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Federal Register

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Title 3—

The President

Presidential Determination No. 02–32 of September 30, 2002

Presidential Determination on the Transfer of Funds from International Organizations and Programs Funds to the Child Survival and Health Programs Fund

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 610 of the Foreign Assistance Act of 1961, as amended (FAA), I hereby determine it is necessary for the purposes of the FAA that the $34 million in FY 2002 International Organizations and Programs funds that were allocated for the United Nations Population Fund be transferred to, and consolidated with, the Child Survival and Health Programs Fund, and such funds are hereby transferred and consolidated. The transferred funds will be administered by the U.S. Agency for International Development in support of reproductive health and maternal health and related programs.

You are authorized and directed to transmit this determination to the Congress and to arrange for its publication in the **Federal Register**.

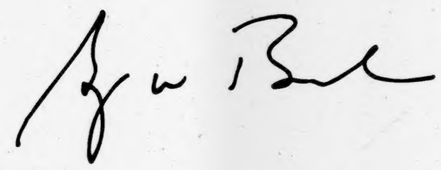

THE WHITE HOUSE,
Washington, September 30, 2002.

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Federal Register
Vol. 67, No. 194
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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

United States Standards for Milled Rice; Correction

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Direct final rule; correction.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration published a Direct final rule in the **Federal Register** revising the United States Standards for Milled rice to establish and add a new level of milling degree, "hard milled," to the existing milling requirements, and to eliminate reference to "lightly milled" from the milling requirements of U.S. Standards for Milled Rice.

FOR FURTHER INFORMATION CONTACT: John Giler, (202) 720–0252.

Correction

In the **Federal Register** of September 30, 2002 (67 FR 61249), make the following corrections to the Effective Date section of the **SUPPLEMENTARY INFORMATION,** first column, last paragraph on page 61250:

1. Remove "June 30, 2002", and add "October 31, 2002" in its place.

2. Remove "August 1, 2002", and add "December 1, 2002" in its place.

Dated: October 2, 2002.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 02–25432 Filed 10–4–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV02–905–4 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Exemption for Shipments of Tree Run Citrus

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the rules and regulations currently prescribed under the Florida citrus marketing order (order). The order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (committee). This rule exempts shipments of small quantities of tree run citrus from the grade, size, and assessment requirements of the order. Producers can ship 150 1–3/5 bushel boxes per variety, per shipment, of their own citrus free from order regulations, not to exceed 1,500 boxes per variety for the season. This change is effective for the 2002–03 season only. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns.

DATES: Effective October 8, 2002; comments received by December 6, 2002 will be considered prior to issuance of a final rule. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by December 6, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202)720–8938, or e-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler

is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule changes the rules and regulations under the order to exempt shipments of small quantities of tree run citrus from grade, size, and assessment requirements. Tree run citrus is wholesome citrus picked and boxed in the field and taken directly to market without being graded or sized. With this change, producers are allowed to ship 150 1⅗ bushel boxes per variety, per shipment, of their own citrus free from marketing order regulations. Total shipments cannot exceed 1,500 boxes per variety for the season. This action was unanimously recommended by the committee at its meeting held on May 22, 2002.

Section 905.80 of the marketing order provides authority for the Committee to exempt certain types of shipments from regulation. Exemptions can be implemented for types of shipments of any variety in such minimum quantities, or for such purposes as the committee with the approval of USDA may specify. No assessment is levied on fruit so shipped. The committee shall, with the approval of USDA, prescribe such rules, regulations, or safeguards as it deems necessary to prevent varieties handled under the provisions of this section from entering channels of trade for other than the purposes authorized by this section.

This rule adds section 905.149 to the rules and regulations under the order. This section defines grower tree run citrus and outlines the procedures to be used for growers to apply to the committee to ship their own tree run citrus fruit exempt from grade, size, and assessment requirements under the order. Under this section, once the exemption has been approved, the grower must report to the committee the volume of fruit shipped, the date of the shipment, and type of transportation used.

According to Florida Department of Citrus (FDOC) regulation 20–35.006, "Tree run grade is that grade of naturally occurring sound and wholesome citrus fruit which has not been separated either as to grade or size after severance from the tree." Also, FDOC regulation 20–62.002 defines wholesomeness as fruit free from rot, decay, sponginess, unsoundness, leakage, staleness, or other conditions showing physical defects of the fruit. By definition, this fruit is handled by the grower and bypasses normal handler operations. Prior to this change, all tree run citrus had to meet all requirements of the marketing order, as well as State of Florida Statutes and Florida Department of Citrus regulations. Even with this change, tree run citrus must continue to meet applicable State of Florida Statutes and Florida Department of Citrus regulations, including inspection. Growers will be able to pick, box, and ship directly to buyers, and avoid the costs incurred when citrus is handled by packinghouses.

Over the past few years, small producers of Florida citrus have expressed concerns regarding problems incurred when selling their citrus. These concerns include costs, returns, and available markets. These problems, along with market conditions, have driven a fair number of citrus growers and handlers out of the citrus industry. These concerns have been discussed at committee meetings, as well as meetings of other industry groups.

Some small growers have stated they have had difficulty getting packinghouses to pack their fruit. There is limited demand for certain varieties of citrus produced. In some cases, supply exceeds demand in the standard markets. According to committee data, over the past five years, fresh grapefruit sales have dropped 25 percent and fresh orange shipments are down 11 percent. In some cases, varieties may be out of favor with handlers and consumers, or there may be a glut on the market of a particular variety of fruit. As a result, packinghouses do not wish to become over stocked with fruit which is difficult to market and, therefore, will not pack less popular minor varieties of fruit or fruit that is in oversupply. Packinghouses do not want to pack what they cannot sell. These factors have caused wholesome fruit to be shipped to processing plants or left on the tree.

The costs of growing for the fresh market have been increasing, while, in many cases the returns to the grower have been decreasing. The cost of picking, packing, and hauling, and associated handling costs for fruit going to the fresh market, is sometimes greater than the grower's return on the fruit. The costs associated with growing for the fresh market are greater than the costs for growing for the processed market.

When citrus cannot be sold into the fresh market, it can be sold to the processing plants. However, the prices received are considerably lower. For example, during the last five years, only the 1999–2000 season produced on-tree returns for processed red seedless grapefruit that exceeded one dollar per box. Over the period from 1977 through 2000, the differential between fresh prices and processed prices has averaged $3.55 per box. The average on-tree price for processed Florida oranges during the 2000–01 season was $2.72 compared to $4.25 for fresh oranges.

In some cases, where the cost of harvesting citrus exceeds the returns to the grower or the grower cannot find a buyer for the fruit, economic abandonment can occur. According to information from the National Agricultural Statistics Service, the seasons of 1995–96, 1996–97, 1997–98, and 2000–01 had an average economic abandonment of two million boxes or more of red seedless grapefruit alone.

Consequently, growers are looking for other outlets to move their fruit in an effort to increase returns. Several growers at the meeting stated regulations imposed on the citrus industry have made it difficult for them to ship homegrown fruit into interstate markets. Some growers believe secondary markets exist which are not currently being supplied that would provide them an additional outlet to sell their citrus. They think niche markets exist that could be profitable if they were given the opportunity to reach them. They believe they can ship quality fruit directly to out-of-state markets and that it would be well received.

Growers want the opportunity to pursue those niche markets. These growers contend tree run citrus does not need a minimum grade and size to be marketable, and that they can supply quality fruit to secondary markets not served by packed fruit. However, they believe to do it profitably, they need to bypass the normal handler operations and the associated costs.

The committee listened to the concerns of these small growers and the problems they have encountered. In an effort to allow these growers to pursue these niche markets, the committee, which consists of growers and handlers, unanimously voted to allow a minimum quantity of citrus to be shipped exempt from the grade, size, and assessment regulations. The committee recommended growers be allowed to ship up to 150 1⅗ bushel boxes of each variety, per shipment, from their own groves, with total shipments for the season not to exceed 1,500 boxes per variety.

Throughout industry discussions, many different combinations of varieties and shipment totals were discussed. In making this recommendation, the committee determined that 150 boxes of each variety per shipment will allow the grower to ship a sufficient amount of fruit to make the exemption cost effective and yet not allow too much fruit to enter market channels exempt from marketing order requirements. The committee believes this level of volume will help keep this fruit in non-competitive outlets.

The committee believes this tree run fruit will be sold primarily to non-competitive, niche markets, such as farmers' markets, flea markets, roadside stands, and similar outlets and will not compete with non-exempt fruit shipped under the order. Fruit is sold in similar markets within the state, and such markets have been successful. This change allows growers to sell directly to similar markets outside of the state. The committee believes this action will allow the industry to service more non-traditional markets and that this may be a way to increase fresh market shipments and develop new markets. Granting this exemption will allow growers to supply markets that might not otherwise be supplied. Some members expect that this tree run or grove fresh fruit may create greater consumer interest in fresh citrus fruit.

Under this provision, the grower is required to apply to the committee, on a "Grower Tree Run Certificate Application" form provided by the committee, for an exemption to ship tree run citrus fruit to interstate markets. On this form, the grower must provide the committee with their name; address; phone number; legal description of the grove; variety of citrus to be shipped; and the approximate number of boxes produced on the specified grove. The grower must also certify that the fruit to be handled comes from the grove owned by the grower applicant. The grower will report to the committee the actual number of boxes per variety shipped under the exemption on the shipment form discussed below.

The Grower Tree Run Certificate Application form will be submitted to the committee manager. The manager will review the application for completeness and accuracy. The manager will also verify the information provided. After the application has been reviewed, the manager will notify the grower applicant in writing whether the application is approved or denied.

Once the grower has received approval for their application for exemption and begins shipping fruit, a "Report of Shipments Under Grower Tree Run Certificate" form, also provided by the committee, must be completed for each shipment. On this form, the grower will provide the location of the grove, the amount of fruit shipped, the shipping date, and the type of transportation used to ship the fruit, along with the vehicle license number. The grower must supply the Road Guard Station with a copy of the grower certificate report for each shipment, and provide a copy of the report to the committee. This report will enable the committee to maintain compliance and gather data, which will be used to determine the effectiveness of the exemption. Failure to comply with these requirements may result in the cancellation of a grower's certificate.

The FDOC defines tree run grade and wholesomeness of citrus fruit. This fruit is handled by the grower and bypasses normal handler operations. Even with the change to the provisions under the order, tree run citrus must still meet the requirements of the State of Florida Statutes and FDOC regulations, including inspection. Consequently, growers will continue to need to have the fruit inspected to meet current State requirements.

This exemption will be effective for the current season, beginning with the effective date of this rule, and ending July 1, 2003, only. The committee determined that offering the exemption for one season will provide sufficient information on how the fruit shipped under the exemption was received on the market. It will also indicate whether or not other markets exist that packed fruit is not currently supplying, where these markets are located, and approximately how much fruit can be sold in such markets. It will also indicate the number of growers interested in utilizing the exemption and the volume of citrus shipped under the exemption. In addition, it will provide the committee with information regarding any potential impact on competitive outlets. The committee will also have information available regarding any compliance issues not previously discussed. At the end of the season, the committee will review all available information and decide whether the exemption should be continued.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including citrus, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order. Therefore, no change is necessary in the citrus import regulations as a result of this action.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 11,000 producers of Florida citrus in the production area and approximately 80 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on industry and committee data, the average annual f.o.b. price for fresh Florida citrus during the 2000–01 season was approximately $8.10 per ⅘-bushel carton for all shipments, and the total fresh shipments for the 2000–01 season are estimated at 53.5 million ⅘-bushel cartons of Florida citrus. Approximately 50 percent of the handlers handled 93 percent of Florida citrus shipments. Using information provided by the committee, about 60 percent of citrus handlers could be considered small businesses under the SBA definition. Although specific data is unavailable, the Department believes that the majority of Florida citrus producers may be classified as small entities.

This rule adds a § 905.149 to the rules and regulations under the order to exempt shipments of small quantities of

tree run citrus from the grade, size, and assessment requirements of the order. This action allows growers to ship 150 1⅗ bushel boxes per variety, per shipment, of their own tree run citrus free from marketing order regulations into interstate markets. Total shipments cannot exceed 1,500 boxes per variety for the season per individual grower. This change is effective for the 2002–03 season only. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns. Authority for this action is provided in § 905.80(e).

According to a recent study by the University of Florida—Institute of Food and Agricultural Sciences, production costs for the 2001–02 season ranged from $1.71 per box for processed oranges to $2.41 per box for grapefruit grown for the fresh market. The average packing charge for oranges is approximately $6.50 per box, for grapefruit the charge is approximately $5.75 per box, and for tangerines the charge can be as high as $9 per box. In a time when grower returns are weak, sending fruit to a packinghouse can be cost prohibitive, especially for the small grower. This rule may provide an additional outlet for fruit that might otherwise be forced into the processing market or left on the tree altogether.

This rule will not impose any additional costs on the grower. This rule has the opposite effect, reducing the costs associated with having fruit handled by a packinghouse. This rule will enable growers to ship their tree run citrus free from grade, size, and assessment requirements under the order. This action will allow growers to ship minimum quantities of their citrus directly into interstate commerce exempt from some order requirements and their related costs. With this action, growers will be able to reduce handling costs and use those savings toward developing additional markets. This will benefit all growers regardless of size but it is expected to have a particular benefit for the small grower.

The committee considered several alternatives to this action, including making no change to the current regulations. The committee believed that some change was necessary to help Florida citrus growers. The committee considered allowing growers to ship unlimited quantities of any grower's citrus. This option was rejected because it would have caused market disruption and compliance problems, as growers could become shippers for other growers. It would have also made it more difficult to keep this fruit in noncompetitive outlets. Other alternatives considered were increasing the number of boxes available to be shipped per load, and increasing the number of boxes available to be shipped per season. These options were also rejected amid concerns that too much fruit could be shipped and find its way into the competitive markets.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

Further, the committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in committee deliberations. Like all committee meetings, the May 22, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, the committee has a number of appointed subcommittees to review certain issues and make recommendations to the committee. A subcommittee met May 21, 2002, and discussed the tree run issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This action requires two additional forms. These information collection requirements are discussed in the following section.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that AMS is requesting emergency approval for a new information collection request for Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida, Marketing Order No. 905. The emergency request is necessary because insufficient time is available to follow normal clearance procedures.

Title: Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida, Marketing Order No. 905.

OMB Number: 0581–NEW.

Type of Request: New collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Florida citrus marketing order program, which has been operating since 1939.

On May 22, 2002, the committee unanimously recommended revising the order's administrative rules and regulations to exempt a small volume of a grower's tree run fruit from certain order requirements and to require producers to apply to the committee for such an exemption and to report to the committee information on their shipments under the exemption. This information will be reported on two new committee forms. *Form CAC 401, Grower Tree Run Certificate Application*, is used by growers to apply for an exemption to ship their own tree run Florida citrus fruit during the season. *Form CAC 402, Report of Shipments Under Grower Tree Run Certificate*, is used by growers to inform the committee of their tree run shipments during the regulation period.

The new reports are needed so the committee can collect information on the number of growers shipping their own tree run Florida citrus fruit into interstate commerce during the regulation period, and information on the volume of tree run fruit shipped. The committee will evaluate this information and determine whether a grower is in compliance with the regulation. These reports will ensure compliance with the regulations and assist the committee and the USDA with oversight and planning.

The information collected is used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs regional and headquarters staff, and authorized committee employees. Authorized committee employees will be the primary users of the information and AMS would be the secondary user.

The request for approval of the new information collections under the order is as follows:

CAC 401, Grower Tree Run Certificate Application

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Growers applying to ship their own tree run Florida citrus fruit during the 2002–03 season.

Estimated Number of Respondents: 45.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3.74 hours.

CAC 402, Report of Shipments Under Grower Tree Run Certificate

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Growers who handle their own tree run Florida citrus fruit during the regulation period.

Estimated Number of Respondents: 45.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 11.21 hours.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–NEW and the Florida citrus marketing order, and be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. As mentioned before, because there is insufficient time for a normal clearance procedure and prompt implementation is needed, AMS is seeking emergency approval from OMB for the use of the two new forms for the 2002–03 regulation period. Upon OMB approval, the forms will be merged with the forms currently approved under OMB No. 0581–0189, "Generic OMB Fruit Crops." As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition to this change in the information collection burden, this rule exempts grower owned, tree run, Florida citrus fruit from some of the rules and regulations under the order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This rule needs to be in place as soon as possible to cover as many shipments during the 2002–03 season as possible. Also, growers need to know they are free to market their citrus under these exemption procedures. In addition, this issue has been widely discussed at various industry and association meetings, and the committee has kept the industry well informed. Interested persons have had time to determine and express their positions. Further, growers and handlers are aware of this rule, which was recommended at public meetings. Also, a 60-day comment period is provided for in this rule.

List of Subjects in 7 CFR Part 905

Oranges, Grapefruit, Tangerines, Tangelos, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 905.149 is added to read as follows:

§ 905.149 Procedure for permitting growers to ship tree run citrus fruit.

(a) *Tree run citrus fruit.* Tree run citrus fruit as referenced in this section is defined in the Florida Department of Citrus (FDOC) regulation 20–35.006, which specifies that "Tree run grade is that grade of naturally occurring sound and wholesome citrus fruit which has not been separated either as to grade or size after severance from the tree." Wholesomeness is as defined in FDOC regulation 20–62.002. The tree run citrus fruit shipped under this provision also must be from the applying grower's own grove.

(b) *Application.* A grower shall apply to ship tree run fruit using a Grower Tree Run Certificate Application, furnished by the committee. Such application shall contain, but not be limited to: the name, address, and phone number of the grower; legal description of the grove(s) from which citrus will be shipped; variety of citrus produced on the identified grove(s); approximate number of boxes produced on the identified grove(s); and a certification to the U.S. Department of Agriculture and to the committee as to the truthfulness of the information shown thereon; and any other appropriate information or documents deemed necessary by the committee or its duly authorized agents.

(c) *Approval.* The committee or its duly authorized agents shall give prompt consideration to each application for a Grower Tree Run Certificate. Approval of an application will be based upon a determination as to whether the information contained therein and on whether other information available to the committee supports an application's approval. Approval of an application shall be evidenced by the issuance of a Grower Tree Run Certificate to the applicant. Each certificate shall expire at the end of the fiscal period.

(d) *Suspension or denial of a Grower Tree Run Certificate.* The committee may investigate the handling of tree run shipments under a Grower Tree Run Certificate to determine whether growers are complying with the requirements and regulations applicable to such certificates. Whenever the committee finds that a grower is failing to comply with the requirements and regulations applicable to such certificates, the Grower Tree Run Certificate issued to such grower may be suspended or, in the case of an application for the issuance of an initial Grower Tree Run Certificate, may be denied. Such suspension of a certificate shall be for a reasonable period of time as determined by the committee, but in no event shall it extend beyond July 31, 2003. In the case of the denial of an application for the issuance of an initial certificate, such certificate shall be denied until the applicant comes into compliance with the requirements and regulations applicable to such certificates. Prior to suspending or denying an application for a Grower Tree Run Certificate, the committee shall give the grower reasonable

advance notice in writing of its intention and the facts and reasons therefor, and afford the grower an opportunity, either orally or in writing, to present opposing facts and reasons. The grower shall be informed of the committee's determination in writing and in a timely manner.

(e) To qualify for a Grower Tree Run Certificate, each such grower must notify the committee prior to the first shipment of tree run Florida citrus fruit of the grower's intent to ship such citrus, submit an application on forms supplied by the committee, and agree to other requirements as set forth in this section with respect to such shipments.

(f) The handling of tree run citrus under a Grower Tree Run Certificate shall be exempt from the provisions of §§ 905.52 and 905.53 and the regulations issued thereunder, under the following conditions:

(1) A grower may only ship up to 150 1⅗ bushel boxes per variety, per shipment.

(2) A grower may only ship up to 1,500 boxes per variety per season.

(3) This rule is applicable for the 2002–03 season only. Each grower certificate shall expire July 31, 2003.

(4) Each grower shall apply to the Citrus Administrative Committee and receive a Grower Tree Run Certificate prior to shipping their own tree run Florida citrus fruit.

(5) Each grower of citrus shipping under a Grower Tree Run Certificate shall supply the committee with reports on each shipment as requested by the committee, on forms supplied by the committee, providing the following information: The name and address of the grower, along with the grower's Grower Tree Run Certificate number; the legal description of the grove; the variety and amount of citrus shipped; the date the fruit was shipped; and the truck/trailer license number. A copy of the form will be completed for each shipment. One copy of the report will be forwarded by the grower to the committee office within 10 days after such shipment, and one copy of the report will accompany each shipment and be given to the Road Guard Station.

Dated: October 1, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–25430 Filed 10–2–02; 2:25 pm]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV02–906–1 IFR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Texas Valley Citrus Committee (Committee) for the 2002–03 and subsequent fiscal periods from $0.12 to $0.11 per 7/10-bushel carton of oranges and grapefruit handled. The Committee locally administers the marketing order which regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. Authorization to assess orange and grapefruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective October 8, 2002. Comments received by December 6, 2002 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, orange and grapefruit handlers in the Lower Rio Grande Valley in Texas are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable oranges and grapefruit beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2002–03 and subsequent fiscal periods from $0.12 to $0.11 per 7/10-bushel carton of oranges and grapefruit.

The Texas orange and grapefruit marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Texas oranges and grapefruit. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1999–2000 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 30, 2002, and unanimously recommended 2002–03 expenditures of $1,226,022 and an assessment rate of $0.12 per 7/10-bushel carton of oranges and grapefruit. The Committee met again on August 28, 2002, and recommended a decreased assessment rate of $0.11, with no change to the previously approved budget of $1,226,022. Thirteen of the 14 Committee members and alternates acting as members voted in support of the $0.11 per 7/10-bushel carton decrease. One Committee member voted against the decrease. In comparison, last year's budgeted expenditures were $1,236,777. The assessment rate of $0.11 is $0.01 lower than the rate currently in effect. The Committee voted to reduce the assessment rate after determining that its reserve fund was higher than they believed necessary, and to lower handler assessment costs for 2002–03 by $100,000.

The major expenditures recommended by the Committee for the 2002–03 fiscal period include $810,500 for advertising, $179,000 for the Mexican Fruit Fly program, $107,845 for management and administration of the program, and $74,777 for compliance. Budgeted expenses for these items in 2001–02 were $810,500, $197,000, $104,500, and $74,777, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Texas oranges and grapefruit. Texas orange and grapefruit shipments for the year are estimated at 10 million 7/10-bushel cartons, which should provide $1,100,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently $274,041) will be kept within the maximum of one fiscal period's expenses permitted by the order (§ 906.35).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 410 producers of oranges and grapefruit in the production area and approximately 15 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated Texas citrus industry profile shows that 6 of the 15 handlers (40 percent) shipped over 651,042 7/10-bushel cartons of oranges and grapefruit. Using an average f.o.b. price of $7.68 per 7/10-bushel carton, these handlers could be considered large businesses under SBA's definition, and the remaining 9 handlers (60 percent) could be considered small businesses. Of the approximately 410 producers within the production area, few have sufficient acreage to generate sales in excess of $750,000. Thus, the majority of handlers and producers of Texas oranges and grapefruit may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $0.12 to $0.11 per 7/10-bushel carton of oranges and grapefruit. The Committee recommended 2002–03 expenditures of $1,226,022 and an assessment rate of $0.11 per 7/10-bushel carton of oranges and grapefruit. The recommended assessment rate of $0.11 is $0.01 lower than the current rate. The quantity of assessable oranges and grapefruit for the 2002–03 fiscal year is estimated at 10 million cartons. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2002–03 fiscal period include $810,500 for advertising, $179,000 for the Mexican Fruit Fly program, $107,845 for management and administration of the program, and $74,777 for compliance. Budgeted expenses for these items in 2001–02 were $810,500, $197,000, $104,500, and $74,777, respectively.

The Committee recommended the $0.11 assessment rate to lower its operating reserve to $171,249. With a $0.12 assessment rate, the Committee projected its reserve on July 31, 2003, to be $271,249, and it thought that was higher than needed to administer the program. It also recommended the reduced rate to lower handler assessments by $100,000 during 2002–03.

The Committee reviewed and unanimously recommended 2002–03 expenditures of $1,226,022, which included a decrease in the Mexican Fruit Fly program and an increase in the management and administration of the program. Budgeted expenses for the advertising program and the compliance program remained the same as last year. In arriving at the budget, the Committee considered information from various sources, including the Executive Committee. The Committee considered leaving the established higher assessment rate unchanged. However, it concluded that the reserves currently held by the Committee are higher than the Committee needs to administer the program.

The proposed assessment rate of $0.11 per 7/10-bushel carton of assessable oranges and grapefruit was determined by dividing the total budget by the 10 million 7/10-bushel cartons of oranges and grapefruit estimated for the 2002–03 fiscal period. The $0.11 rate will provide $1,100,000 in assessment income. The additional $126,022 to fund the Committees estimated expenses will come from the Committee's reserve, a refund of an overpayment from the Mexican Fruit Fly program, and interest income.

A review of historical information (October 1998 through May 2002) and preliminary information pertaining to the upcoming fiscal period indicates that the packinghouse door price for the 2002–03 fiscal period could range, monthly, from $1.65 to $10.36 per 7/10-bushel carton of Texas oranges and grapefruit, depending upon the fruit variety, size, and quality. Therefore, the estimated assessment revenue for the 2002–03 fiscal period as a percentage of total grower (packinghouse door) revenue could range between 6.67 percent and 1.06 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Texas orange and grapefruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 28, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2002–03 fiscal period began on August 1, 2002, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable oranges and grapefruit handled during such fiscal period; (2) this action decreases the assessment rate for assessable oranges and grapefruit beginning with the 2002–03 fiscal period; (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 906.235 is revised to read as follows:

§ 906.235 Assessment rate.

On and after August 1, 2002, an assessment rate of $0.11 per 7/10-bushel carton is established for oranges and grapefruit grown in the Lower Rio Grande Valley in Texas.

Dated: October 1, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–25429 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV02–920–4 FR]

Kiwifruit Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Kiwifruit Administrative Committee (Committee) for the 2002–03 and subsequent fiscal periods from $0.03 to $0.045 per 22-pound volume fill container or equivalent of kiwifruit. The Committee locally administers the marketing order which regulates the handling of kiwifruit grown in California. Authorization to assess kiwifruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: October 8, 2002.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938; or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California kiwifruit handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable kiwifruit beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2002–03 and subsequent fiscal periods from $0.03 to $0.045 per 22-pound volume fill container or equivalent of kiwifruit.

The California kiwifruit marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of California kiwifruit. They are familiar with the Committee's needs and the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–01 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 10, 2002, and unanimously recommended 2002–03 expenditures of $80,760 and an assessment rate of $0.045 per 22-pound volume fill container or equivalent of kiwifruit. In comparison, last year's budgeted expenditures were $78,000. The assessment rate of $0.045 is $0.015 higher than the rate currently in effect. The higher assessment rate is needed to offset the 2002–03 increase in salaries and vehicle expenses, and to keep the operating reserve at an adequate level.

The following table compares major budget expenditures recommended by the Committee for the 2002–03 and 2001–02 fiscal periods:

Budget expense categories	2002–03	2001–02
Administrative Staff & Field Salaries	$55,500	$50,000
Travel	5,000	9,500
Office Costs/Annual Audit	14,500	14,500
Vehicle Expense Account	5,760	4,000

The assessment rate recommended by the Committee was derived using the following formula: Anticipated expenses ($80,760), plus the desired 2003 ending reserve ($36,287), minus the 2002 beginning reserve ($23,979), divided by the total estimated 2002–03 shipments (2,068,182 22–pound volume fill containers). This calculation resulted in the $0.045 assessment rate. This rate will provide sufficient funds to meet the anticipated expenses of $80,760 and result in a July 2003 ending reserve of $36,287, which is acceptable to the Committee. The July 2003 ending reserve funds (estimated to be $36,287) will be within the maximum permitted by the order, approximately one fiscal period's expenses (§ 920.41).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 326 producers of kiwifruit in the production area and approximately 52 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as

those whose annual receipts are less than $5,000,000.

None of the 52 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000. Two of the 326 producers subject to regulation have annual sales of at least $750,000. Thus, the majority of handlers and producers of kiwifruit may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $0.03 to $0.045 per 22-pound volume fill container or equivalent of kiwifruit. The Committee unanimously recommended 2002–03 expenditures of $80,760 and an assessment rate of $0.045 per 22-pound volume fill container or equivalent of kiwifruit. The assessment rate of $0.045 is $0.015 higher than the 2001–02 rate. The quantity of assessable kiwifruit for the 2002–03 fiscal period is estimated at 2,068,182 22-pound volume fill container or equivalent of kiwifruit. Thus, the $0.045 rate should provide $93,068 in assessment income and be adequate to meet this year's expenses.

The following table compares major budget expenditures recommended by the Committee for the 2002–03 and 2001–02 fiscal years:

Budget expense categories	2002–03	2001–02
Administrative Staff & Field Salaries	$55,500	$50,000
Travel	5,000	9,500
Office Costs/Annual Audit	14,500	14,500
Vehicle Expense Account	5,760	4,000

The Committee reviewed and unanimously recommended 2002–03 expenditures of $80,760, which included increases in administrative salaries and vehicle expenses. Prior to arriving at this budget, the Committee considered alternative expenditure levels, but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate recommended by the Committee was derived using the following formula: Anticipated expenses ($80,760), plus the desired 2003 ending reserve ($36,287), minus the 2002 beginning reserve ($23,979), divided by the total estimated 2002–03 shipments (2,068,182 22-pound volume fill containers). This calculation resulted in the $0.045 assessment rate. This rate will provide sufficient funds to meet the anticipated expenses of $80,760 and result in a July 2003 ending reserve of $36,287, which is acceptable to the Committee. The July 2003 ending reserve funds (estimated to be $36,287) will be within the maximum permitted by the order, approximately one fiscal period's expenses (§ 920.41).

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2002–03 season could range between $9.50 and $13.00 per 22-pound volume fill container or equivalent of kiwifruit. Therefore, the estimated assessment revenue for the 2002–03 fiscal period as a percentage of total grower revenue could range between 0.5 and 0.3 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 10, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on August 15, 2002 (67 FR 53322). Copies of the proposed rule were also mailed or sent via facsimile to all California kiwifruit handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending September 16, 2002, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers are already receiving the 2002–03 kiwifruit crop and the marketing order requires that the rate of assessment apply to all assessable kiwifruit handled during the 2002–03 and subsequent seasons; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 920.213 is revised to read as follows:

§ 920.213 Assessment rate.

On and after August 1, 2002, an assessment rate of 0.045 per 22-pound volume fill container or equivalent of kiwifruit is established for kiwifruit grown in California.

Dated: October 1, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–25428 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1437

RIN 0560–AG82

Noninsured Crop Disaster Assistance for Sea Grass and Sea Oats

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Commodity Credit Corporation (CCC) regulations governing the Noninsured Crop Disaster Assistance Program (NAP) to add sea grass and sea oats as eligible crops as provided for in the Farm Security and Rural Investment Act of 2002 (2002 Act). The intended affect of this rule is to make producers of these crops eligible for disaster assistance under NAP.

EFFECTIVE DATE: October 7, 2002.

FOR FURTHER INFORMATION CONTACT: Steve Peterson, Chief, Noninsured Assistance Programs Branch (NAPB); Production, Emergencies, and Compliance Division (PECD); Farm Service Agency (FSA); United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517; telephone (202) 720–5172; e-mail *Steve_Peterson@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 196 of the Federal Agriculture Improvement Act of 1996 (1996 Act) is the statutory authority for NAP. Section 10101 of the 2002 Act amended section 196 to provide for the new crop eligibility implemented by this rule. Section 161 of the 1996 Act requires that the provisions of Title I of the 1996 Act, which includes section 196, be issued without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Executive Order 12866

This final rule has been determined to be not significant under Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Noninsured Crop Disaster Assistance—10.451.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because neither the Secretary of Agriculture nor CCC are required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. FSA has concluded that this rule is categorically excluded from further environmental review and documentation as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. This final rule preempts State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) do not apply to this rule because neither the Secretary of Agriculture nor CCC are required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule. Also, the rule imposes no mandates as defined in UMRA.

Paperwork Reduction Act

Section 196 of the 1996 Act requires that these regulations be issued without regard to the Paperwork Reduction Act. This means that the normal 60-day public comment period and OMB approval of the information collections required by this rule are not necessary before the regulations may be made effective. However, FSA will still request approval of the new information collections required by this rule.

Government Paperwork Elimination Act

CCC and FSA are committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required by participation in the Noninsured Crop Disaster Assistance Program are not yet fully implemented in a way that would allow the public to conduct business with FSA electronically. Accordingly, applications for this program may be submitted at FSA offices by mail or FAX.

Background

The Noninsured Crop Disaster Assistance Program is operated by FSA and CCC under the authority section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333) (the 1996 Act). The 1996 Act requires that eligible program crops be crops that are used for food or fiber or that are specifically identified by the statute. Sea grass and sea oats were neither and therefore were not eligible. Section 10101 of the 2002 Act amended section 196 of the 1996 Act to specifically identify them as eligible crops.

Section 196 of the 1996 Act provides that the Secretary of Agriculture shall operate a noninsured crop disaster assistance program to provide coverage equivalent to the catastrophic risk protection otherwise available under section 508(b) of the Federal Crop Insurance Act (7 U.S.C. 1508(b)). Coverage under section 196 is limited to crops that are commercial or agricultural in nature for which

catastrophic risk protection under section 508(b) is not available and that are produced for food or fiber or are specifically included by the statute. Qualifying losses must be due to drought, flood, or other natural disaster, as determined by the Secretary. Among other requirements, the 1996 Act specifies that a producer shall submit an application for noninsured crop disaster assistance at a local office of the Department, that the application must be in such form and contain such information as the Secretary may specify and must be submitted not later than 30 days before the beginning of the coverage period. The coverage period is determined by the Secretary. There are also provisions in the law for acreage reports. Under the statute, differing qualifying loss thresholds are based on whether the crop was planted and failed or whether instead the crop could not be planted because of a qualifying condition. If all other conditions are met, payments will are determined by multiplying the amount by which the harvest is less than 50 percent of the established yield for the crop by 55 percent of the average market price for the crop (or any comparable coverage determined by the Secretary) by a payment rate that takes in other factors. Provisions are also made in the statute for yield determinations. Further details are set out in the final rule published on March 19, 2002, which was a major revision of the NAP regulations.

The rule provides that sea oats and sea grass will be treated as value-loss crops and eligibility will be limited to ornamental plants grown for commercial sale and seeds and transplants produced for commercial sale as propagation stock. The rule provides that claims involving ornamental sea oat and see grass plants will be compensable in the same manner and subject to the same conditions as ornamental nursery stock under section 1437.305 of the existing regulations. For propagation stock (seed or transplant), claims will be compensable under new provisions set out in the rule. The limitations in the rule reflect the limited purpose of the statute and the limitations that apply to other crops under the same program. They include the requirement that an application for coverage be filed at least 30 days in advance of the coverage period. That rule establishes, among other things, the manner in which the beginning of the coverage period, and hence the last date for filing the application for coverage, is determined.

This rule provides that sea oats and sea grass will be treated as "value loss" crops, as opposed to field crops where the loss is not based on the loss of particular plants, but based on loss of an expected yield of a particular plot. As with ornamental crops, all plants that survive the disaster will be treated as not involving a compensable loss even though there may be some damage to the plant. This reflects the orientation of the program to actual yield, rather than quality, losses. In any event, gradations of loss to individual plants would be difficult (a difficulty not contemplated by the statute). It would also be imprecise. Further, in many cases, damaged plants can be rejuvenated.

List of Subjects in 7 CFR Part 1437

Crop insurance, Nursery stock, Plants.

For the reasons set out above, 7 CFR Part 1437 is amended as follows:

PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM

1. The authority citation for part 1437 continues to read as follows:

Authority: 15 U.S.C. 714 *et seq.*; and 7 U.S.C. 7333.

Subpart A—General Provisions

2. Amend § 1437.4 by removing the word "and" at the end of paragraph (c)(4)(vi), removing the period at the end of paragraph (c)(4)(vii) and inserting a semicolon and the word "and" in its place, and adding paragraph (c)(4)(viii) to read as follows:

§ 1437.4 Eligibility.

* * * * *

(c) * * *

(4) * * *

(viii) Sea grass and sea oats.

Subpart D—Determining Coverage Using Value

3. Add section 1437.310 to read as follows:

§ 1437.310 Sea grass and sea oats.

(a) Sea grass and sea oats are value loss crops and eligibility will be limited to ornamental plants grown for commercial sale and seeds and transplants produced for commercial sale as propagation stock.

(b) An eligible commodity under this section intended for sale on a commercial basis as:

(1) An ornamental plant can produce a claim in the event of a loss due to a qualifying condition only in the same manner and subject to the same conditions as ornamental nursery stock under § 1437.305 and such claims shall not, as such, be subject to the provisions of paragraphs (c) through (h) of this section, except to the extent that similar provisions apply to claims under § 1437.305.

(2) Propagation stock (seed or transplant) can produce a claim under this part but only in accord with the provisions that follow in this section and subject to other conditions on payment as may be imposed elsewhere in this part.

(c) For purposes of a loss calculation arising under paragraph (b)(2) of this section, the value of:

(1) Seed will be determined on a yield basis made in accordance with subpart B of this part and average market price established in accordance with § 1437.11.

(2) Transplant losses will be determined based on inventory that existed immediately before and after the disaster and average market price established in accordance with § 1437.11.

(d) Transplant producers must have up-to-date inventory and sales records and other documents, sufficient to document actual losses, as determined by CCC.

(e) The land, waterbed, or facility in which the eligible commodity was located at the time of loss must:

(1) Be owned or leased by the producer;

(2) Have readily identifiable boundaries; and

(3) Be managed and maintained using acceptable growing practices for the geographical region, as determined by CCC.

(f) The producer must have control of the land, waterbed, or facility and must ensure adequate and proper:

(1) Flood prevention;

(2) Growing medium;

(3) Fertilization or feeding;

(4) Irrigation and water quality;

(5) Weed control;

(6) Pest and disease control;

(7) Rodent and wildlife control; and

(8) Over-winterization facilities, as applicable.

(g) The eligible commodity must be:

(1) Grown in a region or controlled environment conducive to successful production, as determined by CCC; and

(2) Placed in the waterbed or facility in which the loss occurs and not be indigenous to the waterbed or facility.

(h) Eligible commodities having any dollar value after the disaster shall be considered as having full value when making loss calculations. Also, damaged plants that do not have any value after the disaster but that can be rejuvenated or may, if not fully rejuvenated, reacquire value, shall be counted as worth full value as well.

(i) In the crop year in which a notice of loss is filed, producers may be

required, at the discretion of CCC, to provide evidence that the eligible commodity was produced in accordance with paragraphs (e), (f), and (g) of this section and other provisions of this part.

Signed in Washington, DC, on September 20, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 417

[Docket No. 00–022N]

E. coli O157:H7 Contamination of Beef Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Compliance with the HACCP system regulations and request for comment.

SUMMARY: The Food Safety and Inspection Service (FSIS) is publishing this document to inform manufacturers of beef products of the Agency's views about the application of the hazard analysis and critical control point (HACCP) system regulations to contamination with *Escherichia coli (E. coli)* O157:H7.

FSIS believes that the availability of certain scientific data on *E. coli* O157:H7 constitutes a change that could affect an establishment's hazard analysis or alter its HACCP plans for raw beef products. Therefore, under the HACCP regulations, if establishments have not already reassessed their HACCP plans for raw beef products in light of this data, they must do so now. Establishments that have not already reassessed their HACCP plans in light of this data must reassess their HACCP plans to determine whether *E. coli* O157:H7 contamination is a hazard reasonably likely to occur in their production process. This requirement applies to HACCP plans for all raw beef products, including ground beef, other non-intact beef products, and intact beef products. If reassessment results in a determination that *E. coli* O157:H7 contamination is a food safety hazard reasonably likely to occur in the establishment's production process, then it must be addressed in a HACCP plan.

All establishments producing raw beef products are required to reassess their HACCP plans. However, establishments receiving product for grinding may have purchase specifications requiring all their suppliers to have one or more critical control points (CCPs) validated to eliminate or to reduce *E. coli* O157:H7 below detectable levels. Such establishments may determine that no additional steps to address this pathogen are necessary in their production process. Establishments adopting this approach should incorporate these purchase specifications and their means of ensuring that their specifications are met in their HACCP plans, in their Sanitation SOPs, which FSIS has recognized as prerequisites for HACCP, or in other prerequisite programs.

In addition, FSIS is issuing new guidance material related to the control of *E. coli* O157:H7 and is making available the Agency's draft comparative risk assessment of intact and non-intact (blade tenderized) steaks. (*See* **ADDRESSES.**) Additionally, FSIS will be issuing a revised *E. coli* O157:H7 sampling and testing Directive and this notice discusses the revisions expected to be made.

FSIS invites comments on the matters presented in this notice, on its guidance material, and on the draft comparative risk assessment.

DATES: Comments may be submitted by December 6, 2002. Establishments that produce raw beef products, and that have not already reassessed their HACCP plans for those products in light of the scientific data on *E. coli* O157:H7 discussed in this notice, are to reassess their HACCP plans by the following dates according to plant size: December 6, 2002 for large plants (all establishments with 500 or more employees); February 4, 2003 for small plants (all establishments with 10 or more employees but fewer than 500); and April 7, 2003 for very small plants (all establishments with fewer than 10 employees or annual sales of less than $2.5 million).

See the **SUPPLEMENTARY INFORMATION** for FSIS verification dates.

ADDRESSES: Submit one original and two copies of written comments to FSIS Docket Clerk, Docket No. 00–022N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. All comments submitted in response to this document and the guidance material will be available for public inspection in the Docket Clerk's office between 8:30 a.m. and 4:30 p.m., Monday through Friday. The draft comparative risk assessment of intact and non-intact (blade tenderized) steaks is also available on the Internet at: *http://www.fsis.usda.gov/OPPDE/rdad/publications.htm*. FSIS is making the guidance material available today at the same Internet address.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Engeljohn, Director, Regulations and Directives Development Staff, Food Safety and Inspection Service, U.S. Department of Agriculture (202) 720–5627.

SUPPLEMENTARY INFORMATION:

HACCP

The Food Safety and Inspection Service (FSIS) administers a regulatory program under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) to protect the health and welfare of consumers by preventing the distribution of meat and poultry products that are unwholesome, adulterated, or misbranded. To further the goal of reducing the risk of foodborne illness from meat and poultry products to the maximum extent possible, FSIS issued final regulations on July 25, 1996, mandating Pathogen Reduction-Hazard Analysis and Critical Control Point (HACCP) Systems for federally inspected establishments (61 FR 38806). These regulations require that federally inspected establishments take preventive and corrective measures at each stage of the food production process where food safety hazards occur.

Part 417, the regulations on HACCP systems, requires a hazard analysis to determine the food safety hazards reasonably likely to occur in the production process and to identify the preventive measures an establishment can apply to control those hazards in the production of particular products (§ 417.2(a)). Ten potential hazard areas, including microbiological contamination, are listed to guide establishments in this analysis (§ 417.2(a)(3)). Whenever a hazard analysis reveals one or more such hazards are reasonably likely to occur in the production process, the regulations require that the establishment develop and implement a written HACCP plan, for each product, that includes specified control measures for each hazard so identified (§ 417.2(b)(1) and (c)).

Section 417.2(a)(1) provides that a food safety hazard is reasonably likely to occur if a prudent establishment would establish control measures because the hazard historically has occurred, or because there is a reasonable possibility that it will occur

in the particular type of product being processed, in the absence of those controls.

The likelihood that a food safety hazard will occur in the production process for a particular product at a given location, and the identification and adequacy of preventive measures to control a likely hazard, must be determined by each establishment. Obviously, conditions that affect such determinations may change over time. For this reason, the HACCP system regulations require that every establishment reassess the adequacy of its HACCP plans at least annually and whenever any changes occur that could affect the underlying hazard analysis or alter the HACCP plans (§ 417.4(a)(3)). New information regarding the fact that *E. coli* O157:H7 is more prevalent than was previously thought is such a change. When reassessment reveals that a plan no longer meets the requirements for the contents of a HACCP plan, the establishment must modify the plan immediately (§ 417.4(a)(3)).

E. coli O157:H7 Policy

In 1994, FSIS notified the public that raw ground beef contaminated with *E. coli* O157:H7 is adulterated under the FMIA unless the ground beef is further processed to destroy this pathogen. Also in 1994, FSIS began sampling and testing ground beef for *E. coli* O157:H7. (For the Agency's current sampling and testing program instructions, *see* FSIS Directive 10,010.1, Microbiological Testing Program for *Escherichia coli* O157:H7 in Raw Ground Beef, February 1, 1998, available on the Internet at *http://www.fsis.usda.gov/oppde/rdad/publications.htm* and in the Docket Clerk's office.)

On January 19, 1999, FSIS published a policy statement, "Beef Products Contaminated with *E. coli* O157:H7" (64 FR 2803). This statement explained the Agency's policy governing beef products that contain *E. coli* O157:H7. The Agency stated that, in evaluating beef products contaminated with *E. coli* O157:H7, it would distinguish intact cuts of muscle (*e.g.*, steaks and roasts) distributed for consumption from non-intact products (*e.g.*, beef that has been mechanically tenderized by needling or cubing) and from intact cuts of muscle that are to be further processed into non-intact product prior to distribution for consumption (*e.g.*, manufacturing trimmings for use in production of ground beef). This statement explained that intact cuts of beef that are to be further processed into non-intact product prior to distribution for consumption must be treated in the same manner as non-intact cuts of beef because pathogens may be introduced below the surface of these products when they are further processed into non-intact products. Manufacturing trimmings (*i.e.*, pieces of meat remaining after steaks, roasts, and other intact cuts are removed) are an example of this type of product. Although manufacturing trimmings may be intact, they are generally further processed into non-intact product.

The Agency stated that if non-intact products or intact products that are to be further processed into non-intact product prior to distribution for consumption are found to be contaminated with *E. coli* O157:H7, they must be processed into ready-to-eat product, or they would be deemed to be adulterated (64 FR 2804). FSIS explained that pathogens, including *E. coli* O157:H7, may be introduced below the surfaces of non-intact products as the result of the processes by which they are made. As a result, customary cooking of these products may not be adequate to kill the pathogens. In contrast, the meat interior of intact products remains protected from pathogens migrating below the exterior. Consequently, customary cooking of these products will destroy any *E. coli* O157:H7. Finally, in this **Federal Register** notice, FSIS requested comments and recommendations relevant to the Agency's policy and to any regulatory requirements that might be appropriate to prevent the distribution of beef products adulterated with this pathogen.

On March 8, 1999, FSIS held a public meeting to discuss the policy addressed in its January 19, 1999, **Federal Register** notice. On February 11, 2000, FSIS announced that it would hold a public meeting on February 29, 2000, to discuss recent developments concerning *E. coli* O157:H7 (65 FR 6881). In the February 11, 2000, **Federal Register** notice, FSIS also responded to comments received concerning the Agency's *E. coli* O157:H7 policy and again requested comments. On February 29, 2000, FSIS held the public meeting on *E. coli* O157:H7. At the meeting, numerous organizations presented information on *E. coli* O157:H7. FSIS presented information on the new testing procedures that it is using for *E. coli* O157:H7 and on the FSIS risk assessment on *E. coli* O157:H7. The Agricultural Research Service (ARS) presented information on research concerning the incidence of *E. coli* O157:H7 in animals entering the slaughter plant and at various stages in the slaughter process. Also, the Centers for Disease Control and Prevention (CDC) presented information concerning its increased estimates for illnesses associated with *E. coli* O157:H7. A complete transcript of the February 29, 2000, public meeting is available on the Internet at *http://www.fsis.usda.gov/oppde/rdad/frpubs/ecolimtg.pdf*.

On November 5, 2001, FSIS announced the availability of and requested comments on its draft risk assessment for *E. coli* O157:H7 in ground beef (66 FR 55912). At this time, FSIS also made the interpretive summary of the risk assessment and draft risk assessment available on the Internet. The draft risk assessment discusses and cites the studies discussed below. As stated below, under "Relevant Data Requiring Reassessment," the data from some of these studies and FSIS surveillance data provided evidence that *E. coli* O157:H7 is more prevalent than was thought before these data became available.

Risk of E. coli O157:H7 Contamination

Exposure to *E. coli* O157:H7 has been linked to serious, life-threatening human illnesses (hemorrhagic colitis and hemolytic uremic syndrome). At the February 29, 2000, public meeting, a representative from the CDC presented its national estimates for foodborne illnesses associated with *E. coli* O157:H7. These estimates showed an increase from previous CDC estimates of illnesses associated with *E. coli* O157:H7. At that time, CDC increased its estimates for illnesses associated with *E. coli* O157:H7 because surveillance data allowed a more detailed estimation of mild illnesses not resulting in physician consultation.[1] As FSIS stated in the February 11, 2000, meeting notice, although not all these illnesses were attributable to beef, the increase in illness associated with *E. coli* O157:H7 indicated that this pathogen occurred more frequently than was previously thought (65 FR 6882). CDC continues to collect data on the incidence of reported cases. Based on recent preliminary FoodNet data, there does not appear to be a sustained decrease in disease associated with *E. coli* O157:H7.[2]

Also at the public meeting, an FSIS representative presented information on the new *E. coli* O157:H7 testing procedures that the Agency began using on September 3, 1999. This method is approximately four times more sensitive

[1] For information on the estimates, see Mead, Paul S., *et al.*, "Food-Related Illness and Death in the United States," *Journal of Emerging Infectious Diseases*, Vol. 5, No. 5, 1999.

[2] Morbidity and Mortality Weekly Report. 2002. Preliminary FoodNet Data on the Incidence of Foodborne Illnesses—Selected Sites, United States, 2001. Vol. 51, Number 15: 325–329.

than the previous method. Prior to the introduction of the new FSIS testing method, the prevalence of *E. coli* O157:H7 in raw ground beef samples tested was 0.149 percent. Using the new method between September 3, 1999, and September 8, 2002, the prevalence of *E. coli* O157:H7 in raw, ground beef samples tested was 0.797 percent. This increase in *E. coli* O157:H7 prevalence in raw ground beef samples suggests that the low rate of positive findings in the past may have had more to do with the sensitivity of the method and size of the sample being used than with the rarity of the pathogen.

Also at the February 29, 2000, public meeting, a representative from ARS presented information concerning a recent *E. coli* O157:H7 prevalence study (hereinafter referred to as the Elder study).[3] In this study of fed cattle, 28 percent (91 of 327) of fecal samples were positive for *E. coli* O157:H7. Previous studies of fed cattle had found a fecal prevalence of 2 percent (188 of 11,881 samples),[4] 4 percent (38 of 1046 samples),[5] 6 percent (14 of 240 samples),[6] and, for the study hereinafter referred to as the Smith study, 23 percent (707 of 3054 samples).[7]

Three multistate studies reported the apparent prevalence of feedlots containing one or more infected cattle. Even if one animal in a herd was found positive for *E. coli* O157:H7 the herd was considered positive for *E. coli* O157:H7. These estimates were 63 percent (63 of 100 feedlots),[8] 100 percent (6 of 6 feedlots),[9] and 100 percent (5 of 5 feedlots).[10] Although all the studies cited in the preceding sentence found a high proportion of herds to contain at least one animal that was positive for *E. coli* O157:H7, except for the Smith study, these studies did not find many animals within a specific herd to be positive for *E. coli* O157:H7. The Smith and Elder studies found higher within herd *E. coli* O157:H7 prevalence than all the other studies cited. That is, these studies found more animals within a specific herd to be positive for *E. coli* O157:H7 than the other studies did.

The study from ARS mentioned above (Elder 2000) also addressed the prevalence of *E. coli* O157:H7 on carcasses at preevisceration, at postevisceration, and at postprocessing. *E. coli* O157:H7 was found on 43 percent (148 of 341) of the preevisceration carcasses, 18 percent (59 of 332) of the postevisceration carcasses, and 2 percent (6 of 330) of the postprocessing carcasses.

In addition to fed cattle, culled breeding cattle (dairy and beef cows and bulls) are an important source of beef products. Four studies provided fecal prevalence evidence of *E. coli* O157:H7 of 1 percent (10 of 1412 samples),[11] 1 percent (52 of 4361 samples),[12] 2 percent (89 of 4031 samples),[13] and 3 percent (7 of 205 samples).[14]

Five multistate studies reported the apparent prevalence of breeding herds containing one or more infected cattle. These estimates were 24 percent (22 of 91 herds),[15] 61 percent (8 of 13 herds),[16] 75 percent (27 of 36 herds),[17] 87 percent (13 of 15 herds),[18] and 100 percent (6 of 6 herds).[19]

At the February 29, 2000, public meeting, FSIS presented preliminary results from the FSIS draft risk assessment for *E. coli* O157:H7 in ground beef. These preliminary results did not incorporate the evidence presented at this meeting from the ARS (Elder 2000). The best estimate of the prevalence of *E. coli* O157:H7 in live cattle destined for ground beef production was given as just over 10 percent. The bounds of uncertainty depended upon the class of animal considered, fed or culled, and ranged from less than 5 percent to greater than 15 percent. For plants that slaughter culled cattle, the estimated prevalence of *E. coli* O157:H7–contaminated 2000 pound combo-bins was given as 15 percent, with a range from greater than 5 percent to less than 30 percent. For steers and heifers, the estimated combo bin prevalence was over 40 percent, with a lower bound greater than 20 percent and an upper bound less than 60 percent.

Trim from bins is mixed together and ground to achieve product with specific fat content. The mixing of the contents of several combo bins disperses the *E. coli* O157:H7 organisms and results in ground product with a lower concentration, but higher prevalence, of contamination than in the original bins. Preliminary risk assessment estimates suggested that nearly 90 percent of grinder loads had at least one *E. coli* O157:H7 organism present with a lower bound greater than 70 percent and an upper bound greater than 95 percent.

The estimates presented at the public meeting were preliminary and were premised on the assumption that slaughter plants were achieving an average of about 1.5 log10 reduction of *E. coli* O157:H7 as a result of decontamination measures taken after dehiding and after carcass splitting. At this time, FSIS does not have information about the level of log reduction for *E. coli* O157:H7 being achieved in specific slaughter operations or thereafter, or about whether the 1.5 log10 reduction modeled in the risk assessment is comparable to what industry is achieving today. If validated interventions being used today result in more than a 1.5 log10 reduction, and

[3] Robert. O. Elder, *et al.* Correlation of Enterohemorrhagic *Escherichia coli* O157 Prevalence in Feces, Hides, and Carcasses of Beef Cattle During Processing. Proc Natl Acad Sci USA. Mar 2000. 97(7): 2999–3003.

[4] Dargatz DA, Wells SJ, Thomas LA, *et al.* Factors associated with the presence of *Escherichia coli* O157 in feces of feedlot cattle. J. Food Prot. 1997; 60(5): 466–470.

[5] Hancock DD, Besser TE, Rice DH, *et al.* Multiple sources of *Escherichia coli* O157 in feedlots and dairy farms in the Northwestern USA. Prev. Vet. Med. 1998; 35: 11–19.

[6] Hancock DD, Rice DH, and Besser TE. 1999. Prevalence of *E. coli* O157:H7 in feedlot cattle at slaughter plants. Study funded by National Cattlemen's Beef Association. Washington State University.

[7] Smith, D, Blackford M, Younts S, *et al.* 2001. Ecological relationships between the prevalence of cattle shedding *E. coli* O157:H7 and characteristics of the cattle or conditions of the feedlot pen. J. Food Prot. 64(12): 1899–1903.

[8] Dargatz DA, Wells SJ, Thomas LA, *et al.* Factors associated with the presence of *Escherichia coli* O157 in feces of feedlot cattle. J. Food Prot. 1997; 60(5): 466–470.

[9] Hancock DD, Besser TE, Rice DH, *et al.* Multiple sources of *Escherichia coli* O157 in feedlots and dairy farms in the Northwestern USA. Prev. Vet. Med. 1998; 35: 11–19.

[10] Smith, D, Blackford M, Younts S, *et al.* 2001. Ecological relationships between the prevalence of cattle shedding *E. coli* O157:H7 and characteristics of the cattle or conditions of the feedlot pen. J. Food Prot. 64(12): 1899–1903.

[11] Hancock DD, Besser TE, Kinsel ML, Tarr PI, Rice DH, and Paros MG. The prevalence of *Escherichia coli* O157 in dairy and beef cattle in Washington State. Epidemiol. Infect. 1994; 113: 199–207.

[12] Garber L, Wells S, Schroeder-Tucker L, *et al.* Factors associated with fecal shedding of verotoxin-producing *Escherichia coli* O157 on dairy farms. J. Food Prot. 1999; 62(4): 307–312.

[13] Besser TE, Hancock DD, Pritchett LC, *et al.* Duration of detection of fecal excretion of *Escherichia coli* O157:H7 in cattle. J Infect. Dis. 1997; 175: 726–729.

[14] Rice DH, Ebel ED, Hancock DD, *et al.* *Escherichia coli* O157 in cull dairy cows on farm and at slaughter. J. Food Prot. 1997; 60(11): 1386–1387.

[15] Garber L, Wells S, Schroeder-Tucker L, *et al.* Factors associated with fecal shedding of verotoxin-producing *Escherichia coli* O157 on dairy farms. J. Food Prot. 1999; 62(4): 307–312.

[16] Hancock DD, Besser TE, Rice DH, *et al.* A longitudinal study of *Escherichia coli* O157 in fourteen cattle herds. Epidemiol. Infect. 1997; 118: 193–195.

[17] Hancock DD, Rice DH, Herriot DE, *et al.* Effects of farm manure handling practices on *Escherichia coli* O157 prevalence in cattle. J. Food Prot. 1997; 60(4): 363–366.

[18] Lagreid WW, Elder RO, and Keen JE. Prevalence of *Escherichia coli* O157:H7 in range beef calves. Epidemiol. Infect. 1999; 123(2): 291–298.

[19] Hancock DD, Besser TE, Rice DH, *et al.* Multiple sources of *Escherichia coli* O157 in feedlots and dairy farms in the Northwestern USA. Prev. Vet. Med. 1998; 35: 11–19.

other factors remain the same, then the prevalence of *E. coli* O157:H7 would be a lower percentage than that reflected in the preliminary risk assessment estimates. FSIS requests comment and data on these issues. FSIS is still reviewing the draft risk assessment and may further modify its estimates in the future.

As noted above, on November 5, 2001, FSIS announced the availability of, and requested comments on, its draft risk assessment for *E. coli* O157:H7 in ground beef (66 FR 55912). At that time, FSIS also submitted the draft risk assessment to the National Academies of Science (NAS) for scientific peer review. FSIS received 6 comments in response to its request for comments in the **Federal Register**. FSIS is currently reviewing those comments. FSIS expects to receive NAS' comments concerning the risk assessment shortly and may revise the risk assessment based on NAS' comments and the public comments received.

Relevant Data Requiring Reassessment

Studies before those of Smith and Elder suggested that *E. coli* O157:H7 prevalence rates within herds were low. A 1992–1993 FSIS baseline survey of steer and heifer carcasses found 4 (0.2%) of these carcasses *E. coli* O157:H7–positive, and a 1993–1994 FSIS baseline survey of cow and bull carcasses found none of the carcasses positive for *E. coli* O157:H7. The USDA's Animal and Plant Health Inspection Service-Veterinary Services-National Animal Health Monitoring System also completed on-farm surveys of dairy cattle in 1992 and feedlot cattle in 1994. These national surveys found *E. coli* O157:H7 in 0.4 percent of dairy calves sampled and 1.6 percent of feedlot cattle sampled. Thus, these results suggested that *E. coli* O157:H7 occurred in cattle at a prevalence level that would require substantial numbers of samples to detect the organism in a population.

The results from FSIS' *E. coli* O157:H7 testing program since FSIS began using its new testing method and certain research studies discussed above provide evidence that *E. coli* O157:H7 is more prevalent than was thought before these data became available, and that this pathogen may be a hazard that is reasonably likely to occur at all stages of handling raw beef products. The specific studies cited above that suggest that *E. coli* O157:H7 is more prevalent than previously thought in live cattle and carcasses are the study by Elder *et al.* and the study by Smith *et al.* (both cited above).

FSIS is publishing this document to advise federally inspected establishments of the Agency's position on one aspect of its public health strategy to deal with *E. coli* O157:H7 contamination and to provide an opportunity for comment on that position, as FSIS continues to develop a comprehensive strategy. As explained under the HACCP discussion above, the regulations require that establishments reassess their HACCP plans whenever any changes occur that would affect their hazard analysis or alter their HACCP plans. The availability of FSIS testing data since FSIS began using the new testing method and the information from the Smith and Elder studies presented above is a change that requires establishments to reassess their HACCP plans because these data provided evidence that *E. coli* O157:H7 is more prevalent than was thought before this data became available.

The Elder and Smith studies were completed in 2000 and 1999, respectively, and published thereafter, and FSIS surveillance data from its new testing method became available in 1999. FSIS has not previously informed manufacturers of beef products that it believes that the availability of these data constitutes a change that could affect an establishment's hazard analysis and alter its HACCP plans for raw beef products. The preliminary results of the draft risk assessment on *E. coli* O157:H7 support FSIS' position. No more recent data have become available that would affect FSIS' conclusions regarding the prevalence of *E. coli* O157:H7.

Based on anecdotal information from its inspection program personnel and from In-Depth Verification Reviews (IDVs), FSIS believes that most establishments have not taken the data discussed above into account in their hazard analysis, and that establishments might not have addressed *E. coli* O157:H7 in their HACCP plans or, for grinding establishments, in programs that serve as prerequisites to HACCP plans. Therefore, the Agency is issuing this notice informing the public of its views concerning the implications of the *E. coli* O157:H7 data discussed above.

According to the data from the studies discussed above, the fecal prevalence of *E. coli* O157:H7 in fed cattle is significantly higher than the fecal prevalence of *E. coli* O157:H7 in culled breeding cattle (dairy, beef cows, and bulls). However, FSIS believes that all establishments producing raw beef products, including those slaughtering culled breeding cattle or using meat from culled breeding cattle in processing, need to reassess their HACCP plans because the data show that *E. coli* O157:H7 is present in culled breeding cattle, because most slaughter establishments slaughter both fed and culled breeding cattle, and because most beef processing establishments use meat from both fed and culled breeding cattle. FSIS believes that establishments that slaughter both types of cattle or use both types of meat in processing would not develop different HACCP plans for slaughtering fed versus culled breeding cattle or for processing meat from fed versus culled breeding cattle.

Prior Reassessments Based on Relevant *E. coli* O157:H7 Data

Because all establishments are required to reassess their HACCP plans at least annually according to § 417.4(a)(3), all establishments should have reassessed their HACCP plans at least once, and possibly twice, since the February 29, 2000, public meeting. As noted above, at that public meeting, FSIS, ARS, and the CDC presented some of the data that provided evidence that *E. coli* O157:H7 was more prevalent than previously thought at that time, and that this pathogen may be a hazard that is reasonably likely to occur at all stages of handling raw beef products. In addition, FSIS placed the transcript from the public meeting on its web site shortly after the meeting. Finally, FSIS released the draft risk assessment, which discussed the published data that provide evidence that *E. coli* O157:H7 is more prevalent than previously thought, on its web page in November 2001.

Because FSIS made some of the data discussed above available in 2000 and released the draft risk assessment in 2001, establishments that produce raw beef products already may have reassessed their HACCP plans based on this data to determine whether *E. coli* O157:H7 is a hazard reasonably likely to occur in their production of these products, and, if so, whether their HACCP plans appropriately address this hazard. Establishments that already have taken the relevant *E. coli* O157:H7 data into account in a reassessment are not required to conduct another reassessment of their HACCP plans, provided these establishments have evidence of their reassessment based on this data that is available to FSIS inspection program personnel in their hazard analysis, HACCP plans, or record of reassessment. Establishments should have taken into account all of the data discussed above that suggest that *E. coli* O157:H7 is more prevalent than previously thought: the FSIS testing data and the data from the Smith and Elder studies.

Outcomes of Reassessments Based on Relevant *E. coli* O157:H7 Data

Establishments that produce raw beef products that have not conducted a reassessment of their HACCP plans based on the relevant *E. coli* O157:H7 data discussed above to determine whether *E. coli* O157:H7 is a hazard reasonably likely to occur in their production of these products, and, if so, whether their HACCP plans appropriately address this hazard, are required to conduct a reassessment. If this pathogen is a hazard reasonably likely to occur, then it must be addressed in a HACCP plan through one or more CCPs designed to control the pathogen.

Even establishments that produce intact product will need to reassess their HACCP plans based on the new *E. coli* O157:H7 data. These establishments are required to reassess their HACCP plans because much intact beef product may be used to make non-intact product, such as ground beef. According to § 417.2(a)(2), establishments are required to identify the intended use or consumers of the finished product. Therefore, to be able to determine the adequacy of their HACCP plans, establishments that produce intact beef products need to determine whether their products will be used to produce raw, non-intact product.

This document addresses only the need for HACCP plan reassessment. FSIS cannot predict the likelihood that an establishment producing raw beef products will need to incorporate, or alter, controls to prevent, eliminate, or reduce *E. coli* O157:H7 to an acceptable level (i.e., a level that would not be detectable using the FSIS testing method or a method with a sensitivity at least equivalent to FSIS' method) in one or more HACCP plans as a result of plan reassessment. FSIS does believe, however, that given the FSIS testing data and the data from the Elder and Smith studies discussed above, establishments should strongly consider the possibility that *E. coli* O157:H7 contamination is a hazard reasonably likely to occur in their production of beef products, especially if an establishment produces non-intact product that has been or could be adulterated with *E. coli* O157:H7 or produces intact product that is to be used for non-intact product, and this non-intact product has been or could be found to be adulterated with *E. coli* O157:H7.

In determining whether *E. coli* O157:H7 is a hazard reasonably likely to occur in the production process for their raw beef products, establishments should take into account whether their raw beef products have tested positive for *E. coli* O157:H7 in either FSIS or industry testing. They should also consider whether there is a reasonable likelihood of *E. coli* O157:H7 contamination of their raw beef products in the absence of controls (see § 417.2(a)(1)).

Although all establishments producing raw beef products are required to reassess their HACCP plans, some establishments may determine that they do not need to change their HACCP plans. For example, some establishments may already address *E. coli* O157:H7 in their HACCP plans. Even if these establishments did not take the FSIS testing data and the Smith and Elder data into account in their prior hazard analysis, they may determine that their HACCP plans are still adequate to prevent, eliminate, or reduce *E. coli* O157:H7 to an undetectable level in light of the data, and that these data do not affect their hazard analysis. Similarly, establishments that produce raw intact product that will not be further processed into raw, non-intact product may determine that these data do not affect their hazard analysis, and that their HACCP plans do not need to be changed.

Critical Control Points and Sanitation SOPs and Other Prerequisite Programs

The regulations require that establishments develop HACCP plans that include critical control points (CCPs): points, steps, or procedures in a food process at which a control can be applied, and, as a result, a food safety hazard can be prevented, eliminated, or reduced to acceptable levels. FSIS considers an acceptable reduction for *E. coli* O157:H7 to be a reduction to an undetectable level.

Because controls to reduce the risk of *E. coli* O157:H7 contamination when the product is still intact may be the best means of controlling the hazard, FSIS believes that slaughter establishments and deboning establishments should strongly consider putting in place one or more validated CCPs that are designed to eliminate or reduce *E. coli* O157:H7 and other pathogens. If such establishments have controls in place to address *E. coli* O157:H7 specifically, they cannot conclude that the pathogen is *not* a hazard reasonably likely to occur in the absence of those controls. FSIS believes that any interventions that slaughter and deboning establishments use to address *E. coli* O157:H7 should be incorporated into their HACCP plans. At this time, FSIS is not aware of any prerequisite programs that are appropriate for use in slaughter and deboning establishments to address *E. coli* O157:H7. FSIS advises that it intends to scrutinize very closely the hazard analyses and HACCP plans of those slaughter or deboning establishments that conduct, or have conducted, a reassessment and decide that an intervention for *E. coli* O157:H7 is not necessary.

According to the requirements of § 417.4(a)(1), establishments must validate CCPs to ensure that they can successfully apply a scientifically appropriate CCP to prevent, eliminate, or reduce *E. coli* O157:H7 under their commercial operating conditions (see 61 FR 38826–38827). Until establishments demonstrate that the CCP achieves the anticipated effect under actual in-plant conditions, effectiveness of the CCP is theoretical, and the plan is not validated. Based on information from inspection program personnel and IDVs, FSIS believes that many establishments have not validated their CCPs based on actual in-plant conditions.

Published scientific studies have demonstrated that there are effective decontamination methods that can be used for preventing, eliminating, or reducing *E. coli* O157:H7. Establishments can validate their CCPs for *E. coli* O157:H7 by ensuring that the operation of the CCP in their plant can meet the parameters of these studies, and by challenge studies using an appropriate surrogate for *E. coli* O157:H7 that could include, but not be limited to, *E. coli* and coliforms. There are no situations in which inspection program personnel will ask that establishments introduce pathogenic or harmful bacteria into the establishments to validate the effectiveness of CCPs. Establishments can ensure the effectiveness of their CCPs through monitoring, verification, and corrective action procedures in their written HACCP plans.

FSIS believes that establishments that receive product for grinding also should address *E. coli* O157:H7. These establishments can employ validated CCPs in their HACCP plans to address *E. coli* O157:H7. Interventions are becoming available to grinders. These establishments can also establish and require that specifications for the raw material that they purchase be met by suppliers. FSIS believes that grinders that have purchase specifications that require that all of their suppliers have one or more CCPs in their HACCP plans that are validated to eliminate or reduce *E. coli* O157:H7 below detectable levels and that ensure that these specifications are met may determine that no additional steps to address *E. coli*

O157:H7 are necessary in their production process for ground beef. However, given the nature of the pathogen, FSIS strongly recommends that grinders that have purchase specifications addressing *E. coli* O157:H7 determine whether CCPs preventing *E. coli* O157:H7 growth or contamination after product receipt are necessary.

Grinders could incorporate purchase specifications to prevent *E. coli* O157:H7-contaminated product from entering their establishment in their HACCP plans. However, the Agency also recognizes that some may argue that purchase specifications addressing *E. coli* O157:H7 do not lend themselves to a point, step, or procedure in a food process at which control can be applied (see definition of "critical control point" in § 417.1). Also, if grinding establishments have purchase specifications addressing *E. coli* O157:H7 that require that incoming product has been treated to eliminate or reduce *E. coli* O157:H7 to an undetectable level, and if they ensure that these specifications are met, these establishments may determine that they do not need a separate CCP to eliminate or reduce *E. coli* O157:H7 after receipt of product. In recognition of these arguments, FSIS advises that grinders may choose not to include purchase specifications addressing *E. coli* O157:H7 as CCPs in their HAACP plans. If they do not include these purchase specifications as CCPs in their HACCP plans, however, establishments should incorporate them in their Sanitation SOPs, which FSIS has recognized as prerequisites for HACCP (61 FR 38834), or in other programs that are prerequisites for HACCP (prerequisite programs).

Current regulations do not include specific requirements for prerequisite programs other than Sanitation SOPs. However, under § 417.5(a)(1), establishments must maintain records of their hazard analysis, including all supporting documentation. According to the regulations, the hazard analysis must include the food safety hazards that can occur before, during, and after entry into the establishment (§ 417.2(a)). If an establishment has determined in its hazard analysis that *E. coli* O157:H7 is a hazard that can occur at one of these points but is *not* reasonably likely to occur in the establishment's processing because the establishment has a prerequisite program with purchase specifications addressing *E. coli* O157:H7, information concerning the prerequisite program is supporting documentation that must be maintained under § 417.5(a)(1). All documentation supporting the hazard analysis must be made available to FSIS upon request (§ 417.5(f)).

FSIS expects the supporting documentation concerning prerequisite programs other than Sanitation SOPs to include the programs' procedures and operational controls in writing. In addition, FSIS expects the documentation to include records that document that the program is effective, and that *E. coli* O157:H7 is not reasonably likely to occur. Without this documentation, FSIS would question the adequacy of the establishment's HACCP system and hazard analysis.

Establishments should revise their prerequisite programs, as necessary, to ensure their effectiveness and should take appropriate corrective actions when they determine that their prerequisite programs may have failed to prevent contamination or adulteration of product. If establishments that address *E. coli* O157:H7 in their prerequisite programs and not in their HACCP plans produce *E. coli* O157:H7-positive product, this occurrence would be considered a "deviation not covered by a specified corrective action" or an "unforeseen hazard" (§ 417.3(b)). Therefore, these establishments would be required to take the corrective actions, including reassessment, set forth in § 417.3(b).

As with other prerequisite programs that include purchase specifications addressing *E. coli* O157:H7, establishments with Sanitation SOPs that include purchase specifications addressing *E. coli* O157:H7 may conclude that the pathogen is not reasonably likely to occur in the establishments' processing because of the Sanitation SOPs. However, unlike other prerequisite programs, current regulations provide requirements for Sanitation SOPs and ensure that FSIS has access to establishments' records documenting the implementation and monitoring of the Sanitation SOPs. According to the Sanitation SOP regulations, establishments that include purchase specifications addressing *E. coli* O157:H7 in their Sanitation SOPs will need to evaluate routinely the effectiveness of these purchase specifications in preventing the adulteration of their products. They will also need to revise these purchase specifications as necessary to keep them effective (*see* § 416.14). Moreover, they will need to maintain records to document the implementation, monitoring, and correction of their purchase specifications (*see* §§ 416.15 and 416.16).

Under § 416.15, establishments are required to conduct corrective actions when they determine that their Sanitation SOP may have failed to prevent direct contamination or adulteration of product; however, under § 416.15, establishments are not required to reassess their Sanitation SOPs when they determine that their Sanitation SOPs may have failed to prevent direct contamination or adulteration of product. If establishments that address *E. coli* O157:H7 in their Sanitation SOPs and not in their HACCP plans produce *E. coli* O157:H7-positive product, this occurrence would be considered a "deviation not covered by a specified corrective action" or an "unforeseen hazard" (§ 417.3(b)). Therefore, these establishments would be required to take the corrective actions, including reassessment, set forth in § 417.3(b).

FSIS received a petition dated December 30, 1999, signed by numerous meat and poultry trade organizations (see 65 FR 30952 for information on this petition and the text of this petition). The petition stated that a HACCP plan is only one part of a plant's overall food safety system, and that other integral components of that system include Sanitation SOPs, various good manufacturing practices, and other prerequisite programs that are needed to form the foundation for the HACCP system. The petition stated that FSIS should recognize these other components of establishments' food safety systems when determining whether HACCP plans are adequate.

In this notice, FSIS is recognizing that establishments receiving raw beef product for grinding can effectively include purchase specifications addressing *E. coli* O157:H7 in Sanitation SOPs and other prerequisite programs. FSIS has made no general determinations concerning food safety hazards other than *E. coli* O157:H7 and no general determinations concerning what circumstances other than grinders' receiving product that meets purchase specifications can be addressed through prerequisite programs, rather than HACCP. If establishments, other than grinders, address any food safety hazard in a prerequisite program, and if grinders include more than purchase specifications addressing *E. coli* O157:H7 in their prerequisite programs, FSIS will review the establishments' supporting documentation for these programs and will make a determination concerning the adequacy of these programs, applicable HACCP plans, and hazard analyses on a case-by-case basis.

FSIS does not believe that establishments receiving raw beef product for grinding will be able to substitute Sanitation SOPs or other prerequisite programs addressing *E. coli* O157:H7 for their HACCP plans in their entirety because the Agency does not believe that *E. coli* O157:H7 contaminated product from outside sources would be the only food safety hazard reasonably likely to occur in the production of ground beef in the absence of controls. For establishments receiving raw beef product for grinding, FSIS believes that Sanitation SOPs or other prerequisite programs *together with* HACCP plans function as food safety HACCP systems that effectively produce safe, unadulterated product.

Verification

All establishments are required to conduct on-going verification activities to ensure that their HACCP plans are effectively implemented (§ 417.4(a)(2)). Whether the establishment has CCPs addressing *E. coli* O157:H7 in their HACCP plans or has concluded the pathogen is *not* reasonably likely to occur because it has purchase specifications that prevent the pathogen from entering the facility, the establishment is required to conduct on-going verification activities to ensure that any CCP is adequately addressing *E. coli* O157:H7, or that the purchase specifications continue to prevent the pathogen from entering the facility. FSIS recommends that establishments' verification activities include testing for *E. coli* O157:H7.

State Inspection Programs and Programs Outside the United States (U.S.)

Establishments in states that have their own inspection programs that produce raw beef products and that have not already done so must reassess their HACCP plans in light of the *E. coli* O157:H7 data discussed above. Similarly, producers outside the U.S. that import raw beef product into the U.S. that have not already done so will have to reassess their HACCP systems based on the data discussed above.

FSIS Actions To Enforce and Facilitate Compliance With the Reassessment Requirement

Establishments that produce raw beef products are to reassess their HACCP plans unless they have already reassessed their HACCP plans based on the *E. coli* O157:H7 data that suggest that the pathogen may be more prevalent than previously thought, and they have evidence of this reassessment that is available to FSIS inspection program personnel in their hazard analysis, HACCP plans, or record of reassessment. Although establishments are not required to maintain a written record of their reassessment, FSIS encourages them to do so.

The Agency intends to instruct its inspection program personnel to determine whether reassessments were conducted or are being conducted and to begin making this determination on November 6, 2002. At this time, inspection program personnel will ensure that all establishments producing raw beef products are aware that the Agency has issued this notice and will ensure that those establishments that have not yet reassessed their HACCP plans based on the relevant *E. coli* O157:H7 data discussed above begin their reassessment in time to complete it by the following date according to plant size: December 6, 2002 for large plants (all establishments with 500 or more employees); February 4, 2003 for small plants (all establishments with 10 or more employees but fewer than 500); and April 7, 2003 for very small plants (all establishments with fewer than 10 employees or annual sales of less than $2.5 million). FSIS will not begin enforcing the required reassessment until December 6, 2002 for large plants; February 4, 2003 for small plants; and April 7, 2003 for very small plants. By looking into establishments' reassessment actions prior to the time they are required to complete their reassessments, FSIS will ensure that all establishments producing raw beef products, including those that are small and very small businesses that may not belong to a trade association, are aware of this notice. FSIS will mail this notice to all small and very small plants prior to the effective date for reassessment.

The Agency then intends to instruct its inspection program personnel to collect data concerning the outcomes of the required reassessment and to begin collecting this data on: December 23, 2002 for large plants; February 19, 2003 for small plants; and April 21, 2003 for very small plants. Inspection program personnel will collect data concerning (1) whether establishments reassessed their HACCP plans based on the relevant *E. coli* O157:H7 data prior to or after publication of this notice; (2) whether establishments changed their HACCP plans or prerequisite programs as a result of a reassessment that took this data into account; (3) if establishments changed their HACCP plans or prerequisite programs, how the plans or prerequisite programs were changed; and (4) if establishments did not change their HACCP plans or prerequisite programs, the reasons the plans or programs were not changed. If an establishment does not reassess its HACCP plans in accord with this document, FSIS will evaluate the establishment's compliance with Part 417.

Guidance

FSIS is making available guidelines entitled, "Guidance for Beef Grinders and Suppliers of Boneless Beef and Trim Products" on the Internet (*http://www.fsis.usda.gov/oppde/rdad/publications.htm*). In this guidance material available today, FSIS is providing recommendations for reducing the occurrence of *E. coli* O157:H7 and *Salmonella* in ground beef, boneless beef, and trim products. FSIS initially made this guidance material available to the public in March 1998. FSIS has expanded this guidance material to include guidance for suppliers of boneless beef and trim and recommendations for reducing *Salmonella* in ground beef, boneless beef, and trim products.

In the guidance material, to further reduce the risk of *E. coli* O157:H7 contamination after product receipt, FSIS is recommending that grinders receiving product from more than one supplier prevent any mixing of product from different suppliers, unless they can demonstrate that the source materials from the different suppliers have been adequately treated to eliminate or reduce *E. coli* O157:H7 to an undetectable level. Keeping product from different suppliers separate will prevent any potentially *E. coli* O157:H7-contaminated source material from adulterating source materials from other suppliers. Also, by keeping product from different suppliers separate, grinders will be able to identify the potential source of any *E. coli* O157:H7-contaminated product should the pathogen be detected. If FSIS finds samples of ground beef produced from suppliers' source materials outside the grinding establishment or retail facility to be positive for *E. coli* O157:H7, FSIS intends to notify the supplying establishments that they may have supplied *E. coli* O157:H7-positive product to a grinding establishment or retail facility.

FSIS intends to gather pertinent information concerning suppliers from Federal grinding establishments and retail facilities. If FSIS confirms that ground product is positive for *E. coli* O157:H7, FSIS intends to obtain from Federal grinding establishments the following information concerning their suppliers of the source materials: the name, point of contact, and phone number for the establishments supplying the source materials for the lot of ground beef sampled; the supplier lot numbers and production dates; and any other information that would be

useful to suppliers that may have supplied *E. coli* O157:H7-positive product to Federal grinding establishments. Similarly, at the time FSIS collects samples of ground beef from retail facilities, FSIS will obtain from the retail facility the names and establishment numbers of the establishments supplying the source materials for the lot of ground beef sampled, the supplier lot numbers and production dates, and any other information that would be useful to suppliers if they are later notified of an *E. coli* O157:H7 positive finding.

Under § 320.1(b)(1), establishments and retail facilities are required to keep records of each transaction involving their purchasing or receiving any meat or meat food product. These records must show the name or description of the articles they purchase or receive (§ 320.1(b)(1)(i)) and the name and address of the seller of the articles they purchase (§ 320.1(b)(1)(iv)). Establishments and retail facilities must provide FSIS access to these records (§ 320.4, 21 U.S.C. 642). FSIS expects that supplier lot numbers and production dates are normally available at Federal grinding establishments and retail facilities. In addition, FSIS expects that establishments or retail facilities would normally obtain the contact information FSIS is collecting.

In addition, FSIS is making available on the Internet address previously listed new guidance material on reducing the occurrence of *E. coli* O157:H7 for beef slaughter establishments and for live animal producers. In the guidance material for beef slaughter establishments, FSIS has included examples of published studies of decontamination methods that can be used as critical control points addressing *E. coli* O157:H7.

The Agency invites comments on the guidance materials it is making available. In the guidance materials, FSIS is emphasizing that it is important for everyone who is involved in producing beef products to have in place measures designed to prevent, eliminate, or reduce the presence of *E. coli* O157:H7 in their products.

In both the guidance material for beef grinders and suppliers of boneless beef and trim products and the guidance material for beef slaughter establishments, FSIS is recommending that establishments consider that *E. coli* O157:H7 prevalence may be higher in April through September than during other times of the year, and that they may have to account for this increased prevalence in their HACCP systems. Several studies show that the period from June to September is a high prevalence season.[20] In addition, FSIS has recently reviewed establishment testing data that show greater *E. coli* O157:H7 prevalence in April through September. To account for increased *E. coli* O157:H7 prevalence, establishments may need to conduct more frequent or more rigorous verification activities, and they may need to employ more rigorous interventions, during April through September.

Finally, at the Internet address previously listed, FSIS is making available guidance material on the procedures for joint FSIS and FDA approval of ingredients and sources of radiation, including antimicrobials, used in the production of meat and poultry products and specific guidance on the use and labeling of ingredients and sources of radiation used to reduce microorganisms, particularly *E. coli* O157:H7, on beef carcasses, ground beef, and beef trimmings. This guidance document also includes a discussion on direct and secondary direct food additives and the appropriate use of the ingredient statement on the label of treated meat.

FSIS E. coli O157:H7 Testing Program

Currently, FSIS tests only raw ground beef products for *E. coli* O157:H7. In addition to continuing to test for *E. coli* O157:H7 in raw ground beef, FSIS is considering testing raw beef trimmings and other intact materials used in non-intact product and beef carcasses and parts (primals and subprimals) that will be processed into non-intact product. FSIS is considering testing trimmings, other source materials for non-intact product, and carcasses and parts that will be processed into non-intact product because controls to reduce the risk of *E. coli* O157:H7 when the product is still intact may be among the best ways to control the hazard. FSIS testing would verify the effectiveness of these controls. Such controls would include interventions used at slaughter, proper chilling practices, and segregating product that has been treated with interventions from product that has not. The only treatment available to eliminate *E. coli* O157:H7 in raw, non-intact product (*e.g.*, ground beef, blade tenderized steaks, and blade tenderized roasts) is a full bactericidal treatment, such as irradiation or cooking. However, there are also treatments that can be used that have been shown to reduce significantly the level of this pathogen. At this time, FSIS has not finalized plans to begin *E. coli* O157:H7 testing of raw beef trimmings, other intact materials used in non-intact product, and beef carcasses and parts that will be processed into non-intact product.

Although it has not finalized its plans regarding verification activities at establishments that produce intact product, FSIS intends to conduct verification activities at establishments that supply intact product to grinding establishments when the Agency determines that a supplier may be responsible for *E. coli* O157:H7-positive ground product. In this situation, FSIS intends to conduct verification activities concerning the supplier's HACCP system and Sanitation SOPs. FSIS also intends to conduct verification tests on trim when the Agency finds ground product at a grinder that receives product from outside sources positive for *E. coli* O157:H7 and is able to identify the supplier.

FSIS received a petition from the Center for Science in the Public Interest (CSPI), dated July 1, 2002, requesting that, in addition to its current testing of raw, ground beef for *E. coli* O157:H7, FSIS conduct *E. coli* O157:H7 testing of raw beef carcasses and beef trim. In their petition, CSPI also stated that slaughterhouses should be required to conduct *E. coli* O157:H7 testing of carcasses and trimmings. FSIS has posted a copy of the petition on the Internet at the address previously listed.

FSIS also received a letter from Excel Corporation, dated June 10, 2002, that included recommendations for changing FSIS" testing program. Excel Corporation stated that FSIS" sampling frequency should be based on what scientific evidence shows about the applied intervention's effectiveness in reducing *E. coli* O157:H7. Excel also stated that carcasses would need to be sampled more frequently than trim and trim more frequently than ground beef to reach the same level of statistical verification of the effectiveness of an intervention process.

Excel also recommended that FSIS provide that ground beef that has been tested and found negative for *E. coli* O157:H7 could be labeled to indicate this fact, so that FSIS program personnel would reduce their sampling of this product once it is at retail. Excel recommended the following statement be allowed on product that tests negative for *E. coli* O157:H7: "Product sampled and sample tested and found negative for *E. coli* O157:H7." FSIS has posted a copy of the letter on the Internet.

In modifying its verification sampling and testing program for *E. coli* O157:H7, FSIS will consider the data that its inspection program personnel collect concerning establishments" actions in response to the required HACCP plan reassessment and comments received concerning the Agency's *E. coli* O157:H7 testing program, the CSPI petition, and the letter from Excel Corporation.

FSIS Directive 10,010.1

According to the Agency's current sampling and testing program instructions in FSIS Directive 10,010.1, FSIS does not typically collect raw ground beef samples for *E. coli* O157:H7 testing at establishments that conduct activities addressing *E. coli* O157:H7 that are specified in the Directive, including testing for *E. coli* O157:H7. Recently, FSIS found that some of these establishments producing raw ground beef have had problems with *E. coli* O157:H7 contamination. Therefore, FSIS is in the process of revising the Directive so that no establishments producing raw ground beef will be exempt from FSIS *E. coli* O157:H7 sampling and testing. FSIS intends to sample and test product from all grinding establishments at this time. FSIS will also be developing a risk-based verification program that takes into account such factors as volume of production and effectiveness of interventions.

FSIS also intends to revise Directive 10,010.1 to make it consistent with HACCP. According to the existing Directive, if FSIS collects a raw ground beef sample from an establishment that tests positive for *E. coli* O157:H7, FSIS must continue to collect samples from that establishment until the Agency has obtained 15 consecutive negative test results.

FSIS intends to remove this provision from the Directive because FSIS believes that this policy is inconsistent with HACCP. Under HACCP, it is the establishment's responsibility to take appropriate corrective actions when a sample tests positive for *E. coli* O157:H7.

When FSIS has removed from the Directive the provision requiring 15 consecutive negative FSIS *E. coli* O157:H7 test results following an FSIS *E. coli* O157:H7 positive test result, FSIS will exercise its discretion in determining the appropriate number of follow-up samples to collect and test and will make this determination based on the suspected cause of *E. coli* O157:H7 contamination and the establishment's corrective action.

The current Directive defines the "sampled lot" as all raw ground beef products produced between performance of complete cleaning and sanitization procedures for all equipment used in handling or processing a raw ground beef product. FSIS believes that this definition is too prescriptive, and that, under HACCP, establishments should be given more flexibility concerning the definition of the sampled lot. Therefore, FSIS is revising the Directive to recognize the establishment's definition of the sampled lot, provided the establishment has a scientific or other supportable basis for defining the sampled lot.

FSIS cautions, however, that an establishment's defined lot size does not relieve an establishment from its responsibility to consider whether there are connections between lots. For example, if multiple lots of raw ground product were produced from source materials from the same production lot of a single supplier, and some of this product was found positive for *E. coli* O157:H7, FSIS would expect the establishment to have a scientific basis that justifies why any raw ground product produced from those source materials should *not* be considered to be adulterated.

Finally, FSIS intends to revise the Directive to specify that the Agency will only collect samples of product that has passed pre-shipment record review in accordance with § 417.5(c).

FSIS does not intend to discontinue its *E. coli* O157:H7 testing program. By conducting its own verification sampling and testing program, FSIS will have meaningful data on the occurrence of *E. coli* O157:H7 in beef processing operations. FSIS invites comment on the issues related to FSIS Directive 10.010.1.

Comments

In response to the February 11, 2000, notice announcing the February 29, 2000, public meeting, FSIS received 294 comments, 285 of which were identical comments. Comments were from consumers, consumer groups, industry associations, a food animal concerns organization, and an FSIS employee. Comments addressed various issues including FSIS" policy concerning non-intact products announced in the January 19, 1999, policy statement, FSIS and industry testing for *E. coli* O157:H7, and the FSIS *E. coli* O157:H7 risk assessment data that were presented at the February 29, 2000, public meeting. In addition, several commenters responded specifically to the questions for consideration that FSIS listed in the February 11, 2000, notice.

FSIS considered these comments when it developed plans to make the intended changes to Directive 10,010.1 discussed above. FSIS will continue to consider these comments, any comments submitted in response to this notice, the data that its inspection program personnel collect concerning establishments' actions resulting from the required reassessment, and baseline data for raw beef components of ground beef and beef patties and, possibly, baseline data for carcasses, as it determines how it will modify its *E. coli* O157:H7 testing program and as it makes any additional changes to the Directive addressing the program.

E. coli O157:H7 in Intact and Non-Intact (Tenderized) Beef

In May 2001, FSIS requested that the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) answer several questions with regard to *E. coli* O157:H7 in blade-tenderized, non-intact beef. NACMCF reviewed data from Kansas State University to respond to these questions. A February 14, 2002, report from NACMCF that includes FSIS' questions and NACMCF's response to the questions is available on the Internet at: *http://www.fsis.usda.gov/OPHS/NACMCF/index.htm*.

Based on the Kansas State data, NACMCF concluded that non-intact, blade tenderized beef steaks could potentially contain an infective dose of *E. coli* O157:H7 in their interior. NACMCF also concluded that blade tenderized steaks do not present a greater risk to consumers than intact beef steaks with regard to *E. coli* O157:H7 if the meat is oven broiled and cooked to an internal temperature of 140°F or above. However, NACMCF did not conclude that blade tenderized steaks pose no greater risk than intact steaks when cooked by other methods or when cooked to lower temperatures. The report suggested that blade-tenderized steaks may pose a risk, particularly to immunocompromised individuals, when served very rare with cold spots (that is, when cooked to an internal temperature of less than 120°F). All of NACMCF's risk estimates were based on a worst case scenario that assumed a very high concentration (3 x

[20] Garber, L., *et al.*, Factors associated with the shedding of verotoxin-producing *Escherichia coli* O157 on dairy farms. J Food Prot. 1999; 62(4): 307–312; Hancock, D.D., *et al.*, The prevalence of *Escherichia coli* O157 in dairy and beef cattle in Washington State. Epidemiol Infect. 1994; 113: 199–207; Hancock D., Personal communication. Ongoing research project in collaboration with FDA-CVM. 2001; Hancock, D.D., *et al.*, Effects of farm manure handling practices on *Escherichia coli* O157 prevalence in cattle. J Food Prot. 1997; 60(4): 363–366; Heuvelink, A.E., *et al.*, Occurrence of verocytotoxin-producing *Escherichia coli* O157 on Dutch dairy farms. J Clin. Microbiol. 1998; Dec: 3480–3487; Van Donkersgoed, J.T., *et al.*, The prevalence of vertoxins, *Escherichia coli* O157:H7, and *Salmonella* in the feces and rumen of cattle at processing. Can Vet J. 1999; 40:332–338.

10^3 cfu/gm) of *E. coli* O157:H7 in raw product.

NACMCF concluded that there is insufficient data to assess whether non-intact, blade tenderized beef roasts present a greater risk to consumers than intact beef roasts with regard to *E. coli* O157:H7 if prepared similarly to intact beef roasts.

Similarly, NACMCF concluded that there was insufficient data to respond to the question of whether scientific evidence supports the need for a labeling requirement to distinguish between intact and non-intact products to protect the public.

The NACMCF report identifies research needs for addressing *E. coli* O157:H7 in blade tenderized steaks and makes recommendations to FSIS concerning the Agency's future requests to NACMCF about this issue. In the event of an outbreak or a sporadic case of illness attributed to the consumption of beef steak, the report recommends that the CDC and FSIS gather data on cooking practices for the product that caused the illness, the processing of this product, and the purchase locations of this product.

FSIS has also conducted a comparative risk assessment of intact (nontenderized) and non-intact (blade tenderized) steaks. The results of the risk assessment are consistent with those of NACMCF. The risk assessment concluded that the risk of *E. coli* O157:H7 illness is not greater for broiled tenderized steaks than for broiled non-tenderized steaks at temperatures between 110°F and less than 140°F, regardless of the initial *E. coli* O157:H7 contamination level or the susceptibility of the consumer. Also, the risk assessment concluded that the risk of illness associated with *E. coli* O157:H7 from broiled tenderized and broiled non-tenderized steaks cooked to 140°F is miniscule, regardless of the initial contamination level or susceptibility of the consumer. Finally, the FSIS risk assessment concluded that the risk of illness is slightly higher for grilled or fried tenderized steaks compared to grilled or fried non-tenderized steaks at temperatures between 110°F and 140°F. The FSIS comparative risk assessment of intact and non-intact (blade tenderized) steaks is still a draft document and is available on the Internet address at: *http://www.fsis.usda.gov/oppde/rdad/publications.htm*. FSIS invites comments on this risk assessment.

FSIS also received a letter dated August 27, 2002, from the National Cattlemen's Beef Association concerning a study that evaluated the surfaces of beef sub-primal cuts for the presence of *E. coli* O157:H7 prior to mechanical tenderization. According to this letter, the results of this study show that the incidence of *E. coli* O157:H7 on sub-primals is very low. FSIS is interested in evaluating the data from this study. The Agency may incorporate these data into its comparative risk assessment of intact and non-intact steaks. Therefore, these data may influence the comparative risk assessment.

FSIS is reviewing the NACMCF report and its draft risk assessment for *E. coli* O157:H7 in intact and non-intact (blade tenderized) steaks and will consider NACMCF's conclusions and the conclusions from the risk assessment with regard to the policy announced for non-intact products in the January 19, 1999, **Federal Register** (discussed above, under "*E. coli* O157:H7 policy"). At this time, FSIS believes that the public health hazard presented by *E. coli* O157:H7 and the prevalence of *E. coli* O157:H7 in these products continues to support application of the policy announced in the January 19, 1999, **Federal Register**. There is a lack of data on industry and consumer practices for cooking pinned, needled, and blade tenderized steaks (*e.g.*, grilling, oven broiling, or frying) and a lack of data on the proportion of industry outlets and consumers that prepare these products according to each of these different methods. If FSIS obtains substantial and reliable data showing that industry and consumers customarily cook pinned, needled, and blade tenderized products in a manner that destroys *E. coli* O157:H7, FSIS would consider modifications to its policy concerning *E. coli* O157:H7 in these products.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS web site at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done at Washington, DC, on October 3, 2002.

Garry L. McKee,

Administrator.

[FR Doc. 02–25504 Filed 10–3–02; 11:15 am]

BILLING CODE 3410–DM–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The SBA has been made aware of the existence of small business manufacturers for Hand and Edge Tool Manufacturing, North American Industry Classification System (NAICS) 332212. Notices to waive the Nonmanufacturer Rule appeared in the **Federal Register** on August 28, 2002 (67 FR 55179) and July 27, 2002 (67 FR 47755). Comments from these notices were received from large and small business manufacturers. Our knowledge of the existence of small business manufacturers requires us to deny the waiver of the Nonmanufacturer for Hand and Edge Tool Manufacturing, NAICS 332212.

EFFECTIVE DATE: September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Edith G. Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416, Tel: (202) 619–0422.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on two coding systems. The first is the Office of Management and Budget North American Industry Classification System. The second is the Product and Service Code established by the Federal Procurement Data System.

Linda G. Williams,

Associate Administrator for Government Contracting.

[FR Doc. 02–25263 Filed 10–4–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 123

RIN 3245–AE44

Pre-Disaster Mitigation Loans

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its regulations to implement the Pre-Disaster Mitigation Loan Program (Program), which is a five-year pilot program authorized by statute in 1999. The statute allows SBA to make low interest, fixed rate loans to small businesses for the purpose of implementing mitigation measures to protect their property from disaster related damage. The Program was developed in support of the Federal Emergency Management Agency (FEMA) Pre-Disaster Mitigation Program and covers businesses located in eligible participating communities, as determined by FEMA. This rule also describes how much a person could borrow from SBA to provide post-disaster mitigation for a damaged primary residence.

DATES: This rule is effective November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Herbert L. Mitchell, Associate Administrator, Office of Disaster Assistance, 202–205–6734.

SUPPLEMENTARY INFORMATION: The Program is a pilot authorized by statute at a level of $15 million for each of five (5) fiscal years from 2000 through 2004. The Program enables SBA to make low interest, fixed rate loans to small businesses for the purpose of implementing mitigation measures that will protect them from disaster related damage. The Program was developed in support of FEMA's Pre-Disaster Mitigation Program, which covers businesses located in eligible communities as determined by FEMA. This program encourages prevention rather than relying solely on a response and recovery approach to emergency management. The purpose of the Program is to implement techniques and technologies that will mitigate the effects of natural disasters. Implementation will enable SBA to lend to small businesses in disaster prone areas to help them avert and lessen the costs of future disaster inflicted damages. This is the first time, since SBA has administered the disaster loan program beginning in 1953, that SBA is empowered to administer a pre-disaster mitigation loan program.

SBA's current Program rules were effective October 1, 1999. 64 FR 48275 (September 3, 1999). However, SBA has not made any loans under these rules for several reasons. First, SBA is required by statute to "use mitigation techniques in support of a formal mitigation program established by the [FEMA] * * *" 15 U.S.C. 636(b)(1)(C). In 1999, FEMA had not yet completely established its pre-disaster mitigation program, then known as "Project Impact." Communities had to apply to FEMA to be accepted as a pre-disaster mitigation eligible community. This took time. Next, FEMA's pre-disaster mitigation program was placed on hold, pending appropriations in the FY02 Departments of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act. On November 26, 2001, the appropriations act provided $25 million to FEMA for its pre-disaster mitigation grant program. FEMA is now re-evaluating, revisiting and revamping its pre-disaster program. Therefore, SBA decided to proceed with this final rule to provide clear guidance and complete instructions to the public to support the FEMA program.

On June 14, 2000, SBA published a proposed rule on the Program in the **Federal Register** requesting public comment (65 FR 37307). This final rule clarifies the application and loan approval processes and makes editorial changes to make the regulation more understandable. The final rule explains the Program, defines "mitigation measure," provides the purpose of pre-disaster mitigation loans, and explains how to apply for the loans, the maximum amount and interest rate of the loans, how SBA makes Program funding decisions, and what happens if Program funds run out or an application is denied. The final rule also contains a new application package for the Program approved by the Office of Management and Budget.

SBA received only one comment, from FEMA, which suggests several minor changes.

First, FEMA suggests that SBA refer to the Program as a "community based initiative" instead of referencing it as Project Impact. We agree with FEMA's recommendation and have deleted any reference to Project Impact in the final rule.

Second, FEMA recommends that SBA clarify that an applicant for a pre-disaster mitigation loan needs to submit a "written statement" from a local or State coordinator and that the written statement must include the information contained in the regulation. We agree with FEMA's recommendation and use the phrase "written statement" consistently in this final rule along with an appropriate cross-reference to the requirements in § 123.408.

Third, FEMA requests that SBA add a clarifying sentence which states that "the State or local coordinator's written statement does not constitute an endorsement or technical approval of the project and is not a guarantee that the project will prevent damage in future disasters." SBA agrees with this comment and adds the requested language to § 123.408.

SBA has not adopted one of FEMA's comments. FEMA requested that SBA delete the references to participating pre-disaster mitigation community locations in § 123.403(a) because these communities may grow and change over time. SBA decided to retain the references to participating pre-disaster mitigation communities in § 123.403(a) because these are general references and we encourage the public to contact FEMA for more detailed information. SBA anticipates that at a minimum, the general information will serve to inform applicants in unique communities (*e.g.*, the District of Columbia and Puerto Rico) that they may be eligible to participate in the Program.

In addition to the changes made in response to FEMA's comments, SBA

makes a few changes in this final rule for the purpose of clarification.

In § 123.21 ("What is a mitigation measure?") SBA clarifies that mitigation measures can occur before a disaster (pre-disaster) or after a disaster (post-disaster). In addition, we include appropriate cross-references for further information on either pre-or post-disaster mitigation efforts for homes or businesses.

SBA also revised the final rule in an effort to accurately define borrowing limits for each mitigation category: pre-disaster mitigation loans for businesses; post-disaster mitigation loans for businesses; and post-disaster mitigation loans for homes. SBA did not alter the substance of text dealing with the borrowing limits, but simply changed the location of the information within the rule so that each borrowing limit is addressed under the appropriate mitigation category. To accomplish this, we deleted the proposed § 123.22 ("How much can your business borrow for mitigation?") and we have relocated this information to § 123.204 ("How much can your business borrow for post-disaster mitigation?") and § 123.405 ("How much can your business borrow with a pre-disaster mitigation loan?"). When relocating this information, SBA deleted the inappropriate text references to primary residences or personal property. These references should not have been included in the borrowing limit section for business mitigation loans. These references to primary residences or personal property should have been included in the section addressing the borrowing limit for mitigation loans for homes. As such, we have added a new § 123.107 ("How much can I borrow for post-disaster mitigation for my home?").

Another change is included in §§ 123.400 ("What is the Pre-Disaster Mitigation Loan Program?") and 123.401(a) ("What types of mitigation measures can your business include in its application for a pre-disaster mitigation loan?"). In these sections we inadvertently left out the word "contents" from the text. The Pre-Disaster Mitigation Loan Program is designed, in part, to support mitigation measures geared towards protecting commercial real property, leasehold improvements, and the contents of either. As such, SBA adds the word "contents" to the relevant §§ 123.400 and 123.401(a).

Proposed § 123.410 ("When will SBA make funding decisions?") would have required SBA to wait to make funding decisions until 60 days after the opening of a 30-day application window. This would have allowed SBA to receive and process all applications before deciding which applications to fund. SBA has concluded, however, that there is no reason to delay funding decisions since each application is evaluated on its own merits and not in comparison to the other applications received during that application window. Accordingly, SBA has deleted proposed § 123.410. SBA has redesignated proposed §§ 123.411—123.413 as §§ 123.410—123.412, respectively.

SBA also has concluded that it should date stamp each application when it is received, rather than after it is screened for completeness. Since SBA will be using multiple screeners to review the applications, an applicant's ranking should not be dependent upon the efficiency or schedule of a particular screener. Date stamping upon receipt will eliminate this possibility. In addition, SBA has decided against time-stamping applications. Instead, applications that are received on the same date will be assigned a ranking through the use of a computerized random number generator. SBA believes this is a more equitable way to assign priorities to applications received essentially at the same time. New § 123.410 is revised to reflect these changes.

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Chapter 35)

This rule is a "significant" regulatory action within the meaning of Executive Order 12866 and was reviewed by the Office of Management and Budget. As a new pilot program authorized at $15 million for 5 years, OMB determined that the Program raised potential budgetary, legal and policy issues and required coordination with another Federal agency (FEMA). In 1999 Congressional Budget Office (CBO) estimated that the SBA would require an annual appropriation of $3 million to cover the subsidy costs of the proposed program at a 22 percent subsidy rate. Outlays would be about $2 million in 2000 and $3 million in each year during the 2001–2004 period, assuming appropriations of the necessary amounts. CBO estimates that administrative costs, both for managing the Program and preparing a report to Congress required by the bill, would be well below $500,000 in any year.

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to prepare a final regulatory flexibility analysis describing the need for and objectives of the rule; a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis; and a description of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities. 5 U.S.C. 604(a). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

In the proposed rule, SBA certified that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. The basis of the certification was that since Congress has limited the funding level for this pilot program, the program can only serve a limited number of small businesses. With a maximum loan amount of $50,000, the number of small businesses affected under the program would be 300. Even if the loan amounts did not reach the maximum level, and amounted to only $25,000 per loan, the number of small businesses affected would only be 600. SBA did not consider the number to be substantial, in view of the fact that there could be as many as some 13–16 million small businesses across the country. No comments were received on the certification.

SBA has also determined that the final rule will not have a significant economic impact on a substantial number of small businesses. While the amount of the loan may have a significant impact on the businesses that receive them, the loans will not be going to a substantial number of small businesses. As stated in the proposal, at the maximum level, the loans will only affect 600 small businesses. Also as stated in the proposal, there are 13 to 16 million small businesses across the country, and 600 is not a substantial number. Accordingly, the Administrator of the SBA hereby certifies to the Chief Counsel of Advocacy of the SBA that this rule will not have a significant economic impact on a substantial number of small businesses.

For the purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, SBA has submitted the Pre-Disaster Mitigation Small Business Loan Application (application) to the Office of Management and Budget (OMB) for review and OMB has given its clearance. SBA did not receive any comments from the public regarding this proposed collection of information and only non-substantive, clarifying changes have been made to the proposed application package. The application will allow small businesses to apply for pre-disaster mitigation loans and will provide SBA with the information necessary to evaluate applicants. The application requests such information as name, address, location and type of mitigation project, type of business, management information, organization type, and financial information to permit SBA to determine repayment ability. The applicant will have to complete an application each time it applies for a pre-disaster mitigation loan. SBA estimates that the time necessary to complete an application for the Program will average 2 hours.

For purposes of Executive Order 13132, SBA has determined that this final rule has no federalism implications.

For purposes of Executive Order 12988, SBA has determined that this final rule is drafted, to the extent practicable, to be in accordance with the standards set forth in section 3 of that Order.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small business.

13 CFR Part 123

Disaster assistance, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA amends 13 CFR parts 121 and 123 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 is revised to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 636(b), 637(a), and 644(c), and 662(5); and sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188, Pub. L. 106–24, 113 Stat. 39.

2. In § 121.302, add two sentences at the end of paragraph (c) to read as follows:

§ 121.302 When does SBA determine the size status of an applicant?

* * * * *

(c) * * * For pre-disaster mitigation loans, size status is determined as of the date SBA accepts a complete Pre-Disaster Mitigation Small Business Loan Application for processing. Refer to § 123.408 of this chapter to find out what SBA considers to be a complete Pre-Disaster Mitigation Small Business Loan Application.

* * * * *

PART 123—DISASTER LOAN PROGRAM

1. The authority citation for part 123 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c); Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739; and Pub. L. 106–50, 113 Stat. 245.

2. Redesignate § 123.107 as a new § 123.21 and revise the section to read as follows:

§ 123.21 What is a mitigation measure?

A mitigation measure is something done for the purpose of protecting real and personal property against disaster related damage. You may implement mitigation measures after a disaster occurs (post-disaster) to protect against recurring disaster related damage, or before a disaster occurs (pre-disaster) to protect against future disaster related damage. Examples of mitigation measures include building retaining walls, sea walls, grading and contouring land, elevating flood prone structures, relocating utilities, or retrofitting structures to protect against high winds, earthquakes, flood, wildfires, or other physical disasters. Section 123.107 specifically addresses post-disaster mitigation for home disaster loans, and § 123.204 specifically addresses post-disaster mitigation for businesses. Sections 123.400 through 123.412 specifically address pre-disaster mitigation.

3. Add a new § 123.107 to read as follows:

§ 123.107 How much can I borrow for post-disaster mitigation for my home?

For mitigation measures implemented after a disaster has occurred, you can borrow the lesser of the cost of the mitigation measure, or up to 20 percent of the amount of your approved home disaster loan to repair or replace your damaged primary residence and personal property.

4. Add a new § 123.204 to read as follows:

§ 123.204 How much can your business borrow for post-disaster mitigation?

For mitigation measures implemented after a disaster has occurred, you can borrow the lesser of the cost of the mitigation measure, or up to 20 percent of the amount of your approved physical disaster business loan to repair or replace your damaged business real estate and other business assets.

5. Revise subpart E to read as follows:

Subpart E—Pre-Disaster Mitigation Loans

Sec.

123.400 What is the Pre-Disaster Mitigation Loan Program?
123.401 What types of mitigating measures can your business include in an application for a pre-disaster mitigation loan?
123.402 Can your business include its relocation as a mitigation measure in an application for a pre-disaster mitigation loan?
123.403 When is your business eligible to apply for a pre-disaster mitigation loan?
123.404 When is your business ineligible to apply for a pre-disaster mitigation loan?
123.405 How much can your business borrow with a pre-disaster mitigation loan?
123.406 What is the interest rate on a pre-disaster mitigation loan?
123.407 When does your business apply for a pre-disaster mitigation loan and where does your business get the application?
123.408 How does your business apply for a pre-disaster mitigation loan?
123.409 Which pre-disaster mitigation loan requests will SBA consider for funding?
123.410 Which loan requests will SBA fund?
123.411 What if SBA determines that your business loan request meets the selection criteria of § 123.409 but SBA is unable to fund it because SBA has already allocated all program funds?
123.412 What happens if SBA declines your business' pre-disaster loan request?

Subpart E—Pre-Disaster Mitigation Loans

§ 123.400 What is the Pre-Disaster Mitigation Loan Program?

The Pre-Disaster Mitigation Loan Program allows SBA to make low interest, fixed rate loans to small businesses for the purpose of implementing mitigation measures to protect their commercial real property (building) or leasehold improvements or contents from disaster related damage. This program supports the Federal Emergency Management Agency (FEMA's) Pre-Disaster Mitigation Program. This pilot program is authorized for 5 fiscal years (October—September), from 2000 through 2004, and has only been approved for limited funding. Therefore, approved loan requests are funded on a first come, first served basis up to the limit of program funds available (see § 123.411).

§ 123.401 What types of mitigation measures can your business include in an application for a pre-disaster mitigation loan?

To be included in a pre-disaster mitigation loan application, each of

your business' mitigation measures must satisfy the following criteria:

(a) The mitigation measure, as described in the application, must serve the purpose of protecting your commercial real property (building) or leasehold improvements or contents from damage that may be caused by future disasters; and

(b) The mitigation measure must conform to the priorities and goals of the State or local government's mitigation plan for the community in which the business subject to the measure is located. To show that this factor is satisfied your business must submit to SBA, as a part of your complete application, a written statement from a State or local emergency management coordinator confirming this fact (see § 123.408). Contact your regional FEMA office for a list of your State's emergency management coordinators or visit the FEMA Web site at *http://www.fema.gov.*

§ 123.402 Can your business include its relocation as a mitigation measure in an application for a pre-disaster mitigation loan?

Yes, you may request a pre-disaster mitigation loan for the relocation of your business if:

(a) Your commercial real property (building) is located in a SFHA (Special Flood Hazard Area); and

(b) Your business relocates outside the SFHA but remains in the same participating pre-disaster mitigation community. Contact your regional FEMA office for a listing of communities participating in the Pre-Disaster Mitigation Program and SFHAs or visit the FEMA Web site at *http://www.fema.gov.*

§ 123.403 When is your business eligible to apply for a pre-disaster mitigation loan?

To be eligible to apply for a pre-disaster mitigation loan your business must meet each of the following criteria:

(a) Your business, which is the subject of the pre-disaster mitigation measure, must be located in a participating pre-disaster mitigation community. Each State, the District of Columbia, Puerto Rico, and the Virgin Islands have at least one participating pre-disaster mitigation community. Contact your regional FEMA office to find out the locations of participating pre-disaster mitigation communities or visit the FEMA Web site at *http://www.fema.gov.*;

(b) If your business is proposing a mitigation measure that protects against a flood hazard, the location of your business which is the subject of the mitigation measure must be located in a Special Flood Hazard Area (SFHA). Contact your FEMA regional office to find out the locations of SFHAs or visit the FEMA Web site at *http://www.fema.gov.*;

(c) As of the date your business submits a complete Pre-Disaster Mitigation Small Business Loan Application to SBA (see § 123.408 for what SBA's considers to be a complete application), your business, along with its affiliates, must be a small business concern as defined in part 121 of this chapter. The definition of small business concern encompasses sole proprietorships, partnerships, corporations, limited liability entities, and other legal entities recognized under State law;

(d) Your business, which is the subject of the mitigation measure, must have operated as a business in its present location for at least one year before submitting its application;

(e) Your business, along with its affiliates and owners, must not have the financial resources to fund the proposed mitigation measures without undue hardship. SBA makes this determination based on the information your business submits as a part of its application; and

(f) If your business is owning and leasing out real property, the mitigation measures must be for protection of a building leased primarily for commercial rather than residential purposes (SBA will determine this based upon a comparative square footage basis).

§ 123.404 When is your business ineligible to apply for a pre-disaster mitigation loan?

Your business is ineligible to apply for a pre-disaster mitigation loan if your business (including its affiliates) satisfies any of the following conditions:

(a) Any of your business' principal owners is presently incarcerated, or on probation or parole following conviction of a serious criminal offense, or has been indicted for a felony or a crime of moral turpitude;

(b) Your business' only interest in the business property is in the form of a security interest, mortgage, or deed of trust;

(c) The building, which is the subject of the mitigation measure, was newly constructed or substantially improved on or after February 9, 1989, and (without significant business justification) is located seaward of mean high tide or entirely in or over water;

(d) Your business is an agricultural enterprise. Agricultural enterprise means a business primarily engaged (see § 121.107 of this chapter) in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agriculture-related industries. Sometimes a business is engaged in both agricultural and non-agricultural business activities. If the primary business activity of your business is not an agricultural enterprise, it may apply for a pre-disaster mitigation loan, but loan proceeds may not be used, directly or indirectly, for the benefit of the agricultural activities;

(e) Your business is engaged in any illegal activity;

(f) Your business is a government owned entity (except for a business owned or controlled by a Native American tribe);

(g) Your business presents live performances of a prurient sexual nature or derives directly or indirectly more than *de minimis* gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;

(h) Your business engages in lending, multi-level sales distribution, speculation, or investment (except for real estate investment with property held for commercial rental);

(i) Your business is a non-profit or charitable concern;

(j) Your business is a consumer or marketing cooperative;

(k) Your business derives more than one-third of its gross annual revenue from legal gambling activities;

(l) Your business is a loan packager that earns more than one-third of its gross annual revenue from packaging SBA loans;

(m) Your business principally engages in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting; or

(n) Your business is primarily engaged in political or lobbying activities.

§ 123.405 How much can your business borrow with a pre-disaster mitigation loan?

Your business, together with its affiliates, may borrow up to $50,000 each fiscal year. This loan amount may be used to fund only those projects that were a part of your business' approved loan request. SBA will consider mitigation measures costing more than $50,000 per year if your business can identify, as a part of its Pre-Disaster Mitigation Small Business Loan Application, sources that will fund the cost above $50,000.

§ 123.406 What is the interest rate on a pre-disaster mitigation loan?

The interest rate on a pre-disaster mitigation loan will be fixed at 4 percent per annum or less. The exact interest rate will be stated in the **Federal Register** notice announcing each filing period (see § 123.407).

§ 123.407 When does your business apply for a pre-disaster mitigation loan and where does your business get an application?

SBA will publish a notice in the **Federal Register** announcing the availability of pre-disaster mitigation loans. The notice will designate a 30-day application filing period with a specific opening date and filing deadline, as well as the locations for obtaining and filing loan applications. In addition to the **Federal Register**, SBA will coordinate with FEMA, and will issue press releases to the local media to inform potential loan applicants where to obtain loan applications. SBA will not accept any applications postmarked after the filing deadline; however, SBA may announce additional application periods each year depending on the availability of program funds.

§ 123.408 How does your business apply for a pre-disaster mitigation loan?

To apply for a pre-disaster mitigation loan your business must submit a complete Pre-Disaster Mitigation Small Business Loan Application (application) within the announced filing period. Complete applications mailed to SBA and postmarked within the announced filing period will be accepted. The complete application serves as your business' loan request. A complete application supplies all of the filing requirements specified on the application form including a written statement from the local or State coordinator confirming:

(a) The business that is the subject of the mitigation measure is located within the participating pre-disaster mitigation community; and

(b) The mitigation measure is in accordance with the specific priorities and goals of the local participating pre-disaster mitigation community in which the business is located. (The local or State coordinator's written statement does not constitute an endorsement or technical approval of the project and is not a guarantee that the project will prevent damage in future disasters).

§ 123.409 Which pre-disaster mitigation loan requests will SBA consider for funding?

(a) SBA will consider a loan request for funding if, after reviewing a complete application, SBA determines that it meets the following selection criteria:

(1) Your business satisfies the requirements of §§ 123.401, 123.402 and 123.403;

(2) None of the conditions specified in § 123.404 apply to your business, its affiliates, or principal owners;

(3) Your business has submitted a reasonable cost estimate for the proposed mitigation measure and has chosen to undertake a mitigation measure that is likely to accomplish the desired mitigation result (SBA's determination of this point is not a guaranty that the project will prevent damage in future disasters);

(4) Your business is creditworthy; and

(5) There is a reasonable assurance of loan repayment in accordance with the terms of a loan agreement.

(b) SBA will notify you in writing if your loan request does not meet the criteria in this section.

§ 123.410 Which loan requests will SBA fund?

SBA will date stamp each application (loan request) as it is received. SBA will fund loan requests which meet the selection criteria specified in § 123.409 on a first come, first served basis using this date stamp, until it has allocated all available program funds. Multiple applications received on the same day will be ranked by a computer based random selection system to determine their funding order. SBA will notify you in writing of its funding decision.

§ 123.411 What if SBA determines that your business loan request meets the selection criteria of § 123.409 but SBA is unable to fund it because SBA has already allocated all program funds?

If SBA determines that your business' loan request meets the selection criteria of § 123.409 but we are unable to fund it because we have already allocated all available program funds, your request will be given priority status, based on the original acceptance date, once more program funds become available. However, if more than 6 months pass since SBA determined to fund your request, SBA may request updated or additional financial information.

§ 123.412 What happens if SBA declines your business' pre-disaster mitigation loan request?

If SBA declines your business' loan request, SBA will notify your business in writing giving specific reasons for decline. If your business disagrees with SBA's decision, it may respond in accordance with § 123.13. If SBA reverses its decision, SBA will use the date it received your business' last request for reconsideration or appeal as the basis for determining the order of funding.

Dated: July 12, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–25143 Filed 10–4–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM230; Special Conditions No. 25–215–SC]

Special Conditions: Boeing Model 737 –100, –200, and –300 Series Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing 737 -100, -200, & -300 series airplanes modified by Aircraft Systems & Manufacturing, Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of a new IS&S Digital Air Data Control System that performs critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is September 26, 2002. Comments must be received on or before November 6, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM230, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM230. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Connie Beane, FAA, Standardization Branch, ANM–113, Transport Airplane

Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2796; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification, and thus delivery, of the affected airplane. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On June 17, 2002, Aircraft Systems & Manufacturing, Inc., Georgetown, TX, applied for a supplemental type certificate (STC) to modify Boeing 737–100/–200/–300 series airplanes. These airplanes are low-wing, pressurized transport category airplanes with two wing-mounted jet engines. They are capable of seating between 100 and 150 passengers, depending upon the model and configuration. The modification incorporates the installation of a dual Air Data Control System consisting of a single air data computer and electronic altimeter for display of No. 1 altitude data, an air data display unit (ADDU) for display of No. 2 altitude data and an altitude alerter. These systems have a potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Amendment 21–69, effective September 16, 1991, Aircraft Systems & Manufacturing, Inc. must show that the Boeing 737–100, –200, and –300 series airplanes, as modified to include the new IS&S Digital Air Data Control System, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16WE or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The specific regulations included in the certification basis for the Boeing 737–100, –200, and –300 series airplanes include 14 CFR part 25, as amended by amendments 25–1 through 25–3, 25–7, 25–8, and 25–15.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing 737 –100, –200, and –300 Series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing 737 –100, –200, and –300 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 11.38, and become part of the airplane's type certification basis in accordance with 21.101(b)(2). Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should Aircraft Systems & Manufacturing, Inc. apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

As noted earlier, the Boeing 737–100, –200, and –300 series airplanes modified by Aircraft Systems & Manufacturing, Inc. will incorporate a new IS&S Digital Air Data Control System that will perform critical functions. These systems may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards that address the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be novel or unusual design features.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing 737–100, –200, and –300 series airplanes modified by Aircraft Systems & Manufacturing, Inc. These special conditions will require that the new IS&S Digital Air Data Control System, which performs critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500kHz	50	50
500 kHz–2MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 737–100, –200, and –300 series airplanes modified by Aircraft Systems & Manufacturing, Inc. to install new IS&S Digital Air Data Control System. Should Aircraft Systems & Manufacturing, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate A16WE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain design features on the Boeing Model 737–100, –200, and –300 series airplanes modified by Aircraft Systems & Manufacturing, Inc. to include the new IS&S Digital Air Data Control System. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplanes.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Boeing 737–100, –200, and –300 series airplanes modified by Aircraft Systems & Manufacturing, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on September 26, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–25470 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–251–AD; Amendment 39–12903; AD 2002–20–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes seven existing airworthiness directives (ADs), applicable to certain Boeing Model 737 series airplanes that, among other things, currently require replacing the main rudder power control unit (PCU) and PCU vernier control rod bolts; testing the main rudder PCU to detect certain discrepancies and to verify proper operation of the PCU; and revising the FAA-approved Airplane Flight Manual procedures to correct a jammed or restricted flight control condition. Instead, this amendment requires installation of a new rudder control system and changes to the adjacent systems to accommodate that new rudder control system. This amendment is prompted by FAA determinations that the existing system design architecture is unsafe due to inherent failure modes, including single-jam modes and certain latent failures or jams, which, when combined with a second failure or jam, could cause an uncommanded rudder hardover event and consequent loss of control of the airplane. Additionally, the current rudder operational procedure is not effective throughout the entire flight envelope. The actions specified by the proposed AD are intended to prevent the identified unsafe condition.

DATES: Effective November 12, 2002.

ADDRESSES: Information pertaining to this amendment may be obtained from or examined at the Federal Aviation Administration (FAA), Transport

Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2673; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–14–04, amendment 39–10061 (62 FR 35068, June 30, 1997), which is applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes; and AD 2000–22–02 R1, amendment 39–11948 (65 FR 69239, November 16, 2000), which is applicable to all Boeing Model 737 series airplanes; was published in the **Federal Register** on November 13, 2001 (66 FR 56783). The action proposed to require installation of a new rudder control system and changes to the adjacent systems to accommodate that new rudder control system.

Discussion of Background

The National Transportation Safety Board (NTSB) has identified the most probable cause of two major accidents on Model 737 series airplanes as a jammed secondary slide in the main rudder power control unit (PCU) servo valve in combination with overtravel of the primary slide. While AD 97–14–04 addresses what was considered to be this most likely cause of uncommanded rudder hardovers, the FAA recognizes that other causes are still possible.

Subsequently, we determined that the existing system design architecture is unsafe due to inherent failure modes, including single-jam modes and certain latent failures or jams, which, when combined with a second failure or jam, could cause an uncommanded rudder hardover event and consequent loss of control of the airplane. These failure modes remain even following accomplishment of the actions required by AD 97–14–04, amendment 39–10061 (62 FR 35068, June 30, 1997).

In addition, we received information from the Independent 737 Flight Controls Engineering Test and Evaluation Board (ETEB) verifying the existence of the failure modes described above in the rudder system of all Model 737 series airplanes that can cause an uncommanded rudder hardover.

Because of the existing design architecture, we issued AD 2000–22–02 R1 to include a special non-normal operational "Uncommanded Rudder" procedure, which provides necessary instructions to the flightcrew for control of the airplane during an uncommanded rudder hardover event. The revised rudder procedure included in AD 2000–22–02 R1 is implemented to provide the flightcrew with a means to recover control of the airplane following certain failures of the rudder control system. However, such a procedure, which is unique to Model 737 series airplanes, adds to the workload of the flightcrew at a critical time when the flightcrew is attempting to recover from an uncommanded rudder movement or other system malfunction. While that procedure effectively addresses certain rudder system failures, we find that such a procedure will not be effective in preventing an accident if the rudder control failure occurs during takeoff or landing.

For these reasons, we have determined that the need for a unique operational procedure and the inherent failure modes in the existing rudder control system, when considered together, present an unsafe condition. In light of this, we proposed to eliminate the unsafe condition by mandating incorporation of a newly designed rudder control system. The manufacturer is currently redesigning the rudder system to eliminate these rudder failure modes. The redesigned rudder control system will incorporate design features that will increase system redundancy, and will add an active fault monitoring system to detect and annunciate to the flightcrew single jams in the rudder control system. If a single failure or jam occurs in the linkage aft of the torque tube, the new rudder design will allow the flightcrew to control the airplane, using normal piloting skills, without operational procedures that are unique to this airplane model.

Actions Since Issuance of Proposed Rule

Since the issuance of the notice of proposed rulemaking (NPRM), which proposed to require the supersedure of AD 97–14–04 and AD 2000–22–02 R1, we have determined that this final rule needs to supersede five additional ADs, which are listed in the table below. Our decision to supersede these ADs was based on a number of factors. First, the new rudder control system required by this AD will better address the identified unsafe condition through redundancy in the system architecture, which will increase reliability. Second, the requirements of those ADs will no longer be relevant to or necessary for the new rudder control system, since the parts required by those ADs will not be included in the design for the new rudder control system. The five additional ADs are listed in the table below and described in the following paragraphs:

List of ADs To Be Superseded

AD No.	Amendment No.	Federal Register citation
95–06–53	39–9199	60 FR 18981, April 14, 1995.
97–05–10	39–9954	62 FR 9679, March 4, 1997.
97–09–15 R1	39–10912	63 FR 64857, November 24, 1998.
98–02–01	39–10283	63 FR 1903, January 13, 1998.
99–11–05 COR	39–11175	64 FR 27905, May 24, 1999.

• AD 95–06–53, applicable to all Boeing Model 737 series airplanes, requires identification of the part and serial numbers of the main rudder PCU; and replacement of certain PCUs with serviceable parts, if necessary. That AD corrects an unsafe condition caused by improper tooling used to torque the spring retaining nut in the servo valve of the main rudder PCU. However, the PCUs identified in AD 95–06–53 will not be used in the configuration of the new rudder control system required by this AD.

• AD 97–05–10, applicable to all Boeing Model 737 series airplanes, requires removal of the main rudder PCU and replacement with a serviceable unit. That AD corrects an unsafe condition due to an unapproved Hi-Lock bolt that was installed in the lever assembly bearing of the main rudder PCU instead of the correct bolt. However, the PCUs identified in AD 97–05–10 will not be used in the configuration of the new rudder control system required by this AD.

• AD 97–09–15 R1, applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, requires a one-time inspection to determine the part number of the engage solenoid valve of the yaw damper on the rudder PCU, and replacement of the valve with a valve having a different part number, if necessary. However, the engage solenoid valves specified in AD 97–09–15 R1 will not be used in the configuration of the new main rudder PCU required by this AD.

• AD 98–02–01, applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, requires removing the yaw damper coupler; replacing its internal rate gyroscope with a new or overhauled unit; and performing a test to verify the integrity of the yaw damper coupler, and repair if necessary. However, that configuration of the yaw damper coupler, using mechanical rate gyroscopes, is no longer approved for installation on Model 737 series airplanes. Instead, AD 97–14–03, amendment 39–10060 (62 FR 34623, June 27, 1997), requires, among other things, installation of a new yaw damper system that replaces the gyroscopes specified by AD 98–02–01. That new system is intended to prevent malfunction of the yaw damper system.

• AD 99–11–05 COR, applicable to all Boeing Model 737 series airplanes, requires repetitive displacement tests of the secondary slide in the dual concentric servo valve of the PCU for the rudder; and replacement of the valve assembly with a modified valve assembly, if necessary. However, the dual concentric servo valve of the PCU for the rudder, which was specified in AD 99–11–05 COR, will not be used in the configuration of the main rudder PCU that will be installed as a component of the new rudder control system required by this AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. One commenter supports the proposed rule. Due consideration has been given to all comments received.

Request to Withdraw Proposal

One commenter considers that an adequate level of safety has been achieved by the accomplishment of AD 97–14–04 and AD 2000–22–02 R1, which are referenced in the Discussion paragraph of the proposed rule, and by the accomplishment of ADs 95–06–53, 97–05–10, 97–06–09, 97–09–14, 97–09–15, 97–14–03, 98–02–01, and 99–11–05. The commenter states that since accomplishing the modifications required by AD 97–14–03 and AD 97–14–04, no instances of uncommanded rudder movement have occurred. In addition, no discrepancies were found by the PCU manufacturer during numerous displacement tests conducted per AD 99–11–05. Further, the proposed rule identifies multiple conditions that only theoretically could occur with the existing rudder control system. After reviewing this information, we infer that the commenter is requesting withdrawal of the proposed rule.

The FAA does not concur with the commenter's request to withdraw the proposed rule. As explained in the proposed rule, the unsafe condition is due to inherent failure modes, including single-jam modes and certain latent failures or jams, which, when combined with a second failure or jam, could cause an uncommanded rudder hardover event and consequent loss of control of the airplane. Because the identified inherent failure modes have not been eliminated by the actions required by those previously issued ADs, we have determined that the actions required by this final rule are warranted. This determination was made after considering the existence of these failure modes and the need for a unique operational procedure (per AD 2000–22–02 R1). No change to the final rule is necessary in this regard.

Disagreement With Identified Unsafe Condition

One commenter, the manufacturer, does not agree that the unsafe condition identified in the proposed AD exists in the current Model 737 rudder control system for the following reasons:

• The current rudder control system is safe and has been shown to meet all current regulations using accepted industry analysis and validation practices.

• Service experience accumulated over 116 million flight hours demonstrates that the system is safe; the airplane has one of the lowest accident rates of airplanes in its class.

• All issues identified as potential safety issues have been addressed by service bulletins mandated by the following airworthiness directives issued by the FAA: AD 97–14–03; AD 97–14–04; AD 97–26–01, amendment 39–10244 (62 FR 65597, December 15, 1997); and AD 98–13–12, amendment 39–10600 (63 FR 33246, June 18, 1998).

• The 737 Flight Controls ETEB report did not identify any new significant failure modes or unsafe conditions that invalidate previous Model 737 certification documentation. All failure modes in the ETEB report had been previously identified and analyzed by the manufacturer. The existing rudder system is considered safe and meets federal regulations.

While the manufacturer does not agree that the unsafe condition exists, it states that it is committed to a redesign of the Model 737 rudder control system to further enhance an already safe system. The manufacturer also states that the new design will eliminate certain potential latent failures in the system, even though evaluation in accordance with federal regulations has shown such latencies to be acceptable. The elimination of such failures will enable the system to be functionally equivalent to a three-actuator system. The new system also will eliminate the need for the existing uncommanded rudder non-normal operational procedure unique to Model 737 series airplanes.

While the ADs identified by the manufacturer were issued to address previously identified unsafe conditions, we have determined that the inherent failure modes identified in this AD have not been eliminated by the actions required by those ADs. Therefore, we do not agree with the manufacturer's conclusion that the existing design of the rudder control system is safe. As described in the proposed AD, the unsafe condition is due to inherent failure modes, including single-jam modes, and certain latent failures or jams, which, when combined with a second failure or jam, could cause an uncommanded rudder hardover event and consequent loss of control of the airplane.

Likewise, AD 2000–22–02 R1 provides instructions to the flightcrew for addressing certain rudder system failures, but those instructions will not be effective in preventing an accident if the rudder control failure occurs during takeoff or landing.

After considering all of this information, we have determined that it is necessary to issue this AD to eliminate the unsafe condition by mandating the installation of a newly designed rudder control system. The new system will incorporate design features that will increase system redundancy, and will add an active fault monitoring system to detect and annunciate to the flightcrew single jams in the rudder control system. If a single failure or jam occurs in the linkage aft of the torque tube, the new system will allow the flightcrew to control the airplane using normal piloting skills, and without using operational procedures that are unique to this airplane model. In light of this, we consider that the actions specified in

this final rule are warranted. No change to the final rule is necessary in this regard.

Request for Information/Concerns About New Rudder Control System

One commenter, the NTSB, requested more information on the system safety assessment (SSA) being conducted in support of the design changes for the proposed new rudder control system. To help evaluate the new design, the commenter would like to review the analyses being conducted for each design, the reliability benefits, and other rudder actuation system designs that were submitted.

The commenter also stated the following concerns about the new system:

- It does not provide full independence for the main PCU, and "it would appear that true redundancy would require two fully independent PCUs."
- The automatic activation system for the standby PCU may increase the number of possible failure modes compared to the installation of a third full-time independent PCU.
- Without the SSA information, the commenter states that it is unable to determine if the revisions to the rudder actuation system of the Boeing Model 737 series airplanes will sufficiently address safety concerns.

We cannot provide the requested SSA information or other requested design information because it is proprietary to The Boeing Company. However, we have sent the commenter's request to Boeing. Boeing has informed us that it has briefed the NTSB on the Rudder System Enhancement Program on January 16, 2001, and on March 18, 2002. To the extent that the commenter expresses an interest in certification documentation, Boeing will submit the SSA results to us for our approval as part of the certification of the new design.

The commenter also expressed a concern that true redundancy would require two fully independent PCUs. During our reviews of the new rudder control system, we have found that the new main rudder PCU design is equivalent to two independent PCUs. The main rudder PCU is an assembly with two PCUs arranged in tandem. The new main rudder PCU will have two independent servo valves in lieu of the existing common dual concentric servo valve. Two separate input linkages will control the position of these valves on the main rudder PCU. The pilot can override each of these input linkages and also override the linkage for the standby PCU. The function of the override capability is to enable the pilot to control the airplane in the event of a jam in any one of the three input linkages or associated servo valves in the rudder control system.

Finally, the commenter expressed concerns that the automatic activation system for the standby PCU may increase the number of failure modes, compared to the installation of a third full-time independent PCU. In addressing this concern, we note that introduction of a third full-time PCU for a single flight control surface would introduce latent failure modes. With three active PCUs, a single PCU failure (due to a valve jam or linkage failure) can remain latent while the other two PCUs control the rudder surface position. Typically, rudder control systems with three active PCUs require frequent periodic maintenance to detect a single failure, or require a fault-monitoring and annunciation system.

The introduction of any fault-monitoring system will increase the number of failure modes due to increased system complexity. Although the fault-monitoring system for the new rudder control system slightly increases the number of failure modes, these failure modes would not have any adverse effect on the operation of the rudder control system. However, this new system will provide significant benefits in the capability to detect certain failures, provide crew annunciation, and activate the standby rudder PCU. When the standby rudder PCU is activated along with the main rudder PCU, there will be effectively three PCUs controlling the rudder surface position.

In light of this information and based on our certification activities, the new rudder control system will adequately address the identified unsafe condition. No change to the final rule is necessary in this regard.

Suggestion Regarding the Identified Unsafe Condition

One commenter suggested that electromagnetic interference may have contributed to reported events of uncommanded rudder movement on Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. However, the commenter concluded that, if this is true, those airplanes have already been fixed by previously mandated changes to the yaw damper system.

We do not concur with the commenter's suggestion or conclusion. The only electrical components in the rudder control system are in the yaw damper system. The existing rudder yaw damper system has mechanical stops that limit rudder movement to the yaw damper authority. In a normally functioning system, it is not possible for electrical interference to move the rudder beyond the mechanical stops. No change to the final rule is necessary in this regard.

Requests To Revise the Compliance Time

Several commenters request revising the proposed compliance time of 5 years, and two commenters suggest a new compliance time of September 2008. In addition, several commenters recommend basing the compliance time on the completion of tests for the new main rudder PCU, receipt of service bulletins, operators' maintenance schedules, and parts availability. Additional recommendations and FAA responses are described as follows:

- One commenter states that wiring kits should be available in the second quarter of 2002, but actual hardware won't be available until the year 2003. In addition, because of the number of affected airplanes (about 150) in the commenter's fleet, the proposed 5-year compliance time will not be sufficient to accomplish the required actions if receipt of the service bulletins and parts are delayed for 2 years.
- One commenter suggests extending the compliance time to 10 years, and states that the extensive modifications required by the proposed rule are best suited for accomplishment at a D-check.
- One commenter is concerned about parts availability and a possible schedule slide. The commenter states that the manufacturer projects a maximum production capacity of 100 PCUs per month, with about 75 of those units available for retrofit each month after airplane production line requirements are met. In addition, if PCU certification and production proceed on schedule, a maximum of 3,300 airplanes could be retrofitted within 44 months, which would be insufficient to meet 27 percent of potential worldwide demands. The commenter is concerned that, if PCU certification or the production schedule should slide, the schedule for providing sufficient parts would be adversely affected.
- One commenter, the manufacturer, justifies its request for a September 2008 compliance time by noting the benefits of a slower introduction to the retrofit program. The manufacturer states that the FAA made assumptions in the proposed AD based on estimates for retrofitting U.S.-registered airplanes (about 2,000). However, the manufacturer notes that it must plan for retrofitting the worldwide fleet (about 4,500 airplanes). In addition, because the proposed changes to the rudder control system will require modifications throughout the airplane, the manufacturer recommends the September 2008 compliance time to allow for a phased approach for the retrofit program, thereby providing the time necessary to correct any issues identified during the first retrofits.

We partially concur with the commenters' requests to revise the compliance time. We have considered the commenters' suggestions and concerns, and have made the following determinations. We concur with the requests to revise the compliance time to the year 2008, but do not concur with the request to extend the compliance time to 10 years. We agree that the 5-year compliance time required by the proposed rule may not allow operators sufficient time to accomplish the required design modifications. We also agree that the new compliance time should take into consideration when the service bulletins will be issued and when the required parts will be made available to the operators.

In addressing the concerns about delays in the issuance of service bulletins, insufficient parts, and sliding schedules, the manufacturer has established a firm schedule and has assured us that all service information and parts will be provided within the required 6-year compliance time to support the new rudder control system. The manufacturer also has established backup plans to further ensure that parts will be available to meet schedule deadlines. To date, the manufacturer has informed us that the necessary service information is being developed and will be issued according to schedule, and that all necessary parts are being manufactured and will be available per the schedule. Further, we will closely monitor the manufacturer's schedule to ensure that all service information and parts are provided to the operators on time.

In making our determination to extend the compliance time from 5 to 6 years, we also have taken into consideration the service record of Model 737 series airplanes since the accomplishment of the modifications required by AD 97–14–03 and AD 97–14–04. In light of all of this information, we have determined that a compliance time of 6 years will provide sufficient time for affected operators to install the new rudder control system without adversely affecting safety. Paragraph (a) of the final rule is revised accordingly.

Requests To Delay Issuance of Proposed Rule

Although several commenters support the intent of the proposed AD, the commenters request delaying issuance of the proposed rule. The specific comments are described as follows:

- The Air Transport Association (ATA) of America, on behalf of some of its members, recommends delaying issuance of the proposed rule until after the new main rudder PCU is tested and certified, and after the service information is issued by the manufacturer and approved by the FAA. Although service bulletins for the wiring installations for certain airplanes were issued in February 2002, issuance of additional service bulletins are not expected until the third quarter of 2002. In addition, service information for PCU procedures is not expected until July 2003. ATA is concerned about the risks associated with mandating the proposed actions before completing test and evaluation procedures for the new rudder control system, and about the limited number of retrofit kits that will be available each month.
- One commenter strongly recommends waiting to issue the proposed rule until the relevant Boeing service bulletins and required parts are available. As noted earlier in the "Requests to Revise the Compliance Time" paragraph of this AD, that same commenter stated that, although the wiring kits would be available in the second quarter of 2002, actual hardware would not be available until the year 2003.
- Two commenters consider that the proposed rule should be issued after the new rudder control system has been tested and approved. Issuing the proposed rule before approval of the system does not allow operators the opportunity to evaluate and comment on the system. Requiring installation of an unknown system places an undue burden on operators, since procedures for the corrective action are not yet defined.

We do not agree that issuance of this AD should be delayed. The manufacturer has assured us that the compliance time specified by this AD will allow sufficient time to design, test, and evaluate the new rudder control system. As described earlier, we are monitoring the manufacturer's schedule for issuing the required service information and providing parts, and we will strive to ensure that the parts and information will be provided to the operators so that they can meet the requirements of this AD.

We infer from the commenters' requests to delay issuance of the final rule that the commenters are seeking more time to comply with the rule. In this regard, we partially concur, and, as described earlier in this AD, have extended the 5-year compliance time specified in the proposed AD to 6 years. The manufacturer has assured us that, in addition to the wiring service information issued in February 2002, it will provide all additional service information (including PCU procedures) and parts necessary to meet the requirements of this AD. In addition, the new rudder control system, including all necessary components for the system, will be thoroughly tested and evaluated prior to issuance of the service information. No change is made to the final rule in this regard. As described earlier, paragraph (a) of the final rule specifies the new compliance time of 6 years after the effective date of this AD.

Cost Concerns

One commenter states that the proposed costs are substantial ($184,000 per airplane, or $364 million for U.S. operators).

We recognize that the costs for the new rudder control system are substantial. However, in determining the costs associated with the new rudder control system, we based our cost estimate on the manufacturer's estimate of 700 work hours per airplane for the installation of the new rudder control system, and our estimate of approximately $140,000 per airplane for parts. For reasons specified in the proposed AD, we have determined that an unsafe condition exists, and we consider that accomplishment of the requirements of this AD is necessary to address that identified unsafe condition. No change is made to the final rule in this regard.

Request To Supersede Certain ADs

One commenter considers that any new proposed rule should supersede the ADs listed in the following table and described below:

COMMENTER'S SUGGESTED LIST OF ADS TO BE SUPERSEDED

AD No.	Amendment No.	Federal Register citation
95–06–53	39–9199	60 FR 18981, April 14, 1995.
97–05–10	39–9954	62 FR 9679, March 4, 1997.

COMMENTER'S SUGGESTED LIST OF ADS TO BE SUPERSEDED—Continued

AD No.	Amendment No.	Federal Register citation
97–06–09	39–9966	62 FR 12739, March 18, 1997.
97–09–14*	39–10010	62 FR 24008, May 2, 1997.
97–09–15*	39–10011	62 FR 24325, May 5, 1997.
97–14–03	39–10060	62 FR 34623, June 27, 1997.
97–14–04	39–10061	62 FR 35068, June 30, 1997.
98–02–01	39–10283	63 FR 1903, January 13, 1998.
99–11–05*	39–11175	64 FR 27905, May 24, 1999.
2000–22–02 R1	39–11948	65 FR 69239, November 16, 2000.

• Asterisks in the preceding table indicate the following changes since the issuance of those ADs:

• AD 97–09–14 was superseded by AD 2000–02–18, amendment 39–11536 (65 FR 5238, February 3, 2000).

• AD 97–09–15 was revised by AD 97–09–15 R1, amendment 39–10912 (63 FR 64857, November 24, 1998).

• AD 99–11–05 was corrected by AD 99–11–05 COR, amendment 39–11175 (64 FR 27905, May 24, 1999).

The commenter adds that incidents of uncommanded rudder movement were reported on airplanes prior to the accomplishment of AD 97–14–03 and AD 97–14–04; however, no incidents have occurred since the accomplishment of those ADs. In addition, the manufacturer of the main rudder PCU has accomplished 361 displacement tests per AD 99–11–05, and no discrepancies occurred during those tests.

We partially concur with the commenter's request. We have determined that the final rule should supersede the two ADs cited in the NPRM (AD 97–14–04 and AD 2000–22–02 R1) and only five of the ADs listed in the table above (AD 95–06–53, 97–05–10, 97–09–15 R1, 98–02–01, and 99–11–05 COR). (Those five ADs were described in detail in this AD in "Actions Since Issuance of Proposed Rule.")

However, we do not agree that this AD should supersede AD 97–06–09, AD 97–14–03, or AD 2000–02–18 (which supersedes 97–09–14) because the requirements of those ADs are necessary to correct unsafe conditions that are not addressed by the requirements of this AD. In addition, the components and system specified in AD 97–14–03 are compatible with the new rudder control system and are necessary for the operation of that system. The requirements of those three ADs are described as follows:

• AD 97–06–09, applicable to certain Boeing Model 737–300, –400, and –500 series airplanes, requires replacing certain aileron/rudder trim control modules with an improved module that contains an improved rudder trim switch that precludes the problems of sticking associated with the existing switch. That AD is intended to prevent such sticking.

• AD 97–14–03, applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, requires installation of a newly designed rudder-limiting device and yaw damper system. As described earlier in this AD in the "Actions Since Issuance of Proposed Rule" paragraph, AD 97–14–03 supersedes AD 98–02–01 (which requires mechanical rate gyroscopes that are no longer approved for installation on Model 737 series airplanes). The new yaw damper system required by AD 97–14–03 is intended to prevent excessive rudder authority and consequent reduced controllability of the airplane, and malfunctions of the yaw damper system.

• AD 2000–02–18 (which supersedes AD 97–09–14), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, requires an inspection of reworked aileron/elevator PCUs and rudder PCUs to determine if reworked PCU manifold cylinder bores containing chrome plating are installed, and replacement of the cylinder bores with cylinder bores that have been reworked using the oversize method or the steel sleeve method if necessary. That AD is intended to prevent a reduced rate of movement of the elevator, aileron, or rudder due to contamination of hydraulic fluid from chrome plating chips. Such reduced rate of movement, if not corrected, could result in reduced controllability of the airplane.

We have revised the final rule to supersede the five ADs listed and described in a previous paragraph, "Actions Since Issuance of Proposed Rule." As discussed previously in this AD, the final rule also supersedes two other ADs.

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes previously described. We also have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 4,500 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2,000 airplanes of U.S. registry will be affected by this AD.

The new installation action that is required by this new AD will take approximately 700 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $140,000 per airplane. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $364,000,000 (over the proposed 6-year compliance time), or $182,000 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9199 (60 FR 18981, April 14, 1995); amendment 39–9954 (62 FR 9679, March 4, 1997); amendment 39–10061 (62 FR 35068, June 30, 1997); amendment 39–10283 (63 FR 1903, January 13, 1998); amendment 39–10912 (63 FR 64857, November 24, 1998); amendment 39–11175 (64 FR 27905, May 24, 1999); and amendment 39–11948 (65 FR 69239, November 16, 2000); and by adding a new airworthiness directive (AD), amendment 39–12903, to read as follows:

2002–20–07 Boeing: Amendment 39–12903. Docket 2001–NM–251–AD. Supersedes AD 95–06–53, Amendment 39–9199; AD 97–05–10, Amendment 39–9954; AD 97–09–15 R1, Amendment 39–10912; AD 97–14–04, Amendment 39–10061; AD 98–02–01, Amendment 39–10283; AD 99–11–05 COR, Amendment 39–11175; and AD 2000–22–02 R1, Amendment 39–11948.

Applicability: All Model 737 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncommanded rudder hardover event and consequent loss of control of the airplane due to inherent failure modes, including single-jam modes, and certain latent failure or jams combined with a second failure or jam; accomplish the following:

Installation

(a) Within 6 years after the effective date of this AD, do the actions required by paragraphs (a)(1) and (a)(2) of this AD, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(1) Install a new rudder control system that includes new components such as an aft torque tube, hydraulic actuators, and associated control rods, and additional wiring throughout the airplane to support failure annunciation of the rudder control system in the flight deck. The system also must incorporate two separate inputs, each with an override mechanism, to two separate servo valves on the main rudder power control unit (PCU); and an input to the standby PCU that also will include an override mechanism.

(2) Make applicable changes to the adjacent systems to accommodate the new rudder control system.

Alternative Methods of Compliance

(b)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with the ADs listed in the following table, are not considered to be approved as alternative methods of compliance with this AD:

TABLE—LIST OF ADS

AD No.	Amendment No.
95–06–53	39–9199
97–05–10	39–9954
97–09–15 R1	39–10912
97–14–04	39–10061
98–02–01	39–10283
99–11–05 COR	39–11175
2000–22–02 R1	39–11948

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(d) This amendment becomes effective on November 12, 2002.

Issued in Renton, Washington, on September 27, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–25346 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–248–AD; Amendment 39–12904; AD 2002–19–51 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2002–19–51 R1 that was sent previously to all known U.S. owners and operators of all Boeing Model 737 series airplanes by individual notices. This AD revises existing AD 2002–19–51 that currently requires, for certain airplanes, an inspection to determine the serial number of certain flight control modules (FCM), having P/N 65–44891–7, and corrective actions if necessary. That AD was prompted by reports of failed FCMs, which resulted in sluggish response of the aileron, elevator, and rudder surfaces. This AD revises the existing AD to provide operators with additional options for compliance, to specify the serial numbers of the affected compensator, and to make other editorial changes. The actions specified by this AD are intended to prevent operation with one failed FCM, which could result in reduced controllability of the airplane, or with two failed FCMs, which could result in loss of control of the airplane.

DATES: Effective October 15, 2002, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–19–51 R1, issued on September 18, 2002, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before December 6, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–248–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–248–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this AD may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2673; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 2002, the FAA issued airworthiness directive (AD) 2002–19–51, applicable to all Boeing Model 737 series airplanes, to require, for certain airplanes, an inspection to determine whether flight control modules (FCM) having part number (P/N) 65–44891–7 with serial number (S/N) 8726 or greater (hereafter referred to as "suspect FCMs") are installed, and corrective actions if necessary. The corrective actions include replacing the suspect FCM(s) with a serviceable FCM(s) having P/N 65–44891–7 with a S/N less than 8726, and revising the FAA-approved Airplane Flight Manual (AFM) to include procedures for certain airplanes to identify failures of suspect FCMs before dispatch and to provide the flightcrew with operating procedures in the event of failure of an FCM in flight. The AD also requires certain operators to submit inspection findings to the FAA. That action was prompted by reports of failed FCMs, which resulted in sluggish response of the aileron, elevator, and rudder surfaces. The actions required by that AD are intended to prevent operation with one failed FCM, which could result in reduced controllability of the airplane, or with two failed FCMs, which could result in loss of control of the airplane.

Clarification of Affected Airplanes

Because of reports of some operators misinterpreting the applicability of AD 2002–19–51, we find that clarification is necessary. Operators should note that this AD affects all Boeing Model 737 series airplanes. Operators of Model 737–600, –700, –700C, –800, and –900 series airplanes, having line numbers 1136 through 1230 inclusive, are subject to all requirements of this AD. However, operators of all Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; and Model 737–600, –700, –700C, –800, and –900 series airplanes, having line numbers other than 1136 through 1230 inclusive; are only required to adhere to paragraphs (j) and (k) of this AD (*i.e.*, parts installation paragraphs) to ensure that spare replacement FCMs and compensators identified in those paragraphs are not installed on any Model 737 series airplane in the future. No change to this AD is necessary in this regard.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2002–19–51, the FAA has approved an alternative method of compliance (AMOC) for the replacement required by paragraphs (d)(1), (d)(2), and (h) of that AD. The AMOC allows FCMs having P/Ns other than 65–44891–7 that are approved for installation on Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes to be installed during the replacements required by those paragraphs. In addition, we have determined that a suspect FCM can continue to be used once the compensator has been replaced with an airworthy compensator. Therefore, we have revised those paragraphs and paragraph (j) of this AD accordingly.

We also have determined that replacement of all suspect FCMs with airworthy FCMs terminates the requirements of paragraphs (e) through (g) of this AD. Therefore, we have revised paragraphs (c) and (d)(1) of this AD accordingly.

We also have revised paragraph (h) of this AD to state explicitly that suspect FCMs that fail during operation of the airplane must be replaced before further flight.

AD 2002–19–51 contains a typographical error in paragraph (k). That paragraph refers to "compensator having P/N 10–605603–3," which does not exist. The correct P/N of that compensator is "P/N 10–60560–3." In addition, the airplane manufacturer has provided us with the specific S/Ns (*i.e.*, 20478A or greater) of the suspect compensator, P/N 10–60560–3. Therefore, we have revised paragraph (k) of this AD accordingly to prohibit installation of only these S/Ns. We also clarified that unairworthy compensators cannot be installed on any FCM.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued emergency AD 2002–19–51 R1 to prevent operation with one failed FCM, which could result in reduced controllability of the airplane, or with two failed FCMs, which could result in loss of control of the airplane. This AD revises AD 2002–19–51 to continue to require, for certain airplanes, an inspection to determine the S/N of the FCMs having P/N 65–44891–7 and corrective actions if necessary. This AD also continues to require certain operators to submit inspection findings to Boeing. This AD revises the existing AD to provide operators with additional options for compliance, to specify the serial numbers of the affected compensator, and to make other editorial changes.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on September 18, 2002, to all known U.S. owners and operators of all Boeing Model 737 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to §39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–248–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–19–51 R1 Boeing: Amendment 39–12904. Docket 2002–NM–248–AD. Revises AD 2002–19–51.

Applicability: All Model 737–100, –200, –200C, –300, –400, –500, –600, –700, –700C, –800, and –900 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (l) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent operation with one failed flight control module (FCM), which could result in reduced controllability of the airplane, or with two failed FCMs, which could result in loss of control of the airplane, accomplish the following:

Inspection

(a) For Model 737–600, –700, –700C, –800, and –900 series airplanes, having line numbers 1136 through 1230 inclusive: Before further flight after the effective date of this AD, do an inspection to determine the serial number (S/N) of both FCMs having part number (P/N) 65–44891–7.

Neither FCM Has S/N 8726 or Greater

(b) If neither FCM has S/N 8726 or greater (hereafter referred to as a "suspect FCM"), no further action is required by this AD, except for the requirements specified in paragraphs (j) and (k) of this AD.

FCM(s) Has S/N 8726 or Greater

(c) If one FCM is a suspect FCM, the airplane may continue to be operated, but within 24 hours after accomplishing the inspection required by paragraph (a) of this AD, do the actions specified in paragraphs (e) through (g) of this AD. Replacement of the suspect FCM with an FCM identified in paragraph (c)(1), (c)(2), or (c)(3) of this AD terminates the requirements of paragraphs (e) through (g) of this AD.

(1) A serviceable FCM having P/N 65–44891–7 with a S/N less than 8726.

(2) A serviceable FCM having a P/N other than 65–44891–7 that is approved for installation on Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes.

(3) A suspect FCM on which the compensator has been replaced with a serviceable compensator, approved for installation on FCM, P/N 65–44891–7, other than a compensator having P/N 10–60560–3 with S/N 20478A or greater.

(d) If both FCMs are suspect FCMs, do the actions specified in either paragraph (d)(1) or (d)(2) of this AD.

(1) Before further flight, replace one of the FCMs with an FCM identified in paragraph (c)(1), (c)(2), or (c)(3) of this AD. Thereafter, the airplane may continue to be operated, but within 24 hours after accomplishing the inspection required by paragraph (a) of this AD, do the actions specified in paragraphs (e) through (g) of this AD. Replacement of both suspect FCMs with FCMs identified in paragraph (c)(1), (c)(2), or (c)(3) of this AD terminates the requirements of paragraphs (e) through (g) of this AD.

(2) Before further flight, replace both FCMs with FCMs identified in paragraph (c)(1), (c)(2), or (c)(3) of this AD. Thereafter, no further action is required by this AD, except for the requirements specified in paragraphs (j) and (k) of this AD.

(e) If required by paragraph (c), (d)(1), or (m) of this AD: Revise the Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following (this may be accomplished by inserting this AD into the AFM):

"Pre-Flight Flight Control Module (FCM) Checks

These checks can be performed any time after the Electric Hydraulic Pump A and B Switches are positioned ON and prior to Engine Start. Ensure ground personnel are clear of all control surfaces. If Minimum Equipment List (MEL) dispatch with one or both autopilot channels inoperative is planned, it is acceptable not to perform the check on the inoperative channel(s).

Flight Control Switch Check

1. Ensure FLT CONTROL A & B switches are ON

2. FLT CONTROL A Switch * * * OFF
—Verify Flight Controls LOW PRESSURE Light illuminates within 2 seconds.
3. FLT CONTROL A Switch * * * ON
—Verify Flight Control LOW PRESSURE Light extinguishes.
4. FLT CONTROL B Switch * * * OFF
—Verify Flight Controls LOW PRESSURE Light illuminates within 2 seconds.
5. FLT CONTROL B Switch * * * ON
—Verify Flight Controls LOW PRESSURE Light extinguishes.

Note: Failure of the Flight Control LOW PRESSURE Light to illuminate within 2 seconds may indicate a failure of the related flight control module

Autopilot Check

1. Ensure IRUs are in the NAV mode
2. A/P ENGAGE Switch * * * CMD A
—Wait 10 seconds, and verify light remains ON
3. Disengage A autopilot
4. A/P ENGAGE Switch * * * CMD B
—Wait 10 seconds, and verify light remains ON
5. Disengage B autopilot
6. To fail this test, one autopilot will fail to engage and the other will fail to stay engaged.

Note: Failure of the autopilots to engage as described in Step 6. may indicate a failure of a flight control module.

Warning: If either Pre-Flight FCM Checks fails, do not takeoff until the failed module has been replaced."

(f) If required by paragraph (c), (d)(1), or (m) of this AD: Revise the Limitations Section of the FAA-approved AFM to include the following statement (this may be accomplished by inserting this AD into the AFM): "If a flight control module (FCM), having P/N 65–44891–7 with S/N 8726 or greater is installed, the 'Pre-Flight Flight Control Module (FCM) Checks' specified in the Normal Procedures of this AFM must be accomplished before each flight. If either Pre-Flight FCM Checks fails, do not takeoff until the failed module has been replaced."

(g) If required by paragraph (c), (d)(1), or (m) of this AD: Revise the Non-Normal Procedures Section of the FAA-approved AFM to include the following (this may be accomplished by inserting this AD into the AFM):

Flight Control Module (FCM) Failure

Note: If the module fails in flight, neither A nor B autopilot will engage. Other indications include possible increase in flight control forces (similar to manual reversion) and possible yaw damper disengagement.

Failure of a second module in flight could result in serious degradation of airplane controllability, including high control forces.

If a failure is suspected in flight:

- Plan to land at the nearest suitable airport
- Crosswind capability may be reduced
- Do not turn off any flight control switches
- Plan a flaps 15 landing
- Use VREF 15 + 5 or VREF ICE + 5"

Note 2: The Limitations, Non-Normal Procedures, and Normal Procedures specified by paragraphs (e) through (g) of this AD are required to be implemented only for airplanes on which suspect FCMs have been installed. However, individual pilots may operate other airplanes on which those suspect FCMs have not been installed, and that are not subject to those limitations and procedures. Therefore, to avoid any confusion or misunderstanding, it is important that airlines have communication mechanisms in place to ensure that pilots are aware, for each flight, whether the Limitations, Non-Normal Procedures, and Normal Procedures apply.

Failures Detected During "Flight Control Check"

(h) If any failure is detected during any "Pre-Flight Flight Control Module (FCM) Checks" specified in paragraph (e) of this AD, or during operation of the airplane, before further flight, replace the affected FCM with an FCM identified in paragraph (c)(1), (c)(2), or (c)(3) of this AD.

Reporting Requirement

(i) Submit a report of inspection findings to the Boeing Renton Airline Support Manager, Craig Blankenstein, 2925 South 112th Street, Seattle, Washington 98168; fax (206) 544–9698; at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. (The report must include the airplane line number and FCM P/N and S/N.) Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection required by paragraph (a) of this AD is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection required by paragraph (a) of this AD has been accomplished before receipt of AD 2002–19–51: Submit the report within 10 days after the effective date of this AD.

Part Installation

(j) For all airplanes: After the effective date of this AD, no person shall install an FCM having P/N 65–44891–7 with a S/N 8726 or greater, on any airplane, unless the compensator has been replaced with a compensator, approved for installation on FCM, P/N 65–44891–7, other than a compensator having P/N 10–60560–3 with S/N 20478A or greater.

(k) After the effective date of this AD, no person shall install a compensator having P/N 10–60560–3 with S/N 20478A or greater, on any FCM.

Alternative Methods of Compliance

(l) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(m) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided that the airplane is operated per the requirements of paragraphs (e) through (g) of this AD, and that there are no known FCM failures upon dispatch.

Effective Date

(n) This amendment becomes effective on October 15, 2002, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–19–51 R1, issued on September 18, 2002, which contained the requirements of this amendment.

Issued in Renton, Washington, on October 1, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–25458 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 4, 9, 11, 16, 17, 18, 19, 21, 31, 36, 37, 38, 39, 40, 41, 140, 145, 150, 170, 171 and 190

Changes in Divisional Structure and Delegations of Authority

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending its rules to reflect the reassignment of responsibilities, including delegations of authority, resulting from its recent reorganization of Commission staff. Effective July 1, 2002, the Commission reassigned the responsibilities of the former Division of Trading and Markets and Division of Economic Analysis to the newly established Division of Clearing and Intermediary Oversight, Division of Market Oversight and Office of the Chief Economist. The reorganized divisions will more effectively implement the provisions of the Commodity Futures Modernization Act of 2000 (CFMA).

EFFECTIVE DATE: October 7, 2002.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone 202–418–5260. E-mail: [*parchitzel@cftc.gov*].

SUPPLEMENTARY INFORMATION: On December 21, 2000, the President signed into law the Commodity Futures Modernization Act of 2000 ("CFMA") which extensively revises the Commodity Exchange Act (Act)[1] In order to more effectively implement its provisions, the Commission has reorganized its operating divisions. Under the reorganized structure, the Division of Trading and Markets and the Division of Economic Analysis (the former divisions) has been reconfigured into two new divisions, the Division of Clearing and Intermediary Oversight and the Division of Market Oversight (the new divisions), and the Office of the Chief Economist.

The Commission is amending several of its rules in Chapter I of Title 17 of the Code of Federal Regulations to reflect this reorganized structure. Accordingly, as indicated in the chart below, the Commission is deleting from its rules references to the former divisions and replacing them with references to the new divisions. As amended, the rules will reflect the new assignments of responsibilities, including delegated authorities, to the two new divisions.

The Commission is also amending rule 140.99, which governs requests for exemptive, no-action and interpretative letters. Before its amendment, rule 140.99 required all requests to be filed with the Division of Trading and Markets, and thereafter routed to the appropriate office or division. The Commission has determined that it will be more efficient to require the requester to file the request directly with the division with operating responsibility for administering the provision of the Act or of the Commission's regulations from which relief is sought. Accordingly, the Commission is amending rule 140.99 to require that requests relating to certain specific subject matter areas (as enumerated in the amended rule) be filed with the division with operating responsibility for that subject matter area.

The Commission is deleting rule 140.100 which it adopted on July 9, 2002, 67 FR 45299. That rule provided that all delegations of authority from the Commission to the Directors of the former divisions, and their respective designees, as set forth in Chapter I of Title 17 of the Code of Federal Regulations, were delegated jointly to the respective Directors of the new divisions, and their respective designees. Now that the Commission has amended several of its rules to reflect the new agency structure, rule 140.100 is no longer necessary. Finally, the Commission is removing and reserving rules 1.41a, 1.41c and 1.42, which have been superseded by the CFMA[2]

Related Matters

Administrative Procedure Act

The Commission has determined that restructuring of responsibilities, including delegations of authority, relates solely to agency organization, procedure and practice. Therefore, the provisions of the Administrative Procedure Act that generally require notice of proposed rulemaking and that provide other opportunities for public participation are not applicable.[3] The Commission further finds that, because the rules have no adverse effect upon a member of the public, there is good cause to make them effective immediately upon publication in the **Federal Register.**

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, and pursuant to the authority contained in the Act, and in particular section 2(a)(11) of the Act, 7 U.S.C. 2(a)(11), as amended, the Commission hereby amends Parts 1, 3, 4, 9, 11, 16, 17, 18, 19, 21, 31, 36, 37, 38, 39, 40, 41, 140, 145, 150, 170, 171, and 190 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

17 CFR Parts 1, 3, 4, 9, 11, 16, 17, 18, 19, 21, 31, 36, 37, 38, 39, 40, 41, 140, 145, 150, 170, 171 and 190

1. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
1.12(g)(3)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
1.12(h)	Division of Trading Markets	Division of Clearing and Intermediary Oversight.
1.62(b)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
1.62(b)	Attn: Chief Counsel,	Attn:
1.65(d)	Chief Counsel, Division of Trading and Markets	Deputy Director, Compliance and Registration Section, Division of Clearing and Intermediary Oversight.
1.66(b)(5)(ii)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
3.12(g)(2)(i)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
3.12(g)(2)(ii)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
3.22	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
3.33(e)	Division of Trading and Markets, Registration Unit	Division of Clearing and Intermediary Oversight.
3.50(c)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
3.50(d)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
3.55(e)(2)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
3.56(e)(2)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
3.63	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
3.70(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.

[1] The Commodity Exchange Act may be found at 7 U.S.C. 1 *et seq.* (2000), as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

[2] Section 15 of the Commodity Exchange Act, as amended by the CFMA, provides that before promulgating a regulation under this Act or issuing an order, the Commission shall consider the costs and benefits of the action of the Commission. These rules govern internal agency organization, procedure, and practice, and therefore the Commission finds that none of the considerations enumerated in section 15(a)(2) of the Act, as amended, are applicable to these rules.

[3] 5 U.S.C. 553 (1994).

Section	Remove	Add
3.70(a)	Chief Counsel	Deputy Director, Compliance and Registration Section.
Pt. 3 App. A,	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
4.2(a)	Managed Funds Branch, Division of Trading and Markets.	Division of Clearing and Intermediary Oversight.
9.2(h)	Division of Trading and Markets	Division of Market Oversight and/or the Division of Clearing and Intermediary Oversight.
9.11(c)	Contract Markets Section, Division of Trading and Markets.	Division of Market Oversight.
9.12(b)	Division of Trading and Markets	Division of Market Oversight.
9.26, first sentence	Within twenty days after the receipt by the Division of Trading and Markets of the answering brief, the Division of Trading and Markets * * *.	Within twenty days after receipt of the answering brief, the Division of Market Oversight and/or the Division of Clearing and Intermediary Oversight * * *
9.26, last sentence	No employee of the Division of Trading and Markets	No employee of the Division(s) filing the notice.
9.31(a)	Division of Trading and Markets	Division of Market Oversight or the Division of Clearing and Intermediary Oversight.
11.2(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
11.2(a)	Division of Economic Analysis	Division of Market Oversight.
16.07	Division of Economic Analysis	Division of Market Oversight.
17.03	Division of Economic Analysis	Division of Market Oversight.
18.03	Division of Economic Analysis	Division of Market Oversight.
19.00(a)(3)	Division of Economic Analysis	Division of Market Oversight.
21.02a(c)	Division of Economic Analysis	Division of Market Oversight.
31.6(f)(1)	Division of Economic Analysis	Division of Market Oversight.
31.6(f)(2)	Division of Economic Analysis	Division of Market Oversight.
31.13(n)(1)	Division of Trading and Markets	Division of Cleaering and Intermediary Oversight.
31.14(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
31.14(a)	Division of Economic Analysis	Division of Market Oversight.
36.3(b)(2)(ii)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
36.3(b)(2)(ii)	Economic Analysis	The Division of Market Oversight.
37.5(f)(1)	Division of Trading and Markets and separately to the Director of Economic Analysis or such other employee or employees as the Directors.	Division of Market Oversight or such other employee or employees as the Director.
37.5(f)(2)	Directors	Director.
37.8(d)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
37.8(d)	Division of Economic Analysis	Division of Market Oversight.
38.3(e)(1)	Division of Trading and Markets and separately to the Director of Economic Analysis or such other employee or employees as the Directors.	Division of Market Oversight or such other employee or employees as the Director.
38.3(e)(2)	Directors	Director.
38 App B, Core Principle 11, (a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
39.3(e)(1)–(2)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
40.7(a)(1)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
40.7(a)(1)	Economic Analysis	The Division of Market Oversight.
40.7(a)(2)	Director of the Division of Trading and Markets, or the delegatees of the Director.	Directors of Division of Market Oversight and Division of Clearing and Intermediary Oversight or the delegatees of the Directors.
40.7(b), introductory text	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
40.7(b), introductory text	Economic Analysis	The Division of Market Oversight.
41.33(g)	Division of Trading and Markets and the Director of the Division of Economic Analysis, jointly.	Division of Market Oversight.
41.33(g)(1)	Division of Trading and Markets or the Director of the Division of Economic Analysis.	Division of Market Oversight.
41.33(g)(2)	Division of Trading and Markets and the Director of the Division of Economic Analysis.	Division of Market Oversight.
41.3(d)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.72(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.72(a)	Division of Economic Analysis	Division of Market Oversight.
140.73(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.73(a)	Division of Economic Analysis	Division of Market Oversight.
140.73(b)	Division of Economic Analysis	Division of Market Oversight.
140.74(a)	Division of Economic Analysis	Division of Market Oversight.
140.74(b)	Division of Economic Analysis	Division of Market Oversight.
140.74(c)	Division of Economic Analysis	Division of Market Oversight.
140.75	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.76(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.76(b)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.77(a)	Director of the Division of Economic Analysis and the Division of Trading and Markets or their.	Director of the Division of Market Oversight or the Director's.
140.77(b)	Directors of the Division of Economic Analysis and the Division of Trading and Markets may submit any matter which has been delegated to them.	Director of the Division of Market Oversight may submit any matter which has been delegated to the director.

Section	Remove	Add
140.77(c)	Directors of the Division of Economic Analysis and the Division of Trading and Markets.	Director of the Division of Market Oversight.
140.91(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.91(b)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.92(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.92(b)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.92(c)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.93(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.93(b)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.93(c)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.95(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.95(b)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.94(c)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.96(a)	Division of Economic Analysis	Division of Market Oversight.
140.96(b)	Division of Economic Analysis	Division of Market Oversight.
140.96(b)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.96(c)	Division of Economic Analysis	Division of Market Oversight.
140.96(c)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.96(d)	Division of Economic Analysis	Division of Market Oversight.
140.96(d)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.97(a)	Division of Economic Analysis	Division of Market Oversight.
140.97(b)	Division of Economic Analysis	Division of Market Oversight.
140.97(c)	Division of Economic Analysis	Division of Market Oversight.
140.99(a)(5)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.99(a)(5)	Division of Economic Analysis	Division of Market Oversight.
140.735–2a footnote 7	Division of Economic Analysis	Division of Market Oversight.
145.6(a)	Division of Economic Analysis, Commodity Futures Trading Commission, One World Trade Center, Suite 3747, New York, New York 10048, Telephone: (212) 466–2061.	Commodity Futures Trading Commission, 140 Broadway, New York, New York 10005 Telephone: (646) 746–9700.
145.6(a)	Division of Trading and Markets, Commodity Futures Trading Commission, 300 South Riverside Plaza, Suite 1600 North, Chicago, Illinois 60606, Telephone: (312) 353–5990.	Commodity Futures Trading Commission, 525 West Monroe Street, Suite 1100, Chicago, Illinois 60661, Telephone: (312) 596–0700.
145.6(a)	Division of Trading and Markets, Commodity Futures Trading Commission, 510 Grain Exchange Building, Minneapolis, Minnesota 55415, Telephone (612) 370–3255.	Commodity Futures Trading Commission, 510 Grain Exchange Building, Minneapolis, Minnesota 55415, Telephone: (612) 370–3255.
145.6(a)	Division of Trading and Markets, Commodity Futures Trading Commission, 4900 Main Street, Suite 721, Kansas City, Missouri 64112, Telephone: (816) 931–7600.	Commodity Futures Trading Commission, 4900 Main Street, Suite 721, Kansas City, Missouri 64112, Telephone: (816) 931–7600.
Pt. 145, App A, (e)	Division of Economic Analysis	Division of Market Oversight.
Pt. 145, App A, (g)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight
150.3(b)	Division of Economic Analysis	Division of Market Oversight.
150.4(e)	Division of Economic Analysis	Division of Market Oversight.
170.12	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
171.28	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
171.28	Division of Economic Analysis	Division of Market Oversight.
171.31(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
171.31(a)	Division of Economic Analysis	Division of Market Oversight.
190.10(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
190.10(b)(4)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
190.10(d) heading & (d)(1)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
190.10(d)(2)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
190.10(d)(3)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

2. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

3. Sections 1.4a, 1.41c, and 1.42 are removed and reserved.

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

4. The authority citation for Part 140 continues to read as follows:

Authority: 7 U.S.C. 2 and 12a.

5. Section 140.99 is amended by revising paragraph (d)(2) to read as follows:

§ 140.99 Request for exemptive, no-action and interpretative letters.

* * * * *

(d) Filing requirements. * * *

(1) * * *

(2) A request for a Letter relating to the provisions of the Act or the Commission's rules, regulations or orders governing designated contract markets, registered derivatives transaction execution facilities, exempt commercial markets, exempt boards of trade, the nature of particular

transactions and whether they are exempt or excluded from being required to be traded on one of the foregoing entities, foreign trading terminals, hedging exemptions, and the reporting of market positions shall be filed with the Director, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. A request for a Letter relating to all other provisions of the Act or Commission rules shall be filed with the Director, Division of Clearing and Intermediary Oversight Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. A request for a Letter relating to all other provisions of the Act or Commission rules shall be filed with the Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. The request must be submitted electronically using the e-mail address *dmoletters@cftc.gov* (for request filed with the Division of Market Oversight), or *dcioletters@cftc.gov* (for requests filed with the Division of Clearing and Intermediary Oversight), as appropriate, and a properly signed paper copy of the request must be provided to the Division of Market Oversight or the Division of Clearing and Intermediary Oversight, as appropriate, within ten days for purposes of verification of the electronic submission.

* * * * *

§ 140.100 [Removed]

6. Section 140.100 is removed.

Issued in Washington, DC, this 26th day of September, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–25049 Filed 10–4–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR part 1308

[DEA–225F]

Schedules of Controlled Substances: Rescheduling of Buprenorphine From Schedule V to Schedule III

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to reschedule buprenorphine from a Schedule V narcotic to a Schedule III narcotic under the Controlled Substances Act (CSA). This action is based on a rescheduling recommendation by the Department of Health and Human Services (DHHS) and a DEA review indicating that buprenorphine meets the criteria of a Schedule III narcotic. The DEA published a proposed rule to reschedule buprenorphine on March 21, 2002 (67 FR 13114). The comment period was extended for an additional 30 days until May 22, 2002 (67 FR 20072). The DEA received ten comments but no requests for hearings.

This final action will impose the regulatory controls and criminal sanctions of a Schedule III narcotic on those persons who handle buprenorphine or products containing buprenorphine.

DATES: Effective Date: October 7, 2002. Compliance to some regulatory requirements may be delayed as noted in the Regulatory Requirements section of this document.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Background

Buprenorphine is a semisynthetic opioid. As a derivative of thebaine, buprenorphine was controlled in Schedule II of the CSA in 1970 and remained in Schedule II during its research and development for marketing. In 1981, buprenorphine hydrochloride (Buprenex®) was approved for marketing in the United States as an injectable formulation (0.3 mg/ml) for the treatment of moderate to severe pain. The DEA proposed placement of buprenorphine in Schedule V of the CSA after receiving a medical and scientific evaluation and a Schedule V recommendation from the DHHS. However, buprenorphine was not placed in Schedule V of the CSA until April 1, 1985 (50 FR 8104, February 28, 1985) due to a hearing requested by the manufacturer of buprenorphine, Reckitt & Coleman (now Reckitt Benckiser). Since 1985, Buprenex® has remained in Schedule V. As an injectable analgesic, this product has had limited use outside hospital and clinic settings and is the only buprenorphine product presently marketed in the United States.

In December 2001, the DHHS forwarded a recommendation to reschedule buprenorphine to Schedule III of the CSA. This recommendation was based on a reevaluation of buprenorphine's abuse potential and dependence profile in light of numerous scientific studies and years of human experience with this drug. The DHHS compared buprenorphine with other drugs that share similar pharmacological properties and/or medical utility and considered both foreign and domestic data especially in regard to formulations of buprenorphine that are likely to become available for use in the United States. Two New Drug Applications (NDA) have been submitted to the Food and Drug Administration (FDA) for high dose sublingual (under the tongue) tablets. These potential addiction treatment products include: (1) Subutex®, a mono or single entity buprenorphine product (2 and 8 mg tablets), and (2) Suboxone®, a combination product in a 4:1 ratio of buprenorphine to naloxone (2: 0.5 and 8: 2 mg tablets). The Subutex® and Suboxone® NDAs remain pending at the FDA but approvable letters have been issued for both products and they are likely to receive final marketing approval in 2002. Low dose sublingual tablets (0.1 , 0.2 and 0.4 mg) have been available in numerous countries throughout the world and, in recent years, high dose sublingual tablets (2 and 8 mg) have been introduced in many countries for the treatment of opioid dependence.

After consideration of the DHHS scientific and medical evaluation and Schedule III recommendation, the DEA completed an independent eight factor analysis that included the following factors in accordance with 21 U.S.C. 811(c):

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effects;

(3) The state of current scientific knowledge regarding the drug;

(4) Its history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter.

On March 21, 2002, the DEA published a proposed rule to place buprenorphine in Schedule III of the CSA (67 FR 13114). This notice will

finalize that proposed rule. Schedule III control requires the DEA to make the following findings in accordance with 21 U.S.C. 812 (b):

1. Buprenorphine has a potential for abuse less than the drugs or other substances in Schedules I and II.

2. Buprenorphine has a currently accepted medical use in treatment in the United States.

3. Abuse of buprenorphine may lead to moderate or low physical dependence or high psychological dependence.

Comments to the Proposed Rule

The DEA received comments from ten interested parties. Two commenters were in support of the proposed rule, seven commenters were in opposition to the proposed rule and one individual requested that the DEA be mindful of possible conflicts of interest by individuals/organizations responding to this proposed rule. One commenter felt that Schedule II more accurately reflected the abuse potential and dependence profile of buprenorphine while another commenter felt that the evidence suggests that buprenorphine should remain in Schedule V. Five commenters support differential scheduling of buprenorphine products and contend that the buprenorphine/naloxone product under development has less abuse potential. The following is a listing of all commenters and a brief summary of their comments:

1. The Medical Director of the American Psychiatric Association (APA) commented on behalf of this organization. He stated that the APA supports the proposed rule to reschedule this drug. However, once buprenorphine has been approved for use in opioid substitution treatment, the APA recommends that the DEA study and evaluate the actual abuse over a three-year period to more accurately determine whether placement in Schedule III is appropriate.

2. The President of the American Association for the Treatment of Opioid Dependence (AATOD) submitted comments on behalf of the Board of Directors of AATOD in support of a Schedule III narcotic classification for buprenorphine and its products.

3. The Chair Committee for the Treatment of Opioid Dependence of the California Society of Addiction Medicine (CSAM) and the President of CSAM recommended less restrictive scheduling of the buprenorphine/naloxone combination product (Suboxone®) compared to the mono buprenorphine product (Subutex®) should they be approved for marketing. They believe it is important to convey the message to physicians about the lower risk of abuse and diversion of the combined formulation. They believe that differential scheduling would encourage physicians to appropriately choose the combination product for treatment of addicted patients. No data was provided in support of their contentions.

4. A member of the Board of Directors of the American Academy of Addiction Psychiatry (AAAP) commented on behalf of this organization. The AAAP contends that the available literature and research on buprenorphine do not support the DEA recommendation and recommends differential scheduling of buprenorphine products. Because Buprenex® has been in Schedule V and has not been associated with widespread diversion and abuse, they believe there is no compelling reason to reschedule this medication. Further, they believe there are substantial differences between the two sublingual products intended for addiction treatment. They contend that the buprenorphine/naloxone product is being developed specifically to prevent diversion and illicit injection use. They believe that buprenorphine diversion in other countries has been limited to use by out-of-treatment, opioid dependent, injection drug users. Should both products be placed in Schedule III, they believe that there will be no incentive for physicians to differentially make use of one product. They recommend Schedule V for Buprenex® and Suboxone® and Schedule III for Subutex®. No data was submitted to the DEA in support of these comments.

5. The President of the American Society of Addiction Medicine (ASAM) commented on behalf of this organization. His views also represent those of the Chairmen of ASAM's Medication Development Committee and the Opioid Agonist Treatment Committee. They contend that placing all buprenorphine-containing products into the same schedule is not consistent with the pharmacology and the intended clinical use of the buprenorphine/naloxone sublingual tablets. They believe that sufficient evidence currently exists to support a lower parenteral abuse potential of the combination product as compared to the mono product. They feel that differentially scheduling these addiction medications would encourage physicians to prescribe the naloxone combination product in preference to the mono-product. No data was submitted to the DEA in support of these comments.

6. The President of the College on Problems of Drug Dependence (CPDD) commented on behalf of this organization. This commenter requests that the DEA consider differential scheduling for the potential addiction treatment medications, Suboxone® and Subutex®. She believes there is strong evidence to support differential scheduling: the combination product will lead to lower abuse liability and less parenteral abuse by individuals who are currently dependent on opioids because the naloxone will precipitate withdrawal. The mono-product will not precipitate withdrawal. No data was submitted to the DEA in support of these comments.

7. The President of Reckitt Benckiser Pharmaceuticals, the manufacturer of Buprenex® and the sponsor of the two NDAs for buprenorphine products in the treatment of opioid dependence, does not support the proposed rule for the following reasons:

(a) Little diversion or abuse of buprenorphine has been noted in the United States in the 15 years the product has been marketed.

(b) The DEA has disregarded data on the development of the naloxone combination product that shows significantly less potential for diversion and abuse.

(c) The DEA disregards the additional controls imposed on these newer products by the Drug Addiction Treatment Act of 2000 (DATA).

(d) The Schedule III control for all formulations of buprenorphine would thwart company efforts to ensure that the combination product, if approved, is the primary medication that should be utilized for addiction treatment. By not differentially scheduling these products, the DEA is removing the incentive for physicians to prescribe the combination product rather than the single entity product.

The company feels that Buprenex® should be left in Schedule V, and the addiction medications, if approved, should be placed in Schedule IV. Or, as an alternative, the substance, buprenorphine, should be placed in Schedule III (which would include Subutex®), Suboxone® should be placed in Schedule IV and buprenorphine products with less than 1 mg/ml should be placed in Schedule V. No data was provided to the DEA in support of these comments.

8. The law offices of Hogan & Hartson submitted comments on behalf of a client. Hogan & Hartson requests that DEA enter an order immediately placing buprenorphine and all products containing buprenorphine under Schedule II based on their contention that:

(a) Buprenorphine has a high potential for abuse consistent with the

abuse potential of Schedule II drugs. The partial agonist activity, including safety in overdose, is not supported and, even if true, does not warrant a change from the conclusion that buprenorphine has a high potential for abuse.

(b) Safety in overdose is not a relevant factor in deciding if a drug has less abuse potential than other similar drugs.

(c) The DEA failed to consider that the illusion of safety may result in greater potential for abuse.

(d) Scheduling under the CSA is a relative analysis and depends on aligning a drug with the closest set of comparators. Hogan and Hartson believe that the closest set of comparators are Schedule II.

(e) Buprenorphine is a gateway drug which compounds public health risks.

(f) The DEA failed to give adequate weight to the fact that buprenorphine is administered by many routes of administration and in combination with other drugs.

(g) The DEA has not been consistent in its decision making process and has failed to meet the non-arbitrary agency action requirements. The finding that buprenorphine has a potential for abuse less than Schedule I or II substances is arbitrary and capricious and not supported by the underlying administrative record.

(h) The DEA position that buprenorphine most closely resembles Schedule III substances with respect to physical and psychological dependence is contrary to the evidence (even if true, DEA must give greater weight to the abuse potential).

(i) The DEA erred in considering that buprenorphine be available for office-based use as it is not a relevant factor in the scheduling analysis.

(j) Placement of buprenorphine in Schedule III to make it available for office based care will have a significant impact on opioid treatment programs. The DEA is required to analyze this issue and follow the mandate of the Regulatory Flexibility Act.

(k) The CSA requires DEA to make a reasonable predictive judgment about a drug and should not take a reactive posture by stating "should significant abuse or diversion of buprenorphine occur, DEA will initiate actions to increase its regulatory control."

In support of these comments, Hogan & Hartson referred to various legal citations and statements made by DEA and FDA in the scheduling review documents on buprenorphine. No new scientific data was submitted.

9. The law offices of Hyman, Phelps & McNamara, P.C. commented on behalf of Purdue Pharma. After reviewing the information that the FDA and the DEA relied upon in order to reach a decision to propose Schedule III placement for buprenorphine, they contend that:

(a) The DEA has not presented an adequate basis for the proposed rulemaking.

(b) The proposed rule has not adequately described the pharmacology of the drug substance buprenorphine or the drug products that would be affected by this rule.

(c) Many facts cited by the DEA and FDA in their conclusions have been removed from their proper scientific context. This is particularly evident in the description of buprenorphine and in the basis for the DEA conclusion that buprenorphine may cause high psychological dependence.

(d) The DEA and FDA have not explained why data generated since the original scheduling action for buprenorphine in 1985 would alter the original conclusions that buprenorphine has a low potential for abuse and low potential for physical and psychological dependence.

(e) The DEA and FDA have inadequately described the conditions of use of Subutex® in France and the impact of such use on either the mortality associated with heroin addiction or the frequency of abuse of buprenorphine. It is asserted without supporting data that the conditions of use that will apply to Suboxone® and Subutex®, should they be approved for use in the United States, will inevitably lead to significant abuse of buprenorphine. There is no discussion of how the proposed use of Subutex® in the United States may differ from the use of this product in France. There is not an acknowledgment in the proposed rule that one of the products under development, which is not available in France, contains naloxone which is expected to deter intravenous abuse.

(f) The additional controls that would be provided by moving buprenorphine to Schedule III are not described and no rationale is provided for the assertion that the Drug Addiction Treatment Act will not provide adequate safeguards for the public health.

(g) The overwhelming scientific and medical evidence demonstrates that buprenorphine should not be rescheduled. If buprenorphine is rescheduled it should not be placed any higher than Schedule IV.

Hyman, Phelps & McNamara relied on data from the World Health Organization (WHO), United Nations (UN), International Narcotics Control Board (INCB) statistics, emergency department mentions in the Drug Abuse Warning Network (DAWN), DEA forensic laboratory data, literature cited in FDA and DEA review documents on buprenorphine and case law.

1. The Director of the Edmond de Rothschild Foundation, Chemical Dependency Institute of Beth Israel Medical Center in New York City, urged the DEA to assess possible conflict of interest of individuals/organizations submitting comments on the proposed rule to place buprenorphine in Schedule III of the CSA.

DEA Response to Comments

The DEA has thoroughly reviewed, analyzed and considered all the comments submitted in response to the proposed rule to place buprenorphine into Schedule III of the CSA. Most commenters averred that the DEA failed to consider data that demonstrates that buprenorphine has a lower (or higher) abuse potential/dependence profile than Schedule III substances. In most instances, no data was provided to support these contentions. Two commenters, however, provided data that they relied upon in opposing the proposed rule. The relevant data cited by these commenters were available to and considered by DHHS and DEA in deliberations regarding the proposal to reschedule buprenorphine. In several cases, the same medical, scientific and other data cited by FDA and/or DEA in scheduling review documents are interpreted differently by the commenters.

Fundamental to all of the comments in opposition to the proposed rule is the belief that buprenorphine and/or products containing buprenorphine have an abuse potential and dependence profile other than Schedule III. The following is a brief summary of the data used by the DEA to conclude that the most appropriate placement for buprenorphine and products containing buprenorphine is in Schedule III of the CSA classified as a narcotic. Following this summary (under the headings of Abuse Potential of Buprenorphine and Dependence Profile of Buprenorphine), specific questions or comments raised by the commenters are addressed.

Abuse Potential of Buprenorphine

The evaluation of the abuse potential of any substance considers a number of factors including (but not limited to) its chemistry (including ease of synthesis and evidence of clandestine production), pharmacology (including routes of administration, profile of effects under various conditions and populations, duration of action, drug interactions), intended use, populations at-risk of abuse and actual abuse data.

The subjective effects (alterations in mood, feeling and thinking) produced by a drug may lead to reinforcement of drug-taking behavior and abuse (Jasinski, 1991). The abuse potential criteria under the CSA is a relative one with Schedule I and II requiring substances to have a high abuse potential and Schedule III, IV and V substances having progressively lower abuse potentials. This necessitates the comparison of the abuse potential of the substance under review with other substances. Morphine, a Schedule II substance with high abuse potential, is often used as a standard for comparing the effects produced by other opiates; the more an opiate/opioid is morphine-like as perceived by the user, the more likely the substance, if available, will be abused.

Buprenorphine is a semi-synthetic opioid derived from thebaine. It has high affinity for, low intrinsic activity at, and slow dissociation from opioid receptors (for review see Johnson & McCagh, 2000). These properties contribute to its protracted occupancy at opioid receptors.

Buprenorphine is a partial agonist (activator) at the mu-opioid receptor and an antagonist (blocker) at the kappa-opioid receptor (Richards and Sadee, 1985; Sadee *et al.*, 1982). Mu receptor activation is associated with analgesia, miosis (pupillary constriction), respiratory depression, euphoria, reduced gastrointestinal motility and dependence. Kappa receptor activation produces analgesia, miosis, sedation, dysphoria and psychotomimetic effects including disorientation and/or depersonalization. As a partial agonist at the mu receptor, buprenorphine produces effects similar to pure mu agonists (like morphine) but effects are less dose-dependent producing a "ceiling effect" on both physiological and psychological properties: dose increases above the "ceiling dose" do not produce greater effects (Pickworth *et al.*, 1993; Walsh *et al.*, 1994, 1995). Various effects produced by buprenorphine have different ceiling doses. At clinically relevant doses, the "ceiling" for some effects produced by buprenorphine administration may not be reached. As a consequence, buprenorphine may act more like a pure mu agonist (depending on dose, effect being measured and individual variability) and may produce significant dose-related euphoria, drug liking, respiratory depression and sedation over a wide range of doses (*see* citations below). However, buprenorphine's unique pharmacology results in greater safety (less respiratory depression at very high doses), less physical dependence and greater flexibility in dose scheduling than pure mu agonists such as morphine (Johnson & McCagh, 2000).

Although poorly available by the oral route due to poor absorption and extensive metabolism in the small intestine and liver, buprenorphine can be taken sublingually (Walter *et al.*, 1996). As a drug of abuse, tablets have been crushed and snorted, smoked and placed in aqueous solutions and injected (for example: Strang, 1985, 1991; Gruer *et al.*, 1993; Kintz, 2001). The absolute bioavailability of sublingual tablets is approximately 30 percent when the extent of absorption of a sublingual solution is compared to an intravenous dose (Mendelson *et al.*, 1997a). Dissolving buprenorphine in aqueous alcohol enhances sublingual absorption: the bioavailability of the tablet is about 50 percent that of a sublingual aqueous alcohol solution containing equivalent amounts of buprenorphine (Nath *et al.*, 1999; Schuh *et al.*, 1999a). This difference in the bioavailability of sublingual aqueous alcohol solutions and sublingual tablets of buprenorphine may account for some of the variability in data involving dose effects. Data generated using animal models suggest that buprenorphine may have relatively high bioavailability in humans by the intranasal route (Brewster *et al.*, 1981; Lindhardt *et al.*, 2000).

The more ways a drug can be administered by various populations of abusers increases its likelihood to be abused. Individuals that only abuse pharmaceuticals by swallowing tablets or liquids (like most abusers of hydrocodone products) would be less likely to abuse buprenorphine. At the same time, the lack of oral bioavailability increases the likelihood that buprenorphine will be abused in a manner that enhances its reinforcing effects. Abuse data indicates that buprenorphine is often injected. While heroin addicts and experienced narcotic abusers have been the primary abusers of buprenorphine, data from England, France, Scotland, and Ireland demonstrate that, if available, buprenorphine is abused by young, non-dependent drug abusers (Coggans *et al.*, 1991; Forsyth *et al.*, 1993; Frischer, 1992; Hammerseley *et al.*, 1990; O'Connor *et al.*, 1988).

The DEA has no evidence that buprenorphine is clandestinely produced; diverted pharmaceutical products are the only source of this drug for those who would choose to abuse it. Like all substances with abuse potential, the greater the availability of buprenorphine (greater use due to new dosage forms and new indications) the more likely it will be abused. High-dose, sublingual tablets intended for narcotic treatment and utilized outside the constraints of traditional narcotic treatment programs increases the risk that these products will be diverted, trafficked and abused. Simply stated, providing an abusable substance to known drug abusers imparts enhanced risks. While little diversion and abuse of the injectable formulation, Buprenex®, has occurred in the United States, the circumscribed use (few prescriptions and primary use in hospital settings) has limited the availability of this substance for abuse purposes. Recent increases in the use of Buprenex® may be related to the use of this product for narcotic treatment and detoxification: IMS National Disease and Therapeutic Index data and DEA field office reports indicate that many doctors are illegally using Buprenex® for narcotic treatment and detoxification. The Drug Addiction Treatment Act of 2000 (DATA) does not apply to Buprenex® as it has not been approved by the FDA for use in narcotic treatment.

Drug discrimination studies are among the most rigorous laboratory procedures for assessing the substitutability of psychoactive drugs and provide valuable information about the subjective effects produced by a drug (Schuster & Johanson, 1988). In drug discrimination studies, buprenorphine generally substitutes for mu agonists across several animal species including humans (for example: Leander, 1983; France *et al.*, 1984; Young *et al*, 1984; France & Woods, 1985; Hoffmeister, 1988; Picker & Dykstra, 1989; Negus *et al.*, 1990; Preston *et al.*, 1989, 1992; Bigelow and Preston, 1992; Paronis & Holtzman, 1994; Walker *et al.*, 1994). These studies suggest that buprenorphine shares more similar effects with pure mu agonists than with prototypic partial agonists (like butorphanol and pentazocine that are in Schedule IV of the CSA). For example, Preston & Bigelow (2000) conducted a drug discrimination study in adult males with histories of opioid abuse (but not physically dependent at time of study) trained to discriminate hydromorphone (a Schedule II pure mu agonist) from placebo (saline). Of the partial agonists tested (buprenorphine, butorphanol, pentazocine and nalbuphine) only buprenorphine fully substituted for hydromorphone and produced dose-related increases in hydromorphone-appropriate responses. Pentazocine showed an inverted U-shaped dose-response curve while butorphanol and nalbuhine did not

substitute for hydromorphone at any dose tested.

The subjective effects of buprenorphine, with or without naloxone, have been studied under a wide range of conditions including study subjects, dose ranges, routes of administration and timing intervals. In addition, opiate or naloxone challenge in buprenorphine maintained clients vary significantly with study conditions. Despite the methodological differences in these studies, certain conclusions can be made regarding the abuse potential of buprenorphine (with or without naloxone) in different populations of users. The following represents a sampling of those studies.

Studies conducted in non-drug abusers (for example: Manner *et al.*, 1987; Saarialho-Kere *et al.*, 1987; MacDonald *et al.*, 1989; Fullerton *et al.*, 1991; Zacny *et al.*, 1997) indicate that buprenorphine, like morphine, produces dose related impairment of psychomotor performance, euphoria, miosis, respiratory depression, somnolence and nausea. In studies with non-dependent, opioid-experienced subjects, the most consistent finding with buprenorphine administration (sublingual, intravenous, intramuscular, subcutaneous) is a dose-related increase in "drug liking" and "good drug effects" over a wide range of doses (for example: Jasinski *et al.*, 1978; Preston *et al.*, 1992; Weinhold *et al.*, 1992; Pickworth *et al.*, 1993; Preston and Bigelow, 1994; Foltin and Fischman, 1996; Greenwald *et al.*, 1999; Strain *et al.*, 2000; Comer *et al.*, 2002). In opioid dependent subjects, buprenorphine can substitute for heroin. Clinical data indicate that when equipotent doses of buprenorphine and methadone are used, buprenorphine is as effective as methadone in suppressing opioid withdrawal (Bickel *et al.*, 1988; Johnson *et al.*, 1992). Jasinski *et al.* (1978) reported that chronic subcutaneous administration of a daily dose of 8 mg of buprenorphine produces morphine-like subjective effects and euphoria equivalent to 30 mg of morphine sulfate administered four times daily. In a sample of experienced detoxified opiate abusers, Bedi *et al* (1998) examined the abuse liability of 0.6 mg of buprenorphine, 16 mg morphine and 30 mg pentazocine. Buprenorphine produced significant euphoria and was identified as heroin rather than pentazocine. In a study with opiate-dependent heroin abusers, intravenous administration of 2 mg of buprenorphine produced potent opiate agonist effects (Mendelson *et al.*, 1996). Seven of eight subjects estimated that this dose of buprenorphine had a street value between $5 and $20 but of lesser value than heroin. In subjects maintained on daily sublingual buprenorphine (8 mg), intramuscular injections of buprenorphine (4, 8, 16 mg) produced opioid agonist-like effects (Strain *et al.*, 1997). Collectively, these data suggest that buprenorphine has abuse potential in a wide spectrum of individuals. Vulnerable populations include drug naive individuals (new drug abusers), opiate experienced individuals and opiate dependent individuals.

Many of the comments to the proposed rule for buprenorphine rescheduling expressed concern about placing the buprenorphine/naloxone combination product in the same schedule as single entity products. They contend that the combination product has significantly less abuse potential warranting lesser control. However, the data regarding naloxone and buprenorphine/naloxone administration in various populations of users does not support a lower schedule.

Naloxone is an opioid antagonist that acts competitively at opioid receptors. It is used to reverse opioid central depression, including respiratory depression (the leading cause of death in narcotic overdoses), and has been given intravenously to precipitate withdrawal symptoms in the diagnosis of opioid dependence. It is generally injected and has a short duration of action. Taken sublingually, naloxone has little bioavailability.

The buprenorphine/naloxone combination product was specifically developed to inhibit intravenous abuse by heroin addicts. In theory, the injection of buprenorphine/naloxone combination in opioid-dependent subjects should precipitate a moderate to severe withdrawal syndrome similar to abrupt withdrawal from opioids. This withdrawal syndrome develops within minutes of injection and subsides in one to two hours. However, a substantial percentage of individuals currently abusing heroin or other opiates do not show any evidence of withdrawal when challenged with naloxone. Between 34 and 61 percent of patients applying for methadone maintenance may have minimal or no response to intravenous or intramuscular naloxone in doses ranging from 0.2–1.2 mg (Blachly, 1973; Judson *et al.*, 1980; Kanof *et al.*, 1991; Peachy and Lei, 1988; Zilm and Sellers, 1978). While addicts that seek treatment may have very high levels of psychological dependence, this data suggest that they may not have high levels of physical dependence on narcotics.

The extent of withdrawal associated with injection of buprenorphine/naloxone combination, should it occur, is directly related to the buprenorphine/naloxone dose and the level of dependence of the subjects. For example, individuals maintained on 30–60 mg of methadone (Strain *et al.*, 1995; Mendelson *et al.*, 1997) or 60–120 mg intramuscular morphine (Mendelson *et al.*, 1999; Fudala *et al.*, 1998; Schuh *et al.*, 1996), opiate doses likely to produce significant physical dependence, experience an unpleasant opioid withdrawal syndrome after injection of low doses of naloxone or buprenorphine/naloxone. Mendelson *et al.* (1999) studied the effects of three intravenous buprenorphine and naloxone combinations on agonist effects and withdrawal signs in 12 opiate-dependent subjects. Following stabilization on a daily dose of 60 mg morphine intramuscularly, subjects were challenged with buprenorphine alone (2 mg intravenously) or in combination with naloxone in ratios of 2:1, 4:1, and 8:1 (1, 0.5, and 0.25 mg of naloxone). Buprenorphine alone did not precipitate withdrawal and produced effects similar to morphine. Dose-dependent increases in withdrawal signs and symptoms and a decrease in opioid agonist effects occurred after all naloxone combinations. At the 4:1 ratio (that which has been chosen for the marketing of the combination product), opioid agonist effects were attenuated by about 50 percent and unpleasant effects were observed for about 30 minutes. These data suggest that injection of the combination buprenorphine/naloxone product has less abuse potential in non-buprenorphine opiate-dependent addicts.

In New Zealand, the only country that has marketed a buprenorphine/naloxone combination product, extensive intravenous abuse of the 0.2 mg buprenorphine tablet among opiate abusers led to the 1991 reformulation of buprenorphine to include 0.17 mg of naloxone. Robinson *et al.* (1993) conducted two separate surveys among narcotic addicts presenting for treatment before and after the launch of the naloxone combination product. In 1990, 81 percent of the patients reported intravenous buprenorphine abuse in the previous 4 weeks, 50 percent reported exclusive use of buprenorphine and 65 percent tested positive for the drug. In 1991, 57 percent reported intravenous abuse of the combination tablet and 43 percent tested positive for the combination. One third of the patients that used the combination product intravenously reported instances of withdrawal symptoms. Only one patient reported exclusive use (by injection) of buprenorphine/naloxone and experienced no adverse withdrawal effects. The authors concluded that the combination product did act as a deterrent for some drug abusers but did not stop injection practices. In addition, the authors noted that the injection of the combination product would not produce withdrawal symptoms (act as a deterrent) in individuals who were not physically dependent on narcotics or those who were physically dependent on buprenorphine.

Injection of buprenorphine/naloxone in opioid naive individuals, non-dependent opioid abusers or buprenorphine maintained addicts will likely result in opioid agonist effects. For example, intramuscular administration of buprenorphine alone (0.4 and 0.8 mg/70 kg) or in combination with naloxone (0.4 and 0.8 mg/70 kg) was examined in seven non-physically dependent opioid abuser volunteers (Weinhold et al, 1992). In subjective measures of drug effects, buprenorphine alone produced dose dependent increases in "drug liking", "high", and agonist ratings. Administration of 0.4 mg buprenorphine in combination with 0.4 mg naloxone produced positive subjective opiate effects greater than 0.4 mg of buprenorphine alone and a greater percentage of subjects identified the naloxone-buprenorphine combination as an opiate when compared to buprenorphine treatment alone. However, increasing the naloxone concentration to 0.8 mg (twice the concentration of buprenorphine) significantly reduced opioid agonist effects.

In another study with opioid-dependent volunteers stabilized on 8 mg/day sublingual buprenorphine, intravenous buprenorphine (8 mg) with naloxone (4 or 8 mg) produced subjective effects similar to 8 mg sublingual buprenorphine and did not precipitate withdrawal (Harris *et al.*, 2000). Buprenorphine's high affinity for opioid receptors prevents naloxone from displacing buprenorphine already bound to these sites. In some populations of buprenorphine-maintained clients, extremely high intravenous doses of naloxone are required to even partially displace buprenorphine from opioid receptors (Koston *et al.*, 1990).

In non-dependent opioid abusers, sublingual administration of buprenorphine/naloxone (1/0.25, 2/0.5, 4/1, 8/2, 16/4 mg) produced opioid agonist-like effects (Strain *et al.*, 2000).

The data suggest that the buprenorphine/naloxone combination products will likely produce an unpleasant withdrawal when injected by heroin-dependent subjects. However, this combination drug product will not be a serious deterrent to injection by marginally or non-physically dependent users or by individuals stabilized on this medication for addiction treatment (those individuals that will probably have the greatest access to this drug) or by injecting addicts who are abusing and dependent on buprenorphine. In addition, this combination product, taken sublingually, is not a deterrent for abuse by most populations. Studies on snorting and smoking this combination are not available.

One of the many objectives of opioid replacement therapy for addiction treatment is to deter addicts from the continued use of heroin or other opiates. Chronic buprenorphine dosing produces cross-tolerance to other opioids (Jasinski *et al.*, 1978; Bickel *et al.*, 1988) and may limit the magnitude of effects produced by supplemental challenges of other opioids.

In subjects maintained on a sublingual dose of 8 mg/day of buprenorphine, acute supplemental intramuscular doses of buprenorphine (4, 8 and 16 mg) or hydromorphone (9 and 18 mg) administered 16 hours after the buprenorphine daily dose produced opioid agonist effects although there was a lack of graded dose-effects for hydromorphone (Strain *et al.*, 1997). The addition of naloxone to the maintenance dose of buprenorphine does not impart greater blockade (Strain *et al.*, 2002).

In a study to determine what dose of buprenorphine would effectively block the reinforcing effects of intravenous heroin (Comer *et al.*, 2001), both 8 and 16 mg of sublingual buprenorphine maintenance dosing failed to block the effects of 12.5 mg or 25 mg of heroin. These data indicate that buprenorphine maintenance (even at relatively high maintenance doses) may not serve as a deterrent for patients who chose to continue their illicit use of heroin or other opiates.

Buprenorphine has been diverted, trafficked and abused in many countries throughout the world. Starting in the late 1970s, low-dose buprenorphine sublingual tablets and injectable solutions were approved for marketing in many countries. High-dose buprenorphine for narcotic treatment gained marketing approval in France in 1996 and has since been approved in several other countries.

Buprenorphine abuse was detected in many countries soon after it was approved for marketing. The initial profile of low abuse liability and high therapeutic index (safety) fueled decisions that allowed the initial marketing of buprenorphine without any significant restrictions or regulatory controls. Its easy accessibility and acceptability by a wide spectrum of drug abusers, including heroin addicts, resulted in substantial abuse (for example: Levelle *et al.*, 1991; Rainey, 1986; Strang, 1995,1991; Tracqui *et al.*, 1998; Kintz, 2001; Basu, 1998; Robinson *et al.*, 1993; Dore *et al.*, 1997, Singh *et al.*, 1992; Chowdhury *et al.*, 1998). Austria, Australia, Belgium, Germany, France, India, New Zealand, Norway and Sweden have all increased the regulatory controls on buprenorphine. In 1988 the World Health Organization (WHO) recommended that buprenorphine be placed in Schedule III of the Psychotropic Convention. This action was taken by the United Nations in 1989.

A number of factors have contributed to the illicit use of buprenorphine. In areas where heroin has been less available or of low quality, buprenorphine's low cost, easy accessibility, high purity and substantial morphine-like effects have contributed to its popularity on the illicit market. Doctor shopping and forged prescriptions are important sources of this drug and, according to the International Narcotics Control Board (INCB), large quantities of buprenorphine have been trafficked across international borders.

While extensive diversion, trafficking and abuse have been documented for both the sublingual tablets and injectable formulations, the sublingual tablet has a greater appeal to a wider range of drug abusers. The variety of routes of administration may account for this preference. The tablets can be abused by the sublingual route or they can be crushed and snorted or the powder can be solubilized and injected.

In summary, unlike Schedule IV partial mu agonists, buprenorphine is recognized as morphine-like in many drug discrimination studies and produces effects similar to morphine over a wide range of doses. Significant abuse has been documented in many countries although various factors, including the lack of regulatory controls placed on buprenorphine and the scarcity of high purity heroin, have played a role in contributing to this abuse. Buprenorphine's partial agonist effects make buprenorphine less desirable than pure mu agonists in Schedule I or II. The extent to which buprenorphine is able to produce euphoria and "good drug" effects limits its use by opiate tolerant abusers. While buprenorphine can substitute for heroin,

it is rarely preferred over high quality heroin. In addition, the reduced respiratory depressant effects of buprenorphine (as a consequence of its "ceiling effect") imparts greater safety in overdose than other pharmaceutical narcotics controlled in Schedule II.

In reviewing all the data relevant to the abuse potential, including the comments and the DHHS evaluation, the DEA concludes that buprenorphine has an abuse potential less than narcotics in Schedule I or II of the CSA but greater than Schedule IV narcotics.

Dependence Profile of Buprenorphine

In addition to having abuse potential, most drugs controlled under the CSA are capable of producing dependence, either physical (physiological) or psychological. Physical dependence refers to the physiological changes produced by repeated use of a drug that necessitates the continued administration of the drug to prevent a withdrawal syndrome. Psychological dependence refers to the need or craving for a drug that compels an abuser to continue drug use.

Chronic buprenorphine administration is associated with physical dependence (for example see: Jasinski *et al.*, 1978; Kosten *et al.*, 1988, 1990; San *et al.*, 1992; Eissenber *et al.*, 1996). The extent of physical dependence, as measured by an abstinence syndrome, has been characterized as mild to moderate in intensity and of long duration. The profile of withdrawal effects/duration varies with buprenorphine dose, route of administration and duration of chronic use. While some aspects of the abstinence syndrome approach those which occur with pure mu agonists, generally the withdrawal is reported as less intense and may not require pharmaceutical intervention for relief of adverse withdrawal effects.

Jasinski *et al.* (1978) conducted the original clinical abuse liability studies evaluating buprenorphine's abuse potential. Buprenorphine was shown to produce morphine-like subjective, behavioral and physiological effects and morphine-like physical dependence. The abstinence syndrome observed after abrupt withdrawal of chronically administered buprenorphine (8 mg subcutaneous for 60 days) was delayed producing peak Himmelsbach abstinence scores after about two weeks. Peak withdrawal effects were clinically significant but of lesser magnitude than pure mu agonists. Withdrawal effects included loss of appetite, malaise, insomnia, sensitivity of the skin, lacrimation, rhinorrhea, perspiration, gooseflesh, nausea, leg aches and backaches. These effects were variably reported as mild to moderate and clients requested an opiate to alleviate the symptoms.

In another study examining the physical dependence profile of buprenorphine, 19 heroin dependent male subjects were maintained on 8 mg sublingual buprenorphine for 16 days followed by an additional 18 days of daily or every other day dosing of 8 mg (Fudala *et al.*, 1990). Abrupt discontinuation in buprenorphine dosing produced an abstinence syndrome starting within the first 72 hours, peaking within 3 to 5 days and diminishing after 8 to 10 days. Over 50 percent of the participants required therapeutic intervention for withdrawal symptoms.

In a report on the use of Subutex® in France (Ministry of Health of France, 1998), clinicians describe a buprenorphine abstinence syndrome similar to abrupt withdrawal from methadone, characterized by 2 to 3 days of no symptoms followed by 10 days of unpleasant symptoms. Abrupt withdrawal of buprenorphine produced effects approaching that of methadone withdrawal but with periods that were very difficult to bear due to the continual switching between a normal state and a state of withdrawal.

One of the clearest indications of buprenorphine physical dependence potential is data gathered on neonates of buprenorphine maintained mothers (Fisher *et al.*, 2000). Buprenorphine neonatal abstinence syndrome (NAS) was also reported in postmarketing data from France. The withdrawal syndrome, including tremor and autonomic hyperreflexia, is generally mild to moderate in severity. Between 1996 and the first six months of 1999, 66 reports of NAS were reported to the manufacturer.

The extent of psychological dependence produced by buprenorphine is largely dependent on its ability to produce pleasurable effects and the desire or need to continue the use of this drug for those effects. High psychological dependence is associated with significant loss of drug use control, escalation of dose, drug seeking behaviors and maladaptive patterns of substance use despite serious negative consequences. In reviewing the psychological dependence profile of buprenorphine, the DEA considered a number of factors including: drug effects, evidence of diversion, trafficking and abuse of buprenorphine, patterns of drug use and physical or psychological problems associated with continued abuse of this drug.

As reviewed earlier, buprenorphine produces significant morphine-like effects over a wide range of doses and in numerous populations of drug abusers. However, buprenorphine's partial agonist activity often results in shallower dose-response curves with reduced maximal amounts of euphoria, drug liking and/or "good drug" effects than many of the pure mu agonists that have been compared to buprenorphine.

Buprenorphine has been extensively diverted, trafficked and abused throughout many countries although those activities have often been fueled by the lack of high purity heroin and limited regulatory controls placed on buprenorphine (Lavelle *et al.*, 1991; Rainey, 1986; Strang, 1995, 1991; Tracqui *et al.*, 1998; Kintz, 2000; Basu, 1998; Robinson *et al.*, 1993; Dore *et al.*, 1997, Singh *et al.*, 1992; Chowdhury *et al.*, 1998). Surveys in several countries show that buprenorphine, along with heroin, temazepam, and amphetamines, ranks among the top drugs most frequently abused (Lavelle *et al.*, 1991; Arditti *et al.*, 1992; Lapeyre-Mestre *et al.*, 1997; Thirion *et al.*, 1999; Shewan *et al.*, 1998; Taylor *et al.*, 1996; Coggans *et al.*, 1991; Barnard *et al.*, 1998). Falsified prescriptions, theft, doctor shopping and street buys have all been identified as sources for buprenorphine.

Buprenorphine use is associated with maladaptive patterns of substance use. In an analysis of 11,186 buprenorphine prescriptions (written in France during 4 months between September through December 1999), 12 percent of the patients received prescriptions from more than two prescribers and 18 percent of the patients were judged as having deviant maintenance treatment with more than two prescribers or more than 20 mg per day of buprenorphine (Thirion *et al.*, 2002). Data provided in a report generated by a multidisciplinary task force (working under an agreement with the Office of the Junior Minister for Health, the General Health Administration and Schering Plough Laboratories) on the use of Subutex® in France noted that the sales of syringes in France remained stable despite the large numbers of individuals in treatment with Subutex®. At the same time, there was a significant reduction in heroin trafficking and heroin-related deaths. As so many heroin addicts were in treatment and being prescribed medications that are not injectable formulations, the sales for injection equipment should have fallen off drastically. That did not occur. Survey data regarding buprenorphine use indicated that between 12 and 31 percent of buprenorphine users crush the buprenorphine tablets and inject their own medication or diverted medication, often in combination with benzodiazepines (Ministry of Health of France, 1998). Benzodiazepines purportedly enhance and prolong the euphorigenic properties of buprenorphine. These injection practices are associated with the spread of HIV and other communicable diseases as well as serious overdose events. Over 100 deaths in France have been associated high dose buprenorphine injection in combination with benzodiazepines (Tracqui *et al.*, 1998; Kintz, 2001). In another study of 1018 drug injectors in Glasgow during 1993 and 1994, 41 percent of the injectors reported using buprenorphine and, of those, 26 percent reported at least one overdose (Taylor *et al.*, 1996).

A number of case reports involving buprenorphine abuse demonstrate that buprenorphine is associated with a pathological pattern of use, tolerance development and an opiate abstinence syndrome (Quigley *et al.*, 1984; Singh *et al.*, 1992; Basu *et al.*, 1990). Researchers who have compared the toxicologic and psychopathologic characteristics of buprenorphine dependence with those of heroin found no clinically significant differences (Torrens *et al.*, 1993).

The availability and use of high-dose sublingual tablets is a relatively new phenomenon. The ease with which addicts can be detoxified after extended use of buprenorphine at high maintenance doses has not been well established nor is there information regarding continued abstinence after detoxification from long-term, high-dose use/abuse of buprenorphine. The dependence capacity of buprenorphine may be heightened under these conditions.

In summary, buprenorphine produces low to moderate physical dependence. The withdrawal syndrome is of less intensity and longer duration than most narcotics in Schedule I or II of the CSA. Therapeutic intervention may be necessary to help ameliorate some of the withdrawal affects. Buprenorphine abuse is associated with a loss of control, escalation of dose, drug seeking behaviors and maladaptive patterns of substance use. The data suggest that buprenorphine has a relatively high psychological dependence profile although it is generally less reinforcing than heroin and other pure mu agonists.

Answers to Specific Comments Regarding the Proposed Placement of Buprenorphine in Schedule III of the CSA

Comment: The buprenorphine/naloxone product (Suboxone®) should be placed in a lower schedule than the single entity product (Subutex®) when/if approved for use in the United States. This differential scheduling would show the lower abuse potential of the combination product and would encourage physicians to preferentially prescribe the combination product.

Answer: The addition of naloxone to the buprenorphine high dose sublingual tablets may be aversive in physically dependent opiate abusers but it will have little (may reduce agonist effects) or no effect in all other populations of abusers. It does not have significantly less abuse potential. For more information, see section on abuse potential.

A physician with the appropriate training in narcotic addiction treatment (as mandated by the Drug Addiction Treatment Act of 2000) has, or will be provided, information about the merits of prescribing the combination product. Should the buprenorphine sublingual tablets be approved for use in the United States, the physician will, ultimately, write a prescription for Subutex® or Suboxone® based on an informed decision about what he/she feels is the best treatment for the patient.

Comment: Because Buprenex® has been in Schedule V and has not been associated with widespread diversion or abuse, there is no compelling reason to reschedule this medication.

Answer: As a single entity product, Buprenex® has no other active ingredient in its formulation that may mitigate its abuse potential. While no significant abuse of Buprenex® has occurred in the United States (which both FDA and DEA believe is directly related to its limited use in the United States) many countries have experienced significant abuse of low dose buprenorphine in tablet and injectable formulations. Buprenex® does not have less abuse potential than other buprenorphine products.

Comment: Products containing less than 1 mg/ml of buprenorphine should be placed in Schedule V of the CSA.

Answer: Because buprenorphine is significantly more potent than morphine with much greater bioavailability by the injection route of administration, intravenous injection of 0.3 mg of buprenorphine (1 dosage unit of Buprenex®) produces physiological and subjective effects equivalent to 10 mg or more of intravenous morphine (Zacny *et al.*, 1997). Injection of 1 mg/ml buprenorphine would be approximately equivalent to the injection of 20–30 mg of morphine (calculated by extrapolation and considering the shallower dose-response curve). These doses produce significant opiate effects and, if available, are likely to be attractive to most opiate abusers. In addition, as an injectable product, Buprenex® misuse/abuse is associated with possible behavioral risks including shared needles/syringes that contribute to the spread of HIV, hepatitis and other communicable diseases (also review previous comment and answer). There are no provisions in the CSA to schedule narcotic products based solely on the concentration of active ingredient.

Comment: Buprenorphine diversion has been limited to use by out-of-treatment, opioid-dependent, injection drug users.

Answer: While buprenorphine has been primarily abused by injection, data indicates that it has been abused by other routes of administration and other populations of drug abusers. Data from France indicate that a significant percentage of treatment clients (prescribed high dose, single entity product) abuse their own or diverted medication (see discussions on abuse liability and dependence profile).

Comment: Once buprenorphine has been approved for use in opioid substitution treatment, the DEA should study and evaluate abuse over a three-year period in order to more accurately determine whether placement in Schedule III is appropriate.

Answer: Whenever a drug is placed under control in the CSA, the DEA is responsible for monitoring the use of that drug. In addition, the Drug Addiction Treatment Act (DATA) has mandated that DEA monitor the use of Schedule III–V narcotic treatment drugs utilized under DATA.

Comment: The DEA has disregarded data on the development of the naloxone combination product that show significantly less potential for diversion and abuse.

Answer: The DEA is aware that the combination product was specifically developed to deter injection abuse by physically dependent opioid injecting drug abusers. In addition, DEA wants to support and encourage manufacturers to develop products that will reduce the diversion and abuse of legitimate pharmaceuticals. This combination product will inhibit injection by non-buprenorphine dependent addicts and this is a positive outcome. However, after careful examination of all the relevant data regarding the abuse potential of this product in all populations at-risk for abuse (see section on abuse potential), the DEA has concluded that the combination product does not warrant lesser control than other buprenorphine products.

Comment: The DEA has disregarded the additional controls that would be imposed on Subutex® and Suboxone® by the Drug Addiction Treatment Act of 2000 (DATA).

Answer: As part of the review process, both the DEA and the DHHS carefully considered the use of these narcotic treatment drugs within the context of use under DATA. DATA was never intended to be a solitary regulatory piece of legislation and drugs used under this Act must first meet the findings of a Schedule III, IV or V substance as defined in the CSA (21 U.S.C. 812(b)). DATA does not have an impact on the criteria necessary for scheduling under the CSA. The scheduling criteria and procedures remain unchanged and continue to dictate the requirements for the scheduling of buprenorphine as well as any other controlled substance.

Comment: The potential for buprenorphine to be abused, particularly when marketed in high-dose tablets, is consistent with the abuse potential of other Schedule II substances. The partial agonist activity, including safety in overdose, is not supported and, even if true, does not warrant a change from the conclusion that buprenorphine has a high potential for abuse.

Answer: Under certain conditions and in various populations, buprenorphine has a high potential for abuse. Buprenorphine is recognized as morphine-like in many drug discrimination studies and produces effects similar to morphine over a wide range of doses. This data suggests that buprenorphine, if available, would be very attractive to most narcotic abusers (*see* section on abuse potential especially in regard to doses of 2 mg or more). However, the extent to which buprenorphine is able to produce euphoria, "good drug" effects, and respiratory depression is limited by its partial agonist properties. That is, almost uniformly, pure mu agonists are capable of producing greater levels of euphoria and other positive subjective effects than buprenorphine. This is an important issue for a drug-tolerant/dependent narcotic abuser (those likely to be prescribed or have access to high-dose buprenorphine tablets). Buprenorphine may alleviate withdrawal, but may not produce the level of "feel-good" effects that the abuser is seeking. Although buprenorphine is abused by heroin addicts, it is rarely preferred over high quality heroin even when buprenorphine is co-administered with benzodiazepines. The low availability and high cost of high purity heroin compared to the high availability and low cost of buprenorphine have been factors in the high incidence of buprenorphine abuse in many countries. Currently, the availability and purity of heroin across the United States is very high while the price of heroin is relatively low in comparison to the projected cost of buprenorphine tablets.

The DEA cited safety in overdose as an example of buprenorphine's partial agonist activity and as a mitigating factor differentiating the abuse potential of buprenorphine from mu agonists in Schedule II of the CSA. Factor (6) under 811(c) requires that the DEA consider what, if any, risk there is to the public health. The commenter argued that this margin of safety exists only when the drug is taken in a carefully controlled clinical setting without concomitant use of other drugs. In fact, narcotic addicts are likely to abuse benzodiazepines with buprenorphine and often by the injection route—all risk factors for buprenorphine-related deaths. The DEA agrees that the increased safety with respect to diminished respiratory depression may be negated under these circumstances. Data from France regarding buprenorphine-related deaths also supports this conclusion. However, for the initiate to opioid abuse or the non-dependent opioid abuser using buprenorphine, the concurrent injection use of buprenorphine with benzodiazepines is less likely to occur. In addition, accidental death or serious overdose by a child or other family member who ingests the medication of an individual prescribed buprenorphine is also less likely to occur. This is an advantage over drugs like morphine, oxycodone and methadone and a relevant factor that carries considerable significance when weighing public health risks and the need for regulatory scrutiny.

In reviewing all the data relevant to the abuse potential, including the evaluation provided by the DHHS as well as all the comments, the DEA concludes that buprenorphine has an abuse potential less than narcotics in Schedule I or II of the CSA but greater than Schedule IV narcotics. It should be noted that a Schedule III substance can have a relatively high abuse potential. The law (21 U.S.C. 812 (b)(3)) does not have an absolute descriptive term (*i.e.* high, low) relating to the abuse potential of Schedule III substances. However, the abuse potential must be less than Schedule I or II.

Comment: The DEA failed to consider that the illusion of safety may result in greater potential for abuse.

Answer: Prior to completing the final scheduling review document, the DEA received the FDA review document and a scheduling recommendation from the DHHS. The FDA specifically cited this concern in their document and the DEA considered this possibility. Buprenorphine has often been touted as a drug with minimal abuse potential and great safety in overdose. In many countries, these misconceptions have led to less regulatory oversight and freer prescribing practices by physicians resulting in easier access and greater availability of buprenorphine for abuse purposes. See sections on the abuse potential and dependence profile of buprenorphine. The narcotic abuser may view buprenorphine "safety" as a good reason to select buprenorphine over another narcotic or to use greater amounts of buprenorphine without regard to possible overdose.

Comment: Scheduling under the CSA is a relative analysis and depends on aligning a drug with the closest set of comparators. Buprenorphine most closely resembles Schedule II narcotics.

Answer: Scheduling is a relative analysis. The effects produced by buprenorphine were compared to many Schedule II substances and found, under certain conditions, to be similar. However, buprenorphine is a partial agonist and shares some very important properties with other partial agonists in Schedule IV (*i.e.* pentazocine and butorphanol). These partial agonist properties play an important role when comparing buprenorphine effects with pure mu agonist effects. Continued use of all narcotic agonists results in tolerance development, dependence and possible addiction. For the narcotic abuser, escalation of dose, to achieve enhanced effects or to compensate for drug tolerance, will, at some point, be compromised with a partial agonist: the dose-response curve of buprenorphine is more shallow and less linear than mu agonists. This means that buprenorphine may not produce the enhanced effects sought by the chronic drug abuser. In addition, the current data indicates that buprenorphine produces moderate physical dependence and relatively high psychological dependence, not the severe dependence of Schedule II narcotics. Both the DHHS and the DEA have determined that the available data on buprenorphine regarding the abuse potential and dependence profile are most closely aligned to, or defined by, a Schedule III narcotic. For review, please see previous sections on abuse potential and dependence profile found herein.

Comment: Buprenorphine is a gateway drug compounding its public health risks.

Answer: Generally, substances like alcohol, nicotine and marijuana are universally accepted as gateway drugs because data shows that they are often the first drugs used by adolescents and a correlation exists between early experimental use of these substances and an escalation to serious drug abuse problems. One of the at-risk populations for buprenorphine abuse is naïve (inexperienced) opioid abusers (*see* section on abuse potential). Early experimentation with buprenorphine may lead to serious drug abuse problems.

Comment: The DEA has not been consistent in its decision making process and has failed to meet the "non-arbitrary agency requirements." The finding that buprenorphine has a potential for abuse less than Schedule I or II substances is arbitrary and capricious and not supported by underlying administrative record.

Answer: The DEA has not been arbitrary or capricious in the decision making process regarding the abuse potential of buprenorphine. Buprenorphine has a very unique pharmacological profile and produces a range of opioid effects typical of both pure mu agonists and prototypical partial agonists depending on dose, pattern of use, and population taking this drug. Most single entity pure mu agonists are controlled in Schedule I or II of the CSA, while partial agonists, butorphanol and pentazocine, are controlled in Schedule IV. After reviewing all the relevant data, the DEA concluded that buprenorphine's abuse potential is most closely defined by Schedule III (*see* section on abuse potential and answers to previous comments).

Comment: One of the strongest signs that a drug has a high potential for abuse is evidence that it is abused through multiple routes of administration, and that it is used with other drugs of abuse. Among other things, this shows that drug abusers not only like the drug, they are trying to enhance its effects. DEA's finding on the abuse potential of buprenorphine failed to consider and give adequate weight to the evidence on this point.

Answer: The DEA did consider various pharmacological parameters relating to the use of buprenorphine by various routes of administration (*see* section on abuse potential). Drug abusers frequently abuse more than one drug. The reasons for this are varied. Abusers may be trying to enhance the effects of the drug they are using and/or trying to ameliorate some of the unwanted side effects. The DEA believes appropriate weight was placed on this issue.

Comment: DEA's conclusion that buprenorphine most closely resembles a Schedule III drug, with respect to physical and psychological dependence, is contrary to evidence.

Answer: This comment was followed by a number of citations that were taken from the buprenorphine scheduling review documents of both DEA and FDA (those reviews that were conducted prior to the proposal to place buprenorphine in Schedule III). These comments, for the most part, were taken out of context, interpreted differently or weighted differently than by DEA and/or FDA. For example, the statement that buprenorphine produces "morphine-like physical dependence" does not mean that morphine and buprenorphine have the same physical dependence capacity. It does mean that the physiological changes produced by buprenorphine and morphine are similar and they share similar withdrawal signs. The statement that "under most conditions, buprenorphine's physiological and psychological effects are essentially the same as morphine or hydromorphone" means that buprenorphine is capable of producing effects (*i.e.*, miosis, respiratory depression, analgesia, drug euphoria, drug liking and sedation) on a par with morphine and hydromorphone "under most conditions". A more appropriate caveat would be "under many conditions". This was a statement taken out of context and does not mean that these drugs produce the same dependence profile. It is important to note that, in making scheduling decisions, all the available information regarding a substance must be synthesized and weighed. The section on dependence profile found herein does not contain all the data DEA relied upon but does provide a summary of some important data and the rationale used by DEA in concluding that buprenorphine produces moderate physical dependence and relatively high psychological dependence.

Comment: In the absence of sufficient data on physical and psychological dependence, the DEA must give weight to its abuse liability assessment.

Answer: While some data was lacking regarding the dependence profile of long-term use/abuse of high dose buprenorphine, sufficient data is available for making a determination regarding buprenorphine dependence (*see* previous section on dependence profile). In addition, DEA did not find that buprenorphine has an abuse potential consistent with Schedule II.

Comment: Whether buprenorphine will be eligible for office-based use under recently enacted federal legislation is not a relevant factor in the scheduling analysis and DEA erred by considering it.

Answer: In the March 21, 2002, **Federal Register** notice on the proposed rule for buprenorphine scheduling, the DEA made the following statement under a section on consequences of this proposed rule: "The DEA recognizes the need to expand narcotic treatment and this factor was a consideration in proposing Schedule III placement for buprenorphine."

The proposed placement of buprenorphine in Schedule III was not made on the basis of making buprenorphine products available for office-based narcotic treatment. Taken out of context, we recognize that this statement could possibly lead to that interpretation. This statement was meant as a preamble to express DEA's concerns regarding the use of buprenorphine within the context of office-based narcotic treatment. The DEA does recognize the need to expand treatment. As part of our scheduling review, DEA did consider the impact of buprenorphine treatment products used within the context of office-based practice.

The factors for determining the placement of a substance within one of the schedules of controlled substances are specifically laid out in Title 21 U.S.C. 812(b). The manner in which a substance will be used and its availability to the public are among the elements that must be considered in determining a substance's actual or relative potential for abuse (*see* section on abuse potential). The DEA did not consider the need to expand narcotic treatment as a specific factor in determining the placement of buprenorphine under the CSA. Certainly the anticipated use of buprenorphine for addiction treatment was a point of consideration in terms of its possible impact on the relative potential for abuse, however, it was not a determining factor.

Comment: To the extent that DEA considered the placement of buprenorphine under Schedule III, in order to expand access to narcotic treatment (67 FR at 13115), DEA was required to do a complete analysis of the impact of its proposal under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Among other things, DEA was required to consider the impact of the decision on small businesses, including methadone treatment programs.

Answer: As stated previously, the DEA did not propose placement of

buprenorphine in Schedule III in order to have it available for office based treatment; it was DEA's analysis of the factors laid out in Section 811(c) that resulted in the determination that buprenorphine should be placed in Schedule III.

With respect to the issue of possible economic impact, DEA does not view the placement of buprenorphine into Schedule III as having a direct economic impact on the activities of traditional narcotic treatment programs. As a Schedule III controlled substance, buprenorphine will be equally available to traditional NTP programs as well as office-based treatment providers. The migration of stabilized patients from NTP's to office-based treatment programs will be driven more by the differences in the program requirements and characteristics. The office-based programs may be more attractive to the stabilized patients. As such, DEA stands by its certification that placement of buprenorphine in Schedule III will not have a significant economic impact on a substantial number of small business entities.

Comment: In its concluding statement (of the proposed rule), DEA notes that buprenorphine's abuse potential and dependence profile suggest that there may be significant abuse and diversion of the tablets in the United States. DEA therefore intends to initiate action to increase regulatory control, should that occur. This approach, however, is fundamentally at odds with the approach required under the CSA. The CSA requires DEA to make a reasonable predictive judgment about a drug, and to act proactively to address it. As Congress recognized, the risks associated with drug abuse are too great from a law enforcement and public health perspective to take a reactive posture.

Answer: Sublingual tablets of buprenorphine have not been available in the United States. Both the DEA and FDA relied heavily on foreign experience with these products and no country has marketed a high dose, naloxone-combination product. While drug abuse and addiction are universal problems, the availability of potent narcotic pharmaceuticals and high purity heroin in the United States will likely alter the types of abuse problems experienced with high dose buprenorphine tablets when/if they are approved for marketing. That is, one of the motivators involved in the abuse of buprenorphine in many countries has been the lack of affordable, high purity heroin and fewer, more restrictive controls placed on potent narcotic analgesics. At the same time, narcotic treatment under DATA will be a considerable departure from the more structured Narcotic Treatment Programs of the past decades. Should these products be approved, they will be prescribed by physicians, who may not have extensive experience in dealing with this patient population, and used by addicts, who are likely to abuse/divert their medications. This activity, under DATA, will occur in the absence of enforceable minimal standards of treatment. DEA believes that these conditions increase the likelihood of diversion and abuse of these products.

In light of these uncertainties and in consideration of all the data relevant to buprenorphine's abuse potential and dependence capacity, the DEA has concluded that Schedule III placement and the constraints placed on physicians under the Drug Addiction Treatment Act of 2000 (Pub. L. 106–310) will be sufficient to curb significant abuse problems. However, if our assessment is not correct, the DEA will take appropriate actions.

Comment: The DEA has not presented an adequate basis for the proposed rulemaking. Many of the studies cited by DEA and FDA are not described in sufficient detail. Moreover, some important information from these studies has not been considered by DEA.

Answer: The proposed rule outlines the basic facts. It provides a brief description about the action being proposed, describes buprenorphine as a derivative of thebaine, a partial agonist and its efficacy as an analgesic (with far greater potency than morphine). The two NDAs for buprenorphine products pending at FDA are mentioned with respect to being high-dose sublingual tablets intended for narcotic treatment. The notice outlines an FDA review as part of an NDA process for the proposed treatment drugs. Greater human experience and new scientific data prompted a scheduling review by FDA that resulted in a DHHS rescheduling recommendation. The DEA considered this recommendation and carefully reviewed the FDA scheduling review document (in matters of science and medicine, DHHS findings are binding on DEA). The DEA then conducted a final review and, outlined in the proposed notice, the factors DEA considered in making the decision to propose Schedule III for buprenorphine and all products containing buprenorphine. This was the basis for this proposed rulemaking. Upon request, the DEA did provide the FDA and DEA review documents to interested parties.

In this final rule, the DEA has included summaries of the data DEA relied upon in determining the abuse potential and dependence profile of buprenorphine. However, like most review documents, specific details about all the studies cannot be given. Citations, however, are provided.

This commentator stated that DEA's statements regarding buprenorphine's potency with respect to morphine and the fact that buprenorphine is a derivative of thebaine have no bearing on buprenorphine's abuse potential. As a derivative of thebaine, buprenorphine was originally classified under the CSA as a narcotic. This statement was not made to imply anything with respect to abuse potential. Many substances (*i.e.* opiate antagonists) are derived from thebaine and have no abuse potential. Potency, however, is an element that directly affects the abuse potential. As mentioned in an earlier comment, 1 mg/ml of buprenorphine produces substantial euphoria. If buprenorphine is marketed in 2 and 8 mg tablets, those tablets can be dissolved in water and shared by several opiate abusers (depending on level of narcotic tolerance). The implications of this activity speak directly to the abuse potential and the possible public health risks associated with shared injection equipment.

The DEA did review and consider the information in the literature cited, as well as countless other scientific papers, law enforcement and drug abuse data bases, and law enforcement documents that were not cited.

Comment: The proposed rule has not adequately described the pharmacology of the drug substance buprenorphine or the drug products that would be affected by this rule.

Answer: The section herein on abuse potential reviews the pharmacological profile of buprenorphine. Currently, only one buprenorphine product, Buprenex®, will be affected by this rule. This drug product is an injectable formulation containing 0.3 mg/ml of buprenorphine. It is approved for use for moderate to severe pain management.

Two New Drug Applications (NDA) have been submitted to FDA for high dose sublingual tablets. These potential addiction treatment products include: (1) Subutex®, a mono or single entity buprenorphine product, and (2) Suboxone®, a combination product in a 4:1 ratio of buprenorphine to naloxone. The Subutex® and Suboxone® NDAs remain pending at the FDA. When/if these products are approved for marketing they will also be affected by this rule.

Comment: Many facts cited by the DEA and FDA in their conclusions have been removed from their proper scientific context. This is particularly evident in the description of buprenorphine and in the basis for the DEA conclusion that buprenorphine may cause high psychological dependence.

Answer: Concluding statements rarely provide detail and, by their nature, are brief statements regarding conclusions that are made regarding all the available data. The section on buprenorphine's dependence profile herein and previous comments/answers regarding this issue, provide a detailed discussion of the basis for DEA's conclusions regarding dependence potential.

Comment: The DEA and FDA have not explained why data generated since the original scheduling action for buprenorphine in 1985 would alter the original conclusions that buprenorphine has a low potential for abuse and low potential for physical and psychological dependence.

Answer: The DEA has reviewed all the documents pertaining to the original placement of buprenorphine in Schedule V of the CSA. In 1981, buprenorphine hydrochloride (Buprenex®) was approved for use in the United States as an analgesic. In 1982, the Assistant Secretary of Health recommended that buprenorphine be placed in Schedule V of the CSA. This recommendation was based on findings that buprenorphine had an approved medical use in the United States and that its abuse potential and dependence capacity was low and consistent with Schedule V placement. The DEA published a proposal to place buprenorphine in Schedule V in 1982. This rulemaking was finalized on April 1, 1985 (50 FR 8104) following a hearing requested by Reckitt & Colman (now Reckitt Benckiser), the patent holder and manufacturer for buprenorphine worldwide. The company's objection to the proposal was based on their contention that buprenorphine did not have sufficient potential for abuse to warrant Schedule V placement in the CSA and that buprenorphine should not be classified as a narcotic as defined by the CSA. Data was provided from several countries including West Germany, Australia and New Zealand (where buprenorphine had been available for a limited period of time) showing buprenorphine abuse, diversion and trafficking. In addition, FDA provided testimony at the administrative hearing on buprenorphine regarding the basis for their decision to recommend Schedule V.

In reviewing this data, the science, at that time, relied heavily on preclinical studies that indicated that buprenorphine had minimal abuse potential and dependence producing capacity. While Jasinski's (1978) original clinical abuse liability study was available and considered, more weight was placed on the fact that buprenorphine's partial agonist activity mitigated the development of any serious abuse problems and the belief that this was an exceedingly safe drug in overdose. Clinical use in foreign countries, where it had already been approved for marketing, was limited but did indicate that buprenorphine had some abuse potential. However, as a low-dose, injectable formulation for the treatment of moderate to severe pain, widespread use and availability was not anticipated.

Since that time, the use, abuse and available data have increased. Clinical experience with various dosage forms for both pain management and addiction treatment is now available. In addition, the anticipated use of high-dose buprenorphine tablets with the possibility that they could be prescribed by physicians and used in an office based setting for the treatment of opioid addiction prompted FDA to re-evaluate the status of buprenorphine under the CSA. In reviewing all the available data, both FDA and DEA have concluded that placement in Schedule III as a narcotic is the most appropriate schedule for buprenorphine and products containing buprenorphine.

Comment: DEA and FDA rely heavily on data concerning abuse of buprenorphine in foreign countries that occurred prior to the international control of buprenorphine in 1989 under the 1971 Psychotropic Convention.

Answer: Both DEA and FDA reviewed all the available data that addressed the eight factors that are used as a basis for making a final scheduling decision. Published literature regarding the use, misuse, abuse, diversion and trafficking in buprenorphine was gathered and assessed. Published data about the abuse of any drug often provides a wealth of information including: who is abusing it, how it is being abused, source of the drug and possible street prices, extent or seriousness of the abuse, drug effects, concurrent use of other drugs, and reasons it is sought and abused. Much of this information is timeless and speaks to the ability of a drug to produce certain effects that some humans find pleasurable. Both DEA and FDA considered buprenorphine abuse data within the context of regulatory controls, heroin availability and purity, and availability and use of other pharmaceutical narcotics.

Comment: The DEA and FDA have inadequately described the conditions of use of Subutex® in France and the impact of such use on either the mortality associated with heroin addiction or the frequency of abuse of buprenorphine. It is asserted without supporting data that the conditions of use that will apply to Suboxone® and Subutex®, should they be approved for use in the United States, will inevitably lead to significant abuse of buprenorphine. There is no discussion of how the proposed use of Subutex® in the United States may differ from the use of this product in France. There is not an acknowledgment in the proposed rule that one of the products under development, which is not available in France, contains naloxone to deter intravenous abuse.

Answer: Buprenorphine was first marketed in France in 1987 as a low dose sublingual tablet (Arditti *et al.*, 1992). Between 1992 and 1993, buprenorphine was identified as the third most commonly appearing drug in falsified prescriptions in southwestern France (Baumevielle *et al.*, 1997). In December 1992, the French government instituted special dispensing and prescribing procedures similar to those governing narcotic drugs: buprenorphine was monitored by the French Medical Association; prescriptions were required to be written on a voucher taken from a counterfoil prescription book that was specifically designed for narcotic drugs; and prescriptions could be filled by any pharmacy, but had to be retained by the pharmacist for three years.

In 1996, general practitioners were permitted to prescribe buprenorphine sublingual tablets (Subutex®, 2 and 8 mg) for treating opiate dependence for up to 28 days per prescription. This system of treatment is a considerable departure from previous policy. Prior to 1996, France provided very limited treatment with methadone in state-run clinics (on a per capita basis, France had the lowest narcotic treatment of any European country). The spread of HIV and other communicable diseases by intravenous drug users and the acceptance of various types of narcotic replacement treatment in other countries (methadone, morphine, heroin and low-dose buprenorphine), combined with data suggesting that high-dose buprenorphine was a safer treatment drug, set the stage for France's new policy. When Subutex® was first launched, the street price of an 8 mg sublingual tablet was 100 francs (Auriacombe *et al.*, 1997). More recently

(Dru. 1999), the street price for buprenorphine in Paris was 10 to 15 francs and was reported as being easily accessible on the illicit market. This reduction in street pricing for buprenorphine is likely the result of widespread availability, by licit and illicit means. Because of continuing reports of abuse and diversion, in September 1999, restrictions on dispensing of buprenorphine were tightened to a 7-day supply per prescription.

Information regarding the use of Subutex® in France comes from a variety of sources. One of the first and most comprehensive reports was generated by a multidisciplinary task force (working under an agreement with the Office of the Junior Minister for Health, the General Health Administration and Schering Plough Laboratories) and reported on the early use of Subutex® in France. Data presented in the report suggested that trafficking in heroin and heroin overdose deaths significantly declined in France since Subutex® became available (an estimated 75 percent reduction). However, data also showed that Subutex® use is associated with significant public health risks. The following points were made by the task force:

- The use of benzodiazepines in combination with buprenorphine products is frequently encountered (both self-reports of addicts and studies have verified the frequency of this combination: about 20 to 44 percent of addicts treated with Subutex® also administer benzodiazepines). From February 1996 to October 1997, health officials were aware of 17 deaths associated with this combination.
- Sales of syringes remained stable despite the large numbers of individuals in treatment with Subutex® (50,000 buprenorphine-treated patients in 1997). Addicts reported that they continue to inject, often crushing, dissolving and injecting their buprenorphine tablets as well as other drugs of abuse.
- Survey data indicated that general practitioners were unable to obtain psychological services for their patients, as few psychiatrists want to treat intravenous drug users (less than 1 percent of the psychiatrists were linked to addiction treatment or had experience in treating addiction).
- Subutex® was diverted and abused by a significant percentage of individuals receiving buprenorphine prescriptions: 12 to 31 percent injected their own medication and 2 to 9 percent received multiple prescriptions from 2 or more physicians.
- Young abusers, not yet addicted to narcotics, were using buprenorphine as a "gateway" drug (the degree to which this occurs was unknown).

Recent data regarding Subutex® use in France is provided by Thirion *et al.* (2002), who conducted an analysis of 11,186 buprenorphine prescriptions (written between September through December 1999) to determine how buprenorphine was being used by French practitioners. Eighty five percent of the buprenorphine prescriptions were written by general practitioners who often prescribed for only one or two patients. The mean dose was 11.5 mg/day. Twelve percent of the patients received prescriptions from more than two prescribers and 43 percent of the maintained patients had an associated benzodiazepine prescription, often on the same prescription form. Sixty one percent of the patients had regular follow-up, 21 percent had occasional consultations and 18 percent had deviant maintenance treatment (more than two prescribers or more than 20 mg per day of buprenorphine). The authors concluded that the easy access to maintenance treatment in France is associated with a high risk of buprenorphine abuse.

A number of studies have examined buprenorphine-related deaths in France. In a compilation of the case reports and analysis involving buprenorphine overdoses (29 non-fatal and 20 fatal occurring between February 1996 and October 1997 at the hospitals and forensic laboratories in Strasbourg, France), Tracqui and colleagues (1998) speculated that the high dosage of Subutex® tablets is likely to play a role in the occurrence of accidents in spite of the theoretical "ceiling effect." However, almost all cases involved diverted medication and the use of other psychoactive drugs, especially benzodiazepines. Intravenous injection of the crushed tablet also appears to be a risk factor and was associated with 8 deaths and 10 non-fatal overdoses.

Kintz (2001) reported an additional 117 deaths involving buprenorphine. These fatalities were observed at the Institute of Legal Medicine of Strasbourg from March 1998—July 2000 (39 cases) and at 13 other French forensic centers from mid 1996—March 2000 (78 cases). Eighty two percent of the cases involved males. Needle marks suggesting recent intravenous injection(s) were observed in about half of the subjects. All but one case involved concomitant intake of other psychotropic substances. Benzodiazepines were most commonly found in combination with buprenorphine (91 cases). The author concluded that intravenous injection, concomitant use of CNS depressants (especially benzodiazepines) and high-dose buprenorphine formulation were risk factors in buprenorphine-associated fatalities. He further concluded that the total number of buprenorphine-related deaths in France is probably underestimated due to: (1) The drug is difficult to analyze (low concentration and no readily available immunoassay in France); (2) only some forensic centers responded to the question of fatalities involving buprenorphine; and (3) in numerous cases, an obvious overdose (known drug addict, presence of syringe or packages of Subutex®), no autopsy is requested by the police or a judge.

If approved for use in the United States, the prescription of Subutex® or Suboxone® in an office based setting will be a significant departure from years of regulated narcotic treatment practice. While physicians who want to prescribe these drugs for narcotic treatment must be certified by CSAT and can only treat up to 30 opiate-dependent patients at any given time, other regulatory requirements are less restrictive than those in France.

The above data show a pattern of increased regulatory control measures as a consequence of increasing levels of diversion and abuse. Injection of the Subutex® tablets is a common practice among treatment clients and prescription data indicates that they are also using benzodiazepines. Addiction is a medical disease associated with predictive behaviors that transcend national boundaries. Even in the best treatment programs, recurrent relapse occurs. As stated previously, providing prescriptions of narcotic substances to known drug abusers for the treatment of opiate dependence, in the absence of any enforceable treatment standards, is likely to be related with the diversion and abuse of these medications.

Comment: The additional controls that would be provided by moving buprenorphine to Schedule III are not described and no rationale is provided for the assertion that the Drug Addiction Treatment Act will not provide adequate safeguards for the public health.

Answer: The regulatory controls for those who handle Schedule III narcotics are described later in this final rule. There are some additional regulatory requirements beyond what is required of Schedule V narcotics: prescription refills are limited to 5 refills in 6 months, a permit is required to export this drug, and both manufacturers and distributors must file reports with the DEA. For individuals involved in illicit activities, trafficking penalties and fines are significantly increased.

The Drug Addiction Treatment Act (DATA) does not have an impact on DEA's scheduling responsibilities under the CSA. The scheduling criteria and procedures remain unchanged and continue to dictate the requirements for the scheduling of buprenorphine as well as any other controlled substance.

Comment: The overwhelming scientific and medical evidence demonstrates that buprenorphine should not be rescheduled. If buprenorphine is rescheduled, it should not be placed any higher than Schedule IV.

Answer: Both the DEA and the DHHS have determined that the preponderance of evidence indicates that buprenorphine has an abuse potential and dependence profile consistent with Schedule III of the CSA. The sections on abuse potential and dependence profile and answers to previous comments address this issue.

Conclusion

Relying on the scientific and medical evaluation and scheduling recommendation of the DHHS in accordance with Section 201(b) of the Act (21 U.S.C. 811 (b)), and after a careful consideration of all comments and a final, independent review by the DEA, the Deputy Administrator finds that:

1. Buprenorphine has a potential for abuse less than the drugs or other substances in Schedule I and II.
2. Buprenorphine has a currently accepted medical use in treatment in the United States.
3. Abuse of buprenorphine may lead to moderate or low physical dependence or high psychological dependence

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Regulatory Requirements

Persons who manufacture, distribute, dispense, import, export, store or engage in research with buprenorphine must comply with the following regulatory requirements:

1. *Registration*. Any person who manufactures, distributes, dispenses, imports or exports buprenorphine or engages in research or conducts instructional activities or chemical analysis with respect to this substance must be registered to conduct such activities in accordance with 21 CFR part 1301. Those individuals who are currently registered to handle buprenorphine in Schedule V may continue activities under that registration until approved or denied registration in Schedule III provided such registrant has filed an application for registration in Schedule III with DEA on or before November 6, 2002. Any persons not currently registered and proposing to engage in such activities may not conduct activities with the substance until properly registered in Schedule III.

2. *Security*. Buprenorphine must be manufactured, distributed and stored in accordance with 21 CFR 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c) and 1301.76.

3. *Labeling and packaging*. Products manufactured, distributed or dispensed before October 7, 2002 and labeled as Schedule V may be distributed and dispensed until April 7, 2002. Products manufactured, distributed or dispensed after October 7, 2002 shall comply with the requirement of 21 CFR 1302.03–1302.07.

4. *Inventory*. Registrants possessing buprenorphine are required to take inventories pursuant to 21 CFR 1304.03, 1304.04 and 1304.11.

5. *Records and reports*. All registrants must keep records and provide reports pursuant to 21 CFR 1304.03, 1304.04, 1304.21–1304.25 and 1304.33.

6. *Prescriptions*. All prescriptions for buprenorphine or prescriptions for products containing buprenorphine are to be issued pursuant to 21 CFR 1306.03–1306.07 and 1306.21–1306.26.

7. *Importation and Exportation*. All importation and exportation of buprenorphine shall be in compliance with 21 CFR part 1312.

8. *Criminal Liability*. Any activity with buprenorphine not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act or the Narcotic Addict Treatment Act of 2000, shall continue to be unlawful on or after October 7, 2002, except as authorized in this rule.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in a manner consistent with the principles of the Regulatory Flexibility Act (5 U.S.C. 605(b)). It will not have a significant economic impact on a substantial number of small business entities. Buprenorphine is already controlled under the CSA. Individuals who are currently engaged in activities with buprenorphine are already registered to handle controlled substances and are subject to the regulatory requirements of the CSA.

Executive Order 12866

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action

is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The Deputy Administrator certifies that this proposed rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). DEA has determined that this is not a significant rulemaking action. Therefore, this action has not been reviewed by the Office of Management and Budget. Buprenorphine is already controlled under the CSA. Individuals who are currently engaged in activities with buprenorphine are already registered to handle controlled substances and are subject to the regulatory requirements of the CSA.

Executive Order 12988

This proposed regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This proposed rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of the DEA by the Department of Justice regulations (21 CFR 0.100),and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308—[AMENDED]

1.The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.13 is amended by revising paragraph (e) to read as follows:

§ 1308.13 Schedule III.

* * * * *

(e) *Narcotic drugs.* Unless specifically excepted or unless listed in another schedule:

(1) Any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:	
(i) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium	9803
(ii) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts	9804
(iii) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium	9805
(iv) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts	9806
(v) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts	9807
(vi) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts	9808
(vii) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts	9809
(viii) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts	9810
(2) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts, as set forth below:	
(i) Buprenorphine	9064

(ii) [Reserved.]

* * * * *

3. Section 1308.15(b) is revised to read as follows:

§ 1308.15 Schedule V.

* * * * *

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:

(1) [Reserved]

* * * * *

Dated: October 1, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–25293 Filed 10–4–02; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 450

[FHWA Docket No. FHWA–2001–10886]

RIN 2125–AE92

Metropolitan Transportation Planning and Programming

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA, jointly with the Federal Transit Administration (FTA), amends its regulation on Planning and Assistance Standards that govern the development of transportation plans and programs for urbanized (metropolitan) areas. The FTA has codified the FHWA regulations for Metropolitan Transportation Planning and Programming into their regulations at 49 CFR 613 and joins the FHWA in making this change. This change provides the New York City metropolitan area additional time to review and update its transportation plan by waiving the regulatory requirement for a triennial plan update for the New York City metropolitan area for up to three years, until September 30, 2005. This action is necessary because the New York Metropolitan Transportation Council's (NYMTC) offices were destroyed by the terrorist attacks that occurred on September 11, 2001, and without this waiver, Federal highway and transit funding could be disrupted after September 30, 2002, when the current plan is set to expire. Furthermore, Congress recently enacted and the President signed HR 3880 that clearly expresses its intent to provide the New York City metropolitan area with relief from certain transportation conformity and metropolitan transportation planning requirements until September 30, 2005.

EFFECTIVE DATE: October 7, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. John Humeston, Metropolitan Planning and Policies Team (HEPM), (404) 562–3667 (metropolitan planning), 60 Forsyth Street, Suite 8M5; Atlanta, Georgia 30303–3104; or Mr. Reid Alsop, Office of the Chief Counsel (HCC–31), (202) 366–1371; 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

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Background

The Clean Air Act of 1970 (CAA) (44 U.S.C. 7401 *et seq.*) requires each State to develop a State Implementation Plan (SIP) that indicates how areas that are not meeting air quality standards intend to meet those standards. The Environmental Protection Agency (EPA) reviews and approves all SIPs. The SIP must specify emission limitations and other measures necessary to attain and maintain the national air quality levels for each pollutant.

In 1977, the Congress amended the CAA to prohibit Federal agencies from engaging in, supporting in any way, or providing financial assistance for any transportation activity that does not conform to the applicable SIP, including Federal or federally assisted transportation projects (Public Law 95–95; 91 Stat. 749). The Congress wanted to ensure that any Federal funding and approval for transportation plans, programs, and projects would be consistent with measures and goals of the SIP. In 1990, the Congress further amended the CAA by integrating it with the transportation planning process and conditioning Federal approval and funding of transportation activities on their demonstrated conformity with the applicable SIP.

The entity responsible for developing transportation plans and programs for urbanized areas of a State is the Metropolitan Planning Organization (MPO). Section 134(g) of title 23, U.S. Code, requires each MPO to prepare and update periodically a long-range transportation plan for its metropolitan area. The MPO must coordinate the development of this long-range plan with the SIP in all metropolitan areas that are nonattainment or maintenance areas for ozone, carbon monoxide, or particulate matter under the CAA (23 U.S.C. 134(g)(3)). These statutory mandates for MPOs have been codified in the FHWA regulations for Metropolitan Transportation Planning and Programming at 23 CFR 450 subpart C. Additionally, the Federal Transit Administration (FTA) adopts these regulations at 49 CFR 613 subpart A where the FTA cross-references and incorporates by reference the FHWA regulations. The FTA concurs with the changes made by this final rule to 23 CFR 450.322(a).

Section 134(g) states that the transportation plan shall be reviewed and updated periodically, according to a schedule that the Secretary of Transportation (hereinafter Secretary) determines to be appropriate. The Secretary, through the Federal Highway Administrator, has outlined the schedule for reviewing and approving the MPO's transportation plans in 23 CFR 450.322(a). The transportation plan has a 20-year horizon and must be reviewed and updated at least triennially in any nonattainment and maintenance areas (23 CFR 450.322(a)).

The New York City metropolitan area includes an urbanized area for the purposes of section 134 and has been designated as a nonattainment area for the purposes of the CAA. The MPO responsible for the New York City metropolitan area is the New York Metropolitan Transportation Council (NYMTC). The NYMTC last reviewed and updated its transportation plan on September 30, 1999, and without this proposed amendment would be required to again review and update the plan by September 30, 2002. Unfortunately, the NYMTC occupied offices in the World Trade Center in Manhattan and their offices were destroyed by the terrorist attacks on the World Trade Center buildings on September 11, 2001. Therefore, it will be impossible for NYMTC to update its transportation plan by September 30, 2002, as required by 23 CFR 450.322(a). This could disrupt Federal highway and transit funding after that date.

In addition to the long-range plan, the MPO must develop a transportation improvement program (TIP) for the area (23 U.S.C. 134(h)(1)(A)). The TIP must be updated every two years and approved by the MPO and the Governor (23 U.S.C. 134(h)(1)(D)). The New York metropolitan area last updated their TIP on November 1, 2001.

Recently, the President signed into law HR 3880 in order to provide NYMTC additional time to review and update its TIP, and prepare conformity determinations, by providing relief from certain transportation conformity and metropolitan transportation planning requirements until September 30, 2005. HR 3880 exempts the New York City area's current TIP and plan from the Clean Air Act's conformity requirements until September 30, 2005. The intent is to provide NYMTC additional time to organize and become operational again in order to work on a new plan and TIP in the aftermath of the September 11, 2001, terrorist attacks on that area.

For the same reasons, the FHWA, in conjunction with the FTA, amends its regulation on Planning and Assistance Standards, which governs the development of transportation plans and programs for urbanized (metropolitan) areas, to provide New York City metropolitan area additional time to review and update its transportation plan. In urbanized nonattainment areas, such as the New York City area, the transportation plan is required to be "revised and updated at least triennially * * *" 23 CFR 450.322(a). The transportation plan for

the New York City metropolitan area was last updated on September 30, 1999. The recently enacted HR 3880 that provides NYMTC a temporary waiver from certain statutory and regulatory transportation conformity and metropolitan transportation planning requirements is a clear indication of Congressional intent that the New York city metropolitan area be given relief from the closely related regulatory requirement for updates of the plan, codified in 23 CFR 450.322(a).

Consequently, the FHWA hereby amends the regulation on Planning and Assistance Standards, that governs the development of transportation plans and programs for urbanized (metropolitan) areas and statewide transportation plans and programs, to provide the New York City metropolitan area additional time to review and update its transportation plan. This action waives the regulatory requirement for a triennial plan update for the New York metropolitan area for up to three years, until September 30, 2005, consistent with the date set by the Congress. Since the Congress expressed its intent to provide the NYMTC additional time to review and update its TIP, it is consistent for the FHWA to amend its regulations to support the congressional action to provide relief for NYMTC.

Rulemaking Analyses and Notices

In accordance with section 553(b)(3)(B) of the Administrative Procedure Act, the FHWA believes that good cause exists to waive prior notice and opportunity for public comment as it is impracticable and contrary to the public interest. The Congress has clearly expressed its intent that the NYMTC should be afforded additional time to review and update their plan and TIP by enacting HR 3880. It is unnecessary to provide prior notice and opportunity for public comment for this regulatory change that is consistent with and implements the intent of Congress. Furthermore, prior notice and opportunity for public comment is impracticable because the current plan is set to expire on September 30, 2002, which does not provide sufficient time to obtain public comment on this action. The NYMTC occupied office space in the World Trade Towers that were destroyed in the terrorist attack of September 11, 2001, and it is impossible for the NYMTC to review and update its transportation plan by September 30, 2002. If NYMTC does not have a new plan or a waiver from the requirement to have a new plan on that date, then transportation projects may not advance. Therefore, with the imminent expiration of the current plan and the clear Congressional intent to provide a temporary waiver to the New York City metropolitan area from certain transportation conformity and metropolitan planning requirements, the FHWA believes good cause exists to waive prior notice and opportunity for comment.

For the reasons stated above, the FHWA believes good cause exits to waive prior notice and opportunity for comment. Additionally, in accordance with section 553(d)(3) of the APA, the FHWA believes that good cause exists to make this rule effective upon publication in the **Federal Register**. Without the relief granted by this action, the New York City metropolitan area would not be able to advance any transportation projects after their current plan expires on September 30, 2002, unless and until the NYMTC is able to review and update their plan or a waiver from this requirement. Since the NYMTC occupied office space in the World Trade Center that was completely destroyed on September 11, 2002, it will be impossible for the NYMTC to create a new transportation plan in that time under the current circumstances. Therefore, it is necessary to amend our regulation to provide the necessary relief contemplated by Congress as soon as possible.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies

We have determined that this rulemaking is not a significant regulatory action within the meaning of Executive Order 12866 and under Department of Transportation regulatory policies and procedures. This action is intended to reduce current regulatory burdens on the NYMTC for a temporary time period. In preparing this action, the FHWA has sought to maintain existing flexibility of operation wherever possible for States, MPOs, and other affected organizations and utilize already existing processes to accomplish any new tasks or activities.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Public Law 96–354; 5 U.S.C. 601–612), we have evaluated the effects of this rule on small entities, such as, local governments and businesses. We believe that the flexibility available to States and MPOs in responding to requirements has been maintained, if not enhanced, in this proposal. Accordingly, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This action has been reviewed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient Federalism implications on States and local governments that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. The Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178; 112 Stat. 107) and its predecessors authorize the Secretary to implement the provisions for metropolitan and statewide planning. We believe that policies in these proposed rules are consistent with the principles, criteria and requirements of the Federalism Executive Order and the TEA–21.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway planning and Construction; 20.500, Federal Transit Capital Improvement Grants, 20.505, Federal Transit Technical Studies Grants; 20.507, Federal Transit Capital and Operating Assistance Formula Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation in Federal programs and activities apply to these programs.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA)(44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations.

The reporting requirements for statewide transportation plans and programs are approved under OMB control number 2132–0529. The information collection requirements addressed under the current OMB approval number (2132–0529) impose a total burden of 241,850 hours on the planning agencies that must comply with the requirements in the existing regulation.

National Environmental Policy Act

We have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). It is our determination this action is consistent with the provisions of 23 CFR 771.117(c)(20) which deems the issuance of regulations of this nature to meet the requirements for a Categorical Exclusion.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. (2 U.S.C. 1531 *et seq.*)

The requirements of 23 U.S.C. 134 and 135 are supported by Federal funds administered by the FHWA and the FTA. There is a legislatively established local matching requirement for these funds of twenty percent of the total project cost. The FHWA and the FTA believe that the costs of complying with these requirements are predominantly covered by the funds they administer.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13211 (Energy Effects)

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that this final rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of every year. The RINs contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 450

Grant programs—transportation, Highways and roads, Mass transportation, Reporting and recordkeeping requirements.

Issued on: October 2, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, by amending part 450 as set forth below:

PART 450—PLANNING ASSISTANCE AND STANDARDS

1. The authority citation for part 450 continues to read as follows:

Authority: 23 U.S.C. 134, 135, 217(g), 315; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303–5306; 49 CFR 1.48(b) and 1.51.

2. Revise § 450.322(a) to read as follows:

§ 450.322 Metropolitan transportation planning process: Transportation plan.

(a) The metropolitan transportation planning process shall include the development of a transportation plan addressing at least a twenty-year planning horizon. The plan shall include both long-range and short-range strategies/actions that lead to the development of an integrated intermodal transportation system that facilitates the efficient movement of people and goods. The transportation plan shall be reviewed and updated at least triennially in nonattainment and maintenance areas and at least every five years in attainment areas to conform its validity and consistency with current and forecasted transportation and land use conditions and trends and to extend the forecast period, except that the transportation plan for the New York Metropolitan Transportation Council that was reviewed and updated on September 30, 1999, shall be reviewed and updated no later than September 30, 2005. The transportation plan must be approved by the MPO.

* * * * *

[FR Doc. 02–25515 Filed 10–3–02; 11:54 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–114]

RIN 2115–AA97

Security Zones; Passenger Vessels, Portland, Maine, Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing moving and fixed security zones around high capacity passenger vessels, including international ferries, located in the Portland, Maine, Captain of the Port zone. These actions are necessary to ensure public safety and prevent sabotage or terrorist acts against these vessels. Persons and vessels are prohibited from entering these security zones without permission of the Captain of the Port, Portland, Maine.

DATES: This rule is effective from September 25, 2002, until December 1, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Portland, Maine, 103 Commercial Street, Portland, Maine 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) R. F. Pigeon, Port Operations Department, Marine Safety Office Portland, Maine at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the warnings given by national security and intelligence officials that there is an

increased risk that further subversive or terrorist activity may be launched against the United States, the Homeland Security Advisory System level was upgraded to "high" and the Maritime Security (MARSEC) Level was raised to Level II indicating a heightened threat. As a result, a heightened level of security has been established around all passenger vessels in the Portland, Maine, Captain of the Port zone. These security zones are needed to protect passenger vessels, persons aboard passenger vessels, the public, waterways, ports and adjacent facilities from sabotage or other subversive acts, accidents, or other events of a similar nature taken upon passenger vessels in the Portland, Maine, Captain of the Port zone.

Passenger vessels have already begun their seasonal arrivals in the Portland, Maine, Captain of the Port zone. Any delay in the effective date of this rule, is contrary to the public interest insofar as it may render individuals and facilities within, and adjacent to, passenger vessels vulnerable to subversive activity, sabotage or terrorist attack. The measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to passenger vessels. Immediate action is required to accomplish these objectives and necessary to continue safeguarding these vessels and the surrounding area.

For the reasons stated in the paragraphs above, under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

On September 11, 2001, terrorists launched attacks on commercial and public structures (airplanes, the World Trade Center in New York and the Pentagon in Arlington, Virginia) killing large numbers of people and damaging properties of national significance. There is an increased risk that further subversive or terrorist activity may be launched against the United States based on warnings given by national security and intelligence officials.

Due to these warnings, on September 10, 2002 the Homeland Security Advisory System level was upgraded to "high" and the Maritime Security (MARSEC) Level was raised to Level II indicating a heightened threat. As a result, a heightened level of security has been established around all passenger vessels in the Portland, Maine, Captain of the Port zone. In addition, the increased tensions in the Middle East have made it prudent for select facilities and vessels to be on a higher state of alert because terrorist organizations have publicly declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

These heightened security concerns, together with the catastrophic impact that a terrorist attack against a passenger vessel would have to the public interest, make these security zones prudent on the navigable waterways of the United States. Vessels operating near passenger vessels present possible platforms from which individuals may gain unauthorized access to these vessels or launch terrorist attacks upon these vessels. As a result, the Coast Guard is taking measures to prevent vessels or persons from accessing the navigable waters close to passenger vessels in the Portland, Maine, Captain of the Port zone.

Discussion of Rule

This regulation establishes temporary security zones that will be in effect in the navigable waters within a 100-yard radius around any passenger vessel that is moored, or in the process of mooring, at any berth or anchored within the Portland, Maine, Captain of the Port zone. While underway, the security zone will be 100 yards on each side and astern of the passenger vessel and 200 yards ahead which is needed due to the passenger vessel's speed of advance through the water. To clarify which types of passenger vessels this rule applies to, we have adopted a modified version of the definition in 33 CFR 120.100 for this rule by removing the requirement for "making voyages lasting more than 24 hours" and by increasing the requirement for number of passengers from "authorized to carry more than 12 passengers for hire" to "authorized to carry more than 500 passengers for hire". This change allows for including high capacity cruise ships and international ferries under the definition while excluding smaller vessels.

These security zones are needed to protect passenger vessels, persons aboard passenger vessels, the public, waterways, ports and adjacent facilities from sabotage or other subversive acts, accidents, or other events of a similar nature taken upon passenger vessels in the Portland, Maine, Captain of the Port zone. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port or his designated representative. Vessels already moored or anchored when these security zones take effect are not required to get underway to avoid either the moving or fixed zones unless specifically ordered to do so by the Captain of the Port or his designated representative.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, state, county, municipal, or private agency to assist in the enforcement of the regulation. To the extent that each is applicable, this regulation is issued under the authority contained in 33 U.S.C. 1226 and 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; and 49 CFR 1.46.

Any violation of the security zones described herein is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $250,000), in rem liability against the offending vessel and license sanctions.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). These zones will encompass a small portion of the waterway for a limited period of time. There is ample room for vessels to navigate around the security zones and delays, if any, are expected to be minimal. Vessels and persons may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the same reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or operations for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are establishing a temporary security zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–114 to read as follows:

§ 165.T01–114 Security Zones; Passenger Vessels, Portland, Maine, Captain of the Port Zone.

(a) *Definition.* "Passenger vessel" as used in this section means a passenger vessel over 100 gross tons, authorized to carry more than 500 passengers for hire; making voyages of which any part is on the high seas; and for which passengers are embarked or disembarked in the Portland, Maine, Captain of the Port zone as defined in 33 CFR 3.05–15.

(b) *Location.* The following areas are security zones:

(1) All navigable waters within a 100-yard radius around any passenger vessel that is moored, or in the process of mooring, at any berth or anchored within the Portland, Maine, Captain of the Port zone.

(2) All navigable waters of the Portland, Maine, Captain of the Port zone 200-yards ahead, and 100-yards on each side and astern of any passenger vessel that is underway.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or movement within these zones is prohibited unless previously authorized by the Coast Guard Captain of the Port, Portland, Maine (COTP) or his designated representative. These security zones will not preclude the routine loading and unloading of passengers, vehicles or cargo; or movement of authorized employees and support personnel at any facility or aboard any passenger vessel.

(2) All persons and vessels must comply with the instructions of the COTP or the designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state and federal law enforcement vessels. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the COTP or his designated representative.

(3) No person may swim upon or below the surface of the water within the boundaries of these security zones unless previously authorized by the COTP or his designated representative.

(d) *Effective period.* This section is effective from September 25, 2002, through December 1, 2002.

Dated: September 25, 2002.

W.W. Briggs,

Acting Commander, U.S. Coast Guard Captain of the Port, Portland, Maine.

[FR Doc. 02–25405 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 187–0365a; FRL–7385–3]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This revision concerns the emission of volatile organic compounds (VOC) from wastewater systems. We are approving a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on December 6, 2002, without further notice, unless EPA receives adverse comments by November 6, 2002. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted rule and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule and TSD at the following locations:

Air and Radiation Docket and Information Center (6102T), U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., Washington DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the date that it was amended by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local Agency	Rule No.	Rule Title	Amended	Submitted
SCAQMD	1176	VOC Emissions from Wastewater Systems	09/13/96	11/26/96

On February 12, 1997, this submittal was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved into the SIP on August 25, 1994 (59 FR 43751) a version of SCAQMD Rule 1176, originally adopted on November 3, 1989.

C. What Are the Changes in the Submitted Rule?

Rule 1176 changes for refineries are as follows:

- Refineries will be required to either control with monitoring repeat-emitting drain system components (DSC) to 500 ppm VOC or install controls on all DSCs with less monitoring.
- New process drains are required to have DSC controls.
- Monitoring frequencies are decreased for low-emitting and non-emitting DSCs.

Other Rule 1176 changes for all facilities are as follows:

- Bulk loading terminals are excluded.
- Separator forebays, clarifiers, and tanks are included.
- Schematic identification is required for some facilities for certain components with an accompanying list of all DSCs.
- The 500 ppm VOC limit applies to the entire wastewater system, and no openings are allowed in manhole covers.
- A requirement for the inspector to be certified is added.
- Requirements for recordkeeping and reporting are added.
- Certain exemptions are allowed for sources that would emit little or no VOCs.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), must not interfere with applicable requirements including requirements concerning attainment (see section 110(l)), and must not relax existing requirements in effect prior to enactment of the 1990 CAA amendments (see section 193). The SCAQMD regulates an extreme ozone nonattainment area. 40 CFR 81.305. Therefore Rule 1176 must fulfill RACT requirements.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation, Cutpoints, Deficiencies, and Deviations* (the "Blue Book"), U.S. EPA, OAQPS (May 25, 1988).
- *Control of Refinery Vacuum Producing Systems, Wastewater Separators and Process Unit Turnarounds,* EPA–450/2–77–025 (October 1977).

B. Does the Rule Meet the Evaluation Criteria?

We believe the rule is consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling RACT. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by November 6, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 6, 2002. This will incorporate the rule into the federally-enforceable SIP.

III. Background Information

A. Why Was This Rule Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H)of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 30, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(242)(i)(B)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(242) * * *

(i) * * *

(B) * * *

(*2*) Rule 1176, adopted on November 3, 1989 and amended on September 13, 1996.

* * * * *

[FR Doc. 02–25299 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV 054—6022a; FRL–7381–9]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Ambient Air Quality Standard for Nitrogen Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the West Virginia State Implementation Plan (SIP). This revision establishes ambient air quality standards for nitrogen dioxide, equivalent to the national primary and secondary ambient air quality standards established by EPA. EPA is approving this revision to the SIP in accordance with the Clean Air Act.

DATES: This rule is effective on December 6, 2002, without further notice, unless EPA receives adverse written comment by November 6, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Janice Lewis, (215) 814–2185, or by e-mail at *Lewis.Janice@epa.gov*. Please note any comments on this rule must be submitted in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: On September 21, 2000, the West Virginia Division of Environmental Protection submitted a revision to its SIP to establish ambient air quality standards for nitrogen dioxide. The revision consists of the adoption of revisions to Regulation 45CSR12—Ambient Air Quality Standards for Nitrogen Dioxide.

I. Background

A. Summary of the SIP Revision

This revision restructures and reorganizes Regulation 45CSR12, governing the ambient air quality standards for nitrogen dioxide. The revision also updates reference test methods for measuring nitrogen dioxide concentrations in the ambient air.

B. EPA's Evaluation of the SIP Revision

The EPA has determined that this revision to 45CSR12—Ambient Air Quality Standards for Nitrogen Dioxide meets all federal criteria for approval.

II. Final Action

EPA is approving West Virginia's Rule 45CSR12, submitted as a SIP revision on September 21, 2000, into the West Virginia SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 6, 2002 without further notice unless EPA receives adverse comment by November 6, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule approving revisions to West Virginia's ambient air quality standards for nitrogen dioxide does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 13, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(49) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(49) Revisions to West Virginia Rule 45CSR12 submitted on September 21, 2000, by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000, from the West Virginia Division of Environmental Protection transmitting Regulation 45CSR12—Ambient Air Quality Standard for Nitrogen Dioxide.

(B) Revised Regulation 45CSR12, effective on June 1, 2000.

(ii) Additional Material—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(49)(i) of this section.

[FR Doc. 02–25294 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV048–6020a; FRL–7381–7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia, Regulation To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia State Implementation Plan (SIP). The SIP revision is a regulation to prevent and control air pollution from the operation of coal preparation plants, coal handling operations and coal refuse disposal areas in West Virginia. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on December 6, 2002 without further notice, unless EPA receives adverse written comment by November 6, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and West Virginia

Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On September 21, 2000, West Virginia submitted a formal revision to its State Implementation Plan (SIP). The SIP revision is a regulation (45CSR5) to prevent and control air pollution from the operation of coal preparation plants, coal handling operations and coal refuse disposal areas in West Virginia.

There are two revisions of 45CSR5 that bring all the of the West Virginia Office of Air Quality coal related rules into one rule. The first revisions of 45CSR5, that set standards for particulate matter weight and visible emissions from coal preparation plants and coal handling operations, went to public hearing on August 12, 1994 and became effective May 1, 1995. The rule also established monitoring, recordkeeping, and reporting requirements and requires that each owner/operator obtain an annual operating permit from the West Virginia Office of Air Quality without which the plant cannot be operated.

The second revisions are to streamline the requirements of 45CSR5 and to incorporate the requirements for coal refuse sites that went to public hearing on July 19, 1999 and became effective August 31, 2000.

Summary of SIP Revision

(A) Revisions to modify the definitions of the following: (1) Handling operation—to entail similar activities at facilities less than 200 tons of coal per day, (2) coal preparation plants—to conform to the New Source Performance Standards (NSPS) definition in Subpart Y of 40 CFR part 60, and (3) fugitive dust and fugitive dust control system—to clarify that water or chemical suppression are recognized as emission control measures.

(B) Revisions to incorporate the requirements for coal refuse sites: (1) Definitions of coal refuse, coal refuse disposal area, coal refuse pile, and operation of a coal refuse disposal area, (2) standards for coal refuse disposal areas, and (3) burning coal refuse disposal areas.

(C) Revisions to the operating permit requirements to apply only to coal preparation plants. The revised rule provides that coal preparation plants requiring a Title V operating permit would only have to obtain the Title V permit. For owners or operators of a coal preparation plant and for coal handling operations that choose a general permit under 45CSR13, would only be required to submit the required registration and obtain coverage under the general permit.

(D) Revisions to clarify thermal dryers constructed or modified after October 24, 1974 are subject to the NSPS under 40 CFR part 60.

(E) Revisions to clarify that 45CSR17 (fugitive particulate matter emission requirements) is not applicable to 45CSR5 sources.

(F) Revisions correcting Code citations and modifying definitions to conform 45CSR5 to the 1994 statutory changes which incorporated the West Virginia Office of Air Quality into the West Virginia Division of Environmental Protection, Bureau of Environment.

(G) Revisions to clarify that continuous opacity monitoring data may be used to determine opacity violations or compliance not withstanding Method 9 of 40 CFR part 60, Appendix A.

These revisions strengthen the SIP by providing control strategies of coal plants, and are consistent with the NSPS requirements. The structure of the rule is also consistent with the West Virginia organization.

II. Final Action

EPA is approving the revisions of 45CSR5, "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposable Areas," submitted by West Virginia Division of Environmental Protection on September 21, 2000. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 6, 2002 without further notice unless EPA receives adverse comment by November 6, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, to prevent and control air pollution from the operation of coal preparation plants, coal handling operations, and coal refuse disposal areas in West Virginia, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 13, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(47) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(47) Revisions toWest Virginia Regulations to prevent and control air pollution from the operation of coal preparation plants, coal handling operations, and coal refuse disposal areas, submitted on September 21, 2000 by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000 from the West Virginia Division of Environmental Protection to EPA transmitting the regulation to prevent and control air pollution from the operation of coal preparation plants, coal handling operations, and coal refuse disposal areas.

(B) Revisions to Title 45, Series 5, 45CSR5, To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas, effective August 31, 2000.

(ii) Additional Material.

(A) Letter of November 21, 2000 from the West Virginia Division of Environmental Protection to EPA transmitting materials related to revisions of 45CSR5.

(B) Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(47)(i) of this section.

[FR Doc. 02–25291 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV052–6023a; FRL–7388–9]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Ambient Air Quality Standard for Carbon Monoxide and Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the West Virginia State Implementation Plan (SIP). This revision establishes reference test methods for measuring carbon monoxide concentrations in the ambient air, equivalent to the national primary and secondary ambient air quality standards established by EPA. EPA is approving this revision to the SIP in accordance with the Clean Air Act.

DATES: This rule is effective on December 6, 2002 without further notice, unless EPA receives adverse written comment by November 6, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Janice Lewis, (215) 814–2185, or by e-mail at *Lewis.Janice@epa.gov*. Please note any comments on this rule must be submitted in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On September 21, 2000, the West Virginia Division of Environmental Protection submitted a revision to its SIP to establish reference test methods for measuring ambient air concentrations for carbon monoxide.

The revision consists of the adoption of revisions to Rule 45CSR9—Ambient Air Quality Standards for Carbon Monoxide and Ozone.

A. Summary of the SIP Revision

This revision restructures and reorganizes Regulation 45CSR9, governing the ambient air quality standards for carbon monoxide. The revision also establishes reference test methods for measuring carbon monoxide concentrations in the ambient air. The West Virginia Division of Environmental Protection has reserved sections in Regulation 45CSR9 to address ozone ambient air concentrations and reference test methods. Since the recent ligation of the Federal 8-hour ozone standard, West Virginia will be adopting the 8-hour ozone standard in the future.

B. EPA's Evaluation of the SIP Revision

The EPA has determined that this revision to 45CSR9—Ambient Air Quality Standards for Carbon Monoxide and Ozone, for the purpose of establishing reference test methods for measuring ambient air concentrations for carbon monoxide meet all Federal criteria for approval.

II. Final Action

EPA is approving West Virginia's Rule 45CSR9, submitted as a SIP revision on September 21, 2000, into the West Virginia SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 6, 2002 without further notice unless EPA receives adverse comment by November 6, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule approving revisions to West Virginia's reference test methods for measuring ambient air concentrations for carbon monoxide does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: September 24, 2002.

James M. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(50) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(50) Revision to West Virginia Rule 45CSR9 submitted on September 21, 2000, by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000, from the West Virginia Division of Environmental Protection transmitting Regulation 45CSR9—Ambient Air Quality Standard for Carbon Monoxide and Ozone.

(B) Revised Regulation 45CSR9, effective on June 1, 2000.

(ii) Additional Material—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(50)(i)of this section.

[FR Doc. 02–25283 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 207–0252; FRL–7380–8]

Revisions to the California State Implementation Plan, Antelope Valley Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing disapproval of revisions to the Antelope Valley and South Coast portions of the California State Implementation Plan (SIP). The revisions would provide local agencies broad discretion to suspend rules, regulations or orders during state or federally declared state of emergencies. EPA proposed disapproval of these revisions in the **Federal Register** on March 31, 2000. We are finalizing disapproving under authority of the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on November 6, 2002.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted rule revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 L Street, Sacramento, CA 95812

Antelope Valley Air Pollution Control District, 315 W. Pondera Street, Lancaster, California 93534

South Coast Air Quality Management District, 21865 E. Cooley Drive, Diamond Bar, CA 91765

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone (415) 947–4120.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On March 31, 2000 (65 FR 17229), EPA proposed to disapprove the following rules that were submitted for inclusion into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
AVAPCD	118	Emergencies	8/19/97	3/10/98
SCAQMD	118	Emergencies	12/7/95	5/18/98

We proposed to disapprove these rules because we determined that they did not comply with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received one comment regarding SCAQMD Rule 118, submitted via fax by Barbara Baird of SCAQMD. A signed version of this comment was subsequently submitted dated May 3, 2000, which we are treating as the official comment.

The commenter asserts that EPA must approve Rule 118 because the rule will not interfere with attainment of the National Ambient Air Quality Standards (NAAQS), reasonable further progress (RFP) towards attainment of the NAAQS or any other requirement of the Act. EPA disagrees with this assertion as follows.

1. A state of emergency could potentially last for weeks or even months. During this time (and, in theory, in perpetuity under 118(d)(2)), Rule 118 would allow suspension of any and all requirements for air pollution sources regardless of the effects on human health or the environment. We do not believe that such a broad grant of immunity is in the public interest or is consistent with the CAA. For example, the CAA prohibits SCAQMD and EPA from relaxing SIP requirements or taking actions that would interfere with attainment, RFP, or any other requirements of the Act.[1] Because Rule 118 is written very broadly, it does not ensure compliance with these CAA provisions.

2. The impacts of suspending requirements under Rule 118 could last far beyond the emergency period. For example, an air pollution source could be constructed or modified during a state of emergency without the pollution controls or public review that are normally required. After the emergency period, such a source could continue to emit air pollution at levels that might interfere with attainment, RFP, permit requirements in CAA section 173 or other requirements of the Act, and even at levels directly harmful to human health and the environment. Under Rule 118, however, the source might not be held responsible for those consequences because the permitting rules were suspended when it was constructed or modified. Because such a rule is inconsistent with the CAA and contrary to the public interest, it should not be approved into the SIP.

3. The CAA requires SIPs to contain enforceable emission limits and other control measures.[2] Rule 118 would undermine this requirement by allowing SCAQMD broad discretion to suspend enforceable requirements in the SIP without consultation or approval from EPA or the public.

4. The CAA already allows states to suspend SIP requirements during certain emergencies, but is more focused than Rule 118 and provides for federal oversight.[3] We believe it provides the flexibility needed during an emergency while ensuring adequate protection of public health.

The commenter also states that some emergency situations could justify violation of SIP rules. If such situations

[1] *See e.g.*, 42 U.S.C. 7410(i), (1).

[2] *See* 7410(a)(2)(A).

[3] *See* 7410(f) and (g).

occur. EPA believes that enforcement discretion, which can consider various factors such as applicable CAA requirements and impacts on human health and the environment, is a more appropriate mechanism for addressing them than the broad discretion to grant immunity under Rule 118.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules do not comply with relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is disapproving these rules for inclusion into the California SIP. The effect of this action is that the federally enforceable California SIP remains unchanged. The current SIP does not contain any version of AVAPCD and SCAQMD Rule 118, Emergencies.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. E.O. 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

E. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

EPA's disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Lists of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 29, 2002.

Laura Yoshi,

Deputy Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.242 is amended by adding paragraphs (a)(1)(ii) and (a)(2) to read as follows:

§ 52.242 Disapproved rules and regulations.

(a) * * *

(1) * * *

(ii) Rule 118, Emergencies, submitted on May 21, 1998.

(2) Antelope Valley Air Pollution Control District.

(i) Rule 118, Emergencies, submitted on March 10, 1998.

* * * * *

[FR Doc. 02–25282 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 272–0369a; FRL–7387–1]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Bay Area Air Quality Management District (BAAQMD) portion of the California State Implementation Plan (SIP). These revisions concern Oxides of Nitrogen (NO_X) and Carbon Monoxide (CO) emissions from boilers, steam generators, and process heaters in petroleum refineries. In accordance with the Clean Air Act as amended in 1990 (CAA or the Act), we are approving a local rule that regulates these emission sources.

DATES: This rule is effective on December 6, 2002, without further notice, unless EPA receives adverse comments by November 6, 2002. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, EPA Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local Agency	Rule No.	Rule Title	Adopted	Submitted
BAAQMD	9–10	Nitrogen Oxides and Carbon Monoxide from Boilers, Steam Generators, and Process Heaters in Petroleum Refineries.	7/17/02	8/12/02

On September 11, 2002, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

BAAQMD adopted an earlier version of this rule on January 5, 1994, and CARB submitted it to us on July 23, 1996. We published a limited approval and limited disapproval of this previous version of Rule 9–10 into the SIP on March 29, 2001.

C. What Is the Purpose of the Submitted Rule Revisions?

Rule 9–10 limits the emissions of nitrogen oxides and carbon monoxide from boilers, steam generators, and process heaters in petroleum refineries. On March 29, 2001, the EPA published a limited approval and limited disapproval of a previous version of this rule, because the rule improved the State Implementation Plan (SIP) overall, but some rule provisions failed to satisfy the requirements of section 110 of the Clean Air Act. Specifically, the district did not include adequate monitoring, source test, and recordkeeping requirements in the rule that was submitted to EPA.

On August 12, 2002, the district submitted a revised version of rule 9–10 for approval into the SIP. Rule 9–10, as revised, includes sections pertaining to monitoring, source test, and record keeping requirements to address the deficiencies identified by EPA in 2001. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating This Rule?

Generally, SIP rule must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see sections 182(a)(2)(A) and 182(f)), must not relax existing requirements approved into the SIP prior to 1990 (see section 193) and must not interfere with any applicable requirement or reasonable further progress (see section 110(l)). The BAAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 9–10 must fulfill RACT.

Guidance and policy documents that we used to help evaluate enforceability and RACT requirements consistently include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
3. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_x Supplement), 57 FR 55620, November 25, 1992.
4. Requirement for Preparation, Adoption, and Submittal of Implementation Plans, U.S. EPA, 40 CFR part 51.
5. Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, State of California Air Resources Board, July 18, 1991.

B. Does This Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations, and adequately addresses the deficiencies identified in our 2001 limited disapproval. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by November 6, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 6, 2002. This will incorporate this rule into the federally enforceable SIP and will permanently terminate all sanctions and FIP clocks associated with our March 2001 limited disapproval.

III. Background Information

Why Was This Rule Submitted?

NO_x helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. EPA has established a National Ambient Air Quality Standard (NAAQS) for ozone. Section 110(a) of the CAA requires states to submit regulations to achieve and maintain NAAQS. Table 2 lists some of the national milestones leading to the submittal of this local agency NO_x rule.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.

TABLE 2.—OZONE NONATTAINMENT MILESTONES—Continued

Date	Event
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 13, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(300) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(300) Amended regulation for the following AQMD was submitted on August 12, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area Air Quality Management District.

(*1*) Rule 9–10 adopted on January 5, 1994 and amended on July 17, 2002.

* * * * *

[FR Doc. 02–25297 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 272–0369c; FRL–7387–2]

Interim Final Determination To Stay Sanctions, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay imposition of sanctions based on a proposed approval of revisions to the Bay Area Air Quality Management District (BAAQMD) portion of the California State Implementation Plan (SIP) published elsewhere in this issue of the **Federal Register**. The revisions concern BAAQMD Rule 9–10.

DATES: This interim final determination is effective on October 7, 2002. However, comments will be accepted until November 6, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

You can inspect copies of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSD at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, EPA Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Background

On March 29, 2001 (66 FR 17078), we published a limited approval and limited disapproval of BAAQMD Rule 9–10 as adopted locally on January 5, 1994 and submitted by the State on July 23, 1996. We based our limited disapproval action on certain deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after April 30, 2001 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On July 17, 2002, BAAQMD adopted revisions to Rule 9–10 that were intended to correct the deficiencies identified in our limited disapproval action. On August 12, 2002, the State submitted these revisions to EPA. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of this submittal because we believe it corrects the deficiencies identified in our March 29, 2001 disapproval action. In the final rule section of today's **Federal Register**, we have also published a parallel direct final rule approving the revisions to BAAQMD Rule 9–10. Based on today's proposed approval and parallel direct final approval, we are taking this final rulemaking action, effective on publication, to stay imposition of sanctions that were triggered by our March 29, 2001 limited disapproval.

EPA is providing the public with an opportunity to comment on this stay of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of the revised BAAQMD Rule 9–10, we will take final action finding that the state has not corrected the original disapproval deficiencies and reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay CAA section 179 sanctions associated with BAAQMD Rule 9–10 based on our concurrent proposal to approve the State's SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action stays federal sanctions and imposes no additional requirements. Accordingly, the administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule only stays sanctions, and does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of October 7, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 7, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 13, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–25296 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA135–4101a; FRL–7389–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County's Generic VOC and NO_X RACT Regulation and Revised Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Pennsylvania State Implementation Plan (SIP) submitted by the Commonwealth of Pennsylvania on behalf of the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality (hereafter the ACHD). These revisions consist of a generic regulation which requires major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) to implement reasonably available control technology (RACT) and related changes to the definitions of the terms "major source" and "potential emissions" and "low NO_X burner with separate overfire air." This generic RACT regulation applies to major sources not otherwise subject to RACT pursuant to other ACHD regulations. These sources are located in Allegheny County. EPA is approving this revision to the SIP in accordance with the Clean Air Act (CAA).

DATES: This final rule is effective on November 21, 2002 without further notice, unless EPA receives adverse comments by November 6, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Janice M. Lewis, (215) 814–2185, at the EPA Region III address above, or via e-mail at *lewis.janice@epa.gov*. While information may be requested via e-mail, any comments must be submitted in writing to the EPA Region III address above. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On October 30, 1998, the Pennsylvania Department of Environmental Protection (PADEP), submitted on behalf of Allegheny County Health Department (ACHD) a formal revision to the State Implementation Plan (SIP) for the control of VOC and NO_X emissions from major sources. This revision included amendments to the definitions of the terms major source, potential emissions, and low NO_X burner with separate overair. This revision consists of new reasonably available control technology (RACT) regulations which would require sources that emit or have the

potential to emit 50 tons per year (tpy) or more of VOC or 100 tpy or more of NO_X in Allegheny County to comply with RACT requirements by May 31, 1995.

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), major sources of VOC & NO_X located in Allegheny County were required to implement RACT by no later than May 31, 1995. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). At the time of the SIP revision submittal, Allegheny County was classified as a moderate ozone nonattainment area. On October 19, 2001 (66 FR 53094), the Pittsburgh-Beaver Valley Ozone Area, which includes Allegheny County, was redesignated to attainment. The SIP submittal which is the subject of this rulemaking consists of Allegheny County's; Article XXI; Section 2105.06—Major Sources of NO_X and VOC Compounds and revisions to Section 2101.20 which amends definitions of the terms Major Source, Potential Emissions and Low NO_X Burner with Separate Overfire Air.

II. Summary of SIP Revisions

A. Section 2105.06—Major Sources of Nitrogen Oxides (NO_X) and Volatile Organic Compounds (VOC)

Allegheny County's Article XXI, Section 2105.06 requires major sources of VOCs and NO_X for which no applicable emission limitations have been established, to identify their emissions, propose RACT, and to complete implementation of RACT by May 31, 1995. Subsequently, PADEP will submit for ACHD each source-specific RACT determination to EPA for approval as a SIP revision.

B. Section 2105.06(d) Presumptive RACT Requirements for Certain NO_X Sources

Section 2105.06(d) provides certain major NO_X sources with an alternative to case-by-case RACT determinations. This section specifies that presumptive RACT for coal-fired combustion units with a rated heat input equal to or greater than 100 million British Thermal Units per hour (mmBTU/hr) is the installation of low NO_X burners with separate overfired air. For units with a rated heat input between 20 mmBTUs/hr and 50 mmBTUs/hr presumptive RACT is an annual adjustment or tune-up of the combustion process to include at a minimum; Inspection, adjustment, cleaning, or replacement of fuel-burning equipment, including the burners and moving parts necessary for proper operation as specified by the manufacturer; inspection of the flame pattern or characteristics and adjustments necessary to minimize total emissions of NO_X, and to the extent practicable minimize emissions of CO; and inspection of the air-to-fuel ration control system and adjustments necessary to ensure proper calibration and operation as specified by the manufacturer. For all combustion units with a rated heat input equal to or greater than 20 mmBTU/hr and less than 50 mmBTU/hr, presumptive RACT is to record each adjustment in a permanently bound log book, or other methods approved by ACHD, which contains, at a minimum: The date of the adjustment procedure, the name of the service company and technicians, the operating rate or load after adjustment, the CO and NO_X emission rates after adjustment, the excess oxygen rate after adjustment, and other information required by the applicable operating permit.

For the following source types, presumptive RACT is the installation, maintenance, and operation of the source in accordance with manufacturer's specifications: (1) Boilers and other combustion sources with individual rated gross heat inputs less than 20mmBTUs/hr of operation; (2) combustion turbines with individual heat input rates less than 25mmBTU/hr which are used for natural gas distribution; (3) internal combustion engines rated at less than 50 brake horsepower (bhp) gross which are set and maintaining 4 degree retarded timing relative to standard timing; (4) incinerators or thermal/catalytic oxidizers used primarily for air pollution control; (5) any fuel-burning equipment, gas turbine, or internal combustion engine with an annual capacity factor of less than 5 percent, or an emergency standby engine operating less than 500 hours in a consecutive 12-month period; (6) sources which have been approved as meeting the Lowest Available Emission Rate (LAER) for NO_X emissions since November 15, 1990, with federally enforceable emission limitations; and (7) sources which have been approved as meeting the Best Available Control Technology (BACT) for NO_X emissions since November 15, 1990, with federally enforceable emissions limitations, also these sources must still meet any applicable, more stringent category-wide RACT requirements.

C. Section 2105.06(e) NO_X RACT Emission Averaging General Requirements

Section 2105.06(e) permits major NO_X sources to submit a RACT proposal that includes averaging of emissions at two or more facilities provided several conditions are met and the proposal is approved by EPA as a revision to the Pennsylvania SIP for Allegheny County. Among other conditions, the averaging scheme must require emission caps and enforceable emission rates at each participating source, telemetry links between the participating sources, and an up-front agreement that a violation at one of the participating sources is considered a violations at all of the participating sources.

D. Section 2105.06(f) Presumptive RACT Requirements for Certain VOC Sources

Section 2105.06(f) provides that RACT for VOC sources is the installation, maintenance, and operation of the source in accordance with the manufacturer's specifications. VOC sources that have been approved as meeting BACT and/or LAER since November 15, 1990, must also meet more stringent category-wide RACT emission limitations.

E. Section 2105.06(g) Recordkeeping

The recordkeeping provisions apply to all VOC and NO_X sources in Allegheny County. This section clearly requires that records be kept for a period of at least 2 years and that such records must provide sufficient data and calculations to demonstrate compliance with the applicable RACT requirements. This section also requires that sources of VOC and NO_X that claim exemptions from RACT maintain records that clearly demonstrate their exempt status.

F. Section 2101.20 Definition for Major Source, Potential Emissions and Low NO_X Burner With Separate Overfire Air

1. *Major Source*—The October 30, 1996 submittal amends the definitions of the terms Major Source, Potential Emissions and Low NO_X Burner with Separate Overfire Air found in Section 2101.20. Allegheny County defines the term Major Source as any stationary source, or any group of stationary sources, that is located on one or more contiguous or adjacent properties, is under common control of the same person (or persons under common control), belongs to a single major industrial grouping, and is described as follows: For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of VOC or NO_X in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and ten (10) tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and ten (10) tpy of nitrogen oxides shall not apply with respect to any source of which the Administrator has made a finding, under Section 182 (f)(1) or (2) of the Clean Air Act, that requirements under Subsection 182(f) of the Act do not apply; for ozone transport regions established pursuant to Section 184 of the Clean Air Act, sources with the potential to emit 50 tpy or more of VOCs. The definition of a major source conforms to EPA's definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (*i.e.*, all have the same two-digit code) as described in the most recent Standard Industrial Classification Manual.

2. *Potential Emissions*—Allegheny County defines the term Potential Emissions as the maximum capability of a source to emit air contaminants, including fugitive emissions, under the physical and operational design of the source. Any physical or operational limitation on the capability to emit air contaminants, including air pollution control equipment and techniques and permit conditions limiting the operating rate, hours of operation, or fuels or raw materials used, shall be treated as part of the design of the source to the extent such limitation, or its effect on emissions, is federally enforceable under the provisions of the Clean Air Act.

3. *Low NO_X Burner with Separate Overfire Air*—Allegheny County defines this term as a burner design capable of reducing the formation of oxides of nitrogen (NO_X) emissions through substoichiometric combustion of fuel by means of a burner assembly consisting of two or more stages and the addition of secondary combustion air introduced downstream of the burner location.

III. EPA's Analysis of the SIP Revisions for Allegheny County

On October 16, 2001 (66 FR 52506), EPA fully approved the Commonwealth of Pennsylvania's Generic VOC and NO_X RACT regulations as they apply in the Pittsburgh-Beaver Valley Ozone area, including Allegheny County. All of the source specific RACT determinations for major sources of NO_X and VOC located in Allegheny County have already been issued by ACHD, submitted to EPA by PADEP, and approved by EPA as SIP revisions. In accordance with the EPA policy memorandum for "Approval Options for Generic RACT Rules Submitted to Meet the non-CTG VOC RACT Requirement and Certain NO_X RACT Requirements" dated November 7, 1996, Allegheny County's generic RACT regulation is fully approvable because all of the source-specific RACT determinations have already been submitted and approved as SIP revisions, and there are no remaining unregulated sources. EPA has also determined that Allegheny County's regulation is consistent with Pennsylvania's generic VOC and NO_X RACT regulations which were fully approved for the Pittsburgh-Beaver Valley Ozone area, including Allegheny County, on October 16, 2001 (66 FR 52506).

IV. Final Action

EPA is granting full approval of Allegheny County's Generic VOC and NO_X RACT regulations, Article XXI, Section 2105.06—Major Sources of NO_X and VOC Compounds and revisions to Section 2101.20—Definitions for the terms Major Source, Potential Emissions and Low NO_X Burner with Separate Overfire Air, as revisions to the Pennsylvania SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on November 21, 2002 without further notice unless EPA receives adverse comment by November 6, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

standards (VCS). EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule to approve and revise certain definitions ofAllegheny County's Generic VOC and NO_X RACT regulations do not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 24, 2002.

James M. Newsom,

Acting Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(157) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(157) Approval of revisions to the Allegheny County Regulations, Article XXI pertaining to Major Sources of Nitrogen Oxides and Volatile Organic Compounds and Definitions for Major Source, Potential Emissions and Low NO_X burner with separate overfire air submitted on October 30, 1998, by the Pennsylvania Department of Environmental Protection on behalf of Allegheny County Health Department:

(i) Incorporation by reference.

(A) The letter dated October 30, 1998, from the Pennsylvania Department of Environmental Protection transmitting Allegheny County's Generic VOC and NO_X RACT regulations, Appendix 33; Article XXI, Section 2105.06—Major Sources of Nitrogen Oxides and Volatile Organic Compounds and Section 2101.20—Definition for Major Source, Potential Emissions and Low NO_X Burner with Separate Overfire Air.

(B) Additions of the following Article XXI definitions and regulations, effective October 20, 1995:

(*1*) Regulation 2101.20—definitions of "major source" (introductory paragraph, paragraphs (d) and (e) and closing paragraph; only), "potential emissions" and "low NO_X burner with separate overfire air."

(*2*) Regulation 2105.06—Major Sources of Nitrogen Oxides and Volatile Organic Compounds.

(ii) Additional Material—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(157)(i) of this section.

[FR Doc. 02–25285 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0046a; FRL–7383–2]

Approval and Promulgation of Air Quality Implementation Plans; State of Montana: General Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving revisions to the Montana State Implementation Plan (SIP) submitted by the Governor of Montana on August 26, 1999. The revisions adopt Administrative Rules of Montana (ARM), Sub-Chapter 14, "Conformity of General Federal Actions," Sections 17.8.1401 and 17.8.1402, into the SIP. The rules require conformity of general Federal actions to assure that actions of federal agencies that take place in nonattainment or maintenance areas, other than transportation actions, are consistent with the goals of the Montana SIP. EPA is taking this action under section 110 and 176 of the Clean Air Act (Act).

DATES: This rule is effective on December 6, 2002, without further notice, unless EPA receives adverse comment by November 6, 2002. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices:

United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466; and,

Air and Radiation Docket and Information, Room B–108, United States Environmental Protection Agency, (Mail Code 6102T), 1301 Constitution Avenue NW, Washington, DC 20460.

Copies of the State documents relevant to this action are available for public inspection at: Montana Department of Environmental Quality, Planning, Prevention and Assistance Division, 1520 East 6th Avenue, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Jeffrey Kimes, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Telephone number: (303) 312–6445.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "our," or "us" refers to the United States Environmental Protection Agency.

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I. Background

a. What Is General Conformity?

The conformity rules assure that in air quality nonattainment or maintenance areas projected emissions stay within the emissions ceiling in the SIP. The rules for conformity of general Federal actions assure that actions of Federal agencies that take place in nonattainment or maintenance areas, other than transportation actions, are consistent with the Montana SIP. Conformity first appeared in the Act's 1977 amendments (Pub. L. 95–95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The Act's 1990 Amendments expanded the scope and content of the conformity concept by defining conformity to an implementation plan. Section 176(c) of the Act defines conformity as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards (NAAQS) and achieving expeditious attainment of such standards. Also, the Act states that no Federal activity will: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

b. Who Must Follow General Conformity?

All Federal government agencies must follow The General Conformity rules. The General Conformity rules establish emissions thresholds for requiring a conformity analysis. The Federal agency taking the action is required to perform the conformity analysis. We published the first General Conformity rule on November 30, 1993 (58 FR 63214) and it was codified at 40 CFR part 93, subpart B.

c. How Is General Conformity Different From Transportation Conformity?

Section 176(c)(A) of the Act requires us to issue criteria and procedures for determining conformity of all Federal actions to applicable SIPs. 40 CFR part 93, subpart A spells out criteria and procedures for determining conformity of all Federal actions related to transportation projects funded or approved under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). 40 CFR part 93, subpart B provides criteria and procedures for determining the conformity of all other Federal actions to applicable SIPs. Examples of Federal actions covered by this rule may include but are not limited to reuse of military bases, private construction on Federal land, granting of permits, leasing of Federal land, and construction of Federal office buildings.

d. Why Is Montana Required To Create Its Own General Conformity Rule?

The Act requires each State to develop rules to implement the General Conformity rule. (*See* 40 CFR 93.151) EPA believes that State and local agencies have the primary responsibility for achieving the clean air goals established in the Act. Therefore, each State must submit a revised SIP that includes General Conformity criteria and procedures that are consistent with General Conformity rule. These criteria require that State rules must be at least as stringent as the requirements specified in EPA's General Conformity rule. Furthermore, State rules can only be more stringent if they apply equally to Federal and non-Federal entities.

II. Approval of the States' Transportation Conformity Rules

a. What Did the State Submit?

Section 110(k) of the Act addresses our actions on submissions of revisions to a SIP. The Act requires States to observe certain procedural requirements in developing SIP revisions for submission to us. Section 110(a)(2) of the Act requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to us.

On August 26, 1999, the Governor of Montana submitted a SIP revision that adopts Administrative Rules of Montana (ARM), Sub-Chapter 14, "Conformity of General Federal Actions," Sections 17.8.1401 and 17.8.1402. The Montana Board of Environmental Review adopted this SIP revision at a public hearing on May 14, 1999 after appropriate public participation and interagency consultation and it became effective in the ARM as State law on June 4, 1999.

We have evaluated the Governor's submittal and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the Act. By operation of law under section 110(k)(1)(B) of the Act, the Governor's August 26, 1999, submittal became complete on February 26, 2000.

b. What Is EPA Approving Today and Why?

We are approving the Administrative Rules of Montana (ARM), Sub-Chapter 14, "Conformity of General Federal Actions," Sections 17.8.1401 and 17.8.1402 submitted by the Governor of Montana on August 26, 1999. The Montana Board of Environmental Review adopted this SIP revision at a public hearing on May 14, 1999 after appropriate public participation and interagency consultation and it became effective in the ARM as State law on June 4, 1999. The Montana rules are consistent with the Federal General Conformity rules.

Montana incorporated 40 CFR part 93, subpart B into the State rules. Montana modified definitions found in 40 CFR part 93, subpart B and incorporated them into the State rule. The definitions of "MPO" (Metropolitan Planning Organization) and "state air quality agency" were modified to incorporate meaning specific to Montana. Montana incorporated 40 CFR 93.153 and 93.160 with modifications to provide language consistent with a State rule rather than a Federal rule. We agree with these minor changes. It should be noted that Administrative Rules of Montana (ARM)

Section 17.8.1402, a subject of this action, references ARM Section 17.8.1302 which we did not act on in a previous **Federal Register** action (66 FR 48561, September 21, 2001). ARM 17.8.1302 includes an incorporation by reference (IBR) of 40 CFR part 93, subpart A. EPA excluded ARM Section 17.8.1302 because of the IBR. The rationale for not acting on ARM 17.8.1302 is discussed in a separate action (66 FR 48561, September 21, 2001).

III. Final Action

In this action, we are approving the adoption of ARM, Sub-Chapter 14, "Conformity of General Federal Actions," Sections 17.8.1401 and 17.8.1402 to the Montana SIP. This SIP revision was submitted by the Governor of Montana on August 26, 1999. We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 6, 2002, without further notice unless we receive adverse comments by November 6, 2002. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule, in the **Federal Register**, informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 6, 2002, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Consideration of Clean Air Act Section 110(l)

Section 110(l) of the Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable progress towards attainment of a National Ambient Air Quality Standard (NAAQS) or any other applicable requirements of the Act. This SIP revision is consistent with Federal requirements and does not interfere with any applicable requirements of the Act. Therefore, we conclude that our approval of ARM, Sub-Chapter 14, "Conformity of General Federal Actions," Sections 17.8.1401 and 17.8.1402 meets the intent of section 110(l) of the Act.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 12, 2002.

Jack McGraw,

Acting Regional Administrator, Region VIII.

Chapter I, title 40, part 52, of the Code of Federal Regulations is amended to read as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(56) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(56) On August 26, 1999, the Governor of Montana submitted Administrative Rules of Montana Sub-Chapter 14, "Conformity of General Federal Actions" that incorporates conformity of general federal actions to state or federal implementation plans, implementing 40 CFR part 93, subpart B into State regulation.

(i) Incorporation by reference.

(A) Administrative Rules of Montana 17.8.1401, and 17.8.1402 effective June 4, 1999.

[FR Doc. 02–25287 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 61

[ND–001–0005a & 0007a; FRL–7379–8]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Revisions to the Air Pollution Control Rules; Delegation of Authority for New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule and delegation of authority.

SUMMARY: EPA approves revisions to the State Implementation Plan (SIP) submitted by the Governor of North Dakota with a letter dated June 21, 2001. The revisions affect air pollution control rules regarding general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration. EPA will handle separately direct delegation requests for emission standards for hazardous air pollutants for source categories and the State's Acid Rain Program.

In addition, EPA is providing notice that on January 3, 2002, North Dakota was delegated authority to implement and enforce certain New Source Performance Standards (NSPS), as of August 1, 2000. Finally, given that on July 7, 1995 EPA delegated authority to North Dakota to implement and enforce the Clean Air Act section 112 requirements, including, among other things, the National Emission Standards for Hazardous Air Pollutants (NESHAPs), EPA is now removing the State's part 61 regulations from the federally-approved SIP.

DATES: This direct final rule is effective on December 6, 2002, without further notice, unless EPA receives adverse comment by November 6, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Mail written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202–2405. Documents relevant to this action can be perused during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202–2405. Copies of the incorporation by reference material are available at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington DC 20460. Copies of the State documents relevant to this action are available at the North Dakota Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, North Dakota, 58504–5264.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region VIII, (303) 312–6449.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

I. Background

A. Procedural Background

The Act requires States to follow certain procedures in developing implementation plans and plan revisions for submission to EPA. Sections 110(a)(2) and 110(l) of the Act provide that each implementation plan a State submits must be adopted after reasonable notice and public hearing.

We also must determine whether a submittal is complete and therefore warrants further review and action [*see* section 110(k)(1) of the Act and 57 FR 13565]. EPA's completeness criteria for SIP submittals can be found in 40 CFR part 51, appendix V. EPA attempts to determine completeness within 60 days of receiving a submission. However, the law considers a submittal complete if we don't determine completeness within six months after we receive it.

To provide for public comment, the North Dakota Department of Health (NDDH), after providing adequate notice, held a public hearing on September 28, 2000 to address the revisions to the SIP and Air Pollution Control Rules. Following the public hearing, public comment period, and legal review by the North Dakota Attorney General's Office, the North Dakota State Health Council adopted the rule revisions, which became effective on June 1, 2001.

The Governor of North Dakota submitted the SIP revisions to EPA with a letter dated June 21, 2001. We reviewed them to determine completeness under the completeness criteria in 40 CFR part 51, appendix V. We found the submittal complete and so notified the Governor in a letter dated July 26, 2001. That letter also described the next steps to be taken in our review.

B. June 21, 2001 Revisions

As noted above, we will handle separately the revisions in the June 21, 2001 submittal regarding Chapter 33–15–21 (the State's Acid Rain Program) and a direct delegation request for North Dakota Air Pollution Control Rules Chapter 33–15–22, regarding emission standards for hazardous air pollutants for source categories. The submittal also included a direct delegation request for standards of performance for new stationary sources (see below). The revisions in the June 21, 2001 submittal to be addressed in this document pertain to general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration, which involve the following chapters of the North Dakota Administrative Code (N.D.A.C.): 33–15–01 General Provisions; 33–15–05 Emissions of Particulate Matter Restricted; 33–15–14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate

(subsection specific to exclusions from Title V permit to operate requirements only); 33–15–15 Prevention of Significant Deterioration; and 33–15–17 Restriction of Fugitive Emissions.

1. Chapter 33–15–01, N.D.A.C., General Provisions

The definition for "public nuisance" was removed from this chapter because the State believes it is covered under the definition of "air pollution." In addition changes were made to clarify reporting requirements when stack testing for air contaminant emissions. The requirements are consistent with 40 CFR parts 60, 61, 63, and 75. Because these revisions are consistent with Federal requirements, they are approvable.

2. Chapter 33–15–05, N.D.A.C., Emissions of Particulate Matter Restricted

In Section 33–15–05–04, Methods of Measurement, the State deleted the F factors for various fuels and replaced them with a reference to 40 CFR part 60, Appendix A, Method 19. This revision simply incorporated reference information from Federal rules and is approvable.

3. Chapter 33–15–14, N.D.A.C., Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (New subsection entitled Source Exclusions from Title V Permit to Operate Requirements)

Subsection 33–15–14–07 was added to provide an exemption from the Title V permitting requirements for certain gasoline service stations, bulk gasoline plants, coating sources, printing, publishing and packaging operations, degreasers using volatile organic solvents, and hot mix asphalt plants. The sources that qualify for this exemption will be required to maintain certain records which demonstrate that they are minor sources and in some instances, report to the State.

This exclusionary rule creates generic potential-to-emit (PTE) limits for specific source categories, and thereby clarifies which of the sources within the specific categories are minor with respect to the Title V operating permit requirements. The rule is only intended to exclude certain sources from the requirements of Title V, but not from North Dakota's construction or minor source operating permit programs. EPA's authority for approval of exclusionary rules, generally, is Section 110 of the Clean Air Act, which allows us to approve preconstruction permit programs and rules and non-title V operating permit programs and rules. Therefore, we are approving this new exclusionary subsection, 33–15–14–07, as part of the federally-approved SIP.

4. Chapter 33–15–15, N.D.A.C., Prevention of Significant Deterioration

The definition of "significant" was updated to match the Federal definition. In addition, a provision was removed that did not allow a PSD source to consume more than one-half of the available increment in another state unless approved by the North Dakota Health Department after consultation with the other state. The removal of this provision was made to make the State rules more consistent with Federal requirements (40 CFR 51.166 and 40 CFR 52.21 do not include this requirement). Although there is no longer a consultation requirement, there are still requirements under ND's PSD program for notice to an affected state and an affected Federal Land Manager of any source which may significantly impact their land. This notification usually takes the form of a copy of the public notice, a copy of the related analyses, and a copy of the draft permit. The affected parties then have the opportunity during the public comment period to provide comments to the NDDH. Since the revisions to this chapter are consistent with Federal requirements, they are approvable.

5. Chapter 33–15–17, N.D.A.C., Restriction of Fugitive Emissions

The revisions to this chapter involved deleting a reference to nuisances and replacing it with a requirement that a source cannot cause air pollution as defined in the general provisions chapter (to be consistent with the changes made to Chapter 33–15–01, discussed above). These revisions are approvable because the State believes that nuisances are covered under its definition of "air pollution."

C. Delegation of Authority

1. NSPS

With the June 21, 2001 submittal, North Dakota requested delegation of authority for revisions to the New Source Performance Standards (NSPS), promulgated in Chapter 33–15–12, N.D.A.C. On January 3, 2002 delegation was given with the following letter:

Ref: 8P–AR

Honorable John Hoeven,
Governor of North Dakota, State Capitol, 600 E Boulevard Avenue, Bismarck, North Dakota 58505–0001.

Re: Delegation of Clean Air Act New Source Performance Standards

Dear Governor Hoeven:

In a June 21, 2001, letter from you and a June 26, 2001, letter from Francis Schwindt, North Dakota Department of Health, the State of North Dakota requested delegation of authority for revisions to the New Source Performance Standards (NSPS), promulgated in Chapter 33–15–12 of the North Dakota Administrative Code. The State's NSPS regulations incorporate by reference the Federal NSPS in 40 CFR Part 60 as in effect on August 1, 2000, with the exception of subpart Eb, which the State has not adopted. In the above-mentioned letters, the State requests authority for implementation and enforcement of the NSPS through the delegation of authority process pursuant to section 111(c) of the Clean Air Act, 42 U.S.C. 7411(c), as amended.

Subsequent to States adopting NSPS regulations, EPA delegates the authority for the implementation and enforcement of those standards, so long as the State's regulations are not less stringent than the Federal regulations. EPA has reviewed the pertinent statutes and regulations of the State of North Dakota and has determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS by the State of North Dakota. Therefore, pursuant to section 111(c) of the Clean Air Act (Act), as amended, and 40 CFR part 60, EPA hereby delegates its authority for the implementation and enforcement of one NSPS to the State of North Dakota as follows:

(A) Responsibility for all sources located, or to be located, in the State of North Dakota subject to the standards of performance for new stationary sources promulgated in 40 CFR part 60 as in effect on August 1, 2000, with the exception of subpart Eb, which the State has not adopted.

(B) Not all authorities of NSPS can be delegated to states under section 111(c) of the Act, as amended. The EPA Administrator retains authority to implement those sections of the NSPS that require: (1) Approving equivalency determinations and alternative test methods, (2) decision making to ensure national consistency, and (3) EPA rulemaking to implement. For the NSPS categories previously delegated to North Dakota, our May 28, 1998 and May 7, 1999, delegation letters list those sections which can't be delegated to the State. Those letters are enclosed for your use.

(C) As 40 CFR part 60 is updated, North Dakota should revise its regulations accordingly and in a timely manner, and submit to EPA requests for updates to its delegated authority.

This delegation is based upon and is a continuation of the conditions stated in EPA's original delegation letter of August 30, 1976, to the Honorable Arthur A. Link, then Governor of North Dakota, except that condition 5, relating to Federal facilities, has been voided by the Clean Air Act Amendments of 1977. It is also important to note that EPA retains concurrent enforcement authority, as stated in condition 2. In addition, if at any time there is a conflict between a State and a Federal NSPS regulation, the Federal regulation must be applied if it is more stringent than that of the State, as stated in condition 7. A copy of the August 30, 1976, letter was published in the notices section of the **Federal Register** on October 13, 1976 (41 FR 44884), along with the associated rulemaking notifying the public that certain reports and applications required from operators of new and modified sources shall be submitted to the State of North Dakota (41 FR 44859). Copies of the **Federal Register** notices are enclosed for your convenience.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objection from you within ten days of the date on which you receive this letter, the State of North Dakota will be deemed to have accepted all the terms of this delegation. An information notice will be published in the **Federal Register** in the near future informing the public of this delegation, in which this letter will appear in its entirety.

If you have any questions on this matter, please call me, or have your staff contact Richard Long, Director of our Air and Radiation Program, at 303–312–6005.

Sincerely yours,
Jack W. McGraw,
Acting Regional Administrator.

Enclosures.

cc: Francis Schwindt, ND Department of Health, Terry O'Clair, ND Department of Health.

2. Part 61 NESHAPs

EPA is providing notice that with the July 7, 1995 interim approval of North Dakota's Title V Operating Permit program (see 60 FR 35335), it granted delegation of authority to North Dakota to implement and enforce Clean Air Act section 112 requirements. This delegation of authority includes, among other things, the NESHAPs promulgated in 40 CFR part 61 ("part 61 NESHAPs"). The State's part 61 NESHAPs regulations are contained in Chapter 33–15–13, N.D.A.C.

With a September 10, 1997 submittal, the State revised Chapter 33–15–13 to incorporate all Federal part 61 NESHAPs (except 40 CFR part 61, subparts B, H, K, Q, R, T, and W, pertaining to radionuclides) promulgated as of October 1, 1996. However, the State's NESHAPs authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR part 61.

In addition, EPA cannot act on the State's request for delegation of authority for 40 CFR part 61, subpart I (regarding radionuclide emissions from facilities licensed by the Nuclear Regulatory Commission and other Federal facilities not covered by subpart H) because EPA rescinded subpart I (see 61 FR 68972–68981, December 30, 1996) subsequent to the State's adoption of these revisions.

Given that the State has had delegation of authority for part 61 NESHAPs for many years, EPA is removing "Emission Standards for Hazardous Air Pollutants, Chapter 33–15–13 , N.D.A.C., from the federally-approved SIP.

II. Section 110(l)

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. The North Dakota SIP revisions that are the subject of this document do not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act. The SIP revision amends the State's General Provisions and Methods of Measurement and these changes are consistent with Federal requirements and rules. The new rules that provide for source exclusions from the title V permit to operate requirements are consistent with EPA's authority to approve exclusionary rules under section 110 of the Clean Air Act and the rules do not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act because they are consistent with the April 14, 1998, EPA guidance from John Seitz, Director of the Office of Air Quality Planning and Standards, entitled "Potential to Emit (PTE) Guidance for Specific Source Categories." The update to the State's PSD rules mirror the Federal rules. Finally, the State's removal of the term "nuisance" does not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act since nuisances can still be addressed under the State's definition of "air pollution."

III. Final Action

EPA is approving North Dakota's SIP revision, as submitted by the Governor with a letter dated June 21, 2001. The revisions in the June 21, 2001 submittal which are being approved in this document involve the following chapters of the North Dakota Administrative Code: 33–15–01 General Provisions; 33–15–05 Emissions of Particulate Matter Restricted; 33–15–14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (specifically, subsection 33–15–14–07, Source Exclusions from Title V Permit to Operate Requirements); 33–15–15 Prevention of Significant Deterioration; and 33–15–17 Restriction of Fugitive Emissions. The June 21, 2001 submittal also included requests for direct delegation of Chapter 33–15–21, Acid Rain Program and Chapter 33–15–22, Emission Standards for Hazardous Air Pollutants for Source Categories, which are being handled separately.

In addition, as requested by the State with its June 21, 2001 submittal, EPA is providing notice that it granted delegation of authority to North Dakota on January 3, 2002, to implement and enforce the NSPS promulgated in 40 CFR part 60, promulgated as of August 1, 2001 (except subpart Eb, which the State has not adopted). However, the State's NSPS authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR part 60.

Finally, EPA is providing notice that with the July 7, 1995 interim approval of North Dakota's Title V Operating Permit program (*see* 60 FR 35335), it granted delegation of authority to North Dakota to implement and enforce Clean Air Act section 112 requirements. This delegation of authority includes, among other things, the NESHAPs promulgated in 40 CFR part 61 ("part 61 NESHAPs"). The State's part 61 NESHAPs regulations are contained in Chapter 33–15–13 of the North Dakota Administrative Code. With a September 10, 1997 submittal, the State revised Chapter 33–15–13 to incorporate all Federal part 61 NESHAPs (except 40 CFR part 61, subparts B, H, K, Q, R, T, and W, pertaining to radionuclides) promulgated as of October 1, 1996. However, the State's NESHAPs authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR part 61. Given that the State has had delegation of authority for part 61 NESHAPs for many years, EPA is removing Emission Standards for Hazardous Air Pollutants, Chapter 33–15–13 of the North Dakota Administrative Code, from the federally-approved SIP.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this

rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter,'Reporting and recordkeeping requirements.

40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Vinyl chloride.

Dated: September 3, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart JJ—North Dakota

2. Section 52.1820 is amended by adding paragraph (c)(32) to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(32) The Governor of North Dakota submitted revisions to the North Dakota State Implementation Plan and Air Pollution Control Rules with a letter dated June 21, 2001. The revisions address air pollution control rules regarding general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration.

(i) Incorporation by reference.

(A) Revisions to the Air Pollution Control Rules as follows: General Provisions 33–15–01–04, 33–15–01–12, and 33–15–01–15; Emissions of Particulate Matter Restricted 33–15–05–04.1; Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate 33–15–14–02.13.b.1, 33–15–14–03.1.c, and 33–15–14–07; Prevention of Significant Deterioration of Air Quality 33–15–15–01.1.hh and 33–15–15–01.2; and Restriction of Fugitive Emissions 33–15–17–01, effective June 1, 2001.

(B) Revisions to the Air Pollution Control Rules as follows: Emissions of Particulate Matter Restricted 33–15–05–03.1, repealed effective July 12, 2000.

3. A new § 52.1836 is added to read as follows:

§ 52.1836 Change to approved plan.

North Dakota Administrative Code Chapter 33–15–13, National Emission Standards for Hazardous Air Pollutants, is removed from the approved plan. This change is a result of EPA's July 7, 1995 interim approval of North Dakota's Title V Operating Permit program, in which it granted delegation of authority to North Dakota to implement and enforce Clean Air Act section 112 requirements. That delegation of authority includes, among other things, the NESHAPs promulgated in 40 CFR part 61 ("part 61 NESHAPs"). With a September 10, 1997 submittal, the State requested delegation of authority to implement and enforce the Clean Air Act part 61 NESHAPs (except subparts B, H, K, Q, R, T, and W, pertaining to radionuclides), as in effect on October 1, 1996. EPA did not act on the State's request for delegation of authority for 40 CFR part 61, subpart I (regarding radionuclide emissions from facilities licensed by the Nuclear Regulatory Commission and other Federal facilities not covered by subpart H) because EPA rescinded subpart I subsequent to the State's adoption of these revisions.

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, and 7601.

Subpart A—General Provisions

2. In § 61.04(c), the table entitled "Region VIII. Delegation Status of National Emission Standards for Hazardous Air Pollutants [1]" is amended by revising the table heading for "ND" as follows:

§ 61.04 Address.

* * * * *

(c) * * *

REGION VIII.—DELEGATION STATUS OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS [1]

Subpart	CO	MT [2]	ND	SD [2]	UT [2]	WY

* * * * *

[1] Authorities which may not be delegated include 40 CFR 61.04(b), 61.12(d)(1), 61.13(h)(1)(ii), 61.112(c), 61.164(a)(2), 61.164(a)(3), 61.172(b)(2)(ii)(B), 61.172(b)(2)(ii)(C), 61.174 (a)(2), 61.174(a)(3), 61.242–1(c)(2), 61.244, and all authorities listed as not delegable in each subpart under Delegation of Authority.

[2] Indicates approval of National Emission Standards for Hazardous Air Pollutants as part of the State Implementation Plan (SIP) with the exception of the radionuclide NESHAP Subparts B, Q, R, T, W which were approved through section 112(l) of the Clean Air Act.

* * * * *

[FR Doc. 02–25289 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2288, MB Docket No. 02–142, RM–10436]

Digital Television Broadcast Service; Galveston, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Telemundo of Galveston-Houston License Corporation, licensee of station KTMD–TV, NTSC channel 49 and permittee of DTV station KTMD–DT, DTV channel 47, Galveston, Texas, substitutes TV channel 48 for TV channel 47; and DTV channel 48c for DTV channel 47 at Galveston, Texas. *See* 67 FR 41363, June 18, 2002. TV channel 47 can be allotted to Galveston with a zero offset at coordinates 29–30–24 N. and 94–30–48 W. DTV channel 48c can be allotted to Galveston in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 29–34–15 N. and 95–30–37 W. with a power of 1000, HAAT of 599 meters and with a DTV service population of 3899 thousand. With this action, this proceeding is terminated.

DATES: Effective November 7, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–142, adopted September 16, 2002, and released September 23, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Texas, is amended by removing TV channel 48 and adding TV channel 47 at Galveston.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under Texas, is amended by removing DTV channel 47 and adding DTV channel 48c at Galveston.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–25353 Filed 10–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2366, MB Docket No. 02–132, RM–10374]

Digital Television Broadcast Service; Montgomery, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Alabama Educational Television Commission and LibCo, Inc., substitutes DTV channel *27 for DTV channel *14; and DTV channel 14 for DTV channel 57 at Montgomery, Alabama. *See* 67 FR 38924, June 6, 2002. DTV channels *27 and 14 can be allotted to Montgomery, Alabama, for stations WAIQ–DT and WSFA–DT, respectively, in compliance with the principle community coverage requirements of Section 73.625(a). DTV channel *27 can be allotted at coordinates 32–22–55 N. and 86–17–33 W. with a power of 750, HAAT of 183 meters and with a DTV service population of 522 thousand. DTV channel 14 can be allotted at coordinates 31–58–28 N. and 86–09–44 W. with a power of 600, HAAT of 530 meters and with a DTV service population of 714 thousand. With this action, this proceeding is terminated.

DATES: Effective November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–132, adopted September 23, 2002, and released September 27, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II,

445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Alabama, is amended by removing DTV channel *14 and adding DTV channel *27 at Montgomery.

3. Section 73.622(b), the Table of Digital Television Allotments under Alabama, is amended by removing DTV channel 57 and adding DTV channel 14 at Montgomery.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–25352 Filed 10–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2367, MB Docket No. 02–153, RM–1–454]

Television Broadcast Service; New Iberia, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Iberia Communications, LLC, substitutes channel 50 for channel 53–. *See* 67 FR 47757, July 22, 2002. TV channel 50 can be allotted to New Iberia, Louisiana, in compliance with the principle community coverage requirements of Section 73.610 at coordinates 29–55–12 N. and 91–46–07 W. With this action, this proceeding is terminated.

DATES: Effective November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–153, adopted September 23, 2002, and released September 27, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Louisiana is amended by removing TV channel 53 and adding TV channel 50 at New Iberia.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–25350 Filed 10–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2368, MB Docket No. 02–152, RM–10457]

Television Broadcast Service; Wiggins, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KB Prime Media LLC, substitutes channel 46– for channel 56+ at Wiggins, Mississippi. *See* 67 FR 44790, July 5, 2002. TV channel 46– can be allotted to Wiggins in compliance with the principle community coverage requirements of Section 73.610 at coordinates 30–32–32 N. and 89–10–40 W. With this action, this proceeding is terminated.

DATES: Effective November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–152, adopted September 23, 2002, and released September 27, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Mississippi, is amended by removing TV channel 56+ and adding TV channel 46– at Wiggins.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–25349 Filed 10–4–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020402077–2077–01; I.D. 032502A]

RIN 0648–AP85

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications; Pacific Whiting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency rule and extension of expiration date.

SUMMARY: This action extends an emergency rule, now in effect, that establishes the 2002 fishery specifications for Pacific whiting (whiting) in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). These specifications include the level of the acceptable biological catch (ABC), optimum yield (OY), tribal allocation, and allocations for the non-tribal commercial sectors. The intended effect of this action is to maintain allowable harvest levels of whiting based on the best available scientific information.

DATES: The expiration date of the emergency rule published on April 15, 2002 (67 FR 18117), is October 15, 2002. This action extends the emergency rule until April 15, 2003.

ADDRESSES: Copies of the environmental assessment/regulatory impact review may be obtained from the Pacific Fishery Management Council (Council) by writing to the Council at 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201, or by contacting Donald McIsaac at 503–326–6352, or may be obtained from William L. Robinson, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Becky Renko or Yvonne deReynier (Northwest Region, NMFS) 206–526–6140; or Svein Fougner (Southwest Region, NMFS) 310–980–4040.

SUPPLEMENTARY INFORMATION: Electronic Access: This rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.access.gpo.gov/su_docs/aces/aces140.html*. Background information and documents are available at the NMFS Northwest Region Web site at *http://www/nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Council's Web site at *http://www.pcouncil.org*.

Background

On April 15, 2002, NMFS published an emergency rule (67 FR 18117) establishing a whiting acceptable biological catch (ABC) based on F40% F proxy with a medium recruitment scenario. The U.S.-Canada coastwide ABC was set at 208,000 mt, with a U.S. ABC of 166,000 mt. That emergency rule also adopted a U.S.-Canada coastwide optimum yield (OY) of 162,000 mt and a U.S. OY of 129,600 mt.

Each year, the whiting OY is allocated between the tribal and commercial sectors of the fishery. The Pacific Coast Indian treaty fishing rights, described at 50 CFR 660.324, allow for the allocation of fish to the tribes through the annual specification and management process. Regulations at 50 CFR 660.323(a)(4) divide the commercial OY into separate allocations for the non-tribal catcher/processor, mothership, and shore-based sectors of the whiting fishery.

For 2002, NMFS set the tribal whiting allocation at 22,680 mt. The non-tribal commercial OY for whiting is 106,920 mt (the 129,600 mt OY minus the 22,680 mt tribal allocation). Each non-tribal sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (36,353 mt), motherships getting 24 percent (25,661 mt), and the shore-based sector getting 42 percent (44,906 mt).

Additional information concerning the 2002 whiting ABC and OY and sector allocations of whiting may be found in the April 15, 2002 (67 FR 18117), **Federal Register** document for this action. Extension of this emergency rule is authorized under section 305(c)(3)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Comments and Responses

During the comment period, NMFS received 1 letter from an association representing seafood processors and associated businesses that process, transport and sell whiting products. The comments resulted in no change to the emergency rule.

Comment 1: We request that the emergency rule be withdrawn and re-issued to establish whiting harvest levels as recommended by the Pacific Fishery Management Council.

Response: The Council's recommendation was disapproved by NMFS after considering the best available science. NMFS believes that the risk neutral medium recruitment scenario, instead of the Council's risk accepting recommendation, is supported by the best available science. With the April 15, 2002, emergency rule (67 FR 18117) extension herein, NMFS adopted a U.S. ABC of 166,000 mt and an OY of 129,600 mt, consistent with the risk neutral medium recruitment scenario.

Comment 2: The commenter requests that the treaty Indian tribal allocation of whiting be reduced to "reflect a percentage reduction equal to that imposed on non-tribal fishermen."

Response: Presumably the commenter refers to the fact that the tribal share for 2001 was 14.4 percent of the OY, while for 2002 it is 17.5 percent (and would have been 16.4 percent under the PFMC proposal rejected by NMFS).

The tribal share is determined by a "sliding scale," OY-based methodology. This methodology, which has been in use since 1999, provides for a slighter higher percentage of the OY to go to the treaty fishery at lower OY levels (to a maximum of 17.5 percent), with lower percentages to the treaty fishery at higher OY levels. The "sliding scale" methodology was used to set the tribal shares in both 2001 and 2002. For OYs under 145,000 (as in 2002), this method sets the tribal share at 17.5 percent.

The sliding scale methodology has been the subject of extensive litigation, which continues today. In *United States* v. *Washington*, the Court held that the "sliding scale" methodology is consistent with the Magnuson-Stevens Act, and is the best available scientific method to determine the appropriate allocation of whiting to the tribes. *United States* v. *Washington* 143 F.Supp.2d 1218 (W.D. Wash. 2001). This ruling was reaffirmed in July 2002. *Midwater Trawlers Cooperative* v. *Daley*, C96–1808R (W.D. Wash. 2002) (Order Granting Defendants' Motion to Supplement Record, July 17, 2002). Additional briefing will occur in this case. However, at this time NMFS remains under a Court Order in *United States* v. *Washington* to use the "sliding scale" methodology unless the Secretary of Commerce finds just cause for its alteration or abandonment, the parties agree to a permissible alternative methodology, or further order issues from the Court. As one of these events has not yet occurred, NMFS is obligated by the Court to continue to use the "sliding scale" methodology. Since the methodology already encompasses OYs at all levels, it is not appropriate to reduce the tribal share specified by the "sliding scale" methodology simply because the OY declines.

Comment 3: The **Federal Register** document lists recruitment assumptions and their probabilities as point estimates and ignores the ranges associated with these. The Council's recommended OY was within the medium range and is risk neutral in spite of NMFS' attempt to characterize it as something else.

Response: The Council's Scientific and Statistical Committee noted that the "medium" recruitment assumption with an F40% FMSY proxy was the risk neutral characterization of the incoming recruits to the fishery. NMFS believes that the Council's choice to use a 1999 year class estimate midway between the medium and high estimate did not adequately protect the whiting stock given the high variance associated with forecasting recruitment and future biomass levels.

Comment 4: The retrospective analysis which shows that past recruitment levels in previous assessments were lower than predicted has no bearing on future assessments.

Response: The primary source of uncertainty in the whiting assessment concerned estimates of the fish spawned in 1999. At the time of the 2001 survey, the fish spawned in 1999 had only partially recruited to the fishery. Therefore, recruitment level of these young fish in the near future was not well estimated by the model and resulted in uncertainty about the effect they would have on the exploitable stock biomass. The 2002 stock assessment results suggest that a lower estimate of recruitment of the 1999 year class is two to three times more likely than a higher recruitment estimate. As fish spawned in 1999 mature and more survey and fishery dependent data become available, the strength of the 1999 year class will be better understood.

Comment 5: Detailed economic information provided by the public was not reflected in the **Federal Register** document and the economic impact was downplayed by NMFS.

Response: Although it was not specifically noted in the **Federal Register** document, NMFS did review economic information provided by the public at the Council's March 2002 meeting before making a final decision. NMFS recognized and clearly stated that the reduced whiting OY was expected to have a major economic impact on harvesters and processors in the short-term. However, NMFS believes the reductions were necessary for the long-term health of the whiting fishery.

Classification

The Assistant Administrator for Fisheries, NOAA (AA,) has determined that this extension is needed to maintain the current ABC and OY for the entire year. The non-tribal catcher/processor sector's fishing activities are ongoing. Whiting is an overfished species and needs to be protected from overfishing. Maintaining the 2002 harvest levels set by the emergency rule (67 FR 18117, April 15, 2002,) will serve to protect whiting from overharvest for the remainder of 2002. Accordingly, the AA is extending the expiration date of this emergency rule until the effective date of the 2003 management measures, not to exceed 180 days.

Authority: 16 U.S.C 1801 *et seq.*

Dated: October 1, 2002

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 02–25334 Filed 10–4–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 194
Monday, October 7, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, and 70

RIN 3150–AG85

Financial Assurance Amendments for Materials Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations for financial assurance for certain materials licensees to bring the amount of financial assurance required more in line with current decommissioning costs. The objective of this proposed action is to maintain adequate financial assurance so that timely decommissioning can be carried out following shutdown of a licensed facility.

DATES: The comment period expires December 23, 2002. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Web site (*http://ruleforum.llnl.gov*). This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6203 e-mail, *cwp@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The NRC regulations requiring financial assurance for decommissioning are designed to ensure that adequate funding will be available for timely decommissioning by licensees following shutdown of normal operations. The financial assurance regulations are part of the overall NRC strategy to maintain safety and protection of the public and the environment during and after decommissioning and decontamination of nuclear facilities.

Financial assurance is composed of several parts: (1) Licensees for which financial assurance should be required must be identified; (2) the amount of financial assurance required for each licensee must be adequate to fund current decommissioning costs; and (3) appropriate financial assurance mechanisms (surety bonds, escrow accounts, parent or self-guarantee, etc.) must be required. The objective of this rulemaking is to maintain adequate financial assurance by addressing gaps in the current regulatory framework regarding (1) and (2) above.

Under current decommissioning regulations, materials licensees using substantial quantities of nuclear materials must provide financial assurance for decommissioning (most materials licensees do not need to provide financial assurance because their possession limits are below the threshold for requiring financial assurance). NRC has approximately 4900 materials licensees of which approximately 10 percent require financial assurance. The financial assurance requirements were established in 1988 as part of the decommissioning rulemaking (53 FR 24018; June 27, 1988). Revision to some of the financial assurance requirements for materials licensees are needed because there have been changes in decommissioning costs since that time. Also, experience has revealed that for certain types of licensees, such as waste brokers, special circumstances exist that require different financial assurance considerations.

Discussion

This proposed rule would maintain assurance of adequate funding for timely decommissioning. The current financial assurance regulations do not provide adequate coverage of potential decommissioning costs for certain types of materials licensees, mainly due to large increases in decommissioning costs since the financial assurance regulations were put in place. Allowing these financial assurance coverage shortfalls to remain could increase the likelihood of inadequate funding for timely decommissioning.

Inadequate/untimely funding of decommissioning could have adverse impacts on public health and safety, and protection of the environment. If a site is not decommissioned due to insufficient funds, there is an increased likelihood of contamination and/or exposure of members of the public. The changes to the regulations proposed here are focused on areas where the likelihood of inadequate funding relative to decommissioning costs is high. The proposed changes address situations where currently required amounts of financial assurance appear to be substantially less than decommissioning costs. The proposed changes would provide approximately $80 million in additional financial assurance.[1]

These proposed amendments were developed prior to recent heightened concerns about security of nuclear material. Because the objective of the

[1] Staff estimate based on numbers of licensees using each of the 3 certification amounts.

amendments is timely decommissioning of nuclear facilities with appropriate disposal of radioactive materials, these amendments should also enhance security of nuclear materials.

Failure to provide adequate financial assurance for decommissioning also has equity considerations. The potential costs to the public when it is required to cover the expense of cleanup of contaminated facilities where financial assurance is inadequate, must be considered. Equity considerations call for adequate financial assurance so that a licensee's decommissioning costs are borne by that licensee, not the Federal, State, or local government.

The NRC has completed studies of financial assurance requirements for materials licensees. The studies were carried out by ICF, Inc., a contractor with extensive experience in financial assurance. The studies, "Assessment of the Financial Assurance Requirements for Waste Broker Material Licensees," ICF, Inc., July 1999, and "Analysis of Decommissioning Certification Amounts for Materials Licensees—Parts 30, 40, and 70," ICF Consulting, December 2000, provide information that was used to develop this proposed rulemaking.[2] In addition, Pacific Northwest National Laboratory (PNNL), which has extensive experience in analyzing decommissioning costs, has completed several reports on current decommissioning costs for various types of nuclear facilities. The PNNL reports, *Revised Analysis of Decommissioning Reference Non-Fuel Cycle Facilities*, draft NUREG/CR–6477, PNNL, 1996, and *Technology, Safety, and Costs of Decommissioning a Reference Large Irradiator and Reference Sealed Sources*, NUREG/CR–6280, PNNL, January 1996, also form a basis for this proposed rule.[3]

Proposed Changes

The changes being proposed are in four areas:

(1) Large sealed source licensees—large irradiators—would no longer be able to use the $75,000 certification amount as a basis for financial assurance, and would have to base their financial assurance on a site-specific decommissioning cost estimate;

(2) All waste broker licensees would have to provide financial assurance, would not be permitted to use the certification amounts, and would have to base their financial assurance on a site-specific decommissioning cost estimate;

(3) The certification amounts for licensees would be increased by 50 percent; and

(4) Decommissioning cost estimates would have to be updated at least every 3 years.

Large Irradiators

Large irradiator licensees engage in the industrial irradiation of material primarily for purposes of sterilization (*e.g.*, food products and medical equipment). These large irradiators operate facilities that have a large number of sealed sources, with possession limits of several million curies. The NRC has approximately 10 irradiator licensees authorized for possession of 1 million curies or more. Under present financial assurance requirements, these licensees may use the $75,000 certification amount as a basis for financial assurance. Although this licensed radioactive material is all in the form of sealed sources, estimated current decommissioning costs for this type of facility, such as for source removal, shipping, and supplier handling charges, greatly exceed the $75,000 certification amount that they may use.

PNNL's study of large irradiator decommissioning costs, *Technology, Safety, and Costs of Decommissioning a Reference Large Irradiator and Reference Sealed Sources*, NUREG/CR–6280, PNNL, January 1996, provides estimates of decommissioning costs under a number of scenarios. Estimated decommissioning costs for an irradiator facility with 1 million curies of source activity are at least $128,000; for a facility with 2 million curies, estimated costs are at least $231,000. These cost estimates are for the least costly decommissioning scenarios, with all sources being returned to the supplier and no leakage of contamination.

The NRC is proposing to put an upper limit on the size of a sealed source licensee able to continue to use the $75,000 certification amount. This proposed change would require a sealed source licensee with possession limits of over 1 million curies of Co-60, the radioactive material generally used by large irradiators, to base financial assurance on a decommissioning cost estimate. This facility-specific cost estimate is likely to be higher than $75,000, and the licensee would incur higher financial assurance costs. However, the facility-specific cost estimate should provide a more accurate estimate of decommissioning costs.

Waste Brokers

Waste broker licensees handle radioactive waste associated with or generated by other licensees and non-licensed entities. There is no definition of "waste broker" in existing NRC regulations and the term is commonly used to describe several different activities. These amendments would add a definition of "waste broker" to cover licensees that accept radioactive material for the purpose of processing, compacting, repackaging, or otherwise preparing it for disposal, or for storage. The NRC has approximately 15 waste broker licensees, of which eight require financial assurance under current regulations.[4] Many waste broker licensees also conduct other types of licensed activities as part of their overall business. The NRC financial assurance regulations treat waste brokers in the same way as other materials licensees; there are no special financial assurance requirements applicable only to waste brokers.

The NRC has conducted an analysis of the adequacy of financial assurance requirements for waste brokers. The ICF report, "Assessment of the Financial Assurance Requirements for Waste Broker Material Licensees," ICF, Inc., July 1999, concludes that waste brokers engage in fundamentally different types of activities than other materials licensees, and require treatment appropriate to these activities.

From the viewpoint of financial assurance, waste broker activities are unique in that: (1) Waste brokers are likely to have radioactive wastes generated by other licensees, and the inventory of waste a broker will have onsite at any time may fluctuate considerably and be difficult to predict; and (2) waste brokers have a financial interest in maximizing the amount of radioactive waste that they handle—waste broker revenues are directly correlated to the amount of waste accepted.

The disposal costs of waste inventories are very high—much greater than when the decommissioning regulations were promulgated. The current financial assurance regulations do not consider the costs of disposing of significant volumes of waste generated outside the decommissioning process, such as inventories of brokered waste. Waste brokers may currently maintain a level of financial assurance that is inadequate for disposal of waste inventories. Charges for disposal of waste at low-level waste disposal facilities are based on the volume of waste disposed and also on the level of activity (*e.g.*, quantity of curies) of the waste. The possession limits that determine what level of financial assurance a waste broker licensee must have are based on the quantity of curies of material possessed, not volume of material possessed. A waste broker that must dispose of large volumes of relatively low activity waste would be subject to substantial waste disposal charges. That same waste broker might have an inadequate amount of financial assurance to pay these charges because the financial assurance requirements are based only on curie level.

The 1988 financial assurance regulations made no special provision for waste brokers. However, it is now clear that the activities of a waste broker licensee have very different implications for decommissioning costs than is the case for other types of materials licensees. For example, a laboratory using radioactive materials in making products will have a licensed possession limit based on the amount of radioactive materials in use at the facility. Most of the inventory of radioactive material will pass out of the licensee's possession as products are sold and shipped to users. Even in the case of bankruptcy and abrupt shutdown of operations, the product of the laboratory can most likely be sold or transferred. Decommissioning activities will consist of decontamination of the facility and some limited waste disposal. On the other hand, a waste broker having similar possession limits has limited options to reduce its inventory of radioactive material (waste) usually by disposal at a radioactive waste disposal facility. Thus, decommissioning costs can be substantially higher for a waste broker than for another type of licensee with similar possession limits.

The NRC is proposing that all waste broker licensees be required to have financial assurance, and to base financial assurance on a facility-specific decommissioning cost estimate that takes into account other factors such as actual volume of material in addition to possession limits in curies.

Certification Amounts

The amount of financial assurance that must be provided can be based on either: (1) A facility-specific decommissioning cost estimate provided by the licensee in a decommissioning funding plan;[5] or (2), one of several dollar amounts (certification amounts) specified in the regulations. The certification amounts are based on possession limits, and range from $75,000 for sealed source licensees to $750,000 for licensees possessing large quantities of unsealed material. At present, about 60 percent of materials licensees required to have financial assurance use the certification amounts. Which certification amount is required of a licensee depends on the possession limits for radioactive materials applicable to that license.

The present certification amounts are based on decommissioning cost estimates that are now approximately 15 years old. When the decommissioning rule was established, it was expected that periodic adjustments to the certification amounts would be needed as decommissioning costs changed over time. NRC has reviewed current decommissioning cost information and is proposing adjustments to the certification amounts. General inflation since 1988, as measured by the Gross Domestic Product price deflator (price index), has resulted in current prices that are approximately 40 percent higher than they were when the final decommissioning rule was published.[6] Specific information on decommissioning costs also shows a substantial increase. NRC regulations for decommissioning of nuclear power reactor licensees at 10 CFR 50.75 contain a cost adjustment factor for licensees to update the minimum amount of financial assurance required. This adjustment factor, which takes into account labor, energy, and waste disposal costs, shows a minimum increase of approximately 65 percent in reactor decommissioning costs from 1986 to 2000.[7] A major factor underlying the increase is waste disposal charges, which have gone up by at least 120 percent during this period. The increase is much greater in certain geographic areas—disposal costs vary considerably according to disposal site.[8]

A study by PNNL for NRC on costs of decommissioning for six different types of reference non-fuel cycle nuclear materials licensees concludes that decommissioning costs increased by 34–66 percent between 1986 and 1996.[9] An ICF study found that estimates of decommissioning costs for a majority of a sample of Part 30 licensees using certification amounts exceed the applicable certification amount by a substantial margin.[10]

The NRC is proposing to raise all certification amounts by 50 percent. The proposed certification amounts would be $113K for sealed source licensees, and $225K and $1,125K for licensees using unsealed sources. The revisions to the certification amounts proposed in this notice are aimed at keeping the certification amounts reasonably in accordance with current decommissioning costs for a typical licensee that has possession limits that allow it to use that particular certification amount.

The certification amounts were never intended to be an exact measure of decommissioning costs for all licensees. The universe of materials licensees required to have financial assurance is composed of very diverse types of operations. Actual decommissioning costs vary considerably, depending on extent and type of activities, and quantities and types of radionuclides in use. The NRC recognizes that the applicable certification amounts for any one particular licensee may be greater than the amount required to decommission that licensee's facility. In these cases, the NRC encourages a licensee to submit a facility specific decommissioning cost estimate as a basis for financial assurance.

The certification amounts are designed to provide qualifying licensees a method for establishing a basis for the amount of financial assurance needed without devoting the resources needed to develop detailed decommissioning cost estimates. The NRC believes that the certification amounts serve a useful purpose by allowing certain licensees using relatively small quantities of radioactive materials to establish financial assurance in a simple, cost-effective way. At issue is the assurance of timely funding of decommissioning and the cost burden on licensees of providing this assurance. In comparing the relative merits of using a facility-specific decommissioning cost estimate or a certification amount, the tradeoff

[2] These documents are available on NRC's interactive rulemaking Web site *http://ruleforum.llnl.gov*.

[3] These documents are available on NRC's interactive rulemaking Web site *http://ruleforum.llnl.gov*.

[4] "Assessment of the Financial Assurance Requirements for Waste Broker Material Licensees," ICF Consulting, 1999, p. 6.

[5] For some types of licensees using very large amounts of unsealed radioactive material, a facility-specific cost estimate must be used.

[6] National Income and Product Accounts Tables, Bureau of Economic Analysis, U.S. Department of Commerce.

[7] *Report on Waste Burial Charges*, NUREG–1307, Revision 9, U.S. Nuclear Regulatory Commission, 2000, p.6. Copies of NUREG–1307, Revision 9 are available for inspection or copying for a fee from the NRC Public Document Room at O–1F23, 11555 Rockville Pike, Rockville, MD. Copies may be purchased at current rates from the U.S. Government Printing Office, P.O. Box 370892, Washington, DC 20402–9328 (telephone (202)512–2249); or from the National Technical Information Service by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

[8] NUREG–1307, Revision 9, p. 6.

[9] "*Revised Analysis of Decommissioning Reference Non-Fuel Cycle Facilities*, draft NUREG/CR–6477, Pacific Northwest National Laboratories, 1996, p. iv.

[10] "Analysis of Decommissioning Certification Amounts for Materials Licensees (Parts 30, 40, and 70)," ICF Consulting, 2000, p. 36.

involved is the benefit of having the amount of financial assurance required more closely track actual decommissioning costs against the additional expense of developing a decommissioning cost estimate. The NRC would also require more resources for review of a financial assurance submission based on a decommissioning cost estimate than for review of a submission based on a certification amount.

Requirement for Updating Decommissioning Cost Estimates

The existing financial assurance regulations do not contain a specific requirement for updating cost estimates in decommissioning funding plans after a certain number of years. Existing regulatory language only refers to "adjusting cost estimates and associated funding levels periodically over the life of the facility." The NRC believes that a more specific requirement is warranted and is proposing to require updated decommissioning cost estimates at least every 3 years. Decommissioning costs, especially waste disposal costs, can change significantly over a relatively short time period. For example, the decommissioning cost estimate for a large materials licensee increased from approximately $40 million in 2001 to over $67 million in 2002. Even requiring updates at least every 3 years would not completely address this problem. However, by requiring an update of decommissioning cost estimates at least every 3 years, the NRC is attempting to prevent a large gap between actual decommissioning costs and licensee decommissioning cost estimates from developing. This proposed change is intended to assure adequate financial coverage of actual decommissioning costs.

Cost Impacts on Licensees

The proposed requirements would have significant cost impacts for large irradiators, waste brokers, and licensees that use the certification amounts. The NRC has only a small number of large irradiators and waste brokers, but approximately 300 NRC materials licensees use the certification amounts. The NRC estimates that additional annual costs of providing financial assurance for all affected licensees would be approximately $1.2 million. Most of this would be attributable to the increase in the certification amounts. In addition, one-time costs of approximately $60K–$250K would result from additional licensees having to prepare decommissioning cost estimates. Also, licensees that base financial assurance on a decommissioning cost estimate would incur the additional costs of having to prepare more frequent decommissioning cost updates to comply with the proposed requirement for updated cost estimates every 3 years. More detailed information on cost impacts is contained in the Regulatory Analysis cited in this notice. The NRC seeks comments from stakeholders on its analysis of the estimated benefits and costs for each class of licensee.

As stated previously, the benefit of the proposed rulemaking is the assurance of adequate funding for timely decommissioning. Updates are needed in the current financial assurance regulations that would decrease the likelihood of inadequate funding for timely decommissioning. The effect of inadequate/untimely funding of decommissioning may have adverse impacts on public health and safety. If a site is not decommissioned due to insufficient funds, there is an increased likelihood of contamination and/or exposure of members of the public. In addition, adequate financial assurance would prevent situations where Federal, State, or local governments bear the cost of decommissioning, rather than site operators. This proposed action would require licensees to provide an additional approximately $80 million in financial assurance coverage.

Implementation

The NRC plans to implement these requirements, if finalized, in a way that minimizes the burden on licensees and regulators. Licensees would be given a reasonable period of time to submit new decommissioning cost estimates and to obtain any additional financial assurance that may be required. The NRC is considering establishing different effective dates for revised financial assurance requirements, depending on the type of licensee, so that new financial assurance submittals would not all be filed at one time. For example, licensees currently using the $750K certification amount would be required to obtain additional financial assurance to comply with the proposed $1,125 certification amount within 12 months of the effective date of a final rule. Licensees currently using the $75K or $150K certification amounts would be required to obtain additional financial assurance to comply with the proposed $113K or $225K certification amounts within 18 months of the effective date of a final rule. In either case, these licensees could choose the option of basing financial assurance on a decommissioning cost estimate.

Licensees that would no longer be able to use the certification amounts, such as large irradiators and waste brokers, would be allowed up to 24 months to submit a decommissioning cost estimate. The NRC encourages public comments on implementation issues and concerns.

Discussion of Proposed Amendments by Section

Section 30.4 Definitions

A definition of the term "waste broker" is added.

Section 30.35 Financial Assurance and Recordkeeping for Decommissioning

Paragraph (a) is amended to require licensees possessing large numbers of sealed sources to base financial assurance on a decommissioning funding plan. Amended § 30.35(c)(2) revises the certification amount. A new § 30.35(c)(5) would require waste broker licensees to base financial assurance on a site-specific decommissioning cost estimate. Amended § 30.35(d) would increase the certification amounts by 50 percent—proposed new certification amounts would be $113K, $225K, and $1,125K. Amended § 30.35(e) would require that decommissioning funding plans be updated at least every 3 years.

10 CFR 40.36 Financial Assurance and Recordkeeping

Amended § 40.36(b)(2) would increase the applicable certification amount by 50 percent. Amended § 40.36(c)(2) revises the certification amount. Amended § 40.36(d) would require that decommissioning funding plans be updated at least every 3 years.

10 CFR 70.25 Financial Assurance and Recordkeeping for Decommissioning

Amended § 70.25(c)(2) revises the certification amount. Amended § 70.25(d) would increase the applicable certification amount by 50 percent. Revised § 70.25(e) would require that decommissioning funding plans be updated at least every 3 years.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" that became effective on September 3, 1997 (62 FR 46517), NRC program elements (including regulations) are placed into four compatibility categories. In addition, NRC program elements also can be identified as having particular health and safety significance or as being reserved solely to the NRC. The compatibility categories of the financial assurance regulations are not being changed in the proposed rulemaking.

The sections of 10 CFR parts 30, 40, and 70 dealing with financial assurance that are being changed and their respective compatibility categories are as follows:

Section 30.35 Financial Assurance and Recordkeeping for Decommissioning

Compatibility category D, except D/Health and Safety—paragraphs (a), (b), (d), and (g).

States are given flexibility to allow different dollar amounts based upon jurisdiction and local conditions. The Health and Safety designation for paragraph (g) is warranted because of the requirement for transfer of certain records (*e.g.*, spills or spread of contamination) important for decommissioning to a subsequent licensee at the same facility.

Section 40.36 Financial Assurance and Recordkeeping for Decommissioning

Compatibility category D—paragraphs (c) and (e). Category D/Health and Safety—paragraphs (a), (b), (d), and (f).

States have the flexibility to specify different dollar amounts based on jurisdiction and local conditions. The Health and Safety designation for paragraph (f) is warranted because of the requirement for transfer of certain records (*e.g.*, spills or spread of contamination) important for decommissioning to a subsequent licensee at the same facility.

Section 70.25 Financial Assurance and Recordkeeping for Decommissioning

Compatibility category D except (a) is NRC, and D/Health and Safety—paragraphs (b), (d), and (g).

States have the flexibility to specify different dollar amounts based on jurisdiction and local conditions. Paragraph (a) addresses areas reserved to the NRC because it concerns uranium enrichment facilities and special nuclear materials in quantities sufficient to form a critical mass.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the Government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would make revisions to certain financial assurance requirements for materials licensees. Financial assurance requirements are not standards that have been established by any voluntary consensus organizations.

Environmental Assessment and Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, not to prepare an environmental impact statement for this proposed rule because the Commission has concluded on the basis of an environmental assessment that this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment. These proposed amendments would revise financial assurance requirements for certain materials licensees. The amendments would not lead to any increase in the effect on the environment of the decommissioning activities considered in the final rule published on June 27, 1988 (53 FR 24018), as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG–0586, August 1988).[11] Actions conducted under this rule would not introduce any impacts on the environment not previously considered by the NRC.

The determination of this environmental assessment is that there will be no significant adverse impact to the quality of the human environment from this action. This action should provide a positive impact by providing additional assurance of timely decommissioning. However, the general public should note that the NRC welcomes public participation. Comments on any aspect of the Environmental Assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of this notice of proposed rulemaking, which includes the environmental assessment, to every State Liaison Officer and requested their comments. It may be examined at the NRC Public Document Room, O–1F23, 11555 Rockville Pike, Rockville, MD. Single copies are available from Clark Prichard, telephone (301) 415–6203, e-mail, *cwp@nrc.gov*, of the Office of Nuclear Material Safety and Safeguards.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements contained in 10 CFR parts 30, 40, and 70 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collection requirements have been submitted to the Office of Management and Budget for review and approval. Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0009, –0017, and –0020.

The burden to the public for the information collections contained in 10 CFR part 30 is estimated to average 10.4 hours per response, the burden for the information collections contained in 10 CFR part 40 is estimated to average 7.3 hours per response, and the burden for the information collections contained in 10 CFR part 70 is estimated to average 7.5 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet

[11] Copies of NUREG–0586 are available for inspection or copying for a fee from the NRC Public Document Room at O–1F23, 11555 Rockville Pike, Rockville, MD. Copies may be purchased at current rates from the U.S. Government Printing Office, P.O. Box 370892, Washington, DC 20402–9328 (telephone (202) 512–2249); or from the National Technical Information Service by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

electronic mail to *infocollects@nrc.gov;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0017, –0020, and –0009), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by November 6, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading. The analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the regulatory analysis are available from Clark Prichard, telephone (301) 415–6203, e-mail, cwp@nrc.gov of the Office of Nuclear Material Safety and Safeguards.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. Some licensees affected by this proposed action may fall within the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121. However, while the proposed rule would change the financial assurance requirements for these licensees, a licensee may base its financial assurance on a facility-specific decommissioning cost estimate. No licensee would be required to provide financial assurance in excess of what is needed to cover decommissioning costs. Increases in financial assurance amounts required are only the amounts necessary to maintain adequate financial assurance to cover increased decommissioning costs. The regulatory analysis cited for this proposed action contains estimates of cost impacts on different types of licensees.

The NRC is seeking public comment on the potential impact of the proposed rule on small entities. The NRC particularly desires comment from small entities (*i.e.*, small businesses, small organizations, and small jurisdictions under the Regulatory Flexibility Act) as to how the proposed regulations will affect them and how the regulations may be tiered or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety. Those small entities that offer comments on how the regulations could be modified should specifically discuss—

(a) The size of their business and how the proposed regulations would result in a significant economic burden upon them as compared to large organizations in the same business community.

(b) How the proposed regulations could be modified to take into account their differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the commenter.

(d) How the proposed regulations, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individuals or groups; and

(e) How the proposed regulations, as modified, would still adequately protect the public health and safety.

The comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Backfit Analysis

There are no backfit requirements in 10 CFR Parts 30 and 40, and, in accordance with the effective date note regarding implementation of § 70.76, the provisions of 10 CFR 70.76 on backfitting have not yet gone into effect. Therefore, a backfit analysis is not required. However, the burdens and the benefits associated with this proposed rule are addressed in this notice and in the Regulatory Analysis.

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR parts 30, 40, and 70.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec.184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.4, a definition is added in alphabetical order to read as follows:

§ 30.4 Definitions.

* * * * *

Waste broker means any licensee that collects or accepts radioactive material from other entities for the purpose of processing, compacting, repackaging, or otherwise preparing it for disposal, or for storage.

* * * * *

3. In § 30.35, paragraphs (a), (c)(2), (d), and (e) are revised and a new paragraph (c)(5) is added to read as follows:

§ 30.35 Financial assurance and recordkeeping for decommissioning.

(a)(1) Each applicant for a specific license authorizing possession and use of unsealed byproduct material of half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in appendix B to part 30 shall submit a decommissioning funding plan as described in paragraph (e) of this section. The decommissioning funding plan must also be submitted when a combination of isotopes is involved if R divided by 10^5 is greater than 1 (unity rule), where R is defined here as the sum of the ratios of the quantity of each isotope to the applicable value in appendix B to part 30.

(2) Each holder of, or applicant for, any specific license authorizing possession and use of sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities set forth in appendix B to part 30 (or when a combination of isotopes is involved if R, as defined in § 30.35(a)(1), divided by 10^{12} is greater than 1), shall submit a decommissioning funding plan as described in paragraph (e) of this section.

* * * * *

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit a decommissioning funding plan as described in paragraph (e) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $1,125,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

* * * * *

(5) Waste brokers, *i.e.*, each applicant or holder of a specific license that collects or accepts radioactive material from other entities for the purpose of processing, compaction, repackaging, or otherwise preparing it for disposal, or for storage, must provide financial assurance in an amount based on a decommissioning funding plan as described in paragraph (e) of this section. The decommissioning funding plan must include the cost of disposal of the maximum amount (curies) of radioactive material permitted by license, and the cost of disposal of the maximum quantity, by volume, of radioactive material present at the licensee's facility at any time, in addition to the cost to remediate the licensee's site to meet the license termination criteria of 10 CFR part 20.

(d) Table of required amounts of financial assurance for decommissioning by quantity of material. Licensees having possession limits exceeding the upper bounds of this table must base financial assurance on a decommissioning funding plan.

greater than 10^4 but less than or equal to 10^5 times the applicable quantities of appendix B to part 30 in unsealed form. (For a combination of isotopes, if R, as defined in § 30.35(a)(1), divided by 104 is greater than 1 but R divided by 10^5 is less than or equal to 1)	$1,125,000
greater than 10^3 but less than or equal to 10^4 times the applicable quantities of appendix B to part 30 in unsealed form. (For a combination of isotopes, if R, as defined in § 30.35(a)(1), divided by 10^3 is greater than 1 but R divided by 10^4 is less than or equal to 1)	$225,000
greater than 10^{10} but less than or equal to 10^{12} times the applicable quantities of appendix B to part 30 in sealed sources or plated foils. (For a combination of isotopes, if R, as defined in § 30.35(a)(1), divided by 10^{10} is greater than 1, but R divided by 10^{12} is less than or equal to 1)	$113,000

(e) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (f) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates must be adjusted at intervals not to exceed three years. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

4. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2),83, 84, Pub. L. 95–604, 92Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094,2095, 2111, 2113,'2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

5. In § 40.36, paragraphs (b)(2), (c)(2), and (d) are revised to read as follows:

§ 40.36 Financial assurance and recordkeeping for decommissioning.

* * * * *

(b) * * *

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount of $225,000 using one of the methods described in paragraph (e) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section must be submitted to NRC prior to receipt of licensed material. If the applicant does not defer execution of the financial instrument , the applicant shall submit to NRC, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section.

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit a decommissioning funding plan as described in paragraph (d) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $1,125,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

* * * * *

(d) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of

the method of assuring funds for decommissioning from paragraph (e) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates must be adjusted at intervals not to exceed three years. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

6. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

7. In § 70.25, paragraphs (c)(2), (d), and (e) are revised to read as follows:

§ 70.25 Financial assurance and recordkeeping for decommissioning.

* * * * *

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit a decommissioning funding plan as described in paragraph (e) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $1,125,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

* * * * *

(d) Table of required amounts of financial assurance for decommissioning by quantity of material. Licensees having possession limits exceeding the upper bounds of this table must base financial assurance on a decommissioning funding plan.

greater than 10^4 but less than or equal to 10^5 times the applicable quantities of appendix B to part 30. (For a combination of isotopes, if R, as defined in § 70.25(a), divided by 10^4 is greater than 1 but R divided by 10^5 is less than or equal to 1.)	$1,125,000
greater than 10^3 but less than or equal to 10^4 times the applicable quantities of appendix B to part 30. (For a combination of isotopes, if R, as defined in § 70.25(a), divided by 10^3 is greater than 1 but R divided by 10^4 is less than or equal to 1.)	$225,000

(e) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (f) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates must be adjusted at intervals not to exceed three years. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section.

* * * * *

Dated at Rockville, Maryland, this 27th day of September, 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–25243 Filed 10–4–02; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2002–17]

Contribution Limitations and Prohibitions

AGENCY: Federal Election Commission.

ACTION: Cancellation of public hearing.

SUMMARY: On August 22, 2002, the Federal Election Commission published proposed changes to its rules relating to contribution limitations and prohibitions under the Federal Election Campaign Act of 1971, as amended. 67 FR 54366 (August 22, 2002). The proposed rules implement provisions of the Bipartisan Campaign Reform Act of 2002. The Notice of Proposed Rulemaking stated that the Commission would hold a public hearing on the proposed rules on October 3, 2002, if the Commission received a sufficient number of requests to testify by September 13, 2002. Although the Commission received a small number of requests to testify, it has decided not to hold public hearings on the proposed rules. Therefore, the Commission is canceling the public hearing.

FOR FURTHER INFORMATION CONTACT: Ms. Mai Dinh, Acting Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

Dated: October 1, 2002.

Karl J. Sandstrom,

Vice Chairman, Federal Election Commission.

[FR Doc. 02–25400 Filed 10–4–02; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AAL–7]

Proposed Establishment of Class E Airspace; Wasilla, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Wasilla, AK. A Standard Instrument Approach Procedure (SIAP) is being established for the Wasilla Airport. There is no existing Class E airspace associated with the Wasilla Airport. Adoption of this proposal would result in the addition of Class E airspace extending upward from 700 feet above the surface at Wasilla, AK.

DATES: Comments must be received on or before November 21, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 02–AAL–7, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.CTR.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–AAL–7." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register**'s web page for access to recently published rulemaking documents at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

Any person may obtain a copy of this NPRM by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by adding Class E airspace at Wasilla, AK. The intended effect of this proposal is to establish that Class E controlled airspace, from 700 feet above the surface, needed to enable IFR operations at Wasilla, AK, to be contained within controlled airspace.

The FAA Instrument Flight Procedures Production and Maintenance Branch (AVN–130) has developed a new SIAP for the Wasilla Airport. The proposed approach from AVN–130 is designated the Area Navigation (Goblal Positioning System) (RNAV GPS) Runway 3, original. It allows Category A aircraft (aircraft approach speed less than 91 knots) and Category B aircraft (aircraft approach speed of 91 knots or more but less than 121 knots) to descend under instrument flight rules (IFR) down to approach minimums of 500 feet above ground level with visibility as low as 1 mile. This SIAP proposal, because of the low approach minimums, would necessitate the establishment of controlled airspace down to the surface, *i.e.*, a surface area, due to the high density of traffic operating to and from the many public and private use airports in close proximity to the Wasilla Airport. A surface area surrounding the Wasilla Airport would require all VFR pilots operating within that surface area to comply with higher visibility and cloud clearance minimums, than exist with the current Class G airspace, and to acquire a Special Visual Flight Rules (SVFR) clearance when the weather is below basic VFR minimums (1,000 ft. ceiling and 3 miles visibility).

It was decided by the FAA Alaskan Region, contrary to the AVN–130 proposal, to propose a slightly different SIAP, which would set the approach minimums for the new RNAV (GPS) Runway 3 SIAP at 1,000 feet above ground level with a visibility requirement of 1¼ miles for Category A aircraft and 1½ miles for Category B aircraft. This proposal would ensure that aircraft executing the new RNAV (GPS) Runway 3 approach remain within controlled airspace while executing this SIAP in IFR conditions until 1,000 feet above the surface, at which time they would proceed visually to the airport. This action would not require establishment of a surface area at this time. Therefore, if adopted, this proposal would establish controlled airspace upward from 700 feet above the surface to allow aircraft executing the SIAP to descend to approach minimums (1,000 ft. altitude and 1¼ or 1½ miles visibility) while remaining within controlled airspace.

New airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Wasilla Airport, excluding that airspace from 700 feet above the surface already established for the Big Lake Airport, would be created by this action. That airspace extending upward from 1,200 feet above the surface will remain the same if this action is taken.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Wasilla, AK [New]

Wasilla Airport, AK
(Lat. 61°34'08" N, long. 149°32'25" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Wasilla Airport excluding Big Lake Class E Airspace.

* * * * *

Issued in Anchorage, AK, on September 24, 2002.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–25311 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–23]

Proposed Establishment of Class E5 Airspace; Tazwell, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace at Tazwell, TN. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for New Tazwell Municipal Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before November 6, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–23, Manager, Airspace Branch, ASO–520, PO Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–ASO–23." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, PO Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Tazwell, TN. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows: Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO TN E5 Tazwell, TN [NEW]

New Tazwell Municipal Aairport, TN
Point in Space Coordinates
(Lat. 36°24'47" long. 83°30'00"

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 36°24'47" long. 83°30'00"W) serving New Tazwell Airport.

* * * * *

Issued in College Park, Georgia, September 27, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–25316 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–S–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–22]

Proposed Amendment of Class E5 Airspace; Rockwood, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E5 airspace at Rockwood, TN. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Harriman City Hospital, Harriman, TN. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before November 6, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–22, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–ASO–22." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (MPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E5 airspace at Rockwood, TN. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows.

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth

* * * * *

ASO TN E5 Rockwood, TN [Revised]

Rockwood Municipal Airport, TN
(Lat. 35°55'20"N, long. 84°41'23"W)
Harriman City Hospital
Point In Space Coordinates
(Lat. 35°56'36"N, long. 84°30'18"W)

That airspace extending upward from 700 feet or more above the surface within a 9.5-mile radius of Rockwood Municipal Airport and within a 6-mile radius of the point in space (lat. 35°56'36" N, long. 84°30'18"W) serving Harriman City Hospital; excluding that airspace within the Crossville, TN, Class E airspace area.

* * * * *

Issued in College Park, Georgia, September 27, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–25315 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–21]

Proposed Establishment of Class E5 Airspace; Newport, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace at Newport, TN. An Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Cocke County Baptist Hospital, Newport, TN. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before November 6, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–21, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for the Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.
Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–ASO–21." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Newport, TN. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO TN E5 Newport, TN [NEW]

Cocke County Baptist Hospital, TN
Point in Space Coordinates
(Lat. 36°00'13" N long. 83°10'53" W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 36°00'13" N long. 83°10'53" W) serving Cocke County Baptist Hospital; excluding that airspace within the Knoxville, TN, and the Morristown, TN Class E airspace areas.

* * * * *

Issued in College Park, Georgia, on September 27, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–25314 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–20]

Proposed Establishment of Class E5 Airspace; Middlesboro, KY

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace at Middlesboro, KY. An Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Middlesboro—Bell County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before November 6, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–20, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for the Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.
Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made "Comments to Airspace Docket No. 02–ASO–20." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for the Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Middlesboro, KY. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend—14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation of part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASO KY E5 Middlesboro, KY [NEW]

Middlesboro—Bell County Airport, KY
Point in Space Coordinates
(Lat. 36°36′37″ long. 83°43′32″)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 36°36′37″ long. 83°43′32″ W) serving Middlesboro—Bell County Airport.

* * * * *

Issued in College Park, Georgia, on September 27, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–25313 Filed 10–04–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–19]

Proposed Amendment of Class E5 Airspace; Augusta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E5 airspace at Augusta, GA. A Non-Directional Beacon (NDB) Runway (RWY) 17 Standard Instrument Approach Procedure (SIAP) has been developed for Millen Airport, Millen, GA. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and other Instrument Flight Rules (IFR) operations at Millen Airport. The operating status of the airport would change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before November 6, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–19, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–ASO–19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E5 airspace at Augusta, GA. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO GA E5 Augusta, GA [REVISED]

Augusta, Bush Field, GA
(Lat. 33°22′12″N, long. 81°57′52″W)
Bushe NDB
(Lat. 33°17′13″N, long. 81°56′49″W)
Daniel Field
(Lat. 33°27′59″N, long. 82°02′21″W)
Burke County Airport
(Lat. 33°02′28″N, long. 82°00′14″W)
Burke County NDB
(Lat. 33°02′33″N, long. 82°00′17″W)
Millen Airport
(Lat. 32°53′37″N, long. 81°57′55″W)
Millen NDB
(Lat. 32°53′41″N, long. 81°58′01″W)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Bush Field and within 8 miles west and 4 miles east of the Augusta ILS localizer south course extending from the 8.2-mile radius to 16 miles south of the Bushe NDB, and within a 6.3-mile radius of Daniel Field, and within a 6.2-mile radius of Burke County Airport and within 3.5 miles each side of the 243° bearing from the Burke County NDB extending from the 6.2-mile radius to 7 miles southwest of the NDB, and within a 6.4-mile radius of Millen Airport and within 4 miles east and 8 miles west of the 357° bearing from the Millen NDB extending from the 6.4-mile radius to 16 miles north of the airport.

* * * * *

Issued in College Park, Georgia, on September 27, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–25312 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

[Docket No. FHWA–2002–12229]

RIN 1076–AE17

Indian Reservation Roads Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Bureau of Indian Affairs (BIA) has been conducting information and education meetings with the public as noticed in the **Federal Register** on August 7, 2002 (67 FR 51328). The document of August 7, 2002, noted that all comments were due on or before October 7, 2002. This document extends that comment period to November 7, 2002.

DATES: All comments must be received by November 7, 2002.

ADDRESSES: Mail or hand deliver written comments to the docket number appearing at the top of this document to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001 or submit electronically at *http://dms.dot.gov/submit*. All comments should include the docket number appearing in the heading of this document. All comments received will be available for examination and copying at the Dockets Management Facility between 9 a.m. , and 5 p.m., ET, Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard, or you may print the acknowledgment page that appears after comments electronically.

FOR FURTHER INFORMATION CONTACT: LeRoy Gishi, Chief, Division of Transportation, Bureau of Indian Affairs, 1849 C Street, NW., MS 4058 MIB, Washington, DC 20240, (202) 208–4359 between 8 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The purpose of the information and educational meetings was to involve affected and interested parties in the administration of the Indian Reservation Roads Program. There has been a series of 12 information and education meetings throughout the country where public participation, in the form of questions and requests for clarification of the proposed rulemaking, was encouraged. Because of the overwhelming public response to the proposed rulemaking, the BIA believes it prudent to extend the comment period to November 7, 2002. This extension will facilitate the maximum direct participation of all interested parties in this important bureau process.

Dated: October 1, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–25433 Filed 10–4–02; 8:45 am]

BILLING CODE 4310–LY–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124667–02]

RIN 1545–BA78

Disclosure of Relative Values of Optional Forms of Benefit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would consolidate the content requirements applicable to explanations of qualified joint and survivor annuities and qualified preretirement survivor annuities payable under certain retirement plans, and would specify requirements for disclosing the relative value of optional forms of benefit that are payable from certain retirement plans in lieu of a qualified joint and survivor annuity. These regulations would affect retirement plan sponsors and administrators, and participants in and beneficiaries of retirement plans. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments, requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for January 14, 2003, at 10 a.m., must be received by January 2, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–124667–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:ITA:RU (REG–124667–02), room 5226, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet

by submitting comments directly to the IRS Internet site at: *www.irs.gov/regs*. The public hearing will be held in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Linda S. F. Marshall, 202–622–6090; concerning submissions and the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224. Comments on the collections of information should be received by December 6, 2002. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in this proposed regulation are in § 1.417(a)(3)–1. This information is required by the IRS to comply with the requirements of section 417(a)(3) regarding explanations that must be provided to participants in a qualified plan prior to a waiver of a qualified joint and survivor annuity (QJSA) or a qualified preretirement survivor annuity (QPSA). This information will be used by participants and spouses of participants to determine whether to waive a QJSA or QPSA, and by the IRS to confirm that the plan complies with applicable qualification requirements to avoid adverse tax consequences. The collections of information are mandatory. The respondents are nonprofit institutions.

Estimated total annual reporting burden: 375,000 hours.

The estimated annual burden per respondent varies from .01 to .99 hours, depending on individual circumstances, with an estimated average of .5 hours.

Estimated number of respondents: 750,000.

The estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to 26 CFR part 1 under section 417(a)(3) of the Internal Revenue Code of 1986 (Code).

A qualified retirement plan to which section 401(a)(11) applies must pay a vested participant's retirement benefit under the plan in the form of a qualified joint and survivor annuity (QJSA), except as provided in section 417. Section 401(a)(11) applies to defined benefit plans, money purchase pension plans, and certain other defined contribution plans. A QJSA is defined in section 417(b) as an annuity for the life of the participant with a survivor annuity for the life of the spouse (if the participant is married) that is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity that is payable during the joint lives of the participant and the spouse. Under section 417(b)(2), a QJSA for a married participant generally must be the actuarial equivalent of the single life annuity benefit payable for the life of the participant. However, a plan is permitted to subsidize the QJSA for a married participant. If the plan fully subsidizes the QJSA for a married participant so that failure to waive the QJSA would not result in reduced payments over the life of the participant compared to the single life annuity benefit, then the plan need not provide an election to waive the QJSA. *See* section 417(a)(5).

For a married participant, the QJSA must be at least as valuable as any other optional form of benefit payable under the plan at the same time. *See* § 1.401(a)-20, Q&A–16. Further, the anti-forfeiture rules of section 411(a) prohibit a participant's benefit under a defined benefit plan from being satisfied through payment that is actuarially less valuable than the value of the participant's accrued benefit expressed in the form of an annual benefit commencing at normal retirement age. These determinations must be made using reasonable actuarial assumptions. However, *see* § 1.417(e)–1(d) for actuarial assumptions required for use in certain present value calculations.

If a plan provides a subsidy for one optional form of benefit (*i.e.*, the payments under an optional form of benefit have an actuarial present value that is greater than the actuarial present value of the accrued benefit), there is no requirement to extend a similar subsidy (or any subsidy) to every other optional form of benefit. Thus, for example, a participant might be entitled to receive a single-sum distribution upon early retirement that does not reflect any early retirement subsidy in lieu of a QJSA that reflects a substantial early retirement subsidy. As a further example, a participant might be entitled to receive a single-sum distribution at normal retirement age in lieu of a QJSA that is subsidized as described in section 417(a)(5).

Section 417(a) provides rules under which a participant (with spousal consent) may waive payment of the participant's benefit in the form of a QJSA. Section 417(a)(3) provides that a plan must provide to each participant, within a reasonable period before the annuity starting date (and consistent with such regulations as the Secretary may prescribe) a written explanation of the terms and conditions of the QJSA, the participant's right to make, and the effect of, an election to waive the QJSA form of benefit, the rights of the participant's spouse, and the right to revoke (and the effect of the revocation of) an election to waive the QJSA form of benefit.

Section 205 of the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93–406 (88 Stat. 829) as subsequently amended, provides parallel rules to the rules of sections 401(a)(11) and 417 of the Internal Revenue Code. In particular, section 205(a)(3) of ERISA provides a parallel rule to section 417(a)(3) of the Code. Treasury regulations issued under section 417(a)(3) of the Code apply as well for purposes of section 205(a)(3) of ERISA.

Regulations governing the requirements for waiver of a QJSA were published in the **Federal Register** on August 19, 1988 (TD 8219; 53 FR 31837). Section 1.401(a)–20, Q&A–36, provides rules for the explanation that must be provided under section 417(a)(3) as a prerequisite to waiver of a QJSA. Section 1.401(a)–20, Q&A–36, requires that such a written explanation must contain a general description of the eligibility conditions and other material features of the optional forms of benefit and sufficient additional information to explain the relative values of the optional forms of benefit available under the plan (*e.g.*, the extent to which optional forms are subsidized relative to the normal form of benefit or the interest rates used to calculate the optional forms). In addition, § 1.401(a)–20, Q&A–36, provides that the written explanation must comply with the requirements set forth in § 1.401(a)–11(c)(3). Section 1.401(a)–11(c)(3) was issued prior to the enactment of section 417, and provides rules relating to written explanations that were required prior to a participant's election of a preretirement survivor annuity or election to waive a joint and survivor annuity. Section 1.401(a)–11(c)(3)(i)(C) provides that such a written explanation must contain a general explanation of the relative financial effect of these elections on a participant's annuity.

In addition, under section 411 and § 1.411(a)–11(c), so long as a benefit is immediately distributable (within the meaning of § 1.411(a)–11(c)(4)), a participant must be informed of his or her right to defer that distribution. This requirement is independent of the section 417 requirements addressed in these proposed regulations.

Concerns have been expressed that, in certain cases, the information provided to participants under section 417(a)(3) regarding the available distribution forms does not adequately enable them to compare those distribution forms without professional advice. In particular, participants who are eligible for both subsidized annuity distributions and unsubsidized single-sum distributions may be receiving notices that do not adequately explain the value of the subsidy that is foregone if the single-sum distribution is elected. In such a case, merely disclosing the amount of the single-sum distribution and the amount of annuity payments may not adequately enable those participants to make an informed comparison of the relative values of those distribution forms, even if the interest rate used to derive the single sum is disclosed. Furthermore, questions have been raised as to how the relative values of optional forms of benefit are required to be expressed under current regulations. Accordingly, these proposed regulations are being issued to propose disclosure requirements that would enable participants to compare the relative values of the available distribution forms using more readily understandable information.

Explanation of Provisions

The proposed regulations would consolidate the content requirements applicable to explanations of QJSAs and QPSAs under section 417(a)(3), and would specify rules for disclosing the relative value of optional forms of benefit as part of the QJSA explanation. Similar to the requirements in the current regulations, the required explanation must contain, with respect to each of the optional forms of benefit presently available to the participant, a description of the optional form of benefit, a description of the eligibility conditions for the optional form of benefit, a description of the financial effect of electing the optional form of benefit, a description of the relative value of the optional form of benefit, and a description of any other material features of the optional form of benefit. Further, as under the current regulations, the QJSA explanation would be permitted to be made either by providing the participant with information specific to the participant, or by providing the participant with generally applicable information and offering the participant the opportunity to request additional information specifically applicable to the participant with respect to any optional forms of benefit available to the participant. The proposed regulations would clarify that a defined contribution plan is not required to provide a description of the relative values of optional forms of benefit compared to the value of the QJSA.

The proposed regulations would provide additional guidance regarding the required description of the relative values of optional forms of benefit compared to the value of the QJSA and the content of the required disclosure of relative values. Under the proposed regulations, the description of the relative value of an optional form of benefit compared to the value of the QJSA must be expressed in a manner that provides a meaningful comparison of the relative economic values of the two forms of benefit without the participant having to make calculations using interest or mortality assumptions. In order to make this comparison, the benefit under one or both optional forms of benefit must be converted, taking into account the time value of money and life expectancies, so that both are expressed in the same form. The proposed regulations give several examples of techniques that may be used for this comparison: expressing the actuarial present value of the optional form of benefit as a percentage or factor of the actuarial present value of the QJSA; stating the amount of an annuity payable at the same time and under the same conditions as the QJSA that is the actuarial equivalent of the optional form of benefit; or stating the actuarial present value of both the QJSA and the optional form of benefit. For purposes of providing a description of the relative value of an optional form of benefit compared to the value of the QJSA (and also for purposes of comparing the financial effect of the distribution forms available to a participant), a plan would be permitted to provide reasonable estimates (*e.g.*, estimates based on data as of an earlier date than the annuity starting date or an estimate of the spouse's age). If estimates are used, the participant has a right to a more precise calculation upon request.

Since disclosing the relative value of every optional form of benefit regardless of the degree of subsidy may be too burdensome, and may provide participants with information that appears more precise than is warranted based on the inexact nature of the actuarial assumptions used, the proposed regulations would provide some ways to simplify this disclosure of relative values of optional forms of benefit. One way in which this disclosure would be simplified is through a banding rule under which two or more optional forms of benefit that have approximately the same value could be grouped for purposes of disclosing relative value. Under these proposed regulations, two or more optional forms of benefit would be treated as having approximately the same value if those optional forms of benefit vary in relative value in comparison to the value of the QJSA by 5 percentage points or less when the relative value comparison is made by expressing the actuarial present value of each of those optional forms of benefit as a percentage of the actuarial present value of the QJSA. For such a group of optional forms of benefit, the requirement relating to disclosing the relative value of each optional form of benefit compared to the value of the QJSA could be satisfied by disclosing the relative value of any one of the

optional forms in the group compared to the value of the QJSA, and disclosing that the other optional forms of benefit in the group are of approximately the same value. If a single-sum distribution is included in such a group of optional forms of benefit, the single-sum distribution must be the distribution form that is used for purposes of this comparison. The relative value of all optional forms of benefit that have an actuarial present value that is at least 95% of the actuarial present value of the QJSA may be described by stating that those optional forms of benefit are of approximately equal value to the value of the QJSA. Thus, these rules would permit a plan that provides no subsidized forms of benefit to state the comparison of relative values simply by stating that all distribution forms are approximately equal in value to the QJSA.

Another way in which this disclosure may be simplified is through the use of representative values: if, under the banding rule, two or more optional forms of benefit are grouped, a representative relative value for all of the grouped options could be used as the approximate relative value for all of the grouped options, in lieu of using the relative value of one of the optional forms of benefit in the group. For this purpose, a representative relative value is any relative value that is not less than the relative value of the member of the group of optional forms of benefit with the lowest relative value and is not greater than the relative value of the member of that group with the highest relative value when measured on a consistent basis. For example, if three optional forms have relative values of 87.5%, 89%, and 91% of the value of the QJSA, all three optional forms can be treated as having a relative value of approximately 90% of the value of the QJSA.

The proposed regulations would also permit the disclosure of the financial effect and relative value of optional forms of benefit to be made in the form of generally applicable information rather than information specific to the participant, provided that information specific to the participant regarding the optional form of benefit must be furnished at the participant's request. Thus, under the proposed regulations, in lieu of providing a QJSA explanation that describes each optional form that is presently available to the participant, the generalized QJSA explanation need only reflect the generally available optional forms of benefits, along with a reference to where a participant can obtain the information for any other optional forms of benefits (such as optional forms from prior benefit structures for limited groups of employees) that are presently available to the participant.

With respect to the generally available optional forms of benefits, in lieu of providing a statement of financial effect and relative value comparison that is specific to the participant, the generalized QJSA explanation is permitted to include a chart or other comparable device showing a series of examples of financial effects and relative value comparisons for hypothetical participants. The examples in the chart should reflect a representative range of ages for the hypothetical participants and use reasonable assumptions for the age of the hypothetical participant's spouse and any other variable that affects the financial effect, or relative value, of the optional form of benefit. The chart must be accompanied by a general statement describing the effect of significant variations between the assumed ages or other variables on the financial effect of electing the optional form of benefit and the comparison of the relative value of the optional form of benefit to the value of the QJSA. A generalized QJSA explanation that includes this chart must also include the amount payable to the participant under the normal form of benefit, either at normal retirement age, or payable immediately. In addition, this chart must be accompanied by a statement that includes an offer to provide, upon the participant's request, a statement of financial effect along with a comparison of relative values that is specific to the participant for one or more presently available optional forms of benefit, and a description of how a participant may obtain this additional information. Thus, with respect to those optional forms of benefit for which additional information is requested, the participant must receive a QJSA explanation specific to the participant that is based on the participant's actual age and benefit.

The proposed regulations would provide rules governing the actuarial assumptions to be used in comparing the value of an optional form of benefit to the QJSA. If an optional form of benefit is subject to the requirements of section 417(e)(3) and § 1.417(e)–1(d) (*e.g.*, a single-sum distribution), any comparison of the value of the optional form of benefit to the value of the QJSA must be made using the applicable mortality table and the applicable interest rate as defined in § 1.417(e)–1(d)(2) and (3) (or, at the option of the plan, another reasonable interest rate and reasonable mortality table used under the plan to calculate the amount payable under the optional form of benefit). All other optional forms of benefit payable to the participant must be compared with the QJSA using a single set of interest rates and mortality tables that are reasonable and that are applied uniformly for this purpose with respect to all such other optional forms payable to the participant. The uniform interest and mortality assumptions should be used regardless of whether those assumptions are actually used to determine the amount of benefit payments under any particular optional form.

The proposed regulations would also require disclosure of information to help a participant understand the significance of a disclosure of the relative value of an optional form of benefit. Under the proposed regulations, the notice would be required to provide an explanation of the concept of relative value. Specifically, the notice would be required to explain that the relative value comparison is intended to allow the participant to compare the total value of distributions paid in different forms, that the relative value comparison is made by converting the value of the optional forms of benefit currently available to a common form (such as the QJSA or single-sum distribution), and that this conversion uses interest and life expectancy assumptions.

Under the proposed regulations, a required numerical comparison of the value of the optional form of benefit to the value of the QJSA under the plan generally would be required to disclose the interest rate that is used to develop a required numerical comparison. However, if all optional forms of benefit are permitted to be treated as having approximately the same value after application of the banding rule described above, then the plan would not be required to disclose the interest rate used to develop a required numerical comparison to the QJSA for optional form of benefit that is not subject to the requirements of section 417(e)(3). In addition, the proposed regulations would require the plan to provide a general statement that all numerical comparisons of relative value provided are based on average life expectancies, and that the relative value of payments ultimately made under an annuity optional form of benefit will depend on actual longevity.

Under the proposed regulations, both the QPSA explanation and the QJSA explanation must be written in a manner calculated to be understood by the average participant. A plan may wish to provide additional information beyond the minimum information that would be required under these proposed regulations, in order to help an employee to evaluate the form of benefit that would be most desirable under the employee's individual circumstances. For example, the plan may wish to add further explanation of the effects of ill health or other factors influencing expected longevity on the desirability of electing annuity forms of distribution.

The proposed regulations contain rules regarding the method for providing the QJSA explanation and the QPSA explanation. Under the proposed regulations, these explanations must be written explanations. First class mail to the last known address of the party is an acceptable delivery method for a section 417(a)(3) explanation. Likewise, hand delivery is acceptable. However, the posting of the explanation is not considered provision of the section 417(a)(3) explanation.

These proposed regulations do not address the extent to which the QJSA explanation or the QPSA explanation can be provided through electronic media. The IRS and the Treasury Department are considering the extent to which the QJSA explanation and the QPSA explanation, as well as other notices under the various Internal Revenue Code requirements relating to qualified retirement plans, can be provided electronically, taking into account the effect of the Electronic Signatures in Global and National Commerce Act (ESIGN), Public Law 106–229, 114 Stat. 464 (2000). The IRS and the Treasury Department anticipate issuing proposed regulations regarding these issues, and invite comments on these issues.

Proposed Effective Date

The regulations are proposed to be applicable to QJSA explanations with respect to distributions with annuity starting dates on or after January 1, 2004, and to QPSA explanations provided on or after January 1, 2004.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that qualified retirement plans of small businesses typically commence distribution of benefits to few, if any, plan participants in any given year and, similarly, only offer elections to waive a QPSA to few, if any, participants in any given year. Thus, the collection of information in these regulations will only have a minimal economic impact on most small entities. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically to the IRS Internet site at *http://www.irs.gov/regs*. All comments will be available for public inspection and copying. The IRS and Treasury request comments on the clarity of the proposed rules and how they may be made easier to understand or to implement.

A public hearing has been scheduled for January 14, 2002, at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts at the Constitution Avenue entrance. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by January 2, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Linda S. F. Marshall of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Paragraph (c)(3) of § 1.401(a)–11 is revised to read as follows:

§ 1.401(a)–11 Qualified joint and survivor annuities.

* * * * *

(c) * * *

(3) *Information to be provided by plan.* For rules regarding the information required to be provided with respect to the election to waive a QJSA or a QPSA, see § 1.417(a)(3)–1.

* * * * *

Par. 3. A–36 of § 1.401(a)–20 is revised to read as follows:

§ 1.401(a)–20 Requirements of qualified joint and survivor annuity and qualified preretirement survivor annuity.

* * * * *

A–36. For rules regarding the explanation of QPSAs and QJSAs required under section 417(a)(3), see § 1.417(a)(3)–1.

* * * * *

Par. 4. Section 1.417(a)(3)–1 is added to read as follows:

§ 1.417(a)(3)–1 Required explanation of qualified joint and survivor annuity and qualified preretirement survivor annuity.

(a) *Written explanation requirement*—(1) *General rule.* A plan meets the survivor annuity requirements of section 401(a)(11) only if the plan meets the requirements of section 417(a)(3) and this section regarding the written explanation required to be provided a participant with respect to a QJSA or a QPSA. A written explanation required to be provided to a participant with respect to either a QJSA or a QPSA under section 417(a)(3) and this section is referred to in this section as a section 417(a)(3) explanation. See § 1.401(a)–20, Q&A–37, for exceptions to the written explanation requirement in the case of a fully subsidized QPSA or QJSA, and § 1.401(a)–20, Q&A–38, for the

definition of a fully subsidized QPSA or QJSA.

(2) *Time for providing section 417(a)(3) explanation*—(i) *QJSA explanation.* See § 1.417(e)–1(b)(3)(ii) for rules governing the timing of the QJSA explanation.

(ii) *QPSA explanation.* See § 1.401(a)–20, Q&A–35, for rules governing the timing of the QPSA explanation.

(3) *Required method for providing section 417(a)(3) explanation.* A section 417(a)(3) explanation must be a written explanation. First class mail to the last known address of the participant is an acceptable delivery method for a section 417(a)(3) explanation. Likewise, hand delivery is acceptable. However, the posting of the explanation is not considered provision of the section 417(a)(3) explanation.

(4) *Understandability.* A section 417(a)(3) explanation must be written in a manner calculated to be understood by the average participant.

(b) *Required content of section 417(a)(3) explanation*—(1) *Content of QPSA explanation.* The QPSA explanation must contain a general description of the QPSA, the circumstances under which it will be paid if elected, the availability of the election of the QPSA, and, except as provided in paragraph (d)(3) of this section, a description of the financial effect of the election of the QPSA on the participant's benefits (*i.e.*, an estimate of the reduction to the participant's estimated normal retirement benefit that would result from an election of the QPSA).

(2) *Content of QJSA explanation.* The QJSA explanation must satisfy either paragraph (c) or paragraph (d) of this section. Under paragraph (c) of this section, the QJSA explanation must contain certain specific information relating to the benefits available under the plan to the particular participant. Alternatively, under paragraph (d) of this section, the QJSA explanation can contain generally applicable information in lieu of specific participant information, provided that the participant has the right to request additional information regarding the participant's benefits under the plan.

(c) *Participant-specific information required to be provided*—(1) *In general.* A QJSA explanation satisfies this paragraph (c) if it provides the following information with respect to each of the optional forms of benefit presently available to the participant—

(i) A description of the optional form of benefit;

(ii) A description of the eligibility conditions for the optional form of benefit;

(iii) A description of the financial effect of electing the optional form of benefit (*i.e.*, the amount payable under the form of benefit);

(iv) In the case of a defined benefit plan, a description of the relative value of the optional form of benefit compared to the value of the QJSA, in the manner described in paragraph (c)(2) of this section; and

(v) A description of any other material features of the optional form of benefit.

(2) *Requirement for numerical comparison of relative values*—(i) *In general.* The description of the relative value of an optional form of benefit compared to the value of the QJSA under paragraph (c)(1)(iv) of this section must be expressed to the participant in a manner that provides a meaningful comparison of the relative economic values of the two forms of benefit without the participant having to make calculations using interest or mortality assumptions. Thus, in performing the calculations necessary to make this comparison, the benefits under one or both optional forms of benefit must be converted, taking into account the time value of money and life expectancies, so that the values of both optional forms of benefit are expressed in the same form. For example, such a comparison may be expressed to the participant using any of the following techniques—

(A) Expressing the actuarial present value of the optional form of benefit as a percentage or factor of the actuarial present value of the QJSA;

(B) Stating the amount of the annuity that is the actuarial equivalent of the optional form of benefit and that is payable at the same time and under the same conditions as the QJSA; or

(C) Stating the actuarial present value of both the optional form of benefit and the QJSA.

(ii) *Simplified presentations permitted*—(A) *Grouping of certain optional forms.* Two or more optional forms of benefit that have approximately the same value may be grouped for purposes of a required numerical comparison described in this paragraph (c)(2). For this purpose, two or more optional forms of benefit have approximately the same value if those optional forms of benefit vary in relative value in comparison to the value of the QJSA by 5 percentage points or less when the relative value comparison is made by expressing the actuarial present value of each of those optional forms of benefit as a percentage of the actuarial present value of the QJSA. For such a group of optional forms of benefit, the requirement relating to disclosing the relative value of each optional form of benefit compared to the value of the QJSA can be satisfied by disclosing the relative value of any one of the optional forms in the group compared to the value of the QJSA, and disclosing that the other optional forms of benefit in the group are of approximately the same value. If a single-sum distribution is included in such a group of optional forms of benefit, the single-sum distribution must be the distribution form that is used for purposes of this comparison. In addition, the relative value of all optional forms of benefit that have an actuarial present value that is at least 95% of the actuarial present value of the QJSA is permitted to be described by stating that those optional forms of benefit are approximately equal in value to the QJSA, or that all of those forms of benefit and the QJSA are approximately equal in value.

(B) *Representative relative value for grouped optional forms.* If, in accordance with paragraph (c)(2)(ii)(A) of this section, two or more optional forms of benefits are grouped, the relative values for all of the optional forms of benefit in the group can be stated using a representative relative value as the approximate relative value for the entire group. For this purpose, a representative relative value is any relative value that is not less than the relative value of the member of the group of optional forms of benefit with the lowest relative value and is not greater than the relative value of the member of that group with the highest relative value when measured on a consistent basis. For example, if three optional forms have relative values of 87.5%, 89%, and 91% of the value of the QJSA, all three optional forms can be treated as having a relative value of approximately 90% of the value of the QJSA. As required under paragraph (c)(2)(ii)(A) of this section, if a single-sum distribution is included in the group of optional forms of benefit, the 90% relative factor of the value of the QJSA must be disclosed as the approximate relative value of the single sum, and the other forms can be described as having the same approximate value as the single sum.

(iii) *Actuarial assumptions used to determine relative values.* For the purpose of providing a numerical comparison of the value of an optional form of benefit to the value of the immediately commencing QJSA, the following rules apply—

(A) If an optional form of benefit is subject to the requirements of section 417(e)(3) and § 1.417(e)–1(d), any comparison of the value of the optional form of benefit to the value of the QJSA must be made using the applicable mortality table and the applicable interest rate as defined in § 1.417(e)–1(d)(2) and (3) (or, at the option of the plan, another reasonable interest rate and reasonable mortality table used under the plan to calculate the amount payable under the optional form of benefit); and

(B) All other optional forms of benefit payable to the participant must be compared with the QJSA using a single set of interest and mortality assumptions that are reasonable and that are applied uniformly with respect to all such optional forms payable to the participant (regardless of whether those assumptions are actually used under the plan for purposes of determining benefit payments).

(iv) *Required disclosure of assumptions*—(A) *Explanation of concept of relative value.* The notice must provide an explanation of the concept of relative value, communicating that the relative value comparison is intended to allow the participant to compare the total value of distributions paid in different forms, that the relative value comparison is made by converting the value of the optional forms of benefit presently available to a common form (such as the QJSA or a single-sum distribution), and that this conversion uses interest and life expectancy assumptions. The explanation of relative value must include a general statement that all comparisons provided are based on average life expectancies, and that the relative value of payments ultimately made under an annuity optional form of benefit will depend on actual longevity.

(B) *Disclosure of interest assumptions.* A required numerical comparison of the value of the optional form of benefit to the value of the QJSA under the plan is required to disclose the interest rate that is used to develop the comparison. If all optional forms of benefit are permitted to be grouped under paragraph (c)(2)(ii)(A) of this section, then the requirement of this paragraph (c)(2)(iv)(B) does not apply for any optional form of benefit not subject to the requirements of section 417(e)(3) and § 1.417(e)–1(d)(3).

(3) *Permitted estimates of financial effect and relative value*—(i) *General rule.* For purposes of providing a description of the financial effect of the distribution forms available to a participant as required under paragraph (c)(1)(iii) of this section, and for purposes of providing a description of the relative value of an optional form of benefit compared to the value of the QJSA for a participant as required under paragraph (c)(1)(iv) of this section, the plan is permitted to provide reasonable estimates (*e.g.*, estimates based on data as of an earlier date than the annuity starting date, a reasonable assumption for the age of the participant's spouse, or, in the case of a defined contribution plan, reasonable estimates of amounts that would be payable under a purchased annuity contract), including reasonable estimates of the applicable interest rate under section 417(e)(3).

(ii) *Right to more precise calculation.* If a QJSA notice uses a reasonable estimate under paragraph (c)(3)(i) of this section, the QJSA explanation must identify the estimate and explain that the plan will, upon the request of the participant, provide a more precise calculation and the plan must provide the participant with a more precise calculation if so requested. Thus, for example, if a plan provides an estimate of the amount of the QJSA that is based on a reasonable assumption concerning the age of the participant's spouse, the participant can request a calculation that takes into account the actual age of the spouse, as provided by the participant.

(iii) *Revision of prior information.* If a more precise calculation described in paragraph (c)(3)(ii) of this section materially changes the relative value of an optional form compared to the value of the QJSA, the revised relative value of that optional form must be disclosed, regardless of whether the financial effect of selecting the optional form is affected by the more precise calculation.

(4) *Special rules for disclosure of financial effect for defined contribution plans.* For a written explanation provided by a defined contribution plan, a description of financial effect required by paragraph (c)(1)(iii) of this section with respect to an annuity form of benefit must include a statement that the annuity will be provided by purchasing an annuity contract from an insurance company with the participant's account balance under the plan. If the description of the financial effect of the optional form of benefit is provided using estimates rather than by assuring that an insurer is able to provide the amount disclosed to the participant, the written explanation must also disclose this fact.

(d) *Substitution of generally applicable information for participant information in the section 417(a)(3) explanation*—(1) *Forms of benefit available.* In lieu of providing the information required under paragraphs (c)(1)(i) through (v) of this section for each optional form of benefit presently available to the participant as described in paragraph (c) of this section, the QJSA explanation may contain the information required under paragraphs (c)(1)(i) through (v) of this section for the QJSA and each other optional form of benefit generally available under the plan, along with a reference to where a participant may readily obtain the information required under paragraphs (c)(1)(i) through (v) of this section for any other optional forms of benefit that are presently available to the participant.

(2) *Financial effect and comparison of relative values*—(i) *General rule.* In lieu of providing a statement of the financial effect of electing an optional form of benefit as required under paragraph (c)(1)(iii) of this section, or a comparison of relative values as required under paragraph (c)(1)(iv) of this section, based on the actual age and benefit of the participant, the QJSA explanation is permitted to include a chart (or other comparable device) showing the financial effect and relative value of optional forms of benefit in a series of examples specifying the amount of the optional form of benefit payable to a hypothetical participant at a representative range of ages and the comparison of relative values at those same representative ages. Each example in this chart must show the financial effect of electing the optional form of benefit pursuant to the rules of paragraph (c)(1)(iii) of this section, and a comparison of the relative value of the optional form of benefit to the value of the QJSA pursuant to the rules of paragraph (c)(2) of this section, using reasonable assumptions for the age of the hypothetical participant's spouse and any other variables that affect the financial effect, or relative value, of the optional form of benefit. The requirement to show the financial effect of electing an optional form can be satisfied through the use of other methods (*e.g.*, expressing the amount of the optional form as a percentage or a factor of the amount payable under the normal form of benefit), provided that the method provides sufficient information so that a participant can determine the amount of benefits payable in the optional form. The chart or other comparable device must be accompanied by the disclosures described in paragraph (c)(2)(iv) of this section explaining the concept of relative value and disclosing certain interest assumptions. In addition, the chart or other comparable device must be accompanied by a general statement describing the effect of significant variations between the assumed ages or other variables on the financial effect of electing the optional form of benefit and the comparison of the relative value of

the optional form of benefit to the value of the QJSA.

(ii) *Actual benefit must be disclosed.* The generalized notice described in this paragraph (d)(2) will satisfy the requirements of paragraph (b)(2) of this section only if the notice includes either the amount payable to the participant under the normal form of benefit or the amount payable to the participant under the normal form of benefit adjusted for immediate commencement. For this purpose, the normal form of benefit is the form under which payments due to the participant under the plan are expressed under the plan, prior to adjustments for form of benefit. For example, assuming that a plan's benefit accrual formula is expressed as a straight life annuity, the generalized notice must provide the amount of either the straight life annuity commencing at normal retirement age or the straight life annuity commencing immediately.

(iii) *Ability to request additional information.* The generalized notice described in this paragraph (d)(2) must be accompanied by a statement that includes an offer to provide, upon the participant's request, a statement of financial effect and a comparison of relative values that is specific to the participant for any presently available optional form of benefit, and a description of how a participant may obtain this additional information.

(3) *Financial effect of QPSA election.* In lieu of providing a specific description of the financial effect of the QPSA election, the QPSA explanation may provide a general description of the financial effect of the election. Thus, for example, the description can be in the form of a chart showing the reduction to a hypothetical participant's normal retirement benefit at a representative range of participant ages as a result of the QPSA election (using a reasonable assumption for the age of the hypothetical participant's spouse relative to the age of the hypothetical participant). In addition, this chart must be accompanied by a statement that includes an offer to provide, upon the participant's request, an estimate of the reduction to the participant's estimated normal retirement benefit, and a description of how a participant may obtain this additional information.

(4) *Additional information required to be furnished at the participant's request*—(i) *Explanation of QJSA.* If, as permitted under paragraphs (d)(1) and (2) of this section, the content of a QJSA explanation does not include all the items described in paragraph (c) of this section, then, upon a timely request from the participant for any of the information required under paragraphs (c)(1)(i) through (v) of this section for one or more presently available optional forms (including a request for all optional forms presently available to the participant), the plan must furnish the information required under paragraphs (c)(1)(i) through (v) of this section with respect to those optional forms. Thus, with respect to those optional forms of benefit, the participant must receive a QJSA explanation specific to the participant that is based on the participant's actual age and benefit. In addition, the plan must comply with paragraph (c)(3)(iii) of this section.

(ii) *Explanation of QPSA.* If, as permitted under paragraph (d)(3) of this section, the content of a QPSA explanation does not include all the items described in paragraph (b)(1) of this section, then, upon a timely request from the participant for an estimate of the reduction to the participant's estimated normal retirement benefit that would result from a QPSA election, the plan must furnish such an estimate.

(e) *Examples.* The following examples illustrate the application of this section. Solely for purposes of these examples, the applicable interest rate that applies to any distribution that is subject to the rules of section 417(e)(3) is assumed to be 5½%, and the applicable mortality table under section 417(e)(3) and § 1.417(e)–1(d)(2) is assumed to be the table that applies as of January 1, 2003. In addition, solely for purposes of these examples, assume that a plan which determines actuarial equivalence using 6% interest and the applicable mortality table under section 417(e)(3) and § 1.417(e)–1(d)(2) that applies as of January 1, 1995, is using reasonable actuarial assumptions. The examples are as follows:

Example 1. (i) Participant M participates in Plan A, a qualified defined benefit plan. Under Plan A, the QJSA is a joint and 100% survivor annuity, which is actuarially equivalent to the single life annuity determined using 6% interest and the section 417(e)(3) applicable mortality table that applies as of January 1, 1995. On January 1, 2004, M will terminate employment at age 55. When M terminates employment, M will be eligible to elect an unreduced early retirement benefit, payable as either a life annuity or the QJSA. M will also be eligible to elect a single-sum distribution equal to the actuarial present value of the single life annuity payable at normal retirement age (age 65), determined using the applicable mortality table and the applicable interest rate under section 417(e)(3).

(ii) Participant M is provided with a QJSA explanation that describes the single life annuity, the QJSA, and single-sum distribution option under the plan, and any eligibility conditions associated with these options. The explanation indicates that, if Participant M commenced benefits at age 55 and had a spouse age 55, the monthly benefit under an immediately commencing single life annuity is $3,000, the monthly benefit under the QJSA is estimated to be 89.96% of the monthly benefit under the immediately commencing single life annuity or $2,699, and the single sum is estimated to be 74.7645 times the monthly benefit under the immediately commencing single life annuity or $224,293.

(iii) The QJSA explanation indicates that the single life annuity and the QJSA are of approximately the same value, but that the single-sum option is equivalent in value to a QJSA of $1,215. (This amount is 45% of the value of the QJSA at age 55 ($1,215 divided by 89.96% of $3,000 equals 45%).) The explanation states that the relative value comparison converts the value of the single life annuity and the single-sum options to the value of each if paid in the form of the QJSA and that this conversion uses interest and life expectancy assumptions. The explanation specifies that the calculations relating to the single-sum distribution were prepared using 5.5% interest and average life expectancy, that the other calculations were prepared using a 6% interest rate and that the relative value of actual annuity payments for an individual can vary depending on how long the individual and spouse live. The explanation notes that the calculation of the QJSA assumed that the spouse was age 55, that the amount of the QJSA will depend on the actual age of the spouse (for example, annuity payments will be significantly lower if the spouse is significantly younger than the participant), and that the amount of the single-sum payment will depend on the interest rates that apply when the participant actually takes a distribution. The explanation also includes an offer to provide a more precise calculation to the participant taking into account the spouse's actual age.

(iv) Participant M requests a more precise calculation of the financial effect of choosing a QJSA, taking into the actual age of Participant M's spouse. Based on the fact that M's spouse is age 50, Plan A determines that the monthly payments under the QJSA are 87.62% of the monthly payments under the single life annuity, or $2,628.60 per month, and provides this information to M. Plan A is not required to provide an updated calculation of the relative value of the single sum because the value of single sum continues to be 45% of the value of the QJSA.

Example 2. (i) The facts are the same as in *Example 1*, except that under Plan A, the single-sum distribution is determined as the actuarial present value of the immediately commencing single life annuity. In addition, Plan A provides a joint and 75% survivor annuity that is reduced from the single life annuity and that is the QJSA under Plan A. For purposes of determining the amount of the QJSA, the reduction is only half of the reduction that would normally apply under the actuarial assumptions specified in Plan A for determining actuarial equivalence of optional forms.

(ii) In lieu of providing information specific to Participant M in the QJSA notice as set forth in paragraph (c) of this section, Plan A satisfies the QJSA explanation

requirement in accordance with paragraph (d)(2) of this section by providing M with a statement that M's monthly benefit under an immediately commencing single life annuity (which is the normal form of benefit under Plan A, adjusted for immediate commencement) is $3,000, along with the following chart showing the financial effect and the relative value of the optional forms of benefit compared to the QJSA for a hypothetical participant with a $1,000 benefit and a spouse who is three years younger than the participant. For each optional form generally available under the plan, the chart shows the financial effect and the relative value, using the grouping rules of paragraph (c)(2)(ii) of this section. Separate charts are provided for ages 55, 60, and 65.

Optional form	Amount of distribution per $1,000 of immediate single life annuity	Relative value
Age 55 Commencement:		
Life Annuity	$1,000 per month	Approximately the same value as the QJSA.
QJSA (joint and 75% survivor annuity)	$956 per month	n/a.
Joint and 100% survivor annuity	$886 per month	Approximately the same value as the QJSA.
Lump sum	$165,959	Approximately the same value as the QJSA.
Age 60 Commencement:		
Life Annuity	$1,000 per month	Approximately 94% of the value of the QJSA.
QJSA (joint and 75% survivor annuity)	$945 per month	n/a.
Joint and 100% survivor annuity	$859 per month	Approximately 94% of the value of the QJSA.
Lump sum	$151,691	Approximately the same value as the QJSA.
Age 65 Commencement:		
Life Annuity	$1,000 per month	Approximately 93% of the value of the QJSA.
QJSA (joint and 75% survivor annuity)	$932 per month	n/a.
Joint and 100% survivor annuity	$828 per month	Approximately 93% of the value of the QJSA.
Lump sum	$135,759	Approximately 93% of the value of the QJSA.

(iii) The chart disclosing the financial effect and relative value of the optional forms specifies that the calculations were prepared assuming that the spouse is three years younger than the participant, that the calculations relating to the single-sum distribution were prepared using 5.5% interest and average life expectancy, that the other calculations were prepared using a 6% interest rate, and that the relative value of actual payments for an individual can vary depending on how long the individual and spouse live. The explanation states that the relative value comparison converts the QJSA, the single life annuity, the joint and 100% survivor annuity, and the single-sum options to an equivalent present value and that this conversion uses interest and life expectancy assumptions. The explanation notes that the calculation of the QJSA depends on the actual age of the spouse (for example, annuity payments will be significantly lower if the spouse is significantly younger than the participant), and that the amount of the single-sum payment will depend on the interest rates that apply when the participant actually takes a distribution. The explanation also includes an offer to provide a calculation specific to the participant upon request.

(iv) Participant M requests information regarding the amounts payable under the QJSA, the joint and 100% survivor annuity, and the single sum.

(v) Based on the information about the age of Participant M's spouse, Plan A determines that M's QJSA is $2,856.30 per month, the joint and 100% survivor annuity is $2,628.60 per month, and the single sum is $497,876. The actuarial present value of the QJSA (determined using the 5.5% interest and the section 417(e)(3) applicable mortality table, the actuarial assumptions required under section 417) is $525,091. Accordingly, the value of the single-sum distribution available to M at January 1, 2004, is 94.8% of the actuarial present value of the QJSA. In addition, the actuarial present value of the life annuity and the 100% joint and survivor annuity are 95.0% of the actuarial present value of the QJSA.

(vi) Plan A provides M with a QJSA explanation that incorporates these more precise calculations of the financial effect and relative value of the optional forms for which M requested information.

(f) *Effective date.* This section applies to QJSA explanations provided with respect to distributions with annuity starting dates on or after January 1, 2004, and to QPSA explanations provided on or after January 1, 2004.

§ 1.417(e)–1 [Amended]

Par. 5. In § 1.417(e)–1, paragraph (b)(2) is amended by removing the language "§ 1.401(a)–20 Q&A–36" and adding "§ 1.417(a)(3)–1" in its place.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–25338 Filed 10–4–02; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 187–0365b; FRL–7385–4]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This revision regulates the emission of volatile organic compounds (VOC) from wastewater systems. We are proposing to approve a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by November 6, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted rule and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule and TSD at the following locations:

Air and Radiation Docket and Information Center (6102T), U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local SCAQMD Rule 1176. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this

SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 30, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–25300 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV054–6022b; FRL–7382–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Ambient Air Quality Standard for Nitrogen Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing ambient air quality standards for nitrogen dioxide, equivalent to the national primary and secondary ambient air quality standards established by EPA. In the Final Rules section of this **Federal Register**, EPA is approving West Virginia's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by November 6, 2002.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Janice Lewis, (215) 814–2185, at the EPA Region III address above, or by e-mail at *Lewis.Janice@epa.gov*. Please note any comments on this rule must be submitted in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: On September 21, 2000, the West Virginia Division of Environmental Protection submitted a revision to its SIP to establish ambient air quality standards for nitrogen dioxide. The revision consists of the adoption of Rule 45CSR12—Ambient Air Quality Standard for Nitrogen Dioxide. For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: September 13, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–25295 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV048 –6020b; FRL–7381–8]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia, Regulation To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia to prevent and control air pollution from the operation of coal preparation plants, coal handling operations and coal refuse disposal areas. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 6, 2002.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action of West Virginia's Regulation to Prevent and Control Air Pollution From the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: September 13, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–25292 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV052–6023b; FRL–7388–8]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Ambient Air Quality Standard for Carbon Monoxide and Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing reference test methods for measuring carbon monoxide concentrations in the ambient air, equivalent to the national primary and secondary ambient air quality standards established by EPA. In the Final Rules section of this **Federal Register**, EPA is approving West Virginia's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 6, 2002.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Janice Lewis, (215) 814–2185, at the EPA Region III address above, or by e-mail at *Lewis.Janice@epa.gov*. Please note any comments on this rule must be submitted in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: On September 21, 2000, the West Virginia Division of Environmental Protection submitted a revision to its SIP to establish reference test methods for measuring ambient air concentrations for carbon monoxide. The revision consists of the adoption of Rule 45CSR9—Ambient Air Quality Standards for Carbon Monoxide and Ozone. For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: September 24, 2002.

James M. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 02–25284 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 272–0369b; FRL–7387–3]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Bay Area Air Quality Management District (BAAQMD) portion of the California State Implementation Plan (SIP). These revisions concern Oxides of Nitrogen (NO_X) and Carbon Monoxide (CO) emissions from boilers, steam generators, and process heaters in petroleum refineries. In accordance with the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing to approve a local rule to regulate these emission sources.

DATES: Any comments on this proposal must arrive by November 6, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, EPA Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: BAAQMD 9–10. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: September 13, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–25298 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA126–5061; FRL–7391–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revisions to the Ozone Maintenance Plan and Mobile Sources Emissions Budget for the Richmond Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision amends Virginia's ten-year plan to maintain the national ambient air quality standard (NAAQS) for ozone in the Richmond area. The maintenance plan is being amended to change the contingency measures portion and to identify measures taken in response to recorded violations of the 1-hour ozone NAAQS in the Richmond area. The maintenance plan is also being amended to substitute measures that establish a safety margin to retain the 2015 motor vehicle emissions budget for volatile organic compounds. This action is being taken under the Clean Air Act (the Act).

DATES: Written comments must be received on or before November 6, 2002.

ADDRESSES: Written comments may be mailed to Walter K. Wilkie, Deputy Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or via e-mail at *cripps.christopher@epa.gov*. While clarifying questions may be posed via e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

What Is the History of the Maintenance Plan for the Richmond Area?

The Richmond area includes the following jurisdictions in Virginia: Henrico, Hanover, and Chesterfield Counties, part of Charles City County and the Cities of Richmond, Colonial Heights and Hopewell.[1] On November 17, 1997 (62 FR 61237), EPA approved the Commonwealth of Virginia's request to redesignate the Richmond moderate ozone nonattainment area to attainment, and also approved Virginia's 10-year plan for continued maintenance of the 1-hour ozone NAAQS in the Richmond area as a revision to the Virginia SIP.

A provision of the Virginia maintenance plan requires the state to adopt and implement contingency measures in the event of a violation of the 1-hour ozone NAAQS. On June 5, 1998, EPA revoked the 1-hour ozone NAAQS, that is, as a legal matter, made the 1-hour standard not applicable. *See* 63 FR 31013, June 5, 1998. On September 18, 1998, the Richmond area violated the 1-hour ozone NAAQS. On August 1, 1999 a second monitor in the Richmond area recorded a violation of the 1-hour ozone NAAQS. However, in 1998 and 1999, at the time of the violations, the 1-hour ozone NAAQS had been revoked by EPA in all areas that had attained the standard, including the Richmond area.

On October 18, 2000, EPA reinstated the 1-hour ozone NAAQS in the Richmond area and notified Virginia that it was required to implement the contingency measures contained in the SIP-approved maintenance plan to address the violations that occurred in 1998 and 1999. *See* 65 FR 45182, July 20, 2000.

II. Content of the November 20, 2001 SIP Revision

When Did Virginia Submit the Revisions to the Contingency Plan and Substitute Measures for the 2015 Safety Margin?

On November 20, 2001, the Virginia Department of Environmental Quality (VA DEQ) submitted an amendment to the 1-hour ozone maintenance plan for the Richmond area to address the violation of the 1-hour ozone NAAQS, to revise the contingency measures part of the plan and to use different measures that establish a safety margin needed to support the 2015 volatile organic compound (VOC) motor vehicle emissions budgets.

What Did the Original Contingency Plan Require in the Event of an Exceedance or Violation of the 1-Hour Ozone NAAQS?

The original contingency measure section that was approved as part of the Richmond maintenance plan contained the following emission control measures that are to be implemented in response to recorded exceedances and violations of the ozone standard in the area:

1. Preparation of a comprehensive ozone precursor emissions inventory for the area, and implementation of a voluntary ozone advisory and action program.
2. Implementation of a basic motor vehicle inspection and maintenance (I/M) program.
3. Implementation of Reasonably Available Control Technologies (RACT) on major sources of NO_X emissions.
4. Open burning restrictions and appropriate transportation control measures (TCMs).

The first has already been implemented with the ozone forecast and action program jointly administered by the VA DEQ and the Richmond Ridefinders organization. The first scheduled progress tracking emissions inventory for 1999 has been developed. Virginia's preliminary analysis of the 1999 emissions inventory for Richmond indicated that the emissions levels remain below the established attainment emissions caps.

In response to the 1998 and 1999 monitored violations of the 1-hour ozone standard in the Richmond area, the current contingency measure section calls for the implementation of a basic I/M program. The plan requires the basic I/M regulation to be adopted within 12 months of notification by EPA, and implemented within 8 months after adoption (for a total of twenty months upon notification from EPA). Based on the effective date of the reinstatement of the 1-hour standard of October 18, 2000, a contingency measure would have to be implemented in the Richmond area by no later than June 2002.

Why and How Has Virginia Changed the Contingency Plan Portion of the Richmond Maintenance Plan?

The Commonwealth has re-evaluated the contingency measures in the Richmond maintenance plan, and revised the contingency measure section of the maintenance plan through the November 20, 2001 SIP revision. As a result of this re-evaluation of the contingency plan, Virginia determined that a basic I/M program is a less effective and desirable contingency measure than originally anticipated. This is due to the limited emission reduction potential of such a program, along with the substantial administrative and implementation effort required to establish the program.

As a result, the Commonwealth revised the contingency measure section of the Richmond maintenance plan to contain the following list of contingency measures:

1. Voluntary ozone advisory and action program (implemented in 1996).
2. Open burning restrictions (implemented by state regulation in 2000). The Commonwealth is only using the VOC reductions from this measure as a contingency measure to address the violations that occurred in 1998 and 1999.
3. Emission standards for nonroad spark-ignition handheld engines—Phases 1 & 2 (Phase 1 implemented, Phase 2 to be implemented in 2002).
4. Reduction of oxides of nitrogen (NO_X) from large utility and industrial sources or "NOX SIP Call" (to be implemented by Federal rule in 2003 or state regulation beginning in 2004). This measure replaces the NO_X RACT contingency measure in the original contingency measure section.

If these measures do not provide for continued maintenance of the 1-hour standard, and this standard remains in effect for the Richmond area, the Virginia's revised continency plan calls for the evaluation of the feasibility and effectiveness of implementing the following additional contingency measures at that time:

1. TCMs.
2. Other measures to be determined.

What Is the History of the 2015 Motor Vehicle Emissions Budgets?

The Richmond maintenance plan must cover a ten-year period through calendar year 2007 and as a result establishes motor vehicle emissions budgets for 2007. These 2007 motor vehicle emissions budgets would apply for any year after 2007 in the absence of specific budgets for years after 2007. On July 30, 1996, Virginia submitted a SIP revision modifying the motor vehicle emissions budgets in the Richmond maintenance plan for 2015 and later years.[2] In that revision, Virginia determined that emission reductions over and above that needed to demonstrate maintenance from other portions of the emissions inventory will occur during this time period even though mobile source emissions of NO_X and VOC are predicted to rise in the year 2015 as vehicle travel increases. The July 30, 1996 revision relied on reductions from a ban on open burning and from national emission control programs on locomotive and marine engine sources to modify the 2015 mobile source emissions budgets.

The additional emissions reductions from the open burning ban and the national control programs created a safety margin. For Richmond the safety margin for VOC emissions was 3.78 tons/day and for NO_X was 6.64 tons/day. All these reductions from the area and non-road source categories were allocated to the motor vehicle emissions budget for the purposes of conformity determinations. The 2015 motor vehicle emissions budgets in the maintenance plan were increased to 35.64 tons/day for VOC emissions and 67.71 tons/day for NO_X emissions. EPA approved these revised budgets on November 17, 1997 (62 FR 61237).

How Is the 2015 Safety Margin Being Sustained?

Because Virginia is now using the VOC emission reduction credits from open burning restrictions for contingency measure purposes, the 2015 VOC safety margin is now being revised to replace the emission reduction benefits (2.75 tons/day in 2015) from the open burning measure with equivalent benefits from the small nonroad gasoline-powered engine standards control program. The safety margin for NO_X is not affected by the November 20, 2001 revision.

What Is the Status of the Open Burning Control Measure?

Virginia has implemented restrictions on certain open burning operations in the Richmond area starting with the calendar year 2000. The new restrictions prohibit as of January 1, 2000, open burning for the purpose of disposal of clean burning construction waste, debris waste, and demolition waste on the site of local landfills is prohibited in the Richmond Volatile Organic Compounds Emissions Control Area during June, July, and August.[3] Virginia has adopted these requirements into its state code at 9 VAC 5 Chapter 40, Existing Stationary Sources, Part II, Emission Standards, Article 40, Emission Standards For Open Burning (Rule 4–40). This rule is both Federally and State enforceable. This rule was approved into the Virginia SIP on March 12, 1997 (62 FR 11334) and is codified at 40 CFR 52.2420(c)(113). Virginia did not rely upon this rule to demonstrate maintenance for the ten-year period ending calendar year 2007 that is covered by the maintenance plan for the Richmond area.

However, Virginia did rely upon the VOC and NO_X benefits from this measure to establish "long-range" (2015 and beyond) mobile source emissions budgets for the purpose of demonstrating transportation conformity.

Because Virginia is now using the VOC reductions from the open burning restrictions as a contingency measure to address the 1998 and 1999 violations of the ozone NAAQS, the same reductions can no longer be used to supplement the long-range transportation conformity motor vehicle emission budgets in the future. Therefore, through this SIP revision, Virginia has replaced these emission reductions from open burning restrictions in the long-range transportation budget with equivalent VOC reductions from the small gasoline engine standards that have been estimated to occur by 2015. The NO_X reduction benefit from the open burning restrictions will be retained for long range conformity purposes.

Virginia did not rely upon this measure for its demonstration of maintenance.

What Are the Benefits From the Small Nonroad Gasoline-powered Engine Standards Control Program?

EPA promulgated emission standards for small nonroad gasoline-powered engine standards in two phases of control. EPA promulgated the Phase 1 final rule for handheld and non-handheld equipment on July 3, 1995, (60 FR 34582; codified at 40 CFR part 90). The phase 1 rule took effect for most new handheld and non-handheld engines beginning in model year 1997. EPA promulgated the Phase 2 rules for non-handheld equipment on March 30, 1999 (64 FR 15208; codified at 40 CFR part 90). These Phase 2 standards took effect for most new non-handheld engines beginning in model year 2001. EPA promulgated the Phase 2 rules for handheld equipment on April 25, 2000, (65 FR 24268; codified at 40 CFR part 90). These Phase 2 standards for took effect for most new handheld engines beginning in model year 2002.

Virginia did not rely upon these rules in its demonstration of maintenance through 2007 in the maintenance plan approved on November 17, 1997. The VA DEQ has determined that this measure will produce 3.84 tons per day of VOC emission reductions in 2002 and over 11 tons per day in 2015. VA DEQ is applying all of the 3.84 VOC emission reduction in 2002 as a contingency measure. In the revised maintenance plan, 2.75 tons per day of the total 11 plus tons per day of VOC emission reductions in 2015 from this measure are being used to maintain the safety margin necessary to support the 2015 VOC motor vehicle emissions budget. In effect, part of the 2015 VOC emission reductions are being substituted for the 2.75 tons per day of VOC emission reductions from the open burning measure in order to maintain the safety margin for the 2015 VOC motor vehicle emissions budgets.

[1] For the boundaries of the portion of Charles City County within the Richmond ozone maintenance area, *see* 40 CFR 81.347.

[2] While the maintenance plan was required to cover out to 2007, transportation plans must show conformity for twenty years. Therefore, when the Richmond maintenance plan was submitted in 1996 conformity determinations had to consider a "horizon" as far out as 2017.

[3] The Richmond Emissions Control Area for Volatile Organic Compounds consists of Charles City, Chesterfield, Hanover and Henrico Counties and the Cities of Colonial Heights, Hopewell, and Richmond. See 9 VAC 5–20–206.

What Would Have Been the Benefits From the Vehicle Inspection Maintenance Program?

The VA DEQ estimated that the basic biennial and decentralized I/M program in the original maintenance plan would produce a 1.23 ton/day reduction in VOC emissions and a 0.14 ton/day reduction in NO_X emissions once the program is fully implemented.

How Does the Emission Reductions From the Current Contingency Measure Compare With the Revised Maintenance Plan?

Initial Contingency Plan (Reductions)		
Basic Vehicle I/M Program	1.23 tons/day	0.14 tons/day
Revised Contingency Plan (Reductions beginning in 2000)		
Open Burning Restrictions	2.40 tons/day	Not Used.
Nonroad Engine Standards—Phase 1&2	3.81 tons/day	0.01 tons/day.
NO_X SIP Call	None	Up to 46 tons/day.

III. EPA's Evaluation of Virginia's SIP Revision

Because the Richmond area had violated the ozone NAAQS, Virginia was required to adopt and implement contingency measures to reduce emissions.

There are four ozone monitors in the Richmond area. These are in Charles City County, Hanover County, Henrico County and Chesterfield County. The monitors in Henrico and Charles City Counties are the only ones that have recorded a violation of the 1-hour ozone NAAQS since the area was redesignated to attainment in 1997: The Hanover County monitor recorded two exceedances of the 1-hour ozone NAAQS during the 1997 ozone season, two exceedances occurred during the1998 season and four in the 1999 season. The second exceedance recorded during 1998 ozone season constituted the violation of the 1-hour ozone NAAQS. The Charles City County monitor recorded no exceedances of the 1-hour ozone NAAQS during the 1997 and 1998 ozone seasons but recorded five during the 1999 season. The fourth exceedance recorded during 1999 ozone season constituted the violation of the 1-hour ozone NAAQS at this monitor.

Since the time of full implementation of the open burning restrictions in May of 2000, none of monitors in either Charles City or Hanover Counties have recorded an exceedance of the 1-hour ozone NAAQS. The other two monitors in the area have continued to show attainment. The control requirements for open burning restrictions have provided a sufficient level of emission reductions to maintain the 1-hour NAAQS and have strengthened the SIP. The Virginia revised contingency plan provided for earlier emission reduction than the original plan and provides for a continual reduction of VOC and NO_X emissions over the same time frame.

Therefore, EPA believes that adequate contingency measures have been adopted and implemented for the Richmond area to prevent future violations of the 1-hour ozone NAAQS.

EPA's review of this material indicates Virginia has adopted adequate control measures. Virginia has substituted equivalent emission reductions for the basic I/M program. EPA believes that the proposed revisions to the Richmond maintenance plan will continue to provide attainment of the 1-hour ozone NAAQS in the future.

We are seeking public comments on this proposed rulemaking and will accept such comments provided they are submitted as specified in the **DATES** and **ADDRESSES** sections of this document. We will address all comments in our final rulemaking on the revisions to Virginia's maintenance plan.

EPA is proposing to approve the November 20, 2001 SIP revision to Virginia's 1-hour ozone maintenance plan for the Richmond area. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

IV. Proposed Action

EPA is proposing to approve the revisions to Virginia's 1-hour ozone maintenance plan for the Richmond area submitted by the VA DEQ on November 20, 2001.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule on revisions to the Richmond maintenance plan does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 30, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc: 02–25416 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA135–4101b; FRL–7389–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County's Generic VOC and NO_X RACT Regulation and Revised Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Pennsylvania State Implementation Plan (SIP) submitted by the Commonwealth of Pennsylvania on behalf of the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality (hereafter the ACHD). These revisions consist of a generic regulation which requires major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) to implement reasonably available control technology (RACT) and related changes to the definitions of the terms "major source" and "potential emissions" and "low NO_X burner with separate overfire air". This generic RACT regulation applies to major sources not otherwise subject to RACT pursuant to other ACHD regulations. These sources are located in Allegheny County which is part of the Pittsburgh-Beaver Valley ozone area. In the Final Rules section of this **Federal Register**, EPA is approving the ACHD's generic VOC and NO_X regulation as a revision into the Pennsylvania SIP as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by November 6, 2002.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201 and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Janice Lewis at (215) 814–2185, the EPA Region III address above or by e-mail at *lewis.janice@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action for Allegheny County's generic RACT regulations, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: September 24, 2002.

James M. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 02–25286 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0046b; FRL–7383–1]

Approval and Promulgation of Air Quality Implementation Plans; State of Montana: General Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of revisions to the Montana State Implementation Plan (SIP) submitted by Governor of Montana on August 26, 1999. The revisions adopt Administrative Rules of Montana (ARM), Sub-Chapter 14, "Conformity of General Federal Actions," Sections 17.8.1401 and 17.8.1402, into the SIP. EPA is taking this action under section 110 and 176 of the Clean Air Act (Act). The conformity rules assure that in air quality nonattainment or maintenance areas projected emissions stay within the emissions ceiling in the SIP. The rules for conformity of general Federal actions assure that actions of Federal agencies that take place in nonattainment or maintenance areas, other than transportation actions, are consistent with the goals of the Montana SIP.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal

because the Agency views these as non-controversial revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing on or before November 6, 2002.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices: United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466; and, Air and Radiation Docket and Information, Room B–108, United States Environmental Protection Agency, (Mail Code 6102T), 1301 Constitution Avenue NW, Washington, DC 20460.

Copies of the State documents relevant to this action are available for public inspection at: Montana Department of Environmental Quality, Planning, Prevention and Assistance Division, 1520 East 6th Avenue, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Jeffrey Kimes, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, Telephone number: (303) 312–6445.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 12, 2002.

Jack McGraw,

Acting Regional Administrator, Region VIII

[FR Doc. 02–25288 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 61

[ND–001–0005b & ND–001–0007b; FRL–7379–9]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Revisions to the Air Pollution Control Rules; Delegation of Authority for New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and delegation of authority.

SUMMARY: EPA proposes to approve revisions to the State Implementation Plan (SIP) submitted by the Governor of North Dakota with a letter dated June 21, 2001. The revisions affect air pollution control rules regarding general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration. EPA will handle separately direct delegation requests for emission standards for hazardous air pollutants for source categories and the State's Acid Rain Program.

In addition, EPA is providing notice that on January 3, 2002, North Dakota was delegated authority to implement and enforce certain New Source Performance Standards (NSPS), as of August 1, 2000. Finally, given that on July 7, 1995 EPA delegated authority to North Dakota to implement and enforce the Clean Air Act section 112 requirements, including, among other things, the National Emission Standards for Hazardous Air Pollutants (NESHAPs), EPA proposes to remove the State's NESHAPs regulations from the federally-approved SIP.

In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing on or before November 6, 2002.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the State documents relevant to this action are available for public inspection at the North Dakota Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, North Dakota 58504–5264.

FOR FURTHER INFORMATION CONTACT: Amy Platt, EPA, Region VIII, (303) 312–6449.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 3, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 02–25290 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 46

Proposed Waiver of the Applicability of Certain Provisions of Department of Health and Human Services Regulations for the Protection of Human Subjects for Department of Health and Human Services Epidemiologic Research Involving Prisoners as Subjects

AGENCY: Office for Human Research Protections, Office of Public Health and Science, Office of the Secretary, Department of Health and Human Services.

ACTION: Proposed notice of waiver.

SUMMARY: The Department of Health and Human Services (DHHS) is proposing to waive the applicability of certain provisions of Subpart C of 45 CFR part 46, the DHHS regulations for the protection of human subjects, to specific types of epidemiological research involving prisoners as subjects. Subpart C, entitled Additional DHHS Protections Pertaining to Biomedical and Behavioral Research Involving Prisoners as Subjects, sets forth specific requirements for any research involving prisoners that is conducted or supported by DHHS. Pursuant to 45 CFR 46.101(i), the Secretary of Health and Human Services proposes waiving the applicability of 45 CFR 46.305(a)(1) and 46.306(a)(2) to allow DHHS to conduct or support certain important and necessary epidemiologic research that presents no more than minimal risk and no more than inconvenience to prisoner-subjects.

DATES: Comments on the proposed waiver must be received on or before November 6, 2002.

ADDRESSES: Comments must be sent to: Irene Stith-Coleman, Ph.D., Office for Human Research Protections (OHRP), The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Telephone 301–496–7005. E-mail *istithco@osophs.dhhs.gov*. The Department invites written comments on the proposed waiver.

FOR FURTHER INFORMATION CONTACT: Irene Stith-Coleman, Ph.D., Office for Human Research Protections (OHRP), The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Telephone 301–496–7005. E-mail *istithco@osophs.dhhs.gov*. Interested persons may obtain a copy of the current regulations for protection of human subjects, including subpart C, at *http://ohrp.osophs.dhhs.gov/humansubjects/guidance/45cfr46.htm*.

SUPPLEMENTARY INFORMATION:

Proposed Waiver

Pursuant to 45 CFR 46.101(i), the Secretary of Health and Human Services (HHS) proposes waiving the applicability of 45 CFR 46.305(a)(1) and 46.306(a)(2) for certain research conducted or supported by DHHS. In specific, for DHHS conducted or supported research involving epidemiologic studies (1) in which the sole purposes are (i) to describe the prevalence or incidence of a disease by identifying all cases, or (ii) to study potential risk factor associations for a disease, and (2) where the institution responsible for the conduct of the research certifies to the Office for Human Research Protections (OHRP), acting on behalf of the Secretary, that the Institutional Review Board (IRB) approved the research and fulfilled its duties under 45 CFR 46.305(a)(2)-(7) and determined and documented that (i) the research presents no more than minimal risk and no more than inconvenience to the prisoner-subjects, and (ii) prisoners are not a particular focus of the research, the Secretary of DHHS proposes waiving the requirements in sections 46.305(a)(1) and 46.306(a)(2) that the IRB and the Secretary determine that the research involves one of the categories of research permissible under 45 CFR 46.306(a)(2).

Background

DHHS conducts or supports certain epidemiologic studies in which the purposes are: (1) to describe the prevalence or incidence of a disease by identifying all cases, and (2) to study potential risk factor associations for a disease. For most such studies, the IRB determines that the research at issue involves no more than minimal risk and no more than inconvenience to the subjects. The human participants in this type of public health research may include prisoners in the study population. State health agencies are most commonly the conduits for this kind of research.

Subpart C of the DHHS regulations, set forth in 45 CFR 46.301 *et seq.*, defines four categories of research that may involve prisoners. Sections 45 CFR 46.305(a)(1) and 46 306(a)(2) require that IRBs and the Secretary, respectively, determine that research involving prisoners represent one of these four categories. The first three, paragraphs (i), (ii), and (iii) of 46.306(a)(2), require that the research target either (i) the causes, effects, or processes of incarceration and of criminal behavior; (ii) the prison as an institution or prison life; or (iii) conditions particularly affecting prisoners as a class. The fourth, paragraph (iv) of 46.306(a)(2), permits research on practices which have the intent and reasonable probability of improving the health or well-being of the prisoner-subject. Certain epidemiologic studies conducted or supported by the DHHS do not fall into any of these four categories. Instead, the research focuses on a particular condition or disease which might affect prisoners as it would anyone else in the population.

An example of an epidemiological study that would be permitted under the proposed waiver is one in which all persons with HIV, but with none of the known risk factors for HIV, are asked to participate in a study involving an interview, review of medical records, and collection of a blood specimen. The purpose of the study is to determine other potential risk factors for HIV. All states with mandatory HIV reporting laws report these cases to the Centers for Disease Control and Prevention (CDC). Each person who meets the study definition would be asked to participate, and prisoners could well be members of the potential study group.

The range of studies to which the proposed waiver would apply includes chronic diseases, injuries, and environmental health. This type of research uses epidemiologic methods (such as interviews and collection of biologic specimens) that entails no more than minimal risk to the subjects.

The specific type of epidemiological research conducted by DHHS and subject to the proposed waiver involves no more than minimal risk and no more than inconvenience to the human subject participants. The proposed waiver would allow DHHS to conduct or support a type of minimal risk research that does not now fall within the categories set out in 45 CFR 46.306(a)(2).

Periodic Review

If implemented, a periodic review of the ways in which DHHS implements the proposed waiver would be conducted by OHRP to determine the adequacy of the waiver in meeting its intended need or if adjustments to the waiver might be necessary and appropriate.

Dated: September 9, 2002.

Eve E. Slater,

Assistant Secretary for Health.

Approved: September 26, 2002.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

[FR Doc. 02–25205 Filed 10–4–02; 8:45 am]

BILLING CODE 4150–28–P

Notices

Federal Register
Vol. 67, No. 194
Monday, October 7, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. DA–02–05]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Services' (AMS) intention to request an extension for and revision to a currently approved information collection for the Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products—Recordkeeping (Subpart B).

DATES: Comments received by December 6, 2002, will be considered.

FOR FURTHER INFORMATION CONTACT: Susan M. Sausville, USDA/AMS/Dairy Programs, Dairy Standardization Branch, Room 2746-South Building, 1400 Independence Avenue, SW., Washington, DC 20250–0230; Tel: (202) 720–2643, Fax: (202) 720–2643 or via e-mail at *susan.sausville@usda.gov*

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products—Record Keeping (Subpart B).

OMB Number: 0581–0110.

Expiration Date of Approval: April 30, 2003.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621 *et seq.*) directs the Department to develop programs which will provide for and facilitate the marketing of agricultural products. One of these programs is the USDA voluntary inspection and grading program for dairy products (7 CFR part 58) where these dairy products are graded according to U.S. grade standards by a USDA grader. The dairy products under the dairy program may be identified with the USDA grade mark. Dairy processors, buyers, retailers, institutional users, and consumers have requested that such a program be developed to assure the uniform quality of dairy products purchased. In order for any service program to perform satisfactorily, there are regulations for the provider and user. For these reasons, the dairy inspection and grading program regulations were developed and issued under the authority of the Act. These regulations are essential to administer the program to meet the needs of the user and to carry out the purposes of the Act.

The information collection requirements in this request are essential to carry out the intent of the AMA to ensure that dairy products are produced under sanitary conditions and that buyers are purchasing a quality product. In order for the Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products to serve the government, industry, and the consumer, laboratory test results must be recorded.

Respondents are not required to submit information to the agency. The records are to be evaluated by a USDA inspector at the time of an inspection. These records include quality tests of each producer, plant records of required tests and analysis, and starter and cheese make records. As an offsetting benefit, the records required by USDA are also records that are routinely used by the inspected facility for their own supervisory and quality control purposes.

Estimate of Burden: Public reporting burden for this record keeping is estimated to average 2.85 hours per response.

Respondents: Dairy products manufacturing facilities.

Estimated Number of Respondents: 487.

Estimated Total Annual Burden on Respondents: 1388.

Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to the Office of the Deputy Administrator, USDA/AMS/Dairy Programs, Room 2968-S, 1400 Independence Avenue SW., Washington, DC 20090–6456. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: October 1, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–25431 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

South Pyramid Timber Sales, Willamette National Forest, Linn County, OR

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

SUMMARY: August 2, 1999, a Notice of Intent (NOI) to prepare an environmental impact statement for the South Pyramid Timber Sales on the Sweet Home Ranger District of the Willamette National Forest, was published in the **Federal Register** (64 FR 41912). The 1999 NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Brian McGinley, Resource Planner, Sweet Home Ranger District, 3225 Highway 22, Sweet Home, Oregon 97386; phone 541–367–5168.

Dated: September 19, 2002.

Michael Rassbach,

District Ranger.

[FR Doc. 02–25375 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Coconino National Forest, Arizona; Arizona Snowbowl 2002 Facilities Improvements Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of intent prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the anticipated environmental effects of the Arizona Snowbowl (Snowbowl) proposed 2002 Facilities Improvements Plan. The chief feature of the Proposed Action is Snowbowl's proposal to develop snowmaking. This would entail the burial of air, water, and electrical lines within the ski area sufficient to enable the Snowbowl to produce artificial snow from reclaimed water on 203.5 acres of skiing terrain. Snowmaking would also require the construction of a 10 million gallon water storage pond within the ski area, as well as the construction of a pipeline from Flagstaff to the Snowbowl to convey the water.

The other major aspects of the Proposed Action include:

- Realignment, modernization and/or upgrade of the Sunset, Hart Prairie and Aspen chairlifts; and installment of a new Humphrey's chairlift to provide skier access to a new pod of ski runs.
- Creation of approximately 66.5 acres of new skiing terrain, intended to primarily serve intermediate and advanced skiers. This proposed work comprises widening and extending some trails, and the construction of two sets of new trails.
- Construction of a seven-acre snowplay area near the Hart Prairie Lodge. The proposed snowplay area would include a surface conveyor, a parking lot, and a guest services building.
- Construction of a snowboarding halfpipe near the bottom of the existing Sunset chairlift.
- Enlargement and upgrading of both day lodges.
- Development of a 2,500 sq. foot Cultural Center in or near the Agassiz Lodge.
- Construction of three new ski team buildings to replace existing buildings.
- Placement of low-watt lighting on ski trails and facilities on the middle to lower areas of the ski area for night skiing.
- Construction of a redesigned entrance loop to improve vehicle traffic flow.
- Construction of pedestrian underpass between the Hart Prairie Lodge and the Sunset chairlift to increase pedestrian safety and improve traffic flow.
- Construction of a hiking trail from the existing Agassiz mid-station to the top of the Aggasiz chairlift.
- Construction of an Americans with Disability Act (ADA)-complaint summer access trail into Hart Prairie.
- Combination of parking lots 1 and 2.
- Thinning of approximately 42 acres of dead and dying trees.
- Improvement of skiing terrain by grading/stumping 50 acres and smoothing 10 acres on existing ski runs, and
- Creation of a dedicated ski teaching area to accommodate beginning skiers.

The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected individuals may become aware of how they may participate in the process and contribute to the final decision.

DATES: Comments concerning the proposal and environmental analysis should be received by November 15, 2002. A draft environmental impact statement is expected in June of 2003 and a final environmental impact statement is expected in January of 2004.

ADDRESSES: Send written comments concerning this proposal to: Peaks Ranger District, attn: Snowbowl Upgrade, 5075 N. Highway 89, Flagstaff, AZ 86004. e-mail: *r3_coconino_snowbowlupgrade@fs.fed.us.*

FOR FURTHER INFORMATION: Direct questions about the proposed action and EIS to Ken Jacobs, Peaks Ranger District, Phone: (928) 214–2464.

SUPPLEMENTARY INFORMATION: The Proposed Action addresses issues related to safety, customer service and economics associated with the operations of the existing ski area. All elements of the proposal remain within the existing Special Use Permit Boundary. Presently, alpine skiing/snowboarding and other resort activities are provided to the public through a Special Use Permit (SUP) issued by the U.S. Forest Service and administered by the Coconino National Forest. Many of the proposed projects have been conceptually approved through a previous National Environmental Policy Act analysis.

The permitted ski area is coated on National Forest System lands within sections 31 and 32, Township 23 North, Range 7 East; section 36 Township 23 North, Range 6 East; sections 5 and 6, Township 22 North, Range 7 East; and sections 1, Township 22 North, Range 6 East.

The proposed improvements are consistent with the Coconino National Forest Land and Resource Management Plan (Forest Plan). The proposed improvements are considered necessary in light of current resort deficiencies, increased visitation experienced over the past decade and projects future visitation. The ensuing analysis will provide additional site-specific detail for the proposal to reflect changing socio-economic and environmental considerations, and may modify the project proposal in response to environmental issues.

The majority of the proposed improvements are originally within the 1979 Final Environmental Impact Statement and the Record of Decision for the Arizona Snowbowl Ski Area Proposal. New proposed projects have been designed to remain within the scope of the 1979 Ski Area Proposal and Final Environmental Impact Statement. The proposed improvements provide high quality, reliable recreational opportunities while minimizing effects to surrounding resource values. This has been accomplished by focusing the scope of the proposed action on the key elements necessary to significantly enhance the quality of the skiing experience offered to the recreating public.

Purpose and Need for Action

The Forest Service and Arizona Snowbowl cooperatively determined broad categories important to the improvement to the Arizona Snowbowl (Snowbowl) facilities. From these categories, a list of proposed projects was created. The overall Purpose and Need for these projects responds to the three broad categories, (1) consistent/reliable operating season by snowmaking, (2) improve skiing and recreational opportunities by bringing terrain and infrastructure into balance with demand, and (3) facilities need to comply with Americans with Disabilities Act (ADA).

Possible Alternatives

There are no alternatives identified at this time. However, different configurations of improvements or

different sources of water for snowmaking will likely be explored.

Responsible Official

The responsible official is Jim Golden, Forest Supervisor for the Coconino National Forest, 2323 E Greenlaw Lane, Flagstaff AZ 86004. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR part 215 or part 251.

Nature of Decision To Be Made

The decision will be to modify the master plan for the Snowbowl Ski permit, if an action alternative is selected. All potential actions are within the existing permit area; there will be no expansion of the area.

Scoping Process

Public questions and comments regarding this proposal are an integral part of this environmental analysis process. Comments will be used to identify issues and develop alternatives to Snowbowl's proposal. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible.

Two public open houses will be held. The first, on October 10, 2002 from 6:30 p.m. to 8:30 p.m. and the second, on October 26, 2002 from 2 p.m. to 5 p.m. Both meetings will be held at the Flagstaff High School Commons in Flagstaff Arizona. The purpose of the meetings will be to provide the public with an opportunity to become more familiar with the proposal and to understand the review and analysis process that will be used in evaluating this proposal. Additional information may also be obtained on the web by accessing: *http://www.fs.fed.us/r3/coconino/nepa*.

Preliminary Issues

Identified preliminary issues include:

Traditional Cultural Property—The San Francisco Mountain is a Traditional Cultural Property (TCP) and was determined eligible for the National Register of Historic Places as part of the White Vulcan Mine Settlement in July 2000. The Mountain is of traditional cultural significance to several Indian tribes, including the Hopi, Navajo, Zuni, Hualapai, Havasupai, Yavapai-Apache, Yavpai-Prescott, Tonto Apache, White Mountain Apache, San Carlos Apache, San Juan Southern Paiute, Fort McDowell Mohave Apache, and Acoma. Previous input has indicated that commercial and recreational activities on the Mountain sometimes conflict with these values.

Snowmaking—Preliminary input from some members of the public have expressed concern over the hydrological effects of snowmaking on the surrounding land. In addition, some people have expressed health related concerns over the use of reclaimed water for snowmaking.

These issues as well as any other identified by this scoping process will be analyzed in detail during the EIS process. Alternatives may be developed or mitigation measures identified to address issues related to the proposed action.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participation by the close of the November 15, 2002 comment period so that substantive comments and objections are made available to the Forest Service at the time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: October 1, 2002.

Rodger Zanotto,

Acting Forest Supervisor, Coconino National Forest.

[FR Doc. 02–25373 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will meet in Clovis, California. The purpose of the meeting is to discuss and to receive project proposals regarding the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) for expenditure of Payments to States Fresno County Title II funds.

DATES: The meeting will be held November 19, 2002, 6:30 p.m. to 9:30 p.m.

ADDRESSES: 1600 Tollhouse Road, California. The meeting will be held at the Sierra National Forest, Forest Supervisor's office, 1600 Tollhouse Road, Clovis, California 93611–0532. Send written comments to Nancy Fleenor, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *nfleenor@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Nancy Fleenor, Fresno County Resource Advisory Committee Coordinator, (559)855–5355 ext. 3350.

SUPPLEMENTARY INFORMATION: The meeting is open to the public.

Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public sessions will be provided and individuals who made written requests by November 19, 2002 will have the opportunity to address the Committee at those sessions. Agenda items to be covered include: (1) Review and approve the October 15, 2002 meeting notes; (2) discuss new business of the RAC if applicable; (3) discuss the progress of the 2001 funded projects; (4) consideration of Title II Project proposals from the public and/or the RAC members; (5) confirm the date, location and agenda of the next meeting; (6) public comment.

Dated: September 30, 2002.

Ray Porter,

District Ranger.

[FR Doc. 02–25344 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Columbia County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Columbia County Resource Advisory Committee (RAC) will meet on October 7, 2002 in Dayton, Washington. The purpose of the meeting is to discuss future RAC actions including the consideration of possible Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on October 7, 2002 from 7 p.m. to 9 p.m.

ADDRESSES: The meeting will be held at the U.S. Post Office, 202 S. 2nd St., Dayton, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fuishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: This meeting will focus on Title II project proposals. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: September 30, 2002.

Monte Fujishin,

Columbia County RAC Designated Federal Official.

[FR Doc. 02–25354 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–BH–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne County Resource Advisory Committee will meet on October 28, 2002, at the City of Sonora Fire Department, in Sonora, California. The purpose of the meeting is to review subcommittee recommendations on how to improve funding and administrative procedures for project proposals.

DATES: The meeting will be held October 28, 2002, from 12 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Pat Kaunert, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora CA 95370 (209) 532–3671; EMAIL *pkaunert@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Report out from the Chairperson's presentation to the Tuolumne County Board of Supervisors; (2) Review subcommittee recommendations on how to improve funding and administrative procedures for project proposals; (3) Determine purpose and dates of future meetings. This meeting is open to the public.

Dated: September 30, 2002.

Glenn Gottschall,

Acting Forest Supervisor.

[FR Doc. 02–25376 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–ED–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Status of Project Proposals, (5) Draft Project Evaluation Criteria/Possible Action, (6) Draft Project Evaluation & Tracking Report/Possible Action, (7) General Discussion, (8) Project Presentation/Possible Action.

DATES: The meeting will be held on October 28, 2002, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Williows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussions is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by October 24, 2002 will have the opportunity to address the committee at those sessions.

Dated: October 1, 2002.

James F. Giachino,

Designated Federal Official.

[FR Doc. 02–25439 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–802]

Certain Preserved Mushrooms from Indonesia: Initiation of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of New Shipper Antidumping Duty Review for the period February 1, 2002, through July 31, 2002.

EFFECTIVE DATE: October 7, 2002.

SUMMARY: The Department of Commerce has received requests to conduct a new shipper review of the antidumping duty order on certain preserved mushrooms from Indonesia. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(d), we are initiating a review for PT Eka Timur Raya and PT Karya Kompos Bagas.

FOR FURTHER INFORMATION CONTACT: Sophie Castro or Rebecca Trainor, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0588 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce ("the Department") regulations are to 19 CFR part 351 (2002).

Background

The Department has received timely requests from PT Eka Timur Raya (Etira) and PT Karya Kompos Bagas (KKB), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on certain preserved mushrooms from Indonesia, which has a February anniversary month.

As required by 19 CFR 351.214(b)(2)(i), (ii), and (iii)(A), each company identified above has certified that it did not export certain preserved mushrooms to the United States during the period of investigation ("POI"), and that it has never been affiliated with any exporter or producer which exported certain preserved mushrooms during the POI. Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), each company submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the date of entry of that first shipment, the volume of that shipment and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act, as amended, and 19 CFR 351.214(b), and based on information on the record, we are initiating a new shipper review for Etria and KKB.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on certain preserved mushrooms from Indonesia. We intend to issue the preliminary results of this new shipper review not later than 180 days after initiation of this review.

Antidumping Duty New Shipper Review Proceeding	Period to be Reviewed
PT Eka Timur Raya	02/01/02 - 07/31/02
PT Karya Kompos Bagas	02/01/02 - 07/31/02

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the above-listed companies in accordance with 19 CFR 351.214(e). Because Etria and KKB certified that they both produce and export the subject merchandise, the sale of which was the basis for this new shipper review request, we will apply the bonding privilege only to subject merchandise for which they are both the producer and exporter.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: September 30, 2002.

Richard Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–25448 Filed 10–4–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms from the People's Republic of China: Initiation of Fifth New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received requests to conduct a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China. In accordance with 19 CFR 351.214(d), we are initiating a review for Xiamen Zhongjia Imp. and Exp. Co., Ltd. and Zhangzhou Longhai Minhui Industry and Trade Co., Ltd., both producers and exporters of certain preserved mushrooms from the People's Republic of China ("PRC").

EFFECTIVE DATE: October 7, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1766.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce ("the Department") regulations are to 19 CFR part 351 (April 2002).

Background

The Department has received timely requests from Xiamen Zhongjia Imp. and Exp. Co., Ltd. ("Zhongjia") and Zhangzhou Longhai Minhui Industry and Trade Co., Ltd. ("Minhui"), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on certain preserved mushrooms from the PRC, which has a February anniversary month.

As required by 19 CFR 351.214(b)(2)(i), (ii), and (iii)(A), each company identified above has certified that it did not export certain preserved mushrooms to the United States during the period of investigation ("POI"), and that it has never been affiliated with any exporter or producer which did export certain preserved mushrooms during the POI. The company has further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv)(A), each company submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the date of entry of that first shipment, the volume of that shipment, and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act, as amended, and 19 CFR 351.214(b), and based on information on the record, we are initiating the new shipper review for Minhui and Zhongjia.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on certain preserved mushrooms from the PRC. We intend to issue the preliminary results of this review not later than 180 days after the date on which the review is initiated.

Antidumping Duty New Shipper Review Proceeding	Period to be Reviewed
PRC: Certain Preserved Mushrooms, A–570–851:	
Xiamen Zhongjia Imp. and Exp. Co., Ltd.	02/01/02 - 07/31/02
Zhangzhou Longhai Minhui Industry and Trade Co., Ltd.	02/01/02 - 07/31/02

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the above-listed companies. Because Minhui and Zhongjia have certified that they both produce and export the subject merchandise, the sale of which was the basis for this new shipper review request, we will apply the bonding privilege only to subject merchandise for which they are both the producer and exporter.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: September 30, 2002.

Richard Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–25449 Filed 10–4–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Stainless Steel Flanges From India; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 7, 2002, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on certain forged stainless steel flanges (flanges) from India (67 FR 10358). The review covers flanges manufactured by Isibars Ltd. (Isibars), Panchmahal Steel Ltd. (Panchmahal), Patheja Forgings and Auto Parts Ltd. (Patheja), and Viraj Forgings Ltd. (Viraj). The period of review (POR) is February 1, 2000, through January 31, 2001. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: October 7, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Robert James, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–5222 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

Background

We invited parties to comment on our preliminary results of review, and we received briefs and rebuttals from the petitioners, the Coalition Against Indian Flanges, and Viraj.

Scope of Review

The products under review are certain forged stainless steel flanges from India, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the review.

Use of Facts Available

As in the preliminary results, and for the reasons stated therein, we have continued to assign to Panchmahal and Patheja the rate of 210%, based on adverse facts available.

Analysis of Comments Received

The issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Joseph A.

Spetrini, Deputy Assistant Secretary, Important Administration, Group III, to Faryar Shirzad, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Record Unit, room B–099 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the International Trade Administration's Web site at *http://www.ia.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our verification and analysis of the comments received, we have changed our approach to the margin calculation for Viraj. *See* the Decision Memo.

Final Results of the Review

We determine that the following percentage weighted-average margins exists for the period February 1, 2000, through January 31, 2001:

CERTAIN FORGED STAINLESS STEEL FLANGES FROM INDIA

Weighted-average margin	Producer/ manufacturer/ exporter (percent)
Isibars	0
Panchmahal	210.00
Patheja	210.00
Viraj	0

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's entries during the review period.

In addition, the following deposit requirements will be effective upon publication of this notice for all shipments of stainless steel flanges from India entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act:

(1) For the companies reviewed, the cash deposit rates will be the rates listed above, (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent segment of the proceeding in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 162.14 percent, the all others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.214.

Dated: September 5, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Petitioners

1. Viraj affiliation with KOP;
2. KOP sales and expenses data;
3. KOP's U.S. selling expenses;
4. Equity infusion;
5. Duty drawback;
6. Billet costs;
7. Duties and taxes in costs;
8. Labor and variable overhead;
9. G&A expense ratio;
10. Interest expense ratio;
11. Direct selling expenses;

Viraj

12. CEP Prices;
13. Production quantities;
14. Weight-averaged prices
15. Margin Calculations
16. Foreign Unit Price
17. Aberrant margin
18. Prices per piece vs. per kilogram
19. Imputed costs in CEP profit

[FR Doc. 02–25445 Filed 10–4–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Certain Welded Carbon Steel Pipe and Tube From Turkey: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

EFFECTIVE DATE: October 7, 2002.

SUMMARY: On June 25, 2002, the Department of Commerce (the Department) published in the **Federal Register** (67 FR 42753) a notice announcing the initiation of an administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey,[1] covering the period May 1, 2001, through April 30, 2002, and one manufacturer/exporter of the subject merchandise, the Borusan Group. We are now rescinding this review as a result of Allied Tube, *et al.*'s withdrawal of their request for an administrative review.

[1] The review was requested by Allied Tube & Conduit Corporation, IPSCO Tubulars, Inc., and Wheatland Tube Company (Allied Tube, *et al.*), domestic producers of the merchandise under review.

FOR FURTHER INFORMATION CONTACT: Charles Riggle at (202) 482–0650 or David Layton at (202) 482–0371, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute And Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (April 2002).

Background

On May 31, 2002, Allied Tube, *et al.*, in accordance with 19 CFR 351.213(b), requested an administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey. On June 25, 2002, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of this order for the period May 1, 2001, through April 30, 2002 (67 FR 42753). On September 6, 2002, Allied Tube, *et al.* withdrew their request for this review.

Rescission of Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. Allied Tube, *et al.* were the only parties to request this review and they withdrew their request within the 90-day period. Accordingly, this review is rescinded.

This notice is issued and published in accordance with section 751 of the Act (19 U.S.C. 1675) and 19 CFR 351.213(d)(4).

Dated: September 27, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–25446 Filed 10–4–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period April 1, 2002, through June 30, 2002. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: October 7, 2002.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or David Salkeld, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979, (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on cheeses that were imported during the period April 1, 2002, through June 30, 2002.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: September 30, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross[1] subsidy ($/lb)	Net[2] subsidy ($/lb)
Austria	European Union Restitution Payments	$0.08	$0.08
Belgium	EU Restitution Payments	0.02	0.02
Canada	Export Assistance on Certain Types of Cheese	0.22	0.22
Denmark	EU Restitution Payments	0.04	0.04
Finland	EU Restitution Payments	0.12	0.12
France	EU Restitution Payments	0.10	0.10
Germany	EU Restitution Payments	0.05	0.05
Greece	EU Restitution Payments	0.00	0.00
Ireland	EU Restitution Payments	0.05	0.05

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY—Continued

Country	Program(s)	Gross [1] subsidy ($/lb)	Net [2] subsidy ($/lb)
Italy	EU Restitution Payments	0.04	0.04
Luxembourg	EU Restitution Payments	0.07	0.07
Netherlands	EU Restitution Payments	0.04	0.04
Norway	Indirect (Milk) Subsidy	0.29	0.29
	Consumer Subsidy	0.13	0.13
Total		0.42	0.42
Portugal	EU Restitution Payments	0.04	0.04
Spain	EU Restitution Payments	0.04	0.04
Switzerland	Deficiency Payments	0.05	0.05
U.K.	EU Restitution Payments	0.05	0.05

[1] Defined in 19 U.S.C. 1677(5)
[2] Defined in 19 U.S.C. 1677(6)

[FR Doc. 02–25447 Filed 10–4–02; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–833]

Notice of Amended Final Affirmative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final affirmative countervailing duty determination.

SUMMARY: On August 30, 2002, the Department of Commerce published in the **Federal Register** the *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Germany*, 67 FR 55808 (August 30, 2002). On September 4, 2002 we received a ministerial error allegation from Saarstahl AG. On September 9, 2002, the petitioners filed a response to the allegation. Based on our review of the comments received from the parties, we are not revising the estimated countervailing duty rate for Saarstahl AG.

Subsequent to issuing the final determination, the Department noted an error in the calculation of the "all others" rate. We have revised the estimated countervailing duty "all others" rate accordingly. The revision to the "all others" rate is listed below in the "Amended Final Determination" section.

EFFECTIVE DATE: October 7, 2002.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4987.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 ("the Act"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department") regulations are to 19 CFR part 351 (April 2001).

Scope of Investigation

The merchandise covered by this investigation is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter ("subject merchandise" or "wire rod").

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the *Harmonized Tariff Schedule of the United States* ("HTSUS") definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (i.e., products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. Grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

Grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as "tire cord quality" or "tire bead quality" indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Period of Investigation

The period for which we are measuring subsidies, or period of investigation, is calendar year 2000.

Amended Final Determination

In accordance with section 705(d) of the Act, on August 30, 2002, the Department published in the **Federal Register** the *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Germany*, 67 FR 55808. On September 4, 2002, we received a ministerial error allegation, timely filed pursuant to 19 CFR 351.224(c)(2), from Saarstahl AG, ("Saarstahl"). Saarstahl alleged that the Department made a ministerial error in the final determination in failing to use an 11–year average useful life ("AUL") in Saarstahl's calculations. On September 9, 2002, the petitioners (Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.) submitted a rebuttal to Saarstahl's allegation. The petitioners argued that Saarstahl's allegation does not constitute a ministerial error as defined by the Department's regulations and should be rejected by the Department.

After analyzing the submissions, we have determined that Saarstahl's allegation does not constitute a ministerial error as defined by section 351.224(f) of the Department's regulations. For a detailed discussion of the ministerial error allegation and the Department's analysis, *see* September 30, 2002, "Ministerial Errors" memorandum from the Team to Richard W. Moreland, Deputy Assistant Secretary ("*Ministerial Errors Memo*"), which is on file in the Department's Central Records Unit in Room B–099 of the main Department building.

After releasing the final determination, the Department found an error in the calculation of the "all others" rate. The error resulted from the use of the originally reported sales values for Ispat Walzdraht Hochfeld GmbH ("IWHG") and Ispat Hamburger Stahlwerke GmbH ("IHSW") in the calculation, rather than the revised sales values obtained at verification. Using the correct U.S. sales values for IHSW and IWHG, the revised "all others" rate is 10.97 percent *ad valorem*. For a discussion of this issue and the revised "all others" margin calculation, *see Ministerial Errors Memo*.

Accordingly, we are amending the final determination for the countervailing duty investigation of carbon and certain alloy steel wire rod from Germany to correct the "all others" rate. The estimated net subsidy rates are as follows:

Producer/Exporter	Net Subsidy Rate
Saarstahl, A.G.	18.46
Ispat (IHSW, IWHG, ISRG)	1.12
All Others	10.97

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(ii) of the Act, we are directing the Customs Service ("Customs") to continue suspending liquidation on all imports of subject merchandise from Germany that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Customs shall require a cash deposit or the posting of a bond equal to the margin/subsidy rates indicated in the chart above. These suspension of liquidation instructions will remain in effect until further notice.

We will issue a countervailing duty order if the International Trade Commission ("ITC") issues a final affirmative injury determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our amended final determination.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the final reminder to parties subject to an Administrative Protective Order ("APO") of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d), 705(e) and 777(i) of the Act.

Dated: October 1, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–25450 Filed 10–4–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

[I.D. 100102A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Documentation of Fish Harvest.

Form Number(s): None.

OMB Approval Number: 0648–0365.

Type of Request: Regular submission.

Burden Hours: 50.

Number of Respondents: 25.

Average Hours Per Response: 30 minutes.

Needs and Uses: Seafood dealers who possess red porgy, gag, black grouper, or greater amberjack during seasonal fishery closures must maintain documentation that such fish were harvested from areas other than the South Atlantic. Documentation includes information on the vessel that harvested the fish and on where and when the fish were offloaded. The information is required for the enforcement of fishery regulations.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: Recordkeeping.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: September 26, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–25330 Filed 10–4–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 2002–C–007]

Final United States Patent and Trademark Office Information Quality Guidelines

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of availability.

SUMMARY: This document announces the availability of the agency's final information quality guidelines that ensure and maximize the quality, objectivity, utility, and integrity of information disseminated by the agency. These guidelines also detail the administrative mechanism developed by the USPTO to allow affected persons to seek and obtain appropriate correction of information maintained and disseminated by the agency that does not comply with the OMB or the agency guidelines. This notice of availability and these guidelines are required by section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Public Law 106–554) and the OMB information quality guidelines published in the **Federal Register** on January 3, 2002 (67 FR 369–378); corrected on February 5, 2002 (67 FR 5365); and reprinted in their entirety February 22, 2002 (67 FR 8451–8460).

ADDRESSES: The final USPTO information quality guidelines are available on the USPTO Web site in the News & Notices section, *http://www.uspto.gov/main/newsandnotices.htm*.

FOR FURTHER INFORMATION CONTACT: Bruce Cox, Director, Office of Electronic Information Products, *Bruce.Cox@uspto.gov* (703) 306–2606; or Christopher Leithiser, Information Products Division, *Chris.Leithiser@uspto.gov* (703) 306–2622.

Dated: September 30, 2002.

Jon W. Dudas,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 02–25475 Filed 10–4–02; 8:45 am]

BILLING CODE 3510–16–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 17 October 2002 at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC, 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas are available to the public one week prior to the meeting. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200.

Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 30 September 2002.

Charles H. Atherton,

Secretary.

[FR Doc. 02–25377 Filed 10–4–02; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Pakistan

October 1, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 8, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 360 is being increased for 10% special shift from Category 361, reducing the limit for Category 361 to account for the special shift being applied to Category 360.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63683, published on December 10, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 1, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on October 8, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Specific limits	
360	9,092,671 numbers.
361	9,540,744 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–25397 Filed 10–4–02; 8:45 am]

BILLING CODE 3510–DR–S

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission ("Commission") will hold an informal conference followed by a public hearing on Wednesday, October 16, 2002. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the Commissioners and staff will begin at 9:30 a.m. Topics of discussion include: a presentation on "Green Infrastructure" by a spokesperson of the Regional Planning Partnership; a presentation on the Filtration Avoidance Determination for the New York City Catskill-Delaware Water Supply System by a spokesperson of the U.S. Environmental Protection Agency; an update on development of the Commission's new Comprehensive Plan; a discussion regarding a Memorandum of Agreement between the Commission and the National Park Service for the development of a Tri-State Watershed Management Area Plan for the Delaware Water Gap Recreation Area; a presentation on the Commission's 2002 305(b) Water Quality Assessment Report; a status report on the PCB TMDL for the Delaware Estuary; a discussion regarding a resolution to amend the *Comprehensive Plan* and *Water Code* relating to the operation of Lake Wallenpaupack during drought watch, drought warning and drought conditions; and a discussion of emergency waivers requested by United Water Delaware and Pennsylvania-American Water Company and proposed docket revisions related thereto.

The subjects of the public hearing to be held during the 1:30 p.m. business meeting include, in addition to the dockets listed below, a resolution amending United Water Delaware's Docket D–96–50 CP by the addition of a new condition "m;" a resolution regarding a request by the Pennsylvania-American Water Company for emergency relief from condition "e" of Docket D–86–82 CP concerning conservation releases from Rock Run Reservoir and to amend Docket D–96–16 CP by the addition of a new condition "s;" a resolution regarding a request by the Pennsylvania American Water Company and the Chester County Water Resources Authority for emergency relief from condition "d" of Docket D–87–35 CP; and a resolution amending the *Comprehensive Plan* and *Water Code* relating to the Lake Wallenpaupack Drought Operating Plan.

The dockets scheduled for public hearing are as follows:

1. *Unitech Services Group, Inc. D–99–7.* A project to construct a new outfall from the applicant's existing tertiary treatment plant to discharge 0.08 million gallons per day (mgd) of treated industrial laundry wastewater to the Schuylkill River in Royersford Borough, Montgomery County, Pennsylvania. The treated effluent is currently routed to the Royersford Borough sewage treatment plant (STP). The project will enable the STP to receive additional flow from development within its service area.

2. *Burlington Township D–99–50 CP.* A ground water withdrawal project to supply up to 25.95 mg/30 days of water to the applicant's distribution system from new Well No. 7 and to increase the withdrawal limit from all wells from 98.2 mg/30 days to 113 mg/30 days. The project is located in the Assiscunk and Delaware River Watersheds in Burlington Township, Burlington County, New Jersey.

3. *East Goshen Municipal Authority D–2000–30 CP.* A project to expand the applicant's existing Ridley Creek secondary treatment 0.4 mgd STP to 0.75 mgd. The STP is located approximately 600 feet southeast of the intersection of Route 352 and Boot Road in East Goshen Township, Chester County, Pennsylvania and will continue to serve portions of East Goshen and Willistown Townships, both in Chester County. Treated effluent will continue to discharge to the non-tidal portion of Ridley Creek, a tributary of the Delaware River.

However, up to 0.135 mgd of treated effluent will be seasonally utilized for irrigation of the proposed Applebrook Golf Course to be located on the former Smith-Kline-Beecham/Pfizer tract in East Goshen Township.

4. *Summit Management & Utilities, Inc. D–2001–56 CP.* A ground water withdrawal project to supply up to 14 mg/30 days of water to both the applicant's water supply distribution system and for golf course irrigation from new Well No. 3, in the Polar Gap Member of the Catskill Formation, and to limit the total allocation from existing Wells Nos. 1 and 2 and New Well No. 3 to 22.4 mg/30 days. Irrigation of the golf course will be sourced from both Well No. 3 and wastewater effluent from an existing STP. The project is located in the Tunkhannock Creek Watershed in Kidder Township, Carbon County, Pennsylvania.

5. *Jeffsonville Golf Course D–2002–30 CP.* A ground water withdrawal project to supply up to 8.64 mg/30 days of water to the applicant's golf course from new Wells Nos. PW–1 and PW–3 in the Stockton Formation, and to limit the existing withdrawal from all wells to 8.64 mg/30 days. The project is located in the Indian Creek Watershed in West Norriton Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

6. *Waymart Area Authority D–2002–32 CP.* A project to expand a 0.21 mgd STP to process 0.715 mgd, while continuing to provide tertiary treatment. The expanded plant will serve Waymart Borough and a portion of Canaan Township, both in Wayne County,

Pennsylvania. The project is located on the northern shore of Lake Ledore, approximately one mile southeast of the intersection of Interstate Highway 6 and State Route 296. Treatment plant effluent will continue to be discharged to Van Auken Creek in the drainage area of the Delaware River Basin Commission Special Protection Waters, but a new outfall will be provided.

In addition to the public hearing items, the Commission will address the following at its 1:30 p.m. business meeting. Minutes of the August 28, 2002 business meeting; announcements; a report on Basin hyrologic conditions; a report by the Executive Director; a report by the Commission's General Counsel; a resolution concerning the drought emergency declared by the Commission on December 18, 2001; and a resolution authorizing the Executive Director to enter into an agreement with the National Park Service for Development of a Tri-State Watershed Management Plan for the Delaware Water Gap National Recreation Area. The meeting will conclude with an opportunity for public dialogue.

The Commission's draft dockets and draft resolutions scheduled for public hearing on October 16, 2002 are posted on the Commission's web site, *http://www.drbc.net*, where they can be accessed through the Notice of Commission Meeting and Public Hearing. Documents relating to the dockets and other items may be examined at the Commission's offices. Please contact Thomas L. Brand at 609–883–9500 ext. 221 with any docket-related questions. Persons wishing to testify at this hearing are requested to register in advance with the Commission Secretary at 609–883–9500 ext. 203.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the hearing should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission may accommodate your needs.

Dated: October 1, 2002.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 02–25441 Filed 10–4–02; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF ENERGY

Final Report Implementing Office of Management and Budget Information Dissemination Quality Guidelines

AGENCY: Office of the Chief Information Officer, Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE gives notice of the final report to the Office of Management and Budget (OMB) that contains final DOE guidelines setting forth policy and procedures to ensure and maximize the quality, utility, objectivity, and integrity of the information that DOE disseminates to members of the public. DOE has prepared this final report pursuant to OMB government-wide guidelines under section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Act) (Pub.L. 106–554, 114 Stat. 2763).

DATES: The guidelines in the final report to OMB are effective October 1, 2002.

ADDRESSES: The final DOE report and guidelines in this notice are available on the web site of the DOE Chief Information Officer (CIO) at *http://cio.doe.gov/informationquality*.

FOR FURTHER INFORMATION CONTACT: Office of the Chief Information Officer, Attention: Ms. Deborah Henderson, U.S. Department of Energy, Room 8H–089, 1000 Independence Avenue, SW., Washington, DC 20585; *toby.henderson@hq.doe.gov;* (202) 586–5606.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The final report and guidelines in this notice are in response to OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (OMB guidelines), 67 FR 8452 (February 22, 2002) under section 515 of the Act. DOE's final guidelines apply to a wide variety of information disseminated to members of the public. The DOE final guidelines are modeled on the OMB guidelines with modifications specific to DOE. The principal modifications with explanations, are as follows:

1. DOE inserted the definitions before the operative portions of its final guidelines, and in order to enhance readability, opted to relocate some of the language in the OMB definitions (namely, that which provided policy as distinguished from strictly definitional material) among the operative sections of the guidelines.

2. DOE included general pre-dissemination review procedures which would provide for the originating DOE office to review information in light of the quality standards in the OMB and DOE guidelines and, in appropriate cases, for higher level internal review of the originating office's conclusions to ensure that the procedures are followed.

3. DOE included its own definition of "influential" when that term is applied to financial, scientific, or statistical information. Under the OMB guidelines, "influential" information of that type is supposed to meet the highest standards of quality and transparency (consistent with countervailing considerations such as confidentiality) and data must be capable of reproduction by a qualified individual outside of the agency. DOE decided to define "influential information" as information that DOE routinely embargoes because of its potential effect on markets, information on which a regulatory action with a $100 million per year impact is based, and other information products on a case-by-case basis. Routine embargo information occurs with regard to certain of the information products of DOE's Energy Information Administration. Currently, only some of the appliance energy conservation standards rulemakings under the Energy Policy and Conservation Act (42 U.S.C. 6295) have $100 million impacts on the economy. While DOE is committed to maintaining high standards of quality for all of its information products aimed at the public, DOE is not of the view that the impact of other information products warrants holding them to the most rigorous standards of transparency and reproducibility.

4. DOE included mandatory procedures, including content requirements, to be followed by members of the public in submitting requests for correction of information under the guidelines. With respect to information related to DOE documents subject to public comment, members of the public generally would have to submit requests for correction in the form of timely comments to ensure their consideration. However, the final guidelines allow for the possibility of DOE consideration of late-filed requests for correction. They also provide specifically for requests for correction applicable to final rules and final environmental impact statements. With respect to DOE documents that are not subject to public comment, members of the public would be required to submit requests for correction to the DOE CIO who would direct the request to the originating DOE program office. That office should provide at least an initial response within 60 days. A member of the public could request review of an adverse initial response through the DOE CIO. The CIO would direct the request for review to a higher level official of the DOE program office to whom the originating program office reports for a final decision (in which the DOE Office of General Counsel must concur) within 60 days.

5. Consistent with the OMB guidelines, DOE has modified the portion of the DOE guidelines calling for use of the criteria in the Safe Drinking Water Act Amendments of 1996 (SDWAA) (42 U.S.C 300g-1(b)(3)(A) and (B)) in the preparation of risk assessments. The modified guidelines specify criteria adapted from the SDWAA, applicable to information containing analyses of risks to human health, safety, and the environment.

II. Response to Public Comments and Modifications to Draft DOE Guidelines

Authority of OMB Guidelines. DOE received a comment arguing that DOE should ignore the definitions of "dissemination" and "information" in the OMB guidelines because, in the view of the commenter, OMB has no discretion under section 515 to exempt categories of information from the data quality guidelines. DOE also received comments arguing that DOE should disregard the OMB guidelines and rely instead on standards in the text of section 515 when DOE responds to a request for correction. DOE rejects these comments because section 515 does not apply directly to agencies. Rather, it grants OMB authority to issue directives to agencies, which are binding on the agencies as a matter of internal Executive Branch administration. Specifically, subsection (a) of section 515 requires OMB to issue government-wide information quality guidelines, and subsection (b) of section 515 requires that OMB include in its guidelines a requirement for agencies to "establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under subsection (a)." Thus, section 515 specifically contemplates that compliance with section 515 in responding to requests for correction will be evaluated against the OMB guidelines and not the terms of section 515 itself.

Applicability of DOE guidelines. DOE's draft guidelines stated that they applied to information disseminated or re-disseminated on or after October 1, 2002. A commenter urged DOE to clarify the applicability of its guidelines by substituting the phrase "information that is still being disseminated by DOE on or after October 1, 2002." DOE decided to clarify the applicability of its guidelines by using the phrase "information that is disseminated by DOE on or after October 1, 2002, regardless of when that information was first disseminated."

Adjudicatory exemption. Consistent with the OMB guidelines, the DOE draft guidelines would exempt from the definition of "dissemination" documents related to adjudicatory proceedings in which there is an opportunity for trial-type proceedings to test information quality. In order to clarify the scope of the exemption, DOE has added examples. The examples are documents made available to the public in connection with a formal adjudicatory proceeding by the Nuclear Regulatory Commission to license a DOE facility and documents distributed to the public in Bonneville Power Administration ratemaking proceedings.

Supplemental DOE Element guidelines. The DOE draft guidelines authorize DOE Elements to adopt supplemental guidelines consistent with OMB and DOE guidelines. One of the comments argued that DOE Elements should be required to propose their supplemental guidelines for public comment because of the notice and comment rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 553). DOE does not believe this is necessary because the draft guideline provision in question concerned the "process" the DOE Element would follow for reviewing information quality. These supplemental guidelines will contain either procedures or non-binding general statements of policy. Both types of policy are explicitly exempt from notice and comment rulemaking (5 U.S.C. 553(b)(A)).

Timely correction of information errors in documents subject to public comment. The DOE draft guidelines provided for the possibility of preliminary responses to requests for correction with regard to documents made available for public comment at an early stage in a proceeding. One of the comments questioned whether DOE's omission of a 60 day deadline for responding to a request for correction with regard to a document subject to public comment was inconsistent with the requirement in the OMB guidelines for "timely" responses. The commenter argued that there is a need for prompt responses because information disseminated by agencies in connection with a proposal can do significant harm. This suggestion of potential significant harm is speculative; notably, the commenter did not offer any example to support the argument. While commenters sometimes criticize the information on which DOE bases its proposed rules and draft environmental impact statements, DOE has never received a request to expedite a proceeding or otherwise withdraw information in question because of significant harm attributable to delay in taking final agency action. From time to time, DOE has received a comment so persuasive in criticizing the factual basis for a proposal that DOE decided either to repropose or to extend or reopen the comment period in a **Federal Register** notice describing the comment, stating DOE's preliminary reaction to the comment, and offering additional information or new policy options for comment. Although DOE has never experienced a case of significant harm that warranted an early definitive response to a comment, DOE is aware that other agencies may have experienced a rare case in which imminent harm of a significant nature might justify such a response. In supplemental guidance issued after the close of DOE's comment period on its draft guidelines, OMB recommended that agencies provide for consideration of request for correction prior to final agency action in appropriate circumstances. Consistent with that guidance and DOE's prior practice, DOE has modified its draft guidelines at paragraph IV.A.1.(C) to provide for consideration of a prompt, albeit preliminary, response on the merits to a request for correction if the requester adequately justifies the necessity for such a response.

Late-filed requests for correction of documents subject to public comment. DOE's draft guidelines would require members of the public to file requests for correction during the comment period. The draft guidelines were silent as to how DOE would treat late-filed requests for correction, and some of the commenters argued for greater flexibility or against any restriction to the comment deadline. DOE believes requests for correction in a notice and comment rulemaking should be treated the same way as comments under other crosscutting statutory requirements such as the Regulatory Flexibility Act. Accordingly, DOE responded to these commenters by providing in paragraph IV.A.1.(D) that DOE may consider late-filed requests for correction comments "to the same extent that DOE considers late-filed comments and time permits such consideration." DOE has long had a practice of considering late-filed comments but has always reserved, and continues to reserve, the discretion to

disregard such comments in appropriate circumstances.

Petitions for rulemaking and supplemental environmental impact statements. The DOE draft guidelines would require members of the public to file requests for correction of a final rule in the form of a petition for rulemaking and of a final environmental impact statement in the form of a petition for a supplemental environmental impact statement. One of the comments criticized this provision as overbroad and unnecessary because there will be times when the request for correction does not seek a change in the rule or the environmental impact statement. DOE has addressed this comment by limiting the requirement to file these requests for correction as petitions for rulemaking or for a supplemental environmental impact statement to circumstances in which the request for correction is actually aimed at changing the rule or the environmental impact statement. DOE's final guidelines impose the obligation to petition for a supplemental environmental impact if the person requesting the correction is claiming that there are significant new circumstances or information as provided in the governing Council on Environmental Quality regulations (40 CFR 1502.9(c)(1)(ii)).

Burden of demonstrating need for correction. The DOE draft guidelines proposed to place on the person requesting a correction the "burden of proof" to demonstrate the need for a correction. One commenter objected to this provision as an unreasonable disincentive and hurdle on request for corrections but did not explain why the provision is unreasonable. Another comment accepted the desirability of this provision but argued that DOE should add explicitly that it has the burden of maintaining an "administrative record" demonstrating that the information at issue complies with the OMB guidelines. DOE rejects the first comment out of concern that removing a burden to justify will promote frivolous requests. Anyone who requests a correction under the OMB and DOE guidelines should be required to explain the basis for the request as a prerequisite to any agency diversion of resources to respond. DOE rejects the second comment in part because the term "administrative record" is suggestive of the availability of judicial review. Also, the OMB and DOE guidelines require documentation of DOE action in response to a request for correction, and any additional recordkeeping requirements could be overly burdensome. In today's final guidelines, DOE has changed the term "burden of proof" to "burden of justification" because the former may misleadingly suggest that requests for correction should be focused on evidentiary standards and trial-type procedures rather than the need to correct information.

Definition of "influential information." Consistent with the OMB guidelines, DOE defined the term "influential information" as information disseminated in connection with major rulemakings and information that is subject to embargo because of potential immediate effects on markets. DOE's draft definition also provided for a case-by-case designation of information as "influential." One of the comments argued that case-by-case designations should be guided by OMB's tentative definition of "influential information" in its guidelines. OMB's definition referred to information that will have or does have a "clear and substantial impact on important public policies or important private sector decisions." In DOE's view, OMB's language does not provide a clear enough line for consistent and efficient administration of the "influential information" concept in the DOE context. DOE prefers to gain experience in applying its own definition before deciding whether that definition needs to be supplemented with additional criteria to govern case-by-case designations of "influential information."

Non-DOE information. Consistent with the OMB guidelines, DOE's guidelines apply to third party information that is either relied on or endorsed by DOE. Two commenters urged that DOE modify its draft DOE guidelines to cover third party data submissions that DOE neither relies on nor endorses and information disseminated by national laboratories under their own names. DOE rejects these comments because the OMB guidelines do not direct that agency guidelines shall apply to information produced by other entities that is neither relied on nor endorsed by the agency. Moreover, DOE is of the view that the limited resources available should be focused on addressing the quality of information that DOE relies on or endorses.

Definition of "affected person." The OMB guidelines direct agencies to devise a request for correction procedure for "affected persons" (as defined by the OMB guidelines). DOE, however, omitted that definition in its draft guidelines and elected to allow any persons to submit requests for correction. DOE omitted the definition because it believes the underlying purpose of section 515 of the Act is to improve the quality of agency information whether or not the information has effects on particular individuals. A commenter argued in favor of a broad definition of "affected person" in order to lower what the commenter perceived as a potential hurdle to requests for correction. DOE believes its omission of the term "affected person" eliminates the potential hurdle entirely and that it has therefore gone beyond what this commenter suggested.

Separation of functions. The DOE draft guidelines provide for a prominent role for the originating office in processing requests for correction. With respect to requests filed in connection with notice and comment rulemaking and environmental impact statements, and with respect to appeals from initial decisions on requests for correction of information in documents not subject to public comment, DOE senior officials with concurrence from the DOE Office of General Counsel will make the final decision. Some commenters objected to the role of the originating office and argued that decisionmaking responsibility be assigned to an office independent of the originating office. DOE rejects these comments for several reasons. First, the OMB guidelines do not require or even contemplate separation of functions. Second, OMB has issued supplementary guidance indicating its approval of procedures involving a prominent role for agency Offices of General Counsel to assist agencies in following the directives of the OMB guidelines. Third, originating offices should be given the opportunity to correct erroneous information in the first instance since they are responsible for the information in question and are especially knowledgeable about the quality basis for the information.

Confidential information. Consistent with the OMB guidelines, the draft DOE guidelines provide for use of confidential information if necessary. A commenter argued that agencies should adopt a general prohibition against use of what the commenter described as "third party proprietary models." The commenter further argued that if such a model must be used, the agencies should have the burden of demonstrating to OMB that no other option is available before contracting to use the model. DOE rejects this comment because: (1) The OMB guidelines do not require agencies to adopt such a policy; (2) the policy would be inconsistent with Executive Order 12866 which requires OMB clearance only of significant regulatory actions; and (3) the policy would be too restrictive. In the appliance energy conservation standards program under the Energy Policy and Conservation Act (42 U.S.C. 6295), DOE contracts with a third party to collect individual company data under arrangements providing for the third party to provide aggregate data only to DOE. This arrangement enhances the willingness of individual companies to divulge proprietary information, and DOE does not believe it should adopt a procedure to prohibit or otherwise jeopardize a data collection effort that is essential to carry out DOE's substantive standard-setting mandates under the Energy Policy and Conservation Act (or for that matter DOE's substantive mandates under any other statutory authority).

Reasonableness of 60-Day Decision Deadlines. With respect to information that is not subject to public comment, the DOE draft guidelines provide for 60 days as a goal for an initial decision and for appeals from an initial decision. A commenter argues that 60 days is too long and would undermine the effect of attempting to obtain corrective action. DOE disagrees for two reasons. First, the comment does not offer any example to demonstrate that a 60-day target would undermine the effect of attempting to obtain corrective action. Second, the 60-day target gives necessary time to carefully consider a request for correction and formulate and internally review a response while at the same time carrying out other, unrelated, and possibly priority duties. DOE draws support for the 60-day target from OMB supplemental guidance indicating the OMB is of the view that 60 days is a reasonable target period of time to arrive at a decision.

Paperwork Reduction Act. In its draft guidelines, DOE provided for DOE Elements to demonstrate that information collections will comply with the OMB and DOE guidelines when requesting clearance of new information collections. A commenter criticized this provision as wasteful and counterproductive because agencies are already required to demonstrate "practical utility" for proposed information collections. DOE disagrees because if the information to be collected is intended for dissemination to the public, the formulation of the information collection should appropriately take the OMB and DOE guidelines (including the basic standard of quality which goes beyond utility) into account.

Definition of "peer review." Consistent with the OMB guidelines, the DOE draft guidelines provide for peer review in certain circumstances such as risk assessments. One comment criticized the term "peer review" as vague, and suggested that DOE adopt a definition for that term. In DOE's view, there is no need for a definition of the term "peer review" since the OMB guidelines are explicit about the elements of adequate "peer review."

Information request docket. Consistent with the OMB guidelines, the DOE draft guidelines provide for annual reporting of actions on requests for correction but did not provide for a public docket at a DOE web site giving the current status of all requests for correction. One comment urged that the DOE guidelines should provide for such a docket. While the DOE CIO will maintain a web site with essential information for members of the public who want to file a request for correction or to print out the DOE guidelines, DOE declines to allocate scarce resources for the expensive, labor intensive effort the commenter requests. DOE's limited resources should be focused exclusively on complying with DOE's obligations under the OMB guidelines' directives.

Responding to requests for consideration. The DOE draft guidelines do not commit DOE to particular courses of action in responding to requests for consideration that concern information that is incorrect. One of the comments argued for an inflexible policy of correcting the information. DOE declines to accept this comment because the appropriate course of action should be determined in light of the particular facts and circumstances. In some instances, an acknowledgment of error may be all that is necessary, the document in question may not be subject to correction (*e.g.*, effective final rules appliance energy conservation standards subject to 42 U.S.C. 6295(o)), and other measures may be needed to address any errors.

Effect of DOE guidelines on DOE Elements. The DOE guidelines do not purport to impose legally binding substantive policies on DOE Elements. A commenter argues that the DOE guidelines should be binding on DOE Elements. DOE rejects this comment because the DOE information collection procedures are not substantive rules and should therefore not be binding as such.

Substitute information. The DOE draft guidelines provide that members of the public must validate, insofar as they can, any information offered for DOE to adopt consistent with the OMB and DOE guidelines. A commenter argued against this provision because it is a disincentive to filing a request for correction. DOE rejects this comment because the procedures do not impose any obligation to submit substitute information and because those members of the public who do submit such information should make the case for the higher quality of the information they think DOE should adopt.

Complexity of procedures. The DOE draft guidelines contain specific procedures for members of the public to follow. One commenter criticized these procedures as complex and argued generally for simplification without offering any specifics. The procedures are a function of the variety of contexts in which DOE disseminates information and the omission of detailed procedures in section 515 of the Act and the OMB guidelines. DOE does not believe that its procedures are complex or difficult to understand or follow.

Risk assessments. Consistent with the OMB guidelines, DOE considered whether to add a variation of the criteria in the Safe Drinking Water Act Amendments of 1996 (42 U.S.C. 300g-1(b)(3) (A) and (B)) to its guidelines for preparing environmental risk assessments. In its notice inviting public comment on the draft guidelines, DOE stated that it was considering whether to add separate procedures intended to foster the preparation of comprehensive, informative and understandable ecological risk assessments, in addition to procedures for health risk assessments. One of the comments supported this approach but urged that DOE's proposal be modified to emphasize a number of elements that the commenter believed would add rigor, *e.g.*, analysis of local populations of biota. DOE rejects this comment because the purpose of these guidelines is to provide general guides for the preparation of quality documents, not to mandate, or even to suggest a specific approach for risk assessment. DOE believes it should retain the discretion to tailor its assessment methodology so that it is appropriate for a given situation. DOE therefore revised its original proposal to make clear that it is a procedural guideline of general applicability and not intended as a policy statement with respect to analytic methodology. Given the general suitability of the criteria that DOE has included in today's final guidelines, DOE has concluded that there is no need for separate criteria for health and ecological risk assessments.

Other comments. DOE received other comments that raise issues outside the scope of this proceeding or do not offer specific suggestions for improving the DOE draft guidelines. Although the purpose of this proceeding is to establish procedures and a general statement of policy under the OMB guidelines, some commenters sought to have DOE reconsider substantive energy policies with which they disagree.

Others raise questions about generic procedures that should be addressed to OMB such as a consistent policy regarding dissemination of information developed by an interagency risk assessment consortium committee and inclusion of information quality as a performance goal in performance plans under the Government Performance and Results Act. DOE has not responded to the issues these extraneous comments raise because they are out of scope or irrelevant.

III. OMB Review

Consistent with the OMB guidelines, DOE submitted this notice to OMB for review. OMB has completed its review.

Issued in Washington, DC on October 1, 2002.

Karen S. Evans,

Chief Information Officer

Final Report to the Office of Management and Budget on Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Energy

Introduction

This report is submitted to the Office of Management and Budget (OMB) by the Department of Energy (DOE) pursuant to OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (OMB guidelines), 67 FR 8452 (February 22, 2002) under section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub.L. 106–554, 114 Stat. 2763). The report includes DOE's guidelines to implement the policies and procedural guidance set forth in the OMB guidelines.

Background

DOE is responsible for the administration of a wide variety of national defense, energy supply, energy conservation, and nuclear waste cleanup programs authorized by law. DOE administers a system of national laboratories with active scientific research programs. DOE also disseminates a large volume of statistical reports through its Energy Information Administration. Although DOE is not a major regulatory agency, DOE has some rulemaking mandates and authorities, such as the appliance energy conservation program of test procedures and standards, that require the dissemination of financial, scientific, and statistical information. Like other agencies, DOE publishes draft and final environmental impact statements and environmental assessments under the National Environmental Policy Act, 42 U.S.C. 4321–4347.

Discussion of Guidelines

DOE has always maintained high standards of quality in the production of information disseminated to members of the public. As a source of scientific and statistical information on which members of the public and other government officials rely, DOE has long had procedures to assure adequate information quality. DOE's Energy Information Administration is a leader in this regard and has elaborate procedures to ensure the quality of its information products. DOE's Office of Energy Efficiency and Renewable Energy has elaborate special procedures for some of its rulemakings. That office has codified a general statement of policy in Appendix A to Subpart C of 10 CFR Part 430 with regard to its information quality review procedures for information used in its appliance energy conservation standards rulemakings.

The DOE guidelines set forth below are modeled on OMB guidelines and incorporate a basic standard of quality (including objectivity, utility, and integrity) in the development and dissemination of DOE or DOE-sponsored information to the public. They also incorporate the procedures that DOE has traditionally followed to review information products for adequate quality. In addition, the DOE guidelines provide a uniform set of procedures for members of the public who wish to request correction of information on a timely basis. These procedures will ensure that final DOE decisions with respect to requests for correction will be made by high-level management officials with the concurrence of the DOE Office of General Counsel.

DOE notes that section 515 establishes procedures and performance goals for the internal management of the Executive Branch. While seeking to establish a process that assures that DOE is attentive to the issue of information quality, neither section 515 nor the OMB Guidelines nor DOE's own Guidelines provide for judicially manageable standards regarding the quality of information that the agency may disseminate. Therefore, neither section 515 nor the OMB Guidelines nor DOE's Guidelines create private rights or contemplate judicial oversight of its directives through judicial review. Rather, the statute contemplates internal executive branch management of its directives, as evidenced by its directive to each agency to "report periodically to the Director" of OMB concerning "(i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency; and (ii) how such complaints were handled by the agency." DOE's Guidelines likewise contemplate that internal executive branch management will be the mechanism for meeting the objectives of section 515.

The DOE Guidelines were prepared by the DOE Chief Information Officer, who is responsible for coordinating DOE's response to OMB's guidelines, in cooperation with other affected DOE offices. They have been approved by the Secretary of Energy.

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated to the Public by the Department of Energy

I. Background

Section 515, Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554), directed the Office of Management and Budget (OMB) to issue government-wide guidelines that "provide policy and procedural guidance to Federal Agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal Agencies." The OMB guidelines, published in the **Federal Register** on February 22, 2002 (67 FR 8452), direct agencies to issue by October 1, 2002, their own implementing guidelines that include administrative mechanisms allowing members of the public to seek and obtain correction of information disseminated by the agency that does not comply with the OMB or agency guidelines.

The Department of Energy (DOE) Information Quality Guidelines, issued by the Department's Chief Information Officer (CIO) pursuant to OMB's Guidelines, are intended to provide guidance to Departmental Elements (*i.e.*, major DOE offices) on maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated to the public.

The DOE Guidelines also establish mechanisms for members of the public to seek and obtain administrative correction of disseminated information that does not comply with the quality requirements of these Guidelines. Finally, the Guidelines explain how the CIO will comply with OMB's annual reporting requirement concerning complaints from members of the public.

The DOE Information Quality Guidelines are effective on October 1, 2002.

II. Introduction

The CIO has designed these Guidelines to apply to a wide variety of DOE information dissemination activities that may range in importance and scope. They are intended to be sufficiently generic to fit all media, printed, electronic, or other forms. The CIO has sought to avoid the problems that would be inherent in developing detailed, prescriptive, "one-size-fits-all" DOE-wide guidelines that would artificially require different types of dissemination activities to be treated in the same manner.

The Guidelines are designed so that DOE Elements can apply them in a common sense and workable manner. It is important that these guidelines not impose unnecessary administrative burdens that would inhibit DOE Elements from continuing to take advantage of the Internet and other technologies to disseminate information to the public. In this regard, DOE Elements may incorporate the standards and procedures required by these guidelines into their existing information resources management and administrative practices rather than create new and potentially duplicative or contradictory processes. DOE Elements may rely on their implementation of the computer security provisions of the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 *et seq.*, to establish appropriate security safeguards for ensuring the integrity of the information that they disseminate.

III. DOE Information Quality Guidelines

A. What Definitions Apply to These Guidelines?

1. *DOE Element* means a major DOE office headed by an official whose position is subject to Senate confirmation or an office which directly reports to the Secretary, Deputy Secretary, or either of the DOE Under Secretaries.

2. *Dissemination* means DOE Element initiated or sponsored distribution of information to the public.

3. *Influential* means, when used in the context of scientific, financial, or statistical information, information (1) that is subject to embargo until the date of its dissemination by the Department or DOE Element disseminating the information because of potential market effects; (2) that is the basis for a DOE action that may result in an annual effect on the economy of $100 million or more; or (3) that is designated by a DOE Element as "influential."

4. *Information* means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms, including information that a DOE Element disseminates from a web page, but excluding the provision of hyperlinks to information that others disseminate.

5. *Information dissemination product* means any book, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, a DOE Element disseminates to the public, including any electronic document, CD–ROM, or web page.

6. *Integrity* means the information has been secured and protected from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

7. *Objectivity* means the information is presented in an accurate, clear, complete, and unbiased manner and the substance of the information is accurate, reliable, and unbiased.

8. *Quality* means utility, objectivity, and integrity.

9. *Reproducibility* means capability of being substantially reproduced, subject to an acceptable degree of imprecision, and with respect to analytical results, "capable of being substantially reproduced" means that independent analysis of the original or supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision or error.

10. *Subject to public comment* means that DOE has made the information available for comment by members of the public, preliminary to making a final determination, through a notice in the **Federal Register** including, but not limited to, a notice of inquiry, an advance notice of proposed rulemaking, a notice of proposed rulemaking, a notice reopening or extending a comment period due to receipt of new information, a notice of availability of a draft environmental impact statement, a notice of a proposed information collection, or any other **Federal Register** notice that provides an opportunity for comment by members of the public regarding the quality of information on which a final determination may be based.

11. *Utility* means the usefulness of the information to its intended users, including the public.

B. Which public disseminations of information are and are not subject to these Guidelines?

These Guidelines apply to any public dissemination of information. The definitions of "information" and "dissemination" establish the scope of the applicability of the guidelines. "Information" means "any communication or representation of knowledge such as facts or data." Consequently, "information" does not include opinions.

"Dissemination" is defined to mean agency initiated or sponsored distribution of information to the public, including, for example, a risk assessment prepared by a DOE Element to inform the agency's formulation of possible regulatory or other action. A DOE Element does not "initiate" the dissemination of information when a Federally employed scientist or Federal grantee or contractor publishes his or her research findings, even if the DOE retains ownership or other intellectual property rights because DOE paid for the research. In such cases, to avoid confusion, the DOE Element should ensure that the researcher includes an appropriate disclaimer that the views are the researcher's and do not necessarily reflect the views of DOE. However, if a DOE Element directs a Federally employed scientist or Federal grantee or contractor to disseminate information and retains authority to review and approve the information before release, then the DOE Element has sponsored the dissemination of the information.

"Dissemination" also does not include the following distributions:

(1) Press releases, including but not limited to fact sheets, press conferences or similar communications in any medium that announce, support the announcement or give public notice of information a DOE Element has disseminated elsewhere;

(2) Any inadvertent or unauthorized disclosure of information intended only for inter-agency and intra-agency communications;

(3) Correspondence with individuals or persons;

(4) Testimony and other submissions to Congress containing information a DOE Element has disseminated elsewhere;

(5) Responses to requests for DOE records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or similar laws;

(6) Information in public filings (such as public comments received by DOE in rulemaking proceedings), except where the DOE Element distributes information submitted to it by a third party in a manner that suggests that the DOE Element endorses or adopts the information, or indicates in its distribution that it is using or proposing to use the information to formulate or support a regulation, guidance, or other DOE Element decision or position.

(7) Information contained in subpoenas or documents filed in connection with adjudicative proceedings (characterized by trial-type procedures with opportunity to test information quality), including DOE adjudicatory orders, opinions, amicus and other briefs, documents filed in Bonneville Power Administration's ratemaking proceedings, and documents submitted for purposes of a Nuclear Regulatory Commission licensing proceeding for a DOE facility;

(8) Procedural, operational, policy and internal manuals and memoranda prepared for the management and operation of DOE Elements that are not primarily intended for public dissemination;

(9) Archival records (including information made available to the public on a DOE web site to document historical DOE actions); and

(10) Communications intended to be limited to government employees or DOE contractors or grantees.

C. What Are the Responsibilities of DOE Elements for Ensuring Quality of Information Disseminated to the Public and Responding to Requests From Members of the Public for Correction of Information?

1. Ensuring Quality

As a guiding principle, DOE Elements should have as a performance goal that information disseminated to the public meets a basic level of quality. The quality of information disseminated by DOE Elements is measured by its utility, objectivity, and integrity. "Objectivity" focuses on whether the disseminated information is being presented in an accurate, clear, complete and unbiased manner and as a matter of substance, is accurate, reliable and unbiased. This includes whether the information is presented in the proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation.

Also, DOE Elements should (to the extent possible, consistent with security, privacy, intellectual property, trade secrets, and confidentiality protections) identify the sources of the disseminated information and, in a scientific, financial, or statistical context, the supporting data and models, so that the public can assess for itself whether there may be some reason to question the objectivity of the sources. Where feasible, data should have full, accurate, transparent documentation, and possible sources of error affecting data quality should be identified and disclosed to users.

In addition, "objectivity" involves a focus on ensuring accurate, reliable, and unbiased information. In a scientific, financial, or statistical context, the original and supporting data should be generated, and the analytical results developed, using sound statistical and research methods. If the data and analytical results have been subjected to formal, independent, external peer review, the information may generally be presumed to be of acceptable objectivity. However, this presumption is rebuttable based on a persuasive showing by a member of the public seeking correction of information in a particular instance. If DOE Element-sponsored peer review is employed to help satisfy the objectivity standard, the review process employed should meet the general criteria for competent and credible peer review recommended by OMB's Office of Information and Regulatory Affairs to the President's Management Council (http://www.whitehouse.gov/omb/inforeg/oira_review-process.html), namely "that (a) peer reviewers be selected primarily on the basis of necessary technical expertise, (b) peer reviewers be expected to disclose to agencies prior technical/policy positions they may have taken on the issues at hand, (c) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (private or public sector), and (d) peer reviews be conducted in an open and rigorous manner."

Influential information. If a DOE Element is responsible for disseminating and disseminates influential scientific, financial information, a high degree of transparency of data and methods should be ensured to facilitate the reproducibility of such information by qualified third parties. "Influential" when used in the context of scientific, financial or statistical information, means information: (1) That is subject to embargo until its dissemination by DOE or a DOE Element disseminating the information because of potential market effects; (2) that is the basis for a DOE action that may result in an annual effect on the economy of $100 million or more; or (3) that is designated by a DOE Element as "influential."

With regard to original and supporting data related thereto, these Guidelines do not direct that all disseminated original and supporting data be subjected to the reproducibility requirement applicable to influential information. DOE Elements may identify, in consultation with the relevant scientific and technical communities, those particular types of data that may practicably be subjected to the reproducibility requirement, given ethical, feasibility, confidentiality, privacy, trade secret, security, and intellectual property constraints. It is understood that reproducibility of data is an indication of transparency about research design and methods and thus a replication exercise (*i.e.* a new experiment, test, or sample) should not be required prior to each dissemination. At a minimum, DOE Elements should assure reproducibility for those kinds of original and supporting data according to "commonly accepted scientific, financial, or statistical standards."

With regard to analytic results related thereto, DOE Elements generally should demonstrate sufficient transparency about data and methods that an independent reanalaysis could be undertaken by a qualified member of the public. These transparency standards apply to analysis of data from a single study as well as to analyses that combine information from multiple studies.

Making the data and models publicly available will assist in determining whether analytical results are capable of being substantially reproduced. However, the objectivity standard does not override other compelling interests such as privacy, trade secret, security, intellectual property, and other confidentiality protections.

In situations where public access to data and methods will not occur due to other compelling interests, DOE Elements should apply rigorous robustness checks to analytic results and document what checks were undertaken. DOE Elements should, however, disclose the specific data sources that have been used and the specific quantitative methods and assumptions that have been employed. However, each DOE Element should define the type of robustness checks and the level of detail for documentation thereof, in ways appropriate for it given the nature and multiplicity of issues for which the DOE Element is responsible.

With regard to the dissemination of information containing analyses of risks to human health, safety and the environment, it is DOE policy for DOE Elements in complying with the OMB guidelines to apply the following criteria adapted from the Safe Drinking Water Act Amendments of 1996.

1. Use:

a. The best available peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and

b. Data collected by accepted methods (if the reliability of the method and the nature of decision justify use of the data).

2. Present information that is comprehensive, informative, and understandable.

3. Specify, to the extent practicable:

a. Each population addressed by any estimate of risk;

b. The expected risk or central estimate of risk for the populations addressed;

c. Each appropriate upper-bound or lower-bound estimate of risk;

d. Each significant uncertainty identified in the process of an assessment of risk and the studies that would assist in resolving the uncertainty; and

e. Peer-reviewed studies known to the DOE Element that support, are directly relevant to, or fail to support any estimate of risk effects and the methodology used to reconcile inconsistencies in the scientific data.

DOE Elements responsible for dissemination of vital health, environmental and medical information should interpret the reproducibility and peer-review standards in a manner appropriate to assuring the timely flow of vital information to medical providers, patients, health agencies, and the public.

"Utility" refers to the usefulness of the information to intended users including the public. In assessing the usefulness of information, DOE Elements need to consider the uses of the information they plan to disseminate not only from their perspective but also from the perspective of the public. As a result, when transparency of information is relevant for assessing the information's usefulness from the public's perspective, DOE Elements should take care to ensure that transparency has been addressed in its review of the information.

"Integrity" refers to security—the protection of information from unauthorized access or revision to ensure that information by DOE or DOE Elements is not compromised through corruption or falsification.

Pre-dissemination review procedures. Before disseminating information to members of the public, the originating office of the DOE Element is responsible for ensuring that the information is consistent with the OMB and DOE guidelines and that the information is of adequate quality for dissemination. If the information is influential financial, scientific, or statistical information, then, to the extent practicable, the DOE Element should provide for higher level review of the originating office's conclusions. Each DOE Element should identify for the CIO a high ranking official who is responsible for ensuring the accountability of the DOE Element's program offices in reviewing information to be disseminated to members of the public under the OMB and DOE guidelines.

As a matter of good and effective information resources management, DOE Elements may develop and post on their websites supplemental guidelines for the process they will follow for reviewing the quality (including objectivity, utility and integrity) of information before it is disseminated. DOE Elements should treat information quality as integral to every step of development of information, including creation, collection, maintenance, and dissemination. This process will enable every DOE Element to substantiate the quality of the information it has disseminated through documentation or other means appropriate to the information.

Paperwork Reduction Act. It is important that DOE Elements make use of OMB's Paperwork Reduction Act (PRA) clearance process to help improve the quality of information that the DOE Elements collect and disseminate to the public. DOE Elements already are required to demonstrate in their PRA submissions to OMB the "practical utility" of a proposed collection of information the DOE Element plans to disseminate. Additionally, for all proposed collections of information that will be disseminated to the public, DOE Elements should evaluate the proposed collection in light of the OMB and DOE guidelines, and based on that evaluation, state in their PRA clearance submissions to OMB that the proposed collection of information will result in information that will be collected, maintained, and used in a way consistent with the OMB and DOE information quality guidelines.

2. Responding to Requests From Members of the Public

To facilitate public review of information disseminated to the public, these Guidelines provide procedures allowing members of the public to seek and obtain correction of information disseminated to the public that does not comply with the quality provisions of the OMB and DOE guidelines. The procedures, set out in part IV below, provide separate mechanisms for information set forth or referenced in a DOE or DOE-sponsored document subject to public comment and all other DOE or DOE-sponsored information.

IV. Requests From Members of the Public for Correction of Publicly Disseminated Data

A. How Does a Member of the Public Request Correction of Publicly Disseminated Information?

1. *Requests from members of the public seeking correction of DOE or DOE-sponsored documents subject to public comment, rulemaking notices, and environmental impact statements.*

(A) With respect to information set forth or referenced with endorsement in a DOE or DOE-sponsored document subject to public comment on or after October 1, 2002, a member of the public must request correction within the comment period in a comment that:

(1) Specifically identifies the information in question and the document(s) containing the information;

(2) Explains with specificity the reasons why the information is inconsistent with the applicable quality standards in the OMB or DOE guidelines;

(3) Presents substitute information, if any, with an explanation showing that such information is consistent with the applicable quality standards in the OMB and DOE guidelines; and

(4) Justifies the necessity for, and the form of, the requested correction.

(B) A member of the public must file a request for correction of a document subject to public comment at the address for comments set forth in DOE's notice providing for public comment.

(C) If a member of the public requests correction of information set forth or referenced with endorsement in a document subject to public comment prior to publication of the final document and provides a justification of the necessity for an early response, DOE may consider providing a preliminary response including but not limited to a **Federal Register** notice describing the request for correction and reopening the comment period.

(D) If a member of the public files a request for correction under paragraph IV.A.1 of these guidelines after the close of a comment period, DOE may consider the request to the same extent that DOE considers late-filed comments and time permits such consideration.

(E) With respect to information that is set forth or referenced with

endorsement in a notice of final rulemaking or a final regulation disseminated on or after October 1, 2002, (regardless of when first disseminated and regardless of whether there was prior notice and opportunity for public comment), a member of the public:

(1) Must file a request for correction with Office of the Chief Information Officer at the address provided in paragraph IV.A.2 of these guidelines;

(2) Must include in such a request the content required by paragraph IV.A.1 of these guidelines; and

(3) Must file such a request regarding the regulatory text or supporting information that would necessitate changes to the regulatory text as a petition for reconsideration or for regulatory amendments under 5 U.S.C. 553(e).

(F) With respect to information set forth or referenced with endorsement in a final environmental impact statement (and any related portion of a Record of Decision) disseminated on or after October 1, 2002, regardless of when first disseminated, a member of the public:

(1) Must file a request for correction with the Office of the Chief Information Officer at the address provided in paragraph IV.A.2 of these guidelines;

(2) Must include in such a request the content required by paragraph IV.A.1 of these guidelines; and

(3) Must file such a request in the form of a petition for a supplemental environmental impact statement if the petitioner asserts that are significant new circumstances or information as provided for in 40 CFR 1502.9(c)(1)(ii).

(G) With respect to information that is made subject to public comment on or after October 1, 2002, and that is set forth or referenced with endorsement in a DOE notice of final rulemaking or a final environmental impact statement (and any related portions of a Record of Decision), DOE may summarily deny a request for correction as untimely.

(H) A member of the public who files a request for correction under paragraph IV.A.1 has the burden of justification with respect to the necessity for correction as well as with respect to the timing and type of correction requested.

2. *Requests from members of the public seeking correction of DOE or other DOE-sponsored documents.*

(A) With respect to information set forth or referenced with endorsement in a DOE or DOE-sponsored document that is disseminated on or after October 1, 2002, regardless of when the information was first disseminated, and that is not subject to paragraph IV.A.1 of these guidelines, a member of the public must request correction by letter to the Office of the Chief Information Officer, Attention: DOE Quality Guidelines, U.S. Department of Energy, Forrestal Building—Room 8H–089, 1000 Independence Avenue NW., Washington, DC. 20585, or via Fax to (202) 586–7966, or by providing the information called for at the CIO Web site: *http://cio.doe.gov/informationquality*. This web site requests the information set forth in paragraph (B) below.

(B) If a member of the public requests correction of DOE or DOE-sponsored information by letter, addressed to the CIO, then the letter must:

(1) Specifically identify the information in question and the document(s) containing the information;

(2) Explain with specificity the reasons why the information is inconsistent with the applicable quality standards in the OMB Guidelines or DOE guidelines;

(3) Present substitute information, if any, with an explanation showing that such information is consistent with the OMB guidelines and the DOE implementing guidelines; and

(4) Justify the necessity for, and the form of, the requested correction.

(C) A member of the public who files a request for correction under paragraph IV.A.2 has the burden of justification with respect to the necessity for correction as well as with respect to the type of correction requested.

B. How Does DOE Process Requests for Correction?

1. *Incomplete requests.* If a request for correction is incomplete, DOE may seek clarification from the person submitting the request or return it without prejudice to resubmission.

2. *Public notice of a request for correction.* In selected cases, DOE may publish notice of the receipt of a request for correction and may invite public comment.

3. *Participation by other interested persons.* By letter, DOE may invite or allow other interested persons to comment on a request for correction.

4. *Initial decisions.* If the request for correction concerns information that does not involve a document subject to public comment, then the originating office of the DOE Element responsible for dissemination of the information should provide at least an initial decision within 60 days from the date of receipt. The response should contain a statement of reasons for the disposition. If an initial decision on a request for correction under this paragraph requires more than 60 days, then the DOE Element should inform the requestor that more time is required and indicate the reason why and an estimated decision date.

5. *Administrative appeals.* In the event DOE initially denies a request for correction of information not subject to public comment and the person who submitted the request would like additional review, then that person must submit a request for review, including a statement of reasons for modifying or reversing the initial decision, no later than 30 days from the date of that decision. A request for review under this paragraph must be submitted by e-mail to dictrs.quid@hq.doe.gov or by regular mail to Office of the Chief Information Officer, Attention: DOE Quality Guidelines, U.S. Department of Energy, Forrestal Building—Room 8H–089, 1000 Independence Avenue NW., Washington, DC 20585, or via Fax to (202) 586–7966. The CIO will direct the request for review to the DOE Element which supervises the originating DOE program office, and the DOE Element, with the concurrence of the Office of General Counsel, should issue a final decision for DOE (with a copy to the CIO) within 60 days from the date that the request for review is received. If a final decision on a request for correction under this paragraph requires more than 60 days, then the DOE Element should inform the requestor that more time is required and indicate the reason why and an estimated decision date.

6. Any corrective action will be determined by the nature and timeliness of the information, the magnitude of the error, and the cost of undertaking a correction. DOE Elements are not required to change, or in any way alter, the content or status of information simply based on the receipt of a request for correction. DOE Elements need not respond substantively to frivolous or repetitive requests for correction. Nor do DOE Elements have to respond substantively to requests that concern information not covered by the OMB or DOE Guidelines or from a person who has not justified the necessity for correction.

7. If DOE determines that a request for correction of information not subject to public comment has merit, DOE may respond by correcting the information in question and without issuing a decision explaining the reasons for accepting the request.

8. If DOE receives multiple requests for correction of information not subject to public comment, DOE may consolidate the requests and respond on a DOE web site, or by notice in the **Federal Register**, or by issuing a correction in similar form and manner as the original information was issued.

9. If a member of the public complains about information set forth or referenced with endorsement in a DOE or DOE-sponsored document and does not request correction under the OMB and DOE guidelines, then the complaint is not subject to processing as a request for correction under those guidelines.

10. If a member of the public requests correction of information first disseminated more than one year prior to the request and the information does not have a continuing significant impact on DOE projects or policy decisions or on important private sector decisions, DOE may regard the information as stale for purposes of responding to the request.

11. DOE may devise additional procedures on a case-by-case basis as may be appropriate to process requests for correction.

V. DOE Reporting Requirements

On an annual basis, the Office of the CIO (OCIO) will report to the Director of OMB on the requests for corrections received under these Guidelines. DOE elements must designate a reporting official, except as agreed otherwise between the DOE Element and the OCIO. The OCIO will work with the DOE Element reporting officials to develop the annual OMB report beginning January 1, 2004. The report will include the number of complaints received, nature of complaints (*e.g.*, request for deletion or correction) and how they are resolved (*i.e.*g number corrected, denied, or pending review).

[FR Doc. 02–25402 Filed 10–4–02; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2413–010, et al.]

American Electric Power Service Corporation, et al. Electric Rate and Corporate Filings

September 27, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. American Electric Power Service Corporation

[Docket Nos. ER00–2413–010]

Take notice that on September 25, 2002, American Electric Power Service Corporation, on behalf of the operating companies of the American Electric Power System (collectively AEP) filed a proposed amendment to its Open Access Transmission Tariff in compliance with the Commission's August 2, 2002 Letter Order, 100 FERC ¶ 61,150 (2002) in the above-referenced docket.

AEP requests an effective date of July 1, 2000 for the proposed amendment. Copies of AEP's filing have been served upon AEP's transmission customers and the public service commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: October 16, 2002.

2. Continental Electric Cooperative Services, Inc.

[Docket No. ER02–1118–003]

Take notice that on September 25, 2002, Continental Electric Cooperative Services, Inc., submitted to Federal Energy Regulatory Commission a modification to its rate schedule.

Comment Date: October 16, 2002.

3. Just Energy, LLC

[Docket No. ER02–2134–001]

Take notice that on September 25, 2002, Just Energy, LLC (Just Energy) tendered for filing a compliance filing in the above-referenced docket involving Just Energy, LLC Tariff Sheet No. 1.

Comment Date: October 16, 2002.

4. Southern California Edison Company

[Docket No. ER02–2263–001

Take notice that on September 25, 2002, Southern California Edison Company (SCE) tendered for filing a revised rate sheet for its market-based rate tariff (FERC Electric Tariff No. 8). The purpose of this filing is to comply with the Commission's August 29, 2002 Letter Order in the above-referenced case.

Copies of this filing were served upon the Service List compiled by the Secretary in this docket.

Comment Date: October 16, 2002.

5. Ameren Services Company

[Docket No. ER02–2534–001]

Take notice that on September 24, 2002, Ameren Services Company (ASC) tendered for filing a Firm Point-to-Point Transmission Service Agreement between ASC and Illinois Municipal Electric Company. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreement in Docket No. ER 02–2534–000 with the executed Agreement.

Comment Date: October 15, 2002.

6. Ameren Services Company

[Docket No.ER02–2594–000]

Take notice that on September 24, 2002, Ameren Services Company (ASC) tendered for filing Service Agreements for Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service between ASC and TECO EnergySource, Inc., Peabody Energy Corporation, Wisconsin Public Service Corporation and PSEG Energy Resources & Trade LLC (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: October 15, 2002.

7. Midwest Independent Transmission System

[Docket No. ER02–2595–000]

Take notice that on September 24, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed Rate Schedules 16 and 17 for incorporation into the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1. The Midwest ISO's proposed Schedules 16 and 17 provide for the collection of costs incurred by the Midwest ISO to provide Financial Transmission Rights (FTRs), establish and implement within its footprint day-ahead and real-time energy markets (Energy Markets) and to facilitate the creation of a joint and common market by and between the Midwest ISO and the PJM Interconnection, L.L.C.

The Midwest ISO has requested an effective date of November 25, 2002.

The Midwest ISO seeks waiver of the Commission's regulations, 18 CFR 385.2010 with respect to service on all required parties. The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: October 15, 2002.

8. El Paso Electric Company

[Docket No. ER02–2596–000]

Take notice that on September 25, 2002, El Paso Electric Company (EPE) on behalf of itself tendered for filing the executed Shiprock-Four Corners Project

345-kV Switchyard Interconnection Agreement (IA) between the Four Corner Participants and the Interconnection Participants.

The Four Corner Participants consist of the joint owners of a 345-kV Switchyard and include EPE, Arizona Public Service Company (APS), Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company and Tucson Electric Power Company.

The Interconnection Participants consist of Public Service of Colorado, Tri-State Generation and Transmission Association, Inc., and the United States of America acting by and through the Administrator, Western Area Power Administration, Department of Energy. The Interconnection Participants have rights to a 230-kV Shiprock-Four Corners Transmission Line that is being upgraded to 345-kV, and desire an interconnection to the 345-kV Switchyard of the Four Corner Participants. The IA establishes the rates, terms and conditions for installation, operation and maintenance of interconnection facilities related to the Shiprock-Four Corners Project 345-kV Switchyard. Under the terms of the IA, the Interconnection Participants will reimburse APS for the construction costs of the interconnection facilities and these interconnection facilities will permit the relocation of the termination of the Shiprock-Four Corners Transmission Line to the 345-kV Switchyard.

A copy of this filing has been served on parties to the IA, the Public Utility Commission of Texas, the New Mexico Public Regulation Commission, and the United States Department of Agriculture, Rural Utilities Service ("RUS").

Comment Date: October 16, 2002.

9. PJM Interconnection, L.L.C.

[Docket Nos. ER02–2597–000]

Take notice that on September 24, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing signature pages to the PJM Transmission Owners Agreement (TOA) executed by Rock Springs Generation, L.L.C. (RSG) and CED Rock Springs, Inc. (CEDRS) and a revised Attachment L to PJM's Open Access Transmission Tariff. PJM states that execution of the TOA by RSG and CEDRS follows amendments to the TOA accepted by the Commission on August 22, 2002, in Docket No. ER02–2256–000 and, upon acceptance subject to the proposed effective date, will obviate the need for the Facilities Operation Agreement among PJM, RSG and CEDRS that PJM filed in Docket No. ER02–1726–000 on May 6, 2002. The revised Attachment L adds RSG and CEDRS to the list of PJM Transmission Owners. PJM requests an effective date of April 29, 2002, for the executed signature pages to the TOA and the revised Attachment L.

Copies of this filing were served upon the official service lists of Docket Nos. ER02–1726–000 and ER02–2256–000, all members of PJM, and the state electric utility regulatory commissions within the PJM region.

Comment Date: October 15, 2002.

10. Commonwealth Edison Company

[Docket No. ER02–2598–000]

Take notice that on September 25, 2002, Commonwealth Edison Company (ComEd) submitted for filing four unexecuted Service Agreements entered into between ComEd and NRG Power Marketing Inc. under ComEd's Open Access Transmission Tariff (OATT).

ComEd seeks waiver of the Commission's notice requirements to permit an effective date of January 1, 2002 for all of the Service Agreements. Copies of the filing were served upon NRG Power Marketing Inc. and the Illinois Commerce Commission.

Comment Date: October 16, 2002.

11. Central Power and Light Company

[Docket No. ER02–2599–000]

Public Service Company of Oklahoma Southwestern Electric Power Company West Texas Utilities Company

Take notice that on September 25, 2002, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the Companies) submitted for filing a refund report in compliance with the letter order issued July 26, 2002 in the above-referenced dockets (July 26 Letter Order). The July 26 Letter Order established the rates that enable the calculation of refunds required by the Commission's November 8, 2001 order in the above-referenced dockets. Central Power and Light Company, *et al.*, 97 FERC ¶ 61,157 (2001) (Remand Order). The Companies state that a copy of the filing has been served on all parties to this proceeding, all customers under the tariff and the Public Utility Commission of Texas, the Louisiana Public Service Commission, the Arkansas Public Service Commission and the Oklahoma Corporation Commission.

Comment Date: October 16, 2002.

12. Laurent Cusson, Richard Legault, Donald Tremblay

[Docket Nos. ID–3695–001, ID–3694–001, and ID–3826–000]

Take notice that on September 23, 2002, Laurent Cusson, Richard Legault and Donald Tremblay submitted to Federal Energy Regulatory Commission (Commission) Abbreviated Applications for Authorization to Hold Interlocking Positions pursuant to Section 305 of the Federal Power Act and Part 45 of the Commission's Regulations.

Comment Date: October 15, 2002.

13. Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, West Texas Utilities Company

[Docket Nos. OA97–24–008, ER97–881–005, ER98–4609–005, and ER98–4511–006

Take notice that on September 25, 2002, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the Companies) submitted for filing revised pages to the Companies' Transmission Coordination Agreement (TCA). The revised provisions of the TCA govern the allocation of transmission service revenues between the Companies during the locked-in time period from January 1, 1997 to June 15, 2000. These changes to the TCA are needed to reflect the effect of the refunds the Companies were required to make in compliance with the letter order issued July 26, 2002 in Central Power and Light Co., *et al.*, Docket Nos. OA97–24–007, *et al.* (July 26 Letter Order). The July 26 Letter Order established the rates required by the Commission's November 8, 2001 order in the same dockets. Central Power and Light Company, *et al.*, 97 FERC 61,157 (2001).

The Companies state that a copy of the filing has been served on all parties to Docket Nos. OA97–24–000, *et al.*, the Public Utility Commission of Texas, the Louisiana Public Service Commission, the Arkansas Public Service Commission and the Oklahoma Corporation Commission.

Comment Date: October 16, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25399 Filed 10–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2126–000, et al.]

Consolidated Edison Company, et al.; Electric Rate and Corporate Filings

September 25, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Consolidated Edison Company

[Docket No. ER02–2126–003]

Take notice that on September 23, 2002, Consolidated Edison Company of New York, Inc., (Con Edison) tendered for filing an Amendment to its prior filings in these dockets of an unexecuted Interconection Agreement (Agreement) between Con Edison and PSEG Power in-City I, LLC (PSEG Power), Con Edison's Amendment was filed in response to the letter order issued on August 28, 2002 by the Director, OMTR/Tariffs and Rates—East.

Con Edison states that copies of the filing were served upon PSEG Power, the New York Independent System Operator, and the New York Public Service Commission.

Comment Date: October 15, 2002.

2. PJM Interconnection, L.L.C.

[Docket No. ER02–2519–002]

Take notice that on September 23, 2002, PJM Interconnection, L.L.C. (PJM), submitted for filing an amendment to its August 29, 2002 and September 11, 2002 filings in this docket. In its August 29, 2002 filing, PJM amended the Appendix of Attachment K of the PJM Open Access Transmission Tariff (PJM Tariff) and Schedule 1 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) to establish a Spinning Reserve market for PJM and PJM West and new compensation rules. On September 11, 2002 PJM amended its August 29, 2002 filing to include conforming amendments to both the PJM Tariff and Operating Agreement consistent with the Spinning Reserve market and compensation rules. PJM hereby submits one further amendment in light of the implementation of the Spinning Reserve market and compensation rules.

PJM requests an effective date of December 1, 2002 for the amendments filed on August 29, 2002, September 11, 2002, and September 23, 2002. Copies of this filing were served upon all parties listed on the official service list in Docket No. ER02–2519–000, all PJM members, and each state electric utility regulatory commission in the PJM control area and PJM West region.

Comment Date: October 10, 2002.

3. New England Power Company

[Docket No. ER02–2568–000]

Take notice that on September 20, 2002, New England Power Company (NEP) submitted for filing Original Service Agreement No. 214 between NEP and Lake Road Generating Company, L.P. (Lake Road) under NEP's open access transmission tariff, New England Power Company, FERC Electric Tariff, Original Volume No. 9. The Service Agreement consists of a related facilities agreement between NEP and Lake Road concerning upgrades to transmission facilities operated by NEP in Rhode Island to accommodate the interconnection of Lake Road's new generating station to the transmission system of Connecticut Light and Power in Connecticut.

Comment Date: October 11, 2002.

4. NorthWestern Energy, L.L.C.

[Docket No. ER02–2569–000]

Take notice that on September 20, 2002, NorthWestern Energy, L.L.C. filed with the Federal Energy Regulatory Commission (Commission) a Change in Rate Filing and Request for Certain Waivers.

Comment Date: October 11, 2002.

5. Minnesota Power

[Docket No. ER02–2570–000]

Take notice that on September 20, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Biwabik, Minnesota (Biwabik). This filing included revised rates, which would allow Biwabik the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Biwabik's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 11, 2002.

6. Avista Corporation

[Docket No. ER02–2571–000]

Take notice that on September 20, 2002, Avista Corporation (Avista), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12 Service Agreement No. 120, which is an Agreement for Firm and Non-Firm Point-to-Point Transmission Service Under Avista Corporation's Open Access Transmission Tariff—FERC

Electric Tariff Volume No. 8 between Avista and Haleywest/Plummer Forest Products (Service Agreement).

Avista respectfully requests that the Commission accept the Service Agreement No. 120 for filing and grant all waivers necessary to allow the Service Agreement No. 120 to become effective September 9, 2002. Plummer is the sole customer affected by this Service Agreement and the waiver, if granted, will not affect any other rate or charge to any other customer.

Copies of the filing were served upon Haleywest/Plummer Forest Products, Inc., the sole party to the Service Agreement.

Comment Date: October 11, 2002

7. Minnesota Power

[Docket No. ER02–2572–000]

Take notice that on September 20, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Aitkin, Minnesota (Aitkin). This filing included revised rates, which would allow Aitkin the option purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Aitkin's retail customers. Minnesota Power requests January 1, 2003 as the effective date for the revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Biwabik, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; the City of Proctor—Public Utilities Commission (all located in the State of Minnesota0; and b) Resale Service—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested and effective date of January 1, 2003 for those revised rates.

Comment Date: October 11, 2002.

8. PSEG Energy Resources & Trade LLC

[Docket No. ER02–2573–000]

Take notice that on September 20, 2002, PSEG Energy Resources & Trade LLC (PSEG) of Newark, New Jersey, tendered for filing a letter, together with certain attachments, requesting that the Commission amend the Western Systems Power Pool (WSPP) Agreement to include PSEG ER&T as a participant.

PSEG further requests waiver of the Commission's regulations such that the agreement can be made effective as of the filing date. Copies of the filing have been served upon Michael Small, Esquire, the Executive and Operating Committees of the WSPP and the New Jersey Board of Public Utilities.

Comment Date: October 11, 2002.

9. Minnesota Power

[Docket No. ER02–2574–000]

Take notice that on September 20, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Grand Rapids, Minnesota—Public Utilities Commission (Grand Rapids). This filing included revised rates, which would allow Grand Rapids the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Grand Rapids' retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested and effective date of January 1, 2003 for those revised rates.

Comment Date: October 11, 2002.

10. Minnesota Power

[Docket No. ER02–2575–000]

Take notice that on September 20, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Gilbert, Minnesota (Gilbert). This filing included revised rates, which would allow Gilbert the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Gilbert's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 11, 2002.

11. California Independent System Operator Corporation

[Docket No. ER02–2576–000]

Take notice that on September 20, 2002, the California Independent System Operator Corporation (ISO) submitted for filing an update to the Comprehensive Market Design (MD02) proposal contained in Amendment No. 44 to the ISO Tariff (Update) and Request for Expedited Consideration of the Update. For the reasons described below, the ISO respectfully submits that good cause exists for the Commission to undertake expedited action on and grant approval of the proposed clarifications and modifications set forth herein.

This Update would modify the ISO Tariff to: (1) Postpone the effective date for the implementation of Real-Time Economic Dispatch and Uninstructed Deviation Penalties; (2) change the deadline for submitting Supplemental Energy bids; (3) exempt bids $0/MWh or less from the calculation to determine the reference price for resources; (4) extend the provisions of ISO Tariff Amendment No. 43 to pay pre-dispatched System Resources outside the ISO Control Area the instructed Imbalance Energy price in all intervals; (5) clarify that Automatic Mitigation Procedure reference prices will be calculated daily; and (6) limit the liability of the independent entity calculating such reference prices.

The ISO has served this filing upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. In addition, the ISO has posted a copy of the filing on its Home Page.

Comment Date: October 11, 2002.

12. Minnesota Power

[Docket No. ER02–2578–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the Public Utilities Commission of Brainerd, Minnesota (Brainerd). This filing included revised rates, which would allow Brainerd the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Brainerd's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

13. Minnesota Power

[Docket No. ER02–2579–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Two Harbors, Minnesota (Two Harbors). This filing included revised rates, which would allow Two Harbors the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to the retail customers of Two Harbors. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, and Randall; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

14. Minnesota Power

[Docket No. ER02–2580–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Nashwauk, Minnesota (Nashwauk). This filing included revised rates, which would allow Nashwauk the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Nashwauk's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

15. Minnesota Power

[Docket No. ER02–2581–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Hibbing, Minnesota—Public Utilities Commission (Hibbing). This filing included revised rates, which would allow Hibbing the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Hibbing's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Virginia—Department of Public Utilities (located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

16. Minnesota Power

[Docket No. ER02–2582–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Ely, Minnesota (Ely). This filing included revised rates, which would allow Ely the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Ely's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota).

Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

17. Minnesota Power

[Docket No. ER02–2583–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Proctor, Minnesota—Public Utilities Commission (Proctor). This filing included revised rates, which would allow Proctor the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Proctor's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; and the City of Grand Rapids—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota).

Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

18. Minnesota Power

[Docket No. ER02–2584–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for Superior Water Light & Power Company, a wholly owned affiliate of Minnesota Power serving northwestern Wisconsin. Except for designations required by Order No. 614, the wholesale rate schedule terms and conditions remain unchanged from those previously on file with the Commission.

Comment Date: October 15, 2002.

19. Minnesota Power

[Docket No. ER02–2585–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Mountain Iron, Minnesota (Mountain Iron). This filing included revised rates, which would allow Mountain Iron the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Mountain Iron's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements

Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Keewatin, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

20. Minnesota Power

[Docket No. ER02–2586–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Buhl, Minnesota (Buhl). This filing included revised rates, which would allow Buhl the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Buhl's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

21. Minnesota Power

[Docket No. ER02–2587–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for Dahlberg Light & Power Company. Except for designations required by Order No. 614, the wholesale rate schedule terms and conditions remain unchanged from those previously on file with the Commission.

Comment Date: October 15, 2002.

22. Minnesota Power

[Docket No. ER02–2588–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Keewatin, Minnesota (Keewatin). This filing included revised rates, which would allow Keewatin the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Keewatin's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

23. Minnesota Power

[Docket No. ER02–2589–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Virginia, Minnesota—Department of Public Utilities (Virginia, Minnesota). This filing included revised rates, which would allow Virginia, Minnesota the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Virginia, Minnesota's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission (located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

24. Minnesota Power

[Docket No. ER02–2590–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Pierz, Minnesota (Pierz). This filing included revised rates, which would allow Pierz the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to the retail customers of Pierz. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota).

Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

25. Minnesota Power

[Docket No. ER02–2591–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Randall, Minnesota (Randall). This filing included revised rates, which would allow Randall the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Randall's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

26. Southern California Edison Company

[Docket No. ER02–2592–000]

Take notice that on September 23, 2002, Southern California Edison Company (SCE) tendered for filing under SCE's Transmission Owner Tariff a System Facilities Agreement (Agreement) between SCE and Blythe Energy LLC (Blythe).

The Agreement specifies the terms and conditions pursuant to which SCE will design, engineer, construct and install the system facilities for Blythe to interconnect a 520 MW combined cycle power plant to the Western Area Power Administration (WAPA) transmission system at WAPA's Blythe Substation. SCE and WAPA's transmission systems are interconnected at WAPA's Blythe Substation.

SCE respectfully request the Agreement to become effective on September 24, 2002. Copies of this filing were served upon the Public Utilities Commission of the State of California and Blythe.

Comment Date: October 15, 2002.

27. Delmarva Power & Light Company

[Docket No. ER02–2593–000]

Take notice that on September 23, 2002, Delmarva Power & Light Company (Delmarva) tendered for filing a revised and executed Interconnection Agreement (Revised Interconnection Agreement) between Delmarva and the Delaware Municipal Electric Corporation (DEMEC). The Revised Interconnection Agreement continues to provide for the interconnection of DEMEC's generating units with the Delmarva transmission system and adds new tax provisions that were agreed to by the Parties.

Delmarva respectfully requests that the Commission allow the Interconnection Agreement to become effective on September 24, 2002, the day after filing. Copies of the filing were served upon the Delaware Public Service Commission, the Maryland Public Service Commission and the Virginia State Corporation Commission.

Comment Date: October 15, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25398 Filed 10–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

October 2, 2002.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 9, 2002, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone, (202) 502–8400. For a recording listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

807th—Meeting October 9, 2002; Regular Meeting, 10 a.m.

Administrative Agenda

A–1.
Docket# AD02–1,000, Agency Administrative Matters

A–2.
Docket# AD02–7,000, Customer Matters, Reliability, Security and Market Operations

A–3.
Docket# AD02–23,000, Demand Response Programs

Markets, Tariffs and Rates—Electric

E–1.
Docket# ER02–2458,000, Midwest Independent Transmission System Operator, Inc.

E–2.
Docket# ER02–2463,000, ISO New England Inc.

E–3.
Docket# ER02–1494,000, Commonwealth Edison Company

E–4.
Omitted

E–5.
Docket# ER02–290,001, Midwest Independent Transmission System Operator, Inc.

E–6.
Docket# ER01–2207,001, Mid-Continent Area Power Pool
Other#s ER01–2207,002, Mid-Continent Area Power Pool
ER01–2207,004, Mid-Continent Area Power Pool
ER01–2207,005, Mid-Continent Area Power Pool

E–7.
Docket# ER01–702,003, American Transmission Company LLC
Other#s OA01–8,002, Wisconsin Electric Power Company

E–8.
Docket# TX96–2,006, City of College Station, Texas
Other#s TX96–2,000, City of College Station, Texas
TX96–2,001, City of College Station, Texas
TX96–2,002, City of College Station, Texas

E–9.
Docket# ER00–1743,004, Entergy Services, Inc.

E–10.
Docket# ER01–3000,006, International Transmission Company and DTE Energy Company
Other#s RT01–101,006, International Transmission Company and DTE Energy Company
EC01–146,006, International Transmission Company and DTE Energy Company

E–11.
Docket# ER02–1326,001, PJM Interconnection, L.L.C.
Other#s ER02–1326,002, PJM Interconnection, L.L.C.

E–12.
Omitted

E–13.
Omitted

E–14.
Docket# EC02–100,000, Mirant Neenah, LLC, Alliant Energy Resources, Inc., and Mirant Wisconsin Investments, Inc.

E–15.
Omitted

E–16.
Docket# ER00–1365,002, California Independent System Operator Corporation
Other#s ER00–1365,001, California Independent System Operator Corporation

E–17.
Docket# ER99–896,002, California Independent System Operator Corporation
Other#s ER99–896,001, California Independent System Operator Corporation

E–18.
Docket# EC00–118,002, Arizona Public Service Company, Pinnacle West Capital Corporation and Pinnacle West Energy Corporation

E–19.
Omitted

E–20.
Docket# ER02–405,002, Entergy Services, Inc.
Other#s EL02–107,000, Duke Energy Hinds, LLC, Duke Energy Hot Spring, LLC, Duke Energy Southaven, LLC, Duke Energy North America, LLC v. Entergy Services, Inc., Entergy Operating Companies
ER02–405,003, Entergy Services, Inc.

E–21.
Docket# ER00–1608,002, Southern Company Services, Inc.
Other#s ER01–2166,002, Southern Company Services, Inc.

E–22.
Omitted

E–23.
Omitted

E–24.
Omitted

E–25.
Omitted

E–26.
Docket# ER02–1663,001, Tampa Electric Company
Other#s ER02–1663,002, Tampa Electric Company

E–27.
Docket# ER97–2353,007, New York State Electric & Gas Corporation

E–28.
Omitted

E–29.
Docket# ER02–191 .001, Nevada Power Company

E–30.
Omitted

E–31.
Docket# ER02–2014,001, Entergy Services, Inc.

E–32.
Docket# EL02–101,000, Cleco Power LLC; Dalton Utilities (acting as agent for the City of Dalton, Georgia); Entergy Services, Inc. (acting as agent for Entergy Arkansas, Inc., Entergy Gulf States Inc., Entergy Louisiana, Inc., Entergy Mississippi Inc., and Entergy New Orleans, Inc.); Georgia Transmission Corporation; JEA (formerly Jacksonville Electric Authority); MEAG Power; Sam Rayburn G & T Electric Cooperative Inc.; South Carolina Public Service Authority; Southern Company Services, Inc. (acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company); and the City of Tallahassee, Florida.

E–33.
Docket# EL00–51,000, Northern Maine Independent System Administrator Inc.

E–34.
Omitted

E–35.
Docket# EL02–59,000, KeySpan-Ravenswood, Inc. v. New York Independent System Operator, Inc.

E–36.
Docket# EL01–76,000,001, State of Michigan and the Michigan Public Service Commission v. Wolverine Power Supply Cooperative, Inc.

E–37.
Docket# EL02–91,000, Williams Energy Marketing & Trading Company v. Southern Company Services, Inc.

E–38.
Docket# EL02–118,000, GenPower Anderson, LLC, FPL Energy Anderson, LLC, and Mountain Creek 2001 Trust v. Duke Energy Corporation and Duke Electric Transmission
Other#s ER02–2480,000, Duke Energy Corporation

E–39.
Docket# EL02–97,000, East Kentucky Power Cooperative, Inc. v. Louisville Gas and Electric Company and Kentucky Utilities Company

E–40.
Docket# EL02–121,000, Occidental Chemical Corporation v. PJM Interconnection, L.L.C. and Delmarva Power & Light Company
E–41.
Docket# EL02–112,000, FirstEnergy Solutions Corp. v. PJM Interconnection, L.L.C.
Other#s EL02–120,000, Edison Mission Energy v. PJM Interconnection, L.L.C.
0E–42.
Omitted
E–43.
Docket# EL00–66,000, Louisiana Public Service Commission and the Council of the city of New Orleans v. Entergy Corporation
Other#s ER00–2854,000, Entergy Services, Inc.
EL95–33,002, Louisiana Public Service Commission v. Entergy Services, Inc.
E–44.
Docket# RT02–1,000, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico and Tucson Electric Power Company
Other#s EL02–9,000, WestConnect RTO, LLC
E–45.
Docket# EL01–122,003, PJM Interconnection L.L.C.
Other#s EL01–122,002, PJM Interconnection L.L.C.
EL01–122,004, PJM Interconnection L.L.C.
E–46.
Docket# EL00–62,010, NSTAR Services Company v. New England Power Pool
Other#s EL00–62,046, NSTAR Services Company v. New England Power Pool
ER00–2052,008, NSTAR Services Company v. New England Power Pool
ER00–2052,011, NSTAR Services Company v. New England Power Pool
EL00–102,000, Northeast Utilities Service Company and Select Energy, Inc., v. ISO New England, Inc.
EL00–102,001, Northeast Utilities Service Company and Select Energy, Inc., v. ISO New England, Inc.
EL00–109,000, Alternate Power Source, Inc., v. ISO New England, Inc.
EL00–109,001, Alternate Power Source, Inc., v. ISO New England, Inc.
EL00–109,002, Alternate Power Source, Inc., v. ISO New England, Inc.
E–47.
Docket# ER99–3301,002, California Independent System Operator Corporation
E–48.
Docket# ER02–1420,001, Midwest Independent Transmission System Operator, Inc.
E–49.
Docket# EL02–103,000, City of Vernon, California
E–50.
Docket# ER02–700,000, Florida Power & Light Company
E–51.
Docket# RM00–7,002, Revision of Annual Charges Assessed to Public Utilities
Other#s RM00–7,003, Revision of Annual Charges Assessed to Public Utilities
RM00–7,004, Revision of Annual Charges Assessed to Public Utilities
RM00–7,005, Revision of Annual Charges Assessed to Public Utilities
RM00–7,006, Revision of Annual Charges Assessed to Public Utilities
E–52.
Docket# ER02–1656,001, California Independent System Operator Corporation
Other#s EL01–68,019, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council
ER02–1656,002, California Independent System Operator orporation
ER02–1656,003, California Independent System Operator Corporation
ER02–1656,004, California Independent System Operator Corporation
ER02–1656,005, California Independent System Operator Corporation
ER02–1656,006, California Independent System Operator Corporation

Miscellaneous Agenda

M–1.
Docket# RM02–3,000, Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities

Markets, Tariffs and Rates—Gas

G–1.
Docket# RP00–490,000, Transwestern Pipeline Company
Other#s RP00–490,001, Transwestern Pipeline Company
RP00–626,000, Transwestern Pipeline Company
RP00–626,001, Transwestern Pipeline Company
RP00–626,002, Transwestern Pipeline Company
RP00–626,003, Transwestern Pipeline Company
G–2.
Docket# RP96–389,067, Columbia Gulf Transmission Company
G–3.
Docket# RP02–216,000, Reliant Energy Gas Transmission Company
Other#s RP02–216,001, Reliant Energy Gas Transmission Company
G–4.
Omitted
G–5.
Omitted
G–6.
Omitted
G–7.
Docket# TM99–6–29,003, Transcontinental Gas Pipe Line Corporation
Other#s TM99–6–29,004, Transcontinental Gas Pipe Line Corporation
RP00–209,000, Transcontinental Gas Pipe Line Corporation
RP01–253,000, Transcontinental Gas Pipe Line Corporation
RP02–171,000, Transcontinental Gas Pipe Line Corporation
G–8.
Omitted
G–9.
Docket# RP02–13,003, Portland Natural Gas Transmission System
G–10.
Docket# RP02–122,001, Kinder Morgan Interstate Gas Transmission, LLC
G–11.
Docket# RP99–274,006, Kern River Gas Transmission Company
Other#s RP99–274,007, Kern River Gas Transmission Company
G–12.
Docket# IS02–10,002 Kinder Morgan Operating L.P. "A"
G–13.
Omitted
G–14.
Docket# RP00–462,001, Equitrans, L.P.
Other#s RP00–462,002, Equitrans, L.P.
RP01–37,003, Equitrans, L.P.
RP01–37,004, Equitrans, L.P.
G–15.
Docket# RP02–151,004, Gulf South Pipeline Company, LP
Other#s RP96–320,057, Gulf South Pipeline Company, LP
RP02–151,005, Gulf South Pipeline Company, LP
G–16.
Docket# RP02–330,001, ANR Pipeline Company
Other#s RP02–330,002, ANR Pipeline Company
G–17.
Omitted
G–18.
Omitted
G–19.
Docket# RP02–129,003, Southern LNG Inc.
Other#s RP02–129,000, Southern LNG Inc.
RP02–129,001, Southern LNG Inc.
RP02–129,002, Southern LNG Inc.
G–20.
Docket# RP00–260,010, Texas Gas Transmission Corporation
Other#s RP00–260,000, Texas Gas Transmission Corporation
G–21.
Docket# OR02–9,000, Chevron Products Company v. Calnev Pipe Line, L.L.C.
G–22.
Omitted
G–23.
Docket# IS01–444,005, Conoco Pipe Line Company
Other#s IS01–445,005, Conoco Pipe Line Company
G–24.
Docket# RP02–34,000, Eastern Shore Natural Gas Company
G–25.
Docket# RP02–334,003, Northern Natural Gas Company
Other#s RP02–334,002, Northern Natural Gas Company

Energy Projects—Hydro

H–1.
Docket# P–11162,004, Wisconsin Power and Light Company
H–2.
Docket# P–10893,008, Hy Power Energy Company
H–3.
Docket# P–2413,052, Georgia Power Company
H–4.
Docket# UL00–3,004, Homestake Mining Company

Other#s UL00–4,004, Homestake Mining Company
H–5.
Omitted
H–6.
Docket# P–10455,021, JDJ Energy Company
H–7.
Omitted
H–8.
Docket# P–2114,106, The Yakama Nation v. Public Utility District No. 2 of Grant County, WA

Energy Projects—Certificates

C–1.
Docket# CP02–229,000, SG Resources Mississippi, L.L.C.
Other#s CP02–230,000, SG Resources Mississippi, L.L.C.
CP02–231,000, SG Resources Mississippi, L.L.C.
C–2.
Omitted
C–3.
Docket# CP02–97,000, West Texas Gas, Inc.
C–4. Docket# CP02–17,001, Texas Eastern Transmission, L.P.
Other#s CP02–45,001, Texas Eastern Transmission, L.P.
C–5.
Docket# CP02–44,001, Dominion Transmission, Inc.
Other#s CP02–46,001, Tennessee Gas Pipeline Company
CP02–47,001, Dominion Transmission, Inc. and Tennessee Gas Pipeline Company
CP02–47,002, Dominion Transmission, Inc. and Tennessee Gas Pipeline Company
CP02–48,001, National Fuel Gas Supply Corporation and Tennessee Gas Pipeline Company
CP02–53,001, National Fuel Gas Supply Corporation and Dominion Transmission, Inc.
C–6.
Docket# CP02–32,001, Texas Eastern Transmission, LP
C–7.
Docket# CP01–422,002, Kern River Gas Transmission Company

Magalie R. Salas,

Secretary.

[FR Doc. 02–25644 Filed 10–4–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7391–8]

Agency Information Collection Activities: Continuing Collection; Comment Request; Part B Permit Application, Permit Modifications and Special Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Part B Permit Application, Permit Modifications and Special Permits, EPA ICR No.1573.06, OMB No. 2050–0009, expires on March 31, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 6, 2002.

ADDRESSES: Comments may be submitted by mail, through hand delivery/courier, or electronically. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

The mailing address, referencing Docket ID No. RCRA–1999–0050, is: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters, 1200 Pennsylvania Avenue NW., Washington, DC 20460–001. Hand deliveries of comments should be made to the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Comments may also be submitted electronically through the Internet to: *rcra-docket@epa.gov*. Comments in electronic format should also be identified by the Docket ID No. RCRA–1999–0050. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5303W), U.S. EPA, 1200 Pennsylvania Avenue NW., Washington DC 20460–001.

Hand deliveries must be brought to the Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Docket is open from 9 a.m. to 4 p.m. Monday through Friday, excluding federal holidays. The telephone number for the Reading Room is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: David Eberly by phone at (703) 308–8645, by mail at the Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–001, or by e-mail at eberly.david@epa.gov.

SUPPLEMENTARY INFORMATION:

How Can I Get copies of the ICR Supporting Statement and Other Related Information?

1. *Docket.* EPA has established an official public docket for this ICR under Docket ID No. RCRA–1999–0050. The official public docket consists of the documents specifically referenced in the ICR, any public comments received, and other information related to this ICR. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center (see **ADDRESSES** above). This Docket Facility is open from 9 a.m. to 4 p.m. Monday through Friday, excluding federal holidays. It is recommended that the public make an appointment by calling (202) 566–1742. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies are $0.15/page.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in A.1 above.

For public commenters, it is important to note that EPA's policy is

that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments in formulating a final decision.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. RCRA–1999–0050. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov*, Attention Docket ID No. RCRA–1999–0050. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in **ADDRESSES.** These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and two copies of their comments, referencing Docket ID No. RCRA–1999–0050, to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters, 1200 Pennsylvania Avenue NW., Washington, DC 20460–001.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. RCRA–1999–0050. Such deliveries are only accepted during the Docket's normal hours of operation, from 9 a.m. to 4 p.m. Monday through Friday, excluding federal holidays.

How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to: RCRA CBI Document Control Officer, Office of Solid Waste (5303W), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–001, Attention Docket ID No. RCRA–1999–0027. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information. In particular, for this ICR, EPA is soliciting information on the estimates for performing waste analyses as required in 40 CFR 264.13(a)(1) and 40 CFR 265.13(a)(1).

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Affected Entities: Entities potentially affected by this action are owners and operators of hazardous waste management facilities.

Title: Part B Permit Application, Permit Modifications and Special Permits, EPA ICR #1573.06, OMB No. 2050–0009, expires on March 31, 2003.

Abstract: Section 3005 of Subtitle C of RCRA requires treatment, storage or disposal (TSD) facilities to obtain a permit. To obtain the permit, the TSD must submit an application describing the facility's operation. There are two parts to the RCRA permit application—Part A and Part B. Part A defines the processes to be used for treatment, storage, and disposal of hazardous wastes; the design capacity of such processes; and the specific hazardous wastes to be handled at the facility. Part B requires detailed site specific information such as geologic, hydrologic, and engineering data. In the event that permit modifications are proposed by the applicant or EPA, modifications must conform to the requirements under Sections 3004 and 3005.

This ICR provides a comprehensive discussion of the requirements for owner/operators of TSDFs submitting applications for a Part B permit or permit modification. The information collections contained in this ICR are divided into three sections: demonstrations and exemptions from requirements (40 CFR part 264), contents of the Part B application (40 CFR part 270), and permit modifications and special permits (40 CFR part 270).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Burden Statement:

The estimated average burden for renewing the existing Part B ICR is as follows:

Demonstrations and Exemptions From Requirements

Releases from regulated Units—1.62 hours
Demonstrations and Exemptions from Requirements—9.67 hours

Contents of the Part B Application

Legal Review—100.00 hours
General Information—0.00 hours
Permit Application—2.93 hours
General Requirements—0.09 hours
General Facility Standards—356.25 hours
Financial Assurance—19.35 hours
Other Part B Requirements—12.00 hours
Ground Water Protection—166.94 hours
Solid Waste Management Units—10.81 hours
Specific Part B Information Requirements—1,143.70 hours
Schedules of Compliance—0.65 hours

Permit Modifications and Special Permits

Permit Modifications—47.35 hours
Expiration and Continuation of Permits—112.75 hours
Special Forms of Permits—59.54 hours

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: September 26, 2002.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 02–25420 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[IL 215–1; FRL–7391–9]

Notice of Final Determination for the Carlton LLC, North Shore Power Plant, City of Zion, Lake County, IL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This notice announces that on February 28, 2001, the Environmental Appeals Board (EAB) of the EPA dismissed a petition for review of a permit issued for the Carlton, Inc. North Shore Power Plant (Carlton) by the Illinois Environmental Protection Agency (Illinois EPA) pursuant to the regulations under Illinois' minor New Source Review (NSR) program. The EAB dismissed the petition for lack of jurisdiction to review the permit.

DATES: The effective date for the EAB's decision is February 28, 2001. Judicial review of this permit decision, to the extent it is available pursuant to section 307(b)(1) of the Clean Air Act, may be sought by filing a petition for review in the United States Court of Appeals for the Seventh Circuit within 60 days of October 7, 2002.

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address: Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604. To arrange viewing of these documents, call Jorge Acevedo at (312) 886–2263.

FOR FURTHER INFORMATION CONTACT: Jorge Acevedo, Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard (AR–18J), Chicago, Illinois 60604. Anyone who wishes to review the EAB decision can obtain it at *http://www.epa.gov/eab/disk11/carlton.pdf*.

SUPPLEMENTARY INFORMATION: This supplemental information is organized as follows:

A. What Action is EPA Taking?
B. What is the Background Information?
C. What did EPA Determine?

A. What Action Is EPA Taking?

We are notifying the public of a final decision by EPA's EAB on a permit issued by Illinois EPA pursuant to Illinois' minor NSR program.

B. What Is the Background Information?

On November 10, 2000, Illinois EPA issued a construction permit 99120057 to Carlton for the construction of either three General Electric (GE) frame 7FA simple cycle turbines with a nominal capacity of 187 megawatts each, or six GE Frame 7EA simple cycle turbines with a nominal capacity of 98.2 megawatts each. The proposed turbines would fire only natural gas and would be required to use dry low oxides of nitrogen combusters. On December 11, 2000, Verena Owen and the Lake County Conservation Alliance (LCCA) filed a petition for review stating that the proposed facility was not a minor source, but in fact a major source of Carbon Monoxide, Nitrogen Oxides, Volatile Organic Materials, and Hazardous Air Pollutants and should be subject to the appropriate regulations. Illinois EPA filed a motion to dismiss the petition on January 5, 2001, in which it argued that the EAB lacked

jurisdiction to review Illinois EPA's permit decision because the permit issued to Carlton was issued under Illinois EPA's minor NSR program, rather than the Federal PSD program. On January 22, 2001, the EAB issued an order requesting EPA's Office of General Counsel (OGC) prepare an amicus brief on the issue of whether the EAB has jurisdiction over this matter. OGC subsequently filed an amicus brief advancing the view that the EAB is without jurisdiction in this case.

C. What Did the EAB Determine?

On February 28, 2001, the EAB denied the petition for review based on the grounds of lack of jurisdiction. The EAB stated that their jurisdiction is limited to permits issued under federal regulations and it does not extend to appeals of state-issued minor NSR permits in approved States.

Dated: September 24, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 02–25421 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7390–9]

Environmental Laboratory Advisory Board (ELAB) Meeting Date, and Agenda

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB) will hold an Open Forum on Tuesday, November 19, 2002 at 5–6 p.m. MST and an Open Meeting on Thursday, November 21, 2002 at 9 a.m.–12 p.m. MST at the La Fonda Hotel, 100 E. San Francisco Street, Santa Fe, New Mexico. The ELAB meetings will be held in conjunction with the NELAC Eighth Interim Meeting occurring in the same location the week of November 17. Members of the public are invited to attend both ELAB events. Items to be discussed include: (1) An update on implementation of the National Environmental Laboratory Accreditation Conference (NELAC) restructuring, (2) discussion of future ELAB recommendations to EPA, and (3) the hearing of public comments and views on the environmental laboratory accreditation. ELAB is soliciting input from the public on these and other issues related to the National Environmental Laboratory Accreditation Program (NELAP) and the NELAC standards. Written comments on NELAP laboratory accreditation and the NELAC standards are encouraged and should be sent to Mr. Edward Kantor, DFO, U.S. EPA, P.O. Box 93478, Las Vegas NV 89193, or faxed to (702) 798–2261, or e-mailed to *kantor.edward@epa.gov*. or can be presented in person at the Open Forum, November 19, 2002. Members of the public are invited to raise issues or to make comments at the Open Forum, and time permitting, will be allowed to comment on discussions ensued from the ELAB Open Meeting.

Dated: September 30, 2002.

John G. Lyon,

Director, Environmental Sciences Division, National Environmental Research Laboratory.

[FR Doc. 02–25418 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7391–2]

Ross Metals, Inc., Superfund Site, Notice of Proposed De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed de minimis settlement.

SUMMARY: Under section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the U.S. Environmental Protection Agency (EPA) has offered a de minimis settlement at the Ross Metals, Inc., Superfund Site (Site) located in Rossville, Tennessee, under an Administrative Order on Consent (AOC) to settle claims for past and future response costs at the Site. Twenty-nine (29) parties have returned signature pages accepting EPA's settlement offer. For thirty (30) days following the publication of this notice, EPA will receive written comments relating to the settlement. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency—Region 4, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Mr. Ray Strickland at the above address within 30 days of the date of publication.

Dated: September 26, 2002.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–25419 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7391–1]

Public Water System Supervision Program Revision for the State of Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State of Colorado has revised its Public Water System Supervision (PWSS) primacy program by adopting regulations for the Consumer Confidence Report Rule. Having determined that these revisions meet all pertinent requirements in the Safe Drinking Water Act, and EPA's implementing regulations, the EPA approves them.

Today's approval action does not extend to public water systems in Indian Country. Please see Supplementary Information, Item B.

DATES: Any member of the public is invited to submit written comments and/or request a public hearing on this determination by November 6, 2002. Please see Supplementary Information, Item C, for information on submitting comments and requesting a hearing. If no hearing is requested or granted, then this action shall become effective November 6, 2002. If a public hearing is requested and granted, then this determination shall not become effective until such time following the hearing as the Regional Administrator issues an order affirming or rescinding this action.

ADDRESSES: Written comments and requests for a public hearing should be addressed to: Robert E. Roberts, Regional Administrator, c/o Qian Zhang (8P–W–MS), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA, Region 8, Municipal Systems Unit, 999 18th Street (4th Floor), Denver, CO 80202–2466; (2) Colorado Department of Public Health and Environment (CDPHE), Drinking Water Section, 4300 Cherry Creek Drive South, Denver, CO.

FOR FURTHER INFORMATION CONTACT: Qian Zhang, Municipal Systems Unit, EPA, Region 8 (8P–W–MS), 999 18th Street, Suite 300, Denver, CO 80202–2466, 303–312–6267.

SUPPLEMENTARY INFORMATION: EPA approved Colorado's application for assuming primary enforcement authority for the PWSS program, pursuant to section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g–2, and 40 CFR part 142 (see 48 FR 55173). CDPHE administers Colorado's PWSS program. The State of Colorado has revised its Public Water System Supervision (PWSS) primacy program by adopting regulations for the Consumer Confidence Report Rule that correspond to regulations for 40 CFR part 141, subpart O.

A. Why Are Revisions to State Programs Necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 CFR part 142 for maintaining primacy. They must adopt regulations that are at least as stringent as the National Primary Drinking Water Regulations (NPDWRs) at 40 CFR part 141. (40 CFR 142.10(a)). Changes to state programs may be necessary as federal primacy requirements change, as states must adopt all new and revised NPDWRs in order to retain primacy. (40 CFR 142.12(a)).

B. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Colorado?

Colorado is not authorized to carry out its Public Water System Supervision program in Indian country. This includes, but is not limited to, lands within the exterior boundaries of the following Indian reservations located within the State of Colorado:
a. Southern Ute Indian Reservation;
b. Ute Mountain Ute Indian Reservation;
and any other lands which are Indian country as defined in 18 U.S.C. 1151.

C. Requesting a Hearing and Submitting Written Comments.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of the responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Colorado. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Colorado. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. A final determination will be made upon review of the hearing record.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: September 26, 2002.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 02–25417 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7385–2]

Program Requirement Revisions related to the Public Water System Supervision Program for the States of Vermont, Connecticut, and New Hampshire, and the Commonwealth of Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the States of Vermont, Connecticut and New Hampshire, and the Commonwealth of Massachusetts, are in the process of revising their approved Public Water System Supervision Programs to meet the requirements of the Safe Drinking Water Act (SDWA).

EPA has determined that the Revised Public Water System Definition for the State of Vermont, as authorized under the Safe Drinking Water Act Amendments of 1996 and final rule provided on April 28, 1998 (63 FR 23362), and the Public Notification Rule that corresponds to 40 CFR part 141, subpart Q, are no less stringent than the corresponding revised federal definitions. Therefore, EPA intends to approve these Public Water System Supervision Program requirements for Vermont.

The State of Connecticut has adopted drinking water regulations establishing Administrative Penalty Authority that applies to its Drinking Water Program. The State submitted documentation, along with certification from its State Attorney General's office, indicating that the Administrative Penalty Authority currently in effect meets the minimum requirements set forth in the 1996 SDWA Amendments. EPA has determined that the Administrative Penalty Authority currently in effect in Connecticut is no less stringent than corresponding federal requirements, as authorized under the Safe Drinking Water Act Amendments of 1996 and final rule provided on April 28, 1998 (63 FR 23362). Therefore, EPA intends to approve the Administrative Penalty Authority requirements for Connecticut.

The Commonwealth of Massachusetts has revised its Public Water System Supervision (PWSS) primacy program by adopting regulations for the Public Notification Rule that correspond to 40 CFR part 141, subpart Q. After review of the submitted documentation, EPA has determined that Massachusetts' Public Notification Rule is no less stringent than the corresponding federal regulation. Therefore, EPA intends to approve this Public Water System Supervision Program requirement for Massachusetts.

The State of New Hampshire has adopted drinking water regulations for Synthetic Organic Chemicals and Inorganic Chemicals (also known as Phase II, Phase IIB, and Phase V Drinking Water Regulations) promulgated by EPA on January 30, 1991 (56 FR 3526), July 1, 1991 (56 FR 30266) and July 17, 1992 (57 FR 31776) respectively. After additional review of the submitted documentation, EPA has determined that the state program revisions for its Phase II, Phase IIB, and Phase V Drinking Water Regulations are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these Public Water System Supervision Program requirements for New Hampshire.

DATES: All interested parties may request a public hearing for any of the above EPA determinations. A request for a public hearing must be submitted within thirty (30) days of this **Federal Register** publication date to the Regional Administrator at the address

shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by this date, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become final and effective 30 days after the publication of this **Federal Register** Notice. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination; (3) information that the requesting person intends to submit at such hearing; and (4) the signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, at the following office(s): U.S. Environmental Protection Agency, Office of Ecosystem Protection, One Congress Street, 11th floor, Boston, MA 02114.

For documents specific to that State/Commonwealth:

Massachusetts Department of Environmental Protection, Drinking Water Program, One Winter Street, Boston, MA 02108.

Connecticut Department of Public Health, Drinking Water Division, 450 Capitol Avenue, P.O. Box 340308—51 WAT, Hartford, CT 06134–0308.

Vermont Department of Environmental Conservation, Water Supply Division, 103 South Main Street, Waterbury, VT 05671–0405.

New Hampshire Department of Environmental Services, Water Supply Engineering Bureau, P.O. Box 95, 6 Hazen Drive, Concord, NH 03302–0095.

FOR FURTHER INFORMATION CONTACT: Barbara McGonagle, Office of Ecosystem Protection (telephone 617–918–1608).

Authority: Sections 1401 and 1413 (42 U.S.C. 300g–2) of the Safe Drinking Water Act, as amended (1996), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: September 26, 2002.

Robert W. Varney,

Regional Administrator, EPA—New England.

[FR Doc. 02–25426 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 02–276; FCC 02–248]

Commission Seeks Comment on Disposition of Down Payments and Pending Applications for Licenses Won During Auction No. 35

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks comment on whether the Commission should take further action with regard to the pending applications for licenses won during Auction No. 35, which would consist of one of two scenarios described in the document. Under these scenarios, the Commission would refund certain amounts on deposit with the Commission for licenses subject to pending litigation or regulatory proceedings, and allow individual applicants to request voluntary dismissal of their license applications, with prejudice, for some or all of the licenses subject to pending litigation or regulatory proceedings.

DATES: Comments are due on or before October 11, 2002, and reply comments are due on or before October 21, 2002.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554 or hand carry comments to 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m.

FOR FURTHER INFORMATION CONTACT: Scott Delacourt at (202) 418–0639.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 35 Pending License Applications* Public Notice released September 12, 2002. The complete text of the *Auction No. 35 Pending License Applications Public Notice*, including the statement, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Auction No. 35 Pending License Applications Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Background

1. On March 26, 2002, the Commission granted partial refunds of the down payments made by certain winning bidders in Auction No. 35 *Partial Refund Order*, 17 FCC Rcd 6283 (not published in the **Federal Register**). These winning bidders had made down payments and filed long-form applications for spectrum associated with licenses that had previously been issued to NextWave Personal Communications Inc., NextWave Power Partners Inc. (collectively "NextWave") and Urban Comm-North Carolina, Inc. ("Urban Comm"). This spectrum, as well as Auction No. 35, continues to be the subject of extensive litigation and pending regulatory proceedings. Key issues over the effectiveness of the Commission's automatic cancellation rules with respect to NextWave's licenses are scheduled for oral argument before the Supreme Court on October 8, 2002.

2. Pursuant to the *Partial Refund Order*, the Commission has already refunded approximately $2.8 billion to the Auction No. 35 winning bidders who have not yet received their licenses, but it retained an amount equal to three percent of the net winning bids for these licenses and maintained the pending status of the applications for these licenses. The total amount still on deposit with the Commission is $489,548,061. The total amount of these Auction No. 35 winners' obligations, including the refunded down payments, to the government for the former NextWave and Urban Comm licenses won at the auction is $16,318,268,700. The Commission has already received $504,419,150 in final payments for other licenses won and granted based on Auction No. 35.

3. As noted in the *Partial Refund Order*, the Commission was sympathetic to the needs of the auction winners, many of whom are small businesses, to have access to their funds to continue to operate their businesses. At the same time, the Commission held that it must protect the integrity of Auction No. 35 in the event the Commission is ultimately successful in its litigation. It therefore struck a balance between the hardship that would be imposed by continuing to retain the entirety of the down payments and the need to protect the integrity of the auction. Accordingly, it refunded to the payors of record a substantial portion of the monies on deposit.

4. However, the Commission's *Partial Refund Order* also found, *inter alia*, that the continued litigation associated with particular licenses *did not* relieve the winning bidders of the obligation to pay their full bid amounts for licenses won in Auction No. 35. In this regard, the Commission disposed of matters raised by Verizon in a letter to the Commission's Deputy General Counsel in which Verizon argued that it no longer had an obligation to pay the amount it bid in Auction No. 35 based on the theory that spectrum auctions create contractual relationships between the Commission and winning bidders, and that the Commission's failure to make timely delivery of the licenses rendered the contract void. No other Auction No. 35 applicant advanced this contract theory. In response to Verizon's letter, the *Partial Refund Order* stated that auctions are a regulatory mechanism for distributing licenses and that the relationship between the Commission and winning bidders of spectrum licenses is governed by the Communications Act, the Commission's competitive bidding regulations, and Public Notices setting forth specific conditions on particular auctions. Those conditions, the Commission stated, included the auction's contingency on the "final" outcome of the Next Wave litigation. Therefore, the Commission held that the fact that spectrum associated with the former NextWave licenses was not yet available for use by the Auction No. 35 winning bidders did not require the Commission to relieve Verizon of its bid obligations.

5. Verizon challenged the Commission's *Partial Refund Order* in two courts. In the D.C. Circuit, in case No. 02–1110, Verizon seeks a ruling that the delay in licensing caused by the NextWave litigation entitles Verizon to declare its auction obligations void. In the Court of Federal Claims, in case No. 02–280c, Verizon seeks a declaration nullifying Auction No. 35 as well as consequential damages. We stand by our legal conclusions in the *Partial Refund Order*, and do not through the *Auction No. 35 Pending License Applications Public Notice* suggest any support for Verizon's legal argument.

Discussion

6. Since the Commission issued its *Partial Refund Order* several months ago, the state of the capital markets for entities, including the applicants, engaged in the provision of wireless telecommunications services, as well as other telecommunications services, has continued to decline rapidly. Specifically, since March, the Commission has received submissions asserting that unique and troubling financial circumstances have led to difficulties in accessing capital and other problems for companies of all sizes, which in turn has affected the customers they serve. For instance, these commenters suggest that the impact of continuing contingent liabilities on credit ratings in the midst of a severe downturn in capital markets could potentially frustrate other policy objectives as well as quality of service. Moreover, as we have seen in the past, market downturns affect the value of spectrum licenses won at auction and licensees' (or applicants') ability to meet auction payment obligations. At the same time, the Commission remains concerned about protecting the integrity of its spectrum auction program. Concerns about the state of the capital markets must be balanced against this important public interest consideration.

7. Taking official notice of the status of the capital markets and other economic events, the Commission, on its own motion, seeks comment on these observations and whether it should take further action with regard to the pending applications for licenses won during Auction No. 35 for spectrum formerly licensed to NextWave and Urban Comm.

8. Specifically, the Commission seeks comment on whether it should consider further, *inter alia*, the following scenarios:

(i) *Full Refund and Option to Dismiss All Pending Applications.* Upon request, the Commission would refund to the payor of record the full amount of monies on deposit with the Commission for the licenses subject to the NextWave litigation and Urban Comm proceedings. The Commission would also provide a period of time for individual applicants to request voluntary dismissal of all of their applications, with prejudice.

Under this scenario, applicants obtaining a full refund and choosing to dismiss their applications would lose all claims to the affected Auction No. 35 licenses. Should the Commission prevail in the litigation, new initial licenses for the spectrum would be assigned by auction at a future date. In addition, the Commission would waive, in whole or part, its default rules for these licenses and, subject to coordination with the Department of Justice pursuant to applicable federal claims collection standards, forgive the debt incurred on them at Auction No. 35. The Commission seeks comment on whether it would be advisable to waive the default rules, or to extend debt forgiveness, in whole or part, to a bidder opting for dismissal of its application(s). In addition, we seek comment on whether a bidder receiving a waiver or debt forgiveness should be barred from participating in the reauction of the licenses or otherwise obtaining such licenses for a period of time. Finally, the Commission seeks comment on whether applicants that would like to keep their applications pending should reaffirm their commitment to their Auction No. 35 obligations or just remain silent.

(ii) *Selective Opt-Out for Pending Applications.* The Commission would grant individual applicant requests for voluntary dismissal of their applications, with prejudice, for certain licenses and not others.

Under this scenario, the Commission would provide applicants the opportunity to pick and choose licenses for which to keep the applications pending and which to dismiss. The Commission seeks comment on whether all of the down payments should be refunded or only down payments associated with the dismissed licenses. As with the first scenario, applicants choosing to dismiss their applications would lose all claims to the affected licenses. Should the Commission prevail in the litigation, new initial licenses for the spectrum would be assigned by auction at a future date. In addition, the Commission would, in whole or part, waive its default rules for dismissed license applications and, subject to coordination with the Department of Justice pursuant to applicable federal claims collection standards, forgive the debt on them incurred at Auction No. 35. Again, the Commission seeks comment on whether a bidder opting for dismissal of its application(s) and receiving a full or partial waiver of the default payment rules should be barred from participating in the reauction of the licenses or otherwise obtaining such licenses for a period of time.

9. Although the oral argument in the Supreme Court case is fast approaching and the Commission has the utmost confidence in the merits of its case, the Commission and winning bidders in Auction No. 35 still face the possibility of prolonged litigation over such licenses during uncertain and trying economic conditions. The Commission also recognizes that should the Supreme Court rule in the government's favor, there may nevertheless be unresolved issues over the licenses, that would prolong the litigation. Depending on the length of the delay, capital market conditions may continue to change, increasing the possibility that winning bidders in Auction 35 will be in a significantly different position that at the time of the auction. Accordingly, the

Commission seeks comment on the scenarios discussed based on the changed circumstances since issuance of its *Partial Refund Order*. The Commission also seeks comment on whether granting relief under any of the options discussed herein would promote or disserve the public interest objectives outlined in section 309(j) of the Communications Act, including "promoting economic opportunity and competition" and ensuring "efficient and intensive use of the electromagnetic spectrum."

Procedural Matters

10. Pursuant to 47 CFR 1.1200(a), the Commission may adopt modified ex parte procedures in particular proceedings if the public interest so requires. Accordingly, issues related to the *Auction No. 35 Pending License Applications Public Notice* will be governed by "permit-but-disclose" *ex parte* procedures that are applicable to non-restricted proceedings under 47 CFR 1.1206. Designating this matter as "permit but disclose" will provide an opportunity for all interested parties to comment on the policy questions concerning the treatment of the funds on deposit. All other matters concerning Auction No. 35 applications that are the subject of NextWave's Petition to Defer and other petitions to deny remain restricted, pending further action by Public Notice.

11. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before October 11, 2002, and reply comments on or before October 21, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998).

12. Comments filed through the ECFS can be sent as an electronic file via the Internet to *<http://www.fcc.gov/e-file/ecfs.html>*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Marlene H. Dortch, Secretary, Office of the Secretary, Federal Communications Commission.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–25348 Filed 10–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act; Meeting Announcing an Open Meeting of the Board

TIME AND DATE: 10 a.m., Wednesday, October 9, 2002.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

MATTER TO BE CONSIDERED:

- Amendment to the Federal Home Loan Bank of Seattle Capital Plan.
- Amendment to the Federal Home Loan Bank of Indianapolis Capital Plan.
- Federal Home Loan Bank of Dallas Request for an additional Elective Director from the State of Texas.
- Public Interest Director—Board of Directors Office of Finance (Tentative).

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Elaine L. Baker,

Secretary to the Board.

[FR Doc. 02–25498 Filed 10–2–02; 4:33 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 21, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Jasper Banking Company ESOP, and James H. Bryan, Trustee, both of Jasper, Georgia; to acquire additional voting shares of JBC Bancshares, Inc., Jasper, Georgia, and thereby indirectly acquire additional voting shares of Jasper Banking Company, Jasper, Georgia.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Male Family Investments II, L.P., Augusta, Kansas; to acquire control of Prairie Capital, Inc., Augusta, Kansas, and thereby indirectly acquire voting shares of Prairie State Bank, Augusta, Kansas.

Board of Governors of the Federal Reserve System, October 1, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–25366 Filed 10–4–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. BNC Bancorp, Thomasville, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of North Carolina, Thomasville, North Carolina.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. The Templar Fund, Inc., St. Louis, Missouri; to acquire between 36.77 and 40.8 percent of the voting shares of Truman Bancorp, Inc., St. Louis, Missouri, and thereby indirectly acquire Truman Bank, St. Louis, Missouri.

Board of Governors of the Federal Reserve System, October 1, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–25365 Filed 10–4–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The FTC has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements contained in its Automotive Fuel Ratings, Certification and Posting Rule ("Fuel Rating Rule" or "Rule"). The FTC is seeking public comments on the proposal to extend through December 31, 2005 the current PRA clearance for information collection requirements contained in the regulations. That clearance expires on December 31, 2002.

DATES: Comments must be filed by November 6, 2002.

ADDRESSES: Send written comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, ATTN.: Desk Officer for the Federal Trade commission (comments in electronic form should be sent to *oira_docket@omb.eop.gov*), and to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580 (comments in electronic form should be sent to: *FuelRating PRA@ftc.gov*) as prescribed below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be sent to Neil Blickman, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3038.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. On July 24, 2002, the FTC sought comment on the information collection requirements associated with the Fuel Rating Rule, 16 CFR part 306 (OMB Control Number: 3084–0068). *See* 67 FR 48471. No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule.

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be field in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *Fuel Rating PRA@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CCR 4.9(b)(6)(ii).

The Fuel Rating Rule establishes standard procedures for determining, certifying, and disclosing the octane rating of automotive gasoline and the automotive fuel rating of alternative liquid automotive fuels, as required by the Petroleum Marketing Practices Act. 15 U.S.C. 2822(a)–(c). The Rule also requires refiners, producers, importers, distributors, and retailers to retain records showing how the ratings were determined, including delivery tickets or letters of certification.

Estimated annual hours burden: 42,000 total burden hours (17,000 recordkeeping hours + 25,000 disclosure hours).

Recordkeeping: Based on industry sources, staff estimates that 200,000 fuel industry members each incur an average annual burden of approximately five minutes to ensure retention of relevant business records for the period required by the Rule, resulting in a total of 17,000 hours, rounded.

Disclosure: Staff estimates that affected industry members incur an average burden of approximately one hour to produce, distribute, and post octane rating labels. Because the labels are durable, only about one of every eight industry members (*i.e.*, approximately 25,000 of 200,000 members) incur this burden each year, resulting in a total annual burden of 25,000 hours.

Estimated annual cost burden: $739,000, rounded ($672,000 in labor costs and $67,000 in non-labor costs).

Labor costs: Staff estimates that the work associated with the Rule's recordkeeping and disclosure requirements is performed by skilled clerical employees at an average rate of $16.00 per hour. Thus, the annual labor cost to respondents of complying with the recordkeeping and disclosure requirements of the Rule is estimated to be $672,000 ((17,000 hours + 25,000 hours) × 16.00 per hours).

Capital or other non-labor costs: $67,000, rounded up to the nearest thousand. Staff believes that there are no current start-up costs associated with the Rule. Because the Rule has been effective since 1979 for gasoline, and since 1993 for liquid alternative automotive fuels, industry members already have in place the capital equipment and other means necessary to comply with the Rule. Retailers

(approximately 175,000 industry members), however, do incur the cost of procuring (and replacing) fuel dispenser labels to comply with the Rule. According to industry input, the price per label is about thirty-eight cents. Based on ranging industry estimates of a 6–10 year useful life per dispenser label, staff will conservatively factor into its calculation of labeling cost the shortest assumed useful life, *i.e.*, 6 years. Staff believes that the average retailers has six dispensers, with all of them being obtained either simultaneously or otherwise within the same year. Assuming that, in any given year, 1/6 of all retailers (29,167 retailers) will replace their dispenser labels, staff estimates total labeling cost to be $66,500 (29,167 × 6 × .38).

John D. Graubert

Acting General Counsel

[FR Doc. 02–25443 Filed 10–4–02; 8:45 am]

BILLING CODE 6750–01–M

OFFICE OF GOVERNMENT ETHICS

Final OGE Information Quality Guidelines

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics announces that the Office of Management and Budget (OMB) has completed its review of OGE's Information Quality Guidelines. The Office of Government Ethics' final Information Quality Guidelines are now posted on the OGE Web site.

FOR FURTHER INFORMATION CONTACT: Mary T. Donovan at the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; OGE Internet e-mail: *usoge@oge.gov* (for e-mail messages the subject line should include the following reference—"Final OGE Information Quality Guidelines"); telephone: (202) 208–8000, ext. 1185; TDD 202–208–8025; FAX: 202–208–8037. A copy of the final guidelines may be obtained, without charge, by contacting Ms. Donovan.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury & General Government Appropriations Act for FY 2001 (Public Law No. 106–554 requires each Federal agency to publish guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of the information it disseminates to the public. Agency guidelines must be based on Governmentwide guidelines issued by OMB. In compliance with this statutory requirement, OMB has completed its final review of OGE's Information Quality Guidelines and OGE has posted its final guidelines on the OGE Internet Web site (*http://www.usoge.gov*). The guidelines, effective October 1, 2002, describe OGE's procedures for ensuring the quality of information that it disseminates to the public and the procedures by which an affected person could obtain correction of information disseminated by OGE that did not comply with the guidelines.

On July 31, 2002, OGE published a notice of the posting of its draft information quality guidelines on OGE's Web site and requested public comment. *See* 67 FR 49694–49695. The Office of Government Ethics received one letter of general comments. In response to that letter and OMB's final review of the draft guidelines, OGE added language to clarify the effective date of the guidelines once finalized. Furthermore, in response to OMB's final review, OGE inserted language addressing OGE's current comprehensive public comment process, including the separate procedures for commenting on documents published in the **Federal Register**.

Persons who cannot access the guidelines through the Internet may request a paper or electronic copy by contacting Ms. Donovan at the address, phone number, e-mail address, or FAX number listed above.

Approved: October 1, 2002.

Daniel D. Dunning,

Deputy Director for Administration and Information Management, Office of Government Ethics.

[FR Doc. 02–25461 Filed 10–4–02; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Office at (202) 619–2118 or e-mail *Geerie.Jones@HHS.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Incidence of Received Research Misconduct in Biomedical Research—NEW—As required by Section 493 of the Public Health Service Act, the Secretary by regulation shall require that applicant and institution receiving PHS funds must investigate and report instances of alleged or apparent misconduct in science. The purpose of this study is to produce a reliable estimate of the incidence of search misconduct and initiate a longitudinal database for measuring changes and evaluating federal and institutional efforts to prevent research misconduct and promote research integrity. *Respondents:* Not-for-profit Institutions—*Number of Respondents:* 3,000; *Burden per Response:* 20 minutes; *Total Burden:* 1,000 hours.

Send comments via e-mail to *Geerie.Jones@HHS.gov* or mail to OS Reports Clearance Office, Room 503H, Huber H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Comments should be received within 60 days of this notice.

Dated: September 12, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 02–25403 Filed 10–4–02; 8:45 am]

BILLING CODE 4150–31–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Office at (202) 619–2118 or e-mail *Geerie.Jones@HHS.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: 1. Survey of SCHIP Administrators for the Congressionally Mandated Evaluation of the State Children's Health Insurance Program—NEW—The Department's Office of the Assistant Secretary for Planning and Evaluation proposes to conduct a survey of state administrators of the State Children's Health Insurance Program (SCHIP). As mandated by the Balanced Budget Refinement Act (BBRA) of 1999 this study is to obtain information about the broader context in which state programs operate, including the political and social context, policy discussions, lessons learned, and key issues facing the program in the next one or two years. *Respondents:* State and local governments—*Number of Respondents:* 56; *Estimated Burden per Response:* 1.12 hours; *Total Burden:* 63 hours.

Send comments via e-mail to *Geerie.Jones@HHS.gov* or mail to OS Reports Clearance Office, Room 503H, Huber H. Humphrey Building, 200 Independence Avenue, SW., Washington DC 20201. Comments should be received within 60 days of this notice.

Dated: September 23, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 02–25404 Filed 10–4–02; 8:45 am]

BILLING CODE 4154–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS–2002–17]

Grant to the Community Nutrition Institute

AGENCY: Office of Community Services (OCS), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Award announcement.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to the Community Nutrition Institute to support a nationwide initiative for the Community Food and Nutrition Program (CFNP). The nationwide initiative is a national research project to study the impact of current CFNP projects on low-income communities, families, and children nationwide. The results of the study will enable OCS to improve the quality of service provided to the network of CFNP grantees, and to assess the program's impact on improving the health and nutritional well-being of low-income families, children and individuals nationwide.

The CFNP legislation requires that the Department fund a Nationwide Program for Fiscal Year 2002. Pub. L. 97–35 as amended by Pub. L. 105–285 at section 681(b)(2)(C) states that "* * * The Secretary shall * * * make grants * * * on a competitive bases * * * for nationwide programs. * * *" Since the Department did not receive any applications in response to our CFNP Nationwide Program Announcement, this project is being funded noncompetitively. It is expected to provide valuable information useful to this Department and other practitioners regarding research and demonstration initiatives related to welfare reform and the well-being of low-income children and families. This is a three-year project. The cost of the project is $300,000 for the first year.

FOR FURTHER INFORMATION CONTACT: Catherine Rivers, Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Phone: 202–401–5252.

Dated: September 18, 2002.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 02–25394 Filed 10–4–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grant to the Hebrew Immigrant Aid Society

AGENCY: Office of Refugee Resettlement (ORR), HHS.

ACTION: Grant Award Announcement.

SUMMARY: Notice is hereby given that an award is being made to the Hebrew Immigrant Aid Society of New York, in the amount of $850,000 to further the integration and self-sufficiency of recently arrived refugees by implementing programs to strengthen refugee families and marriages and to promote responsible fatherhood. The funds provided will be utilized to develop programs in 10 pilot sites. The period of this funding will extend through September 29, 2004.

After an appropriate review, it has been determined that the need for the cited services by this population is imperative and the applicant has over two hundred years of experience in resettling such refugees. The proposed activities—family strengthening programs for struggling refugee families—strongly support the Administration's defined goals. These programs reflect current social science research in family relationships and have a strong track record in successful outcomes in mainstream populations. Their extension to refugee populations will be a welcome addition to ORR's social services emphasis. No other grant program currently includes these programs.

FOR FURTHER INFORMATION CONTACT: Loren Bussert, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–4732.

Dated: September 27, 2002.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 02–25395 Filed 10–4–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of

Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 67 FR 42268–42271, dated July 21, 2002) is amended to reorganize the Office of the Director, NCHS.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the functional statement for the *National Center for Health Statistics (CS)* and insert the following:

(1) Provides national leadership in health statistics and epidemiology; (2) collects, analyzes, and disseminates national health statistics on vital events and health activities, including the physical, mental, and physiological characteristics of the population, illness, injury, impairment, the supply and utilization of health facilities and manpower, the operation of the health services system: health costs and expenditures, changes in the health status of people, and environmental, social, and other health hazards; (3) administers the Cooperative Health Statistics System; (4) stimulates and conducts basic and applied research in health data systems and statistical methodology; (5) coordinates to the maximum extent feasible, the overall health statistical and epidemiological activities of the program and agencies of the Department of Health and Human Services (DHHS) and provides technical assistance in the planning, management, and evaluation of the Department's statistical programs; (6) maintains operational liaison with statistical units of other health agencies, public and private, and provides technical assistance within the limitations of staff resources; (7) fosters research, consultation, and training programs in international statistical activities; (8) participates in the development of national health statistics policy with other Federal agencies; (9) directs the environmental and epidemiological statistics programs of the National Center for Health Statistics (NCHS); and (10) provides the Secretary, DHHS with consultation and advice on statistical matters in its role as the Government's principal general-purpose health statistics organization as designated by the Office of Management and Budget (OMB).

Delete the functional statement for the *Office of the Director (CS1)* and insert the following:

(1) Plans, directs, administers, coordinates and evaluates the total vital, health, and health-related statistics programs of the Center; (2) stimulates basic and applied research and development activities; (3) provides national and international leadership in vital and health statistics and epidemiology; (4) conducts a variety of professional activities to provide assistance to government agencies, to foster international relationships, and to improve the broad fields of vital and health statistics and epidemiology; (5) coordinates the Center's activities with public and private health statistical agencies; (6) provides advice and guidance on disease classification problems in the Center, coordinates activities within the Center on classification of diseases and procedures; and has responsibility for development of revision proposals and U.S. position on decennial revisions of the International Classification of Diseases (ICD); (7) directs the Center's environmental and epidemiological statistics programs; (8) provides management and administration for the Center; (9) provides program planning and development for the Center; (10) develops and coordinates legislative activities; and (11) directs and coordinates Center activities in support of the Department's Equal Employment Opportunity program.

Delete in its entirety the functional statement for the *Office of International Statistics (CS15)* and the *Office of Data Standards, Program Development, and Extramural Programs (CS16).*

After the *Office of Planning, Budget and Legislation (CS17),* insert the following:

Classifications and Public Health Data Standards Staff (CS18). (1) Serves as a nucleus for Public Health data standards and health classifications by fostering the collaborative development of tools and guidelines to enhance the integrity, comparability, quality, and usefulness of the data products from a wide variety of public and private agencies at the national and sub-national levels; (2) establishes and maintains liaison and partnerships with Federal agencies within and outside DHHS and with a wide variety of private and professional organizations to promote uniformity in classifications, data sets, definitions, and related data policies and standards; (3) assures representation of NCHS and takes a leadership role on intra- and interagency task forces and committees reviewing and developing uniform data elements and data sets for diverse health care settings, nomenclatures and classifications; (4) serves as a focal point within NCHS for collaborative activities related to computer-based patient record development; (5) supports the Director, NCHS, as a member of the DHHS Data Council and coordinates NCHS staff support to the Data Council for Public Health data standards activities; (6) provides scientific and technical support and Executive Secretariat services to the National Committee on Vital and Health Statistics (NCVHS), the legislatively-mandated advisory committee to the Secretary, DHHS; (7) establishes and maintains liaison between NCVHS and agencies within DHHS, other governmental agencies, and relevant private and professional organizations; (8) directs and facilitates cross-cutting Public Health data standards activities that involve multiple outside organizations and have important implications for NCHS and CDC programs; (9) provides liaison with standards-setting organizations on emerging data needs and on medical and health classification issues; (10) is responsible for overseeing, coordinating, evaluating, and formulating recommendations for the ICD Family of Classifications and related classifications, by providing the focus within NCHS for the development and execution of classification activities; (11) serves as the focal point and coordinator of U.S. Government activities related to the ICD and maintains liaison with the World Health Organization (WHO), through direction of the WHO Collaborating Center for the Classification of Diseases of North America; (12) provides advice and assistance within NCHS and to other agencies and organizations in the conduct of training activities related to Public Health data standards; conducts training in key areas as appropriate; and promotes appropriate training and educational materials for implementation and use of data sets and classification systems; (13) is responsible for assuring comparability of morbidity classification, using current and subsequent versions of the ICD for morbidity, and recommends revisions to the ICD for morbidity applications as appropriate; (14) assumes full responsibility for the development and implementation of the evaluation program of NCHS for assessment of the adequacy, completeness, and responsiveness of Center programs both nationally and internationally to the NCHS mission and user needs for data; based on evaluations, makes proposals for changes in NCHS programs or policies; (15) participates with appropriate agencies and organizations to promote the dissemination, adoption, and use of Public Health data standards advocated by NCHS, DHHS, and the NCVHS; to this end, develops comprehensive policy analyses and special reports, and newsletters; and (16) directs the work of the Public Health Data Standards Consortium.

Dated: September 20, 2002.

William Gimson,

Acting Director.

[FR Doc. 02–25455 Filed 10–4–02; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Final Selection Criteria and Solicitation of Nominations for Chemicals or Categories of Environmental Chemicals for Analytic Development and Inclusion in Future Releases of the National Report on Human Exposure to Environmental Chemicals

AGENCY: Centers for Disease Control and Prevention (CDC), Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: On Wednesday, March 20, 2002, CDC sought public comment on its proposed criteria for selecting environmental chemicals or categories of chemicals for inclusion in future releases of the *National Report on Human Exposure to Environmental Chemicals* (the "Report"). (See **Federal Register**, Vol. 67, No. 54, p. 12996). In response to the comments received, CDC now provides the final selection criteria and solicits public nominations for categories of chemicals to be included in future issues of the "Report." The selection criteria, which will be used by experts to prioritize the nominated chemicals for analytic development and for inclusion in future issues of the "Report," are as follows: (1) Independent scientific data which suggest that the potential for exposure of the U.S. population to a particular chemical is changing (*i.e.*, increasing or decreasing) or persisting; (2) seriousness of health effects known or suspected to result from exposure to the chemical (for example, cancer, birth defects, or other serious health effects); (3) proportion of the U.S. population likely to be exposed to levels of chemicals of known or potential health significance; (4) need to assess the efficacy of public health actions to reduce exposure to a chemical in the U.S. population or a large component of the U.S. population (for example, among children, women of childbearing age, the elderly); (5) existence of an analytical method that can measure the chemical or its metabolite in blood or urine with adequate accuracy, precision, sensitivity, specificity, and speed; and (6) incremental analytical cost (in dollars and personnel) to perform the analyses (preference is given to chemicals that can be added readily to existing analytical methods).

CDC welcomes all nominations: those persons who wish to nominate a chemical or chemical category (for example, pesticides, fumigants) should use the structural name (for example, 2,3,7,8-tetrachlorodibenzo-p-dioxin). Do not submit chemicals by their product names because chemical products are most commonly mixtures of chemicals. Nominators should indicate which of the selection criteria the chemical or categories of chemicals satisfy and should provide as much information as possible about the chemical or chemical category, including references and Chemical Abstracts Service (CAS) numbers. A CAS number is a unique number assigned to a given compound by the Chemical Abstracts Service, a division of the American Chemical Society. This number is also known as the CAS registry number (CAS RN). You may verify spellings of chemical names and CAS numbers by referring to *Hawley's Condensed Chemical Dictionary* (published by John Wiley and Sons; ISBN: 0471387355) or by searching Web sites such as the following: *http://www.chemfinder.com, http://www.chemindustry.com/chemicals/index.asp, http://webbook.nist.gov/chemistry/name-ser.html,* or *http://db.chemsources.com/chemsources/chemfind.htm.* The more information nominators provide, the more efficiently the nominated chemical will move through the selection process.

For each criterion, a panel of experts will score nominated chemicals on a scale of 1 to 5, with a higher score indicating higher priority. For each criterion, the score will be multiplied by the weighting factor for the criterion (criteria 1–3 each have weights of 25, criteria 4 and 5 have weights of 10 each, and criterion 6 has a weight of 5) and the weighted score summed to obtain a final point score for each chemical or chemical category. The maximum final point score is 500, which would result from a scoring of 5 for each of the six criteria. On the basis of its final point score, a chemical will be placed in one of five priority groups (*e.g.*, priority group 1, priority group 2, and so on). CDC will report each chemical or chemical category evaluated along with the priority group to which it was assigned. This information will appear in the **Federal Register** and on CDC's Web site at this address: *http://www.cdc.gov/nceh/dls/report/selectedchemicals.* CDC's intent is to maintain a transparent process and to be good steward of the data it produces.

To that end, CDC will publish additional notices in the **Federal Register** as needed to keep the public abreast of progress on the nomination of chemicals for future issues of the "Report."

DATES: Submit nominations on or before December 6, 2002.

ADDRESSES: Address all nominations related to this notice to Dorothy Sussman, Centers for Disease Control and Prevention, National Center for Environmental Health, Division of Laboratory Sciences, Mail Stop F–20, 4770 Buford Highway, Atlanta, Georgia 30341. Nominations may also be made via e-mail to this address: *ncehdls@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Technical Information: Dr. Richard Wang, Telephone 770–488–7950.

SUPPLEMENTARY INFORMATION: CDC publishes the "Report" under the authorities 42 U.S.C. 241 and 42 U.S.C. 242k. The "Report" provides an ongoing assessment using biomonitoring of the exposure of the noninstitutionalized, civilian population to environmental chemicals. Biomonitoring assesses human exposure to chemicals by measuring the chemicals or their breakdown products in human specimens such as blood or urine. For the "Report," an environmental chemical means a chemical compound or chemical element present in air, water, soil, dust, food, or other environmental medium. The "Report" provides exposure information about participants in an ongoing national survey known as the National Health and Nutrition Examination Survey (NHANES). This survey is conducted by CDC's National Center for Health Statistics; measurements are conducted by CDC's National Center for Environmental Health. The first "Report," published in March 2001, gave information about levels of 27 chemicals found in the U.S. population. This "Report" can be obtained in the following ways: access *http://www.cdc.gov/nceh/dls/report/;* e-mail *ncehdls@cdc.gov;* or telephone 1–866–670–6052. The second "Report," which will be issued in late fall of 2002, will include information about at least 75 chemicals. In addition to new data on those chemicals that appeared in the first "Report," information on the following categories of chemicals will be in the second "Report": polycyclic

aromatic hydrocarbons (PAHs), co-planar and non-coplanar polychlorinated biphenyls (PCBs), persistent organochlorine pesticides, carbamate pesticides, dioxins and furans, and phytoestrogens.

Future editions of the "Report" will provide detailed assessments of exposure levels among different population groups defined by sex, race or ethnicity, age, urban or rural residence, educational level, income, and other characteristics. Over time, CDC will be able to track trends in exposure levels. Future editions may also include additional exposure information for special-exposure populations (e.g., children, women of childbearing age, the elderly) from studies of people through localized or point sources, and from studies of adverse health effects resulting from exposure to varying levels of environmental chemicals.

Dated: September 30, 2002.

Verla S. Neslund,

Director, Executive Secretariat, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–25374 Filed 10–4–02, 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4050–NR]

Medicare Program; Changes in Medicare Appeals Procedures Based on Section 521 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of CMS ruling.

SUMMARY: This notice announces a CMS Ruling that sets forth our policy regarding implementation of the new appeals provisions in section 1869 of the Social Security Act, as amended by section 521 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), Public Law 106–554. The Ruling identifies changes that will take effect on October 1, 2002 and provides notice of the administrative procedures that CMS contractors, administrative law judges, and the Departmental Appeals Board are to follow in processing Medicare claims appeals.

FOR FURTHER INFORMATION CONTACT: Michele Edmondson (410) 786–6478.

SUPPLEMENTARY INFORMATION: The CMS Administrator signed Ruling CMSR–02–01 on September 12, 2002. The text of the CMS Ruling is as follows:

Changes in Medicare Appeals Procedures Under Section 521 of BIPA

Summary: Section 521 of BIPA states that "the amendments made by [section 521] shall apply with respect to initial determinations made on or after October 1, 2002." BIPA § 521(d), Pub. L. 106–554 (2000). The statute includes a series of structural and procedural changes to the existing appeals process, including revised time limits for filing appeals, reduced decision-making time frames throughout all levels of the Medicare administrative appeals system, and the establishment of new entities known as qualified independent contractors (QICs) to conduct reconsiderations of contractors' initial determinations or redeterminations. However, CMS is unable to immediately implement many of these far-reaching changes. The primary purpose of this Ruling is to explain CMS' progress to date in implementing section 521 of BIPA and identify those provisions that will be implemented effective October 1, 2002. Additionally, the Ruling will clarify our policies with respect to the provisions that cannot be implemented by October 1, 2002, and provides notice of the administrative procedures that CMS contractors, administrative law judges (ALJs) and the Departmental Appeals Board (DAB) will follow in processing Medicare claim appeals until we are able to fully implement section 521 of BIPA.

Citations: Sections 1154, 1869 and 1879 of the Social Security Act and section 521 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000, Public Law 106–554.

I. Background

Section 1869 of the Act establishes a Medicare beneficiary's right to dispute initial determinations made by contractors that result in the denial of claims, in whole or in part, for services received under the Medicare Part A and Part B Programs. Section 1879(d) extends these appeal rights, under certain circumstances, to providers and suppliers who accept assignment.

For initial determinations made before October 1, 2002, an appeal of an initial claim decision generally follows one of two distinct processes, depending on whether it is a Part A or a Part B claim. For Part A claims, "reconsiderations" under section 1816(f)(2)(A) of the Act are carried out by Medicare contractors, known as fiscal intermediaries (FIs), who issue the initial determination. If an initial determination is upheld at the reconsideration level, the appellant may request a hearing before an ALJ, if the amount in controversy is $100 or more. If the ALJ upholds the FI's reconsideration decision, the appellant may request a review by the DAB. An appellant's next level of appeal is to a Federal District Court. For Part B claims, reviews under section 1842(b)(2)(B)(i) of the Act are carried out by Medicare contractors known as carriers. If the amount in controversy is at least $100, carrier reviews are subject to "fair hearings" under section 1841(b)(2)(B)(ii) of the Social Security Act, which are carried out by the same Medicare contractor that conducted the review. Subsequently, these appeals may proceed to the ALJ hearing level, provided that the amount in controversy is $500, after which the appeals process for Part B claims mirrors the Part A appeals process. In addition, Quality Improvement Organizations (QIOs—formerly Peer Review Organizations) make initial determinations and reconsiderations with respect to certain hospital discharges under sections 1154 and 1155 of the Act. These decisions are also subject to ALJ hearings, if the amount in controversy is at least $200.

Section 521 of BIPA amends section 1869 of the Act to revise the Medicare administrative appeals process. Section 521's structural and procedural changes include:

- Establishing a uniform process for handling Medicare Part A and B appeals, including the introduction of a new level of contractor appeal.
- Revising the time frames for filing a request for a Part A and Part B appeal.
- Imposing a 30-day timeframe for certain "redeterminations" made by the contractors who made the initial determination.
- Requiring the establishment of a new appeals entity, the qualified independent contractor (QIC), to conduct "reconsiderations" of contractors' initial determinations or redeterminations, and allowing appellants to escalate the case to an ALJ hearing, if reconsiderations are not completed within 30 days.
- Establishing a uniform amount in controversy threshold of $100 for appeals at the ALJ level.
- Imposing 90-day time limits for conducting ALJ and DAB appeals of lower-level decisions and allowing appellants to escalate a case to the next level of appeal if ALJs or the DAB do not meet their deadlines.

- Imposing "de novo" review when the DAB reviews an ALJ decision made after a hearing.

Revised section 1869 also requires that the Secretary establish a process by which an individual may obtain an expedited determination if he/she receives a notice from a provider of services that the provider plans to terminate services or discharge the individual from the provider. Currently, this right to an expedited review only exists with respect to hospital discharges (under sections 1154 and 1155 of the Act).

As discussed in detail below, CMS is unable to immediately implement some of these provisions for initial determinations made on or after October 1, 2002. The primary purpose of this Ruling is to discuss the progress we have made to date in implementing the various section 521 provisions, describe the criteria used to evaluate our ability to implement the provisions at this time, and explain which requirements will be implemented effective October 1, 2002. Additionally, it clarifies our policies with respect to the provisions that cannot be implemented by October 1, 2002, and provides notice of the administrative procedures that CMS contractors, ALJs and the Medicare Appeals Council (MAC) at the DAB will follow in processing Medicare claims appeals until we are able to fully implement the procedures set forth in section 521 of BIPA.

II. Implementation of the New Appeals Requirements

CMS is fully committed to improving the administrative appeals process by implementing section 521 of BIPA and we have made significant progress toward full implementation of BIPA section 521. Consistent with the statute, we recently issued a Program Memorandum to our carriers and intermediaries instructing them to implement the revised filing deadlines for requesting an appeal of a reconsideration or review and the lower amount in controversy requirement for Part B ALJ hearings. We have completed development of the Requests for Proposals needed to solicit bids for the QIC contracts, including full statements of work (SOWs) for these contracts. We are releasing the draft SOWs for industry comment simultaneously with issuing this CMS ruling. We are also completing development of the notice of proposed rulemaking (NPRM) needed to establish implementing regulations for the provisions contained in section 521 of BIPA, and we expect to release the NPRM this fall for public display and comment. Additionally, CMS is near completion of the first phase of a contract to develop a central appeals case tracking system, and is working on revising the various appeals forms. Finally, we have taken steps within the agency to ensure that our denial messages from the initial determination phase through to reconsideration, review and fair hearing levels are more informative to potential appellants.

Despite these efforts, however we believe it is in the public interest to implement only some of section 521's provisions beginning October 1, 2002. The primary reason is that the new appeals provisions require additional policy development that can be best accomplished through notice and comment rulemaking. Only with the issuance of final regulations can we achieve the uniformity and consistency needed for proper implementation of the BIPA 521 provisions. (See, for example, the Inspector General's January 2002 report: "Medicare Administrative Appeals—The Potential Impact of BIPA", OEI–04–01–00290, in which CMS" auditors, the OIG, concur that immediate implementation of section 521 presents significant challenges due to large-scale structural changes and the lack of guidance or resources to ensure a smooth transition to the new system.) Among the key issues that have been identified by CMS and other observers as requiring additional policy guidance prior to implementation are:

- How CMS can balance its responsibilities to reduce Medicare fraud and abuse with the need to comply with the shorter BIPA time frames and escalation provisions.
- The proper amount-in-controversy threshold for QIC reconsiderations.
- The rules that should apply during the transition period to the new appeals system and whether it is possible or prudent to operate dual appeals systems depending on the date of an initial claim determination.
- Whether the existing availability of phone and in-person "fair hearings" can be accommodated under the new QIC reconsideration process.
- Whether and how CMS should be represented at the upper levels of the appeal process.
- How will case docketing, record keeping, case file management and transmission, and case effectuation responsibilities be divided between the existing contractors and the QICs.
- Who will conduct expedited determinations, how will the process work, and what if any financial protections will be involved.

Each year, more than 5 million Medicare claim appeals are filed with 54 CMS contractors—the FIs and carriers—and upper level appeals may be heard by any one of an estimated 1,000 SSA ALJs or by the MAC. The introduction of QICs into this process adds a new level of complexity, as the questions above demonstrate. As we transition to the new appeals process envisioned by BIPA, it is crucial that implementation be carried out uniformly and that our implementation plans be clear to the key stakeholders who will be affected by these changes in the claim appeals process, including not only the entities that adjudicate appeals, but also Medicare beneficiaries, providers, and suppliers. Attempting to resolve these types of issues and develop final regulations without public comment will clearly produce piecemeal public policy development. More importantly, it is unlikely to achieve the more efficient, more accurate appeals system that is the goal of the BIPA 521 provisions.

Thus, in view of the complex nature of the changes required by BIPA, we believe that it is essential to the public interest to carry out notice and comment rulemaking before implementing the new appeals provisions. This rulemaking effort is greatly complicated by the continuing uncertainty over resource availability and the possibility of further changes to the statutory appeals provisions. Moreover, we need to ensure that allocating scarce CMS resources to carry out this statutory mandate will not risk disruptions to other fundamental functions of the Medicare program, such as processing and payment of Medicare claims. Rather than risk disruptions to these core functions of the Medicare program, we believe that the more appropriate course is to continue to conduct appeals under the current system while simultaneously working toward effective BIPA implementation.

III. What Provisions Will Be Implemented on October 1, 2002?

While we cannot ignore the risks of proceeding directly to final regulations without public comment, CMS recognizes the urgent need for improvements to the Medicare claim appeals system. Additionally, we understand the benefits that the new appeals provisions afford to beneficiaries, providers, physicians and other suppliers of service. Therefore, we sought to determine the feasibility of implementing individual sections of 521 by evaluating each of the key BIPA provisions in terms of the following criteria:

- Do the new provisions fundamentally affect an individual's

right to appeal a denied claim, or do they primarily involve the applicable appeals procedures?

- Are the provisions clear and self-explanatory?
- Can the provisions be implemented by October 1, 2002, using existing CMS resources?
- Can the provisions be implemented appropriately under the existing appeals structure, that is, without the introduction of QICs into the administrative appeals process?
- In the short-term, will implementing a given provision on a stand-alone basis support, rather than undermine, Congress' statutory intent (and the Administration's shared goal) of producing more timely and accurate final decisions on Medicare claim appeals?

Our examination revealed three instances where all of these key questions could be answered affirmatively. Therefore, CMS will implement the following provisions on October 1, 2002:

We intend to implement the new 120-day deadline for filing requests for redeterminations, established under section 1869(a)(3)(C)(i). This change increases the existing 60-day deadline for requesting reconsiderations of Part A claims and decreases the 180-day deadline for requesting Part B reviews. This provision fundamentally affects an individual's right to appeal a denied claim, and its implementation is financially feasible. Therefore, CMS will implement these new filing deadlines for all initial determinations made on or after October 1, 2002 (*Note:* These deadlines do not apply to QIO determinations.)

We recognize that this change would establish a shorter deadline for Part B appeals, which could at least temporarily prove more difficult to meet for parties wishing to appeal Part B claims. We note though that it is generally in the best financial interest of an appellant to request an appeal and receive an appeal decision expeditiously. Also, particularly for beneficiary appellants, we believe that uniform appeals filing deadlines for Part A and B claims represents another positive aspect of this change. However, to alleviate any hardship associated with the possible need to gather documentation faster than in the past in order to comply with the new statutory filing deadlines, we are instructing CMS contractors, under these limited circumstances, to grant requests for extensions of up to 60 days in the filing deadline for Part B claims that are based on an explanation from the patient, provider, or supplier that the time was needed to gather the necessary supporting records.

Revised section 1869(b)(1)(E) specifies that the amount in controversy (AIC) threshold for requesting an ALJ hearing is $100, as opposed to the thresholds of $500 for Part B appeals and $200 for appeals of QIO determinations. It also stipulates the circumstances under which appellants may aggregate appeals to meet the AIC threshold. We believe that the reduced threshold is an unambiguous change that fundamentally affects an individual's right to appeal a denied claim. Therefore, CMS will implement the new amount in controversy requirements for Part B ALJ hearings and ALJ hearings for QIO initial determinations specified in section 521 of BIPA for initial determinations made on or after October 1, 2002. Contractors should continue to follow the existing instructions for aggregation of claims to meet the AIC threshold—thus the rules at 42 CFR 405.740 and 405.817 governing aggregation continue to apply. We note that the new statute does not establish an amount in controversy threshold for QIC reviews; and section 1842(b)(3), which was not repealed by section 521, sets a $100 AIC threshold for fair hearings. Thus, we believe it is appropriate to continue a $100 AIC threshold for carrier fair hearings.

Revised section 1869(a)(3) deals with redeterminations. Redeterminations under BIPA are to be conducted by the same CMS contractors that made the initial determinations. BIPA section 521 did not repeal either section 1816(f)(2)(A) or section 1842(b)(2)(B)(i), which currently set specific time frames for FI reconsiderations and carrier reviews, respectively. The general rules and limitations established under sections 1869(a)(3)(A) and (B) basically mirror current policy, for example, a contractor's review of the initial determination must precede a higher level appeal and that no redetermination may be made by an individual involved in the initial determination. Therefore, for initial determinations made on or after October 1, 2002, existing CMS contractors will continue to follow the provisions in sections 1816(f) and 1842(b) of the Social Security Act for both Part A reconsiderations and Part B reviews.

The remaining provisions in section 521 of BIPA, when evaluated using the criteria mentioned above, resulted in negative responses to all or most of the questions posed. We will discuss each of these below, in the order in which they appear in the revised section 1869 of the Act.

Section 1869(a)(2)(A) of the Act, as amended by BIPA, requires certain initial determinations to be concluded and notice provided no later than 45 days following receipt of the claim by the fiscal intermediary or carrier. Under the current process, providers are given 45 days to produce additional medical documentation. Thus, the imposition of a 45-day decision-making time frame creates substantial financial pressure on the existing medical review structure. Additionally, since providers, physicians, and other suppliers will receive significantly less time to respond to document requests, we believe that these entities will want an opportunity to comment on how these decision-making deadlines are to be implemented. Therefore, we will address this issue in the forthcoming proposed rule.

Section 1869(a)(3)(C)(ii) of the Act, as amended by BIPA, requires that all redeterminations of initial determinations made on or after October 1, 2002 be issued within 30 days. This reduction of the current timeframes established by sections 1816(f)(2) and 1842(b)(2) of the Act, creates a strain on the existing appeals structure and requires significant additional resources to implement. Given these considerations, we are unable to implement this requirement immediately. Instead, we will continue to hold contractors to the existing statutory standards in sections 1816(f)(2) and 1842(b)(2) of the Act, that is, 90 percent of Part A reconsideration decisions within 90 days, and 95 percent of Part B review decisions within 45 days.

Section 1869(b)(1) of the Act contains a series of new provisions concerning Medicare claim appeals, including the general rule under paragraph (b)(1)(A) that any individual who is dissatisfied with a redetermination decision can request a reconsideration of this decision by a QIC before proceeding to an ALJ hearing. As discussed in detail above, we do not believe it is feasible or consistent with other policy considerations to immediately implement this new level of appeal; thus we do not intend to introduce this change until QICs are in place to carry out these reconsiderations.

Sections 1869(b)(1)(B) and (C) address provider and supplier representation and assignment issues. To the extent that these provisions represent departures from existing requirements, we do not view them as self-explanatory and instead believe that they warrant notice and comment rulemaking before they can be implemented. Thus, we do not intend to make any changes in existing regulatory appeal procedures based on these provisions effective October 1, 2002. The existing regulations regarding representation (at 20 CFR Subpart R, and 42 CFR 405.870 and 405.872) will continue in effect until full BIPA implementation.

Section 1869(b)(1)(D) addresses the time limits for filing upper level appeals. The statute charges the Secretary with establishing in regulations time limits for filing requests for ALJ hearings. We believe that the public, especially the beneficiary population, will want an opportunity to comment on the filing deadlines that will govern their ALJ hearing requests, and, therefore, we will address this issue in the forthcoming proposed rule.

Section 1869(b)(1)(F) establishes a new requirement for expedited determinations in the cases of individuals who are dissatisfied with provider decisions to terminate their care. There are many significant issues related to these new provisions, including who should conduct these determinations, to whom should these provisions apply, and related financial liability and notice requirements. Although Quality Improvement Organizations have performed a comparable function for hospital discharges for many years, the new expedited determination process is much broader in scope and will require substantial additional resources and new contractual obligations. We also believe that the beneficiary population and other stakeholders will be interested in commenting on any rules governing expedited determinations. In view of these considerations, we are unable to implement these provisions effective October 1, 2002. We will discuss these complex issues in detail in our upcoming proposed rule.

As the statute provides under section 1869(b)(1)(G), we also will establish through rulemaking guidelines with respect to the reopening and revision of initial determinations and reconsidered determinations.

Section 1869(c) sets forth a series of requirements for conducting QIC reconsiderations. Until the Secretary enters into contracts with these new entities, we are unable to implement these provisions. As noted above, we believe it would be impractical to begin the formal procurement process until we have reasonable assurances that we can allocate adequate resources to commit to these contractual obligations. To the extent that we are unable to commit to future contractual obligations, we believe that it would be impractical at this time to begin the formal contract procurement process, and thus expect private-sector entities to expend resources preparing their proposals. Thus, carriers will continue to conduct fair hearings in accordance with section 1869 of the Act, prior to its amendment by BIPA, and existing regulations.

Section 1869(d) of the Act sets forth the remaining substantive changes to the Medicare administrative appeals procedures. These changes all involve the procedures and deadlines for upper level appeals, that is, hearings before SSA ALJs, reviews by the MAC at the DAB, and judicial review. Like the provisions set forth under new section 1869(c), we believe that these new requirements are clearly premised on, and build upon, the conduct of a previous reconsideration by the new QIC entities. In fact, section 1869(d)(1) which contains the deadlines for ALJ hearings specifically states that the deadlines apply for a "hearing on a decision of a qualified independent contractor." Similarly, section 1869(d)(2), which contains the deadlines on DAB proceedings, puts those deadlines in the context of "decisions on a hearing described in paragraph (1)"—that is, reviews of ALJ hearings on decisions made by QICs.

Without QICs, there is no reasonable expectation that the new 90-day deadlines for ALJ and DAB decisions can be met. With fully operational QICs, on the other hand, working in concert with other systemic improvements envisioned by the statute (such as, an appeal-specific data base) there is reason to believe that the volume of Medicare claims decisions that will reach these upper levels of the appeals system can be significantly reduced—eventually making attainable the new deadlines established under section 1869(d).

Much like section 1869(c)(3)(C)(ii) of the Act, section 1869(d)(3) contains provisions concerning the consequences of a failure by an ALJ or the DAB to meet the new 90-day deadlines for decision-making. In brief, the statute gives an appellant the option of escalating a case to the next level of appeal, and also to Federal district court, if a decision is not issued within the prescribed timeframe. These decision-making deadlines are premised in statute on the sequential introduction of QICs, under section 1869(c). Without QICs, we do not believe that these deadlines can be met. Thus, as a practical reality, implementing these escalation provisions has the potential to result in cases escalating to Federal court without benefit of the record developed during an ALJ hearing. Under a worst case scenario, the prospect would exist of Federal courts being inundated by more than 10,000 cases that now are heard annually by the MAC, or of the introduction of an endless loop where cases are remanded from the courts to the MAC to the ALJs in search of a timely decision. We do not believe that these prospects are consistent with statutory intent or responsible government, and thus we do not believe that these escalation provisions can be implemented effective October 1, 2002. The next section of this ruling discusses how contractors will be expected to implement all aspects of this ruling, including how to deal with escalation requests.

IV. Responsibilities of Medicare Contractors Under This Ruling

Until QICs are established and final regulations to implement section 521 of BIPA are issued, Medicare contractors (that is, FIs, carriers, and QIOs) generally should continue to follow current practices, consistent with section 1869 of the Act prior to its amendment by BIPA, and consistent with existing regulations, in making initial determinations and carrying out Medicare claim appeals and reviews of hospital discharges. As explained in Section III of this Ruling, the only substantive changes to these provisions involve the new 120-day deadline for filing for carrier reviews or FI reconsiderations and the reduction of the AIC threshold to $100 for an ALJ hearing for the Part B claim determinations or QIO determination appeals process. Contractors should not implement other provisions contained in section 521 of BIPA until further notice.

If an FI receives a request for a QIC reconsideration of a Part A claim denial that has been upheld on the FI's reconsideration, the contractor should treat the request as a request for a hearing before an ALJ and process it accordingly. After following the appropriate processing requirements, contractors should retain a copy of the request onsite and mail a copy of the request to: BIPA Lead, CMS, Mail Stop S1–05–06, 7500 Security Boulevard, Baltimore, MD 21244. If a carrier or FI receives a request for a QIC reconsideration of a Part B claim denial that has been upheld on review, the contractor should treat the request as a request for a fair hearing, and process it accordingly. After following the appropriate processing requirements, contractors should retain a copy of the request onsite and mail a copy of the request to: BIPA Lead, CMS, Mail Stop

S1–05–06, 7500 Security Boulevard, Baltimore, MD 21244.

If a contractor receives a request to escalate an appeal to the ALJ hearing level (or the MAC level) because the contractor (or the ALJ) has not issued a timely decision on the appeal, the contractor should inform the appellant of the delay in implementation of the BIPA provisions, referencing this Ruling, and explain that the appeal will be processed under the existing appeals procedures. The contractor should note that the contractor (or the ALJ) will notify the appellant of its decision on the case and of any subsequent right the appellant may have to an ALJ hearing (or MAC review) on the decision. If the appellant makes such an appeal, a copy of the contractor's correspondence with the appellant should be sent to the ALJ (or the MAC), including a copy of the appellant's request for escalation.

If an ALJ or the MAC requests case files from a contractor in order to process a request to escalate an appeal, the contractor should notify the ALJ or the MAC, in writing, that the case file is currently being used to process a request for appeal at the review, reconsideration or fair hearing level, as appropriate. In that situation, contractors should indicate that the case file will be transmitted when the carrier, FI or hearing officer completes its review. Contractors should retain a copy of the request onsite and mail a copy of the request to: BIPA Lead, CMS, Mail Stop S1–05–06, 7500 Security Boulevard, Baltimore, MD 21244.

Finally, QIOs should continue to review hospital discharges in accordance with §§ 1154(a) and 1154(e) of the Act, with respect to time frames and financial liability.

Authority: Section 1154, 1869, and 1879 of the Social Security Act (42 U.S.C. 1395ff) and section 521 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Pub. L. 106–554.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 12, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–25351 Filed 10–1–02; 4:05 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of New System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of new System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, called the "Privacy Accountability Database (PAD)," HHS/CMS/OIS No. 09–70–0540. The primary purpose of the system of records is to aid CMS in tracking, reporting, and accounting the disclosures made from all CMS system of records as permitted by the Privacy Act of 1974 and The Health Insurance Portability and Accountability Act of 1996 (HIPAA). Information retrieved from this system of records will be used to support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; support constituent requests made to a Congressional representative; and support litigation involving the agency.

We have provided background information about the proposed system in the **SUPPLEMENTARY INFORMATION** section, below. Although the Privacy Act requires only that the "routine use" portion of the system be published for comment, CMS invites comments on all portions of this notice. See "Effective Dates" section for comment period.

EFFECTIVE DATES: CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on September 19, 2002. In any event, we will not disclose any information under a routine use until forty (40) calendar days after publication. We may defer implementation of this system of records or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Kimberly Elmo, Division of Data Liaison and Distribution (DDLD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

SUPPLEMENTARY INFORMATION:

I. Description of the New System of Records

A. Statutory and Regulatory Basis for System of Records

42 CFR 401.101–401.148 and 1106(a) of the Social Security Act, 42 U.S.C. 1306(a), 45 CFR 552a(c) of the Privacy Act and 45 CFR 164.528 of the Health Insurance Portability and Accountability Act.

B. Background

CMS administers the Medicare, Medicaid, and the State Children's Health Insurance Program to accomplish its mission of ensuring health care security for beneficiaries. Accordingly, CMS possesses the nation's largest collection of health care data (consisting of over 60 system of records), with information on over 74 million Americans. Having in place adequate electronic and procedural controls to address confidentiality will protect this personally identifiable data.

Data files consisting of personally identifiable data are disclosed to various entities. These disclosures fall under exceptions of the Privacy Act, routine uses of the applicable system of record or are permitted by HIPAA. Privacy legislation requires CMS to track disclosures from each individual system of records. The PAD will provide the necessary tracking, reporting and accounting capabilities that CMS must have in place to be in compliance with the Privacy Act of 1974 and HIPAA.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The PAD will contain information on disclosures of CMS data that fall under exceptions of the Privacy Act; routine uses of the applicable system of record or permitted by HIPAA that require tracking. This system may also contain the Medicare Health Insurance Claim Number, Social Security Number, or Railroad Retirement Board Number and a PAD tracking number for Medicare beneficiaries whose CMS data have been disclosed.

The PAD will be implemented in phases. The initial fielding, scheduled to coincide with the April 14, 2003 HIPAA Privacy Rule compliance date, will capture and record applicable disclosure tracking information for enrollment and claims databases only (09–70–0536 Medicare Beneficiary Database and 09–70–0005 National Claims History National Medicare Utilization Database). These two databases contain the information most requested and, subsequently, serve as the source for the most frequently disclosed information. This phased implementation is based on architectural and technical limitations that exist in the CMS data center today. Modernization and reengineering initiatives are ongoing to increase cross-platform compatibility and integration. The PAD will incorporate accounting of additional databases as they are integrated into the new environment. This SOR will be republished as necessary.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release PAD information that can be associated with an individual as provided for under "Section III. Entities Who May Receive Disclosures Under Routine Use." Both identifiable and non-identifiable data may be disclosed under a routine use. Identifiable data includes individual records with PAD information and identifiers. Non-identifiable data includes individual records with PAD information and masked identifiers or PAD information with identifiers stripped out of the file.

CMS will only disclose the minimum personal data necessary to achieve the purpose of the PAD. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data are being collected; *e.g.*, tracking, reporting and accounting the disclosures made from all CMS systems of records as permitted by the Privacy Act and HIPAA.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would, in fact, accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually, identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities That May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the PAD without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. CMS proposes to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, or consultants that have been contracted by the agency to assist in the performance of a service related to this system of records and that need to have access to the records in order to perform the activity.

CMS contemplates disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing agency business functions relating to purposes for this system of records.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and requires the contractor to return or destroy all information at the completion of the contract.

2. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

Individuals sometimes request the help of a Member of Congress in resolving some issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

B. Additional Provisions Affecting Routine Use Disclosures

In addition, CMS policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This System of Records contains Protected Health Information as defined by the Department of Health and Human Services' regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 82462 as amended by 66 FR 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

IV. Safeguards

The PAD system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, "Security of Federal Automated Information Resources." CMS has prepared a comprehensive system security plan as required by OMB Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, "Guide for Developing Security Plans for Information Technology Systems." Paragraphs A-C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

A. Authorized Users

Personnel having access to the system have been trained in Privacy Act requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. Records are used in a designated work area and system location is attended at all times during working hours.

To ensure security of the data, the proper level of class-user is assigned for each individual user level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

—*Database Administrator* class owns the database objects (*e.g.*, tables, triggers, indexes, stored procedures, packages) and has database administration privileges to these objects.

—*Quality Control Administrator* class has read and write access to key fields in the database;

—*Quality Index Report Generator* class has read-only access to all fields and tables;

—*Policy Research* class has query access to tables, but are not allowed to access confidential patient identification information; and

—*Submitter* class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites will implement the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMS system:

Access to all servers is to be controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server is to require a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination, which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information Systems (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

—*User Log-on*—Authentication is to be performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.

—*Workstation Names*—Workstation naming conventions may be defined and implemented at the agency level.

—*Hours of Operation*—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are to be determined and implemented at the agency level.

—*Inactivity Lockout*—Access to the NT workstation is to be automatically locked after a specified period of inactivity.

—*Warnings*—Legal notices and security warnings are to be displayed on all servers and workstations.

—*Remote Access Security*—Windows NT Remote Access Service (RAS) security handles resource access control. Access to NT resources is to be controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security. These include, but are not limited to: The Privacy Act of 1974; the Computer Security Act of 1987; OMB Circular A–130, revised; Information Resource Management Circular #10; HHS AIS Security Program; the CMS Information Systems Security Policy, Standards, and Guidelines Handbook; and other CMS systems security policies. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effects of the New System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of PAD data. PAD information is submitted to CMS through standard systems. CMS will use a variety of onsite and offsite edits and audits to increase the accuracy of PAD data.

CMS will take precautionary measures (*see* item IV., above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of maintaining this system of records.

Dated: September 19, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

09–70–0540

SYSTEM NAME:

Privacy Accountability Database (PAD), HHS/CMS/OIS.

SECURITY CLASSIFICATION:

Level 3, Privacy Act Sensitive.

SYSTEM LOCATION:

HCFA Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850. CMS contractors and agents at various locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will contain the Medicare Health Insurance Claim (HIC) Number, Social Security Number, or Railroad Retirement Board Number for Medicare seneficiaries whose CMS data have been disclosed under exceptions of the Privacy Act, routine uses of the applicable system of record or are permitted by HIPAA. .

CATEGORIES OF RECORDS IN THE SYSTEM:

The PAD will contain information on disclosures of CMS data that fall under exceptions of the Privacy Act; routine uses of the applicable system of record or permitted by HIPAA that require tracking. This system may also contain the Medicare Health Insurance Claim (HIC) Number, Social Security Number, or Railroad Retirement Board Number for Medicare beneficiaries whose CMS data have been disclosed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 CFR 401.101–401.148 and sec 1106(a) of the Social Security Act, 42 U.S.C. 1306(a), 45 CFR 552a(c) of the Privacy Act and 45 CFR 164.528 of the Health Insurance Portability and Accountability Act.

PURPOSE(S):

The primary purpose of the systems of records is to aid CMS in tracking, reporting, and accounting the disclosures made from all CMS system of records as permitted by the Privacy Act of 1974 and The Health Insurance Portability and Accountability Act of 1996 (HIPAA).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the PAD without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, CMS policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). Be advised, this System of Records contains Protected Health Information as defined by the Department of Health and Human Services' (HHS) regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 8462 as amended by 66 FR 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

1. To agency contractors, or consultants that have been contracted by the agency to assist in the performance of a service related to this system of records and that need to have access to the records in order to perform the activity.

2. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreedto represent the employee, or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper and magnetic media.

RETRIEVABILITY:

The Medicare records are retrieved by Health Insurance Claim Number, Social Security Number, or Railroad Retirement Board Number of the beneficiary and PAD tracking number.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMS system. For computerized records, safeguards have been established in accordance with HHS standards and National Institute of Standards and Technology guidelines; *e.g.*, security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management Circular #10, Automated Information Systems Security Program; CMS Information Systems Security, Standards Guidelines Handbook and OMB Circular No. A–130 (revised) Appendix III.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with established CMS, Privacy Act and HIPAA retention guidelines. CMS will conduct periodic reviews to determine if these records are historical and should be placed in permanent files after established retention periods and administrative needs of CMS have elapsed.

Note: The Department of Justice issued a directive in 1992 prohibiting the destruction of Medicare claims/administrative records. Therefore, all Medicare claims-related/ administrative data will be retained until the freeze is lifted."

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Data Liaison and Distribution, Enterprise Databases Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager, who will require the system name, the subject individual's name (woman's maiden name, if applicable), social security number (SSN) (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay), address, date of correspondence and control number.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

CMS's National Claims History system of records, Enrollment Database system of records, Medicare Beneficiary Database system of records, and Medicaid Statistical Information System of records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–25427 Filed 10–4–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Online Interstate Referral Guide (IRG).

OMB No.: 0970–0209.

Description: The IRG is an essential reference maintained by OCSE that provides States with an effective and efficient way of viewing and updating State profile, address, and FIPS code information by consolidation data available through numerous discrete sources into a single centralized, automated repository.

Respondents: State IV–D Child Support Programs.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Online IRG	54	18	.3	292

Estimated Total Annual Burden Hours: 292.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 02447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 1, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–25424 Filed 10–4–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: OCSE–369A: Financial Report; and OCSE–34A: Quarterly Report of Collections.

OMB No.: 0970–0181.

Description: Each State agency administering the Child Support Enforcement Program under Title IV–D of the Social Security Act is required to provide information to the Office of Child Support Enforcement concerning its administrative expenditures and its receipt and disposition of child support payments from non-custodial parents. These quarterly reporting forms enable each State to provide that information, which is used to compute both the quarterly grants awarded to each State and the annual incentive payments earned by each State. This information is also included in a published annual statistical and financial report, available to the general public.

Comments sent to the Office of Child Support Enforcement, both directly and in response to an earlier **Federal Register** Notice (67 FR 39727, *et seq.*), provided many useful recommendations to update and correct these financial reporting forms. However, several comments strongly indicated that State agencies would have inadequate time to incorporate these revisions in time to meet the reporting requirements for the fiscal year beginning October 1, 2002. In addition, legislation has been introduced in Congress that, if enacted, may require additional revisions to these forms.

For these reasons, we have decided to request that the expiration date of the existing forms be extended, without change, through September 30, 2004.

Respondents: State agencies administering the Child Support Enforcement Program.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–396A	54	4	8	1,728
OCSE–34A	54	4	8	1,728

Estimated Total Annual Burden Hours: 3,456.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: October 1, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–25425 Filed 10–4–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Los Angeles District Office; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA) is announcing a meeting which is intended to give the drugs, devices, and biologics industries and consumers an opportunity to exchange information with the FDA Los Angeles District staff. The main focus of the meeting is to provide an opportunity for the Los Angeles District leadership to interact with industry and the public, and to discuss regulatory affairs, plans, and future programs. The open house is sponsored by the Orange County Regulatory Affairs Discussion Group (OCRA).

Date and Time: The open house will be held on Tuesday, October 22, 2002, from 6 p.m. to 9 p.m.

Location: The open house will be held at FDA Los Angeles District, 19900 MacArthur Boulevard, suite 300, Irvine, CA 92612.

Contact: Ramlah Oma, Food and Drug Administration, 19900 MacArthur Blvd., suite 300, Irvine, CA 92612, 949–798–7611, FAX: 949–798–7656, or Jack Dhuwalia, OCRA, PMB 624, 5405 Alton Pkwy, suite 5A, Irvine, CA 92604, 888–532–4357, FAX: 949–854–2672, Internet: www.ocra-dg.org.

Registration and open house Information: For registration information, including registration form and electronic payment, see the OCRA Internet site at www.ocra-dg.org (click on " OCRA meetings").

Registrations fees are $40.00 for members of OCRA, Southern California Pharmaceutical Discussion Group (SCPDG), and Parenteral Drug Association (PDA), and $45.00 for nonmembers. The cost includes hot and cold hors d'oeuvres, dessert and nonalcoholic beverages, but excludes parking fees.

If you need special accommodations due to a disability, please contact Ramlah Oma (see *Contact*) at least 7 days in advance.

Dated: October 1, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–25392 Filed 10–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0385]

Guidance on the Petition Process to Request Approval of Labeling for Foods That Have Been Treated By Irradiation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance; Implementation of Section 10809 of the Farm Security and Rural Investment Act of 2002, Pub. L. No. 107–171, § 10809 (2002) Regarding the Petition Process to Request Approval of Labeling for Foods That Have Been Treated By Irradiation," which explains the recommended process for petitioning the agency for approval of labeling, which is not false or misleading in any material respect, of a food that has been treated by irradiation.

DATES: Submit written or electronic comments at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS–822), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance document implementing the part of section 10809 of the Farm Security and Rural Investment Act of 2002 (Public Law 107–171, § 10809 (2002)), that states that "[p]ending promulgation of the final rule * * *, any person may petition the Secretary [FDA] for approval of labeling, which is not false or misleading in any material respect, of a food which has been treated by irradiation using radioactive isotope, electronic beam, or x-ray." Section 10809 of the Farm Security and Rural Investment Act of 2002 also requires that, pending promulgation of the final rule, "[t]he Secretary [FDA] shall approve or deny such a petition within 180 days of receipt of the petition, or the petition shall be deemed denied, except to the extent additional agency review is mutually agreed upon by the Secretary [FDA] and the petitioner."

FDA is issuing this guidance to interested parties who wish to petition the agency for approval of the labeling of a food treated by irradiation. As explained in the guidance, FDA recommends that interested parties who wish to petition the agency use the procedures set forth in § 10.30 (21 CFR 10.30), except that § 10.30(e)(2)(iii), regarding 180-day tentative responses,

does not apply, because section 10809 of the Farm Security and Rural Investment Act of 2002 provides that the petition is deemed denied if the Secretary (FDA) fails to act on the petition within 180 days of its receipt, unless the parties mutually agree upon an extension.

This guidance is a level 1 guidance issued consistent with FDA's good guidance practices regulation (§ 10.115 (21 CFR 10.115)). The agency is soliciting public comment, but is implementing this guidance document immediately in accordance with § 10.115(g)(2) because the agency has determined that prior public participation is not feasible or appropriate. The Farm Security and Rural Investment Act of 2002 (Public Law 107–171) was enacted on May 13, 2002, and section 10809 is now in effect and must be implemented immediately. Thus, there is a pressing need for guidance to help effect such implementation. Accordingly, FDA is making this guidance effective immediately. This guidance represents the agency's current thinking on this subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in citizen petitions under § 10.30 is approved under OMB control number 0910–0183.

III. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on this guidance at any time. Groups or organizations must submit two copies of any written comments. Individuals may submit one copy of their comments. Identify your written comments by placing the docket number at the top of your comment(s). If you base your comments on scientific evidence or data, please submit copies of the specific information along with your comments. Any comments submitted will be filed under the docket number identified in brackets in the heading of this document. The guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.cfsan.fda.gov/~dms/guidance.html*.

Dated: September 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–25390 Filed 10–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02P–0009]

Draft Guidance for Industry: Guidance on Bulk Transport of Juice Concentrates and Certain Shelf Stable Juices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled "Guidance on Bulk Transport of Juice Concentrates and Certain Shelf Stable Juices." This draft guidance document is intended to provide processors of juice concentrates and certain shelf stable juice products with recommendations for the use of appropriate control measures to ensure that juice concentrates and certain shelf stable juices do not become contaminated or recontaminated with microbial pathogens during bulk transport.

DATES: Submit written or electronic comments concerning the draft guidance by December 6, 2002, to ensure adequate consideration in the preparation of the final guidance document. Comments on this guidance may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to Amy Green (*see* **FOR FURTHER INFORMATION CONTACT**). *See* **SUPPLEMENTARY INFORMATION** section for electronic access to this draft guidance.

Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Amy Green, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2025, FAX 301–436–2651.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has developed the draft guidance document to provide processors of juice concentrates and certain shelf stable juice products with recommendations for the use of appropriate control measures to help ensure that juice concentrates and certain shelf stable juice products do not become contaminated or recontaminated with microbial pathogens during bulk transport. The draft guidance recommends control measures for several transport modalities, including: (1) Multiuse or reusable containers (*e.g.*, tankers, reusable drums without liners, and reusable totes without liners) and (2) single-use sanitary containers or liners (*e.g.*, single-use sanitary totes, single-use sanitary drums, bag-in-box containers, totes with single-use sanitary liners, and drums with single-use sanitary liners). The draft document describes five major areas of concern with bulk transport systems, special considerations for tankers, and provides examples of a cleaning and sanitizing protocol for a tanker, control measures that might be used in loading and unloading a tanker, and critical control points a producer might use to include bulk transport in its hazard analysis critical control point (HACCP) plan.

This draft guidance is partly in response to a citizen petition submitted by certain representatives of the juice industry asking that FDA: (1) Amend 21 CFR 120.24(c) to exempt processors of juice concentrate and certain shelf stable juice products from the "single facility requirement" and (2) delay the effective date of the "single facility requirement" until the agency has disposed of the citizen petition. The petitioners contend that transportation hazards, which the "single facility requirement" was designed to address, could be adequately addressed as part of a processor's HACCP plan. This draft guidance provides recommendations that producers and users of juice concentrates and certain shelf stable juice products can use to prevent, reduce to acceptable levels, or eliminate the risk of contamination or recontamination of these products with microbial pathogens during bulk transport and thus satisfy the conditions under which FDA will consider the exercise of enforcement discretion.

The draft guidance entitled "Guidance on Bulk Transport of Juice Concentrates and Certain Shelf Stable Juices" is being issued as a level 1 draft guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). This draft guidance represents the agency's current thinking on this subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (*see* **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at *http://www.cfsan.fda.gov/~dms/guidance.html*.

Dated: September 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–25342 Filed 10–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0384]

Draft Guidance for Industry: Standardized Training Curriculum for Application of HACCP Principles to Juice Processing; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled "Guidance for Industry: Standardized Training Curriculum for Application of HACCP Principles to Juice Processing" (the draft guidance). The draft guidance advises juice processors of FDA's view that the first edition of the "Juice HACCP Training Curriculum" of the Juice HACCP Alliance (coordinated through the efforts of the National Center for Food Safety and Technology at the Illinois Institute of Technology) (the standardized curriculum) is adequate for use in training individuals to meet the requirements of the juice hazard analysis and critical control point (HACCP) regulation. The draft guidance also advises processors and educators on how the requirements of the juice HACCP regulation may be met using the standardized curriculum or alternative curricula for training individuals and on how they can view, download, or purchase the standardized curriculum.

DATES: Submit written or electronic comments concerning this draft guidance by December 6, 2002, to ensure adequate consideration in preparation of the final guidance document. Comments on this draft guidance may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to Michael E. Kashtock, (see **FOR FURTHER INFORMATION CONTACT**). Send two self-addressed adhesive labels to assist that office in processing your request. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–2022, FAX 301–436–2651, e-mail: mkashtoc@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA's juice HACCP regulation in part 120 (21 CFR part 120) includes in §120.13 a requirement that individuals who perform certain specified functions, e.g., developing the hazard analysis or the HACCP plan, "shall have successfully completed training in the application of HACCP principles to juice processing at least equivalent to that received under standardized curriculum recognized as adequate by the Food and Drug Administration, or shall be otherwise qualified through job experience to perform these functions." This draft guidance advises juice processors of FDA's view that the first edition of the "Juice HACCP Training Curriculum" of the Juice HACCP Alliance (coordinated through the efforts of the National Center for Food Safety and Technology at the Illinois Institute of Technology) (the standardized curriculum) is adequate for use in training individuals to meet the requirements of the juice HACCP regulation. This guidance also advises processors and educators on how the requirements of the juice HACCP regulation may be met using the standardized curriculum or alternative curricula for training individuals and on how they can view, download, or purchase the standardized curriculum.

The draft guidance entitled "Guidance for Industry: Standardized Training Curriculum for Application of HACCP Principles to Juice Processing," is being issued as a level 1 draft guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). This draft guidance represents the agency's current thinking on curricula for training juice processing personnel in the application of HACCP principles to juice processing. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. The draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at the CFSAN Web site at http://www.cfsan.fda.gov/~dms/guidance.html.

Dated: September 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–25391 Filed 10–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0493]

Guidance for Industry: Exemptions From the Warning Label Requirement for Juice—Recommendations for Effectively Achieving a 5-Log Pathogen Reduction; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Exemptions from the Warning Label Requirement for Juice—Recommendations for Effectively Achieving a 5-Log Pathogen Reduction." This guidance is intended to provide revised FDA guidance to small and very small fruit and vegetable juice processors for effectively achieving a 5-log pathogen reduction that is the basis for exempting juice products from the warning label requirement established by the final rule entitled "Food Labeling: Warning and Notice Statement: Labeling of Juice Products" ("the juice labeling rule"). A 5-log pathogen reduction is also a requirement of the final rule entitled "Hazard Analysis and Critical Control Point (HACCP): Procedures for the Safe and Sanitary Processing and Importing of Juice" (the "juice HACCP rule").

DATES: Submit written or electronic comments concerning the guidance at any time.

ADDRESSES: Submit written requests for single copies of this guidance entitled "Guidance for Industry: Exemptions from the Warning Label Requirement for Juice—Recommendations for Effectively Achieving a 5-Log Pathogen Reduction" to Jennifer A. Burnham (*see* **FOR FURTHER INFORMATION CONTACT**).

Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Burnham, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740, 301–436–2030, FAX: 301–436–2632.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2001, FDA issued a draft guidance document that outlined the agency's current recommendations for effectively achieving a 5-log pathogen reduction in juice. The purpose of this draft guidance was to encourage processors who are not subject to the juice HACCP rule and who are performing a 5-log pathogen reduction to attain exemption from the warning label requirement to apply effective 5-log pathogen reduction treatments based upon FDA's most current scientific understanding. In the **Federal Register** notice of December 21, 2001 (66 FR 65978), announcing the availability of the draft guidance document, FDA provided a 60-day period for comment on the draft guidance.

FDA received four comments in response to the December 21, 2001, draft guidance document. These comments represented the views of trade associations representing small farm family citrus operations, commercial fresh citrus shippers, juice and juice beverage producers and suppliers, and a public health group. The comments suggested changes or modifications to FDA's revised recommendations for effectively achieving a 5-log pathogen reduction. FDA has considered the submitted comments and determined that the suggested changes or modifications are beyond the scope of this guidance or are not consistent with FDA's current scientific understanding of pathogen reduction. On its own initiative, FDA is making certain editorial changes in the guidance.

II. Conclusion

The agency is adopting the revised recommendations for effectively achieving a 5-log pathogen reduction that is the basis for exempting juice products from the warning label requirement as presented in the draft guidance document. After considering the comments the agency received, the agency has determined that no changes are warranted.

The guidance entitled "Guidance for Industry: Exemptions from the Warning Label Requirement for Juice—Recommendations for Effectively Achieving a 5-Log Pathogen Reduction" is being issued as a level 1 guidance, consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents the agency's current recommendations for effectively achieving a 5-log pathogen reduction in juice. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Comments

Interested persons may, at any time, submit written or electronic comments to the Dockets Management Branch (*see* **ADDRESSES**) on this guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. The guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.cfsan.fda.gov/~dms/guidance.html*.

Dated: September 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–25341 Filed 10–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by November 6, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–016881

Applicant: Hawthorn Corporation, Grayslake, Illinois

The applicant requests a permit to export , re-export, and re-import captive-born tigers (*Panthera tigris*) and future progeny born outside of the United States currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–062075

Applicant: The Hawthorn Corporation, Grayslake, IL

The applicant requests a permit to export , re-export, and re-import captive-born tigers (Panthera tigris) and future progeny born outside of the United States currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–062056

Applicant: Columbus Zoo and Aquarium, Powell, Ohio

The applicant requests a permit to transfer from the Miami Metro Zoo, Miami, Florida to the Columbus Zoo And Aquarium, Powell, Ohio, live Komodo island monitors (Varanus komodoensis) for the purpose of enhancement of the survival of the species through conservation for a period of five years.

PRT–050415

Applicant: Big Game Alaska Inc, Portage Glacier, AK

The applicant requests a permit to import 5 live captive-born wood bison from LaPrarie Woodland Bison Ranch Whitehorse, Yukon Territory, Canada, for the purpose of enhancement of the survival of the species through propagation.

PRT–058654

Applicant: Oregon Graduate Institute, Beaverton, OR

The applicant requests a permit to import biological samples (trunk mucus) taken from two captive held Asian elephants (*Elephas maximus*) that were born in the wild. The elephants are current residents of the Auckland Zoo, Auckland, New Zealand, their samples will be used for scientific research purposes. This notification covers activities conducted by the applicant for a five-year period.

PRT–058905

Applicant: Oregon Graduate Institute, Beaverton, OR

The applicant requests a permit to export and re-import non-living museum specimens of endangered and threatened species of plants and animals previously accessioned into the permittee's collection for scientific research. This notification covers activities conducted by the applicant for a five year period.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–061116

Applicant: James L. Scull, Jr., Rapid City, SD

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: September 27, 2002.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–25383 Filed 10–4–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by November 6, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–062382

Applicant: Eddie R. Simone, Ogden UT

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa.

for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: September 20, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority

[FR Doc. 02–25384 Filed 10–4–02; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Endangered Species Recovery Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (Service), solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before November 6, 2002, to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–776608

Applicant: Monk & Associates LLC, Walnut Creek, California.

The permittee requests an amendment to take (harass by survey, capture, handle, and release) the Sonoma distinct population segment (DPS) of the California tiger salamander (*Ambystoma californiense*) in conjunction with demographic research in Sonoma County, California for the purpose of enhancing its survival.

Permit No. TE–028605

Applicant: SWCA Inc., Environmental Consultants, Mission Viejo, California.

The permittee requests an amendment to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) and the California least tern (*Sterna antillarum browni*) in conjunction with demographic research throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–060971

Applicant: Paul De Ley, University of California, Riverside, California.

The applicant requests a permit to take (collect) the cysts of the Riverside fairy shrimp (*Streptocephalus woottoni*), and remove/reduce to possession root material of *Eryngium aristulatum* var. *parishii* (San Diego button-celery) and *Orcuttia californica* (California Orcutt grass) in conjunction with research on nematodes in Riverside County, California for the purpose of enhancing their survival.

Permit No. TE–061146

Applicant: Deborah Clark, Corvallis, Oregon.

The applicant requests a permit to take (kill) the Fender's blue butterfly (*Icaricia icarioides fenderii*) in conjunction with habitat restoration using herbicides in Benton County, Oregon for the purpose of enhancing its survival.

Permit No. TE–061625

Applicant: Stephanie Owens, San Diego, California.

The applicant requests a permit to take (monitor nests) the least Bell's vireo (*Vireo bellii pusillus*), and (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with demographic research throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–797267

Applicant: H.T. Harvey and Associates, San Jose, California.

The permittee requests an amendment to take (harass by survey, capture, handle, and release) the Sonoma and the Santa Barbara DPSs of the California tiger salamander (*Ambystoma californiense*) in conjunction with demographic research in Sonoma and Santa Barbara Counties, California for the purpose of enhancing their survival.

Permit No. TE–061844

Applicant: Nathaniel Goldstein, Boulder, Colorado.

The applicant requests a permit to take (harass by survey, fin clip, release, and remove from the wild) the Ash Meadows pupfish (*Cyprinodon nevadensis mionectes*) in conjunction with demographic research in the Ash Meadows Wildlife Refuge in Nevada for the purpose of enhancing its survival.

Permit No. TE–061375

Applicant: Renee Spenst, Sacramento, California.

The applicant requests a permit to take (harass) the California clapper rail (*Rallus longirostris obsoletus*) and the salt marsh harvest mouse (*Reithrodontomys raviventris*) in conjunction with scientific research in Alameda and Solano Counties, California for the purpose of enhancing their survival.

Permit No. TE–815537

Applicant: Karen Swaim, Livermoore, California.

The permittee requests an amendment to take (insert passive integrated transponder tags and tail clip) the San Francisco garter snake (*Thamnophis sirtalis*) in conjunction with scientific research throughout the range of the species for the purpose of enhancing its survival.

Permit No. TE–059612

Applicant: David Armes, Fresno, California.

The applicant requests a permit to take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), the vernal pool tadpole shrimp (*Lepidurus packardi*), and the Riverside fairy shrimp (*Streptocephalus wootoni*) in conjunction with surveys throughout the range of each species for the purpose of enhancing their survival.

Permit No. TE–023250

Applicant: Department of the Navy, San Diego, California.

The permittee requests an amendment to remove/reduce to possession (collect plants, tissue, and seeds) the *Sibara filifolia* (Santa Cruz Island rock cress) and *Lithophragma maximum* (San Clemente Island woodland star) in conjunction with propagation studies and surveys for genetic variation in the Channel Islands, California for the purpose of enhancing their survival.

Permit No. TE–062121

Applicant: Ryan R. Young, Carlsbad, California.

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*), the light-footed clapper rail (*Rallus longirostris levipes*), and the Yuma clapper rail (*Rallus longirostris yumanensis*) in conjunction with demographic surveys in San Diego, Ventura, Orange, Imperial, Kern, and San Bernardino Counties in California; and Yuma, La Paz, and Mohave Counties in Arizona for the purpose of enhancing their survival.

Permit No. TE–062335

Applicant: City of Santa Rosa, Santa Rosa, California.

The applicant requests a permit to take (harass by survey, capture, handle, and release) the Sonoma distinct population segment (DPS) of the California tiger salamander (*Ambystoma californiense*) in conjunction with demographic research in Sonoma County, California for the purpose of enhancing its survival.

FWS solicits public review and comment on each of these permit applications.

Dated: September 20, 2002.

Rowan W. Gould,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 02–25456 Filed 10–4–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Aquatic Nuisance Species Task Force will meet from 8:30 a.m. to 5 p.m., Wednesday, November 13, 2002; from 8:30 a.m. to 5 p.m., Thursday, November 14, 2002; and from 8:30 a.m. to 1 p.m., Friday, November 15, 2002.

ADDRESSES: The ANS Task Force meeting will be held at the Radison Waikiki Prince Kuhio, 2500 Kuhio Avenue, Honolulu, Hawaii 96815. Phone 808–922–0811.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: *sharon_gross@fws.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the ANS Task Force meeting include: a field trip to view local invasive species problems; an update of activities from each of the Task Force's regional panels; submission of a Rapid Response Plan by the Western Regional Panel; status and updates from several other Task Force committees including the Prevention Committee, the Communications, Education and Outreach Committee, and the Research Committee; approval of the Draft Green Crab Control Plan; status of State and Interstate ANS Management Plans and approval of the Massachusetts State Plan; an update on ballast water management activities; a panel on the status of Brown Tree Snake activities; and other topics.

Minutes of the meeting will be maintained by the Executive Secretary; Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: September 25, 2002.

Cathleen I. Short,

Co-chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries and Habitat Conservation.

[FR Doc. 02–25382 Filed 10–4–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 0148813 and UTU 0148813A]

Public Land Order No. 7543; Partial Revocation of Public Land Order No. 4774; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a public land order insofar as it affects approximately 178 acres of National Forest System lands withdrawn for the Lodgepole, Hacking Lake, Yellow Pine, Beaver View, Upper Provo River Bridge, and Moosehorn Campgrounds and the Weber Cottonwood Picnic Ground. The withdrawal is no longer needed except on a portion of the lands withdrawn for the Lodgepole Campground. The lands included in the portion of the withdrawal being revoked will be opened to mining.

EFFECTIVE DATE: November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Shelley Paige, Forest Service, Intermountain Region, 324–25th Street, Ogden, Utah 84401–2310, 801–625–5797.

SUPPLEMENTARY INFORMATION: The Forest Service has determined that the withdrawal is no longer needed on any of the lands except a portion of the Lodgepole Campground and has requested the revocation.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 4774, which withdrew lands for seven Forest Service recreation areas, is hereby revoked in its entirety except for the following described land:

Ashley National Forest
Lodgepole Campground
Salt Lake Meridian
T. 1 N., R. 22 E.,
Sec. 17, E½SE¼SW¼SW¼; sec.
Sec. 20, E½NE¼NW¼NW¼.

The area described contains 10 acres in Duchesne County.

2. At 10 a.m. on November 6, 2002, the lands described in Public Land Order No. 4774 (35 FR 4402, March 12, 1970), except those lands described in Paragraph 1, will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of

record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: September 20, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–25437 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–ET; WYW 74730]

Notice of Proposed Extension of Public Land Order No. 6368; Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to extend Public Land Order No. 6368 for a 20-year period. This order withdrew public lands from location and entry under the mining laws to protect the Horsethief and Natural Trap Caves in Big Horn County. The lands have been and will remain open to mineral leasing. This notice also gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by January 6, 2003.

ADDRESSES: Comments and meeting requests should be sent to the BLM Wyoming State Director, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Janet Booth at 307–775–6124.

SUPPLEMENTARY INFORMATION: On September 13, 2002, a petition/application was approved allowing the Bureau of Land Management to file an application to extend Public Land Order No. 6368. This withdrawal was made to protect the important recreational, scientific, and educational values of the Horsethief and Natural Trap Caves. Public Land Order No. 6368 will expire on April 15, 2003.

The withdrawal comprises approximately 528.23 acres of public land as described below:

Sixth Principal Meridian
T. 58 N., R. 94 W.,
Sec. 20, lots 1 to 8, inclusive, and S½N½;
Sec. 21, lots 4, 5, and SW¼NW¼;
Sec. 28, S½SE¼.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed extension may present their views in writing to the undersigned officer of the BLM.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed extension should submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

This extension will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

Dated: September 27, 2002.

Alan L. Kesterke,

Acting State Director.

[FR Doc. 02–25436 Filed 10–4–02; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Colorado River Basin Salinity Control Advisory Council (Council) was established by the Colorado River Basin Salinity Control Act of 1974 (Pub. L. 93–320) (Act) to receive reports and advise federal agencies on implementing the Act. In accordance with the Federal Advisory Committee Act, the Bureau of Reclamation announces that the Council will meet as detailed below.

DATES AND LOCATION: The Advisory Council will conduct its annual meeting at the following time and location:

October 29, 2002—San Diego, California. The meeting will begin at 8:30 a.m. and recess at 12:30 p.m. and reconvene briefly the following day at 1 p.m. The meeting will be held in the Shelter Pointe Hotel and Marina, on Shelter Island, at 1551 Shelter Island Drive.

Agenda: The purpose of the meeting will be to discuss the accomplishments of federal agencies and make recommendations on future activities to control salinity. Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Bureau of Reclamation, Bureau of Land Management, Fish and Wildlife Service, and United States Geological Survey of the Department of the Interior; the Natural Resources Conservation Service of the Department of Agriculture; and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss salinity control activities and the contents of the reports.

The meeting of the Council is open to the public. Any member of the public may file written statements with the Council before, during, or up to 30 days after the meeting, in person or by mail. To the extent that time permits, the Council chairman may allow public presentation of oral statements at the meeting. To allow full consideration of information by the Advisory Council members, written notice must be provided to Kib Jacobson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102; telephone (801) 524–3753; faxogram (801) 524–5499; e-mail at: *kjacobson@uc.usbr.gov* at least FIVE (5) days prior to the meeting. Any written comments received prior to the meeting will be provided to the Advisory Council members at the meeting.

It is the Bureau of Reclamation's practice to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that their home address be withheld from public disclosure, which will be honored to the full extent allowable by law. To have your name and/or address withheld, please state this prominently at the beginning of your comment. Submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Kib Jacobson, telephone (801) 524–3753; faxogram (801) 524–5499; e-mail at: *kjacobson@uc.usbr.gov.*

Dated: September 13, 2002.

Darryl Beckmann,

Acting Regional Director.

[FR Doc. 02–25442 Filed 10–4–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0038

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for 30 CFR Part 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.

DATES: Comments on the proposed information collection must be received by December 6, 2002, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection activity that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR part 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources—30 CFR Part 783.

OMB Control Number: 1029–0038.

Summary: Applicants for underground coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed underground coal mining activities.

Bureau Form Number: None.

Frequency of Collection: Once, at time of application submission.

Description of Respondents: Underground coal mining applicants and State regulatory authorities.

Total Annual Responses: 59

Total Annual Burden Hours: 25,088 hours.

Dated: September 30, 2002.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 02–25434 Filed 10–4–02; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0043, 1029–0111 and 1029–0112

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for the titles described below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost for 30 CFR part 761, Areas designated by Act of Congress; 30 CFR part 772, Requirements for coal exploration; and 30 CFR part 800, Bonding and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by November 6, 2002, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease at (202) 208–2783 or electronically to *jtreleas@osmre.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. OSM has submitted three requests to OMB to renew its approval of the collections of information contained in: 30 CFR part 761, Areas designated by Act of Congress; 30 CFR part 772, Requirements for coal exploration; and 30 CFR part 800, Bonding and insurance requirements for surface coal mining and reclamation operations under regulatory programs. OSM is requesting a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these collections of information are 1029–0043 for 30 CFR 800, 1029–0111 for 30 CFR part 761, and 1029–0112 for 30 CFR part 772.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments for these collections of information was published on June 25, 2002 (67 FR 42803). No comments were received. This notice provides the

public with an additional 30 days in which to comment on the following information collection activities:

Title: Areas designated by Act of Congress, 30 CFR part 761.

OMB Control Number: 1029–0111

Summary: OSM and State regulatory authorities use the information collected under 30 CFR part 761 to ensure that persons planning to conduct surface coal mining operations on the lands protected by section 522(e) of the Surface Mining Control and Reclamation Act of 1977 have the right to do so under one of the exemptions or waivers provided by this section of the Act.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for certain surface coal mine permits and State regulatory authorities.

Total Annual Responses: 262.

Total Annual Burden Hours: 1,864.

Title: Requirements for Coal exploration, 30 CFR part 772.

OMB Control Number: 1029–0112.

Summary: OSM and State regulatory authorities use the information collected under 30 CFR part 772 to maintain knowledge of coal exploration activities, evaluate the need for an exploration permit, and ensure that exploration activities comply with the environmental protection and reclamation requirements of 30 CFR parts 772 and 815 and section 512 of SMCRA (30 U.S.C. 1262).

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Persons planning to conduct coal exploration and State regulatory authorities.

Total Annual Responses: 905.

Total Annual Burden Hours: 8,510.

Title: Bond and Insurance requirements for surface coal mining and reclamation operations under regulatory programs, 30 CFR part 800.

OMB Control Number: 1029–0043.

Summary: The regulations at 30 CFR part 800 primarily implement section 509 of the Surface Mining Control and Reclamation Act of 1977, which requires that persons planning to conduct surface coal mining operations first post a performance bond to guarantee fulfillment of all reclamation obligations under the approved permit. The regulations also establish bond release requirements and procedures consistent with section 519 of the Act, liability insurance requirements pursuant to Section 507(f) of the Act, and procedures for bond forfeiture should the permittee default on reclamation obligations.

Bureau Form Number: None.

Frequency of Collection: On Occasion.

Description of Respondents: Surface coal mining and reclamation permittees and State regulatory authorities.

Total Annual Responses: 14,167.

Total Annual Burden Hours: 166,114 hours.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to the appropriate OMB control numbers in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503. Also please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210–SIB, Washington, DC 20240, or electronically to *jtreleas@osmre.gov*.

August 28, 2002.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 02–25435 Filed 10–4–02; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 26, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or e-mail *Howze-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Att: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics (BLS).

Title: National Longitudinal Survey of Women.

OMB Number: 1220–0110.

Affected Public: Individuals or households.

Frequency: Biennially.

Estimated Time Per Response and Total Burden Hours:

Form	Number of respondents	Total annual responses	Estimated minutes/response	Total annual burden (Hours)
2003 NLSW Pretest	50	50	70	58
2003 NLSW Main Fielding	6,627	6,627	70	7,790
Re-interview	668	668	5	56
Total	6,677	7,345		7,904

Note: The difference between the total number of respondents and the total number of responses reflects the fact that 668 respondents will be interviewed twice once in either the pretest or the main fielding and a second time in the quality-control re-interview. An additional 58 burden hours have been included for the main fielding to account for the possibility of having to interview the 50 women selected for the pre-test again in the main fielding in the unlikely event that the pre-test fails completely.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Under Title 29 of the United States Code, Congress authorized the Bureau of Labor Statistics of the U.S. Department of Labor (Department) to collect labor statistics. The National Longitudinal Surveys (NLS) program is part of this effort. The data collected in the 2003 National Longitudinal Survey of Women (NLSW) will contribute to the knowledge about opportunities and services for younger women who desire to enter or re-enter the labor force. The Department will use this information to help understand and explain the employment activities, unemployment problems, and retirement decisions of women. The mature women currently are ages 66–80 and young women are ages 49–60. The 2003 NLSW is the only longitudinal survey designed to measure changes in the U.S. labor market for women born in years 1922–37 or 1943–53. No other source of data provides information on the extended time period covered by the NLSW, the wide variety of variables that it contains, and the characteristics of the sample. The 2003 NLSW will expand the existing socioeconomic data bank for women.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–25378 Filed 10–4–02; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB review; comment request

September 26, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or e-Mail *King-Darrin@dol. gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Stuart Shapiro, OMB Desk Officer for MSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* Enhance the quality, utility, and clarity of the information to be collected; and
* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Type of Review: Extension of a currently approved collection.

Title: Quarterly Mine Employment and Coal Production Report.

OMB Number: 1219–0006.

Affected Public: Business or other for-profit.

Frequency: Quarterly.

Number of Respondents: 24,604.

Number of Annual Responses: 86,158.

Estimated Time Per Response: 30 minutes for hardcopy filings and 15 minutes for electronic filings.

Total Burden Hours: 41,155.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $27,236.

Description: The reporting and record keeping provisions in 30 CFR 50, Notification, Investigation, Reports and Records of Accidents, Injuries and Illnesses, Employment and Coal Production in Mines, are essential elements in MSHA's Congressional mandate to reduce work-related injuries and illnesses among the nation's miners.

Section 30 CFR 50.30(a) requires mine operators and independent contractors working on mine property to report quarterly employment and coal production to MSHA on Form 7000–2. MSHA tabulates and analyzes the information from this form along with data from MSHA Form 7000–1, Mine Accident, Injury, and Illness Report (OMB No. 1219–0007), to compute incidence and severity rates for various injury types. These rates are used to analyze trends and to assess the degree of success of the health and safety efforts of MSHA and the mining industry.

Employment and production data when correlated with accident, injury, and illness data provide information that allows MSHA to improve its safety and health enforcement programs, focus its education and training efforts, and establish priorities for its technical assistance activities in mine safety and health. Maintaining a current database allows MSHA to identify and direct increased attention to those mines, industry segments, and geographical areas where hazardous trends are developing.

MSHA Form 7000–2 is also a source of national coal production data, allowing MSHA to analyze the relationship between production and health and safety. Coal production data are also used to determine the sizes of coal mines for assessment purposes.

Section 103(d) of the Federal Mine Safety and Health Act of 1977 (Mine Act) requires operators to report employee hours worked. Section 103(h) of the Mine Act requires operators to keep any records and make any reports that are reasonably necessary for MSHA to perform its duties under the Mine Act.

Data collected through MSHA Form 7000–1 (OMB # 1219–0007) and MSHA Form 7000–2 enable MSHA to publish

timely quarterly and annual statistics, reflecting current safety and health conditions in the mining industry. The data gathered from this collection provides MSHA with the figures upon which to base its incidence rate calculations and trend analyses. These data are used not only by MSHA, but also by other Federal and State agencies, health and safety researchers, and the mining community to assist in measuring and comparing the results of health and safety efforts both in the United States and internationally.

Coal production data are used in various analyses that range from a comparative nature to complex modeling—such as the Cost of Injury Model developed through research. Additionally, this information impacts the evaluation and review of MSHA's regulations, the development of new safety and health standards, and the evaluation of MSHA's programs.

Quarterly employment and worktime information provide control figures on which MSHA can base its incidence rate calculations and trend analyses. The employment data are used to normalize injury experience so that mines of different sizes can be compared and also to compare experience for different time periods.

MSHA tabulates and analyzes the information from MSHA Form 7000–2, along with that from MSHA Form 7000–1, Mine Accident, Injury, and Illness Report, to compute incidence and severity rates for various injury types.

MSHA uses this information to direct its inspection and assistance activities to those mines, industry segments, and geographical areas which the current data demonstrate as having particular problems. Injury rates must be computed at least quarterly for MSHA to target its enforcement and assistance resources. Less frequent data collection would neither be timely nor statistically valid for this purpose.

Agency: Mine Safety and Heath Administration (MSHA).

Type of Review: Extension of a currently approved collection.

Title: Mine Accident, Injury and Illness Report.

OMB Number: 1219–0007.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Number of Respondents: 4,174.

Requirement	Annual responses	Average response time (hours)	Annual burden hours
Immediate Notification of MSHA—30 CFR 50.10:			
Fatal Accidents	72	0.50	36
Other Accidents	1,813	0.50	907
Investigation of Accidents and Occupational Injuries—30 CFR 50.11(b):			
Fatal Accidents	72	80.00	5,760
Nonfatal Accidents	78	16.00	1,248
Other Occurrences	15,592	1.00	15,592
Separate Investigation Reports—30 CFR 50.11(b):			
Fatal Accidents	56	4.00	224
Other Occurrences	14,468	1.00	14,468
Mine Accident, Injury, and Illness Reports—30 CFR 50.20:			
Initial Reports	17,555	0.50	8,778
Follow-up Reports	8,518	0.33	2,811
Total	58,224		49,823

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $12,914.

Description: The reporting and recordkeeping provisions in 30 CFR 50, Notification, Investigation, Reports and Records of Accidents, Injuries and Illnesses, Employment and Coal Production in Mines, are essential elements in MSHA's Congressional mandate to reduce work-related injuries and illnesses among the nation's miners.

Section 50.10 requires mine operators and mining contractors to immediately notify MSHA in the event of an accident. This immediate notification is critical to MSHA's timely investigation and assessment of the probable cause of the accident.

Section 50.11 requires that the operator or contractor investigate each accident and occupational injury and prepare a report. The operator or contractor may not use MSHA Form 7000–1 as a report, unless the mine employs fewer than 20 miners and the occurrence involves an occupational injury not related to an accident.

Section 50.20(a) requires mine operators and mining contractors to report each accident, injury, or illness to MSHA on Form 7000–1 within 10 working days after an accident or injury has occurred or an occupational illness has been diagnosed. The use of MSHA Form 7000–1 provides for uniform information gathering across the mining industry.

MSHA tabulates and analyzes the information from MSHA Form 7000–1, along with data from MSHA Form 7000–2, Quarterly Mine Employment and Coal Production Report (OMB No. 1219–0006), to compute incidence and severity rates for various injury types. These rates are used to analyze trends and to assess the degree of success of the health and safety efforts of MSHA and the mining industry.

Accident, injury, and illness data when correlated with employment and production data provide information that allows MSHA to improve its safety and health enforcement programs, focus its education and training efforts, and establish priorities for its technical assistance activities in mine safety and health. Maintaining a current database allows MSHA to identify and direct increased attention to those mines, industry segments, and geographical areas where hazardous trends are developing. This could not be done effectively utilizing historical data. The information collected under Part 50 is the most comprehensive and reliable occupational data available concerning the mining industry.

Section 103(d) of the Federal Mine Safety and Health Act of 1977 (Mine Act) mandates that each accident be investigated by the operator to determine the cause and means of preventing a recurrence. Records of such accidents and investigations shall be kept and made available to the Secretary or his authorized representative and the appropriate State agency. Section 103(h) requires operators to keep any records and make any reports that are reasonably necessary for MSHA to perform its duties under the Mine Act. Section 103(j) of the Mine Act requires operators to notify MSHA of the occurrence of an accident and to take appropriate measures to preserve any evidence which would assist in the investigation into the cause or causes of the accident.

Data collected through MSHA Form 7000–1 and MSHA Form 7000–2 enable MSHA to publish timely quarterly and annual statistics, reflecting current safety and health conditions in the mining industry. These data are used not only by MSHA, but also by other Federal and State agencies, health and safety researchers, and the mining community to assist in measuring and comparing the results of health and safety efforts both in the United States and internationally.

MSHA tabulates and analyzes information from MSHA Form 7000–1, along with that from MSHA Form 7000–2, Quarterly Mine Employment and Coal Production Report, to derive quarterly evaluations of normalized injury and illness experience at the nation's mines. These data allow MSHA to detect accident, injury, and illness trends ascribable to specific mine sites, types of mining, work locations, or tasks.

MSHA uses this information to target its inspection and assistance activities toward those mines, industry segments, and geographical areas which the current data demonstrate as having particular problems. Injury rates must be computed at least quarterly for MSHA to target its enforcement and assistance resources. Less frequent data collection would neither be timely nor statistically valid for this purpose.

The mining industry also uses this quarterly injury incidence data in its efforts to reduce injuries and illnesses. MSHA's compilations are the only source of information which permits a particular mining operation to compare its record with that of similar mines.

Ira Mills,

Departmental Clearance Officer.

[FR Doc. 02–25379 Filed 10–4–02; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 25, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or e-mail *Howze-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collection; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics (BLS).

Title: Local Area Unemployment Statistics (LAUS) Program Manual.

OMB Number: 1220–0017.

Affected Public: State, Local or Tribal Government.

Frequency: Monthly and Annually.

Estimated Time Per Response and Total Burden Hours:

Form	Number of respondents	Annual frequency	Total annual responses	Estimated hours/response	Total annual burden (Hours)
LAUS 3040	52	13 months	86,650	1.6	138,640
LAUS 8	52	11 months	572	1.6	915
LAUS 15	52	0.5 months	26	2	52
LAUS 16	52	1 yearly	52	1.4	73
Totals			87,300		139,680

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operation/maintaining systems or purchasing services: $0.

Description: The Bureau of Labor Statistics has been charged by Congress [Congressional Act of July 7, 1930 (29 USC Chapters 1 and 21)] with the responsibility of collecting and publishing monthly information on employment, the average wage received, and the hours worked by area and industry. The process for developing residency based employment and unemployment estimates is a cooperative Federal-State program that uses employment and unemployment inputs available in State agencies. The estimates are used in economic analysis by public agencies and private industry, and for State and area allocations and eligibility determinations according to legal and administrative requirements. The Manual provides the theoretic basis and essential technical instructions and guidance that States require to prepare State and area unemployment estimates, while the reports are integral parts of the LAUS program that ensure and/or measure the timeliness, quality, consistency, and adherence to program directives and related research. Implementation of policy and legislative prerogatives could not be accomplished as now written without collection of the data.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–25380 Filed 10–4–02; 8:45 am]

BILLING CODE 4510–24–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247]

Entergy Nuclear Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–26 issued to Entergy Nuclear Operations, Inc. (the licensee) for operation of the Indian Point Nuclear Generating Unit No. 2 (IP2) located in Westchester County, New York.

The proposed amendment would revise Technical Specification (TS) 3.10.4, "Rod Insertion Limits," TS 3.10.5, "Rod Misalignment Limitations," and TS 3.10.6, "Inoperable Rod Position Indicator Channels." The proposed amendment would remove the cycle-specific allowances on (1) rod insertion limits during individual rod position indicator channel calibrations and (2) rod position indicator channel accuracy for operation at or below 50 percent power. The proposed amendment also would revise the control rod indicated misalignment limits.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), § 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability [* * *] or consequences of an accident previously evaluated.

The magnitude of control rod misalignment, allowed by the proposed changes to TS Section 3.10.5, is not a contributor to the mechanistic cause of an accident previously evaluated in the UFSAR (Updated Final Safety Analysis Report). The functions of the Control Rod Drive System or the Analog Rod Position Indicator System are not being altered by the proposed changes. Therefore, the proposed increase in control rod misalignment will not result in an increase in the probability of a previously evaluated accident.

The bounding design limitations of these systems will continue to be met and the integrity of the fuel cladding and the reactor coolant system pressure boundary will not be challenged by the proposed changes. The initial conditions and input assumptions employed in the calculation of the offsite radiological doses will remain valid. Therefore, the consequences of a previously evaluated accident will not be increased.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The pertinent licensing basis acceptance criteria will continue to be met and the margin of safety defined in the TS Bases will not be reduced in the IP2 licensing basis accident analyses. The magnitude of the allowed control rod misalignment is not a contributor to the mechanistic cause of any known accident and the functions of the Control Rod Drive System or the Analog Rod Position Indicator System are not being altered. Therefore, a new or different kind of an accident than any previously evaluated, will not be created.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in [a] margin of safety.

Based on the changes to safety analyses input parameter values, the pertinent licensing basis acceptance criteria will continue to be met and the margin of safety, defined in the TS Bases, will not be reduced in the IP2 licensing basis accident analyses. Therefore, the proposed change will not involve a reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 6, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1]

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to [insert attorney name and address], attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated [date], which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 1st day of October 2002.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–25386 Filed 10–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237, 50–249, 50–254, and 50–265]

Exelon Generation Company, LLC, Dresden Nuclear Power Station, Units 2 and 3, Quad Cities Nuclear Power Station, Units 1 and 2; Exemption

1.0 Background

The Exelon Generation Company, LLC (the licensee) is the holder of Facility Operating License Nos. DPR–19 and DPR–25, which authorize operation of the Dresden Nuclear Power Station, Units 2 and 3 (Dresden), and Facility Operating License Nos. DPR–29 and DPR–30, which authorize operation of the Quad Cities Nuclear Power Station, Units 1 and 2 (Quad Cities). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The Dresden facility consists of two boiling-water reactors located in Grundy County, Illinois, and the Quad Cities facility consists of two boiling-water reactors located in Rock Island County, Illinois.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 50, section 50.71, paragraph (e)(4) requires that subsequent revisions to the Updated Final Safety Analysis Report (UFSAR) be submitted periodically to the NRC provided that the interval between successive updates does not exceed 24 months. The Dresden and Quad Cities UFSAR revisions are currently submitted on a 24-month cycle. The next scheduled date for submittal of the revised UFSAR for Dresden is June 30, 2003, and for Quad Cities is October 20, 2003. The licensee proposes to submit revised UFSARs along with Operating License Renewal Applications (LRAs) for Dresden and Quad Cities in January 2003, and to resume the established schedule for submittal of UFSAR revisions for Dresden on June 30, 2005, and for Quad Cities on October 20, 2005. An exemption is required because 10 CFR 50.71(e)(4) requires that subsequent revisions to the UFSAR be submitted periodically to the NRC provided that the interval between successive updates does not exceed 24 months.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. These circumstances include the special circumstances that compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

The underlying purpose of the regulation is to ensure the UFSAR contains the latest information and analyses submitted to the NRC by the licensee or prepared by the licensee pursuant to NRC requirement since the submittal of the original final safety analysis report, or, as appropriate, since the last update to the final safety analysis report submitted under 10 CFR 50.71(e).

The staff examined the licensee's rationale to support the exemption request and concluded that granting it would meet the underlying purpose of 10 CFR part 50. Consistent with previous applicants and in order to facilitate the review of LRAs for Dresden and Quad Cities, the licensee plans to submit revised copies of each station's UFSAR along with the LRAs in January 2003. Submitting the revised UFSARs with the LRAs in January 2003 will result in submittal of the revisions for Dresden and Quad Cities earlier than their normal due dates. Revised UFSARs are necessary to facilitate NRC review of the LRAs due to numerous changes approved for the stations since the last revisions, including modifications due to extended power uprates, fuel type changes, and numerous other license amendments. A revised UFSAR is an integral element of the technical resources used by the NRC for the review of an LRA. The licensee maintains the UFSARs current with controlled and approved procedures which track and account for all changes for subsequent incorporation. The licensee UFSAR control process ensures that the UFSARs are maintained as required by NRC regulations. The proposed action only alters the schedule for submittal of the UFSAR revisions on a one-time basis. The requested exemption will only provide temporary relief from the applicable regulation and does not jeopardize the health and safety of the public. The licensee plans to resume the established schedule for submittal of the UFSAR revisions in 2005 for both stations. Also, the licensee plans to submit all other documents incorporated by reference in the UFSARs on the regularly scheduled dates in 2003.

10 CFR 50.12(a)(2)(iii) requires that special circumstances are present whenever compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated. If the exemption is not granted, the licensee will have to prepare multiple UFSAR revision submittals within a ten-month period. Resetting the schedule for UFSAR update submittals to every other year in January would also result in undue hardship due to the scheduling of resources towards the end and beginning of the year. The staff finds that the licensee merits the required special circumstances under 10 CFR 50.12(a)(2)(iii).

Therefore, the staff concludes that pursuant to 10 CFR 50.12(a)(2), a one-time exemption is authorized from the requirements of 10 CFR 50.71(e)(4) to allow extension of the submittal of revisions to the Dresden and Quad Cities UFSARs until June 30, 2005, and October 20, 2005, respectively.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Exelon Generation Company, LLC a one-time exemption for Dresden and Quad Cities from the requirement of 10 CFR 50.71(e)(4) that subsequent revisions to the UFSAR be submitted periodically to the NRC provided that the interval between successive updates does not exceed 24 months. The exemption is granted based upon the licensee's intention to submit updated UFSARs along with LRAs in January 2003, as stated in the letter from K. Jury (licensee) to NRC Document Control Desk, "Request for Schedular Exemption for Biennial Submittal of Revised Updated Safety Analysis Reports (UFSARs) to Support Operating License Renewal Application," dated August 9, 2002.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (67 FR 59580).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 2nd day of October 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–25387 Filed 10–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

Nine Mile Point Nuclear Station, LLC, Nine Mile Point Nuclear Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from title 10 of the Code of Federal Regulations (10 CFR) Section 54.17(c) for Facility Operating License No. NPF–69, issued to Nine Mile Point Nuclear Station, LLC (NMPNS), for operation of Nine Mile Point Nuclear Station, Unit No. 2 (NMP2) located in Oswego County, New York. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant a schedular exemption from the provision of 10 CFR 54.17(c), which stipulates that a licensee may not apply for a renewed operating license earlier than 20 years before the current license expires. The exemption would allow NMPNS to submit a renewal application for NMP2 earlier than 20 years before expiration of its operating license.

The Need for the Proposed Action

The proposed action would allow NMPNS to submit one application for renewal of the operating licenses of both nuclear units located at the site, with the goal of attaining efficiencies for preparation and review of the application.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the issuance of the proposed exemption will not have a significant environmental impact. The proposed schedular exemption pertains solely to the future submission of an application to renew the NMP2 operating license. It causes no changes to the current design or operation of NMP2, and imparts no prejudice in the future review of the application for license renewal.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for NMP2, dated June 1973.

Agencies and Persons Consulted

On September 27, 2002, the NRC staff consulted with the New York State official, Mr. John P. Spath of the New York State Energy Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 4, 2002, as supplemented on June 27, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 1st day of October 2002.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–25388 Filed 10–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Workshop on Key Issues Related to the Licensing of Future Non-Light Water Reactors; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent; correction.

SUMMARY: This document corrects a document appearing in the **Federal Register** on September 26, 2002 (67 FR 60702), that informs the public that the NRC has underway preapplication reviews of advanced reactor designs. This action is necessary to correct an erroneous address for the meeting location.

ADDRESSES: The workshop will be held at the Double Tree Hotel, 1750 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Farouk Eltawila, Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research, Mail Stop T–10 F32, telephone (301) 415–7499; Internet: *FXE@nrc.gov*, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: On page 60702, the **ADDRESSES** heading is corrected to read as set forth above.

Dated at Rockville, Maryland, this 2nd day of October, 2002.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 02–25389 Filed 10–4–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25760; 812–12680]

Oppenheimer Integrity Funds, et al.; Notice of Application

September 30, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act") under (i) section 6(c) of the Act granting an exemption from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: Oppenheimer Integrity Funds; Oppenheimer California Municipal Fund; Oppenheimer Capital Appreciation Fund; Oppenheimer Capital Income Fund; Oppenheimer Capital Preservation Fund; Oppenhimer Cash Reserves; Oppenheimer Champion Income Fund; Oppenheimer Concentrated Growth Fund; Bond Fund Series; Oppenheimer Discovery Fund; Oppenheimer Developing Markets Fund; Oppenheimer Emerging Growth Fund; Oppenheimer Emerging Technologies Fund; Oppenheimer Enterprise Fund; Oppenheimer Europe Fund; Oppenheimer Multi-State Municipal Trust; Oppenheimer Global Fund; Oppenheimer Global Growth & Income Fund; Oppenheimer Gold & Special Minerals Fund; Oppenheimer Growth Fund; Oppenheimer High Yield Fund; Oppenheimer Municipal Fund; Oppenheimer International Bond Fund; Oppenheimer International Growth Fund; Oppenheimer International Small Company Fund; Oppenheimer Limited-Term Government Fund; Oppenheimer Main Street Funds, Inc.; Oppenheimer Main Street Opportunity Fund; Oppenheimer Main Street Small Cap Fund; Oppenheimer MidCap Fund; Oppenheimer Special Value Fund; Oppenheimer Money Market Fund, Inc.; Oppenheimer Multiple Strategies Fund; Oppenheimer Municipal Bond Fund; Oppenheimer New York Municipal Fund; Oppenheimer Quest For Value Funds; Oppenheimer Quest Value Fund, Inc.; Oppenheimer Quest Global Value Fund, Inc.; Oppenheimer Quest Capital Value Fund, Inc.; Oppenheimer Real Asset Fund; Oppenheimer Real Estate Fund; Oppenheimer Select Managers; Oppenheimer Series Fund, Inc.; Oppenheimer Strategic Income Fund; Oppenheimer Total Return Fund, Inc.; Oppenheimer Trinity Core Fund; Oppenheimer Trinity Large Cap Growth Fund; Oppenheimer Trinity Value Fund; Oppenheimer U.S. Government Trust; Rochester Fund Municipals; Rochester Portfolio Series; Oppenheimer Variable Account Funds; Panorama Series Fund, Inc., Centennial America Fund, L.P. (each, an "Oppenheimer Fund"); Centennial California Tax Exempt Trust; Centennial Government Trust; Centennial Money Market Trust; Centennial New York Tax Exempt Trust; Centennial Tax Exempt Trust (each, a "Centennial Fund," and, together with the Oppenheimer Funds, the "Companies"); OppenheimerFunds, Inc. ("OFI") and Centennial Asset Management, Corp ("CAMC").

FILING DATES: The application was filed on November 14, 2001, and amended on May 29, 2002 and August 13, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 21, 2002 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o Dina C. Lee, Esq., OppenheimerFunds, Inc., 498 Seventh Avenue, 14th Floor, New York, NY 10018.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681 or Todd F. Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Companies are organized as Massachusetts business trusts, Maryland corporations, or, in the case of Centennial America Fund, L.P., a limited partnership under the laws of the state of Delaware, and are registered under the Act as open-end management investment companies.[1] The business and affairs of each Company are managed under the directions of the board of trustees or directors or, in the case of Centennial America Fund, L.P., the managing general partners of the relevant Company ("Board").

2. Each of OFI and CAMC, a wholly owned subsidiary of OFI, is registered as an investment adviser under the Investment Advisers Act of 1940. Each Oppenheimer Fund has entered into an investment advisory agreement with OFI, and each Centennial Fund has entered into an investment advisory agreement with CAMC. OFI also provides the Funds with certain administrative services.

3. Each Fund may deposit uninvested daily cash balances into a joint account administered by OFI ("Joint Account"). Each Fund may lend money to banks or other entities by entering into repurchase agreements either directly or through the Joint Account. Other Funds may need to borrow money from the same or similar banks for temporary purposes to satisfy redemption requests, to cover unanticipated cash shortfalls such as a trade "fail" in which cash

[1] Applicants also request for any other open-end investment company registered under the Act for which OFI or any person controlling, controlled by or under common control with OFI acts or may act in the future as investment adviser (included in the term "Companies"). All Companies that presently intend to rely on the requested relief are named as applicants. Any other Companies that subsequently rely on the requested order will comply with the terms and conditions in the application. A Company, if it has no series, and each series of a Company, are referred to as a "Fund."

payment for a security sold by a Fund has been delayed, or for other temporary purposes. Currently, the Funds have credit arrangements with their custodians (*i.e.*, overdraft protection) under which the custodians may, but are not obligated to, lend money to the Funds to meet the Funds' temporary cash needs. Many of the Funds also have entered into loan agreements with banks to provide a line of credit for temporary funding.

4. If the Funds were to borrow money from their custodians under their current arrangements or under other credit facility arrangements with a bank, the Funds would pay interest on the borrowed cash at a rate which would be higher than the rate that would be earned by other non-borrowing Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants believe this differential represents the bank's profit. Other bank loan arrangements, such as committed lines of credit, would require the Funds to pay commitment fees, attorney fees and related costs in addition to the interest rate to be paid by the borrowing Fund.

5. Applicants request an order that would permit the Funds to enter into master interfund lending agreements ("Interfund Lending Agreements") under which the Funds would lend money and borrow money for temporary purposes directly to and from each other (an "Interfund Loan"). Applicants believe that the proposed credit facility would substantially reduce the Funds' potential borrowing costs and enhance their ability to earn higher rates of interest on short-term lendings. Although the proposed credit facility would substantially reduce the Funds' need to borrow from banks, the Funds would be free to continue committed lines of credit or other borrowing arrangements with banks. The Funds also would continue to maintain overdraft protection currently provided by their custodians.

6. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When a Fund liquidates portfolio securities to meet redemption requests, which normally are effected immediately, it often does not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

7. Applicants also propose using the credit facility when a sale of securities fails due to circumstances beyond the seller's control, such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from securities sold. When the Fund experiences a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Fund incurs overdraft charges. Alternatively, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

8. While bank borrowings could generally supply needed cash to cover unanticipated redemptions and sales fails, under the proposed credit facility, a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

9. The interest rate charged to the Funds on any loan under the credit facility (the "Interfund Loan Rate") would be the average of the Joint Account Repo Rate and the Bank Loan Rate, both as defined below. The Joint Account Repo Rate would be the current overnight repurchase agreement rate available through the Joint Account. The Bank Loan Rate would be calculated by OFI each day that a Fund borrows or lends, according to a formula established by each Fund's Board to approximate the lowest interest rate at which bank loans would be available to the Funds. The formula would be based upon a publicly available rate (*e.g.*, federal funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. Each Fund's Board periodically would review the continuing appropriateness of using the formula to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Board.

10. The credit facility would be administered by OFI's fund accounting department (collectively, the "Cash Management Team"). Under the proposed credit facility, the portfolio managers for each participating Fund could provide standing instructions to participate daily as a borrower or lender. OFI on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodian. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Cash Management Team would allocate loans among borrowing Funds without any further communication from portfolio managers. There typically will be far more available uninvested cash each day than borrowing demand. Therefore, after allocating cash for Interfund Loans, OFI will invest any remaining cash in accordance with the standing instructions from portfolio managers or return remaining amounts for investment directly by the relevant Funds. The money market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

11. The Cash Management Team would allocate borrowing demand and cash available for lending among the Funds on what the Cash Management Team believed to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund's Board, including a majority of trustees/directors who are not "interested persons" of the Fund, as defined in section 2(a)(19) of the Act ("Independent Trustees/Directors"), to ensure that both borrowing and lending Funds participate on an equitable basis.

12. OFI would (a) monitor the interest rates charged and the other terms and conditions of the loans, (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and

limitations, (c) ensure equitable treatment of each Fund, and (d) make quarterly reports to the Board concerning any transactions by the Funds under the credit facility and the interest rates charged.

13. OFI will administer the program under its (or CAMC's) existing investment advisory agreement with each Fund, and OFI would receive no additional compensation from its administration of the proposed credit facility. OFI or companies affiliated with it may collect standard pricing, record keeping, accounting and bookkeeping fees applicable to repurchase and lending transactions generally, including transactions effected through the credit facility. Fees would be no higher than those applicable for comparable loan transactions.

14. Each Fund's participation in the proposed credit facility is either currently consistent with its organizational documents and its investment policies and limitations, or such documents, policies and limitations will be amended or modified to be made consistent with the Fund's participation. The prospectus of each Fund discloses the extent to which the Fund may borrow money for temporary purposes and lend securities and other assets and the extent to which the Fund is able to mortgage or pledge securities to secure permitted borrowings. If the requested relief is granted, the statement of additional information ("SAI") of each Fund participating in the interfund lending arrangements will disclose the existence of such arrangements. Each Fund that desires to engage in interfund lending arrangements, and that has existing fundamental policies that would restrict participation in such arrangements, will obtain shareholder approval to amend such policies to the extent necessary to permit it to participate in such arrangements on the conditions set forth in the application.

15. In connection with the credit facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, such other person. Applicants state that the Funds may be under common control by virtue of having OFI or CAMC, which is a wholly owned subsidiary of OFI, as their common investment adviser.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) were intended to prevent a person with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because (a) OFI would administer the program as a disinterested fiduciary; (b) all Interfund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or other short-term instruments; (c) the Interfund Loans would not involve a greater risk than such other investments; (d) the lending Fund would receive interest at a rate higher than it could obtain through such other investments; and (e) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that OFI would receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) of the Act prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank; provided that, immediately after the borrowing, there is an asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting the relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated persons of an affiliated person, when acting as principal, from effecting any transaction in which the company is a joint or a joint and several participants unless permitted by Commission order upon application. Rule 17d–1(b) of the Act provides that in passing upon applications for exemptive relief, the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms which are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the credit facility will be the average of the Joint Account Repo Rate and the Bank Loan Rate.

2. On each business day, OFI will compare the Bank Loan Rate with the Joint Account Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Joint Account Repo Rate and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan; (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral; (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days); and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, the event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total less than 10% of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be 10% or greater of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after such borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to equal or exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans equal or exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (a) repay all of its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to less than 10% of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to equal or exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings equals or exceeds 10% is repaid or the Fund's total outstanding borrowings cease to equal or exceed 10% of its total assets, the Fund will mark the value of collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend to another Fund through the Interfund Lending Agreements if the loan would cause its aggregate outstanding loans through the Interfund Lending Agreements to exceed 15% of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund will not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Except as set forth in this condition, no Fund may borrow through the credit facility unless the Fund has a policy that prevents the Fund from borrowing for other than temporary or emergency purposes. In the case of a Fund that does not have such a policy, the Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Cash Management Team will calculate total Fund borrowing and lending demands through the credit facility, and allocate loans on an equitable basis among the Funds, without the intervention of any portfolio manager of the Funds. The Cash Management Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. OFI will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts for investment directly by the relevant Funds.

13. OFI will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the respective Board concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit thereunder.

14. The Board of each Fund, including a majority of the Independent Trustees/Directors, will (a) review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions; (b) establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans, approve any modifications thereto, and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, OFI will promptly refer such loan for arbitration to an independent arbitrator selected by the Board of any Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[2] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit at least annually a written report to the Board setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions, setting forth a description of the terms of the transactions, including the amount, the maturity and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, and such other information presented to the Fund's Board in connection with the review required by conditions 13 and 14.

17. OFI will prepare and submit to the Boards for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all the Funds are treated fairly. After the commencement of the operations of the credit facility, OFI will report on the operations of the credit facility at the respective Board's quarterly meetings.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates OFI's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report will be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Joint Account Repo Rate but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with the procedures established by the Boards; and (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility unless it has fully disclosed in its SAI all material facts about its intended participation.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25356 Filed 10–4–02; 8:45 am]

BILLING CODE 8010–01–P

[2] If a dispute involves Funds with separate Boards, the respective Boards of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46577; File No. S7–12–02]

Final Data Quality Guidelines

AGENCY: Securities and Exchange Commission.

ACTION: Notice of availability of final guidelines.

SUMMARY: The Securities and Exchange Commission has posted on its Web site at *http://www.sec.gov* its final data quality assurance guidelines. The guidelines describe the Commission's procedures for ensuring and maximizing the quality of information before it is disseminated to the public, and the procedures by which an affected person may obtain correction, where appropriate, of disseminated information that does not comply with the guidelines.

FOR FURTHER INFORMATION CONTACT: David R. Fredrickson, Assistant General Counsel, Office of General Counsel, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0606, (202) 942–0890.

Dated: October 1, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25362 Filed 10–4–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46572; File No. SR–CBOE–2002–58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Proposing To Extend the Rapid Opening System Pilot Program

September 30, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to extend the Rapid Opening System ("ROS") pilot program until March 31, 2003 or such time as the Commission has approved ROS on a permanent basis.[3] The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

* * * * *

Rapid Opening System

Rule 6.2A

(a)–(c) No change.

(d) Pilot Program.

This Rule (and the sentences in Rule 6.2 and Rule 6.45 referring to this Rule) will be in effect until [September 30, 2002] *March 31, 2003* on a pilot basis.

Interpretation and Policies

.01–.02 Unchanged.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The request to permanently approve ROS is being considered separately under SR–CBOE–2002–55. Telephone conversation between Jamie Galvan, Attorney, CBOE, and Christopher Solgan, Attorney, Division of Market Regulation, Commission, on September 24, 2002.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 9, 1999, the Commission approved, on a pilot basis, the implementation of the ROS.[4] ROS is a system developed by CBOE to open an entire options class, all series, as a single event, based on a single underlying value. The ROS pilot program is due to expire on September 30, 2002.[5] The Exchange proposes to extend the ROS pilot until March 31, 2003 or such time as the Commission has approved ROS on a permanent basis.

The Exchange recently submitted a proposed rule filing to the Commission proposing permanent approval of ROS as well as an extension of the ROS pilot.[6] This proposed rule change replaces and supersedes that portion of SR–CBOE–2002–55 that proposes an extension of the ROS pilot. CBOE proposes an extension of the ROS pilot so that the pilot may continue to operate while the Commission considers the Exchange's request for permanent approval.[7] CBOE believes that ROS has operated successfully over the past three years, and on that basis, the Exchange believes an extension of the pilot is warranted.

2. Statutory Basis

The CBOE believes that ROS has improved market efficiency for all market participants by successfully facilitating expedited openings of options classes on the Exchange during the pilot period. Therefore, CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (f)(6) of Rule 19b–4[11] thereunder because the Exchange has designated the proposed rule change as one that does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b–4(f)(6)(iii) of the Act,[12] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and the Exchange is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange has requested that the Commission accelerate the operative

[4] See Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999) (approving SR–CBOE–98–48). ROS is governed by CBOE Rule 6.2A.

[5] The Commission has extended the ROS pilot program three times. See Securities Exchange Act Release Nos. 42596 (March 30, 2000), 65 FR 18397 (April 7, 2000) (extending the pilot until September 30, 2000), 43395 (September 29, 2000), 65 FR 60706 (October 12, 2000) (extending the pilot until September 30, 2001), and 44891 (October 1, 2001), 66 FR 51483 (October 9, 2001) (extending the pilot until September 30, 2002).

[6] See SR–CBOE–2002–55.

[7] The Pacific Exchange, Inc.'s Automatic Opening Rotations pilot program has recently been extended until September 30, 2003. See Securities Exchange Act Release No. 46055 (June 10, 2002), 67 FR 41288 (June 17, 2002).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

date of the proposal to September 30, 2002 so that the ROS pilot program may continue without interruption after it would have otherwise expired on September 30, 2002. For this reason, the Commission, consistent with the protection of investors and the public interest, has determined to accelerate the operative date of the proposal to September 30, 2002.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2002–58 and should be submitted by October 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25363 Filed 10–4–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 5.000 (5) percent for the October-December quarter of FY 2003.

James E. Rivera,

Associate Administrator for Financial Assistance.

[FR Doc. 02–25357 Filed 10–4–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4146]

Office of the Procurement Executive; 60-Day Notice of Proposed Information Collection: Department of State Acquisition Regulation (DOSAR); OMB Control Number 1405–0050

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: Bureau of Administration, Office of the Procurement Executive.

Title of Information Collection: Department of State Acquisition Regulation (DOSAR).

Frequency: On occasion.

Form Number: N/A.

Respondents: Any business, other for-profit, individual, not-for-profit, or household organizations wishing to receive Department of State contracts.

Estimated Number of Respondents: 2,790.

Average Hours Per Response: Varies.

Total Estimated Burden: 225,503 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Gladys Gines, Procurement Analyst, Office of the Procurement Executive, U.S. Department of State, Washington, DC 20520, who may be reached on (703) 516–1691.

Dated: September 11, 2002.

Lloyd W. Pratsch,

Procurement Executive, Bureau of Administration, Department of State.

[FR Doc. 02–25444 Filed 10–4–02; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Transportation Labor-Management Board; Establishment and Notice of Meeting

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of Federal Advisory Committee Establishment and notice of meeting.

SUMMARY: Following consultation with the General Services Administration, the U.S. Department of Transportation (DOT) announces the establishment of the Transportation Labor-Management Board (Board) and the Board's first meeting. Notice of the establishment of the Board and the meeting is required under the Federal Advisory Committee Act.

Time and Place: The Board will meet on Tuesday, October 22, 2002, at 9 a.m., at the U.S. Department of Transportation, Nassif Building, room 4438/40, 400 Seventh Street, SW., Washington, DC 20590. The room is located on the 4th floor.

Type of Meeting: The meeting is open to the public. Please note that visitors without a government identification badge should enter the Nassif Building at the Southwest lobby, for clearance at the Visitor's Desk. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

Point of Contact: Stephen Gomez, U.S. Department of Transportation, Office of the Secretary, Corporate Human Resource Policy Division, M–13, Nassif Building, 400 Seventh Street, SW., room 7411, Washington, DC 20590, (202) 366–9455.

SUPPLEMENTARY INFORMATION: The purpose of the Transportation Labor-Management Board is to foster a cooperative and constructive working relationship between employees, labor representatives, and managers within DOT by providing a forum for discussions between management and the unions on significant departmental issues. The Board will serve as an advisory committee providing information, advice and recommendations on cross-cutting departmental issues to DOT through the Assistant Secretary for Administration, and shall exist for two years from the date of the Charter. The Board will be comprised of seven management representatives and seven union representatives, appointed by the DOT's operating administrations and unions. The Secretary of Transportation or his/her designee will appoint a Chairperson from among the Board's membership.

The purpose of the October 22nd meeting is to establish a collaborative working relationship between Board members, determine the Board's operating principles, and address approaches for achieving the objectives identified in the Board's Charter.

Public Participation

We invite interested persons and organizations to submit comments. Mail or deliver your comments or recommendations to Stephen Gomez at the address shown above. Comments should be received by October 18, 2002 in order to be considered at the October 22nd meeting.

Issued in Washington, DC, on September 30, 2002.

For the U.S. Department of Transportation.

Linda Moody,

Associate Director, Human Resource Leadership Division.

[FR Doc. 02–25411 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: System of Records

AGENCY: Office of the Secretary, DOT.

ACTION: Notice to amend a system of records.

SUMMARY: DOT intends to amend a system of record under the Privacy Act of 1974.

EFFECTIVE DATE: November 18, 2002. If no comments are received, the proposal will become effective on the above date. If comments are received, the comments will be considered and, where adopted, the documents will be republished with changes.

FOR FURTHER INFORMATION CONTACT: Yvonne L. Coates, Department of Transportation, Office of the Secretary, 400 7th Street, SW., Washington, DC 20590, (202) 366–6964 (telephone), (202) 366–7024 (fax), Yvonne.Coates@ost.dot.gov (Internet address).

SUPPLEMENTARY INFORMATION: The Department of Transportation system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, has been published in the **Federal Register** and is available from the above mentioned address.

DOT/ALL 9

SYSTEM NAME:

Identification Media Record Systems.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

The system is located in the:

a. Office of Security and Administrative Management, M–40, 400 7th Street, SW., Washington, DC 20590; (for Office of the Secretary of Transportation and all DOT Agencies other than those listed below).

b. Commandant, United States Coast Guard Headquarters, G–O, Washington, DC 20593 and District and Area Offices.

c. Federal Aviation Administration, Office of Security and Investigations, 800 Independence Avenue, SW., Washington, DC 20591; and all FAA Regional Offices and Centers.

d. Federal Highway Administration, Operations and Services Divisions, 400 7th Street, SW., Washington, DC 20590, and all FHWA Regional Offices.

e. Transportation Security Administration, 400 7th Street, SW., Washington, DC 20590, and Federal Security Directors at various airports.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:

Present and former employees, contractor employees, consultants, and other individuals or personnel that require access to DOT facilities, information, resources or information-based systems in any element of DOT.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, photographs, receipts for DOT identification and verification media and official credentials, temporary building passes, security badges, security clearance level and type, date of clearance, clearance basis, entry on duty information, current duty assignment information, routing symbols, limited relevant portions of the background investigation date of background investigation, investigating agency and follow-up investigation data, date of birth, social security number, position title and position sensitivity, assignment to sensitive duty positions, facility access, gender, designations, automated information systems access designations, records of access authorizations granted, biometric data (fingerprint or other biometric data as determined by current standards), PKI certificates and encryption information, digital signature codes and verification data, personal information number (pin)/identification and verification media password, or identification record number and expiration date, applications for other identification needed for official duties, and other fields as dictated by the Governmental SmartCard Interoperability Standard.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 49 U.S.C. 322; 49 U.S.C. 114(d); 49 U.S.C. 106(f)(2); 49 U.S.C. 40122.

PURPOSE(S):

- To control access to DOT facilities, information or information-based systems by authenticating the identity of each person using the system; the system will not be used to monitor or track individuals or their usage habits.
- To provide a ready concentration of employee personal data to facilitate issuance, accountability, and recovery of required identification media issued to employees, contractor employees, consultants, and other individuals or personnel who require access to DOT facilities, information or information-based systems in the performance of their duties.
- To provide for universal and positive verification and control for DOT employees, contractor employees, consultants, and other individuals or personnel needed to perform their official duties.
- To control and account for DOT identification and verification media, credentials, and security badges issued to DOT employees, former employees, contractors, and other individuals who require access to DOT facilities and information or information-based systems in the performance of their DOT or other official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

- Records may be disclosed to contractors for the limited purpose of assisting the Department or one of its elements in issuing, controlling and accounting for DOT identification and

[13] For purposes only of accelerating the operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

verification media, credentials and security badges and maintaining associated databases.

• Records may be disclosed to Departmental contractors concerning their own current and former employees to facilitate the control and accountability of DOT identification and verification media, credential and security badges issued to contract employees.

• See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in an electronic database and may be on computer disks/chips, magnetic tape, and paper forms in file folders. The items of information set forth in the category of records section may be contained on an electronic computer chip or other media imbedded on the identification and verification medium of each employee, contractor, or other individual to whom the identification and verification media is issued.

RETRIEVABILITY:

Retrieval from the system is by name, social security number, date of birth, security clearance level, date of investigation, type of investigation, identification and verification media or record number, digital certificates, duty position location (POD), identification and verification media expiration or issue date, other fields as included in the Governmental SmartCard Interoperability Standard, or other category of records and can be accessed only by authorized individuals.

SAFEGUARDS:

Computers provide privacy and access limitations to records by requiring a user name and password match or equivalent safeguards such as biometrics and public key infrastructure (PKI) technology. Access to decentralized segments is similarly controlled. Only those personnel with a need to have access to the system are given user names and passwords or equivalent technology. Data are manually and/or electronically stored in a locked room with limited access.

The protection of the data/information and of the identification and verification media complies with NIST Standards; at no time will any data/information be placed on the media in a manner less secure than its original source.

RETENTION AND DISPOSAL:

Hard copy of information including applications, photographs and identification media is destroyed immediately upon termination of employment and/or expiration of surrendered ID media. Inactive electronic records pertaining to applications, photographs, and identification media is removed from the video ID system monthly. The following schedules apply: General Records Schedule (GRS) 11, item 4, Space and Maintenance Records; and GRS 20, item 3a, Electronic Records.

SYSTEM MANAGER(S) AND ADDRESS:

a. Office of Security and Administrative Management, M–40, Department of Transportation, 400 7th Street, SW., Washington, DC 20590 (for OST and all DOT agencies other than those listed below).

b. Commandant, G–O United States Coast Guard, Washington, DC 20593.

c. Director of Security and Investigations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

d. Chief, Operations and Services Division, Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as System Manager. Correspondence contesting records must include the full name and social security number of the individual concerned and documentation justifying the claim.

RECORD ACCESS PROCEDURES:

Same as Notification procedure.

CONTESTING RECORD PROCEDURES:

Same as Notification procedure.

RECORD SOURCE CATEGORIES:

Individuals about whom the record is maintained, automated personnel systems maintained by DOT or any of its elements, and background and clearance investigation systems of records maintained by the DOT or any of its elements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: September 30, 2002.

Yvonne L. Coates,

Privacy Act Coordinator.

[FR Doc. 02–25412 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 12, 2002, page 40373.

DATES: Comments must be submitted on or before November 6, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Operating Requirements: Domestic, Flag, and Supplemental Operations—Part 121.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0008.

Forms(s): FAA Form 8070–1.

Affected Public: A total of 139 air operators.

Abstract: 14 CFR part 121 prescribes the requirements governing air carrier operators. The information collected is used to determine air operators' compliance with the minimum safety standards set out in the regulation and to determine the applicants' eligibility for air operations certification. The respondents include private businesses.

Estimated Annual Burden Hours: An estimated 1,273,247 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on September 30, 2002.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 02–25472 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare Draft and Final Environmental Impact Statements

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice.

The Northwest Mountain Region, Airports Division, Federal Aviation Administration, acting as lead agency, intends to prepare Draft and Final Environmental Impact Statements (EIS) for the construction of a replacement airport at St. George, Utah.

Background

On January 30, 2001, the Federal Aviation Administration (FAA) issued a Record of Decision/Finding of No Significant Impact document for the construction of a replacement airport at St. George, Utah. On December 22, 2001, the Grand Canyon Trust filed suit against the FAA in the U.S. Circuit Court of Appeals for the District of Columbia Circuit. On May 24, 2002, the court issued it's decision on the issues. In summary, the court found that "the FAA must evaluate the cumulative impact of noise pollution on the Park as a result of construction of the proposed replacement airport in light of air traffic near and over the Park, for whatever airport, air tours near or in the Park, and the acoustical data collected by the NPS in the Park in 1995 and 1998 mentioned in comments on the draft Environmental Assessment (EA)." The court remanded the case [to the FAA] "because the record is insufficient for the court to determine whether an EIS is required".

The purpose of the Draft and Final EIS's will be to address the court's issues and any other environmental issues that have changed since issuance of the final environmental assessment in January of 2001.

Proposed Action and Alternatives

The proposed action is the construction of a replacement airport at St. George, Utah. Alternatives to be evaluated include:

a. No-Build (continue using the existing airport as is).

b. Build a replacement airport at the preferred site (which is a combination of alternatives sites 1 and 1A), and

c. Alternative sites 1, 1A, and 2 as described on pages 32–40 of the final EA.

Scoping Process

The proposed action was the subject of a Final Environmental Assessment (FEA) report prepared in January 2001. Persons wishing to review the FEA in order to better understand the proposed action or provide comments regarding environmental concerns may review the FEA at the following locations:

Federal Aviation Administration, Airports Division, ANM–600, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056.

Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, CO 80249–6361.

City of St. George, Public Works Office, 175 East 200 North, St. George, UT 84770.

Washington County Libary, St. George Branch, 50 S. Main, St. George, Utah.

In order to insure that all significant issues related to the proposed action are identified and given consideration, letters containing environmental concerns must be received by Dennis Ossenkop, 1601 Lind Ave. SW., Suite 315, Renton, WA 98055–4056 by November 14, 2002.

Release of Draft EIS

Approximate Release of Draft EIS: Unknown at this time.

Point of Contact for Information

Dennis Ossenkop, 1601 Lind Ave. SW., Suite 315, Renton, WA 98055–4056, Telephone: 425–227–2611.

Dated: September 27, 2002.

Lowell H. Johnson,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 02–25317 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In July 2002, there were 11 applications approved. Additionally, four approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

Public Agency: Asheville Regional Airport Authority, Asheville, North Carolina.

Application Number: 02–02–C–00–AVL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $4,977,794.

Earliest Charge Effective Date: October 1, 2002.

Estimated Charge Expiration Date: November 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Asheville Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Install fire alarm system.
Flight information display.
Construct runway safety area, runway 16, phase I.
Construct runway safety area, runway 16, phase II.
Rehabilitate terminal sidewalks.
Modify access road.
Construct perimeter security road.
Construct aircraft rescue and firefighting road.
Install perimeter fencing.
Construct runway safety area, runway 16, phase III.
Replace terminal roof.
Install emergency generators.
Replace chiller.
Update master plan.
Install baggage belt.
Modify loading bridge.
Construct baggage facility.
Rehabilitate runway lights.
Improve runway/taxiway safety area.
Expand baggage claim.

Expand holding room.
Install new airfield lighting vault.
Expand general aviation ramp.
Rehabilitate runway and taxiway.
Acquire passenger lift device.
Install runway lighting.
Rehabilitate taxiway lights.
Install sprinkler system.
Modify terminal.
Construct north access road.
Construct perimeter security road, phase II.
Security enhancements.
PFC administrative costs.

Brief Description of Disapproved Project: Acquire emergency response trailer.

Determination: Disapproved. The FAA has determined that the acquisition of this trailer is not a requirement of Part 139. In addition, there does not appear to be any special situation or mitigating circumstance at this airport that would meet the basic criteria for expanded eligibility of equipment to meet a particular safety requirement at this airport.

Decision Date: July 5, 2002.

FOR FURTHER INFORMATION CONTACT: Tracie D. Klejne, Atlanta Airports District Office, (404) 305–7148.

Public Agency: Metropolitan Washington Airports Authority, Alexandria, Virginia.

Application Number: 02–05–C–00–DCA.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $33,895,949.

Earliest Charge Effective Date: September 1, 2006.

Estimated Charge Expiration Date: November 1, 2007.

Class of Air Carriers Not Required to Collect PFC's: Part 135 nonscheduled/on demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Ronald Reagan Washington National Airport (DCA).

Brief Description of Projects Approved for Collection at DCA at a $4.50 PFC Level and Use at Washington Dulles International Airport:

Taxiway F.
Taxiway J. extension.

Decision date: July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Eleanor Schifflin, Eastern Region Airports Division, (718) 553–3354.

Public Agency: Milwaukee County, Milwaukee, Wisconsin.

Application Number: 02–07–C–00–MKE.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $38,715,244.

Earliest Charge Effective Date: December 1, 2011.

Estimated Charge Expiration Date: May 1, 2015.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at General Mitchell International Airport (MKE).

Brief Description of Projects Approved for Collection at MKE and Use at MKE:

C Concourse hydrant fueling system.
7R/25L edge lights.
Electrical system upgrade—airfield.
Ground run-up enclosure construction.
Corporate hangar road reconstruction.
Relight terminal roadway.
Elevator controls upgrade.
PFC administrative costs.
D concourse expansion.
Taxiway B–C.
North ticketing expansion.
Airport security improvements.
Part 150 update.
Renovate road to south maintenance shop area.
Separate taxiway circuits and add duct banks.

Brief Description of Project Approved for Collection at MKE and Use at Lawrence J. Timmerman Airport:

Rehabilitate runway and taxiway.

Brief Description of Projects Approved for Collection at MKE:

International arrivals building ramp expansion.
Outer taxiway extension.

Decision Date: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Minneapolis Airports District Office, (612) 713–4363.

Public Agency: Sacramento County Department of Airports, Sacramento, California.

Application Number: 02–07–C–00–SMF.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $11,141,350.

Earliest Charge Effective Date: November 1, 2013.

Estimated Charge Expiration date: March 1, 2014.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Closed circuit television camera and video cassette recorder.
Card access system replacement.
Taxiway A replacement.
Aircraft rescue and firefighting vehicle replacement.
Runway 16R/34L and exit taxiways rehabilitation.
Terminal A apron, phase 2.
Aircraft rescue and firefighting building remodel.
Cargo building pavement reconstruction.

Brief Description of Project Approved for Collection and Use at a $3.00 PFC Level: International arrival facility.

Decision Date: July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: City of Columbia, Missouri.

Application Number: 02–01–C–00–COU.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,363,932.

Earliest Charge Effective Date: November 1, 2002.

Estimated Charge Expiration Date: October 1, 2012.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Acquisition of rapid intervention vehicle.
Phases I and II resurfacing of general aviation apron, purchase of snowblower, and aircraft ramp and airport access road lighting.
Runway 13/31 asphalt overlay and Gate 5 relocation.
Overlay airport access road and terminal loop, construct snow removal equipment building addition, and construct taxiway C and apron underdrain.
Fence replacement, computer access gates, and standby electrical power.
Phase I air carrier apron extension and consultant services.
Phase II of air carrier apron south extension and front end loader.
Phase I of commercial apron expansion and modify Gate 9.
Rehabilitation of north cargo apron.
Master plan update.
Repair runway 2/20 pavement, remark airfield, upgrade runway 2/20 north safety area, and replace underground lighting control cables.
Phase II of commercial apron expansion.

Reimbursement for land acquisition.
Preliminary terminal study.
Environmental assessment.

Brief Description of Projects Approved for Collection:

Replacement of snow plow/spreader truck.
Cargo apron south addition.
Upgrade runway 13/31.
Preliminary terminal upgrade design.

Decision Date: July 16, 2002.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, Central Region Airports Division, (816) 329–2641.

Public Agency: County of Pitkin, Aspen, Colorado.

Application Number: 02–04–C–00–ASE.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $986,381.

Earliest Charge Effective Date: May 1, 2003.

Estimated Charge Expiration Date: August 1, 2004.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Aspen-Pitken County Airport.

Brief Description of projects Approved for Collection and Use:

Master plan.
East side infrastructure development planning and design.
Relocation/rehabilitation of north general aviation apron.
Construct of aircraft parking apron.
Replace runway lighting and install runway end identifier lights on runway 33.
Replace wildlife fence.
Installation of medium intensity approach lighting system.

Decision Date: July 18, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher J. Schaffer, Denver Airport District Office, (303) 342–1258.

Public Agency: Walker Field Airport Authority, Grand Junction, Colorado.

Application Number: 02–05–U–00–GJT.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue To Be Used in This Decision: $1,480,000.

Charge Effective Date: April 1, 2003.

Charge Expiration Date: July 1, 2007.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use: Expand terminal building boarding area/concourse/loading bridges.

Decision Date: July 24, 2002.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: City of Tallahassee, Florida.

Application Number: 02–04–C–00–TLH.

Application Type: Impose and use a PFC.

PFC Level: $4.50

Total PFC Revenue Approved in This Decision: $10,063,307.

Earliest Charge Effective Date: October 1, 2002.

Estimated Charge Expiration Date: October 1, 2007.

Class of Air Carriers Not Required To Collect PFC's: Part 135 air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Tallahassee Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Terminal second floor access.
Integrated communication system.
Airport layout plan update.
Security system upgrade.
Former landfill remediation.
Air carrier taxiway rehabilitation.
Terminal apron security fencing.
Runway 9/27 safety area improvements.
Master plan update.
Passenger loading bridges.
Terminal improvement program.
Runway 18/36 safety area improvements.
Terminal apron rehabilitation.
Taxiway J extension.
Sinkhole stabilization and taxiway repair.
Airside perimeter/service road.
Security fencing and gate improvements.
Taxiway J rehabilitation and widening.
Electrical vault upgrade.
Runway 9/27 lighting improvements.
General aviation access taxiway R construction.
Air cargo apron expansion.
Runway 18/36 shoulder improvements.
Security closed circuit television camera rehabilitation and improvements.
Terminal access road.
North apron overlay.

Brief Description of Projects Approved for Collection:

Terminal security improvements.
Crisis command/communications center.
Taxiway N rehabilitation.
Taxiway P rehabilitation.
General aviation taxiway overlays.
Interactive training system improvements.
New general aviation central apron construction.
General aviation south apron rehabilitation.
Construct taxiway X.
Terminal apron lighting improvements.
Old terminal apron rehabilitation.
Americans with Disabilities Act passenger lift.
Taxiway S extension.
Airport storm water drainage improvements.
General aviation apron lights.

Brief Description of Disapproved Project: Automated vehicle identification system.

Determination: Disapproved. The FAA has determined that this project appears to exceed known Federal security requirements. The information provided in the application was not sufficient to allow the FAA to determine that this project was eligible.

Brief Description of Withdrawn Project: Instrument landing system/global positioning system installation.

Determination: This project was withdrawn by the public agency by letter dated May 13, 2002. Therefore, the FAA did not rule on this project in this record.

Decision Date: July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Bill Farris, Orlando Airports District Office, (407) 812–6331.

Public Agency: Kenton County Airport Board, Covington, Kentucky.

Application Number: 02–08–C–00–CVG.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $259,789,000.

Earliest Charge Effective Date: August 1, 2003.

Estimated Charge Expiration Date: July 1, 2008.

Classes of Air Carriers Not Required To Collect PFC's:

(1) Part 121 supplemental operators which operate at the airport without an operating agreement with the public agency and enplane less than 1,500 passengers per year; and (2) Part 135 on-demand air taxis, both fixed wing and rotary.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class

accounts for less than 1 percent of the total annual enplanements at Cincinnati/Northern Kentucky International Airport.

Brief Description of Project Approved for Collection and Use at a $4.50 PFC Level: Runway 17/35 (future 18R/36L)

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Deicing system enhancements—storm water treatment system, Gunpowder Creek.
Concourse C improvements—flight information display system replacement.
Terminal area blast analysis.
Airport security master plan.
Extend runway 9/27 phase 2—1,000 feet.

Brief Description of Project Partially Approved for Collection and Use at a $3.00 PFC Level: Noise compatibility program measures.

Determination: Partially approved. The portion of the project described as "ANAV Flight Procedures Development and Ground Station Design" is not Airport Improvement Program (AIP) eligible in accordance with paragraph 557(a) of FAA Order 5100.38B, AIP Handbook (May 31, 2002).

Brief Description of Withdrawn Project: KR 212 interchange improvements.

Determination: This project was withdrawn by the public agency by letter dated July 19, 2002. Therefore, the FAA did not rule on this project in this record.

Decision Date: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Jerry O. Bowers, Memphis Airports District Office, (901) 544–3495.

Public Agency: Port of Bellingham, Bellingham, Washington.

Application Number: 02–05–C–00–BLI.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $930,653.

Earliest Charge Effective Date: June 1, 2003.

Estimated Charge Expiration Date: January 1, 2007.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled air taxi/commercial operators utilizing aircraft having a seating capacity of less than 20 passengers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Bellingham International Airport.

Brief Description of Projects Approved for Collection and Use:

Extension of runway 16/34, new high intensity runway lighting system, extension of taxiway lighting, wetlands mitigation.
Airport sign system.
Master Plan.
Construct and rehabilitate aircraft apron.
Acquisition of snow removal equipment.
Construct snow removal equipment building.
Upgrades on security gates, installation of wildlife fencing.
Reconstruct and rehabilitate taxiway D.
Construct/reconstruct terminal apron.
Construct deicing facility.
Acquisition of passenger lift device.
Master plan.
Acquire aircraft rescue and firefighting vehicle.

Decision Date: July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Marquette County, Gwinn, Michigan.

Application Number: 02–06–C–00–SAW.

Application Type: Impose and use a PFC.

PCF Level: $4.50.

Total PCF Revenue Approved in this Decision: $227,558.

Earliest Charge Effective Date: December 1, 2002.

Estimated Charge Expiration Date: May 1, 2004.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Construct north access road.
Taxiway rehabilitation.
Passenger boarding bridges.
Snow removal equipment.
Runway pavement rehabilitation.
Taxiway signage.
Refurbish beacon.

Decision Date: July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Arlene B. Draper, Detroit Airports District Office, (734) 487–7282.

Amendments to PFC Approvals:

Amendment No. City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–01–C–02–BZN, Bozeman, MT	06/28/02	$4,827,700	$5,277,700	01/01/03	05/01/03
93–01–C–03–PLB, Plattsburgh, NY	07/08/02	123,980	121,502	02/01/99	11/01/96
01–03–C–01–LIT, Little Rock, AR	07/17/02	15,986,750	15,986,750	05/01/04	05/01/04
00–03–C–02–MSO, Missoula, MT	07/17/02	1,500,000	2,500,000	02/01/04	02/01/05

Issued in Washington, DC on September 30, 2002.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 02–25473 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 00–03–C–00–PWM To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Portland International Jetport, Portland, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comments on the application to impose and use the revenue from a PFC at Portland International Jetport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 6, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Priscilla Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jeff Schultes, Airport Manager, Portland International Jetport at the following address: 1001 Westbrook Street, Portland, Maine 04102.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Portland under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (718) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from PFC at Portland International Jetport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 3, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Portland was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 29, 2002.

The following is a brief overview of the application.

Proposed charge effective date: August 1, 2003.

Proposed charge expiration date: June 1, 2010.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $14,214,483.

Brief description of proposed project(s):

Impose only projects:

Baggage Claim Expansion and Improvements Impose and use projects:

Terminal Canopy Completion
Passenger Boarding Bridge Acquisition
Passenger Boarding Bridge—Regional Jet Modifications
Runway 11/29 Upgrade
Taxiway Improvements
Terminal Roadway System Expansion
Snow Removal Equipment Acquisition
PFC Program Administration Costs

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: air taxi/commercial operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Portland International Jetport.

Issued in Burlington, Massachusetts on September 25, 2002.

Bradley A. Davis,

Acting Manager, Airports Division, New England Region.

[FR Doc. 02–25474 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Olmsted County, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the proposed reconstruction of Trunk Highway (TH) 14 and bridge replacement over the Dakota, Minnesota & Eastern (DM&E) Railroad line, from the end of the four-lane roadway on the east side of Rochester through Eyota, approximately 8 miles, in Olmsted County, Minnesota.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Craig Lenz, Project Manager, Minnesota Department of Transportation—District 6, 2900 48th Street NW., Rochester, Minnesota 55901, Telephone (507) 285–7353; (651) 296–9930 TTY.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation (Mn/DOT), will prepare an EIS on a proposal to reconstruct TH 14, including replacement of the bridge over the DM&E Railroad line, from the end of the four-lane roadway on the east side of the City of Rochester through the City of Eyota, approximately 8 miles, in Olmsted County, Minnesota. The project proposes to replace a seventy-three year old railroad bridge and improve the geometry of the bridge approaches and the roadway segment in order to address identified safety, operational, structural, and geometric deficiencies.

TH 14 is a major east-west highway in southern Minnesota and plays a major role in the movement of people and goods. This roadway serves a variety of travel demands including mobility to serve commuter, commercial, and recreational traffic and access to homes, farms, and commercial retail businesses. The purpose of the project is to address present and future safety, operations, structural and geometric deficiencies along this segment of TH 14. Identified problems include high crash rates; lack of passing zones; several accesses to the roadway; geometric deficiencies in the roadway design including sharp curves, narrow shoulders and minimal vertical and horizontal clearance under the bridge; and a decrease to unacceptable levels of service in the future if no improvements are made.

The EIS will evaluate the social, economic, transportation and environmental impacts of alternatives, including: No-Build and Build Alternatives. Each of the three proposed Build Alternatives will include both a four-lane suburban and a four-lane rural roadway design and all of the Build Alternatives assume a roadway overpass of the DM&E Railroad. The Build alternatives include: *Alternative 1: Existing Alignment*—Central Bridge Location (over the railroad), *Alternative 2: North Alignment*—West Bridge Location (over the railroad), and *Alternative 3: South Alignment*—East Bridge Location (over the railroad). The "Trunk Highway 14 Scoping Document/Draft Scoping Decision Document" will be published in October 2002. A press release will be published to inform the public of the document's availability. Copies of the scoping document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the EIS. A thirty-day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. Interagency and public scoping meetings will also be held during the comment period. The Interagency and public scoping and information meetings have been scheduled for Wednesday, December 4, 2002 from 2 to 3:30 p.m. at the Eyota City Hall, 38 West South Front Street, and 4:30 to 7 p.m. to the Dover-Eyota High School, 615 South Avenue, respectively. Public notice will be given for these meetings.

A Draft EIS will be prepared based on the outcome of the scoping process. The Draft EIS will be available for agency

and public review and comment. In addition, a public hearing will be held following completion of the Draft EIS. Public Notice will be given for the time and place of the public hearing on the Draft EIS.

Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 27, 2002.

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration, St. Paul, Minnesota

[FR Doc. 02–25345 Filed 10–4–02; 8:45 am]

BILLING CODE 34910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council on Monday, October 14, 2002, in the McCormick Room at the Chicago Hilton. The meeting runs from 10 a.m.–2 p.m. A luncheon starts at 1 p.m.

The General Session includes the following items: (1) Welcome; (2) Introductions and Antitrust Statement; (3) Approval of Minutes (From the Last Meeting); (4) Approval of Program Plan Homeland Security Supplement and Advice Letter; (5) Approval of IVI Advice Letter; (6) Review Leadership Steering Committee Appointments; (7) Discussion of Areas of Responsibility (coverage)—Forums and Programs; (8) Review Two-Day Summit Agenda and Discussion of Logistics; (9) Discussion of Outcome Strategies: Special Interest Groups, Management of Projects, Member Communication, and Other Items; (10) Other Business; (11) Luncheon; (12) Adjourn.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of ITS AMERICA will meet on Monday, October 14, 2002 from 10 a.m.–2 p.m.

ADDRESSES: The Hilton Chicago, 720 S. Michigan Ave., Chicago, IL 60605. Phone: (312) 922–4400 and Fax (312) 922–5240.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW., Suite 800, Washington, DC 20024. Persons needing further information or who request to speak at this meeting should contact Debbie M. Busch at ITS AMERICA by telephone at (202) 484–2904 or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, DC 20590, (202) 366–9536. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: October 2, 2002.

Jeffrey Paniati,

Acting Associate Administrator, Office of Operations, Federal Highway Administration, and Acting Director, ITS Joint Program Office, Department of Transportation.

[FR Doc. 02–25413 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Port Authority Trans-Hudson Corporation

[Docket Number FRA–2002–12936]

The Port Authority Trans-Hudson Corporation (PATH) seeks a temporary waiver of compliance until December 31, 2003, for one locomotive from the requirements of the *Railroad Safety Appliance Safety Standards*, 49 CFR 231.30(a)(2), which requires all locomotives used in switching service built prior to April 1, 1977, be equipped with four switching steps. The locomotive for which the waiver is requested is a 42-ton General Electric diesel switcher style locomotive without switching steps. PATH is leasing the locomotive for use by a contractor. They also state that the locomotive was refurbished in April 2002, and that it is physically impossible to modify the locomotive to incorporate switching steps.

If the request is granted, PATH will utilize the locomotive during the reconstruction of their system damaged during the terrorist attack on the World Trade Center on September 11, 2001. The locomotive would be utilized to transport materials and equipment to and from a construction site at a speed not to exceed 15 mph. PATH needs the waiver because the locomotive would travel for approximately one mile over PATH's main line, from PATH's "C" yard in Jersey City, New Jersey to Exchange Place Station. The construction site extends west of Exchange Place and is off limits to any passenger service.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2002–12936) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are

available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, DC, on September 25, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–25406 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The Notice of Proposed Rule was published on December 19, 2001, [66 FR 65536–65567].

DATES: Comments must be submitted on or before November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph Scott 202–366–8525 and Roger Kurrus 202–366–2750 at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS–22),. 400 Seventh Street, SW., Room 5307, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

(1) *Title:* Tire Identification and Recordkeeping.

OMB Number: 2127—0503.

Type of Request: Revision as a result of a notice of proposed rulemaking.

Abstract: Each tire manufacturer must collect and maintain records of the names and address of the first purchasers of new tires. All tire dealers and distributors must record the names and addresses of retail purchasers of new tires and identification number(s) of the tires sold. A specific form is provided to tire dealers and distributors by tire manufacturers for recording this information. The completed forms returned to the tire manufacturers where they are to remain for three years after the date received by the manufacturer. Additionally, motor vehicle manufacturers are required to record the names and addresses of the first purchasers of new motor vehicles, together with the identification numbers of the tires on the new vehicles.

Affected Public: Businesses and other-for-profit institutions (tire manufacturers, dealers, and distributors).

Estimated Total Annual Burden: 271,750.

(2) *Title:* Consolidated Justification of Owner's Manual Requirements for Motor Vehicles and Equipment.

OMB Number: 2127—0541.

Type of Request: Revision as a result of a notice of proposed rulemaking .

Abstract: 49 U.S.C. 30117 authorizes the Secretary to require that manufacturers provide technical information, as for example information directed for publication in a vehicle owner's manual, related to the performance and safety specified in the Federal motor vehicle safety standards for the purposes of educating the consumer and providing safeguards against improper use. Using this authority, the agency issued the following FMVSS and regulations, specifying that certain safety precautions regarding items of motor vehicle equipment appear in the vehicle owner's manual to aid the agency in achieving many of it's safety goals.

Affected Public: Individuals, households, business, other-for-profit, not-for-profit, farms, Federal Government and State, Local, or Tribal Government.

Estimated Total Annual Burden: 1771.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on October 2, 2002.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 02–25464 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period was published on February 28, 2002 (67 FR 9353–9354).

DATES: Comments must be submitted on or before November 6, 2002.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Alan Block at the National Highway Traffic Safety Administration, Office of Research and Technology (NTI–130), 202–366–6401, 400 Seventh Street, SW., Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 2002 Motor Vehicle Occupant Safety Survey.

OMB Number: 2127–New.

Type of Request: New information collection requirement.

Abstract: The Motor Vehicle Occupant Safety Survey (MVOSS) is conducted biennially for the National Highway Traffic Safety Administration to collect data on occupant protection issues. It is a national telephone survey composed of two questionnaires, each administered to a randomly selected

sample of approximately 6,000 persons age sixteen and older. One questionnaire focuses on attitudes, knowledge, and self-reported behavior regarding seat belts, while the other questionnaire focuses on child restraint use. Additional topics addressed by the survey include air bags, emergency medical services, and crash injury experience. The proposed survey is the fifth in the MVOSS series. The 2002 Motor Vehicle Occupant Safety Survey will collect data on topics included in the preceding surveys in order to monitor change over time in the use of occupant protection devices and in attitudes and knowledge related to motor vehicle occupant safety. The survey will also include new questions that address emergent issues in occupant protection.

Affected Public: Randomly selected members of the general public aged sixteen and older in telephone households.

Estimated Total Annual Burden: 4,000 hours.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: October 2, 2002.

Marilena Amoni,

Associate Administrator for Program Development and Delivery.

[FR Doc. 02–25465 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13384]

Notice of Receipt of Petition for Decision that Nonconforming 2001 and 2002 Ducati 996R Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2001 and 2002 Ducati 996R motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2001 and 2002 Ducati 996R motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 6, 2002

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Superbike Racing, Inc. of Atlanta, Georgia ("SRI") (Registered Importer 1–286) has petitioned NHTSA to decide whether non-U.S. certified 2001 and 2002 Ducati 996R motorcycles are eligible for importation into the United States. The vehicles that SRI believes are substantially similar are 2001 and 2002 Ducati 996R motorcycles that were manufactured for importation into and sale in the United States and certified by their manufacturer, Ducati Motor Holding S.p.A. of Bologna, Italy, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2001 and 2002 Ducati 996R motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

SRI submitted information with its petition intended to demonstrate that non-U.S. certified 2001 and 2002 Ducati 996R motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2001 and 2002 Ducati 996R motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 108 *Lamps, Reflective Devices and Associated Equipment*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 120 *Tire Selection and Rims for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 1, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–25409 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13382]

Notice of Receipt of Petition for Decision That Nonconforming 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is November 6, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

DC Imports, Inc. of Deerfield Beach, Florida ("DCI") (Registered Importer 0–242) has petitioned NHTSA to decide whether non-U.S. certified 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles are eligible for importation into the United States. The vehicles that DCI believes are substantially similar are 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles that were manufactured for importation into and sale in the United States and certified by their manufacturer, Bimota Motor S.p.A. of Rimini, Italy, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

DCI submitted information with its petition intended to demonstrate that non-U.S. certified 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, and 205 *Glazing Materials*.

The petitioner also states that vehicle identification number (VIN) plates that meet the requirements of 49 CFR part 565 have been affixed to non-U.S. certified 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 106 *Brake Hoses*: Installation of a flexible conduit/brake hose that is certified to meet the standard.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies incorporating headlamps that are certified to meet the standard; (b) installation of a cable that will allow the headlamp to be steady-burning when the ignition is in the "on" position.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars*: installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays*: (a) Installation of a U.S. model speedometer calibrated in miles per hour; (b) installation of passenger footrests that fold rearward and upward when not in use.

The petitioner states that when the vehicle has been brought into conformity with all applicable Federal motor vehicle safety standards, a certification label that meets the requirements of 49 CFR part 567 will be affixed to the front of the motorcycle frame.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 1, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–25410 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–13355; Notice 1]

Bridgestone/Firestone; Receipt of Application for Decision of Inconsequential Noncompliance

Bridgestone/Firestone has determined that approximately 4,700 P235/75R15 Dayton Timberline A/T tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Bridgestone/Firestone has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The Sao Paulo, Brazil plant produced these noncompliant tires during the week 40 through and including week 49 of the year 2001. The subject tires were mismarked as "Extra Load." The actual markings on the subject tires are:

Max load 920 Kg (2028 lbs.) at 300 kPa (44 psi) max press, Extra Load. The correct markings should be:

Max load 920 Kg (2028 lbs.) at 300 kPa (44 psi) max press.

Bridgestone/Firestone believes that the noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. The subject tires with the exception of the "Extra Load" marking meet all the requirements of 49 CFR Section 571.109.

2. The subject tires were tested by Bridgestone/Firestone and meet the requirements of high speed, endurance, strength, and bead unseat as defined in 49 CFR Section 571.109 for the "Extra Load" designation.

3. The subject tires as shipped from the manufacturing plant were identified by tire labels and article number as standard load. Thus, the potential for sale of these tires as "Extra Load" is very small.

Bridgestone/Firestone submits that mismarking of the subject tires should be deemed inconsequential to motor vehicle safety.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: November 6, 2002.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on October 1, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–25408 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–13356; Notice 1]

Cooper Tire & Rubber Company; Receipt of Application for Decision of Inconsequential Noncompliance

Cooper Tire & Rubber Company (Cooper) has determined that approximately 956 Cooper Lifeliner Touring SLE tires in the 185/70R14 size do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Cooper has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The Texarkana, Arkansas, tire manufacturing facility had one mold involved in production during the twelfth and thirteenth production weeks of 2002, in which the plant identification code was incorrectly stated. The subject tires were molded "DOT VT". The correct molding for the Texarkana, Arkansas plant identification code should have been DOT UT". The incorrect plant identification code was removed from the mold and the correct plant identification code inserted.

Cooper states that the incorrect plant identification code on each tire does not present "a safety-related defect" (sic). Their tire registration system will be programmed to register these tires with the incorrect plant identification code. In the event of a recall, this same system will identify the tire registrations with the incorrect plant identification code. The involved tires produced from these molds comply with all other requirements of 49 CFR 571.109.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 6, 2002.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: October 1, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–25407 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34242 (Sub–No. 1)]

Union Pacific Railroad Company-Trackage Rights Exemption-The Burlington Northern and Santa Fe Railway Co.

AGENCY: Surface Transportation Board, DOT.

ACTION: Petition for exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 34242 [1] to permit the trackage rights to expire on or about November 23, 2002, in accordance with the agreement of the parties.

DATES: This exemption will be effective on November 6, 2002. Petitions to stay must be filed by October 17, 2002. Petitions to reopen must be filed by October 28, 2002.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34242 (Sub-No. 1) must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative: Robert T. Opal, 1416 Dodge Street, Room 830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā 2 Dā Legal Copy Service, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.]

Board decisions and notices are available on our website at "*http://www.stb.dot.gov.*"

Decided: September 26, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–25272 Filed 10–4–02; 8:45 am]

BILLING CODE 4915–00–P

[1] On August 14, 2002, the Union Pacific Railroad Company (UP) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by The Burlington Northern and Santa Fe Railway Company (BNSF) to grant temporary overhead trackage rights to UP over BNSF's rail lines between BNSF milepost 460.0 near Sweetwater, TX, and BNSF milepost 655.7 near Clovis, NM, a distance of approximately 221.2 miles. *See Union Pacific Railroad Company-Trackage Rights Exemption-The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34242 (STB served Sept. 3, 2002). The trackage rights operations under the exemption were scheduled to be consummated on August 22, 2002.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 25, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 6, 2002 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0057.
Form Number: ATF F 487–B (5170.7).
Type of Review: Extension.
Title: Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Taxpaid.
Description: ATF F 487–B is used to document the shipment of taxpaid Puerto Rican articles into the United States. The form is verified by Puerto Rican and U.S. Treasury Officials to certify that products are either taxpaid or deferred under appropriate bond. Serves as a method of protection of the revenue.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 20.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 100 hours.

OMB Number: 1512–0190.
Form Number: ATF F 5100.11.
Type of Review: Extension.
Title: Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.
Description: ATF F 5100.11 is completed by exporters to report the withdrawal of spirits, denatured spirits, and wines from internal revenue bonded premises, without payment of tax for direct exportation, transfer to a foreign trade zone, customs manufacturer's bonded warehouse or customs bonded warehouse or for use as supplies on vessels or aircraft.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 300.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 6,000 hours.

OMB Number: 1512–0195.
Form Number: ATF F 5110.25.
Type of Review: Extension.
Title: Application for Operating Permit Under 26 U.S.C. 5171(d).
Description: ATF F 5110.25 is completed by proprietors of distilled spirits plants who engage in certain specified types of activities. ATF district office personnel use the information on the form to identify the applicant, the location of the business and the types of activities to be conducted.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 80.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 20 hours.

OMB Number: 1512–0503.
Recordkeeping Requirement ID Number: ATF REC 5120/3.
Type of Review: Extension.
Title: Marks on Wine Containers.
Description: ATF requires that wine on wine premises be identified by statements of information on labels or contained in marks. ATF uses this information to validate the receipts of excise tax revenue by the Federal government. Consumers are provided with adequate identifying information.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 1,560.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Jacqueline White, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–25358 Filed 10–4–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 25, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 6, 2002 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0001.
Form Number: ATF F 1370.3 and ATF F 1370.2.
Type of Review: Extension.
Title: Requisition for Forms or Publications (1370.3); and Requisition for Firearms Explosives Forms (1370.2).
Description: Forms are used by the general public to request or order forms or publications from the ATF Distribution Center. These forms notify ATF of the quantity required by the respondent and provide a guide as to annual usage of ATF forms and publications by the general public.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 30,000.
Estimated Burden Hours Per Respondent: 1 hour, 3 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,725 hours.

OMB Number: 1512–0117.
Form Number: ATF F 5620.7 (2147).
Type of Review: Extension.
Title: Claim for Drawback of Tax on Cigars, Cigarettes, Cigarette Papers and Cigarette Tubes.
Description: ATF F 5620.7 documents taxpaid cigarettes, cigars, cigarette papers and tubes that were exported to a foreign country, Puerto Rico, or Virgin Islands. This form is used by taxpayer to claim drawback for tax paid on exported products.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 288.
Estimated Burden Hours Per Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 144 hours.

OMB Number: 1512–0472.
Form Number: ATF F 5630.5 and ATF 5630.7.
Type of Review: Extension.
Title: Special Tax Registration and Return Alcohol and Tobacco (5630.5); and Special Tax Registration and Return National Firearms Act (NFA)(5630.7).
Description: Excise taxes, alcohol, tobacco and firearms taxes, 26 U.S.C. Chapters 51, 52, and 53 authorize the collection of an occupational tax from persons engaging in certain alcohol, tobacco or firearms businesses. ATF F 5630.5 and/or ATF F 5630.7 is used to both compute and report the tax, and as an application for registry as required by statute. Upon receipt of the tax a special tax stamp is issued.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Respondents: 90,700.
Estimated Burden Hours Per Respondent: 48 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 72,778 hours.
Clearance Officer: Jacqueline White, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,
Departmental Reports Management Officer.
[FR Doc. 02–25359 Filed 10–4–02; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 25, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 6, 2002 to be assured of consideration.

Departmental Offices/International Portfolio Investment Data Reporting Systems

OMB Number: 1505–0024.
Form Number: International Capital Forms CQ–1 and CQ–2.
Type of Review: Revision.
Title: Treasury International Capital (TIC) Form CQ–1: Report of Financial Liabilities to, and Financial Claims on, Foreign Residents; and Form CQ–2: Report of Commercial Liabilities to, and Commercial Claims on, Unaffiliated Foreign Residents.
Description: Forms CQ–1 and CQ–2 are required by law to collect timely information on international portfolio capital movements, including data on financial and commercial liabilities to, and claims on, unaffiliated foreigners and certain affiliated foreigners held by non-banking enterprises in the U.S. This information is necessary for compiling the U.S. balance of payments accounts and the U.S. international investment position, and for formulating U.S. international financial and monetary policies.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 400.
Estimated Burden Hours Per Respondent: 4 hours.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 6,800 hours.
Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.
OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building.

Mary A. Able,
Departmental Reports Management Officer.
[FR Doc. 02–25360 Filed 10–4–02; 8:45 am]
BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 30, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 6, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1518.
Form Number: IRS Form 5498–MSA.
Type of Review: Extension.
Title: MSA or Medicare+Choice MSA Information.
Description: Form 5498–MSA is used to report contributions to a medical savings account as set forth in section 220(h).
Respondents: Business or other for-profit.
Estimated Number of Respondents: 16,442.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 6,988 hours.
Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,
Departmental Reports Management Officer.
[FR Doc. 02–25361 Filed 10–4–02; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

Performance Review Board—Appointment of Members

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: General notice.

SUMMARY: This notice announces the appointment of the members of the U.S. Customs Service Performance Review Boards (PRB's) in accordance with 5 U.S.C. 4314(c)(4). The purpose of the PRB's is to review performance appraisals for senior executives and to make recommendations to the appointing authority regarding proposed performance ratings, bonuses, and other related personnel actions.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Robert M. Smith, Assistant Commissioner, Human Resources Management, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Room 2.4–A, Washington, DC 20229, Telephone (202) 927–1250.

Background: There are two PRB's in the U.S. Customs Service.

Performance Review Board 1

The purpose of this Board is to review the performance appraisals and proposed related personnel actions for senior executives who report directly to the Deputy Commissioner or the Commissioner of Customs. The members are:

Donnie A. Carter, Deputy Assistant Director, Recruitment and Hiring, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

John C. Dooher, Senior Associate Director, Washington Office, Federal Law Enforcement Training Center, Department of the Treasury.

Carla F. Kidwell, Associate Director for Technology, Bureau of Engraving and Printing, Department of the Treasury.

Kenneth R. Papaj, Deputy Commissioner, Financial Management Service, Department of the Treasury.

Carlton D. Spriggs, Deputy Director, U.S. Secret Service, Department of the Treasury.

Performance Review Board 2

The purpose of this Board is to review the performance appraisals and proposed related personnel actions for all senior executives except those who report directly to the Deputy Commissioner or the Commissioner of Customs. The members are:

Assistant Commissioners:
Jayson P. Ahern, Field Operations.
Marjorie L. Budd, Training and Development.
S.W. Hall, Information and Technology/CIO.
William A. Keefer, Internal Affairs.
Dennis H. Murphy, Public Affairs.
Nicole R. Nason, Congressional Affairs.
Susan J. Rabern, Finance/CFO.
Donald K. Shruhan, International Affairs.
Michael T. Schmitz, Regulations and Rulings.
Robert M. Smith, Human Resources Management.
Deborah J. Spero, Strategic Trade.
John C. Varrone, Investigations.

Dated: September 13, 2002.

Robert C. Bonner,
Commissioner of Customs.
[FR Doc. 02–25381 Filed 10–4–02; 8:45 am]
BILLING CODE 4820–02–P

Federal Register

Monday,
October 7, 2002

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 575

Consumer Information Regulations; Federal Motor Vehicle Safety Standards; Rollover Resistance; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. NHTSA–2001–9663; Notice 2]

RIN 2127–AI81

Consumer Information Regulations; Federal Motor Vehicle Safety Standards; Rollover Resistance

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Transportation Recall Enhancement, Accountability, and Documentation Act of 2000 requires NHTSA to develop a dynamic test on rollovers by motor vehicles for the purposes of a consumer information program, to carry out a program of conducting such tests, and, as these tests are being developed, to conduct a rulemaking to determine how best to disseminate test results to the public. In response, this document discusses the results of NHTSA's evaluation of numerous driving maneuver tests for the dynamic rollover consumer information program that Congress mandated for the American public beginning in the 2003 model year. This document also proposes several alternative methods for using the dynamic rollover test results in the agency's consumer information for vehicle rollover resistance.

DATES: *Comment Date:* Comments must be received by November 21, 2002.

ADDRESSES: All comments should refer to Docket No. NHTSA–2001–9663; Notice 2 and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 10 a.m. to 5 p.m. Monday through Friday. For public comments and other information related to previous notices on this subject, please refer to DOT Docket Nos. NHTSA–2000–6859 and 8298 also available on the Web at *http://dms.gov/search*, and NHTSA Docket No. 91–68; Notice 3, NHTSA Docket, Room 5111, 400 Seventh Street, SW., Washington, DC 20590. The NHTSA Docket hours are from 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For technical questions you may contact Patrick Boyd, NPS–23, Office of Safety Performance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 and Dr. Riley Garrott, NRD–22, NHTSA Vehicle Research and Test Center, P.O. Box 37, East Liberty, OH 43319. Mr. Boyd can be reached by phone at (202) 366–6346 or by facsimile at (202) 493–2739. Dr. Garrott can be reached by phone at (937) 666–4511 or by facsimile at (937) 666–3590.

SUPPLEMENTARY INFORMATION:

I. Executive Summary
II. Safety Problem
III. Background
IV. Comments to the Previous Notice
V. National Academy of Sciences Rollover Rating Study
VI. Choice of Maneuvers for Dynamic Rollover Resistance Tests
VII. Proposed Rollover Resistance Rating Alternatives
VIII. Intent to Evaluate Centrifuge Test
IX. Handling Tests
X. Assessment of Costs and Benefits
XI. Rulemaking Analyses and Notices
XII. Submission of Comments
Appendix I. Summary of Evaluation Test Results

I. Executive Summary

Section 12 of the "Transportation Recall, Enhancement, Accountability and Documentation (TREAD) Act of November 2000" directs the Secretary to "develop a dynamic test on rollovers by motor vehicles for a consumer information program; and carry out a program conducting such tests. As the Secretary develops a [rollover] test, the Secretary shall conduct a rulemaking to determine how best to disseminate test results to the public." The rulemaking must be carried out by November 1, 2002.

On July 3, 2001, NHTSA published a Request for Comments notice (66 FR 35179) discussing a variety of dynamic rollover tests that we had chosen to evaluate in our research program and what we believed were their potential advantages and disadvantages. It also discussed other possible approaches we considered but decided not to pursue. The driving maneuver tests to be evaluated fit into two broad categories: closed-loop maneuvers in which all test vehicles attempt to follow the same path; and open-loop maneuvers in which all test vehicles are given equivalent steering inputs. Other potential tests using a centrifuge or computational simulation were discussed but not included in our test plan. This notice discusses the comments we received and the results of our test program to date.

The TREAD Act calls for a rulemaking to determine how best to disseminate rollover test results to the public, and this Notice of Proposed Rulemaking proposes alternatives for using the dynamic tests results in consumer information on the rollover resistance of new vehicles. The resulting rollover resistance ratings will be part of NHTSA's New Car Assessment Program (NCAP). The tests will be carried out and reported to the public by NHTSA. This program places no regulatory requirements on vehicle manufacturers. Past NCAP ratings have been developed using a procedure of public notice and comment, but there was no legal requirement to do so since no regulatory requirements were imposed on any party except NHTSA. Because the dissemination of information will pose no regulatory burden on manufacturers, we provided a brief statement on the potential benefits of this program and no regulatory evaluation.

While the TREAD Act calls for a rulemaking to determine how best to disseminate the rollover test results, the development of the dynamic rollover test is simply the responsibility of the Secretary. Based on NHTSA's recent research to evaluate rollover test maneuvers, the National Academy of Sciences' study of rollover ratings, comments to the July 3, 2000 notice, extensive consultations with experts from the vehicle industry, consumer groups and academia, and NHTSA's previous research in 1997–8, the agency has chosen the J-turn and the Fishhook Maneuver as dynamic rollover tests. They are the limit maneuver tests that NHTSA found to have the highest levels of objectivity, repeatability and discriminatory capability. Vehicles will be tested in two load conditions using the J-turn at up to 60 mph and the Fishhook maneuver at up to 50 mph. Both maneuvers will be conducted with an automated steering controller, and the reverse steer of the Fishhook Maneuver will be timed to coincide with the maximum roll angle to create an objective "worst case" for all vehicles regardless of differences in resonant roll frequency. The light load condition will be the weight of the test driver and instruments, approximating a vehicle with a driver and one front seat passenger. The heavy load condition will add additional 175 lb manikins in all rear seat positions.

The National Academy of Sciences recommended that dynamic maneuver tests be used to supplement rather than replace Static Stability Factor (the basis of our present rollover resistance ratings) in consumer information on rollover resistance. This notice proposes two alternatives for consumer information ratings on vehicle rollover resistance that include both dynamic maneuver test results and Static Stability Factor. The first alternative is to include the dynamic test results as vehicle variables along with SSF in a statistical model of rollover risk. This is conceptually similar to the present

ratings in which a statistical model is used to distinguish between the effects of vehicle variables and demographic and road use variables recorded for state crash data on a large number of single vehicle crashes. The National Academy of Sciences demonstrated the tight confidence limits that can be achieved using a logistic regression model for this purpose. Such a model would be used to predict the rollover rate in single vehicle crashes for a vehicle considering both its dynamic maneuver test performance and its Static Stability Factor for an average driver population (as a common basis of comparison).

Under the first alternative, the "star rating" of a vehicle would be based on the rollover rate in single vehicle crashes predicted for it by a statistical model. The format would be the same as for the present rollover ratings (for example, one star for a predicted rollover rate in single vehicle crashes greater than 40 percent and five stars for a predicted rollover rate less than 10 percent). The present rollover ratings are based on a linear regression model using state crash reports of 241,000 single vehicle crashes of 100 make/model vehicles. We are proposing to replace the current rollover risk model with one that uses the performance of the vehicle in dynamic maneuver tests as well as its SSF to predict rollover risk. The performance of a vehicle in dynamic maneuver tests is simply whether it tipped-up or not in each of the four maneuver/load combinations. The lowest entry speed of maneuvers that caused tip-up will also be used if it improves the predictive fit of the model. In order to compute a logistic model of rollover risk, it is necessary to have large number of state crash reports of single vehicle crashes to establish rollover rates of vehicles for which the dynamic maneuver test performance and SSF are known. The agency is performing dynamic maneuver tests on about 25 of the 100 make/model vehicles for which we have SSF measurements and substantial state crash data. We believe this approach will ensure that the assigned NCAP ratings for rollover resistance correlate to the maximum extent possible with real-world performance. However, since the agency has not finished testing these 25 vehicles, we cannot yet say what the actual coefficients of the model relating dynamic maneuver test performance and SSF to predicted rollover rate will be. We are asking for comments on the validity of this concept only in this notice.

The second alternative is to have separate ratings for Static Stability Factor and for dynamic maneuver test performance. Dynamic maneuver tests directly represent on-road untripped rollovers. The dynamic maneuver test performance would be used to rate resistance to untripped rollovers in a qualitative scale, such as A for no tip-ups, B for tip-up in one maneuver, C for tip-ups in two maneuvers, etc. Here again the results of ongoing dynamic testing of vehicles with established rollover rates would guide the establishment of a qualitative scale. A statistical risk model is not possible for untripped rollover crashes, because they appear to be relatively rare events and they cannot be reliably identified in state crash reports. The current Static Stability Factor based system would be used to rate resistance to tripped rollovers. Again we are asking for comments on the usefulness and validity of this concept in this notice. Until our testing of the 25 vehicles is finished, we will not know what particular NCAP rating will be assigned to a make/model under either of these two alternatives.

II. Safety Problem

Rollover crashes are complex events that reflect the interaction of driver, road, vehicle, and environmental factors. We can describe the relationship between these factors and the risk of rollover using information from the agency's crash data programs. We limit our discussion here to light vehicles, which consist of (1) passenger cars and (2) multipurpose passenger vehicles and trucks under 4,536 kilograms (10,000 pounds) gross vehicle weight rating.[1]

According to the 2000 Fatality Analysis Reporting System (FARS), 9,882 people were killed as occupants in light vehicle rollover crashes, which represents 31 percent of the occupants killed that year in crashes. Of those, 8,146 were killed in single-vehicle rollover crashes. Seventy-eight percent of the people who died in single-vehicle rollover crashes were not using a seat belt, and 65 percent were partially or completely ejected from the vehicle (including 53 percent who were completely ejected). FARS shows that 53 percent of light vehicle occupant fatalities in single-vehicle crashes involved a rollover event.

Using data from the 1996–2000 National Automotive Sampling System (NASS) Crashworthiness Data System (CDS), we estimate that 274,000 light vehicles were towed from a police-reported rollover crash each year (on average), and that 31,000 occupants of these vehicles were seriously injured (defined as an Abbreviated Injury Scale (AIS) rating of at least AIS 3).[2] Of these 274,000 light vehicle rollover crashes, 221,000 were single-vehicle crashes. (The present rollover resistance ratings estimate the risk of rollover if a vehicle is involved in a single-vehicle crash.) Sixty-two percent of those people who suffered a serious injury in single-vehicle towaway rollover crashes were not using a seat belt, and 48 percent were partially or completely ejected (including 41 percent who were completely ejected). Estimates from NASS CDS indicate that 81 percent of towaway rollovers were single-vehicle crashes, and that 84 percent (186,000) of the single-vehicle rollover crashes occurred after the vehicle left the roadway. An audit of 1992–96 NASS CDS data showed that about 95 percent of rollovers in single-vehicle crashes were tripped by mechanisms such as curbs, soft soil, pot holes, guard rails, and wheel rims digging into the pavement, rather than by tire/road interface friction as in the case of untripped rollover events.

According to the 1996–2000 NASS General Estimates System (GES) data, 61,000 occupants annually received injuries rated as K or A on the police KABCO injury scale in rollover crashes. (The police KABCO scale calls A injuries "incapacitating," but their actual severity depends on local reporting practice. An "incapacitating" injury may mean that the injury was visible to the reporting officer or that the officer called for medical assistance. A K injury is fatal.) The data indicate that 212,000 single-vehicle rollover crashes resulted in 50,000 K or A injuries. Fifty-one percent of those with K or A injury in single-vehicle rollover crashes were not using a seat belt, and 23 percent were partially or completely ejected from the vehicle (including 20 percent who were completely ejected). Estimates from NASS GES indicate that 13 percent of light vehicles in police-reported single-vehicle crashes rolled over. The estimated risk of rollover differs by light vehicle type: 10 percent of cars and 10 percent of vans in police-reported single-vehicle crashes rolled over, compared to 18 percent of pickup trucks and 27 percent of SUVs. The percent of all police reported crashes for each vehicle type that resulted in rollover was 1.7 percent for cars, 2.0 percent for vans, 3.7 percent for pickup trucks and 5.4 percent for SUVs as estimated by NASS GES.

[1] For brevity, we use the term "light trucks" in this document to refer to vans, minivans, sport utility vehicles (SUVs), and pickup trucks under 4,536 kilograms (10,000 pounds) gross vehicle weight rating. NHTSA has also used the term "ALTVs" to refer to the same vehicles.

[2] A broken hip is an example of an AIS 3 injury.

III. Background

Section 12 of the "Transportation Recall, Enhancement, Accountability and Documentation (TREAD) Act of November 2000" directs the Secretary to "develop a dynamic test on rollovers by motor vehicles for a consumer information program; and carry out a program conducting such tests. As the Secretary develops a [rollover] test, the Secretary shall conduct a rulemaking to determine how best to disseminate test results to the public." The rulemaking must be carried out by November 1, 2002.

On July 3, 2001, NHTSA published a Request for Comments notice (66 FR 35179) discussing a variety of dynamic rollover tests that we had chosen to evaluate in our research program and what we believed were their potential advantages and disadvantages. It also discussed other possible approaches we considered but decided not to pursue. The driving maneuver tests to be evaluated fit into two broad categories: closed-loop maneuvers in which all test vehicles attempt to follow the same path; and open-loop maneuvers in which all test vehicles are given equivalent steering inputs. Other potential tests using a centrifuge or computational simulation were discussed but not included in our test plan. This notice discusses the comments we received and the results of our test program to date.

The TREAD Act calls for a rulemaking to determine how best to disseminate rollover test results to the public, and this Notice of Proposed Rulemaking proposes several alternatives for using the dynamic tests results in consumer information on the rollover resistance of new vehicles. The resulting rollover resistance ratings will be part of NHTSA's New Car Assessment Program (NCAP). The tests will be carried out and reported to the public by NHTSA. This program places no regulatory requirements on vehicle manufacturers. Past NCAP ratings have been developed using a procedure of public notice and comment, but there was no legal requirement to do so since no requirements were imposed on any party except NHTSA.

NHTSA's NCAP program has been publishing comparative consumer information on frontal crashworthiness of new vehicles since 1979, on side crashworthiness since 1997, and on rollover resistance since January 2001. The present rollover resistance ratings are based on the Static Stability Factor (SSF) which is the ratio of one half the track width to the center of gravity (c.g.) height. (see *http://www.nhtsa.dot.gov/hot/rollover/* for ratings and explanatory information).

SSF was chosen over vehicle maneuver tests in the present ratings system because it represents the first order factors that determine vehicle rollover resistance in the 95 percent of rollovers that are tripped by impacts with curbs, soft soil, pot holes, guard rails, *etc.* or by wheel rims digging into the pavement. In contrast, untripped rollovers are those in which tire/road interface friction is the only external force acting on a vehicle that rolls over. Driving maneuver tests directly represent on-road untripped rollover crashes which are about 5 percent of the total, and test performance can be improved by vehicle changes that may not improve resistance to tripped rollovers. Other reasons for selecting the SSF measure are: driving maneuver test results are greatly influenced by SSF; the SSF is highly correlated with actual crash statistics; it can be measured accurately and inexpensively and explained to consumers; and changes in vehicle design to improve SSF are unlikely to degrade other safety attributes.

Vehicle manufacturers generally oppose the present rollover resistance ratings because they believe that SSF is too simple since it does not include the effects of suspension deflections, tire traction and electronic stability control (ESC) and because they believe that the influence of vehicle factors on rollover risk is too slight to warrant consumer information ratings for rollover resistance. In the conference report dated October 23, 2000 of the FY2001 DOT Appropriation Act, Congress permitted NHTSA to move forward with the rollover rating proposal and directed the agency to fund a National Academy of Sciences study on vehicle rollover ratings. The study topics are "whether the static stability factor is a scientifically valid measurement that presents practical, useful information to the public including a comparison of the static stability factor test versus a test with rollover metrics based on dynamic driving conditions that may induce rollover events." The National Academy's report was completed and made available in pre-publication form on February 21, 2002. Section IV discusses the findings and recommendations of the study.

IV. Comments to the Previous Notice

In its July 3, 2001 Request for Comments notice (66 FR 35179), NHTSA solicited comment on the development of a dynamic test for vehicle rollover resistance and identified a number of tests it planned to evaluate. The notice posed the following five sets of questions for comments. Most commenters either supported one of the tests being evaluated, suggested another test, or described elements the commenter believed to be important for any test chosen for rollover resistance. In this way, most commenters responded to the substance of question 1. While only a few commenters responded specifically to the other questions, parts of the general comments of other commenters are discussed in the context of the questions.

Question 1: NHTSA has decided to devote its available time and resources under the TREAD Act to develop a dynamic test for rollover based on driving maneuver tests. Is this the best approach to satisfy the intent of Congress in the time allotted? Are there additional maneuvers that NHTSA should be evaluating? Which maneuver or combination of maneuvers do you believe is the best for rollover rating? Are these other approaches well enough developed and validated that they could be implemented 18 months from now?

Comments: In answer to this question many commenters either voiced a preference for one of the maneuvers in the test plan NHTSA announced in its July RFC Notice or made specific suggestions for other tests. Daimler-Chrysler (D–C), Continental-Teves, BMW, Mitsubishi and Volkswagen (VW) supported the use of the ISO 3388 Part 2 double lane change test (developed by VDA, the German vehicle manufacturers' association) as the dynamic rollover test. VW suggested that the ratings should include three components: (a) SSF for general overall rating of static stability, (b) the ISO 3388 Part 2 test with minimum entry of 60 kph without 2 wheel lift, and (c) a dynamic handling test that gives credit to ESC.

Several commenters supported the variations of the fishhook test. Toyota suggested a fishhook test with fixed timing using the LAR (lateral acceleration at rollover [tip-up]) criterion as test for untripped rollover. Toyota's recommendation also suggested using the ISO 3388 PART 2 test as a stability/controllability test, with entry speed and peak to peak yaw rate as the measured criteria. Toyota also offered a hypothetical star rating breakdown for LAR as a rollover rating and a star rating chart relating entry speed and peak to peak yaw rate in the ISO 3388 PART 2 test as a separate controllability rating. TRW stated that rollover test maneuvers should excite worst case roll dynamics, but that some conditions on the vehicle path should be observed to keep handling tradeoffs in check. It expressed the opinion that a fishhook test with steering based on roll rate best approached the stated goal but that future developments in simulation could also be useful for rollover resistance ratings. Honda recommended a fishhook maneuver with a protocol for optimizing to the worst case timing for each vehicle as a test for untripped rollover resistance combined with the basic quasi-static centrifuge test to measure tripped rollover resistance. Nissan had previously suggested a fishhook test and its own optimization protocol, but in its comment to this notice, Nissan changed its position stating that the fishhook may be too severe for consumer information and that it has no data correlating it to real world accidents. It suggested that NHTSA should test for handling properties instead of rollover resistance.

NHTSA's July RFC Notice announced a research plan that excluded the centrifuge test on the basis that it was not deemed sufficiently "dynamic" for the requirements of the TREAD Act and for concern that a vehicle optimized for the centrifuge test may have more oversteer than the manufacturer would otherwise choose. Nevertheless, a number of commenters were in support of rollover resistance tests that included centrifuge testing. Ervin and Winkler of UMTRI suggested a number of possible test modes using a centrifuge including a basic quasi-static mode which adds suspension roll and shear effects to SSF, tether release modes which add roll inertial forces somewhat analogous to J-turn and fishhook maneuvers, and a curb trip mode with a sliding table. They also suggested that a driving maneuver handling test for yaw stability be performed in addition to the centrifuge test. As noted above, a quasi-static centrifuge test for tripped rollover was part of Honda's recommendation. CU also suggested a centrifuge (or SSF as an alternative) as part of recommended suite of tests also including a dynamic maneuver test with steering reversal (like the fishhook) and handling tests for maximum lateral acceleration and yaw stability. Advocates commented that driving maneuver tests by themselves are not sufficient for rollover resistance tests because they only define untripped rollover resistance, and Advocates recommend that UMTRI's centrifuge tests should be investigated because they can be applied to both tripped and untripped rollover resistance.

GM recommended that the centrifuge test be substituted for Side Pull Ratio or SSF in the Stability Margin concept it had recommended to NHTSA in comments to previous notices on rollover resistance ratings. It also supplied information addressing NHTSA's concern that the centrifuge test could reward undesirable changes in suspension roll stiffness distribution. The issue first arose in comments from Ford on a 1994 NHTSA proposal for rollover consumer information based on Tilt Table Ratio. Ford stated that a vehicle's score in a tilt table test is greatest if both the front and rear tires lift simultaneously when the table is inclined at the minimum angle for two wheel lift, and that the manufacturer could achieve the optimum score by stiffening the rear suspension relative to the front. If the manufacturer did so, the result would be a vehicle with less understeer as the trade-off for a better Tilt Table Ratio. The same optimization principal would apply to centrifuge tests. GM's comment included curves showing the point of optimization of Side Pull Ratio (theoretically the same as the centrifuge measurement) and its sensitivity to the proportion of total roll stiffness provided by the front suspension for a typical SUV and a typical car. GM compared the curves to the suspension characteristics of these production vehicles and found that (a) the suspension roll stiffnesses of the production vehicles were close to the optimized condition as designed with a very small sensitivity to further suspension changes and (b) the suspension changes to obtain the negligible improvement in rollover test score involved a relative stiffening at the front that would increase rather than decrease the understeer. GM concluded that manufacturers would have little to gain by suspension tuning for centrifuge test scores and that the tuning would be at least as likely to increase understeer as to decrease it. We believe that Ford's comment was correct in 1994, but NHTSA has recently reviewed data showing a trend toward less understeer in SUVs of more recent design. GM's dismissal of the issue may reflect more accurately the design of today's new vehicles.

Toyota and GM were the only commenters to suggest how the results of their rollover and handling tests could be expressed in ratings. GM suggested that the following conditions be used to define "good rollover resistance for light-duty vehicles": (a) quasi-static centrifuge test tip-up threshold of at least 0.9g; (b) maximum lateral acceleration in a circular driving maneuver of at least 0.6g; and (c) a stability margin (a–b) at least 0.2g or 1.5/wheelbase [in meters] squared. GM estimated that a centrifuge measurement of 0.9g would correspond to a SSF of 1.06. However, we would estimate that centrifuge measurement as corresponding closer to a SSF of 1.00, based on comparisons with tilt table tests with an allowance for the vertical load error inherent with the tilt table.

Based on its stability margin concept of good rollover resistance, GM suggested the following "star rating" system. A vehicle passing all three conditions for good rollover resistance would be rated with two stars. Failing any one of the conditions would reduce its rating to one star. Bonus stars above the two star level would be awarded for a centrifuge test measurement 1.0g or better, a maximum lateral acceleration measurement of 0.7g or better, or a stability margin 0.1 or more above the minimum (0.2g or 1.5/wheelbase [in meters] squared). A vehicle satisfying all of these higher conditions would receive a five star rating. GM also suggested that NHTSA consider a symbol other than a star for rollover resistance ratings to differentiate them from frontal and side crashworthiness ratings. As previously mentioned, Toyota offered a hypothetical star rating breakdown for LAR in a Fishhook as a rollover rating.

Previously, Ford had suggested a proprietary test method (Path Corrected Limit Lane Change (PCLLC)) involving a series of double lane change maneuvers controlled by a human driver and a mathematical technique for correcting the measurements of vehicle acceleration and wheel force to those expected if the vehicle perfectly adheres to a desired common path for vehicle comparisons. NHTSA agreed to evaluate this method but keep the details of the analytical technique confidential. Appendix I of this notice discusses the results of PCLLC testing using the same vehicles tested in other maneuver tests.

In its comment to the July notice, Ford announced that the same test measurements could be made using a newly developed advanced path following steering controller to replace the human driver and the proprietary mathematical correction technique. Ford expected both implementations of the protocol to produce the same measurements. But it changed its recommendation to the path following steering controller because the face validity (realistic appearance) of the test would be enhanced by having the advanced steering controller actually drive the vehicles through nominally identical paths rather than rely on corrections to the unavoidably variable paths taken by skilled human test drivers. Ford's comment was made after

NHTSA had run the PCLLC maneuvers in a cooperative effort with Ford to evaluate that test method. However, we believe that the results of the tests of our vehicles using the PCLLC mathematical corrections would be representative of same maneuver tests accomplished with a path following steering controller.

Ford's path following steering controller is not the same as the automated steering controller NHTSA used to obtain repeatable steering inputs for open-loop maneuvers. Ford's steering controller is designed to drive different vehicles in the same repeatable path although the steering inputs to guide the various vehicles along the same path may be quite different. It uses a real-time computer simulation of the vehicle steering responses and a differential GPS position signal as feedback signals for closed-loop control.

Unlike the other maneuver tests in NHTSA's evaluation, Ford's maneuvers are not intended to produce wheel lift or loss of control or invoke ESC operation. Ford suggests four lane change maneuvers (like those shown in Figure 9) varying in offset and length, each producing a maximum lateral acceleration of 0.7g at a single test speed of 45 mph, but varying in fundamental lateral acceleration frequency from 0.29 Hz to 0.40 Hz. The scoring metric is the maximum dynamic weight transfer measured as a 400 ms moving average. It refers to the percent reduction in vertical load for the two wheels on the side of the vehicle approaching tip-up. At tip-up, the dynamic weight transfer is 100 percent, but dynamic weight transfer in the range of 50 to 80 percent would be typical in the Ford maneuver. A lower percent weight transfer score indicates a vehicle with higher rollover resistance. The tests are performed with the vehicle loaded to the gross vehicle weight rating and the rear axle load at the rear axle weight rating.

Intrinsic advantages of this test method are its insensitivity to changes in pavement and tire friction because the tests are performed at lateral force levels below the friction limit and its continuous (as opposed to binary, tip-up or no tip-up) performance metric with a comparative score for all vehicles. Intrinsic disadvantages are its compression of vehicle differences as a result of tests restricted to a smaller range of lateral acceleration, the need for very accurate and repeatable vertical wheel force measurements to discriminate the compressed vehicle differences, and the question of whether non-limit dynamic tests can predict the comparative dynamic behavior of vehicles in limit maneuvers. Ford believes that non-limit results can be projected up to the limit, but it is certainly possible that anomalies in suspension behavior may occur only at the limit.

Suzuki commented that driving maneuver tests should not be used as NHTSA's dynamic rollover test because they measure only resistance to untripped rollover, are unrealistic driving maneuvers and have many practical problems. Suzuki argued that a dynamic tripped rollover test should be used instead. In November 2001, Suzuki and its contractor Exponent made a suggestion how a "dynamic tripped rollover test" could be conducted. The test would use a braked sled with the vehicle placed transversely on the sled adjacent to tripping curb. From a constant speed of 25 mph, the sled would be braked at a relatively constant deceleration which produces a steady lateral acceleration on the test vehicle. Repeated runs of the sled at incrementally higher levels of deceleration would be made until the vehicle lifts and rolls at least 20 degrees to a position restrained by safety straps. Such a test imposes a step increase of lateral acceleration on the vehicle and measures the result of weight transfer due to the static rigid body (SSF) properties of the vehicle, to the c.g. movement due to quasi-static body roll, and to the dynamic effects of roll inertia and suspension damping. This test is very similar to the "straight tethered" centrifuge test suggested by UMTRI in which the steady lateral acceleration imposed on the vehicle by the centrifuge is resisted by a tether until the tether is released and the vehicle experiences a step increase of lateral acceleration. Both are also analogous to a J-turn test with an extremely high level of tire adhesion.

Question 2: How should NHTSA address the problem of long term and short term variations in pavement friction in conducting comparative driving maneuver tests of vehicle rollover resistance for a continuing program of consumer information?

Comments: Toyota, D–C, and Ford addressed the question explicitly. Toyota had suggested a fishhook maneuver using the scoring metric LAR (lateral acceleration at roll). It believes that LAR is not very sensitive to changes in pavement friction, but if the pavement friction is too low it will become impossible for the vehicle to achieve sufficient lateral acceleration in the maneuver to reach LAR. Toyota also suggested a double lane change handling maneuver in which entry speed and peak to peak yaw rate were scoring metrics that it considers sensitive to pavement friction. It suggests strict limits on the course parameters to qualify the handling tests as valid, giving as an example the surface temperature limits (35C ± 10C) used by the Japanese government NCAP protocol for braking tests.

D–C suggested that a standard pavement friction monitoring trailer using a standard ASTM tire be used to define the nominal surface friction of a test track, and that at least five braking tests be conducted using the same anti-lock equipped vehicle with standard tires to qualify the surface before a test session. Limits for braking test measurements, temperature and wind velocity would be established to qualify the surface. VW made a similar recommendation of defined limits on temperature, humidity, wind speed and surface friction (presumably using a pavement friction monitoring trailer with a standard ASTM tire).

Ford explained that its test protocol for the double lane change maneuvers performed either by a path-following robot or by mathematical path-correction of driver-controlled tests calls for comparing the side to side load transfer at a standard 0.7g lateral acceleration. Since almost all vehicles can achieve this level of lateral acceleration on ordinary dry pavement despite expected fluctuations in surface friction, the test method is not sensitive to ordinary pavement friction fluctuations.

Likewise, fluctuations in pavement friction are not an issue for the centrifuge test suggested by UMTRI and the sled test suggested by Exponent/Suzuki because both tests use a curb-like structure rather than pavement friction to initiate an overturning moment.

Question 3: Some ESC systems presently have two functions. One is yaw stability which uses one or more brakes to keep the vehicle headed in the right direction in a limit maneuver, and the other is simple brake intervention in excess of the braking required for yaw stability. It is expected that the presence of a brake intervention function in ESC will have a large effect on the rating of vehicles because the average speed through a given test maneuver for vehicles having this function will be much less than for vehicles without it (even if equipped with ESC for yaw stability) under the usual test protocols of coasting through maneuvers and using the entry speed as the test speed. Is the value given to the brake intervention function of ESC as opposed to the yaw stability function by potential rollover rating tests commensurate with its safety value to consumers? Please provide all the data and reasoning that support your view. Should NHTSA measure the vehicle speed at the completion of the maneuver as well as vehicle speed at entry?

Comments: Toyota commented that automatic braking in excess of what is required for yaw stability control to further lower the speed is a good strategy to mitigate harm in an emergency, but it recognizes NHTSA's concern that dynamic rollover tests could give the same credit to less sophisticated systems as to yaw control. Toyota believes that its suggestion of a separate handling test to accompany the dynamic rollover test would reward controllability and show the advantage of yaw control systems.

D–C commented that ESC should operate during rollover maneuver tests with entry speed being the only criterion for the stringency of the maneuver. The exit speed should not be considered.[3] Continental-Teves also commented that only the entry speed is an appropriate measure because it best defines the obstacle avoidance situation facing the driver.

TRW commented that ESC should be rewarded if it enhances roll dynamic behavior, and it also stated that "Differential Braking Roll Prevention" should be rewarded by the agency's rollover maneuver tests. It did not define the term "Differential Braking Roll Prevention", but we understand it to mean an automatic braking system in which selected brakes are applied for the purpose of reducing the lateral force generating capability of the selected tires rather than to augment yaw stability or to simply slow down.

Ford also opposed using the average speed through a given test as a criterion and pointed out that its recommended test does not use speed as a comparative metric at all. It also stated that its test is unlikely to invoke ESC but would measure the effect of active stabilizer bars and electronically controlled shocks.

Several other manufacturers share Ford's view that the operation of ESC is not essential to rollover resistance tests. GM suggested laboratory tests of rollover resistance using a centrifuge in which ESC would not operate. It stated that "the rollover resistance of the underlying vehicle structure and suspension is a more important parameter than the possible use of ESC to mask poor rollover resistance of the foundation vehicle." Similarly, the recommendations from Suzuki and Exponent for a tripped rollover test do not involve the use of ESC. Honda suggested that if a vehicle is equipped with an on/off switch for ESC, it should be tested with the switch in the off position.

One of the agency's reasons for posing this question was that ESC systems with a component of ordinary four wheel braking above the differential braking for yaw control are performing a braking action that the driver is also likely to do in an emergency. However, the usual test protocol for the maneuver tests being evaluated requires the driver to coast rather than brake. Therefore, there was a question whether the potential advantage of vehicles with automatic braking tied to ESC would be unrealistically amplified by a test protocol that would prevent driver braking in circumstances where actual drivers would be likely to brake. Our concern over this theoretical problem has been reduced by our observations during the recent maneuver test research that vehicles tip up early in rollovers maneuvers minimizing the effect of automatic braking.

Question 4: If open-loop (defined steering input) maneuvers are used to determine whether a vehicle is susceptible to two wheel lift as a result of severe steering actions, superficial changes that reduce tire traction or otherwise reduce vehicle handling (but prevent wheel lift) would be rewarded the same as more fundamental or costly improvements. The same is true of closed loop (path following) maneuvers that use wheel lift as the sole criterion. Should measures of vehicle handling be reported so that consumers can be aware of possible trade-offs. What indicators of vehicles handling would be appropriate to measure, and how should this consumer information be reported?

Comments: Many commenters recommended handling tests either in addition to rollover resistance maneuver tests or instead of rollover resistance maneuver tests. Nissan had earlier recommended a fishhook maneuver test for rollover resistance and had proposed a method of timing the steering reversal to achieve maximum severity for each test vehicle. However, in its comments to the July notice, Nissan recommended that NHTSA measure handling rather than rollover resistance on the basis that the fishhook test may be too severe for the purposes of consumer information and that Nissan had no data regarding the correlation of fishhook test performance to real-world crashes. It suggested a steady state lateral acceleration test and a lateral transient response test. D–C addressed the question directly by stating that its recommended ISO 3388 PART 2 test does not give incentives for negative trade-offs but rather encourages optimized cornering capability and "limit condition performance" by giving lower ratings for "bad handling". In its recommendation of the ISO 3388 PART 2 test, Continental-Teves actually described it as a handling test.

The combination of a rollover test and a separate handling test was recommended by many commenters. Toyota suggested that a closed loop stability and controllability test should be combined with an open loop rollover resistance test to deal with the trade-off issue for rollover tests. It suggested using the ISO 3388 PART 2 test as a handling test with both entry speed and peak-to-peak yaw rate as performance criteria. The peak-to-peak yaw rate would reflect on the yaw stability of the vehicle. UMTRI suggested the centrifuge test for a rollover resistance but recommended adding a driving maneuver test to characterize yaw controllability. GM also recommended the centrifuge test, but suggested combining its results with a driving test of steady state maximum lateral acceleration to create a stability margin and set a lower limit for handling. In addition to static and dynamic rollover resistance tests, CU recommended a steady state lateral acceleration test on a skip pad and "track-type tests to assess the vehicle's controllability, response and grip." VW also suggested static and dynamic rollover resistance tests , but called for a handling test that "would give positive credit to ESP [ESC in generic parlance], since experience in Germany appears to substantiate the real world benefits of ESP. It did suggest a specific test, but tests of yaw stability would be expected to measure an aspect of handling benefited by ESC operation.

Question 5: What criteria should NHTSA use to select the best vehicle maneuver test for rollover resistance? Should the maneuver that has the greatest chance of producing two wheel lift in susceptible vehicles be chosen regardless of its resemblance to driving situations? Is it more important that the maneuver resemble an emergency maneuver that consumers can visualize? How important is objectivity and repeatability?

Comments: One issue is the potential conflict between the ability of a dynamic rollover test to produce tip-up in vulnerable vehicles (severity) and its resemblance to a driving maneuver consumers can imagine doing (face validity). Toyota commented that it

[3] NHTSA notes that if the stringency of a rollover maneuver test was determined by averaging the entry and exit speeds, a test in which the vehicle performed automatic braking would be considered less stringent than one in which the vehicle entered at the same speed and coasted through at a higher speed.

views severity as the more important property for a rollover resistance test and face validity as the more important property for a handling test. Ford and D–C took the opposite position. Ford stated that extreme maneuvers that cause two wheel lift of some vehicles on a paved road surface are unrelated to the vast majority of crashes. D–C said that resemblance to emergency maneuvers is more important than determining "artificial conditions" under which a particular vehicle is likely to roll over.

There were other comments about the general issue of criteria for selecting a rollover test. Continental-Teves stated that "a dynamic test for vehicle rollover rating should assess whether the vehicle system (driver and vehicle) is capable of keeping the vehicle on the road" which is consistent with the view that the ISO 3388 PART 2 test is more of a handling test than a rollover test. Advocates disagreed with NHTSA's conclusion that the TREAD Act called for a driving maneuver test as a rollover test, and suggested that UMTRI's ideas for a centrifuge test should be investigated. IIHS stated that "although some of the test maneuvers may have considerably greater consumer face validity, the ultimate decision as to which maneuvers to use should rest on which provide the best correlation with real-world crash risk."

Commenter's Recommended Approaches

D–C, Mitsubishi, VW, BMW and Continental-Teves recommended the ISO 3388 PART 2 closed-loop tight double lane change test as the best dynamic rollover test, but also described it as a handling test.

Toyota, Honda, CU, and TRW recommended Fishhook tests optimized in various ways to present the worst-case timing to each vehicle as the best dynamic rollover test. Nissan had recommended the Fishhook earlier but decided that the Fishhook test may be too severe for consumer information, and recommended handling tests instead of a rollover test.

UMTRI, GM, Advocates, CU and Honda recommended a centrifuge test as at least part of the rollover rating despite NHTSA's elimination of it from the research plan announced in July 2001.

Honda, CU, and VW suggested the combination of a rollover maneuver test and the centrifuge test or SSF for rollover ratings.

Toyota, UMTRI, Nissan, VW and Ford recommend a separate handling test distinct from the rollover rating with particular emphasis on yaw stability and ESC.

Suzuki and Ford recommended tests other than those discussed in the July 2001 Notice. Suzuki recommended a dynamic tripped rollover test such as the sled test described by Exponent. Ford recommended using a new path following steering controller instead of the PCLLC mathematical path correction technique it previously recommended, but it continued to recommend the maneuvers and performance metric used in the PCLLC.

NHTSA notes that although the Alliance criticized SSF for not measuring the effect of ESC, the tests recommended by Ford and GM do not measure the effect of ESC. Also, Honda recommended testing with ESC turned off if an on/off switch is provided.

V. National Academy of Sciences Study

In the conference report dated October 23, 2000 of the FY 2001 DOT Appropriation Act, Congress directed the agency to fund a National Academy of Sciences study on vehicle rollover ratings. The study topics were "whether the static stability factor is a scientifically valid measurement that presents practical, useful information to the public including a comparison of the static stability factor test versus a test with rollover metrics based on dynamic driving conditions that may induce rollover events." The National Academy's report was completed and made publicly available on February 21, 2002.

The National Academy of Sciences made a number of findings and recommendations concerning NHTSA's present ratings of rollover resistance that we view as guidance for our efforts under the TREAD Act to improve the rating system.

Finding 1: Through a rigid-body model, SSF relates a vehicle's track width, T, and center of gravity height, H, to a clearly defined level of the sustained lateral acceleration that will result in the vehicle's rolling over. The rigid-body model is based on the laws of physics and captures important vehicle characteristics related to rollover.

Finding 2: Analysis of crash data reveals that, for higher-risk scenarios, SSF correlates significantly with a vehicle's involvement in single-vehicle rollovers, although driver behavior and driving environment also contribute. For these scenarios, the statistical trends in crash data and the underlying physics of rollover provide consistent insight: an increase in SSF reduces the likelihood of rollover.

Finding 3: Metrics derived from dynamic testing are needed to complement static measures, such as SSF, by providing information about vehicle handling characteristics that are important in determining whether a driver can avoid conditions leading to rollover.

The first three findings help resolve some very important questions facing NHTSA regarding the implementation of the TREAD Act to improve the rollover rating system. Namely, is SSF a scientifically valid measure of rollover resistance and should a dynamic rollover test replace SSF? The National Academy confirmed that SSF is a scientifically valid measure of rollover resistance for which the underlying physics and real-world crash data are consistent in the conclusion that an increase in SSF reduces the likelihood of rollover. It also found that dynamic tests should complement static measures, such as SSF, rather than replace them in consumer information on rollover resistance.

The National Academy's report describes a rollover crash as an event having three phases: A phase in which the driver is in control of the vehicle, a transition phase in which loss of control develops, and a phase in which the vehicle is out of control. The report gives SSF (along with the terrain) as the dominant determinants of rollover in the final, out of control phase, of a crash leading to rollover. It is in the previous transition phase of the crash that other vehicle properties reflected in the ideal dynamic test can potentially influence whether the crash enters the final phase in which only the geometric properties of the vehicle matter.

In its presentation to NHTSA of the findings and recommendations, the NAS study committee clarified that it envisions dynamic tests as limit maneuvers where loss of control and actual on-road vehicle tip-up can be expected for vulnerable vehicles. The NAS study panel also expressed a preference for combining static and dynamic vehicle information in a single rollover resistance rating, but it did not offer explicit suggestions for accomplishing the combination or conveying the rating to the consumer.

The next series of findings involve the statistical relationship between SSF and rollover rate that NHTSA uses to interpret the rollover resistance ratings.

Finding 4: NHTSA's implementation of an exponential statistical model lacks the confidence levels needed to permit discrimination among vehicles within a vehicle class with regard to differences in rollover risk.

Finding 5: The relationship between rollover risk and SSF can be estimated accurately with available crash data and software using a logit model. For the analysis of rollover crash data, this model is more appropriate than an exponential model.

Finding 6: The approximation of the rollover curve with five discrete levels—corresponding to the five rating categories—is coarse and does not adequately convey the information provided by the available crash data, particularly at lower SSF values where the rollover curve is relatively steep.

NHTSA calculated what it believed was an accurate trend line between the rollover rate in single vehicle crashes and SSF using data from over 221,000 single vehicle crashes of 100 vehicle make/model/generations representing the range of SSFs and vehicle classes (cars, vans, pickup trucks and SUVs). It determined the average rollover rate for each of the 100 vehicles, corrected the rates for differences in demographic and road use variables (driver age, gender, alcohol use, road and weather conditions, etc) and performed a linear regression between SSF and the logarithm of the corrected average rollover rate of each vehicle. The NAS report refers to this approach as the exponential model because it creates an exponential regression line between SSF and rollover rate. NHTSA chose this approach because the exponential form of the regression line fits the rollover rate data well, and linear regression computes the R^2 goodness of fit statistic that is familiar to many scientific readers who are not professional statisticians. However, the standard statistical technique for determining the confidence limits of the regression line (which estimate how well the line would be replicated with another sample of crash data for the same vehicles) only considers a data set of 518 points. The 518 data points are the rollover rates in each of six states for those vehicles in the 100 make/model population for which more than 25 single vehicle crashes were reported. Consequently, the 95th percentile confidence limits computed for the exponential line are much larger than what would be expected for a data set of 221,000 points. This is the basis for Finding Number 4. Since each of the 518 data points on average represents 486 crashes, it stands to reason that the actual reproducibility of the line is much better than that computed on the basis of only 518 points. As the NAS study notes, the standard method of computing confidence limits for linear regression is the wrong method for our regression line, but it offered no other method of computing the confidence limits of our present model.

In Finding Number 5, the National Academy offered an alternative solution to the confidence limits issue. It recommended that the logit model be used in place of the exponential model (linear regression on the logarithm of rollover rate). The logit model operates on the 221,000 crash data samples individually rather than as 518 averages. Consequently, the confidence limits are extremely narrow as would be expected for a regression line representing a huge database. However, the change to logit model produces another problem. Each model incorporates an implicit assumption about the form of the regression line. We chose the exponential form because it appeared to follow the locus of data points. The form of the line produced by logit model in our application is closer to a straight line than to an exponential line. Consequently, it does not follow the locus of the raw data points as well. It appears to underestimate the rollover rate of vehicles at the low end of the SSF range by a substantial margin (36% versus about 45% @ SSF=1.00). The NAS study acknowledged this shortcoming and gives the example of a nonparametric-based rollover curve it calculated on a subset of NHTSA data that represents the low end of the SSF range much better than the logit curve. We are investigating non-parametric models and logit models using various transformations of SSF to develop a model combining the demonstrated tight confidence limits of the logit model with the more accurate estimate of rollover risk of our exponential model.

For the interpretation of vehicle measurements for consumer information on rollover risk, NAS concentrated exclusively on using statistical models relating measurements, such as SSF, to rollover risk in a single vehicle crash. Finding 5 concerns the choice of model within this methodology. Finding 6 suggests that a five interval system loses some of the power of the data to discriminate rollover risk between vehicles. The committee goes on to recommend that the agency look at a greater number of intervals or even a continuous risk scale.

Finding 7: A gap exists between recommended practices for the development of safety information and NHTSA's current process for identifying and meeting consumer needs for such information. In particular:

- The focus group studies used to develop the star rating system were limited in scope.
- The agency has not undertaken empirical studies to evaluate consumers' use of the rollover resistance rating system in making vehicle safety judgments or purchase decisions.

Focus group testing is the most appropriate tool we can use within our budget and time constraints. As mentioned in the response to Recommendation 3, below, we plan to use interviewing in conjunction with focus group testing to design second-tier information to be used by consumers who want more information than the star ratings. The agency has not undertaken empirical studies to evaluate consumer's use of the rollover rating system because the program was just initiated for the 2001 model year. Such a study would provide useful feedback for the development of additional consumer rollover information. However some history of use by the public needs to be acquired before the current system can be evaluated.

Recommendation 1: NHTSA should vigorously pursue its ongoing research on driving maneuver tests for rollover resistance, mandated under the TREAD Act, with the objective of developing one or more dynamic tests that can be used to assess transient vehicle behavior leading to rollover.

This notice describes the results of test program that is part of NHTSA's pursuit of the requirements of the TREAD Act to develop dynamic tests for rollover. We believe that the limit maneuver tests we are developing will provide the evaluation of the transient vehicle behavior that the NAS committee has recommended as a complement to the information from static measures. We also trying to develop tests of vehicle controllability to give consumers some information on the relative difficulty of keeping the vehicle on the road away from tripping mechanisms in the event of an emergency maneuver.

Recommendation 2: In the longer term, NHTSA should develop revised consumer information on rollover that incorporates the results of one or more dynamic tests on transient vehicle behavior to complement the information from static measures, such as SSF.

NHTSA will evaluate possible changes in its present consumer information on rollover resistance, based on SSF, as we develop the protocol for dynamic testing for rollover required by the TREAD Act. Part of our research planned for March to November 2002 will be to investigate the best way to present both static and dynamic information to consumers.

Recommendation 3: NHTSA should investigate alternative options for communicating information to the public on SSF and its relationship to rollover. In developing revised consumer information, NHTSA should:

- Use a logit model as a starting point for analysis of the relationship between rollover risk and SSF.
- Consider a higher-resolution representation of the relationship between rollover risk and SSF than is provided by the current five-star rating system.
- Continue to investigate presentation metrics other than stars.
- Provide consumers with more information placing rollover risk in the broader context of motor vehicle safety.

NHTSA is considering changing to a new model in conjunction with the incorporation of dynamic test results into the rollover resistance rating program. While the NAS prefers the logit model because it has tighter confidence bounds than the linear model we used, the logit model underestimates the risk of rollover for low-SSF vehicles. To attempt to overcome the drawbacks of both our original method and the logit model, while keeping tight confidence bounds, we will investigate the use of other statistical models to better estimate rollover risk in future model years at the same time that we improve our model to include dynamic test results.

The NAS committee stated that it believed that NHTSA had documented the relationship between SSF and rollover risk in single-vehicle crashes so well that we were short-changing the public by reducing this information to five star-rating levels.[4] The NAS committee recommended that we provide the public with additional rating levels in order to allow the public to better differentiate rollover risk between vehicles. The focus groups we conducted before implementing the current program indicated that consumers would prefer the five-star rating system. This star rating method is also consistent with the other parts of NCAP (frontal and side crash ratings). However, we will explore the use of greater differentiation of the data as well as alternative presentation formats in future consumer research. We will change our presentation of the second-level detailed information as soon as possible. We already provide the actual SSF number for each vehicle in NCAP in addition to the star rating, for those consumers who want more detailed information on the vehicles. This hierarchical approach was recommended in the 1996 NAS study, "Shopping for Safety." We are considering refining this level of information by placing that SSF number in the context of all the other vehicles tested. We can also provide the public with the point estimate for the rollover risk associated with each value of the SSF using the logit curve. We will conduct interviews and focus groups this spring to determine the most effective way to communicate primary and secondary level information to consumers. Different communication methods may be developed for print and web site implementation.

We agree that providing more information about rollover risk in the context of overall motor vehicle risk would be useful information to consumers. The agency presently includes an explanation of rollover resistance ratings, how they were derived, and safe driving tips on its web site.

We intend to develop further consumer information on rollovers. In the short term, we are looking into providing consumers a better context for rollover risk by better describing the size of the rollover crash problem and its risk relative to other crash modes. In the long term, the agency is trying to develop a method of combining available information on the safety performance of each new vehicle model. The approach we are exploring uses the front, side, and rollover measures from NCAP combined with the safety benefits of rollover resistance and vehicle weight estimated from real-world crash data. We would like to combine the individual measures (for front, side, and rollover crashes) to reflect their relative frequency in the real world. However, a complete description of the safety of a new vehicle model should include the effect of that vehicle on other road users (including occupants of other vehicles on the road, pedestrians, and bicyclists). We are still performing research that will help us better understand the factors critical to vehicle aggressiveness and compatibility, and that will provide a basis for a comprehensive combined safety rating.

VI. Choice of Maneuvers for Rollover Resistance Tests

Appendix I describes the candidate vehicle maneuver tests evaluated as possible tests for dynamic rollover resistance and presents the results of our evaluation program. The research to evaluate potential maneuver tests for rollover is fully documented in the NHTSA technical report "Another Experimental Examination of Selected Maneuvers That May Induce On-Road Untripped, Light Vehicle Rollover—Phase IV of NHTSA's Light Vehicle Rollover Research Program".

Table 1 summarizes the observations in Appendix I about each of the nine Rollover Resistance maneuvers in the areas of Objectivity and Repeatability, Performability, Discriminatory Capability, and Realistic Appearance.

TABLE 1.—SUMMARY OF ROLLOVER RESISTANCE MANEUVER OBSERVATIONS

	NHTSA J-Turn	J-Turn with pulse braking	Fixed timing fishhook	Roll rate feedback fishhook	Nissan fishhook	Ford path corrected limit lane change	ISO 3888 part 2 double lane change	Consumers union short course double lane change	Open-loop pseudo -double lane change
Objectivity and Repeatability	Advantage	Advantage	Advantage	Advantage	Advantage	Disadvantage	Disadvantage	Disadvantage	Advantage
Performability	Advantage	Disadvantage	Advantage	Advantage	Disadvantage	Disadvantage	Advantage	Advantage	Disadvantage
Discriminatory Capability	Advantage*	Unacceptable	Advantage	Advantage	Advantage	Advantage	Unacceptable	Unacceptable	Unacceptable
Realistic Appearance	Disadvantage	Disadvantage	Disadvantage	Disadvantage	Disadvantage	Advantage	Advantage	Advantage	Advantage

*When limited to vehicles with low rollover resistance and/or disadvantageous load condition.

A. Closed-Loop Driver Controlled Rollover Resistance Maneuvers

We continue to have substantial concerns about the use of maneuvers with driver generated steering inputs to develop NCAP rollover resistance ratings. Although fairly good driver-to-driver repeatability was seen during the Phase IV testing, this partially reflects the approximately equal skill levels of the test drivers. (This also partially reflects the small range of the rating metric, maneuver entrance speeds, that was seen.) A professional race driver could probably drive cleanly through these maneuvers with higher entrance speeds. Conversely, an inexperienced driver who has never done any test driving could probably only manage lower speeds. We remain concerned that ratings generated with a driver-closed steering loop maneuver might not be fair or helpful to consumers if this year's test driver were not as good as last year's or the test driver was having an off day when a particular make-model was tested.

A further problem for maneuvers with driver generated steering inputs is that of "clean" (none of the cones delimiting the maneuver's course were bypassed or struck) versus "not clean" runs. Only for a "clean" run do we know that the driver actually drove the prescribed maneuver. If the vehicle during a run bypasses or hits one or more of the delimiting cones, then there is no way to ensure that the driver was actually trying to steer the prescribed course. To give two extreme examples, a test driver could drive through the ISO 3888 Part 2 Double Lane Change at a very high speed without a chance of two-wheel lift occurring by going straight. Or, at the same speed, he could achieve two-wheel lift by performing a fishhook maneuver. For either case, a "not clean" run would be recorded.

It is extremely difficult to generate two-wheel lift while having a "clean" run. While Consumers Union has stated that on a rare occasion it managed to achieve two-wheel lift in a "clean" run, in general, two-wheel lift will result in the vehicle not following the prescribed course. Therefore, we must use maximum maneuver entrance speed for a "clean" run as the rating metric instead of the more directly rollover related metric of when two-wheel lift first occurs. The relationship between maximum maneuver entrance speed and rollover resistance is not known.

Although all Rollover Resistance maneuvers are influenced by both a vehicle's handling characteristics and its resistance to tip-up, it appears that handling dominates the Double Lane Change maneuvers but is less important for the J-Turn and Fishhook maneuvers. The Double Lane Change maneuvers are better for studying emergency vehicle handling than rollover resistance. Clean runs of the CU and ISO 3388 tests are not limit maneuvers in the sense of the J-Turn and Fishhook because they cannot measure tip-up after the vehicle's direction control is lost.

One way to characterize maneuvers is by the number of major steering movements they involve. The J-Turn has just one major steering movement, the initial steer. A Fishhook has two major steering movements, the initial steer and the countersteer. As shown by Figures 11 and 14, a Double Lane Change has four major steering movements, the initial lane change steer, the second lane change steer, the recovery steer, and the stabilization steer, plus some minor steering movements. We believe that these additional major steering movements increase the influence of handling for Double Lane Change results compared to J-Turn and Fishhook maneuvers.

During the Phase IV Rollover Research there were a number of "not clean" runs of the CU Double Lane Change maneuver that resulted in two-wheel lift. These two-wheel lifts always occurred just after the completion of the second major steering movement, well before the third. In other words, the two-wheel lifts occurred while the Double Lane Change and Fishhook steering inputs were still similar and not after they had diverged. No two-wheel lifts in Double Lane Change maneuvers were seen after the third major steering movement. We believe that by the time of the third major steering movement, the severity of the steering has caused sufficient speed to be scrubbed-off to make two-wheel lifts at this point in the maneuver very unlikely.

Double lane change maneuvers scored on the basis of highest "clean" run speed had no value as dynamic tests of rollover resistance. For our sample of test vehicles, there was actually an inverse relationship between double lane change speed scores and the incidence of tip-up in more severe maneuvers that induced tip-up. The test vehicle that tipped-up the most often in other maneuvers and at a consistently lower tip-up speed than other test vehicles would be rated the best vehicle for rollover resistance by the CU Short Course or ISO 3888 Part 2 double lane change on the basis of maximum clean run speed. These tests measure a type of handling performance but do not measure rollover resistance.

B. Sub-Limit Maneuvers Measuring Dynamic Weight Transfer

Ford suggested two methods of implementing the same idea. It first suggested the Path Corrected Limit Lane Change method in which vertical wheel force measurements made in driver controlled runs over a number of nominal double lane change paths are corrected mathematically for variations due to the vehicle's departure from the ideal path. Appendix I reported the results of a demonstration of this method in which Ford assisted NHTSA in performing the test runs, and Ford performed the mathematical corrections and calculated the Dynamic Weight Transfer Metric (DWTM) for each of our test vehicles. In its subsequent comments to the docket, Ford announced that it had developed an advanced path following robot that could drive each test vehicle repeatably through the ideal path directly, eliminating the need for mathematical path correction. Ford expected both implementations to produce the same DWTM for a given vehicle, and the following remarks address both implementations.

Four double lane change courses are run at 45 mph. They are each designed to produce a maximum lateral acceleration of 0.7g, but at a different frequency of motion due to their different combinations of length and offset. The performance metric for each test vehicle is highest dynamic weight transfer produced by any of the four double lane change courses.

Ford's use of the double lane change is much more relevant to rollover resistance than the ISO 3888 or Consumers Union double lane change tests described above. Dynamic weight transfer is the mechanism that leads to tip-up. However, the Ford test is not a limit maneuver. It will not cause vehicles to tip-up, lose control, or even invoke ESC in most instances. From a theoretical point of view, this is the source of its greatest advantage and greatest limitation. Running the tests at sub-limit 0.7g lateral acceleration is a great advantage because any reasonable concrete or asphalt pavement should supply sufficient traction. It should eliminate concern about pavement traction variation at a designated test location, and even permit comparable tests at different locations. It should also eliminate the possibility of tire debeading during test conditions. However, sub-limit tests require that the comparison of dynamic performance between vehicles be extrapolated from a test condition that does not cause control problems to the extreme conditions that may actually produce rollover. Suspension effects that may be important at tip-up would not necessarily appear at the sub-limit test condition. While the swing-axle suspension design is not in current use, it offers a clear example of the theoretical problem of sub-limit tests. If a rear swing-axle vehicle enjoys a DWTM advantage over a vehicle with a beam rear axle at a sub-limit condition, it is easy to see how that advantage may not extrapolate to a limit condition where weight jacking and severe positive camber angles associated with swing-axle suspension manifest themselves.

[4] Finding 3–5. "The current practice of approximating the rollover curve with five discrete levels does not convey the richness of the information provided by available crash data." "An Assessment of the National Highway Traffic Safety Administration's Rating System for Rollover Resistance," TRB NRC, prepublication copy February 21, 2002, page 3–27.

Sub-limit maneuver testing also may not predict vehicle rollover resistance at limit conditions. It is unclear how great a practical limitation on rollover resistance testing is presented by the inability of sub-limit tests to measure anomalies in suspension behavior that may occur only in limit conditions. However, in the case of the Ford test, the evaluation of the results for our test vehicles shows other practical limitations that are certainly important. We included the 2WD Chevrolet Blazer and the 4WD Ford Escape among our test vehicles because they represented a large difference in static stability factor (0.21) within the SUV class. In every test maneuver that produced tip-up and in all load conditions, the Blazer had the worst performance and the Escape had the best. Under the PCLLC method, the Mercedes ML320 with ESC enabled performed worse than the Blazer and significantly worse than the performance of the same ML320 with the ESC disabled. Since no other test showed a loss of rollover resistance due to the operation of ESC, we conclude that there was an error in the PCLLC method for this vehicle. Aside from the ML320 with ESC, the Blazer and Escape set the performance range among our test vehicles in the Ford test as well. However, the standard deviation of DTWM measurement is so large in comparison to the range of differences in DTWM between vehicles, that the large difference in rollover resistance between the 2WD Blazer and the 4WD Escape barely attains statistical significance. Aside from the erroneous result for the ML320s with ESC, none of the other differences in DTWM between test vehicles were statistically distinguishable from random measurement variation. The measurement repeatability of the present form of the Ford test makes it not suitable for comparisons of vehicles within a class. The measurement variation of DWTM relative to the range of values across vehicle population is at least 20 times that of SSF measurements.

A surprising limitation of the Ford test was that there was no discernable dynamic weight transfer component in the measured Dynamic Weight Transfer Metric. Except for the measurement of the ML320 with ESC that we consider erroneous, the "dynamic" weight transfer measurements were not different from the quasi-static weight transfer calculated from c.g height, track width, and an allowance for steady state body roll. This suggests that the same weight transfer would be measured if the vehicle were simply driven in a circle at 0.7g lateral acceleration.

The centrifuge is a theoretically ideal way to make the same measurement. The weight transfer measurement could be made by placing the vehicle on stationary scales on the centrifuge platform. Stationary scales are a much more accurate way of measuring vertical load than the method used in the Ford test. Both the PCLLC method and the path-following robot method of Ford's test rely on measurements of axle height and camber relative to the road to deduce vertical loads from separate studies of tire deflection versus vertical and lateral loads and camber angle. The centrifuge test could directly measure quasi-static weight transfer at 0.7g, but it could also measure the lateral acceleration at tip-up for each vehicle which would increase the measurement range across the population of vehicles. We expect that the repeatability of centrifuge measurements would approach that of SSF measurements, and Section VIII describes our plans to investigate the potential of centrifuge testing. The "straight tether release" method of centrifuge testing suggested by UMTRI also provides for a dynamic component of load transfer that can be measured under laboratory conditions. It is identical in concept to the sled tests for tripped rollover suggested by Exponent.

Although Ford's PCLLC test produces results that are more quasi-static than dynamic, rollover resistance ratings based on quasi-static load transfer are useful if measured precisely, and they are likely to correlate very well with real-world crash statistics. However, only true limit maneuver tests measure the effects of ESC and potential anomalies in suspension behavior on rollover resistance. Unfortunately, limit maneuver tests are affected by pavement friction to a much greater degree than Ford's test or centrifuge tests that do not involve pavement friction. We do not expect pavement effects to be an insurmountable obstacle to practical limit maneuver tests, but should that occur, we believe that the centrifuge test has a great advantage in precision, simplicity, and cost of operation over the PCLLC method while sharing its advantage of pavement insensitivity.

C. Choice of the Fishhook Test With Roll Rate Feedback and the J–Turn as an Effective Pair of Dynamic Rollover Resistance Test Maneuvers

The fishhook and J-turn maneuvers turned out to be the only true limit maneuvers in the test program. Unlike the other maneuvers they were capable of causing tip-up in vehicles susceptible to on-road untripped rollover. They were able to detect an increase in resistance to on-road untripped rollover as a result of ESC operation, and they place the vehicle in a circumstance where anomalies in suspension behavior will manifest themselves. They were very objective and repeatable because they were performed using a steering controller. We estimate that the speed at tip-up is repeatable within 2 mph on the same surface. A test performance criterion of tip-up or no tip-up would be absolutely repeatable except for vehicles with a tip-up speed within 2 mph of the maneuver cut-off speed set by safety concern for test drivers. We are examining the repeatability of limit maneuver tests on different pavements and in different seasonal conditions on the same pavement.

Our reasons for not choosing a Double Lane Change maneuver are summarized in Table 1, discussed in Appendix I of this notice and further clarified in subsections A and B above. However, to briefly repeat, our primary concerns with the Double Lane Change maneuvers are: (a) The Ford version appears to be a very complex and expensive way of measuring quasi-static load transfer with poor measurement precision; also it does not measure ESC effects or anomalies in suspension behavior at the limit; and (b) the ISO 3388 and CU Short Course simply do not measure rollover resistance under the performance criteria of maximum entry speed of a clean run, nor are they limit tests.

Table 1 summarizes the observations that point to the Fishhook maneuver as the best choice for a dynamic rollover resistance test maneuver. We prefer the Roll Rate Feedback Fishhook to the Fixed Timing Fishhook because roll rate feedback feature adapts the timing of steering to characteristics of the vehicle being tested. This feature resolves long-standing criticism of double lane change maneuvers for rollover testing that the inherent timing of the course could favor the frequency response of some vehicles over others. (The Ford test used a variety of double lane change courses to address the same issue.) The Nissan Fishhook also contains a procedure to adjust the steering timing to the vehicle characteristic, but it is a more difficult test to perform than is the automated Roll Rate Feedback Fishhook maneuver.

One of the problems with using the Roll Rate Feedback Fishhook (or any other Fishhook) maneuver for consumer information is that Fishhook does not give people an understanding as to how this maneuver occurs during driving. To help people understand this test, we

have decided to rename Fishhook maneuvers (all variants) as Road Edge Recovery Maneuvers. The Roll Rate Feedback Fishhook will be renamed the NHTSA Road Edge Recovery Maneuver.

NHTSA analyses of crash databases have found that the most common scenario leading to untripped rollover is road edge recovery. This scenario begins with the vehicle dropping two wheels off the right edge of the paved roadway onto an unpaved shoulder. The reasons for this occurring include, among others, driver inattention, distraction and fatigue. The driver attempts to regain the paved roadway by steering to the left. Due to the lip between the pavement and the shoulder, a substantial steer angle is required to start the vehicle moving to the left. However, once the vehicle overcomes the lip and starts moving, it quickly threatens to depart from the left side of the road. Therefore, the driver rapidly countersteers to the right. This pattern of steering during a road edge recovery was discovered during research done by the Texas Transportation Institute.[5]

The similarity between the characteristic pattern of steering used by drivers during a road edge recovery and a fishhook maneuver is apparent. We note that fishhook maneuvers do not simulate the lip between the pavement and the shoulder. However, we do not believe that this matters since the effects of this lip occur at the very beginning of the maneuver, well before the vehicle is likely to have two-wheel lift.

The NHTSA J-Turn maneuver (without pulse braking) was the easiest limit maneuver to perform repeatably and objectively. However, it was not chosen as a stand-alone dynamic rollover resistance test because it is not severe enough. While our research has shown that the J-Turn can discriminate between vehicles that have a low rollover resistance, J-Turns generally do not induce tip-up for modern production vehicles loaded only with a driver and instrumentation. Fishhook maneuvers induce two-wheel lifts for more production vehicles.

The discriminatory power of the dynamic rollover test program will be maximized by having test maneuvers with different levels of stringency rather than just a single maneuver with tip-up speed as the only metric. The NHTSA J-Turn is our choice for a lower severity dynamic rollover resistance test maneuver. We have selected it because it has excellent objectivity and repeatability, is easy to perform, and has a well worked out test procedure. Having only a single major steering movement, it is a logical step down from the Fishhook. This maneuver has a long history of industry use. During NHTSA's discussions with the automotive industry, every manufacturer stated that they routinely perform J-Turn testing during vehicle development.

Another way to increase the range of test severity is by testing vehicles in different load conditions. Ford suggested using the PCLLC tests with vehicles loaded to their Gross Vehicle Weight Rating with the rear axle carrying its maximum rated load. The tests described in this notice used a roof load as a second load configuration. The rating system alternatives described in the next section presume that the vehicles will be tested in two load conditions. We have tentatively decided that the light load condition will be just the driver and instruments and that the heavy load condition will be the equivalent of fiftieth percentile male dummies in all seating positions. Thus, we will test in four levels of stringency: J-turn with light and heavy loads; and Roll Rate Feedback Fishhook with light and heavy loads. The J-turn with light load is the least stringent, and the Fishhook with heavy load is the most stringent. The rating example in the next section assumes only four binary dynamic performance variables, namely did it tip-up or not in each of the four maneuver/load combinations. The speed at tip-up will be available as another level of stringency, but it is not clear whether it will be needed. A greater number of dynamic variables may not further improve the fit of the statistical model.

VII. Proposed Rollover Resistance Rating Alternatives

While many commenters suggested or supported specific dynamic rollover tests, only two of them made suggestions about how to use the results of dynamic rollover tests in ratings of rollover resistance. GM defined minimum levels of performance for the centrifuge tip-up test, the constant radius driving maneuver test of maximum lateral acceleration, and the stability margin which is the difference between centrifuge test result and the constant radius maneuver test result. A vehicle meeting all three minimum levels of performance would be rated 2 stars. It also defined a single higher "bonus star" level for each of the three performance criteria, making it possible to rate up to 3 bonus stars for total rating of 5 stars. Toyota presented an example of a range of Lateral Acceleration for Rollover (LAR) in a fishhook maneuver (with pulse braking if necessary) for a number of hypothetical vehicles divided into 5 star levels of increasing LAR, noting that the actual star levels should be determined "through NHTSA testing/data analysis." GM's suggestion is based on the idea of being directionally correct—a vehicle with better rollover stability attributes should earn a higher rating. Toyota's example is based on directional correctness as a minimum; it is unclear whether its reference to NHTSA data analysis refers to the analysis of test data to determine the likely extremes of LAR or to the analysis of rollover statistics for vehicles of known LAR.

NHTSA's present rollover resistance ratings based on SSF are interpreted in terms of a predicted rollover rate for the vehicle if it is involved in a single vehicle crash. This goes far beyond the GM-suggested minimum quality of directional correctness for a rating system. The NAS study strongly supported the use of SSF to predict rollover rate as long as the model relating SSF and rollover risk could be demonstrated to be repeatable across data sets (shown by a tight confidence limits about the regression line). While the logit model underestimates the rollover risk of vehicles with very low SSF, its tight confidence limits can be calculated by standard statistical software, and NAS concluded that the repeatability of the model would support the discrimination of more than 5 levels of rollover resistance for light vehicles.

Should Rollover Resistance Be Rated Using Dynamic Maneuver Tests Alone?

The requirements of the TREAD Act refer only to a "dynamic test on rollovers" and are silent about rollover resistance information derived from static measures. However, the NAS study of the present rollover rating system recommended that "NHTSA should vigorously pursue the development of dynamic testing to *supplement* the information provided by SSF" [emphasis added]. NAS did not suggest that any combination of dynamic tests alone was sufficient for consumer information on rollover resistance, and its report explained that in the final out-of-control phase of a rollover crash "SSF and the terrain over which the vehicle is moving are the dominant determinants of whether rollover will occur."

NHTSA agrees that the dynamic tests should supplement rather than replace the static measures for the reasons given by NAS, but also because ratings

[5] Ivey, D.L., Sicking, D.L., "Influence of Pavement Edge and Shoulder Characteristics on Vehicle Handling and Stability," Transportation Research Record 1084.

derived only from dynamic driving maneuver tests would severely limit the scope of the consumer information. The terrain over which dynamic driving maneuver tests for rollover take place is smooth dry pavement, but the vast majority of rollovers take place on terrain that includes soft soil, curbs and other objects that can place higher tripping forces on the vehicle than can tire/pavement friction. There are a number of vehicle design strategies for preventing tip-up in maneuver tests. Those that involve lowering the center of gravity of the vehicle, increasing its track width or reducing body sway would be expected to increase the vehicle's general rollover resistance both on-road and in the event of contact with a curb, soft soil or other tripping mechanism.

There are also a number of vehicle design strategies to prevent tip-up in maneuver tests that involve reducing the lateral tire/pavement friction. These strategies range from simply using low traction tires to sophisticated "rollover prevention" systems that can apply one or more brakes in response to sensing a potential rollover situation. When a tire is subjected to heavy braking, its capacity for lateral traction is greatly reduced. This principle can be used to cause the vehicle to skid rather than tip-up under control of a "rollover prevention" system (that uses the brake intervention capability of ESC under control of a tip-up sensing rather than yaw sensing computer program). Design strategies that depend on the active or passive management of tire traction can be effective in reducing the risk of a vehicle rolling over on the road where tire traction matters. However, the on-road untripped rollover is a special and limited case of rollover crash; most rollovers are initiated by a tripping mechanism other than tire traction. NAS found that dynamic maneuver tests for rollover are important because they are sensitive to vehicle properties that are not reflected in static measures of rollover resistance. But, a dynamic maneuver test *alone* can only assure the measured level of rollover resistance in the case of on-road untripped rollover because tip-up in the dynamic test can be prevented by tire traction management strategies that have no effect when a tripping mechanism (other than tire traction) initiates the rollover. Using dynamic maneuver tests to supplement the information on rollover resistance obtained from static measurements represents a potential improvement in consumer information, but the use of dynamic maneuver tests alone would result in rollover resistance ratings that may not apply to the most common type of real-world rollover crash in which the vehicle strikes a tripping mechanism. That would significantly reduce the correlation of rollover resistance ratings to real-world rollover crashes.

Rollover Resistance Ratings Based on Both Static Measures and Dynamic Maneuver Tests

Alternative 1—Combine Static and Dynamic Vehicle Measurement in a Statistical Model of Rollover Risk

The ideal rollover resistance rating system would give consumers information on the risk of rollover in a single vehicle crash taking into account both the static properties of a vehicle and its performance in dynamic maneuver tests. The risk based system is better than a system that is merely directionally correct. In addition to answering the question "is the rollover risk lower for vehicle A or vehicle B?", it can answer also the questions, "how much lower?" and "what is the absolute risk?".

The present rollover resistance ratings are based on a statistical model that considers about 221,000 single vehicle crashes of 100 popular make/model vehicles for which we have SSF measurements. In addition, each state accident report provides a number of driver demographic variables (sex, age, sobriety), road characteristic variables (speed limit, hill, curve, slippery surface), and weather variables (storm, darkness). A statistical model can use the real-world crash data to determine the effect of any variable on the proportion of single vehicle crashes that result in rollover (rollover risk) in the presence of other variables that may also exert an influence. In the present case, the only vehicle variable is SSF, and the model predicts the risk of rollover as a function of SSF in the presence of the many combinations of confounding variables in the data sample of 221,000 crashes. The predicted rollover risk of a vehicle in a single vehicle crash, based on its SSF, becomes its rollover resistance rating which is expressed in five discrete levels (less than 10%, 10% to 20%, 20% to 30%, 30% to 40%, more than 40%) designated by one to five stars.

As mentioned previously, the NAS recommended that we use a logistic regression model instead of the linear regression model in order to establish tight confidence limits on the repeatability of the model, and it found that the differences of rollover risk between vehicles predicted by the statistical model were significant enough to support more than five discrete levels. Also, the NAS study recommended that NHTSA develop a risk model that combines the SSF measurement with the results of one or more dynamic maneuver tests for a more robust consumer information rating on rollover resistance.

The NAS study was not concerned with the distinction between tripped and untripped rollovers because it is the magnitude and duration of the forces that cause rollover in all circumstances. NHTSA has considered the distinction between tripped and untripped rollovers important in making a choice between a road maneuver test or a general rollover resistance indicator metric like SSF for consumer information because tripped rollovers are much more common occurrences. However, the NAS recommendation of including both SSF and road maneuver test results in a risk model makes the distinction between tripped and untripped rollovers unnecessary. The recommendation does not require a choice between the two types of rollover resistance measures because both are included. Also, the risk model will be calculated using all available rollover data including tripped and untripped rollovers from several states for a number of vehicles that we will test using J-Turn and Fishhook maneuvers and measure for SSF. The predictive power of both SSF and road maneuver tests determined by real-world data will be reflected in the risk model.

We plan to conduct dynamic rollover tests of various levels of stringency. The J-turn maneuver with a driver and instruments (light load configuration) is the least stringent. It would be rare for this maneuver to cause tip-up of a modern vehicle. The same J-turn test performed with a passenger load in every seating position (heavy load configuration) is a more stringent test that is likely to cause tip-up for a few vehicles. The Fishhook test with roll rate feedback is more stringent than the J-turn test because it includes a steering reversal designed to occur at the least favorable instant for each vehicle. It would also be performed in both light and heavy vehicle load configurations for a total of four levels of test stringency. Each maneuver is repeated in a series of increasing speeds until it tips-up or reaches the maximum test speed. The speed at tip-up offers a discriminator within each stringency level if needed.

We believe that this suite of dynamic rollover tests will identify vehicles vulnerable to rolling over without the presence of a tripping mechanism, and identify a relative rank order of vehicles regarding this vulnerability. However, the vehicle's rank order alone does not predict the rollover risk associated with its level of vulnerability to tip-up in dynamic rollover tests. Also, the dynamic test program is not expected to distinguish between vehicles having an SSF of about 1.2 or greater because they are unlikely to tip-up in any dynamic maneuver test for rollover. This expectation is based upon NHTSA's rollover maneuver research from 1997 to present.

Combining the dynamic rollover test results with SSF in a risk model should overcome the limitations discussed above. Consider two vehicles with a similar SSF. If one vehicle tips up during dynamic rollover tests but the second does not, we would expect this advantage to manifest itself in the rollover crash statistics of real vehicles. Likewise, a vehicle that tips-up only in high severity maneuvers should have better real-world performance than a vehicle of similar SSF that tips up in lower severity maneuvers as well. Even if the real-world reduction in rollover risk associated with better dynamic maneuver test performance proves to not be large, it is certainly reasonable to expect it to affect the statistical risk model when it is entered along with SSF as one or more additional vehicle variables.

The logistic regression model recommended by NAS (referred to as the logit model) gives an example of how the dynamic and static information could be combined in a risk model. As presented in the NAS report, the model operated on three driver description variables, four road description variables, two weather variables, but only one vehicle variable. There is no obvious reason why the same model could not operate on additional vehicle variables. While we are particularly interested in differences in rollover risk between vehicles with different dynamic test performance but similar SSF, we recognize that dynamic test results and SSF are not independent variables. But some of the variables describing the driver, road and weather also were not independent. The hypothetical exercise described below seems to confirm that logistic regression can use interrelated variables without difficulty.

The data base we have used to construct linear and logistic regression models for the existing rating program and to assist NAS in its study of rollover ratings contains the state crash data for 100 vehicle make/models and their SSF measurements, but we do not have dynamic maneuver test results for these vehicles. In order to evaluate the logistic regression process when dynamic test results as well as SSF are used as vehicle variables, we selected 25 vehicles from our 100 vehicle data base and tried to estimate their probable dynamic maneuver test results based on previous dynamic tests of similar make/models. In the absence of real test results these hypothetical maneuver test results allowed us to use the logistic regression software with vehicle multiple variables. The hypothetical dynamic maneuver test results were in the form of 4 binary (yes/no) variables representing whether the vehicle would tip-up in the four maneuver tests of differing stringency (J-turn/light load, J-turn/heavy load, Fishhook/light load, Fishhook/heavy load). The possible sub-levels of performance defined by test speed at tip-up were not used. The data base included about 88,000 single vehicle crashes of the 25 vehicle make/models with the real driver, road, weather and SSF data, but only our estimates for dynamic "data'.

First, logistic regression was performed with SSF as the only vehicle variable. The result is presented by the dashed line in Figure 1. It is essentially identical to the result of the "logit model" recommended by NAS that was constructed using a 221,000 crash data base of which the 88,000 crashes are a subset. The similarity of the results is consistent with the finding of very tight confidence limits for the model.

Next, the logistic regression was repeated using the hypothetical dynamic maneuver test results in addition to SSF as vehicle variables. The points on the graph are the predicted rollover rates for each of the 25 vehicles considering both its static and dynamic measurements under the mean distribution of the driver, road and weather variables. The locus of points generally follows the line predicted by SSF alone but shows differences in predicted rollover rates as a result of hypothetical dynamic test performance, especially at the low end of the SSF range. We estimated in the hypothetical dynamic maneuver test results that, with one exception, none of the vehicles with an SSF greater than 1.17 would tip up in even our most severe dynamic maneuver test. However, even if a vehicle does not tip-up in our maneuver tests, its risk of rollover is not zero, and it is strongly related to SSF as shown in the model. The model also allows for the possibility that vehicles with the same SSF may have significant differences in dynamic test results that influence the real rollover risk. These are the characteristics we expect in a reasonable risk model. While this preliminary investigation of logistic regression as a means to combine static and dynamic measurements is encouraging, NHTSA will continue to examine the theoretical soundness and confidence limits of the model in keeping with the recommendations of NAS.[6]

The relative value of static versus dynamic measurements for determining the rollover resistance of vehicles is a significant question. Certainly, the use of both types of information to determine rollover resistance should lead to the most accurate information, but one must determine the relative weighting of the static and dynamic measurements. The combination of the static and dynamic information in a statistical model of rollover risk is an objective way to let real-world crash data determine the weighting that best represents the outcomes of crashes. Besides providing the best rollover risk estimates, the statistical model also has the advantage of not requiring judgments about appropriate data weighting from NHTSA or any of the interested parties. Regardless of the rating method, the NCAP program will make available the test results for SSF and for each of the dynamic maneuver

[6] We noted that the predicted rollover risk of vehicles at the low end of the SSF range in Figure 1 was considerably larger for the model including dynamic maneuver results than for the logistic model using SSF only. This is due in part to an apparent limitation in the form of the risk prediction curve with a single independent variable inherent to the basic logistic regression procedure that prevents the line from having sufficient curvature to follow the trend in rollover risk versus SSF in the data set presented to the model. The exponential risk curve upon which our current SSF rollover resistance ratings are based agrees more closely with the logistic model operating on both the SSF and the hypothetical dynamic maneuver tests. Our current rating system also agrees more closely with the actual rollover rates of vehicles than does the basic logistic regression procedure operating on SSF alone. We expect to overcome the limitation in the form of the risk prediction curve of the logistic regression model operating on SSF alone by using transformations of SSF (log(SSF) for example) as the vehicle variable. Once we have achieved a model with the goodness of fit of our current exponential model and the narrow confidence limits of the logistic model recommended by NAS, we can add the dynamic maneuver test results with the certainty that we are refining the risk prediction rather than compensating for the deficiencies of the base model. In the example of Figure 1, we would not expect much change in the points representing the risk predictions of the 25 vehicle with both SSF and dynamic maneuver test results. The use of multiple variables tends to free the model of the restrictions in form that are otherwise manifested in a single variable model by the need to represent an exponential risk relationship by single continuous line with a large change in curvature in our data range. However, we would expect the line representing an improved logistic model with SSF only to conform more closely to the actual vehicle rollover rates, and we would expect the spread between the SSF line and the vehicle points to represent only the effect of the dynamic performance of the vehicle.

tests, so that consumers can see the basis of our rating and exercise their own judgments about their particular concerns.

However, this method of rollover resistance rating has some drawbacks. Dynamic maneuver test results for vehicles with large samples of single vehicle crash data are needed to compute a robust risk model. In order to use dynamic test results in risk-based ratings, NHTSA must first test a number of older vehicles to correlate the combined vehicle information of dynamic test performance and SSF to rollover rate using a large crash database. Eventually the NCAP test results will supply the risk model with vehicle information, but sufficient corresponding crash data will trail the vehicle measurements by at least four years. State accident records are reported to NHTSA yearly, but they lag by about two model years. Even a high production vehicle requires about two years of exposure to accumulate sufficient single vehicle crash data in the few states with reliable reporting of both vehicle identification and rollover crashes. Consequently, it will be a number of years before the effects on rollover rate of traction management strategies and other technologies that improve dynamic maneuver test results are represented directly in the risk model. In the mean time, vehicle characteristics that improve rollover resistance only in the special case of on-road untripped rollover may be overvalued in the risk model in comparison to vehicle characteristics that improve resistance to both untripped and tripped rollover.

Critics of the SSF-based rating system may view the combination of dynamic and static measurements in a risk model as an attempt by NHTSA to devalue the dynamic tests. That is not the case.[*] It is true that SSF is a strong predictor of the risk of rollover especially in a tripping situation and that most rollovers are tripped. Consequently, we expect SSF to have a strong effect in a risk model even when dynamic test variables are also included. However, the strong effect of SSF is not likely to diminish the differences in rollover rate predicted for difference in dynamic performance. We note that the example of Figure 1 is based only on estimates of dynamic test performance. We will not know until we have actual dynamic test results for some of the 100 vehicles in our 221,000 crash database whether the effect of dynamic test performance on the rollover risk model is as great as expected.

Alternative 2: Separate Ratings for Dynamic Rollover Test Results and Static Vehicle Measurements

An alternative rating system is proposed to address concerns that combining the dynamic and static information in a risk model could give the dynamic tests less influence than concerned parties would prefer. It is based on the idea that the dynamic rollover maneuver tests are a direct representation of an on-road untripped rollover. Therefore, the dynamic test results may be reported separately as ratings of resistance to untripped rollover. Likewise, the SSF measurements would be presented separately as ratings of resistance to tripped rollover.

We believe that the vast majority of the rollovers in our 221,000 single vehicle crash database are tripped rollovers. However, it is impossible to identify those that may be untripped because state accident reports are not concerned with that level of detail. About 95 percent of the small number of rollover crashes investigated directly by NHTSA in great detail (the NASS–CDS program) were tripped. Assuming a similar distribution of tripped and untripped rollovers, our large database is a suitable basis for a risk model of tripped rollover using SSF. The tripped rollover risk predictions would be the same as the present risk predictions except for the changes in statistical methodology recommended by NAS.

Unfortunately, the NASS–CDS database receives reports of only about 10 untripped rollovers (and about 200 tripped rollovers) a year, precluding any possibility of risk prediction on a make/model basis for untripped rollover. Ratings of resistance to untripped rollover would have to be based simply on the principal of directional correctness. For instance, a vehicle that did not tip-up in any maneuver at any load condition would be rated "A"; a vehicle that would tip-up in a maneuver test only when loaded at every seating position would be rated "B"; and a vehicle that would tip-up in a maneuver test even in the lightly loaded condition would be rated "C".

This rating system also has some disadvantages. The use of two sets of ratings about the same general type of crash would be difficult to communicate effectively to consumers. It will also be hard to explain to consumers why the SSF rating may be expressed in terms of risk but not the dynamic rating. Since the only risk information in the rating system would be associated with the static measures, those most interested in the dynamic tests may find that more dismissive of the dynamic tests than the combination of both types of information in a single risk model. Since an unknown portion of our crash database does contain untripped rollovers, the risk model based on that data without the use of untripped rollover test data at hand may also be perceived as not the best use of all data available to NHTSA.

Some of the parties most interested in dynamic tests have commented repeatedly that SSF should not be used in the rollover resistance rating of vehicles. However, consumer information based only on dynamic maneuver tests greatly reduces the assessment of the physical forces that cause real world rollovers. That would make the consumer information less useful to the public.

SSF measures the steady, rigid body load transfer common to all rollovers. The quasi-static centrifuge test adds a measurement of the load transfer due to body roll which should also be common to all rollovers. The Exponent sled test and the straight tethered centrifuge test add roll momentum effects typical of tripped rollovers and possibly J-turn tests. The dynamic maneuver tests add to these only a measurement of the effect of ESC and other electronic "rollover prevention" systems and a measurement of dynamic suspension behavior that may detect unusual problems at limit conditions. However, the test conditions of dynamic maneuver tests are limited by on-road tire traction and represent only the special case of on-road untripped rollover. Hence, we believe the dynamic maneuver tests should be used to supplement in some way one of the other three types of tests with relevance to tripped rollovers because tripped rollovers represent the vast majority of real world rollovers.

Consumers Preferences for Presentation of Rollover Ratings

In response to the NAS recommendations and in order to better refine approaches to developing and delivering consumer information on rollover, NHTSA recently initiated additional consumer research on rollover. This research was to further explore the perceptions, opinions, beliefs and attitudes of drivers about vehicle rollover, and to gather reactions to different presentations of ratings and other rollover information.

[*] The example of Figure 1 shows substantial differences in risk prediction by standard logistic regression when hypothetical dynamic test results are added to a model using only SSF to describe the vehicle. This example demonstrates the potential value of adding dynamic test results to the logit model because the predictions that include the hypothetical dynamic test results more closely match the actual rollover rates.

The consumer research conducted was iterative in that it utilized individual in-depth interviews as a first phase, and focus group testing as a second phase. The in-depth interviews were conducted with 22 persons in Baltimore, MD in March, 2002. A total of 12 focus groups of 106 persons were conducted in Chicago, Dallas, and Richmond in April, 2002. Participants for both the interviews and focus groups had to have purchased or planned to purchase a vehicle within the year. They also had to rate safety as somewhat or very important in their vehicle purchase decisions. One-third of the participants also had to rate rollover as somewhat or very important in their purchase decisions.

The in-depth interviews were conducted with the intention of exploring consumer beliefs and perceptions in a probing more detailed way than is possible in focus groups. The interviews also served to provide insights as to how the focus groups could be most effectively conducted to acquire the desired findings. The interview results provided the basis for modifying approaches and sample materials presented at the focus groups. This iterative process did not, however, render opposing or contradictory results. The findings of the interviews and focus groups were remarkably and consistently similar. The key findings are as follows:

Understanding of and Preference for Dynamic and/or Static Rating for Rollover

- Virtually all participants were able to identify the difference between the tests for the Static Stability Factor (SSF) Rollover Rating and the Dynamic Test rollover rating, *i.e.*, that the first is a vehicle measurement and that the latter involves maneuver tests.
- Most participants preferred a combined rating, especially once they understood that 95% of real-world rollovers are accounted for by SSF. Those who said they should be presented separately thought they would provide consumers with more information; but they also thought that the different (5 pt vs.3 pt) rating scales presented would confuse people. Many thought that a dynamic test was more realistic.
- Some participants had trouble understanding "track width" and "center of gravity height" in the description of SSF.
- Even though most participants did not explain rollover in the same way it was described to them, most stated that the description of rollover they read (from NHTSA web-site information on rollover) was understandable.
- Some of the rollover terminology; "rollover resistance rating," "tripped by" and especially "tripped by a *ditch*," were confusing or did not make sense to many of the participants.

Preferences for Presentation of Rollover Ratings and Information

- Participants were presented with stars, numbers, letters and descriptive language as alternatives for presenting rollover ratings. Stars were overwhelmingly preferred by both interview and focus group participants. They clearly disliked number ratings, and were ambivalent about letters and descriptors. Graphics presented to participants are shown in Figure 2 and in the report "Findings of 21 In-Depth Interviews and 12 Focus Group Discussions Regarding Vehicle Rollover," which is available in the docket for this notice.
- Participants accurately interpreted the star ratings, with and without the key that explained what each star meant and which was better. However, many did not fully grasp that the ratings were vehicle ratings and were therefore confused by or did not find credible the actual data sets that showed percentages from over 40% to under 10% for rollover risk.
- When presented with a bar graph that showed an individual vehicle among all vehicles, most interview participants found the bar graph complicated and too vague. Some said it might be useful to decide between different vehicle classes. The bar graph was refined visually and presented as a way of checking an individual vehicle through the web-site for the focus groups. When shown this graph depicting where a certain vehicle ranked in relationship to other vehicles in it's class, and against all classes as well as where it fell in the star rating range, most participants understood it and thought it useful.

Preferences for Rating Levels for Rollover Ratings

- Nearly all of the participants preferred five rating levels. Alternatives of three and ten ratings were presented through the use of numbers, letters, half-stars and narrative descriptors. Most said they did not like the half stars, but when probed said it might make a difference in whether or not they would consider a vehicle. Interestingly, many assigned different values to half-star ratings; *e.g.* 3½ stars was considered more important than 4½ stars.
- Most participants felt three rating levels were too few. Very few felt that 10 rating levels were appropriate. Most thought it was too much information and unnecessary.

The findings of this research will help NHTSA to develop appropriate and useful rollover ratings and consumer information in the future. NAS has recommended that the agency provide the public with additional rating levels in order to allow better differentiation of rollover risk between vehicles. While clearly there are improvements to be made in how rollover resistance and ratings are explained and made useful to the consumer, there does not seem to be any basis in our research to date for deviating from stars or from the five rating levels presently being used. However, for consumers who desire more information than just star-ratings, we will provide detailed information on each vehicle on the web-site. Consumers will also be able to differentiate between vehicles through use of the internet based bar-graph data that tested positively, and through other as yet undeveloped presentations.

VIII. Intent To Evaluate Centrifuge Test

The test device for the centrifuge test is similar in concept to a merry-go-round. A person seated at the edge of the merry-go-round feels a lateral force pushing him or her away from the spinning surface that increases with the rotational speed of the merry-go-round. The centrifuge device test shown in Figure 3 consists of an arm attached to a powered vertical shaft. At the end of the arm is a horizontal platform upon which the test vehicle is parked. As the vertical shaft rotates, the parked vehicle is subjected to a lateral acceleration that can be precisely controlled and measured. The basic quasi-static measurement is the lateral acceleration at which the parked vehicle experiences two-wheel lift. The outside tires are restrained by a low curb so the measurement is independent of surface friction, and the vehicle is tethered for safety to prevent excessive wheel lift. This test method was suggested by the University of Michigan Transportation Research Institute (UMTRI) both in comments to our notice about the present rollover resistance ratings and more recently in the context of the TREAD Act. As discussed in Section III, the quasi-static centrifuge test was also recommended by GM, Honda, CU and Advocates as a possible improvement on SSF to measure general rollover resistance. The test method is directed primarily at tripped rollover, which UMTRI noted accounts for all but a small percentage of rollovers.

The centrifuge test has many advantages. Like SSF, it is a measurement that that can be performed accurately, repeatably and economically (at least in labor costs). It is arguably more accurate than SSF in evaluating tripped rollover resistance because it includes the effect of the outward c.g. movement as a result of suspension and tire deflections. Its correlation to SSF would be high, and it would be expected to correlate well with the actual rollover rates of vehicles, because those statistics are largely driven by tripped rollovers. The quasi-static centrifuge measurement of a vehicle's lateral acceleration at two-wheel lift is expected to be roughly 10 percent less than the vehicle's SSF with about a +/−5 percent range to cover extremes in roll stiffness.

Despite these advantages, we did not include the centrifuge test in the test evaluation plan that was the subject of our July 2001 notice. We stated the following reasons:

> Improvements in centrifuge test performance can be made by suspension changes that degrade handling. The best performance in the centrifuge test (and in the closely related but less accurate tilt table test) occurs when the front and rear inside tires lift from the platform at the same time. The tuning of the relative front/rear suspension roll stiffness to accomplish this will cause the vehicle to oversteer more than most manufacturers would otherwise desire. We do not want to tempt manufacturers to make this kind of trade-off. Further, we understood the intention behind TREAD to be that NHTSA should give the American public information on performance in a driving maneuver that would evaluate the performance of new technologies like ESC. The centrifuge test would not do so.

As discussed in Section III of this notice, GM provided some data disputing our concern that improvements in centrifuge test scores could be obtained at the expense of changing the understeer/oversteer suspension tuning of vehicle from what the manufacturer would otherwise choose as optimum for handling and consumer satisfaction. We request that other manufacturers and vehicle designers review GM's information (comment 6 to docket NHTSA–2001–9663 notice 1) and comment on the validity of NHTSA's concern.

In view of the interest expressed by several commenters in centrifuge testing and the potential importance GM's information, NHTSA intends to evaluate the practicability of centrifuge testing. To our knowledge, centrifuge tests for rollover resistance of vehicles have never been performed. The interest of commenters is based on theoretical advantages over SSF. NHTSA will develop a test fixture and test a number of vehicles in the quasi-static mode using a very large centrifuge at NASA's Goddard Space Flight Center in Greenbelt, Maryland.

IX. Handling Tests

A. The Need for Handling Testing and a Handling Rating

NHTSA expects that implementation of a rollover rating system using dynamic tests will, over time, influence vehicle designs. Therefore, it is of the utmost importance that we do not encourage designers to maximize vehicle performance in rollover resistance tests by degrading other safety relevant areas of vehicle performance.

Several possible ways to maximize vehicle performance in rollover resistance tests would degrade vehicle handling. For example, better performance in rollover resistance tests could be achieved by one or more of:

- Making the vehicle have less turning capability. Unfortunately, this would make it harder, in difficult situations, for drivers to keep the vehicle on the road or to avoid colliding with other vehicles, pedestrians, animals, and other objects.
- Equalizing the roll stiffnesses of the front and rear suspensions. Unfortunately, this may make the vehicle spin-out in limit maneuvers.
- Making the vehicle respond slowly to steering inputs. Again, this would make it harder, in some situations, for drivers to keep the vehicle on the road or to avoid colliding with other vehicles or pedestrians.

To discourage vehicle designers from maximizing rollover resistance at the expense of handling, NHTSA believes that if our rollover ratings are directly influenced by dynamic tests then we must also have a handling rating based on handling tests.

In addition to discouraging vehicle designers from maximizing rollover resistance at the expense of handling, having a handling rating based on handling tests should also encourage the adoption of yaw stability control. While the crash prevention benefits of yaw stability control have not yet been proven, we anticipate that it may help prevent crashes. Based on NHTSA's Phase IV Rollover Research, we will see some improvement in a vehicle's rollover resistance rating due to yaw stability control. However, a handling rating provides another opportunity for showing the beneficial effects of yaw stability control.

B. Guiding Principles for NHTSA Handling Testing and Handling Rating

What is handling? In this document, what we mean by handling is the lateral response of the vehicle to a driver's control inputs. Clearly steering inputs are the most important control inputs for handling, however, brake and throttle pedal inputs can also have an effect.

Traditionally, handling assessments have been made subjectively. Several test drivers drive a vehicle for a period of time through a broad variety of maneuvers. The maneuvers range in severity from mild to severe to limit. After driving the vehicle, each driver independently assigns a numerical handling rating to the vehicle. Ratings from all of the test drivers are averaged to obtain an overall handling rating.

We do not believe that a subjective handling rating is suitable for inclusion in the New Car Assessment Program. Government generated handling ratings must be objectively and repeatably determined.

There are two perspectives for handling ratings. One perspective is how safe the vehicle is to drive. The other is how well the vehicle gives an enthusiast driver a pleasurable sense of control. Given its mission, a NHTSA generated handling rating can only assess how safe a vehicle is to drive, not how pleasurable it is to drive.

What aspects of handling affect safety? NHTSA has identified the following four:

1. Amount of turning capability. A vehicle that can turn more sharply should be easier for drivers to keep on the road and to avoid colliding with other vehicles, pedestrians, animals, and other objects.
2. Graceful degradation at/near limits. When a driver approaches or tries to exceed the maximum turning capability of a vehicle the vehicle should plow-out (saturate traction on the front wheels first) instead of spin-out (saturate traction on the rear wheels first).
3. Predictability. When the driver steers, brakes, or changes the throttle level, the vehicle should do what the driver expects the vehicle to do. Since all vehicles have delays between steering, braking, or throttle application and the response of the vehicle, drivers must predict the response of the vehicle to a control input. If the vehicle does not perform as expected, there may not be time for the driver to react to the unexpected motion before a crash occurs.
4. Responsiveness. When the driver steers, brakes, or changes the throttle level, the vehicle should respond quickly to the driver's inputs. A slowly responding vehicle would be harder for drivers to keep on the road or to avoid colliding with other vehicles, pedestrians, animals, and other objects.

We have discussed the aspects of handling that affect safety with Consumers Union. In addition to the four aspects listed above, Consumers Union uses a fifth, appropriate feedback to the steering handwheel, in developing ratings for their magazine. While we do not dispute the importance of appropriate feedback to the steering handwheel, this seems to us to be such an inherently subjective assessment that we have not included it in the above list.

We welcome comments as to the correctness of the above list of handling aspects that affect safety. Are the aspects that are listed appropriate? Have we left anything out?

C. Handling Tests Being Considered by NHTSA

NHTSA is considering developing a handling rating based upon results from the three handling maneuvers. The handling maneuvers are:

1. Slowly Increasing Steer maneuver. Using a programmable steering controller, the steering handwheel is turned slowly (13.5 degrees per second) from zero to well beyond the point at which the maximum lateral acceleration occurs (a handwheel steering angle of 270 degrees). The driver applies the throttle to keep the vehicle's speed as constant at 50 mph as possible during the turn.

The Slowly Increasing Steer maneuver provides data to assess the amount of turning capability of a vehicle (the Maximum Attainable Lateral Acceleration) and whether the vehicle's handling degrades gracefully at the limit (did the vehicle plow or spin when the maximum achievable turn was attained). We performed this maneuver for every vehicle tested during Phases II, III, and IV of NHTSA Rollover Research. Based on our experience we believe that this maneuver can be performed with excellent objectivity and repeatability. There is a well worked out and widely accepted procedure for the Slowly Increasing Steering maneuver that is contained in the Society of Automotive Engineers Standard J266.

2. Dropped Throttle in a Turn maneuver. Using a programmable steering controller, the steering handwheel is turned quickly, and then held at, the angle required to attain 90 percent of the vehicle's maximum achievable lateral acceleration. The driver initially applies the throttle to keep the vehicle's speed as constant as possible during the turn. The throttle is then suddenly released and the resulting vehicle motion measured.

The Dropped Throttle in a Turn maneuver provides data to assess the predictability of the vehicle. Desirable behavior is for the vehicle to either maintain the same radius of curvature or to "tuck-in" a bit (slightly decrease the radius of curvature). While we have not performed this maneuver in the past, we expect that this maneuver can be performed with excellent objectivity and repeatability. There is a well worked out and widely accepted procedure for the Dropped Throttle in a Turn maneuver that is contained in the International Standards Organization's Standard 9816.

Multiple measures of vehicle performance are determined from this test. One is the Dropped Throttle Yaw Rate Ratio, defined as the maximum yaw rate attained at any time during the three seconds after the throttle was released divided by the initial yaw rate. The second is the Dropped Throttle Path Deviation, defined as the lateral displacement of the vehicle's center of gravity two seconds after the throttle has been released from the anticipated path if the throttle had not been released.

3. The Step Steer maneuver. This maneuver is performed in the same manner as the NHTSA J-Turn except that the handwheel steering angle used is less. Instead of turning the steering handwheel to 8.0 times the angle needed to achieve 0.3 g lateral acceleration in the Slowly Increasing Steer maneuver (the angle used for the NHTSA J-Turn), for this maneuver the steering wheel is only turned to the angle needed to achieve 4.0 meters per second squared lateral acceleration. A handwheel steering rate of 1,000 degrees per second is used. The maneuver entrance speed is 50 mph (80 kph) and the throttle is held constant through the test.

Multiple measures of vehicle performance are determined from this test. One is the Yaw Rate Response Time, defined as the time from when the steering handwheel reaches 50 percent of its final value to the time when the yaw rate reaches 90 percent of its steady-state value. The second is the Peak Yaw Rate Response Time, defined as the time from when the steering handwheel reaches 50 percent of its final value to the time when the yaw rate reaches it peak value. The third is Percent Overshoot, defined as the difference between the peak and steady state yaw rates divided by the steady state yaw rate.

The Step Steer maneuver provides data to assess the predictability (from the Percent Overshoot measure) and the responsiveness (from the Yaw Rate Response Time and the Peak Yaw Rate Response Time measures) of the vehicle. We performed this maneuver for every vehicle tested during Phase IV of NHTSA Rollover Research; based on our experience we believe that this maneuver can be performed with excellent objectivity and repeatability. There is a well worked out and widely accepted procedure for the Step Steer maneuver that is contained in the International Standards Organization's Standard 7401.

Each Handling Maneuver would be performed at two loading conditions, Nominal Load and Rear Load. The Nominal Load consists of the curb weight vehicle plus the driver plus NHTSA's instrumentation package plus NHTSA's titanium outriggers. The Rear Load adds to the Nominal Load ballast positioned such that the vehicles rear Gross Axle Weight Rating (GAWR) and Gross Vehicle Weight Rating (GVWR) are achieved simultaneously. The ballast is comprised of bags of lead shot, positioned as flat as possible across the rear cargo area of the test vehicle. The ballast will be secured in a manner that insures it does not shift during testing. We will use a " inch enclosed plywood box to contain the ballast used in the Rear Load condition. Due to the wide range of shapes and sizes of light vehicle cargo areas, such boxes will need to be constructed on a per-vehicle basis.

We welcome comments as to the appropriateness of the above list of handling maneuvers. What have we left out?

NHTSA is seeking tests of handling and controllability both as way of dealing with potential trade-offs between handling properties and rollover tests and as a way of giving credit to technologies that improve controllability. We request comment on the value of such tests to resolve the concern for design compromises that could improve centrifuge test scores.

One of our concerns is that yaw stability control is supposed to increase a vehicle's predictability; however, our Dropped Throttle in a Turn Maneuver test is may not be adequate for measuring the effects of yaw stability control. What other objective and repeatable tests exist for measuring vehicle predictability?

D. Combining Handling Test Results to Generate a Handling Rating

As is the case for rollover resistance ratings, an ideal handling rating system would use data obtained from the above mentioned handling tests to predict the

risk, for a vehicle make/model assuming an "average" driver, of a single vehicle crash. The risk based ratings are better than ratings that are merely directionally correct because in addition to answering the question "Is the single vehicle crash risk lower for Vehicle A or Vehicle B?", it can also answer the questions, "How much lower?", and "What is the absolute risk?".

The influence of drivers on whether or not a single vehicle crash occurs is very high. The driver demographic variables that are available in the crash data bases are believed not to be sufficient to quantify this influence (*i.e.*, there is no variable quantifying a driver's aggressivity). Therefore, we believe that, unlike rollover resistance ratings, handling ratings will not be able to predict single vehicle crash risk. They can, at best, be directionally correct.

We envision a three level handling rating system, tentatively, from best to worst, A, B, and C. A star rating system would not be used for handling ratings because they are not risk based but only directionally correct.

The handling rating calculation method proposed below contains many constants whose values NHTSA will specify at a later date (*e.g.*, a_{YMinN} and $a_{YRangeN}$). Our intention is to determine values for these constants based on data collected during the Phase VI testing. During Phase VI 25 vehicles for which we have state crash data on rollover will be tested using both rollover maneuver tests and handling tests concluding in Fall 2002. We have tried to choose the Phase VI test vehicles so as to cover the full range of handling that is seen in the current fleet, from excellent to average. (We do not believe that any current production vehicle has handling we would characterize as bad.) Once we have the Phase VI data, we will select values for the constants so that approximately one-third of the vehicles earn A ratings, one-third earn B ratings, and one-third earn C ratings.

The handling rating would be determined from the measurements results of the handling tests as follows:

1. Calculate a Handling Score, HS, from the formula:

$HS = W_1 * H_1 + W_2 * H_2 + W_3 * H_3 + W_4 * H_4 + W_5 * H_5 + W_6 * H_6 + W_7 * H_7 + W_8 * H_8 + W_9 * H_9 + W_{10} * H_{10} + W_{11} * H_{11} + W_{12} * H_{12}$

where W_1 through W_{12} are weights that NHTSA will select values for at a later date, H_1 is the Maximum Attainable Lateral Acceleration at Nominal Load sub-score, H_2 is the Dropped Throttle Yaw Rate Ratio at Nominal Load sub-score, H_3 is the Dropped Throttle Path Deviation at Nominal Load sub-score, H_4 is the Yaw Rate Response Time at Nominal Load sub-score, H_5 is the Peak Yaw Rate Response Time at Nominal Load sub-score, and H_6 is the Percent Overshoot at Nominal Load sub-score, H_7 is the Maximum Attainable Lateral Acceleration at Rear Load sub-score, H_8 is the Dropped Throttle Taw Rate Ratio at Rear Load sub-score, H_9 is the Dropped Throttle Path Deviation at Rear Load sub-score, H_{10} is the Yaw Rate Response Time at Rear Load sub-score, H_{11} is the Peak Yaw Rate Response Time at Rear Load sub-score, and H_{12} is the Percent Overshoot at Rear Load sub-score.

2. Calculate the Maximum Attainable Lateral Acceleration at Nominal Load sub-score, H_1, from the formulas:

If $a_{YMaxN} < a_{YMinN}$ then $H_1 = 0$

If $a_{YMaxN} > (a_{YMinN} + a_{YRangeN})$ then $H_1 = 1$

Otherwise

$a_{BarN} = (a_{YMaxN} - a_{YMinN}) / a_{YRangeN}$

$H_1 = a_{BarN} * (2 - a_{BarN})$

where a_{YMaxN} is the measured Maximum Attainable Lateral Acceleration at Nominal Load, and a_{YMinN} and $a_{YRangeN}$ are constants that NHTSA will select values for at a later date.

3. Calculate the Dropped Throttle Yaw Rate Ratio at Nominal Load sub-score, H_2, from the formula:

If $R_{MaxN} > R_{RangeN}$ then $H_2 = 0$

Otherwise

$H_2 = 1 - ((R_{MaxN} - 1) / R_{RangeN})^2$

where R_{MaxN} is the measured Dropped Throttle Yaw Rate Ratio at Nominal Load, and R_{RangeN} is a constant that NHTSA will select a value for at a later date. Note that R_{MaxN} can never be less than one.

4. Calculate the Dropped Throttle Path Deviation at Nominal Load sub-score, H_3, from the formula:

If $Y_{DevN} < Y_{MinN}$ then $H_3 = 0$

If $Y_{DevN} \geq Y_{MinN}$ and $Y_{DevN} < 0$ then $H_3 = 1 - (Y_{DevN}/Y_{MinN})^2$

If $Y_{DevN} \geq 0$ and $Y_{DevN} < Y_{OkN}$ then $H_3 = 1$

If $Y_{DevN} \geq Y_{OkN}$ and $Y_{DevN} < Y_{MaxN}$ then $Y_{BarN} = (Y_{DevN} - Y_{OkN})/(Y_{MaxN} - Y_{OkN})$

$H_3 = Y_{BarN} * (2 - Y_{BarN})$

If $Y_{DevN} > Y_{MaxN}$ then $H_3 = 0$

where Y_{DevN} is the measured Dropped Throttle Path Deviation at Nominal Load, and Y_{MaxN}, Y_{MinN}, and Y_{OkN} are constants that NHTSA will select values for at a later date.

5. Calculate the Yaw Rate Response Time at Nominal Load sub-score, H4, from the formula:

If $t_{rN} < t_{rMinN}$ then $H_4 = 1$

If $t_{rN} > (t_{rMinN} + t_{rRangeN})$ then $H_4 = 0$

Otherwise

$H_4 = ((t_{MinN} + t_{rRangeN}) - t_{rN})/t_{rRangeN}$

where t_{rN} is the measured Yaw Rate Response Time at Nominal Load, and t_{rMinN} and $t_{rRangeN}$ are constants that NHTSA will select values for at a later date.

6. Calculate the Peak Yaw Rate Response Time at Nominal Load sub-score, H_5, from the formula:

If $t_{pN} < t_{pMinN}$ then $H_5 = 1$

If $t_{pN} > (t_{pMinN} + t_{pRangeN})$ then $H_5 = 0$

Otherwise

$H_5 = ((t_{pMinN} + t_{pRangeN}) - t_{pN})/t_{pRangeN}$

where t_{pN} is the measured Yaw Rate Response Time at Nominal Load, and t_{pMinN} and $t_{pRangeN}$ are constants that NHTSA will select values for at a later date.

7. Calculate the Percent Overshoot at Nominal Load sub-score, H_6, from the formula:

If $O_{r\%N} < 0$ then $H_6 = 1$

Otherwise

$H_6 = 1 - (O_{r\%N}/O_{rRangeN})^2$

where $O_{r\%N}$ is the measured Percent Overshoot at Nominal Load, and $O_{rRangeN}$ is a constant that NHTSA will select a value for at a later date. Note that $O_{r\%N}$ can never be less than zero.

8. Calculate the Maximum Attainable Lateral Acceleration at Rear Load sub-score, H_7, from the formulas:

If $a_{YMaxR} < a_{YMinR}$ then $H_7 = 0$

If $a_{YMaxR} > (a_{YMinR} + a_{YRangeR})$ then $H_7 = 1$

Otherwise

$a_{BarR} = (a_{YMaxR} - a_{YMinR}) / a_{YRangeR}$

$H_7 = a_{BarR} * (2 - a_{BarR})$

where a_{YMaxR} is the measured Maximum Attainable Lateral Acceleration at Rear Load, and a_{YMinR} and $a_{YRangeR}$ are constants that NHTSA will select values for at a later date.

9. Calculate the Dropped Throttle Yaw Rate Ratio at Rear Load sub-score, H_8, from the formula:

If $R_{MaxR} > R_{RangeN}$ then $H_8 = 0$

Otherwise

$H_8 = 1 - ((R_{MaxR} - 1)/R_{RangeR})^2$

where R_{MaxR} is the measured Dropped Throttle Yaw Rate Ratio at Rear Load, and R_{RangeR} is a constant that NHTSA will select a value for at a later date. Note that R_{MaxR} can never be less than one.

10. Calculate the Dropped Throttle Path Deviation at Rear Load sub-score, H_9, from the formula:

If $Y_{DevR} < Y_{MinR}$ then $H_9 = 0$

If $Y_{DevR} \geq Y_{MinR}$ and $Y_{DevR} < 0$ then $H_9 = 1 - (Y_{DevR}/Y_{MinR})^2$

If $Y_{DevR} \geq 0$ and $Y_{DevR} < Y_{OkR}$ then $H_9 = 1$

If $Y_{DevR} \geq Y_{OkR}$ and $Y_{DevR} < Y_{MaxR}$ then $Y_{BarR} = (Y_{DevR} - Y_{OkR})/(Y_{MaxR} - Y_{OkR})$

$H_9 = Y_{BarR} * (2 - Y_{BarR})$

If $Y_{DevR} > Y_{MaxR}$ then $H_9 = 0$

where Y_{DevR} is the measured Dropped Throttle Path Deviation at Nominal Load, and Y_{MaxR}, Y_{MinR}, and Y_{OkR} are constants that NHTSA will select values for at a later date.

11. Calculate the Yaw Rate Response Time at Rear Load sub-score, H_{10}, from the formula:

If $t_{rR} < t_{rMinR}$ then $H_{10} = 1$

If $t_{rR} > (t_{rMinR} + t_{rRangeR})$ then $H_{10} = 0$

Otherwise

$H_{10} = ((t_{rMinR} + t_{rRangeR}) - t_{rR})/t_{rRangeR}$

where t_{rR} is the measured Yaw Rate Response Time at Rear Load, and t_{rMinR} and $t_{rRangeR}$ are constants that NHTSA will select values for at a later date.

12. Calculate the Peak Yaw Rate Response Time at Rear Load sub-score, H_{11}, from the formula:

If $t_{pR} < t_{pMinR}$ then $H_{11} = 1$

If $t_{pR} > (t_{pMinR} + t_{pRangeR})$ then $H_{11} = 0$

Otherwise

$H_{11} = ((t_{pMinR} + t_{pRangeR}) - t_{pR})/t_{pRangeR}$

where t_{pR} is the measured Yaw Rate Response Time at Rear Load, and t_{pMinR} and $t_{pRangeR}$ are constants that NHTSA will select values for at a later date.

13. Calculate the Percent Overshoot at Rear Load sub-score, H_{12}, from the formula:

If $O_{r\%R} < 0$ then $H_{12} = 1$

Otherwise

$H_{12} = 1 - (O_{r\%R}/O_{rRangeR})^2$

where $O_{r\%R}$ is the measured Percent Overshoot at Rear Load, and $O_{rRangeR}$ is a constant that NHTSA will select a value for at a later date. Note that $O_{r\%R}$ can never be less than zero.

14. Calculate the provisional Handling Rating from the Handling Score, HS, as follows:

If HS > HS_A then the provisional Handling Rating is an A

If HS < HS_C then the provisional Handling Rating is a C

Otherwise the provisional Handling Rating is a B

where HS_A and HS_C are constants that NHTSA will select values for at a later date.

15. If the vehicle spins when determining the Maximum Attainable Lateral Acceleration at Nominal Load, then reduce the provisional Handling Rating by one letter (but never below a C).

16. If the vehicle spins when determining the Maximum Attainable Lateral Acceleration at Rear Load, then reduce the provisional Handling Rating by one letter (but never below a C).

17. The provisional Handling Rating now becomes the final Handling Rating.

We welcome comments as to the appropriateness of the above technique for determining handling ratings. How can it be improved? One possibility would be to have two handling ratings, one for Nominal Load and one for Rear Load. Would this be better? Or should we consider the ratings for the different loadings to be an additional level of detail available to interested persons who want more than just the one rating?

X. Assessment of Costs and Benefits

The costs are Federal Government costs for developing the test protocol and rating system, conducting the tests, and disseminating the information. The benefits are information to consumers. Consumers want additional information. It is impossible for us to quantify the effect on consumer behavior or on manufacturer behavior.

XI. Rulemaking Analyses and Notices

A. Executive Order 12866

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impact of this action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This action has been determined to be economically not significant. However, because it is a subject of Congressional interest, this rulemaking document was reviewed by the Office of Management and Budget under Executive Order 12866, "Regulatory Planning and Review."

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. § 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small business, small organizations and small governmental jurisdictions. I hereby certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. The proposed action does not impose regulatory requirements on any manufacturer or other party.

C. National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federal implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposal would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million (106.99/98.11 = 1.09). The assessment may be included in conjunction with other assessments, as it is here.

The proposed action does not impose regulatory requirements on any manufacturer or other party.

F. Civil Justice Reform

This proposal would not have any retroactive effect. Under 49 U.S.C. 21403, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect

of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 21461 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

This proposal does not contain "collections of information," as that term is defined in 5 CFR Part 1320 Controlling Paperwork Burdens on the Public.

H. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. This action will not result in regulatory language.

XII. Submission of Comments

How Can I Influence NHTSA's Thinking on This Proposed Rule?

In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide views on options we propose, to suggest new approaches we have not considered, provide new data, indicate how this proposed rule may affect you, or provide other relevant information. We welcome your views on all aspects of this proposed rule, but request comments on specific issues throughout this document. We grouped these specific requests near the end of the sections in which we discuss the relevant issues. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning as clearly as possible.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts of the proposal you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- Be sure to include the name, date, and docket number with your comments.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on "search."

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Issued on: September 27, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

BILLING CODE 4910–59–P

Figure 1. Rollover Risk from Two Logistic Models, with and without Hypothetical Dynamic Maneuver Test Results

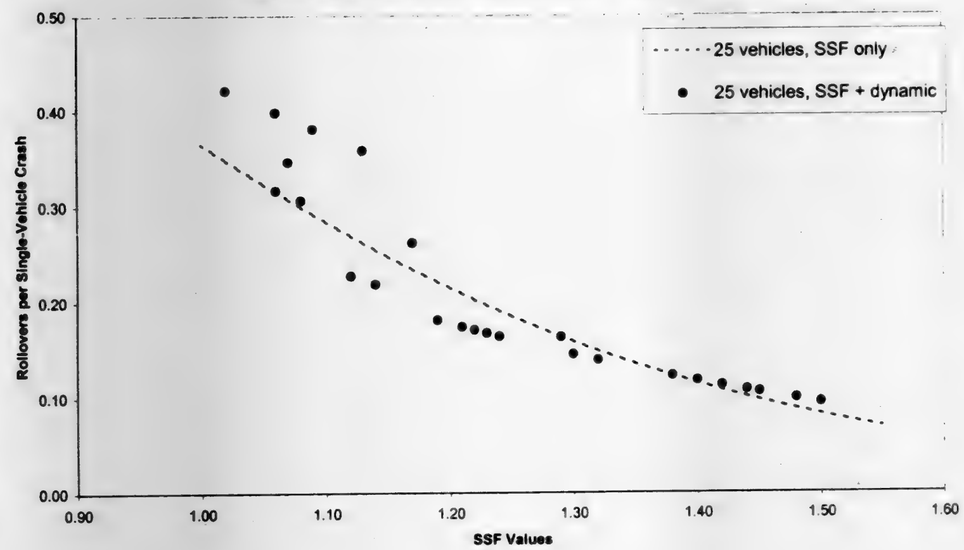

Rollover Star Rating

Rollover Rating for this Vehicle is:

Figure 2a. Graphics presented to focus groups – 4 out of 5 stars, without key

Rollover Star Rating

The Rollover Rating for this Vehicle is:

Key: Rollover Risk

Less than 10% chance of rollover
10-20% chance of rollover
20-30% chance of rollover
30-40% chance of rollover
More than 40% chance of rollover

Figure 2b. Graphics presented to focus groups – 4 out of 5 stars, with key

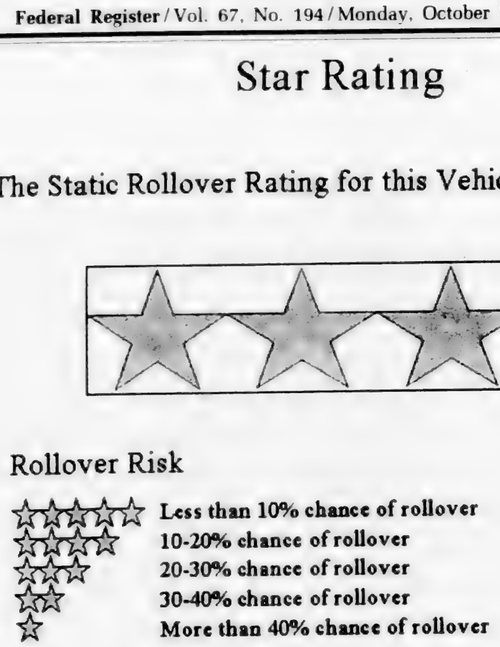

Figure 2c. Graphics presented to focus groups – 5 star system with half stars used

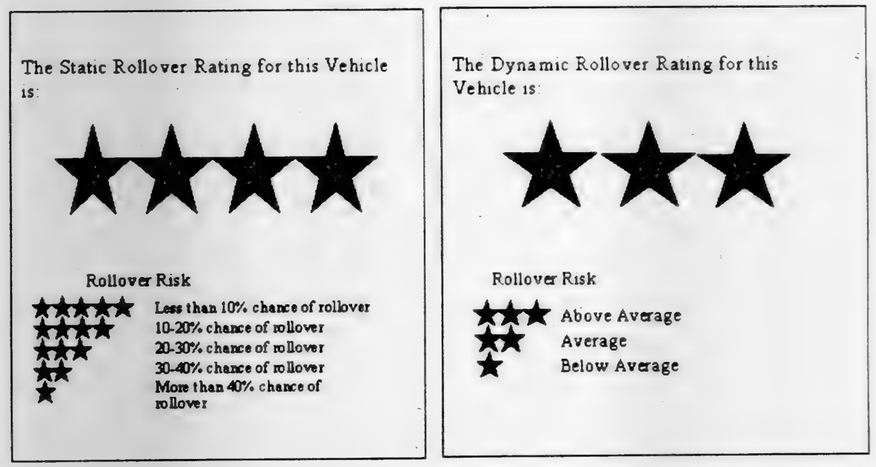

Figure 2d. Graphics presented to focus groups – separate presentation of static and dynamic ratings

Number Rating

The Static Rollover Rating for this Vehicle is:

4

Rollover Risk

1 Less than 10% chance of rollover
2 10-20% chance of rollover
3 20-30% chance of rollover
4 30-40% chance of rollover
5 More than 40% chance of rollover

Figure 2e. Graphics presented to focus groups – 5 level system expressed with numbers rather than stars

Number Rating

The Static Rollover Rating for this Vehicle is:

7

Rollover Risk

1 Less than 10% chance of rollover
2 11-14 % chance of rollover
3 15-18% chance of rollover
4 19-22% chance of rollover
5 23-26% chance of rollover
6 27-30% chance of rollover
7 31-34% chance of rollover
8 35-38% chance of rollover
9 39-42% chance of rollover
10 More than 42% chance of rollover

Figure 2f. Graphics presented to focus groups – 10 level system expressed with numbers rather than half-stars

Web Chart

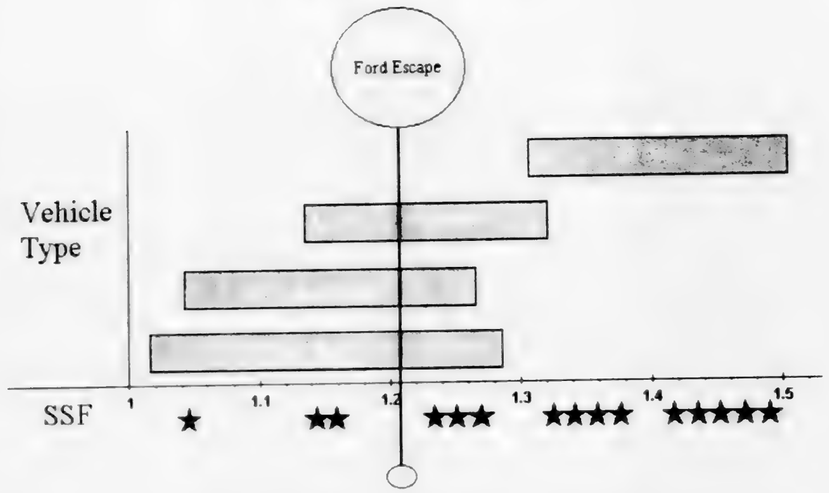

Figure 2g. Graphics presented to focus groups – rating of the vehicle of interest shown graphically in context of all other rated vehicles

Emergency Handling Letter Rating

The Vehicle Control Rating for this Vehicle is:

B

Key

A Above Average

B Average

C Below Average

Figure 2h. Graphics presented to focus groups – 3 level system expressed with letters

Emergency Handling Narrative Rating

The Vehicle Control Rating for this Vehicle is:

Average

Key
Below Average
Average
Above Average

Figure 2i. Graphics presented to focus groups – 3 level system expressed with words

Figure 3. Centrifuge Test

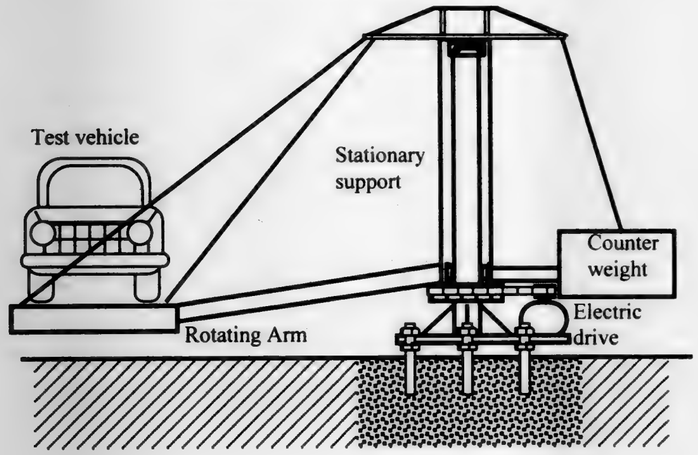

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Appendix I.—Summary of Maneuver Evaluation Test Results

Prior to the initiation of this research, NHTSA met with the Alliance of Automobile Manufacturers, Daimler-Chrysler, BMW, Volkswagen, Mitsubishi, Ford, Nissan, Toyota, Consumers Union of the United States, MTS Systems Corporation, Heitz Automotive Inc., and other interested parties to gather information on possible approaches for dynamic rollover tests. NHTSA also corresponded with the University of Michigan Transportation Research Institute. These parties made specific suggestions about approaches to dynamic testing of vehicle rollover resistance. Based on these suggestions plus NHTSA's experience in this area, a set of nine rollover resistance maneuvers were selected for evaluation. These nine maneuvers were listed in the July 2001 notice.

The research to evaluate potential maneuver tests for rollover is fully documented in the NHTSA technical report "Another Experimental Examination of Selected Maneuvers That May Induce On-Road Untripped, Light Vehicle Rollover—Phase IV of NHTSA's Light Vehicle Rollover Research Program". A number of test results and principal observations about the maneuvers are discussed here under the following four general headings:

1. Objectivity and Repeatability, *i.e.*, whether a maneuver could be performed objectively with repeatable results for the same vehicle.

2. Discriminatory Capability, *i.e.*, whether a maneuver demonstrated poorer performance for vehicles that have less resistance to rollover. Although of obvious importance, a maneuver's ability to discriminate between different levels of vehicle handling was not considered.

3. Performability *i.e.*, how difficult each maneuver is to objectively perform while obtaining repeatable results, how well developed are the test procedures for each maneuver, and whether the test procedure includes adequate means for adapting to differing vehicle characteristics.

4. Realistic Appearance, *i.e.*, whether a test maneuver looks like a maneuver consumers might imagine performing in an emergency.

The headings are useful for organizing the information, but they are not mutually exclusive. For example, the discussion of whether the performance of a vehicle in a particular maneuver is influenced more by handling properties than by rollover resistance would be under the heading of Discriminatory Capability. But the repeatability of the performance measurement discussed under Objectivity and Repeatability also influences the discriminatory capability of the maneuver. Similarly, Performability is a catch-all category that includes discussions of topics outside of the more specific headings.

Realistic Appearance helps consumers visualize the test maneuvers, but it is less important than the other three categories of test attributes because we are interested in anything that the vehicle is capable of doing. What we desire are "worst case" maneuvers, not necessarily ones that drivers try to perform. For example, drivers would not try to drive in a fishhook pattern, but the steering movements are similar to what occurs in an unsuccessful road edge recovery attempt. The maneuver only looks like a fishhook path if the vehicle does not tip-up. If the vehicle tips-up, it occurs shortly after the counter-steer when a driver in a road edge recovery attempt would still be on the pavement.

The specific reasons for the choice of maneuvers we are proposing for rollover resistance ratings are discussed in Section VI. The reasons are a consequence of the observations made in this section plus other practical considerations such as the desirability of multiple maneuvers to create a range of test severity were taken into account.

Four sport utility vehicles were tested during the summer of 2001 to obtain the data needed to perform this maneuver evaluation (the Phase IV Rollover Research). Two of the vehicles tested during the Phase IV research (the 1999 Mercedes ML320 and the 2001 Toyota 4Runner) came with yaw stability control systems as original equipment. Both of these vehicles were treated, for the purposes of maneuver evaluation, as two vehicles, one with yaw stability control and one without.

Therefore, the six test vehicles were:

1. 2001 Chevrolet Blazer without yaw stability control
2. 2001 Ford Escape without yaw stability control.

Note: The Automotive News Truck Market classifications classify this vehicle as a Sport Wagon instead of a Sport Utility Vehicle.

3. 1999 Mercedes ML320 with yaw stability control disabled
4. 1999 Mercedes ML320 with yaw stability control enabled
5. 2001 Toyota 4Runner with yaw stability control disabled
6. 2001 Toyota 4Runner with yaw stability control enabled

Each of the above test vehicles was tested in three configurations. Only two of these configurations will be discussed in this notice; test data from the Modified Handling configuration were not used for the maneuver evaluations discussed in this notice. The test configurations of interest were:

Nominal Vehicle. The vehicle load consisted of one occupant (the driver), instrumentation, and outriggers in/on the vehicle.

Reduced Rollover Resistance Vehicle. In addition to the Nominal Vehicle load, sufficient weight was placed on the roof to reduce the vehicle's SSF by 0.05. The weight on the roof was positioned so that the longitudinal/lateral position of the center of gravity did not change.

The Reduced Rollover Resistance Vehicle was used as a check on the sensitivity of the test maneuvers. A 0.05 reduction in SSF equates, for sport utility vehicles, to approximately a one star reduction in the vehicle's rollover resistance rating. (A larger reduction in SSF is necessary to achieve a one star rating reduction for vehicles, such as passenger cars, that have higher SSFs.) NHTSA believes that a one star reduction in the rollover resistance rating should make a vehicle substantially easier to rollover. Maneuvers with good discriminatory capability should measure substantially worse performance for this vehicle configuration than for the Nominal Vehicle configuration.

Data collected during the Phase IV Rollover Research was used to evaluate eight of the rollover resistance maneuvers (all except the J-Turn with Pulse Braking). For each of these eight maneuvers, vehicles were tested in the Nominal Vehicle configuration. For maneuvers which we deemed appropriate, testing was also performed using the Reduced Rollover Resistance configuration. For the J-Turn with Pulse Braking, we decided that we had sufficient data from prior testing (Phases II and III of the Rollover Research program) to evaluate this maneuver.

The results of the evaluation for each rollover resistance maneuver follows. For each maneuver, a brief description of the maneuver is given followed by its scores in each of the four evaluation factors. Each evaluation factor score is followed by a discussion as to how that particular score was decided upon.

A. NHTSA J-Turn

Maneuver Description

To perform this maneuver, the programmable steering controller input the handwheel commands described by Figure 1.

The NHTSA J-Turn handwheel angle is eight times the handwheel angle that produces a quasi-static 0.3 g lateral acceleration at 50 mph for each particular test vehicle. The handwheel rate of the handwheel ramp was 1000 degrees per second.

J-Turn tests were performed with two directions of steer, to the left and to the right. Vehicle speed was increased in 5 mph increments from 35 to 60 mph, unless at least two inches of simultaneous two-wheel lift was observed. If such wheel lift was detected, entrance speeds were iteratively reduced by 1 mph until it was no longer apparent.

Objectivity and Repeatability

The NHTSA J-Turn is the most objective and repeatable of all of the rollover resistance maneuvers. Figure 2 shows the Handwheel Angle, Vehicle Speed, Lateral Acceleration, and Roll Angle as functions of time for three tests of the Toyota 4Runner with yaw stability control enabled that were run at approximately the same speed (59.4, 58.1, and 58.6 mph). The Handwheel Angle graph shows that, by using the programmable steering controller, the steering control input can be precisely replicated from run-to-run (there are three traces in this graph). Test drivers can repeatably achieve input speeds within ±2 mph of the target speed. The vehicle speed, lateral acceleration and roll angle traces clearly show the very high repeatability of this maneuver.

Data from these runs is typical of our experience with the maneuver, with one exception. For runs that are either result in two-wheel lift or are very near to the point at which it first occurs, the roll angle repeatability becomes much worse. This is the case for all rollover resistance maneuvers that induce tip up because the vehicle either falls over or it does not. As a result, small fluctuations in test performance can lead to large changes in roll angle in this situation. This results in a variability of approximately ±2 mph in determining the lowest speed at which two-wheel lift occurs. As such, roll angle variability at the tip-up threshold did not lower the Objectivity and Repeatability rating for this maneuver.

Performability

The NHTSA J-Turn is the easiest of all of the rollover resistance maneuvers to perform. Objective and repeatable NHTSA J-Turn maneuvers can easily be performed using a programmable steering controller. Having only one major steering movement maximizes maneuver repeatability. The test procedure is well developed. Procedures have been developed to adapt the NHTSA J-Turn maneuver to the characteristics of the vehicle being tested.

Discriminatory Capability

None of the vehicles tested had two-wheel lift during NHTSA J-Turn tests in their Nominal Vehicle configuration. However, all of the vehicles except the Ford Escape and the Toyota 4Runner with its yaw stability control enabled did have two-wheel lift when tested in their Reduced Rollover Resistance configuration. The NHTSA J-Turn is not a severe enough maneuver to discriminate between typical, current generation, sport utility vehicles loaded with a driver and passenger only. However, it was very sensitive to the decrease in rollover resistance attributable to a decrease in SSF of 0.05. Also the speed at tip-up could discriminate between our individual test vehicles when the entire group was loaded to produce a decrease in SSF of 0.05. We used a roof load of about 200 lb to reduce the SSF by 0.05, but the addition of 5 to 6 passengers causes a similar reduction in SSF for typical current generation SUVs, vans and pickup trucks.

Realistic Appearance

Drivers perform NHTSA J-Turns during actual driving on cloverleaf entrance/exit ramps and other, essentially constant radius, curves that are driven at substantial speeds. This maneuver is not given an excellent rating in this category, however, because for light vehicles, actual drivers are very unlikely to use the large steering magnitudes needed to induce two-wheel lift without also applying sustained braking.

During NHTSA's discussions with the automotive industry, every manufacturer stated that they routinely perform J-Turn testing during vehicle development. This maneuver has a long history of industry use.

B. J-Turn With Pulse Braking

Maneuver Description

To perform this maneuver, the programmable steering and braking controller input the handwheel steering and braking commands as shown in Figure 3. Figure 3 also shows a typical vehicle roll rate response resulting from the steering input so as to explain the timing of the brake pulse. Pulse braking was initiated at the first zero crossing (determined by the roll rate being between +1.5 degrees per second and −1.5 degrees per second) of the roll rate after the initiation of steering (*i.e.*, at the time when the maximum roll angle occurs).

The handwheel magnitudes used for the J-Turn with Pulse Braking maneuver were always 330 degrees. The handwheel rate of the handwheel ramp was 1000 degrees per second.

The maximum brake pedal force used for the J-Turn with Pulse Braking maneuver was 200 pounds. The brake pulse durations ranged from 0.25 to 0.55 seconds.

J-Turn with Pulse Braking tests were performed with two directions of steer, to the left and to the right. Vehicle speed was increased in 2 mph increments from 36 to 60 mph, unless simultaneous two-wheel lift was observed.

Objectivity and Repeatability

The J-Turn with Pulse Braking is not as objective and repeatable as the J-Turn due to the pulse braking. Research has shown that the results of this test depend upon the precise timing and magnitude of the brake pulse. Therefore, to perform this maneuver with reasonable objectivity and repeatability, both tightly controlled steering and braking are required. The programmable steering controller needed for the J-Turn has now become a programmable steering and braking controller with a corresponding increase in testing complexity, difficulty, and cost.

Figure 4 shows the Handwheel Angle, Brake Pedal Force, Lateral Acceleration, Longitudinal Acceleration, Roll Angle, and Vehicle Speed, as functions of time for two tests of a 1998 Chevrolet Tracker (this vehicle did not have either antilock brakes or yaw stability control) that were run at approximately the same speed (31.1 and 31.3 mph). Unlike the rest of the data presented in this section, the J-Turn with Pulse Braking data was collected during the summer of 2000 as part of the Phase III–B Rollover research.

Like the NHTSA J-Turn, due to the use of the programmable steering controller, the steering control input was precisely replicated from run-to-run. The apparent non-repeatability in the steering input (and lateral acceleration and roll angle) is actually after the test is over and the driver has retaken control of the vehicle.

Similarly, the Brake Pedal Force graph shows that, by using the programmable braking controller, the braking control input can be precisely replicated from run-to-run. The precisely overlaid lateral acceleration, longitudinal acceleration, roll angle, and vehicle speed traces clearly show the very high repeatability achieved for these two runs.

We caution, however, that data from these two runs is not typical of our experience with maneuver. In general, we saw somewhat more variability in the brake pedal force than is shown in Figure 4. Also, as was discussed above for the NHTSA J-Turn, for runs that are near the point at which two-wheel lift first occurs, roll angle repeatability becomes much worse.

Performability

The addition of pulse braking substantially reduces the performability of this maneuver relative to the NHTSA J-Turn. The addition of a programmable braking controller, which is necessary to achieve the precise pulse brake timing required for repeatable performance, makes this test significantly harder and more costly to run. Issues remain as to the brake pulse timing needed to achieve worst case rollover performance.

Through the use of roll rate feedback, the timing of the brake pulse can be adapted to the characteristics of the vehicle being tested. The magnitude of the steering input can also be adapted from vehicle-to-vehicle (although this was not done during the Phase III research).

Discriminatory Capability

The J-Turn with Pulse Braking is a very bad maneuver for measuring the rollover resistance of different vehicles. For vehicles equipped with antilock braking systems (ABS), it does not appear to give any additional information beyond that obtained from the NHTSA J-Turn maneuver (unless the ABS is disabled; not a realistic situation). For vehicles without ABS, it can be a very severe test vehicle provided the timing of the brake pulse is just right. If this test were used for NCAP, it would discriminate more on the basis of ABS equipment than rollover resistance.

Realistic Appearance

Drivers could perform J-Turns with Pulse Braking during actual driving on cloverleaf entrance/exit ramps and other, essentially constant radius, curves that are driven at substantial speeds. However, we think that the occurrence of this maneuver is unlikely. With the large steering magnitudes needed to induce two-wheel lift, we believe it to be far more probable that drivers will apply sustained braking (which discourages rather than encourages two-wheel lift) instead of pulse braking.

C. Fixed Timing Fishhook

Maneuver Description

To perform this maneuver, the programmable steering controller input the handwheel commands described by Figure 5.

Fixed Timing Fishhook handwheel angle is 6.5 times the handwheel angle that produces a quasi-static 0.3 g lateral acceleration at 50 mph for each particular test vehicle. The commanded dwell (amount of time after the first steer for which handwheel position was maintained) for the Fixed Timing Fishhook was 0.25 seconds. The handwheel rates of the initial steer and countersteer ramps were 720 degrees per second.

Fixed Timing Fishhook tests were performed with both initial directions of steer, to the left and to the right. Vehicle speed was increased in 5 mph increments from 35 to 50 mph, unless at least two inches of simultaneous two-wheel lift was observed. If such wheel lift was detected, entrance speeds were iteratively reduced by 1 mph until it was no longer apparent.

Objectivity and Repeatability

The Fixed Timing Fishhook can be performed with excellent objectivity and repeatability. Figure 6 shows the Handwheel Angle, Vehicle Speed, Lateral Acceleration, and Roll Angle as functions of time for three tests of the Chevrolet Blazer that were run at approximately the same speed (37.8, 37.8, and 37.3 mph). Data from these runs is typical of our experience with this maneuver.

The vehicle speed and lateral acceleration traces clearly show the very high repeatability of this maneuver. The roll angle traces show the non-repeatability in roll angle that occurs around the point of two wheel lift. All three of these runs had two wheel lift approximately three seconds into the test. The amount of two-wheel lift was substantially less for one run than for the other two. Near the initiation of two-wheel lift, the roll angle becomes mathematically unstable because the vehicle either falls over or it does not. As was discussed above for the NHTSA J-Turn, this roll angle non-repeatability occurs for all maneuvers that generate two-wheel lift.

Performability

Objective and repeatable Fixed Timing Fishhook maneuvers can easily be performed using a programmable steering controller. The test procedure is well developed. Procedures have been developed to adapt the steering magnitude used for the Fixed Timing Fishhook maneuver for the characteristics of the vehicle being tested.

Discriminatory Capability

The Fixed Timing Fishhook is excellent maneuver for measuring the rollover resistance of different vehicles. The Chevrolet Blazer and the Mercedes ML320 (with the stability control both enabled and disabled) had two-wheel lift when tested in their Nominal Vehicle configuration. All vehicles (with the stability control, if present, both enabled and disabled) had two-wheel lift when tested in their Reduced Rollover Resistance configuration. (The Mercedes ML320 was not tested in its Reduced Rollover Resistance configuration. However, we are certain that it would have had two-wheel lift in this configuration because it had two-wheel lift in its Nominal Vehicle configuration and raising its center of gravity height is going to encourage, not prevent, two-wheel lifts.) The maneuver initial speed (a severity measure for the Fixed Timing Fishhook) at which two-wheel lifts first occurred varied about as expected.

While the Fixed Timing Fishhook does an excellent job of discriminating between vehicles for typical, current generation, sport utility vehicles, it will not do as good a job for the entire vehicle fleet. It is doubtful that any two-wheel lifts will occur during testing of vehicles that have a Static Stability Factors of 1.2 or greater (*e.g.*, most vehicles that earn three or more stars under NHTSA's current rollover rating program). That said, no driving maneuver known to NHTSA is expected to cause two-wheel lifts for vehicles in the 1.20 SSF range. However, as the name of this maneuver implies, the timing of this maneuver does not change from vehicle-to-vehicle. This will result in some vehicles not being tested with the timing needed to achieve worst case rollover performance.

Realistic Appearance

The Fishhook maneuver's steering input, no matter whether it's the Fixed Timing, Roll Rate Feedback, or Nissan variant, approximates the steering that a driver might perform in an effort to resume traveling in the correct lane of a two lane road after dropping two-wheels off of the road. None of the Fishhooks simulate the effects of the road-edge drop-off.

D. Roll Rate Feedback Fishhook

Maneuver Description

This maneuver is performed similarly to the Fixed Timing Fishhook except for the timing of the steering reversal. Figure 7 shows the handwheel steering input, as a function of time, used for this maneuver. Note that the magnitude of the steering is identical to that of the Fixed Timing Fishhook. However, the steering dwell time (amount of time after the first steer for which handwheel position was maintained) is no longer kept at 0.25 seconds. Instead, this dwell time is varied so as to maximize the severity of the maneuver.

Figure 7 also shows a typical vehicle roll rate response resulting from the steering input so as to explain the timing of the steering reversal. The steering reversal was initiated at the first zero crossing (determined by the roll rate being between +1.5 degrees per second and −1.5 degrees per second) of the roll rate after the initiation of steering (*i.e.*, at the time when the maximum roll angle occurs).

Objectivity and Repeatability

The Roll Rate Feedback Fishhook can be performed with excellent objectivity and repeatability. Occasionally, when performing this maneuver, the measured roll rate does not return to zero for a substantial period of time (1 to 2 seconds) resulting in a greatly delayed countersteer and an invalid test. However, this happens quite rarely, and it is obvious to the test driver when this delay causes the need to repeat the test run. Therefore, from a practical point of view, the objectivity and repeatability of this maneuver was not different from that of the Fixed Timing Fishhook.

Figure 8 shows the Handwheel Angle, Vehicle Speed, Lateral Acceleration, and Roll Angle as functions of time for three tests of the Toyota 4Runner with stability control disabled that were run at approximately the same speed (39.9, 40.3, and 39.5 mph). Data from these runs is typical of our experience with this maneuver.

The vehicle speed and lateral acceleration traces show the high repeatability of this maneuver. The roll angle traces show the non-repeatability in roll angle that occurs around the point of two wheel lift. As the traces show two of these runs had two wheel lift approximately three seconds into the test while one did not. Near the initiation of two-wheel lift, the roll angle becomes mathematically unstable because the vehicle either falls over or it does not. As was discussed above for the NHTSA J-Turn, this roll angle non-repeatability occurs for all maneuvers that generate two-wheel lift.

Performability

Objective and repeatable Roll Rate Feedback Fishhook maneuvers can easily be performed using a programmable steering controller equipped to handle roll rate feedback. The test procedure is well developed. Procedures have been developed to adapt both the steering magnitude and the steering reversal timing used for the Roll Rate Feedback Fishhook maneuver for the characteristics of the vehicle being tested.

Discriminatory Capability

The Roll Rate Feedback Fishhook is excellent maneuver for measuring the rollover resistance of different vehicles. The Chevrolet Blazer and the Mercedes ML320 (with the stability control both enabled and disabled) had two-wheel lift when tested in their Nominal Vehicle configuration. All vehicles (with the stability control, if present, both enabled and disabled) had two-wheel lift when tested in their Reduced Rollover Resistance configuration. (The Mercedes ML320 was not tested in its Reduced Rollover Resistance configuration. However, we are certain that it would have had two-wheel lift in this configuration because it had two-wheel lift in its Nominal Vehicle configuration and raising its center of gravity height is going to encourage, not prevent, two-wheel lifts.) The maneuver initial speed (a severity measure for the Roll Rate Feedback Fishhook) at which two-wheel lifts first occurred varied about as expected.

While the Roll Rate Feedback Fishhook does an excellent job of discriminating between vehicles for typical, current generation, sport utility vehicles, as explained above for the Fixed Timing Fishhook, it will not do as good a job for the entire vehicle fleet.

Realistic Appearance

See the Fixed Timing Fishhook maneuver Realistic Appearance discussion.

E. Nissan Fishhook

Maneuver Description

The Nissan Fishhook adds to the Fixed Timing Fishhook a procedure for adjusting the steering reversal timings to the vehicle being tested. This adjustment process has the same goal as the adjustment process used for the Roll Rate Feedback Fishhook, *i.e.*, to test each vehicle with the steering reversal timing required for the vehicle to have its worst case rollover performance. While the Roll Rate Feedback Fishhook maneuver accomplishes this by using roll rate feedback resulting in only one test run per initial maneuver speed, the Nissan Fishhook uses an iterative procedure to determine the timing.

First, a J-Turn is performed followed by a series of Fixed Timing Fishhooks (with different timings). Typically, two to four runs will be made for each initial maneuver speed. The procedure used to determine the final timing is too complex to give here but is fully described in the NHTSA technical report "Another Experimental Examination of Selected Maneuvers That May Induce On-Road Untripped, Light Vehicle Rollover—Phase IV of NHTSA's Light Vehicle Rollover Research Program." However, the final dwell times (the length of the pause between

completion of the first steer and the initiation of the countersteer, shown as time, T_1, in Figures 5 and 7) generated were close to those of the Roll Rate Feedback Fishhook.

Objectivity and Repeatability

The Nissan Fishhook was performed with good objectivity and repeatability. By using the programmable steering machine, handwheel inputs were precisely executed, and able to be replicated from run-to-run. Test drivers were able to achieve maneuver entrance speeds an average of ± 0.9 mph from the desired target speed.

Note that the Objectivity and Repeatability rating of the Nissan Fishhook maneuver was reduced from that assigned to the Fixed Timing Fishhook. This was due to roll rate zero-crossing variability observed in response to the step steer used in determining the timing of the maneuver. The Nissan Fishhook requires accurate determination of the third roll rate zero-crossing following input of the step steer. This is because zero crossing variability directly affects what dwell time duration will ultimately satisfy Nissan's requirements. If the third roll rate zero crossing is delayed (*e.g.*, due to an anomalous response produced during the step steer) an inappropriate dwell time extension will result.

Generally speaking the vehicle speed, lateral acceleration, and roll angle data observed during Nissan Fishhook tests were highly repeatable. However, as was discussed above for the NHTSA J-Turn, for runs that are near the point at which two-wheel lift first occurs, roll angle repeatability becomes much worse.

Performability

The Nissan Fishhook has a well worked out test procedure. It does not have a procedure to adapt the steering magnitude for the characteristics of the vehicle being tested although this could probably be added to the current test procedure without difficulty. The steering reversal timings used for the Nissan Fishhook maneuver are adjusted for the vehicle being tested.

The primary advantage of the Nissan Fishhook over the Roll Rate Feedback Fishhook is that by not using roll rate feedback you avoid the occasional need for repetitions caused by anomalies in the roll rate measurement and the extra expense of a programmable steering controller that can handle roll rate feedback.

The primary disadvantage of the Nissan Fishhook over the Roll Rate Feedback Fishhook is that the Nissan procedure requires three to four times as many test runs than does the Roll Rate Feedback Fishhook. As a result, greater tire wear occurs which has been shown to affect the results of Fishhook testing. It also increases testing time and costs.

The Nissan Fishhook, as proposed by Nissan, uses a very high steering wheel angle rate (1,080 degrees per second). Our programmable steering controller has some difficulty with such a high rate. Changing to the lower steering wheel angle rate (720 degrees per second) used for the Fixed Timing and Roll Rate Feedback Fishhooks would probably only minimally affect maneuver results. Reduction of the magnitude of the countersteer to the amount used for the Fixed Timing and Roll Rate Feedback Fishhooks should slightly increase maneuver severity. Our experience has been that the large countersteer used by the Nissan Fishhook slows the vehicle down more rapidly, decreasing maneuver severity.

Discriminatory Capability

The Nissan Fishhook was an excellent maneuver for measuring the rollover resistance of different vehicles. The dynamic rollover propensity of only the Chevrolet Blazer and Ford Escape was assessed using the Nissan Fishhook, and all tests were performed in the Nominal Load condition. Two-wheel lift was produced during tests performed with the Chevrolet Blazer.

The results obtained with Nissan's methodology were in good agreement with those produced during Fixed Timing and Roll Rate Feedback Fishhook testing. That said, the entrance speed of the Nissan Fishhook test for which two-wheel lift occurred was approximately 6 mph higher than that of either of the other Fishhooks.

While the Nissan Fishhook does an excellent job of discriminating between vehicles for typical, current generation, sport utility vehicles, as explained above for the Fixed Timing Fishhook, it will not do as good a job for the entire vehicle fleet.

Realistic Appearance

See the Fixed Timing Fishhook maneuver Realistic Appearance discussion.

F. Ford Path Corrected Limit Lane Change

Maneuver Description

Ford's procedure is a path specific method composed of an array of double lane change courses and a data-normalizing technique used to address driver variability. It results in a metric based on dynamic weight transfer.

Ford believes that a path specific method, wherein test vehicles navigate a standard set of paths, is preferable to maneuvers that employ open loop steering. Ford states that a specific path provides a basis for comparison of the resulting metrics. By ensuring that all vehicles experience the same magnitude of lateral acceleration, the effects of surface variability on test results are negated. Ford suggests that 0.7g is an appropriate target for lateral acceleration. Its suite of specific paths exercises vehicles through a range of frequencies and amplitudes at the proposed target lateral acceleration.

Three markers (short traffic cones) placed on the pavement delimit the path's lane change apertures with the middle marker representing an avoidance obstacle. Varying the position of the obstacle laterally and longitudinally (with corresponding longitudinal repositioning of the exit marker) produces an array of steering input amplitudes and frequencies. A test vehicle approaches the course at 45 mph. The driver releases the throttle at the course entrance and coasts while steering through the course. Figure 9 portrays the suite of double lane change paths to the left used for this maneuver. A similar suite of double lane change paths to the right is also tested.

Ford addresses driver and test surface variability with the Path Corrected Limit Lane Change (PCLLC) normalizing technique. The mathematical procedure is executed during post-processing of test data and is used "to normalize the varying results of physical tests to a uniformly based metric."[8] The results indicate how the various vehicles would perform had they followed the exact same path.

Ford states, "Post-test computer aided normalizing techniques have been sufficiently developed that we have high confidence in their applicability to this issue. The PCLLC technique uses physical test data to define a vehicle-specific transfer function. These functions are then used to normalize metric values, such as dynamic weight transfer, to a specific vehicle path common to all vehicles evaluated. The data suggests that use of these normalizing techniques eliminates concerns that may arise because of test driver variability and by subjecting the vehicles to the same path, help to eliminate track surface variability, thus providing the only dynamic test method and metric unaffected by these sources of variability. We [Ford] believe this is a technically sound method to achieve reliable, repeatable and objectively stated results that will improve upon SSF based star ratings."[9]

Ford reports that an analysis of the results of the normalizing technique shows that, despite varying styles of driving indicated by measurement of peak steering wheel angles and rates, the differences in the mean values of Dynamic Weight Transfer Metric (DWTM) among four test drivers driving the same vehicle are not statistically significant.

Ford has allowed NHTSA to evaluate the PCLLC technique under a confidentiality agreement. Thus, details of the procedure are not available for this notice. NHTSA expects that Ford would make the details of the procedure public if it proposed that Ford's test protocol as the dynamic rollover test mandated by the TREAD Act.

Ford proposes a rollover resistance metric based on dynamic lateral weight transfer. Ford defines dynamic weight transfer as the "percentage of weight that is removed from a vehicle's two inside tires during a severe lane change."[10] The Dynamic Weight Transfer Metric (DWTM) is the maximum percent of dynamic weight transfer averaged over a minimum specific time. Ford recommends a minimum specific time of 400 milliseconds.

Objectivity and Repeatability

The Path Corrected Limit Lane Change maneuver consists of a series of closed-loop

[8] Copied from Page 4 of Ford Motor Company's submission of August 16, 2001 in response to NHTSA notice Consumer Information Regulations; Rollover Resistance, Docket No. NHTSA–2001–9663 (66 Fed. Reg. 35179–35193, July 3, 2001). Referred to subsequently as Ford's 2001 Rollover Comments.

[9] Copied from Page 5 of Ford's 2001 Rollover Comments.

[10] Copied from Page 1 of a Ford Motor Company memorandum titled "Dynamic Weight Transfer Results from Path-Corrected Limit Lane Change Joint Testing with NHTSA." Referred to subsequently as Ford's PCLLC Report.

(test driver generated steering inputs) double lane changes. Data collected during these double lane changes is then processed "to assure that all vehicles follow the same path and are subject to the same acceleration demands."[11] For reasons that are discussed below in the Discriminatory Capability subsection for this maneuver, Ford Motor Company (Ford) recommends the calculation of a Dynamic Weight Transfer Metric (DWTM) at 0.7 g lateral acceleration for this maneuver. "Because different vehicle designs will react differently to forces of varying magnitude and time duration, a suite of various paths should be analyzed in determining an overall dynamic weight transfer metric (DWTM), based on values of maximum weight transfer."[12] Note that higher values of DWTM are worse than lower values.

Ford has performed a substantial amount of Path Corrected Limit Lane Change maneuver testing. While we do not have access to this data, Ford has summarized this data as follows: "Ford's overall standard deviation for the DWT metric is 4.4 from multiple tests made on a variety of vehicles with a variety of drivers, over a time span of several months and using a new set of tires fitted for each test."[13] To understand the meaning of this standard deviation, we need to know the expected range of the dynamic weight transfer metric.

The most basic way to estimate this range is to approximate the vehicle as a rigid block in a steady state curve at 0.7g lateral acceleration. Using this approximation, the expected range of DWTM values is from 46.7 percent (corresponding to a vehicle with a static stability factor of 1.50) to 70,0 percent (corresponding to a static stability factor of 1.00).

Real vehicles, of course, are not rigid bodies. They have compliant suspensions and tires. This increases the DWTM values from those of rigid vehicles. Based on NHTSA's Tilt Table data and assumptions about the difference between tilt table and flat track testing, we estimate an addition of about 4% to 8% DWTM to the rigid body calculations as a result of quasi-static body roll at 0.7 g. Applying the average addition of 6% DWTM makes the expected range of DWTM approximately 53 percent to 76 percent. Therefore, Ford's standard deviation of 4.4 for DWTM is 19 percent of the entire expected range of DWTM values.

Another way to understand the meaning of this standard deviation is to analyze the values of DWTM that were measured by Ford and NHTSA during joint testing of the Phase IV rollover test vehicles. Table 1 lists these values, along with the number of observations that these values are based on, the calculated dynamic weight transfer at 0.7 g lateral acceleration based on a rigid body model, and the difference between these two dynamic weight transfer values.

Consider the Chevrolet Blazer and the Ford Escape. The Blazer receives one star; the lowest rating a for sport utility vehicle from NHTSA's current rollover rating system (which is based on Static Stability Factor). The Ford Escape has an SSF at the high end of the three star range; one of the higher ratings for sport utility vehicles. Most sport utility vehicles have Static Stability Factors between these two vehicles.

TABLE 1.—MEASURED AND CALCULATED DYNAMIC WEIGHT TRANSFERS[14]

	2001 Chevrolet Blazer	2001 Ford Escape	1999 Mercedes ML320 with ESC on	1999 Mercedes ML320 with ESC off	2001 Toyota 4Runner with ESC on	2001 Toyota 4Runner with ESC off
PCLLC Measured DWTM (in percent)	70.3	62.9	74.8	68.2	66.2	66.6
Number of Observations	4	4	4	10	4	4
Steady State Rigid Body WT Calculated from SSF (in percent)	67.3	55.6	60.9	60.9	63.1	63.1
Difference (in percent)	3.0	7.3	13.9	7.3	3.1	3.5

Now compare the DWTM values of these vehicles as measured using the Path Corrected Limit Lane Change and shown in Table 1. For the Chevrolet Blazer the measured DWTM value is 70.3. However, based on Ford's standard deviation and the number of samples, we have 95 percent confidence that the DWTM for this vehicle is between 66.0 and 74.6. Similarly, for the Ford Escape we have 95 percent confidence that the DWTM is between 58.6 and 67.2. Note that these ranges overlap. However, the difference between these two vehicles DWTM values is statistically significant (although just barely having a t-value of 2.38 versus the critical t-value of 2.37).

A measurement standard deviation for which the difference between a sport utility vehicle with high rollover resistance and one with low rollover resistance is only marginally statistically significant is too large for generating vehicle ratings.

Table 1 shows another problem with the measured DWTM values. When we estimated the expected range of DWTM as 53 percent to 76 over the entire range of vehicles from SUVs to sport sedans, we considered only the quasi-static load transfer due to the vehicle's rigid body geometry (SSF) and to its steady state body roll. We neglected the dynamic weight transfer that occurs as a result of body roll acceleration in an abrupt maneuver. However, when the calculated steady state, rigid body weight transfer in Table 1 is subtracted from the measured DWTM, the difference is no more than that expected for the steady state body roll in all but one case. It would appear that the Dynamic Weight Transfer Metric produced by PCLLC generally measures quasi-static rather than dynamic weight transfer. Quasi-static weight transfer is what occurs when a vehicle is driven in a circle at a constant speed without abrupt changes in speed or direction.

The exception is the DWTM measurement for the Mercedes ML320 with yaw stability control enabled. While the DTWM for this vehicle with yaw stability control disabled is no more than the expected quasi-static load transfer, the DTWM increases by 6.6 percent when the yaw stability control is enabled. The difference between these two values is statistically significant and would seem to represent a dynamic weight transfer component missing in the other PCLLC results in Table 1. However, it is hard to understand why stability control should lower the rollover resistance of this vehicle. Fishhook testing indicates just the opposite; that yaw stability control increases the rollover resistance of this vehicle. Therefore, we believe that the measured DWTM value for the Mercedes ML320 with yaw stability control enabled is incorrect.

In conclusion, the objectivity and repeatability of the Path Corrected Limit Lane Change has not yet attained an acceptable level for rating the rollover resistance of vehicles. Future improvements to the objectivity and repeatability of this maneuver can probably be made, but there are other tests with more potential for making highly objective and repeatable measurements of quasi-static weight transfer.

Performability

The procedure for performing this test is straight-forward. However, substantial additional instrumentation, over and above that required to perform a Fishhook maneuver, are required. The costs and additional testing time associated with this equipment is expected to exceed the costs and additional testing time saved by not having to use a programmable steering controller. An additional test, on a tire testing machine, is also required.

Ford has ideas for reducing the additional instrumentation required for the Path Corrected Limit Lane Change procedure. However, this is a future enhancement and cannot be evaluated at this time.

[11] Copied from Page 3 of Ford's 2001 Rollover Comments.

[12] Copied from Page 1 of Appendix III of Ford's 2001 Rollover Comments.

[13] Copied from Page 2 of Ford's PCLLC Report.

[14] Values taken from Page 2 of Ford's PCLLC Report.

Since Ford processed the data collected during our testing, we are unable to say how difficult the data processing is to perform. However, with experience and the correct software it is expected to approximately equal the effort required to process data from a Fishhook or J-Turn test. There may be issues in making Ford's data processing software publicly available.

Due to the use of a suite of paths for calculating DWTM values, the Path Corrected Limit Lane Change procedure should adequately adapt to differing vehicle characteristics.

We also have concerns about determining dynamic weight transfer as an average value over a 400 millisecond window. The use of this broad a window may filter out dynamic effects that may be important in actual vehicle rollovers.

Discriminatory Capability

No two-wheel lifts occurred during Path Corrected Limit Lane Change testing for any of the test vehicles. However, unlike the J-Turn and Fishhook maneuvers, the occurrence/non-occurrence of two-wheel lift is not used as a measure of vehicle performance for this maneuver. The DWTM measured in PCLLC testing produces a continuous measure of rollover resistance that, like SSF, that allows discrimination even among vehicles that are not susceptible to on-road untripped rollover.

Ford recommends the calculation of a Dynamic Weight Transfer Metric (DWTM) at 0.7 g lateral acceleration as a measure of vehicle performance for this maneuver. Data collected during testing is processed to remove driver effects by having all vehicles always follow the same specified paths and be subject to the same acceleration demands. "Because different vehicle designs will react differently to forces of varying magnitude and time duration, a suite of various paths should be analyzed in determining an overall dynamic weight transfer metric (DWTM), based on values of maximum weight transfer."[15] Ford's reasons for making this recommendation are as follows:

"For a given velocity change, various vehicle related factors determine the magnitude of dynamic weight transfer for events that can lead to both tripped or un-tripped rollover. Obviously, the higher the center-of-gravity, the greater the transfer for a given travel velocity change. Similarly, the smaller the track width, the greater the transfer. As is well known, many factors other than these two affect dynamic weight transfer and it is because of this that SSF is a narrow and inadequate concept. For example, if deflections occur in suspensions, tires, or other parts that control overall body movements such as active stabilizer bars or electronically controlled shock absorbers, when dynamic forces are applied, the magnitude of the dynamic weight transfer will also change. Inertial values, yaw plane motions, vertical motions and pitch plane motions that arise because of a vehicle's design details or features can affect force and moment balances and can change vehicle configurations to affect the magnitude of the dynamic weight transfer. It is a directionally correct proposition that the greater the magnitude of the dynamic weight transfer in a given high severity event, the less margin, reserve, or resistance remains to a rollover occurring. Based on these principles, Ford believes that dynamic weight transfer is a metric of value in a dynamic test." "Our preliminary work has confirmed that this metric will discriminate among specific vehicles within a class and between classes of vehicles. We submit that DWTM is a more reliable metric than SSF alone."[16]

DWTM has the theoretical advantage over SSF of including load transfer due to quasi-static body roll and true dynamic load transfer due to body roll accelerations, but its measurement by the PCLLC method seems to be lacking the dynamic load transfer component. The PCLLC test also is not able to test for the effect of yaw stability control. In its comment to the docket of the last notice, Ford suggested that the same 0.7g lane change maneuvers and DTWM could be implemented directly with an advanced path following robot rather than with the PCLLC method, but it cautioned that the test would not evaluate the effect of yaw stability control. In light of this comment, it is not surprising that the PCLLC test measured no effect of yaw stability control of Toyota 4Runner, but it remains troubling that it measured a significant loss of rollover resistance for yaw stability control of the Mercedes ML320 contrary to its effect measured in other rollover maneuver tests.

As discussed above, we do not believe that dynamic weight transfer values determined using this maneuver have, so far, attained an acceptable level of repeatability. We are also concerned about not exercising vehicles to the limits of their performance. By not taking vehicles to their limits, some important limit performance problems could be overlooked.

Realistic Appearance

In general, double lane change maneuvers have an excellent appearance of reality. These are the emergency obstacle avoidance maneuvers that people think of first when they consider untripped rollover. While the Path Corrected Limit Lane Change trajectories are idealized, rather than actual, this distinction would likely not be noticed by consumers.

G. ISO 3888 Part 2 Double Lane Change

Maneuver Description

To perform ISO 3888 Part 2 Double Lane Change testing, the vehicle was driven through the course shown in Figure 10. The driver released the throttle 6.6 ft (2.0 m) from the entrance of the first lane. No throttle input or brake application occurred during the remainder of maneuver.

Drivers iteratively increased maneuver entrance speed from approximately 35 mph in 1 mph increments. The iteration continued until valid tests could no longer be performed (lane position could not be maintained without striking cones). Each driver was required to perform three valid runs at their maximum speed. This was to assess input and output variability for tests performed by the same driver with the same entrance speed.

The manner in which the 1 mph iterations were implemented was somewhat driver-dependent. Some drivers preferred to increase speed until they could no longer achieve a valid test. Once this threshold was reached, the driver would reduce speed slightly and perform three valid tests. Other drivers would perform three valid tests at one speed before proceeding to the next iteration. Both methods produced similar results.

So as to examine driver-to-driver differences, during the Phase IV research, this maneuver was performed for each vehicle by three drivers. To reduce any confounding effect tire wear may have on ISO 3888 Part 2 Double Lane Change test results, a new tire set was installed on each vehicle, for each driver.

Objectivity and Repeatability

Since steering inputs for the ISO 3888 Part 2 Double Lane Change maneuver are generated by the test driver, vehicle performance in this maneuver depends upon the skill of the test driver, the steering strategy used by the test driver, plus random run-to-run fluctuations.

The ISO 3888 Part 2 Double Lane Change maneuver attempts to minimize this variability through the use of an in-between lane of substantial length and very tight entry, exit, and in-between lanes, thereby minimizing a driver's steering options for getting through the course without striking delineating cones.

Figure 11 shows the range of handwheel steering angles used by three different test drivers while performing this maneuver multiple times while Figure 12 shows the range of handwheel steering angles used by these drivers at selected times during this maneuver. As these figures show, there are both substantial driver-to-driver differences and substantial within driver run-to-run differences in the steering inputs. These differences tend to increase as the maneuver progresses.

Arguably, the differences in steering inputs shown in Figure 11 and 12 do not really matter for the purposes of determining Rollover Resistance Ratings. What really matters are driver-to-driver differences in vehicle outputs, specifically the vehicle rating metrics.

The rating metric suggested by the Daimler-Chrysler Corporation is the maximum entry speed into the test course at which a driver successfully achieved a "clean" run. (A "clean" run is one during which none of the cones delineating the course were struck.)

Table 2 shows the maximum achievable "clean" run speeds for three test drivers for the Nominal Vehicle configuration for each of the Phase IV rollover test vehicles. (While each vehicle was tested by three drivers, four drivers actually participated in this testing.) Note that higher values of this metric indicate a better performing vehicle.

[15] Copied from Page 1 of Appendix III of Ford's 2001 Rollover Comments.

[16] Copied from Pages 5 and 6 of Ford's 2001 Rollover Comments.

TABLE 2.—MAXIMUM ACHIEVABLE "CLEAN" RUN SPEEDS FOR THE ISO 3888 PART 2 DOUBLE LANE CHANGE MANEUVER—NOMINAL VEHICLE CONFIGURATION

Test driver	2001 Chevrolet Blazer (mph)	2001 Ford Escape (mph)	1999 Mercedes ML320 with ESC on (mph)	1999 Mercedes ML320 with ESC off (mph)	2001 Toyota 4Runner with ESC on (mph)	2001 Toyota 4Runner with ESC off (mph)
GF/RS	39.0	36.9	38.0	37.2	37.6	35.9
LJ	40.0	36.6	37.0	36.7	36.7	35.3
RL	41.0	38.0	36.8	37.8	35.8	37.0
Range	2.0	1.4	1.2	1.1	1.8	1.7

Table 3 shows a rank ordering of the Phase IV rollover test vehicles based on the maximum "clean" run speeds achieved by the test drivers. Note that 1 is the best rank and 6 the worst.

TABLE 3.—VEHICLE RANKINGS BASED ON MAXIMUM ACHIEVABLE "CLEAN" RUN SPEEDS FOR THE ISO 3888 PART 2 DOUBLE LANE CHANGE MANEUVER—NOMINAL VEHICLE CONFIGURATION

Test driver	2001 Chevrolet Blazer	2001 Ford Escape	1999 Mercedes ML320 with ESC on	1999 Mercedes ML320 with ESC off	2001 Toyota 4Runner with ESC on	2001 Toyota 4Runner with ESC off
GF/RS	1	5	2	4	3	6
LJ	1	5	2	3	3	6
RL	1	2	5	3	6	4

As Table 2 shows, for the drivers used, the range of maximum achievable "clean" run entry speeds varied from 1.2 mph for the 1999 Mercedes ML320 with yaw stability control enabled to 2.0 mph for the 2001 Chevrolet Blazer. The average range was 1.5 mph. While these may seem like small ranges, the entire best-to-worst range in Table 2 is only 5.7 mph. Since we tested a fairly broad range of sport utility vehicles during the Phase IV research, the maximum achievable "clean" run speeds for most sport utility vehicles are expected to be in this 5.7 mph range. Therefore, driver-to driver variability averages 27 percent of the range of the rating metric and can be as much as 35 percent.

The problem caused by driver-to-driver variability combined with the small range of metric values is clearly shown by Table 3. While the Chevrolet Blazer attained the best ranking from all three test drivers, the ranking for the Mercedes ML320 with yaw stability control enabled varied from second best to second worst.

Driver skills and abilities vary with time. Although we did not do such testing, if we retested the Phase IV rollover test vehicles with the same test drivers performing the ISO 3888 Part 2 Double Lane Change maneuver we anticipate that our results would not exactly match those shown in Tables 2 and 3. Since we have such a small range for the rating metric day-to-day (or even hour-to-hour) changes in test driver performance would probably change the maximum achievable "clean" run entry speeds by a substantial percentage of the overall range.

Due to the problems associated with driver-to-driver variability and run-to-run for the same driver variability, the objectivity and repeatability of this maneuver is poor.

Performability

The procedure for performing this test is straight-forward. However, as discussed above, this maneuver has objectivity and repeatability issues. Resolving these issues adds difficulty and complexity to performing these tests.

For example, one possibility for improving objectivity and repeatability is to use multiple drivers to perform the testing (three drivers were used during the Phase IV testing). While this should help, there are still potential problems. One exceptionally skilled test driver could generate very good performance metrics for a mediocre vehicle. If this exceptionally skilled driver did not test some other vehicle, that vehicle's performance metrics might, incorrectly, be lower than they should be. Therefore, in addition to using multiple drivers, procedures would need to be developed to ensure that every vehicle is tested by drivers of approximately equal skill.

The ISO 3888 Part 2 Double Lane Change test procedure includes adjustments to lane width and lane change gate length for differing vehicle sizes. These should adequately adapt this maneuver for differing vehicle characteristics.

Discriminatory Capability

No two-wheel lifts occurred during any "clean" run of ISO 3888 Part 2 Double Lane Change testing for any of the test vehicles. (A "clean" run is one during which none of the cones delineating the course were struck.) While some two-wheel lifts did occur during runs that were not "clean", these should not be considered for the determination of our rollover resistance ratings. The reason is that when a run is not "clean", there is no way to determine whether the vehicle comes close to following the test course. For example, a driver could perform a fishhook maneuver or simply drive straight through. Either case would simply be recorded as not a "clean" run.

Unlike the J-Turn and Fishhook maneuvers, the occurrence/non-occurrence of two-wheel lift cannot be used as a measure of vehicle performance for this maneuver because two-wheel lifts during a clean run appear very unlikely for any NCAP vehicle. The rating metric suggested by the Daimler-Chrysler Corporation (Daimler) is the maximum entry speed into the test course at which a driver successfully achieved a "clean" run.

Table 4 shows the maximum achievable "clean" run speeds attained by any of the test drivers for both the Nominal Vehicle and Reduced Rollover Resistance configuration for each of the Phase IV rollover test vehicles. Note that higher values of this metric indicate a better performing vehicle.

The Reduced Rollover Resistance configuration vehicles have had weights placed on the roof so as to raise the center of gravity height. Their Static Stability Factors have been reduced by 0.05. A 0.05 reduction in SSF equates, for sport utility vehicles, to approximately a one star reduction in the vehicle's rollover resistance rating. As was previously stated, NHTSA believes that a one star reduction in the rollover resistance rating should make a vehicle substantially easier to rollover. Maneuvers with good discriminatory capability should measure substantially worse performance for Reduced Rollover Resistance the configuration than for the Nominal Vehicle configuration.

TABLE 4.—MAXIMUM ACHIEVABLE "CLEAN" RUN SPEEDS BY ANY DRIVER FOR THE ISO 3888 PART 2 DOUBLE LANE CHANGE MANEUVER—NOMINAL VEHICLE AND REDUCED ROLLOVER RESISTANCE CONFIGURATIONS

Test driver	2001 Chevrolet Blazer (mph)	2001 Ford Escape (mph)	1999 Mercedes ML320 with ESC on (mph)	1999 Mercedes ML320 with ESC off (mph)	2001 Toyota 4Runner with ESC on (mph)	2001 Toyota 4Runner with ESC off (mph)
Nominal Vehicle Configuration	41.0	38.0	38.0	38.9	37.6	37.0
Reduced Rollover Resistance Configuration	39.0	37.3	37.4	37.1	39.3	38.0
Difference	2.0	0.7	0.6	1.8	−1.7	−1.0

This expected substantial change in rollover resistance ratings is not seen for the ISO3888 Part 2 Double Lane Change maneuver. For three of the vehicles the maximum achievable "clean" run speeds attained by any of the test drivers in the Reduced Rollover Resistance configuration vehicles did decrease slightly compared to the Nominal Configuration vehicles while for the 2001 Toyota 4Runner they increased slightly. The average change was only 0.4 mph, far less than the average driver-to-driver variability of 1.5 mph.

The expected substantial change in rollover resistance measurement was not observed for the ISO3888 Part 2 Double Lane Change maneuver apparently because the sensitivity of the test to handling properties is predominant compared to its sensitivity to rollover resistance. Placing weight on a vehicle's roof raises its center of gravity height which reduces its rollover resistance. However, doing this also increases a vehicle's mass and roll moment of inertia, resulting in changes to a vehicle's handling that are not well understood. Since handling and rollover resistance are inextricably intertwined in the rating produced by this maneuver, the rating generated can improve even though the rollover resistance of a vehicle is getting worse.

Results from both J-Turn and Fishhook testing are, of course, also influenced by the handling characteristics of the vehicle. However, handling has less of a chance to dominate these maneuvers because they involve fewer major steering movements (one for a J-Turn, two for a Fishhook, and three for a Double Lane Change).

The above reasoning also explains an apparent anomaly in Table 3. In this table, the Chevrolet Blazer has the best ranking of any of the vehicles. However, based on its one star rating and performance in the NHTSA J-Turn and Fishhooks, we believe it to have the lowest rollover resistance of any of the Phase IV rollover test vehicles. The apparent contradiction is resolved once we realize that the ISO3888 Part 2 Double Lane Change maneuver measures mostly the handling rather than rollover resistance of vehicles.

Realistic Appearance

In general, double lane change maneuvers have an excellent appearance of reality. These are the emergency obstacle avoidance maneuvers that people think of first when they consider untripped rollover.

H. Consumers Union Short Course Double Lane Change

Maneuver Description

To perform Consumers Union Short Course Double Lane Change testing, the vehicle was driven through the course shown in Figure 13. As the vehicle approached the course entrance, the driver released the throttle so as to achieve a desired target speed as the vehicle passed over a timing strip 35 feet from the entrance of the first lane. Otherwise, the procedure for this maneuver was identical to that used for the ISO 3888 Part 2 Double Lane Change testing.

Objectivity and Repeatability

Since steering inputs for the Consumers Union Short Course Double Lane Change maneuver are generated by the test driver, vehicle performance in this maneuver depends upon the skill of the test driver, the steering strategy used by the test driver, plus random run-to-run fluctuations.

Figure 14 shows the range of handwheel steering angles used by three different test drivers while performing this maneuver multiple times while Figure 15 shows the range of handwheel steering angles used by these drivers at selected times during this maneuver. As these figures show, there are both substantial driver-to-driver differences and substantial within driver run-to-run differences in the steering inputs. These differences tend to increase as the maneuver progresses.

Arguably, the differences in steering inputs shown in Figures 14 and 15 do not really matter for the purposes of determining Rollover Resistance Ratings. What really matters are driver-to-driver differences in vehicle outputs, specifically the vehicle rating metrics.

The rating metric used by NHTSA is the maximum entry speed into the test course at which a driver successfully achieved a "clean" run. (A "clean" run is one during which none of the cones delineating the course were struck.) Note that this is not the rating metric used by Consumers Union for this maneuver; Consumers Union performs subjective rating of the emergency handling capability of vehicles with vehicles that have large amounts of two-wheel lift in this maneuver receiving an "unacceptable" safety rating.

Table 5 shows the maximum achievable "clean" run speeds for three test drivers for the Nominal Vehicle configuration for the Phase IV rollover test vehicles. Note that higher values of this metric indicate a better performing vehicle.

TABLE 5.—MAXIMUM ACHIEVABLE "CLEAN" RUN SPEEDS FOR THE CONSUMERS UNION SHORT COURSE DOUBLE LANE CHANGE MANEUVER—NOMINAL VEHICLE CONFIGURATION

Test driver	2001 Chevrolet Blazer (mph)	2001 Ford Escape (mph)	1999 Mercedes ML320 with ESC on (mph)	1999 Mercedes ML320 with ESC off (mph)	2001 Toyota 4Runner with ESC on (mph)	2001 Toyota 4Runner with ESC off (mph)
GF	39.3	37.0	38.8	36.7	36.5	37.7
LJ	38.1	37.1	37.1	36.6	37.4	35.7
RL	40.7	40.5	39.2	38.3	37.8	37.8
Range	2.6	3.5	1.7	1.7	1.3	2.1

Table 6 shows a rank ordering of the Phase IV rollover test vehicles based on the maximum "clean" run speeds achieved by the three test drivers. Note that 1 is the best rank and 6 the worst.

TABLE 6.—VEHICLE RANKINGS BASED ON MAXIMUM ACHIEVABLE "CLEAN" RUN SPEEDS FOR THE CONSUMERS UNION SHORT COURSE DOUBLE LANE CHANGE MANEUVER—NOMINAL VEHICLE CONFIGURATION

Test driver	2001 Chevrolet Blazer	2001 Ford Escape	1999 Mercedes ML320 with ESC on	1999 Mercedes ML320 with ESC off	2001 Toyota 4 Runner with ESC on	2001 Toyota 4 Runner with ESC off
GF	1	4	2	5	6	3
LJ	1	3	3	5	2	6
RL	1	2	3	4	5	5

As Table 5 shows, for three test drivers used, the range of maximum achievable "clean" run entry speeds varied from 1.3 mph for the 2001 Toyota 4Runner with yaw stability control enabled to 3.5 mph for the 2001 Ford Escape. The average range was 2.2 mph. While these may seem like small ranges, the entire best-to-worst range in Table 5 is only 5.0 mph. Since we tested a fairly broad range of sport utility vehicles during the Phase IV research, the maximum achievable "clean" run speeds for most sport utility vehicles are expected to be in this 5.0 mph range. Therefore, driver-to driver variability averages 44 percent of the range of the rating metric and can be as much as 70 percent.

The problem caused by driver-to-driver variability combined with the small range of metric values is clearly shown by Table 6. While the Chevrolet Blazer attained the best ranking from all three test drivers, the ranking for the Toyota 4Runner with yaw stability control enabled varied from second best to worst.

Driver skills and abilities vary with time. Although we did not do such testing, if we retested the Phase IV rollover test vehicles with the same test drivers performing the Consumers Union Short Course Double Lane Change maneuver we anticipate that our results would not exactly match those shown in Tables 4 and 5. Since we have such a small range for the rating metric day-to-day (or even hour-to-hour) changes in test driver performance would probably change the maximum achievable "clean" run entry speeds by a substantial percentage of the overall range.

Due to the problems associated with driver-to-driver variability and run-to-run for the same driver variability, the objectivity and repeatability of this maneuver are poor. However, it is important to recognize that NHTSA's objective for this maneuver, the determination of rollover resistance ratings, is not the same as Consumers Union's objective, the evaluation of a vehicle's emergency handling capabilities. Handling evaluation has always been a subjective process. This appears to be a better maneuver for what Consumers Union wants to accomplish than for what the NHTSA wants to accomplish.

Performability

The procedure for performing this test is straight-forward. However, as discussed above, this maneuver has objectivity and repeatability issues. Resolving these issues adds difficulty and complexity to performing these tests.

For example, one possibility for improving objectivity and repeatability is to use multiple drivers to perform the testing (three drivers were used during the NHTSA testing). While this should help, there are still potential problems. One exceptionally skilled test driver could generate very good performance metrics for a mediocre vehicle. If this exceptionally skilled driver did not test some other vehicle that vehicle's performance metrics might, incorrectly, be lower than they should be. Therefore, in addition to using multiple drivers, procedures would need to be developed to ensure that every vehicle is tested by drivers of approximately equal skill.

The Consumers Union Short Course Double Lane Change test procedure does not change from vehicle-to-vehicle. This reflects Consumers Union's reason for developing this maneuver, as a test of emergency handling. On an actual road, if an obstacle suddenly intrudes into a vehicle's lane requiring emergency maneuvering to avoid, the parameters of the intrusion (distance ahead of oncoming vehicle at which the intrusion begins, amount of intrusion) do not depend on the characteristics of the oncoming vehicle. In other words, if a child runs out in front of you, they do not run out sooner because your vehicle is bigger or wider.

However, NHTSA has a different purpose. We are trying to rate a vehicle resistance to rollover. As such, we would like to test with worst case lane geometry. This may well change with vehicle size or other characteristics. Therefore, for NHTSA's purpose, we believe that a test maneuver should adapt for differing vehicle characteristics.

Discriminatory Capability

No two-wheel lifts occurred during any "clean" run of Consumers Union Short Course Double Lane Change testing for any of the test vehicles. (A "clean" run is one during which none of the cones delineating the course were struck.) While some two-wheel lifts did occur during runs that were not "clean", these should not be considered for the determination of our rollover resistance ratings. The reason is that when a run is not "clean", there is no way to determine whether the vehicle comes close to following the test course. For example, a driver could perform a fishhook maneuver or simply drive straight through. Either case would simply be recorded as not a "clean" run.

Unlike the J-Turn and Fishhook maneuvers, the occurrence/non-occurrence of two-wheel lift cannot be used as a measure of vehicle performance for this maneuver because two-wheel lifts during clean run appear unlikely for NCAP vehicles. The rating metric use by NHTSA is the maximum entry speed into the test course at which a driver successfully achieved a "clean" run.

We did not perform testing of the Reduced Rollover Resistance configurations of the Phase IV test vehicles with this maneuver; so, we cannot make the comparisons shown in Table 4 for this maneuver. However, the discussion following Table 4 likely applies to this maneuver as well as to the ISO 3888 Part 2 Double Lane Change. Again, this maneuver tests both the handling and rollover resistance of vehicles. In fact, since Consumers Union developed this maneuver to examine the emergency handling of vehicles, and because this maneuver is not as tightly constrained as is the ISO 3888 Part 2 Double Lane Change, we believe that this maneuver focuses more on handling than does the ISO maneuver. Since handling and rollover resistance are inextricably intertwined in the rating produced by this maneuver with handling dominating, the rating generated can easily improve even though the rollover resistance of a vehicle is getting worse.

The above reasoning explains the apparent anomaly in Table 6. In this table, the Chevrolet Blazer has the best ranking of any of the vehicles. However, based on its one star rating and performance in the NHTSA J-Turn and Fishhooks, we believe it to have the lowest rollover resistance of any of the Phase IV rollover test vehicles. The apparent contradiction is resolved once we realize that the Consumers Union Double Lane Change maneuver measures both the handling and rollover resistance of vehicles with handling dominating.

Due to the fact that this maneuver is not focused solely on a vehicle's rollover resistance but instead measures some combination of their handling and rollover resistance properties, its discriminatory capability for rollover resistance (not emergency handling) is poor.

Realistic Appearance

See the ISO 3888 Part 2 Double Lane Change maneuver Realistic Appearance discussion.

I. Open-Loop Pseudo-Double Lane Change

Maneuver Description

Driver-based, path-following double lane changes have historically been associated with considerable handwheel variability. This was in evidence during the ISO 3888 Part 2 and Consumers Union Short Course testing performed during the Phase IV research. Although the ISO 3888 Part 2 Double Lane Change course layout attempts to minimize this variability by relating lane width to vehicle width, handwheel variability observed during this maneuver continues to exceed that typically observed during steering machine-based maneuvers.

Aside from the handwheel variability issues, double lane changes have a certain appeal. It is foreseeable that the inputs of either double lane change used in Phase IV could emulate a driver's reaction to a variety of crash avoidance scenarios. Furthermore, examination of what effects the third steering input (second reversal) has on dynamic rollover propensity is of interest. To facilitate examination of third steer effects without the confounding effect of handwheel variability, open-loop handwheel inputs executed with the steering machine that approximated a double lane change were performed.

Two open-loop pseudo-double lane changes were performed during the Phase IV research: ISO 3888 Part 2 and Consumers Union Short Course simulations. For each maneuver, handwheel inputs were chosen to approximate those observed during closed-loop, path-following tests performed at VRTC by three test drivers. Specifically, steering recorded during the three tests begun with the highest, yet most similar, entrance speeds was considered for each driver, per maneuver. Using these data, handwheel input composites were developed. Open-loop double lane changes were performed in the Nominal load condition, with the Toyota 4Runner and Chevrolet Blazer only. The Ford Escape and Mercedes ML320 were not evaluated with these maneuvers.

Upon completion of the path-following double lane changes, the three highest, most consistent valid maneuver entrance speeds attained by each driver were determined. A valid test was one in which no vehicle-to-cone contact was detected. This produced a total of nine valid runs for each vehicle (recall the 4Runner with enabled stability control was considered to be separate vehicle from the 4Runner with disabled stability control).

Double lane change simulation began by plotting of the handwheel angles for all drivers of a particular vehicle. The plots were overlaid and centered about the middle peak of the maneuver in the time domain. After each of the nine tests was centered, the data were averaged to form a preliminary composite.

Once the preliminary composite was created, averages for each of the three primary handwheel peaks were calculated. These averages were based on peak value data (independent of time) from each of the nine driver-based tests. Each average was then divided by the appropriate preliminary composite value to produce a ratio. The three ratios were averaged to produce a final, overall ratio. This final ratio was multiplied by preliminary composite data to yield a final handwheel input composite.[17]

[17] Determination of the final composite was necessary because the peak handwheel input of a particular test did not necessarily occur at the same time as the others. The preliminary composite was used to establish trends (*e.g.*, timing, rates, *etc.*) in the handwheel position data. The final composite increased handwheel magnitudes, so as to insure maneuver severity was preserved.

Piecewise approximation was used to construct ramp-based handwheel profiles representative of the final handwheel composites. The approximation was programmed into the steering machine, and the maneuver performed.

Figure 16 presents the suite of piecewise approximations used to define the Consumers Union Short Course simulations for the Toyota 4Runner (enabled and disabled stability control) and Chevrolet Blazer.

Generally speaking, closed-loop Consumers Union Short Course tests performed with the 4Runner (disabled stability control) and Blazer contained four significant steering inputs (*i.e.*, third reversals). The drivers used the fourth steering inputs to preserve lateral stability and insure exit lane position. These inputs were included in Consumers Union Short Course approximations for the 4Runner with disabled stability control and for the Blazer, but were not required for approximation of 4Runner steering observed during tests performed with enabled stability control.

Due to the length of the second lane in the ISO 3888 Part 2 course, each driver made steering adjustments after the second handwheel peak to maintain lane position. As a result, each ISO 3888 Part 2 simulation contained five significant handwheel peaks. Figure 17 presents the open-loop steering inputs used to simulate the ISO 3888 Part 2 Double Lane Change maneuver for each vehicle.

During testing, runs of the Open-Loop Pseudo-Double Lane Change were performed beginning with a maneuver entry speed of 35 mph. Vehicle speed was iteratively increased in 5 mph increments to 50 mph or until two-wheel lift occurred. Additionally, tests were performed at the average maximum entrance speed attained by test drivers at VRTC during closed-loop tests without the steering machine. No downward speed iterations were used to isolate the lowest entrance speed capable of producing two-wheel lift.

Objectivity and Repeatability

The Open-Loop Pseudo-Double Lane Change can be performed with excellent objectivity and repeatability. Figure 18 shows the Handwheel Angle, Vehicle Speed, Lateral Acceleration, and Roll Angle as functions of time for two tests of the Chevrolet Blazer that were run at approximately the same speed (40.3 and 40.7 mph). Data from these runs is typical of our experience with this maneuver.

Since this maneuver uses the programmable steering controller, the steering control input is once again precisely replicated from run-to-run. However, the lateral acceleration becomes slightly less repeatable when the vehicle is in the recovery portion (*i.e.*, while trying to straighten out after performing the return lane change).

As was discussed above for the NHTSA J-Turn, for runs near the point at which two-wheel lift first occurs, roll angle repeatability becomes much worse.

Performability

Objective and repeatable Open-Loop Pseudo-Double Lane Change maneuvers can easily be performed using a programmable steering controller.

While running this maneuver is straightforward, we have substantial concerns about the maneuver itself. Unfortunately, due to lack of development time, we doubt that the steering inputs used during the Phase IV Rollover Research correspond to worst case conditions. Work is needed as to how to adapt this maneuver for different vehicles sizes or characteristics. Probably at least one year of effort would be required to develop and refine this maneuver.

Discriminatory Capability

Testing for the Open-Loop Pseudo-Double Lane Change maneuver was only performed using two vehicles, the 2001 Chevrolet Blazer and the 2001 Toyota 4Runner (both with the yaw stability control enabled and disabled). Two different steering inputs were used for this Open-Loop Pseudo-Double Lane Change testing, one that simulated the ISO 3888 Part 2 Double Lane Change and one that simulated the Consumers Union Short Course Double Lane Change.

For the simulated ISO 3888 Part 2 Double Lane Change, the Chevrolet Blazer had two-wheel lift while the Toyota 4Runner with yaw stability control enabled and disabled did not. However, the maneuver entry speed at which the Chevrolet Blazer had two-wheel lift was substantially (5 mph) higher than the maximum speed at which Toyota 4Runner testing was stopped. When yaw stability control was disabled, the speed at which Toyota 4Runner testing was stopped was determined by when spin-out occurred. When yaw stability control was enabled, the speed at which Toyota 4Runner testing was stopped was determined by test driver concerns about possible loss of control. So two-wheel lift was seen for the Chevrolet Blazer but not the Toyota 4Runner because the Blazer was able to perform this maneuver at higher speeds than was the 4Runner. As was the case for the actual ISO 3888 Part 2 Double Lane Change, handling and rollover resistance appear to be inextricably intertwined in the ratings produced by this maneuver.

For the simulated Consumers Union Short Course Double Lane Change, the Chevrolet Blazer and the Toyota 4Runner with yaw stability control disabled had two-wheel lift while the Toyota 4Runner with yaw stability control enabled did not. The maneuver entry speed at which the Chevrolet Blazer had two-wheel lift was higher than the maximum speed at which Toyota 4Runner two-wheel lift occurred. However, based on its one star rating and performance in the NHTSA J-Turn and Fishhooks, we believe the Chevrolet Blazer to have the lowest rollover resistance of any of the Phase IV rollover test vehicles. The explanation for this apparent anomaly is that, as was the case for the actual Consumers Union Short Course Double Lane Change, handling and rollover resistance appear to be inextricably intertwined in the ratings produced by this maneuver.

Because this maneuver is not focused solely on a vehicle's rollover resistance but

instead measures some combination of handling and rollover resistance properties, its discriminatory capability for rollover resistance is poor.

Realistic Appearance

The Realistic Appearance discussion from the Ford Path Corrected Limit Lane Change again applies.

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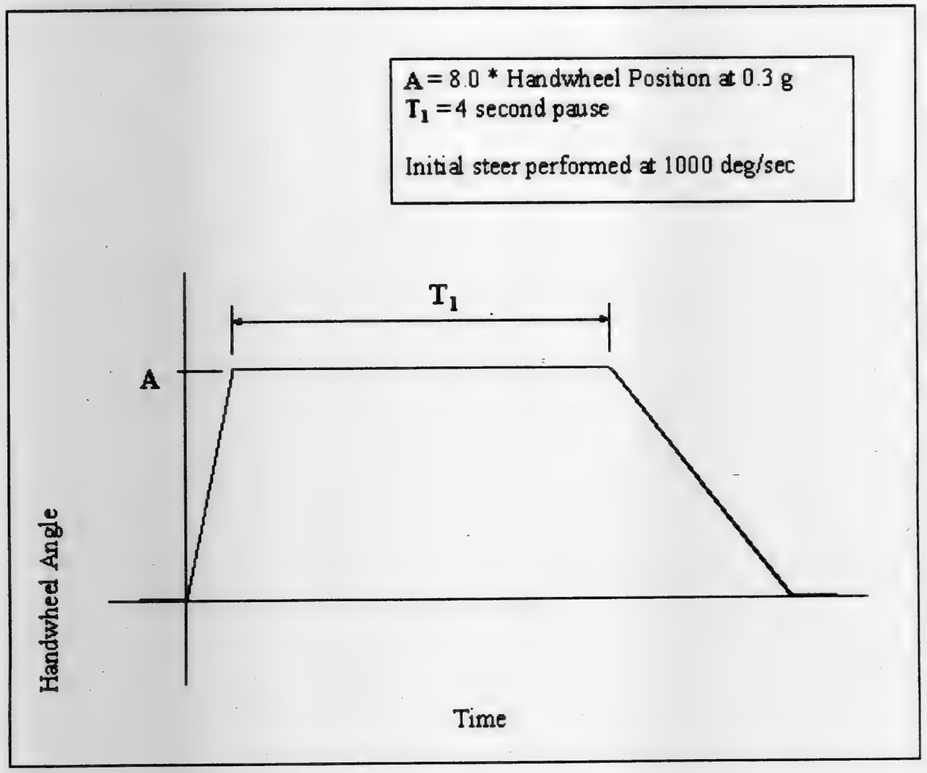

Figure 1: J-Turn maneuver description.

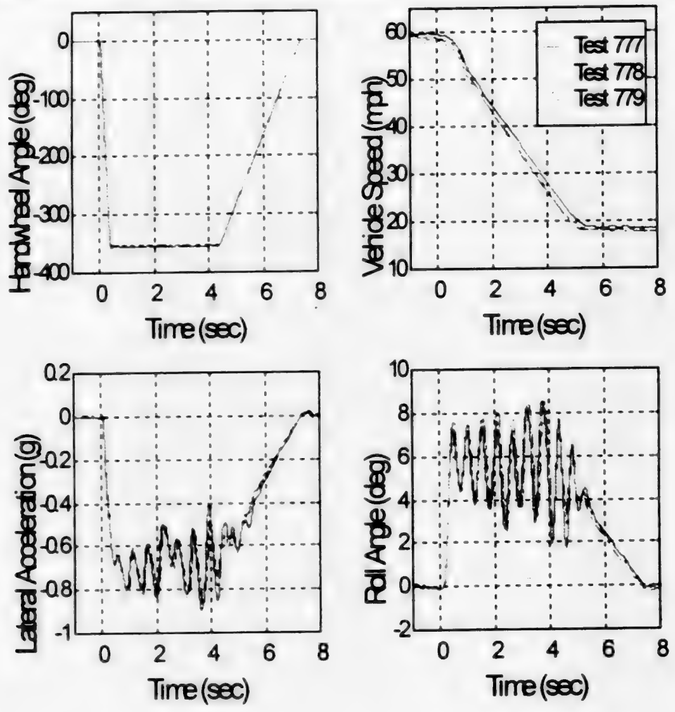

Figure 2: NHTSA J-Turn test inputs and outputs for three tests performed with the Toyota 4Runner with yaw stability control disabled

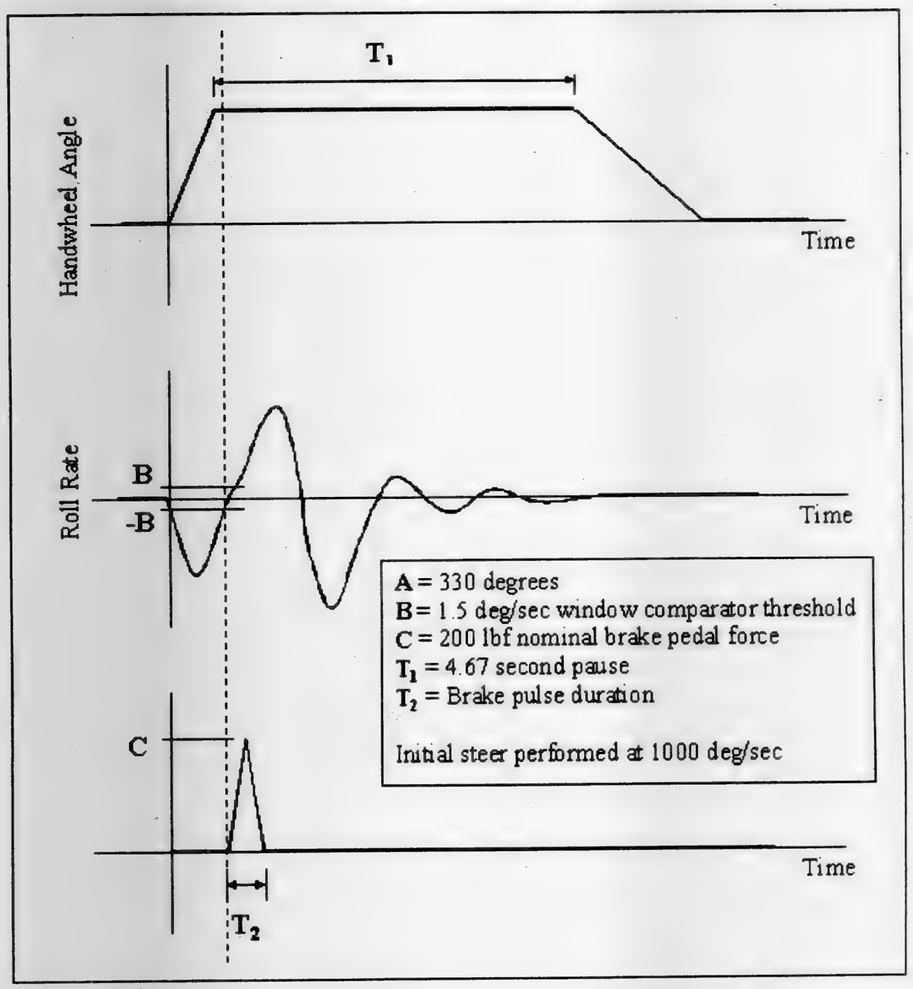

Figure 3: J-Turn with Pulse Braking Handwheel Steering Angle and Brake Pedal Force

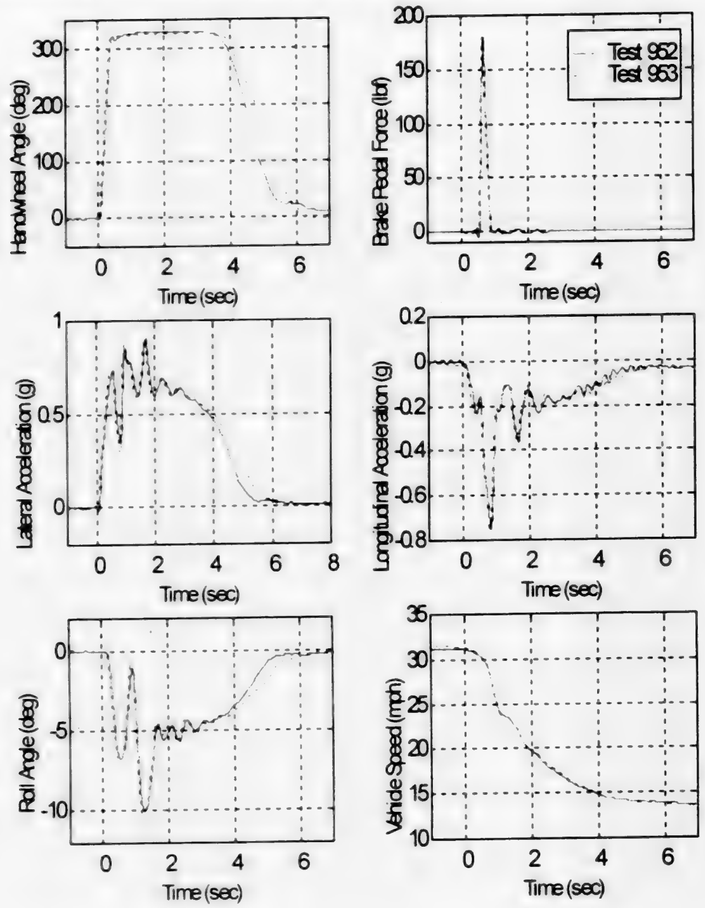

Figure 4: J-Turn with Pulse Braking test inputs and outputs for two tests performed with the Chevrolet Tracker during Phase III-B of Rollover Research

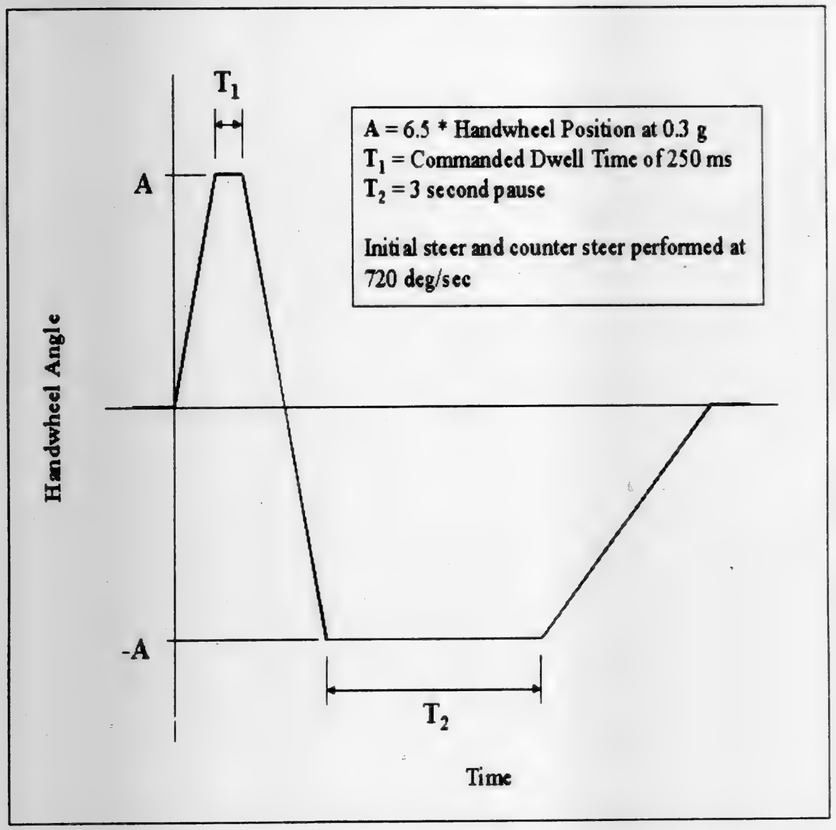

Figure 5: Fixed Timing Fishhook maneuver description

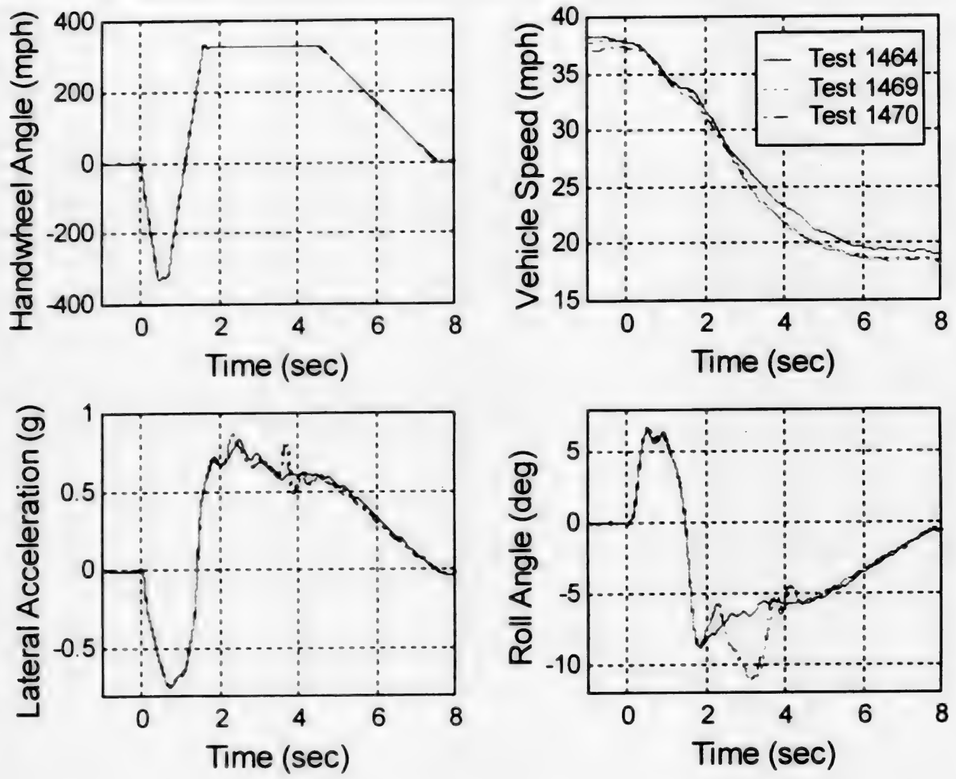

Figure 6: Fixed Timing Fishhook test inputs and outputs for three tests performed with the Chevrolet Blazer

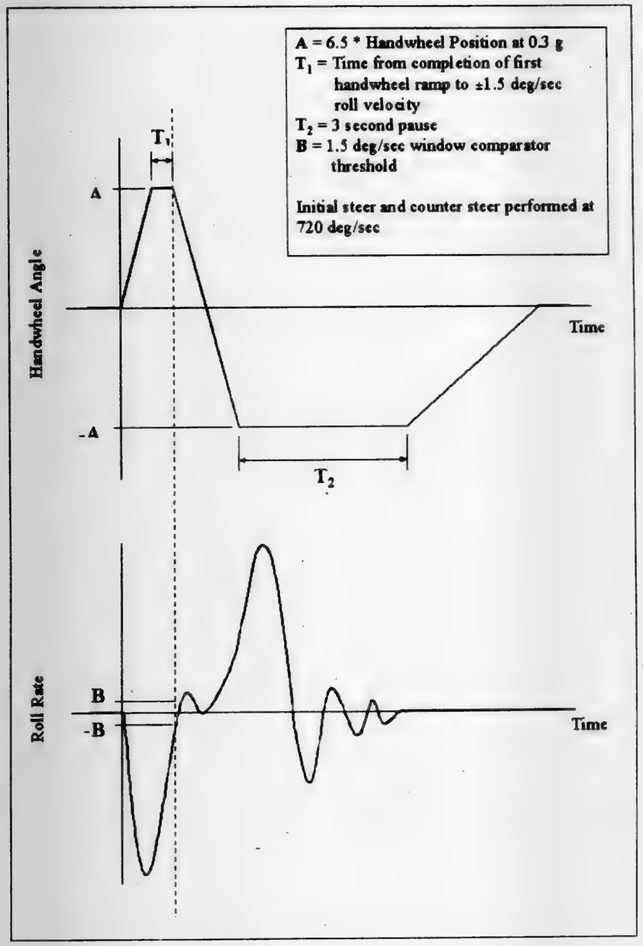

Figure 7: Roll Rate Fishhook maneuver description

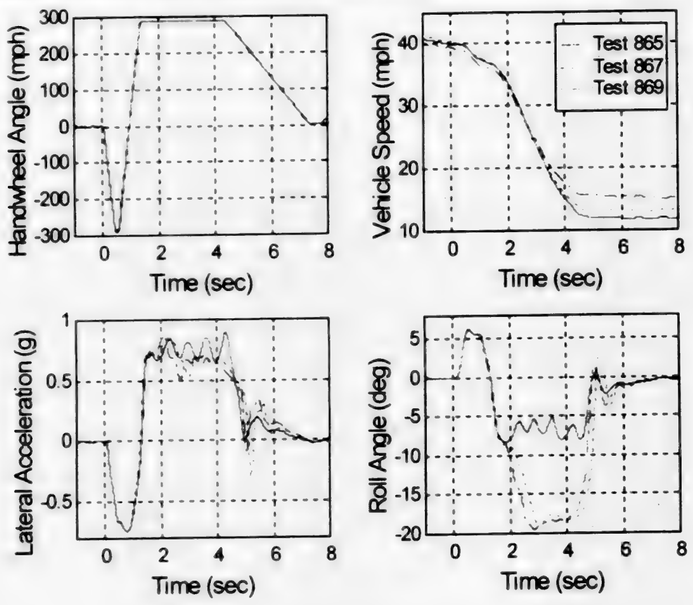

Figure 8: Roll Rate Feedback Fishhook test inputs and outputs for three tests performed with the Toyota 4Runner with yaw stability control disabled

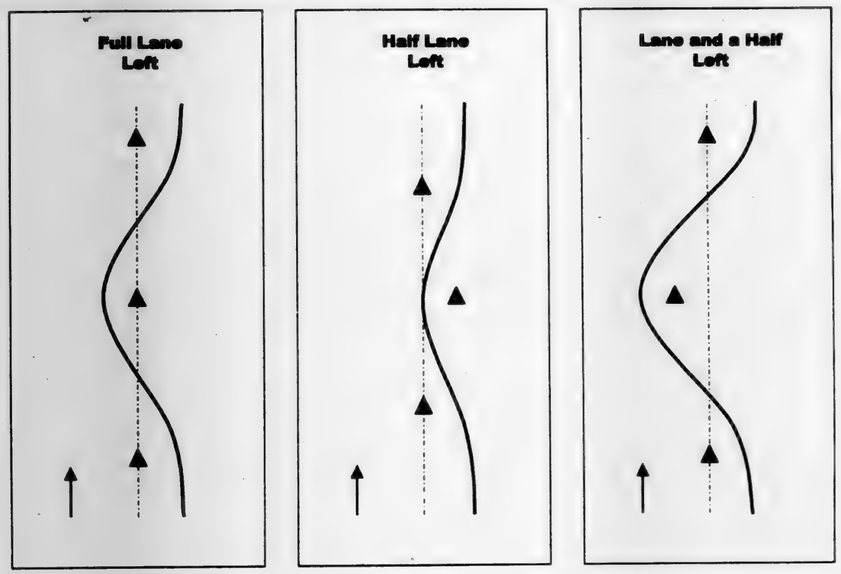

Figure 9: Ford Path Specific Double Lane Change Course

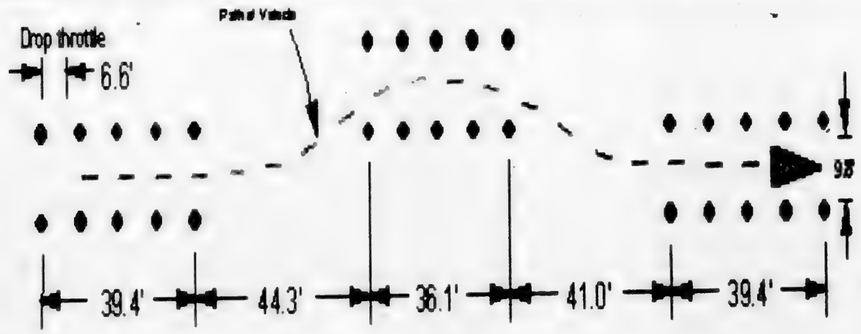

Figure 10: The ISO 3888 Part 2 Double Lane Change Course

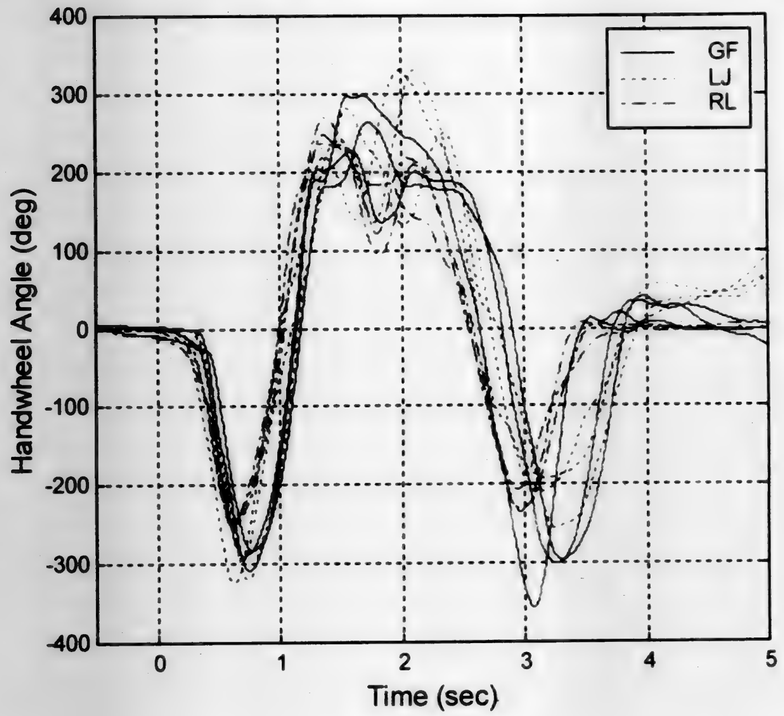

Figure 11: Handwheel input repeatability observed during ISO 3888 Part 2 Double Lane Change testing performed with the Chevrolet Blazer

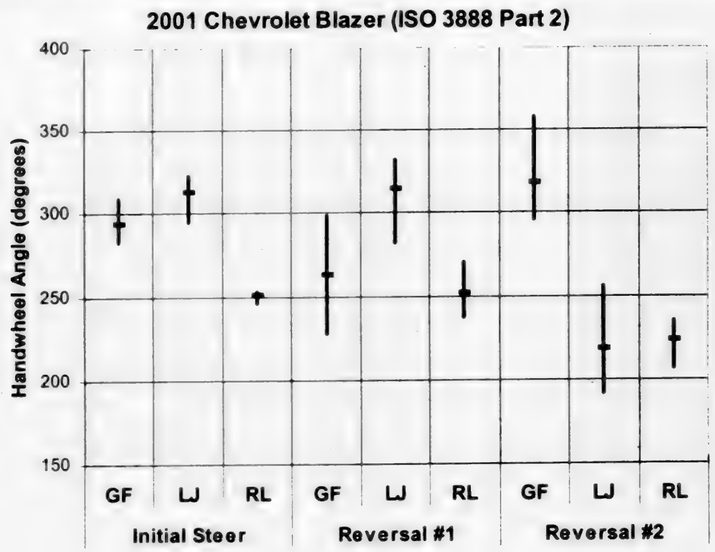

Figure 12: Handwheel input repeatability observed during ISO 3888 Part 2 Double Lane Change testing performed with the Chevrolet Blazer

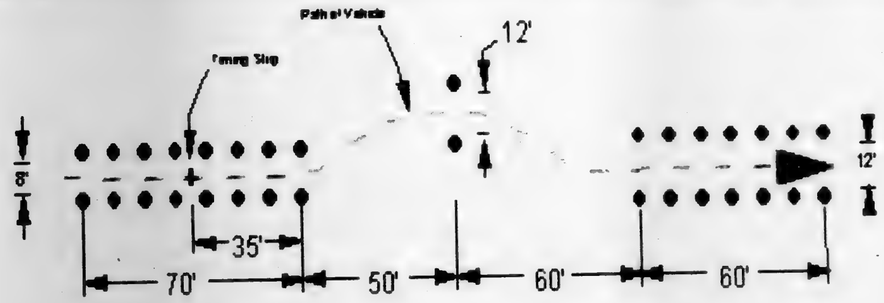

Figure 13: The Consumers Union Short Course Double Lane Change

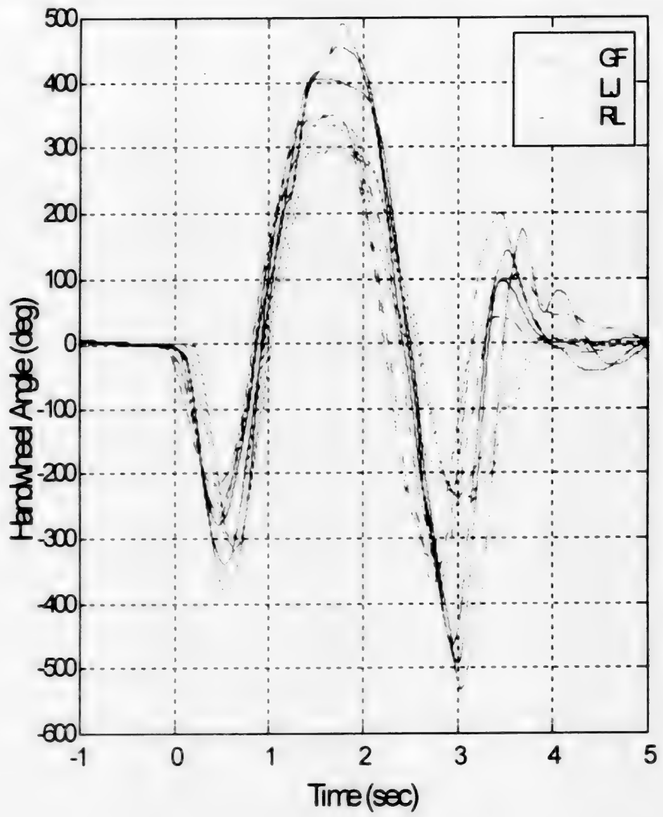

Figure 14: Handwheel input repeatability observed during Consumers Union Short Course testing performed with the Chevrolet Blazer.

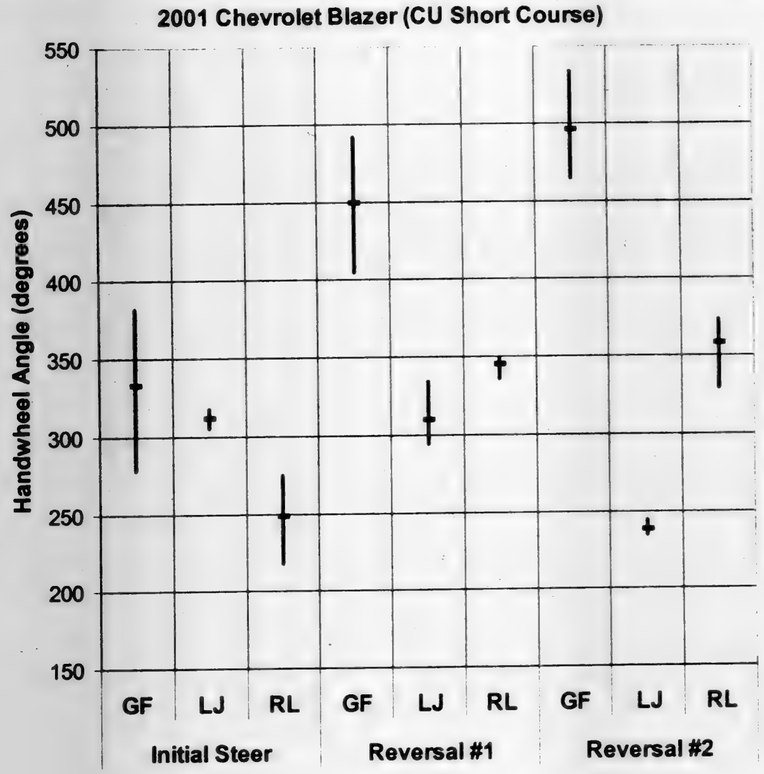

Figure 15: Handwheel input repeatability observed during Consumers Union Short Course Double Lane Change testing performed with the Chevrolet Blazer

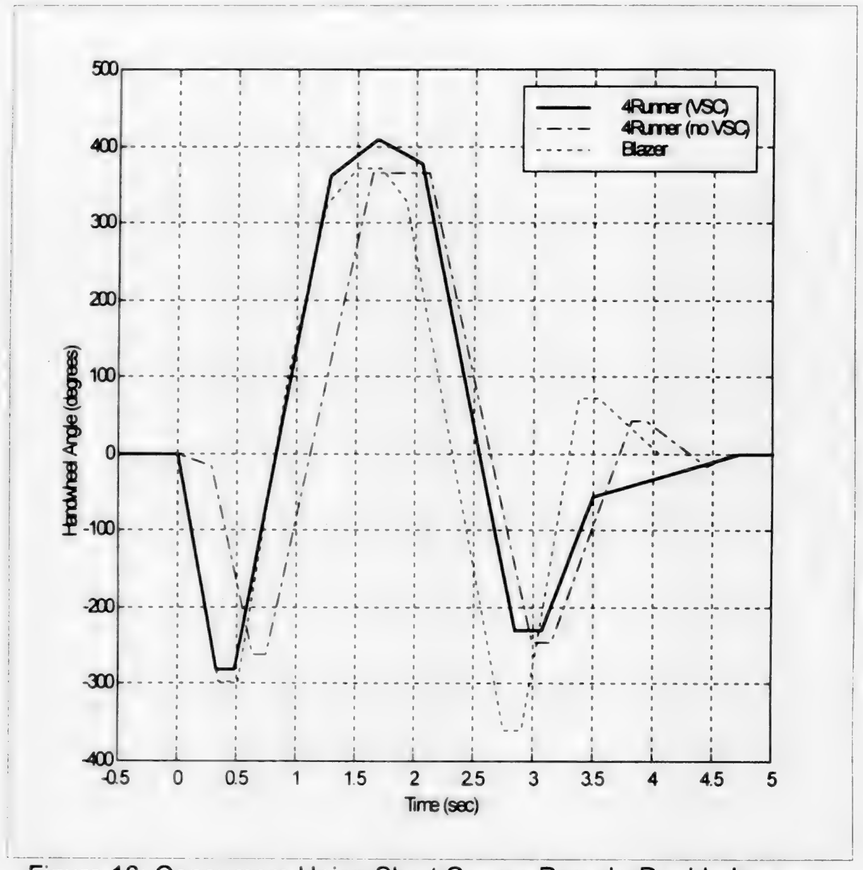

Figure 16: Consumers Union Short Course Pseudo-Double Lane Change Steering Inputs

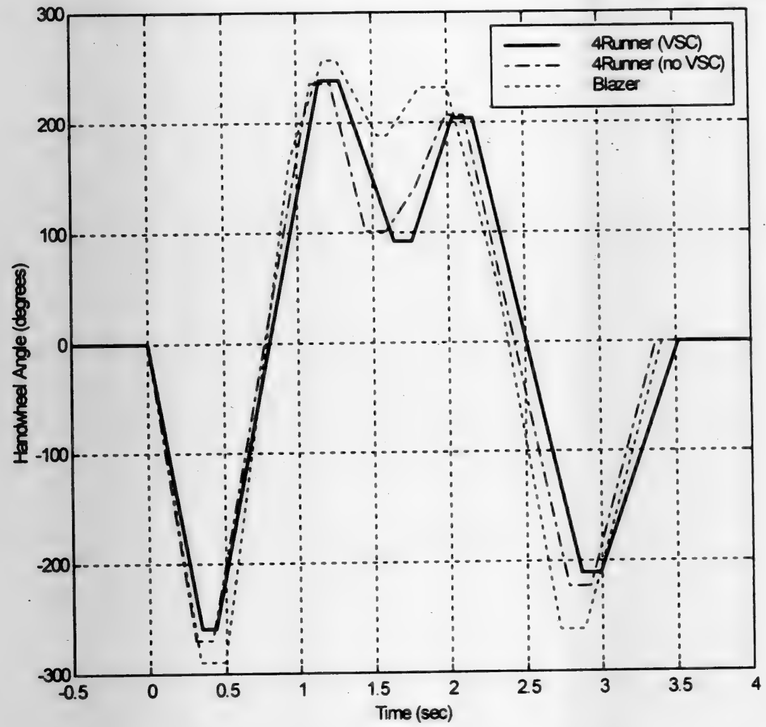

Figure 17: ISO 3888 Part 2 Pseudo-Double Lane Change Steering Inputs

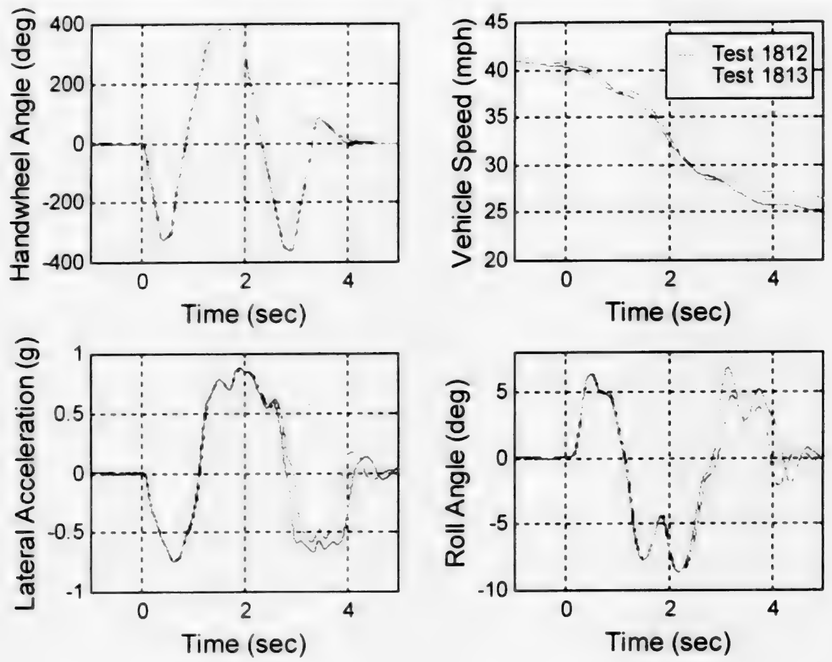

Figure 18: Open-Loop Pseudo-Double Lane Change test inputs and outputs for two tests performed with the Chevrolet Blazer

[FR Doc. 02–25115 Filed 10–1–02; 8:45 am]
BILLING CODE 4910–59–C

Federal Register

Monday,
October 7, 2002

Part III

Department of Defense

48 CFR Parts 206, et al.
Defense Federal Acquisition Regulation Supplement; Foreign Acquisition; Proposed Rule

DEPARTMENT OF DEFENSE

48 CFR Parts 206, 208, 209, 225, 242, and 252

[DFARS Case 2002–D009]

Defense Federal Acquisition Regulation Supplement; Foreign Acquisition

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to simplify and clarify policy pertaining to the acquisition of supplies and services from foreign sources.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before December 6, 2002, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2002–D009 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D009.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes revisions to DFARS Part 225, Foreign Acquisition, and associated provisions and clauses. The rule—

- Provides streamlined procedures for evaluating foreign offers when acquiring supplies, and adds procedures for evaluating foreign offers in acquisitions in which price is not the determining factor.
- Changes the definition of "qualifying country end product" to permit the qualifying country manufacturing the product to use components from any other qualifying country.
- Lowers the required approval levels for determinations of nonavailability under the Buy American Act.
- Lowers the required approval levels for individual public interest determinations for acquisition of end products from qualifying countries.
- Provides that the Government will evaluate duty only if it is to be paid. Except for qualifying country supplies or eligible end products, the contractor will request duty-free entry only on foreign supplies for which the contractor estimates that duty will exceed $200 per unit (end product or component). One duty-free entry clause replaces five existing clauses.
- Makes use of the clause pertaining to Waiver of United Kingdom Levies optional for acquisitions not expected to exceed the simplified acquisition threshold.
- Eliminates the requirement for a contractor to represent that it will comply with all laws, decrees, labor standards, and regulations of the foreign country in which the contract will be performed.
- Moves restrictions on contracting with firms owned or controlled by the government of a terrorist country or other foreign governments from Part 209, Contractor Responsibility, to Part 225, Foreign Acquisition.
- Deletes obsolete text and clauses relating to outdated appropriations act restrictions, resulting in the elimination of four clauses.
- Incorporates the DFARS changes proposed under Case 2002–D008, Trade Agreements Act-Exception for U.S.-Made End Products, published at 67 FR 49278 on July 30, 2002.

Because of the complexity of the Buy American Act and the trade agreements, DoD is preparing an on-line training module to assist in understanding DFARS Part 225. The goal is to provide sufficient explanatory material and practical examples to clarify the main issues.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most of the changes in the rule merely simplify and clarify existing policy and procedures. Other changes, such as the revised definition of "qualifying country end product" primarily affect foreign firms, which, by definition, do not qualify as small entities within the meaning of the Regulatory Flexibility Act. The changes in procedures for evaluation of duty will result in a paperwork burden reduction for both large and small businesses, but the economic impact will not be significant. Therefore, DoD has not prepared an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D009.

C. Paperwork Reduction Act

This rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* The information collection requirements in the rule are currently approved by the Office of Management and Budget under Control Numbers 0704–0229 and 0704–0187. Elimination of the provision at 252.225–7003, Information for Duty-Free Entry Evaluation, will result in a reduction of 21,451 hours in estimated annual burden.

List of Subjects in 48 CFR Parts 206, 208, 209, 225, 242, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Parts 206, 208, 209, 225, 242, and 252 as follows:

1. The authority citation for 48 CFR Parts 206, 208, 209, 225, 242, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 206—COMPETITION REQUIREMENTS

2. Section 206.303–1 is amended by adding paragraph (d) to read as follows:

206.303–1 Requirements.

* * * * *

(d) The Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), is the agency point of contact for submission of justifications to the Office of the United States Trade Representative.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.7203 [Amended]

3. Section 208.7203 is amended in paragraph (c) by removing "225.7010" and adding in its place "225.7005".

PART 209—CONTRACTOR QUALIFICATIONS

209.101 [Removed]

4. Section 209.101 is removed.

5. Section 209.104–1 is amended by revising paragraph (g) to read as follows:

209.104–1 General standards.

* * * * *

(g) For restrictions on contract award to certain foreign firms, see subparts 225.7 and 225.70.

209.104–70 [Removed]

6. Section 209.104–70 is removed.

209.405–2 [Removed]

7. Section 209.405–2 is removed.

209.409 [Removed]

8. Section 209.409 is removed.

PART 225—FOREIGN ACQUISITION

9. Sections 225.000, 225.001, and 225.003 are revised to read as follows:

225.000 Scope of part.

This part also provides policy and procedures for—

(1) Purchasing foreign defense supplies, services, and construction materials, including special procedures for—

(i) Contracting with Canadian and other qualifying country sources; and

(ii) Cooperative projects;

(2) Implementing statutory and policy restrictions on foreign acquisition;

(3) Reporting contract performance outside the United States;

(4) Foreign military sales acquisitions; and

(5) Antiterrorism/force protection for defense contractors outside the United States.

225.001 General.

When evaluating offers of foreign end products, consider the following:

(1) *Statutory or policy restrictions.*

(i) Determine whether the product is restricted by—

(A) Statute (see subpart 225.70); or

(B) DoD policy (see subpart 225.71 and FAR 6.302–3).

(ii) If an exception to or waiver of a restriction in subpart 225.70 or 225.71 would result in award of a foreign end product, apply the policies and procedures of the Buy American Act or the Balance of Payments Program, and, if applicable, the trade agreements.

(2) *Memoranda of understanding or other international agreements.* Determine whether the offered product is the product of one of the qualifying countries listed in 225.872–1.

(3) *Trade agreements.* If the product is not an eligible product, a qualifying country end product, or a U.S.-made end product, purchase of the foreign end product may be prohibited (see FAR 25.403(c) and 225.403(c)).

(4) *Other trade sanctions and prohibited sources.*

(i) Determine whether the offeror complies with the secondary Arab boycott of Israel. Award to such offerors may be prohibited (see 225.670).

(ii) Determine whether the offeror is a prohibited source (see 225.770).

(5) *Buy American Act and Balance of Payments Program.* See the evaluation procedures in Subpart 225.5.

225.003 Definitions.

As used in this part—

(1) *Caribbean Basin country end product* includes petroleum or any product derived from petroleum.

(2) *Defense equipment* means any equipment, item of supply, component, or end product purchased by DoD.

(3) *Domestic concern* means—

(i) A concern incorporated in the United States (including a subsidiary that is incorporated in the United States, even if the parent corporation is a foreign concern); or

(ii) An unincorporated concern having its principal place of business in the United States.

(4) *Domestic end product* has the meaning given in the clauses at 252.225–7001, Buy American Act and Balance of Payments Program; and 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the meaning in FAR 25.003.

(5) *Eligible product* means, instead of the definition in FAR 25.003, a designated, NAFTA, or Caribbean Basin country end product in the categories listed in 225.401–70.

(6) *Foreign concern* means any concern other than a domestic concern.

(7) *Government of a terrorist country* is defined in the provision at 252.225–7017, Disclosure of Ownership or Control by the Government of a Terrorist Country.

(8) *Nonqualifying country* means a country other than the United States or a qualifying country.

(9) *Nonqualifying country component* means a component mined, produced, or manufactured in a nonqualifying country.

(10) *Qualifying country* means a country with a memorandum of understanding or international agreement with the United States. Qualifying countries are listed in 225.872–1.

(11) *Qualifying country component* and *qualifying country end product* are defined in the clauses at 252.225–7001, Buy American Act and Balance of Payments Program; and 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. *Qualifying country end product* is also defined in the clause at 252.225–7021, Trade Agreements.

(12) *Qualifying country offer* means an offer of a qualifying country end product, including the price of transportation to destination.

(13) *Source*, when restricted by such words as foreign, domestic, or qualifying country, means the actual manufacturer or producer of the end product or component.

(14) *Terrorist country* is defined in the provision at 252.225–7017, Disclosure of Ownership or Control by the Government of a Terrorist Country.

10. Subpart 225.1 is revised to read as follows:

Subpart 225.1—Buy American Act—Supplies

Sec.

225.101 General.
225.103 Exceptions.
225.104 Nonavailable articles.
225.105 Determining reasonableness of cost.
225.170 Solicitations.

225.101 General.

(a) For DoD, the following two-part test determines whether a manufactured end product is a domestic end product:

(i) The end product is manufactured in the United States; and

(ii) The cost of its U.S. and qualifying country components exceeds 50 percent of the cost of all its components. This test is applied to end products only and not to individual components.

(c) Additional exceptions that allow the purchase of foreign end products are listed at 225.103.

225.103 Exceptions.

(a)(i)(A) Public interest exceptions for certain countries are in 225.872.

(B) For procurements subject to the Trade Agreements Act, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that it is inconsistent with the public interest to apply the Buy American Act to end products that are substantially transformed in the United States.

(ii)(A) Normally, use the evaluation procedures in Subpart 225.5, but

consider recommending a public interest exception if the purposes of the Buy American Act are not served, or in order to meet a need set forth in 10 U.S.C. 2533. For example, a public interest exception may be appropriate—

(*1*) If accepting the low domestic offer will involve substantial foreign expenditures, or accepting the low foreign offer will involve substantial domestic expenditures;

(*2*) To ensure access to advanced state-of-the-art commercial technology; or

(*3*) To maintain the same source of supply for spare and replacement parts (also see paragraph (b)(ii)(B) of this section)—

(*i*) For an end item that qualifies as a domestic end product; or

(*ii*) In order not to impair integration of the military and commercial industrial base.

(B) Except as provided in 225.872–4(b), process a determination for a public interest exception after consideration of the factors in 10 U.S.C. 2533—

(*1*) At a level above the contracting officer for acquisitions valued at $100,000 or less;

(*2*) By the head of the contracting activity for acquisitions valued at more than $100,000 but less than $1,000,000; or

(*3*) By the agency head for acquisitions valued at $1,000,000 or more.

(b)(i) A determination that an article, material, or supply is not reasonably available is required when domestic offers are insufficient to meet the requirement and award is to be made on other than a qualifying country or eligible end product.

(ii) Except as provided in FAR 25.103(b)(3), the determination shall be approved—

(A) At a level above the contracting officer, if the acquisition is valued at $100,000 or less;

(B) By the chief of the contracting office if the acquisition is valued at more than $100,000 but less than $1,000,000; or

(C) By the head of the contracting activity or immediate deputy if the acquisition is valued at $1,000,000 or more.

(iii) DoD has determined that the following articles are not reasonably available from domestic sources:

(A) End products or components listed in 225.104(a).

(B) Spare or replacement parts that must be acquired from the original foreign manufacturer or supplier.

(C) Foreign drugs acquired by the Defense Supply Center, Philadelphia, when the Director, Pharmaceuticals Group, Directorate of Medical Materiel, determines that only the requested foreign drug will fulfill the requirements.

(iv) Under coordinated acquisition (see subpart 208.70), the determination is the responsibility of the requiring department when the requiring department specifies acquisition of a foreign end product.

(c) The cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated under subpart 225.5.

225.104 Nonavailable articles.

(a) DoD has determined that the following articles also are nonavailable in accordance with FAR 25.103(b):

(i) Aluminum clad steel wire.

(ii) Sperm oil.

225.105 Determining reasonableness of cost.

(b) Use an evaluation factor of 50 percent instead of the factors specified in FAR 25.105(b).

225.170 Solicitations.

For oral solicitations, inform prospective quoters that only domestic and qualifying country end products are acceptable unless—

(1) Other foreign end products are excepted either on a blanket or an individual basis; or

(2) The price of another foreign end product is the low offer under the evaluation procedures in Subpart 225.5.

225.202 [Amended]

11. Section 225.202 is amended in paragraph (a)(2) as follows:

a. In the first sentence, by removing the parenthetical "(iii)"; and

b. In the second sentence, by removing "must" and adding in its place "shall".

12. Section 225.401 is revised to read as follows:

225.401 Exceptions.

(a)(2) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR Subpart 25.4, it may submit a request with supporting rationale to the Director of Defense Procurement (OUSD (AT&L) DP). Approval by OUSD (AT&L) DP is not required if—

(A) Purchase from foreign sources is restricted by statute (see Subpart 225.70);

(B) Another exception in FAR 25.401 applies to the acquisition; or

(C) Competition from foreign sources is restricted under Subpart 225.71.

13. Section 225.401–70 is amended in the introductory text by revising the last sentence to read as follows:

225.401–70 Products subject to trade agreement acts.

* * * The following list indicates those products that are eligible for designated and NAFTA countries, but are not eligible for Caribbean Basin countries.

* * * * *

14. Sections 225.402 and 225.403 are revised to read as follows:

225.402 General.

To estimate the value of the acquisition, use the total estimated value of end products subject to trade agreement acts (see 225.401–70).

225.403 Trade Agreements Act.

(c) For acquisitions subject to the Trade Agreements Act, acquire only U.S.-made, qualifying country, or eligible end products unless—

(i) The contracting officer determines that offers of U.S.-made, qualifying country, or eligible products from responsive, responsible offerors are either—

(A) Not received; or

(B) Insufficient to fill the Government's requirements. In this case, accept all responsive, responsible offers of U.S.-made, qualifying country, and eligible products before accepting any other offers; or

(ii) A national interest waiver under 19 U.S.C. 2512(b)(2) is granted on a case-by-case basis. Except as delegated in paragraphs (c)(i)(A) and (B) of this section, submit any request for a national interest waiver to the Director of Defense Procurement in accordance with department or agency procedures. Include supporting rationale with the request.

(A) The head of the contracting activity may approve a national interest waiver for a purchase by an overseas purchasing activity, if the waiver is supported by a written statement from the requiring activity that the products being acquired are critical for the support of U.S. forces stationed abroad.

(B) The Commander or Director, Defense Energy Support Center, may approve national interest waivers for purchases of fuel for use by U.S. forces overseas.

15. Subpart 225.5 is revised to read as follows:

Subpart 225.5—Evaluating Foreign Offers—Supply Contracts

Sec.

225.502 Application.
225.503 Group offers.
225.504 Evaluation examples.

225.502 Application.

(b) Use the following procedures instead of the procedures in FAR 25.502(b) for acquisitions subject to the Trade Agreements Act:

(i) Consider only offers of U.S.-made, qualifying country, or eligible end products, except as permitted by 225.403.

(ii) If price is the determining factor, award on the low offer.

(c) Use the following procedures instead of the procedures in FAR 25.502(c) for acquisitions subject to the Buy American Act or the Balance of Payments Program:

(i)(A) If the acquisition is subject only to the Buy American Act or the Balance of Payments Program, then only qualifying country end products are exempt from application of the Buy American Act or Balance of Payments Program evaluation factor.

(B) If the acquisition is also subject to NAFTA, then NAFTA country end products are also exempt from application of the Buy American Act or Balance of Payments Program evaluation factor.

(C) If the acquisition is also subject to the Trade Agreements Act, then designated country end products and Caribbean Basin Country end products are also exempt from application of the Buy American Act or Balance of Payments Program evaluation factor.

(ii) If price is the determining factor, use the following procedures:

(A) If the low offer is a domestic offer, award on that offer.

(B) If there are no domestic offers, award on the low offer (see example in 225.504(1)).

(C) If the low offer is a foreign offer that is exempt from application of the Buy American Act or Balance of Payments Program evaluation factor, award on that offer. (If the low offer is a qualifying country offer from a country listed at 225.872–1(b) and the Trade Agreements Act does not apply, execute a determination in accordance with 225.872–4.)

(D) If the low offer is a foreign offer that is not exempt from application of the Buy American Act or Balance of Payments Program evaluation factor, and there is another foreign offer that is exempt, and is lower than the lowest domestic offer, award on the low foreign offer (see example in 225.504(2)).

(E) Otherwise, apply the 50 percent evaluation factor to the low foreign offer.

(*1*) If the price of the low domestic offer is less than the evaluated price of the low foreign offer, award on the low domestic offer (see example in 225.504(3)).

(*2*) If the evaluated price of the low foreign offer remains less than the low domestic offer, award on the low foreign offer (see example in 225.504(4)).

(iii) If price is not the determining factor, use the following procedures:

(A) If there are domestic offers, apply the 50 percent Buy American Act or Balance of Payments Program evaluation factor to all foreign offers unless an exemption applies.

(B) Evaluate in accordance with the criteria of the solicitation.

(C) If these procedures will not result in award on a domestic offer, reevaluate offers without the 50 percent factor. If this will result in award on an offer to which the Buy American Act or Balance of Payments Program applies, but evaluation in accordance with paragraph (c)(ii) of this section would result in award on a domestic offer, proceed with award only after execution of a determination in accordance with 225.103(a)(ii)(B), that domestic preference would be inconsistent with the public interest.

225.503 Group offers.

Evaluate group offers in accordance with FAR 25.503, but apply the evaluation procedures of 225.502.

225.504 Evaluation examples.

The following examples illustrate the evaluation procedures in 225.502(c)(ii). The examples assume that the contracting officer has eliminated all offers that are unacceptable for reasons other than price or a trade agreement and that price is the determining factor in contract award. The same evaluation procedures and the 50 percent evaluation factor apply regardless of whether the acquisition is subject to the Buy American Act (BAA) or the Balance of Payments Program (BOPP).

(1) Example 1.

Offer A	$945,000	Foreign offer subject to BAA/BOPP
Offer B	$950,000	Foreign offer exempt from BAA/BOPP

Since no domestic offers are received, do not apply the evaluation factor. Award on Offer A.

(2) Example 2.

Offer A	$950,000	Domestic offer
Offer B	$890,000	Foreign offer exempt from BAA/BOPP
Offer C	$880,000	Foreign offer subject to BAA/BOPP

Since the exempt foreign offer is lower than the domestic offer, do not apply the evaluation factor. Award on Offer C.

(3) Example 3.

Offer A	$9,100	Foreign offer exempt from BAA/BOPP
Offer B	$8,900	Domestic offer
Offer C	$6,000	Foreign offer subject to BAA/BOPP

Since the domestic offer is lower than the exempt foreign offer, apply the 50 percent evaluation factor to Offer C. This results in an evaluated price of $9,000 for Offer C. Award on Offer B.

(4) Example 4.

Offer A	$910,000	Foreign offer exempt from BAA/BOPP
Offer B	$890,000	Domestic offer
Offer C	$590,000	Foreign offer subject to BAA/BOPP

Since the domestic offer is lower than the exempt foreign offer, apply the 50 percent evaluation factor to Offer C. This results in an evaluated price of $885,000 for Offer C. Award on Offer C.

16. Subpart 225.6 is added to read as follows:

Subpart 225.6—Trade Sanctions

Sec.

225.670 Secondary Arab boycott of Israel.
225.670–1 Restriction.
225.670–2 Procedures.
225.670–3 Exceptions.
225.670–4 Waivers.

225.670 Secondary Arab boycott of Israel.

225.670–1 Restriction.

In accordance with 10 U.S.C. 2410i, do not enter into a contract with a foreign entity unless it has certified that it does not comply with the secondary Arab boycott of Israel.

225.670–2 Procedures.

For contracts awarded to the Canadian Commercial Corporation (CCC), the CCC will submit a certification from its proposed subcontractor with the other required precontractual information (see 225.870).

225.670–3 Exceptions.

This restriction does not apply to—

(a) Purchases at or below the simplified acquisition threshold;

(b) Contracts for consumable supplies, provisions, or services for the support of United States forces or of allied forces in a foreign country; or

(c) Contracts pertaining to the use of any equipment, technology, data, or services for intelligence or classified purposes, or to the acquisition or lease thereof, in the interest of national security.

225.670–4 Waivers.

The Secretary of Defense may waive this restriction on the basis of national security interests. Forward waiver requests to the Director, Defense Procurement, ATTN: OUSD(AT&L)DP/FC, 3060 Defense Pentagon, Washington, DC 20301–3060.

17. Subpart 225.7 is revised to read as follows:

Subpart 225.7—Prohibited Sources

Sec.
225.770 Ownership or control by the government of a terrorist country.
225.770–1 Prohibition.
225.770–2 Procedures.
225.770–3 Waiver.

225.770 Ownership or control by the government of a terrorist country.

225.770–1 Prohibition.

(a) In accordance with 10 U.S.C. 2327(b), do not award a contract of $100,000 or more to a firm or to a subsidiary of a firm if the government of a terrorist country, either directly or indirectly, has a significant interest—

(1) In the firm; or

(2) In the subsidiary or the firm that owns the subsidiary.

(b) Do not consent to any subcontract with a firm, or a subsidiary of a firm, that the Secretary of Defense has identified as being owned or controlled by the government of a terrorist country unless the agency head states in writing the compelling reasons for the subcontract.

225.770–2 Procedures.

Forward any disclosure that the government of a terrorist country has a significant interest in an offeror or a subsidiary of an offeror, through the head of the agency, to the Director, Defense Procurement, ATTN: OUSD(AT&L)DP/FC, 3060 Defense Pentagon, Washington, DC 20301–3060.

225.770–3 Waiver.

The Secretary of Defense may waive the prohibition in 225.770–1(a) in accordance with 10 U.S.C. 2327(c). The Secretary of Defense may not delegate this waiver authority.

18. Subpart 225.8 is revised to read as follows:

Subpart 225.8—Other International Agreements and Coordination

Sec.
225.802 Procedures.
225.802–70 Contracts for performance outside the United States and Canada.
225.802–71 End use certificates.
225.870 Contracting with Canadian contractors.
225.870–1 General.
225.870–2 Solicitation of Canadian contractors.
225.870–3 Submission of offers.
225.870–4 Contracting procedures.
225.870–5 Contract administration.
225.870–6 Termination procedures.
225.870–7 Acceptance of Canadian supplies.
225.870–8 Industrial security.
225.871 North Atlantic Treaty Organization cooperative projects.
225.871–1 Scope.
225.871–2 Definitions.
225.871–3 General.
225.871–4 Statutory waivers.
225.871–5 Directed subcontracting.
225.871–6 Disposal of property.
225.871–7 Congressional notification.
225.872 Contracting with qualifying country sources.
225.872–1 General.
225.872–2 Applicability.
225.872–3 Solicitation procedures.
225.872–4 Individual determinations.
225.872–5 Contract administration.
225.872–6 Audit.
225.872–7 Industrial security for qualifying countries.
225.872–8 Subcontracting with qualifying country sources.
225.873 Waiver of United Kingdom commercial exploitation levies.
225.873–1 Policy.
225.873–2 Procedures.

225.802 Procedures.

(b) Information on specific agreements is available as follows:

(i) Memoranda of understanding and other international agreements between the United States and the countries listed in 225.872–1 are maintained in the Foreign Contracting Directorate, Office of the Director of Defense Procurement ((703) 697–9351/2/3; DSN 227–9351/2/3).

(ii) Military Assistance Advisory Groups, Naval Missions, and Joint U.S. Military Aid Groups normally have copies of the agreements applicable to the countries concerned.

(iii) Copies of international agreements covering the United Kingdom of Great Britain and Northern Ireland, Western European countries, North Africa, and the Middle East are filed with the U.S. European Command.

(iv) Agreements with countries in the Pacific and Far East are filed with the U.S. Pacific Command.

225.802–70 Contracts for performance outside the United States and Canada.

(a) When a contracting office anticipates placement of a contract for performance outside the United States and Canada, and the contracting office is not under the jurisdiction of a command for the country involved, the contracting office shall maintain liaison with the cognizant contract administration office (CAO) during preaward negotiations and postaward administration. The CAO will provide pertinent information for contract negotiations, effect appropriate coordination, and obtain required approvals for the performance of the contract.

(b) If the acquisition requires the performance of work in the foreign country by U.S. personnel or a third country contractor, or if the acquisition requires logistics support for contract employees, source inspection, or additional Government employees—

(1) The contracting officer shall coordinate with the CAO before contract award;

(2) The contracting officer shall request the following information from the CAO:

(i) The applicability of any international agreements to the acquisition.

(ii) Security requirements applicable to the area.

(iii) The standards of conduct for the prospective contractor and its employees and any consequences for violation of the standards of conduct.

(iv) Requirements for use of foreign currencies, including applicability of U.S. holdings of excess foreign currencies.

(v) Availability of logistical support for contractor employees.

(vi) Information on taxes and duties from which the Government may be exempt;

(3) The contracting officer shall furnish the following information to the CAO:

(i) A synopsis of the work to be performed and, if practical, a copy of the solicitation.

(ii) Any contractor logistical support desired in support of U.S. or foreign military sale requirements.

(iii) Contract performance period and estimated contract value.

(iv) Number and nationality of contractor employees and date of planned arrival of contractor personnel.

(v) Contract security requirements.

(vi) Other pertinent information to effect complete coordination and cooperation.

225.802–71 End use certificates.

Contracting officers considering the purchase of an item from a foreign source may encounter a request for the signing of a certificate to indicate that the Armed Forces of the United States is the end user of the item, and that the U.S. Government will not transfer the item to third parties without authorization from the Government of the country selling the item. When encountering this situation, refer to DoD Directive 2040.3, End Use Certificates, for guidance.

225.870 Contracting with Canadian contractors.

225.870–1 General.

(a) The Canadian Government guarantees to the U.S. Government all commitments, obligations, and covenants of the Canadian Commercial Corporation under any contract or order issued to the Corporation by any contracting office of the U.S. Government. The Canadian Government has waived notice of any change or modification that may be made, from time to time, in these commitments, obligations, or covenants.

(b) For production planning purposes, Canada is part of the defense industrial base (see 225.870–2(b)).

(c) The Canadian Commercial Corporation will award and administer contracts with contractors located in Canada, except for—

(1) Negotiated acquisitions for experimental, developmental, or research work under projects other than the Defense Development Sharing Program;

(2) Acquisitions of unusual or compelling urgency;

(3) Acquisitions at or below the simplified acquisition threshold; or

(4) Acquisitions made by DoD activities located in Canada.

(d) The Canadian Commercial Corporation uses provisions in contracts with Canadian or U.S. concerns that give DoD the same production rights, data, and information that DoD would obtain in contracts with U.S. concerns.

(e) The Government of Canada will provide the following services under contracts with the Canadian Commercial Corporation without charge to DoD:

(1) *Contract administration services*, including—

(i) Cost and price analysis;

(ii) Industrial security;

(iii) Accountability and disposal of Government property;

(iv) Production expediting;

(v) Compliance with Canadian labor laws;

(vi) Processing of termination claims and disposal of termination inventory;

(vii) Customs documentation;

(viii) Processing of disputes and appeals; and

(ix) Such other related contract administration functions as may be required with respect to the Canadian Commercial Corporation contract with the Canadian supplier.

(2) *Audits.* The Public Works and Government Services Canada performs audits when needed. Route requests for audit on non-Canadian Commercial Corporation contracts through the cognizant contract management office of the Defense Contract Management Agency.

(3) *Inspection.* The Department of National Defence (Canada) provides inspection personnel, services, and facilities at no charge to DoD departments and agencies (see 225.870–7).

225.870–2 Solicitation of Canadian contractors.

(a) Except for acquisitions described in 225.870–1(c)(1) through (4), include Canadian firms on solicitation mailing lists and comparable source lists only at the request of the Canadian Commercial Corporation.

(b) Include Canadian planned producers under the Industrial Preparedness Production Planning Program on solicitation mailing lists for their planned items (see FAR 14.205–1).

(c) Send solicitations directly to Canadian firms appearing on the appropriate solicitation mailing lists. Send a complete copy of the solicitation and a listing of Canadian firms solicited to the Canadian Commercial Corporation, 11th Floor, 50 O'Connor Street, Ottawa, Ontario, K1A–0S6, Canada.

(d) If requested, furnish a solicitation to the Canadian Commercial Corporation even if no Canadian firm is solicited.

(e) Handle acquisitions at or below the simplified acquisition threshold directly with Canadian firms and not through the Canadian Commercial Corporation.

225.870–3 Submission of offers.

(a) As indicated in 225.870–4, the Canadian Commercial Corporation is the prime contractor. To indicate acceptance of offers by individual Canadian companies, the Canadian Commercial Corporation issues a letter supporting the Canadian offer and containing the following information:

(1) Name of the Canadian offeror.

(2) Confirmation and endorsement of the offer in the name of the Canadian Commercial Corporation.

(3) A statement that the Corporation shall subcontract 100 percent with the offeror.

(b) When a Canadian offer cannot be processed through the Canadian Commercial Corporation in time to meet the date for receipt of offers, the Corporation may permit Canadian firms to submit offers directly. However, the contracting officer shall receive the Canadian Commercial Corporation's endorsement before contract award.

(c) The Canadian Commercial Corporation will submit all sealed bids in terms of U.S. currency. Do not adjust contracts awarded under sealed bidding for losses or gains from fluctuation in exchange rates.

(d) Except for sealed bids, the Canadian Commercial Corporation normally will submit offers and quotations in terms of Canadian currency. The Corporation may, at the time of submitting an offer, elect to quote and receive payment in terms of U.S. currency, in which case the contract—

(1) Shall provide for payment in U.S. currency; and

(2) Shall not be adjusted for losses or gains from fluctuation in exchange rates.

225.870–4 Contracting procedures.

(a) Except for contracts described in 225.870–1(c)(1) through (4), award individual contracts covering purchases from suppliers located in Canada to the Canadian Commercial Corporation, 11th Floor, 50 O'Connor Street, Ottawa, Ontario, Canada, K1A–0S6.

(b) Direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract, provided the Corporation's approval is obtained on any matters involving changes to the contract.

(c) Identify in the contract, the type of currency, *i.e.*, U.S. or Canadian. Contracts that provide for payment in Canadian currency shall—

(1) Quote the contract price in terms of Canadian dollars and identify the amount by the initials "CN"; *e.g.*, $1,647.23CN; and

(2) Clearly indicate on the face of the contract the U.S./Canadian conversion rate at the time of award and the U.S. dollar equivalent of the Canadian dollar contract amount.

225.870–5 Contract administration.

(a) Assign contract administration in accordance with Part 242. When the Defense Contract Management Agency will perform contract administration in Canada, name in the contract the following payment office for disbursement of DoD funds (DoD Department Code: 17—Navy; 21—Army; 57—Air Force; 97—all other DoD components), whether payment is in Canadian or U.S. dollars: DFAS—Columbus Center; DFAS–CO/New Dominion Division; PO Box 182041; Columbus, OH 43218–2041.

(b) The following procedures apply to cost-reimbursement type contracts:

(1) The Public Works and Government Services Canada (PWGSC) automatically arranges audits on contracts with the Canadian Commercial Corporation.

(i) Consulting and Audit Canada (CAC) furnishes audit reports to PWGSC.

(ii) Upon advice from PWGSC, the Canadian Commercial Corporation certifies the invoice and forwards it with Standard Form (SF) 1034, Public Voucher, to the administrative

contracting officer for further processing and transmittal to the disbursing office.

(2) For contracts placed directly with Canadian firms, the administrative contracting officer requests audits from the CAC, Ottawa, Ontario, Canada.

(i) The CAC/PWGSC approves invoices on a provisional basis pending completion of the contract and final audit.

(ii) The CAC/PWGSC forwards these invoices, accompanied by SF 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing officer.

(iii) The CAC/PWGSC furnishes periodic advisory audit reports directly to the administrative contracting officer.

225.870–6 Termination procedures.

(a) The Canadian Commercial Corporation will continue administering contracts that the U.S. contracting officer terminates.

(b) The Corporation will settle all Canadian subcontracts in accordance with the policies, practices, and procedures of the Canadian Government.

(c) The U.S. agency administering the contract with the Canadian Commercial Corporation shall provide any services required by the Canadian Commercial Corporation, including disposal of inventory, for settlement of any subcontracts placed in the United States. Settlement of such U.S. subcontracts will be in accordance with this regulation.

225.870–7 Acceptance of Canadian supplies.

(a) For contracts placed in Canada, either with the Canadian Commercial Corporation or directly with Canadian suppliers, the Department of National Defence (Canada) will perform any necessary contract quality assurance and/or acceptance, as applicable.

(b) Signature by the Department of National Defence (Canada) quality assurance representative on the DoD inspection and acceptance form is satisfactory evidence of acceptance for payment purposes.

225.870–8 Industrial security.

Industrial security for Canada shall be in accordance with the U.S.-Canada Industrial Security Agreement of March 31, 1952, as amended.

225.871 North Atlantic Treaty Organization cooperative projects.

225.871–1 Scope.

This section—

(a) Implements 22 U.S.C. 2767 and 10 U.S.C. 2350b; and

(b) Provides guidance on awarding contracts for North Atlantic Treaty Organization (NATO) cooperative projects.

225.871–2 Definitions.

(a) *Cooperative project* means a jointly managed arrangement—

(1) Described in a written agreement between the parties;

(2) Undertaken to further the objectives of standardization, rationalization, and interoperability of the armed forces of NATO member countries; and

(3) Providing for—

(i) One or more of the other participants to share with the United States the cost of research and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(ii) Concurrent production in the United States and in another member country of a defense article jointly developed; or

(iii) Acquisition by the United States of a defense article or defense service from another member country.

(b) *Other participant* means a cooperative project participant other than the United States.

225.871–3 General.

(a) *Cooperative project authority.*

(1) Departments and agencies, that have authority to do so, may enter into cooperative project agreements with NATO or with one or more member countries of NATO under DoDD 5530.3, International Agreements.

(2) Under laws and regulations governing the negotiation and implementation of cooperative project agreements, departments and agencies may enter into contracts, or incur other obligations, on behalf of other participants without charge to any appropriation or contract authorization.

(3) Agency heads are authorized to solicit and award contracts to implement cooperative projects.

(b) Contracts implementing cooperative projects shall comply with all applicable laws relating to Government acquisition, unless a waiver is granted under 225.871–4. A waiver of certain laws and regulations may be obtained if the waiver—

(1) Is required by the terms of a written cooperative project agreement;

(2) Will significantly further NATO standardization, rationalization, and interoperability; and

(3) Is approved by the appropriate DoD official.

225.871–4 Statutory waivers.

(a) For contracts or subcontracts placed outside the United States, the Deputy Secretary of Defense may waive any provision of law that specifically prescribes—

(1) Procedures for the formation of contracts;

(2) Terms and conditions for inclusion in contracts;

(3) Requirements or preferences for—

(i) Goods grown, produced, or manufactured in the United States or in U.S. Government-owned facilities; or

(ii) Services to be performed in the United States; or

(4) Requirements regulating the performance of contracts.

(b) There is no authority for waiver of—

(1) Any provision of the Arms Export Control Act (22 U.S.C. 2751);

(2) Any provision of 10 U.S.C. 2304;

(3) The cargo preference laws of the United States, including the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)); or

(4) Any of the financial management responsibilities administered by the Secretary of the Treasury.

(c) Forward any request for waiver under a cooperative project to the Deputy Secretary of Defense, through the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics). The waiver request shall include a draft Determination and Findings for signature by the Deputy Secretary of Defense establishing that the waiver is necessary to significantly further NATO standardization, rationalization, and interoperability.

(d) Obtain the approval of the Deputy Secretary of Defense before committing to make a waiver in an agreement or a contract.

225.871–5 Directed subcontracting.

(a) The Director of Defense Procurement may authorize the direct placement of subcontracts with particular subcontractors. Directed subcontracting is not authorized unless specifically addressed in the cooperative project agreement.

(b) In some instances, it may not be feasible to name specific subcontractors at the time the agreement is concluded. However, the agreement shall clearly state the general provisions for work sharing at the prime and subcontract level.

(c) The agreement is the authority for a contractual provision requiring the contractor to place certain subcontracts with particular subcontractors. No separate justification and approval during the acquisition process is required.

225.871–6 Disposal of property.

Dispose of property that is jointly acquired by the members of a cooperative project under the procedures established in the agreement or in a manner consistent with the terms of the agreement.

225.871–7 Congressional notification.

(a) Congressional notification is required when DoD makes a determination to award a contract or subcontract to a particular entity, if the determination was not part of the certification made under 22 U.S.C. 2767(f) before finalizing the cooperative agreement.

(1) Departments and agencies shall provide a proposed Congressional notice to the Director of Defense Procurement in sufficient time to forward to Congress before the time of contract award.

(2) The proposed notice shall include the reason it is necessary to use the authority to designate a particular contractor or subcontractor.

(b) Congressional notification is also required each time a statutory waiver under 225.871–4 is incorporated in a contract or a contract modification, if such information was not provided in the certification to Congress before finalizing the cooperative agreement.

225.872 Contracting with qualifying country sources.

225.872–1 General.

(a) As a result of memoranda of understanding and other international agreements, DoD has determined it inconsistent with the public interest to apply restrictions of the Buy American Act or the Balance of Payments Program to the acquisition of defense equipment that is mined, produced, or manufactured in any of the following countries (referred to in this part as "qualifying countries"):

Australia
Belgium
Canada
Denmark
Egypt
Federal Republic of Germany
France
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Portugal
Spain
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland

(b) Individual acquisitions for products of the following qualifying countries may, on a purchase-by-purchase basis (see 225.872–4), be exempted from application of the Buy American Act and the Balance of Payments Program as inconsistent with the public interest'

Austria
Finland
Sweden

(c) The determination in paragraph (a) of this subsection does not limit the authority of the Secretary concerned to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a qualifying country source when considered necessary for national defense reasons.

225.872–2 Applicability.

(a) This section applies to all acquisitions of supplies except those restricted by—

(1) U.S. National Disclosure Policy, DoDD 5230.11, Disclosure of Classified Military Information to Foreign Governments and International Organizations;

(2) U.S. defense mobilization base requirements purchased under the authority of FAR 6.302–3(a)(2)(i) except for quantities in excess of that required to maintain the defense mobilization base. This restriction does not apply to Canadian planned producers.

(i) Review individual solicitations to determine whether this restriction applies.

(ii) Information concerning restricted items may be obtained from the Deputy Under Secretary of Defense (Industrial Affairs);

(3) Other U.S. laws or regulations (*e.g.*, the annual DoD appropriations act); and

(4) U.S. industrial security requirements.

(b) This section does not apply to construction contracts.

225.872–3 Solicitation procedures.

(a) Include qualifying country sources on solicitation mailing lists upon their request (see FAR 14.205).

(b) Except for items developed under the U.S./Canadian Development Sharing Program, use the criteria for soliciting and awarding contracts to small business concerns under FAR part 19 without regard to whether there are potential qualifying country sources for the end product. Do not consider an offer of a qualifying country end product if the solicitation is identified for the exclusive participation of small business concerns.

(c) Send solicitations directly to qualifying country sources. Solicit Canadian sources through the Canadian Commercial Corporation in accordance with 225.870.

(d) Use international air mail if solicitation destinations are outside the United States and security classification permits such use.

(e) If unusual technical or security requirements preclude the acquisition of otherwise acceptable defense equipment from qualifying country sources, review the need for such requirements. Do not impose unusual technical or security requirements solely for the purpose of precluding the acquisition of defense equipment from qualifying countries.

(f) Do not automatically exclude qualifying country sources from submitting offers because their supplies have not been tested and evaluated by the department or agency.

(1) Consider the adequacy of qualifying country service testing on a case-by-case basis. Departments or agencies that must limit solicitations to sources whose items have been tested and evaluated by the department or agency shall consider supplies from qualifying country sources that have been tested and accepted by the qualifying country for service use.

(2) The department or agency may perform a confirmatory test, if necessary.

(3) Apply U.S. test and evaluation standards, policies, and procedures when the department or agency decides that confirmatory tests of qualifying country end products are necessary.

(4) If it appears that these provisions might adversely delay service programs, obtain the concurrence of the Under Secretary of Defense (Acquisition, Technology, and Logistics), before excluding the qualifying country source from consideration.

(g) Permit industry representatives from a qualifying country to attend symposia, program briefings, prebid conferences (see FAR 14.207 and 15.201(c)), and similar meetings that address U.S. defense equipment needs and requirements. When practical, structure these meetings to allow attendance by representatives of qualifying country concerns.

225.872–4 Individual determinations.

(a) If the offer of an end product from a qualifying country source listed in 225.872–1(b), as evaluated, is low or otherwise eligible for award, prepare a determination and findings exempting the acquisition from the Buy American Act and Balance of Payments Program as inconsistent with the public interest, unless another exception such as the Trade Agreements Act applies.

(b) Obtain signature of the determination and findings—

(1) At a level above the contracting officer, if the acquisition is valued at $100,000 or less; or

(2) By the chief of the contracting office, if the acquisition is valued at more than $100,000.

(c) Prepare the determination and findings substantially as follows:

Service or Agency

Exemption of the Buy American Act and Balance of Payments Program

Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of FAR 25.103(a), the acquisition of a qualifying country end product may be made as follows:

Findings

1. The (*contracting office*) proposes to purchase under contract number ___, (*describe item*) mined, produced, or manufactured in (*qualifying country of origin*). The total estimated cost of this acquisition is ___.

2. The United States Government and the Government of ___ have agreed to remove barriers to procurement at the prime and subcontract level for defense equipment produced in each other's countries insofar as laws and regulations permit.

3. The agreement provides that the Department of Defense will evaluate competitive offers of qualifying country end products mined, produced, or manufactured in (*qualifying country*) without imposing any price differential under the Buy American Act or Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that such items may better compete for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of such items shall fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. To achieve the foregoing objectives, the solicitation contained the clause (*title and number of the Buy American Act clause contained in the contract*). Offers were solicited from other sources and the offer received from (*offeror*) is found to be otherwise eligible for award.

Determination

I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American Act or t Balance of Payments Program to the offer described in this determination and findings.

(Date)

225.872–5 Contract administration.

(a) Arrangements exist with some qualifying countries to provide reciprocal contract administration services. Some arrangements are at no cost to either government. To determine whether such an arrangement has been negotiated and what contract administration functions are covered, contact the Deputy Director of Defense Procurement (Foreign Contracting), ((703) 697–9351/2/3, DSN 227–9351/2/3).

(b) When contract administration services are required on contracts to be performed in qualifying countries, direct the request to the cognizant activity listed in the Federal Directory of Contract Administration Services. The cognizant activity also will arrange contract administration services for DoD subcontracts that qualifying country sources place in the United States.

(c) The contract administration activity receiving a delegation shall determine whether any portions of the delegation are covered by memoranda of understanding annexes and, if so, shall delegate those functions to the appropriate organization in the qualifying country's government.

(d) Information on quality assurance delegations to foreign governments is in subpart 246.4, Government Contract Quality Assurance.

225.872–6 Audit.

(a) Memoranda of understanding with some qualifying countries contain annexes that provide for reciprocal "no-cost" audits of contracts and subcontracts (pre- and post-award).

(b) To determine if such an annex is applicable to a particular qualifying country, contact the Deputy Director of Defense Procurement (Foreign Contracting), ((703) 697–9351/2/3, DSN 227–9351/2/3).

(c) Handle requests for audits in qualifying countries in accordance with 215.404–2(c).

(1) Except for the United Kingdom, send the request to the administrative contracting officer at the cognizant activity listed in Section 2B of the Federal Directory of Contract Administration Services. Send the request for audit from the United Kingdom directly to their Ministry of Defence.

(2) Send an advance copy of the request to the focal point identified by the Deputy Director of Defense Procurement (Foreign Contracting).

225.872–7 Industrial security for qualifying countries.

The required procedures for safeguarding classified defense information necessary for the performance of contracts awarded to qualifying country sources are in the DoD Industrial Security Regulation DoD 5220.22–R (implemented for the Army by AR 380–49; for the Navy by SECNAV Instruction 5510.1H; for the Air Force by AFI 31–601; for the Defense Information Systems Agency by DCA Instruction 240–110–8; and for the National Imagery and Mapping Agency by NIMA Instruction 5220.22).

225.872–8 Subcontracting with qualifying country sources.

In reviewing contractor subcontracting procedures, the contracting officer shall ensure that the contract does not preclude qualifying country sources from competing for subcontracts, except when restricted by national security interest reasons, mobilization base considerations, or applicable U.S. laws or regulations (see the clause at 252.225–7002, Qualifying Country Sources as Subcontractors).

225.873 Waiver of United Kingdom commercial exploitation levies.

225.873–1 Policy.

DoD and the Government of the United Kingdom (U.K.) have agreed to waive U.K. commercial exploitation levies and U.S. nonrecurring cost recoupment charges on a reciprocal basis. For U.K. levies to be waived, the offeror or contractor shall identify the levies and the contracting officer shall request a waiver before award of the contract or subcontract under which the levies are charged.

225.873–2 Procedures.

(a) The Government of the U.K. shall approve waiver of U.K. levies. When an offeror or contractor identifies a levy included in an offered or contract price, the contracting officer shall provide written notification to the Defense Security Cooperation Agency, ATTN: PSD–PMD, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306, telephone (703) 601–3864. The Defense Security Cooperation Agency will request a waiver of the levy from the Government of the U.K. The notification shall include—

(1) Name of the U.K. firm;

(2) Prime contract number;

(3) Description of item for which waiver is being sought;

(4) Quantity being acquired; and

(5) Amount of levy.

(b) Waiver may occur after contract award. If levies are waived before contract award, evaluate the offer without the levy. If levies are identified but not waived before contract award, evaluate the offer inclusive of the levies.

19. Subpart 225.9 is revised to read as follows:

Subpart 225.9—Customs and Duties

Sec.
225.901 Policy.
225.902 Procedures.
225.903 Exempted supplies.

225.901 Policy.

Unless the supplies are entitled to duty-free treatment under a special category in the Harmonized Tariff Schedule of the United States (*e.g.*, the Caribbean Basin Economic Recovery Act or NAFTA), or unless the supplies already have entered into the customs territory of the United States and the contractor already has paid the duty, DoD will issue duty-free entry certificates for—

(1) Qualifying country supplies (end products and components);

(2) Eligible products (end products but not components) under contracts subject to the Trade Agreements Act or NAFTA; and

(3) Other foreign supplies for which the contractor estimates that duty will exceed $200 per unit (end product or component).

225.902 Procedures.

(1) *Formal entry and release.*

(i) The administrative contracting officer shall—

(A) Ensure that contractors are aware of and understand any Duty-Free Entry clause requirements. Contractors should understand that failure by them or their subcontractors to provide the data required by the clause will result in treatment of the shipment as without benefit of free entry under Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States.

(B) Upon receipt of the required notice of purchase of foreign supplies from the contractor or any tier subcontractor—

(*1*) Verify the duty-free entitlement of supplies entering under the contract; and

(*2*) Review the prime contract to ensure that performance of the contract requires the foreign supplies (quantity and price) identified in the notice.

(C) Within 20 days after receiving the notification of purchase of foreign supplies, forward the following information in the format indicated to the Commander, DCMA New York, ATTN: Customs Team, DCMAE–GNTF, 207 New York Avenue, Building 120, Staten Island, NY 10305–5013:

We have received a contractor notification of the purchase of foreign supplies. I have verified that foreign supplies are required for the performance of the contract.

Prime Contractor Name and Address:
Prime Contractor CAGE Code:
Prime Contract Number plus Delivery Order Number, if applicable:
Total Dollar Value of the Prime Contract or Delivery Order:
Expiration Date of the Prime Contract or Delivery Order:
Foreign Supplier Name and Address:
Number of Subcontract/Purchase Order for Foreign Supplies:
Total Dollar Value of the Subcontract for Foreign Supplies:
Expiration Date of the Subcontract for Foreign Supplies:
CAO Activity Address Number:
ACO Name and Telephone Number:
ACO Code:
Signature:
Title:

(D) If a contract modification results in a change to any data verifying duty-free entitlement previously furnished, forward a revised notification including the changed data to DCMA New York.

(ii) The Customs Team, DCMAE–GNTF, DCMA New York—

(A) Is responsible for issuing duty-free entry certificates for foreign supplies purchased under a DoD contract or subcontract; and

(B) Upon receipt of import documentation for incoming shipments from the contractor, its agent, or the U.S. Customs Service, will verify the duty-free entitlement and execute the duty-free entry certificate.

(iii) Upon arrival of foreign supplies at ports of entry, the consignee, generally the contractor or its agent (import broker) for shipments to other than a military installation, will file U.S. Customs Form 7501, 7501A, or 7506, with the District Director of Customs.

(2) *Immediate entry and release.* Importations made in the name of a DoD military facility or shipped directly to a military facility are entitled to release under the immediate delivery procedure.

(i) A DoD immediate delivery application has been approved and is on file at Customs Headquarters.

(ii) The application is for an indefinite period and is good for all Customs districts, areas, and ports.

225.903 Exempted supplies.

(b)(i) The term "supplies"—

(A) Includes—

(*1*) Articles known as "stores," such as food, medicines, and toiletries; and

(*2*) All consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags, and polishes; and

(B) Does not include portable articles necessary and appropriate for the navigation, operation, or maintenance of the vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term "equipment."

(ii) The duty-free certificate shall be printed, stamped, or typed on the face of, or attached to, Customs Form 7501. A duly designated officer or civilian official of the appropriate department or agency shall execute the certificate in the following form:

(Date) _____

I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name) _____

(Title) _____

(Organization) _____

20. Subpart 225.11 is revised to read as follows:

Subpart 225.11—Solicitation Provisions and Contract Clauses

Sec.
225.1100 Scope of subpart.
225.1101 Acquisition of supplies.
225.1103 Other provisions and clauses.

225.1100 Scope of subpart.

This subpart prescribes the clauses that implement subparts 225.1 through 225.10. The clauses that implement subparts 225.70 through 225.75 are prescribed within those subparts.

225.1101 Acquisition of supplies.

(1) Use the provision at 252.225–7000, Buy American Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–2, Buy American Act Certificate. Use the provision in any solicitation that includes the clause at 252.225–7001, Buy American Act and Balance of Payments Program.

(2) Use the clause at 252.225–7001, Buy American Act and Balance of Payments Program, instead of the clause at FAR 52.225–1, Buy American Act—Supplies, in solicitations and contracts unless—

(i) All line items will be acquired from a particular source or sources under the authority of FAR 6.302–3;

(ii) All line item[s] must be domestic or qualifying countr[y] and products in accordance with [S]ubpart 225.70. (However, the clause may still be required if subpart 225.70 requires manufacture of the end product in the United States or in the United States or Canada, without a corresponding requirement for use of domestic components);

(iii) An exception to the Buy American Act or Balance of Payments Program applies; or

(iv) One or both of the following clauses will apply to all line items in the contract:

(A) 252.225–7021, Trade Agreements.

(B) 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

(3) Use the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, in solicitations and contracts that include one of the following clauses:

(i) 252.225–7001, Buy American Act and Balance of Payments Program.

(ii) 252.225–7021, Trade Agreements.

(iii) 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

(4) Use the clause at 252.225–7013, Duty-Free Entry, instead of the clause at FAR 52.225–10. Do not use the clause for acquisitions of supplies for exclusive use outside the United States.

(5) Use the provision at 252.225–7020, Trade Agreements Certificate, instead of the provision at FAR 52.225–6, Trade Agreements Certificate, in solicitations that include the clause at 252.225–7021, Trade Agreements.

(6)(i) Use the clause at 252.225–7021, Trade Agreements, instead of the clause at FAR 52.225–5, Trade Agreements, when the Trade Agreements Act applies.

(ii) Do not use the clause if purchase from foreign sources is restricted, unless the contracting officer anticipates a waiver of the restriction.

(iii) The acquisition of eligible and noneligible products under the same contract may result in the application of trade agreements to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Trade Agreements clause.

(7) Use the provision at 252.225–7032, Waiver of United Kingdom Levies—Evaluation of Offers, in solicitations and contracts if a U.K. firm is expected to—

(i) Submit an offer; or

(ii) Receive a subcontract exceeding $1 million.

(8) Use the clause at 252.225–7033, Waiver of United Kingdom Levies, in solicitations and contracts if a U.K. firm is expected to—

(i) Submit an offer; or

(ii) Receive a subcontract exceeding $1 million.

(9) Use the provision at 252.225–7035, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–4, Buy American Act—North American Free Trade Agreement—Israeli Trade Act, in solicitations that include the clause at 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. Use the provision with its Alternate I when the clause at 252.225–7005 is used with its Alternate I.

(10)(i) Use the clause at 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the clause at FAR 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act, in solicitations and contracts for the items listed at 225.401–70, when the estimated value equals or exceeds $25,000, but is less than $169,000, and NAFTA applies to the acquisition.

(A) Use the basic clause when the estimated value equals or exceeds $56,190.

(B) Use the clause with its Alternate I when the estimated value equals or exceeds $25,000 but is less than $56,190.

(ii) Do not use the clause if purchase from foreign sources is restricted (see 225.401(a)(2)), unless the contracting officer anticipates a waiver of the restriction.

(iii) The acquisition of eligible and noneligible products under the same contract may result in the application of the North American Free Trade Agreement Implementation Act to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause.

225.1103 Other provisions and clauses.

(1) Unless the contracting officer knows that the prospective contractor is not a domestic concern, use the clause at 252.225–7005, Identification of Expenditures in the United States, in solicitations and contracts that—

(i) Exceed the simplified acquisition threshold; and

(ii) Are for the acquisition of—

(A) Supplies for use outside the United States;

(B) Construction to be performed outside the United States; or

(C) Services to be performed primarily outside the United States.

(2) Use the provision at 252.225–7008, Disclosure of Ownership or Control by the Government of a Terrorist Country, in solicitations expected to result in contracts of $100,000 or more.

(3) Use the clause at 252.225–7009, Subcontracting with Firms Owned or Controlled by the Government of a Terrorist Country, in solicitations and contracts with a value of $100,000 or more.

(4) Unless an exception applies or a waiver has been granted in accordance with subpart 225.6, use the provision at 252.225–7031, Secondary Arab Boycott of Israel, in all solicitations.

(5) Use the clause at 252.225–7041, Correspondence in English, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

(6) Use the provision at 252.225–7042, Authorization to Perform, in solicitations when contract performance will be wholly or in part in a foreign country.

225.7000 [Amended]

21. Section 225.7000 is amended as follows:

a. In paragraph (a), in the first sentence, by removing "Defense" and adding in its place "DoD"; and

b. In paragraph (b), by adding "the" before "Balance of Payments Program".

22. Section 225.7002–3 is amended by revising paragraph (c) to read as follows:

225.7002–3 Contract clauses.

* * * * *

(c) Use the clause at 252.225–7015, Restriction on Acquisition of Hand or Measuring Tools, in solicitations and contracts exceeding the simplified acquisition threshold that require delivery of hand or measuring tools.

225.7003 through 225.7023–3 [Removed]

23. Sections 225.7003 through 225.7023–3 are removed.

24. New sections 225.7003 through 225.7018–4 are added to read as follows:

225.7003 Waiver of restrictions of 10 U.S.C. 2534.

(a) Where provided for elsewhere in this subpart, the restrictions on certain foreign purchases under 10 U.S.C. 2534(a) may be waived as follows:

(1)(i) The Under Secretary of Defense (Acquisition, Technology, and Logistics), without power of delegation, may waive a restriction for a particular item for a particular foreign country upon determination that—

(A) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country; or

(B) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(ii) A notice of the determination to exercise the waiver authority shall be published in the **Federal Register** and submitted to the congressional defense committees at least 15 days before the effective date of the waiver.

(iii) The effective period of the waiver shall not exceed 1 year.

(iv) For contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, the waiver will be applied as directed or authorized in the waiver to—

(A) Subcontracts entered into on or after the effective date of the waiver; and

(B) Options for the procurement of items that are exercised after the effective date of the waiver, if the option prices are adjusted for any reason other than the application of the waiver.

(2) The head of the contracting activity may waive a restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(i) The restriction would cause unreasonable delays.

(ii) Satisfactory quality items manufactured in the United States or Canada are not available.

(iii) Application of the restriction would result in the existence of only one source for the item in the United States or Canada.

(iv) Application of the restriction is not in the national security interests of the United States.

(v) Application of the restriction would adversely affect a U.S. company.

(3) A restriction is waived when it would cause unreasonable costs. The cost of an item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items that are not of U.S. or Canadian origin.

(b) In accordance with the provisions of paragraphs (a)(1)(i) through (a)(1)(iii) of this section, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restrictions of 10 U.S.C. 2534(a) for certain items manufactured in the United Kingdom, including air circuit breakers for naval vessels, totally enclosed lifeboats, and ball and roller bearings (see 225.7006, 225.7008, and 225.7009). This waiver applies to—

(1) Procurements under solicitations issued on or after August 4, 1998; and

(2) Subcontracts and options under contracts entered into prior to August 4, 1998, under the conditions described in paragraph (a)(1)(iv) of this section.

225.7004 Restriction on acquisition of foreign buses.

225.7004–1 Restriction.

In accordance with 10 U.S.C. 2534, do not acquire a multipassenger motor vehicle (bus) unless it is manufactured in the United States or Canada.

225.7004–2 Applicability.

Apply this restriction if the buses are purchased, leased, rented, or made available under contracts for transportation services.

225.7004–3 Exceptions.

This restriction does not apply in any of the following circumstances:

(a) Buses manufactured outside the United States and Canada are needed for temporary use because buses manufactured in the United States or Canada are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the United States or Canada.

(b) The requirement for buses is temporary in nature. For example, to meet a special, nonrecurring requirement or a sporadic and infrequent recurring requirement, buses manufactured outside the United States and Canada may be used for temporary periods of time. Such use may not, however, exceed the period of time needed to meet the special requirement.

(c) Buses manufactured outside the United States and Canada are available at no cost to the U.S. Government.

(d) The acquisition is for an amount at or below the simplified acquisition threshold.

225.7004–4 Waiver.

The waiver criteria at 225.7003(a) apply to this restriction.

225.7005 Restriction on certain chemical weapons antidote.

225.7005–1 Restriction.

In accordance with 10 U.S.C. 2534 and defense industrial mobilization requirements (see subpart 208.72), do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless the chemical weapons antidote or component is manufactured in the United States or Canada by a company that—

(a) Is a producer under the industrial preparedness program at the time of contract award;

(b) Has received all required regulatory approvals; and

(c) Has the plant, equipment, and personnel to perform the contract in the United States or Canada at the time of contract award.

225.7005–2 Exception.

This restriction does not apply if the acquisition is for an amount at or below the simplified acquisition threshold.

225.7005–3 Waiver.

The waiver criteria at 225.7003(a) apply to this restriction.

225.7006 Restriction on air circuit breakers for naval vessels.

225.7006–1 Restriction.

In accordance with 10 U.S.C. 2534, do not acquire air circuit breakers for naval vessels unless they are manufactured in the United States or Canada.

225.7006–2 Exceptions.

This restriction does not apply if the acquisition is—

(a) For an amount at or below the simplified acquisition threshold; or

(b) For spare or repair parts needed to support air circuit breakers manufactured outside the United States. Support includes the purchase of spare air circuit breakers when those from alternate sources are not interchangeable.

225.7006–3 Waiver.

(a) The waiver criteria at 225.7003(a) apply to this restriction.

(b) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restriction for air circuit breakers manufactured in the United Kingdom. See 225.7003(b) for applicability.

225.7006–4 Solicitation provision and contract clause.

(a) Use the provision at 252.225–7037, Evaluation of Offers for Air Circuit Breakers, in solicitations requiring air circuit breakers for naval vessels unless—

(1) An exception applies; or

(2) A waiver has been granted, other than the waiver for the United Kingdom, which has been incorporated into the provision.

(b) Use the clause at 252.225–7038, Restriction on Acquisition of Air Circuit Breakers, in solicitations and contracts requiring air circuit breakers for naval vessels unless—

(1) An exception applies; or

(2) A waiver has been granted, other than the waiver for the United Kingdom,

which has been incorporated into the clause.

225.7007 Restrictions on anchor and mooring chain.

225.7007–1 Restrictions.

(a) In accordance with section 8041 of the Fiscal Year 1991 DoD Appropriations Act (Public Law 101–511) and similar sections in subsequent DoD appropriations acts, do not acquire welded shipboard anchor and mooring chain, four inches or less in diameter, unless'

(1) It is manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States exceeds 50 percent of the total cost of components.

(b) 10 U.S.C. 2534 also restricts acquisition of welded shipboard anchor and mooring chain, four inches or less in diameter, when used as a component of a naval vessel. However, the Appropriations Act restriction described in paragraph (a) of this subsection takes precedence over the restriction of 10 U.S.C. 2534.

225.7007–2 Waiver.

(a) The Secretary of the department responsible for acquisition may waive the restriction in 225.7007–1(a), on a case-by-case basis, if—

(1) Sufficient domestic suppliers are not available to meet DoD requirements on a timely basis; and

(2) The acquisition is necessary to acquire capability for national security purposes.

(b) Document the waiver in a written determination and findings containing—

(1) The factors supporting the waiver; and

(2) A certification that the acquisition must be made in order to acquire capability for national security purposes.

(c) Provide a copy of the determination and findings to the House and Senate Committees on Appropriations.

225.7007–3 Contract clause.

Unless a waiver has been granted, use the clause at 252.225–7019, Restriction on Acquisition of Anchor and Mooring Chain, in solicitations and contracts requiring welded shipboard anchor or mooring chain four inches or less in diameter.

225.7008 Restrictions on totally enclosed lifeboat survival systems.

225.7008–1 Restrictions.

(a) In accordance with section 8124 of the Fiscal Year 1994 DoD Appropriations Act (Public Law 103–139) and section 8093 of the Fiscal Year 1995 DoD Appropriations Act (Public Law 103–335), do not purchase a totally enclosed lifeboat survival system, which consists of the lifeboat and associated davits and winches, unless—

(1) 50 percent or more of the components are manufactured in the United States; and

(2) 50 percent or more of the labor in the final manufacture and assembly of the entire system is performed in the United States.

(b) In accordance with 10 U.S.C. 2534(a), do not purchase a totally enclosed lifeboat that is a component of a naval vessel unless it is manufactured in the United States or Canada.

(1) 10 U.S.C. 2534(h) prohibits the use of a contract clause or certification to implement this restriction.

(2) Implement this restriction through management and oversight techniques that achieve the objective of the restriction without imposing a significant management burden on the Government or the contractor.

225.7008–2 Exceptions.

The restriction in 225.7008–1(b) does not apply if the acquisition is—

(a) For an amount at or below the simplified acquisition threshold; or

(b) For spare or repair parts needed to support totally enclosed lifeboats manufactured outside the United States.

225.7008–3 Waiver.

(a) The waiver criteria at 225.7003(a) apply to the restriction of 225.7008–1(b).

(b) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restriction of 225.7008–1(b) for totally enclosed lifeboats manufactured in the United Kingdom. See 225.7003(b) for applicability.

225.7008–4 Contract clause.

Use the clause at 252.225–7039, Restriction on Acquisition of Totally Enclosed Lifeboat Survival Systems, in solicitations and contracts that require delivery of totally enclosed lifeboat survival systems.

225.7009 Restrictions on ball and roller bearings.

225.7009–1 Restrictions.

(a) In accordance with 10 U.S.C. 2534, through fiscal year 2005, do not acquire ball and roller bearings or bearing components unless they are manufactured in the United States or Canada.

(b) In accordance with section 8099 of the DoD Appropriations Act for Fiscal Year 1996 (Public Law 104–61) and similar sections in subsequent DoD appropriations acts, do not acquire ball and roller bearings unless the bearings and bearing components are manufactured in the United States or Canada.

225.7009–2 Exceptions.

(a) The restriction in 225.7009–1(a) does not apply to—

(1) Acquisitions using simplified acquisition procedures, unless ball or roller bearings or bearing components are the end items being purchased;

(2) Commercial items incorporating ball or roller bearings;

(3) Miniature and instrument ball bearings needed to meet urgent military requirements;

(4) Items acquired overseas for use overseas; or

(5) Ball and roller bearings or bearing components, or items containing bearings, for use in a cooperative or co-production project under an international agreement. This exception does not apply to miniature and instrument ball bearings.

(b) The restriction in 225.7009–1(b) does not apply to contracts or subcontracts for the acquisition of commercial items, except for commercial ball and roller bearings acquired as end items.

225.7009–3 Waiver.

(a)(1) The waiver criteria at 225.7003(a)(1) apply to the restriction of 225.7009–1(a).

(2) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restriction of 225.7009–1(a) for ball and roller bearings manufactured in the United Kingdom. See 225.7003(b) for applicability.

(b) The head of the contracting activity may waive the restriction in 225.7009–1(a)—

(1) Upon execution of a determination and findings that—

(i) No domestic (U.S. or Canadian) bearing manufacturer meets the requirement;

(ii) It is not in the best interests of the United States to qualify a domestic bearing to replace a qualified nondomestic bearing.

(A) This determination shall be based on a finding that the qualification of a domestically manufactured bearing would cause unreasonable costs or delay.

(B) A finding that a cost is unreasonable should take into consideration DoD policy to assist the domestic industrial mobilization base.

(C) Contracts should be awarded to domestic bearing manufacturers to increase their capability to reinvest and become more competitive;

(iii) Application of the restriction would result in the existence of only one source for the item in the United States or Canada;

(iv) Application of the restriction is not in the national security interests of the United States; or

(v) Application of the restriction would adversely affect a U.S. company.

(2) If the acquisition is for an amount less than the simplified acquisition threshold and simplified acquisition procedures are being used.

(3) For multiyear contracts or contracts exceeding 12 months, except those for miniature and instrument ball bearings, if—

(i) The head of the contracting activity executes a determination and findings in accordance with paragraph (b)(1) of this subsection;

(ii) The contractor submits a written plan for transitioning from the use of nondomestic to domestically manufactured bearings;

(iii) The contractor's written plan—

(A) States whether a domestically manufactured bearing can be qualified, at a reasonable cost, for use during the course of the contract period;

(B) Identifies any bearings that are not domestically manufactured, their application, and source of supply; and

(C) Describes, including cost and timetable, the transition to a domestically manufactured bearing (The timetable for the transition should normally take no longer than 24 months from the date the waiver is granted); and

(iv) The contracting officer accepts the contractor's plan and incorporates it into the contract.

(4) For miniature and instrument ball bearings, only if the contractor agrees to acquire a like quantity and type of domestic manufacture for nongovernmental use.

(c) The Secretary of the department responsible for acquisition may waive the restriction in 225.7009–1(b), on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(1) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(2) The acquisition must be made in order to acquire capability for national security purposes.

225.7009–4 Contract clause.

(a) Use the clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings, in solicitations and contracts, unless—

(1) The items being acquired do not contain ball and roller bearings; or

(2) An exception applies or a waiver has been granted, other than the waiver for the United Kingdom, which has been incorporated into the clause.

(b) Use the clause with its Alternate I in solicitations and contracts that use simplified acquisition procedures.

225.7010 Restriction on vessel propellers.

225.7010–1 Restriction.

In accordance with section 8064 of the National Defense Appropriations Act for Fiscal Year 2001 (Public Law 106–259), do not use fiscal year 2000 or 2001 funds to acquire vessel propellers other than those produced by a domestic source and of domestic origin, *i.e.*, vessel propellers—

(a) Manufactured in the United States or Canada; and

(b) For which all component castings were poured and finished in the United States or Canada.

225.7010–2 Exceptions.

This restriction does not apply to contracts or subcontracts for acquisition of commercial items.

225.7010–3 Waiver.

The Secretary of the department responsible for acquisition may waive this restriction on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7010–4 Contract clause.

Use the clause at 252.225–7023, Restriction on Acquisition of Vessel Propellers, in solicitations and contracts that use fiscal year 2000 or 2001 funds for the acquisition of vessels or vessel propellers, unless—

(a) An exception applies or a waiver has been granted; or

(b) The vessels being acquired do not contain vessel propellers.

225.7011 Restriction on carbon, alloy, and armor steel plate.

225.7011–1 Restriction.

In accordance with section 8111 of the Fiscal Year 1992 DoD Appropriations Act (Public Law 102–172) and similar sections in subsequent DoD appropriations acts, do not acquire any of the following types of carbon, alloy, or armor steel plate unless it is melted and rolled in the United States or Canada:

(a) Carbon, alloy, or armor steel plate in Federal Supply Class 9515.

(b) Carbon, alloy, or armor steel plate described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute.

225.7011–2 Waiver.

The Secretary of the department responsible for acquisition may waive this restriction, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate U.S. or Canadian supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7011–3 Contract clause.

Unless a waiver has been granted, use the clause at 252.225–7030, Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate, in solicitations and contracts that—

(a) Require the delivery to the Government of carbon, alloy, or armor steel plate that will be used in a facility owned by the Government or under the control of DoD; or

(b) Require contractors operating in a Government-owned facility or a facility under the control of DoD to purchase carbon, alloy, or armor steel plate.

225.7012 Restriction on supercomputers.

225.7012–1 Restriction.

In accordance with section 8112 of Public Law 100–202, and similar sections in subsequent DoD appropriations acts, do not purchase a supercomputer unless it is manufactured in the United States.

225.7012–2 Waiver.

The Secretary of Defense may waive this restriction, on a case-by-case basis, after certifying to the Armed Services and Appropriations Committees of Congress that—

(a) Adequate U.S. supplies are not available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7012–3 Contract clause.

Unless a waiver has been granted, use the clause at 252.225–7011, Restriction on Acquisition of Supercomputers, in solicitations and contracts for the acquisition of supercomputers.

225.7013 Restrictions on construction or repair of vessels in foreign shipyards.

In accordance with 10 U.S.C. 7309—

(a) Do not award a contract to construct in a foreign shipyard—

(1) A vessel for any of the armed forces; or

(2) A major component of the hull or superstructure of a vessel for any of the armed forces; and

(b) Do not overhaul, repair, or maintain in a foreign shipyard, a naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) homeported in the United States. This restriction does not apply to voyage repairs.

225.7014 Restriction on overseas military construction.

For restriction on award of military construction contracts to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, see 236.274(a).

225.7015 Restriction on overseas architect-engineer services.

For restriction on award of architect-engineer contracts to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, see 236.602–70.

225.7016 Restriction on research and development.

(a) In accordance with Public Law 92–570, do not use DoD appropriations to make an award to any foreign corporation, organization, person, or entity, for research and development in connection with any weapon system or other military equipment, if there is a U.S. corporation, organization, person, or entity—

(1) Equally competent; and

(2) Willing to perform at a lower cost.

(b) This restriction does not affect the requirements of FAR part 35 for selection of research and development contractors. However, when a U.S. source and a foreign source are equally competent, award to the source that will provide the services at the lower cost.

225.7017 Restriction on Ballistic Missile Defense research, development, test, and evaluation.

225.7017–1 Definitions.

Competent," "foreign firm," and "U.S. firm" are defined in the provision at 252.225–7018, Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation.

225.7017–2 Restriction.

In accordance with section 222 of the DoD Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100–180), do not use any funds appropriated to or for the use of DoD to enter into or carry out a contract with a foreign government or firm, including any contract awarded as a result of a broad agency announcement, if the contract provides for the conduct of research, development, test, and evaluation (RDT&E) in connection with the Ballistic Missile Defense Program.

225.7017–3 Exceptions.

This restriction does not apply—

(a) To contracts awarded to a foreign government or firm if the contracting officer determines that—

(1) The contract will be performed within the United States;

(2) The contract is exclusively for RDT&E in connection with antitactical ballistic missile systems; or

(3) The foreign government or firm agrees to share a substantial portion of the total contract cost. Consider the foreign share as substantial if it is equitable with respect to the relative benefits that the United States and the foreign parties will derive from the contract. For example, if the contract is more beneficial to the foreign party, its share of the cost should be correspondingly higher; or

(b) If the head of the contracting activity certifies in writing, before contract award, that a U.S. firm cannot competently perform a contract for RDT&E at a price equal to or less than the price at which a foreign government or firm would perform the RDT&E. The contracting officer or source selection authority, as applicable, shall make a determination that will be the basis for the certification.

(1) The determination shall—

(i) Describe the contract effort;

(ii) State the number of proposals solicited and received from both U.S. and foreign firms;

(iii) Identify the proposed awardee and the amount of the contract;

(iv) State that selection of the contractor was based on the evaluation factors contained in the solicitation, or the criteria contained in the broad agency announcement; and

(v) State that a U.S. firm cannot competently perform the effort at a price equal to, or less than, the price at which the foreign awardee would perform it.

(2) When either a broad agency announcement or program research and development announcement is used, or when the determination is otherwise not based on direct competition between foreign and domestic proposals, the determination shall not be merely conclusory.

(i) The determination shall specifically explain its basis, include a description of the method used to determine the competency of U.S. firms, and describe the cost or price analysis performed.

(ii) Alternately, the determination may contain—

(A) A finding, including the basis for such finding, that the proposal was submitted solely in response to the terms of a broad agency announcement, program research and development announcement, or other solicitation document without any technical guidance from the program office; and

(B) A finding, including the basis for such finding, that disclosure of the information in the proposal for the purpose of conducting a competitive acquisition is prohibited.

(3) Within 30 days after contract award, forward a copy of the certification and supporting documentation to the Ballistic Missile Defense Organization, ATTN: BMDO/DRI, 7100 Defense Pentagon, Washington, DC 20301–7100.

225.7017–4 Solicitation provision.

Unless foreign participation is otherwise excluded, use the provision at 252.225–7018, Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation, in competitively negotiated solicitations for RDT&E in connection with the Ballistic Missile Defense Program.

225.7018 Restriction on access to proscribed information.

225.7018–1 Definitions.

"Entity controlled by a foreign government," "foreign government," and "proscribed information," are defined in the provision at 252.225–7010, Disclosure of Ownership or Control by a Foreign Government.

225.7018–2 Restriction.

(a) In accordance with 10 U.S.C. 2536(a), do not award a contract under a national security program to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract.

(b) The contracting officer may seek advice regarding this restriction from the Director, Defense Security Programs, Office of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence.

225.7018–3 Waiver.

(a) Except as provided in paragraph (b) of this subsection, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence may waive the restriction in 225.7018–2 upon determining that the waiver is essential to the national security interests of the United States. Requests for waiver shall include a proposed national security interest determination that—

(1) Contains the solicitation and other reference numbers to identify the action;

(2) Identifies the proposed awardee and provides a synopsis of its foreign ownership;

(3) Provides a general description of the acquisition and performance requirements;

(4) Identifies the national security interests involved and the ways that award of the contract will help advance those interests;

(5) Provides a statement as to availability of another entity with the capacity, capability, and technical expertise to satisfy defense acquisition, technology base, or industrial base requirements; and

(6) Describes any alternate means available to satisfy the requirement, e.g., use of substitute products or technology or alternate approaches to accomplish the program objectives.

(b) In the case of a contract awarded for environmental restoration, remediation, or waste management at a DoD facility, the Secretary of Defense may waive this restriction upon—

(1) Determining that—

(i) The waiver will advance the environmental restoration, remediation, or waste management objectives of DoD and will not harm the national security interests of the United States; and

(ii) The entity to which the contract will be awarded is controlled by a foreign government with which the Secretary is authorized to exchange Restricted Data under section 144c of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)); and

(2) Notifying Congress of the decision to grant the waiver. Do not award the contract until the end of the 45-day period that begins on the date the appropriate Congressional committees received the notification.

(c) The requiring activity—

(1) Will prepare waiver requests in coordination with the contracting officer; and

(2) Will submit waiver requests through the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).

225.7018–4 Solicitation provision.

Use the provision at 252.225–7010, Disclosure of Ownership or Control by a Foreign Government, in solicitations for contracts that will require contractor access to proscribed information.

25. Sections 225.7100 through 225.7103–3 are revised to read as follows:

225.7100 Scope of subpart.

This subpart contains foreign product restrictions that are based on policies designed to protect the defense industrial base.

225.7101 Definitions.

"Domestic manufacture" is defined in the clause at 252.225–7025, Restriction on Acquisition of Forgings.

225.7102 Forgings.

225.7102–1 Policy.

When acquiring the following forging items, whether as end items or components, acquire items that are of domestic manufacture to the maximum extent practicable:

Items	Categories
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears.	All greater than 120 inches in diameter.

225.7102–2 Exceptions.

The policy in 225.7102–1 does not apply to acquisitions—

(a) Using simplified acquisition procedures, unless the restricted item is the end item being purchased;

(b) Overseas for overseas use; or

(c) When the quantity acquired exceeds the amount needed to maintain the U.S. defense mobilization base (provided the excess quantity is an economical purchase quantity). The requirement for domestic manufacture does not apply to the quantity above that required to maintain the base, in which case, qualifying country sources may compete.

225.7102–3 Waiver.

Upon request from a contractor, the contracting officer may waive the requirement for domestic manufacture of the items listed in 225.7102–1.

225.7102–4 Contract clause.

Use the clause at 252.225–7025, Restriction on Acquisition of Forgings, in solicitations and contracts, unless—

(a) The supplies being acquired do not contain any of the items listed in 225.7102–1; or

(b) An exception in 225.7102–2 applies. If an exception applies to only a portion of the acquisition, specify the excepted portion in the solicitation and contract.

225.7103 Polyacrylonitrile (PAN) carbon fiber.

225.7103–1 Policy.

DoD has imposed restrictions on the acquisition of PAN carbon fiber from foreign sources. DoD is phasing out the restrictions over the 5-year period ending May 31, 2005. Contractors with contracts that contain the clause at 252.225–7022 shall use U.S. or Canadian manufacturers or producers for all PAN carbon fiber requirements.

225.7103–2 Waivers.

With the approval of the chief of the contracting office, the contracting officer may waive, in whole or in part, the requirement of the clause at 252.225–7022. For example, a waiver may be justified if a qualified U.S. or Canadian source cannot meet scheduling requirements.

225.7103–3 Contract clause.

Use the clause at 252.225–7022, Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber, in solicitations and contracts for major systems as follows:

(a) In solicitations and contracts issued on or before May 31, 2003, if—

(1) The system is not yet in production (milestone C as defined in DoDI 5000.2, Operation of the Defense Acquisition System); or

(2) The clause was used in prior program contracts.

(b) In solicitations and contracts issued during the period beginning June 1, 2003, and ending May 31, 2005, if the system is not yet in system development and demonstration (milestone B as defined in DoDI 5000.2).

26. Section 225.7200 is revised to read as follows:

225.7200 Scope of subpart.

This subpart—

(a) Prescribes procedures for contractor reporting and DoD monitoring of the volume, type, and nature of contract performance outside the United States; and

(b) Implements 10 U.S.C. 2410g, which requires offerors and contractors to notify DoD of any intention to perform a DoD contract outside the United States and Canada when the contract could be performed inside the United States or Canada.

27. Sections 225.7202 and 225.7203 are revised to read as follows:

225.7202 Distribution of reports.

Forward a copy of reports submitted in accordance with the clause at 252.225–7004, Reporting of Contract Performance Outside the United States, to the Deputy Director of Defense

Procurement (Foreign Contracting), OUSD(AT&L)DP(FC), Washington, DC 20301–3060. This is necessary to satisfy the requirement of 10 U.S.C. 2410g that the notifications (or copies) be maintained in compiled form for 5 years after the date of submission.

225.7203 Solicitation provision and contract clause.

Except for acquisitions described in 225.7201—

(a) Use the provision at 252.225–7003, Report of Intended Performance Outside the United States, in solicitations with a value exceeding $500,000; and

(b) Use the clause at 252.225–7004, Reporting of Contract Performance Outside the United States, in solicitations and contracts with a value exceeding $500,000.

28. Section 225.7301 is amended by revising paragraphs (b) through (d) to read as follows:

225.7301 General.

* * * * *

(b) Conduct FMS acquisitions under the same acquisition and contract management procedures used for other defense acquisitions.

(c) Separately identify known FMS requirements and the FMS customer in solicitations.

(d) Clearly identify contracts for known FMS requirements by marking "FMS requirement" on the face of the contract along with the FMS customer and the case identifier code.

29. Section 225.7302 is amended by revising the introductory text and paragraph (a)(4) to read as follows:

225.7302 Procedures.

For FMS programs that will require an acquisition, the contracting officer will assist the departmental/agency activity responsible for preparing the LOA by—

(a) * * *

(4) For noncompetitive acquisitions over $10,000, ask the prospective contractor for information on price, delivery, and other relevant factors. The request for information shall identify the fact that the information is for a potential foreign military sale and shall identify the foreign customer; and

* * * * *

225.7303 [Amended]

30. Section 225.7303 is amended as follows:

a. In paragraph (a), in the first sentence, by removing the phrase "as are";

b. In paragraph (a), in the second sentence, by removing "Application" and adding in its place "However, application"; and

c. In paragraph (b), in the first sentence, by removing "must" and adding in its place "shall".

31. Section 225.7303–2 is amended as follows:

a. In paragraph (a) introductory text, by revising the last sentence;

b. By revising paragraph (a)(1);

c. In paragraph (a)(2)(ii), by adding "or" before "operations/tactics";

d. By revising paragraph (c) introductory text; and

e. In paragraph (c)(1) by removing the period and adding in its place "; and". The revised text reads as follows:

225.7303–2 Cost of doing business with a foreign government or an international organization.

(a) * * * Examples of such costs include, but are not limited to, the following:

(1) Selling expenses (not otherwise limited by FAR Part 31), such as—

(i) Maintaining international sales and service organizations;

(ii) Sales commissions and fees in accordance with FAR Subpart 3.4;

(iii) Sales promotions, demonstrations, and related travel for sales to foreign governments. Section 126.8 of the International Traffic in Arms Regulations (ITAR) (22 CFR 126.8) may require Government approval for these costs to be allowable, in which case the appropriate Government approval shall be obtained; and

(iv) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

* * * * *

(c) The limitations for major contractors on independent research and development and bid and proposal (IR&D/B&P) costs for projects that are of potential interest to DoD, in 231.205–18(c)(iii), do not apply to FMS contracts, except as provided in 225.7303–5. The allowability of IR&D/B&P costs on contracts for FMS not wholly paid for from funds made available on a nonrepayable basis is limited to the contract's allocable share of the contractor's total IR&D/B&P expenditures. In pricing contracts for such FMS—

* * * * *

32. Section 225.7303–4 is revised to read as follows:

225.7303–4 Contingent fees.

(a) Except as provided in paragraph (b) of this subsection, contingent fees are generally allowable under DoD contracts, provided—

(1) The fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor for the purpose of securing business (see FAR part 31 and FAR subpart 3.4); and

(2) The contracting officer determines that the fees are fair and reasonable.

(b)(1) Under DoD 5105.38–M, LOAs for requirements for the governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) shall provide that all U.S. Government contracts resulting from the LOAs prohibit the reimbursement of contingent fees as an allowable cost under the contract, unless the contractor identifies the payments and the foreign customer approves the payments in writing before contract award (see 225.7308(a)).

(2) For FMS to countries not listed in paragraph (b)(1) of this subsection, contingent fees exceeding $50,000 per FMS case are unallowable under DoD contracts, unless the contractor identifies the payment and the foreign customer approves the payment in writing before contract award.

33. Section 225.7303–5 is amended by revising paragraphs (a) and (b) to read as follows:

225.7303–5 Acquisitions wholly paid for from nonrepayable funds.

(a) In accordance with 22 U.S.C. 2762(d), price FMS wholly paid for from funds made available on a nonrepayable basis on the same costing basis with regard to profit, overhead, IR&D/B&P, and other costing elements as is applicable to acquisitions of like items purchased by DoD for its own use.

(b) Direct costs associated with meeting a foreign customer's additional or unique requirements are allowable under such contracts. Indirect burden rates applicable to such direct costs are permitted at the same rates applicable to acquisitions of like items purchased by DoD for its own use.

* * * * *

34. Section 225.7305 is amended by revising the first sentence to read as follows:

225.7305 Limitation of liability.

Advise the contractor when the foreign customer will assume the risk for loss or damage under the appropriate limitation of liability clause(s) (see FAR subpart 46.8). * * *

35. Section 225.7308 is revised to read as follows:

225.7308 Contract clauses.

(a) Use the clause at 252.225–7027, Restriction on Contingent Fees for Foreign Military Sales, in solicitations and contracts for FMS.

(b) Use the clause at 252.225–7028, Exclusionary Policies and Practices of Foreign Governments, in solicitations and contracts for the purchase of supplies and services for international military education training and FMS.

PART 242—CONTRACT ADMINISTRATION

242.302 [Amended]

36. Section 242.302 is amended by removing paragraph (a)(19).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.209–7001, 252.209–7002, and 252.209–7004 [Removed and Reserved]

37. Sections 252.209–7001, 252.209–7002, and 252.209–7004 are removed and reserved.

38. Section 252.212–7001 is amended as follows:

a. By revising the clause date and paragraph (b); and

b. In paragraph (c), in entry "252.225–7014", by removing "(MAR 1998)" and adding in its place "(XXX 2002)". The revised text reads as follows:

252.212–7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (XXX 2002)

* * * * *

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

__ 252.205–7000 Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).

__ 252.219–7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (APR 1996) (15 U.S.C. 637).

__ 252.219–7004 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program) (JUN 1997) (15 U.S.C. 637 note).

__ 252.225–7001 Buy American Act and Balance of Payments Program (XXX 2002) (41 U.S.C. 10a–10d, E.O. 10582).

__ 252.225–7012 Preference for Certain Domestic Commodities (APR 2002) (10 U.S.C. 2533a).

__ 252.225–7014 Preference for Domestic Specialty Metals (XXX 2002) (10 U.S.C. 2533a).

__ 252.225–7015 Restriction on Acquisition of Hand or Measuring Tools (XXX 2002) (10 U.S.C. 2533a).

__ 252.225 7016 Restriction on Acquisition of Ball and Roller Bearings (XXX 2002) (__ Alternate I) (DEC 2000) (10 U.S.C. 2534 and section 8099 of Public Law 104–61 and similar sections in subsequent DoD appropriations acts).

__ 252.225–7021 Trade Agreements (XXX 2002) (19 U.S.C. 2501–2518 and 19 U.S.C. 3301 note).

__ 252.225–7027 Restriction on Contingent Fees for Foreign Military Sales (XXX 2002) (22 U.S.C. 2779).

__ 252.225–7028 Exclusionary Policies and Practices of Foreign Governments (XXX 2002) (22 U.S.C. 2755).

__ 252.225–7036 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (XXX 2002) (___ Alternate I) (XXX 2002) (41 U.S.C. 10a–10d and 19 U.S.C. 3301 note).

__ 252.225–7038 Preference for United States or Canadian Air Circuit Breakers (XXX 2002) (10 U.S.C. 2534(a)(3)).

__ 252.227–7015 Technical Data—Commercial Items (NOV 1995) (10 U.S.C. 2320).

__ 252.227–7037 Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).

__ 252.243–7002 Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).

__ 252.247–7023 Transportation of Supplies by Sea (MAY 2002) (___ Alternate I) (MAR 2000) (___ Alternate II) (MAR 2000) (10 U.S.C. 2631).

__ 252.247–7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

* * * * *

39. Sections 252.225–7000 through 252.225–7003 are revised to read as follows:

252.225–7000 Buy American Act—Balance of Payments Program Certificate.

As prescribed in 225.1101(1), use the following provision:

Buy American Act—Balance of Payments Program Certificate (XXX 2002)

(a) *Definitions. Domestic end product, foreign end product, qualifying country,* and *qualifying country end product* have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will evaluate offers of qualifying country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American Act and Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except those listed in paragraphs (c)(2) or (3) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror certifies that the following end products are qualifying country end products:

Line Item No.	Country of origin

(3) The following end products are other foreign end products:

Line Item No.	Country of origin (If known)

(End of provision)

252.225–7001 Buy American Act and Balance of Payments Program.

As prescribed in 225.1101(2), use the following clause:

Buy American Act and Balance of Payments Program (XXX 2002)

(a) *Definitions.* As used in this clause—

(1) *Component* means an article, material, or supply incorporated directly into an end product.

(2) *Domestic end product* means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if the cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(A) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) It is inconsistent with the public interest to apply the restrictions of the Buy American Act.

(3) *End product* means those articles, materials, and supplies to be acquired under this contract for public use.

(4) *Foreign end product* means an end product other than a domestic end product.

(5) *Qualifying country* means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(6) *Qualifying country component* means a component mined, produced, or manufactured in a qualifying country.

(7) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States.

(b) This clause implements the Buy American Act (41 U.S.C. 10a–10d). Unless otherwise specified, this clause applies to all line items in the contract.

(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, the Contractor shall deliver a qualifying country end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

252.225–7002 Qualifying Country Sources as Subcontractors.

As prescribed in 225.1101(3), use the following clause:

Qualifying Country Sources as Subcontractors (XXX 2002)

(a) *Definition. Qualifying country*, as used in this clause, means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation (FAR) Supplement.

(b) Subject to the restrictions in section 225.872 of the Defense FAR Supplement, the Contractor shall not preclude qualifying country sources or U.S. sources from competing for subcontracts under this contract.

(End of clause)

252.225–7003 Report of Intended Performance Outside the United States.

As prescribed in 225.7203(a), use the following provision:

Report of Intended Performance Outside the United States (XXX 2002)

(a) The offeror shall submit a Report of Contract Performance Outside the United States, with its offer, if—

(1) The offer exceeds $10 million in value; and

(2) The offeror is aware that the offeror or a first-tier subcontractor intends to perform any part of the contract outside the United States and Canada that—

(i) Exceeds $500,000 in value; and

(ii) Could be performed inside the United States or Canada.

(b) Information to be reported includes that for—

(1) Subcontracts;

(2) Purchases; and

(3) Intracompany transfers when transfers originate in a foreign location.

(c) The offeror shall submit the report using—

(1) DD Form 2139, Report of Contract Performance Outside the United States; or

(2) A computer-generated report that contains all information required by DD Form 2139.

(d) The offeror may obtain a copy of DD Form 2139 from the Contracting Officer.

(End of provision)

40. Section 252.225–7004 is added to read as follows:

252.225–7004 Reporting of Contract Performance Outside the United States.

As prescribed in 225.7203(b), use the following clause:

Reporting of Contract Performance Outside the United States (XXX 2002)

(a) *Reporting criteria.* Reporting under this clause is required for—

(1) Contracts exceeding $10 million in value, when any part that exceeds $500,000 in value could be performed inside the United States or Canada, but will be performed outside the United States and Canada. If the Contractor submitted the information with its offer, the Contractor need not resubmit the information unless it changes; and

(2) Contracts exceeding $500,000 in value, when any part that exceeds the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation will be performed outside the United States, unless—

(i) A foreign place of performance is the principal place of performance; and

(ii) The Contractor indicated the foreign place of performance in the Place of Performance provision of its offer.

(b) *Information required.* Information to be reported includes that for—

(1) Subcontracts;

(2) Purchases; and

(3) Intracompany transfers when transfers originate in a foreign location.

(c) *Submission of reports.* The Contractor—

(1) Shall submit reports required by paragraph (a)(1) of this clause to the Contracting Officer as soon as the information is known, with a copy to the addressee in paragraph (c)(2) of this clause. To the maximum extent practicable, the Contractor shall report information regarding a first-tier subcontractor at least 30 days before award of the subcontract;

(2) Shall submit reports required by paragraph (a)(2) of this clause within 10 days after the end of each Government quarter to Deputy Director of Defense Procurement (Foreign Contracting), OUSD(AT&L)DP(FC), Washington, DC 20301–3060;

(3) Shall submit reports using—

(i) DD Form 2139, Report of Contract Performance Outside the United States; or

(ii) A computer-generated report that contains all information required by DD Form 2139; and

(4) May obtain copies of DD Form 2139 from the Contracting Officer.

(d) *Flowdown requirements.*

(1) The Contractor shall include the substance of this clause in all first-tier subcontracts exceeding $500,000, except those for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence.

(2) The Contractor shall provide the number of this contract to its subcontractors for reporting purposes.

(End of clause)

41. Sections 252.225–7008 through 252.225–7011 are revised to read as follows:

252.225–7008 Disclosure of Ownership or Control by the Government of a Terrorist Country.

As prescribed in 225.1103(2), use the following provision:

Disclosure of Ownership or Control by the Government of a Terrorist Country (XXX 2002)

(a) *Definitions.* As used in this provision—

(1) *Government of a terrorist country* includes the State and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) *Terrorist country* means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) "Significant interest" means—

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or an officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm, such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) *Prohibition on award.* In accordance with 10 U.S.C. 2327, DoD will not award a contract to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless the Secretary of Defense grants a waiver.

(c) *Disclosure.* If the government of a terrorist country has a significant interest in the offeror or a subsidiary of the offeror, the offeror shall disclose the interest in an attachment to its offer. If the offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include—

(1) Identification of each government holding a significant interest; and

(2) A description of the significant interest held by each government.

(End of provision)

252.225–7009 Subcontracting with Firms Owned or Controlled by the Government of a Terrorist Country.

As prescribed in 225.1103(3), use the following clause:

Subcontracting With Firms Owned or Controlled by the Government of a Terrorist Country (XXX 2002)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not enter into any subcontract exceeding $25,000 with a firm, or a subsidiary of a firm, that is—

(1) On the List of Parties Excluded from Federal Procurement and Nonprocurement Programs; and

(2) Identified on the List as being ineligible for the award of DoD contracts or subcontracts because the firm or subsidiary is owned or controlled by the government of a terrorist country.

(b) If the Contractor believes there is a compelling need to enter into a subcontract with a subcontractor described in paragraph (a) of this clause, the Contractor shall submit a written notice to the Contracting Officer that includes—

(1) The name of the proposed subcontractor; and

(2) The compelling reason(s) for doing business with the proposed subcontractor.

(End of clause)

252.225–7010 Disclosure of Ownership or Control by a Foreign Government.

As prescribed in 225.7018–4, use the following provision:

Disclosure of Ownership or Control by a Foreign Government (XXX 2002)

(a) *Definitions.* As used in this provision—

(1) *Effectively owned or controlled* means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the offeror's officers or a majority of the offeror's board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).

(2) *Entity controlled by a foreign government*—

(i) Means—

(A) Any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; or

(B) Any individual acting on behalf of a foreign government; and

(ii) Does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.

(3) *Foreign government* includes the State and the government of any country (other than the United States and its possessions and trust territories) as well as any political subdivision, agency, or instrumentality thereof.

(4) *Proscribed information* means—

(i) Top Secret information;

(ii) Communications Security (COMSEC) information, except classified keys used to operate secure telephone units (STU IIIs);

(iii) Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;

(iv) Special Access Program (SAP) information; or

(v) Sensitive Compartmented Information (SCI).

(b) *Prohibition on award.* No contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract, unless the Secretary of Defense or a designee has waived application of 10 U.S.C. 2536(a).

(c) *Disclosure.* The offeror shall disclose any interest a foreign government has in the offeror when that interest constitutes control by a foreign government as defined in this provision. If the offeror is a subsidiary, it shall also disclose any reportable interest a foreign government has in any entity that owns or controls the subsidiary, including reportable interest concerning the offeror's immediate parent, intermediate parents, and the ultimate parent. Use a separate sheet if necessary, and provide the information in the following format:

Offeror's Point of Contact for Questions about Disclosure (Name and Phone Number with Country Code, City Code and Area Code, as applicable):

Name and Address of Offeror:

Name and Address of Entity Controlled by a Foreign Government: Description of Interest, Ownership Percentage, and Identification of Foreign Government:

(End of provision)

252.225–7011 Restriction on Acquisition of Supercomputers.

As prescribed in 225.7012–3, use the following clause:

Restriction on Acquisition of Supercomputers (XXX 2002)

Supercomputers delivered under this contract shall be manufactured in the United States.

(End of clause)

42. Section 252.225–7013 is added to read as follows:

252.225–7013 Duty-Free Entry.

As prescribed in 225.1101(4), use the following clause:

Duty-Free Entry (XXX 2002)

(a) *Definitions.* As used in this clause—

(1) *Eligible product* means—

(i) "Designated country end product" or "Caribbean Basin country end product" as defined in the Trade Agreements clause of this contract;

(ii) "NAFTA country end product" as defined in the Trade Agreements clause or the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this contract; or

(iii) "Canadian end product" as defined in Alternate I of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this contract.

(2) *Qualifying country* and *qualifying country end product* have the meanings given in the Trade Agreements clause, the Buy American Act and Balance of Payments Program clause, or the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this contract.

(b) Except as provided in paragraph (i) of this clause, or unless supplies were imported into the United States before the date of this contract or the applicable subcontract, the price of this contract shall not include any amount for duty on—

(1) End items that are eligible products or qualifying country end products;

(2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in U.S.-made end products to be delivered under this contract; or

(3) Other supplies for which the Contractor estimates that duty will exceed $200 per unit (end product or component).

(c) The Contractor shall—

(1) Claim duty-free entry only for supplies that the Contractor intends to deliver to the Government under this contract, either as end items or components of end items; and

(2) Pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use, other than—

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Contracting Officer.

(d) Except as the Contractor may otherwise agree, the Government will execute duty-free entry certificates and will afford such assistance as appropriate to obtain the duty-free entry of supplies—

(1) For which no duty is included in the contract price in accordance with paragraph (b) of this clause; and

(2) For which shipping documents bear the notation specified in paragraph (e) of this clause.

(e) For foreign supplies for which the Government will issue duty-free entry certificates in accordance with this clause, shipping documents submitted to Customs shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information:

(i) Prime contract number and, if applicable, delivery order number.

(ii) Number of the subcontract for foreign supplies, if applicable.

(iii) Identification of the carrier.

(iv)(A) For direct shipments to a U.S. military installation, the notation: "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE. Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify Commander, Defense Contract Management Agency (DCMA) New York, ATTN: Customs Team, DCMAE–GNTF, 207 New York Avenue, Staten Island, New York 10305–5013, for execution of Customs Form 7501, 7501A, or 7506 and any required duty-free entry certificates."

(B) If the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to include the name and address of the contractor, agent, or broker who will notify Commander, DCMA New York, for execution of the duty-free entry certificate. (If the shipment will be consigned to a contractor's plant and no duty-free entry certificate is required due to NAFTA or another trade agreement, the Contractor shall claim duty-free entry under NAFTA or the applicable trade agreement and shall comply with the U.S. Customs Service requirements. No notification to Commander, DCMA New York, is required.)

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight).

(vi) Estimated value in U.S. dollars.

(vii) Activity address number of the contract administration office administering the prime contract, e.g., for DCMA Dayton, S3605A.

(f) *Preparation of customs forms.*

(1)(i) Except for shipments consigned to a military installation, the Contractor shall—

(A) Prepare any customs forms required for the entry of foreign supplies into the United States in connection with this contract; and

(B) Submit the completed customs forms to the District Director of Customs, with a copy to DCMA NY for execution of any required duty-free entry certificates.

(ii) Shipments consigned directly to a military installation will be released in accordance with sections 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(g) The Contractor shall—

(1) Prepare (if the Contractor is a foreign supplier), or shall instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) Consign the shipment as specified in paragraph (e) of this clause; and

(3) Mark on the exterior of all packages—

(i) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE"; and

(ii) The activity address number of the contract administration office administering the prime contract.

(h) The Contractor shall notify the Administrative Contracting Officer (ACO) in writing of any purchase of qualifying country supplies to be accorded duty-free entry, that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The Contractor shall furnish the notice to the ACO immediately upon award to the qualifying country supplier and shall include in the notice—

(1) The Contractor's name, address, and Commercial and Government Entity (CAGE) code;

(2) Prime contract number and, if applicable, delivery order number;

(3) Total dollar value of the prime contract or delivery order;

(4) Date of the last scheduled delivery under the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

(8) Date of the last scheduled delivery under the subcontract for foreign supplies;

(9) List of items purchased;

(10) An agreement that the Contractor will pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use other than—

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Contracting Officer;

(11) Qualifying country of origin; and

(12) Scheduled delivery date(s).

(i) This clause does not apply to purchases of qualifying country supplies in connection with this contract if—

(1) The supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the amount purchased in connection with this contract.

(j) The Contractor shall—

(1) Insert the substance of this clause, including this paragraph (j), in all subcontracts for—

(i) Qualifying country components; or

(ii) Nonqualifying country components for which the Contractor estimates that duty will exceed $200 per unit;

(2) Require subcontractors to include the number of this contract on all shipping documents submitted to Customs for supplies for which duty-free entry is claimed pursuant to this clause; and

(3) Include in applicable subcontracts—

(i) The name and address of the ACO for this contract;

(ii) The name, address, and activity address number of the contract administration office specified in this contract; and

(iii) The information required by paragraphs (h)(1), (2), and (3) of this clause.

(End of clause)

43. Sections 252.225–7014 through 252.225–7016 are revised to read as follows:

252.225–7014 Preference for Domestic Specialty Metals.

As prescribed in 225.7002–3(b)(1), use the following clause:

Preference for Domestic Specialty Metals (XXX 2002)

(a) *Definitions.* As used in this clause—

(1) *Qualifying country* means any country listed in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(2) *Specialty metals* means—

(i) Steel—

(A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium base alloys.

(b) Any specialty metals incorporated in articles delivered under this contract shall be melted in the United States, its possessions, or Puerto Rico.

(c) This clause does not apply to specialty metals—

(1) Melted in a qualifying country or incorporated in an article manufactured in a qualifying country; or

(2) Purchased by a subcontractor at any tier.

(End of clause)

Alternate I (XXX 2002)

As prescribed in 225.7002–3(b)(2), substitute the following paragraph (c) for paragraph (c) of the basic clause, and add the following paragraph (d) to the basic clause:

(c) This clause does not apply to specialty metals melted in a qualifying country or incorporated in an article manufactured in a qualifying country.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts for items containing specialty metals.

252.225–7015 Restriction on Acquisition of Hand or Measuring Tools.

As prescribed in 225.7002–3(c), use the following clause:

Restriction on Acquisition of Hand or Measuring Tools (XXX 2002)

Hand or measuring tools delivered under this contract shall be produced in the United States or its possessions.

(End of clause)

252.225–7016 Restriction on Acquisition of Ball and Roller Bearings.

As prescribed in 225.7009–4(a), use the following clause:

Restriction on Acquisition of Ball and Roller Bearings (XXX 2002)

(a) *Definitions.* As used in this clause—

(1) *Bearing components* means the bearing element, retainer, inner race, or outer race.

(2) *Miniature and instrument ball bearings* means all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, regardless of material, tolerance, performance, or quality characteristics.

(b) Except as provided in paragraph (c) of this clause, all ball and roller bearings and ball and roller bearing components (including miniature and instrument ball bearings) delivered under this contract, either as end items or components of end items, shall be wholly manufactured in the United States or Canada. Unless otherwise specified, raw materials, such as preformed bar, tube, or rod stock and lubricants, need not be mined or produced in the United States or Canada.

(c)(1) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as components if—

(i) The end items or components containing ball or roller bearings are commercial items; or

(ii) The ball or roller bearings are commercial components manufactured in the United Kingdom.

(2) The commercial item exception in paragraph (c)(1) of this clause does not include items designed or developed under a Government contract if the end item is bearings or bearing components.

(d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7019–3 of the Defense Federal Acquisition Regulation Supplement. If the restriction is waived for miniature and instrument ball bearings, the Contractor shall acquire a like quantity and type of domestic manufacture for nongovernmental use.

(e) The Contractor shall retain records showing compliance with the restriction in paragraph (b) of this clause until 3 years after final payment and shall make the records available upon request of the Contracting Officer.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts, except those for—

(1) Commercial items other than ball or roller bearings; or

(2) Items that do not contain ball or roller bearings.

(End of clause)

Alternate I (DEC 2000)

As prescribed in 225.7009–4(b), substitute the following paragraph (c)(1)(ii) for paragraph (c)(1)(ii) of the basic clause:

(c)(1)(ii) The ball or roller bearings are commercial components.

252.225–7017 [Removed and Reserved]

44. Section 252.225–7017 is removed and reserved.

45. Sections 252.225–7018 through 252.225–7021 are revised to read as follows:

252.225–7018 Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation.

As prescribed in 225.7017–4, use the following provision:

Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation (XXX 2002)

(a) *Definitions.*

(1) *Competent* means the ability of an offeror to satisfy the requirements of the solicitation. This determination is based on a comprehensive assessment of each offeror's proposal, including consideration of the specific areas of evaluation criteria in the relative order of importance described in the solicitation.

(2) *Foreign firm* means a business entity owned or controlled by one or more foreign nationals or a business entity in which more than 50 percent of the stock is owned or controlled by one or more foreign nationals.

(3) *U.S. firm* means a business entity other than a foreign firm.

(b) Except as provided in paragraph (c) of this provision, the Department of Defense will not enter into or carry out any contract, including any contract awarded as a result of a broad agency announcement, with a foreign government or firm if the contract provides for the conduct of research, development, test, or evaluation in connection with the Ballistic Missile Defense Program. However, foreign governments and firms are encouraged to submit offers, since this provision is not intended to restrict access to unique foreign expertise if the contract will require a level of competency unavailable in the United States.

(c) This prohibition does not apply to a foreign government or firm if—

(1) The contract will be performed within the United States;

(2) The contract is exclusively for research, development, test, or evaluation in connection with antitactical ballistic missile systems;

(3) The foreign government or firm agrees to share a substantial portion of the total contract cost. The foreign share is considered substantial if it is equitable with respect to the relative benefits that the United States and the foreign parties will derive from the contract. For example, if the contract is more beneficial to the foreign party, its share of the costs should be correspondingly higher; or

(4) The U.S. Government determines that a U.S. firm cannot competently perform the contract at a price equal to or less than the price at which a foreign government or firm can perform the contract.

(d) The offeror (___) is (___) is not a U.S. firm.

(End of provision)

252.225–7019 Restriction on Acquisition of Foreign Anchor and Mooring Chain.

As prescribed in 225.7007–3, use the following clause:

Restriction on Acquisition of Foreign Anchor and Mooring Chain (XXX 2002)

(a) Welded shipboard anchor and mooring chain, four inches or less in diameter, delivered under this contract—

(1) Shall be manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States shall exceed 50 percent of the total cost of components.

(b) The Contractor may request a waiver of this restriction if adequate domestic supplies meeting the requirements in paragraph (a) of this clause are not available to meet the contract delivery schedule.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts for items containing welded shipboard anchor and mooring chain, four inches or less in diameter.

(End of clause)

252.225–7020 Trade Agreements Certificate.

As prescribed in 225.1101(5), use the following provision:

Trade Agreements Certificate (XXX 2002)

(a) *Definitions. Caribbean Basin country end product, designated country end product, NAFTA country end product, nondesignated country end product, qualifying country end product,* and *U.S.-made end product* have the meanings given in the Trade Agreements clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will consider only offers of end products that are U.S.-made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end products, unless the Government determines that—

(i) There are no offers of such end products;

(ii) The offers of such end products are insufficient to fulfill the Government's requirements; or

(iii) A national interest exception to the Trade Agreements Act applies.

(c) *Certification and identification of country of origin.*

(1) For all line items subject to the Trade Agreements clause of this solicitation, the offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2) of this provision, is a U.S.-made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end product.

(2) The following supplies are other nondesignated country end products:

(insert line item number)
(insert country of origin)

(End of provision)

252.225–7021 Trade Agreements.

As prescribed in 225.1101(6), use the following clause:

Trade Agreements (XXX 2002)

(a) Definitions. As used in this clause—

(1) *Caribbean Basin country* means—

Antigua and Barbuda
Aruba
Bahamas
Barbados
Belize
British Virgin Islands
Costa Rica
Dominica
El Salvador
Grenada
Guatemala
Guyana
Haiti
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
St. Kitts-Nevis
St. Lucia
St. Vincent and the Grenadines
Trinidad and Tobago

(2) *Caribbean Basin country end product*

(i) Means an article that—

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself; and

(ii) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of—

(A) Textiles, apparel articles, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, and handloomed, handmade, or folklore articles that are not granted duty-free status in the Harmonized Tariff Schedule of the United States (HTSUS);

(B) Tuna, prepared or preserved in any manner in airtight containers; and

(C) Watches and watch parts (including cases, bracelets, and straps) of whatever type, including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the HTSUS column 2 rates of duty (HTSUS General Note 3(b)) apply.

(3) *Component* means an article, material, or supply incorporated directly into an end product.

(4) *Designated country* means—

Aruba
Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Canada
Cape Verde
Central African Republic
Chad
Comoros
Denmark
Djibouti
Equatorial Guinea
Finland
France
Gambia
Germany
Greece
Guinea
Guinea-Bissau
Haiti
Hong Kong
Iceland
Ireland
Israel
Italy
Japan
Kiribati
Lesotho
Liechtenstein
Luxembourg
Malawi
Maldives
Mali
Mozambique
Nepal
Netherlands
Niger
Norway
Portugal
Republic of Korea
Rwanda
Sao Tome and Principe
Sierra Leone
Singapore
Somalia
Spain
Sweden
Switzerland
Tanzania U.R.
Togo
Tuvalu
Uganda
United Kingdom
Vanuatu
Western Samoa
Yemen

(5) *Designated country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the designated country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(6) *End product* means those articles, materials, and supplies to be acquired under this contract for public use.

(7) *NAFTA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(8) *Nondesignated country end product* means any end product that is not a U.S.-made end product or a designated country end product.

(9) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.

(10) *Qualifying country* means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(11) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States.

(12) *United States* means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(13) *U.S.-made end product* means an article that—

(i) Is mined, produced, or manufactured in the United States; or

(ii) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

(b) This clause implements the Trade Agreements Act of 1979 (19 U.S.C. 2501, *et seq.*), the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note), and the Caribbean Basin Initiative. Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end products unless—

(1) In its offer, the Contractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and

(2) The Government determines that—

(i) Offers of U.S.-made end products or qualifying, designated, Caribbean Basin, or NAFTA country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest exception to the Trade Agreements Act applies.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(e) The HTSUS is available on the Internet at *http://www.customs.ustreas.gov/impoexpo/impoexpo.htm*. The following sections of the HTSUS provide information regarding duty-free status of articles specified in paragraph (a)(2)(ii)(A) of this clause:

(1) General Note 3(c), Products Eligible for Special Tariff Treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries Under the United States—Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits Under the United States—Caribbean Basin Trade Partnership Act.

(End of clause)

252.225–7022 [Amended]

46. Section 252.225–7022 is amended by revising the clause date to read "(XXX 2002)"; and in paragraph (a) by removing "only".

252.225–7023 [Amended]

47. Section 252.225–7023 is amended in the introductory text by removing "225.7020–4" and adding in its place "225.7010–4".

252.225–7024 [Removed and Reserved]

48. Section 252.225–7024 is removed and reserved.

49. Section 252.225–7025 is revised to read as follows:

252.225–7025 Restriction on Acquisition of Forgings.

As prescribed in 225.7102–4, use the following clause:

Restriction on Acquisition of Forgings (XXX 2002)

(a) *Definitions.* As used in this clause—

(1) *Domestic manufacture* means manufactured in the United States or Canada if the Canadian firm—

(i) Normally produces similar items or is currently producing the item in support of DoD contracts (as a contractor or a subcontractor); and

(ii) Agrees to become (upon receiving a contract/order) a planned producer under DoD's Industrial Preparedness Production Planning Program, if it is not already a planned producer for the item.

(2) *Forging items* means—

Items	Categories
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears.	All greater than 120 inches in diameter.

(b) End items and their components delivered under this contract shall contain forging items that are of domestic manufacture only.

(c) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7102–3 of the Defense Federal Acquisition Regulation Supplement.

(d) The Contractor shall retain records showing compliance with the restriction in paragraph (b) of this clause until 3 years after final payment and shall make the records available upon request of the Contracting Officer.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in subcontracts for forging items or for other items that contain forging items.

(End of clause)

252.225–7026. [Removed and Reserved]

50. Section 252.225–7026 is removed and reserved.

51. Sections 252.225–7027 and 252.225–7028 are revised to read as follows:

252.225–7027 Restriction on Contingent Fees for Foreign Military Sales.

As prescribed in 225.7308(a), use the following clause:

Restriction on Contingent Fees for Foreign Military Sales (XXX 2002)

(a) Except as provided in paragraph (b) of this clause, contingent fees, as defined in the Covenant Against Contingent Fees clause of this contract, are generally an allowable cost, provided the fees are paid to—

(1) A bona fide employee of the Contractor; or

(2) A bona fide established commercial or selling agency maintained by the Contractor for the purpose of securing business.

(b) For foreign military sales, unless the contingent fees have been identified and payment approved in writing by the foreign customer before contract award, the following contingent fees are unallowable under this contract:

(1) For sales to the Government(s) of _____, contingent fees in any amount.

(2) For sales to Governments not listed in paragraph (b)(1) of this clause, contingent fees exceeding $50,000 per foreign military sale case.

(End of clause)

252.225–7028 Exclusionary Policies and Practices of Foreign Governments.

As prescribed in 225.7308(b), use the following clause:

Exclusionary Policies and Practices of Foreign Governments (XXX 2002)

The Contractor and its subcontractors shall not take into account the exclusionary policies or practices of any foreign government in employing or assigning personnel, if—

(a) The personnel will perform functions required by this contract, either in the United States or abroad; and

(b) The exclusionary policies or practices of the foreign government are based on race, religion, national origin, or sex.

(End of clause)

252.225–7029 [Removed and Reserved]

52. Section 252.225–7029 is removed and reserved.

53. Sections 252.225–7030 through 252.225–7033 are revised to read as follows:

252.225–7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate.

As prescribed in 225.7011–3, use the following clause:

Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate (XXX 2002)

Carbon, alloy, and armor steel plate shall be melted and rolled in the United States or Canada if the carbon, alloy, or armor steel plate—

(a) Is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute; and

(b) Will be delivered to the Government or will be purchased by the Contractor as a raw

material for use in a Government-owned facility or a facility under the control of the Department of Defense.

(End of clause)

252.225–7031 Secondary Arab Boycott of Israel.

As prescribed in 225.1103(4), use the following provision:

Secondary Arab Boycott of Israel (XXX 2002)

(a) *Definitions.* As used in this provision—

(1) *Foreign person* means any person (including any individual, partnership, corporation, or other form of association) other than a United States person.

(2) *United States person* is defined in 50 U.S.C. App. 2415(2) and means—

(i) Any United States resident or national (other than an individual resident outside the United States who is employed by other than a United States person);

(ii) Any domestic concern (including any permanent domestic establishment of any foreign concern); and

(iii) Any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern.

(b) *Certification.* If the offeror is a foreign person, the offeror certifies, by submission of an offer, that it—

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. 2407(a) prohibits a United States person from taking.

(End of provision)

252.225–7032 Waiver of United Kingdom Levies—Evaluation of Offers.

As prescribed in 225.1101(7), use the following provision:

Waiver of United Kingdom Levies—Evaluation of Offers (XXX 2002)

(a) Offered prices for contracts or subcontracts with United Kingdom (U.K.) firms may contain commercial exploitation levies assessed by the Government of the U.K. The offeror shall identify to the Contracting Officer all levies included in the offered price by describing—

(1) The name of the U.K. firm;

(2) The item to which the levy applies and the item quantity; and

(3) The amount of levy plus any associated indirect costs and profit or fee.

(b) In the event of difficulty in identifying levies included in a price from a prospective subcontractor, the offeror may seek advice through the Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue NW., Washington, DC 20006.

(c) The U.S. Government may attempt to obtain a waiver of levies pursuant to the U.S./U.K. reciprocal waiver agreement of July 1987.

(1) If the U.K. waives levies before award of a contract, the Contracting Officer will evaluate the offer without the levy.

(2) If levies are identified but not waived before award of a contract, the Contracting Officer will evaluate the offer inclusive of the levies.

(3) If the U.K. grants a waiver of levies after award of a contract, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs and profit or fee.

(End of provision)

252.225–7033 Waiver of United Kingdom Levies.

As prescribed in 225.1101(8), use the following clause:

Waiver of United Kingdom Levies (XXX 2002)

(a) The U.S. Government may attempt to obtain a waiver of any commercial exploitation levies included in the price of this contract, pursuant to the U.S./United Kingdom (U.K.) reciprocal waiver agreement of July 1987. If the U.K. grants a waiver of levies included in the price of this contract, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs and profit or fee.

(b) If the Contractor contemplates award of a subcontract exceeding $1 million to a U.K. firm, the Contractor shall provide the following information to the Contracting Officer before award of the subcontract:

(1) Name of the U.K. firm.

(2) Prime contract number.

(3) Description of item to which the levy applies.

(4) Quantity being acquired.

(5) Amount of levy plus any associated indirect costs and profit or fee.

(c) In the event of difficulty in identifying levies included in a price from a prospective subcontractor, the Contractor may seek advice through the Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue, NW., Washington, DC 20006.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in any subcontract for supplies where a lower-tier subcontract exceeding $1 million with a U.K. firm is anticipated.

(End of clause)

54. Sections 252.225–7035 through 252.225–7039 are revised to read as follows:

252.225–7035 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

As prescribed in 225.1101(9), use the following provision:

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate (XXX 2002)

(a) *Definitions. Domestic end product, foreign end product, NAFTA country end product, qualifying country end product,* and *United States* have the meanings given in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government will—

(1) Evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) For line items subject to the North American Free Trade Agreement Implementation Act, will evaluate offers of qualifying country end products or NAFTA country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Canadian) end products:

_____

(ii) The offeror certifies that the following supplies are NAFTA country end products:

_____

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products.

_____

(End of provision)

Alternate I (XXX 2002)

As prescribed in 225.1101(9), substitute the phrase "Canadian end product" for the phrase "NAFTA country end product" in paragraph (a) of the basic provision; and substitute the phrase "Canadian end products" for the phrase "NAFTA country end products" in paragraphs (b) and (c)(2)(ii) of the basic provision.

252.225–7036 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

As prescribed in 225.1101(10)(i), use the following clause:

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (XXX 2002)

(a) *Definitions.* As used in this clause—

(1) *Component* means an article, material, or supply incorporated directly into an end product.

(2) *Domestic end product* means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if the cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(A) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) It is inconsistent with the public interest to apply the restrictions of the Buy American Act.

(3) *End product* means those articles, materials, and supplies to be acquired under this contract for public use.

(4) *Foreign end product* means an end product other than a domestic end product.

(5) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.

(6) *NAFTA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(7) *Qualifying country* means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(8) *Qualifying country component* means a component mined, produced, or manufactured in a qualifying country.

(9) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States.

(10) *United States* means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(b) This clause implements the Buy American Act (41 U.S.C. 10a–10d), the Balance of Payments Program, and the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note). Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or other foreign end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a NAFTA country end product, the Contractor shall deliver a qualifying country end product, a NAFTA country end product, or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate I (XXX 2002)

As prescribed in 225.1101(10)(i)(B), substitute the following paragraphs (a)(6), (b), and (c) for paragraphs (a)(6), (b), and (c) of the basic clause:

(a)(6) "Canadian end product," means an article that—

(i) Is wholly the growth, product, or manufacture of Canada; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself.

(b) This clause implements the Buy American Act (41 U.S.C. 10a–10d), the Balance of Payments Program, and the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note). Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, Canadian, or other foreign end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Canadian end product, the Contractor shall deliver a qualifying country end product, a Canadian end product, or, at the Contractor's option, a domestic end product.

252.225–7037 Evaluation of Offers for Air Circuit Breakers.

As prescribed in 225.7006–4(a), use the following provision:

Evaluation of Offers for Air Circuit Breakers (XXX 2002)

(a) The offeror shall specify, in its offer, any intent to furnish air circuit breakers that are not manufactured in the United States, Canada, or the United Kingdom.

(b) The Contracting Officer will evaluate offers by adding a factor of 50 percent to the offered price of air circuit breakers that are not manufactured in the United States, Canada, or the United Kingdom.

(End of provision)

252.225–7038 Restriction on Acquisition of Air Circuit Breakers.

As prescribed in 225.7006–4(b), use the following clause:

Restriction on Acquisition of Air Circuit Breakers (XXX 2002)

Unless otherwise specified in its offer, the Contractor shall deliver under this contract air circuit breakers manufactured in the United States, Canada, or the United Kingdom.

(End of clause)

252.225–7039 Restriction on Acquisition of Totally Enclosed Lifeboat Survival Systems.

As prescribed in 225.7008–4, use the following clause:

Restriction on Acquisition of Totally Enclosed Lifeboat Survival Systems (XXX 2002)

The Contractor shall deliver under this contract totally enclosed lifeboat survival systems (consisting of the lifeboat and associated davits and winches), for which—

(a) 50 percent or more of the components have been manufactured in the United States; and

(b) 50 percent or more of the labor in the manufacture and assembly of the entire system has been performed in the United States.

(End of clause)

252.225–7041 [Amended]

55. Section 252.225–7041 is amended in the introductory text by removing "225.1103(2)" and adding in its place "225.1103(5)".

56. Section 252.225–7042 is revised to read as follows:

252.225–7042 Authorization to Perform.

As prescribed in 225.1103(6), use the following provision:

Authorization To Perform (XXX 2002)

The offeror represents that it has been duly authorized to operate and to do business in

the country or countries in which the contract is to be performed.

(End of provision)

[FR Doc. 02–24739 Filed 10–4–02; 8:45 am]
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Federal Register

Monday,
October 7, 2002

Part IV

Environmental Protection Agency

43 CFR Parts 268 and 271
Land Disposal Restrictions: National Treatment Variance To Designate New Treatment Subcategories for Radioactively Contaminated Cadmium–, Mercury– and Silver–Containing Batteries; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 268 and 271

[FRL–7390–7; Docket Number: RCRA–2002–0027]

RIN 2050–AE99

Land Disposal Restrictions: National Treatment Variance To Designate New Treatment Subcategories for Radioactively Contaminated Cadmium-, Mercury-, and Silver-Containing Batteries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to grant a national treatability variance from the Land Disposal Restrictions (LDR) treatment standards for radioactively contaminated cadmium-, mercury-, and silver-containing batteries by designating new treatment subcategories for these wastes in response to a rulemaking petition from the Department of Energy. The current treatment standards of thermal recovery for cadmium batteries and of roasting and retorting for mercury batteries are technically inappropriate, because any recovered metals would likely contain residual radioactive contamination and not be usable. The current numerical treatment standard for silver batteries is also inappropriate because of the potential increase in radiation exposure to workers associated with manually segregating silver-containing batteries for the purpose of treatment. Macroencapsulation in accordance with the provisions for treatment standards for hazardous debris is designated as the required treatment prior to land disposal for the new waste subcategories. This will allow safe disposal of these radioactively contaminated materials.

DATES: This rule is effective on November 21, 2002 without further notice, unless EPA receives adverse comment by November 6, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand/delivery/courier. You must send an original and two copies of the comments referencing Docket Number RCRA–2002–0027 to: EPA Docket Center (EPA/DC), B102, EPA West, 1301 Constitution Ave. NW, Washington, DC 20460–0002. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section I. D. below.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Call Center is open Monday-Friday, 9 a.m. to 4 p.m., Eastern Standard Time. For more information on specific aspects of this direct final rule, contact Mr. John Austin at 703–308–0436, *austin.john@epa.gov*, or write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

The contents of the preamble to this final are listed in the following outline:

I. General Information
- A. Regulated Entities
- B. Direct Final Action
- C. How Can I Get Copies of This Document and Other Related Information?
- D. How and To Whom Do I Submit Comments?
- E. How Should I Submit CBI to the Agency?
- F. What Should I Consider as I Prepare My Comments for EPA?

II. Background
- What Is the Basis for LDR Treatment Variances?

III. Why Are the Existing Standards Inappropriate?
- A. What Are the Wastes That Require a Treatment Variance?
- B. What Are the New Treatment Standards?

IV. State Authority
- A. Applicability of Rules in Authorized States
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V. Regulatory Requirements
- A. Executive Order 12866: Regulatory Planning and Review
- B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq.*
- C. Paperwork Reduction Act
- D. Unfunded Mandates
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Children's Health
- H. Executive Order 13211: Energy Effects
- I. National Technology Transfer and Advancement Act of 1995
- J. Executive Order 12898: Environmental Justice
- K. Congressional Review Act

I. General Information

A. Regulated Entities

Entities potentially regulated by this action are those which generate, treat, and dispose radioactive batteries. Regulated categories and entities include:

Category	Radioactively contaminated cadmium-, mercury-, and silver- containing batteries.
Industry	Nuclear waste generators, and treatment and disposal facilities.
Examples of regulated entities.	Envirocare of Utah, Inc.; Nevada Test Site; and the Hanford Nuclear Reservation, Washington.
Federal Agencies	Department of Energy.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Direct Final Action

EPA is publishing this rule without a prior proposal because we view it as a noncontroversial action. We anticipate no adverse comment because of the limited nature of this action. Having said this, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to grant the designation of a new treatment subcategory if adverse comments are filed. This direct final rule will be effective on November 21, 2002 without further notice unless we receive adverse comment by November 6, 2002. If we receive significant adverse comment on this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating that this direct final rule action is being withdrawn due to adverse comment. We will then address all public comments, as appropriate. We will not institute a second comment period on this action. Any parties interested in commenting on this rulemaking must do so at this time.

C. How Can I Get Copies of This Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. RCRA–2002–0027. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center (EPA/DC), B102, EPA West, 1301 Constitution Ave. NW, Washington, DC 20460–0002. The EPA/DC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. To review file materials, we recommend that you make an appointment by calling (202) 566–0270. You may copy a maximum of 100 pages from any file maintained at the RCRA Docket at no charge. Additional copies cost $0.15 per page.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials at the EPA/DC.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

D. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. RCRA–2002–0027. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov*, Attention Docket ID No. RCRA–2002–0027. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the following section. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. You must send an original and two copies of the comments referencing Docket Number RCRA–2002–0027 to: EPA Docket Center (EPA/DC), B102, EPA West, 1301 Constitution Ave. NW, Washington, DC 20460–0002.

3. By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center (EPA/DC), B102, EPA West, 1301 Constitution Ave. NW, Washington, DC 20460–0002, Attention Docket ID No. RCRA–2002–0027. Deliveries are only

accepted during the Docket's normal hours of operation 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

E. How Should I Submit CBI to the Agency?

Do not submit information electronically that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Attention Docket ID No. RCRA–2002–0027. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

F. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

What Is the Basis for LDR Treatment Variances?

Under section 3004(m) of the Resource Conservation and Recovery Act (RCRA), EPA is required to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." EPA interprets this language to authorize treatment standards based on the performance of best demonstrated available technology (BDAT). This interpretation was upheld by the *D.C. Circuit in Hazardous Waste Treatment Council* vs. *EPA*, 886 F. 2d 355 (D.C. Cir. 1989).

The Agency recognizes that there may be wastes that cannot be treated to levels specified in the regulations (see 40 CFR 268.40) because an individual waste matrix or concentration can be substantially more difficult to treat than those wastes the Agency evaluated in establishing the treatment standard (51 FR 40576, November 7, 1986), or that it may be inappropriate to require the waste to be treated to the level specified or by the method specified, even though such treatment is technically possible. For such wastes, EPA has a process by which a generator or treater may seek a treatment variance (see 40 CFR 268.44). Treatment variances may be generic (under 40 CFR 268.44(a)) or site-specific (under 40 CFR 268.44(h)). A generic variance can result in the establishment of a new treatability group and a corresponding treatment standard that applies to all wastes that meet the criteria of the new waste treatability group (55 FR 22526, June 1, 1990). A site-specific variance applies only to a specific waste from a specific facility.

On June 13, 2002, the Department of Energy (DOE) petitioned EPA pursuant to 40 CFR 268.44 for a generic treatability variance for mercury-, cadmium-, and silver-containing batteries that are contaminated with radioactive materials. The petition is available in the docket for this rulemaking.

III. Why Are the Existing Standards Inappropriate?

A. What Are the Wastes That Require a Treatment Variance?

Batteries are used in a variety of ways across the DOE complex. For example, nickel-cadmium (NiCd) rechargeable batteries are commonly found in cellular and cordless telephones, 2-way radios, video cameras, portable power tools, laptop computers, and radiological monitoring equipment. Mercury-containing and silver-containing batteries have been widely used in watches, calculators, and cameras. When these batteries reach end of life, they are typically classified as radioactive waste if they were used in a radioactively contaminated area, unless through decontamination and/or radiological surveys they can be cleared for management as non-radiological waste. Sometimes because of cracks, fissures, holes or uneven surfaces in the battery casings, a reasonable confidence level that the batteries are free of radioactive contamination cannot be achieved. In other cases, radioactive contamination is found that cannot be easily removed. In either case, there will always be some batteries that are deemed to be radioactively contaminated.

Based on input from individual facilities, DOE estimates that 2,653 kg of radioactively contaminated waste cadmium-containing batteries, and 247 kg of radioactively contaminated waste mercury-containing batteries are in storage across the complex. No estimate is available for silver-containing batteries. Projected generation rates are 23 kg/yr for radioactively contaminated waste cadmium batteries and 4 kg/yr for radioactively contaminated waste mercury batteries.

The cadmium-containing waste batteries are almost all NiCd batteries, although other types of cadmium-containing waste batteries such as mercury-cadmium and silver-cadmium may be present as well. At a minimum, all of the cadmium-containing waste batteries exhibit the toxicity characteristic for cadmium and carry a D006 hazardous waste code.

Detail on the specific types of mercury-containing waste batteries present is limited, but it is assumed that this waste stream includes both mercury-zinc and mercury-cadmium batteries. At a minimum, these batteries exhibit the toxicity characteristic for mercury and carry a D009 hazardous waste code. Detail on specific types of silver-containing waste batteries is also limited. They may be silver-cadmium or of other composition. At a minimum, these batteries exhibit the toxicity characteristic for silver and carry a D011 hazardous waste code.

While not representing a large volume of waste, radioactively contaminated cadmium-, mercury-, and silver-containing batteries, which must be managed as mixed waste (*i.e.*, RCRA hazardous and radioactive), present an ongoing waste disposal problem for several sites in the DOE complex. This situation has developed because the existing applicable LDR treatment standards are inappropriate, as explained below. Moreover, neither EPA nor DOE is aware of any commercial metals recovery facility that currently accepts radioactively contaminated cadmium-, or mercury-containing waste batteries for treatment.

B. What Are the New Treatment Standards?

Under existing land disposal restriction (LDR) treatment standards, cadmium-containing waste batteries are classified as D006 Cadmium Containing Batteries Subcategory waste. As such, they are subject to the specified technology of RTHRM (thermal recovery of metals). Most mercury-containing waste batteries are classified as D009 High Mercury-Inorganic Subcategory waste because they are inorganic, exhibit the toxicity characteristic for mercury (under 40 CFR 261.24(b)), and contain greater than 260 ppm total mercury. As such, they are subject to the specified technology of RMERC (roasting/retorting with recovery of mercury). In both cases, the objective of the specified technology is to volatilize the metals in a high temperature treatment unit and subsequently condense and collect them for reuse, while significantly reducing the concentration of metals in the waste residual. This approach is technically inappropriate for radioactively contaminated cadmium- and mercury-containing batteries, because the recovered metals would likely contain residual radioactive contamination. As a consequence, the recovered metals would have an extremely low probability for reuse.

For silver-containing batteries that are D011, the existing LDR treatment standards require treatment to meet numerical constituent concentration levels for silver and any underlying hazardous constituents. Meeting these standards could involve manually segregating the silver-containing batteries from commingled waste batteries before treatment, which could entail increased worker exposure to radiation and result in the generation of larger volumes of radioactively contaminated waste for disposal.

As a result, we intend to grant a national treatment variance by designation of new treatment subcategories for these materials. We believe that the appropriate treatment standard is macroencapsulation in accordance with the design and operating standards of 40 CFR 268.45. Macroencapsulation of debris is defined at 40 CFR 268.45 Table 1 as:

Application of surface coating materials such as polymeric organics (*e.g.*, resins and plastics) or use of a jacket of inert inorganic materials to substantially reduce surface exposure to potential leaching media.

The design and operating standard requires that the encapsulating material must completely encapsulate the waste and be resistant to degradation by the debris and its contaminants and materials into which it may come into contact after placement (*e.g.*, leachate, other waste, or microbes).

Encapsulation technologies are applicable primarily to wastes containing hazardous metal constituents. Macroencapsulation is the required treatment for D008 radioactive lead solids subcategory wastes and K175 mercury-bearing wastes. Macroencapsulation is also an alternative treatment standard for hazardous debris. We believe that macroencapsulation is appropriate for these radioactively contaminated batteries, because it would require minimal worker handling and reduce the potential for leaching media to contact the batteries following disposal. Thus, macroencapsulation would minimize worker exposure to radioactivity and the potential for release, which we wish to encourage.

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State in lieu of the federal program, and to issue and enforce permits in the State. A State may receive authorization by following the approval process described under 40 CFR 271.21. See 40 CFR part 271 for the overall standards and requirements for authorization. EPA continues to have independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. An authorized State also continues to have independent authority to bring enforcement actions under State law.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new Federal requirements and prohibitions promulgated pursuant to HSWA provisions take effect in authorized States at the same time that they take effect in unauthorized States. As such, EPA carries out HSWA requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorizes the State to do so.

Authorized States are required to modify their programs when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program. See also § 271.1(i). Therefore, authorized States are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than existing Federal requirements.

B. Effect on State Authorization

The requirements of today's rule, in EPA's view, are neither more nor less stringent than current regulatory requirements.[1] Therefore, when promulgated, the Agency will add the rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA. Although States are only required to adopt requirements that are more stringent than the existing provisions, EPA strongly encourages States to adopt the provisions of today's rule.

V. Regulatory Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant

[1] Although today's rule is granted through the 40 CFR 268.44 variance process, the Agency has determined that the new standards are neither more nor less stringent than the current standards. This is because today's rule offers a different technical approach (macoencapsulation) over the current technical approaches of recovery and stabilization.

regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business that has fewer than 1000 or 100 employees per firm depending upon the SIC code the firm primarily is classified; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This rule is not expected to result in a net cost to any affected entity. Thus, adverse impacts are not anticipated. Costs could increase for entities that are not complying with current requirements, but even these costs, which are not properly attributable to the current rulemaking, would not be expected to result in significant impacts on a substantial number of small entities.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

This rule does not change in any way the paperwork requirements already applicable to radioactive cadmium-, mercury-, or silver-containing batteries. Therefore, it does not affect requirements under the Paperwork Reduction Act.

D. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for the proposed and final rules with "federal mandates" that may result in expenditures by state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The Agency's analysis of compliance with the Unfunded Mandates Reform Act (UMRA) of 1995 found that today's rule imposes no enforceable duty on any state, local or tribal government or the private sector. This rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector. In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Because we consider today's rule to be neither more nor less stringent than the current regulations, state governments are not required to adopt the proposed changes. The UMRA generally excludes from the definition of "Federal intergovernmental mandate" duties that arise from participation in a voluntary federal program. The UMRA also excludes from the definition of "Federal private sector mandate" duties that arise from participation in a voluntary federal program. Therefore, we have determined that today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because states are not required to adopt the provisions of this rule. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175, because it does not preempt tribal law. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Children's Health

"Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potential effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. When the subject wastes are treated and disposed in accordance with this regulation, the Agency believes that future risks to the human health and the environment will be minimized.

H. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Effect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, though OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not establish new technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Environmental Justice

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (February 11, 1994) is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). Facilities that would be affected by today's rule include any facility generating hazardous radioactive cadmium, radioactive mercury, or radioactive silver batteries for treatment or disposal. The Agency does not believe that today's rule will result in any disproportionately negative impacts on minority or low-income communities relative to affluent or non-minority communities, because today's rule will facilitate the removal of the subject hazardous wastes from current generation sites for treatment and controlled disposal to ensure protection of human health and the environment.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective 45 days following the publication.

List of Subjects

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous material transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: September 30, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. In § 268.40, the Table, "Treatment Standards for Hazardous Wastes" is amended by adding entries to the end of entries D006, D009, and D011 to read as follows. The footnotes are republished without change.

§ 268.40 Applicability of treatment standards.

* * * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste code	Waste description and treatment/Regulatory subcategory[1]	Regulated hazardous constituent		Wastewaters: Concentration in mg/L,[3] or technology code[4]	Nonwastewaters: Concentration in mg/kg[5] unless noted as "mg/L TCLP", or technology code.[4]
		Common name	CAS[2] No.		
D006[9]	Radioactively contaminated cadmium containing batteries. (**Note:** This subcategory consists of nonwastewaters only)	Cadmium	7440–43–9	NA	Macroencapsulation in accordance with 40 CFR 268.45.
D009[9]	Radioactively contaminated mercury containing batteries. (**Note:** This subcategory consists of nonwastewaters only)	Mercury	7439–97–6	NA	Macroencapsulation in accordance with 40 CFR 268.45.
D011[9]	Radioactively contaminated silver containing batteries. (**Note:** This subcategory consists of nonwastewaters only)	Silver	7440–22–4	NA	Macroencapsulation in accordance with 40 CFR 268.45.

Footnotes to Treatment Standard Table 268.40

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR part 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units opeated in accordance with the technical requirements of 40 CFR Part 264, Subpart O, or Part 265, Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

[9] These wastes, when rendered nonhazardous and then subsequently injected in a Class I SDWA well, are not subject to treatment standards. (See § 148.1(d)).

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

3. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

4. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by date of publication to read as follows.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	**Federal Register** reference	Effective date
Sept. 30, 2002	Land Disposal Restrictions: National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium-, Mercury-, and Silver-Containing Batteries.	[Insert **Federal Register** citation page numbers].	November 21, 2002

* * * * *

[FR Doc. 02–25414 Filed 10–4–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 268 and 271

[FRL–7390–8; Docket Number: RCRA–2002–0027]

RIN 2050–AE99

Land Disposal Restrictions: National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium-, Mercury-, and Silver-Containing Batteries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to take direct final action to grant a national treatability variance from the Land Disposal Restrictions (LDR) treatment standards for radioactively contaminated cadmium-, mercury-, and silver-containing batteries by designating new treatment subcategories for these wastes in response to a rulemaking petition from the Department of Energy. The current treatment standards of thermal recovery for cadmium batteries and of roasting and retorting for mercury batteries are technically inappropriate because any recovered metals would likely contain residual radioactive contamination and not be usable. The current numerical treatment standard for silver batteries is also inappropriate because of the potential increase in radiation exposure to workers associated with manually segregating silver-containing batteries for the purpose of treatment. Macroencapsulation in accordance with the provisions for treatment standards for hazardous debris is proposed as the required treatment prior to land disposal.

In the "Rules and Regulations" section of the **Federal Register**, we are publishing a direct final rule that would designate a new treatment subcategory for radioactively contaminated cadmium, mercury, and silver-containing batteries without prior proposal because we view this action as noncontroversial and we anticipate no significant adverse comment. We have explained our reasons for this approach in the preamble to the direct final rule. If we receive significant adverse comment on the direct final rule, however, we will withdraw the direct final action and the treatment variance will not take effect. We will not institute a second comment period on this action. Any parties interested in commenting on this proposed variance must do so at this time.

DATES: To make sure EPA considers your comments or suggested revisions to this proposal, they must be postmarked on or before November 6, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand/delivery/courier. You must send an original and two copies of the comments referencing Docket Number RCRA–2002–0027 to: EPA Docket Center (EPA/DC), B102, EPA West, 1301 Constitution Ave. NW, Washington, DC 20460–0002.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Call Center is open Monday-Friday, 9 a.m. to 4 p.m., Eastern Standard Time. For more information on specific aspects of this proposed/direct final rule, contact Mr. John Austin at 703–308–0436, *austin.john@epa.gov*, or write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: This document concerns Land Disposal Restrictions: National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium-, Mercury-, and Silver-Containing Batteries. For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

List of Subjects

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous material transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: September 30, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–25415 Filed 10–4–02; 8:45 am]

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Aliens with criminal convictions before April 1, 1997; relief from deportation or removal; comments due by 10-15-02; published 8-13-02 [FR 02-20403]

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Bombardier-Rotax GmbH; comments due by 10-15-02; published 8-16-02 [FR 02-20266]

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Motor carriers transporting hazardous materials; security requirements; comments due by 10-15-02; published 7-16-02 [FR 02-17899]

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Research and Special Programs Administration

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Hazardous materials transportation—

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 4558/P.L. 107–234

To extend the Irish Peace Process Cultural and Training Program. (Oct. 4, 2002; 116 Stat. 1481)

H.J. Res. 112/P.L. 107–235

Making further continuing appropriations for the fiscal year 2003, and for other purposes. (Oct. 4, 2002; 116 Stat. 1482)

Last List October 3, 2002

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–048–00001–1)	9.00	Jan. 1, 2002
3 (1997 Compilation and Parts 100 and 101)	(869–048–00002–0)	59.00	[1] Jan. 1, 2002
4	(869–048–00003–8)	9.00	[4] Jan. 1, 2002
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27–52	(869–048–00008–9)	47.00	Jan. 1, 2002
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210–299	(869–048–00010–1)	59.00	Jan. 1, 2002
300–399	(869–048–00011–9)	42.00	Jan. 1, 2002
400–699	(869–048–00012–7)	57.00	Jan. 1, 2002
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900–999	(869–048–00014–3)	58.00	Jan. 1, 2002
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CFR Index and Findings Aids	(869–044–00047–0)	59.00	Jan. 1, 2002
Complete 2001 CFR set		1,195.00	2001
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Subscription (mailed as issued)		298.00	2000
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Complete set (one-time mailing)		290.00	2000
Complete set (one-time mailing)		247.00	1999

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

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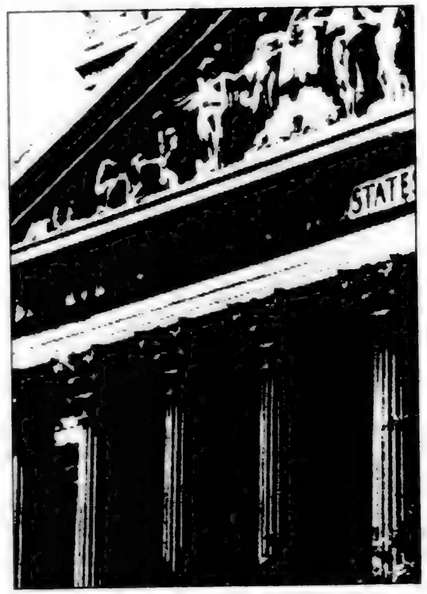

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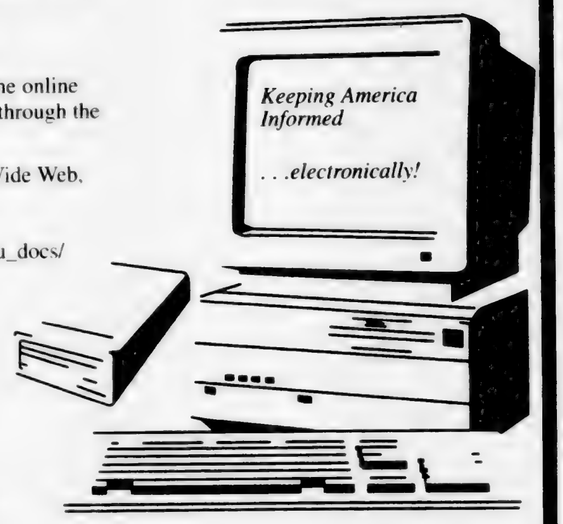

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Vol. 67, No. 195
Tuesday, October 8, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–096–1]

Oriental Fruit Fly; Designation of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by quarantining a portion of Los Angeles and San Bernardino Counties, CA, and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Oriental fruit fly into noninfested areas of the United States.

DATES: This interim rule was effective October 2, 2002. We will consider all comments that we receive on or before December 9, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–096–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–096–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–096–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8039.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, vegetables, and berries. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks, which can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. Section 301.93–3(a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Oriental fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Oriental fruit fly has been found. The regulations impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.93–3(c).

Less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles and (2) the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Oriental fruit fly.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service reveal that a portion of Los Angeles and San Bernardino Counties, CA, is infested with the Oriental fruit fly. The Oriental fruit fly is not known to exist anywhere else in the continental United States.

State agencies in California have begun an intensive Oriental fruit fly eradication program in the quarantined area in Los Angeles and San Bernardino Counties. Also, California has taken action to restrict the interstate movement of regulated articles from the quarantined area.

Accordingly, to prevent the spread of the Oriental fruit fly into other States, we are amending the regulations in § 301.93–3 by designating a portion of Los Angeles and San Bernardino Counties, CA, as a quarantined area for the Oriental fruit fly. The quarantined area is described in the rule portion of this document.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the Oriental fruit fly from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget

has waived its review under Executive Order 12866.

This rule amends the Oriental fruit fly regulations by adding a portion of Los Angeles and San Bernardino Counties, CA, to the list of quarantined areas. The regulations restrict the interstate movement of regulated articles from a quarantined area.

County records indicate there are approximately 1,500 acres of wine grapes, 200 acres of lemons and oranges, 50 acres of miscellaneous fruit, 20 garden centers, and 26 chain stores with nursery licenses within the quarantined area that may be affected by this rule. In addition, there are 13 production nurseries in the ZIP Code, although some may not be within the quarantined area.

We expect that any small entities located within the quarantined area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears to be minimal. The effect on any small entities that may move regulated articles interstate will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The site-specific environmental assessment provides a basis for the conclusion that the implementation of integrated pest management to eradicate the Oriental fruit fly will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice). In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**. The environmental assessment and finding of no significant impact may also be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/ppq/offrc.pdf*.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A-293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.93–3, paragraph (c) is revised to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) The areas described below are designated as quarantined areas:

CALIFORNIA

Los Angeles and San Bernardino Counties. That portion of Los Angeles and San Bernardino Counties in the Rancho Cucamonga area bounded by a line as follows: Beginning at the intersection of North Mills Avenue and Mount Baldy Road; then northeast and north along Mount Baldy Road to its intersection with Barrett Road; then east from the intersection of Mount Baldy Road and Barrett Road along an imaginary line to the Joe Elliot Tree Memorial; then southeast from the Joe Elliot Tree Memorial along an imaginary line to the north end of Etiwanda Avenue; then southeast and south along Etiwanda Avenue to State Highway 30; then west along State Highway 30 to Rochester Avenue; then south along Rochester Avenue to Baseline Road; then west along Baseline Road to Milliken Avenue; then south along Milliken Avenue to State Highway 66; then west along State Highway 66 to Haven Avenue; then south along Haven Avenue to 8th Street; then west along 8th Street to East 8th Street; then west along East 8th Street to West 8th Street; then west along West 8th Street to Central Avenue; then north along Central Avenue to State Highway 66; then west along State Highway 66 to North Mills Avenue; then north along North Mills Avenue to the point of beginning.

Done in Washington, DC, this 2nd day of October 2002 .

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–25537 Filed 10–7–02; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 63

RIN 3150–AG91

Specification of a Probability for Unlikely Features, Events and Processes

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) is amending its regulations governing the disposal of high-level radioactive wastes in a potential geologic repository at Yucca Mountain, Nevada, to define the term "unlikely" in quantitative terms. NRC regulations now specify a range of numerical values for use in determining whether a feature, event or process, or a sequence of events and processes, should be excluded from certain required assessments. NRC is taking this action to clarify how it plans to implement two of the environmental standards for Yucca Mountain issued by the U.S. Environmental Protection Agency (EPA). Specifically, EPA's standards require the exclusion of "unlikely" features, events or processes, or sequences of events and processes, from the required assessments for the human-intrusion and ground-water protection standards. In accordance with the Energy Policy Act of 1992, NRC has adopted EPA's standards in its recently published technical requirements for a potential geologic repository at Yucca Mountain.

EFFECTIVE DATE: November 7, 2002.

ADDRESSES: The final rule and any related documents are available on NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. For information about the interactive rulemaking Web site, contact Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*.

The documents may also be examined at the NRC Public Document Room (PDR), Room O–1F23, 11555 Rockville Pike, Rockville, MD.

NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737; or by e-mail to: *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Timothy McCartin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7285, e-mail: *tjm3@nrc.gov*; or Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6203, e-mail: *cwp@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2001 (66 FR 55732), NRC published a final rule, 10 CFR part 63, governing disposal of high-level radioactive wastes in a potential geologic repository at Yucca Mountain, Nevada. We are now finalizing one particular matter that specifies a probability for unlikely features, events, and processes (FEPs). These are the regulations that the U.S. Department of Energy (DOE) must meet in any license application for construction and operation of a potential repository. As mandated by the Energy Policy Act of 1992, Pub. L. 102–486, NRC's rule adopts the radiation protection standards established by EPA in 40 CFR Part 197 (66 FR 32074; June 13, 2001). EPA's standards for disposal include an individual-protection standard (40 CFR 197.20); a human-intrusion standard (40 CFR 197.25); and ground-water protection standards (40 CFR 197.30). These EPA standards have been incorporated into NRC's regulations at 10 CFR 63.311, 63.321, and 63.331, respectively.

DOE's performance assessments are required to consider the naturally occurring features, events, and processes that could affect the performance of a geologic repository (*i.e.*, specific conditions or attributes of the geologic setting; degradation, deterioration, or alteration processes of engineered barriers; and interactions between natural and engineered barriers). EPA's standards include limits on what DOE must consider in performance assessments undertaken to determine whether the repository will perform in compliance with the standards (40 CFR 197.36). EPA's standards state that DOE's performance assessments shall not include consideration of "very unlikely" FEPs, which EPA defines to be those FEPs that are estimated to have less than one chance in 10,000 of occurring within 10,000 years of disposal. In addition, EPA's standards require NRC to exclude "unlikely" FEPs, or sequences of events and processes, from the required assessments for demonstrating compliance with the human-intrusion and ground-water protection standards. EPA did not define unlikely FEPs in its standards, but, rather, left the specific probability of the unlikely FEPs for NRC to define. The Commission explained in its rulemaking establishing part 63 that it "* * * fully supports excluding unlikely FEPs from analyses for estimating compliance with the standards for human intrusion and ground-water protection * * *," and that it "* * * plan[ned] to conduct an expedited rulemaking to quantitatively define the term 'unlikely'" (66 FR 55734; November 2, 2001).

NRC published a proposed rule, "10 CFR Part 63: Specification of a Probability for Unlikely Features, Events, and Processes," on January 25, 2002 (67 FR 3628), and requested public comments. That proposed rule defined the term "unlikely" in quantitative terms. This action was taken to allow NRC to implement EPA's final standards for a potential repository at Yucca Mountain, Nevada. The Commission was careful to point out that its specification for unlikely events was in the context of very specific assessments (*i.e.*, those made to assess compliance with ground-water protection and human-intrusion standards) over a long time frame, and this specification was not intended to suggest or imply precedent for other significantly different applications that used the term "unlikely".

Unlike the broader purposes served by the performance assessment for the all-pathway individual-protection standard, the performance assessments used to determine compliance with the human-intrusion standard and the ground-water protection standards serve narrow, focused objectives. In the case of the performance assessment for human intrusion, the purpose is to evaluate the robustness of the repository system, assuming the occurrence of a prescribed human-intrusion scenario. In the case of the performance assessment for ground-water protection, the purpose is to evaluate potential degradation of the ground-water resource. Although EPA's final standards did not specify a numerical value to define unlikely FEPs in quantitative terms, the preamble to the standards stated that the exclusion of unlikely FEPs is intended to focus these assessments on the "expected" or "likely" performance of the repository.[1]

From a probabilistic perspective, any FEP with an annual probability of 10^{-4} or higher would have a high probability of occurring within the 10,000 year compliance period.[2] As the Commission

[1] For example, the preamble states: (1) "[T]he assessment of resource pollution potential is based upon the engineering design of the repository being sufficiently robust under expected conditions to prevent unacceptable degradation of the ground-water resource over time" (66 FR 32114; June 13, 2001); and (2) the term "undisturbed," which is used in connection with demonstrating compliance with the ground-water protection standards, means the "* * * disposal system is not disturbed by human intrusion but that other processes or events that are likely to occur could disturb the system" (66 FR 32104; June 13, 2001).

[2] Estimating a high probability of occurrence for an FEP creates an expectation that an FEP will occur; however, it does not guarantee such an occurrence. There is a chance that even high-probability FEPs will not occur. Likewise, in a probabilistic sense, having a low probability of occurrence does not mean that an FEP will not occur.

described in the proposed rule, likely FEPs should include not only FEPs very likely to occur, but also those reasonably likely to occur. Given uncertainties in estimating the occurrence of FEPs over a 10,000 year time period, the Commission believed a prudent decision was to consider FEPs with 10 percent or greater chance of occurring within the 10,000 year compliance period as likely FEPs. Thus, the Commission sought public comment on its proposal that unlikely FEPs be defined as those FEPs with less than a 10 percent chance, but greater than or equal to a 0.01 percent chance, of occurring within the 10,000 year compliance period (*i.e.*, annual probability less than 10^{-5}, but greater than or equal to 10^{-8}, which is the upper boundary for very unlikely events). As mentioned previously, the focus of the performance assessments for human intrusion and ground-water protection is to be on expected conditions. The Commission believes an upper bound for unlikely FEPs of a 10 percent chance of occurring within the compliance period will focus the assessments for ground-water protection and human intrusion on the likely performance of the repository.

II. Public Comments and Responses

The 75-day comment period for the proposed rule closed on April 10, 2002. Comments were received from the following five organizations: EPA; State of Nevada and the Nevada Agency for Nuclear Projects; DOE; Nuclear Energy Institute (NEI); and Exelon Generation. Commenters differed on the quantitative values NRC should use for defining unlikely FEPs. Although some commenters supported the proposed values, others provided different numbers and associated rationales. In preparing the final rule, the NRC staff carefully reviewed and considered these comments. The commenters that suggested alternative values did not provide a convincing basis for rejecting NRC's proposed range and adopting a different range; therefore, the Commission has decided to finalize the rule as originally proposed. The NRC's consideration of each of the comments is provided below.

1. EPA Comments

Comment 1.1: The upper value for the probability range for unlikely FEPs should be an annual probability of 10^{-6}. An annual probability of 10^{-6} as a demarcation separating likely FEPs from unlikely FEPs is reasonable because it is the middle of the range between FEPs that are nearly certain to occur (*i.e.*, annual probability of 10^{-4}), and FEPs that are very unlikely to occur (*i.e.*, annual probability of 10^{-8}). Placing the demarcation closer to either end of the range could be perceived as biased, either too liberal or too conservative, whereas the middle of the range avoids those implications. The NRC proposal, which is a factor of 10 reduction (from the 10^{-4} annual probability level), could be perceived as an arbitrary selection, whereas an annual probability of 10^{-6} is a factor of 100 reduction and is likely to be more widely accepted.

Response 1.1: The Commission stated in the proposed rulemaking (67 FR 3629; January 25, 2002) that the specification of a value to quantitatively define the probability for unlikely FEPs is complicated because of the subjective nature of the term "unlikely." The Commission did consider the merits of using an annual probability of 10^{-6} rather than 10^{-5} for the demarcation between likely and unlikely FEPs. These two probability values represent approximately a 1 percent and 10 percent chance of occurring over the 10,000 year regulatory period. The Commission considered a 1 percent chance of occurring (*i.e.*, annual probability of 10^{-6} over 10,000 years) neither expected nor likely and, therefore, an inappropriate value for the demarcation between likely and unlikely FEPs (67 FR 3630; January 25, 2002). The Commission continues to believe an annual probability of 1×10^{-5} (*i.e.*, 10 percent chance of occurring within the 10,000 year compliance period) is a protective and prudent value for defining the upper limit of unlikely FEPs and is retaining the proposed range for defining unlikely FEPs.

EPA has suggested that a probability value which represents the middle of a particular range (only when displayed on a logarithmic scale) contains some inherent justification for its selection. EPA also suggests that the NRC proposal, which is a factor of 10 less than an annual probability of 10^{-4}, may be considered too high by some, whereas the EPA recommended value of 10^{-6}, which is 100 times lower than 10^{-4}, is likely to be more acceptable. The issue is not whether a particular value lies within the middle of a range (when plotted in a particular manner), or that the value is 10 rather than 100 times less than another value. The issue for NRC is to determine an appropriate value that is protective of public health and safety and the environment, and consistent with EPA's standards. EPA's standards exclude unlikely FEPs from the required assessments for ground-water protection and human intrusion so that these assessments may focus on the likely performance of the repository. This is the context in which the definition of a specific probability value should be viewed. The Commission and other commenters consider the NRC proposal (*i.e.*, 10 percent chance of occurring over 10,000 years defines demarcation between likely and unlikely FEPs) consistent with the intended focus of the assessments for ground-water protection and human intrusion, and protective of public health and safety and the environment (see Comments 3–5).

Comment 1.2: Given the significant uncertainty in estimating the probability for rare events (*e.g.*, events with an annual probability of 10^{-5}), specification of an annual probability value of 10^{-6} for the demarcation between likely and unlikely FEPs will provide greater confidence that all likely FEPs are considered in the assessments for ground-water protection and human intrusion. There is no need to be restrictive about the probability limits because both standards and regulations allow for excluding FEPs that have no significant impact on performance results. Use of an annual probability of 10^{-6} assures a reasonably conservative approach is taken for screening FEPs.

Response 1.2: EPA has suggested that the Commission adopt a more conservative approach for selecting the demarcation between likely and unlikely FEPs. The Commission disagrees with this approach advocated by EPA for the following reasons: (1) The proposed value of 10^{-5} (*i.e.*, 10 percent chance of occurrence over 10,000 years) already represents a reasonably conservative value for the demarcation between likely and unlikely FEPs; (2) introducing additional conservatism for screening of FEPs, by selecting an annual probability of 10^{-6}, will detract from the intended purpose of the assessments to focus on likely performance; and (3) understanding and addressing uncertainties in the quantitative estimates for the probabilities of FEPs is preferred over selection of more conservative screening values.

The Commission acknowledges that selection of a more conservative value (*i.e.*, annual probability of 10^{-6}) for the demarcation between likely and unlikely FEPs could provide additional assurance by considering a broader range of FEPs. Such an approach, however, would not be consistent with the intent that the required assessments focus on likely behavior. EPA, in describing what level of expectation will meet the standards, has pointed out negative aspects of an overly conservative approach (*e.g.*, conservatism can bias analyses and deflect attention from questions critical to developing an adequate understanding of the FEPs) (66 FR 32102; June 13, 2001). The Commission understands that EPA believes its recommendation (*i.e.*, annual probability of 10^{-6}) is "reasonably" conservative. However, the Commission views EPA's recommendation, which would identify FEPs with as little as a one-in-a-million chance of occurring in a year (*i.e.*, one percent chance of occurring over 10,000 years) as likely FEPs, as overly conservative and thus not appropriate. The Commission, as well as other commenters (see Comments 4 and 5), support the annual probability of 10^{-5} (*i.e.*, 10 percent chance of occurrence over 10,000 years) as a reasonably conservative value for the demarcation between likely and unlikely FEPs. The Commission continues to believe the specification of an annual probability of 10^{-5} is consistent with the focus on likely performance for the assessments of ground-water protection and human intrusion.

There will be uncertainty in estimating performance of any geologic repository, including the uncertainty in estimating the probabilities of FEPs. NRC's regulation for Yucca Mountain contains specific requirements for addressing uncertainty in estimating performance, which includes uncertainty for estimating probabilities for FEPs. The Commission believes it is prudent to understand and evaluate the uncertainty in the probability estimates rather than set a more conservative screening value as a means to address uncertainty in estimating probabilities of FEPs. Reasonable expectation, as specified in EPA standards (40 CFR 197.14) and NRC regulations (10 CFR 63.304), in compliance with the postclosure standards of the repository, dictates that uncertainties be understood and evaluated even when they may be difficult to precisely quantify (*e.g.*, accounting for the inherently greater uncertainties, in making long-term projections of the performance of the Yucca Mountain disposal system, does not exclude important parameters from assessments and analyses simply because they are difficult to precisely quantify to a high degree of confidence). In the preamble to the final standards, EPA asserted that "[T]he reasonable expectation approach is aimed simply at focusing attention on understanding the uncertainties in projecting disposal system performance so that regulatory decision making will be done with a full understanding of the uncertainties involved" (66 FR 32102; June 13, 2001). The Commission believes its requirements for the performance assessments provide for a thorough evaluation and understanding of uncertainties in estimating repository performance. Thus, selection of a more conservative probability value for the demarcation between likely and unlikely FEPs is unnecessary. As discussed previously, the Commission continues to believe the proposed value (*i.e.*, 10 percent chance of occurring within 10,000 years) ensures the assessments for ground-water protection and human intrusion focus, as intended, on likely performance, whereas the use of more conservative values to define unlikely FEPs would inappropriately distort the estimation of likely performance.

Comment 1.3: Variation in dose assessments for Yucca Mountain is sufficiently broad (*e.g.*, two orders of magnitude—a factor of one-hundred) that it is reasonable to adopt an annual probability value of 10^{-6} as the demarcation between likely and unlikely FEPs because this value represents a numerically similar difference (*i.e.*, two orders of magnitude) between it and the probability for events nearly certain to occur within the 10,000 year period (*i.e.*, an annual probability value of 10^{-4}). Whereas NRC's proposed value (*i.e.*, an annual probability value of 10^{-5}) is only a factor of 10 (*i.e.*, one order of magnitude) different from the probability for events nearly certain to occur.

Response 1.3: The performance assessments for evaluating individual protection for the proposed repository at Yucca Mountain evaluate performance probabilistically; therefore, the estimates of repository performance are represented by a range of values. The variation in repository performance results from including uncertainty and variability in the models and parameters of the performance assessment used to represent FEPs associated with the site conditions and the natural and engineered barriers of the repository. EPA's observation that the variation in estimates of repository performance and the difference between the EPA recommendation of an annual probability value of 10^{-6} and the probability of FEPs nearly certain to occur within the 10,000 year period (*i.e.*, an annual probability value of 10^{-4}) are both two orders of magnitude does not justify EPA's recommendation, nor does it imply that NRC's proposed value of 10^{-5} is inappropriate. EPA has not provided information to support the relevance of this observation to the specification of a value for the demarcation of likely and unlikely FEPs. The performance assessments for Yucca Mountain involve complex models, for FEPs, that consider the uncertainty and variability in natural processes and the degradation of engineered materials. Performance assessments are expected to continue to evolve over time as new information is collected and evaluated and the variation in performance assessment results is also expected to change. A logical conclusion of the EPA comment is that the demarcation between likely and unlikely FEPs should change if future assessments of Yucca Mountain cause the variation of results to deviate from the current two orders of magnitude range. The Commission believes the determination of an annual probability for the demarcation between likely and unlikely FEPs should not be tied to the performance assessment results nor any other particular assessment of site conditions (see also response to Comment 1.4).

Comment 1.4: The selection of the probability for the demarcation between likely and unlikely FEPs should be divorced from the site conditions.

Response 1.4: The Commission agrees that site conditions should not be used to determine the probability for the demarcation between likely and unlikely FEPs. NRC's proposed rulemaking did not use any site conditions to determine an appropriate probability value. In the proposed rule, the Commission did identify a few selected FEPs, as a matter of reference, to inform the public of the kinds of FEPs that might be included and excluded by the proposed probability range for unlikely FEPs (67 FR 3630; January 25, 2002).

2. State of Nevada and the Nevada Agency for Nuclear Projects Comments

Comment 2.1: Unlikely FEPs should be defined by the same quantitative value used to define very unlikely FEPs (*i.e.*, annual probability less than 10^{-8}). The EPA standard requires the Commission to set the quantitative level for unlikely FEPs, but it does not require that it be higher than the value used to define very unlikely FEPs.

Response 2.1: The EPA standards provide that a numerical value to define unlikely FEPs is to be specified by NRC, and the preamble to the standards clearly indicates that any such value would be higher than the value used to define very unlikely events. More

specifically, the preamble to the final standards states: "[W]e intended to establish another demarcation for excluding unlikely features, events, and processes with a higher probability. * * *" (66 FR 32100; June 13, 2002). The Commission does not consider the State's proposal (*i.e.*, unlikely FEPs be specified with the same numerical value used to define very unlikely FEPs) consistent with EPA's intent for the standards or common understanding of the two terms "unlikely" and "very unlikely," which imply a difference in likelihood. The Commission believes its proposal, which specified a numerical range for unlikely FEPS above the range for very unlikely FEPs, is consistent with the EPA standards, as required by statute, and is fully protective of public health and safety and the environment.

Comment 2.2: Preservation of ground-water quality must not be compromised. Therefore, the assessment for protection of ground water should be no less rigorous than the assessment used to evaluate individual protection, which is required to consider unlikely events.

Response 2.2: The State is correct in pointing out that the individual protection assessment is the only assessment that includes unlikely FEPs; however, the EPA standards are clear that "unlikely" FEPs are to be excluded from the performance assessments for ground-water protection and human intrusion (40 CFR 197.36). The State of Nevada's recommendation is not consistent with EPA's standards that specify different assessments for determining compliance with the ground-water protection and individual-protection standards. EPA's intent for the assessments for ground-water protection and human intrusion is to focus on the *likely* performance of the repository; thus, unlikely events are to be excluded from these two assessments (*see* Response 1.2). Unlikely FEPs should not be included in the assessments for ground-water protection and human intrusion, because inclusion would inappropriately emphasize the contribution of these less likely FEPs when determining the likely behavior of the repository. Exclusion of low-probability FEPs ensures that the assessments for ground-water protection and human intrusion are as intended (*i.e.*, on likely repository performance).

Ground water is an important resource, and potential contamination of ground water is evaluated in all three assessments (*i.e.*, ground-water protection, human intrusion, and individual protection) required by regulations and standards. More specifically, the assessment for ground-water protection must demonstrate compliance with stringent safety standards [*e.g.*, 0.04 millisievert/year (mSv/yr) (4 millirem/year (mrem/yr))] for the potential contamination of drinking water. The assessment for individual protection must demonstrate compliance with a 0.15 mSv/yr (15 mrem/yr) exposure limit from *all* potential exposure pathways (*e.g.*, drinking contaminated water, consuming crops that are assumed to be irrigated with contaminated water, consuming animal products that are assumed to be raised with contaminated water and feed) and include unlikely FEPs. The assessment for human intrusion must demonstrate compliance with a 0.15 mSv/yr (15 mrem/yr) exposure limit from *all* potential exposure pathways, and assume that a human intrusion results in a borehole that provides a direct pathway for water to transport waste to the water table (*i.e.*, the ground-water resource). The Commission considers the multiple and overlapping assessments for ground-water protection, individual protection, and human intrusion, and the associated standards, to provide a comprehensive evaluation of potential ground-water contamination that is protective of the ground-water resource. Requiring the assessments for ground-water protection and human intrusion to include "unlikely" FEPs is not necessary for protection of the ground-water resource nor consistent with the EPA standards.

Comment 2.3: NRC's proposed value for unlikely events would, but should not, allow the exclusion of igneous activity from consideration in the performance assessments for ground-water protection and human intrusion because it could be the largest contributor to dose. The proposed definition for unlikely events is subjective to the extreme because the largest risk contributor is excluded.

Response 2.3: The State's recommendation that igneous activity be included because, as currently assessed, igneous activity is the largest contributor to risk, is not consistent with EPA's standards. EPA's standards specify that NRC is to determine FEPs are either "unlikely" or "very unlikely," based on the likelihood of occurrence of the FEPs and not on other considerations, such as risk. The Commission explained, in its proposed rule (67 FR 3629; January 25, 2002), that EPA's intent for the assessments for ground-water protection and human intrusion was to focus on the *likely* performance of the repository; thus, unlikely events are to be excluded from these two assessments. Unlikely FEPs should not be included in the assessments for ground-water protection and human intrusion because inclusion would inappropriately emphasize the contribution of these less likely FEPs when determining the likely behavior of the repository. Exclusion of such low-probability FEPs ensures that the assessments for ground-water protection and human intrusion are as intended (*i.e.*, on likely repository performance), and are not considered "subjective to the extreme," because of this exclusion.

Exclusion of igneous activity in the assessments for ground-water protection and human intrusion is not expected to have a significant effect on either assessment. The assessment for ground-water protection is not affected because the dose from an igneous event is predominately through the air pathway and not the ground-water pathway. The assessment for human intrusion is not affected because the assumed intrusion (*i.e.*, single borehole to the water table) scenario leads to a ground-water pathway, whereas the igneous event primarily involves the air pathway. As the State has indicated, the air pathway is considered in the assessment for individual protection.

Comment 2.4: The performance assessments for human intrusion and individual protection should consider similar FEPs, to provide a meaningful comparison of repository resilience.

Response 2.4: As discussed in the previous responses (under Comments 2.2 and 2.3), each of the three performance assessments (*i.e.*, those conducted to demonstrate compliance with the standards for individual protection, ground-water protection, and resiliency to an assumed human intrusion) has its own specific purpose, assumptions, and standards. The EPA standards and NRC's regulations do not require that direct comparisons be made between any of these assessments. The performance assessment for human intrusion demonstrates the resilience of the repository by assuming a specified intrusion occurs and by requiring potential exposures to comply with the same overall exposure limit [*i.e.*, 0.15 mSv/yr (15 mrem/yr) from all pathways] used for individual protection. Although the EPA standards clearly state "unlikely" FEPs are not to be included in the assessment for human intrusion and ground-water protection (40 CFR 197.36), the performance assessments for individual protection, ground-water protection, and human intrusion provide a comprehensive evaluation of FEPs to inform the licensing decision. Regardless of which aspect of repository performance is the largest risk contributor, the regulatory requirements for all assessments must be met.

Comment 2.5: The possibility of multiple intrusions into the repository should be considered as a likely event and included in the evaluation of human intrusion rather than the "single" intrusion prescribed in the EPA standards and adopted in NRC's regulations.

Response 2.5: The State raised a similar concern (*i.e.*, consideration for multiple intrusions) during the public comment period for part 63. The Commission addressed this issue when it finalized part 63, stating:

> Another related issue is whether the stylized calculation should consider multiple intrusions. The final EPA standards resolve this issue in favor of a single intrusion. Moreover, in its findings and recommendations, NAS [National Academy of Sciences] argued against analyses of whether and how often exploratory drilling would occur at Yucca Mountain because of the complexities associated in such assessments. Simply stated, the NAS felt that no one can accurately predict the characteristics of future human society and their technology. In the context of human intrusion, estimating the probability of exploratory drilling for a given resource relies on an ability to predict certain economic and technical factors that influence supply of, and demand for, that resource. In fact, NAS noted that the continued advances in noninvasive geophysical techniques may, in fact, reduce the number and frequency of exploratory boreholes * * *
>
> Consequently, any consideration for the drilling of multiple exploratory boreholes or later drilling of more boreholes further increases the speculative nature of the intrusion scenario with potentially little increase in understanding repository resilience.

The EPA standards provide for consideration of a single borehole at the earliest time that human intrusion into the waste package can occur without recognition by the drillers. The Commission believes this is an appropriate test for evaluating repository resilience. Moreover, the suggested alternative to evaluate multiple intrusions for the human intrusion calculation fails to reflect the purpose of the human intrusion calculation, that is to test the resilience of the repository, not to evaluate the speculative issue of frequency of the intrusion (66 FR 55761; November 2, 2001).

3. DOE Comments

DOE supports NRC's proposed probability range for defining unlikely FEPs as a reasonable and conservative choice.

Comment 3.1: For assessing operational safety of the repository, NRC's regulations specify that operational events that occur one or more times during the operational period are considered reasonably likely to occur. Applying this definition (*i.e.*, one or more times) to the specification of a value to define unlikely FEPs results in an upper bound of one chance of occurrence within 10,000 years (*i.e.*, approximately 10^{-4} annual probability). Thus, NRC's proposal of an upper bound of one chance in ten of occurring within 10,000 years (*i.e.*, 10^{-5} annual probability) for unlikely FEPs is a reasonable and conservative approach.

Response 3.1: During the development of the proposed rulemaking, NRC considered an annual probability of 10^{-4} for the demarcation between likely and unlikely FEPs, but ultimately decided on a probability of one chance in ten of occurring within 10,000 years (*i.e.*, annual probability of 10^{-5}) as a prudent value, given the uncertainties in estimating the occurrence of FEPs over the very long compliance period. The Commission was careful to point out that its specification for unlikely events was in the context of very specific assessments (*i.e.*, those made to assess compliance with ground-water protection and human-intrusion standards) over a long time frame, and this specification was not intended to suggest or imply precedent for other significantly different applications that used the term "unlikely" (67 FR 3630; January 25, 2002). Similarly, significantly different applications such as requirements for the safety assessment of the operational period (*e.g.*, significantly shorter time period, inclusion of worker activities) should not imply a precedent for specifying a value for unlikely FEPs.

4. NEI Comments

NEI supports NRC's proposed probability range for defining unlikely FEPs. NEI stated that the proposed definition of unlikely FEPs will facilitate a reasonable and prudently conservative analysis of these aspects of repository performance (*i.e.*, ground-water protection and human intrusion).

5. Exelon Generation Comments

Exelon Generation supports NRC's proposed probability range for defining unlikely FEPs.

III. Changes From the Proposed Rule

Section 63.342 Limits on Performance Assessments

The word "should" has been replaced with the word "shall" to be consistent with the final EPA standard (40 CFR 197.36).

IV. Section-by-Section Analysis

Section 63.342 Limits on Performance Assessments

This section specifies how DOE will determine which features, events, and processes will be considered in the performance assessments described in subpart L of part 63.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this rule, NRC is establishing probability limits for unlikely FEPs at a potential geologic repository for high-level radioactive waste at Yucca Mountain, Nevada. This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Finding of No Significant Environmental Impact: Availability

Pursuant to section 121(c) of the Nuclear Waste Policy Act, this rule does not require the preparation of an environmental impact statement under section 102(2)(c) of the National Environmental Policy Act of 1969 or any environmental review under subparagraph (E) or (F) of section 102(2) of such act.

VII. Paperwork Reduction Act Statement

This rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995. (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0199.

Public Protection Notification

If a means used to impose an information collection requirement does not display a currently valid OMB control number, NRC may not conduct nor sponsor, and a person is not required to respond to, the information collection.

VIII. Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. It is available for inspection in the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

Single copies of the analysis may be obtained from Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6203, e-mail: *cwp@ nrc.gov*.

IX. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule relates to the licensing of only one entity, DOE, which does not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

X. Backfit Analysis

NRC has determined that the backfit rule does not apply to this rule and, therefore, that a backfit analysis is not required, because this rule does not involve any provisions that would impose backfits as defined in 10 CFR chapter 1.

XI. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 63

Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 63.

PART 63—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN A GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA

1. The authority citation for part 63 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat.1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2238, as amended (42 U.S.C. 10134, 10141); and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

2. Section 63.342 is revised to read as follows:

§ 63.342 Limits on performance assessments.

DOE's performance assessments shall not include consideration of very unlikely features, events, or processes, *i.e.*, those that are estimated to have less than one chance in 10,000 of occurring within 10,000 years of disposal. DOE's assessments for the human-intrusion and ground-water protection standards shall not include consideration of unlikely features, events, and processes, or sequences of events and processes, *i.e.*, those that are estimated to have less than one chance in 10 and at least one chance in 10,000 of occurring within 10,000 years of disposal. In addition, DOE's performance assessments need not evaluate the impacts resulting from any features, events, and processes or sequences of events and processes with a higher chance of occurrence if the results of the performance assessments would not be changed significantly.

Dated at Rockville, Maryland, this 2nd day of October, 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–25521 Filed 10–7–02; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1132]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to reflect the annual indexing of the low reserve tranche and the reserve requirement exemption for 2003, and announces the annual indexing of the deposit reporting cutoff level that will be effective beginning in September 2003. The amendments increase the amount of transaction accounts subject to a reserve requirement ratio of three percent in 2003, as required by section 19(b)(2)(C) of the Federal Reserve Act, from $41.3 million to $42.1 million of net transaction accounts. This adjustment is known as the low reserve tranche adjustment. The Board is increasing from $5.7 million to $6.0 million the amount of reservable liabilities of each depository institution that is subject to a reserve requirement of zero percent in 2003. This action is required by section 19(b)(11)(B) of the Federal Reserve Act, and the adjustment is known as the reservable liabilities exemption adjustment. The Board is also increasing the deposit cutoff level that is used in conjunction with the reservable liabilities exemption to determine the frequency of deposit reporting from $106.9 million to $112.3 million for nonexempt depository institutions. (Nonexempt institutions are those with total reservable liabilities exceeding the amount exempted from reserve requirements.) Thus, beginning in September 2003, nonexempt institutions with total deposits of $112.3 million or more will be required to report weekly while nonexempt institutions with total deposits less than $112.3 million may report quarterly, in both cases on form FR 2900. Exempt institutions with at least $6.0 million in total deposits may report annually on form FR 2910a.

DATES: Effective Date: November 7, 2002.

Compliance Dates: For depository institutions that report weekly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the fourteen-day reserve computation period that begins Tuesday, November 26, 2002, and the corresponding fourteen-day reserve maintenance period that begins Thursday, December 26, 2002. For institutions that report quarterly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the seven-day reserve computation period that begins Tuesday, December 17, 2002, and the corresponding seven-day reserve maintenance period that begins Thursday, January 16, 2003. For all depository institutions, the deposit cutoff level will be used to screen institutions in July of 2003 to determine the reporting frequency for the twelve month period that begins in September 2003.

FOR FURTHER INFORMATION CONTACT: Heatherun Allison, Counsel (202/452–3565), Legal Division, or June O'Brien, Economist (202/452–3790), Division of Monetary Affairs; for user of Telecommunications Device for the Deaf (TDD) only, contact (202/872–4984); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The required reserve ratio applicable to transaction account balances exceeding the low reserve tranche is 10 percent. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting the low reserve tranche for the next calendar year. The adjustment in the tranche is to be 80 percent of the percentage increase or decrease in net transaction accounts at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Currently, the low reserve tranche on net transaction accounts is $41.3 million. Net transaction accounts of all depository institutions rose by 2.5 percent (from $596.7 billion to $611.4 billion) from June 30, 2001, to June 30, 2002. In accordance with section 19(b)(2), the Board is amending Regulation D (12 CFR part 204) to increase the low reserve tranche for transaction accounts for 2003 by $0.8 million to $42.1 million.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. Unlike the adjustment for the low reserve tranche on net transaction accounts, which adjustment can result in a decrease as well as an increase, the change in the exemption amount is to be made only if the total reservable liabilities held at all depository institutions increase from one year to the next. The percentage increase in the exemption is to be 80 percent of the increase in total reservable liabilities of all depository institutions as of the year ending June 30. Total reservable liabilities of all depository institutions increased by 7.1 percent (from $2,317.7 billion to $2,481.7 billion) from June 30, 2001, to June 30, 2002. Consequently, the reservable liabilities exemption amount for 2003 under section 19(b)(11)(B) will be increased by $0.3 million from $5.7 million to $6.0 million.[1]

The effect of the application of section 19(b) of the Federal Reserve Act to the change in the total net transaction accounts and the change in the total reservable liabilities from June 30, 2001, to June 30, 2002, is to increase the low reserve tranche to $42.1 million, to apply a zero percent reserve requirement on the first $6.0 million of net transaction accounts, and to apply a three percent reserve requirement on the remainder of the low reserve tranche.

For institutions that report weekly, the tranche adjustment and the reservable liabilities exemption adjustment will be effective for the fourteen-day reserve computation period beginning Tuesday, November 26, 2002, and for the corresponding fourteen-day reserve maintenance period beginning Thursday, December 26, 2002. For institutions that report quarterly, the tranche adjustment and the reservable liabilities exemption adjustment will be effective for the seven-day computation period beginning Tuesday, December 17, 2002, and for the corresponding seven-day reserve maintenance period beginning Thursday, January 16, 2003.

In order to reduce the reporting burden for small institutions, the Board has established a deposit reporting cutoff level to determine deposit reporting frequency. The Board has specified that the annual percentage increase in the nonexempt deposit cutoff be set equal to 80 percent of the growth rate of total deposits at all depository institutions over the one-year period ending on the most recent June 30.

From June 30, 2001, to June 30, 2002, total deposits increased 6.3 percent, from $5,602.3 billion to $5,955.9 billion. Accordingly, the nonexempt deposit cutoff level will increase by $5.4 million from $106.9 million in 2002 to $112.3 million in 2003. Based on the indexation of the reservable liabilities exemption, the cutoff level for total deposits above which reports of deposits must be filed will rise from $5.7 million to $6.0 million. Under the deposit reporting system, institutions are screened during each year to determine their reporting category beginning in the September of that year. Hence, the cutoff level would be used in the 2003 deposit report screening process and new deposit reporting panels will be implemented in September 2003.

Thus, effective in September 2003, all U.S. branches and agencies of foreign banks and Edge and Agreement corporations, regardless of size, and other institutions with total reservable liabilities exceeding $6.0 million (nonexempt institutions) and with total deposits at or above $112.3 million would be required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (form FR 2900). Nonexempt institutions with total deposits below $112.3 million could file the FR 2900 quarterly. Institutions that obtain funds from non-U.S. sources or that have foreign branches or IBFs would continue to be required to file the Report of Certain Eurocurrency Transactions (forms FR 2950/FR 2951) at the same frequency as they file the form FR 2900. Institutions with reservable liabilities at or below the exemption amount of $6.0 million (exempt institutions) and with at least $6.0 million in total deposits would be required to file the Annual Report of Total Deposits and Reservable Liabilities (form FR 2910a). Institutions with total deposits below the exemption level of $6.0 million would be excused from reporting if their deposits can be estimated from other data sources.

Finally, the Board may require a depository institution to report on a weekly basis, regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or overstates the deductions allowed in computing required reserve balances.

Notice. The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments prescribed by statute and by the Board's policy concerning reporting practices. In addition, the reservable liabilities exemption adjustment and the increases for reporting purposes in the deposit cutoff level reduce regulatory burdens on depository institutions, and the low reserve tranche adjustment will have a *de minimis* effect on depository institutions with net transaction accounts exceeding $42.1 million. Accordingly, the Board finds good cause for determining, and so determines, that notice in accordance with 5 U.S.C. 553(b) is unnecessary.

Regulatory Flexibility Analysis

The Board certifies that these amendments will not have a substantial economic impact on small depository institutions.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

[1] Consistent with Board practice, the tranche and exemption amounts have been rounded to the nearest $0.1 million.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. Section 204.9 is revised to read as follows:

§ 204.9 Reserve requirement ratios.

The following reserve ratios are prescribed for all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement
Net transaction accounts:	
$0 to $6.0 million	0 percent of amount.
Over $6.0 million and up to $42.1 million.	3 percent of amount.
Over $42.1 million.	$1,083,000 plus 10 percent of amount over $42.1 million.
Nonpersonal time deposits.	0 percent.
Eurocurrency liabilities.	0 percent.

Dated: October 2, 2002.

By order of the Board of Governors of the Federal Reserve System.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–25484 Filed 10–7–02; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE189, Special Condition 23–129–SC]

Special Conditions; Atlantic Aero, Inc. on the Raytheon Models 300, 300LW, B300, and B300C; Protection of Electronic Flight Instrument Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Atlantic Aero, Inc., P.O. Box 35408, Greensboro, North Carolina 27425–5408 for a Supplemental Type Certificate for the Raytheon Model 300, 300LW, B300 and B300C airplanes. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of an electronic flight instrument system (EFIS) display for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is September 25, 2002. Comments must be received on or before November 7, 2002.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE189, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE189. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

SUPPLEMENTARY INFORMATION:

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE189." The postcard will be date stamped and returned to the commenter.

Background

On May 17, 2002, Atlantic Aero, Inc., P.O. Box 35408, Greensboro, North Carolina 27425–5408, made application to the FAA for a new Supplemental Type Certificate for the Raytheon Model 300, 300LW, B300, and B300C airplanes. The Raytheon Model 300 series airplane is currently approved under TC No. A24CE. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS, that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Atlantic Aero, Inc. must show that the Raytheon Model 300, 300LW, B300, and B300C aircraft meet the following provisions, or the applicable regulations in effect on the date of application for the change to the Raytheon Model 300, 300LW, B300, and B300C: For those areas modified or impacted by the installation of the Collins FD 2000 EFIS system the following paragraphs as amended by Amendments 23–1 through 23–54 must be complied with: 23.305, 23.307, 23.365, 23.603, 23.609, 23.611, 23.613, 23.625, 23.627, 23.771, 23.773, 23.777, 23.1301, 23.1303, 23.1309, 23.1311, 23.1321, 23.1322, 23.1331, 23.1335, 23.1351, 23.1357, 23.1359, 23.1361, 23.1365, 23.1367, 23.1381, 23.1431, 23.1529, 23.1541, 23.1543, 23.1581 and the special conditions adopted by this rulemaking action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Atlantic Aero, Inc. plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz 500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to Raytheon Model 300, 300LW, B300, and B300C airplanes. Should Atlantic Aero, Inc. apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has

determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Raytheon Model 300, 300LW, B300, and B300C airplanes modified by Atlantic Aero, Inc. to add an EFIS.

1. *Protection of Electrical and Electronic Systems From High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri, on September 25, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–25471 Filed 10–7–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30332; Amdt. No. 3025]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 8, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 8, 2002.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: PO Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAM as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97:

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on September 27, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.35, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective October 31, 2002*

Huntsville, AL, Huntsville Intl-Carl T. Jones Field, ILS RWY 18R, Amdt 22
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, Converging ILS Y Rwy 18L, Orig
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, Converging ILS Z Rwy 18L, Orig
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, ILS Y Rwy 18L, Orig
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, ILS Z Rwy 18L, Orig

** * * Effective November 28, 2002*

Alabaster, AL, Shelby County, RNAV (GPS) RWY 33, ORIG
Bentonville, AR, Bentonville Muni/Louise M. Thaden Field, RNAV (GPS) Rwy 18, Orig
Bentonville, AR, Bentonville Muni/Louise M. Thaden Field, RNAV (GPS) Rwy 36, Orig
Bentonville, AR, Bentonville Muni/Louise M. Thaden Field, VOR–A, Amdt 12
Bentonville, AR, Bentonville Muni/Louise M. Thaden Field, VOR/DME–B, Amdt 5
Bentonville, AR, Bentonville Muni/Louise M. Thaden Field, GPS Rwy 18, Amdt 1, Cancelled
Bentonville, AR, Bentonville Muni/Louise M. Thaden Field, GPS Rwy 36, Amdt 1, Cancelled
Palm Springs, CA, Desert Resorts Regional, VOR–A, Orig-A
San Diego, CA, San Diego Intl-Lindbergh Field, NDB Rwy 9, Amdt 19C
San Diego, CA, San Diego Intl-Lindbergh Field, NDB Rwy 27, Amdt 1D
San Diego, CA, San Diego Intl-Lindbergh Field, RNAV (GPS) Rwy 9, Orig
San Diego, CA, San Diego Intl-Lindbergh Field, RNAV (GPS) Rwy 27, Orig
Twentynine Palms, CA, Twentynine Palms, VOR Rwy 26, Amdt 1
Twentynine Palms, CA, Twentynine Palms, RNAV (GPS) Rwy 26, Orig
Zephyrhills, FL, Zephyrhills Muni, NDB Rwy 4, Orig
Zephyrhills, FL, Zephyrhills Muni, NDB Rwy 4, Orig, Cancelled
Chicago, IL, Chicago Midway, ILS Rwy 13C, Amdt 41
Chicago, IL, Chicago Midway, ILS Rwy 31C, Amdt 6
Chicago, IL, Chicago Midway, RNAV (GPS) Rwy 4L, Orig
Chicago, IL, Chicago Midway, RNAV (GPS) Rwy 13L, Orig
Chicago, IL, Chicago Midway, RNAV (GPS) Rwy 22R, Orig
Chicago, IL, Chicago Midway, RNAV (GPS) Rwy 31R, Orig
Muskegon, MI, Muskegon County, NDB Rwy 32, Amdt 12
Muskegon, MI, Muskegon County, ILS Rwy 24, Amdt 4
Muskegon, MI, Muskegon County, ILS Rwy 32, Amdt 17
Muskegon, MI, Muskegon County, RNAV (GPS) Rwy 6, Orig
Muskegon, MI, Muskegon County, RNAV (GPS) Rwy 14, Orig
Muskegon, MI, Muskegon County, RNAV (GPS) Rwy 24, Orig
Muskegon, MI, Muskegon County, RNAV (GPS) Rwy 32, Orig
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, RNAV (GPS) Rwy 4, Amdt 1
Ainsworth, NE, Ainsworth Muni, RNAV (GPS) Rwy 17, Orig
Ainsworth, NE, Ainsworth Muni, RNAV (GPS) Rwy 35, Orig
Ainsworth, NE, Ainsworth Muni, VOR Rwy 17, Amdt 3
Ainsworth, NE, Ainsworth Muni, VOR Rwy 35, Amdt 4
Ainsworth, NE, Ainsworth Muni, GPS Rwy 35, Orig-A Cancelled
Scribner, NE, Scribner State, RNAV (GPS) Rwy 17, Orig
Scribner, NE, Scribner State, RNAV (GPS) Rwy 35, Orig
Scribner, NE, Scribner State, VOR Rwy 35, Amdt 2
Matawan, NJ, Marlboro, VOR OR GPS–A, Amdt 1, Cancelled
Matawan, NJ, Marlboro, VOR/DME RNAV OR GPS Rwy 9, Amdt 1, Cancelled
Alamogordo, NM, Alamogordo-White Sands Regional, RNAV (GPS) Rwy 3, Orig
Alamogordo, NM, Alamogordo-White Sands Regional, VOR/DME Rwy 3, Orig
Alamogordo, NM, Alamogordo-White Sands Regional, VOR Rwy 3, Amdt 2
Alamogordo, NM, Alamogordo-White Sands Regional, NDB Rwy 3, Amdt 5
Alamogordo, NM, Alamogordo-White Sands Regional, GPS Rwy 3, Amdt 1A Cancelled
Durhamville, NY, Kamp, VOR OR GPS Rwy 28, Amdt 1A, Cancelled
Olean, NY, Cattaraugus County-Olean, NDB Rwy 22, Amdt 12A, Cancelled
Newburgh, NY, Stewart Intl, NDB Rwy 9, Amdt 8B
Newburgh, NY, Stewart Intl, ILS Rwy 9, Amdt 9
Newburgh, NY, Stewart Intl, RNAV (GPS) Rwy 9, Orig
Newburgh, NY, Stewart Intl, RNAV (GPS) Rwy 16, Orig
Newburgh, NY, Stewart Intl, (GPS) Rwy 16, Orig, Cancelled
Newburgh, NY, Stewart Intl, RNAV (GPS) Rwy 27, Orig
Newburgh, NY, Stewart Intl, GPS Rwy 27, Orig, Cancelled
Newburgh, NY, Stewart Intl, RNAV (GPS) Rwy 34, Orig
Kinston, NC, Kinston Regional Jetport at Stallings Field, VOR Rwy 23, Amdt 14
Louisburg, NC, Franklin County, ILS Rwy 4, Amdt 2
Bristow, OK, Jones Memorial, RNAV (GPS) Rwy 17, Orig
Bristow, OK, Jones Memorial, RNAV (GPS) Rwy 35, Orig
Bristow, OK, Jones Memorial, NDB Rwy 35, Amdt 2
Bristow, OK, Jones Memorial, GPS Rwy 17, Orig, Cancelled
Bristow, OK, Jones Memorial, GPS Rwy 35, Orig, Cancelled
Goldsby, OK, David Jay Perry, RNAV (GPS) Rwy 31, Orig
Goldsby, OK, David Jay Perry, VOR/DME Rwy 31, Amdt 1
Goldsby, OK, David Jay Perry, GPS Rwy 31, Orig, Cancelled
Madill, OK, Madill Muni, RNAV (GPS) Rwy 18, Orig
Madill, OK, Madill Muni, GPS Rwy 18, Orig Cancelled
Mooreland, OK, Mooreland Muni, RNAV (GPS) Rwy 17, Orig

Mooreland, OK, Mooreland Muni, GPS Rwy 17, Orig, Cancelled
Muskogee, OK, Muskogee/Davis Field, RNAV (GPS) Rwy 4, Orig
Muskogee, OK, Muskogee/Davis Field, RNAV (GPS) Rwy 31, Orig
Muskogee, OK, Muskogee/Davis Field, NDB Rwy 31, Amdt 10
Muskogee, OK, Muskogee/Davis Field, VOR Rwy 31, Amdt 4
Muskogee, OK, Muskogee/Davis Field, GPS Rwy 4, Orig–B, Cancelled
Muskogee, OK, Muskogee/Davis Field, GPS Rwy 31, Orig, Cancelled
Bloomsburg, PA, Bloomsburg Muni, VOR–A, Orig
Bloomsburg, PA, Bloomsburg, Muni, VOR OR GPS Rwy 8, Amdt 2, Cancelled
Bloomsburg, PA, Bloomsburg, Muni, RNAV (GPS)–B Orig
Philadelphia, PA, Wings Field, VOR/DME RNAV Rwy 6, Amdt 4, Cancelled
Philadelphia, PA, Wings Field, NDB Rwy 6, Amdt 9
Philadelphia, PA, Wings Field, GPS Rwy 24, Orig, Cancelled
Philadelphia, PA, Wings Field, RNAV (GPS) Rwy 6, Orig
Philadelphia, PA, Wings Field, RNAV (GPS) Rwy 24, Orig
Dallas-Fort Worth, TX, Dallas-Fort Worth International, ILS Rwy 35C, Amdt
Dallas-Fort Worth, TX, Dallas-Fort Worth International, Converging ILS Rwy 35C, Amdt 5
Dallas-Fort Worth, TX, Dallas-Fort Worth International, RNAV (GPS) Rwy 35C, Orig
Dallas-Fort Worth, TX, Dallas-Fort Worth International, GPS Rwy 35C, Orig-A, Cancelled
Blanding, UT, Blanding Muni, RNAV (GPS) Rwy 35, Orig
Blanding, UT, Blanding Muni, GPS Rwy 35, Orig, Cancelled
Franklin, VA, Franklin Muni-John Beverly Rose, RNAV (GPS) Rwy 9, Orig
Franklin, VA, Franklin Muni-John Beverly Rose, RNAV (GPS) Rwy 27, Orig
Gordonsville, VA, Gordonsville Muni, NDB OR GPS Rwy 23, Orig, Cancelled
Wakefield, VA, Wakefield Muni, NDB Rwy 20, Amdt 4C
Wakefield, VA, Wakefield Muni, RNAV, (GPS) Rwy 20, Orig
Bellingham, WA, Bellingham Intl, ILS Rwy 16, Amdt 4
Bellingham, WA, Bellingham Intl, NDB Rwy 16, Amdt 1
Prairie Du Chien, WI, Prairie Du Chien Muni, VOR/DME Rwy 29, Amdt 8
Prairie Du Chien, WI, Prairie Du Chien Muni, RNAV (GPS) Rwy 14, Orig
Prairie Du Chien, WI, Prairie Du Chien Muni, RNAV (GPS) Rwy 32, Orig
Prairie Du Chien, WI, Prairie Du Chien Muni, RNAV (GPS) Rwy 29, Orig
Prairie Du Chien, WI, Prairie Du Chien Muni, GPS Rwy 29, Orig, Cancelled

[FR Doc. 02–25309 Filed 10–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30333; Amdt. No. 3026]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: This rule is effective October 8, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 8, 2002.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective date of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAP and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executives Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on September 27, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

According, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2)

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPS, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
08/15/02	NJ	Teterboro	Teterboro	2/8518	VOR RWY 24, Orig.
09/11/02	WV	Clarksburg	Harrison/Marion Regional	2/9616	VOR or GPS Rwy 3, AMDT 15A.
09/11/02	NJ	Teterboro	Teterboro	2/9624	ILS Rwy 6, Amdt 29A.
09/11/02	NJ	Teterboro	Teterboro	2/9626	VOR/DME Rwy 6, Orig-B.
09/11/02	NJ	Teterboro	Teterboro	2/9627	COPTER ILS Rwy 6, AMDT 1B.
09/11/02	NJ	Teterboro	Teterboro	2/9639	VOR/DME RNAV Rwy 24, Orig-B.
09/12/02	NY	Newburgh	Stewart Intl	2/9643	ILS Rwy 27, Orig.
09/13/02	TX	Houston	Sugar Land Muni/Hull Field	2/9673	ILS Rwy 35, Amdt 3.
09/13/02	TX	Houston	Sugar Land Muni/Hull Field	2/9675	VOR/DME–A, Amdt 1.
09/13/02	TX	Houston	Sugar Land Muni/Hull Field	2/9676	NDB Rwy 17, Amdt 9.
09/13/02	TX	Houston	Sugar Land Muni/Hull Field	2/9677	VOR/DME RNAV Rwy 35, Amdt 8.
09/13/02	TX	Houston	Sugar Land Muni/Hull Field	2/9682	RNAV (GPS) Rwy 17, Orig-A.
09/13/02	TX	Houston	Sugar Land Muni/Hull Field	2/9687	RNAV (GPS) Rwy 35, Orig.
09/13/02	TX	Houston	Sugar Land Muni/Hull Field	2/9688	NDB Rwy 35, Amdt 5.
09/16/02	TX	Center	Center Muni	2/9766	GPS Rwy 17, Amdt 1.
09/16/02	TX	Center	Center Muni	2/9767	GPS Rwy 35, Orig.
09/18/02	KY	Louisville	Louisville Intl-Standiford Field	2/9810	ILS Rwy 35L (Cat I, II, III), Amdt 1A.
09/18/02	IL	Chicago/Prospect Heights/Wheeling	Chicago/Palwaukee Muni	2/9811	VOR Rwy 16, Orig-A.
09/19/02	OH	Marion	Marion Muni	2/9847	LOC/DME Rwy 24, Orig.
09/19/02	OH	Marion	Marion Muni	2/9848	GPS Rwy 24, Orig-A.
09/19/02	CA	Vacaville	Nut Tree	2/9852	GPS Rwy 20, Amdt 1A.
09/19/02	MN	Winona	Winona Muni-Conrad Field	2/9857	VOR Rwy 29, Amdt 16.
09/19/02	MN	Winona	Winona Muni-Conrad Field	2/9858	RNAV (GPS) Rwy 29, Orig.
09/23/02	FM	Yap Island	Yap Intl	2/9977	NDB Rwy 7, Amdt 1.
09/24/02	WI	Sturgeon Bay	Door County Cherryland	2/0071	NDB or GPS Rwy 1, Amdt 10.
09/24/02	WI	Sturgeon Bay	Door County Cherryland	2/0072	SDF Rwy 1, Amdt 6.
09/25/02	OH	Cleveland	Cleveland Hopkins Intl	2/0123	NDB or GPS Rwy 24L, Amdt 1C.
09/25/02	WI	Madison	Dane County Regional Truax Field	2/0136	VOR Rwy 13, Orig.
09/25/02	WI	Madison	Dane County Regional Truax Field	2/0138	RNAV (GPS) Rwy 13, Orig.
09/25/02	WI	Madison	Dane County Regional Truax Field	2/0139	RNAV (GPS) Rwy 31, Orig.

FDC date	State	City	Airport	FDC No.	Subject
09/25/02	WI	Madison	Dane County Regional Truax Field	2/0140	VOR/DME or Tacan Rwy 13, Orig.
09/25/02	WI	Madison	Dane County Regional Truax Field	2/0141	VOR/DME or Tacan Rwy 31, Orig.
09/26/02	MI	Grand Rapids	Gerald R. Ford Intl	2/0116	ILS Rwy 8R, Amdt 5C

[FR Doc. 02–25310 Filed 10–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1 and 39

RIN 2900–AJ77

Prohibition of Interment or Memorialization in National Cemeteries and Certain State Cemeteries Due to Commission of Capital Crimes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Veterans Affairs (VA) regulations governing eligibility for interment or memorialization in national cemeteries and in State cemeteries receiving State cemetery grants from VA. The final rule concerns statutory provisions designed to ensure that the remains of certain persons who committed Federal or State capital crimes are not interred in such cemeteries and that the memory of such persons is not memorialized in such cemeteries.

DATES: *Effective Date:* This final rule is effective November 7, 2002.

Applicability Date. The provisions of Public Law 105–116 were enacted on November 21, 1997, and subsequently codified at 38 U.S.C. 2408(d) and 2411. Consistent with the enabling legislation, the provisions to this regulation shall apply to requests for interment or memorialization made on or after November 21, 1997, and to State cemetery grants made on or after November 21, 1997.

FOR FURTHER INFORMATION CONTACT: Kimberly Wright, Program Analyst, Office of Field Programs (401A2), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, or Karen Barber, Program Analyst, Legislative and Regulatory Division (402B3), (202) 273–5307 or (202) 273–5183, respectively. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: On July 21, 2000, the National Cemetery Administration (NCA) published in the **Federal Register** (65 FR 45332) a proposed rule which would implement the provisions of 38 U.S.C. 2408(d) and 2411. The final rule generally prohibits interment or memorialization in a VA national cemetery of a person who is convicted of a Federal capital crime and sentenced to death or life imprisonment, or is convicted of a State capital crime, and sentenced to death or life imprisonment without parole. The final rule, at 38 CFR 1.618, also addresses when Federal officials are authorized to deny burial in VA national cemeteries to persons who are shown by clear and convincing evidence to have committed a Federal or State capital crime but were not convicted of such crime because of flight to avoid prosecution or by death prior to trial. The Secretary is also authorized to provide aid to States for the establishment, expansion and/or improvement of State veterans cemeteries. Under 38 U.S.C. 2408(d)(1), State cemetery grants are conditioned on the application by the individual State of the prohibition against interment or memorialization of individuals convicted of Federal or State capital crimes, or found by clear and convincing evidence to have committed such crimes, without having been convicted of the crimes due to flight or death prior to trial. The final rule amends VA's regulation governing the State Cemetery Grants Program, 38 CFR 39.3(b), to note this requirement.

Comment on Proposed Rule

We provided a 60-day comment period that ended September 19, 2000. We received one written response by e-mail during this period. The response included three comments. First, it suggested improving the proposed rule by using a "deliminating" date to this regulation for consideration of veterans who were convicted prior to 1997. Congress specified that 38 U.S.C. 2411 would apply to applications for interment or memorialization made on or after November 21, 1997. Accordingly, our implementing regulations must reflect this date of applicability. The second comment suggested that, for those cases where a person avoided conviction due to either flight or death, the standard for determining whether a person committed a capital crime should be beyond a reasonable doubt, not preponderance of the evidence. Congress specified that the standard of review for making decisions of this nature is "clear and convincing evidence" (38 U.S.C. 2411) and we have no authority to deviate from this standard of review.

The third comment asked whether there was a problem, in cemeteries where Native Americans and Prisoners of War (POWs) were interred, that might require individuals in these categories who had committed capital crimes to be disinterred. VA is not aware of any problems caused by the interment of Native Americans and POWs that relate to its implementation of the capital crimes prohibition. While such individuals are buried in certain VA national cemeteries, Public Law 105–116, which established the capital-crimes burial prohibition, is not retroactive to interment or memorialization requests predating November 21, 1997. Further, 38 CFR 1.621 provides that, interment in national cemeteries is considered "permanent and final," and sets forth stringent prerequisites for disinterment. Further, it provides that disinterment proceedings are matters that VA may not initiate.

For these reasons, we believe it is not necessary to revise the rule based on the views expressed by the commenter.

Revisions to the Inquiry and Proceedings Process Contained in the Proposed Rule

Since November 1997, NCA cemetery directors have dealt with several benefit cases in which the capital crime ban came into play. The majority of the cases involved situations in which an individual avoided conviction either due to flight or death. Because of lessons learned through experience, we are amending § 1.618. Those modifications, which are described below, are procedural as opposed to substantive in nature.

First, when a cemetery director receives a request for burial and there is reason to believe that a capital crime may have taken place, the cemetery director is required to initiate an inquiry seeking information in order to make an initial decision on the case. Once made aware of this requirement, families often decide to bury at a location other than a VA national cemetery. Under the proposed rule, the cemetery director is required to continue the inquiry process even though the decedent has been buried elsewhere. In order to be sensitive to grieving families, NCA prefers to interpret private burial as a withdrawal of the request for national cemetery burial. Section 1.618(b) of the final rule has been modified so that if alternative burial arrangements are made during the inquiry all further VA action on the request for burial will cease.

Second, § 1.618(c)(2) as proposed included a provision on the number of days the family or other personal representative has to respond to a notice from the cemetery director stating that there appears to be clear and convincing evidence that a capital crime took place. This section has been revised to provide additional time for the family or other personal representative to respond. Upon receipt of the notice, the family or other personal representative will have 15 instead of 10 days to respond.

Third, the proposed version of § 1.618(c)(2) has been modified to include an additional option for the family or other personal representative. Initially, the family or other personal representative could: (1) Request a hearing on the matter, (2) submit a written statement, with or without supporting documentation, for inclusion in the record, or (3) waive these two options. There was no option for the family or other personal representative to end the process if so desired. Through experience, we have found that several families made alternate burial arrangements at a location other than a VA national cemetery. NCA did not receive any further communications regarding national cemetery burial from these families. This new option allows the family or other personal representative to end the benefit decision process at this point and avoid having a finding made by VA. Under the final rule, the family or other personal representative may notify the cemetery director that the request for interment or memorialization is withdrawn, thereby, ending the claim process. This provides the family a simple means of ending the inquiry process. Under the proposed rule, VA was required to complete the process even if the decedent were buried in a private cemetery.

Fourth, § 1.618(d), as proposed, authorized the cemetery director or his or her designee to act as the Hearing Official when the family or other personal representative requests a hearing. As it is not feasible for NCA to train all cemetery directors as Hearing Officials (for potentially a limited number of cases), this section has been modified. Under the final rule, the Director, Memorial Services Network will conduct the hearing.

Fifth, § 1.618(h), as proposed, required that appellate rights be provided even if the burial request was granted. This section has been revised to make clear that appellate rights need only be furnished when a request for burial or interment is denied. Notice of appellate rights accompanying a decision granting a request for burial or interment is unnecessary and may be confusing to the recipient of the notice.

In addition, because the regulations are clear as to their scope, the information included in the Note to § 1.617 is unnecessary. Therefore, the Note following that section has been removed.

Over the past four years NCA staff has closely monitored the processing of cases where the capital crimes prohibition might apply. The above changes are based upon NCA experience gathered during this time. These minor procedural modifications will reduce the burden on grieving families, improve clarity, reduce processing time, and increase efficiency.

Based on the rational set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule without change except that we are making nonsubstantive changes for purposes of clarity and are making the changes discussed above.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers for this rule are 64.201, 64.202, and 64.203.

List of Subjects

38 CFR Part 1

Administrative practice and procedure, Cemeteries, Claims, Crimes, Criminal offenses.

38 CFR Part 39

Cemeteries, Grant programs-veterans, Veterans.

Approved: September 25, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR parts 1 and 39 are amended as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 1.600 is added to read as follows:

§ 1.600 Definitions.

(a) [*Reserved*]

(b) *Definitions.* For purposes of §§ 1.617 and 1.618:

Appropriate State official means a State attorney general or other official with statewide responsibility for law enforcement or penal functions.

Clear and convincing evidence means that degree of proof which produces in the mind of the fact-finder a firm belief regarding the question at issue.

Convicted means a finding of guilt by a judgment or verdict or based on a plea of guilty, by a Federal or State criminal court.

Federal capital crime means an offense under Federal law for which the death penalty or life imprisonment may be imposed.

Interment means the burial of casketed remains or the placement or scattering of cremated remains.

Life imprisonment means a sentence of a Federal or State criminal court directing confinement in a penal institution for life.

Memorialization means any action taken to honor the memory of a deceased individual:

Personal representative means a family member or other individual who

has identified himself or herself to the National Cemetery Administration cemetery director as the person responsible for making decisions concerning the interment of the remains of or memorialization of a deceased individual.

State capital crime means, under State law, the willful, deliberate, or premeditated unlawful killing of another human being for which the death penalty or life imprisonment without parole may be imposed.

(Authority: 38 U.S.C. 2408, 2411)

3. Section 1.617 is added to read as follows:

§ 1.617 Prohibition of interment or memorialization of persons who have been convicted of Federal or State capital crimes.

(a) *Prohibition.* The interment in a national cemetery under the control of the National Cemetery Administration of the remains, or the memorialization, of any of the following persons is prohibited:

(1) Any person identified to the Secretary of Veterans Affairs by the United States Attorney General, prior to approval of interment or memorialization, as an individual who has been convicted of a Federal capital crime and sentenced to death or life imprisonment as a result of such crime.

(2) Any person identified to the Secretary of Veterans Affairs by an appropriate State official, prior to approval of interment or memorialization, as an individual who has been convicted of a State capital crime and sentenced to death or life imprisonment without parole as a result of such crime.

(3) Any person found under procedures specified in § 1.618 to have committed a Federal or State capital crime but have avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution.

(b) *Notice.* The prohibition referred to in paragraph (a)(3) of this section is not contingent on receipt by the Secretary of Veterans Affairs or any other VA official of notice from any Federal or State official.

(c) *Receipt of notification.* The Under Secretary for Memorial Affairs is delegated authority to receive from the United States Attorney General and appropriate State officials on behalf of the Secretary of Veterans Affairs the notification of conviction of capital crimes referred to in paragraphs (a)(1) and (2) of this section.

(d) *Decision where notification previously received.* Upon receipt of a request for interment or memorialization, where the Secretary of Veterans Affairs has received the notification referred to in paragraph (a)(1) or (2) of this section with regard to the deceased, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411.

(e) *Inquiry.* (1) Upon receipt of a request for interment or memorialization, where the Secretary of Veterans Affairs has not received the notification referred to in paragraph (a)(1) or (a)(2) of this section with regard to the deceased, but the cemetery director has reason to believe that the deceased may have been convicted of a Federal or State capital crime, the cemetery director will initiate an inquiry to either:

(i) The United States Attorney General, in the case of a Federal capital crime, requesting notification of whether the deceased has been convicted of a Federal capital crime for which the deceased was sentenced to death or life imprisonment; or

(ii) An appropriate State official, in the case of a State capital crime, requesting notification of whether the deceased has been convicted of a State capital crime for which the deceased was sentenced to death or life imprisonment without parole.

(2) The cemetery director will defer decision on whether to approve interment or memorialization until after a response is received from the Attorney General or appropriate State official.

(f) *Decision after inquiry.* Where an inquiry has been initiated under paragraph (e) of this section, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411 upon receipt of the notification requested under that paragraph, unless the cemetery director initiates an inquiry pursuant to § 1.618(a).

(g) *Notice of decision.* Written notice of a decision under paragraph (d) or (f) of this section will be provided by the cemetery director to the personal representative of the deceased, along with written notice of appellate rights in accordance with § 19.25 of this title. This notice of appellate rights will include notice of the opportunity to file a notice of disagreement with the decision of the cemetery director. Action following receipt of a notice of disagreement with a denial of eligibility for interment or memorialization under this section will be in accordance with §§ 19.26 through 19.38 of this title.

(Authority: 38 U.S.C. 512, 2411, 7105)

4. Section 1.618 is added to read as follows:

§ 1.618 Findings concerning commission of a capital crime where a person has not been convicted due to death or flight to avoid prosecution.

(a) *Inquiry.* With respect to a request for interment or memorialization, if a cemetery director has reason to believe that a deceased individual who is otherwise eligible for interment or memorialization may have committed a Federal or State capital crime, but avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution, the cemetery director, with the assistance of the VA regional counsel, as necessary, will initiate an inquiry seeking information from Federal, State, or local law enforcement officials, or other sources of potentially relevant information. After completion of this inquiry and any further measures required under paragraphs (c), (d), (e), and (f) of this section, the cemetery director will make a decision on the request for interment or memorialization in accordance with paragraph (b), (e), or (g) of this section.

(b) *Decision approving request without a proceeding or termination of a claim by personal representative without a proceeding.* (1) If, after conducting the inquiry described in paragraph (a) of this section, the cemetery director determines that there is no clear and convincing evidence that the deceased committed a Federal or State capital crime of which he or she was not convicted due to death or flight to avoid prosecution, and the deceased remains otherwise eligible, the cemetery director will make a decision approving the interment or memorialization.

(2) If the personal representative elects for burial at a location other than a VA national cemetery, or makes alternate arrangements for burial at a location other than a VA national cemetery, the request for interment or memorialization will be considered withdrawn and action on the request will be terminated.

(c) *Initiation of a proceeding.* (1) If, after conducting the inquiry described in paragraph (a) of this section, the cemetery director determines that there appears to be clear and convincing evidence that the deceased has committed a Federal or State capital crime of which he or she was not convicted by reason of unavailability for trial due to death or flight to avoid prosecution, the cemetery director will provide the personal representative of the deceased with a written summary of the evidence of record and a written notice of procedural options.

(2) The notice of procedural options will inform the personal representative that he or she may, within 15 days of receipt of the notice:

(i) Request a hearing on the matter;

(ii) Submit a written statement, with or without supporting documentation, for inclusion in the record;

(iii) Waive a hearing and submission of a written statement and have the matter forwarded immediately to the Under Secretary for Memorial Affairs for a finding; or

(iv) Notify the cemetery director that the personal representative is withdrawing the request for interment or memorialization, thereby, closing the claim.

(3) The notice of procedural options will also inform the personal representative that, if he or she does not exercise one or more of the stated options within the prescribed period, the matter will be forwarded to the Under Secretary for Memorial Affairs for a finding based on the existing record.

(d) *Hearing.* If a hearing is requested, the Director, Memorial Services Network will conduct the hearing. The purpose of the hearing is to permit the personal representative of the deceased to present evidence concerning whether the deceased committed a crime which would render the deceased ineligible for interment or memorialization in a national cemetery. Testimony at the hearing will be presented under oath, and the personal representative will have the right to representation by counsel and the right to call witnesses. The VA official conducting the hearing will have the authority to administer oaths. The hearing will be conducted in an informal manner and court rules of evidence will not apply. The hearing will be recorded on audiotape and, unless the personal representative waives transcription, a transcript of the hearing will be produced and included in the record.

(e) *Decision of approval or referral for a finding after a proceeding.* Following a hearing or the timely submission of a written statement, or in the event a hearing is waived or no hearing is requested and no written statement is submitted within the time specified:

(1) If the cemetery director determines that it has not been established by clear and convincing evidence that the deceased committed a Federal or State capital crime of which he or she was not convicted due to death or flight to avoid prosecution, and the deceased remains otherwise eligible, the cemetery director will make a decision approving interment or memorialization; or

(2) If the cemetery director believes that there is clear and convincing evidence that the deceased committed a Federal or State capital crime of which he or she was not convicted due to death or flight to avoid prosecution, the cemetery director will forward a request for a finding on that issue, together with the cemetery director's recommendation and a copy of the record to the Under Secretary for Memorial Affairs.

(f) *Finding by the Under Secretary for Memorial Affairs.* Upon receipt of a request from the cemetery director under paragraph (e) of this section, the Under Secretary for Memorial Affairs will make a finding concerning whether the deceased committed a Federal or State capital crime of which he or she was not convicted by reason of unavailability for trial due to death or flight to avoid prosecution. The finding will be based on consideration of the cemetery director's recommendation and the record supplied by the cemetery director.

(1) A finding that the deceased committed a crime referred to in paragraph (f) of this section must be based on clear and convincing evidence.

(2) The cemetery director will be provided with written notification of the finding of the Under Secretary for Memorial Affairs.

(g) *Decision after finding.* Upon receipt of notification of the finding of the Under Secretary for Memorial Affairs, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411. In making that decision, the cemetery director will be bound by the finding of the Under Secretary for Memorial Affairs.

(h) *Notice of decision.* The cemetery director will provide written notice of the finding of the Under Secretary for Memorial Affairs and of a decision under paragraph (b), (e)(1), or (g) of this section. With notice of any decision denying a request for interment or memorialization, the cemetery director will provide written notice of appellate rights to the personal representative of the deceased, in accordance with § 19.25 of this title. This will include notice of the opportunity to file a notice of disagreement with the decision of the cemetery director and the finding of the Under Secretary for Memorial Affairs. Action following receipt of a notice of disagreement with a denial of eligibility for interment or memorialization under this section will be in accordance with §§ 19.26 through 19.38 of this title.

(Authority: 38 U.S.C. 512, 2411)

PART 39—STATE CEMETERY GRANTS

5. The authority citation for part 39 continues to read as follows:

Authority: 38 U.S.C. 2408.

6. In § 39.2, a new paragraph (d) is added immediately following the authority citation at the end of paragraph (c) to read as follows:

§ 39.2 Scope of the State cemetery grants program.

* * * * *

(d) Any grant under this part made on or after November 21, 1997, is made on the condition that after the date of receipt of the grant the State receiving the grant, subject to requirements for receipt of notice in 38 U.S.C. 2408 and 2411, will prohibit in the cemetery for which the grant is furnished the interment of the remains of or the memorialization of any person:

(1) Who has been convicted of a Federal capital crime for which the person was sentenced to death or life imprisonment;

(2) Who has been convicted of a State capital crime for which the person was sentenced to death or life without parole; or

(3) Who has been found by an appropriate State official, under procedures to be established by the State, to have committed a Federal or State capital crime but to have not been convicted of such crime by reason of unavailability for trial due to death or flight to avoid prosecution.

(Authority: 38 U.S.C. 2408, 2411).

7. In § 39.3, paragraph (b)(1) and the authority citation at the end of the section are revised to read as follows:

§ 39.3. Applications with respect to projects.

* * * * *

(b) * * *

(1) Any cemetery established, expanded, or improved through assistance of this program shall be used exclusively for the interment or memorialization of eligible persons, as set forth in §§ 39.1(h) and 39.2(a), whose interment or memorialization is not contrary to the conditions of the grant (see § 39.2(d) and 38 U.S.C. 2408 and 2411).

* * * * *

(Authority: 38 U.S.C. 2408, 2411)

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[FR Doc. 02–25493 Filed 10–7–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AG20

Loan Guaranty: Net Value and Pre-Foreclosure Debt Waivers

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: We are amending the Loan Guaranty Regulations to change the formula for calculating the net value of property securing VA guaranteed loans being terminated and to add criteria for granting preforeclosure debt waivers. The changes regarding net value appear necessary to more accurately reflect current costs. The changes regarding waivers appear necessary to more accurately reflect statutory intent.

DATES: *Effective Date:* November 7, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Fyne, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington DC 20420, telephone (202) 273–7380.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on August 1, 2000 (65 FR 46882), we proposed to amend the Loan Guaranty Regulations (38 CFR part 36) to change the formula for calculating the net value of property securing VA guaranteed loans being terminated and to add criteria for granting preforeclosure debt waivers.

Under current law, when a VA guaranteed loan is reported as being in default, the Secretary is required to establish the "net value" of the property securing the guaranteed loan in default. "Net value" means the fair market value of the property minus certain costs that VA would incur to acquire, manage, and dispose of the property. The relationship between the net value of the property, the total indebtedness of the veteran at the time of loan termination, and the amount of VA's guaranty determines whether or not VA may acquire the property following foreclosure from the foreclosing loan holder. These factors also affect the Government's claim payment to the foreclosing holder under the guaranty. In addition, they will affect the amount of the veteran's debt to the Government under those circumstances where, by law, VA is entitled to establish a debt against a veteran. Moreover, they affect the VA's loss on the guaranty transaction which, in turn, will affect the veteran's ability to have previously-used entitlement restored.

Previously, under § 36.4301, VA computed "net value" using cost data for the proceeding three fiscal years. We proposed to change how VA computes "net value." Instead of using three years' data, we proposed to use data only from the most recent fiscal year.

We also proposed to make nonsubstantive changes to the definition of "net value" for purposes of clarification and conformance to statutory provisions.

The comment period ended October 2, 2000. We received comments from one commenter, an association that represents mortgage lenders. These comments are discussed below. Based on the rationale set forth in the proposed rule and this document, we have adopted the provisions of the proposed rule as a final rule with a change in the definition of "net value," explained below.

Using data from 1995 through 2000, the commenter provided its fiscal analysis of the impact of the proposed rule on the mortgage industry if the proposed rule had been in effect. The analysis performed by the commenter revealed little change in using three years compared to one year. Even so, the commenter requested that VA not change the formula until after conducting a thorough analysis, including the impact on the number of *no-bids (buy-downs)* and consideration of "anticipated changes in policies and procedures".

It is necessary to describe *no-bids* and *buy-downs* to address this concern. VA computes the net value of the property securing the loan in each case prior to termination. This is done to determine whether VA can lower its claim liability. If the difference between the loan indebtedness and the net value is less than VA's maximum claim liability on the case, then VA can reduce its liability by requiring the loan holder to credit the account with the net value of the property. The holder then can convey the property to VA in return for its net value.

If the difference between the loan indebtedness and the net value is greater than VA's maximum claim liability, VA cannot reduce its liability. In that case VA does not specify in advance a minimum amount to be credited to the loan account, and the holder cannot convey the property to VA. The industry typically calls such cases *no-bids*.

When a holder receives advice that a case is a *no-bid*, it may decide to voluntarily waive part of the loan indebtedness. This is done to reduce the difference between loan indebtedness and the net value to a point where the difference is less than VA's claim liability. Then VA can reduce its liability by requiring the loan holder to credit the remaining indebtedness with the net value, and the case is no longer a *no-bid*. The amount waived by the holder is called the *buy-down*.

After giving careful consideration to the comment we have determined that further analyses is not warranted. The argument that we should give consideration to anticipated changes in policies and procedures is not a basis for giving further analysis before establishing a rule change. Furthermore, even if such an analysis were possible, VA's primary goal for this rule was to more accurately reflect in any future year the cost of acquiring, managing, and disposing of properties. Using the most recent data available would provide a better predictor of costs in the coming year.

An example provided by the commenter of a policy change impacting net value was the potential cost of lead-based paint hazard reductions. The commenter expressed concern that moving from considering three years' data to one year's data would likely increase the number of no-bids immediately after VA implemented the lead-based paint procedures. However, as we stated above, VA's primary goal is to accurately reflect the cost to VA of acquiring, managing, and disposing of properties. In the case of lead-based paint procedures, VA has decided not to significantly change procedures and therefore there should be no real changes in costs attributable to them. Just as implementing a new procedure like lead paint abatement could show an immediate impact on no-bids, future cost savings by VA resulting from legislation, regulations, or management efficiencies would be recognized more quickly, to the advantage of loan holders by VA adopting the proposed rule. Therefore VA continues to believe, as the commenter noted, that moving to annualized cost data would have a neutral impact over time.

The definition of net value, in the proposed rule, requires VA to determine the costs of acquiring and disposing of property. One of the cost factors the proposed rule required VA to determine was losses on resale. The commenter requested that VA also include average resale gains in calculating a property's net value. The commenter asserted that this is consistent with the Department's stated goal of creating a net value that more accurately reflects current costs. Failure to recognize such gains would understate a property's net value and unfairly increase no-bids. We agree with the rationale set forth by the commenter, and have made an appropriate change to the final rule so that VA will consider losses and gains when calculating net value using the previous year's operating expenses.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of the final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule only affects VA guaranteed loan foreclosures. Such foreclosures represent only a small part of affected lenders' businesses. Moreover, the effect of the rule will be cost-neutral in almost all cases. Therefore, pursuant to 5 U.S.C. 605(b), the rule is exempt form the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.118.

List of Subjects in 38 CFR Part 36

Condominiums, Flood insurance, Housing, Indians, Individuals with disabilities, Loan programs-housing and community development, Loan programs-Indians, Loan programs-veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: July 12, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as follows:

PART 36—LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. In § 36.4301, the introductory text for the term "Net Value", and paragraph (3) are revised, to read as follows:

§ 36.4301 Definitions.

* * * * *

Net value. The fair market value of real property, minus an amount representing the costs that the Secretary estimates would be incurred by VA in acquiring and disposing of the property. The number to be subtracted from the fair market value will be calculated by multiplying the fair market value by the current cost factor. The cost factor used will be the most recent percentage of the fair market value that VA calculated and published in the Notices section of the **Federal Register** (it is intended that this percentage will be calculated annually). In computing this cost factor, VA will determine the average operating expenses and losses (or gains) on resale incurred for properties acquired under § 36.4320 which were sold during the preceding fiscal year and the average administrative cost to VA associated with the property management activity. The final net value derived from this calculation will be stated as a whole dollar amount (any fractional amount will be rounded up to the next whole dollar). The cost items included in the calculation will be:

* * * * *

(3) *Administrative costs.* (i) An estimate of the total cost for VA of personnel (salary and benefits) and overhead (which may include things such as travel, transportation, communication, utilities, printing, supplies, equipment, insurance claims and other services) associated with the acquisition, management and disposition of property acquired under § 36.4320 of this part. The average administrative costs will be determined by:

(A) Dividing the total cost for VA personnel and overhead salary and benefits costs by the average number of properties on hand and adjusting this figure based on the average holding time for properties sold during the preceding fiscal year; then

(B) Dividing the figure calculated in paragraph (3)(i)(A) of this definition by the VBA ratio of personal services costs to total obligations.

(ii) The three cost averages will be added to the average loss (or gain) on property sold during the preceding fiscal year (based on the average property purchase price) and the sum will be divided by the average fair market value at the time of acquisition for properties which were sold during the preceding fiscal year to derive the percentage to be used in estimating net value.

3. Section 36.4323 is amended by:

A. In paragraph (e)(1)(v), removing "liability." from the end of the paragraph and adding, in its place, "liability; or".

B. Adding paragraph (e)(1)(vi).

C. In paragraph (e)(4), revising the first sentence and the authority citation at the end of the paragraph.

The addition and revisions read as follows:

§ 36.4323 Subrogation and indemnity.

* * * * *

(e) * * *

(1) * * *

(vi) The obligor being released is not the current titleholder to the property and there are no indications of fraud, misrepresentation, or bad faith on the obligor's part in obtaining the loan or disposing of the property or in connection with the loan default.

* * * * *

(4) Determinations made under paragraphs (e)(1) and (e)(2) of this section are intended for the benefit of the Government in reducing the amount of claim payable by VA and/or avoiding the establishment of uncollectible debts owing to the United States. * * *

(Authority: 38 U.S.C. 501, 3703(c)(1), 5302)

* * * * *

[FR Doc. 02–25494 Filed 10–7–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL–7392–1]

RIN 2050–AE91

Municipal Solid Waste Landfill Location Restrictions for Airport Safety

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received adverse comment, we are withdrawing the direct final rule for Municipal Solid Waste Landfill Location Restrictions for Airport Safety. We published the direct final rule on July 11, 2002 (67 FR 45915)

to amend the location restriction requirements in the criteria for municipal solid waste landfills in order to incorporate new landfill siting requirements enacted in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. We stated in that **Federal Register** document that if we received adverse comment by August 12, 2002, we would publish a timely notice of withdrawal in the **Federal Register**. We subsequently received adverse comment on that direct final rule. We will address those comments in a subsequent final action based on the parallel proposal also published on July 11, 2002 (67 FR 45948). As stated in the parallel proposal, we will not institute a second comment period on this action. Although EPA is issuing this withdrawal of its direct final rule, the new siting requirements enacted in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century continue to remain in effect.

DATES: As of October 8, 2002, EPA withdraws the direct final rule published at 67 FR 45915, on July 11, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Moorcones, Office of Solid Waste and Emergency Response, Office of Solid Waste, Municipal and Industrial Solid Waste Division (mail code 5305W), U.S. Environmental Protection Agency Headquarters (EPA HQ), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone: 540–338–1348; e-mail: <*moorcones.mary@epamail.epa.gov*>.

Dated: October 2, 2002.

Christine Todd Whitman,

Administrator, Environmental Protection Agency.

[FR Doc. 02–25582 Filed 10–7–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278, CC Docket No. 92–90, FCC 02–250]

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission announces that it will terminate and close CC Docket No. 92–90. On September 12, 2002, the Commission adopted a Notice of Proposed Rulemaking (NPRM) on its rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). The NPRM seeks comment on whether the Commission's rules governing unsolicited advertising using the telephone and facsimile machine need to be revised in order to more effectively carry out Congress's directives in the TCPA. The Commission will close and terminate CC Docket No. 92–90 and open a new docket to address the issues raised in this proceeding.

DATES: Effective October 8, 2002.

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon or Richard D. Smith at 202–418–2512, Consumer & Governmental Affairs Bureau.

SUPPLEMENTARY INFORMATION: On September 12, 2002, the Commission adopted an NPRM and Memorandum Opinion and Order in CG Docket No. 02–278 and CC Docket No. 92–90, FCC 02–250. In the NPRM, the Commission seeks comment on whether to revise, clarify or adopt any additional rules pursuant to the TCPA on the use of telephone and facsimile machines to deliver unsolicited advertisements. The Commission also seeks comment on whether to reconsider the option of establishing a national do-not-call list. In the Memorandum Opinion and Order, the Commission notes that the telemarketing marketplace has undergone significant changes. In addition, the Commission has received thousands of complaints from consumers who allege violations of the TCPA and our rules and orders. Based on these complaints, the changes in the way telemarketing is conducted, and our decision to revisit the option of establishing a national do-not-call list, it is clear that the focus of this proceeding has changed significantly from when the *1997 TCPA Reconsideration Order* (62 FR 19686, April 23, 1997) was released. Therefore, the Commission announces that it will close and terminate CC Docket No. 92–90 and open a new docket to address the issues raised in this proceeding. Only pending Petitions and Requests for Clarification from CC Docket 92–90 will be incorporated into the instant proceeding. The full text of this document is available on the Commission's website Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW, Washington, DC 20554.

List of Subjects in 47 CFR Part 64

Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–25568 Filed 10–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2149, MB Docket No. 02–101, RM–10429]

Digital Television Broadcast Service; Reliance, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Young Broadcasting of Sioux Falls, Inc., licensee of station KPLO-TV, substitutes DTV channel 13 for DTV channel 14 at Reliance, South Dakota. *See* 67 FR 34670, May 15, 2002. DTV channel 13 can be allotted to Reliance, South Dakota, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 43–57–57 N. and 99–36–11 W. with a power of 40, HAAT of 338 meters and with a DTV service population of 53 thousand. With this action, this proceeding is terminated.

DATES: Effective October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–101, adopted September 4, 2002, and released September 10, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

1. Section 73.622(b), the Table of Digital Television Allotments under South Dakota, is amended by removing DTV channel 14 and adding DTV channel 13 at Reliance.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–25570 Filed 10–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2282, MB Docket No. 02–131, RM–10440]

Digital Television Broadcast Service; Hammond, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KB Prime Media LLC, substitutes DTV channel 42 for NTSC channel 62+ at Hammond, Louisiana. *See* 67 FR 40632, June 13, 2002. DTV channel 42 can be allotted to Hammond, Louisiana, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 29–58–57 N. and 89–57–09 W. with a power of 1000, HAAT of 308 meters and with a DTV service population of 1667 thousand. With this action, this proceeding is terminated.

DATES: Effective November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–131, adopted September 13, 2002, and released September 19, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Louisiana, is amended by removing TV channel 62+ at Hammond.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under Louisiana, is amended by adding Hammond, DTV channel 42.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–25571 Filed 10–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2215, MB Docket No. 02–94, RM–10423]

Digital Television Broadcast Service; Athens, GA

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of August 9, 2002, (67 FR 51769), a document changing the DTV Table of Allotments to reflect the substitution of DTV channel *12c for DTV channel *22 at Athens, Georgia. However, DTV channel *12c was inadvertently published without the "c" designation. This document corrects that amendment contained in section 73.622(b) of the Commission's Rules.

DATES: Effective September 3, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION:

Background

The FCC published a document in the **Federal Register** of August 9, 2002, (67 FR 51769) removing DTV channel *22 and adding DTV channel *12c at Athens, Georgia. DTV channel *12 was inadvertently published in lieu of DTV channel *12c at Athens, Georgia. This correction removes DTV channel *12 and adds DTV channel *12c.

Need for Correction

As published, the final regulations contain an error, which may prove to be misleading, and needs to be clarified.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Georgia, is amended by removing DTV channel *12 and adding DTV channel *12c at Athens.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–25572 Filed 10–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2150, MB Docket No. 02–102, RM–10430]

Digital Television Broadcast Service; Florence, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Young Broadcasting of Sioux Falls, Inc., substitutes DTV channel 2 for DTV channel 25 at Florence, South Dakota. *See* 67 FR 34670, May 15, 2002. DTV channel 2 can be allotted to Florence in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 44–57–56 N. and 97–35–22 W. with a power of 3.7, HAAT of 243 meters and with a DTV

service population of 119 thousand. With this action, this proceeding is terminated.

DATES: Effective October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–102, adopted September 4, 2002, and released September 10, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under South Dakota, is amended by removing DTV channel 25 and adding DTV channel 2 at Florence.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–25573 Filed 10–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2148, MM Docket No. 01–302, RM–10333]

Digital Television Broadcast Service; Fort Wayne, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Indiana Broadcasting LLC, licensee of station WANE–TV, substitutes DTV channel 31 for DTV channel 4 at Fort Wayne, Indiana. *See* 66 FR 65872, December 21, 2001. DTV channel 31 can be allotted to Fort Wayne, Indiana, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 41–05–38 N. and 85–10–48 W. with a power of 82, HAAT of 253 meters and with a DTV service population of 792 thousand. Since the community of Fort Wayne, Indiana, is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–302, adopted September 4, 2002, and released September 10, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Indiana, is amended by removing DTV channel 4 and adding DTV channel 31 at Fort Wayne.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–25574 Filed 10–7–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020215032–2127 02; I.D. 092402A]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Readjustment to 2002 Quotas; Commercial Quota Adjustments for Maryland and Virginia

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota adjustments.

SUMMARY: NMFS announces adjustments to the 2002 commercial Atlantic bluefish quota for the States of Maryland and the Commonwealth of Virginia. This action complies with regulations implementing the Fishery Management Plan for Atlantic Bluefish (FMP), which require that landings in excess of a state's commercial quota be deducted from that state's quota the following year. The FMP also allows two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), to transfer or combine part or all of their annual commercial quota. The Regional Administrator must consider the criteria set forth in § 648.160(f)(1) in the evaluation of requests for quota transfers or combinations. The public is advised that quota adjustments have been made and is informed of the revised quotas for the affected states.

DATES: Effective October 7, 2002 through December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Myles A. Raizin, Fishery Policy Analyst, 978–281–9104.

SUPPLEMENTARY INFORMATION: Regulations implementing Atlantic bluefish management measures are found at 50 CFR part 648, subpart J. The regulations require annual specification of a commercial quota that is apportioned among the Atlantic coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.160. The final specifications for the 2001 Atlantic bluefish fishery set a total commercial quota equal to 9.58 million lb (4.35 million kg)(66 FR 23625; May 9, 2001). Maryland and Virginia's quota shares were calculated to be 287,662 lb (130,518 kg) and 1,138,412 lb (516,521 kg), respectively. However, in 2001, both Maryland and Virginia transferred a portion of their quotas to other states, leaving their final adjusted quotas at 87,662 lb (39,774 kg) for Maryland and 738,412 lb (335,033 kg) for Virginia.

Section 648.160(e)(2) provides that all landings in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota must be deducted from that state's annual quota for the following year.

Based on dealer reports and other available information, NMFS has determined that, in 2001, the State of Maryland landed 130,451 lb (59,188 kg) and the Commonwealth of Virginia landed 790,477 lb (358,655 kg) of bluefish causing overages of 42,789 lb (19,414 kg) and 52,065 lb (23,623 kg) for Maryland and Virginia, respectively.

On June 6, 2002, final specifications for the 2002 commercial Atlantic bluefish became effective (67 FR 38909). Total commercial harvest was specified at 10.5 million lb (4.76 million kg). Maryland and Virginia's shares of the quota were 315,189 lb (142,967 kg) and 1,247,348 lb (565,787 kg), respectively. Consistent with the regulations regarding the disposition of overages, the 2002 Atlantic bluefish commercial quota for Maryland is hereby reduced by 42,789 lb (19,414 kg) to 272,400 lb (123,593 kg). The 2002 Atlantic bluefish commercial quota for Virginia is hereby reduced by 52,065 lb (23,623 kg) to 1,195,283 lb (541,833 kg).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 1, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service

[FR Doc. 02–25460 Filed 10–7–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 100302A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2002 Pacific cod total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 3, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, or *Mary.Furuness@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA is 1,685 metric tons (mt) as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002 and 67 FR 34860, May 16, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,385 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 3, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–25621 Filed 10–3–02; 3:17 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 195
Tuesday, October 8, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1710 and 1721

RIN 0572–AB79

Extensions of Payments of Principal and Interest

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulation on extensions of payments of principal and interest, to include a maximum interest rate a RUS Borrower can charge on deferments for programs relating to consumer loans. The maximum interest rate will not be more than 300 basis points above the average interest rate on the note(s) being deferred. This limit would allow the Borrower to offset all or part of the administrative costs involved. In addition, this proposed rule sets forth the procedure for RUS Borrowers to request a Section 12(a) extension for distributed generation projects. These changes are intended to clarify the procedures Borrowers are to follow when requesting extensions of payments of principal and interest.

DATES: Written comments must be received by RUS or carry a postmark or equivalent no later than December 9, 2002.

ADDRESSES: Written comments should be addressed to Al Rodgers, Deputy Assistant Administrator, Electric Program, U.S. Department of Agriculture, Rural Utilities Service, Room 4037 South Building, Stop 1560, 1400 Independence Avenue, SW., Washington, DC 20250–1560. Telephone (202) 720–9547. RUS requires a signed original and three copies of all comments (7 CFR Part 1700). All comments received will be made available for inspection in room 4037 South Building during regular business hours.

FOR FURTHER INFORMATION CONTACT: Gail P. Salgado, Management Analyst, Rural Utilities Service, Electric Program, Room 4024, South Building, Stop 1560, 1400 Independence Avenue, SW., Washington, DC 20250–1560. Telephone (202) 205–3660.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeals procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS electric program provides loans and loan guarantees to Borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. Small entities are not subjected to any requirements which are not applied equally to large entities. RUS Borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

Comments on this notice must be received by December 9, 2002.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, DC 20250–1522.

Title: Extensions of Payments of Principal and Interest.

OMB Control Number: 0572–0123.

Type of Request: Revision of a currently approved collection.

Abstract: 7 CFR 1721, subpart B, sets forth the procedures for Borrowers to follow when requesting extensions of principal and interest.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4.34 hours per response.

Respondents: Not-for-profit institutions, business or other for-profit.

Estimated Number of Respondents: 94.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 816.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled, "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034) advising that RUS loans and loan guarantees are not covered by Executive Order 12372.

Background

On January 9, 2001, at 66 FR 1604, the Rural Utilities Service (RUS) published a proposed rule, 7 CFR Part 1721—Extensions of Payments of Principal and Interest, which proposed adding procedures and conditions under which Borrowers may request extensions of the payment of principal and interest. RUS Bulletins 20–5:320–2 and 20–23, which previously addressed extensions of principal and interest, were rescinded with the publication of the subsequent final rule, which was published in the **Federal Register** on January 4, 2002, at 67 FR 484. RUS received comments on the proposed rule from the National Rural Electric Cooperative Association (NRECA) recommending RUS consider allowing a Borrower to defer principal payments to finance properly coordinated distributed generation projects. RUS advised in the final rule that RUS agrees with NRECA's recommendation but that the comment could not be considered for the regulation under consideration and that it would be deferred for a subsequent proposal. RUS now proposes to set forth procedures and conditions under which RUS Borrowers may request extensions of principal payments to finance distributed generation projects. As proposed, the project(s) must be owned by the RUS Borrower or the customer who borrows deferred RUS loan funds from the RUS Borrower.

RUS recognizes that distributed generation projects using either renewable or non-renewable energy sources properly coordinated and dispersed throughout rural electric utility service territories have the potential to enhance rural development through the creation of new jobs to install, operate, and maintain systems.

Distributed generation projects strategically dispersed throughout a rural electric utility service area, near specific customers or load centers, can also be a cost-effective means of providing reliable electric service to distribution consumers. However, randomly installed distributed generation projects have the potential to negatively impact the electric system and to increase overall system costs, especially on rural electric distribution systems. RUS proposes to minimize these potential negative impacts by limiting individual unit capacity of consumer owned distributed generation projects eligible for this program. Distributed generation projects to be owned by distribution Borrowers would not be limited as proposed because such projects are expected to receive a more coordinated planning effort to benefit the entire system membership.

The intent of RUS in promulgating this proposed regulation is to create a readily available source of locally controlled financing to develop distributed generation projects, that, like the already eligible renewable energy projects, are designed and administered to be in the best interest of the member of the distribution Borrower, the Borrower requesting the deferment, and the local community without impairing RUS loan feasibility and security at either the power supply or distribution level.

Renewable energy is considered a type of distributed generation. Additional eligibility purposes for renewable energy is included in 7 CFR 1721.104(c).

RUS also proposes to establish a maximum interest rate a RUS Borrower can charge on deferments for programs relating to consumer loans. The maximum interest rate will not be more than 300 basis points above the average interest rate on the note(s) being deferred. This limit would be used to offset all or part of the Borrower's administrative costs.

7 CFR 1710 is being amended to add a new definition of "Distributed generation" and to remove and replace the definitions of "Off-grid renewable energy system," "On-grid renewable energy system," and "Renewable energy system."

List of Subjects

7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1721

Electric power, Loan programs—energy, Rural areas.

For the reasons set forth in the preamble, RUS proposes to amend 7 CFR chapter XVII as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 continues to read:

Authority: 7 U.S.C. 901 *et seq.*; 1921 *et seq.*, and 6941 *et seq.*

Subpart A—General

2. Amend § 1710.2(a) by adding a new definition of "Distributed generation" in alphabetical order and by revising definitions of "Off-grid renewable energy system," "On-grid renewable energy system," and "Renewable energy system" as follows:

§ 1710.2 Definitions and rules of construction.

* * * * *

Distributed generation is the generation of electricity by a sufficiently small electric generating system as to allow interconnection of the electric generating system near the point of service at distribution voltages or customer voltages including points on the customer side of the meter. A distributed generating system may be operated in parallel or independent of the electric power system. A distributed generating system may be fueled by any source, including but not limited to renewable energy sources. A distributed generation project may include one or more distributed generation systems.

* * * * *

Off-grid renewable energy system is a renewable energy system not interconnected to an area electric power system.

On-grid renewable energy system is a renewable energy system interconnected to an area electric power system (EPS) through a normally open or normally closed device. It can be interconnected to the EPS on either side of a consumer's meter.

* * * * *

Renewable energy system is an energy conversion system fueled from any of the following energy sources: solar, wind, hydropower, biomass, or geothermal. Any of these energy sources may be converted to heat or electricity. Energy from bio-mass may be converted from any organic matter available on a renewable basis, including dedicated energy crops and trees, agricultural food and feed crops, agricultural crop wastes and residues, wood wastes and residues, aquatic plants, animal wastes, municipal wastes, and other waste materials.

* * * * *

PART 1721—POST LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

3. The authority citation for part 1721 continues to read:

Authority: 7 U.S.C. 901 *et seq.*; 1921 *et seq.*, and 6941 *et seq.*

Subpart B—Extensions of Payments of Principal and Interest

4. Amend § 1721.103 by adding paragraph (c) to read as follows:

§ 1721.103 Policy.

* * * * *

(c) The maximum interest rate a RUS Borrower can charge on deferments for programs relating to consumer loans, *e.g.*, energy resource conservation (ERC) program, contribution-in-aid of construction (CIAC), etc., will not be more than 300 basis points above the average interest rate on the note(s) being deferred. For example, if the RUS Borrower's average interest rate on the note(s) being deferred is 5 percent, the RUS Borrower can charge a maximum interest rate of 8 percent.

5. Amend § 1721.104 by:

a. Revising paragraph (c)(1)(ii);

b. Redesignating paragraph (d) as (e); and

c. Adding a new paragraph (d).

This revision and addition are to read as follows:

§ 1721.104 Eligible purposes.

* * * * *

(c) * * *

(1) * * *

(ii) Electric power system interfaces;

* * * * *

(d) *Deferments for distributed generation projects.*

(1) A Borrower may request that RUS defer principal payments to enable the Borrower to finance distributed generation projects. Amounts deferred under this program can be used to cover costs to install all or part of a distributed generation system that:

(i) The Borrower will own and operate, or

(ii) The consumer owns, provided the system owned by the consumer does not exceed 5KW.

(2) A distributed generation project may include one or more individual systems.

* * * * *

7. Amend § 1721.105 by redesignating paragraph (d) as (e) and by adding a new paragraph (d) to read as follows:

§ 1721.105 Application documents.

* * * * *

(d) *Deferments for distributed generation projects.* A Borrower requesting principal deferments for distributed generation projects must submit the following information and approval is also subject to any applicable terms and conditions of the Borrower's loan contract, mortgage, or indenture:

(1) A letter from the Borrower's General Manager requesting an extension of principal payments for the purpose of financing distributed generation projects and describing the details of the project, and

(2) A copy of the board resolution establishing the distributed generation projects program.

* * * * *

8. Amend § 1721.106 by revising the heading of paragraph (b) to read as follows:

§ 1721.106 Repayment of deferred payments.

* * * * *

(b) *Deferments relating to the ERC loan program, renewable energy project(s), distributed generation project(s), and the contribution(s)-in-aid of construction.*

* * * * *

Dated: September 10, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–25209 Filed 10–7–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–341–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 and 200PF Series Airplanes Equipped With Pratt and Whitney PW2000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires inspections, adjustments, and functional checks of the engine thrust reverser system; and modification of the engine thrust reverser directional control valve. The existing AD also requires installation of an additional thrust reverser locking feature and periodic functional tests of the locking feature following installation. This action would reduce the applicability in the existing AD. The actions specified by this AD are intended to prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

DATES: Comments must be received by November 22, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–341–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–341–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: John Vann, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1024; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–341–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–341–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 3, 1994, the FAA issued AD 94–01–10, amendment 39–8792 (FR 59 FR 4558, February 1, 1994), applicable to certain Boeing Model 757 series airplanes, to require inspections, adjustments, and functional checks of the engine thrust reverser system; and modification of the engine thrust reverser directional control valve. That action also requires installation of an additional thrust reverser locking feature and periodic functional tests of the locking feature following installation. That action was prompted by results of a safety review of the thrust reverser system on these airplanes. The requirements of that AD are intended to prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 94–01–10, we have determined that the applicability in that AD (Boeing Model 757 series airplanes equipped with Pratt and Whitney PW2000 series engines) should be limited to Boeing Model 757–200 and –200PF series airplanes equipped with Pratt and Whitney PW2000 series engines. This determination was made because the intervals for the repetitive inspections of the engine thrust reverser system for Model 757–300 series airplanes, as required by the existing AD, have been included as a certification maintenance requirement in the airplane certification program.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 94–01–10 to continue to require the same actions specified in the existing AD, and would reduce the applicability.

Cost Impact

Since this proposed AD would merely delete airplanes from the applicability of the proposed rule, it would add no additional costs, and would require no additional work to be performed by affected operators. The current costs associated with this amendment are reiterated below for the convenience of affected operators:

The FAA estimates that 270 airplanes of U.S. registry would be affected by this proposed AD.

It will take approximately 624 work hours per airplane to accomplish the modification required by AD 94–01–10, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of the modification currently required by this AD is estimated to be $37,440 per airplane.

It will take approximately 1 work hour per airplane to accomplish the periodic functional tests required by AD 94–01–10, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the periodic functional tests currently required by this AD on U.S. operators is estimated to be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8792 (FR 59 FR 4558, February 1, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2001–NM–341–AD. Revises AD 94–01–10, Amendment 39–8792.

Applicability: Model 757–200 and –200PF series airplanes equipped with Pratt and Whitney PW2000 series engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane, accomplish the following:

Inspections/Adjustments/Functional Checks/ Modification

(a) Within 14 days after September 16, 1991 (the effective date of AD 91–20–09, amendment 39–8043), accomplish either paragraph (a)(1) or (a)(2) of this AD.

(1) Accomplish both paragraphs (a)(1)(i) and (a)(1)(ii) of this AD:

(i) Inspect the thrust reverser Directional Control Valve (DCV) assemblies of both engines to determine the solenoid-driven pilot valve's part number, in accordance with Boeing Alert Service Bulletin 757–78A0027, dated September 9, 1991.

(A) If any DCV has a suspect pilot valve as specified in the service bulletin, prior to further flight, replace the DCV with a DCV that has a part number of a non-suspect solenoid-driven pilot valve, in accordance with the service bulletin.

(B) If a DCV has a non-suspect solenoid-driven pilot valve as specified in the service bulletin, that pilot valve does not need to be replaced.

(ii) Perform all tests and inspections of the engine thrust reverser control and indication system on both engines in accordance with Boeing Service Bulletin 757–78–0025, dated September 9, 1991. Prior to further flight, correct any discrepancy found in accordance with the service bulletin.

(2) Accomplish paragraph (a)(1) of this AD on one engine's thrust reverser and deactivate the other engine's thrust reverser, in accordance with Section 78–31–1 of Boeing Document D630N002, "Boeing 757 Dispatch Deviation Guide," Revision 8, dated January 15, 1991.

(b) Within 24 days after September 16, 1991, the requirements of paragraph (a)(1) of this AD must be accomplished on both engines' thrust reverser systems.

(c) Repeat the tests and inspections specified in paragraph (a)(1)(ii) at intervals not to exceed 3,000 flight hours, and prior to further flight following any maintenance that disturbs the thrust reverser control system. Prior to further flight, correct any discrepancy found in accordance with Boeing Service Bulletin 757–78–0025, dated September 9, 1991.

Installation/Functional Test

(d) Within 5 years after March 3, 1994 (the effective date of AD 94–01–10, amendment 39–8792), install an additional thrust reverser system locking feature (sync lock installation), in accordance with Boeing Service Bulletin 757–78–0028, Revision 1, dated October 29, 1992, or Revision 2, dated January 14, 1993.

(e) Within 1,000 hours time-in-service after installing the sync lock required by paragraph (d) of this AD (either in production or by retrofit), or within 1,000 hours time-in-service after March 3, 1994, whichever occurs later; and thereafter at intervals not to exceed 1,000 hours time-in-service: Perform functional tests of the sync lock in accordance with the "Thrust Reverser Sync Lock Integrity Test" procedures specified below. If any discrepancy is found during any test, prior to further flight, correct it in accordance with procedures described in the Boeing 757 Maintenance Manual.

"Thrust Reverser SYNC Lock Integrity Test

1. General

A. Use this procedure to test the integrity of the thrust reverser sync locks.

2. Thrust Reverser Sync Lock Test

A. Prepare for the Thrust Reverser Sync Lock Test.

(1) Open the AUTO SPEEDBRAKE circuit breaker on the overhead circuit breaker panel, P11.

(2) Do the steps that follow to supply power to the thrust reverser system:

(a) Make sure the thrust levers are in the idle position.

Caution: Do Not Extend the Thrust Reverser While the Core Cowl Panels Are Open. Damage to the Thrust Reverser and Core Cowl Panels Can Occur.

(b) Make sure the thrust reverser halves are closed.

(c) Make sure the core cowl panels are closed.

(d) Put the EEC MAINT POWER switch or the EEC POWER L and EEC POWER R switches to the ALTN position.

(e) For the left engine:

(1) Put the EEC MAINT CHANNEL SEL L switch to the AUTO position.

(2) Put the L ENG fire switch to the NORM position.

(f) For the right engine:

(1) Put the EEC MAINT CHANNEL SEL R switch to the AUTO position.

(2) Put the R ENG fire switch to the NORM position.

(g) Make sure the EICAS circuit breakers (6 locations) are closed.

Warning: The Thrust Reverser Will Automatically Retract if the Electrical Power to the EEC/Thrust Reverser Control System Is Turned Off or if the EEC Maint Power Switch Is Moved to the Norm Position. The Accidental Operation of the Thrust Reverser Can Cause Injury to Persons or Damage to Equipment Can Occur.

(h) Make sure these circuit breakers on the main power distribution panel, P6, are closed:

(1) FUEL COND CONT L
(2) FUEL COND CONT R
(3) T/L INTERLOCK L
(4) T/L INTERLOCK R
(5) LEFT T/R SYNC LOCK
(6) RIGHT T/R SYNC LOCK
(7) L ENG ELECTRONIC ENGINE CONTROL ALTN PWR (if installed)
(8) R ENG ELECTRONIC ENGINE CONTROL ALTN PWR (if installed)

(i) Make sure these circuit breakers on the overhead circuit breaker panel, P11, are closed:

(1) AIR/GND SYS 1
(2) AIR/GND SYS 2
(3) LANDING GEAR POS SYS 1
(4) LANDING GEAR POS SYS 2

(j) For the left engine, make sure these circuit breakers on the P11 panel are closed:

(1) LEFT ENGINE PDIU
(2) LEFT ENGINE THRUST REVERSER CONT/SCAV PRESS
(3) LEFT ENGINE ELECTRONIC ENGINE CONTROL ALTN PWR (if installed)
(4) LEFT ENGINE THRUST REVERSER PRI CONT
(5) LEFT ENGINE THRUST REVERSER SEC CONT

(k) For the right engine, make sure these circuit breakers on the P11 panel are closed:

(1) RIGHT ENGINE PDIU
(2) RIGHT ENGINE THRUST REVERSER CONT/SCAV PRESS
(3) RIGHT ENGINE ELECTRONIC ENGINE CONTROL ALTN PWR (if installed)
(4) RIGHT ENGINE THRUST REVERSER PRI CONT
(5) RIGHT ENGINE THRUST REVERSER SEC CONT

(l) Supply electrical power.

(m) Remove the pressure from the left (right) hydraulic system.

B. Do the Thrust Reverser Sync Lock Test.

(1) Move and hold the manual unlock lever on the center actuator on both thrust reverser sleeves to the unlock position.

(2) Make sure the thrust reverser sleeves did not move.

(3) Move the left (right) reverser thrust lever up and rearward to the idle detent position.

(4) Make sure both thrust reverser sleeves move aft (approximately 0.15 to 0.25 inch).

(5) Release the manual unlock lever on the center actuators.

Warning: Make Sure All Persons and Equipment Are Clear of the Area Around the Thrust Reverser. When You Apply Hydraulic Pressure the Thrust Reverser Will Extend and Can Cause Injuries to Persons or Damage to Equipment.

(6) Pressurize the left (right) hydraulic system.

(7) Make sure the thrust reverser extends.

(8) Move the left (right) reverser thrust lever to the fully forward and down position to retract the thrust reverser.

C. Put the Airplane Back to its Usual Condition.

(1) Remove hydraulic pressure.

(2) Close the left and right fan cowls.

(3) Close the AUTO SPEEDBRAKE circuit breaker on the P11 panel.

(4) Remove electrical power if it is not necessary.

D. Repeat the Thrust Reverser Sync Lock Test on the other engine."

(f) Installation of the sync lock, as required by paragraph (d) of this AD, constitutes terminating action for the requirements of paragraphs (a) through (c) of this AD.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 91–20–09, amendment 39–8043; and AD 94–01–10, amendment 39–8792; are approved as alternative methods of compliance with the requirements of this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 1, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–25604 Filed 10–7–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 50

[Docket Number 020919216–2216–01]

RIN 0607–AA37

Bureau of the Census Geographically Updated Population Certification Program

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: Following the 1970 decennial census and every decennial census thereafter, the Bureau of the Census (Census Bureau) has provided the opportunity for county, local, and tribal governments to obtain certified population and housing unit counts for areas in which their boundaries have changed from those used to tabulate the results of the immediately preceding decennial census. These changes might occur either as the result of newly created governmental units (incorporations), additions to existing governmental units (annexations), the combination of two existing governmental units (merger), or other circumstances. These governmental units are established by law for the purpose of implementing specified general-or special-purpose governmental functions; the certification process is available to both.

Most governmental units have legally established boundaries and names, and have officials (usually elected) who have the power to carry out legally prescribed functions, provide services for residents, and raise revenues. These are commonly referred to as general-purpose governmental units and typically include counties, boroughs, cities, towns, villages, townships, and federally recognized American Indian reservations. Special-purpose governmental units typically are limited to one function, such as school districts.

This update service was suspended on June 1, 1998, to accommodate the taking of the 2000 census and will resume in the fall of 2002. The Census Bureau is proposing this rule to reinstate the process by creating a centralized system for certifying population and housing counts and to establish a fee structure that accurately reflects the costs associated with this certification process. This service will be a permanent process, but one that will be temporarily suspended during future decennial censuses. Typically, the Census Bureau will suspend this service, and direct its resources to the decennial census, for a total of five years—the two years preceding the decennial census, the decennial census year, and the two years following it. The Census Bureau will issue notices in the **Federal Register** announcing when it suspends and, in turn, resumes, the service.

DATES: Written comments must be submitted on or before November 7, 2002.

ADDRESSES: Please direct all written comments on this proposed program to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on this proposed action should be directed to Rodger V. Johnson, Population Distribution Branch, Population Division, U.S. Census Bureau, Room 2324, Federal Building 3, Washington, DC 20233, (301) 763–2419, by fax (301) 457–2481, or e-mail (*rodger.v.johnson@census.gov*).

SUPPLEMENTARY INFORMATION:

Background

The Census Bureau first began to certify decennial census population counts for updated governmental unit boundaries in 1972 in response to the request of local governments to establish eligibility for participation in the General Revenue Sharing Program, authorized under Public Law 92–152. At the time, the Census Bureau established a fee-based program, enabling governmental units with annexations to obtain updated decennial census population counts that included the population living in annexed areas. The Census Bureau also received funding from the U.S. Department of the Treasury to make those determinations for larger annexations that met prescribed criteria and for newly formed general-purpose governmental units. The General Revenue Sharing Program ended on September 30, 1986, but the certification program continued into 1988 with support from the Census Bureau. The program was suspended to accommodate the taking of the 1990 decennial census and resumed in 1992. The Census Bureau supported the program through fiscal year 1995 for cities with large annexations and through fiscal year 1996 for newly incorporated places. The program was continued on a fee-basis only until June 1, 1998, at which time it was suspended for the 2000 decennial census (see **Federal Register**, 63 FR 27706, May 20,

1998). At the time, it was stated that the program would resume in three years; however, resumption was delayed by continuing resource demands of the 2000 decennial census.

Although there is no legal requirement that the Census Bureau provide this service, there is a demand by governmental units for Census 2000 population and housing counts certified to reflect boundary updates or the formation of new governmental units dated after January 1, 2000 (the legally effective date for boundaries used in tabulating Census 2000). Title 13, Section 8, allows the Census Bureau to continue this program by providing certain statistical materials (certified population and housing counts) upon payment of costs for the service. The Census Bureau is the sole provider of this service obtained through the processing of individual Census 2000 enumeration records protected by the confidentiality restrictions of Title 13, United States Code (U.S.C.).

A geographically updated population certification from the Census Bureau confirms that an official population count is an accurate retabulation of the Census 2000 population as configured for the new boundaries. A population certification may be needed for many reasons. For example, general-purpose governments may be required by state law to produce a Census Bureau population certification for funds disbursement from their respective states, or federally sponsored programs may require or honor a Census Bureau population certification for program eligibility. Special-purpose governmental units also may need official certification of census population and housing counts for other purposes.

The Census Bureau will reinstate a fee-based program that will use current geographic and demographic programs to support customer requests. The proposed fee structure reflects variations in resources needed to meet customer requirements for certifications of standard governmental units, as listed later in this notice (see paragraph (c) under section 50.60, "Request for Certification"). To create a consistent process to meet the anticipated demand for the service, the Census Bureau is proposing an amendment to Title 15 CFR part 50:

- Add a new section 50.60 containing the Census Bureau's certification process.
- Establish a consistent fee structure. The fees will depend on the degree of geographic processing tasks required to complete the certification request and on the urgency of the request. There are two types of fees, based upon whether the population certificate is generated through an annually scheduled geographic update process, or is expedited in order to meet customer needs. The annual and expedited certification fees further depend on whether or not additional geographic data must be acquired from the customer and reviewed, tracked, and processed. The lowest fee applies to customers whose geographic data have been collected as part of the annual geographic update process and whose schedules permit waiting until the annual processing has been completed. The highest fee applies to customers from whom additional geographic data must be acquired (over and above the normal annual process) and who also specify expedited processing.
- Require requests for certifications to contain information on Form BC–1869(EF), "Request for Geographically Updated Official Population Certificate." (See the Census Bureau's Web site, <*http://www.census.gov/mso/www/certification/*>.)

Administrative Procedure and Regulatory Flexibility Act

A notice of proposed rulemaking is not required by Title 5 U.S.C. 553, or any other law, for this rule of agency organization, procedure and practice that involves a matter relating to public property, loans, grants, benefits, or contracts. Accordingly, it is exempt from the notice and comment provisions of the Administrative Procedure Act under 5 U.S.C. 553(a)(2) and 5 U.S.C. 553(b)(A). Therefore, the analytical requirements of the Regulatory Flexibility Act are not applicable (5 U.S.C. 601, *et seq.*). As a result, a Regulatory Flexibility Analysis is not required and none has been prepared. However, this rule is being published as a proposed rule with an opportunity for public comment, because of the importance of the issues raised by this rulemaking.

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule does not contain policies with federalism implications as that term is defined in Executive Order 12612.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), Title 44, U.S.C., Chapter 35, unless that collection of information displays a current Office of Management and Budget control number. This notice does not represent a collection of information and is not subject to the PRA's requirements. The form referenced in the rule, Form BC–1869(EF), will collect only information necessary to process a certification request. As such, it is not subject to the PRA's requirements (5 CFR 1320.3(h)(1)).

List of Subjects in 15 CFR Part 50

Census data, Geographic updates, Population census, Seals and insignia, Statistics.

PART 50—SPECIAL SERVICES AND STUDIES BY THE BUREAU OF THE CENSUS

1. The authority citation for 15 CFR part 50 continues to read as follows:

Authority: Sec. 3, 49 Stat. 293, as amended; and 15 U.S.C. 192a. Interprets or applies sec. 1, 40 Stat. 1256, as amended; sec. 1, 49 Stat. 292; sec. 8, 60 Stat. 1013, as amended; 15 U.S.C. 192, 189a; and 13 U.S.C. 8.

2. Add section 50.60 to read as follows:

§ 50.60 Request for Certification

(a) *Certification Process.* Upon request, the Census Bureau certifies population and housing counts of standard governmental units to reflect boundary updates, including new incorporations, annexations, mergers, and so forth. The Census Bureau will produce a certificate, that is, a signed statement by a Census Bureau official attesting to the authenticity of the certified Census 2000 population and housing count to reflect updates to the legal boundaries of governmental units after those in effect for Census 2000. This service will be a permanent process, but one that will be temporarily suspended during future decennial censuses. Typically, the Census Bureau will suspend this service, and direct its resources to the decennial census, for a total of five years—the two years preceding the decennial census, the decennial census year, and the two years following it. The Census Bureau will issue notices in the **Federal Register** announcing when it suspends and, in turn, resumes, the service.

(1) The Census Bureau charges customers a preset fee for this service according to the amount of work involved in compiling the population and housing counts, as determined by the resources expended to meet customer requirements and the set cost of the product (one certificate). Certification fees may increase somewhat if the customer requests additional original certificates. Each additional certificate costs $35.00. Certification prices are shown in the following table:

DESCRIPTION AND ESTIMATED FEE

Standard governmental units	Estimated fee
Annual Certification	$693 to $1,799.
Expedited Certification	$1,530 to $9,075.

(2) [Reserved]

(b) *Description of Certification Types.* The Census Bureau will process requests for population certificates for standard governmental units, in accordance with the Census Bureau's annual certification schedule or under an expedited certification arrangement. The boundaries for standard governmental units are regularly and customarily updated between decennial censuses by the Census Bureau's geographic support system. These governmental units include a variety of legally defined general- and special-purpose governmental units, including counties and statistically equivalent entities, minor civil divisions, incorporated places, consolidated cities, federally recognized American Indian reservations, and school districts. A complete list of entities is defined in paragraph (c) of this section.

(1) *Annual Certification.* Annual population and housing certification is available around October 1 of each calendar year to new or existing governmental units that reported legal boundary updates in the Census Bureau's annual Boundary and Annexation Survey. In accordance with reporting requirements of this survey, the legally effective dates of the boundary updates may not be later than January 1 of the calendar year. These certifications are available through September of the following year.

(i) The annual certification process also is available to standard governmental units that are not in the Boundary and Annexation Survey of that year. Governmental units electing participation in this process must draft the legal boundary updates upon Census Bureau-supplied maps. The legally effective dates of the boundaries may not be later than January 1 of the calendar year. The Census Bureau must receive the census maps annotated with the legally certified boundaries and associated address ranges by April 1 of the same calendar year. The Census Bureau will determine that the legal boundary updates are acceptable by verifying that the information is complete, legible, and usable, and that the legal boundaries on the maps have been attested by the governmental unit as submitted in accordance with state law or tribal authority.

(ii) [Reserved]

(2) *Expedited Certification.* (i) Expedited certification will be available where the customer requests any of the following:

(A) Certification of boundary updates legally effective after January 1 of the current calendar year; or

(B) Certification of boundary updates reported to the Census Bureau after April 1 of the current calendar year; or

(C) Certification of boundary updates by the Census Bureau before October 1 of the current calendar year.

(ii) Governmental units electing participation in this option must draft the legal boundary updates upon Census Bureau-supplied maps. To allow sufficient processing time, the Census Bureau must receive acceptable census maps annotated with the legally certified boundaries and associated address ranges no later than three months before the date requested by the customer to receive the population certificate. The Census Bureau will determine that the legal boundary updates are acceptable by verifying that the information is complete, legible, and usable, and that the legal boundaries on the maps have been attested as submitted in accordance with state law or tribal authority.

(c) *List of Standard Governmental Units.* The following is a list of the standard governmental units eligible for the Geographically Updated Population Certification Program:

(1) Federally recognized American Indian reservations and off-reservation trust land entities [tribal government]; this includes a reservation designated as a colony, community, Indian community, Indian village, pueblo, rancheria, reservation, reserve, and village.

(2) Counties and statistically equivalent entities, including the following: Counties in 48 states; boroughs, municipalities, and census areas in Alaska (state official); parishes in Louisiana; and municipios in Puerto Rico.

(3) Minor civil divisions as recognized in Census 2000 in the following 28 states: Arkansas, Connecticut, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, West Virginia, and Wisconsin.

(4) Incorporated places, including the following: boroughs in Connecticut, New Jersey, and Pennsylvania; cities in 49 states and the District of Columbia; cities, boroughs, and municipalities in Alaska; towns in 30 states (excluding towns in New England, New York, and Wisconsin, which are minor civil divisions); and villages in 20 states.

(5) Consolidated cities.

(6) School districts.

(d) *Non-Standard Certifications.* Certifications for population and housing counts of non-standard geographic areas or of individual census blocks are not currently available under this program but will be announced under a separate notice at a later date.

(e) *Submitting Certification Requests.* Requests for certifications should be submitted on Form BC–1869(EF), Request for Geographically Updated Official Population Certification, to the Census Bureau by fax, (301) 457–4714, or by e-mail, *MSO.certify@census.gov.* Form BC–1869(EF) will be available on the Census Bureau's Web site at: <*http://www.census.gov/mso/www/certification.*> A letter or e-mail communication requesting the service without Form BC–1869(EF) will be accepted only if it contains the information necessary to complete a Form BC–1869(EF).

Dated: October 1, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–25401 Filed 10–7–02; 8:45 am]

BILLING CODE 3510–07–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–7392–2]

Historic Area Remediation Site (HARS)-Specific Polychlorinated Biphenyl Worm Tissue Criterion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing today to modify the designation of the Historic Area Remediation Site (HARS) to establish a HARS-specific worm tissue polychlorinated biphenyl (PCB) criterion of 113 parts per billion (ppb) for use in determining the suitability of proposed dredged material for use as Remediation Material. This amendment to the HARS designation would

establish a pass/fail criterion for evaluating PCBs in worm tissue from bioaccumulation tests performed on dredged material proposed for use at the HARS as Remediation Material. This value would remain in effect until after EPA and the U.S. Army Corps of Engineers (USACE) complete their review of the 2002 HARS human health scientific peer review comments, conduct and respond to the comments on the scientific peer review on the ecological proposal, and revise, as necessary, the process used to evaluate the suitability of dredged material proposed for use as Remediation Material at the HARS for all contaminants of concern in accordance with the September 27, 2000 Memorandum of Agreement between EPA and the USACE.

Among other things, the September 27, 2000 MOA established an interim guidance value of 113 ppb for PCBs in the tissues of bioassayed worms, to be considered when determining whether proposed dredged material from the New York/New Jersey Harbor is acceptable for placement at the HARS. At the time of the MOA, the agencies agreed that, while the peer review was not complete, the science review warranted the implementation of this interim change. The September 2000 MOA selected PCBs from the other contaminants because PCBs were specifically mentioned in the HARS designation. This interim change is designed to keep remediation of the HARS current with the latest scientific information concerning PCBs.

Upon signing the MOA, EPA withdrew its concurrence (given prior to the MOA) for the U.S. Gypsum Corporation to place dredged material at the HARS as Remediation Material. U.S. Gypsum brought suit against the USACE and EPA, and in a July 10, 2002 decision, Judge Jed Rakoff of the U.S. District Court, Southern District of New York, held that the announcement of the 113 ppb interim value in the MOA was *de facto* rulemaking that should have been the subject of public notice and comment. This rulemaking is intended to address the court's concerns.

DATES: *Comments:* Comments must be received by November 7, 2002.

Public Hearings: The public hearing dates are as follows:

1. October 28, 2002, at 7:00 P.M., Monmouth Beach, New Jersey.

2. October 29, 2002, at 2:00 PM., New York, New York.

ADDRESSES: *Comments:* Comments may be submitted by mail or electronically as follows: 1. By mail: Submit written comments on this notice to: Mr. Douglas Pabst, Team Leader, Dredged Material Management Team, U.S. Environmental Protection Agency Region 2, 290 Broadway, New York, NY 10007–1866 (E-mail *pabst.douglas@epa.gov*) To ensure proper identification of your comments, include in the subject line the name, date and **Federal Register** citation of this notice.

2. Electronically: Submit your comments electronically to: *pabst.douglas@epa.gov* Electronic comments must be submitted as an ASCII or WordPerfect file avoiding the use of special characters and any form of encryption. Comments will also be accepted on disks in WordPerfect or ASCII file format sent or delivered to the addresses above. All comments and data in electronic form must be identified by the name, date and **Federal Register** citation of this notice. No confidential business information should be sent via e-mail.

Public Hearings: The public hearing locations are:

1. Monmouth Beach, New Jersey: Monmouth Beach Municipal Auditorium, 22 Beach Road, Monmouth Beach, New Jersey, 07750.

2. New York City, New York: Room 27D, EPA Region 2, 290 Broadway New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Pabst, Team Leader, Dredged Material Management Team, U.S. Environmental Protection Agency Region 2, 290 Broadway, New York, NY 10007–1866 (E-mail *pabst.douglas@epa.gov*) (212) 637–3797.

SUPPLEMENTARY INFORMATION:

General Information

I. Regulated Entities

Entities potentially affected by this action include those who might have sought or will seek permits to place dredged material into ocean waters at the HARS for purpose of remediation, under the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* (hereinafter referred to as the MPRSA). The rule would primarily be of relevance to entities in the New York-New Jersey Harbor and surrounding area seeking permits from the USACE to place Remediation Material at the HARS, as well as the USACE itself. Potentially affected categories and entities seeking to use the HARS include:

Category	Examples of potentially affected entities
Industry	Ports in NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material to be placed at the HARS.
	Marinas in the NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material to be placed at the HARS.
	Shipyards in the NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material to be placed at the HARS.
	Berth owners in the NY/NJ Harbor and surrounding area seeking MPRSA permits for dredged material to be placed at the HARS.
State/local/tribal governments	Local governments owning ports or berths in the NY/NJ Harbor and surrounding area seeking MPRSA permits for dredged material to be placed at the HARS.
Federal	US Army Corps of Engineers for its proposed dredging projects in NY/NJ Harbor and surrounding areas to be placed at the HARS.
	Federal agencies seeking MPRSA permits for dredged material from NY/NJ Harbor and surrounding areas to be placed at the HARS.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your organization is affected by this action, you should carefully consider whether your organization is subject to the requirement to obtain an MPRSA permit in accordance with the Purpose and Scope provisions of 40 CFR 220.1, and you wish to use the site subject to today's proposal. If you have any questions regarding applicability of this action to a particular entity, please consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Other entities potentially affected by today's proposal would include commercial and recreational fishing interests using New York Bight Apex fishing and shellfish grounds. However, by establishing a pass/fail interim PCB tissue criterion that is approximately 75 percent lower than the previously established 400 ppb worm tissue guideline for remediation of areas adversely impacted by historic disposal activities (see discussion below), any effects of today's proposal on fishery and shellfish resources would be expected to be positive.

II. Background

In 1972, the Congress of the United States enacted the MPRSA to address and control the dumping of materials into ocean waters. Title I of MPRSA authorized EPA (and the USACE in the case of dredged material) to regulate dumping in ocean waters. Since the MPRSA was enacted, and through its subsequent amendments (including the Ocean Dumping Ban Act of 1988, which prohibited ocean dumping of sewage sludge and industrial waste), dumping in the New York Bight has been dramatically reduced.

Regulations implementing the MPRSA are set forth at 40 CFR Parts 220 through 229. With few exceptions, the MPRSA prohibits the transportation of material from the United States for the purpose of ocean dumping except as may be authorized by a permit issued under the MPRSA. The MPRSA divides permitting responsibility between EPA and the USACE. Under Section 102 of the MPRSA, EPA has responsibility for issuing permits for all materials other than dredged material (*e.g.*, fish wastes, burial at sea). Under Section 103 of the MPRSA, the Secretary of the Army has the responsibility for issuing permits for the ocean dumping of dredged material. This permitting authority has been delegated to the USACE. Determinations to issue Section 103 MPRSA permits for dredged material are subject to EPA review and concurrence.

Section 102(c) of the MPRSA also provides that EPA shall designate recommended times and sites for ocean dumping, and Section 103(b) further provides that the USACE shall use such EPA designated sites to the maximum extent feasible. EPA's ocean dumping regulations provide that EPA's designation of an ocean dumping site is accomplished by promulgation of a site designation in 40 CFR Part 228 specifying the site. On October 1, 1986, the Administrator delegated the authority to designate/de-designate ocean dumping sites for dredged material to the Regional Administrator of the Region in which the site is located. In accordance with that authority, EPA Region 2 designated the HARS in September 1997 for placement of dredged material suitable for use as Material for Remediation (40 CFR 228.15(d)(6) (62 FR 46142)). Pursuant to that designation, dredged material proposed for use at the HARS must be determined to be suitable for use as Remediation Material. Remediation Material is defined as uncontaminated dredged material (*i.e.*, dredged material that meets current Category I standards and will not cause significant undesirable effects including through bioaccumulation).

The designation ensured that material be selected so that it will not cause significant undesirable effects including through bioaccumulation or unacceptable toxicity in accordance with 40 CFR 227.6. The HARS was designated for continuing use until EPA determines that the PRA (Primary Remediation Area: a nine square nautical mile area to be remediated) has been sufficiently capped with at least 1 meter of the Material for Remediation.

The HARS is being managed to reduce impacts of historical disposal activities at the site to acceptable levels (in accordance with 40 CFR 228.11 (c)). The HARS is being remediated with uncontaminated dredged material (*i.e.*, dredged material that meets current Category I standards and will not cause significant undesirable effects including through bioaccumulation) (hereinafter referred to as "the Material for Remediation" or "Remediation Material").

On September 27, 2000, EPA and the U.S. Army Corps of Engineers (USACE) entered into a Memorandum Of Agreement (MOA) that announced a schedule and a process by which EPA and USACE would review the science and the guidelines used in the evaluation of dredged material proposed for placement as Remediation Material at the HARS. Specifically, the Agencies committed to the shared objective of completing the scientific peer review process, initiated by EPA, and responding to the input from peer review and the public.

EPA is proposing today to modify the HARS designation (40 CFR 228.15(d)(6)) to establish a HARS-specific worm tissue PCB criterion of 113 ppb for dredged material proposed for use as Remediation Material, pursuant to 40 CFR 228.10 and 228.11(c). It should be noted that MPRSA site designation does not constitute or imply EPA's approval of actual placement of material at the site. Before placement of the Material for Remediation at the HARS may commence, the USACE must evaluate permit applications according to EPA's Ocean Dumping Regulations and obtain EPA's concurrence.

III. Need To Establish a HARS-Specific Tissue PCB Criterion

The need for remediating the HARS is described in detail in the HARS SEIS (EPA 1997a), associated proposed (62 FR 26267) and final (62 FR 46142) rulemaking, and the Response to Comments on the proposed rule (EPA, 1997b). In summary, the proposal to terminate and de-designate the MDS, and simultaneously redesignate the site and surrounding degraded areas as the HARS, is amply supported by the presence of toxic effects in the HARS (a Category III sediment characteristic), dioxin bioaccumulation exceeding Category I levels in worm tissue collected from the HARS (a Category II sediment characteristic), National Oceanic and Atmospheric Administration (NOAA) ER–L/ER–M exceedances in some HARS sediments, and PCB/TCDD contamination in area lobster stocks. While it is impossible to quantify how much of New York Bight Apex contamination is the direct result of past dredged material disposal, other ocean dumping activities (*e.g.*, former sewage sludge disposal at the 12-Mile Site), or other sources (*e.g.*, via Hudson River plume or atmospheric deposition), the presence of these degraded sediments in the Apex is cause for concern.

Organisms living in or near these degraded surface sediments in near shore waters will be continually exposed to contaminants until the contaminants are buried by natural sedimentation, placement of Remediation Material, or otherwise isolated or removed. Exposed sediments can directly and indirectly impact benthic and pelagic organisms. Impacts to terrestrial organisms (including human beings) are also possible if the contaminants were to undergo trophic transfer.

NOAA tissue data from lobsters that were harvested in the New York Bight Apex in 1994 revealed that PCB concentrations in the hepatic tissue (tomalley) of the lobsters were above U.S. Food and Drug Administration consumption guidelines. It must be kept in mind that the lobsters analyzed in the NOAA study were harvested from wild stocks in the Apex, whose populations migrate seasonally through the region, including the HARS. Contamination of these animals cannot be definitively linked to specific areas of dredged

material disposal, to other past dumping activities, or to other pollution sources. Nor does the study indicate that human consumption of lobster muscle tissue (meat) presents health risks. However, the lobster study data do show that contaminants are being accumulated, and that concern about potential human-health risks is warranted. This contaminant data set complements other evidence of benthic contamination in the New York Bight Apex region.

The evaluative framework used to determine suitability of dredged material for use as Remediation Material at the HARS was developed in 1996 for the MDS and revised in 1998 for the HARS. It is a framework for assessing the potential for human health and ecological effects by comparing bioaccumulation test results to guidance values. These guidance values were derived from researching the best available literature at the time. The 1996 framework continued the use of a PCB guidance value of 400 ppb for worm tissue based on the Matrix approach defined in the 1981 USACE guidance: *Final Interpretive Guidance for Bioaccumulation of Petroleum Hydrocarbon, DDT, Cadmium, and Mercury in the New York Bight.*

In 1998, EPA began the peer review process specified in the New York/New Jersey Harbor Estuary Program (HEP) Comprehensive Conservation and Management Plan (CCMP). A panel of 11 scientific peer reviewers submitted comments pertaining to the HARS evaluative framework and guidance values. For PCBs and the other matrix values, peer reviewers expressed concerns regarding the relevance of the Matrix approach developed in 1981, and recommended evaluating PCBs and the other matrix values, using human health and ecological risk assessment procedures (USEPA, 2000).

On September 27, 2000, EPA and the U.S. Army Corps of Engineers (USACE) entered into a Memorandum Of Agreement (MOA) that announced a schedule and a process by which EPA and USACE would review the science and the guidelines used in the evaluation of dredged material proposed for placement as Remediation Material at the HARS. Specifically, the Agencies committed to the shared objective of completing the scientific peer review process, initiated by EPA, and responding to the input from peer review and the public.

In addition, the MOA established an interim guidance value of 113 ppb for PCBs in the tissues of bioassayed worms, to be considered when determining whether proposed dredged material from the New York/New Jersey Harbor is acceptable for placement at the HARS. At the time of the MOA, the agencies agreed that, while the peer review was not complete, the science review warranted the implementation of the 113 ppb value on an interim basis. The September 2000 MOA addressed PCBs and not the other contaminants because PCBs were specifically mentioned in the HARS designation. In addition, experience in evaluating NY/NJ Harbor dredged material indicated that the PCB levels were often significant to the determination. This interim use of the 113 ppb value was intended to keep remediation of the HARS current with the latest scientific information concerning PCBs. The MOA states, "This change [PCBs] reflects current scientific developments and ensures that the agencies' approach remains consistent with the remedial objectives of the HARS designation. Notably, this change will result in improvements in the quality of HARS Remediation Material with respect to numerous parameters other than PCBs, because elevated PCB levels frequently are associated with elevated levels of other chemicals of concern." The 113 ppb HARS-specific PCB value will improve the quality of HARS Remediation Material to reflect current scientific standards, and to provide for the continued management of the HARS to reduce impacts within the PRA to acceptable levels in accordance with 40 CFR 228.11(c), as required in 40 CFR 228.15(6)(A). The 113 ppb figure was understood to be an interim value, since the scientific processes and benchmark measures used to determine whether or not dredged material meets the remediation goals of the HARS were still under review. The review of the guidelines for the HARS has taken longer than anticipated in the MOA and is still underway.

Upon signing the MOA, EPA withdrew its concurrence (given prior to the MOA) for the U.S. Gypsum Corporation to place dredged material at the HARS as Remediation Material. U.S. Gypsum brought suit against the USACE and EPA, and in a July 10, 2002 decision, Judge Jed Rakoff of the U.S. District Court, Southern District of New York, held that the announcement of the 113 ppb interim value in the MOA was *de facto* rulemaking that should have been the subject of public notice and comment. This rulemaking is intended to address the court's concerns while allowing for the use of 113 ppb value as a binding criteria applicable to dredged materials to be placed at the HARS. The need for establishing a HARS-specific tissue PCB criterion: (1) Reflects EPA Region 2's interpretation and ongoing review of the science associated with responding to the 1998 peer review comments (USEPA, 2000a); (2) is in response to the high degree of public controversy over the question of suitability of HARS Remediation Material; (3) is appropriate as an interim protective step in light of the remediation goals of the HARS, in particular the specific mention of PCBs in the need for remediating the HARS; (4) represents an interim measure to incorporate recent science (as opposed to 1981 science) as EPA and the USACE develop a new HARS-specific evaluation process by evaluating and responding to the 2002 peer review comments on the human health proposal, conducting the scientific peer review on the ecological proposal, and responding to comments on the ecological proposal; and (5) addresses the court's procedural concerns.

This proposed HARS-specific worm tissue PCB value would remain in effect until EPA and the USACE develop a new HARS-specific evaluation process by evaluating and responding to the 2002 peer review comments on the human health proposal, conducting the scientific peer review on the ecological proposal, and responding to comments on the ecological proposal. In total, this effort may take up to 2 years to fully address and implement for all contaminants of concern.

IV. Proposed Action

In an effort to continuously incorporate and utilize the best available science to reduce adverse impacts that have occurred within the HARS (*see*, 40 CFR 228.11), EPA is proposing today to modify the designation of the HARS (40 CFR 228.15(d)(6)) to establish a HARS-specific worm tissue PCB criterion of 113 ppb for dredged material proposed for use as Remediation Material. As discussed in detail in Section III, implementation of the HARS-specific tissue PCB criterion of 113 ppb for dredged material proposed for use as Remediation Material will provide for continued remediation in accordance with 40 CFR 228.10 and 228.11(c).

V. Derivation of HARS-Specific 113 ppb PCB Criterion

This revision of the worm PCB Matrix value reflects EPA Region 2's interpretation and ongoing review of the science associated with responding to the 1998 peer review comments. This risk-based value was calculated using exposure assumptions chosen to represent specific conditions associated with consuming fish from the HARS. As such, we believe it is the best delineation of a level for PCBs at which remediation of the HARS can be assured, based on our current assessment of available knowledge about PCBs, bioaccumulation, and the area of the HARS. The 113 ppb value for PCBs in worm tissue is based on an assessment of human noncancer health hazard risk. It is the lowest of three (cancer, noncancer, and ecological values) PCB risk- or effects-based values derived by EPA Region 2, in consultation with USACE, based in part on the recommendation of 1998 scientific peer reviewers. The general risk assessment basis for this HARS-Specific value is described below; for further details pertaining to the specific derivation of the tissue level used as the HARS-specific value, see USEPA 2000b.

1. Human Health Risk

Uptake of HARS contaminants by marine organisms was assumed to occur through direct exposure to the sediments and/or through uptake from eating contaminated prey. For assessing ecological and human health risks, a simplified description of the food web was used to describe feeding relationships between species at the HARS. The New York Bight food web used in modeling transfer of contaminants was described by a simplified food chain consisting of three representative levels. These trophic levels were: bottom dwelling organisms, predators, and upper level predators.

For the purpose of evaluating risks to humans, it was assumed that fish consumption is the pathway of concern for humans to be exposed to contaminants in dredged material proposed for use as Remediation Material at the HARS, and that the fish consumed would be exposed through trophic transfer of contaminants from invertebrate prey. Because the HARS is located offshore and in open water, and because data shows that suspended and dissolved constituents of dredged material do not persist in the water column following release from the barge, pathways of human exposure other than consumption of seafood (*e.g.*, inhalation, or direct exposure through bathing) were not emphasized in the evaluation process.

To determine whether a tested sediment would result in bioaccumulation that would cause significant undesirable effects with regard to human health, standard human health risk calculations were used to develop tissue values associated with specified levels of protection (cancer risk of 1×10^{-4}, hazard index of 1). The basic risk assessment equations underlying the calculations used to develop the HARS tissues values are as follows:

$$\text{Cancer risk level} = \frac{\text{MV}\times\text{CPF}\times\text{FIR}\times\text{CF}\times\text{EF}\times\text{ED}\times\text{TTF}}{\text{BW}\times\text{AT}\times\text{BFR}}$$

$$\text{Noncancer hazard quotient} = \frac{\text{MV}\times\text{FIR}\times\text{CF}\times\text{EF}\times\text{ED}\times\text{TTF}}{\text{RfD}\times\text{AT}\times\text{BFR}\times\text{BW}}$$

Where:

MV—Measured tissue value (mg/kg)
CPF—Cancer potency factor (Kg-day/mg)
FIR—Fish Ingestion Rate (g/day)
CF—Conversion factor (kg/g)
EF—Exposure frequency (365 days/year)
ED—Exposure duration (70 years)
TTF—Trophic transfer factor (unitless)
BW—Body weight (70 Kg)
AT—Averaging time (25,550 days)
BFR—Whole body to fillet ratio (unitless)
RfD—Reference dose (mg/Kg-day).

Evaluating human risks associated with contaminants in dredged material proposed for use at the HARS assumes that recreational anglers represent a reasonably maximally exposed (RME) population for assessing risks to humans. More explicitly stated, EPA Region 2 assumed that there is a subpopulation of anglers that fishes exclusively at the HARS and that all recreationally-caught fish reportedly consumed by this subpopulation of anglers are obtained by angling at the HARS. The assessment assumed that fish are filleted prior to being eaten. In addition, the assessment assumed that the consumed of fish did not use the HARS 100 percent of the time.

The following specific guideline measures and assumptions were applied to all human health risk/effects evaluations to estimate human exposure to HARS contaminants.

Cancer Potency Factor (CPF)/Reference Dose (RD)—Available cancer potency factors (2 per mg/kg-day) and chronic reference doses for oral exposure of PCBs (0.02 µg/kg-day) were obtained from the EPA Integrated Risk Information System (IRIS).

Seafood consumption (FIR)—A factor of 7.2 grams per day (g/day) was used as a site-specific estimate of daily fish consumption by high consumers (*i.e.*, New Jersey recreational anglers) in the vicinity of the HARS (USEPA, 2000b).

Exposure Duration (ED): EPA Region 2 assumed a default lifetime exposure of 70 years for its assessment of human health risks (USEPA, 2000b).

Site Use Factor—A factor to express the proportion of time that fish predators may be exposed to contaminated benthic prey residing at the HARS. A factor of 0.777 (*i.e.*, 77.7 percent HARS-area foraging), was derived to estimate site use for a "generic" fish in the diet of the target sub-population (*i.e.*, New Jersey recreational fishers) (USEPA, 2000b).

Whole-body to fillet factor (BFR)—In assessing risks due to PCBs, EPA Region 2/CENAN employ a whole-body to fillet correction factor of 1.35 to estimate the concentration of contaminant in the whole body of the fish that is associated with the concentration in the edible (fillet) portion of the fish (USEPA, 2000b).

Trophic Transfer Factor (TTF)—Trophic transfer of contaminants from benthic prey to fish predators was estimated by applying a discrete factor that expresses the ratio of the residue concentration in predator as a function of the residue concentration in prey. A trophic transfer factor of 3 was applied based on the predictions of a widely applied food web model (Gobas, 1993).

The regulations at 40 CFR 227.6 require that there be reasonable assurance that no significant undesirable effects will occur. The regulations further provide that such reasonable assurance be based on consideration of statistical significance of effects at the 95 percent confidence

level. In our current and proposed processes, standard statistical tests are in fact used throughout the process of evaluating dredged material for suitability for placement at the HARS. Statistics are used to ensure confidence in the determination whether bioaccumulation measured in test organisms exceeds that in reference organisms. Given the methodology and assumptions used to calculate the value of 113 ppb, we believe that use of the number directly, compared to the arithmetic mean of bioassayed tissues using the material proposed to be placed at the HARS, provides the reasonable assurance required by the regulations. The additional use of statistical confidence limits, in this situation, does not increase confidence in the determination.

Accordingly, for the purposes of this rule, to promote clarity and to address concerns that have been frequently and vigorously expressed by elected officials and members of the public, the 113 ppb PCB value would be applied directly to the arithmetic mean of the worm bioaccumulation tissue test results, as a pass/fail standard. In light of the unique nature of the HARS as a site with the purpose of remediating the area designated, this approach provides further assurance that no significant undesirable effects will occur, in accordance with 40 CFR 227.6 and will reduce impacts to acceptable levels in accordance with 40 CFR 228.11(c). As such, projects having arithmetic means of PCB worm concentrations above 113 ppb and whose bioaccumulation has been shown with 95% confidence to be statistically significant (as compared to accumulations in reference exposures) would be considered to be unsuitable for placement at the HARS as they would exceed the HARS-specific PCB tissue criterion necessary to achieve the remedial goal of the HARS.

As part of our overall review of the matrix values, including the ongoing peer review process, we are considering, among other things, whether and how statistical confidence limits should continue to be applied in evaluating bioaccumulation test results. This decision should not be understood as an indication that EPA will not continue to rely on statistical confidence limits in the future, for PCBs as well as for other contaminants of concern, after our ongoing scientific peer review of the HARS TEF is completed.

VI. Supporting Documents

1. USEPA. 1997a. Supplement to the Environmental Impact Statement on the New York Dredged Material Disposal Site Designation for the Designation of the Historic Area Remediation Site (HARS) in the New York Bight Apex. May 1997.

2. USEPA. 1997b. Response to Comments on the May 13, 1997, Proposed Rule for the Simultaneous De-Designation and Termination of the Mud Dump Site (MDS) and Designation of the Historic Area Remediation Site (HARS). August 1997.

3. USEPA. 2000. Memorandum of Agreement: among the Department of the Army, the Environmental Protection Agency, and the U.S. Army Corps of Engineers. To Strengthen Environmental Protection of the Ocean Environment and to Promote Economic Progress in the Port of New York and New Jersey. September 27, 2000.

4. USEPA. 2000a. Proposed Changes to the Bioaccumulation Testing Evaluation Framework and Response to Scientific Peer Reviewers Comments on the Framework for Determining the Suitability of Dredged Material to be Placed at the Historic Area Remediation (HARS). October 19, 2000.

5. USEPA. 2000b. Memorandum to the File from Douglas Pabst. Subject: Modification of the Matrix Value for PCB in Worm Tissue. September 27, 2000.

How Can You Get Additional Information or Copies of Support Documents?

1. Electronically. You may obtain electronic copies of this document and various support documents from the EPA home page at the **Federal Register** *http://www.epa.gov/fedrgstr/*, or on EPA Region 2's homepage at: *http://www.epa.gov/region02/water/dredge/113rule*.

2. In person. The complete administrative record for this action has been established and includes supporting documentation as well as printed, paper versions of electronic comments. Copies of information in the record are available upon request. The official record of this rulemaking is available for inspection at the EPA Region 2 Library, 16th Floor, 290 Broadway, New York, NY 10007–1866. For access to the docket materials, call Rebecca Garvin at (212) 637–3185 between 9 am and 3:30 pm Monday through Friday, excluding legal holidays, for an appointment. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order." It has been determined that this rule is not a "significant regulatory action" under the terms of the Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

After considering the economic impact of today's proposed rule on small entities, the Agency certifies that this action will not have a significant economic impact on a substantial number of small entities for reasons explained below.

For the purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business based on the Small Business Administration's (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The SBA thresholds define minimum employment, sales revenue, or other factors than may qualify an industry segment as small. The thresholds used in this analysis are firm level four digit Standard Industrial Classification (SIC) codes. Exhibit 1 presents the SBA size standards used in this analysis.

EPA used current information concerning the potential universe of small entities that could be affected by the rule by obtaining information about all permits issued and any current permit applications. Since the HARS was first designated in 1997, the U.S. Army Corps of Engineers has received 17 permit applications for HARS placement, of which 14 permits were issued (Federal authorizations were not included in this analysis as the USACE is not a small entity), and there are currently 3 permit applications pending. As the HARS is anticipated to exist for a limited time, until the PRA has been remediated with at least one meter of Remediation Material, EPA believes it is reasonable to estimate that this universe of current and pending applications constitute the reasonable universe of entities affected by the proposed rule. Of the 17 permit applications, 4 (Castle Astoria Terminals, Inc., Port Imperial Marina, New York WaterWays, and International Matex Tank Terminals) are small entities, which is not a substantial number of small entities. Of the 4, 3 (Castle Astoria Terminals, Inc., Port Imperial Marina, and New York WaterWays) would have been affected by today's proposal, based upon past permitting information. Castle Astoria Terminals, Inc. has had a permit for HARS placement since 1999, but has not dredged to date. Port Imperial Marina, recently received a permit for HARS placement, but dredges very infrequently. New York WaterWays does not currently have a HARS placement permit, and has not dredged for many years. Further, these small entities are only a very small percentage of their SIC code.

In summary, based on past permit information, there would have been a small absolute number of small entities affected by the proposed rule, with very low impacts. As such, EPA concludes that the proposed rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

This proposed rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) because it would not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

D. The Unfunded Mandates Reform Act and Executive Order 12875

Title II of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA estimated total annualized (post-tax) costs of compliance for the proposed rule to be $13.5 million. Of this total $13.5 million would be incurred by the private sector and $0 would be incurred by State and Local governments. Thus, this proposed rule is not subject to the requirements of Sections 202 and 205 of UMRA.

EPA also has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule would apply equally to all dredged material to be placed at the HARS, thus there would be no unique effect of the rule on small governments. This rule is not anticipated to result in significant expenditures for small governments based on the universe of permit holders and applicants for the HARS. Thus, the requirements of Section 203 of UMRA also do not apply to this rule.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 *FR* 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 *FR* 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." "Policies that have Tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian Tribes, on the relationship between the Federal

government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes."

This proposed rule does not have Tribal implications. It would not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. EPA does not have information indicating that any Tribe would incur costs because of this rule. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 *FR* 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe might have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not an economically significant rule as defined under Executive Order 12866 and does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. Therefore, it is not subject to Executive Order 13045.

H. Executive Order 13211: Energy Effects

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 *FR* 28355 (May 22, 1001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 ("NTTAA"), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental' Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

No action from this proposed rule will have a disproportionately high and adverse human health and environmental effect on any segment of the population. In addition, this rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of Executive Order 12898 do not apply.

K. National Environmental Policy Act of 1969

Section 102(c) of the National Environmental Policy Act of 1969, Section 4321 et seq. (NEPA) requires Federal agencies to prepare environmental impact statements (EIS) for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. Although EPA ocean dumping program activities have been determined to be "functionally equivalent" to NEPA, EPA has voluntarily undertaken to follow NEPA procedures when designating ocean dumping sites. *See*, 63 FR 58045 (Oct. 29, 1998) .

In August 1982, EPA published a final EIS designation of the New York Dredged Material Disposal Site (Mud Dump Site)." The EIS assessed the environmental impacts of establishing an ocean disposal site for 100 million cubic yards (mcy) of dredged materials generated within the Port of New York and New Jersey. After completion of the EIS, EPA designated the Mud Dump Site as an Impact Category I disposal site (*see*, 40 CFR 228.10(c)) with a capacity of 100 mcy (*see*, 40 CFR 228.15(d)(6)). Approximately 68 mcy of dredged material was disposed of at the Mud Dump Site. In 1997, EPA prepared a Supplemental EIS, for the Designation of the Historic Area Remediation Site (HARS) in the New York Bight Apex. That document addressed the environmental considerations relevant to the HARS, and identified the Priority Remediation Area (PRA) within the HARS. At the time of the rule designating the HARS, the PCB matrix value for disposal at the site was 400 ppb. The establishment of the new PCB matrix value of 113 ppb is a refinement based on new information since the designation of the HARS, which will have positive impacts on the marine environment. EPA does not consider this refinement as a substantial change in the designation of the HARS. Consequently, no additional NEPA review is required.

L. The Endangered Species Act

Under Section 7(a)(2) of the Endangered Species Act, 16 U.S.C. 1536(a)(2), federal agencies are required to "insure that any action authorized, funded, or carried on by such agency * * * is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species * * *." Under regulations implementing the Endangered Species Act, a federal agency is required to consult with either the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (depending on the species involved) if the agency's action "may effect" endangered or threatened species or their critical habitat. *See*, 50 CFR 402.14(a).

EPA initiated its consultation process with the U.S. Fish and Wildlife Service (USFWS) on April 6, 1995 for what was then the Mud Dump Site and surrounding areas. The consultation process was concluded with them on July 28, 1995, with the USFWS's concurrence that EPA's action was not likely to adversely affect federally listed species under its jurisdiction. The action covered by this proposed rule is more protective of the marine environment. Accordingly, the conclusions of our earlier consultation with the USFWS for the designation of the HARS is still valid.

EPA initiated threatened and endangered species consultation with the National Marine Fisheries Service (NMFS) on April 4, 1996. As directed by the NMFS, EPA prepared a Biological Assessment (BA) to assess the impacts of the designation of the HARS on the Kemp's ridley and loggerhead sea turtles, and the humpback and fin whales. In May 1997, EPA sent the NMFS a copy of the BA, which concluded that the designation of the HARS is not likely to adversely affect the species in question; NMFS concurred with this conclusion. Since the BA utilized a PCB worm tissue matrix value of 400 ppb and this action proposes 113 ppb, any impacts to endangered or threatened species, or their critical habitats resulting from this action will be positive; the conclusion of the earlier consultation with NMFS is still valid.

M. Magnuson-Stevens Fishery Conservation and Management Act

The 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) require the designation of essential fish habitat (EFH) for federally managed species of fish and shellfish. Pursuant to section 305(b)(2) of the MSFCMA, federal agencies are required to consult with the National Marine Fisheries Service (NMFS) regarding any action they authorize, fund, or undertake that may adversely affect EFH. An adverse effect has been defined by the Act as follows: "Any impact which reduces the quality and/or quantity of EFH. Adverse effects may include direct (*e.g.*, contamination or physical disruption), indirect (*e.g.*, loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions." EFH became effective after the HARS was designated. However, prior to September 2000 all USACE permits and authorizations were subject to EFH review utilizing a PCB matrix value of 400 ppb and were found acceptable. Since September 2000, all USACE permits and authorizations have been subject to EFH review utilizing a PCB matrix value of 113 ppb and have been found acceptable. Since this action proposes 113 ppb, any impacts to EFH species, or their critical habitats predicted from this action would be expected to be the same, as such, the consultation requirements of Section 305(b)(2) of the MSFCMA do not apply to this rule.

N. Plain Language Directive

Executive Order 12866 requires each agency to write all rules in plain language. EPA has written this proposed rule in plain language to make this proposed rule easier to understand.

O. Executive Order 13158: Marine Protected Areas

Executive Order 13158 (65 FR 34909, May 31, 2000) requires EPA to "expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment." EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of the Executive Order is to protect the significant natural and cultural resources within the marine environment, which means "those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law."

Today's proposed rule implements Section 103 of the MPRSA which requires that permits for dredged material are subject to EPA review and concurrence. The proposed rule would amend 40 CFR 228.15(d)(6) by establishing a HARS-specific tissue PCB criterion of 113 ppb for dredged material proposed for use as Remediation Material.

As the HARS-specific PCB criterion of 113 ppb represents the lower of the non-cancer, cancer, and ecological PCB values, EPA expects that this proposed rule would afford additional protection of aquatic organisms at individual, population, community, or ecosystem levels of ecological structures, especially since the previous matrix value was 400 ppb. Therefore, EPA expects today's proposed rule would advance the objective of the Executive Order to protect marine areas.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: October 1, 2002.

Jane M. Kenny,

Regional Administrator, EPA Region 2.

In consideration of the foregoing, EPA is proposing to amend part 228 of chapter I, title 40 of the Code of federal Regulations is amended as follows:

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by adding paragraph (d)(6)(v) (E) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(d) * * *

(6) * * *

(v) * * *

(E) HARS-specific Polychlorinated Biphenyl (PCB) Tissue Criterion:

PCB bioaccumulation worm test results for dredged material approved for use at the HARS as Remediation Material shall not exceed the HARS-specific PCB tissue criterion of 113 ppb. This HARS-specific PCB tissue criterion will be applied to the arithmetic mean concentration reported for the analyses of the worm tissue replicates exposed to the tested sediments, without the use of statistical confidence limits.

* * * * *

[FR Doc. 02–25586 Filed 10–7–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278, CC Docket No. 92–90, FCC 02–250]

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on whether to revise, clarify or adopt any additional rules in order to more effectively carry out Congress's directives in the Telephone Consumer Protection Act of 1991 (TCPA). New technologies have emerged that allow telemarketers to better target potential customers and make it more cost effective to market using telephones and facsimile machines. These new telemarketing techniques have also increased public concern about the effect on consumer privacy. Therefore, we seek comment on whether to revise or clarify our rules governing unwanted telephone solicitations and the use of automatic

dialing systems, prerecorded or artificial voice messages, and telephone facsimile machines.

DATES: Comments are due November 22, 2002 and reply comments are due December 9, 2002. Written comments by the public on the proposed information collections are due November 22, 2002. Written comments must be submitted by the Office of Managements and Budget (OMB) on the proposed information collection on or before December 9, 2002.

ADDRESSES: Parties who choose to file comment by paper must file an original and four copies to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at *www.fcc.gov/e-file/ecfs.html*. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov* and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC, 20503 or via the Internet to *Kim_A._Johnson@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon or Richard D. Smith at 202–418–2512, Consumer & Governmental Affairs Bureau. For additional information concerning the information collection(s) contained in this document, contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CG Docket No. 02–278 and CC Docket No. 92–90, FCC 02–250, released September 18, 2002. The full text of this document is available on the Commission's Web site Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

Paperwork Reduction Act

This NPRM contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Only those proposals that might change an information collection requirement are discussed below.

OMB Control Number: 3060–0519.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, NPRM, CG Docket No. 02–278 and CC Docket No. 92–90.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 30,000.

Estimated Time Per Response: 55.1 hours (average).

Frequency of Response: Recordkeeping; On occasion reporting requirement; Third Party disclosure.

Total Annual Burden: 1,653,600 hours.

Total Annual Costs: None.

Needs and Uses: The current total public disclosure and recordkeeping burden for collections of information under the TCPA rules is 936,000 hours, as stated most recently in the Commission's OMB submission to extend approval of the information collection in connection with the TCPA rules.

1. Additional Hour Burden for Company-Specific Do-Not-Call List Requirements

In this NPRM, the Commission seeks comment on the current recordkeeping requirement on companies to maintain lists of telephone subscribers who do not wish to be contacted by telephone. Taking into account more recent estimates on the number of telemarketing calls made daily in the United States, we estimate that the requirement to maintain such lists may result in an additional 291,200 burden hours.

2. Proposal That the Commission Require Common Carriers To Inform Subscribers of the Option To Register With a National Do-Not-Call List and To Inform Any Telemarketers To Which They Provide Services of the Do-Not-Call Requirements

We estimate that any requirement on common carriers to notify telemarketers and consumers of a national do-not-call list will account for an additional burden of 396,400 hours.

3. Proposal That the Commission Adopt Certain Recordkeeping Requirements

The Commission also seeks comment on whether to adopt certain recordkeeping requirements that must be met before companies may avail themselves of any "safe harbor" protections for violating the do-not-call rules. Companies that conduct telemarketing already maintain their own do-not-call lists and many of them must reconcile their lists with state do-not-call lists. We believe that any additional recordkeeping burden as a result of specific "safe harbor" requirements, particularly the verifiable authorizations, would be minimal. We estimate that this requirement will account for one hour of recordkeeping burden per company, or an additional 30,000 hours.

Synopsis of NPRM

1. It has been nearly ten years since the Commission adopted a broad set of rules to curb unwanted telephone solicitations in the *TCPA Order* (57 FR 48333, October 23, 1992). In this NPRM, we seek to review the practices used to market goods and services over the telephone and facsimile machine that are the focus of the TCPA and the Commission's implementing regulations. In doing so, we ask whether the Commission should: (1) refine its existing rules on the use of autodialers, prerecorded messages, and unsolicited facsimile advertisements, to account for technological developments in recent years and emerging telemarketing practices; (2) adopt any additional rules as permitted by the statute to ensure that our telemarketing requirements protect the privacy of individuals and permit legitimate telemarketing practices; and (3) reconsider the option of establishing a national do-not-call list as authorized by Congress in the TCPA. On the subject of a national do-not-call list, we are particularly interested in comments addressing those entities not covered by the FTC's proposed national

do-not-call database as well as the interplay between a national registry and state do-not-call lists. We request that commenters address issues relating to our current rules separately from those issues relating to a national do-not-call list.

2. In evaluating the issues in this NPRM, we will be mindful of the constitutional standards applicable to governmental regulations of commercial speech articulated in *Central Hudson Gas & Elec. Corp.* v. *Public Service Commission*. In order to determine whether restrictions on commercial speech survive "intermediate scrutiny," *Central Hudson* sets out a four-part test. *Central Hudson* asks first whether the speech in question concerns illegal activity or is misleading, in which case the government may freely regulate the speech. If the speech is not misleading and does not involve illegal activity, the court applies the rest of the four-part test to the government's regulation. The second prong of *Central Hudson* examines whether the government has a substantial interest in regulating the speech. Third, the government must show that the restriction on commercial speech directly and materially advances that interest. Finally, the regulation must be narrowly tailored. Narrowly tailored means that the government's restriction on speech reflects a "carefu[l] calculat[ion of] the costs and benefits associated with the burden on speech imposed by its prohibition." To the extent that any proposed changes to our current rules implicate these constitutional standards, we seek comment on such implications.

1. TCPA Rules

a. Company-Specific Do-Not-Call Lists

3. The TCPA directs the Commission to "compare and evaluate alternative methods and procedures . . . for their effectiveness in protecting [residential telephone subscribers'] privacy rights" to avoid receiving unwanted telephone solicitations. In the *TCPA Order*, the Commission determined that rules requiring telemarketers to maintain their own lists of consumers who did not wish to be called sufficiently balanced consumer interests in limiting unsolicited advertising with telemarketers' interests in providing beneficial services to consumers. The company-specific do-not-call approach protects residential telephone subscriber privacy by requiring telemarketers to place a consumer on a do-not-call list if the consumer asks not to receive further solicitations.

4. We now seek comment on the overall effectiveness of the company-specific do-not-call approach in providing consumers with a reasonable means to curb unwanted telephone solicitations. We recognize that some consumers may feel that receiving product and service information by telephone helps them reap the benefits of a competitive marketplace; such consumers may value the savings and convenience that telemarketing often provides. Other consumers may wish to limit, or even stop altogether, the number of telemarketing calls they receive. Given the volume of telemarketing calls, we seek comment on whether the company-specific do-not-call approach adequately balances the interests of those consumers who wish to continue receiving telemarketing calls, and of the telemarketers who wish to reach them, against the interests of those who object to such sales calls. We note that, under the company-specific do-not-call approach, consumers must repeat their request not to be called on a case-by-case basis as calls are received. We seek comment on whether this approach is unreasonably burdensome for consumers. We also seek comment on how effective such requests have been in practice in preventing unwanted telephone solicitations. For example, we seek comment on whether such requests are typically honored, whether consumers continue to receive calls for some period of time after requesting that they be placed on a do-not-call list, and whether some telemarketers hang up before consumers can assert their "do-not-call" rights. In addition, we seek comment on whether consumers with hearing and speech disabilities often may be unable to convey a request not to be called to telemarketers.

5. As discussed above, changes in the marketplace and technological innovations since the Commission adopted its TCPA rules in 1992 may have reduced the effectiveness of the company-specific approach. For example, the widespread use of predictive dialers and answering machine detection technology results in many "hang-up" or "dead air" calls in which the consumer has no opportunity to request that the telemarketer not call in the future. The FTC indicates that use of predictive dialers has increased dramatically in the past decade. The FTC notes that many consumers feel frightened, threatened, or harassed when receiving a pattern of such hang-up calls. In addition, there is no way for the consumer to determine whether such calls are placed by telemarketers or may be part of some illegitimate conduct. Such calls may also be particularly trying for the elderly and persons with disabilities who may have difficulty reaching the phone only to be disconnected. Such calls may also be disruptive to the increasing number of individuals who now work from home by tying up telephone lines or disconnecting telecommuters from the Internet. We seek comment on what, if any, legitimate business or commercial speech interest is promoted by these calls. We seek comment on these issues and any other impact that changes in the telemarketing industry over the last decade have had on the overall effectiveness of the company-specific approach.

6. In the *TCPA Order*, the Commission enumerated a number of advantages both to consumers and businesses in adopting a company-specific do-not-call approach. In particular, the Commission concluded that company-specific do-not-call lists: (1) Were already maintained by many telemarketers; (2) allow residential subscribers to selectively halt calls from telemarketers; (3) allow businesses to gain useful information about consumer preferences; (4) protect consumer confidentiality because the lists would not be universally accessible; and (5) impose the costs of protecting consumers on telemarketers rather than telephone companies or consumers. We seek comment on whether these and any other potential advantages of the company-specific do-not-call approach remain valid today. In addition, we seek comment on whether the company-specific approach should be retained if the FTC, either acting alone or in conjunction with the Commission, adopts a national do-not-call list. Under such circumstances, we seek comment as to whether the benefits of retaining company-specific do-not-call lists to consumers would continue to outweigh the costs to telemarketers. Parties are strongly encouraged to provide empirical studies or other specific evidence whenever possible to support their arguments.

7. If the Commission concludes that it should retain the company-specific do-not-call lists, we seek comment on whether the Commission should consider any additional modifications that would allow consumers greater flexibility to register on such lists. For example, we seek specific comment on whether companies should be required to provide a toll-free number and/or a website that consumers can access to register their name on the do-not-call list. In addition, we seek comment on whether any additional measures should be taken to ensure that consumers with disabilities have the

same opportunity as other consumers to request that they be placed on do-not-call lists. We also seek comment on whether companies should be required to respond affirmatively to such requests or otherwise provide some means of confirmation so that consumers may verify that their requests have been processed. As a related matter, we seek comment as to whether the Commission should set a specific time frame for companies to process do-not-call requests. We also ask whether the requirement that companies honor do-not-call requests for ten years is a reasonable length of time for consumers and telemarketers. In addition, we seek comment on any possible Commission or industry initiatives that would better inform consumers of their right to request placement on a company's do-not-call list. We also seek comment on the effectiveness of any private sector initiatives, such as the Direct Marketing Association's Telephone Preference Service, in reducing unwanted sales calls. Are there any industry "best practices" that might provide telemarketers with possible safe harbors from liability for violating our do-not-call rules? Finally, we seek comment on whether our rules should be modified to minimize unnecessary burdens on telemarketers. We seek comment on these and any other modifications that commenters may suggest that would better balance the goal of limiting unsolicited advertising against telemarketers' burdens in conducting beneficial or otherwise legitimate telemarketing practices.

8. *Interplay of sections 222 and 227.* The Commission has recently released an Order implementing section 222 of the Communications Act of 1934, as amended. Section 222, entitled "Privacy of Customer Information," obligates telecommunications carriers to protect the confidentiality of certain information. In the *CPNI Order* (67 FR 59205, September 20, 2002), the Commission determined that a telecommunications carrier may use a customer's CPNI to market various services to a customer if that customer has provided its carrier with appropriate consent. The section 227 rules require telemarketers to maintain their lists of consumers who do not wish to be called and to place a consumer on a do-not-call list if the consumer asks not to receive further solicitations.

9. We seek comment broadly on the interplay between sections 222 and 227. For example, if an individual places her name on her carrier's do-not-call list under section 227 (or a national do-not-call list, if one were implemented), should such an express request not to be contacted by means of the telephone be honored even though the customer may also have provided implied (opt-out) consent under section 222 for use and disclosure of her CPNI? We believe that a consumer's request to be placed on a telecommunications carrier's do-not-call list limits that carrier's ability to market to that consumer over the telephone. The carrier, however, may still market to that consumer, using her CPNI, in other ways (*e.g.*, direct mail, email, etc.). Honoring a do not call request under section 227 does not render a consent under section 222 a nullity, but instead merely limits the manner of contact (i.e., marketing over the telephone) consistent with the express request of the customer under section 227. Further, we believe it likely that permitting a section 222 opt-out consent to eliminate or trump a section 227 do not call request would lead to customer confusion concerning privacy rights and the actions required to secure those rights. We request comment on our tentative conclusion, as well as on the rationale underlying that conclusion. We also request comment on whether we should reach that same tentative conclusion where the form of consent provided under section 222 is an express opt-in consent. Commenters should also analyze those constitutional considerations that may influence our determination, and explain with particularity how their recommendations are consistent with first amendment requirements.

10. As discussed below, the Commission's rules permit an exemption for companies to deliver artificial or prerecorded message calls to consumers with whom they have an "established business relationship." The Commission seeks comment on what effect the established business relationship exemption might have on the telecommunications industry, if a national do-not-call list is established. Should we consider modifying the definition of "established business relationship" so that a company that has a relationship with a customer based on one type of product or service may not call consumers on the do-not-call list to advertise a different service or product?

b. Network Technologies

11. We seek comment on whether network technologies have been developed over the last decade that may allow consumers to avoid receiving unwanted telephone solicitations. If so, we seek comment on whether and how these technologies should influence our analysis of the merits of revising our company-specific do-not-call rules or possibly adopting a national do-not-call list. In particular, we seek comment on what factors the Commission should consider in deciding whether to rely on these technologies. In the 1992 *TCPA Order*, the Commission rejected the network technology method of avoiding unwanted telephone solicitations. In particular, the Commission considered whether to require telemarketers to use a special area code or telephone number prefix that would allow consumers to block such calls using automatic number identification (ANI) or a caller ID service. Based on the costs and technical barriers to implement this alternative, however, the Commission concluded that this solution was not the best means for accomplishing the objectives of the TCPA at that time. The Commission also noted that it was unclear whether fees on telemarketers would be sufficient to cover the costs of making call blocking technology universally available, raising the possibility that such costs would be passed on to residential telephone subscribers, in violation of the TCPA. We seek comment on whether these concerns remain persuasive today. We seek comment on whether we should consider any other technologies in this context, and, if so, we ask commenters to include a brief explanation of how these technologies operate and how much they would cost to implement.

12. Under the Commission's rules, with certain limited exceptions, common carriers using Signaling System 7 (SS7) and offering or subscribing to any service based on SS7 functionality are required to transmit the calling party number (CPN) associated with an interstate call to interconnecting carriers. As discussed in greater detail below, we take this opportunity to seek comment on whether the Commission should consider any additional "caller ID" requirements in the context of its review of the TCPA rules. Specifically, should the Commission require telemarketers to transmit the name and telephone number of the calling party, when possible, or prohibit them from blocking or altering the transmission of such information? We also seek comment on what impact any changes to our "caller ID" rules might have on existing state "caller ID" rules.

c. Autodialers

13. *Definition.* Section 227 and the Commission's implementing regulations define automatic telephone dialing systems as "equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers." The Commission seeks comment on the definition of "automatic telephone dialing system" (or "autodialer") and whether it is necessary to identify the technologies section 227 is designed to address. The TCPA and Commission's rules prohibit calls using an autodialer to emergency telephone lines, to the telephone line of a guest room of a health care facility, to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call. In addition, Commission rules provide that all artificial or prerecorded messages delivered by an autodialer shall, at the beginning of the message, state the identity of the entity initiating the call and, during the message, the telephone number or address of such entity. The Commission has received inquiries about whether certain technologies fall within these restrictions, given that they may or may not be classified as "automatic telephone dialing systems."

14. The legislative history of the TCPA suggests that autodialer-generated calls are more intrusive to the privacy concerns of the called party than live solicitations. An autodialer can generate far more calls to residences than a telemarketer can manually. In addition, an autodialer is frequently used to send artificial or prerecorded messages, which the legislative history suggests are often a greater nuisance and invasion of privacy than calls placed by "live" persons. We seek comment on this reading of the legislative history and whether Congress intended the definition of "automatic telephone dialing system" to be broad enough to include any equipment that dials numbers automatically, either by producing 10-digit telephone numbers arbitrarily or generating them from a database of existing telephone numbers. The Commission recognizes that in the last decade new technologies have emerged to assist telemarketers in dialing the telephone numbers of potential customers. More sophisticated dialing systems, such as predictive dialers and other electronic hardware and software containing databases of telephone numbers, are now widely used by telemarketers to increase productivity and lower costs. Therefore, we ask commenters to provide information on the various technologies used to dial telephone numbers. We invite comment on the use of random and sequential number generators and whether an autodialer can generate phone calls from a database of existing numbers. If a particular technology generates numbers at random, how does a telemarketer comply with the law to avoid calling emergency phone lines, health care facilities, pager numbers, and wireless telephone numbers? In light of new technologies and the legislative history, is there a need to refine the definition in our rules to better balance the goal of limiting unsolicited advertising against the burdens on telemarketers and their interest in providing beneficial telemarketing services?

15. *Autodialed Calls to Residences and Businesses.* Additionally, the Commission seeks input from commenters about the costs and benefits of adopting rules to further restrict the use of autodialers to dial residential and business telephone numbers. We specifically seek comment on the practice of using automatic telephone dialing equipment to dial large blocks of telephone numbers in order to identify lines that belong to telephone facsimile machines. Should the Commission adopt rules to restrict this practice?

16. *Predictive Dialers.* We seek specific comment on whether a predictive dialer, as a form of automatic telephone dialing system, is subject to the ban on calls to emergency lines, health care facilities, paging services, and any service for which the called party is charged for the call. Specifically, we ask whether a predictive dialer that dials telephone numbers using a computer database of numbers falls under the TCPA's restrictions on the use of autodialers. We seek comment on whether the Commission should adopt rules to further restrict the use of predictive dialers to dial consumers' telephone numbers. In addition to automatically dialing numbers, predictive dialers are set up to "predict" the average time it takes for a consumer to answer the phone and when a telemarketer will be free to take the next call. When a consumer answers the telephone, a predictive dialer transfers the call to an available telemarketer. When a predictive dialer simultaneously dials more numbers than the telemarketers can handle, some of the calls are disconnected. The consumer may hear silence on the line as the call is being transferred or a "click" as the call is disconnected. In 1991, the Commission received a total of 757 complaints regarding calls placed to subscribers by autodialers. From June 2000 to December 2001, the Commission received over 1,500 inquiries about predictive dialing alone. In addition, the consumer alert titled "Predictive Dialing: Silence on the Other End of the Line" has received over 16,000 hits on the Commission's website since the alert was posted in February of 2001. In light of the increased use of predictive dialers, the Commission seeks recommendations on what approaches we might take to minimize any harm that results from the use of predictive dialers. Cognizant of the benefits of predictive dialing to the telemarketing industry, the Commission invites comment on whether requiring a maximum setting on the number of abandoned calls or requiring telemarketers who use predictive dialers to also transmit caller ID information are feasible options for telemarketers. We also seek comment on whether prohibiting telemarketers from blocking caller ID information would alleviate the harm that results when predictive dialers abandon calls. As noted earlier, under the Commission's caller ID rules, common carriers using SS7 and offering or subscribing to any service based on SS7 functionality are required to transmit the CPN associated with an interstate call to interconnecting carriers. If the Commission were to adopt rules regarding the transmission of caller ID information by telemarketers, should we consider amending the caller ID rules in any way to ensure the two sets of rules are consistent? We also invite commenters to suggest alternative approaches to the problems associated with abandoned calls.

17. *Answering Machine Detection.* Another reason for "dead air" may be the use of Answering Machine Detection (AMD) technology that monitors calls once they are answered. According to DialAmerica Marketing, Inc., AMD can be used along with automatic dialing systems to deliver telemarketing calls. AMD may either send a prerecorded message to an answering machine or transfer the call to a telemarketer once it detects that a customer has answered the call. According to comments filed with the FTC, if the AMD detects "noise" (*e.g.*, the word "Hello") followed by silence, it assumes that a person has answered the phone. If the AMD detects noise for several seconds, it assumes that it is an answering machine message. In either case, the AMD may be programmed to disconnect the call or send a prerecorded message to an answering machine. In the event that a person has answered the telephone and the call is transferred to a sales representative, the use of AMD involves the monitoring of the line for several seconds and may create "dead air" while the call is being transferred. The Commission seeks comment on the use of AMD by the telemarketing industry and whether AMD technology

is responsible for much of the "dead air" consumers encounter. We also seek comment on whether consumers are most frustrated with the delay in response as the call is transferred to a telemarketer, or with calls that are abandoned entirely, or with both. Would restrictions on the use of AMD serve to alleviate the problem of "dead air?" Should restrictions on AMD be implemented in conjunction with restrictions on autodialers and predictive dialers? Commenters are strongly encouraged to support their arguments with empirical studies or other specific evidence.

d. Identification Requirements

18. Commission regulations require that a person or entity making a telephone solicitation must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The term "telephone solicitation" is defined to mean the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of * * * property, goods, or services * * *". The TCPA clearly imposes identification requirements upon artificial and prerecorded voice messages and our identification rules apply without limitation to "any telephone solicitation to a residential telephone subscriber." Nonetheless, we seek comment on whether we should modify our rules to state expressly that the identification requirements apply to otherwise lawful artificial or prerecorded messages, as well as to live solicitation calls.

19. Under Commission rules, telemarketers who use autodialers to send artificial or prerecorded messages similarly must identify themselves by name and phone number or address. We seek comment on the Commission's identification requirement at 47 CFR 64.1200(d) and its applicability to predictive dialing and other circumstances involving abandoned telemarketing calls. We note that, in its discussion on predictive dialing, the FTC maintains that telemarketers who abandon calls are violating section 310.4(d) of the Telemarketing Sales Rule. The FTC states that, under its rules, when a telemarketer calls a consumer, the telemarketer is required to disclose identifying information to the person receiving the call. According to the FTC, the consumer is "receiving the call" when the consumer answers the telephone. Therefore, if a predictive dialer abandons the call before the telemarketer identifies himself or herself, the FTC proposes that the telemarketer is violating the Telemarketing Sales Rule. We seek comment on whether the Commission should reach a similar conclusion.

e. Artificial or Prerecorded Voice Messages

(i) Commercial and Non-Commercial Calls

20. The TCPA and Commission rules prohibit telephone calls to residences using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is for emergency purposes or is specifically exempted. Commission rules exempt calls that are non-commercial as well as commercial calls that do not include the transmission of any unsolicited advertisement. The rules define "unsolicited advertisement" to mean "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission." While the Commission has declined to create specific categories of non-commercial exemptions (other than for tax-exempt nonprofit organizations, discussed below), it noted that messages that do not seek to sell a product or service do not tread heavily upon the consumer interests implicated by section 227. Therefore, the Commission determined that calls conducting research, market surveys, political polling, or similar activities which do not involve solicitation as defined by the rules are exempt from the prohibition on prerecorded messages. We note here that the exemption for non-commercial calls applies to a wide range of entities, some of which are engaged in political or religious discourse. This Commission does not intend in this NPRM to seek comment on the exemption as it applies to political and religious speech.

21. We specifically seek comment on artificial or prerecorded messages containing offers for free goods or services (including free estimates or free analyses) and messages with "information-only" about products. We also invite comment about calls seeking people to help sell or market a business' products (a kind of "help wanted" message). We note that, while these calls do not purport to sell something, they often contain messages advertising the quality of certain goods or services and are intended to generate future business. Such messages usually include phone numbers that consumers can call to obtain further information, at which time the seller offers additional goods or services for purchase. Such calls arguably have a dual purpose, as in the case when a business calls to inquire about a customer's satisfaction with a product or service already purchased, but is nevertheless motivated in part by the desire to ultimately sell additional goods or services. The Commission therefore seeks comment on whether our rules would better serve consumers and businesses if they more explicitly addressed those calls that include information about a product or service but do not immediately solicit a purchase. Would it balance the interests of consumers and telemarketers more effectively for us to clarify that calls containing offers for free goods or services are prohibited without the prior express consent of the called party? Would such action assist telemarketers in their efforts to comply with our rules, as well as reduce the number of unwanted telephone solicitations? Again, as stated above, we note that we are not seeking comment regarding political or religious speech.

22. Based on public inquiries, we also seek comment on prerecorded messages sent by radio stations or television broadcasters that encourage telephone subscribers to tune in at a particular time for a chance to win a prize or some similar opportunity. Does the Commission need to specifically address these kinds of telemarketing calls, and, if so, what rules might we adopt to appropriately balance consumers' interest in restricting unsolicited advertising with commercial freedoms of speech?

(i) Tax-Exempt Nonprofit Organizations

23. The TCPA excludes calls or messages by tax-exempt nonprofit organizations from the definition of "telephone solicitation." In the *TCPA Order*, the Commission concluded that calls by tax-exempt nonprofit organizations also should be exempt from the prohibition on prerecorded messages to residences as non-commercial calls. Noting that the TCPA seeks primarily to protect subscribers from unrestricted commercial telemarketing activities, the Commission found no evidence to show that non-commercial calls represented as serious a concern for telephone subscribers as unsolicited commercial calls. In addition, the Commission determined that calls made by independent telemarketers on behalf of tax-exempt nonprofit organizations are not subject to our rules governing telephone solicitations. We point out, however, that the Commission has received inquiries over the years about certain practices by nonprofit organizations. We take this opportunity to seek comment on calls made jointly by nonprofit and for-profit organizations and whether they should be exempt from the restrictions on telephone solicitations and prerecorded messages. For example, if a nonprofit organization calls consumers to sell another company's magazines and receives a portion of the proceeds, should such calls fall within the exemption? We emphasize in this NPRM that the exemption for tax-exempt nonprofit organizations applies to religious and political organizations that have likewise received tax exempt status from the U.S. government. We note here that the exemption for non-commercial calls applies to a wide range of entities, some of which are engaged in political or religious discourse. In this NPRM, we do not seek comment on the exemption as it applies to political and religious speech. We emphasize that we do not seek comment in this notice on the exemption as it applies to political and religious speech whether conducted by nonprofit organizations or for-profit organizations on behalf of nonprofit organizations. We note that the statute and our rules clearly apply already to messages that are predominantly commercial in nature, and that we will not hesitate to consider enforcement action should the provider of an otherwise commercial message seek to immunize itself by simply inserting purportedly "non-commercial" content into that message.

(ii) Established Business Relationship

24. In the *TCPA Order*, the Commission determined that, based on the record and legislative history, the TCPA permits an "established business relationship" exemption from the restrictions on artificial or prerecorded message calls to residences. The Commission concluded that a solicitation to someone with whom a prior business relationship exists does not adversely affect subscriber privacy interests. The Commission defined the term "established business relationship" to mean "a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party." We seek comment on whether any circumstances have developed that would justify revisiting these conclusions. If so, would revisiting the exemption interfere with ongoing business relationships or impede communications between businesses and their customers, particularly for small businesses? Should the Commission specify by rule the particular circumstances that would establish the requisite business relationship? We seek comment specifically on whether we should clarify the type of consumer inquiry that would create an established business relationship for purposes of the exemption. For example, need we clarify that a consumer's request for information related to business hours or directions to a business location is not an inquiry that would establish the requisite business relationship? The Commission also invites comment on whether merely asking at a previous time about a company's products, services, or prices could establish a prior business relationship. If so, is there any time limitation to such relationships?

25. We also seek comment on the interplay between the established business relationship exemption and a customer's request not to receive calls from a person or entity with which the customer has a prior business relationship. In the *TCPA Order*, the Commission noted that a business may not make telephone solicitations to an existing or former customer who has asked to be placed on that company's do-not-call list. The Commission explained that a customer's request to be placed on the company's do-not-call list terminates the business relationship between the company and that customer for the purpose of any future solicitation. We seek comment on the effect of a do-not-call request on a prior business relationship. Specifically, should a company be obligated to honor a do-not-call request even when the customer continues to do business with the entity making the solicitations? Or is the consumer obligated to first terminate all business with the company before the company must suspend solicitation calls to that customer? For example, must a consumer who subscribes to a daily newspaper or holds a credit card cancel the newspaper subscription or credit card in order to stop future solicitation calls from those businesses?

f. Time of Day Restrictions

26. In the *TCPA Order*, the Commission concluded that it was in the public interest to impose time of day restrictions on telephone solicitations as reasonable limitations on telemarketing to residences. Accordingly, the Commission implemented regulations that prohibited unsolicited sales calls before 8:00 am and after 9:00 pm local time at the called party's location. As part of our review of the current TCPA rules, we seek comment on how effective these time restrictions have been at limiting objectionable solicitation calls. The FTC's Telemarketing Sales Rule also includes calling time restrictions that are consistent with the FCC's rules on calling hours. The FTC indicates that the current calling time restrictions provide reasonable protections for consumers' privacy while not burdening the telemarketing industry. The FTC also notes that altering the calling hours under the TSR would create a conflict in the federal [FCC] regulations governing telemarketers. We seek comment on this reasoning. In addition, should more restrictive calling times be adopted only in the event a national do-not-call list is not established, or could they work in conjunction with a national registry to better protect consumers from receiving telephone solicitations to which they object?

g. Unsolicited Facsimile Advertisements

27. The TCPA prohibits the transmission of unsolicited advertisements by telephone facsimile machines and requires those sending any messages via telephone facsimile machines to identify themselves to message recipients. We seek comment on the continued effectiveness of these regulations and on any developing technologies, such as computerized fax servers, that might warrant revisiting the rules on unsolicited faxes. In considering any possible rule changes, we will take into account both the record developed during this proceeding, as well as the Commission's extensive enforcement experience regarding the rules on unsolicited fax advertisements.

(i) Prior Express Invitation or Permission

28. The TCPA prohibits the sending of unsolicited advertisements to telephone facsimile machines. The Commission's rules define an unsolicited advertisement as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission." We seek comment on the need to clarify what constitutes prior express invitation or permission for purposes of sending an unsolicited fax. In the *1995 TCPA*

Reconsideration Order (60 FR 42068, August 15, 1995), the Commission determined that the intent of the TCPA was not to equate mere distribution or publication of a telephone facsimile number with prior express permission or invitation to receive such advertisements. The Commission determined that given the variety of ways in which fax numbers may be distributed, it was appropriate to treat the issue of consent in any complaint on a case-by-case basis. We seek comment on the circumstances in which facsimile numbers are distributed or published by individuals and businesses. We invite comment specifically on the issue of membership in a trade association or similar group. For example, should the publication of one's fax number in an organization's directory constitute an invitation or permission to receive an unsolicited fax? The Commission also seeks comment on what effect its case-by-case analysis has had on the number of unsolicited faxes sent to consumers and on costs incurred by the recipients of such faxes.

(ii) Established Business Relationship

29. We seek comment on the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive telephone facsimile advertisement transmissions. This determination has amounted to an effective exemption from the prohibition on sending unsolicited facsimile advertisements, although our rules do not expressly provide for such an exemption. We ask whether, in practice, the Commission's previous determination has served to protect ongoing business relationships and whether it has had any adverse impact on consumer privacy. If we were to preserve the "exemption," should we amend our rules to expressly provide for it? We also seek comment on the need to clarify the scope of the "exemption." For instance, should a company that has an established relationship with a customer based on one type of product or service also be allowed to send unsolicited faxes about a different service or product? We invite comment on a consumer's authority to stop faxes to his facsimile number from a business with which he has an established relationship. Is it necessary for the Commission to adopt rules to protect consumers from unsolicited faxes in such circumstances?

(iii) Fax Broadcasters

30. We seek comment on whether the Commission should address specifically in the rules the activities of "fax broadcasters" who transmit other entities' advertisements to a large number of telephone facsimile machines for a fee. In the *TCPA Order*, the Commission stated that "[i]n the absence of a "high degree of involvement or actual notice of an illegal use and failure to take steps to prevent such transmissions," common carriers will not be held liable for the transmission of a prohibited facsimile message." When asked whether common carriers' exemption from liability extended to entities that engage in fax broadcasting but are not common carriers, the Commission found that "[t]he entity or entities on whose behalf facsimiles are transmitted are ultimately liable for compliance with the rule banning unsolicited facsimile advertisements, and that fax broadcasters are not liable for compliance with the rule." In a later order further addressing fax broadcasters' obligations under the TCPA rules, the Commission stated that "[f]acsimile broadcast service providers are businesses or individuals that transmit messages on behalf of other entities to selected destinations and that do not determine either the message content or to whom they are sent." ome fax broadcasters maintain lists of telephone facsimile numbers that they use to direct their clients' advertisements. This practice, among others, indicates a fax broadcaster's close involvement in sending unlawful fax advertisements and may subject such entities to enforcement action under the TCPA and our existing rules. Based on the number of complaints and inquiries the Commission has received in the last few years on unwanted faxes, and the apparent prevalence of fax broadcasters that determine the destination of their clients' advertisements, we seek comment on whether the Commission should address specifically in the rules the activities of such fax broadcasters. Should the Commission amend the rules to state explicitly that certain fax broadcasting practices expose the fax broadcaster to liability under the TCPA and the Commission's rules? Should the Commission specify by rule the particular activities that would demonstrate a fax broadcaster's "high degree of involvement" in the unlawful activity of sending unsolicited advertisements to telephone facsimile machines? Would such a rule afford consumers a greater measure of protection from unlawful faxing than they already enjoy under existing rules? Would such a rule better inform the business community about the general prohibition on unsolicited fax advertising? Have the Commission's rules that require fax advertisements to identify the entity on whose behalf the messages are sent been effective at protecting consumers' rights to enforce the TCPA?

h. Wireless Telephone Numbers

31. The TCPA and the Commission's rules specifically prohibit telephone calls using an autodialer or an artificial or prerecorded voice message to any telephone number assigned to a paging service, cellular telephone service, or any service for which the called party is charged for the call, except in emergencies or with the prior express consent of the called party. The Commission's rules also state that live telephone solicitations to residential telephone subscribers must comply with time of day restrictions and must institute procedures for maintaining do-not-call lists. The Commission has not opined on whether wireless subscribers or a subset thereof are "residential telephone subscribers" for purposes of these restrictions.

32. Since 1991, the commercial wireless industry has grown dramatically, both in the number of subscribers and the amount of usage for each subscriber. A USA Today/CNN/Gallop poll found that almost one in five mobile telephony users regard their wireless phone as their primary phone. Also, many wireless consumers purchase large "buckets" of minutes at a fixed rate, which may have an impact on the way consumers perceive the costs of making and receiving calls on their wireless phones.

33. We seek comment on the extent to which telemarketing to wireless consumers exists today. Specifically, we seek comment on whether consumers receive solicitations on their wireless phones, and the nature and frequency of such solicitations. We also seek comment on whether telemarketers are including or targeting wireless phone numbers in their telemarketing calls. Do telemarketers distinguish between wireless and wireline phone numbers and, if so, how?

34. In addition, we seek comment on whether the Commission's TCPA rules are sufficient to address any issues identified above, or whether any revisions are necessary. For example, should wireless telephone numbers or a subset thereof be considered "residential telephone numbers" for the purposes of the Commission's rules on telephone solicitations? If so, should there be any different rules that apply to solicitations to wireless telephone numbers than already would apply under § 64.1200(e)?

35. We note that the TCPA permits the Commission to exempt from the restrictions on autodialer or prerecorded message calls to wireless phone numbers "calls to a telephone number assigned to a cellular telephone service that are not charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the interest of the privacy rights this section is intended to protect." In the *TCPA Order*, the Commission concluded that calls made by cellular carriers to their subscribers for which the subscribers were not charged do not fall within the prohibitions on autodialers or prerecorded messages. We seek comment on whether there are other types of calls to wireless telephone numbers that are not charged to the called party, and whether such calls also should not fall within the prohibitions on autodialers or prerecorded messages.

36. Lastly, we seek comment on any developments anticipated in the near future that may affect telemarketing to wireless phone numbers. For example, when consumers are able to port numbers from their wireline phones to wireless phones, or are assigned numbers from a pool of numbers rather than from a full central office code, how will telemarketers identify wireless numbers in order to comply with the TCPA? We therefore seek comment on the availability of any technological tools that would allow telemarketers to recognize numbers that have been ported from wireline to wireless phones or to recognize wireless numbers that have been assigned from a pool of numbers that formerly were all wireline. For example, we note that the public safety community is finalizing plans that would enable Public Safety Answering Points to identify the type of phone from which the caller is making an emergency call. The Number Portability Administration Center administrator, Neustar, has, however, limited access to this Interactive Voice Response (IVR) system to service providers, authorized law enforcement, and public safety agencies. Telemarketers currently do not have access to the IVR system. Should telemarketers be given access to the IVR system, or should access to the IVR system continue to be restricted to service providers, law enforcement, and public safety agencies? If telemarketers are granted access, will the IVR system be sufficient to enable them to determine whether a number serves a wireline or wireless subscriber? If telemarketers should not be given access to the IVR system, or if this system will be insufficient to identify whether a number serves a wireless or wireline subscriber, should a different system be developed, perhaps based on the IVR system, for use by telemarketers?

i. Enforcement

(i) Private Right of Action and Individual Complaints

37. Based on the statutory language, the Commission determined that "[a]bsent state law to the contrary, consumers may immediately file suit in state court if a caller violates the TCPA's prohibitions on the use of automatic dialing system and artificial or prerecorded voice messages." The Commission also determined that the TCPA permits a consumer to file suit in state court if he or she has received more than one telephone call within any 12-month period by or on behalf of the same company in violation of the guidelines for making telephone solicitations. The Commission has continued to receive inquiries about a consumer's right to file suit against a person or entity that has made one phone call in violation of the TCPA rules. Should we clarify whether a consumer may file suit after receiving one call from a telemarketer who, for example, fails to properly identify himself or makes a call outside the time of day restrictions? In addition, telemarketers that are not common carriers are not currently subject to the informal complaint rules that require common carriers to reply to individual complaints upon notice of a complaint by the Commission. The Commission released an NPRM in February seeking comment on whether to extend the informal complaint rules to entities other than common carriers. We seek comment in this proceeding on whether the Commission should amend these informal complaint rules to apply to telemarketers.

(ii) State Law Preemption

38. In the TCPA, Congress provided a standard for preemption of state law on autodialers, artificial or prerecorded voice messages, and telephone solicitations. The TCPA does not preempt "any state law that imposes more restrictive intrastate requirements or regulations on, or which prohibits—(A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements; (B) the use of automatic telephone dialing systems; (C) the use of artificial or prerecorded voice messages; or (D) the making of telephone solicitations." The Commission seeks comment on whether and, if so, to what degree, state requirements should be preempted. Some courts have held that the TCPA does not necessarily preempt less restrictive state laws on telemarketing. We seek comment on this interpretation. In addition, we ask whether preemption should depend on whether the state law in question applies solely to intrastate telemarketing or to interstate telemarketing as well. What conflicts between state telemarketing laws and federal law might warrant preemption?

2. National Do-Not-Call List

39. Pursuant to section 227(c)(3) of the TCPA, the Commission "may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and parts thereof available for purchase." In this section, we seek comment on whether the Commission should revisit its determination not to adopt a national do-not-call list. Persistent consumer complaints regarding unwanted telephone solicitations indicate that the time may now be ripe to revisit this issue. We note that a national list might provide consumers with a one-step method for preventing telemarketing calls. This option might be less burdensome than repeating requests on a case-by-case basis, particularly in light of the number of entities that conduct telemarketing today. A national list might also be less burdensome for telemarketers, who, under the company-specific approach, must retain do-not-call records for a period of ten years. We also seek comment on the options for possible Commission action in conjunction with the FTC's proposal to adopt a nationwide do-not-call list for those entities over which it has jurisdiction and the proliferation of state-adopted do-not-call lists. We acknowledge that the FTC has not yet adopted final rules based on its proposal, and we note that we have the option to seek further comment to fully address the interplay between final FTC rules and possible Commission action.

40. As discussed above, we invite comment in the context of our consideration of a national do-not-call list on the constitutional standards applicable to governmental regulation of commercial speech. Specifically, we seek comment on whether a national do-not-call list satisfies each of the standards articulated in *Central Hudson*, including the requirement that the regulation be narrowly tailored to ensure that it is no more extensive than

necessary to serve the governmental interest.

41. In declining to adopt a national do-not-call list in 1992, the Commission concluded that a national database would be costly and difficult to establish and maintain in a reasonably accurate form. The Commission found that frequent updates would be required, regional telemarketers would be forced to purchase a national database, costs might be passed on to consumers, and the information compiled would present problems in protecting consumer privacy. The Commission noted that, because nearly one-fifth of all telephone numbers change each year, any such database would require frequent updates to remain accurate. The Commission also noted concerns in protecting the privacy of telephone subscriber information including whether the confidentiality of subscribers having unpublished or unlisted numbers could be maintained.

42. We seek comment on any disadvantages to consumers or any other parties to establishing a national do-not-call list including whether the concerns noted by the Commission in declining to adopt a national do-not-call list in 1992 remain persuasive today. Specifically, we seek information regarding the potential costs of establishing and maintaining a national do-not-call database, the burdens on telemarketers of compliance with a national do-not-call database, and whether there should be any distinction on a national, regional, state, or local level or for small businesses. In particular, we seek comment on whether technological innovations in computers and software programs over the last ten years have mitigated, in any respect, concerns about the costs, accuracy, and privacy issues involved in establishing a national database. We also seek comment on how state commissions and parties involved in compiling and maintaining the state established do-not-call lists have dealt with each of these issues. The information and experience acquired by these parties in the actual operation of such databases may prove particularly useful in this analysis. We also seek comment on what effect, if any, some combination of efforts by the FTC, states, and this Commission would have on the cost and privacy issues involved in developing and maintaining a national do-not-call list. We seek comment on whether a national do-not-call list provides any advantages to telemarketers in identifying those consumers who do not wish to be contacted.

43. Section 227(c)(3) enumerates a number of specific requirements that the Commission must satisfy in adopting a national database. In relevant part, these include: (1) Specifying a method by which to select an entity to administer the database; (2) requiring each common carrier providing telephone exchange service to inform subscribers of the opportunity to object to receiving telephone solicitations; (3) specifying the methods by which subscribers may be informed, by the common carrier that provides service to the subscriber, of the subscriber's right to give or revoke a notification of an objection to receiving telephone solicitations; (4) specifying the methods by which such objections shall be collected and added to the database; (5) prohibiting any residential subscriber from being charged for giving or revoking such notification or being included in the database; (6) prohibiting any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included in the database; (7) specifying the method by which any person desiring to make or transmit telephone solicitations will obtain access to the database and the costs to be recovered from such persons; (8) specifying the methods for recovering, from persons accessing the database, the cost involved in operating the database; (9) specifying the frequency with which the database will be updated and the method by which such updates will take effect; (10) designing the database to enable states to use it to administer or enforce state law; (11) prohibiting the use of the database for any purpose other than compliance with the requirements of section 227 and any such state law, and specifying methods for protection of the privacy rights of persons whose numbers are included in the database; and (12) requiring each common carrier providing services to any person for the purpose of making telephone solicitations to notify such persons of the requirements of this section and the regulations thereunder. We seek comment on what possible options the Commission might pursue that would satisfy the requirements listed above, as well as complement the FTC's proposal and the individual state do-not-call statutes and regulations. We note that while the FTC's proposal could incorporate some, if not all, of the twelve criteria above, the FTC is not required by statute to satisfy these requirements. Therefore, we ask whether these twelve requirements would preclude the Commission from adopting rules requiring common carriers and other entities under our TCPA jurisdiction to comply with a national do-not-call regime administered by the FTC, should the FTC adopt rules that are inconsistent with the TCPA.

44. We recognize that the effectiveness and value of any national do-not-call list would be contingent upon an informed public. As noted above, Congress provided that, should the Commission establish a national do-not-call list, each common carrier providing telephone exchange service shall be required to inform its subscribers of the opportunity to object to telephone solicitations and the option to register with a national do-not-call list. As part of our ongoing efforts to ensure that consumers are aware of their rights under the TCPA, we will continue to disseminate our own public notices, fact sheets, and other information to publicize the rules applicable to telemarketing calls. In addition, should we establish a national do-not-call list, we propose adopting rules that codify the statutory provisions requiring common carriers to notify their subscribers of the opportunity to place their telephone numbers on a national do-not-call list. We seek input on this proposal and any other suggestions to ensure that consumers are well informed.

45. *FTC Proposal to Adopt a Nationwide Do-Not-Call List.* As noted above, the FTC has recently issued a Notice of Proposed Rulemaking seeking comment on a number of potential amendments to its Telemarketing Sales Rule. In relevant part, the FTC proposes to adopt a national do-not-call list that would allow consumers to prohibit calls from any telemarketer within the FTC's jurisdiction by placing their telephone number on a central registry to be maintained by, or on behalf of, the FTC. Because the FTC lacks jurisdiction over banks, common carriers, insurance companies, and certain other entities, these entities could continue to make telemarketing calls to individuals on the FTC's do-not-call list. We seek comment on whether the Commission should use its authority under the TCPA to extend any national do-not-call requirements adopted by the FTC to those entities that fall outside the FTC's jurisdiction. If so, we seek comment on what role the Commission should play in the administration and enforcement of a national database.

46. If the Commission should determine that a national do-not-call list is warranted, we seek comment on what actions the Commission could take to most efficiently, effectively, and consistently complement the FTC's proposal. The FTC indicates that its do-not-call proposal is consistent with the Commission's regulations and should "not be construed to permit any conduct that is precluded or limited by FCC regulations." If inconsistencies exist at the end of the rulemakings, would this create confusion regarding the applicability and enforcement of the do-not-call requirements to certain entities? For example, the FTC proposes to extend the do-not-call requirement to telemarketing calls from "for-profit entities" that solicit charitable contributions. In so doing, the FTC indicates that its authority extends not only to the sale of goods or services but also to charitable solicitations by for-profit entities on behalf of nonprofit organizations. The Commission has concluded, however, that its regulations under the TCPA apply only to commercial calls. In addition, the TCPA specifically excludes "tax exempt nonprofit organizations" from its provisions. The Commission has concluded that this exemption for nonprofit organizations extends to telephone solicitations made by telemarketers on behalf of tax-exempt nonprofit organizations. We seek comment on whether this interpretation raises possible inconsistencies with the FTC's proposal. If so, we seek comment on how these inconsistencies could be reconciled in the administration of any national do-not-call database.

47. The FTC's proposal also may allow some business and wireless telephone subscribers to register on the national database. The TCPA, however, only grants authority to the Commission to establish a national database for residential subscribers. We seek comment on the extent to which wireless subscribers may be considered "residential" for purposes of the TCPA. In addition, we seek comment on what, if any, conflict exists under the FTC's rules and proposals and the TCPA regarding inclusion of business consumers on the national do-not-call list. The FTC proposal also does not indicate whether consumers will be charged a fee for including their names on the national do-not-call database. We note that the TCPA prohibits the Commission from charging residential consumers to be included in the database. We seek comment on whether these and any other issues that commenters may identify raise potential areas of concern in coordinating the FTC's proposals with any Commission action. To the extent that any such inconsistencies exist, we seek suggestions as to how they could be reconciled to minimize the potential for confusion to consumers, telemarketers, and regulators in the administration and enforcement of any national do-not-call database established under the combined authority of the FTC and the Commission.

48. We also seek comment on whether the Commission should adopt any new rules or revise any of its existing rules to remain consistent with the proposals of the FTC. For example, the FTC proposes that consumers who have placed themselves on the national do-not-call registry "could allow telemarketing calls from or on behalf of specific sellers, or on behalf of charitable organizations, by providing express verifiable authorization to the seller, or telemarketer making calls on behalf of a seller or charitable organization, that the consumer agrees to accept calls from that seller or telemarketer." The FTC also proposes adopting certain recordkeeping requirements that must be met before companies may avail themselves of the "safe harbor" protections for violating the do-not-call rules. In so doing, the FTC notes that the Commission's rules are silent as to any such requirements to reconcile names or numbers on a national registry because our rules relate only to company-specific lists. We seek comment on whether, if the Commission implements a national database with the FTC, the Commission should adopt recordkeeping or other rules that mirror those proposed by the FTC.

49. Finally, we note that the FTC has sought comment on establishing a national do-not-call registry for a two-year trial period, after which it may review the costs and benefits of the central registry in order to determine whether to modify or terminate its operation. We seek comment on how this could affect any Commission decision to establish a joint database with the FTC, including whether the Commission should commit to a similar review at the same time. We also seek comment on what, if any, disruptions this may cause consumers if the FTC determines at that time to terminate the operation of its national do-not-call database. Finally, we note that the FTC has released a Privacy Act Notice specifying the measures it intends to take to ensure the privacy of consumers in compiling and maintaining the national registry. In its Notice, the FTC proposes to collect certain information including, at a minimum, telephone numbers of individuals who do not wish to receive telemarketing calls. To the extent necessary, the FTC may collect other information such as date(s) and time(s) that the individual's telephone number was placed on the registry; the individual's specific telemarketing preferences; and other identifying information that individuals may provide voluntarily (*e.g.*, residential zip codes for record sorting purposes). The FTC expects to use automated methods to collect the information and to process requests from individuals seeking access to their records in the system. The FTC states that it intends to maintain these records in a secure electronic database operated by that agency and/or contractor personnel bound by the restrictions of the Privacy Act. We seek comment on whether the Commission should impose any requirements beyond those proposed by the FTC to ensure that consumer proprietary information would be protected in a national database.

50. *State Do-Not-Call Lists.* As noted above, a number of states have adopted or are considering legislation to establish statewide do-not-call lists. Such state lists vary widely in the methods used for collecting data, the fees charged, and the types of entities required to comply with their restrictions. Some state statutes provide for state-managed do-not-call lists, while others require telemarketers to use the Direct Marketing Association's Telephone Preference Service. In some states, residents can register for the do-not-call lists at no charge. In others, telephone subscribers must pay a fee. The state "do-not-call" statutes provide for varying exceptions to the do-not-call requirements. In the context of our review of the national do-not-call database, we seek comment on how effective these state administered do-not-call lists have been in curbing unwanted telephone solicitations and whether a national database would correct any of the shortcomings of the state lists.

51. If the Commission should establish a nationwide do-not-call list in conjunction with the FTC, we seek comment on the potential relationship of that database to state do-not-call laws. We seek comment on the potential role that states could play in administering and enforcing federal do-not-call requirements. We believe that many states have obtained valuable experience and insight into the administration of the do-not-call lists in their respective states. We therefore seek comment from the states, and any other interested parties, on the following options to incorporate state expertise in this process. We also invite additional suggestions on these or any alternative proposals.

52. First, we seek comment on whether those states that have adopted

do-not-call laws should administer those laws to the extent that they apply to intrastate telemarketing calls, while the federal law would govern interstate telemarketing. Under such circumstances, we seek comment on whether the Commission should establish a regulatory scheme similar to that developed with the Commission's "slamming" rules that would allow states to "opt-in" and thereby co-administer and enforce the federal interstate do-not-call rules in their respective states. Consistent with the Commission's slamming regulations, states that "opt-in" would be required to write and interpret their statutes and regulations for telemarketing calls in a manner that is consistent with the federal rules. States would be allowed to adopt more restrictive rules for intrastate telemarketing calls if such action is necessary based on its local experiences. Consumers residing in states that decided not to "opt-in" would be allowed to register with the administrator of the federal do-not-call database. These consumers would register and file do-not-call complaints regarding both unwanted intrastate and interstate telephone solicitations with the appropriate federal regulatory entity.

53. We seek comment on whether this proposal is administratively feasible, including whether it is possible and/or necessary for regulators and consumers to distinguish intrastate from interstate telemarketing calls. We note that in comments filed in the FTC proceeding, the Attorneys General of all fifty states, Puerto Rico, and the Northern Mariana Islands, indicated that states have enforced their own do-not-call laws against telemarketers irrespective of whether such calls are intrastate or interstate in nature. The Attorneys General contend that states have historically enforced their consumer protection laws within, as well as across, state lines to prosecute out-of-state companies that have contacted their residents over the telephone. We seek comment on this interpretation of state authority to regulate telemarketing calls originating outside of the state.

54. Second, we seek comment on how we could work together with states that have adopted do-not-call lists. The state Attorneys General argue that the states have the authority to enforce their own no-call laws against telemarketers across the country. Although many states have adopted laws that differ in some respects from the FTC's proposal, these differences may be reflective of the particularized circumstances of consumers and telemarketers in that state. In this context, the federal do-not-call database could act either as a default mechanism for those states that have not adopted do-not-call laws or coexist with the state do-not-call laws to provide consumers with additional safeguards.

55. Under this approach, there would be no disruption to consumers in the administration and enforcement of the state regulations as applied to interstate calls. In this context, we seek comment on whether consumers in states that have adopted do-not-call laws should be restricted solely to registering on the state database or should also be allowed the option to register on any federal national do-not-call database. If consumers are allowed the option to register on both databases, we seek comment on whether the federal database should permit states to submit do-not-call requests from their own database and to obtain from the federal database any requests from their own state. As noted above, states have adopted a variety of do-not-call laws, some of which may be less restrictive of telemarketing activity than the regulations proposed by the FTC. We therefore seek comment on whether the administration of both a state and federal do-not-call database would be feasible, including whether this approach may lead to consumer confusion or duplicative administrative costs. In this regard, we seek suggestions on how the federal and state regulatory entities should coordinate their efforts, including providing adequate information to consumers.

56. Finally, we invite comment on additional proposals to reconcile the administration of any national do-not-call list with the various state lists. For example, the Commission has received inquiries regarding whether the Commission may also consider preempting the state do-not-call statutes, in whole or in part, under the theory that Congress has legislated comprehensively in this area, thus occupying the entire field of regulation and leaving no room for the states to supplement federal law. This issue has never been addressed on the Commission level, leading to uncertainty among states and telemarketers. In addition, the legislative history indicates that Congress believed the TCPA was necessary because states may lack jurisdiction to regulate interstate telemarketing calls. We seek comment on whether there are any advantages to a single national database over a collection of state do-not-call laws. Alternatively, we seek comment on whether the development of state do-not-call lists obviates the need for a national list. We also seek comment on whether preemption of state do-not-call lists would result in substantial confusion for those consumers that may have already registered in states that have adopted do-not-call lists. Similar to our discussion above, we seek comment in this context on whether the states could be allowed to "opt-in" and thereby co-administer and enforce the federal do-not-call rules in their respective states.

II. Procedural Issues

A. Ex Parte Presentations

57. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

B. Initial Regulatory Flexibility Analysis

58. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic effect on small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the NPRM provided below in the Comment Filing Procedures section. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

59. Since 1992, when the Commission adopted rules pursuant to the TCPA, telemarketing practices have changed significantly. New technologies have emerged that allow telemarketers to better target potential customers and make marketing using telephones and facsimile machines more cost-effective. At the same time, these new telemarketing techniques have heightened public concern about the effect on consumer privacy. The Commission has received numerous inquiries and complaints involving its rules on telemarketing and unsolicited fax advertisements. A growing number of states have passed or are considering legislation to establish statewide do-not-call lists, and the FTC has proposed establishing a national do-not-call registry. Congress provided in the TCPA that "individuals" privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices. In this NPRM, we seek comment on whether the Commission's rules need to be revised in order to more effectively carry out Congress's directives in the TCPA. Specifically, we seek comment on whether to revise or clarify our rules governing unwanted telephone solicitations and the use of automatic telephone dialing systems, prerecorded or artificial voice messages and telephone facsimile machines. In addition, we seek comment on the effectiveness of company-specific do-not-call lists. We also seek comment on whether the Commission should revisit its determination not to adopt a national do-not-call list. In so doing, we seek comment on the options for possible Commission action in conjunction with the FTC's proposal to adopt a national do-not-call registry for those entities over which it has jurisdiction and the proliferation of state-adopted do-not-call lists. We seek comment on these issues, as well as any alternative means of protecting consumers' privacy while avoiding imposing unnecessary burdens on the telemarketing industry, consumers, and regulators.

2. Legal Basis

60. The legal basis for any action that may be taken pursuant to this NPRM is contained in sections 1 thru 4, 227 and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 151 thru 154 and 227; and 47 CFR 64.1200 and 1201 of the Commission's rules.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

61. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

62. The Commission's rules on telephone solicitation and the use of autodialers, artificial or prerecorded messages and telephone facsimile machines apply to a wide range of entities, including all telecommunications carriers and other entities that use the telephone or facsimile machine to advertise. Thus, we expect that the proposals in this proceeding could have a significant economic impact on a substantial number of small entities. In 1992, there were approximately 4.44 million small business firms in the United States, according to SBA data. The SBA has determined that "telemarketing bureaus" with $6 million or less in annual receipts qualify as small businesses. For 1997, there were 1,727 firms in this category, total, which operated for the entire year. Of this total, 1,536 reported annual receipts of less than $5 million.

63. Determining a precise number of small entities that would be subject to the requirements proposed in this NPRM is not readily feasible. Therefore, we invite comment about the number of small business entities that would be subject to the proposed rules in this proceeding. After evaluating the comments, the Commission will examine further the effect any rule changes might have on small entities, and will set forth our findings in the final Regulatory Flexibility Analysis.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

64. We are seeking comment on whether to amend the Commission's TCPA rules and/or to revisit the option of establishing a national do-not-call list. The proposed rules will apply, with certain exceptions, to all entities making telephone solicitations or using automatic telephone dialing systems, prerecorded or artificial voice messages or telephone facsimile machines to send unsolicited advertisements. If we retain the company-specific do-not-call approach, we seek comment on whether to require companies to provide a toll-free number and/or website for consumers to register their names on the do-not-call lists. We also seek comment on whether additional measures should be taken to ensure that consumers with disabilities can register their do-not-call requests. Any such measures, if adopted, may involve additional costs to businesses. If we find that establishing a national do-not-call list is warranted, we must determine the entity that will maintain the list and the procedures for administering the list. For small businesses whose call lists are not automated, scrubbing lists could be more labor-intensive and thus, more time-consuming and costly. However, we do not anticipate that such recordkeeping will require the use of professional skills, including legal and accounting expertise. In this NPRM, we seek information regarding the burdens on telemarketers to comply with a national do-not-call database, including the requirements to obtain a national list of telephone numbers and to incorporate those numbers into telemarketers' individual do-not-call lists. Entities, especially small businesses, are encouraged to quantify the costs and benefits of a national do-not-call list, as well as the costs and benefits of any possible new rules regarding certain telemarketing technologies and practices. Finally, the TCPA under section 227(c)(3) provides that should the Commission adopt a national do-not-call list, common carriers shall be required to inform subscribers of the option to register on a national do-not-call list. We seek input on this proposal and any other suggestions to ensure the public is well-informed.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

65. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

66. This NPRM invites comment on a number of alternatives to modify the existing TCPA rules on telephone solicitation and the use of autodialers, artificial or prerecorded messages, and telephone facsimile machines. The Commission also will consider additional significant alternatives developed in the record. We seek comment on the effectiveness of company-specific do-not-call lists and whether the benefits of individual company lists continue to outweigh the costs to telemarketers. We also seek comment on whether any network technologies have been developed over the last decade that could serve as alternatives to do-not-call lists. We ask whether any such technologies are effective, universally available, and

affordable to consumers in allowing consumers to curb unwanted telephone solicitations. In addition, we seek comment on a number of proposals such as requiring a maximum setting on the number of abandoned calls, requiring telemarketers to transmit caller ID information or prohibiting them from blocking such information. We also ask whether revisiting the established business relationship exemption would interfere with ongoing business relationships, particularly for small businesses.

67. We also seek comment on options for possible Commission action in conjunction with the FTC's proposal to establish a national do-not-call registry. A national do-not-call list might provide consumers with a one step method to avoid unwanted sales calls and assist telemarketers in identifying those consumers who do not wish to be contacted. We seek information, however, about the potential costs of establishing and maintaining a national list and about the burdens on telemarketers of complying with a national do-not-call list. Specifically, we ask whether there should be any distinctions for small businesses that must comply with a national do-not-call registry. We also ask whether consumers listed on a national registry should be permitted to also provide express verifiable authorization to those businesses from whom they want to receive calls.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

68. The Telemarketing Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. 6101 thru 6108, and the Telemarketing Sales Rule (TSR) adopted by the FTC also address certain telemarketing acts or practices. The TCPA and Commission rules currently do not duplicate, overlap or conflict with the Telemarketing Act or TSR; however, there are provisions in the FTC's rules that mirror the Commission's rules, such as the calling time restrictions. It is difficult to determine at this time whether any of the proposals contained in this NPRM might conflict with any other federal rules, given that the FTC has undertaken a rulemaking proceeding of its own. Therefore, we ask in the NPRM whether any inconsistencies at the end of the rulemakings would create confusion regarding the applicability and enforcement of the do-not-call requirements to certain entities. For instance, the FTC proposes to extend its do-not-call requirements to telemarketing calls from "for-profit entities" that solicit charitable contributions; the Commission has concluded that its regulations apply only to commercial calls. The FTC's proposal also appears to allow some business and wireless telephone subscribers to register on the national database, while the TCPA grants authority to the Commission to establish a national database only for residential subscribers. Therefore, the Commission invites comment in this NPRM on whether we could adopt any new rules or revise any of our existing rules to remain consistent with the FTC's proposals.

C. Filing of Comments and Reply Comments

69. We invite comment on the issues and questions set forth above. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before November 22, 2002, and reply comments on or before December 9, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings* (63 FR 24121, May 1, 1998).

70. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties also should send four (4) paper copies of their filings to Kelli Farmer, Federal Communications Commission, Room 4-C740, 445 12th Street, SW., Washington, DC 20554.

71. Written comments by the public on the proposed and/or modified information collections are due on or before November 22, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before December 9, 2002. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov* and to Edward Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *edward.springer@omb.eop.gov*.

72. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov*.

III. Ordering Clauses

73. The Notice of Proposed Rulemaking is adopted.

74. The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–25569 Filed 10–7–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 177

Federal Motor Carrier Safety Administration

49 CFR Part 397

[Docket No. FMCSA–02–11650 (HM–232A)]

RIN 2137–AD70, 2126–AA71

Security Requirements for Motor Carriers Transporting Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), and Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Supplemental advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Research and Special Programs Administration (RSPA) and the Federal Motor Carrier Safety Administration (FMCSA) published a July 16, 2002 Advance Notice of Proposed Rulemaking (ANPRM) seeking comments on the feasibility of implementing security enhancement requirements for motor carriers transporting hazardous materials, and the potential costs and benefits of deploying such enhancements. After receiving a request from an industry association to put a procedure in place to protect potentially security-sensitive comments, we are informing commenters of the procedures currently set forth in RSPA's regulations for requesting confidential treatment. Thus, we are removing the sentence in the ANPRM indicating that "comments that include information that may compromise transportation security will be disqualified as beyond the scope of the rulemaking." We will consider all comments received. All comments will be placed in the rulemaking docket unless they, or a portion thereof, are determined to be confidential and thereby protected from disclosure under the law. In this supplement to the ANPRM, we are also extending the comment period for an additional 31 days to November 15, 2002.

DATES: Submit comments on or before November 15, 2002. To the extent possible, we will consider late-filed comments as we consider further action.

FOR FURTHER INFORMATION CONTACT: Donna O'Berry, (202) 366–4400, Office of the Chief Counsel, Research and Special Programs Administration; Susan Gorsky, (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration; or William Quade, (202) 366–6121, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration.

SUPPLEMENTARY INFORMATION: RSPA and FMCSA published a July 16, 2002 ANPRM entitled "Security Requirements for Motor Carriers Transporting Hazardous Materials." *See* 67 FR 46622. In that rulemaking document, RSPA and FMCSA are examining the feasibility of implementing specific enhanced security requirements for motor carriers transporting hazardous materials, and the potential costs and benefits of deploying such enhancements. In the July 16 ANPRM, we set out seven questions and invited commenters to submit data and information in response to those questions.

Because the ANPRM addressed measures to enhance the security of hazardous materials in transportation, we urged commenters to carefully consider the information they submitted in response to the questions posed. After the ANPRM was published, we received an industry association letter indicating that it planned to file comments and stating "however, we are concerned that the public dissemination of these comments could compromise our national security by providing information that could later be exploited by terrorists with access to such information." The association requested that we establish a procedure to safeguard those comments.

After reviewing this request, we have decided to supplement the ANPRM to inform the public of the procedures currently in RSPA's regulations for requesting confidentiality. (These procedural regulations were recently re-written in plain language and published on June 25, 2002 [67 FR 42948].) Under 49 CFR 105.30, if you submit information to us, you may ask us to keep the information confidential. This section explains the steps you should follow: (1) Mark "confidential" on each page of the original document you would like to keep confidential, (2) send us, along with the original document, a second copy of the original document with the confidential information deleted, and (3) explain why the information is confidential (for example, it is exempt from mandatory public disclosure under the Freedom of Information Act (FOIA) [5 U.S.C. 552] because it is confidential commercial information). *See* 67 FR 42953.

In your explanation, you should provide enough information to enable us to make a determination as to the confidentiality of the information provided. In addition, if you believe that certain laws or FOIA exemptions might apply to protect the information, you should reference those legal citations.

The FOIA requires that we release any nonexempt (not protected under FOIA) portions of information that can be reasonably segregated. Therefore, we ask that you identify the particular portions of information within your documents that you believe are confidential. If the non-confidential information is so intertwined with the confidential information that disclosing it would leave only meaningless words and phrases, the entire page or document may be withheld.

After reviewing your request for confidentiality and the information provided, we will analyze all applicable laws to decide whether or not to treat the information as confidential. We will notify you of our decision to grant or deny confidentiality at least five days before the information is publicly disclosed, and give you an opportunity to respond. *See* 105.30(b).

If, prior to submitting your request, you have any questions regarding RSPA's procedures for determining confidentiality, you may call one of the contact individuals above for more information.

The July 16 ANPRM included a statement that we would disqualify information received in comments that could compromise transportation security as beyond the scope of the rulemaking. In light of the fact that RSPA's regulations provide a process for requesting confidentiality, all comments will be part of the docket, unless comments or portions of comments are determined to be confidential and protected from disclosure under law. Information determined to be confidential will be redacted and the unredacted portions will be placed in the docket.

The ANPRM provided an October 15, 2002 deadline for filing comments. In conjunction with informing the public of our procedures for requesting confidentiality, we are also extending the comment period deadline to November 15, 2002 to provide commenters with an additional 30 days

to file comments. We will consider late-filed comments to the extent possible.

Issued in Washington, DC on October 1, 2002, under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

Julie A. Cirillo,

Assistant Administrator, Federal Motor Carrier Safety Administration.

[FR Doc. 02–25463 Filed 10–7–02; 8:45 am]

BILLING CODE 4910–60–P; 4910–EX–P

Notices

Federal Register

Vol. 67, No. 195

Tuesday, October 8, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Notice of Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on October 21, 2002, from 8:30 am to 5 pm.

ADDRESSES: The meeting will be held at the Wyatt Company, 303 West Madison Street, Board Room, Chicago, IL.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Director of Practice and Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1891.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at the Wyatt Company, 303 West Madison Street, Board Room, Chicago, IL on Monday, October 21, 2002, from 8:30 am to 5 pm.

The purpose of the meeting is to discuss topics and questions, which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: September 30, 2002.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 02–25620 Filed 10–7–02; 8:45 am]

BILLING CODE 4830–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development; One Hundred and Thirty Fifth Meeting, Notice of Meeting.

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and thirty-fifth meeting of the Board for International Food and Agricultural Development (BIFAD). Notice may be published less than fifteen days prior to the meeting due to scheduling conflicts. The meeting will be held from 8 a.m. to 1 p.m. on October 17 , 2002 in the Oceanic A&B Meeting Rooms on the Concourse Level of the Ronald Reagan Building (RRB), 1300 Pennsylvania Avenue, NW, Washington, DC.

The program will be devoted to the inauguration of a new Board, a discussion of long-term training, and USAID Bureau reports on the status of agricultural or rural livelihoods and the involvement of universities.

The meeting is free and open to the public. Those wishing to attend the meeting or obtain additional information about BIFAD should contact Mr. Lawrence Paulson, the Designated Federal Officer for BIFAD. Write him in care of the U.S. Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, NW, Room 2.11–073, Washington, DC 20523–2110 or telephone him at (202) 712–1436 or fax (202) 216–3010.

Lawrence Paulson,

USAID Designated Federal Officer for BIFAD, Office of Agriculture and Food Security, Bureau for Economic Growth, Agriculture & Trade.

[FR Doc. 02–25600 Filed 10–7–02; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Value-Pass-Through of USDA Donated Commodities in Food Service Management Company Fixed-Rate-Per-Meal Contracts

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Food and Nutrition Service, Food Distribution Division, will hold a meeting to discuss methods of value-pass-through of USDA donated commodities in food service management company fixed-rate-per-meal contracts in the National School Lunch Program. The purpose of this meeting is to offer State agencies, school food authorities, advocacy groups, food service management companies, and other interested parties the opportunity for dialogue prior to proposed rulemaking.

DATE AND TIME: Thursday, October 24, 2002, 1 p.m. to 5 p.m.

ADDRESSES: Food and Nutrition Service, 3101 Park Center Drive, Conference Room 204–B, Alexandria, Virginia 22302.

SUPPLEMENTARY INFORMATION: In April 2002, the USDA Office of Inspector General issued Audit Report Number 27601–0027–CH titled "National School Lunch Program—Food Service Management Companies," which found that, in the States reviewed by the Office of Inspector General, many school food authorities that maintained fixed-rate-per-meal contracts did not receive proper credit for USDA donated commodities. Federal regulations require that any USDA donated commodities received by a school food authority and made available to a food service management company shall be used solely for the school food authority's food service operation and that the full value of all USDA donated food must accrue to the benefit of the school food authority.

The discussion topics of this meeting will be limited to (a) the Office of Inspector General's recommended approach for crediting USDA donated commodities, (b) value-pass-through methods currently used by food service management companies and school food authorities in food service management

contracts, and (c) proposals for the development of new specific procedures for crediting USDA donated commodities.

For those unable to attend the meeting or those who attend and have additional comments on the discussion topics, the contact person named below will accept written statements before the meeting and until Friday, November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Suzanne Rigby, Branch Chief, Schools and Institutions Branch, Food Distribution Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 500, Alexandria, Virginia 22302,–(703) 305–2644. To confirm attendance, please contact Sherry Thackeray at (703) 305–2652 or e-mail *Sherry.Thackeray@fns.usda.gov*. Confirmation of attendance is encouraged, but not mandatory for participation in this meeting. Office of Inspector General audit report is available on the Office of Inspector General's Internet Web site at *http://www.usda.gov/oig/webdocs/27601–27–Ch.pdf*. A copy may also be requested by contacting Sherry Thackeray.

Dated: October 2, 2002.

Eric M. Bost,

Under Secretary, Food, Nutrition, and Consumer Services

[FR Doc. 02–25581 Filed 10–7–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Comprehensive Management of Nutria Herbivory Damage in Coastal Louisiana and Coastwide Nutria Control Program (LA–03b) in Coastal Louisiana

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102 (2) (C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Comprehensive Management of Nutria Herbivory Damage in Coastal Louisiana and the Coastwide Nutria Control Program (LA–03b), Coastal Louisiana.

FOR FURTHER INFORMATION, CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of the federally assisted action indicates that the action will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that preparation and review of an environmental impact statement is not needed for this project.

The recommended plan consists of (1) implementing an incentive payment program to encourage the harvest of up to 400,000 nutria annually from coastal Louisiana by payment of $4.00 per nutria tail to registered program participants (Coastwide Nutria Control Program LA–03b), (2) investigating techniques to promote revegetation of damaged sites with native vegetation, and (3) pursuing additional funding and/or funding sources to conduct more comprehensive revegetation. The goal of the recommended plan is to reestablish the ecological balance (plant and animal) that existed when the number of nutria harvested was high. It is predicted that the plan would reduce the conversion of fresh, intermediate, and brackish marsh to open water by about 15,000 acres over 20 years.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data collected during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 02–25490 Filed 10–7–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue three revised conservation practice standards in Section IV of the FOTG. The revised standards are: Pond (378), Pipeline (516) and Forest Trails and Landings (655). These practices may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to *darrell.brown@in.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: September 23, 2002.

Jane E. Hardisty,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 02–25489 Filed 10–7–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No. 020430099–2226–02]

RIN 0690–XX07

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Disseminated Information

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: Section 515 of Public Law 106–554, the Treasury and General Government Appropriations Act for Fiscal Year 2001, directs the Office of Management and Budget (OMB) to issue government-wide guidelines that "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies." The OMB guidelines require that agencies subject to the OMB guidelines must establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the OMB guidelines or the agency guidelines. The OMB final guidelines were published in the **Federal Register** on February 22, 2002. Those guidelines direct that, by October 1, 2002, agencies publish their information quality guidelines.

The Department of Commerce published its draft guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of disseminated information on its Internet Web site on May 1, 2002 and in the **Federal Register** on May 3, 2002 (67 FR 22398). The Department of Commerce's response to the comments received is included in the **SUPPLEMENTARY INFORMATION** section of this document.

This document implements section 515 for the Department of Commerce and defines the Department of Commerce's information quality guidelines. It may be revised periodically, based on experience, evolving requirements in the Department of Commerce, and concerns expressed by the public.

ADDRESSES: Correspondence should be sent to Thomas N. Pyke, Jr., Chief Information Officer, Department of Commerce, 14th St. and Constitution Ave. NW, Room 5029B, Washington, DC 20230. Send e-mail to *informationquality@doc.gov*. Department of Commerce operating units will publish their information quality standards on the Web sites listed in the **SUPPLEMENTARY INFORMATION** section of this document. Correspondence on the operating unit standards should be addressed directly to the contact noted in the operating unit standards.

FOR FURTHER INFORMATION CONTACT: Diana H. Hynek, Office of the Chief Information Officer, Department of Commerce, 14th St. and Constitution Ave. NW., Room 6625, Washington, DC 20230. Telephone (202) 482–0266 or by e-mail to *dhynek@doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Commerce ("Commerce" or "Department") is one of the most diverse Federal departments, both in terms of its mission and the information it provides to the public. We are responsible for daily weather reporting, facilitating the use of technology both at home and in the workplace, collecting statistics that assist the public and private sector, and supporting the environmental and economic health of U.S. communities. Our mission is to promote job creation and improve living standards for all Americans by creating an infrastructure that encourages economic growth, technological competitiveness, and sustainable development, conservation, and wise use of living marine resources.

To carry out this mission, three strategic goals have been identified. They are to provide the information and the framework to enable the economy to operate efficiently and equitably; provide the infrastructure for innovation to enhance U.S. competitiveness; and observe and manage the Earth's environment to promote sustainable growth.

Commerce provides the basic economic data necessary to develop sound business decisions, producing many of the commonly used economic statistics issued by the U.S. Government. The Department also produces information designed to encourage the use of science and technology in the production of consumer goods and services.

Commerce plays an important role in the nation's global business development. The Department develops and disseminates foreign market research and international trade opportunities through its offices in the United States and in 83 foreign countries. Commerce also monitors and enforces compliance with U.S. trade laws and agreements, and defends American firms from injurious foreign business practices by administering U.S. antidumping and countervailing duty laws.

The oceanic and atmospheric programs at Commerce improve the understanding and rational use of the natural environment to further the Nation's safety, welfare, security, and commerce. These responsibilities include predicting the weather, charting the seas, and protecting the oceans and coastal areas.

Domestically, Commerce's programs promote long-term business enterprises that create jobs for minority groups and in underdeveloped areas across the United States. These programs are supported by reports, publications, projections, and business expertise. The Department provides services to citizens and private business as well as to state, local, and tribal governments.

Commerce Commitment to Information Quality

Given the broad responsibilities of the Commerce Department in scientific, technical, and statistical information, Commerce welcomes the opportunity provided by the issuance of the Office of Management and Budget information quality guidelines to demonstrate our thorough and professional approach to information release.

Our goal is to ensure and maximize the quality of the information we release to the public. We are committed to making the methods, models, and processes that produce our information transparent and rigorous. At the Commerce Department, we have a long tradition of producing relevant, credible, high quality information to the public at large, the academic community, and the private sector.

We believe that we uphold a high standard regarding information quality through the use of quality control procedures for statistical data collection and processing. The 2000 decennial census, conducted by the Census Bureau, was the most accurate census in the history of the Nation. Commerce has made significant strides in redesigning the national income and product accounts by improving the conceptual foundation and incorporating new estimating methods and other statistical improvements. Our scientific research incorporates both internal and external peer review as appropriate. The Department boasts two Nobel Prize winners in science. We operate supercomputers that rank in the Nation's top ten in processing power. These powerful computers allow us a high degree of model resolution that increases the number of data points

used to improve the accuracy of weather forecasts.

In summary, these Commerce guidelines are a continuation of our commitment to information quality. We have a proven track record in producing high quality information and welcome the opportunity to present our information quality guidelines.

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Commerce and Its Operating Units

Because of the diversity of Commerce's mission, we have taken a distributed approach to preparing our information quality guidelines. Outlined below are the responsibilities of the Department of Commerce and the responsibilities of the individual operating units of the Department.

I. Department of Commerce Responsibilities

The Department of Commerce Chief Information Officer (CIO) will prepare and submit reports annually to the Director of the Office of Management and Budget (OMB) regarding the number and nature of complaints received by the Department of Commerce regarding Department compliance with the OMB guidelines concerning the quality, objectivity, utility, and integrity of information and how such complaints were resolved, as required by section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Public Law 106–554) and the OMB Guidelines.

II. Operating Unit Responsibilities

The operating units of the Department are organizational entities outside the Office of the Secretary charged with carrying out specified substantive functions (*i.e.*, programs) of the Department. For purposes of this document, operating unit responsibilities will apply to the Office of the Secretary also.

1. By October 1, 2002, document and make available to the public information quality standards that address the requirements of quality, objectivity, utility, and integrity for all non-exempt information disseminated by the operating unit.

2. By October 1, 2002, establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the operating unit on or after October 1, 2002, that does not comply with these Department guidelines and the OMB guidelines.

The operating unit will respond to all initial requests within 60 calendar days of receipt. If the request requires more than 60 calendar days to resolve, the operating unit will inform the complainant that more time is required and indicate the reason why and an estimated decision date. The operating unit will respond to all requests for appeals within 60 calendar days of receipt. If the request requires more than 60 calendar days to resolve, the operating unit will inform the complainant that more time is required and indicate the reason why and an estimated decision date.

In cases where the operating unit disseminates a study, analysis, or other information prior to the final operating unit action or information product, requests for correction will be considered prior to the final operating unit action or information product in those cases where the operating unit has determined that an earlier response would not unduly delay issuance of the operating unit action or information product and the complainant has shown a reasonable likelihood of suffering actual harm from the operating unit's dissemination if the operating unit does not resolve the complaint prior to the final operating unit action or information product.

Note: The guidelines addressed in items 1 and 2 cover information disseminated on or after October 1, 2002, regardless of when the information was first disseminated, except that pre-dissemination review procedures shall apply only to information first disseminated on or after October 1, 2002. Covered information disseminated will comply with all applicable OMB Information Quality Guidelines as well as these Department of Commerce Information Quality Guidelines.

3. Beginning on October 1, 2002, demonstrate in the operating unit's Paperwork Reduction Act (PRA) submissions to OMB the "practical utility" of a proposed collection of information that the operating unit plans to disseminate. Additionally, for all proposed collections of information that will be disseminated to the public, demonstrate in the operating unit's PRA clearance submissions to OMB that the proposed collection of information will result in information that will be collected, maintained, and used in a way consistent with applicable information quality guidelines.

4. Assist the Department CIO in the preparation of annual reports to OMB by providing information requested by the Department CIO.

Response to Comments

The Department and its operating units received eleven responses to the request for comments. Four responses were received from public interest groups; one was from a voluntary professional association; two were from a for-profit corporation; and four were from industry associations. Some of the comments contained in the submissions were addressed either to the entire Federal government or to agencies other than the Department. In this notice, the Department is responding only to comments relevant to its applicable information quality standards. In addition, the Department has received further guidance from OMB (OMB guidance, June 10) on the development of information quality guidelines, which helps the Department respond to some of the comments. A detailed analysis of the comments, and the Department's response based on both the comments and the OMB guidance, follows.

General

Comment: Some commenters suggested that the Department and its operating units should view information quality as a "performance goal." One of these commenters requested, in particular, that the National Oceanic and Atmospheric Administration (NOAA) list the names of the component offices (*e.g.*, National Marine Fisheries Service, National Weather Service, *etc.*) that will be subject to the guidelines.

Response: In keeping with the guidance provided by OMB, the Department views its information quality guidelines as performance standards. NOAA's information quality guidelines apply to all its line (component) offices.

Comment: Some commenters suggested that the Department provide additional, subsequent opportunity in the future for further public comment on the guidelines after publication on October 1, 2002. These commenters noted that the Department's guidelines lack a centralized focus and commitment to implementation of the new information quality and oversight system and administrative correction mechanisms. These commenters stated that the Department must establish a complete, centrally focused and harmonized information correction system.

Response: Pursuant to public request, the Department extended for 30 days the period for public comments on its draft guidelines. While the Department would like to gather additional public input, further extension of the public comment period, or a further round of comments, is not possible due to the statute's October 1, 2002, deadline for implementation of the Department's information quality guidelines.

Comment: Some commenters noted that the Department's guidelines lack a centralized focus and commitment to implementation of the new information quality and oversight system and administrative correction mechanisms. These commenters stated that the Department must establish a complete, centrally focused and harmonized information correction system.

Response: As to adopting a single, central information correction system, the Department's guidelines reflect the reality of the broad scope of the Department's mandate, from conducting each decennial census to forecasting the weather. In keeping with the first principle stated by OMB in its own guidance to federal agencies, a one-size-fits-all approach is not effective (67 FR at 8452). Were the Department or some of its component operating units (OUs) to attempt to apply a single centralized standard, it would necessarily be far less specific—and less effective as a performance standard—than the approach taken.

Comment: Several commenters urged the Department to establish a permanent, dedicated area on its Web site where all documents, notices of existing challenges to disseminated data, resolutions of those challenges, uncorrected information found wanting, and other items related to guidelines can be disseminated.

Response: The Department and its OUs will publish the information quality guidelines as well as other appropriate information on their respective Web sites for public use.

Comment: Some of the commenters pointed out that the guidelines fail to require that the dissemination of the corrected data will be accomplished in a manner equal to the dissemination of and proportional to the significance and importance of the original data.

Response: The form of corrective action will be determined by the nature and timeliness of the information involved and such factors as the significance of the error on the use of the information and the magnitude of the error.

Comment: Some commenters suggested that the Department's guidelines have not proposed complete, functional, and responsible administrative review mechanisms that will afford affected parties meaningful opportunity to ensure data quality and obtain timely correction of flawed information.

Response: OMB notes that under its guidelines "agencies need only ensure that their own guidelines are consistent with * * * OMB guidelines, and then ensure that their administrative mechanisms satisfy the standards and procedural requirements in the new agency guidelines." (67 FR at 8453). In keeping with this directive, the administrative review mechanisms adopted by the Department's OUs are designed to ensure a fair opportunity to seek and obtain correction of information that does not comply with applicable guidelines.

Comment: Some commenters urged a clear statement in the guidelines that these mechanisms are available for challenges based on alleged non-conformance with the OMB or the Department's guidelines.

Response: Administrative mechanisms are provided for appropriate challenges based on all applicable guidelines.

Comment: One commenter urged the Department to make every effort to clearly assert that the guidelines are not judicially reviewable and that the Department is not legally bound by the guidelines and has the right to depart from them when appropriate.

Response: The Department takes the mandate of Section 515 seriously and has published information quality guidelines and standards designed to ensure and maximize the quality of information that it disseminates and will comply with those guidelines and standards. The Department notes that the guidelines are not intended to provide any right to judicial review.

Comment: One commenter suggested that the Department state that public access to information is a central government responsibility that the agency will uphold and that the guidelines should not impose unnecessary administrative burdens that would inhibit agencies from continuing to disseminate information that can be of great benefit and value to the public. The commenter suggested that the Department should look to Section 515 itself to determine the scope and components that are required to be in the guidelines. This commenter also stated that Section 515 should be reviewed as a clarification of the Paperwork Reduction Act (PRA) and that the Department should state that "quality" is only one factor to consider. The commenter stated that the agency must answer to its core substantive mission, operate within budgetary constraints, and consider the benefits of timely dissemination.

Response: The Department agrees that public access to information is a central government responsibility and intends to apply its information quality guidelines in ways conducive to wide dissemination of information that is of benefit and value to the public. The Department agrees that nothing in Section 515 is intended to diminish or interfere with the Department's core substantive mission and activities, or its ability to operate within budgetary constraints to timely disseminate beneficial information to the public.

Comment: One commenter urged the Department to provide appropriate policy direction to its operating units regarding the data quality standards and pre-dissemination review procedures to ensure that the OMB information quality standards will be met.

Response: Such policy direction has been an integral part of the Department's implementation of OMB's guidelines.

Comment: Some commenters noted that the Department should provide effective procedures for the timely correction of information determined to be flawed and for appropriate prohibitions on further use and dissemination of such information until it is corrected.

Response: In keeping with OMB's directive, the administrative review mechanisms adopted by the Department's OUs are designed to ensure a fair opportunity to seek and obtain correction of information that does not comply with applicable guidelines. In any given instance, the form of corrective action will be determined by the nature and timeliness of the information involved and factors including, but not limited to, the significance of the error on the use of the information and the magnitude of the error.

Comment: Some commenters noted that the Department should revise its draft guidelines to address the open issues, eliminate (or carefully circumscribe and narrow) the proposed exemptions and limitations, and set forth a complete, centrally focused data correction scheme for the Department that implements new information quality and oversight systems and the full administrative correction mechanisms contemplated by Congress and OMB. The commenters stated that the changes should include the specific measures recommended herein.

Response: The OMB guidelines clearly state that agencies should incorporate the standards and procedures required by OMB's "guidelines into their existing information resources management and administrative practices rather than create new and potentially duplicative

or contradictory processes." (67 FR at 8453)

Scope

Comment: Several commenters stated that the Department should revise the "Scope" sentence to read: "These guidelines cover information disseminated (as defined in the OMB Guidelines) by the Department on or after October 1, 2002, regardless of when the information was first disseminated."

Response: The Department has clarified that it is the pre-dissemination review procedures that will apply only to information first disseminated on or after October 1, 2002. The Scope section now clearly states that the pre-dissemination review requirement applies to information that the agency first disseminates on or after October 1, 2002, and that the administrative correction mechanisms apply to information that the agency disseminates on or after October 1, 2002, regardless of when the agency first disseminated the information. This language is consistent with OMB's guidance to federal agencies.

Information Not Covered by the Department's Guidelines

Comment: Some commenters expressed concerns about the Department's exemption of certain information from the guidelines. Some of these commenters suggested that the exemptions be "eliminated or narrowly circumscribed" to prevent undermining the mandate of the Act. One commenter objected to OMB's creation of exemptions not authorized by Section 515 and the inconsistency between OMB's "dissemination" exemptions in its Section 515 guidelines with OMB's broader definition of "dissemination" in implementing the PRA. This commenter also objected to additional exemptions proposed by federal agencies. One commenter noted that OMB exempts some types and categories of information from the guidelines and argues that neither OMB nor the agencies has legal authority to exempt "any information that an agency has in fact made public." This commenter further objected to agency inclusion of OMB exemptions and to any agency interpretations, changes, or exemptions that differ from OMB's.

Response: The Department is implementing the guidance (guidelines and June 10 supplemental information) developed by OMB. Comments raising concerns with the OMB guidelines are outside the scope of the Department's actions. The Department has clarified that the exemption for press releases only applies to press releases themselves and not to any background information on which the press release is based. The Department and its OUs did not create exemptions in addition to those outlined by OMB.

Comment: Two commenters noted that Section 515 lists no exceptions to information disseminated by an agency and, therefore, the Department should not attempt to restrict coverage by narrowing the classifications of information covered. The commenters believe that all information disseminated by the Department should be covered by the guidelines, including information "initiated or sponsored" by the Department and third party information that the Department disseminates in a manner that reasonably suggests that the agency agrees with the information. The commenters suggested that the Department should include "information contained in rulemaking dockets" among the classes of information covered.

Response: The Department notes that the information not covered by the guidelines includes information that is not "disseminated" to the public by the Department (such as intra- or inter-agency information or responses to requests through FOIA, the Privacy Act, *etc.*) and information that is already public (such as press releases, public filings, *etc.*). The Department also points out that all "information" "disseminated"—as those terms are defined by OMB—by the Department is covered by these guidelines, including third party information. In addition, OMB exempted some types and categories of information within the statutory directive to "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information." The Department has no control over the quality of information submitted to the agency during a rulemaking. However, any such information on which the Department might rely would be subject to the guidelines' provisions on third party information.

Comment: Several commenters suggested that these exemptions, especially, but not limited to, those covering adjudicatory proceedings and notice and comment-type proposed action, may undermine the mandate of Section 515. The commenters suggested that information dissemination as part of a proposed rule or proposed NRDAR plan not be excluded from the application of the guidelines. However, another commenter stated that the rulemaking process affords adequate procedures and opportunities for questioning and correcting information and that data disseminated from a rulemaking process should not be eligible for dispute under the information quality administrative mechanism.

Response: Regarding the commenters' suggestion that the Department include adjudicatory proceedings within the coverage of the guidelines, the Department notes that in the preamble to the OMB guidelines, OMB stated:

> There are well-established procedural safeguards and rights to address the quality of adjudicatory decisions and to provide persons with an opportunity to contest decisions. These guidelines do not impose any additional requirements on agencies during adjudicative proceedings and do not provide parties to such adjudicative proceedings any additional rights of challenge or appeal (67 FR at 8454).

The Department agrees with this reasoning and has, therefore, retained the exemption for adjudicatory processes.

The Department's guidelines, including those of all the OUs, do not exempt information included in a rulemaking. However, the guidelines maintain the integrity of the rulemaking process by addressing requests for correction in a way that does not disrupt that process. This is in keeping with OMB's frequent reiteration, in its guidance, that disruption of existing processes is neither contemplated nor desired.

Further, the Department notes that the commenters may have misunderstood the language in its draft guidelines concerning such actions. Informal and formal rulemakings and Natural Resource Damage Assessment and Restoration Plans (NRDAR Plans) are subject to these guidelines. As such, the information quality standards remain applicable to information disseminated as part of a proposed rule or a proposed Natural Resource Plan.

Comment: Some commenters stated that there are no "case-by-case" exemptions from applicability of the guidelines and states that "Congress clearly intended OMB's Data Quality guidelines to apply to all information that agencies subject to the PRA in fact make public." The commenters' examples suggest that, with regard to the meaning of "information," the reach of Section 515 is identical to that of the PRA. The commenters complain that agency proposals "exempt material relating or [sic] adjudicatory proceedings or processes, including briefs and other information submitted to courts." The commenters state that neither OMB nor any federal agency has authority to make this exemption.

Response: This exemption was listed specifically by OMB in its own information quality guidelines to federal agencies, and the Department believes it is appropriate and in keeping with long-established principles of adjudicative processes, which have many inherent safeguards.

Standards and Pre-dissemination Review: Influential Information and Objectivity

Comment: Two commenters pointed out that the Department failed to provide any guidance on how influential scientific or technical information will be subjected to the required higher standards for quality and greater transparency. These commenters stated that the high level of generality provides insufficient guidance to NOAA's Fisheries Service, whose technical fishery conservation and management data is used to regulate fisheries. Some other commenters stated that the Department failed to address appropriate standards of objectivity for influential information.

Response: The Department has revised the guidelines to provide clearer guidance on quality standards for influential information and objectivity. The Department recognizes the importance of influential information that may be used in decisions such as fishery conservation and management. NOAA has revised its guidelines to discuss meeting the objectivity standard for influential information.

Comment: One commenter stated that the Department should narrowly define "influential" information, employing a high threshold for coverage to maximize its flexibility and preserve its ability to act in a timely fashion.

Response: The Department recognizes that a balancing process is involved in defining "influential" information. In keeping with OMB's directive that each agency "define 'influential' in ways appropriate for it given the nature and multiplicity of issues for which the agency is responsible" (67 FR at 8460), the Department's OUs have defined "influential" in ways appropriate to their specific missions and activities, with the goal of ensuring and maximizing information quality.

Comment: Some commenters suggested that the Department should abandon its proposed "objectivity" standard and instead should adopt the "objectivity" standard established by OMB for non-scientific, non-financial and non-statistical information. These commenters stated that the Department should also direct its operating units to do the same.

Response: As the Department has noted above, OMB has stressed that its guidelines are intended to be flexible and that a one-size-fits-all approach has not been taken, and that it has deliberately allowed agencies to tailor their guidelines to their mission and activities.

Comment: Two commenters stated that the Department should define the categories of information that are "influential" scientific, financial, and statistical information and include within those categories all information disseminated in connection with NRDAR Plans. Two commenters objected to the fact that some agencies neither adopted OMB's definition of "influential" nor provided one of their own.

Response: The Department does not believe it is appropriate to list prospectively all information that may be "influential." Rather, the OUs have defined the term "influential," either by adopting or adapting OMB's definition of that term, and will characterize specific information as such when appropriate. Certain information, such as the gross domestic product, can readily be predicted to consistently meet BEA's definition. However, NRDAR Plans would not typically meet the "influential" threshold established by NOAA. Such Plans deal with site-specific liabilities of one or several persons responsible for unlawful releases of hazardous substances or oil. As such, NRDAR Plans are not expected to have a genuinely clear and substantial impact on major public policy and private sector decisions.

Comment: One commenter suggested that the Department should not unduly limit the concept of "quality" information by narrow definitions of the terms "objectivity, utility, and integrity." This commenter suggested that the Department should begin the description of objectivity by pointing out that the term "objectivity" includes both the substance of information and its presentation.

Response: The Department has revised the definitions of objectivity, utility, and integrity, to incorporate the suggestion concerning both the substance and presentation of information.

Comment: Some commenters objected to the use of policy-driven or mission-driven assumptions or factors by agencies in connection with risk assessments. These commenters stated that only numerical information or factors can be considered in risk assessments and that risk management policy decisions should be clearly separated from the presentation of scientific data and analysis.

Response: The Department believes that an agency's (or operating unit's) activities and decisions must be consistent with and based upon its statutory mandate. Nothing in Section 515 or in the OMB guidelines repeals or amends the specific statutes governing agency action. Consistent with these statutes, the guidelines of all the Department's OUs require an absence of bias in both the presentation and substance elements of objectivity. In addition, the Department and all of its OUs are committed to transparency about how analytic results are generated, in terms of the specific data used, the various assumptions employed, the specific analytic methods applied, and the statistical procedures employed, consistent with other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections.

Comment: Several commenters pointed out that NOAA completely failed to either adopt or adapt the quality principles of the Safe Drinking Water Act (SDWA) for risk assessment. Two commenters stated that federal agencies must adopt (not adapt) both the SDWA science quality and risk assessment standards unless they conflict with other federal statutory requirements. Two of the commenters suggested that NOAA should adopt the SDWA standards, including a commitment to apply best available science for all influential scientific information it disseminates, including information disseminated in connection with NRDAR plans. These commenters stated that NOAA should specifically adopt the SDWA statutory risk criteria for health assessments and apply them to NRDAR plans.

Response: Although Section 515 does not mention either risk assessments or the Safe Drinking Water Act, the OMB guidelines clearly direct agencies to adopt or adapt the risk principles of the SDWA. Specifically, the OMB guidelines state that "[w]ith regard to analysis of risks to human health, safety and the environment maintained or disseminated by the agencies, agencies shall either adopt or adapt the quality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996." NOAA's guidelines meet this requirement. NOAA has included in its guidelines a separate section discussing specifically the SDWA criteria for risk assessments. This discussion explains the adaptation of the SDWA criteria for "influential"

information that constitutes assessment of risk to human health, safety, or the environment.

As to the suggestion by some commenters that the SDWA criteria apply to NRDAR Plans, the Department points out that NRDAR Plans are based upon existing statutory, regulatory, and other guidance that may not be completely compatible with the SDWA criteria. A natural resource damage assessment (NRDA) addresses the adverse impacts of past unlawful releases of hazardous substances or oil to determine the liability of the person(s) responsible for those unlawful releases. This liability is measured by the cost of actions to restore the natural resources injured by the releases. Each NRDA is highly fact, site, and party-specific. The impact of an NRDA on one or a few persons' liability for past actions does not constitute the forward-looking impact intended to be included in the category of influential information or SDWA risk assessment. NRDAs are not risk assessments as that term is used in the SDWA or the OMB guidelines. The action to be taken as a result of a NRDA is mandated by law and designed to return the environment to the condition it would have been had the release not occurred. Thus, NRDAs are not analyses of the possible effects on the environment of taking or not taking some future action as are SDWA risk assessments.

Comment: Two commenters urged NOAA to consider quality information as that which is "excellent, complete, up-to-date, and accurate." These commenters stated that NOAA should adopt and expand upon the standards set forth in the SDWA, with more specific guidance regarding all data, especially "original data." The commenters suggested these additional factors include:

(1) Whether the most accurate methods were used to collect information;
(2) Whether data measurement methodologies were validated;
(3) Whether quality assurance/quality control techniques were applied;
(4) Whether methods used produce data relevant to study hypotheses;
(5) Whether any experimental conditions were carefully controlled;
(6) Whether confounding factors were eliminated or successfully controlled;
(7) Whether covariates were successfully controlled;
(8) Whether the degree and source of measurement variation were determined;
(9) Whether the data were collected by those with requisite qualifications;
(10) Whether study materials/populations were representative of conclusions;
(11) Whether appropriate statistical methodologies were employed; and
(12) Whether weight-of-evidence analysis was applied to the information.

Response: All of the Department's OUs strive to maintain and disseminate information that is excellent, complete, up to date, and accurate and their guidelines are designed to achieve that goal. However, the suggested additional factors, which go beyond those enumerated in the SDWA, are not all appropriate to every review of influential information or to every risk assessment and therefore would not be appropriate as standards. The Department notes that NOAA has added additional criteria concerning risk assessment to its guidelines.

Comment: One commenter felt that OMB went far beyond the congressional mandate to inappropriately ask agencies to adapt or adopt the SDWA risk assessment principles. The commenter stated that Department should state that the type of peer review envisioned by the SDWA is inappropriate for all types of risk analysis and may conflict with underlying statutes.

Response: In keeping with OMB's guidance, the Department has adapted the risk assessment principles of the SDWA.

Standards and Pre-dissemination Review: Robustness

Commenter: One commenter stated that OMB's guidelines require robustness checks for information that the agency cannot disclose, such as Confidential Business Information, but which is material to information that the agency does disseminate. The commenter proposed a standard for such robustness checks. This commenter also stated that OMB's "general standard' for these robustness checks is "that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision'" (citing 67 FR at 8452, 8457).

Response: The OMB Guidelines state that:

> In situations where public access to data and methods will not occur due to other compelling interests, agencies shall apply especially rigorous robustness checks to analytic results and document what checks were undertaken. Agency guidelines shall, however, in all cases, require a disclosure of the specific data sources that have been used and the specific quantitative methods and assumptions that have been employed. Each agency is authorized to define the type of robustness checks, and the level of detail for documentation thereof, in ways appropriate for it given the nature and multiplicity of issues for which the agency is responsible.

Where an operating unit of the Department relies on information that cannot be disclosed to support influential information that it disseminates, it performs and discloses robustness checks according to the requirements set by OMB Guidelines and implemented in its own information quality guidelines.

Standards and Pre-dissemination Review: Third Party Data

Comment: Some commenters suggested that information generated by third parties, such as states, municipalities, and private entities, that is relied upon and disseminated by the Department is subject to the requirements of Section 515. The commenters stated that such information is subject to the same data quality standards, pre-dissemination review procedures, and administrative correction mechanisms as information generated by the Department.

Response: The Department has added language specifically dealing with third party information. The Department believes it may use reliable outside information, even though third-party sources such as states, municipalities, and universities are not themselves subject to Section 515. The scientific instrumentalities of such third parties play an appropriate role in providing scientific, financial, or statistical information to federal agencies.

The diverse operating units of the Department use such third-party information in varying ways. When used to develop information products or to form the basis of a decision or policy, this information is then subject to the OUs' guidelines. Thus, for an OU to use third-party information, it must be of known quality, and any limitations, assumptions, collection methods, or uncertainties concerning it must be taken into account.

Comment: Some commenters acknowledged a distinction between information generated outside the Department and not used, relied upon, or endorsed by the Department, but merely made public by the Department, and information generated outside the Department and used, relied upon, or endorsed by the Department. Two of these commenters stated that this was a distinction without a difference and that the guidelines should apply to both types of dissemination. One commenter stated that "the data quality guidelines should clearly state that they only apply to information disseminated from the agency itself and not when the agency is merely acting as a conduit of information."

Response: For Section 515 to apply, information must be "disseminated." By definition, "dissemination" means agency initiated or sponsored distribution of information to the public. OU guidelines apply to information that the OU disseminates. However, dissemination does not include distribution limited to government employees or agency contractors or grantees; intra-or inter-agency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law. This definition also does not include distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes. When an OU distributes information generated by a third party but in no way claims that information as its own, the OU will inform the public that the information is not subject to the Section 515 or applicable information quality guidelines.

Comment: One commenter discussed Federal agencies' use of third-party proprietary models, stating: "The OMB guidelines further explain that when public access to models is impossible for "privacy, trade secrets, intellectual property, and other confidentiality protections,: an agency 'shall apply especially rigorous robustness checks to analytic results and documents what checks were undertaken'." [sic]

Response: The Department agrees that when public access to models used to generate influential scientific, financial, or statistical information is impossible, especially rigorous robustness checks should be applied to analytic results and these checks should be disclosed.

Commenter: One commenter suggested that the Department prohibit use of third-party proprietary models that are barriers to public access to data in the guidelines, although the commenter did not cite a specific model.

Response: Without a specific indication of practices by the Department (or its OUs) using third-party models that the commenter finds objectionable, it is not possible to prepare a specific response. However, the Department strives for openness and transparency in all its scientific, financial, and statistical activities, consistent with applicable privacy, trade secrets, intellectual property, and other confidentiality protections.

Comment: Some commenters noted that the Department should develop provisions for new, and modify existing, contracts, cooperative agreements, and grants that require Department partners to furnish information that complies with the OMB and Department guidelines. The commenters also stated that these new provisions should prohibit use by these parties, in fulfilling their contractual, cooperative, or grant agreement obligations with the Department, of information that is not in compliance with the OMB and Department guidelines.

Response: The Department will consider any necessary modification of new and existing contracts, cooperative agreements, and grants with regard to the quality of information presented to the Department through these vehicles. However, such documents already contain provisions requiring work products to be of appropriately high quality.

National Assessment on Climate Change (NACC)

Comment: One commenter argued that, to the extent that the Department or NOAA refers or links to, or otherwise disseminates the first NACC, it is in violation of Section 515. The commenter further claimed that continuing to disseminate the NACC is unacceptable under the Act. The commenter continued with a lengthy, detailed condemnation of the NACC, produced by the U.S. Global Change Research Project (USGCRP).

Response: Although NOAA is one of many agencies that are partners in the USGCRP (*http://www.usgcrp.gov/usgcrp/usagency.html*), NOAA's activities in that capacity are the very sorts of activities that its mission requires. Any information that NOAA disseminates in connection with those activities, including any future contributions by NOAA to any collective product such as the NACC, will be in full compliance with NOAA's Information Quality Guidelines, when they become effective. However, any request for correction of the NACC itself should be addressed to the agency that created such information.

Standards and Pre-Dissemination Review: Peer Review

Comment: One commenter asked what the standard is for rebutting the presumption of objectivity resulting from formal, independent, external peer review. Another commenter questioned whether the presumption of validity will apply if the agency does not comply with peer review criticism, views, or recommendations.

Response: Consistent with OMB's guidelines (67 FR at 8452, 8454), the Department's guidelines make clear that the presumption of objectivity resulting from formal, independent, external peer review is rebuttable and that the requester has the burden of rebutting the presumption that information subjected to formal, independent, external peer review is objective.

Comment: One commenter suggested that the Department should state that "influential" information will not be subject to new formal, external, independent peer review to meet the "objectivity" standard. The commenter noted that, where peer review is employed, the Department should commit to using appropriately balanced peer review panels and avoid conflicts of interest.

Response: Formal, independent, external peer review is sometimes available and is sometimes used, depending on the specific information and program involved. But other means are also used to ensure objectivity, according to the specific applicable information quality standards. Where peer review is used, the Department attempts to appropriately balance panels and to avoid conflicts of interest, while at the same time ensuring that reviewers have sufficient knowledge of the subject to provide meaningful review.

Melding of Processes

Comment: One commenter disagreed with the Department's position that "[r]equests to correct information contained within a Natural Resource Plan must be made during the public comment period provided when it is posted for comment." This commenter stated that Natural Resource Plans can be highly technical, and it is not always apparent whether they contain flawed information or conclusions at the time they are first disseminated. This same commenter stated that the provision in the draft guidelines stating that a comment or petition filed after a comment period has closed, "may be considered, at the discretion of the agency * * * as a late comment." The commenter argued that Section 515 conveys independent rights granted to the public and neither Section 515 nor OMB's guidelines contain any such restrictions in instances where other notice and comment opportunities are available.

Response: The Department notes that, although Section 515 may not speak to requests for correction filed during a public comment period, OMB's guidance to the agencies does state that it is reasonable to meld the Section 515 correction process with a notice and

comment process; therefore creating several procedures where an existing process will achieve the same purpose is unnecessary. Also, it is imperative that the operating unit drafting a rule or Natural Resource Plan be aware of and take into account any demonstration of incorrect information. Therefore, the guidelines continue to meld the Section 515 process into existing public input processes where appropriate. In addition, in some cases, public comment periods are required and shaped by existing statutes or regulations.

Comment: Some commenters believe that the draft guidelines excluded requests for information correction if they pertain to information disseminated as part of a proposed rule or a Natural Resource Plan, which is inconsistent with the objectives and terms of Section 515 and with the OMB directive providing affected parties the unfettered right to "timely" correction of flawed information. The commenters noted that this approach also fails to address or redress the injury affected persons may suffer outside the context of a specific rulemaking or Natural Resource Plan during the pendency of long rulemaking or Natural Resource Plan processes. The commenters noted that rulemakings, as well as natural resource damage assessments and restoration decisions and plans, may take years to complete, during which time discrete, easily resolved and/or important data correction requests may languish without response, all the while adversely affecting the general public and/or the requester who is entitled to a timely response under Section 515. The commenters stated that the Department's guidelines should provide that discrete requests for objective information correction are to be resolved in a timely fashion using the focused procedures of the guidelines, rather than the unwieldy and daunting vehicle of a rulemaking or some other extended decisionmaking process involving the opportunity for notice and comment.

Response: As explained earlier, the Department has not excluded from the administrative correction mechanism information disseminated as part of a proposed rule or a Natural Resource Plan. The Department notes that the responsible office may choose to provide a response prior to the completion of a rulemaking or Natural Resource Plan, if doing so is appropriate and will not delay the issuance of the final action in the matter, particularly if the complainant can demonstrate actual harm from the information or demonstrate substantial uncertainty as to whether the proposed rule or Natural Resource Plan will take an unusual length of time for final issuance.

Administrative Correction Mechanism

Comment: Some commenters stated that the information correction mechanisms fail to meet the spirit, purpose, and objectives of Section 515 and the OMB guidelines.

Response: The Department has made numerous changes in the administrative mechanism in response to these comments. The Department does not intend to discourage requests for correction or erect procedural barriers that could block legitimate complaints. It is in the best interest of the Department and the public to timely correct information that does not comply with its guidelines.

Savings Clause

Comment: Some commenters urged the elimination of the "savings clause" intended to exempt from coverage certain unidentified information challenges where unspecified "different procedures" for correction may exist.

Response: The Department has deleted the "savings clause" from its guidelines.

Affected Person

Comment: Several commenters suggested that the Department provide a broader definition of "affected persons" who can invoke these mechanisms, consistent with Congressional intent in Section 515 and similar to the proposals of several federal agencies. These commenters stated that the guidelines should also include procedures to enhance notification of and participation by affected parties.

Some commenters argued that the Department and its operating units definition of "affected person" resembles judicial requirement for "standing," which neither Section 515 nor OMB's guidelines require. The commenters urged the Department to adopt a definition of "affected person" that includes "anyone who uses the information, benefits from it, or is harmed by it," as well as trade associations and other groups who represent such persons.

Response: The Department never intended to limit the class of affected persons. However, the Department has revised the definition of "affected person" to describe more clearly a broad class of affected persons. Further, the revised definition is broad enough to include trade associations and others who are related to or associated with persons who may be affected.

Responsible Office

Comment: Some commenters recommended that the Department designate which office within an operating unit would qualify as the responsible office that may decide initial information correction requests. Several commenters stated that the Department should create an independent, dedicated appeal board outside the program office within which the "responsible office" resides to ensure uniform, objective, and timely resolution of appeals of information correction request denials.

Response: The Department's operating units have taken varying approaches to designating the responsible office, in each case using a method that best fits their mission and activities. This is in keeping with OMB's guidance, which has provided flexibility so that "each agency will be able to incorporate the requirements of these OMB guidelines into the agency's own information resource management and administrative practices." (67 FR at 8452). Also, as the Department has noted above, OMB encouraged agencies to incorporate the standards and procedures required by its guidelines into their existing information resources management and administrative practices rather than create new and potentially duplicative or contradictory processes.

Comment: One commenter complained that some agencies do not provide any indication as to the official responsible for deciding the disposition of requests for correction.

Response: The operating units of the Department do provide this information.

Appeal Official

Comment: One commenter suggested that allowing the "Appeal Official" to be only one administrative level above the official who made the initial decision is not sufficiently removed from the office that issued the contested information to ensure sufficient objectivity. The commenter noted that appeals should be made to a centralized Department-wide official, such as the Department's Chief Information Officer or the Section 515 officer. The commenter also stated that the guidelines should clearly state that the appeals officer should act in an "ombudsman" capacity, to objectively assess information complaints and not endeavor to uphold the agency's stated position.

Response: In all cases, the Department's intent is for the review to be objective. The Appeal Official must be sufficiently removed to make a fair and objective review but at the same time needs to have enough expertise to understand the issues. This involves a balance that different operating units have met in different ways. However, in no case is the appeal official in the same office as the one that decided the initial complaint.

Comment: Some commenters asked for assurances that the heads of responsible offices and appeal officials will be provided sufficient resources to allow for meaningful initial information correction requests and appeals of denials of such within the presumptive 60-day time limit.

Response: The Department has designed its administrative mechanisms to achieve timely response to requests for correction within available resources.

Time Limits for Filing Requests

Comment: One commenter stated that the Department should "establish a timeliness requirement for requests after which an agency has the option to reject a request (*e.g.*, a data quality complaint must be made within three month's of the information's release)."

Response: Since the information quality guidelines apply to information disseminated by the Department "on or after October 1, 2002, regardless of when the information was first disseminated * * *", the Department cannot limit requests for correction of information based on a specific dissemination date. Moreover, the Department believes that it is often difficult to define a specific date of dissemination of information from which to establish a timeliness requirement for a request for correction.

Comment: One commenter suggested that the Department clearly state that the burden of proof lies squarely with the requester to demonstrate both that they are an affected party and that the challenged information does not comply with OMB's guidelines.

Response: The Department and its operating units have added to their information quality guidelines a statement specifying that the burden of proof is on the requester to show both the necessity and type of correction sought and that, where appropriate, the requester has the burden of rebutting the presumption that information subjected to formal, independent, external peer review is objective. Additionally, the definition of "affected" has been changed. "Affected person" as now defined means an individual or entity that uses, benefits from, or is harmed by the disseminated information at issue. Any initial request for correction must include an explanation of how the requester is affected.

Timely Review

Comment: Some commenters addressed the issue of setting appropriate, specific time limits for agency decisions on information correction requests. Two of these commenters proposed language that provide agencies with flexibility for requests that may require a longer time frame for response without allowing open-ended delays for making decisions. Two commenters asked that the Department assure that proper and strict limits be imposed on the ability of the responsible offices to extend the time period for resolving initial information correction requests beyond the presumptive 60 day limit.

Response: The Department has retained the language in its draft guidelines: "An initial decision will be communicated to the requester, usually within 60 calendar days."

In order to assist the Department in making a timely response, it has added to its guidelines a list of corrective actions that may be taken in response to a correction request, based on the nature and timeliness of the information involved, as well as factors such as the significance of the error on the use of the information, and the magnitude of the error. Actions contained in that list include: personal contacts via letter or telephone, form letters, press releases, and postings on an appropriate Web site.

Comment: Some commenters suggested that the Department establish effective procedures and schedules for the timely correction of information determined to be flawed and for appropriate prohibitions on further use and dissemination of such information until it is corrected.

Response: The timetable for corrective action depends on many factors, including but not limited to: the magnitude and significance of the error, the timeliness of the information involved, the original form of dissemination, and the nature of the correction. Any schedule for correction is dependent on these and other factors that cannot be determined in advance. According to the Department's model administrative mechanism, which is used by most of the operating units, the initial decision is a determination of whether the information should be corrected and what, if any, corrective action should be taken, and this decision is communicated to the requester.

Comment: Some commenters stated that the Department's guidelines set unreasonable time frames for filing and addressing complaints regarding some data that undercut accuracy requirements. The commenters argued that an affected individual should be allowed to request correction at any time after improper data is disseminated, particularly for a fishery where timely, accurate distribution of data is paramount.

Response: Timeliness is an important factor in the determination of the appropriate response to an information correction request. The Department has addressed this issue in its revised guidelines by adding the list of corrective actions mentioned above, which recognizes timeliness as an important factor in determining a remedy and which includes withdrawal or correction of the information in question as a form of correction where appropriate. The guidelines now contain the statement: "The form of corrective action will be determined by the nature and timeliness of the information involved and such factors as the significance of the error on the use of the information and the magnitude of the error."

Comment: One commenter believes that agencies must provide a "specific time frame" for decisions on information correction requests.

Response: The Department provides time frames for response to requests for correction of information that it has disseminated. A single specific time limit for decision on requests for correction for all of the Department operating units is not possible because of the diverse missions of the Department's operating units. However, in all cases the Department will endeavor to respond as soon as reasonably possible, usually within 60 calendar days as stated in the Department's guidelines.

Initial Requests

Comment: One commenter suggested that the guidelines should explicitly state that the administrative mechanism applies only to corrections of factual information and that the Department will not consider interpretations of data and information, or requests for de-publishing. The commenter stated that to avoid wasteful duplication of effort the Department should limit complaints to information that is not already subject to existing data quality programs and measures (giving the example of rulemaking proceedings), and that complaints for any data quality standard that presents a potential moving target (i.e., "best available evidence") should be evaluated based on information available at the time of dissemination.

The commenter urged that the Department's response to correction requests should be proportional to the significance and importance of the information in question to establish the necessary flexibility to set aside a request that has been superceded or is otherwise outdated. The commenter also stated that the Department should limit the mechanism to only what is required in Section 515 to avoid any possibility of creating new rights under administrative law. Finally, the commenter noted that the Department needs adequate procedural safeguards to avoid becoming mired down in minor data disputes, bad faith requests, and frivolous, repetitive, or non-timely claims.

Response: Regarding consideration of interpretations of data and information, the Department's information quality guidelines and Section 515 itself are not designed to contemplate interpretations of data and information apart from requests for correction of information that is not in compliance with agency guidelines. Similarly, requests for de-publishing would be considered only in the context of an appropriate request for correction of Department-disseminated information, in which case withdrawal of the affected information would be one of the options considered if the information were found to be incorrect.

Although the Department has not limited complaints to information that is not already subject to existing data quality programs and measures, the Department has designed its administrative mechanisms to take advantage of existing processes that are designed to ensure the quality of information, such as rulemakings. The Department agrees that requests for correction should be evaluated based on the evidence available at the time of dissemination. However, where it is possible, timely, appropriate, and cost-effective to make corrections based on later-acquired evidence that meets the Department's quality standards, the Department will consider correction.

The Department agrees that its response to correction requests should be proportional to the significance and importance of the information in question (among other factors). The Department believes its guidelines provide the necessary flexibility to deal with superceded or outdated requests. The Department notes that its guidelines provide that requests that are duplicative, repetitious, or frivolous may be rejected and that information need not be corrected if the correction would serve no useful purpose.

Comment: One commenter suggested that the Department's rigid requirements for filing a request for correction serve as an entry barrier against the requestor. The commenter pointed out that no other federal agency has adopted such a rigid approach, which will terminate with prejudice the majority of requests received. The commenter noted that this practice could lead to retaining an acknowledged fact error in Department information by having such high barriers to a substantive examination of the error.

Response: The Department does not intend to place procedural barriers in the way of legitimate requests for correction. Numerous provisions in the Department's administrative correction mechanisms have been modified to make the process easier to use. In addition, provisions have been added allowing defective requests to be amended and resubmitted.

Reconsideration of Requests

Comment: One commenter pointed out that the Department should be aware that Section 515 does not address reconsideration of complaints and that such a requirement is outside the scope of the statutory requirements. Therefore, the commenter stated that the Department's reconsideration process should remain fairly informal and limited in scope, since the review mechanism is to ensure that initial agency review was conducted with due diligence.

Response: Although the statutory language of Section 515 does not address reconsideration or appeals from initial denials of requests for correction, the Department has followed the OMB guidelines and, in keeping with those guidelines has, through its OUs, devised appeal processes "that serve to address the genuine and valid needs of the agency and its constituents without disrupting agency processes." (67 FR at 8458)

Contents of Request

Comment: Several commenters requested that the Department eliminate the requirement of a "proper request." One commenter explained that the problem was that requesters whose requests were determined not to be proper were not given the opportunity to amend the request, thereby creating in effect a form of summary judgment with prejudice.

Response: To investigate a request for correction and respond to the requester, the Department must have appropriate contact information and sufficient information regarding the source of the information disseminated and how the requester believes that information fails to comply with the applicable information quality standards. This information can only be provided by the requester. Therefore, the Department has retained the requirement of a "proper request" but has added that if a request is determined not to be proper, the requester may amend the request and resubmit it.

Stating a Claim

Comment: Some commenters urged the elimination of the proposed requirement that the responsible office make a preliminary determination, on the basis of the strength of the assertions in the request alone, that the information in question was based on non-conformance with the Department's information quality standards before objectively investigating and analyzing the request.

Response: This provision has been amended to clarify its purpose. The provision was never meant to preclude any request for correction. Rather it was meant to ensure that the Department could determine from the request exactly what the requestor's claim or complaint is. A request that cannot be understood is not possible to address. Along with language clarifying this intent, language has been added stating that a request determined to not state a claim "may be amended and resubmitted * * *"

Comment: One commenter strongly opposed the Department's position that there is no appeal from a decision that a request does not state a claim.

Response: The Department points out that an appeal is not necessary for a decision by the responsible office that a request does not state a claim because the guidelines clearly state that a denied request may be amended and resubmitted for consideration. The elements of a valid claim are listed in the guidelines. A refused claim may be amended to ensure that these elements are included in the resubmission.

Duplicative Requests

Comment: One commenter stated that the Department should state that if a request has been made and responded to, then a new, similar request may be rejected as frivolous or duplicative.

Response: The Department has included a statement that requests that are duplicative, repetitious, or frivolous may be rejected.

Criteria for Corrections

Comment: One commenter questioned whether the Department would always correct information when it agrees (in some sense) with a request for correction. The commenter suggested that agencies should be required to correct information in all cases.

Response: The OMB guidelines provide that agencies are "required to undertake only the degree of correction that they conclude is appropriate for the nature and timeliness of the information involved, and explain such practices in their annual fiscal year reports to OMB." (67 FR 8453) Further, the OMB guidelines direct agencies to weigh the costs and benefits of higher quality information. The Department's guidelines are in compliance OMB guidelines.

Substantially the Same and Acceptable Error

Comment: Several commenters objected to the Department's assertion that it need not correct information that was within an "acceptable degree of imprecision" and information that failed to meet the applicable standards but would have been substantially the same or statistically the same had the applicable standards been met. One of these commenters also objected to the Department's assertion that it would not correct information the correction of which would serve no useful purpose.

Response: In the course of simplifying the Department's administrative correction mechanisms, references to the concepts of "acceptable degree of imprecision" and "substantially the same or statistically the same" have been removed from that part of the Department's guidelines. However, these concepts are fundamental to scientific inquiry and have not been discarded. In fact, the concept of "acceptable degree of imprecision" is inherent in OMB's view of "reproducibility" and is part of OMB's (and the Department's) definition of that term (67 FR 8456, 8457, 8460). Similarly, concepts of acceptable statistical variability are essential to the scientific process. Information that falls within clearly delineated and acceptable statistical ranges is in fact scientifically correct. The Department has retained the assertion that no initial request for correction will be considered under these procedures concerning disseminated information the correction of which would serve no useful purpose, but has explained what is meant by "serve no useful purpose." Specifically, "[c]orrection of disseminated information would serve no useful purpose with respect to information that is not valid, used, or useful after a stated short period of time" (such as a weather forecast or atomic time). The Department points out that information need not be corrected if the information would have been substantially or statistically the same or if the information is within an acceptable degree of error, in line with the scientific process.

Budget Constraints

Comment: Several commenters stated that budgetary constraints should not be a basis for failing to correct information determined by the Department to be flawed. Some of these commenters stated that Section 515 gives the public the right to seek and obtain correction of federally disseminated information. One commenter suggested that "this noncorrection of known errors seems to be too smooth a path of evasion by the most interested staff members, against those requesters seeking legitimate redress and whose claim of error is acknowledged to be correct."

Response: The Department points out that budgetary constraints do not exempt information from any necessary correction. However, the OMB guidelines direct agencies to weigh the costs and benefits of higher quality information. The Department's intent in including the statement regarding resources unavailable to that official is now more correctly expressed, consistent with OMB's guidelines, as an examination of costs and benefits of higher quality information.

Department of Commerce and Operating Unit Web Sites

The Web sites that publish the Department of Commerce's information quality guidelines are noted below. The first site includes this document for the Department of Commerce. The remaining sites document the information quality guidelines for Commerce's operating units.

http://www.doc.gov/
http://www.osec.doc.gov/cio/oipr/OS%20Revised%20Info%20Qual%20Guidelines.htm
http://www.bxa.doc.gov/
http://www.esa.doc.gov/
http://www.bea.doc.gov/
http://www.census.gov/
http://www.doc.gov/eda/
http://www.ita.doc.gov/
http://www.mbda.gov/
http://www.noaa.gov/
http://www.ntia.doc.gov/
http://www.ta.doc.gov/
http://www.nist.gov/
https://www.ntis.gov/

Dated: September 30, 2002.

Thomas N. Pyke, Jr.,

Chief Information Officer.

[FR Doc. 02–25340 Filed 10–1–02; 3:33 pm]

BILLING CODE 3510-CW-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1250]

Grant of Authority for Subzone Status; Brittany Dyeing and Printing Corporation (Inc.) (Textile Finishing), New Bedford, MA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry.

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the City of New Bedford, Massachusetts, grantee of Foreign-Trade Zone 28, has made application for authority to establish special-purpose subzones status at the textile finishing plant of Brittany Dyeing and Printing Corporation (Inc.), located in New Bedford, Massachusetts (FTZ Docket 12–2002, filed February 7, 2002).

Whereas, notice inviting the public comment was given in the **Federal Register** (67 FR 7131, February 15, 2002); and,

Whereas, the application seeks FTZ authority for only the following processes: Dyeing, printing, shrinking, sanferizing, desizing, sponging, bleaching, cleaning/laundering, calendaring, hydroxilating, decatizing, fulling, mercerizing, chintzing, moiring, framing/beaming, stiffening, weighting, crushing, tubing, thermofixing, anti-microbial finishing, shower proofing, flame retardation, and embossing; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were subject to the restriction listed below;

Now, therefore, the Board hereby grants authority for subzone status at the

textile finishing plant of Brittany Dyeing and Printing Corporation (Inc.), located in New Bedford, Massachusetts (Subzone 28E), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and further subject to the following restrictions:

1. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign status fabric admitted to the subzone;

2. No activity under FTZ procedures shall be permitted and that would result in a change in textile quota category or country of origin, and/or alter applicable U.S. quota/visa requirements; and,

3. All FTZ activity shall be subject to § 146.63(d) of the U.S. Customs Service regulations (19 CFR part 146).

Signed at Washington, DC, this 30th day of September 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration Alternate Chairman, Foreign-Trade Zones Board

[FR Doc. 02–25629 Filed 10–7–02; 8:45 am]

BILLING CODE 3510–05–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1248]

Grant of Authority for Subzone Status; Reebok International, Ltd. (Footwear); Lancaster, Stoughton and Norwood, MA

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for " * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Massachusetts Port Authority, grantee of Foreign-Trade Zone 27, has made application to the Board for authority to establish special-purpose subzone at the footwear warehousing and distribution facilities of Reebok International, Ltd., located in Lancaster, Stoughton and Norwood, Massachusetts (FTZ Docket 13–2002, filed 2/7/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 7131, 2/15/02); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the footwear distribution facilities of Reebok International, Ltd., located in Lancaster, Stoughton and Norwood, Massachusetts (Subzone 27M), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 30th day of September 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–25627 Filed 10–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 38–2002]

Foreign-Trade Zone 40—Cleveland, Ohio, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, requesting authority to expand its zone (Site 3) in the Cleveland, Ohio, area, within the Cleveland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 26, 2002.

FTZ 40 was approved on September 29, 1978 (Board Order 135, 43 FR 46886, 10/11/78) and expanded in June 1982 (Board Order 194, 47 FR 27579, 6/25/82); April 1992 (Board Order 574, 57 FR 13694, 4/17/92); February 1997 (Board Order 870, 62 FR 7750, 2/20/97; June 1999 (Board Order 1040, 64 FR 33242, 6/22/99) and April 2002 (Board Order 1224, 67 FR 20087, 4/15/02). The general-purpose zone project currently consists of the following sites in the Cleveland, Ohio, area: *Site 1* (94 acres)—Port of Cleveland complex on Lake Erie at the mouth of the Cuyahoga River, Cleveland; *Site 2* (175 acres)—the IX Center (formerly the "Cleveland Tank Plant"), in Brook Park, adjacent to the Cleveland Hopkins International Airport; *Site 3* (1,900 acres)—Cleveland Hopkins International Airport complex; *Site 4* (450 acres)—Burke Lakefront Airport, 1501 North Marginal Road, Cleveland; *Site 5* (298 acres)—Emerald Valley Business Park, Cochran Road and Beaver Meadow Parkway, Glenwillow; *Site 6* (30 acres)—Collinwood site, South Waterloo (South Marginal) Road and East 152nd Street, Cleveland; *Site 7* (47 acres)—Water Tower Industrial Park, Coit Road and East 140th Street, Cleveland; *Site 8* (83 acres)—Strongsville Industrial Park, Royalton Road (State Route 82), Strongsville; *Site 9* (13 acres)—East 40th Street between Kelley & Perkins Avenues (3830 Kelley Avenue), Cleveland; and, *Site 10* (15 acres)—Frane Industrial Park, Forman Road, Ashtabula.

The applicant is now requesting authority to expand existing Site 3 by adding the 42-acre Snow Road Industrial Park, 18901 Snow Road, Brook Park. The site is contiguous to the Cleveland Hopkins International Airport complex (Site 3). The facility was the former tire warehousing and distribution facility of Goodyear Corporation, and it is now owned by the Crow Holdings Industrial Trust which is redeveloping the site as an industrial complex. The site will provide public warehousing and distribution services to area businesses. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099—14th Street, NW., Washington, DC 20005.

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–Suite 4100W, 1401 Constitution Avenue, NW, Washington, DC 20230.

The closing period for their receipt is December 9, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 23, 2002).

A copy of the application and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 600 Superior Avenue East, Suite 700, Cleveland, OH 44114.

Dated: September 26, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–25630 Filed 10–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1247]

Approval for Expansion of Manufacturing Authority Within Subzone 61G; IPR Pharmaceuticals, Inc., Plant (Pharmaceuticals), Carolina, Puerto Rico

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, IPR Pharmaceuticals, Inc. (IPR), operator of SZ 61G, has requested authority to expand the scope of manufacturing activity under zone procedures within Subzone 61G at the IPR plant in Carolina, Puerto Rico (FTZ Docket 5–2002, filed January 17, 2002);

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 3685, January 25, 2002);

Whereas, pursuant to Section 400.32(b)(1) of the FTZ Board regulations (15 CFR part 400), the Secretary of Commerce's delegate on the FTZ Board has the authority to act for the Board in making decisions regarding manufacturing activity within existing zones when the proposed activity is the same, in terms of products involved, to activity recently approved by the Board and similar in circumstances (15 CFR 400.32(b)(1)(i)); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand the scope of authority under zone procedures within Subzone 61G on behalf of IPR Pharmaceuticals, Inc., is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 20th day of September 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02–25631 Filed 10–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1249]

Expansion of Foreign-Trade Zone 78, Nashville, Tennessee, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Metropolitan Government of Nashville and Davidson County, grantee of Foreign-Trade Zone 78, submitted an application to the Board for authority to expand FTZ 78-Site 7 to include an additional parcel (42 acres; includes temporary site) within the Eastgate Business Park in Lebanon, Tennessee, adjacent to the Nashville Customs port of entry (FTZ Docket 15–2002; filed February 8, 2002;

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 7132, February 15, 2002) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 78–Site 7 is approved, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 30th day of September, 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–25628 Filed 10–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Certain Stainless Steel Sheet and Strip in Coils From Taiwan: Extension of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the review of stainless steel sheet and strip in coils from Taiwan. This review covers the period July 1, 2000 through June 30, 2001.

EFFECTIVE DATES: October 8, 2004.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4243.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2001).

Background

On October 1, 2001, the Department published a notice of initiation of this antidumping duty administrative review for the period of July 1, 2000 through June 30, 2001 (66 FR 49924). We published the preliminary results of review on July 9, 2002.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary results, to issue its final results by an additional 60 days. Completion of the final results within the 120-day period is not practicable for the following reasons:

- This review involves certain complex issues which were raised by petitioners after the verification and after the preliminary results of review.
- The review involves a large number of transactions and complex adjustments.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by 30 days until December 6, 2002.

Dated: September 26, 2002.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–25625 Filed 10–7–02; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, Los Angeles; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–036. Applicant: University of California, Los Angeles, Los Angeles, CA 90095. Instrument: Low Temperature Scanning Tunneling Microscope System, Model LT–STM 1. Manufacturer: VTS Createc GmbH, Germany. Intended Use: See notice at 67 FR 55197, August 28, 2002.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides: (1) Operation at 10K to 300K using a liquid bath helium cryostat completely surrounded by a 4K radiation shield, (2) alternate operation with liquid nitrogen and (3) a scanning range of 1mu; at 6K and 1.5μ at 77K. A university center for microstructural devices advised September 23, 2002 that (1) These capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–25626 Filed 10–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081202A]

New Information Indicates Fine-scaled Stock Structure for Harbor Seals in Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information; request for comments; reopening comment period.

SUMMARY: On August 26, 2002, NMFS announced that new information is available that indicates fine-scaled stock structure of harbor seals in Alaska. NMFS invited the public to submit additional information or viewpoints related to harbor seal stock structure in Alaska. In response to a request from the public, NMFS is reopening the comment period for 14 days.

DATES: Comments must be received before close of business on October 22, 2002.

ADDRESSES: Comments should be forwarded to P. Michael Payne, Assistant Regional Administrator for Protected Resources, Alaska Regional Office, NMFS, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, Alaska Regional Office, NMFS, Juneau, Alaska, (907) 586–7824; or Thomas Eagle, Office of Protected Resources, NMFS, Silver Spring, MD, (301) 713–2322, ext. 105.

SUPPLEMENTARY INFORMATION:

Electronic Access

The original notice of availability and a map of the areas in Alaska where seal groupings appear discrete may be found at *www.fakr.noaa.gov/protectedresources.*

Background

NMFS issued a notice (67 FR 54792, August 26, 2002) that new information indicates that stock structure of harbor seals in Alaska may be more finely scaled than is currently recognized in marine mammal stock assessment reports compiled pursuant to section 117 of the Marine Mammal Protection Act. NMFS also advised in that notice that it is evaluating harbor seal stock structure through a co-management process with the Alaska Native Harbor Seal Commission. NMFS solicited additional information and viewpoints from the public that it should consider throughout the evaluation of harbor seal stock structure.

The Alaska Department of Fish and Game requested that NMFS extend the comment period for 2 weeks. In response to this request, NMFS is reopening the comment period for 2 weeks.

Dated: October 2, 2002.

Chris Mobley,

Acting Director, Office of Protected Resources,National Marine Fisheries Service.

[FR Doc. 02–25623 Filed 10–7–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091702B]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of cancellation of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) has cancelled the public meeting of its Monkfish Oversight Committee that was scheduled for Tuesday, October 8, 2002 at 9:30 a.m. at the Holiday Inn By The Bay, 88 Spring Street, Portland, ME 04101.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The initial notice published on September 13, 2002 (67 FR 59492). The meeting will be rescheduled at a later date and announced in the **Federal Register.**

Dated: October 3, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–25622 Filed 10–7–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091802A]

Marine Mammals; File No. 1033–1683–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Michael A. Castellini, Ph.D., Institute of Marine Science, School of Fisheries and Ocean Sciences, University of Alaska, Fairbanks, AK 99775, has been issued a permit to take Weddell seals (*Leptonychotes weddellii*) and other Antarctic pinnipeds for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On August 5, 2002, notice was published in the **Federal Register** (67 FR 50632) that a request for a scientific research permit to take Weddell seals had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 1033–1683 authorizes the Holder to capture, sample, instrument and release Weddell seals, incidentally harass crabeater seal (Lobodon carcinophagus), leopard seal (Hydrurga leptonyx), Ross seal (Ommatophoca rossii), southern elephant seal (Mirounga leonina), and Antarctic fur seal (Archtocephalus gazella), and import blood, feces and milk collected during research.

Dated: September 25, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–25624 Filed 10–7–02; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Homeland Security Training and Technical Assistance NOFA Discussion Forum

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service will host a teleconference call to discuss, and answer question regarding, the recent Notice of Availability of Funds for a National Provider of Training and Technical Assistance to Corporation for National and Community Service Programs Using Service and Volunteers to Support Homeland Security, published in the **Federal Register** on September 5, 2002 (67 FR 56809). Please send discussion questions at least 24 hours prior to the call via email to *charrison@cns.gov.* We will consider all discussion questions. The toll-free number for the call is 888–889–1959. The pass code is HS ONE. Callers will also be required to give the conference leader's name Gina Fulbright-Powell.

DATES: Teleconference call will take place on Thursday, October 10, 2002, 2:30–4 p.m. Eastern.

ADDRESSES: Our address is The Corporation for National and Community Service, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: For further information, contact Gina Fulbright-Powell (202–606–5000, ext. 182), e-mail *gfulbrig@cns.gov* or Wade Gatling (202–606–5000, ext. 451), e-mail *wgatling@cns.gov.*

Dated: October 3, 2002.

Gretchen Van der Veer,

Director, Office of Leadership Development and Training.

[FR Doc. 02–25606 Filed 10–7–02; 8:45 am]

BILLING CODE 6050–28–P

DELAWARE RIVER BASIN COMMISSION

Notice of Proposed Rulemaking; Proposed Amendments to the Comprehensive Plan and Water Code Relating to Operation of Lake Wallenpaupack During Drought Watch, Drought Warning and Drought Conditions

AGENCY: Delaware River Basin Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission will hold a public hearing to receive comments on proposed amendments to the agency's *Comprehensive Plan* and *Water Code* to incorporate a revised drought operating plan for the Lake Wallenpaupack Reservoir and Hydroelectric Facility, located in Pike County, Pennsylvania in the Lackawaxen Watershed. The reservoir and facility currently are owned and operated by PPL Holtwood, LLC ("PPL"). The proposed rulemaking would increase by 12,500 acre-feet or 4.1 billion gallons the amount of Lake Wallenpaupack water available to the Commission for flow augmentation in the main stem Delaware River during drought watch, drought warning and drought conditions, as defined in Section 2.5.3 of the Water Code and Docket D–77–20 CP (Revision 4), dated April 28, 1999. The minimum lake elevation to be maintained during drought conditions—the target elevation for December 1—would decrease from 1170.0 feet to 1167.5 feet. The right to use as much as 4.1 billion gallons of Lake Wallenpaupack water to augment Delaware River flows during drought would be deemed to satisfy up to 10,000 acre-feet of the Commission's consumptive use replacement requirement for the Martins Creek and Lower Mount Bethel generating facilities and future facilities that PPL (or its successors in interest) might construct. That is, under the proposed drought plan, the Commission would release PPL (and its successors) from the requirement that it provide up to 10,000 acre-feet or 3.3 billion gallons of dedicated storage to replace, gallon for gallon, water consumptively used by the entity's existing and future generating facilities when the basin is in drought watch, drought warning or drought operations.

DATES: The public hearing will be held on Wednesday, October 16, 2002 during the Commission's regular business meeting, which will begin at 1:30 p.m. Persons wishing to testify are asked to register in advance with the Commission Secretary by phoning 609–

883–9500 ext. 203. Written comments will be accepted through Friday, November 15, 2002. *Comments must be received, not merely postmarked, by that date.*

ADDRESSES: The public hearing will be held at the Commission's offices, 25 State Police Drive, West Trenton, NJ. Written comments should be addressed to the Commission Secretary at DRBC, P.O. Box 7360, West Trenton, NJ 08628–0360.

FOR FURTHER INFORMATION CONTACT: Please contact Pamela M. Bush, at 609–883–9500 ext. 203, with questions about the proposed rule change or the rulemaking process.

SUPPLEMENTARY INFORMATION: A draft resolution enacting the proposed amendments to Sections 2.5.5 and 2.5.6 of the *Water Code* and the text of the current *Water Code* (which is incorporated in the *Comprehensive Plan*) may be viewed on the Commission's Web site, at *http://www.drbc.net.*

Dated: October 1, 2002.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 02–25440 Filed 10–7–02; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 9, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 2, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.
Title: Trends in International Mathematics and Science Study (TIMSS): 2003.
Frequency: One time.
Affected Public: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 25,575.
Burden Hours: 20,704.
Abstract: The TIMSS 2003 will assess the mathematical and science knowledge of students in over 50 participating countries. This is the third cycle of TIMSS studies. Previous TIMSS were conducted in 1994–1995 and in 1999. TIMSS 2003 will go to fourth and eighth graders in the United States. In addition to the assessments, in each participating country, the selected students and their 4th grade teachers and 8th grade science and math teachers, and administrators of the selected schools will also fill out background questionnaires to learn about curricula, instruction, home context, and school characteristics and policies.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2169. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the e-mail address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–25482 Filed 10–7–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 9, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 2, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.
Title: Guaranty Agency Financial Report.
Frequency: Monthly; Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit.
Reporting and Recordkeeping Hour Burden:
Responses: 612.
Burden Hours: 33,660.
Abstract: The Guaranty Agency Financial Report is used to request payments from and make payments to the Department of Education under the Federal Family Education Loan (FFEL) program authorized by Title IV, Part B of the HEA of 1965, as amended. The report is also used to monitor the agency's financial activities, including activities concerning its federal fund, operating fund and the agency's restricted account.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2145. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the e-mail address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–25483 Filed 10–7–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 7, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the e-mail address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 1, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.
Title: National College Alcohol, Drug and Violence Survey.
Frequency: Annually.
Affected Public: Not-for-profit institutions; Individuals or household.
Reporting and Recordkeeping Hour Burden:
Responses: 50,000.
Burden Hours: 30,000.
Abstract: The National College Alcohol, Drug and Violence Survey is being conducted as a national probability sample in order for the Department to obtain national statistics on alcohol and other drug use and violence among students at institutions of higher education.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2088. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the e-mail address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–25481 Filed 10–7–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–137–A]

Application to Amend Electricity Export Authorization; New York State Electric & Gas Corporation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: New York State Electric & Gas Corporation (NYSEG) has submitted an application to amend its authorization to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before November 7, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA)(16 U.S.C. 824a(e)).

On April 14, 1997, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized NYSEG to transmit electric energy from the United States to Canada using the international electric transmission facilities owned by Niagara Mohawk Power Corporation and the New York Power Authority.

On September 17, 2002, NYSEG applied to amend its existing export authorization by adding to the list of authorized export points those international transmission facilities owned by Citizens Utilities Company, the Joint Owners of Highgate Project, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by NYSEG, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the NYSEG application to export electric energy to Canada should be clearly marked with Docket EA–137–A. Additional copies are to be filed directly with Mr. John R. Tigue, Manager, Bulk Power Sales, New York State Electric & Gas Corporation, Corporate Drive, Kirkwood Industrial Park, Post Office Box 5224, Binghamton, New York 13902–5224 and Mr. William J. Cronin, Esq., Rosa Pietanza, Esq., Huber Lawrence & Abell, 605 Third Avenue, 27th Flr, New York, New York 10158.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Pending Procedures" from the options menus.

Issued in Washington, DC on October 2, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–25535 Filed 10–7–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Idaho Operations Office Notice of Availability of Solicitation for Awards of Financial Assistance

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of Solicitation Number DE–PS07–03ID14434 University Reactor Instrumentation (URI) Program.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, is soliciting applications for special research grant awards that will upgrade and improve U.S. nuclear research and training reactors. It is anticipated that on October 1, 2002, a full text for Solicitation Number DE–PS07–03ID14434 for the 2003 URI Program will be made available at the Industry Interactive Procurement System (IIPS) Web site at: *http://e-center.doe.gov*. The deadline for receipt of applications will be on December 5, 2002. Applications are to be submitted via the IIPS Website. Directions on how to apply and submit applications are detailed under the solicitation on the Web site.

FOR FURTHER INFORMATION CONTACT: Kathleen Stallman, Contract Specialist at *stallmkm@id.doe.gov*.

SUPPLEMENTARY INFORMATION: The solicitation will be issued in accordance with 10 CFR part 600.6(b), eligibility for awards under this program will be restricted to U.S. colleges and universities having a duly licensed, operating nuclear research or training reactor because the purpose of the University Reactor Instrumentation (URI) program is to upgrade and improve the U.S. university nuclear research and training reactors and to contribute to strengthening the academic community's nuclear engineering infrastructure.

The statutory authority for this program is Pub. L. 95–91.

Issued in Idaho Falls on September 26, 2002.

R.J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 02–25529 Filed 10–7–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. No 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, November 7, 2002, 9 a.m.–5 p.m.; Friday, November 8, 2002, 8:30 a.m.–4 p.m.

ADDRESSES: West Coast Hotel, 1101 North Columbia Center Boulevard, Kennewick, WA 99336.

FOR FURTHER INFORMATION CONTACT: Yvonne Sherman, Public Involvement Program Manager, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA, 99352; Phone: (509) 376–6216; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Thursday, November 7, 2002

- Tank Waste Program
  - —Strategic Initiative 2: Accelerate Tank Waste Treatment Completion by 20 Years
  - Accelerated Tank Retrieval and Closure Issues
  - M–45 Tri-Party Agreement Draft Change Package (Single-Shell Tank Retrieval and the Establishment of Accelerated Waste Retrieval and Closure Demonstration Projects)
- Waste Treatment
  - —Supplemental Technologies
  - —Potential Enhancements to the Vitrification Plant
  - —Challenges: Funding, Technology Development
- Hanford's Draft Long-Term Stewardship Plan
  - —Goals and Outcomes for November Long-Term Stewardship Workshop

Friday, November 8, 2002

- Update on the Draft Hanford Solid (Radioactive and Hazardous) Waste Environmental Impact Statement (EIS)
- Public Involvement Processes (*e.g.* HAB press releases, DOE ads, fact sheets)
- Discussion on FY 03 Hanford Advisory Board Meeting Schedule
- Committee Updates

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Yvonne Sherman's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Yvonne Sherman, Department of Energy Richland Operation Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352, or by calling her at (509) 376–1563.

Issued at Washington, DC on October 2, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–25531 Filed 10–7–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; Methane Hydrate Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Methane Hydrate Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, November 13, 2002, 8:30 a.m. to 5 p.m. and Thursday, November 14, 2002, 8:30 a.m. to 3 p.m.

ADDRESSES: Marriott at Metro Center, 775 12th Street NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Edith Allison, U.S. Department of Energy, Office of Natural Gas and Petroleum Technology, Washington, DC 20585. Phone: 202/586–1023.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Methane Hydrate Advisory Committee is to provide advice on potential applications of methane hydrate to the Secretary of Energy; assist in developing recommendations and priorities for the Department of Energy methane hydrate research and development program; and, submit to Congress a report on the anticipated impact on global climate change from methane hydrate formation, methane hydrate degassing and consumption of natural gas produced from methane hydrates.

Tentative Agenda

Wednesday, November 13

- Welcome and Introductions—Mike Smith, Assistant Secretary for Fossil Energy and Arthur Johnson, Advisory Committee Chairman
- Joint meeting with the Interagency Coordinating Committee—8:30 to noon Briefings on Methane Hydrate Accomplishments, Future Activities and R&D Issues by Minerals Management Service; National Oceanic and Atmospheric Administration; National Science Foundation; Naval Research Laboratory; U.S. Geological Survey; and Department of Energy
- Presentation and discussion—Ocean Drilling Program Leg 204 to Hydrate Ridge
- Presentation and discussion—Mallik Well and other Arctic studies

Ten minutes will be allowed for questions and public comment after each presentation.

- Review of draft report to Congress on Hydrates and Global Climate Change

Thursday, November 14

- Continue review and revision of report to Congress on Hydrates and Global Climate Change
- Discussion of additional recommendations to Department of Energy
- Public comment period
- Adjournment, about 3:00 p.m.

Public Participation: The meeting is open to the public. The Chairmen of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Edith Allison at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Transcripts will be available by request.

Issued in Washington, DC, on October 2, 2002.

Rachel M. Samuel,

Deputy Advisory Committee , Management Officer.

[FR Doc. 02–25534 Filed 10–7–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

Coal Policy Committee of the National Coal Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Coal Policy Committee of the National Coal Council. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, November 12, 2002, 10 a.m. to 2 p.m.

ADDRESSES: Chicago Hilton, 720 South Michigan Avenue, Chicago, IL.

FOR FURTHER INFORMATION CONTACT: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585. Phone: 202/586–3867.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Coal Policy Committee of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues. The purpose of this meeting is to review the Council's document summarizing past Council reports that address energy security and mercury emissions control technology.

Tentative Agenda:

- Call to order by Ms. Georgia Nelson, Chairwoman, Coal Policy Committee.
- Review and discuss the Council's document summarizing past Council reports that address energy security and mercury emissions control technology.
- Discussion of other business properly brought before the Coal Policy Committee.
- Public comment—10 minute rule.
- Adjournment.

Public Participation: The meeting is open to the public. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Margie D. Biggerstaff at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Transcripts: The transcript will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on October 2, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–25528 Filed 10–7–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Umatilla Generating Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to offer contract terms for integrating power from the Umatilla Generating Project into the Federal Columbia River Transmission System. This decision is based on input from public processes and information in the Umatilla Generating Project Environmental Impact Statement (DOE/EIS–0324, January 2002). The Umatilla Generating Project is a 550-megawatt gas-fired, combined-cycle, combustion-turbine power generation project, located near Hermiston, Oregon, which will help meet the short-term need and future demand for energy resources.

ADDRESSES: Copies of the Umatilla Generating Project ROD and the Umatilla Generating Project EIS may be obtained by calling BPA's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION CONTACT: Inez S. Graetzer, KEC–4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, telephone number 503–230–3786; fax number 503–230–5699; e-mail *isgraetzer@bpa.gov*.

Issued in Portland, Oregon, on September 27, 2002.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 02–25530 Filed 10–7–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–570–000]

Alliance Pipeline L.P.; Notice of Tariff Filing

October 2, 2002.

Take notice that on September 30, 2002, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 279, to become effective November 1, 2002.

Alliance states that Sheet No. 279 sets forth the available delivery points on its pipeline system. Alliance further states that it has added a delivery point located at Will County, Illinois for the purpose of delivering volumes of natural gas to Guardian Pipeline L.L.C. Alliance is submitting First Revised Sheet No. 279 to reflect the addition of the new delivery point to the list of delivery points available under its FERC Gas Tariff. Alliance states that its filing is made pursuant to the authority of section 4 of the Natural Gas Act, 15 U.S.C. 717c.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25566 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–055]

ANR Pipeline Company; Notice of Negotiated Rate

October 2, 2002.

Take notice that on September 30, 2002, ANR Pipeline Company, (ANR) tendered for filing two negotiated rate agreements between ANR and Anadarko Energy Service Company pursuant to ANR's Rate Schedules ITS and ITS (Liquefiables). ANR tenders these agreements pursuant to its authority to enter into negotiated rate agreements. ANR requests that the Commission accept and approve the agreements to be effective October 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25561 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–568–000]

Black Marlin Pipeline Company; Notice of Tariff Filing

October 2, 2002.

Take notice that on September 30, 2002, Black Marlin Pipeline Company (Black Marlin) tendered for filing in its FERC Gas Tariff First Revised Volume No. 1, the tariff sheets listed on Attachment A to the filing. The tariff sheets are proposed to be effective November 1, 2002.

Black Marlin states that the purpose of the tariff filing is to: (1) Update the information in the tariff regarding whom customers and interested parties can contact; (2) replace references in the tariff to an electronic bulletin board with information regarding Black Marlin's Internet Web site; and (3) incorporate a cash-out mechanism for transportation gas imbalances.

Black Marlin states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25564 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–046]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

October 2, 2002.

Take notice that on September 30, 2002, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of November 1, 2002:

Fifty-ninth Revised Sheet No. 25
Fifty-ninth Revised Sheet No. 26
Fifty-ninth Revised Sheet No. 27
Twenty-sixth Revised Sheet No. 30A

Columbia states that this filing is being submitted pursuant to Stipulation I, Article I, Section E, True-up Mechanism, of the Settlement (Settlement) in Docket No. RP95–408, *et al.* Columbia notes that, pursuant to the true-up mechanism, Columbia is required to true-up its collections from the Settlement Component for twelve-month periods commencing November 1, 1996. In accordance with the Settlement, the true-up component of the Settlement Component is to be removed effective November 1 of each year. Columbia states that the instant filing is being made to remove such true-up component from the currently effective Settlement Component effective November 1, 2002.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered

by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25558 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–565–000]

Dominion Transmission, Inc.; Notice of Annual TCRA Filing

October 2, 2002.

Take notice that on September 30, 2002, Dominion Transmission Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with an effective date of November 1, 2002:

Fifteenth Revised Sheet No. 31
Eighteenth Revised Sheet No. 32
Tenth Revised Sheet No. 34
Thirteenth Revised Sheet No. 35
Sixth Revised Sheet No. 39

DTI states that the purpose of this filing is to update DTI's effective Transportation Cost Rate Adjustment (TCRA) through the mechanism described in GT&C Section 15.

DTI states that copies of the filing have been sent to DTI's customers and interested stated commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25563 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP02–118–004]

High Island Offshore System, L.L.C.; Notice of Negotiated Rate Filing

October 2, 2002.

Take notice that on September 30, 2002, High Island Offshore System, L.L.C. (HIOS) tendered for filing a Negotiated Rate Arrangement with BP Exploration and Production, Inc. (BP). HIOS requests that the Commission approve the Negotiated Rate Arrangement effective October 1, 2002.

HIOS states that the filed Negotiated Rate Arrangement reflects negotiated rates between HIOS and BP for transportation under Rate Schedule FT–2 beginning October 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25562 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–569–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2002.

Take notice that on September 30, 2002, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Seventh Revised Sheet No. 4A. The proposed effective date of this revised tariff sheet is November 1, 2002.

Iroquois states that pursuant to Part 154 of the Commission's regulations and Section 12.3 of the General Terms and Conditions of its tariff, it is filing Fourth Revised Sheet No. 4A and supporting workpapers as part of its annual update of its Deferred Asset Surcharge to reflect the annual revenue requirement associated with its Deferred Asset for the amortization period commencing November 1, 2002.

Iroquois states that the revised tariff sheet reflects a decrease of $.0001 per Dth in Iroquois' effective Deferred Asset Surcharge for Zone 1 of $.0001 per Dth (from $.0007 to $.0006 per Dth), which results in a decrease in the Inter-Zone surcharge of $.0001 per Dth (from $.0011 to $.0010 per Dth).

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25565 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–571–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2002.

Take notice that on September 30, 2002, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing to its FERC Gas Tariff, First Revised Volume No. 1, Eighth Revised Sheet No. 4A, with an effective date of November 1, 2002.

Iroquois states that pursuant to Part 154 of the Commission's regulations and Section 12.5 of the General Terms and Conditions of its tariff, it is filing Eighth Revised Sheet No. 4A and supporting workpaper as part of its annual Transportation Cost Rate Adjustment filing to reflect changes in Account No. 858 costs for the twelve month period commencing November 1, 2002.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25567 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–4–002]

Maritimes & Northeast Pipeline L.L.C.; Notice of Compliance Filing

October 1, 2002.

Take notice that on September 26, 2002, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 243, First Rev First Revised Sheet No. 265, and First Rev First Revised Sheet No. 295, to become effective on November 1, 2002.

In compliance, Maritimes proposes to revise its Index Price consistently throughout its tariff to be calculated as the monthly average of the Platts Gas Daily, Midpoint, Tennessee Zone 6 (delivered) price, less the 100% load factor Rate Schedule MN365 maximum recourse rate. The following sections of the General Terms & Conditions of Maritimes' FERC Gas Tariff, First Revised Volume No. 1, have been revised to reflect this Index Price: (i) Section 11.6(c) (Balancing, Index Price); (ii) Section 20.4 (Fuel Retainage Quantity, True Up); and (iii) Section 8.7 (Curtailment, Compensation).

Maritimes states that copies of this filing were mailed to all affected customers of Maritimes and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25545 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–53–000]

Midwest Independent Transmission System Operator, Inc.; Notice of Application

October 2, 2002.

Take notice that on September 24, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue long-term notes or other evidences of indebtedness in an amount not to exceed $100 million.

Midwest also requests a waiver from the Commission's competitive bidding requirement at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing should file with the

Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov/*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 208–1659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: October 23, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25553 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–562–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 1, 2002.

Take notice that on September 25, 2002, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to be effective November 1, 2002:

Forty-Sixth Revised Sheet No. 5
Forty-Sixth Revised Sheet No. 6
Forty-Third Revised Sheet No. 7
Eighteenth Revised Sheet No. 8

MRT states that the purpose of this filing is to adjust MRT's fuel percentages pursuant to section 22 of its General Terms and Conditions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25550 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–363–004]

North Baja Pipeline, LLC; Notice of Negotiated Rate

October 1, 2002.

Take notice that on September 25, 2002, North Baja Pipeline, LLC (NBP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 6 and Original Sheet No. 8.

NBP states that these sheets are being filed to reflect two negotiated rate agreements in its tariff. NBP requests that these tariff sheets be made effective September 1, 2002.

NBP further states that a copy of this filing has been served on NBP's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25548 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–45–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Tariff and Filing of Non-Conforming Agreement

October 1, 2002.

Take notice that on September 25, 2002, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, Eighth Revised Sheet No. 2, First Revised Sheet No. 492 and Sheet No. 493, proposed to be effective on October 28, 2002.

Northern states that the purpose of this filing is to submit a Master Netting and Setoff Agreement as a non-conforming agreement and to add a tariff sheet listing of non-conforming agreements.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25542 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–564 -000]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 1, 2002.

Take notice that on September 27, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing revised tariff sheets to reflect modifications necessary to reinstate the rate ceiling for short-term capacity release transactions following the conclusion of FERC's two-year waiver period as provided for in Order No. 637. GTN requests an effective date of October 1, 2002, for these tariff sheets.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file amotion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25552 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–561–000]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 1, 2002.

Take notice that on September 25, 2002, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Tenth Revised Sheet No. 5, Tenth Revised Sheet No. 6, Eleventh Revised Sheet No. 7, and Second Revised Sheet No. 15, to be effective November 1, 2002.

REGT states that the purpose of this filing is to adjust REGT's fuel percentages and Electric Power Costs (EPC) Tracker pursuant to sections 27 and 28 of its General Terms and Conditions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25549 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–35–001]

Tennessee Gas Pipeline Company; Notice of Compliance Tariff Filing

October 2, 2002.

Take notice that on September 30, 2002, Tennessee Gas Pipeline Company, (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Ninth Revised Sheet No. 405A, with an effective date of September 16, 2002.

Tennessee states that the revised tariff sheet is being filed in order to comply with the Commission's September 13, 2002 Order in the referenced proceeding, which relates to Tennessee's previous filing to enhance the creditworthiness provisions of its FERC Gas Tariff, and also provides protection to Tennessee and its creditworthy and paying customers from the realistic potential of sudden changes in other customers' financial condition and payment status.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section

385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25554 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–106]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate

October 2, 2002.

Take notice that on September 20, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Calpine Energy Services, L.P. Tennessee requests that the Commission grant such approval effective November 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25559 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–563–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

October 1, 2002.

Take notice that on September 26, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets, which sheets are enumerated in Appendix A attached to the filing.

Transco states that the purpose of the filing is to track rate and fuel percentage changes attributable to transportation service purchased from Texas Gas Transmission Corporations (Texas Gas) under its Rate Schedule FT, the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. This filing is being made pursuant to tracking provisions under Section 4 of Transco's Rate Schedule FT–NT.

Transco states that included in Appendix B attached to the filing is the explanation of the rate changes and details regarding the computation of the revised FT–NT rates.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25551 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–288–027]

Transwestern Pipeline Company; Notice of Negotiated Rate

October 2, 2002.

Take notice that on September 30, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eighteenth Revised Sheet No. 5B.05; Tenth Revised Sheet No. 5B.07; Seventh Revised Sheet No. 5B.08; and Second Revised Sheet No. 5B.12, to become effective October 1, 2002:

Transwestern states that the above sheets are being filed to implement a specific negotiated rate agreement with PNM Gas Services, to reflect a negotiated rate calculation change with Astra Power LLC, and to reflect the permanent capacity release by USGT/Aguila to BP Energy, in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines. Transwestern states that the above referenced tariff sheets have been revised to reflect the new negotiated rate contract information.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25560 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–241–000]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Penalty Revenue Report

October 1, 2002.

Take notice that on April 30, 2002, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing a report of the amount of penalty revenue collected by Williams pursuant to the provisions of Article 9.6 of the General Terms and Conditions of its FERC Gas Tariff during Periods of Daily Balancing (PODB) occurring in the 1995–96 and 1996–97 winter heating seasons, and the proposed distribution of such penalty revenues.

Williams states that as a result of severe weather conditions and resulting high demand for gas in its major market areas, Williams imposed two PODBs pursuant to Article 9.4 of its tariff during the 1995–96 winter heating season and three PODBs during the 1996–97 winter heating season as further described in its report. Penalties were imposed for overruns of MDTQ and MDWQ, depletion of gas in storage, under receipts at receipt points and over deliveries at delivery points as provided in Article 9.6 of Williams' tariff. As a result, Williams has collected $869,052 in penalty revenues. Williams proposes to refund these penalty revenues plus accrued interest ($396,119 through April 30, 2002) to non-offending parties as shown herein.

Williams states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 8, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25546 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–241–002]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Penalty Revenue Report

October 1, 2002.

Take notice that on August 6, 2002, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing a second revised page 6 of Schedule 1 to its report of penalty revenue collected during Periods of Daily Balancing (PODB), filed April 30, 2002 in Docket No. RP02–241–000, and the subsequent revised report filed July 23, 2002 in Docket No. RP02–241–001.

Williams states that it made a revised filing on July 23, 2002 to report the amount of penalty revenue collected pursuant to the provisions of Article 9.6 of the General Terms and Conditions of its FERC Gas Tariff during Periods of Daily Balancing (PODB) occurring in the 1995–96 and 1996–97 winter heating seasons, and the proposed distribution of such revenue. Williams' July 23, 2002 filing contained an inadvertent error related to an allocation of refunds to a party who should not have received a refund, as reflected on second revised page 6 of Schedule 1.

Williams states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above, as well as all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 8, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18

CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25547 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–119–000, *et al.*]

Manchief Power Company, L.L.C., *et al.*; Electric Rate and Corporate Regulation Filings

October 1, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Manchief Power Company, L.L.C., Manchief Holding Company, Mesquite Colorado Holdco, L.L.C., Mesquite Investors, L.L.C., Fulton Cogeneration Associates, L.P.

[Docket No. EC02–119–000]

Take notice that on September 26, 2002, Manchief Power Company, L.L.C. (Manchief Power), Manchief Holding Company (Manchief Holding), Mesquite Colorado Holdco, L.L.C. (Mesquite Colorado) Mesquite Investors, L.L.C. (Mesquite Investors) and Fulton Cogeneration Associates, L.P. (Fulton) (jointly, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act for authorization to effectuate a transfer of the member interests in Manchief Power (which constitutes and indirect change in control over Manchief Power's jurisdictional facilities) from Mesquite Colorado to Manchief Holding. Applicants also requested expedited consideration of the Application and privileged treatment for certain exhibits pursuant to 18 CFR 33.9 and 388.112. Fulton and Manchief are also requesting Section 203 approval, to the extent applicable, to separate their shared market-based rate tariff.

Comment Date: October 17, 2002.

2. Entergy Services, Inc.

[Docket Nos. ER01–1951–003 and EL01–112–001]

Take notice that on September 23, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a compliance refund report in accordance with the Commission's letter order in Docket Nos. ER01–1951–000, ER01–1951–001, ER01–1951–002, and EL01–112–000.

Comment Date: October 23, 2002.

3. Duke Energy Oakland LLC, Duke Energy South Bay LLC

[Docket Nos. ER02–10–001 and ER02–239–003]

Take notice that on September 26, 2002, Duke Energy South Bay, LLC (DESB) tendered for filing certain revisions to Schedules A and B of its RMR Agreement (RMR Agreement) with the California Independent System Operator (CAISO). The revisions are proposed in light of an Offer of Settlement submitted in the above-referenced dockets.

DESB requests an effective date of January 1, 2002 for these revisions. Copies of the filing have been served upon each person designated on the official service list compiled by the Secretary in these proceedings.

Comment Date: October 17, 2002.

4. Commonwealth Edison Company

[Docket No. ER02–2241–001]

Take notice that on September 27, 2002, Commonwealth Edison Company (ComEd) submitted for filing an unexecuted Agreement for Dynamic Scheduling of Transmission Service between ComEd and Wisconsin Electric Power Company (Wisconsin Electric) under ComEd's Open Access Transmission Tariff (OATT) in compliance with Commonwealth Edison Co., 100 FERC ¶ 61,231 (2002).

ComEd states that a copy of this filing has been served on Wisconsin Electric and the Illinois Commerce Commission.

Comment Date: October 18, 2002.

5. California Independent System Operator Corporation

[Docket No. ER02–2321–003]

Take notice that on September 27, 2002, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the directives contained in the Commission's August 30, 2002 order in the captioned docket concerning Amendment No. 46 to the ISO Tariff, 100 FERC ¶ 61,234.

The ISO has served this filing upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff, and all parties on the official service list for the captioned docket. In addition, the ISO has posted a copy of the filing on its Home Page.

Comment Date: October 18, 2002.

6. Southern California Edison Company

[Docket Nos. ER02–2604–000 and EC02–118–000]

Take notice that on September 24, 2002, Southern California Edison Company (SCE) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 35.13 of the Commission's regulations and Section 205 of the Federal Power Act, the High Desert Power Project Tie-Line Facilities Rental Agreement (Tie-Line Agreement), dated September 10, 2002, between SCE and High Desert Power Trust, LLC (HDPT). The Tie-Line Agreement specifies, among other things, that SCE shall engineer, design, procure, construct, install, own, operate, and maintain a 230 kV transmission line and related facilities to connect the switchyard at the High Desert Power Project to interconnection facilities at SCE's Victor Substation (Tie-Line). Following the in-service date of the Tie-Line, SCE will lease the Tie-Line to HDPT.

SCE requests that the Tie-Line Agreement be accepted for filing effective September 25, 2002. In addition, SCE also filed with the Commission an application pursuant to Section 203 of the Federal Power Act requesting any authorizations deemed necessary by the Commission for a disposition of jurisdictional facilities, namely a lease of the Tie-Line to HDPT, pursuant to the terms and conditions of the Tie Line Agreement. SCE respectfully requests that this application be granted and authorization be obtained by September 25, 2002.

Copies of this filing were served upon the Public Utilities Commission of the State of California, HDPT and HDPP.

Comment Date: October 15, 2002.

7. Sierra Pacific Power Company, Nevada Power Company

[Docket No. ER02–2609–000]

Take notice that on September 27, 2002, Sierra Pacific Power Company (Sierra) and Nevada Power Company (Nevada Power) tendered for filing pursuant to Section 205 of the Federal Power a revised Joint Open Access Transmission Tariff. This filing is intended to implement retail access in Nevada and to make certain other changes to reflect the current status of operations. Sierra and Nevada Power request that the revised tariff be made effective on November 1, 2002, which is the date that retail access commences in the state of Nevada.

Comment Date: October 18, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25540 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–420–000]

Red Lake Gas Storage, L.P.; Notice of Intent to Prepare an Environmental Assessment for the Proposed Red Lake Gas Storage Project and Request for Comments on Environmental Issues

October 1, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Red Lake Gas Storage Project involving construction and operation of facilities by Red Lake Gas Storage, L.P. (RLGS) in Mohave County, Arizona.[1]

These facilities would consist of: 2 underground salt caverns, about 52 miles of various diameter pipeline, 34,000 horsepower (hp) of compression, and appurtenant gas storage facilities. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a RLGS representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. RLGS would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, RLGS could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice RLGS provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*www.ferc.gov*).

Summary of the Proposed Project

RLGS proposes to construct the underground gas storage facilities in Mohave County, Arizona to provide firm and interruptible gas storage and hub services in interstate commerce. RLGS seeks authority to construct and operate:

1. Two subsurface solution-mined salt caverns for gas storage;
2. 31.0 miles of 36-inch-diameter natural gas pipeline with a collocated fiber optic cable;
3. 4.7 miles of 6-inch-diameter natural gas pipeline;
4. 11.5 miles of 18-inch-diameter brine disposal pipeline;
5. 4.7 miles of 16-inch-diameter raw-water supply pipeline;
6. four raw water supply wells;
7. four brine disposal wells;
8. a 25,000-horsepower (hp) gas storage field compressor station;
9. a gas dehydration system;
10. a 4.9-mile-long access road;
11. electric power generators; and
12. an interconnecting facility containing a meter station, a 9,000-hp compressor station, and 18-inch-diameter interconnecting pipelines to El Paso Natural Gas Company (0.3-mile-long), Transwestern Pipeline Company (0.2-mile-long), and Questar Southern Trails Pipeline Company (0.4-mile-long).

The general location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining detailed maps of a specific portion of the project, send in your request using the form in Appendix 3.

Land Requirements for Construction

Construction of the proposed facilities would require about 746.9 acres of land. Following construction, about 414.3 acres would be maintained as new aboveground facility sites and permanent right-of-way. The remaining 332.6 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

Geology and soils
Land use
Water resources, fisheries, and wetlands
Cultural resources
Vegetation and wildlife
Air quality and noise
Endangered and threatened species
Hazardous waste
Public safety

[1] RLGS' application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "FERRIS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 5.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by RLGS. This preliminary list of issues may be changed based on your comments and our analysis.

Impact on habitats unique to ephemeral waterbodies;

Water use and brine disposal; and

Impact on protected species and/or Federal Species of Concern (SC) including:

Plants—Parish's phacelia (SC), desert monopod, and three-hearts;

Birds—Loggerhead shrike (SC), western burrowing owl, Swainson's hawk;

Mammals—sensitive bat species; and

Reptiles/Amphibians—Sonoran desert tortoise, chuckwalla, and rosy boa

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and/or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Hydro.

Reference Docket No. CP02–420–000.

Mail your comments so that they will be received in Washington, DC on or before October 31, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at (202) 502–8222, TTY (202) 502–8659. The FERRIS link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25541 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2210–082]

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

October 1, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No:* 2210–082.

c. *Date Filed:* September 5, 2002.

d. *Applicant:* Appalachian Power Company (APC).

e. *Name of Project:* Smith Mountain.

f. *Location:* The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Frank M. Simms, Fossil and Hydro Operations, American Electric Power, 1 Riverside Plaza, Columbus, Ohio 43215, (614) 223–2918.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 219–3097, or e-mail address: *heather.campbell@ferc.gov.*

j. *Deadline for filing comments and or motions:* November 1, 2002.

All documents (original and eight copies) should be filed with: Ms. Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2210–082) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Request:* APC is requesting Commission approval to permit Willard Construction (permittee) to install and operate an extension to an existing stationary covered boat dock located at the Golfer's Crossing development. The extension would provide 12 additional boat slips to the existing 9 boat slips for a total of 21 covered stationary boat slips. No dredging is planned as part of this proposal

l. *Location of the Application:* This filing is available for review at the Commission in the Public Reference Room , located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call the Helpline at (866) 208–3676 or contact FERCONLINESUPPORT@ferc.gov. For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25543 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

October 1, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 11351–010.

c. *Date Filed:* August 16, 2002.

d. *Applicants:* William S. Woods (Transferor) and the Board of Public Utilities operating the Columbia Power & Water Systems (Transferee).

e. *Name of Project:* Old Columbia Dam.

f. *Location:* On the Duck River in Maury County, Tennessee. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicants Contact:* John R. Collier, Board of Public Utilities, Columbia Power and Water Systems, P.O. Box 379, Columbia, TN 38402–0379.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments and or motions:* November 1, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–11351–010) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Transfer:* Applicants request that the license for the Old Columbia Dam Project be transferred from William S. Woods to the Board of Public Utilities operating the Columbia Power & Water Systems.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov.* For TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to

intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25544 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

October 2, 2002

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 8277–027.

c. *Date Filed:* August 23, 2002.

d. *Applicants:* Otis Hydroelectric Company (Transferor) and International Paper Company (Transferee).

e. *Name of Project:* Otis Hydroelectric Project.

f. *Location:* On the Androscoggin River in Franklin, Oxford, and Androscoggin Counties, Maine. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicants Contact:* William J. Madden, Jr., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005, (202) 371–5700; Michael Chapman, International Paper Company, 6400 Poplar Avenue, Memphis, TN 38197, (901) 419–3805.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments and or motions:* November 1, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–8277–027) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Transfer:* The applicants seek Commission approval to transfer the license for the Otis Hydroelectric Project from Otis Hydroelectric Company to International Paper Company in order to effectuate a corporate reorganization.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV*. Copies are also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25556 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 2, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is availab.e for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12290–000.

c. *Date Filed:* July 5, 2002.

d. *Applicant:* Mohawk Hydro, LLC.

e. *Name of Project:* Mohawk Dam Hydroelectric Project.

f. *Location:* The proposed project would be located on an existing dam owned by the U.S. Army Corps of Engineers, on the Walhonding River in Coshocton County, Ohio.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 502–8763.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please include the project number (P–12290–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed run-of-river project using the existing Corps' Mohawk Dam and Reservoir would consist of: (1) A 120-inch-diameter, 200-foot-long steel penstock, (2) a powerhouse containing two generating units with an installed capacity of 8 MW, (3) a 25–kv transmission line approximately 2 miles long, and (4) appurtenant facilities. The project would have an annual generation of 29 GWh.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the Mohawk Hydro LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25557 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Participation at MISO–PJM–SPP Single Market Design Forum Meeting

October 2, 2002.

The Federal Energy Regulatory Commission hereby gives notice that on October 9, 2002, members of its staff will attend the MISO–PJM–SPP Single Market Design Forum meeting, concerning the development of a joint and common wholesale energy market

for the Midwest Independent Transmission System Operator, Inc. (MISO), PJM Interconnection (PJM) and Southwest Power Pool, Inc. (SPP) regions. The staff's attendance is part of the Commission's ongoing outreach efforts. The meeting is sponsored by MISO, PJM and SPP, and will be held on October 9, 2002, 10:00 a.m. at the La Meridien New Orleans, 614 Canal Street, New Orleans, LA 70130 . This meeting is open to the public. The meeting may discuss matters at issue in Docket No. RM01–12–000, Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, and in Docket No. EL02–65–000, *et al.*, Alliance Companies, *et al.*

For more information, contact Mike Gahagan, Vice President, Chief Information Officer & Chief Strategic Officer, Midwest Independent Transmission System Operator, Inc. at (317) 249–5450, or Lawrence R. Greenfield, Senior Attorney, Federal Energy Regulatory Commission at (202) 502–6415 or *lawrence.greenfield@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25555 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7392–5]

Meeting of the Small Systems Affordability Working Group of the National Drinking Water Advisory Council

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under section 10(a)(2) of Pub. L. 92–423, "The Federal Advisory Committee Act," notice is hereby given of the forthcoming meeting of the Small Systems Affordability Work Group, of the National Drinking Water Advisory Council, established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*).

DATES: The affordability work group will meet on October 21–22, 2002 (9 a.m.–5:30 p.m. on October 21 and 8:30 a.m.–3:30 p.m. on October 22).

ADDRESSES: The meeting will be held at RESOLVE Inc., 1255 23rd Street, NW., Suite 275, Washington, DC and is open to the public, but from past experience, seating will likely be limited.

FOR FURTHER INFORMATION CONTACT: For more information on the location and times of these meetings, or general background information please contact the Safe Drinking Water Hotline (phone: 800–426–4791 or (703)285–1093; e-mail: *hotline-sdwa@epa.gov*). Members of the public are requested to contact RESOLVE if they plan on attending at (202) 944–2300. Any person needing special accommodations at either of these meetings, including wheelchair access, should contact RESOLVE (contact information previously noted), at least five business days before the meeting so that appropriate arrangements can be made. For technical information contact Mr. Amit Kapadia, Designated Federal Officer, Small Systems Affordability Work Group, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4607M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (e-mail: *kapadia.amit@epa.gov*; Tel: 202–564–4879).

SUPPLEMENTARY INFORMATION: As part of the 2002 appropriations process, Congress directed EPA to "begin immediately to review the Agency's affordability criteria and how small system variance and exemption programs should be implemented for arsenic" (Conference Report 107–272, page 175). Congress further directed the Agency to prepare a report, which EPA submitted (Report to Congress: Small System Arsenic Implementation Issues: EPA 815–R–02–003), "on its review of the affordability criteria and the administrative actions undertaken or planned to be undertaken by the Agency, as well as potential funding mechanisms for small community compliance and other legislative actions, which, if taken by the Congress, would best achieve appropriate extensions of time for small communities while also guaranteeing maximum compliance." (Conference Report 107–272, page 175).

In evaluating treatment technologies for small systems, EPA currently uses an affordability threshold of 2.5% of median household income. EPA's national-level affordability criteria consist of two major components: an expenditure baseline and an affordability threshold. The expenditure baseline (derived from annual median household water bills) is subtracted from the affordability threshold (a share of median household income that EPA believes to be a reasonable upper limit for these water bills) to determine the expenditure margin (the maximum increase in household water bills that can be imposed by treatment and still be considered affordable). EPA compares the cost of treatment technologies against the available expenditure margin to determine if an affordable compliance technology can be identified. If EPA cannot identify an affordable compliance technology, then it attempts to identify a variance technology. Findings must be made at both the Federal and State level that compliance technologies are not affordable for small systems before a variance can be granted.

EPA is asking the NDWAC for advice on its national-level affordability criteria and the methodology used to establish these criteria. Taking into consideration the structure of the Safe Drinking Water Act and the limitations of readily available data and information sources, EPA is seeking the Council's opinion of the national level affordability criteria, methodology for deriving the criteria, and approach to applying those criteria to NPDWRs.

As part of the Council's review of EPA's national-level affordability criteria, the Agency is seeking input on (1) the Agency's overall approach, (2) alternatives, if any, to the use of median household income as a metric, (3) alternatives, if any, to 2.5% as a metric, (4) alternatives, if any, to calculating the expenditure baseline, (5) the usefulness of a separate criteria for ground and surface water systems, (6) including an evaluation of the potential availability of financial assistance, and (7) the need for making affordability determinations on a regional basis. Other issue areas may also be discussed. The meeting is open to the public; statements from the public will be taken at the close of the meeting. EPA is not soliciting written comments and is not planning to formally respond to comments.

This is the second work group meeting on this topic. At the first meeting held on September 11–12, the work group was briefed by EPA on the approach to affordability taken by the Agency. At the first meeting, the work group also devised an approach to answer the Agency's charge questions. In this second work group meeting, other technical experts have been invited to speak and the work group will continue with its deliberations.

Dated: October 2, 2002.

William R. Diamond,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 02–25589 Filed 10–7–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6392–4]

Environmental Monitoring and Assessment Program Research Strategy

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of a final document.

SUMMARY: The Environmental Protection Agency's (EPA) is announcing the availability of its *Environmental Monitoring and Assessment Program Research Strategy*, EPA 620/R–02/002. The *Environmental Monitoring and Assessment Program Research Strategy* serves to guide the planning of EPA research efforts, led by the Office of Research and Development (ORD), in developing indicators and unbiased statistical design frameworks that allow the condition of aquatic ecosystems to be assessed at local, tribal, state, regional, and national scales.

ADDRESSES: A limited number of copies of the *Environmental Monitoring and Assessment Program Research Strategy* are available from the National Service Center for Environmental Publications. Request a copy by telephoning 1–800–490–9198 or 513–489–8190 and providing the title and the EPA number for the document, EPA 620/R–02/002. Internet users may download a copy from the EPA's Office of Research and Development home page. The URL is *http://www.epa.gov/ORD/*.

FOR FURTHER INFORMATION CONTACT: Dr. Michael McDonald, the National Health and Environmental Effects Research Laboratory's EMAP Program Manager, (MD–B–243–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–7973; facsimile: 919–541–4621; e-mail: *mcdonald.michael@epa.gov*.

SUPPLEMENTARY INFORMATION: In assessing environmental risk and determining restoration priorities, current environmental conditions must be known and rates of change must be measurable. Because of EPA's responsibilities under the Clean Water Act, the Environmental Monitoring and Assessment Program, within the Office of Research and Development, has focused on improving monitoring and assessment methodologies for aquatic ecosystems and their associated landscapes. EMAP has focused on developing indicators and unbiased statistical design frameworks to assess the status and trends of aquatic ecosystems at local, state, regional, and national scales. As is EMAP's primary mission, the goal of this Strategy is the development of sound scientific approaches to determine the health of the nation's aquatic ecosystems and the stressors most closely associated with impairment.

EMAP efforts ensure that comprehensive and comparable methods are being used at a national level, allowing meaningful assessments and the first regional comparisons of aquatic ecosystem conditions across the entire U.S. These results will significantly improve the quality of performance-based reporting to Congress and will better inform EPA national and regional decisions on priority issues and areas.

State managers and technical staff frequently struggle to balance local information needs with federal reporting requirements. EMAP will continue to work with State partners to develop cost-effective monitoring methodology to aid in decision-making. Results to date from EMAP approach applications in more than 30 States show cost-savings while producing full-coverage condition estimates. Often these cost-savings are used to address priority issues also identified through the EMAP process.

Finally, EMAP's approach and associated indicators serve the Agency and the public by contributing to scientifically based reports such as EPA's upcoming state of the environment report and the Heinz Center's "The State of the Nation's Ecosystems" report. EMAP's efforts help to fill important information needs at both national and at local levels. EMAP information will improve our ability assess our progress in environmental protection and provide valuable information for decision makers and the public.

This *Environmental Monitoring and Assessment Program Research Strategy* was subjected to external peer review by independent scientific experts. The final strategy reflects the comments of both internal and external peer review.

Dated: October 2, 2002.

Paul Gilman,

Assistant Administrator for Research and Development.

[FR Doc. 02–25583 Filed 10–7–02; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Availability of Final Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by U.S. Equal Employment Opportunity

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: EEOC hereby announces the availability of its final information quality guidelines on its web site.

DATES: Effective Date: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Lizette Molina, Special Assistant to the Director, Office of Information Technology, (202) 663–4446, or Jay Friedman, Director of Strategic Planning and Management Controls Division, Office of Research, Information and Planning, (202) 663–4094.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission (EEOC) has finalized its Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the U.S. Equal Employment Opportunity Commission. These guidelines are currently published on EEOC's Web site *www.eeoc.gov*. Individuals without Intenet access may contact EEOC's Office of Communications and Legislative Affairs at (202) 663–4900 or TTY (202) 663–4494 for a hard copy.

Dated: October 2, 2002.

Sallie T. Hsieh,

Chief Information Officer, Equal Employment Opportunity Commission.

[FR Doc. 02–25580 Filed 10–7–02; 8:45 am]

BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

September 26, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to

any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 7, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0798.

Title: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form No.: FCC Form 601.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 241,335.

Estimated Time Per Response: 1.25 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement and every 10 years (renewal).

Total Annual Burden: 211,169 hours.

Total Annual Cost: $48,267,100.

Needs and Uses: The FCC Form 601 is a multi-purpose form use dot apply for an authorization to operate radio stations, amend pending applications, modify existing licenses, and perform a variety of other miscellaneous tasks in the Public Mobile Services, Personal Communications Services, General Wireless Communications Services, Private Land Mobile Radio Services, Broadcast Auxiliary Services, Fixed Microwave Services, Maritime Services (excluding ships), and Aviation Services (excluding aircraft). The Commission is submitting this information collection request to OMB as an extension of currently approved collection for the full-three year clearance.

OMB Control No.: 3060–0855.

Title: Telecommunications Reporting Worksheet and Associated Requirements, CC Docket No. 96–45.

Form No.: FCC Forms 499, 499–A, and 499–Q.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 5,500 respondents; 14,300 responses.

Estimated Time Per Response: 6 hours for the annual report; 9.5 hours for the quarterly reports.

Frequency of Response: On occasion, annual and quarterly reporting requirements, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 106,287 hours.

Total Annual Cost: $18,000.

Needs and Uses: Telecommunications carriers and certain other providers of telecommunications services must contribute to the support and cost recovery mechanisms for telecommunications relay services, numbering administration, number portability, and universal service. The Commission is submitting this information collection request to OMB as an extension of currently approved collection for the full-three year clearance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–25478 Filed 10–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

September 23, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 7, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0126.

Title: Section 73.1820, Station Log.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities; and Not-for-profit institutions.

Number of Respondents: 15,122.

Estimated Time per Response: 0.017 hours to 0.5 hours.

Total Annual Burden: 15,326.

Total Annual Cost: None.

Needs and Uses: 47 CFR 73.1820 requires each licensee of an AM, FM, or TV broadcast station to maintain a station log. Each entry must accurately reflect the station's operation—adjustments to operating parameters for AM stations with directional antennas without an approved sampling system; the actual time of any observation of extinguishment or improper operation of tower lights for all stations; and entry of each test of the Emergency Alert System (EAS) for commercial stations. The FCC staff in field investigations will use these data to assure that the licensee is operating in accordance with the technical requirements as specified in the FCC Rules and with the station authorization, and is taking reasonable measures to preclude interference to other stations. It is also used to verify that the Emergency Alert System is operating properly.

OMB Control Number: 3060–0329.

Title: Equipment Authorization—Verification, 47 CFR Section 2.955.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5,655.

Estimated Time per Response: 18 hours (avg.).

Frequency of Response: Recordkeeping; On occasion and one-time reporting requirements; Third party disclosure.

Total Annual Burden: 101,790 hours.

Total Estimated Cost: $1,131,000.

Needs and Uses: The Commission Rules, 47 CFR parts 15 and 18, require manufacturers of radio frequency (RF) equipment devices to gather and retain technical data on their equipment to verify compliance with established technical standards for each device operated under the applicable Rule part. Testing and verification aid in controlling potential interference to radio communications. The FCC will use these data, as necessary, to investigate complaints of harmful interference or to verify the manufacturer's compliance with FCC regulations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–25479 Filed 10–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

September 16, 2002.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 7, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0888.

Title: Part 76, Cable Television Service Pleading and Complaint Rules.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; and Individuals or households.

Number of Respondents: 400.

Estimated Time Per Response: 4 to 40 hours.

Frequency of Response: On occasion requirements; Third party disclosure .

Total Annual Burden: 8,800 hours.

Total Respondent Cost: $1,600,000.

Needs and Uses: The FCC released a Report and Order (R&O) on January 8, 1999, CS Docket No. 98–54, FCC 98–348. Among other things, the R&O consolidated the general procedural requirements for part 76 in §§ 76.6 through 76.10; eliminated redundant requirements; expanded the types of submissions styled "Petitions for Special Relief" and standardized filing procedures for all petitions seeking a finding of "effective competition;" established a standard provision for part 76 pleadings to provide uniform filing format, deadlines, etc; required all submissions made pursuant to part 76 to be verified by the submitting party or the party's attorney—including written verification that the signatory had read the submission and that the submission is well grounded in fact and warranted by existing law or good faith argument for extension, modification, or reversal of existing law.

OMB Control Number: 3060–1004.

Title: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers.

Form Number: N/A.

Type of Review: Revision to an Existing Collection.

Respondents: Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal Government.

Number of Respondents: 251.

Estimated Time Per Response: 4 to 5 hours.

Frequency of Response: Recordkeeping; Quarterly, Semi-Annual, and One-Time reporting requirements disclosure requirement.

Total Annual Burden: 1,282 hours.

Total Respondent Cost: None.

Needs and Uses: On July 26, 2002, the FCC released an Order to Stay in CC Docket No. 94–102, FCC 02–210 to stay temporarily the application for the wireless Enhanced 911 Phase II interim handset and network upgrade compliance deadlines under 47 CFR 20.18(f) and (g) for non-nationwide carriers that filed waiver requests relating to those deadlines—Tier II Commercial Mobile Radio Service (CMRS) carriers must begin to comply on March 1, 2002 and Tier III CMRS carriers on September 1, 2003. Previously, the FCC had provided similar, but less extensive relief from these rules to the nationwide carriers that had requested it. The FCC also established reporting requirements of December 31, 2002 to monitor the progress and insure the E 911 compliance for these effected nationwide carriers. The Stay now places identical quarterly reporting requirements on Tier II carriers and a one-time reporting requirement on Tier III carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–25480 Filed 10–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

September 26, 2002.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 7, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Section 25.139, NGSO FSS Coordination and Information Sharing Between MVDDS Licensees in the 12.2 GHz to 12.7 GHz Band.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 6.

Estimated Time per Response: 6 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 36 hours.

Total Annual Costs: None.

Needs and Uses: On May 23, 2002, the FCC released a *Memorandum Opinion and Order and Second Report and Order*, ET Docket No. 98–206, FCC 02–116, which requires NGSO FSS licensees to maintain a subscriber database in a format that can be readily shared with Multichannel Video Distribution and Data Service (MVDDS) licensees for the purpose of determining compliance with the MVDDS transmitting antenna spacing requirement relating to qualifying existing NGSO FSS subscriber receivers set forth in 47 CFR 101.129.

OMB Control Number: 3060–XXXX.

Title: Section 101.103, Frequency Coordination Procedures.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 354.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 177 hours.

Total Annual Costs: None.

Needs and Uses: On May 23, 2002, the FCC released a *Memorandum Opinion and Order and Second Report and Order*, ET Docket No. 98–206, FCC 02–116, which requires NGSO FSS licensees to maintain a subscriber database in a format that can be readily shared with Multichannel Video Distribution and Data Service (MVDDS) licensees for the purpose of determining compliance with the MVDDS transmitting antenna spacing requirement relating to qualifying existing NGSO FSS subscriber receivers set forth in 47 CFR 101.129.

OMB Control Number: 3060–XXXX.

Title: Section 101.1403, Broadcast Carriage Requirements.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 354.

Estimated Time per Response: 1.0 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 354 hours.

Total Annual Costs: None.

Needs and Uses: On May 23, 2002, the FCC released a Memorandum Opinion and Order and Second Report and Order, ET Docket No. 98–206, FCC 02–116, which requires Multichannel Video Distribution and Data Service (MVDDS) respondents that meet the statutory definition of Multiple Video Programming Distributor (MVPD) to comply with the broadcast carriage requirements located at 47 U.S.C 325(b)(1). Any MVDDS licensee that is an MVPD must obtain the prior express authority of a broadcast station before retransmitting that station's signal, subject to the exceptions contained in section 325(b)(2) of the Communications Act of 1934, as amended.

OMB Control Number: 3060–XXXX.

Title: Section 101.1413, License Term and Renewal Expectancy.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 354.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occasion and ten year reporting requirements; Third party disclosure.

Total Annual Burden: 177 hours.

Total Annual Costs: $8,900.

Needs and Uses: On May 23, 2002, the FCC released a *Memorandum Opinion and Order and Second Report and Order*, ET Docket No. 98–206, FCC 02–116, which requires Multichannel Video Distribution and Data Service (MVDDS) renewal applicants to comply with the requirements to provide substantial service by the end of the ten-year initial license term.

OMB Control Number: 3060–XXXX.

Title: Section 101.1417, Annual Report.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 354.

Estimated Time per Response: 1.0 hours.

Respondents: Business and other for-profit entities.

Frequency of Response: Annual reporting requirements.

Total Annual Burden: 354 hours.

Total Annual Costs: None.

Needs and Uses: On May 23, 2002, the FCC released a *Memorandum Opinion and Order and Second Report and Order* (MO&O and 2nd R&O), which requires Multichannel Video Distribution and Data Service (MVDDS) licensees to file two copies of a "licensee information report" by March 1st of each year with the FCC, for the proceeding calendar year. This report must include the name and address of the licensee, station(s) call letters and primary geographic service area(s), and statistical data for the licensee's station(s). This report enables the Commission to keep track of the number of MVDDS licensee stations.

OMB Control Number: 3060–XXXX.

Title: Section 101.1440, MVDDS Protection of Direct Broadcast Satellites (DBS).

Form Number: N/A.

Type of Review: New collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 354.

Estimated Time per Response: 40.0 hours.

Respondents: Business and other for-profit entities.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 14,160 hours.

Total Annual Costs: None.

Needs and Uses: On May 23, 2002, the FCC released a *Memorandum Opinion and Order and Second Report and Order* (MO&O and 2nd R&O), ET Docket No. 98–206, FCC 02–116, which requires Multichannel Video Distribution and Data Service (MVDDS) licensees to conduct a survey of the area around its proposed transmitting antenna site to determine the location of all DBS customers that may potentially be effected by the introduction of its MVDDS service. This MO&O and 2nd R&O will ensure that Multichannel Video Distribution and Data Service (MVDDS) signal will not be in excess of the appropriate Equivalent Power Flux Density (EPFD) limits as written in 47 CFR 101.105(a)(4)(ii)(B) is causing interference to DBS customers. If the MVDDS licensee determines that its signal level will exceed the EPFD limit at any DBS customer site, it shall take whatever steps are necessary, up to and including finding a new transmission site.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 02–25477 Filed 10–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2579]

Petition for Reconsideration of Action in Rulemaking Proceeding

October 3, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by October 23, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Cheyenne, Wyoming).

Number of Petition Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–25575 Filed 10–7–02; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1433–DR]

Indiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1433-DR), dated September 25, 2002, and related determinations.

EFFECTIVE DATE: September 25, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 25, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Indiana, resulting from severe storms and tornadoes on September 20, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Indiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for the Individual and Family Grant program will be limited to 75 percent of the total eligible costs. If Public Assistance and Hazard Mitigation are later requested and warranted, Federal funds provided under these two programs will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William Lokey of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Indiana to have been affected adversely by this declared major disaster:

Bartholomew, Blackford, Brown, Daviess, Decatur, Delaware, Fayette, Franklin, Gibson, Grant, Greene, Hamilton, Hancock, Hendricks, Henry, Jay, Johnson, Knox, Lawrence, Madison, Marion, Monroe, Morgan, Owen, Pike, Posey, Randolph, Rush, Shelby, Sullivan, Tipton, and Vanderburg for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–25524 Filed 10–7–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1433–DR]

Indiana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana, (FEMA–1433-DR), dated September 25, 2002, and related determinations.

EFFECTIVE DATE: September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or Magda.Ruiz@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include Public Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 25, 2002:

The counties of Johnson, Knox, Marion, Monroe, Morgan and Posey for Public Assistance (already designated for Individual Assistance).

All counties in the State of Indiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–25526 Filed 10–7–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1434–DR]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–1434–DR), dated September 26, 2002, and related determinations.

EFFECTIVE DATE: September 26, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 26, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from Tropical Storm Fay on September 6, 2002, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Scott Wells of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

Brazoria, Frio, Galveston, La Salle, Live Oak, Matagorda, Nueces, San Patricio, and Wharton Counties for Individual Assistance.

All counties within the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–25525 Filed 10–7–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1432–DR]

Wisconsin; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1432–DR), dated September 10, 2002, and related determinations.

EFFECTIVE DATE: September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is reopened. The incident period for this declared disaster is now September 2–6, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–25527 Filed 10–7–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 22, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Steven M. Eldred, Beloit, Wisconsin, as voting trustee of the Helen M. Eldred Voting Trust and the John M. Eldred Voting Trust; and the Eldred Family Limited Partnership I and Eldred Family Limited Partnership II, both located in Beloit, Wisconsin, to gain control of Centre I Bancorp, Inc., Beloit, Wisconsin, and thereby indirectly acquire First National Bank and Trust Company of Beloit, Beloit, Wisconsin.

2. Mark B. Richardson, Thetford Center, Vermont, and Kimberly A. Richardson, Atlanta, Georgia; to acquire voting shares of Oakwood Bancorp, Inc., Springfield, Illinois, and thereby indirectly acquire voting shares of United Community Bank, Oakwood, Illinois.

Board of Governors of the Federal Reserve System, October 2, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–25485 Filed 10–7–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 1, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Trustcompany Bancorp, Jersey City, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of The Trust Company of New Jersey, Jersey City, New Jersey.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. BTC Financial Corporation, and Midamerica Financial Corporation, both of Des Moines, Iowa; to acquire 100 percent of the voting shares of Bankers Trust Company, N.A., Cedar Rapids, Iowa, a *de novo* bank.

In addition to this application, Midamerica Financial Corporation, Des Moines, Iowa, also has applied to become a bank holding company by acquiring Bankers Trust Company, N.A., Cedar Rapids, Iowa, a *de novo* bank.

2. First Mutual Bancorp of Illinois, Inc., Harvey, Illinois; to merge with Security Bancorp of Dupage, Inc., Naperville, Illinois, and thereby indirectly acquire voting shares of Security Bank of Dupage, Naperville, Illinois.

Board of Governors of the Federal Reserve System, October 2, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–25487 Filed 10–7–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 22, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Four Oaks Fincorp, Inc., Four Oaks, North Carolina; to engage *de novo* through Four Oaks Mortgage Services, L.L.C., Four Oaks, North Carolina, and Four Oaks Mortgage Company L.P.,

Clayton, North Carolina, in mortgage banking, pursuant to §§ 225.28(b)(1) and (b)(2)(viii) of Regulation Y.

Board of Governors of the Federal Reserve System, October 2, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board

[FR Doc.02–25486 Filed 10–7–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services, has been renewed for a 2-year period, through September 18, 2004.

CONTACT PERSON FOR FURTHER INFORMATION: Burma Burch, Committee Management Officer, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., M/S E–72, Atlanta, Georgia 30333, telephone (404) 498–0090, fax (404) 498–0011.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 2, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–25510 Filed 10–7–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Consultation on Draft Documents: Program Announcement for Health Departments and HIV Prevention Community Planning Guidance

Name: National Center for HIV, STD, and TB Prevention: Meeting.

Time and Date: 8:30 a.m.—5 p.m.; October 17–18, 2002.

Place: Swissotel Atlanta, 3391 Peachtree Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, but limited by the space available. The meeting room accommodates approximately 200 people.

Purpose: The purpose of this consultation is to obtain input into the development of the Program Announcement for Health Departments and the HIV Prevention Community Planning Guidance. The program announcement for health departments will be addressed on October 17 and the community planning guidance will be addressed on October 18.

Contact Person for More Information: Sean David Griffiths, Centers for Disease Control and Prevention, National Center for HIV, STD, and TB Prevention, Division of HIV/AIDS Prevention, 1600 Clifton Rd., NE, M/S E–35, Atlanta, GA 30333, telephone 404–639–3453.

The Director, Management and Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 2, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–25509 Filed 10–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Healthcare Infection Control Practices Advisory Committee.

Times and Dates: 8:30 a.m.–5 p.m., October 21, 2002. 8:30 a.m.–4 p.m., October 22, 2002.

Place: Swissotel, 3391 Peachtree Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary; the Assistant Secretary for Health; the Director, CDC; and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.*, nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters to be Discussed: Agenda items will include a review of the Draft Guideline for Preventing Transmission of Infectious Agents in Healthcare Settings (formerly Guideline Isolation Precautions in Hospitals); the Draft Guideline for Disinfection and Sterilization in Healthcare Settings; the Draft Guideline for Prevention of Healthcare-associated Pneumonia; and updates on CDC activities of interest to the committee.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michele L. Pearson, M.D., Executive Secretary, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, 1600 Clifton Road, NE, M/S A–07, Atlanta, Georgia 30333, telephone (404) 498–1182.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 2, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–25508 Filed 10–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interagency Committee on Smoking and Health (ICSH) Cessation Subcommittee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Subcommittee Meeting.

Name: ICSH Cessation Subcommittee.

Date and Time: October 24, 2002, 8:30 a.m. to 2:15 p.m.

Place: Meeting location to be determined and announced in a separate notice prior to the meeting date. For additional information please contact Monica Swann at 202/205–8500.

Purpose: The ICSH Cessation Subcommittee is charged with making recommendations to ICSH on how best to promote tobacco use cessation. The Subcommittee will develop a report, to be submitted by ICSH to the Secretary, Health and Human Services, which contains action steps for both a Secretary's initiative and public-private partnerships to achieve this outcome. Background documents on ICSH and the ICSH Cessation Subcommittee are available at *http://www.cdc.gov/tobacco/ICSH/index.htm.*

Matter to be Discussed: The ICSH Cessation Subcommittee is convening a meeting and soliciting comments to obtain input from key audiences who must work in a coordinated manner to successfully promote tobacco use cessation. Input should be focused on (1) the opportunities to promote tobacco use cessation, (2) the strategies to overcome barriers and challenges faced by each group to ensure these objectives are implemented, and (3) the types of support DHHS could provide. Individuals and organizations are encouraged to comment in one or both of the following ways: (1) In writing, by submission through the mail or by e-mail; (2) in person, at the Subcommittee meeting. Written comments will also be accepted during the public meeting.

Agenda items are subject to change as priorities dictate.

Status: Open to the public, limited only by the space and time available.

SUPPLEMENTARY INFORMATION: If you would like to attend the Subcommittee meeting, you are encouraged to register by providing your name, title, organization name, address, and telephone number to Jessica Porras (address below). If you would like to speak at the meeting, please notify Jessica Porras when you register. Written comments may be submitted until December 20, 2002; comments received after October 24, 2002, will be shared at future subcommittee meetings. Submitted comments will be posted on the Internet at *http://www.cdc.gov/tobacco/ICSH/index.htm.*

To submit electronic comments, send via e-mail to *jporras@cdc.gov.* To submit comments by mail, send to: ICSH Cessation Subcommittee Public Comments (Attn: Ms. Jessica Porras), Office on Smoking and Health, 200 Independence Ave., SW., Room 317–B, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ms. Jessica Porras, Office on Smoking and Health, 200 Independence Ave., Suite 317–B, Washington, DC 20201, 202–205–8500 (telephone) or (202) 205–8313 (facsimile) or *jporras@cdc.gov* (email).

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 2, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–25511 Filed 10–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Dockets No. 02N–0354]

Agency Information Collection Activities; Announcement of OMB Approval; the Evaluation of Long-Term Antibiotic Drug Therapy for Persons Involved in Anthrax Remediation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "The Evaluation of Long-Term Antibiotic Drug Therapy for Persons Involved in Anthrax Remediation" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 19, 2002 (67 FR 53805), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0494. The approval expires on March 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: October 1, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–25538 Filed 10–7–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0308]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and "Lookback" Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 7, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed

collection of information to OMB for review and clearance.

Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and "Lookback" Requirements (OMB Control Number 0910–0116)—Extension

Under the statutory requirements contained in section 351 of the Public Health Service Act (42 U.S.C. 262), no blood, blood component, or derivative may move in interstate commerce unless: (1) It is propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked license; (2) the product complies with regulatory standards designed to ensure safety, purity, and potency; and (3) it bears a label plainly marked with the product's proper name, manufacturer, and expiration date. In addition, under the biologics licensing and quarantine provisions in sections 351 to 361 of the Public Health Service Act (42 U.S.C. 262 to 264) and the general administrative provisions under sections 501 to 503, 505 to 510, and 701 to 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 to 353, 355 to 360, and 371 to 374), FDA has the authority to issue regulations designed to protect the public from unsafe or ineffective biological products and to issue regulations necessary to prevent the introduction, transmission, or spread communicable diseases. The current good manufacturing practices (CGMP) and related regulations implement FDA's statutory authority to ensure the safety, purity, and potency of blood and blood components. The lookback regulations are intended to help ensure the continued safety of the blood supply by providing necessary information to users of blood and blood components and appropriate notification of recipients of transfusion at increased risk for transmitting human immunodeficiency virus (HIV) infection. The information collection requirements in the CGMP and lookback regulations provide FDA with the necessary information to perform its duty to ensure the safety, purity, and potency of blood and blood components. These requirements establish accountability and traceability in the processing and handling of blood and blood components and enables FDA to perform meaningful inspections. The recordkeeping requirements serve preventative and remedial purposes. The disclosure requirements identify the various blood and blood components and important properties of the product, demonstrate that the CGMP requirements have been met, and facilitate the tracing of a product back to its original source. The reporting requirements inform FDA of any deviations that occur and that may require immediate corrective action. In part 606 (21 CFR part 606), § 606.100(b) requires that written standard operating procedures (SOPs) be maintained for the collection, processing, compatibility testing, storage, and distribution of blood and blood components used for transfusion and manufacturing purposes. Section 606.100(c) requires the review of all pertinent records to a lot or unit of blood prior to release. Any unexplained discrepancy or failure of a lot or unit of final product to meet any of its specifications must be thoroughly investigated, and the investigation, including conclusions and followup, must be recorded. Section 606.110(a) requires a physician to certify in writing that the donor's health permits plateletpheresis or leukapheresis if a variance from additional regulatory standards for a specific product is used when obtaining the product from a specific donor for a specific recipient. Section 606.110(b) requires establishments to request prior Center for Biologics Evaluation and Research (CBER) approval for plasmapheresis of donors who do not meet donor requirements. Section 606.151(e) requires that records of expedited transfusions in life threatening emergencies be maintained. So that all steps in the collection, processing, compatibility testing, storage and distribution, quality control, and transfusion reaction reports and complaints for each unit of blood and blood components can be clearly traced, § 606.160 requires that legible and indelible contemporaneous records of each significant step be made and maintained for no less than 5 years. Section 606.165 requires that distribution and receipt records be maintained to facilitate recalls, if necessary. Section 606.170(a) requires records to be maintained of any reports of complaints of adverse reactions as a result of blood collection or transfusion. Each such report must be thoroughly investigated, and a written report, including conclusions and followup, must be prepared and maintained. Section 606.170(b) requires that fatal complications of blood collection and transfusions be reported to FDA as soon as possible and that a written report shall be submitted within 7 days. Section 610.46(a) (21 CFR 610.46(a)) requires blood establishments to notify consignees, within 72 hours, of repeatedly reactive tests results so that previously collected blood and blood components are appropriately quarantined. Section 610.46(b) requires blood establishments to notify consignees of licensed, more specific test results for HIV within 30 calendar days after the donors's repeatedly reactive test. Section 610.47(b) (21 CFR 610.47(b)) requires transfusion services not subject to Centers for Medicare and Medicaid Services (CMS) regulations to notify physicians of prior donation recipients or to notify recipients themselves of the need for HIV testing and counseling. In addition to the CGMPs in part 606, there are regulations in part 640 (21 CFR part 640) that require additional standards for certain blood and blood components as follows: Sections 640.3(a); 640.4(a); 640.25(b)(4) and (c)(1); 640.27(b); 640.31(b); 640.33(b); 640.51(b); 640.53(c); 640.56(b) and (d); 640.61; 640.63(b)(3), (e)(1), and (e)(3); 640.65(b)(2); 640.66; 640.71(b)(1); 640.72; 640.73; and 640.76(a) and (b). The information collection requirements and estimated burdens for these regulations are included in the part 606 burden estimates, as described below. Respondents to this collection of information are licensed and unlicensed blood establishments inspected by FDA, and other transfusion services inspected by CMS. Based on FDA's registration system, there are approximately 2,841 registered blood establishments inspected by FDA. Of these 2,841 establishments, approximately 1,349 perform pheresis, approximately 1,041 annually collect 27 million units of Whole Blood, blood components including Source Plasma, and Source Leukocytes and are required to follow FDA "lookback" procedures, and approximately 166 are registered transfusion services that are not subject to CMS's "lookback" regulations. Based on CMS records there are an estimated 4,980 transfusion services. The following reporting and recordkeeping estimates are based on information provided by industry, CMS, and FDA experience. In table 1 of this document, we estimate that there are approximately 3,500 repeat donors that will test reactive on a screening test for HIV. FDA estimates that each repeat donor has donated two previous times, and an average of three components were made from each donation. Under § 610.46(a) and (b), this estimate results in 21,000 (3,500 x 2 x 3) notifications of the HIV screening test results to consignees by collecting establishments for the purpose of quarantining affected blood and blood components, and another 21,000 (3,500 x 2 x 3) notifications to consignees of subsequent test results. Under § 606.110(b), licensed establishments submit supplements to their biologics license applications to request prior CBER approval of plasmapheresis donors who do not meet donor requirements. The information collection requirements for § 606.110(b) are reported under OMB control number 0910–0338. In table 2 of this document, the recordkeeping chart reflects the estimate that 95 percent of the recordkeepers, which collect 98 percent of the blood supply, had developed SOPs as part of their customary and usual business practice. Establishments may minimize burdens associated with CGMP and related regulations by using model SOPs developed by industries' accreditation organizations. These accreditation organizations represent almost all registered blood establishments.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
606.170(b)[2]	70	1	70	20	1,400
610.46(a)	1,041	20	21,000	0.17	3,570
610.46(b)	1,041	20	21,000	0.17	3,570
610.47(b)	166	0.7	116	1	116
Total					8,656

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The reporting requirement in § 640.73, which addresses the reporting of fatal donor reactions, is included in the estimate for § 606.170(b).

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Record-keepers	Annual Frequency per Record-keeping	Total Annual Records	Hours per Record	Total Hours
606.100(b)[2]	249[5]	1	249	24	5,976
606.100(c)	249[5]	10	2,490	1	2,490
606.110(a)[3]	67[6]	5	335	0.5	168
606.151(e)	249[5]	12	2,988	0.083	248
606.160[4]	249[5]	2,169	540,000	0.5	270,000
606.165	249[5]	2,169	540,000	0.083	44,820
606.170(a)	249[5]	12	2,988	1	2,988
Total					326,690

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The recordkeeping requirements in §§ 640.3(a)(1), 640.4(a)(1), and 640.66, which address the maintenance of SOPs, are included in the estimate for § 606.100(b).
[3] The recordkeeping requirements in § 640.27(b), which address the maintenance of donor health records for the plateletpheresis, are included in the estimate for § 606.110(a).
[4] The recordkeeping requirements in §§ 640.3(a)(2); 640.3(f); 640.4(a)(2); 640.25(b)(4) and (c)(1); 640.31(b); 640.33(b); 640.51(b); 640.53(b) and (d); 640.61; 640.63(b)(3), (e)(1), and (e)(3); 640.65(b)(2); 640.71(b)(1); 640.72; and 640.76(a) and (b); which address the maintenance of various records, are included in the estimate for § 606.160.
[5] 5 percent of CMS and FDA-registered blood establishments (0.05 x 4,890).
[6] 5 percent of pheresis establishments (1,349).

Dated: October 1, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–25539 Filed 10–7–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Biological Response Modifiers Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Biological Response Modifiers Advisory Committee. This meeting was originally announced in the **Federal Register** of September 27, 2002 (67 FR 61142). The amendment is being made to reflect a change in the *Date and Time, Agenda, Procedure, Location, and Closed Committee Deliberations* portions of the meeting. The meeting was originally scheduled as a teleconference on October 10, 2002, from 5:30 p.m. to 7:30 p.m. at the National Institutes of Health, Bldg. 29C, 29 Lincoln Dr., Bethesda, MD. FDA added a discussion topic related to

retrovirus vectors in gene therapies for the treatment of patients with severe combined immune deficiency disease to the meeting and the meeting will be held on October 10 at the Hilton DC North—Gaithersburg, 620 Perry Pkwy., Gaithersburg, MD from 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Gail Dapolito or Rosanna L. Harvey, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314 or call the FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12389. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 27, 2002 (67 FR 61142), FDA announced that a meeting of the Biological Response Modifiers Advisory Committee would be held on October 10, 2002. This amendment is to update information provided earlier pertaining to the meeting. On page 61142, beginning in the last column, the *Date and Time, Location, Agenda, Procedure, and Closed Committee Deliberations* portions of the meeting are amended to read as follows:

Date and Time: The meeting will be held on October 10, 2002, from 8 a.m. to approximately 5:30 p.m.

Location: Hilton DC North—Gaithersburg, Grand Ballrooms A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD.

Agenda: On October 10, 2002, the committee will discuss safety issues recently identified related to retrovirus vectors in gene therapies for the treatment of patients with severe combined immune deficiency disease and receive updates on individual research programs in the Division of Cell and Gene Therapies and the Division of Therapeutic Proteins.

Procedure: On October 10, 2002, from 8 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 9. Oral presentations from the public will be scheduled between approximately 11:30 a.m. to 12:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 9, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberatons: On October 10, 2002, between approximately 5 p.m. and 5:30 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss reports of individual research programs in the Center for Biologics Evaluation and Research.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: October 2, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–25641 Filed 10–3–02; 3:17 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Drug Abuse Warning Network (OMB number 0930–0078, revision—The Drug Abuse Warning Network (DAWN) is an on-going data system that currently collects information on drug abuse-related medical emergencies and deaths as reported from about 466 hospitals and 137 medical examiners/coroners (ME/C) nationwide. DAWN provides national and metropolitan estimated of substances involved with drug-related ED visits; disseminates information about substances involved in deaths investigated by participating ME/Cs; provides a means for monitoring drug abuse patterns, trends, and the emergence of new substances; assesses health hazards associated with drug use; and generates information for national and local drug abuse policy and program planning. DAWN data are used by Federal, State, and local agencies, as well as universities, pharmaceutical companies, and the press.

The current emergency department (ED) sample supports estimates for the coterminous U.S. and 21 major metropolitan areas. Beginning in 2003, the DAWN case definition will be changed to obtain more consistent and reliable data on drug abuse cases and also will capture additional cases where drug use/misuse led to ED visits or deaths for conditions such as adverse drug reactions, underage drinking and malicious poisonings. To achieve better geographic and population coverage, the ED sample will be expanded to support estimates for the full U.S. and 48 metropolitan areas. By the end of 2005, the sample will include approximately 841 hospitals. To achieve complete coverage, approximately 66 non-participating ME/C jurisdictions in the 48 metropolitan areas targeted for the ED expansion will be added in lieu of a sample. Facilities (EDs and ME/Cs) will continue to use the current forms in early 2003 to complete reporting on events occurring through December 2002, but will use the revised forms for all events occurring from 1/1/2003 forward.

TOTAL REPORTING BURDEN FOR DAWN: CLOSEOUT 2002 [1]

	Number of respondent facilities	Estimated number of responses per respondent	Estimated time per response	Gross burden hours	IR[2] reporting hours	Total adjusted burden hours
EMERGENCY DEPARTMENTS						
Current Forms	166	36	9 min.	896	448	448
Current eHERS[3]	300	36	9min (.15 hr)	1,620	810	810

TOTAL REPORTING BURDEN FOR DAWN: CLOSEOUT 2002 [1]—Continued

	Number of respondent facilities	Estimated number of responses per respondent	Estimated time per response	Gross burden hours	IR[2] reporting hours	Total adjusted burden hours
ED Logs	166	16	2 min (.03 hr)	88	44	44
Subtotal						1,302
MEDICAL EXAMINERS/CORONERS						
Current Forms	20	70	15 min (.25 hr)	350	175	175
Current eMERS[4]	119	70	15 min (.25 hr)	2,082	1,041	1,041
ME Logs	20	40	2 min (.03 hr)	26	13	13
Subtotal						1,229
Total						2,531

[1] Number of respondents and respondent burden from December 1, 2002 through March 31, 2003 (EDs) and December 1, 2002 through September 30, 2003 (ME/Cs), using the current reporting forms.
[2] There is no burden associated with reporting by Independent Reporters (IRs), so these hours are not included in Total Adjusted Burden. Half (50 percent) of all respondents are Independent Reporters.
[3] eHERS is the electronic Hospital Emergency Reporting System.
[4] eMERS is the electronic Medical Examiner Reporting System.

TOTAL REPORTING BURDEN FOR DAWN: JANUARY 1, 2003–NOVEMBER 30, 2005 [1]

	Number of respondent facilities	Estimated number of responses per respondent	Estimated time per response	Gross burden hours	IR[2] reporting hours	Total adjusted burden hours
EMERGENCY DEPARTMENTS						
Revised[3] Forms	100	354	12 min (.20 hr)	7,080	3,540	3,540
Revised eHERS[4]	786	1,596	12 min (.20 hr)	250,891	125,446	125,445
Subtotal						128,985
MEDICAL EXAMINERS/CORONERS						
Revised[3] Forms	20	60	15 min (.25 hr)	300	150	150
Revised eMERS[5]	259	264	15 min (.25 hr)	17,094	8,547	8,547
Subtotal						8,697
Total						137,682

[1] Number of respondents and respondent burden shown as totals from January 1, 2003 through November 30, 2005, using the revised reporting forms.
[2] There is no burden associated with reporting by Independent Reporters (IRs), so these hours are not included in Total Adjusted Burden. Half (50 percent) of all respondents are Independent Reporters.
[3] Burden associated with transmittal forms is included in the overall burden associated with identifying and reporting a DAWN case. Transmittal forms are tally sheets used as part of the reporting process, and burden cannot be segregated from completing episode forms.
[4] eHERS is the electronic Hospital Emergency Reporting System.
[5] eMERS is the electronic Medical Examiner Reporting System.

TOTAL AND ANNUALIZED BURDEN, ENTIRE CLEARANCE PERIOD: DECEMBER 1, 2003–NOVEMBER 30, 2005

	Total adjusted burden hours
Emergency Departments.	
Total Burden	130,287
Medical Examiners/Coroners.	
Total Burden	9,926
Total Burden (ED and ME/C)	140,213
Annualized Burden	46,738

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 1, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–25512 Filed 10–7–02; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4736–N–15]

Notice of Proposed Information Collection for Public Comment for the Housing Choice Voucher Program: Application, Utilities, Inspection, Financial Reports, Request for Lease Approval, Certificate of Family Participation, Housing Voucher, Portability Information, Housing Assistance Payments Contracts (Tenant-Based)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* December 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing & Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number). For hearing- and speech-impaired persons, this telephone number may be accessed via TTY (Text telephone) by calling the Federal Information Relay Services at 1–800–877–8339 (toll-free).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

This Notice also Lists the following Information:

Title of Proposal: Housing Choice Voucher Program: Application, Utilities, Inspection, Financial Reports, Request for Lease Approval, Certificate of Family Participation, Housing Voucher, Portability Information, Housing Assistance Payments (HAP) Contracts—Tenant-Based.

OMB Control Number: 2577–0169.

Description of the Need for the Information and Proposed Use: Housing Agencies (HAS) will prepare an application for funding which specifies the number of units requested, as well as the HA's objectives and plans for administering the Housing Choice Voucher Program. The application is reviewed by the HUD Field Office and ranked according to the HA's administrative capability, the need for housing assistance, and other factors specified in the Notice of Funding Availability (NOFA). The HAs must establish a utility allowance schedule for all utilities and other services. Units must be inspected, using HUD-prescribed forms to determine if the units meet the housing quality standards (HQS) of the Program. HAs are also required to maintain financial reports in accordance with accepted accounting standards. The required financial statements are similar to those prepared by any responsible business or organization at the end of the fiscal year. The family must complete and submit to the HA a Request for Lease Approval when it finds a unit which is suitable for its needs, a Certificate of Family Participation, and Housing Voucher. Initial HAs will use a standardized form to submit portability information to the receiving HA who will also use the form for monthly portability billing. HAs and Owners will enter into HAP Contacts each providing information on rents, payments, certifications, notifications, and Owner agreement in a form acceptable to the HA.

Agency form numbers: HU–52515, HUD–52517, HUD–52580, HUD–52580–A, HUD–52646, HUD–52665, HUD–52667, HUD–52672, HUD–52673, HUD–52581, HUD–52641, HUD–52641–A, HUD–52642, HUD–52642–A (Forms HUD–52595 and HUD–52663 are canceled.)

Members of the Affected Public: State and Local Governments, businesses or other for profits.

Estimation of the Total Number of Hours Needed to Prepare the Information Collection including the Number of Respondents, Frequency of response, and hours of response: The number of respondents (2500 HAs + 410,000 families + 100,000 tenant-based owners + 100 project-based owners) = 512,600 total respondents, hours per response varies for each form, frequency, annually and on-occasion, total annual burden hours 650,975.[1]

Status of the Proposed Information Collection: Extension with change only adding the HAP Contracts.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 30, 2002.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

[1] The cancellation of two forms and the transfer of elevated blood level match which is now covered under Part 35 reduced the burden hours by 6,025 hours. The addition of the information collection in the HAP Contracts will void the decrease keeping the burden hour the same.

Funding Application

Section 8 Tenant-Based Assistance
Rental Certificate Program
Rental Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169 (exp.9/30/2002)

Send the original and two copies of this application form and attachments to the local HUD Field Office

Public reporting burden for this collection of information is estimated to average 1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Eligible applicants (HAs) must submit this information when applying for grant funding for tenant-based housing assistance programs under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). HUD will use the information to evaluate an application based on selection criteria stated in the Notice of Funding Availability (NOFA). HUD will notify the HA of its approval/disapproval of the funding application. Responses are required to obtain a benefit from the Federal Government. The information requested does not lend itself to confidentiality.

Name and Mailing Address of the Housing Agency (HA) requesting housing assistance payments

Application/Project No. (HUD use only)

Do you have an ACC with HUD	No	Yes	Date of Application	Legal Area of Operation (area in which the HA has authority under State and local law to administer the program)
for Section 8 Certificates?	☐	☐		
for Section 8 Vouchers?	☐	☐		

A. Area(s) From Which Families To Be Assisted Will Be Drawn.

Locality (city, town, etc.)	County	Congressional District	Units

B. Proposed Assisted Dwelling Units. (Complete this section based on the unit sizes of the applicants at the top of the waiting list)

	Number of Dwelling Units by Bedroom Size							
	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR	Total Dwelling Units
Certificates								
Vouchers								

C. Average Monthly Adjusted Income. Complete this section based on actual incomes of current participants by unit size. Enter average monthly adjusted income for each program separately and only for the unit sizes requested in Section B.

	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR
Certificates	$	$	$	$	$	$	$
Vouchers	$	$	$	$	$	$	$

D. Need for Housing Assistance. Demonstrate that the project requested in this application is responsive to the condition of the housing stock in the community and the housing assistance needs of low-income families residing in or expected to reside in the community. (If additional space is needed, add separate pages.)

E. **Housing Quality Standards (HQS).** (Check applicable box)

☐ HUD's HQS will be used with no modifications ☐ Attached for HUD approval are HQS acceptability criteria variations

F. **New HA information.** Complete this section if HA currently does not administer a tenant-based certificate or voucher program.

Financial and Administrative Capability. Describe the experience of the HA in administering housing or other programs and provide any other relevant information which evidences present or potential management capability for the proposed rental assistance program. Submit this narrative on a separate page.

Qualification as an HA. Demonstrate that the applicant qualifies as an HA and is legally qualified and authorized to administer the funds applied for in this application. Submit the relevant enabling legislation and a supporting legal opinion.

Note: If this application is approved, the HA must submit for HUD approval a utility allowance schedule and budget documents.

G. **Certifications.** The following certifications are incorporated as a part of this application form. The signature on the last page of this application of the HA representative authorized to sign the application signifies compliance with the terms of these certifications.

Equal Opportunity Certification

The Housing Agency (HA) certifies that:

(1) The HA will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations issued pursuant thereto (24 CFR Part 1) which state that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will take any measures necessary to effectuate this agreement.

(2) The HA will comply with the Fair Housing Act (42 U.S.C. 3601-19) and regulations issued pursuant thereto (24 CFR Part 100) which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status, or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing.

(3) The HA will comply with Executive Order 11063 on Equal Opportunity in Housing which prohibits discrimination because of race, color, creed, or national origin in housing and related facilities provided with Federal financial assistance and HUD regulations (24 CFR Part 107).

(4) The HA will comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 CFR Part 8) which state that no otherwise qualified individual with handicaps in the United States shall solely by reason of the handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(5) The HA will comply with the provisions of the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and regulations issued pursuant thereto (24 CFR Part 146) which state that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under a program or activity receiving Federal financial assistance.

(6) The Housing Agency will comply with the provisions of Title II of the Americans with Disabilities Act (42 U.S.C. 12131) and regulations issued pursuant thereto (28 CFR Part 35) which state that subject to the provisions of Title II, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity.

The following provisions apply only to housing assisted with Project-Based Certificates:

(7) The HA will comply with Executive Order 11246 and all regulations pursuant thereto (41 CFR Chapter 60-1) which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity.

(8) The HA will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) and regulations issued pursuant thereto (24 CFR Part 135), which require that, to the greatest extent feasible, opportunities for training and employment be given to low-income persons residing within the unit of local government for metropolitan area (or non-metropolitan county) in which the project is located.

Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Certification Regarding Drug-Free Workplace Requirements

Instructions for Drug-Free Workplace Requirements Certification:

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).

6. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All *direct charge* employees; (ii) All *indirect charge* employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees or subrecipients or subcontractors in covered workplaces).

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

Check ☐ if there are workplaces on file that are not identified here.

Housing Agency Signature

Signature of HA Representative	Print or Type Name of Signatory	
	Phone No.	Date

Previous editions are obsolete

Page 4 of 4

form HUD-52515 (1/96)
ref. Handbook 7420.8

Request for Tenancy Approval
Housing Choice Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp. 9/30/2002)

Public reporting burden for this collection of information is estimated to average .08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

Eligible families submit this information to the Public Housing Authority (PHA) when applying for housing assistance under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). The PHA uses the information to determine if the family is eligible, if the unit is eligible, and if the lease complies with program and statutory requirements. Responses are required to obtain a benefit from the Federal Government. The information requested does not lend itself to confidentiality.

1. Name of Public Housing Agency (PHA)	2. Address of Unit (street address, apartment number, city, State & zip code)

3. Requested Beginning Date of Lease	4. Number of Bedrooms	5. Year Constructed	6. Proposed Rent	7. Security Deposit Amt.	8. Date unit available for inspection

9. Type of House/Apartment
☐ Single Family Detached ☐ Semi-Detached / Row House ☐ Manufactured Home ☐ Garden / Walkup ☐ Elevator / High-Rise

10. If this unit is subsidized, indicate type of subsidy:
☐ Section 202 ☐ Section 221(d)(3)(BMIR) ☐ Section 236 (Insured or noninsured) ☐ Section 515 Rural Development

11. Utilities and Appliances
The owner shall provide or pay for the utilities and appliances indicated below by an "O". The tenant shall provide or pay for the utilities and appliances indicated below by a "T". Unless otherwise specified below, the owner shall pay for all utilities and appliances provided by the owner.

Item	Specify fuel type				Provided by	Paid by
Heating	☐ Natural gas	☐ Bottle gas	☐ Oil or Electric	☐ Coal or Other		
Cooking	☐ Natural gas	☐ Bottle gas	☐ Oil or Electric	☐ Coal or Other		
Water Heating	☐ Natural gas	☐ Bottle gas	☐ Oil or Electric	☐ Coal or Other		
Other Electric						
Water						
Sewer						
Trash Collection						
Air Conditioning						
Refrigerator						
Range/Microwave						
Other (specify)						

12. Owner's Certifications. By executing this request, the owner certifies that:

a. The most recent rent charged for the above unit was

$ _____ per month. This rent included the following utilities:

_____

_____

The reason for any differences between the prior rent and the proposed rent in Block 6 is:

_____

_____

_____

_____

Previous editions are obsolete

Page 1 of 2

form HUD-52517 (08/2002)
ref. Handbook 7420.8

b. The program regulation requires the PHA to certify that the rent charged to the housing choice voucher tenant is not more than the rent charged for other unassisted comparable units. **Please complete the following section for most recent comparable units most recently leased within the same complex.**

Address and unit number	Date Rented	Rental Amount
1.		
2.		
3.		

c. The owner (including a principal or other interested party) is not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.

d. Check one of the following:

_____ Lead-based paint disclosure requirements do not apply because this property was built on or after January 1, 1978.

_____ The unit, common areas servicing the unit, and exterior painted surfaces associated with such unit or common areas have been found to be lead-based paint free by a lead-based paint inspector certified under the Federal certification program or under a federally accredited State or Tribal certification program.

_____ A completed statement is attached containing disclosure of known information on lead-based paint and/or lead-based paint hazards in the unit, common areas or exterior painted surfaces, including a statement that the owner has provided the lead hazard information pamphlet to the family.

13. PHA Determinations.

a. **The PHA has not screened the family's behavior or suitability for tenancy. Such screening is the owner's own responsibility.**

b. The owner's lease must include word-for-word all provisions of the HUD tenancy addendum.

c. The PHA will arrange for inspection of the unit and will notify the owner and family as to whether or not the unit will be approved.

Print or Type Name of Owner or Other Party Authorized to Execute the Lease		Print or Type Name of Family	
Signature		Signature (s)	
Business Address		Present Address of Family (street address, apartment no., city, State, & zip code)	
Telephone Number	Date (mm/dd/yyyy)	Telephone Number	Date (mm/dd/yyyy)

Inspection Checklist

Housing Choice Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(Exp. 9/30/2002)

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This collection of information is authorized under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). The information is used to determine if a unit meets the housing quality standards of the section 8 rental assistance program.

Name of Family	Tenant ID Number	Date of Request (mm/dd/yyyy)
Inspector	Neighborhood/Census Tract	Date of Inspection (mm/dd/yyyy)
Type of Inspection ☐ Initial ☐ Special ☐ Reinspection	Date of Last Inspection (mm/dd/yyyy)	PHA

A. General Information

Inspected Unit Year Constructed (yyyy)

Full Address (including Street, City, County, State, Zip)

Number of Children in Family Under 6

Housing Type (check as appropriate)
- ☐ Single Family Detached
- ☐ Duplex or Two Family
- ☐ Row House or Town House
- ☐ Low Rise: 3, 4 Stories, IncludingGarden Apartment
- ☐ High Rise; 5 or More Stories
- ☐ Manufactured Home
- ☐ Congregate
- ☐ Cooperative
- ☐ Independent Group Residence
- ☐ Single Room Occupancy
- ☐ Shared Housing
- ☐ Other

Owner

Name of Owner or Agent Authorized to Lease Unit Inspected	Phone Number
Address of Owner or Agent	

B. Summary Decision On Unit (To be completed after form has been filled out)

☐ Pass ☐ Fail ☐ Inconclusive	Number of Bedrooms for Purposes of the FMR or Payment Standard	Number of Sleeping Rooms	

Inspection Checklist

Item No.	1. Living Room	Yes Pass	No Fail	In-Conc.	Comment	Final Approval Date (mm/dd/yyyy)
1.1	Living Room Present					
1.2	Electricity					
1.3	Electrical Hazards					
1.4	Security					
1.5	Window Condition					
1.6	Ceiling Condition					
1.7	Wall Condition					
1.8	Floor Condition					

* Room Codes: 1 = Bedroom or Any Other Room Used for Sleeping (regardless of type of room); 2 = Dining Room or Dining Area; 3 = Second Living Room, Family Room, Den, Playroom, TV Room; 4 = Entrance Halls, Corridors, Halls, Staircases; 5 = Additional Bathroom; 6 = Other

Item No.	1. Living Room (Continued)	Yes Pass	No Fail	In-Conc.	Comment	Final Approval Date (mm/dd/yyyy)
1.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint? If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?				☐ Not Applicable	
	2. Kitchen					
2.1	Kitchen Area Present					
2.2	Electricity					
2.3	Electrical Hazards					
2.4	Security					
2.5	Window Condition					
2.6	Ceiling Condition					
2.7	Wall Condition					
2.8	Floor Condition					
2.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint? If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?				☐ Not Applicable	
2.10	Stove or Range with Oven					
2.11	Refrigerator					
2.12	Sink					
2.13	Space for Storage, Preparation, and Serving of Food					
	3. Bathroom					
3.1	Bathroom Present					
3.2	Electricity					
3.3	Electrical Hazards					
3.4	Security					
3.5	Window Condition					
3.6	Ceiling Condition					
3.7	Wall Condition					
3.8	Floor Condition					
3.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint? If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?				☐ Not Applicable	
3.10	Flush Toilet in Enclosed Room in Unit					
3.11	Fixed Wash Basin or Lavatory in Unit					
3.12	Tub or Shower in Unit					
3.13	Ventilation					

Item No.	4. Other Rooms Used For Living and Halls	Yes Pass	No Fail	In-Conc.	Comment	Final Approval Date (mm/dd/yyyy)
4.1	Room Code* and Room Location ☐	(Circle One) Right/Center/Left			(Circle One) Front/Center/Rear ___Floor Level	
4.2	Electricity/Illumination					
4.3	Electrical Hazards					
4.4	Security					
4.5	Window Condition					
4.6	Ceiling Condition					
4.7	Wall Condition					
4.8	Floor Condition					
4.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint? If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?				☐ Not Applicable	
4.10	Smoke Detectors					
4.1	Room Code* and Room Location ☐	(Circle One) Right/Center/Left			(Circle One) Front/Center/Rear ___Floor Level	
4.2	Electricity/Illumination					
4.3	Electrical Hazards					
4.4	Security					
4.5	Window Condition					
4.6	Ceiling Condition					
4.7	Wall Condition					
4.8	Floor Condition					
4.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint? If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?				☐ Not Applicable	
4.10	Smoke Detectors					
4.1	Room Code* and Room Location ☐	(Circle One) Right/Center/Left			(Circle One) Front/Center/Rear ___Floor Level	
4.2	Electricity/Illumination					
4.3	Electrical Hazards					
4.4	Security					
4.5	Window Condition					
4.6	Ceiling Condition					
4.7	Wall Condition					
4.8	Floor Condition					
4.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint? If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?				☐ Not Applicable	
4.10	Smoke Detectors					

Item No.	4. Other Rooms Used For Living and Halls	Yes Pass	No Fail	In-Conc.	Comment	Final Approval Date (mm/dd/yyyy)
4.1	Room Code* and Room Location ☐	(Circle One) Right/Center/Left			(Circle One) Front/Center/Rear ___Floor Level	
4.2	Electricity/Illumination					
4.3	Electrical Hazards					
4.4	Security					
4.5	Window Condition					
4.6	Ceiling Condition					
4.7	Wall Condition					
4.8	Floor Condition					
4.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint?				☐ Not Applicable	
	If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?					
4.10	Smoke Detectors					
4.1	Room Code* and Room Location ☐	(Circle One) Right/Center/Left			(Circle One) Front/Center/Rear ___Floor Level	
4.2	Electricity/Illumination					
4.3	Electrical Hazards					
4.4	Security					
4.5	Window Condition					
4.6	Ceiling Condition					
4.7	Wall Condition					
4.8	Floor Condition					
4.9	Lead-Based Paint Are all painted surfaces free of deteriorated paint?				☐ Not Applicable	
	If not, do deteriorated surfaces exceed two square feet per room and/or is more than 10% of a component?					
4.10	Smoke Detectors					
	5. All Secondary Rooms (Rooms not used for living)					
5.1	None Go to Part 6					
5.2	Security					
5.3	Electrical Hazards					
5.4	Other Potentially Hazardous Features in these Rooms					

Item No.	6. Building Exterior	Yes Pass	No Fail	In-Conc.	Comment	Final Approval Date (mm/dd/yyyy)
6.1	Condition of Foundation					
6.2	Condition of Stairs, Rails, and Porches					
6.3	Condition of Roof/Gutters					
6.4	Condition of Exterior Surfaces					
6.5	Condition of Chimney					
6.6	Lead Paint: Exterior Surfaces Are all painted surfaces free of deteriorated paint?				☐ Not Applicable	
	If not, do deteriorated surfaces exceed 20 square feet of total exterior surface area?					
6.7	Manufactured Home: Tie Downs					
	7. Heating and Plumbing					
7.1	Adequacy of Heating Equipment					
7.2	Safety of Heating Equipment					
7.3	Ventilation/Cooling					
7.4	Water Heater					
7.5	Approvable Water Supply					
7.6	Plumbing					
7.7	Sewer Connection					
	8. General Health and Safety					
8.1	Access to Unit					
8.2	Fire Exits					
8.3	Evidence of Infestation					
8.4	Garbage and Debris					
8.5	Refuse Disposal					
8.6	Interior Stairs and Commom Halls					
8.7	Other Interior Hazards					
8.8	Elevators					
8.9	Interior Air Quality					
8.10	Site and Neighborhood Conditions					
8.11	Lead-Based Paint: Owner's Certification				☐ Not Applicable	

If the owner is required to correct any lead-based paint hazards at the property including deteriorated paint or other hazards identified by a visual assessor, a certified lead-based paint risk assessor, or certified lead-based paint inspector, the PHA must obtain certification that the work has been done in accordance with all applicable requirements of 24 CFR Part 35. The Lead-Based Paint Owner Certification must be received by the PHA before the execution of the HAP contract or within the time period stated by the PHA in the owner HQS violation notice. Receipt of the completed and signed Lead-Based Paint Owner Certification signifies that all HQS lead-based paint requirements have been met and no re-inspection by the HQS inspector is required.

C. Special Amenities (Optional)

This Section is for optional use of the HA. It is designed to collect additional information about other positive features of the unit that may be present. Although the features listed below are not included in the Housing Quality Standards, the tenant and HA may wish to take them into consideration in decisions about renting the unit and the reasonableness of the rent.
Check/list any positive features found in relation to the unit.

1. Living Room

- ☐ High quality floors or wall coverings
- ☐ Working fireplace or stove
- ☐ Balcony, patio, deck, porch
- ☐ Special windows or doors
- ☐ Exceptional size relative to needs of family
- ☐ Other: (Specify)

2. Kitchen

- ☐ Dishwasher
- ☐ Separate freezer
- ☐ Garbage disposal
- ☐ Eating counter/breakfast nook
- ☐ Pantry or abundant shelving or cabinets
- ☐ Double oven/self cleaning oven, microwave
- ☐ Double sink
- ☐ High quality cabinets
- ☐ Abundant counter-top space
- ☐ Modern appliance(s)
- ☐ Exceptional size relative to needs of family
- ☐ Other: (Specify)

3. Other Rooms Used for Living

- ☐ High quality floors or wall coverings
- ☐ Working fireplace or stove
- ☐ Balcony, patio, deck, porch
- ☐ Special windows or doors
- ☐ Exceptional size relative to needs of family
- ☐ Other: (Specify)

4. Bath

- ☐ Special feature shower head
- ☐ Built-in heat lamp
- ☐ Large mirrors
- ☐ Glass door on shower/tub
- ☐ Separate dressing room
- ☐ Double sink or special lavatory
- ☐ Exceptional size relative to needs of family
- ☐ Other: (Specify)

5. Overall Characteristics

- ☐ Storm windows and doors
- ☐ Other forms of weatherization (e.g., insulation, weather stripping)
- ☐ Screen doors or windows
- ☐ Good upkeep of grounds (i.e., site cleanliness, landscaping, condition of lawn)
- ☐ Garage or parking facilities
- ☐ Driveway
- ☐ Large yard
- ☐ Good maintenance of building exterior
- ☐ Other: (Specify)

6. Disabled Accessibility

Unit is accessible to a particular disability. ☐ Yes ☐ No

Disability _____

D. Questions to ask the Tenant (Optional)

1. Does the owner make repairs when asked? Yes ☐ No ☐
2. How many people live there? _____
3. How much money do you pay to the owner/agent for rent? $ _____
4. Do you pay for anything else? (specify) _____
5. Who owns the range and refrigerator? (insert O = Owner or T = Tenant) Range _____ Refrigerator _____ Microwave _____
6. Is there anything else you want to tell us? (specify) Yes ☐ No ☐

E. Inspection Summary/Comments (Optional)

Provide a summary description of each item which resulted in a rating of "Fail" or "Pass with Comments."

Tenant ID Number	Inspector	Date of Inspection (mm/dd/yyyy)	Address of Inspected Unit

Type of Inspection Initial ☐ Special ☐ Reinspection ☐

Item Number	Reason for "Fail" or "Pass with Comments" Rating

Continued on additional page ☐ Yes ☐ No

Inspection Form
Housing Choice Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp. 9/30/2002)

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This collection of information is authorized under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). The information is used to determine if a unit meets the housing quality standards of the section 8 rental assistance program.

PHA	Tenant ID Number	Date of Request (mm/dd/yyyy)
Inspector	Date Last Inspection (mm/dd/yyyy)	Date of Inspection (mm/dd/yyyy)
Neighborhood/Census Tract	Type of Inspection: ☐ Initial ☐ Special ☐ Reinspection	Project Number

A. General Information

Street Address of Inspected Unit

City | County | State | Zip

Name of Family | Current Telephone of Family

Current Street Address of Family

City | County | State | Zip

Number of Children in Family Under 6

Name of Owner or Agent Authorized to Lease Unit Inspected | Telephone of Owner or Agent

Address of Owner or Agent

Housing Type (check as appropriate)
- ☐ Single Family Detached
- ☐ Duplex or Two Family
- ☐ Row House or Town House
- ☐ Low Rise: 3,4 Stories, Including Garden Apartment
- ☐ High Rise; 5 or More Stories
- ☐ Manufactured Home
- ☐ Congregate
- ☐ Cooperative
- ☐ Independent Group Residence
- ☐ Single Room Occupancy
- ☐ Shared Housing
- ☐ Other:(Specify)

B. Summary Decision on the Unit
(to be completed after the form has been filled in)

Housing Quality Standard Pass or Fail

☐ 1. **Fail**. If there are any checks under the column headed "Fail" the unit fails the minimum housing quality standards. Discuss with the owner the repairs noted that would be necessary to bring the unit up to the standard.

☐ 2. **Inconclusive**. If there are no checks under the column headed "Fail" and there are checks under the column headed "Inconclusive," obtain additional information necessary for a decision (question owner or tenant as indicated in the item instructions given in this checklist). Once additional information is obtained, change the rating for the item and record the date of verification at the far right of the form.

☐ 3. **Pass**. If neither (1) nor (2) above is checked, the unit passes the minimum housing quality standards. Any additional conditions described in the right hand column of the form should serve to: (a) establish the precondition of the unit, (b) indicate possible additional areas to negotiate with the owner, (c) aid in assessing the reasonableness of the rent of the unit, and (d) aid the tenant in deciding among possible units to be rented. The tenant is responsible for deciding whether he or she finds these conditions acceptable.

☐ **Unit Size**: Count the number of bedrooms for purposes of the FMR or Payment Standard. Record in the box provided.

☐ **Year Constructed**: Enter from Line 5 of the Request for Tenancy Approval form. Record in the box provided.

☐ **Number of Sleeping Rooms**: Count the number of rooms which could be used for sleeping, as identified on the checklist. Record in the box provided.

C. How to Fill Out This Checklist

Complete the checklist on the unit to be occupied (or currently occupied) by the tenant. Proceed through the inspection as follows:

Area	Checklist Category
room by room	1. Living Room
	2. Kitchen
	3. Bathroom
	4. All Other Rooms Used for Living
	5. All Secondary Rooms Not Used for Living
basement or utility room	6. Heating & Plumbing
outside	7. Building Exterior
overall	8. General Health & Safety

Each part of the checklist will be accompanied by an explanation of the item to be inspected.

Important: For each item numbered on the checklist, check one box only (e.g., check one box only for item 1.4 "Security," in the Living Room.)

In the space to the right of the description of the item, if the decision on the item is: "Fail" write what repairs are necessary; If "Inconclusive" write in details.

Also, if "Pass" but there are some conditions present that need to be brought to the attention of the owner or the tenant, write these in the space to the right.

If it is an annual inspection, record to the right of the form any repairs made since the last inspection. If possible, record reason for repair (e.g., ordinary maintenance, tenant damage).

If it is a complaint inspection, fill out only those checklist items for which complaint is lodged. Determine, if possible, tenant or owner cause.

Once the checklist has been completed, return to Part B (Summary Decision on the Unit).

1. Living Room

1.1 Living Room Present

Note: If the unit is an efficiency apartment, consider the living room present.

1.2 Electricity

In order to qualify, the outlets must be present and properly installed in the baseboard, wall or floor of the room. Do not count a single duplex receptacle as two outlets, i.e., there must be **two** of these in the room, or **one of these plus a permanently installed ceiling or wall light fixture.**

Both the outlets and/or the light must be working. Usually, a room will have sufficient lights or electrical appliances plugged into outlets to determine workability. Be sure light fixture does not fail just because the bulb is burned out.

Do not count any of the following items or fixtures as outlets/fixtures: Table or floor lamps (these are not permanent light fixtures); ceiling lamps plugged into socket; extension cords.

If the electric service to the unit has been temporarily turned off check "Inconclusive." Contact owner or manager after inspection to verify that electricity functions properly when service is turned on. Record this information on the checklist.

1.3 Electrical Hazards

Examples of what this means: broken wiring; noninsulated wiring; frayed wiring; improper types of wiring, connections or insulation; wires lying in or located near standing water or other unsafe places; light fixture hanging from electric wiring without other firm support or fixture; missing cover plates on switches or outlets; badly cracked outlets; exposed fuse box connections; overloaded circuits evidenced by frequently "blown" fuses (ask the tenant).

Check "Inconclusive" if you are uncertain about severity of the problem and seek expert advice.

1.4 Security

"Accessible to outside" means: doors open to the outside or to a common public hall; windows accessible from the outside (e.g. basement and first floor); windows or doors leading onto a fire escape, porch or other outside place that can be reached from the ground.

"Lockable" means: the window or door has a properly working lock, or is nailed shut, or the window is not designed to be opened. A storm window lock that is working properly is acceptable. Windows that are nailed shut are acceptable only if these windows are not needed for ventilation or as an alternate exit in case of fire.

1.5 Window Condition

Rate the windows in the room (including windows in doors).

"Severe deterioration" means that the window no longer has the capacity to keep out the wind and the rain or is a cutting hazard. Examples are: missing or broken-out panes; dangerously loose cracked panes; windows that will not close; windows that, when closed, do not form a reasonably tight seal.

If more than one window in the room is in this condition, give details in the space provided on the right of the form.

If there is only "moderate deterioration" of the windows the item should "Pass." "Moderate deterioration" means windows which are reasonably weather-tight, but show evidence of some aging, abuse, or lack of repair. Signs of deterioration are: minor crack in window pane; splintered sill; signs of some minor rotting in the window frame or the window itself; window panes loose because of missing window putty. Also for deteriorated and peeling paint see 1.9. If more than one window is in this condition, give details in the space provided on the right of the form.

1.6 Ceiling Condition

"Unsound or hazardous" means the presence of such serious defects that either a potential exists for structural collapse or that large cracks or holes allow significant drafts to enter the unit. The condition includes: severe bulging or buckling; large holes; missing parts; falling or in danger of falling loose surface materials (other than paper or paint).

Pass ceilings that are basically sound but have some nonhazardous defects, including: small holes or cracks; missing or broken ceiling tiles; water stains; soiled surfaces; unpainted surfaces; peeling paint (for peeling paint see item 1.9).

1.7 Wall Condition

"Unsound or hazardous" includes: serious defects such that the structural safety of the building is threatened, such as severe buckling, bulging or leaning; damaged or loose structural members; large holes; air infiltration.

Pass walls that are basically sound but have some nonhazardous defects, including: small or shallow holes; cracks; loose or missing parts; unpainted surfaces; peeling paint (for peeling paint see item 1.9).

1.8 Floor Condition

"Unsound or hazardous" means the presence of such serious defects that a potential exists for structural collapse or other threats to safety (e.g., tripping) or large cracks or holes allow substantial drafts from below the floor. The condition includes: severe buckling or major movements under walking stress; damaged or missing parts.

Pass floors that are basically sound but have some nonhazardous defects, including: heavily worn or damaged floor surface (for example, scratches or gouges in surface, missing portions of tile or linoleum, previous water damage). If there is a floor covering, also note the condition, especially if badly worn or soiled. If there is a floor covering, including paint or sealant, also note the conditions, specially if badly worn, soiled or peeling (for peeling paint, see 1.9).

1.9 Lead-Based Paint

Housing Choice Voucher Units. If the unit was built January 1, 1978, or after, no child under age six will occupy or currently occupies it, is a 0-BR, elderly or handicapped unit with no children under age six on the lease or expected, has been certified lead-based paint free by a certified lead-based paint inspector (no lead-based paint present or no lead-based paint present after removal of lead-based paint.), check NA and do not inspect painted surfaces.

This requirement applies to all painted surfaces (building components) within the unit. (Do not include tenant belongings). Surfaces to receive a visual assessment for deteriorated paint include walls, floors, ceilings, built in cabinets (sink bases), baseboards, doors, door frames, windows systems including mullions, sills, or frames and any other painted building component within the unit. Deteriorated paint includes any painted surface that is peeling, chipping, chalking, cracking, damaged or otherwise separated from the substrate.

All deteriorated paint surfaces more than 2 sq. ft. in any one interior room or space, or more than 10% of the total surface area of an interior type of component with a small surface area (i.e., window sills, baseboards, and trim) must be stabilized (corrected) in accordance with all safe work practice requirements and clearance is required. If the deteriorated painted surface is less than 2 sq. ft. or less than 10% of the component, only stabilization is required. Clearance testing is not required. Stabilization means removal of deteriorated paint, repair of the substrate, and application of a new protective coating or paint. Lead-Based Paint Owner Certification is required following stabilization activities, except for *de minimis level repairs.*

1. Living Room

For each numbered item, check one box only.

Item No.	Description	Decision: Yes, Pass	Decision: No, Fail	Decision: Inconclusive	If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date (mm/dd/yyyy) of final approval
1.1	**Living Room Present** Is there a living room?	☐	☐			
1.2	**Electricity** Are there at least two working outlets or one working outlet and one working light fixture?	☐	☐	☐		
1.3	**Electrical Hazards** Is the room free from electrical hazards?	☐	☐	☐		
1.4	**Security** Are all windows and doors that are accessible from the outside lockable?	☐	☐			
1.5	**Window Condition** Is there at least one window, and are all windows free of signs of severe deterioration or missing or broken out panes?	☐	☐			
1.6	**Ceiling Condition** Is the ceiling sound and free from hazardous defects?	☐	☐			
1.7	**Wall Condition** Are the walls sound and free from hazardous defects?	☐	☐			
1.8	**Floor Condition** Is the floor sound and free from hazardous defects?	☐	☐			
1.9	**Lead-Based Paint** Are all painted surfaces free of deteriorated paint?	☐	☐			
	If no, does deteriorated surfaces exceed two square feet and/or more than 10% of a component?	☐	☐		☐ Not Applicable	

Additional Comments: (Give Item Number)

Comments continued on a separate page Yes ☐ No ☐

2. Kitchen

2.1 Kitchen Area Present

Note: A kitchen is an area used for preparation of meals. It may be either a separate room or an area of a larger room (for example, a kitchen area in an efficiency apartment).

2.2 - 2.9 Explanation for these items is the same as that provided for "Living Room" with the following modifications:

2.2 Electricity

Note: The requirement is that at least one outlet and one permanent light fixture are present and working.

2.5 Window Condition

Note: The absence of a window does not fail this item in the kitchen. If there is no window, check "Pass."

2.10 Stove or Range with Oven

Both an oven and a stove (or range) with top burners must be present and working. If either is missing and you know that the owner is responsible for supplying these appliances, check "Fail." Put check in "Inconclusive" column if the tenant is responsible for supplying the appliances and he or she has not yet moved in. Contact tenant or prospective tenant to gain verification that facility will be supplied and is in working condition. Hot plates are not acceptable substitutes for these facilities.

An oven is not working if it will not heat up. To be working a stove or range must have all burners working and knobs to turn them off and on. Under "working condition," also look for hazardous gas hook-ups evidenced by strong gas smells; these should fail. (Be sure that this condition is not confused with an unlit pilot light -a condition that should be noted, but does not fail.)

If both an oven and a stove or range are present, but the gas or electricity are turned off, check "Inconclusive." Contact owner or manager to get verification that facility works when gas is turned on. If both an oven and a stove or range are present and working, but defects exist, check "Pass" and note these to the right of the form. Possible defects are marked, dented, or scratched surfaces; cracked burner ring; limited size relative to family needs.

A microwave oven may be substituted for a tenant-supplied oven and stove (or range).

A microwave oven may be substituted for an owner-supplied oven and stove (or range) if the tenant agrees and microwave ovens are furnished instead of ovens and stoves (or ranges) to both subsidized and unsubsidized tenants in the building or premises.

2.11 Refrigerator

If no refrigerator is present, use the same criteria for marking either "Fail" or "Inconclusive" as were used for the oven and stove or range.

A refrigerator is not working if it will not maintain a temperature low enough to keep food from spoiling over a reasonable period of time. If the electricity is turned off, mark "Inconclusive." Contact owner (or tenant if unit is occupied) to get verification of working condition.

If the refrigerator is present and working but defects exist, note these to the right of the form. Possible minor defects include: broken or missing interior shelving; dented or scratched interior or exterior surfaces; minor deterioration of door seal; loose door handle.

2.12 Sink

If a permanently attached kitchen sink is not present in the kitchen or kitchen area, mark "Fail." A sink in a bathroom or a portable basin will not satisfy this requirement. A sink is not working unless it has running hot and cold water from the faucets and a properly connected and properly working drain (with a "gas trap"). In a vacant apartment, the hot water may have been turned off and there will be no hot water. Mark this "Inconclusive." Check with owner or manager to verify that hot water is available when service is turned on.

If a working sink has defects, note this to the right of the item. Possible minor defects include: dripping faucet; marked, dented, or scratched surface; slow drain; missing or broken drain stopper.

2.13 Space for Storage, Preparation, and Serving of Food

Some space must be available for the storage, preparation, and serving of food. If there is no built-in space for food storage and preparation, a table used for food preparation and a portable storage cabinet will satisfy the requirement. If there is no built-in space, and no room for a table and portable cabinet, check "Inconclusive" and discuss with the tenant. The tenant makes the final determination as to whether or not this space is acceptable.

If there are some minor defects, check "Pass" and make notes to the right. Possible defects include: marked, dented, or scratched surfaces; broken shelving or cabinet doors; broken drawers or cabinet hardware; limited size relative to family needs.

2. Kitchen

For each numbered item, check one box only.

Item No	Description	Decision: Yes, Pass	Decision: No, Fail	Decision: Inconclusive	If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date (mm/dd/yyyy) of final approval
2.1	**Kitchen Area Present** Is there a kitchen?	☐	☐			
2.2	**Electricity** Are there at least one working outlet and one working, permanently installed light fixture?	☐	☐	☐		
2.3	**Electrical Hazards** Is the kitchen free from electrical hazards?	☐	☐	☐		
2.4	**Security** Are all windows and doors that are accessible from the outside lockable?	☐	☐			
2.5	**Window Condition** Are all windows free of signs of deterioration or missing or broken out panes?	☐	☐			
2.6	**Ceiling Condition** Is the ceiling sound and free from hazardous defects?	☐	☐			
2.7	**Wall Condition** Are the walls sound and free from hazardous defects?	☐	☐			
2.8	**Floor Condition** Is the floor sound and free from hazardous defects?	☐	☐			
2.9	**Lead-Based Paint** Are all painted surfaces free of deteriorated paint?	☐	☐			
	If no, does deteriorated surfaces exceed two square feet and/or less than 10% of a component?	☐	☐		☐ Not Applicable	
2.10	**Stove or Range with Oven** Is there a working oven, and a stove (or range) with top burners that work?	☐	☐	☐		
	If no oven and stove (or range) are present, is there a microwave oven and, if microwave is owner-supplied, do other tenants have microwaves instead of an oven and stove (or range)?	☐	☐	☐		
2.11	**Refrigerator** Is there a refrigerator that works and maintains a temperature low enough so that food does not spoil over a reasonable period of time?	☐	☐	☐		
2.12	**Sink** Is there a kitchen sink that works with hot and cold running water?	☐	☐	☐		
2.13	**Space for Storage, Preparation, and Serving of Food** Is there space to store, prepare, and serve food?	☐	☐	☐		

Additional Comments: (Give Item Number)(Use an additional page if necessary)

Comments continued on a separate page Yes ☐ No ☐

3. Bathroom

3.1 Bathroom Present

Most units have easily identifiable bathrooms (i.e., a separate room with toilet, washbasin and tub or shower). In some cases, however, you will encounter units with scattered bathroom facilities (i.e., toilet, washbasin and tub or shower located in separate parts of the unit). At a minimum, there must be an enclosure around the toilet. In this case, count the enclosure around the toilet as the bathroom and proceed with 3.2-3.9 below, with respect to this enclosure. If there is more than one bathroom that is normally used, rate the one that is in best condition for Part 3. If there is a second bathroom that is also used, complete Part 4 of the checklist for this room. (See Inspection Manual for additional notes on rating the second bathroom.)

3.2 - 3.9 Explanation for these items is the same as that provided for "Living Room" with the following modifications:

3.2 Electricity

Note: The requirement is that at least one permanent light fixture is present and working

3.3 Electrical Hazards

Note: In addition to the previously mentioned hazards, outlets that are located where water might splash or collect are considered an electrical hazard.

3.5 Window Condition

Note: The absence of a window does not fail this item in the bathroom (see item 3.13, Ventilation, for relevance of window with respect to ventilation). If there is no window, but a working vent system is present, check "Pass."

3.7 Wall Condition

Note: Include under nonhazardous defects (that would pass, but should be noted) the following: broken or loose tile; deteriorated grouting at tub/wall and tub/floor joints, or tiled surfaces; water stains.

3.8 Floor Condition

Note: Include under nonhazardous defects (that would pass, but should be noted) the following: missing floor tiles; water stains.

3.10 Flush Toilet in Enclosed Room in Unit

The toilet must be contained within the unit, be in proper operating condition, and be available for the exclusive use of the occupants of the unit (i.e., outhouses or facilities shared by occupants of other units are not acceptable). It must allow for privacy.

Not working means: the toilet is not connected to a water supply; it is not connected to a sewer drain; it is clogged; it does not have a trap; the connections, vents or traps are faulty to the extent that severe leakage of water or escape of gases occurs; the flushing mechanism does not function properly. If the water to the unit has been turned off, check "Inconclusive." Obtain verification from owner or manager that facility works properly when water is turned on.

Comment to the right of the form if the toilet is "present, exclusive, and working," but has the following types of defects: constant running; chipped or broken porcelain; slow draining.

If drain blockage is more serious and occurs further in the sewer line, causing backup, check item 7.6, "Fail," under the plumbing and heating part of the checklist. A sign of serious sewer blockage is the presence of numerous backed-up drains.

3.11 Fixed Wash Basin or Lavatory in Unit

The wash basin must be permanently installed (i.e., a portable wash basin does not satisfy the requirement). Also, a kitchen sink used to pass the requirements under Part 2 of the checklist (kitchen facilities) cannot also serve as the bathroom wash basin. The wash basin may be located separate from the other bathroom facilities (e.g., in a hallway).

Not working means: the wash basin is not connected to a system that will deliver hot and cold running water; it is not connected to a properly operating drain; the connectors (or vents or traps) are faulty to the extent that severe leakage of water or escape of sewer gases occurs. If the water to the unit or the hot water unit has been turned off, check "Inconclusive." Obtain verification from owner or manager that the system is in working condition.

Comment to the right of the form if the wash basin is "present and working," but has the following types of minor defects: insufficient water pressure; dripping faucets; minor leaks; cracked or chipped porcelain; slow drain (see discussion above under 3.10).

3.12 Tub or Shower in Unit

Not present means that neither a tub nor shower is present in the unit. Again, these facilities need not be in the same room with the rest of the bathroom facilities. They must, however, be private.

Not working covers the same requirements detailed above for wash basin (3.11).

Comment to the right of the form if the tub or shower is present and working, but has the following types of defects: dripping faucet; minor leaks; cracked porcelain; slow drain (see discussion under 3.10); absent or broken support rod for shower curtain.

3.13 Ventilation

Working vent systems include: ventilation shafts (non-mechanical vents) and electric fans. Electric vent fans must function when switch is turned on. (Make sure that any malfunctions are not due to the fan not being plugged in.) If electric current to the unit has not been turned on (and there is no openable window), check "Inconclusive." Obtain verification from owner or manager that system works. Note: exhaust vents must be vented to the outside, attic, or crawlspace.

3. Bathroom

For each numbered item, check one box only.

Item No	Description	Decision: Yes, Pass	No, Fail	Inconclusive	If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date (mm/dd/yyyy) of final approval
3.1	**Bathroom Present** (See description) Is there a bathroom?	☐	☐			
3.2	**Electricity** Is there at least one permanently installed light fixture?	☐	☐	☐		
3.3	**Electrical Hazards** Is the bathroom free from electrical hazards?	☐	☐	☐		
3.4	**Security** Are all windows and doors that are accessible from the outside lockable?	☐	☐			
3.5	**Window Condition** Are all windows free of signs of deterioration or missing or broken out panes?	☐	☐			
3.6	**Ceiling Condition** Is the ceiling sound and free from hazardous defects?	☐	☐			
3.7	**Wall Condition** Are the walls sound and free from hazardous defects?	☐	☐			
3.8	**Floor Condition** Is the floor sound and free from hazardous defects?	☐	☐			
3.9	**Lead-Based Paint** Are all painted surfaces free of deteriorated paint?	☐	☐			
	If no, does deteriorated surfaces exceed two square feet and/or more than 10% of a component?	☐	☐		☐ Not Applicable	
3.10	**Flush Toilet in Enclosed Room in Unit** Is there a working toilet in the unit for the exclusive private use of the tenant?	☐	☐	☐		
3.11	**Fixed Wash Basin or Lavatory in Unit** Is there a working, permanently installed wash basin with hot and cold running water in the unit?	☐	☐	☐		
3.12	**Tub or Shower** Is there a working tub or shower with hot and cold running water in the unit?	☐	☐	☐		
3.13	**Ventilation** Are there openable windows or a working vent system?	☐	☐	☐		

Additional Comments: (Give Item Number)(Use an additional page if necessary)

Comments continued on a separate page Yes ☐ No ☐

4. Other Room Used for Living and Halls

Complete an "Other Room" checklist for as many "other rooms used for living" as are present in the unit and not already noted in Parts I, 2, and 3 of the checklist. See the discussion below for definition of "used for living." Also complete an "Other Room" checklist for all entrance halls, corridors, and staircases that are located within the unit and are part of the area used for living. If a hall, entry and/or stairway are contiguous, rate them as a whole (i.e., as part of one space).

Additional forms for rating "Other Rooms" are provided in the checklist.

Definition of "used for living." Rooms "used for living" are areas of the unit that are walked through or lived in on a regular basis. Do not include rooms or other areas that have been permanently, or near permanently, closed off or areas that are infrequently entered. For example, do not include a utility room, attached shed, attached closed-in porch, basement, or garage if they are closed off from the main living area or are infrequently entered. Do include any of these areas if they are frequently used (e.g., a finished basement/playroom, a closed-in porch that is used as a bedroom during summer months). Occasional use of a washer or dryer in an otherwise unused room does not constitute regular use.

If the unit is vacant and you do not know the eventual use of a particular room, complete an "Other Room" checklist if there is any chance that the room will be used on a regular basis. If there is no chance that the room will be used on a regular basis, do not include it (e.g., an unfinished basement) since it will be checked under Part 5, All Secondary Rooms (Rooms not used for living).

4.1 Room Code and Room Location

Enter the appropriate room code given below:

Room Codes:

1 = Bedroom or any other room used for sleeping (regardless of type of room)

2 = Dining Room or Dining Area

3 = Second Living Room, Family Room, Den, Playroom, TV Room

4 = Entrance Halls, Corridors, Halls, Staircases

5 = Additional Bathroom (also check presence of sink trap and clogged toilet)

6 = Other

Room Location: Write on the line provided the location of the room with respect to the unit's width, length and floor level as if you were standing outside the unit facing the entrance to the unit:

right/left/center: record whether the room is situated to the right, left, or center of the unit.

front/rear/center: record whether the room is situated to the back, front or center of the unit.

floor level: identify the floor level on which the room is located.

If the unit is vacant, you may have some difficulty predicting the eventual use of a room. Before giving any room a code of 1 (bedroom), the room must meet all of the requirements for a "room used for sleeping" (see items 4. 2 and 4.5).

4.2 - 4.9 Explanations of these items are the same as those provided for "Living Room" with the following modifications:

4.2 Electricity/Illumination

If the room code is not a "1," the room must have a means of natural or artificial illumination such as a permanent light fixture, wall outlet present, or light from a window in the room or near the room. If any required item is missing, check "Fail." If the electricity is turned off, check "Inconclusive."

4.5 Window Condition

Any room used for sleeping must have at least one window. If the windows in sleeping rooms are designed to be opened, at least one window must be openable. The minimum standards do not require a window in "other rooms." Therefore, if there is no window in another room not used for sleeping, check "Pass," and note "no window" in the area for comments.

4.6 Smoke Detectors

At least one battery-operated or hard-wired smoke detector must be present and working on each level of the unit, including the basement, but not the crawl spaces and unfinished attic.

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards).

If the dwelling unit is occupied by any hearing-impaired person, smoke detectors must have an alarm system designed for hearing-impaired persons as specified in NFPA 74 (or successor standards).

If the unit was under HAP contract prior to April 24, 1993, owners who installed battery-operated or hard-wired smoke detectors in compliance with HUD's smoke detector requirements, including the regulations published on July 30, 1992 (57 FR 33846), will not be required subsequently to comply with any additional requirements mandated by NFPA 74 (i.e. the owner would not be required to install a smoke detector in a basement not used for living purposes, nor would the owner be required to change the location of the smoke detectors that have already been installed on the other floors of the unit). In this case, check "Pass" and note under comments.

Additional Notes

For staircases, the adequacy of light and condition of the stair rails and railings is covered under Part 8 of the checklist (General Health and Safety)

4. Other Rooms Used for Living and Halls

For each numbered item, check one box only.

4.1 Room Location

_____ right/left/center: the room is situated to the right, left, or center of the unit.

_____ front/rear/center: the room is situated to the back, front or center of the unit.

_____ floor level: the floor level on which the room is located.

Room Code ☐

1 = Bedroom or Any Other Room Used for Sleeping (regardless of type of room)
2 = Dining Room or Dining Area
3 = Second Living Room, Family Room, Den, Playroom, TV Room
4 = Entrance Halls, Corridors, Halls, Staircases
5 = Additional Bathroom (also check presence of sink trap and clogged toilet)
6 = Other:

Item No.	Description	Decision: Yes, Pass	Decision: No, Fail	Decision: Inconclusive	If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date (mm/dd/yyyy) of final approval
4.2	**Electricity/Illumination** If Room Code is a 1, are there at least two working outlets or one working outlet and one working, permanently installed light fixture?	☐	☐	☐		
	If Room Code is not a 1, is there a means of illumination?	☐	☐	☐		
4.3	**Electrical Hazards** Is the room free from electrical hazards?	☐	☐	☐		
4.4	**Security** Are all windows and doors that are accessible from the outside lockable?	☐	☐			
4.5	**Window Condition** If Room Code is a 1, is there at least one window?	☐	☐			
	And, regardless of Room Code, are all windows free of signs of severe deterioration or missing or broken-out panes?	☐	☐			
4.6	**Ceiling Condition** Is the ceiling sound and free from hazardous defects?	☐	☐			
4.7	**Wall Condition** Are the walls sound and free from hazardous defects?	☐	☐			
4.8	**Floor Condition** Is the floor sound and free from hazardous defects?	☐	☐			
4.9	**Lead-Based Paint** Are all painted surfaces free of deteriorated paint?	☐	☐			
	If no, does deteriorated surfaces exceed two square feet and/or more than 10% of a component?	☐	☐		☐ Not Applicable	
4.10	**Smoke Detectors** Is there a working smoke detector on each level?	☐	☐			
	Do the smoke detectors meet the requirements of NFPA 74?	☐	☐			
	In units occupied by the hearing impaired, is there an alarm system connected to the smoke detector?	☐	☐			

Additional Comments: (Give Item Number)(Use an additional page if necessary)

Comments continued on a separate page Yes ☐ No ☐

4. Supplemental for Other Rooms Used for Living and Halls

For each numbered item, check one box only.

4.1 Room Location

_____ right/left/center: the room is situated to the right, left, or center of the unit.

_____ front/rear/center: the room is situated to the back, front or center of the unit.

_____ floor level: the floor level on which the room is located.

Room Code ☐

1 = Bedroom or Any Other Room Used for Sleeping (regardless of type of room)
2 = Dining Room or Dining Area
3 = Second Living Room, Family Room, Den, Playroom, TV Room
4 = Entrance Halls, Corridors, Halls, Staircases
5 = Additional Bathroom (also check presence of sink trap and clogged toilet)
6 = Other:

Item No.	Description	Decision: Yes, Pass	Decision: No, Fail	Decision: Inconclusive	If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date of final approval
4.2	**Electricity/Illumination** If Room Code is a 1, are there at least two working outlets or one working outlet and one working, permanently installed light fixture?	☐	☐	☐		
	If Room Code is not a 1, is there a means of illumination?	☐	☐	☐		
4.3	**Electrical Hazards** Is the room free from electrical hazards?	☐	☐	☐		
4.4	**Security** Are all windows and doors that are accessible from the outside lockable?	☐	☐			
4.5	**Window Condition** If Room Code is a 1, is there at least one window?	☐	☐			
	And, regardless of Room Code, are all windows free of signs of severe deterioration or missing or broken-out panes?	☐	☐			
4.6	**Ceiling Condition** Is the ceiling sound and free from hazardous defects?	☐	☐			
4.7	**Wall Condition** Are the walls sound and free from hazardous defects?	☐	☐			
4.8	**Floor Condition** Is the floor sound and free from hazardous defects?	☐	☐			
4.9	**Lead-Based Paint** Are all painted surfaces free of deteriorated paint?	☐	☐			
	If no, does deteriorated surfaces exceed two square feet and/or more than 10% of a component?	☐	☐		☐ Not Applicable	
4.10	**Smoke Detectors** Is there a working smoke detector on each level?	☐	☐			
	Do the smoke detectors meet the requirements of NFPA 74?	☐	☐			
	In units occupied by the hearing impaired, is there an alarm system connected to the smoke detector?	☐	☐			

Additional Comments: (Give Item Number)(Use an additional page if necessary)

Comments continued on a separate page Yes ☐ No ☐

4. Supplemental for Other Rooms Used for Living and Halls

For each numbered item, check one box only.

4.1 Room Location

_____ right/left/center: the room is situated to the right, left, or center of the unit.

_____ front/rear/center: the room is situated to the back, front or center of the unit.

_____ floor level: the floor level on which the room is located.

Room Code ☐

1 = Bedroom or Any Other Room Used for Sleeping (regardless of type of room)
2 = Dining Room or Dining Area
3 = Second Living Room, Family Room, Den, Playroom, TV Room
4 = Entrance Halls, Corridors, Halls, Staircases
5 = Additional Bathroom (also check presence of sink trap and clogged toilet)
6 = Other:

Item No.	Description	Decision: Yes, Pass	Decision: No, Fail	Decision: Inconclusive	If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date (mm/dd/yyyy) of final approval
4.2	**Electricity/Illumination** If Room Code is a 1, are there at least two working outlets or one working outlet and one working, permanently installed light fixture?	☐	☐	☐		
	If Room Code is not a 1, is there a means of illumination?	☐	☐	☐		
4.3	**Electrical Hazards** Is the room free from electrical hazards?	☐	☐	☐		
4.4	**Security** Are all windows and doors that are accessible from the outside lockable?	☐	☐			
4.5	**Window Condition** If Room Code is a 1, is there at least one window?	☐	☐			
	And, regardless of Room Code, are all windows free of signs of severe deterioration or missing or broken-out panes?	☐	☐			
4.6	**Ceiling Condition** Is the ceiling sound and free from hazardous defects?	☐	☐			
4.7	**Wall Condition** Are the walls sound and free from hazardous defects?	☐	☐			
4.8	**Floor Condition** Is the floor sound and free from hazardous defects?	☐	☐			
4.9	**Lead-Based Paint** Are all painted surfaces free of deteriorated paint?	☐	☐			
	If no, does deteriorated surfaces exceed two square feet and/or more than 10% of a component?	☐	☐		☐ Not Applicable	
4.10	**Smoke Detectors** Is there a working smoke detector on each level?	☐	☐			
	Do the smoke detectors meet the requirements of NFPA 74?	☐	☐			
	In units occupied by the hearing impaired, is there an alarm system connected to the smoke detector?	☐	☐			

Additional Comments: (Give Item Number)(Use an additional page if necessary)

Comments continued on a separate page Yes ☐ No ☐

4. Supplemental for Other Rooms Used for Living and Halls

For each numbered item, check one box only

4.1 Room Location

_____ right/left/center: the room is situated to the right, left, or center of the unit.

_____ front/rear/center: the room is situated to the back, front or center of the unit.

_____ floor level: the floor level on which the room is located.

Room Code ☐

1 = Bedroom or Any Other Room Used for Sleeping (regardless of type of room)
2 = Dining Room or Dining Area
3 = Second Living Room, Family Room, Den, Playroom, TV Room
4 = Entrance Halls, Corridors, Halls, Staircases
5 = Additional Bathroom (also check presence of sink trap and clogged toilet)
6 = Other:

Item No.	Description	Decision: Yes, Pass	Decision: No, Fail	Decision: Inconclusive	If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date (mm/dd/yyyy) of final approval
4.2	**Electricity/Illumination** If Room Code is a 1, are there at least two working outlets or one working outlet and one working, permanently installed light fixture?	☐	☐	☐		
	If Room Code is not a 1, is there a means of illumination?	☐	☐	☐		
4.3	**Electrical Hazards** Is the room free from electrical hazards?	☐	☐	☐		
4.4	**Security** Are all windows and doors that are accessible from the outside lockable?	☐	☐			
4.5	**Window Condition** If Room Code is a 1, is there at least one window?	☐	☐			
	And, regardless of Room Code, are all windows free of signs of severe deterioration or missing or broken-out panes?	☐	☐			
4.6	**Ceiling Condition** Is the ceiling sound and free from hazardous defects?	☐	☐			
4.7	**Wall Condition** Are the walls sound and free from hazardous defects?	☐	☐			
4.8	**Floor Condition** Is the floor sound and free from hazardous defects?	☐	☐			
4.9	**Lead-Based Paint** Are all painted surfaces free of deteriorated paint?	☐	☐			
	If no, does deteriorated surfaces exceed two square feet and/or more than 10% of a component?	☐	☐		☐ Not Applicable	
4.10	**Smoke Detectors** Is there a working smoke detector on each level?	☐	☐			
	Do the smoke detectors meet the requirements of NFPA 74?	☐	☐			
	In units occupied by the hearing impaired, is there an alarm system connected to the smoke detector?	☐	☐			

Additional Comments: (Give Item Number)(Use an additional page if necessary)

Comments continued on a separate page Yes ☐ No ☐

5. All Secondary Rooms (Rooms not used for living)

5. Secondary Rooms (Rooms not used for living)

If any room in the unit did not meet the requirements for "other room used for living" in Part 4, it is to be considered a "secondary room (not used for living)." Rate all of these rooms together (i.e., a single Part 5 checklist for all secondary rooms in the unit).

Inspection is required of the following two items since hazardous defects under these items could jeopardize the rest of the unit, even if present in rooms not used for living: 5.2 Security, 5.3 Electrical Hazards. Also, be observant of any other potentially hazardous features in these rooms and record under 5.4

5.1 None

If there are no "Secondary Rooms (rooms not used for living)," check "None" and go on to Part 6.

5.2 - 5.4 Explanations of these items is the same as those provided for "Living Room"

Additional Note

In recording "other potentially hazardous features," note (in the space provided) the means of access to the room with the hazard and check the box under "Inconclusive." Discuss the hazard with the HA inspection supervisor to determine "Pass" or "Fail." Include defects like: large holes in floor, walls or ceilings; evidence of structural collapse; windows in condition of severe deterioration; and deteriorated paint surfaces.

6. Building Exterior

6.1 Condition of Foundation

"Unsound or hazardous" means foundations with severe structural defects indicating the potential for structural collapse; or foundations that allow significant entry of ground water (for example, evidenced by flooding of basement).

6.2 Condition of Stairs, Rails, and Porches

"Unsound or hazardous" means: stairs, porches, balconies, or decks with severe structural defects; broken, rotting, or missing steps; absence of a handrail when there are extended lengths of steps (generally four or more consecutive steps); absence of or insecure railings around a porch or balcony which is approximately 30 inches or more above the ground.

6.3 Condition of Roof and Gutters

"Unsound and hazardous" means: The roof has serious defects such as serious buckling or sagging, indicating the potential of structural collapse; large holes or other defects that would result in significant air or water infiltration (in most cases severe exterior defects will be reflected in equally serious surface defects within the unit, e.g., buckling, water damage). The gutters, downspouts and soffits (area under the eaves) show serious decay and have allowed the entry of significant air or water into the interior of the structure. Gutters and downspouts are, however, not required to pass. If the roof is not observable and there is no sign of interior water damage, check "Pass."

6.4 Condition of Exterior Surfaces

See definition above for roof, item 6.3.

6.5 Condition of Chimney

The chimney should not be seriously leaning or showing evidence of significant disintegration (i.e., many missing bricks).

6.6 Lead-Based Paint: Exterior Surfaces

Housing Choice Voucher Units If the unit was built January 1, 1978 or after, no child under age six will occupy or currently occupies, is a 0-BR, elderly or handicapped unit with no children under age six on the lease or expected, has been certified lead-based paint free by a certified lead-based paint inspector (no lead-based paint present or no lead-based paint present after removal of lead), check NA and do not inspect painted surfaces. Visual assessment for deteriorated paint applies to all exterior painted surfaces (building components) associated with the assisted unit including windows, window sills, exterior walls, floors, porches, railings, doors, decks, stairs, play areas, garages, fences or other areas if frequented by children under age six. All deteriorated paint surfaces **more than 20 sq. ft. on exterior surfaces** must be stabilized (corrected) in accordance with all safe work practice requirements. **If the painted surface is less than 20 sq. ft., only stabilization is required. Clearance testing is not required.** Stabilization means removal of deteriorated paint, repair of the substrate, and application of a new protective coating or paint. Lead-Based Paint Owner Certification is required following stabilization activities except for *de minimis level* repairs.

6.7 Manufactured Homes: Tie Downs

Manufactured homes must be placed on a site in a stable manner and be free from hazards such as sliding and wind damage. Manufactured homes must be securely anchored by a tiedown device which distributes and transfers the loads imposed by the unit to appropriate ground anchors so as to resist wind overturning and sliding, unless a variation has been approved by the HUD Field Office.

5. All Secondary Rooms (Rooms not used for living) For each numbered item, check one box only.

Item No.	Description	Decision: Yes, Pass	Decision: No, Fail	Decision: Inconclusive	If Fail, what repairs are necessary? If inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date (mm/dd/yyyy) of final approval
5.1	None ☐ Go to Part 6					
5.2	**Security** Are all windows and doors that are accessible from the outside lockable?	☐	☐			
5.3	**Electrical Hazards** Are all these rooms free from electrical hazards?	☐	☐	☐		
5.4	**Other Potentially Hazardous Features** Are all of these rooms free of any other potentially hazardous features? For each room with an "other potentially hazardous feature," explain the hazard and the means of control of interior access to the room.	☐	☐	☐		
6.0	**Building Exterior**					
6.1	**Condition of Foundation** Is the foundation sound and free from hazards?	☐	☐			
6.2	**Condition of Stairs, Rails, and Porches** Are all the exterior stairs, rails, and porches sound and free from hazards?	☐	☐			
6.3	**Condition of Roof and Gutters** Are the roof, gutters, and downspouts sound and free from hazards?	☐	☐			
6.4	**Condition of Exterior Surfaces** Are exterior surfaces sound and free from hazards?	☐	☐			
6.5	**Condition of Chimney** Is the chimney sound and free from hazards?	☐	☐			
6.6	**Lead-Based Paint: Exterior Surfaces** Are all painted surfaces free of deteriorated paint?	☐	☐			
	If no, does deteriorated surfaces exceed 20 sq. ft. of total exterior surface area?	☐	☐	☐ Not Applicable		
6.7	**Manufactured Homes: Tie Downs** If the unit is a manufactured home, is it properly placed and tied down? If not a manufactured home, check "Not Applicable."	☐	☐			
		☐	☐	☐ Not Applicable		

Additional Comments: (Give Item Number)(Use an additional page if necessary)

Comments continued on a separate page Yes ☐ No ☐

7. Heating and Plumbing

7.1 Adequacy of Heating Equipment

"Adequate heat" means that the heating system is capable of delivering enough heat to assure a healthy environment in the unit (appropriate to the climate). The HA is responsible for defining what constitutes a healthy living environment in the area of the country in which it operates. Local codes (city or state codes) should be instructive in arriving at a reasonable local definition. For example, for heat adequacy, local codes often require that the unit's heating facility be capable of maintaining a given temperature level during a designated time period. Portable electric room heaters or kitchen stoves or ranges with a built-in heat unit are not acceptable as a primary source of heat for units located in areas where climate conditions require regular heating.

"Directly or indirectly to all rooms used for living" means:

"directly" means that each room used for living has a heat source (e.g., working radiator; working hot air register; baseboard heat)

"indirectly" means that, if there is no heat source present in the room, heat can enter the room easily from a heated adjacent room (e.g a dining room may not have a radiator, but would receive heat from the heated living room through a large open archway).

If the heating system in the unit works, but there is some question whether a room without a heat source would receive adequate indirect heat, check "Inconclusive" and verify adequacy from tenant or owner (e.g., unheated bedroom at the end of a long hallway).

How to determine the capability of the heating system: If the unit is occupied, usually the quickest way to determine the capability of the heating system over time is to question the tenant. If the unit is not occupied, or the tenant has not lived in the unit during the months when heat would be needed, check "Inclusive." It will be necessary to question the owner on this point after the inspection has been completed and, if possible, to question other tenants (if it is a multi-unit structure) about the adequacy of heat provided. Under some circumstances, the adequacy of heat can be determined by a simple comparison of the size of the heating system to the area to be heated. For example, a small permanently installed space heater in a living room is probably inadequate for heating anything larger than a relatively small apartment.

7.2 Safety of Heating Equipment

Examples of "unvented fuel burning space heaters" are: portable kerosene units, unvented open flame portable units.

"Other unsafe conditions" include: breakage or damage to heating system such that there is a potential for fire or other threats to safety; improper connection of flues allowing exhaust gases to enter the living area; improper installation of equipment (e.g., proximity of fuel tank to heat source, absence of safety devices); indications of improper use of equipment (e.g., evidence of heavy build-up of soot, creosote, or other substance in the chimney); disintegrating equipment; combustible materials near heat source or flue. SeeInspection Manual for a more detailed discussion of the inspection of safety aspects of the heating systems.

If you are unable to gain access to the primary heating system in the unit check "Inconclusive." Contact the owner or manager for verification of safety of the system. If the system has passed a recent local inspection, check "Pass." This applies especially to units in which heat is provided by a large scale, complex central heating system that serves multiple units (e.g., a boiler in the basement of a large apartment building). In most cases, a large scale heating system for a multi-unit building will be subject to periodic safety inspections by a local public agency. Check with the owner or manager to determine the date and outcome of the last such inspection, or look for an inspection certificate posted on the heating system.

7.3 Ventilation and Adequacy of Cooling

If the tenant is present and has occupied the unit during the summer months, inquire about the adequacy of air flow. If the tenant is not present or has not occupied the unit during the summer months, test a sample of windows to see that they open (see Inspection Manual for instruction).

"Working cooling equipment" includes: central (fan) ventilation system; evaporative cooling system; room or central air conditioning.

Check "Inconclusive" if there are no openable windows and it is impossible, or inappropriate, to test whether a cooling system works. Check with other tenants in the building (in a multi-unit structure) and with the owner or manager for verification of the adequacy of ventilation and cooling.

7.4 Water Heater

"Location presents hazard" means that the gas or oil water heater is located in living areas or closets where safety hazards may exist (e.g., water heater located in very cluttered closet with cloth and paper items stacked against it). Gas water heaters in bedrooms or other living areas must have safety dividers or shields.

Water heaters must have a temperature-pressure relief valve and discharge line (directed toward the floor or outside of the living area) as a safeguard against build up of steam if the water heater malfunctions. If not, they are not properly equipped and shall fail.

To pass, gas or oil fired water heaters must be vented into a properly installed chimney or flue leading outside. Electric water heaters do not require venting.

If it is impossible to view the water heater, check "Inconclusive." Obtain verification of safety of system from owner or manager.

Check "Pass" if the water heater has passed a local inspection. This applies primarily to hot water that is supplied by a large scale complex water heating system that serves multiple units (e.g., water heating system in large apartment building). Check in the same manner described for heating system safety, item 7.2, above.

7.5 Water Supply

If the structure is connected to a city or town water system, check "Pass." If the structure has a private water supply (usually in rural areas) inquire into the nature of the supply (probably from the owner) and whether it is approvable by an appropriate public agency.

General note: If items 7.5, 7.6, or 7,7 are checked "Inconclusive," check with owner or manager for verification of adequacy.

7.6 Plumbing

"Major leaks" means that main water drain and feed pipes (often located in the basement) are seriously leaking. (Leaks present at specific facilities have already been evaluated under the checklist items for "Bathroom" and "Kitchen.")

"Corrosion" (causing serious and persistent levels of rust or contamination in the drinking water) can be determined by observing the color of the drinking water at several taps. Badly corroded pipes will produce noticeably brownish water. If the tenant is currently occupying the unit, he or she should be able to provide information about the persistence of this condition. (Make sure that the "rusty water" is not a temporary condition caused by city or town maintenance of main water lines.) See general note under 7.5.

7.7 Sewer Connection

If the structure is connected to the city or town sewer system, check "Pass." If the structure has its own private disposal system (e.g., septic field), inquire into the nature of the system and determine whether this type of system can meet appropriate health and safety regulations.

The following conditions constitute "evidence of sewer back up": strong sewer gas smell in the basement or outside of unit; numerous clogged or very slow drains; marshy areas outside of unit above septic field. See general note under 7.5.

7. Heating and Plumbing

For each numbered item, check one box only.

Item No.	Description	Decision: Yes, Pass	Decision: No, Fail	Decision: Inconclusive	If Fail, what repairs are necessary? If Inconclusive, give details If Pass with comments, give details.	If Fail or Inconclusive, date (mm/dd/yyyy) of final approval
7.1	**Adequacy of Heating Equipment** Is the heating equipment capable of providing adequate heat (either directly or indirectly) to all rooms used for living?	☐	☐	☐		
7.2	**Safety of Heating Equipment** Is the unit free from unvented fuel burning space heaters or any other types of unsafe heating conditions?	☐	☐	☐		
7.3	**Ventilation and Adequacy of Cooling** Does the unit have adequate ventilation and cooling by means of openable windows or a working cooling system?	☐	☐	☐		
7.4	**Water Heater** Is the water heater located, equipped, and installed in a safe manner?	☐	☐	☐		
7.5	**Water Supply** Is the unit served by an approvable public or private sanitary water supply?	☐	☐	☐		
7.6	**Plumbing** Is plumbing free from major leaks or corrosion that causes serious and persistent levels of rust or contamination of the drinking water?	☐	☐	☐		
7.7	**Sewer Connection** Is plumbing connected to an approvable public or private disposal system, and is it free from sewer back-up?	☐	☐	☐		

Additional Comments: (Give Item Number)

Comments continued on a separate page Yes ☐ No ☐

8. General Health and Safety

8.1 Access to Unit

"Through another unit" means that access to the unit is only possible by means of passage through another dwelling unit.

8.2 Exits

"Acceptable fire exit" means that the building must have an alternative means of exit that meets local or State regulations in case of fire; this could include:

An openable window if the unit is on the first floor or second floor or easily accessible to the ground.

A back door opening on to a porch with a stairway leading to the ground.

Fire escape, fire ladder, or fire stairs.

"Blocked" means that the exit is not useable due to conditions such as debris, storage, door or window nailed shut, broken lock.

Important note: The HA has the final responsibility for deciding whether the type of emergency exit is acceptable, although the tenant should assist in making the decision.

8.3 Evidence of Infestation

"Presence of rats, or severe infestation by mice or vermin" (such as roaches) is evidenced by: rat holes; droppings; rat runs; numerous settings of rat poison. If the unit is occupied, ask the tenant.

8.4 Garbage and Debris

"Heavy accumulation" means large piles of trash and garbage, discarded furniture, and other debris (not temporarily stored awaiting removal) that might harbor rodents. This may occur inside the unit, in common areas, or outside. It usually means a level of accumulation beyond the capacity of an individual to pick up within an hour or two.

8.5 Refuse Disposal

"Adequate covered facilities" includes: trash cans with covers, garbage chutes, "dumpsters" (i.e., large scale refuse boxes with lids); trash bags (if approvable by local public agency). "Approvable by local public agency" means that the local Health and Sanitation Department (city, town or county) approves the type of facility in use. Note: During the period when the HA is setting up its inspection program, it will check with the local health and sanitation department to determine which types of facilities are acceptable and include this in the inspection requirements.

If the unit is vacant and there are no adequate covered facilities present, check "Inconclusive." Contact the owner or manager for verification of facilities provided when the unit is occupied.

8.6 Interior Stairs and Common Halls

"Loose, broken, or missing steps" should fail if they present a serious risk of tripping or falling.

A handrail is required on extended sections of stairs (generally four or more consecutive steps). A railing is required on unprotected heights such as around stairwells.

"Other hazards" would be conditions such as bare electrical wires and tripping hazards.

Housing Choice Voucher Units If the unit was built January 1, 1978, or after, no child under six will occupy or currently occupies it, is a 0-BR, elderly or handicapped unit with no children under six on the lease or expected, has been certified lead-based paint free by a certified lead-based paint inspector (no lead-based paint present or no lead-based paint present after removal of lead-based paint.), check NA and do not inspect painted surfaces.

This requirement applies to all painted surfaces (building components) within the unit. (Do not include tenant belongings). Surfaces to receive a visual assessment for deteriorated paint include walls, floors, ceilings, built in cabinets (sink bases), baseboards, doors, door frames, windows systems including mullions, sills, or frames and any other painted building component within the unit. Deteriorated paint includes any painted surface that is peeling, chipping, chalking, cracking, damaged or otherwise separated from the substrate.

All deteriorated paint surfaces **more than 2 sq. ft. in any one interior room or space, or more than 10% of the total surface area of an interior type of component with a small surface area (i.e., window sills, baseboards, and trim)** must be stabilized (corrected) in accordance with all safe work practice requirements and clearance is required. **If the deteriorated painted surface is less than 2 sq. ft. or less than 10% of the component, only stabilization is required. Clearance testing is not required.** Stabilization means removal of deteriorated paint, repair of the substrate, and application of a new protective coating or paint. Lead-Based Paint Owner Certification is required following stabilization activities, except for *de minimis level* repairs.

8.7 Other Interior Hazards

Examples of other hazards might be: a broken bathroom fixture with a sharp edge in a location where it represents a hazard; a protruding nail in a doorway.

8.8 Elevators

Note: At the time the HA is setting up its inspection program, it will determine local licensing practices for elevators. Inspectors should then be aware of these practices in evaluating this item (e.g., check inspection date). If no elevator check "Not Applicable."

8.9 Interior Air Quality

If the inspector has any questions about whether an existing poor air quality condition should be considered dangerous, he or she should check with the local Health and Safety Department (city, town or county).

8.10 Site and Neighborhood Conditions

Examples of conditions that would "seriously and continuously endanger the health or safety of the residents" are:

other buildings on, or near the property, that pose serious hazards (e.g., dilapidated shed or garage with potential for structural collapse),

evidence of flooding or major drainage problems,

evidence of mud slides or large land settlement or collapse,

proximity to open sewage,

unprotected heights (cliffs, quarries, mines, sandpits),

fire hazards,

abnormal air pollution or smoke which continues throughout the year and is determined to seriously endanger health, and

continuous or excessive vibration of vehicular traffic (if the unit is occupied, ask the tenant).

8.11 Lead-Based Paint: Owner Certification

If the owner is required to correct any lead-based paint hazards at the property including deteriorated paint or other hazards identified by a visual assessor, a certified lead-based paint risk assessor, or certified lead-based paint inspector, the PHA must obtain certification that the work has been done in accordance with all applicable requirements of 24 CFR Part 35. The Lead-Based Paint Owner Certification must be received by the PHA before the execution of the HAP contract or within the time period stated by the PHA in the owner HQS violation notice. Receipt of the completed and signed Lead-Based Paint Owner Certification signifies that all HQS lead-based paint requirements have been met and no re-inspection by the HQS inspector is required.

8. General Health and Safety — For each numbered item, check one box only

Item No.	Description	Decision: Yes, Pass	Decision: No, Fail	Decision: Inconclusive	If Fail, what repairs are necessary? If Inconclusive, give details. If Pass with comments, give details.	If Fail or Inconclusive, date (mm/dd/yyyy) of final approval
8.1	**Access to Unit** Can the unit be entered without having to go through another unit?	☐	☐			
8.2	**Exits** Is there an acceptable fire exit from this building that is not blocked?	☐	☐			
8.3	**Evidence of Infestation** Is the unit free from rats or severe infestation by mice or vermin?	☐	☐			
8.4	**Garbage and Debris** Is the unit free from heavy accumulation of garbage or debris inside and outside?	☐	☐			
8.5	**Refuse Disposal** Are there adequate covered facilities for temporary storage and disposal of food wastes, and are they approvable by a local agency?	☐	☐	☐		
8.6	**Interior Stairs and Common Halls** Are interior stairs and common halls free from hazards to the occupant because of loose, broken, or missing steps on stairways; absent or insecure railings; inadequate lighting; or other hazards?	☐	☐	☐		
8.7	**Other Interior Hazards** Is the interior of the unit free from any other hazard not specifically identified previously?	☐	☐			
8.8	**Elevators** Where local practice requires, do all elevators have a current inspection certificate? If local practice does not require this, are they working and safe?	☐	☐	☐ Not Applicable		
8.9	**Interior Air Quality** Is the unit free from abnormally high levels of air pollution from vehicular exhaust, sewer gas, fuel gas, dust, or other pollutants?	☐	☐			
8.10	**Site and Neighborhood Conditions** Are the site and immediate neighborhood free from conditions which would seriously and continuously endanger the health or safety of the residents?	☐	☐			
8.11	**Lead-Based Paint: Owner Certification** If the owner of the unit is required to correct any deteriorated paint or lead-based paint hazards at the property, has the Lead-Based Paint Owner's Certification been completed, and received by the PHA? If the owner was not required to correct any deteriorated paint or lead-based paint hazards, check NA.	☐	☐	☐ Not Applicable		

Additional Comments: (Give Item Number)

Comments continued on a separate page Yes ☐ No ☐

Special Amenities (Optional)

This Section is for optional use of the HA. It is designed to collect additional information about other positive features of the unit that may be present. Although the features listed below are not included in the Housing Quality Standards, the tenant and HA may wish to take them into consideration in decisions about renting the unit and the reasonableness of the rent.

Check/list any positive features found in relation to the unit.

1. Living Room

- ☐ High quality floors or wall coverings
- ☐ Working fireplace or stove
- ☐ Balcony, patio, deck, porch
- ☐ Special windows or doors
- ☐ Exceptional size relative to needs of family
- ☐ Other: (Specify)

2. Kitchen

- ☐ Dishwasher
- ☐ Separate freezer
- ☐ Garbage disposal
- ☐ Eating counter/breakfast nook
- ☐ Pantry or abundant shelving or cabinets
- ☐ Double oven/self cleaning oven, microwave
- ☐ Double sink
- ☐ High quality cabinets
- ☐ Abundant counter-top space
- ☐ Modern appliance(s)
- ☐ Exceptional size relative to needs of family
- ☐ Other: (Specify)

3. Other Rooms Used for Living

- ☐ High quality floors or wall coverings
- ☐ Working fireplace or stove
- ☐ Balcony, patio, deck, porch
- ☐ Special windows or doors
- ☐ Exceptional size relative to needs of family
- ☐ Other: (Specify)

4. Bath

- ☐ Special feature shower head
- ☐ Built-in heat lamp
- ☐ Large mirrors
- ☐ Glass door on shower/tub
- ☐ Separate dressing room
- ☐ Double sink or special lavatory
- ☐ Exceptional size relative to needs of family
- ☐ Other: (Specify)

5. Overall Characteristics

- ☐ Storm windows and doors
- ☐ Other forms of weatherization (e.g., insulation, weather stripping)
- ☐ Screen doors or windows
- ☐ Good upkeep of grounds (i.e., site cleanliness, landscaping, condition of lawn)
- ☐ Garage or parking facilities
- ☐ Driveway
- ☐ Large yard
- ☐ Good maintenance of building exterior
- ☐ Other: (Specify)

6. Disabled Accessibility

Unit is accessible to a particular disability. ☐ Yes ☐ No

Disability _____

D. Questions to ask the Tenant (Optional)

1. Does the owner make repairs when asked? Yes ☐ No ☐
2. How many people live there? _____
3. How much money do you pay to the owner/agent for rent? $ _____
4. Do you pay for anything else? (specify) _____
5. Who owns the range and refrigerator? (insert O = Owner or T = Tenant) Range _____ Refrigerator _____ Microwave _____
6. Is there anything else you want to tell us? (specify) _____

Inspection Summary (Optional)

Provide a summary description of each item which resulted in a rating of **Fail** or **Pass with Comments.**

Tenant ID No.	Inspector	Date of Inspection	Address of Inspected Unit

Type of Inspection ☐ Initial ☐ Special ☐ Reinspection

Item Number	Reason for "Fail" or "Pass with Comments" Rating

Comments continued on a separate page Yes ☐ No ☐

Voucher
Housing Choice Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB No. 2577-0169
(exp. 9/30/2002)

Public Reporting Burden for this collection of information is estimated to average .05 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This collection of information is authorized under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). The information is used to authorize a family to look for an eligible unit and specifies the size of the unit. The information also sets forth the family's obligations under the Housing Choice Voucher Program.

Please read **entire** document before completing form. Fill in all blanks below. Type or print clearly.	Voucher Number
1. **Insert unit size** in number of bedrooms. (This is the number of bedrooms for which the Family qualifies, and is used in determining the amount of assistance to be paid on behalf of the Family to the owner.)	1. Unit Size
2. **Date Voucher Issued (mm/dd/yyyy)** Insert actual date the Voucher is issued to the Family.	2. Issue Date (mm/dd/yyyy)
3. **Date Voucher Expires (mm/dd/yyyy)** Insert date sixty days after date Voucher is issued. (See Section 6 of this form.)	3. Expiration Date (mm/dd/yyyy)
4. **Date Extension Expires** (if applicable)(mm/dd/yyyy) (See Section 6 of this form)	4. Date Extension Expires (mm/dd/yyyy)

5. Name of Family Representative	6. Signature of Family Representative	Date Signed (mm/dd/yyyy)

7. Name of Public Housing Agency (PHA)

8. Name and Title of PHA Official	9. Signature of PHA Official	Date Signed (mm/dd/yyyy)

1. Housing Choice Voucher Program

A. The public housing agency (PHA) has determined that the above named family (item 5) is eligible to participate in the housing choice voucher program. Under this program, the family chooses a decent, safe and sanitary unit to live in. If the owner agrees to lease the unit to the family under the housing choice voucher program, and if the PHA approves the unit, the PHA will enter into a housing assistance payments (HAP) contract with the owner to make monthly payments to the owner to help the family pay the rent.

B. The PHA determines the amount of the monthly housing assistance payment to be paid to the owner. Generally, the monthly housing assistance payment by the PHA is the difference between the applicable payment standard and 30 percent of monthly adjusted family income. In determining the maximum initial housing assistance payment for the family, the PHA will use the payment standard in effect on the date the tenancy is approved by the PHA. The family may choose to rent a unit for more than the payment standard, but this choice does not change the amount of the PHA's assistance payment. The actual amount of the PHA's assistance payment will be determined using the gross rent for the unit selected by the family.

2. Voucher

A. When issuing this voucher the PHA expects that if the family finds an approvable unit, the PHA will have the money available to enter into a HAP contract with the owner. However, the PHA is under no obligation to the family, to any owner, or to any other person, to approve a tenancy. The PHA does not have any liability to any party by the issuance of this voucher.

B. The voucher does not give the family any right to participate in the PHA's housing choice voucher program. The family becomes a participant in the PHA's housing choice voucher program when the HAP contract between the PHA and the owner takes effect.

C. During the initial or any extended term of this voucher, the PHA may require the family to report progress in leasing a unit at such intervals and times as determined by the PHA.

3. PHA Approval or Disapproval of Unit or Lease

A. When the family finds a suitable unit where the owner is willing to participate in the program, the family must give the PHA the request for tenancy approval (on the form supplied by the PHA), signed by the owner and the family, and a copy of the lease, including the HUD-prescribed tenancy addendum. **Note: Both documents must be given to the PHA no later than the expiration date stated in item 3 or 4 on top of page one of this voucher.**

B. The family must submit these documents in the manner that is required by the PHA. PHA policy may prohibit the family from submitting more than one request for tenancy approval at a time.

C. The lease must include, word-for-word, all provisions of the tenancy addendum required by HUD and supplied by the PHA. This is done by adding the HUD tenancy addendum to the lease used by the owner. If there is a difference between any provisions of the HUD tenancy addendum and any provisions of the owner's lease, the provisions of the HUD tenancy addendum shall control.

D. After receiving the request for tenancy approval and a copy of the lease, the PHA will inspect the unit. The PHA may not give approval for the family to lease the unit or execute the HAP contract until the PHA has determined that all the following program requirements are met: the unit is eligible; the unit has been inspected by the PHA and passes the housing quality standards (HQS); the rent is reasonable; and the landlord and tenant have executed the lease including the HUD-prescribed tenancy addendum.

E. If the PHA approves the unit, the PHA will notify the family and the owner, and will furnish two copies of the HAP contract to the owner.

1. The owner and the family must execute the lease.
2. The owner must sign both copies of the HAP contract and must furnish to the PHA a copy of the executed lease and both copies of the executed HAP contract.
3. The PHA will execute the HAP contract and return an executed copy to the owner.

F. If the PHA determines that the unit or lease cannot be approved for any reason, the PHA will notify the owner and the family that:

1. The proposed unit or lease is disapproved for specified reasons, and
2. If the conditions requiring disapproval are remedied to the satisfaction of the PHA on or before the date specified by the PHA, the unit or lease will be approved.

4. Obligations of the Family

A. When the family's unit is approved and the HAP contract is executed, the family must follow the rules listed below in order to continue participating in the housing choice voucher program.

B. The family must:

1. Supply any information that the PHA or HUD determines to be necessary including evidence of citizenship or eligible immigration status, and information for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
2. Disclose and verify social security numbers and sign and submit consent forms for obtaining information.
3. Supply any information requested by the PHA to verify that the family is living in the unit or information related to family absence from the unit.
4. Promptly notify the PHA in writing when the family is away from the unit for an extended period of time in accordance with PHA policies.
5. Allow the PHA to inspect the unit at reasonable times and after reasonable notice.
6. Notify the PHA and the owner in writing before moving out of the unit or terminating the lease.
7. Use the assisted unit for residence by the family. The unit must be the family's only residence.
8. Promptly notify the PHA in writing of the birth, adoption, or court-awarded custody of a child.
9. Request PHA written approval to add any other family member as an occupant of the unit.
10. Promptly notify the PHA in writing if any family member no longer lives in the unit.
11. Give the PHA a copy of any owner eviction notice.
12. Pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease.

C. Any information the family supplies must be true and complete.

D. The family (including each family member) must not:

1. Own or have any interest in the unit (other than in a cooperative, or the owner of a manufactured home leasing a manufactured home space).
2. Commit any serious or repeated violation of the lease.
3. Commit fraud, bribery or any other corrupt or criminal act in connection with the program.
4. Engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.
5. Sublease or let the unit or assign the lease or transfer the unit.
6. Receive housing choice voucher program housing assistance while receiving another housing subsidy, for the same unit or a different unit under any other Federal, State or local housing assistance program.
7. Damage the unit or premises (other than damage from ordinary wear and tear) or permit any guest to damage the unit or premises.
8. Receive housing choice voucher program housing assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.
9. Engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises.

5. Illegal Discrimination

If the family has reason to believe that, in its search for suitable housing, it has been discriminated against on the basis of age, race, color, religion, sex, disability, national origin, or familial status, the family may file a housing discrimination complaint with any HUD Field Office in person, by mail, or by telephone. The PHA will give the family information on how to fill out and file a complaint.

6. Expiration and Extension of Voucher

The voucher will expire on the date stated in item 3 on the top of page one of this voucher unless the family requests an extension in writing and the PHA grants a written extension of the voucher in which case the voucher will expire on the date stated in item 4. At its discretion, the PHA may grant a family's request for one or more extensions of the initial term.

Family Portability Information
Section 8 Tenant-Based Assistance
Rental Certificate/Rental Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp. 9/30/2002)

Public reporting burden for this collection of information is estimated to average .50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This collection of information is authorized under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). The information is used to standardize the information submitted to the receiving Housing Authority (HA) by the initial HA. In addition, the information is used for monthly billing by the receiving HA.

Sensitive Information. The information collected on this form is considered sensitive and is protected by the Privacy Act. The Privacy Act requires that these records be maintained with appropriate administrative, technical, and physical safeguards to ensure their security and confidentiality. In addition, these records should be protected against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom the information is maintained.

Part I Initial HA Information and Certification

Instructions: This portion of the form is to be completed by the **initial HA** for a family that is moving out of the **initial HA's** jurisdiction under the portability procedures.

1. Head of Household Name	2. Head of Household Social Security Number

3. Form of Assistance	4. Certificate/Voucher Number	5. Bedroom Size	6. Issuance Date (mm/dd/yyyy)	7. Expiration Date (mm/dd/yyyy)	8. Date of Last Income Examination (mm/dd/yyyy)
☐ Certificate ☐ Voucher					

9. Annual income if new admission (not currently a Section 8 certificate or voucher participant) $ _____

10. Date by which initial billing must be received (six months from date initial HA issued certificate/voucher)(mm/dd/yyyy) _____

11. 80% of initial HA ongoing administrative fee (calculated using the monthly per unit fee amount for Column A from the *Federal Register* Annual Factors for determining HA administrative fees) $ _____

Attachments:

a. A copy of the certificate/voucher issued by the initial HA.

b. **A copy of the current form HUD-50058 and copies of the income verification for the current form HUD-50058.** (Note: This is the latest form HUD-50058 completed for either an admission, an annual reexamination, or an interim redetermination. It is not the form HUD-50058 that the initial HA completes to report the portability move-out.)

Certification Statement:

The family ☐ is a current program participant or ☐ is not a current program participant but is income-eligible in the receiving HA's jurisdiction (see line 9 above), and the certificate or voucher was issued in accordance with the program regulations. Please issue the family a receiving HA voucher or certificate that does not expire before the expiration date indicated in Item 7 (the expiration date on the initial HA's certificate/voucher) for the appropriate bedroom size (based on the receiving HA's policies). I certify that the information contained on Part I of this form and the attached documents provided by my agency is true and correct. My agency will promptly reimburse amounts paid on behalf of the above family in accordance with program rules and regulations.

Name of Certifying HA Official _____ Type full Name and Address of Initial HA below

Signature _____

Initial HA Contact Name _____

Phone Number _____

Form Submission Date (mm/dd/yyyy) _____

Part II-A Receiving HA Information and Certification

Instructions: The **receiving HA** must always complete Part II-A.

1. Head of Household Name	2. Head of Household Social Security Number

3. Certificate/Voucher Bedroom Size (per receiving HA's policies)	4. HAP Contract Number (if applicable)

Certification Statement:

I certify that the information contained on Part II of this form and, if applicable, the attached form HUD-50058 is true and correct and that my agency will promptly remit any overpayment to your agency.

Name of Certifying HA Official _____ Type full Name and Address of Receiving HA below

Signature _____

Receiving HA Contact Name _____

Phone Number _____

Form Submission Date (mm/dd/yyyy) _____

Part II-B Family Status, Initial HAP Contract Execution and Billing Changes After HAP Contract Execution

Instructions: Part II-B must be completed and mailed by the receiving HA within 10 working days from the date a HAP contract is executed on behalf of the family, or from the effective date of the change in the family status or billing amount. The receiving HA does not submit the billing form each month unless the monthly amount due changes or both HAs agree to a different billing schedule that requires a more frequent billing submittal.

Check each statement below that applies:

☐ 1. The above family has failed to submit a request for lease approval for an eligible unit within the allotted time period. You may therefore reissue your voucher or certificate to another family and, if applicable, modify any records concerning local preference usage.
Do not complete remainder of form.

☐ 2. We have executed a HAP contract on behalf of the family and are absorbing the family into our own program effective _____(mm/dd/yyyy). You may reissue your certificate or voucher to another family. Do not complete remainder of form.

☐ 3. We executed a HAP contract effective _____ (mm/dd/yyyy) on behalf of the family and are billing your agency. **A copy of the new form HUD-50058 is attached to this form. No other documentation is required. (Receiving HAs are required to complete and submit a form HUD-50058 for families moving into their jurisdiction under portability. The receiving HA may elect to conduct a special recertification of the family to conform the dates of the unit inspection and recertification, but is not required to do so by HUD in order to complete the form HUD-50058 for a portability move-in.)**
Go to line 9 below.

☐ 4. The HAP amount has changed effective _____ (mm/dd/yyyy) for the family because of: (Check all applicable items. **A current copy of the form HUD-50058 must be attached to this form. No other documentation is required.**)
Go to line 9 below.

____ annual recertification
____ interim/special recertification
____ rent increase to owner (certificate program only)
____ change in payment standard (voucher program only)
____ the family moved to another unit in the receiving HA jurisdiction.
____ other:(specify)

Comments continued on separate page Yes ☐ No ☐

☐ 5. The HAP payments: (Check one)

____ have been temporarily abated effective _____ (mm/dd/yyyy).

Please suspend the HAP to owner portion from your payment effective _____ (mm/dd/yyyy) until further notice.

____ that were abated beginning _____ (mm/dd/yyyy) have been resumed effective _____ (mm/dd/yyyy).

☐ 6. We are terminating the family from the program and will no longer be billing your agency.

Effective date of termination:_____ (mm/dd/yyyy)

Reason for termination:(specify)

☐ 7. The HAP contract has been terminated effective _____ (mm/dd/yyyy) and no new HAP contract has yet been executed on behalf of the family.

The family:

____ will not be remaining in our jurisdiction and has been referred to your agency.

____ intends to remain in our jurisdiction. The family's voucher/certificate expires _____ (mm/dd/yyyy).

☐ 8. We have paid a damage/vacancy loss claim for the family.

☐ 9. Billing Information

Regular Monthly Billing Amount

a. Monthly HAP to owner (line 21g or line 22n of form HUD-50058) _____

b. 80% of initial HA ongoing admin fee (line 11 of Part I of this form) _____

c. Monthly utility reimbursement amount (line 21f, if checked, or line 22p of form HUD-50058) _____

d. Total regular monthly billing amount (sum of lines a, b, and c) _____

Additional Amount Due, If Applicable

e. Prorated HAP to owner from _____ to _____ _____

f. Hard-to-house fee _____

g. Damage/vacancy loss claim paid _____

h. Other (explain) _____

i. Total additional amount (sum of lines e, f, g and h) _____

Billing Amount

j. Payment Due This Billing Submission (sum of lines d and i.) _____

(After this submission, billing amount is amount recorded on line d, unless otherwise notified by the receiving HA.)

Allowances for Tenant-Furnished Utilities and Other Services

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169 (exp 9/30/2002)

See Public Reporting Statement and Instructions on back

Locality | Unit Type | Date (mm/dd/yyyy)

Utility or Service		Monthly Dollar Allowances 0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
Heating	a. Natural Gas						
	b. Bottle Gas						
	c. Oil / Electric						
	d. Coal / Other						
Cooking	a. Natural Gas						
	b. Bottle Gas						
	c. Oil / Electric						
	d. Coal / Other						
Other Electric							
Air Conditioning							
Water Heating	a. Natural Gas						
	b. Bottle Gas						
	c. Oil / Electric						
	d. Coal / Other						
Water							
Sewer							
Trash Collection							
Range/Microwave							
Refrigerator							
Other -- specify							

Actual Family Allowances To be used by the family to compute allowance. Complete below for the actual unit rented.

Name of Family

Address of Unit

Number of Bedrooms

Utility or Service	per month cost
Heating	$
Cooking	
Other Electric	
Air Conditioning	
Water Heating	
Water	
Sewer	
Trash Collection	
Range/Microwave	
Refrigerator	
Other	
Total	$

Previous editions are obsolete

form HUD-52667 (12/97) ref. Handbook 7420.8

Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This collection of information is authorized under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). The information is used to establish a utility allowance schedule for all utilities and other services used to determine the family's monthly housing assistance payment and rental payment. HUD will use this information to ensure that the costs are reasonable.

Instructions for Form HUD-52667, Allowances For Tenant Furnished Utilities and Other Services

Form HUD-52667 shall be completed by a HA for each different type of unit as explained below. Each form shall be reproduced by the HA and given to families with their Certificate or Voucher or subsequently in connection with any revisions. The form will provide the family, while shopping for a unit, with the amount of the allowances for various types of units for rent. With these allowances the family can compare gross rents and fair market rents. Form HUD-52667 shall also be used by the HA to record the actual allowance for each family.

Level of Allowance: Utilities and other services are included in gross rent, and when they are not furnished by the owner, an allowance must be provided to the family. Allowances must be adequate for all utilities and services not provided by the owner that were included in the fair market rent. The utility allowance schedule is based **on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality**. In developing the schedule, the HA must use normal patterns of consumption for the community as a whole and current utility rates. Allowances must not be based on energy consumption or costs above average or below average income families. The objective shall be to establish allowances based on actual rates and average consumption estimates and should allow the majority of participating families an allowance that is adequate to cover expected average utility costs and other services over a 12-month period.

Determining Allowances:

a. In general, HAs shall use to the extent possible local sources of information on the cost of utilities and services. The following local sources should be contacted:

(1) Electric utility suppliers.

(2) Natural gas utility suppliers.

(3) Water and sewer suppliers.

(4) Fuel oil and bottle gas suppliers.

(5) Public service commissions.

(6) Real estate and property management firms.

(7) State and local agencies.

(8) Appliance sales or leasing firms.

b. Recently adopted utility allowance schedules from neighboring HAs with essentially the same type of housing stock should also be examined. In most cases fuel or utilities rates normally will not vary appreciably in neighboring communities and where data is not available in small communities allowances for larger nearby communities may be used. Where local sources are inadequate, the HA may consult the national average consumption data provided in Table 1 and make appropriate adjustments to reflect local conditions.

c. The HA must establish separate heating and cooling allowances for the various types of existing housing in the locality with the same number of bedrooms. Depending on local housing stock, utility allowances must be established for the following unit types: detached houses, duplexes, row or townhouses, garden and high rise apartments and manufactured homes. In addition to establishing different heating and cooling allowances for various types of structures, attention should be given to different allowances for water depending on whether families will have responsibilities for lawn care.

d. The data to be solicited from the local sources shown above should be as close as possible in form and detail to the format of form HUD-52667. If possible, all consumption data should be obtained for each unit size and type. If data is available only for an average unit size (2.5 bedrooms), multiply the utilities costs for the average unit by the following factors:

Size of Unit	Factor
0-BR	0.5
1-BR	0.7
2-BR	0.9
3-BR	1.1
4-BR	1.4
5-BR	1.6

Example: Natural gas heating cost for average sized unit is $18.00 per month. The allowance for a 4-bedroom unit will be 1.4 X $18.00 = $25.00 (rounded to nearest dollar).

Air Conditioning: Allowances for air conditioning must be established only for communities where the majority of units in the market provide centrally air conditioned units or appropriate wiring for tenant installed A/C units.

Ranges and Refrigerators: Allowances for ranges and refrigerators must be based on the lesser of the cost of leasing or installment purchasing of suitable equipment.

Utility Rate Schedules: The cost of gas and electricity varies according to amounts consumed as shown on the appropriate rate schedules. It is not possible to compute exactly the cost of electricity for any given function without knowing the total electrical usage for a unit. However, because neither the HA or the families know beforehand just what will be the combination of utilities for any unit rented, it will be necessary to approximate the allowances for each function (e.g., heating cooking, etc.) as follows:

For electricity the rates used for lighting, refrigeration and appliances (Table 1, Item I), should be from the top of the rate schedule or the higher unit costs. Allowances for electric cooking, water heating and space heating should be computed from the middle or lower steps in the rate schedules.

Similarly, allowances for gas used for water heating and cooking should be computed using rates from the top of the rate schedule and for heating from the lower steps.

Supporting Documentation: The HA shall maintain with the form HUD-52667 copies of all supporting documentation used in determining the allowances and any revisions. For instance, letters from local utility companies shall be attached plus any worksheets used by the HA in computing allowances. The material should contain, if possible, the quantities of the utilities that are the basis of the dollar allowances (e.g., kilowatt hours per unit. A copy of the utility allowance schedule must be sent to the HUD Field Office.

Table 1

Average Allowances For Tenant Purchased Utilities

Note: The consumption amounts listed below are inexact averages and must be used with caution when establishing allowances for actual projects.

		Monthly Consumption
	Units	2 1/2-BR (a)
I. Electricity		
a. Lighting and Regrigeration	KWH	250-400 (b)
b. Cooking	KWH	110
c. Domestic Hot Water	KWH	340 (c)
d. Space Heating	KWH	680 (d)
e. Air Conditioning	KWH	180 (e)
II. Natural Gas And Bottle Gas		
a. Cooking	Therms	8
b. Domestic Hot Water	Therms	21 (c)
c. Space Heating	Therms	48 (d)
III. Fuel Oil		
a. Domestic Hot Water	Gals	17 (c)
b. Space Heating	Gals	40 (d)
IV. Water		
a. Domestic Use	Gals	8,000
b. Lawn	Gals	2,000

(a) Estimated average consumption for a hypothetical 2 1/2 bedroom dwelling unit. All consumptions listed must be adjusted for the size of the dwelling unit. Factors shown under Determining Allowances, subparagraph d, may be used for making the adjustment.

(b) Consumptions will vary considerably depending on electrical appliances used. Upper limit should be sufficient to provide 85 kilowatt hours for a clothes dryer and 50 kilowatt hours for a frost free refrigerator.

(c) The temperature of local water supply varies by geographic area and will have considerable impact on energy used to heat domestic water. This estimate is for North Central geographic areas where the average city water temperature is approximately 50° F.

(d) Consumptions are for housing insulated for the heating system installed. Normally a building designed for electric space heating is better insulated than one designed for gas or oil space heating equipment. Climatic conditions assumed to be 4,000 heating degree days and 0° F outside design temperature. Consumption must be adjusted for the normal heating degree days and the outside design temperature in the given geographic area.

(e) Consumption estimated for 1,000 degree days cooling. Actual consumption will depend on many variables.

Note: The consumption amounts listed above are inexact averages and must be used with caution when establishing allowances for actual projects.

Supporting Data for Annual Contributions Estimates

Section 8 Housing Assistance Payments Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169 (Exp. 9/30/2002)

Public reporting burden for this collection of information is estimated to average 1.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless that collecton displays a valid OMB control number. Authority for this collection of information is the Housing and Community Development Act of 1987. Housing Agencies (HAs) required to maintain financial reports in accordance with accepted accounting standards too permit timely and effective audits. The financial records identify the amount of annual contributions that are received and disbursed by HAs. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Public Housing Agency (Name and Address)

2. Project No.

3. Submission ☐ Original ☐ Revision No.

4. No. of Dwelling Units | 5. No. of Unit Months

Part I Estimate of Annual Housing Assistance Payments Required

	Bedroom Size of Dwelling Units	Number of Dwelling Units	Monthly Gross Rent/Payment Standard	Amount Payable by Family Toward Gross Rent	Monthly Housing Assistance Payments	Unit Months Under Lease	Annual Housing Assistance Payments
6.	0 BR						
7.	1 BR						
8.	2 BR						
9.	3 BR						
10.	4 BR						
11.							
12.							
13.							
14.							
15.	Total						$

Part II Calculation of Estimated Ongoing Administrative Fee

		Unit Months (a)	HUD Published 2-BR Fair Market Rent x (b)	Product of Columns (a) x (b) = (c)	Allowable Percent x (d)	Administrative Fee = (e)
16.	0 BR					
17.	1 BR					
18.	Total					

Part III Calculation of Estimated Hard- to- House (Existing Housing Certificates and Housing Vouchers Only)

		Estimated Number of Families (a)	Fee Per Family x (b)	Total Hard-to-House Fee = (c)
19.				

Part IV Calculation of Estimated Preliminery Expense

		Requested Amount	
		Requested Amount	HUD Modifications
Administrative Expenses	20. Administrative Salaries		
	21. Employee Benefit Contributions		
	22. Legal Expense		
	23. Travel Expense		
	24. Sundry		
	25. Office Rent		
	26. Accounting and Auditing Fees		
	27. Total Administrative Expenses		
Non-Expendable Equipment	28. Office Equipment		
Expenses	29. Office Furnishings		
	30. Automotive		
	31. Other		
	32. Total Non-Expendable Equipment Expenses		
General Expenses	33. Maintenance and Operation (Non-Expend. Equip. Only)		
	34. Insurance		
	35. Sundry		
	36. Total General Expense		
Total Preliminary Expenses	37. Sum of Lines 27, 32, and 36		

Submit three copies
Previous editions are obsolete

form HUD-52672 (2/85)
ref Handbook 7420.7

Estimate of Total Required Annual Contributions

Section 8 Housing Assistance Payments Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169 (Exp.9/30/2002)

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1. Public Housing Agency (Name and Address)

2. Project No.

3. Submission ☐ Original ☐ Revision No.

4. Annual Contributions Contract No.	5. HUD Field Office	6. HUD Regional Office	7. No. Dwelling Units	8. No. Units Months

9. Housing Program Type (Mark One)
☐ (a) New Construction ☐ (b) Substantial Rehabilitation ☐ (c) Moderate Rehabilitation ☐ (d) Existing Housing Certificates ☐ (e) Housing Vouchers

10. PHA Fiscal Year Ending Date (Mark one and complete year)
☐ (a) March 31, ☐ (b) June 30, ☐ (c) September 30, ☐ (d) December 31, YYYY

I. Maximum Annual Contributions	PHA Estimate (Housing Vouchers Only)			HUD Approved (Housing Vouchers Only)		
	Housing Payments	PHA Fee	PHA Estimate Total	Housing Payments	PHA Fee	HUD Approved Total
11. Maximum Annual Contributions Commitment						
12. Prorata Maximum Annual Contributions Applicable to a Period in Excess of 12 Months						
13. Maximum Annual Contributions for Fiscal Year (Line 11 plus Line 12)						
14. Project Account-Estimated or Actual Balance at Beginning of Requested Fiscal Year						
15. Total Annual Contributions Available—Estimated or Actual (Line 13 plus Line 14)						

Previous editions are obsolete
Submit an Original and 2 copies

form HUD-52673 (2/85)
ref Handbook 7420.7

II. Maximum Annual Contributions	PHA Estimate (Housing Vouchers Only) Housing Payments	PHA Fee	PHA Estimate Total	HUD Approved (Housing Vouchers Only) Housing Payments	PHA Fee	HUD Approved Total
16. Estimated Annual Housing Assistance Payments (form HUD-52672, Line 15)						
17. Estimated Ongoing Administrative Fee (form HUD-52672, Line 18)						
18. Estimated Hard-to-House Fee (form HUD-52672, Line 19)						
19. Estimated Independent Public Accountant Audit Costs						
20. Estimated Preliminary Administrative and General Expense (form HUD-52672, Lines 27 and 36)						
21. Carryover of Preliminary Administrative and General Expense not Expended in the Previous FY Ending ( )						
22. Estimated Non-Expendable Equipment Expense (form HUD-52672, Line 32)						
23. Carryover of Non-Expendable Equipment Expense not Expended in the Previous FY Ending ( )						
24. Total Annual Contributions Required—Requested Fiscal Year (Lines 16 through 23)						
25. Deficit at End of Current Fiscal Year—Estimated or Actual						
26. Total Annual Contributions Required (Line 24 plus Line 25)						
27. Estimated Project Account Balance at End of Requested Fiscal Year (Line 15 minus Line 26)						
28. Provision for Project Account Requested Fiscal Year Increase (decrease) (Line 27 minus Line 14)						
III. Annual Contributions Approved						
29. Total Annual Contributions Approved/Requested Fiscal Year (Line 26 plus increase, if any, on Line 28)						
30. Source of Total Contributions Approved/Requested Fiscal Year: (a) Requested Fiscal Year Maximum Annual Contributions Commitment (Line 13 or Line 29, whichever is smaller)						
(b) Project Account (Line 29 minus Line 30(a))						

Name of PHA Approving Official		Name of Approving HUD Field Office Official	
Signature		Signature	
Title	Date (mm/dd/yyyy)	Title	Date (mm/dd/yyyy)

Previous editions are obsolete
Submit an Original and 2 copies

form HUD-52673 (2/85)
ref Handbook 7420.7

Voucher for Payment of Annual Contributions and Operating Statement

Housing Assistance Payments Program

See Instructions in appropriate program and books

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(Exp. 9/30/2002)

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1. Public Housing Agency (HA) (name and address)	2. Project Number	3. Annual Contributions Contract Number
	4. Housing Program Type ☐ Rental Certificate ☐ Rental Voucher ☐ Moderate Rehab. ☐ Section 23	
	5. HA Fiscal Year Ending Date (mark one and complete the year as YYYY) ☐ March 31, ____ ☐ June 30, ____ ☐ Sept. 30, ____ ☐ December 31, ____	

6. Number of Unit Months under Lease by Bedroom Size: 1BR	2BR	3BR	4BR	5BR	Other

7. Average Tenant Contribution	8. Portability Accounts Payable _____ Accounts Receivable _____

Request is hereby made for the payment of annual contributions pursuant to the terms and conditions of the above numbered Annual Contributions Contract for the project and fiscal year shown above.

Part I. Request for Payment	Approved Budget Estimates (a)	HA Actuals Total (b)	HUD Approved Total (c)
Maximum Annual Contributions Available			
9. Maximum Annual Contributions Commitment (per ACC)			
10. Prorata Maximum Annual Contributions applicable to a Period of less than Twelve Months			
11. Contingency Reserve, ACC Program Reserve			
12. Total Annual Contributions Available (sum of lines 9, 10, and 11)			
Annual Contributions Required			
13. 4715 Housing Assistance Payments			
14. Security and Utility Deposit Fund (Section 23 Only)			
15. Ongoing Administrative Fees Earned			
16. Hard-to-House Fees Earned (Rental Certificates, Rental Vouchers, and Moderate Rehabilitation units converted to Rental Certificates)			
17. Actual Independent Public Accountant Audit Costs			
18. Total Preliminary Fees Earned			
19. Total Funds Required (sum of lines 13 thru 18)			
20. Deficit at End of Preceding Fiscal Year			
21. Program Receipts Other than Annual Contributions (3610, 3690, 7530, and Section 23 Security and Utility Deposits Repaid)			
22. Ongoing Fee Reduction			
23. Total Annual Contributions Required (line 19 plus line 20 minus line 21 minus line 22)			

Previous editions are obsolete
Replaces form HUD-52681-A

form HUD-52681 (02/2002)
ref Handbook 7420.8

	Approved Budget Estimates (a)	HA Actuals Total (b)	HUD Approved Total (c)
Balance of Annual Contributions Available			
24. ACC Program Reserve Balance (Amount by which line 12 exceeds line 23)			
25. Deficit (amount by which line 23 exceeds line 12)			
26. Provision for ACC Program Reserve a) Increase (Amount by which line 24 exceeds line 11)			
b) Decrease (amount by which line 11 exceeds line 24)			
Year End Settlement			
27. Annual Contributions due for Fiscal Year (line 23 minus line 25)			
28. Total Partial Payments Approved by HUD for Fiscal Year			
29. Underpayment due HA (amount by which line 27 exceeds line 28)			
30. Overpayment due HUD (amount by which line 28 exceeds line 27)			
Part II. Operating Receipts			
31. 3300 Interest Earned on Operating Reserve			
32. 3300P Administrative Fee Income - Portable Certificates and Vouchers			
33. 3610 Interest Earned on General Fund Investment			
34. 3690 Other Income			
35. 7530 Receipts from Non-Expendable Equipment not Replaced			
36. Total Annual Contributions Required (line 23)			
37. Total Receipts (sum of lines 31 thru 36)			
Part III. Operating Expenditures			
38. 4715 Housing Assistance Payments			
39. Independent Public Accountant Costs (Section 8 only)			
40. Total Ongoing Administrative Expenses			
41. Total Preliminary Fees Earned			
42. Total Expenditures (sum of lines 38 thru 41)			
Prior Year Adjustments			
43. Affecting Residual Receipts (or Deficit) for Debit (Credit)			
44. Total Operating Expenses (line 42 plus line 43)			
45. Net Income (or Deficit) before Provision for Operating Reserve (line 37 minus line 44)			

	Approved Budget Estimates (a)	HA Actuals Total (b)	HUD Approved Total (c)
Part IV. Analysis of Operating Reserve			
46. Operating Reserve - Balance at Beginning of FY Covered by this Statement			
47. Cash Deposits to (or Withdrawals from) Operating Reserve During Fiscal Year			
48. Net Income (or Deficit) before Provision for Operating Reserve (line 45)			
Provision for Operating Reserve (Acct. 7016/Sec. 8; Acct. 7016.1/Rental Vouchers)			
49. Addition (The amount of income, if any, on line 48)			
50. Deduction (The amount of deficit, if any, on line 48)			
51. Operating Reserve - Balance at End of Fiscal Year Covered by this Statement (line 46 plus or minus line 47 plus line 49 or minus line 50)			

I Certify that:

(1) housing assistance payments have been or will be made only in accordance with Housing Assistance Payments Contracts or Rental Voucher Contracts in the form prescribed by HUD and in accordance with HUD regulations and requirements;

(2) units have been inspected by the HA in accordance with HUD regulations and requirements; and

(3) this voucher for annual contributions has been examined by me and to the best of my knowledge and belief is true, correct and complete.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Public Housing Agency	Title of Authorized HA Official	
	Signature of Authorized HA Official	Date (mm/dd/yyyy)

The Field Office has reviewed calculations of the Ongoing Administrative Fee. The HUD approved totals are the official totals as reported in HUD CAPs.

Name of Office	Signature of Director, Office of Public Housing	Date (mm/dd/yyyy)

Overpayment to be offset $_____

Underpayment certified for payment to the HA $_____

Housing Assistance Payments Contract (HAP Contract) Section 8 Tenant-Based Assistance Housing Choice Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval Pending

Instructions for use of HAP Contract

This form of Housing Assistance Payments Contract (HAP contract) is used to provide Section 8 tenant-based assistance under the housing choice voucher program (voucher program) of the U.S. Department of Housing and Urban Development (HUD). The main regulation for this program is 24 Code of Federal Regulations Part 982.

The local voucher program is administered by a public housing agency (PHA). The HAP contract is an agreement between the PHA and the owner of a unit occupied by an assisted family. The HAP contract has three parts:

Part A Contract information (fill-ins).
See section by section instructions.

Part B Body of contract

Part C Tenancy addendum

Use of this form

Use of this HAP contract is required by HUD. Modification of the HAP contract is not permitted. The HAP contract must be word-for-word in the form prescribed by HUD.

However, the PHA may choose to add the following:

Language that prohibits the owner from collecting a security deposit in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. Such a prohibition must be added to Part A of the HAP contract.

Language that defines when the housing assistance payment by the PHA is deemed received by the owner (e.g., upon mailing by the PHA or actual receipt by the owner). Such language must be added to Part A of the HAP contract.

To prepare the HAP contract, fill in all contract information in Part A of the contract. Part A must then be executed by the owner and the PHA.

Use for special housing types

In addition to use for the basic Section 8 voucher program, this form must also be used for the following "special housing types" which are voucher program variants for special needs (see 24 CFR Part 982, Subpart M): (1) single room occupancy (SRO) housing; (2) congregate housing; (3) group home; (4) shared housing; and (5) manufactured home rental by a family that leases the manufactured home and space. When this form is used for a special housing type, the special housing type shall be specified in Part A of the HAP contract, as follows: "This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: (Insert Name of Special Housing type)."

However, this form may not be used for the following special housing types: (1) manufactured home space rental by a family that owns the manufactured home and leases only the space; (2) cooperative housing; and (3) the homeownership option under Section 8(y) of the United States Housing Act of 1937 (42 U.S.C. 1437f(y)).

How to fill in Part A

Section by Section Instructions

Section 2: **Tenant**

Enter full name of tenant.

Section 3. **Contract Unit**

Enter address of unit, including apartment number, if any.

Section 4. **Household Members**

Enter full names of all PHA-approved household members. Specify if any such person is a live-in aide, which is a person approved by the PHA to reside in the unit to provide supportive services for a family member who is a person with disabilities.

Section 5. **Initial Lease Term**

Enter first date and last date of initial lease term.

The initial lease term must be for at least one year. However, the PHA may approve a shorter initial lease term if the PHA determines that:

- Such shorter term would improve housing opportunities for the tenant, **and**
- Such shorter term is the prevailing local market practice.

Section 6. **Initial Rent to Owner**

Enter the amount of the monthly rent to owner during the initial lease term. The PHA must determine that the rent to owner is reasonable in comparison to rent for other comparable unassisted units. During the initial lease term the owner may not raise the rent to owner.

Section 7. **Housing Assistance Payment**

Enter the initial amount of the monthly housing assistance payment.

Section 8. **Utilities and Appliances**

The lease and the HAP contract must specify what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the tenant. Fill in section 8 to show who is responsible to provide or pay for utilities and appliances.

The public reporting burden for this collection of information is estimated to average 1 hour per contract, including the time for reviewing the contract, signing it, gathering and maintaining the data, certifying, completing, and submitting the information between the PHA and Owner. Section 8 of the U.S. Housing Act of 1937 (42 U.S.C.1437f) is the authority for this contract; respondents receive a benefit.

Housing Assistance Payments Contract (HAP Contract) Section 8 Tenant-Based Assistance Housing Choice Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Part A of the HAP Contract: Contract Information

(To prepare the contract, fill out all contract information in Part A.)

1. **Contents of Contract**
   This HAP contract has three parts:
   Part A: Contract Information
   Part B: Body of Contract
   Part C: Tenancy Addendum
2. **Tenant**
3. **Contract Unit**
4. **Household**
   The following persons may reside in the unit. Other persons may not be added to the household without prior written approval of the owner and the PHA.
5. **Initial Lease Term**
   The initial lease term begins on (mm/dd/yyyy): _____
   The initial lease term ends on (mm/dd/yyyy): _____
6. **Initial Rent to Owner**
   The initial rent to owner is: $ _____
   During the initial lease term, the owner may not raise the rent to owner.
7. **Initial Housing Assistance Payment**
   The HAP contract term commences on the first day of the initial lease term. At the beginning of the HAP contract term, the amount of the housing assistance payment by the PHA to the owner is $ _____ per month.
   The amount of the monthly housing assistance payment by the PHA to the owner is subject to change during the HAP contract term in accordance with HUD requirements.

8. Utilities and Appliances

The owner shall provide or pay for the utilities and appliances indicated below by an "O". The tenant shall provide or pay for the utilities and appliances indicated below by a "T". Unless otherwise specified below, the owner shall pay for all utilities and appliances provided by the owner.

Item	Specify fuel type	Provided by	Paid by
Heating	☐ Natural gas ☐ Bottle gas ☐ Oil or Electric ☐ Coal or Other		
Cooking	☐ Natural gas ☐ Bottle gas ☐ Oil or Electric ☐ Coal or Other		
Water Heating	☐ Natural gas ☐ Bottle gas ☐ Oil or Electric ☐ Coal or Other		
Other Electric			
Water			
Sewer			
Trash Collection			
Air Conditioning			
Refrigerator			
Range/Microwave			
Other (specify)			

Signatures:

Public Housing Agency

Print or Type Name of PHA

Signature

Print or Type Name and Title of Signatory

Date (mm/dd/yyyy)

Owner

Print or Type Name of Owner

Signature

Print or Type Name and Title of Signatory

Date (mm/dd/yyyy)

Mail Payments to:

Name

Address (street, city, State, Zip)

Housing Assistance Payments Contract (HAP) Contract Section 8 Tenant-Based Assistance Housing Choice Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Part B of HAP Contract: Body of Contract

1. **Purpose**
   a. This is a HAP contract between the PHA and the owner. The HAP contract is entered to provide assistance for the family under the Section 8 voucher program (see HUD program regulations at 24 Code of Federal Regulations Part 982).
   b. The HAP contract only applies to the household and contract unit specified in Part A of the HAP contract.
   c. During the HAP contract term, the PHA will pay housing assistance payments to the owner in accordance with the HAP contract.
   d. The family will reside in the contract unit with assistance under the Section 8 voucher program. The housing assistance payments by the PHA assist the tenant to lease the contract unit from the owner for occupancy by the family.
2. **Lease of Contract Unit**
   a. The owner has leased the contract unit to the tenant for occupancy by the family with assistance under the Section 8 voucher program.
   b. The PHA has approved leasing of the unit in accordance with requirements of the Section 8 voucher program.
   c. The lease for the contract unit must include word-for-word all provisions of the tenancy addendum required by HUD (Part C of the HAP contract).
   d. The owner certifies that:
      (1) The owner and the tenant have entered into a lease of the contract unit that includes all provisions of the tenancy addendum.
      (2) The lease is in a standard form that is used in the locality by the owner and that is generally used for other unassisted tenants in the premises.
      (3) The lease is consistent with State and local law.
   e. The owner is responsible for screening the family's behavior or suitability for tenancy. The PHA is not responsible for such screening. The PHA has no liability or responsibility to the owner or other persons for the family's behavior or the family's conduct in tenancy.
3. **Maintenance, Utilities, and Other Services**
   a. The owner must maintain the contract unit and premises in accordance with the housing quality standards (HQS).
   b. The owner must provide all utilities needed to comply with the HQS.
   c. If the owner does not maintain the contract unit in accordance with the HQS, or fails to provide all utilities needed to comply with the HQS, the PHA may exercise any available remedies. PHA remedies for such breach include recovery of overpayments, suspension of housing assistance payments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract. The PHA may not exercise such remedies against the owner because of an HQS breach for which the family is responsible, and that is not caused by the owner.
   d. The PHA shall not make any housing assistance payments if the contract unit does not meet the HQS, unless the owner corrects the defect within the period specified by the PHA and the PHA verifies the correction. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. For other defects, the owner must correct the defect within the period specified by the PHA.
   e. The PHA may inspect the contract unit and premises at such times as the PHA determines necessary, to ensure that the unit is in accordance with the HQS.
   f. The PHA must notify the owner of any HQS defects shown by the inspection.
   g. The owner must provide all housing services as agreed to in the lease.
4. **Term of HAP Contract**
   a. **Relation to lease term.** The term of the HAP contract begins on the first day of the initial term of the lease, and terminates on the last day of the term of the lease (including the initial lease term and any extensions).
   b. **When HAP contract terminates.**
      (1) The HAP contract terminates automatically if the lease is terminated by the owner or the tenant.
      (2) The PHA may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If the PHA terminates program assistance for the family, the HAP contract terminates automatically.
      (3) If the family moves from the contract unit, the HAP contract terminates automatically.
      (4) The HAP contract terminates automatically 180 calendar days after the last housing assistance payment to the owner.
      (5) The PHA may terminate the HAP contract if the PHA determines, in accordance with HUD requirements, that available program funding is not sufficient to support continued assistance for families in the program.

(6) The PHA may terminate the HAP contract if the PHA determines that the contract unit does not provide adequate space in accordance with the HQS because of an increase in family size or a change in family composition.

(7) If the family breaks up, the PHA may terminate the HAP contract, or may continue housing assistance payments on behalf of family members who remain in the contract unit.

(8) The PHA may terminate the HAP contract if the PHA determines that the unit does not meet all requirements of the HQS, or determines that the owner has otherwise breached the HAP contract.

5. **Provision and Payment for Utilities and Appliances**

a. The lease must specify what utilities are to be provided or paid by the owner or the tenant.

b. The lease must specify what appliances are to be provided or paid by the owner or the tenant.

c. Part A of the HAP contract specifies what utilities and appliances are to be provided or paid by the owner or the tenant. The lease shall be consistent with the HAP contract.

6. **Rent to Owner: Reasonable Rent**

a. During the HAP contract term, the rent to owner may at no time exceed the reasonable rent for the contract unit as most recently determined or redetermined by the PHA in accordance with HUD requirements.

b. The PHA must determine whether the rent to owner is reasonable in comparison to rent for other comparable unassisted units. To make this determination, the PHA must consider:

(1) The location, quality, size, unit type, and age of the contract unit; and

(2) Any amenities, housing services, maintenance and utilities provided and paid by the owner.

c. The PHA must redetermine the reasonable rent when required in accordance with HUD requirements. The PHA may redetermine the reasonable rent at any time.

d. During the HAP contract term, the rent to owner may not exceed rent charged by the owner for comparable unassisted units in the premises. The owner must give the PHA any information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere.

7. **PHA Payment to Owner**

a. **When paid**

(1) During the term of the HAP contract, the PHA must make monthly housing assistance payments to the owner on behalf of the family at the beginning of each month.

(2) The PHA must pay housing assistance payments promptly when due to the owner.

(3) If housing assistance payments are not paid promptly when due after the first two calendar months of the HAP contract term , the PHA shall pay the owner penalties in accordance with generally accepted practices and law, as applicable in the local housing market, governing penalties for late payment by a tenant. However, the PHA shall not be obligated to pay any late payment penalty if HUD determines that late payment by the PHA is due to factors beyond the PHA's control. Moreover, the PHA shall not be obligated to pay any late payment penalty if housing assistance payments by the PHA are delayed or denied as a remedy for owner breach of the HAP contract (including any of the following PHA remedies: recovery of overpayments, suspension of housing assistance payments, abatement or reduction of housing assistance payments, termination of housing assistance payments and termination of the contract).

(4) Housing assistance payments shall only be paid to the owner while the family is residing in the contract unit during the term of the HAP contract. The PHA shall not pay a housing assistance payment to the owner for any month after the month when the family moves out.

b. **Owner compliance with HAP contract.** Unless the owner has complied with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments under the HAP contract.

c. **Amount of PHA payment to owner**

(1) The amount of the monthly PHA housing assistance payment to the owner shall be determined by the PHA in accordance with HUD requirements for a tenancy under the voucher program.

(2) The amount of the PHA housing assistance payment is subject to change during the HAP contract term in accordance with HUD requirements. The PHA must notify the family and the owner of any changes in the amount of the housing assistance payment.

(3) The housing assistance payment for the first month of the HAP contract term shall be pro-rated for a partial month.

d. **Application of payment.** The monthly housing assistance payment shall be credited against the monthly rent to owner for the contract unit.

e. **Limit of PHA responsibility.**

(1) The PHA is only responsible for making housing assistance payments to the owner in accordance with the HAP contract and HUD requirements for a tenancy under the voucher program.

(2) The PHA shall not pay any portion of the rent to owner in excess of the housing assistance payment. The PHA shall not pay any other claim by the owner against the family.

f. **Overpayment to owner.** If the PHA determines that the owner is not entitled to the housing assistance payment or any part of it, the PHA, in addition to other remedies, may deduct the amount of the overpayment from any amounts due the owner (including amounts due under any other Section 8 assistance contract).

8. **Owner Certification**

During the term of this contract, the owner certifies that:

a. The owner is maintaining the contract unit and premises in accordance with the HQS.

b. The contract unit is leased to the tenant. The lease includes the tenancy addendum (Part C of the HAP contract), and is in accordance with the HAP contract and program requirements. The owner has provided the lease to the PHA, including any revisions of the lease.

c. The rent to owner does not exceed rents charged by the owner for rental of comparable unassisted units in the premises.

d. Except for the rent to owner, the owner has not received and will not receive any payments or other consideration (from the family, the PHA, HUD, or any other public or private source) for rental of the contract unit during the HAP contract term.

e. The family does not own or have any interest in the contract unit.

f. To the best of the owner's knowledge, the members of the family reside in the contract unit, and the unit is the family's only residence.

g. The owner (including a principal or other interested party) is not the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.

9. **Prohibition of Discrimination.** In accordance with applicable equal opportunity statutes, Executive Orders, and regulations:

a. The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the HAP contract.

b. The owner must cooperate with the PHA and HUD in conducting equal opportunity compliance reviews and complaint investigations in connection with the HAP contract.

10. **Owner's Breach of HAP Contract**

a. Any of the following actions by the owner (including a principal or other interested party) is a breach of the HAP contract by the owner:

(1) If the owner has violated any obligation under the HAP contract, including the owner's obligation to maintain the unit in accordance with the HQS.

(2) If the owner has violated any obligation under any other housing assistance payments contract under Section 8.

(3) If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing assistance program.

(4) For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan.

(5) If the owner has engaged in any drug-related criminal activity or any violent criminal activity.

b. If the PHA determines that a breach has occurred, the PHA may exercise any of its rights and remedies under the HAP contract, or any other available rights and remedies for such breach. The PHA shall notify the owner of such determination, including a brief statement of the reasons for the determination. The notice by the PHA to the owner may require the owner to take corrective action, as verified or determined by the PHA, by a deadline prescribed in the notice.

c. The PHA's rights and remedies for owner breach of the HAP contract include recovery of overpayments, suspension of housing assistance payments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract.

d. The PHA may seek and obtain additional relief by judicial order or action, including specific performance, other injunctive relief or order for damages.

e. Even if the family continues to live in the contract unit, the PHA may exercise any rights and remedies for owner breach of the HAP contract.

f. The PHA's exercise or non-exercise of any right or remedy for owner breach of the HAP contract is not a waiver of the right to exercise that or any other right or remedy at any time.

11. **PHA and HUD Access to Premises and Owner's Records**

a. The owner must provide any information pertinent to the HAP contract that the PHA or HUD may reasonably require.

b. The PHA, HUD and the Comptroller General of the United States shall have full and free access to the contract unit and the premises, and to all accounts and other records of the owner that are relevant to the HAP contract, including the right to examine or audit the records and to make copies.

c. The owner must grant such access to computerized or other electronic records, and to any computers, equipment or facilities containing such records, and must provide any information or assistance needed to access the records.

12. **Exclusion of Third Party Rights**

a. The family is not a party to or third party beneficiary of Part B of the HAP contract. The family may not enforce any provision of Part B, and may not exercise any right or remedy against the owner or PHA under Part B.

b. The tenant or the PHA may enforce the tenancy addendum (Part C of the HAP contract) against the owner, and may exercise any right or remedy against the owner under the tenancy addendum.

c. The PHA does not assume any responsibility for injury to, or any liability to, any person injured as a result of the owner's action or failure to act in connection with management of the contract unit or the premises or with implementation of the HAP contract, or as a result of any other action or failure to act by the owner.

d. The owner is not the agent of the PHA, and the HAP contract does not create or affect any relationship between the PHA and any lender to the owner or any suppliers, employees, contractors or subcontractors used by the owner in connection with management of the contract unit or the premises or with implementation of the HAP contract.

13. Conflict of Interest

a. "Covered individual" means a person or entity who is a member of any of the following classes:

(1) Any present or former member or officer of the PHA (except a PHA commissioner who is a participant in the program);

(2) Any employee of the PHA, or any contractor, subcontractor or agent of the PHA, who formulates policy or who influences decisions with respect to the program;

(3) Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the program; or

(4) Any member of the Congress of the United States.

b. A covered individual may not have any direct or indirect interest in the HAP contract or in any benefits or payments under the contract (including the interest of an immediate family member of such covered individual) while such person is a covered individual or during one year thereafter.

c. "Immediate family member" means the spouse, parent (including a stepparent), child (including a stepchild), grandparent, grandchild, sister or brother (including a stepsister or stepbrother) of any covered individual.

d. The owner certifies and is responsible for assuring that no person or entity has or will have a prohibited interest, at execution of the HAP contract, or at any time during the HAP contract term.

e. If a prohibited interest occurs, the owner shall promptly and fully disclose such interest to the PHA and HUD.

f. The conflict of interest prohibition under this section may be waived by the HUD field office for good cause.

g. No member of or delegate to the Congress of the United States or resident commissioner shall be admitted to any share or part of the HAP contract or to any benefits which may arise from it.

14. Assigament of the HAP Contract

a. The owner may not assign the HAP contract to a new owner without the prior written consent of the PHA.

b. If the owner requests PHA consent to assign the HAP contract to a new owner, the owner shall supply any information as required by the PHA pertinent to the proposed assignment.

c. The HAP contract may not be assigned to a new owner that is debarred, suspended or subject to a limited denial of participation under HUD regulations (see 24 Code of Federal Regulations Part 24).

d. The HAP contract may not be assigned to a new owner if HUD has prohibited such assignment because:

(1) The Federal government has instituted an administrative or judicial action against the owner or proposed new owner for violation of the Fair Housing Act or other Federal equal opportunity requirements, and such action is pending; or

(2) A court or administrative agency has determined that the owner or proposed new owner violated the Fair Housing Act or other Federal equal opportunity requirements.

e. The HAP contract may not be assigned to a new owner if the new owner (including a principal or other interested party) is the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has determined (and has notified the family of such determination) that approving the assignment, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.

f. The PHA may deny approval to assign the HAP contract if the owner or proposed new owner (including a principal or other interested party):

(1) Has violated obligations under a housing assistance payments contract under Section 8;

(2) Has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing program;

(3) Has engaged in any drug-related criminal activity or any violent criminal activity;

(4) Has a history or practice of non-compliance with the HQS for units leased under the Section 8 tenant-based programs, or non-compliance with applicable housing standards for units leased with project-based Section 8 assistance or for units leased under any other Federal housing program;

(5) Has a history or practice of failing to terminate tenancy of tenants assisted under any Federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that:

(a) Threatens the right to peaceful enjoyment of the premises by other residents;

(b) Threatens the health or safety of other residents, of employees of the PHA, or of owner employees or other persons engaged in management of the housing;

(c) Threatens the health or safety of, or the right to peaceful enjoyment of their residents by, persons residing in the immediate vicinity of the premises; or

(d) Is drug-related criminal activity or violent criminal activity;

(6) Has a history or practice of renting units that fail to meet State or local housing codes; or

(7) Has not paid State or local real estate taxes, fines or assessments.

g. The new owner must agree to be bound by and comply with the HAP contract. The agreement must be in writing, and in a form acceptable to the PHA. The new owner must give the PHA a copy of the executed agreement.

15. Written Notices. Any notice by the PHA or the owner in connection with this contract must be in writing.

16. Entire Agreement: Interpretation

a. The HAP contract contains the entire agreement between the owner and the PHA.

b. The HAP contract shall be interpreted and implemented in accordance with HUD requirements, including the HUD program regulations at 24 Code of Federal Regulations Part 982.

Housing Assistance Payments Contract (HAP Contract) Section 8 Tenant-Based Assistance Housing Choice Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Part C of HAP Contract: Tenancy Addendum

1. **Section 8 Voucher Program**
   a. The owner is leasing the contract unit to the tenant for occupancy by the tenant's family with assistance for a tenancy under the Section 8 housing choice voucher program (voucher program) of the United States Department of Housing and Urban Development (HUD).
   b. The owner has entered into a Housing Assistance Payments Contract (HAP contract) with the PHA under the voucher program. Under the HAP contract, the PHA will make housing assistance payments to the owner to assist the tenant in leasing the unit from the owner.
2. **Lease**
   a. The owner has given the PHA a copy of the lease, including any revisions agreed by the owner and the tenant. The owner certifies that the terms of the lease are in accordance with all provisions of the HAP contract and that the lease includes the tenancy addendum.
   b. The tenant shall have the right to enforce the tenancy addendum against the owner. If there is any conflict between the tenancy addendum and any other provisions of the lease, the language of the tenancy addendum shall control.
3. **Use of Contract Unit**
   a. During the lease term, the family will reside in the contract unit with assistance under the voucher program.
   b. The composition of the household must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. Other persons may not be added to the household without prior written approval of the owner and the PHA.
   c. The contract unit may only be used for residence by the PHA-approved household members. The unit must be the family's only residence. Members of the household may engage in legal profitmaking activities incidental to primary use of the unit for residence by members of the family.
   d. The tenant may not sublease or let the unit.
   e. The tenant may not assign the lease or transfer the unit.
4. **Rent to Owner**
   a. The initial rent to owner may not exceed the amount approved by the PHA in accordance with HUD requirements.
   b. Changes in the rent to owner shall be determined by the provisions of the lease. However, the owner may not raise the rent during the initial term of the lease.
   c. During the term of the lease (including the initial term of the lease and any extension term), the rent to owner may at no time exceed:
      (1) The reasonable rent for the unit as most recently determined or redetermined by the PHA in accordance with HUD requirements, or
      (2) Rent charged by the owner for comparable unassisted units in the premises.
5. **Family Payment to Owner**
   a. The family is responsible for paying the owner any portion of the rent to owner that is not covered by the PHA housing assistance payment.
   b. Each month, the PHA will make a housing assistance payment to the owner on behalf of the family in accordance with the HAP contract. The amount of the monthly housing assistance payment will be determined by the PHA in accordance with HUD requirements for a tenancy under the Section 8 voucher program.
   c. The monthly housing assistance payment shall be credited against the monthly rent to owner for the contract unit.
   d. The tenant is not responsible for paying the portion of rent to owner covered by the PHA housing assistance payment under the HAP contract between the owner and the PHA. A PHA failure to pay the housing assistance payment to the owner is not a violation of the lease. The owner may not terminate the tenancy for nonpayment of the PHA housing assistance payment.
   e. The owner may not charge or accept, from the family or from any other source, any payment for rent of the unit in addition to the rent to owner. Rent to owner includes all housing services, maintenance, utilities and appliances to be provided and paid by the owner in accordance with the lease.
   f. The owner must immediately return any excess rent payment to the tenant.
6. **Other Fees and Charges**
   a. Rent to owner does not include cost of any meals or supportive services or furniture which may be provided by the owner.
   b. The owner may not require the tenant or family members to pay charges for any meals or supportive services or furniture which may be provided by the owner. Nonpayment of any such charges is not grounds for termination of tenancy.
   c. The owner may not charge the tenant extra amounts for items customarily included in rent to owner in the locality, or provided at no additional cost to unsubsidized tenants in the premises.
7. **Maintenance, Utilities, and Other Services**
   a. **Maintenance**
      (1) The owner must maintain the unit and premises in accordance with the HQS.
      (2) Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

   b. **Utilities and appliances**
      (1) The owner must provide all utilities needed to comply with the HQS.
      (2) The owner is not responsible for a breach of the HQS caused by the tenant's failure to:
         (a) Pay for any utilities that are to be paid by the tenant.
         (b) Provide and maintain any appliances that are to be provided by the tenant.
   c. **Family damage.** The owner is not responsible for a breach of the HQS because of damages beyond normal wear and tear caused by any member of the household or by a guest.
   d. **Housing services.** The owner must provide all housing services as agreed to in the lease.
8. **Termination of Tenancy by Owner**
   a. **Requirements.** The owner may only terminate the tenancy in accordance with the lease and HUD requirements.
   b. **Grounds.** During the term of the lease (the initial term of the lease or any extension term), the owner may only terminate the tenancy because of:
      (1) Serious or repeated violation of the lease;
      (2) Violation of Federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the unit and the premises;
      (3) Criminal activity or alcohol abuse (as provided in paragraph c); or
      (4) Other good cause (as provided in paragraph d).
   c. **Criminal activity or alcohol abuse.**
      (1) The owner may terminate the tenancy during the term of the lease if any member of the household, a guest or another person under a resident's control commits any of the following types of criminal activity:
         (a) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);
         (b) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
         (c) Any violent criminal activity on or near the premises; or
         (d) Any drug-related criminal activity on or near the premises.
      (2) The owner may terminate the tenancy during the term of the lease if any member of the household is:
         (a) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
         (b) Violating a condition of probation or parole under Federal or State law.
      (3) The owner may terminate the tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.
      (4) The owner may terminate the tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety or right to peaceful enjoyment of the premises by other residents.
   d. **Other good cause for termination of tenancy**
      (1) During the initial lease term, other good cause for termination of tenancy must be something the family did or failed to do.
      (2) During the initial lease term or during any extension term, other good cause includes:
         (a) Disturbance of neighbors,
         (b) Destruction of property, or
         (c) Living or housekeeping habits that cause damage to the unit or premises.
      (3) After the initial lease term, such good cause includes:
         (a) The tenant's failure to accept the owner's offer of a new lease or revision;
         (b) The owner's desire to use the unit for personal or family use or for a purpose other than use as a residential rental unit; or
         (c) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, the owner's desire to rent the unit for a higher rent).
   e. **Eviction by court action.** The owner may only evict the tenant by a court action.
   f. **Owner notice of grounds**
      (1) At or before the beginning of a court action to evict the tenant, the owner must give the tenant a notice that specifies the grounds for termination of tenancy. The notice may be included in or combined with any owner eviction notice.
      (2) The owner must give the PHA a copy of any owner eviction notice at the same time the owner notifies the tenant.
      (3) Eviction notice means a notice to vacate, or a complaint or other initial pleading used to begin an eviction action under State or local law.
9. **Lease: Relation to HAP Contract**
   If the HAP contract terminates for any reason, the lease terminates automatically.
10. **PHA Termination of Assistance**
    The PHA may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If the PHA terminates program assistance for the family, the lease terminates automatically.

11. **Family Move Out**

The tenant must notify the PHA and the owner before the family moves out of the unit.

12. **Security Deposit**

a. The owner may collect a security deposit from the tenant. (However, the PHA may prohibit the owner from collecting a security deposit in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. Any such PHA-required restriction must be specified in the HAP contract.)

b. When the family moves out of the contract unit, the owner, subject to State and local law, may use the security deposit, including any interest on the deposit, as reimbursement for any unpaid rent payable by the tenant, any damages to the unit or any other amounts that the tenant owes under the lease.

c. The owner must give the tenant a list of all items charged against the security deposit, and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must promptly refund the full amount of the unused balance to the tenant.

d. If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may collect the balance from the tenant.

13. **Prohibition of Discrimination**

In accordance with applicable equal opportunity statutes, Executive Orders, and regulations, the owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status or disability in connection with the lease.

14. **Conflict with Other Provisions of Lease**

a. The terms of the tenancy addendum are prescribed by HUD in accordance with Federal law and regulation, as a condition for Federal assistance to the tenant and tenant's family under the Section 8 voucher program.

b. In case of any conflict between the provisions of the tenancy addendum as required by HUD, and any other provisions of the lease or any other agreement between the owner and the tenant, the requirements of the HUD-required tenancy addendum shall control.

15. **Changes in Lease or Rent**

a. The tenant and the owner may not make any change in the tenancy addendum. However, if the tenant and the owner agree to any other changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must be in accordance with the requirements of the tenancy addendum.

b. In the following cases, tenant-based assistance shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner:

(1) If there are any changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;

(2) If there are any changes in lease provisions governing the term of the lease;

(3) If the family moves to a new unit, even if the unit is in the same building or complex.

c. PHA approval of the tenancy, and execution of a new HAP contract, are not required for agreed changes in the lease other than as specified in paragraph b.

d. The owner must notify the PHA of any changes in the amount of the rent to owner at least sixty days before any such changes go into effect, and the amount of the rent to owner following any such agreed change may not exceed the reasonable rent for the unit as most recently determined or redetermined by the PHA in accordance with HUD requirements.

16. **Notices**

Any notice under the lease by the tenant to the owner or by the owner to the tenant must be in writing.

17. **Definitions**

Contract unit. The housing unit rented by the tenant with assistance under the program.

Family. The persons who may reside in the unit with assistance under the program.

HAP contract. The housing assistance payments contract between the PHA and the owner. The PHA pays housing assistance payments to the owner in accordance with the HAP contract.

Household. The persons who may reside in the contract unit. The household consists of the family and any PHA-approved live-in aide. (A live-in aide is a person who resides in the unit to provide necessary supportive services for a member of the family who is a person with disabilities.)

Housing quality standards (HQS). The HUD minimum quality standards for housing assisted under the Section 8 tenant-based programs.

HUD. The U.S. Department of Housing and Urban Development.

HUD requirements. HUD requirements for the Section 8 program. HUD requirements are issued by HUD headquarters, as regulations, Federal Register notices or other binding program directives.

Lease. The written agreement between the owner and the tenant for the lease of the contract unit to the tenant. The lease includes the tenancy addendum prescribed by HUD.

PHA. Public Housing Agency.

Premises. The building or complex in which the contract unit is located, including common areas and grounds.

Program. The Section 8 housing choice voucher program.

Rent to owner. The total monthly rent payable to the owner for the contract unit. The rent to owner is the sum of the portion of rent payable by the tenant plus the PHA housing assistance payment to the owner.

Section 8. Section 8 of the United States Housing Act of 1937 (42 United States Code 1437f).

Tenant. The family member (or members) who leases the unit from the owner.

Voucher program. The Section 8 housing choice voucher program. Under this program, HUD provides funds to an PHA for rent subsidy on behalf of eligible families. The tenancy under the lease will be assisted with rent subsidy for a tenancy under the voucher program.

Tenancy Addendum
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB Approval Pending

(To be attached to Tenant Lease)

1. **Section 8 Voucher Program**

a. The owner is leasing the contract unit to the tenant for occupancy by the tenant's family with assistance for a tenancy under the Section 8 housing choice voucher program (voucher program) of the United States Department of Housing and Urban Development (HUD).

b. The owner has entered into a Housing Assistance Payments Contract (HAP contract) with the PHA under the voucher program. Under the HAP contract, the PHA will make housing assistance payments to the owner to assist the tenant in leasing the unit from the owner.

2. **Lease**

a. The owner has given the PHA a copy of the lease, including any revisions agreed by the owner and the tenant. The owner certifies that the terms of the lease are in accordance with all provisions of the HAP contract and that the lease includes the tenancy addendum.

b. The tenant shall have the right to enforce the tenancy addendum against the owner. If there is any conflict between the tenancy addendum and any other provisions of the lease, the language of the tenancy addendum shall control.

3. **Use of Contract Unit**

a. During the lease term, the family will reside in the contract unit with assistance under the voucher program.

b. The composition of the household must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. Other persons may not be added to the household without prior written approval of the owner and the PHA.

c. The contract unit may only be used for residence by the PHA-approved household members. The unit must be the family's only residence. Members of the household may engage in legal profitmaking activities incidental to primary use of the unit for residence by members of the family.

d. The tenant may not sublease or let the unit.

e. The tenant may not assign the lease or transfer the unit.

4. **Rent to Owner**

a. The initial rent to owner may not exceed the amount approved by the PHA in accordance with HUD requirements.

b. Changes in the rent to owner shall be determined by the provisions of the lease. However, the owner may not raise the rent during the initial term of the lease.

c. During the term of the lease (including the initial term of the lease and any extension term), the rent to owner may at no time exceed:

(1) The reasonable rent for the unit as most recently determined or redetermined by the PHA in accordance with HUD requirements, or

(2) Rent charged by the owner for comparable unassisted units in the premises.

5. **Family Payment to Owner**

a. The family is responsible for paying the owner any portion of the rent to owner that is not covered by the PHA housing assistance payment.

b. Each month, the PHA will make a housing assistance payment to the owner on behalf of the family in accordance with the HAP contract. The amount of the monthly housing assistance payment will be determined by the PHA in accordance with HUD requirements for a tenancy under the Section 8 voucher program.

c. The monthly housing assistance payment shall be credited against the monthly rent to owner for the contract unit.

d. The tenant is not responsible for paying the portion of rent to owner covered by the PHA housing assistance payment under the HAP contract between the owner and the PHA. A PHA failure to pay the housing assistance payment to the owner is not a violation of the lease. The owner may not terminate the tenancy for nonpayment of the PHA housing assistance payment.

e. The owner may not charge or accept, from the family or from any other source, any payment for rent of the unit in addition to the rent to owner. Rent to owner includes all housing services, maintenance, utilities and appliances to be provided and paid by the owner in accordance with the lease.

f. The owner must immediately return any excess rent payment to the tenant.

6. **Other Fees and Charges**

a. Rent to owner does not include cost of any meals or supportive services or furniture which may be provided by the owner.

b. The owner may not require the tenant or family members to pay charges for any meals or supportive services or furniture which may be provided by the owner. Nonpayment of any such charges is not grounds for termination of tenancy.

c. The owner may not charge the tenant extra amounts for items customarily included in rent to owner in the locality, or provided at no additional cost to unsubsidized tenants in the premises.

7. **Maintenance, Utilities, and Other Services**

a. **Maintenance**

(1) The owner must maintain the unit and premises in accordance with the HQS.

(2) Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

b. **Utilities and appliances**

(1) The owner must provide all utilities needed to comply with the HQS.

(2) The owner is not responsible for a breach of the HQS caused by the tenant's failure to:

(a) Pay for any utilities that are to be paid by the tenant.

(b) Provide and maintain any appliances that are to be provided by the tenant.

c. **Family damage**. The owner is not responsible for a breach of the HQS because of damages beyond normal wear and tear caused by any member of the household or by a guest.

d. **Housing services**. The owner must provide all housing services as agreed to in the lease.

8. **Termination of Tenancy by Owner**

a. **Requirements**. The owner may only terminate the tenancy in accordance with the lease and HUD requirements.

b. **Grounds**. During the term of the lease (the initial term of the lease or any extension term), the owner may only terminate the tenancy because of:

(1) Serious or repeated violation of the lease;

(2) Violation of Federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the unit and the premises;

(3) Criminal activity or alcohol abuse (as provided in paragraph c); or

(4) Other good cause (as provided in paragraph d).

c. **Criminal activity or alcohol abuse.**

(1) The owner may terminate the tenancy during the term of the lease if any member of the household, a guest or another person under a resident's control commits any of the following types of criminal activity:

(a) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);

(b) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;

(c) Any violent criminal activity on or near the premises; or

(d) Any drug-related criminal activity on or near the premises.

(2) The owner may terminate the tenancy during the term of the lease if any member of the household is:

(a) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(b) Violating a condition of probation or parole under Federal or State law.

(3) The owner may terminate the tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

(4) The owner may terminate the tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety or right to peaceful enjoyment of the premises by other residents.

d. **Other good cause for termination of tenancy**

(1) During the initial lease term, other good cause for termination of tenancy must be something the family did or failed to do.

(2) During the initial lease term or during any extension term, other good cause includes:

(a) Disturbance of neighbors,

(b) Destruction of property, or

(c) Living or housekeeping habits that cause damage to the unit or premises.

(3) After the initial lease term, such good cause includes:

(a) The tenant's failure to accept the owner's offer of a new lease or revision;

(b) The owner's desire to use the unit for personal or family use or for a purpose other than use as a residential rental unit; or

(c) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, the owner's desire to rent the unit for a higher rent).

e. **Eviction by court action.** The owner may only evict the tenant by a court action.

f. **Owner notice of grounds**

(1) At or before the beginning of a court action to evict the tenant, the owner must give the tenant a notice that specifies the grounds for termination of tenancy. The notice may be included in or combined with any owner eviction notice.

(2) The owner must give the PHA a copy of any owner eviction notice at the same time the owner notifies the tenant.

(3) Eviction notice means a notice to vacate, or a complaint or other initial pleading used to begin an eviction action under State or local law.

9. **Lease: Relation to HAP Contract**

If the HAP contract terminates for any reason, the lease terminates automatically.

10. **PHA Termination of Assistance**

The PHA may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If the PHA terminates program assistance for the family, the lease terminates automatically.

11. **Family Move Out**

The tenant must notify the PHA and the owner before the family moves out of the unit.

12. **Security Deposit**

a. The owner may collect a security deposit from the tenant. (However, the PHA may prohibit the owner from collecting a security deposit in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. Any such PHA-required restriction must be specified in the HAP contract.)

b. When the family moves out of the contract unit, the owner, subject to State and local law, may use the security deposit, including any interest on the deposit, as reimbursement for any unpaid rent payable by the tenant, any damages to the unit or any other amounts that the tenant owes under the lease.

c. The owner must give the tenant a list of all items charged against the security deposit, and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must promptly refund the full amount of the unused balance to the tenant.

d. If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may collect the balance from the tenant.

13. **Prohibition of Discrimination**

In accordance with applicable equal opportunity statutes, Executive Orders, and regulations, the owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status or disability in connection with the lease.

14. **Conflict with Other Provisions of Lease**

a. The terms of the tenancy addendum are prescribed by HUD in accordance with Federal law and regulation, as a condition for Federal assistance to the tenant and tenant's family under the Section 8 voucher program.

b. In case of any conflict between the provisions of the tenancy addendum as required by HUD, and any other provisions of the lease or any other agreement between the owner and the tenant, the requirements of the HUD-required tenancy addendum shall control.

15. **Changes in Lease or Rent**

a. The tenant and the owner may not make any change in the tenancy addendum. However, if the tenant and the owner agree to any other changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must be in accordance with the requirements of the tenancy addendum.

b. In the following cases, tenant-based assistance shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner:

(1) If there are any changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;

(2) If there are any changes in lease provisions governing the term of the lease;

(3) If the family moves to a new unit, even if the unit is in the same building or complex.

c. PHA approval of the tenancy, and execution of a new HAP contract, are not required for agreed changes in the lease other than as specified in paragraph b.

d. The owner must notify the PHA of any changes in the amount of the rent to owner at least sixty days before any such changes go into effect, and the amount of the rent to owner following any such agreed change may not exceed the reasonable rent for the unit as most recently determined or redetermined by the PHA in accordance with HUD requirements.

16. **Notices**

Any notice under the lease by the tenant to the owner or by the owner to the tenant must be in writing.

17. **Definitions**

Contract unit. The housing unit rented by the tenant with assistance under the program.

Family. The persons who may reside in the unit with assistance under the program.

HAP contract. The housing assistance payments contract between the PHA and the owner. The PHA pays housing assistance payments to the owner in accordance with the HAP contract.

Household. The persons who may reside in the contract unit. The household consists of the family and any PHA-approved live-in aide. (A live-in aide is a person who resides in the unit to provide necessary supportive services for a member of the family who is a person with disabilities.)

Housing quality standards (HQS). The HUD minimum quality standards for housing assisted under the Section 8 tenant-based programs.

HUD. The U.S. Department of Housing and Urban Development.

HUD requirements. HUD requirements for the Section 8 program. HUD requirements are issued by HUD headquarters, as regulations, Federal Register notices or other binding program directives.

Lease. The written agreement between the owner and the tenant for the lease of the contract unit to the tenant. The lease includes the tenancy addendum prescribed by HUD.

PHA. Public Housing Agency.

Premises. The building or complex in which the contract unit is located, including common areas and grounds.

Program. The Section 8 housing choice voucher program.

Rent to owner. The total monthly rent payable to the owner for the contract unit. The rent to owner is the sum of the portion of rent payable by the tenant plus the PHA housing assistance payment to the owner.

Section 8. Section 8 of the United States Housing Act of 1937 (42 United States Code 1437f).

Tenant. The family member (or members) who leases the unit from the owner.

Voucher program. The Section 8 housing choice voucher program. Under this program, HUD provides funds to an PHA for rent subsidy on behalf of eligible families. The tenancy under the lease will be assisted with rent subsidy for a tenancy under the voucher program.

Housing Assistance Payments Contract
Manufactured Home Space Rental
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval Pending

Instructions for use of HAP Contract

This form of Housing Assistance Payments Contract (HAP contract) is used to provide Section 8 tenant-based rental assistance for manufactured home space rental by an eligible low-income family under the housing choice voucher program (voucher program) of the U.S. Department of Housing and Urban Development (HUD).

The main regulation for the voucher program is 24 Code of Federal Regulations Part 982. Assistance for manufactured home space rental is a "special housing type" in the voucher program. Special voucher program requirements for special housing types are described in Subpart M of Part 982.

The local voucher program is administered by a public housing agency (PHA). The HAP contract for manufactured home space rental is an agreement between the PHA and the owner of a manufactured home space leased by an assisted family (manufactured home space owner). The family owns a manufactured home. During the lease term, the family will occupy a manufactured home located on the leased space.

Use of this form

The HAP contract has three parts:

Part A: Contract information (fill-ins).
See section by section instructions.

Part B: Body of contract

Part C: Tenancy addendum

Use of this HAP contract is required by HUD. Modification of the HAP contract is not permitted. The HAP contract must be word-for-word in the form prescribed by HUD.

However, the PHA may choose to add the following:

- o Language that prohibits the owner from collecting a security deposit in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. Such a prohibition must be added to Part A of the HAP contract.
- o Language that defines when the housing assistance payment by the PHA is deemed received by the owner (e.g., upon mailing by the PHA or upon actual receipt by the owner). Such language must be added to Part A of the HAP contract.

To prepare the HAP contract, fill in all contract information in Part A of the contract. Part A must then be executed by the manufactured home space owner and the PHA.

How to fill in Part A

Section by section instructions

Section 2: **Tenant**

Enter full name of tenant.

Section 3. **Manufactured Home Space**

Enter address and designation of manufactured home space.

Section 4. **Household Members**

Enter full names of all PHA-approved household members. Specify if any such person is a live-in aide – a person approved by the PHA to reside in the manufactured home to provide supportive services for a family member who is a person with disabilities.

Section 5. **Initial Lease Term**

Enter first date and last date of initial lease term.

The initial lease term must be for at least one year. However, the PHA may approve a shorter initial lease term if the PHA determines that:

- o Such shorter term would improve housing opportunities for the tenant, and
- o Such shorter term is the prevailing local market practice.

Section 6. **Initial Space Rent**

Enter the amount of the monthly rent to owner for the space during the initial lease term. The rent to owner includes owner maintenance and management charges for the space, and charges for owner-paid utilities. However, rent to owner does not include tenant-paid utilities.

The PHA must determine that the rent to owner for the space is reasonable in comparison to rent for other comparable unassisted spaces. During the initial lease term, the owner may not raise the rent to owner.

Section 7. **Housing Assistance Payment**

Enter the initial amount of the monthly housing assistance payment.

Section 8. **Utilities**

The lease and the HAP contract must specify what utilities are to be supplied by the owner, and what utilities are to be supplied by the tenant. Fill in section 8 to show who is responsible to provide or pay for utilities.

The public reporting burden for this collection of information is estimated to average 1 hour per contract, including the time for reviewing the contract, signing it, gathering and maintaining the data, certifying, completing, and submitting the information between the PHA and Owner. Section 8 of the U.S. Housing Act of 1937 (42 U.S.C.1437f) is the authority for this contract; respondenct receive a benefit.

Housing Assistance Payments Contract
Manufactured Home Space Rental
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Part A of the HAP Contract: Contract Information

(To prepare the contract, fill out all contract information in Part A.)

1. **Contents of Contract**

   The purpose of this HAP contract is to assist the household to lease a manufactured home space (space) from the owner. The HAP contract has three parts:

   Part A: Contract Information

   Part B: Body of Contract

   Part C: Tenancy Addendum

2. **Tenant**

3. **Manufactured Home Space: Address and Designation**

4. **Household Members**

   The following persons may reside in the manufactured home and space. Other persons may not be added to the household without prior written approval of the owner and the PHA.

5. **Initial Lease Term** (mm/dd/yyyy)

   The initial lease term begins on: _____

   The initial lease term ends on: _____

6. **Initial Space Rent**

   The initial rent to owner for the space is: $ _____

   During the initial lease term, the owner may not raise the rent to owner.

7. **Initial Housing Assistance Payment**

   The HAP contract term commences on the first day of the initial lease term. At the beginning of the HAP contract term, the amount of the housing assistance payment by the PHA to the owner is $_____ per month.

   The amount of the monthly housing assistance payment by the PHA to the owner is subject to change during the HAP contract term in accordance with HUD requirements.

8. **Utilities and Appliances**

The owner shall provide or pay for the utilities and appliances indicated below by an "O". The tenant shall provide or pay for the utilities and appliances indicated below by a "T". Unless otherwise specified below, the owner shall pay for all utilities and appliances provided by the owner.

Item	Specify fuel type	Provided by	Paid by
Heating	☐ Natural gas ☐ Bottle gas ☐ Oil or Electric ☐ Coal or Other		
Cooking	☐ Natural gas ☐ Bottle gas ☐ Oil or Electric ☐ Coal or Other		
Water Heating	☐ Natural gas ☐ Bottle gas ☐ Oil or Electric ☐ Coal or Other		
Other Electric			
Water			
Sewer			
Trash Collection			
Air Conditioning		N/A	
Refrigerator		N/A	
Range/Microwave		N/A	
Other (specify)			

Signatures:

Public Housing Agency	**Owner**
Print or Type Name of PHA	Print or Type Name of Owner
Signature	Signature
Print or Type Name and Title of Signatory	Print or Type Name and Title of Signatory
Date (mm/dd/yyyy)	Date (mm/dd/yyyy)

Mail Payments to:

Name

Address (street, city, State, Zip)

Housing Assistance Payments Contract
Manufactured Home Space Rental
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Part B of HAP Contract: Body of Contract

1. **Purpose**
   a. This is a HAP contract between the PHA and the owner. The HAP contract is entered to help the family pay rent for the manufactured home space (space) described in Part A of the HAP contract with monthly assistance payments from the PHA under the Section 8 voucher program (see HUD program regulations at 24 Code of Federal Regulations Part 982).
   b. During the HAP contract term, the PHA will pay housing assistance payments to the owner in accordance with the HAP contract. The housing assistance payments by the PHA assist the tenant to lease the space from the owner. The HAP contract only applies to the space and household identified in Part A (including any PHA-approved changes in household composition in accordance with this contract).
2. **Lease of Manufactured Home Space**
   a. The PHA has approved the leasing of the space in accordance with requirements of the Section 8 voucher program.
   b. The lease for the space must include word-for-word all provisions of the tenancy addendum required by HUD (Part C of the HAP contract).
   c. The owner certifies that:
      (1) The owner and the tenant have entered into a lease for the space that includes all provisions of the tenancy addendum.
      (2) The lease is in a standard form that is used in the locality by the owner for rental of a manufactured home space and that is used for other unassisted tenants in the manufactured home park.
      (3) The lease is consistent with State and local law.
   d. The owner is responsible for screening the family's behavior or suitability for tenancy. The PHA is not responsible for such screening. The PHA has no liability or responsibility to the owner or other persons for the family's behavior or the family's conduct in tenancy.
3. **Housing Quality Standards**
   a. The PHA shall not make any housing assistance payments if the housing, including the space and the manufactured home, does not comply with the HQS, regardless of whether the failure is caused by the owner or by the household.
   b. The PHA may inspect the mobile home park, the space and the manufactured home at such times as the PHA determines necessary to ensure that the unit is in accordance with the HQS.
   c. The PHA must notify the owner and the tenant of any HQS defects shown by the inspection.
   d. The owner must provide all maintenance and management services for the space as agreed to in the lease.
4. **Term of HAP Contract**
   a. **Relation to lease term.** The term of the HAP contract begins on the first day of the initial term of the lease, and terminates on the last day of the term of the lease (including the initial lease term and any extensions).
   b. **When HAP contract terminates.**
      (1) The HAP contract terminates automatically if the lease is terminated by the owner or the tenant.
      (2) The PHA may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If the PHA terminates program assistance for the family, the HAP contract terminates automatically.
      (3) The HAP contract terminates automatically if the family moves from the space, or if the family's manufactured home is removed from the space.
      (4) The HAP contract terminates automatically 180 calendar days after the last housing assistance payment to the owner.
      (5) The PHA may terminate the HAP contract if the PHA determines, in accordance with HUD requirements, that available program funding is not sufficient to support continued assistance for families in the program.
      (6) The PHA may terminate the HAP contract if the PHA determines that the manufactured home does not provide adequate space in accordance with the HQS because of an increase in family size or a change in family composition.
      (7) If the family breaks up, the PHA may terminate the HAP contract, or may continue housing assistance payments on behalf of family members who continue to reside in the manufactured home located on the space.
      (8) The PHA may terminate the HAP contract if the PHA determines that the housing does not comply with all requirements of the HQS, or determines that the owner has otherwise breached the HAP contract.
5. **Provision and Payment for Utilities**
   a. The lease must specify what utilities are to be provided or paid by the owner or the tenant.
   b. Part A of the HAP contract specifies what utilities are to be provided or paid by the owner or the tenant. The lease shall be consistent with the HAP contract.
6. **Rent to Owner: Reasonable Rent**
   a. During the HAP contract term, the rent to owner for the space may at no time exceed the reasonable rent as most recently determined or redetermined by the PHA in accordance with HUD requirements.

b. The PHA must determine whether the rent to owner is reasonable in comparison to rent for other comparable unassisted spaces. To make this determination, the PHA must consider:

(1) The location and size of the space,

(2) Any utilities provided or paid by the owner in connection with rental of the space, and

(3) Any services and maintenance provided by the owner in accordance with the lease.

c. The PHA must redetermine the reasonable rent when required in accordance with HUD requirements. The PHA may redetermine the reasonable rent at any time.

d. During the HAP contract term, the rent to owner may not exceed rent charged by the owner for comparable unassisted spaces in the manufactured home park. The owner must give the PHA any information requested by the PHA on rents charged by the owner for rental of other spaces in the manufactured home park or elsewhere.

7. **PHA Payment to Owner**

a. **When paid**

(1) During the term of the HAP contract, the PHA must make monthly housing assistance payments to the owner on behalf of the family at the beginning of each month.

(2) The PHA must pay housing assistance payments promptly when due to the owner.

(3) If housing assistance payments are not paid promptly when due after the first two calendar months of the HAP contract term, the PHA shall pay the owner penalties in accordance with generally accepted practices and law, as applicable in the local housing market, governing penalties for late payment by a tenant. However, the PHA shall not be obligated to pay any late payment penalty if HUD determines that late payment by the PHA is due to factors beyond the PHA's control. Moreover, the PHA shall not be obligated to pay any late payment penalty if housing assistance payments by the PHA are delayed or denied as a remedy for owner breach of the HAP contract (including any of the following PHA remedies: recovery of overpayments, suspension of housing assistance payments, abatement or reduction of housing assistance payments, termination of housing assistance payments and termination of the contract).

(4) Housing assistance payments shall only be paid to the owner while the family is residing in the manufactured home located on the space during the term of the HAP contract. The PHA shall not pay a housing assistance payment to the owner for any month after the month when the family moves from the space.

b. **Owner compliance with HAP contract.** Unless the owner has complied with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments under the HAP contract.

c. **Amount of PHA payment to owner**

(1) The amount of the monthly PHA housing assistance payment to the owner shall be determined by the PHA in accordance with HUD requirements for a manufactured home space tenancy under the voucher program.

(2) The amount of the PHA housing assistance payment is subject to change during the HAP contract term in accordance with HUD requirements. The PHA must notify the family and the owner of any changes in the amount of the housing assistance payment.

(3) The housing assistance payment for the first month of the HAP contract term shall be prorated for a partial month.

d. **Application of payment.** The monthly housing assistance payment shall be credited against the monthly rent to owner for the contract space.

e. **Limit of PHA responsibility.**

(1) The PHA is only responsible for making housing assistance payments to the owner in accordance with the HAP contract and HUD requirements for a manufactured home space tenancy assisted under the voucher program.

(2) The PHA shall not pay any portion of the rent to owner in excess of the housing assistance payment. The PHA shall not pay any other claim by the owner against the family.

f. **Overpayment to owner.** If the PHA determines that the owner is not entitled to the housing assistance payment or any part of it, the PHA, in addition to other remedies, may deduct the amount of the overpayment from any amounts due the owner (including amounts due under any other Section 8 assistance contract).

8. **Owner Certification.**

During the term of this contract, the owner certifies that:

a. The owner is operating the manufactured home park and the space in accordance with the housing quality standards (HQS), and is providing all maintenance and management services and facilities necessary for compliance with the HQS, including trash collection and facilities for disposal of waste and refuse.

b. The space is leased to the tenant. The lease includes the tenancy addendum for manufactured home space rental (Part C of the HAP contract), and is in accordance with the HAP contract and program requirements. The owner has provided the lease to the PHA, including any revisions of the lease.

c. The rent to owner does not exceed rents charged by the owner for rental of comparable unassisted spaces in the manufactured home park.

d. Except for the rent to owner, the owner has not received and will not receive any payments or other consideration (from the family, the PHA, HUD, or any other public or private source) for rental of the contract unit during the HAP contract term.

e. The family does not own or have any interest in the space.

f. To the best of the owner's knowledge, the members of the family reside in the manufactured home located on the space, and the manufactured home is the family's only residence.

g. The owner (including a principal or other interested party) is not the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA has determined (and has notified the owner and the family of such determination) that approving rental of the space, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.

9. **Prohibition of Discrimination.** In accordance with applicable equal opportunity statutes, Executive Orders, and regulations:

a. The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the HAP contract.

b. The owner must cooperate with the PHA and HUD in conducting equal opportunity compliance reviews and complaint investigations in connection with the HAP contract.

10. **Owner's Breach of HAP Contract**

a. Any of the following actions by the owner (including a principal or other interested party) is a breach of the HAP contract by the owner:

(1) If the owner has violated any obligation under the HAP contract.

(2) If the owner has violated any obligation under any other housing assistance payments contract under Section 8.

(3) If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing assistance program.

(4) For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan.

(5) If the owner has engaged in any drug-related criminal activity or any violent criminal activity.

b. If the PHA determines that a breach has occurred, the PHA may exercise any of its rights and remedies under the HAP contract, or any other available rights and remedies for such breach. The PHA shall notify the owner of such determination, including a brief statement of the reasons for the determination. The notice by the PHA to the owner may require the owner to take corrective action, as verified or determined by the PHA, by a deadline prescribed in the notice.

c. The PHA's rights and remedies for owner breach of the HAP contract include recovery of overpayments, suspension of housing assistance payments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract.

d. The PHA may seek and obtain additional relief by judicial order or action, including specific performance, other injunctive relief or order for damages.

e. Even if the family continues to live in the manufactured home, the PHA may exercise any rights and remedies for owner breach of the HAP contract.

f. The PHA's exercise or non-exercise of any right or remedy for owner breach of the HAP contract is not a waiver of the right to exercise that or any other right or remedy at any time.

11. **PHA and HUD Access to Premises and Owner's Records**

a. The owner must provide any information pertinent to the HAP contract that the PHA or HUD may reasonably require.

b. The PHA, HUD and the Comptroller General of the United States shall have full and free access to the manufactured home park, the space and the manufactured home, and to all accounts and other records of the owner that are relevant to the HAP contract, including the right to examine or audit the records and to make copies.

c. The owner must grant such access to computerized or other electronic records, and to any computers, equipment or facilities containing such records, and must provide any information or assistance needed to access the records.

12. **Exclusion of Third Party Rights**

a. The family is not a party to or third party beneficiary of Part B of the HAP contract. The family may not enforce any provision of Part B, and may not exercise any right or remedy against the owner or PHA under Part B.

b. The tenant or the PHA may enforce the tenancy addendum (Part C of the HAP contract) against the owner, and may exercise any right or remedy against the owner under the tenancy addendum.

c. The PHA does not assume any responsibility for injury to, or any liability to, any person injured as a result of the owner's action or failure to act in connection with management of the space or the manufactured home park, or in conjunction with implementation of the HAP contract, or as a result of any other action or failure to act by the owner.

d. The owner is not the agent of the PHA, and the HAP contract does not create or affect any relationship between the PHA and any lender to the owner or any suppliers, employees, contractors or subcontractors used by the owner in connection with management of the space or the manufactured home park, or with implementation of the HAP contract.

13. **Conflict of Interest**

a. "Covered individual" means a person or entity who is a member of any of the following classes:

(1) Any present or former member or officer of the PHA (except a PHA commissioner who is a participant in the program);

(2) Any employee of the PHA, or any contractor, subcontractor or agent of the PHA, who formulates policy or who influences decisions with respect to the program;

(3) Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the program; or

(4) Any member of the Congress of the United States.

b. A covered individual may not have any direct or indirect interest in the HAP contract or in any benefits or payments under the contract (including the interest of an immediate family member of such covered individual) while such person is a covered individual or during one year thereafter.

c. "Immediate family member" means the spouse, parent (including a stepparent), child (including a stepchild), grandparent, grandchild, sister or brother (including a stepsister or stepbrother) of any covered individual.

d. The owner certifies and is responsible for assuring that no person or entity has or will have a prohibited interest, at execution of the HAP contract, or at any time during the HAP contract term.

e. If a prohibited interest occurs, the owner shall promptly and fully disclose such interest to the PHA and HUD.

f. The conflict of interest prohibition under this section may be waived by the HUD field office for good cause.

g. No member of or delegate to the Congress of the United States or resident commissioner shall be admitted to any share or part of the HAP contract or to any benefits which may arise from it.

14. **Assignment of the HAP Contract**

a. The owner may not assign the HAP contract to a new owner without the prior written consent of the PHA.

b. If the owner requests PHA consent to assign the HAP contract to a new owner, the owner shall supply any information as required by the PHA pertinent to the proposed assignment.

c. The HAP contract may not be assigned to a new owner if the new owner (including a principal or other interested party) is debarred, suspended or subject to a limited denial of participation under HUD regulations (see 24 Code of Federal Regulations Part 24).

d. The HAP contract may not be assigned to a new owner if HUD has prohibited such assignment because:

(1) The Federal government has instituted an administrative or judicial action against the owner or proposed new owner for violation of the Fair Housing Act or other Federal equal opportunity requirements, and such action is pending; or

(2) A court or administrative agency has determined that the owner or proposed new owner violated the Fair Housing Act or other Federal equal opportunity requirements.

e. The HAP contract may not be assigned to a new owner if the new owner (including a principal or other interested party) is the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has determined (and has notified the family of such determination) that approving the assignment, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.

f. The PHA may deny approval to assign the HAP contract if the owner or proposed new owner (including a principal or other interested party):

(1) Has violated obligations under a housing assistance payments contract under Section 8;

(2) Has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing program;

(3) Has engaged in any drug-related criminal activity or any violent criminal activity;

(4) Has a history or practice of noncompliance with the HQS for units leased under the Section 8 tenant-based programs, or noncompliance with applicable housing standards for units leased with project-based Section 8 assistance or for units leased under any other Federal housing program;

(5) Has a history or practice of failing to terminate tenancy of tenants assisted under any federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that:

(a) Threatens the right to peaceful enjoyment of the premises by other residents;

(b) Threatens the health or safety of other residents, of employees of the PHA or of owner employees or other persons engaged in management of the housing;

(c) Threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises; or

(d) Is drug-related criminal activity or violent criminal activity;

(6) Has a history or practice of renting spaces or units that fail to meet State or local housing codes; or

(7) Has not paid State or local real estate taxes, fines or assessments.

g. The new owner must agree to be bound by and comply with the HAP contract. The agreement must be in writing, and in a form acceptable to the PHA. The new owner must give the PHA a copy of the executed agreement.

15. **Written Notices.** Any notice by the PHA or the owner in connection with this contract must be in writing.

16. **Entire Agreement; Interpretation**

a. The HAP contract contains the entire agreement between the owner and the PHA.

b. The HAP contract shall be interpreted and implemented in accordance with HUD requirements, including the HUD program regulations at 24 Code of Federal Regulations Part 982.

Housing Assistance Payments Contract
Manufactured Home Space Rental
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Part C of HAP Contract: Tenancy Addendum

1. **Section 8 Voucher Program**

a. The owner has leased the manufactured home space (space) to the tenant for occupancy by the tenant's family with assistance for a tenancy under the Section 8 housing choice voucher program (voucher program) of the United States Department of Housing and Urban Development (HUD). During the term of the lease, a manufactured home owned by the family will be located on the space. The family will reside in the manufactured home with assistance under the voucher program.

b. The owner has entered into a Housing Assistance Payments Contract (HAP contract) with the PHA under the voucher program. Under the HAP contract, the PHA will make housing assistance payments to the owner to help the family pay the rent for the space.

2. **Lease**

a. The owner has given the PHA a copy of the lease, including any revisions agreed by the owner and the tenant. The owner certifies that the terms of the lease are in accordance with all provisions of the HAP contract, and that the lease includes the tenancy addendum.

b. The tenant shall have the right to enforce the tenancy addendum against the owner. If there is any conflict between the tenancy addendum and any other provisions of the lease, the language of the tenancy addendum shall control.

3. **Use of Manufactured Home**

a. During the lease term, the family will reside in the manufactured home located on the space with assistance under the voucher program.

b. The composition of the household must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. Other persons may not be added to the household without prior written approval of the owner and the PHA.

c. The manufactured home space may only be used for residence by the PHA-approved household members. The manufactured home must be the family's only residence. Members of the family may engage in legal profit-making activities incidental to primary use of the manufactured home and space for residence by members of the family.

d. The tenant may not sublease or let the manufactured home or the space.

e. The tenant may not assign the lease or transfer the space.

4. **Rent to Owner**

a. The initial rent to owner for the space may not exceed the amount approved by the PHA in accordance with HUD requirements.

b. Changes in the rent to owner for the space shall be determined by the provisions of the lease. However, the owner may not raise the rent during the initial term of the lease.

c. During the term of the lease (including the initial term of the lease and any extension term), the rent to owner for the space may at no time exceed:

(1) The reasonable rent for the space as most recently determined or redetermined by the PHA in accordance with HUD requirements, or

(2) Rent charged by the owner for comparable unassisted spaces in the manufactured home park.

5. **Family Payment to Owner**

a. The family is responsible for paying the owner any portion of the rent to owner that is not covered by the PHA housing assistance payment.

b. Each month, the PHA will make a housing assistance payment to the owner on behalf of the family in accordance with the HAP contract. The amount of the monthly housing assistance payment will be determined by the PHA in accordance with HUD requirements for a manufactured home space tenancy under the Section 8 voucher program.

c. The monthly housing assistance payment shall be credited against the monthly rent to owner for the space.

d. The tenant is not responsible for paying the portion of rent to owner covered by the PHA housing assistance payment under the HAP contract between the owner and the PHA. A PHA failure to pay the housing assistance payment to the owner is not a violation of the lease. The owner may not terminate the tenancy for nonpayment of the PHA housing assistance payment.

e. The owner may not charge or accept, from the family or from any other source, any payment for rent of the space in addition to the rent to owner. The rent to owner for the space includes owner management and maintenance charges for the space, and owner-paid utilities. However, rent to owner does not include tenant-paid utilities.

f. The owner must immediately return any excess rent payment to the tenant.

6. **Other Fees and Charges**

a. Rent to owner does not include cost of any meals or supportive services or furniture which may be provided by the owner.

b. The owner may not require the tenant or family members to pay charges for any meals or supportive services or furniture which may be provided by the owner. Nonpayment of any such charges is not grounds for termination of tenancy.

c. The owner may not charge the tenant extra amounts for items customarily included in rent to owner in the locality, or provided at no additional cost to unsubsidized tenants in the premises.

7. **Maintenance, Utilities, and Other Services**

a. **Maintenance**

(1) The manufactured home park and the space shall be operated in accordance with the housing quality standards (HQS). The owner shall provide all maintenance and management services and facilities necessary for compliance with the HQS, including: trash collection and facilities for disposal of waste and refuse. However, the owner is not required to maintain or repair the family's manufactured home.

(2) The owner shall provide adequate maintenance of roads, walkways and other common areas and facilities, and shall assure that the family has adequate access to the space.

b. **Utilities and appliances**

(1) The owner must provide sources and lines for supply of all utilities needed to comply with the HQS, including water, electricity and other necessary utilities.

(2) The owner is not responsible for a breach of the HQS caused by the tenant's failure to:

(a) Pay for any utilities that are to be paid by the tenant.

(b) Provide and maintain any appliances that are to be provided by the tenant.

c. **Family damage**. The owner is not responsible for a breach of HQS because of damages to the manufactured home by a member of the household.

8. **Termination of Tenancy by Owner**

a. **Requirements.** The owner may only terminate the tenancy in accordance with the lease and HUD requirements.

b. **Grounds.** During the term of the lease (the initial term of the lease or any extension term), the owner may only terminate the tenancy because of:

(1) Serious or repeated violation of the lease;

(2) Violation of Federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the space and the manufactured home park;

(3) Criminal activity or alcohol abuse (as provided in paragraph c); or

(4) Other good cause (as provided in paragraph d).

c. **Criminal activity or alcohol abuse.**

(1) The owner may terminate the tenancy during the term of the lease if any member of the household, a guest or another person under a resident's control commits any of the following types of criminal activity:

(a) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the manufactured home park by, other residents (including property management staff residing in the manufactured home park);

(b) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the manufactured home park;

(c) Any violent criminal activity on or near the manufactured home park; or

(d) Any drug-related criminal activity on or near the manufactured home park.

(2) The owner may terminate the tenancy during the term of the lease if any member of the household is:

(a) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(b) Violating a condition of probation or parole under Federal or State law.

(3) The owner may terminate the tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

(4) The owner may terminate the tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety or right to peaceful enjoyment of the manufactured home park by other residents.

d. **Other good cause for termination of tenancy**

(1) During the initial lease term, other good cause for termination of tenancy must be something the family did or failed to do.

(2) During the initial lease term or during any extension term, other good cause includes:

(a) Disturbance of neighbors,

(b) Destruction of property, or

(c) Living or housekeeping habits that cause damage to the manufactured home, the space or the manufactured home park.

(3) After the initial lease term, such good cause includes:

(a) The tenant's failure to accept the owner's offer of a new lease or revision;

(b) The owner's desire to use the space for personal or family use or for a purpose other than residential rental use; or

(c) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the manufactured home park, the owner's desire to rent the space for a higher rent).

e. **Eviction by court action.** The owner may only evict the tenant from the space by a court action.

f. **Owner notice of grounds**

(1) The owner must give the tenant a notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice to the tenant.

(2) The notice must be given at or before commencement of the eviction action. The notice may be included in or combined with any owner eviction notice.

(3) The owner must give the PHA a copy of any owner eviction notice at the same time the owner notifies the tenant.

(4) Eviction notice means a notice to vacate, or a complaint or other initial pleading used to begin an eviction action under State or local law.

9. **Lease: Relation to HAP Contract.** If the HAP contract terminates for any reason, the lease terminates automatically.

10. **PHA Termination of Assistance.** The PHA may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If the PHA terminates program assistance for the family, the lease terminates automatically.

11. **Family Move-Out.** The tenant must notify the PHA and the owner before the family moves out of the space.

12. **Security Deposit**

a. The owner may collect a security deposit from the tenant. (However, the PHA may prohibit the owner from collecting a security deposit in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. Any such PHA-required restriction must be specified in the HAP contract.)

b. When the family moves out of the space, the owner, subject to State and local law, may use the security deposit, including any interest on the deposit, as reimbursement for any unpaid rent payable by the tenant, any damages or any other amounts that the tenant owes under the lease.

c. The owner must give the tenant a list of all items charged against the security deposit, and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must promptly refund the full amount of the unused balance to the tenant.

d. If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may collect the balance from the tenant.

13. **Prohibition of Discrimination.** In accordance with applicable equal opportunity statutes, Executive Orders, and regulations, the owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status or disability in connection with the lease.

14. **Conflict with Other Provisions of Lease**

a. The terms of the tenancy addendum are prescribed by HUD in accordance with Federal law and regulation, as a condition for Federal assistance to the tenant and tenant's family under the Section 8 voucher program.

b. In case of any conflict between the provisions of the tenancy addendum as required by HUD, and any other provisions of the lease or any other agreement between the owner and the tenant, the requirements of the HUD-required tenancy addendum shall control.

15. **Changes in Lease or Rent**

a. The tenant and the owner may not make any change in the tenancy addendum. However, if the tenant and the owner agree to any other changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must be in accordance with the requirements of the tenancy addendum.

b. In the following cases, tenant-based assistance shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner:

(1) If there are any changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;

(2) If there are any changes in lease provisions governing the term of the lease;

(3) If the family moves to a new unit, even if the unit is in the same building or complex.

c. PHA approval of the tenancy, and execution of a new HAP contract, are not required for agreed changes in the lease other than as specified in paragraph b.

d. The owner must notify the PHA of any changes in the amount of the rent to owner at least sixty days before any such changes go into effect, and the amount of the rent to owner following any such agreed change may not exceed the reasonable rent for the space as most recently determined or redetermined by the PHA in accordance with HUD requirements.

16. **Notices.** Any notice under the lease by the tenant to the owner or by the owner to the tenant must be in writing.

17. **Definitions**

Family. The persons who may reside in the manufactured home located on the space with assistance under the program.

HAP contract. The housing assistance payments contract between the PHA and the owner. The PHA pays housing assistance payments to the owner in accordance with the HAP contract.

Household. The persons who may reside in the manufactured home located on the space. The household consists of the family and any PHA-approved live-in aide. (A live-in aide is a person who resides in the unit to provide necessary supportive services for a member of the family who is a person with disabilities.)

Housing quality standards (HQS). The HUD minimum quality standards for manufactured housing assisted under the Section 8 tenant-based programs.

HUD. The U.S. Department of Housing and Urban Development.

HUD requirements. HUD requirements for the Section 8 program. HUD requirements are issued by HUD headquarters, as regulations, Federal Register notices or other binding program directives.

Lease. The written agreement between the owner and the tenant for the lease of the space to the tenant. The lease includes the tenancy addendum prescribed by HUD.

Manufactured home park. The property on which the space is located, including common areas and grounds.

PHA. Public Housing Agency.

Program. The Section 8 housing choice voucher program.

Rent to owner. The total monthly rent payable to the owner for the space. The rent to owner is the sum of the portion of rent payable by the tenant plus the PHA housing assistance payment to the owner.

Section 8. Section 8 of the United States Housing Act of 1937 (42 United States Code 1437f).

Space (manufactured home space). The manufactured home space rented by the tenant with assistance under the program.

Tenant. The family member (or members) who leases the space from the owner.

Voucher program. The Section 8 housing choice voucher program. Under this program, HUD provides funds to a PHA for rent subsidy on behalf of eligible families. The tenancy under the lease will be assisted with rent subsidy for a tenancy under the voucher program.

Tenancy Addendum
Manufactured Home Space Rental
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program
(To be attached to Tenant Lease)

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

Tenancy Addendum

1. **Section 8 Voucher Program**
   a. The owner has leased the manufactured home space (space) to the tenant for occupancy by the tenant's family with assistance for a tenancy under the Section 8 housing choice voucher program (voucher program) of the United States Department of Housing and Urban Development (HUD). During the term of the lease, a manufactured home owned by the family will be located on the space. The family will reside in the manufactured home with assistance under the voucher program.
   b. The owner has entered into a Housing Assistance Payments Contract (HAP contract) with the PHA under the voucher program. Under the HAP contract, the PHA will make housing assistance payments to the owner to help the family pay the rent for the space.
2. **Lease**
   a. The owner has given the PHA a copy of the lease, including any revisions agreed by the owner and the tenant. The owner certifies that the terms of the lease are in accordance with all provisions of the HAP contract, and that the lease includes the tenancy addendum.
   b. The tenant shall have the right to enforce the tenancy addendum against the owner. If there is any conflict between the tenancy addendum and any other provisions of the lease, the language of the tenancy addendum shall control.
3. **Use of Manufactured Home**
   a. During the lease term, the family will reside in the manufactured home located on the space with assistance under the voucher program.
   b. The composition of the household must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. Other persons may not be added to the household without prior written approval of the owner and the PHA.
   c. The manufactured home space may only be used for residence by the PHA-approved household members. The manufactured home must be the family's only residence. Members of the family may engage in legal profit-making activities incidental to primary use of the manufactured home and space for residence by members of the family.
   d. The tenant may not sublease or let the manufactured home or the space.
   e. The tenant may not assign the lease or transfer the space.
4. **Rent to Owner**
   a. The initial rent to owner for the space may not exceed the amount approved by the PHA in accordance with HUD requirements.
   b. Changes in the rent to owner for the space shall be determined by the provisions of the lease. However, the owner may not raise the rent during the initial term of the lease.
   c. During the term of the lease (including the initial term of the lease and any extension term), the rent to owner for the space may at no time exceed:
      (1) The reasonable rent for the space as most recently determined or redetermined by the PHA in accordance with HUD requirements, or
      (2) Rent charged by the owner for comparable unassisted spaces in the manufactured home park.
5. **Family Payment to Owner**
   a. The family is responsible for paying the owner any portion of the rent to owner that is not covered by the PHA housing assistance payment.
   b. Each month, the PHA will make a housing assistance payment to the owner on behalf of the family in accordance with the HAP contract. The amount of the monthly housing assistance payment will be determined by the PHA in accordance with HUD requirements for a manufactured home space tenancy under the Section 8 voucher program.
   c. The monthly housing assistance payment shall be credited against the monthly rent to owner for the space.
   d. The tenant is not responsible for paying the portion of rent to owner covered by the PHA housing assistance payment under the HAP contract between the owner and the PHA. A PHA failure to pay the housing assistance payment to the owner is not a violation of the lease. The owner may not terminate the tenancy for nonpayment of the PHA housing assistance payment.
   e. The owner may not charge or accept, from the family or from any other source, any payment for rent of the space in addition to the rent to owner. The rent to owner for the space includes owner management and maintenance charges for the space, and owner-paid utilities. However, rent to owner does not include tenant-paid utilities.
   f. The owner must immediately return any excess rent payment to the tenant.
6. **Other Fees and Charges**
   a. Rent to owner does not include cost of any meals or supportive services or furniture which may be provided by the owner.
   b. The owner may not require the tenant or family members to pay charges for any meals or supportive services or furniture which may be provided by the owner. Nonpayment of any such charges is not grounds for termination of tenancy.
   c. The owner may not charge the tenant extra amounts for items customarily included in rent to owner in the locality, or provided at no additional cost to unsubsidized tenants in the premises.

7. **Maintenance, Utilities, and Other Services**
   a. **Maintenance**
      (1) The manufactured home park and the space shall be operated in accordance with the housing quality standards (HQS). The owner shall provide all maintenance and management services and facilities necessary for compliance with the HQS, including: trash collection and facilities for disposal of waste and refuse. However, the owner is not required to maintain or repair the family's manufactured home.
      (2) The owner shall provide adequate maintenance of roads, walkways and other common areas and facilities, and shall assure that the family has adequate access to the space.
   b. **Utilities and appliances**
      (1) The owner must provide sources and lines for supply of all utilities needed to comply with the HQS, including water, electricity and other necessary utilities.
      (2) The owner is not responsible for a breach of the HQS caused by the tenant's failure to:
         (a) Pay for any utilities that are to be paid by the tenant.
         (b) Provide and maintain any appliances that are to be provided by the tenant.
   c. **Family damage.** The owner is not responsible for a breach of HQS because of damages to the manufactured home by a member of the household.
8. **Termination of Tenancy by Owner**
   a. **Requirements.** The owner may only terminate the tenancy in accordance with the lease and HUD requirements.
   b. **Grounds.** During the term of the lease (the initial term of the lease or any extension term), the owner may only terminate the tenancy because of:
      (1) Serious or repeated violation of the lease;
      (2) Violation of Federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the space and the manufactured home park;
      (3) Criminal activity or alcohol abuse (as provided in paragraph c); or
      (4) Other good cause (as provided in paragraph d).
   c. **Criminal activity or alcohol abuse.**
      (1) The owner may terminate the tenancy during the term of the lease if any member of the household, a guest or another person under a resident's control commits any of the following types of criminal activity:
         (a) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the manufactured home park by, other residents (including property management staff residing in the manufactured home park);
         (b) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the manufactured home park;
         (c) Any violent criminal activity on or near the manufactured home park; or
         (d) Any drug-related criminal activity on or near the manufactured home park.
      (2) The owner may terminate the tenancy during the term of the lease if any member of the household is:
         (a) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
         (b) Violating a condition of probation or parole under Federal or State law.
      (3) The owner may terminate the tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.
      (4) The owner may terminate the tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety or right to peaceful enjoyment of the manufactured home park by other residents.
   d. **Other good cause for termination of tenancy**
      (1) During the initial lease term, other good cause for termination of tenancy must be something the family did or failed to do.
      (2) During the initial lease term or during any extension term, other good cause includes:
         (a) Disturbance of neighbors,
         (b) Destruction of property, or
         (c) Living or housekeeping habits that cause damage to the manufactured home, the space or the manufactured home park.
      (3) After the initial lease term, such good cause includes:
         (a) The tenant's failure to accept the owner's offer of a new lease or revision;
         (b) The owner's desire to use the space for personal or family use or for a purpose other than residential rental use; or
         (c) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the manufactured home park, the owner's desire to rent the space for a higher rent).
   e. **Eviction by court action.** The owner may only evict the tenant from the space by a court action.
   f. **Owner notice of grounds**
      (1) The owner must give the tenant a notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice to the tenant.
      (2) The notice must be given at or before commencement of the eviction action. The notice may be included in or combined with any owner eviction notice.
      (3) The owner must give the PHA a copy of any owner eviction notice at the same time the owner notifies the tenant.
      (4) Eviction notice means a notice to vacate, or a complaint or other initial pleading used to begin an eviction action under State or local law.

9. **Lease: Relation to HAP Contract.** If the HAP contract terminates for any reason, the lease terminates automatically.

10. **PHA Termination of Assistance.** The PHA may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If the PHA terminates program assistance for the family, the lease terminates automatically.

11. **Family Move-Out.** The tenant must notify the PHA and the owner before the family moves out of the space.

12. **Security Deposit**

a. The owner may collect a security deposit from the tenant. (However, the PHA may prohibit the owner from collecting a security deposit in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. Any such PHA-required restriction must be specified in the HAP contract.)

b. When the family moves out of the space, the owner, subject to State and local law, may use the security deposit, including any interest on the deposit, as reimbursement for any unpaid rent payable by the tenant, any damages or any other amounts that the tenant owes under the lease.

c. The owner must give the tenant a list of all items charged against the security deposit, and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must promptly refund the full amount of the unused balance to the tenant.

d. If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may collect the balance from the tenant.

13. **Prohibition of Discrimination.** In accordance with applicable equal opportunity statutes, Executive Orders, and regulations, the owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status or disability in connection with the lease.

14. **Conflict with Other Provisions of Lease**

a. The terms of the tenancy addendum are prescribed by HUD in accordance with Federal law and regulation, as a condition for Federal assistance to the tenant and tenant's family under the Section 8 voucher program.

b. In case of any conflict between the provisions of the tenancy addendum as required by HUD, and any other provisions of the lease or any other agreement between the owner and the tenant, the requirements of the HUD-required tenancy addendum shall control.

15. **Changes in Lease or Rent**

a. The tenant and the owner may not make any change in the tenancy addendum. However, if the tenant and the owner agree to any other changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must be in accordance with the requirements of the tenancy addendum.

b. In the following cases, tenant-based assistance shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner:

(1) If there are any changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;

(2) If there are any changes in lease provisions governing the term of the lease;

(3) If the family moves to a new unit, even if the unit is in the same building or complex.

c. PHA approval of the tenancy, and execution of a new HAP contract, are not required for agreed changes in the lease other than as specified in paragraph b.

d. The owner must notify the PHA of any changes in the amount of the rent to owner at least sixty days before any such changes go into effect, and the amount of the rent to owner following any such agreed change may not exceed the reasonable rent for the space as most recently determined or redetermined by the PHA in accordance with HUD requirements.

16. **Notices.** Any notice under the lease by the tenant to the owner or by the owner to the tenant must be in writing.

17. **Definitions**

Family. The persons who may reside in the manufactured home located on the space with assistance under the program.

HAP contract. The housing assistance payments contract between the PHA and the owner. The PHA pays housing assistance payments to the owner in accordance with the HAP contract.

Household. The persons who may reside in the manufactured home located on the space. The household consists of the family and any PHA-approved live-in aide. (A live-in aide is a person who resides in the unit to provide necessary supportive services for a member of the family who is a person with disabilities.)

Housing quality standards (HQS). The HUD minimum quality standards for manufactured housing assisted under the Section 8 tenant-based programs.

HUD. The U.S. Department of Housing and Urban Development.

HUD requirements. HUD requirements for the Section 8 program. HUD requirements are issued by HUD headquarters, as regulations, Federal Register notices or other binding program directives.

Lease. The written agreement between the owner and the tenant for the lease of the space to the tenant. The lease includes the tenancy addendum prescribed by HUD.

Manufactured home park. The property on which the space is located, including common areas and grounds.

PHA. Public Housing Agency.

Program. The Section 8 housing choice voucher program.

Rent to owner. The total monthly rent payable to the owner for the space. The rent to owner is the sum of the portion of rent payable by the tenant plus the PHA housing assistance payment to the owner.

Section 8. Section 8 of the United States Housing Act of 1937 (42 United States Code 1437f).

Space (manufactured home space). The manufactured home space rented by the tenant with assistance under the program.

Tenant. The family member (or members) who leases the space from the owner.

Voucher program. The Section 8 housing choice voucher program. Under this program, HUD provides funds to a PHA for rent subsidy on behalf of eligible families. The tenancy under the lease will be assisted with rent subsidy for a tenancy under the voucher program.

[FR Doc. 02–25343 Filed 10–7–02; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–59]

Notice of Submission of Proposed Information Collection to OMB: Public Housing Agency (PHA) Plan

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 7, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0226) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Public Housing Agency (PHA) Plan.

OMB Approval Number: 2577–0226.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Public Housing Agencies (PHAs) must submit 5-year plans and annual plans for tenant-based assistance and public housing operating subsidies.

Respondents: State, Local or Tribal Government.

Frequency of Submission: Annually, Other (Every five years).

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	4,100	1	....	21	....	85,800

Total Estimated Burden Hours: 85,800.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1955, 44 U.S.C. 35, as amended.

Dated: October 1, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–25500 Filed 10–7–02; 8:45 am]
BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

Office of Indian Education Programs

Submission of Information Collection to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Office of Indian Education Programs, Interior.

ACTION: Notice of renewal of a currently approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act, this notice announces that the Bureau of Indian Affairs is submitting an information collection to the Office of Management and Budget for renewal. The collection concerns the enrollment applications for two Bureau operated post secondary schools: Haskell Indian Nations University and Southwestern Indian Polytechnic Institute. We are requesting a renewal of clearance and requesting comments on this information collection.

DATES: Written comments must be submitted on or before November 7, 2002.

ADDRESSES: You are requested to send any comments to Attention: Desk Officer for the Department of the Interior, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503. Please send a copy of your written comments to Kenneth Whitehorn, Department of the Interior, Office of Indian Education Programs, Branch of Planning, MS - Room 3512 MIB, 1849 C Street, NW., Washington, DC 20240. You may fax your written comments to (202) 208–3312.

FOR FURTHER INFORMATION CONTACT: Kenneth Whitehorn, (202) 208–4976.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

I. Abstract

The Bureau of Indian Affairs (BIA) is submitting the admission forms for Haskell Indian Nations University and the Southwestern Indian Polytechnic Institute for review by OMB. These admission forms are useful in determining program eligibility of American Indian and Alaska Native students for educational services. The forms have been changed to include a Paperwork Reduction Act and Public Burden statements, a Privacy Act statement, and an Effects of Non Disclosure statement.

These forms are utilized pursuant to Blood Quantum Act, Public Law 99–

228; the Snyder Act, Chapter 115, Public Law 67–85; and, the Indian Appropriations of the 48th Congress, Chapter 180, page 91, For Support of Schools, July 4, 1884.

II. Request for Comments

A notice announcing the emergency clearance and requesting comments was published on April 23, 2002 (67 FR 19770). There were no comments received regarding that notice, however, the Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. They also will become a matter of public record.

All written comments will be available for public inspection in Room 3512 of the Main Interior Building, 1849 C Street, NW., Washington, DC, from 7:45 a.m. to 4:15 p.m. EST, Monday through Friday, excluding legal holidays. If you wish to have your name or address withheld from public view, you must state this prominently at the beginning of your comments. We will honor your request to the extent allowed by law.

We will not request nor sponsor a collection of information, and you need not respond to such a request, if there is no valid Office of Management and Budget Control Number.

III. Data

Title: Applications for Admission to Haskell Indian Nations University and to Southwestern Indian Polytechnic Institute.

OMB approval number: 1076–0114.

Type of Review: Renewal.

Description: These eligibility application forms are mandatory in determining a student's eligibility for educational services. This collection is at no cost to the public.

Total Number of Respondents: 2,281.

Total Number of Annual responses: 3,943.

Total Annual Burden hours: 15 minutes per response × 3,943 annual responses = 986 hours.

Dated: October 1, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–25619 Filed 10–7–02; 8:45 am]

BILLING CODE 4310–NM–P 4310–TS–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for endangered species permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: Written data or comments on these applications must be received, at the address given below, by November 7, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist). Telephone: 404/679–4176; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: Victoria Davis, Telephone: 404/679–4176; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to "*victoria_davis@fws.gov.*" Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed above (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to the Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Applicant: Jeff S. Glitzenstein, South Carolina Native Plant Society, Tallahassee, Florida, TE059092–0.

The applicant requests authorization to remove and reduce to possession cuttings and seeds of *Lindera melissifolia* (pondberry) for the purposes of initiating colonies in the Francis Marion National Forest. The proposed activities will take place in the Francis Marion National Forest, Charleston and Berkeley Counties, South Carolina.

Applicant: United States Army Corps of Engineers Research and Development Center, Dr. Andrew C. Miller, Vicksburg, Mississippi, TE060818–0.

The applicant requests authorization to take (survey, capture, and translocate) approximately 3,000 endangered fat pocketbook mussels (*Potamilus capax*) from Stateline Outlet Ditch, Mississippi County, Arkansas. The applicant has requested to relocate mussels from the dredge site to other suitable sites in the river.

Applicant: United States Army Corps of Engineers Research and Development Center, Dr. Andrew C. Miller, Vicksburg, Mississippi, TE060835–0.

The applicant requests authorization to take (survey, capture, and translocate) by clamshell dredging the endangered orangefoot (pearlymussel) pimpleback (*Pletobasus cooperianus*) and the pink (pearlymussel) mucket (*Lampsilis abrupta*). Clamshell dredging is proposed as an experimental technique to minimize mussel mortality. The proposed activity will occur in the Tennessee River navigation channel near Diamond Island, Hardin County, Tennessee.

Applicant: Arkansas Tech University, Joseph N. Stoeckel, Russellville, Arkansas, TE060875–0.

The applicant requests authorization to take (survey, handle, identify, examine, release, and collect voucher specimens and relics) the fat pocketbook mussel (*Potamilus capax*) while conducting presence and absence surveys. The surveys will be conducted at Old Frenchman's Bayou and ditch number 1 in Mississippi and Critendon counties, Arkansas.

Applicant: Natural Resources Conservation Service, James David Ellis, Little Rock, Arkansas, TE059043–0.

The applicant requests authorization to take (survey, capture, tag, mark, and release) the American burying beetle (*Nicrophorus americanus*) while conducting presence and absence surveys to determine if the species is present in the South Logan Counties Water Supply project area. The proposed activities will occur in Logan and Scott Counties, Arkansas.

Applicant: Ichauway, Inc. d.b.a. Joseph W. Jones Ecological Research Center, Newton, Georgia, TE059033–0.

The applicant requests authorization to remove and reduce to possession seeds of *Lindera melissifolia* (pondberry) to determine the role of seed predation, longevity of seeds, and the effects of leaf litter on seed germination in order to promote sexual reproduction. The proposed activities will take place in the Francis Marion National Forest, Charleston and Berkeley Counties, South Carolina and the Delta National Forest, Sharkey County, Mississippi.

Applicant: Dr. William D. Pearson, University of Louisville, Louisville, Kentucky, TE059028–0.

The applicant requests authorization to take (survey, capture, and release) the Kentucky cave shrimp (*Palaemonias ganteri*) to determine presence and absence and to gather population data while conducting long term monitoring of the aquatic fauna in subterranean streams of Mammoth Cave National Park. The proposed activities will take place in Roaring River, Echo/Styx River, Mystic River, Owl cave, Eyeless Fish Trail, and Golden Triangle streams within the Mammoth Cave National Park, Edmonson County, Kentucky.

Applicant: CCR Environmental, Inc., Mr. Christian M. Crow, Atlanta, Georgia, TE059008–0.

The applicant requests authorization to take (survey, capture, and release) the fat threeridge mussel (*Amblema neislerii*), shinyrayed pocketbook (*Lampsilis subangulata*), gulf moccasinshell (*Medionidus penicillatus*), oval pigtoe (*Pleurobema pyriforme*), and purple bankclimber (*Elliptoideus sloatianus*) to determine the absence or presence in various streams, including bridge and roadway crossings throughout Georgia.

Applicant: Kenneth Neil Medlin, North Carolina Department of Transportation, Clayton, North Carolina, TE061055.

The applicant requests authorization to take (survey, capture, and release) the Cape Fear shiner (*Notropis mekistocholas*) and the spotfin chub (*Cyprinella monacha*) while conducting presence and absence surveys when potential transportation projects occur. The proposed activities will occur in the Cape Fear River Basin and the Tennessee River Basin, North Carolina.

Applicant: International Carnivorus Plant Society, Barry Rice, Fullerton, California, TE060992–0.

The applicant requests authorization to remove and reduce to possession seeds of *Sarracenia jonesii* (mountain sweet pitcher plant), *Sarracenia oreophila* (green pitcher plant), *Sarracenia alabamensis* (Alabama canebrake pitcher plant), and *Pinguilcula ionantha* (Godfrey's butterwort) for interstate commerce distribution in the United States.

Applicant: International Carnivorus Plant Society, Barry Rice, Fullerton, California, TE061005–0.

The applicant requests authorization to remove and reduce to possession seeds of *Sarracenia jonesii* (mountain sweet pitcher plant), *Sarracenia oreophila* (green pitcher plant), *Sarracenia alabamensis* (Alabama canebrake pitcher plant), and *Pinguilcula ionantha* (Godfrey's butterwort) interstate commerce distribution in the United States. The seeds would be germinated and grown under the expert care and when they are approximately two years old, the vigorous individuals would be sold.

Applicant: United States Army Corps of Engineers-Memphis District, David L. Reece, Memphis, Tennessee, TE061069–0.

The applicant requests authorization to take (survey, collect, and replace at point of collection) the endangered orangefoot (pearlymussel) pimpleback (*Pletobasus cooperianus*), pink (pearlymussel) mucket (*Lampsilis abrupta*), fat pocketbook mussel (*Potamilus capax*), Turgid-blossom pearly mussel (*Epioblasma turgidula*), and ring pink mussel (*Obovaria retusa*) while conducting presence and absence surveys. The proposed activities will occur within the boundaries of the U.S. Army Corps of Engineers-Memphis District in the following states: Arkansas, Tennessee, and Kentucky.

Applicant: Dennis R. DeVries, Auburn University, Auburn, Alabama, TE061284–0.

The applicant requests authorization to take (survey, collect, measure, count, and replace at point of collection) the endangered Tulotoma snail (*Tulotoma magnifica*) while conducting presence and absence surveys. The proposed activities will occur in the Coosa River drainage, Alabama.

Dated: September 18, 2002.

Christine E. Eustis,

Acting Regional Director, Region IV.

[FR Doc. 02–25513 Filed 10–7–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Incidental Take Permits for the Alabama Beach Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; announcement of scoping meeting.

SUMMARY: The Fish and Wildlife Service announces its intent to prepare an environmental impact statement regarding the proposed Gulf Highlands Area Habitat Conservation Plan (HCP) and issuance of two permits for the incidental take of the Alabama beach mouse. These permits are for the construction, occupancy, use, operation, and maintenance of two residential/recreational condominium projects-the Gulf Highlands Condominiums by Gulf Highlands LLC and Beach Club West by Fort Morgan Paradise Joint Venture on the Fort Morgan Peninsula, in Baldwin County, Alabama. We will also hold a public scoping meeting/hearing on

October 29, 2002, at Gulf State Park in Gulf Shores, Alabama.

DATES: Written comments concerning our intent to prepare an EIS and concerning the HCP should be received on or before November 22, 2002. The scoping meeting will be held on October 29, 2002, from 4 p.m. to 8 p.m.

ADDRESSES: Persons wishing to review the application and HCP may obtain a copy by writing the Service's Southeast Regional Office at Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (Attn: Endangered Species Permits,) or Field Office, U.S. Fish and Wildlife Service, 1208–B Main Street, Daphne, AL 36526 (Attn: Ms. Barbara Allen). Documents will be available for public inspection by appointment during normal business hours at the regional office. Written data or comments concerning the HCP and our notice of intent to prepare an EIS should be submitted to the Regional Office. Please reference permit numbers TE–007985–0 (Gulf Highlands) and TE–031307–0 (Fort Morgan Peninsula Joint Venture) in such comments, or in requests for documents.

The scoping meeting will be held at Gulf State Park, 20115 State Highway 135, Gulf Shores, Alabama. A court reporter will be present to record all comments, and all interested parties will be allowed to comment.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Valenta, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–4144; or Ms. Barbara Allen, Fish and Wildlife Biologist, Daphne Field Office, (see **ADDRESSES** above), telephone: 334/441–5181, extension 33.

SUPPLEMENTARY INFORMATION: The proposed residential/recreational condominium developments will be located on approximately 196 acres in south Baldwin County, Alabama, between State Highway 180 and the Gulf of Mexico (Section 28, Township 9 South, Range 2 East) about twelve miles west of Highway 59 in Gulf Shores, Alabama, on the Fort Morgan Peninsula.

Some of the Applicants' future activities have the potential to impact species subject to protection under the Act, including the Alabama beach mouse *(Peromyscus polionotus ammobates)*. Section 10(a)(1)(B) permits non-Federal landowners to take endangered and threatened species, provided the take is incidental to otherwise lawful activities and will not appreciably reduce the likelihood for the survival and recovery of the species in the wild, among other permit issuance criteria. An applicant for a permit under section 10 of the Act must prepare and submit to the Service for approval a plan containing, among other things, a strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for implementation of the plan will be provided.

The Applicants have initiated and continued discussions with the Service regarding the possibility of Permits and an associated HCP for their activities on lands to be covered by the Permits. General activities proposed for permit coverage include residential, commercial and industrial development, construction, and maintenance activities.

The Service previously considered the Applicants' HCP in an Environmental Assessment and issued a Finding of No Significant Impact. 67 FR 17089 (Apr. 9, 2002). That environmental analysis was challenged in an action for judicial review brought by Sierra Club and Friends of the Earth. The United States District Court for the Southern District of Alabama granted a preliminary injunction against any take of the Alabama beach mouse pursuant to the permits previously issued to Applicants. *Sierra Club and Friends of the Earth* v. *Norton*, 207 F. Supp. 2d. 1310 (S.D. Ala. 2002).

Subsequently, in light of the court's preliminary injunction, the Service determined to revisit the earlier NEPA analysis for this HCP and the issued permits. See Defendant's Motion for Voluntary Remand, *Sierra Club and Friends of the Earth* v. *Norton*, No. CV–02–0258–CB–C (S.D. Ala. Aug. 8, 2002). The Service has decided, and announces through this notice, its intent to review the proposed HCP and the environmental effects of issuing the permits through preparation of an EIS.

The environmental review will analyze the Applicants' proposed HCP as well as a full range of reasonable alternatives and the associated impacts of each. The Service is currently in the process of developing alternatives for analysis. The alternatives identified to date are as follows:

Alternative 1—No Action: The Service would not re-affirm the ITPs.

Alternative 2—Development According to Original Gulf Highlands Subdivision Plat: A portion of the Applicants' properties were originally platted and zoned for single family residential development by the Baldwin County Planning Commission. This development alternative involves development according to the original plat or by additional platting and subdivision of the lands.

Alternative 3—Development With Primary Features Occupying Full Width of the Escarpment: Alternative 3 consists of the residential high-rise building complexes placed atop the escarpment.

Alternative 4—Development Entirely North of the Escarpment: This alternative would involve development of residential condominium buildings and infrastructure approximately 300 feet north of the escarpment for both projects.

Alternative 5—Development of Portions of the Escarpment With a 325 ft. Habitat Corridor Between the Projects: Alternative 5 consists of the development of the same number of units, but placed on different portions of the escarpment and adjacent areas. This development configuration would result in the preservation of an undeveloped corridor of ABM habitat approximately 325 feet wide separating the individual developments and connecting the interior scrub areas with the designated critical habitat to the south of the developments.

Alternative 6–Development of Onsite Mitigation Including a 909-foot Corridor Connecting Adjacent Primary/Secondary Dunes and Escarpment to the Interior: This alternative increases the width of the undeveloped corridor described above and repositions the corridor to the west side of the property. This alternative provides for dedication of 105.5 acres of Applicant-owned lands into conservation status via covenants, conditions and restrictions attached to the property, and conditions of any ITP that might be issued.

Persons wishing to provide relevant information and comments regarding this activity should submit these to the above address. For information, please contact the individual identified above in the section entitled **FOR FURTHER INFORMATION CONTACT.**

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR parts 1500 through 1508), and with other appropriate Federal laws and regulations, policies, and procedures of the Service for compliance with those regulations. It is estimated that the draft EIS will be available for public review in early 2003.

Dated: October 2, 2002.

Sam D. Hamilton,

Regional Director.

[FR Doc. 02–25505 Filed 10–7–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–014–02–1652–HB; GP–2–300]

Emergency Closure of Public Lands; Klamath County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency Closure of the Willow Valley Road in Klamath County, Oregon.

SUMMARY: Notic is hereby given that the Willow Valley Road, (41–14E–13), at the Rock Creek Bridge, in T. 41 S., R. 15 E., Sec. 17, Willamette Meridan, Klamath County, Oregon is temporarily closed to vehicle operation from October 7, 2002 through November 29, 2002. The closure is made under the authority of 43 CFR 8364.1. The purpose of this emergency temporary closure is to protect persons from potential harm during bridge replacement.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0.–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months, as well as the penalties provided under Oregon State law.

The public road temporarily closed to public use under this order will be posted with signs at points of public access.

DATES: This closure is effective from October 7, 2002 through November 29, 2002.

ADDRESSES: Copies of the closure order and map showing the location of the closed road is available for the Klamath Falls Resource Area Office, 2795 Anderson Avenue, Building 25, Klamath Falls, Oregon 97603.

FOR FURTHER INFORMATION CONTACT: Teresa A. Raml, Field Manager, Klamath Falls Resource Area Office at (541) 883–6916.

Dated: July 12, 2002.

Teresa A. Rami,

Field Manager, Klamath Falls Resource Area.

[FR Doc. 02–25660 Filed 10–04–02; 10:58 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–933–1410–ET; A–033717]

Public Land Order No. 7540; Partial Revocation of Public Land Order No. 2374; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects approximately 304.18 acres of public lands withdrawn for military purposes for the Department of the Air Force at Port Moller Radio Relay Site, Alaska. The lands are no longer needed for the purpose for which they were withdrawn. This action also allows the conveyance of the lands to the State of Alaska, if such lands are otherwise available. Any lands described herein that are not conveyed to the State will continue to be subject to the terms and conditions of Public Land Order No. 5186, as amended, and any other withdrawal or segregation of record.

EFFECTIVE DATE: October 8, 2002.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), and by Section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1994), it is ordered as follows:

1. Public Land Order No. 2374, which withdrew public lands for military purposes, is hereby revoked insofar as it affects the following described lands:

Seward Meridian

T. 48 S., R. 72 W.,

Three parcels more particularly described as:

Tract A

Commencing at U.S.L.M.S. 1147, latitude 55°59′28″ N., longitude 160°34′29.374″ W., 1927 N.A.D.;
Thence S. 73°32′44″ E., 16.040.33 feet to Point "Site";
Thence North 1,000 feet to the Point of Beginning; thence
East, 1,000 feet;
South, 2,000 feet;
West, 2,000 feet;
North, 2,000 feet;
East, 1,000 feet to the Point of Beginning.
The area described contains 91.83 acres.

Tract B

Commencing at U.S.L.M.S. 1147, latitude 55°59′28″ N., longitude 160°34′29.374″ W., 1927 N.A.D.;
Thence N. 30°18′42″ E., 3,785.54 feet to the Point of Beginning, thence
N. 59°32′30″ W., 750 feet;
N. 30°27′30″ E., 5,500 feet;
S. 59°32′30″ E., 1,500 feet;
S. 30°27′30″ W., 5,500 feet;
N. 59°32′30″ W., 750 feet to the Point of Beginning.
The area described contains 189.39 acres.

Tract C

Commencing at U.S.L.M.S. 1147, latitude 55°59′28″ N., longitude 160°34′29.374″ W., 1927 N.A.D.;
Thence S. 73°32′44″ E., 10,580 feet to the Point of Beginning; thence
N. 83° E., 730 feet;
S. 7° E., 1,000 feet;
S. 83° W., 1,000 feet;
N. 7° W., 1,000 feet;
N. 83° E., 270 feet to the Point of Beginning.
The area described contains 22.96 acres.
The areas described aggregate 304.18 acres.

2. The State of Alaska application for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1994), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e)(1994), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such lands are otherwise available. Any lands not conveyed will continue to be subject to the terms and conditions of Public Land Order No. 5186, as amended, and any other withdrawal or segregation of record.

Dated: September 13, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–25576 Filed 10–7–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–933–1410–ET; F–07357]

Public Land Order No. 7541; Partial Revocation of Public Land Order No. 2550; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects 55.31 acres of public land withdrawn for airport purposes for the Federal Aviation Administration. The land is no

longer needed for the purpose for which it was withdrawn. This action also allows the conveyance of the land to the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State will be subject to Public Land Order No. 5180, as amended, and any other withdrawal or segregation of record.

EFFECTIVE DATE: October 8, 2002.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), and by Section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1994), it is ordered as follows:

1. Public Land Order No. 2550, which withdrew public lands for airport purposes, is hereby revoked insofar as it affects the following described land:

Fairbanks Meridian

T. 1 S., R. 2 W.,
Sec. 23, NE¼NE¼ excluding NE¼SE¼NE¼NE¼, E½E½NW¼SE¼NE¼NE¼, E½NE¼SW¼SE¼NE¼NE¼, and N½SE¼SE¼NE¼NE¼;
Sec. 24, W½NW¼NW¼.
The area described contains 55.31 acres.

2. The State of Alaska application for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1994), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e)(1994), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Lands selected by, but not conveyed to, the State will be subject to Public Land Order No. 5180, as amended and any other withdrawal or segregation of record.

Dated: September 13, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–25577 Filed 10–7–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–933–1410–ET; A–042420]

Public Land Order No. 7539; Partial Revocation of Public Land Order No. 2713, as Amended; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects 30 acres of public land withdrawn for air navigation purposes for the Federal Aviation Administration at Talkeetna, Alaska. The land is no longer needed for the purpose for which it was withdrawn. The land is also classified for conveyance to Cook Inlet Region, Inc., under the Act of January 2, 1976, as amended. Any land described herein that is not conveyed will continue to be subject to the terms and conditions of Public Land Order No. 5186, as amended, and any other withdrawal or segregation of record.

EFFECTIVE DATE: October 8, 2002.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), and by Section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1994), it is ordered as follows:

1. Public Land Order No. 2713, as amended, which withdrew public lands for air navigation purposes, is hereby revoked insofar as it affects the following described land:

Seward Meridian

T. 26 N., R. 4 W.,
Sec. 31, W½SE¼NW¼ and NW¼NE¼SW¼.
The area described contains 30 acres.

2. Subject to valid existing rights, the land is classified for conveyance to Cook Inlet Region, Inc., under the Act of January 2, 1976, as amended, 43 U.S.C. 1611 (note) (1994). Any land not conveyed will continue to be subject to the terms and conditions of Public Land Order No. 5186, as amended, and any other withdrawal or segregation of record.

Dated: September 13, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–25579 Filed 10–7–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–010–1430–ET; FL–ES–051481]

Public Land Order No. 7542; Transfer of Jurisdiction; Florida

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies the Executive Order dated January 9, 1838 and transfers the administrative jurisdiction of 49.83 acres of land located at the Pensacola Naval Air Station from the Department of the Navy to the Department of Veterans Affairs for the expansion and operation of the Barrancas National Cemetery.

EFFECTIVE DATE: October 8, 2002.

FOR FURTHER INFORMATION CONTACT: Duane Winters, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206, 601–977–5403.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the Executive Order dated January 9, 1838, which withdrew public domain land for the benefit of the United States Navy, is hereby modified to transfer administrative jurisdiction of the following described land from the Department of the Navy to the Department of Veterans Affairs, to manage as part of the National Cemetery System:

Tallahassee Meridian

T. 3 S., R. 30W.,
Tract 6.
The area described contains 49.83 acres in Escambia County.

2. The land described in Paragraph 1 remains withdrawn from all forms of appropriation and disposition under the public land laws, including the mining laws, but not from leasing under the mineral leasing laws.

Dated: September 13, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–25578 Filed 10–7–02; 8:45 am]

BILLING CODE 4310–OJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

South Delta Improvements Program

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of extension of time for written comments on scope of environmental impact statement/ environmental impact report (EIS/EIR).

SUMMARY: The Bureau of Reclamation is extending the public review period to October 31, 2002, for written comments on the scope of the EIS/EIR for the South Delta Improvements Program. The notice of intent for the EIS/EIR was published in the **Federal Register** on August 30, 2002 (67 FR 55870). The comment period was originally to end on October 4, 2002.

DATES: Written comments on the scope of the EIS/EIR should be submitted on or before October 31, 2002.

ADDRESSES: Written comments on the scope of the EIS/EIR should be sent to Mr. Dan Meier, Bureau of Reclamation, 2800 Cottage Way, MP–700, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Mr. Meier, Reclamation, at the above address, or by telephone at 916–978–5086 or TDD 1–800–735–2922; or Mr. Paul Marshall, Department of Water Resources, 1416 Ninth Street, Sacramento, CA 94236, or by telephone at 916–653–2118.

SUPPLEMENTARY INFORMATION: Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: September 26, 2002.

Frank Michny,

Regional Environmental Officer.

[FR Doc. 02–25506 Filed 10–7–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Alternatives for Meeting Water Needs in the Red River Valley, ND

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: On December 15, 2000, the 106th Congress passed the Dakota Water Resources Act of 2000, which was signed into law on December 21, 2000 (Public Law 106–554). Among other things, the Dakota Water Resources Act of 2000 (DWRA) states that, "the Secretary of the Interior shall conduct a comprehensive study of the water quality and quantity needs of the Red River Valley in North Dakota and possible options for meeting those needs" (Section 8(b)(1)). In addition, the DWRA states that, "pursuant to an agreement between the Secretary and State of North Dakota as authorized under section 19g) * * * the Secretary and the State of North Dakota shall jointly prepare and complete a draft environmental impact statement concerning all feasible options to meet the comprehensive water quality and quantity needs of the Red River Valley and the options for meeting those needs" (Section 8(c)(2)(A)).

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) and the State of North Dakota (ND) will jointly prepare this environmental impact statement (EIS). The State of North Dakota (ND) has designated the Garrison Diversion Conservancy District (GDCD) to serve as the State lead in preparation of the EIS for the Red River Valley Water Supply Project. Reclamation, acting under the authority of the Secretary of the Interior, is the lead Federal agency. Cooperating agencies will be identified at a later date.

Reclamation and the GDCD will use the NEPA compliance process to ensure that the public has opportunities to review and comment on long-term water supply and management alternatives for the Red River Valley Water Supply Project. Public comments are invited and encouraged regarding both the scope of environmental and socioeconomic issues and alternative that should be evaluated in the EIS.

Reclamation and the GDCD have scheduled six public scoping meetings in which Federal, State, local and tribal government agencies, non-governmental organizations, the public, and the international community are invited to participate in the open exchange of information and to submit comments on the proposed scope of the EIS. Each meeting will be preceded by a 2-hour open house during which Reclamation staff, GDCD staff, and other study participants will provide information and answer questions.

DATES: *See* **SUPPLEMENTARY INFORMATION** section for the locations, dates, and times of the scoping meetings.

Written comments on the scope of the issues and alternatives to be evaluated in the EIS will be accepted and should be postmarked or e-mailed no later than December 16, 2002, to be most effective.

ADDRESSES: Written comments should be submitted to: Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck ND 58502.

FOR FURTHER INFORMATION CONTACT: Signe Snortland, Red River Valley Water Supply Project EIS, Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck ND 58502; Telephone: (701) 250–4242 extension 3619; or FAX to (701) 250–4326. You may submit e-mail *ssnortland@gp.usbr.gov* or access the Red River Valley Water Supply Project web site at *http://www.usbr.gov/gp/dkao/rrvwsp.htm*.

SUPPLEMENTARY INFORMATION: In 1944, the U.S. Congress passed the Flood Control Act (the Missouri-Basin Pick Sloan Act), which authorized the construction of dams on the Missouri River and its tributaries. The Garrison Diversion Unit (GDU) was authorized in 1965, and construction began in 1967. The project was designed to divert Missouri River water to central and eastern ND for irrigation; fish and wildlife enhancement; municipal, rural, and industrial (MR&I) water supply; and recreation development. Most of the currently authorized principal supply works have been completed, except for about a 20-mile reach between the end of the Mccluskey Canal and beginning of the New Rockford Canal.

The project was reformulated in 1986 to reduce the emphasis on irrigation and increase the emphasis on meeting the MR&I water needs throughout ND. The 1986 Reformulation Act authorized a Sheyenne River water supply and release feature and water treatment plant capable of delivering 100 cubic feet per second of water to eastern ND.

The authorization for the GDU was amended again in December 2000 by DWRA. The DWRA requires that an EIS and feasibility-level study be prepared to aid decision-making on a preferred alternative for meeting water needs in the Red River Valley in North Dakota.

Development of a reliable water supply for the Red River Valley has been a subject of great interest to local residents, along with government agencies and entities concerned with water management and development. Although rivers in eastern ND such as the Red and Sheyenne rivers are prone to flooding and excessive runoff, they also experience low flow and drought conditions such as those that occurred in the 1930's and 1980's.

In 1994, Reclamation initiated an appraisal-level (preliminary) assessment of MR&I water needs in the Red River Valley as an outcome of the ND Water Management Collaborative Process. That study was completed in two phases. The first phase was further subdivided into parts A & B. Phase IA compared the existing and projected future MR&I water needs in the Red River Valley with the surface water flows and groundwater resources available to meet those needs. That report, completed in April 1998, concluded that significant shortages could occur during droughts if no action is taken.

The Phase IB report provided an evaluation of seasonal instream flow needs for water quality and maintenance of aquatic life in the Sheyenne and Red rivers. That report was finalized in August 1999.

The Phase II report presented a range of preliminary alternatives to meet the shortages identified in the Phase IA report. These alternatives included both in-basin and out-of-basin water supplies along with water conservation and a variety of management and operational techniques.

Purpose of and Need for the Federal Action

The Red River Valley Water Supply Project EIS will evaluate alternative ways to meet the comprehensive "water quality and quantity needs of the Red River Valley in North Dakota" [DWRA Section 8(b)(1)]. The needs are defined as municipal, rural, and industrial supplies; water quality; aquatic environment; recreation; and water conservation measures [Section 8(b)(2)].

Proposed Alternatives

As required by Council on Environmental Quality (CEQ) implementing regulations (40 CFR 1502.2[e]), a full range of reasonable alternatives will be evaluated in the EIS. These alternatives will include No Action and development of in-basin and out-of-basin water sources. The EIS will evaluate potential environmental impacts of specific alternatives together with engineering and socioeconomic considerations. A preferred alternative has not been identified at this time.

Eight preliminary alternatives, including No Action, were described in the Phase II Needs Assessment. These alternatives were:

- No Action. This alternative represents the reasonably foreseeable future condition if a Red River Valley Water Supply Project is not constructed.
- Construction of a new water supply reservoir on the Sheyenne River near Kindred.
- Raising the height of Baldhill Dam on the Sheyenne River near Valley City to increase water storage.
- Development of groundwater resources including purchase of existing rights, new well fields, desalinization, and aquifer storage and recovery.
- Importation of Missouri River water via a pipeline from Bismarck to Fargo.
- Importation of Missouri River water via a pipeline from Lake Oahe south of Bismarck to the vicinity of Wahpeton.
- Importation of Missouri River water to the upper Sheyenne River utilizing existing GDU principal supply works.
- Importation of Missouri River water via a system of closed pipelines from the GDU principal supply works to cities, industries, and rural water systems.
- Other potential water sources including Minnesota sub-basins and Devils Lake may be evaluated in detail in the EIS. Comments or suggestions on these alternatives or suggestions of other alternatives that should be considered are welcome.

Preliminary Identification of Environmental Issues

The following issues have been tentatively identified for analysis in the EIS. This list is preliminary and is intended to facilitate public comment on the scope of this EIS. It is not intended to be all-inclusive nor does it imply any predetermination of potential impacts. Reclamation and the GDCD invite comments on this list:

- Impacts on streams and lakes, groundwater, floodplains, wetlands, and on water uses and quality.
- Impacts on aquatic and terrestrial plants and animals and their habitats including species that are federally or State-listed as threatened or endangered, proposed, candidate, or of special concern and/or critical habitat.
- Potential impacts from the transfer of biota, including parasites and pathogens, between the Missouri River basin and the Hudson Bay basin.
- Potential impacts to Canadian waters due to transfer of harmful iota or changes in water quality or quantity.
- Potential cumulative environmental impacts to the Missouri River from past, present, and foreseeable future withdrawals.
- Potential cumulative environmental impacts to the Sheyenne and Red rivers, including effects of the proposed Devils Lake outlet as well as other reasonably foreseeable discharges or withdrawals.
- Impacts on cultural resources such as historic, archaeological, architectural, or traditional properties.
- Socioeconomic impacts on affected communities related to long-term water supply and management.
- Environmental justice, particularly whether or not water management activities have a disproportionately high and adverse effect on minority and low-income populations.
- Compliance with all applicable Federal, State, and local statutes and regulations and with international agreements and required Federal and State environmental permits, consultations, and notifications.
- Compliance with all applicable Executive Orders.

Timing

Reclamation and the GDCD plan to issue the draft EIS by December 2005. Reclamation and the U.S. Environmental Protection Agency will separately publish notices of availability of the draft EIS in the Federal Register. Reclamation and GDCD will publicize the availability of the draft EIS in other media and will provide opportunities for Federal, State, local and tribal government agencies, non-governmental organizations, the general public, and the international community to participate in additional information forums and to submit comments.

Locations, Dates and Times of Scoping Meetings

- Monday, October 28, 2002, 7 p.m., Fargo, North Dakota, Fargo Civic Auditorium, 207 4th Street North, lower level, Room A
- Tuesday, October 29, 2002, 7 p.m., Valley City, North Dakota, AmericInn Hotel, 330 Wintershow Road
- Wednesday, October 30, 2002, 7 p.m., Grand Forks, North Dakota, Grand Forks City Council Chambers, 225 North 4th Street, third floor
- Wednesday, November 6, 2002, 7 p.m., Pembina, North Dakota, Pembina State Museum, Exit 215 off of Interstate 29, 805 Highway 59
- Thursday, November 7, 2002, 7 p.m., Wahpeton, North Dakota, Wahpeton City Hall, 1900 4th Street North, Community Room
- Friday, November 8, 2002, 1:00 p.m., Bismarck, North Dakota, Doublewood Hotel, Interstate 94 and Exit 159

Issues raised at the scoping meetings will be documented in the Scope of Statement (SOS) for the Red River Valley Water Supply Project EIS. The objectives of this report are to summarize the essence of the comments in a clear and concise manner and to accurately portray the scope of the EIS. The SOS will be distributed to public libraries near the meeting locations, posted on Reclamation's Red River Valley Water Supply Project EIS web page, and mailed upon request.

Public Disclosure Statement

Comments received in response to this notice will become part of the administrative record for this project and are subject to public inspection. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: September 12, 2002.

Maryanne C. Bach,

Regional Director, Great Plains Region.

[FR Doc. 02–25514 Filed 10–7–02; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 16, 2002, a proposed consent decree in *United States* v. *Buena Vista Mines, Inc., et al.*, Civil Action No. 98–7226 SVW (RNBx), was lodged with the United States District Court for the Central District of California.

In this action, brought under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9606, 9607, the United States sought reimbursement of response costs incurred by the U.S. Environmental Protection Agency ("EPA") at the Buena Vista/Klau Mine Site near Paso Robles California, as well as civil penalties and treble damages arising from the failure of defendants Buena Vista Mines, Inc. ("BVMI"), Harold J. Biaggini, and Edward C. Biaggini, III to comply with an EPA administrative clean-up order. The consent decree provides for payments of $500,000 from the defendants and $100,000 from third-party defendant County of San Luis Obispo and in addition, provides that the United States will receive the major portion of all proceeds of any future BVMI land sales. In exchange for the settlement payments, the settling parties will receive a site-wide covenant-not-to-sue, subject to certain reservations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Buena Vista Mines, Inc., et al.*, D.J. Ref. No. 90–5–1–1–4467/1.

The consent decree may be examined at the offices of U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood, fax. no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $10.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–25517 Filed 10–7–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act and Resource Conservation and Recovery Act

Pursuant to 28 CFR 50.7, notice is hereby given that on October 2, 2002, a Consent Decree in *United States* v. *Environmental Services, LLC.*, Case No. IP 00–0538–C–B/S, was lodged with the United States District Court for the Southern District of Indiana Indianapolis Division.

Under this Consent Decree, Heritage Environmental Services LLC. ("Heritage") will pay a penalty of $360,000 to the United States for violations of section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b) as amended ("CAA") and section 3008(a) of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. 6928(a) as alleged in the Complaint in this action in connection with two of Heritage's hazardous waste treatment, storage, and disposal facilities located in Indianapolis, Indiana and Lemont, Illinois.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Heritage Environmental Services, LLC.*, D.J. Ref. 90–5–2–1–06331.

The Consent Decree may be examined at the Office of the United States Attorney, Souther District of Indiana, United States Courthouse, 46 East Ohio Street, 5th Floor, Indianapolis, Indiana 46204, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $6.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–25516 Filed 10–7–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 C.F.R. § 50.7 notice is hereby given that on September 16, 2002, a proposed Consent Decree in *United States* v. *Wolcottville Sand and Gravel Corporation, d/b/a London Aggregates*, No. 98–CV–74192 (E.D. Mich.), and *PIRGIM Public Interest Lobby* v. *Wolcottville Sand and Gravel Corporation, d/b/a London Aggregates,*

No. 98–73730 (E.D. Mich.) was lodged with the United States District Court for the Eastern District of Michigan.

The United States' complaint sought injunctive relief and civil penalties for Wolcottville's violations of the conditions and limitations of its National Pollutant Discharge Elimination System ("NPDES") permit, issued by the State of Michigan pursuant to CWA Section 402, 33 U.S.C. 1342, at Wolcottville's limestone quarry in Milan, Monroe County, Michigan. Under the proposed consent decree, Wolcottville will modify its mining operations such that it will be able to eliminate all discharges at the quarry and surrender its National Pollution Discharge Elimination System permit. Wolcottville will also pay $75,000 to resolve the United States' claim for civil penalties, perform certain supplemental environmental projects at a cost of $360,000 in partial mitigation of the United States' civil penalty claims, and undertake two restoration projects in settlement of the citizen plaintiffs' claims.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *Wolcottville Sand and Gravel Corporation, d/b/a London Aggregates*, No. 98–CV–74192 (E.D. Mich.), D.J. Ref. 90–5–1–1–4461.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, 211 W. Fort Street Detroit, Michigan 48226–3211 (contact Assistant United States Attorney Mary Rigdon, 313–226–9100), and at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago Illinois (contact Assistant Regional Counsel Richard Clarizio (312–886–0559). A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. 202–616–6584, telephone confirmation number 202–514–1547. In requesting a copy, please enclose a check in the amount of $15.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–25518 Filed 10–7–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933—National Center for Manufacturing Sciences

Notice is hereby given that, on August 28, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Center for Manufacturing Sciences, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ferro Corporation, Washington, PA; FOBA North American Laser, Lee's Summit, MO; HY-Tech Research Corporation, Radford, VA; JWH Group, Inc., Peninsula, OH; Monode Marking Products, Inc., Mentor, OH; Motorsoft, Inc., Lebanon, OH; RLW, Inc., State College, PA; Robotic Vision Systems, Inc. (RVSI), Canton, MA; Rockwell Automation, Inc., Milwaukee, WI; Spatial Integrated Systems, Inc. (SIS), Rockville, MD; Telesis Technologies, Inc., Rosewell, GA; and Waterjet Tech, Inc., St. Louis, MO have been added as parties to this venture. Also, Hydrogen Technology Applications, Clearwater, FL; Carnegie Mellon Research Institute, Pittsburgh, PA; Cybernet Systems Corporation, Ann Arbor, MI; ESD, The Engineering Society of Detroit, Southfield, MI; Hurco Companies, Inc., Indianapolis, IN; Information Transport Associates, Inc., Annapolis, MD; IntelliSeek, Inc., Cincinnati, OH; LMI Automotive, Windsor, Ontario, Canada; Metal Finishing Suppliers Association, Inc., Herndon, VA; Michigan Manufacturing Technology Center, Plymouth, MI; MicroDexterity Systems, Inc., Carbondale, CO; Minority Sub-Contractors Center, Inc., Clairton, PA; Primavera Systems, Inc., Bala Cynwyd, PA; Quantum Consultants, Inc., East Lansing, MI; Savi Technology, Inc., St. Charles, MD; Setco Industries, Inc., Novi, MI; SMART Technologies, Inc., Calgary, Alberta, Canada; Southwest Research Institute, San Antonio, TX; Structural Dynamics Research Corporation, Milford, OH; Trellis Software & Controls, Inc., Rochester Hills, MI; and Triton Systems, Inc., Chelmsford, MA have been dropped as parties to this venture.

Bresson, Rupp, Lipa & Company, Ann Arbor, MI has changed its company name to Knovalent, Inc.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and National Center for Manufacturing Sciences, Inc. intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, National Center for Manufacturing Sciences, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on May 3, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 8, 2002 (67 FR 45150).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–25520 Filed 10–7–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection Comments Requested

ACTION: 60-day notice of information collection under review: reinstatement, with no change, of a previously approved collection for which approval has expired: Victim Assistance Grant Program Performance Report.

The Department of Justice (DOJ), Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until December 9, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Celetine Williams (202) 616–3565, Office for Victims of Crime, Office of Justice Programs, US Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, With Change, of a Previously Approved Collection for Which Approval has Expired.

(2) *Title of the Form/Collection:* Victims of Crime Act, Victim Assistance Grant Program, Performance Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: OJP ADMIN Form 739/4 (REV. 8–99). Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State government. Other: None. This form will be used to allow the director of OVC to collect performance data from recipients of VOCA victim assistance grant fund.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 57 respondents will complete an estimated 20 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,197 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, D.C. 20530.

Dated: October 3, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–25613 Filed 10–7–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review; new collection; Bureau of Justice Assistance, Southwest Border Prosecution Initiative.

The Department of Justice (DOJ), Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until December 9, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact, Robert Watkins Program Manager, Bureau of Justice Assistance, Office of Justice Programs, US Department of Justice, 810 Seventh Street NW., Washington, DC 20531 (202) 514–3447.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Bureau of Justice Assistance, Southwest Border Prosecution Initiative.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Office of Justice Programs, US Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and Local Government. This information will assist BJA in determining program eligibility and payment levels for select units of general government in Texas, Arizona, New Mexico and California. It will also provide contact and banking information for purposes of ongoing communication and federal payments resulting from submitting and approved online, Internet-based applications. The respondents will be the chief executive officers or their designees from local governments located in the four states.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 250 respondents will complete an application for benefits. The estimated amount of time required for the average respondent to respond is between 2 and 10 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,500 burden hours annually associated with this information collection.

If additional information is required contact: Brenda E. Dyer, Department

Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 3, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–25614 Filed 10–7–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP)—1363]

Office of Juvenile Justice and Delinquency Prevention: Meeting of the Coalition of Juvenile Justice

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is announcing the meeting of the Coalition for Juvenile Justice. The purpose of this meeting is to discuss and adopt recommendations from members regarding the committee's responsibility to advise the OJJDP Administrator, the President, and the Congress, about state perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention.

DATES: The meeting dates are:

1. Thursday, November 7, 2002, 9 a.m. to 4:30 p.m. (ET).
2. Friday, November 8, 2002, 9 a.m. to 4:15 p.m. (ET).
3. Saturday, November 9, 2002, 9 a.m. to 5 p.m. (ET)
4. Sunday, November 10, 2002, 8 a.m. to 1 p.m. (ET).

ADDRESSES: All meetings will be held at the Eden Roc Renaissance Resort, 4525 Collins Avenue, Miami Beach, Florida 33140; Telephone: 305–531–0000; Fax: 305–674–5537.

FOR FURTHER INFORMATION CONTACT: For information about how to attend this meeting (or to submit written questions (optional)), contact Freida Thomas, 810 7th Street, NW., Washington, DC 20531; Telephone: 202–307–5924 (This is not a toll-free number); Fax: 202–307–2819; e-mail: *Freida@ojp.usdoj.gov*.

SUPPLEMENTARY INFORMATION: The Coalition of Juvenile Justice, established pursuant to section 9 of the Federal Advisory Committee Act, (5 U.S.C. App. II), is meeting to carry out its advisory functions under section 5601 of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C., as amended.

This meeting will be open to the public.

Dated: September 26, 2002.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 02–25597 Filed 10–7–02; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10958, et al.]

Proposed Exemptions; Fidelity Management Trust Company and its Affiliates (Collectively Fidelity)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *"moffittb@pwba.dol.gov"*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Fidelity Management Trust Company and Its Affiliates (Collectively Fidelity), Located in Boston, Massachusetts

[Application No. D–10958]

Proposed Exemption

I. Covered Transactions

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of ERISA and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code,

shall not apply, to certain lines of credit (the Line of Credit or Lines of Credit), and the Loan and repayment of funds, including accrued interest, thereunder (the Loan or Loans), involving certain employee benefit plans (the Plan or Plans) with respect to which Fidelity acts as directed trustee, investment manager or other administrative service provider.

II. General Conditions

(a) Each Loan is made to the Plan in connection with the administration of a unitized fund (Unitized Fund) as defined in section III (e) in order to facilitate redemptions from the Unitized Fund.

(b) Each Line of Credit will be negotiated by Fidelity on behalf of the Plan with a bank, as defined under the Investment Advisers Act of 1940, as amended, having total assets of at least $5 billion (the Lender or Lenders);

(c) Each Loan is initiated, accounted for and administered by Fidelity, which will monitor the transactions on behalf of the Plans to ensure that the terms and conditions of the exemption are met at all times;

(d) The Line of Credit provides that each Loan thereunder, including accrued interest thereon, will be repaid by the Unitized Fund promptly in the ordinary course of business upon settlement of the transaction that triggered the need for the Loan;

(e) The maximum amount loaned with respect to a Unitized Fund on any business day that a Loan is initiated does not, after the Loan is made, exceed 25% of the total fair market value of the Unitized Fund (such value determined as of the most recent close of the New York Stock Exchange or as otherwise provided in the applicable Line of Credit, provided such determination is substantially contemporaneous with the Loan);

(f) The fair market value of the assets in the Unitized Fund is determined by an objective method specified in the Line of Credit;

(g) The Lender's recourse with respect to any Loan from a Unitized Fund is limited to the assets of such Unitized Fund. No commitment fees, or commissions are paid by the Plan and no compensating balance is required by the Lenders in connection with these loans. Any set-off will be limited to the assets of the Unitized Fund borrowing the funds;

(h) Interest payable by the Plan on each Loan is based on rates quoted to Fidelity by the Lenders under the Lines of Credit and accepted by Fidelity on behalf of the Plan in accordance with the Lines of Credit;

(i) The Plan enters into a written agreement with Fidelity pursuant to which Fidelity is authorized to borrow on behalf of the Plan. Prior to borrowing on behalf of a Plan pursuant to this exemption, Fidelity provides the Plan with written notice explaining the Line of Credit program. The notice shall state that Fidelity agrees to act as a fiduciary on behalf of the Plan in connection with the following activities involving the Line of Credit agreements with the Lenders: the negotiation of the Plan's participation in the Line of Credit agreements; the negotiation of interest rates; the terms of the Loans, and the terms of repayment under the Lines of Credit agreements. The notice shall set forth Fidelity's objective methodology for allocating favorable interest rates or credit availability equitably among those Unitized Funds seeking to borrow under the Line of Credit agreements on any given day, *i.e.*, "the applicable ordering rules and limitations." Each notice shall also address under what circumstances Fidelity may exclude the Plan from participation in the program, either temporarily or permanently;

(j) Fidelity, on behalf of the Plan, enters into a written agreement with each of the Lenders offering these Line of Credit Agreements to the Plan. The agreement shall address, among other things, the maximum Line of Credit available, the terms for the Loan and repayment, the formula or method for determining the interest rate payable with respect to each Loan, and the conditions for terminating the agreement;

(k) The Plan may elect to terminate participation in the Lines of Credit at any time, without penalty and subject to the Plan's repayment of any outstanding Loan;

(l) No later than 15 business days after month end, Fidelity shall provide the Plan Sponsor of each Plan that has any outstanding Loan during a calendar month with a written report showing the Plan's outstanding Loans on each day during such month, the amount repaid on each such day, the interest rate and the amount of interest paid on each such day, the aggregate balance of all Loans outstanding on the last business day of such month and the aggregate amount of interest paid during such month;

(m) The Loans are made on terms at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party;

(n) Each Lender is not related to Fidelity and is a party in interest (including a fiduciary), solely by reason of providing services to the Plan, or solely by reason of a relationship to a service provider to the Plan described in section 3(14)(F), (G), (H) or (I) of the Act;

(o) The agreements and the any loans contemplated thereunder are not a part of an agreement, arrangement, or understanding designed to benefit any party in interest with respect to any plan;

(p) No fees, or other compensation are paid to Fidelity in connection with the Loans by either the Plan or the Lenders;

(q) Where a Unitized Fund covered by this exemption invests in employer securities, such securities constitute "qualifying employer securities" as defined in section 407(d)(5) of the Act (QES) for which market quotations are readily available from independent sources within the meaning of Rule 17a–7, of the Investment Advisers Act of 1940, 17 CFR 270.17a–7. The exemption shall also apply to convertible preferred stock that qualifies as QES and is convertible, under an objective formulation, into securities for which market quotations are readily available as described above.

(r) Where a Unitized Fund, other than an employer securities fund or a stable value fund, invests directly or indirectly in securities, no less than 75 percent of such securities are securities for which market quotations are readily available from independent sources, within the meaning of Rule 17a–7, of the Investment Advisers Act of 1940, 17 CFR 270.17a–7;

(s) Fidelity maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons described in paragraph (t) to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Fidelity, such records are lost or destroyed prior to the end of such six year period; and

(2) No party in interest, other than Fidelity, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by sections 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (t);

(t)(1) Except as provided in paragraph (t)(2) and notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (s) are unconditionally available for examination during normal business hours by—

(A) Any duly authorized employees or representatives of the Department or the Internal Revenue Service;

(B) Any fiduciary of the Plan or any duly authorized employee or representative of such fiduciary;

(C) Any employer of participants and beneficiaries in the Plan and any employee organization whose members are covered by the Plan, or any authorized employee or representative of these entities; and

(D) Any participant or beneficiary of the Plan or any duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described above in paragraph (t)(1)(B), (C) or (D) shall be authorized to examine the trade secrets of Fidelity or commercial or financial information that is privileged or confidential;

(3) Should Fidelity refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (t)(2) above, Fidelity shall, by the close of the thirtieth (30th) day following the request, provide a written or electronic notice advising that person (i) of the reasons for the refusal and (ii) that the Department may request such information.

III. Definitions

(a) "Fidelity" refers to Fidelity Management Trust Company and its affiliates.

(b) "Affiliate" means (i) any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (ii) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (iii) any corporation or partnership of which such other person is an officer, director or partner.

(c) "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) Fidelity is "related" to a Lender if the Lender (or a person controlling, or controlled by, the Lender) owns a five percent or more interest in Fidelity or if Fidelity (or a person controlling, or controlled by, Fidelity) owns a five percent or more interest in the Lender. For purposes of this definition:

(1) The term "interest" means with respect to ownership of an entity (A) the combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation, (B) the capital interest or the profits interest of the entity if the entity is a partnership, or (C) the beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority (A) to exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or (B) to dispose or to direct the disposition of such interest.

(e) A "Unitized Fund" is a fund that, to facilitate trading and/or accounting, has established "units" representing undivided interests in all of the assets of such fund.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption shall be effective as of the date the final exemption is published in the **Federal Register**.

Summary of Facts and Representations

1. Fidelity Management Trust Company, a Massachusetts trust company, is a subsidiary of FMR Corp., the parent of a group of companies known as Fidelity Investments®. Fidelity Investments is one of the nation's largest mutual fund companies and a leading provider of financial services. It provides a wide range of investment management, brokerage, administrative and other financial services and products to both retail and institutional customers. Fidelity Investments manages in the United States and Canada approximately 322 mutual funds with aggregate assets, as of December 31, 2001, in excess of $815 billion. In addition, it manages more than $68 billion of assets other than mutual funds, including separate accounts and collective investment funds. Fidelity provides trustee, custodial, investment management, participant recordkeeping and/or other related services to employee benefit plans, including the Plans.

2. The Plans are qualified plans under section 401(a) of the Code and are employee benefit plans within the meaning of section 3(3) of ERISA. Substantially all of the Plans are defined contribution plans that permit each Plan participant to allocate his or her account balance among a number of investment options available under the Plan. These options may include mutual funds, separately-managed accounts, bank-maintained collective investment funds (including so-called stable value funds) and/or company stock funds. Moreover, many of the Plans operate in a so-called "daily environment"; *i.e.*, each Plan participant can elect to make investment transfers on any business day and the transfer will generally be effected at the close of business on that day.

3. The Applicant represents that from time to time, the Plans find themselves in the position where, incidental to their ordinary operation, there is a cash shortfall that creates a short-term liquidity problem. Most frequently this occurs when amounts are to be withdrawn from a unitized investment option (*e.g.*, to facilitate benefit distributions, participant loans and/or participant-directed transfers to other investment options) at a time when such investment option does not hold sufficient cash to meet the withdrawal need (each such investment option, a "Unitized Fund" and collectively, the "Unitized Funds"). In such circumstances, the Plan must either borrow the requisite cash on a short-term basis until securities can be liquidated and cash proceeds obtained (this will typically take three business days) or delay the withdrawal from the particular Unitized Fund until the needed cash is available. The Applicant represents that, since this latter alternative is at odds with the participants' expectation that the Plan will operate in a "daily environment," the former alternative (*i.e.*, short-term Loan) is the preferred choice for dealing with this type of situation.

4. It would be possible for a Unitized Fund to hold a larger percentage of its assets in "cash" in order to minimize the likelihood that there will be such a cash shortfall; however, such an approach will undermine the achievement of the investment objective of the investment option, especially those that are equity based. Moreover, according to the Applicant, it is simply not feasible, as a practical matter, to maintain enough "cash" in a Unitized Fund at all times to be certain that the Unitized Fund will always be in a position to meet the maximum potential need, especially during volatile market situations. Hence, it is inevitable that at least some liquidity shortfalls will occur from time to time.

5. Fidelity has negotiated the Lines of Credit with several banks that are not related to Fidelity, and anticipates that it may from time to time negotiate additional Lines of Credit. These Lines of Credit allow Fidelity to borrow, on the Plans' behalf, cash in order to meet the Unitized Funds' short-term cash shortfalls. Fidelity anticipates that there will be approximately three or four Lenders at any given time. It is also anticipated that the Lenders will be very large financial institutions with many affiliated companies and worldwide operations. In view of the size of such institutions and the number of Plans involved, Fidelity represents that it is very difficult for such institutions to determine whether they are parties in interest with respect to any of the Plans. Moreover, even if it were to be established that the Lenders are not parties in interest with respect to the Plans, that could change over time while a Loan is outstanding or as new Loans are affected.

6. Since Fidelity may not be able to determine in the ordinary course of business, whether a Lender is a party in interest with respect to each Plan, the Lines of Credit raise potential concerns under section 406(a) of the Act, absent an exemption. In this regard, given the size of the Lenders, the large number of Plans involved and the various conditions of the potentially available class exemptions (*e.g.*, the qualified professional asset manager exemption, (QPAM), PTE 84–14, 49 FR 9494(3/13/84), as corrected, 50 FR 41430 (10/10/85), it may be difficult to determine if any of such class exemptions are available. Consequently, the implementation of the Lines of Credit, and the Loans thereunder, even where such Line of Credit is in the best interests of the Plan, may result in a prohibited transaction.

7. The Applicant represents that each Line of Credit provides that (i) each Loan thereunder will be unsecured, (ii) recourse with respect to each Loan thereunder will be limited to the assets of the Unitized Fund that borrowed the funds, (iii) each Loan thereunder, including accrued interest thereon, will be repaid promptly in the ordinary course of business, generally in less than ten days and (iv) with respect to any Unitized Fund, the aggregate amount of Loans outstanding on any business day that a Loan is initiated will not, after such Loan is made, exceed 25% of the total fair market value of the Unitized Fund.[1] The total fair market value of a Unitized Fund (including Employer Stock, cash or cash equivalents and accrued dividends and earnings) will be determined as of the most recent close of the New York Stock Exchange or as otherwise provided in the applicable Line of Credit, provided such determination is substantially contemporaneous with the Loan.

8. Interest rates will be quoted to Fidelity each business day by each Lender in accordance with the terms of the Line of Credit. The quoted interest rate will be based on a Federal funds rate (or other market rate) plus a spread, and will apply to any Loans from the Lender that are outstanding on such day. Because the quoted interest rate may fluctuate daily, the rate of interest being charged on any outstanding loan may also fluctuate daily.

9. In regard to these Lines of Credit, Fidelity will act as a fiduciary pursuant to a written agreement with the Plan. The agreement will provide that Fidelity will act as a fiduciary on behalf of the Plan in connection with the negotiation of the Plan's participation in the Line of Credit agreements, the negotiation of interest rates under the Line of Credit agreements, the Loans under the Line of Credit agreements, the ordering rules and limitations described below, and the terms of repayment of the Line of Credit agreements.

10. Fidelity will establish generally applicable ordering rules and limitations with respect to the use of the Lines of Credit. The need for such rules arises from several factors. For example, although not anticipated to be very likely, it is possible that the aggregate liquidity needs of all eligible Unitized Funds on any given day may exceed the total credit available under all of the credit lines then in place. In addition, and more relevant, the three or four Lenders that will be making advances available under the lines may, and likely will, quote different rates on a given day. If the aggregate demand for liquidity on a particular day exceeds the amount of credit available at the most favorable rate on that day, then it is necessary to allocate the opportunity to borrow at the most favorable rate(s) among the various Unitized Funds requiring liquidity on that day. Accordingly, on those days when the aggregate liquidity demand of the eligible Unitized Funds exceeds the amount available at the most favorable rate, Fidelity will implement a policy pursuant to which it will allocate the available credit among the Unitized Funds pursuant to a pre-established objective allocation methodology.

11. Fidelity will initiate, account for and administer each Loan and will monitor such transactions on behalf of the Plans to ensure that the terms and conditions of the exemption are met at all times.

12. Fidelity will provide the Plan Sponsor of each Plan that has any outstanding Loans during a calendar month with a written report showing the Plan's outstanding Loans on each day during such month, the amount repaid on each such day, the amount of interest paid on each such day, the interest rate and the aggregate balance of all Loans outstanding on the last business day of such month and the aggregate amount of interest paid during such month.

13. The Plan Sponsor of each Plan will be notified of the Lines of Credit that may be available to such Plan in advance of any Loan made pursuant to the exemption. Such notice will include a general description of the Lines of Credit and how they operate. Each Plan Sponsor may elect to "opt-out" of the program, in which event the Plan of such Plan Sponsor will not effect any Loans under the Lines of Credit. Moreover, a Plan Sponsor who has initially determined not to opt-out of the program may at any time thereafter elect to opt-out of the program without penalty, by written notice to Fidelity. Subsequent to its receipt of such a notice, Fidelity will not effect any further Loans on behalf of such Plan under the Lines of Credit. Any Loans outstanding at the time such notice is received will be repaid in accordance with the Lines of Credit.

14. Fidelity will not receive any fees or other compensation from the Plans in connection with the Lines of Credit. In addition, Fidelity will not receive any payment or other consideration from the Lenders in connection with the Loans. Fidelity represents that it will pay the Lender's cost of establishing the Lines of Credit. The Applicant represents that such up-front expenses are required to be paid by the borrower (the Plans on behalf of their Unitized Funds) under virtually all credit agreements. In this case, in order to induce the Lenders to enter into the proposed arrangements, and given the practical difficulty of allocating the up-front cost of establishing the arrangements among the many Unitized Funds that may ultimately participate in the credit arrangement, Fidelity has determined that it will pay these expenses on behalf of the Unitized Funds. Any out-of-pocket expenses incurred by a Lender in enforcing the agreement, however, will generally be paid by the applicable Unitized Fund, unless otherwise paid by the Plan Sponsor or Fidelity. The Applicant represents that lender expenses relating to enforcing the terms of the loan are required to be paid by the borrower (here the Plans on behalf of the Unitized Funds) under virtually all credit agreements.

15. As a general matter, Fidelity explains that its intent is that the credit program will be administered such that advances under the program will be used primarily in the context of settlement risk (*i.e.*, the risk of broker default prior to settlement) as opposed to being used in the context of market risk. "Settlement risk" is present when a Unitized Fund has entered into the

[1] The Applicant originally requested a limit of 33⅓ percent, explaining that registered investment companies (mutual funds) can potentially face the same types of liquidity concerns as the Unitized Funds. According to the Applicant, pursuant to section 18(f)(1) of the Investment Company Act of 1940, such mutual funds would be limited to borrowing no more than 33⅓ percent of fund assets. The Department believed that a 25 percent limit was more appropriate and the Applicant agreed.

sale transaction whose settlement (*i.e.*, receipt of cash proceeds) is pending (thereby triggering the liquidity shortfall to be satisfied by a Loan) prior to the close of business on the day on which the withdrawal that is being funded by such advance occurs. In this situation, the price of the "related" sale transaction is known and will be factored into the Unitized Fund unit value that is utilized for purposes of the withdrawal. By contrast, according to Fidelity, market risk will be present (in addition to settlement risk) in situations where the "related" sale transaction is not able to be effected prior to the determination of the relevant Unitized Fund unit value, with the result that the Unitized Fund (and the remaining participants in the Unitized Fund) bear the risk that the actual sale transaction price will turn out to be lower than the value on which the unit value was based.[2]

16. In addition, in order to maintain the integrity of the overall credit arrangement, Fidelity reserves the ability, in its sole discretion, to exclude a particular Plan or Plans from access to the Lines of Credit on a given day or days. Fidelity represents that it does not anticipate that it will exercise its exclusion power very often. The Applicant explains that, if there were circumstances giving rise to a material concern regarding the potential for default by a particular Plan, (such as, for example, an unanticipated bankruptcy of the Plan sponsor that triggers a suspension of trading in the Plan sponsor's stock or some other cause of extreme volatility in the Plan sponsor's stock value) Fidelity believes it is important that it have the power to avoid the risk of such default by excluding the Plan from borrowing under the Line of Credit program during the period of concern.

17. In summary, the applicant represents that the proposed Lines of Credit satisfy the criteria contained in section 408(a) of the Act for the following reasons:

(a) the Loan terms must be at least as favorable to the Plan as a similar third-party arm's-length transaction;

(b) each Loan will be initiated, accounted for and administered by Fidelity which will maintain written records of each Loan and monitor the terms and conditions of the exemption, on behalf of the affected Plan, at all times.

[2] According to Fidelity, the Unitized Fund (and the remaining participants) will also benefit on the upside in the event that the actual sale transaction price turns out to be higher than the value on which the unit value was based.

(c) the same Lines of Credit will generally be available pursuant to their terms for use by all of the Unitized Funds;

(d) the Lenders will not be "related" to Fidelity or "parties in interest" to the Plans other than by reason of being a service provider to the Plans or related to a service provider;

(e) the Plans will benefit from not having to maintain a larger cash buffer that undermines the achievement of the investment objective of the Unitized Funds;

(f) the Plans will further benefit from not having to delay withdrawals from the Unitized Funds in most situations until such time as there is sufficient cash to satisfy the cash shortfall and therefore will be able to better achieve the participants' expectation of a "daily environment;" and

(g) the sponsor of each Plan will be notified of the existence of the Lines of Credit that may be available to such Plan in advance of any Loan made pursuant to the exemption and will make an independent decision whether the Plan should participate in the program. In addition, the Plan Sponsor of a Plan that is participating in the program may elect to opt out at any time, without penalty.

Notice to Interested Persons

Notice of the proposed exemption will be provided by first-class mail to each known Plan Sponsor within 25 days after the publication of the notice of proposed exemption in the **Federal Register**. Such notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on and/or to request a hearing. Comments and hearing requests with respect to the proposed exemption are due 45 days after the date of publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Andrea W. Selvaggio of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Brightpoint, Inc. (Brightpoint) Located in Indianapolis, Indiana

[Exemption Application No. D–10999]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) The June 5, 2001 payment (the Payment) by Brightpoint of $108,738.85 (the Assessment Amount) to the Millennium Trust Company LLC (Millennium) on behalf of the Brightpoint, Inc. 401(k) Plan (the Plan) for the purpose of satisfying a court-ordered assessment against the assets of the Plan (the Assessment) that arose in connection with the $68,100,000.00 deficiency (the Deficiency) incurred by the Independent Trust Corporation (Intrust); and (2) the transfer by the Plan to Brightpoint (the Repayment) of certain assets recovered by PricewaterhouseCoopers LLP (the Receiver) in connection with the Deficiency, if the following conditions are met:

(A) In the event the Plan receives an amount of assets from the Receiver (a Recovery Amount) that is greater than the Assessment Amount, the Plan will not be required to pay Brightpoint that portion of the Recovery Amount that is in excess of the Assessment Amount;

(B) In the event the Plan receives a Recovery Amount that is less than the Assessment Amount, the Plan will not be required to pay Brightpoint the difference between the Assessment Amount and the Recovery Amount;

(C) The Plan will not pay any of the costs and/or fees associated with the Payment and the Repayment;

(D) The Deficiency did not arise in connection with any improper act undertaken by a Plan fiduciary (other than Intrust or its principals); and

(E) Upon notification of the Intrust losses, the Brightpoint Plan fiduciaries undertook, and will continue to undertake, any actions necessary to ensure that the assets of the Plan were, and are, adequately protected.

EFFECTIVE DATE: June 5, 2001.

Summary of Facts and Representations

1. Brightpoint is a Delaware corporation with its principal offices located in Indianapolis, Indiana. Brightpoint supports the global wireless telecommunications industry through the provision of, among other things, distribution, management, and business solution services.

2. Brightpoint is the sponsor of the Plan. The Plan is a defined contribution 401(k) plan having 480 participants and $2,648,775.39 in total assets as of March 31, 2001. The applicant represents that the assets of the Plan are comprised solely of shares of certain mutual funds and shares of Brightpoint stock (collectively, the Plan Shares).

The applicant states that from April 1, 1997 until April 13, 2001, Intrust acted as the trustee of the Plan.[3] As such, Intrust forwarded Plan contributions to either American Funds, the custodian for the mutual funds, or McDonald & Company, the custodian for the Brightpoint stock. In addition, Intrust processed Plan distributions by forwarding to Plan participants the cash proceeds it received from various sales of the Plan Shares.

3. On April 14, 2000, the Illinois Office of Banks and Real Estate (the State Regulator) discovered the Deficiency. In this regard, on that date, the State Regulator determined that a substantial cash shortage existed with respect to the amount of assets held in trust by Intrust. According to the applicant, it is presently believed that the Deficiency, the resolution of which is currently under litigation, resulted from the misappropriation by certain Intrust principals of assets held by Intrust. Specifically, the Deficiency involved cash taken from certain Intrust accounts. The applicant states, however, that cash was not misappropriated from the Plan's trust account with Intrust (the Intrust Plan Account). As a result, the applicant states that the amount of assets held in the Intrust Plan Account, being comprised primarily of the Plan Shares, was not affected or reduced by the misappropriation of Intrust assets (the Misappropriation).

The State Regulator initiated receivership proceedings under the jurisdiction of the Circuit Court of Cook County, Illinois (the Court). The Court appointed PricewaterhouseCoopers LLP as the receiver of Intrust and, with limited exceptions, the Court froze all of the trust assets held by Intrust, including those of the Plan.[4] On November 29, 2000, the Court approved the purchase of Intrust's assets by Millennium and, thereafter, Millennium became the trustee of the Plan. The applicant represents that currently the Plan Shares are held in trust in a certain Millennium trust account (the Millennium Plan Account).

4. On March 1, 2001, upon determining that the Deficiency totaled $68,100,000.00, the Court issued an order (the First Court Order) that apportioned the Deficiency among certain Intrust accounts (the Allocation). In this regard, after taking judicial notice of, among other things, various hearings, proceedings, testimony, arguments, and pleadings, the Court determined that it was not feasible to trace the Deficiency Amount to specific Intrust accounts. Rather, with certain exceptions not applicable to the Plan, the Court allocated the Deficiency among essentially all of the frozen former Intrust accounts on mostly a pro rata basis.

In this way, the Court allocated the Assessment Amount to the Millennium Plan Account. The applicant represents that such assessment had the effect of a $108,738.85 charge against the assets held in the Millennium Plan Account.[5]

5. Each trust account affected by the Allocation, or a party on behalf of such account, was required to pay its allocated portion to Millennium by June 5, 2001.[6] Pursuant to the terms of the First Court Order, upon Millennium's receipt of this payment, the Receiver was required to issue the respective payor a certificate. Such certificate entitled its holder to receive a pro rata portion of the total net amount recovered from certain Intrust principals, insurers, and/or elsewhere. A certificate, however, did not guarantee its holder would receive a recovery amount equal to the amount such holder paid pursuant to the Court's allocation of the Deficiency.

6. Upon monitoring the legal actions associated with the Deficiency, the applicant states, Brightpoint determined that the Recovery Amount would likely be less than the Assessment Amount.[7] To protect the Plan from a potential shortfall, on June 5, 2001, Brightpoint paid the Assessment Amount on behalf of the Plan. The applicant represents that, consistent with the terms of the First Court Order, Brightpoint thereafter anticipated that it would receive a certificate from the Receiver.

7. On September 8, 2001, the Receiver petitioned the court to amend the First Court Order. In this regard, the applicant states that for reasons unrelated to the Plan and the transactions described herein, the Receiver sought a procedural change with respect to the issuance of the certificates. As applied to the payment by Brightpoint of the Assessment Amount on behalf of the Plan, and contrary to the terms of the First Court Order, the requested amendment had the effect of requiring the Receiver to issue a certificate to the Plan, and not Brightpoint. The Court granted the motion on October 12, 2001 and, accordingly, the First Court Order was amended (the Amended Court Order).

Accordingly, the Plan received, and currently continues to hold, a certificate that was issued by the Receiver (the Certificate). The applicant states that, to date, the Plan has not received any amounts pursuant to its holding of the Certificate.

8. The applicant seeks relief for the Payment and the Repayment. In this regard, the applicant represents that as stated above, Brightpoint undertook the Payment in the belief that the Recovery Amount will likely be less than the Assessment Amount. The applicant notes that, in the event that the Recovery Amount does in fact turn out to be less than the Assessment Amount, the Plan will not be required to pay Brightpoint the amount representing the difference between the Assessment Amount and the Recovery Amount. In this way, the Plan will not incur a loss due to the court-ordered allocation of the Deficiency.

The applicant states further that the terms of the Repayment are also protective of the Plan. In this regard, the entitlement of Brightpoint to any recovery of the Deficiency pursuant to the holding of the Certificate by the Plan is limited to an amount not in excess of the Assessment Amount. Pursuant to the terms of the Repayment, in the event that the Recovery Amount turns out to be greater than the Assessment Amount, the portion of the Recovery Amount that exceeds the Assessment Amount will be retained by the Plan. In this way, Brightpoint may only receive up to $108,738.85, the amount Brightpoint paid to Millennium on behalf of the Plan, as a result of the Plan's holding of the Certificate.

[3] The Department is expressing no opinion herein as to whether the requirements of section 404 of the Act have been met with respect to the hiring and retention of Intrust by Brightpoint.

[4] By order of the Court, the assets held in the Plan Millennium Account, and almost all other former Intrust accounts, were to remain frozen until Millennium had completed its efforts to collect the allocated shortage amounts from each affected account. The applicant represents that for the period in time in which the assets remained frozen, Plan distributions were made using assets that came into the Plan after the starting date of the freeze. Subsequently, the assets in the Plan Millennium Account were unfrozen and, thereafter, Plan distributions were made from the unfrozen assets.

[5] To determine this amount, the Court first determined the types of Intrust account assets that would be subject to the Allocation. Next, the Court determined that an amount equal to 8.69% of the total amount of such assets would need to be paid to Millennium to offset the shortage. Since the Account held $1,251,310.16 in assets subject to the Allocation, the Plan, or a party on behalf of the Plan, was required to pay $108,738.85 (0.0869 × $1,251,310.16) to Millennium.

[6] The applicant states that if Millennium did not receive the assessed amount with respect to a particular account by June 5, 2001, Millennium was authorized by the Court to reduce the amount of assets held in that account by such assessed amount.

[7] According to the applicant, Brightpoint retains the belief that the Recovery Amount will be less than the Allocation Amount.

9. The applicant states that Brightpoint acted in good faith in paying the Assessment Amount on behalf of the Plan. In this regard, the applicant represents that the fiduciaries of the Plan had no reason or opportunity to know in advance of the Deficiency since the Intrust shortage consisted solely of non-Plan assets. In addition, the applicant represents that Plan distributions processed through Intrust were done so properly and in a timely manner. According to the applicant, Brightpoint paid the Assessment Amount solely as a means of responding to an event that was potentially harmful to the Plan and its participants and beneficiaries.

10. In summary, the applicant represents that the Payment and Repayment satisfy the statutory criteria for an exemption under section 408(a) of the Act since:

(A) In the event the Plan receives a Recovery Amount that is greater than the Assessment Amount, the Plan will not be required to pay Brightpoint that portion of the Recovery Amount that is in excess of the Assessment Amount;

(B) In the event the Plan receives a Recovery Amount that is less than the Assessment Amount, the Plan will not be required to pay Brightpoint the difference between the Assessment Amount and the Recovery Amount;

(C) The Plan will not pay any of the costs and/or fees associated with the Payment and the Repayment;

(D) The Deficiency did not arise in connection with any improper act undertaken by a Plan fiduciary (other than Intrust or its principals); and

(E) Upon notification of the Intrust losses, the Brightpoint Plan fiduciaries undertook, and will continue to undertake, the actions necessary to ensure that the assets of the Plan were, and are, adequately protected.

Notice to Interested Persons: The applicant represents that notice to interested persons will be made within thirty (30) business days following publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than sixty (60) days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Christopher Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

J. Penner Corporation Profit Sharing Plan (the Plan), Located in Doylestown, PA

[Application No. D–11099]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[8] If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the sale (the Sale) of certain improved real property (the Property) by Thomas G. Frazier and Carol G. Frazier (the Fraziers) to their respective participant directed individual investment accounts in the Plan (the Thomas Frazier Account and the Carol Frazier Account; together, the Frazier Accounts or the Accounts); and (2) the simultaneous lease (the Lease) of the Property by the Frazier Accounts to J. Penner Corporation (the Corporation), the Plan sponsor and a party in interest with respect to the Plan, provided that the following conditions are met:

(a) The terms and conditions of the transactions are not less favorable to the Frazier Accounts than those which the Frazier Accounts would receive in an arm's length transaction with an unrelated party.

(b) The Sale is a one-time transaction for cash.

(c) The acquisition price that is paid by the Frazier Accounts for proportionate interests in the Property is not more than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale.

(d) The value of the proportionate interests in the Property that are acquired by each of the Frazier Accounts does not exceed 25% of each of the Frazier Accounts' assets at the time of the Sale nor throughout the duration of the Lease.

(e) The Frazier Accounts do not pay any real estate fees, commissions or other expenses with respect to the transactions.

(f) The rental amount under the Lease is no less than the fair market rental value of the Property, as determined by a qualified, independent appraiser on the date the Lease is entered into by the parties.

(g) The Lease is a triple net lease under which the Corporation, as lessee, pays, in addition to the base rent, all normal operating expenses of the Property, including taxes, insurance, maintenance, repairs and utilities.

(h) The Fraziers indemnify and hold the Plan and the Frazier Accounts harmless from any liability arising from the Sale, including, but not limited to, hazardous material found on the Property, violation of zoning, land use regulations or restrictions, and violations of federal, state or local environmental regulations or laws.

(i) The Sale is effected and the Lease commences only upon completion of the following transactions, which shall occur no later than sixty days after the granting of the final exemption: (1) The Fraziers and the Bucks County Industrial Development Corporation (BCIDC) fulfill all of their obligations to the Pennsylvania Industrial Development Authority (PIDA); (2) the Fraziers pay off their debt obligation to BCIDC in accordance with the terms of an installment sale agreement (the Installment Sale Agreement) and reacquire legal title to the Property; and (3) the lease agreement (the Original Lease) between the Fraziers and the Corporation is terminated.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan, as described in section 401(a) of the Code, and is exempt from taxation under section 501 of the Code. The Plan was established by the Corporation on July 1, 1986. As of December 31, 2001, the Plan had 18 participants, including the Fraziers. The Plan provides for individually-directed accounts and each of the Fraziers maintains a directed investment account in such Plan. The Fraziers are trustees and fiduciaries of the Plan.

As of December 31, 2001, the Plan had total assets of approximately $1,945,224. As of the same date, the Thomas Frazier Account in the Plan had a fair market value of $919,472 and the Carol Frazier Account in the Plan had a fair market value of $537,520, for a combined total fair market value of $1,456,992.

2. The Corporation is an S corporation that is incorporated in the Commonwealth of Pennsylvania and maintains its principal place of business in Doylestown, Pennsylvania. The Corporation manufactures products for the automotive replacement glass market and sells its products to the original equipment manufacturers. The Fraziers own 100 percent of the outstanding capital stock of the Corporation and they are directors and officers of the Corporation.

3. At present, BCIDC, a Pennsylvania non-profit corporation, holds legal title to certain improved, real property that is located at 17 Weldon Drive, Doylestown Township, Doylestown, Pennsylvania, of which the Fraziers are the equitable owners, as set forth in the Installment Sale Agreement. The Property consists of a 3.47 acre parcel of light industrially zoned land with an existing one story industrial building totaling approximately 10,000 square feet of space and adjoining parking facilities. The Fraziers originally acquired the Property, which was vacant land at the time, in 1988 for $212,000 in cash from Horsham Valley Development Corporation, an unrelated party. The Property is currently subject to an original lease (the Original Lease) between the Fraziers as the lessors, and the Corporation as the lessee. The Original Lease is a 15 year, triple net lease which commenced on April 5, 1990 and expires on April 1, 2005. The annual rental under the Original Lease is $80,000, payable in monthly installments of approximately $6,666.67. The Corporation does not own any other real estate contiguous to the Property, which is used solely by the Corporation in its business.

4. On April 5, 1990, legal title to the Property was transferred by the Fraziers to BCIDC by deed for consideration in the amount of $1.00. This enabled BCIDC to obtain a first mortgage loan (the Mortgage Loan) from PIDA, a Pennsylvania non-profit entity created under the Pennsylvania Industrial Development Authority Act (the PIDAA)[9] to provide financing in the form of low interest loans for industrial development projects throughout Pennsylvania. The Mortgage Loan is in the principal amount of $314,822. It has a term that commenced on June 1, 1990 and ends on May 1, 2005, and it carries an interest rate of three percent per annum. The parties intended that the interest rate would be passed through to the Fraziers under the terms of the Installment Sale Agreement. The applicants represent that this interest rate could only be obtained by having BCIDC acquire legal title to the Property so that the Property could qualify as an "industrial development project."[10] In addition, the applicants represent that BCIDC agreed to enter into this financing arrangement with the Fraziers in order to establish an industrial development project and to create jobs in the area.

The Fraziers received the Mortgage Loan proceeds and simultaneously entered into the Installment Sale Agreement on April 5, 1990 with BCIDC to repurchase the Property for $314,822 and pay for it over a period of 15 years, which coincides with the term of the Mortgage Loan. Pursuant to the amortization schedule, such payments would be in monthly installments of $2,174.11, with interest at three percent per annum included in each payment.

The Fraziers used the Mortgage Loan proceeds exclusively for the industrial development project. Of the $314,822 received, $5,626.96 were used for settlement costs including counsel fees, title insurance, recording fees and real estate taxes. The balance of the Mortgage Loan proceeds was used to construct the industrial building. As of August 31, 2002, the Mortgage Loan and the Installment Sale Agreement had an outstanding principal balance of approximately $66,779.79.

As collateral for the Mortgage Loan, the Fraziers assigned the Original Lease to PIDA and BCIDC and the Installment Sale Agreement to PIDA. As additional security for the Mortgage Loan, the Fraziers gave their personal guarantee.

5. The Property has been appraised by Stuart S. Kingsbury, Jr., CCRA, CREA, CRB, GRI of Kingsbury Real Estate Appraisers, located in Doylestown, Pennsylvania. Mr. Kingsbury is an independent, certified general appraiser in the State of Pennsylvania. In an independent appraisal report dated April 6, 2002 (the 2002 Appraisal), Mr. Kingsbury updated a June 27, 2001 independent appraisal (the 2001 Appraisal) that was prepared by his firm, in which the Property's fair market value and annual fair market rental value were placed at $330,000 and $80,000, respectively, as of June 1, 2001. Utilizing the Market Data Approach to valuation in the 2002 Appraisal, Mr. Kingsbury determined that the fair market value of the Property as of March 19, 2002 was $350,000. As of the same date, Mr. Kingsbury also determined that the annual fair market rental value of the Property was $85,000 or $7,0883.33 per month on a triple net basis. Mr. Kingsbury will again update the appraisal on the date of the Sale and Lease transactions.

6. To enable the Frazier Accounts to diversify their assets by obtaining income-producing real estate, the applicants propose that the Frazier Accounts purchase the Property from the Fraziers for $350,000 or an amount that is not more than the fair market value of the Property on the date of the Sale. The Property will be allocated between the Frazier Accounts so that the Thomas Frazier Account acquires a 64 percent interest in the Property, representing approximately 24 percent of the fair market value of such Account's assets, and the Carol Frazier Account acquires a 36 percent interest in the Property, representing approximately 23 percent of the fair market value of that Account's assets.

Contemporaneously with their purchase of the Property, the Frazier Accounts will enter into the Lease with the Corporation. The Frazier Accounts will not be required to pay any real estate fees, commissions or other expenses in connection with their acquisition of the Property or with the administration of the Lease. Further, the Fraziers, who had a combined net worth of approximately $3 million as of September 21, 2002, will indemnify and hold the Plan and the Frazier Accounts harmless from any liability arising from the Sale, including, but not limited to, hazardous material found on the Property, violation of zoning, land use regulations or restrictions, and violations of federal, state or local environmental regulations or laws.[11] Finally, the Sale and the Lease will commence only upon the completion of the following transactions, which will occur no later than sixty days after the granting of the final exemption: (a) The Fraziers and BCIDC have fulfilled all of their obligations to PIDA; (b) the Fraziers have paid off their debt obligation to BCIDC in accordance with the Installment Sale Agreement and have reacquired legal title to the

[8] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

[9] The purpose of the PIDAA is to promote the welfare of the people of Pennsylvania by reducing unemployment in certain critical economic areas and to provide for the establishment of industrial development projects in such areas.

[10] Under Section 303(i) of the PIDAA, as amended, an "industrial development project" is described as any land, site, structure, facility or undertaking comprising or being connected with or being a part of (i) an industrial enterprise, (ii) a manufacturing enterprise, (iii) a research and development enterprise, or (iv) an agricultural enterprise, established or to be established by an industrial development agency in a critical economic area.

[11] It should be noted that in his 2001 Appraisal of the Property, Mr. Kingsbury states that his routine inspection of, and inquiries about, the Property did not reveal any information to indicate any apparent environmental conditions which would affect the Property's value negatively. However, he explains that it is possible that tests and inspections made by a qualified hazardous substance and environmental expert would reveal the existence of hazardous materials and environmental conditions on or around the Property that would negatively affect its value. Mr. Kingsbury did not comment on the Property's environmental conditions in his 2002 Appraisal.

Property; and (c) the Original Lease between the Fraziers and the Corporation has been terminated.

Accordingly, the applicants request an administrative exemption from the Department under the terms and conditions described herein.

7. The proposed Lease will be for a term of ten years and it will have no renewal options. The Lease provides that the Corporation will pay the Frazier Accounts an initial monthly rent of $7,083.33 per month, based upon Mr. Kingsbury's 2002 Appraisal of the fair market rental value of the Property, which will be updated at the time the Lease is entered into by the parties. Said rent will be allocated in proportion to each Account's ownership interest in the Property. The Lease will be a triple net lease under which the Corporation will pay all normal operating expenses of the Property, including taxes, insurance, maintenance, repairs and utilities. The applicant represents that on the third, sixth and ninth anniversaries of the date of commencement of the Lease (the Tri-Annual Adjustment Dates), the fair market rental value of the Property will be determined as of the Tri-Annual Adjustment Date, by a qualified, independent appraiser selected by the Fraziers in their capacity as trustees of their respective Accounts in the Plan. However, in no event will the rent be adjusted below the rental amount paid for the preceding year. In addition, during each year of the term of the Lease, the rental rate will be increased by an amount equal to the most recent percentage increase in the Consumer Price Index or three percent, whichever is greater.

8. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The terms and conditions of the transactions will not be less favorable to the Frazier Accounts than those which the Frazier Accounts would receive in an arm's length transaction with an unrelated party.

(b) The Sale will be a one-time transaction for cash.

(c) The acquisition price that is paid by the Frazier Accounts for proportionate interests in the Property will be no more than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale.

(d) The value of the proportionate interests in the Property that are acquired by each of the Frazier Accounts will not exceed 25 percent of each of the Frazier Accounts' assets at the time of the transaction and throughout the duration of the Lease.

(e) The Frazier Accounts will not pay any real estate commissions, fees or other expenses with respect to the transactions.

(f) The rental amount of the Lease will be no less than the fair market rental value of the Property, as determined by a qualified, independent appraiser on the date the Lease is entered into by the parties.

(g) The Lease will be a triple net lease under which the Corporation, as lessee, will pay, in addition to the base rent, all normal operating expenses of the Property, including taxes, insurance, maintenance, repairs and utilities.

(h) The Fraziers will indemnify and hold the Plan and the Frazier Accounts harmless from any liability arising from the Sale, including, but not limited to, hazardous material found on the Property, violation of zoning, land use regulations or restrictions, and violations of federal, state or local environmental regulations or laws.

(i) The Sale will be effected and the Lease will commence only upon completion of the following transactions, which shall occur no later than sixty days following the granting of the exemption: (1) The Fraziers and BCIDC have fulfilled all of their obligations to PIDA; (2) the Fraziers have paid off their debt obligation to BCIDC in accordance with the Installment Sale Agreement and have reacquired legal title to the Property; and (3) the Original Lease between the Fraziers and the Corporation has been terminated.

Notice to Interested Persons

The Fraziers will provide notice of the proposed exemption to all interested persons by personal delivery within ten days of the date of publication of the notice of proposed exemption in the **Federal Register**. The notice will include a copy of the proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which will inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Comments regarding the proposed exemption and requests for a public hearing are due within 40 days of the date of publication of the notice of pendency in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 3rd day of October, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits, Administration, Department of Labor.

[FR Doc. 02–25598 Filed 10–7–02; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–47; Exemption Application No. D–10989 et al.]

Grant of Individual Exemptions; Investors Savings Bank Pension Plan (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Investors Savings Bank

Pension Plan (the Plan) Located in Milburn, New Jersey

[Prohibited Transaction Exemption 2002–47; Exemption Application No. D–10989]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sales by the Plan of certain securities (the Securities) to Investors Savings Bank, a party in interest with respect to the Plan, provided that the following conditions were satisfied: (1) Each sale was a one-time transaction for cash; (2) the Plan paid no commissions nor other expenses relating to the sales; (3) for each Security that was publicly traded, the Plan received an amount equal to the highest, as of the date of the sale, of (a) the Plan's cost, (b) the book value, or (c) the fair market value of the Security, as determined by an independent, third-party market source; and (4) for each Security that was not publicly traded, the Plan received an amount equal to its cost for the Security, which was in excess of the fair market value of the Security on the date of the sale.

Effective Date: The exemption is effective as of January 4, 1999.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 9, 2002 at 67 FR 51877.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Deutsche Bank AG and Its Affiliates Located in Frankfurt am Main, Germany

[Prohibited Transaction Exemption 2002–48; Exemption Application No. D–10991]

Exemption

Section I—Transactions

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, as of April 24, 2001, to

(a) The lending of securities, under certain "exclusive borrowing" arrangements, to

(1) Deutsche Bank AG (Deutsche Bank) (including the New York Branch of Deutsche Bank (DBNY)); or

(2) Its affiliates Deutsche Bank Securities Inc. (DBS), Deutsche Bank Trust Company Americas (DBT), the "Foreign Borrowers" (as defined in Section III), and any branch or affiliate of Deutsche Bank that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer or a U.S. bank (collectively, with Deutsche Bank, referred to as the "Borrowers," as defined in Section III) by employee benefit plans (Plans), including commingled investment funds holding assets of such Plans, with respect to which the Borrowers are a party in interest; and

(b) the receipt of compensation by Deutsche Bank or its affiliates in connection with the securities lending transactions, provided that the conditions, set forth in Section II, are satisfied.

Section II—Conditions

(a) For each Plan, neither the Borrower nor any affiliate has or exercises discretionary authority or control over the Plan's investment in the securities available for loan, nor do they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) The party in interest dealing with the Plan is a party in interest with respect to the Plan (including a fiduciary) solely by reason of providing services to the Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H), or (I) of the Act.

(c) The Borrower directly negotiates an exclusive borrowing agreement (the Borrowing Agreement) with a Plan fiduciary that is independent of the Borrower and its affiliates.

(d) The terms of each loan of securities by a Plan to a Borrower are at least as favorable to such Plan as those of a comparable arm's length transaction between unrelated parties, taking into account the exclusive arrangement.

(e) In exchange for granting the Borrower the exclusive right to borrow certain securities, the Plan receives from the Borrower either (i) a flat fee (which may be equal to a percentage of the value of the total securities subject to the Borrowing Agreement from time to time), (ii) a periodic payment that is equal to a percentage of the value of the total balance of the outstanding borrowed securities, or (iii) any combination of (i) and (ii) (collectively,

the Exclusive Fee). If the Borrower deposits cash collateral, all the earnings generated by such cash collateral shall be returned to the Borrower—provided that the Borrower may, but shall not be obligated to, agree with the independent fiduciary of the Plan that a percentage of the earnings on the collateral may be retained by the Plan, or the Plan may agree to pay the Borrower a rebate fee and retain the earnings on the collateral (the Shared Earnings Compensation). If the Borrower deposits non-cash collateral, all earnings on the non-cash collateral shall be returned to the Borrower—provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a lending fee (the Lending Fee) (the Lending Fee and the Shared Earnings Compensation are collectively referred to as the "Transaction Lending Fee"). The Transaction Lending Fee, if any, shall be either in addition to the Exclusive Fee or an offset against such Exclusive Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement. Any change in the Exclusive Fee or the Transaction Lending Fee that the Borrower pays to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of the Plan, except that consent is presumed where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula. Where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and such independent Plan fiduciary must not object in writing to such change, prior to the effective time of such change.

(f) The Borrower may, but shall not be required to, agree to maintain a minimum balance of borrowed securities subject to the Borrowing Agreement. Such minimum balance may be a fixed U.S. dollar amount, a flat percentage, or other percentage determined pursuant to an objective formula.

(g) By the close of business on or before the day the loaned securities are delivered to the Borrower, the Plan receives from the Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by a U.S. bank other than Deutsche Bank or any affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) (and as further amended or superseded).[1] Such collateral will be deposited and maintained in an account which is separate from the Borrower's accounts and will be maintained with an institution other than the Borrower. For this purpose, the collateral may be held with a third party, an affiliate of the Borrower, or a branch of Deutsche Bank other than the Borrower that is a trustee or custodian of the Plan. If maintained by an affiliate of the Borrower or a branch of Deutsche Bank other than the Borrower, the collateral will be segregated from the assets of such affiliate or branch.

(h) The market value (or in the case of a letter of credit, the stated amount) of the collateral initially equals at least 102 percent of the market value of the loaned securities on the close of business on the day preceding the date of the loan and, if the market value of the collateral at any time falls below 100 percent (or such higher percentage as the Borrower and the independent fiduciary of the Plan may agree upon) of the market value of the loaned securities, the Borrower delivers additional collateral on the following day to bring the level of the collateral back to at least 102 percent. The level of the collateral is monitored daily by the Plan or its designee, which may be Deutsche Bank or any of its branches or affiliates, including DBT, which provides custodial or directed trustee services in respect of the securities covered by the Borrowing Agreement for the Plan. The Borrowing Agreement will provide the Plan with a continuing security interest in, and a lien on, the collateral, or will provide for the transfer of title to the collateral to the Plan.

(i) Before entering into a Borrowing Agreement, the Borrower furnishes to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement—provided, however, that in the case of a Borrower that is a branch of Deutsche Bank, the Borrower will furnish to the Plan the most recent publicly available audited and unaudited statement of Deutsche Bank's financial condition.

(j) The Borrowing Agreement contains a representation by the Borrower that, as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished statements of financial condition.

(k) The Plan receives the equivalent of all distributions made during the loan period, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of tax withholdings)[2] had it remained the record owner of the securities.

(l) The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty (except for, if the Plan has terminated its Borrowing Agreement, the return to the Borrower of a pro-rata portion of the Exclusive Fee paid by the Borrower to the Plan) whereupon the Borrower delivers securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five business days of written notice of termination or the customary settlement period for such securities.

(m) In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement, the Plan or its agent will have the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Borrower's obligation to return the Plan's securities, the Borrower will indemnify the Plan in the United States with respect to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Plan plus applicable interest at a reasonable rate, including reasonable attorneys' fees incurred by the Plan for legal action arising out of default on the loans, or failure by the Borrower to properly indemnify the Plan.

(n) Except as otherwise provided herein, all procedures regarding the securities lending activities, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as to applicable securities laws of the United States, Germany, the United Kingdom, Japan, Canada, and/or Australia, as appropriate.

(o) Only Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Borrowers—provided, however, that

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations, or employee organization, whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the Borrowers, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million—provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations, or employee organization, whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Borrowers, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity.

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above is formed for the sole purpose of making loans of securities.)

(p) Prior to any Plan's approval of the lending of its securities to the Borrowers, a copy of this exemption (and the notice of pendency) is provided to the Plan, and the Borrower informs the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.[3]

(q) The independent fiduciary of the Plan receives monthly reports with respect to the securities lending transactions, including, but not limited to, the information set forth in the following sentence, so that an independent Plan fiduciary may monitor such transactions with the Borrowers. The monthly report will list for a specified period all outstanding or closed securities lending transactions. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or premium (if applicable) at which the security is loaned, and the number of days the security has been on loan. At the request of the Plan, such a report will be provided on a daily or weekly basis, rather than a monthly basis. Also, upon request of the Plan, the Borrower will provide the Plan with daily notifications of securities lending transactions.

(r) In addition to the above conditions, all loans involving Foreign Borrowers must satisfy the following supplemental requirements:

(1) Such Foreign Borrower is subject to regulation by (i) the Bundesanstalt fuer Finanzdienstleistungsaufsicht (the BAFin) in Germany, (ii) the Financial Services Authority and the Securities and Futures Authority in the United Kingdom, (iii) the Ministry of Finance or the Financial Services Agency and the Tokyo Stock Exchange or the Osaka Stock Exchange in Japan, (iv) the Office of the Superintendent of Financial Institutions Canada, Ontario Securities Commission, and the Investment Dealers Association in Canada, or (v) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia, or any governmental regulatory authority that is a successor in interest to any such regulator.

(2) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 C.F.R. 240.15a–6) under the Securities Exchange Act of 1934 (the 1934 Act) that provides foreign broker-dealers a limited exception from U.S. registration requirements;

(3) All collateral is maintained in U.S. dollars or in U.S. dollar-denominated securities or letters of credit, or other collateral permitted under PTE 81–6 (as amended or superseded);

(4) All collateral is held in the United States and the situs of the Borrowing Agreement is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 C.F.R. 2550.404(b)–1; and

(5) Prior to entering into a transaction involving a Foreign Borrower, the Foreign Borrower must:

(i) Agree to submit to the jurisdiction of the United States;

(ii) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(iii) Consent to the service of process on the Process Agent; and

(iv) Agree that enforcement by a Plan of the indemnity provided by the Foreign Borrower will occur in the U.S. courts.

(s) The Borrower maintains, or causes to be maintained, within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (t)(1) to determine whether the conditions of the exemption have been met, except that

(1) A prohibited transaction will not be considered to have occurred if, due

[1] PTE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act) (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein) or to a U.S. bank, that is a party in interest with respect to such plan.

[2] The Department notes the Borrowers' representation that dividends and other distributions on foreign securities payable to a lending Plan are subject to foreign tax withholdings and that the Borrower will always put the Plan back in at least as good a position as it would have been had it not loaned securities.

[3] The Department notes the Borrowers' representation that, under the exclusive borrowing arrangements, neither the Borrower nor any of its affiliates will perform the essential functions of a securities lending agent, *i.e.*, the Borrowers will not be the fiduciary who negotiates the terms of the Borrowing Agreement on behalf of the Plan, the fiduciary who identifies the appropriate borrowers of the securities, or the fiduciary who decides to lend securities pursuant to an exclusive arrangement. However, the Borrowers or their affiliates may monitor the level of collateral and the value of the loaned securities.

to circumstances beyond the control of Deutsche Bank and/or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than the Borrower shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (t)(1).

(t)(1) Except as provided in subparagraph (t)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (s) are unconditionally available at their customary location for examination during normal business hours by

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission (SEC);

(ii) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Plan or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (t)(1)(ii)–(t)(1)(iv) are authorized to examine the trade secrets of Deutsche Bank or its affiliates or commercial or financial information which is privileged or confidential.

Section III—Definitions

(a) An *affiliate* of a person means:

(i) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with, the person. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(ii) Any officer, director, employee, or relative (as defined in section 3(15) of the Act) of any such other person or any partner in any such person; and

(iii) Any corporation or partnership of which such person is an officer, director, or employee, or in which such person is a partner.

(b) The term *Foreign Borrower* or *Foreign Borrowers* means Deutsche Bank or any broker-dealer or bank that, now or in the future, is a branch or an affiliate of Deutsche Bank that is subject to regulation by (i) the BAFin in Germany, (ii) the Financial Services Authority and the Securities and Futures Authority in the United Kingdom, (iii) the Ministry of Finance or the Financial Services Agency and the Tokyo Stock Exchange or the Osaka Stock Exchange in Japan, (iv) the Office of the Superintendent of Financial Institutions Canada, Ontario Securities Commission, and the Investment Dealers Association in Canada, or (v) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia, or any governmental regulatory authority that is a successor in interest to any such regulator.

(c) The term "Borrower" or "Borrowers" means DBS, DBNY, DBT, and the Foreign Borrowers, or any branch or affiliate of Deutsche Bank that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer or a U.S. bank.

Effective Date: The exemption is effective as of April 24, 2001.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 3, 2002 at 67 FR 44625.

Written Comments

The Department received one written comment with respect to the notice of proposed exemption (the Proposal). The comment was submitted by the applicant, who requested certain clarifying modifications and additions to the operative language in the final exemption, as well as to the Summary of Facts and Representations (the Summary) in the Proposal (see 67 FR 44625). The requested modifications and additions to both the operative language and the Summary, are discussed below.

1. The applicant wished to clarify that the term "Deutsche Bank" includes its branches, such as Deutsche Bank AG, New York Branch (DBNY), and to add Deutsche Bank Trust Company Americas (DBT) to the list of covered Borrowers.

Thus, Section I(a) of the Proposal (67 FR 44625, column 3) has been revised to read as follows (note deleted and italicized language):

(1) Deutsche Bank AG (Deutsche Bank) *(including the New York Branch of Deutsche Bank (DBNY))*; or

(2) its affiliates Deutsche Bank Securities Inc. (DBS), Deutsche Bank [delete "AG, New York Branch (DBNY)"] *Trust Company Americas (DBT)*, [delete "and"] the "Foreign Borrowers" (as defined in Section III), *and any branch or affiliate of Deutsche Bank that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer or a U.S. bank* (collectively, with Deutsche Bank, referred to as the "Borrowers," as defined in Section III)

2. Similarly, Section III(b) of the Proposal (67 FR 44628, center column) defining "Foreign Borrowers" has been revised to read as follows (note deleted and italicized language):

The term "Foreign Borrower" or "Foreign Borrowers" means *Deutsche Bank or* any broker-dealer or bank that, now or in the future, is *a branch or* an affiliate of Deutsche Bank that is subject to regulation by (i) the *BAFin* [delete "BAK and the Deutsche Bundesbank"] in Germany, * * *, or (v) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia, *or any governmental regulatory authority that is a successor in interest to any such regulator.*

For an explanation regarding the "BAFin" and the italicized language added to the end of clause (v), above, see Comment 8, below.

3. Further, Section III(c) of the Proposal (67 FR 44628, center column) defining "Borrowers" has been revised to read as follows (note deleted and italicized language):

The term "Borrower" or "Borrowers" means [delete "Deutsche Bank"] DBS, DBNY, *DBT*, and the Foreign Borrowers, [delete "and"] *or* any [delete "other"] *branch or* affiliate of Deutsche Bank that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer or a U.S. bank.

4. The revisions in Comment 2, above, should also be made to the corresponding paragraph in Item 1 of the Summary (67 FR 44629, column 1) (note deleted and italicized language):

Deutsche Bank requests an individual exemption to cover *DBNY, DBS, DBT*, the Foreign Borrowers identified above, as well as any [delete "broker-dealer or bank"] *other branch or affilate of Deutsche Bank* that, now or in the future, is [delete "an affiliate of Deutsche Bank that is"] (i) *a U.S. registered broker-dealer or government securities broker or dealer or a U.S. bank, or* (ii) that is subject to regulation by (a) the *BAFin* [delete "BAK, and the Deutsche Bundesbank"] in Germany, (b) the Financial Services Authority and the Securities and Futures Authority in the United Kingdom, (c) the Ministry of Finance or the Financial Services Agency and the Tokyo Stock Exchange or the Osaka Stock Exchange in Japan, (d) the Office of the Superintendent of Financial Institutions Canada, Ontario Securities Commission, and the Investment Dealers Association in Canada, or (e) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia, *or any governmental regulatory authority that is a successor in interest to any such regulator.*

5. The second sentence of Section II(h) of the Proposal (67 FR 44626, center column) regarding monitoring of the collateral has been revised to read as follows (note deleted and italicized language):

The level of the collateral is monitored daily by the Plan or its designee, which may be Deutsche Bank or any of its *branches or* affiliates, including [delete Deutsche Bank Trust Company Americas] DBT, which provides custodial or directed trustee services in respect of the securities covered by the Borrowing Agreement for the Plan.

Further, the words ldquo;*branches or*" should be added to the corresponding second sentence of the second paragraph in Item 10 of the Summary (67 FR 44631, center column).

6. The applicant wished to add the italicized language, below, to the first sentence of Section II(m) of the Proposal (67 FR 44626, column 3) regarding default by the Borrower. Thus, Section II (m) has been revised to read as follows:

In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement, the Plan or its agent will have the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price.

Further, the same addition should be made to the corresponding first sentence in Item 15 of the Summary (67 FR 44632, center column).

7. The applicant stated that the use of the term "confirmations" in Section II(q) of the Proposal connotes confirmation slips described in Rule 10b-10 under the 1934 Act, which applies to securities transactions, not to securities lending transactions. Thus, the last sentence of Section II(q) (67 FR 44627, center column) has been revised to read as follows (note deleted and italicized language):

Also, upon request of the Plan, the Borrower will provide the Plan with daily [delete "confirmations"] *notifications* of securities lending transactions.

Further, the same revision should be made to the corresponding last sentence in Item 10 of the Summary (67 FR 44631, column 3).

8. The applicant stated that there has been a change in the identity of the governmental regulatory authority in Germany. Following the adoption on April 22, 2002 of the Law on Integrated Financial Services Supervision (Gesetz ueber die integrierte Finanzaufsicht—FinDAG), the Federal Authority for Financial Services Supervision (Bundesanstalt fuer Finanzdienstleistungsaufsicht—BAFin) was established on May 1, 2002. The functions of the former offices for banking supervision (Gundesaufsichtsamt fuer das Kreditwesen—BAKred), insurance supervision (Bundesaufsichtsamt fuer das Versicherungswesen—BAV), and securities supervision (Bundesaufsichtsamt fuer den Wertpapierhandel—BAWe) have been combined in a single state regulator that supervises banks, financial services institutions, and insurance undertakings across the entire financial market and comprises all the key functions of consumer protection and solvency supervision. The new BAFin has been created to ensure a consistent regulation and supervision of the financial services and markets in Germany through one single authority. The applicant also noted generally that, in foreign jurisdictions, the authority to regulate securities transactions and securities lending transactions may change from agency to agency, from time to time, or the legal name of the appropriate regulator may change.

Thus, Section II(r)(1) of the Proposal (67 FR 44627, column 3), a supplemental requirement for Foreign Borrowers, has been revised to refer to the "BAFin," as well as by adding the italicized language and the end of clause (v):

(1) Such Foreign Borrower is subject to regulation by (i) the [delete "Bundesaufsichtsamt fuer das Kreditwesen (the BAK) and the Deutsche Bundesbank"] *Bundesanstalt fuer Finanzdienstleistungsaufsicht (the BAFin)* in Germany, * * *, or (v) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia, *or any governmental regulatory authority that is a successor in interest to any such regulator.*

Further, consistent with the above (as well as Comments 2 & 4), paragraph (i) in Item 17 of the Summary (67 FR 44632, column 3), should be revised such that the Foreign Borrower may be a bank "*or a broker-dealer*" that is subject to regulation by the various foreign regulators listed (substituting "BAFin" for "BAK and the Deutsche Bundesbank"), as well as "*any governmental regulatory authority that is a successor in interest to any such regulator.*"

9. The applicant wished to correct duplicative references to Deutsche Bank, already included in the revised definitions of "Foreign Borrower" and "Borrower."

Thus, the following revisions have been made to Section II(r)(5), (r)(5)(iv), and (s) of the Proposal (67 FR 44627, column 3) (note deleted language):

(5) Prior to entering into a transaction involving a Foreign Borrower, [delete "Deutsche Bank or"] the Foreign Borrower must * * *

(iv) Agree that enforcement by a Plan of the indemnity provided by [delete "Deutsche Bank or"] the Foreign Borrower will occur in the U.S. courts.

(s) [Delete "Deutsche Bank or"] The Borrower maintains, or causes to be maintained, within the United States for a period of six years * * *

Further, the same revision should be made to Footnote 8 in Item 4 of the Summary (67 FR 44630, column 1) as follows:

Under certain circumstances described in the April 9, 1997 No-Action Letter (*e.g.*, clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and [delete "Deutsche Bank or between a Plan a the Foreign Borrower * * *

10. The applicant wished to make the following correction to the third paragraph in Item 1 of the Summary (67 FR 44628, column 3) (note deleted language):

(c) Morgan Grenfell & Co., Ltd., located in London, is subject to regulation in the United Kingdom by the Financial Services Authority [delete "in respect of prudential supervision"];

11. The applicant wished to add the following sentence after the first sentence in Item 7 of the Summary (67 FR 44630, column 3):

The form of the Borrowing Agreement to be used in foreign jurisdictions will reflect appropriate local industry or market standards. [FN 11]

[FN 11] For example, the form of the Borrowing Agreement to be used in the United Kingdom differs from the standard U.S. Borrowing Agreement. Under the form Borrowing Agreement to be used in the United Kingdom, the Plan receives title to (rather than a pledge of or a security interest in) the collateral.

The applicant noted that the revisions, above, are consistent with the language of a similar recent exemption [see PTE 2002–33 (67 FR 42077, June 20, 2002)] for Morgan Stanley Dean Witter & Co. in the notice of proposed exemption relating thereto (67 FR 15241, March 29, 2002) (see 67 FR at 15245, column 3, Item 8).

12. The applicant wished to add a new Item 10 to follow Item 9 of the Summary (67 FR 44631, column 1), with the remaining items appropriately renumbered:

> 10. An independent fiduciary of the Plan may provide written instructions directing that the investment of any cash collateral, or any portion thereof, be managed by Deutsche Bank or any branch or affiliate thereof, or be invested in one or more mutual funds managed by Deutsche Bank or any branch or affiliate thereof. Deutsche Bank or such branch or affiliate, as applicable, may receive a reasonable and customary investment management fee, provided that the independent fiduciary of the Plan approves such compensation arrangement, after receiving written disclosure of the compensation arrangement to be paid to Deutsche Bank or such branch or affiliate, as applicable, in connection with such investment management. The independent fiduciary of the Plan may revoke such written instructions at any time. [FN 12]
>
> [FN 12] This transaction is outside the scope of the proposed exemption. The Department notes that it is the responsibility of Deutsche Bank or such branch or affiliate to determine whether the conditions of section 408(b)(2) of the Act will be met with respect to the transaction (*i.e.*, the reasonable contract or arrangement requirement and the reasonable compensation requirement).

The applicant noted that the paragraph and footnote, above, are consistent with the language of a similar recent exemption [see PTE 2002–44 (67 FR 56597, September 4, 2002)] for Goldman, Sachs & Co. in the notice of proposed exemption relating thereto (67 FR 44633, July 3, 2002) (see 67 FR 44640, column 1, Item 16).

13. Finally, the applicant requested that the third sentence in old Item 10 of the Summary (67 FR 44631, center column), to be renumbered as Item 11, be revised to be consistent with Section II(g) of this exemption (note deleted and italicized language):

> For this purpose, the collateral may be held on behalf of the Plan [delete "by"] *with a third party*, an affiliate of the Borrower, *or a branch of Deutsche Bank other than the Borrower*, that is [delete "the"] *a* trustee or custodian of the Plan.

The Department has modified the language of this exemption to reflect the applicant's clarifications to the record, as discussed above, and acknowledges such clarifications as they relate to the information contained in the Proposal, as published in the **Federal Register** on July 3, 2002.

Accordingly, based upon the information contained in the entire record, the Department has determined to grant the proposed exemption as modified herein.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 3rd day of October, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–25599 Filed 10–7–02; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (02–121)]

National Environmental Policy Act; International Space Research Park at the John F. Kennedy Space Center, Florida

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and conduct scoping meetings for the proposed International Space Research Park (ISRP) on the John F. Kennedy Space Center (KSC).

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216 subpart 1216.3), NASA intends to conduct scoping and prepare an EIS for the proposed International Space Research Park (ISRP) on the John F. Kennedy Space Center (KSC). NASA is proposing an agreement with the State of Florida, through the Florida Space Authority (FSA), to allow the State of Florida to develop up to 160 hectares (400 acres) of land on KSC as a research park. The State of Florida would develop the property in phases during the next 20 to 25 years. KSC, which is located in Brevard County on the east coast of Florida, is a major locus within NASA of Shuttle and International Space Station (ISS) activities and is adjacent to Cape Canaveral Air Force Station (CCAFS) from which many NASA missions are launched. NASA's goal in developing the ISRP at KSC is to provide an opportunity for commercial, research and educational interests from both governmental and non-governmental sectors to develop new, state-of-the-art facilities to promote the expanded use of space.

The EIS will address, among other matters, the environmental impacts of the development and operation of the research park at two possible locations on KSC.

DATES: Interested parties are invited to submit comments on environmental concerns in writing on or before December 9, 2002, to assure full consideration. In addition, interested parties may attend one or both of the two public scoping meetings to be held on October 24, 2002. The first meeting will be held at the KSC Visitors Complex at 9:30 a.m. The second meeting will be held at the Florida Solar Energy Center on the Cocoa Campus of the Brevard Community College at 7 p.m.

ADDRESSES: Written comments should be addressed to Mr. Mario Busacca, Environmental Program Office, Mail Code TA–C3, Kennedy Space Center, Florida, 32899. Comments may also be sent by electronic mail to: *Mario.Busacca-1@ksc.nasa.gov*, by facsimile to Mr. Busacca's attention at 321–867–8040, or by visiting the ISRP EIS Web page at *http://eis.ksc.nasa.gov/index.cfm*.

FOR FURTHER INFORMATION CONTACT: Mr. Mario Busacca, Environmental Program Office, Mail Code TA–C3, Kennedy Space Center, Florida, 32899; 321–867–8456; fax, 321–867–8040; electronic mail: *Mario.Busacca-1@ksc.nasa.gov*. In addition, status updates and other additional information can be found on the following Web site: *http://eis.ksc.nasa.gov/index.cfm*.

SUPPLEMENTARY INFORMATION: Some of the key objectives of the KSC mission are to support development of the ISS and growth in the commercial space industry; promote and facilitate general commercial use and development of space; and continue to develop KSC as a world leader in spaceport and range technology development while maintaining the prominence in launch and landing operations of KSC and CCAFS, collectively known as the Cape Canaveral Spaceport (CCS). Towards these ends, KSC believes the development and operation of a commercial-based research park would attract and promote broad-based research and technology development activities. In addition, the development and testing activities would increase the availability of intellectual, physical, and financial resources to directly support the use and development of space and its commercial potential. This outcome would enable NASA to more efficiently perform its core research and exploration missions. Therefore, NASA is proposing to allow the State of Florida, through its FSA, to develop up to 160 hectares (400 acres) of land on KSC as a ISRP. This area would be developed and managed by the FSA for the life of the ISRP, which is up to 50 years. The FSA would seek tenants to build and operate commercial and educational facilities within the ISRP, which would be subdivided into about 24 available parcels ranging in size from approximately two to eight hectares (five to 20 acres) each.

Enterprises, both private and public wishing to engage in or support research and technology, space product development, or commercialized space services that are in alignment with the strategic direction and needs of the FSA would be invited to consider locating their laboratories and offices in the ISRP. The proposed ISRP would be unique and as such would be expected to attract a broad, but synergistic range of activities. Such activities may include university-sponsored research and education, commercial space experiment processing services, spaceport and range technology development and support activities, international laboratories and administrative support for NASA's global partners on the space station, technical and scientific support labs, space business assistance activities, space technology brokerage activities, and business support services required by ISRP tenants. NASA envisions the ISRP as a pedestrian-friendly campus, with features to encourage interaction and collaboration among its tenants. The ISRP would manage all utilities and services for the tenants. All tenants would be required to meet strict eligibility requirements to be allowed to build in the ISRP. Heavy manufacturing or large-scale assembly of space hardware, and any operations deemed hazardous or incompatible with other ISRP users, would not be allowed. Full build-out of the ISRP is not expected for 20 to 25 years. At full build-out, the ISRP would contain facilities that represent a combined floor space of more than 185,000 square meters (2 million square feet) of research and development and related facility space and a total estimated population of approximately 10,000 workers.

An initial Memorandum of Understanding (MOU) between KSC and FSA was signed in December 2001, describing the respective roles of the partners in planning the ISRP and establishing common understandings related to the subsequent implementation and operation of the ISRP. The MOU provides that NASA fund and lead the concept development study with FSA involvement, and FSA fund and manage follow-on engineering, technical, and business studies to prepare for ISRP implementation. The proposed management approach envisioned for the ISRP is that NASA would retain ownership of the property but convey land use and development rights to the FSA for up to 50 years. The FSA would enter into long-term arrangements with ISRP tenants to enable commercially financed space industry firms and academic institutions to build and operate in the ISRP.

NASA is planning to evaluate two locations as reasonable alternatives for the proposed ISRP on KSC: the first alternative site (Alternative 1) is located south of the KSC Visitor Complex and west of Kennedy Parkway, and the second alternative site (Alternative 2) is located east of Kennedy Parkway just to the north of the south gate entrance (Gate 2) to KSC. The EIS will also consider the No Action Alternative (*i.e.*, not developing the ISRP). Alternative 1, the Proposed Action, would result in development in an area of approximately 160 hectares (440 acres) that currently is comprised mostly of citrus groves, some of which are no longer in production. Citrus production will cease, in any event, in 2008. Alternative 1 also contains some 32 hectares (79 acres) of wetlands, not all of which would be impacted by ISRP development. Alternative 2 would result in development in an area that contains 134 hectares (332 acres) of pine flatwoods and scrub habitat and some 27 hectares (67 acres) of wetlands, not all of which would be impacted by ISRP development. Both of these locations were selected in part to accommodate the need for the ISRP to be located outside the KSC security zone to allow for 24-hour access by the tenants.

The EIS will consider the full range of potential environmental impacts associated with these alternatives. Environmental issues addressed will include, but not necessarily be limited to: land use, motor vehicle traffic, air and water quality, infrastructure and drainage, hazardous materials and site contamination, pollution prevention, geology, biological resources, noise, aesthetics, cultural resources, socioeconomic impacts (including environmental justice), and other issues identified for emphasis during the scoping process. NASA will consult with the State Historic Preservation Office during the planning process because Alternative 2 may potentially affect archeological and historic sites. NASA will also consult with the U.S. Fish and Wildlife Service regarding the potential for the ISRP to impact threatened and endangered species and critical habitat.

Dated: October 3, 2002.

Jeffrey E. Sutton,

Assistant Administrator for Management Systems.

[FR Doc. 02–25663 Filed 10–7–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that four meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506 as follows:

Media Arts: October 24–25, 2002, Room 716 (Access and Heritage &

Preservation categories). A portion of this meeting, from 2:00 p.m. to 3:00 p.m. on October 25th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:30 a.m. to 5:30 p.m. on October 24th and from 9:30 a.m. to 2 p.m. and 3 p.m. to 4:30 p.m. on October 25th, will be closed.

Design: November 4–5, 2002, Room 716 (Access and Heritage & Preservation categories). A portion of this meeting, from 11:45 a.m. to 12:45 p.m. on November 5th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5 p.m. on November 4th and from 9 a.m. to 11:45 a.m. and 12:45 p.m. to 2:30 p.m. on November 5th, will be closed.

Opera: November 18, 2002, Room 714 (Access and Heritage & Preservation categories). A portion of this meeting, from 2:30 p.m. to 3:30 p.m., will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 2:30 p.m. and 3:30 p.m. to 4 p.m., will be closed.

Music: November 19–22, 2002, Room 714 (Access and Heritage & Preservation categories). A portion of this meeting, from 2 p.m. to 3:30 p.m. on November 22nd, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on November 19th–21st, and from 9 a.m. to 2 p.m. and 3:30 p.m. to 4:30 p.m. on November 22nd, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: October 2, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–25607 Filed 10–7–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel, AccessAbility Section, will be held by teleconference from 12 p.m.–12:30 p.m. on Tuesday, October 22, 2002 in Room 528 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to subsection (c)(4),(6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: October 2, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–25608 Filed 10–7–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Committee Management Renewal

The NSF management officials having responsibility for the Oversight Council for the International Arctic Research Center (#9535) have determined that renewing this group for another year is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation by 42 USC 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

For more information contact Susanne Bolton at (703) 292–7488.

Dated: October 1, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–25501 Filed 10–07–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering—(1115).

Date and Time: October 25, 2002: 8 a.m. to 3:45 p.m.

Place: Hilton Arlington and Towers, Master Ballroom, 950 N. Stafford Street, Arlington, VA 22203.

Type of Meeting: Open.

Contact Person: Gwen Barber-Blount, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Suite 1105, Arlington, VA 22230. Telephone: (703) 292–8900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community. To provide advice to the Assistant Director/CISE on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Report from the Assistant Director. Discussion of Information Technology Research. CISE activity related to Homeland Security, NSF's Career Program, Cyber Infrastructure, use of panel reviews, and discussion of the COV report on the PACI program.

Dated: October 3, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–25601 Filed 10–7–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Notice of Meeting; Correction

Correction: The National Science Foundation published a document in the **Federal Register** of October 1, 2002 on page 61670, 2nd column concerning the notice of meeting for advisory committee #1170. The subject heading and name of the committee should read "Advisory Committee for Engineering." Below is the corrected notice.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended) the National Science Foundation announces the following meeting.

Name and Committee Code: Advisory Committee for Engineering (#1170).

Date and time: October 17, 2002/8:30 a.m.–5 p.m.; October 18, 2002/8:30 a.m.–12 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Stafford II, Room 555.

Type of Meeting: Open.

Contact Person: Dr. Elbert L. Marsh, Deputy Assistance Director for Engineering, National Science Foundation, Suite 505, 4201 Wilson Boulevard, Arlington, VA 22230; Telephone: (703) 292–4609. If you are attending the meeting and need access to the NSF building, please contact Maxine Byrd at 703–292–4601 or at *mbyrd@nsf.gov* so that your name can be added to the building access list.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to Engineering programs and activities.

Agenda: The principal focus of the forthcoming meeting will be on strategic issues, both for the Directorate and the Foundation as a whole. The Committee will also address matters relating to the future of the engineering profession, and engineering education.

Dated: October 1, 2002

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–25502 Filed 10–07–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Directorate for Mathematical and Physical Sciences Advisory Committee; Notice of Meeting

Name: Directorate for Mathematical and Physical Sciences Advisory Committee (MPSAC).

Date/Time: November 6, 2002, 12–5; November 7, 2002, 8:30 AM–6 PM; November 8, 2002, 8:30 AM–3 PM.

Place: November 6, 2002, Stafford Building II, Room 595, 4121 Wilson Boulevard, Arlington, VA. November 7–8, 2002, 4201 Wilson Boulevard, Arlington, VA 22230, Room 375.

Type of Meeting: Open.

Contact Person: Dr. Morris L. Aizenman, Senior Science Associate, Directorate for Mathematical and Physical Sciences, Room 1005, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8807.

Purpose of Meeting: To provide advice and recommendations concerning NSF science and education activities within the Directorate for Mathematical and Physical Sciences.

Agenda: November 6: Briefing to New MPSAC members. November 7–8: Briefing on current status of Directorate. Meeting with members of the Education and Human Resources Directorate Advisory Committee. Discussion of MPS Activities with respect to MPSAC Recommendations concerning responses to the Hart-Rudman Report Discussion of MPS International Activities. Meeting of MPSAC with Divisions within MPS Directorate.

Dated: October 1, 2002.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 02–25503 Filed 10–7–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESSES: Comments should be addressed to Director, Division of Human Resource Management, National Science Foundation, Room 315, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Wilkinson, Jr., at the above address or (703) 292–8180.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Joseph Bordogna, Deputy Director, Chairperson

Mary E. Clutter, Assistant Director for Biological Sciences

Karl A. Erb, Director, Office of Polar Programs

Nathaniel Pitts, Director, Office of Integrative Activities

Dated: October 3, 2002.

John F. Wilkinson, Jr.,

Director, Division of Human Resources Management.

[FR Doc. 02–25602 Filed 10–7–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Office of Inspector General Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of membership of the National Science Foundation's Performance Review Board for Office of Inspector General Senior Executive Service positions.

SUMMARY: This announcement of the membership of the National Science Foundation's Office of Inspector General Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESSES: Comments should be addressed to Director, Division of Human Resource Management, National Science Foundation, Room 315, 4210 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Wilkinson, Jr., at the above address or (703) 292–8180.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Office of Inspector General Senior Executive Service Performance Review Board is as follows: Mark S. Wrighton, Chairman, Audit and Oversight Committee, National Science Board, Chairperson Nathaniel Pitts, Director, Office of Integrative Activities Bruce Umminger, Senior Scientist, Office of Integrative Activities.

Dated: October 3, 2002.

John F. Wilkinson, Jr.,

Director, Division of Human Resource Management.

[FR Doc. 02–25603 Filed 10–7–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Exelon Generation Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of an amendment to Facility Operating License Nos. DPR–29 and DPR–30 issued to Exelon Generation Company, LLC (Exelon, the licensee), for operation of the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, IL.

The proposed amendment would revise the Updated Safety Analysis Report (UFSAR) to allow lifting heavier loads with the reactor building crane during the Unit 1 refueling outage beginning in November 2002.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), § 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will allow use of the reactor building crane at Quad Cities Nuclear Power Station (QCNPS) during power operations to lift heavy loads up to 125 tons for removal and re-installation activities for the reactor cavity shield blocks during the Unit 1 refueling outage (*i.e.*, Q1R17). The reactor building crane has additional margin for a total lifted load of 125 tons with single failure-proof features if a Design Basis Earthquake (DBE) is not assumed. Exelon has qualitatively demonstrated that the probability of a DBE occurring during the limited duration (estimated to be 24 hours) of the request is very small. The probability of load drop accidents previously evaluated is not increased since the capacity of the reactor building crane equals or exceeds the weight of the reactor cavity shield blocks.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes allow use of the QCNPS reactor building crane for a limited duration to lift heavy loads up to a total of 125 tons during removal and re-installation activities for the reactor cavity shield blocks. The reactor building crane has additional margin for a lifted load of 125 tons with single failure-proof features if a DBE is not assumed. The probability of a DBE during the limited duration of the request is very small. Therefore, the single failure-proof features ensure that the proposed changes provide an equivalent level of safety and will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The reactor building crane is rated for lifting loads up to 125 tons. The NRC has approved qualification of the QCNPS reactor building crane as single failure-proof for loads of up to 110 tons. The proposed change allows use of the crane for a limited duration to lift loads up to 125 tons. Existing safety margins are enhanced when lifting loads up to 125 tons if a DBE is not assumed, and Exelon has demonstrated that the probability of a DBE during the limited duration of the request is very small. Therefore, it is concluded that the proposed changes do not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 7, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 1, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 2nd day of October, 2002.

For the Nuclear Regulatory Commission.

Carl F. Lyon,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–25605 Filed 10–7–02; 8:45 am]

BILLING CODE 7590–01–P

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of October 7, 14, 21, 28, November 4, 11, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 7, 2002

There are no meetings scheduled for the Week of October 7, 2002.

Week of October 14, 2002—Tentative

There are no meetings scheduled for the Week of October 14, 2002.

Week of October 21, 2002—Tentative

There are no meetings scheduled for the Week of October 21, 2002.

Week of October 28, 2002—Tentative

Wednesday, October 30, 2002

2 p.m.
Discussion of Security issues (Closed—Ex. 1 & 9)

Thursday, October 31, 2002

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)

9:30 a.m.

Briefing on EEO Program (Public Meeting)
2:30 p.m.
Briefing on Proposed Rulemaking to Add New Section 10 CFR 50.69, "Risk-Informed Categorization and Treatment of Structures, Systems, and Components for Nuclear Power Reactors" (Public Meeting)
This meeting will be webcast live at the Web address *http://www.nrc.gov.*

Week of November 4, 2002—Tentative

There are no meetings scheduled for the week of November 4, 2002.

Week of November 11, 2002—Tentative

There are no meetings scheduled for the Week of November 11, 2002.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: R. Michelle Schroll (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: October 3, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 02–25656 Filed 10–4–02; 10:48 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46581; File No. SR–Amex–2002–50]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to Trading of Trust Issued Receipts and "Other Securities"

October 1, 2002.

I. Introduction

On May 31, 2002, the American Stock Exchange LLC ("Amex or Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the trading by regular members in securities listed pursuant to Section 107 of the Amex Company Guide (Other Securities) and Amex Rule 1200 (Trust Issued Receipts). On July 8, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The amended proposed rule change was published for comment in the **Federal Register** on Wednesday, July 31, 2002.[4] The Commission received no comments on the proposed rule change.

II. Description of the Proposed Rule Change

The Amex proposed to amend Amex Rule 958, Commentary .10 relating to trading by regular members in Other Securities and Trust Issued Receipts. In its proposal, the Exchange noted that in 1992, the Commission approved Amex Rule 958, Commentary .10 relating to trading on the Floor in "derivative products," index warrants, and currency warrants.[5] Commentary .10 requires that these securities be traded by Registered Traders under Amex Rule 958, which relates to trading by Registered Options Traders ("ROTs"). Commentary .10 also states that index warrants and currency warrants may be traded by ROTs who are regular members. Options Principal Members ("OPMs") and Limited Trading Permit Holders ("LTPs") are permitted to trade derivative products under Amex Rule 958, but are not permitted to trade index or currency warrants. All of these securities must be traded under Amex Rule 958 only and cannot be traded by Registered Equity Traders ("RETs") or Registered Equity Market Makers ("REMMs") under Amex Rules 111 or 114.[6] The "derivative products" traded by Registered Traders under Amex Rule 958 include all exchange-traded funds listed under Amex Rules 1000 and 1000A, including, for example, Nasdaq 100 Index Tracking Stock™, SPDRs®, DIAMONDS®, iShares™, and Select Sector SPDRs®.

Pursuant to Amex Rule 958, Commentary .10, regular members trading derivative products, index warrants, and currency warrants as ROTs are subject to continuous market making obligations. As such, ROTs receive market maker margin. OPMs and LTPs are also permitted to trade derivative products pursuant to Article I, Section 3 and Article IV, Section 1(h), respectively, of the Amex Constitution, and, because their trading under Amex Rule 958 also requires ongoing market making obligations, OPMs and LTPs also receive market maker margin.[7]

According to the Exchange, when it first authorized trading in derivative products by OPMs and LTPs in 1990, it specifically intended to encourage trading crowds and competitive market making to develop in such products as SuperTrust securities (which represented interests in actual portfolios of securities such as the S&P 500 Index) and SPDRS®, which were then under development by the Exchange. In the Exchange's Rule 19b–4 filing with the Commission to authorize such OPM and LTP trading, the Exchange stated that the definition of derivative products was not intended to include products that OPMs and LTPs were not entitled to trade at that time, including currency warrants, index warrants, or closed-end mutual funds.[8]

The Exchange proposes to amend Amex Rule 958, Commentary .10 to clarify that "structured products" and Trust Issued Receipts (HOLDRS℠) traded under Amex equity trading rules must be traded under Amex Rule 958 and only by registered traders who are regular members. Structured products include all securities listed under Section 107 of the Amex Company Guide (*e.g.*, Index-Linked Notes (MITTS®, BOXES℠, TIERS℠); Equity-Linked Term Notes (*e.g.*, GOALS, ELKS℠, SPARQS℠, STRIDES℠) and Trust Preferred Securities (*e.g.*, TOPrS)). Trust Issued Receipts include HOLDRS℠ and are listed under Amex Rules 1200 *et seq.* Therefore, the Exchange represents that these securities are ineligible to be traded either (1) by OPMs or LTPs; or (2) by RETs or REMMs under Amex Rules 111 and 114.[9] The Exchange believes that permitting regular member ROTs to trade structured products and HOLDRS℠ under Amex Rule 958 will promote additional market depth and liquidity. According to the Amex, structured products and Trust Issued Receipts do not fall within the definition of "derivative products" as contemplated by the Exchange in authorizing OPMs and LTPs to trade derivative products; therefore, OPMs and LTPs are not permitted to trade those products. The Exchange proposal would clarify Amex Rule 958 to reflect this position.[10]

III. Discussion of the Proposed Rule Change

The Exchange's proposal would amend Amex Rule 958, Commentary .10 to clarify that structured products and Trust Issued Receipts rules must be traded under Amex Rule 958 and only by registered traders who are regular (*i.e.*, full) members. The proposed rule change would codify current practice, which affects REMMs, RETs, OPMs, and LTPs. Under the current practice, REMMs and RETs, which are regular members of the Exchange, must register under Amex Rule 958 in order to trade structured products or Trust Issued Receipts; LTPs and OPMs, which are not regular members, are not permitted to trade those products.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act[11] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[12] which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

When an individual REMM, RET, or other regular member of the exchange registers under Amex Rule 958, he or she becomes a competing market maker with continuous affirmative market making obligations. The individual also receives "good faith" margin, which permits the individual to finance up to 100% of his or her securities positions' market value.[13] Entitlement to good faith margin may serve to attract regular members to trade structured products and Trust Issued Receipts, which, in turn may provide increased depth and liquidity to the markets for those products. Greater depth and liquidity contribute to better executions, a result which is consistent with the protection of investors and the public interest.

The Exchange does not permit either structured products or Trust Issued Receipts to be traded by OPMs or LTPs. OPMs and LTPs have authority to trade "derivative products," as defined in the Amex Constitution and interpreted by the Amex Board of Governors. The Amex observes that when it proposed to allow OPMs and LTPs to trade derivative products, it explicitly stated that its proposal was not intended to expand OPM and LTP trading privileges beyond products that OPMs and LTPs were trading at that time. OPMs and LTPs were not trading structured products and Trust Issued Receipts; those products were not in existence when the Exchange proposed to allow OPMs and LTPs to trade derivative products. Moreover, the Amex represents that the definition of derivative products contemplates only products that are based on open-ended, managed indexes or portfolios registered under the Investment Company Act of 1940.[14] Structured products and Trust Issued Receipts do not satisfy those criteria.[15]

The Commission finds that it is within the Exchange's discretion to assign or limit trading rights based on type of product and class of membership, as long as the procedures adopted are not inconsistent with the purposes of the Act.[16] In this regard, the Exchange has articulated a legitimate business purpose of attracting registered traders to trade structured products and Trust Issued Receipts. The Commission therefore finds the Exchange's proposed rule change clarifying current practice to be consistent with the Act.[17]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[18] that the proposed rule change (SR–Amex–2002–50) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25611 Filed 10–7–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46580; File No. SR–BSE–2002–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange Relating to an Interpretation of its Execution Guarantee Rule

October 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 5, 2002, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.

The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from Claire McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 3, 2002 ("Amendment No. 1"). Amendment No. 1 deleted a proposed technical change to Amex Rule 958.

[4] Securities Exchange Act Release No. 46251 (July 24, 2002), 67 FR 49724.

[5] Securities Exchange Act Release No. 30768 (June 2, 1992), 57 FR 24277 (June 8, 1992) (File No. SR–Amex–92–06).

[6] The term "derivative products" is defined in Article I, Section 3(d) of the Exchange Constitution to include standardized options and "other securities which are issued by The Options Clearing Corporation or another limited purpose entity or trust, and which are based solely on the performance of an index or portfolio of other publicly traded securities." The definition explicitly excludes warrants of any type and closed-end funds.

[7] OPMs also can trade stock options and index options. LTPs can trade index options but not stock options. As previously mentioned, OPMs and LTPs also may trade derivative products, but are not permitted to trade index or currency warrants. Derivative products cannot be traded by persons registered as RETs or REMMs under Amex Rules 111 or 114. REMMs are not subject to Amex Rule 958 type continuous market making obligations and do not receive "good faith" market maker margin, but instead are subject to full customer margin requirements.

[8] See Securities Exchange Act Release No. 28612 (November 14, 1990), 55 FR 48308 (November 20, 1990) (File No. SR–Amex–90–17).

[9] However, because RETs and REMMs are regular members of the Exchange, they may, after registering under Amex Rule 958, trade structured products and Trust Issued Receipts under Amex Rule 958. Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel and Steven Johnston, Special Counsel, Division, Commission, on July 22, 2002.

[10] The Exchange also originally proposed a technical change to Amex Rule 958. The Exchange withdrew the proposed technical change in Amendment No. 1. The proposed technical change was unnecessary because it had been previously proposed by the Amex and approved by the Commission. (See Securities Exchange Act Release No. 45320 (January 18, 2002), 67 FR 3921 (January 28, 2002)(File No. SR–Amex–2001–79).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] Good faith margin, as defined in Regulation T, issued by the Board of Governors of the Federal Reserve System, as the amount of margin which a creditor, exercising sound judgment, would customarily require for a specified security position and which is established without regard to the customer's other assets or securities positions held in connection with unrelated transactions. See 12 CFR 220.2. In lieu of margin that otherwise would be required, good faith margin permits a trader to finance up to 100% of his or her securities positions' market value.

[14] 15 U.S.C. 80a–1 *et seq.*

[15] Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Steven Johnston, Special Counsel, Division, Commission, on September 4, 2002.

[16] 15 U.S.C. 78f(b). *See* Securities Exchange Act Release No. 28612 (November 14, 1990), 55 FR 48308 (November 20, 1990)(File No. SR–Amex–90–17).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement an interpretation of its Execution Guarantee Rule in response to Commission action regarding *de minimis* trades through of certain Exchange Traded Funds ("ETFs") in ITS. The text of the proposed rule change is available at the Office of the Secretary, BSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to add Paragraph .07 to the Interpretations and Policies section of Chapter II, *Dealings on the Exchange*, Section 33, *Execution Guarantee*, of the BSE Rules. This proposed rule change is in response to a Commission Order issued August 28, 2002, granting a *de minimis* exemption for transactions in certain ETFs from the Trade-Through Provisions of the Intermarket Trading System ("ITS") Plan ("Order").[3]

As of the implementation date of the Order, September 4, 2002, certain executions that take place according to the rules of the Exchange may be deemed violative of the provisions thereof. Accordingly, the Exchange is seeking to implement this proposed rule change to run commensurate with the pilot period outlined in the Order, or until such longer time as the Commission may deem appropriate in conjunction with any further related action concerning this issue.

In Chapter II, *Dealings on the Exchange*, Section 33, *Execution Guarantee* of the BSE Rules, paragraph (c)(2) states that "All agency limit orders will be filled if one of the following conditions occur * * * (2) there has been price penetration of the limit in the primary market * * *." Moreover, in various sections of Chapter XV, *Dealer Specialists*, there are similar provisions.[4] These provisions, in particular those set forth in Chapter II, guarantee that a limit order in a BSE specialist's book will be filled if the primary market trades through the limit price. The BSE specialist provides this protection to its customer limit orders in part due to the fact that the specialist can seek relief through ITS in the event of a trade-through.

As a result of the Commission's Order, certain primary market trades-through in ETFs will constitute exempt trades-through, but will still, under BSE Rules, trigger an obligation on the part of a BSE specialist to provide trade-through protection. However, the specialist will no longer be able to seek recourse to seek satisfaction through ITS from the primary market. Accordingly, the BSE specialist will be competitively disadvantaged if this section of its rules is strictly enforced, while the *de minimis* exemption exists for other ITS participants. Therefore, the BSE is seeking to implement an Interpretation of Chapter II, Section 33(c)(2) of its rules permitting the Exchange to not enforce the provision following a *de minimis* trade through of certain ETFs outlined in the Order.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act[5] and furthers the objectives of section 6(b)(5),[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, in that it is designed to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to the File No. SR–BSE–2002–14 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25612 Filed 10–7–02; 8:45 am]

BILLING CODE 8010–01–P

[3] See Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002). Participants of the ITS Plan are exempt from Section 8(d) of the Plan for the period of September 4, 2002 until June 4, 2003 with respect to transactions in QQQs, DIAMONDs, and SPDRs, that are executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS.

[4] See, e.g., Commentary to Section 1, *Specialists*, which sets forth a specialist's obligations in relation to buying and selling on a principal basis while holding unexecuted orders in his book; Section 2, *Responsibilities*, which sets forth, in part, a specialist's primary duties as agent; Section 4, *Precedence to Orders in the Book*, which sets forth the precedence parameters a specialist must adhere to; and Section 18, *Procedures for Competing Specialists*, which sets forth, in various paragraphs, obligations which may conflict with the *de minimis* exemption in the Order.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46582; File No. SR–CBOE–2002–53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Amending Its Rules To Provide Notice of Benefits of Membership and Attendant Obligations

October 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on September 9, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to add a rule provision setting forth that each CBOE member and Option Trading Permit holder (until such permit expires) with trading rights on CBOE (i) is a member of OneChicago, LLC, and (ii) to the extent provided in OneChicago rules, becomes bound by OneChicago rules and subject to jurisdiction of OneChicago by accessing or entering any order into the OneChicago System.

Below is the text of the proposed rule change. Proposed new language is italicized and proposed deletions are in brackets.

* * * * *

Chicago Board Options Exchange, Incorporated

Rules

* * * * *

RULE 3.28. Reserved.

Membership in OneChicago, LLC

RULE 3.29. Each member and Option Trading Permit holder (until such permit expires) with trading rights on the Exchange is a member of OneChicago, LLC, and to the extent provided in OneChicago rules, becomes bound by OneChicago rules and subject to jurisdiction of OneChicago by accessing or entering any order into the OneChicago System.

Extension of Time Limits

RULE *3.30* [3.28]. Any time limit imposed on an applicant, member, or other person under this Chapter may be extended by the Membership Committee in the event that the Membership Committee determines that such an such extension is warranted due to extenuating circumstances.

Delegation of Authority

RULE *3.31* [3.29].(a) All of the authority granted to the Exchange under this Chapter may be exercised by the Membership Committee and/or the Membership Department.

(b) The Membership Committee may delegate to the Membership Department any of the authority that is granted to the Membership Committee under the Rules.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OneChicago, LLC is a joint venture formed by CBOE, the Chicago Mercantile Exchange, and the Chicago Board of Trade to provide a market for trading security futures products. OneChicago has been conditionally designated by the Commodity Futures Trading Commission as a contract market under the Commodity Exchange Act and is in the process of registering with the Commission as a national securities exchange under section 6(g) of the Act.[3]

One of CBOE's primary goals in participating in the formation of OneChicago was to provide CBOE's membership with access to a market for trading security futures products. Accordingly, OneChicago Rule 132[4] provides that any person or entity with full member trading rights or option trading permits (until such permits expire) on CBOE is a member of OneChicago. A person or entity with full member trading rights on CBOE is a CBOE member with the right to enter into securities transactions at the CBOE. These persons and entities include CBOE members in a number of CBOE membership capacities including, among others, those CBOE members with an authorized floor function (*i.e.*, are approved to act as a CBOE Market-Maker and/or Floor Broker), lessees of CBOE memberships, Chicago Board of Trade exercisers, CBOE Clearing Members, and CBOE member organizations approved to transact business with the public. A person or entity with option trading permits (until such permits expire) is an Option Trading Permit holder under CBOE Rule 3.27 that is not a lessor of the Option Trading Permit.

Additionally, OneChicago Rule 307(a) provides, in pertinent part, that by accessing, or entering any order into, the OneChicago System, and without any need for any further action, undertaking or agreement, a OneChicago member agrees (i) to be bound by, and comply with, OneChicago rules, the rules of any OneChicago clearing corporation, and applicable law, to the extent applicable to it, and (ii) to become subject to the jurisdiction of OneChicago with respect to any and all matters arising from, related to, or in connection with, the status, actions, or omissions of that OneChicago member.

In this regard, CBOE proposes to add a CBOE rule provision setting forth that each CBOE member and Option Trading Permit holder (until such permit expires) with trading rights on CBOE (i)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(g).

[4] The CBOE's original filing referred to OneChicago Rule 129. The CBOE represents that the OneChicago rules have since been amended and the correct reference should now be to OneChicago Rule 132. Telephone conversation between Arthur B. Reinstein, Legal Division, CBOE, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on September 24, 2002.

is a member of OneChicago, LLC, and (ii) to the extent provided in OneChicago rules, becomes bound by OneChicago rules and subject to jurisdiction of OneChicago by accessing or entering any order into the OneChicago System. This rule provision would be set forth in new CBOE Rule 3.29.[5]

The primary purpose of this proposed rule change is two-fold. First, the right to trade on and to be a member of OneChicago is a benefit granted to CBOE members with trading rights on CBOE, and CBOE desires to provide notice of this benefit of CBOE membership in CBOE's rules. Second, CBOE desires to provide notice to CBOE members in the CBOE rules that by accessing or entering an order into the OneChicago System, a CBOE member will become bound by OneChicago rules and subject to the jurisdiction of OneChicago. In the absence of CBOE Rule 3.29, CBOE members would still be bound by OneChicago rules and subject to the jurisdiction of OneChicago by accessing or entering an order into the OneChicago System by virtue of OneChicago Rule 307(a). It is also the case that CBOE members will have notice of these provisions in the OneChicago rules and through other means such as circulars and educational sessions conducted in connection with the launch of trading on OneChicago. However, CBOE believes that it is important to also include notice of these provisions in CBOE's rules to further ensure that CBOE members, applicants for CBOE membership, and prospective CBOE members are aware of these provisions.

Although proposed CBOE Rule 3.29 would fall within the scope of the consent form that new CBOE members sign and that current CBOE members have previously signed to the effect that they agree to abide by CBOE rules as they shall be in effect from time to time, OneChicago would continue to be responsible for enforcing its own rules. It is not intended that CBOE would enforce OneChicago rules by virtue of adopting proposed CBOE Rule 3.29, and CBOE would not be assuming any responsibility or obligation to enforce OneChicago rules, or compliance by CBOE members with those rules, by virtue of this rule change. Nevertheless, OneChicago would be a third party beneficiary of proposed CBOE Rule 3.29 and would be able to rely upon the agreement by CBOE members to be subject to proposed CBOE Rule 3.29 in enforcing OneChicago rules, in addition to the authority granted by OneChicago rules themselves.

In this regard, proposed CBOE Rule 3.29 is similar to other CBOE rules which provide important notices to CBOE members and others by including those notices in CBOE's rules and in which other parties are third party beneficiaries of those CBOE rules. For example, CBOE Rule 24.14 sets forth disclaimers of warranty and liability that are applicable with respect to reporting authorities for index options that are traded on CBOE. In addition, CBOE Rule 6.7A generally provides that CBOE members may not institute a lawsuit against, among others, CBOE contractors for actions taken or omitted to be taken in connection with the official business of CBOE.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[6] in general and furthers the objectives of section 6(b)(5) of the Act[7] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and to promote just and equitable principles of trade by further ensuring that CBOE members are aware of an important benefit of CBOE membership and of important obligations that are applicable to those who utilize that benefit.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from September 9, 2002, the date on which it was filed, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

Under Rule 19b–4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission. The CBOE provided the Commission with notice of intent to file at least five days prior to filing the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2002–53 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25610 Filed 10–7–02; 8:45 am]

BILLING CODE 8010–01–P

[5] Current CBOE Rules 3.28 and 3.29 would be renumbered as CBOE Rules 3.30 and 3.31, respectively. The rule change would leave Rule 3.28 reserved for future use.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46576; File No. SR–NYSE–2002–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Customer Portfolio and Cross-Margining Requirements

October 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 13, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 21, 2002, the NYSE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 431 to permit self-clearing members and member organizations to margin listed, broad-based, market index options, index warrants and related exchange-traded funds according to a prescribed portfolio margin methodology relating to a portfolio margin account of a registered broker-dealer, any affiliate of a self-clearing member or member organization, certain qualified members of a national futures exchange, and any other person or entity that maintains account equity of at least $5 million.

The Exchange further proposes to amend NYSE Rule 726 to require that a disclosure statement and written acknowledgement for use with the proposed portfolio margining and cross-margining changes be furnished to customers.

The text of the proposed rule change is available at the Office of the Secretary, NYSE, at the Commission, and on the Commission's Web site.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Background

NYSE Rule 431 generally prescribes minimum maintenance margin requirements for customer accounts held at members and member organizations. In April 1996, the Exchange established the Committee to assess the adequacy of NYSE Rule 431 on an ongoing basis, review margin requirements, and make recommendations for change. A number of proposed amendments resulting from the Committee's recommendations have been approved by the Exchange's Board of Directors since the Committee was established. Similarly, the proposed amendments discussed below have been recommended by the Committee and have been adopted by the Exchange in this proposal, as amended.[4] The Exchange represents that the proposed portfolio margin and cross-margin rules have been developed in conjunction with the CBOE, The Options Clearing Corporation, the American Stock Exchange, LLC, the Board of Trade of the City of Chicago, Inc., the Chicago Mercantile Exchange, Inc., and the National Association of Securities Dealers, Inc.

b. Portfolio Margin

The Exchange proposes to amend NYSE Rule 431 to expand the scope of its margin rule by providing a portfolio margin methodology for listed, broad-based market index options, index warrants and related exchange-traded funds. The Exchange believes that the proposed amendments would allow clearing members and member organizations to extend to eligible customers portfolio margin methodology as an alternative to the current strategy-based margin requirements. The Exchange further believes that the proposed rule would also allow broad-based market index futures and options on such futures to be included in a portfolio margin account, thus providing a cross-margin capability. The Exchange proposes to introduce the amendments as a two-year pilot program that would be available on a voluntary basis to member organizations.

Portfolio margining is a margin methodology that sets margin requirements for an account based on the greatest projected net loss of all positions in a product class or group as determined by the Commission-approved options pricing model using multiple pricing scenarios. These scenarios are designed to measure the theoretical loss of the positions given changes in both the underlying price and implied volatility inputs to the model. Accordingly, the margin required is based on the greatest loss that would be incurred in a portfolio if the value of its components move up or down by a predetermined amount.

The Exchange represents that the purpose and benefit of portfolio margining is to efficiently set levels of margin that more precisely reflect actual net risk of all positions in the account. A customer benefits from portfolio margining in that margin requirements calculated on net position risk are generally lower than strategy-based margin methodologies currently in place. In permitting margin computation based on actual net risk, members and member organizations will no longer be required to compute margin requirement for each individual position or strategy in a customer's account.

However, as a pre-condition to permitting portfolio margining, the member or member organization would be required to establish procedures and guidelines to monitor credit risk to the member or member organization's capital, including intra-day credit risk, and stress testing of portfolio margin accounts. Further, members and member organizations would have to establish procedures for regular review and testing of these required risk analysis procedures.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Mary Yeager, Assistant Secretary, NYSE, to T.R. Lazo, Senior Special Counsel, Division of Market Regulation, Commission, dated August 20, 2002 ("Amendment No. 1"). In Amendment No. 1, the NYSE made technical corrections to its proosed rule language to eliminate any inconsistencies between its proposal and the Chicago Board Options Exchange, Inc.'s ("CBOE") proposal pursuant to the rule 431 Committee's ("Committee") recommendations. See Securities Exchange Act Release No. 45630 (March 22, 2002), 67 FR 15263 (March 29, 2002) (File No. SR–CBOE–2002–03) ("CBOE Proposal").

[4] Many aspects of the proposed rule change are similar to the CBOE's proposed rule change to permit customer portfolio margining and cross-margining. See CBOE Proosal, *supra* note 3.

c. Cross-Margining Capability

In addition, the proposed rule change permits a clearing member or member organization to establish a separate portfolio margin account (securities margin account) exclusively for cross-margining. In this regard, related index futures and options on such futures would be allowed to be carried in the portfolio margin account, thus affording a cross-margin capability. In a portfolio margin account that is used exclusively for cross-margining, separate portfolios may be established containing index options, index warrants and exchange-traded funds structured to replicate the composition of the index underlying a particular portfolio, as well as related index futures and options on such futures.

To determine theoretical gains and losses, and resulting margin requirements, the same portfolio margin computation procedure will be applied to portfolio margin accounts that contain a cross-margin element.

d. Disclosure Document and Customer Attestation

Exchange Rule 726 prescribes requirements for the delivery of options disclosure documents concerning the opening of customer accounts. As proposed by the Exchange, members and member organizations would be required to provide every portfolio margin customer with a written risk disclosure statement at or prior to the initial opening of a portfolio margin account. The disclosure statement is divided into two sections, one dealing with portfolio margining, and the other with cross-margining.

The statement would disclose the risk and operation of portfolio margin accounts, including cross-margining, and the differences between portfolio margin and strategy-based margin requirements. The disclosure statement would also address who is eligible to open a portfolio margin account, the instruments that are allowed, and when deposits to meet margin and minimum equity are required.

Included within the portfolio margin section of the disclosure statement would be a list of certain of the risks unique to portfolio margin accounts, such as: increased leverage; shorter time for meeting margin; involuntary liquidation if margin not received; inability to calculate future margin requirements because of the data and calculations required; and that long positions are subject to a lien. The risks and operation of a cross-margin feature are delineated in the cross-margin section of the disclosure statement, and a list of certain of the risks associated with cross-margining will be included as well.

In addition, at or prior to the time a portfolio margin account is initially opened, members and member organizations would be required to obtain a signed acknowledgement regarding certain implications of portfolio margining (*e.g.*, treatment under SEC Rules 8c–1, 15c2–1 and 15c3–3 under the Act) from the customer. Further, prior to providing cross-margining, members and member organizations would be required to obtain a second signed customer acknowledgement relative to the segregation treatment for futures contracts and Securities Investor Protection Corporation coverage.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with section 6(b) of the Act[5] in general, and furthers the objectives of section 6(b)(5) of the Act[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investor and the public interest. In addition, the Exchange believes that section 6(b)(5) of the Act[7] requires that the rules of an exchange foster cooperation and coordination with persons engaged in regulating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2002–19 and should be submitted by October 21, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25609 Filed 10–7–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–2(a)(12).

DEPARTMENT OF STATE

[Public Notice 4149]

Culturally Significant Objects Imported for Exhibition; Determinations: "Millet to Matisse: Nineteenth-and-Twentieth-Century French Painting From Kelvingrove Art Gallery, Glasgow"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, "Millet to Matisse: Nineteenth-and-Twentieth-Century French Painting from Kelvingrove Art Gallery, Glasgow," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Speed Art Museum, Louisville, Kentucky, from on or about November 6, 2002, to on or about February 2, 2003, The Frick Art and Historical Center, Pittsburgh, Pennsylvania, from on or about February 26, 2003, to on or about May 25, 2003, the Joslyn Art Museum, Omaha, Nebraska, from on or about June 18, 2003, to on or about September 14, 2003, The Albuquerque Museum, Albuquerque, New Mexico, from on or about October 8, 2003, to on or about January 4, 2004, the Kalamazoo Institute of the Arts, Kalamazoo, Michigan, from on or about May 19, 2004, to on or about August 15, 2004, the Oklahoma City Museum of Art, Oklahoma City, Oklahoma, from on or about September 8, 2004, to on or about December 5, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: October 2, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–25618 Filed 10–7–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4147]

Culturally Significant Objects Imported for Exhibition; Determinations: "The Medici, Michelangelo, and the Art of Late Renaissance in Florence"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "The Medici, Michelangelo, and the Art of Late Renaissance in Florence," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of some or all of the exhibit objects at The Art Institute of Chicago, Chicago, IL from on or about November 9, 2002 to on or about February 2, 2003, and The Detroit Institute of Arts, Detroit, MI from on or about March 15, 2003 to on or about June 8, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: October 2, 2002.

Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–25615 Filed 10–7–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4148]

Culturally Significant Objects Imported for Exhibition Determinations: "The Sensuous and the Sacred: Chola Bronzes From South India"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, "The Sensuous and the Sacred: Chola Bronzes from South India," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Arthur M. Sackler Gallery, Smithsonian Institution, Washington, DC, from on or about November 10, 2002, to on or about March 9, 2003, the Dallas Museum of Art, Dallas, Texas, from on or about April 4, 2003, to on or about June 15, 2003, the Cleveland Museum of Art, Cleveland, Ohio, from on or about July 6, 2003, to on or about September 14, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: October 3, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–25616 Filed 10–7–02; 8:45 am]

BILLING CODE 4710–08–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of Meeting.

SUMMARY: TVA will convene a meeting of the Regional Resource Stewardship Council (Regional Council) to obtain views and advice on the topic of planning for and use of TVA reservoir lands. Under the TVA Act, TVA is charged with the proper use and conservation of natural resources for the purpose of fostering the orderly and proper physical, economic and social development of the Tennessee Valley region. The Regional Council was established to advise TVA on its natural resource stewardship activities. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (FACA).

The meeting agenda includes the following:

(1) Orientation to the second-term of the Regional Council.

(2) TVA reservoir lands—planning, management, and use.

(a) Panel presentations and discussion on the public land policies and practices of other public land management agencies.

(b) Briefing on TVA's reservoir land planning process and land management practices.

(c) Regional Council deliberation.

(3) Close out of business for the First Term Regional Council.

4. Public comments on the topic of TVA reservoir lands.

The Regional Council will hear opinions and views of citizens by providing a public comment session. The Public comment session will be held from 11 a.m. to Noon EST on October 24, 2002. Citizens who wish to express views and opinions on the topic of TVA reservoir lands may do so during the Public Comment portion of the agenda. Up to one hour will be allotted for the Public Comments with participation available on a first-come, first-served basis. Speakers addressing the Regional Council are requested to limit their remarks to no more than 5 minutes. Persons wishing to speak register at the door and are then called on by the Regional Council Chair during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902.

DATES: The meeting will be held on Wednesday and Thursday, October 23 and 24, 2002, from 8:30 a.m. to 5 p.m. Eastern Standard Time each day.

ADDRESSES: The meeting will be held at the Downtown Radisson, 401 West Summit Hill Drive, Knoxville, Tennessee 37902, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Sandra L. Hill, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902, (865) 632–2333.

Dated: October 1, 2002.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 02–25507 Filed 10–7–02; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Review Under 49 U.S.C. 41720 of United/US Airways Agreements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice ending waiting period.

SUMMARY: United Air Lines and U.S. Airways have submitted agreements to the Department for review under 49 U.S.C. 41720. That statute requires certain types of agreements between major U.S. passenger airlines to be submitted to the Department at least thirty days before the agreements' proposed effective date and allows the Department to extend the waiting period for any such agreements. The Department has completed its review of the United/US Airways agreements and has determined to end the waiting period for the agreements. The Department has concluded that the competitive issues presented by the agreements do not presently require further investigation. In reaching this conclusion, the Department is relying on the terms of the agreements, the data provided in response to our requests, and the two airlines' acceptance of restrictions imposed by the Justice Department that are intended to limit the possibility of anti-competitive conduct.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: On July 25 United and U.S. Airways submitted code-share and frequent flyer program reciprocity agreements to us for review under 49 U.S.C. 41720. After informally reviewing the agreements, we find that no formal investigation of the agreements is warranted at this time, and we have determined that we should end the waiting period. The two airlines have agreed to restrictions proposed by the Justice Department that are intended to limit the possibility of anti-competitive behavior, and each airline has represented to us that it will continue to compete independently on fares and service levels. To ensure that they abide by those representations, we will monitor closely their conduct in implementing the agreements.

Under 49 U.S.C. 41720, certain kinds of joint venture agreements among major U.S. passenger airlines must be submitted to us at least thirty days before their proposed implementation date. We may extend the waiting period by 150 days with respect to a code-sharing agreement and by sixty days for the other types of agreements covered by the advance-filing requirement. At the end of the waiting period (either the thirty-day period or any extended period implemented by us), the parties may implement their agreement.

The statute does not require the parties to obtain our approval before they implement an agreement. Blocking them from implementing their agreement would normally require our issuance of an order under 49 U.S.C. 41712 (formerly section 411 of the Federal Aviation Act) in a formal enforcement proceeding that determined that the agreement's implementation would be an unfair method of competition and thus a violation of that section. Our review of all agreements submitted under 49 U.S.C. 41720 has been informal. It is analogous to the review of major mergers and acquisitions conducted by the Justice Department and the Federal Trade Commission under the Hart-Scott-Rodino Act, 15 U.S.C. 18a, since we consider whether we should institute a formal proceeding for determining whether an agreement would violate section 41712.

While our review of the United/US Airways agreements has been informal, we established an opportunity for other parties to review redacted copies of the United/US Airways agreements and to submit comments due to the public interest in the agreements. 67 FR 50745 (August 5, 2002). We have carefully considered the comments filed on the agreements as well as the agreements themselves and other information provided to us by the parties. We have also consulted with the Justice Department, which has been reviewing the agreements under its responsibility to enforce the antitrust laws. Of course, our authority under 49 U.S.C. 41712 to prohibit unfair methods of competition is somewhat broader than the Justice Department's authority to enforce the antitrust laws. See, *e.g., United Air Lines* v. *CAB*, 766 F.2d 1107 (7th Cir. 1985). We extended the waiting period twice in order to conduct a comprehensive review of the agreements. 67 FR 54525 (August 22, 2002); 67 FR 59328 (September 20, 2002).

We have determined to end the waiting period for the United/US Airways agreements and take no action at this time to prevent the airlines from beginning to implement the agreements. At the present time, the material we have reviewed is not sufficient for us to conclude that an enforcement proceeding under 49 U.S.C. 41712 is warranted. However, we have a number of concerns about the United/US Airways agreements and the relationship being created by them. The two airlines together will have an industry market share of 23 percent, as measured by domestic revenue-passenger-miles ("RPMs"). In contrast, the largest airline, American, has a 17 percent market share. United has a 14 percent share, while U.S. Airways has a 9 percent share. U.S. Airways has also been the primary airline in the Northeast. We have a concern that the joint venture relationship being created by United and U.S. Airways may lead to lessening of competition between the two airlines in some markets. On the other hand, the joint venture will provide service benefits for a number of travellers and may increase competition in other markets, if United and U.S. Airways have strong incentives to compete with each other. While there is considerable overlap between the United and U.S. Airways route networks, the code-share arrangement will enable United and U.S. Airways to offer more integrated connecting services in markets not now served by either airline, which will benefit consumers traveling in those markets.

Legally and practically, the airlines' joint venture relationship will not be the equivalent of a merger, there will not be a significant integration of the airlines' operations, and each airline has represented that it will independently establish its fare levels and capacity levels in its city-pair markets. In addition, the fares paid by passengers on flights operated under the code-share arrangement will go to the airline operating the flight, even if the passenger bought the ticket under the other airline's code (the airline operating the flight is the operating carrier, while the other airline is the marketing carrier). This should give each airline an incentive to compete with its partner by operating its own flights, since it will obtain passenger revenues only when it is the operating carrier.

After examining the United/US Airways agreements, the Justice Department has determined that it will not challenge those agreements under the antitrust laws if United and U.S. Airways accept certain restrictions on their joint venture. The two airlines have accepted those restrictions, as set forth in a letter agreement with the Justice Department. These restrictions primarily bar the airlines from code-sharing on certain nonstop routes and engaging in certain pricing conduct that could provide a vehicle for signaling and collusion. The two airlines have also agreed with the Justice Department that each airline will independently establish the terms and conditions for its frequent flyer program. The terms of the parties' agreements, with restrictions set forth in the airlines' agreement with the Justice Department, appear at this time to address our immediate concerns with competition by United and U.S. Airways. In reaching our conclusion, we are expressly relying on the airlines' representations to us and on their strict compliance with the terms of their agreement with the Department of Justice.

Under the agreement with the Justice Department, United and U.S. Airways will not code-share on local traffic on routes where both offer nonstop service, including their hub-to-hub routes (Philadelphia-Los Angeles, for example). They will not code-share on local traffic on nonstop services operated to the same endpoint from either Dulles International Airport or Reagan Washington National Airport, except for Washington, DC-LaGuardia/Boston flights. On routes served by only one of the two airlines, the marketing carrier's fares must be the same as the operating carrier's fares. On routes served by both airlines where both have comparable service (connecting service, for example), each airline's fares for flights operated by the other airline must be the same as the fares for its own flights or the fares established by the airline operating the flights. The marketing airline thus must charge either the same fares as the operating airline or the fares charged by the marketing airline for its own flights. On routes where one airline offers nonstop service and the other airline offers connecting service, the latter airline's fares for the nonstop service must be the same as the operating carrier's fares. Finally, United and U.S. Airways must continue to act independently in establishing the terms and conditions of their frequent flyer programs and in bidding on corporate contracts, although when consistent with the antitrust laws they may offer customers the option of a joint bid.

As noted, we have considered the comments submitted on the agreements. While many of them support the United/US Airways joint venture, several of the comments argue that the joint venture will be anti-competitive and that we should institute a formal proceeding to investigate its competitive effects. At this time we are not persuaded that the joint venture or the agreements would, on their face, violate 49 U.S.C. 41712. We have not yet seen evidence that the agreements will unreasonably restrict either airline's incentives and ability to compete independently or would be likely to result in collusion on fares or service levels.

Given our strong concern that the agreements not have anti-competitive results, however, we intend to monitor closely their implementation by United and U.S. Airways. If we obtain evidence that the airlines' implementation of their joint venture is having an adverse impact on competition, we may take action under 49 U.S.C. 41712 at that time. Furthermore, if United and U.S. Airways at any future time decide that they will no longer comply with the restrictions agreed upon with the Justice Department, they will have created a new agreement which must be submitted to us under 49 U.S.C. 41720 and which therefore cannot be implemented until the end of a new waiting period. The same will be true if they materially modify the terms of the agreements submitted by them on July 25. Under our established interpretation of 49 U.S.C. 41720, airlines that significantly modify a joint venture agreement must submit the modified agreement to us under that statute.

We are continuing to examine the similar agreements submitted by Delta, Continental, and Northwest, which were filed one month after United and U.S. Airways submitted their agreements. 67 FR 56340 (September 3, 2002).

Issued in Washington, DC, on October 2, 2002.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–25523 Filed 10–7–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending September 27, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–13428.

Date Filed: September 23, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC123 0205 dated 20 September 2002, Mail Vote 236—TC123 North Atlantic (except USA-Malaysia), Expedited Resolution r1–r6, Intended effective date: 1 November 2002.

Docket Number: OST–2002–13429.

Date Filed: September 23, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC123 0206 dated 20 September 2002, Mail Vote 237—TC123 Mid Atlantic Expedited Resolutions r1–r5, PTC123 0207 dated 20 September 2002, Mail Vote 238—TC123 South Atlantic Expedited Resolutions r6–r11, Intended effective date: 1 November 2002.

Docket Number: OST–2002–13432.

Date Filed: September 24, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC23 EUR–SASC 0098 dated 20 September 2002, Europe-South Asian Subcontinent Resolutions r1–r12, Minutes—PTC23 EUR–SASC 0099 dated 20 September 2002, Tables—PTC23 EUR–SASC FARES 0038 dated 20 September 2002, Intended effective date: 1 April 2003.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–25532 Filed 10–7–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 12, 2002, page 40373.

DATES: Comments must be submitted on or before November 7, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Aviation Medical Examiner Program.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0604.

Form(s): FAA Form 8520–2.

Affected Public: A total of 450 Aviation Medical Examiner applicants.

Abstract: This collection of information is necessary in order to determine applicants' professional and personel qualifications for certification as an Aviation Medical Examiner (AME). The information is used to develop the AME directories used by airmen who must undergo periodic examinations by AMEs.

Estimated Annual Burden Hours: An estimated 225 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected, and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, in October 2, 2002.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 02–25594 Filed 10–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 12, 2002, page 40373.

DATES: Comments must be submitted on or before November 7, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Procedures for non-federal Navigational Facilities, FAR 171.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0014.

Form(s): FAA Form 6030–1, 6030–17, 6790–4, 6790–5.

Affected Public: A total of 2413 navigation facility operators.

Abstract: The non-Federal navigation facilities are electrical/electronic aids to air navigation which are purchased, installed, operated, and maintained by an entity other than the FAA and are available for use by the flying public. These aids may be located at unattended sites or airport terminals. The information kept is used by the FAA to prove that the facility is maintained within certain specified tolerances.

Estimated Annual Burden Hours: An estimated 33,116 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 2, 2002.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 02–25595 Filed 10–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 12, 2002, page 40373.

DATES: Comments must be submitted on or before November 7, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Training and Qualification Requirements for Check Airmen and Flight Instructors.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0600.

Form(s): NA.

Affected Public: A total of 3,000 airmen and flight instructors.

Abstract: This rule establishes separate requirements for check airmen who check only in flight simulators and flight instructors who instruct only in flight simulators. The collection of information allows the FAA to determine the compliance to this rule of experienced pilots who would otherwise qualify as flight instructors or check airmen but who are not medically eligible to hold the requisite medical certificates.

Estimated Annual Burden Hours: An estimated 12.5 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 2, 2002.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 02–25596 Filed 10–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In August 2002, there were no applications approved. Twelve approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 190) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amendment approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
*93–01–C–05–TYS, Knoxville, TN	02/08/02	4,881,882	4,453,055	02/01/97	02/01/97
*99–01–C–01–STC, St. Cloud, MN	04/16/02	1,147,578	1,147,578	10/01/19	01/01/14
*97–04–1–01–SBP, San Luis Obispo, CA	06/25/02	6,820,830	6,820,830	07/01/15	07/01/12
00–06–U–01–SBP, San Luis Obispo, CA	06/25/02	NA	NA	07/01/15	07/01/12
99–03–C–01–MOB, Mobile, AL	07/15/02	5,694,289	4,033,023	10/01/04	07/01/04
92–01–C–01–NGM, Agana, GU	08/16/02	5,632,000	800,00	06/01/94	06/01/94
*93–02–C–02–NGM, Agana, GU	08/16/02	258,408,107	257,802,097	07/01/21	03/01/25
*99–04–C–01–PNS, Pensacola, FL	08/19/02	19,400,000	19,400,000	06/01/09	09/01/07
*93–01–1–02–SHV, Shreveport, LA	08/20/02	29,841,353	29,841,353	05/01/16	09/01/14
95–02–U–01–SHV, Shreveport, LA	08/20/02	NA	NA	05/01/16	09/01/14
*94–02–C–02–BWI, Baltimore, MD	08/28/02	60,230,930	60,230,930	04/01/09	06/01/04

AMENDMENTS TO PFC APPROVALS—Continued

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amendment approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
99–03–C–02–DRO, Durango, CO	08/29/02	730,634	1,169,258	09/01/02	01/01/04

NOTE: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For St. Cloud, MN, this change is effective on July 1, 2002. For San Luis Obispo, CA, this change is effective on September 1, 2002. For Pensacola, FL, Agana, GU, Shreveport, LA, and Baltimore, MD, this change is effective on November 1, 2002.

Issued in Washington, DC on October 2, 2002.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 02–25593 Filed 10–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 02–13469]

Grant of Applications of Five Motorcycle Manufacturers for Temporary Exemption, and Requests for Extension of Temporary Exemption, From Federal Motor Vehicle Safety Standard No. 123

This notice grants the applications by five motorcycle manufacturers for either a temporary exemption of two years from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays*, or for an extension of two years of an existing temporary exemption from such requirement. The applicants assert that "compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles," 49 U.S.C. Sec. 30113(b)(3)(iv).

The manufacturers who have applied for a temporary exemption are CPI Motor Co. of Ta-Li City, Taiwan (CPI), for the Motorrad JT 125 (Moskito); American Suzuki Motor Corporation, Brea, California, on behalf of Suzuki Motor Corporation of Japan, for the Suzuki AN650, and Malaguti USA, Miami, Florida, on behalf of Malaguti S.p.A. of Bologna, Italy, for the Ciak 150 cc and F–18 150 cc motor scooters. The manufacturers who have applied for an extension of an existing exemption are Aprilia, U.S.A. Inc., Woodstock, Ga. for the Aprilia Scarabeo 150 (NHTSA Temporary Exemption No. 99–9, expiring October 1, 2002 (see 64 FR 44264, 65 FR 1225, and 66 FR 59519)); and American Honda Motor Company, Inc., Torrance, California, for the Honda NSS250(NHTSA Temporary Exemption No. EX 2000–2, expiring November 1, 2002, 65 FR 69130).

Because the safety issues raised by petitions for renewal of exemptions are identical to those raised in the initial petitions by these manufacturers, and because these issues are identical to those raised by the manufacturers petitioning for an exemption for the first time, we have decided to address all the petitions in a single notice. Further, given the opportunity for public comment on these issues in the years 1998–2001 (which resulted only in comments in support of the petitions), we have concluded that a further opportunity to comment on the same issues is not likely to result in any substantive submissions, and that we may proceed to decisions on these petitions. See, e.g., most recently Aprilia and Honda (66 FR 59519) and Aprilia (65 FR 1225).

The Reason Why the Applicants Need a Temporary Exemption

The problem is one that is common to the motorcycles covered by the applications. If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control, although the left handlebar is permissible for motor-driven cycles (Item 11, Table 1). Motor-driven cycles are motorcycles with motors that produce 5 brake horsepower or less. The five manufacturers petitioned to use the left handlebar as the control for the rear brakes of certain of their motorcycles whose engines produce more than 5 brake horsepower. The frame of each of these motorcycles has not been designed to mount a right foot operated brake pedal (i.e, these scooter-type vehicles which provide a platform for the feet and operate only through hand controls). Applying considerable stress to this sensitive pressure point of the frame could cause failure due to fatigue unless proper design and testing procedures are performed.

Absent an exemption, the manufacturers will be unable to sell the motorcycle models named above because the vehicles would not fully comply with Standard No. 123.

Arguments Why the Overall Level of Safety of the Vehicles To Be Exempted Equals or Exceeds That of Non-Exempted Vehicles

As required by statute, the petitioners have argued that the overall level of safety of the motorcycles covered by their petitions equals or exceeds that of a non-exempted motor vehicle for the following reasons. All vehicles for which petitions have been submitted are equipped with an automatic transmission. As there is no foot-operated gear change, the operation and use of a motorcycle with an automatic transmission is similar to the operation and use of a bicycle, and the vehicles can be operated without requiring special training or practice.

CPI is manufacturing the Moskito 125 (JT125) under contract with Motorrad und Zweiradwerk GmbH of Germany, which has completed certification testing of the vehicle. CPI will affix a certification of compliance with the Federal motor vehicle safety standards as the manufacturer of the Moskito 125, and then ship the motorcycles directly to Motorrad of North America for sale in the United States.

According to CPI, the JT125 provides an equivalent overall level of safety to a complying vehicle because its operation is similar to that of a bicycle, and the use of a left-hand lever for the rear brake is highly intuitive and easy to use. The use of the left handlebar for the rear brake control on scooters is more natural and quicker for a scooter rider than the rider's foot searching for the correct position on a pedal to operate the brakes. In addition, "additional benefit is provided by the reduced probability of inadvertent wheel locking in an emergency braking situation, which comes from increased sensitivity to brake feedback with the hand lever."

American Suzuki informed us that its AN650 "can easily meet the braking performance requirements in FMVSS 122," and enclosed a test report in support. It also compared the performance of the AN650 with the somewhat lighter GSF600S motorcycle, which is equipped with rear brakes that are operable using a right foot control, and found the braking performance "very similar."

Malaguti submitted its models to Clark Engineering for braking performance tests, and enclosed a test report in support of its petition. It asserted that the Ciak 150 cc and F–18 150 cc meet the braking requirements of ECE 93/14 as well.

In its earlier petitions, Aprilia cited tests performed by Carter Engineering on a similar Aprilia scooter to support its statement that "a motor vehicle with a hand-operated rear wheel brake provides a greater overall level of safety than a nonexempt vehicle." See materials in Docket No. NHTSA 98–4357. According to Aprilia, a rear wheel hand brake control allows riders to brake more quickly and securely, it takes a longer time for a rider to find and place his foot over the pedal and apply force than it does for a rider to reach and squeeze the hand lever, and there is a reduced probability of inadvertent wheel locking in an emergency braking situation. Aprilia provided copies of its own test reports on a similar exempted model, the Habana, dated March 1, 2001, and May 1, 2001, which have been placed in Docket No. NHTSA–01–10257. In its latest petition, it stated that it has received no written complaints relating to the brake operation of the Scarabeo 150s which it has imported and sold under NHTSA Temporary Exemption No. 99–9.

Aprilia also pointed out that European regulations allow motorcycle manufacturers the option of choosing rear brake application through either a right foot or left handlebar control, and that Australia permits the optional locations for motorcycles of any size with automatic transmissions.

Honda informed us that "the NSS250 can easily meet the braking performance requirements of both FMVSS 122 and ECE 78," and, therefore, that "This braking system provides the NSS250 with an overall safety level exceeding * * * nonexempted vehicles." Honda will also offer the NSS250 with optional ABS for the purpose of a marketability evaluation.

In support of its petition, Honda enclosed copies of a second effectiveness service brake system test conducted in accordance with S5.3 of Standard No. 122, demonstrating that the NSS250 easily stopped within the maximum distances specified at speeds of 30 and 65 mph, as well as a test showing compliance with ECE 78.

Arguments Why an Exemption Would be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

CPI argued that its scooter is intended for low speed urban use and that it expects that these vehicles will be used mostly in congested traffic conditions. The JT125 provides a more natural braking response because of its automatic transmission and platform configuration. The vehicle provides "enhanced safety, environmentally clean and fuel efficient, safe, convenient urban transportation. The emissions of the JT125's "very small engine" have been demonstrated to be lower than large motorcycles, an alternative means of transportation.

American Suzuki argued that the level of safety of the AN650 is at least equal to that of vehicles certified to meet Standard No. 123. In its opinion, scooters like the AN650 "are of interest to the public [as] evidenced by * * * the favorable public comment on [similar] exemption requests and the number of scooters sold under the granted exemptions."

In Malaguti's opinion, its scooters provide a "much more natural braking response by the rider than non-exempted vehicles." The exemption would also be in the public interest "because Malaguti is promoting environmentally clean and efficient urban transportation."

Aprilia asserted in its initial requires for exemption that "the public interest would be served with the granting of the exemption because the Scarabeo 150 provides enhanced safety as well as environmentally friendly, fuel-efficient, convenient urban transportation." According to Aprilia, its initial assertion is supported by feedback from initial customers. It has enclosed comments from Scarabeo 150 customers touting the speed and handling of the motorcycle, and a magazine article commenting that it is "the perfect vehicle for stop-and-go traffic."

An exemption would be in the public interest because the Scarabeo 150 is intended for low-speed urban use, and "it is expected that it will be used predominantly in congested traffic areas." Further, the design of the vehicle has been tested by long use around the world, and "neither consumer groups nor government authorities have raised safety concerns about this design." For this reason, Aprilia argues that an exemption would also be consistent with the objectives of motor vehicle safety.

In support of its argument that an exemption would be in the public interest and consistent with the objectives of motor vehicle safety, Honda reiterated its certainty "that the level of safety of the NSS250 is equal to similar vehicles certified under FMVSS No. 123. * * *"

NHTSA's Decisions on the Applications and Request

It is evident that, unless Standard No. 123 is amended to permit or require the left handlebar brake control on motorscooters with more than 5 hp, the petitioners will be unable to sell their motorcycles if they do not receive a temporary exemption from the requirement that the right foot pedal operate the brake control. It is also evident from the previous grants of similar petitions by Aprilia, Honda, and others, that we have repeatedly found that the motorcycles exempted from the brake control location requirement of Standard No. 123 have an overall level of safety that equals or exceeds that of nonexempted motorcycles.

CPI argued that an exemption would be in the public interest because it would make available a low-emission, fuel efficient, convenient means of urban transportation in congested traffic conditions. Thus, it appears to us that use of the JT125 would reduce both pollution and congestion on city streets. We note its remark, too, that "neither consumer groups nor governmental authorities have raised any safety concerns as a result of this design."

American Suzuki's argument that an exemption would be in the public interest because of the comments in support of previous exemption requests for similar scooter-type vehicles is a valid one, absent any data indicating that the overall level of safety is not at least equal to that of complying vehicles.

Malaguti's arguments are similar to those of other petitioners regarding braking response and enhancing the environment and urban transportation.

Aprilia's argument that an exemption for the Habana 150 would be in the public interest because of its probable use in congested urban areas is equally applicable to the Scarabeo 150, as is its arguments that use of such vehicles worldwide has raised no vehicle safety issues related to location of brake controls. Honda reiterated its belief that overall the NSS250 is as safe as a conforming motorcycle. We note that its original request in 2000 for exemption from Standard No. 123 for this model was supported by approximately 40 commenters (See 66 FR 69130). This response to our request for comments indicates a great public interest in scooter-type vehicles and a belief of the

commenters that such vehicles have a place in the nation's overall private-vehicle transportation fleet.

In consideration of the foregoing, we hereby find that the petitioners have met their burden of persuasion that to require compliance with Standard No. 123 would prevent these manufacturers from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles. We further find that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Therefore:

1. CPI Motor Co. is hereby granted NHTSA Temporary Exemption No. EX02–1 from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays*, that the rear wheel brakes be operable through the right foot control. This exemption covers only the Motorrad JT125 (Moskito) and expires on October 1, 2004.

2. Suzuki Motor Corporation is hereby granted NHTSA Temporary Exemption No. EX02–2 from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays*, that the rear brakes be operable through the right foot control. This exemption applies only to the Suzuki AN650, and will expire on October 1, 2004.

3. Malaguti S.p.A. is hereby granted NHTSA Temporary Exemption No. EX02–3 from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays*, that the rear wheel brakes be operable through the right foot control. This exemption covers only the Ciak 150 cc and F–18 cc, and expires on October 1, 2004.

4. NHTSA Temporary Exemption No. 99–9, exempting Aprilia USA Inc. from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays*, that the rear wheel brakes be operable through the right foot control, is hereby extended to expire on October 1, 2004. This exemption applies only to the Aprilia Scarabeo 150.

5. NHTSA Temporary Exemption No. EX2001–8, exempting American Honda Motor Co., Inc., from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays*, that the rear brakes be operable through the right foot control, is hereby extended to expire on October 1, 2004. This exemption applies only to the Honda NSS250.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50).

Issued on October 3, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–25522 Filed 10–7–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Cemeteries and Memorials will be held October 28–31, 2002, at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC. On October 28, the meeting will be held in Room 930 beginning at 9 a.m. and concluding at 3:30 p.m. On October 29 and 30, the meeting will be held in Room 630, and at several cemetery sites, beginning at 8 a.m. and concluding at 5 p.m. On October 31, the meeting will be held in Room 930 beginning at 8 a.m. and concluding at noon. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of national cemeteries, soldiers' lots and plots, and the selection of new national cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee will make recommendations to the Secretary regarding these activities.

On October 28, new appointees to the Committee will receive an orientation briefing on the VA, the National Cemetery Administration (NCA), the Federal Advisory Committee Act (FACA), and their roles and responsibilities as Committee members. On October 29, the Committee will receive updates on NCA's "National Shrine Commitment" as it relates to historic preservation issues. The Committee will travel to Baltimore and Loudon Park National Cemeteries to view monuments and structures at those two historic cemeteries. On October 30, the Committee will be briefed on new cemetery construction, the State Cemetery Grants Program, legislative initiatives, and other issues related to the administration and maintenance of national cemeteries. The Committee will also visit Arlington National Cemetery. On October 31, the Committee will conclude with discussions of any unfinished business, make program recommendations, and future meeting sites and agenda topics.

Any member of the public wishing to attend the meeting is requested to contact Ms. Paige Lowther, Designated Federal Officer, at (202) 273–5164. The Committee will accept written comments. Comments can be transmitted electronically to the Committee at *paige.lowther@mail.va.gov* or mailed to National Cemetery Administration (40), 810 Vermont Avenue, NW., Washington, DC 20420. In the letter, the writers must identify themselves and state the organizations, associations or person(s) they represent.

Dated: September 27, 2002.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–25497 Filed 10–7–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

President Task Force To Improve Health Care Delivery for Our Nation's Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is scheduled for Wednesday, October 9, 2002, beginning at 9 a.m. and adjourning at 5 p.m. The meeting will be held in the Jefferson Ballroom of the Radisson Hotel Old Town, 901 North Fairfax Street, Alexandria, VA and is open to the general public.

The purpose of the President's Task Force to Improve Health Care for Our Nation's Veterans is to:

(a) Identify ways to improve benefits and services for Department of Veterans Affairs (VA) beneficiaries and Department of Defense (DoD) military retirees who are also eligible for benefits from VA, through better coordination of the activities of the two departments;

(b) Identify opportunities to remove barriers that impede VA and DoD coordination, including budgeting processes, timely billing, cost accounting, information technology, and reimbursement; and

(c) Identify opportunities through partnership between VA and DoD, to maximize the use of resources and infrastructure, including buildings, information technology and data sharing systems, procurement of supplies, equipment and services.

The morning and afternoon sessions will be a discussion of format and issues for the Final Report to the President.

Interested persons can provide written comments to Mr. Dan Amon, Communications Director, President's Task Force to Improve Health Care Delivery for Our Nation's Veterans, 1401 Wilson Boulevard, 4th Floor, Arlington, Virginia 22209.

Dated: October 1, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–25495 Filed 10–7–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation (VACOR); Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Veterans' Advisory Committee on Rehabilitation will be held on November 13–14, 2002, from 9 a.m. until 4:30 p.m. on both days at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC. On November 13, the meeting will be held in Room 730 and on November 14, the meeting will be held in Room 930. Both meeting sessions will be open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs on the rehabilitation needs of disabled veterans and the administration of VA's rehabilitation programs.

On the morning of November 13th, the meeting will begin with presentation of Certificates of Appointments to newly appointed Committee members. Then, the Committee will receive an update regarding the current status of the Vocational Rehabilitation and Employment program. In the afternoon, the Committee will receive a briefing regarding Traumatic Brain Injury services available through the VA Physical Medicine and Rehabilitation program.

On the morning of November 14th, General Counsel will provide the Committee with a briefing on the Ethics Guidelines for Special Government Employees. Then, the Committee will receive a briefing regarding the Compensated Work Therapy, Incentive Therapy and Transitional Residence programs. In the afternoon, the Committee will receive a briefing concerning Blind Rehabilitation Services available though the Veterans Health Administration. The meeting will conclude with a discussion of future meeting dates, agenda items and recommendations.

Any member of the public wishing to attend the meeting should contact Ms. Alison O. Rosen, Department of Veterans Affairs, Veterans Benefits Administration (28), 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 273–7208.

Dated: September 27, 2002.

By direction of the Secretary:

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–25496 Filed 10–07–02; 8:45 am]

BILLING CODE 8320–01–M

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Federal Register

Tuesday,
October 8, 2002

Part II

Department of the Treasury

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Parts 4, 5, 7, and 13
Organic Claims in Labeling and Advertising of Alcohol Beverages (2002R–288P); Final Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, 7, and 13

[T.D. ATF–483]

RIN 1512–AC87

Organic Claims in Labeling and Advertising of Alcohol Beverages (2002R–288P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision; temporary rule.

SUMMARY: ATF amends the alcohol labeling and advertising rules to cross-reference the United States Department of Agriculture's (USDA) National Organic Program (NOP) rules. Any alcohol beverage labeled or advertised with an organic claim must comply with both NOP rules administered by USDA and the applicable rules administered by ATF. Elsewhere in this separate part, ATF invites comments on this temporary rule. We will accept comments during the 60-day period following publication of the rule.

EFFECTIVE DATE: The effective date is October 21, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Evanchec, Bureau of Alcohol, Tobacco and Firearms, Alcohol Labeling and Formulation Division, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–8140; e-mail *RJEvanchec@atfhq.atf.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background

ATF's Authority To Regulate Labeling and Advertising

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information about a product's identity and prohibits the use of deceptive information on such labels. At 27 U.S.C. 205(f), the FAA Act prohibits deceptive advertising. The FAA Act also authorizes ATF to issue regulations to carry out the Act's provisions. Regulations in 27 CFR parts 4, 5, and 7 set forth the rules for labeling and advertising of wine, distilled spirits, and malt beverages, respectively. Regulations in 27 CFR part 13 set forth rules for approval, denial, and revocation of labels and for appeals of our decisions on such issues.

Organic Foods Production Act of 1990

Under the Organic Foods Production Act of 1990 (OFPA), 7 U.S.C. 6501 *et seq.*, the USDA has authority over agricultural products sold, labeled, or represented (including those advertised) with organic claims. The OFPA applies to alcohol beverages, so producers and importers of wine, spirits, and malt beverages who comply with its rules may make organic claims about their products. The USDA office responsible for administering the OFPA is the Agricultural Marketing Service (AMS). On December 21, 2000, AMS published its final rule establishing the NOP. The final rule, beginning at 65 FR 80548, amended USDA regulations in title 7, Code of Federal Regulations, by adding a new part 205—National Organic Program.

AMS regulations apply to all domestic and imported products that make organic claims. However, in drafting their rules, the AMS used terms specific to non-alcohol food labels, such as "principal display panel," "information panel," and "ingredient list" to refer to positions on the label. On the NOP Web site (*http://www.ams.usda.gov/nop*), AMS provides guidance for placement of required and optional information related to organic claims on other types of packaging, such as alcohol beverage labels.

The OFPA and implementing regulations provide civil and criminal penalties for improper use of organic claims. AMS has sole authority to administer and enforce the NOP rules. Those rules became effective on February 20, 2001, and all labels and representations, including advertisements, that make organic claims must comply with the rules by October 21, 2002.

Prior ATF Policy on Organic Claims on Alcohol Beverages

Before the NOP regulations were published, we allowed importers and producers to claim their alcohol beverage products were made from organically grown raw materials if the applicant for label approval provided documentation of organic certification by a recognized certifying agency or State or foreign government. We enunciated our organic claims policy in our publication, Compliance Matters 95–2 (*http://www.atf.treas.gov/pub/alctob_pub/ comp952.htm*).

After publication of the NOP regulations, we announced a new policy on organic claims in our Alcohol & Tobacco Newsletter of March 2001 (*http://www.atf.treas.gov/pub/alctob_pub/mar2001newsltr02.htm*). We stated that our approval of labels with organic claims did not indicate compliance with the NOP.

Based upon the NOP-required compliance date of October 21, 2002, approval of any label that makes organic claims but does not comply with such rules will be revoked by operation of regulations as of October 21, 2002.

ATF Policy on Organic Claims on Alcohol Beverages Under the NOP

We have entered into a Memorandum of Understanding with AMS on a number of questions related to the agencies' responsibilities with respect to alcohol beverage labels and advertising that contain organic claims. ATF will refer any Certificate of Label Approval (COLA) or Certificate of Exemption from Label Approval application that makes an organic claim to AMS for a determination as to whether the label complies with NOP rules. If AMS advises us that the label complies with its rules, we will complete our customary review of the COLA or Exemption application and take appropriate action. If AMS advises us that the label does not comply with its rules, we will return the COLA or Exemption application to the applicant for correction, since the label would mislead consumers.

When ATF approves a label, we presume the contents of the bottle that uses the label will be as described on the label. If the contents do not conform to the description on the label, the product is mislabeled in violation of the FAA Act and must not be sold in interstate commerce under ATF-administered rules. This has always been true for any label claim, and we want to confirm this policy as it applies to organic claims on labels. For example, if we approve a label for a beer made from organically grown barley and the grower of the barley loses its organic certification, the brewer must not use the approved label on beer made from barley that was grown after the grower lost its certification. We will take action on such violations under the FAA Act and will refer the labels and pertinent information to AMS. Aside from whether a label or advertisement conforms with the NOP, ATF will continue to review labels under existing regulations to ensure that organic claims, as presented, are not likely to mislead or deceive consumers as to the identity of the products.

Products Without COLAs or Certificates of Exemption From Label Approval

There are certain situations when ATF does not issue a COLA or a Certificate of Exemption from Label Approval. Examples are malt beverages that are bottled in or shipped into a State that does not have similar State law to the FAA Act and wines that contain less than 7 percent alcohol by volume, since such wines are not covered under the FAA Act. In these cases, the NOP rules continue to apply.

Advertising

ATF also has jurisdiction over advertising of alcohol beverages, but does not require pre-approval of advertising. If we discover any misleading use of organic claims in alcohol beverage advertising, we will treat these violations the same as any other violations involving misleading information in advertising. We will also refer our findings to the NOP for its further action.

Regulatory Changes

ATF amends its regulations in parts 4, 5, 7, and 13 to recognize the NOP's authority to regulate any organic claims on labels of alcohol beverages. We add 7 CFR 205 to the list of related regulations in each part. We add a new section to parts 4, 5, and 7 to confirm that we will allow organic claims in labeling and advertising of alcohol beverages as long as they conform to the requirements of the NOP.

In part 13, we add a section to reflect our reliance on AMS for determinations concerning organic claims on labels and to direct persons who wish to appeal any AMS determinations that affect labels to the proper office of AMS. We also amend § 13.51 to clarify that labels may be revoked by operation of laws and regulations other than the FAA Act and its implementing regulations. This has been ATF's policy, and the amendment to the regulation is a clarification rather than a change. Finally, we amend § 13.61 to note that we will disclose applications for approval of labels that make organic claims to the appropriate office of the USDA.

Each prohibited practices section of parts 4, 5, and 7 includes a prohibition on referring to standards or tests in a way that is misleading (§§ 4.39(a)(4), 5.42(a)(4), and 7.29(a)(4)). There is also a prohibition on the use of seals (§§ 4.39(g), 5.42(b)(7), and 7.29(d)), if they are misleading to consumers. Curative and therapeutic claims are prohibited under §§ 4.39(h), 5.42(b)(8), and 7.29(e). In its consumer information brochure on the organic rule (*http://www.ams.usda.gov/nop/consumerbrochure.htm*), the USDA stated, "USDA makes no claims that organically produced food is safer or more nutritious than conventionally produced food. Organic food differs from conventionally produced food in the way it is grown, handled, and processed." Therefore, we do not consider organic claims to be curative or therapeutic. Since properly used organic claims, including certifying agent names and seals and the USDA organic seal, are not misleading to the consumer, we did not make any changes to the prohibited practices sections of the regulations.

No Change to Internal Revenue Code (IRC) Rules

The IRC only gives ATF authority to require labels that show compliance with the alcohol tax and qualification rules in chapter 51 of the Code. In parts 19, 24, and 25, we interpret this to mean the label must show the tax class, quantity, and responsible bottler. Because organic claims do not affect the tax classification or status of the product, we will not change the IRC regulations. Organic claims relating to alcohol beverage products that are exempt from FAA Act requirements will be entirely under the jurisdiction of the NOP.

Transition to New Rules

Any approved labels that make organic claims but do not comply with the NOP rules are revoked by operation of law and regulations, effective October 21, 2002. For products that were made from ingredients grown before October 21, 2002, bottlers and importers may submit labels to ATF for approval only until supplies of such products are exhausted. The NOP policy is articulated at *http://www.ams.usda.gov/nop/Commercestream091202.pdf*.

Regulatory Analyses and Notices

Administrative Procedure Act

Because this document merely cross-references the NOP rules as they relate to alcohol beverage labeling and because the compliance date for those rules is October 21, 2002, we find it to be impracticable to issue this Treasury Decision with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation in § 553(d).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this temporary rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no new requirement for collection(s) of information is contained in these regulations.

Executive Order 12866

We have determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Drafting Information

Marjorie D. Ruhf of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms, drafted this document. However, other employees of ATF, the Treasury Department, and the Department of Agriculture's Agricultural Marketing Service participated in developing the document.

List of Subjects

27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Advertising, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Beer, Customs duties and inspection, Imports, Labeling, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 13

Administrative practice and procedure, Alcohol and alcoholic beverages, Labeling.

Authority and Issuance

Title 27, Code of Federal Regulations, is amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

2. The undesignated cross-references preceding the center heading for subpart A are removed and a new § 4.5 is added to subpart A, to read as follows:

§ 4.5 Related regulations.

The following regulations also relate to this part:

27 CFR Part 205—National Organic Program

27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits
27 CFR Part 5—Labeling and Advertising of Distilled Spirits
27 CFR Part 7—Labeling and Advertising of Malt Beverages
27 CFR Part 9—American Viticultural Areas
27 CFR Part 12—Foreign Nongeneric Names of Geographic Significance Used in the Designation of Wines
27 CFR Part 13—Labeling Proceedings
27 CFR Part 16—Alcoholic Beverage Health Warning Statement
27 CFR Part 24—Wine
27 CFR Part 26—Liquors and Articles From Puerto Rico and the Virgin Islands
27 CFR Part 27—Importation of Distilled Spirits, Wines, and Beer
27 CFR Part 71—Rules of Practice in Permit Proceedings
27 CFR Part 252—Exportation of Liquors

3. A new subpart K is added to part 4 to read as follows:

Subpart K—Use of the Term "Organic"

§ 4.101 Use of the term "organic."

(a) Use of the term "organic" is optional and is treated as "additional information on labels" under § 4.38(f).

(b) Any use of the term "organic" on a wine label or in advertising of wine must comply with the United States Department of Agriculture's (USDA) National Organic Program rules (7 CFR part 205) as interpreted by the USDA.

(c) This section applies to labels and advertising that use the term "organic" on and after October 21, 2002.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

4. The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

5. Section 5.2 is revised to read as follows:

§ 5.2 Related regulations.

The following regulations also relate to this part:

7 CFR Part 205—National Organic Program
27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits
27 CFR Part 4—Labeling and Advertising of Wine
27 CFR Part 7—Labeling and Advertising of Malt Beverages
27 CFR Part 13—Labeling Proceedings
27 CFR Part 16—Alcoholic Beverage Health Warning Statement
27 CFR Part 19—Distilled Spirits Plants
27 CFR Part 26—Liquors and Articles From Puerto Rico and the Virgin Islands
27 CFR Part 27—Importation of Distilled Spirits, Wines, and Beer
27 CFR Part 71—Rules of Practice in Permit Proceedings
27 CFR Part 252—Exportation of Liquors

6. A new subpart I is added to part 5 to read as follows:

Subpart I—Use of the Term "Organic"

§ 5.71 Use of the term "organic."

(a) Use of the term "organic" is optional and is treated as "additional information on labels" under § 5.33(f).

(b) Any use of the term "organic" on a distilled spirits label or in advertising of distilled spirits must comply with the United States Department of Agriculture's (USDA) National Organic Program rules, 7 CFR part 205, as interpreted by the USDA.

(c) This section applies to labels and advertising that use the term "organic" on and after October 21, 2002.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

7. The authority citation for part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

8. Section 7.4 is revised to read as follows:

§ 7.4 Related regulations.

The following regulations also relate to this part:

27 CFR Part 205—National Organic Program
27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits
27 CFR Part 4—Labeling and Advertising of Wine
27 CFR Part 5—Labeling and Advertising of Distilled Spirits
27 CFR Part 13—Labeling Proceedings
27 CFR Part 16—Alcoholic Beverage Health Warning Statement
27 CFR Part 25—Beer
27 CFR Part 26—Liquors and Articles from Puerto Rico and the Virgin Islands
27 CFR Part 27—Importation of Distilled Spirits, Wines, and Beer
27 CFR Part 71—Rules of Practice in Permit Proceedings

9. A new subpart I is added to part 7 to read as follows:

Subpart I—Use of the Term "Organic"

§ 7.81 Use of the term "organic."

(a) Use of the term "organic" is optional and is treated as "additional information on labels" under § 7.28(e).

(b) Any use of the term "organic" on a malt beverage label or in advertising of malt beverages must comply with the United States Department of Agriculture's (USDA) National Organic Program rules (7 CFR part 205) as interpreted by the USDA.

(c) This section applies to labels and advertising that use the term "organic" on and after October 21, 2002.

PART 13—LABELING PROCEEDINGS

10. The authority citation for part 13 continues to read as follows:

Authority: 27 U.S.C. 205(e) and 26 U.S.C. 5301 and 7805.

11. Section 13.1 is amended by adding two sentences to the end of the section, to read as follows:

§ 13.1 Scope of part.

* * * The appeal process in this part does not apply to organic claims on alcohol beverage labels. See § 13.101.

12. A new § 13.3 is added to subpart A to read as follows:

§ 13.3 Related regulations.

The following regulations also relate to this part:

7 CFR Part 205—National Organic Program
27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits
27 CFR Part 4—Labeling and Advertising of Wine
27 CFR Part 5—Labeling and Advertising of Distilled Spirits
27 CFR Part 7—Labeling and Advertising of Malt Beverages
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27 CFR Part 26—Liquors and Articles from Puerto Rico and the Virgin Islands
27 CFR Part 27—Importation of Distilled Spirits, Wines, and Beer
27 CFR Part 71—Rules of Practice in Permit Proceedings
27 CFR Part 252—Exportation of Liquors

13. Section 13.51 is amended by revising the first sentence to read as follows:

§ 13.51 Revocation by operation of law or regulation.

ATF will not individually notify all holders of certificates of label approval, certificates of exemption from label approval, or distinctive liquor bottle approvals that their approvals have been revoked if the revocation occurs by operation of either ATF-administered law or regulation or applicable law or regulation of other agencies. * * *

14. Section 13.61 is amended by redesignating the text of paragraph (a) as paragraph (a)(1); adding a paragraph heading to newly designated paragraph (a)(1); and adding paragraph (a)(2) to read as follows:

§ 13.61 Publicity of information.

(a) *Pending and denied applications.*

(1) *General.* * * *

(2) *Labels that make organic claims.* ATF will disclose applications for approval of labels that make organic claims to the appropriate office of the United States Department of Agriculture to assure such labels comply with National Organic Program rules.

* * * * *

15. A new subpart G is added to part 13 to read as follows:

Subpart G—Appeals Concerning Other Agencies' Rules

§ 13.101 Appeals concerning use of the term "organic."

To appeal a determination that an organic claim on a label does not comply with the National Organic Program rules in 7 CFR part 205, contact the Program Manager, National Organic Program (NOP), Agricultural Marketing Service, United States Department of Agriculture. See the NOP appeal process in 7 CFR 205.680.

Signed: August 19, 2002.

Bradley A. Buckles,

Director.

Approved: September 6, 2002.

Timothy E. Skud,

Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement).

[FR Doc. 02–25265 Filed 10–7–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, 7, and 13

[Notice No. 954; Re: T.D. ATF–483]

RIN 1512–AC87

Organic Claims in Labeling and Advertising of Alcohol Beverages (2002R–288P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: ATF is proposing to finalize temporary regulations published elsewhere in this seperate part that amend the alcohol labeling and advertising rules to cross-reference the United States Department of Agriculture's (USDA) National Organic Program (NOP) rules. Any alcohol beverage labeled or advertised with an organic claim must comply with both NOP rules administered by the USDA and the applicable rules administered by ATF. In this notice of proposed rulemaking, we invite comments on the temporary rule.

DATES: Written comments must be received by December 9, 2002.

ADDRESSES: You may send comments to any of the following addresses—

- Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, PO Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 954);
- 202–927–8525 (Facsimile);
- *nprm@atfhq.atf.treas.gov* (E-mail);
- *http://www.atf.treas.gov* (Online—A comment form is available with this copy of the notice).

See the "Public Participation" section of this notice for specific requirements, as well as information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: Richard Evanchec, Alcohol Labeling and Formulation Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–8140; e-mail *RJEvanchec@atfhq.atf.treas.gov*.

SUPPLEMENTARY INFORMATION: Please see the T.D. ATF–483 published in the "Rules and Regulations" section of today's issue of the **Federal Register** for a discussion of our temporary and proposed changes to parts 4, 5, 7, and 13.

Public Participation

We request comments from anyone interested. We specifically request comments on the clarity of the temporary rule and how we could make it easier to understand. We will consider your comments if we receive them on or before the closing date. We will consider comments received after the closing date if we can.

You may view comments by appointment at the ATF Reading Room, Public and Governmental Affairs, room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226. You may also obtain copies at 20 cents per page. If you want to view or request copies of comments, telephone the ATF Librarian at 202–927–7890.

For your convenience, we will post comments received in response to this notice on the ATF Web site. All comments posted on our Web site will show the name of the commenter but not street addresses, telephone numbers, or e-mail addresses. We may also omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the ATF Reading Room. To access online copies of the comments on this temporary rule, visit *http://www.atf.treas.gov/* and select "Regulations," then "Notices of proposed rulemaking (Alcohol)." Next, select "View Comments" under this notice number. Finally, select "Notice of Proposed Rulemakings Comments" and this notice number.

We do not recognize any submitted material as confidential. We will disclose all information on comments and commenters. Do not enclose in your comments any material you consider confidential or inappropriate for disclosure.

You may submit comments in any of five ways.

- *By Mail:* Send written comments to ATF at the address listed in the **ADDRESSES** section.
- *By Facsimile:* Submit comments by facsimile transmission to 202–927–8525. We will not acknowledge receipt. Comments transmitted as facsimiles will be treated as originals, and they must—

(1) Be legible;
(2) Reference this Notice number;
(3) Be on 8.5-by 11-inch paper;
(4) Contain a legible, written signature; and
(5) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *By e-mail:* Send comments to *nprm@atfhq.atf.treas.gov*. We will not acknowledge receipt of e-mail. We will treat e-mailed comments as originals. Comments transmitted as electronic-mail must—

(1) Contain your name, mailing address, and e-mail address; and
(2) Reference this Notice number on the subject line.

- *Online:* See the ATF Internet Web site at *http://www.atf.treas.gov*. We provide a comment form with the online copy of this notice.

In Person: Write to the Director to ask for a public hearing. The Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Regulatory Analyses and Notices

Administrative Procedure Act

We issued the associated temporary rule without prior notice or public procedure under 5 U.S.C. 553(b) and without it being subject to the effective date limitation in section 553(d) for two reasons. First, the temporary rule merely cross-references and incorporates the NOP rules as they relate to alcohol beverage labeling. The mandatory compliance date for the NOP rules is October 21, 2002. Second, we are not imposing new requirements. By this notice, we are allowing interested persons an opportunity to comment.

Regulatory Flexibility Act

A regulatory flexibility analysis is not required. Implementation of this proposed rule would not significantly impact a substantial number of small entities.

We do not endorse products when we approve labels that make organic claims. These regulations merely allow bottlers to more accurately describe their products to consumers and help consumers identify the alcohol beverages they purchase. Thus, any benefit derived from the use of an organic claim results from a proprietors' own efforts and from consumer acceptance of products that comply with the rules of the NOP.

Paperwork Reduction Act

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and its implementing regulations, 5 CFR part 1320, do not apply.

Executive Order 12866

We have determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Drafting Information

Marjorie Ruhf of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms, drafted this document. Employees of the Treasury Department and USDA, as well as other ATF employees, participated in its development.

Signed: August 19, 2002.

Bradley A. Buckles,

Director.

Approved: September 6, 2002.

Timothy E. Skud,

Deputy Assistant Secretary, (Regulatory, Tariff, and Trade Enforcement).

[FR Doc. 02–25264 Filed 10–7–02; 8:45 am]

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Title 3—

The President

Proclamation 7602 of October 4, 2002

Fire Prevention Week, 2002

By the President of the United States of America

A Proclamation

Every year, fires needlessly take lives and destroy homes, natural habitats, and livelihoods. This year, as we observe Fire Prevention Week, I ask all citizens to take responsible steps to prevent fires at home and outdoors and to ensure that safety and emergency plans are in place and in practice.

Approximately 3,500 Americans die each year in home fires; and 85 percent of all annual fire fatalities occur in residences. To prevent this tragic loss of life, the National Fire Protection Association, in partnership with the Federal Emergency Management Agency, the United States Fire Administration, and America's 26,354 fire departments, is sponsoring the 2002 Fire Prevention Week campaign, "Team Up for Fire Safety." I encourage all Americans to heed the recommendations of fire safety experts by ensuring that every home is equipped with the appropriate number of properly installed and maintained smoke alarms and that every family has fire safety and escape plans. These measures will help to prevent fires and protect our families, our communities, and our firefighters.

America has faced a devastating wildfire season this year, and much wildlife habitat has been destroyed by fires in our overgrown forests. To reduce the threat of these catastrophic wildfires and to restore the health of America's forests, we must continue to develop improved forest management plans. My Healthy Forests Initiative aims to ensure our environment's health by thinning dangerous overgrowth. Firefighters and forest experts agree that we could strengthen the health of our forests by targeted thinning of dense forests and quickly restoring fire- damaged areas to prevent erosion. Through these improved forest policies, we can protect our citizens, prevent catastrophic fires, preserve healthy forests, and sustain wildlife habitat.

During Fire Prevention Week, our Nation also gives thanks for the invaluable service rendered by our firefighters, who risk their lives to preserve and protect our communities. These courageous public servants have inspired us with their dedication and professionalism. On September 11, 2001, we saw that our brave firefighters are among America's greatest heroes. As we remember the sacrifice of so many firefighters that day, let us draw great strength from their example of selfless service to others. These firefighters embodied the best of the American spirit.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 6 through October 12, 2002, as Fire Prevention Week. On Sunday, October 6, 2002, pursuant to Public Law 107–51, flags will be flown at half-staff on all Federal office buildings in honor of the National Fallen Firefighters Memorial Service. I invite the people of the United States to participate in this observance by flying our Nation's flag over their homes at half-staff on this day, to mark this week with appropriate programs and activities, and to renew efforts throughout the year to prevent fires and their tragic consequences.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

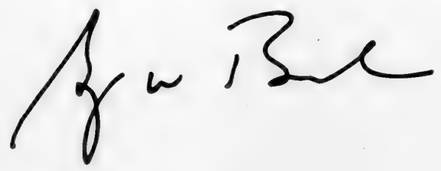

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Presidential Documents

Proclamation 7603 of October 4, 2001

Child Health Day, 2002

By the President of the United States of America

A Proclamation

On Child Health Day, we renew our commitment to the well-being and safety of our children. Parents, families, teachers, and neighbors all play important roles in preparing children to face life's physical, spiritual, intellectual, and emotional demands. For the future of our country, we must work together to provide our young people with the knowledge and skills they need to be safe, self-confident, and successful.

From maintaining a healthy environment and high safety standards to providing immunizations and quality health care, children rely on our vigilance and support. Each year, 30 million children require emergency care due to acute illness and injury. We can all take important steps to help prevent these accidents and to improve the health and safety of young Americans.

Parents and other caregivers should be aware of the latest safety precautions and pay careful attention to consumer safety warnings. They should always secure infants, toddlers, and small children in safety seats and booster seats. Children should be taught always to wear their seatbelts when riding in a vehicle and to use protective gear when riding a bicycle, roller blading, skate boarding, playing sports, and participating in other similar activities. Parents should set a good example by refraining from smoking and should teach their children about the health risks of tobacco, drugs, and alcohol.

Child obesity has become a serious problem in this country. About 8 million young Americans—almost 15 percent of all children—are overweight. Obesity can cause medical complications that can lead to hospitalization for type 2 diabetes, sleep apnea, and asthma. Ensuring regular participation in physical activity can help children manage weight, control blood pressure, and maintain healthy bones, muscles, and joints.

My Administration is strongly committed to advancing programs that help children discover and understand the benefits of healthy living. The recently introduced HealthierUS Initiative will help Americans improve their health and quality of life through modest improvements in physical activity, nutrition, getting preventive screenings, and making healthy choices. Families play a vital role and can help to promote and encourage these beneficial habits.

By committing ourselves to health and safety, we better enable young people to achieve their goals, live longer, fuller lives, and we strengthen our Nation. The Congress, by a joint resolution approved May 18, 1928, as amended (36 U.S.C. 105), has called for the designation of the first Monday in October as "Child Health Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Monday, October 7, 2002, as Child Health Day. On this day, and on every day throughout the year, I call upon families, schools, child health professionals, communities, and governments to help all of our children discover the rewards of good health and wellness.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

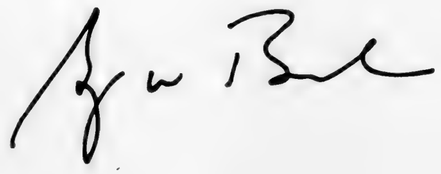

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Presidential Documents

Proclamation 7604 of October 4, 2002

German-American Day, 2002

By the President of the United States of America

A Proclamation

As the oldest and longest-lived democracy in the world, our Nation is committed to promoting freedom, protecting liberty, and pursuing peace. For over 225 years, America has been a place where people have come to realize their dreams and enjoy the blessings of religious tolerance and individual rights.

In 1683, 13 immigrant families left Germany to escape religious persecution and establish the first German settlement in North America in Germantown, Pennsylvania. Since that time, more than 7 million German immigrants have come to America, and through hard work, innovation, and dedication, they have influenced our Nation and strengthened our country. Each year, we celebrate German-American Day, which offers us the chance to reflect on the proud and important contributions that German Americans have made to the United States.

Carl Schurz, who emigrated from the Rhineland, served as a United States Senator and Secretary of the Interior. He said that German immigrants "could render no greater honor to their former fatherland than by becoming conscientious and faithful citizens of their new country." As farmers, businessmen, scientists, artists, teachers, and politicians, German Americans have contributed to the values that make our Nation strong. Through his artistic abilities as a cartoonist and caricaturist during and following the Civil War, Thomas Nast established himself as a political voice for the underprivileged and champion of equal rights for all citizens.

The important work of Joseph Pulitzer helped to create the American legacy of freedom of the press and to advance the field of journalism. Oscar Hammerstein is known as an integral figure in the history of the United States opera for building his second Manhattan Opera House in addition to several other theaters. This tradition of excellence continued with the musical talents of his grandson, Oscar Hammerstein II, as he elevated the American musical comedy to musical theater that Americans enjoy today. The efforts of German-American entrepreneurs Levi Strauss, the creator of blue jeans, and Walter Percy Chrysler, the first president of Chrysler Corporation in 1925, reflect the entrepreneurial spirit of our country. Today, German Americans continue to serve this Nation with distinction in our Armed Forces, in our communities, and throughout all sectors of our society.

On this day, we recognize the important and continuing relationship between Germany and the United States. Our friendship was forged after World War II and is based on mutual support and respect. Germany showed meaningful support for the United States after the September 11, 2001, terrorist attacks. On this day, I am pleased to call all Americans to celebrate the contributions that German Americans have made to our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 6, 2002, as

German-American Day. I encourage all Americans to recognize the contributions of our citizens of German descent to the liberty and prosperity of the United States, and to celebrate our close ties to the people of Germany.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

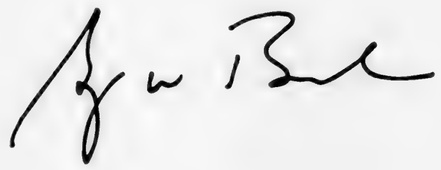

[FR Doc. 02–25899
Filed 10–8–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13275 of October 7, 2002

Creating a Board of Inquiry To Report on Certain Labor Disputes Affecting the Maritime Industry of the United States

WHEREAS, there exists a labor dispute between, on the one hand, employees represented by the International Longshore and Warehouse Union and, on the other hand, employers and the bargaining association of employers who are (1) U.S. and foreign steamship companies operating ships or employed as agents for ships engaged in service to or from the Pacific Coast ports in California, Oregon, and Washington, and (2) stevedore and terminal companies operating at ports in California, Oregon, and Washington; and

WHEREAS, such dispute has resulted in a lock-out that affects a substantial part of the maritime industry, an industry engaged in trade, commerce, transportation (including the transportation of military supplies), transmission, and communication among the several States and with foreign nations; and

WHEREAS, a continuation of this lock-out, if permitted to continue, will imperil the national health and safety;

NOW, THEREFORE, by virtue of the authority vested in me by section 206 of the Labor Management Relations Act, 1947 (61 Stat. 155; 29 U.S.C. 176) (the "Act"), I hereby create a Board of Inquiry consisting of such members as I shall appoint to inquire into the issues involved in such dispute.

The Board shall have powers and duties as set forth in title II of the Act. The Board shall report to me in accordance with the provisions of section 206 of the Act no later than October 8, 2002.

Upon the submission of its report, the Board shall continue in existence in order to perform any additional functions under the Act, including those functions set forth in section 209(b), but shall terminate no later than upon completion of such functions.

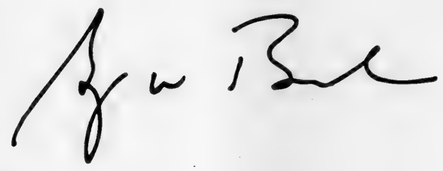

THE WHITE HOUSE,
October 7, 2002.

[FR Doc. 02–25900
Filed 10–8–02; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 67, No. 196
Wednesday, October 9, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 723 and 729

RIN 0560–AG75

2002 Farm Bill Regulations—Termination of Peanut Market Quota Program and Revised Flue-Cured Tobacco Reserve Stock Level

AGENCY: Farm Service Agency, Agriculture.

ACTION: Final Rule.

SUMMARY: This rule takes two actions to reflect new law enacted in the Farm Security and Rural Investment Act of 2002 (2002 Act). First, rules for the now terminated (as to 2002 and subsequent crops) marketing quota program for peanuts are removed. Second, the "reserve stock level" for flue-cured tobacco (used to set quotas) is changed. These two actions simply implement new law and in that sense are ministerial only.

EFFECTIVE DATE: October 9, 2002.

FOR FURTHER INFORMATION CONTACT: Daniel J. Stevens, USDA, Farm Service Agency, STOP 0514, 1400 Independence Avenue, SW., Washington, DC 20250–0514, telephone 202–720–5291. Electronic mail: *Daniel_Stevens@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by OMB.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Loan Deficiency Payments—10.051.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be done without regard to chapter 5 of title 44 of the United States Code, the Paperwork Reduction Act. Accordingly, these regulations and the forms and other information collection activities need to administer the program authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act. Further, this rule does not contain new information collections or revise those collection currently approved by OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this final rule because FSA is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule.

Unfunded Federal Mandates

This rule contains no Federal mandates for State, local, and tribal governments or the private sector as defined under the regulatory provisions of Title II of the Unfunded Mandate Reform Act (UMRA). Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

Sections 1309 and 1310 of the 2002 Act terminated, beginning with the 2002 crop, the long standing marketing quota and price support program for peanuts. New and differing peanut programs were enacted in the same legislation. This rule removes, because of the new law, the marketing quota regulations in Chapter VII of Title 7 of the Code of Federal Regulations (CFR), specifically those at 7 CFR part 729. Removal of the price support regulations contained in Chapter XIV of Title 7 of the CFR will be covered by separate notice as will rules for the new program enacted in the 2002 Act. The revised text of 7 CFR part 729 will not affect the 2001 and preceding crops. Those crops remain subject to the previous rules.

Second, in the law that preceded the 2002 Act, the reserve stock level for flue cured tobacco was set to be the greater of 100,000 pounds (farm sales weight) or 15 percent of the national quota for that tobacco for the marketing year immediately preceding the marketing year for which the determination is being made. Section 1610 of the 2002 Act changed 100,000 pounds to 60,000 pounds and 15 percent to 10 percent. This rule implements that change too. Reserve stock levels serve a function in the calculation of national tobacco quotas.

List of Subjects

7 CFR Part 723

Agricultural commodities, Marketing quotas, Price support programs, Tobacco

7 CFR Part 729

Agricultural commodities, Marketing quotas, Price support programs

Accordingly, chapter VII is amended as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 is revised to read as follows:

Authority: 7 U.S.C. 1301 *et seq.*; 7 U.S.C. 1421; 7 U.S.C. 1445–1 and 1445–2.

2. Amend section 723.503 by revising paragraph (a)(3) to read as follows:

§ 723.503 Establishing the quotas.

(a) * * *

(3) Reserve stock level adjustment. The total calculated by adding the sums of paragraphs (a)(1) and (a)(2) of this section may be adjusted by the Director as necessary to maintain inventories of producer loan associations for burley and flue-cured tobacco at the reserve stock level. For burley, the reserve stock level is the larger of 50 million pounds farm sales weight or 15 percent of the previous year's national market quota. For flue-cured, the reserve stock level is the larger of 60 million pounds or 10 percent of the previous year's quota. The Director shall consider supply conditions when making any adjustment and a downward adjustment for burley tobacco may not exceed either 35 million pounds farm sales weight or 50 percent of the amount by which loan inventories exceed the reserve stock

level, whichever is larger. If the uncommitted pool stocks of burley tobacco for 2001 and subsequent crops equal or are less than the reserve stock level, then the downward adjustment in quota for that year may be made based on the reserve stock level for that kind of tobacco, with no downward limitation.

* * * * *

PART 729—[Revised]

3. 7 CFR Part 729 is revised to read as follows:

PART 1729—PEANUT MARKETING QUOTAS

Authority: 7 U.S.C. 7271; 15 U.S.C. 714b-c; 7 U.S.C. 7959.

§ 729.1 Applicablity to 1996 through 2001 crops of peanuts.

Sections 1309 and 1310 of the Farm Security Rural Investment Act of 2002 terminated, beginning with the 2002 crop, the marketing quota and price support program for peanuts. However, 7 CFR part 729, revised as of January 1, 2002 continues to apply to the 1996 through 2001 crops of peanuts.

Signed at Washington, DC on September 12, 2002.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–25271 Filed 10–8–02; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 32, and 35

RIN 3150–AF74

Medical Use of Byproduct Material; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: correction.

SUMMARY: This document corrects a final rule appearing in the **Federal Register** on April 24, 2002 (67 FR 20250). This action in necessary to correct typographic and editorial errors.

EFFECTIVE DATE: October 24, 2002.

FOR FURTHER INFORMATION CONTACT: Anthony Tse, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6233; e-mail *ant@nrc.gov*.

SUPPLEMENTARY INFORMATION:

In rule FR Doc. 02–9663 published April 24, 2002, (67 FR 20250) make the following corrections:

1. On page 20253, third column, second paragraph, tenth line, the word "Specialities" should read "Specialties."

2. On page 20260, first column, second complete paragraph, tenth line, the word "Specialities" should read "Specialties."

3. On page 20342, second column, 14th line, "2120 L Street NW. (Lower Level), Washington, DC" should read "One White Flint North, 11555 Rockville Pike, Room O–1F21, Rockville, MD 20852."

4. On page 20350, first column, 25th line, insert the word "contains" after the word "INFORMATION."

§ 20.1002 [Amended]

5. In § 20.1002, 19th line, the comma after the word "released" should be deleted.

§ 20.1003 [Amended]

6. In § 20.1003, Occupational dose, 15th line, the comma after the word "released" should be deleted.

7. In § 20.1003, Public dose, 12th line, the comma after the word "released" should be deleted.

§ 20.1301 [Amended]

8. In § 20.1301(a)(1), tenth line, the comma after the word "released" should be deleted.

§ 32.72 [Amended]

9. In § 32.72, last line, after "35.55(b)", insert the words "or, prior to October 25, 2004, 10 CFR 35.980(b)."

§ 35.6 [Amended]

10. In § 35.6(c), fifth line, the word "license" should read "licensee."

§ 35.12 [Amended]

11. In § 35.12(c)(1)(i), second line, the word "Licens" should read "License."

§ 35.13 [Amended]

12. In § 35.13(b)(1), fifth line, "35.910, 35.920, 35.930, 35.932, 35.934, 35.940, 35.941, 35.950, or 35.960" should read "35.910(a), 35.920(a), 35.930(a), 35.940(a), 35.950(a), or 35.960(a)".

13. In § 35.13(b)(2), fourth line, "35.980" should read "35.980(a)."

14. In § 35.13(b)(3), third line, "35.961" should read "35.961(a) or (b)."

§ 35.40 [Amended]

15. In § 35.40(a), fourth line, the word "Megabequerels" should read "Megabecquerels."

§ 35.51 [Amended]

16. In § 35.51(b)(1), eighth line, the words "an individual who meets the requirements for" should be deleted.

Dated at Rockville, Maryland, this 3rd day of October, 2002.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 02–25658 Filed 10–8–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket No. 02–12A]

RIN 1557–AC00

Assessment of Fees

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Final rule; technical correction.

SUMMARY: This final rule makes a correction to the final rule that the OCC published in the **Federal Register** on September 11, 2002 (67 FR 57509) amending 12 CFR 8.2(a). That provision sets forth the formula for the semiannual assessment the OCC charges each national bank.

EFFECTIVE DATE: This final rule is effective on October 9, 2002.

FOR FURTHER INFORMATION CONTACT: Michele Meyer, Counsel, Legislative and Regulatory Activities Division, 202–874–5090.

SUPPLEMENTARY INFORMATION: On November 16, 2001, the OCC published a final rule in the **Federal Register** that amended 12 CFR 8.2(a), which sets forth the formula for the semi-annual assessment that the OCC charges national banks. 66 FR 57645 (November 16, 2001). The objective of the rulemaking, as described in the preambles to the proposed and final rules, was to revise 12 CFR 8.2(a) only. However, in the published final rule, 12 CFR 8.2(a)(1) through (a)(6) were inadvertently deleted. 66 FR at 57647–48. A final rule published September 11, 2002 restored those deleted provisions of the regulation. 67 FR 57509 (September 11, 2002).

However, the September 11, 2002 final rule also restored erroneously 12 CFR 8.2(a)(7), which had been removed in a prior rulemaking. 66 FR 29890 (June 1, 2001). Today's final rule again removes that provision from the regulation.

This final rule takes effect immediately. The OCC has concluded that the notice and comment procedures prescribed by the Administrative Procedure Act are unnecessary because this rule corrects a technical error without substantive change to the provision of § 8.2(a). *See* 5 U.S.C. 553(b)(3)(B). *Cf. United States National Bank of Oregon* v. *Independent Insurance Agents of America, Inc.*, 508 U.S. 439, 462 (1993) (error in punctuation construed so as not to defeat the "true meaning" of a Federal law that relocated but did not repeal the statutory provision authorizing national banks to sell insurance).

List of Subjects in 12 CFR Part 8

National banks, Reporting and recordkeeping requirements.

Accordingly, 12 CFR part 8 is amended by making the following correcting amendments:

PART 8—ASSESSMENT OF FEES

1. The authority citation for part 8 continues to read as follows:

Authority: 12 U.S.C. 93a, 481, 482, 1867, 3102, and 3108; 15 U.S.C. 78c and 78l; and 26 D.C. Code 102.

2. In § 8.2, paragraphs (a)(1) through (a)(6), respectively, are republished and paragraph (a)(7) is removed, to read as follows:

§ 8.2 Semiannual assessment.

(a) * * *

(1) Every national bank falls into one of the ten asset-size brackets denoted by Columns A and B. A bank's semiannual assessment is composed of two parts. The first part is the calculation of a base amount of the assessment, which is computed on the assets of the bank up to the lower endpoint (Column A) of the bracket in which it falls. This base amount of the assessment is calculated by the OCC in Column C.

(2) The second part is the calculation by the bank of assessments due on the remaining assets of the bank in excess of Column E. The excess is assessed at the marginal rate shown in Column D.

(3) The total semiannual assessment is the amount in Column C, plus the amount of the bank's assets in excess of Column E times the marginal rate in Column D: Assessments = C+[(Assets − E) × D].

(4) Each year, the OCC may index the marginal rates in Column D to adjust for the percent change in the level of prices, as measured by changes in the Gross Domestic Product Implicit Price Deflator (GDPIPD) for each June-to-June period. The OCC may at its discretion adjust marginal rates by amounts less than the percentage change in the GDPIPD. The OCC will also adjust the amounts in Column C to reflect any change made to the marginal rate.

(5) The specific marginal rates and complete assessment schedule will be published in the "Notice of Comptroller of the Currency Fees", provided for at § 8.8 of this part. Each semiannual assessment is based upon the total assets shown in the bank's most recent "Consolidated Report of Condition (Including Domestic and Foreign Subsidiaries)" (Call Report) preceding the payment date. The assessment shall be computed in the manner and on the form provided by the Comptroller of the Currency. Each bank subject to the jurisdiction of the Comptroller of the Currency on the date of the second or fourth quarterly Call Report required by the Office under 12 U.S.C. 161 is subject to the full assessment for the next six-month period.

(6)(i) Notwithstanding any other provision of this part, the OCC may reduce the semiannual assessment for each non-lead bank by a percentage that it will specify in the Notice of Comptroller of the Currency Fees described in § 8.8.

(ii) For purposes of this paragraph (a)(6):

(A) *Lead bank* means the largest national bank controlled by a company, based on a comparison of the total assets held by each national bank controlled by that company as reported in each bank's Call Report filed for the quarter immediately preceding the payment of a semiannual assessment.

(B) *Non-lead bank* means a national bank that is not the lead bank controlled by a company that controls two or more national banks.

(C) *Control* and *company* have the same meanings as these terms have in sections 2(a)(2) and 2(b), respectively, of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(2) and (b)).

* * * * *

Dated: September 25, 2002.

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel.

[FR Doc. 02–25634 Filed 10–8–02; 8:45 am]

BILLING CODE 4810–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 37, 38, 39 and 40

RIN 3038–AB63

Amendments to New Regulatory Framework for Trading Facilities and Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is adopting a number of technical amendments to its rules implementing the Commodity Futures Modernization Act of 2000 with respect to trading facilities and clearing organizations. The rules add new categories of exchange rules or rule amendments that need not be approved by or self-certified to the Commission; amend the definitions of "rule" and "dormant contract;" add new definitions of "dormant contract market," "dormant derivatives transaction execution facility," and "dormant derivatives clearing organization"; and add a procedure for listing or relisting products for trading on a registered entity that has become dormant.

EFFECTIVE DATE: November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy E. Yanofsky, Assistant Chief Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5260. e-mail: *NYanofsky@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission, on August 10, 2001, promulgated rules implementing the provisions of the Commodity Futures Modernization Act of 2000 (CFMA) relating to trading facilities.[1] 66 FR 42256. These rules, parts 36 through 40 of the Commission's rules, became effective on October 9, 2001.

The CFMA profoundly altered federal regulation of commodity futures and option markets. The new statutory framework established two categories of markets subject to Commission regulatory oversight, designated contract markets (contract markets) and registered derivatives transaction execution facilities (DTFs), and two categories of exempt markets, exempt boards of trade and, under section 2(h)(3) of the Commodity Exchange Act (Act), exempt commercial markets. The Commission's rules relating to trading facilities established administrative procedures necessary to implement the CFMA, interpreted certain of the CFMA's provisions and provided guidance on compliance with various of its requirements. In addition, the Commission, under its exemptive authority, in a limited number of instances, provided relief from, or

[1] The CFMA was intended, in part, "to promote innovation for futures and derivatives," "to reduce systemic risk," and "to transform the role of the Commission to oversight of the futures markets." *See* section 2 of the CFMA.

greater flexibility than, the CFMA's provisions.

On April 26, 2002, the Commission proposed a limited number of amendments responding to initial issues that had arisen in administering its implementing rules, or which are technical in nature. 67 FR 20702. The Commission received three comment letters, all from contract markets. The commenters generally supported the proposed rules, but expressed concern about the intended scope of the proposed amendments relating to self-certification of exchange fees. The Commission agrees with these comments, and is amending rule 40.6(c) to better describe those categories of exchange fees that will be subject to the self-certification requirement and those that will not. In all other respects, the Commission is adopting the rules as proposed.[2]

II. The Final Rules

A. Dormant Contract Markets and Products

The Commission has long required boards of trade, before relisting a dormant contract for trading, to demonstrate that the contract continues to meet the Act's requirements. See 17 CFR 5.2. This requirement was based upon the premise that contracts that have been dormant for a significant period of time may not have been updated to reflect intervening changes in cash-market practices, and therefore may no longer meet applicable statutory and regulatory requirements. Accordingly, the relisting of a dormant contract was treated in some respects similarly to the designation of a new contract.

Part 40 of the Commission's rules implementing the CFMA retains the concept that the Act's requirements for listing a new product for trading should also be applicable when relisting a dormant contract for trading. Specifically, Commission rule 40.2 requires that, before either listing a contract or relisting a dormant contract for trading, registered entities certify that the product complies with the Act. The Commission proposed amending its part 40 requirements relating to dormant contracts in two ways.

First, the Commission proposed to revise the exemptive period in the definition of "dormant contract" in rule 40.1 from the time following "initial listing" to the time following initial exchange certification or Commission approval. The Commission originally used "initial listing" to mark the beginning of the exemptive period based upon its belief that registered entities routinely would certify products to the Commission shortly before trading was imminent as permitted by rule 40.2. However, many exchanges have continued their prior practice of fulfilling regulatory requirements well in advance of a product's anticipated listing date. In addition, some exchanges have certified to the Commission, but have never listed for trading, a number of new products. Accordingly, the Commission proposed that the exemptive period under the dormant contract definition begin running from the time of certification or Commission approval. Second, in light of the far greater rapidity with which markets innovate and change today compared to when the dormant contract rule was first promulgated and the lessened burden of a simple self-certification compared to the previous requirement that dormant contracts be approved by the Commission prior to relisting, and for consistency with the operation of other rules, the Commission proposed to amend rule 40.1 to reduce the grace period during which a new contract is exempt from being defined as dormant from 60 to 36 complete calendar months.

The Commission also proposed to amend rule 40.2 so that it would apply in instances where the registered entity itself has become dormant. Prior to enactment of the CFMA, the term "designated contract market" denoted the Commission-approved products traded on a board of trade.[3] Accordingly, prior to the CFMA, a board of trade's initial application for designation as a contract market in a commodity triggered review of both the general requirements for designation as a contract market as well as those requirements that were product-specific. If a board of trade determined to relist a contract for trading after all of its contracts had become dormant, the Commission would have reviewed both the terms and conditions of the product to be relisted as well as whether the board of trade continued to meet the general designation requirements. The Commission proposed to amend parts 37, 38, 39 and 40 of its rules to clarify that, when a registered entity that has become dormant determines to list or relist an initial product for trading (or in the case of a derivatives clearing organization, to accept a product for clearing), it must demonstrate that it continues to satisfy the criteria for designation or registration.[4] In making such a demonstration, a registered entity may rely upon previously-submitted materials that still pertain to, and accurately describe, current conditions.

No comments were received concerning these proposed amendments on dormant markets and products and the Commission is adopting the rules as proposed.

B. Product Approval Procedures

Contract markets or DTFs may request that the Commission review and approve new products and new rules or rule amendments. The Commission proposed amending rules 40.3 and 40.5 to include a provision similar to that for applications for contract market designation and DTF registration, that the applicant or submitting entity identify with particularity information in the submission that will be subject to a request for confidential treatment and support that request for confidential treatment with reasonable justification. *See* rules 38.3(a)(5) and 37.5(b)(5). As proposed, rule 40.3 also provided that the terms and conditions of products for which approval is voluntarily requested will be made publicly available at the time of their submission to the Commission to enable the Commission, by obtaining the views of market participants and others, to ascertain whether the proposed product would be readily susceptible to manipulation, or otherwise violate the Act.[5] Finally, the Commission proposed a new rule 40.8 to make clear that all other information required by the core principles to be made public by a registered entity will be treated as public information by the Commission at the time the Commission issues an order of designation or registration, a registered entity is deemed approved, or a rule or rule amendment is approved or deemed approved by the Commission, or can first be made effective by the registered entity.[6]

No comments were received concerning these proposed amendments on product approval procedures and the Commission is adopting the rules as proposed.

C. Exchange Fees

The Commission also proposed to amend rules 40.1, 40.4 and 40.6 explicitly to address the procedures applicable to the imposition or amendment of exchange fees. The Commission's proposed rules provided that fees related to delivery of an enumerated agricultural commodity would be subject to the prior-approval requirements of the Act, and that all other fees would be subject only to the certification requirement. The Commission's proposed rules further provided that fees or fee changes of any type of less than $1.00 would be exempt from the certification requirement (or the prior-approval requirement, if applicable) as *de minimis*.[7]

The three contract markets that commented expressed concern that the Commission's proposed rule could be read to require the exchanges to certify all fees and fee changes of $1.00 or more, including fees established by an independent third party and fees that are administrative in nature. The Commission did not intend this result and accordingly is revising rule 40.6 to clarify the treatment of rules relating to fees. Under the final rules, certification will still be required for fees or fee changes that are related to delivery, trading, clearing and dispute resolution and that are $1.00 or more.[8] *See* rule 40.6(a).[9] Fees of $1.00 or more that are unrelated to the foregoing (delivery, trading, clearing and dispute resolution), or that are established by an independent third party,[10] will be exempt from certification but subject to notification under rule 40.6(c)(2)(v). Finally, neither the certification nor notification requirements will apply to fees that are under $1.00, or that relate to matters that are administrative in nature, such as dues, badges, telecommunications services, booth space, real time quotations, historical information, publications or software licenses. *See* rule 40.6(c)(3)(ii)(E).

D. Definition of Rule

The Commission proposed to amend the definition of "rule" in part 40.1[11] to exclude from its meaning exchange actions relating to the setting of margin levels, except with respect to security futures products and contracts on stock indices. Prior to the CFMA, section 5a(a)(12) of the Act required that all changes to contract terms and conditions, with the exception of rules relating to the setting of margin levels, be submitted to the Commission for prior approval. The ability to adjust margin levels was afforded this special status because of the recognized need for exchanges to change margin levels rapidly, often changing margin levels within a single trading session, in response to changing market conditions. In section 113 of the CFMA, Congress removed the prior-approval provision, providing instead that registered entities could amend their rules by self-certification. However, there is no indication that Congress intended thereby to affect the special status accorded rules relating to the setting of margin levels.[12] Accordingly, the Commission believes that specifically excluding the setting of margin levels (except with respect to stock index products and security futures products) from the definition of "rule" is consistent with Congress's intent and with the public interest.[13] One commenter, the New York Mercantile Exchange, stated that it appreciated this proposed clarifying amendment. The Commission is amending the definition of "rule" as proposed.

III. Cost-Benefit Analysis

Section 15 of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. Section 15 does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15 simply requires the Commission to "consider the costs and benefits" of its

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[2] The Commission will consider as appropriate additional amendments to the rules implementing the CFMA related to trading facilities based upon further administrative experience.

[3] In contrast, the CFMA redefined the meaning of "designated contract market" to refer to the approved or licensed facility on which futures contracts and commodity options are traded.

[4] The definitions of "dormant contract market," "dormant derivatives transaction execution facility," and "dormant derivatives clearing organization" provide for a 36-month initial exemptive period that would begin when the Commission issues an order, including conditional orders, designating a contract market or registering a DTF or a derivatives clearing organization.

The Commission is also adopting, as proposed, two technical amendments related to continuing goodstanding designation or registration status. The first makes clear that the notification procedure available to contract markets to operate as a DTF applies only to active contract markets. Accordingly, before using this notification procedure, dormant contract markets must reinstate their active contract market status. Of course, they could also become a registered DTF by application. The second provides that, upon a change of ownership of a contract market or DTF, the new owners must certify that the facility continues to meet the respective designation or registration requirement.

[5] Commission staff routinely conduct trade interviews when reviewing novel instruments to ascertain the relative susceptibility of a product to being manipulated. To be meaningful, these interviews require the release of the proposed instrument's terms and conditions. Generally, the Commission also intends to continue its long-standing practice of requesting public comment on the terms and conditions of new products under review for Commission approval by publication of notices in the **Federal Register**. In instances where notice in the **Federal Register** is impracticable or otherwise unnecessary, notice of a submission for voluntary approval and of the public availability of the proposed product's terms and conditions will be through the Commission's internet Web site (*http://www.cftc.gov*).

The terms and conditions of products eligible for trading by self-certification must be made publicly available by the contract market (Core Principle 7), or the DTF (Core Principle 4), and will be available from the Commission, at the time that the exchange legally could commence trading—the beginning of the business day following certification to the Commission.

[6] This requirement is limited to information required to be made public by a registered entity under a core principal, and does not apply to additional materials that may be filed in support of an application for designation or registration. For example, section 5(d)(7) of the Act requires contract markets to make publicly available information concerning "the terms and conditions of the contracts of the contract market and the mechanisms for executing transactions on or through the facilities."

[7] Separately, as proposed, the Commission has revised the list of rule amendments that are not material changes to futures contracts on the enumerated agricultural commodities to clarify that rule changes not required to be certified to the Commission under rule 40.6(c) are also not material.

[8] The $1.00 fee or fee change is on a per contract basis and not on a per unit basis.

[9] Such a certification includes the exchange's determination (which need not be separately stated) that the fee or fee change complies with the exchange's obligation under Core Principle 18 that its actions avoid resulting in an unreasonable restraint of trade or imposing any material anticompetitive burden on trading.

[10] These fees may include, for example, USDA grading and inspection charges.

[11] With respect in general to the defintion of "rule," Commission staff in recent months has learned, through bulletins and notices to the members of registered entities, of a number of rule changes that were not appropriately submitted to the Commission for review under part 40. The Commission again reminds registered entities, as it did in its proposal, that the definition of "rule" under part 40 encompasses more than just provisions labeled as "rules" in rulebooks, but includes, among other things, resolutions, interpretations and stated policies. In order to relieve any administrative burdens, registered entities may submit rule changes to the Commission in the form of member bulletins and notices, so long as those submissions are labeled and, if necessary, certified in accordance with the procedural requirements of part 40. In this regard, the Commission notes that it does not interpret this requirement as expanding any requirement or its administrative practice with regard to rule submissions that existed prior to enactment of the CFMA. The Commission further notes that its rules provide several categories of exchange rules that registered entities are not required to certify or to report to the Commission in a weekly notification. The categories of rules that are exempt from the certification and notification requirements are those that, for instance, relate to the routine, daily administration, direction and control of employees. *See* rule 40.6(c)(3) for a complete list of rules that are exempt from both certification and notification requirements. In this **Federal Register** release, the Commission has expanded this category of exempt rules to include fees or fee changes that are eigther under $1.00 or that relate to matters that are administrative in nature.

[12] In this regard, Congress did not modify the Act's other provisions relating to margins. *See* section 2(a)(C)(v).

[13] The Commission is also adopting, as proposed, a number of technical amendments. Appendix C to part 40 details the information that foreign boards of trade should include in a request for no-action relief to offer and sell to persons in the United States foreign exchange-traded futures contracts on broad-based securities indices. The Commission is amending that guidance to incorporate the changes made by the CFMA to the criteria for approving such stock index futures contracts. The Commission is also, as proposed, making conforming changes to a number of delegations in the rules and to several other provisions.

action, in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas of concern and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission's proposal contained an analysis of its consideration of these costs and benefits and solicited public comment thereon. 67 FR 20704. The Commission specifically invited commenters to submit any data that they may have quantifying the costs and benefits of the proposed rules. *Id.* The Commission has considered all of the comments letters received, none of which specifically addressed the costs or benefits of the proposed rules. The commenters, however, did raise concerns about the possible unintended consequences of the Commission's proposal concerning exchange fees and the Commission has responded favorably to those concerns and thus has limited any unintended costs.

After considering the costs and benefits of these rules, the Commission had decided to adopt them as discussed above.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The rules adopted herein would affect contract markets and other registered entities. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[14] In its previous determinations, the Commission has concluded that contract markets, DTFs and clearing organizations are not small entities for the purpose of the RFA.[15]

In the proposed rules, the Commission solicited comment on whether the rules as proposed would have a significant economic impact on a substantial number of small entities. The Commission received no comments in response to this request. The Commission hereby determines that the rules, as adopted herein, will not have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act of 1995

This rulemaking contains information-collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission submitted a copy of this section to the Office of Management and Budget (OMB) for its review. No comments were received in response to the Commission's invitation in the notice of proposed rulemaking to comment on any potential paperwork burden associated with these rules.

List of Subjects

17 CFR Part 37

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 38

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 39

Commodity futures, Consumer protection.

17 CFR Part 40

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000), and in particular, sections 1a, 2, 3, 4, 4c, 4i, 5, 5a, 5b, 5c, 5d, 6 and 8a thereof, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 37—DERIVATIVES TRANSACTION EXECUTION FACILITIES

1. The authority citation for part 37 is revised to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 6(c), 7a and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

2. Section 37.2 is revised to read as follows:

§ 37.2 Exemption.

Contracts, agreements or transactions traded on a derivatives transaction execution facility registered as such with the Commission under section 5a of the Act, the facility and the facility's operator are exempt from all Commission regulations for such activity, except for the requirements of this part 37 and §§ 1.3, 1.31, 1.59(d), 1.63(c), 15.05, 33.10, part 40, part 41 and part 190 of this chapter, and as applicable to the market, parts 15 through 21 of this chapter, which are applicable to a registered derivatives transaction execution facility as though they were set forth in this section and included specific reference to derivatives transaction execution facilities.

3. Section 37.5 is amended by revising paragraphs (a), (b), and (f)(1) to read as follows:

§ 37.5 Procedures for registration.

(a) *Notification by contract markets.* (1) To operate as a registered derivatives transaction execution facility pursuant to section 5a of the Act, a board of trade, facility or entity that is designated as a contract market, which is not a dormant contract market as defined in § 40.1 of this chapter, must:

(i) Comply with the core principles for operation under section 5a(d) of the Act and the provisions of this part 37; and

(ii) Notify the Commission of its intent to so operate by filing with the Secretary of the Commission at its Washington, DC, headquarters a copy of the facility's rules (which may be trading protocols) or a list of the designated contract market's rules that apply to operation of the derivatives transaction execution facility, and a certification by the contract market that it meets:

(A) The requirements for trading of section 5a(b) of the Act; and

(B) The criteria for registration under section 5a(c) of the Act.

(2) Before using the notification procedure of paragraph (a) of this section for registration as a derivatives transaction execution facility, a dormant contract market as defined in § 40.1 of this chapter must reinstate its designation under § 38.3(a)(2) of this chapter.

(b) *Registration by application*—(1) *Initial registration.* A board of trade, facility or entity shall be deemed to be registered as a derivatives transaction execution facility thirty days after receipt (during the business hours defined in Sec. 40.1 of this chapter) by the Secretary of the Commission at its Washington, DC, headquarters, of an application for registration as a derivatives transaction execution facility unless notified otherwise during that period, or, as determined by Commission order, registered upon conditions, if:

(i) The application demonstrates that the applicant satisfies the requirements for trading and the criteria for registration of sections 5a(b) and 5a(c) of the Act, respectively;

(ii) The submission is labeled "Application for DTF Registration";

(iii) The submission includes:

(A) The derivatives transaction execution facility's rules, which may be trading protocols;

(B) Any agreements entered into or to be entered into between or among the facility, its operator or its participants, technical manuals and other guides or instructions for users of such facility, descriptions of any system test procedures, tests conducted or test results, and descriptions of the trading mechanism or algorithm used or to be used by such facility, to the extent such documentation was otherwise prepared; and

(C) To the extent that compliance with the requirements for trading or the criteria for recognition is not self-evident, a brief explanation of how the rules or trading protocols satisfy each of the conditions for registration;

(iv) The applicant does not amend or supplement the application for recognition, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period;

(v) The applicant identifies with particularity information in the application that will be subject to a request for confidential treatment and supports that request for confidential treatment with reasonable justification; and

(vi) The applicant has not instructed the Commission in writing at the time of submission of the application or during the review period to review the application pursuant to the time provisions of and procedures under section 6 of the Act.

(2) *Reinstatement of dormant registration.* Before listing products for trading, a dormant derivatives transaction execution facility as defined in § 40.1 must reinstate its registration under the procedures of paragraphs (a)(1) or (b)(1) of this section, as applicable; *provided however*, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

* * * * *

(f) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to exercise the functions provided under paragraph (d) of this section.

* * * * *

4. Section 37.6 is amended by revising paragraphs (a), (b), introductory text, (b)(1), (b)(2) and (b)(2)(i) introductory text, (b)(2)(iii), and (c) to read as follows:

§ 37.6 Compliance with core principles.

(a) *In general.* To maintain registration as a derivatives transaction execution facility upon commencing operations by listing products for trading or otherwise, or for a dormant derivatives transaction execution facility as defined in § 40.1 of this chapter that has been reinstated under § 37.5(b)(2) upon recommencing operations by relisting products for trading or otherwise, and on a continuing basis thereafter, the derivatives transaction execution facility must have the capacity to be, and be, in compliance with the core principles of section 5a(d) of the Act.

(b) *New and reinstated derivatives transaction execution facilities.*—(1) *Certification of compliance.* Unless an applicant for registration or for reinstatement of registration has chosen to make a voluntary demonstration under paragraph (b)(2) of this section, a newly registered derivatives transaction execution facility at the time it commences operations, or a dormant derivatives transaction execution facility as defined in § 40.1 of this chapter at the time that it recommences operations, must certify to the Commission that it has the capacity to, and will, operate in compliance with the core principles under section 5a(d) of the Act.

(2) *Voluntary demonstration of compliance.* An applicant for registration or for reinstatement of registration may choose to make a voluntary demonstration of its capacity to operate in compliance with the core principles as follows:

(i) At least thirty days prior to commencing or recommencing operations, the applicant for registration or for reinstatement of registration must file (during the business hours defined in § 40.1 of this chapter) with the Secretary of the Commission at its Washington, DC, headquarters, either separately or with the application required by § 37.5, a submission that includes:

* * * * *

(iii) If it appears that the applicant has failed to make the requisite showing, the Commission will so notify the applicant at the end of that period. Upon commencement or recommencement of operations by the derivatives transaction execution facility, such a notice may be considered by the Commission in a determination to issue a notice of violation of core principles under section 5c(d) of the Act.

(c) *Existing derivatives transaction execution facilities.*—(1) *In general.* Upon request by the Commission, a registered derivatives transaction execution facility shall file with the Commission such data, documents and other information as the Commission may specify in its request that demonstrates that the registered derivatives transaction execution facility is in compliance with one or more core principles as specified in the request or that is requested by the Commission to enable the Commission to satisfy its obligations under the Act.

(2) *Change of owners.* Upon a change of ownership of an existing registered derivatives transaction execution facility, the new owner shall file with the Secretary of the Commission at its Washington, DC, headquarters, a certification that the derivatives transaction execution facility meets the requirements for trading and the criteria for registration of sections 5a(b) and 5a(c) of the Act, respectively.

* * * * *

PART 38—DESIGNATED CONTRACT MARKETS

5. The authority citation for Part 38 is revised to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 7 and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

6. Section 38.2 is revised to read as follows:

§ 38.2 Exemption.

Agreements, contracts, or transactions traded on a designated contract market under section 6 of the Act, the contract market and the contract market's operator are exempt from all Commission regulations for such activity, except for the requirements of this part 38 and §§ 1.3, 1.12(e), 1.31, 1.37(c)–(d), 1.38, 1.52, 1.59(d), 1.63(c), 1.67, 33.10, part 9, parts 15 through 21,

[14] 47 FR 18618–21 (Apr. 30, 1982).

[15] 47 FR 18618, 18619 (April 30, 1982) discussing contract markets); 66 FR 42256, 42268 (August 10, 2001) (discussing DTFs); 66 FR 45605, 45609 (August 29, 2001) (discussing DCOs).

part 40, part 41 and part 190 of this chapter.

7. Section 38.3 is amended by revising paragraph (a) to read as follows:

§ 38.3 Procedures for designation by application.

(a)(1) *Initial Application.* A board of trade or trading facility shall be deemed to be designated as a contract market sixty days after receipt (during the business hours defined in § 40.1 of this chapter) by the Secretary of the Commission at its Washington, DC, headquarters, of an application for designation unless notified otherwise during that period, or, as determined by Commission order, designated upon conditions, if:

(i) The application demonstrates that the applicant satisfies the criteria for designation of section 5(b) of the Act, the core principles for operation under section 5(d) of the Act and the provisions of this part 38;

(ii) The application is labeled as being submitted pursuant to this part 38;

(iii) The application includes:

(A) A copy of the applicant's rules and any technical manuals, other guides or instructions for users of, or participants in, the market, including minimum financial standards for members or market participants;

(B) A description of the trading system, algorithm, security and access limitation procedures with a timeline for an order from input through settlement, and a copy of any system test procedures, tests conducted, test results and the nature of contingency or disaster recovery plans;

(C) A copy of any documents pertaining to the applicant's legal status and governance structure, including governance fitness information;

(D) A copy of any agreements or contracts entered into or to be entered into by the applicant, including partnership or limited liability company, third-party regulatory service, member or user agreements, that enable or empower the applicant to comply with a designation criterion or core principal; and

(E) To the extent that any of the items in § 38.3(a)(1)(iii)(A)–(D) raise issues that are novel, or for which compliance with a condition for designation is not self-evident, a brief explanation of how that item and the application satisfies the conditions for designation;

(iv) The applicant does not amend or supplement the designation application, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period;

(v) The applicant identifies with particularity information in the application that will be subject to a request for confidential treatment and supports that request for confidential treatment with reasonable justification; and

(vi) The applicant has not instructed the Commission in writing at the time of submission of the application or during the review period to review the application pursuant to procedures under section 6 of the Act.

(2) *Reinstatement of dormant designation.* Before listing or relisting products for trading, a dormant designated contract market as defined in § 40.1 of this chapter must reinstate its designation under the procedures of paragraph (a)(1) of this section; provided however, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

* * * * *

8. Section 38.4(a)(2) is revised to read as follows:

§ 38.4 Procedures for listing products and implementing contract market rules.

(a) Request for Commission approval of rules and products. (1) * * *

(2) Notwithstanding the forty-five day review period for voluntary approval under §§ 40.3(b) and 40.5(b) of this chapter, the operating rules and the terms and conditions of products submitted for voluntary Commission approval under § 40.3 or § 40.5 of this chapter that have been submitted at the same time as an application for contract market designation or an application under § 38.3(a)(2) to reinstate the designation of a dormant contract market as defined in § 40.1 of this chapter, or while one of the foregoing is pending, will be deemed approved by the Commission no earlier than the facility is deemed to be designated or reinstated.

* * * * *

9. Section 38.5 is amended by adding a new paragraph (c) to read as follows:

§ 38.5 Information relating to contract market compliance.

* * * * *

(c) Upon a change of ownership of an existing designated contract market, the new owner shall file with the Secretary of the Commission at its Washington, DC, headquarters, a certification that the designated contract market meets all of the requirements of sections 5(b) and 5(d) of the Act and the provisions of this part 38.

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

10. The authority citation for part 39 is revised to read as follows:

Authority: 7 U.S.C. 7b as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

11. Section 39.4 is amended by revising the section heading, by redesignating the text in paragraph (c) as paragraph (c)(2) and by adding a new paragraph (c)(1) to read as follows:

§ 39.4 Procedures for implementing derivatives clearing organization rules and clearing new products.

* * * * *

(c) *Acceptance of new products for clearing.* (1) A dormant derivatives clearing organization within the meaning of § 40.1 of this chapter may not accept for clearing a new product until its registration as a derivatives clearing organization is reinstated under the procedures of § 39.3 of this part; provided however, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

* * * * *

PART 40—PROVISIONS COMMON TO CONTRACT MARKETS, DERIVATIVES TRANSACTION EXECUTION FACILITIES AND DERIVATIVES CLEARING ORANIZATIONS

12. The authority citation for part 40 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a, 8 and 12a, as amended by appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

13. Section 40.1 is amended by revising the definitions of *dormant contract, rule,* and paragraph (6) of *terms and conditions,* by republishing the introductory text of *terms and conditions* and by adding in alphabetical order definitions of *business hours, dormant contract market, dormant derivatives clearing organization* and *dormant derivatives transaction execution facility,* to read as follows:

§ 40.1 Definitions.

* * * * *

Business hours means the hours between 8:15 a.m. and 4:45 p.m., eastern standard time or eastern daylight savings time, whichever is currently in effect in Washington, DC all days except Saturdays, Sundays and legal public holidays.

Dormant contract or *dormant product* means any commodity futures or option contract or other agreement, contract, transaction or instrument in which no trading has occurred in any future or option expiration for a period of six complete calendar months; *provided, however,* no contract or instrument shall be considered to be dormant until the end of thirty-six complete calendar months following initial exchange certification or Commission approval.

Dormant contract market means any designated contract market on which no trading has occurred for a period of six complete calendar months; *provided, however,* no contract market shall be considered to be dormant until the end of 36 complete calendar months following the day that the order of designation was issued or that the contract market was deemed to be designated.

Dormant derivatives clearing organization means any derivatives clearing organization that has not accepted for clearing any agreement, contract or transaction that is required or permitted to be cleared by a derivatives clearing organization under sections 5b(a) and 5b(b) of the Act, respectively, for a period of six complete calendar months; *provided, however,* no derivatives clearing organization shall be considered to be dormant until the end of 36 complete calendar months following the day that the order of registration was issued or that the derivatives clearing organization was deemed to be registered.

Dormant derivatives transaction execution facility means any derivatives transaction execution facility on which no trading has occurred for a period of six complete calendar months; *provided, however,* no derivatives transaction execution facility shall be considered to be dormant until the end of 36 complete calendar months following the day that the order of registration was issued or that the derivatives transaction execution facility was deemed to be registered.

* * * * *

Rule means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, term and condition, trading protocol, agreement or instrument corresponding thereto, in whatever form adopted, and any amendment or addition thereto or repeal thereof, made or issued by a contract market, derivatives transaction execution facility or derivatives clearing organization or by the governing board thereof or any committee thereof, except those provisions relating to the setting of levels of margin for commodities other than those subject to the provisions of section 2(a)(1)(C)(v) of the Act and security futures as defined in section 1a(31) of the Act.

Terms and conditions means any definition of the trading unit or the specific commodity underlying a contract for the future delivery of a commodity or commodity option contract, specification of settlement or delivery standards and procedures, and establishment of buyers' and sellers' rights and obligations under the contract. Terms and conditions include provisions relating to the following:

* * * * *

(6) Delivery standards and procedures, including fees related to delivery or the delivery process, alternatives to delivery and applicable penalties or sanctions for failure to perform;

* * * * *

14. Section 40.3 is amended by revising paragraph (a)(4) and adding paragraph (a)(5) to read as follows:

§ 40.3 Voluntary submission of new products for Commission review and approval.

(a) * * *

(4) The submission identifies with particularity information in the submission, except for the product's terms and conditions which are made publicly available at the time of submission, that will be subject to a request for confidential treatment and supports that request for confidential treatment with reasonable justification; and

(5) The submission includes the fee required under appendix B to this part.

* * * * *

15. Section 40.4 is amended by revising paragraphs (b)(5) and (b)(6) and by adding paragraphs (b)(7) and (b)(8) to read as follows:

§ 40.4 Amendments to terms or conditions of enumerated agricultural contracts.

* * * * *

(b) * * *

(5) Changes required to comply with a binding order of a court of competent jurisdiction, or of a rule, regulation or order of the Commission or of another Federal regulatory authority;

(6) Corrections of typographical errors, renumbering, periodic routine updates to identifying information about approved entities and other such nonsubstantive revisions of a product's terms and conditions that have no effect on the economic characteristics of the product;

(7) Fees or fee changes of less than $1.00; and

(8) Any other rule, the text of which has been submitted to the Secretary of the Commission at least ten days prior to its implementation at its Washington, DC, headquarters and that has been labeled "Non-material Agricultural Rule Change," and with respect to which the Commission has not notified the contract market during that period that the rule appears to require or does require prior approval under this section.

16. Section 40.5 is amended by revising paragraphs (a)(1)(v) and (a)(1)(vi) and by adding paragraph (a)(1)(vii) to read as follows:

§ 40.5 Voluntary submission of rules for Commission review and approval.

(a) * * *

(1) * * *

(v) Note and briefly describe any substantive opposing views expressed with respect to the proposed rule that were not incorporated into the proposed rule prior to its submission to the Commission;

(vi) Identify any Commission regulation that the Commission may need to amend, or sections of the Act or Commission regulations that the Commission may need to interpret in order to approve the proposed rule. To the extent that such an amendment or interpretation is necessary to accommodate a proposed rule, the submission should include a reasoned analysis supporting the amendment to the Commission's rule or interpretation; and

(vii) Identify with particularity information in the submission (except for a product's terms and conditions, which are made publicly available at the time of submission) that will be subject to a request for confidential treatment and support that request for confidential treatment with reasonable justification.

* * * * *

17. Section 40.6 is amended by removing the words "§ 40.1(d)" in paragraph (a)(2) and, in their place, adding the words "§ 40.1", and by revising paragraphs (c)(2)(iii), (c)(2)(iv), (c)(3)(ii)(B), (c)(3)(ii)(C) and (c)(3)(ii)(D), and adding paragraph (c)(2)(v) and (c)(3)(ii)(E) to read as follows:

§ 40.6 Self-certification of rules by designated contract markets and registered derivatives clearing organizations.

* * * * *

(c) * * *

(2) * * *

(iii) *Index products.* Routine changes in the composition, computation, or method of selection of component entities of an index (other than a stock index) referenced and defined in the product's terms, that do not affect the pricing basis of the index, which are

made by an independent third party whose business relates to the collection or dissemination of price information and that was not formed solely for the purpose of compiling an index for use in connection with a futures or option product;

(iv) *Option contract terms.* Changes to option contract rules relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis, or

(v) *Fees.* Fees or fee changes that are $1.00 or more and are established by an independent third party or are unrelated to delivery, trading, clearing or dispute resolution.

(3) * * *

(ii) * * *

(B) *Administrative procedures.* The organization and administrative procedures of a contract market or a derivatives clearing organization's governing bodies such as a Board of Directors, Officers and Committees, but not voting requirements. Board of Directors or Committee composition requirements or procedures, use or disclosure of material non-public information gained through the performance of official duties, or requirements relating to conflicts of interest;

(C) *Administration.* The routine, daily administration, direction and control of employees, requirements relating to gratuity and similar funds, but not guaranty, reserves, or similar funds; declaration of holidays, and changes to facilities housing the market, trading floor or trading area;

(D) *Standards of decorum.* Standards of decorum or attire or similar provisions relating to admission to the floor, badges, or visitors, but not the establishment of penalties for violations of such rules; and

(E) *Fees.* Fees or fee changes that are less than $1.00 or that relate to matters such as dues, badges, telecommunication services, booth space, real time quotations, historical information, publications, software licenses or other matters that are administrative in nature.

18. Section 40.7(b)(1) is revised to read as follows:

§ 40.7 Delegations.

* * * * *

(b) * * *

(1) Relate to, but do not substantially change, the quantity, quality, or other delivery specifications, procedures, or obligations for delivery, cash settlement, or exercise under an agreement, contract or transaction approved for trading by the Commission; daily settlement prices; clearing position limits; requirements or procedures for governance of a registered entity; procedures for transfer trades; trading hours; minimum price fluctuations; and maximum price limit and trading suspension provisions;

* * * * *

19. Part 40 is amended by adding a new § 40.8 to read as follows:

§ 40.8 Availability of public information.

Any information required to be made publicly available by a registered entity under sections 5(d)(7), 5a(d)(4) and 5b(c)(2)(L) of the Act, respectively, will be treated as public information by the Commission at the time an order of designation or registration is issued by the Commission, a registered entity is deemed to be designated or registered, a rule or rule amendment of the registered entity is approved or deemed to be approved by the Commission or can first be made effective the day following its certification by the registered entity.

20. Appendix C to part 40 is amended by revising paragraphs (5)(ii) through (vii) to read as follows:

Appendix C—Information That a Foreign Board of Trade Should Submit When Seeking No-Action Relief To Offer and Sell, to Persons Located in the United States, a Futures Contract on a Broad-based Securities Index Traded on That Foreign Board of Trade

* * * * *

(5) * * *

(ii) The total capitalization, number of stocks (including the number of unaffiliated issuers if different from the number of stocks), and weighting of the stocks by capitalization and, if applicable, by price in the index as well as the combined weighting of the five highest-weighted stocks in the index;

(iii) Procedures and criteria for selection of individual securities for inclusion in, or removal from, the index, how often the index is regularly reviewed, and any procedures for changes in the index between regularly scheduled reviews;

(iv) Method of calculation of the cash-settlement price and the timing of its public release;

(v) Average daily volume of trading by calendar month, measured by share turnover and dollar value, in each of the underlying securities for a six-month period of time and, separately, the dollar value of the average daily trading volume of the securities comprising the lowest weighted 25% of the index for the past six calendar months, calculated pursuant to Sec. 41.11;

(vi) If applicable, average daily futures trading volume; and

(vii) A statement that the index is not a narrow-based security index as defined in section 1a(25) of the Act.

Issued in Washington, DC, this 1st day of October, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–25476 Filed 10–8–02; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 163 and 178

[T.D. 02–59]

RIN 1515–AC78

Duty-Free Treatment for Certain Beverages Made With Caribbean Rum

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with minor revisions, the interim rule amending the Customs Regulations that was published in the **Federal Register** on February 9, 2001, as T.D. 01–17. The interim rule implemented a change to the Caribbean Basin Economic Recovery Act, also known as the Caribbean Basin Initiative (CBI), that enabled certain beverages to obtain duty-free entry under specified conditions when the beverages were processed in the territory of Canada from rum that was the growth, product or manufacture either of a CBI beneficiary country or of the U.S. Virgin Islands. This final rule adopts the certification and supporting documentation requirements set forth in the interim rule that were necessary to establish compliance with the statutory law, thereby ensuring that the rum beverages were properly entitled to duty-free entry under the CBI.

EFFECTIVE DATE: Final rule effective on October 9, 2002. This final rule is applicable to products that are entered or withdrawn from warehouse for consumption on or after October 4, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Wallio, Office of Field Operations, (202–927–9704).

SUPPLEMENTARY INFORMATION:

Background

The Caribbean Basin Economic Recovery Act (19 U.S.C. 2701–2707) (CBERA) establishes an economic recovery program for nations of the Caribbean and Central America. Under the CBERA, also referred to as the Caribbean Basin Initiative (CBI), the President is authorized to proclaim duty-free treatment for all eligible articles of a beneficiary country (19 U.S.C. 2701).

A beneficiary country under the CBI refers to any country listed in 19 U.S.C. 2702(b) with respect to which there is in effect a proclamation by the President designating the country as a beneficiary country for purposes of the CBI (19 U.S.C. 2702(a)(1)(A)). A rule of origin specifies under what conditions an article will be considered to be a product of a beneficiary country—in brief, the article must be wholly the growth, product or manufacture of a beneficiary country, or must be a new or different article of commerce that has been grown, produced, or manufactured in the beneficiary country (19 U.S.C. 2703(a)).

Sections 10.191 through 10.198b of the Customs Regulations (19 CFR 10.191–10.198b) currently implement the duty-free aspects of the CBI.

In pertinent part, in order to be entitled to duty-free treatment under the CBI, an article otherwise eligible for such treatment must be imported directly from a beneficiary country into the customs territory of the United States (19 U.S.C. 2703(a)(1)(A); 19 CFR 10.193).

Before passage of the United States-Caribbean Basin Trade Partnership Act (Title II of Pub. L. 106–200, 114 Stat. 275, enacted on May 18, 2000) (CBTPA), in the case of rum produced in a beneficiary country and then imported into Canada for processing into a rum beverage, the beverage would not have been eligible for duty-free treatment under the CBI because it was not imported directly from a beneficiary country into the United States. At the same time, the beverage would also have been ineligible for duty-free treatment under the North American Free Trade Agreement Implementation Act (19 U.S.C. 3301 *et seq.*) (NAFTA) because the processing it undergoes in Canada would not be sufficient to qualify it as a NAFTA originating good (19 U.S.C. 3332; General Note 12, Harmonized Tariff Schedule of the United States (HTSUS); 19 CFR 181.131; and the appendix to 19 CFR part 181).

Beverages Made in Canada With Caribbean Rum; Amendment of CBERA by United States-Caribbean Basin Trade Partnership Act

Section 212 of the CBTPA added a new paragraph (a)(6) to section 213(a) of the CBERA (19 U.S.C. 2703(a)(6)), in order to provide for duty-free entry under specified conditions for certain beverages that are produced in the territory of Canada from rum that is the growth, product, or manufacture either of a beneficiary country under the CBI or of the U.S. Virgin Islands.

Specifically, under 19 U.S.C. 2703(a)(6), a beverage that is imported directly into the customs territory of the United States from the territory of Canada and that is classifiable under subheading 2208.90 or 2208.40, Harmonized Tariff Schedule of the United States (HTSUS), is entitled to duty-free entry under the CBERA if such beverage is produced in the territory of Canada from rum, provided that the rum: (1) Is the growth, product, or manufacture of a beneficiary country or of the U.S. Virgin Islands; (2) is imported directly into the territory of Canada from a beneficiary country or from the U.S. Virgin Islands; and (3) accounts for at least 90 percent by volume of the alcoholic content of the beverage.

Accordingly, by a document published in the **Federal Register** (66 FR 9643) on February 9, 2001, as T.D. 01–17, Customs issued an interim rule setting forth a new § 10.199 in order to implement the provision allowing for duty-free admission for certain beverages produced in the territory of Canada from Caribbean rum. Section 10.199 prescribed the certification and supporting documentary requirements and recordkeeping responsibilities that must be observed in order to afford duty-free admission for those beverages that properly qualify for such treatment, and to otherwise ensure compliance with the requirements of the statutory law.

In addition, the Interim (a)(1)(A) List set forth as an Appendix to part 163, Customs Regulations (19 CFR part 163, Appendix), that lists the records required for the entry of merchandise, was revised to add a reference to the requirement in § 10.199 that an importer possess those documents that are necessary for the duty-free entry of the beverages, including the declaration of the Canadian processor and related supporting information. Also, part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, was revised to include an appropriate reference to the documentary requirements in § 10.199.

Discussion of Comment

One comment was received in response to the interim rule. The commenter requested clarification as to the effective date for according duty-free treatment to those imported beverages that were made with Caribbean rum under 19 U.S.C. 2703(a)(6). The interim rule stated that it would be applicable to products entered or withdrawn from warehouse for consumption on or after February 9, 2001. However, the commenter asserted that Presidential Proclamation No. 7351 specified an effective date of October 2, 2000.

Customs Response

Presidential Proclamation No. 7351 of October 2, 2000 (65 FR 59329) dealt with the implementation of the amendments made to the CBERA by the CBTPA. While effective on the date signed (October 2, 2000), the Proclamation also made clear that modifications to the HTSUS were necessary to implement any preferential tariff treatment afforded by the amendments; and that these modifications were set forth in an Annex to the Proclamation that would be effective on the date announced by the United States Trade Representative (USTR) in a notice to be published in the **Federal Register**. This Annex included HTSUS subheading 9817.22.05, which was the provision necessary to implement the statutory amendment authorizing duty-free treatment for the rum beverages (19 U.S.C. 2703(a)(6)).

The notice setting forth the Annex was published in the **Federal Register** on October 4, 2000, and, in pertinent part, the notice stated that it was effective with respect to goods entered, or withdrawn from warehouse, for consumption on or after this date of publication (65 FR 59329, at 59332–59333).

Therefore, as already indicated above under the **EFFECTIVE DATE** caption, this final rule document will apply to goods entered, or withdrawn from warehouse, for consumption on or after October 4, 2000. It is observed in this regard, however, that because the interim rule in this matter was not published in the **Federal Register** until February 9, 2001, Customs, prior to this time, did not accept duty-free entries for rum beverages subject to 19 U.S.C. 2703(a)(6).

Consequently, for entries of eligible rum beverages that were made on or after October 4, 2000, and prior to February 9, 2001, importers or their agents may make use of either the Supplemental Information Letter or Post Entry Amendment procedure prior to liquidation of the entry, or they may file a timely protest under 19 U.S.C. 1514, to obtain duty-free treatment for these qualifying beverages. Such claims must be made at the port where the original entry was filed.

Relevant HTSUS Subheadings Not Applicable to Liqueurs

It is noted that the beverages entitled to duty-free treatment under 19 U.S.C. 2703(a)(6) are specifically described as spirituous beverages and liqueurs classifiable under HTSUS subheading 2208.40 or 2208.90. However, in further consideration of the interim rule, Customs noted that neither of these HTSUS subheadings in fact applies to liqueurs. Rather, liqueurs are provided for in HTSUS subheading 2208.70 which is not included within section 2703(a)(6). Thus, liqueurs are not entitled to duty-free treatment under this statutory enactment. For this reason, Customs is deleting any reference to liqueurs set forth in interim § 10.199 in this final rule. For the sake of editorial clarity and convenience, § 10.199, as revised, is republished below in its entirety, together with a related revision to the (a)(1)(A) List in the Appendix to part 163.

Conclusion

After careful consideration of the comment received and further review of the matter, Customs has concluded that the interim rule amending parts 10, 163 and 178, Customs Regulations (19 CFR parts 10, 163 and 178) that was published in the **Federal Register** (66 FR 9643) on February 9, 2001, as T.D. 01–17, should be adopted as a final rule with the modification discussed above.

Inapplicability of Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to the provisions of 5 U.S.C. 553(b)(B), public notice is inapplicable to this final rule because it was determined that good cause existed for dispensing with prior public notice and comment procedures. To this end, the final rule affords a preferential tariff benefit to the importing public; it reflects, and provides a necessary and reasonable means for enforcing, statutory requirements that are already in effect; and it closely parallels existing regulatory provisions that implement similar trade preference programs. Also, for these same reasons, there is no need for a delayed effective date under 5 U.S.C. 553(d). Because this document is not subject to the requirements of 5 U.S.C. 553, as noted, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Nor does this document meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information involved in this final rule document has already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Number 1515–0194 (Documentation requirements for articles entered under various special tariff treatment provisions). This collection includes a claim for duty-free entry of eligible articles under the Caribbean Basin Initiative. This rule does not present any substantive changes to the existing approved information collection. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Exports, Foreign relations, Imports, International traffic, Preference programs, Reporting and recordkeeping requirements, Shipments, Trade agreements (Caribbean Basin Initiative, Generalized System of Preferences, U.S.-Canada Free Trade Agreement, etc.).

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, the interim rule amending 9 CFR parts 10, 163, and 178 which was published at 66 FR 9643, February 9, 2001, is adopted as a final rule with the following changes:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general and the relevant specific sectional authority for part 10 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

Sections 10.191 through 10.199 also issued under 19 U.S.C. 2701 *et seq.*;

* * * * *

2. Section 10.199 is revised to read as follows:

§ 10.199 Duty-free entry for certain beverages produced in Canada from Caribbean rum.

(a) *General.* A spirituous beverage that is imported directly from the territory of Canada and that is classifiable under subheading 2208.40 or 2208.90, Harmonized Tariff Schedule of the United States (HTSUS), will be entitled, upon entry or withdrawal from warehouse for consumption, to duty-free treatment under section 213(a)(6) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(6)), also known as the Caribbean Basin Initiative (CBI), if the spirituous beverage has been produced in the territory of Canada from rum, provided that the rum:

(1) Is the growth, product, or manufacture either of a beneficiary country or of the U.S. Virgin Islands;

(2) Was imported directly into the territory of Canada from a beneficiary country or from the U.S. Virgin Islands; and

(3) Accounts for at least 90 percent of the alcoholic content by volume of the spirituous beverage.

(b) *Claim for exemption from duty under CBI.* A claim for an exemption from duty for a spirituous beverage under section 213(a)(6) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(6)) may be made by entering such beverage under subheading 9817.22.05, HTSUS, on the entry summary document or its electronic equivalent. In order to claim the exemption, the importer must have the records described in paragraphs (d), (e), (f) and (g) of this section so that, upon Customs request, the importer can establish that:

(1) The rum used to produce the beverage is the growth, product or manufacture either of a beneficiary country or of the U.S. Virgin Islands;

(2) The rum was shipped directly from a beneficiary country or from the U.S. Virgin Islands to Canada;

(3) The beverage was produced in Canada;

(4) The rum accounts for at least 90% of the alcohol content of the beverage; and

(5) The beverage was shipped directly from Canada to the United States.

(c) *Imported directly.* For a spirituous beverage imported from Canada to qualify for duty-free entry under the CBI, the spirituous beverage must be imported directly into the customs territory of the United States from Canada; and the rum used in its production must have been imported directly into the territory of Canada either from a beneficiary country or from the U.S. Virgin Islands.

(1) "Imported directly" into the customs territory of the United States from Canada means:

(i) Direct shipment from the territory of Canada to the U.S. without passing through the territory of any other country; or

(ii) If the shipment is from the territory of Canada to the U.S. through the territory of any other country, the spirituous beverages do not enter into the commerce of any other country while en route to the U.S.; or

(iii) If the shipment is from the territory of Canada to the U.S. through the territory of another country, and the invoices and other documents do not show the U.S. as the final destination, the spirituous beverages in the shipment are imported directly only if they:

(A) Remained under the control of the customs authority of the intermediate country;

(B) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the latter's sales agent; and

(C) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the products in good condition.

(2) "Imported directly" from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada means:

(i) Direct shipment from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada without passing through the territory of any non-beneficiary country; or

(ii) If the shipment is from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada through the territory of any non-beneficiary country, the rum does not enter into the commerce of any non-beneficiary country while en route to Canada; or

(iii) If the shipment is from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada through the territory of any non-beneficiary country, the rum in the shipment is imported directly into the territory of Canada only if it:

(A) Remained under the control of the customs authority of the intermediate country;

(B) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail; and

(C) Was not subjected to operations in the intermediate country other than loading and unloading, and other activities necessary to preserve the product in good condition.

(d) *Evidence of direct shipment*—(1) *Spirituous beverages imported from Canada.* The importer must be prepared to provide to the port director, if requested, documentary evidence that the spirituous beverages were imported directly from the territory of Canada, as described in paragraph (c)(1) of this section. This evidence may include documents such as a bill of lading, invoice, air waybill, freight waybill, or cargo manifest. Any evidence of the direct shipment of these spirituous beverages from Canada into the U.S. may be subject to such verification as deemed necessary by the port director.

(2) *Rum imported into Canada from beneficiary country or U.S. Virgin Islands.* The importer must be prepared to provide to the port director, if requested, evidence that the rum used in producing the spirituous beverages was imported directly into the territory of Canada from a beneficiary country or from the U.S. Virgin Islands, as described in paragraph (c)(2) of this section. This evidence may include documents such as a Canadian customs entry, Canadian customs invoice, Canadian customs manifest, cargo manifest, bill of lading, landing certificate, airway bill, or freight waybill. Any evidence of the direct shipment of the rum from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada for use there in producing the spirituous beverages may be subject to such verification as deemed necessary by the port director.

(e) *Origin of rum used in production of the spirituous beverage*—(1) *Origin criteria.* In order for a spirituous beverage covered by this section to be entitled to duty-free entry under the CBI, the rum used in producing the spirituous beverage in the territory of Canada must be wholly the growth, product, or manufacture either of a beneficiary country under the CBI or of the U.S. Virgin Islands, or must constitute a new or different article of commerce that was produced or manufactured in a beneficiary country or in the U.S. Virgin Islands. Such rum will not be considered to have been grown, produced, or manufactured in a beneficiary country or in the U.S. Virgin Islands by virtue of having merely undergone blending, combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the product.

(2) *Evidence of origin of rum*—(i) *Declaration.* The importer must be prepared to submit directly to the port director, if requested, a declaration prepared and signed by the person who produced or manufactured the rum, affirming that the rum is the growth, product or manufacture of a beneficiary country or of the U.S. Virgin Islands. While no particular form is prescribed for the declaration, it must include all pertinent information concerning the processing operations by which the rum was produced or manufactured, the address of the producer or manufacturer, the title of the party signing the declaration, and the date it is signed.

(ii) *Records supporting declaration.* The supporting records, including those production records, that are necessary for the preparation of the declaration must also be available for submission to the port director if requested. The declaration and any supporting evidence as to the origin of the rum may be subject to such verification as deemed necessary by the port director.

(f) *Canadian processor declaration; supporting documentation.* (1) *Canadian processor declaration.* The importer must be prepared to submit directly to the port director, if requested, a declaration prepared by the person who produced the spirituous beverage(s) in Canada, setting forth all pertinent information concerning the production of the beverages. The declaration will be in substantially the following form:

I, _____ declare that the spirituous beverages here specified are the products that were produced by me (us), as described below, with the use of rum that was received by me (us); that the rum used in producing the beverages was received by me (us) on

_____ (date), from _____ (name and address of owner or exporter in the beneficiary country or in the U.S. Virgin Islands, as applicable); and that such rum accounts for at least 90 percent of the alcoholic content by volume, as shown below, of each spirituous beverage so produced.

Marks and numbers	Description of products and of processing	Alcoholic content of products; alcoholic content (%) attributable to rum [1]
.....	.....	.....
.....	.....	.....

Marks and numbers	Description of products and of processing	Alcoholic content of products, alcoholic content (%) attributable to rum [1]

[1] The production records must establish, for each lot of beverage produced, the quantity of rum the growth, product or manufacture of a CBI beneficiary country or of the U.S. Virgin Islands under 19 U.S.C. 2703(a)(6) that is used in producing the finished beverage; the alcoholic content by volume of the finished beverage; and the alcoholic content by volume of the finished beverage, expressed as a percentage, that is attributable to the qualifying rum. If rum from two or more qualifying sources (*e.g.*, rum the growth, product or manufacture of a CBI beneficiary country or of the U.S. Virgin Islands and other rum the growth, product or manufacture of another CBI country) are used in processing the beverage, the alcoholic content requirement may be met by aggregating the alcoholic content of the finished beverage that is attributable to rum from each of the qualifying sources used in processing the finished beverage, as reflected in the production records.

Date _____
Address _____
Signature _____
Title _____

(2) *Availability of supporting documents.* The information, including any supporting documents and records, necessary for the preparation of the declaration, as described in paragraph (f)(1) of this section, must be available for submission to the port director, if requested. The declaration and any supporting evidence may be subject to such verification as deemed necessary by the port director. The specific documentary evidence necessary to support the declaration consists of those documents and records which satisfactorily establish:

(i) The receipt of the rum by the Canadian processor, including the date of receipt and the name and address of the party from whom the rum was received (the owner or exporter in the beneficiary country or the U.S. Virgin Islands); and

(ii) For each lot of beverage produced and included in the declaration, the specific identification of the production lot(s) involved; the quantity of qualifying rum that is used in producing the finished beverage, including a description of the processing and of the finished products; the alcoholic content by volume of the finished beverage; and the alcoholic content by volume of the finished beverage, expressed as a percentage, that is attributable to the qualifying rum.

(g) *Importer system for review of necessary recordkeeping.* The importer will establish and implement a system of internal controls which demonstrate that reasonable care was exercised in its claim for duty-free treatment under the CBI. These controls should include tests to assure the accuracy and availability of records that establish:

(1) The origin of the rum;

(2) The direct shipment of the rum from a beneficiary country or from the U.S. Virgin Islands to Canada;

(3) The alcohol content of the finished beverage imported from Canada; and

(4) The direct shipment of the finished beverage from Canada to the United States.

(h) *Submission of documents to Customs.* The importer must be prepared to submit directly to the port director, if requested, those documents and/or supporting records as described in paragraphs (d), (e) and (f) of this section, for a period of 5 years from the date of entry of the related spirituous beverages under section 213(a)(6) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(6)), as provided in § 163.4(a) of this chapter. If requested, the importer must submit such documents and/or supporting records to the port director within 60 calendar days of the date of the request or such additional period as the port director may allow for good cause shown.

PART 163—RECORDKEEPING

1. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

2. The Appendix to part 163 is amended by revising the listing for § 10.199 under section IV to read as follows:

Appendix to Part 163—Interim (a)(1)(a) List

* * * * *

IV. * * *

§ 10.199 Documents, etc. required for duty-free entry of spirituous beverages produced in Canada from CBI rum, declaration of Canadian processor (plus supporting information).

* * * * *

Robert C. Bonner,

Commissioner of Customs.

Approved: October 3, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–25654 Filed 10–8–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice 4160]

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

AGENCY: Department of State.

ACTION: Interim final rule; request for comments.

SUMMARY: This rule amends the Schedule of Fees for Consular Services. Specifically, it raises from $65 to $100 the fee charged for the processing of an application for a nonimmigrant visa (MRV) or a combined nonimmigrant visa and border crossing card (BCC). The Department of State is raising the fee as an emergency measure to ensure that sufficient resources are available to meet the costs of processing nonimmigrant visas, the demand for which has dropped at the same time that the processing of nonimmigrant visa applications has become more labor intensive because of the increased security screening of visa applicants in the aftermath of the September 11, 2001 attacks on New York and Washington and in Pennsylvania. This rule further corrects the item listed as the "border crossing card" for minors under age 15 by deleting reference to a 5-year period of validity.

DATES: *Effective date:* This interim rule is effective on November 1, 2002.

Comment period: The Department of State will accept written comments from interested persons up to November 8, 2002.

ADDRESSES: Written comments may be submitted to the Office of the Executive Director, Bureau of Consular Affairs, U.S. Department of State, Suite H1004, 2401 E Street NW., Washington, DC 20520, or by e-mail to *fees@state.gov*.

FOR FURTHER INFORMATION CONTACT: Susan Abeyta, Office of the Executive Director, Bureau of Consular Affairs, Department of State; phone: 202–663–2505, telefax: 202–663–2499; e-mail: *fees@state.gov*.

SUPPLEMENTARY INFORMATION:

Background

What Is the Authority for This Action?

The majority of the Department of State's consular fees are established pursuant to the general user charges statute, 31 U.S.C. 9701 (which directs that certain government services be self-sustaining to the extent possible), and/or U.S.C. 4219, which as implemented through Executive Order 10718 of June 27, 1957, authorizes the Secretary of State to establish fees to be charged for official services provided by U.S. embassies and consulates. In addition, a number of statutes address specific fees. A cost-based, nonimmigrant visa processing fee for the machine readable visa (MRV) and for a combined border crossing and nonimmigrant visa card (BCC) (22 CFR 41.32) is authorized by section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Public Law 103–236 (April 30, 1994), as amended. In addition, aliens under 15 are in certain circumstances entitled to a combined MRV/BCC for a statutorily established fee of $13, which is below the full cost of service, pursuant to section 410 of title III of the Commerce, Justice, State Appropriations Act enacted as part of the Omnibus FY 1999 Appropriations Act, Public Law 105–277 (Oct. 21, 1998). Various statutes permit the Department to retain some of the consular fees it collects, including the MRV and MRV/BCC fees. Section 103 of the Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107–173 (May 14, 2002), amended section 140(a) of Public Law 103–235 (which authorizes the MRV fee) to permit the Department to retain all MRV fees until they are expended.

Consistent with OMB Circular A–25 guidelines, the Department conducted a cost-of-service study from September 1999 to October 2001 to update the Schedule of Fees for Consular Services. The results of that study were the foundation of the current Schedule, which was published as a final rule on May 16, 2002, at Volume 67, No. 95 FR 34831. The Schedule went into effect on June 1, 2002.

Why Is the Department Raising the MRV and BCC Application Processing Fee to $100 at This Time?

The $65 MRV/BCC fee that went into effect on June 1, 2002 was based on worldwide nonimmigrant visa operations' total costs distributed over an anticipated applicant level of approximately 10.5 million per year. It is now clear, however, that the estimate of the number of nonimmigrant visa applicants was too high. Visa demand worldwide has dropped by approximately 19.6% overall for the current fiscal year, which has been affected by international economic conditions and the events of September 11, 2001. The trend is continuing downward: nonimmigrant visa demand was down 26% during the normally peak season of June 1 to August 31. In August 2002, visa demand was down 32.9%. There has been no corresponding decline in the Department's costs of administering nonimmigrant visa services; such costs have remained the same in part because the processing of each application has become more time consuming and labor intensive as a result of enhanced security screening requirements for applicants instituted since September 11, 2001. Thus, the Department is facing a critical revenue shortfall because its nonimmigrant visa application processing costs can no longer be recovered by MRV revenues generated by the MRV fee when set at $65. Taking the 2001 Cost of Service Study's figures as a baseline, but now distributing the costs of nonimmigrant visa application processing services over a smaller number of applicants, based on the smaller number of applicants that the Department has seen in the current fiscal year, the Department has determined that an MRV fee of $100 will be required to recover the full cost of processing nonimmigrant visa applications during the anticipated period of the current Schedule of Fees. Given the uncertainty with respect to when the applicant volume will recover, it is reasonable and appropriate to raise the fee now. Failing to do so could jeopardize the Department's ability to continue critical programs, including enhanced border security measures recently undertaken.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as an interim rule, with a provision for post-promulgation comments, based on the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The rule will not take effect, however, until November 1, 2002. Publishing the rule in this way, with a post-promulgation opportunity for comment, will allow the Department to make the rule effective at the earliest reasonable opportunity. Allowing a full 30-day comment period followed by a publication of the final rule with a further 30 days before its effective date is not practicable or in the public interest. That process would delay imposition of the new fee notwithstanding the critical need for the Department to recover its costs and to have sufficient resources to conduct activities that are dependent on MRV fee revenues, including the enhanced security screening of visa applicants and other measures being taken in the aftermath of the September 11, 2001 terrorist attacks on the United States. By setting the new fee through an interim final rule, the Department will have sufficient time to make necessary provisions to implement the new fee as early in Fiscal Year 2003 as is feasible. Comments received before the end of the comment period will be addressed in a subsequent final rule.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $1 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements. It will affect OMB collection number 1405—by increasing the public cost burden.

List of Subjects in 22 CFR Part 22

Consular services, Fees, Passports and visas.

Accordingly, 22 CFR part 22 is amended as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 continues to read as follows:

Authority: 8 U.S.C. 1153 note, 1351, 1351 note; 10 U.S.C. 2602 (c); 22 U.S.C. 214, 2504(a), 4201, 4206, 4215, 4219; 31 U.S.C. 9701; Pub. L. 105–277, 112 Stat. 2681 *et seq.*; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

2. Section 22.1 is amended by revising item No. 21(a), (b), and (c), to read as follows:

§ 22.1 Schedule of fees.

Item No.	Fee
. . . . .	
21. Nonimmigrant visa application and border crossing card processing fees (per person):	
(a) Nonimmigrant visa [21–MRV Processing]	$100
(b) Border crossing card—10 year (age 15 and over) [22–BCC 10 Year]	100
(c) Border crossing card—(under age 15). For Mexican citizen if parent has or is applying for a border crossing card (23–BCC Child)	13
. . . . .	

Dated: September 27, 2002.

Grant S. Green, Jr.,

Under Secretary of State for Management, Department of State.

[FR Doc. 02–25692 Filed 10–4–02; 2:59 pm]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

31 CFR Part 1

Privacy Act, Implementation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury gives notice of a final rule to exempt an Internal Revenue Service system of records entitled "Employee Complaint and Allegation Referral Records—Treasury/IRS 00.007" from certain provisions of the Privacy Act.

EFFECTIVE DATE: October 9, 2002.

FOR FURTHER INFORMATION CONTACT: Jim D'Elia, Commissioner's Complaint Processing and Analysis Group, N:ADC:C , 1111 Constitution Avenue, NW., Washington, DC 20224, Phone 202–622–5212.

SUPPLEMENTARY INFORMATION: The Department of the Treasury published a notice of a proposed rule exempting a system of records from certain provisions of the Privacy Act of 1974, as amended. The Internal Revenue Service (IRS) published the system notice in its entirety at 67 FR 36963–36964 (May 28, 2002), and the proposed rule at 67 FR 40253–40254 (June 12, 2002).

Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, as amended, if the system is investigatory material compiled for law enforcement purposes. The "Employee Complaint and Allegation Referral Records—Treasury/IRS 00.007", contains investigatory material compiled for law enforcement purposes.

The proposed rule requested that public comments be sent to the Director, Commissioner's Processing and Analysis Group, Internal Revenue Service, 1111 Constitution Ave., N:ADC:C, NW., Washington, DC 20224, no later than July 12, 2002.

The IRS did not receive comments on the proposed rule. Accordingly, the Department of the Treasury is hereby giving notice that the system of records entitled "Employee Complaint and Allegation Referral Records—Treasury/IRS 00.007", is exempt from certain provisions of the Privacy Act.

The provisions of the Privacy Act from which the system of records is exempt pursuant to 5 U.S.C. 552a(k)(2) are as follows: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H) and (e)(4)(I), and (f).

As required by Executive Order 12866, it has been determined that this proposed rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

The regulation will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that these regulations will not significantly affect a substantial number of small entities. The final rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that this final rule would not impose new record keeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1, Subpart C of title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 paragraph (g)(1)(viii) is amended by adding the following text to the table in numerical order.

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.

* * * * *

(g) * * *

(1) * * *

(viii) * * *

System No.	Name of system
. .	. . . . .
IRS 00.007	Employee Complaint and Allegation Referral Records.
. .	. . . . .

Dated: September 17, 2002.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 02–25691 Filed 10–8–02; 8:45 am]

BILLING CODE 4830–11–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK38

Enrollment—Provision of Hospital and Outpatient Care to Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: VA's medical regulations captioned "Enrollment—Provision of Hospital and Outpatient Care to Veterans" implement a national enrollment system to manage the delivery of inpatient hospital care and outpatient medical care. Prior to October 1, 2002, veterans were eligible to be enrolled based on seven priority categories. In this final rule we add veterans awarded the Purple Heart to priority category 3 to implement new statutory requirements. We also delete the copayment provisions from priority category 4 to clarify statutory requirements. In addition, we divide priority category 7 into two new priority categories (7 and 8) to implement new statutory requirements, using the subpriorities for former category 7 for these new categories. Further, we state principles for placing veterans in enrollment categories to help ensure clarity and fairness in making priority category determinations. Finally, we change the VA officials who can make enrollment decisions and provide an additional address for sending a request for voluntary disenrollment.

DATES: Effective Date: November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Amy Hertz, Office of Policy and Planning (105D), at (202) 273–8934 or Roscoe Butler, Chief Policy & Operations, Health Administration Service (10C3), at (202) 273–8302. These individuals are in the Veterans Health Administration of the Department of Veterans Affairs, and are located at 810 Vermont Avenue, NW., Washington, DC 20420.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on July 23, 2002 (67 FR 48078), the Department of Veterans Affairs proposed to amend its enrollment regulations that manage the delivery of inpatient hospital care and outpatient medical care. We requested comments for a 30-day period that ended August 22, 2002, to allow for a final rule to be established in time to allow the VA Secretary to have as many options as possible concerning the provision of health care services to veterans in fiscal year 2003. We received no comments. Based on the rationale set forth in the proposed rule, we are adopting the proposed rule as a final rule.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: September 18, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. Section 17.36 is amended by:

A. Removing "Chief Network Officer" wherever it appears and adding, in its place, "Deputy Under Secretary for Health for Operations and Management

or Chief, Health Administration Service or equivalent official at a VA medical facility, or Director, Health Eligibility Center".

B. Revising paragraphs (a)(2), (b)(4), and (b)(7).

C. In paragraph (b)(3), removing "prisoners of war;" and adding, in its place, "prisoners of war; veterans awarded the Purple Heart;"

D. Adding a new paragraph (b)(8).

E. Revising paragraph (d)(1); removing "Note to Paragraph (d)(1)"; and redesignating paragraphs (d)(3) through (d)(5) as paragraphs (d)(4) through (d)(6), respectively.

F. Adding a new paragraph (d)(3).

G. Revising newly redesignated paragraphs (d)(5) introductory text; and (d)(5)(i).

H. In newly redesignated paragraph (d)(5)(iii), removing "priority category 5;" and adding, in its place, "priority category 5 or priority category 7;".

I. In paragraph (f), removing "[insert actual photocopy of VA Form 10–10EZ]".

J. Revising the authority at the end of the section.

The revisions and additions read as follows:

§ 17.36 Enrollment—provision of hospital and outpatient care to veterans.

(a) * * *

(2) Except as provided in paragraph (a)(3) of this section, a veteran enrolled under this section and who, if required by law to do so, has agreed to make any applicable copayment is eligible for VA hospital and outpatient care as provided in the "medical benefits package" set forth in § 17.38.

* * * * *

(b) * * *

(4) Veterans who receive increased pension based on their need for regular aid and attendance or by reason of being permanently housebound and other veterans who are determined to be catastrophically disabled by the Chief of Staff (or equivalent clinical official) at the VA facility where they were examined.

* * * * *

(7) Veterans who agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g) if their income for the previous year constitutes "low income" under the geographical income limits established by the U.S. Department of Housing and Urban Development for the fiscal year that ended on September 30 of the previous calendar year. For purposes of this paragraph, VA will determine the income of veterans (to include the income of their spouses and dependents) using the rules in §§ 3.271, 3.272, 3.273, and 3.276. After determining the veterans' income and the number of persons in the veterans' family (including only the spouse and dependent children), VA will compare their income with the current applicable "low-income" income limit for the public housing and section 8 programs in their area that the U.S. Department of Housing and Urban Development publishes pursuant to 42 U.S.C. 1437a(b)(2). If the veteran's income is below the applicable "low-income" income limits for the area in which the veteran resides, the veteran will be considered to have "low income" for purposes of this paragraph. To avoid a hardship to a veteran, VA may use the projected income for the current year of the veteran, spouse, and dependent children if the projected income is below the "low income" income limit referenced above. This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans; and

(ii) All other priority category 7 veterans.

(8) Veterans not included in priority category 4 or 7, who are eligible for care only if they agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g). This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans; and

(ii) All other priority category 8 veterans.

* * * * *

(d) *Enrollment and disenrollment process*—(1) *Application for enrollment.* A veteran may apply to be enrolled in the VA healthcare system at any time. A veteran who wishes to be enrolled must apply by submitting a VA Form 10–10EZ to a VA medical facility. Veterans applying based on inclusion in priority categories 1, 2, 3, 6, and 8 do not need to complete section II, but must complete the rest of the form. Veterans applying based on inclusion in priority category 4 because of their need for regular aid and attendance or by being permanently housebound need not complete section II, but must complete the rest of the form. Veterans applying based on inclusion in priority category 4 because they are catastrophically disabled need not complete section II, but must complete the rest of the form, if: they agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g); they are a veteran of the Mexican border period or of World War I or a veteran with a 0 percent service-connected disability who is nevertheless compensated; their catastrophic disability is a disorder associated with exposure to a toxic substance or radiation, or with service in the Southwest Asia theater of operations during the Gulf War as provided in 38 U.S.C. 1710(e); or their catastrophic disability is an illness associated with service in combat in a war after the Gulf War or during a period of hostility after November 11, 1998, as provided in 38 U.S.C. 1710(e). All other veterans applying based on inclusion in priority category 4 because they are catastrophically disabled must complete the entire form. Veterans applying based on inclusion in priority category 5 must complete the entire form. Veterans applying based on inclusion in priority category 7 must complete the entire form except for section IIE. VA form 10–10EZ is set forth in paragraph (f) of this section and is available from VA medical facilities.

* * * * *

(3) *Placement in enrollment categories.*

(i) Veterans will be placed in priority categories whether or not veterans in that category are eligible to be enrolled.

(ii) A veteran will be placed in the highest priority category or categories for which the veteran qualifies.

(iii) A veteran may be placed in only one priority category, except that a veteran placed in priority category 5 based on a specified disorder or illness will also be placed in priority category 7 or priority category 8, as applicable, if the veteran has previously agreed to pay the applicable copayment, for all matters not covered by priority category 6.

(iv) A veteran who had been enrolled based on inclusion in priority category 5 and became no longer eligible for inclusion in priority category 5 due to failure to submit to VA a current VA Form 10–10EZ will be changed automatically to enrollment based on inclusion in priority category 6 or 8 (or more than one of these categories if the previous principle applies), as applicable, and be considered continuously enrolled. To meet the criteria for priority category 5, a veteran must be eligible for priority category 5 based on the information submitted to VA in a current VA Form 10–10EZ. To be current, after VA has sent a form 10–10EZ to the veteran at the veteran's last known address, the veteran must return the completed form (including signature) to the address on the return envelope within 60 days from the date VA sent the form to the veteran.

(v) Veterans will be disenrolled, and reenrolled, in the order of the priority categories listed with veterans in priority category 1 being the last to be disenrolled and the first to be reenrolled. Similarly, within priority categories 7 and 8, veterans will be disenrolled, and reenrolled, in the order of the priority subcategories listed with veterans in subcategory (i) being the last to be disenrolled and first to be reenrolled.

* * * * *

(5) *Disenrollment.* A veteran enrolled in the VA health care system under paragraph (d)(2) or (d)(4) of this section will be disenrolled only if:

(i) The veteran submits to a VA medical center or the VA Health Eligibility Center, 1644 Tullie Circle, Atlanta, Georgia 30329, a signed document stating that the veteran no longer wishes to be enrolled; or

* * * * *

(Authority: 38 U.S.C 101, 501, 1521, 1701, 1705, 1710, 1721, 1722).

[FR Doc. 02–25491 Filed 10–8–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AF00

Schedule for Rating Disabilities; The Skin

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correction.

SUMMARY: In a document published in the **Federal Register** on July 31, 2002, (67 FR 49590), we amended that portion of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities that addresses the skin. The document contains an error in the Supplementary Information portion of the preamble. That error consists of an incorrect restatement of regulatory text. This document corrects that error.

DATES: *Effective Date:* This correction is effective July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Policy and Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: In rule FR Doc. 02–19331, published on July 31, 2002 (67 FR 49590), on page 49595, in column 1, the first paragraph, the phrase "a 30-percent evaluation calls for recurrent debilitating episodes at least four times during the past 12-month period despite ongoing immunosuppressive therapy" is corrected to read "a 30-percent evaluation calls for recurrent debilitating episodes at least four times during the past 12-month period, and requiring intermittent systemic immunosuppressive therapy."

Approved: October 1, 2002.

Roland Halstead,

Acting Director, Office of Regulatory Law.

[FR Doc. 02–25492 Filed 10–8–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 154–1154a; FRL–7392–6]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving revisions to the Iowa State Implementation Plan (SIP). The SIP revisions, regarding the state's construction permitting rules as they pertain to industrial anaerobic lagoons and anaerobic lagoons for animal feeding operations in Iowa, will help ensure Federal enforceability of the state's air program.

DATES: This direct final rule will be effective December 9, 2002, unless EPA receives adverse comments by November 8, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Lynn M. Slugantz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lynn M. Slugantz at (913) 551–7883.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is an SIP?

What is the Federal approval process for an SIP?

What does Federal approval of a state regulation mean to me?

What is being addressed in this action?

Have the requirements for approval of an SIP revision been met?

What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled "Approval and Promulgation of

Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Action?

The Iowa Department of Natural Resources (IDNR) has requested that EPA approve changes to Iowa Administrative Code, Chapter 22, "Controlling Pollution," as a revision to the Iowa SIP. The changes were adopted by the Environmental Protection Commission on March 15, 1999, and became effective on May 12, 1999. Our approval of these revisions is consistent with our past approval of Iowa construction permitting regulations for these types of lagoons. While the revisions to IAC chapter 22 reference IAC chapter 65, the state of Iowa did not request EPA approval of the chapter 65 requirements since it includes requirements (for example odor controls) not pertaining to the requirements of section 110 of the Clean Air Act.

The following is a description of the changes to Chapter 22 of the Iowa Administrative Code which are the subject of this approval action:

1. *Application for a Construction Permit*—Chapter 22, subrule 22.1(3), was amended to specify that the owner or operator of any new or modified industrial anaerobic lagoon or a new or modified anaerobic lagoon for an animal feeding operation other than a small operation, as defined elsewhere in the State's regulations, shall apply for a construction permit.

2. *Required Application Information for Animal Feeding Operation*—Chapter 22, subrule 22.1(3), paragraph "c", subparagraph (3), was amended to refer to Iowa rule 567–65.15(455B) for a description of information to be provided in the construction permit application.

3. *Conditions for State Issuance of a Construction Permit for Anaerobic Lagoons*—Chapter 22, subrule 22.3(2), was amended to refer to criteria in subrule 23.5(2) and Iowa rule 567–65.15(455B) to be used in determining when to issue a construction permit for industrial anaerobic lagoon and for animal feeding operations using an anaerobic lagoon, respectively.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are approving amendments to Iowa Administrative Code, Chapter 22, subrules 22.1(3), 22.1(3)"c"(3) and 22.3(2). We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 9, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 3, 2002.

William W. Rice,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—Iowa

2. In § 52.820 the table in paragraph (c) is amended under Chapter 22—Controlling Pollution by:

a. Revising the entry for "567–22.1".

b. Revising the entry for "567–22.3".

The revisions read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Comments
Iowa Department of Natural Resources, Environmental Protection Commission [567]				
Chapter 22—Controlling Pollution				
567–22.1	Permits Required for New or Existing Stationary Sources.	3/14/01	October 9, 2002 67 FR 62889	
567–22.3	Issuing Permits	3/14/01	October 9, 2002 67 FR 62889	Subrule 22.3(6) has not been approved as part of the SIP.

* * * * *

[FR Doc. 02–25590 Filed 10–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT–001–0038, UT–001–0039, UT–001–0040; FRL–7262–2]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Vehicle Inspection and Maintenance Programs; Salt Lake County and General Requirements and Applicability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On March 21, 2002, EPA published a notice of proposed rulemaking (NPR) that proposed approval of revisions to Utah's state air quality implementation plan (SIP). The revisions update Utah's vehicle inspection and maintenance (I/M) programs. On August 14, 2001 and on August 15, 2001, the Governor of Utah submitted revisions to the SIP affecting the State's motor vehicle I/M programs. The August 14, 2001, submittal revised Utah's Rule R307–110–33, which incorporates by reference Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County to allow Salt Lake County to take 100% credit for their test and repair vehicle I/M network, rather than the previously required EPA default of a 50% emissions reduction credit. The August 15, 2001, submittal revises Utah's Rule R307–110–31, which incorporates by reference Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability to require mandatory implementation of the inspection of vehicle On-Board Diagnostic (OBD) systems starting January 1, 2002. In this action, EPA is approving the revisions to Utah's Rule R307–110–33 and Rule R307–110–31.

EFFECTIVE DATE: November 8, 2002.

ADDRESSES: Richard R. Long, Director, Air and Radiation Program, Mail code 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202 and copies of the Incorporation by Reference material are available at the United States Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114.

FOR FURTHER INFORMATION CONTACT: Jeffrey Kimes, EPA, Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "our," or "us" is used, we mean EPA.

Throughout this document wherever "R307–110–33" is used alone it is

assumed to mean "R307–110–33, which incorporates by reference Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County" and wherever "R307–110–31" is used alone it is assumed to mean "R307–110–31, which incorporates by reference Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability."

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I. Summary of EPA's Final Action

We are approving revisions to the SIP that were submitted by the Governor of Utah on August 14, 2001 and August 15, 2001. The August 14, 2001, submittal updates Utah's Rule R307–110–33. Specifically, this revision allows Salt Lake County to receive full credit (100%) for its test and repair vehicle Inspection and Maintenance (I/M) network. Salt Lake County has demonstrated that its test and repair I/M network is as effective as a test only I/M network and is eligible to take full emission reduction credit rather than the previously required EPA default of a 50% emissions reduction credit. The revised rule R307–110–33 being approved in this action supersedes and replaces the existing State rule.

The August 15, 2001, submittal updates Utah's Rule R307–110–31. This revision required the mandatory implementation of the inspection of vehicle On-Board Diagnostic (OBD) systems starting January 1, 2002 in all areas implementing an I/M program. Therefore, this requirement is applicable for Davis County, Salt Lake County, Utah County, and Weber County. As a convenience to vehicle owners, Davis, Utah, and Weber Counties are already implementing this program. Salt Lake County began implementing the program on January 1, 2002. The revised rule R307–110–33 being approved in this action supersedes and replaces the existing R307–110–33 rule.

II. What Is the State's Process To Submit These Materials to EPA?

Section 110(k) of the Clean Air Act (CAA) addresses our actions on submissions of revisions to a State Implementation Plan (SIP). The CAA requires states to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted by the State, after reasonable notice and public hearing, and prior to the revision being submitted by a state to us.

A. R307–110–33, Which Incorporates by Reference Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County

The Utah Air Quality Board (UAQB) held a public hearing on June 21, 2001, to include in the Salt Lake County SIP element a demonstration that Salt Lake County's test and repair I/M network is as effective as a test only I/M network, and allow the County to claim 100% credit instead of 50% credit in emissions reduction. The UAQB adopted the revisions to R307–110–33, on August 1, 2001. This SIP revision became State effective on August 2, 2001, and was submitted by the Governor of Utah to us on August 14, 2001.

B. R307–110–31, Which Incorporates by Reference Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability

The UAQB held a public hearing on June 21, 2001, to consider amendments to postpone the Federally required inspection of the OBD systems on newer vehicles, because the Federal implementation date had been postponed until January 1, 2002 (66 FR 18156). The UAQB adopted the revisions to R307–110–31 on August 1, 2001. This SIP revision became State effective on August 2, 2001, and was submitted by the Governor of Utah to us on August 15, 2001.

We have evaluated the Governor's submittals and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. As required by section 110(k)(1)(B) of the CAA, we reviewed these SIP revision materials for conformance with the completeness criteria in 40 CFR part 51, appendix V and determined that the Governor's submittals were administratively and technically complete. Our completeness determination was sent on October 18, 2001, through a letter from Jack W. McGraw, Acting Regional Administrator, to Governor Michael O. Leavitt.

III. Evaluation of the State's Submittal

We have thoroughly reviewed the Utah rules that are the subject of this rulemaking and have found the revisions to meet all applicable requirements. A detailed evaluation of the rule revisions submitted by the State can be found in the notice of proposed rulemaking (NPR) for these rules found at 57 FR 9425, March 1, 2001. The NPR provided a detailed evaluation of how the State submittal meets the CAA requirements and the entire evaluation is not repeated here. The evaluation below is a limited summary of the evaluation found in the NPR.

A. R307–110–33, Which Incorporates by Reference Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County

In this action, we are approving revisions to Utah's Rule R307–110–33, as adopted by the UAQB on August 1, 2001, and State effective on August 2, 2001. The Salt Lake County vehicle I/M program is in place to reduce vehicle emissions so that the Federal carbon monoxide National Ambient Air Quality Standard (NAAQS) and the Federal 1-hour ozone NAAQS are not exceeded. The changes in Rule R307–110–33 involve a demonstration that Salt Lake County's test and repair I/M network is as effective as a test only I/M network.

Section 182(b)(4) of the CAA requires that Salt Lake County implement an I/M program at least as effective as EPA's Basic Performance Standard as specificied in 40 CFR 51.352. Our July 24, 2000, rulemaking (see 65 FR 45526) deleted our prior requirement of an automatic 50% emission credit discount for decentralized test and repair I/M programs if it can be demonstrated that the test and repair I/M network is as effective as a test only I/M network.

We are approving Utah's SIP revision to Rule R307–110–33, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County. Salt Lake County's test and repair network was demonstrated to be as effective as a test-only network.

B. R307–110–31, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability

In this action, we are also approving SIP revisions to Utah's Rule R307–110–31, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as adopted by the Utah Air Quality Board on August 1, 2001, and State effective on August 2, 2001.

The Governor had previously submitted a revision to Rule R307–110–31 on February 22, 1999, that we did not take action on. The February 22, 1999 submittal committed the State of Utah to implement testing of vehicle OBD systems by January 1, 2001, as was required by the 40 CFR part 51 subpart S Inspection/Maintenance Program Requirements. On April 5, 2001, we extended the Federal date for mandatory implementation of the inspection of vehicle OBD systems, in 40 CFR part 51 Subpart S, to January 1, 2002 (*see* 66 FR 18156). The Governor's August 15, 2001 submittal meets the requirements of our April 5, 2001 rulemaking (*see* 66 FR 18156) and supersedes and replaces the previous SIP revision to Rule R307–110–31 submitted by the Governor on February 22, 1999. The Governor's August 15, 2001, SIP revision simply incorporates the Federal OBD rule change.

IV. Public Comment

No public comment was received in response to the EPA's proposed rulemaking on these Utah SIP revisions.

V. Final Rulemaking Action

In this Final Rulemaking Action, we are approving revisions to the SIP affecting the State's motor vehicle I/M programs submitted by the Governor of Utah. The approved revisions include the August 14, 2001, submittal revising Utah's Rule R307–110–33, which incorporates by reference Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County and the August 15, 2001, submittal revising Utah's Rule R307–110–31 which incorporates by reference, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability to require mandatory implementation of the inspection of vehicle On-Board Diagnostic (OBD) systems starting January 1, 2002. The final rule is effective November 8, 2002.

VI. Consideration of Clean Air Act Section 110(l)

Section 110(l) of the Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable progress towards attainment of a National Ambient Air Quality Standard (NAAQS) or any other applicable requirements of the Act. This SIP revision is consistent with Federal requirements and does not interfere with any applicable requirements of the Act. Therefore, we conclude that our approval of Utah's Rule R307–110–33 and R307–110–31 meets the requirements of section 110(l) of the Act.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 9, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: August 8, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart TT—Utah

2. Section 52.2320 is amended by adding paragraph (c)(48)and (c)(49) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(48) On August 14, 2001, the Governor of Utah submitted a revision to Utah's SIP to update UACR R307–110–33, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County. The changes involve a demonstration that Salt Lake County's test and repair I/M network is as effective as a test only I/M network.

(i) Incorporation by reference.

(A) UACR R307–110–33, which incorporates by reference Utah SIP, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County and appendices 1.a, 1.b, and 1.c, adopted by the UAQB August 1, 2001 and State effective on August 2, 2001.

(49) On August 15, 2001, the Governor of Utah submitted a revision to Utah's SIP to update UACR R307–110–31, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability. This revision required the mandatory implementation of the inspection of vehicle On-Board Diagnostic (OBD) systems starting January 1, 2002 in all areas implementing an I/M program.

(i) Incorporation by reference.

(A) UACR R–307–110–31 which incorporates by reference Utah SIP, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability adopted by the UAQB on August 1, 2001 and State effective on August 2, 2001.

[FR Doc. 02–25588 Filed 10–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MA–01–7203a; FRL –7387–5a]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Massachusetts; Plan for Controlling MWC Emissions From Existing Large MWC Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the Sections 111(d)/129 State Plan originally submitted by the Massachusetts Department of Environmental Protection (MA DEP) on January 11, 1999, and revised on November 16, 2001. This State Plan is for implementing and enforcing provisions at least as protective as the federal Emission Guidelines (EGs) applicable to existing Municipal Waste Combustors (MWCs) units with capacity to combust more than 250 tons/day of municipal solid waste (MSW).

EFFECTIVE DATE: This final rule will become effective on November 8, 2002.

ADDRESSES: Documents which EPA has incorporated by reference for previous rulemaking are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, Room B102, 1301 Constitution Avenue NW., Washington, DC 20460. You may examine copies of materials the MA DEP submitted to EPA relative to this action during normal business hours at the following locations:

Environmental Protection Agency-New England, Region 1, Air Permits Program, Office of Ecosystem Protection, Suite 1100, One Congress Street, Boston, Massachusetts 02114–2023.

Massachusetts Department of Environmental Protection, Bureau of Waste Prevention, Division of Business Compliance, One Washington Street, Boston, Massachusetts 02108, (617) 556–1120.

The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

FOR FURTHER INFORMATION CONTACT: John Courcier at (617) 918–1659, or by e-mail at *courcier.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

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VI. By what date must MWCs in Massachusetts achieve compliance?.
VII. Administrative Requirements

I. What Action Is EPA Taking Today?

EPA is approving the above referenced State Plan with revisions. EPA finds the State Plan to be at least as protective as EPA's Emission Guidelines. *See* 40 CFR part 60, subpart Cb.

II. Why Did EPA Withdraw Its Original Approval?

This rulemaking was originally published as a direct final notice in the July 14, 1999 **Federal Register**. *See* 64 FR 37923 for additional information. Subsequent to this notice, EPA received numerous adverse and supportive comments. Because of the adverse comments, EPA withdrew the direct final notice on September 1, 1999. *See* 64 FR 47680. EPA has responded to these adverse comments under III below.

III. How Has EPA Addressed the Adverse Comments on Its Original Direct Final Approval?

As mentioned under section II above, EPA published its direct final and proposed approval of the State's MWC Plan, including the MWC rule, on July 14, 1999. The plan was to become effective on September 13, 1999, unless EPA received adverse comment by August 13, 1999. Subsequently, we did receive timely comments objecting to the State's Plan and EPA's approval of it. Following the September 1, 1999 withdrawal of EPA's proposed direct final approval, EPA received additional adverse comments as well as supportive comments. The adverse comments received include the following:

- The MA DEP's mercury limit is arbitrary and has not been demonstrated to be consistently achievable.
- There are no test methods that have been validated at the 28 µg/dscm level.
- MA DEP did not provide the public with adequate notice and opportunity to comment, in that MA DEP modified the mercury standard to be more stringent after the close of the public comment period, and did not provide further opportunity for comment.

The full text of written comments and EPA's responses can be found in the docket located at EPA's Boston office.

EPA will briefly address the adverse comments below:

EPA does not find the mercury limit to be arbitrary. Units equipped with fabric filters and carbon injection have been shown to be capable of meeting the limit. Although some MWC units equipped with electrostatic precipitators (ESPs) have not been shown to be able to achieve the limit consistently, MA DEP can reasonably determine that well-controlled units should be able to meet the 28 µg/dscm level. MA DEP has addressed the issue of mercury spikes based on MSW content by allowing facilities to average four quarterly test results to achieve the standard. In addition, the Plan allows ESP-controlled sources unable to meet the standard within the first year to apply for a limited waiver for periods of up to five years, to provide time to install and test additional control measures.

The more stringent numerical limit, and the elimination of the 85% reduction option, are not contrary to Clean Air Act requirements. Section 129(b)(2) of the Act requires a State to submit a plan that is "at least as protective" as EPA's EGs. By proposing a more stringent mercury standard, MA DEP has provided a standard that is at least as protective as the federal mercury standard. The provisions of sections 111(d) and 129 do not prevent a State from submitting emission limits that are more stringent than the federal EGs. Even if the State's limit has not been consistently achieved by all ESP-controlled units in the past, the State may require such units to achieve a level of control that has been shown to be achievable by other municipal waste combustors.

One commenter indicated that there are no approved test methods available for measuring mercury at and below the 28 µg/dscm level. This commenter believes EPA can not approve a limit for which there is no validated test method. It is correct that Method 29 (the approved EPA test method for measuring mercury) has not been validated at a large MWC at the MA DEP's mercury level. However, Method 29 has been validated at both smaller MWCs and at power plants at the low levels being discussed here. Therefore, EPA has no reason to believe that Method 29 is not an appropriate test method to use in this situation.

As required by 40 CFR 60.23(c), the State conducted public hearings and received comments on the State Plan. One of the comments to EPA is that the State should have conducted a further public process before adopting a standard that differed from the standard it had proposed in the notice of public hearing. In particular, the commenter claimed that the State was required to provide further opportunity for comment before adopting a mercury standard that differed from the proposal in eliminating the compliance option of 85% reduction by weight. EPA believes that the State has met EPA's requirement that it provide a public hearing on the State Plan prior to adoption. With respect to the adequacy of the public hearing process under Massachusetts law, the Massachusetts Attorney General's Office has stated that the procedures were adequate under the Massachusetts Administrative Procedure Act. Accordingly, EPA is satisfied that the State has demonstrated that it provided an adequate public hearing process, and that it has adequate legal authority to enforce the standard, in accordance with 40 CFR 60.26(a).

IV. Why Is EPA Approving the State's Plan at This Time?

EPA's approval of MA DEP's State Plan is based on our findings that:

(1) MA DEP provided adequate public notice of, and held public hearings for the proposed rule-making, and Massachusetts may carry out and enforce its provisions which are at least as protective as the EGs for large MWCs, and

(2) MA DEP demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

V. When Does the State Plan Become Effective and What Becomes of the Federal Plan?

This final rule is effective on November 8, 2002, without further notice. The Federal Plan is an interim action. On the effective date of this action, the Federal Plan will no longer apply to MWC units covered by the State Plan.

VI. By What Date Must MWCs in Massachusetts Achieve Compliance?

All existing large MWC units in the Commonwealth of Massachusetts must now be in compliance with these requirements. The final compliance date was December 19, 2000.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This action also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This action also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing section 111(d) State Plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS),

EPA has no authority to disapprove a State Plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State Plan submission, to use VCS in place of a State Plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 9, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* § 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal .

Dated: September 27, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Part 62 is amended by adding a new § 62.5340 and a new undesignated center heading to Subpart W to read as follows:

Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

§ 62.5340 Identification of Plan.

(a) *Identification of Plan.* Massachusetts Plan for the Control of Designated Pollutants from Existing Plants (Section 111(d) Plan).

(b) The plan was officially submitted as follows:

(1) Control of metals, acid gases, organic compounds and nitrogen oxide emissions from existing municipal waste combustors, originally submitted on January 11, 1999 and amended on November 16, 2001. The Plan does not include: the site assignment provisions of 310 CMR 7.08(2)(a); the definition of "materials separation plan" at 310 CMR 7.08(2)(c); and the materials separation plan provisions at 310 CMR 7.08(2)(f)(7).

(2) [Reserved]

(c) *Designated facilities.* The plan applies to existing sources in the following categories of sources:

(1) Municipal waste combustors.

(2) [Reserved]

3. Part 62 is amended by adding a new § 62.5425 and a new undesignated center heading to subpart W to read as follows:

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Municipal Waste Combustors With the Capacity to Combust Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.5425 Identification of sources.

(a) The plan applies to the following existing municipal waste combustor facilities:

(1) Fall River Municipal Incinerator in Fall River.

(2) Covanta Haverhill, Inc., in Haverhill.

(3) American Ref-Fuel of SEMASS, L.P. in Rochester.

(4) Wheelabrator Millbury Inc., in Millbury.

(5) Wheelabrator Saugus, J.V., in Saugus.

(6) Wheelabrator North Andover Inc., in North Andover.

(b) [Reserved]

[FR Doc. 02–25685 Filed 10–8–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AD25

Disaster Assistance; Federal Assistance to Individuals and Households

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule; correction.

SUMMARY: We, FEMA, published an interim final rule on September 30, 2002, 67 FR 61446, concerning Federal disaster assistance to individuals and households. There were a number of errors that were misleading and need clarification. This document corrects those errors.

EFFECTIVE DATE: September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Hirsch; Response and Recovery Directorate; (202) 646–4099, or (e-mail) at *Michael.Hirsch@fema.gov*.

SUPPLEMENTARY INFORMATION: On September 30, 2002 we published an interim final rule on, 67 FR 61446, concerning Federal disaster assistance to individuals and households. There were a number of inadvertent errors in that rule, and this document corrects those errors.

In the interim final rule (FR Doc. 02–24773), published September 30, 2002, 67 FR 61446, make the following corrections:

1. On page 61448, in the second line of the third column, correct the reference "206.110" to read "206.101".

PART 206—[CORRECTED]

2. On page 61452, in the first column, correct amendatory instruction "2." to read as follows:

2. Subpart D is amended by revising the heading and adding §§ 206.110 through 206.120 to read as follows:

§ 206.115 [Corrected]

3. On page 61455, in the sixth line from the bottom of the third column, correct the reference "206.111(a)" to read "206.120(a)".

§ 206.117 [Corrected]

4. On page 61456 in the 31st line from the top of the second column, correct "(i) Direct Assistance" to read "(ii) Direct Assistance".

5. On page 61456 on the 18th line from the bottom of the third column, correct "206.119(e)" to read "206.110(e)".

§ 206.120 [Corrected]

6. On page 61459 on the 37th line from the top of the third column, correct "(vii) Processing for retention of records" to read "(viii) Process for retention of records".

Dated: October 3, 2002.

John R. D'Araujo, Jr.,

Assistant Director, Response and Recovery Directorate.

[FR Doc. 02–25681 Filed 10–8–02; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

Schedule of Fees Authorized by 49 U.S.C. 30141

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final Rule; correction.

SUMMARY: The final rule adopting fees beginning on page 60596 in the **Federal Register** of Thursday, September 26, 2002, contains errors that need correction.

DATES: This correction is effective October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Chief Counsel, NHTSA (202–366–5238).

SUPPLEMENTARY INFORMATION: NHTSA published a final rule on September 26, 2002 (67 FR 60596) adopting fees for Fiscal Year (FY) 2003, and until further notice, as authorized by 49 U.S.C. 30141, relating to the registration of importers and the importation of motor vehicles not certified as conforming to the Federal motor vehicle safety standards. This correction corrects that document.

1. On page 60599 in the first column, under Amendatory Instruction 2 to section 594.6, paragraph D is corrected to read as follows: "D. Revising the last sentence of paragraph (h)."

2. On page 60599 in the first column, under Amendatory Instruction 2 to section 594.6, the following paragraph is added: "F. Revising paragraph (d)."

3. On page 60599 in the second column, after paragraph (b), add paragraph (d) to read as follows:

* * * * *

(d) That portion of the initial annual fee attributable to the remaining activities of administering the registration program on and after October 1, 2002, is set forth in paragraph (i) of this section. This portion shall be refundable if the application is denied, or withdrawn before final action upon it.

* * * * *

Dated: October 4, 2002.

Jeffrey N. Runge,

Administrator.

[FR Doc. 02–25726 Filed 10–8–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG92

Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for *Thlaspi californicum* (Kneeland Prairie Penny-cress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Thlaspi californicum* (Kneeland Prairie penny-cress). The critical habitat consists of one unit whose boundaries encompass a total area of approximately 30 hectares (74 acres) in Humboldt County, California. Section 7 of the Act requires Federal agencies to ensure that any actions they fund, authorize, or carry out do not result in the destruction or adverse modification of critical habitat. As required by section 4 of the Act, we considered economic and other relevant impacts prior to making a final decision on the size and configuration of the critical habitat unit.

DATES: This rule is effective November 8, 2002.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule are available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Office, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521.

FOR FURTHER INFORMATION CONTACT: Bruce Halstead, Project Leader, Arcata Fish and Wildlife Office, at the above address (telephone 707/822–7201; facsimile 707/822–8411).

SUPPLEMENTARY INFORMATION:

Background

Thlaspi californicum (Kneeland Prairie penny-cress) is a perennial member of the mustard family (Brassicaceae). The species grows from 9.5 to 12.5 centimeters (3.7 to 4.9 inches) tall with a basal cluster of green to purplish, sparsely toothed leaves. Leaves borne along the stem are sessile (without a stalk) with entire to toothed margins. The white flowers have strongly ascending flower stalks. *Thlaspi californicum* flowers from April to June. The fruit is a sharply pointed silicle (a short fruit typically no more than two to three times longer than wide), and is elliptic to obovate, without wings, and with an ascending stalk.

Serano Watson (1882) first described *Thlaspi californicum* based on a collection made by Volney Rattan from among rocks at Kneeland Prairie at 760 meters (m) (2,500 feet (ft)) elevation. Jepson (1925) later referred to it as *T. alpestre* var. *californicum*. Munz (1959) referred to the taxon as *T. glaucum* var. *hesperium;* however, he segregated it as *T. californicum* in his supplement (Munz 1968). Holmgren (1971) assigned the name *Thlaspi montanum* var. *californicum*. Finally, the taxon was returned to *T. californicum* in the current *Jepson Manual* (Hickman 1993, Rollins 1993).

Thlaspi californicum is endemic to serpentine soils in Kneeland Prairie, located in the outer north coast range of Humboldt County, California. Serpentine soils are derived from ultramafic rocks (rocks with unusually large amounts of magnesium and iron). The entire known distribution of *T. californicum* occurs on Ashfield Ridge at elevations ranging from 792 to 841 m (2,600 to 2,760 ft).

Plant communities in Kneeland Prairie include the following: California annual and introduced perennial grasslands; seasonal and perennial wetlands; and mixed oak/Douglas-fir *(Pseudotsuga menziesii)* woodlands (SHN 1997). Boulder outcrops in Kneeland Prairie form scattered knobs that protrude out of the grasslands. The majority of these outcrops are volcanic rock types such as greenstone pillow basalt, basalt, tuff, or agglomerates (State of California 1975). Along Ashfield Ridge and nearby side ridges, many of the outcrops are serpentine (State of California 1975). The serpentine outcrops exhibit a distinctive flora compared to the surrounding grassland (SHN 2001). In addition to *Thlaspi californicum*, serpentine outcrops on Ashfield Ridge support the following two special interest plants, both considered as rare by the California

Native Plant Society: *Fritillaria purdyi* (Purdy's fritillary) and *Astragalus rattanii* ssp. *rattanii* (Rattan's milk-vetch) (SHN 1997).

Little is known about the reproductive biology of *Thlaspi californicum*. Some members of the genus, such as *T. montanum*, are known to outbreed, while others, such as *T. alpestre*, primarily self-pollinate (Holmgren 1971). Due to its very close taxonomic relationship to *T. montanum*, *T. californicum* is almost certainly an outbreeder. Generalist bees and flies are the assumed principal pollinators (SHN 2001).

The only known occurrence of *Thlaspi californicum* includes five relatively distinct groups of plants all located within 300 m (980 ft) of each other on three small patches of serpentine. The species occupies an area which is fragmented by the Kneeland Airport and Mountain View Road. We do not know if genetic interchange occurs between plants in these separate groups; therefore, the five areas will be referred to as individual colonies. The location was described as consisting of three colonies in 1990 (Imper 1990, SHN 2001); a fourth colony was discovered in 1999 (SHN 2001), and one additional colony in 2001 (SHN 2001).

In 1997, the largest colony contained an estimated 10,840 plants (SHN 1997); this estimate was later corrected to 9,919 plants (SHN 2001). The sizes of the other two colonies known in 1997 were 140 and 40 plants (SHN 1997); therefore, the total revised estimate in 1997 was 10,099 plants. In 2001, the total number of *Thlaspi californicum* plants was estimated at approximately 5,293 (SHN 2001), with 5,142 plants at the largest colony, and 90 plants, 30 plants, 16 plants, and 15 plants at the four smaller colonies. In 2002, the total number of plants was estimated at approximately 8,954, with 8,851 plants at the largest colony, and 114 plants, 41 plants, 25 plants, and 23 plants at the four smaller colonies (Imper 2002). These data suggest a large annual turnover in the population and downplay the significance of the population decline noted between 1997 and 2001.

Historically, several land use activities probably altered the distribution and abundance of *Thlaspi californicum* colonies. These activities included construction of the county road in the 1800s (currently Mountain View Road), the Kneeland Airport in 1964, and the California Department of Forestry & Fire Protection (CDFFP) helitack base in 1980. Prior to 1964, suitable habitat for *T. californicum* on Ashfield Ridge consisted of two serpentine patches (1.9 hectares (ha) (4.7 acres (ac)) and 0.6 ha (1.4 ac)) and scattered smaller patches of 0.01 ha (0.02 ac) to 0.2 ha (0.6 ac) in size. The two larger serpentine outcrops formed a semi-continuous ridgetop exposure covering more than 2.4 ha (6 ac), extending in an east-west direction along the top of the ridge in the area now occupied by the airstrip, county road, and helitack base (SHN 2001).

Construction of the county road, airstrip, and helitack base bisected and fragmented the two largest patches of suitable habitat into four relatively isolated patches and also reduced the total available habitat by approximately 50 percent. No data are available on the distribution or number of individuals prior to this habitat alteration. However, these colonies probably occupied a larger area or formed one large colony prior to these construction activities, based on anecdotal evidence. The impacts on population or community processes from this habitat loss and possible population reduction are unknown. In general, smaller serpentine outcrops support a higher number of alien species (Harrison 1999). Smaller outcrops may also be more vulnerable to recreational impacts, trampling, and modification of the unique serpentine soil chemistry as a result of enrichment from the surrounding meadow system (SHN 2001). Patch size influences fruit and flower production in *Calystegia collina* (serpentine morning glory) (Wolf and Harrison 2001). Small outcrops had fewer patches of *Calystegia collina*, patches with relatively low densities of flowers, and they attracted fewer insect visitors. These factors, in addition to a reduction and/or fragmentation of the site, increase the likelihood of extinction.

In 2001, all known colonies occupied an estimated 0.3 ha (0.8 ac), divided among five colonies as follows: 0.29 ha (0.72 ac); 0.02 ha (0.05 ac); 0.008 ha (0.02 ac); 0.004 ha (0.01 ac); and 0.002 ha (0.005 ac). The five known colonies occur on three separate serpentine outcrops, but they currently occupy only about 29 percent of the suitable habitat on these three outcrops (total area 1.1 ha (2.8 ac)). In addition to the three occupied outcrops, fourteen unoccupied serpentine outcrops occur on Ashfield Ridge, ranging in size from 0.01 ha (0.02 ac) to 0.2 ha (0.6 ac) (combined area of 0.9 ha (2.2 ac)). The distances between the outcrops range from 10 m to 85 m (33 ft to 279 ft). These patches are located within 400 m (1,312 ft) of the largest *Thlaspi californicum* colony. Serpentine soils contiguous with and in the vicinity of the colonies are most likely to support *T. californicum* in the future.

Historic records for *Thlaspi californicum* refer to Kneeland Prairie and Ashfield Ridge as site locations (Watson 1882, Holmgren 1971). Over 99 percent of the serpentine soils in Kneeland Prairie occur on Ashfield Ridge. Two additional small serpentine outcrops are located on a ridge approximately 4.8 kilometers (km) (3 miles (mi)) southwest of Ashfield Ridge (State of California 1975). No historic records exist to show that *T. californicum* occupied these two outcrops. Similarly, no current records exist to indicate that they are occupied.

The next nearest known serpentine outcrops to Kneeland Prairie occur approximately 6.4 km (4 mi) southeast of Ashfield Ridge at Iaqua Buttes. The serpentine outcrops at Iaqua Buttes support the more widespread *Thlaspi montanum* var. *montanum*. No evidence of *T. californicum* or intergradation between *T. californicum* and *T. montanum* var. *montanum* was observed during surveys at the Iaqua Buttes site in 2001 (SHN 2001). *T. montanum* var. *montanum* also occurs on serpentine soils in the vicinity of Horse Mountain approximately 24 km (15 mi) northeast of Ashfield Ridge (SHN 2001). In 2001, serpentine outcrops on the western edge of the Six Rivers National Forest were surveyed for *T. californicum*. No populations of this species were located during these field visits (Jennings 2001). Service personnel surveyed the largest known serpentine exposure west of U.S. Highway 101 and south of Myers Flat (vicinity of Cedar Flat) in 2002; this survey also produced negative results. No evidence exists to show that the historic range of *T. californicum* ever extended beyond Kneeland Prairie (SHN 2001).

Previous Federal Action

Federal Government actions for *Thlaspi californicum* began when we published an updated notice of review (NOR) for plants on December 15, 1980 (45 FR 82480). This notice included *T. californicum* (referred to as *T. montanum* var. *californicum*) as a category 2 candidate. Category 2 candidates were those taxa for which data in our possession indicated listing might be appropriate, but for which additional biological information was needed to support a proposed rule. On November 28, 1983, we published a supplement to the 1980 NOR (48 FR 53640) as well as the subsequent revision on September 27, 1985 (50 FR 39526) which included *T. m.* var. *californicum* as a category 2 candidate.

We published revised NORs on February 21, 1990 (55 FR 6184) and September 30, 1993 (58 FR 511440). In both notices, we included *Thlaspi montanum* var. *californicum* as a category 1 candidate. Category 1 candidates are taxa for which we have on file sufficient information on biological vulnerability and threats to support preparation of listing proposals, but issuance of the proposed rules are precluded by other pending listing proposals of higher priority. In our February 28, 1996, **Federal Register** Notice of Review of Plant and Animal Taxa that are Candidates for Listing as Endangered or Threatened Species (CNOR) (61 FR 7595), we discontinued designation of multiple categories of candidates. Only taxa meeting the definition of former category 1 are now considered candidates for listing. *T. montanum* var. *californicum* was included as a candidate species in the February 28, 1996, notice. Our September 19, 1997, CNOR (62 FR 49397) included *T. californicum* as a candidate for listing.

On February 12, 1998 (63 FR 7112), we published a proposal to list *Thlaspi californicum* as endangered. Our October 25, 1999, CNOR (64 FR 57533) included *T. californicum* as a taxon proposed for listing as endangered. The final rule listing *T. californicum* as an endangered species was published on February 9, 2000 (65 FR 6332).

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species. At the time *Thlaspi californicum* was proposed, we determined that designation of critical habitat for *T. californicum* was not prudent because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this species to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered.

A series of court decisions for a variety of species overturned our determinations that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cri. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we reexamined the question of whether designation of critical habitat for *Thlaspi californicum* was prudent. At the time *T. californicum* was listed, we found that designation of critical habitat was prudent.

On June 17, 1999, our failure to issue final rules for listing *Thlaspi californicum* and nine other plant species as endangered or threatened, and our failure to make a final critical habitat determination for the 10 species was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *Babbitt* (Case No. C99–2992 (N.D.Cal.)). On May 19, 2000, the U.S. District Court for the Northern District of California issued an order setting the timetable for the promulgation of the critical habitat designations. We agreed to complete the proposed critical habitat designations for the 10 species by September 30, 2001. However, in mid-September 2001, plaintiffs agreed to a brief extension of this due date until October 19, 2001.

On October 24, 2001, we published a proposed rule to designate critical habitat for *Thlaspi californicum* (66 FR 53756). The proposed critical habitat consisted of one unit whose boundaries encompassed a total area of approximately 30 ha (74 ac) in Humboldt County, California. The public comment period was open for 60 days until December 24, 2001. We did not receive any requests for public hearings during the comment period, and we did not hold any public hearings. On May 7, 2002, we published a notice announcing reopening of the public comment period and availability of the draft economic analysis for the proposed critical habitat designation for *T. californicum* (67 FR 30643). The comment period was open for an additional 30 days until June 6, 2002. In mid-May 2002, the plaintiffs agreed to extend the completion date of the final rule until September 30, 2002.

Summary of Comments and Recommendations

In the proposed rule published on October 24, 2001 (66 FR 53756), we requested that all interested parties submit comments that might contribute to the development of the final rule. The first comment period closed on December 24, 2001 (66 FR 53756). Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. An announcement was posted on the Service website October 24, 2001, and an article was published in the Times-Standard newspaper on October 29, 2001, inviting general public comment. We reopened the comment period on May 7 to June 6, 2002, to allow for comments on the draft economic analysis of the proposed critical habitat (67 FR 30643).

We received a total of seven written comments during the two comment periods, including three from designated peer reviewers. Of the four comments from private individuals, three opposed and one was neutral on the proposed action. We reviewed all comments received for substantive issues and new information regarding critical habitat and *Thlaspi californicum*. Public comments are grouped into two general issues relating specifically to (1) procedural and regulatory issues and (2) biological issues. Comments have been incorporated directly into the final rule or addressed in the following summary.

Issue 1: Procedural and Regulatory Issues

(1) *Comment:* Two commenters requested that all or a portion of their lands be removed from the critical habitat designation.

Service Response: Section 4(b)(2) of the Act states "The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat." Absent a finding by us that the economic or other relevant impacts of a critical habitat designation would outweigh the benefits of designation, the Act does not provide for the exclusion from critical habitat of private lands essential to the conservation of listed species. The boundaries of the critical habitat unit were delineated with a 100-m grid. We attempted to exclude areas from the boundary that did not contain primary constituent elements; however, we did not map the unit in sufficient detail to exclude all such areas. The lands owned by one of the commenters (commenter A) is such an area. This land, less than 2.5 ha (1 ac), is located in the northwest corner of the unit boundary and does not contain any primary constituent elements. Therefore, by definition this

commenter's land is not critical habitat. The other commenter's (commenter B) land does contain primary constituent elements. We believe that this parcel of land contains components essential to the conservation of *Thlaspi californicum* because it includes one of the fourteen unoccupied serpentine outcrops on Ashfield Ridge. We believe that the designation of these lands (commenter B) in this final rule as critical habitat outweigh the benefits of their exclusion from being designated as critical habitat. The possible removal of these lands from the designation is also addressed in the Exclusions Under Section 4(b)(2) section of this rule.

(2) *Comment:* One commenter was concerned about the impacts of the designation on private landowners and wanted to know if private landowners would be compensated for the loss of use of their lands because of protective measures. Another noted generally that the Constitution does not give plants rights over citizens.

Service Response: Designation of critical habitat, by itself, does not require private landowners to undertake any management activities or otherwise restrict the use of private lands. Critical habitat applies only to actions carried out, funded, or permitted by the Federal Government. The Act provides that Federal actions may not destroy or adversely modify critical habitat. Critical habitat designation will not affect any uses of private land unless actions on the land are carried out, funded, or require authorization from the Federal Government. If a Federal nexus does exist for a particular activity on private lands, the activity may still proceed unless the Service concludes that the action would destroy or adversely modify critical habitat. In that event, the Act provides for the development of reasonable and prudent alternatives to the proposed activity that meet its intended purposes and would avoid the destruction or adverse modification of critical habitat. Given the nature of activities currently occurring on the designated private lands and likely to occur in the future as described below, the likelihood of a future federal nexus is remote and the likelihood of any future section 7 consultation under the Act resulting in compensable restrictions on private land uses is even more unlikely.

Issue 2: Biological Concerns

(1) *Comment:* One commenter questioned the information provided on population numbers and whether *Thlaspi californicum* is growing in other places.

Service Response: The current population sampling design involves a complete count of plants in the four small colonies and uses a statistical-based sampling protocol to estimate the number of plants in the largest colony. In 2001 and 2002, surveys were conducted in an attempt to locate new populations of *Thlaspi californicum*. These surveys occurred in the following locations: (1) laqua Buttes which is the nearest known serpentine outcrop to Kneeland Prairie; (2) suitable habitat located on the Six Rivers National Forest within 16 km (10 mi) north and south of the Kneeland Prairie site; and (3) the largest known serpentine exposure west of U.S. Highway 101 and south of Myers Flat. No new *T. californicum* sites were located during any of these surveys. As stated by one of the peer reviewers, the data show that this plant is restricted to one location on Ashfield Ridge.

(2) *Comment:* One peer reviewer suggested that the potential impacts of herbivory should be addressed.

Service Response: Cattle grazing has occurred in Kneeland Prairie for at least a century. The current level of grazing appears relatively low. Unique serpentine soils in Kneeland Prairie support low total plant cover (typically less than 40 percent) and do not support many of the desirable forage species available in the prairie. Impacts of cattle grazing are not quantified, but available evidence suggests they are minimal at the current low stocking level. Recent data suggest that herbivory by rabbits or other small mammals may be significant in some colonies, but no quantitative data have yet been collected on the magnitude of this impact.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from five knowledgeable individuals with expertise in botany. Three of the five peer reviewers provided comments that are summarized in the previous section and incorporated in the final rule; all three reviewers supported the proposal. None of the reviewers provided new information about the biology or distribution of *Thlaspi californicum* or about additional areas considered essential to its conservation.

One peer reviewer stated that the methods and criteria used in the proposed rule are "* * * sound in light of current conservation biology theory and the information known about the taxonomy and ecology of the species". The reviewer also stated that the "* * * inclusion of unoccupied habitat * * * on the serpentine outcrops and adjunct prairie is needed to ensure ecological functions of the species" and "the definition of primary constituent elements * * * is comprehensive and well planned."

A second peer reviewer stated that the "proposed actions, were, even without complete data, reasonable and based on solid scientific assumptions." The reviewer recommended a monitoring strategy that includes establishment of permanent plots and marking individuals. In 2002, we established permanent grids and mapped individual plants in order to monitor life history and species composition.

The third peer reviewer suggested that herbivory on the known population and the survey of potential habitat on Six Rivers National Forest lands should be discussed. Discussions of these issues were added to the final rule. The reviewer also stated that the "* * * inclusion of unoccupied habitat and primary constituent elements * * *" was supported by the literature.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Areas outside the geographic area currently occupied by the species shall be designated as critical habitat only when a designation limited to its present range would be inadequate to ensure the conservation of the species.

Conservation is defined in section 3(3) of the Act as the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which listing under the Act is no longer necessary. Regulations under 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species.

Habitat included in a critical habitat designation must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

When we designate critical habitat at the time of listing, as required under section 4 of the Act, or under short court-ordered deadlines, we may not have the information necessary to identify all areas which are essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

We will designate only currently known essential areas. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If information available at the time of designation does not show an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. We will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best scientific and commercial data demonstrate that the unoccupied areas are essential for the conservation needs of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments, unpublished materials, and expert opinion or personal knowledge.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best available scientific information in determining which areas were essential for the conservation of *Thlaspi californicum*. This information included data from the following sources: 1993 United States Geological Survey (USGS) 1:24,000 scale, 3.75', infrared, color digital, orthophotographic, quarter quadrangle images; geologic map of the Van Duzen River Basin (State of California 1975); 1962 panchromatic, 1:12,000 scale, aerial photograph HCN–2 22–17; ownership parcels from the Humboldt County Planning Department, updated as of August 2000; recent biological surveys and reports; and discussions with botanical experts. We also conducted or contracted for site visits, either cursory or more extensive, at locations on private lands where access was obtained, on State lands managed by CDFFP, and on public lands managed by Six Rivers National Forest and the Bureau of Land Management, including laqua Buttes and Board Camp Mountain.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to: space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for germination, or seed dispersal; and habitats protected from disturbance or which are representative of the historic geographical and ecological distributions of a species.

The long-term probability of conservation of *Thlaspi californicum* is dependent upon a number of factors, including protection of serpentine sites containing existing colonies; protection of adequate serpentine sites on Ashfield Ridge to allow for recolonization or expansion; preservation of the connectivity between serpentine sites to allow gene flow between the colonies through pollinator activity and seed dispersal mechanisms; and protection and maintenance of proximal areas for the survival of pollinators and seed dispersal agents. In addition, the small, fragmented distribution of this species makes it especially vulnerable to edge effects from adjacent activities, such as the spread of non-native species; nearby uses of herbicides and pesticides; livestock grazing; and erosion due to natural or diverted flow patterns.

Based on our knowledge of this species to date, the primary constituent elements of critical habitat for *Thlaspi californicum* consist of, but are not limited to:

(1) Thin rocky soils that have developed on exposures of serpentine substrates (SHN 2001);

(2) Plant communities that support a relatively sparse assemblage of serpentine indicator or facultative-serpentine indicator species, including various native forbs and grasses but not trees or shrubs, such that competition for space and water (both above and below ground), and light is reduced, compared to the surrounding habitats (SHN 2001). Known associated species include: *Festuca rubra* (red fescue), *Koeleria macrantha* (junegrass), *Elymus glaucus* (blue wildrye), *Eriophyllum lanatum* (woolly sunflower), *Lomatium macrocarpum* (large-fruited lomatium), and *Viola hallii* (Hall's violet) (SHN 2001);

(3) Serpentine substrates that contain 15 percent or greater (by surface area) of exposed gravels, cobbles, or larger rock fragments, which may contribute to alteration of factors of microclimate, including surface drainage and moisture availability, exposure to wind and sun, and temperature (SHN 2001); and

(4) Prairie grasslands and oak woodlands located within 30 m (100 ft) of the serpentine outcrop area on Ashfield Ridge. Protection of these habitats is essential to the conservation of the *Thlaspi californicum* in that it will provide connectivity among the serpentine sites, help to maintain the hydrologic and edaphic integrity of the serpentine sites, and support populations of pollinators and seed dispersal organisms.

Criteria Used To Identify Critical Habitat

In our delineation of the critical habitat unit, we selected areas to provide for the conservation of *Thlaspi californicum* at the only location it is known to occur. Adult individuals of the species currently only grow on approximately 0.3 ha (0.8 ac) of land on Ashfield Ridge in Kneeland Prairie. However, the area essential for the conservation of the species is not

restricted solely to the area where the plant is physically visible. It must include an area large enough to maintain the ecological functions upon which the species depends (*e.g.*, the hydrologic and edaphic conditions).

We first mapped all known *Thlaspi californicum* occurrences. Due to the historic loss and fragmentation of the largest patches of suitable habitat, we also mapped all suitable habitat in proximity to the known occurrences. Maintaining the number and distribution of serpentine outcrops on Ashfield Ridge will help to ensure the long-term viability of *T. californicum*, as high-quality habitat patches in close proximity to a source population have the highest likelihood of future occupancy (Murphy *et al.* 1990). Protection of these outcrops will provide a range of habitat conditions, for example, moisture availability, temperature, and wind exposure, which will optimize the opportunities for recolonization or expansion and reduce the likelihood of extinction due to stochastic events. They will also protect undetected *T. californicum* colonies and seed banks.

We also mapped grasslands and oak woodlands surrounding the serpentine outcrops. These areas provide connectivity between all serpentine outcrops; maintain the hydrologic and edaphic integrity of the serpentine sites; and support biological agents of pollination and seed dispersal necessary for the conservation of the species. Inclusion of the grasslands and oak woodlands will also minimize impacts to serpentine outcrops resulting from external peripheral influences, such as erosion, grazing, or the spread of exotic species.

At this time, we are not designating as critical habitat any serpentine outcrops within Kneeland Prairie, other than the outcrops on Ashfield Ridge. A draft recovery plan is in preparation, which does not call for establishment of *Thlaspi californicum* beyond Ashfield Ridge. However, since *T. californicum* has an extremely restricted range, establishment at new locations may be determined necessary to provide insurance against stochastic events. In that case, critical habitat may be reevaluated based on recommendations in the final recovery plan.

We considered ownership status in delineating areas as critical habitat. *Thlaspi californicum* is known only to occur on State, county, and private lands. We are not aware of any Tribal lands in or near our designated critical habitat unit for *T. californicum*.

We used a geographic information system (GIS) to facilitate identification of critical habitat areas. We used information from recent biological surveys and reports; discussions with botanical experts; and locations of serpentine soils to create GIS data layers. Serpentine soil sites were derived from a geologic map, infrared color digital orthophotos, and global positioning system data collected in the field during 2000 and 2001. These data layers were created on a base of 1:24,000 scale USGS 3.75', infrared, color digital, orthophotographic, quarter quadrangle images. We used these data layers to map the primary constituent elements. We defined boundaries of the designated critical habitat unit by overlaying this map with a 100–m Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD27) grid and removing all NAD27 grid cells that did not contain the primary constituent elements.

In selecting the critical habitat area, we attempted to avoid developed areas and other lands unlikely to contribute to the conservation of *Thlaspi californicum*. However, we did not map the critical habitat unit in sufficient detail to exclude all such areas. Existing features and structures within the critical habitat unit boundary, such as buildings, roads, and other paved areas will not contain one or more of the primary constituent elements and, hence, are not considered critical habitat. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species or primary constituent elements in adjacent critical habitat.

Special Management Considerations or Protections

As noted in the Critical Habitat section, "special management considerations or protection" is a term that originates in the definition of critical habitat. We believe the critical habitat area may require special management considerations or protection because *Thlaspi californicum* occupies an extremely localized range. Potential threats to the habitat of *T. californicum* include: expansion of Kneeland Airport and CDFFP helitack base; road realignment; fires caused by airplane or vehicular accidents; contaminant spills; erosion; application of herbicides and pesticides; livestock grazing; and introduction and spread of exotic species.

Additional special management is not required if adequate management or protection is already in place. Adequate special management considerations or protection are provided by a legally operative plan or agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. Currently, no plans meeting these criteria have been developed for *Thlaspi californicum*.

Critical Habitat Designation

The critical habitat area described below includes all the primary constituent elements discussed above, and constitutes our best assessment at this time of the areas needed for the species' conservation. Critical habitat is designated for *Thlaspi californicum* at the only location it is known to occur.

We are designating one unit of critical habitat, comprising 30 ha (74 ac), surrounding Kneeland Airport and roughly bisected by Mountain View Road. The unit includes all 5 known colonies and all other serpentine outcrops in close proximity to the colonies. All of the critical habitat unit for *Thlaspi californicum* is located on Ashfield Ridge in Kneeland Prairie, Humboldt County, California. This ridge separates the Van Duzen and Mad River basins near the community of Kneeland in central Humboldt County.

The unit contains approximately 2 ha (5 ac) of serpentine soils. Approximately 16 percent (0.3 ha (0.8 ac)) of the serpentine soils are known to be occupied. However, undetected colonies may exist on the serpentine soils within the unit. The approximate area, by land ownership, of this unit is shown in Table 1. Approximately 5 percent (2 ha (4 ac)) of this area consists of State lands, while County lands comprise approximately 11 percent (3 ha (8 ac)), and private lands comprise approximately 84 percent (25 ha (62 ac)). No Federal lands are within the critical habitat unit. This species is not known to occur or to have occurred historically on Federal lands.

TABLE 1.—APPROXIMATE AREAS AND PERCENT OF CRITICAL HABITAT OF *Thlaspi californicum* IN HECTARES (HA) (ACRES (AC)) IN HUMBOLDT COUNTY, CALIFORNIA, BY LAND OWNERSHIP. ESTIMATES REFLECT THE TOTAL AREA WITHIN CRITICAL HABITAT UNIT BOUNDARIES.

Ownership	Hectares	Acres	Percent
State	2	4	5
Private	25	62	84
County	3	8	11
Federal	0	0	0
TOTAL	30	74	100

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, permit, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat were designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (50 CFR 402.10 (d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not jeopardize the species or destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat.

If *Thlaspi californicum* is discovered on Federal lands, those activities on Federal lands that may affect *T. californicum* or its critical habitat would require a section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the Army Corps of Engineers under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Housing Administration, Federal Aviation Administration (FAA), or Federal Emergency Management Agency), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, as well as actions on non-Federal lands that are not federally funded, authorized, or permitted will not require section 7 of the Act consultations.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Thlaspi californicum* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Ground disturbance of serpentine outcrops and grassland and oak woodland areas, including but not limited to grading, ripping, tilling, and paving;

(2) Alteration of serpentine outcrops, including but not limited to removal of boulders, mining, and quarrying;

(3) Removing, destroying, or altering vegetation in the critical habitat unit,

including but not limited to inappropriately managed livestock grazing, clearing, introducing or encouraging the spread of nonnative species, recreational activities, and maintaining an unnatural fire regime either through fire suppression or frequent and poorly timed prescribed fires;

(4) Hydrologic changes or other activities that alter surface drainage patterns resulting in erosion of serpentine outcrops or adjacent areas, including but not limited to water diversion, groundwater pumping, irrigation, and erosion control;

(5) Construction or maintenance activities that destroy or degrade critical habitat, including but not limited to road building, building construction, airport expansion, drilling, and culvert maintenance or installation;

(6) Application or runoff of pesticides, herbicides, fertilizers, or other chemical or biological agents; and

(7) Emergency response and clean-up of fuel or other contaminant spills.

To properly understand the effects of critical habitat designation, we must first compare the requirements pursuant to section 7 of the Act for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 of the Act prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on the survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Designation of critical habitat in areas occupied by *Thlaspi californicum* is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. Designation of critical habitat in areas not occupied by *T. californicum* may result in an additional regulatory burden when a Federal nexus exists. However, we believe, and the economic analysis discussed below illustrates, that the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Few additional consultations are likely to be conducted due to the designation of critical habitat.

Designation of critical habitat could affect the following agencies and/or actions: Development on private, State, or county lands requiring permits or funding from Federal agencies, such as the U.S. Army Corps of Engineers, the Department of Housing and Urban Development, the FAA, or the Federal Highway Administration; construction of communication sites licensed by the Federal Communications Commission; and authorization of Federal grants or loans. These actions would be subject to the section 7 process. Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure a permit to take according to section 10(a)(1)(B) of the Act would be subject to the section 7 consultation process.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, contact the Project Leader, Arcata Fish and Wildlife Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Region 1, Division of Endangered Species, 911 NE 11th Avenue, Portland, OR 97232–4181 (503/231–6131, facsimile 503/231–6243).

Exclusions Under Section 4(b)(2)

Subsection 4(b)(2) of the Act allows us to exclude areas from the critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in extinction of the species. As discussed in this final rule and our economic analysis for this rulemaking, we have determined that no significant adverse economic effects will result from this critical habitat designation. We believe the areas included in this designation are essential for the conservation of *Thlaspi californicum* because they protect the existing colonies, all suitable serpentine sites on Ashfield Ridge, connectivity between the serpentine sites, and the ecological functions upon which the species depends. We believe that the designation of the lands in this final rule as critical habitat outweigh the benefits of their exclusion from being designated as critical habitat. Consequently, none of the proposed lands have been excluded from the designation based on economic impacts or other relevant factors pursuant to section 4(b)(2).

Relationship to Habitat Conservation Plans

No habitat conservation plans (HCPs) currently exist that include *Thlaspi californicum* as a covered species. However, the designated lands are covered lands in the Pacific Lumber Company's HCP. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although "take" of listed plants is not prohibited by the Act, listed plant species may also be covered in an HCP for wildlife species.

In most instances, we believe that the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. In the event that future HCPs covering *Thlaspi californicum* are developed within the boundaries of the designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *T. californicum*. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We will also provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *T. californicum*. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. Following the publication of the proposed critical habitat designation, a draft economic analysis was prepared by Economic & Planning Systems, Inc. for the Service. The draft analysis was made available for review on May 7, 2002 (67 FR 30643). The public comment on the draft analysis was open until June 6, 2002, however, we did not receive any comments.

Our economic analysis evaluated the potential future effects associated with the listing of *Thlaspi californicum* as an endangered species, as well as potential effects of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a "without section 7" baseline and compares it to a "with section 7" scenario. The "without section 7" baseline represents the level of protection currently afforded to the species under the Act, absent section 7 protective measures, and includes protections afforded by other Federal, State, and local laws such as the California Environmental Quality Act. The "with section 7" scenario identifies land-use activities likely to involve a Federal nexus that may affect the species or its designated critical habitat, which accordingly may trigger future consultations under section 7 of the Act.

Upon identifying section 7 impacts, the analysis proceeds to consider the subset of impacts that can be attributed exclusively to the critical habitat designation. The upper-bound estimate includes both jeopardy and critical habitat impacts. The subset of section 7 impacts likely to be affected solely by the designation of critical habitat represents the lower-bound estimate of the analysis. The categories of potential costs considered in the analysis included costs associated with: (1) Identifying the effect of the designation on a particular parcel or land use activity (*e.g.*, technical assistance, section 7 consultations); and (2) modification to projects, activities, or land uses resulting from the section 7 consultations.

The only reasonably foreseeable activity that will require consultation is the County's proposed Kneeland Airport improvement project. The analysis estimates economic costs for two possible outcomes from this consultation. Both estimates conclude that the costs are attributable co-extensively to the listing of *Thlaspi californicum* due to the species limited distribution and suitable habitat. We are not aware of any future activities on State or private lands included in the designation would involve a Federal nexus.

Based on our economic analysis, we concluded that the designation of critical habitat would result in little additional regulatory burden or associated significant additional costs above and beyond those attributable to the listing of *Thlaspi californicum* due to the limited extent of the designation and the limited amount of reasonably foreseeable activity with a Federal nexus in the area.

The economic analysis concludes that the only existing or reasonably foreseeable activity that will require consultation is the proposed Kneeland Airport improvement project. The most likely outcome of the consultation would be approval of the proposal as presented or a recommendation to implement minor project modifications. The precise nature of any recommended project modifications is difficult to predict in advance of the actual consultation, however, the economic analysis estimates that the type of minor modification that may be associated with a consultation may cost around $113,000. The analysis also estimated the potential cost to the economy under the extreme assumption that the improvement project was found to jeopardize the species or adversely modify critical habitat and that the Service is unable to identify any reasonable and prudent alternatives that would allow the project to proceed in another form. Cost associated with this scenario are estimated to range between $169,000 and $4.2 million depending on how the County's chooses to address the airport maintenance or whether or not they construct a replacement airport.

Because of *T. californicum*'s extremely limited distribution and small amount of available suitable habitat, it is assumed that the Kneeland Airport improvement project would be subject to consultation on potential impacts to the species, regardless of critical habitat designation. Therefore, these potential costs are attributable co-extensively to the listing of the *Thlaspi californicum*. The designation of critical habitat is not expected to result in any significant additional regulatory protection.

A copy of the final economic analysis and supporting documents are included in our administrative record and may be obtained by contacting the Arcata Fish and Wildlife Office (see **ADDRESSES** section). Copies of the final economic analysis also are available on the Internet at *http://pacific.fws.gov/news/*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), as OMB determined that this rule may raise novel legal or policy issues. The Service prepared an economic analysis of this action. The Service used this analysis to meet the requirement of section 4(b)(2) of the Endangered Species Act to determine the economic consequences of designating the specific areas as critical habitat. The draft EA was made available for public comment, and we considered comments on it during the preparation of this rule.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. A "substantial number" of small entities is more than 20 percent of those small entities affected by the regulation, out of the total universe of small entities in the industry or, if appropriate, industry segment. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to prepare a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. For the reasons stated in the proposed rule, in addition to the reasons stated below, we certify that critical habitat designation for *Thlaspi californicum* will not have a significant effect on a substantial number of small entities.

According to the Small Business Administration, small entities include

small organizations, such as independent nonprofit organizations, and small government jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, the Service considered the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, the Service considered the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting, etc.). The Service applied the "substantial number" test individually to each industry to determine if certification is appropriate. The area designated as critical habitat is small, less than 30 ha (74 ac), and we have identified fewer than a half-dozen landowners. The small scale of the designation ensures that the "substantial number of small entities" threshold of the Regulatory Flexibility Act will not be met. The five primary landowners include the following: Humboldt County, which owns Kneeland Airport and Mountain View Road; State of California, which owns the Kneeland helictack base; Pacific Lumber Company, and two private landowners.

The economic analysis identified the Kneeland Airport improvement project as the activity most likely to be affected by this rulemaking. The analysis estimated that a future section 7 consultation could cost all involved parties a total of $20,300 and that likely mitigation could cost about $113,000. Kneeland Airport is owned by Humboldt County, which has a population of approximately 126,000. Because SBREFA defines a "small government jurisdiction" as "governments of cities, counties * * * with a population of less than fifty thousand." (U.S.C. 601), Humboldt County was not considered a small entity for purposes of this analysis, even though the analysis did consider the potential effects of the airport improvement project. Similarly, the other private landowners are not considered small businesses under the scope of SBREFA.

The economic analysis did, however, consider whether the activities of these landowners have any Federal involvement because designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. No Federal lands occur within the designated critical habitat unit. Land use within the majority of the unit, outside of the existing developed areas, consists of livestock grazing and unforested lands surrounding timber lands. None of these activities is likely to trigger a future section 7 consultation. The likelihood of future development in these areas is low, with the exception of the future airport expansion under consideration. If the proposed airport expansion proceeds, the Federal Aviation Administration will likely be required to consult with the Service under section 7 of the Act on activities that agency funds, permits, or implements that may affect *Thlaspi californicum*. With this critical habitat designation, the Federal Aviation Administration will also be required to consult with the Servfce if its activities may affect designated critical habitat. However, the Service believes this will result in minimal additional regulatory burden on the agency and its applicant or because consultation would already be required due to the presence of the listed species. Consultation to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process and trigger only minimal additional regulatory impacts beyond the duty to avoid jeopardizing the species because of this species limited distribution and available habitat.

Should the airport expansion or another federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the vast majority of such projects can be successfully implemented with at most minor changes that avoid significant economic impacts to project proponents. The area designated as critical habitat is small, less than 30 ha (74 ac), and we have identified fewer than a half-dozen landowners. The scale of the designation ensures that the "substantial number of small entities" threshold of the Regulatory Flexibility Act will not be met.

Designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, the Service is unaware of any ongoing Federal activities that affect this species, and since *Thlaspi californicum* was listed (2000), the Service has not conducted any formal or informal consultations involving this species.

Therefore, we certify that the designation of critical habitat for *Thlaspi californicum* will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

As discussed above, this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act (SBREFA). This final designation of critical habitat: (a) does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed in the draft economic analysis, no small entities as defined by SBREFA will potentially be affected by the designation of critical habitat.

Proposed and final rules designating critical habitat for listed species are issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises are not affected by this action and will not be affected by the final rule designating critical habitat for this species. Therefore, we anticipate that this final rule will not place significant additional burdens on any entity.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required. The primary land uses within designated critical habitat include small county airport facilities, CDFFP helitack base, grazing, and unforested lands surrounding timber lands. Significant energy production, supply, and distribution facilities are not included within designated critical habitat. Therefore, this action does not represent a significant action affecting energy production, supply, and distribution facilities; and no Statement of Energy Effects is required. Because of this species restricted range and the limited amount of suitable habitat, any consultation required pursuant to section 7 of the Act by a Federal agency undertaking an action in this area would likely be triggered by the listing of the species and not solely by this designation of critical habitat.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule, as designated, will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that they must ensure that any programs involving Federal funds, permits or other authorized activities will not adversely affect the critical habitat. In our economic analysis, we found the direct and indirect costs associated with critical habitat designation to be small in relation to any small governments potentially affected.

(b) This rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating 30 ha (74 ac) of lands in Humboldt County, California, as critical habitat for *Thlaspi californicum*. The takings implications assessment concludes that this final designation of critical habitat does not pose significant takings implications for lands within or affected by the designation of critical habitat for *T. californicum*. A copy of this assessment is available by contacting the Arcata Fish and Wildlife Office (*see* **ADDRESSES** section).

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policies, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in California. We will continue to coordinate any future changes in the designation of critical habitat for *Thlaspi californicum* with the appropriate State agencies. Since *T. californicum* only occurs distributed over an extremely limited area, the designation of critical habitat imposes few, if any, additional restrictions to those currently in place and therefore has little incremental impact on State and local governments and their activities. The designation may provide some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While this does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning rather than having to wait for case-by-case section 7 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Thlaspi californicum*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain any new or revised information collections for which Office of Management and Budget approval is required under the Paperwork Reduction Act. Information collections associated with Act permits are covered by an existing OMB approval, and are assigned clearance No. 1018–0094, with an expiration date of July 31, 2004. The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

The Service has determined that it does not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 (NEPA) in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. The Service published a notice outlining its reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This final designation does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act" June 5, 1997), with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of *Thlaspi californicum* because they do not support the species, nor do they provide essential habitat. Therefore, critical habitat for *T. californicum* has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this final rule is available upon request from the Arcata Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

The primary author of this document is Robin Hamlin (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.12(h) revise the entry for *Thlaspi californicum* under "FLOWERING PLANTS" to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Thlaspi californicum	Kneeland Prairie penny-cress	U.S.A. (CA)	Brassicaceae — Mustard	E	684	17.96(a)	NA

3. Amend § 17.96(a) by adding an entry for *Thlaspi californicum* in alphabetical order under Brassicaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) Flowering plants.

* * * * *

Family Brassicaceae: *Thlaspi californicum* (Kneeland Prairie penny-cress)

(1) A critical habitat unit is depicted for Humboldt County, California, on the map below.

(2) The primary constituent elements of critical habitat for *Thlaspi californicum* are the habitat components that provide:

(i) Thin rocky soils that have developed on exposures of serpentine substrates;

(ii) Plant communities that support a relatively sparse assemblage of serpentine indicator, or facultative-serpentine indicator, species, including various native forbs and grasses, but not trees or shrubs, such that competition for space and water (both above and below ground) and light is reduced, compared to the surrounding habitats. Known associated species include the following: *Festuca rubra* (red fescue), *Koeleria macrantha* (junegrass), *Elymus glaucus* (blue wildrye), *Eriophyllum lanatum* (woolly sunflower), *Lomatium macrocarpum* (large-fruited lomatium), and *Viola hallii* (Hall's violet);

(iii) Serpentine substrates that contain 15 percent or greater (by surface area) of exposed gravels, cobbles, or larger rock fragments, which may contribute to alteration of factors of microclimate, including surface drainage and moisture availability, exposure to wind and sun, and temperature; and

(iv) Prairie grasslands and oak woodlands located within 30 m (100 ft) of the serpentine outcrop area on Ashfield Ridge. Protection of these habitats is essential to the conservation of *Thlaspi californicum* in that it will provide connectivity among the serpentine sites, help to maintain the hydrologic and edaphic integrity of the serpentine sites, and support populations of pollinators and seed dispersal organisms.

(3) Existing features and structures within the boundaries of mapped critical habitat units, such as buildings, roads, airports, and other paved areas will not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

(4) Critical habitat unit. Humboldt County, California.

(i) From USGS. 1:24,000 scale Iaqua Buttes quadrangle, land bounded by the following UTM Zone 10 NAD27 coordinate pairs (East, North): 421800, 4507300; 422100, 4507800; 422100, 4507300; 422200, 4507600; 421700, 4507400; 421800, 4507500; 421600, 4507500; 421800, 4507900; 421800, 4507800; 421900, 4507900

(ii) Map follows:

BILLING CODE 4310–55–P

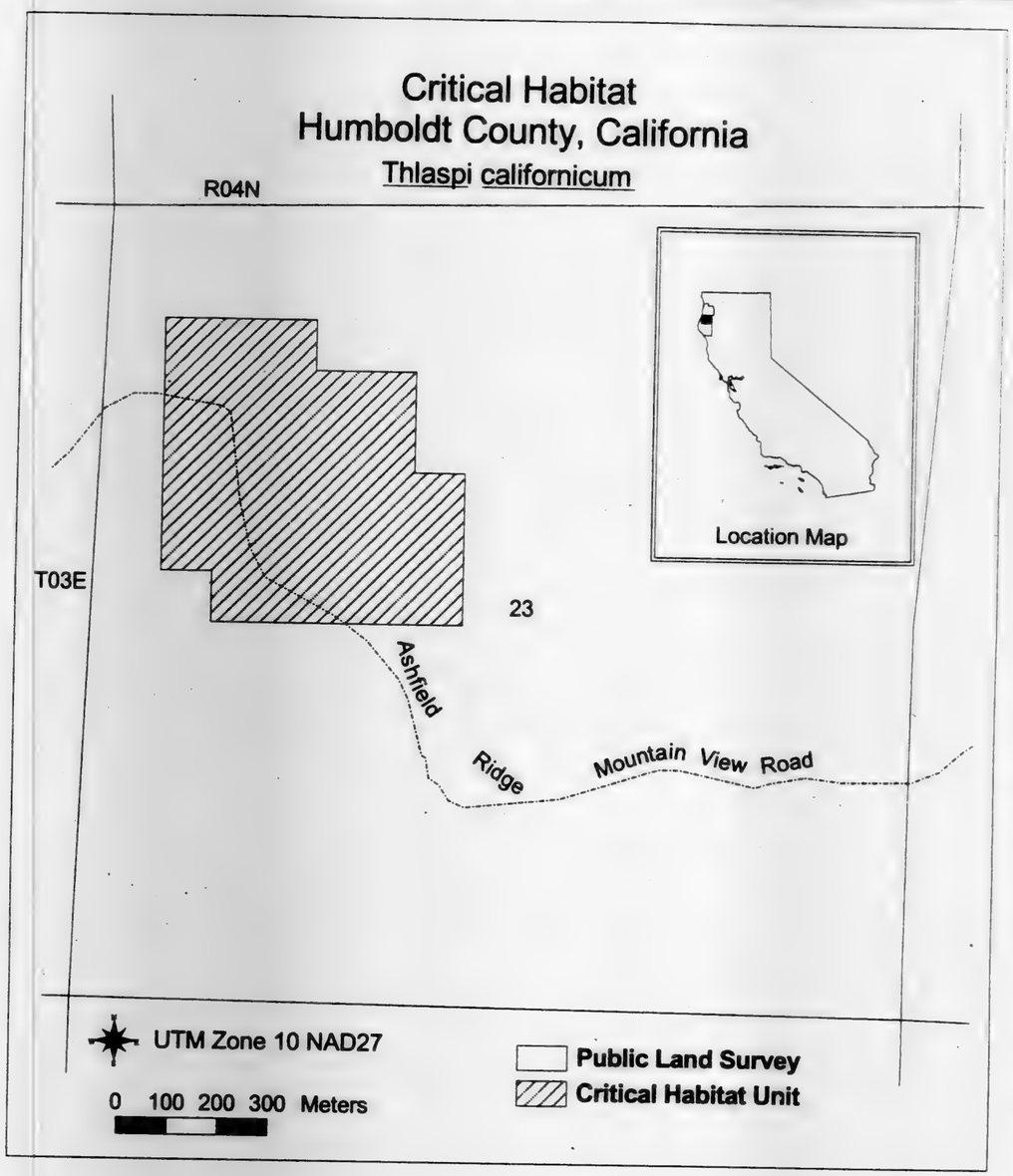

* * * * *

Dated: September 30, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–25371 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 092602F]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the D season allowance of the pollock total allowable catch (TAC) for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 5, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, or *mary.furuness@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Within any fishing year, underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Administrator, Alaska Region, NMFS (Regional Administrator), provided that the sum of the revised seasonal allowances does not exceed 30 percent of the annual TAC apportionment for the Central and Western Regulatory Areas in the GOA (§ 679.20(a)(5)(ii)(C)). For 2002, 30 percent of the annual TAC for the Central and Western Regulatory Areas is 15,187 metric tons (mt). For 2002, the Regional Administrator has determined that within each area for which a seasonal allowance is established, any overage or underage of harvest from the previous season(s) shall be subtracted from or added to the seasonal allowance of the following season provided that the resulting sum of seasonal allowances in the Central and Western Regulatory Areas does not exceed 15,187 mt in any single season. The D season allowance of the pollock TAC in Statistical Area 610 of the GOA is 5,949 mt as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002 and 67 FR 34860, May 16, 2002). The C season allowance in Statistical Area 610 was under harvested by 110 mt, therefore the Regional Administrator, in accordance with § 679.20(a)(5)(ii)(C), is increasing the D season pollock TAC in Statistical Area 610 by 110 mt to 6,059 mt.

In accordance with § 679.20(d)(1)(i), the Regional Administrator, has determined that the D season allowance of the pollock TAC in Statistical Area 610 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,009 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 4, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–25709 Filed 10–4–02; 3:21 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 67, No. 196

Wednesday, October 9, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket Number 010622161–2029–02]

RIN 0607–AA34

Automated Export System Mandatory Filing for Items on the Commerce Control List (CCL) and the United States Munitions List (USML) That Currently Require a Shipper's Export Declaration (SED)

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice for proposed rulemaking and request for comments.

SUMMARY: The U.S. Census Bureau (Census Bureau) is amending the Foreign Trade Statistics Regulations (FTSR) to incorporate requirements for the mandatory Automated Export System (AES)/AESDirect filing for items identified on the Department of Commerce's Commerce Control List (CCL) and the Department of State's United States Munitions List (USML). The AES is the electronic method to file the Shipper's Export Declaration (SED) and the ocean manifest information directly with the U.S. Customs Service (Customs). AESDirect is the Census Bureau's free Internet-based system for filing SED information with the Customs' AES. Further references to AES covers both AES and AESDirect. You are only required to file information via AES for those items that require a SED. This rule will, among other things, provide provisions for AES mandatory filing in the FTSR.

DATES: Submit written comments on or before December 9, 2002.

ADDRESSES: Please direct all written comments on this proposed rule to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: C. Harvey Monk, Jr., Chief, Foreign Trade Division, U.S. Census Bureau, Room 2104, Federal Building 3, Washington, D.C. 20233–6700, (301) 763–2255, by fax (301) 457–2645, or by e-mail: *c.harvey.monk.jr@census.gov*.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 2001, the Census Bureau published a program notice in the **Federal Register** (66 FR 39006) announcing that we would be issuing rules, and allowing the public to comment, on this subject.

The Census Bureau is responsible for collecting, compiling, and publishing trade statistics for the United States under the provisions of Title 13, United States Code (U.S.C.), Chapter 9, Section 301. The paper SED and the AES are the primary media used for collecting such trade data, and the information contained therein is used by the Census Bureau for statistical purposes only. This information is exempt from public disclosure under the provisions of Title 13, U.S.C., Chapter 9, Section 301(g). The SED and AES records also are used for export control purposes under Title 50, U.S.C., and Title 22, U.S.C., to detect and prevent the export of certain critical technology and commodities to unauthorized destinations or end users.

Under the current rules and regulations, export information is compiled from both paper and electronic transactions filed by the export community with Customs and the Census Bureau. The AES is an electronic method by which the U.S. principal party in interest or the authorized agent can transmit the required export information. For purposes of completing the SED or AES record, the U.S. principal party in interest (USPPI) is the person in the United States that receives the primary benefit, monetary or otherwise, from the export transaction. The authorized agent is the person in the United States who is authorized by power of attorney or written authorization by the USPPI or the foreign principal party in interest to prepare and file the SED or AES record. A paper SED or the electronic equivalent AES record is required, with certain exceptions, for exports of merchandise valued at more than $2,500 from the United States, Puerto Rico, and the United States Virgin Islands to foreign countries or exports between U.S. Virgin Islands and Puerto Rico and the United States. The SED or AES record also is required for all exports under a Bureau of Industry and Security (BIS) or Department of State (State Department) export license or State Department license exemption, regardless of value, unless exempted from the requirement for an SED or AES record by the State Department (*see* 15 CFR, part 30, § 30.55(h)(2) and 22 CFR parts 120–130).

For export data filed via a paper SED, the USPPI or freight forwarder must present the SED to the exporting carrier when the cargo is tended to the carrier. The vessel, air or rail carrier must present the manifest and supporting documentation to the Customs Port Director at the port of export within four days after departure if a bond is posted with Customs. However, this rule does not apply to SEDs or AES shipments subject to BIS or State Department licenses or State Department license exemptions. If the information is filed in the AES, an exemption legend is included on the vessel, air, or rail manifest, or other commercial loading document indicating that no SED is attached, with a transaction identification number or unique identifier to identify the electronic AES record. If no manifest is required or the manifest is electronically filed, the paper SEDs or the electronically filed AES exemption legends are presented directly to Customs.

Electronic filing strengthens the U.S. Government's ability to control the export of critical goods and technologies and weapons of mass destruction to prohibited and unauthorized end-users and affords the government the ability to significantly improve the quality, timeliness, and coverage of export statistics. Currently, fifty (50) percent of the paper SEDs submitted contain one or more errors in export reporting, accounting for a significant percentage of unreported exports. Reporting on the AES has demonstrated that, compared to paper filing, the error rate is reduced substantially and coverage is improved. Currently, the error rate for export transactions filed through the AES is approximately six (6) percent. At this time, the electronic AES filing of the required export information under Title 13, U.S.C., Section 301, is strictly voluntary for the export of any item.

On November 29, 1999, the President signed H.R. 3194, the Consolidated

Appropriations Act of 1999, into law (Pub. L. 106–113). Section 1252(a) of this law, amends Title 13, U.S.C., Chapter 9, section 301 to add subsection "(h)" authorizing the Secretary of Commerce to require by regulation, mandatory reporting requirements for filing export information through the AES for items identified on the CCL and USML that require the SED. The effective date of this amendment is 270 days after the Secretary of Commerce, the Secretary of the Treasury, and the Director of the National Institute of Standards and Technology jointly provide a certification to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the U.S. House of Representatives that a secure AES mainframe computer system of Customs and the Internet-based AESDirect system of the Census Bureau is capable of handling the expected volume of information required to be filed, plus the anticipated volume from voluntary use of the AES has been successfully implemented and tested and is fully functional with respect to reporting all items on the USML, including quantities and destinations. The required certification report was submitted to Congress on June 2001. The certification report described the security measures in place to develop, implement, and maintain each system; summarized the information system assessment reports prepared by the General Services Administration (GSA), Office of Information Security, and Customs; and provided the Census Bureau's response to those security assessment reports listing the specific actions taken by both agencies to ensure the security and functionality of the system. In addition, the AES has received a security accreditation from Customs, and the AESDirect system has received a security accreditation from the Census Bureau. On July 26, 2001, the Census Bureau published a program notice in the **Federal Register** (66 FR 39006) announcing that the AES certification report was submitted to Congress.

As authorized by Section 1252(b) of Pub. L. 106–113, the Census Bureau proposes to amend the FTSR to specify the mandatory provisions for electronically filing SEDs as well as the time and place requirements for filing. In addition, the Census Bureau proposes to amend the FTSR to specify: (1) The requirements for the filing of SEDs through the electronic AES and the provisions and responsibilities of parties exporting items identified on the CCL and USML via the AES; (2) the provision by the Department of Commerce for the establishment of on-line assistance services to be available for those individuals who must use the AES; (3) the provision by the Department of Commerce for ensuring that an individual required to use the AES is able to print out from the AES a validated record of the individual's submission, including the date of submission and a transaction number or unique identifier, where appropriate, for the export transaction; and (4) a requirement that the Department of Commerce print out and maintain on file a paper copy or other acceptable back-up record of the individual's submission at a location selected by the Secretary of Commerce. This rule defines the regulatory revisions that would be made to implement this legislation. The Census Bureau also proposes to amend the FTSR to specify how electronic export information is identified on the manifest by mode of transportation and define the carrier's responsibilities. In addition to proposing regulations on the provisions for the mandatory filing via the AES, this Notice of Proposed Rulemaking proposes to amend §§ 30.63 (14)–(21) to collect additional data through the AES to meet the State Department's requirements. Finally, this notice proposes to add to the paper SED the requirement to enter the freight forwarder's Employer Identification Number (EIN) when required. This requirement applies to filers who are not required to file through AES and who choose to file a paper SED, rather than filing voluntarily through AES.

One additional revision the Census Bureau proposes for the FTSR is the removal of AES Filing Option 3. Option 3 allows the filer to provide partial pre-departure information and complete information five (5) working days from the date of exportation. The Census Bureau identified four (4) specific reasons for making Option 3 inactive. Option 3 has shown to be underutilized by the AES filers. Option 3 filers have frequently shown noncompliance with timely filing for both the pre-departure and post departure filings and, therefore, the data collected are often incomplete and inaccurate because of missing post departure filings. Lastly, Option 3 has shown to be a burden by requiring filers to transmit twice for one shipment. Of the 734,916 total average AES shipment transactions collected per month, Option 3 filings average only 28,739 or 3.9 percent. Additionally, of the 5,000 plus AES filers, only 53 filers are using Option 3 and of those, only 7 use Option 3 exclusively.

The mandatory compliance date for these regulatory requirements would be 90 days after issuance of any final rule.

Program Requirements

In order to comply with the requirements of Pub. L. 106–113, the Census Bureau proposes amending the appropriate sections of the FTSR to specify the requirements for the AES mandatory filing and the revision to the paper SED. For purposes of this rule, all references to filing mandatory AES shipments do not apply to the paper SED.

The Census Bureau proposes revising the following sections of the FTSR: (a) Section 30.1 to specify the general requirements for filing items identified on the CCL and USML, that require the SED, via the AES; (b) Section 30.7 to add instructions for filing the address of the USPPI, the freight forwarder's EIN on the paper SED, the transportation reference number, instructions for filing the gross shipping weight for air, vessel, truck and rail modes of transportation via paper and the AES and delete references to "marks and numbers"; (c) Section 30.12 to specify the instructions regarding the time and place for presenting SED information; (d) Section 30.21 to specify the departing carrier's responsibility for filing export and manifest data via paper and the AES; (e) Section 30.22 to specify the responsibilities of the departing carrier to deliver to the Customs Port Director at the time of exportation, the required documentation for electronically filed items; (f) Section 30.23 to amend the requirements for the pipeline carrier when the item is identified on the CCL or USML; (g) Section 30.60 is amended to specify participation requirements in the AES; (h) Section 30.61 to specify the electronic filing options required for mandatory filing and to delete references to Option 3; (i) Section 30.62 is amended to update the specifications for certification, qualification and standards for AES and AESDirect; (j) Section 30.63 to revise the requirements for entering a USPPI's profile in AES and to add data elements required in the AES to validate State Department's Office of Defense Trade Controls (ODTC) licensed or license-exempt shipments and to delete references to Option 3; (k) Section 30.65 to specify the requirements for annotating the proper exemption legends when exports are filed through the AES; (l) Section 30.66 to specify requirements as stated in Section 1252(b)(2) of Pub. L. 106–113, which pertains to record keeping and documentation requirements; (m) revise Appendix A to amend the instructions for the Letter of Intent; (n) revise Appendix B to delete references to Option 3 filing and to reserve it for future use; and (o) revise Appendix C, Part II—Export Information Codes and Part III—License Codes, Bureau of Industry and Security Codes and Department of State Codes to specify additional license codes required and reference as to where to locate the International Traffic in Arms Regulations (ITAR) license exemption citations. Revise Part IV—In-Bond Code to delete codes that pertain only to import shipments. The collection of additional data items listed in Appendix C has been approved by the Office of Management and Budget (OMB).

The State Department and the Department of Treasury concur with the provisions contained in this notice of proposed rulemaking.

Rulemaking Requirements

Administrative Procedure Act

This proposed rule is exempt from all requirements of Section 553 of the Administrative Procedure Act, because it deals with a foreign affairs function of the United States (5 U.S.C. 553(a)(1)). However, this rule is being published as a proposed rule with an opportunity for public comment, because of the importance of the issues raised by this rulemaking.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant impact on a substantial number of small entities. This action requires that exporters file export information through the AES for items identified on the CCL and USML that currently require the SED. Currently, 85 percent of all export transactions are voluntarily filed electronically and the remaining 15 percent are filed on paper SEDs.

Based on year 2000 data, the Census Bureau estimates there were 128,000 exporters who were considered small entities under the Small Business Act—because they had less than 500 employees—and that filed one or more export shipments. Of these 128,000 exporters, 90 percent used a forwarding agent to file export documentation, the SED, on their behalf. Although, it is not possible to determine how many of the 128,000 small businesses exported merchandise identified on the CCL or the USML and that are currently required to file an SED, the Census Bureau anticipates that the new requirement would not significantly affect the small businesses who must now file through AES. It is unlikely that the regulations that require mandatory use of AES to file export information would affect a substantial number of small entities because 90 percent of all exporters who are considered small entities already use a forwarding agent to file export documentation.

In addition, those small exporters that do not currently use a forwarding agent to file export documentation will not be significantly impacted by this regulation. We can safely assume that small businesses involved in exporting items on the CCL and USML are electronically sophisticated, and would have access to a computer and the Internet. The Census Bureau has provided a free Internet-based system, AESDirect, especially for small businesses to submit their export information electronically. The implementation of AESDirect was the primary criteria required in order for Section 1252 of Pub. L. 106–113 to become effective. Therefore, it is not necessary for small businesses to purchase software for this task. Small businesses currently filing paper and who will now be required to file electronically will be able to continue to use their current forwarding agent who will be required to file the export information electronically on their behalf or the exporters can use AESDirect and file directly for themselves.

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. It has been determined that this rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, OMB approved on April 26, 2002, with control number 0607–0512, the collection of all information associated with the AES and SED under this rule. We estimate that each electronic SED will take approximately 3 minutes to complete; we estimate that each paper SED will take approximately 11 minutes to complete.

List of Subjects in 15 CFR Part 30

Economic statistics, Foreign trade, Exports, Reporting and record keeping requirements.

For the reasons set out in the preamble, it is proposed that Part 30 be amended as follows:

PART 30—FOREIGN TRADE STATISTICS

1. Revise the authority citation for part 30 to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization Plan No. 5 of 1950 (3 CFR 1949–1953 Comp., 1004); and Department of Commerce Organization Order No. 35–2A, July 22, 1987, as amended.

PART 30—[AMENDED]

2. In Part 30, revise all references to the "Bureau of Export Administration" to read the "Bureau of Industry and Security" and revise all reference to "BXA" to read "BIS."

3. Revise the heading of Subpart A to read as follows:

Subpart A—General Requirements—U.S. Principal Party in Interest

4. Amend § 30.1 to revise all references to "exporters or their authorized agents" to read "U.S. principal party in interest or the authorized agent," in paragraph (a), revise paragraph (b) and paragraph (c) to read as follows:

§ 30.1 General statement of requirement for Shipper's Export Declarations.

* * * * *

(b) Export information that is required to be filed for items identified on the Commerce Control List (CCL) of the Export Administration Regulations (EAR) (15 CFR Supplement No. 1 to Part 774) or the U.S. Munitions List (USML) of the International Traffic in Arms Regulations (ITAR) (22 CFR, part 121) is to be filed electronically through AES. This requirement to file information via AES applies to those items that require a Shipper's Export Declaration. Exemptions from these requirements and exceptions to some of the provisions of these regulations for particular types of transactions are found in subparts C and D of this part.

(c) In lieu of filing paper SEDs as provided elsewhere in this Section, the U.S. principal party in interest or the authorized agent is required to file shippers' export information, when required, electronically through the AES for the export of items identified on the CCL of the EAR (15 CFR Supp. No. 1 to part 774) or the USML of the ITAR (22 CFR, part 121) as provided for in

subpart E of this part, Electronic Filing Requirement-Shipper's Export Information. Information for items identified on the USML, including those exported under an export license exemption, must be filed electronically prior to export, unless exempted from the SED filing requirement by the State Department. For State Department USML shipments, refer to the International Traffic in Arms Regulations (22 CFR, parts 120–130) for State Department requirements concerning the AES exemption legend and filing time requirements. The U.S. principal party in interest or the authorized agent filing SEDs for the export of items not on the CCL or the USML have the option of filing this information electronically as provided for in subpart E of this part.

5. Amend § 30.7 as follows:

a. Add paragraph (d)(3).

b. Revise the first sentence of paragraph (e).

c. Remove and reserve paragraph (k).

d. Revise paragraphs (j) and (o).

e. Add a sentence after the second sentence in paragraph (l).

The additions and revisions read as follows:

§ 30.7 Information required on Shipper's Export Declaration.

* * * * *

(d) * * *

(3) *Address (number, street, city, state, Zip Code) of the USPPI.* In all export transactions, the USPPI shall report the address location from which the merchandise actually starts its journey to the port of export. For example, a Shipper's Export Declaration covering merchandise laden aboard a truck at a warehouse in Georgia for transport to Florida for loading onto a vessel for export to a foreign country shall show the address of the warehouse in Georgia. If the USPPI does not have a facility (processing plant, warehouse or distribution center, retail outlet, etc.) at the location from which the goods began their export journey, report the USPPI address from which the export was directed. For shipments of multiple origins reported on a single SED, report the address from which the greatest value begins its export journey or, if such information is not known at the time of export, the address from which the export is directed.

(e) *Forwarding or other agent.* The name, address, and Employer Identification Number (EIN) or Social Security Number (SSN) of the duly authorized forwarding or other agent (if any) of a principal party in interest must be recorded where required on the SED or AES record. * * *

(j) *Transportation Reference Number.* Enter the Transportation Reference Number as follows:

(1) *Vessel Shipments.* Report the booking number for all sea shipments. The booking number is the reservation number assigned by the carrier to hold space on the vessel for cargo being exported.

(2) *Air Shipments.* Report the master air waybill number for all air shipments. The air waybill number is the reservation number assigned by the carrier to hold space on the airplane for cargo being exported.

(3) *Rail Shipments.* Report the bill of lading (BOL) number for all rail shipments. The BOL number is the reservation number assigned by the carrier to hold space on the rail car for cargo being exported.

(4) *Truck Shipments.* Report the Freight or Pro Bill number for all truck shipments. The Freight or Pro Bill number is the number assigned by the carrier to hold space on the truck for cargo being exported. The Freight or Pro Bill number correlates to a bill of lading number, air waybill number or Trip number for multi-modal shipments.

(k) [Reserved]

(l) * * * Include marks, numbers or other identification shown on packages and the number and kinds of packages (*i.e.*, boxes, barrels, baskets, bales, etc.).

* * *

(o) *Gross (shipping) weight.* Enter the gross shipping weight in kilograms on the SED or the AES record, including the weight of containers, for air, vessel, truck, and rail methods of transportation. However, for containerized cargo in lift vans, cargo vans, or similar substantial outer containers, the weight of such containers should not be included in the gross weight of the commodities. If the gross shipping weight information is not available for individual Schedule B items because commodities covered by more than one Schedule B number are contained in the same shipping container, approximate shipping weights should be used for each Schedule B item in the container. The total estimated weights must equal the actual shipping weight of the entire container or containers and contents.

* * * * *

6. Revise § 30.12 to read as follows:

§ 30.12 Time and place for presenting the SED or Exemption Legends.

The following conditions govern the time and place to present paper SEDs or the AES transaction identification number that identifies the electronic record. It is the duty of the principal party in interest or the authorized agent to deliver the required number of copies of the SED or the exemption legends when the cargo is tendered to the exporting carrier. Information on items identified on the Commerce Control List (CCL) of the EAR (15 CFR Supp. No. 1 to part 774) or the U.S. Munitions List (USML) of the International Traffic in Arms Regulations (ITAR) (22 CFR, Part 121) that require an SED, must be filed through the AES. Information for items identified on the USML, including those exported under an export license exemption, must be filed electronically prior to export, unless exempted from the SED filing requirements by the State Department. For State Department USML shipments, refer to the ITAR (22 CFR, Parts 120–130) for more specific requirements concerning the AES exemption legend and filing time requirements. Failure of the U.S. principal party in interest or the authorized agent of either the U.S. principal party in interest or foreign principal party in interest to comply with these requirements constitutes a violation of the provisions of these regulations, and renders such principal party or the authorized agent subject to the penalties provided for in § 30.95 of this part.

(a) *Postal Exports.* SEDs for exports of items being sent by mail, as required in § 30.1 of this part, shall be presented to the postmaster with the packages at the time of mailing.

(b) *Pipeline Exports.* SEDs for exports being sent by pipeline are not required to be presented prior to exportation; however, they are required to be filed within four (4) working days after the end of each calendar month. These SEDs must be filed with the Customs Port Director having jurisdiction for the pipeline, and the filer must deliver the SED in the number of copies specified in § 30.5 of this part to cover exports to each consignee during the calendar month.

(c) *Exports by other methods of transportation.* For exports sent other than by mail or pipeline, the required number of copies of SEDs as prescribed in § 30.5 of this part shall be delivered to the exporting carrier when the cargo is tendered to the exporting carrier.

(d) *Exports Filed Via AES.* For exports filed through the AES, it is the duty of the U.S. principal party in interest or the authorized agent to deliver to the exporting carrier, the AES exemption legends as provided for in § 30.65 of this part or 22 CFR (parts 120–130) of the ITAR when the cargo is tendered to the exporting carrier.

Subpart B—General Requirements—Exporting Carriers

7. Revise § 30.21 to read as follows:

§ 30.21 Requirements for the filing of manifests.

Carriers transporting merchandise via vessel, aircraft, or rail are required to file an outbound manifest (along with the required SEDs, supporting documentation and/or the exemption statement) to the Customs Port Director at the port of exportation. Outbound vessel manifests may be filed via paper or electronically through the vessel transportation module, a component of the AES, as provided in U.S. Customs Service Regulations, 19 CFR 4.63 and 4.76. SEDs may be filed via paper or electronically via the AES.

(a) *Paper SED—paper manifest.* If filing paper SEDs and paper manifest, attach the copies of the SEDs to the manifest. For each item of cargo, the Transportation Reference Number on the SED covering the item must be shown on the manifest.

(b) *Paper SED—electronic manifest.* If filing paper SEDs and the electronic outbound vessel manifest, carriers are responsible for submitting paper SEDs directly to the Customs Port Director.

(c) *Electronic SED—paper manifest.* If filing the electronic SED and paper outbound manifest, carriers must annotate the outbound manifest with the appropriate AES exemption legends as provided in § 30.65 of this part.

(d) *Electronic SED and manifest.* If filing the SED information and outbound vessel manifest electronically through the AES, the carrier must adhere to the instructions specified in U.S. Customs Regulations, 19 CFR, 4.76 and § 30.60 of this Part and transmit the appropriate exemption legend as provided in § 30.65 of this part.

(e) *When an SED is not required.* If an item does not require a SED, the proper exemption legend must be annotated on the outbound manifest or other appropriate commercial documents as provided in § 30.50 of this Part.

(f) *Exports to Puerto Rico.* When filing paper manifests for shipments from the United States to Puerto Rico, the manifest shall be filed with the Customs Port Director where the merchandise is unladen in Puerto Rico.

(1) *Vessels.* Vessels transporting merchandise as specified in § 30.20 of this part (except vessels exempted by paragraph (e)(4) of this section) shall file a complete Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A. In addition, vessel carriers are required to perform the following:

(i) *Bunker fuel.* Vessel manifest (including vessels carrying bunker fuel to be laden aboard vessels on the high seas) clearing for foreign countries shall show quantities and values of bunker fuel taken aboard at that port for fueling use of the vessel, apart from such quantities as may have been laden on vessels as cargo.

(ii) *Coal and Fuel Oil.* The quantity of coal shall be reported in metric tons (2240 pounds), and the quantity of fuel oil shall be reported in barrels of 158.98 liters (42 gallons). Fuel oil shall be described in such manner as to identify diesel oil as distinguished from other types of fuel oil.

(2) *Aircraft.* Aircraft transporting merchandise as specified in § 30.20 of this part, shall file a complete manifest on Customs Form 7509, as required in U.S. Customs Regulations, 19 CFR 122.72 through 122.76. All the cargo so laden shall be listed and shall show, for each item, the air waybill number or marks and numbers on packages, the number of packages, and the description of the goods.

(3) *Rail carriers.* Rail carriers transporting merchandise as specified in § 30.20 of this Part shall file a car manifest. Such manifest shall be filed with the Customs Port Director at the port of exportation, giving the marks and numbers, the name of the shipper or consignor, description of goods and the destination thereof. The manifest may be a waybill, or copy thereof, or a copy of the manifest prepared for foreign customers.

(4) *Carriers not required to file manifests.* Carriers other than vessels, aircraft, and rail carriers, or vessels under 5 net tons engaged in trade with a foreign country other than by sea are not required to file manifests. Vessels specifically exempted from entry by section 441 of the Tariff Act of 1930 are exempt from filing manifests. Carriers exempted from filing manifests are required, upon request, to present to the Customs Port Director regulatory SED exemption legends or AES exemption legends. Failure of the carrier to do so constitutes a violation of the provisions of these regulations, and renders such carrier subject to the penalties provided for in § 30.95 of this part.

8. Amend § 30.22 by adding a sentence to the end of paragraph (a), adding a sentence after the first sentence in paragraph (b), and adding paragraph (f) to read as follows:

§ 30.22 Requirements for the filing of Shipper's Export Declarations or AES Exemption Legends by departing carriers.

(a) * * * When the export information for a shipment is filed via the AES, the carrier is responsible for presenting the proper AES exemption legend as provided in § 30.65 of this part and the ITAR (22 CFR part 121) for U.S. Munitions List (USML) shipments.

(b) * * * If the export information is filed electronically via the AES, the carrier is responsible for providing the Customs Port Director at the port of exportation with the proper AES exemption legend as provided in § 30.65 of this part and the ITAR (22 CFR, part 121) for U.S. Munitions List (USML) shipments.

* * * * *

(f) Information on items identified on the Commerce Control List of the EAR (15 CFR Supp. No. 1 to part 774) or the U.S. Munitions List of the ITAR (22 CFR part 121) that require an SED, must be filed through AES. The exporting carrier must not accept paper SEDs or cargo that does not have the appropriate AES filing exemption legend as set forth in § 30.65 of this part and the ITAR (22 CFR part 121) for U.S. Munitions List (USML) shipments. Acceptance of paper SEDs or cargo without the appropriate exemption legend constitutes a violation of the provisions of these regulations, and renders such carrier subject to the penalties provided for in § 30.95 of this part.

* * * * *

9. Amend § 30.23 by adding a sentence to the end of the paragraph to read as follows:

§ 30.23 Requirements for the filing of Shipper's Export Declarations by pipeline carriers.

* * * If the merchandise transported by pipeline is identified on the Commerce Control List of the EAR (15 CFR Supplement No.1 to part 774) or the U.S. Munitions List of the ITAR (22 CFR, part 121), and requires an SED, the data regarding the shipment must be filed electronically through the AES.

Subpart E—Electronic Filing Requirements—Shipper's Export Information

10. Amend 30.60 to revise paragraph (a) to read as follows:

§ 30.60 General requirements for filing export and manifest data electronically using the Automated Export System.

* * * * *

(a) *Participation.* Filing using the AES is mandatory for those items identified on the Commerce Control List (CCL) of the EAR (15 CFR Supplement No. 1 to part 774) or the U.S. Munitions List (USML) of the ITAR (22 CFR, part 121). You are only required to file information via AES for those items that require a Shipper's Export Declaration. All other participation in the AES in voluntary. Information for items

identified on the CCL or the USML filed via AES must be filed by the U.S. principal party in interest or the authorized agent. A Data Entry Center, service center, or port authority may transmit an AES record for CCL or USML items, completed by the U.S. principal party in interest or the authorized agent, without obtaining a power of attorney or written authorization. A Data Entry Center, service center, or port authority must have a power of attorney or written authorization from the U.S. principal party in interest or foreign principal party in interest if it completes any export information in AES for CCL or USML shipments. Companies may also buy a software package designed by an AES certified software vendor. Certified trade participants (filing agents) can transmit to and receive data from the AES pertaining to merchandise being exported from the United States. Participants in the AES process, who may apply for AES certification, includeU.S. principal parties in interest or the authorized agents, carriers, non-vessel operating common carriers (NVOCC), consolidators, port authorities, software vendors, or service centers. Once becoming certified, an AES filer (filing agent) must agree to stay in complete compliance with all export rules and regulations.

* * * * *

11. Amend § 30.61 to revise the introductory text, remove paragraph (b), and redesignate paragraph (c) as paragraph (b) to read as follows:

§ 30.61 Electronic filing options.

As an alternative to filing paper Shipper's Export Declaration forms (Option 1), two electronic filing options (Option 2 and 4) for transmitting shipper's export information are available to U.S. principal parties or the authorized filing agent. The electronic filing Option 4 takes into account that complete information concerning export shipments is not always available prior to exportation. Information on the export of items identified on the Commerce Control List of the EAR (15 CFR Supplement No. 1 to part 774) or the U.S. Munitions List of the ITAR (22 CFR, part 121) that require an SED can be filed using Options 2 or 4. Option 4 may only be used when the appropriate licensing agency has granted the U.S. principal party in interest or the authorized agent authorization to use this option. The available AES electronic filing options are as follows:

* * * * *

12. Revise § 30.62 to read as follows:

§ 30.62 AES/AESDirect Certification, qualification, and standards.

Certification for AES filing will apply to the U.S. principal party in interest, authorized forwarding agent, carrier, non-vessel operating common carriers (NVOCC), consolidator, port authority, software vendor, or service center transmitting export information electronically using the AES.

(a) *AES Certification Process.* Applicants interested in AES filing must submit a Letter of Intent to the Census Bureau in accordance with the provisions contained in § 30.60. Customs and the Census Bureau will assign client representatives to work with the applicant to prepare them for AES certification. The AES applicant must perform an initial two-part communication test to ascertain whether the applicant's system is capable of both transmitting data to, and receiving data from, the AES. The applicant must demonstrate specific system application capabilities. The capability to correctly handle these system applications is the prerequisite to certification for participation in the AES. The applicant must successfully transmit the AES certification test. The Customs' and Census Bureau's client representatives provide assistance during certification testing. These representatives make the sole determination as to whether or not the applicant qualifies for certification. Upon successful completion of certification testing, the applicant's status is moved from testing mode to operational mode. Upon certification, the filer will be required to maintain an acceptable level of performance in AES filings. The certified AES filer may be required to repeat the certification testing process at any time to ensure that operational standards for quality and volume of data are maintained. The Census Bureau will provide the certified AES filer with a certification letter after the applicant has been approved for operational status. The certification letter will include:

(1) The date that filers may begin transmitting "live" data electronically using AES;

(2) Reporting instructions; and

(3) Examples of the required AES exemption legends.

(b) AES*Direct Certification process.* Applicants interested in AES*Direct* filing must complete the online AES*Direct* registration form. After submitting the registration, an AES*Direct* filing account is created for the filing company. The applicant will receive separate e-mails providing an AES*Direct* user name, temporary administrator code, and temporary password. The filer uses the temporary administrator code to create a permanent administrator code that allows the user to create a permanent password. The user name and new permanent password will allow the filer to complete a certification quiz. Upon passing the quiz, notification by e-mail will be sent when an account is fully activated for filing via AES*Direct*. Print the page congratulating the filer on passing the quiz for retention purposes. The activation notice will specify which AES filing status the account has been authorized.

(c) *Filing agent certification.* Once an authorized filing agent has successfully completed the certification process, the U.S. principal party in interest using that agent does not need further AES certification. The certified filing agent must have a properly executed power of attorney, a written authorization from the U.S. principal party in interest or foreign principal party in interest, or a SED signed by the U.S. principal party in interest to transmit their data electronically using the AES. The U.S. principal party in interest or authorized agent that utilizes a service center or port authority must complete certification testing, unless the service center or port authority has a formal power of attorney or written authorization from the U.S. principal party in interest to file the export information on behalf of the U.S. principal party in interest.

(d) *AES filing standards.* The certified AES filer's data will be monitored and reviewed for quality, timeliness, and coverage. The Census Bureau will notify the AES filer if the filer fails to maintain an acceptable level of quality, timeliness, and coverage in the transmission of export data or fail to maintain compliance with Census Bureau regulations contained in this Section. The Census Bureau, if necessary, will take appropriate action to correct the specific situation(s). In the case of AES*Direct*, when submitting a registration form to AES*Direct*, the registering company is certifying that they will be in compliance with all applicable laws and regulations. This includes complying with the following security requirements:

(1) AES*Direct* user names and passwords are to be neither written down nor disclosed to any unauthorized user or any persons outside of the registered company. Filers must change passwords for security purposes when prompted to do so.

(2) Registered companies are responsible for those persons having a user name and password. If an employee with access to the user name and password leaves the company or otherwise is no longer an authorized user, the company must change the password and user name in the system and must do so immediately in order to ensure the integrity and confidentiality of Title 13 data.

(3) Antivirus software must be installed and set to run automatically on all computers that access AES*Direct*. All AES*Direct* registered companies will maintain subscriptions with their antivirus software vendor to keep antivirus lists current. Registered companies are responsible for performing full scans of these systems on a regular basis and eliminating any virus contamination. If the registered company's computer system is infected with a virus, the company should refrain from using AES*Direct* until it is virus free. Failure to comply with these requirements will result in immediate loss of privilege to use AES*Direct* until the registered company can establish to the satisfaction of the Census Bureau's Foreign Trade Division Computer Security Officer that the company's computer systems accessing AES*Direct* is virus free.

13. Amend § 30.63 by revising paragraph (a)(1), (b)(11), (b)(13), and (c), and by adding paragraphs (b)(14) through (b)(21) to read as follows:

§ 30.63 Information required to be reported electronically through AES (data elements).

(a) * * *

(1) *U.S. Principal Party in Interest (USPPI)/USPPI identification'(i) Name and address of the USPPI.* For details on the reporting responsibilities of USPPIs, see § 30.4 and § 30.7 (d)(1), (2), (3), and (e).

(ii) *USPPI's profile.* The USPPI's Employer Identification Number (EIN) or Social Security Number (SSN) and the USPPI name, address, contact, and telephone number must be reported with every shipment. If neither EIN or SSN is available for the USPPI, as in the case of a foreign entity being shown as the USPPI as defined in § 30.7(d), the border crossing number, passport number, or any other number assigned by Customs is required to be reported. (See § 30.7(d)(2) for a detailed description of the EIN.)

(b) * * *

(11) *Transportation Reference Number.* Report the Transportation Reference Number as follows:

(i) *Vessel Shipments.* Report the booking number for all sea shipments. The booking number is the reservation number assigned by the carrier to hold space on the vessel for cargo being exported.

(ii) *Air Shipments.* Report the master air way bill number for all air shipments. The air waybill number is the reservation number assigned by the carrier to hold space on the airplane for cargo being exported.

(iii) *Rail Shipments.* Report the bill of lading (BOL) number for all rail shipments. The BOL number is the reservation number assigned by the carrier to hold space on the rail car for cargo being exported.

(iv) *Truck Shipments.* Report the Freight or Pro Bill number for all truck shipments. The Freight or Pro Bill number is the number assigned by the carrier to hold space on the truck for cargo being exported. The Freight or Pro Bill number correlates to a bill of lading number, air waybill number or Trip number for multi-modal shipments.

* * * * *

(13) *Filing option indicator.* Report the 1-character filing option that indicates Option 2 or 4 filing.

(14) *Office of Defense Trade Controls (ODTC) Registration Number.* The number assigned by ODTC to persons who are required to register per Part 122 of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130), that has an authorization from ODTC (license or exemption) to export the article.

(15) *ODTC Significant Military Equipment (SME) Indicator.* A term used to designate articles on the United States Munitions List for which special export controls are warranted because of their capacity for substantial military utility or capability. See section 120.7 of the International Traffic in Arms Regulations (ITAR) 22 CFR parts 120–130, for a definition of SME and Section 121.1 for items designated as SME articles.

(16) *ODTC Eligible Party Certification Indicator.* Certification by the U.S. exporter that the exporter is an eligible party to participate in defense trade. See ITAR 22 CFR, § 120.1(c). This certification is required only when an exemption is claimed.

(17) *ODTC USML Category Code.* The United States Munitions List category of the article being exported (22 CFR part 121).

(18) *ODTC Unit of Measure (ULM).* This unit of measure is the ULM covering the article being shipped as described on the export authorization or declared under an ITAR exemption.

(19) *ODTC Quantity.* This quantity is for the article being shipped. The quantity is the total number of units that corresponds to the ODTC Unit of Measure Code.

(20) *ODTC Exemption Number.* The exemption number is the specific citation from the Code of Federal Regulations (22 CFR parts 120—130) that exempts the shipment from the requirements for a license or other written authorization from ODTC.

(21) *ODTC Export License Line Number.* The line number of the State Department export license that corresponds to the article being exported.

(c) *Seal Number.* Optional. Report the security seal number of the seal placed on the equipment.

14. Revise § 30.65 to read as follows:

§ 30.65 Annotating the proper exemption legends for shipments transmitted electronically.

(a) Items identified on the U.S. Munitions List (USML), must meet the predeparture reporting requirements identified in the ITAR (22 CFR Parts 120–130) for the State Department requirements concerning AES exemption legends and time and place of filing.

(b) For shipments other than USML, the U.S. principal party in interest or the authorized agent is responsible for annotating the proper exemption legend on the bill of lading, air waybill, or other commercial loading document for presentation to the carrier prior to export. The carrier is responsible for providing the proper exemption legend to the Customs Port Director at the port of exportation as stated in § 30.21 of this Part. The exemption legend will identify that the shipment information has been accepted as transmitted and electronically filed using the AES. The exemption legend must appear on the bill of lading, air waybill, or other commercial loading documentation and the manifest and must be clearly visible and include either of the following:

(1) For shipments other than USML, the exemption legend will include the statement, "NO SED REQUIRED—AES," followed by the filer's identification number and a unique shipment reference number referred to as the "XTN" or the returned confirmation number provided by AES when the transmission is accepted, referred to as the "ITN." Items on the USML must meet the pre-departure reporting requirements in the ITAR (22 CFR parts 102–130).

(2) For U.S. principal parties in interest who have been approved to participate in Filing Option 4, the exemption statement, "NO SED REQUIRED—AES4," followed by the U.S. principal party's in interest employer identification number followed by the filer's identification number if other than the U.S. principal party in interest files the data.

15. Revise § 30.66 to read as follows:

§ 30.66 Support, documentation and record keeping requirements.

(a) *Support. ASKAES@census.gov* is an online service that allows electronic filers to seek assistance pertaining to AES. AES*Direct* is supported by a help desk available twelve (12) hours a day, seven (7) days a week.

(b) *Documentation.* Filers using the AES*Direct* are able to print out from the AES*Direct* a validated record of the filer's submission. Filers using AES are able to print records containing date of submission and a unique identification number for each AES record submitted. The Census Bureau will maintain an electronic file of data sent through AES to ensure that an individual is able to receive from the system, a validated record of the submission. The U.S. principal party in interest or the authorized agent of the U.S. principal party in interest or foreign principal party in interest may request a copy of the electronic record submitted as provided for in § 30.91 of this part.

(c) *Recordkeeping.* All parties to the export transaction (owners and operators of the exporting carriers and U.S. principal party and/or the authorized agents) must retain documents or records pertaining to the shipment for five (5) years from the date of export. Customs, the Census Bureau, and other participating agencies may require that these documents be produced at any time within the 5-year time period for inspection or copying. These records may be retained in an elected format, including electronic or hard copy as provided in the applicable agency's regulations. Acceptance of the documents by Customs or the Census Bureau does not relieve the U.S. principal party in interest or the authorized agent from providing complete and accurate information after the fact. The Department of State or other regulatory agencies may have additional record keeping requirements for exports.

16. Amend Appendix A as follows:

a. Add an introductory paragraph;

b. Revise items A.5, A.6, and A.10;

c. Remove item A.6(i) and redesignate items A.6(ii) and A.6(iii) as A.6(i) and A.6(ii), respectively;

d. Revise paragraphs B and C;

e. Add paragraph D.

The additions and revisions read as follows:

Appendix A to Part 30-Format For Letter of Intent, Automated Export System (AES)

The first requirement for participation in AES is a Letter of Intent. The Letter of Intent is a written statement of a company's desire to participate in AES. It must set forth a commitment to develop, maintain, and adhere to Customs and Census performance requirements and operations standards. Once the letter of intent is received, a U.S. Customs Client Representative and U.S. Census Bureau Client Representative will be assigned to the company. Census will forward additional information to prepare the company for participation in AES.

A. Letters of Intent should be on company letterhead and must include:

* * * * *

5. Computer Site Location Address, City, State, Postal Code (Where transmissions will be initiated)

6. Type of Business—U.S. Principal Party in Interest, Freight Forwarder/Broker, Carrier, NVOCC, Port Authority, Software Vendor, Service Center, etc. (Indicate all that apply)

(i) Freight Forwarders/Brokers, indicate the number of U.S. principal parties in interest for whom you file export information (SEDs)

(ii) U.S. Principal Parties in Interest, indicate whether you are applying for AES Option 2 or Option 4

* * *

10. Filer Code—EIN, SSN or SCAC (Indicate all that apply)

* * * * *

B. The following self-certification statement, signed by an officer of the company, must be included in your letter of intent: "We (COMPANY NAME) certify that all statements made and all information provided herein are true and correct. I understand that civil and criminal penalties, including forfeiture and sale, may be imposed for making false or fraudulent statements herein, failing to provide the requested information or for violation of U.S. laws on exportation (13 U.S.C. Sec. 305; 22 U.S.C. Sec. 401; 18 U.S.C. Sec. 1001; 50 U.S.C. App. 2410."

C. The AES Option 4 privilege allows a U.S. principal party in interest to send no data prior to exportation and complete data within 10 working days after exportation. Participants will be reviewed by several government agencies prior to acceptance into the Option 4 program.

D. Send AES or Option 4 Letter of Intent to : Chief, Foreign Trade Division, U.S. Census Bureau, Washington, DC 20233. Or, the copy can be faxed to : 301–457–1159.

Appendix B To Part 30—Required Pre-Departure Data Elements For Filing Option 3

17. [Removed] Remove and reserve Appendix B.

Dated: October 4, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–25667 Filed 10–8–02; 8:45 am]

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FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 154, 161, 250 and 284

[Docket No. PL02–9–000]

Notice of Public Conference

September 26, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of public conference.

SUMMARY: On February 9, 2000, the Commission issued Order No. 636, amending its regulations in response to growing development of more competitive markets for natural gas and the transportation of natural gas (65 FR 10156, February 25, 2000). The Commission is holding a public conference to engage industry members and the public in a dialogue about policy issues facing the natural gas industry today and the Commission's regulation of the industry of the future.

DATES: *Requests to participate:* October 15, 2002. *Conference date:* October 25, 2002.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth P. Niehaus, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, (202) 502–6398, *kenneth.niehaus@ferc.gov.*

SUPPLEMENTARY INFORMATION:

1. The Federal Energy Regulatory Commission (FERC) will hold a conference on October 25, 2002, to engage industry members and the public in a dialogue about policy issues facing the natural gas industry today and the Commission's regulation of the industry for the future. The Commission expects a wide ranging discussion that will help the Commission establish its regulatory goals for an industry that anticipates long term growth to reach 30-Tcf annually. The Commission anticipates exploring issues concerning: (1) Supply and demand; (2) the application of the Commission's open access polices to liquefied natural gas (LNG) import facilities; (3) the Commission's Outer Continental Shelf (OCS) gathering policy; and (4) the flexibility pipelines need to serve historical load as well as new demand. In addition, the Commission will provide an opportunity for market participants and other interested persons to raise issues and make policy recommendations for Commission consideration.

I. Background

2. In 1997, the Commission held a conference to revisit its approach to natural gas regulation in light of significant changes in the structure of the natural gas industry that occurred as a result of Order No. 636.[1] Since that time, the energy industry has continued to experience ongoing structural changes that impact the supply and demand of natural gas. Some of these changes include shifts in the industry from regulated to non-regulated gathering operations. Over the past five years, the Commission has seen an increase in abandonment of these facilities from the regulated companies to non-regulated affiliated and non-affiliated gathering companies. Changes from regulated to non-regulated services raise important issues that the Commission needs to consider in assuring unrestricted access to necessary supplies from the OCS.

3. In Order No. 637,[2] issued in 2000, the Commission revised, among other things, its regulations relating to scheduling procedures, capacity segmentation, and pipeline penalties to improve the competitiveness and efficiency of the interstate pipeline grid and to enhance pipeline transportation services. Changes in historical pipeline operations brought about by Order No. 637 may impact investment in much needed pipeline infrastructure to fulfill future demand for natural gas.

4. The increasing demands placed on pipelines by new electric generation load may impact the flexibility pipelines currently have in meeting the service demands of historical customers. In its Annual Energy Outlook 2002, Energy Information Administration (EIA) forecasts that natural gas for power generation will grow 4.6 percent annually, reaching from 9.65 to 10.36 Tcf in 2020 depending on economic growth (consumption in 2000 was 4.24 Tcf).

5. The economy, mild weather patterns, and major developments in the financial foundation and structure of the energy industry may also have important repercussions on long term markets, supplies, and investment in infrastructure. Reduction in market capitalization of many major energy players, substantial layoffs, the exiting and restructuring of many companies' energy trading business, bankruptcies, the sale of major assets by major energy players, and the cancellation of many future gas-fired generation projects all may potentially affect natural gas markets and the infrastructure it depends upon.

6. Even with the nation's current economic slowdown, however, natural gas demand continues to grow. Overall, EIA projects that the natural gas market will grow from the 22.83 Tcf consumed in 2000 to between 30.02 to 32.63 Tcf in 2015, with projections for 2020 from 32.03 to 34.99 Tcf, depending on economic growth. All the above mentioned events may impact the industry's ability to prepare for and meet the future anticipated demand.

II. Scope of Inquiry

7. The purpose of this conference is to discuss short and long term issues that may impact the Commission's regulation of the natural gas industry. The Commission wants to explore whether the Commission's current regulatory approach in natural gas fosters or impedes supply production and investment in development of the infrastructure needed to meet the anticipated long term growth to 30-Tcf annually. In addition to providing an open forum for communicating with the Commissioners, the Commission wishes to address the following topics.

A. Supply Forecast

8. EIA projects that natural gas consumption could reach 34.99 Tcf annually in 2020. Decreasing gas prices have resulted in a reduction in capital expenditures for development in natural gas production. Evidence indicates that production in traditional supply regions, including onshore gas production in the Permian Basin and offshore in the shallow shelf of the Gulf of Mexico, is in decline. At the same time, Canadian imports have been falling while domestic exports to Mexico have been increasing. Additionally, concerns have been raised relating to potential barriers that may restrict the domestic producing community's ability to meet the projected demand. The Commission wishes to explore natural gas supply issues and their impact on the infrastructure needed to meet forecasted demand.

B. Liquefied Natural Gas

9. In the 1970's the Commission authorized the construction and operation of several LNG import terminals to provide a needed supplemental source of gas supplies to U.S. markets.[3] In response to more recent demands for natural gas, the Commission has approved the reactivation of two of the original LNG import projects and the expansion of an existing LNG terminal.[4] Additionally, there are two pending applications for other LNG expansion projects and one for a new LNG import facility.[5]

10. The Commission recognizes that LNG imports are expected to become a key supply source in the U.S. over the next ten years. We believe it is time to reexamine our existing policy in light of the changes that have occurred in the gas industry since that time. While the Commission recently denied a request to disclaim jurisdiction over the siting, construction, and operation of LNG facilities,[6] it has not reviewed its open access policy as it pertains to LNG import facilities. The Commission wishes to explore regulatory goals that will remove unnecessary barriers to the development of LNG facilities and supply as a major source of natural gas to meet the forecasted future demand.

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[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulations of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13,267 (April 16, 1992), FERC Stats. & Regs Preambles January 1991-June 1996 ¶ 30,939 (April 8, 1992), *order on reh'g,* Order No. 636–A, 57 FR 36,128 (August 12, 1992), FERC Stats. & Regs. Preambles, January 1991-June 1996 ¶ 30,950 (August 3, 1992), *order on reh'g,* Order No. 636–B, 57 FR 57,911 (December 8, 1992), 61 FERC ¶ 61,272 (1992), notice of denial of rehearing (January 8, 1993), 62 FERC ¶ 61,007 (1993), *aff'd in part and vacated and remanded in part, UDC* v. *FERC,* 88 F.3d 1105 (D.C. Cir. 1996), *order on remand,* Order No. 636–C, 78 FERC § 61,186 (1997), *order on reh'g,* Order No. 636–D, 83 FERC ¶ 61,210 (1998).

[2] *See* Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, FERC Stats. & Regs. Regulations Preambles (July 1996-December 2000) ¶ 31,091 (Feb. 9, 2000); *order on rehearing,* Order No. 637–A FERC Stats. & Regs. Regulations Preambles (July 1996-December 2000) ¶ 31,099 (May 19, 2000), *aff'd in part and rev'd and remanded in part, INGAA* v. *FERC,* 285 F.3d 18 (D.C. Cir. 2002).

[3] *See* Columbia LNG Corp., 47 FPC 1624, *order on reh'g,* 48 FPC 723 (1972) (approving the construction and operation of the Cove Point and Elba Island LNG import terminals); Trunkline LNG Co., 58 FPC 726, *order on reh'g,* 58 FPC 2935 (1977) (approving the construction and operation of a Lake Charles LNG import terminal); Distrigas Corp., 58 FPC 2589 (1977) (approving a settlement authorizing operation of LNG import terminal at Everett, Massachusetts).

[4] *See* Southern LNG Inc., 89 FERC ¶ 61,314 (1999), *order on reh'g,* 90 FERC ¶ 61,257 (2000); Cove Point LNG Limited Partnership, 97 FERC ¶ 61,043, *order on reh'g,* 97 FERC ¶ 61,276 (2001); *order denying clarification and reh'g,* 98 FERC ¶ 61,270 (2002); Distrigas of Massachusetts, 94 FERC ¶ 61,008 (2001).

[5] CMS Trunkline LNG Co. (CMS) application filed in Docket No. CP02–60–000. In Docket No. CP02–60–000, the Commission preliminary approved CMS's application to expand its Calcasieu Parish, Louisiana terminal (100 FERC ¶ 61,217), and in Docket No. CP02–379–000 Southern LNG's request authorization for further expansion of its Elba Island facility. On May 30, 2002, Hackberry LNG Terminal, L.L.C. filed an application in Docket No. CP02–374–000, *et al.,* to construct and operate a new LNG import facility.

[6] *See* Dynegy LNG Production Terminal, L.P., 97 FERC ¶ 61,231 (2001).

C. Offshore Gathering Policy

11. In *ExxonMobil Gas Marketing Company* v. *FERC*,[7] the court affirmed the Commission's gathering policy as it pertained to facilities located in the OCS. In Order No. 639,[8] the Commission determined that under the Commission's authority under the Outer Continental Lands Act (OCSLA), gatherers in the OCS must report information regarding service provided through their gathering facilities. The Commission believes that such information is necessary to assure that the gatherers providing service in the OCS do so on an open and nondiscriminatory basis. Subsequently, however, the court determined that the OCSLA did not give the Commission authorization to promulgate such a requirement.[9] The Commission wishes to explore future regulatory policies and goals that would promote the further development of offshore supply sources in the OCS.

D. Flexibility in Pipeline Operations

12. Natural gas is now the fuel of choice for new power generation due to the efficiency of technology, low initial investment costs, relative ease of siting new plants, and lower pollutant emissions. Electric generation load is more variable through a given day than a traditional pipeline customer load.[10] Therefore, electric generation customers require transportation services and facilities that accommodate hourly rather than daily swings in gas consumption and wider fluctuations in consumption volumes.[11] Because of the large amounts of gas used as gas-fired generation plants, and their potential to cause rapid and unanticipated hourly consumption demands, traditional pipeline customers have expressed the concern that the ramping-up of one or more power plants could lead to pressure drops which, in turn, could result in a reduction in both the pressure and rate of gas flowing through the meter station and distribution facilities. The Commission believes it is imperative that the future pipeline infrastructure meets the flexibility and service needs of all of their customers. We wish to explore issues related to serving new demand to meet current and future needs.

E. Open Forum

13. In addition to addressing the above mentioned issues, the Commission also seeks to encourage industry representatives and interested individuals to raise other issues for the Commission to consider in shaping its future regulatory policies concerning the natural gas industry. The Commission envisions that the conference will consist of panels and an open forum that will give all interested individuals an opportunity to raise issues.

III. Participation

14. The conference will be held on October 25, 2002 at FERC, 888 First Street, NE., in Washington, DC in the Commission Meeting Room. The public is invited to attend. Anyone interested in participating should contact Ken Niehaus at 202–502–6398 or at *kenneth.niehaus@ferc.gov* by October 15, 2002. Requests for participate should include information concerning the issue or issues the participant would like to raise. We will issue further details on the conference including the agenda and a list of participants, as plans evolve.

15. The conference will be transcribed. Those interested in acquiring the transcript should contact Ace Reporters at 202–347–3700 or 800–336–6646. Transcripts will be placed in the public record ten days after the Commission receives the transcripts. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live or over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection website at *http://www.capitolconnection.gmu.edu* and click on "FERC."

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25120 Filed 10–8–02; 8:45 am]

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[7] 297 F.3d 1071 (2002).

[8] Regulations under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf, 65 FR 20,354 (Apr. 17, 2000), FERC Stats. & Regs. ¶ 31,514 (2002), *order on reh'g and clarification*, Order No. 639–A, 65 FR 47,294 (Aug. 2, 2000), FERC Stats. & Regs. ¶ 31,103 (2000).

[9] *See* Chevron U.S.A., Inc. v. *FERC*, No. 02–5056 (D.C. Cir.).

[10] Impact of Power Generation Gas Demand on Natural Gas Local Distribution Companies, American Gas Association, prepared by: Energy and Environmental Analysis, Inc. There are baseload generators, intermediate load generators, and peaking plants. Used together, these plants maintain electric power levels throughout the electric transmission grid sufficient to meet customer demand. Generally, baseload units (these are high fixed-cost units using less expensive fuel and with the lowest operating costs) meet the based demands. Intermediate load generators (i.e., most combined cycle facilities) are run regularly, by not on a full time basis. Peaking units are generally last dispatched and operated only on the days and hours of highest electricity demand. These units generally have low fixed costs, but high operating and fuel costs.

[11] *Id.*

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 24 and 101

RIN 1515–AC77

Reimbursable Customs Services: Increase in Hourly Percentage Rate of Charge

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to increase the hourly percentage rate of charge for reimbursable Customs services. In a previous document published in the **Federal Register** on February 1, 2001, Customs had proposed increasing the rate of charge to 158 percent of the hourly rate of regular pay of the employee performing the service because the present rate of charge of 137 percent does not reimburse Customs for the actual costs of providing such services. Based on the comments received to the previous Notice and following a complete review of the costs of providing reimbursable Customs services, Customs is now proposing a new methodology for determining the rate of charge for reimbursable Customs services and to revise the rate of charge to 154 percent of the hourly rate of regular pay of the employee performing the service. The proposed increase in the hourly percentage rate of charge is based on the actual expenses incurred by Customs in fiscal year 2000 associated with providing reimbursable Customs services during regular hours of duty and includes an increased percentage rate of charge for administrative overhead costs associated with providing such reimbursable services. This document proposes that the new hourly percentage rate of charge will be reviewed biennially using the actual costs and expenses associated with providing requested reimbursable Customs services from the preceding fiscal year.

Further, this document proposes to increase the percentage rate of charge for administrative overhead costs associated with providing overtime services. It also updates the list of national holidays in 19 CFR 101.6.

DATES: Comments must be received on or before December 9, 2002.

ADDRESSES: Written comments may be addressed to, and inspected at, U.S. Customs Service, Office of Regulations and Rulings—Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Written comments may be inspected at U.S. Customs Service, 799 9th Street, NW., Washington, DC. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Dennis Lomax, Revenue Branch, National Finance Center, Indianapolis, IN 46278; telephone (317) 298–1200, ext. 1404.

SUPPLEMENTARY INFORMATION:

Background

Under certain circumstances, Customs provides inspectional and supervisory services to parties-in-interest who request such Customs services during regular hours of duty or on an overtime basis. When these Customs services are provided, however, the party-in-interest is required to reimburse the Government for the Customs employee's compensation and other chargeable expenses. Customs authority to charge these expenses is contained at 31 U.S.C. 9701, which provides, in part, that each government service provided to identifiable persons is to be as self-sustaining as possible and that the fees and charges established by the agency are to be based on the costs to the Government in providing the service.

The amount of compensation and expenses chargeable to parties-in-interest for reimbursable Customs services performed during regular hours of duty is presently based on a computational formula that yields an hourly percentage rate of charge that is provided for in the introductory text of § 24.17(d) of the Customs Regulations (19 CFR 24.17(d)), plus a reimbursable charge for Medicare compensation that is provided for at § 24.17(f), and a reimbursable charge for administrative overhead costs that is provided for at § 24.21. The rate of charge for reimbursable Customs services performed on an overtime or outside the basic 40-hour workweek basis is provided for at other sections in part 24 of the Customs Regulations (*see* 19 CFR 24.16 and 24.17(d)(1)).

The charge currently provided for the reimbursable services of a Customs employee performed on a regular workday during a basic 40-hour workweek, pursuant to § 24.17(d), is computed at a rate that is equal to 137 percent of the hourly rate of regular pay of the particular employee (plus additional charges for any night pay differential). This charge is based on a five-factor formula that computes an hourly percentage rate of charge that is intended to recover the estimated costs of various employee benefits such as leave, holidays, retirement, and life and health insurance and is only used to determine the costs of providing reimbursable Customs services during a basic 40-hour workweek.

In addition to the base 137 percent rate of charge for reimbursable Customs services performed during a basic 40-hour workweek, § 24.21 provides that 15 percent of the compensation and/or expenses of the Customs employee performing the reimbursable service is chargeable to parties-in-interest for administrative overhead costs. This 15 percent rate of charge for administrative overhead costs has been in effect for nearly 20 years.

In addition to the base 137 percent rate of charge set forth in § 24.17(d) and the 15 percent rate of charge set forth in § 24.21, § 24.17(f) further provides that parties-in-interest are also required to reimburse Customs for its share of Medicare costs for the employee. Section 24.17(f) currently provides that 1.35 percent of the reimbursable compensation expenses incurred will be the payment for Medicare costs. However, the regulations are incorrect because, pursuant to 26 U.S.C. 3111(b), Medicare compensation costs are to be recovered at a rate of charge that is equal to 1.45 percent of the reimbursable compensation expenses incurred.

On February 1, 2001, Customs published a Notice of Proposed Rulemaking (Notice) in the **Federal Register** (66 FR 8554) that proposed to increase the hourly percentage rate of charge for reimbursable Customs services. The proposed increase was based on a recommendation by Treasury's Office of Inspector General (OIG) following an audit of Customs charges to the courier hubs for reimbursable Customs services that found that the current 137 percent rate of charge computed was inadequate to cover Customs actual costs. The OIG noted that the formula used to determine the computational charge of 137 percent set forth in § 24.17(d) contained two outdated cost factors. First, the formula took account of 9 legal public holidays, but the number of public holidays is now 10 with the addition in 1983 of the Birthday of Martin Luther King, Jr. Second, the formula provided that the working hour equivalent of the Government's contributions for an employee's benefits was computed at 11½ percent of the annual rate of pay of an employee, but that should have risen to 28.55 percent since it was last computed. Accordingly, the OIG recommended that the rate of charge for reimbursable Customs services performed during regular hours of duty should be increased from 137 percent to 158 percent of the hourly rate of regular pay of the employee performing the service. The initial Notice only discussed the increase in the hourly rate of charge percentage for reimbursable Customs services within the context of § 24.17; there was no discussion regarding the additional percentage rate of charge for administrative overhead costs provided for at § 24.21(a).

Comments were solicited on this proposed rulemaking from interested parties with a response date of April 2, 2001. Five comments were timely received: three were from trade associations and two were from express consignment operators. All of the comments expressed general concern about the added increase in costs if the proposed increase in the hourly percentage rate of charge is adopted. Based on these comments, a review of the estimated costs of providing reimbursable Customs services during a basic 40-hour workweek was undertaken.

The comments and the results of Customs review of the computational formula and the additional charges for administrative overhead and Medicare costs associated with providing reimbursable Customs services during a basic 40-hour workweek are addressed below.

Discussion of Comments

Annual & Sick Leave

Comment: Three of the commenters objected to some of the number values attached to factors in the computational formula used to determine the rate of charge for reimbursable Customs services. Two of these commenters objected to the OIG using the maximum time frame for annual leave (26 days, which is the 208 hour figure in the present formula), which is based on the most senior Customs officers, and for sick leave (13 days, which is the 104 hour figure in the formula) as factors in the computational formula used to determine the rate of charge. These commenters felt that the number values attached to these factors had the effect of overstating costs because not all

Customs services provided are performed by Customs employees eligible for maximum leave time, which requires 15 years of Government service, and that there was a strong probability that most Customs officers do not use all of their eligible sick leave in a year. These commenters argue that because the number of annual leave and sick days used in the reimbursable computational formula are inappropriate, the calculations are too high and the number values for these factors must be reduced to fairly reflect Custom's costs.

A third commenter stated that if the numbers utilized for annual and sick leave were 50 percent of those being proposed, the computational formula would more accurately reflect the actual figures for work and non-work time, and thus provide a more accurate invoice for reimbursable charges. Noting that express carriers are responsible for reimbursement of Customs fees at double the normal rate of charge, it was stated that when benefits and administrative fees are added and then doubled the actual cost to an express operator for each $1.00 of salary cost is $3.04 under the current provisions and would be increased to $3.46 under the proposed rule. This commenter states that this 13.8 percent increase is significant and creates a real economic burden; however, if the numbers utilized for annual and sick leave were reduced by 50 percent the impact on express operators would be reduced from a 13.8 percent increase to only 5.3 percent, a far more realistic and acceptable inorease.

These commenters urged Customs not to adopt the proposed rule; to completely review the Notice regarding the issues raised; and expressed a strong preference for eliminating entirely the current system under which reimbursable charges are assessed, preferring a system that is transparent and simple. Specifically, these commenters advocated a system funded on a transaction-based fee, *i.e.*, a fixed fee per informal shipment.

Customs response: Customs agrees that the present computational formula factors—and resulting hourly percentage rate of charge—do not represent the actual costs to Customs of providing requested inspectional and supervisory services and that a better system, one that is more transparent and simple for reimbursing the Government, should be adopted. To that end, Customs reexamined how reimbursable service charges were calculated and conducted a cost analysis. As a result of the cost analysis, Customs found that it slightly undercharges for the actual costs and expenses of providing requested reimbursable Customs services. Accordingly, Customs is proposing, in this document, a new hourly percentage rate of charge for reimbursable Customs services that is based on actual expenses.

Customs now addresses the comment regarding express carriers being responsible for reimbursement of Customs fees at double the normal hourly rate of charge and that if the numbers utilized for annual and sick leave were reduced by 50 percent of those being proposed the computational formula would more accurately reflect the actual figures for work and non-work time, providing a more accurate invoice for reimbursable charges. Customs does not agree with this comment. First, Customs does not charge for non-work time (*see* discussion below under Lunch Hours). Second, "the reimbursement of Customs fees at double the normal rate" issue is misleading because the fees billed are statutory. *See* 19 U.S.C. 58c(b)(9)(A), which provides for the aggregation of merchandise processing fees in an amount equal to reimbursable services. When merchandise is informally entered or released at a centralized hub facility, an express consignment carrier facility, or a small airport or other facility, the Merchandise Processing Fees (MPF) are billed in an amount equal to the reimbursable fee amount. Thus, each Customs assignment at these locations generates two billings, each for identical amounts. One of the billings is to reimburse Customs for providing Customs services (*see* 31 U.S.C. 9701 and 19 CFR 24.17, which provides for the reimbursable charge fee); the second billing is for MPFs (*see* 19 U.S.C. 58c(b)(9)(A)(ii) and 19 CFR 24.23(b)(2)(ii), which provide for the MPF when processing merchandise that is informally entered or released.) The generation of a second billing for MPFs that is equal to the amount of the billing for Customs services is in lieu of the per entry or release fee of $2.00, $6.00, or $9.00, provided for at 19 U.S.C. 58c(a)(10) and 19 CFR 24.23(b)(2)(i). This method of billing for the MPF releases the inspectors at the express consignment facilities from the responsibility of having to prepare collection documents for each informal entry which would dramatically slow the process of clearing merchandise and put the express consignment operators in jeopardy of not meeting their delivery deadlines. Accordingly, the billing for the MPF at a cost equal to the billing for Customs services is beneficial to express consignment operators.

Further, any increase in the hourly rate of charge percentage must represent reimbursement to the Government for actual expenses. Accordingly, Customs cannot adopt an artificial number, *i.e.*, 50 percent of the number of annual and sick leave hours used to calculate the reimbursable fee, that bears no relationship to those expenses.

It is also noted that the impact of the proposed increase in the hourly rate of charge percentage contained in this document (discussed below) is less than 1 percent of what is currently billed.

Regarding the comment proposing a system funded on a transaction-based fee, *i.e.*, a fixed fee per informal shipment, Customs points out it is bound by current law which is premised on a reimbursable payment scheme. In order to adopt a transaction fee approach, Congressional action is required. Customs does not have authority, on its own, to adopt a transaction fee system.

Customs agrees that the current system is not transparent and simple. While there is a computational formula set forth in the introductory paragraph of § 24.17(d) for determining reimbursable charges for Customs services, the actual billing practice to collect the fees for Customs services provided entails billing for costs and expenses that are not included in the formula, but are found in various sections of the Customs Regulations: §§ 24.16, 24.17 (other than the introductory paragraph of paragraph (d)), and 24.21. To remedy this situation, Customs is proposing in this document a new formula basis that would consolidate various regulatory provisions for clarity and be more accurate in providing reimbursement to Customs for the actual costs and expenses associated with providing requested Customs services.

Lunch Hours

Comment: Two commenters objected that the OIG Report provided that couriers could be invoiced for employee's time spent at lunch. These commenters stated that no such allowance should be allowed and that reimbursable charges should be assessed only for actual time worked.

Customs response: Regarding billings for the actual hours worked by Customs personnel, the OIG Report stated that Customs only billed 7 hours a day when inspectors worked a full 8 hours. This means that Customs did not bill couriers for employee's time spent at lunch.

Benefits Ratio

Comment: Two commenters stated that the OIG Report provided no substantiation for the ratio of benefit costs to employee's salary. One of these commenters alleged that because the initial **Federal Register** Notice did not explain the OIG's audit report's conclusion—that the benefit ratio is 28.55 percent instead of 11.5 percent—that it violates the Administrative Procedure Act and Customs should withdraw the Notice.

Customs response: Customs disagrees that the initial Notice violated the Administrative Procedure Act (APA). In promulgating a rulemaking document for publication in the **Federal Register** one of the requirements is that the Notice of Proposed Rulemaking shall include either the terms or substance of the proposed rule or a description of the subjects and issues involved. See 5 U.S.C. 553(b)(3). Customs believes the initial Notice clearly stated that the proposal was to increase the rate of charge for reimbursable Customs services in accordance with the OIG Report and that this met the APA standard of a description of the subjects and issues involved. Nonetheless, Customs believes that this comment is moot as Customs is proceeding in this document with another proposal.

Revenue Raising

Comment: One commenter stated that the OIG Report suggests that the underlying purpose of the proposed 15 percent increase in the computational charge is not to reimburse Customs for costs of services, but rather, to raise revenue, which is an unlawful purpose.

Customs response: Customs disagrees with this interpretation of the OIG's Report statement. The OIG Report statement in question was presented as a net result, that is, that if Customs increased its hourly rate of charge percentage from 137 percent to 158 percent, this would result in a revenue enhancement to Customs in that it would enable Customs to collect all the revenue due for providing reimbursable Customs services.

Computation of Charges

Comment: One commenter stated that the proposed increase in the rate of charge was unreasonable and arbitrary, and would have a significant financial impact on all airports, not just user-fee airports. This commenter proposed that a more reasonable increase of 149 percent, one that is in line with similar services provided airports, be adopted.

Customs response: Customs has already discussed how the proposed increase in the hourly rate of charge percentage merely represents reimbursement to the Government based on actual expenses. Since the proposed increase in the hourly rate of charge percentage bore a direct relationship to actual expenses, as audited by the OIG, the proposal was neither unreasonable nor arbitrary. However, as indicated later in this document, Customs is now proposing a different rate of charge based on actual expenses during the fiscal year of 2000.

Application of Charges

Comment: Three of the commenters argued that the reimbursable charges imposed by Customs on the air express industry are not similarly imposed on the U.S. Postal Service (USPS), which gives USPS an unfair competitive advantage. These commenters recommended that Customs rectify this imbalance before attempting to increase the rate of charge for reimbursable Customs services.

Customs response: It is acknowledged that the billing schemes applicable to the USPS and the air express industry are statutorily different: one being grounded in the Consolidated Omnibus Budget Reconciliation Act of 1985, the other being grounded in the Omnibus Budget Reconciliation Act of 1987. But since the initial Notice concerned an increase in the rate of charge for reimbursable Customs services and not the application of this rate of charge, this comment falls outside the scope of this rulemaking and will not be addressed in this document.

Impact of Increase and Need for Delayed Effective Date for Final Rule

Comment: One commenter urged Customs to delay the effective date of any new reimbursable rate six months from the date of publication. The commenter stated that delaying the effective date would provide a reasonable amount of time for businesses whose budgets are already established based on the existing rate of charge for reimbursable Customs services to adjust to the proposed increased rate of charge.

Customs response: Customs cannot agree to this accommodation for several reasons. First, the proposed increase in the rate of charge is minimal. The present total charge for reimbursable Customs services is 153.45 percent and the proposed increase, as discussed below, will only raise the total charge to 154 percent. Customs does not believe that such a small increase would cause serious disruption to interested parties' budgets. Second, in consolidating the various regulatory provisions that comprise the total charge for reimbursable Customs services, Customs is making its regulations as transparent and simple as possible—a goal that should be accomplished as soon as possible. Third, the purpose for the change in the rate of charge for reimbursable Customs services is to provide full reimbursement to Customs for these services. For these reasons, allowing for a delayed effective date of six months would contradict the purpose of the reimbursable charges statute (31 U.S.C. 9701). Accordingly, in the final rule document Customs expects to provide for the normal 30 days delayed effective date provided for by the APA.

Further Consideration by Customs

Based upon the comments received to the initial Notice published on February 1, 2001, and upon further consideration of the factors employed in the computational formula to represent reimbursement to Customs for the costs and expenses associated with providing requested Customs services, Customs has decided to no longer use the five-factor computational formula that is presently used to determine the hourly percentage rate of charge for reimbursable Customs services. The computational formula currently provided at § 24.17(d) contains outdated cost factors and other factors that do not capture the actual costs to Customs of providing inspectional and supervisory services. Customs now believes that a straight comparison of actual costs based on data every other year—beginning with fiscal year 2000—yields an hourly percentage rate of charge that provides Customs with a firm basis for determining the fees it needs to charge for reimbursable Customs services. Further, Customs believes that consolidating the various regulatory provisions that comprise all the costs and expense factors used to charge parties-in-interest for requested Customs services will provide the trade community with the clarity it needs to understand how Customs arrives at the percentage rate charged.

New Proposed Rate of Charge

This document sets forth a new proposed methodology for determining the rate of charge for reimbursable Customs services performed on a regular workday during a basic 40-hour workweek, and, based on that methodology, proposes that the rate of charge be increased to a single rate of 154 percent of the hourly rate of regular pay of the employee performing the service. This new proposed hourly percentage rate of charge employs an updated computational formula that is based on the ratio of actual benefits to salary for personnel in the Office of Field Operations who performed

reimbursable services during regular hours of duty (not costs for overtime or services delivered outside the basic workweek) in fiscal year 2000. The new proposal consolidates in one section of the regulations (§ 24.17(d)) the other fee and expense provisions associated with providing reimbursable Customs services during regular hours of duty.

For the Office of Field Operations for fiscal year 2000, the ratio of benefits to salary was determined as follows:

	Millions
Salaries:	
Full-time	$479.1
Part-time	6.5
Total Salaries	485.6
Benefits:	
Life and Health Insurance	31.6
Retirement Contributions	55.5
FICA	18.1
Medicare	3.6
Uniforms	3.8
Cost of Living	2.9
All Others	3.6
Total Benefits	119.1

Benefits Rate of Charge = 24 percent (119.1 M/485.6 M).

Thus, the benefits rate of charge is calculated to be 24 percent. In determining this benefits ratio, Medicare costs are included. Medicare costs are not considered within the 137 percent rate of charge currently set forth in the regulations at § 24.17(d); they are added on to the 137 percent pursuant to § 24.17(f).

Because the Medicare compensation cost is directly factored into the proposed percentage rate of charge, it is proposed to revise paragraph (f) of § 24.17 to limit its application to provisions other than the provision providing for reimbursable Customs services during a regular workweek. Also, the reference to 1.35 percent is removed, as the rate was changed to 1.45 percent in 1986 by the Federal Insurance Contributions Act (FICA), which establishes this compensation charge.

Currently, in addition to the charge of 137 percent and the Medicare charge, Customs charges for administrative overhead for services performed during the regular workweek. Administrative overhead is provided for at § 24.21 of the Customs Regulations. In this document, Customs is proposing to consolidate the administrative overhead charge for work during a regular workweek into the hourly percentage rate of charge.

Administrative Overhead Charges for Regular Workweek Reimbursable Services

Section 24.21(a) provides, in part, that an additional charge for administrative overhead costs must be collected from parties-in-interest who are required to reimburse Customs for compensation and/or expenses of Customs officers performing reimbursable and overtime services for the benefit of such parties under either § 24.16 or § 24.17. This charge is currently represented by the flat rate of charge of 15 percent. The flat rate of charge was adopted in 1984 because at that time Customs did not have a formal accounting system for determining the indirect costs of administrative overhead and chose to adopt the Treasury Department's recommendation that 15 percent of the identified costs of providing such services be used. See T.D. 84–231.

To determine whether the 15 percent administrative overhead charge truly represented reimbursement to the government, Customs took the actual indirect costs of administrative overhead expenses during regular hours of duty (not costs for overtime or services delivered outside the basic workweek) for the Office of Field Operations for fiscal year 2000 and found the following relationship:

%	Millions
Salaries:	
Full-time	$479.1
Part-time	6.5
Total Salary	$485.6
Administrative Support	$145.1

Administrative Overhead Rate of Charge = 30 percent (145.1 M/485.6 M).

Thus, the charge for administrative overhead is determined to be 30 percent of the compensation and/or expenses of the Customs officers performing the services. Combining the direct benefit and the indirect administrative overhead rates of charge gives a single rate of charge percentage that is calculated as follows:

	Millions
Benefits Costs	$119.1
Administrative Overhead	145.1
Total Benefit and Administrative Overhead Costs	264.2

Combined Rates of Charge = 54 percent (264.2 M/485.6 M).

Taking these tabulations into consideration, Customs in this document is proposing to amend § 24.17(d) to reflect that the charges for the services of a Customs employee on a regular workweek during a basic 40-hour workweek will be computed at 154 percent of the hourly rate of regular compensation for the particular Customs employee performing the services.

Because the administrative overhead cost is directly factored into the proposed percentage rate of charge for work during a regular workweek, Customs is proposing to amend § 24.21(a) to remove the references to reimbursable services and § 24.17.

Administrative Overhead Charges for Overtime Reimbursable Services

Customs also examined the relationship between administrative overhead expenses for overtime services and the compensation and/or expenses of the Customs officers performing overtime services. Customs took the actual indirect costs of administrative overhead expenses associated with providing Customs services on an overtime basis for the Office of Field Operations for fiscal year 2000 and found the following relationship:

	Millions
Overtime Salaries	$132.1
Administrative Support	39.5

Administrative Overhead Rate of Charge = 30 percent (39.5 M/132.1 M).

This 30 percent rate more accurately reflects the Government's cost in providing administrative overhead services to parties-in-interest. Accordingly, it is proposed to amend § 24.21(a) to reflect that the rate of charge for administrative overhead for Customs officers performing overtime services will be 30 percent of the compensation and/or expenses of the Customs officers performing the service. A conforming change is proposed to § 24.17(e).

With the proposed amendments to part 24 of the Customs Regulations, Customs believes that the calculation of the percentage charges for Customs services provided on either a reimbursable or overtime basis is more transparent and simple to compute.

The proposed new percentage rates of charge set forth in this document more accurately reflects the Government's actual costs in providing these services to parties-in-interest and will be reviewed biennially using the actual costs and expenses associated with providing requested reimbursable Customs services from the preceding fiscal year.

Other Amendments

In § 101.6, it is proposed to amend paragraph (a) by updating the list of national holidays on which Customs offices are closed by adding the third Monday in January, and the heading of paragraph (b) by correcting a typographical error.

Comments

Before adopting these proposed regulations as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.5 of the Treasury Department Regulations (31 CFR 1.5), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, NW., Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

The Regulatory Flexibility Act and Executive Order 12866

The proposed amendments are intended to conform the Customs regulations with statutory laws, which provide for ten legal public holidays and allow Customs to assess reimbursable charges to those parties-in-interest who require Customs services on either a reimbursable or overtime basis. Further, in the case of reimbursable charges for Customs services performed during regular hours of duty, because the proposed increases in the percentage rates of charge yield a combined increase that is so small (an increase of only .55 percent), pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Further, these proposed amendments do not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 24

Accounting, Customs duties and inspection, Fees, Financial and accounting procedures, Reimbursable charges, Reporting and recordkeeping requirements, Wages.

19 CFR Part 101

Customs duties and inspection, Organization and functions (Government agencies), Reimbursable charges, Reporting and recordkeeping requirements, Wages.

Proposed Amendments to the Regulations

For the reasons set forth above, it is proposed to amend parts 24 and 101 of the Customs Regulations (19 CFR parts 24 and 101), as set forth below:

PART 24—Customs Financial and Accounting Procedure

1. The general authority citation for part 24 continues to read, and the specific authority for § 24.17 is revised to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461; 4462; 31 U.S.C. 9701.

* * * * *

Section 24.17 also issued under 5 U.S.C. 6103; 19 U.S.C. 267, 1450, 1451, 1452, 1456, 1524, 1557, 1562; 46 U.S.C. 2110, 2111, 2112;

* * * * *

2. In § 24.17:

a. The introductory text of paragraph (d) is revised and the table following the introductory text is removed;

b. Paragraph (e) is revised; and

c. Paragraph (f) is revised.

The revisions to paragraphs (d), (e), and (f) read as follows:

§ 24.17 Reimbursable services of Customs employees.

* * * * *

(d) *Computation charge for reimbursable services.* The charge for the services of a Customs employee on a regular workday during a basic 40-hour workweek is computed at a rate that is equal to 154 percent of the hourly rate of regular compensation for the particular Customs employee performing the services with an additional charge equal to any night pay differential actually payable under 5 U.S.C. 5545. The 154 percent hourly rate of charge is based on the reimbursable service expenses incurred by the Office of Field Operations during fiscal year 2000 and includes charges for administrative overhead and Medicare.

* * * * *

(e) The reimbursable charge for Customs services performed on an overtime basis shall be computed in accordance with §§ 24.16 and 24.21(a).

(f) *Medicare compensation costs.* In addition to other expenses and compensation chargeable to parties-in-interest set forth in this section, unless otherwise expressly provided for, such persons shall also be required to reimburse Customs for its share of applicable Medicare costs.

3. In § 24.21, the heading and paragraph (a) are revised to read as follows:

§ 24.21 Administrative overhead charges.

(a) *Overtime services.* The charge for the administrative overhead costs associated with providing Customs services on an overtime basis for parties-in-interest under the provisions of § 24.16 of this part shall be computed at a rate that is equal to 30 percent of the hourly rate of compensation for the particular Customs employee performing the service.

* * * * *

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 is revised to read as follows:

Authority: 5 U.S.C. 301, 6103; 19 U.S.C. 2, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

* * * * *

2. In § 101.6:

a. Paragraph (a) is revised; and

b. Paragraph (b) is amended by removing the word "hgurs" in the heading and adding, in its place, the word "hours".

The revision reads as follows:

§ 101.6 Hours of business.

* * * * *

(a) *Saturdays, Sundays, and national holidays.*—(1) *National holidays.* In addition to Saturdays, Sundays, and any other calendar day designated as a holiday by Federal statute or Executive Order, Customs offices will be closed on the following national holidays:

(i) January 1;

(ii) The third Monday in January;

(iii) The third Monday in February;

(iv) The last Monday in May;

(v) July 4;

(vi) The first Monday in September;

(vii) The second Monday in October;

(viii)November 11;

(ix) The fourth Thursday in November; and

(x) December 25.

(2) *Observance of national holidays.* If a national holiday falls on a Saturday, then the Friday preceding that Saturday will be observed as the national holiday for work purposes. If a national holiday falls on a Sunday, then the Monday following that Sunday will be observed as the national holiday for work purposes.

* * * * *

Approved: October 2, 2002.

Robert C. Bonner,

Commissioner of Customs.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury

[FR Doc. 02–25655 Filed 10–8–02; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 154–1154; FRL–7392–7]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Iowa. The SIP revisions, regarding the State's construction permitting rules as they pertain to industrial anaerobic lagoons and anaerobic lagoons for animal feeding operations in Iowa, will help ensure Federal enforceability of the state's air program. In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by November 8, 2002.

ADDRESSES: Comments may be mailed to Lynn Slugantz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Lynn Slugantz at (913) 551–7883.

SUPPLEMENTARY INFORMATION: *See* the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: June 3, 2002.

William W. Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 02–25591 Filed 10–8–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI21

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Astragalus pycnostachyus* var. *lanosissimus*, a Plant From the Coast of Southern and Central California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Astragalus pycnostachyus* var. *lanosissimus* (Ventura marsh milk-vetch). Approximately 170 hectares (ha) (420 acres (ac)) of land fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Santa Barbara and Ventura counties, California. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded or authorized by Federal agencies.

We are soliciting data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments until December 9, 2002. Public hearing requests must be received by November 25, 2002.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

(1) You may submit written comments and information to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

(2) You may also send comments by electronic mail (e-mail) to *fw1venturamilkvetch@fws.gov*. *See* the Public Comments Solicited section below for file format and other information about electronic filing.

(3) You may hand-deliver comments to our Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Rick Farris, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003 (telephone 805/644–1766; facsimile 805/644–3958). Information regarding this proposal is available in alternate formats upon request.

SUPPLEMENTARY INFORMATION:

Background

Astragalus pycnostachyus var. *lanosissimus* (Ventura marsh milk-vetch) is an herbaceous perennial in the pea family (Fabaceae). It has a thick taproot and multiple erect, reddish stems, 40 to 90 centimeters (cm) (16 to 36 inches (in)) tall, that emerge from the root crown. The pinnately compound leaves (divided more than once on the same stem and arranged like a feather) are densely covered with silvery white hairs. The 27 to 39 leaflets are 5 to 20 millimeters (mm) (0.2 to 0.8 in) long. The numerous greenish-white to cream colored flowers are in dense clusters and are 7 to 10 mm (0.3 to 0.4 in) long. The calyx (a whorl of leaves below the flower) teeth are 1.2 to 1.5 mm (0.04 in) long. The fruits are single-celled pods 8 to 11 mm (0.31 to 0.43 in) long (Barneby 1964). The blooming time has been recorded as July to October (Barneby 1964); however, the one extant population was observed to flower from June to September (Wilken and Wardlaw 2001). This variety is distinguished from *A. pycnostachyus* var. *pycnostachyus* (brine milk-vetch) by certain flower characteristics (*i.e.*, the length of calyx tube, calyx teeth, and peduncles (a stalk bearing a flower or flower cluster)). It is distinguished from other local *Astragalus* species by its overall size, perennial growth form, size and shape of fruit, and flowering time.

Little is known of the habitat requirements of *Astragalus pycnostachyus* var. *lanosissimus*. All but two of the known collections of this taxon were made prior to 1930, and specimen labels from these collections and original published descriptions contain virtually no habitat information. The related variety, *A. pycnostachyus* var. *pycnostachyus*, is found in or at the high edge of coastal saltmarshes and seeps. The only known population of *A. pycnostachyus* var. *lanosissimus* occurs in a sparsely vegetated low area, at an elevation of about 10 meters (m) (30 feet (ft)), on a site previously used for disposal of petroleum waste products (Impact Sciences, Inc. 1997). Dominant shrub species at the site are *Baccharis pilularis* (coyote brush), *Baccharis salicifolia* (mulefat), *Salix lasiolepis* (arroyo willow), and the non-native *Myoporum laetum* (myoporum) (Impact Sciences, Inc. 1997). The population occurs with sparse vegetative cover provided primarily by *Baccharis pilularis, Baccharis salicifolia*, a non-native *Carpobrotus* sp. (seafig) and a non-native annual grass, *Bromus madritensis* ssp. *rubens* (red brome). Soils are reported to be loam-silt loams (Impact Sciences, Inc. 1997). Soils may have been transported from other locations as a cap for the disposal site once it was closed. The origin of the soil used to cap the waste disposal site is unknown; however, because of the costs of transport, the soil source is likely local.

Despite the lack of information available from historical collections, the best description we have of the habitat of *Astragalus pycnostachyus* var. *lanosissimus* is from Wilken and Wardlaw (2001) who concluded that the species occurs in low-elevation coastal dune-swale areas, where freshwater levels (in the form of saturated soils or groundwater) are high enough to reach the roots of the plants. Sometimes, high groundwater is shown by the presence of water in sloughs or coastal creeks, but more typically evidence for freshwater availability is seen in the presence of native, freshwater-dependent plants, such as *Salix* spp. (willows), *Typha* spp. (cattails), *Baccharis salicifolia*, and others. The soils associated with *A. pycnostachyus* var. *lanosissimus* are well-drained, yet contain a mix of sand and clay. Because of the freshwater influence, the soils do not exhibit a white crust which would indicate saline or alkaline conditions.

Like the habitat requirements, little is known about the reproductive biology of *Astragalus pycnostachyus* var. *lanosissimus*. According to Wilken and Wardlaw (2001), the species appears to be self-compatible and partly self-pollinating; however, the flower structure of this species and other *Astragalus* suggests that pollination requires manipulation of flower parts by insects. Few insects have been observed visiting *A. pycnostachyus* var. *lanosissimus* flowers. Wilken and Wardlaw (2001) observed a bumblebee (*Bombus* sp.) and two skippers (Family: Hesperidae) visiting the plants, and other researchers have observed large insects visiting other *Astragalus* species (*e.g.*, Karron 1987). Therefore, it seems likely that insects are the natural pollinators of this plant. The life cycle of *A. pycnostachyus* var. *lanosissimus* thus requires that a pollinator community is present (Geer *et al.* 1995, Karron 1987). The pollinator community is supported by surrounding native vegetation. Non-native plants are likely to be detrimental as they compete with native plants, including *A. pycnostachyus* var. *lanosissimus*, for nutrients, water, and sunlight. Therefore, the percentage cover of exotic plants must be relatively low in areas designated as critical habitat for *A. pycnostachyus* var. *lanosissimus*. Recent research has shown that predation by non-native snails is a factor in the survival of seedlings in the extant population (Wilken and Wardlaw 2001).

Wilken and Wardlaw (2001) concluded that seed production in *Astragalus pycnostachyus* var. *lanosissimus* was limited by pollination and/or fertilization and seed predation by weevils (Family: Bruchidae). The reason for the low pollination rate is unknown, but could be attributed to factors that affect the local pollinator community, such as habitat loss, pesticides, and competition for nectar and aggression from non-native insects such as Argentine ant (*Linepithema humile*).

Low survivorship of seedlings and young plants observed in *Astragalus pycnostachyus* var. *lanosissimus* may be due in part to herbivory by snails (the non-native *Otala lactea* or *Helix aspersa*) and brush rabbits (*Sylvilagus bachmani*) (Wilken and Wardlaw 2001). Due to the combination of poor seedling and young plant survivorship and low seed production, the population of *A. pycnostachyus* var. *lanosissimus* declined from its rediscovery in 1997 until the 2001 season (Impacts Sciences 1997 and 1998; Wilken and Wardlaw 2001; Wilken, pers. comm., 2002). The population appears to be surviving due to having established a seedbank (not all seeds produced in one year will germinate the following year). The hard seed coat may require scarification (scraping or small cuts) that cannot happen within one season, so the seed may survive for one year or more in the soil until the coat can break down or is broken by some mechanical means (Wall, pers. comm., 2000). Also, Wilken and Wardlaw (2001) found that the plants may not become reproductive until more than 18 to 30 months following germination. The implication for *A. pycnostachyus* var. *lanosissimus* is that low seed production and thus a seed bank deficit, combined with low seedling survival and the mortality of some adult plants, may contribute to the population's decline unless the factors causing these problems (*e.g.*, snail herbivory, low pollination rate) can be addressed.

Astragalus pycnostachyus var. *lanosissimus* was first described by Per Axel Rydberg (1929) as *Phaca lanosissima* from an 1882 collection by S.B. and W.F. Parish made in what is now Orange County, California. The combination *A. pycnostachyus* var. *lanosissimus* was assigned to this taxon by Philip Munz and Jean McBurney in 1932 (Munz 1932).

The exact location of the type locality of *Astragalus pycnostachyus* var. *lanosissimus* is unclear. The specimen label from the plant collected in 1882 by S.B. and W.F. Parish identifies the site as "La Bolsa." Based on the labeling of other specimens collected by the Parishes in 1881 and 1882, Barneby (1964) suggested that this collection may have come from the Ballona marshes in Los Angeles County. However, Critchfield (1978) believed that "La Bolsa" could have referred to Bolsa Chica, a coastal marsh system located to the south in Orange County. The California Natural Diversity Data Base (CNDDB) (CDFG 2002) concludes that "La Bolsa" is the Bolsa Bay area between Sunset Beach and Huntington Beach in Orange County. Collections of other plants from the "La Bolsa" area have been mapped as the Bolsa Chica salt marsh, although exact locations of the collections are not known.

In the five decades following its discovery, *Astragalus pycnostachyus* var. *lanosissimus* was collected from only a few locations in Los Angeles and Ventura counties. In a second 1882 collection, the plant was collected from near Santa Monica in Los Angeles County. It was also collected from the Ballona marshes just to the south in

1902, and "Cienega" in 1904, also likely near the Ballona wetlands. In Ventura County it was collected in 1901 and 1925 from Oxnard and in 1911 from an unspecified location in "Ventura, California," a city adjacent to Oxnard.

Barneby (1964) believed that *Astragalus pycnostachyus* var. *lanosissimus* had been extirpated from Santa Monica southward, noting that there was still the possibility it survived in Ventura County (although he knew of no locations at that time). The species was briefly rediscovered in 1967 through the chance collection by R. Chase of a single specimen growing by a roadside between the cities of Ventura and Oxnard. Searches uncovered no other living plants at that location, although some mowed remains discovered on McGrath State Beach lands across the road from Chase's collection site were believed to belong to this taxon (information on herbarium label from specimen collected by R.M. Chase 1967). Floristic surveys and focused searches conducted in the 1970s and 1980s at historical collection locations did not locate any populations of *A. pycnostachyus* var. *lanosissimus* and the plant was presumed extinct (Isley 1986, Burgess 1987, Spellenberg 1993, Skinner and Pavlik 1994). On June 12, 1997, a population of the plant was rediscovered by a Service biologist in a degraded coastal dune system near Oxnard, California (Kate Symonds, pers. obs., 1997).

Based upon searches for *Astragalus pycnostachyus* var. *lanosissimus* between the last collection in 1967 and its rediscovery in 1997, the species is believed to have been extirpated from all of the general areas from which it had been collected except the single remaining extant population in Oxnard, Ventura County. Locations of collections from the late 1800s to early 1900s in Los Angeles County are now urbanized within the expansive Los Angeles metropolitan area. Approximately 90 percent of the Ballona wetlands, once encompassing almost 810 ha (2,000 ac), have been drained, dredged, and developed into the urban areas of Marina del Rey and Venice (Critchfield 1978, Friends of Ballona Wetlands 1998). Ballona Creek, the primary freshwater source for the wetland, had been straightened, dredged and channelized by 1940 (Friesen *et al.* 1981). Despite periodic surveys of what remains at the Ballona wetlands, *A. pycnostachyus* var. *lanosissimus* has not been collected there since the early 1900s (Gustafson 1981; herbarium labels from collections by H. P. Chandler and by E. Braunton, 1902, housed at UC Berkeley Herbaria).

In 1987, botanists searched specifically for *Astragalus pycnostachyus* var. *lanosissimus* without success at previous collection locations throughout its range in coastal habitats, including Bolsa Chica in Orange County and on public lands around Oxnard in Ventura County (F. Roberts, Service, *in. litt.*, 1987; T. Thomas, Service, pers. comm., 1997). Point Mugu Naval Air Weapons Station, in southern Ventura County, may have suitable habitat (Wilken and Wardlaw 2001); however, focused surveys have not been conducted there. *A. pycnostachyus* var. *lanosissimus* was not found during cursory surveys of the base, nor has this taxon ever been collected there despite habitat evaluations and vegetation sampling by the Navy for the past 15 years (Navy Base Ventura County 2002).

The single known population of *Astragalus pycnostachyus* var. *lanosissimus* near the city of Oxnard is in a degraded backdune community. From 1955 to 1981 the land on which it occurs was used as a disposal site for oil field wastes (Impact Sciences, Inc. 1998). In 1998, the City of Oxnard published a Final Environmental Impact Report (FEIR) for development of this site (Impact Sciences, Inc. 1998). In a final step, the project was approved by the California Coastal Commission in April 2002. The proposal for the site includes remediation of soils contaminated with hydrocarbons, followed by construction of 300 homes and a 2–ha (6–ac) lake on 37 ha (91 ac) of land. The proposed soil remediation would involve excavation and stockpiling of the soils, followed by soil treatment and redistribution of the soils over the site (Impact Sciences, Inc. 1998).

The proposed measures for conservation on the site would be to establish a 2 ha (5 ac) preserve that would be dominated by highly disturbed soils. The buffers between the development and preserve areas would be 15 meters (m) (50 feet (ft)). According to a comprehensive review of rare plant preserve design compiled by the Conservation Biology Institute (2000), buffers of that size are insufficient to protect a rare plant species because indirect effects (*e.g.*, fuel management, loss of pollinators, introduction of competing exotic plants) are not absorbed and are likely to extend well into the preserved area. Thus, the preserve proposed for *Astragalus pycnostachyus* var. *lanosissimus* has inadequate consideration of the biological needs of the species and unproven management and protection of the site. The proposed project, as described in the FEIR, could have several adverse effects on the only known population of *A. pycnostachyus* var. *lanosissimus*, possibly resulting in the extinction of this taxon in the wild. We anticipate that the project will exacerbate the problems the population already experiences with snail predation and exotic plants, and will also introduce pesticides, increase human access, interrupt pollination, and alter the freshwater inundation regime that the species apparently requires.

The Service was not involved in the agreements between the developer and local and State officials because our regulatory authority does not extend to listed plants on private land unless there is a Federal nexus, such as a Federal permit or funding. No nexus existed on the site and our role was strictly advisory.

A sooty fungus was found on the leaves of *Astragalus pycnostachyus* var. *lanosissimus* in late summer, 1997, as leaves began to senesce (die) or wither and the plants entered a period of dormancy (Impact Sciences, Inc. 1997). The effects of the fungus on the population are not known, but it is possible that the fungus attacks senescing leaves in great number only at the end of the growing season. The plants appeared robust when in flower in June 1997, matured seed by October 1997, and were regrowing in March 1998, after a period of dormancy, without obvious signs of the fungus (Steeck, in. litt, 1998). Wilken and Wardlaw (2001) did not detect any signs of pathogens on mature plants that appeared to be in poor health; however, two mature plants had infestations of aphids (Family: Aphididae) that were being tended by non-native Argentine ants. Cucumber mosaic virus, which is transmitted by aphids, was found in the *A. pycnostachyus* var. *lanosissimus* population (Wilken 2002).

In 1997, the seeds of *Astragalus pycnostachyus* var. *lanosissimus* were heavily infested with seed beetles (Bruchidae: Coleoptera). In a seed collection done for conservation purposes in 1997, the Service found that most fruits partially developed at least 4 seeds; however, seed predation reduced the average number of undamaged seeds to only 1.8 per fruit (Steeck, in. litt., 1998). Wilken and Wardlaw (2001) reported similar findings in 2000. Apparently heavy seed predation by seed beetles and weevils has been reported among other members of the genus *Astragalus* (Platt *et al.* 1974, Lesica 1995). Wilken and Wardlaw (2001) estimate that seed predation by these insects may reduce seed viability by 30 percent in a given year.

Because of its small population size, the only natural population is also threatened by competition with non-native plant species. *Cortaderia selloana* (pampas grass), *Carpobrotus* sp., and *Bromus madritensis* ssp. *rubens* are invasive non-native plant species that occur at the site (Impact Sciences, Inc. 1997). *Carpobrotus* sp. in particular, are competitive, succulent species with the potential to cover vast areas in dense clonal mats and may harbor non-native snails. *Bromus madritensis* ssp. *rubens* grew in high densities around some mature individuals of *Astragalus pycnostachyus* var. *lanosissimus* in 1998 and seedlings were germinating among patches of *Carpobrotus* spp. and *Bromus* spp. in 1998 (D. Steeck, *in. litt., 1998*). Seedling survival rates in these areas have not yet been determined.

Efforts to conserve *Astragalus pycnostachyus* var. *lanosissimus* have been initiated by the landowner (North Shore at Mandalay LLC) and a task force of scientists from the University of California and Santa Barbara Botanic Garden, agencies (California Department of Fish and Game, U.S. Fish and Wildlife Service, California Department of Parks and Recreation), and plant propagation experts from the Rancho Santa Ana Botanic Gardens (RSABG). Contractors for the landowner and proponent of the development, North Shore at Mandalay LLC, have successfully grown plants in a remote greenhouse facility. Several plants were excavated from the natural population and potted prior to state and Federal listing, and other plants were started from seed gathered from the natural population. In addition, *A. pycnostachyus* var. *lanosissimus* seed from the site was placed in a seed storage collection and a seed bulking project at RSABG. RSABG has been successful in germinating *A. pycnostachyus* var. *lanosissimus* seed and growing the plants in containers (Wilken and Wardlaw 2001).

Research populations have been introduced in two locations within the historical range of *Astragalus pycnostachyus* var. *lanosissimus*: Mandalay State Beach, across the street from the extant population, and one at McGrath State Beach. Two transplantation experiments are underway outside of the known range of the species: one at Carpenteria Marsh and the other at Coal Oil Point, both in Santa Barbara County. Approximately 250 individuals were planted and are being irrigated at the Coal Oil Point Reserve. Seed has been introduced at 10 separate dune locations at the Reserve (Cristina Sandoval, Reserve Director, pers. comm., 2002). The success of any of these efforts in establishing self-sustaining populations of *A. pycnostachyus* var. *lanosissimus* is yet to be determined.

In 1997, the population of *Astragalus pycnostachyus* var. *lanosissimus* in Oxnard consisted of about 374 plants, of which 260 were small plants thought to have germinated in the last year and 114 were "adult" plants. Of these adult plants, fewer than 65 plants produced fruit in 1997 (Impact Sciences, Inc. 1997). In 1998, 192 plants were counted during surveys of the population. Service biologists placed cages around a sample of plants in 1999 to protect them from severe herbivory apparently done by small mammals, most likely brush rabbits. Despite this protection, only 30 to 40 plants produced flowers in 1999, which was believed to be less than half of those blooming in 1998 (Steeck, *in litt.*, 1998).

Wilken and Wardlaw (2001) state that the total number of adult plants declined between 1997 and 2000. Although 46 of 80 seedlings that germinated in the 2000 growing season were still present in October 2000, the total number of surviving adult plants in 2000 was estimated at 39. Many are believed to have succumbed to herbivory from snails and brush rabbits. Other losses are unexplained, sudden mortalities (Wilken and Wardlaw 2001). Following efforts to control snails in 2000 (*i.e.*, poisoning, hand removal, clearing of iceplant, fencing), and perhaps more favorable growing conditions in the winter of 2000–2001, more than 1,000 seedlings were observed (Wilken, pers. comm., 2002). Of these, more than 300 survived until October 2001 when they became dormant. At the time of this proposal, more recent survey data is not available.

Previous Federal Action

Federal actions for this taxon began pursuant to section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51) was presented to Congress on January 9, 1975, and *Astragalus pycnostachyus* var. *lanosissimus* was included on List C, among those taxa believed possibly extinct in the wild. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3)) of the Act and its intention to review the status of the plant taxa named therein.

On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This list, which included *Astragalus pycnostachyus* var. *lanosissimus*, was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In a December 10, 1979, notice (44 FR 70796) the Service withdrew the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. *A. pycnostachyus* var. *lanosissimus* was included in that withdrawal notice.

We published an updated Notice of Review (NOR), Review of Plant Taxa for Listing as Endangered and Threatened Species on December 15, 1980 (45 FR 82480). This notice included *Astragalus pycnostachyus* var. *lanosissimus* in a list of category 1 candidate species that were possibly extinct in the wild. Category 1 candidate species were taxa for which we had sufficient information on biological vulnerability and threats to support the preparation of listing proposals. These category 1 candidates were given high priority for listing were extant populations to be confirmed.

The Service maintained *Astragalus pycnostachyus* var. *lanosissimus* as a category 1 candidate in subsequent NORs: November 28, 1983 (48 FR 53640); September 27, 1985 (50 FR 39526); and February 21, 1990 (55 FR 6184). The Service published a NOR (58 FR 51144) on September 30, 1993, in which taxa whose existence in the wild was in doubt, including *A. pycnostachyus* var. *lanosissimus*, were moved to Category 2. Category 2 candidate species were taxa for which information then in our possession indicated that proposing to list the taxon as endangered or threatened was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support proposed rules. On February 28, 1996

we published a NOR in the **Federal Register** (61 FR 7596) that discontinued the designation of category 2 species as candidates, including those taxa thought to be extinct. Thus, *A. pycnostachyus* var. *lanosissimus* was excluded from this and subsequent NORs. In 1997, *A. pycnostachyus* var. *lanosissimus* was rediscovered and a review of the taxon's status indicated that a proposed rule was warranted.

A proposed rule to list *Astragalus pycnostachyus* var. *lanosissimus* as endangered was published in the **Federal Register** on May 25, 1999 (64 FR 28136). On January 26, 2001, the Center for Biological Diversity (CBD) filed a Complaint for Declaratory and Injunctive Relief against the Service asking the court to enjoin the Service to render a final listing determination for *A. pycnostachyus* var. *lanosissimus*. The final rule listing the plant as endangered was published on May 21, 2001 (66 FR 27901).

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exists: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species. At the time *Astragalus pycnostachyus* var. *lanosissimus* was listed, we found that designation of critical habitat was prudent but not determinable, and that we would designate critical habitat once we had gathered the necessary data.

Despite this finding regarding critical habitat at the time of listing, the CBD lawsuit also sought to cause the Service to prepare a final rule designating critical habitat for *Astragalus pycnostachyus* var. *lanosissimus*. A stipulated settlement agreement and Order was filed with the court on August 2, 2001, which provides that the Service will submit for publication in the **Federal Register** a proposed critical habitat designation for *A. pycnostachyus* var. *lanosissimus* on or before October 1, 2002, and that the final designation will be submitted for publication on or before October 1, 2003.

Critical Habitat

Section 3 defines critical habitat as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat.

Critical habitat also provides non-regulatory benefits to the species by informing public and private interest groups of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features essential for the conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified, by helping people to avoid causing accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known, and using the best scientific and commercial data available, habitat areas that provide at least one of the physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species." Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best available scientific and commercial data demonstrate that unoccupied areas are essential for the conservation needs of the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, unpublished materials, or other unpublished materials.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas that support newly discovered populations in the future, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9(a)(2) prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus*. This information included data from the final rule listing the species as endangered (66 FR 27901), the CNDDB (CDFG 2002), recent biological surveys, reports and aerial photos, additional information provided by interested parties, and discussions with botanical experts. We also conducted site visits at locations managed by Federal and State agencies, including the Navy Base Ventura County/Point Mugu, McGrath State Beach, and Carpinteria Marsh.

Much of the critical habitat description is derived from Wilken and Wardlaw (2001) which represents the most complete information to date regarding the biology and habitat of *Astragalus pycnostachyus* var. *lanosissimus*. Of particular relevance to this critical habitat determination, Wilken and Wardlaw (2001) provide descriptions of the habitat of *A. pycnostachyus* var. *lanosissimus*' closest relative, *A. pycnostachyus* var. *pycnostachyus* (northern marsh milk-vetch). Wilken and Wardlaw (2001) collected data on habitat characteristics at sites occupied by *A. pycnostachyus* var. *pycnostachyus* and compared these with the characteristics at the extant population of *A. pycnostachyus* var. *lanosissimus*. Once common habitat characteristics had been established, Wilken and Wardlaw used these to evaluate areas for their suitability for establishing new populations of *A. pycnostachyus* var. *lanosissimus*. The factors evaluated included: degree of disturbance; vegetative cover (percent and type); associated species; proximity to subterranean water table; and potential threats. Wilken and Wardlaw (2001) also analyzed soil from the site where *A. pycnostachyus* var. *lanosissimus* currently exists for physical and chemical properties important for general plant growth, such as texture, pH, salinity, nutrients, and micronutrients.

Determining what constitutes habitat for *Astragalus pycnostachyus* var. *lanosissimus* is difficult due to having only one extant population on a site of questionable history (*i.e.*, soil dumping, oil waste) to sample. Also, the historical collections did not fully document the habitat where the plants were found. Therefore, both Wilken and Wardlaw (2001) and the Service's (Steeck, *in litt.*, 1998) data were used to characterize the habitat of *A. pycnostachyus* var. *lanosissimus* and to determine the primary constituent elements. Some differences between the two subspecies of *A. pycnostachyus* are apparent, especially in regards to associated plant species and general habitat type. These differences may be a function of a small data set for *A. pycnostachyus* var. *lanosissimus* due to its single population, uncertainty surrounding the presence of *A. pycnostachyus* var. *lanosissimus* on the extant site (*i.e.*, whether it is a natural occurrence or was introduced through soil dumping), and differences in the two subspecies in terms of what habitat may support them. We have paid particular attention to information from Wilken and Wardlaw (2001) because they analyzed conditions at the only known site where *A. pycnostachyus* var. *lanosissimus* currently occurs.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to: space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for reproduction, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the known historical geographical and ecological distributions of a species.

Much of what is known about the specific physical and biological requirements of *Astragalus pycnostachyus* var. *lanosissimus* is described in the Background section of this proposed rule. The proposed critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *A. pycnostachyus* var. *lanosissimus* throughout its range and to provide those habitat components essential for the conservation of the species. These habitat components provide for: (1) Individual and population growth, including sites for germination, pollination, reproduction, pollen and seed dispersal, and seed dormancy; (2) areas that allow gene flow and provide connectivity or linkage within larger populations; (3) areas that provide basic requirements for growth, such as water, light, and minerals; and (4) areas that support populations of pollinators and seed dispersal organisms.

We believe the long-term probability of the conservation of *Astragalus pycnostachyus* var. *lanosissimus* is dependent upon the protection of the existing population site and sites where introductions can be conducted, as well as the maintenance of ecological functions within these sites, including connectivity between colonies (*i.e.*, groups of plants within sites) within close geographic proximity to facilitate pollinator activity and seed dispersal. The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of *A. pycnostachyus* var. *lanosissimus*. Based on the best available information at this time, the primary constituent elements of critical habitat for *A. pycnostachyus* var. *lanosissimus* consist of, but are not limited to:

(1) Vegetation cover of at least 50 percent but not exceeding 75 percent, consisting primarily of known associated native species, including but not limited to, *Baccharis salicifolia*, *Baccharis pilularis*, *Salix lasiolepis*, *Lotus scoparius* (deerweed), and *Ericameria ericoides* (coast goldenbush);

(2) Low densities of non-native annual plants and shrubs, not exceeding 25 percent cover (combined with the minimum 50 percent native cover requirement, total cover of natives and non-natives should not exceed 75 percent);

(3) The presence of a high water table, either fresh or brackish, as evidenced by the presence of channels, sloughs, or depressions that may support stands of

Salix lasiolepis, *Typha* spp., and *Scirpus* spp. (cattail);

(4) Soils that are fine-grained, composed primarily of sand with some clay and silt, yet are well-drained; and

(5) Soils that do not exhibit a white crystalline crust that would indicate saline or alkaline conditions.

Criteria Used To Identify Critical Habitat

Critical habitat being proposed for *Astragalus pycnostachyus* var. *lanosissimus* includes the only known location where the species currently occurs and two other sites with high potential to support the species based upon habitat characteristics (including the analysis of Wilken and Wardlaw 2001) and/or historical occurrences. We believe that establishment of new, self-sustaining populations of *A. pycnostachyus* var. *lanosissimus* at other sites is essential for the species' survival because the species is currently known from a single location at which its future is uncertain due to its small population size and the high degree of threat from chance catastrophic events. Catastrophic events are a concern when the number of populations or geographic distribution of a species is severely limited (Shaffer 1981, 1987; Primack 1998; Meffe and Carroll 1997), as is the case with *A. pycnostachyus* var. *lanosissimus*. Because a critical habitat designation limited to this species' present range—one known location—would be inadequate to ensure its conservation, the establishment of additional locations for *A. pycnostachyus* var. *lanosissimus* is critical to reducing the risk of extinction.

For sites not currently occupied by *Astragalus pycnostachyus* var. *lanosissimus*, we first considered the historical range of the species based upon collection data and records from the CNDDB (CDFG 2001). From this potential distribution, we located the areas where the plants were observed or collected as closely as they could be discerned from the data. In some cases, we had to determine that old place names, such as "La Bolsa," referred to sites with some similar name, like Bolsa Chica, or found references that made conclusions about modern place names from the data.

By examining aerial photographs and reviewing pertinent literature, and through discussions with knowledgeable individuals, we identified areas where habitat similar to that at the currently occupied site and where habitat similar to that occupied by the closest relative, *Astragalus pycnostachyus* var. *pycnostachyus*, may still exist. These broader areas were refined with information on the extant population and the other locations as derived from Wilken and Wardlaw (2001). We also engaged in discussions with the Carlsbad Fish and Wildlife Office which has responsibility for and experience with the historical locations in southern Los Angeles and Orange counties (K. Clark and J. Fancher, pers. comm., 2002).

The boundaries of the units were identified on aerial photographs and U.S. Geological Survey topographical maps and refined based upon adjacent land uses. For example, one unit is bordered on three sides by urban areas and on the final side by the Pacific Ocean. We decided that due to the limited suitable habitat available, the patchiness of such habitat, and the lack of information on related ecosystem functions that would support *Astragalus pycnostachyus* var. *lanosissimus*, we should include all natural vegetation within the units up to where land use changes and natural vegetation end. The critical habitat units were designed to encompass a large enough area to support existing ecological processes that may be essential to the conservation of *A. pycnostachyus* var. *lanosissimus* (*e.g.*, that provide areas into which populations might expand, provide connectivity or linkage between colonies within a unit, and support populations of pollinators and seed dispersal organisms).

Within the historical range of *Astragalus pycnostachyus* var. *lanosissimus*, we considered two of the collection localities: Bolsa Chica, Orange County, and the Ballona Wetlands, Los Angeles County. During discussions with biologists most familiar with these areas (K. Clark and J. Fancher, pers. comm., 2002), we concluded that, although the areas remain undeveloped for the most part, conditions have changed dramatically since the plants were collected. For example, the Bolsa Chica area has been altered by oil development, which created raised pads and lower excavated areas, and channelized the natural freshwater inflow that once existed. The influence of tidal flow is now more pronounced, to the point that the soils have become saline. The area, therefore, does not contain plant species that indicate freshwater influence. Plant species indicating freshwater influence are found at the currently occupied site and at locations where the close relative, *A. pycnostachyus* var. *pycnostachyus*, occurs. Also, long-range plans for Bolsa Chica are to increase the tidal influence by establishing a direct connection to the ocean across Bolsa Chica State Beach. The Ballona Wetlands are similarly isolated from a freshwater source and are subject to considerable disturbance. Consequently, we rejected both Bolsa Chica and the Ballona Wetlands as potential reintroduction sites for *A. pycnostachyus* var. *lanosissimus* and as critical habitat units.

For critical habitat outside of the historical range, we considered areas from Gaviota State Beach, Santa Barbara County, south to San Diego County. We have included only one critical habitat unit (Carpinteria Marsh) that could be considered outside of the known range of the species in this critical habitat proposal. That location is included because of its proximity to the historical distribution, the initial success of efforts to establish a population there, and the presence of primary constituent elements. Data to support designation of critical habitat elsewhere outside the historic range of *Astragalus pycnostachyus* var. *lanosissimus* are limited. In addition, we do not believe introducing *A. pycnostachyus* var. *lanosissimus* in the vicinity of *Astragalus pycnostachyus* var. *pychnostachyus* is prudent because of the potential for hybridization and dilution of genetic identity between the two varieties. Therefore, we do not believe it is appropriate to designate critical habitat elsewhere outside the historic range of *A. pycnostachyus* var. *lanosissimus*.

In selecting areas of proposed critical habitat we made an effort to avoid developed areas, such as housing developments, that are unlikely to contain the primary constituent elements or otherwise contribute to the conservation of *Astragalus pycnostachyus* var. *lanosissimus*. However, we did not map critical habitat in sufficient detail to exclude all lands unlikely to contain the primary constituent elements essential for the conservation of *A. pycnostachyus* var. *lanosissimus*. Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, railroads, airport runways and other paved areas, lawns, and other urban landscaped areas will not contain any of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

In summary, we selected critical habitat areas that provide for the conservation of *Astragalus pycnostachyus* var. *lanosissimus* where it is known to occur, as well as areas suitable for establishment of new

populations. As noted above, establishment of new populations is important to reduce the risk of extirpation from chance catastrophic events. If we determine that areas outside of the boundaries of the designated critical habitat are important for the conservation of this species, we may propose these additional areas as critical habitat in the future.

Special Management Considerations

It is essential to manage the critical habitat areas in a manner that provides for the conservation of *Astragalus pycnostachyus* var. *lanosissimus*. This includes not only the immediate area where the species may be present, but an additional area that can provide for normal population fluctuations that may occur in response to natural and unpredictable events. *A. pycnostachyus* var. *lanosissimus* is also dependent upon habitat components beyond the immediate areas on which the plant occurs, including the adjacent vegetation communities with which the species is associated, and sufficient areas to support the ecological processes of which the plant's life cycle is a part. These ecological processes include hydrology, pollination, seed dispersal, expansion of distribution, recolonization, and maintenance of natural predator-prey relationships.

Of paramount importance is the maintenance of a pollinator community as *Astragalus pycnostachyus* var. *lanosissimus* appears to be suffering from poor seed set (Wilken and Wardlaw 2001). Although self-compatible, *A. pycnostachyus* var. *lanosissimus* has a flower structure that suggests a relationship with large insects. In this case, the number of plants in the host plant population (*A. pycnostachyus* var. *lanosissimus*) appears to be insufficient in itself to support the pollinator community. Thus, the survival of a pollinator community is dependent upon sufficient natural vegetation beyond the footprint of the rare plant in question, as these other plants are able to sustain the pollinators which are not solely dependent upon the resources of the rare species, yet still provide pollination services to the rare plant. Given the patchiness of suitable habitat for *A. pycnostachyus* var. *lanosissimus* in the region under consideration in this proposal, and the lack of data on the minimum size of patches that can support the appropriate pollinators of *A. pycnostachyus* var. *lanosissimus*, we believe that all of the remaining natural vegetation within the proposed critical habitat units must be managed to maintain and enhance the value to a pollinator community. Maintenance and enhancement can include eradication of non-native plants, control of non-native insects (especially Argentine ants) and snails, revegetation with native shrubs and annuals, and irrigation as needed.

Because only one extant population of *Astragalus pycnostachyus* var. *lanosissimus* remains, Wilken and Wardlaw (2001) provided the following recommendations for experimental introductions of the species into the proposed critical habitat units:

(1) The experimental areas should be free from human incursion, except by researchers and monitors. Exclusion can be accomplished by signs, fencing, and enforcement;

(2) *Astragalus pycnostachyus* var. *lanosissimus* plantings should attempt to establish clusters to examine the gradients of conditions that may be present in the critical habitat areas;

(3) Plants should be grown in containers for transplant into experimental population areas, with emphasis on larger containers (one gallon minimum);

(4) Seeds should be collected from as many different plants as possible each year to establish a diverse genetic pool, and propagate individuals from many different collections;

(5) Transplantation of new container stock, germinated yearly, should occur once per year for at least 3 years to achieve a balanced age structure in the new population and to compensate for fluctuating mortality rates; and

(6) A monitoring program should be implemented to achieve specific goals defined prior to introduction of *Astragalus pycnostachyus* var. *lanosissimus*. The goals should include, at a minimum: population size; age class structure; survivorship; and reproductive success (*i.e.*, pollination, seed production, seedling survival).

Proposed Critical Habitat Designation

The proposed critical habitat areas described below constitute our best assessment at this time of the areas essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus*. The areas being proposed as critical habitat are: (1) Mandalay, including the site of the extant population at Fifth Street and Harbor Boulevard in Oxnard, Ventura County; (2) McGrath Lake area, McGrath State Beach, California Department of Parks and Recreation (CDPR), Ventura County, and (3) Carpinteria Salt Marsh Reserve run by the University of California, Santa Barbara, Santa Barbara County.

The only site occupied by a natural population of *Astragalus pycnostachyus* var. *lanosissimus* is in the Mandalay Unit, located at Fifth Street and Harbor Boulevard in the City of Oxnard. A research population has been initiated at the Mandalay State Beach portion of the unit. Research introductions have also occurred at the Carpinteria Salt Marsh Reserve and McGrath State Beach units. Despite the presence of research populations, we consider all of the units unoccupied except the portion of the Mandalay unit where the natural population occurs. Therefore, we propose to designate currently unoccupied habitat because the conservation of *A. pycnostachyus* var. *lanosissimus* requires it. The single extant natural population is likely to be extirpated by direct and indirect effects of the approved development of the North Shore at Mandalay project (*i.e.*, due to inadequate preserve design), or a catastrophic event could eliminate the population regardless of the development. In the absence of suitable off-site locations where the species could be established, it is possible that it could go extinct. The two unoccupied sites proposed for inclusion have been identified through research as the most likely candidates for new populations because the primary constituent elements are present and they can be adequately protected from the threats identified earlier. One site is within the historical range of the species and one is not. We believe the designation of currently unoccupied locations as critical habitat is essential to the conservation of *A. pycnostachyus* var. *lanosissimus*.

Also, our evaluation of *Astragalus pycnostachyus* var. *lanosissimus* has shown that suitable habitat areas are scarce within the historical range of the species. The combination of associated plant species, high groundwater, low salinity, and other primary constituent elements has either been removed by urbanization, agriculture, oil field development, or flood control projects. Other areas within the historical range were considered and rejected, and areas outside of the historical range were limited in scope and only one was included. The scarcity of suitable habitat has also contributed to the need to propose areas currently unoccupied by *A. pycnostachyus* var. *lanosissimus* as critical habitat.

In summary, we propose to designate approximately 170 ha (420 ac) of land in three units as critical habitat for *Astragalus pycnostachyus* var. *lanosissimus*. The approximate areas of proposed critical habitat by land ownership are shown in Table 1. Private lands comprise approximately 33 percent of the proposed critical habitat; and State lands comprise 67 percent. No

Federal lands are proposed for inclusion.

TABLE 1.—APPROXIMATE AREAS IN HECTARES (HA) AND ACRES (AC) OF PROPOSED CRITICAL HABITAT FOR *Astragalus pycnostachyus* VAR. *lanosissimus* BY LAND OWNERSHIP

Unit name	Private	State	Federal	Total
Mandalay Unit	42 ha (104 ac)	20 ha (49 ac)	0 ha (0 ac)	62 ha (153 ac)
McGrath Unit	14 ha (35 ac)	11 ha (27 ac)	0 ha (0 ac)	25 ha (62 ac)
Carpenteria Salt Marsh Unit	0 ha (0 ac)	83 ha (205 ac)	0 ha (0 ac)	83 ha (205 ac)
Total	56 ha (139 ac)	114 ha (281 ac)	0 ha (0 ac)	170 ha (420 ac)

Note: Approximate acres have been converted to hectares (1 ha = 2.47 ac). Based on the level of precision of mapping of each unit, hectares and acres greater than 10 have been rounded to the nearest whole number. Totals are sums of units.

The proposed critical habitat areas constitute our best assessment at this time of the areas that are essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus*. The three critical habitat units include the only known location where the species currently occurs and two other sites with high potential to support the species. A brief description of each critical habitat unit is given below:

Mandalay Unit

The Mandalay Unit is located on both sides of Harbor Boulevard and north of Fifth Street in the city of Oxnard, Ventura County. On the east side of Harbor Boulevard, the unit extends north from Fifth Street to the Edison Canal, and east from Harbor Boulevard to the Edison Canal. The western portion on Mandalay State Beach includes the area north of Fifth Street, west of Harbor Boulevard, east of an access road that bisects the park, and south of a point halfway between where Harbor Boulevard crosses the Edison Canal and Fifth Street. This unit covers 62 ha (152 ac) and is important because it contains the only known location where *Astragalus pycnostachyus* var. *lanosissimus* naturally exists and one research population. Additional area is included beyond the footprint of the extant population to provide area for expansion of the population and to preserve habitat that may support important pollinators.

The eastern portion of this unit is part of a pending development called the North Shore at Mandalay. The project includes a 2-ha (5-ac) preserve for *Astragalus pycnostachyus* var. *lanosissimus*; however, we believe it is unlikely that the species will persist on the site in the long-term, despite proposed management measures in the Memorandum of Understanding between the developer and the California Department of Fish and Game (CDFG), and a settlement agreement between the developer and the California Native Plant Society. The population will be mostly isolated from surrounding vegetation, and the ecological processes sustaining the population may be interrupted. Also, the project may allow increased human intrusion, provide habitat for non-native plants and snails, alter the hydrologic regime, and introduce pesticides and fertilizers that adversely affect the plants.

The portion of this unit on Mandalay State Beach is identified by Wilken and Wardlaw (2001) as a potential site for establishing a new population of *Astragalus pycnostachyus* var. *lanosissimus*. In 2002, the first efforts at establishing a new population were begun. The proximity of Mandalay State Beach to the extant population indicates that some natural exchange of seeds or pollen could take place if a second population were established at Mandalay State Beach. The site contains most of the primary constituent elements defined for *A. pycnostachyus* var. *lanosissimus* critical habitat, although Wilken and Wardlaw (2001) note some dense cover of non-native annuals. Also, using their five parameters, Wilken and Wardlaw (2001) ranked the Mandalay State Beach portion of this unit as one of the most similar to the natural occurrences of *A. pycnostachyus* var. *lanosissimus* and the closely related *A. pycnostachyus* var. *pycnostachyus*, and hence one of the top candidates for establishing a new population.

We discussed designation of critical habitat in this area with the CDPR. Because the area is currently operated by that agency and is public land, there is opportunity to work with the state to develop strategies to introduce *Astragalus pycnostachyus* var. *lanosissimus* and to form manageable reserves.

As discussed above, currently unoccupied areas (or those with research populations) that support the primary constituent elements are essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus* because they provide additional areas separate from the existing population of *A. pycnostachyus* var. *lanosissimus*, into which it can be introduced. We believe it is extremely important to have additional area to reduce the likelihood that the species may become extinct as the result of a catastrophic event, such as a fire or disease, that can affect an isolated population.

McGrath Unit

The site within McGrath Beach State Park is adjacent to McGrath Lake on the leeward side of the southern end of the lake, between the lake and Harbor Boulevard. A second site to the north, just south of the existing camping facilities, was examined but considered unsuitable by Wilken and Wardlaw (2001) due to frequent use by the public and large stands of non-native vegetation. The unit covers 25 ha (62 ac), of which 14 ha (35 ac) is privately owned.

Of the sites they examined, Wilken and Wardlaw (2001) identify the McGrath Lake area as having the best combination of characteristics similar to that of the extant population of *Astragalus pycnostachyus* var. *lanosissimus* and its closest relative, *A. pycnostachyus* var. *pycnostachyus* based upon five parameters (*i.e.*, dominant vegetation composed of a shrub canopy less than 75 percent; absence of competitive annual or perennial exotic plants; water table in close proximity; soil types consistent with that at the site of the extant population; and native habitat supporting pollinators).

The CDPR agreed to allow the CDFG and the RSABG to establish a research population on this site. The effort is still in its early stages and no conclusive data has yet been retrieved. We also discussed the proposed designation with representatives of the CDPR. Because part of this unit is currently operated by the CDPR and is public land, there is opportunity to work with the state to develop strategies to introduce *Astragalus pycnostachyus* var. *lanosissimus* and to form manageable reserves. This unit is also one of the last known places where the species was observed growing naturally, and it is close to the extant population and shares many of the broader climatic and habitat features of that site.

As discussed above, currently unoccupied units (or those with research populations underway) are essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus* because they provide additional areas separate from the existing population of *A. pycnostachyus* var. *lanosissimus* into which it can be established. We believe it is important to have additional units to reduce the likelihood that the species may become extinct as the result of a catastrophic event. Additional geographically separated units can provide protection from chance events such as disease that can destroy the only remaining population.

Carpinteria Salt Marsh Unit

The Carpenteria Salt Marsh Unit extends from the Southern Pacific Railroad tracks south and west to Sand Point Drive and Santa Monica Creek. It lies north and west of Sandyland Cove Road and north of Avenue del Mar. The area is identified on the U.S.G.S. 7.5-minute Carpinteria quadrangle as "El Estero" and covers 83 ha (206 ac), which is all State-owned.

Much of this area may be saltmarsh habitat that is unsuitable for *Astragalus pycnostachyus* var. *lanosissimus*; however, the habitats surrounding the area where a research population has been established may support the pollinators and other ecological processes that *A. pycnostachyus* var. *lanosissimus* requires. The preliminary introduction of the plant occurred in a portion of the unit near the intersection of Sandyland Cove Road and the railroad tracks. We do not have recent data on the introduced plants' status. Wilken and Wardlaw (2001) identify this area as one of those ranking highest for *A. pycnostachyus* var. *lanosissimus* using the five parameters of habitat suitability they devised. These parameters closely parallel the primary constituent elements, so we believe that most, if not all, of the elements are represented at this site. The diverse native vegetation present may support a good pollinator community; however, a residential community is nearby and non-native snails were observed in the area.

This site in Santa Barbara County is near the range of the species as predicted by the historical collections and described by Skinner and Pavlik (1994), who list the known counties as Ventura, Los Angeles, and Orange. The regulations state that we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best available scientific and commercial data demonstrate that the unoccupied areas are essential for the conservation needs of the species (50 CFR 424.12(e)). We have included it here because of the high potential for successful establishment of a new population per Wilken and Wardlaw's (2001) findings. Also, given the limited availability of suitable sites within the known range and uncertainty surrounding the success of any attempt to establish new populations of a rare plant where it does not already occur, we believe this site is essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus*.

As discussed above, additional, currently unoccupied, units (or those with research populations) are essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus* because they provide additional areas separate from the existing population for *A. pycnostachyus* var. *lanosissimus* into which it can be introduced. We believe it is extremely important to have additional units to reduce the likelihood that the species may become extinct as the result of a catastrophic event. Additional geographically separated units can provide protection from chance events such as disease that can destroy the only remaining population.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, permit, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent that it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist Federal agencies in eliminating conflicts that may be caused by their proposed actions. The conservation measures in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species, or resulting in the destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect *Astragalus pycnostachyus* var. *lanosissimus* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration, Environmental Protection Agency, or Federal Emergency Management Authority funding), would also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not Federally funded, authorized, or permitted do not require section 7 consultation.

We recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) of the Act jeopardy standard and the prohibitions of section 9 of the Act, as determined on the basis of the best available information at the time of the action. Critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 ensures that actions funded, authorized, or carried out by Federal agencies are not likely to jeopardize the continued existence of a listed species, or destroy or adversely modify the listed species' critical habitat. Actions likely to jeopardize the continued existence of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to destroy or adversely modify critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on the recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Designation of critical habitat in the only area occupied by *Astragalus pycnostachyus* var. *lanosissimus* is not likely to result in a regulatory requirement above that already in place due to the presence of the listed species. Designation of critical habitat in areas not occupied by *A. pycnostachyus* var. *lanosissimus* may result in an additional regulatory requirement when a Federal nexus exists.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Astragalus pycnostachyus* var. *lanosissimus* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat of *Astragalus pycnostachyus* var. *lanosissimus* include, but are not limited to the following:

(1) Alteration of existing hydrology by lowering the groundwater table through surface changes or pumping of groundwater, or redirection of freshwater sources through diverting surface waters (*e.g.*, channelization);

(2) Compaction of soil through the establishment of trails or roads;

(3) Placement of structures or hardscape (*e.g.*, pavement, concrete, non-native rock or gravel);

(4) Removal of native vegetation that reduces native plant cover to below 50 percent;

(5) Introduction of non-native vegetation or creation of conditions that encourage the growth of non-natives, such as irrigation, landscaping, soil disturbance, addition of nutrients, etc.;

(6) Use of pesticides or other chemicals that can directly affect *Astragalus pycnostachyus* var. *lanosissimus*, its associated native vegetation, or pollinators;

(7) Introduction of non-native snails or Argentine ants or creation of conditions favorable to these species, through landscaping with non-native groundcover plants such as iceplant, irrigation, or other activities that encourage populations of these non-native species that have been detrimental to the existing population;

(8) Activities that isolate the plants or their populations from neighboring vegetation or open space and thus interfere with ecological processes that rely upon connectivity with adjacent habitat, such as maintaining pollinator populations and seed dispersal; and

(9) Soil disturbance that damages or interferes with the seedbank of the species, such as discing, tilling, grading, removal, or stockpiling.

Designation of critical habitat could affect the following agencies and/or actions: development on private lands requiring permits from Federal agencies, such as authorization from the Corps, pursuant to section 404 of the Clean Water Act, or a section 10(a)(1)(B) permit from the Service, or some other Federal action that includes Federal funding that will subject the action to the section 7 consultation process (*e.g.*, from the Federal Highway Administration, Federal Emergency Management Agency, or the Department of Housing and Urban Development); military activities of the U.S. Department of Defense (Navy) on their lands or lands under their jurisdiction; the release or authorization of release of biological control agents by the U.S. Department of Agriculture; regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act; construction of communication sites licensed by the Federal Communications Commission; and authorization of Federal grants or loans. Where Federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans (HCPs) submitted by the applicant to secure an incidental take permit pursuant to section 10(a)(1)(B) of the Act would be subject to the section 7 consultation process, a process that would consider all federally-listed species affected by the HCP, including plants.

Several other species that are listed under the Act have been documented to occur in the same general areas as the current distribution of *Astragalus pycnostachyus* var. *lanosissimus*. These include brown pelican (*Pelecanus occidentalis*), western snowy plover (*Charadrius alexandrinus nivosus*), California least tern (*Sterna antillarum browni*), light-footed clapper rail (*Rallus longirostris levipes*), and *Cordylanthus maritimus* ssp. *maritimus* (salt marsh bird's beak).

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181 (503/231–6131, FAX 503/231–6243).

Relationship to Habitat Conservation Plans

Currently, no HCPs exist that include *Astragalus pycnostachyus* var. *lanosissimus* as a covered species. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although take of listed plants is not prohibited by the Act, listed plant species may also be covered in an HCP for wildlife species.

In the event that future HCPs are developed within the boundaries of proposed or designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *Astragalus pycnostachyus* var. *lanosissimus*. The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a system of interlinked habitat blocks configured to promote the conservation of the species through application of the principles of conservation biology.

We will provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *Astragalus pycnostachyus* var. *lanosissimus* and appropriate management for those lands. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat.

Economic Analysis and Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available, and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat designation if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species.

We will conduct an analysis of the economic impacts of designating these proposed areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a comment period on the draft economic analysis and the proposed rule at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments are sought particularly concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Astragalus pycnostachyus* var. *lanosissimus* habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* such as those derived from non-consumptive uses (*e.g.*, hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs);

(6) The methodology we might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat; and

(7) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods: (1) You may mail comments to the Field Supervisor at the address provided in the **ADDRESSES** section above; (2) You may also comment via the Internet to *fw1venturamilkvetch@r1.fws.gov*. Please submit internet comments as an ASCII file avoiding the use of special characters and any form of encryption.

Please also include "Attn: RIN–1018–AI21" and your name and return address in your internet message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805–644–1766. Please note that the Internet address *fw1venturamilkvetch@r1.fws.gov* will be closed out at the termination of the public comment period; (3) You may hand-deliver comments to our Ventura Fish and Wildlife Office (*see* **ADDRESSES** section above).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (*see* **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). The Service is preparing a draft economic analysis of this proposed action. The Service will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless failure to designate such area as critical habitat will lead to the extinction of *Astragalus pycnostachyus* var. *lanosissimus*. This analysis will be available for public comment before finalizing this designation. The availability of the draft economic analysis will be announced in the **Federal Register**.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

This discussion is based upon the information regarding potential economic impact that is available to the Service at this time. This assessment of economic effect may be modified prior to final rulemaking based upon development and review of the economic analysis being prepared pursuant to section 4(b)(2) of the Act and E.O. 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect the position of the Service on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish & Wildlife Service*, 248 F.3d 1277 (10th Cir. 2001).

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the Regulatory Flexibility Act to require a certification statement. In today's rule, we are certifying that this rule will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration (*http://www.sba.gov/size/*), small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

In determining whether this rule could "significantly affect a substantial number of small entities," we consider the number of small entities affected within particular types of economic activities and whether critical habitat could potentially affect a "substantial number" of small entities in counties supporting critical habitat areas. While SBREFA does not explicitly define "substantial number," the Small Business Administration, as well as other Federal agencies, have interpreted this to represent an impact on 20 percent or greater of the number of small entities in any industry. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation if they lack a Federal nexus. In areas where the species is present, Federal agencies funding, permitting, or implementing activities are already required to avoid jeopardizing the continued existence of *Astragalus pycnostachyus* var. *lanosissimus* through consultation with us under section 7 of the Act. If this critical habitat designation is finalized, Federal agencies must also ensure that their activities do not destroy or adversely modify designated critical habitat through consultation with us. However, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants where the species is present because conservation already would be required due to the presence of a listed species.

In unoccupied areas, or areas of uncertain occupancy, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, and may result in additional requirements on Federal activities to avoid destroying or adversely modifying critical habitat. Because *Astragalus pycnostachyus* var. *lanosissimus* has only been listed since June 2001, there have been no formal consultations involving the species. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the areas proposed for critical habitat which are considered unoccupied will be due to the critical habitat designation. Should a federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the vast majority of such projects can be successfully implemented with at most minor changes that avoid significant economic impacts to project proponents.

The majority of the areas proposed for critical habitat are state-managed public lands, for which projected land uses are resource protection, recreation, research, and education. Additionally, the private lands under consideration include the proposed North Shore development in the Mandalay unit. On non-federal lands, activities that lack federal involvement would not be affected by the critical habitat designation. Activities of an economic nature that are likely to occur on non-federal lands in the area encompassed by this proposed designation are primarily commercial or residential development. None of the developments recently approved by the local jurisdictions have any Federal involvement, and we are not aware of a significant number of future activities on any of the proposed units that would require Federal permitting or authorization; therefore, we conclude that the proposed rule would not affect a substantial number of small entities.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. However, the Act does not prohibit the take of listed plant species or require terms and conditions to minimize adverse effect to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have no consultation history for *Astragalus pycnostachyus* var. *lanosissimus*, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on

our understanding of the needs of the species and the threats it faces, especially as described in the final listing rule and in this proposed critical habitat designation, as well as our experience with similar listed plants in California. In addition, the State of California listed *A. pycnostachyus* var. *lanosissimus* as an endangered species under the California Endangered Species Act of 1978, and we have also considered the kinds of actions required through State consultations for this species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing non-native species, restoration of degraded habitat, construction of protective fencing, and regular monitoring. These measures are not likely to result in a significant economic impact to project proponents.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing this designation. However, court deadlines require us to publish this proposed rule before the economic analysis can be completed. In the absence of this economic analysis, we have reviewed our previously published analyses of the likely economic impacts of designating critical habitat for other California plant species, such as *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower). Like *Astragalus pycnostachyus* var. *lanosissimus*, *C. robusta* var. *hartwegii* is a native species restricted to certain specific habitat types along the coast of California and may require similar protective and conservation measures. *C. robusta* var. *hartwegii* also occurs close to the coast, in an area experiencing residential and commercial development pressure. Our high-end estimate of the economic effects of designating one critical habitat unit of *C. robusta* var. *hartwegii* ranged from $82,500 to $287,500 over ten years.

We believe that the economic effects of the proposed rule for *Astragalus pycnostachyus* var. *lanosissimus* will be less than those identified for other California plant critical habitat designations, such as *Chorizanthe robusta* var. *hartwegii*, because there is limited private land involved and the plant occurs naturally in only one of the proposed units. The designation of critical habitat in areas not occupied by *A. pycnostachyus* var. *lanosissimus* could result in extra costs involved with consultations that may not have occurred were it not for the designations; however, one unit is entirely State-owned and the burden of consultation should not cause economic hardship on private entities.

Efforts to establish *Astragalus pycnostachyus* var. *lanosissimus* on unoccupied sites would be mostly funded by Federal, State, and non-governmental organizations, and would likely not require private funding. Consequently, we believe that the economic effects of the proposed rule for *A. pycnostachyus* var. *lanosissimus* are likely to be minimal, similar to those identified for *Chorizanthe robusta* var. *hartwegii*.

In summary, we have concluded that this proposed rule would not result in a significant economic effect on a substantial number of small entities. The proposed designation includes one privately-owned parcel for which a project has been proposed and for which there is no Federal involvement or section 7 consultation required. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected to affect any small entities. Even if a small entity is affected, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. The kinds of measures we anticipate we would recommend can usually be implemented at low cost. Therefore, we are certifying that the proposed designation of critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

The Service will use the economic analysis to evaluate consistency with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing to designate approximately 170 ha (420 ac) of lands in Santa Barbara and Ventura counties, California as critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* in a takings implications assessment. This preliminary assessment concludes that this proposed rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by *Astragalus pycnostachyus* var. *lanosissimus* imposes no additional restrictions beyond those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation of critical habitat in unoccupied areas may require consultation under section 7 of the Act on non-Federal lands (where a Federal nexus occurs) that might otherwise not have occurred.

The designation may have some benefit to the CDPR in that the areas essential to the conservation of this species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of this species are specifically identified. While this definition and identification does not alter where and what Federally sponsored activities may occur, it may assist local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Astragalus pycnostachyus* var. *lanosissimus*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with Federally recognized Tribes on a Government-to-Government basis. The proposed designation of critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

The primary author of this proposed rule is Rick Farris, Ventura Fish and Wildlife Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4205; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.12(h) revise the entry for *Astragalus pycnostachyus* var. *lanosissimus* under "FLOWERING PLANTS" to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
.	.	.	.	.	.	.	.
Astragalus pycnostachyus var. *lanosissimus*	Ventura marsh milk-vetch.	U.S.A. (CA)	Fabaceae—Pea	E	708	17.96(b)	NA

3. In § 17.96, amend paragraph (a) by adding an entry for *Astragalus pycnostachyus* var. *lanosissimus* in alphabetical order under Family Fabaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Fabaceae: *Astragalus pycnostachyus* var. *lanosissimus* (Ventura marsh milk-vetch).

(1) Critical habitat units are depicted for Santa Barbara and Ventura counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* are the habitat components that provide:

(i) Vegetation cover of at least 50 percent but not exceeding 75 percent, consisting primarily of known associated native species, including but not limited to, *Baccharis salicifolia*, *Baccharis pilularis*, *Salix lasiolepis*, *Lotus scoparius*, and *Ericameria ericoides*;

(ii) Low densities of non-native annual plants and shrubs, not exceeding 25 percent cover (combined with the minimum 50 percent native cover requirement, total cover of natives and non-natives should not exceed 75 percent);

(iii) The presence of a high water table, either fresh or brackish, as evidenced by the presence of channels, sloughs, or depressions that may support stands of *Salix lasiolepis*, *Typha* spp., and *Scirpus* spp.;

(iv) Soils that are fine-grained, composed primarily of sand with some clay and silt, yet are well-drained; and

(v) Soils that do not exhibit a white crystalline crust that would indicate saline or alkaline conditions.

(3) Critical habitat does not include existing features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical Habitat Map Units.

(i) Data layers defining map units were created on a base of USGS 7.5′ quadrangles, and proposed critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) *McGrath and Mandalay Units.* Ventura County, California.

(i) Mandalay Unit A. From USGS 1:24,000 quadrangle map Oxnard, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 293381, 3786370; 293036, 3787170; 292994, 3787290; 292974, 3787330; 292995, 3787330; 293017, 3787330; 293122, 3787270; 293269, 3787190; 293331, 3787150; 293362, 3787140; 293399, 3787130; 293570, 3787080; 293640,

3787050; 293665, 3787040; 293686, 3787020; 293699, 3786990; 293707, 3786960; 293701, 3786620; 293713, 3786580; 293732, 3786540; 293760, 3786520; 293851, 3786460; 293903, 3786420; 293928, 3786380; 293936, 3786360; 293381, 3786370.

(ii) *Mandalay Unit B.* From USGS 1:24,000 quadrangle map Oxnard, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 293352, 3786380; 293044, 3786380; 292798, 3786960; 292761, 3787040; 293070, 3787030; 293352, 3786380.

(iii) *McGrath Unit.* From USGS 1:24,000 quadrangle map Oxnard, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 292406, 3788600; 292474, 3788440; 292752, 3787790; 292716, 3787780; 292704, 3787770; 292702, 3787770; 292717, 3787730; 292718, 3787720; 292715, 3787710; 292692, 3787680; 292725, 3787600; 292530, 3787600; 292415, 3787630; 292394, 3787670; 292400, 3787690; 292403, 3787710; 292407, 3787720; 292412, 3787770; 292412, 3787800; 292412, 3787820; 292409, 3787840; 292401, 3787900; 292375, 3787940; 292348, 3787960; 292338, 3787980; 292338, 3788000; 292343, 3788010; 292353, 3788030; 292358, 3788040; 292360, 3788050; 292360, 3788060; 292354, 3788070; 292338, 3788070; 292326, 3788090; 292322, 3788120; 292313, 3788150; 292310, 3788170; 292312, 3788230; 292309, 3788250; 292301, 3788260; 292302, 3788280; 292304, 3788290; 292308, 3788300; 292311, 3788320; 292307, 3788330; 292308, 3788350; 292310, 3788380; 292310, 3788390; 292310, 3788400; 292311, 3788420; 292306, 3788450; 292305, 3788480; 292301, 3788490; 292295, 3788500; 292297, 3788520; 292304, 3788550; 292306, 3788560; 292406, 3788600.

(iv) Map of McGrath and Mandalay Units Follows:

BILLING CODE 4310–55–P

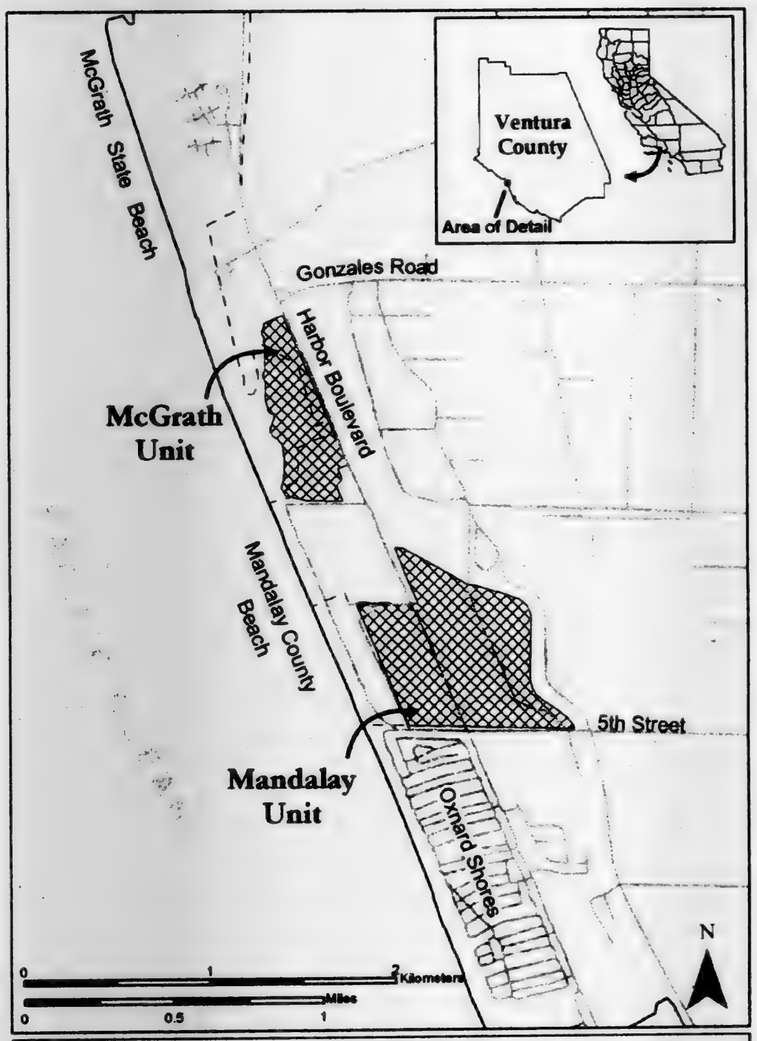

Proposed Critical Habitat for the Ventura Marsh Milk-Vetch: McGrath and Mandalay Units

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(6) *Carpinteria Salt Marsh.* Santa Barbara and Ventura counties, California.

(i) *Carpinteria Salt Marsh Unit A.* Santa Barbara County, California. From USGS 1:24,000 quadrangle map Carpinteria, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 266039, 3810060; 266166, 3810060; 266335, 3810050; 266449, 3810040; 266521, 3810040; 266572, 3810030; 266621, 3810010; 266711, 3809980; 266784, 3809950; 266912, 3809880; 267485, 3809530; 267463, 3809500; 267453, 3809470; 267428, 3809440; 267403, 3809390; 267381, 3809360; 267343, 3809300; 267290, 3809250; 267255, 3809190; 267243, 3809170; 267214, 3809160; 267185, 3809170; 267148, 3809200; 267094, 3809240; 267058, 3809260; 267023, 3809260; 266973, 3809260; 266932, 3809250; 266889, 3809250; 266813, 3809250; 266793, 3809260; 266772, 3809270; 266720, 3809290; 266690, 3809300; 266655, 3809310; 266644, 3809330; 266645, 3809350; 266602, 3809360; 266580, 3809380; 266544, 3809420; 266498, 3809480; 266456, 3809530; 266408, 3809590; 266356, 3809650; 266320, 3809690; 266264, 3809750; 266206, 3809810; 266162, 3809860; 266122, 3809900; 266081, 3809940; 266053, 3809960; 266042, 3809980; 266033, 3809990; 266032, 3810010; 266037, 3810060; 266039, 3810060.

(ii) *Carpinteria Salt Marsh Unit B.* Santa Barbara County, California. From USGS 1:24,000 quadrangle map Carpinteria, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 267531, 3809510; 267588, 3809470; 267654, 3809440; 267708, 3809400; 267767, 3809360; 267755, 3809360; 267733, 3809360; 267710, 3809360; 267684, 3809360; 267662, 3809340; 267638, 3809310; 267621, 3809290; 267602, 3809270; 267587, 3809240; 267577, 3809220; 267563, 3809180; 267555, 3809150; 267544, 3809120; 267526, 3809100; 267504, 3809090; 267480, 3809080; 267458, 3809080; 267434, 3809090; 267413, 3809100; 267387, 3809110; 267357, 3809120; 267342, 3809130; 267318, 3809140; 267270, 3809140; 267275, 3809160; 267291, 3809170; 267303, 3809190; 267309, 3809210; 267319, 3809220; 267342, 3809240; 267365, 3809260; 267384, 3809280; 267411, 3809330; 267435, 3809360; 267454, 3809390; 267469, 3809420; 267490, 3809470; 267508, 3809490; 267531, 3809510.

(iii) *Carpinteria Salt Marsh Unit C.* Santa Barbara County, California. From USGS 1:24,000 quadrangle map Carpinteria, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 267638, 3809260; 267658, 3809240; 267668, 3809240; 267775, 3809120; 267611, 3808980; 267584, 3808950; 267538, 3808970; 267516, 3808980; 267504, 3808960; 267488, 3808950; 267462, 3808960; 267437, 3808980; 267408, 3809010; 267386, 3809020; 267354, 3809040; 267344, 3809070; 267320, 3809080; 267337, 3809110; 267410, 3809070; 267443, 3809060; 267461, 3809050; 267487, 3809050; 267513, 3809060; 267532, 3809070; 267548, 3809080; 267564, 3809100; 267576, 3809120; 267600, 3809170; 267613, 3809210; 267627, 3809250; 267638, 3809260.

(iv) *Carpinteria Salt Marsh Unit D.* Ventura County, California. From USGS 1:24,000 quadrangle map Carpinteria, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 266801, 3809220; 266818, 3809220; 266839, 3809220; 266859, 3809220; 266883, 3809220; 266912, 3809220; 266939, 3809230; 266960, 3809230; 266988, 3809230; 267008, 3809230; 267025, 3809220; 267044, 3809210; 267062, 3809200; 267085, 3809180; 267105, 3809170; 267127, 3809150; 267149, 3809140; 267171, 3809130; 267190, 3809120; 267211, 3809120; 267239, 3809120; 267262, 3809120; 267290, 3809120; 267312, 3809120; 267331, 3809110; 267323, 3809100; 267314, 3809090; 267305, 3809080; 267294, 3809060; 267290, 3809060; 267279, 3809060; 267271, 3809060; 267258, 3809070; 267240, 3809070; 267223, 3809070; 267208, 3809070; 267190, 3809080; 267169, 3809090; 267147, 3809100; 267125, 3809100; 267099, 3809100; 267079, 3809110; 267061, 3809120; 267047, 3809140; 267029, 3809150; 267022, 3809160; 267012, 3809170; 266993, 3809170; 266970, 3809180; 266940, 3809180; 266912, 3809180; 266883, 3809190; 266862, 3809190; 266843, 3809180; 266823, 3809180; 266810, 3809180; 266795, 3809180; 266787, 3809180; 266781, 3809190; 266775, 3809200; 266773, 3809210; 266776, 3809220; 266783, 3809220; 266791, 3809230; 266801, 3809220.

(v) Map of Carpinteria Salt Marsh Unit Follows:

BILLING CODE 4310-55-P

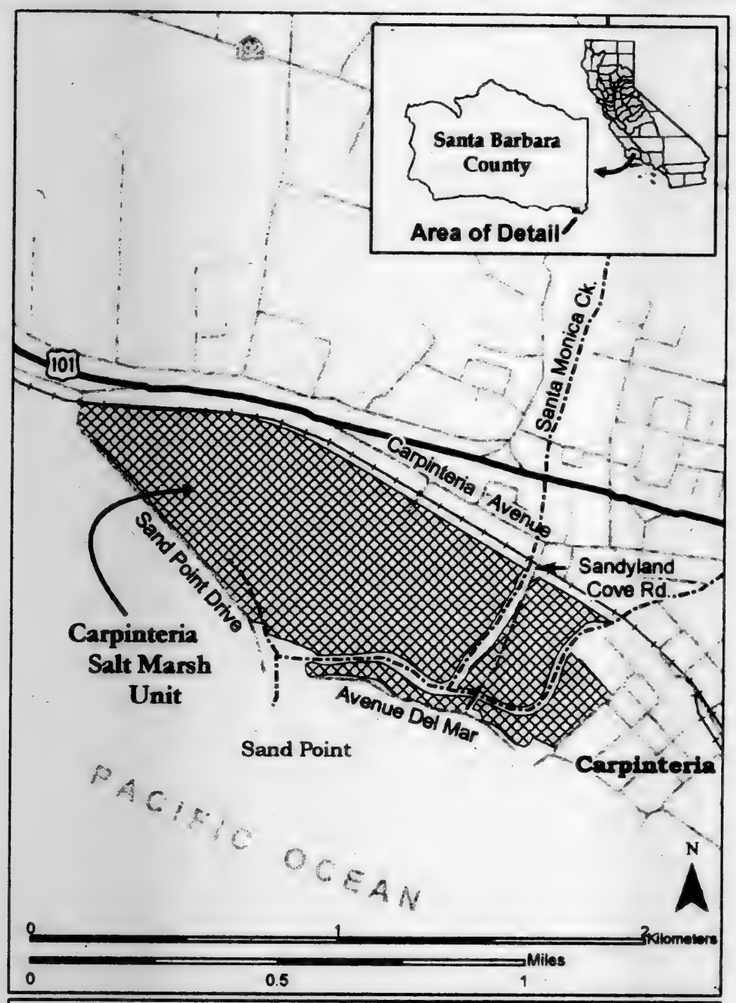

Proposed Critical Habitat for the Ventura Marsh Milk-Vetch: Carpinteria Salt Marsh Unit

* * * * *

Dated: September 30, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–25372 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register
Vol. 67, No. 196
Wednesday, October 9, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 3, 2002.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Information Collection for Document Delivery Services.

OMB Control Number: 0518–0027.

Summary of Collection: The National Agricultural Library (NAL) accepts requests from libraries and other organizations in accordance with the national and international interlibrary loan code and guidelines. In its national role, NAL collects and supplies copies or loans of agricultural materials not found elsewhere. 7 USC 3125a and 7 CFR 505 gives NAL the authority to collect this information. NAL provides photocopies and loans of materials directly to USDA staff, other Federal agencies, libraries and other institutions, and indirectly to the public through their libraries. The Library charges for some of these activities through a fee schedule. In order to fill a request for reproduction or loan of items the library must have the name, mailing address, phone number, and patron ID number of the respondent initiating and request, and depending on the method of delivery, may require a fax number, e-mail address, or Ariel IP address. The collected information is used to deliver the material to the respondent, bill for and track payment of applicable fees, monitor the return to NAL of loaned material, identify and locate the requested material in NAL collections, and determine whether the respondent consents to the fees charged by NAL.

Need and Use of the Information: The information collected is used by NAL document delivery staff to identify the protocol for processing the request. The information collected determines whether the respondent is charged or exempt from any charges and what process the recipient uses to make payment if the request is chargeable. The information provided is also used by staff to process/package the reproduction or loan for delivery. Without the requested information NAL has no way to locate and deliver the loan or reproduction to the respondent, and thus cannot meet its mandate to supply agricultural material.

Description of Respondents: Federal Government; Not-for-profit institutions; State, Local or Tribal Government; Business or other for-profit.

Number of Respondents: 2500.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 725.

National Agricultural Statistics Service

Title: Egg, Chicken, and Turkey Surveys.

OMB Control Number: 0535–0004.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production. Thousands of farmers, ranchers, agribusinesses and others voluntarily respond to nationwide surveys about crops, livestock, prices, and other agricultural activities. Estimates of egg, chicken, and turkey production are an integral part of this program. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. This statute specifies "The Secretary of Agriculture shall procure and preserve all information concerning agriculture which she can obtain * * * by the collection of statistics * * * and shall distribute them among agriculturists". Information published from the surveys in this docket is needed by USDA economists and government policy makers to ensure the orderly marketing of broilers, turkeys and eggs.

Need and Use of the Information: Statistics on these poultry products contribute to a comprehensive program of keeping the government and poultry industry abreast of anticipated changes. All of the poultry reports are used by producers, processors, feed dealers, and others in the marketing and supply channels as a basis for their production and marketing decisions.

Description of Respondents: Farms, Business or other for profit.

Number of Respondents: 3,149.

Frequency of Responses: Reporting: Weekly; Monthly; Annually.

Total Burden Hours: 3,133.

National Agricultural Statistics Service

Title: Agricultural Labor Survey.

OMB Control Number: 0535–0109.

Summary of Collection: The 1938 Agricultural Adjustment Act, as amended in 1948, requires wage rate data for computation of an index component. This component is used in calculation of parity prices. National Agricultural Statistics Service (NASS) primary function is to prepare and issue State and national estimates of crop and livestock production, disposition, and prices. The Agricultural Labor Survey provides employment data for equitable allocation and distribution of these funds to where seasonal workers need housing and education. The survey is the only timely and reliable source of information on the size of the farm worker population. NASS will collect information using a survey.

Need and Use of the Information: NASS will collect information on wage rate estimates and the year-to-year changes in these rates and how changes in wage rates help measure the changes in costs of production of major farm commodities. Farm worker organizations, private and government agencies will use agricultural labor data for the planning and placement of farm workers, in determining immigration policies and to measure the availability of farm workers across the Nation.

Description of Respondents: Farm.

Number of Respondents: 12,425.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 10,608.

Farm Service Agency

Title: USDA Registration Form to Request Electronic Access Code.

OMB Control Number: 0560–0219.

Summary of Collection: The USDA County Base Agency's (CBA) have developed a management and technical process that addresses user authentication and authorization prerequisites for providing services electronically. The process provides an electronic alternative to traditional ink signatures. The process is based on a one-time registration requirement for each CBA customer desiring access to any on-line services that require user authentication. The information collected on form AD–2016, USDA Registration Form to Request Electronic Access Code, is necessary to enable the authentication of users and grant them access to only those resources for which they are authorized.

Need and Use of the Information: The voluntary registration process applies to CBA customers and partners (non-CBA employees) who request Farm Service Agency, Rural Development, and Natural Resources Conservation Service provided services. Registration can be requested by the customer in person, by mail, or by fax. The information collected on form AD–2016 will be used to verify and validate the identity of registrants and to enable the electronic authentication of users. The user will then have access to these authorized resources without needing to re-authenticate within the context of a single Internet session.

Description of Respondents: Farms; Individuals or Households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,100,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,331,000.

Rural Housing Service

Title: 7 CFR 3575–A, "Community Program Guaranteed Loans".

OMB Control Number: 0575–0137.

Summary of Collection: The Rural Housing Service (RHS) is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit corporations, and Indian tribes for the development of essential community facilities primarily serving rural residents. The Community Facilities Division of the RHS is considered community Programs under the 7 CFR, part 3575, subpart A. Implementation of the Community Programs guaranteed loans program was effected to comply with the Appropriations Act of 1990 when Congress allocated funds for this authority. The guaranteed loan program encourages lender participation and provides specific guidance in the processing and servicing of guaranteed Community Facilities loans. RHS will collect information using several forms.

Need and Use of the Information: RHS will collect information to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan funds for authorized purposes. Failure to collect proper information could result in improper determination of eligibility, improper use of funds, and/or unsound loans.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 125.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 76,977.

Animal & Plant Health Inspection Service

Title: Importation of Poultry Meat and Other Poultry Products from Sinaloa and Sonora Mexico

OMB Control Number: 0579–0144.

Summary of Collection: Title 21 U.S.C. authorizes sections 111, 114, 114a, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g of 21 U.S.C. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as brucellosis, as well as to take actions to prevent and to manage exotic diseases such as exotic Newcastle disease and other foreign diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal & Plant Health Inspection Service (APHIS) ability to compete in exporting animals and animal products. Veterinary Services, a division within USDA's Animal and Plant Health Inspection Service (APHIS), is responsible for administering regulations intended to prevent the introduction of animal diseases, such as exotic Newcastle disease into the United States. APHIS currently has regulations in place that restrict the importation of poultry meat and other poultry products from Mexico due to the presence of exotic Newcastle disease in the country. However, APHIS does allow the importation of poultry meat and poultry products from the Mexican States of Sinaola and Sonora because they have determined that poultry meat and products from these two Mexican States pose a negligible risk of introducing exotic Newcastle disease into the United States. To ensure that these items are safe for importation, APHIS requires that certain data appear on the foreign meat inspection certificate that accompanies that poultry meat and other poultry products from Sinaloa and Sonora to the United Stats. APHIS also requires that serial numbered seals be applied to containers carrying the poultry meat and other poultry products.

Need and Use of the Information: APHIS will collect information to certify that the poultry meat or other poultry products were (1) derived from poultry born and raised in commercial breeding establishments in Sinaloa and Sonora; (2) derived from poultry that were slaughtered in Sinaloa or Sonora in a Federally-inspected slaughter plant approved to export these commodities to the United States in accordance with Food Safety & Inspection regulations; (3) processed at a Federally inspected processing plant in Sinaloa or Sonora; and (4) kept out of contact with poultry from any other State within Mexico. APHIS will also collect information to ensure that the poultry meat or poultry products from Sinaloa and Sonora pose the most negligible risk possible for introducing exotic Newcastle disease into the United States.

Description of Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 10.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 40.

Agricultural Marketing Service

Title: Livestock & Meat Market News.
OMB Control Number: 0581–0154.
Summary of Collection: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621), Section 203(g), directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization. Livestock and Meat Market News provides a timely exchange of accurate and unbiased information on current marketing conditions (supply, demand, prices, trends, movement, and other information) affecting trade in livestock, meats, grain, and wool. Administered by the U.S. Department of Agriculture's Agricultural Marketing Service (AMS), this nationwide market news program is conducted in cooperation with approximately 30 States departments of agriculture. AMS will collect information using market reports.
Need and Use of the Information: AMS will collect information on price, supply, and movement of livestock, meat carcasses, meat and pork cuts, and meat hyproducts. Several agencies, agricultural universities and colleges use the information collected to keep apprised of the current market conditions, movement of livestock and meat in the United States and to determine available supplies and current pricing.
Description of Respondents: Business or other for-profit; State, Local or Tribal Government; Farm; Individuals or households.
Number of Respondents: 450.
Frequency of Responses: Reporting: Weekly; Other (Daily).
Total Burden Hours: 7,202.

Food and Nutrition Service

Title: Food Stamp Mail Issuance Report.
OMB Control Number: 0584–0015.
Summary of Collection: Section 7(d) of the Food Stamp Act of 1977 requires the Secretary of Agriculture to develop appropriate procedures for determining and monitoring the amount of food coupon inventories maintained by State agencies for the Food Stamp Program. Section 7(f) makes State agencies strictly liable for financial losses involved in coupon issuance with the exception of coupons sent through the mail to the extent prescribed in the regulations. The Food and Nutrition Service (FNS), on behalf of the Secretary, requires each coupon issuer to submit quarterly a written report of the issuer's operations during the periods. The FNS will collect information using FNS Form 259, Food Stamp Mail Issuance Report.
Need and Use of the Information: FNS will collect information to establish the issuance and accountability systems which ensures that only certified eligible households receive benefits; that program benefits are timely distributed in the correct amount; and that coupon issuance and reconciliation activities are properly conducted and accurately reported to FNS. The State agency is responsible, regardless of any agreements to the contrary, for ensuring that assigned duties are carried out in accordance with FSP regulations.
Description of Respondents: State, Local, or Tribal Government.
Number of Respondents: 200.
Frequency of Responses: Recordkeeping; Reporting: Quarterly.
Total Burden Hours: 67.

Agricultural Research Service

Title: Food Stamp Nutrition Connection Resource Sharing Form.
OMB Control Number: 0518–NEW.
Summary of Collection: In 2001, the United States Department of Agriculture's Food and Nutrition Service (FNS) established the Food Stamp Nutrition Connection to improve access to Food Stamp Program nutrition resources. The National Agricultural Library's Food and Nutrition Information Center (FNIC) currently develops and maintains this resource system. A proposed voluntary "Sharing Form" would give Food Stamp nutrition education providers the opportunity to share their resources and learn about existing materials. Data collected using this form will help FNIC identify nutrition education and training resources for review and inclusion in an online database. FNS encourages, but does not require or mandate, state Food Stamp nutrition education programs to submit materials to FNIC for inclusion in the Food Stamp Nutrition Connection database.
Need and Use of the Information: FNIC will use the collected information to help build an online database of nutrition education and training materials. Food Stamp nutrition education providers could use this information to identify and obtain curricula, lesson plan, research, training tools and participant materials. The information will be collected using online and printed versions of the form. Failure to collect this information would significantly inhibit FNIC's ability to provide up-to-date information on existing nutrition education materials that are appropriate for Food Stamp nutrition education programs.
Description of Respondents: Not-for-profit institutions; Federal Government; State, Local or Tribal Government; Business or other for-profit.
Number of Respondents: 50.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 16.

Rural Business-Cooperative Service

Title: Survey of Cooperatives on Selecting Director Candidates for Director Elections.
OMB Control Number: 0570–NEW.
Summary of Collection: The Rural Business-Cooperative Service (RBS) mission is to assist farmer-owned cooperatives in improving the economic well being of their farmer-members. The Cooperative Marketing Act of 1926 established the Cooperative Services Program (CS). Cooperatives are a distinctive form of business in operating with democratic control and ownership by members. The agricultural businesses operated by cooperatives are becoming increasingly complicated and their industries are competitive. The existing conditions for Cooperatives practices and operations are not longer exceptive and they need to adopt formal methods for screening and evaluation.
Need and Use of the Information: RBS developed a survey to collect information on different methods and procedures used in selecting candidates for election to board of directors, for recruitment, and for monetary compensation for directors.
Description of Respondents: Business or other for-profit.
Number of Respondents: 490.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 113.

Animal & Plant Health Inspection Service

Title: Foreign Quarantine Notices.
OMB Control Number: 0579–0049.
Summary of Collection: The United States Department of Agriculture is responsible for preventing plant disease or insect pests from entering the United States, preventing the spread of pests and noxious weeds not widely distributed in the United States, and eradicating those imported pests when eradication is feasible. The Plant Protection Act authorizes the Department to carry out this mission. Under the Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of plant pests and other articles to prevent the introduction of plant pests into the United States. Implementing the laws is necessary to prevent injurious plant and insect pest from entering the United States, a situation that could produce serious consequences for U.S. agriculture. The Animal and Plant Health Inspection Service (APHIS) is required to collect information from a variety of individuals, both within and outside the United States, who are involved in growing, packing, handling, transporting, and importing foreign plants, roots, bulbs, seeds, importing foreign logs, lumber, other unmanufactured wood articles, and other plant products. APHIS will collect this information using a number of forms.
Need and Use of the Information: APHIS will collect information to ensure that plants, fruits, vegetables, roots, bulbs, seeds, foreign logs, lumber, other unmanufactured wood articles, and other plant products imported into the United States do not harbor plant diseases or insect pests that could cause serious harm to U.S. agriculture.
Description of Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions; Farms; State, Local or Tribal Government.
Number of Respondents: 92,457.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 91,138.

Animal & Plant Health Inspection Service

Title: TB Payments to El Paso Texas.
OMB Control Number: 0579–0193.
Summary of Collection: Title 21 U.S.C. authorizes sections 111, 114, 114a, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as tuberculosis, as well as to take actions to prevent and to manage exotic diseases such as foot-and-mouth disease, rinderpest, and other foreign animal diseases. More specifically, 21 U.S.C. 111, 115, and 118 authorize the Secretary of Agriculture to take such measures as she may deem proper to prevent the introduction or dissemination of any contagious or communicable disease of animals or live poultry from a foreign country into the United States or from one State to another. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection (APHIS) ability to compete in exporting animals and animal products. Since 1985, State Animal Health Officials in Texas, along with APHIS, have been taking measure to eliminate tuberculosis in dairy herds in the El Paso, Texas area. As a result of these eradication efforts, dairy herds in the El Paso area have become free of tuberculosis, only to become reinfected again. Because of this situation, APHIS determined that in order to further the eradication of tuberculosis in the United States, it is necessary to remove all bovine dairy herds from El Paso area. APHIS published an interim rule that would allow them to make payments to El Paso dairy herd owners if these owners agree to dispose of their dairy herds, closing their existing dairy operations, and refrain from establishing new cattle breeding operations in the area. A number of information collection activities will be used to collect information for dairy owners.
Need and Use of the Information: APHIS will collect information to provide payment to owners of dairy cattle and other property used in connection with dairy operations in the area of El Paso, Texas. To be eligible for payment under this program, all owners of dairy operations in the area of El Paso, Texas must sign and adhere to an agreement with APHIS.
Description of Respondents: Business or other for-profit; State, Local or Tribal Government; Farms.
Number of Respondents: 95.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 875.

Sondra A. Blakey,
Departmental Information Collection Clearance Officer.
[FR Doc. 02–25677 Filed 10–8–02; 8:45 am]
BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–02'06]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) is announcing a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: The meeting dates are: October 19, 2002, 8 a.m. to 6:30 p.m.; and October 20, 2002, 8 a.m. to 6 p.m. Requests from individuals and organizations wishing to make an oral presentation at the meeting are due by the close of business on October 9, 2002.

ADDRESSES: The meeting will take place at the Radisson Barceló Hotel, Board Room, 2121 P Street, NW., Washington, DC. Requests to make an oral presentation at the meeting may be sent to Ms. Katherine Benham at USDA–AMS–TMD–NOP, 1400 Independence Avenue, SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250–0200. Requests to make an oral presentation at the meeting may also be sent electronically to Ms. Katherine Benham at *katherine.benham@usda.gov*, via telephone at (202) 205–7806, or via facsimile at (202) 205–7808.

The October NOSB meeting agenda is available at *http://www.ams.usda.gov/nop* or from Ms. Katherine Benham at (202) 205–7806, preceding addresses or via telephone (202) 205–7806.

FOR FURTHER INFORMATION CONTACT: Richard Mathews, Program Manager, National Organic Program, (202) 720–3252.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. Section 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to make recommendations about whether a substance should be allowed or prohibited in organic production or handling, to assist in the development of standards for substances to be used in organic production and to advise the Secretary on other aspects of the implementation of the OFPA. The NOSB met for the first time in Washington, DC, in March 1992, and currently has six committees working on various aspects of the organic program. The committees are: Accreditation, Crops, Livestock, Materials, International, and Processing.

In August of 1994, the NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture. Since that time, the NOSB has submitted 42 addenda to its recommendations and reviewed more than 241 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of the NOSB was held on September 17–19, 2002, in Washington, DC.

The Department of Agriculture (USDA) published its final National Organic Program regulation in the **Federal Register** on December 21, 2000 (65 FR 80548). The rule became effective April 21, 2001.

The principal purposes of the meeting are to provide an opportunity for the

NOSB to: Receive an update from the USDA/NOP, receive various committee reports, receive reports from the Materials Task Force and Composting Task Force, and review materials to determine if they should be included on the National List of Allowed and Prohibited Substances.

The Materials Committee will report on current petitions' statuses, and report on EPA List 3 and 4 Inerts. The Materials Committee will also present for NOSB consideration 10 materials for possible inclusion on the National List of Allowed and Prohibited Substances. The Livestock Committee will present for NOSB consideration its recommendations on "dairy herd replacements", and the scope of review for excipients and other materials. The Processing Committee will discuss the ion exchange production process, present a recommendation for the scope of materials review, and present a recommendation for when handling becomes processing for producers and retailers. The Crops Committee will present its recommendations for hydroponic production, planting stock, and application of the 20% sodium nitrate annotation. The Accreditation Committee will report on the review of NOP accreditation procedures and present its recommendation for grower group certification criteria. Finally, the International Committee will discuss and present its recommendation on US/EU equivalency.

Materials to be reviewed at the meeting by the NOSB are as follows:

Crop Production: Potassium Silicate, Potassium Sulfate, 1,4 Dimethylnaphthalene, and Butylated Hydroxytoluene (BHT); and for *Livestock Production*: Mineral Oil, Calcium Propionate, Furosemide, Atropine, Flunixin, and Proteinated Chelates.

For further information, *see http://www.ams.usda.gov/nop*. Copies of the NOSB meeting agenda can be requested from Ms. Katherine Benham by telephone at (202) 205–7806; or obtained by accessing the NOP Web site at *http://www.ams.usda.gov/nop*.

The meeting is open to the public. The NOSB has scheduled time for public input on Saturday, October 19, 2002, from 8:15 a.m. until 10:15 a.m., and Sunday, October 20, 2002, from 8 a.m. until 9 a.m., at the Radisson Barceló Hotel, 2121 P Street, NW., Washington, DC. Individuals and organizations wishing to make an oral presentation at the meeting may make their requests via letter, telephone, e-mail or facsimile as set forth in the addresses section of this notice. While persons wishing to make a presentation, may also sign up at the door, advance registration will ensure that a person has the opportunity to speak during the allotted time period and will help the NOSB to better manage the meeting and to accomplish its agenda. Individuals or organizations will be given approximately 5 minutes to present their views. All persons making an oral presentation are requested to provide their comments in writing. Written submissions may contain information other than that presented at the oral presentation.

Written comments must be submitted to Ms. Benham, prior to or after the meeting, at USDA–AMS–TMD–NOP, 1400 Independence Avenue, SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250–0200. Persons submitting written comments at the meeting are asked to provide 30 copies.

Interested persons may visit the NOSB portion of the NOP Web site *http://www.ams.usda.gov/nop* to view available documents prior to the meeting. Approximately 6 weeks following the meeting interested persons will be able to visit the NOSB portion of the NOP Web site to view documents from this meeting.

Dated: October 3, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–25678 Filed 10–8–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Comet Administrative Study Environmental Impact Statement—Klamath National Forest

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The Forest Service is canceling the Notice of Intent for the Comet Administrative Study EIS—Klamath National Forest that was published in **Federal Register**, Vol. 65, No. 230 on pages 71087 through 71088 on Wednesday, November 29, 2000. The usefulness of the study has diminished due to changing circumstances, so it will no longer be pursued.

FOR FURTHER INFORMATION CONTACT: Margaret J. Boland, Forest Supervisor, Klamath National Forest, USDA Forest Service, 1312 Fairlane Road, Yreka, California 96097.

Dated: September 27, 2002.

Margaret J. Boland,

Forest Supervisor.

[FR Doc. 02–25651 Filed 10–8–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Southern Intertie Project; Notice of Availability of a Record of Decision

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), has issued a Record of Decision (ROD) for the Southern Intertie Project. The decision of RUS is that the National Environmental Policy Act process is satisfied with respect to a request for financing assistance from Golden Valley Electric Association (GVEA) for its share of the cost of constructing the Southern Intertie Project. The project being proposed by the Intertie Participants Group (IPG), of which GVEA is a member, is the construction of a 138 kilovolt (kV) transmission line between the Kenai Peninsula and Anchorage, Alaska. The construction of the project will be undertaken in accordance with the FEIS.

FOR INFORMATION CONTACT: Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff, USDA Rural Utilities Service, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–1784, fax (202) 720–0820. The e-mail address is: *lwolfe@rus.usda.gov*.

SUPPLEMENTARY INFORMATION: The RUS preferred alternative, the Tesoro Route, would connect the Bernice Lake Substation on the Kenai Peninsula with the Pt. Woronzof Substation in Anchorage. This alternative would parallel the Tesoro Pipeline from the Captain Cook State Recreational Area to Pt. Possession (Route A). At Pt. Possession three options are available to cross the Turnagain Arm and terminate at the Pt. Woronzof Substation. Route Option B crosses the Turnagain Arm via Fire Island to the Pt. Woronzof Substation. Route Option C crosses the Turnagain Arm directly from Pt. Possession to a landing at the Pt. Woronzof Substation. Route Option D would cross the Turnagain Arm from Pt. Possession to Pt. Campbell. From the Pt. Campbell landing, this alternative would continue to parallel the Tesoro pipeline through Kincaid Park and terminate at the Pt. Woronzof Substation (Route Option N).

As stated in the Final Environmental Impact Statement (FEIS), the RUS preferred alternative route between Pt. Possession and Anchorage is Route Option D/N. However, RUS considers both Route Options B and C acceptable alternatives.

Notices of availability of the FEIS were published in the **Federal Register** on July 10, 2002, at 67 FR 45701, by RUS and on July 12, 2002, at 67 FR 46185 by EPA. The 30-day comment period ended on August 12, 2002. Comments were received from 2 agencies and 5 non-profit organizations. No new issues or concerns were identified in these comments.

The RUS is the lead Federal agency in the environmental review process. The U.S. Fish and Wildlife Service (USFWS) and the U.S. Army Corps of Engineers (USACE) are serving as cooperating agencies. The USFWS' ROD was issued on September 11, 2002. The USACE's ROD is pending.

Agencies, persons, and organizations on the FEIS mailing list will receive a copy of each agency's ROD. The RUS' ROD is available online at *http://www.usda.gov/rus/water/ees/eis.htm*. The USFWS' ROD is available online at *http://www.r7.fws.gov/compatibility/completed/kenai/kenai.cfm*.

Dated: October 2, 2002.

Blaine D. Stockton,

Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 02–25703 Filed 10–8–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Submission for OMB Review; Comprehensive Economic Development Strategy (CEDS)—Comment Request

ACTION: Extension of a currently approved collection, comment request.

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration (EDA).

Title: Comprehensive Economic Development Strategy Guidelines.

Agency Form Number: Not Applicable.

OMB Approval Number: 0610–0093.

Type of Request: Extension of a currently approved collection.

Burden: 34,430 hours.

Average Hours Per Response: (1) Initial CEDS for Districts and other EDA supported Planning Organizations—242 hours; (2) CEDS Document for non-districts and non-EDA supported organizations—27 hours; (3) Annual CEDS Report—52 hours; and (4) CEDS Update—77 hours.

Number of Respondents: Approximately 640 respondents.

Needs and Uses: The Economic Development Administration (EDA) provides investments that will help our partners across the nation (states, regions and communities) create wealth and minimize poverty by promoting a favorable business environment to attract private capital investment and higher skill, higher wage jobs through world-class capacity building, infrastructure, business assistance, research grants and strategic initiatives.

Information gathered through CEDS is needed by EDA to ensure that areas served by an EDA-supported planning organization have or are developing a continuous community-based planning process and have thoroughly thought out what type of economic development is needed in the area to alleviate unemployment, underemployment, and/or depressed incomes. This information is required under the Public Works and Economic Development Act of 1965, as amended, including the comprehensive amendments by the Economic Development Administration Reform Act of 1998, Public Law 105–393, (PWEDA). Additionally, information is used by EDA to determine: if statutory requirements are met on eligibility for projects for public works and economic adjustment (except for strategy/planning); district designation requirements; and if planning requirements are met. CEDS is the foundation for most of EDA's programs. CEDS is a continuous, broad based and diverse process put in place to describe and to address economic distress through a particular economic development project(s) activity(es).

Affected Public: State, local or Tribal Government and not-for profit organizations.

Frequency: One time for Initial Document, Annual Report, and Updates are due every five (5) years for districts and other EDA-supported planning organizations.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, U.S. Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via Internet at *dhynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 4, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–25697 Filed 10–8–02; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–601]

Top-of-the-Stove Stainless Steel Cooking Ware From the Republic of Korea: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and rescission, in part, of antidumping duty administrative review.

SUMMARY: In response to requests by the Stainless Steel Cookware Committee (the Committee), the petitioner, and two manufacturers/exporters of the subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on top-of-the-stove stainless steel cooking ware from Korea. The period of review (POR) is January 1, 2001, through December 31, 2001.

We preliminarily determine that certain manufacturers/exporters sold subject merchandise at less than normal value (NV) during the POR. If these preliminary results are adopted in the final results of this administrative review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties on all appropriate entries. We invite interested parties to comment on the preliminary results. Parties who submit comments in this proceeding should also submit with the argument(s): (1) A statement of the issue(s) and (2) a brief summary of their argument (not to exceed five pages).

EFFECTIVE DATE: October 9, 2002.

FOR FURTHER INFORMATION CONTACT: Ronald M. Trentham and Thomas F. Futtner, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; (202) 482–6320 and (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2001).

Background

The Department published an antidumping duty order on top-of-the-stove stainless steel cooking ware (cookware) from Korea on January 20, 1987 (52 FR 2139). On January 2, 2002, the Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on cookware from Korea (67 FR 56) covering the period January 1, 2001, through December 31, 2001.

On January 31, 2002, in accordance with 19 CFR 351.213(b), the Committee, whose members are Regal Ware, Inc., The West Bend Company, New Era Cookware and Vita-Craft Corporation, requested that we conduct an administrative review of twenty-six specific manufacturers/exporters of cookware from Korea: Daelim Trading Co., Ltd. (Daelim), Dong Won Metal Co., Ltd. (Dong Won), Chefline Corporation, Sam Yeung Ind. Co., Ltd., Namyang Kitchenflower Co., Ltd., Kyung-Dong Industrial Co., Ltd., Ssang Yong Ind. Co., Ltd., O. Bok Stainless Steel Co., Ltd., Dong Hwa Stainless Steel Co., Ltd., Il Shin Co., Ltd., Hai Dong Stainless Steel Ind. Co., Ltd., Han Il Stainless Steel Ind. Co., Ltd., Bae Chin Metal Ind. Co., East One Co., Ltd., Charming Art Co., Ltd., Poong Kang Ind. Co., Ltd., Won Jin Ind. Co., Ltd., Wonkwang Inc., Sungjin International Inc., Sae Kwang Aluminum Co., Ltd., Hanil Stainless Steel Ind. Co., Ltd., Seshin Co., Ltd., Pionix Corporation, East West Trading Korea, Ltd., Clad Co., Ltd., and B.Y. Enterprise, Ltd. On January 31, 2002, Daelim and Dong Won requested that the Department conduct reviews of their exports of the subject merchandise to the United States. In accordance with 19 CFR 351.221(b), we published a notice of initiation of the review on February 26, 2002 (67 FR 8780).

On March 25, 2002 and on April 4, 2002, we issued Section A antidumping questionnaires to each of the twenty-six manufacturers/exporters listed above.[1]

The following twenty-four companies failed to respond to the Department's Section A questionnaire: Chefline Corporation, Sam Yeung Ind. Co., Ltd., Kyung-Dong Industrial Co., Ltd., Ssang Yong Ind. Co., Ltd., O. Bok Stainless Steel Co., Ltd., Il Shin Co., Ltd., Hai Dong Stainless Steel Ind. Co., Ltd., Han Il Stainless Steel Ind. Co., Ltd., Bae Chin Metal Ind. Co., East One Co., Ltd., Charming Art Co., Ltd., Poong Kang Ind. Co., Ltd., Won Jin Ind. Co., Ltd., Wonkwang Inc., Sungjin International Inc., Sae Kwang Aluminum Co., Ltd., Hanil Stainless Steel Ind. Co., Ltd., Seshin Co., Ltd., East West Trading Korea, Ltd., Clad Co., Ltd., B.Y. Enterprise, Ltd., Pionix Corporation, Namyang Kitchenflower Co., Ltd., and Dong Hwa Stainless Steel Co., Ltd. On August 1, 2002 and August 2, 2002, we informed each of these companies that because they failed to respond to the Department's questionnaire, we may use facts available (FA) to determine their dumping margins. In response, the following manufacturers/exporters reported that they had no sales or shipments during the POR: Hai Dong Stainless Steel Co., Ltd, Sungjin International, Inc., Seshin Co., Ltd., Sae Kwang Aluminum Co, Ltd., Dong Hwa Stainless Steel Co, Ltd., Pionix Corporation, Il Shin Co., Ltd., and Wonkwang Inc. We confirmed using U.S. Customs (Customs) data that there were no entries of subject merchandise from these firms during the POR. Accordingly, we are preliminarily rescinding the review with respect to these manufacturers/exporters.

On April 16, 2002 and April 19, 2002, respectively, Dong Won and Daelim responded to Section A of the antidumping questionnaire. On May 13, 2002, the Department issued Sections B, C and D of the Department's questionnaire to these two companies.

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

Dong Won and Daelim filed narrative responses to Sections B, C and D on July 8, 2002. On July 12, 2002, Daelim and Dong Wong submitted electronic databases and calculation worksheets for Sections B, C, and D of the Department's questionnaire.

On August 12, 2002 and August 13, 2002, respectively, the Department issued Section A through D supplemental questionnaires to Dong Won and Daelim. The responses to these supplemental questionnaires were received on September 3, 2002 and on September 4, 2002.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The merchandise subject to this antidumping order is top-of-the-stove stainless steel cookware from Korea. The subject merchandise is all non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. The subject merchandise includes skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope of the order are stainless steel oven ware and stainless steel kitchen ware. The subject merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 7323.93.00 and 9604.00.00. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

The Department has issued several scope clarifications for this order. The Department found that certain stainless steel pasta and steamer inserts (63 FR 41545, August 4, 1998), certain stainless steel eight-cup coffee percolators (58 FR 11209, February 24, 1993), and certain stainless steel stock pots and covers are within the scope of the order (57 FR 57420, December 4, 1992). Moreover, as a result of a changed circumstances review, the Department revoked the order on Korea in part with respect to certain stainless steel camping ware (1) made of single-ply stainless steel having a thickness no greater than 6.0 millimeters; and (2) consisting of 1.0, 1.5, and 2.0 quart saucepans without handles and with lids that also serve as fry pans (62 FR 3662, January 24, 1997).

Facts Available

Application of FA

Section 776(a)(2) of the Act provides that if any interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information by the deadlines for submission of the information or in the form or manner requested; (C) significantly impedes an antidumping investigation; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in making its determination.

As stated above, on March 25, 2002 and on April 4, 2002, we issued Section A questionnaires to twenty-six manufacturers/exporters of the subject merchandise. Eight companies ultimately advised the Department that they did not sell subject merchandise to the United States during the POR. The following sixteen companies failed to respond to the Department's Section A questionnaire: Chefline Corporation, Sam Yeung Ind. Co., Ltd., Kyung-Dong Industrial Co., Ltd., Ssang Yong Ind. Co., Ltd., O. Bok Stainless Steel Co., Ltd., Han Il Stainless Steel Ind. Co., Ltd., Bae Chin Metal Ind. Co., East One Co., Ltd., Charming Art Co., Ltd., Poong Kang Ind. Co., Ltd., Won Jin Ind. Co., Ltd., Hanil Stainless Steel Ind. Co., Ltd., East West Trading Korea, Ltd., Clad Co., Ltd., B.Y. Enterprise, Ltd., and Namyang Kitchenflower Co., Ltd. On August 2, 2002, we informed each of these companies that because they failed to respond to the Department's questionnaire, we may use FA to determine their dumping margins.

Because these sixteen companies failed to provide any of the necessary information requested by the Department, pursuant to section 776(a)(2)(B) of the Act, we must establish the margins for these companies based totally on facts otherwise available.

Selection of Adverse FA (AFA)

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997). These 16 companies were given two opportunities to respond, and did not. Moreover, these companies failed to offer any explanation for their failure to respond to our questionnaires. As a general matter, it is reasonable for the Department to assume that these companies possessed the records necessary for this review; however, by not supplying the information the Department requested, these companies failed to cooperate to the best of their ability. As these 16 companies have failed to cooperate to the best of their ability, we are applying an adverse inference pursuant to section 776(b) of the Act. As AFA, we have used 31.23 percent, the highest rate determined for any respondent in any segment of this proceeding. *See Final Determination of Sales at Less Than Fair Value; Certain Stainless Steel Cookware from Korea*, 51 FR 42873 (November 26, 1986) (*Final LTFV Determination*).

Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the less than fair value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA further provides that the term "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

The rate used as AFA in this segment was originally calculated using verified information from the investigative segment of this proceeding. *See Final LTFV Determination*. The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as AFA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. Furthermore, we have no new information that would lead us to reconsider the reliability of the rate being used in this case.

As to the relevance of the margin used for AFA, the courts have stated that "[b]y requiring corroboration of adverse inference rates, Congress clearly intended that such rates should be reasonable and have some basis in reality." *F.Lli De Cecco Di Filippo Fara S. Martino S.p.A., v. U.S.*, 216 F.3d 1027, 1034 (Fed. Cir. 2000).

The rate selected is the rate currently applicable to certain companies, including fifteen of the sixteen companies that failed to respond to the Department's questionnaires in this POR. *See Top-of-the-Stove Stainless Steel Cooking Ware From the Republic of Korea: Final Results and Rescission, in Part, of the Antidumping Duty Administrative Review*, 67 FR 40274 (June 12, 2002) (*Final Results*). In determining a relevant AFA rate, the Department assumes that if the non-responding parties could have demonstrated that their dumping margins were lower, they would have participated in this review and attempted to do so. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190–91 (Fed. Cir. 1990). Therefore, given these sixteen companies' failure to cooperate to the best of their ability in this review, we have no reason to believe that their dumping margins would be any less than the highest rate in this proceeding. This rate ensures that they do not benefit by failing to cooperate fully. Therefore, we consider the rate of 31.23 percent relevant and appropriate to use as AFA for the non-responding parties.

NV Comparisons

To determine whether sales of cookware from South Korea to the United States were made at less than NV, we compared the export price (EP) to the NV for Daelim and EP and constructed export price (CEP) to the NV for Dong Won, as specified in the *EP*, *CEP* and *NV* sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP and CEP transactions.

EP

Where Daelim and Dong Won sold merchandise directly to unaffiliated purchasers in the United States, we used EP, in accordance with section 772(a) of the Act, as the price to the United States. For both respondents, we calculated EP using the packed prices charged to the first unaffiliated customer in the United States (the starting price).

We made deductions from the starting price for movement expenses in accordance with section 772(c) of the Act. Movement expenses included, where appropriate, brokerage and handling, international freight, and marine insurance, in accordance with section 772(c)(2)(A) of the Act. For Dong Won, we disallowed a duty drawback adjustment to the starting price. *See* Calculation Memorandum for Dong Won, dated October 3, 2002, on file in the Central Records Unit (CRU), B–099 of the main Department Building.

CEP

For Dong Won, we calculated CEP, in accordance with subsection 772(b) of the Act, for those sales to unaffiliated purchasers that took place after importation into the United States. We based CEP on the packed FOB prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions for discounts. We also made deductions for movement expenses in accordance with 772(c)(2)(A) of the Act. Movement expenses included foreign inland freight, ocean freight, marine insurance, U.S. brokerage and handling, U.S. Customs duties, and U.S. inland freight. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses, inventory carrying costs, and other indirect selling expenses. Also, we made an adjustment for profit in accordance with section 772(d)(3) of the Act.

NV

1. Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. Since Daelim's and Dong Won's aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of their respective U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, pursuant to section 773(a)(1)(B) of the Act, we based NV on home market sales.

2. Cost of Production (COP) Analysis

In the review segment of this proceeding that was most recently completed prior to initiating this review, we disregarded home market sales found to be below the cost of production (COP) for Daelim and Dong Won. *See Top-of-the Stove Stainless Steel Cooking Ware from the Republic of Korea: Final Results and Rescission, in Part, of Antidumping Duty Administrative Review*, 66 FR 45664 (August 29, 2001). Pursuant to section 773(b)(2)(A)(ii) of the Act, this provides reasonable grounds to believe or suspect in this review segment that Daelim and Dong Won made sales in the home or third country markets at prices below the COP. Consequently we initiated a COP inquiry with respect to both Daelim and Dong Wong and conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated, respectively, COP based on the sum of Daelim and Dong Won's cost of materials and fabrication (COM) for the foreign like product, plus amounts for selling, general, and administrative (SG&A) expenses, including financial expenses, and packing costs. For the preliminary results, we relied on Daelim's and Dong Won's submitted information without adjustment.

B. Test of Foreign Market Sales Prices

We compared COP to foreign market sale prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard foreign market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to foreign market prices, less any applicable movement charges, discounts and rebates, and selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time, within the meaning of section 773(b)(2)(B) of the Act. Because we compared prices to POR or fiscal year average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found, looking at Dong Won's and Daelim's home market sales, that both firms made sales at below COP prices within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit for the recovery of costs within a reasonable period of time. Therefore, we excluded these sales from our analysis and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products sold in the relevant foreign markets meeting the description in the "Scope of the Review" section of this notice, above, for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the foreign markets made in the ordinary course of trade (*i.e.*, sales within the contemporaneous window which passed the cost test), we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Further, as in prior segments of this proceeding, merchandise was considered "similar" for purposes of comparison only if it is of the same "product type," (*i.e.*, (1) vessels or (2) parts). Among merchandise which was identical on the basis of "product type," we then selected the most "similar" model through a hierarchical ranking of the remaining 11 product characteristics listed in sections B and C of our antidumping questionnaire and application of the difference in merchandise test. If there were no sales of identical or similar merchandise in the foreign market to compare to U.S. sales, we compared U.S. sales to the constructed value (CV) of the product sold in the U.S. market during the comparison period. For a further discussion of the Department's product comparison methodology see *Top-of-the-Stove Stainless Steel Cooking Ware From the Republic of Korea: Final Results and Rescission, in Part, of Antidumping Duty Administrative Review*, 66 FR 45664 (August 29, 2001) and accompanying Issues and Decision Memorandum at Comment 1.

Level of Trade (LOT)

In accordance with section 773(a)(7)(A) of the Act, if the Department compares a U.S. sale at one LOT to NV sales at a different LOT, we will adjust the NV to account for the difference in LOT if the difference affects price comparability as evidenced by a pattern of consistent price differences between sales at the different LOTs in the market in which NV is determined.

Section 351.412(c)(2) of the Department's regulations states that the Secretary will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). To make this determination, the Department reviews such factors as selling functions, classes of customer, and the level of selling expenses for each type of sale. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions, even if substantial, are not alone sufficient to establish a difference in the LOT. Similarly, while customer categories such as "distributor" and "wholesaler" may be useful in identifying different LOTs, they are insufficient in themselves to establish that there is a difference in the LOT.

In determining whether separate LOTs actually existed in the foreign and U.S. markets for each respondent, we examined whether the respondent's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories, and selling functions (or services) offered to each customer or customer category, in both markets.

Dong Won reported home market sales through one channel of distribution, sales made by Dong Won to unaffiliated distributors/wholesalers and retailers. Upon review of the record, we found that Dong Won performed the same selling functions at the same degree for all home market sales. Therefore, we preliminarily determined that Dong Won made all home market sales at one LOT for purposes of our antidumping analysis.

For the U.S. market, Dong Won reported both EP and CEP sales. After reviewing the U.S. market selling functions reported by Dong Won, and after deducting the CEP selling expenses incurred by Dong Won's U.S. affiliate, we found that Dong Won provided a qualitatively different degree of services on EP sales than for CEP sales. We therefore found the selling functions were sufficiently different to warrant a preliminary determination that two separate LOTs exist in the United States.

When we compared EP sales to home market sales, we found that Dong Won provided a qualitatively different degree of services on home market sales than on EP sales. In addition, the differences in selling functions performed for home market and EP transactions indicate that home market sales involved a more advanced stage of distribution than EP sales. Our preliminary analysis demonstrates that the home market LOT is different from, and constitutes a more advanced stage of distribution than the EP LOT because, the home market LOT includes significantly more selling functions at a higher level of service with greater selling expenses than the EP LOT. *See* Memorandum on LOT for Dong Won, dated October 3, 2002 (Dong Won LOT Memo).

Section 773(a)(7)(A) of the Act describes the LOT adjustment. Section 351.412(a) of the Department's regulations states that the Secretary is authorized to adjust NV to account for the effect on the comparability of U.S. and home market prices when sales in the two markets are not made at the same LOT. Section 351.412(d) of the Department's regulations states that the Secretary will determine that a difference in LOT has an effect on price comparability only if it is established that there is a pattern of consistent price differences between sales at the LOT of the EP or CEP and the LOT at which NV is determined. Section 351.412(d)(2) states that the Secretary will make the determination under section 351.412(d)(1) on the basis of sales of the foreign like product by the producer, or when this is not possible, on sales of different or broader product lines, sales by other companies, or on any other reasonable basis.

As discussed above, we found that there is only one LOT in the market in which NV is determined. Therefore, it is not possible to determine a pattern of price differences on the basis of sales of the foreign like product by the producer. Furthermore, we do not have information on the record in this review to determine a pattern of price differences on the basis of sales of different or broader product lines, sales by other companies, or on any other reasonable basis. As such, no LOT adjustment is possible for comparison to Dong Won's EP transactions.

For CEP sales, Dong Won performed fewer selling functions than in the home market. In addition, the differences in selling functions performed for home market and CEP transactions indicate that home market sales involved a more advanced stage of distribution than CEP sales. Our preliminary analysis demonstrates that the home market LOT is different from, and constitutes a more advanced stage of distribution than, the CEP LOT because, after making the CEP deductions under section 772(d) of the Act, the home market LOT includes significantly more selling functions at a higher level of service with greater selling expenses than the CEP LOT.

Section 773(a)(7)(B) of the Act provides for a CEP offset to NV when NV is established to be at a LOT which constitutes a more advanced LOT than the LOT of the CEP transaction, but the data available do not provide an appropriate basis upon which to determine a LOT adjustment. Since NV is established at a LOT which constitutes a more advanced LOT than the LOT of the CEP transaction, and, as discussed above, the data do not provide an appropriate basis upon which to determine a LOT adjustment, we conclude that Dong Won is entitled to a CEP offset to NV. *See* Dong Won LOT Memo.

Daelim reported sales through two channels of distribution for its home market sales. The first channel of distribution was sales through its affiliate in the home market, Living Star. The second channel of distribution was direct sales to home market customers. Daelim performs the same selling activities for home market sales in both channels of distribution. Although these functions are not performed at the same degree of intensity, we found that the differences in degree of intensity in selling functions between the two channels of distribution does not give rise to a substantial distinction. Therefore, we conclude that there is one LOT in the home market. *See* Memorandum on LOT for Daelim, dated October 3, 2002. Daelim reported only EP sales in the U.S. market. For EP sales, Daelim reported one LOT, consisting of two channels of distribution.

Upon review of the record we found that Daelim performed the same selling functions (*i.e.*, inventory maintenance, technical advice, warranty services, freight & delivery arrangement, and advertising) at the same degree for EP sales as compared to home market sales. As such, we preliminarily find that there are no differences in the number, type, and degree of selling functions that Daelim performs for home market sales as compared to its EP sales. Therefore, because we are calculating NV at the same LOT as Daelim's EP sales, no LOT adjustment is warranted. *See* 19 CFR 351.412(b)(1).

Date of Sale

In accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporters's or producer's records kept in the ordinary course of business, unless satisfactory evidence is presented that the exporter or producer established the material terms of sale on some other date. For both foreign market and U.S. transactions, Daelim and Dong Won reported the date of the contract (*i.e.*, purchase order date) as the date of sale, *i.e.*, the date when the material terms of sale are finalized. The respondents note that the purchase order confirms all major terms of sale—price, quantity, and product specification—as agreed to by the respondents and the customer. Because there is nothing on the record to indicate that there were changes in the material terms of sale between the purchase order (or revised purchase order) and the invoice, the Department preliminarily determines that the purchase order date is the most appropriate date to use for the date of sale.

CV

In accordance with section 773(e) of the Act, we calculated CV based on the respondents' respective COM employed in producing the subject merchandise, SG&A expenses, the profit incurred and realized in connection with the production and sale of the foreign like product, and U.S. packing costs. We used the COM and G&A expenses as reported in the CV portion of respondents' questionnaire responses. We used the U.S. packing costs as reported in the U.S. sales portion of the respondents' questionnaire responses. For selling expenses, we used the average of the selling expenses reported for home market sales that passed the cost test, weighted by the total quantity of sales of each product. For profit, we first calculated, based on the home market sales that passed the cost test, the difference between the home market sales value and home market COP, and divided the difference by the home market COP. We then multiplied this percentage by the COP for each U.S. model to derive profit.

Price-to-Price and Price-to-CV Comparisons

For those comparison products for which there were sales that passed the cost test, we based the respondent's NV on the price at which the foreign like product is first sold for consumption in Korea, in the usual commercial quantities, in the ordinary course of trade in accordance with section 773(a)(1)(B)(i) of the Act.

In accordance with section 773(a)(6) of the Act, for both CV and NV, we made adjustments, where appropriate, for inland freight, inland insurance, and discounts. We also reduced CV and foreign market prices by packing costs incurred in the foreign market, in accordance with section 773(a)(6)(B)(i) of the Act. In addition, we increased CV and foreign market prices for U.S. packing costs, in accordance with section 773(a)(6)(A) of the Act. We made further adjustments to foreign market prices, when applicable, to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we made an adjustment for differences in circumstances of sale by deducting foreign market direct selling expenses and adding any direct selling expenses associated with U.S. sales not deducted under the provisions of section 772(d)(1) of the Act. Finally, in the case of Dong Wong, where appropriate, we made a CEP offset adjustment to account for comparing U.S. and foreign market sales at different LOTs.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margins exist for the period January 1, 2000, through December 31, 2000:

Manufacturer/Exporter	Margin (percent)
Dong Won Metal Co., Ltd	0.20
Dae-Lim Trading Co., Ltd	0.90
Chefline Corporation	31.23
Sam Yeung Ind. Co., Ltd	31.23
Kyung-Dong Industrial Co., Ltd	31.23
Han Il Stainless Steel Ind. Co., Ltd	31.23
East One Co., Ltd	31.23
Charming Art Co., Ltd	31.23
Won Jin Ind. Co., Ltd	31.23
Hanil Stainless Steel Ind. Co., Ltd	31.23
East West Trading Korea, Ltd	31.23
Clad Co., Ltd	31.23
B.Y. Enterprise, Ltd	31.23
Namyang Kitchenflower Co., Ltd	31.23
Ssang Yong Ind. Co., Ltd	31.23
O. Bok Stainless Steel Co., Ltd	31.23
Bae Chin Metal Ind. Co	31.23
Poong Kang Ind. Co., Ltd	31.23

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments, within 120 days from the publication of these preliminary results.

Upon completion of this administrative review, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates for the merchandise subject to this review. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct Customs to assess the resulting assessment rates against the entered Customs values for the subject merchandise on each of the importer's entries during the POR. For Daelim and Dong Won, we have calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales to the entered value of sales used to calculate those duties. For all other respondents, the assessment rate will be based on the margin percentage identified above. We will direct Customs to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is *de minimis*, *i.e.*, less then 0.5 percent.

Furthermore, the following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of top-of-stove stainless steel cooking ware from Korea entered, or withdrawn from warehouse, for consumption on or after publication

date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates established in the final results of this administrative review, except if the rate is less than 0.5 percent *ad valorem* and, therefore, *de minimis*, no cash deposit will be required; (2) for exporters not covered in this review, but covered in the original LTFV investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the LTFV investigation, the cash deposit rate will be 8.10 percent, the "all-others" rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 3, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–25686 Filed 10–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an Amended Export Trade Certificate of Review, Application No. 84–13A12.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Northwest Fruit Exporters ("NFE") on June 11, 1984. Notice of issuance of the Certificate was published in the **Federal Register** on June 14, 1984 (49 FR 24581).

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2001).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 84–00012, was issued to NFE on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16306, May 6, 1988); September 21, 1988 (53 FR 37628, September 27, 1988); September 20, 1989 (54 FR 39454, September 26, 1989); November 19, 1992 (57 FR 55510, November 25, 1992); August 16, 1994 (59 FR 43093, August 22, 1994); November 4, 1996 (61 FR 57850, November 8, 1996); October 22, 1997 (62 FR 55783, October 28, 1997); November 2, 1998 (63 FR 60304, November 9, 1998); October 20, 1999 (64 FR 57438, October 25, 1999); October 16, 2000 (65 FR 63567, October 24, 2000); and October 5, 2001 (66 FR 52111, October 12, 2001).

NFE's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): L & M Companies, Selah, Washington; Orondo Fruit Co., Inc., Orondo, Washington; and Rawland F. Taplett d/b/a R.F. Taplett Fruit & Cold Storage Co., Wenatchee, Washington;

2. Delete the following companies as "Members" of the Certificate: Chief Wenatchee Growers, Wenatchee, Washington; Dole Northwest, Wenatchee, Washington; Fossum Orchards, Inc., Yakima, Washington; Garrett Ranches Packing, Wilder, Idaho; R.E. Redman & Sons, Inc., Wapato, Washington; Regal Fruit Cooperative, Tonasket, Washington; Sun Fresh International, LLC, Wenatchee, Washington; Taplett Fruit Packing Inc., Wenatchee, Washington; Voelker Fruit & Cold Storage, Inc., Yakima, Washington; and Williamson Orchards, Caldwell, Idaho; and

3. Change the listing of the following Members: "Allan Bros., Inc., Naches, Washington" to the new listing "Allan Bros., Naches, Washington"; "Borton & Sons, Yakima, Washington" to "Borton & Sons, Inc., Yakima, Washington"; "Carlson Orchards, Yakima, Washington" to "Carlson Orchards, Inc., Yakima, Washington"; "CPC International Apple Co., Tieton, Washington" to "CPC International Apple Company, Tieton, Washington"; "Domex Marketing Co., Yakima, Washington" to "Domex Marketing, Yakima, Washington"; "Douglas Fruit Co., Pasco, Washington" to "Douglas Fruit Company, Inc., Pasco, Washington"; "Dovex Fruit Company, Wenatchee, Washington" to "Dovex Fruit Co., Wenatchee, Washington"; "Hansen Fruit & Cold Storage, Co., Yakima, Washington" to "Hansen Fruit & Cold Storage Co., Inc., Yakima, Washington"; "Jenks Bro. Cold Storage, Inc., Royal City, Washington" to "Jenks Bros. Cold Storage & Packing, Royal City, Washington"; "Kershaw Fruit & Cold Storage, Yakima, Washington" to "Kershaw Fruit & Cold Storage, Co., Yakima, Washington"; "Keystone Ranch, Riverside, Washington" to "Keystone Fruit Co. L.L.C. dba Keystone Ranch, Riverside, Washington"; "Lloyd Garretson, Co., Inc., Yakima, Washington" to "Lloyd Garretson Co. Yakima, Washington"; "Northern Fruit Co., Wenatchee, Washington" to "Northern Fruit Company, Inc., Wenatchee, Washington"; "Northwestern Fruit & Produce Co., Yakima, Washington" to "Apple King, LLC, Yakima, Washington"; "Obert Cold Storage, Zillah, Washington" to "Obert Cold Storage, Inc., Zillah, Washington"; "Poirier Packing & Warehouse, Pateros, Washington" to "Poirier Warehouse, Pateros, Washington"; "Price Cold Storage, Yakima, Washington" to "Price Cold Storage & Packing Co., Inc., Yakima, Washington"; "Rainier Fruit Sales, Selah, Washington" to "Rainier Fruit Company, Selah, Washington; "Rowe Farms, Naches, Washington" to "Rowe Farms, Inc., Naches, Washington"; "Sund-Roy, Inc., Yakima,

Washington" to "Sund-Roy L.L.C., Yakima, Washington"; "Valley Fruit, Wapato, Washington" to "Valley Fruit III LLC, Wapato, Washington"; "Yakima Fruit & Cold Storage, Yakima, Washington" to "Yakima Fruit & Cold Storage Co., Yakima, Washington"; and "Zirkle Fruit Co., Selah, Washington" to "Zirkle Fruit Company, Selah, Washington".

The effective date of the amended certificate is July 8, 2002. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: October 3, 2002.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 02–25682 Filed 10–8–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, education and extension, science and technology programs, and other matters as described below:

DATES: The announced meeting is scheduled during two days: Tuesday, October 22, 8:30 a.m. to 6 p.m.; Wednesday, October 23, 8:30 a.m. to 12:15 p.m.

ADDRESSES: U.S. Department of Commerce, Herbert C. Hoover Building, 14th & Constitution Avenue, Northwest, Room 6059, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald C. Baird, Director, National Sea Grant College program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11761, Silver Spring, Maryland 20910, (301) 713–2448.

SUPPLEMENTARY INFORMATION: The Panel, which consists of a balanced representation from academic, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Public Law 94–461, 33 U.S.C. 1128). The Panel advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice. The agenda for the meeting is as follows:

Tuesday, October 22, 2002

8:30 a.m.—Welcoming and Opening of Meeting, Approval of Minutes and Agenda, Introductory Remarks.
8:45 a.m.—Executive Committee Report, Summary of Executive Committee Meeting, Meetings with NOAA, Leadership Retreat, Sea Grant Association.
9:15 a.m.—State of Sea Grant, Strategy in the Next Five Years, Reauthorization/OMB—Competition and Merit, Strategic Planning in Sea Grant and NOAA, NOAA's Changing Organizational Structure, National Ocean Commission, Improving Sea Grant's Role in NOAA.
10 a.m.—Sea Grant Association President's Report.
10:30 a.m.—Break.
10:45 a.m.—Draft Allocation Policy.
11:30 a.m.—Program Evaluation.
12:15 p.m.—Fisheries Extension.
12:45 p.m.—Lunch.
2 p.m.—Sea Grant and NOAA, Functions of the NOAA Sea Grant Office, Discussion: Strategy to Better Integrate Sea Grant into NOAA, National Communications Strategy.
4 p.m.—Panel Roundtable for New Members, How the Panel Operates, Recent Reports, Panel Member Insights, Wednesday, October 23, 2002
8:30 a.m.—NOAA Update.
9:30 a.m.—Congressional Update.
10:30 a.m.—Break.
10:45 a.m.—Debrief on the Executive Committee Meetings
11:15 a.m.—NSGO Update, National Competitions, New Hampshire Sea Grant College Application, FY2003 Budget, Education Update, Climate Extension.
12 noon—Wrap-up, Sea Grant Week Meeting.
12:15 p.m.—Adjourn.

Dated: October 3, 2002.

Louisa Koch,

Acting Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 02–25669 Filed 10–08–02; 8:45 am]

BILLING CODE 3510–KA–M

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection of Information; Comment Request—Baby-Bouncers, Walker-Jumpers, and Baby-Walkers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC) requests comments on a proposed extension of approval, for a period of three years from the date of approval by the Office of Management and Budget (OMB), of information collection requirements in regulations regarding children's articles called baby-bouncers, walker-jumpers, or baby-walkers. The collection of information consists of requirements that manufacturers and importers of these products must establish and maintain records of inspections, testing, sales, and distributions to demonstrate that the products are not banned by rules issued under the Federal Hazardous Substances Act and codified at 16 CFR part 1500.

The CPSC will consider all comments received in response to this notice before requesting approval of this collection of information from OMB.

DATES: The Office of the Secretary must receive written comments not later than December 9, 2002.

ADDRESSES: Written comments should be captioned "Baby-Bouncers" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR part 1500, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0416, extension 2226.

SUPPLEMENTARY INFORMATION: Products called "baby-bouncers," "walker-jumpers," or "baby-walkers" are intended to support children younger than two years of age while they sit, bounce, jump, walk, or recline. Regulations issued under provisions of the Federal Hazardous Substances Act (15 U.S.C. 1261, 1262) establish safety requirements for these products.

A. Requirements for Baby-Bouncers, Walker-Jumpers, and Baby Walkers

One CPSC regulation bans any such product if it is designed in such a way that exposed parts present hazards of amputations, crushing, lacerations, fractures, hematomas, bruises or other injuries to children's fingers, toes, or other parts of the body. 16 CFR 1500.18(a)(6).

A second CPSC regulation establishes criteria for exempting baby-bouncers, walker-jumpers, and baby-walkers from the banning rule under specified conditions. 16 CFR 1500.86(a)(4). The exemption regulation requires certain labeling on these products and their packaging to identify the name and address of the manufacturer or distributor and the model number of the product. Additionally, the exemption regulation requires that records must be established and maintained for three years relating to testing, inspection, sales, and distributions of these products. The regulation does not specify a particular form or format for the records. Manufacturers and importers may rely on records kept in the ordinary course of business to satisfy the recordkeeping requirements if those records contain the required information.

The OMB approved the collection of information requirements in the regulations under control number 3041–0019. OMB's most recent extension of approval expires on January 31, 2003. The CPSC now proposes to request an extension of approval without change for the regulations' information collection requirements.

The safety need for this collection of information remains. Specifically, if a manufacturer or importer distributes products that violate the banning rule, the records required by section 1500.86(a)(4) can be used by the firm and the CPSC (i) to identify specific models of products that fail to comply with applicable requirements, and (ii) to notify distributors and retailers if the products are subject to recall.

B. Estimated Burden

The CPSC staff estimates that about 28 firms are subject to the testing and recordkeeping requirements of the regulations. The CPSC staff estimates further that the burden imposed by the regulations on each of these firms is approximately 2 hours per year. Thus, the total annual burden imposed by the regulations on all manufacturers and importers is about 56 hours.

The CPSC staff estimates that the hourly wage for the time required to perform the required testing and to maintain the required records is about $28.40 (rate for total compensation of technical workers, 2002), and that the annual total cost to the industry is approximately $1,590.40.

During a typical year, the CPSC will expend approximately two days of professional staff time reviewing records required to be maintained by the regulations for baby-bouncers, walker-jumpers, and baby-walkers. The annual cost to the Federal government of the collection of information in these regulations is estimated to be $680 (based on $42.50/hour staff time).

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: October 3, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–25633 Filed 10–8–02; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements; Notification Requirements Under Safety Regulations for Coal and Woodburning Appliances

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the July 9, 2002 **Federal Register** (67 FR 45483), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek an extension of approval through October 31, 2005, of information collection requirements in the safety regulations for coal and woodburning appliances (16 CFR part 1406). No responses were received in response to the notice. The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information.

These regulations require manufacturers and importers of certain coal and woodburning appliances to provide safety information to consumers on labels and instructions and an explanation of how certain clearance distances in those labels and instructions were determined. The requirements to provide copies of labels and instructions to the Commission have been in effect since May 16, 1984. For this reason, the information burden imposed by this rule is limited to manufacturers and importers introducing new products or models, or making changes to labels, instructions, or information previously provided to the Commission. The purposes of the reporting requirements in part 1406 are to reduce risks of injuries from fires associated with the installation, operation, and maintenance of the appliances that are subject to the rule, and to assist the Commission in determining the extent to which manufacturers and importers comply with the requirements in part 1406.

Additional Information About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Notification Requirements for Coal and Woodburning Appliances, 16 CFR part 1406.

Type of request: Extension of approval.

Frequency of collection: Labeling, plus one-time requirement for reporting of new models or changes.

General description of respondents: Manufacturers and importers of coal and woodburning appliances.

Estimated Number of respondents: 5.

Estimated average number of responses per respondent: 1 per year.

Estimated number of responses for all respondents: 5 per year.

Estimated number of hours per response: 3.

Estimated number of hours for all respondents: 15 per year.

Estimated cost of collection for all respondents: $397.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by November 8, 2002 to (1) Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503;

telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

Copies of this request for an extension of an information collection requirement are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2226.

Dated: October 2, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–25632 Filed 10–8–02; 8:45 am]

BILLING CODE 6355–01–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 2002–1]

Quality Assurance for Safety-Related Software

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice, recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a(a)(5) concerning quality assurance for safety-related software.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before November 8, 2002.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Andrew L. Thibadeau at the address above or telephone (202) 694–7000.

Dated: October 1, 2002.

John T. Conway,

Chairman.

September 23, 2002.

Background

Two core Integrated Safety Management (ISM) functions evolving from the Department of Energy's (DOE) implementation of Defense Nuclear Facilities Safety Board (Board) Recommendation 95–2, *Safety Management* are: (1) Analyzing hazards; and (2) identifying and implementing controls to prevent and/or mitigate potential accidents. DOE relies heavily on computer software to analyze hazards, and design and operate controls that prevent or mitigate potential accidents.

DOE and its contractors use many codes to evaluate the consequences of potential accidents. Safety controls and their functional classifications are often based on these evaluations. Functional classifications establish the level of rigor to which controls are designed, procured, maintained, and inspected. The robustness and reliability of many structures, systems, and components (SSCs) throughout DOE's defense nuclear complex depend on the quality of the software used to analyze and to guide these decisions, the quality of the software used to design or develop controls, and proficiency in use of the software. In addition, software that performs safety-related functions in distributed control systems, supervisory control and data acquisition systems (SCADA), and programmable logic controllers (PLC) requires the same high quality needed to provide adequate protection for the public, the workers, and the environment. Other types of software, such as databases used in safety management activities, can also serve important safety functions and deserve a degree of quality assurance commensurate with their safety significance.

In some areas where there is at present no substantial activity in development of new software for safety applications, new calculations are usually based on existing codes, with data inputs and some logic chains often modified to fit the problems of the moment. It is therefore necessary to ensure that software so modified is not placed in general use in competition with generally validated and more widely useable software.

Software quality assurance (SQA) provides measures designed to ensure that computer software will perform its intended functions. Such measures must be applied during the design, testing, documentation, and subsequent use of the software, and must be maintained throughout the software life cycle. It is generally accepted that an effective SQA program ensures that:

- All requirements, including the safety requirements, are properly specified.
- Models are a valid representation of the physical phenomena of interest, and digital control functions are properly executed.
- Input and embedded data are accurate.
- Software undergoes an appropriate verification and validation process.
- Results are in reasonable agreement with available benchmark data.
- All internal logic states of PLCs and SCADA are understood, so that no sequence of inputs, even those due to component failure, can leave the controlled system in an unexpected or unanalyzed state.
- Computer codes are properly and consistently executed by analysts.
- Code modifications and improvements are controlled, subjected to regression and re-acceptance testing, and documented.

DOE identified inadequate SQA as a problem as early as December 1989, when its Office of Environment, Safety and Health (DOE–EH) issued ENVIRONMENT, SAFETY & HEALTH BULLETIN EH–89–9, *Technical Software Quality Assurance Issues*. This bulletin states, "Inadequate SQA for scientific and technical codes at any phase in their "life cycle" may not only result in lost time and/or excessive project costs, but may also endanger equipment and public or occupational sectors." The bulletin cites problems with all three types of software noted above (analysis, design, and operation). Likewise, a 1997 assessment performed by DOE's Accident Phenomenology and Consequence Assessment Methodology Evaluation Program determined that only a small fraction of accident analysis computer codes meet current industry SQA standards. SQA problems continue to persist, as documented in the Board's technical report DNFSB/TECH–25, *Quality Assurance for Safety-Related Software at Department of Energy Defense Nuclear Facilities*, issued in January 2000.

An integrated and effective SQA infrastructure still does not exist within DOE. This situation can lead to both errors in technical output from software used in safety analyses and incorrect performance of instrumentation and controls for safety-related systems. In a letter to DOE dated January 20, 2000, the Board identified these deficiencies and requested that DOE provide a corrective action plan within 60 days. On October 3, 2000, the Board received DOE's corrective action plan, but found that it did not sufficiently respond to the Board's concerns. On October 23, 2000, the Board asked for a new plan of action; DOE has never submitted a revised plan, although several deliverables under the original plan have been received.

During the Board's August 15, 2001, public meeting on quality assurance, DOE proposed a revised set of actions to improve SQA processes and practices. Since then, DOE has attempted to develop a Quality Assurance Improvement Plan that includes SQA as a key goal. This action now appears stalled as a result of internal differences over objectives and funding. Thus, despite well over two years of effort, DOE has failed to develop and implement effective corrective actions in response to the Board's reporting requirement.

This situation is not acceptable. To improve SQA in the DOE complex, the Board recommends prompt actions to achieve the following:

Responsibility and Authority

1. Define responsibility and authority for the following: developing SQA guidance, conducting oversight of the development and use of software important to safety, and directing research and development as noted below. Roles and responsibilities should address all software important to safety, including, at a minimum, design software, instrumentation and control software, software for analysis of consequences of potential accidents, and other types of software, such as databases used for safety management functions.

2. Assign those responsibilities and authorities to offices/individuals with the necessary technical expertise.

Recommended Computer Codes for Safety Analysis and Design

3. Identify software that would be recommended for use in performing design and analyses of SSCs important to safety, and for analysis of expected consequences of potential accidents.

4. Identify an organization responsible for management of each of these software tools, including SQA, technical support, configuration management, training, notification to users of problems and fixes, and other official stewardship functions.

Proposed Changes to the Directives System

5. Establish requirements and guidance in the DOE directives system for a rigorous SQA process, including specific guidance on the following: grading of requirements according to safety significance and complexity; performance of safety reviews, including failure analysis and fault tolerance; performance of verification and validation testing; and training to ensure proficiency of users.

Research and Development

6. Identify evolving areas in software development in which additional research and development is needed to ensure software quality.

Appendix—Transmittal Letter to the Secretary of Energy Defense Nuclear Facilities Safety Board

September 23, 2002.

The Honorable Spencer Abraham, Secretary of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1000.

Dear Secretary Abraham: The Defense Nuclear Facilities Safety Board (Board) has been following closely the Department of Energy's (DOE) response to a reporting requirement dated January 20, 2000, which requested a corrective action plan to address deficiencies documented in the Board's technical report DNFSB/TECH–25, *Quality Assurance for Safety-Related Software at Department of Energy Defense Nuclear Facilities*. Although more than two years have since elapsed, DOE has been unable to develop and execute an acceptable plan to resolve these issues, some of which were identified as early as 1989. Since the Board's August 15, 2001, public meeting on quality assurance, DOE has been developing an overall Quality Assurance Improvement Plan that includes software quality assurance as a key element, but this effort has not yet produced any substantial results.

As a result, the Board on September 23, 2002, unanimously approved Recommendation 2002–1, *Quality Assurance for Safety-Related Software*, which is enclosed for your consideration. After your receipt of this recommendation and as required by 42 U.S.C. 2286d(a), the Board will promptly make it available for access by the public in DOE's regional public reading rooms. The Board believes that the recommendation contains no information that is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161–68, as amended, please see that it is promptly placed on file in your regional public reading rooms. The Board will also publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,

Chairman.

[FR Doc. 02–25488 Filed 10–8–02; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.256]

Office of Elementary and Secondary Education; Territories and Freely Associated States Educational Grant (T&FASEG) Program; Notice Inviting Applications for New Awards

Purpose of Program: This program provides local educational agencies (LEAs) in the U.S. Territories (American Samoa (AS), the Commonwealth of the Northern Mariana Islands (CMNI), Guam (GU), and the Virgin Islands (VI)) and the Freely Associated States (the Federated States of Micronesia (FSM), the Republic of the Marshall Islands (RMI), and the Republic of Palau (RP)) with financial assistance to provide direct educational services to assist all students with meeting challenging State academic standards and to carry out activities described in the Elementary and Secondary Education Act as reauthorized by the No Child Left Behind Act of 2001 (NCLB), including teacher training, curriculum development, development or acquisition of instructional materials, and general school improvement and reform.

Deadline for Transmittal of Applications: December 9, 2002.

Deadline for Intergovernmental Review: January 7, 2003.

Applications Available: October 9, 2002.

Eligible Applicants: LEAs in AS, CNMI, GU, VI, FSM, RMI, and the RP.

Note: The Freely Associated States (FSM, RMI and RP) are eligible for these funds only until an agreement for the extension of U.S. educational assistance under new Compacts of Free Association for those States become effective.

Available Funds: $4,750,000.00.

Estimated Range of Awards: $250,000–800,000.

Estimated Average Size of Awards: $475,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Supplemental Information:

The T&FASEG program provides financial assistance to the Territories and Freely Associated States for programs that will enable students to make progress toward achieving high State academic standards and the high levels of educational achievement envisioned by the NCLB. The T&FASEG program is a supplemental resource to local school jurisdictions to help improve the quality of teaching and learning to ensure that no child is left behind. The grants may be used for educational purposes that are consistent with the purposes and programs authorized in the Elementary and Secondary Education Act (ESEA), as reauthorized by the NCLB.

Under the T&FASEG program, the Secretary awards grants for projects to:

(a) Conduct activities consistent with the purposes of the ESEA as reauthorized by the NCLB, including the types of activities authorized by ESEA—

(1) Title I—Improving The Academic Achievement of the Disadvantaged.
(2) Title II—Preparing, Training and Recruiting High Quality Teachers and Principals.
(3) Title III—Language Instruction for Limited English Proficient and Immigrant Students.
(4) Title IV—21st Century Schools.
(5) Title V—Promoting Informed Parental Choice and Innovative Programs.
(b) Provide direct educational services that assist all students with meeting challenging State content standards. For the purposes of this program, the term "direct educational services"—
(1) Means activities that are designed to improve student achievement or the quality of education; and
(2) Includes instructional services for students and teacher training.

Allowable Activities

The following illustrates some of the many types of activities that a grantee may conduct with funds under this program:

- Programs based on scientifically based research that are designed to strengthen the knowledge and skills of elementary and secondary students in primarily reading, language arts and mathematics, but may also include science, foreign languages, civics and government, economics, history, and geography.
- The establishment of professional development programs that provide pre-service and in-service training and give teachers, principals, and administrators the knowledge and skills to help students meet challenging State or local academic content standards and student academic achievement standards.
- Programs to recruit, train, and hire highly-qualified teachers.
- The planning, design, and operation of model, innovative schools and programs that—

(1) Are based on scientifically based research and methods of teaching and learning; and
(2) Are specially tailored to meet the educational needs of children in the area to be served.

- Programs for early language, literacy, and pre-reading development, particularly for students from low-income families.
- Programs for the development of curricula and instructional materials and the acquisition and use of instructional materials, including library and reference materials, academic assessments, reference materials, computer software and hardware for instructional use, and other curricular materials that are tied to high academic standards, that are used to improve student achievement, and that are a part of an overall education reform plan.
- Programs that involve families, communities, and businesses in the planning and operation of educational programs for their children.
- Programs to enhance student and parental choice among public schools, including charter schools.

Note: The full text of the NCLBA may be found on the Internet at: *http://www.ed.gov/legislation/ESEA02/.*

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

Selection Criteria: The Secretary will use the following selection criteria in accordance with 34 CFR 75.209–75.210 to evaluate applications under this competition. As provided for in the authorizing legislation, the Secretary, in making awards under this program, will take into consideration the recommendations of Pacific Resources for Education and Learning (PREL). PREL will use the following criteria in developing its recommendations, and the Secretary will use them in making final funding decisions.

(a) *Need for Project.* (25 points.)
(1) The Secretary considers the need for the proposed project.
(2) In determining the need for the proposed project, the Secretary considers the following factors:
(i) The magnitude or severity of the problem to be addressed by the proposed project.
(ii) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.
(iii) The extent to which the proposed project will address the needs of disadvantaged and other students who are at risk of educational failure.

(b) *Significance.* (10 points.)
(1) The Secretary considers the significance of the proposed project.
(2) In determining the significance of the proposed project, the Secretary considers the following factors:
(i) The significance of the proposed project to education in the area to be served.
(ii) The significance of the problems or issues to be addressed by the proposed project.
(iii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(c) *Quality of the Project Design.* (25 points.)
(1) The Secretary considers the quality of the design of the proposed project.
(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:
(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable, and the extent to which they will be measured.
(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.
(iii) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.
(iv) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.
(v) The extent to which the proposed project encourages parental involvement.
(vi) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

(d) *Adequacy of Resources.* (5 points.)
(1) The Secretary considers the adequacy of resources for the proposed project.
(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:
(i) The extent to which the budget is adequate to support the proposed project.
(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.
(iii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(e) *Quality of project personnel.* (10 points.)
(1) The Secretary considers the quality of the project personnel who will carry out the proposed project.
(2) In determining the quality of the personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.
(3) In addition, the Secretary considers the following factors:
(i) The qualifications, including relevant training and experience, of the project director.
(ii) The qualifications, including relevant training and experience, of key project personnel.
(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(f) *Quality of the project evaluation.* (15 points.)
(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.
(2) In determining the quality of the evaluation, the Secretary considers the following factors:
(i) The extent to which the methods of evaluation provide a scientific basis for examining the effectiveness of project implementation strategies.
(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data.

(g) *Quality of project services.* (10 points.)
(1) The Secretary considers the quality of the services to be provided by the proposed project.
(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.
(3) In addition, the Secretary considers the following factors:
(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.
(ii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.
(iii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.
(iv) The extent to which the services to be provided by the proposed project are focused on individuals with greatest needs.

Waiver of Proposed Rulemaking: It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules, competitive preferences and program definitions. Section 437 (d)(1) of the General Education Provisions Act (GEPA), however, allows the Secretary to exempt from rulemaking requirements rules governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). The Secretary, in accordance with section 437 (d)(1) of GEPA, has decided to forego public comment in order to ensure timely grant awards.

For Applications and Further information contact: Valerie Rogers, U. S. Department of Education, 400 Maryland Avenue, SW, Room 3E245, Washington, DC 20202–6140. Telephone (202) 260–2543.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

Individuals with disabilities may obtain this document in an alternative format, (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

Individuals with disabilities also may obtain a copy of the application package in alternative format, by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at the previous site. If you have questions about using, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 20 U.S.C. 6331.

Dated: October 4, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–25700 Filed 10–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, October 12, 2002 8:30 a.m.–Noon.

ADDRESSES: Crosby Senior Center, 8910 Willey Road, Harrison, OH.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, The Perspectives Group, Inc., 1055 North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail; *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

8:30 a.m.—Call to Order
8:30–8:45 a.m.—Chair's Remarks and Ex Officio Announcements
8:45–9 a.m.—Plan for Upcoming Chairs Meeting
9–10 a.m.—Silos Update and Discussion
10–10:15 a.m.—Break
10:15–11:45 a.m.—Record Report Discussion
11:45–12 p.m.—Public Comment
Noon—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This **Federal Register** notice is being published less than 15 days prior to the meeting date

due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, c/o Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on October 4, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–25680 Filed 10–8–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2418–001, et al.]

Northeast Utilities Service Company, et al.; Electric Rate and Corporate Regulation Filings

September 30, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Northeast Utilities Service Company

[Docket No. ER02–2418–001]

Take notice that on September 26, 2002, Northeast Utilities Service Company (NUSCO) submitted a correction to the rate schedule with respect to The Connecticut Light and Power Company (CL&P) which was correctly identified in the transmittal letter, but not correctly identified on the top left of each page of the composite copies included as Attachment 2 to the filing. The CL&P rate schedule designation should read "CL&P First Revised FERC Electric Rate Schedule No. 492."

Comment Date: October 17, 2002.

2. Reliant Energy Mid-Atlantic Power Holdings, LLC

[Docket No. ER02–2600–000]

Take notice that on September 25, 2002 Reliant Energy Mid-Atlantic Power Holdings, LLC (REMPH) filed notice of the cancellation of its FERC Electric Rate Schedule No. 1 as it applies to Units 1 and 2 of REMPH's Warren Station only. REMPH states that the cancellation results from the decommissioning of the units at the Warren Station and will be effective on September 30, 2002.

Comment Date: October 16, 2002.

3. American Atlas #1, Ltd., L.L.L.P.

[Docket No. ER02–2601–000]

Take notice that on September 26, 2002, American Atlas #1, Ltd., L.L.L.P. (American Atlas), tendered for filing a Notice of Cancellation of Rate Schedule respecting American Atlas Electric Tariff No. 1, which became effective June 1, 1999, in Docket No. ER99–3086–000. American Atlas requests that the cancellation become effective November 25, 2002.

Comment Date: October 17, 2002.

4. Southern California Edison Company

[Docket No. ER02–2602–000]

Take notice that on September 26, 2002, Southern California Edison Company (ASCE) tendered for filing the Amended and Restated Radial Lines Agreement (Agreement) between SCE and Reliant Energy Ormond Beach, L.L.C.

The Agreement serves to show revisions for replacement of Capacitance Coupled Voltage Transformers that are needed for SCE to operate and maintain the radial lines, and to conform to the requirements of the Commission's Order No. 614.

SCE respectfully requests that the Agreement become effective on September 27, 2002. Copies of this filing were served upon the Public Utilities Commission of the State of California and Reliant Energy Ormond Beach, L.L.C.

Comment Date: October 17, 2002.

5. MidAmerican Energy Company

[Docket No. ER02–2603–000]

Take notice that on September 26, 2002, MidAmerican Energy Company (MidAmerican), filed with the Commission a Generation Interconnection Contract between MidAmerican, as transmission and distribution delivery services provider, and MidAmerican, as wholesale merchant, which incorporates the revisions as agreed to in the First Amendment to Generation Interconnection Contract, dated May 1, 2002 (Revised Contract).

MidAmerican requests an effective date of May 1, 2002, for the Revised Contract and seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment Date: October 17, 2002.

6. Keystone Energy Group, Inc.

[Docket No. ER02–2605–000]

Take notice that on September 26, 2002, Keystone Energy Group, Inc. (Keystone) petitioned the Commission for acceptance of Keystone Rate schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market based rates; and waiver of certain Commission regulations.

Keystone intends to engage in wholesale electric power and energy purchases and sales as a marketer. Keystone is not in the business of generating or transmitting electric power.

Comment Date: October 17, 2002.

7. Madison Gas and Electric Company

[Docket No. ER02–2606–000]

Take notice that on September 26, 2002, Madison Gas and Electric Company (MGE) tendered for filing a service agreement under MGE's Market-Based Power Sales Tariff with Sempra Energy Trading Corp.

MGE requests the agreement be effective on the date it was filed with the Federal Energy Regulatory Commission.

Comment Date: October 17, 2002.

8. Quonset Point Cogen, L.P.

[Docket No. ER02–2607–000]

Take notice that on September 27, 2002, Quonset Point Cogen, L.P. (Quonset) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for an order accepting its FERC Electric Rate Schedule No. 1, granting certain blanket approvals, including the authority to sell electricity at market-base rates, and waiving certain regulations of the Commission. Quonset requests expedited Commission consideration and waiver of the prior notice requirements so that its Electric Rate Schedule No. 1 can become effective on October 15, 2002.

Comment Date: October 18, 2002.

9. Kentucky Utilities Company

[Docket No. ER02–2608–000]

Take notice that on September 27, 2002, Kentucky Utilities Company (KU) filed an amendment to its Interchange Agreement with the City of Paris, Kentucky, to incorporate certain changes required in connection with KU's transfer of certain distribution facilities to the City of Paris. The Amendment does not change any rates or charges under the Interchange Agreement as previously approved and on file with this Commission.

Comment Date: October 18, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25646 Filed 10–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

October 2, 2002.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 9, 2002 (30 Minutes Following Regular Commission Meeting).

PLACE: Hearing Room 5, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public, Investigations and Inquiries and Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey, Breathitt and Brownell voted to hold a closed meeting on October 9, 2002. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25735 Filed 10–4–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7392–8]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Pub. L. 92–463), EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Citizens Advisory Committee (CAC).

DATES: The meeting will be held on Wednesday, November 6, 2002, from 1 p.m. to 5 p.m., and on Thursday, November 7, 2002, from 8:30 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Bay Tower Hotel and Conference Center, 711 Casino Magic Drive, Bay St. Louis, MS 39520 (1–800–5–MAGIC–5)

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda is attached.

The meeting is open to the public.

Dated: September 30, 2002.

Gloria D. Car,

Designated Federal Officer.

Gulf of Mexico Program—Citizens Advisory Committee Meeting—Bay Towers Hotel and Conference Center, Bay St. Louis, Mississippi, November 6–7, 2002

Draft Agenda

Wednesday, November 6

11:45–1:00 CAC Members Networking Luncheon (at hotel)

1:00–1:20 p.m. Opening Remarks/ Introductions (Jim Kachtick, Chair). Review and approval of November 7–8, 2001 and June 11–13, 2002, Meeting Summaries. Jim Kachtick, Chair

1:20–1:45 Chair Report, Jim Kachtick, Chair
- Follow-up on CAC Action Items

1:45–2:15 GMP Director's Report, Gloria Car, GMPO Associate Director

2:15–2:30 Break

2:30–3:15 Presentation: Dockwatch Update (Jellyfish), Dr. William Graham, Dauphin Island Sea Lab

3:15–5:00 Casino Magic Golf Course Gulf Guardian Award Video Golf Course Tour (tentative)

Evening Dinner Sponsored by Hancock County Board of Supervisors—location to be announced

Thursday, November 7

7:30–8:30 Continental Breakfast

8:30–9:15 CAC Projects Report, Jennyfer Smith, Battelle
- Dockwatch Project
- Coastal Bird Trail
- FFA Environmental Speech Project
- GMP Presentation for CAC Members
- CAC Web Page and Status of Bulletin Board

9:15–9:45 Election of Officers

9:45–10:30 Members Roundtable and Participation Reports

10:30–10:45 Break

10:45–11:30 Presentation on the Gulf Restoration Network, Cynthia Sarthou, Gulf Restoration Network

11:15–11:30 Meeting Calendar for 2003

11:30–12:00 Citizens Advisory Committee Wrap-up
- Discussion and Recommendations

12:00 Adjourn

[FR Doc. 02–25683 Filed 10–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0270; FRL–7276–7]

Pesticide Product; Registration Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any

previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2002–0270, must be received on or before November 8, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Alan Reynolds, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0515; e-mail address: *reynolds.alan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide manufacturer. Potentially affected entities may include, but are not limited to:

Pesticide manufacturers (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0270. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0270. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2002–0270. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0270.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0270. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Application

EPA received an application as follows to register a pesticide product containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Product Containing an Active Ingredient Not Included in any Previously Registered Products

File symbol: 74411–R. Applicant: Insect Biotechnology, Inc., 100 Capitola Drive, Suite 307, Durham, NC 27713. Product name: Technical Trypsin Modulating Oostatic Factor (TMOF). Product type: Insecticide. Active ingredient: Trypsin Modulating Oostatic Factor at 100%. Proposed classification/Use: Manufacturing use product for formulation into insecticidal products for mosquito control.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: September 30, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 02–25684 Filed 10–8–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0244; FRL–7198—2]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0244, must be received on or before November 8, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0244 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Leonard Cole, Biopesticide and Pollution Prevention Division, Office of Pesticide Programs, (7511C) Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food

manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categones	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit I.A. above. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0244. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0244. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2002–0244. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2002–0244.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0244. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 24, 2002.

Janet L. Andersen,

Director, Biopesticide and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by Mycogen Seeds c/o Dow AgroSciences LLC, and represents the view of the Mycogen Seeds. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues, or an explanation of why no such method is needed.

Mycogen Seeding c/o Dow AgroSciences LLC

PP 2G6494

EPA has received a pesticide petition 2G6494 from Mycogen Seeds c/o Dow AgroSciences LLC , 9330 Zionsville Road, Indianapolis, IN 46268–1054, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a temporary tolerance for the plant-incorporated protectant *Bacillus thuringiensis* subspecies aizawai Cry1F (synpro) insect control protein and the genetic material responsible for the production of this protein in or on cotton. (See EPA document OPP–2002–0244, FRL–7196–2 published elsewhere in this issue of the **Federal Register**.)

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Mycogen Seeds c/o Dow AgroSciences LLC has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Mycogen Seeds c/o Dow AgroSciences LLC and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product name and Proposed Use Practices

This notice of filing summarizes information submitted and cited by Mycogen Seeds c/o Dow AgroSciences LLC in support of a request for a temporary exemption from tolerance residues of the plant incorporated-protectant *Bacillus thuringiensis* subspecies aizawai Cry1F (synpro) insect control protein and the genetic material responsible for the production of this protein in cotton.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues. Bacillus thuringiensis* subspecies aizawai Cry1F (synpro) insect control protein is expressed in cotton plants to provide protection from key lepidopteran insect pests such as the tobacco budworm and pink bollworm. Cry1F (synpro) transgenic plants are derived from transformation events that contain the insecticidal gene via a plasmid insert. The Cry1F (synpro) protein poses no foreseeable risks to non-target organisms including mammals, birds, fish, beneficial insects, and earthworms. Cry1F (synpro)-protected cotton provides growers with a highly efficacious tool for controlling important insect pests in cotton in a manner that is fully compatible with integrated pest management practices.

2. *Analytical method.* A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed. No analytical method is included because this petition requests a temporary exemption from the requirement for a tolerance.

C. Mammalian Toxicological Profile

Cry proteins have been deployed as safe and effective pest control agents in microbial *Bacillus thuringiensis* formulations for almost 40 years. There are currently 180 registered microbial *Bacillus thuringiensis* products in the United States for use in agriculture, forestry, and vector control. The numerous toxicology studies conducted with these microbial products show no significant adverse effects, and demonstrate that the products are practically non-toxic to mammals. An exemption from the requirement of a tolerance has been in place for these products since at least 1971 (40 CFR 180.1011).

Toxicology studies conducted to determine the toxicity of Cry1F (synpro) insect control protein demonstrated that the protein has very low toxicity. In an acute oral toxicity study in the mouse (male and female), the estimated acute LD_{50} was determined to be >2,000 mg/kg of the microbially produced test substance.

In an *in vitro* study, Cry1F protein was rapidly and extensively degraded in simulated gastric conditions in the presence of pepsin at pH 1.2. Cry1F (synpro) was completely proteolyzed to amino acids and small peptide fragments in <1 minute. This indicates that the protein is highly susceptible to digestion in the human digestive tract and that the potential for adverse health effects from chronic exposure is virtually nonexistent. Moreover, proteins in general are not known to be carcinogenic. A search of relevant databases indicated that the amino acid sequence of the Cry1F (synpro) protein exhibits no significant homology to the sequences of known allergens or protein toxins. Thus, Cry1F (synpro) is highly unlikely to exhibit an allergic response.

The results of a study to determine the lability of the Cry1F (synpro) protein to heat demonstrated that the protein was deactivated after exposure to 75° or 90°C for 30 minutes, according to bioassay results on tobacco budworm.

The genetic material necessary for the production of the Cry1F (synpro) insect control protein are nucleic acids (DNA) which are common to all forms of plant and animal life. There are no known instances of where nucleic acids have caused toxic effects as a result of dietary exposure.

Collectively, the available data on Cry1F (synpro) protein along with the safe use history of microbial *Bacillus thuringiensis* products establishes the safety of the plant pesticide *Bacillus thuringiensis* subspecies aizawai Cry1F (synpro) insect control protein and the genetic material necessary for its production in all raw agricultural commodities.

D. Aggregate Exposure

Non-dietary exposure. Insecticidal crystal proteins of *Bacillus thuringiensis* are known to have a high degree of insect specificity via binding to specific receptors in the insect gut, and do not harm people, wildlife or many beneficial insects (Ballester et al., 1999; Aronson and Shai, 2001). The level of protein that is expressed in corn plants is very low. The small amount of Cry1F (synpro) in plant tissue is deep in the plant matrix, which greatly reduces availability for dermal or respiratory exposure. Significant dietary exposure to Cry1F (synpro) protein is unlikely to occur. Dietary exposures at very low levels, via ingestion of processed commodities, although they may occur, are unlikely to be problematic because of the low toxicity and the high degree of digestibility of the protein. In addition, the protein is not likely to be present in drinking water because the protein is deployed in minute quantities within the plant, and studies demonstrate that Cry1F (synpro) protein is rapidly degraded in soil. In summary, the potential for significant aggregate exposure to Cry1F (synpro) protein is highly unlikely.

E. Cumulative Exposure

Common modes of toxicity are not relevant to consideration of the cumulative exposure to *Bacillus thuringiensis* Cry1F (synpro) insect control protein. The product has demonstrated low mammalian toxicity and Bt insecticidal crystal proteins are known to bind to specific receptors in the insect gut, such that biological effects do not appear to be cumulative with any other known compounds.

F. Safety Determination

1. *U.S. population.* The deployment of the product in minute quantities within the plant, the very low toxicity of the product, the lack of allergenic potential, and the high degree of digestibility of the protein, are all factors in support of Mycogen's assertion that no significant risk is posed by exposure of the U.S. population to *Bacillus thuringiensis* subspecies aizawai Cry1F (synpro) insect control protein.

2. *Infants and children.* Non-dietary exposure to infants and children is not anticipated, due to the proposed use pattern of the product. Due to the very low toxicity of the product, the lack of allergenic potential, and the high degree of digestibility of the protein, dietary exposure is anticipated to be at very low levels and is not anticipated to pose any harm to infants and children.

G. Effects on the Immune and Endocrine Systems

Given the rapid digestibility of Cry1F (synpro) insecticidal crystal protein, no chronic effects are expected. Cry1F (synpro) insecticidal crystal protein, or metabolites of the insecticidal crystal protein are not known to, or are expected to have any effect on the immune or endocrine systems. Proteins in general are not carcinogenic, therefore, no carcinogenic risk is associated with the Cry1F (synpro) protein.

H. Existing Tolerances

There are no existing tolerances or exemptions from tolerance for *Bacillus thuringiensis* subspecies aizawai Cry1F (synpro) granted to Mycogen Seeds c/o Dow AgroSciences LLC.

[FR Doc. 02–25584 Filed 10–8–02; 8:45 a.m.]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0244; FRL–7196—2]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0244, must be received on or before November 8, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0244 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Leonard Cole, Biopesticide and Pollution Prevention Division, Office of Pesticide Programs, (7511C) Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in OPP–2002–0244. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0244. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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C. How and To Whom Do I Submit Comments?

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not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2002–0244. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2002–0244.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0244. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

September 24, 2002.

Janet L. Andersen,

Director, Biopesticide and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by Mycogen Seeds c/o Dow AgroSciences LLC, and represents the view of the Mycogen Seeds. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues, or an explanation of why no such method is needed.

Mycogen Seeding c/o Dow AgroSciences LLC

PP 2G6494

EPA has received a pesticide petition (2G6494) from Mycogen Seeds c/o Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180, to establish an exemption from the requirement of a temporary tolerance for the plant incorporated protantant; *bacillus thuringiensis* var *Kurstaki* CrylAc in or on cotton. The plant also expresses the Cry1F protein (refer to FRL–7198–2 published elsewhere in this issue of the **Federal Register**).

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Mycogen Seeds c/o Dow AgroSciences LLC has submitted the following summary of information, data, and arguments in support of their pesticide petition. EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Bacillus thuringiensis subspecies *kurstaki*. Cry1Ac (synpro) insect control protein is expressed in cotton plants to provide protection from key lepidopteran insect pests such as the tobacco budworm and pink bollworm. Cry1Ac (synpro) transgenic plants are derived from transformation events that contain the insecticidal gene via a plasmid insert. The Cry1Ac (synpro) protein poses no foreseeable risks to non-target organisms including mammals, birds, fish, beneficial insects, and earthworms. Cry1Ac (synpro) protected cotton provides growers with a highly efficacious tool for controlling important insect pests in cotton in a manner that is fully compatible with integrated pest management practices.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The Cry1Ac gene was isolated from *bacillus thuringiensis* subspecies *kurstaki* and modified before it was inserted into cotton plants to produce a full length protein. The Cry1Ac (synpro) insecticidal protein has been adequately characterized. Several safety studies were conducted using a microbially produced test substance preparation that contained 14% Cry1Ac protein. Studies conducted to establish the equivalence of the Cry1Ac (synpro) protein obtained from cotton, or from a microbial source demonstrate that the materials are similar with respect to molecular weight, immunoreactivity, lack of post-translational glycosylation and spectrum of bioactivity.

2. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* No analytical method is included because this petition requests a temporary exemption from the requirement for a tolerance.

C. Mammalian Toxicological Profile

Cry proteins have been deployed as safe and effective pest control agents in microbial bacillus thuringiensis formulations for almost 40 years. There are currently 180 registered microbial bacillus thuringiensis products in the United States for use in agriculture, forestry, and vector control. The numerous toxicology studies conducted with these microbial products show no significant adverse effects, and demonstrate that the products are practically non-toxic to mammals. An exemption from the requirement of a tolerance has been in place for these products since at least 1971 (40 CFR 180.1011).

Toxicology studies conducted to determine the toxicity of Cry1Ac (synpro) insecticidal crystal protein demonstrated that the protein has very low toxicity. In an acute oral toxicity study in the mouse (male and female), the estimated acute LD_{50} was determined to be >5,000 mg/kg of the microbially produced test substance containing 14% Cry1Ac (synpro) protein. In an *in vitro* study, Cry1Ac (synpro) protein was rapidly and extensively degraded in simulated gastric conditions in the presence of pepsin at pH 1.2. Cry1Ac (synpro) was completely proteolyzed to amino acids and small peptide fragments in <1 minute. This indicates that the protein is highly susceptible to digestion in the human digestive tract and that the potential for adverse health effects from chronic exposure is virtually nonexistent. Moreover, proteins in general are not known to be carcinogenic. A search of relevant data bases indicated that the amino acid sequence of the Cry1Ac (synpro) protein exhibits no significant homology to the sequences of known allergens or protein toxins. Thus, Cry1Ac (synpro) is highly unlikely to exhibit an allergic response.

The results of a study to determine the lability of the Cry1Ac (synpro) protein to heat demonstrated that the protein was deactivated after exposure to 75 °C or 90 °C for 30 minutes, according to bioassay results on tobacco budworm. The genetic material necessary for the production of the Cry1Ac (synpro) insecticidal crystal protein are nucleic acids (DNA) which are common to all forms of plant and animal life. There are no known instances of where nucleic acids have caused toxic effects as a result of dietary exposure.

Collectively, the available data on Cry1Ac (synpro) protein along with the safe use history of microbial *bacillus thuringiensis* products, establishes the safety of the plant pesticide *bacillus thuringiensis* subspecies *kurstaki*, Cry1Ac (synpro) insecticidal crystal protein and the genetic material necessary for its production in all raw agricultural commodities.

D. Aggregate Exposure

Insecticidal crystal proteins of bacillus thuringiensis are known to have a high degree of insect specificity via binding to specific receptors in the insect gut, and do not harm people, wildlife or many beneficial insects (Ballester et al., 1999; Aronson and Shai, 2001). The level of protein that is expressed in corn plants is very low. The small amount of Cry1Ac (synpro) in plant tissue is deep in the plant matrix, which greatly reduces availability for dermal or respiratory exposure. Significant dietary exposure to Cry1Ac (synpro) protein is unlikely to occur. Dietary exposures at very low levels, via ingestion of processed commodities, although, they may occur, are unlikely to be problematic because of the low toxicity and the high degree of digestibility of the protein. In summary the potential for significant aggregate exposure to Cry1Ac (synpro) protein is highly unlikely.

E. Cumulative Exposure

Common modes of toxicity are not relevant to consideration of the cumulative exposure to *bacillus thuringiensis* Cry1Ac (synpro) insecticidal crystal protein. The product has demonstrated low mammalian toxicity, and *Bt* insecticidal crystal proteins are known to bind to specific receptors in the insect gut, such that biological effects do not appear to be cumulative with any other known compounds.

F. Safety Determination

1. *U.S. population.* The deployment of the product in minute quantities within the plant, the very low toxicity of the product, the lack of allergenic potential, and the high degree of digestibility of the protein, are all factors in support of Mycogen's assertion that no significant risk is posed by exposure of the U.S. population to *bacillus thuringiensis*

subspecies *kustaki* Cry1Ac (synpro) insect control protein.

2. *Infants and children.* Non-dietary exposure to infants and children is not anticipated, due to the proposed use pattern of the product. Due to the very low toxicity of the product, the lack of allergenic potential, and the high degree of digestibility of the protein, dietary exposure is anticipated to be at very low levels and is not anticipated to pose any harm to infants and children.

G. Effects on the Immune and Endocrine Systems

Given the rapid digestibility of Cry1Ac (synpro) insecticidal crystal protein, no chronic effects are expected. Cry1Ac (synpro) insecticidal crystal protein, or metabolites of the insecticidal crystal protein are not known to, or are expected to have any effect on the immune, or endocrine systems. Proteins in general are not carcinogenic; therefore, no carcinogenic risk is associated with the Cry1Ac (synpro) protein.

H. Existing Tolerances

There are no existing tolerances or exemptions from tolerance for *bacillus thuringiensis* subspecies *kurstaki* Cry1Ac (synpro) granted to Mycogen Seeds c/o Dow AgroSciences LLC.

[FR Doc. 02–25585 Filed 10–8–02; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 10, 2002, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Acting Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- September 12, 2002 (Open)
- September 12, 2002 (Open and Closed)
- September 17, 2002 (Closed)
- September 26, 2002 (Open)

B. Reports

- Corporate Approvals
- Provisions of the 2002 Farm Bill
- Conditions and Trends in the Dallas Field Office Portfolio

C. New Business

- Regulations
- Final Rule—Adjusting Civil Money Penalties for Inflation

- *Other*
  - Reaffiliation of Northwest Farm Credit Services, ACA with CoBank, ACB
  - Merger of AgAmerica, FCB with and into AgriBank FCB
  - East Carolina Farm Credit, ACA Restructuring
  - Consolidation of the Federal Land Bank Association of Western Oklahoma, FLCA, Clinton, PCA, and PCA of Woodward to form an ACA (with subsidiaries)

Closed*

- *New Business*
  - Investments
  - Securities Issues

Dated: October 4, 2002.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 02–25760 Filed 10–7–02; 10:32 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting, Thursday, October 10, 2002

October 3, 2002.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on , which is scheduled to commence at in Room TW–C305, at 445 12th Street, SW, Washington, DC.

Item No.	Bureau	Subject
1	International	*Title:* International Settlements Policy Reform and International Settlement Rates (IB Docket No. 96–261). *Summary:* The Commission will consider a Notice of Proposed Rulemaking concerning the reform of the International Settlements Policy, its international simple resale and benchmarks policy, and the issue of foreign mobile termination rates.
2	Media	*Title:* Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service (MM Docket No. 99–325). *Summary:* The Commission will consider a First Report and Order concerning digital operation by terrestrial radio broadcasters.
3	Enforcement	*Title:* SBC Communications, Inc., Apparent Liability for Forfeiture. *Summary:* The Commission will consider a Forfeiture Order concerning compliance with the shared transport condition of the SBC/Ameritech merger order.
4	Enforcement	The Enforcement Bureau will report to the Commission on recent enforcement activities.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com*.

* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events web page at *http://www.fcc.gov/realaudio*. Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, telephone number (703) 834–1470, Ext. 19; fax number (703) 834–0111.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–25759 Filed 10–7–02; 10:32 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Federal Register Citation of Previous Notice: 67 FR 62472, October 7, 2002

ACTION: Notice; correction.

SUMMARY: The Federal Housing Finance Board published a Sunshine Act Notice in the **Federal Register** on October 7, 2002, regarding the Board of Directors meeting of October 9, 2002. The Notice contained an incorrect title of an agenda item.

Correction

In the **Federal Register** on October 7, 2002, in FR 67, Number 194, on page 62472, correct the last agenda item to read:

- Appointment—Financing Corporation Directorate (Tentative)

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Arnold Intrater,

General Counsel.

[FR Doc. 02–25915 Filed 10–7–02; 2:29 pm]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 011821.
Title: MSC/CMA CGM Space Charter Agreement.
Parties: Mediterranean Shipping Company, S.A., CMA CGM S.A.
Synopsis: The agreement authorizes MSC to charter space to CMA CGM in the trades between United Kingdom, Belgium, France, Germany and Mexico, on the one hand, and the U.S. East and Gulf Coasts (Eastport, Maine to Brownsville, TX), on the other hand.

Agreement No.: 011822.
Title: Priority/Crowley Space Charter Agreement.
Parties: Priority Transport, Inc., Crowley Liner Service, Inc.
Synopsis: The agreement authorizes Crowley to charter space fromPriority Transport in the trade between San Juan, Puerto Rico, and Santo Domingo, the Dominican Republic.

Agreement No.: 011823.
Title: Contship/P&O Nedlloyd Vessel Sharing Agreement.
Parties: P&O Nedlloyd Limited, P&O Nedlloyd B.V., Contship Containerlines.
Synopsis: Under the proposed agreement, the parties are authorized to share vessel space between the U.S. East Coast and North Europe, the Mediterranean, Australia, New Zealand, the Caribbean, the South Pacific, and Singapore.

Agreement No.: 011824.
Title: Contship/P&O Nedlloyd-CMA CGM/Marfret Agreement.
Parties: P&O Nedlloyd Limited, P&O Nedlloyd B.V., Contship Containerlines, CMA CGM S.A., CMA CGM (UK) Limited, Compagnie Maritime Marfret S.A.
Synopsis: Under the proposed agreement, the parties are authorized to share vessel space between the U.S. East Coast and North Europe, the Mediterranean, Australia, New Zealand, the Caribbean, the South Pacific, and Singapore.

Agreement No.: 011825.
Title: CS/PONL–HSDG Agreement.
Parties: P&O Nedlloyd Limited, P&O Nedlloyd B.V. and Contship Containerlines, Hamburg-Süd.
Synopsis: Under the proposed agreement, the parties are authorized to share vessel space between the U.S. East Coast and North Europe, the Mediterranean, Australia, New Zealand, the Caribbean, the South Pacific, and Singapore.

Agreement No.: 011826.
Title: CS/PONL–Hapag-Lloyd Agreement.
Parties: P&O Nedlloyd Limited, P&O Nedlloyd B.V., Contship Containerlines, Hapag-Lloyd Container Linie GmbH.
Synopsis: Under the proposed agreement, the parties are authorized to share vessel space between the U.S. East Coast and North Europe, the Mediterranean, Australia, New Zealand, the Caribbean, the South Pacific, and Singapore.

Agreement No.: 011827.
Title: Europe-Australia-New Zealand-U.S. East Coast Bridging Agreement.
Parties: P&O Nedlloyd Limited, P&O Nedlloyd B.V., Contship Containerlines, CMA CGM S.A., CMA CGM (UK) Limited, Compagnie Maritime Marfret S.A., Hamburg-Süd, Hapag-Lloyd Container Linie GmbH.
Synopsis: The proposed agreement would allow the parties to the Contship/P&O Nedlloyd Vessel Sharing Agreement, the CS/PONL–CMA CGM/Marfret Agreement, the CS/PONL–HSDG Agreement, and the CS/PONL–Hapag-Lloyd Agreement to discuss and agree on operational matters and slot allocations in connection with their services between the U.S. East Coast and North Europe, the Mediterranean, Australia, New Zealand, the Caribbean, the South Pacific, and Singapore.

By Order of the Federal Maritime Commission.

Dated: October 4, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–25694 Filed 10–8–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 02–14]

Avalon Risk Management, Inc., General Agent for Aegis Security Insurance Co. v. Michael Brian Deitchman, Arnistics, LLC and Advanced Global Logistics; Notice of Filing of Complaint and Assignment

Avalon Risk Management, Inc., General Agent for Aegis Security Insurance Co., ("Complainant") has filed a complaint against Michael B. Deitchman; Arnistics, LLC; and Advanced Global Logistics ("Respondents"). Complainant states that it provided Ocean Transportation Intermediary ("OTI") bonds to the Respondents, who represented that they would comply with all Federal Maritime Commission ("Commission") OTI regulations, including paying freight and related charges. However, Complainant alleges that Respondents fraudulently induced carriers to release cargo to them or their agents, thus causing carriers to lose their liens on the cargo without payment. Four carriers have settled claims for the resultant damages with Complainant, to whom they have assigned their recovery rights.

Complainant states that Respondent Deitchman breached the settlement agreement he entered into to indemnify the Complainant for the costs associated with the claims, thus violating the Shipping Act of 1984 ("Shipping Act") by obtaining ocean transportation at less than the rates that would otherwise be applicable. Respondents are said to have violated section 10(a)(1) of the Shipping Act by issuing checks with insufficient funds as payment to carriers for the ocean freight and other charges incurred by Respondents, thereby obtaining ocean transportation at less than the rates that would otherwise be applicable. Complainant also alleges that Respondents violated certain OTI fiduciary duties.

Complainant asks the Commission to issue orders (1) compelling Respondents to answer its charges and scheduling a hearing in Washington DC; (2) against the Respondents for their violations of the Shipping Act; (3) compelling Respondents to make reparations to Complainant, plus interest, costs and attorneys' fees; and (4) holding that the Respondents' business activities described in the Complaint are unlawful and in violation of the Shipping Act and ordering them to cease and desist therefrom.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by October 1, 2003, and the final decision of the Commission shall be issued by January 26, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–25695 Filed 10–8–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 1, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *State Bankshares, Inc.*, Fargo, North Dakota; to acquire 100 percent of the voting shares of State Bank of Moorhead, Moorhead, Minnesota.

In connection with this application, Applicant also has applied to acquire Northern Capital Holding Company, Fargo, North Dakota, and thereby engage in providing trust services, and brokerage and financial advisory services, pursuant to §§ 225.28 (b) (5), (b)(6), (b)(7), and (b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, October 3, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–25643 Filed 10–8–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 10 a.m. (EDT) October 21, 2002.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and part closed to the public.

MATTERS TO BE CONSIDERED: emsp;

Parts Open to the Public

1. Approval of the minutes of the September 17, 2002, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director (with discussion of litigation to be closed to the public).

Part Closed to the Public

Discussion of litigation.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: October 7, 2002.

David L. Hutner,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 02–25927 Filed 10–7–02; 3:16 pm]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Trade Commission.

TIME AND DATE: 2 p.m., Monday, November 4, 2002.

PLACE: Federal Trade Commission Building, Room 532, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: *Portions Open to Public:*

(1) Oral argument in Polygram Holding *et al.* Docket 9298.

Portions Closed to the Public:

(2) Executive session to follow oral argument in Polygram Holding, *et al.* Docket 9298.

FOR FURTHER INFORMATION CONTACT: Mitch Katz, Office of Public Affairs: (202) 326–2180, Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary.

[FR Doc. 02–25755 Filed 10–7–02; 9:28 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[Wildlife Order 186; 4–U–AL–0767]

Public Buildings Services; Mobile Point Light Station, Gulf Shores, AL

Pursuant to section 2 of Pub. L. 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c) notice is hereby given that:

1. The General Services Administration transferred 32.34 acres of land and improvements, identified as Mobile Point Light Station, Gulf Shores, AL to the U.S. Fish and Wildlife Service Department of the Interior by transfer letter dated June 12, 2002.

2. The above property was conveyed for wildlife conservation in accordance with the provisions of section 1 of Pub. L. 80–537 (16 U.S.C. 667b), as amended by Pub. L. 92–432.

Dated: September 25, 2002.

Gordon S. Creed,

Assistant Commissioner, Office of Property Disposal.

[FR Doc. 02–25650 Filed 10–8–02; 8:45 am]

BILLING CODE 6820–86–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0268]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Cosmetic Product Voluntary Reporting Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 8, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Cosmetic Product Voluntary Reporting Program—(21 CFR 720.4, 720.6, and 720.8)—(OMB Control Number 0910–0030)—Extension

Under the Federal Food, Drug, and Cosmetic Act (the act), cosmetic products that are adulterated under section 601 of the act (21 U.S.C. 361) or misbranded under section 602 of the act (21 U.S.C. 362) cannot legally be distributed in interstate commerce. To assist FDA in carrying out its responsibility to regulate cosmetics, FDA requests under part 720 (21 CFR part 720), but does not require, that firms that manufacture, pack, or distribute cosmetics file with the agency an ingredient statement for each of their products (§ 720.4). Ingredient statements for new submissions (§ 720.4) are reported on Form FDA 2512, "Cosmetic Product Ingredient Statement," and on Form FDA 2512a, a continuation form. Changes in product formulation (§ 720.6) are also reported on Forms FDA 2512 and FDA 2512a. When a firm discontinues the commercial distribution of a cosmetic, FDA requests that the firm file Form FDA 2514, "Discontinuance of Commercial Distribution of Cosmetic Product Formulation" (§ 720.6). If any of the information submitted on or with these forms is confidential, the firm may submit a request for confidentiality under § 720.8.

FDA uses the information received on these forms as input for a computer-based information storage and retrieval system. These voluntary formula filings provide FDA with the best information available about cosmetic product formulations, ingredients and their frequency of use, businesses engaged in the manufacture and distribution of cosmetics, and approximate rates of product discontinuance and formula modifications. FDA's database also lists cosmetic products containing ingredients suspected to be carcinogenic or otherwise deleterious to the public health. The information provided under the Cosmetic Product Voluntary Reporting Program assists FDA scientists in evaluating reports of alleged injuries and adverse reactions to the use of cosmetics. The information also is utilized in defining and planning analytical and toxicological studies pertaining to cosmetics.

FDA shares nonconfidential information from its files on cosmetics with consumers, medical professionals, and industry. For example, by submitting a Freedom of Information Act request, consumers can obtain information about which products do or do not contain a specified ingredient and about the levels at which certain ingredients are typically used. Dermatologists use FDA files to cross-reference allergens found in patch test kits with cosmetic ingredients. The Cosmetic, Toiletry, and Fragrance Association, which is conducting a review of ingredients used in cosmetics, has relied on data provided by FDA in selecting ingredients to be reviewed based on frequency of use.

The Cosmetic Product Voluntary Reporting Program was suspended during fiscal year (FY) 1998 due to a lack of budgetary funding and was reinstated at the beginning of FY 1999. The estimated hour burden is 60 percent of the previous level reported in 1999. In general, the larger cosmetic companies have resumed participating in the program, whereas the smaller companies are lagging.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
720.1 through 720.4 (new submission)	FDA 2512 and FDA 2512a	54	35.6	1,920	0.5	960
720.4 and 720.6 (amendments)	FDA 2512 and FDA 2512a	54	1.4	75	0.33	25

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
720.3 and 720.6 (notices of discontinuance)	FDA 2514	54	0.4	20	0.1	2
720.8 (requests for confidentiality)	0	0	0	0	1.5	0
Total						987

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on the number and frequency of submissions received in the past and on discussions between FDA staff and respondents during routine communications. The actual time required for each submission will vary in relation to the size of the company and the breadth of its marketing activities.

Dated: October 1, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–25642 Filed 10–8–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Maternal and Child Health Research Grants Review Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following advisory committee meeting. The meeting is open to the public on Wednesday, November 20, 2002, from 9 a.m. to 10 a.m. and closed for the remainder of the meeting.

Name: Maternal and Child Health Research Grants Review Committee.

Date and Time: November 20—22, 2002; 9 a.m. to 5 p.m.

Place: Embassy Suites Hotel, Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Purpose: To review research grant applications in the program areas of maternal and child health, administered by the Maternal and Child Health Bureau, Health Resources and Services Administration.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Research, Training and Education, who will report on program issues, congressional activities, and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on Wednesday, November 20, 2002, from 10 a.m., through the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Associate Administrator for Management and Program Support, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write or contact Kishena C. Wadhwani, Ph.D., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2207.

Dated: October 2, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–25659 Filed 10–8–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt.

SUMMARY: We announce our receipt of applications to conduct certain activities pertaining to scientific research and enhancement of survival of endangered species.

DATES: Written comments on these requests for permits must be received by November 8, 2002.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director-Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; telephone 303–236–7400, facsimile 303–236–0027.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone 303–236–7400.

SUPPLEMENTARY INFORMATION: The following applicants have requested renewal of scientific research and enhancement of survival permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

TE–051833

Applicant: J. Stephen McCusker, San Antonio Zoo, San Antonio, Texas

The applicant requests a permit to possess black-footed ferrets (*Mustela nigripes*) for public display in conjunction with recovery activities for the purpose of enhancing the species' survival and recovery.

TE–062348

Applicant: Craig Milewski, Dakota State University, Madison, South Dakota

The applicant requests a permit to take Topeka shiner (*Notropis topeka*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Dated: September 19, 2002.

Mary G. Henry,

Regional Director, Denver, Colorado.

[FR Doc. 02–25653 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Kneeland Prairie Penny-Cress (*Thlaspi californicum*), for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability for public review of the Draft Recovery Plan for the Kneeland Prairie Penny-cress (*Thlaspi californicum*). The draft plan includes specific recovery criteria and measures to be taken in order to delist the Kneeland Prairie penny-cress. We solicit review and comment from local, State, and Federal agencies, and the public on this draft recovery plan.

DATE:S Comments on the draft recovery plan must be received on or before December 9, 2002, to receive consideration by us.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, California 95521 (phone: 707–822–7201). Requests for copies of the draft recovery plan, and written comments and materials regarding this plan should be addressed to Bruce Halstead, Project Leader, at the above Arcata address.

FOR FURTHER INFORMATION CONTACT: David Imper, Fish and Wildlife Ecologist, at the above Arcata address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended in 1988 (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

Kneeland Prairie penny-cress (*Thlaspi californicum*; penny-cress) is a perennial member of the mustard family (Brassicaceae), restricted to outcrops of serpentine substrate located in Kneeland Prairie, Humboldt County, California. Historical loss of the serpentine habitat, combined with the potential for future loss of habitat is the primary current threat to the species.

The draft recovery plan includes conservation measures designed to ensure that a self-sustaining population of penny-cress will continue to exist, distributed throughout its extant and historic range. Specific recovery actions focus on protection of the serpentine outcrops and surrounding oak woodland and grasslands. The draft plan also seeks to re-establish multiple sexually reproducing colonies of the penny-cress within the native serpentine plant community present in Kneeland Prairie. The ultimate objective of this recovery plan is to delist penny-cress through implementation of a variety of recovery measures including: (1) Protection of the extant population and its habitat, involving acquisition or other legal protective mechanisms, monitoring, and coordination with the landowners; (2) research on the species biology and habitat requirements; (3) augmentation of existing colonies and establishment of new colonies; and (4) ex-situ conservation measures including artificial rearing and seed banking.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 26, 2002.

Steve Thompson,

Manager, California/Nevada Operations Office, Region 1, Fish and Wildlife Service.

[FR Doc. 02–25457 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Final Stock Assessment Reports

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of final marine mammal stock assessment reports for Pacific walrus, polar bear, and sea otter in Alaska; response to comments.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), the Fish and Wildlife Service (FWS) has incorporated public comments into revisions of marine mammal stock assessment reports (SARs) for Pacific walrus, polar bear, and sea otter in Alaska. The 2002 final SARs are now complete and available to the public.

ADDRESSES: Send requests for printed copies of the final stock assessment reports to: Chief, U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, AK 99503, (800) 362–5148.

Electronic Access

Copies of the final stock assessment reports are available on the Internet in Adobe Acrobat format at *http://www.r7.fws.gov/mmm/SAR.*

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the MMPA (16 U.S.C. 1361–1407) requires the FWS and the National Marine Fisheries Service (NMFS) to prepare stock assessment reports for each marine mammal stock that occurs in waters under the jurisdiction of the United States. Section 117 of the MMPA also requires the FWS and the NMFS to review the stock assessment reports: (a) At least annually for stocks that are specified as strategic stocks; (b) at least annually for stocks for which significant new information is available; and (c) at least once every three years for all other stocks. If the review indicates that the status of the stock has changed or can be more accurately determined, the agencies are directed to revise the SARs. We published the initial SARs in 1995 and revised SARs for Pacific walrus and polar bears in 1998.

Draft 2002 SARs were made available for a 90-day public review and comment period on March 28, 2002 (67 FR 14959). Prior to releasing them for public review and comment, FWS subjected the draft reports to internal technical review and to scientific review

by the Alaska Regional Scientific Review Group (ASRG) established under the MMPA. Following the close of the comment period, FWS revised the stock assessments and prepared the final 2002 SARs.

Previous stock assessments covered a single stock of Pacific walrus, two stocks of polar bears (Chukchi/Bering seas and Southern Beaufort Sea), and a single stock of sea otters in Alaska. There are no changes in stock identification for Pacific walrus and polar bear, however three stocks of sea otters (southwest Alaska, southcentral Alaska, and southeast Alaska) have now been identified.

A strategic stock is defined in the MMPA as a marine mammal stock (A) for which the level of direct human-caused mortality exceeds the potential biological removal level; (B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future; or (C) which is listed as a threatened or endangered species under the Endangered Species Act of 1973, or is designated as depleted under the MMPA.

Only the southwest Alaska stock of sea otters was classified as strategic. All other stocks were classified as non-strategic. Based on the best available scientific information, sea otter numbers across southwest Alaska are declining. In April 2000, an aerial survey of sea otters in the Aleutian Islands indicated the population had declined by 70% during the period from 1992–2000. In August 2000 FWS designated the northern sea otter in the Aleutian Islands as a candidate species under the Endangered Species Act. Additional surveys in 2000 and 2001 along the Alaska Peninsula and Kodiak archipelago also showed population declines in these areas. As a result, the southwest Alaska stock is classified as strategic in the final report and is under review for possible listing under the Endangered Species Act.

A summary of the final revised stock assessment reports is presented in Table 1. The table lists each marine mammal stock, estimated abundance (N_{EST}), minimum abundance estimate (N_{MIN}), maximum theoretical growth rate (R_{MAX}), recovery factor (F_R), Potential Biological Removal (PBR), annual estimated average human-caused mortality, and the status of each stock.

TABLE 1.—SUMMARY OF FINAL STOCK ASSESSMENT REPORTS FOR PACIFIC WALRUS, POLAR BEAR, AND SEA OTTER IN ALASKA

Species	Stock	N_{EST}	N_{MIN}	R_{MAX}	E_R	PBR	Mortality causes (5 yr. average)			Stock status
							Subsistence	Fishery	Other	
Pacific Walrus	Alaska	—	—	0.08	—	—	5,789	1	4	Non-strategic.
Polar Bear	Alaska Chukchi/Bering Seas.	—	—	0.06	0.5	—	45 (Alaska) 100+ (Russia).	0	0 (Alaska) — (Russia)	Non-strategic.
Polar Bear	Alaska Southern Beaufort Sea.	2,272	1,971	0.06	1.0	88	34 (Alaska) 20 (Canada)	0	<1 (Alaska) 0 (Canada)	Non-strategic.
Sea Otter	Southeast Alaska	12,632	9,266	0.20	1.0	927	301	0	0	Non-strategic.
Sea Otter	Southcentral Alaska.	16,552	13,955	0.20	1.0	1,396	297	0	0	Non-strategic.
Sea Otter	Southwest Alaska	41,474	33,203	0.20	0.25	830	97	<1	0	Strategic.

Dash(—)indicates unknown value.

Comments and Responses

FWS received 4 letters containing comments for sea otters, 3 letters for Pacific walrus, and two letters for polar bears. The comments and responses are separated below by species.

Sea Otter Stock Assessment Reports

Comment 1: One commenter noted that the calculation of N_{min} for some sea otter surveys does not incorporate available estimates of sampling variance.

Response: We revised our approach to estimating N_{min} for surveys that are uncorrected for sea otters not detected by observers by applying generic correction factors appropriate for the type of survey. This approach is consistent with our finding on a recent petition to list sea otters in Alaska as depleted under the MMPA (66 FR 55693, November 2, 2001)

Comment 2: Several commenters noted that the population estimates for the Cook Inlet and Kenai Fiords areas are outdated, do not conform to the established stock boundaries, and include duplication of effort in Kachemak Bay.

Response: We have substituted recent population estimates for these areas that remedy these problems.

Comment 3: One commenter indicated that the population estimate for much of the southeast Alaska stock is outdated.

Response: The survey in question is 7 years old. Stock Assessment guidelines state that abundance estimates older than 8 years are not reliable. Although it is still acceptable for use in the current stock assessment, we recognize the limitations of the existing data and have requested the U.S. Geological Survey, Division of Biological Resources, to conduct an aerial survey of sea otters in southeast Alaska. This survey is currently underway, and will be completed in sections over the next 2–3 years.

Comment 4: One commenter recommended that sea otter population estimates would be clearer if they were presented in tabular form.

Response: Tables of survey results have been included in the final stock assessment reports for sea otters.

Comment 5: Several commenters noted that sea otter population estimates included unpublished data.

Response: Typically peer-reviewed journals follow a 1–2 year cycle from manuscript preparation to submission to acceptance to publication. We believe that presentation of recent unpublished survey results, from surveys we conducted, is preferable than using older published estimates, and more appropriately meets the standard of "the best scientific information available."

Comment 6: One commenter stated that the observed sea otter population growth rate of 12% for the Cross Sound/Icy Strait region may not be representatives of the entire southeast Alaska stock.

Response: We agree and have added text to clarify this point.

Comment 7: One commenter was concerned the fisheries information does not include information about fisheries that have the potential to interact with sea otters.

Response: Section 117(a)(4) of the Act states that stock assessment shall "deserve commercial fisheries that interact with the stock." We interpret this to mean those fisheries for which we have information about interactions, not fisheries with the *potential* for interaction as suggested above. We see little value in speculating as to which fisheries *might* interact with sea otters. For a detailed list of fisheries and marine mammal interactions, the reader is directed to NMFS Continuing List of Fisheries [67 FR 2410, January 17, 2002]. The FWS relies on NMFS to provide us with estimates of fishery interactions. For further details on the limitations of these data, the reader is directed to the most recent NMFS Notice of Availability of Final Stock Assessment Reports [67 FR 10671, March 8, 2002].

Comment 8: Several commenters noted harvest estimates from the marine mammal Marking, Tagging, and Reporting Program may be biased low to an unknown degree due to incomplete hunter compliance.

Response: We believe this potential source of bias is extremely small for the following reason. Sea otters are hunted for their pelts, which must be tanned before they can be fashioned into handicrafts, and commercial tanneries will not accept untagged pelts. For accuracy, we have inserted the word "Estimated" into figure legends for subsistence harvest.

Comment 9: One commenter noted that information about the number of sea otters captured and released for scientific research was not quantified.

Response: Statistics on capture and release for scientific research have been included.

Pacific Walrus Stock Assessment Report

Comment 10: One commenter noted that the section "Current and maximum net productivity rates" referred to a study by University of Alaska researchers to investigate the reproductive rates of free-ranging walrus herds. The commenter recommended that the reproductive rates and/or juvenile survival rates observed in these studies be reported in the SAR.

Response: The FWS has concluded that these data are too preliminary for inclusion in the 2001 SAR and has removed all references to this study. The FWS will reconsider including this information in future SAR's once the study is complete.

Comment 11: Two commenters recommended making changes to the section "Conservation issues and habitat concerns" in reference to the issue of global warming and its potential impacts to the Pacific walrus population.

Response: At the present time there are no data available to make reliable predictions of the net impacts that changing climate conditions might have on the status and trend of the Pacific walrus population. The text of the SAR has been modified to clarify this point.

Comment 12: One commenter noted that the SAR underestimated struck-and-lost rates for subsistence-harvested animals and questioned the accuracy of the sex-ratio reported for the walrus harvest in Alaska. The commenter refers to recent FWS harvest monitoring field reports, describing harvest monitoring activities in the Bering Strait region, that suggest that self-reporting of struck-and-lost rates are likely to be negatively biased and describe a harvest with a skewed sex-ratio favoring females and dependent calves.

Response: Due to potentially negative bias associated with self-reporting of struck-and-lost rates, the FWS did not include this data in the SAR. The struck-and-lost estimate reported in the SAR is based on a published study describing the number of walrus struck and lost during monitored subsistence hunts in Alaska (Fay *et al.* 1994), The annual field reports referred to by the commenter describe a subset of the annual subsistence walrus harvest in Alaska. Although the spring hunt in these Bering Strait communities is frequently characterized by a sex-ratio skewed towards females, the sex ratio of the state-wide harvest over the 5-year period described in the 2001 SAR (1996–2000) was near parity. The source of the sex-ratio information was the FWS Marking, Tagging, and Reporting Program, which is a State-wide, year-round program that requires subsistence hunters to report the age and gender of all harvested walrus to the FWS. The source of the sex-ratio information was referenced in the text for clarity.

Comment 13: One commenter noted that the 42% struck-and-lost rate described in the SAR was based on data at least eight years old and speculated that this rate may change over time due to changes in hunting conditions and practices. The commenter recommended that this assumption should be verified from time to time and modified accordingly if it is found to change.

Response: In the absence of more recent scientific data, the FWS has chosen to use the published 42% rate for struck-and-lost animals as the best available scientific information for calculation of total harvest levels. However, the FWS agrees with the commenter that it is important to update or verify this struck-and-lost information periodically. The FWS hopes to initiate cooperative studies with the Eskimo Walrus Commission to examine struck-and-lost rates in the near future.

Comment 14: One commenter recommended that the draft stock assessment should emphasize that the Pacific walrus population may be in decline, even as the subsistence hunt continues to take a very large number of animals.

Response: The current size and trend of the Pacific walrus population is unknown. In the absence of new survey information, it is not possible to make reliable predictions regarding population trend.

Comment 15: One commenter noted that Russian officials consider the level of fisheries interaction to the small. The commenter felt this statement could be reassuring or misleading and recommended that the statement that the level of take in Russian waters is undetermined.

Response: We agree and have changed the text in the SAR to indicate that there are no data available concerning the incidental catch of walrus in fisheries operating in Russian waters.

Comment 16: One commenter noted that the section on "Fisheries information" refers to trawl and longline fishery interactions, but does not distinguish the level of takes between two gear types or the multiple fisheries that they represent.

Response: The text was modified to clarify that the only fishery for which incidental kill or injury was reported was the domestic Bering Sea groundfish trawl fishery. For additional information regarding fisheries interactions, the SAR references a complete list of fisheries and marine mammal interactions published annually by NMFS [67 FR 2410, January 17, 2002].

Comment 17: One commenter noted that the observer coverage for fisheries observer data was not stated.

Response: The range of observer coverage over the 5-year period (1996–2000), as well as the annual observed and estimated mortalities, are included in Table 2 of the SAR.

Comment 18: One commenter noted that the SAR states that most of the interactions involve walruses dead from other causes and recommended that the report provide information to support this statement.

Response: The text was modified to clarify that most of the observed interactions were with decomposed walrus carcasses or skeleton remains suggesting that the animals died prior to their interaction with the fishing gear.

Comment 19: One commenter noted that the SAR states that the rate of mortality and injury is estimated at "less than two animal [sic] per year," but the basis of that estimate is not clear from the data presented.

Response: The SAR identifies the NMFS observer program as the source of information regarding fisheries interactions in U.S. waters. The range of observer coverage over the 5-year period (1996–2000), as well as the annual observed and estimated mortalities are included in Table 2.

Comment 20: One commenter recommended that the SAR should identify the potential indirect impacts that bottom trawling may have on the Pacific walrus population through alteration of habitat.

Response: Section 117(a)(4) of the Marine Mammal Protection Act states that stock assessments shall "describe commercial fisheries that interact with the stock." We interpret this to mean those fisheries for which we have information about direct interactions with walrus, not fisheries with potential secondary impacts as suggested above.

Polar Bear Stock Assessment Reports

Chukchi/Bering Sea

Comment 21: One commenter questioned whether the process of delineating stocks is based on political reasons such as management agreements or evidence of significant biological distinction.

Response: We clarified the stock assessments for the Chukchi/Bering Seas stock and the Southern Beaufort Sea stock assessment to indicate that past and present management regimes have consistently distinguished between the Southern Beaufort Sea and Chukchi/Bering Seas stocks based upon biological evidence presented in the stock assessments.

Comment 22: Two commenters noted that the evidence suggesting that the stock has grown since 1972 was not sufficient to support the claims made regarding the trends in this population. This section also states that it is realistic to infer that the Chukchi/Bering Seas stock mimicked the growth pattern and later stability of the Beaufort Seas stock since that stocks have experienced similar management and harvest histories. However, this inference could be reasonably questioned for several reasons. First, growth patterns are a function of multiple factors including, but not limited to, harvest and management histories. As harvest and management histories are not the only determinants of growth trends, and as other possible factors (e.g., disease, shifts in distribution or availability of prey) are not evaluated, this inference should be questioned.

Response: We agree that scientific evidence is scant regarding population trends for the Chukchi/Bering Seas stock. Most of the evidence cited in sub-points a–e are from previous data should have not been reaffirmed in recent years. We have revised this section to indicate that, while evidence or impressions of population growth were appropriate previously, current data to support this conclusion is not available. For reasons stated earlier, it appeared reasonable to believe that the Chukchi/Bering Seas stock experienced growth following a 50% reduction in harvest in the 1970's and that population growth likely continued up to the early 1990s, similar to the Beaufort Sea stock. The Beaufort Sea stock stabilized in the 1990's. It is possible that the same may have been true for the Chukchi/Bering Seas stock, although this population was subject to additive unknown harvest levels, starting around 1992, that may have affected its status. Supporting evidence is not available to confirm the status of the population, and recent information regarding increased Russian harvest and decreased Alaska harvest are cause for concern. Consequently, we have chosen to designate the status of the Chukchi/Bering Seas stock as unknown.

Comment 23: One commenter noted that the harvest patterns for the two stocks may not have been the same. Subsistence harvests are illustrated in Figure 2 of each SAR, but comparisons should be done carefully as the y–axis is not the same in the two figures, and it appears that the number of bears taken from the Chukchi/Bering Seas stock may have been on the order of two times the number taken from the Southern Beaufort Sea stock. The significance of that difference will depend in part on the respective size of the two populations, and since the size of the Chukchi/Bering Seas stock is undetermined, the effects of harvesting are not clear.

Response: Figure 2 illustrates that the trend of declining U.S. harvests, post MMPA, were similar for both stocks. We acknowledge that the respective size of the two populations is crucial to understanding the effect of any harvest regime. Recent decline in harvest levels from the Alaska Chukchi/Bering Seas during the period 1996–2001 and reports of substantial illegal harvest in Russia are of concern. Because of these concerns, we revised the status of this stock to unknown.

Comment 24: One commenter noted that the report does not provide a basis for confidence in the precision and reliability of harvest estimates for Russian harvests.

Response: We have changed the Figure 2 caption to "Annual Alaska polar bear harvest from 1961–2001." We have added text in the SAR to clarify that harvest estimates for Chukotka are based on anecdotal information.

Comment 25: Two commenters suggested that data for this stock continue to be insufficient for establishing a population estimate and urge the FWS to prioritize its research needs to improve the data available on this stock.

Response: The FWS has placed an emphasis on the development of the US/Russia Bilateral Treaty for the conservation of this population stock. The bilateral treaty includes provisions for conducting research to monitor population trends and develop population estimates for the Chukchi/Bering Seas stock. The current polar bear research program does not have adequate personnel or funding to conduct operations in both the Southern Beaufort Sea and the Chukchi/Bering Seas. The FWS continues to support implementation of the Bilateral Treaty, unified harvest management programs in Russia and Alaska, and conducting an aggressive polar bear research program to more effectively monitor this population.

Comment 26: One commenter noted that factors which may affect growth rates, including potential effects of global climate change and persistent organic pollutants were not included in the Southern Beaufort Sea stock assessment.

Response: We have incorporated these references into the Southern Beaufort Sea stock assessment.

Comment 27: One commenter recommended including the basis for the statement that the number of unreported kills since 1980 to the present time is thought to be negligible.

Response: We consider the number of unreported kills since 1980 to be negligible for the following reasons. All harvested bears in Alaska are required to have the skull and skin tagged through FWS's Marking, Tagging, and Reporting Program. Due to the relatively small number of bears taken; the high visibility, cultural importance, and sharing of the take within villages; the relatively large size and visible methods of handling polar bear hides; and repeated visits by biologists and reports from harvest monitors, we believe that the total harvest is accurately represented by the tagged and untagged bear harvest totals.

Comment 28: One commenter requested clarification on whether illegal hunting in Russia increased or became significant in 1992, and whether the occurrence of illegal hunting has been acknowledged since 1992.

Response: The text has been clarified to indicate that the occurrence and significance of illegal hunting was thought to have begun in 1992.

Comment 29: Two commenters noted that the basis for the statement that the "stock appears to be stable despite a substantial annual harvest" should be either justified with suitable evidence or deleted.

Response: For reasons previously stated, we have modified the text to acknowledge that the population status or trend of this population is unknown.

Comment 30: The draft stock assessment does not consider the impact of oil and gas development on polar bears as is done with the sea otter stocks.

Response: Oil and gas exploration or development projects have not been proposed in the Alaska Chukchi/Bering Seas during the past five years. If future oil and gas development projects are proposed, we will consider the potential effects to polar bears.

Southern Beaufort Sea

Comment 31: One commenter noted that it was not clear if estimates of the female, total, and minimum populations pertain to the entire period from 1986 to 1998, or perhaps only to the end of the period. Previous estimates by the same lead author suggested a doubling of size during the period from 1988 to 1998, although the report later suggests that the population is stable.

Response: We have condensed and clarified this information to indicate that Amstrup (unpublished data) estimated the total population to be 2,272. This population estimate for the period 1986–98 was based on an estimate of 1,250 females (CV = 0.17) and a sex ratio of 55% female from the best model (Amstrup *et al.* 2001). N_{min} is 1,973 bears for a population size of 2,272 anc CV of 0.17.

Comment 32: In addition, it was not clear that the estimate of the minimum population is calculated correctly. The female population is estimated as 1,250 with a CV of 0.17. The total population is estimated by 1,250/0.55 and, based on the estimated minimum population, it appears that 0.55 was treated as a constant. Presumably, however, 0.55 is a correction factor that is also estimated with some degree of error, and that error should be included in the calculation of the CV for the total population estimate.

Response: A variance was not calculated for the 55% female sex composition and thus the ration is used as a constant for the abundance estimate. The N_{min} estimate is correct, and typographic errors in the formula have been corrected.

Comment 33: One commenter suggested that the basis for the arguments that the population may have approached carrying capacity (K) was not evident based on the information provided. The report states that "the indication that the population was stable, births approximated deaths, is noteworthy." It is unlikely that the data are available to confirm that births approximated deaths, so that statement appears to be a supposition. It is not clear what is meant by the statement that this supposition seems "noteworthy." Clarification would be useful.

Response: The text has been revised to emphasize that the most recent population modeling exercise (Amstrup *et al.* 2001) suggests that the population grew during the late 1970's and 1980's and stablized in the 1990's. Inferences to the population relationship with carrying capacity have been removed. The statement that modeling indicates that the population stablized in the 1990's (Amstrup *et al.* 2001) is supported and has been retained as noteworthy since it indicates a change in status.

Comment 34: One commenter suggested that, without good juvenile survival estimates, life-history analysis and estimated growth rates may be inaccurate.

Response: Juvenile survival rates are not known for this population, nor well known for any polar bear population. We have good information on survival estimates of yearlings and two-year-old bears. Recently weaned two-year-old bears were assigned survival estimates of the two-year-old bears, and the three-year-old bears were given survival estimates of yearlings. We believe that these estimates are conservative.

Comment 35: The stock assessment for the Southern Beaufort Sea stock of polar bears notes that the potential biological removal level for this stock has been adjusted upward from 59 to 88 to account for the male harvest bias. For this stock, such an adjustment may be consistent with the purpose of PBR as set forth in the first sentence of the statutory definition (section 3 (20)), but is not consistent with the second part of the definition setting forth the formula for calculating PBR.

Response: In the narrative, PBR levels are calculated with and without a sex-biased harvest adjustment. We have chosen the adjusted PBR since it more accurately reflects what we would consider as a safe biological removal level. This is an issue of perception more than substance, since there is no application beyond taking of polar bears incidental to commercial fishing, and no incidental take of polar bears by commercial fisheries has occurred.

Comment 36: One found that the reported numbers of polar bear kills in the section on "Sport and native Subsistence Harvest" was confusing. A table of annual bear harvests by stock, time period, country, and type of hunt (sport versus subsistence) would help to clarify the history of harvest from this stock.

Response: We have reorganized and revised the text in this section and Figure 2 caption to clarify the harvest information. Figure 2 is included to illustrate a decline in the Alaska harvest after passage of the MMPA in 1972. The last five years of the Canada harvest data for the Southern Beaufort Sea stock have been summarized in the text.

Comment 37: One commenter noted that it was unclear as to whether the reference to industry pertains to the oil and gas industry specifically or all industry in general.

Response: The use of industry in the generic sense is correct in this sentence. While the incidental take regulations apply to the oil and gas industry, the statute allows U.S. citizens, including any industry, to petition for the development of incidental take regulations.

Literature Cited

Amstrup, S.C., T.L. McDonald, and I. Stirling. 2001. Polar bears in the Beaufort sea: A 30-year mark-recapture case history. Journal of Agricultural, Biological and Environmental Statistics. Vol 6(2):221–234.

Fay, F.H. J.J. Burns, S.W. Stoker, and J.S. Grundy. 1984. The struck-and-lost factor in Alaskan walrus harvests. Arctic 47(4):368–373.

Dated: August 29, 2002.

David B. Allen,

Regional Director.

[FR Doc. 02–25679 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–090–5900 GP2–0103]

Notice of Intent to Prepare an Environmental Impact Statement Within the Upper Siuslaw River Sub-Unit of a Late-Successional Reserve on Lands Administered by the Eugene District in Lane and Douglas Counties, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The Eugene District of the Bureau of Land Management (BLM), with the U.S. Fish and Wildlife Service as a Cooperating Agency, is developing a plan for forest and aquatic ecosystem restoration within a Late-Successional Reserve (LSR) in the Coast Range Mountains west of Eugene, Oregon (LSR–267). The purpose of the plan will be to design a long-term management approach and specific actions needed to achieve the LSR goals and Aquatic Conservation Strategy objectives set out in the Northwest Forest Plan. BLM will develop a restoration plan for the Upper Siuslaw River sub-unit of LSR–267, and will analyze the impacts of the proposed plan and alternatives in an EIS.

BLM invites written comments on the scope of the analysis for a restoration plan for the Upper Siuslaw River sub-unit of LSR–267. BLM will give notice of the availability of the environmental impact statement and decision-making process that will occur so that interested and affected people will be aware of how they may participate and contribute to the final decision. These notices will be published in local newspapers and mailed to known persons or groups of interest in the local area.

The Upper Siuslaw LSR Restoration plan is intended to be developed in conformance with the 1995 Eugene District Resource Management Plan (RMP). This plan is not expected to require any amendment or revision of the RMP, and therefore the provisions of 43 CFR 1610.5–5 and 1610.6 do not apply.

DATES: Comments concerning the scope of the analysis should be received in writing by November 8, 2002, to ensure timely consideration. Comments, including names and street addresses of respondents, will be available for public review at the Eugene District office during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays, and may be published as part of the environmental analysis or other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organization or businesses, will be made available for public inspection in their entirety.

ADDRESSES: Send written comments to: Rick Colvin, P.O. Box 10226, Eugene, OR, 97440; or e-mail to: *or090mb@or.blm.gov* Attn: Rick Colvin.

FOR FURTHER INFORMATION CONTACT: Rick Colvin at (541) 683–6600 or 1–888–442–3061.

SUPPLEMENTARY INFORMATION: The 1994 Northwest Forest Plan established a network of Late-Successional Reserves (LSRs) designed to protect and enhance late-successional and old-growth forest ecosystems on Federal forests within the range of the northern spotted owl. The Northwest Forest Plan allows certain activities within LSRs if they are neutral or beneficial to late-successional habitat characteristics. The Northwest Forest Plan requires preparation of an LSR Assessment prior to most management actions. The LSR Assessment for the planning area was completed in 1997.

Silvicultural treatments, including thinning and underplanting, may speed the development of late-successional forest structural characteristics and may improve habitat conditions for threatened and endangered species, including the northern spotted owl and marbled murrelet. Aquatic restoration may be accelerated by creation of in-stream habitat structures, riparian thinning to restore large conifers, and improved road management, including culvert replacement. Additional information on the role of active management in restoring late-successional forest characteristics and healthy aquatic ecosystems is available in the Northwest Forest Plan and supporting documents and in the watershed analysis and LSR Assessment for this planning area.

The Upper Siuslaw LSR Restoration plan will address management of the approximately 25,000 acres of BLM-managed lands within LSR 267 in the upper portion of the Siuslaw River fifth-field watershed. Intermingled with these federal lands are privately-owned lands.

In preparing the EIS, BLM will identify and consider a range of management actions including commercial and non-commercial forest thinning, snag and coarse woody debris creation, road decommissioning, culvert replacement, and in-stream habitat restoration. A No Action alternative which would involve no active management will be analyzed in detail. Other preliminary alternatives include: Continuation of the current management approach; restoration limited to forest plantations and road management, with no commercial timber harvest; restoration focused on recovery of threatened and endangered species; restoration that would reduce forest stand densities as quickly as possible; restoration based on multi-entry and multi-trajectory thinning.

Preliminary issues identified include:

—How would thinning affect development of late-successional forest habitat characteristics?
—What are the effects of restoration activities on the northern spotted owl, marbled murrelet, and coho salmon habitat?
—What level of risk to existing late-successional forest would result from restoration activities?
—How would actions meet the objectives of the Aquatic Conservation Strategy?
—How much new road construction would be needed to implement restoration actions?
—How would road decommissioning and road management actions alter public access to BLM lands?
—How would restoration actions affect the presence and spread of noxious weeds?
—What would be the economic effects of restoration activities?
—What would the restoration program cost?

Input from the scoping process will be used to determine the scope of the analysis, consistent with the requirements of 40 CFR 1501.7 and 1508.22. The scoping process includes:

—Defining the scope of the analysis and nature of the decision to be made;
—identifying the issues for consideration within the environmental impact statement;
—exploring possible alternatives;
—identifying potential environmental effects;
—identifying groups or individuals that would be interested in or affected by the proposed plan.

BLM is also interested in suggestions from the public about how they would like to be involved in the environmental analysis and decision-making process.

BLM will seek information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations interested in or affected by the proposed plan.

In August 2000, BLM mailed preliminary information to known persons or groups of interest in the local area. Since that time, BLM has also solicited public participation through a series of public meetings and field trips and plans to hold more meetings and field trips. BLM has also mailed a periodic newsletter about this LSR Restoration Project to known persons or groups of interest in the local area. In response to these efforts, BLM has received comments on the scope of the environmental analysis, possible alternatives, and issues for consideration. BLM will use those comments received prior to this notice together with comments received in response to this notice in determining the scope of the analysis.

The responsible official for this proposal is: Steven Calish, Field Manager, South Valley and Coast Range Resource Areas, Eugene District, BLM.

Julia Dougan,

District Manager.

[FR Doc. 02–25662 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–EU; N–66188]

Notice of Realty Action: Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct sale of Public Lands in Eureka County, Nevada.

SUMMARY: The following described lands near the town of Eureka, Eureka County, Nevada, have been examined and found suitable for disposal by direct sale, at the appraised fair market value, to Homestake Mining Company of Eureka, Nevada. Authority for the sale is in Sections 203 and 209 of the Federal Land Policy and Management Act of October 21,1976 (43 U.S.C. 1701,1713, 1719).

Mount Diablo Principal Meridian, Nevada

T. 19 N., R. 53 E.,
Sec. 03, Lots 1–4, S½S½
Sec. 04, SE¼SE¼
Sec. 09, E½E½, W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼
Sec. 10, Lots 1–4, N½, W½SW¼, E½SE¼, NW¼SE¼
Sec. 11, W½SW¼
Sec. 14, NW¼NW¼
Sec. 15, Lots 1–6
Sec. 16, NE¼NE¼
Totaling 1644.94 acres.

The above-described lands are hereby classified for disposal in accordance with section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, Act of June 28, 1934, as amended and Executive Order 6910.

DATES: Comments must be submitted within 45 days of the date this Notice is published in the **Federal Register**.

ADDRESSES: Bureau of Land Management, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada 89820.

FOR FURTHER INFORMATION CONTACT: Chuck Lahr, Realty Specialist, at the above address or at (775) 635–4000.

SUPPLEMENTARY INFORMATION: This parcel of land near Eureka, Nevada, is being offered by direct sale to Homestake Mining Company. The land is not required for Federal purposes. The proposed action is consistent with the objectives, goals, and decisions of the Shoshone/Eureka Resource Management Plan.

The United States will retain the subsurface mineral estate associated with the subject parcel. The parcel is currently utilized by Homestake for surface operations, including mining and ore processing, at their Ruby Hill Mine. The parcel is covered in its entirety by federal mining claims controlled by Homestake. The Ruby Hill Mine is an active gold mine. Surface ownership of the subject parcel will allow Homestake to optimize mining operations and better manage closure and reclamation issues associated with mine operations. The potential exists for the discovery of additional locatable minerals, primarily gold, on the subject parcel.

The proponent will have 30 days from the date of receiving the sale offer to accept the offer and to submit a deposit of 30 percent of the purchase price and money for publication costs. The purchaser must submit the rest of the purchase price, within 90 days from the date the sale offer is received. Payments may be by certified check, postal money order, bank draft, or cashier's check made payable to the U.S. Department of the Interior—BLM. Failure to meet conditions established for this sale will void the sale and any money received for the sale will be forfeited.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way for ditches and canals constructed by authority of the United States, Act of August 30, 1890, (43 U.S.C. 945);

2. All mineral deposits shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits under applicable laws and regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Right-of-way N–48618 for a buried water pipeline held by the County of Eureka.

2. All other valid existing rights.

Publication of this Notice in the **Federal Register** segregates the subject lands from all appropriations under the public land laws, except sale under the Federal Land Policy and Management Act of 1976. The segregation will terminate upon issuance of the patent or 270 days from date of publication, whichever occurs first.

For a period of 45 days from the date this Notice is published in the **Federal Register**, interested parties may submit comments to the Battle Mountain Field Manager at the above address. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of timely filed objections this realty action will become the final determination of the Department of the Interior. The land will not be offered for sale until at least sixty days after the date this notice was published in the **Federal Register**.

Dated: August 28, 2002.

Joshua Alpert,

Acting Assistant Field Manager, Nonrenewable Resources.

[FR Doc. 02–25661 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0136).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled "30 CFR part 206, Subpart C, Federal Oil Valuation'.

DATES: Submit written comments on or before December 9, 2002.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385 or e-mail sharron.gebhardt@mms.gov.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 206, Subpart C, Federal Oil Valuation.

OMB Control Number: 1010–0136.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. MMS assists the Secretary in performing the royalty management functions.

Section 101(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), as amended, requires that the Secretary "establish a comprehensive inspection, collection, and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and collect and account for such amounts in a timely manner." In order to accomplish these tasks, MMS developed valuation regulations for Federal leases at 30 CFR part 206, subpart C. Market value is a basic principle underlying royalty valuation. Consequently, these regulations include methods to capture the true market value of crude oil produced from Federal leases, both onshore and offshore.

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to assure that the royalties are paid appropriately. The valuation regulations at 30 CFR part 206, subpart C, require companies to collect and/or submit information used to value their Federal oil.

Frequency: Annually.

Estimated Number and Description of Respondents: 61 Federal lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The annual reporting burden for this information collection is 12,431 hours. At an hourly rate of $50, we estimate the total annual cost to industry is $621,550. See the table below for a breakdown of the burden by CFR section and paragraph.

30 CFR 206 section	Reporting requirements	Burden hours per response	Annual number of responses	Annual burden hours
206.103(a), (b), (c) & (e)	Calculate value of oil not solid at arm's-length	Category 1 = 222.50[1]	13	2,892
		Category 2 = 116.00[2]	4	464
		Category 3 = 31.25[3]	28	875
	Obtain MMS approval for tendering program	400	2	800
	Obtain MMS approval for alternative valuation methodology.	400	2	800
	Obtain MMS approval to use value determined at refinery.	330	1	330
206.107(a)	Request a value determination from MMS	330	8	2,640
206.110(b), (c) and (e)	Propose transportation cost allocation method to MMS when transporting more than one liquid product under an arm's-length contract.	330	1	330
	Propose transportation cost allocation method to MMS when transporting gaseous and liquid products under an arm's-length contract.	330	1	330
	You must obtain MMS approval before claiming a transportation factor in excess of 50 percent of the base price of the product.	330	1	330
206.111(g), (k) and (l)	Propose change of depreciation method for non-arm's-length transportation allowances to MMS.	330	1	330
	Propose transportation cost allocation method to MMS when transporting more than one liquid product under a non-arm's-length contract.	330	1	330
	Propose transportation cost allocation method to MMS when transporting gaeous and liquid product under a non-arm's-length contract.	330	1	330
206.112(b) and (f)	Request MMS approval for location/quality adjustment under non-arm's-length exchange agreements.	330	1	330
	Request MMS for location/quality adjustment when information is not available.	330	4	1,320

30 CFR 206 section	Reporting requirements	Burden hours per response	Annual number of responses	Annual burden hours
Total			61	12,431

[1] Category 1 lessees are companies with over 30 million barrels of domestice production.
[2] Category 2 lessees are companies with between 10 and 30 million barrels of annual domestic production.
[3] Category 3 lessees are companies with less than 10 million barrels of annual domestic production.

MMS is requesting OMB's approval to continue to collect this information. Not collecting the information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments. Proprietary information submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified no "non-hour" cost burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: October 2, 2002.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 02–25705 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Request for Nominations for Public Members to the Royalty Policy Committee of the Minerals Management Advisory Board

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Request for nomination.

SUMMARY: The Secretary of the Department of the Interior has established a Royalty Policy Committee (RPC), on the Minerals Management Advisory Board, to provide advice on the Department's management of Federal and Indian minerals leases, revenues, and other minerals related policies. RPC membership includes representatives from States, Indian Tribes and allottee organizations, minerals industry associations, other governmental agencies, and the interested public. Members serve 2-year terms without pay but will be reimbursed for travel expenses incurred when attending official RPC meetings. Reimbursements will be calculated in accordance with the Federal travel regulations as implemented by the Department. The RPC currently has one vacant public position and another due to expire at the beginning of next year. The Director, MMS, is requesting nominations to complete the RPC's public membership that allows up to four representatives. These nominations may originate from State and local governments, universities, other public organizations or individuals, and may include self-nominations. Nominees should have knowledge of the mineral and energy industry to assure sound representation of the public interest. The nomination package must include a nomination letter from an interested organization, or a self-nomination letter from an individual, outlining the candidate's qualifications including an

updated biography with mailing and email addresses. All nomination packages received will be subject to the Department's diversity policies.

DATES: Submit nominations on or before January 31, 2003.

ADDRESSES: Submit nominations to Gary Fields, Minerals Revenue Management, MMS, P.O. Box 25165, MS 300B3, Denver, CO 80225–0165, telephone number (303) 231–3102, fax number (303) 231–3780, e-mail: *gary.fields@mms.gov*.

FOR FURTHER INFORMATION CONTACT: Gary Fields, Minerals Revenue Management, MMS, P.O. Box 25165, MS 300B3, Denver, CO 80225–0165, telephone number (303) 231–3102, fax number (303) 231–3780.

SUPPLEMENTARY INFORMATION: The location and dates of future Committee meetings will be published in the **Federal Register** and posted on the Internet at *http://www.rmp.mms.gov/Laws_R_D/RoyPC.htm*. Meetings are open to the public without advanced registration on a space available basis. The public may make statements during the meetings, to the extent time permits, and file written statements with the Committee for its consideration. Copies of these written statements should be submitted to Gary Fields.

Committee meetings are conducted under the authority of the Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. appendix 1, and Office of Management and Budget Circular No. A–63, revised.

Dated: October 2, 2002.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 02–25704 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Information Quality Guidelines Pursuant to Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of availability of final Information Quality Guidelines.

SUMMARY: The Office of Management and Budget (OMB) issued guidelines in the **Federal Register** on February 22, 2002 (67 FR 8452), that directed Federal agencies to issue and implement guidelines to ensure and maximize the quality, objectivity, utility, and integrity of Government information disseminated to the public. In compliance with OMB's guidelines, MMS announces the availability of its final Information Quality Guidelines on its Web site.

ADDRESSES: You may access MMS's Information Quality Guidelines on its Web site at: *http://www.mms.gov/qualityinfo*. Our mailing address is: Department of the Interior, Minerals Management Service, (Attn: AD/PMI), Mail Stop 4230, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION: Jo Ann Lauterbach, Office of Policy and Management Improvement; telephone (202) 208–7744; Fax (202) 208–4891; e-mail: *Jo.Ann.Lauterbach@mms.gov*.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554) directed OMB to issue government-wide guidelines that "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies." OMB complied by issuing guidelines that directed each Federal agency to: (a) Issue its own guidelines; (b) establish administrative mechanisms allowing affected persons to seek and obtain correction of information that does not comply with OMB's 515 guidelines; and (c) report periodically to the Director of OMB on the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency and how such complaints were handled by the agency.

In compliance with OMB's directives, the Department of the Interior (DOI) issued draft Information Quality Guidelines in the **Federal Register** on May 24, 2002 (65 FR 26642), that instructed each bureau to prepare its own guidelines. In response to DOI's **Federal Register** Notice, MMS developed and issued draft guidelines for comment on its Web site on August 1, 2002. We received comments from one private organization. We considered their comments, and where applicable or appropriate, we incorporated them into our final guidelines.

We have now finalized our guidelines and posted them on our Web site. These guidelines are a living document and may be revised periodically to reflect changes in DOI's or MMS's policy, or as best practices emerge, about how best to address, ensure, and maximize information quality. MMS welcomes comments on these guidelines at any time and will consider those comments in any future revisions.

Dated: October 1, 2002.

Walter D. Cruickshank,

Acting Director, Minerals Management Service.

[FR Doc. 02–25690 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The following Water Management Plans are available for review:

- Colusa County Water District
- Westlands Water District

To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Management Plans (Criteria).

Note: For the purpose of this announcement, Water Management Plans (Plans) are considered the same as Water Conservation Plans. The above entities have developed a Plan, which Reclamation has evaluated and preliminarily determined to meet the requirements of these Criteria. Reclamation is publishing this notice in order to allow the public to comment on the preliminary determinations. Public comment to Reclamation's preliminary (*i.e.*, draft) determination is invited at this time.

DATES: All public comments must be received by November 8, 2002.

ADDRESSES: Please mail comments to Bryce White, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, or contact at 916–978–5208 (TDD 978–5608), or e-mail at *bwhite@mp.usbr.gov*.

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Bryce White at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on our preliminary (*i.e.*, draft) determination of Plan adequacy. Section 3405(e) of the CVPIA (Title 34 Public Law 102–575) requires the "Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982." Also, according to section 3405(e)(1), these criteria must be developed "* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices." These criteria state that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 acre-feet and agricultural contracts over 2,000 irrigable acres) must prepare Plans that contain the following information:

1. Description of the District
2. Inventory of Water Resources
3. Best Management Practices (BMPs) for Agricultural Contractors
4. BMPs for Urban Contractors
5. Plan Implementation
6. Exemption Process
7. Regional Criteria
8. Five-Year Revisions

Reclamation will evaluate Plans based on these criteria. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entity.

A copy of these Plans will be available for review at Reclamation's Mid-Pacific Regional Office located in Sacramento, California, and the local Area Office. If you wish to review a copy of these Plans, please contact Mr. White at the email address or telephone number above.

Dated: September 30, 2002.

Donna E. Tegelman,

Regional Resources Manager, Mid-Pacific Region.

[FR Doc. 02–25652 Filed 10–8–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: Proposed collection; comment request.

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Commission has submitted an emergency request for approval of questionnaires to the Office of Management and Budget (OMB) for review. The Commission has requested OMB approval by October 25, 2002.

EFFECTIVE DATE: October 3, 2002.

Purpose of Information Collection: The forms are for use by the Commission in connection with investigation No. 332–445, Conditions of Competition in the U.S. Market for Wood Structural Building Components, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the Senate Committee on Finance. The Commission expects to deliver the results of its investigation to the Committee by April 30, 2003.

Summary of Proposal

(1) *Number of forms submitted:* two.

(2) *Title of form:* Conditions of Competition in the U.S. Market for Wood Structural Building Components—Questionnaires for U.S. Producers and Purchasers.

(3) *Type of request:* new.

(4) *Frequency of use:* Producer and Purchaser questionnaire, single data gathering, scheduled for November 1–December 6, 2002.

(5) *Description of respondents:* U.S. firms which produce or purchase wood structural building components.

(6) *Estimated number of respondents:* 339 (Producer questionnaire), 325 (Purchaser questionnaire).

(7) *Estimated total number of hours to complete the forms:* 5,312.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the forms and supporting documents may be obtained from Alfred Forstall (USITC, telephone no. (202) 205–3443). Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, Attention: Desk Officer for International Trade Commission. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Dates: To be assured of consideration, written comments must be submitted to OMB and to the Commission by October 21, 2002. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

By order of the Commission.

Issued: October 4, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–25708 Filed 10–8–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the

Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 18, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 18, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC, 20210.

Signed at Washington, DC, this 9th day of September, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 9/9/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
42,069	Aerus, LLC (Co.)	Piney Flats, TN	09/03/2002	Handheld Vacuum Power Nozzle Wands.
42,070	Athens Products (Co.)	Athens, TN	08/09/2002	Hermetic Stators and Rotors.
42,071	Marconi (Co.)	Toccoa, GA	08/15/2002	Connection Equipment.
42,072	Federal Mogul Corporation (Co.)	Brighton, MA	08/21/2002	Friction Products, Automotive Brakes.
42,073	Wilson Sporting Goods (Co.)	Tullahoma, TN	08/15/2002	Golf Clubs.
42,074	Gerson and Gerson (Co.)	Middlesex, NC	08/08/2002	Infants' Toddlers' and Girls' Dresses.
42,075	LaCrosse Footwear (Co.)	Hillsboro, WI	08/06/2002	Neoprene Waders, Nylon Waders, PAC Boots.
42,076	Weyerhaeuser (Co.)	Albany, OR	08/27/2002	Tree Harvesting.
42,077	Bijur Lubricating Corp. (Co.)	Bennington, VT	08/20/2002	Centralized Lubricating Systems.
42,078	Americal Corporation (Co.)	Goldsboro, NC	08/19/2002	Knitted Sheer Hosiery.
42,079	Nabors Alaska Drilling (Co.)	Anchorage, AK	08/20/2002	Oil Exploration.
42,080	Johnstown Knitting Mill (Co.)	Johnstown, NY	08/20/2002	T-Shirts, Sweatshirts, Underwear, etc.
42,081	Nordic Gear (Co.)	Millersburg, PA	08/28/2002	Sewn Fleece Accessories.
42,082	Nordic Gear (Co.)	Newport, PA	08/28/2002	Sewn Fleece Accessories.
42,083	Bausch and Lomb (Co.)	Rochester, NY	09/03/2002	Contact Lenses.
42,084	Laurel Mould Inc. (Wkrs)	Greensburg, PA	08/22/2002	Moulds for Glass Industry.
42,085	Sterling Dula Architectur (Wkrs)	Erie, PA	03/11/2002	Metal Railings.
42,086	Potlatch (Wkrs)	Warren, AR	08/01/2002	Lumber.
42,087	Milwaukee Electric Tool (Wkrs)	Brookfield, WI	06/19/2002	Tools.
42,088	Lucent (Wkrs)	Mount Olive, NJ	08/22/2002	Wireless Base Stations for Cell Phones.
42,089	U.S. Manufacturing Corp. (Wkrs)	Bad Axe, MI	08/06/2002	Automotive Parts.
42,090	Ames True Temper (USWA)	Parkersburg, WV	08/26/2002	Shovels, Rakes, Hoes, Pitchforks.
42,091	George Fisher Foundry (Wkrs)	Holly, MI	08/16/2002	Mold Lines, Core Machines, Grinders.
42,092	JTM Group (Wkrs)	Jamestown, NY	08/11/2002	Plastic Injection Molds.
42,093	Ames True Temper (Wkrs)	Kane, PA	06/03/2002	Wooden Handles.
42,094	Spectrum Control Inc. (Wkrs)	Erie, PA	08/15/2002	AC Power Distribution Unit.
42,095	K.T. Mold and Mfg. (Co.)	Woodstock, IL	08/18/2002	Plastic Injection Molds.
42,096	Ralph Lauren Womenswear (Co.)	Carlstadt, NJ	08/26/2002	Women's Sportswear.
42,097	Jones Apparel Group USA (Wkrs)	El Paso, TX	08/21/2002	Ladies Suits, Pants, and Jackets.
42,098	Pliant Solutions (PACE)	Fort Edward, NY	08/28/2002	Printed Pattern Vinyl.
42,099	Agilent Technologies (Wkrs)	Everett, WA	08/17/2002	Digital Analyzers.
42,100	Savane International (Wkrs)	El Paso, TX	08/02/2002	Fabric Cutting.
42,101	Carmet Co. (Wkrs)	Duncan, SC	08/21/2002	Spray Nozzles, Drill Bits, Saw Blades.
42,102	Northern Engraving (Wkrs)	Lansing, IA	08/15/2002	Decorative Metals and Plastics.
42,103	Kodak Polychrome Graphics (Wkrs)	Holyoke, MA	08/09/2002	Lithographic Printing Plates.
42,104	Motor Products (Wkrs)	Barberton, OH	08/14/2002	Magnet DC Motors.
42,105	Hershey Food (Wkrs)	Pennsburg, PA	08/21/2002	Chocolate.
42,106	Pyramid Industries (Wkrs)	Erie, PA	06/21/2002	Plastic Conduit, Plastic Waterpipes.
42,107	Bath Unlimited, Inc (Wkrs)	Passaic, NJ	08/28/2002	Shower Heads, Flappers, Ballcocks.
42,108	Harvard Industries (UAW)	Jackson, MI	10/23/2001	Automotive Cooling Fans.

[FR Doc. 02–25666 Filed 10–8–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 18, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 18, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 3rd day of September, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 09/03/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
42,036	EDS Corp (Wrks)	Fairborn, OH	08/19/2002	Information technology.
42,037	Black Diamond Equipment (Comp)	Salt Lake City, UT	08/15/2002	Rock climbing equipment.
42,038	Corning, Inc. (Comp)	Concord, NC	08/12/2002	Single mode optical fiber, canes, blanks.
42,039	Wisconsin Pattern Co (Wrks)	Racine, WI	08/12/2002	Core boxes.
42,040	Lockheed Martin (Wrks)	Tulsa, OK	08/19/2002	Letter sorting—mail sorter.
42,041	Mo-Tech Corp (Wrks)	Oakdale, MN	08/20/2002	Injection molds.
42,042	Plastic Products Co., Inc (Wrks)	Moline, IL	08/20/2002	Microwave ovens.
42,043	Eureka Co. (The) (Wrks)	El Paso, TX	08/02/2002	Upright and canister vacuum cleaners.
42,044	Siemens VDO Automotive (UAW)	Lima, OH	08/21/2002	Manifolds and induction modules.
42,045	Regal Manufacturing, Inc. (UNITE)	New York, NY	08/21/2002	Women's apparel.
42,046	B–W Specialty Mfg. (Wrks)	Seattle, WA	08/12/2002	Wood cores.
42,047	Holloway Sportswear (Comp)	Olla, LA	08/15/2002	Cutting athletic wear patterns.
42,048	Fashion Tanning Co, Inc (UNITE)	Glovesville, NY	08/12/2002	Embossed and colored leather.
42,049	Boeing Co (The) (Wrks)	Tulsa, OK	07/17/2002	Commercial plane components.
42,050	CommScope, Inc. (Comp)	Catawba, NC	08/19/2002	Coaxial and fiber optic cable products.
42,051	Citation Corp (Wrks)	Milwaukee, WI	08/15/2002	Steel forged parts.
42,052	Forem USA (Wrks)	Sparks, NV	08/15/2002	Filters, duplexes, amplifiers, etc.
42,053	Arnold Tool and Die (Comp)	Council Bluffs, IA	08/16/2002	Cast iron plates and shafts.
42,054	Treesource (Wrks)	Tacoma, WA	08/21/2002	Lumber.
42,055	Plymouth, Inc. (Wrks)	Radford, VA	07/18/2002	School and paper products.
42,056	Kadant Black Clawson (Wrks)	Mason, OH	07/30/2002	Paper recycling machinery, paper screens.
42,057	International Ceramic (Comp)	Demotte, IN	08/02/2002	Brick refractory.
42,058	MDN, Inc T/A Crosswire (Comp)	Bellmawr, NJ	08/23/2002	Wire cloth fabricated parts.
42,059	Isaac Hazan and Co. (Wrks)	Secaucus, NJ	08/22/2002	Jackets, pants, skirts, blouses.
42,060	United Sweater Mills Corp (Comp)	Jersey City, NJ	08/20/2002	Ladies sweaters.
42,061	Metropolitan Steel Ind. (Wrks)	Sinking Springs, PA	08/20/2002	Beams, columns, girders and trusses.
42,062	Sam Fashion Inc (Wrks)	North Bergen, NJ	08/15/2002	Ladies coats.
42,063	Acco Chain and Lifting (USWA)	York, PA	08/15/2002	Chains.
42,064	SMTC Manufacturing Corp (Comp)	Austin, TX	08/16/2002	Computer printed circuit boards.
42,065	Cray, Inc. (Wrks)	Chippewa Falls, WI	08/06/2002	Sell computer products.
42,066	Leatherworks, LLC (UAW)	Detroit, MI	08/19/2002	Leather seat covers.
42,067	Huntsman Petrochemicals (Wrks)	Odessa, TX	02/13/2002	Polymer plastics and ethylene liquid.
42,068	Motorola, SPS (Wrks)	Chandler, AZ	08/16/2002	Semiconductors, IC's microprocessors.

[FR Doc. 02–25665 Filed 10–8–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: "Provider Enrollment Form" (OWCP–1168). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before December 9, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution

Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, Email *pforkel@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act; the Black Lung Benefits Act, the Energy Employees Occupational Illness Compensation Act, and the Longshore and Harbor Workers Compensation Act. These programs pay for medical services rendered for the diagnosis and treatment of injured workers for conditions compensable under the Acts. The Provider Enrollment Form (OWCP–1168) is currently used in the Black Lung and Energy programs to obtain profile information on medical providers which is necessary to process payments, apply fee schedules, and conduct checks to identify duplicate and other erroneous billing. This information collection is currently approved for use through February 2005.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks to expand the use of the OWCP 1168 to two additional programs, the Division of Longshore and Harbor Workers Compensation and the Division of Federal Employees' Compensation, as part of the development of a Centralized Medical Bill System for the processing of medical bills in each of OWCP's four programs. This centralization will result in an increase in efficiency of processing medical bills, reduction of administrative costs, and improvement of the efficiency of benefits and service provision. This collection request seeks approval of revisions to the current form to accommodate its use by The Division of Federal Employees' Compensation and the Division of Longshore and Harbor Worker's Compensation. In addition, this revision will facilitate the centralization of bill processing for all four programs under a Federal contractor. Providers must be enrolled in the new system prior to implementation to ensure the continuity of services to both the claimant and provider communities.

Type of Review: Revision.

Agency: Employment Standards Administration.

Title: Provider Enrollment Form.

OMB Number: 1215–0137.

Affected Public: Business or other for-profit.

Total Respondents/Responses: 20,100.

Frequency: On occasion.

Estimated Total Burden Hours: 2,497.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $8,040.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 3, 2002.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 02–25664 Filed 10–8–02; 8:45 am]

BILLING CODE 4510–CK–P

NATIONAL LABOR RELATIONS BOARD

NLRB Organization and Functions

AGENCY: National Labor Relations Board.

ACTION: Amendment of delegation of administrative authority to General Counsel under section 3(d) of National Labor Relations Act.

SUMMARY: The National Labor Relations Board is amending the memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board with respect to administrative functions. The revisions are being adopted in order to reestablish lines of authority within the administrative structure of the Agency.

EFFECTIVE DATE: October 1, 2002.

ADDRESSES: National Labor Relations Board, 1099 14th Street, NW., Room 11600, Washington, DC 20570.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Room 11600, Washington, DC 20570. Telephone: (202) 273–1936.

SUPPLEMENTARY INFORMATION: The Board amended memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board with respect to administrative functions is effective April 1, 1955, as amended September 8, 1958 (effective August 25, 1958), August 12, 1959 (effective August 3, 1959), and April 28, 1961 (effective May 15, 1961) (appearing at 20 FR 2175, 23 FR 6966, 24 FR 6666 and 26 FR 3911, respectively).

Dated: October 4, 2002.

John J. Toner,

Executive Secretary.

National Labor Relations Board

General Counsel

Further Amendment to Memorandum Describing Authority and Assigned Responsibilities

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the **Federal Register** the following further amendment to Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board (effective October 1, 2002).

Dated, Washington, DC, October 4, 2002.

By direction of the Board.

Executive Secretary.

The Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended September 8, 1958 (effective August 25, 1958), August 12, 1959 (effective August 3, 1959), and April 28, 1961 (effective May 15, 1961) (appearing at 20 FR 2175, 23 FR 6966, 24 FR 6666 and 26 FR 3911, respectively), is hereby further amended as follows:

1. Strike the text of paragraphs 1 and 4 of section VII of the amendment dated August 12, 1959 (effective August 3, 1959), strike the text of paragraph 2 of section VII of the amendment dated April 28, 1961 (effective May 15, 1961), and substitute the following:

1. In order more fully to release the Board to the expeditious performance of its primary function and responsibility of deciding cases, the authority and responsibility for all administrative functions of the Agency shall be vested in the General Counsel, except as provided below. This authority shall be exercised subject to the limitations contained in paragraphs 2, 5 and 6, and shall be exercised in conformity with the requirements for joint determination as described in paragraph 4.

2. Subject to the limitations contained in paragraphs 5 and 6, the General Counsel shall exercise full and final authority on behalf of the Agency over the selection, retention, transfer, promotion, demotion, discipline, discharge, and in all other respects, of all personnel engaged in the field, except that personnel action with respect to Regional Directors and Officers-in Charge of Subregional offices will be conducted as hereinafter provided, and in the Washington Office (other than personnel in the Board Members' Offices, the Division of Judges, the Division of Information, the Security Office, the Office of the Solicitor, the Office of the Executive Secretary and the Office of Inspector General): provided, however, that the establishment, transfer or elimination of any Regional or Subregional Office shall require the approval of the Board.

The appointment, transfer, demotion, or discharge of any Regional Director or of any Officer-in-Charge of a Subregional office shall be made by the General Counsel only upon the approval of the Board.

4. In connection with and in order to effectuate the foregoing, the General Counsel is authorized to formulate and execute such necessary requests, certifications, and other related documents on behalf of the Agency, as may be needed from time to time to meet the requirements of the Office of Personnel Management, the Office of Management and Budget or any other Governmental Agency; provided, however, that the total amount of any annual budget requests submitted by the Agency, the apportionment and allocation of funds and/or the establishment of personnel ceilings within the Agency shall be determined jointly by the Board and the General Counsel.

2. Add the following paragraphs 5 and 6 to the text of section VII of the amendment dated April 28, 1961 (effective May 15, 1961):

5. The Information Technology Branch shall be realigned under the authority of the Chief Information Officer ("CIO") (who will jointly report to the General Counsel and the Chairman of the Board with respect to those matters covered by the responsibilities of the CIO), and placed with the Office of Inspector General, Office of Equal Employment Opportunity and the Office of Employee Development outside the Division of Administration. The Editorial and Publications Services Section of the Library and Administrative Services Branch, Division of Administration, shall be transferred to the Office of the Executive Secretary.

6. The Chairman of the Board shall have full and final authority over the selection, retention, transfer, promotion, demotion, discipline, discharge and evaluation of those persons holding Senior Executive Service positions in the Division of Administration, the senior management official in the Office of Employee Development, the Chief Information Officer and the Inspector General.

[FR Doc. 02–25698 Filed 10–8–02; 8:45 am]

BILLING CODE 7545–01–P

POSTAL RATE COMMISSION

[Docket No. MC2002–3; Order No. 1347]

Experimental Mail Classification Case

AGENCY: Postal Rate Commission.

ACTION: Notice and order on new experimental docket.

SUMMARY: This document establishes a docket for consideration of a proposed two-year experiment. The experiment entails two new discounts for certain co-palletized Periodicals mail that is dropshipped to designated destination entry facilities. This document briefly reviews the proposal, sets initial procedural dates, authorizes settlement discussions, and identifies other pertinent Commission actions.

DATES: 1. *September 26, 2002:* Postal Service's request filed with the Commission.

2. *October 2, 2002:* issuance of Commission notice and order (no. 1347).

3. *October 18, 2002:* deadline for notices of intervention, response to motion for waiver, comments on appropriateness of experimental status and use of expedited procedures.

4. *October 22, 2002:* settlement conference (10 a.m.).

5. *October 23, 2002:* prehearing conference (2 p.m.).

ADDRESSES: Send correspondence to the attention of Steven W. Williams, Secretary, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6815.

SUPPLEMENTARY INFORMATION: On September 26, 2002, the United States Postal Service filed a request seeking a recommended decision from the Postal Rate Commission approving an experimental mail classification, along with two related discounts, for certain Outside County Periodicals mail that is co-palletized and dropshipped to specified destination facilities.[1] Request of the United States Postal Service for a Recommended Decision on Experimental Periodicals Co-Palletization Dropship Discounts (request). The request, which includes six attachments, was filed pursuant to chapter 36 of the Postal Reorganization Act, 39 U.S.C. 3601 *et seq.*[2]

In contemporaneous filings, the Service asks for waiver of certain standard filing requirements (if the Commission deems such waiver is required), and seeks expedited consideration of its proposal, including establishment of procedures for settlement. The Service's request for expedition is in addition to that generally available under the Commission's experimental rules [39 CFR 3001.67–3001.67d]. United States Postal Service Request for Expedition and Establishment of Settlement Procedures (request for expedition), September 26, 2002; Motion of United States Postal Service for Waiver (motion for waiver), September 26, 2002. The Service's request, the accompanying testimony of witness Taufique (USPS–T–1), and other related material are available for inspection in the Commission's docket section during regular business hours. They also can be accessed electronically, via the Internet, on the Commission's Web site (*http://www.prc.gov*).

I. The Service Characterizes Its Proposal as a Limited Initiative With the Potential To Improve Operational Efficiency and Control Costs

The Postal Service proposes conducting a two-year experiment

[1] The request also includes a proposal to delete a reference to an outdated "ride-along" rate in DMCS section 443.1a. USPS–T–1 at 1–2.

[2] Attachments A and B to the request contain proposed classification schedule provisions (or revisions to existing provisions); attachment C incorporates by reference the certified financial statement provided in docket no. MC2002–2; attachment D is the certification required by Commission rule 54(p); attachment E is an index of testimony and exhibits; and attachment F is a compliance statement addressing satisfaction of various filing requirements.

testing two discounts for qualifying Outside County Periodicals mail that is co-palletized and dropshipped to either an area distribution center (ADC) or a sectional center facility (SCF).[3] The proposed ADC discount is 0.7 cent per piece; the proposed SCF discount is 1.0 cent per piece. USPS–T–1 at 10. Both discounts were developed using the cost base, advertising pound rates, and test year that underlie the Commission's Periodicals rate recommendations in docket no. R2001–1. Request at 2; USPS–T–1 at 10. The ADC discount reflects passthrough of 95 percent of the underlying cost avoidance estimates; the SCF discount reflects 80 percent passthrough. USPS–T–1 at 13. The proposed discounts leave existing Periodicals classifications and rates otherwise unchanged. Request at 2.

In support of the experiment, the Service states that 70 percent of Periodicals mail is already prepared on pallets, but the remainder is not because it lacks the volume and/or density, as individual publications, to reach the requisite pallet minimum of 250 pounds. Since preparing co-pallets is typically more onerous than preparing single-publication pallets, the Service believes these discounts may encourage mailer participation in worksharing behavior that benefits both customers and the Postal Service. *Id.* at 1–2. In particular, it says the discounts are designed to provide an additional incentive for publishers, printers and consolidators to combine different publications or print runs on pallets, so that Periodicals mail can be prepared on pallets, rather than in sacks, and dropshipped to destination facilities. *Id.* at 1.

The Service proposes extending the new discounts only to Periodicals mail that lacks the density to prepare single-publication pallets; however, both smaller circulation publications and smaller portions of larger circulation publications will be able to participate and receive the proposed discounts under applicable rules. Request at 2 and 6. Qualifying co-palletized mail must be prepared either on ADC or SCF pallets of 250 or more pounds. To limit the scope of the experiment and simplify administration, mail that is co-palletized on 5-digit or 3-digit pallets will not be eligible for the new discounts. USPS–T–1 at 8.

[3] The Service defines co-palletization as the practice of combining bundles of different publications going to the same destination ADC or SCF, on the same pallet. It defines co-mailing as the combination of different publications in the same bundles, with the bundles then combined on pallets. Request at 3.

Experimental designation. The Service seeks consideration of its proposal under the Commission's experimental rules (rules 67–67d). In support of this approach, it notes that it currently lacks data about how much response there will be to a rate incentive for co-palletization, but intends to gather more complete data during the proposed term of the experiment. It says this effort may support a request for a permanent classification. *Id.* at 3–4. The Service proposes that the experimental classification be in effect for two years, but also seeks approval of a provision that would allow for a brief extension if permanent classification authority is sought while the experiment is pending.

The Service says the expedition allowed under the experimental rules is appropriate in light of the interest in controlling Periodicals costs as soon as possible. It also says flexibility is required because the detailed, conventional data necessary to support a request for a permanent classification are currently unavailable. *Id.* at 5. The Service says it believes that this proposal will be attractive to mailers, contribute to the long-term viability of the postal system, and further the general policies of efficient postal operations and reasonable rates and fees enunciated in the Postal Reorganization Act, including 39 U.S.C. 3622(b) and 3623(c). *Id.* at 4–5.

II. The Service Seeks Waiver of Certain Filing Requirements, if Deemed Necessary

The Service maintains that its filing satisfies applicable Commission filing requirements, but seeks waiver of pertinent provisions of rules 54, 64 and 67 to the extent the Commission concludes otherwise. In support of its primary position, the Service says its compliance statement (attachment F to the request) addresses each filing requirement and indicates which parts of the filing satisfy each rule. It also notes that it has incorporated by reference pertinent documentation from the recent omnibus rate case (docket no. R2001–1). Motion for waiver at 1. The Service contends, among other things, that the rate case documentation satisfies most filing requirements because the proposed discounts will not materially alter the rates, fees and classifications established in that docket, and therefore will have only a limited impact on overall postal costs, volumes and revenues. *Id.* at 1. It also asserts that there is substantial overlap between information sought in the general filing requirements and the materials provided in docket no. R2001–1. *Id.* at 2.

However, if the Commission concludes that the materials from the omnibus case are not sufficient to satisfy the requirements, the Service contends strict compliance is not warranted, and seeks waiver. It cites the reasons expressed in support of its general position on the adequacy of its filing; the nature of the proposed experiment; and the small impact on total costs and revenues and on the costs, volumes and revenues of mail categories. *Id.* at 5. Responses to the Service's motion for waiver are due by October 18, 2002.

III. The Service Seeks Expedition and Suggests Several Specific Procedures, Including Prompt Establishment of Settlement Procedures

In support of expedition, the Service asserts that the proposed change is straightforward; limited in scope and duration; and insignificant in terms of its effect on overall volumes, revenues and costs. It also states that the proposal is a candidate for settlement, given widespread support for it within the Periodicals industry, and the lack of adverse effect on competitors or other mailers. Request for expedition at 1–2.

The Service does not propose a specific schedule, but identifies four procedures the Commission could employ to facilitate a quick resolution of this case. These include setting a relatively short intervention period and requiring participants to identify, in their notices of intervention, whether they intend to seek a hearing and to identify any genuine issues of material fact that would warrant such a hearing. They also include scheduling a settlement conference as quickly as possible following the deadline for intervention; dispensing with discovery if there is no hearing or no genuine issues of material fact; or, should discovery be necessary, shortening various time limits. *Id.* at 2–3.

IV. Commission Response

Appropriateness of proceeding under the experimental rules. For administrative purposes, the Commission has docketed the instant filing as an experimental case. Formal status as an experiment under Commission rules 67–67d is based on an evaluation of factors such as the proposal's novelty, magnitude, ease or difficulty of data collection, and duration. A final determination regarding the appropriateness of the experimental designation and application of Commission rules 67–67d will not be made until participants have had an adequate opportunity to comment. Participants are invited to file comments on this matter by October 18, 2002.

Appropriateness of establishing other expedited procedures. The Commission grants the Service's request for expedition to the extent of authorizing settlement procedures; allowing a shorter-than-usual period for intervention; and requiring participants, in their notices of intervention, to state whether they intend to seek a hearing and to identify with particularity any genuine issues of material fact that would warrant a hearing. Decisions on other expedited procedures, such as limiting discovery time limits, will be made at a later time.

Settlement. The Commission authorizes settlement negotiations in this proceeding. It appoints Postal Service counsel as settlement coordinator. In this capacity, counsel for the Service shall file periodic reports on the status of settlement discussions. The Commission authorizes the settlement coordinator to hold a settlement conference on October 22, 2002, at 10 a.m. in the Commission's hearing room. Authorization of settlement discussion does not constitute a finding on the proposal's experimental status or on the need for a hearing.

Representation of the general public. In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's office of the consumer advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding. The OCA shall be separately served with three copies of all filings, in addition to and at the same time as, service on the Commission of the 24 copies required by Commission rule 10(d) (39 CFR 3001.10(d)).

Intervention; need for hearing. Those wishing to be heard in this matter are directed to file a written notice of intervention with Steven W. Williams, secretary of the Commission, 1333 H Street, NW., suite 300, Washington, DC 20268–0001, on or before October 18, 2002. Notices should indicate whether participation will be on a full or limited basis. See 39 CFR 3001–20 and 3001–20a. No decision has been made at this point on whether a hearing will be held in this case. To assist the Commission in making this decision, participants are directed to indicate, in their notices of intervention, whether they seek a hearing and, if so, to identify with particularity any genuine issues of material facts believed to warrant such a hearing.

Experimental status. Participants may comment on whether the Service's request should be evaluated under Commission rules 67–67d. Comments are due by October 18, 2002. Participants should be prepared to discuss relevant issues at the prehearing conference.

Prehearing conference. A prehearing conference will be held October 23, 2002, at 2 p.m. in the Commission's hearing room. Participants shall be prepared to address matters referred to in this ruling.

Ordering Paragraphs

It is ordered:

1. The Commission establishes docket no. MC2002–3, experimental periodicals co-palletization dropship discounts, to consider the Postal Service request referred to in the body of this order.
2. The Commission will sit en banc in this proceeding.
3. The deadline for filing notices of intervention is October 18, 2002.
4. Notices of intervention shall indicate whether the participant seeks a hearing and identify with particularity any genuine issues of material fact that warrant a hearing.
5. The deadline for answers to the motion of United States Postal Service for waiver is October 18, 2002.
6. The deadline for comments on United States Postal Service request for expedition and establishment of settlement procedures is October 18, 2002.
7. The Commission will make its hearing room available for a settlement conference on Tuesday, October 22, 2002, at 10 a.m., and at such other times deemed necessary by the settlement coordinator.
8. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding.
9. The Postal Service's request for expedition is granted to the extent of allowing a shorter-than-usual intervention period, allowing settlement discussions, and requiring participants' interest in a hearing to be identified in the notice of intervention.
10. A prehearing conference will be held Wednesday, October 23, 2002 at 2 p.m. in the Commission's hearing room.
11. Shelley S. Dreifuss, director of the Commission's office of the consumer advocate, is designated to represent the interests of the general public.
12. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Garry J. Sikora,

Acting Secretary.

[FR Doc. 02–25668 Filed 10–8–02; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25762; 812–12682]

The Charles Schwab Family of Funds, et al.; Notice of Application

October 3, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

APPLICANTS: The Charles Schwab Family of Funds, Schwab Investments, Schwab Capital Trust, and Schwab Annuity Portfolios (collectively, the "Trusts") and Charles Schwab Investment Management, Inc. ("CSIM").

SUMMARY OF THE APPLICATION: Applicants request an order to permit them to enter into and materially amend sub-advisory agreements without shareholder approval and to grant relief from certain disclosure requirements.

FILING DATES: The application was filed on November 14, 2001, and amended on October 1, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 28, 2002, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 101 Montgomery Street, San Francisco, CA 94104.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel,

at (202) 942–0581, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Each Trust is organized as a Massachusetts business trust and is registered under the Act as an open-end management investment company. Each Trust currently offers multiple series, each with its own investment objectives, policies and restrictions. CSIM, registered under the Investment Advisers Act of 1940 ("Advisers Act"), serves as the investment adviser to certain series of the Trusts that use or may use the multi-manager structure described in the application (together, the "Funds," and each a "Fund"). CSIM has entered into an investment advisory agreement with each Trust (each an "Advisory Agreement" and collectively, the "Advisory Agreements") that was approved by the board of trustees of each Trust (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), and the sole shareholder or shareholders of each Fund.[1]

2. Under the terms of the Advisory Agreement, CSIM serves as investment adviser to each Fund and provides investment sub-adviser selection, monitoring and asset allocation services to the Funds and may hire one or more sub-advisers ("Sub-Advisers") to exercise day-to-day investment discretion over all or a portion of the assets of a Fund pursuant to separate investment sub-advisory agreements. Each Sub-Adviser is or will be either registered or exempt from registration under the Advisers Act. Sub-Advisers are recommended to the Board by CSIM and selected and approved by the Board, including a majority of the Independent Trustees. Each Sub-Adviser's fee is paid by CSIM out of the management fee received by CSIM from the respective Fund.

3. Applicants request relief to permit CSIM, subject to the Board's approval, to enter into and materially amend sub-advisory agreements without shareholder approval. The requested relief will not extend to a Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or CSIM, other than by reason of serving as a Sub-Adviser to one or more of the Funds (an "Affiliated Sub-Adviser").

4. Applicants also request an exemption from the various disclosure provisions described below that may require the Funds to disclose the fees paid by CSIM to the Sub-Advisers. An exemption is requested to permit a Fund to disclose (as both a dollar amount and as a percentage of a Fund's net assets): (a) Aggregate fees paid to CSIM and any Affiliated Sub-Adviser; and (b) aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers ("Aggregate Fees"). If a Fund employs an Affiliated Sub-Adviser, the Fund will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 15(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (the "Exchange Act"). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of "the terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Sub-Advisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard for the reasons discussed below.

7. Applicants assert that by investing in a Fund, shareholders, in effect, will hire CSIM to manage the Fund's assets by selecting and monitoring Sub-Advisers rather than by hiring its own employees to manage assets directly. Applicants state that investors will purchase Fund shares to gain access to CSIM's expertise in overseeing Sub-Advisers. Applicants further assert that the requested relief will reduce Fund expenses and permit the Funds to operate more efficiently. Applicants note that the Advisory Agreement will remain subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that many Sub-Advisers charge their customers for advisory services according to a "posted" rate schedule. Applicants state that while Sub-Advisers are willing to negotiate fees lower than those posted in the schedule, particularly with large institutional clients, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the relief will encourage Sub-Advisers to negotiate lower advisory fees with CSIM, the benefits of which are likely to be passed on to Fund shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole shareholder prior to offering shares of the Fund to the public.

2. Each Fund will disclose in its prospectus the existence, substance and effect of any order granted pursuant to this application. In addition, each Fund will hold itself out to the public as employing the "manager of managers" approach described in this application. The prospectus will prominently disclose that CSIM has ultimate responsibility (subject to oversight by the Board) for the investment performance of a Fund due to its responsibility to oversee Sub-Advisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of any new Sub-Adviser, CSIM will furnish shareholders of the affected Fund with all of the information about the new Sub-Adviser that would be contained in a proxy statement, except as modified by the order to permit the disclosure of Aggregate Fees. This information will include the disclosure of Aggregate Fees and any change in such disclosure caused by the addition of a new Sub-Adviser. CSIM will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act, except as modified by the order to permit the disclosure of Aggregate Fees.

4. CSIM will not enter into a sub-advisory agreement with any Affiliated Sub-Adviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the Fund.

5. At all times, a majority of the Board will be Independent Trustees and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. When a change of Sub-Adviser is proposed for a Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which CSIM or an Affiliated Sub-Adviser derives an inappropriate advantage.

7. CSIM will provide general management services to each Fund, and, subject to review and approval by the Board, will: (a) Set the Fund's overall investment strategies; (b) evaluate, select and recommend Sub-Advisers to manage all or a part of the Fund's assets; (c) when appropriate, allocate and reallocate the Fund's assets among multiple Sub-Advisers; (d) monitor and evaluate the Sub-Advisers' investment performance; and (e) implement procedures reasonably designed to ensure that the Sub-Advisers comply with the Fund's investment objective, policies, and restrictions.

8. No trustee or officer of the Trusts, or director or officer of CSIM will own directly or indirectly (other than through a pooled investment vehicle over which such person does not have control) any interest in a Sub-Adviser except for (a) ownership of interests in CSIM or an entity that controls, is controlled by or is under common control with CSIM; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

9. Each Fund will disclose in its registration statement the Aggregate Fees.

10. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

11. CSIM will provide the Board, no less frequently than quarterly, with information about CSIM's profitability on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

12. Whenever a Sub-Adviser is hired or terminated, CSIM will provide the Board information showing the expected impact on CSIM's profitability.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25676 Filed 10–8–02; 8:45 am]

BILLING CODE 8010–01–P

[1] Applicants also request relief with respect to future Funds, and any other registered open-end management investment companies or series thereof (a) that are advised by CSIM or any entity controlling, controlled by, or under common control with CSIM, and (b) use the multi-manager structure described in the application ("Future Funds," and together with the Funds, the "Funds"). Any Fund that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. The Trusts are the only existing investment companies that currently intend to rely on the order. If the name of any Fund contains the name of a Sub-Adviser (as defined below), the name Schwab, CSIM, or the name of the entity controlling, controlled by, or under common control with CSIM that serves as the primary adviser to such Fund will precede the name of the Sub-Adviser.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 7, 2002: a closed meeting will be held on Thursday, October 10, 2002, at 2:30 p.m.

Commissioner Atkins, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the Closed Meeting scheduled for Thursday, October 10, 2002 will be:

Institution and settlement of injunctive actions; and

Institution of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 4, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25739 Filed 10–4–02; 4:53 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46588; File No. SR–Amex–2002–77]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Amend the Account Type Codes Under Exchange Rule 719

October 2, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on September 20, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the account type codes under Exchange Rule 719. The text of the proposed rule change appears below. New text is in italics.

Comparison of Exchange Transactions

Rule 719

(a) through (d) No change.

Commentary

.01 No change.

.02 Regardless of whether or not a registered clearing agency is being used for comparison and/or settlement, each clearing member organization shall submit the following trade data and audit trail information with respect to contracts for securities entered into on the Exchange to a registered clearing agency in such form and within such time periods as may be described by the registered clearing agency or the Exchange:

(1) Name or identifying symbol of the security,

(2) The clearing firm's number or alpha symbol as may be used from time to time, in regard to its side of the contract,

(3) The executing broker's badge number or alpha symbol as may be used from time to time, in regard to its side of the contract,

(4) Trade date,

(5) The time the trade was executed,

(6) Number of shares or quantity of security,

(7) Transaction price,

(8) The clearing firm's number or alpha symbol as may be used from time to time, in regard to the contra side of the contract,

(9) The executing broker badge number or alpha symbol as may be used from time to time, in regard to the contra side of the contract,

(10) The terms of settlement,

(11) Specialist, registered trader, and market maker acronyms in regards to options transactions,

(12) Account type code—equities only. The current account type codes for equity transactions are as follows. Members should use the most restrictive account type code available. Thus, for example, members only should use the "A" account type code for an agency transaction when no other account type code accurately describes the trade. These codes may be changed from time to time as the Exchange may determine:

S—Specialist principal transaction in a specialty security (regardless of the account or clearing member).

G—Registered Equity Trader, Registered Equity Market Maker and Registered Option Trader market maker transactions in the equities and ETFs in which they are registered as a market maker regardless of the clearing member, and Registered Option Trader and option specialist transactions in an underlying Paired Security if the underlying Paired Security is an equity other than an ETF (*e.g.*, SPY, DIA, QQQ, HOLDRS, Sector SPDRs).

P—Amex Option Specialist or Market Maker transaction *in the underlying of* an Amex "paired security" if the underlying of the Paired Security is an ETF (*e.g.*, SPY, DIA, QQQ, HOLDRS, Sector SPDRs) (regardless of the clearing member).

O—Proprietary transactions cleared for a competing market maker that is affiliated with the clearing member.

T—Transactions cleared for the account of an unaffiliated member's competing market maker.

R—Transactions cleared for the account of a non-member competing market maker.

I—Transactions cleared for the account of an individual investor.

E—Short exempt transactions cleared for the proprietary account of a clearing member organization or affiliated member/member organization.

F—Short exempt transactions cleared for the proprietary account of an unaffiliated member/member organization.

H—Short exempt transactions cleared for an individual customer account.

B—Short exempt transactions cleared for all agency customer accounts.

L—Short exempt transaction cleared for a competing market maker that is affiliated with the clearing member.

X—Short exempt transaction cleared for the account of an unaffiliated member competing market maker.

Z—Short exempt transaction cleared for the account of a non-member competing market maker.

W—Proprietary transactions not specified above and cleared for the account of an unaffiliated member/member organization.

A—Transactions cleared for all agency customer accounts.

P—Transactions not specified above and cleared for the proprietary account of a clearing member organization or affiliated member/member organization.

V—Proprietary transactions cleared for the account of a non-member broker dealer that is not a competing market maker.

3—Transactions cleared for a Nasdaq market maker that is affiliated with the clearing member that resulted from telephone access to the specialist.

4—Transactions cleared for a member's Nasdaq market maker that is not affiliated with the clearing member that resulted from telephone access to the specialist.

5—Transactions cleared for a non-member Nasdaq market maker that is not affiliated with the clearing member that resulted from telephone access to the specialist.

New York Stock Exchange program trade audit trail account type codes as used from time to time also are acceptable.

(13) Account type code—options only. The current account type codes for option transactions are as follows. Members should use the most restrictive account type code available. These codes may be changed from time to time as the Exchange may determine:

S—Specialist principal transaction in a specialty security (regardless of the account or clearing member)

C—Transactions cleared for the account of an individual investor

F—Transactions cleared for the account of a broker-dealer that is not a registered market maker in the security

P—Registered trader market maker transaction regardless of the clearing member

N—Transactions cleared for the account of a non-member market maker

(14) Such other information as the Exchange may from time to time require. Clearing members may not "summarize" multiple trades in the same security, executed at the same price with the same contra clearing firm as this results in degradation of the audit trail.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange's rules require clearing members to submit to comparison different types of information for each transaction that they clear. These requirements are set forth in Exchange Rule 719. Among the different data that clearing firms must submit for each trade is an account type code. These codes identify the type of account for which the trade was effected (*e.g.*, a customer, market maker or specialist). The Exchange uses these codes for purposes of market oversight and transaction fee billing.

The Exchange is proposing three modifications to the account type codes. Going forward, the number "3" would be used to identify transactions that resulted from telephone access to the Amex specialist effected for a Nasdaq market maker that is affiliated with the clearing member. The number "4" would be used to identify transactions that resulted from telephone access to the specialist effected for a Nasdaq market maker that is an Amex member but is not affiliated with the member clearing the trade. Finally, the number "5" would be used to identify transactions that resulted from telephone access to the specialist effected for a Nasdaq market maker that is not an Amex member and is not affiliated with the clearing member. The Exchange is making these changes to identify the trades that result from telephone access to the specialist so that these trades will not be charged a transaction fee.[3] No other change would be made to Rule 719.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [4] in general and furthers the objectives of section 6(b)(5),[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [6] and paragraph (f)(1) and (3) of Rule 19b–4 [7] thereunder because it constitutes a states policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule and is concerned solely with the administration of the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–77 and should be submitted by October 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25671 Filed 10–8–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange states that Section IX of the Nasdaq Unlisted Trading Privileges Plan ("Plan") provides in part that no Plan Participant can impose any fee or charge with respect to transactions in Nasdaq securities effected with Nasdaq market makers which are communicated to the floor by telephone pursuant to the Plan. *See* Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b-4(f)(1) and (3).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46592; File No. SR–CHX–2002–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Incorporated To Amend the CHX Membership Dues and Fees Schedule to Reduce Tape A and Tape B Specialist Credits, Reduce Floor Broker Earned Credits, and Increase the OTC Specialist Fixed Fees

October 2, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 3, 2002, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 30, 2002, the CHX amended the proposal.[3] The Exchange has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* September 27, 2002 letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Nancy J. Sanow, Division of Market Regulation, Commission ("Amendment No. 1") Amendment No. 1 completely replaces and supersedes the original filing. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on September 30, 2002, the date the CHX filed Amendment No. 1.

designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under section 19(b)(3)(A)(ii) of the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule ("Schedule") for the period from September through December 2002, to (1) reduce the Tape A and Tape B specialist credits; (2) reduce the floor broker earned credits; and (3) increase the OTC specialist fixed fees. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in brackets.

Membership Dues and Fees

* * * * *

E. Specialist Fixed Fees

Except in the case of Exemption Eligible Securities (as defined above in Section D), which shall be exempt from assessment of fixed fees, specialists will be assigned a fixed fee per assigned stock on a monthly basis, to be calculated as follows:

Fixed Fee Per Dual Trading System Security	=	No change to text
Fixed Fee For *Specialist* [Member] Firms Trading Nasdaq/NMS Securities	=	The lowest monthly fixed fee charged each member firm for period from January through June 2002, less the market data rebate earned by the firm in June, 2002. (Effective July 2002)

For each month from September 2002 through December 2002, each specialist firm shall be charged a Fixed Fee Charge equal to that specialist firm's pro rata share of an additional $10,000 monthly fee. A specialist firm's pro rata share shall be based on the firm's percentage participation in the total market data rebates paid to specialist firms trading Nasdaq/NMS Securities in June 2002.

* * * * *

M. Credits

1. Specialist Credits

Total monthly fees owed by a specialist to the Exchange will be reduced (and specialists will be paid each month for any unused credits by the application of the following credits):

a. Effective July 1, 2002 for transactions in Tape A Securities:

CHX monthly CTA trade volume by stock (percent)	Transaction credit (percent)
< 7	18
7–12	45
>12	70

"Tape A Securities" are securities reported on Tape A of the Consolidated Tape Association.

"Transaction Credit" when used in connection with Tape A Securities means the applicable percentage of monthly CHX tape revenue from the Consolidated Tape Association generated by a particular stock. To the extent that CHX tape revenue is subject to a year end adjustment, specialist credits may be adjusted accordingly.

For each month from September 2002 through December 2002, the Transaction Credit calculated above for each specialist firm shall be decreased by an amount equal to that specialist firm's "Credit Reduction Charge," which shall be calculated as follows:

(Total CHX Monthly Tape A Transaction Credits ÷ Total CHX Monthly Tape A & B Transaction Credits) × $40,000 = Tape A Pro Rata Share

(Specialist's Monthly Tape A Transaction Credits ÷ Total CHX Monthly Tape A Transaction Credits) × Tape A Pro Rata Share = Specialist's Credit Reduction Charge

b. Effective July 1, 2002 for transactions in Tape B Securities:

CHX monthly CTA trade volume by stock (percent)	Transaction credit (percent)
≤5.75%	18
>5.75%	50%

"Transaction Credit" when used in connection with Tape B Securities means the applicable percentage of monthly CHX tape revenue from the Consolidated Tape Association generated by a particular stock. To the extent that CHX tape revenue is subject to a year end adjustment, specialist credits may be adjusted accordingly.

"Tape B Securities" are securities reported on Tape B of the Consolidated Tape Association.

For each month from September 2002 through December 2002, the Transaction Credit calculated above for each specialist firm shall be decreased by an amount equal to that specialist firm's "Credit Reduction Charge," which shall be calculated as follows:

(Total CHX Monthly Tape B Transaction Credits ÷ Total CHX Monthly Tape A & B Transaction Credits) × $40,000 = Tape B Pro Rata Share (Specialist's Monthly Tape B Transaction Credits ÷ Total CHX Monthly Tape B Transaction Credits) × Tape B Pro Rata Share = Specialist's Credit Reduction Charge

2. Floor Broker Credits

a. Earned Credits.

Effective January 1, 2001, total monthly fees owed by a floor broker to the Exchange will be reduced by the application of the following Earned Credit (and floor brokers will be paid each month for any unused credits):

* * * * *

For each month from September 2002 through December 2002, the Earned Credit calculated above for each floor broker shall be decreased by an amount equal to that floor broker's "Credit Reduction Charge," which shall be calculated as follows:

(Floor Broker's Monthly Earned Credit ÷ Total CHX Monthly Earned Credits) × $50,000 = Floor Broker's Credit Reduction Charge

* * * * *

3. Credits for Qualified Market Makers Registered in Cabinet Securities

No change to text.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX proposes to amend the Schedule by (1) reducing the Tape A and Tape B credits provided to Exchange specialists; (2) reducing the earned credits available to Exchange floor brokers; and (3) increasing the fixed fees charged to specialists who trade OTC securities. These changes apply for the period from September through December 2002.

The Exchange, like other business entities, sets financial goals for its operations, and attempts, throughout the year, to make decisions that permit it to meet or exceed those goals. To help meet the Exchange's goals for 2002, the Exchange has decided to temporarily reduce certain credit programs and to increase certain fees.

In doing so, the CHX has designed the proposed changes to the credit and fee arrangements to have an equal effect on the Exchange's specialist firms, as a group, and its floor broker firms, as a group. Within each of these two groups, the fee changes are designed to impact specific firms based on the level of their current participation in the credit and/or fee programs.[5] The Exchange believes that its member firms are in agreement with this proposal.

The changes in the credit section of the Schedule (Section M) decrease the credits from the levels that were set in July 2002 as a result of discussions with Commission staff.[6] Among other things, the Tape B transaction credits outlined in the Schedule continue to be 50% or less.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder,[9] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–2002–28, and should be submitted by October 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25670 Filed 10–8–02; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] For example, for each of the months from September to December 2002, the Exchange's specialists that trade securities reported on Tape A of the Consolidated Tape Association, will be assessed a credit reduction charge that is based on their share of the total Tape A transaction credit for those months.

[6] *See* Securities Exchange Act Release No. 46231 (July 19, 2002), 67 FR 48687 (July 25, 2002)(SR–CHX–2002–22).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] *See* footnote 3, *supra*.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46589; File No. SR–NASD–2002–130]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to an Extension of the Nasdaq International Service Pilot Program

October 2, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 26, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons described below, the Commission is granting accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to extend for one year: (1) The pilot term of the Nasdaq International Service ("Service"); and (2) the effectiveness of certain rules ("International Rules") that are unique to the Service. This rule change does not

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

entail any modification of the International Rules. The present authorization for the Service and the International Rules expires on October 9, 2002. With this filing, the pilot period for the Service and the International Rules would be extended until October 9, 2003.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item III below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD proposes to extend for an additional year, until October 9, 2003, the pilot operation of the Service and the effectiveness of the International Rules governing broker-dealers' access to and use of the Service. The Commission originally approved the existing pilot operation of the Service and the International Rules in October 1991.[3] The Service was launched on January 20, 1992. The pilot has since been extended and is currently set to expire on October 9, 2002.[4]

The Service supports an early trading session running from 3:30 a.m. to 9 a.m. E.T. on each U.S. business day ("European Session") that overlaps the business hours of the London financial markets. Participation in the Service is voluntary and is open to any authorized NASD member firm or its approved broker-dealer affiliate in the U.K. A member participates as a Service market maker either by staffing its trading facilities in the U.S. or the facilities of its approved affiliate during the European Session. The Service also has a variable opening feature that permits Service market makers to elect to participate starting from 3:30 a.m., 5:30 a.m. or 7:30 a.m., Eastern Time. The election is required to be made on a security-by-security basis at the time a firm registers with the NASD as a Service market maker.[5] At present, there are no Service market makers participating in the Service.

As noted above, the NASD is seeking to extend the pilot term for one year. During this period, the NASD will continue to reevaluate the Service's operation and consider possible enhancements to the Service to broaden market-maker participation. The NASD continues to view the Service as a significant experiment in expanding potential opportunities for international trading via systems operated by Nasdaq. Accordingly, the NASD believes that this pilot operation warrants an extension to permit possible enhancements that will increase the Service's utility and attractiveness to the investment community. The NASD maintains its belief that it is extremely important to preserve this facility and the opportunities it provides, especially in light of the increasingly global nature of the securities markets and the trend of cross-border transactions generally.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of sections 11A(a)(1)(B) and (C) and 15A(b)(6) of the Act.[6] Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, broader availability of information with respect to quotations for securities, and the execution of investor orders in the best market through the use of advanced data processing and communications techniques. Section 15A(b)(6) requires, among other things, that the NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The NASD believes that the proposed extension of the Service and the International Rules is fully consistent with these statutory provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–130 and should be submitted by October 30, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with sections 11A(a)(1)(B) and (C) and 15A(b)(6) of the Act.[7] The Commission believes that, in connection with the globalization of securities markets, the Service provides an opportunity to advance the statutory goals of (1) achieving more efficient and effective market operations; (2) broader availability of information with respect to quotations for securities; (3) the execution of investor orders in the best market through the use of advanced data processing and communications techniques; and (4) fostering cooperation and coordination with persons engaged in regulating, clearing, settling, processing, information with respect to, and facilitating transactions in securities.

The Commission views the Service as providing potential opportunities for international trading via a system operated by Nasdaq. The Service is intended to promote additional commitments of member firms' capital to market making and to attract commitments from firms based in Europe that currently do not function as Nasdaq market makers. Although there are no Service market makers participating in the Service, the NASD plans to reevaluate the Service's operation and consider possible enhancements to the Service to broaden market maker participation. Accordingly, the Commission believes that this pilot operation warrants an extension to permit possible enhancements that will increase the Service's utility and attractiveness to the investment community. Any changes to the operation of the Service will be filed pursuant to section 19(b)(2) of the Act.[8]

Pursuant to Section 19(b)(2) of the Act,[9] the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that it is appropriate to approve on an accelerated basis the one-year extension of the Service, until October 9, 2003, to ensure the continuous operation of the Service, which is otherwise set to expire on October 9, 2002.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–2002–130) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25673 Filed 10–8–02; 8:45 am]

BILLING CODE 8010–01–P

[3] See Securities Exchange Act Release No. 29812 (October 11, 1991), 56 FR 52082 (October 17, 1991) (File No. SR–NASD–90–33).

[4] See Securities Exchange Act Release No. 44915 (Oct. 9, 2001), 66 FR 52650 (Oct. 16, 2001) (File No. SR–NASD–01–65).

[5] Regardless of the opening time chosen by the Service market maker, the Service market maker is required to fulfill all the obligations of a Service market maker from that time (*i.e.*, either 3:30 a.m., 5:30 a.m. or 7:30 a.m.) until the European Session closes at 9 a.m., Eastern Time. See Securities Exchange Act Release No. 32471 (June 16, 1993), 58 FR 33965 (June 22, 1993) (File No. SR–NASD–92–54).

[6] 15 U.S.C. 78k–1(a)(1)(B), (C); 78o–3(b)(6).

[7] 15 U.S.C. 78k–1(a)(1)(B), (C); 78o–3(b)(6). In reviewing this proposal, the Commission has considered its potential impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78s(b)(2).

[9] 15 U.S.C. 78s(b)(2).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46559; File No. SR–NASD–2002–125]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. To Extend a Pilot Amendment to NASD Rule 4120 Regarding Nasdaq's Authority To Initiate and Continue Trading Halts

September 26, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 20, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to extend a pilot amendment to NASD Rule 4120, which clarified Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq. The purpose of this filing is to extend the pilot until November 15, 2002.[6] Accordingly, there is no new proposed rule language.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Nasdaq asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. See Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] Nasdaq confirmed that this proposed rule change only extends the operation of the pilot, and does not change the pilot substantively. Telephone conversation between John Yetter, Assistant General Counsel, Office of the General Counsel, Nasdaq, and Joseph Morra, Special Counsel, and Marc McKayle, Special Counsel, Division of Market Regulation ("Division"), Commission on September 25, 2002. Nasdaq will implement the proposed rule change immediately.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 11, 2001, Nasdaq filed with the Commission a proposed rule change to clarify Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq.[7] On July 27, 2001, Nasdaq filed Amendment No. 1 to the proposed rule change, which requested that the Commission approve the proposed rule change on a three-month pilot basis expiring on October 27, 2001.[8] Also on July 27, 2001, the Commission approved the proposed rule change and Amendment No. 1 on a pilot basis[9] after finding that the proposed rule change was consistent with the requirements of the Act, including Section 15A of the Act.[10] Since that time, the pilot period for the rule has been extended on several occasions.[11]

According to Nasdaq, as a result of the decentralized and electronic nature of

[7] See Securities Exchange Act Release No. 44307 (May 15, 2001), 66 FR 28209 (May 22, 2001) (Notice for SR–NASD–2001–37).

[8] See Letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Alton Harvey, Office Head of MarketWatch, Division, Commission dated July 27, 2001. (Amendment No. 1 to SR-NASD–2001–37).

[9] See Securities Exchange Act Release No. 44609 (July 27, 2001), 66 FR 40761 (Aug. 3, 2001) (Order granting approval of SR–NASD–2001–37 on a pilot basis).

[10] 15 U.S.C. 78o–3.

[11] See Securities Exchange Act Release No. 44870 (Sept. 28, 2001), 66 FR 50701 (Oct. 4, 2001); Securities Exchange Act Release No. 45344 (Jan. 28, 2002), 67 FR 5022 (Feb. 3, 2002); Securities Exchange Act Release No. 45851 (Apr. 30, 2002), 67 FR 31858 (May 10, 2002).

the market operated by Nasdaq, the price and volume of transactions in a Nasdaq-listed security may be affected by the misuse or malfunction of electronic systems, including systems that are linked to, but not operated by, Nasdaq. In circumstances where misuse or malfunction results in extraordinary market activity, Nasdaq believes that it may be appropriate to halt trading in an affected security until the system problem can be rectified. In the period during which the rule change has been in effect, Nasdaq has not had occasion to initiate a trading halt under the rule. Nevertheless, Nasdaq believes that the rule is an important component of its authority to maintain the fairness and orderly structure of the Nasdaq market. Accordingly, Nasdaq believes that the rule should remain in effect on an uninterrupted basjs.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[12] including Section 15A(b)(6) of the Act,[13] which requires, among other things, that a registered national securities association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule change provides Nasdaq with clearer authority to respond to and alleviate market disruptions and thereby protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In a letter dated July 27, 2001, Instinet Corporation ("Instinet") commented on the proposed rule change as originally proposed and currently in effect.[14] Nasdaq has filed a proposed rule change—SR–NASD–2001–75—to modify the rule in certain respects and to make the rule permanent, and has received no comments on that proposal.[15] Nasdaq believes that the amendments to the rule proposed in SR–NASD–2001–75 respond to the concerns expressed by Instinet without impairing the flexibility that the rule must retain in order for the rule to assist Nasdaq in meeting its overarching responsibility to maintain the fairness and orderly structure of the Nasdaq market. Pending Commission action on SR–NASD–2001–75, Nasdaq believes that the pilot period of the current rule should be extended to allow the rule to remain in effect on an uninterrupted basis.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[16] of the Act and Rule 19b–4(f)(6) thereunder.[17] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the 5-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to operate continuously through November 15, 2002, while the Commission considers Nasdaq's request for permanent approval. For these reasons, the Commission waives both the 5-day pre-filing requirement and the 30-day operative waiting period.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–125 should be submitted by October 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25675 Filed 10–8–02; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78o–3.

[13] 15 U.S.C. 78o–3(b)(6).

[14] See Letter from Jon Kroeper, First Vice President—Regulatory Policy/Strategy, Instinet to Jonathan G. Katz, Secretary, Commission dated July 27, 2001.

[15] See Securities Exchange Act Release No. 45355 (Jan. 29, 2002), 67 FR 5351 (Feb. 5, 2002) (File No. SR–NASD–2001–75).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46579; File No. SR–NYSE–2002–31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Codification of New York Stock Exchange Policies Previously Approved by the Commission and the Reordering of Other Rules

October 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 12, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the NYSE as a "non-controversial" rule change under Rule 19b–4(f)(6) of the Securities Exchange Act of 1934 ("Act").[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the formal codification of several Exchange policies previously approved by the Commission and the reordering of several other Exchange rules. The text of the proposed rule change is available at the Office of the Secretary, NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the NYSE, the purpose of this filing is to formally codify in the NYSE Rule Book several policies which have been previously filed with, and approved by, the Commission pursuant to Rule 19b–4 and to rearrange the placement of several other rules. The NYSE represents that the material filed herein does not constitute a substantive change to any NYSE rule or policy, and is responsive to recommendations made by an Independent Consultant retained by the Exchange. *See In the Matter of New York Stock Exchange*, 70 S.E.C. Docket 106, Release No. 34–41574, 1999 WL 430863 (June 29, 1999).

Rule 90

Exchange Rule 90 prohibits member proprietary transactions on the Exchange in accordance with the principles of Section 11(a) of the Act and the Commission's rules thereunder. The Exchange is proposing to add, as Supplementary Material to Rule 90, the text of Section 11(a) and the text of the Commission's rules thereunder.

[3] 17 CFR 240.19b–4(f)(6).

Rules 110, 111 and 112

Exchange Rules 110, 111 and 112 are primarily addressed to Competitive Traders, although several provisions of these Rules relate to other matters. The Exchange is proposing to reorganize these rules so that all material directly relating to activities of Competitive Traders will be codified in Rule 110. This involves placing certain material currently codified in Rule 111 and Rule 112 into Rule 110. After the reorganization, Rule 111 would contain material currently codified in Supplementary Material to Rule 112 concerning reporting requirements for Competitive Traders and certain other traders. In addition, Rule 112 would consist of material currently codified in paragraphs .10 and .20 of Supplementary Material to Rule 112 dealing with orders initiated off the Floor, and what constitutes "on Floor" and "off Floor" for purposes of Exchange rules.

No new material is being added. The Exchange is simply reorganizing the existing material for ease of reference.

The specific reorganization is as follows. Paragraphs (a), (b), and (c) of current Rule 111 would become paragraphs (a), (b), and (c) of new Rule 110. Paragraphs (a), (b), (c), and (d) of current Rule 112 would become paragraphs (d), (e), (f), and (g) of new Rule 110. Paragraphs (d), (e), (f), (g) and Supplementary Material .10 of current Rule 111 would become paragraphs (h), (i), (j), (k), and (l) of new Rule 110. The text of current Rule 110 would become paragraph (m) of new Rule 110. Supplementary Material paragraphs .21 and .22 of current Rule 112 would become new paragraphs (n), (o), and (p) of new Rule 110.

Supplementary Material paragraph .30 of current Rule 112 would become paragraph (a) of new Rule 111. Supplementary Material paragraphs .40, .50, and .50A of current Rule 112 would become paragraphs (b), (c) and (d) of new Rule 111.

Supplementary Material paragraph .10(a) of Rule 112 would become paragraph (a) of new Rule 112. Supplementary Material paragraphs .20(a), (b), (c), and (d) would become paragraphs (b), (c), (d), and (e) of new Rule 112.

Three paragraphs are proposed to be deleted. Current Rule 112(e) contains exemptions from restrictions on Competitive Traders for specialists in securities in which they are registered. Current Rule 111(c), however, contains similar exemptions. Accordingly, the Exchange is proposing to rescind Rule 112(e) as redundant and unnecessary, and this paragraph would not appear in proposed new Rule 110.

Rule 112.23 refers to the ability of the specialist to establish priority, but not parity or precedence based on size, in certain market situations. This paragraph is similar to restrictions contained in Rule 108, and the Exchange is proposing to delete it as redundant.

Rule 112.24 provides that specialists should state the full size of the offer except in instances in which they believe the proper exercise of the brokerage function makes it inadvisable to do so. This Rule has been superseded by the Commission's limit order display rule, Rule 11Ac1–4, and NYSE Rule 79A.15, and is therefore proposed to be rescinded.

Codification of Exchange Policies

The Exchange is proposing to add its specialist stock allocation policy to Rule 103B.[4] This Rule currently provides that securities listing on the Exchange will be allocated to specialist units according to such policies as the Exchange shall establish. The Exchange's Allocation Policy has been previously filed with the Commission but has not been codified in the Rule Book. The Exchange is simply proposing to add the text of the current Allocation Policy to the text of Rule 103B.

The Exchange is also proposing to codify three other policies which have been previously approved by the Commission. The Exchange's policies and interpretations regarding market-on-close and limit-on-close orders would be codified in new Exchange Rule 123C.[5] Included in this Rule would be interpretive material, previously disseminated to the Exchange's membership, which is reasonably and fairly implied by these policies. The Exchange is not proposing to adopt any new substantive requirements.

The Exchange is proposing to codify its policies and interpretations regarding trading halts and delayed openings in

[4] This policy was last amended in SR–NYSE–2001–10 (Allocation Policy for Exchange-Traded Funds), approved by Securities Exchange Act Release No. 44306 (May 15, 2001), 66 FR 28008 (May 21, 2001), and in SR–NYSE–2001–17 (Interview Pool for Exchange's Allocation Policy and Procedures), approved by Securities Exchange Act Release No. 44975 (October 24, 2001), 66 FR 55037 (October 31, 2001).

[5] This policy was last amended in SR–NYSE–99–26, approved by Securities Exchange Act Release No. 41726 (August 11, 1999), 64 FR 44985 (August 18, 1999).

new Rule 123D.[6] No new substantive requirements are proposed to be adopted.

The Exchange is also proposing to codify its Specialist Combination Review Policy in new Rule 123E.[7] No new substantive requirements are proposed to be adopted.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(5) of the Act,[9] in particular. Section 6(b)(5) of the Act requires, among other things, that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, and the Exchange has provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6)(iii)[13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE has requested that the Commission waive the 30-day pre-operative waiting period, which will allow the proposed administrative rule changes and codification of Exchange policies to take effect immediately. According to the NYSE, the proposed filing consists of formal codification of several Exchange policies previously approved by the Commission and the reordering of several other Exchange rules. Therefore, the Exchange believes that the proposed rule change is non-controversial, addresses the administration of Exchange rules, and should take effect immediately. In light of these considerations, the Commission, consistent with the protection of investors and the public interest, has determined to designate the proposed rule change as operative immediately.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–NYSE–2002–31 and should be submitted by October 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25672 Filed 10–8–02; 8:45 am]

BILLING CODE 8010–01–P

[6] This policy was last amended in SR–NYSE–93–19, approved by Securities Exchange Act Release No. 32890 (September 14, 1993), 58 FR 48916 (September 20, 1993).

[7] This policy was last approved in SR–NYSE–94–46, Securities Exchange Act Release No. 35343 (Feb. 8, 1995), 60 FR 8437 (Feb. 14, 1995). The last proposed amendment to this policy was made in SR–NYSE–2000–11 (March 2, 2000) (not yet approved).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46593; File No. SR–OCC–2002–23]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Physically-Settled Futures on Narrow-Based Stock Indexes

October 2, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 30, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC's by-laws and rules to provide for the clearance and settlement of transactions in physically-settled futures on narrow-based stock indexes.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Introduction

The proposed amendments would provide for the clearance and settlement of physically-settled futures on narrow-based stock indexes under the same basic rules and procedures recently approved by the Commission for the clearance and settlement of other security futures contracts.[3] Delivery of the constituent securities of an underlying narrow-based index would be effected pursuant to the same rules and procedures currently applicable to the clearance and settlement of stock options and physically-settled stock futures.

Background and Brief Product Description

As amended by the Commodity Futures Modernization Act of 2000 ("CFMA"), section 3(a)(55) of the Act defines the term "security future" to include "a contract of sale for future delivery of * * * a narrow-based security index, including any interest therein or based on the value thereof." CFMA does not specify or restrict the means by which a narrow-based security index future can be settled. OneChicago LLC ("ONE") has proposed to include physically-settled index futures among the contracts listed for trading through its facilities and has asked OCC to provide clearing and settlement services for those contracts. OCC's existing rules for clearing security futures contracts, which were approved by the Commission in 2001, provide for the clearance of cash-settled stock futures and index futures and for the clearance of physically-settled stock futures. They do not, however, provide for physically-settled index futures.[4] The purpose of the present rule change is to amend those rules as necessary to provide for clearance and settlement of this additional type of security future.

ONE proposes to trade physically-settled narrow-based index futures that would allow a participant to take a position in defined economic sectors such as airlines, computers, investment banking, and semiconductors. These futures contracts will require the seller at maturity of the contract to deliver to the buyer a specified number of shares (to be set initially at 100 shares or multiples thereof, subject to adjustments to reflect certain corporate events such as stock splits) of each of the constituent securities in the index. The number of deliverable shares of each security will essentially define the index.

ONE intends that the constituent stocks will be represented in an index under an approximate equal-dollar weighting formula. OneChicago will rebalance the index periodically to account for relative price changes of the constituent securities. ONE may also change constituent securities from time to time so that the index better reflects the particular industry sector. New classes of contracts will be opened after each rebalancing or change in the composition of the index. Existing contracts will be unaffected by these rebalancing changes and will continue trading until expiration.

Overview of OCC's Proposed Rule Changes

OCC has determined that physically-settled index futures may be readily settled in a manner similar to physically-settled stock futures. As is the case with stock futures and stock options, delivery of the underlying would ordinarily be made through the National Securities Clearing Corporation ("NSCC") with OCC's broker-to-broker settlement procedures as a fallback in the event that a deliverable security is ineligible to be settled through NSCC. ONE has determined to set the final settlement price against which delivery will be made based on the price of the future rather than using the cash prices of the constituent stocks. The prices that OCC would provide to NSCC with respect to each underlying constituent security would be determined by allocating the final futures settlement price to each constituent security in proportion to its weighting in the index. This would be essentially the same way that OCC currently handles the settlement of equity options that have multiple deliverables as a result of corporate events.

The following discussion describes revisions to particular by-laws or rules that are of particular significance or appear to require explanation. Where special provisions for physically-settled narrow-based index futures are needed, they are proposed to be added primarily in either the basic rules in Articles VI of the By-Laws, Clearance of Exchange Transactions, or to the rules governing security futures generally, which are in Article XII of the By-Laws, Futures and Futures Options, and Chapter XIII of the Rules, Futures and Futures Options. Chapter IX of the Rules, Delivery of Underlying Securities and Payments, governing settlement of delivery obligations with respect to underlying stocks also would be amended slightly. Many other proposed changes are not discussed individually because they are merely conforming changes, constitute minor, nonsubstantive changes to existing by-laws and rules, or are otherwise self-explanatory.

New and Amended Definitions

OCC proposes to define several additional terms applicable to physically-settled narrow-based index futures and to include those terms in Article I of the By-Laws, Definitions, because they are used throughout the by-laws and rules. The new definitions are mostly self-explanatory, but a few terms that are of particular significance are described below.

The term "aggregate purchase price" would be amended to identify the total price against which all of the deliverable securities would be delivered at maturity of a physically-settled narrow-based index future. For purposes of settlement, that aggregate purchase price will then be apportioned among the constituent securities of the underlying index (as described in "Amendments to Chapter IX of the Rules" below).

The amendment to the definition of "final settlement price" would provide that the final settlement price of a futures contract could be determined by reference to the value of the underlying or, as ONE proposes in the case of physically-settled narrow-based index futures, by reference to the final settlement price of the futures contract itself.

The term "class" would be amended to clarify that only physically-settled narrow-based index futures that have identical constituent securities and identical weightings of such securities in the index underlying such future belong to the same "class." This amendment reflects OCC's intention to

[2] The Commission has modified parts of these statements.

[3] *E.g.*, Securities Exchange Act Releases No. 44434 (June 15, 2001), 66 FR 33283 [File No. SR–OCC–2001–05 and 44727 (August 20, 2001), 66 FR 45351 [File No. SR–OCC–2001–07].

[4] *Id.*

treat a class of physically-settled narrow-based index futures contracts that has been rebalanced as a separate class of futures contracts.

The new term "deliverable security" would be defined broadly to include any security that might be deliverable with respect to any physically-settled cleared contract. This term would be created primarily to avoid possible confusion from use of the term "underlying security" to mean a particular constituent security in an underlying index. Similarly, the term "deliverable amount" is used to refer to the number of shares or other units of a particular constituent security that is deliverable with respect to a single contract.

The term "physically-settled narrow-based index future" would be added to distinguish these products from cash-settled narrow-based index futures. The definition of "narrow-based index future" would be amended to encompass both cash- and physically-settled narrow-based index futures, and the definition of "security future" would be amended to include a specific reference to stock futures and narrow-based index futures.

Amendments to Article VI of the By-Laws

Article VI, Clearance of Exchange Transactions, sets out the basic terms of option contracts and the general rules for the clearance of exchange transactions. These basic rules apply to stock options, and except where they are replaced or modified by the by-laws in later articles specifically applicable to other products, they apply to those other OCC cleared products. An amendment to section 10(d) would be added to clarify the mechanism for determination of the deliverable amount with respect to each constituent security in a series of physically-settled narrow-based index futures. Section 19 previously addressed shortages of "underlying" securities. The title would be modified to refer to the new term "deliverable securities." Section 19 would be modified generally to provide for contracts, including but not limited to physically-settled narrow-based index futures, which may call for delivery of multiple securities. This could also be the case, for example, where a stock option or stock future has been adjusted as the result of a special distribution or other corporate event. As proposed, section 19 would provide for the partial settlement of contracts that may have multiple deliverable securities, not all of which are affected by the shortage. Various conforming changes would be made in the remainder of the section and in the interpretations and policies following the section. Subparagraphs (2)–(4) of section 19(a), which are substantively identical but dealt with different types of contracts, would be consolidated into new subparagraph (2). Section 19(c) would be redrafted for clarity and would not effect substantive changes to the treatment of contracts previously addressed by that section. Item 7 under Interpretation and Policy .02 to section 19 would no longer be necessary and would be deleted in its entirety.

Amendments to Article XII of the By-Laws

Article XII, Futures and Futures Options, sets out the basic provisions for futures and futures options. Section 2(a), which sets forth the general rights and obligations of buyers and sellers of futures and futures options, would be amended to set out the general rights and obligations of buyers and sellers of physically-settled narrow-based index futures. A new sentence would be added to section 3(a) clarifying that determinations of adjustments required to reflect certain events with respect to the constituent securities of the index underlying a physically-settled narrow-based index futures contact would be made by the exchange or security futures market on which such futures are traded. It is anticipated that the exchange or security futures market on which such futures are traded would determine the deliverable amount for each constituent security in the index, and that this would effectively define the index. Accordingly, OCC believes that adjustments should be made by the market (as the source of the index) rather than by OCC.

Amendments to Chapter IX of the Rules

As noted above, the Rules in Chapter IX, Delivery of Underlying Securities and Payment relating to delivery of and payment for underlying securities would be modified to apply to the constituent securities in an index underlying a physically-settled narrow-based security future. The proposed changes have been drafted more generally, however, to cover other situations where there may be multiple deliverables as in the case of certain adjustments to options and futures on single stocks as referred to above. The allocation of an aggregate purchase price among multiple deliverables is necessary so that each security can be settled against its own purchase price in case delivery of all the deliverable securities is not simultaneous. The price would be allocated in proportion to recent market prices for the deliverable securities. This allocation would be made by OCC in consultation with ONE in the case of physically-settled narrow-based index futures traded on that market. In the adjustment situation, the allocation is made solely by OCC. The precise allocation among the deliverable securities is ordinarily not material because any overpayment for one deliverable will result in an underpayment for another.

Amendments to Chapter XIII of the Rules

Chapter XIII of the Rules, Futures and Futures Options, governs, *inter alia*, variation payments and delivery obligations for futures and futures options. Variation payments for physically-settled narrow-based index futures would be determined under the existing rules with no change except to the definition of "final settlement price" as described above. Rule 1302, Delivery of Deliverable Securities, would be amended by adding a new subparagraph (b) to provide that at maturity of a physically-settled narrow-based index future, the seller and buyer of such a future would be obligated, respectively, to deliver and receive the deliverable amount of each constituent security of the index underlying the future.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because it provides for the efficient clearance and settlement of physically-settled narrow-based index futures by adapting existing OCC rules that have been approved as effective in promoting the prompt and accurate clearance and settlement of both single stock futures and cash-settled narrow-based index futures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2002–23 and should be submitted by October 24, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25674 Filed 10–8–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3450]

State of Georgia

Fulton County and the contiguous counties of Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth and Gwinnett in the State of Georgia constitute a disaster area due to damages caused by heavy rains and localized flooding that occurred on September 21 and 22, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 2, 2002, and for economic injury until the close of business on July 3, 2003, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.625
Homeowners Without Credit Available Elsewhere	3.312
Businesses With Credit Available Elsewhere	7.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	3.500
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.375
For Economic Injury: Businesses and Small Agricultural Co-operatives Without Credit Available Elsewhere	3.500

The number assigned to this disaster for physical damage is 345006 for Georgia and for economic injury is 9R8700.

Dated: October 3, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Hector V. Barreto,

Administrator.

[FR Doc. 02–25687 Filed 10–8–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3451]

State of Mississippi

As a result of the President's major disaster declaration on October 1, 2002, I find that Amite, Hancock, Harrison, Jackson, Pearl River, Pike and Stone Counties in the State of Mississippi constitute a disaster area due to damages caused by Tropical Storm Isidore occurring on September 23, 2002, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 2, 2002 and for economic injury until the close of business on July 1, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Forrest, Franklin, George, Lamar, Lincoln, Marion, Perry, Walthall and Wilkinson in the State of Mississippi; Mobile County in the State of Alabama; and East Feliciana, St. Helena, St. Tammany, Tangipahoa and Washington Parishes in the State of Louisiana.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.625
Homeowners Without Credit Available Elsewhere	3.312
Businesses With Credit Available Elsewhere	7.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	3.500
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.375
For Economic Injury: Businesses and Small Agricultural Co-operatives Without Credit Available Elsewhere	3.500

The number assigned to this disaster for physical damage is 345111. For economic injury the number is 9R8800 for Mississippi; 9R8900 for Alabama; and 9R9000 for Louisiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 2, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–25689 Filed 10–8–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3448; Amendment #1]

State of Texas

In accordance with a notice received from the Federal Emergency Management Agency, dated September 30, 2002, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on September 6, 2002, and continuing through September 30, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 25, 2002, and for economic injury the deadline is June 26, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 3, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–25688 Filed 10–8–02; 8:45 am]

BILLING CODE 6025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements (ICRs) for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than December 9, 2002.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130–0505, or OMB control number 2130–0548." Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or e-mail to Mr. Brogan at *robert.brogan@fra.dot.gov*, or to Ms. Debra Steward at *debra.steward@fra.dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved ICRs that FRA will submit for clearance by OMB as required under the PRA:

Title: Inspection and Maintenance Standards for Steam Locomotives.

OMB Control Number: 2130–0505.

Abstract: The Locomotive Boiler Inspection Act (LBIA) of 1911 required each railroad subject to the Act to file copies of its rules and instructions for the inspection of locomotives. The original LBIA was expanded to cover the entire steam locomotive and tender and all its parts and appurtenances. This Act then requires carriers to make inspections and to repair defects to ensure the safe operation of steam locomotives. The collection of information is used by tourist or historic railroads and by locomotive owners/operators to provide a record for each day a steam locomotive is placed in service, as well as a record that the required steam locomotive inspections are completed. The collection of information is also used by FRA Federal inspectors to verify that necessary safety inspections and tests have been completed and to ensure that steam locomotives are indeed "safe and suitable" for service and are properly operated and maintained.

Affected Public: Businesses.

Respondent Universe: 82 owners/operators.

Frequency of Submission: On occasion; annually.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
230.6—Waivers	82 owners	2 waiver letters	1 hour	2	$68
230.12—Conditions for movement—Non-Complying Locomotives.	82 owners/operatprs	10 tags	6 minutes	1	30
230.14—31 Service Day Inspection	82 owners/operators	100 reports	20 minutes	33	990
—Notifications	82 owners/operators	2 notifications	5 minutes	.17	6

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
230.15—92 Service Day Inspection	82 owners/operators	100 reports	20 minutes	33	990
230.16—Annual Inspection	82 owners/operators	100 reports	30 minutes	50	1,500
—Notifications	82 owners/operators	100 notifications	5 minutes	8	272
230.17—1,472 Service Day Inspection.	82 owners/operators	10 forms	30 minutes	5	150
230.20—Alteration Reports for Steam Locomotive Boilers.	82 owners/operators	5 reports	1 hour	5	150
230.21—Steam Locomotive Number Change.	82 owners/operators	1 document	2 minutes	.033	1
230.33—Welded Repairs/Alterations	82 owners/operators	5 letters	10 minutes	1	34
—Written Request to FRA for Approval—Unstayed Surfaces.	82 owners/operators	5 letters	10 minutes	1	34
230.34—Riveted Repairs/Alterations	82 owners/operators	10 requests	5 minutes	1	34
230.49—Setting of Safety Relief Valves.	82 owners/operators	38 tags	2 minutes	1. 25	38
230.96—Main, Side, and Valve Motion Rods.	82 owners/operators	1 letter	10 minutes	.17	5
Record Keeping Requirements:					
230.13—Daily Inspection Reports	82 owners/oper.	3,650 reports	2 minutes	122	3,660
230.17—1,472 Service Day Inspection.	82 owners/operators	10 reports	15 minutes	3	90
230.18—Service Day Report	82 owners/operators	150 reports	15 minutes	38	1,140
230.19—Posting of Copy	82 owners/operators	300 forms	1 minute	5	15
230.41—Flexible Stay Bolts with Caps.	82 owners/operators	10 entries	1 minute	.17	5
230.46—Badge Plates	82 owners/operators	3 reports	30 minutes	2	60
230.47—Boiler Number	82 owners/operators	1 report	15 minutes	.25	8
230.75—Stenciling Dates of Tests and Cleaning.	82 owners/operators	50 tests	15 minute	1	30
230.98—Driving, Trailing, and Engine Truck Axles—Journal Diameter Stamped.	82 owners/operators	1 stamp	15 minutes	.25	8
230.116—Oil Tanks	82 owners/operators	10 signs	1 minute	.17	5

Total Responses: 4,674.

Estimated Total Annual Burden: 313 hours.

Status: Extension of a Currently Approved Collection.

Title: Railroad Rehabilitation and Improvement Financing Program.

OMB Control Number: 2130–0548.

Abstract: Prior to the enactment of the Transportation Equity Act for the 21st Century ("TEA 21"), Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (the "Act"), 45 U.S.C. 821 *et seq.*, authorized FRA to provide railroad financial assistance through the purchase of preference shares (45 U.S.C. 825), and the issuance of loan guarantees (45 U.S.C. 831). The FRA regulations implementing the preference share program were eliminated on February 9, 1996, due to the fact that the authorization for the program expired (28 FR 4937). The FRA regulations implementing the loan guarantee provisions of Title V of the Act are contained in 49 CFR Part 260. Section 7203 of TEA 21, Public Law 105–178 (June 9, 1998), replaces the existing Title V financing programs. The collection of information is used by FRA staff to determine the financial eligibility of applicants for a loan or loan guarantee regarding eligible projects for the improvement/rehabilitation of rail equipment or facilities, the refinancing of outstanding debt for these purposes, or the development of new intermodal or railroad facilities. The aggregate unpaid principal amounts of obligations can not exceed $3.5 billion at any one time and not less than $1 billion is to be available solely for projects benefitting freight railroads other than Class I carriers.

Affected Public: State and local governments, governments sponsored authorities and corporations, railroads (including Amtrak), and joint ventures that include at least one railroad.

Respondent Universe: 21,956 potential applicants.

Frequency of Submission: Annual.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response (in hours)	Total annual burden hours	Total annual burden cost
260.23—Form and content of application generally.	21,956 potential applicants	20 applications	20	400	$16,036
260.25—Additional information for applicants without credit ratings.	555 applicants	18 financial document pkgs	40	720	27,936
260.31—Execution and filing of application:					
—Certificate of President	21,956 pot. applicants	20 certificates	.6	12	526
—Certificate of Chief Financial Officer.	21,956 pot. applicants	20 certificates	.6	12	519

CFR section	Respondent universe	Total annual responses	Average time per response (in hours)	Total annual burden hours	Total annual burden cost
—Transmittal letter	21,956 pot. applicants	20 letters	.6	12	519
—Copy/mail app. pkg	21,956 pot. applicants	20 app. pkgs	1.5	30	912
260.33—Information Request	21,956 pot. applicants	20 statements	1	20	851
260.35—Environmental Assessment	21,956 pot. applicants	1 envir. Doc	4,475	4,475	537,000
260.43—Inspection and Reporting	21,956 pot. applicants	20 Docs	10	200	8,510

Total Responses: 159.

Estimated Total Annual Burden: 5,881 hours.

Status: Extension of a Currently Approved Collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on October 3, 2002.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 02–25645 Filed 10–8–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on June 25, 2002 (67 FR 42844–42846).

DATES: Comments must be submitted on or before November 8, 2002.

FOR FURTHER INFORMATION CONTACT: George Person, National Highway Traffic Safety Administration, Office of Defects Investigation, 202–366–5210. 400 Seventh Street, SW., Room 5326, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Reporting of Information and Documents About Potential Defects—Retention of Records 49 CFR part 579.

OMB Number: 2127–0616.

Type of Request: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Abstract: The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act was enacted on November 1, 2000, Public Law 106–414. This Act includes a requirement that the National Highway Traffic Safety Administration (NHTSA) conduct Early Warning Reporting (EWR) rulemaking to require manufacturers of motor vehicles and motor vehicle equipment to submit information, periodically or upon NHTSA's request, that includes claims for deaths and serious injuries, property damage data, communications to customers and others, information on incidents resulting in fatalities or serious injuries from possible defects in vehicles or equipment in the United States or in identical or substantially similar vehicles or equipment in a foreign country, and other information that would assist NHTSA in identifying potential safety-related defects. The intent of this legislation is to provide early warning of such potential safety-related defects.

Estimated Burden Hours: 240,284.

Number of Respondents: 444.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on October 4, 2002.

Delmas Maxwell Johnson,

Associate Administrator for Administration.

[FR Doc. 02–25706 Filed 10–8–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974; System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Proposed New Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Treasury Department, Departmental Offices, gives notice of a newly proposed system of records, "Treasury/DO .214–DC Pensions Retirement Records."

DATES: Comments must be received no later than November 8, 2002. The proposed new system of records will become effective November 18, 2002 unless comments are received which would result in a contrary determination.

ADDRESSES: Send written comments to Department of the Treasury, ATTN: Marc Rigrodsky, Office of the General Counsel, 1500 Pennsylvania Avenue NW., Room 1410, Washington, DC 20220, or to *marc.rigrodsky@do.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Marc Rigrodsky, (202) 622–0450.

SUPPLEMENTARY INFORMATION: The Department of the Treasury (Department) is establishing the DC Pensions Retirement Records system to assist the Department in carrying out its responsibilities under Title XI of the Balanced Budget Act of 1997, Pub. L. 105–33, as amended (the Act), for

administering and paying retirement benefits for certain teachers, police officers, firefighters, and judges who were or are employed by the government of the District of Columbia (District). The Federal Government is responsible for paying police officers," firefighters', and teachers' retirement benefits based upon service accrued through June 30, 1997. The District is responsible for paying benefits based upon service accrued after June 30, 1997. The Federal Government is responsible for paying judges' retirement benefits regardless of when they accrued. All benefit payments that are the responsibility of the Federal Government under the three District retirement programs (police-firefighters, teachers, and judges) are referred to herein as "Federal benefit payments." Benefit payments for service accrued after June 30, 1997, to which an individual is entitled under the District's Replacement Plan for police officers, firefighters and teachers, are the responsibility of the District.

This system of records will consist of information furnished by the subjects of the records, the District and other entities or persons that will enable the Department to calculate and verify eligibility for, and calculate amounts of, Federal benefit payments payable by the Department under the Act. The records in this system will be maintained indefinitely. Because records in the system are retrieved by individual identifier, including by name, social security number and an automatically assigned, system generated number, the Privacy Act of 1974, as amended, requires a general notice of the existence of this system of records to the public.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated November 30, 2000.

The proposed system of records, "Treasury/DO .214–D.C. Pensions Retirement Records," is published in its entirety below.

Dated: October 2, 2002.

W. Earl Wright, Jr.,

Chief, Management and Administrative Programs Officer.

TREASURY/DO .214.

SYSTEM NAME:

D.C. Pensions Retirement Records.

SYSTEM LOCATION:

Director, Office of D.C. Pensions, Department of the Treasury, Metropolitan Square, Washington, DC 20220. Certain records pertaining to Federal benefit payments are located with contractors engaged by the Department of the Treasury (Department), bureaus of the Department, and the government of the District of Columbia (District).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Former District teachers, police officers and firefighters who performed service subject to the District's retirement plans for teachers, and police officers and firefighters, on or before June 30, 1997.

b. Former District judges, regardless of their dates of service.

c. Current District teachers, police officers, firefighters, who have performed service prior to July 1, 1997:

(1) that may make them eligible to receive Federal benefit payments;

(2) who have filed a designation of beneficiary for Federal benefit payments; or

(3) who have filed a service credit application in connection with former Federal service; or

(4) who have filed an application for disability retirement with the District or the Secretary of the Treasury (Secretary) and who are waiting for a final decision, whose disability retirement application has been approved by the District or the Secretary, or whose disability retirement application has been disapproved by the District or the Secretary, and who will receive or would have received Federal benefit payments if their applications are or had been approved.

d. Current District judges;

e. Former District teachers, police officers, firefighters, and judges who died entitled to or while receiving Federal benefit payments, or their surviving spouses, and/or children and/or dependent parents.

f. Former spouses of District teachers, police officers, firefighters, and judges, who have received or are receiving Federal benefit payments, or who have filed a court order awarding future benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system comprises retirement service history records of employee service in the District, the Federal Government, and other entities upon which Federal benefit payments may be based. Also included in the system are current personnel data pertaining to active District teachers, police officers, firefighters, and judges who, by virtue of the Act, may be eligible for Federal benefit payments. It also contains information concerning health benefit and group life insurance enrollment/change in enrollment. Also included are medical records and supporting evidence for disability retirement applications, and documentation regarding their acceptance or rejection. Consent forms and other records related to the withholding of State income tax from annuitant payments, whether physically maintained by the State or the Department, are included in this system.

These records contain the following information:

a. Documentation of District service subject to the retirement plans for District teachers, police officers, firefighters, and judges.

b. Documentation of service credit and refund claims made by District teachers, police officers, firefighters, and judges under their retirement plans who are potentially eligible for Federal benefit payments.

c. Documentation of retirement contributions made by eligible teachers, police officers, firefighters, and judges.

d. Retirement and death claims files applicable to Federal benefit payments, including documents supporting the retirement application, health benefits, and life insurance eligibility, medical records supporting disability claims, and designations of beneficiary.

e. Enrollment and change in enrollment information under the Federal Employees Health Benefits Program, the employee health benefits program for District employees, the Federal Employee Group Life Insurance Program and the employee group life insurance program for District employees.

f. Court orders submitted by former spouses of District teachers, police officers, firefighters, and judges in support of claims for Federal benefit payments.

g. Records relating to overpayments of Federal benefit payments and other debts arising from the Federal Government's responsibility to administer the retirement plans for District judges, police officers, firefighters, and teachers, and records relating to other Federal debts owed by recipients of Federal benefit payments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title XI, Subtitle A, chapters 1 through 9, and Subtitle C, chapter 4, subchapter B of the Balanced Budget Act of 1997, Pub. L. 105–33.

PURPOSE(S):

These records provide information on which to base determinations of:

eligibility for, and computation of, Federal benefit payments; eligibility and premiums for health insurance and group life insurance; and withholding of State income taxes from annuities. These records also may be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used:

1. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Department becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

2. To disclose information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

3. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

4. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Federal Government is a party to the judicial or administrative proceeding. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

5. To disclose information to the National Archives and Records Administration for use in records management inspections.

6. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, when:

(A) The Department, or any component thereof;

(B) Any employee of the Department in his or her official capacity;

(C) Any employee of the Department in his or her individual capacity where the Department of Justice or the Department has agreed to represent the employee;

(D) The United States, when the Department determines that litigation is likely to affect the Department or any of its components; or

(E) The Federal funds established by the Act to pay Federal benefit payments; is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Department is deemed by the Department of Justice or the Department to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which records were collected.

7. To disclose information to contractors, subcontractors, financial agents, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Department, including the District.

8. To disclose, to the following recipients, information needed to adjudicate a claim for Federal benefit payments under the retirement plans for District teachers, police officers, firefighters, and judges, or information needed to conduct an analytical study of benefits being paid under such programs as: Social Security Administration's Old Age, Survivor and Disability Insurance and Medical Programs, military retired pay programs; and Federal civilian employee retirement programs (Civil Service Retirement System, Federal Employees Retirement System, and other Federal retirement systems).

9. To disclose to the U.S. Office of Personnel Management (OPM) and to the District information necessary to verify the election, declination, or waiver of regular and/or optional life insurance coverage.

10. To disclose to health insurance carriers contracting with OPM to provide a health benefits plan under the Federal Employees Health Benefits Program or health insurance carriers contracting with the District to provide a health benefits plan under the health benefits program for District employees, Social Security Numbers and other information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination for benefits provisions of such contracts.

11. To disclose to any inquirer, if sufficient information is provided to assure positive identification of an individual on whom the Department maintains records, the fact that an individual is or is not on the retirement rolls, and if so, the type of annuity (employment or survivor, but not retirement on disability) being paid, or if not, whether a refund has been paid.

12. When an individual to whom a record pertains dies, to disclose to any person possibly entitled in the applicable order of precedence for lump-sum benefits, information in the individual's record that might properly be disclosed to the individual, and the name and relationship of any other person whose claim for benefits takes precedence or who is entitled to share the benefits payable.

13. To disclose information to any person who is legally responsible for the care of an individual to whom a record pertains, or who otherwise has an existing, facially-valid Power of Attorney, information necessary to assure payment of Federal benefit payments to which the individual is entitled.

14. To disclose to the Parent Locator Service of the Department of Health and Human Services, upon its request, the present address of a Federal benefit payments annuitant or survivor, or a former employee entitled to deferred Federal benefit payments, for enforcing child support obligations of such individual.

15. In connection with an examination ordered by the District or the Secretary of the Treasury under

(A) Medical examination procedures; or

(B) Involuntary disability retirement procedures to disclose to the representative of an employee, notices, decisions, other written communications, or any other pertinent medical evidence other than medical evidence about which a prudent physician would hesitate to inform the individual; such medical evidence will be disclosed only to a licensed physician, designated in writing for that purpose by the individual or his or her representative. The physician must be capable of explaining the contents of the medical record(s) to the individual and be willing to provide the entire record(s) to the individual.

16. To disclose information to any source from which the Department seeks additional information that is relevant to a determination of an individual's eligibility for, or entitlement to, coverage under the applicable retirement, life insurance, and health benefits program, to the extent necessary to obtain the information requested.

17. To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

18. To disclose to a Federal agency, in response to its request, the address of an annuitant or applicant for refund of retirement deductions, if the agency requires that information in connection with the collection of a debt due the United States.

19. To disclose to a State agency responsible for the collection of State income taxes the information required by an agreement authorized by law to implement voluntary State income tax withholdings from Federal benefit payments.

20. To disclose to the Social Security Administration the names and Social Security Numbers of Federal benefit payment annuitants when necessary to determine: (1) Their vital status as shown in the Social Security Master Records; and (2) whether retirees receiving Federal benefit payments under the District's retirement plan for police officers and firefighters with post-1956 military service credit are eligible for or are receiving old age or survivors benefits under section 202 of the Social Security Act based upon their wages and self-employment income.

21. To disclose to Federal, State, and local government agencies information about retirees and survivors under the retirement plans administered by the Department pursuant to the Act, including name, Social Security Number, date of birth, sex, health benefit enrollment code, retirement date, retirement code (type of retirement), annuity rate, pay status of case, correspondence address, and ZIP code, to help eliminate fraud and abuse in a benefits program administered by a requesting Federal, State, or local government agency, to ensure compliance with Federal, State, and local government tax obligations by persons receiving Federal benefits payments under such retirement plans, and to collect debts and overpayments owed to the requesting Federal, State, or local government agency.

22. To disclose to a Federal agency, or a person or an organization under contract with a Federal agency to render collection services for a Federal agency as permitted by law, in response to a written request from the head of the agency or his designee, or from the debt collection contractor, the following data concerning an individual owing a debt to the Federal Government: (A) The debtor's name, address, Social Security Number, and other information necessary to establish the identity of the individual; and (B) the amount, status, and history of the debtor's Federal benefit payments.

23. To disclose, as permitted by law, information to a State court or administrative agency in connection with a garnishment, attachment, or similar proceeding to enforce an alimony or a child support obligation.

24. To disclose to a former spouse information necessary to explain how that former spouse's benefit was computed.

25. To disclose information necessary to locate individuals who are owed money or property by a Federal, State or local government agency, or by a financial institution or similar institution, to the government agency owing or otherwise responsible for the money or property (or its agent).

26. To disclose information necessary in connection with the review of a disputed claim for health benefits to a health plan provider participating in the Federal Employees Health Benefits Program or the health benefits program for employees of the District, and to a program enrollee or covered family member or an enrollee or covered family member's authorized representative.

27. To disclose to an agency of a State or local government, or a private individual or association engaged in volunteer work, identifying and address information and other pertinent facts, for the purpose of developing an application by such an entity or person to serve as a representative payee for a person who is mentally incompetent or under other legal disability and who is or may be eligible for Federal benefit payments.

28. To disclose information to another Federal agency for the purpose of effecting administrative or salary offset against a person employed by that agency or receiving or eligible to receive benefit payments from the agency when the Department as a creditor has a claim against that person relating to Federal benefit payments.

29. To disclose information concerning delinquent debts relating to Federal benefit payments to other Federal agencies for the purpose of barring delinquent debtors from obtaining Federal loans or loan insurance guarantees pursuant to 31 U.S.C. 3720B.

30. To disclose information concerning delinquent debts relating to Federal benefit payments to State and local governments, for the purpose of collecting such debts.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic tapes, disks, microfiche, and in paper folders.

RETRIEVABILITY:

These records are retrieved by the name and/or Social Security Number and/or an automatically assigned, system generated number, of the individual to whom they pertain.

SAFEGUARDS:

Records are kept in lockable metal file cabinets or in a secured facility with access limited to those persons whose official duties require access. Data in electronic format may also be password protected. Personnel screening and training are employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

All records on a claim for retirement, including salary and service history, survivor annuity elections and tax and other withholdings are maintained permanently. Records not relevant to the calculation, administration, and payment of Federal benefit payments are disposed of in accordance with Department guidelines. Disposal of paper records and microfiche is by shredding or burning; magnetic tapes and discs are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of DC Pensions, U.S. Department of the Treasury, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its contents, should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.

b. Date of birth.

c. Social Security Number.

d. Name and address of office in which currently and/or formerly employed in the District.

e. Annuity, service credit, or voluntary contributions account number, if assigned.

f. Automatically assigned, system generated number, if known.

Individuals requesting amendment of their records must also follow the Department's Privacy Act regulations regarding verification of identity and amendment of records (31 CFR part 1 subpart C, appendix A).

RECORD ACCESS PROCEDURE:

See "Notification procedure," above.

CONTESTING RECORD PROCEDURE:

See "Notification procedure," above.

RECORD SOURCE CATEGORIES:

The information in this system is obtained from:

a. The individual to whom the information pertains.

b. District pay, leave, and allowance records.

c. Health benefits and life insurance plan systems records maintained by the Office of Personnel Management and the District.

d. Federal civilian retirement systems.

e. Military retired pay system records.

f. Social Security Old Age, Survivor, and Disability Insurance and Medicare Programs.

g. Health insurance carriers and plans participating in the Federal Employee Health Benefits Program and the health benefits program for employees of the District.

h. Official personnel folders.

i. The individual's co-workers and supervisors.

j. Physicians who have examined or treated the individual.

k. Former spouses of the individual to whom the information pertains.

l. State courts or support enforcement agencies.

m. Credit bureaus.

n. The District Police and Firefighters' Retirement and Relief Board.

o. The District Board of Education.

p. The District Public Charter School Board.

q. District public charter schools.

r. The Executive Office of the District of Columbia Courts.

s. The General Services Administration National Payroll Center.

t. The District Retirement Board.

u. The District Office of Personnel.

v. The District Office of the Chief Financial Officer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–25693 Filed 10–8–02; 8:45 am]

BILLING CODE 4810–34–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—External Audit

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before December 9, 2002.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Christine Smith, (202) 906–5740, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: External Audit.

OMB Number: 1550–0102.

Form Number: N/A.

Regulation requirement: N/A.

Description: The Federal Bank Regulatory Agencies issued the "Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations." The Policy Statement recommends that institutions with less than $500 million in assets voluntarily have an external auditing program. The Policy Statement encourages the external auditing program to include an annual audit of their financial statements by an independent public accountant.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 1,000.

Estimated Frequency of Response: 3.

Estimated Burden Hours per Response: .25 hours.

Estimated Total Burden: 750 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: October 2, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 02–25647 Filed 10–8–02; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Release of Non-Public Information

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before December 9, 2002.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Thomas J. Segal, (202) 906–7230, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Release of Non-Public Information.

OMB Number: 1550–0081.

Form Number: N/A.

Regulation requirement: 12 CFR 510.5.

Description: The information collection provides an orderly mechanism for expeditious processing of requests from the public (including litigants in lawsuits where OTS is not a party) for non-public or confidential OTS information (documents and testimony), while preserving OTS's need to maintain the confidentiality of such information.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 36.

Estimated Frequency of Response: On occasion.

Estimated Burden Hours per Response: 5 hours.

Estimated Total Burden: 180 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: October 2, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 02–25648 Filed 10–8–02; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Voluntary Dissolution

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before November 8, 2002.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, or e-mail to *Joseph_F._Lackey_Jr@omb.eop.gov*; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Voluntary Dissolution.

OMB Number: 1550–0066.

Form Number: OTS Form 1499, also known as Form DV.

Regulation requirement: 12 CFR 546.4.

Description: 12 CFR 546.4 provides for federal associations to voluntarily dissolve through the submission of a statement of reasons and plan of dissolution. Approval is required by the board of directors, OTS, and the association's members. Plans for dissolution may be denied if OTS believes the plan is not in the best interests of concerned parties.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 4.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 80 hours plus 690 hours for third party requirements.

Estimated Total Burden: 3,080 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management

and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 3, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 02–25696 Filed 10–8–02; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 67, No. 196

Wednesday, October 9, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1942

Associations—Community Facilities Loans

Correction

In rule document 02–24621 beginning on page 60853 in the issue of Friday, Sepetmber 27, 2002, make the following correction:

§1942.5 [Corrected]

On page 60854, in the first column, in §1942.5, after paragraph (a)(2), in the next paragraph, in the first line, "(1)" should read "(3)".

[FR Doc. C2–24621 Filed 10–8–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy

Correction

In notice document 02–25180 appearing on page 62038 in the issue of Thursday, October 3, 2002, make the following correction:

On page 62038, in the second column, under the heading "*Date*", "November 18, 2002" should read "November 8, 2002".

[FR Doc. C2–25180 Filed 10–8–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350 and 390

Motor Carrier Safety Regulations; Technical Amendments

Correction

In rule document 02–24728 beginning on page 61818 in the issue of Wednesday, October 2, 2002, make the following corrections:

§ 350.213 [Corrected]

1. On page 61820, in the third column, in § 350.213, in the second line, "§ 350.201(1)" should read, "§ 350.201(q)".

§ 390.27 [Corrected]

2. On page 61824, in the first column, in § 390.27, in "**Note 1**", in the third line, "(State" should read, "(State)".

[FR Doc. C2–24728 Filed 10–8–02; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Wednesday,
October 9, 2002

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 219, et al.
Conforming the Federal Railroad Administration's Accident/Incident Reporting Requirements to the Occupational Safety and Health Administration's Revised Reporting Requirements; Other Amendments; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 219, 225, and 240

[Docket No. FRA–2002–13221, Notice No. 1]

RIN 2130–AB51

Conforming the Federal Railroad Administration's Accident/Incident Reporting Requirements to the Occupational Safety and Health Administration's Revised Reporting Requirements; Other Amendments

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM) and request for comments.

SUMMARY: FRA proposes to conform, to the extent practicable, its regulations on accident/incident reporting to the revised reporting regulations of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor. This action will permit the comparability of data on occupational fatalities, injuries, and illnesses in the railroad industry with such data for other industries, will allow the integration of these railroad industry data into national statistical databases, and will enhance the quality of information available for railroad casualty analysis. In addition, FRA proposes to make certain other amendments to its accident reporting regulations unrelated to conforming to OSHA's revised reporting regulations. Finally, FRA proposes minor changes to its alcohol and drug regulations and locomotive engineer qualifications regulations in those areas that incorporate concepts from its accident reporting regulations.

DATES: (1) Written Comments: Written comments on the proposed rule must be received by November 8, 2002. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) Public Hearing: If any person desires an opportunity for oral comment, he or she should notify FRA in writing and specify the basis for the request. FRA will schedule a public hearing in connection with this proceeding if the agency receives a written request for hearing by November 8, 2002.

ADDRESSES: Anyone wishing to file a comment or request a public hearing should refer to the FRA docket and notice numbers (Docket No. FRA–2002–13221, Notice No. 1) in such comment or request. You may submit your comments and related material, or request for a public hearing, by only one of the following methods:

By mail to the Docket Management System, Department of Transportation, Room PL–401, 400 7th Street, SW., Washington, DC 20590–0001; or

Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*. For instructions on how to submit comments or a request for a public hearing electronically, visit the Docket Management System Web site and click on the "help" menu.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at Room PL–401 on the Plaza Level of the Nassif Building at the same address during regular business hours. You may also obtain access to this docket on the Internet at *http://dms.dot.gov*.

For more detailed information on OSHA's revised reporting regulations, *see http://safetydata.fra.dot.gov/OSHA-materials*.

FOR FURTHER INFORMATION CONTACT: For technical issues, Robert L. Finkelstein, Staff Director, Office of Safety Analysis, RRS–22, Mail Stop 17, Office of Safety, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202–493–6280). For legal issues, Anna L. Nassif, Trial Attorney, or David H. Kasminoff, Trial Attorney, Office of Chief Counsel, RCC–12, Mail Stop 12, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202–493–6166 or 202–493–6043, respectively).

SUPPLEMENTARY INFORMATION: Note that, for brevity, references to a section in part 225 will omit "49 CFR"; *e.g.* § 225.5.

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I. Overview of OSHA's Revised Reporting Regulations and FRA's Proposal

On January 19, 2001, OSHA published revised regulations entitled, "Occupational Injury and Illness Recording and Reporting Requirements; Final Rule," including a lengthy preamble that explains OSHA's rationale for these amendments. *See* 66 FR 5916, to be codified at 29 CFR parts 1904 and 1952; *see also* 66 FR 52031 (October 12, 2001) and 66 FR 66943 (December 27, 2001) (collectively, OSHA's Final Rule). A side-by-side comparison of OSHA's previous reporting and recordkeeping provisions with OSHA's new requirements appears at Appendix A of this NPRM. OSHA's Final Rule became effective, with the exception of three provisions, on January 1, 2002. *See* 66 FR 52031; *see also* 67 FR 44037 (July 1, 2002) and 67 FR 44124 (July 1, 2002).

FRA's railroad accident/incident reporting regulations, which are codified at 49 CFR part 225 (part 225), include, among other provisions, sections that pertain to railroad occupational fatalities, injuries, and illnesses; these sections are consistent with prior OSHA regulations, with minor exceptions. These sections of FRA's accident/incident regulations that concern railroad occupational casualties should be maintained, to the extent practicable, in general conformity with OSHA's recordkeeping and reporting regulations to permit comparability of data on occupational casualties between various industries, to allow integration of railroad industry data into national statistical databases, and to improve the quality of data available for analysis of casualties in railroad accidents/incidents. Accordingly, FRA proposes conforming amendments to its existing accident/incident reporting regulations and Guide. Further, FRA proposes minor amendments to its alcohol and drug regulations (49 CFR part 219) (part 219) and locomotive engineer qualifications regulations (49 CFR part 240) (part 240) in those areas that incorporate terms from part 225.

Note: Throughout this preamble to the proposed rule, excerpts from OSHA regulations are provided for the convenience of the reader. The official version of the OSHA regulations appears in 29 CFR part 104.

In addition, FRA proposes to draft a memorandum of understanding (MOU) between FRA and OSHA to address specific areas that are unique to the railroad industry, and where it may not be practical for FRA's regulations to be maintained in conformity with OSHA's Final Rule. Such divergence from OSHA's Final Rule is permitted under a provision of the rule:

> If you create records to comply with another government agency's injury and illness recordkeeping requirements, *OSHA will consider those records as meeting OSHA's Part 1904* recordkeeping requirements *if OSHA accepts the other agency's records under a memorandum of understanding* with that agency, *or if the other agency's records contain the same information* as this Part 1904 requires you to record.

Emphasis added. *See* 29 CFR 1904.3. Specific provisions of part 225 that do not or may not conform to OSHA's Final Rule are discussed in detail in the preamble.

Finally, FRA proposes other miscellaneous amendments to part 225 and the Guide, including revisions not solely related to railroad occupational casualties, such as the telephonic reporting of a train accident that fouls a main line track used for scheduled passenger service.

II. Proceedings to Date and Summary of Issues Addressed by the Working Group

FRA has developed this proposal through its Railroad Safety Advisory Committee (RSAC). RSAC was formed by FRA in March of 1996 to provide a forum for consensual rulemaking and program development. The Committee had representation from all of the agency's major interest groups, including railroad carriers, labor organizations, suppliers, manufacturers, and other interested parties. FRA typically proposes to assign a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. If a working group is unable to reach consensus on recommendations for action, FRA will move ahead to resolve the issue through traditional rulemaking proceedings.

On April 23, 2001, FRA presented task statement 2001–1, regarding accident/incident reporting conformity, to the full RSAC. When FRA presented the subject of revising its accident reporting regulations and Guide to RSAC, the agency stated that the purpose of the task was to bring FRA's regulations and Guide into conformity with OSHA's Final Rule, and to make certain other technical amendments. The task was accepted, and a working group was established to complete the task.

Members of the Working Group, in addition to FRA, include representatives of the following 26 entities: the American Public Transportation Association (APTA); the National Railroad Passenger Corporation (Amtrak); the Association of American Railroads (AAR); The American Short Line and Regional Railroad Association (ASLRRA); the Brotherhood of Locomotive Engineers (BLE); the Brotherhood of Railroad Signalmen (BRS); Transportation Communications International Union/Brotherhood Railway Carmen (TCIU/BRC); Canadian National Railway Company (CN) and Illinois Central Railroad Company (IC); the Sheet Metal Workers International Association; the Brotherhood of Maintenance of Way Employees (BMWE); The Burlington Northern and Santa Fe Railway Company (BNSF); Canadian Pacific Railway Company (CP); Consolidated Rail Corporation—Shared Assets (CR); CSX Transportation, Inc. (CSX); Norfolk Southern Railway Company (NS); Union Pacific Railroad Company (UP); The Long Island Rail Road (LIRR); Maryland Transit Administration (MARC); Southern California Regional Rail Authority (Metrolink); Virginia Railway Express (VRE); Trinity Rail (TR); North Carolina Department of Transportation (NCDOT); Northeast Illinois Regional Commuter Rail Corp. (Metra); the United Transportation Union (UTU); and Wisconsin Central Ltd. (WC).

The Working Group held a total of eight meetings related to this task statement. The first Working Group meeting occurred on May 21–23, 2001, in Washington, DC. A second meeting was held on July 1–3, 2001, in Washington, DC. A third meeting was held on August 7–8, 2001, in Denver, CO. A fourth meeting was held briefly on September 11, 2001, in Chicago, IL, but was cancelled due to the extraordinary events that occurred on that day. A fifth meeting was held on November 14–15, 2001, in St. Louis, MO. A sixth meeting was held on January 22–24, 2002, in Baltimore, MD. A seventh meeting was held on March 12–13, 2002, in New Orleans, LA. An eighth meeting was held on April 24–25, 2002, in Washington, DC.

As a result of these meetings, the Working Group developed consensus recommendations to propose to change the FRA regulations and Guide with respect to all issues presented except for one. Consensus could not be reached on whether railroads should be required to report deaths and injuries of the employees of railroad contractors who are killed or injured while off railroad property. Currently, FRA interprets part 225 as not requiring the reporting of such cases. Since the end of the last Working Group session, FRA has developed a compromise position and proposes that railroads not be required to report deaths or injuries to persons who are not railroad employees that occur while off railroad property unless they result from a train accident, a train incident, a highway-rail grade crossing accident/incident, or a release of a hazardous material or other dangerous commodity related to the railroad's rail transportation business. To accomplish this result, FRA proposes a three-tier definition of the term "event or exposure arising from the operation of a railroad." *See* proposed § 225.5.

This NPRM is intended to reflect a Working Group consensus on all other issues, which are summarized in the following section of the preamble. With regard to part 225, the Working Group recommended amending § 225.5, which contains definitions; § 225.9, which pertains to telephonic reporting of certain accidents/incidents; and § 225.19(d), which pertains to reporting deaths, injuries, and occupational illnesses. To make certain other miscellaneous conforming changes, the Working Group recommended amending § 225.21, which pertains to forms; § 225.23(a), which pertains to joint operations; § 225.33, which pertains to internal control plans; and § 225.35, which pertains to access to records and reports. To address occupational illnesses and injuries that are privacy concern cases, claimed occupational illnesses, and other issues, the Working Group also recommended amending § 225.25, pertaining to recordkeeping. Finally, the Working Group recommended adding a new § 225.39, pertaining to FRA's policy on how FRA will maintain and make available to OSHA certain data FRA receives pertaining to cases that meet the criteria as recordable injuries or illnesses under OSHA's regulations and that are reportable to FRA, but that would not count towards the data in totals compiled for FRA's periodic reports on injuries and illnesses.

With regard to the Guide, the Working Group proposed to revise Chapter 1, pertaining to an overview of accident/incident reporting and recordkeeping requirements; Chapter 2, containing definitions; Chapter 4, pertaining to Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record"; Chapter 6, pertaining to Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)"; and Chapter 7, pertaining to Form FRA F 6180.54, "Rail Equipment Accident/Incident Report"; and to create a new Chapter 12, pertaining to reporting by commuter railroads, and a new Chapter 13, pertaining to new Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to Be Work-Related." The Working Group also proposed to change various codes used in making accident/incident reports to FRA. These codes are listed in appendices of the Guide. The Working Group supported revising Appendix C, "Train Accident Cause Codes"; Appendix E, "Injury and Illness Codes," including revising codes related to the nature of the injury or illness, and the location of the injury; and Appendix F, "Circumstance Codes." The latter included revising codes related to the physical act the person was doing when hurt; where the person was located when injured; what, if any, type of on-track equipment was involved when the person was injured or became ill; what event was involved that caused the person to be injured or become ill; what tools, machinery, appliances, structures, or surfaces were involved when the person was injured or became ill; and the probable reason for the injury or illness. Further, the Working Group advocated revising Appendix H, pertaining to accident/incident reporting forms, particularly Form FRA F 6180.78, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor [and] Employee Statement Supplementing Railroad Accident Report," and Form FRA F 6180.81, "Employee Human Factor Attachment." Finally, the Working Group recommended making additional conforming changes to the Guide.

With regard to part 219, FRA decided that two terms used in that part, "reportable injury" and "accident or incident reportable under Part 225 of this chapter," should be given a slightly different meaning. In particular, the terms would be defined for purposes of part 219 as excluding accidents or incidents that are classified as "covered data" under proposed § 225.5 (*i.e.*, accidents or incidents that are reportable solely because a physician or other licensed health care professional recommended in writing that a railroad employee take one or more days away from work, that the employee's work activity be restricted for one or more days, or that the employee take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the medication was taken). In part 240, the term "accidents or incidents reportable under part 225" is used in § 240.117(e)(2). Instead of creating a separate definition of the term for purposes of part 240, an explicit exception for covered data would be added to § 240.117(e)(2) itself.

Each of these issues is described in greater detail in the next sections of the preamble. The full RSAC has accepted the recommendations of the Working Group as to the changes to be proposed for part 225 and the Guide on which consensus was reached. With regard to the one issue on which consensus was not reached, and with regard to the minor proposed revisions to parts 219 and 240, not presented to the Working Group, the full RSAC has accepted FRA staff recommendations. In turn, FRA's Administrator has adopted these recommendations, which are embodied in this NPRM.

III. Issues Addressed by the Working Group

A. Applicability of Part 225-§ 225.3

OSHA's Final Rule states, "(1) If your company had ten (10) or fewer employees at all times during the last calendar year, you do not need to keep OSHA injury and illness records unless OSHA or the BLS informs you in writing that you must keep records under § 1904.41 or § 1904.42." 29 CFR 1904.1(a). FRA's accident reporting regulations do not have such an exemption from the central reporting requirements for railroads with ten or fewer employees at all times during the last calendar year. Rather, the extent and exercise of FRA's delegated statutory safety jurisdiction are addressed fully in 49 CFR part 209, Appendix A, and the applicability of part 225 in particular is addressed in § 225.3. Under § 225.3(a), the central provisions of part 225 apply to:

all railroads except—

(1) A railroad that operates freight trains only on track inside an installation which is not part of the general railroad system of transportation or that owns no track except for track that is inside an installation that is not part of the general railroad system of transportation and used for freight operations.

(2) Rail mass transit operations in an urban area that are not connected with the general railroad system of transportation.

(3) A railroad that exclusively hauls passengers inside an installation that is insular or that owns no track except for track used exclusively for the hauling of passengers inside an installation that is insular. An operation is not considered insular if one or more of the following exists on its line:

(i) A public highway-rail grade crossing that is in use;

(ii) An at-grade rail crossing that is in use;

(iii) A bridge over a public road or waters used for commercial navigation; or

(iv) A common corridor with a railroad, *i.e.*, its operations are within 30 feet of those of any railroad.

Section 20901 of title 49, U.S. Code (superseding 45 U.S.C. 38 and re-codifying provisions formerly contained in the Accident Reports Act, 36 Stat. 350 (1910), as amended), requires each railroad to file a monthly report of railroad accidents. *See* Pub. L. 103–272. Accordingly, FRA intends to apply its accident reporting regulations to all railroads under FRA's jurisdiction, unless the entity meets one of the exceptions noted in § 225.3. FRA intends to address the difference as to which entities are covered by the reporting requirements, in an MOU between FRA and OSHA.

B. Proposed Revisions and Additions to Definitions in the Regulatory Text—§ 225.5

FRA proposes to amend and add certain definitions to conform to OSHA's Final Rule or to achieve other objectives. Specifically, FRA proposes to revise the definitions of "accident/incident," "accountable injury or illness," "day away from work," "day of restricted work activity," "medical treatment," and "occupational illness." As previously mentioned, FRA proposes to remove the term "arising from the operation of a railroad" and its definition and add the term "event or exposure arising from the operation of a railroad" and its definition. FRA proposes to create definitions of "covered data," "general reportability criteria," "medical removal," "musculoskeletal disorder," "needlestick or sharps injury," "new case," "occupational hearing loss," "occupational tuberculosis," "privacy concern case," "significant change in the number of reportable days away from work," "significant illness," and "significant injury." Some of these changes are discussed in context later in the section-by-section analysis or elsewhere in the preamble.

C. Proposed Revisions to Provision on Telephonic Reporting—§ 225.9

The Working Group agreed to propose certain amendments to § 225.9, pertaining to telephonic reporting, and the corresponding instructions related to telephonic reporting in the Guide. Currently, FRA requires immediate telephonic reporting of accidents/incidents to FRA through the National Response Center (NRC) in only a limited set of circumstances, *i.e.*, the occurrence of an accident/incident arising from the operation of a railroad that results in the death of a rail passenger or employee or the death or injury of five or more persons. *See* § 225.9(a). Contrarily, under OSHA's Final Rule,

Within eight (8) hours after the death of any employee from a work-related incident or the *in-patient hospitalization of three or more employees* as a result of a work-related incident, you must orally report the fatality/multiple hospitalization by telephone or in person to the Area Office of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, that is nearest to the site of the incident.

Emphasis added. 29 CFR 1904.39(a). Further, OSHA's Final Rule states,

Do I have to report a fatality or hospitalization that occurs long after the incident? No, you must only report each fatality or multiple hospitalization incident that occurs *within (30) days of an incident.*

Emphasis added. 29 CFR 1904.39(b)(6). Finally, OSHA's Final Rule states,

Do I have to report a fatality or multiple hospitalization incident that occurs on a commercial or public transportation system? No, you do not have to call OSHA to report a fatality or multiple hospitalization incident if it involves a commercial airplane, train, subway or bus accident. * * *

Emphasis added. 29 CFR 1904.39(b)(4). This provision would seem to exempt railroads from telephonically reporting to OSHA all but a very few railroad accidents/incidents. The extent of the exemption from OSHA's telephonic reporting requirement depends on how broadly "commercial or public transportation system" is interpreted.

As recommended by the Working Group, FRA proposes to broaden the set of circumstances under which a railroad would be required to report an accident/incident telephonically to the NRC, and to make certain other refinements to the rule. Specifically, FRA first proposes to add requirements for telephonic reporting when there is a death to any employee of a contractor to a railroad performing work for the railroad on property owned, leased, or maintained by the contracting railroad. Railroads are increasingly using contractors to perform work previously performed by railroad employees. Often, those workers are exposed to hazards unique to the railroad environment or that otherwise involve conditions under FRA's responsibility. Receiving these reports will assist FRA in discharging its responsibility for monitoring the safety of railroad operations.

FRA also proposes to require the telephonic reporting of certain train accidents that are relevant to the safety of railroad passenger service, including otherwise reportable collisions and derailments on lines used for scheduled passenger service and train accidents that foul such lines. These events are potentially quite significant, since they may indicate risks which affect passenger service (*e.g.*, poor track maintenance or operating practices). Further, these events often cause disruption in intercity and commuter passenger service. Major delays in commuter trains, for instance, have direct economic effects on individuals and businesses.

FRA also proposes to incorporate provisions similar to the National Transportation Safety Board's (NTSB) requirements for telephonic reporting (49 CFR part 840) into its own regulations and Guide. The key provisions of NTSB's requirements, §§ 840.3 and 840.4, read as follows:

Note: Excerpts from NTSB requirements are provided for the convenience of the reader. The official version of the requirements appears at 49 CFR 840.3 and 840.4.

§ 840.3 Notification of railroad accidents.

The operator of a railroad shall notify the Board by telephoning the National Response Center at telephone 800–424–0201 at the earliest practicable time after the occurrence of any one of the following railroad accidents:

(a) No later than 2 hours after an accident which results in:

(1) A passenger or employee fatality or serious injury to two or more crewmembers or passengers requiring admission to a hospital;

(2) The evacuation of a passenger train;

(3) Damage to a tank car or container resulting in release of hazardous materials or involving evacuation of the general public; or

(4) A fatality at a grade crossing.

(b) No later than 4 hours after an accident which does not involve any of the circumstances enumerated in paragraph (a) of this section but which results in:

(1) Damage (based on a preliminary gross estimate) of $150,000 or more for repairs, or the current replacement cost, to railroad and nonrailroad property; or

(2) Damage of $25,000 or more to a passenger train and railroad and non-railroad property.

(c) Accidents involving joint operations must be reported by the railroad that controls the track and directs the movement of trains where the accident has occurred.

(d) Where an accident for which notification is required by paragraph (a) or (b) of this section occurs in a remote area, the time limits set forth in that paragraph shall commence from the time the first railroad employee who was not at the accident site at the time of its occurrence has received notice thereof.

§ 840.4 Information to be given in notification.

The notice required by § 840.3 shall include the following information:

(a) Name and title of person reporting.

(b) Name of railroad.

(c) Location of accident (relate to nearest city).

(d) Time and date of accident.

(e) Description of accident.

(f) Casualties:

(1) Fatalities.

(2) Injuries.

(g) Property damage (estimate).

(h) Name and telephone number of person from whom additional information may be obtained.

The reason FRA proposes to incorporate requirements similar to NTSB's standards for telephonic reporting into its own regulations and Guide is that, unlike NTSB, FRA can enforce these requirements through the use of civil penalties. FRA has long relied upon reports required to be made to NTSB as a means of alerting its own personnel who are required to respond to these events. Although most railroads are quite conscientious in making telephonic reports of significant events, including some not required to be reported, from time to time FRA does experience delays in reporting that adversely affect response times. In this regard, it should be noted that FRA conducts more investigations of railroad accidents and fatalities than any other public body, and even in the case of the relatively small number of accidents that NTSB selects for major investigations, FRA provides a substantial portion of the technical team participating from the public sector. Accordingly, it is appropriate that FRA take responsibility for ensuring that timely notification is provided. As can be seen by comparing the quoted NTSB regulations to proposed § 225.9, FRA has not adopted NTSB's standards wholesale, but extracted necessary additions to FRA's existing requirements (e.g., train accident requiring evacuation of passengers), used terminology from FRA regulations to describe the triggering events (*e.g.*, "train accident" as defined in § 225.5), and slightly modified the contents of the required report (*e.g.*, "available estimates" instead of "estimate").

Concern was expressed within the Working Group about joint operations as to which railroad should be responsible for making the telephonic report. The Working Group agreed that for purposes of telephonic reporting, the dispatching railroad, which controls the track involved, would be responsible for making the telephonic report.

There was much discussion in the Working Group regarding whether railroads should be required to telephonically report certain incidents to the NRC "immediately." One suggestion was to set a fixed period, such as three or four hours, to report an accident/incident, or in any event, be given a reasonable amount of time to report. Prompt reporting permits FRA and (where applicable) NTSB to dispatch personnel quickly, in most cases making it possible for them to arrive on scene before re-railing operations and track reconstruction begin and key personnel become unavailable for interview. Decades of experience in accident investigation have taught FRA that the best information is often available only very early in the investigation, before physical evidence is disturbed and memories cloud.

In addition, there was a suggestion that railroads be permitted to immediately report certain incidents by several methods other than by a telephone call, including use of a facsimile, or notification by e-mail. Railroad representatives indicated that telephonic reporting is sometimes burdensome, particularly when a busy manager must wait to speak to an emergency responder for extended periods of time. FRA rejected this suggestion, and is proposing to require that immediate notification be done by telephone, and only by telephone, because FRA is concerned that if notification is given by other methods, such as facsimile or e-mail, it is possible that no one will be available to immediately receive the facsimile or e-mail message. Conversely, with a telephone call to an emergency response center, a railroad should be able to speak immediately to a person, or at the very least, should hear a recording that would immediately direct the caller to a person.

Concern was expressed within the Working Group that continued use of the term "immediate" in conjunction with a broadening of the events subject to the FRA rule might produce harsh results, due to the need to address emergency response requirements for the safety and health of those affected and to determine the facts that are predicates for reporting. The proposed rule addresses this concern by stating that,

> [t]o the extent the necessity to report an accident/incident depends upon a determination of fact or an estimate of property damage, a report would be considered immediate if made as soon as possible following the time that the determination or estimate is made, or could reasonably have been made, whichever comes first, taking into consideration the health and safety of those affected by the accident/incident, including actions to protect the environment.

Proposed § 225.9(d). Since FRA and the Working Group believe that immediate telephonic reporting raises issues related to emergency response unique to the railroad industry, the Working Group agreed not to conform in some respects to OSHA's oral or in-person reporting requirements. Accordingly, to the extent that OSHA's requirements regarding oral reports by telephone or in person apply to the railroad industry and that part 225 diverges from those requirements, FRA intends to include in the MOU with OSHA a provision specifying how and why FRA intends to depart from OSHA's requirements in this area.

D. Proposed Revisions to Criteria for Reporting Occupational Fatalities, Injuries, and Illnesses—§ 225.19(d)

1. FRA's Current and Proposed Reporting Criteria Applicable to Railroad Employees

Currently, § 225.19(d) reads as follows:

> Group III-Death, injury, or occupational illness. Each event arising from the operation of a railroad shall be reported on Form FRA F 6180.55a if it results in:
>
> (1) Death to any person;
>
> (2) Injury to any person that requires medical treatment;
>
> (3) Injury to a railroad employee that results in:
>
> (i) A day away from work;
>
> (ii) Restricted work activity or job transfer; or
>
> (iii) Loss of consciousness; or
>
> (4) Occupational illness of a railroad employee.
>
> * * * * *

The comparable provisions of OSHA's Final Rule are at §§ 1904.4(a) and 1904.7(b), which read as follows:

§ 1904.4 Recording criteria.

(a) Basic requirement. Each employer required by this Part to keep records of fatalities, injuries, and illnesses must record each fatality, injury and illness that:

(1) Is work-related; and

(2) Is a new case; and

(3) Meets one or more of the general recording criteria of § 1904.7 or the application to specific cases of § 1904.8 through § 1904.12.

* * * * *

§ 1904.7 General recording criteria.

* * * * *

(b) Implementation. (1) How do I decide if a case meets one or more of the general recording criteria? A work-related injury or illness must be recorded if it results in one or more of the following:

(i) Death. See § 1904.7(b)(2).

(ii) Days away from work. See § 1904.7(b)(3).

(iii) Restricted work or transfer to another job. See § 1904.7(b)(4).

(iv) Medical treatment beyond first aid. See § 1904.7(b)(5).

(v) Loss of consciousness. See § 1904.7(b)(6).

(vi) A significant injury or illness diagnosed by a physician or other licensed health care professional. See § 1904.7(b)(7).

As indicated by the preceding rule text, OSHA's Final Rule has specific recording criteria for cases described in 29 CFR 1904.8 through 1904.12. These cases involve work-related needlestick and sharps injuries, medical removal, occupational hearing loss, work-related tuberculosis, and independently reportable work-related musculoskeletal disorders. See Web site for OSHA regulations located in the **ADDRESSES** section.

In response to several comments received after publication of the Final Rule, which was scheduled to take effect on January 1, 2002, OSHA delayed the effective date of three of the rule's provisions until January 1, 2003, so as to allow itself further time to evaluate § 1904.10, regarding occupational hearing loss, and §§ 1904.12 and 1904.29(b)(7)(vi),[1] regarding musculoskeletal disorders. *See* 66 FR 52031. On July 1, 2002, OSHA published a final rule establishing a new standard for the recording of occupational hearing loss cases for calendar year 2003. *See* 67 FR 44037. However, because OSHA was still uncertain about how to craft an appropriate definition for musculoskeletal disorders and whether or not it was necessary to include a separate column on the OSHA log for the recording of these cases and occupational hearing loss cases, OSHA simultaneously published a proposed delay of the effective dates of these provisions, from January 1, 2003, to January 1, 2004, and requested comment on the provisions. *See* 67 FR 44124.

Prior to OSHA's Final Rule, the recordkeeping rule had no specific threshold for recording hearing loss cases. See 67 FR 44038. The Final Rule established a new 10–dB standard at 29 CFR 1904.10:

> If an employee's hearing test (audiogram) reveals that a Standard Threshold Shift (STS) has occurred, you must record the case on the OSHA 300 Log by checking the "hearing loss" column. . . . A standard Threshold Shift, or STS, is defined in the occupational noise exposure standard at 29 CFR 1910.95(c)(10)(i) as a change in hearing threshold, relative to the most recent audiogram for that employee, of an average of 10 decibels (dB) or more at 2000, 3000, and 4000 hertz in one or both ears.

See 66 FR 6129 (January 19, 2001). On October 12, 2001, OSHA delayed the provision and instead adopted the standard set forth in OSHA's enforcement policy, which had been in effect since 1991, and which is FRA's current approach,[2] in order to seek comments on what should be the appropriate hearing loss threshold. *See* 66 FR 52031. The enforcement policy stated that OSHA would cite employers for failing to record work-related shifts in hearing of an average of 25 dB or more at 2000, 3000, and 4000 Hz in either ear. Thus, the hearing loss of an employee would be tested by measuring the difference, or shift, between the employee's current audiogram and the employee's original baseline audiogram. *See* 67 FR 44037, 44038. If the shift was 25 dB or more, OSHA required that it be recorded. The employee's original baseline audiogram is one of two starting points, or baselines, from which you can measure a Standard Threshold Shift (STS), the other being audiometric zero.

Audiometric zero represents the statistical average hearing threshold level of young adults with no history of aural pathology, thus it is not specific to the employee. This is the starting point from which the American Medical Association (AMA) measures a 25–dB permanent hearing impairment. The employee's original baseline audiogram, on the other hand, is taken at the time the worker was first placed in a hearing conservation program.[3] This starting point, which has been enforced by OSHA since 1991 and is the starting point currently used by FRA, fails to take into account any hearing loss that the employee has suffered in previous jobs and can present a problem if the employee has had several successive employers at high-noise jobs.

Thus, if an individual employee has experienced some hearing loss before being hired, a 25–dB shift from the employee's original baseline will be a larger hearing loss than the 25–dB shift from audiometric zero that the AMA recognizes as a hearing impairment and disabling condition. For example, if an employee experienced a 20–dB shift from audiometric zero prior to being hired in a job where he later suffered a 15–dB shift hearing loss from his original baseline audiogram, the AMA would count this as a 35–dB shift, a serious hearing impairment, but under OSHA's enforcement policy (and FRA's current approach), this would only have counted as a 15–dB shift that is not recordable under OSHA's enforcement policy or § 1904.10 for calendar year 2002. In order for it to become recordable, the employee would have had to suffer an additional 10–dB shift, which would mean that the employee would have suffered a 45–dB shift from audiometric zero—almost twice the amount that the AMA considers to be a permanent hearing impairment.

After considering several comments demonstrating that a 25–dB shift from an employee's original baseline audiogram was not protective enough and that a 10–dB shift from an employee's original baseline audiogram was overly protective (and more appropriate as an early warning mechanism that should trigger actions under the Occupational Noise Exposure Standard[4] to prevent impairment from

[1] The effective date of the second sentence of § 1904.29(b)(7)(vi), which states that musculoskeletal disorders are not considered privacy concern cases, was delayed until January 1, 2003 in OSHA's October 12, 2001, final rule. On July 1, 2002, OSHA proposed to delay the effective date of this same provision until January 1, 2004. *See* 67 FR 44124. This provision will be discussed in the context of privacy concern cases in the section-by-section analysis at "III.G.1." of the preamble.

[2] *See* current *Guide* at Appendix E, p. 4. FRA's Occupational Illness Code #1151, concerning noise induced hearing loss, provides in part: "An STS is a change in hearing threshold relative to a baseline audiogram that averages 10 dB or more at 2000, 3000, and 4000 hertz in either ear. Documentation of a 10 dB shift is not, of and by itself, reportable. There must be a determination by a physician . . . that environmental factors at work were a significant cause of the STS. However, if an employee has an overall shift of 25 dB or more above the original baseline audiogram, then an evaluation must be made to determine to what extent it resulted from exposure at work."

[3] Not all employees are placed in a hearing conservation program. OSHA only requires such a program to be in place in general industry when the noise exposure exceeds an 8-hour time-weighted average of 85 dB.

[4] Under § 1910.95, employers must take protective measures (employee notification, providing hearing protectors or refitting of hearing protectors, referring employee for audiological evaluation where appropriate, etc.) to prevent further hearing loss for employees who have experienced a 10–dB shift from the employee's original baseline audiogram. *See* 67 FR at 44040–41.

occurring), OSHA adopted a compromise position that makes a 10–dB shift from an employee's original baseline audiogram recordable in those cases where this shift also represents a 25–dB shift from audiometric zero.

As OSHA's new approach to defining and recording occupational hearing loss cases was not presented to the Working Group, FRA seeks comment on whether FRA should adopt OSHA's new approach as FRA's fixed approach, beginning on the effective date of FRA's final rule, or whether FRA should diverge from OSHA and continue to enforce OSHA's current approach (which was approved by the Working Group and the RSAC and is the same as FRA's current approach) as a fixed approach beginning on the effective date of FRA's final rule. *See* proposed *Guide* at Ch. 6, pp. 27–28, and Appendix E, p. 4. If OSHA's current approach is permitted to continue in effect as FRA's approach, this divergence would need to be addressed in the MOU and approved by OSHA so as to avoid dual reporting on this issue. If OSHA's new approach for calendar year 2003 is adopted, the proposed *Guide* would be updated to reflect the new approach.

As noted above, OSHA may be reconsidering for calendar year 2003 the definition of musculoskeletal disorder (MSD) and the requirement of having a separate column on the OSHA 300 log for the recording of MSD and occupational hearing loss cases. As the issue of OSHA's proposed delays was not before the Working Group when consensus was reached, FRA seeks comment on whether or not the definition and column requirements should be adopted if OSHA's proposed January 1, 2004 delay takes effect. If FRA goes forth with the provisions as approved by the Working Group, FRA would be adopting these provisions in advance of OSHA, a result that may not have been contemplated by the Working Group when it agreed to follow OSHA on these issues prior to the issuance of the proposed delays.

Even if OSHA chooses not to delay the effective date of these provisions, FRA seeks comment on whether or not we should diverge from OSHA by not adopting the definition or column requirements, since FRA already has its own forms and methods in place to collect this data for OSHA's purposes. Instead of requiring railroads to record cases and check boxes on the OSHA 300 log, FRA requires railroads to report these cases using assigned injury codes on the FRA Form F 6180.55a. Code 1151, for example, is the code for occupational hearing loss cases, thus no additional column would be necessary. Similarly, the different kinds of injuries that could qualify as an MSD are given separate codes. Once OSHA decides what types of injuries are appropriate to include in the category or definition of an MSD, OSHA would be able to identify the MSD cases by their respective code numbers, thereby allowing OSHA to use FRA's data for national statistical purposes. Although it is not practical for FRA's injury codes to be as extensive as OSHA's codes, it would be possible to amend the Guide so as to reflect the major codes recognized by OSHA and to add a category such as "Other MSDs, as defined by OSHA in § 1904.12."

FRA also seeks comment on whether or not a definition of an MSD is necessary, since currently there are no special criteria beyond the general recording criteria for determining which MSDs to record, and because OSHA's definition appears to be used primarily as guidance for when to check the MSD column on the 300 Log. *See* 66 FR 6129–6130. If the definition of an MSD and the column requirements were to be omitted from the Final Rule, these differences would be discussed in the MOU.

FRA also seeks comment on whether its regulations should "float," *i.e.*, change automatically anytime OSHA revises its regulations, since the main purpose of this rulemaking is to bring FRA's rule into general conformity with OSHA's regulations (which are developed after a full opportunity for notice and comment) or whether FRA's adoption of a fixed and certain approach can better serve FRA's safety objectives and the needs of the regulated community. This issue is particularly relevant for the proposed definition of medical removal. Because medical removal is such a complex issue, and one that is rarely, if at all, encountered in the railroad environment, FRA seeks comment on whether this definition should "float" with OSHA's. That is, should we word our definition so that it is tied to OSHA's standard anytime OSHA might change that standard? Since the proposed definition [5] references OSHA's standard without restating it within the rule text or preamble, this would reflect the intent of the Working Group.

Finally, OSHA added another category of reportable cases: "significant injuries or illnesses." With regard to the reportability of illnesses and injuries of railroad employees, there are at least three primary differences between OSHA's reporting criteria and FRA's current reporting criteria, at least as stated in § 225.19(d). First, FRA requires that all occupational illnesses of railroad employees be reported. *See* §§ 225.5 and 225.19(d)(4). Contrarily, under OSHA's Final Rule, only certain occupational illnesses are to be reported, namely those that result in death, medical treatment, days away from work, or restricted work or job transfer; constitute a "significant illness"; or meet the "application to specific cases of [29 CFR] §§ 1904.8 through 1904.12." Second, for the reason that FRA's interpretation of part 225 is presently very inclusive, it does not use the term "significant injuries," which is incorporated in the OSHA Final Rule. While FRA does not use the phrase "significant injuries" in the current rule text, the current Guide does require the reporting of conditions similar to OSHA's "significant injuries."

The distinction between medical treatment and first aid depends not only on the treatment provided, but also on the severity of the injury being treated. First aid * * * [i]nvolves treatment of only *minor* injuries. * * * An injury is not minor if * * * [i]t impairs bodily function (*i.e.*, normal use of senses, limbs, etc.); * * * [or] [i]t results in damage to the physical structure of a nonsuperficial nature (*e.g.* fractures); * * *.

Guide, Ch. 6, p. 6. Accordingly, under the Guide, fractures are considered not to be minor injuries, and a punctured eardrum would likewise not be considered a minor injury because it would involve impairment of "normal use of senses." *Id.* Third, FRA does not have "specific cases" reporting criteria for occupational injuries of railroad employees.

FRA proposes to conform part 225 to OSHA's Final Rule with regard to these three differences by amending its regulations at § 225.19(d) and related definitions at § 225.5. FRA would, however, distribute the specific conditions specified under OSHA's "significant" category (§ 1904.7(b)(7)) into injuries and illnesses, subcategories that OSHA could, of course, aggregate, and FRA would omit the note to OSHA's description of "significant illnesses and injuries," which does not appear to be necessary for a proper understanding of the concept and which might be read as open-ended, a result

[5] The proposed definition currently reads: "*Medical removal* means medical removal under the medical surveillance requirements of an Occupational Safety and Health Administration standard in 29 CFR part 1910, even if the case does not meet one of the general reporting criteria."

FRA does not intend. The text of the note is excerpted below:

> Note to § 1904.7: OSHA believes that most significant injuries and illnesses will result in one of the criteria listed in § 1904.7(a). * * * In addition, there are some significant progressive diseases, such as byssinosis, silicosis, and some types of cancer, for which medical treatment or work restrictions may not be recommended at the time of the diagnosis but are likely to be recommended as the disease progresses. OSHA believes that cancer, chronic irreversible diseases, fractured or cracked bones, and punctured eardrums are generally considered significant injuries and illnesses, and must be recorded at the initial diagnosis even if medical treatment or work restrictions are not recommended, or are postponed, in a particular case.

29 CFR 1904.7(b)(7). FRA believes that the note is intended to reference a statutory issue not present in the case of FRA's reporting system and can be omitted from FRA's rule as not relevant and to avoid potential ambiguity. FRA also proposes to explain these new reporting requirements in the Guide. (See later discussion of proposed Chapter 6 of the Guide.)

2. FRA's Current and Proposed Reporting Criteria Applicable to Employees of a Contractor to a Railroad

As previously noted, under § 225.19(d), "Each event arising from the operation of a railroad shall be reported * * * if it results in * * * (1) Death to any person; (2) Injury to any person that requires medical treatment. * * *" Under the "definitions" section of the accident reporting regulations, "person" includes an independent contractor to a railroad. *See* § 225.5. Reading these regulatory provisions together, deaths to employees of railroad contractors that arise from the operation of a railroad, and injuries to employees of railroad contractors that arise from the operation of a railroad and require medical treatment would appear to be reportable to FRA. (The Guide, however, narrows the requirement through its reading of "arising from the operation of a railroad.") FRA does not require reporting of occupational illnesses of contractors; under § 225.19(d)(4), only the occupational illnesses of railroad employees must be reported.

Contrarily, under OSHA's Final Rule, the reporting entity is required to report work-related injuries and illnesses, including those events or exposures meeting the special recording criteria for employees of contractors, only if they are under the day-to-day supervision of the reporting entity.

> If an employee in my establishment is a contractor's employee, must I record an injury or illness occurring to that employee? If the contractor's employee is under the day-to-day supervision of the contractor, the contractor is responsible for recording the injury or illness. If you supervise the contractor employee's work on a day-to-day basis, you must record the injury or illness.

29 CFR 1904.31(b)(3).

In the Working Group meetings, APTA noted that it is difficult to comply with FRA's current rule, read literally, with respect to an employee of a contractor to a railroad while off railroad property. Many commuter railroads often do not know whether an employee of a contractor to the railroad is injured or sickened if the event occurred on property other than property owned, leased, or maintained by the commuter railroad; it is difficult to follow up on an injury or illness suffered by such an employee. For example, ABC Railroad contracts with XYZ Contractor to repair ABC's railcars at XYZ's facilities. An employee of XYZ Contractor, while repairing ABC's rail car at XYZ's facility, receives an injury resulting in medical treatment. ABC Railroad notes that it may not know about the injury and, therefore, could not report it. Furthermore, no information is lost in the national database since the contractor must report the injury to OSHA even if ABC Railroad does not report the injury. The Working Group could not reach consensus on whether to require reporting of injuries to employees of railroad contractors while off railroad property.

A similar difficulty with reporting occurs in the context of fatalities to employees of contractors to a railroad. With respect to whether to require that railroads report fatalities of employees of contractors that arise out of the operation of the railroad but occur off railroad property, the Working Group also could not reach consensus. AAR noted that for the reasons stated above related to injuries and illnesses, it is difficult for railroads to track fatalities of persons who are not employed by the railroad. Labor noted on the other hand, that fatalities are the most serious cases on the spectrum of reportable incidents and that it would be important that those cases be reported to FRA. In addition, labor representatives noted that railroads often contract for taxi services to deadhead railroad crews to their final release point and that if a driver died in a car accident transporting a railroad crew, FRA should know about those cases. FRA noted that as a practical matter, those types of cases occurred infrequently, that FRA data showed only two possible fatal car accidents occurring off railroad property that involved employees of contractors to a railroad. As a compromise, labor representatives proposed that only fatalities that involved transporting or deadheading railroad crews be reportable, but that all other fatalities to employees of contractors to a railroad that occur off railroad property, not be reportable, even if the incident arose out of the operation of the railroad.

Since the Working Group could not reach consensus on the issue of reporting injuries, illnesses, or fatalities of contractors to a railroad that arose out of the operation of the railroad but occurred off railroad property, FRA makes the following proposal based upon its reasoned consideration of the issue. In this regard, FRA has attempted to balance its need for comprehensive safety data concerning the railroad industry against the practical limitations of expecting railroads to be aware of all injuries suffered by contractors off of railroad property. FRA recognizes that certain types of accident/incidents occurring off of railroad property involve scenarios in which the fact that the contractor was performing work for a railroad is incidental to the accident or incident, and would offer no meaningful safety data to FRA, *e.g.*, ordinary highway accidents involving an on-duty contractor to a railroad.

The existing term "arising from the operation of a railroad" and its definition would be deleted from § 225.5. Currently, the definition reads as follows: "*Arising from the operation of a railroad* includes all activities of a railroad that are related to the performance of its rail transportation business." The new term "event or exposure arising from the operation of a railroad" would be added to § 225.5's list of defined terms and given a three-tier definition. First, "event or exposure arising from the operation of a railroad" would be defined broadly with respect to any person on property owned, leased, or maintained by the railroad, to include any activity of the railroad that relates to its rail transportation business and any exposure related to that activity. Second, the term would be defined broadly in the same way with respect to an employee of the railroad, but without regard for whether the employee is on or off railroad property. Third, the term would be defined narrowly with respect to a person who is neither on the railroad's property nor an employee of the railroad, to include only certain enumerated events or exposures, *i.e.*, a train accident, a train incident, or a highway-rail crossing accident/incident involving the railroad; or a release of hazardous material from

a railcar in the railroad's possession or a release of another dangerous commodity if the release is related to the railroad's rail transportation business.

When read together with the rest of proposed § 225.19(d), the new definition of "event or exposure arising from the operation of a railroad" would mean that a railroad would not have to report to FRA the death or injury to an employee of a contractor to the railroad who is off railroad property (or deaths or injuries to any person who is not a railroad employee) unless the death or injury results from a train accident, train incident, or highway-rail grade crossing accident involving the railroad; or from a release of a hazardous material or some other dangerous commodity in the course of the railroad's rail transportation business. In addition, FRA would require railroads to report work-related illnesses only of railroad employees and under no circumstances the illness of employees of a railroad contractor. These proposed reporting requirements diverge from the OSHA standard, which would require the reporting of the work-related death, injury, or illness of an employee of a contractor to the reporting entity if the contractor employee is under the day-to-day supervision of the reporting entity. 29 CFR 1904.31(b)(3). If FRA adopts this proposal, FRA's divergence from OSHA would be addressed in the MOU.

3. Reporting Criteria Applicable to Illnesses

At a Working Group meeting, AAR proposed that major member railroads would file, with their FRA annual report, a list of claimed but denied occupational illnesses not included on the Form FRA F 6180.56, "Annual Railroad Report of Employee Hours and Casualties by State," because the railroads found the illnesses not to be work-related. The list would be organized by State, and would include the name of the reporting contact person. *See also* the discussion of recording claimed illnesses, discussed later in the preamble under section "III.G.2.," below. FRA and other Working Group members have expressed appreciation for this undertaking. It was agreed that this is appropriate for implementation on a voluntary basis, and no comment is sought on this matter.

E. Proposed Technical Revision to § 225.21, "Forms"

The Working Group agreed to add a new subsection § 225.21(j) to create a new form (Form FRA F 6180.107), which would be labeled "Alternative Record for Illnesses Claimed to Be Work-Related." This form would call for the same information that is included on the Form FRA F 6180.98 and would have to be completed to the extent that the information is reasonably available. A further discussion of the nature of this new form is discussed under the revisions to § 225.25, later in this preamble.

F. Proposed Technical Revision to § 225.23, "Joint Operations"

The Working Group agreed to propose certain minor changes to the regulatory text; specifically, to § 225.23(a), concerning joint operations, simply to bring it into conformity with the other major changes to the regulatory text that are proposed. Note that for purposes of telephonic reporting in joint operations, the dispatching railroad would be required to make the telephonic report. *See* proposed § 225.9.

G. Proposed Revisions to § 225.25, "Recordkeeping"

1. Privacy Concern Cases

The Working Group agreed to propose changes to the regulatory text under § 225.25, concerning recordkeeping, by revising § 225.25(h) to address a class of cases described by OSHA as "privacy concern cases." OSHA requires an employer to give its employees and their representatives access to injury and illness records required by OSHA, such as the OSHA 300 Log, with some limitations that apply to privacy concern cases. 29 CFR 1904.35(b)(2), 1904.29(b). A "privacy concern case" is defined by OSHA in 29 CFR 1904.29(b)(7); one type of a privacy concern case is, *e.g.*, an injury or illness to an intimate body part. FRA would define the term similarly in proposed § 225.5. In privacy concern cases, OSHA prohibits recording the name of the injured or ill employee on the Log. The words "privacy case" must be entered in lieu of the employee's name. The employer must "keep a separate, confidential list of the case numbers and employee names for your privacy concern cases so you can update the cases and provide the information to the government if asked to do so." 29 CFR 1904.29(b)(6). In addition, if the employer has a reasonable basis to believe that the information describing the privacy concern case may be personally identifiable even though the employee's name has been left out, the employer may use discretion in describing the injury or illness. The employer must, however, enter enough information to identify the cause of the incident and the general severity of the injury or illness, but need not include details, *e.g.*, a sexual assault case may be described as an injury from assault.

By contrast, FRA requires that an employee have access to information in the FRA-required Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) regarding his or her own injury or illness, not the FRA-required records regarding injuries or illnesses of other employees. § 225.25(a), (b), (c). This renders the FRA-required log of reportables and accountables with its information on the name and Social Security number of the employee, inaccessible to other employees or anyone else. *Id.* Additionally, FRA proposes to amend the requirement that the record contain an employee's Social Security Number, opting to allow a railroad to enter an employee's identification number instead. *See* proposed § 225.25(b)(6). Therefore, FRA considers this difference a sufficient reason not to adopt OSHA's privacy requirements with regard to the reportable and accountable log. This proposed variation from OSHA will be discussed in the MOU.

Although FRA does not allow wide access to the reportable and accountable log, FRA does require, however, the posting in a conspicuous place in each of the employer's establishments, certain limited information on reportable accidents/incidents that occurred at the establishment, thereby making this information accessible to all those working at the establishment and not simply the particular employee who suffered the injury or illness. § 225.25(h). That limited information includes the incident number used to report the case, the date of the injury or illness, the regular job title of the employee involved, and a description of the injury or condition. Even though the name of the employee is not required to be listed, the identity of the person might in some cases be determined, particularly at small establishments. Currently, under § 225.25(h)(15), FRA permits the railroad not to post an injury or illness at the establishment where it occurred if the ill or injured employee requests in writing to the railroad's reporting officer that the injury or illness not be posted. The preceding revision of the rule would be consistent with OSHA's requirements with regard to its Log, but more expansive than those requirements. FRA would also give railroads discretion not to provide details of the injury or condition that constitutes a privacy case. FRA will discuss these slight variations from OSHA's privacy requirements in the MOU.

Another issue relevant to reporting privacy concern cases arose in § 1904.29(b)(7)(vi) of OSHA's January 19, 2001, Final Rule, which states that musculoskeletal disorders (MSDs) are not considered privacy concern cases. OSHA delayed the effective date of this exclusion until January 1, 2003, in its October 12, 2001, final rule. On July 1, 2002, OSHA proposed to delay the effective date of this same provision until January 1, 2004. *See* 67 FR 44124. As the issue of OSHA's proposed delay of this provision was not before the Working Group when consensus was reached, FRA seeks comment on whether or not this exclusion should be adopted if OSHA's proposed January 1, 2004, delay takes effect. If FRA goes forth with the provision as approved by the Working Group, FRA would be adopting the exclusion in advance of OSHA's adoption of it and in advance of OSHA's defining the very term that is supposed to be excluded, a result that may not have been contemplated by the Working Group when it agreed to the proposed rule text on this issue prior to OSHA's issuance of the proposed delay. *See* discussion concerning reporting criteria for MSDs at section III.D.1 of the preamble, above. Even if OSHA chooses not to delay the effective date of this provision and to give it effect on January 1, 2003, FRA seeks comment on whether or not we should diverge from OSHA by not adopting the exclusion. If FRA's final definition of privacy concern case differs from OSHA's eventual definition of the term, then the difference would be discussed in the MOU.

Finally, the question was raised in the Working Group whether FRA's proposed regulations conformed to the Health Insurance Portability and Accessibility Act of 1996 (Pub. L. 104–191 (HIPAA)) and to the Department of Health and Human Services' regulations implementing HIPAA with regard to the privacy of medical records. *See* "the Standards for Privacy of Individually Identifiable Health Information." 65 FR 82462 (Dec. 28, 2000), codified at 45 CFR parts 160 and 164. Since it appears that OSHA's regulations conform to HIPAA, and FRA proposes to conform to OSHA in all essential respects with regard to the treatment of medical information, FRA believes that its proposed regulations will not conflict with HIPAA requirements.

2. Claimed Illnesses for Which Work-Relatedness Is Doubted

a. Recording claimed illnesses. Under the current FRA rule, all accountable or reportable injuries and illnesses are required to be recorded on Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record," or an equivalent record containing the same information. The subset of those cases that qualify for reporting are then reported on the appropriate forms. § 225.25(a), (b). If the case is not reported, the railroad is required to state why not on Form FRA F 6180.98 or the equivalent record. § 225.25(b)(26).

Although this system has generally worked well, problems have arisen with respect to accounting of claimed occupational illnesses. As further explained below, railroads are subject to tort-based liability for illnesses and injuries that arise as a result of conditions in the workplace. By their nature, many occupational illnesses, particularly repetitive stress cases, may arise either from exposures outside the workplace, inside the workplace, or a combination of the two. Accordingly, issues of work-relatedness become very prominent. Railroads evaluate claims of this nature using medical and ergonomic experts, often relying upon job analysis studies as well as focusing on the individual claims.

With respect to accounting and reportability under part 225, railroad representatives state their concern that mere allegations (*e.g.*, receipt of a complaint in a tort suit naming a large number of plaintiffs) not give rise to a duty to report. They add that many such claims are settled for what amounts to nuisance values, often with no admission of liability on the part of the railroad, so even the payment of compensation is not clear evidence that the railroad views the claim of work-relatedness as valid.

Although sympathetic to these concerns, FRA is disappointed in the quality of data provided in the past related to occupational illnesses. Indeed, in recent years the number of such events reported to FRA has been extremely small. FRA has an obligation to verify, insofar as possible, whether the railroad's judgments rest on a reasonable basis, and discharging that responsibility requires that there be a reasonable audit trail to verify on what basis the railroad's decisions were made. While the basic elements of the audit trail are evident within the internal control plans of most railroads, this is not universally the case.

Accordingly, FRA asked the Working Group to consider establishing a separate category of claimed illnesses. This category would be comprised of (1) Illnesses for which there is insufficient information to determine whether the illness is work-related; (2) Illnesses for which the railroad has made a preliminary determination that the illness was not work-related; and (3) Illnesses for which the railroad has made a final determination that the illness is not work-related. These records would contain the same information as the Form FRA F 6180.98, but might at the railroad's election—

- Be captioned "alleged";
- Be retained in a separate file from other accountables; and
- If accountables are maintained electronically, be excluded from the requirement to be provided at any railroad establishment within 4 hours of a request.

This would permit the records to be kept at a central location, in either paper or electronic format.

The railroad's internal control plan would be required to specify the custodian of these records and where they could be found. For any case determined to be reportable, the designation "alleged" would be removed, and the record would be transferred to the reporting officer for retention and reporting in the normal manner. In the event the narrative block (Form FRA F 6180.98, block 39) indicates that the case is not reportable, the explanation contained in that block would record the reasons the railroad determined that the case was not reportable, making reference to the "most authoritative" information relied upon. Although the proposed Form FRA F 6180.107 or equivalent would not require a railroad to include all supporting documentation, such as medical records, it would require a railroad to note where the supporting documentation is located so that it will be readily accessible to FRA upon request.

FRA believes that the system of accounting for contested illness cases described above will focus responsibility for these decisions and provide an appropriate audit trail. In addition, it will result in a body of information that can be used in the future for research into the causes of prevalent illnesses. Particularly in the case of musculoskeletal disorders, it is entirely possible that individual cases may appear not to be work-related due to an imperfect understanding of stressors in the workplace. Review of data may suggest the need for further investigation, which may lead to practical solutions that will be implemented either under the industrial hygiene programs of the railroads or as a result of further regulatory action. Putting this information "on the books" is a critical step in sorting out over time what types of disorders have a nexus to the workplace. *See* proposed amendments to §§ 225.21, 225.25,

225.33, and 225.35 and proposed new Chapter 13 of the Guide.

b. FRA review of railroads' work-relatedness determinations. Concern arose within the Working Group regarding how FRA planned to review a reporting officer's determination that the illness is not work-related. As discussed in section "III.P.3.," below, of the preamble, it will be the railroad's responsibility to determine whether an illness is work-related. In connection with an inspection or audit, FRA's role will be to determine whether the reporting officer's determination was reasonable. Even if FRA disagrees with the reporting officer's determination not to report, FRA will not find that a violation has been committed as long as the determination was reasonable. FRA understands that this is consistent with the approach OSHA is employing under its revised rule, and in any event it is most appropriate given the assignment of responsibility for reporting to the employing railroad. FRA plans to establish access to appropriate expert resources (medical, ergonomic, etc.) as necessary to evaluate the reasonableness of railroad decisions not to report particular cases.

3. Technical Amendments

The Working Group also agreed to propose certain minor changes to subsections 225.25(b)(16), (b)(25), (e)(8), and (e)(24), simply to bring these subsections into conformity with the other major changes to the regulatory text that are proposed.

H. Proposed Addition of § 225.39, "FRA Policy Statement on Covered Data"

FRA proposes to add a new section to the regulatory text that would include a policy statement on covered data. Specifically, proposed § 225.39 would state that FRA will not include in its periodic summaries of data for the number of occupational injuries and illnesses, reports of a case, not otherwise reportable under part 225, involving (1) One day away from work when in fact the employee returned to work, contrary to the written recommendation to the employee by the treating physician or other licensed health care professional; (2) One day of restricted work when in fact the employee was not restricted, contrary to the written recommendation to the employee by the treating physician or other licensed health care professional; or (3) A written over-the-counter medication prescribed at prescription strength, whether or not the medication was taken.

In addition to proposing revisions to its regulations in the *Code of Federal Regulations*, FRA is proposing revisions to its Guide for Preparing Accident/Incident Reports (*Guide* or *FRA's Guide*).

Written comments on the proposed *Guide* must be received by November 8, 2002. Comments may be mailed to the address or submitted electronically to the Web site given under **ADDRESSES** at the beginning of this document. The proposed *Guide* is posted on FRA's Web site at *http://safetydata.fra.dot.gov/guide*.

I. Proposed Revisions to Chapter 1 of the Guide, "Overview of Accident/Incident Reporting and Recordkeeping Requirements"

Proposed Chapter 1 of the Guide has been revised to reflect the major proposed changes to part 225 and the rest of the Guide, such as important proposed definitions, the proposed revision of the telephonic reporting requirement, and the proposed revision of the reportability criteria in § 225.19(d). In addition, Chapter 1 has been revised to change the closeout date for the reporting year. Under FRA's current reporting requirements, railroads are permitted until April 15 to close out their accident/incident records for the previous reporting year. Guide, Ch. 1, p. 11. FRA proposes to amend its Guide to extend the deadline for completing such accident/incident reporting records until December 1, and will extend the deadline even beyond that date on a case-by-case basis for individual records or cases, if warranted.

J. Proposed Revisions to Chapter 6 of the Guide, Pertaining to Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)"

FRA proposes to amend its Guide to bring it, for the most part, into conformity with OSHA's recently published Final Rule on recordkeeping and reporting. The Working Group also wanted to make it clear, by noting in Chapter 6, that railroads are not required to report occupational fatalities, injuries, and illnesses to OSHA if FRA and OSHA enter into an MOU that so provides.

Under OSHA's Final Rule, reporting requirements have changed in many ways, several of which are described below. See also proposed § 225.39 regarding FRA's treatment of cases reportable under proposed part 225 solely because of, *e.g.*, recommended days away from work that are not actually taken.

1. Changes in How Days Away From Work and Days of Restricted Work Are Counted

Under OSHA's Final Rule, if a doctor orders a patient to rest and not return to work for a number of days, or recommends that an employee engage only in restricted work, for purposes of reporting days away from work or restricted work, an employer must report the actual number of days that the employee was ordered not to return to work or was ordered to restrict the type of work performed, even if the employee decides to ignore the doctor's orders, and instead opts to return to work or to work without restriction. Specifically, under OSHA's Final Rule,

> If a physician or other licensed health care professional recommends days away, you should encourage your employee to follow that recommendation. However, the days away must be recorded whether the injured or ill employee follows the physician or licensed health care professional's recommendation or not.

29 CFR 1904.7(b)(3)(ii). The FRA agrees with the position taken by OSHA, that the employee should be encouraged to follow the doctor's advice about not reporting to work and or/taking restricted time to allow the employee to heal from the injury.

OSHA states a similar rule with respect to reporting the number of days of recommended restricted duty. Specifically, OSHA's Final Rule states,

> May I stop counting days if an employee who is away from work because of an injury or illness retires or leaves my company? Yes, if the employee leaves your company for some reason unrelated to the injury or illness, such as retirement, a plant closing, or to take another job, you may stop counting days away from work or days of restricted/job transfer. If the employee leaves your company because of the injury or illness, you must estimate the number of days away or days of restriction/job transfer and enter the day count on the 300 Log.

29 CFR 1904.7(b)(3)(viii). Contrarily, under FRA's current Guide, a railroad must report only the actual number of days that an employee does not return to work or is on restricted work duty due to a work-related injury or illness. "A record of the actual count of these days must be maintained for the affected employee." *See* Guide, Ch. 6, pp. 13–14.

There was much discussion at the Working Group meetings of whether FRA should conform to OSHA's Final Rule with respect to reporting the number of days away from work or number of days of restricted duty. Some Working Group members wanted to leave FRA's current reporting system in place, while others saw merit in the OSHA approach. FRA representatives met with OSHA representatives to address this issue. OSHA insisted that since it tracks an index of the severity of injuries, with days away from work being the most severe non-fatal injuries and illnesses, it was important to OSHA to maintain a uniform database and have those types of injuries captured in its statistics.

A compromise was reached on the issue of reporting the number of days away and number of days of restricted work activity that was acceptable both to the Working Group and, preliminarily, to OSHA. Specifically, FRA proposes that if no other reporting criteria apply but a doctor orders a patient to rest and not to report to work for a number of days, the railroad must report the case under a special category called "covered data." The Guide would explain how this covered data would be coded. The principal purpose of collecting covered data is so that this information can be provided to the Department of Labor for inter-industry comparison. The general rule is as follows: Where a doctor orders days of rest for an employee, the railroad must report actual days away from work unless the employee reports for work the next day, in which case, the railroad must report one day. Note: If the employee takes more days than the doctor ordered, the railroad must still report actual days away from work unless the railroad can show that the employee should have returned to work sooner. The following examples illustrate the application of this principle in combination with existing requirements that would be carried forward.

- If the doctor orders the patient to five days of rest, and the employee reports to work the next day, the railroad must report one day away from work. (This case would be separately coded and not included in FRA accident/incident aggregate statistics.)
- If, on the other hand, the employee takes three days of rest, when the doctor ordered five days of rest, then the railroad must report the actual number of days away from work as three days away from work.
- Of course, if the doctor orders five days of rest and the employee takes five days of rest, then the railroad must report the full five days away from work.
- Finally, if the doctor orders five days of rest, and the employee takes more than the five days ordered, then the railroad must report the actual number of days away from work, unless the railroad can show that the employee should have returned to work sooner than the employee actually did.

An MOU between FRA and OSHA would address these issues.

FRA notes that it may be appropriate to take into consideration special circumstances in determining the appropriate reporting system for the railroad industry. While compensation for injuries and illnesses in most industries is determined under state-level worker compensation systems, which provide recovery on a "no-fault" basis with fixed benefits, railroad claims departments generally compensate railroad employees for lost workdays resulting from injuries or occupational illnesses. In the event a railroad employee is not satisfied with the level of compensation offered by the railroad, the injured or ill employee may seek relief under FELA, which is a fault-based system and subject to full recovery for compensatory damages. Further, railroad employees generally are subject to a federally-administered sickness program, which provides benefits less generous than under some private sector plans. Although it is not readily apparent in any quantitative sense how this combination of factors influences actual practices with respect to medical advice provided and employee decisions to return to work, very clearly the external stimuli are different than one would expect to be found in a typical workplace. Accordingly, it seems particularly appropriate that the Working Group found it wise to adopt a compromise approach that blends the new OSHA approach with the traditional emphasis on actual outcomes. The approach described above will foster continuity in rail accident/incident trend analysis while permitting inter-industry comparability, as well.

2. Changes in the "Cap" on Days Away From Work and Days Restricted; Including All Calendar Days in the Count of Days Away From Work and Days of Restricted Work Activity

In addition, to conform to OSHA's Final Rule, FRA proposes to amend its Guide to lower the maximum number of days away or days of restricted work activity that must be reported, from 365 days to 180 days, and to change the method of counting days away from work and days of restricted work activity. The Working Group noted that counting calendar days is administratively simpler for employers than counting scheduled days of work that are missed. Using this simpler method of counting days away from work provides employers who keep records some relief from the complexities of counting days away from work under FRA's former system. Moreover, the calendar day approach makes it easier to compare an injury/illness date with a return-to-work date and to compute the difference between those two dates. The calendar method also facilitates computerized day counts. In addition, calendar day counts will also be a better measure of severity, because they will be based on the length of disability instead of being dependent on the individual employee's work schedule. Accordingly, FRA proposes to adopt OSHA's approach of counting calendar days because this approach is easier than the former system and provides a more accurate and consistent measure of disability duration resulting from occupational injury and illness and thus will generate more reliable data. Currently, under FRA's Guide, days away from work and days of restricted work activity are counted only if the employee was scheduled to work on those days. In the proposed Guide, because it is a preferred approach, and to be consistent with OSHA's Final Rule, days away from work would include all calendar days, even a Saturday, Sunday, holiday, vacation day, or other day off, after the day of the injury and before the employee reports to work, even if the employee was not scheduled to work on those days.

3. Definitions of "Medical Treatment" and "First Aid"

FRA's current Guide states what constitutes "medical treatment" and what constitutes "first aid" and how to categorize other kinds of treatment. *See* Guide, Ch. 6, pp. 6–9. As stated in the current Guide, "medical treatment" renders an injury reportable. If an injury or illness requires only "first aid," the injury is not reportable, but will, instead, be accountable. Under OSHA's Final Rule, a list is provided of what constitutes "first aid." 29 CFR 1904.7(b)(5). If a particular procedure is not included on that list, and does not fit into one of the two categories of treatments that are expressly defined as not medical treatment (diagnostic procedures and visits for observation or counseling), then the procedure is considered to be "medical treatment." *Id.* FRA proposes to amend its regulations and Guide to conform to OSHA's definition and new method of categorizing what constitutes medical treatment and first aid. Specifically, FRA proposes to amend its regulations and the Guide to address the following four items:

a. Counseling. Under FRA's "definitions" section of its regulations,

* * * Medical treatment also does not include preventive emotional trauma counseling provided by the railroad's employee counseling and assistance officer unless the participating worker has been diagnosed as having a mental disorder that was significantly caused or aggravated by an accident/incident and this condition requires a regimen of treatment to correct.

See § 225.5. Contrarily, under OSHA's Final Rule, "medical treatment does not include: (A) Visits to a physician or other licensed health care professional solely for observation or counseling * * *." Emphasis added. *See* 29 CFR 1904.7(b)(5)(i). Accordingly, to conform to OSHA's Final Rule, FRA proposes to amend its definition of "medical treatment" to exclude counseling as a type of medical treatment. *See* proposed § 225.5.

b. Eye patches, butterfly bandages, Steri-Strips™, and similar items Under FRA's current Guide, use of an eye patch, butterfly bandage, Steri-Strip™, or similar item is considered medical treatment, rendering the injury reportable. Under OSHA's Final Rule, however, use of an eye patch, butterfly bandage, or Steri-Strip™ is considered to be first aid and, therefore, not reportable. In order to conform FRA's Guide to OSHA's Final Rule, FRA proposes to amend the Guide so that use of an eye patch, butterfly bandage, or Steri-Strip™ will be considered to be first aid.

c. Immobilization of a body part Under FRA's current Guide, immobilization of a body part for transport purposes is considered medical treatment. Given, however, that OSHA's Final Rule considers immobilization of a body part for transport to be first aid, FRA proposes to amend its Guide so that immobilization of a body part for transport would be considered first aid.

d. Prescription versus non-prescription medication Under FRA's current Guide, a doctor's order to take over-the-counter medication is not considered medical treatment even if a doctor orders the over-the-counter medication at prescription strength. Under OSHA's Final Rule, however, a doctor's order to take over-the-counter medication at prescription strength is considered medical treatment rather than first aid. For example, under OSHA's Final Rule, if a doctor orders a patient to take simultaneously three 200 mg. tablets of over-the-counter Ibuprofen, since 467 mg. of Ibuprofen is considered to be prescription strength, this case would be reportable.

The Working Group struggled with this issue. On the one hand, it is a legitimate concern that reportability not be manipulated by encouraging occupational clinics to substitute a non-prescription medication when a prescription medication is indicated. That result, however, may be more humane than a circumstance in which the medical provider is encouraged not to order an appropriate dosage.

Further, in some cases, physicians may direct the use of patent medicines simply to save the employee the time to fill a prescription or simply to hold down costs to the insurer; and the physician may find the over-the-counter preparation to be more suitable in terms of formulation, including rate of release and absorption.

As in the case of recommended days away from work not taken (discussed above), the Working Group settled on a compromise position. Where the treating health care professional directs in writing the use of a non-prescription preparation at a dose at least that of the minimum prescribed amount, and no other reporting criteria apply, the railroad would report this as a special case ("covered data" under §§ 225.5 and 225.39). FRA will explore whether it is practical to add to Chapter 6 of the Guide, a list of commonly used over-the-counter medications, including the prescription strength for those medications. This list of over-the-counter medications would conform to OSHA's published standards. Future over-the-counter medication added by OSHA would be posted on FRA's Web site. The case would be included in aggregate data provided to the Department of Labor, but would not be included in FRA's periodic statistical summaries. FRA would have the data available to reference, and if a pattern of apparent abuse emerged, FRA could both examine the working conditions in question and also review possible further amendments to these reporting regulations.

K. Proposed Revisions to Chapter 7 of the Guide, "Rail Equipment Accident/Incident Report"

FRA proposes to amend Chapter 7 of the Guide to include the new codes for remote control locomotive operations, and for reporting the location of a rail equipment accident/incident using longitude and latitude variables.

L. Proposed New Chapter 12 of the Guide on Reporting by Commuter Railroads

FRA has been faced with a number of commuter rail service accident reporting issues. For example, in reviewing accident/incident data using automated processing routines, FRA could not distinguish Amtrak's commuter activities from its intercity service, and could not always distinguish between a commuter railroad that ran part of its operation and contracted for another part of its operation with a freight railroad. FRA developed alternative strategies with the affected railroads for collecting these data to ensure that commuter rail operation accurately reflected the entire scope of operations, yet did not increase the burden of reporting for affected railroads. This issue also arose in the context of an NTSB Safety Recommendation, R–97–11, following NTSB's investigation of a collision on February 16, 1996, in Silver Spring, Maryland, between an Amtrak passenger train and a MARC commuter train. During the accident investigation, NTSB requested from FRA, a five-year accident history for commuter railroad operations. FRA was not, however, able to provide a composite accident history for some of the commuter railroad operations because some of the commuter operations were operated under contract with Amtrak and other freight railroads, and the accident data for some commuter railroads were commingled with the data of Amtrak and the other contracted freight railroads. Accordingly, NTSB's Safety Recommendation R–97–11 addressed to FRA read, "Develop and maintain separate identifiable data records for commuter and intercity rail passenger operations."

When the RSAC Task Statement 2001–1 was presented, FRA determined that a new chapter in the Guide was needed to address NTSB's and FRA's concerns regarding commuter railroad reporting. At the initial May 2001 meeting, FRA representatives presented the issue to the Working Group. FRA representatives were tasked to develop a chapter specifically dealing with commuter rail reporting. In the August 2001 Working Group meeting, FRA presented a draft of the new chapter. A task group was formed that included representatives of Amtrak, Metra, APTA, and FRA. The new Chapter 12 was presented in November of 2001 to the entire Working Group, and the Working Group accepted the chapter in its entirety.

M. Proposed Changes in Reporting of Accidents/Incidents Involving Remote Control Locomotives

An FRA notice entitled, "Notification of Modification of Information Collection Requirements on Remote Control Locomotives," says that the Special Study Blocks on the rail equipment accident report and highway-rail crossing report, as well as special codes in the narrative section of

the "Injury and Illness Summary Report (Continuation Sheet)," are for only temporary use until part 225 and the Guide are amended. 65 FR 79915, Dec. 20, 2000. At the November 2001 Working Group meeting, some members brought up this statement in FRA's notice and the need to craft regular means for reporting accidents/incidents involving remote control locomotives (RCL). In response, a special task group was formed to study the reporting of RCL-related rail equipment accidents, highway-rail crashes, and casualties.

In December of 2001, the task group initially decided to recommend modifying the "Rail Equipment Accident/Incident Report Form" (FRA F 6180.54) and the "Highway-Rail Grade Crossing Accident/Incident Report Form" (FRA F 6180.57) to add an additional block to capture RCL operations, but the task group was not able to reach consensus on the "Injury and Illness Summary Report (Continuation Sheet)" (FRA F 6180.55a).

Railroad representatives were concerned about modifying the accident/incident database with additional data elements. The FRA representatives proposed a new, modified coding scheme that utilized the Probable Reason for Injury/Illness Code field in the set of Circumstance Codes and also included some additional Event Codes and two special Job Codes.

During a subsequent Working Group meeting, a new element was added as Item 30a, "Remote Control Locomotive," on the "Rail Equipment Accident/Incident Report" form to allow entry of one of four possible values:

"0"—Not a remotely controlled operation;

"1"—Remote control portable transmitter;

"2"—Remote control tower operation; and

"3"—Remote control portable transmitter—more than one remote control transmitter.

For the "Highway-Rail Grade Crossing Accident/Incident Report" form to capture RCL operations, the "Rail Equipment Involved" block would be modified to add three additional values:

"A"—Train pulling—RCL;

"B"—Train pushing—RCL; and

"C"—Train standing—RCL.

These recommendations were accepted by the Working Group, as well as the changes in the Job Codes and Circumstance Codes for the "Injury and Illness Summary Report (Continuation Sheet)."

N. Proposed Changes in Circumstance Codes (Appendix F of the Guide)

Prior to 1997, the "Injury and Illness Summary Report (Continuation Sheet)" contained a field called "Occurrence Code." The field attempted to describe what a person was doing at the time the person was injured. Often the action of the injured person was the same, but the equipment involved was different, so a different Occurrence Code was needed for each situation, *e.g.*, person getting off locomotive, person getting off freight car, person getting off passenger car. Another problem with the Occurrence Code was that the code did not provide the information necessary to explain the incident, *e.g.*, if the injury was electric shock, the Occurrence Code was "using hand held tools," so FRA could not tell from the report if the electrical shock was from the hand tool, the third rail, lightning, or drilling into a live electric wire.

To address these concerns, the Occurrence Code field was replaced in 1997 with the Circumstance Code field. The change allowed for more flexibility in describing what the person was doing when injured. Under the broad category of Circumstance Codes, FRA had developed five subsets of codes: Physical Act; Location; Event; Tools, Machinery, Appliances, Structures, Surfaces (etc.); and Probable Reason for Injury/Illness.

During the next five years, FRA and the railroad reporting officers realized that there were still gaps in the codes. FRA proposed expanding the list of Circumstance Codes and determined that some injuries and fatalities should always be reported using a narrative. Also, some Circumstance Codes required the use of narratives. In the July 2001 Working Group meeting, the railroads noted that expanded Circumstance Codes would assist in reporting and analysis. FRA asked the railroads to provide an expanded list of Circumstance Codes for the next meeting, with the understanding that a narrative would be required when the codes did not adequately describe the incident. By the September 2001 meeting, the railroads had produced many new codes, which FRA compiled and presented at the November 2001 meeting. At that meeting, rail labor discussed RCL reporting. In the January 2002 Working Group meeting, the members reviewed the compiled list, including the special RCL codes. The Working Group made recommendations to move some of the codes to other areas. In the March 2002 Working Group meeting, a task group was formed to resolve the remaining issues with respect to codes. Specifically, the Working Group started by referring to proposed codes that pertained to switching operations. These codes were Probable Reason codes that came out of a separate FRA Working Group on Switching Operations Fatality Analysis (SOFA). The task group revised the SOFA codes and added them to Appendix F. The entire Working Group then reviewed and voted to approve all of the task force's proposed codes.

O. Proposed Changes in Three Forms (Appendix H of the Guide)

The Working Group converted the Form FRA F 6180.78, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor [and] Employee Statement Supplementing Railroad Accident Report," and Form FRA F 6180.81, "Employee Human Factor Attachment" to question-and-answer format, and simplified the language so that they are easier to understand. One issue raised was whether a specific warning related to criminal liability for falsifying the form should be included on the form. Some Working Group members believed that a warning would only serve to intimidate employees from filling out the form. FRA noted that it was important to put the warning on the form to deter employees from falsifying information on the forms. FRA also noted that the same warning would be included on the form for reporting officers. Given that labor representatives felt strongly that the language was too intimidating, it was agreed that a general warning would be included on the back of the form, and that the warning would not specifically state the penalties for falsifying information on the form. In addition, the Working Group agreed to propose to modify Form FRA F 6180.98 to include an item for the county in which the accident/incident occurred.

P. Miscellaneous Issues Regarding Part 225 of the Guide

1. Longitude and Latitude Blocks for Two Forms

Following discussions of this issue, the Working Group agreed that provision could be made for voluntarily reporting the latitude and longitude of a rail equipment accident/incident, a trespasser incident, and an employee fatality. FRA proposes to add blocks to the Form FRA F 6180.54 and Form FRA F 6180.55a for this information. The reason FRA is seeking to gather this information is to better determine if there is a pattern in the location of

certain rail equipment accidents/incidents, trespasser incidents, and employee fatalities. Geographic information systems under development in the public and private sectors provide an increasingly capable means of organizing information. Railroads are mapping their route systems, and increasingly accurate and affordable Global Positioning System (GPS) receivers are available and in widespread use.

2. Train Accident Cause Code "Under Investigation" (Appendix C of the Guide)

One of the tasks addressed by the Working Group was to define "under investigation" as that term is used in Cause Code M505, "Cause under investigation (Corrected report will be forwarded at a later date)," and to put that definition in Chapter 7 of the Guide, under subpart C, "Instructions for Completing Form FRA F 6180.54," block 38, "Primary Cause Code" and Appendix C of the Guide. Currently, many accidents/incidents of a significant nature, *e.g.*, ones that are involved in private litigation for many years, are coded as "under investigation." Even if FRA and the railroad think that they know the primary cause of an accident, some railroads will not assign a specific cause code to the accident, either for liability reasons, or because the railroad or a local jurisdiction, or some other authority is still investigating the accident.

To provide finality to the process of investigating an investigation, the Working Group agreed that "under investigation" would mean under active investigation by the railroad. When the railroad has completed its own investigation and received all laboratory results the railroad must make a "good faith" determination of the primary cause of the accident, any contributing causes, and their proper codes. The railroad must not wait for FRA or NTSB to complete its investigation before assigning a cause code. After FRA or NTSB completes its investigation, the railroad may choose to amend the cause code on the accident report.

Accordingly, FRA proposes to revise the Guide to show that the meaning of the cause code in question has been changed to "Cause under active investigation by reporting railroad (Amended report will be forwarded when reporting railroad's active investigation has been completed)."

In addition, the Working Group agreed to add a new code "M507" to denote accidents/incidents in which the investigation is complete but the cause of the accident/incident could not be determined. If a railroad uses this code, the railroad would be required to include in the narrative block, an explanation for why the cause of the accident/incident could not be determined.

3. "Most Authoritative": Determining Work-Relatedness and Other Aspects of Reportability

The duty to report work-related illnesses under the current rule has occasioned concern and disagreement about not only whether an illness exists, but, more importantly and more controversially, whether the illness is work-related. Often an employee's doctor's opinion is that an employee's illness is work-related, while the railroad's doctor's opinion is that the illness is not work-related. In providing guidance in how a reporting officer is to determine whether an illness is work-related, OSHA's Final Rule states,

> [the employer] must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in Sec. 1904.5(b)(2) applies.

29 CFR 1904.5(a). In addition, the preamble to OSHA's Final Rule states,

> Accordingly, OSHA has concluded that the determination of work-relatedness is best made by the employer, as it has been in the past. Employers are in the best position to obtain the information, both from the employee and the workplace, that is necessary to make this determination. Although expert advice may occasionally be sought by employers in particularly complex cases, the final rule provides that the determination of work-relatedness ultimately rests with the employer.

66 FR 5950.

Following publication of this Final Rule, the National Association of Manufacturers (NAM) filed a First Amended Complaint challenging portions of the Final Rule. As part of the NAM–OSHA settlement agreement, published in the **Federal Register**, the parties agreed to the following:

> Under this language [29 CFR 1904.5(a)], a case is presumed work-related if, and only if, an event or exposure in the work environment is a *discernable* cause of the injury or illness or of a *significant* aggravation to pre-existing condition. The work event or exposure need only be one of the discernable causes; it need not be the sole or predominant cause.

Section 1904.5(b)(2) states that a case is not recordable if it "involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment." This language is intended as a restatement of the principle expressed in 1904.5(a), described above. Regardless of where signs or symptoms surface, a case is recordable only if a work event or exposure is a *discernable* cause of the injury or illness or of a *significant* aggravation to a pre-existing condition.

Section 1904.5(b)(3) states that if it is not obvious whether the precipitating event or exposure occurred in the work environment or elsewhere, *the employer* "must evaluate the employee's work duties and environment to decide whether or not one or more events or exposures in the work environment caused or contributed to the resulting condition or *significantly* aggravated a pre-existing condition." This means that *the employer* must make a determination whether it is *more likely than not* that work events or exposures were a cause of the injury or illness, or a *significant* aggravation to a pre-existing condition. If the employer decides the case is not work-related, and OSHA subsequently issues a citation for failure to record, the Government would have the burden of proving that the injury or illness was work-related.

(Emphasis added.) 66 FR 66944. FRA proposes to conform to this language, particularly with respect to making reference to the terms "discernable" and "significant" to qualify the type of causation and aggravation, respectively. *See* proposed definition of "accident/incident" and proposed reportability criteria at proposed § 225.19(d).

The other part of the problem of determining whether an injury or illness is work-related is "who decides." The Working Group proposed to adopt OSHA's Final Rule definition of "most authoritative" stated in OSHA's Final Rule. In the context of discussing how to determine whether or not a case is new, OSHA's Final Rule states,

> If you receive recommendations from two or more physicians or other licensed health care professionals, you must make a decision as to which recommendation is the most authoritative (best documented, best reasoned, or most [persuasive]) and record the case based upon that recommendation.

29 CFR 1904.6(b)(3). (Note: the preamble to OSHA's Final Rule uses the word "persuasive" while the rule text uses the word "authoritative" where FRA put the word "persuasive" in brackets. FRA chose to use the language from the preamble, instead of that in the rule text, to avoid redundancy.)

The question of who is the "most authoritative" physician or other licensed health care professional arises in a number of contexts when there is a conflict of medical opinion. Conflicting medical opinions, often between an employee's physician and a railroad's company physician, arise regarding whether an injury or illness is work-related, whether and how many days away from work an employee needs to recuperate from a work-related injury or illness, and whether a fatality was work-related, or arose from the operation of a railroad. FRA proposes to adopt in its Guide OSHA's definition in its Final Rule of "most authoritative," and to adopt the language from the NAM–OSHA settlement agreement in order to resolve this issue. (*See also* discussion of FRA review of work-relatedness determinations under section "III.G.2.b." of the preamble.)

4. Job Title versus Job Function

An additional issue resolved by the Working Group was to propose to amend the Guide's instructions for completing blocks 40–43 of FRA Form F6180.54 to make it clear that the job function of the employee, rather than the employee's job title, would be used to determine the employee's job title for reporting purposes, when the railroad gives the employee a job title other than "engineer," "fireman," "conductor," or "brakeman."

5. "Recording" versus "Reporting"

Under OSHA's Final Rule, the term "recording" is used. Under FRA's regulations and Guide, the term "reporting" is used. Since FRA has always used the term "reporting" and since one of the statutes authorizing part 225 uses the term "reporting," FRA proposes to continue to use in its regulations and Guide the term "reporting" instead of "recording." *See* 49 U.S.C. 20901(b)(1) ("In establishing or changing a monetary threshold for the reporting of a railroad accident or incident * * *")

IV. Section-by-Section Analysis

Section 219.5 Definitions

For purposes of part 219, "accident or incident reportable under Part 225" would be defined to exclude a case that is classified as "covered data" under § 225.5 of this chapter (*i.e.*, employee injury/illness cases exclusively resulting from a written recommendation to the employee by a physician or other licensed health care professional for time off when the employee instead returned to work, or for a work restriction that was not imposed, or for a non-prescription medication recommended in writing to be taken at a prescription dose, whether or not the medication was taken). The term "accident or incident reportable under Part 225" appears in § 219.301(b)(2), in the description of an event that authorizes breath testing for reasonable cause:

* * * * *

> The employee has been involved in an *accident or incident reportable under Part 225 of this chapter*, and a supervisory employee of the railroad has a reasonable belief, based on specific, articulable facts, that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident;

* * * * *

[Emphasis added.] It should also be noted that § 219.301(b)(2) is incorporated by reference in § 219.301(c) as a basis for "for cause drug testing."

The definition of "reportable injury" would be revised to mean an injury reportable under part 225 of this chapter except for an injury that is classified as "covered data" under § 225.5 of this chapter. The term "reportable injury" appears in three provisions of part 219, each of which describes an event that triggers the requirement for post-accident toxicological testing: (i) A "major train accident" that includes a release of hazardous material lading with a "reportable injury" resulting from the release; (ii) an "impact accident" involving damage above the current reporting threshold and resulting in a "reportable injury"; and (iii) a passenger train accident with a "reportable injury" to any person. §§ 219.201(a)(1)(ii)(B), 219.201(a)(2), and 219.201(a)(4).

The reason that "accident or incident reportable under Part 225" and "reportable injury" would not, for purposes of part 219, include covered data cases is that while these cases are of importance from the standpoint of rail safety analysis and therefore reportable, they are, nevertheless, comparatively less severe than fatalities, other injuries and illnesses and, as such, should not trigger alcohol and drug testing or related requirements and sanctions.

Section 225.5 Definitions

"Accident/incident" would be redefined to conform to OSHA's Final Rule. Under FRA's current rule, "accident/incident" is defined in part as,

> (3) Any event arising from the operation of a railroad which results in:
> (i) Death to any person;
> (ii) Injury to any person that requires medical treatment;
> (iii) Injury to a railroad employee that results in:
> (A) A day away from work;
> (B) Restricted work activity or job transfer; or
> (C) Loss of consciousness; or
> (4) Occupational illness.

(The designation "(4)" in the definition above should read "(iv)." See § 225.19(d)(3).) The parallel language in FRA's proposed definition reads as follows:

> "Accident/incident" means:
> * * * * *
> (3) Any event or exposure arising from the operation of a railroad, if the event or exposure is a discernable cause of any of the following, and the following is a new case or a significant aggravation of a pre-existing injury or illness:
> (i) Death to any person;
> (ii) Injury to any person that results in medical treatment;
> (iii) Injury to a railroad employee that results in:
> (A) A day away from work;
> (B) Restricted work activity or job transfer; or
> (C) Loss of consciousness;
> (iv) Occupational illness of a railroad employee that results in any of the following:
> (A) A day away from work;
> (B) Restricted work activity or job transfer;
> (C) Loss of consciousness; or
> (D) Medical treatment;
> (v) A significant injury to or significant illness of a railroad employee diagnosed by a physician or other licensed health care professional even if it does not result in death, a day away from work, restricted work activity or job transfer, medical treatment, or loss of consciousness;
> (vi) An illness or injury that meets the application of the following specific case criteria:
> (A) A needlestick or sharps injury to a railroad employee;
> (B) Medical removal of a railroad employee;
> (C) Occupational hearing loss of a railroad employee;
> (D) Occupational tuberculosis of a railroad employee; or
> (E) An occupational musculoskeletal disorder of a railroad employee that is independently reportable under one or more of the general reporting criteria.

The phrase "discernable cause" would be included in the proposed definition, and the words "or exposure" would be added before the word "arising." The addition of the word "discernable" is intended to take into account the OSHA–NAM settlement agreement, which also uses "discernable" to describe "cause." As defined in *Webster's Third New International Dictionary, Unabridged* (1971), "discernable" means "capable of being discerned by the senses or the understanding: distinguishable (a trend) (there was the outline of an old trunk-Floyd Dell)." FRA understands why some Working Group members requested this change as a matter of conformity and to emphasize that the employer is not required to speculate regarding work-relatedness. By the same

token. FRA emphasizes that when confronted with specific claims regarding work-relatedness, it is the employer's responsibility to fairly evaluate those claims and opt for reporting if an event, exposure, or series of exposures in the workplace likely contributed to the cause or significantly aggravated the illness.

The Working Group agreed that the definition of "accident/incident" also needed to include that the case had to be a new case, or a significant aggravation of a pre-existing condition. This reference to a "new case" was added to conform to § 1904.4 of OSHA's Final Rule, and the reference to "significant" aggravation of a pre-existing condition was added to conform to the OSHA–NAM settlement agreement.

The inclusion of "death to any person" would remain the same. "[I]njury to any person which requires medical treatment" would be changed to "Injury to any person that results in medical treatment"; no substantive change is proposed. Injury to a railroad employee that results in "(A) A day away from work; (B) Restricted work activity or job transfer; or (C) Loss of consciousness' would not change. FRA would, however, change the existing rule that all occupational illnesses of railroad employees are to be reported and require that they be reported only under certain enumerated conditions. This would also make it clear that an occupational illness of an employee to a contractor to a railroad is not to be reported. Further, FRA proposes to add to its criteria for reportability "significant injuries or illnesses," "needlestick or sharps injuries," "medical removal," "occupational hearing loss," "occupational tuberculosis," and an independently reportable "occupational musculoskeletal disorder" to railroad employees to track OSHA's Final Rule. Finally, as previously discussed, a three-tier definition of "event or exposure arising from the operation of a railroad" would be added.

The definition of "accountable injury or illness" would be revised by substituting the words "railroad employee" for "railroad worker," and by adding the word "discernably" before the word "associated." These are technical changes to bring the language into conformity with the rest of the regulatory text.

The definition of "day away from work" currently means "any day subsequent to the day of the injury or diagnosis of occupational illness that a railroad employee does not report to work for reasons associated with his or her condition." § 225.5. Under the Guide, "If the days away from work were entirely unconnected with the injury (*e.g.*, plant closing or scheduled seasonal layoff), then the count can cease at this time." Guide, Ch. 6, p. 31, question 34. FRA proposes to come closer to following OSHA's general recording criteria under 29 CFR 1904.7 of "day away from work" by proposing that the definition be "any calendar day subsequent to the day of the injury or the diagnosis of the illness that a railroad employee does not report to work, or was recommended by a physician or other licensed health care professional not to return to work, as applicable, even if the employee was not scheduled to work on that day." Currently, if a doctor recommends that an employee not return to work, but the employee ignores the doctor's advice and returns to work anyway, this would not count as a day away from work. Under OSHA's Final Rule, however, the reporting entity would still have to count all the days the doctor recommended that the employee not work. As a compromise, FRA proposes that the railroad would have to report one day away from work, even if the employee actually returned to work on that day, as discussed previously in the preamble. The revision of the definition of "day away from work" is intended to take into account the new rule for reporting the number of days away from work.

The definition of "day of restricted work activity" would be revised for the same reason that FRA is proposing to revise the definition of "day away from work."

The definition of "event or exposure arising from the operation of a railroad" would be added to include, (1) with respect to a person who is on property owned, leased, or maintained by the railroad, an activity of the railroad that is related to the performance of its rail transportation business or an exposure related to the activity; (2) with respect to an employee of the railroad (whether on or off property owned, leased or maintained by the railroad), an activity of the railroad that is related to the performance of its rail transportation business or an exposure related to the activity; and (3) with respect to a person who is not a railroad employee and not on property owned, leased, or maintained by the railroad—(i) a train accident; a train incident; a highway-rail crossing accident/incident involving the railroad; or (ii) a release of a hazardous material from a railcar in the railroad's possession or a release of other dangerous commodity that is related to the performance of the railroad's rail transportation business. Accordingly, with respect to a person who is not a railroad employee and not on property owned, leased, or maintained by the railroad, the definition of "event or exposure arising from the operation of a railroad" is more narrow, covering a more limited number of circumstances than for persons who are either on railroad property, or for railroad employees whether on or off property owned, leased or maintained by the railroad. The justification for narrowing the set of circumstances in which a railroad would be required to report certain injuries and illnesses for events that occur off railroad property is because it is difficult for railroads to know about and follow up on injuries to persons who are not railroad employees. Even more so for persons who are not employees to contractors to a railroad, a reporting railroad would have difficulty tracking, for example, a slip and fall case of a passenger, who may subsequently seek medical treatment from his or her doctor, but not report this to the railroad. Railroads simply have more limited opportunity to know about injuries and illnesses to persons other than those who are injured on their property or who are employed by the railroad. Accordingly, injuries to such persons would not be considered for reporting purposes as events or exposures arising from the operation of the railroad.

The definition of "medical treatment" would be revised as discussed earlier in the preamble, to conform generally to OSHA's new definition under 29 CFR 1904.7(b)(5)(i) of "medical treatment." The proposed definition reads,

> any medical care or treatment beyond "first aid" regardless of who provides such treatment. Medical treatment does not include diagnostic procedures, such as X-rays and drawing blood samples. Medical treatment also does *not* include counseling.

FRA proposes that any type of counseling, in and of itself, is not considered to be medical treatment. If, for example, a locomotive engineer witnesses a grade crossing fatality and subsequently is diagnosed as suffering from Post Traumatic Stress Syndrome as a result of the incident, and receives counseling for this, the case is not reportable. The only factors that would make the case reportable would be if, in addition to the counseling, the employee received prescription medication, such as tranquilizers, had a day away from work or was placed on restricted work, was transferred to another job, or met one of the other criteria for reportability in § 225.19(d). In addition to the general objective of

inter-industry conformity, this change is supported by the absence of meaningful interventions available to prevent such disorders. Although involvement in highway-rail crossing and trespass casualties is a known cause of stress in the railroad industry, FRA and its partners are already aware of that fact and are making every effort to prevent these occurrences. Further, the industry is actively engaged in preventive post-event counseling.

"General reportability criteria" would mean the criteria set forth in § 225.19(d)(1)–(5).

"Medical removal" would be defined as it is described in OSHA's recording criteria under 29 CFR 1904.9 for medical removal cases. "Medical removal" refers to removing an employee from a work location because that location has been determined to be a health hazard. FRA proposes that this definition would change automatically if OSHA elected to revise its recording criteria.

"Needlestick and sharps injury" and "new case" would be defined in general conformity with OSHA's definitions of these terms under 29 CFR 1904.8 and 1904.6, respectively. "Privacy concern case" would be defined as in 29 CFR 1904.29, except that FRA would categorically exclude MSDs from privacy concern cases. As discussed in section "III.G.1.," above, FRA seeks comment on whether or not FRA should adopt this exclusion, especially if OSHA's proposed January 1, 2004, delay takes effect, but in either case. FRA also seeks comment on whether it should adopt the proposed exclusion of MSDs from privacy concern cases as a fixed approach beginning on the effective date of FRA's final rule or whether FRA should "float" with OSHA, *i.e.*, make the existence or nonexistence of the exclusion contingent on OSHA's action.

"Occupational hearing loss" would be defined as OSHA currently defines it under 29 CFR 1904.10 for calendar year 2002. As discussed in section "III.D.1.," above, FRA seeks comment on whether FRA should adopt OSHA's new approach for calendar year 2003 as its fixed approach, beginning on the effective date of FRA's final rule, or whether FRA should diverge from OSHA and continue to enforce OSHA's current approach (which was approved by the Working Group and the RSAC and is the same as FRA's current approach) as a fixed approach beginning on the effective date of FRA's final rule.

The definition of "occupational illness" has been revised to make it clear that only certain occupational illnesses of a person classified under Chapter 2 of the Guide as a Worker on Duty—Employee are to be reported. Contrarily, under the current definition of "occupational illness" other categories of persons, such as Worker on Duty—Contractor, are included in the definition, but illnesses to those persons are not reportable because § 225.19(d)(4) limits the reportability of occupational illnesses to those of "a railroad employee."

"Occupational musculoskeletal disorder" would be defined essentially as it is set forth by OSHA in 29 CFR 1904.12. One of the most common forms of occupational musculoskeletal disorder is Carpal Tunnel Syndrome and other repetitive motion disorders. Under 1904.12 of its January 19, 2001, Final Rule, OSHA defines musculoskeletal disorders (MSDs) as:

> disorders of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs. MSDs do not include disorders caused by slips, trips, falls, motor vehicle accidents, or other similar accidents. Examples of MSDs include: Carpal tunnel syndrome, Rotator cuff syndrome, De Quervain's disease, Trigger finger, Tarsal tunnel syndrome, Sciatica, Epicondylitis, Tendinitis, Raynaud's phenomenon, Carpet layers knee, Herniated spinal disc, and Low back pain.

66 FR at 6129. *See also* 66 FR at 52034. However, as noted in the overview in Section I of this preamble, OSHA has delayed the effective date of this provision from January 1, 2002, to January 1, 2003, and has proposed to delay the effective date until January 1, 2004, "to give [OSHA] the time necessary to resolve whether and how MSDs should be defined for recordkeeping purposes." *See* 67 FR 44125. As the issue of OSHA's proposed delay of this provision was not before the Working Group when consensus was reached, FRA seeks comment on whether or not FRA should still adopt the above definition of MSDs if OSHA's proposed January 1, 2004, delay takes effect. If FRA goes forth with the provision as approved by the Working Group, FRA would be adopting the definition in advance of OSHA's defining of the term, a result that may not have been contemplated by the Working Group when it agreed to follow OSHA on this issue prior to the issuance of the proposed delay. *See* discussion concerning reporting criteria for MSDs at section III.D.1 of the preamble, above. Even if OSHA chooses not to delay the effective date of this provision, FRA seeks comment on whether or not we should even adopt OSHA's definition for calendar year 2003, since it states that there are no special criteria beyond the general recording criteria for determining which MSDs to record and because OSHA's definition appears to be used primarily as guidance for when to check the MSD column on the 300 Log. *See* 66 FR 6129–6130. Note that choosing to exclude this definition from FRA's final rule would not affect an employer's obligation to report work-related injuries and illnesses involving muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs in accordance with the requirements applicable to any injury or illness. If the definition of MSD were to be omitted from the Final Rule, this difference would be discussed in the MOU. FRA also seeks comment on whether or not this definition should "float" with OSHA's. *See* discussion of "float" vs. "fixed" at section III.D.1 of the preamble, above.

"Occupational tuberculosis" would be defined in general conformity with OSHA's recording criteria under 29 CFR 1904.11 for work-related tuberculosis cases. The word "occupational" would be included in the term because the term is intended to cover only the occupational illness and it would be confusing to define simply "tuberculosis" when the unmodified term would seem to call for medical definition of tuberculosis in general.

"Significant change in the number of reportable days away from work" would be defined as a ten-percent or greater change in the number of days away from work that the railroad would have to report. FRA decided on ten percent as the threshold so that railroads would not have to submit amended reports for *de minimis* changes in data. For example, if a railroad estimated that an employee would be away from work for 30 days and reported the 30-day estimate to FRA, and the employee was actually away from work for 32 days, the railroad would not have to amend its accident report to reflect this change. Moreover, FRA uses a ten-percent threshold for amending rail equipment accident reports. Specifically, if a railroad estimates the damage from a rail equipment accident to be $7,000, a railroad need not amend that report unless the actual damage exceeds $7,700. If on the other hand, the actual damage is less than the reporting threshold, but less than ten percent difference from the estimate, the railroad would be allowed to amend the report to indicate that the incident was not a reportable accident. For example, in the scenario above, if the actual damage was $6,400 (less than 10-percent difference from the $7,000 estimate), the railroad would nevertheless be permitted not to report the incident. While the ten-percent threshold is currently in Chapter 6 of the Guide, FRA proposes to create a

definition in the regulatory text since the General Accounting Office recommended that FRA define this term.

For clarification of the terms "Significant illness" and "Significant injury", see discussion earlier in section "III.D.1." of the preamble, above.

Section 225.9 Telephonic Reports of Certain Accidents/Incidents and Other Events

Currently, § 225.9 requires a railroad to report immediately by telephone any accident/incident arising from the operation of the railroad that results in the death of a railroad employee or railroad passenger or the death or injury of five or more persons. FRA proposes an amendment to this section, as recommended by the Working Group, to add new circumstances under which a railroad is to telephonically report and to clarify existing procedures for telephonic reporting of the expanded list of events.

Proposed subsection (a) lists the events that a railroad would be required to report telephonically. In proposed subsection (a)(1), "Certain deaths or injuries," FRA proposes that each railroad must report immediately, whenever it learns of the occurrence of an accident/incident that arose from the operation of the railroad, or an event or exposure that may have arisen from the operation of the railroad, that has certain specified consequences. FRA proposes to use the phrase "may have arisen" in the proposed regulatory text, instead of keeping the current language "arising from the operation of a railroad," because a railroad may not learn for some time that a particular event in fact arose from the operation of the railroad. By stating that a railroad must report an event that "may" have arisen from the operation of the railroad, FRA is assured to capture a broader group of cases. For example, if a railroad employee dies of a heart attack on the railroad's property, the railroad may not know for weeks, following a coroner's report, what the cause of death was, and whether the death was work-related. This case might not get immediately reported because the railroad did not immediately learn that the death arose out of the operation of a railroad. Under the proposed change, if the death "may" have arisen out of the operation of the railroad, the case would be immediately reported, permitting FRA to commence its investigation in a timely manner. Even when death is ultimately determined to be caused by a coronary event, for instance, it is appropriate to inquire whether unusual workplace stressors (*e.g.*, extreme heat, excessive physical activity without relief) may have played a role in causing the fatality. In addition, under subsection (a)(1), FRA would add the death of an employee of a contractor to a railroad performing work for the railroad on property owned, leased, or maintained by the contracting railroad as a new category for telephonic reporting.

In proposed subsection (a)(2), FRA would capture certain train accidents or train incidents, even if death or injury does not necessarily occur as a result of the accident or incident. Currently, FRA does not require telephonic reporting of certain train accidents or train incidents *per se*, but requires that they be reported only if they result in death of a rail passenger or employee, or death or injury of five or more persons. Accordingly, FRA proposes that railroads telephonically report immediately, whenever it learns of the occurrence of any of the following events:

(i) A train accident that results in serious injury to two or more train crewmembers or passengers requiring admission to a hospital;

(ii) A train accident resulting in evacuation of a passenger train;

(iii) A fatality at a highway-rail grade crossing as a result of a train accident or train incident;

(iv) A train accident resulting in damage (based on a preliminary gross estimate) of $150,000, to railroad and nonrailroad property; or

(v) A train accident resulting in damage of $25,000 or more to a passenger train and railroad and nonrailroad property.

In proposed subsection (a)(3), FRA would require telephonic reporting of incidents in which reportable derailment or collision occurs on, or fouls, a line used for scheduled passenger service. This final provision would permit more timely initiation of investigation in cases where the underlying hazards involved could threaten the safety of passenger operations.

For clarification of other aspects of this proposed section, see discussion at section "III.C." of this preamble, above.

Section 225.19 Primary Groups of Accidents/Incidents

FRA proposes to amend subsection (d), "Group III, "Death, injury, occupational illness." See prior discussion in section-by-section analysis of the definition of "accident/incident" and "event or exposure arising from the operation of a railroad." Proposed 225.5.

Section 225.23 Joint Operations

FRA proposes to make technical amendments to § 225.23(a) simply to bring it into conformity with the rest of the proposed regulatory text.

Section 225.25 Recordkeeping

FRA proposes to amend this section by revising subsection 225.25(h)(15) to apply to "privacy concern cases." Accordingly, under the proposed subsection, a railroad is permitted not to post information on an occupational injury or illness that is a "privacy concern case." "Privacy concern case" would be defined in proposed § 225.5.

Section 225.39 FRA Policy Statement on Covered Data

In connection with the requirements for reporting employee illness/injury cases exclusively resulting from a written recommendation of a physician or other licensed health care provider (POLHCP) for time off when the employee instead returned to work, or a written recommendation for a work restriction that was not imposed, and in connection with the provision for special reporting of cases exclusively resulting from the direction of a POLHCP in writing to take a non-prescription medication at prescription dose, FRA proposes to express its policy that these cases would not be included in FRA's regular statistical summaries. The data are requested by the Department of Labor to ensure comparability of employment-related safety data across industries. The data may also be utilized for other purposes as the need arises, but they would not be reported in FRA's periodic statistical summaries for the railroad industry.

Section 240.117 Criteria for Consideration of Operating Rules Compliance Data

FRA proposes a minor change to its locomotive engineer qualifications regulations, which uses a term from part 225. In particular, § 240.117(e)(2) of the locomotive engineer qualifications regulations defines one of the types of violations of railroad rules and practices for the safe operation of trains that is a basis for decertifying a locomotive engineer: failures to adhere to the conditional clause of a restricted speed rule "which cause reportable accidents or incidents under part 225 of this chapter. * * *" This proposed amendment would create an exception for accidents or incidents that are classified as "covered data" under proposed part 225. "Covered data" would be defined as accidents or incidents that are reportable only because a physician or other licensed health care professional recommended in writing that a railroad employee take one or more days away from work, that the employee's work activity be restricted for one or more days, or that the employee take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the medication is taken. The reason that "covered data" would be excluded as a partial basis for decertification under § 240.117(e)(2) is that the injuries and illnesses associated with "covered data" cases are comparatively less severe than other types of injuries and illnesses, and, as such, when coupled with a violation of restricted speed, should not trigger a decertification hearing under part 240.

V. Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of this rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Access to the docket may also be obtained electronically through the Web site for the DOT Docket Management System at *http://dms.dot.gov*. FRA invites comments on this regulatory evaluation.

As part of the regulatory impact analysis, FRA has assessed quantitative measurements of costs and a qualitative discussion of the benefits expected from the adoption of this proposed rule. Over a 20-year period, the Present Value (PV) of the estimated costs is $410 thousand, and the PV of the estimated benefits is $612 thousand.

The major costs anticipated from adopting this proposed rule include those incurred in complying with additional OSHA-conformity reporting requirements, such as the covered data cases. Additional reporting burdens will also occur from an increase in telephonic reporting, and from the reporting of claimed occupational illnesses cases by railroads. Finally, there are costs associated with the familiarization of the railroad reporting officers with the revised *Guide*, and for revisions to FRA and railroad electronic reporting systems and databases.

The major benefits anticipated from implementing this proposed rule include savings from a simplification in the reporting of occupational injuries due to a new definition of "first aid." This benefit will produce a savings in the decision making process for both reportable injuries and accountable injuries. Additional savings would also occur from a reduction in the average burden time to complete a Rail Equipment Accident/Incident Report. This savings is largely a product of a revision to the train accident cause codes. The revised casualty circumstance codes would produce a savings from a reduction in the use of the narrative block on the railroad injury and illness reports. Finally, railroads should receive a savings from a simplification in counting the number of days away from work or of restricted work activity. This includes a savings due to a reduction from 365 to 180 days for the maximum number of days that the railroads would have to track and report injuries and illnesses. FRA also anticipates that there would also be qualitative benefits from this rulemaking from better data or information on railroad reports, and the increased utility that the additional data codes would provide to future analysis.

B. Regulatory Flexibility Act of 1980 and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires a Federal agency to review its proposed and final rules in order to assess their impact on small entities (small businesses, small organizations, and local governments). If the agency determines that its proposed rule would have a significant economic impact on a substantial number of small entities, then the agency must prepare an Initial Regulatory Flexibility Analysis (IRFA). If the agency determines the opposite, then the agency must certify that determination; an IRFA may also provide the basis for the agency's determination that the proposed rule would not have a significant economic impact on a substantial number of small entities.

"Small entity" is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The Small Business Administration (SBA) stipulates in its "Size Standards" that the largest a railroad business firm that is "for-profit" may be, and still be classified as a "small entity" is 1,500 employees for "Line-Haul Operating" Railroads, and 500 employees for "Switching and Terminal Establishments." SBA's "size standards" may be altered by Federal agencies on consultation with SBA and in conjunction with public comment. Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has published an interim policy that formally establishes "small entities" as being railroads that meet the line-haulage revenue requirements of a Class III railroad. 62 FR 43024, Aug. 11, 1997. Currently, the revenue requirements are $20 million or less in annual operating revenue. The $20 million limit is based on the Surface Transportation Board's threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment. *See* 49 CFR Part 1201. The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA proposes to use this alternative definition of "small entity" for this rulemaking. Since this is still considered to be an alternative definition, FRA is using this definition in consultation with the Office of Advocacy, SBA, and therefore requests public comment on its use.

Like the Regulatory Flexibility Act of 1980, a recently published executive order also establishes rulemaking procedures related to small entities. Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," requires in part that a Federal agency notify the Chief Counsel for Advocacy of the SBA of any of its draft rules that would have a significant economic impact on a substantial number of small entities, to consider any comments provided by the SBA, and to include in the preamble to the final rule the agency's response to any written comments by the SBA unless the agency head certifies that including such material would not serve the public interest. 67 FR 53461 (Aug. 16, 2002).

In accordance with the Regulatory Flexibility Act of 1980, FRA has prepared and placed in the docket an IRFA, which assesses the small entity impact of this proposed rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590; please refer to Docket No. FRA–2002–13221, Notice No. 1.

As stated in the IRFA, FRA has determined that there are over 650 small railroads that could potentially be affected by this proposal; however, the

frequency of accidents/incidents, and therefore reporting burden, is generally proportional to the size of the railroad. A railroad that employs thousands of employees and operates trains millions of miles is exposed to greater risks than one whose operation is substantially smaller, all other things being equal. For example, in 1998, only 327 railroads reported one or more casualties.

The economic impacts from this proposed regulation are primarily a result of an increase in casualty reporting due to the reporting of some casualties, due to OSHA recordkeeping requirements which this rulemaking is adopting into FRA reporting requirements. In addition, the railroad industry will incur small burdens for an increase in telephonic reporting of some accident/incidents, and for modifications made to computer software and databases, however, FRA does not anticipate that any of these burdens will be imposed on small entities due to the decreased likelihood of a casualty occurring on a small railroad. The computer-based burdens are not expected to impact small entities either since most small railroads report using personal computer (PC)-based software provided by FRA. It is estimated by FRA that small entities will incur five percent or less of the total costs for this proposed rulemaking.

It is important to note that this proposed rule would also reduce recordkeeping burdens by simplifying the method used to count employee absences and work restrictions, and by reducing the requirement to keep track of lengthy employee absences. The proposed rule would also simplify reporting requirements with clarifying definitions for things such as "medical treatment" and "first aid." Train accident cause codes and injury occurrence codes would be added, so that accident and injury data would be more precise and the need for some narratives would be eliminated.

This proposed rule would not provide alternative treatment for small entities in the regulation or reporting requirements. However, small railroads that report using PC-based software will not be burdened with any costs for modifying or changing the software, since FRA provides this software free to all railroads that utilize it. It is important to note that just by the fact that small railroads report fewer accidents/incidents and casualties, they are less likely to be burdened by the proposed rule.

The IRFA concludes that this proposed rule would not have a significant economic impact on a substantial number of small entities; therefore, FRA certifies that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities. For the same reason, consistent with Executive Order 13272, the draft rule has not been submitted to the SBA. However, FRA will consider any comments submitted by the SBA in developing the final rule. In order to determine the significance of the economic impact for the final rule's Regulatory Flexibility Assessment (RFA), FRA invites comments from all interested parties concerning the potential economic impact on small entities caused by this proposed rule. The Agency will consider the comments and data it receives—or lack of comments and data—in making a decision on the RFA for the final rule.

C. Paperwork Reduction Act of 1995

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section—49 CFR	Respondent universe responses	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
225.9—Telephone Reports—Certain Accidents/Incidents and Other Events.	685 railroads	500 Reports	15 minutes	125 hours	$5,250
225.11—Reporting of Rail Equipment Accidents/Incidents (Form FRA F 6180.54).	685 railroads	3,000 forms	2 hours	6,000 hours	$252,000
225.12(a)—Rail Equipment Accident/Incident Reports—Human Factor (Form FRA F 6180.81).	685 railroads	1,000 forms	15 minutes	250 hours	$10,500
225.12(b)—Rail Equipment Accident/Incident Repots—Human Factor (Part 1, Form FRA F 6180.78).	685 railroads	8,200 notices+copies.	10 minutes and 3 minutes.	527 hours	$22,134
225.12(c)—Rail Equipment Accident/Incident Reports—Human Factor—Joint Operations.	685 railroads	100 requests	20 minutes	33 hours	$1,386
225.12(d)—Rail Equipment Accident/Incident Reports—Human Factor—Late Identification.	685 railroads	20 attachments+20 notices.	15 minutes	10 hours	$420
225.12(e)—Rail Equipment Accident/Incident Reports—Human Factor—Employee Supplement (Part II, Form FRA F 6180.78).	685 railroads	75 statements	1.5 hours	113 hours	$2,938
225.12(f)—Rail Equipment Accident/Incident Reports—Human Factor—Employee Confidential Letter.	Railroad Employees	10 letters	2 hours	20 hours	$520
225.13—Amended Rail Equipment Accident/Incident Reports.	685 railroads	10 amended reports/20 copies.	1 hour+3 minutes	11 hours	$462
225.17—Doubtful Cases; Alcohol/Drug Involvement.	685 railroads	80 reports	30 minutes	40 hours	$1,680
—Appended Reports	685 railroads	5 reports	30 minutes	3 hours	$126
225.19—Highway-Rail Grade Crossing Accident/Incident Reports (Form FRA F 6180.57).	685 railroads	3,400 forms	2 hours	6,800 hours	$285,600
—Death, Injury, or Occupational Illness (Form FRA F 6180.55a).	685 railroads	13,200 forms	20 minutes	4,400 hours	$184,800
225.21 Forms:					
—Form FRA F 6180.55—Railroad Injury/Illness Summary.	685 railroads	8,220 forms	10 minutes	1,370 hours	$57,540
—Form FRA 6180.56—Annual Report of Manhours By State.	685 railroads	685 forms	15 minutes	171 hours	$7,182
—Form FRA F 6180.98—RR Employee Injury and/or Illness Record.	685 railroads	18,000 forms	1 hour	18,000 hours	$756,000
—Form FRA F 6180.98—Copies	685 railroads	540 copies	2 minutes	18 hours	$756
—Form FRA F 6180.97—Initial Rail Equipment Accident/Incident Record.	685 railroads	13,000 forms	30 minutes	6,500 hours	$273,000
225.25—Posting of Monthly Summary	685 railroads	8,220 lists	16 minutes	2,191 hours	$92,064
225.27—Retention of Records	685 railroads	1,900 records	2 minutes	63 hours	$2,646
225.33—Internal Control Plans—Amended.	685 railroads	60 amendments	14 hours	840 hours	$35,280
225.35—Access to Records and Reports—Lists.	15 railroads	400 lists	20 minutes	133 hours	$5,586
—Subsequent Years	4 railroads	16 lists	20 minutes	5 hours	$210
225.37—Magnetic Media Transfers	8 railroads	96 transfers	10 minutes	16 hours	$672
—Batch Control (Form FRA F 6180.99).	685 railroads	200 forms	3 minutes	10 hours	$420

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning the following issues: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan at 202–493–6292.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 17, Washington, DC 20590.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, entitled, "Federalism," issued on August 4, 1999, requires that each agency "in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provide to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State and local officials have been met * * *."

When issuing the proposed rule in this proceeding, FRA has adhered to Executive Order 13132. FRA engaged in the required Federalism consultation during the early stages of the rulemaking through meetings of the full RSAC, on which several representatives of groups representing State and local officials sit. To date, FRA has received only one concern about the Federalism implications of this rulemaking from these representatives, regarding whether or not FRA's notification requirements would preempt State accident notification requirements. Although our regulations under part 225 preempt States from prescribing accident/incident reporting requirements, there is nothing in our regulations that preempts States from having their own, perhaps even different, accident notification requirements:

> Issuance of these regulations under the federal railroad safety laws and regulations preempts States from prescribing accident/incident reporting requirements. Any State may, however, require railroads to submit to it copies of accident/incident and injury/illness reports filed with FRA under this part, for accident/incidents and injuries/illnesses which occur in that State.

49 CFR 225.1. FRA does not propose to change this provision that a State may require a railroad to submit to the State copies of reports required by part 225 regarding accidents in the State.

Additionally, section 20902 of title 49 of the United States Code, which authorizes the Secretary of Transportation to investigate certain accidents and incidents, provides: "[i]f the accident or incident is investigated by a commission of the State in which it occurred, the Secretary, if convenient, shall carry out the investigation at the same time as, and in coordination with, the commission's investigation." This section contemplates that States have an

interest in carrying out simultaneous investigations in coordination with the Secretary, where convenient. It would be consistent with this interest to permit States to adopt their own accident notification requirements so as to allow a prompt, and perhaps coordinated, investigation. Accordingly, FRA believes that it has satisfied the Executive Order.

E. Environmental Impact

FRA has evaluated this regulation in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded:

* * * * *

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. The proposed rule would not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355, May 22, 2001. Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) that is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

List of Subjects

49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 225

Accident investigation, Penalties, Railroad safety, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 240

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend Chapter II, Subtitle B of Title 49, Code of Federal Regulations, as follows:

PART 219—[AMENDED]

1. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

2. Section 219.5 is amended by adding a definition of *Accident or incident reportable under part 225* of this chapter and revising the definition of *Reportable injury* to read as follows:

§ 219.5 Definitions.

* * * * *

Accident or incident reportable under part 225 of this chapter does not include a case that is classified as "covered data" under § 225.5 of this chapter (*i.e.*, employee injury/illness cases exclusively resulting from a written recommendation to the employee by a physician or other licensed health care professional for time off when the employee instead returned to work, for a work restriction that was not imposed, or for a non-prescription medication at prescription strength, whether or not the medication was taken).

* * * * *

Reportable injury means an injury reportable under part 225 of this chapter except for an injury that is classified as "covered data" under § 225.5 of this chapter (*i.e.*, employee injury/illness cases exclusively resulting from a written recommendation to the employee by a physician or other licensed health care professional for time off when the employee instead returned to work, for a work restriction that was not imposed, or for a non-prescription medication at prescription strength, whether or not the medication was taken).

* * * * *

PART 225—[AMENDED]

3. The authority citation for part 225 is revised to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

4. Section 225.5 is amended as follows:

a. By revising paragraph (3) of the definition of the term *Accident/incident.*

b. By revising the definitions of the terms *Accountable injury or illness, Day away from work, Day of restricted work activity, Medical treatment,* and *Occupational illness;*

c. By removing the term *Arising from the operation of a railroad* and its definition, and;

d. By adding definitions of *Covered data, Event or exposure arising from the operation of a railroad, General reporting criteria, Medical removal, Musculoskeletal disorder, Needlestick or sharps injury, New case, Occupational hearing loss, Occupational tuberculosis, Privacy concern case, Significant change in the number of reportable days away from work, Significant illness,* and *Significant injury.*

The revised and added text reads as follows:

§ 225.5 Definitions.

* * * * *

Accident/incident means:

* * *

(3) Any event or exposure arising from the operation of a railroad, if the event or exposure is a discernable cause of one or more of the following, and the following is a new case or a significant aggravation of a pre-existing injury or illness:

(i) Death to any person;

(ii) Injury to any person that results in medical treatment;

(iii) Injury to a railroad employee that results in:

(A) A day away from work;

(B) Restricted work activity or job transfer; or

(C) Loss of consciousness;

(iv) Occupational illness of a railroad employee that results in any of the following:

(A) A day away from work;

(B) Restricted work activity or job transfer;

(C) Loss of consciousness; or

(D) Medical treatment;

(v) Significant injury to or significant illness of a railroad employee diagnosed by a physician or other licensed health care professional even if it does not result in death, a day away from work, restricted work activity or job transfer, medical treatment, or loss of consciousness;

(vi) Illness or injury that meets the application of the following specific case criteria:

(A) Needlestick or sharps injury to a railroad employee;

(B) Medical removal of a railroad employee;

(C) Occupational hearing loss of a railroad employee;

(D) Occupational tuberculosis of a railroad employee; or

(E) Musculoskeletal disorder of a railroad employee that is independently reportable under one or more of the general reporting criteria.

Accountable injury or illness means any condition, not otherwise reportable, of a railroad employee that is discernably caused by an event, exposure, or activity in the work environment which condition causes or requires the railroad employee to be examined or treated by a qualified health care professional.

* * * * *

Covered data means a case involving an employee of a railroad that is reportable exclusively because a physician or other licensed health care professional recommended in writing that—

(1) The employee take one or more days away from work when the employee instead returned to work;

(2) The employee's work activity be restricted for one or more days when the work restriction was not imposed; or

(3) The employee take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the employee takes the medication.

Day away from work means any calendar day subsequent to the day of the injury or the diagnosis of the illness that a railroad employee does not report to work, or was recommended by a physician or other licensed health care professional not to return to work, as applicable, for reasons associated with the employee's condition even if the employee was not scheduled to work on that day.

Day of restricted work activity means any calendar day that an employee is restricted in his or her job following the day of the injury or the diagnosis of the illness, or was recommended by a physician or other licensed health care professional not to return to work, as applicable, for reasons associated with the employee's condition if the work restriction affects one or more of the employee's routine job functions or from working the full workday that the employee would otherwise have worked. An employee's routine job functions are those work activities that the employee regularly performs at least once per week.

* * * * *

Event or exposure arising from the operation of a railroad includes—

(1) With respect to a person who is on property owned, leased, or maintained by the railroad, an activity of the railroad that is related to the performance of its rail transportation business or an exposure related to the activity;

(2) With respect to an employee of the railroad (whether on or off property owned, leased or maintained by the railroad), an activity of the railroad that is related to the performance of its rail transportation business or an exposure related to the activity; and

(3) With respect to a person who is not an employee of the railroad and not on property owned, leased, or maintained by the railroad—an event or exposure directly resulting from the following railroad operations:

(i) A train accident, a train incident, or a highway-rail crossing accident or incident involving the railroad; or

(ii) A release of a hazardous material from a railcar in the possession of the railroad or of another dangerous commodity that is related to the performance of the railroad's rail transportation business.

* * * * *

General reporting criteria means the criteria listed in § 225.19(d)(1), (2), (3), (4), and (5).

* * * * *

Medical removal means medical removal under the medical surveillance requirements of an Occupational Safety and Health Administration standard in 29 CFR part 1910, even if the case does not meet one of the general reporting criteria.

Medical treatment means any medical care or treatment beyond "first aid" regardless of who provides such treatment. Medical treatment does not include diagnostic procedures, such as X-rays and drawing blood samples. Medical treatment also does *not* include counseling.

Musculoskeletal disorder (MSD) means a disorder of the muscles, nerves, tendons, ligaments, joints, cartilage, and spinal discs. The term does not include disorders caused by slips, trips, falls, motor vehicle accidents, or other similar accidents. Examples of MSDs include: Carpal tunnel syndrome, Rotator cuff syndrome, De Quervain's disease, Trigger finger, Tarsal tunnel syndrome, Sciatica, Epicondylitis, Tendinitis, Raynaud's phenomenon, Carpet layers knee, Herniated spinal disc, and Low back pain.

Needlestick or sharps injury means a cut, laceration, puncture, or scratch from a needle or other sharp object that involves contamination with another person's blood or other potentially infectious material, even if the case does not meet one of the general reporting criteria.

New case means a case in which either the employee has not previously experienced a reported injury or illness of the same type that affects the same part of the body, or the employee previously experienced a reported

injury or illness of the same type that affected the same part of the body but had recovered completely (all signs had disappeared) from the previous injury or illness and an event or exposure in the work environment caused the signs or symptoms to reappear.

* * * * *

Occupational hearing loss means a diagnosis of occupational hearing loss by a physician or other licensed health care professional, under the criteria established by the Occupational Safety and Health Administration in 29 CFR 1904.10 for calendar year 2002, even if the case does not meet one of the general reporting criteria.

Occupational illness means any abnormal condition or disorder, as diagnosed by a physician or other licensed health care professional, of any person who falls under the definition for the classification of Worker on Duty—Employee, other than one resulting from injury, discernably caused by an environmental factor associated with the person's railroad employment, including, but not limited to, acute or chronic illnesses or diseases that may be caused by inhalation, absorption, ingestion, or direct contact.

Occupational tuberculosis means the occupational exposure of an employee to anyone with a known case of active tuberculosis if the employee subsequently develops a tuberculosis infection, as evidenced by a positive skin test or diagnosis by a physician or other licensed health care professional, even if the case does not meet one of the general reporting criteria.

* * * * *

Privacy concern case is any occupational injury or illness, other than a musculoskeletal disorder, in the following list:

(1) Any injury or illness to an intimate body part or the reproductive system;

(2) An injury or illness resulting from a sexual assault;

(3) Mental illnesses;

(4) HIV infection, hepatitis, or tuberculosis;

(5) Needlestick and sharps injuries; and

(6) Other illnesses, if the employee independently and voluntarily requests in writing to the railroad reporting officer that his or her injury or illness not be posted.

* * * * *

Significant change in the number of reportable days away from work means at least a ten-percent increase in the number of reportable days away from work compared to the number of reportable days away from work actually reported.

Significant illness means an illness involving cancer or a chronic irreversible disease such as byssinosis or silicosis, if the disease does not result in death, a day away from work, restricted work, job transfer, medical treatment, or loss of consciousness.

Significant injury means an injury involving a fractured or cracked bone or a punctured eardrum, if the injury does not result in death, a day away from work, restricted work, job transfer, medical treatment, or loss of consciousness.

* * * * *

5. Section 225.9 is revised to read as follows:

§ 225.9 Telephonic reports of certain accidents/incidents and other events.

(a) *Types of accidents/incidents and other events to be reported.* (1) *Certain deaths or injuries.* Each railroad must report immediately, as prescribed in paragraphs (b) through (d) of this section, whenever it learns of the occurrence of an accident/incident arising from the operation of the railroad, or an event or exposure that may have arisen from the operation of the railroad, that results in the—

(i) Death of a rail passenger or a railroad employee;

(ii) Death of an employee of a contractor to a railroad performing work for the railroad on property owned, leased, or maintained by the contracting railroad; or

(iii) Death or injury of five or more persons.

(2) *Certain train accidents or train incidents.* Each railroad must report immediately, as prescribed in paragraphs (b) through (d) of this section, whenever it learns of the occurrence of any of the following events that arose from the operation of the railroad:

(i) A train accident that results in serious injury to two or more train crewmembers or passengers requiring their admission to a hospital;

(ii) A train accident resulting in evacuation of a passenger train;

(iii) A fatality at a highway-rail grade crossing as a result of a train accident or train incident;

(iv) A train accident resulting in damage (based on a preliminary gross estimate) of $150,000, to railroad and nonrailroad property; or

(v) A train accident resulting in damage of $25,000 or more to a passenger train and railroad and nonrailroad property.

(3) *Train accidents on or fouling passenger service main lines.* The dispatching railroad must report immediately, as prescribed in paragraphs (b) through (d) of this section, whenever it learns of the occurrence of any train accident reportable as a rail equipment accident/incident under §§ 225.11 and 225.19(c)—

(i) That involves a collision or derailment on a main line that is used for scheduled passenger service; or

(ii) That fouls a main line used for scheduled passenger service.

(b) *Method of reporting.* (1) Telephonic reports required by this section shall be made by toll-free telephone to the National Response Center, Area Code 800–424–8802 or 800–424–0201.

(2) Through one of the same telephone numbers (800–424–0201), the National Response Center (NRC) also receives notifications of rail accidents for the National Transportation Safety Board (49 CFR part 840) and the Research and Special Programs Administration of the U.S. Department of Transportation (Hazardous Materials Regulations, 49 CFR 171.15). FRA Locomotive Safety Standards require certain locomotive accidents to be reported by telephone to the NRC at the same toll-free number (800–424–0201). 49 CFR 229.17.

(c) *Contents of report.* Each report must state the:

(1) Name of the railroad;

(2) Name, title, and telephone number of the individual making the report;

(3) Time, date, and location of the accident/incident;

(4) Circumstances of the accident/incident;

(5) Number of persons killed or injured; and

(6) Available estimates of railroad and non-railroad property damage.

(d) *Timing of report.* (1) To the extent that the necessity to report an accident/incident depends upon a determination of fact or an estimate of property damage, a report will be considered immediate if made as soon as possible following the time that the determination or estimate is made, or could reasonably have been made, whichever comes first, taking into consideration the health and safety of those affected by the accident/incident, including actions to protect the environment.

(2) NTSB has other specific requirements regarding the timeliness of reporting. *See* 49 CFR part 840.

6. In section 225.19, paragraph (d) is revised to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(d) *Group III—Death, injury, or occupational illness.* Each event or exposure arising from the operation of a railroad shall be reported on Form FRA F 6180.55a if the event or exposure is a discernable cause of one or more of the following, and the following is a new case or a significant aggravation of a pre-existing injury or illness:

(1) Death to any person;

(2) Injury to any person that results in medical treatment;

(3) Injury to a railroad employee that results in:

(i) A day away from work;

(ii) Restricted work activity or job transfer; or

(iii) Loss of consciousness;

(4) Occupational illness of a railroad employee that results in any of the following:

(i) A day away from work;

(ii) Restricted work activity or job transfer;

(iii) Loss of consciousness; or

(iv) Medical treatment;

(5) Significant injury to or significant illness of a railroad employee diagnosed by a physician or other licensed health care professional even if it does not result in death, a day away from work, restricted work activity or job transfer, medical treatment, or loss of consciousness;

(6) Illness or injury that meets the application of the following specific case criteria:

(i) Needlestick or sharps injury to a railroad employee;

(ii) Medical removal of a railroad employee;

(iii) Occupational hearing loss of a railroad employee;

(iv) Occupational tuberculosis of a railroad employee; or

(v) Musculoskeletal disorder of a railroad employee that is independently reportable under one or more of the general reporting criteria.

* * * * *

7. In section 225.21, a new paragraph (j) is added to read as follows:

§ 225.21 Forms.

* * * * *

(j) Form FRA 6180.107—*Alternative Record for Illnesses Claimed to Be Work-Related.* (1) Form FRA F 6180.107 shall be used by the railroads to record each illness claimed to be work-related that is reported to the railroad—

(i) For which there is insufficient information to determine whether the illness is work-related;

(ii) For which the railroad has made a preliminary determination that the illness is not work-related; or

(iii) For which the railroad has made a final determination that the illness is not work-related.

(2) For any case determined to be reportable, the designation "illness claimed to be work-related" shall be removed, and the record shall be transferred to the reporting officer for retention and reporting in the normal manner.

(3) In the event the narrative block (similar to Form FRA F 6180.98, block 39) indicates that the case is not reportable, the explanation contained on that block shall record the reasons the railroad determined that the case is not reportable, making reference to the most authoritative information relied upon.

(4) Although the Form FRA F 6180.107 may not include all supporting documentation, such as medical records, the Form FRA F 6180.107 shall note the name, title, and address of the custodian of those documents and where the supporting documents are located so that it is readily accessible to FRA upon request.

8. In section 225.23, paragraph (a) is revised to read as follows:

§ 225.23 Joint operations.

(a) Any reportable death, injury, or illness of an employee arising from an accident/incident involving joint operations must be reported on Form FRA F 6180.55a by the employing railroad.

* * * * *

9. Section 225.25 is amended by revising paragraphs (b)(6), (b)(16), (b)(25)(v), (e)(8), (e)(24), (h)(15), and new paragraphs (b)(25)(xi), (b)(25)(xii) and (i) are added to read as follows:

§ 225.25 Recordkeeping.

* * * * *

(b) * * *

(6) Employee identification number or, in the alternative, Social Security Number of railroad employee;

* * * * *

(16) Whether employee was on premises when injury, illness, or condition occurred;

* * * * *

(25) * * *

(v) If one or more days away from work, provide the number of days away and the beginning date;

* * * * *

(xi) Significant injury or illness of a railroad employee;

(xii) Needlestick or sharps injury to a railroad employee, medical removal of a railroad employee, occupational hearing loss of a railroad employee, occupational tuberculosis of a railroad employee, or musculoskeletal disorder of a railroad employee which musculoskeletal disorder is reportable under one or more of the general reporting criteria.

* * * * *

(e) * * *

(8) County and nearest city or town;

* * * * *

(24) Persons injured, persons killed, and employees with an occupational illness, broken down into the following classifications: worker on duty—employee; employee not on duty; passenger on train; nontrespasser-on railroad property; trespasser; worker on duty—contractor; contractor—other; worker on duty—volunteer; volunteer—other; and nontrespasser-off railroad property;

* * * * *

(h) * * *

(15) The railroad is permitted not to post information on an occupational injury or illness that is a privacy concern case.

* * * * *

(i) *Claimed occupational illnesses.* (1) Each railroad shall maintain either the Form FRA F 6180.107, to the extent that the information is reasonably available, or an alternate railroad-designed record containing the same information as called for on the Form FRA F 6180.107, to the extent that the information is reasonably available, for each illness claimed to be work-related—

(i) For which there is insufficient information to determine whether the illness is work-related;

(ii) For which the railroad has made a preliminary determination that the illness is not work-related; or

(iii) For which the railroad has made a final determination that the illness is not work-related.

(2) For any case determined to be reportable, the designation "illness claimed to be work-related" shall be removed, and the record shall be transferred to the reporting officer for retention and reporting in the normal manner.

(3) In the event the narrative block (similar to Form FRA F 6180.98, block 39) indicates that the case is not reportable, the explanation contained on that block shall record the reasons the railroad determined that the case is not reportable, making reference to the most authoritative information relied upon.

(4) In the event the railroad must amend the record with new or additional information, the railroad shall have up until December 1 of the next calendar year for reporting accidents/incidents to make the update.

(5) Although the Alternative Record for Illnesses Claimed to be Work-Related (or the alternate railroad-designed form) may not include all supporting documentation, such as medical records, the alternative record shall note the custodian of those documents and

where the supporting documents are located so that it is readily accessible to FRA upon request.

10. Section 225.33 is amended by adding new paragraph (a)(11) to read as follows:

§ 225.33 Internal Control Plans.

(a) * * *

(11) In the case of the Form FRA F 6180.107 or the alternate railroad-designed form, a statement that specifies the name, title, and address of the custodian of these records, all supporting documentation, such as medical records, and where the documents are located.

* * * * *

11. Section 225.35 is amended by designating the first paragraph as paragraph (a), designating the second paragraph as paragraph (b), and adding after the fourth sentence of newly designated paragraph (b) the following two sentences:

§ 225.35 Access to records and reports.

* * * * *

(b) * * * The Form FRA F 6180.107 or the alternate railroad-designed form need not be provided at any railroad establishment within 4 hours of a request. Rather, the Form FRA F 6180.107 or the alternate railroad-designed form must be provided upon request, within five business days, and may be kept at a central location, in either paper or electronic format. * * *

12. Section 225.39 is added to read as follows:

§ 225.39 FRA policy on covered data.

FRA will not include covered data (as defined in § 225.5) in its periodic summaries of data on the number of occupational injuries and illnesses.

PART 240—[AMENDED]

13. The authority citation for part 240 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

14. In section 240.117, paragraph (e)(2) is revised to read as follows:

§ 240.117 Criteria for consideration of operating rules compliance data.

* * * * *

(e) * * *

(2) Failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit by at least 10 miles per hour. Where restricted speed is in effect, railroads shall consider only those violations of the conditional clause of restricted speed rules (*i.e.*, the clause that requires stopping within one half of the locomotive engineer's range of vision), or the operational equivalent thereof, which cause reportable accidents or incidents under part 225 of this chapter, except for accidents and incidents that are classified as "covered data" under § 225.5 of this chapter (*i.e.*, employee injury/illness cases exclusively resulting from a written recommendation to the employee by a physician or other licensed health care professional for time off when the employee instead returned to work, for a work restriction that was not imposed, or for a non-prescription medication to be taken at prescription strength, whether or not the medication was taken), as instances of failure to adhere to this section;

* * * * *

Issued in Washington, DC, on September 18, 2002.

Allan Rutter,

Federal Railroad Administrator.

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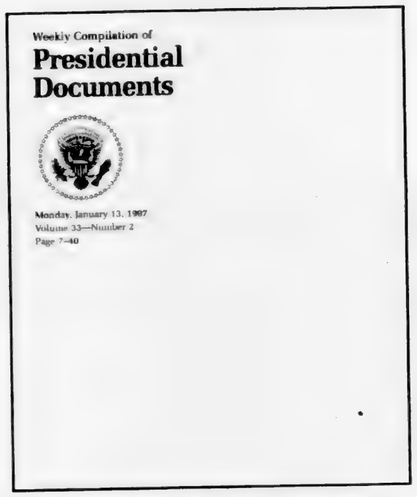

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Rules and Regulations

Federal Register
Vol. 67, No. 197
Thursday, October 10, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 534

RIN 3206–AJ47

Basic Pay for Employees of Temporary Organizations

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations on setting pay for employees of temporary organizations established by law or Executive order. These regulations will enable agencies to determine the rate of basic pay and locality payments for employees of temporary organizations.

EFFECTIVE DATE: The regulations are effective on November 12, 2002.

FOR FURTHER INFORMATION CONTACT: David Sweeney, (202) 606–2858, FAX: (202) 606–0824, or email: *payleave@opm.gov*.

SUPPLEMENTARY INFORMATION: On January 25, 2002, the Office of Personnel Management (OPM) issued interim regulations on compensation for employees of temporary organizations established by law or Executive order. (*See* 67 FR 3581.) Section 1101 of the Floyd D. Spence National Defense Authorization Act for fiscal year 2001 (Public Law 106–398, October 30, 2000), added a new subchapter IV to chapter 31 of title 5, United States Code. Subchapter IV provides OPM with authority to establish regulations to determine the rate of basic pay for employees of temporary organizations without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code. (*See* 5 U.S.C. 3161 (d).) The 60-day comment period for the interim regulations ended on March 26, 2002. We received no comments from either agencies or individuals. However, we are revising §§ 534.301 and 534.302 concerning the purpose and coverage of these regulations to improve readability and reduce redundancy. We are also revising § 534.304(b) to clarify that the cap on locality-adjusted rates of basic pay for employees in staff and other non-executive level positions is the rate for level IV of the Executive Schedule. This is consistent with the cap on locality rates for General Schedule employees. Other than these changes, we are adopting as final the interim rules for agencies to administer the basic pay rates for employees of temporary organizations under 5 U.S.C. part 534, subpart C. The final regulations do not apply to temporary organizations established prior to October 30, 2000.

Consistent with 5 U.S.C. 3161(d), § 534.303 of these final regulations provides that the rate of basic pay for executive level positions of a temporary organization may not exceed the maximum rate of basic pay established for the Senior Executive Service (SES) under 5 U.S.C. 5382. Employees in executive level positions must be paid locality payments under 5 U.S.C. 5304 in addition to basic pay, not to exceed the rate for level III of the Executive Schedule. Section 534.304 provides that the rate of basic pay for staff or other non-executive level positions in a temporary organization may not exceed the maximum rate of basic pay for GS–15 under 5 U.S.C. 5332. However, § 534.304(c) provides that the rate of basic pay for a senior staff position of a temporary organization may, in a case determined by the head of the temporary organization to be exceptional, exceed the maximum rate of basic pay for GS–15, but may not exceed the maximum rate of basic pay for the SES. As previously stated, staff and other non-executive positions also must be paid locality payments under 5 U.S.C. 5304, not to exceed the rate for level IV of the Executive Schedule.

In setting rates of basic pay for staff and other non-executive level positions, consideration should be given to the significance, scope, and technical complexity of the position and the qualifications required for the work involved. (*See* § 534.304 (a)(2).) This is consistent with a parallel requirement established under regulations issued by General Services Administration for setting basic pay for advisory committee members and staff under the Federal Advisory Committee Act. (*See* 41 CFR 102–3.130.)

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 534

Government employees, Hospitals, Students, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, the Office of Personnel Management is adopting the interim rule amending part 534 of title 5 of the Code of Federal Regulations which was published at 67 FR 3581 on January 25, 2002, as final with the following changes:

PART 534—PAY UNDER OTHER SYSTEMS

1.The authority citation for part 534 continues to read as follows:

Authority: 5 U.S.C. 1104, 3161(d), 5307, 5351, 5352, 5353, 5376, 5383, 5384, 5385, 5541, and 5550a.

2. Sections 534.301 and 534.302 are revised to read as follows:

Subpart C—Basic Pay for Employees of Temporary Organizations

§ 534.301 Purpose.

This subpart provides rules for determining the rate of basic pay and locality-adjusted rate of basic pay for employees who are appointed to positions in temporary organizations and compensated under 5 U.S.C. 3161. Such temporary organizations are established by law or Executive order. This subpart does not provide authority to establish other forms of compensation and benefits not authorized by title 5, United States Code, or another specific statutory authority.

§ 534.302 Coverage.

This subpart applies to employees in executive level and staff positions in temporary organizations. Such employees are not subject to the provisions applicable to General Schedule employees covered by chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

3. Paragraph (b) of § 534.304 is revised to read as follows:

§ 534.304 Basic pay for staff positions.

* * * * *

(b) Employees in staff and other non-executive level positions of temporary organizations must be paid locality payments in addition to basic pay in the same manner as employees covered by 5 U.S.C. 5304. Locality-adjusted rates of basic pay may not exceed the locality-adjusted rate of basic pay for grade GS–15 of the General Schedule under 5 U.S.C. 5304, for the locality pay area involved (not to exceed the rate for level IV of the Executive Schedule).

* * * * *

[FR Doc. 02–25848 Filed 10–9–02; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM217; Special Conditions No. 25–209–SC]

Special Conditions: Boeing Commercial Airplane Group, Boeing Model 747–400 Series Airplane; Forward Lower Lobe (Service/Cargo) Compartment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 747–400 series airplane. This airplane, as modified by the Boeing Commercial Airplane Group, Wichita, Kansas, will have novel or unusual design features associated with the installation of a forward lower lobe compartment that will have two functions: that of a service compartment and that of a class C cargo compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2145; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 2001, Boeing Commercial Airplane Group (BCAG)—Wichita Division Designated Alteration Station (DAS) applied for a supplemental type certificate for the installation, in a Boeing Model 747–400 series airplane, of a forward lower lobe compartment that combines two functions: that of a service compartment and that of a class C cargo compartment. The Boeing Model 747–400 series airplane, currently approved under Type Certificate A20WE, is a large transport category airplane with upper and main passenger decks. The main deck is limited to 550 passengers or less and the upper deck is limited to 110 passengers or less, depending on the interior configuration. Cargo compartments are installed below the main deck. The airplane is driven by four high-bypass turbojet engines capable of a static thrust in excess of 43,000 pounds.

The 747–400 configuration proposed for certification is an interim, but certifiable, configuration. The final interior will be installed by another modifier at a later date. Boeing proposes to certificate the model with the forward half of the main deck open and the aft half of the main deck configured for passengers. However, the main deck and upper deck will be certificated with limitations specifying zero occupancy and zero cargo.

Boeing proposes to modify the configuration defined above by installing a stair from the main deck to the forward lower lobe cargo compartment and proposes to use the forward cargo compartment as a service area and as a class C cargo compartment. Further, an air-stair would be installed to allow walk-in access from the ground to the forward lower lobe (service/cargo) compartment. The forward lower lobe (service/cargo) compartment design would have provisions for flammability and smoke protection. Access would be limited to one trained crewmember and access would be allowed during flight but not during taxi, takeoff and landing, or during a fire.

To accommodate access into the forward lower lobe (service/cargo) compartment by a crewmember, Boeing proposes appropriate warning and emergency equipment will be installed as defined for a lower lobe service compartment in § 25.819. A flight attendant seat will be installed in the forward lower lobe (service/cargo) compartment for in-flight emergency use only. The seat will be located so that it meets all certification requirements for attendant seating. Speakers, warning lights, and buzzers will be installed in the forward lower lobe (service/cargo) compartment to warn the crewmember occupant of turbulent conditions, smoke detection, or the need to leave the area. A crew interphone will be provided for communications with the flight deck. In addition, emergency oxygen equipment will be provided as appropriate.

Boeing proposes the forward lower lobe (service/cargo) compartment will meet the class C requirements of § 25.857(c) and will include an approved built-in fire extinguisher or suppression system controllable from the cockpit. In the event of a fire, the forward lower lobe (service/cargo) compartment will be evacuated, and the pilot will initiate a Halon suppression system. A means will be provided to prevent inadvertent access to the compartment when the fire suppression system has been activated. The intention of the fire suppression system is to eliminate the necessity for sending someone into the compartment to fight a fire.

The existing regulations address a service area and a class C cargo compartment as independent compartments, but do not address one compartment that has two uses. The service compartment can be occupied and the class C cargo compartment cannot. Further, fire fighting is dealt with differently in each compartment. The crew fights a fire in a service compartment and a flooding extinguisher system is used to fight a fire in a class C cargo compartment. The concept Boeing proposes may be acceptable if it can be assured that when the compartment is used for either function, a level of safety would be achieved that would be equivalent to compartment installations that are independent. Therefore, special conditions requiring warnings, limitations, and equipment installations are issued to achieve a level of safety that would allow a lower lobe compartment to be used as a service compartment or a class C cargo compartment when the aircraft is to be certificated in a similar configuration to that which Boeing proposes (*i.e.* forward lower lobe compartment with stair access, emergency escape routes, etc.).

Type Certification Basis

Under the provisions of § 21.101 Amendment 21–69, effective September 16, 1991, the Boeing Commercial Airplane Group must show that the Model 747–400 series airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate A20WE or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate A20WE for the Boeing Model 747–400 series airplanes include 14 CFR part 25, as amended by Amendments 25–1 through 25–70, with certain exceptions listed in the type data sheet. The U.S. type certification basis for the Boeing Model 747–400 series airplane is established in accordance with 14 CFR 21.17 and 21.21 and the type certification application date. The type certification basis is listed in Type Certificate Data Sheet No. A20WE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 747–400 series airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 747–400 series airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2) Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1) Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

The Boeing Model 747–400 series airplane will incorporate the following novel or unusual design features: the forward lower lobe compartment will be used as a combined service area/class C cargo compartment.

Discussion

The requirements listed in these special conditions are developed to allow the use of the forward lower lobe as a service compartment and as a class C cargo compartment during flight conditions. To make this concept work, these special conditions establish communication, warning, and personal safety requirements, because the existing requirements, §§ 25.819 versus 25.855, 25.857, and 25.858, are exclusive. As an example, to use the fire control system of a class C cargo compartment, the compartment must not be occupied because the means of fire control is to flood the compartment with fire suppressant.

The applicant has not proposed provisions satisfying regulatory requirements for occupancy of the forward lower lobe (service/cargo) compartment during taxi, takeoff, and landing. Therefore, the FAA will apply appropriate limitations for taxi, takeoff, and landing.

The approach to establishing requirements for a common compartment with two uses is to apply the existing requirements for a service compartment when used as a service compartment and for cargo compartments when used as a class C compartment, and to propose special conditions where the rules are inadequate to address the functionality of both.

Special Condition 1

Currently, § 25.819 addresses a service compartment, which can be occupied, but does not need to be evacuated under certain normal conditions or under certain unsafe conditions (*e.g.*, in the case of fire, the occupant could function as a firefighter). The class C cargo compartment requirements address a stand-alone cargo compartment that is not occupied; fire detection is automatic and suppression relies on a total flood system. To maintain the advantages of both a service compartment and a class C cargo compartment, certain warnings need to be addressed.

Special Condition 1(a)

Special Condition 1(a) will require a visual means in the cockpit to advise the flightcrew when the forward lower lobe (service/cargo) compartment is occupied. The potential exists that the forward lower lobe (service/cargo) compartment may inadvertently be occupied when it is not supposed to be, such as during taxi, takeoff and landing, or during certain emergency events. This requirement ensures the flightcrew is aware of that situation and can take appropriate action to evacuate the forward lower lobe before flooding the compartment with fire suppressant agent. The advisory should be clear as to its intent, either by light with placard or lighted advisory message or equivalent.

Special Condition 1(b)

Special Condition 1(b) will require an "on/off" visual advisory/warning stating "Do Not Enter" (or similar words) to be located outside and on or near the entrance door from the main deck to the forward lower lobe (service/cargo) compartment. The advisory/warning is to be controlled from the flight deck. This is to prevent someone entering the forward lower lobe (service/cargo) compartment when it is not supposed to be occupied. Those conditions exist during taxi, takeoff and landing, and if smoke or fire is detected. Opening the door during a fire would, among other things, degrade the effectiveness of the fire suppressant and allow smoke, flame, and/or suppressant into the cabin.

Special Condition 1(c)

Special Condition 1(c) will require a visible and audible advisory/warning means in the forward lower lobe (service/cargo) compartment to notify the occupant that the occupant must exit the forward lower lobe (service/cargo) compartment. To be effective, the visible and audible advisory/warning must be able to be seen and heard from any part of the compartment. The visible and audible advisory/warning is to be controlled from the flight deck. As the forward lower lobe (service/cargo) compartment may be occupied on the ground or in the air, a means must be provided to notify the occupant to exit the compartment prior to taxi, takeoff and landing, or during certain emergency conditions (other than fire, which is dealt with under Special Condition 1(e)). A visual advisory/warning is included in case the audible warning were to become masked or distorted by engine, equipment, or ground noises.

Special Condition 1(d)

Special condition 1(d) will require a means (visible and audible) to notify the occupant of the forward lower lobe (service/cargo) compartment of the need

to put on supplemental oxygen equipment in the event of a decompression. As the occupant could be anywhere in the forward lower lobe (service/cargo) compartment, the means should be heard and be visible from anywhere in the forward lower lobe (service/cargo) compartment. Further, the warning should be distinct from other warnings in the forward lower lobe (service/cargo) compartment to prevent confusion and inappropriate action. An automatic decompression warning (*i.e.*, not requiring a separate crew action) ensures that the forward lower lobe (service/cargo) compartment occupant does not delay putting on the oxygen equipment. This section of the special conditions is partially in lieu of the visual effect provided by the automatic presentation feature required by § 25.1447.

Special Condition 1(e)

Special Condition 1(e) will require a visible and audible means to warn the occupant of the forward lower lobe (service/cargo) compartment of the need to evacuate the forward lower lobe (service/cargo) compartment if a fire is detected. The means must be heard and be visible from anywhere in the forward lower lobe (service/cargo) compartment and must be distinct from other warnings in the forward lower lobe (service/cargo) compartment in order to prevent confusion and to elicit correct action. The fire/smoke detection warning in the forward lower lobe (service/cargo) compartment must be automatic (*i.e.*, not requiring or depending on a separate crew action), to ensure that the occupant exits the forward lower lobe (service/cargo) compartment prior to the flight deck crew releasing the fire suppressant agent.

Special Condition 2

The lower lobe (service/cargo) compartment must be evacuated if a fire occurs. Further, a means must be provided to prevent access into the compartment during taxi, takeoff or landing, and in the event of a fire. Placards and limitations assist in these situations.

Special Condition 2(a)

Special Condition 2(a) will require a placard to be located outside the forward lower lobe (service/cargo) compartment door to limit access to the forward lower lobe (service/cargo) compartment to one crewmember trained in evacuation means. The accommodations and emergency support equipment provided necessitate limiting access (*i.e.*, one seat, one oxygen bottle, one protective breathing device, one fire extinguisher, etc.).

Special Condition 2(b)

Special Condition 2(b) will require placards, located inside and outside the forward lower lobe (service/cargo) compartment door, stating that the compartment door must remain closed except when entering and leaving the compartment. The smoke/fire detection and suppression systems are certified with the door closed, and the door needs to remain closed to retain their certified characteristics and to be effective. In the event the single occupant falls asleep in the chair provided, the smoke alarm will still function and a warning will be provided to warn the occupant to exit the compartment.

Special Condition 2(c)

Special Condition 2(c) will require a limitation be placed in the airplane flight manual (AFM) and placards be posted inside and outside the forward lower lobe (service/cargo) compartment door, all stating that the forward lower lobe (service/cargo) compartment may not be occupied during taxi, takeoff, landing, or during a fire emergency. These placards are being specified because the compartment is not being certified as occupied during taxi, takeoff, and landing and because the cargo compartment must not be occupied during a fire so that the occupant is not exposed to the fire and suppressant. These placards are somewhat redundant to the advisory required under 1(b) and 1(c), but have the benefit of the information being available to the occupant in the event the flightcrew fails to activate the advisory/warnings of 1(b) and 1(c).

Special Condition 2(d)

Special Condition 2(d), with respect to the forward lower lobe (service/cargo) compartment, will require the AFM supplement include flight deck crew instructions for: allowing access; procedures for fire/smoke/detection/fire fighting; procedures for decompression; and limitations prohibiting occupancy during taxi, takeoff, and landing. Further, this special condition would require that the weight and balance manual include cargo loading restrictions requiring cargo to be loaded and restrained in a manner so that escape paths are maintained. These actions are to ensure the single flightcrew member can safely access the cargo compartment during flight and exit safely during failure conditions.

Special Condition 2(e)

Because access is being provided to the forward lower lobe (service/cargo) compartment, there is a concern that, during flight, passengers may retrieve hazardous materials and weapons stored in luggage. Ideally, access could be prevented by locking the forward lower lobe (service/cargo) compartment and that is one solution (Special Condition 2(e)(1)). However, this airplane is being designed for private use, will have limited access, and will have placards limiting access. Further, there is notification to the flightcrew if the forward lower lobe (service/cargo) compartment is occupied (Special Condition 1(a)). Therefore, as an alternative to locking the lower lobe (service/cargo) compartment, in addition to limiting access under Special Conditions 2(a) and 2(d), prohibiting the airplane from being operated for hire, or offered for common carriage, is issued (Special Condition 2(e)(2)).

Special Condition 3

Special Condition 3 will require equipment in addition to that required by § 25.819.

Special Condition 3(a)

Special Condition 3(a) will require availability at all times of portable oxygen equipment sufficient to supply a crewmember who is allowed to occupy (except during taxi, takeoff and landing, and a fire) the forward lower lobe (service/cargo) compartment. It was first proposed that the oxygen bottle be stored inside the cargo compartment near the seat, along with a portable extinguisher and a protective breathing device. Because the portable oxygen bottle would not be immediately available (a requirement of § 25.1447(c)(1)) in the event of rapid decompression, and it would not be advisable to provide drop-down masks in a cargo compartment or store a portable oxygen bottle in the compartment (even though the bottle would be afforded some protection), the FAA elected to propose that a portable oxygen bottle be mounted at the outside of the main deck entrance of the forward lower lobe (service/cargo) compartment, along with a placard that specifies that anyone entering the forward lower lobe (service/cargo) compartment during flight must carry portable oxygen equipment on their person for the entire time that they are in the compartment.

Special Condition 3(b)

Special Condition 3(b) will require at least one readily accessible hand-held fire extinguisher and one 15-minute protective breathing equipment device be located within the forward lower lobe (service/cargo) compartment adjacent to the seat. This ensures the occupant has the means to exit the compartment if a fire occurs between the occupant and the exit.

Special Condition 3(c)

Special Condition 3(c) will require, in addition to the two evacuation routes (including exit) requirements of § 25.819(a), a means to keep the evacuation routes clear. The cargo in the compartment should be restrained to ensure that the crewmember's paths to the exits are clear. Further, all entrances and exits from the forward lower lobe (service/cargo) compartment must be capable of being closed after exiting. In addition to the concern for cargo blocking the escape paths, there is the concern about hazardous quantities of smoke, flames, or fire suppressant agent entering any compartments occupied by passengers or crew and the concern about the loss of fire suppressant agent from the compartment during a fire. The forward lower lobe (service/cargo) compartment must be capable of being closed off because, after evacuation, it must comply with the requirements applicable to the class C cargo compartment, including §§ 25.855, 25.857, and 25.858.

Special Condition 3(d)

Special Condition 3(d) will require supplemental handheld lighting (with locator light) in the event the occupant is in the forward lower lobe (service/cargo) compartment and power to the compartment or the emergency escape path lighting is off, or lost, or visibility is poor. At least two flashlights would be required. One flashlight would be located adjacent to the secondary emergency exit in the forward lower lobe (service/cargo) compartment at the foot of the stairs in the compartment. The other would be located adjacent to the seat in the forward lower lobe (service/cargo) compartment. Note that this action is in addition to the requirement for an automatic emergency lighting system required by § 25.819(a).

Special Condition 4

Special Condition 4 addresses training manuals and the training associated with the special conditions above for:

(a) Use and actions associated with the warnings and placards of these special conditions.

(b) Accessing and exiting the cargo forward lower lobe (service/cargo) compartment, including emergency exiting (includes those special conditions associated with Special Conditions 1(b), 1(c), 1(d), 1(e), 2(a), 2(b), 2(c), 2(d), and 3(b)).

(c) Checking the oxygen bottle's pressure for adequacy prior to entering the cargo compartment (associated with Special Condition 3(a)).

(d) Carrying the oxygen bottle when entering the forward lower lobe (service/cargo) compartment (associated with Special Condition 3(a)).

(e) Maintaining an exit path aisle and access to the evacuation routes (associated with Special Condition 3(c)).

Special Condition 5

Special Conditions 25–71–NW–3, which included criteria applicable to the stairs between the main deck and upper deck, were incorporated in the Model 747 series airplane certification basis on August 27, 1976. These special conditions have been reviewed, and sections 3(a)(1), 3(a)(2) and 3(a)(7) are proposed as applicable to the stair between the forward lower lobe (service/cargo) compartment and the main deck. These special conditions are renumbered and repeated as 5(a), 5(b), and 5(c).

Discussion of Comments

Notice of proposed special conditions No. 25–02–07–SC for the Boeing Model 747–400 series airplanes was published in the **Federal Register** on July 1, 2002 (67 FR 44111). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 747–400 series airplane. Should Boeing Commercial Airplane Group apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate A20WE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1) Amendment 21–69, effective September 16, 1991.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Boeing Model 747–400 series airplane is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 747–400 airplanes modified by Boeing Commercial Airplane Group, Wichita Division Designated Alteration Station, with a forward lower lobe configured for use as a service compartment and a class C cargo compartment.

1. Required Warnings (in addition to fire/smoke detection and decompression aural warnings required in § 25.819(c)):

(a) There must be a visual means in the cockpit to advise the flightcrew when the forward lower lobe (service/cargo) compartment is occupied. The advisory light should be accompanied by a placard or message indicating someone is in the forward lower lobe (service/cargo) compartment.

(b) There must be an "on/off" visual advisory/warning stating "Do Not Enter" (or similar words) to be located outside and on or near the entrance door to the forward lower lobe (service/cargo) compartment. The advisory/warning is to be controlled from the flight deck.

(c) There must be a visible and audible advisory/warning means in the forward lower lobe (service/cargo) compartment to notify the occupant that the occupant must exit the forward lower lobe (service/cargo) compartment. The visible and audible warning must be seen and heard from any part of the forward lower lobe (service/cargo) compartment. The visible and audible advisory/warning is to be controlled from the flight deck.

(d) A means (visible and audible) must be provided to notify the occupant of the forward lower lobe (service/cargo) compartment of the need to put on supplemental oxygen equipment in the event of a decompression. The means must be heard and be visible from anywhere in the forward lower lobe (service/cargo) compartment and be distinct from other warnings in the forward lower lobe (service/cargo) compartment. This decompression warning should be automatic (*i.e.*, not requiring a separate crew action), to ensure that the forward lower lobe

(service/cargo) compartment occupant does not delay putting on the oxygen equipment. This section of the special conditions is partially in lieu of the visual effect provided by the automatic presentation feature required by § 25.1447.

(e) A means (visible and audible) must be provided to warn the occupant of the forward lower lobe (service/cargo) compartment of the need to evacuate the forward lower lobe (service/cargo) compartment at fire detection. The means must be heard and be visible from anywhere in the forward lower lobe (service/cargo) compartment and be distinct from other warnings in the forward lower lobe (service/cargo) compartment. The fire/smoke detection warning in the forward lower lobe (service/cargo) compartment must be automatic (*i.e.*, not requiring a separate crew action), to ensure that the occupant exits the forward lower lobe (service/cargo) compartment prior to the flight deck crew releasing fire suppressant agent.

2. Required Placards and Limitations (beyond those required in Part 25):

(a) There must be a placard located outside the forward lower lobe (service/cargo) compartment door limiting access to the forward lower lobe (service/cargo) compartment to one crewmember trained in evacuation means.

(b) There must be placards located inside and outside the forward lower lobe (service/cargo) compartment door stating that the forward lower lobe (service/cargo) compartment door must remain closed except when entering and leaving the compartment.

(c) A limitation must be placed in the airplane flight manual (AFM) supplement and placards must be posted inside and outside the forward lower lobe (service/cargo) compartment door, all stating that the forward lower lobe (service/cargo) compartment may not be occupied during taxi, takeoff, landing, or during a fire emergency.

(d) With respect to the forward lower lobe (service/cargo) compartment, the AFM supplement must include flight deck crew instructions for: allowing access; procedures for fire/smoke/detection/fire fighting; procedures for decompression; limitations prohibiting occupancy during taxi, takeoff, and landing. The weight and balance manual must include cargo loading restrictions to maintain escape paths.

(e) A limitation must be placed in the AFM Supplement stating: "Carriage of hazardous material and/or weapons in the forward lower lobe (service/cargo) compartment is prohibited" unless:

(1) Access to the compartment is locked during flight and the key to the lock remains with the flight deck crew only; or

(2) The airplane is not operated for hire, or offered for common carriage. This provision does not preclude the operator from receiving remuneration to the extent consistent with 14 CFR part 125, 14 CFR part 91, and subpart F, as applicable.

3. Required Equipment (in addition to that required by § 25.819):

(a) There must be portable oxygen equipment available at all times sufficient to supply a crewmember who is allowed to occupy the forward lower lobe (service/cargo) compartment (except during taxi, takeoff and landing, and a fire). The equipment is to be mounted at the outside of the main deck entrance to the forward lower lobe (service/cargo) compartment along with a placard specifying that anyone entering the forward lower lobe (service/cargo) compartment during flight must carry portable oxygen equipment on his/her person for the entire time that he/she is in the forward lower lobe (service/cargo) compartment.

(b) At least one readily accessible hand-held fire extinguisher and one 15-minute protective breathing equipment (PBE) device must be located within the forward lower lobe (service/cargo) compartment adjacent to the seat.

(c) In addition to the two evacuation route (including exit) requirements of § 25.819(a), a means must be provided to keep the evacuation routes clear ; *i.e.*, cargo in the compartment should be restrained to ensure that the crewmember's paths to the exits are clear. All entrances and exits from the forward lower lobe (service/cargo) compartment must be capable of being closed after entering and exiting and, after closing, must prevent hazardous quantities of smoke, flames, or fire suppressant agent from entering any compartments occupied by passengers or crew and must prevent loss of fire suppressant agent during a fire.

(d) In addition to the emergency illumination required by § 25.829(a), there must be supplemental handheld lighting (with locator light) located within the forward lower lobe (service/cargo) compartment. At least two flashlights will be required. One flashlight must be located adjacent to the secondary emergency exit of the forward lower lobe (service/cargo) compartment. The other must be adjacent to the seat in the forward lower lobe (service/cargo) compartment.

4. Training manuals and training must include:

(a) Use and actions associated with warnings and placards specified herein.

(b) Accessing and exiting the cargo forward lower lobe (service/cargo) compartment, including emergency exiting.

(c) Checking the oxygen bottle's pressure for adequacy prior to entering the forward lower lobe (service/cargo) compartment.

(d) Carrying the oxygen bottle when entering the forward lower lobe (service/cargo) compartment.

(e) Maintaining exit path aisle and access for the evacuation routes.

5. The stairway between the forward lower lobe (service/cargo) compartment and the main deck (applicable portions excerpted from Special Conditions 25–71–NM–3 issued August 27, 1976) must meet the following requirements:

(a) The stairway must have essentially straight route segments with a landing at each significant change in segment direction.

(b) The stairs must have essentially rectangular treads.

(c) General illumination must be provided so that, when measured along the centerlines of each tread and landing, the illumination is not less than .05 foot-candle.

Issued in Renton, Washington, on September 30, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–25707 Filed 10–9–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, and 558

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for 15 approved new animal drug applications (NADAs) from Cyanamid Agricultural de Puerto Rico, Inc., to Fort Dodge Animal Health.

DATES: This rule is effective October 10, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Cyanamid Agricultural de Puerto Rico, Inc., P.O. Box 243, Manati, PR 00701, has informed FDA that it has transferred ownership of, and all rights and interest in, the following 15 approved NADAs to Fort Dodge Animal Health, A Division of American Cyanamid Co., P.O. Box 1339, Fort Dodge, IA 50501:

NADA Number	Trade Name
039–356	RIPERCOL L Bolus; TRAMISOL Cattle Wormer Bolus
039–357	RIPERCOL L Soluble Drench Powder
042–740	RIPERCOL L; TRAMISOL Soluble Drench Powder for Sheep
042–837	RIPERCOL L Wormer Oblets; TRAMISOL Sheep Wormer Oblets
044–015	TRAMISOL Type A Medicated Article
045–455	TRAMISOL Type A Medicated Article
045–513	RIPERCOL L
049–553	RIPERCOL L
092–237	RIPERCOL L-Piperazine Soluble
093–688	RIPERCOL L-Piperazine
101–079	TRAMISOL 10% Pig Wormer; TRAMISOL Hog Wormer
102–437	TRAMISOL Injectable Solution
104–184	STYQUIN
107–085	TRAMISOL
126–237	TRAMISOL Gel

Accordingly, the agency is amending the regulations in 21 CFR 520.1242a, 520.1242b, 520.1242c, 520.1242e, 520.1242f, 522.234, 522.1244, and 558.315 to reflect the transfer of ownership and to reflect current format.

Following this change of sponsorship, Cyanamid Agricultural de Puerto Rico, Inc., is no longer the sponsor of any approved application. Accordingly, 21 CFR 510.600(c) is being amended to remove the entries for Cyanamid Agricultural de Puerto Rico, Inc.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520 and 522

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Cyanamid Agricultural de Puerto Rico, Inc." and in the table in paragraph (c)(2) by removing the entry for "043781".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1242a [Amended]

4. Section 520.1242a *Levamisole hydrochloride drench and drinking water* is amended in paragraph (b)(1) by removing "043781" and by adding in its place "No. 053501".

§ 520.1242b [Amended]

5. Section 520.1242b *Levamisole hydrochloride tablet or oblet (bolus)* is amended in paragraph (c) by removing "043781" and by adding in its place "053501".

§ 520.1242c [Amended]

6. Section 520.1242c *Levamisole hydrochloride and piperazine dihydrochloride* is amended in paragraph (b) by removing "043781" and by adding in its place "053501".

§ 520.1242e [Amended]

7. Section 520.1242e *Levamisole hydrochloride effervescent tablets* is amended in paragraph (b) by removing "043781" and by adding in its place "053501".

§ 520.1242f [Amended]

8. Section 520.1242f *Levamisole hydrochloride gel* is amended in paragraph (b) by removing "043781" and by adding in its place "053501".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

9. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.234 [Amended]

10. Section 522.234 *Butamisole hydrochloride* is amended in paragraph (b) by removing "043781" and by adding in its place "053501".

§ 522.1244 [Amended]

11. Section 522.1244 *Levamisole phosphate injection* is amended in paragraph (b) by removing "043781" and by adding in its place "053501".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

12. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.315 [Amended]

13. Section 558.315 *Levamisole hydrochloride (equivalent)* is amended in paragraph (a) by removing "043781" and by adding in its place "No. 053501".

Dated: September 26, 2002.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–25880 Filed 10–9–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D. 092502H]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action 12—Adjustment of the Recreational Fishery From the Queets River to Leadbetter Point, WA (Westport Area)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment; request for comments.

SUMMARY: NMFS announces that the recreational fishery in the area from the Queets River to Leadbetter Point, WA (Westport Area), was modified to reopen Sunday, August 18, 2002, through midnight on Monday, August 19, 2002. The area continued with a bag limit of two fish per day, but only 1 chinook, and all retained coho required to have a healed adipose fin clip, and a chinook minimum size limit of 28 inches (71.1 cm) total length. All other restrictions remained in effect as announced for

2002 ocean salmon fisheries. The Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that these management measures should be implemented to provide greater access to the coho and chinook quotas. This action was necessary to conform to the 2002 management goals.

DATES: Adjustment in the Westport Area effective 0001 hours local time (l.t.), August 18, 2002, through 2359 hours l.t., August 19, 2002, or until modified by a subsequent inseason action, which will be published in the **Federal Register** for the west coast salmon fisheries, or until the effective date of the year 2003 management measures. Comments will be accepted through October 25, 2002.

ADDRESSES: Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION:

The Regional Administrator modified the season for the recreational fishery in the Westport sub-area to reopen Sunday, August 18, 2002, through midnight on Monday, August 19, 2002. The area continued with a bag limit of two fish per day, but only 1 chinook, and all retained coho required to have a healed adipose fin clip, and a chinook minimum size limit of 28 inches (71.1 cm) total length. Information provided on August 15, 2002, regarding the available catch and effort data indicated that these management measures should be implemented to provide greater access to the coho and chinook quotas. Modification of fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i).

In the 2002 annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002), NMFS announced the recreational fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, would have an overall chinook quota of 67,500 fish, with each of its four sub-areas having a chinook guideline. The Westport sub-area was announced to open June 30 through the earlier of September 8, 2002, or a 39,280 coho subarea quota, with a guideline of 32,000 chinook.

The recreational fishery in Westport sub-area was modified twice by inseason action. The fishery was first modified to establish a chinook minimum size limit of 28 inches (71.1 cm) total length from the U.S.-Canada Border to Leadbetter Point, WA, and 26 inches (66.0 cm) total length from Leadbetter Point, WA, to Cape Falcon, OR, effective July 21, 2002 (67 FR 52891, August 14, 2002). Information provided on July 18, 2002, regarding the available catch and effort data indicated that modifying the minimum size limit of 24 inches (61.0 cm) total length for chinook to the adjusted size limits should be implemented to slow the catch of chinook and provide greater access to the coho quota. Second, the Westport, WA, sub-area was modified to close at midnight August 15, 2002, with the bag limit also modified to two fish per day, but only 1 chinook, and all retained coho required to have a healed adipose fin clip (67 FR 61041, September 27, 2002). The chinook minimum size limit continued to be 28 inches (71.1 cm) total length. These modifications to the fishing season were adopted to avoid closing the fishery early due to reaching the chinook quota, thus precluding the opportunity to catch available marked hatchery coho salmon that typically show up in greater numbers later in the season.

On August 15, 2002, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the chinook and coho catch rates, and effort data indicated that there was enough chinook left in the quota to allow two more days of fishing, without foreclosing opportunity of fishers to harvest marked coho in the other sub-areas. As a result, the States of Washington and Oregon recommended, and the Regional Administrator concurred, that the recreational fishery in the Westport, WA, sub-area needed modification to reopen on Sunday, August 18, 2002, through midnight on Monday, August 19, 2002, to access the available chinook and marked coho left in the sub-area quotas. In addition, the area was to continue with a bag limit of two fish per day, but only 1 chinook, and all retained coho required to have a healed adipose fin clip, and a chinook minimum size limit of 28 inches (71.1 cm) total length. All other restrictions that applied to this fishery remained in effect as announced in the 2002 annual management measures.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the States. The States manage the fisheries in State waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the effective date by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), or delaying the effectiveness of this rule for 30 days under 5 U.S.C. 553(d)(3), because such notification and delay would be impracticable and contrary to the public interest. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002) and the West Coast Salmon Plan. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the limits to which the fishery must be adjusted to reduce harvest rates in the fishery must be in place. Moreover, such prior notice and the opportunity for public comment is contrary to the public interest because it does not allow recreational fishermen appropriately controlled access to the available fish at the time they are available.

The AA finds good cause to waive the 30-day delay in effectiveness required under 5 U.S.C. 553(d)(3). A delay in effectiveness of this action would not allow recreational fishermen appropriately controlled access to the available fish at the time they are available.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 3, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–25710 Filed 10–9–02; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D. 092602A]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action 13—Adjustment of the Commercial Fishery from the U.S.–Canada Border to Cape Falcon, OR

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustments; request for comments.

SUMMARY: NMFS announces that the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR was modified to reopen on August 22, 2002, and close at midnight, August 28, 2002, with a vessel limit of 250 chinook salmon for the entire 7–day open period. In addition, the gear restriction limiting fishers to no more than four spreads per line between Cape Falcon, OR and Leadbetter Point, WA was suspended for the open period. All other restrictions and regulations remain in effect as announced for 2002 ocean salmon fisheries. The Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that these management measures should be implemented to provide fishers greater access to the chinook and coho quotas. This action was necessary to conform to the 2002 management goals.

DATES: Adjustments in the area from the U.S.-Canada Border to Cape Falcon, OR, effective 0001 hours local time (l.t.), August 22, 2002, through 2359 hours l.t. August 28, 2002, after which the fishery will remain closed until opened through an additional inseason action, which will be published in the **Federal Register** for the west coast salmon fisheries, or until the effective date of the year 2003 management measures. Comments will be accepted through October 25, 2002.

ADDRESSES: Comments on these actions must be mailed or faxed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070, facsimile 206–526–6376; or

Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132, facsimile 562–980–4018.

Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator modified the season for the commercial fishery in the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR to reopen on August 22, 2002, and close at midnight, August 28, 2002, with a vessel limit of 250 chinook salmon for the entire 7–day open period. In addition, the gear restriction limiting fishers to no more than four spreads per line between Cape Falcon, OR and Leadbetter Point, WA was suspended for the open period. Information provided on August 21, 2002, regarding the available catch and effort data indicated that these management measures should be implemented to allow fishers to fully access the chinook and coho quotas. Modification of fishing seasons and gear restriction are authorized by regulations at 50 CFR 660.409(b)(1)(i) and 50 CFR 660.409(b)(1)(iv), respectively.

In the 2002 annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002), NMFS announced that the commercial fishery for all salmon except coho in the area from the U.S.-Canada Border to Cape Falcon, OR would open July 1, 2002, and run through the earlier of September 8, 2002, or a 32,500–chinook quota, except for a selective fishery for marked coho in the sub-area from Leadbetter Point, WA to Cape Falcon, OR scheduled at the end of the season with a 5,000–marked coho quota.

The fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, has been modified four times so far by inseason action. The first inseason action opened the fishery as scheduled on July 1, 2002, but modified it to close at midnight, July 8, 2002, with the provision that no vessel may possess, land, or deliver more than 250 chinook for the entire 8–day open period (67 FR 47334, July 18, 2002). The second inseason action reopened the area on July 12, 2002, and closed it at midnight, July 22, 2002, with the provision that no vessel may possess, land, or deliver more than 400 chinook for the entire 11–day open period (67 FR 49875, August 1, 2002). The third inseason action reopened the area on July 26, 2002, and closed it at midnight, August 5, 2002, with the provision that no vessel may possess, land, or deliver more than 500 chinook salmon for the entire 11–day open period (67 FR52889, August 14, 2002). The fourth inseason action reopened the area on August 9, 2002, and closed it at midnight, August 18, 2002, with the provision that no vessel may possess, land, or deliver more than 400 chinook salmon for the entire 10–day open period (67 FR 60599, September 26, 2002). In addition, the gear restriction limiting fishers to no more than four spreads per line between Cape Falcon, OR and Leadbetter Point, WA was suspended for the fourth open period. These modifications to the fishing season were adopted to avoid closing the fishery early due to reaching the chinook quota, thus precluding the opportunity to catch available marked hatchery coho salmon later in the season.

On August 21, 2002, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife (ODFW) by conference call. Information related to catch to date, the chinook catch rate, and effort data indicated that it was likely that the chinook quota would be reached prematurely unless adequately controlled, potentially foreclosing opportunity of fishers to conduct the selective fishery for marked coho later. As a result, the States of Washington and Oregon recommended, and the Regional Administrator concurred, that the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, would reopen on August 22, 2002, and close at midnight, August 28, 2002, with the provision that no vessel may possess, land, or deliver more than 250 chinook for the entire 7–day open period. In addition, the gear restriction limiting fishers to no more than four spreads per line between Cape

Falcon, OR and Leadbetter Point, WA was again suspended for the open period, because this gear restriction was no longer needed to limit the catch of coho. All other restrictions that apply to this fishery remain in effect as announced in the 2002 annual management measures. The State of Oregon continued the landing restriction for this fishery in their regulations requiring that fishers fishing north of Cape Falcon, OR and intending to land salmon south of Cape Falcon, OR notify the ODFW before they leave the area at the following phone number (541) 867–0300, Ext. 252. In addition, the parties agreed to reevaluate the fishery on August 30, 2002, and assess the possibility of further openers.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the States. The States manage the fisheries in State waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the effective date by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), or delaying the effectiveness of this rule for 30 days under 5 U.S.C. 553(d)(3), because such notification and delay would be impracticable and contrary to the public interest. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002) and the West Coast Salmon Plan. Prior notice and opportunity for public comment was impracticable because NMFS and the State agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the status of the fisheries and the time the limits to which the fishery must be adjusted to reduce harvest rates in the fishery must be in place. Moreover, such prior notice and the opportunity for public comment is contrary to the public interest because it does not allow commercial fishermen appropriately controlled access to the available fish at the time they are available.

The AA finds good cause to waive the 30–day delay in effectiveness required under 5 U.S.C. 553(d)(3). A delay in effectiveness of this action would not allow commercial fishermen appropriately controlled access to the available fish at the time they are available. This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 7, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–25865 Filed 10–9–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 197
Thursday, October 10, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 549

[BOP–1111–P]

RIN 1120–AB11

Inmate Fees for Health Care Services

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes rules describing procedures we will follow for charging inmates fees for certain kinds of health services, as required under the Federal Prisoner Health Care Copayment Act of 2000.

DATES: Please send comments by December 9, 2002.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: Under the Federal Prisoner Health Care Copayment Act of 2000 (Pub. L. 106–294, October 12, 2000, 114 Stat. 1038), the Bureau of Prisons may assess and collect a fee for health care services provided in connection with certain kinds of inmate health care visits. In this document, we propose rules describing procedures we will follow for charging inmates health service fees for certain kinds of health care services.

Who Do These Rules Apply To?

These rules apply to anyone incarcerated in an institution under our jurisdiction and to anyone, as designated by the Director, who has been charged with or convicted of an offense against the United States.

What Will This Rule Do?

Through this rule, the Bureau will add a subpart F to its regulations in 28 CFR part 549, on Medical Services. Under these rules, an inmate must pay a $2.00 fee for health care services if (1) he/she receives services in connection with a visit that he/she requested, except for certain services, or (2) he/she injured an inmate who, as a result of the injury, needs a health care visit.

Under these rules, and under the Federal Prisoner Health Care Copayment Act of 2000, we will not charge fees for health care services based on staff referrals, staff-approved follow-up treatment for a chronic condition, preventative health care services, emergency services, prenatal care, diagnosis or treatment of chronic infectious diseases, mental health care, or substance abuse treatment.

If inmates disagree with a health care service fee that we charge them, they may appeal it through the Bureau's Administrative Remedy Program.

Also, if an inmate is indigent and unable to pay the health care service fee, we will not charge that inmate.

Where To Send Comments

You can send written comments on this rule to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

We will consider comments received during the comment period before taking final action. We will try to consider comments received after the end of the comment period. In light of comments received, we may change the rule.

We do not plan to have oral hearings on this rule. All the comments received remain on file for public inspection at the above address.

Executive Order 12866

The Office of Management and Budget (OMB) determined that certain rules are part of a category of actions which are not "significant regulatory actions" under section 3(f) of Executive Order 12866. Because this rule falls within that category, OMB did not review it.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We want to make Bureau documents easier to read and understand. If you can suggest how to improve the clarity of these regulations, call or write to Sarah Qureshi at the address or telephone number listed above.

List of Subjects in 28 CFR Part 549

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of

Prisons, we propose to amend 28 CFR part 549 as follows.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 549—MEDICAL SERVICES

1. Revise the authority citation for 28 CFR 549 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4005, 4014, 4042, 4045, 4081, 4082, (Repealed in part as to offenses committed on or after November 1, 1987), 4241–4247, 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. Add a new Subpart F to read as follows:

Subpart F—Fees for Health Care Services

Sec.
549.70 Purpose and scope.
549.71 Inmates affected.
549.72 Services provided without fees.
549.73 Appealing the fee.
549.74 Inmates without funds.

§ 549.70 Purpose and scope.

(a) The Bureau of Prisons (Bureau) may, under certain circumstances, charge you, an inmate under our care and custody, a fee for providing you with health care services.

(b) Generally, if you are an inmate as described in § 549.71, you must pay a fee for health care services of $2.00 per health care visit if you:

(1) Receive health care services in connection with a health care visit that you requested, (except for services described in § 549.72); or

(2) Are found responsible through the Disciplinary Hearing Process to have injured an inmate who, as a result of the injury, requires a health care visit.

§ 549.71 Inmates affected.

This subpart applies to:

(a) Any individual incarcerated in an institution under the Bureau's jurisdiction; or

(b) Any other individual, as designated by the Director, who has been charged with or convicted of an offense against the United States.

§ 549.72 Services provided without fees.

We will not charge a fee for:

(a) Health care services based on staff referrals;

(b) Staff-approved follow-up treatment for a chronic condition;

(c) Preventive health care services;

(d) Emergency services;

(e) Prenatal care;

(f) Diagnosis or treatment of chronic infectious diseases; (g) Mental health care; or

(g) Mental health care; or

(h) Substance abuse treatment.

§ 549.73 Appealing the fee.

You may seek review through the Bureau's Administrative Remedy Program (see 28 CFR part 542) if you disagree with either the fee charge or the amount.

§ 549.74 Inmates without funds.

You will not be charged a health care service fee if you are considered indigent and unable to pay the health care service fee. The Warden may establish rules and processes to prevent abuses of this provision.

[FR Doc. 02–25850 Filed 10–9–02; 8:45 am]
BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OEI–2002–0010; FRL–6724–4]

Overburden Exemption; Toxic Chemical Release Reporting; Community Right-to-Know; Administrative Procedure Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition.

SUMMARY: EPA is denying an Administrative Procedure Act (APA) petition to modify its definition of "overburden" to include both consolidated and unconsolidated material. Currently, unconsolidated material is eligible for the overburden exemption to reporting required under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). Specifically, EPA is denying this petition because EPA's review of the petition and available information resulted in the conclusion that consolidated rock includes materials that often contain toxic chemicals above negligible amounts, often in significant quantities.

FOR FURTHER INFORMATION CONTACT: Peter South, Petition Manager, U.S. Environmental Protection Agency, Mail Code 2844T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, 202–566–0745, e-mail: *south.peter@epa.gov*. For specific information on this document, or for more information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, U.S. Environmental Protection Agency, Mail Code 5101, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672. Information concerning this notice is also available on EPA's Web site at *http://www.epa.gov/tri*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This notice does not make any changes to existing regulations. However, you may be affected by this notice if you are a metal mining facility, or a facility that carries out metal mining activities. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially interested entities
Industry	Metal mining facilities that remove and manage overburden and waste rock to access target ore; SIC major group codes 10 (except 1011, 1081, and 1094).
Federal Government.	Federal facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations (CFR). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies Of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OEI–2002–0010.

The public docket includes information considered by EPA in developing this action, including the documents listed below, which are physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not physically located in the docket, please consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Overburden Exemption Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the Overburden Exemption Docket is (202) 566–1752.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. Once in the system, select "search," then key in the appropriate docket identification number.

II. Introduction

A. What Is the Statutory Authority for This Action?

This action is taken under the Administrative Procedure Act (APA), 5 U.S.C. secs 551–559, 701–706.

B. What Is the General Background for This Action?

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals in amounts above reporting threshold levels, to report their environmental releases of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13106.

On May 1, 1997, EPA added metal mining and six other industry groups to the list of facilities subject to the reporting requirements of section 313 of EPCRA. 62 FR 23833. EPA added these groups in order to enhance the public's knowledge about the use and disposition of toxic chemicals in their communities.

EPA defines "overburden" as "the unconsolidated material that overlies a deposit of useful materials or ores." 40 CFR 372.3. Due to the Agency's understanding that overburden contained EPCRA section 313 chemicals in negligible amounts and that reporting was unlikely to provide the public with information valuable enough to warrant reporting, EPA exempted EPCRA section 313 chemicals in overburden from EPCRA section 313 and PPA section 6607 reporting requirements. EPA does not require compliance determinations or reporting of releases or other waste management information for listed chemicals which exist in overburden removed prior to removal of waste rock or extraction of the target ore. The Agency's rationale in providing the overburden exemption, as defined above, was dependent on EPA's understanding that overburden contained toxic chemicals only in negligible amounts, and therefore was unlikely to generate any reporting. 62 FR 23859. The same, however, could not be determined for consolidated rock, and therefore EPA did not extend the exemption to this material. Id.

III. What Does This Petition Request of the Agency?

EPA received a petition from the National Mining Association (NMA) on December 22, 1998, and additional information in a letter on May 7, 1999. NMA petitioned the Agency to modify the EPCRA section 313 definition of "overburden" to include both consolidated and unconsolidated material. Refs. 1 and 2. Currently, only unconsolidated material is considered as overburden under the Toxics Release Inventory (TRI) program, and therefore only unconsolidated material is eligible for the overburden exemption under EPCRA section 313.

NMA asserts that the EPCRA section 313 definition of overburden is inconsistent with that of the mining industry, the body of technical evidence, leading technical authorities, and other federal regulatory definitions. Refs. 1 and 2. NMA considers overburden to include both the consolidated and unconsolidated material that overlies an ore deposit. NMA petitioned EPA to include consolidated material in addition to unconsolidated material in the definition of overburden under EPCRA section 313 and thus make consolidated material eligible for the overburden exemption.

NMA cites two technical references: the American Geological Institute (AGI) Dictionary of Mining, Mineral, and Related Terms, Ref. 3, and the Glossary of Selected Geologic Terms with Special Reference to Their Use in Engineering, Ref. 4. The AGI defines overburden as: overburden (a) Designates material of any nature, consolidated or unconsolidated, that overlies a deposit of useful materials, ores, or coal—esp. those deposits that are mined from the surface by open cuts. (Stokes, 1955) (b) Loose soil, sand, gravel, etc. that lies above the bedrock. Also called burden, capping cover, drift, mantle, surface. See also: baring; burden; top. (Stokes, 1955). Ref. 3.

The Glossary of Selected Geologic Terms with Special Reference to Their Use in Engineering, by W. L Stokes and D. J. Varnes, defines overburden as: overburden, n. A term used by geologists and engineers in several different senses. By some it is used to designate material of any nature, consolidated or unconsolidated, that overlies a deposit of useful materials, ores, or coal, especially those deposits that are mined from the surface by open cuts. As employed by others overburden designates only loose soil, sand, gravel, etc., that lies above the bedrock. The term should not be used without specific definition. Ref. 4.

In addition, NMA cites two EPA definitions and four other federal regulatory definitions that define overburden to include both consolidated and unconsolidated material. The EPA's National Pollutant Discharge Elimination System (NPDES) (40 CFR 122.26(b)(10)) defines overburden as: Overburden means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations. Ref. 2.

EPA's Office of Solid Waste (OSW) 1985 Report to Congress: Wastes from the Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden from Uranium Mining, and Oil Shale defines overburden as: "consolidated or unconsolidated material overlying the mined area." Ref. 5.

The other federal agency definitions include: the Mine Safety and Health Administration (MSHA), the Office of Surface Mining (OSM), the Bureau of Land Management (BLM), and the Bureau of Indian Affairs (BIA). Ref. 2.

IV. What Is the Regulatory Status of the Overburden Exemption?

The regulatory definition of overburden under EPCRA section 313 is the unconsolidated material that overlies a deposit of useful materials or ores. 40 CFR 372.3. In most cases, overburden contains EPCRA section 313 chemicals in negligible amounts and reporting is unlikely to provide the public with sufficient valuable information to justify reporting.

In contrast, waste rock (including consolidated rock) may be acid-generating and may contain toxic metals above negligible amounts that after release can be mobilized and be transported through the environment. EPA considers waste rock (including consolidated rock) as distinct from overburden for purposes of reporting under EPCRA section 313. 62 FR 23859. In fact, EPA's definition of overburden specifically excludes waste rock: "It [overburden] does not include any portion of the ore or waste rock." 40 CFR 372.3. Waste rock (including consolidated rock) is generally considered that portion of the ore body that is barren or submarginal rock or ore which has been mined but under normal conditions is not considered of sufficient value to warrant treatment. Waste rock is part of the ore body and may, depending upon economic conditions, become a valuable source of metal. Waste rock (including consolidated rock) may also be further distributed in commerce for other uses such as road construction. Although waste rock (including consolidated rock) may typically contain lower concentrations of metals and other constituents than the target ore, it often contains toxic chemicals above negligible amounts.

V. What Is EPA's Rationale for Denial?

In adding metal mining to the list of facilities subject to the reporting requirements of EPCRA section 313 (62 FR 23833), EPA provided the overburden exemption due to the Agency's understanding that overburden contained EPCRA section 313 chemicals in negligible amounts and that reporting was unlikely to provide the public with sufficient valuable information to justify reporting. EPA was not able to make the same determination for the consolidated rock that surrounds the ore body or the ore body itself. Therefore, the Agency specifically defined overburden to only include "unconsolidated material that overlies a deposit of useful materials or ores." 40 CFR 372.3.

The Agency specifically did not exempt consolidated mining material (*i.e.*, waste rock, including consolidated rock) due to EPA's understanding that consolidated rock and/or waste rock often contains toxic chemicals above negligible amounts. Neither the petition submitted by NMA nor the documents which define overburden in a broader manner than the TRI program contain information that would allow EPA to change its conclusion. Without that type of information, EPA is unwilling to extend an exemption to materials which contain toxic chemicals above negligible amounts and for which reporting is likely to provide the public with valuable information. EPA's determination relies on the legal doctrine of the de minimis non curat lex: "the law does not concern itself with trifling matters," Alabama Power Co. v. Costle, 636 F.2d 323, 360 (D.C. Cir. 1979). The de minimis principle recognizes that most regulatory statutes permit the "implication" that an agency has the authority to craft exemptions "when the burdens of regulation yield a gain of trivial or no value." Alabama Power, 636 F .2d at 360–61. EPA has found no information to conclude that consolidated mining material contains EPCRA section 313 chemicals in only negligible amounts. As such, EPA limited this particular exemption to include overburden as defined under EPCRA section 313 (*i.e.*, unconsolidated material) and did not extend it to consolidated material (*i.e.*, waste rock including consolidated rock) which often contains EPCRA section 313 toxic chemicals above negligible amounts.

Furthermore, after they are released, the metals that are contained in waste rock and consolidated rock can be mobilized and transported through the environment. Significant human health and environmental damages are caused by the management of mining wastes (*i.e.*, extraction and beneficiation). Refs. 6, 7, and 8. Therefore, reporting on these materials will be valuable to the public.

In addition, NMA's proposed basis for expansion of the TRI definition of overburden—that EPA's definition is inconsistent with that of the industry—is not persuasive. Both the AGI definition and the Stokes and Varnes definition provide similar two-part sub-definitions that are significantly different. Although the first sub-definition provided by AGI is consistent with NMA's assertion that overburden can contain both consolidated and unconsolidated material, the second sub-definition clearly supports EPA's understanding that overburden is also defined to include only loose material (*e.g.*, "Loose soil, sand, gravel, etc. that lies above the bedrock."). Stokes and Varnes provide a similar two-part definition by recognizing two equally acceptable definitions of the term overburden. Stokes and Varnes define overburden as (a) "* * * material of any nature, consolidated or unconsolidated * * *" and (b) "only loose soil, sand, gravel, etc., that lies above bedrock." In addition, Stokes and Varnes highlight the fact that the term overburden should not be used without "specific definition," which EPA provided in the initial rule. Although the term overburden is used by certain government and industry groups to include both consolidated and unconsolidated material, EPA's current definition for the TRI program that overburden includes only unconsolidated material is clearly consistent with the leading technical industry references. As was noted by Stokes and Varnes, the term overburden can accurately be defined to include only unconsolidated material. It is critical, however, when using the term to provide specific definition.

In addition, NMA asserts that the EPCRA section 313 definition of overburden is inconsistent with EPA's Office of Solid Waste (OSW) 1985 Report to Congress, Wastes from the Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden from Uranium Mining, and Oil Shale. The 1985 Report to Congress defines overburden as the "consolidated or unconsolidated material overlying the mined area." Ref. 5. From a regulatory standpoint under the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901–6992k), all overburden which is not returned to the pit is a component of the term mine waste. The 1985 Report to Congress defines mine waste as "the soil or rock that mining operations generate during the process of gaining access to an ore or mineral body, and includes the overburden (consolidated or unconsolidated material overlying the mined area) from surface mines, underground mine development rock (rock removed while sinking shafts, accessing, or exploiting the ore body), and other waste rock, including the rock interbedded with the ore or mineral body." Ref. 5. Mine waste is a RCRA solid waste, but is exempt from regulation as a hazardous waste. 40 CFR 261.4(b)(7).

The 1985 Report to Congress reflects the understanding the Agency had at the time on the nature and types of mining wastes. The 1985 Report to Congress did, however, clearly point out the Agency's concerns that overburden and other types of mine wastes had caused

significant environmental damages. Since then, as a result of the Bevill rulemakings (54 FR 36592 September 1, 1989; 55 FR 2322, January 23, 1990; 56 FR 27300, June 13, 1991) and the Land Disposal Restrictions Phase IV rulemaking (63 FR 28556, May 26, 1998), the Agency has significantly improved its understanding of the nature and types of mining wastes. The Bevill rulemakings were promulgated to establish a regulatory approach to identify the differences between extraction/beneficiation wastes from mineral processing wastes. The Agency's most recent assessment of the environmental risks posed by mining waste confirms the Agency's 1985 concerns and indicates that mine waste continues to cause environmental damage throughout the U.S. Refs. 7 and 8.

NMA also asserts that the EPCRA section 313 definition of overburden is inconsistent with EPA's National Pollutant Discharge Elimination System (NPDES) (CFR 122.26(b)(10)) and other federal agency definitions, including: the Mine Safety and Health Administration (MSHA), the Office of Surface Mining (OSM), the Bureau of Land Management (BLM), and the Bureau of Indian Affairs (BIA). Ref. 2.

Because the statutes governing these programs and the purposes of these programs are different from those for the TRI program, it is reasonable for the TRI program to define overburden differently than other programs. Clearly, the purpose of each of these programs (direct regulation) is quite different from the purposes related to the reporting of releases and other waste management under EPCRA section 313 (information collection and dissemination). The TRI program was established by Congress under EPCRA section 313 in response to public demand for information on toxic chemicals being released in their communities. For example, in a study of 306 of the approximately 1,000 operating hard rock mines in the U.S., EPA found that approximately 228,145 people (including 55,374 children under the age of four) and 89,335 households live within 1 mile of one of the 306 active mine sites. Ref. 9. The entire concept of the TRI program is founded on the belief that the public has the right to know about chemical usage and release in the areas in which they live, as well as the hazards that may be associated with these chemicals. As such, it is reasonable that the EPCRA section 313 program defines overburden differently than other federal regulatory programs.

In the TRI Program's final facility expansion rulemaking (62 FR 23833), EPA determined that it was important for the communities that surrounded mining facilities to have information on the releases and other waste management activities that are associated with those facilities. A broader interpretation of the EPCRA section 313 definition of overburden would result in significantly less information being transmitted to these communities. Recognizing that the purpose of EPCRA section 313 is to provide information to the public, it is reasonable for the TRI program to have more narrowly defined the term overburden—and therefore the scope of the overburden exemption—in order to accomplish the goals of the facility expansion rulemaking, the TRI program, and the statute.

In conclusion, NMA makes the argument that the EPCRA section 313 definition of overburden is inconsistent with that of the mining industry, the body of technical evidence, leading technical authorities, and other federal regulatory definitions. As stated above, NMA's argument is not persuasive because the EPCRA definition of overburden is actually consistent with leading technical industry references. Neither the petition submitted by NMA nor the documents which define overburden in a broader manner than the TRI program contain information that would allow EPA to change its conclusion that consolidated rock and/or waste rock often contain toxic chemicals above negligible amounts. Without that type of information, EPA is unwilling to extend an exemption to materials which contain toxic chemicals above negligible amounts and for which reporting is likely to provide the public with valuable information. Therefore, EPA is denying this petition.

VI. What Are the References Cited in This Notice?

1. National Mining Association. Letter entitled: EPA Response to NMA Queries. December 22, 1998.

2. National Mining Association. Letter entitled: December 22, 1998, NMA Petition on TRI Regulatory Definition of "Overburden." May 7, 1999.

3. American Geological Institute. Dictionary of Mining, Mineral, and Related Terms, 2nd Edition, American Geological Institute (1997).

4. Stokes, W. L. and Varnes, D.J. Glossary of Selected Geologic Terms With Special Reference to Their Use in Engineering, Colorado Scientific Society Proceedings, Vol. 16, (1955).

5. U.S. EPA. Report to Congress, Wastes from the Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden from Uranium Mining, and Oil Shale, U.S. Environmental Protection Agency, EPA 530–SW–85–033 (December 31, 1985).

6. U.S. EPA/Region 10. EPA and Hard Rock Mining: A Source Book for Industry in the Northwest and Alaska (Draft), U.S. Environmental Protection Agency, EPA 910–R–99–016 (November 1999).

7. U.S. EPA/Office of Solid Waste. Human Health and Environmental Damages from Mining and Mineral Processing Wastes, U.S. Environmental Protection Agency, Technical Background Document Supporting the Final Rule: Land Disposal Restrictions Phase IV: Final Rule Promulgating Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters, RCRA Docket No. F–98–2P4F–FFFFF (April 1998).

8. U.S. EPA/Office of Solid Waste. Damage Cases and Environmental Releases from Mines and Mineral Processing Sites, U.S. Environmental Protection Agency, Technical Background Document Supporting the Final Rule: Land Disposal Restrictions Phase IV: Final Rule Promulgating Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters, RCRA Docket No. F–98–2P4F–FFFFF (April 1998).

9. U.S. EPA/Office of Solid Waste. Population Studies of Mines and Mineral Processing Sites, U.S. Environmental Protection Agency, Technical Background Document Supporting the Final Rule: Land Disposal Restrictions Phase IV: Final Rule Promulgating Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters, RCRA Docket No. F–98–2P4F–FFFFF (April 1998).

VII. What Are the Regulatory Assessment Requirements for This Action?

A. Executive Order 12866

This action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993),

because denial of an APA rulemaking petition is not a "significant regulatory action" subject to review by OMB under E.O. 12866.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this denial will not have a significant impact on a substantial number of small entities. This determination is based on the fact that this denial will not result in any adverse economic impacts on the facilities subject to reporting under EPCRA section 313, regardless of the size of the facility.

C. Paperwork Reduction Act

This petition denial will not reduce or increase the overall reporting and record keeping burden estimate provided for the TRI program, and does not require any review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* As such, it is not necessary for EPA to determine the total TRI burden associated with this action.

The reporting and record keeping burdens associated with TRI are approved by OMB under OMB No. 2070–0093 (Form R, EPA ICR No. 1363) and under OMB No. 2070–0145 (Form A, EPA ICR No. 1704). The current public reporting burden for TRI is estimated to average 52.1 hours for a Form R submitter and 34.6 hours for a Form A submitter. These estimates include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection appears above. In addition, the OMB control number for EPA's regulations, after initial display in the final rule, are displayed on the collection instruments and are also listed in 40 CFR part 9.

D. Unfunded Mandates Reform Act and Executive Orders 13084 and 13132

Since this action involves the denial of an APA rulemaking petition, it does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, it is not subject to the requirement for prior consultation with Indian tribal governments as specified in Executive Order 13084, entitled Consultation and Coordination with Indian Tribal Governments (63 FR 27655, May 19,1998). Nor will this action have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999).

E. Executive Order 12898

Pursuant to Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), the Agency must consider environmental justice related issues with regard to the potential impacts of this action on environmental and health conditions in low-income populations and minority populations. The Agency has determined that this action will not result in environmental justice related issues.

F. Executive Order 13045

Pursuant to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), if an action is economically significant under Executive Order 12866, the Agency must, to the extent permitted by law and consistent with the Agency's mission, identify and assess the environmental health risks and safety risks that may disproportionately affect children. Since this action is not economically significant under Executive Order 12866, this action is not subject to Executive Order 13045.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards, nor did EPA consider the use of any voluntary consensus standards. In general, EPCRA does not prescribe technical standards to be used for threshold determinations or completion of EPCRA section 313 reports. EPCRA section 313(g)(2) states that "In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation."

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: September 19, 2002.

Kimberly T. Nelson,

Assistant Administrator, Office of Environmental Information.

[FR Doc. 02–25851 Filed 10–9–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH94

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Blackburn's Sphinx Moth

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; public hearing announcement.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice of a public hearing on the proposed critical habitat designation for Blackburn's sphinx moth (*Manduca blackburni*). The public hearing on the island of Hawaii and extension of the comment period will allow all interested parties to submit oral or written comments on the proposal. We are seeking comments or suggestions from the public, other concerned agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

DATES: The comment period for this proposal closes on December 30, 2002. Any comments received by the closing date will be considered in the final decision on this proposal. One public hearing will be held on the island of Hawaii, on Tuesday, October 29, 2002, in Kailua-Kona from 5:30 to 8:30 p.m. Prior to the public hearing, the Service will be available from 3:30 to 4:30 p.m. to provide information and to answer questions.

ADDRESSES: The public hearing in Kailua-Kona will be held at the King Kamehameha Hotel, 75–5660 Palani Road, Kailua-Kona, Hawaii. Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3–122, PO Box 50088, Honolulu, HI 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, at the above address, (telephone 808/541–3441, facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION: The public hearing for the proposed rule to designate critical habitat for Blackburn's sphinx moth announced in this **Federal Register** notice and the public hearing for the proposed designation of critical habitat for 47 plants from the island of Hawaii announced in a separate **Federal Register** notice are scheduled for the same date, time, and location in Kailua-Kona, Hawaii as a matter of convenience to the public. We will accept comments at this public hearing on the proposed designation of critical habitat for Blackburn's sphinx moth, as well as the proposed designation of critical habitat for 47 plants from the island of Hawaii.

Background

On June 13, 2002, we published a proposed critical habitat rule for the Blackburn's sphinx moth (*Manduca blackburni*) listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et. seq.*), known historically from the islands of Hawaii, Kauai, Maui, Molokai, and Oahu, and known currently from the islands of Hawaii, Kahoolawe, and Maui (67 FR 40633). The original comment period closed on August 12, 2002. The comment period now closes on December 30, 2002.

A final listing rule, listing the Blackburn's sphinx moth as endangered, was published in the **Federal Register** on February 1, 2000 (65 FR 4770). In that final rule, we determined that critical habitat designation for the moth would be prudent, and we also indicated that we were not able to develop a proposed critical habitat designation for the species at that time due to budgetary and workload constraints.

On June 2, 2000, we were ordered by the U.S. District Court for the District of Hawaii (in *Center for Biological Diversity* v. *Babbitt and Clark*, Civ. No. 99–00603 (D. Haw.) to publish the final critical habitat designation for Blackburn's sphinx moth by February 1, 2002. The plaintiffs and the Service entered into a consent decree in a separate action agreeing to jointly seek an extension of this deadline (*Center for Biological Diversity* v. *Norton*, Civ. No. 01–2063 D.D.C. October 2, 2001).

On January 30, 2002, the U.S. District Court in Hawaii approved a joint stipulation to modify the terms of the June 2 order to extend the deadline to August 10, 2002. Subsequently, the Service determined that an additional extension of time was needed to complete this designation making process. On August 21, 2002, the U.S. District Court in Hawaii approved another joint stipulation extending the date for the final rule designating critical habitat for this species to May 30, 2003.

The proposed rule published June 13, 2002, proposes to designate eight separate units, totaling approximately 40,240 hectares (99,433 acres) on the Hawaiian Islands of Maui, Hawaii, Molokai, and Kahoolawe as critical habitat for Blackburn's sphinx moth. For locations of these proposed units, please consult the proposed rule (67 FR 40633).

Section 4(b)(5)(E) of the Act, requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to requests from various parties, we will hold a public hearing on the date and at the address described in the **DATES** and **ADDRESSES** sections above. The public hearing and extension of the comment period allows all interested parties to submit oral or written comments on the proposal.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to us. Legal notices announcing the date, time, and location of the public hearing will be published in newspapers concurrently with the **Federal Register** notice.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll at 503/231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding this proposal is available in alternative formats upon request.

Comments from the public regarding this proposed rule are sought, especially regarding:

(1) The reasons why any particular area should or should not be designated as critical habitat for this species, as defined by section 3 of the Act;

(2) Specific information on the amount, distribution, and quality of habitat for the species, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas, and their possible impacts on proposed critical habitat;

(4) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities, energy development, low-income households, and local governments;

(5) Economic and other potential values associated with designating critical habitat for the above species such as those derived from non-consumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, "existence values", and reductions in administrative costs); and

(6) Information for use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

The comment period on this proposal closes on December 30, 2002. Written comments should be submitted to the Service office listed in the **ADDRESSES** section.

Author

The primary author of this notice is Mike Richardson (*see* **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: October 1, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–25722 Filed 10–9–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI24

Endangered and Threatened Wildlife and Plants; Designations of Critical Habitat for Plant Species From the Island of Oahu, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, and public hearing announcement.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice of a public hearing on the proposed critical habitat designations for 99 plants from the island of Oahu, Hawaii. In addition, the comment period (which originally closed on July 29, 2002) was reopened on August 26, 2002, and closed on September 30, 2002, will now be reopened. The new comment period and public hearing will allow all interested parties to submit oral or written comments on the proposal. We are seeking comments or suggestions from the public, other concerned agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

DATES: The comment period for this proposal now closes on November 30, 2002. Any comments received by the closing date will be considered in the final decision on this proposal. The public hearing will be held from 6 to 8 p.m. on Tuesday, November 19, 2002, on the island of Oahu, Hawaii. Prior to the public hearing, the Service will be available from 3:30 to 4:30 p.m. to provide information and to answer questions. We will also be available for questions after the hearing.

ADDRESSES: The public hearing will be held at the Ala Moana Hotel, 410 Atkinson Dr., Honolulu, Hawaii. Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3–122, P.O. Box 50088, Honolulu, HI 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, at the above address (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

On May 28, 2002, we published a proposed critical habitat rule for 99 of the 101 plant species listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), known historically from the island of Oahu (67 FR 37108). The original comment period closed on July 29, 2002. On August 26, 2002, we reopened the comment period for the proposed designations and non-designations of critical habitat for plant species on the island of Oahu, as well as for plant species on the islands of Kauai, Niihau, Molokai, Maui, Kahoolawe, Northwestern Hawaiian Islands, and Hawaii (67 FR 54766). The reopened comment periods allowed all interested parties to submit written comments on these proposals simultaneously and closed on September 30, 2002. With this notice, we are reopening the comment period for the proposed designations and non-designations of critical habitat for plant species on the island of Oahu. The comment period now closes on November 30, 2002. Written comments should be submitted to the Service (see **ADDRESSES** section).

A total of 101 species historically found on Oahu were listed as endangered or threatened species under the Act between 1991 and 1996. Some of these species may also occur on other Hawaiian islands. Previously, we proposed that designation of critical habitat was prudent for 45 (*Adenophorus periens, Alectryon macrococcus, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Colubrina oppositifolia, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense, Eugenia koolauensis, Euphorbia haeleeleana, Flueggea neowawraea, Gouania meyenii, Gouania vitifolia, Hedyotis coriacea, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Isodendrion laurifolium, Isodendrion longifolium, Isodendrion pyrifolium, Lobelia niihauensis, Lysimachia filifolia, Mariscus pennatiformis, Marsilea villosa, Melicope pallida, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus nutans, Phyllostegia mollis, Phyllostegia parviflora, Plantago princeps, Platanthera holochila, Pteris lidgatei, Sanicula purpurea, Schiedea hookeri, Schiedea nuttallii, Sesbania tomentosa, Silene lanceolata, Solanum sandwicense, Spermolepis hawaiiensis, Tetramolopium lepidotum* ssp. *lepidotum*, and *Vigna o-wahuensis*) of the 101 species reported from the island of Oahu. No change is made to the 45 proposed prudency determinations in the May 28, 2002, proposed critical habitat rule for plants from Oahu. In the May 28, 2002, proposed critical habitat rule, we proposed that designation of critical habitat was not prudent for *Pritchardia kaalae* because it would likely increase the threats from vandalism or collection of this species on Oahu. In the same rule, we proposed that designation of critical habitat was not prudent for *Cyrtandra crenata* because it had not been seen recently in the wild and no viable genetic material of this species is known to exist. In the May 28, 2002, proposed critical habitat rule, we proposed that designation of critical habitat is prudent for 54 (*Abutilon sandwicense, Alsinidendron obovatum, Alsinidendron trinerve, Chamaesyce celastroides* var. *kaenana, Chamaesyce deppeana, Chamaesyce herbstii, Chamaesyce kuwaleana, Chamaesyce rockii, Cyanea acuminata, Cyanea crispa, Cyanea grimesiana* ssp. *obatae, Cyanea humboltiana, Cyanea koolauensis, Cyanea longiflora, Cyanea pinnatifida, Cyanea st.-johnii, Cyanea superba, Cyanea truncata, Cyrtandra dentata, Cyrtandra polyantha, Cyrtandra subumbellata, Cyrtandra viridiflora, Delissea subcordata, Diellia falcata, Diellia unisora, Dubautia herbstobatae, Eragrostis fosbergii, Gardenia mannii, Hedyotis degeneri, Hedyotis parvula, Labordia cyrtandrae, Lepidium arbuscula, Lipochaeta lobata* var. *leptophylla, Lipochaeta tenuifolia, Lobelia gaudichaudii* ssp. *koolauensis, Lobelia monostachya, Lobelia oahuensis, Melicope lydgatei, Melicope saint-johnii, Myrsine juddii, Neraudia angulata, Phyllostegia hirsuta, Phyllostegia kaalaensis, Sanicula mariversa, Schiedea kaalae, Schiedea kealiae, Silene perlmanii, Stenogyne kanehoana, Tetramolopium filiforme, Tetraplasandra gymnocarpa, Trematalobelia singularis, Urera kaalae, Viola chamissoniana* ssp. *chamissoniana*, and *Viola oahuensis*) species for which prudency determinations have not been made previously.

We also propose designation of critical habitat for 99 (*Abutilon sandwicense, Adenophorus periens, Alectryon macrococcus, Alsinidendron obovatum, Alsinidendron trinerve, Bonamia menziesii, Cenchrus agrimonioides, Centaurium sebaeoides, Chamaesyce celastroides* var. *kaenana, Chamaesyce deppeana, Chamaesyce herbstii, Chamaesyce kuwaleana, Chamaesyce rockii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea acuminata, Cyanea crispa, Cyanea grimesiana* ssp. *grimesiana, Cyanea grimesiana* ssp. *obatae, Cyanea humboltiana, Cyanea koolauensis, Cyanea longiflora, Cyanea pinnatifida, Cyanea st.-johnii, Cyanea superba, Cyanea truncata, Cyperus trachysanthos, Cyrtandra dentata, Cyrtandra polyantha, Cyrtandra subumbellata, Cyrtandra viridiflora, Delissea subcordata, Diellia erecta, Diellia falcata, Diellia unisora, Diplazium molokaiense, Dubautia herbstobatae, Eragrostis fosbergii, Eugenia koolauensis, Euphorbia haeleeleana, Flueggea neowawraea, Gardenia mannii, Gouania meyenii, Gouania vitifolia, Hedyotis coriacea, Hedyotis degeneri, Hedyotis parvula, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Isodendrion laurifolium, Isodendrion longifolium, Isodendrion pyrifolium, Labordia cyrtandrae, Lepidium arbuscula, Lipochaeta lobata* var. *leptophylla, Lipochaeta tenuifolia, Lobelia gaudichaudii* ssp. *koolauensis, Lobelia monostachya, Lobelia niihauensis, Lobelia oahuensis, Lysimachia filifolia, Mariscus pennatiformis, Marsilea villosa, Melicope pallida, Melicope saint-johnii, Myrsine juddii, Neraudia angulata, Nototrichium humile, Pelea lydgatei, Peucedanum sandwicense, Phlegmariurus nutans, Phyllostegia hirsuta, Phyllostegia kaalaensis, Phyllostegia mollis, Phyllostegia parviflora, Plantago princeps, Platanthera holochila, Pteris lidgatei, Sanicula mariversa, Sanicula purpurea, Schiedea hookeri, Schiedea kaalae, Schiedea kealiae, Schiedea nuttallii, Sesbania tomentosa, Silene lanceolata, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne kanehoana, Tetramolopium filiforme, Tetramolopium lepidotum* ssp. *lepidotum, Tetraplasandra gymnocarpa, Trematalobelia singularis, Urera kaalae, Vigna o-wahuensis, Viola chamissoniana* ssp. *chamissoniana*, and *Viola oahuensis*) plant species. Critical habitat is not proposed for *Pritchardia munroi* and *Cyrtandra crenata* for the reasons given above. Twenty-five critical habitat units, totaling approximately 45,067 hectares (111,364 acres), are proposed for designation on the island of Oahu.

Section 4(b)(5)(E) of the Act requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to a request from a government agency of the State of Hawaii, we will hold a public hearing on the date and at the address described in the **DATES** and **ADDRESSES** sections above.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to us. Legal notices announcing the date, time, and location of the public hearing will be published in newspapers concurrently with the **Federal Register** notice.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll at 503/231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date.

Information regarding this proposal is available in alternate formats upon request.

Comments from the public regarding this proposed rule are sought, especially regarding:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1);

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act;

(3) Specific information on the amount, distribution, and quality of habitat for the 99 species, and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas, and their possible impacts on proposed critical habitat;

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities, energy development, low income households, and local governments;

(6) Economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, "existence values", and reductions in administrative costs); and

(7) Information for use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

Reopening of the comment period will enable us to respond to the request for a public hearing on the proposed action. The comment period on this proposal now closes on November 30, 2002. Written comments should be submitted to the Service office listed in the **ADDRESSES** section.

Author

The primary author of this notice is Michelle Mansker (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: October 1, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–25721 Filed 10–9–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI26

Endangered and Threatened Wildlife and Plants; Critical Habitat Designation for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: We, the Fish and Wildlife Service (Service), provide notice that we are holding three public hearings to take oral comments regarding the proposed rule to designate critical habitat for 4 crustaceans and 11 plants endemic to vernal pools in California and southern Oregon.

DATES: We will hold public hearings and a public informational meeting at the following dates and times:

October 22, 2002:

San Luis Obispo, CA

First public hearing: 1 p.m. until 3 p.m.; registration begins at 12:30 p.m. Second public hearing: 6 p.m. until 8 p.m.; registration begins at 5:30 p.m. October 24, 2002:

Sacramento, CA

First public hearing: 1 p.m. until 3 p.m.; registration begins at 12:30 p.m.

Second public hearing: 6 p.m. until 8 p.m.; registration begins at 5:30 p.m.

Medford, OR

Public informational meeting: 1:30

p.m. until 3:30 p.m.
Public hearing: 6 p.m. until 8 p.m.; registration begins at 5:30 p.m.

Written comments on the proposed rule (67 FR 59884) must still be received by the date published in the proposed rule.

ADDRESSES: The public hearings and public informational meeting will be held at the following locations:

San Louis Obispo, CA: Embassy Suites, 333 Madonna Road.
Sacramento, CA: Radisson Hotel, 500 Leisure Lane.
Medford, OR: Red Lion Hotel, 200 N. Riverside Avenue.

Written comments and materials concerning the proposed critical habitat designation for 4 vernal pool crustaceans and 11 vernal pool plants in California and Southern Oregon (67 FR 59884) should be sent to Wayne S. White, Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way Room W–2605, Sacramento, CA 95825. Written comments may also be sent by facsimile to 916/414–6713 or through the internet to *fwl_vernalpool@fws.gov*. You may also hand-deliver written comments to our Sacramento Fish and Wildlife Office, at the above address, or at any of the public hearings mentioned above.

Comments and materials received, as well as supporting documentation used in the preparation of the proposed critical habitat designation rule, will be available for public inspection, by appointment, during normal business hours, at the above address. You may obtain copies of the proposed rule from the above address, by calling 916/414–6600, or from our Web site at *http://sacramento.fws.gov*.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler or Susan Moore at the above address (telephone 916/414–6600, facsimile 916/414–6713 or visit our Web site at *http://sacramento.fws.gov/*). Information regarding this proposal is available in alternative formats upon request.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 2002, we published a proposed rule to designate critical habitat, pursuant to the Endangered Species Act of 1973, as amended (Act) for 4 vernal pool crustaceans and 11 vernal pool plants (67 FR 59884). The purpose of the public hearings announced here is to take oral comments on the proposed critical habitat designation.

Critical habitat consists of specific areas on which are found physical or biological characteristics essential to the conservation of a threatened or endangered species. The designation of critical habitat does not establish a preserve or regulate purely private uses of land. However, the Act does require Federal agencies to avoid taking actions that are likely to result in the destruction or adverse modification of critical habitat and to consult with us regarding how to best to avoid such destruction or adverse modification. Critical habitat designations also inform the public regarding areas of special importance for the conservation of the threatened or endangered species involved.

The four vernal pool crustaceans involved in this critical habitat designation are the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*) and vernal pool tadpole shrimp (*Lepidurus packardi*). The eleven vernal pool plant species are Butte County meadowfoam (*Limnanthes floccosa ssp. californica*), Contra Costa goldfields (*Lasthenia conjugens*), Hoover's spurge (*Chamaesyce hooveri*), succulent (or fleshy) owl's-clover (*Castilleja campestris ssp. succulenta*), Colusa grass (*Neostapfia colusana*), Greene's tuctoria (*Tuctoria greenei*), hairy Orcutt grass (*Orcuttia pilosa*), Sacramento Orcutt grass (*Orcuttia viscida*), San Joaquin Valley Orcutt grass (*Orcuttia inaequalis*), slender Orcutt grass (*Orcuttia tenuis*), and Solano grass (*Tuctoria mucronata*). We are proposing a total of 128 units of critical habitat for these 15 species, totaling approximately 672,920 hectares (ha) (1,662,762 acres (ac)) in 36 counties in California and one county in Oregon.

All the species listed above live in vernal pools (shallow depressions that hold water seasonally), swales (shallow drainages that carry water seasonally), and ephemeral freshwater habitats. None are known to occur in riverine waters, marine waters, or other permanent bodies of water. The vernal pool habitats of these species have a discontinuous distribution west of the Sierra Nevada that extends from southern Oregon through California into northern Baja California, Mexico. The species have all adapted to the generally mild climate and seasonal periods of inundation and drying which help make the vernal pool ecosystems of California and southern Oregon unique.

Public Comments Solicited

We solicit additional information and comments that may assist us in making a final decision on the proposed rule to designate critical habitat for 4 vernal pool crustaceans and 11 vernal pool plants. We intend our final critical habitat designation to identify as accurately and effectively as possible those areas possessing characteristics essential to the conservation of the species. We will also take into account any economic or other impacts which this designation might cause. Therefore, we request comments and additional information from the general public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Comments are particularly sought concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether areas under consideration require additional special management;

(2) Specific information on the amount and distribution of any of the vernal pool crustaceans or vernal pool plants and what habitat is essential to the conservation of these species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat; in particular, in Oregon, we seek information related to potential of selected parcels to contribute to the species recovery, considering their zoning, adjacent land uses, watershed integrity, and potential for edge effects (related to shape of parcel);

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for vernal pool crustaceans and vernal pool plants such as those derived from non-consumptive uses (*e.g.*, hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs);

(6) Whether any areas should be excluded pursuant to section 4(b)(2); and

(7) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

Anyone wishing to make an oral comment or statement for the record at any of the hearings listed above is encouraged (but not required) to also provide a written copy of the statement and to present it to us at the hearing.

Oral comments will be transcribed. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed, faxed or emailed to us. Legal notices announcing the date, time, and location of the public hearings will be published in newspapers concurrently with this **Federal Register** notice. We will hold public informational meetings in various locations in California and will publicize the dates and locations in the local news media.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll at 503/231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date.

Previously submitted written comments on this proposal need not be resubmitted. Please submit electronic mail comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: [RIN 1018–AI26]" and your name and return address in your electronic message. If you do not receive a confirmation from our system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at telephone number 916/414–6600.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, at the above address.

Author

The primary author of this notice is Glen Tarr (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: October 1, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–25720 Filed 10–9–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 67, No. 197

Thursday, October 10, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Funds Availability; 2002 Livestock Compensation Program

AGENCY: Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the availability of $752 million under section 32 of the Act of August 24, 1935 (section 32) to implement the 2002 Livestock Compensation Program (LCP). Livestock feed supplies and grazing availability have been significantly reduced due to the extreme drought that has occurred throughout much of the United States during 2001 and 2002. The LCP was created by the United States Department of Agriculture (USDA) to provide immediate financial assistance to the producers of eligible beef, dairy, buffalo, beefalo, sheep or goats, or cash lessees of eligible livestock, in certain States and counties to offset losses due to drought. Funds will be provided to eligible applicants in counties declared under a disaster designation made after January 1, 2001, or submitted to the Secretary of Agriculture, by the Governor of a State or a Tribal Leader of an Indian Reservation, no later than September 19, 2002. The county must be approved by the Secretary to be eligible for the LCP. Complete eligibility criteria and application procedures are provided in the notice below. The Farm Service Agency (FSA) will determine eligible producers and the amount of assistance that will be paid.

DATES: FSA began accepting applications on October 1, 2002. The application deadline will be determined by the Deputy Administrator for Farm Programs of FSA. Payments will be issued to applicants meeting all eligibility requirements beginning October 7, 2002.

FOR FURTHER INFORMATION CONTACT: Lynn Tjeerdsma, Chief, Emergency Preparedness and Programs Branch, USDA/FSA, 1400 Independence Ave. SW, STOP 0517, Washington, D.C. 20250–0522; telephone (202) 720–7641; facsimile (202) 690–3610; electronic mail: *Lynn_Tjeerdsma@wdc.usda.gov*. Persons with disabilities who require alternative means for communication of regulatory information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires consultation with State and local officials.

Environmental Compliance

Due to the drought-related emergency requiring the Agency to provide immediate relief, sufficient time was not available to complete an environmental review prior to implementing the proposed action. Therefore, an environmental assessment is being completed to consider the potential impacts of this proposed action on the human environment in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. A copy of the draft environmental assessment will be made available for public review and comment upon request.

Paperwork Reduction Act

A request for emergency clearance of the information collections associated with this notice has been approved by the Office of Management and Budget (OMB) under 5 CFR 1320.13(a)(2)(iii), and been assigned OMB control number 0560–0223.

I. Definitions

The following definitions are applicable to the 2002 Livestock Compensation Program:

Adult beef cows are female bovine livestock, of a breed used for the purpose of providing meat for human consumption, that have delivered one or more offspring, at any time before June 1, 2002.

Adult beef bulls are male bovine livestock, of a breed used for the purpose of providing meat for human consumption, to be used for breeding purposes, that were two years old on or before June 1, 2002.

Adult buffalo and beefalo cows are female livestock of those breeds, used for the purpose of providing meat for human consumption, that have delivered one or more offspring, at any time before June 1, 2002.

Adult buffalo and beefalo bulls are male livestock of those breeds, used for the purpose of providing meat for human consumption, to be used for breeding purposes that were two years old on or before June 1, 2002.

Adult dairy bulls are male bovine livestock that are two years old on or before June 1, 2002, of a breed used for producing milk for human consumption, for breeding dairy cows.

Adult dairy cows are female bovine livestock, used for the purpose of providing milk for human consumption, that have delivered one or more offspring, at any time before June 1, 2002.

Agency is the Farm Service Agency, its employees, and any successor agency.

Applicant is the individual or business entity applying for assistance.

Application means the Form FSA–553, Livestock Compensation Program (LCP) Application. The FSA–553 is available at FSA county service centers and on the Internet.

Beef bulls are male bovine livestock, used for the purpose of providing meat for human consumption, that as of June 1, 2002, weighed more than 500 pounds and were less than two years old.

Beef replacement heifers and non-breeding heifers are female bovine livestock, used for the purpose of providing meat for human consumption, that as of June 1, 2002, weighed more than 500 pounds and had never delivered any offspring.

Beef steers are neutered male bovine livestock, used for the purpose of providing meat for human consumption, that weighed more than 500 pounds on or before June 1, 2002.

Buffalo and beefalo bulls are male livestock of those breeds, used for the purpose of providing meat for human consumption, that as of June 1, 2002, that weighed more than 500 pounds and were less than two years old.

Buffalo and beefalo replacement heifers and buffalo and beefalo non-breeding heifers are female livestock of those breeds, used for the purpose of providing meat for human consumption, that as of June 1, 2002, weighed more than 500 pounds and had never delivered any offspring.

Buffalo and beefalo steers are neutered male livestock of those breeds, used for the purpose of providing meat for human consumption, that weighed more than 500 pounds on or before June 1, 2002.

Business Entity is a corporation, partnership, joint operation, trust, limited liability company, or cooperative.

Dairy bulls are male bovine livestock, of a breed used for the purpose of providing milk for human consumption, that as of June 1, 2002, weighed more than 500 pounds and were less than two years old.

Dairy replacement heifers and dairy non-breeding heifers are female bovine livestock, of a breed used for the purpose of providing milk for human consumption, that as of June 1, 2002, weighed more than 500 pounds and had never delivered any offspring.

Dairy steers are neutered male bovine livestock, of a breed used for the purpose of providing milk for human consumption, that weighed more than 500 pounds on or before June 1, 2002.

Deputy Administrator or DAFP means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

Eligible County is a county that was named as a primary county under a Secretarial disaster designation after January 1, 2001, for damages and losses due to drought; or for which a Governor of a State or a Tribal Leader of an Indian Reservation, requested a disaster designation no later than September 19, 2002, for damages and losses due to drought, and was subsequently approved by the Secretary as a primary county.

Eligible livestock are certain beef and dairy cattle, buffalo and beefalo, sheep, and goats that an eligible livestock producer owned, or cash-leased for 90 or more days, and that were owned or subject to a cash lease on June 1, 2002. Certain beef and dairy cattle, buffalo and beefalo, sheep, and goats, subject to a contract for purchase by the applicant, that was negotiated prior to June 1, 2002, are eligible livestock.

Eligible livestock producer is an owner or lessee of eligible livestock whose livestock operation headquarters is physically located in an eligible county.

Goats are domesticated, bearded, horned, ruminant mammals of the genus Capra, including Angora goats.

Ineligible livestock are any beef cattle, buffalo, beefalo, dairy cattle, sheep and goats that on June 1, 2002, were not owned or subject to a cash lease or under contract to be purchased by an applicant; and are any beef cattle, buffalo, and dairy cattle that, as of June 1, 2002, weighed less than 500 pounds; and also include livestock owned by an ineligible livestock producer.

Ineligible livestock producer is a livestock owner that slaughters, processes, and packs livestock meat into meat and meat products; and, as determined by the Deputy Administrator, is also a livestock owner that, for monetary reimbursement or other gain, provides feed and facilities for livestock owned by another person on a custom feeding basis; and is also a livestock owner whose livestock operation headquarters is not located in an eligible county.

Sheep are domesticated, horned, ruminant mammals of the genus Ovis, bred for their wool, edible flesh, or skin.

II. Appeals

An applicant may request an appeal or review of an adverse decision made by the Agency in accordance with 7 CFR parts 11 and 780, or its successor regulation.

III. Eligibility Requirements

Applicants must meet all of the following requirements to be eligible for the 2002 Livestock Compensation Program:

1. *Timely application.* The applicant must submit a signed form FSA–553 completed to the best of the applicant's ability to the Agency, no earlier than October 1, 2002, and no later than such date as announced by the Deputy Administrator.

2. *Livestock owner or lessee.* The applicant must own, be subject to a contract to purchase, or cash-lease, eligible livestock.

3. *Applicant's operation must be physically located in an eligible county.* The applicant's livestock operation headquarters must be physically located in an eligible county on June 1, 2002.

IV. Gross Revenue Limitation

A person, as defined in 7 CFR part 1400, who has annual gross revenue in excess of $2.5 million shall not be eligible to receive assistance under the 2002 Livestock Compensation Program. For the purpose of this determination, annual gross revenue means:

(a) With respect to a person who receives more than 50 percent of such person's gross income from farming and ranching, the total gross revenue received from such operations; and

(b) With respect to a person who receives 50 percent or less of such person's gross income from farming and ranching, the total gross revenue from all sources.

V. Payment Limitation

The total amount of benefits that a person, as determined in accordance with 7 CFR part 1400, shall be entitled to receive under the 2002 Livestock Compensation Program may not exceed $40,000.

VI. Determining the Amount of Assistance

(a) *Analysis of need.* The $752 million targeted for the 2002 Livestock Compensation Program is the amount of net income losses related to livestock production in 2001 and 2002 due to drought conditions. The analysis was conducted by USDA's Economic Research Service (ERS). The analysis utilized various models and survey data from several different sources, and followed procedures used to develop USDA's regular farm income forecasts.

The drought-affected areas were identified from the U.S. Drought Monitor (a comprehensive monitoring effort of USDA, National Oceanic and Atmospheric Administration, National Climate Control, and the National Drought Mitigation Center) that classifies climate regions by severity of drought conditions.

Impacts were examined for livestock producers in areas delineated by severity as moderate, severe, extreme and exceptional drought areas.

The ERS analysis considered the effect of drought both on revenue and on operating costs to obtain the net income effect related to livestock production in 2001 and 2002.

(b) *Revenue losses.* Livestock producers in the drought areas lost $103 million in gross receipts in 2001 and $583 million in 2002. Several factors help to explain the level of these revenue losses:

(1) The production impacts modeled in the analysis are associated with heat stress and water availability. In areas with exceptional drought, animal deaths due to heat and greater potential for disease contribute to lost production and revenue.

(2) The analysis does not measure the effect on receipts from early sale of cattle or herd liquidations. The significant decline in livestock prices since last year are not attributed to

drought, but do affect the amount of reduction in potential receipts.

(c) *Additional Expenses.* In many cases, the response to drought conditions by livestock producers involves changes in production practices that create additional and often unanticipated costs to their business. An example would be extra expenses for utilities such as electricity and for water. Such short-run increases in the cost of doing business were examined and their effect on total production expenses ranged from five percent in exceptional drought areas to less than one percent in moderate drought areas. Across all drought areas, total additional expenses were estimated to be $51 million in 2001 and $415 million in 2002.

(d) *Net Impacts.* The net impact on income was the combination of revenue losses plus additional costs incurred and deduction of government assistance that already has been provided in 2002 through the FSA Noninsured Assistance Program (NAP) and the 2002 Cattle Feed Program (See Notice of Funds Availability published September 3, 2002 (67 FR 56260).

Payments for NAP in 2002 are expected to total $250 million, and USDA made $150 million available for the 2002 Cattle Feed Program. The net impact of the drought for 2001 and 2002 was $154 million and $598 million, respectively, for a total two-year impact of just over $750 million.

(e) *Payment Rates.* Payment rates were calculated based on standard feed relationships among the eligible animal types and then indexed against beef cattle.For a beef cow, the feed requirement used for previous FSA-administered feed assistance programs, such as the Livestock Assistance Program at 7 CFR part 1439 and the 2002 Cattle Feed Program described in the September 3, 2002 Notice of Funds Availability, is converted to a corn equivalent of 15.7 pounds of corn per day. Using an Olympic five-year average (average of five years with the highest and lowest values excluded) of 1995–2000 corn prices, the national average price for corn is calculated at $2.07 per bushel or $0.037 per pound. The support feeding rate of 15.7 pounds of corn multiplied by $0.037 per pound of corn required per day to support a beef cow is equivalent to $0.58 per day to feed a beef cow. The subsistence level of $0.58 per day divided into the $18.00 payment for an eligible beef cow results in an approximate 30-day period that the 2002 Livestock Compensation Program will provide funds to purchase feed for a beef cow. A feed relationship factor of 2.6 was used for dairy because dairy cows typically consume 2.6 times the amount of feed consumed by a beef cow. This factor assumes enough feed for dairy cows to continue normal and even increasing levels of milk production.

The payment rate in this program is based on a 1.75 feed relationship factor for dairy. This lower factor was deemed appropriate because of the significant payments dairy producers will receive beginning in October, 2002 under the new Milk Income Loss Contract program. It also remains high enough to ensure continued milk production by eligible dairy cows.

VII. Applicant Certification of Eligible Livestock

Eligible livestock must be certified by owner or lessee on the FSA–553. The applicant will report to FSA and provide proof of the number of eligible livestock that died or were sold after June 1, 2002.

VIII. Payment Eligibility

To be eligible for payment under the 2002 Livestock Compensation Program, as determined by the Deputy Administrator, the applicant shall, as of June 1, 2002, be an owner, lessee, or under contract to purchase eligible livestock, whose livestock headquarters operation is physically located in an eligible county; who has submitted and subsequently received FSA County Committee approval on FSA–553, and who meets all other eligibility requirements.

IX. Payment Amounts

Adult beef cows and bulls, and adult buffalo and beefalo cows and bulls, as defined in Part I: $18.00 per head.

Adult dairy cows and bulls, as defined in Part I: $31.50 per head.

Beef, dairy, buffalo and beefalo replacement heifers, steers, non-breeding heifers, and bulls, as defined in Part I: $13.50 per head.

All sheep and goats, as defined in Part I, born prior to June 1, 2002: $4.50 per head.

X. Contract Liability

All producers receiving a share of the LCP payment are jointly and severally liable for program violations and resulting repayments, if applicable.

XI. How the 2002 LCP Will Work

Applications were accepted in FSA county offices beginning on October 1, 2002. On the LCP application, all owners of livestock in each livestock operation in an eligible county apply for payment on one application. Each applicant provides FSA with, and certifies to, the applicant's name and Tax Identification Number number, address, and number and type of eligible livestock. After FSA County Committee approval of the LCP application, payments will be issued beginning October 7, 2002, from the FSA county office to each approved livestock producer on the application.

XII. Misrepresentation, Scheme or Device

A person shall be ineligible to receive assistance under this part, and be subject to such other remedies as may be allowed by law, if, with respect to such program, it is determined by the FSA State or county committee, or an official of FSA, that such person has:

(a) Adopted any scheme or other device that tends to defeat the purpose of the program operated under this Notice;

(b) Made any fraudulent representation with respect to this program; or

(c) Misrepresented any fact affecting a program determination.

XIII. Liens and Claims of Creditors

Any benefit or portion thereof due any person under this program shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any person, except agencies of the U.S. Government.

XIV. Power of Attorney

In those instances in which, prior to the issuance of this Notice, a producer has signed a power of attorney on an approved FSA–211 for a person or entity indicating that such power shall extend to all programs listed on the form, without limitation, such power will be considered to extend to this program unless by October 1, 2002, the person granting the power notified the local FSA office for the control county that the grantee of the power is not authorized to handle transactions for this program for the grantor.

XV. Administration

Where circumstances preclude compliance due to circumstances beyond the applicant's control, the county or State committee may request that relief be granted by the Deputy Administrator under this Notice. In such cases, except for statutory deadlines and other statutory requirements, the Deputy Administrator may, in order to more equitably accomplish the goals of this Notice, waive or modify deadlines and other program requirements if the failure to meet such deadlines or other requirements does not adversely affect operation of the program and are not prohibited by statute.

The Section 32 funds allocated to FSA to provide assistance under this program will be monitored by careful review of regular and daily reports of all payments issued under the program. Upon expenditure of 85 percent of the designated allocation, FSA will mandate a daily review of expenditures to ensure that payments do not exceed the allocation.

Signed at Washington, DC, on October 7, 2002.

James R Little,

Administrator, Farm Service Agency.

[FR Doc. 02–25841 Filed 10–7–02; 3:59 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ponderosa Pine Restoration Project, Coeur d'Alene River Ranger District, Idaho Panhandle National Forests, Kootenai and Shoshone Counties, ID

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

SUMMARY: On March 12, 2002, a Notice of Intent (NOI) to prepare an environmental impact statement for the Ponderosa Pine Restoration Area Project was published in the **Federal Register** (Volume 67, Number 48, pages 11089–11090). The initial proposal encompassed two analysis areas; however, proposed activities in one of the areas have been deferred. Subsequent reviews have determined there will not likely be significant effects as a result of implementing proposed activities in the remaining analysis area, therefore preparation of an environmental impact statement is not warranted. Since an environmental assessment will be prepared instead of an environmental impact statement, the NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Sarah Jerome, Project Team Leader, Coeur d'Alene River Ranger District, (208) 664–2318.

SUPPLEMENTARY INFORMATION: The public was first notified of this proposal and the intention to prepare an environmental impact statement in February 2002. On March 12, 2002, a Notice of Intent (NOI) to prepare an environmental impact statement for the Ponderosa Pine Restoration Area Project was published in the **Federal Register** (Volume 67, Number 48, pages 11089–11090). Initially, two areas were under consideration. The Coeur d'Alene River Ranger District of the Panhandle National Forest proposed vegetation rehabilitation in the Deerfoot Ridge and Two Mile watersheds, identified as the Ponderosa Pine Restoration Area. The Deerfoot Ridge watershed area is located east of Hayden Lake, Idaho in Kootenai County, and Two-Mile watershed area is located north of Silverton, Idaho in Shoshone County. Based on additional information gathered, it was determined that these areas are sufficiently different to warrant separate analyses. The Deerfoot Ridge area was selected as the first priority; opportunities to restore ponderosa pine stands in the Two-Mile area will be evaluated under a separate assessment later in the year. The original NOI was rescinded on April 5, 2002 (FR Volume 67, Number 66, page 16365), and on May 31, 2002, a new NOI was published in the **Federal Register** (Volume 67, Number 105, pages 38063–38064).

Further review of the Deerfoot Ridge area and the proposed activities has led the project team to the conclusion that there will not likely be significant effects associated with the proposal, and therefore preparation of an environmental impact statement is not warranted. An environmental assessment will be prepared to document the proposed action, alternatives to the proposed action, and environmental consequences of implementing each of the alternatives.

Since an environmental assessment will be prepared instead of an environmental impact statement, the NOI is hereby rescinded.

Dated: October 4, 2002.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 02–25748 Filed 10–9–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Idaho Resource Advisory Committee; Caribou-Targhee National, Idaho Falls, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Caribou-Targhee National Forests' Eastern Idaho Resource Advisory Committee will meet Wednesday, November 13, 2002 in Idaho Falls for a business meeting. The meeting is open to the public.

DATES: The business meeting will be held on November 13, 2002 from 10 a.m. to 1 p.m.

ADDRESSES: The meeting location is the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Jerry Reese, Caribou-Targhee National Forest Supervisor and Designated Federal Officer, at (208) 524–7500.

SUPPLEMENTARY INFORMATION: The business meeting on November 13, 2002, begins at 10 a.m. at the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipart Drive, Idaho Falls, Idaho. Agenda topics will include looking at funding for this upcoming year, revising project proposal form, briefed on project status from last year's approved projects, and welcoming new members.

Dated: October 5, 2002.

Jerry B. Reese,

Caribou-Targhee Forest Supervisor.

[FR Doc. 02–25751 Filed 10–9–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Coweta-Fayette Electric Membership Corporation; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact with respect to a request from Coweta-Fayette Electric Membership Corporation for financing assistance from RUS to finance the construction of a new headquarters facility in Coweta County, Georgia.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–0468, e-mail at *bquigel@rus.usda.gov*.

SUPPLEMENTARY INFORMATION: Coweta-Fayette Electric Membership Corporation proposes to construct a new headquarters facility southeast of Palmetto, Georgia, at the intersection of Collinsworth Road and Weldon Road. The headquarters facility will include an 50,000 square-foot administration

and operations office building, a 19,000 square-foot warehouse, a 9,000 square-foot mechanics garage, a 14,000 square-foot open sided covered truck shed, fueling area, 200 parking spaces for employees and visitors, and customer drive-thru. The facility will be located on a 73 acre site, but actual construction will utilize less than 25 acres of the site.

Copies of the Finding of No Significant Impact are available from RUS at the address provided herein or from Mr. Chris Stephens of Coweta-Fayette Electric Membership Corporation, P.O. Box 488, Newnan, Georgia 30264 telephone (770) 502–0226, extension 4243.

Dated: October 3, 2002.

Blaine D. Stockton,

Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 02–25866 Filed 10–9–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Wisdom Combustion Turbine Project, Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR part 1794), has made a finding of No Significant Impact (FONSI) with respect to a joint project proposed by Corn Belt Power Cooperative (Corn Belt) of Humboldt, Iowa, and Basin Electric Power Cooperative (Basin Electric) of Bismarck, North Dakota.

FOR FUTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone: (202) 720–1414. His e-mail address is: *nislam@rus.usda.gov*. Information is also available from Mr. Donald E. Jensen, Corn Belt, WCT Project Manager, 1300 13th St. North, P.O. Box 508, Humboldt, Iowa, 50548–0508, telephone (515) 332–7984, or e-mail: *djensen@trvnet.net*, or Mr. James Miller, Basin Electric, Manager Environmental Affairs, 1717 East Interstate Avenue, Bismarck, North Dakota, 58501, telephone (701) 255–5144.

SUPPLEMENTARY INFORMATION: The joint project proposed by Corn Belt and Basin Electric will consist of one 80 megawatt (MW), simple cycle combustion turbine. The primary purpose of the Wisdom Combustion Turbine (WCT) project is to meet the increasing power consumption requirements in the northwestern Iowa region. The proposed combustion turbine will be constructed in rural Clay County located in northwest Iowa approximately 4 miles west of Spencer, Iowa. The proposed simple cycle combustion turbine will be located at the existing 231 acre Earl F. Wisdom Station site that currently includes one coal-fired boiler. The construction of the WCT project will require approximately 10 acres of the 231 acres available at the Earl F. Wisdom Station site. The WCT project will utilize the existing gas pipeline, transmission lines and substation, and water wells currently used for operating the existing coal-fired boiler and therefore will not require the construction of additional infrastructure outside of the Earl F. Wisdom Station site boundaries. The WCT project will be fired on natural gas, with #2 diesel fuel oil as backup fuel.

RUS, in accordance with its environmental policies and procedures, required that Corn Belt and Basin Electric prepare an environmental report reflecting the potential impacts of the proposed project. The environmental report, which includes input from federal, state, and local agencies, has been reviewed and accepted as RUS' environmental assessment (EA) for the project in accordance with RUS' Environmental Policies and Procedures, 7 CFR 1794.41. In accordance with the Council on Environmental Quality Regulations, RUS requested comments from all federal, state, and local agencies, which may be affected by, or may have jurisdiction over, the proposed project. Corn Belt published notices of the availability of the EA and solicited public comments per 7 CFR 1794.42. Federal and state agencies have responded but no objections were raised to the project. No comments were received from the public. Based on the EA, RUS has concluded that the proposed action will not have a significant effect to various resources, including important farmland, floodplains, wetlands, cultural resources, threatened and endangered species and their critical habitat, air and water quality, and noise. RUS has also determined that there would be no negative impacts of the proposed project on minority communities and low-income communities as a result of the construction of the project. RUS believes that there are no significant unresolved environmental conflicts related to this project.

RUS has concluded that the impacts from the proposed project would not be significant and that the proposed action is not a major federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

Copy of the FONSI can be reviewed at the headquarters of Corn Belt, Basin Electric, and RUS, at the addresses provided above in this notice.

Dated: October 7, 2002.

Blaine D. Stockton,

Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 02–25867 Filed 10–9–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; All Ports Incorporated

In the Matter of: All Ports, Incorporated, last known address at: 3911 Killam Avenue, Norfolk, Virginia 23508–2632.

Order Denying Export Privileges

On December 18, 2000, a U.S. District Court in the Eastern District of Virginia convicted All Ports, Incorporated of violating section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2000)) ("AECA"). Specifically, the Court found that All Ports, Incorporated knowingly and willfully attempted to export defense articles on the United States Munitions List, from the United States to the People's Republic of China, without having first obtained from the Department of State a license or written authorization for such export.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401–2420 (1994 & Supp. V 1999)) ("Act")[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating any of a number of federal criminal statutes including the AECA shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2002)) ("Regulations"), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person's export privileges for a period of up to 10 years from the date of conviction and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of All Ports, Incorporated's conviction for violating the AECA, and after providing notice and an opportunity for All Ports, Incorporated to make a written submission to the Bureau of Industry and Security before issuing an Order denying its export privileges, as provided in section 766.25 of the Regulations, I, following consultations with the Director, Office of Export Enforcement, have decided to deny All Ports, Incorporated's export privileges for a period of 10 years from the date of its conviction. The 10-year period ends on December 18, 2010. I have also decided to revoke all licenses issued pursuant to the Act in which All Ports, Incorporated had an interest at the time of its conviction.

Accordingly, it is hereby—

Ordered

I. Until December 18, 2010, All Ports, Incorporated, with a last known address of 3911 Killam Avenue, Norfolk, Virginia 23508–2632, ("the denied person") and, when acting in behalf of it, all of its successors or assigns, officers, representatives, agent and employees, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to All Ports, Incorporated by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until December 18, 2010.

VI. In accordance with Part 756 of the Regulations, All Ports, Incorporated may file an appeal from this Order with the Under Secretary for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to All ports, Incorporated. This Order shall be published in the **Federal Register**.

Dated: October 4, 2002.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 02–25741 Filed 10–9–02; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Bing Sun

In the Matter of: Bing Sun, currently incarcerated at Seymour Johnson Federal prison Camp, #51583–083, Goldsboro, North Carolina 27533, and with an address at 14026 Ticonderoga Court, Fontana, California 92336.

Order denying Export Privileges

On December 18, 2000, a U.S. District Count in the Eastern District of Virginia convicted Bing Sun of violating section 38 of the Arms Export Control Act (22 U.S.C. 2778 (1994 & Supp. V 1999)) ("AECA"). Specifically, the Court found that Bing Sun knowingly and willfully attempted to export defense articles on the United States Munitions List, from the United States to the People's Republic of China, without having first obtained from the Department of State a

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 CFR 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1994 & Supp. V 1999)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 14, 2002 (67 FR 53721 (August 16, 2002)), has continued the Regulations in effect under IEEPA.

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

license or written authorization for such export.

Section 11(h) of the Export Administration act of 1979, as amended (currently codified at 5 U.S.C. app. 2401–2420 (1994 & Supp. V 1999)) ("Act")[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating any of a number of federal criminal statutes including the AECA shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2002)) ("Regulations") for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violation the AECA, the Director, Office of Exporter Services in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person's export privileges for a period of up to 10 years from the dare of conviction and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Bing Sun's conviction for violating the AECA, and after providing notice and an opportunity for Bing Sun to make a written submission to the Bureau of Industry and Security before issuing an Order denying his export privileges, as provided in section 766.25 of the Regulations, I, following consultations with the Director, Office of Export Enforcement, have decided to deny Bing Sun's export privileges for a period of 10 years from the date of his conviction. The 10-year period ends on December 18, 2010. I have also decided to revoke all licenses issued pursuant to the Act in which Bing Sun had an interest at the time of his conviction.

Accordingly, it is hereby—

Ordered

I. Until December 18, 2010, Bing Sun, currently incarcerated at Seymour Johnson Federal Prison Camp, #51583–083, Goldsboro, North Carolina 27533, and with an address at 14026 Ticonderoga Court, Fontana, California 92336, ("the denied person") and, when acting in behalf of it, all of its successors or assigns, officers, representatives, agent and employees, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Bing Sun by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until December 18, 2010.

VI. In accordance with Part 756 of the Regulations, Bing Sun may file an appeal from this Order with the Under Secretary for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Bing Sun. This Order shall be published in the **Federal Register**.

Dated: October 4, 2002.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 02–25742 Filed 10–9–02; 8:45 am]

BILLING CODE 3510–DT–M

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the president, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1994 & Supp. V 1999)) ("IEEPA"). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 14, 2002 (67 FR 53721 (August 16, 2002)), has continued the Regulations in effect under IEEPA.

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Patte Sun

In the Matter of: Patte Sun, currently incarcerated at Alderson Federal Prison Camp #16012–111, Alderson, West Virginia 24910, and with an address at 14026 Ticonderoga Court, Fontana, California 92336.

Order Denying Export Privileges

On December 18, 2000, a U.S. District Court in the Eastern District of Virginia convicted Patte Sun of violating section 38 of the Arms Export Control Act (22 U.S.C. 2778 (1994 & Supp. V 1999)) ("AECA"). Specifically, the Court found that Patte Sun knowingly and willfully attempted to export defense articles on the United States Munitions List, from the United States to the People's Republic of China, without having first obtained from the Department of State a license or written authorization for such export.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401–2420 (1994 & Supp. V 1999)) ("Act")[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating any of a number of federal criminal statutes including the AECA shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (2002)) ("Regulations"), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person's export privileges for a period of up to 10 years from the date of conviction and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Patte Sun's conviction for violating the AECA, and after providing notice and an opportunity for Patte Sun to make a written submission to the Bureau of Industry and Security before issuing an Order denying her export privileges, as provided in section 766.25 of the Regulations, I, following consultations with the Director, Office of Export Enforcement, have decided to deny Patte Sun's export privileges for a period of eight years from the date of her conviction. The eight-year period ends on December 18, 2008. I have also decided to revoke all licenses issued pursuant to the Act in which Patte Sun had an interest at the time of her conviction.

Accordingly, it is hereby—

Ordered

I. Until December 18, 2008, Patte Sun, currently incarcerated at Alderson Federal Prison Camp, #16012–111, Alderson, West Virginia 24910, and with an address at 14026 Ticonderoga Court, Fontana, California 92336, ("the denied person") and, when acting in behalf of it, all of its successors or assigns, officers, representatives, agent and employees, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Patte Sun by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until December 18, 2008.

VI. In accordance with Part 756 of the Regulations, Patte Sun may file an appeal from this Order with the Under Secretary for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Patte Sun. This Order shall be published in the **Federal Register**.

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1994 & Supp. V 1999)) ("IEEPA"). On November 13, 2000, the act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 14, 2002 (67 FR 53721 (August 16, 2002)), has continued the Regulations in effect under IEEPA.

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

Dated: October 4, 2002.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 02–25740 Filed 10–9–02; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100202A]

Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting Requirements; Public Workshops

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of workshops.

SUMMARY: NMFS, Alaska Region, and the U.S. Coast Guard, North Pacific Regional Fisheries Training Center, will present workshops on the 2003 recordkeeping and reporting requirements for the Alaska groundfish fisheries and Individual Fishing Quota (IFQ) fisheries.

DATES: The workshops will be held November 12 and 14, 2002. See **SUPPLEMENTARY INFORMATION** for the times.

ADDRESSES: The workshops will be held in Seattle, WA. See **SUPPLEMENTARY INFORMATION** for the addresses.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION: The workshops will include discussion of 2003 recordkeeping and reporting requirements for IFQ fisheries and Alaska groundfish fisheries along with instructions for completion and submittal of the required forms and logsheets.

The workshops are scheduled as follows:

1. November 12, 2002, 1 p.m., Pacific standard time (P.s.t.), for vessels, 3:30 p.m., P.s.t., for shoreside processors at the NOAA Western Regional Center, Building 9, Room A/B, 7600 Sandpoint Way, N.E., Seattle, WA.

2. November 14, 2002, 1 p.m to 2:30 p.m., P.s.t., at FISH EXPO, Room 303, Washington State Trade and Convention Center, Seattle, WA.

Tentatively, additional workshops are being considered in Unalaska, AK, Kodiak, AK, and Sitka, AK. Suggestions and recommendations on scheduling these workshops or on holding workshops at other times and places are welcome.

Special Accommodations

These workshops will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Patsy Bearden, 907–586–7008, at least 7 working days prior to the meeting date.

Dated: October 3, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–25712 Filed 10–9–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 093002A]

Endangered Species; File No. 1361

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Return of application.

SUMMARY: Notice is hereby given that the application submitted by Robert K. Metzger, Metzger Wildlife Surveys, 1327 North Wheaton Drive, St. Charles, Missouri 63301, to take green, hawksbill, loggerhead, Kemp's ridley and leatherback sea turtles along the Atlantic seaboard and the Gulf of Mexico for purposes of scientific research and enhancement has been returned to the applicant.

ADDRESSES: The documents related to this action are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Lillian Becker or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On February 13, 2002 a notice was published in the **Federal Register** (67 FR 6691) that an application had been filed by Robert K. Metzger. The applicant sought an application to perform survey and relocation trawls of sea turtles in conjunction with dredging projects of the Army Corps of Engineers. The applicant has withdrawn his application.

Dated: October 3, 2002.

Trevor R. Spradlin,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–25714 Filed 10–9–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082802F]

Endangered Species; File No. 1360

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. David Secor, Chesapeake Biological Laboratory, University of Maryland Center for Environmental Science, P.O. Box 38, Solomons, Maryland 20619 has been issued a permit to take shortnose sturgeon (Acipenser brevirostrum) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371;Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Lillian Becker or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On January 23, 2002, notice was published in the **Federal Register** (67 FR 3165) that a request for a scientific research permit to take shortnose sturgeon had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit holder hypothesizes that the recovery of shortnose sturgeon on the Hudson River occurred due to one or several strong year-classes following nursery system recovery to normoxia after 1977. The permit holder is going to test this hypothesis by determining the ages of shortnose sturgeon caught in the Hudson river by interpreting annulus of pectoral fin spines. The method will be tested on 10 captive shortnose sturgeon from seven age classes (70 total) from US Fish and Wildlife Service Warm Springs Fish Hatchery, Georgia. The applicant will clip a 1cm section from the primary spine of one pectoral fin near the point of articulation. After this has been tested in hatchery fish, the permit holder will capture shortnose sturgeon in the Hudson River with gillnets, handle, measure, check for tags, tag, passive integrated transponder tag, sex (by external or fiberoptic examination), and release. The applicant is authorized to take 670 shortnose sturgeon.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: October 3, 2002.

Trevor Spradlin,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–25715 Filed 10–9–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100302B]

Marine Mammals; File No. 859–1680

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Jim Johnston, Chief Environmental Planner, United States Air Force, Environmental Management Office, Vandenberg Air Force Base, CA 93437, has applied in due form for a permit to take California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), northern fur seals (*Callorhinus ursinus*), and Pacific harbor seals (*Phoca vitulina richardsi*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before November 12, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant requests a 5 year permit to take up to 700 California sea lions, 700 northern elephant seals, 50 northern fur seals, and 550 harbor seals inhabiting Vandenberg Air Force Base and the northern Channel Islands annually by capture, sedation, blood sampling, skin biopsy, physiological measurements, hearing sensitivity tests, attachment of scientific instruments, temporary captive maintenance, recapture for retrieval of instruments, surveys of abundance and distribution, incidental harassment, and accidental mortality. The purpose of the proposed project is to study the effects of noise from rocket launches and the subsequent launch-generated sonic booms on pinnipeds. The movements and foraging behavior of seals exposed to launch noise and/or sonic booms will be compared with non-exposed control animals using remote VHF radio-telemetry, satellite transmitters, and electronic data loggers.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 3, 2002.

Trevor R. Spradlin,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–25711 Filed 10–9–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100102C]

Marine Mammals; File Nos. 782–1694 and 782–1438

ACTION: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for permit and request to amend permit.

SUMMARY: Notice is hereby given that NMFS, National Marine Mammal Laboratory (NMML), 7600 Sand Point Way, NE, Seattle, WA 98102, has applied in due form for: (1) a permit to take an unspecified number of specimen materials from dead animals of the Orders Cetacea and Pinnipedia)(except walrus) for purposes of scientific research; and (2) an amendment to permit 782–1438.

DATES: Written or telefaxed comments must be received on or before November 12, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Jennifer Skidmore, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit and amendment is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

782–1694 - The applicant proposes to take an unspecified number marine mammal specimen materials for scientific research. The objective of the research is to use the data and specimen materials collected from dead pinnipeds and cetaceans or receive samples from other permitted researchers to obtain information about the biology and life history of each of the species. Specimens from animals will be collected and curated, imported or exported only when the specimens are available from animals: 1) directly taken in countries and situations where such taking is legal [e.g. Alaska Native subsistence harvest]; 2) taken incidental to commercial fishing or other operations; 3) found dead at sea or stranded; 4) found dead of natural causes; and 5) taken legally under other research permits. Samples are requested to be taken anywhere in the United States and imported/exported worldwide.

Permit 782–1438 authorizes the Holder to take beluga whales (Delphinapterus leucas) by capture to satellite tag, flipper tag, suction cup tag, biopsy sample and incidentally harass the animals. The research is conducted in Alaskan waters, specifically the Gulf of Alaska, Bristol Bay, Norton Sound, Kotzebue Sound and the Beaufort Sea. The maximum number of unintentional mortalities currently authorized is one animal annually. During capture operations in May 2002, a beluga whale became entangled in the net and drowned.

The Holder now requests authority to increase the number of beluga whales that may be accidentally killed during capture operations to four (4) animals for the duration of the permit which expires September 2003. A beluga tagged in Cook Inlet in August 2002 was found dead a week later. While the cause of death of the Cook Inlet animal is unknown because a necropsy was not feasible, mortality could have been related to capture or tagging. As a result, the Holder requests an amendment to Permit 782–1438 to allow for additional unintentional mortalities in 2003.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Protected Resources Division, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Both Permit actions - Protected Resources Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7235; fax (907) 586–7012;

Protected Resources Division, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4020; fax (562) 980–4027;

Protected Species Coordinator, Pacific Area Office, NMFS, 1601 Kapiolani Blvd., Rm. 1110, Honolulu, HI 96814–4700; phone (808) 973–2935; fax (808) 973–2941;

Protected Resources Division, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978) 281–9346; fax (978) 281–9371;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (813) 570–5312; fax (813) 570–5517.

Dated: October 3, 2002.

Trevor R. Spradlin,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–25713 Filed 10–9–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Enzyme-Catalyzed Modifications of Macromolecules in Organic Solvents

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR part 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 6,455,285 B1 entitled "Enzyme-Catalyzed Modification of Macromolecules in Organic Solvents" issued September 24, 2002. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone: (508) 233–4928 or e-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–25883 Filed 10–9–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Florida Bay Florida Keys Feasibility Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice; date correction.

SUMMARY: The public scoping meetings scheduled for October 8 and 9, 2002 from 7 p.m. to 9 p.m. as published in the **Federal Register** on Friday, September 27, 2002 (67 FR 61080) has been rescheduled. The public scoping meetings will now be held from 7 p.m. to 9 p.m. on October 29, 2002, at the Marathon Government Center, 2798 Overseas Highway, Marathon, FL.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Tarr, Project Biologist, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL 32232–0019, by e-mail *bradley.a.tarr@usace.army.mil*, or by telephone at 904–232–3582.

SUPPLEMENTARY INFORMATION: None.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–25877 Filed 10–9–02; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Chief of Engineers Environmental Advisory Board; Meeting

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting. The meeting is open to the public.

Name of Committee: Chief of Engineers Environmental Advisory Board (EAB).

Date: October 25, 2002.

Location: Hilton Palm Beach Airport Hotel, Salon B, 150 Australian Avenue, West Palm Beach, FL 33406, phone (561) 684–9400.

Time: 9 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Norman Edwards, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000; Ph: 202–761–4559.

SUPPLEMENTARY INFORMATION: The Board advises the Chief of Engineers on environmental policy, identification and resolution of environmental issues and missions, and addressing challenges, problems and opportunities in an environmentally sustainable manner. The theme of this meeting is the Comprehensive Everglades Restoration Plan. While it is emphasized that this is not a public meeting on the implementation of the Comprehensive Everglades Restoration Plan, the meeting will focus on selected environmental aspects of the CERP and other restoration issues that may have national implications and/or application. The intent of this meeting is to present an opportunity for the Chief of Engineers to receive the views of his EAB. Time will be provided, however, for public comment. Each speaker will be limited to no more than three minutes in order to accommodate as many people as possible within the limited time available. If you wish to receive electronic notice of future meetings you may subscribe to a list server at: *http://www.usace.army.mil/inet/functions/cw/hot_topics/eab.htm.*

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–25878 Filed 10–9–02; 8:45 am]

BILLING CODE 3710–92–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 2002–2]

Weapons Laboratory Support of the Defense Nuclear Complex

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice, recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a(a)(5) concerning weapons laboratory support of the defense nuclear complex.

DATES: Comments, data, views, or arguments concerning the recommendation are due on or before November 12, 2002.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Andrew L. Thibadeau at the address above or telephone (202) 694–7000.

Dated: October 7, 2002.

John T. Conway,

Chairman.

Background

In the past, the Defense Nuclear Facilities Safety Board (Board) has issued recommendations addressing the need for weapons laboratories to support the safety of nuclear explosive operations at the Pantex Plant. Specifically, Recommendation 93–6, Maintaining Access to Nuclear Weapons Expertise in the Defense Nuclear Facilities Complex, addressed preserving expertise in the defense nuclear facilities complex. Both the Board and the Department of Energy (DOE) have devoted significant resources to implementing this recommendation and to maintaining access to the unique knowledge of individuals who were engaged for many years in critical defense nuclear activities, such as weapons design and testing. The continued support by such individuals is necessary to avoid future safety problems in these and related activities, and to maintain the safety of activities with existing weapons.

The Board is encouraged by the initiatives undertaken thus far to ensure access to the capabilities and experience of such individuals while they are still available. Activities such as those at the Theoretical Institute for Thermonuclear and Nuclear Studies at Los Alamos National Laboratory and the Intern Program at Sandia National Laboratories provide excellent opportunities to introduce new personnel to the weapons programs.

However, after visiting each of the weapons laboratories (Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Sandia National Laboratories) to discuss laboratory support for the safety of nuclear explosive operations at the Pantex Plant, the Board has become increasingly concerned that an additional problem regarding technical expertise must be addressed. The weapons laboratories have not taken adequate steps to ensure that experienced staff members who can employ their specialized knowledge are readily available to the defense nuclear complex, especially to operations at the Pantex Plant. While some new talent is being developed, it will be years before these new individuals can be shepherded adequately through the nuclear weapons complex, inculcated with the unique knowledge gained through years of dedicated weapons laboratory work, and mentored in those skills required to maintain the stockpile safely. In the meantime, highly experienced specialists responsible for individual weapon programs are leaving the complex and delays in addressing safety issues continue to occur.

Some of these delays were highlighted in a letter dated August 1, 2002, from the Board to the Acting Director of the National Nuclear Security Administration, which addressed a specific safety improvement at the Pantex Plant. In that letter, the Board emphasized the need to designate a single person who would serve as the point of contact for each weapon system at each appropriate weapons laboratory. That individual should be empowered to integrate and coordinate for his or her

laboratory all information needed to respond to questions concerning the system under his or her purview and to provide the technical support required by the defense nuclear complex with regard to that system. The significant responsibilities assigned to these individuals will require care in their selection. There should be an internal process in place that provides for training and mentoring to ensure that they fully understand their weapon system and can competently judge how and when to draw on appropriate laboratory resources for the support needed by the complex to ensure safety DOE is not adequately addressing this issue.

The example highlighted in the Board's August 2002 letter also indicated the need for better coordination between points of contact. In the example, both internal laboratory and inter-site communications were necessary between personnel who had been developing a technical application for several weapon programs and those responsible for one of the weapon programs. Both lines of communication broke down. As part of its actions to establish adequate points of contact, DOE will need to address proper communications amongst groups working on cross-platform projects, and to ensure that the appropriate resources are prioritized to provide critical stockpile support.

In formulating its Recommendation 93–6, the Board recognized some of the difficulties DOE would face in its stockpile stewardship program. That recognition was implicit in the statement: "Although it may be relatively straightforward to maintain these capabilities in the near term, ensuring their availability 5 to 20 years in the future may be very difficult." The Board is concerned that, without attention to the near-term problems associated with supporting the stockpile, the gains achieved in addressing Recommendation 93–6 are in danger of being lost.

Further, since the size and scope of the nuclear weapons stockpile have been reduced, and research and development leading to new weapons has been restricted, it appears that there has been an increase in "work-for-others" programs. The focus of the nuclear weapons laboratories on the nuclear weapons complex as their number one priority has waned. The Board was encouraged by the Secretary's sfatement at DOE's October 2001 Quarterly Leadership Meeting that DOE's "overarching mission is national security." However, it appears that this message is still not being effectively implemented within DOE and its weapons laboratories.

Recommendation

To address the above issues, the Board makes the following recommendations to ensure safety in weapons programs:

1. That the Secretary of Energy update and reemphasize DOE policies and Orders (*e.g.*, DOE Order 5600.1, Management of the DOE Weapon Program and Weapon Complex) as needed to ensure that the nuclear weapons program is assigned the top priority among all activities at the weapons laboratories.

2. That a process be developed to ensure the assignment of a senior individual, as the point of contact for each weapon system under the purview of each weapons laboratory. This process should include:

(a) Adequate selection criteria;

(b) Appropriate training and mentoring programs (as necessary) to ensure that each individual selected is fully knowledgeable about the weapon system assigned to him or her, as well as internal weapons laboratory programs and procedures;

(c) Formal planning for succession of individuals when they retire or are replaced; and

(d) Periodic dissemination of updated listings of points of contact to the defense nuclear complex.

3. That the internal organizational structure, programs, and procedures of the weapons laboratories be aligned to ensure that these senior, technically competent individuals are empowered (*i.e.*, given the authority and the funding) to direct appropriate resources of their laboratories to provide the support needed to ensure the safety of operations in the nuclear complex related to the weapons under their purview.

4. That DOE establish a position at each DOE site office with responsibility for a nuclear weapons laboratory to ensure that requirements of the defense nuclear complex for support by that laboratory are tracked and met. These positions should be filled by personnel with the appropriate competence and experience who have the authority to resolve competing requirements for resources.

John T. Conway,

Chairman.

Appendix—Transmittal Letter to the Secretary of Energy

Defense Nuclear Facilities Safety Board

October 3, 2002.

The Honorable Spencer Abraham,

Secretary of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1000.

Dear Secretary Abraham: The Defense Nuclear Facilities Safety Board (Board) has been following the Department of Energy's (DOE) efforts to provide appropriate technical support to its defense nuclear facilities, particularly the Pantex Plant. The complexity and uniqueness of the technical safety issues that arise in the nuclear weapons complex require the concerted effort of a cadre of highly competent individuals with expertise not generally available in industry or academia. Most of the personnel with this training and experience are employed at Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Sandia National Laboratories.

The Board is concerned that the number of nuclear weapons experts is declining and the focus of remaining experts is being diverted to other areas. Action is required to change this trend and to re-emphasize the primary role and obligation of the weapons laboratories to support DOE's nuclear weapon-related activities, including the formal training and development of new experts.

As a result, the Board on October 3, 2002, unanimously approved Recommendation 2002–2, Weapons Laboratory Support of the Defense Nuclear Complex, which is enclosed for your consideration. After your receipt of this recommendation and as required by 42 U.S.C. 2286d(a), the Board will promptly make it available to the public. The Board believes that the recommendation contains no information that is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161–68, as amended, please see that it is promptly placed on file in your regional public reading rooms. The Board will also publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,

Chairman.

[FR Doc. 02–25846 Filed 10–9–02; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 9, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 4, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension of a currently approved collection.

Title: Quarterly Cumulative Caseload Report (SC).

Frequency: Quarterly.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 320.

Burden Hours: 320.

Abstract: State VR agencies who administer vocational programs provide key caseload indicator data on this form, including numbers of persons who are applicants, determined eligible/ineligible, waiting for services, and also their program outcomes. This data is used for program, planning, management, budgeting and general statistical purposes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the Browse Pending Collections link and by clicking on link number 2161. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address Vivian.Reese@ed.gov. Requests may also be electronically mailed to the e-mail address OCIO_RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–25729 Filed 10–9–02; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7389–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Eliciting Risk Tradeoffs for Valuing Fatal Cancer Risks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval:

Title: Eliciting Risk Tradeoffs for Valuing Fatal Cancer Risks, EPA ICR No. 2057.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 12, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 2057.01 to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by e-mail at *auby.susan@epamail.epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 2057.01. For technical questions about the ICR contact Dr. Melonie Williams at (202) 566–2279.

SUPPLEMENTARY INFORMATION:

Title: Eliciting Risk Tradeoffs for Valuing Cancer Risks, EPA ICR Number 2057.01. This is a request for a new collection.

Abstract: The purpose of the survey is to provide data that will improve valuation estimates of the benefits of fatal cancer risk reductions. The existing literature on mortality risk values has focused almost exclusively on accidental and immediate deaths; however, it is unclear how applicable these values are for assessing the benefits of fatal cancer risks, which can involve extended periods between exposure on disease onset (latency) and between onset and death (morbidity). The proposed survey will present respondents with choice scenarios involving tradeoffs between different levels and types of risks. It will specifically explore how individuals' tradeoffs between risks are affected by (1) the type of cancer involved and (2) differences in the length of the latency and morbidity periods from cancer. The results will provide empirically-based ratios, which can be used to adjust existing mortality risk value estimates according to these factors. We are requesting OMB permission to conduct a pretest (350 respondents) and full-scale survey (2000) respondents, using an established panel of respondents and a webTV mode of administration. Each survey will take approximately 25 minutes, and data will be collected and stored electronically.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control

numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 29, 2002 (67 FR 4253); one comment was received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 25 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Individuals or households.

Estimated Number of Respondents: 2350.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 979 hours.

Estimated Total Annualized Capital, O&M Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 2057.01 in any correspondence.

Dated: October 4, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–25859 Filed 10–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7393–5]

Investigator Initiated Grants: Request for Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of requests for applications.

SUMMARY: This notice provides information on the availability of fiscal year 2003 investigator initiated grants program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research areas within the solicitations.

FOR FURTHER INFORMATION CONTACT: (1) Technology for a Sustainable Environment, *karn.barbara@epa.gov*, (2) Measurement, modeling and analysis methods for airborne fine particulate matter (PM2.5), *winner.darrel@epa.gov*, (3) ECOHAB (Ecology of Hazardous Algal Blooms), (4) Watershed Classification, *perovich.gina@epa.gov*, and (5) Computational Toxicology Approaches for Endocrine Disruptors Screening Program, *reese.david@epa.gov*. The complete program announcement can be accessed on the Internet at *http://www.epa.gov/ncer*, under "announcements." The required forms for applications with instructions are accessible on the Internet at *http://es.epa.gov/ncer/rfa/forms/downlf.html*. Forms may be printed from this site.

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency invites research applications in the following areas of special interest to its mission: (1) Technology for a Sustainable Environment, (2) Measurement, modeling and analysis methods for airborne fine particulate matter (PM2.5), (3) ECOHAB (Ecology of Hazardous Algal Blooms), (4) Watershed Classification, and (5) Computational Toxicology Approaches for Endocrine Disruptors Screening Program.

Dated: October 1, 2002.

John C. Puzak,

Acting Director, National Center for Environmental Research.

[FR Doc. 02–25863 Filed 10–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7393–4]

Investigator Initiated Grants: Requests for Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for applications (RFA).

SUMMARY: This notice provides information on the availability of a fiscal year 2003 program announcement in which areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth.

DATES: The RFA opened September 30, 2002 and closes January 7, 2003.

FOR FURTHER INFORMATION CONTACT: April Richards, (202) 564–2297. *Richards.April@epa.gov* or Bob Thurnau, (513) 569–7504 *Thurnau.Bob@epa.gov*. The complete program announcement can be accessed on the Internet at *http://www.epa.gov/ncer* under "announcements." Unlike other EPA RFAs, all necessary forms are included in the RFA.

SUPPLEMENTARY INFORMATION: In its Requests for Applications the U.S. Environmental Protection Agency invites research applications in the following are of special interest to its mission: Treatment Technologies for Arsenic Removal for Small Drinking Water Systems: Request for Applications. The objective of this program is to pre-qualify treatment technologies for a subsequent demonstration program which will evaluate the efficiency and effectiveness of drinking water treatment technologies to meet the new arsenic maximum contaminant level (MCL) of 0.01 mg/l for varying source water quality conditions. Proposals selected under this competition will be pre-qualified for demonstration projects at selected utilities throughout the country.

Dated: September 30, 2002.

John C. Puzak,

Acting Director, National Center for Environmental Research.

[FR Doc. 02–25864 Filed 10–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0265; FRL–7276–4]

FIFRA Scientific Advisory Panel; Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a public pre-meeting teleconference and a 3–day face-to-face meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review studies on water disinfection and softening as related to the Food Quality Protection Act of 1996 (FQPA) drinking water exposure assessments.

DATES: *Pre-meeting teleconference*: November 21, 2002, from 1 p.m. to 3 p.m, eastern standard time.

Face-to-face meetings: December 3–5, 2002, from 8:30 a.m. to 5 p.m, eastern standard time.

Comments: For deadlines for submission of requests to present oral comments and submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION.**

Nominations: Requests for nominations to serve as an ad hoc member of the FIFRA SAP for the pre-meeting teleconference and face-to-face meetings should be provided on or before October 25, 2002.

Special seating: Requests for special seating arrangements should be made at least 5 business days prior to the meeting.

ADDRESSES: *Pre-meeting teleconference*: This meeting will be held at the Environmental Protection Agency, EPA East Bldg., 1201 Constitution Ave., NW., Conference Room 4225, Washington, DC. For additional information about the pre-meeting teleconference, including how to receive the teleconference telephone number, contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** To ensure proper receipt by EPA, your request must identify docket ID number OPP–2002–0265 in the subject line on the first page of your response.

Face-to-face meetings: These meetings will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Hwy., Arlington, VA. The telephone number for the Sheraton Crystal City Hotel is (703) 486–1111.

Comments: Written comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

Nominations, Requests to present oral comments, and Special seating: To submit nominations to serve as an ad hoc member of the FIFRA SAP for the face-to-face meetings and pre-meeting teleconference, or requests for special seating arrangements, or requests to present oral comments, notify the DFO listed under **FOR FURTHER INFORMATION CONTACT.** To ensure proper receipt by EPA, your request must identify docket ID number OPP–2002–0265 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, DFO, Office of Science Coordination and Policy (7202M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail address: lewis.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and FQPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0265. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

A meeting agenda relevant to these meetings is now available. EPA's position paper, questions to FIFRA SAP, and FIFRA SAP composition (i.e., members and consultants for this meeting) will be available as soon as possible, but no later than early November. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at http://www.epa.gov/scipoly/sap.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be

transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0265. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0265. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0265.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. Attention: Docket ID Number OPP–2002–0265. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. How May I Participate in These Meetings?

Requests to present oral comments, written comments, or requests for special seating arrangements may be submitted electronically, by mail, or through hand delivery/courier. (See Units I.C.-D.) Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0265 in the subject line on the first page of your request.

1. *Oral comments.* Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern standard time, November 14, 2002, for the pre-meeting teleconference or no later than noon, eastern standard time, November 25, 2002, for the face-to-face meetings in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation and the organization (if any) the individual will represent. In addition, any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard) at the face-to-face meetings should be requested at this time. Oral comments before the FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides to the face-to-face meeting.

2. *Written comments.* Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted no later than noon, eastern standard time, November 14, 2002, for the pre-meeting teleconference or no later than noon, eastern standard time, November 25, 2002, for the face-to-face meetings, to provide the FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meetings.* Seating at both meetings will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

II. Background

A. Purpose of the FIFRA SAP

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of two meetings of the EPA FIFRA SAP. Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) of FIFRA that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of rulemaking pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

B. Pre-meeting Teleconference

The FIFRA SAP will meet on November 21, 2002, via teleconference from 1 p.m. to 3 p.m., eastern standard time. This teleconference meeting will be hosted out of Conference Room 4225, Environmental Protection Protection, EPA East Bldg., 1201 Constitution Ave., NW., Washington, DC. The meeting is open to the public and seating will be on a first-come basis. The public may also attend via telephone. For further information concerning the meeting or how to obtain the telephone number, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

The purpose of this public pre-meeting teleconference is to:

1. Discuss the charge and the adequacy of the review materials provided to the FIFRA SAP.

2. Clarify any questions and issues relating to the charge and the review materials.

3. Discuss specific charge assignments to the Panelists.

4. Clarify specific points of interest raised by the Panelists in preparation for the face-to-face meetings to be held on December 3, December 4, and December 5, 2002.

C. Face-to-Face Public Meetings

On December 3–5, 2002, the Agency will be continuing its consultation with the FIFRA SAP to review studies on water disinfection and softening as related to FQPA drinking water exposure assessments. On September 29, 2000, the Agency updated the FIFRA SAP on their progress in improving its drinking water assessment process. In addition, the Agency presented a review of the scientific literature on the impacts of drinking water treatment on the removal and transformation of pesticides. In their recommendations, the FIFRA SAP supported the Agency's efforts to better understand the effects of water treatment on pesticides and encouraged the Agency to return to the FIFRA SAP to report on its progress in developing approaches that factor treatment into drinking water exposure assessments.

Since the previous meeting, the Agency has reviewed additional pesticide laboratory and field monitoring studies plus new information on the effects of drinking water treatment processes on pesticide removal and transformation. In addition, the Agency has developed a proposed laboratory protocol to determine the effects of individual and combined drinking water treatment processes on pesticide removal and transformation. The purpose of this consultation is to update the Panel on the Agency's efforts to identify various U.S. drinking water treatment processes and to present laboratory studies and field monitoring studies that consider treatment effects on pesticides. The Agency will also present a proposed laboratory protocol for determining the effects of treatment on pesticide removal and transformation plus a plan for testing the protocol design and implementation. For this consultation, the Panel will review:

1. The Agency's progress report on effects of treatment processes on the levels and stability of pesticides in community water systems and;

2. The Agency's proposed laboratory protocol for assessing water treatment effects.

D. Request for Nominations to Serve as Ad Hoc Members of the FIFRA SAP for These Meetings

The FIFRA SAP staff routinely solicit the stakeholder community for nominations to serve as ad hoc members of the FIFRA SAP for each meeting. Any interested person or organization may nominate qualified individuals to serve on the FIFRA SAP for a specific meeting. No interested person shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal Department or Agency or their employment by a Federal Department or Agency (except the EPA). Individuals nominated should have expertise in one or more of the following areas: Water treatment, chemical oxidation, water quality assessment, and drinking water risk assessment. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** by October 25, 2002.

The criteria for selecting scientists to serve on the FIFRA SAP are that these persons be recognized scientists—experts in their fields; that they be as impartial and objective as possible; that they represent an array of backgrounds and perspectives (within their disciplines); have no financial conflict of interest; have not previously been involved with the scientific peer review of the issue(s) presented; and that they

be available to participate fully in the review, which will be conducted over a relatively short-time frame. Nominees will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. Finally, they will be asked to review and to help finalize the meeting minutes.

If a FIFRA SAP nominee is considered to assist in a review by the FIFRA SAP for a particular session, the nominee is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP nominee is required to submit a Confidential Financial Disclosure Report which shall fully disclose, among other financial interests, the nominee's employment, stocks and bonds, and where applicable, sources of research support. EPA will evaluate the nominee's financial disclosure form to assess that there are no formal conflict of interests before the nominee is considered to serve on the FIFRA SAP. Selected FIFRA SAP members will be hired as a Special Government Employee. The Agency will review all nominations; a decision on FIFRA SAP members for the meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

E. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 3, 2002.

Joseph J. Merenda, Jr.,

Director, Office of Science Coordination and Policy.

[FR Doc. 02–25860 Filed 10–9–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0052; FRL–7276–3]

Forum on State and Tribal Toxics Action; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the fall meeting of the Forum on State and Tribal Toxics Action (FOSTTA) to collaborate on environmental protection and chemical and prevention issues. The Chemical Information and Management, Pollution Prevention, Toxics Release Inventory, and Tribal Affairs Projects, components of FOSTTA, will hold meetings October 21–22, 2002. This notice announces the location and times for the meetings and sets forth some tentative agenda topics. EPA invites all interested parties to attend the public meetings.

DATES: The four projects will meet concurrently October 21, 2002, from 10 a.m. to 5 p.m., and October 22, 2002, from 8 a.m. to noon. A plenary session is being planned for the participants on Monday, October 21, 2002, from 8 a.m. to 9:30 a.m.

Requests to participate in the fall FOSTTA meeting, identified by docket ID number OPPT–2002–0052, must be received by EPA on or before October 11, 2002.

ADDRESSES: The meetings will be held at the Hall of States, 444 North Capitol Street, NW., Washington, DC. The building is located across from the Union Station metro stop on the red line.

Requests to participate in the meeting may be submitted to Christine Eppstein, listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Darlene Harrod, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8814; fax number: (202) 564–8813; e-mail address: *harrod.darlene@epa.gov*.

Christine Eppstein, Environmental Council of the States, 444 North Capitol Street, NW., Suite 445, Washington, DC 20001; telephone number: (202) 624–3661; fax number: (202) 624–3666; e-mail address: *ceppstein@sso.org*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in FOSTTA and hearing more about the perspectives of the states and tribes on EPA programs and information exchange regarding important issues related to human health and environmental exposure to toxics. Potentially affected entities may include, but are not limited to:

- States and federally recognized tribes.
- State, Federal, and local environmental and public health organizations.
- Chemical trade associations.

The listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical persons listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Copies of this Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPPT–2002–0052. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.1. Once in the system, select "search," then key in the appropriate docket ID number.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to Christine Eppstein, the technical person listed under **FOR FURTHER INFORMATION CONTACT.** Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number OPPT–2002–0052, must be received on or before October 11, 2002.

IV. Background

The Toxic Substances Control Act, 15 U.S.C. 2609 section 10(g), authorizes EPA and other federal agencies to establish and coordinate a system for exchange among federal, state, and local authorities of research and development results respecting toxic chemical substances and mixtures, including a system to facilitate and promote the development of standard data format and analysis and consistent testing procedures. Through FOSTTA, the Chemical Information and Management Project (CIMP) focuses on EPA's chemical program and works to develop a more coordinated effort involving federal, state, and tribal agencies. The Pollution Prevention Project (P2) promotes the prevention ethic across society, helping companies incorporate P2 approaches and techniques and integrating P2 into mainstream environmental activities at both the federal level and among the states. Under the Emergency Planning and Community Right-to-Know Act, EPA, the states, and the tribes share responsibility for handling toxic chemical release information and making it available to the public through the Toxics Release Inventory (TRI). The Tribal Affairs Project (TAP) concentrates on chemical and prevention issues that are most relevant to the tribes, including lead control and abatement, subsistence lifestyles, and hazard communications and outreach. FOSTTA's vision is to reinvigorate the projects, focus on major policy-level issues, recruit more senior state and tribal leaders, increase outreach to all 50 states and some 560 federally recognized tribes, and vigorously seek ways to engage the states and tribes in ongoing substantive discussions on complex and oftentimes controversial environmental issues that states and tribes resolve at their respective levels of government.

In January 2002, the Environmental Council of the states (ECOS), in cooperation with the National Tribal Environmental Council (NTEC), was awarded the new FOSTTA cooperative agreement. ECOS, NTEC, and EPA's Office of Pollution Prevention and Toxics (OPPT) are co-sponsoring the meetings. As part of a cooperative agreement, ECOS facilitates ongoing efforts of the state and tribal leaders and OPPT to increase understanding and improve collaboration on toxics and pollution prevention issues and to continue a dialogue on how federal environmental programs can best be implemented among the states, tribes, and EPA.

V. The Meeting

In the interest of time and efficiency, the meetings are structured to provide maximum opportunity for state, tribal, and EPA participants to discuss items on the predetermined agenda. At the discretion of the chair, an effort will be made to accommodate participation by observers attending the proceedings. The FOSTTA representatives and EPA will collaborate on environmental protection and chemical and prevention issues. The tentative agenda items identified by the states and the tribes follow:

1. Use of environmental indicators for integrating strategies among state, federal, and international agencies (CIMP).
2. State laboratory capacity study (CIMP).
3. Challenges of promoting pollution prevention (P2).
4. Supplemental environmental projects and environmental management systems (P2).
5. OPPTS Tribal strategy (TAP).
6. Tribal risk assessment (TAP).
7. Electronic facility data profile (TRI).
8. Demonstration of state bulletin board (TRI).

Stephen L. Johnson, Assistant Administrator, Prevention, Pesticides and Toxic Substances, and Carol Jorgensen, Director, American Indian Environmental Office, will be the speakers at the plenary session.

List of Subjects

Environmental protection, Chemicals, Pollution prevention.

Dated: October 1, 2002.

Barbara A. Cunningham,

Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–25862 Filed 10–9–02; 8:45 a.m.]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 1, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 9, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman or Leslie Smith, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov or lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith

Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0972.

Title: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers.

Form No.: FCC Forms 508 and 509.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; non-profit.

Number of Respondents: 1,300.

Estimated Time Per Response: .50–15 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 3,500 hours.

Total Annual Cost: N/A.

Needs and Uses: Pursuant to the Commission's *MAG Order*, the Universal Service Administrative Company (USAC) requires certain data necessary for the administration of the Interstate Common Line Support (ICLS) mechanism for rate-of-return carriers. This data will be used to calculate ICLS for incumbent rate-of-return carriers and competitive eligible telecommunications carriers pursuant to section 54.901 of the Commission's rules. Specifically, USAC requires from rate-of-return carriers projected cost and revenue data, which may be collected on proposed FCC Form 508, when developed. USAC also requires actual cost and revenue data, including demand data, which may be collected on proposed FCC Form 509, when developed. Proposed FCC Form 509 may also require additional supporting cost and revenue data. These forms may also request data related to the transferred ownership of lines for which carriers have received or may receive ICLS. Any carrier may elect to have an agent, including the National Exchange Carrier Association, Inc., perform these filings on its behalf, and the Commission anticipates that many carriers will do so. The carriers and their agents will be encouraged to file proposed FCC Forms 508 and 509 electronically. Additionally, USAC may request, in connection with the verification of data included in proposed FCC Form 509, that certain carriers provide to USAC additional documentation of cost and revenue data in the form of records currently maintained pursuant to existing Commission rules and OMB controls. This additional data is required consistent with USAC's obligation to prevent waste, fraud, and abuse of universal service support and section 54.707 of the Commission's rules. There are no fees associated with any of these information collections.

Federal Communications Commission.

William F. Caton,

Secretary.

[FR Doc. 02–25768 Filed 10–9–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 02–236; FCC 02–236]

Hilco Communications, Inc. and Cumulus Licensing Corp.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the FCC designates the application to assign the license of radio station KAYD(FM), Silsbee, Texas, from Hilco Communications, Inc. ("Hilco") to Cumulus Licensing Corp. ("Cumulus"). The Commission cannot find, based on the record, that grant of this application is consistent with the public interest, convenience, and necessity. Accordingly, pursuant to 47 U.S.C. 309(e), the Commission designates the application for hearing to determine whether the public interest, convenience, and necessity will be served by grant of the application.

DATES: See **SUPPLEMENTARY INFORMATION** section for document filing dates.

ADDRESSES: Please file documents with the Investigations and Hearing Division, Enforcement Bureau, Federal Communications Commission, Room 3–B431, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Charles W. Kelley, Chief, Investigations and Hearing Division, Enforcement Bureau, at (202) 418–1420.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Hearing Designation Order, MM Docket No. 02–236, adopted on August 15, 2002, and released on September 5, 2002. The full text is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The full text may also be purchased from the Commission's copy contractor, Qualex International, Room CY–B402, 445 12th Street, SW., Washington, DC 20554, telephone (202) 863–2983, facsimile (202) 863–2898, or via e-mail at *qualexint@aol.com*, or may be viewed via the internet at: *http://www.fcc.gov/Document_Indexes/Media/2002_index_MB_Order.html*. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Synopsis of the Order

1. In March 1996, the Commission relaxed the numerical station limits in its local radio ownership rules in accordance with Congress's directive in section 202(b) of the Telecommunications Act of 1996. Since then, the Commission has received applications proposing transactions that would comply with the new limits, but that nevertheless could produce concentration levels that raised significant concerns about the potential impact on the public interest. In response to these concerns, the Commission concluded that it has an independent obligation to consider whether a proposed pattern of radio ownership that complies with the local radio ownership limits would otherwise have an adverse competitive effect in a particular local radio market and thus would be inconsistent with the public interest. In August 1998, the Commission also began flagging public notices of radio station transactions that would result in one entity controlling 50 percent or more of the advertising revenues in the relevant Arbitron radio market or two entities controlling 70 percent or more of the advertising revenues in that market. On November 8, 2001, we adopted the Notice of Proposed Rulemaking in MM Docket No. 01–317, 16 FCC Rcd 19861, 66 FR 63986, December 11, 2001 ("*Local Radio Ownership NPRM*"). We expressed concern that our current policies on local radio ownership did not adequately reflect current industry conditions and had led to unfortunate delays in the processing of assignment and transfer applications. Accordingly, we adopted the *Local Radio Ownership NPRM* to undertake a comprehensive examination of our rules and policies concerning local radio ownership and to develop a new framework that will be more responsive to current marketplace realities while continuing to address our core public interest concerns of promoting diversity and competition. In the *Local Radio Ownership NPRM*, we also set forth an interim policy to guide our actions on radio assignment and transfer of control applications pending a decision in that proceeding. Under our interim policy, we presume that an application that falls below the 50/70 screen will not raise competition concerns unless a petition to deny raising competition issues is filed. For applications identified by the 50/70 screen, the interim policy directs the Commission's staff to conduct a public interest analysis, including an independent preliminary competition analysis, and sets forth generic areas of inquiry for this purpose. The interim policy also sets forth timetables for staff recommendations to the Commission for the disposition of cases that may raise competition concerns.

2. On July 31, 2001, Hilco and Cumulus filed an application proposing to assign the license of station KAYD–FM (formerly KLOI(FM)) from Hilco to Cumulus. The application was unopposed. Cumulus currently is the licensee of four stations in the Beaumont-Port Arthur, Texas Arbitron metro: KIKR(AM), Beaumont, Texas, KQHN(AM), Nederland, Texas; KQXY–FM, Beaumont, Texas; and KTCX(FM), Beaumont, Texas.

3. Section 310(d) of the Communications Act of 1934, as amended (the "Communications Act"), 47 U.S.C. 310(d), requires the Commission to find that the public interest, convenience and necessity would be served by the assignment of Hilco's radio broadcast license to Cumulus before the assignment may occur. Under the interim policy set forth in our *Local Radio Ownership NPRM*, we conduct a public interest analysis, including but not limited to an independent preliminary competition analysis of the proposed transaction based on publicly available information and information in the Commission's records. Under the interim policy, to decide whether a proposed assignment serves the public interest, we first determine whether it complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission's rules, including our local radio ownership rules. If it does, we then consider any potential public interest harms of the proposed transaction as well as any potential public interest benefits to determine whether, on balance, the assignment serves the public interest. The Commission's analysis of public interest benefits and harms includes an analysis of the potential competitive effects of the transaction, as informed by traditional antitrust principles. However, the Commission's public interest evaluation is not limited to competition concerns but necessarily encompasses the broad aims of the Communications Act. These broad aims include, among other things, ensuring the existence of an efficient, nationwide radio communications service available to everyone and promoting locally oriented service and diversity in media voices. Our public interest analysis therefore includes assessing whether the transfer will affect the quality of radio services or responsiveness to the local needs of the community, and whether it will result in the provision of new or additional services to listeners. Thus, under our interim policy, where a proposed transaction raises concerns about economic concentration, we will consider evidence that the particular circumstances of a case may mitigate any adverse impact that might otherwise result, as well as any evidence of benefits to radio listeners that might result from the proposed transaction. Ultimately, it is the potential impact of the transaction on listeners that will determine whether we can find that, on balance, grant of a particular radio station assignment or transfer of control application serves the public interest.

4. Having concluded that the proposed transaction is consistent with the numerical limits set forth in our ownership rules, we turn to our competition analysis. Here, we find that the proposed transaction would create a market in which the combined market share of the top two group owners in the market would be 94.5%. We find that Cumulus has failed to demonstrate particular circumstances in this market sufficient to overcome a concern that this level of economic concentration in this market will harm the public interest. To the extent Cumulus presents generic arguments challenging the parameters of our current competition analysis, we will address such concerns in the context of the *Local Radio Ownership NPRM* and need not consider them here. Rather, we look only to the record of this case to determine whether there are unique facts that persuade us that grant of this assignment application would serve the public interest despite the apparent economic concentration it will create. On the basis of the information before us, we are unable to make the required finding that the public interest, convenience and necessity will be served by granting the subject application. Accordingly, we will designate the assignment application for hearing to determine, pursuant to 47 U.S.C. 309(e), and based on the evidence to be adduced at hearing, whether the public interest, convenience and necessity will be served by the grant of the application.

5. We direct the Administrative Law Judge ("ALJ") to examine in an evidentiary hearing the particular circumstances of the Beaumont-Port Arthur, Texas metro to determine whether the factual assumptions in Section III.C. of the Hearing Designation Order are correct. We further direct the ALJ to determine, in light of his or her conclusions, whether the transaction is likely to cause any anticompetitive harms, and to determine what, if any, public benefits would accrue from this transaction. Finally, we direct the ALJ to apply these findings to determine whether, on balance, grant of the application would serve the public interest.

6. Pursuant to 47 U.S.C. 309(e), the application to assign the license of station KAYD–FM, Silsbee, Texas, from Hilco to Cumulus is designated for hearing. Unless the parties timely file the joint election to defer as set forth below, the Hearing shall be at a time and place to be specified in a subsequent Order, to determine, in light of the evidence to be presented in the hearing, whether the public interest, convenience and necessity would be served by the grant of the above-captioned assignment application (File No. BALH–20010731ACB).

7. Pursuant to 47 U.S.C. 309(e), the burden of proof with respect to the introduction of evidence and the burden of proof with respect to the issue specified in this Order shall be upon Hilco and Cumulus, the applicant parties in this proceeding.

8. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send copies of this Order to all parties by Certified Mail—Return Receipt Requested.

9. To defer further consideration of the application to assign the license of station KAYD–FM, Silsbee, Texas, from Hilco to Cumulus in accordance with the interim policy, Hilco and Cumulus must file a joint election to defer consideration of the application. Such election must be filed within 20 days of the mailing of this Order pursuant to Paragraph 8 above.

10. A copy of each document filed in this proceeding subsequent to the date of adoption of this Order must be served on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations and Hearings Division of the Enforcement Bureau at (202) 418–1420. Such service must be addressed to the named counsel of record, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 3–B431, Washington, DC 20554.

11. No less than 15 days of the mailing of the Order pursuant to Paragraph 8 above, the parties may amend their application or file such

other information with the Media Bureau as they deem relevant to ameliorate the competition concerns identified in this Order.

12. To avail themselves of the opportunity to be heard, Hilco and Cumulus, pursuant to 47 CFR 1.221(c) and 1.221(e), in person or by their respective attorneys, must file, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Such written appearance shall be filed within 20 days of the mailing of this Order pursuant to Paragraph 8 above. Pursuant to 47 CFR 1.221(c) of the Commission's rules, if the parties fail to file an appearance within the specified time period, the assignment application will be dismissed with prejudice for failure to prosecute.

13. The applicants, pursuant to 47 U.S.C. 311(a)(2), and 47 CFR 73.3594 must give notice of the hearing within the time and in the manner prescribed, and must advise the Commission of the publication of such notice as required by 47 CFR 73.3594(g).

14. The application to assign the licenses of station KAYD–FM, Silsbee, Texas, from Hilco to Cumulus will be held in abeyance pending the outcome of this proceeding.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–25763 Filed 10–9–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 02–272; FCC 02–246]

Voice in the Wilderness Broadcasting, Inc., and Clear Channel Broadcasting License, Inc.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the FCC designates the application to assign the license of radio station KCOL–FM, Groves, Texas, from Voice in the Wilderness Broadcasting, Inc. ("Voice in the Wilderness") to Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"). The Commission cannot find, based on the record, that grant of this application is consistent with the public interest, convenience, and necessity. Accordingly, pursuant to 47 U.S.C. 309(e), the Commission designates the application for hearing to determine whether the public interest, convenience, and necessity will be served by grant of the application.

DATES: See **SUPPLEMENTARY INFORMATION** section for document filing dates.

ADDRESSES: Please file documents with the Investigations and Hearing Division, Enforcement Bureau, Federal Communications Commission, Room 3–B431, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Charles W. Kelley, Chief, Investigations and Hearing Division, Enforcement Bureau, at (202) 418–1420.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Hearing Designation Order, MM Docket No. 02–272, adopted on September 4, 2002, and released on September 5, 2002. The full text is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The full text may also be purchased from the Commission's copy contractor, Qualex International, Room CY–B402, 445 12th Street, SW., Washington, DC 20554, telephone (202) 863–2983, facsimile (202) 863–2898, or via e-mail at *qualexint@aol.com*, or may be viewed via the Internet at: *http://www.fcc.gov/Document_Indexes/Media/2002_index_MB_Order.html*. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Synopsis of the Order

1. In March 1996, the Commission relaxed the numerical station limits in its local radio ownership rules in accordance with Congress's directive in section 202(b) of the Telecommunications Act of 1996. Since then, the Commission has received applications proposing transactions that would comply with the new limits, but that nevertheless could produce concentration levels that raised significant concerns about the potential impact on the public interest. In response to these concerns, the Commission concluded that it has an independent obligation to consider whether a proposed pattern of radio ownership that complies with the local radio ownership limits would otherwise have an adverse competitive effect in a particular local radio market and thus would be inconsistent with the public interest. In August 1998, the Commission also began flagging public notices of radio station transactions that would result in one entity controlling 50 percent or more of the advertising revenues in the relevant Arbitron radio market or two entities controlling 70 percent or more of the advertising revenues in that market. On November 8, 2001, we adopted the Notice of Proposed Rulemaking in MM Docket No. 01–317, 16 FCC Rcd 19861, 66 FR 63986, December 11, 2001 ("*Local Radio Ownership NPRM*"). We expressed concern that our current policies on local radio ownership did not adequately reflect current industry conditions and had led to unfortunate delays in the processing of assignment and transfer applications. Accordingly, we adopted the *Local Radio Ownership NPRM* to undertake a comprehensive examination of our rules and policies concerning local radio ownership and to develop a new framework that will be more responsive to current marketplace realities while continuing to address our core public interest concerns of promoting diversity and competition. In the *Local Radio Ownership NPRM*, we also set forth an interim policy to guide our actions on radio assignment and transfer of control applications pending a decision in that proceeding. Under our interim policy, we presume that an application that falls below the 50/70 screen will not raise competition concerns unless a petition to deny raising competition issues is filed. For applications identified by the 50/70 screen, the interim policy directs the Commission's staff to conduct a public interest analysis, including an independent preliminary competition analysis, and sets forth generic areas of inquiry for this purpose. The interim policy also sets forth timetables for staff recommendations to the Commission for the disposition of cases that may raise competition concerns.

2. On August 14, 2001, Clear Channel and Voice in the Wilderness filed an application proposing to assign the license of station KCOL–FM (formerly KTFA(FM)) from Voice in the Wilderness to Clear Channel. The application was unopposed. Clear Channel currently is the licensee of four stations in the Beaumont-Port Arthur, Texas Arbitron metro: KIOC(FM), Orange, Texas; KKMY(FM), Orange, Texas; KLVI(AM), Beaumont, Texas; and KYKR(FM), Beaumont, Texas.

3. Section 310(d) of the Communications Act of 1934, as amended (the "Communications Act"), 47 U.S.C. 310(d), requires the Commission to find that the public interest, convenience and necessity would be served by the assignment of Voice in the Wilderness's radio broadcast license to Clear Channel before the assignment may occur. Under the interim policy set forth in our *Local Radio Ownership NPRM*, we conduct a public interest analysis, including but not limited to an independent preliminary competition analysis of the proposed transaction based on publicly available information and information in the Commission's records. Under the interim policy, to decide whether a proposed assignment serves the public interest, we first determine whether it complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission's rules, including our local radio ownership rules. If it does, we then consider any potential public interest harms of the proposed transaction as well as any potential public interest benefits to determine whether, on balance, the assignment serves the public interest. The Commission's analysis of public interest benefits and harms includes an analysis of the potential competitive effects of the transaction, as informed by traditional antitrust principles. However, the Commission's public interest evaluation is not limited to competition concerns but necessarily encompasses the broad aims of the Communications Act. These broad aims include, among other things, ensuring the existence of an efficient, nationwide radio communications service available to everyone and promoting locally oriented service and diversity in media voices. Our public interest analysis therefore includes assessing whether the transfer will affect the quality of radio services or responsiveness to the local needs of the community, and whether it will result in the provision of new or additional services to listeners. Thus, under our interim policy, where a proposed transaction raises concerns about economic concentration, we will consider evidence that the particular circumstances of a case may mitigate any adverse impact that might otherwise result, as well as any evidence of benefits to radio listeners that might result from the proposed transaction. Ultimately, it is the potential impact of the transaction on listeners that will determine whether we can find that, on balance, grant of a particular radio station assignment or transfer of control application serves the public interest.

4. Having concluded that the proposed transaction is consistent with the numerical limits set forth in our ownership rules, we turn to our competition analysis. Here, we find that the proposed transaction would create a market in which the combined market share of the top two group owners in the market would be 92.7%. We find that Clear Channel has failed to demonstrate particular circumstances in this market sufficient to overcome a concern that this level of economic concentration in this market will harm the public interest. To the extent Clear Channel presents generic arguments challenging the parameters of our current competition analysis, we will address such concerns in the context of the *Local Radio Ownership NPRM* and need not consider them here. Rather, we look only to the record of this case to determine whether there are unique facts that persuade us that grant of this assignment application would serve the public interest despite the apparent economic concentration it will create. On the basis of the information before us, we are unable to make the required finding that the public interest, convenience and necessity will be served by granting the subject application. Accordingly, we will designate the assignment application for hearing to determine, pursuant to 47 U.S.C. 309(e), and based on the evidence to be adduced at hearing, whether the public interest, convenience and necessity will be served by the grant of the application.

5. We direct the Administrative Law Judge ("ALJ") to examine in an evidentiary hearing the particular circumstances of the Beaumont-Port Arthur, Texas metro to determine whether the factual assumptions in Section III.C. of the Hearing Designation Order are correct. We further direct the ALJ to determine, in light of his or her conclusions, whether the transaction is likely to cause any anticompetitive harms, and to determine what, if any, public benefits would accrue from this transaction. Finally, we direct the ALJ to apply these findings to determine whether, on balance, grant of the application would serve the public interest.

6. Pursuant to 47 U.S.C. 309(e), the application to assign the license of station KCOL–FM, Groves, Texas, from Voice in the Wilderness to Clear Channel is designated for hearing. Unless the parties timely file a joint election to defer as set forth below, the Hearing shall be at a time and place to be specified in a subsequent Order, to determine, in light of the evidence to be presented in the hearing, whether the public interest, convenience and necessity would be served by the grant of the above-captioned assignment application (File No. BALH–20010814AAU).

7. Pursuant to 47 U.S.C. 309(e), the burden of proof with respect to both the introduction of evidence and the issue specified in this Order shall be upon Voice in the Wilderness and Clear Channel, the applicant parties in this proceeding.

8. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send copies of this Order to all parties by Certified Mail—Return Receipt Requested.

9. To defer further consideration of the application to assign the license of station KCOL–FM, Groves, Texas, from Voice in the Wilderness to Clear Channel in accordance with the interim policy, Voice in the Wilderness and Clear Channel must file a joint election to defer consideration of the application. Such election must be filed within 20 days of the mailing of this Order pursuant to Paragraph 8 above.

10. A copy of each document filed in this proceeding subsequent to the date of adoption of this Order must be served on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations and Hearings Division of the Enforcement Bureau at (202) 418–1420. Such service must be addressed to the named counsel of record, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 3–B431, Washington, DC 20554.

11. No less than 15 days of the mailing of the Order pursuant to Paragraph 8 above, the parties may amend their application or file such other information with the Media Bureau as they deem relevant to ameliorate the competition concerns identified in this Order.

12. To avail themselves of the opportunity to be heard, Voice in the Wilderness and Clear Channel, pursuant to 47 CFR 1.221(c) and 1.221(e), in person or by their respective attorneys, must file, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Such written appearance shall be filed within 20 days of the mailing of this Order pursuant to Paragraph 8 above. Pursuant to 47 CFR 1.221(c) of the Commission's rules, if the parties fail to file an appearance within the specified time period, the assignment application will be dismissed with prejudice for failure to prosecute.

13. The applicants, pursuant to 47 U.S.C. 311(a)(2), and 47 CFR 73.3594 must give notice of the hearing within the time and in the manner prescribed, and must advise the Commission of the publication of such notice as required by 47 CFR 73.3594(g).

14. The application to assign the licenses of station KCOL–FM, Groves, Texas, from Voice in the Wilderness to Clear Channel will be held in abeyance pending the outcome of this proceeding.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–25764 Filed 10–9–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 02–284; FCC 02–251]

Whitehall Enterprises, Inc. and Clear Channel Broadcasting Licenses, Inc.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the FCC designates the application to assign the license of radio station WAAM(AM), Ann Arbor, Michigan, from Whitehall Enterprises, Inc. ("Whitehall") to Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"). The Commission cannot find, based on the record, that grant of this application is consistent with the public interest, convenience, and necessity. Accordingly, pursuant to 47 U.S.C. 309(e), the Commission designates the application for hearing to determine whether the public interest, convenience, and necessity will be served by grant of the application.

DATES: See **SUPPLEMENTARY INFORMATION** section for document filing dates.

ADDRESSES: Please file documents with the Investigations and Hearing Division, Enforcement Bureau, Federal Communications Commission, Room 3–B431, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Charles W. Kelley, Chief, Investigations and Hearing Division, Enforcement Bureau, at (202) 418–1420.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Hearing Designation Order, MB Docket No. 02–284, adopted on September 16, 2002, and released on September 18, 2002. The full text is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The full text may also be purchased from the Commission's copy contractor, Qualex International, Room CY–B402, 445 12th Street, SW., Washington, DC 20554, telephone (202) 863–2983, facsimile (202) 863–2898, or via e-mail at *qualexint@aol.com*, or may be viewed via the internet at: *http://www.fcc.gov/Document_Indexes/Media/2002_index_MB_Order.html*. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Synopsis of the Order

1. In March 1996, the Commission relaxed the numerical station limits in its local radio ownership rules in accordance with Congress's directive in section 202(b) of the Telecommunications Act of 1996. Since then, the Commission has received applications proposing transactions that would comply with the new limits, but that nevertheless could produce concentration levels that raised significant concerns about the potential impact on the public interest. In response to these concerns, the Commission concluded that it has an independent obligation to consider whether a proposed pattern of radio ownership that complies with the local radio ownership limits would otherwise have an adverse competitive effect in a particular local radio market and thus would be inconsistent with the public interest. In August 1998, the Commission also began flagging public notices of radio station transactions that would result in one entity controlling 50 percent or more of the advertising revenues in the relevant Arbitron radio market or two entities controlling 70 percent or more of the advertising revenues in that market. On November 8, 2001, we adopted the Notice of Proposed Rulemaking in MM Docket No. 01–317, 66 FR 63986, December 11, 2001 ("*Local Radio Ownership NPRM*"). We expressed concern that our current policies on local radio ownership did not adequately reflect current industry conditions and had led to unfortunate delays in the processing of assignment and transfer applications. Accordingly, we adopted the *Local Radio Ownership NPRM* to undertake a comprehensive examination of our rules and policies concerning local radio ownership and to develop a new framework that will be more responsive to current marketplace realities while continuing to address our core public interest concerns of promoting diversity and competition. In the *Local Radio Ownership NPRM*, we also set forth an interim policy to guide our actions on radio assignment and transfer of control applications pending a decision in that proceeding. Under our interim policy, we presume that an application that falls below the 50/70 screen will not raise competition concerns unless a petition to deny raising competition issues is filed. For applications identified by the 50/70 screen, the interim policy directs the Commission's staff to conduct a public interest analysis, including an independent preliminary competition analysis, and sets forth generic areas of inquiry for this purpose. The interim policy also sets forth timetables for staff recommendations to the Commission for the disposition of cases that may raise competition concerns.

2. On August 17, 2001, Clear Channel and Whitehall filed an application proposing to assign the license of station WAAM(AM) from Whitehall to Clear Channel. The application was unopposed. Clear Channel currently is the licensee of four stations in the Ann Arbor, Michigan Arbitron metro: WCAS(AM), Saline, Michigan, and WQKL(FM), WTKA(AM), and WWWW(FM), Ann Arbor, Michigan.

3. Section 310(d) of the Communications Act of 1934, as amended (the "Communications Act"), 47 U.S.C. 310(d), requires the Commission to find that the public interest, convenience and necessity would be served by the assignment of Whitehall's radio broadcast license to Clear Channel before the assignment may occur. Under the interim policy set forth in our *Local Radio Ownership NPRM*, we conduct a public interest analysis, including but not limited to an independent preliminary competition analysis of the proposed transaction based on publicly available information and information in the Commission's records. Under the interim policy, to decide whether a proposed assignment serves the public interest, we first determine whether it complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission's rules, including our local radio ownership rules. If it does, we then consider any potential public interest harms of the proposed transaction as well as any potential public interest benefits to determine whether, on balance, the assignment serves the public interest. The Commission's analysis of public interest benefits and harms includes an analysis of the potential competitive effects of the transaction, as informed by traditional antitrust principles. However, the Commission's public interest evaluation is not limited to competition concerns but necessarily encompasses the broad aims of the Communications Act. These broad aims include, among other things, ensuring the existence of an efficient, nationwide radio communications service available to everyone and promoting locally oriented service and diversity in media voices. Our public interest analysis therefore includes assessing whether the transaction will affect the quality of radio services or responsiveness to the local needs of the community, and whether it will result in the provision of new or additional services to listeners. Thus, under our interim policy, where a proposed transaction raises concerns about economic concentration, we will consider evidence that the particular circumstances of a case may mitigate any adverse impact that might otherwise result, as well as any evidence of benefits to radio listeners that might result from the proposed transaction. Ultimately, it is the potential impact of the transaction on listeners that will determine whether we can find that, on balance, grant of a particular radio station assignment or transfer of control application serves the public interest.

4. Having concluded that the proposed transaction is consistent with the numerical limits set forth in our ownership rules, we turn to our competition analysis. Here, we find that the proposed transaction would create a market in which Clear Channel's share of the local radio advertising market would be 94.9%, and the combined market share of the top two group owners in the market would be 99.0%. We find that Clear Channel has failed to demonstrate particular circumstances in this market sufficient to overcome a concern that this level of economic concentration in this market will harm the public interest. To the extent Clear Channel presents generic arguments challenging the parameters of our current competition analysis, we will address such concerns in the context of the *Local Radio Ownership NPRM* and need not consider them here. Rather, we look only to the record before us to determine whether there are unique facts that persuade us that grant of this assignment application would serve the public interest despite the apparent economic concentration it will create. On the basis of the information before us, we are unable to make the required finding that the public interest, convenience and necessity will be served by granting the subject application. Accordingly, we designate the assignment application for hearing to determine, pursuant to 47 U.S.C. 309(e), and based on the evidence to be adduced at hearing, whether the public interest, convenience and necessity will be served by the grant of the application.

5. We direct the Administrative Law Judge ("ALJ") to examine in an evidentiary hearing the particular circumstances of the Ann Arbor, Michigan market to determine whether the factual assumptions in Section III.C. of the Hearing Designation Order are correct. We further direct the ALJ to determine, in light of his or her conclusions, whether the transaction is likely to cause any anticompetitive harms, and to determine what, if any, public benefits would accrue from this transaction. Finally, we direct the ALJ to apply these findings to determine whether, on balance, grant of the application would serve the public interest.

6. Pursuant to 47 U.S.C. 309(e), the burden of proof with respect to both the introduction of evidence and the issue specified in this Order shall be upon Whitehall and Clear Channel, the applicant parties in this proceeding.

7. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send copies of this Order to all parties by Certified Mail—Return Receipt Requested.

8. To defer further consideration of the application to assign the license of station WAAM(AM), Ann Arbor, Michigan, from Whitehall to Clear Channel in accordance with the interim policy, Whitehall and Clear Channel must file a joint election to defer consideration of the application. Such election must be filed within 20 days of the mailing of the Hearing Designation Order.

9. In the event the parties do not timely file the joint election set forth in the paragraph above, pursuant to 47 U.S.C. 309(e), the application to assign the license of station WAAM(AM), Ann Arbor, Michigan, from Whitehall to Clear Channel is designated for hearing at a time and place to be specified in a subsequent Order, to determine, in light of the evidence to be presented in the hearing, whether the public interest, convenience and necessity would be served by the grant of the above-captioned assignment application (File No. BAL–20010817AAH).

10. Within 15 days of the mailing of this Hearing Designation Order, the parties may amend their application or file such other information with the Media Bureau as they deem relevant to ameliorate the competition concerns identified in this Order.

11. To avail themselves of the opportunity to be heard, Whitehall and Clear Channel, pursuant to 47 CFR 1.221(c) and 1.221(e), in person or by their respective attorneys, must file, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Such written appearance shall be filed within 20 days of the mailing of this Hearing Designation Order. Pursuant to 47 CFR 1.221(c) of the Commission's rules, if the parties fail to file an appearance within the specified time period, the assignment application will be dismissed with prejudice for failure to prosecute.

12. The applicants, pursuant to 47 U.S.C. 311(a)(2), and 47 CFR 73.3594 must give notice of the hearing within the time and in the manner prescribed, and must advise the Commission of the publication of such notice as required by 47 CFR 73.3594(g).

13. A copy of each document filed in this proceeding subsequent to the date of adoption of this Order must be served on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations and Hearings Division of the Enforcement Bureau at (202) 418–1420. Such service must be addressed to the named counsel of record, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 3–B431, Washington, DC 20554.

14. The application to assign the licenses of station WAAM(AM), Ann Arbor, Michigan, from Whitehall to Clear Channel will be held in abeyance pending the outcome of this proceeding.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–25765 Filed 10–9–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–46–E (Auction No. 46); DA 02–2395]

1670–1675 MHz Band Auction (Auction No. 46) Postponed Until April 30, 2003

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that the start of the upcoming auction of one nationwide 5 megahertz license in the 1670–1675 MHz band ("Auction No. 46"), scheduled for October 30, 2002, is postponed until April 30, 2003. This postponement is necessary to provide additional time for bidder preparation and planning.

DATES: Auction No. 46 is scheduled for April 30, 2003.

FOR FURTHER INFORMATION CONTACT: Francis Gutierrez, Auction and Industry Analysis Division, Legal Branch at (202)

418–0660 or Lisa Stover, Auction and Industry Analysis Division at (717) 338–2888.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released by the Wireless Telecommunications Bureau on September 25, 2002. The complete text of the Public Notice is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The September 25, 2002 Public Notice may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC,, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

1. On September 13, 2002, ArrayComm, Inc. ("ArrayComm") submitted a letter to the Wireless Telecommunications Bureau requesting a six-month postponement of Auction No. 46. Later that day, the Bureau released a *Public Notice*, 67 FR 61104 (September 27, 2002), seeking comment on ArrayComm's request. The Bureau received five comments in response to the *Public Notice*. Four commenters support or do not oppose a postponement of this auction, while one opposes any delay. Based on the record of comments received by the Bureau, and pursuant to authority delegated by sections 0.131 and 0.331 of the Commission's rules, 47 CFR 0.131, 0.331, the Bureau postpones Auction No. 46 to provide additional time for bidder preparation and planning.

2. Because the short-form application filing window has opened, any short-form applications to participate in Auction No. 46 that are in the system will be deemed ineffective and purged from the system. The new filing window for short-form applications to participate in Auction No. 46 will open on March 18, 2003. The new schedule for Auction No. 46 is as follows:

Short-Form Application (FCC Form 175) Filing Window Opens—March 18, 2003
Short-Form Application (FCC Form 175) Deadline—March 25, 2003, at 6 p.m. ET
Upfront Payments Deadline—April 11, 2003, at 6 p.m. ET
Mock Auction—April 25, 2003
Auction Begins—April 30, 2003

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions & Industry Analysis Division, WTB.

[FR Doc. 02–25766 Filed 10–9–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficient Assets To Satisfy All Claims of Financial Institution in Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) has determined that the proceeds that can be realized from the liquidation of assets of the receivership listed in **SUPPLEMENTARY INFORMATION** are insufficient to wholly satisfy the priority claims of depositors against the receivership estate. Therefore, upon satisfaction of secured claims, depositor claims, and claims which have priority over depositors under applicable law, no amount will remain or will be recovered sufficient to allow a dividend, distribution, or payment to any creditor of lesser priority, including but not limited to claims of general creditors. Any such claims are hereby determined to be worthless.

FOR FURTHER INFORMATION CONTACT: Thomas Bolt, Counsel, Legal Division, FDIC, 550 17th Street, NW., Room H–11052, Washington, DC 20429. Telephone: (202) 736–0168.

SUPPLEMENTARY INFORMATION:

Financial Institution In Receivership Determined To Have Insufficient Assets To Satisfy All Claims

FIN 4637, First National Bank of Keystone, Keystone, West Virginia.

Dated: October 4, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–25738 Filed 10–9–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; 60 Day Notice of Intent To Request Clearance for Extension of Collection of Information; Opportunity for Public Comment

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice of intent to request clearance for extension of a currently approved collection of information and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") is soliciting comments on the need for the collection of information contained in 12 CFR part 1102, subpart B, Rules of Practice for Proceedings. The ASC also requests comments on the practical utility of the collection of information; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

DATES: Comments on this information collection must be received on or before December 9, 2002.

ADDRESSES: Send comments to Ben Henson, Executive Director, Appraisal Subcommittee, 2000 K Street, NW., Suite 310, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, Appraisal Subcommittee, at 2000 K Street, NW., Suite 310, Washington, DC 20006 or 202–872–7520.

SUPPLEMENTARY INFORMATION:

Title: 12 CFR part 1102, subpart B; Rules of Practice for Proceedings.

ASC Form Number: None.

OMB Number: 3139–0005.

Expiration Date: To be requested.

Type of Request: Extension of currently approved collection of information.

Description of Need: The information is used by the ASC in determining whether the ASC should initiate a non-recognition proceeding or "take further action" against a State appraisal regulatory agency ("State agency") and other persons under § 1118 of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3337). The collection of information also sets out detailed procedures for such actions.

Automated Data Collection: None.

Description of Respondents: State, local or tribal government.

Estimated Average Number of Respondents: 2 respondents.

Estimated Average Number of Responses: Each respondent will be required to respond throughout the single proceeding initiated under 12 CFR part 1102, subpart.

Estimated Average Burden Hours Per Response: 60 hours for each proceeding.

Estimated Annual Reporting Burden: 120 hours.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: October 4, 2002.

Marc L. Weinberg,

Acting Executive Director and General Counsel.

[FR Doc. 02–25737 Filed 10–9–02; 8:45 am]

BILLING CODE 6700–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Terminations—08/28/2002			
200208011	Symmetricom, Inc	Datum Inc	Datum Inc.
Transactions Granted Early Terminations—08/29/2002			
20021065	Akzo Nobel NV	Ferro Corporation	Ferro Corporation.
20021094	Homebase Acquisition, LLC	McLeodUSA Incorporated	Consolidated Market Response, Inc., Illinois Consolidated Telephone Company, McLeodUSA Integrated Business Systems, McLeodUSA Public Services, Inc., McLeodUSA Telecommunications Services, Inc.
20021096	The Bank of New York Company, Inc.	Lockwood Financial Group II, LLC	Electronic Managed Account Technologies, Inc., LFG, Inc.
20021097	Veridian Corporation	Roger Mody	Signal Corporation, Signal Services, L.L.C.
Transactions Granted Early Terminations—08/30/2002			
20021102	ARAMARK Corporation	Premier, Inc	Premier Technology Management, Inc.
20021103	Inverness Medical Innovations, Inc	MedPointe Inc	MedPointe Healthcare Inc.
20021104	Ascension Health	Carondelet Health System, Inc	Carondelet Health System, Inc
20021106	Leucadia National Corporation	Williams Communications Group, Inc. (Debtor-in-Possession).	Williams Communications Group, Inc. (Debtor-in-Possession).
Transactions Granted Early Terminations—09/03/2002			
20021058	Smurfit-Stone Container Corporation	MeadWestvaco Corporation	The Mead Corporation.
20021098	J.P. Morgan Chase & Co.	DLJ Brand Holdings, Inc	DLJ Brand Holdings, Inc.
20021099	Virginia L. Shaw	Halliburton Company	Bredero-Shaw, Inc.
20021107	Equilease Holding Corp	Vivendi Universal, S.A	National Energy Development Inc., Sithe Energies, Inc.
20021108	Fremont Partners III, L.P	Artal Group S.A	NC Holdings, Inc.
20021109	Equilease Holding Corp.	Exelon Corporation	National Energy Development Inc., Sithe Energies, Inc.
20021115	Hitachi, Ltd	Hitachi Koki Co., Ltd	Hitachi Printing Solutions, Ltd.
20021117	Intuit, Inc	Russell D. Hobbs, III	Blue Ocean Software, Inc.
20021118	Matlin Patterson Global Opportunities Partners L.P.	Polymer Group Inc	Polymer Group Inc.
20021121	Berkshire Hathaway Inc	CTB International Corp	CTB International Corp.
20021123	El Paso Energy Partners, L.P	El Paso Corporation	El Paso Corporation.
20021124	AMERIGROUP Corporation	Miguel B. Fernandez	PHP Holdings, Inc.
Transactions Granted Early Terminations—09/04/2002			
20021111	Fidelity National Financial, Inc	Factual Data Corporation	Factual Data Corporation.
20021113	Novellus Systems, Inc.	SpeedFam-IPEC, Inc	SpeedFam-IPEC, Inc.
20021116	Hitachi, Ltd	UNISIA JECS Corporation	UNISIA JECS Corporation.
Transactions Granted Early Terminations—09/05/2002			
20021120	Exel plc	Power Packaging, Inc	Power Packaging, Inc.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Terminations—09/06/2002			
20020644	Aggregate Industries, PLC	Wakefield Materials Corporation	Wakefield Materials Corporation.
20020851	Archer-Daniels-Midland Company	Minnesota Corn Processors, LLC	Minnesota Corn Processors, LLC.
Transactions Granted Early Terminations—09/09/2002			
20021101	William H. Gates, III	Six Flags, Inc	Six Flags, Inc.
20021128	Scottish Power plc	Aquila, Inc	Aquila Merchant Services, Inc., Aquila Storage and Transportation, L.P.
20021129	Edward W. Stack	Edward W. Stack	Dick's Sporting Goods, Inc.
20021130	Dex Holdings LLC	Qwest Communications International Inc.	GPP LLC, SGN LLC.
20021136	Code, Hennessy & Simmons IV, L.P	LLS Corp	LLS Corp.
20021143	Kaneb Pipe Line Partners, LP	Koch Industries, Inc	Koch Fertilizer Storage and Terminal Company, Koch Pipeline Company, L.P.
20021148	Regent Communications, Inc	Brill Media Company, LLC	Brill Media Company, LLC.
Transactions Granted Early Terminations—09/10/2002			
20021140	Washington Mutual, Inc.	National Australia Bank Limited	HomeSide Lending, Inc., SR Investment, Inc.
Transactions Granted Early Terminations—09/12/2002			
20021145	Green Equity Investors III, L.P	Phoenix Scientific, Inc	Phoenix Scientific, Inc.
Transactions Granted Early Terminations—09/13/2002			
20021131	U.S. Bancorp	State Street Corporation	State Street Bank and Trust Company.
20021150	David Smilow	Conseco, Inc	Conseco Variable Insurance Company.
20021156	Penn National Garning, Inc	Hollywood Casino Corporation	Hollywood Casino Corporation.
Transactions Granted Early Terminations—09/16/2002			
20021100	OSI Systems, Inc	L–3 Communications Holdings, Inc	PerkinElmer Detection System, Inc.
Transactions Granted Early Terminations—09/17/2002			
20021141	SPO Partners II, L.P	Advent Software, Inc	Advent Software, Inc.
20021146	Robert Bosch Industrietreuhand KG	Koninklijke Philips Electronics N.V	Professional Communication, Security and Imaging.
Transactions Granted Early Terminations—09/18/2002			
20021119	Paychex, Inc.	Willis Stein & Partners, L.P	Advantage Payroll Services, Inc.
Transactions Granted Early Terminations—09/19/2002			
20021151	Groupe Laperriere & Verreault Inc	Baker Hughes Incorporated	Baker Process, Inc.
20021157	Pentair, Inc.	Vivendi Environment, S.A	Ametek Filters, Ltd., Plymouth Products, Inc.
20021159	La Grange Energy, L.P.	Aquila, Inc. (f/k/a UtiliCorp United Inc.).	AQP Holdings, L.P., Aquila Gas Pipeline Corporation, Oasis Pipe Line Company.
Transactions Granted Early Terminations—09/20/2002			
20021169	MDU Resources Group, Inc	Limestone Electron Trust	BIV Generation Company LLC, Brush Generation Company LLC, Mesquite Investors, LLC, Morgan Generation Company LLC.
20021170	International Steel Group Inc	Acme Metals Incorporated	Acme Steel Company.
20021171	Kauai Island Utility Co-Op	Citizens Communications Company	Citizens Communications Company.
20021172	JetBlue Airways Corporation	LiveTV, LLC	LiveTV, LLC.
20021173	Hoosier Energy Rural Electric Cooperative, Inc.	The Williams Companies, Inc	Williams Energy Marketing & Trading Company.
20021177	Fremont Partners III, L.P	Don Tyson	SBI Holdings Inc., SBI Holdings, Inc.

Trans #	Acquiring	Acquired	Entities
20021178	Landry's Restaurants, Inc	Metro National Corporation	Kimberley Restaurants, Ltd., MNC Restaurant Properties, L.P., Well Seasoned, Inc.
Transactions Granted Early Terminations—09/23/2002			
20021122	Honeywell International Inc	Invesys plc	Invesys plc.
Transactions Granted Early Terminations—09/24/2002			
20021135	Cadence Design Systems, Inc	International Business Machines Corporation.	International Business Machines Corporation.
20021175	MAAX, Inc	Aker Plastics Company, Inc	Aker Plastics Company, Inc.
Transactions Granted Early Terminations—09/25/2002			
20021164	Yves Barrette	Ronald D. Erwin	Erwin Industries, LLC.
20021182	G&K Services, Inc	Russell Waggoner, Jr	Rental Uniform Company, Inc., Rental Uniform Service of Somset Kentucky, Inc.
Transactions Granted Early Terminations—09/26/2002			
20021133	Toshiba Corporation	Mitsubishi Electric Corporation	Mitsubishi Electric Corporation.
Transactions Granted Early Terminations—09/27/2002			
20021154	Gencorp Inc	General Dynamics Corporation	General Dynamics OTS (Aerospace), Inc.
20021167	Waste Connections, Inc	Allied Waste Industries, Inc	Allied Waste Industries, Inc.
20021168	RF Micro Devices, Inc.	Carlyle Partners III, L.P	Jazz Semiconductor, Inc.
20021174	General Electric Company	Advanced Ceramics Corporation	Advanced Ceramics Corporation.
20021179	Newco, a to-be-formed Luxembourg SARL.	Vivendi Universal, S.A	Houghton Mifflin Company, Vivendi Universal Publishing S.A.
20021186	Groupe Editions Holding I, SARL	Vivendi Universal, S.A	Houghton Mifflin Company.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Hallman, Contact Representative. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–25758 Filed 10–9–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 022 3005]

The National Research Center for College and University Admissions, Inc., and Don M. Munce; and American Student List, LLC; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: The consent agreements in the two matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies both consent agreements and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

DATES: Comments must be received on or before October 31, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Jessica Rich or Laura Mazzarella, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2148.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having have been field with the accepted, subject to final approval, by the Commission, have been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements, and the allegations in the complaint. An electronic copy of the full text of the consent agreements packages can be obtained from the FTC Home Page (for October 2, 2002), on the World Wide Web, at "*http://www.ftc.gov/os/2002/10index.htm.*" A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 158–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of our as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*. Such

comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Orders To Aid Public Comment

The Federal Trade Commission has accepted agreements, subject to final approval, to (1) a proposed consent order from the National Research Center for College and University Admissions, Inc. ("NRCCUA") and its officer Don M. Munce ("Munce"), and (2) a proposed consent order from American Student List, LLC ("ASL"). The proposed orders are substantively identical. NRCCUA is a student survey company that supplies student data to colleges and universities and other entities for recruitment and marketing purposes. ASL is a commercial list broker that supplies names for youth marketing campaigns.

The proposed consent orders have been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements and take other appropriate action or make final the agreements' proposed orders.

This matter concerns representations made about how detailed, personal information collected from high school students through a survey would be used, and how the survey is funded. The proposed respondents distribute a survey to high school teachers and guidance counselors with the request that they have their students complete the survey. The survey collects from students personal information including name, address, age, race, religious affiliation, and academic, career, and athletic interests. NRCCUA and Munce then Market personal information collected through the survey primarily to colleges and universities, which use the information to target high school students for recruitment purposes. NRCCUA also provides survey information to ASL. ASL uses survey information to create lists of college-bound students that it sells to commercial entities for use in marketing. Such entities include, but are not limited to, consumer products manufacturers, credit card companies, direct marketers, list brokers, database marketing companies, and advertising agencies.

The Commission's complaint charges that the proposed respondents falsely represented that information collection from high school students through the survey is shared only with colleges, universities, and other entities providing education-related services when, in fact, such information is also shared with commercial entities for marketing purposes. The complaint also alleges that the proposed respondents falsely represented that the survey is funded solely by educational institutions when, in fact, the survey also receives substantial funding from ASL, a commercial entity.

Part I of the consent orders prohibits the proposed respondents, in connection with the collection of personally identifiable information from an individual, from misrepresenting (1) how such information is collected or will be used or disclosed, or (2) how the collection of such information is funded. Part II of the orders prohibits the proposed respondents, in connection with the collection of personally identifiable information from students for any "noneducational-related marketing purpose," from using or disclosing such information unless they disclose (1) the existence and nature of such noneducational-related marketing purpose, and (2) the types or categories of any entities to which the information will be disclosed.

The proposed orders define "noneducational-related marketing purpose" to mean for the purpose of marketing products or services, or selling personally identifiable information from or about an individual for use in marketing products or services to individuals. The definition specifically excludes the use of personal information in connection with certain activities determined to be "educational products or services" under the recently enacted No Child Left Behind Act, namely (a) college or postsecondary education recruitment, or military recruitment; (b) book clubs, magazines, and programs providing access to low-cost literary products; (c) curriculum and instructional materials used by elementary schools and secondary schools; (d) student recognition programs; or (e) any other activity expressly determined under the No Child Left Behind Act or its implementing regulations to be an "educational product or service." In addition, the proposed orders provide that when determining whether any specific activity is an "educational product or service," any official, written, publicly-disseminated interpretation by the Department of Education regarding such activity shall be controlling.

Part III of the orders prohibits the proposed respondents from using or disclosing for any noneducational-related marketing purpose any personally identifiable information that was collected through surveys distributed prior to the date of service of the orders. In addition to the educational purposes excepted from the definition of "noneducational-related marketing purpose," Part III also permits the proposed respondents to use such information for the purpose of (a) job recruitment, (b) the provision of student loans, or (c) the provision of standardized test preparation services.

The remainder of the proposed orders contains standard requirements that the proposed respondents maintain copies of privacy statements and other documents relating to the collection, use or disclosure of personally identifiable information; distribute copies of the orders to certain company officials and employees; notify the Commission of any change in the corporation that may affect compliance obligations under the order, and file one or more reports detailing their compliance with the orders. Part VIII of the proposed orders is a provision whereby the orders, absent certain circumstances, terminate twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed orders, and is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

These proposed orders, if issued in final form, will resolve the claims alleged in the complaint against the named respondents. It is not the Commission's intent that acceptance of these consent agreements and issuance of final decisions and orders will release any claims against any unnamed persons or entities associated with the conduct described in the complaint.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–25757 Filed 10–9–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 021 0123]

Shell Oil Company and Pennzoil-Quaker State Company; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 28, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Dennis Johnson, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2712.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 27, 2002), on the World Wide Web, at *"http://www.ftc.gov/os/2002/09/index.htm."* A copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission" or "FTC") has issued a complaint ("Complaint") alleging that the proposed merger of Shell Oil Company ("Shell") and Pennzoil-Quaker State Company ("Pennzoil") (collectively "Respondents") would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and has entered into an agreement containing consent orders ("Agreement Containing Consent Orders") pursuant to which Respondents agree to be bound by a proposed consent order that requires divestiture of certain assets ("Proposed Consent Order") and a hold separate order that requires Respondents to hold separate and maintain certain assets pending divestiture ("Hold Separate Order"). The Proposed Consent Order remedies the likely anticompetitive effects arising from Respondents' proposed merger, as alleged in the Complaint, and the Hold Separate Order preserves competition pending divestiture.

II. Description of the Parties and the Transaction

Shell Oil Company, headquartered in Houston, Texas, is the United States operating entity for the Royal Dutch/Shell Group of Companies (collectively referred to as "Shell"). Shell is engaged in virtually all aspects of the energy business, including exploration, production, refining, transportation, distribution, and marketing. As part of the relief ordered by the Commission in Chevron/Texaco, Docket C–4923 (Jan. 2, 2002), Texaco divested its interest in Equilon Enterprises LLC to Shell and its interest in Motiva Enterprises LLC to Shell and Saudi Refining Company. Equilon and Motiva are engaged in the production, distribution and marketing of refined products, including base oil, gasoline, diesel fuel, and other products. During fiscal year 2001, Shell had worldwide revenues of approximately $135.2 billion and net income of approximately $10.9 billion.

Pennzoil, headquartered in Houston, Texas, is engaged in the business of manufacturing and marketing lubricants, car care products, base oils, branded and unbranded motor oils, transmission fluids, gear lubricants, greases, automotive polishes, automotive chemicals, other automotive products, and specialty industrial products. Pennzoil manufactures and markets conventional and synthetic motor oils primarily under the Pennzoil and Quaker State brands. Pennzoil is also engaged in the franchising, ownership and operation of quick lube oil change centers under the Jiffy Lube name. During fiscal year 2001, Pennzoil had worldwide revenues of approximately $2.3 billion.

Pennzoil has a 50/50 joint venture with Conoco Inc. called Excel Paralubes that operates a base oil refinery located in Westlake, Louisiana, adjacent to Conoco's petroleum products refinery at Lake Charles, Louisiana. Pennzoil obtains a substantial portion of its base oil requirements from its interest in Excel Paralubes. Pennzoil also has a 10-year base oil supply agreement with Exxon Mobil Corporation, which became effective August 1, 2000, as a result of the Commission's order in Exxon/Mobil, Docket C–3907 (Jan. 26, 2001). Pursuant to that agreement, Pennzoil is entitled to obtain up to 6,500 barrels per day of base oil from ExxonMobil, in grades and quantities that are proportionate to ExxonMobil's Gulf Coast base oil production. Part of this volume consists of Group II paraffinic base oil, which is the relevant market alleged in the Complaint.

Pursuant to an agreement and plan of merger dated March 25, 2002, Shell intends to acquire all of the outstanding voting securities of Pennzoil. The transaction is structured such that Shell ND, a wholly-owned subsidiary of Shell, will acquire the Pennzoil shares and then be merged into Pennzoil, with Pennzoil surviving as a wholly-owned subsidiary of Shell. Each outstanding common share of Pennzoil will be converted into the right to receive $22 in cash.

III. The Complaint

The Complaint alleges that the merger of Shell and Pennzoil would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C 45, by substantially lessening competition in the refining and marketing of Group II paraffinic base oil in the United States and Canada. To remedy the alleged anticompetitive effects of the merger, the Proposed Order requires

Respondents to divest Pennzoil's 50% interest in Excel Paralubes, which represents Pennzoil's only base oil ownership position. Respondents also have agreed to freeze at approximately current levels Pennzoil's right to obtain Group II base oil supply under the contract with Exxon Mobil that was obtained as part of the relief in the *Exxon/Mobil* merger proceeding.

Shell and Pennzoil are competitors in the refining and marketing of Group II paraffinic base oil in a geographic market that consists of the United States and Canada. The refining and marketing of Group II paraffinic base oil in this market would be highly concentrated as a result of the merger. Following the proposed merger, Shell would control at least 39% of Group II refining capacity in the United States and Canada. Overall market concentration, as measured by the Herfindahl-Hirschmann Index (HHI), would increase by more than 700 points to a level in excess of 2,300.

The refining and marketing of Group II paraffinic base oil is a relevant line of commerce (*i.e.*, product market). Paraffinic base oil is a refined petroleum product that is the principal component, or "basestock," of finished lubricants used for a variety of applications, including passenger car motor oil, heavy duty engine oil, automatic transmission fluid, and other lubricant products. In the *Exxon/Mobil* investigation, the Commission concluded that paraffinic base oil constitutes a relevant market.

Developments in the industry since the *Exxon/Mobil* merger indicate that a market consisting of Group II paraffinic base oils has evolved. The American Petroleum Institute divides paraffinic base oil into three groups (Groups I, II and III) based on differences in sulfur content, saturates level, and viscosity index. Group II paraffinic base oil has less than 0.03% sulfur by weight, more than 90% saturates by weight, and a viscosity index ranging from 80 to 120. Group II base oil is needed in order to meet current performance standards for lighter-viscosity motor oil formulations (such as 5W–20 and 5W–30), as well as requirements for other lubricants. As new performance standards are adopted, there will be even greater demand for Group II base oil for the production of motor oil and other lubricants. If the price of Group II base oil were to increase by 5–10%, blenders of motor oil and other lubricants would not substitute to other bases stocks in sufficient quantities to prevent the increase.

The Complaint alleges that the proposed transaction would lessen competition in a geographic market consisting of the United States and Canada. There is little Group II production outside of the Untied States and Canada. Further, imports of Group II base oil would be subject to significant freight penalties and would not be competitive with production in the United States and Canada. If the price of Group II base oil in the United States and Canada were to increase by 5–10%, blenders of motor oil and other lubricants would not switch to sources of supply outside the Untied States and Canada in sufficient quantities to prevent the increase.

There are few significant producers of Group II base oil in the Untied States and Canada. The proposed merger would eliminate Pennzoil as a major competitor, and would combine Shell, the market leader, into a close partnership with Conoco, another leading producer. As a result of the proposed merger, Shell would control at least 39% of Group II refining capacity in the United States and Canada, and concentration in the relevant market as measured by the Herfindahl-Hirschmann Index would increase by more than 700 points to a level in excess of 2,300.

Entry into the relevant market is difficult and would not be timely, likely or sufficient to prevent the anticompetitive effects that are likely to result from the proposed merger. Constructing a new refinery or converting an existing Group I refinery to make Group II base oil would require substantial investment, would be subject to significant regulatory obstacles, and would take several years to accomplish. As a result, new entry would not be able to prevent a 5–10% increase in Group II base oil prices.

The Complaint charges that the proposed merger, absent relief, is likely to substantially lessen competition and lead to higher prices of Group II paraffinic base oil, by eliminating direct competition between Shell and Pennzoil, by increasing the likelihood that the combined Shell/Pennzoil will unilaterally exercise market power, and by increasing the likelihood of collusion or coordinated interaction among competitors in the refining and marketing of Group II paraffinic base oil.

To remedy the likely competitive harm, the Proposed Order requires Respondents to Divest Pennzoil's interest in Excel paralubes and to freeze Pennzoil's ability to obtain additional Group II supply under the agreement with ExxonMobil. This relief will effectively remedy any anticompetitive effects that would be expected to arise from this transaction.

IV. Resolution of the Competitive Concerns

The Commission has provisionally entered into an Agreement Containing Consent Orders with Shell and Pennzoil in the settlement of the Complaint. The Agreement Containing Consent Orders contemplates that the Commission would issue the Complaint and enter the Proposed Order and the Hold Separate Order for the divestiture of certain assets described below.

In order to remedy the anticompetitive effects that have been identified, Respondents have agreed to divest Pennzoil's 50% interest in Excel Paralubes, and to freeze Pennzoil's right to obtain additional Group II supply under the contract with ExxonMobil at approximately current levels. If the required divestiture has not been accomplished within the required time, then Respondents are required to transfer Pennzoil's interest in Excel paralubes to a trustee, who will have the responsibility of accomplishing the required divestiture.

Paragraph II.A. of the Proposed Order requires Respondents to divest Pennzoil's interest in Excel Paralubes, at no minimum price, within twelve months after executing the Order, to an acquirer that receives the prior approval of the Commission.

Paragraph II.B. requires Respondents to negotiate with the acquirer, at the acquirer's option, a supply agreement for Respondents to purchase Group II base oil. Such agreement may not exceed one year, may not contain renewal or evergreen rights, and is subject to prior approval by the Commission. Paragraph II.C. provides that, prior to the effective date of divestiture, Respondents may not enter into any agreement to purchase Group II base oil from the acquirer other than one made pursuant to Paragraph II.B.

Paragraph II.D. of the Proposed Order explicitly provides that Respondents may not divest the Pennzoil Excel Paralubes Interest to Conoco, and must enforce a letter agreement with Conoco relating to Excel Paralubes. Conoco already has a significant share of the Group II market, and the addition of Pennzoil's share of Excel Paralubes would result in a significant increase in concentration. In addition, under the Joint Venture Agreement forming the Excel Paralubes partnership, Conoco may, under certain circumstances, have a right of first refusal or a first option to purchase Pennzoil's interest in Excel Paralubes. Conoco has centered into an agreement with Respondents dealing with its waiver of such rights, and consenting to the assignment of a supply agreement pursuant to which Pennzoil purchases base oil from Excel Paralubes.

Paragraph III limits Respondents' use of their rights to purchase Group II base oil from ExxonMobil under the ExxonMobil/Pennzoil Base Oil Agreement. That agreement allows Pennzoil to obtain base oil from ExxonMobil in the proportionate types and amounts corresponding to production at designated ExxonMobil refineries. Pennzoil currently is taking approximately 1,500 barrels per day of Group II under this contract. Any significant increase in that amount could unduly increase concentration. Accordingly, Paragraph III prevents Respondents from increasing their share of the market for Group II Base Oil through additional supply under this agreement.

If Respondents have not accomplished the divestiture within the required time period, Paragraph IV provides that the Commission may appoint a trustee to divest the Pennzoil Excel Paralubes Interest, at no minimum price, to a buyer approved by the Commission. The trustees will have the exclusive power and authority to accomplish the divestiture within twelve months, subject to any necessary extensions by the Commission. Paragraph IV.C.5 requires that the trustee will have access to information related to Atlas and Excel Paralubes as necessary to fulfill his or her obligations. (Atlas is the wholly-owned subsidiary of Pennzoil that holds Pennzoil's interest in the Excel Paralubes partnership.) The trustee shall use his or her best efforts to negotiate the most favorable price and terms for the divestiture, subject to the Respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. If the trustee receives more than one bona fide offer from entities approved by the Commission, the trustee will divest to the party selected by the Respondents.

Other provisions of Paragraph IV.C. generally provide that Respondents are responsible for management expenses incurred by the trustee, that the trustee has authority to employ other persons necessary to carry out his or her duties and responsibilities, and that Respondents indemnify and hold the trustee harmless against any liabilities or expenses arising out of, or in connection with, performance of the trustee's duties. Respondents may require the trustee to sign a customary confidentiality agreement, provided that such agreement may not restrict the trustee from providing any information to the Commission.

Paragraphs V–VIII of the Proposed Order contain certain general provisions. Pursuant to Paragraph V, Respondents are required to provide the Commission with a report of compliance with the Proposed Order every thirty days until the divestiture is completed and annually for nine years after the first year the Order becomes final. Paragraph VI provides for notification to the Commission in the event of any corporate changes in the Respondents. Paragraph VII requires that Respondents provide the Commission with access to their facilities and employees for the purposes of determining or securing compliance with the Proposed Order. Finally, Paragraph VIII terminates the Order ten years from the date it becomes final.

V. Opportunity for Public Comment

The Proposed Order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. The Commission, pursuant to a change in its Rules of Practice, has also issued its Complaint in this matter, as well as the Hold Separate Order. Comments received during this thirty day comment period will become part of the public record. After thirty (30) days, the Commission will again review the Proposed Order and the comments received and will decide whether it should withdraw from the Proposed Order or make final the agreement's Proposed Order.

By accepting the Proposed Order subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Order, including the proposed divestiture, and to aid the Commission in its determination of whether it should make final the Proposed Order contained in the agreement. This analysis is not intended to constitute an official interpretation of the Proposed Order, nor is it intended to modify the terms of the Proposed Order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–25756 Filed 10–9–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. *Cash and Counseling Demonstration:* Additional Survey Instruments—0990–0232—Extension—The Office of the Assistant Secretary for Planning and Evaluation (ASPE) in partnership with the Robert Wood Johnson Foundation, is evaluating a demonstration project of the Cash and Counseling consumer directed care model. A controlled experimental design methodology is being used to test the effects of the experimental intervention; cash payments in lieu of arranged services for Medicaid covered beneficiaries. This portion of the evaluation consists of four non-client surveys.

Respondents: Individuals or households, For-profit, non-profit institutions.

BURDEN INFORMATION

Instrument	Number of respondents	Burden per response	Total burden hours
Informal Caregiver	741	.38	282
Paid Workers	391	.5	196
Consultant Survey (complete)	0	0	0
Ethnographic Study	25	1.0	25
Total	1,157		503

OMB Desk Officer: Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: October 1, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 02–25840 Filed 10–9–02; 8:45 am]

BILLING CODE 4154–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–01–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

National Hospital Discharge Survey—(OMB No. 0920–0212)—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC) proposed to conduct a special study to evaluate expanding pharmaceutical data in the National Health Care Survey. This study is a preliminary investigation of methodological procedures to collect information on drugs for inpatients as part of the National Hospital Discharge Survey (NHDS). The National Health Care Survey currently collects data on drugs prescribed during patient visits to physicians' offices and to emergency and outpatient departments through the National Ambulatory Medical Care Survey and the National Hospital Ambulatory Medical Care Survey. The purpose of this special study is to conduct and evaluate a field test of preliminary data collection methods using medical records as the source for abstracting names of drugs administered to a sample of hospital inpatients. It is anticipated that the results of this special study will provide essential information regarding: the amount of time and medical sophistication required for staff to find and abstract drug data in the medical record; the cost of collecting these data as part of the NHDS; potential problems to be anticipated in conducting a national survey which potentially requires the participation of a large number of hospitals; and, what the next steps should be to evaluate the possibility of adding drug data to the NHDS. The field test for this special study will include a sample of approximately 50 hospitals which are not currently participating in the NHDS. Data collection will include 20 discharges sampled from one month from each participating hospital. The data items to be abstracted are all of the NHDS items in addition to listing the narrative description of all drugs administered during the sampled inpatient stay. It is anticipated that only half of the hospitals which participate in the special study will conduct their own abstracting ("Primary procedure") and that contractor staff will perform the abstracting ("Alternate procedure") in the other 25 hospitals. The total annual burden for this data collection is 367 hours.

Form	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
Medical Record Abstract—Primary Procedure Hospital	25	20	30/60
Medical Record Abstract—Alternate Procedure Hospital	25	20	1/60
Induction Form	50	1	2
Transmittal Form	50	1	10/60

Dated: October 2, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–25716 Filed 10–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02219]

Cooperative Agreement for the Development and Support of Core Public Health Functions Related to Injury Prevention and Control; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a cooperative agreement program for the Development and Support of Core Public Health Functions Related to Injury Prevention and Control.

The purpose of the program is to assist the State and Territorial Injury Prevention Directors' Association (STIPDA) to determine and respond to the training, information, education, research, surveillance, program implementation, and evaluation needs required to build or expand injury prevention and control capacity at the State and territorial level. This program addresses the "Healthy People 2010" focus areas of Injury and Violence Prevention.

B. Eligible Applicant

Assistance is provided only to (STIPDA). No other applications were solicited.

Eligibility is limited to STIPDA because of its unique relationship with State public health injury programs and with State public health officers. STIPDA is the only national nonprofit organization comprised of public health injury directors representing all States and territories. Voting membership in STIPDA is restricted to one injury director for each State, with this director designated by the State health officer. Therefore, STIPDA, is the only organization officially representing the injury perspectives of each State's health officer.

STIPDA is the only organization whose primary mission is to promote, sustain, and enhance the ability of State and territorial public health departments to reduce death and disability associated with injuries. STIPDA has direct access to it's own membership of State and territorial injury prevention and control staff and, therefore, has the capacity to meet the objectives of this agreement.

STIPDA also provides consultation and technical assistance to numerous agencies and has liaison relationships with national organizations. In this way, STIPDA is deeply involved in injury prevention and control program development and evaluation efforts that are conducted nationally.

In collaboration with other national organizations, STIPDA accomplishes its mission in part by disseminating information on state-of-the-art injury prevention and control policies and strategies. The unique information exchange among STIPDA members and resident expert program knowledge provide it with special credibility with national, local, private, and voluntary agencies.

C. Funds

Approximately $493,898 is being awarded in FY 2002. The award will begin on or about September 30, 2002, and will be made for a 12-month budget period within a project period of one year.

D. Where To Obtain Additional Information

Business management technical assistance may be obtained from: Van A. King, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2751, e-mail address: *vbk5@cdc.gov*.

For program technical assistance, contact: James S. Belloni, MA, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway, Mailstop F–41, Atlanta, GA, 30341–3724, Phone Number: 770 488–4538, e-mail address: *jsb1@cdc.gov*.

Dated: October 4, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–25752 Filed 10–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice: Re-Authorization of Pro-Children Act of 1994 ("PCA") Under the No Child Left Behind Act of 2001 ("NCLB")

AGENCY: Department of Health and Human Services, Centers for Disease Control and Prevention.

ACTION: Notice; amendment.

SUMMARY: The Department of Health and Human Services announces the re-authorization of the Pro-Children Act of 1994. The Pro-Children Act prohibits smoking in facilities that are funded directly by the Federal Government or through State or local governments by Federal grant, loan, loan guarantee, or contract programs that offer education, library, day care, health care and early childhood development services (*e.g.*, Head Start) on a routine and regular basis to children under the age of eighteen (18). The Act is being re-authorized under the No Child Left Behind Act of 2001, Pub. L. 107–110 (2001), effective January 8, 2002.

Prohibitions: The below prohibitions shall be effective 90 days after this notice is published, or 270 days after January 8, 2002, whichever occurs first. "Any failure to comply with a prohibition in this section shall be considered to be a violation of this section and any person subject to such prohibition who commits such violation may be liable to the United States for a civil penalty in an amount not to exceed $1,000 for each violation, or may be subject to an administrative compliance order, or both, as determined by the Secretary."

"(a) *Prohibition*—After the date of enactment of the No Child Left Behind Act of 2001, no person shall permit smoking within any indoor facility owned or leased or contracted for, and utilized, by such person for provision of routine or regular kindergarten, elementary, or secondary education or library services to children.

(b) *Additional Prohibition*—(1) In General-After the date of enactment of the No Child Left Behind Act of 2001, no person shall permit smoking within any indoor facility (or portion of such a facility) owned or leased or contracted for, and utilized by, such person for the provision of regular or routine health care or day care or early childhood development (Head Start) services.

(2) *Exception*—Paragraph (1) shall not apply to—

(A) Any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and

(B) Any private residence.

(c) *Federal Agencies*—

(1) *Kindergarten, Elementary, or Secondary Education or Library Services*—After the date of enactment of the No Child Left Behind Act of 2001, no Federal agency shall permit smoking within any indoor facility in the United States operated by such agency, directly or by contract, to provide routine or regular kindergarten, elementary, or secondary education or library services to children.

(2) *Health or Day Care or Early Childhood Development Services*—

(A) *In General*—After the date of enactment of the No Child Left Behind Act of 2001, no Federal agency shall permit smoking within any indoor facility (or portion of such facility) operated by such agency, directly or by contract, to provide routine or regular health or day care or early childhood development (Head Start) services to children.

(B) *Exception*—Subparagraph (A) shall not apply to—

(i) Any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and

(ii) Any private residence.

(3) *Application of Provisions*—The provisions of paragraph (2) shall also apply to the provision of such routine or regular kindergarten, elementary or secondary education or library services in the facilities described in paragraph (2) not subject to paragraph (1)."

SUPPLEMENTARY INFORMATION: Several federal departments have authority to implement and enforce the Pro-Children Act; Department of Health and Human

Services, Department of Education, and the United States Department of Agriculture. The Act does not apply to any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol, or services provided in private residences. For additional information please view **Federal Register** Notice, 94 FRN 32136, or to see the statute in its entirety please view Public Law 107–110 (2001).

FOR FURTHER INFORMATION CONTACT: Pro-Children Act Liaison, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, N.E., Mailstop K–50, Atlanta, GA 30341–3717, (770) 488–5705, then press option 3.

Dated: October 4, 2002.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention.

[FR Doc. 02–25754 Filed 10–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Proposed Measles, Mumps, Rubella (MMR) Vaccine Information Materials

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice with comment period.

SUMMARY: Under the National Childhood Vaccine Injury Act (42 U.S.C. 300aa–26), the CDC must develop vaccine information materials that all health care providers are required to give to patients/parents prior to administration of specific vaccines. Since the recommended interval between receiving rubella-containing vaccine and becoming pregnant has been revised from 3 months to 4 weeks, the vaccine information materials covering measles, mumps and rubella vaccine must be revised. CDC seeks written comment on proposed revised vaccine information materials for MMR vaccine.

DATES: Written comments are invited and must be received on or before December 9, 2002.

ADDRESSES: Written comments should be addressed to Walter A. Orenstein, M.D., Director, National Immunization Program, Centers for Disease Control and Prevention, Mailstop E–05, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Walter A. Orenstein, M.D., Director, National Immunization Program, Centers for Disease Control and Prevention, Mailstop E–05, 1600 Clifton Road, NE., Atlanta, Georgia 30333, (404) 639–8200.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986 (Public Law 99–660), as amended by section 708 of Public Law 103–183, added section 2126 to the Public Health Service Act. Section 2126, codified at 42 U.S.C. 300aa–26, requires the Secretary of Health and Human Services to develop and disseminate vaccine information materials for distribution by all health care providers, whether public or private, to any patient (or to the parent or legal representative in the case of a child) receiving vaccines covered under the National Vaccine Injury Compensation Program.

Development and revision of the vaccine information materials have been delegated by the Secretary to the Centers for Disease Control and Prevention (CDC). Section 2126 requires that the materials be developed, or revised, after notice to the public with a 60-day comment period, and in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care provider and parent organizations, and the Food and Drug Administration. The law also requires that the information contained in the materials be based on available data and information, be presented in understandable terms, and include:

(1) A concise description of the benefits of the vaccine,

(2) A concise description of the risks associated with the vaccine,

(3) A statement of the availability of the National Vaccine Injury Compensation Program, and

(4) Such other relevant information as may be determined by the Secretary.

The vaccines covered by this statutory requirement are diphtheria, tetanus, pertussis, measles, mumps, rubella, polio, hepatitis B, Haemophilus influenzae type b (Hib), varicella (chickenpox), and pneumococcal conjugate vaccine. Copies of the current vaccine information statements (VIS) for these vaccines, and instructions for their use, can be found on the CDC Web site at: *http://www.cdc.gov/nip/publications/vis/.*

Measles, Mumps & Rubella Vaccine

The Advisory Committee on Immunization Practices revised its recommendations for administration of rubella-containing vaccines to change the recommended interval between receiving MMR vaccine and becoming pregnant from 3 months to 4 weeks ("Revised ACIP Recommendations for Avoiding Pregnancy After Receiving a Rubella-Containing Vaccine" MMWR 50/49, Dec 14, 2001). Interim vaccine information materials reflecting this change were posted on the CDC website on June 13, 2002. Following comments received during the consultation process mandated by the statute, we are proposing slightly different language to further clarify this recommendation through publication of this notice announcing proposed revised MMR vaccine information materials.

We invite written comment on the proposed revisions to the vaccine information materials, entitled "Measles, Mumps & Rubella Vaccines: What You Need to Know." Comments submitted will be considered in finalizing these materials. When the final materials are published in the **Federal Register**, the notice will include an effective date for their use. In the meantime, the interim MMR materials, dated June 13, 2002, which reflect the revised recommendation, can be used in lieu of the 12/16/98 version of the MMR materials.

* * * * *

Proposed Measles, Mumps & Rubella Vaccine Information Materials

The vaccine information materials, entitled "Measles, Mumps & Rubella Vaccines: What You Need to Know," and dated 12/16/98 and 6/13/02 (interim), are proposed to be revised as follows:

Section 3, "Some people should not get MMR vaccine or should wait." Delete the third bullet and replace it with the following:

"Pregnant women should wait to get MMR vaccine until after they have given birth. Women should avoid getting pregnant for 4 weeks after getting MMR vaccine."

Section 5, "What if there is a moderate or severe reaction?" At the end of the last bullet, add the website address for the Vaccine Adverse Event Reporting System.

* * * * *

Dated: October 4, 2002.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention.

[FR Doc. 02–25753 Filed 10–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0430]

Lilly Research Labs et al.; Withdrawal of Approval of 16 New Drug Applications and 30 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 16 new drug applications (NDAs) and 30 abbreviated new drug applications (ANDAs). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Effective November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their requests, waived their opportunity for a hearing.

Application No.	Drug	Applicant
NDA 3–188	Eprolin (vitamin E) Capsules.	Lilly Research Laboratories, Lilly Corporate Center, Indianapolis, IN 46285.
NDA 8–317	ACTH Injection (corticotropin for injection USP).	King Pharmaceuticals, Inc., 501 Fifth St., Bristol, TN 37620.
NDA 8–682	Thytropar (thyrotropin for injection).	Aventis Pharmaceuticals, Inc., 399 Interpace Pkwy., P.O. Box 663, Parsippany, NJ 07054.
NDA 9–766	Meticorten (prednisone) Tablets.	Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033.
NDA 12–034	Permitil (fluphenazine hydrochloride (HCl)) Tablets.	Do.
NDA 14–394[1]	Xylocaine (lidocaine), 10% Oral Spray.	AstraZeneca, L.P., 725 Chesterbrook Blvd., Wayne, PA 19087–5677.
NDA 15–874	Alupent (metaproterenol sulfate USP) Tablets, 10 milligrams (mg) and 20 mg.	Boehringer Ingelheim Pharmaceuticals, Inc., 900 Ridgebury Rd., P.O. Box 368, Ridgefield, CT 06877.
NDA 17–056	Follutein (chorionic gonadotropin for injection USP) Injection.	Bristol-Myers Squibb Pharmaceutical Research Institute, P.O. Box 4000, Princeton, NJ 08543–4000.
NDA 17–316	Sodium Iodide I–131 Capsules.	CIS Bioindustries, c/o CIS–US, Inc., 101 De Angelo Dr., Bedford, MA 01730.
NDA 17–571	Alupent (metaproterenol sulfate) Syrup, 10 mg/5 milliliters (mL).	Boehringer Ingelheim Pharmaceuticals, Inc.
NDA 17–695	Antuitrin-S (chorionic gonadotropin), 5,000 units.	Parke-Davis, 201 Tabor Rd., Morris Plains, NJ 07950.
NDA 17–726	Asellacrin (somatropin) Injection.	Serono, Inc., 100 Longwater Circle, Norwell, MA 02061.
NDA 18–821	Reglan (metoclopramide) Syrup.	A.H. Robbins, c/o Wyeth-Ayerst Research, P.O. Box 8299, Philadelphia, PA 19101–8299.
NDA 19–368	Moctanin (monoctanoin).	Ethitek Pharmaceuticals Co., 3 Court of Overlook Bluff, Northbrook, IL 60062.
NDA 20–200	Nalbuphine HCl Injection, 1.5 mg/mL.	Abbott Laboratories, 200 Abbott Park Rd., Abbott Park, IL 60064–3537.
NDA 20–417	FemPatch (estradiol) Transdermal System.	Parke-Davis, 2800 Plymouth Rd., Ann Arbor, MI 48105.
ANDA 60–004	V-Cillin K (penicillin V potassium USP) Powder for Oral Solution, 125 mg/5 mL and 250 mg/5 mL.	Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285.
ANDA 60–463	Garamycin (gentamicin sulfate ointment USP) Ointment, 0.1%.	Schering Corp.
ANDA 60–781	Penicillin G Potassium Tablets USP.	Mylan Pharmaceuticals, Inc., 781 Chestnut Ridge Rd., P.O. Box 4310, Morgantown, WV 26504–4310.
ANDA 61–624	Penicillin V Potassium for Oral Solution USP, 125 mg/5 mL and 250 mg/5 mL.	Do.
ANDA 63–017	Cefadroxil Capsules USP, 500 mg.	Purpac Pharmaceutical Co., 200 Elmora Ave., Elizabeth, NJ 07207.
ANDA 63–119	Tombramycin Sulfate Injection USP, 10 mg/mL.	AstraZeneca, L.P., 1800 Concord Pike, Wilmington, DE 19803–8355.
ANDA 63–265	Amikacin Sulfate Injection USP.	Abbott Laboratories.
ANDA 63–266	Amikacin Sulfate Injection USP.	Do.
ANDA 63–295	Monocid (cefonicid for injection USP), 1 gram (g) vials.	GlaxoSmithKline, One Franklin Plaza, P.O. Box 7929, Philadelphia, PA 19101–7929.
ANDA 70–125	Propranolol HCl Tablets USP, 10 mg.	Lederle Laboratories, c/o ESI Lederle, P.O. Box 41502, Philadelphia, PA 19101–7929.
ANDA 70–127	Propranolol HCl Tablets USP, 40 mg.	Do.
ANDA 70–629	Ibuprofen Tablets USP, 400 mg.	Do.
ANDA 70–630	Ibuprofen Tablets USP, 600 mg.	Do.
ANDA 70–636	Fentanyl Citrate Injection USP, 0.05 mg/mL.	Abbott Laboratories.
ANDA 70–637	Fentanyl Citrate Injection USP, 0.05 mg/mL.	Do.

Application No.	Drug	Applicant
ANDA 71–065	Ibuprofen Tablets USP, 200 mg.	Lederle Laboratories.
ANDA 72–045	Haloperidol Intensol Oral Concentrate (haloperidol oral solution USP), 2 mg/mL.	Roxane Laboratories, Inc., P.O. Box 16532, Columbus, OH 43216.
ANDA 72–768	Sulfamethoxazole and Trimethoprim Tablets USP, 400 mg/80 mg.	Do.
ANDA 73–528	Loperamide HCl Tablets USP, 2 mg.	Able Laboratories, Inc., l6 Hollywood Court, South Plainfield, NJ 07080–4295.
ANDA 73–590	Lactulose Solution USP, 10 g/15 mL.	Roxane Laboratories.
ANDA 74–638	Ioparnidol Injection USP, 61%.	Abbott Laboratones.
ANDA 74–662	Ranitidine Tablets USP, 150 mg and 300 mg.	Boehring Ingelheim Corp., c/o Roxane Laboratories, Inc., P.O. Box 16532, Columbus, OH 43216–6532.
ANDA 75–230	Ketorolac Tromethamine Injection USP, 15 mg/mL and 30 mg/mL.	Bedford Labs, 300 Northfield Rd., Bedford, OH 44146.
ANDA 75–249	Midazolam HCl Injection, 5 mg (base)/mL.	Do.
ANDA 75–455	Midazolam HCl Injection 5 mg (base)/mL.	Ben Venue Laboratories, Inc., 300 Northfield Rd., Bedford, OH 44146.
ANDA 80–256	Methyltestosterone Tablets USP, 10 mg and 25 mg.	Eli Lilly and Co.
ANDA 83–799	Imipramine HCl Tablets USP, 25 mg and 50 mg.	Roxane Laboratories.
ANDA 87–743	Roxipnn Tablets (oxycodone and aspirin tablets USP).	Do.
ANDA 89–239	Mannitol Injection USP, 25%.	AstraZeneca, L.P.
ANDA 89–240	Mannitol Injection USP, 25%.	Do.

[1] While NDA 14–394 was named in the FEDERAL REGISTER withdrawal notice of April 30, 1984 (49 FR 18357), this NDA was never withdrawn and remained active until 1999.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective November 12, 2002.

Dated: September 27, 2002.

Janet Woodcock,

Center for Drug Evaluation and Research.

[FR Doc. 02–25882 Filed 10–9–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0407]

Diagnostic X-Ray Field Size; Revocation of Compliance Policy Guide 7133.17

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revoking the Compliance Policy Guide (CPG) entitled "Sec. 398.475 Minimum X-Ray Field Size for Spot-Film Operation of Fluoroscopic Systems with Fixed SID and Without Stepless Adjustment of the Field Size (CPG 7133.17)." This CPG is no longer necessary because the agency amended the Diagnostic X-Ray Systems Federal Performance Standard to include the minimum x-ray field size.

DATES: The revocation is effective November 12, 2002.

ADDRESSES: Submit written requests for single copies of the CPG to the Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0411, or FAX your request to 301–827–0482.

A copy of the CPG may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Governale, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0411.

SUPPLEMENTARY INFORMATION:

I. Background

FDA issued the CPG entitled "Sec. 398.475 Minimum X-Ray Field Size for Spot-Film Operation of Fluoroscopic Systems with Fixed SID and Without Stepless Adjustment of the Field Size (CPG 7133.17)" on October 1, 1980. This CPG addresses the different requirements for minimum field size for spot-film and fluoroscopic modes of operation for fixed source-image receptor distance (SID) fluoroscopic x-ray systems. This CPG includes a statement that such systems that do not have stepless adjustment would be required to provide a minimum field size of 125 square centimeters or less during fluoroscopy and spot-film radiography.

In the **Federal Register** of May 3, 1993 (58 FR 26401), FDA amended the diagnostic X-ray systems Federal performance standard to incorporate a provision for spot-film devices used on fixed SID fluoroscopic systems. Specifically, 21 CFR 1020.31(h)(4)(i) requires that for spot-film devices used on fixed SID fluoroscopic systems which are not required to, and do not provide stepless adjustment of the x-ray field, the minimum field size, at the greatest SID, does not exceed 125 square centimeters.

Given the current diagnostic X-ray systems Federal performance standard, FDA is revoking CPG 7133.17, in its entirety, to eliminate unnecessary compliance policy.

II. Electronic Access

Before November 12, 2002, a copy of the CPG may be obtained from the Internet at http://www.fda.gov/ora/compliance_ref/cpg/cpgdev/cpg398–475.html.

Dated: October 1, 2022.

John Marzilli,

Deputy Associate Commissioner for Regulatory Affairs.

[FR Doc. 02–25881 Filed 10–9–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Data System for Organ Procurement and Transplantation Network and Associated Forms (OMB No. 0915–0157)—Revision

Section 372 of the Public Health Service (PHS) Act requires that the Secretary, by contract, provide for the establishment and operation of an Organ Procurement and Transplantation Network (OPTN). The OPTN, among other responsibilities, operates and maintains a national waiting list of individuals requiring organ transplants, maintains a computerized system for matching donor organs with transplant candidates on the waiting list, and operates a 24-hour telephone service to facilitate matching organs with individuals included in the list.

Data for the OPTN data system are collected from transplant hospitals, organ procurement organizations, and tissue-typing laboratories. The information is used to match donor organs with recipients, to monitor compliance of member organizations with OPTN rules and requirements, and to report periodically on the clinical and scientific status of organ donation and transplantation in this country. Data are used in the development and revision of OPTN rules and requirements, operating procedures, and standards of quality for organ acquisition and preservation, some of which have provided the foundation for development of Federal regulations. The practical utility of the data collection is further enhanced by requirements that the OPTN data must be made available without restriction for use by OPTN members, the Scientific Registry of Transplant Recipients, the Department of Health and Human Services, and others for evaluation, research, patient information, and other important purposes.

Revisions in the 28 data collection forms are intended to clarify existing questions, to provide additional detail and categories to avoid confusion and be more inclusive, to remove obsolete data, and to comply with requests for more complete and precise data.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Form	Number of respondents	Responses per respondents	Total responses	Hours per response	Total burden hours
Cadaver Donor Registration	59	170	10,030	.0.3	3,009.00
Death referral data	59	12	708	10	7,080.00
Living Donor Registration	668	11	7,348	0.2	1,469.60
Living Donor Follow-up	668	16	10,688	0.1	1,068.80
Donor Histocompatibility	156	86	13,416	0.1	1,341.60
Recipient Histocompatibility	156	161	25,116	0.1	2,511.60
Heart Candidate Registration	140	26	3,640	0.3	1,092.00
Lung Candidate Registration	75	29	2,175	0.3	652.50
Heart/Lung Candidate Registration	81	2	162	0.3	48.60
Thoracic Registration	140	29	4,060	0.3	1,218.00
Thoracic Follow-up	140	168	23,520	0.2	4,704.00
Kidney Candidate Registration	242	108	26,136	0.2	5,227.20
Kidney Registration	242	62	15,004	0.3	4,501.20
Kidney Follow-up*	242	444	107,448	0.2	21,489.60
Liver Candidate Registration	120	97	11,640	0.2	2,328.00
Liver Registration	120	44	5,280	0.4	2,112.00
Liver Follow-up	120	276	33,120	0.3	9,936.00
Kidney/Pancreas Candidate Registration	138	14	1,932	0.2	386.40
Kidney/Pancreas Registration (new form)	138	7	966	0.4	386.40
Kidney/Pancreas Follow-up (new form)	138	51	7,038	0.3	2,111.40
Pancreas Candidate Registration	138	7	966	0.2	193.20
Pancreas Registration	138	4	552	0.3	165.60
Pancreas Follow-up	138	12	1,656	0.2	331.20
Intestine Candidate Registration	38	6	228	0.2	45.60
Intestine Registration	38	3	114	0.2	22.80
Intestine Follow-up	38	9	342	0.2	68.40
Immunosuppression Treatment	668	39	26,052	0.025	651.30
Immunosuppression Treatment Follow-up	668	259	173,012	0.025	4,325.30
Post Transplant Malignancy	668	8	5,344	0.05	267.20
Total	883	.....	517,693	.....	78,744.50

*Includes an estimated 10,000 kidney transplant patients transplanted prior to the initiation of the data system.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrill, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC.

Dated: October 3, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–25725 Filed 10–9–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Director's Council of Public Representatives.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Director's Council of Public Representatives.

Date: October 22, 2002.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: Among the topics proposed for discussion are: (1) Current Issues; (2) Identified Priorities of the NIH Director and COPR; and (3) A Summary of Future Action Items and Follow Up Issues.

Place: 31 Center Drive, Bldg. 31, Conf. Rm. 6, Bethesda, MD 20892.

Contact Person: Jennifer E. Gorman Vetter, NIH Public Liaison/COPR Coordinator, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892, (301) 435–4448, *gormanj@od.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Information is also available on the Instutute's/Center's home page: *www.nih.gov/about/publicliaison/index.html,* where as agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally, 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25904 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants Program For Behavioral Research.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Joyce C. Pegues, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892, 301–594–1286.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399 Cancer Control, National Institutes of health, HHS)

Dated: October 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25891 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: November 14–15, 2002.

Time: November 14, 2002, 8:30 a.m. to 6 p.m.

Agenda: Director's Report; Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Time: November 15, 2002, 8:30 a.m.to 1 p.m.

Agenda: Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, PhD, Executive Secretary, Deputy Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Rm. 8141, Bethesda, MD 20892, 301–496–4218.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/bsa.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25906 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Molecular and Clinical Approaches to Colon Cancer Precursors.

Date: November 18–20, 2002.

Time: 7 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: University Park Marriott, 480 Wakara Way Street, Salt Lake City, UT 84108.

Contact Person: Peter J. Wirth, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8131, Bethesda, MD 20892–8328, 301–496–7565, *pw2q@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control National Institutes of Health, HHS)

Dated: October 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25907 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Community Clinical Oncology Programs.

Date: November 14, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Boulevard, EPN, Conference Room J, Rockville, MD 20852.

Contact Person: Timothy C. Meeker, MD, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20852, 301/594–1279.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93,399, Cancer Control, National Institute of Health, HHS)

Dated: October 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25908 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The Grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, CEGS's and Sequencing Center Review.

Date: November 7–8, 2002.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ken D. Nakamura, PhD, Scientific review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, (301) 402–0838

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25912 Filed 10–09–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Sexual Relationships, Sexual Concurrence and HIV.

Date: November 14–15, 2002.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5e03, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 4, 2002.

Laverne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25884 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Letters of Invitation: Maternal Lifestyles.

Date: October 25, 2002.

Time: 9:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5E01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25885 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDDK.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Diabetes and Digestive and Kidney Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDDK.

Date: November 6–8, 2002.

Open: November 6, 2002, 6 p.m. to 6:30 p.m.

Agenda: Introductions and Overview.

Place: National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

Closed: November 6, 2002, 6:30 p.m. to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

Closed: November 7, 2002, 8 a.m. to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

Closed: November 8, 2002, 8 a.m. to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

Contact Person: Marvin C. Gershengorn, MD, Scientific Director, Division of Intramural Research, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 9000 Rockville Pike, Bldg. 10, Rm. 9N222, Bethesda, MD 20892, (301) 496–4129.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25886 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Training in Gastroenterology.

Date: October 18, 2002.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Blvd, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25887 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel. NICHD Institutional Training For Pediatricians.

Date: November 6–7, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892. (301) 496–1487. *anandr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25888 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. New Animal Models for: Part A Tuberculosis (TB).

Date: November 1, 2002.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6700–B Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Vassil St. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC, 7610, Bethesda, MD 20892–7610. (301) 496–2550.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, New Animal Models for: Part B Aspergillosis.

Date: November 4, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

Contact Person: Vassil St. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC, 7610, Bethesda, MD 20892–7610. (301) 496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25890 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Pelvic Floor Dysfunction.

Date: November 21, 2002.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd, Suite 409, Willco Bldg., Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, HIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.867, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for

Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 3, 2002

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25892 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Revised Toxicology Proposal.

Date: October 17, 2002.

Time: 1 p.m. to 5 p.m

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25893 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Centers for AIDS Research (CFAR).

Date: October 20–22, 2002.

Time: October 20, 2002, 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Time: October 21, 2002, 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Time: October 22, 2002, 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Eleazar Cohen, PhD, Scientific Review Administrator, NIAID/DEA, Scientific Review Program, Room 2220, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892, 301–496–2550, *ec17w@nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25894 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–21, Review of R44 Grants.

Date: October 31, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Ashko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–93, Review of R13 Grants.

Date: November 1, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room H, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–09, Review of R01 Grants.

Date: November 7, 2002.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Four Points Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–10, Review of R01 Grants.

Date: November 8, 2002.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–02, Review of Clinical Trials.

Date: November 11–12, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–07, Review of R01 Grants.

Date: November 14, 2002.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–08, Review of R01 Grants.

Date: November 16, 2002.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Clarion Barcelo Hotel O'Hare International Airport, 5615 North Cumberland Avenue, Chicago, IL 60631.

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–13, Review of R44 Grants.

Date: November 20, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–11, Review of R44 Grants.

Date: December 4, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room H, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Rm., Bethesda, MD 20892–6402.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: October 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25895 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institue on Deafness and Other Communications Disorders Special Emphasis Panel, Human Embryonic Stern Cell Resources.

Date: October 22, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 6129 Executive Blvd., Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Craig A. Jordan, PhD, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8683.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: October 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25896 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–09–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Impact of Microbial Interactions on Infectious Diseases.

Date: November 6–8, 2002.

Time: 8:30 a.m. to 6 p.m..

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Gregory P. Jarosik, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892, 301–496–2550, *gjarosik@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: October 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25901 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasions of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel "Augmentative and Alternative Communication Strategies for Treatment of Acquired Cognitive Linguistic Disorders."

Date: November 11, 2002.

Time: 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892, 301–435–6908.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25902 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Mechanisms of Adverse Drug Reactions in Children.

Date: November 12, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25903 Filed 10–9–02; 8:45 am]

BILLING CODE 41410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel "Small Grants: voice/speech".

Date: October 29, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Suite 400C, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Craig A. Jordan, PhD, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Chemical Senses Feasibility Grants.

Date: November 19, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Suite 400C, Bethesda, MD 20852.

Contact Person: Melissa Stick, PhD, MPh, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Researech, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institues of Health, HHS)

Dated: October 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25905 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel AIDS Center.

Date: November 19, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Richard E. Weise, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892–9606, 301–443–1225, *rweise@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS).

Dated: October 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25909 Filed 10–09–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Training Grants.

Date: November 14, 2002.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Ethel B. Jackson, DDS, Chief, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–7826.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Training Grants.

Date: November 15, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Ethel B. Jackson, DDS, Chief, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–7826.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: October 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25910 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Clinical & Basic Studies in Polycystic Ovarian Syndrome.

Date: November 19–20, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–25913 Filed 10–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Molecular Pathobiology Study Section.
Date: October 6–8, 2002.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street NW., Washington, DC 20007–3701.
Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7804, Bethesda, MD 20892. 301–435–1779. *riverse@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, General Medicine B. Study Section.
Date: October 7–8, 2002.
Time: 8 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892. (301) 435–1198.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Immunological Sciences Integrated Review Group, Experimental Immunology Study Section.
Date: October 10–11, 2002.
Time: 8:30 a.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: Westin Grand Hotel, 2350 M Street, NW., Washington, DC 20037–1417.
Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892. (301) 435–3566. *cooperc@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Immunological Sciences Integrated Review Group, Immunological Sciences Study Section.
Date: October 10–11, 2002.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Westin Grant Hotel, 2350 M Street, NW., Washington, DC 20037–1417.
Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892. (301) 435–1152. *edwardss@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Behavioral Medicine: Animal Studies.
Date: October 11, 2002.
Time: 1:30 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Radisson—Old Town, 901 North Fairfax Street, Alexandria, VA 22314.
Contact Person: Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892. (301) 435–0677.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Editorial Note: This document was received at the Office of the Federal Register on October 7, 2002.

Dated: October 3, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–25889 Filed 10–09–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health.
The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee on Research on Women's Health.
Date: October 28, 2002.
Time: 9 a.m. to 5 p.m.
Agenda: To provide advice on appropriate research activities with respect to women's health and related studies to be undertaken by the national research institutes; to provide recommendations regarding ORWH activities; and to assist in monitoring compliance regarding the inclusion of women in clinical trials.
Place: 31 Center Drive, Bldg. 31, Conf. Rm. 6, Bethesda, MD 20892.
Contact Person: Joyce Rudick, Director, Programs & Management, Office of Research on Women's Health, Office of the Director, National Institutes of Health, Building 1, Room 201, Bethesda, MD 20892, 301/402–1770.
Information is also available on the Institute's/Center's home page: *http://www4.od.nih.gov/orwh/*, where an agenda and any additional information for the meeting will be posted when available.
(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 30, 2002.
Anna Snouffer,
Deputy Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–25911 Filed 10–9–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4736–N–16]

Notice of Proposed Information Collection for Public Comment—Modernization of Public Housing Under the Comprehensive Grant Program (CGP) Reporting Requirements

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* December 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).
This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.
This Notice also lists the following information:
Title of Proposal: Modernization of Public Housing under the Comprehensive Grant Program (CGP) Reporting Requirements.
OMB Control Number: 2577–0157.
Description of the need for the information and proposed use: Public Housing Agencies (PHAs) with 250 units or more of public housing will submit information to HUD to approve the PHAs annual Comprehensive Plan submission, to reserve its formula share of the nation allocation for the CGP, certify resident consultation by the local government, to certify PHA's compliance with statutory and regulatory requirements by the governing body of the PHA, and to monitor performance of the projected activities of the CGP funds. PHAs submit this information to obtain a benefit from the Federal Government. The Public Housing Capital Fund Program will replace the CGP once final regulations are implemented.
Agency form numbers, if applicable: HUD–52832, HUD–52833, HUD–52834, HUD–52835, HUD–52836, HUD–52837, HUD–52840.
Members of affected public: State or Local Government.
Estimation of the total number of hours needed to pare the information collection including number of respondents, frequency of response, and hours of response: 832 respondents, annually, 68 average hours for seven forms, total reporting burden 54,320 hours.
Status of the proposed information collection: Reinstatement, without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 3, 2002.
Michael Liu,
Assistant Secretary for Public and Indian Housing.
BILLING CODE 4210–33–M

Executive Summary of Preliminary Estimated Costs
Physical and Management/ Operations Needs
Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577–0157 (Exp. 7/31/95)

Public Reporting Burden for this collection of information is estimated to average 10.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

PHA/IHA Name | Federal Fiscal Year

Development Number/ Name	Total Current Units	Total Preliminary Estimated Hard Cost	Per Unit Hard Cost	Exceeds Reasonable Cost	Percentage of Vacant Units

Total Preliminary Estimated Hard Cost for Physical Needs	$
Total Preliminary Estimated Cost for PHA-Wide Management/Operations Needs	$
Total Preliminary Estimated Cost for PHA-Wide Nondwelling Structures and Equipment	$
Total Preliminary Estimated Cost for PHA-Wide Administration	$
Total Preliminary Estimated Cost for PHA-Wide Other	$
Grand Total of PHA Needs	$
Signature of Executive Director X	Date

form HUD-52831 (2/92)
ref Handbook 7485.3

Instructions for Preparation of Form HUD-52831, Executive Summary of Preliminary Estimated Costs for Physical and Management/Operations Needs

Report Submission: Prepare one form HUD-52831 for the entire PHA/IHA and submit to HUD as part of the submission of the original Comprehensive Plan in the first year of participation in the CGP and every sixth year when a complete revision of the Comprehensive Plan is required. Use as many pages of this form as necessary to cover all developments within the PHA's/IHA's inventory.

Heading Instructions:

PHA/IHA Name—Enter the Public Housing Agency (PHA)/ Indian Housing Authority (IHA) name.

Federal Fiscal Year—Enter the FFY in which the Comprehensive Plan is being submitted.

Column Instructions:

Development Number/Name—Enter the State abbreviation, the PHA number and the development number, which may be abbreviated as VA 36-1. Also enter the development name, if any.

Total Current Units—For each development, enter the total number of current units as identified in the ACC.

Total Preliminary Estimated Hard Cost—For each development, enter the Total Preliminary Estimated Hard Cost for Needed Physical Improvements from form HUD-52832, Physical Needs Assessment.

Per Unit Hard Cost—For each development, enter the Per Unit Hard Cost from form HUD-52832, Physical Needs Assessment.

Exceeds Reasonable Cost—For each development, enter Yes or No as to whether the hard cost exceeds 90% of TDC from form HUD-52832, Physical Needs Assessment.

Percentage of Vacant Units—For each development, enter the percentage of vacant units from form HUD-52832, Physical Needs Assessment.

Total Preliminary Estimated Hard Cost for Physical Needs—Enter the total for all amounts entered in the column, Total Preminary Estimated Hard Cost.

Total Preliminary Estimated Cost for PHA-Wide Management/Operations Needs—Enter the Total Preliminary Estimated PHA-Wide Cost from form HUD-52833, Management Needs Assessment.

Total Preliminary Estimated Cost for PHA-Wide Nondwelling Structures and Equipment—Enter the total preliminary estimated cost for PHA-wide nondwelling structures and equipment that are currently needed and will be needed within the next five years.

Total Preminary Estimated Cost for PHA-Wide Administration—Enter the total preminary estimated cost for PHA-wide administration (Development Account 1410) that are currently needed and will be needed within the next five years.

Total Preminary Estimated Cost for PHA-Wide Other -- Enter the total preliminary estimated cost for PHA-wide other costs (Development Accounts1411, 1415, 1430, 1440, 1490, 1495) that are currently needed and will be needed within the next five years.

Grand Total of PHA Needs—Enter the sum of preliminary estimated costs for Physical Needs, PHA-wide Management/ Operations Needs, PHA-wide Nondwelling Structures and Equipment, PHA-Wide Administration and PHA-Wide Other.

Physical Needs Assessment
Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577--0157 (Exp. 7/31/95)

Public Reporting Burden for this collection of information is estimated to average 252 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

PHA/IHA Name		☐ Original ☐ Revision Number _____
Development Number	Development Name	DOFA Date

Development Type		Occupancy Type		Structure Type		Number of Buildings	Vacant Units
Rental	☐	Family	☐	Detached/ Semi-Detached	☐		Number _____
Turnkey III	☐	Elderly	☐	Row	☐	Current Bedroom Distribution	
Mutual Help	☐	Mixed	☐	Walk-Up	☐	0 ____ 1 ____ 2 ____	%
Section 23, Bond Financed	☐			Elevator	☐	3 ____ 4 ____ 5 ____	Total Current Units
						5+____	

General Description of Needed Physical Improvements	Urgency of Need (1-5)

Total Preliminary Estimated Hard Cost for Needed Physical Improvements:	$	
Per Unit Hard Cost:	$	
Hard Cost Exceed 90% of TDC (If Yes, attach viability analysis.)	Yes ☐	No ☐
Development Has Long-Term Physical and Social Viability	Yes ☐	No ☐
Date Assessment Prepared:		
Source(s) of Information:		

Instructions for Preparation of Form HUD-52832—Physical Needs Assessment

Report Submission: Prepare a separate form HUD-52832 for each development in the PHA's/IHA's inventory, which is eligible for Comprehensive Grant Program (CGP) funding. Submit these forms to HUD as part of the submission of the original Comprehensive Plan in the first year of participation in the CGP and every sixth year when a complete revision of the physical needs assessment is required. On an as-needed basis, submit a revised form for any development whose physical needs have significantly changed since the last needs assessment and the PHA/IHA wishes to include these needs in the Action Plan. Use only one page per development or development group. Developments which are contiguous and treated as one development for management purposes may be grouped together.

Heading Instructions:

Development Number—Enter an 11-digit alpha numeric code as follows: two-digit State code (alpha); two-digit Field Office code (numeric); P for public housing or B for Indian Housing; three-digit PHA/IHA number (numeric); and three-digit development number (numeric). For example, VA05PO36001.

DOFA Date—Enter the Date of Full Availability (DOFA).

General Characteristics—Check the appropriate box that describes the type of development, the type of occupancy, and the type of structure. Also enter the number of buildings.

If Turnkey III is checked, indicate the number of vacant or non-homebuyer-occupied units planned for substantial rehabilitation next to the box. By so doing, the PHA/IHA indicates that: (1) the proposed modernization will result in bringing the identified units into full compliance with the homeownership objectives under the Turnkey III Program; and (2) the PHA/IHA has homebuyers who both are eligible for homeownership, in accordance with the requirements of 24 CFR Part 904 for PHA's or 24 CFR Part 905, Subpart G, for IHA's, and have demonstrated their intent to be placed into the Turnkey III units proposed to be substantially rehabilitated.

If the development is a Mutual Help and will be at least 10 years old during the next five years, indicate the number of units that are planned for one-time substantial rehabilitation next to the box. By so doing, the IHA indicates that the proposed modernization will result in bringing the identified units into full compliance with the homeownership objectives under the Mutual Help Program.

Current Bedroom Distribution—Enter the current number of units for each bedroom size and the total number of current units in the development as identified in the ACC.

Vacant Units—Enter the number of vacant units as of the date this form is prepared and the percentage of vacant units to the total number of units in the development. In determining the number of vacant units, refer to the definition of vacant units as prescribed in PHMAP Indicator 1.

Column Instructions:

General Description of Needed Physical Improvements: Enter a general description of all unfunded physical improvements that must be undertaken to bring the development (dwelling and nondwelling structures, dwelling and nondwelling equipment, and site) up to a level at least equal to the modernization and energy conservation standards and to comply with other program requirements. Include any replacements of equipment, systems and structural elements that will be needed, assuming routine and timely maintenance, within the next five years. Exclude any physical improvement needs for PHA-wide non-dwelling structures and equipment. Enter only physical improvements that are eligible for CGP funding. Do not enter any physical improvements already funded by CIAP or other sources which the PHA/IHA plans to complete. However, enter physical improvements currently funded under CIAP where the PHA/IHA plans to reprogram CIAP funds for other work under the CGP.

Describe the proposed improvements in broad categories, such as kitchens, bathrooms, roofs, electrical systems, heating systems, landscaping, non-dwelling structures, lead-based paint testing, lead-based paint abatement, physical accessibility, etc. Include all broad categories of needed work without regard to the availability and/or source of funds.

If there are no current needs and the PHA/IHA does not anticipate any replacement needs within the next five years, enter a statement to that effect in this section. Such a statement does not preclude the PHA/IHA from amending the needs assessment at any time within the five-year period if unforeseen needs arise or from identifying new needs which have occurred when the needs assessment is revised every sixth year.

Urgency of Need: For each broad category of work identified under the General Description of Needed Physical Improvements, enter a number that corresponds to the urgency of the need on a PHA-wide basis at that development, with "1" reflecting the most urgent need and "5" reflecting the least urgent need. In determining the urgency of need, assign a "1" to activities required to correct emergency conditions and to meet statutory or other legally mandated requirements, such as lead-based paint testing.

Total Preliminary Estimated Hard Cost for Needed Physical Improvements: Enter the total preliminary estimated hard cost for the broad work categories listed in the General Description of Needed Physical Improvements, excluding any management improvements, administration, architectural/engineering fees, relocation or other soft costs, and any hard costs for PHA/IHA-wide nondwelling structures and equipment.

Per Unit Hard Cost: Divide the Total Preliminary Estimated Hard Cost for Needed Physical Improvements by the total number of current units in the development and enter the per unit hard cost.

Hard Cost Exceed 90% of TDC: Check Yes or No as to whether the Total Preliminary Estimated Hard Cost for Needed Physical Improvements exceeds 90% of computed Total Development Cost (TDC) for the development. **Note:** If Yes is checked, the PHA/IHA may not include work categories/items, except for emergency work, in its Action Plan or Annual Statement unless it submits, and HUD approves, a request to exceed 90% of TDC. **Note:** If Yes is checked, attach the viability analysis.

Development Has Long-Term Physical and Social Viability: Check Yes or No as to whether the PHA/IHA has determined that the development has long-term physical and social viability. **Note:** If No is checked, attach the viability analysis and an explanation of what actions are proposed regarding the nonviable development.

Source(s) of Information: Identify the source(s) of information used to develop the General Description of Needed Physical Improvements. Retain such information in PHA/IHA files (1) as supporting documentation for the needs assessment, (2) for post-review by HUD, or (3) for submission to HUD upon request.

Management Needs Assessment
Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577--0157 (Exp. 7/31/95)

Public Reporting Burden for this collection of information is estimated to average 110.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

PHA/IHA Name

☐ Original

☐ Revision Number :

General Description of Management/Operations Needs	Urgency of Need (1- 5)	Preliminary Estimated PHA-Wide Cost

Total Preliminary Estimated PHA-Wide Cost: | $

Date Assessment Prepared:

Source(s) of Information

Instructions for Preparation of Form HUD-52833, Management Needs Assessment

Report Submission: Prepare one form HUD-52833 for the entire PHA/IHA and submit to HUD as part of the submission of the original Comprehensive Plan in the first year of participation in the Comprehensive Grant Program (CGP) and every sixth year when a complete revision of the management needs assessment is required. On an as-needed basis, submit a revised form whenever management needs have significantly changed since the last needs assessment and the PHA/IHA wishes to include those needs in the Action Plan.

Heading Instructions:

PHA/IHA Name—Enter the Public Housing Agency (PHA)/ Indian Housing Authority (IHA) Name.

Original or Revision Number -- Self-explanatory. Every sixth year a new original is prepared.

Column Instructions:

General Description of Management/Operations Needs:

Enter a general description of all unfunded and no cost improvements needed to upgrade the management and operation of the PHA/IHA and of each viable development so that decent, safe and sanitary living conditions will be provided. Enter only management improvements that are eligible for CGP funding.

Do not enter any management improvements already funded by CIAP or other sources which the PHA/IHA plans to complete. However, enter management improvements currently funded under CIAP where the PHA/IHA plans to reprogram CIAP funds for other work under the CGP.

Identify all current needs related to the mandatory areas set forth in the CGP Handbook 7485.3. To the extent that any of these needs are addressed in an existing document, cross-reference that document. For PHAs, an existing document includes a HUD-approved action plan based on a HUD monitoring review conducted before implementation of the Public Housing Management Assessment Program (PHMAP), a Memorandum of Agreement (MOA) or an Improvement Plan (IP). For IHAs, an existing document includes a HUD-approved Management Improvement Plan (MIP) based on the Administrative Capability Assessment (ACA) or Field Office monitoring. For example, improve rent collection—see MOA. If a particular work category is targeted to a specific development, denote by an asterisk and enter the development number in parenthesis.

In addition, at the PHA's/IHA's option, include other management and operations needs identified through a self-assessment or identified under the PHMAP for PHAs, but not set forth in an MOA or IP.

Describe the needs in broad categories, such as rent collection, preventive maintenance, security, etc. Enter all broad categories of needs without regard to the availability and/or source of funds.

If there are no current needs and the PHA/IHA does not anticipate any management needs within the next five years, enter a statement to that effect in this section. Such a statement does not preclude the PHA/IHA from amending the needs assessment at any time within the five-year period if unforeseen needs arise or from identifying new needs which have occurred when the needs assessment is revised every sixth year.

Urgency of Need:

For each broad category of need identified under the General Description of Management/Operations Needs, enter a number that corresponds to the relative urgency of the need, with "1" reflecting the most urgent need and "5" reflecting the least urgent need.

Preliminary Estimated PHA-Wide Cost:

Enter the preliminary estimated PHA-wide cost for each broad category of need described in the General Description of Management/Operations Needs and the total.

Source(s) of Information:

Identify the source(s) of information used to develop the General Description of Management/Operations Needs. Retain such information in PHA/IHA files (1) as supporting documentation for the needs assessment, (2) for post-review by HUD, or (3) for submission to HUD upon request.

Five-Year Action Plan
Part I: Summary
Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0157 (Exp. 7/31/95)

Public Reporting Burden for this collection of information is estimated to average 40.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

PHA/IHA Name: | Locality (City/County & State) | ☐ Original ☐ Revision No:

A. Development Number/Name/ Physical Improvements	Year 1 FFY:	Year 2 FFY:	Year 3 FFY	Year 4 FFY:	Year 5 FFY:	FFY Development Meets Standards
	See Annual Statement					
B. Physical Improvements Subtotal						
C. Management Improvements						
D. PHA-Wide Nondwelling Structures & Equipment						
E. Administration						
F. Other						
G. Replacement Reserve						
H. Total CGP Funds						
I. Total Non-CGP Funds						
J. Grand Total						

Signature of Executive Director: X | Date: | Signature of Field Office Manager (Regional Administrator in co-located office) X | Date:

Page ___ of ___

form HUD-52834 (2/92)
ref Handbook 7485.3

Five-Year Action Plan
Part I: Summary (Continuation)
Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

A. Development Number/Name/ Physical Improvements	Year 1 FFY:	Year 2 FFY:	Year 3 FFY:	Year 4 FFY:	Year 5 FFY:	FFY Development Meets Standards
	See Annual Statement					

Page ___ of ___

form HUD-52834

Five-Year Action Plan
Part II: Supporting Pages
Physical Needs
Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Year 1 FFY:	Year 2 FFY:		Year 3 FFY:		Year 4 FFY:		Year 5 FFY:	
	Development Number / Name / Major Work Category	Estimated Costs	Development Number / Name / Major Work Category	Estimated Costs	Development Number / Name / Major Work Category	Estimated Costs	Development Number / Name / Major Work Category	Estimated Costs
See Annual Statement								
	Subtotal of Estimated Cost							

Page ___ of ___

form HUD-52834

Five-Year Action Plan
Part III: Supporting Pages
Management Needs
Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Year 1 FFY:	Year 2 FFY:		Year 3 FFY:		Year 4 FFY:		Year 5 FFY:	
	Major Work Category*	Estimated Costs	Major Work Category*	Estimated Costs	Major Work Category*	Estimated Costs	Major Work Category*	Estimated Costs
See Annual Statement								
	Subtotal of Estimated Cost							

*Asterisk any work planned that is development specific and show the development no. in parenthesis.

Page ___ of ___

form HUD-52834

Instructions for Preparation of Form HUD-52834, Five-Year Action Plan

Report Submission: Prepare one form HUD-52834 for the entire PHA/IHA and submit to HUD as part of the submission of the original Comprehensive Plan in the first year of participation in the Comprehensive Grant Program (CGP). Thereafter, submit annually an updated form to eliminate the previous year and to add a new fifth year so that the form always covers the present five-year period beginning with the current year. Use as many pages of this form as necessasry to cover all proposed work.

Part I: Summary

Heading Instructions:

PHA/IHA Name—Enter the Public Housing Agency (PHA)/ Indian Housing Authority (IHA) name.

Locality (City/County & State)—Enter the City/County and State where the PHA/IHA Central Office is located.

Original/Revision No.—Check the appropriate box. If a revision, enter the revision number, e.g., #1, #2, etc.

Year 1—Enter the current FFY.

Years 2 through 5—Enter each successive FFY.

A. Development Number/Name/Phys. Improvements:

\Enter the abbreviated number (e.g. VA 36-1) and name, if any, of each development that will be allocated funding for physical improvements during the five-year period covered by this Action Plan.

Years 2 through 5

For each development entered in A., enter the estimated amount of CGP funds to be allocated for physical improvements (development accounts 1450 through 1475) during each year of years 2 through 5. If the PHA is submitting an Annual Statement covering all or a portion of year 2, the PHA should so indicate in the column for year 2.

FFY Development Meets Standards:

For each development in A, estimate the FFY in which it is anticipated that the development will meet the Modernization and Energy Conservation Standards.

B. Physical Improvements Subtotal:

Enter the estimated subtotal amount of CGP funds to be allocated for physical improvements during each year of years 2 through 5.

C. Management Improvements:

Enter the estimated amount of CGP funds to be allocated for management improvements, including those that are PHA-wide and/or development-specific, (development account 1408) during each year of years 2 through 5.

Note: The estimated amount may not exceed 10% of the annual grant.

D. PHA-Wide Nondwelling Structures and Equipment:

Enter the estimated amount of CGP funds to be allocated for PHA-wide nondwelling structures and equipment during each year of years 2 through 5.

E. Administration:

Enter the estimated amount of CGP funds to be allocated for administrative expenses (development account 1410) during each year of years 2 through 5. **Note**: The estimated amount may not exceed 7% of the annual grant; up to 9% with prior HUD approval.

F. Other:

Enter the estimated amount of CGP funds to be allocated for other expenses (development accounts 1411, 1415, 1430, 1440, 1495,) during each year of years 2 through 5.

G. Replacement Reserve:

Enter the estimated amount of CGP funds to be allocated to the replacement reserve (development account 1490) in accordance with the requirements of Handbook 7485.3, during each year of years 2 through 5.

H. Total CGP Funds:

Enter the total amount of CGP funds that is estimated to be made available for each year of years 2 through 5. This is the sum of A through G.

I. Total Non-CGP Funds:

Enter the estimated amount of non-CGP funds (e.g., Community Development Block Grant funds, CIAP funds being reprogrammed for use under the CGP, etc.) to be allocated in support of the CGP during each year of years 2 through 5.

J. Grand Total:

Enter the total of H and I. **Note**: Enter all estimates as current cost; not trended for inflation.

Part II: Supporting Pages—Physical Needs

FFY:

Year 1—Enter the current FFY.

Years 2 through 5—Enter each successive FFY.

Development Number/Name—Major Work Category:

Enter the abbreviated development number (e.g., VA 36-1) and name, if any, of each development which will be funded in each year of years 2 through 5.

For each development entered, list the major work categories for which CGP funding, including non-CGP funds, will be allocated in each year of years 2 through 5. The work categories should be described in broad terms, such as kitchens, bathrooms, electrical, site, etc. A work category may encompass various components, e.g., the major work category of kitchens may include ranges, refrigerators, cabinets, floors, range hoods, etc.

Enter "PHA-Wide" in each of years 2 through 5 and list PHA-wide non-dwelling structures and equipment that will be funded.

Estimated Cost:

For each major work category or PHA-wide nondwelling structures and equipment listed, enter the estimated hard cost that will be allocated in each year of years 2 through 5. Mark with an asterisk the estimated cost of each work item that will be funded with non-CGP funds, including reprogrammed CIAP funds.

Enter the subtotal of estimated costs for each year of years 2 through 5 that will be funded with CGP funds excluding asterisked items.

Part III: Supporting Pages—Management Needs

FFY:

Year 1—Enter the current FFY.

Years 2 through 5—Enter each successive FFY.

Major Work Category:

In each year of years 2 through 5, enter the major work categories for which CGP funding, including non-CGP funds, will be allocated as well as those work categories that are no cost items. This includes work identified through the Public Housing Management Assessment Program (PHMAP) for PHAs or the Administrative Capability Assessment (ACA) for IHAs, or through audits, HUD monitoring reviews or PHA self-assessments. The work categories should be described in broad terms, such as improve rent collection. A work category may encompass various components, e.g., staff training, hiring a consultant to develop a rent collection policy, automation, etc. If a particular work category is targeted to a specific development, e.g., conduct study to determine the feasibility of resident management, enter the development number in parenthesis.

Estimated Cost:

For each major work category entered, enter the estimated cost that will be allocated in each year of years 2 through 5 Mark with an asterisk the estimated cost of each work item that will be funded with non-CGP funds, including reprogrammed CIAP funds. Enter the subtotal for each year of years 2 through 5, excluding asterisked items. This subtotal should not exceed the total of C on the Part I: Summary for each year of Years 2 through 5.

Two-Year or Partial Two-Year Annual Statement:

If the PHA chooses to complete a two-year Annual Statement, the PHA shall enter a cross-reference to the Annual Statement on the Action Plan for year two.

If the PHA chooses to complete an Annual Statement for the second year covering a portion of the funds, the PHA shall cross-reference the funds covered by the partial Annual Statement and enter the information for the balance of the funds, as required on the Action Plan for year two.

Local Government Statement

Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577–0157 (Exp. 7/31/95)

Public Reporting Burden for this collection of information is estimated to average 0.1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

As Chief Executive Officer of the unit of general local government/Indian tribe

known as _____

in which the (name of Public Housing Agency (PHA) or Indian Housing Authority (IHA)) _____

_____ operates.

I certify to the following:

1. The PHA/IHA developed the Comprehensive Plan/Annual Statement in consultation with local government officials/Indian tribal officials and with residents of the developments covered by the Comprehensive Plan/Annual Statement, in accordance with the requirements of the Comprehensive Grant Program;

2a. For PHAs, the Comprehensive Plan/Annual Statement is consistent with the unit of general local government's assessment of its low-income housing needs (as evidenced by its Comprehensive Housing Affordability Strategy (CHAS) under 24 CFR Part 91, if applicable), and that the unit of general local government will cooperate in providing resident programs and services; or

2b. For IHAs, the Comprehensive Plan/Annual Statement is consistent with the appropriate governing body's assessment of its low-income housing needs and that the appropriate governing body will cooperate in providing resident programs and services; and

3. The PHA's/IHA's proposed drug elimination activities are coordinated with and supportive of local drug elimination strategies and neighborhood improvement programs, if applicable. Under the Cooperation Agreement, the local/tribal government is providing public services and facilities of the same character and to the same extent to Public and Indian housing as are furnished to other dwellings and residents of the locality. Where additional on-duty police are being funded under the Comprehensive Grant Program, such police will only provide additional security and protective services over and above those for which the local/tribal government is contractually obligated to provide under the Cooperation Agreement.

Note: The Comprehensive Plan includes the Action Plan.

Name of Chief Executive Officer:	Signature of Chief Executive Officer and Date:
	X

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

form **HUD-52835** (2/92)
ref Handbook 7485.3

PHA/IHA Board Resolution Approving Comprehensive Plan or Annual Statement

Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577–0157 (Exp. 7/31/95)

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Acting on behalf of the Board of Commissioners of the below-named Public Housing Agency (PHA)/Indian Housing Authority (IHA), as its Chairman, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the Board's approval of (check one or more as applicable):

☐ Comprehensive Plan Submitted on _____ ☐ Amendments to Comprehensive Plan Submitted on _____

☐ Action Plan / Annual Statement Submitted on _____ ☐ Amendments to Action Plan / Annual Statement Submitted on _____

I certify on behalf of the: (PHA/IHA Name) _____ that:

1. The PHA/IHA will comply with all policies, procedures, and requirements prescribed by HUD for modernization, including implementation of the modernization in a timely, efficient, and economical manner;
2. The PHA/IHA has established controls to ensure that any activity funded by the CGP is not also funded by any other HUD program, thereby preventing duplicate funding of any activity;
3. The PHA/IHA will not provide to any development more assistance under the CGP than is necessary to provide affordable housing, after taking into account other government assistance provided;
4. The proposed physical work will meet the modernization and energy conservation standards under 24 CFR 968.115 or 24 CFR 905.603;
5. The proposed activities, obligations and expenditures in the Annual Statement are consistent with the proposed or approved Comprehensive Plan of the PHA/IHA;
6. The PHA/IHA will comply with applicable civil rights requirements under 24 CFR 968.110(a) or 24 CFR 905.115, and, where applicable, will carry out the Comprehensive Plan in conformity with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and Section 504 of the Rehabilitation Act of 1973;
7. The PHA has adopted the goal of awarding a specified percentage of the dollar value of the total of the modernization contracts, to be awarded during subsequent FFYs, to minority business enterprises and will take appropriate affirmative action to assist resident-controlled and women's business enterprises under 24 CFR 968.110(b); or the IHA will, to the greatest extent feasible, give preference to the award of modernization contracts to Indian organizations and Indian-owned economic enterprises under 24 CFR 905.165;
8. The PHA/IHA has provided HUD with any documentation that the Department needs to carry out its review under the National Environmental Policy Act (NEPA) and other related authorities in accordance with 24 CFR 968.110(c), (d) and (m) or 24 CFR 905.120(a), (b), and (j), and will not obligate, in any manner, the expenditure of CGP funds, or otherwise undertake the activities identified in its Comprehensive Plan/Annual Statement, until the PHA/IHA receives written notification from HUD indicating that the Department has complied with its responsibilities under NEPA and other related authorities;
9. The PHA/IHA will comply with the wage rate requirements under 24 CFR 968.110(e) and (f) or 24 CFR 905.120(c) and (d);
10. The PHA/IHA will comply with the relocation assistance and real property acquisition requirements under 24 CFR 968.110(g) or 24 CFR 905.120(e);
11. The PHA/IHA will comply with the requirements for physical accessibility under 24 CFR 968.110(h) or 24 CFR 905.120(f);
12. The PHA/IHA will comply with the requirements for access to records and audits under 24 CFR 968.110(i) or 24 CFR 905.120(g);
13. The PHA/IHA will comply with the uniform administrative requirements under 24 CFR 968.110(j) or 24 CFR 905.120(h);
14. The PHA/IHA will comply with lead-based paint testing and abatement requirements under 24 CFR 968.110(k) or 24 CFR 905.120(i);
15. The PHA/IHA has complied with the requirements governing local/tribal government and resident participation in accordance with 24 CFR 968.320(b) and (c), 968.330(d) and 968.340 or 24 CFR 905.672(b) and (c), 905.678(d) and 905.684, and has given full consideration to the priorities and concerns of local/tribal government and residents, including any comments which were ultimately not adopted, in preparing the Comprehensive Plan/Annual Statement and any amendments thereto;
16. The PHA/IHA will comply with the special requirements of 24 CFR 968.310(d) or 24 CFR 905.666(d) with respect to a homeownership development; and
17. The PHA will comply with the special requirements of 24 CFR 968.235 with respect to a Section 23 leased housing bond-financed development.

Attested By: Board Chairman's Name:	(Seal)
Board Chairman's Signature & Date:	
X	

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

form **HUD-52836** (2/92)
ref Handbook 7485.3

Annual Statement / Performance and Evaluation Report
Part I: Summary
Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0157 (Exp. 7/31/95)

Public Reporting Burden for this collection of information is estimated to average 75.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

PHA/IHA Name	Comprehensive Grant Number	FFY of Grant Approval

☐ Original Annual Statement ☐ Reserve for Disasters/Emergencies ☐ Revised Annual Statement/Revision Number _____ ☐ Performance and Evaluation Report for Program Year Ending _____

Line No	Summary by Development Account	Total Estimated Cost 3/		Actual Cost 3/	
		Original	Revised	Obligated	Expended
1	Total Non-CGP Funds				
2	1408 Management Improvements 1/				
3	1410 Administration 2/				
4	1411 Audit				
5	1415 Liquidated Damages				
6	1430 Fees and Costs				
7	1440 Site Acquisition				
8	1450 Site Improvement				
9	1460 Dwelling Structures				
10	1465.1 Dwelling Equipment—Nonexpendable				
11	1470 Nondwelling Structures				
12	1475 Nondwelling Equipment				
13	1495.1 Relocation Costs				
14	1490 Replacement Reserve				
15	**Amount of Annual Grant (Sum of lines 2-14)**				
16	Amount of line 15 Related to LBP Testing				
17	Amount of line 15 Related to LBP Abatement				
18	Amount of line 15 Related to Section 504 Compliance				

1/ Management Improvement cost may not exceed 10% of line 15.
2/ Administrative cost may not exceed 7% of line 15 (or 9% of line 15 for PHAs/IHAs having an unusually large geographic area). 3/ to be completed at the end of the year.

Signature of Executive Director and Date	Signature of Field Office Manager (or Regional Administrator in co-located office) and Date
X	X

form **HUD-52837** (2/92)
ref Handbook 7485.3

Annual Statement / Performance and Evaluation Report
Part II: Supporting Pages
Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Development Number / Name	General Description of Proposed Work Items	Development Account Number	Estimated Cost			Funds Obligated 3/	Funds Expended 3/	Status of Proposed Work 3/
			Original	Revised 3/	Difference 3/			

3/ To be completed at the end of the program year.

form **HUD-52837**

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Annual Statement / Performance and Evaluation Report
Part III: Implementation Schedule
Comprehensive Grant Program (CGP)

Development Number / Name	Funds Obligated End of Quarter			Funds Expended End of Quarter			Reasons for Revised Target Dates 3
	Original	Revised 3	Actual 3	Original	Revised 3	Actual 3	

3 To be completed at the end of the program year

form HUD-52837

Page ___ of ___

Instructions for Preparation of Form HUD-52837, Annual Statement/Performance and Evaluation Report

Report Submission:

For the Annual Statement:

Prepare a separate Form HUD-52837 (Parts I, II and III) for each annual formula grant, describing the activities which are planned to be undertaken with the Comprehensive Grant Program (CGP) funds. Submit this form to HUD as part of the submission of the original Comprehensive Plan and annually thereafter. On an as-needed basis, submit a revised form when major changes require prior HUD approval to amend the Annual Statement.

Prepare a separate Form HUD-52837 (Parts I, II and III) for emergency funding under the annual formula grant where there is no approved Comprehensive Plan.

Prepare a separate Form HUD-52837 (Parts I, II and III) for each funding request from the $75 million reserve for natural and other disasters and emergencies.

Where the PHA elects to submit an Annual Statement covering up to a two-year period, prepare a separate Form HUD-52837 (Part II only) for year two. A separate Part I and Part III covering year two are not required.

For the Performance and Evaluation Report:

At the end of each program year, complete the sections of Parts I, II and III as noted in footnote 3 on a copy of the original or revised Annual Statement and mark the box Performance and Evaluation Report for Program Year Ending _____. Submit the form(s) to HUD, together with the narrative report on resident and local/tribal government participation and other required items. Continue reporting at the end of each program year, until all funds are expended.

Part I: Summary

Heading Instructions:

PHA/IHA Name - Enter the Public Housing Agency (PHA)/Indian Housing Authority (IHA) name.

Comprehensive Grant Number - Enter the unique Comprehensive Grant number designated for the annual grant. This number is an 11-digit alpha numeric code as follows: two-digit State code (alpha); two-digit Field Office code (numeric); P for Public Housing or B for Indian Housing; three-digit PHA/IHA number (numeric); and three-digit Grant number. The first Comprehensive Grant approved under the CGP shall be 701; e.g., VA05P036701. The second Comprehensive Grant approved under the CGP shall be 702; e.g., VA05P036702. Any funding from the $75 million reserve for natural and other disasters and emergencies shall be given a separate Comprehensive Grant number from the PHA's/IHA's annual formula funding.

FFY of Grant Approval - Enter the FFY in which the grant is being approved/was approved.

Type of Submission - Check the appropriate box and indicate whether the submission is the Original Annual Statement for the annual formula grant or for the $75 million reserve for natural and other disasters and emergencies, the Revised Annual Statement (and revision number), or the Performance and Evaluation Report for Program Year Ending (enter date, e.g., 6/30/93).

Total Estimated Cost:

Line 1 - Enter the Original Total Estimated Cost, rounded to the nearest thousand dollars, for all work that will be undertaken from non-CGP funds, including CIAP funds being reprogrammed for CGP purposes. Enter zero if no work will be undertaken from non-CGP funds. After initial approval by HUD, enter any cost decrease or increase in the Revised Total Estimated Cost column whenever a revised Annual Statement is submitted to HUD for review and approval.

Lines 2 through 14 - For each line, enter the Original Total Estimated Cost, rounded to the nearest thousand dollars, for all work that will be undertaken from the annual formula grant or the $75 million reserve. Enter zero if no work will be undertaken in a particular development account. After initial approval by HUD, enter any cost decrease or increase in the Revised Total Estimated Cost column whenever a revised Annual Statement is submitted to HUD for review and approval.

Line 15 - Amount of Annual Grant - Enter the sum of lines 2 through 14 in the Original Total Estimated Cost column. After initial approval by HUD, the sum of lines 2 through 14 in the Revised Total Estimated Cost column may not exceed line 15 in the Original Total Estimated Cost column.

Line 16 - Amount of line 15 Related to Lead-Based Paint (LBP) Testing - Enter the amount of line 15 related to LBP testing in the Original Total Estimated Cost column and, as appropriate, in the Revised Total Estimated Cost column.

Line 17 - Amount of line 15 Related to LBP Abatement - Enter the amount of line 15 related to LBP abatement in the Original Total Estimated Cost column and, as appropriate, in the Revised Total Estimated Cost column. For example, if windows are being replaced, estimate the portion of the funding which is directly related to LBP abatement.

Line 18 - Amount of line 15 Related to Section 504 Compliance - Enter the amount of line 15 related to Section 504 compliance in the Original Total Estimated Cost column and, as appropriate, in the Revised Total Estimated Cost column.

Actual Cost:

At the end of the CGP program year, i.e., 6/30, for each annual grant with a separate Comprehensive Grant Number for which funds are still being expended, complete the section on Actual Cost.

Lines 1 through 18 - For each line, enter the Actual Cost of funds Obligated and Expended at the end of the CGP program year.

Line 15 - Enter the sum of lines 2 through 14 for obligated and expended.

Part II: Supporting Pages

Development Number/Name - Enter the abbreviated number (e.g., VA-36-1) and the name, if any, of the development where the work items will be undertaken. Enter "PHA-wide" for work items that relate to a PHA-wide activity (e.g., management improvements, administration, non- dwelling equipment).

General Description of Proposed Work Items - For each development listed, enter a general description of all work items (physical or management, as applicable) that will be undertaken at that development, including work that will be funded with non-CGP funds and no cost items, before listing work items to be undertaken at other developments. Identify work items that will be accomplished by Force Account labor by entering (FA) in parenthesis next to the work item. After listing all work items for all developments being funded, enter a general description of PHA-wide activities, such as management improvements, administrative costs, equipment, etc. When work items are subsequently deleted, draw a line through the General Description, Development Account Number, and Estimated Cost. When work items are subsequently added, enter the new work item under the appropriate development number. Enter the quantity of the work as a percentage or whole number. Do not specify the per unit cost or the quality of materials. **Note:** Describe administrative costs in sufficient detail to clearly identify items excluded from the 7% limitation.

Development Account Number - For work items that will be funded from CGP funds, enter the appropriate development account which corresponds to the work item described under the General Description of Proposed Work Items column. For appropriate development accounts, refer to Handbook 7485.3. Where funding will be provided from non-CGP sources, or the work is a no cost item, enter "NA".

Estimated Cost:

Original-For each work item and PHA-wide activity described, enter the Original Estimated Cost. Asterisk the estimated cost of each work item that will be funded with non-CGP funds, including reprogrammed CIAP funds. After listing the estimated cost for all work items at a particular development, enter a subtotal of the estimated cost of only the work items that will be funded from the current year's CGP grant. (**Note**: Do not count costs that have been asterisked in this subtotal). Enter a grand total for Part II of only the work items and PHA-wide activities that will be funded with the current year's CGP grant.

Revised-Where the estimated cost is revised, enter a Revised Estimated Cost as appropriate.

Difference-Enter the difference between the Original and Revised Estimated Costs. If the cost increases, put a plus (+) in front of the dollar amount. If the cost decreases, put a minus (-) in front of the dollar amount. When a new work item is subsequently added, show the estimated cost in the revised column and in the column marked difference. Put a plus (+) in front of the dollar amount unless that item is in an approved two-year or partial two-year Annual Statement. When a work item is subsequently deleted, show the original estimated cost in the column marked difference and put a minus (-) in front of the dollar amount. Each time there is an increase or decrease in the dollar amount for a particular work item, it must be offset by a corresponding increase or decrease in another work item so that the total revised estimated cost is equal to the amount of the annual grant. When the cumulative total of additions equals or exceeds 10%, obtain prior HUD approval before awarding a contract for work that results in the major change. When this occurs, asterisk the work item and complete this form with the appropriate modifications and mark the box Revised Annual Statement/ Revision Number _____.

Funds Obligated-Funds Expended - At the end of each CGP program year for each annual grant with a separate Comprehensive Grant Number for which funds are still being expended, complete the section on Funds Obligated and Funds Expended.

Funds Obligated - In this column, for each development listed, enter the cumulative dollar amount of all funds obligated for that development (round to the nearest thousand) opposite the Original Estimated Cost subtotal. This includes funds obligated by the PHA/IHA for work to be performed by contract labor (i.e., contract award) and force account labor (i.e., work actually started). Funds that are recorded as being obligated shall remain obligated so that total funds obligated are always greater than or equal to total funds expended. Total funds obligated shall not exceed the amount of the annual grant. For each PHA-wide activity listed, enter the total amount of all funds obligated for that activity (round to the nearest thousand) opposite the Original Estimated Cost subtotal.

Funds Expended - In this column, for each development listed, enter the cumulative dollar amount of all funds expended for that development (round to the nearest thousand) opposite the Original Estimated Cost subtotal. For each PHA-wide activity listed, enter the dollar amount of funds expended for that activity (round to the nearest thousand) opposite the Original Estimated Cost subtotal.

Status of Proposed Work - At the end of each program year, complete this section and submit to HUD for the Performance and Evaluation Report. For each work item listed, prepare a brief description of the status of the item, e.g., work completed, contract awarded on 5/2/93, etc. Explain the addition, deletion or modification of any work items, such as the addition of any emergency work, and deviations within the 10% cap for major changes to the Annual Statement, any shifting of work from year two to year one of the approved Annual Statement.

Part III: Implementation Schedule:

Development Number/Name - Enter the abbreviated number(e.g., VA 36-1) and the name, if any, of each development listed on Part II. Enter "PHA-wide" for work items that relate to PHA-wide management improvements.

Implementation Schedule - Funds Obligated - Opposite each development and for each PHA-wide management improvement, enter the estimated quarter ending date for obligation of all funds under the Original column. (Note: - Provide an implementation schedule only for PHA-wide management improvements not for other PHA-wide activities, (e.g, administration, non-dwelling equipment). After initial approval by HUD, enter any revised quarter ending date for obligation of all funds under the Revised column. When all funds are obligated, enter the quarter ending date under the Actual column.

Implementation Schedule - Funds Expended - Opposite each development and for each PHA-wide management improvement, enter the estimated quarter ending date for expenditure of all funds under the Original column. (Note: - Provide an implementation schedule only for PHA-wide management improvements not for other PHA-wide activities (e.g., administration, non-dwelling equipment). After initial approval by HUD, enter any revised quarter ending date for expenditure of all funds under the Revised column. When all funds are expended, enter the quarter ending date under the Actual column.

Reasons for Revised Target Date - Explain any revisions to the target dates for fund obligation or expenditure by specifying the valid delay outside of the PHA's control.

form **HUD-52837**

Actual Comprehensive Grant Cost Certificate

Comprehensive Grant Program (CGP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0157 (Exp. 7/31/95)

Public Reporting Burden for this collection of information is estimated to average 5.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

PHA/IHA Name	Comprehensive Grant Number
	FFY of Grant Approval

The PHA/IHA hereby certifies to the Department of Housing and Urban Development as follows:

1. That the total amount of Modernization Cost (herein called the "Actual Modernization Cost") of the Comprehensive Grant, is as shown below:

A. Original Funds Approved	$
B. Revised Funds Approved	$
C. Funds Advanced	$
D. Funds Expended (Actual Modernization Cost)	$
E. Amount to be Recaptured (A–D)	$
F. Excess of Funds Advanced (C–D)	$

2. That all modernization work in connection with the Comprehensive Grant has been completed;

3. That the entire Actual Modernization Cost or liabilities therefor incurred by the PHA/IHA have been fully paid;

4. That there are no undischarged mechanics', laborers', contractors', or material-men's liens against such modernization work on file in any public office where the same should be filed in order to be valid against such modernization work; and

5. That the time in which such liens could be filed has expired.

Signature of Executive Director	Date
X	

For HUD Use Only

The Cost Certificate is approved for audit.

Approved for Audit (Director, Public Housing Division)	Date
X	

The audited costs agree with the costs shown above.

Verified (Director, Public Housing Division)	Date
X	
Approved (Field Office Manager or, in co-located office, Regional Administrator)	Date
X	

form **HUD-52839** (2/92)
ref Handbook 7485.3

Instructions for Preparation of Form HUD-52839—Actual Comprehensive Grant Cost Certificate

General Instructions:

Prepare and submit to the HUD Field Office an original and one copy of Form HUD-52839 for each terminated or completed annual grant under the Comprehensive Grant Program (CGP).

Heading Instructions:

PHA/IHA Name—Enter the Public Housing Agency (PHA)/Indian Housing Authority (IHA) name.

Comprehensive Grant Number—Enter the unique Comprehensive Grant Number for the grant for which this form is being submitted. This number is the same number as on Form HUD-52837, Annual Statement, for the same grant.

Federal Fiscal Year of Grant Approval—Enter the FFY in which the annual grant was originally approved.

Line Instructions:

Line 1A, Original Funds Approved—For the identified grant, enter the total CGP funds originally approved by HUD through a CGP Amendment to the Consolidated Annual Contributions Contract(s).

Line 1B, Revised Funds Approved—For the identified grant, enter the total revised CGP funds approved by HUD. This amount will generally be the same as the amount on Line 1A. This amount will be less than the amount on Line 1A where HUD is terminating the grant or otherwise recapturing grant funds.

Line 1C, Funds Advanced—For the identified grant, enter the total funds advanced by HUD. This amount may never exceed the amount on Line 1A and should be the same amount as on Line 1B.

Line 1D, Funds Expended—For the identified grant, enter the total funds expended (total cash disbursed) by the PHA/IHA. This amount may never exceed the amount on Line 1A and should be the same amount as on Line 1B.

Line 1E, Amount To Be Recaptured (A minus D)—For the identified grant, enter the amount to be recaptured by subtracting Line 1D from Line 1A.

Line 1F, Excess of Funds Advanced (C minus D)—For the identified grant, enter the excess of funds advanced by subtracting Line 1D from Line 1C; this is the amount to be remitted by the PHA/IHA to HUD. If Line 1D is greater than Line 1C, enter the figure in brackets; this is the amount of funds owed by HUD to the PHA/IHA.

Comprehensive Grant Program (CGP) Amendment

To Consolidated Annual Contributions Contract or
To Mutual Help Consolidated Annual Contributions Contract

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0157 (Exp. 7/31/95)

Public Reporting Burden for this collection of information is estimated to average 0.1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

Whereas, (Public Housing Agency / Indian Housing Authority) _____

_____ (herein called the "PHA/IHA") and the United States of America, Secretary of Housing and Urban Development (herein called "HUD") entered into Consolidated Annual Contributions Contract(s) (ACC) Number(s) _____

_____,

dated _____ ; and/or Mutual Help Consolidated ACC(s) Number(s) _____

_____,

dated _____ (herein called the "ACCs");

Whereas, HUD has agreed to provide comprehensive grant assistance, upon execution of this Amendment, to the PHA/IHA in the amount to be specified below for the purpose of assisting the PHA/IHA in financing improvements to the physical condition of existing public/Indian housing developments and upgrades to the management and operation of such developments in order to ensure that such developments continue to be available to serve low-income families:

$ _____ for Fiscal Year 19 _____
(the amount of comprehensive grant funds previously approved);

$ _____ for Fiscal Year 19 _____ for a combined
(the amount of comprehensive grant funds now being approved);

total of $ _____ ; to be referred to under Comprehensive Grant Number _____ .

Whereas, HUD and the PHA/IHA are entering into this Comprehensive Grant Program Amendment Number _____ .

Now Therefore, the ACCs are amended as follows:

1. The ACCs are amended to provide comprehensive grant assistance in the amounts specified above for modernization of PHA/IHA developments (including section 23 leased-housing bond financed, Mutual Help and Turnkey III). This amendment is a part of the ACCs.
2. The modernization work shall be carried out in accordance with all HUD regulations and other requirements applicable to the Comprehensive Grant Program.
3. In accordance with the HUD regulations, the Comprehensive Plan has been adopted by the PHA/IHA and approved by HUD, and may be amended from time to time. The modernization work shall be carried out as described in the Comprehensive Plan, including the Action Plan.
4. Subject to the provisions of Part II of the ACCs, and to assist in the modernization, HUD agrees to disburse to the PHA/IHA from time to time as needed, up to the amount of funding assistance specified above.
5. The PHA/IHA shall continue to operate each development (for section 23 leased-housing bond financed, after the expiration of the respective lease terms, the PHA shall continue to operate each development) as low-income housing in compliance with the ACCs, as amended, the United States Housing Act of 1937 (the "Act") and all HUD regulations and requirements for a period of twenty years after the last disbursement of comprehensive grant assistance. However, the provisions of Section 308(B) and (C) of the ACC (Article 14.2 of the Mutual Help Consolidated ACC) shall remain in effect for so long as HUD determines there is any outstanding indebtedness of the PHA/IHA to HUD which arose in connection with any development(s) under the ACCs and which is not eligible for forgiveness, and provided further that, for a period of ten years following the last payment of operating subsidy to the PHA/IHA, no disposition of any development covered by this amendment shall occur unless approved by HUD.
6. Section 404 of Part II of the ACC (Article 4.2 of the Mutual Help Consolidated ACC) shall not be applicable to the Comprehensive Grant.

7. If the PHA/IHA does not comply with any of its obligations under this Amendment, HUD may direct the PHA/IHA to terminate all work described in the Annual Statement. In such case, the PHA/IHA shall only incur additional costs with HUD approval.

8. Implementation or use of funding assistance provided under this Amendment is subject to attached corrective action order(s)

(mark one): ☐ Yes ☐ No

9. The Grantee acknowledges its responsibility for adherence to this Amendment by subgrantees to which it makes funding assistance hereunder available.

The parties have caused this Amendment to be effective as of the date of execution on behalf of the United States, as stated below.

U.S. Department of Housing and Urban Development By: Date:

Title:

PHA/IHA Executive Director By: Date:

Title:

Annual Statement/Performance and Evaluation Report on Replacement Reserve

Comprehensive Grant Program (CGP)

U. S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0157 (exp 7/31/95)

Public reporting burden for this collection of information is estimated to average 5.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157) Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Part I: Summary

PHA/IHA Name:

Submission: (mark one)
☐ Original Annual Statement ☐ Revised Ann. Statement/Revision No.
☐ Performance & Evaluation for Program Year ending:

Section 1: Replacement Reserve Status Must be completed each year there is balance in the replacement reserve	Estimated	Actual
1. Current Year Replacement Reserve Interest Earned (account 6200/1420.7)		
2. Current Year Replacement Reserve Withdrawal (equals line 13 of section 2, below)		
3. Net Impact on Replacement Reserve (line 1 minus line 2; equals line 15 of section 2, below)		
4. Current Year Funding for Replacement Reserve (line 14 of form HUD-52837)		
5. Replacement Reserve Balance at End of Previous Program Year (account 2830)		
6. Replacement Reserve Balance at End of Current Program Year (line 4 + line 5 + (or -) line 3) (account 2830)		

Section 2: Replacement Reserve Withdrawal Report Complete this section if there is Withdrawal/Expenditure activity	Current Program Year Estimated Cost		Current Program Year Actual Cost
Summary by Account (6200 subaccount)	Column 1 Original	Column 2 Revised	Column 3 Expended
1. Reserved			
2. 1408 Management Improvements			
3. 1410 Administration			
4. 1415 Liquidated Damages			
5. 1430 Fees & Costs			
6. 1440 Site Acquisition			
7. 1450 Sites Improvements			
8. 1460 Dwelling Structures			
9. 1465 Dwelling Structures/Equipment			
10. 1470 Nondwelling Structures			
11. 1475 Nondwelling Equipment			
12. 1495 Relocation Costs			
13. Replacement Reserve Withdrawal (sum of lines 2 -12)			
14. 1420.7 Replacement Reserve Interest Income	( )	( )	( )
15. Net Withdrawal from Replacement Reserve (lines 13 - 14)			
16. Amount of line 13 related to LBP Testing			
17. Amount of line 13 related to LBP Abatement			
18. Amount of line 13 related to Section 504 Compliance			
19. Amount of line 13 related to Emergencies			

Signature of the Executive Director & Date:
X

Signature of the Field Office Manager & Date:
(or, in co-located offices, the Regional Administrator)
X

form HUD-52842 (2/92)
ref. Handbook 7485.3

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Annual Statement / Performance and Evaluation Report on Replacement Reserve
Part II: Supporting Pages
Comprehensive Grant Program (CGP)

Development Number / Name	General Description of Proposed Work Items	Development Number / Name	Estimated Cost Original	Estimated Cost Revised 2/	Difference 2/	Funds Obligated 2/	Funds Expended 2/	Status of Proposed Work 2/

2/ To be completed at the end of the program year.

Page ___ of ___

form HUD-52842 (2/92)

Instructions
Annual Statement/Performance and Evaluation Report on Replacement Reserve

For the Annual Statement:

Prepare form HUD-52842 once the CGP replacement reserve has been established by the PHA / IHA and funded by HUD. Submit one form HUD-52842 annually with form HUD-52837, Annual Statement/ Performance and Evaluation Report, as long as the PHA/IHA maintains a balance in the replacement reserve or has withdrawal/expenditure activity from the replacement reserve.

Form HUD-52482 is divided into two parts. Section 1 of Part I (Replacement Reserve Status) provides a report of the current year interest earned, current year withdrawals, current year funding of the replacement reserve, and ending balance of the replacement reserve. Section 2 of Part I (Replacement Reserve Withdrawal Report) is only completed if the PHA has withdrawn from the replacement reserve or has expenditure activity. Part II is the same format as Part II of form HUD-52837 and provides a current year report by development account of the use of the replacement reserve withdrawal(s).

For the Performance and Evaluation Report:

At the end of each program year, complete the actual columns for Part I and Part II, where there has been expenditure activity.

Part I: Summary

PHA/IHA Name - Enter the Public Housing Agency (PHA)/Indian Housing Authority (IHA) name.

Type of Submission - Check the appropriate box to indicate whether the submission is the Original Annual Statement, the Revised Annual Statement (and revision number), or the Performance and Evaluation Report for Program Year Ending (enter date; e.g., 6/30/93).

Section 1 - Replacement Reserve Status:

Line 1 - Current Year Replacement Reserve Interest Earned (Account 6200/1420.7) - Enter the estimated amount of interest to be earned on the replacement reserve during the current program year in the "Estimated" column. If Section 2 is completed, this amount must equal Line 14, Column 1 (or 2, if applicable) of Section 2. At the end of the program year, enter the actual interest earned in the "Actual" column. This amount must equal Line 14, Column 3 of Section 2.

Line 2 - Current Year Replacement Reserve Withdrawal - Enter the estimated amount to be withdrawn from the replacement reserve during the current program year in the "Estimated" column. If Section 2 is completed, this amount must equal Line 13, Column 1 (or 2, if applicable) of Section II. At the end of the program year, enter the actual withdrawal amount in the "Actual" column. This amount must equal Line 13, Column 3 of Section 2.

Line 3 - Net Impact on Replacement Reserve - Enter the difference between Line 1 & Line 2. Amount must equal Line15, Section 2.

Line 4 - Current Year Funding for Replacement Reserve - Enter the amount of the increase to the replacement reserve in the appropriate column. This amount must equal Line 14 of Part I of form HUD-52837.

Line 5 - Replacement Reserve Balance at End of Previous Program Year - Enter the replacement reserve balance from the previous program year (Account 2830). This amount will be the same for the "Estimated" and "Actual" columns.

Line 6 - Replacement Reserve Balance at End of Current Program Year - Enter the sum of Lines 4 and 5,plus or minus Line 3. For the "Actual" column, the number entered must agree with the year end closing balance of the replacement reserve.

Section 2 - Replacement Reserve Withdrawal Report

Must be completed if replacement reserve funds have been withdrawn in current year.

Line 1 - Reserved - Do not use at this time.

Lines 2 - 12 - Summary by Account

Column 1 - Original Current Program Year Estimated Cost -

For each line, enter the original current program year estimated cost for all work to be undertaken in a particular development account as a result of the current year withdrawal of funds from the replacement reserve.

Column 2 - Revised Current Program Year Estimated Cost -

For each line, enter any current program year cost decrease or increase after initial approval by HUD.

Column 3 - Expended Current Program Year Actual Cost -

For each Line, enter the actual amount of funds expended as of the end of the current program year. **Note**: If the amount expended in Column 3 is less than the budgeted amount in Column 1 (or 2, if applicable), then the PHA shall include the unexpended amount in the subsequent years estimate or provide an explanation of the change from the estimate.

Line 13 - Replacement Reserve Withdrawal - Enter the sum of lines 2 through 12. The amount in Column 1 (or 2, if applicable) must equal the estimated amount entered on Line 2 of Section 1. The amount entered in Column 3 must equal the actual amount entered on Line 2 of Section 1.

Line 14 - Replacement Reserve Interest Income - Enter the interest income earned on replacement reserve (bracketed). The amount entered in Column 1 (or 2, if applicable) must equal the estimated amount entered on Line 1 of Section 1. The amount entered in Column 3 must equal the actual amount entered on Line 1 of Section 1.

Line 15 - Net Withdrawal from Replacement Reserve - Subtract from Line 13, the amount inside the brackets on Line 14 and enter on Line 15. The amount in Column 1 (or 2, if applicable) must equal the estimated amount of Line 3 of Section 1. The amount entered in Column 3 must equal the actual amount entered on Line 3 of Section 1.

Sample:
Line 13 - Replacement Reserve Withdrawal. $10,000
Line 14 - Replacement Reserve Interest Income ..... (500)
Line 15 - Net Withdrawal from Replacement Reserve. $ 9,500

Line 16 - Amount of Line 13 Related to Lead-Based Paint (LBP) Testing - Enter the amount of line 13 related to LBP testing in Column 1 (or 2, if applicable). At the end of the program year, enter the actual amount in Column 3.

Line 17 - Amount of Line 13 Related to LBP Abatement - Enter the amount of line 13 related to LBP abatement in Column 1 (or 2, if applicable). For example, if windows are being replaced, estimate the portion of the funding which is directly related to LBP abatement. At the end of the program year, enter the actual amount in column 3.

Line 18 - Amount of line 13 Related to Section 504 Compliance - Enter the amount of line 13 related to Section 504 compliance in the Original Total Estimated Cost column and, as appropriate, in the Revised Total Estimated Cost column.

Line 19 - The PHA/IHA shall exhaust its replacement reserve before being eligible to apply for funding for emergencies from the $75 million set-aside. Where applicable, enter the amount of the replacement reserve to be used for emergencies in Column 1 (or 2, if applicable. At the end of the program year, enter the actual amount in Column 3.

Part II: Supporting Pages

Development Number/Name - Enter the abbreviated code (e.g., VA-36-1) and the name, if any, of the development where the work items will be undertaken. Enter "PHA-wide" for work items that relate to a PHA-Wide activity (e.g., management improvements, administration, nondwelling equipment).

Geeral Description of Proposed Work Items - For each development listed, enter a general description of all work items (physical or management, as applicable) that will be undertaken at that development, with replacement reserve funds, before listing work items to be undertaken at other developments. After listing all work items for all developments being funded from the replacement reserve, enter a general description of PHA-wide activities, such as management improvements, administrative costs, equipment, etc. When work items are subsequently deleted, draw a line through the General Description, Development Account Number, and Estimated Cost. When work items are subsequently added, enter the new work item under the appropriate development number. Enter the quantity of the work as a percentage or whole number. Do not specify the per unit cost or the quality of materials.

Development Account Number - For work items that will be funded from replacement reserve funds, enter the appropriate development account which corresponds to the work item described under the General Description of Proposed Work Items column. For appropriate development accounts, refer to Handbook 7485.3.

Estimated Cost - For each work item and PHA-wide activity described, enter the Original Estimated Cost. Then enter a subtotal for each development and a grand total for Part II.

Where the estimated cost is revised, enter a Revised Estimated Cost as appropriate.

Enter the difference between the Original and Revised Estimated Costs. If the cost increases, put a plus (+) in front of the dollar amount. If the cost decreases, put a minus (-) in front the dollar amount.

Status of Proposed Work - At the end of each program year, complete this section and submit to HUD for the Performance and Evaluation Report. For each work item listed, prepare a brief description of the status of the item, e.g., work completed, contract awarded on 5/2/93, etc. Explain the addition, deletion or modification of any work items, such as the addition of any emergency work.

[FR Doc. 02–25731 Filed 10–9–02; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–43]

Notice of Proposed Information Collection: Comment Request; Multifamily Project Applications and Review of Applications—Lender Processing

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection information; (3) Enhance the quality,utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those whoa re to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Multifamily Project Applications and Review of applications—Lender Processing.

OMB Control Number, if applicable: 2502–0331.

Description of the need for the information and proposed use: The Multifamily Accelerated Processing (MAP) lender completes and submits these information collections to HUD for multifamily properties needing FHA insurance. These information collections include data that supports the Fair Market and budget Construction Cost.

Agency Form numbers, if applicable: HUD–92264, HUD–92264A, HUD–92264T, HUD–92273, HUD–92274, HUD–92236, HUD–92331, HUD–92485, and HUD–92329.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare this information collection is 60,605; the number of respondents is 230 generating approximately 2,415 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response varies from one hour to 114 hours.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 2, 2002.

John C. Weicher,

Assistant Secretary for Housing–Federal Housing Commissioner.

[FR Doc. 02–25732 Filed 10–9–02; 8:45 am]
BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Environmental Assessment and Application for an Incidental Take Permit for the Multiple Species Conservation Program, Chula Vista, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; notice of receipt.

SUMMARY: The City of Chula Vista, California, has applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed 50 year permit would authorize incidental take of 13 threatened or endangered animal species, one animal species proposed to be listed as threatened, and 26 currently unlisted animal species of concern in the event that these species become listed during the term of the permit. The permit would also "cover" 14 listed plant species, the take of which is not prohibited under federal law, in recognition of the conservation benefits provided to these species under the Subarea Plan. The permit application includes the Multiple Species Conservation Program (MSCP) Subarea Plan for the City of Chula Vista, an Implementing Agreement that serves as a legal agreement, Draft Implementing Ordinances, and additional supporting documents.

Pursuant to the National Environmental Policy Act, a draft Environmental Assessment for our proposed action of issuing a permit to the City of Chula Vista is also available for public review. This assessment was combined in one document with a draft Supplemental Environmental Impact Report to satisfy requirements of the California Environmental Quality Act. We request comments on this document and the permit application documents.

DATES: We must receive your written comments on or before December 9, 2002.

ADDRESSES: Send comments to Mr. Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008. You may also submit comments by facsimile to (760) 431–9624.

FOR FURTHER INFORMATION CONTACT: Mr. Gjon Hazard, Fish and Wildlife Biologist, at the above address; telephone (760) 431–9440, extension 287.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may request copies of the documents by contacting the Carlsbad Fish and Wildlife Office (see **ADDRESSES**). You also may view the documents, by appointment, during normal business hours (8 a.m. to 5 p.m.), Monday through Friday at this same address. Alternatively, you may view the documents at the following

locations within the City of Chula Vista: Chula Vista Planning Department, 276 Fourth Avenue; Chula Vista Main Library, 365 F Street; Eastlake Branch Library, 1120 Eastlake Parkway; and South Chula Vista Library, 389 Orange Avenue.

Background

Section 9 of the Act and Federal regulation prohibit the "take" of animal species listed as endangered or threatened. That is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). "Harm" is defined by regulation to include significant habitat modification or degradation that actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). Under certain circumstances, we may issue permits to authorize "incidental" take of listed animal species (defined by the Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing permits for threatened and endangered species are at 50 CFR 17.32 and 50 CFR 17.22, respectively.

The City of Chula Vista is seeking a 50-year incidental take permit from us for 86 species on approximately 3,754 acres of habitat within the 33,045-acre Chula Vista Subarea (24,601 acres of which are already developed or non-habitat lands). The proposed permit would authorize incidental take of nine endangered and three threatened animal species: Riverside fairy shrimp (*Streptocephalus wootoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Quino checkerspot butterfly (*Euphydryas editha quino*), arroyo toad (*Bufo californicus*), California brown pelican (*Pelecanus occidentalis californicus*), light-footed clapper rail (*Rallus longirostrus levipes*), bald eagle (*Haliaeetus leucocephalus*), California least tern (*Sterna antillarum browni*), western snowy plover (*Charadrius alexandrinus nivosus*), southwestern willow flycatcher (*Empidonax traillii extimus*), least Bell's vireo (*Vireo bellii pusillus*), coastal California gnatcatcher (*Polioptila californica californica*), and California red-legged frog (*Rana aurora draytoni*). The California red-legged frog is not anticipated to occur in the Chula Vista Planning Area and take of the frog is not anticipated under the Chula Vista Subarea Plan, it has the potential to occur in other MSCP participating jurisdictions. While the red-legged frog is primarily addressed through those jurisdictions' approved Subarea Plans, it may also benefit from the Chula Vista Subarea Plan's contribution to the system of complementary and interlinked preserves created under the MSCP.

The take prohibitions of the Act do not apply to listed plants, although Section 9 of the Act does prohibit certain acts, including the removal or destruction of listed plants in violation of State law. Although take of listed plants is not prohibited under the Act, we propose to name five endangered and three threatened plant species on the permit in recognition of the conservation measures and benefits that would be provided to them under the proposed Subarea Plan exclusively or under the proposed Subarea Plan in conjunction with the approved Subarea plans for other jurisdictions participating in the MSCP. These species are: salt marsh bird's-beak (*Cordylanthus maritimus* ssp. *maritimus*), San Diego button-celery (*Eryngium aristulatum* var. *parishii*), San Diego ambrosia (*Ambrosia pumila*), Otay Mesa mint (*Pogogyne nudiuscula*), California orcutt grass (*Orcuttia californica*), Otay tarplant (*Deinandra conjugens*), San Diego thornmint (*Acanthomintha ilicifolia*), and spreading navaretia (*Navarretia fossalis*). An additional four endangered plants and two threatened plants are not anticipated to be found in the Chula Vista Planning Area, but are included in the Subarea Plan and are named on the permits. These species are primarily conserved through other jurisdictions' MSCP Subarea Plans. The preserve created under the Chula Vista Subarea Plan, which is interlinked and designed to complement the reserve lands created through other approved subarea plans, will indirectly benefit these plant species. These species are: San Diego mesa mint (*Pogogyne abramsii*), Nevin's barberry (*Berberis nevinii*), coastal dune milk vetch (*Astragalus tener* var. *titi*), Del Mar manzanita (*Arctostaphylos glandulosa* ssp. *crassifolia*), thread-leaved brodiaea (*Brodiaea filifolia*), and Encinitas baccharis (*Baccharis vanessae*). Additionally there are 59 unlisted species of concern that are included in the City's MSCP Subarea Plan, including 27 animal species (including one species already proposed to be listed as threatened) for which take authorization under the permit would become effective in the event that these animal species become listed during the term of the permit. Plant species covered by the City of Chula Vista's Plan would be identified on the permit in recognition of the conservation benefits provided for these species under the plan.

The permit application from the City of Chula Vista includes a Subarea Plan that qualifies as both a Habitat Conservation Plan pursuant to Federal law and a Natural Community Conservation Plan pursuant to State law. On December 10, 1993, we issued a final special rule for the coastal California gnatcatcher pursuant to section 4(d) of the Act (58 FR 65088). The rule allows incidental take of the gnatcatcher if such take results from activities conducted under a plan prepared pursuant to the state of California's Natural Community Conservation Planning Act of 1991, its associated Process Guidelines, and the Southern California Coastal Sage Scrub Conservation Guidelines. Consistent with the Conservation Guidelines, while planning for natural communities is underway, the special rule allows interim loss of no more than five percent of the coastal sage scrub habitat in specified areas (subregions).

To mitigate the impact of urban development over a 50-year period, the City of Chula Vista would require project-level impact avoidance and minimization measures, and would assemble a preserve of approximately 4,993 acres. The majority of the preserve (4,860 acres) consists of "hard-lined" areas designated for 100 percent conservation. Up to 133 acres would be conserved on lands designated as 75 to 100 percent conservation areas. An additional 4,250 acres would be conserved outside of the City of Chula Vista's Subarea for impacts that would occur within the City's Subarea. Total conservation within the MSCP Subregional Preserve as a result of the City of Chula Vista's Subarea Plan is estimated to be 9,243 acres. The preserve within the City's Subarea would contain, at a minimum, the following habitats: Coastal sage scrub (2,418 acres), maritime succulent scrub (190 acres), chaparral (28 acres), grassland (896 acres), oak woodland (2 acres), eucalyptus woodland (18 acres), southern coastal salt marsh (202 acres), freshwater/alkali marsh (14 acres), riparian forest (10 acres), riparian/tamarisk scrub (594 acres), open water/freshwater (24 acres), disturbed wetlands (15 acres), natural flood channel (146 acres), and other non-habitat lands (436 acres).

Should we approve the City of Chula Vista's Subarea Plan and issue an incidental take permit to the City of Chula Vista, the five percent limit on interim loss of coastal sage scrub, imposed as part of the Natural Community Conservation Planning Program and the special rule for the gnatcatcher, would be replaced by the conditions of the permit and the Implementation Agreement. Chula Vista would then exercise its land-use review and approval powers in accordance with the Permit, Subarea Plan, and Implementation Agreement to implement the City of Chula Vista's Subarea Plan and assemble its preserve. The City would amend its General Plan to include the MSCP Subarea Plan as a new element of the General Plan and would create overlay zones to implement the General Plan land use designations.

Additionally, the City of Chula Vista would use its local regulatory authority to create or modify ordinances to implement the City's MSCP Subarea Plan. A new Habitat Loss and Incidental Take (HLIT) ordinance would be created to establish conservation and development standards for those development areas outside of Covered Projects (*i.e.*, specific projects identified in the Subarea Plan that would be covered for incidental take pursuant to the proposed incidental take permit). The HLIT ordinance would also provide local regulations for narrow endemic species and wetlands. A new Grazing ordinance would codify the management goals of the Otay Ranch Range Management Plan. The City would also amend its existing Grading ordinance to provide regulations for clearing and grubbing of sensitive habitats and require compliance with the City's MSCP Subarea Plan prior to grading of sensitive habitat.

Our Environmental Assessment considers the City of Chula Vista's MSCP Subarea Plan, as revised since the preparation of the Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS), certified in 1997 for the MSCP Subregional Plan and associated implementing Subarea Plans, which included the City of Chula Vista's Subarea Plan. The Final EIR/EIS evaluated a range of alternatives based on the preserve contributions of the City of Chula Vista's Subarea Plan as well as the subarea plans of other participating jurisdictions. The Multiple Habitat Planning Area (MHPA) Alternative was ultimately adopted with the approval of the MSCP Subregional Plan. Because both the City of San Diego and County of San Diego have been implementing the MHPA Alternative through their respective Subarea Plans since 1997 and 1998, respectively, we did not evaluate additional alternatives in the Environmental Assessment. Instead, the Environmental Assessment focuses on the substantive changes that have occurred to the City of Chula Vista's MSCP Subarea Plan. These include: (1) The addition of Quino checkerspot butterfly to the list of covered species as a result of the Subarea Plan's Quino checkerspot butterfly Recovery Component, (2) the expansion of the preserve as a result of adding lands not previously identified for conservation, and (3) implementation assurances resulting from the Subarea Plan's associated Implementing Agreement and implementing ordinances.

The Environmental Assessment compares these changes to the No Action Alternative. Under the No Action Alternative, the Service would not approve the Chula Vista Subarea Plan and would not issue a permit to Chula Vista. Project proponents would either avoid take of listed animal species within the Chula Vista Subarea Plan boundary or would need to address take of listed animal species on a project-by-project basis. The latter could occur either through an individual incidental take permit, or if there is Federal involvement with the project (for example, a permit or funding), through the formal consultation process. Existing land use and environmental regulations would apply to all projects within the Chula Vista Subarea.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). All comments received, including names and addresses, will become part of the administrative record and may be made available to the public. We will evaluate the permit application, Environmental Assessment, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Endangered Species Act. If we determine that the requirements are met, we will issue an incidental take permit to the City of Chula Vista. We will make a decision on permit issuance no sooner than 60 days from the date of this notice.

Dated: October 3, 2002.

Richard L. Hadley,

Acting Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–25727 Filed 10–9–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability, Natural Resource Damage Assessment Plan

AGENCY: U.S. Fish and Wildlife Service, U.S. Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service, on behalf of the U.S. Department of the Interior, as a natural resource trustee, announces the release of the Natural Resource Damage Assessment Plan (Plan) for the Hudson River Superfund Site. The Plan describes the activities that constitute the Trustees' currently proposed approach to conducting the assessment of natural resources exposed to PCBs.

ADDRESSES: Requests for copies of the Natural Resource Damage Assessment Plan, or for any additional information, should be directed to Dr. Fred Caslick, U.S. Fish and Wildlife Service, New York Field Office, 3817 Luker Road, Cortland, New York 13045, telephone 607–753–9334.

SUPPLEMENTARY INFORMATION: The Hudson River is a Federal Superfund Site, and the U.S. Environmental Protection Agency has issued a Record of Decision calling for removal of an estimated 150,000 lbs. of PCBs from selected areas along a 40-mile stretch of the river between Hudson Falls and the Federal Dam at Troy, New York.

The Plan is being released in accordance with the Natural Resource Damage Assessment Regulations found at title 43 of the Code of Federal Regulations part 11. The Plan is the third step in the damage assessment, the goal of which is to restore natural resources injured by PCB contamination. The first step, a pre-assessment screen of the PCB-contamination, was completed in 1997. The second step, a solicitation for ideas on potential restoration projects, began in 2000 and is ongoing, with the Trustees continuing to accept plan proposals.

Author: The primary author of this notice is Dr. Fred Caslick, New York Field Office, U.S. Fish and Wildlife Service, 3817 Luker Road, Cortland, New York 13045.

Authority: The authority for this action is the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C.

Dated: September 25, 2002.

Dr. Richard O. Bennett,

Acting Regional Director, Region 5, U.S. Fish & Wildlife Service.

[FR Doc. 02–25750 Filed 10–9–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–014–01–1610–PG; GP 3–0003]

Klamath Provincial Advisory Committee

AGENCY: Bureau of Land Management, Klamath Falls Resource Area.

ACTION: Meeting notice for the Klamath Provincial Advisory Committee.

SUMMARY: The Klamath Provincial Advisory Committee will meet at the Campus Center Stage, Shasta Community College, 11555 Old Oregon Trail, Redding, CA 96001, beginning on Wednesday, November 20, 2002 at 1 p.m. Proposed topics include:

- Report from the Regional Ecosystem Office Representative
- Socio-Economic Monitoring, and
- Update on Federal Energy Regulatory Commission.

The meeting will continue on Thursday, November 21, beginning at 8 a.m. Proposed topics include:

- Restoration Activities—Klamath Fisheries Task Force
- Biscuit Fire Update
- Klamath River Management Plan Update
- Upper basin Working Group Restoration Plan

Information to be distributed to the committee members is requested ten (10) days prior to the start of the meeting.

The entire meeting is open to the public. Opportunities for public comment are scheduled for 2:30 to 3 p.m. on November 20, and 9:30 to 10 a.m. on November 21.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Klamath Provincial Advisory Committee may be obtained from Teresa Raml, Field Manager, Klamath Falls Resource Area, 2795 Anderson Ave., Building 25, Klamath Falls, OR 97603, Phone Number 541–883–6919, FAX 541–884–2097, or e-mail *traml@or.blm.gov*.

Dated: October 4, 2002.

Teresa A. Raml,

Field Manager, Klamath Falls Resource Area.

[FR Doc. 02–25749 Filed 10–9–02; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[82% to CO–956–1420–BJ–0000–241A]
[6% to CO–956–9820–BJ–CO01–241A]
[6% to CO–956–9820–BJ–CO02–241A]
[6% to CO–956–9820–BJ–CO03–241A]

Colorado: Filing of Plats of Survey

September 30, 2002.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., September 30, 2002. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat representing the dependent resurvey and survey in Township 5 North, Range 81 West, Sixth Principal Meridian, Group 1260, Colorado, was accepted July 25, 2002.

The plat representing the entire record of the remonumentation of certain original corners in Township 5 North, Range 97 West, Sixth Principal Meridian, Group 750, Colorado, was accepted August 1, 2002.

The plat representing the entire record of the dependent resurvey and survey in Township 35 North, Range 10 East, New Mexico Principal Meridian, Group 1345, Colorado, was accepted August 1, 2002.

The plat representing the dependent resurvey and survey in Township 35 North, Range 11 East, New Mexico Principal Meridian, Group 1345, Colorado, was accepted August 1, 2002.

The plat representing the dependent resurvey and survey Township 48 North, Range 4 West, New Mexico Principal, Group 1243, Colorado, was accepted August 6, 2002.

The plat representing the entire record of the dependent resurvey of Mineral Survey Number 1334, Pueblo Placer, in Township 43 North, Range 4 West, New Mexico Principal Meridian, Group 1332, Colorado, was accepted August 8, 2002.

The plat representing the dependent resurvey and survey in Township 7 North, Range 96 West, Sixth Principal Meridian, Group 1317, Colorado, was accepted August 8, 2002.

The plat representing the dependent resurvey of Mineral Survey Number 18801, Big Dick Load, in section 33, Township 1 South, Range 82 West, Sixth principal Meridian, Group 1288, was accepted August 8, 2002.

The plat representing the dependent resurvey and survey in Township 1 North, Range 79 West, Sixth Principal Meridian, Group 1358, Colorado, was accepted September 18, 2002.

The plat representing the dependent resurvey and survey in Township 3 North, Range 81 West, Sixth Principal Meridian, Group 1358, was accepted September 18, 2002.

The plat representing the dependent resurvey and survey in Township 3 South, Range 2 East, Ute Meridian, Group 1271, was accepted September 26, 2002.

The plat representing the dependent resurvey and survey in Township 4 North, Range 91 West, Sixth Principal Meridian, Group 1318, Colorado, was accepted September 26, 2002.

The supplement plat creating new lots 65 and 66, from original lot 49, is based upon the Dependent Resurvey and Survey Plats approved August 20, 1998, and the supplement plat approved January 30, 2002, was accepted August 15, 2002.

The supplemental plat amending the lot numbers 119 to 121, and 120 to 122, is based upon the Dependent Resurvey and Survey Plats approved March 1, 1996, the Supplemental Plat approved January 29, 2002, and the Dependent Resurvey and Survey Plat approved June 10, 2002, was accepted August 30, 2002.

These surveys were requested by the Bureau of Land Management for administrative and management purposes.

The plat representing the dependent resurvey and survey in Township 5 North, Range 79 West, Sixth Principal Meridian, Group 1220, Colorado, was accepted July 25, 2002.

The plat representing the entire record of the dependent resurvey and survey in Township 11 South, Range 72 West, Sixth Principal Meridian, Group 1372, was accepted August 13, 2002.

The plat representing the dependent resurvey and survey in Township 49 North, Range 16 West, New Mexico Principal Meridian, Group 1296, Colorado, was accepted September 26, 2002.

These surveys were requested by the Forest Service for administrative and management purposes.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 02–25733 Filed 10–9–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Fire Management Plan, Environmental Impact Statement, Guadalupe Mountains National Park, Texas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the Fire Management Plan for Guadalupe Mountains National Park.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service is preparing an environmental impact statement for the Fire Management Plan for Guadalupe Mountains National Park. This effort will result in a new wildland fire management plan that meets current policies, provides a framework for making fire-related decisions, and serves as an operational manual. Development of a new fire plan is compatible with the broader goals and objectives derived from the park purpose that governs resources management. In cooperation with the USDA Forest Service, Bureau of Land Management, State of Texas, and neighboring private land owners, attention will also be given to resources outside the boundaries that affect the integrity of Guadalupe Mountains National Park. Alternatives are based on internal scoping done by National Park Service staff on March 12 and 13, 2002. Besides the No-action alternative, preliminary alternatives include the proposed Two-Fire Management Unit alternative and Cooperative Watershed Plan alternative. The No-action alternative maintains the current 1996 Fire Management Plan strategy of suppression, prescribed natural fire, and prescribed burning. The proposed alternative Two-Fire Management Unit (FMU) defines a relatively small FMU surrounding the visitor center area and the facilities and residences south of U.S. Highway 62/180. This FMU applies full suppression and prescribed burning. The rest of the park comprises the second FMU, with protection and suppression emphasis for special features, such as historic properties, McKittrick Canyon, and habitats of threatened and endangered species. In the second FMU, wildland fire use, prescribed fire, and suppression are management options. The Cooperative Watershed Plan is a variation on the two-unit plan that extends the backcountry FMU along the north boundary to include portions of the McKittrick Canyon watershed that lie on the USDA Forest Service land. Ideally, the park would cooperate on prescribed fire, wildland fire use, monitoring fire effects, as well as suppression. This cooperative plan would be a step toward interagency management of the entire Guadalupe Mountains landscape sometime in the future.

Major issues will consider environmental effects of the FMP that are potential problems and include reduction of plant and wildlife populations, disturbance of unique sites and sensitive species, large-scale changes to landscapes, damage to geological resources and increased geohazards, increased air pollution, hazards to life and property, visitor inconvenience, enhanced conditions for non-indigenous species, and damage to cultural resources.

A scoping brochure has been prepared describing the issues identified to date. Copies of the brochures may be obtained from Superintendent, Guadalupe Mountains National Park, HC 60, Box 400, Salt Flat, Texas 79847–9400, (915) 828–3251.

DATES: The Park Service will accept comments from the public for 30 days from the date this notice is published in the **Federal Register**.

ADDRESSES: Information will be available for public review and comment in the office of the Superintendent, Guadalupe Mountains National Park, HC 60, Box 400, Salt Flat, Texas 79847–9400, (915) 828–3251.

FOR FURTHER INFORMATION CONTACT: Superintendent, Guadalupe Mountains National Park, (915) 828–3251.

SUPPLEMENTARY INFORMATION: If you wish to comment on the scoping brochure, you may submit your comments by any one of several methods. You may mail comments to Superintendent, Guadalupe Mountains National Park, HC 60, Box 400, Salt Flat, Texas 79847–9400. You may also comment via the Internet to *GUMO_superintendent@nps.gov*. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: Guadalupe Mountains NP Fire Management Plan" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at Resources Management 915–828–3251 x251. Finally, you may hand-deliver comments to the above address or at the three public meetings that will be held in Dell City and El Paso, Texas, and Carlsbad, New Mexico. Notification of the public meetings will be given in the scoping brochure that will be mailed to the addresses generated for the park's current General Management Plan process. The brochure will be mailed once we are notified of the date that this Notice of Intent is published in the **Federal Register**. If you are not on the park's mailing list and would like a copy of the brochure, please contact the Superintendent.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Superintendent, Guadalupe Mountains National Park, 915–828–3251 x104.

Michael D. Snyder,

Acting Director, Intermountain Region, National Park Service.

[FR Doc. 02–25868 Filed 10–9–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Human Remains in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native Graves Protection and Repatriation Act, 43 CFR 10.9, of the completion of an inventory of human remains from Lāna'i, HI in the possession of the Bernice Pauahi Bishop Museum, Honolulu, HI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible

for the determinations within this notice.

A detailed assessment of these human remains has been made by Bishop Museum's professional staff in consultation with representatives from the Maui/Lāna'i Island Burial Council.

In 2002, human remains representing one individual were found in collections from Maunalei Cave, Lāna'i, HI. The remains consist of a human phalange. No known individuals were identified. No associated funerary objects are present.

In 2002, human remains representing one individual were found in collections from Lāna'i, HI. The remains consist of a human tooth. No associated funerary objects are present. The collections were gifted to the Bishop Museum by George F. Arnemann in 1956.

Based on the above-mentioned information, officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Bishop Museum also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Maui/Lāna'i Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei and Office of Hawaiian Affairs.

This notice has been sent to officials of the Maui/Lāna'i Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, and the Office of Hawaiian Affairs. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains should contact Dr. Guy Kaulukukui, Vice President of Cultural Studies, Bishop Museum, 1525 Bernice Street, Honolulu, Hawaii, 96718-2704, telephone (808) 848-4126 before November 12, 2002. Repatriation of these human remains to the Maui/Lāna'i Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei and Office of Hawaiian Affairs may begin after that date if no additional claimants come forward.

Dated: August 28, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–25871 Filed 10–9–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items from Lāna'i, HI in the possession of the Bernice Pauahi Bishop Museum, Honolulu, HI, that meet the definition of "unassociated funerary object" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

In 1926, G.C. Munro gifted 97 glass and ivory beads to the Bishop Museum. Accession records indicate that the beads were "found some years ago with the bones of a child." The burial site was located on the island of Lāna'i, HI. Excavation records indicate that the human remains with whom these funerary objects were associated were not collected, or were collected but are no longer within the Bishop Museum's collection.

A detailed assessment of these unassociated funerary objects was made by Bishop Museum's professional staff in consultation with representatives from the Maui/Lāna'i Island Burial Council.

Based on the above-mentioned information, officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these 97 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Bishop Museum also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these 97 unassociated funerary objects and the Maui/Lāna'i Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, and the Office of Hawaiian Affairs.

This notice has been sent to officials of the Maui/Lāna'i Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, and Office of Hawaiian Affairs. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these unassociated funerary objects should contact Dr. Guy Kaulukukui, Vice President of Cultural Studies, Bishop Museum, 1525 Bernice Street, Honolulu, Hawaii, 96718-2704, telephone (808) 848-4126 before November 12, 2002. Repatriation of these unassociated funerary objects to the Maui/Lāna'i Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei and Office of Hawaiian Affairs may begin after that date if no additional claimants come forward.

Dated: August 28, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–25874 Filed 10–9–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of California State University, Bakersfield, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of California State University, Bakersfield, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by California State University, Bakersfield, professional staff in consultation with representatives of the Tule River Indian Tribe of the Tule River Reservation, California.

In 1976, the Kern County Archaeological Society conducted salvage excavations at the Crest Drive-In site (CA-KER-480H) in Bakersfield, CA. The Crest Drive-In site consisted of a shallow, mass grave containing the skeletal remains of approximately 100 individuals, all but eight of which were subsequently reburied. The remains of these eight individuals were subsequently accessioned by California State University, Bakersfield. No known individuals were identified. No associated funerary objects are present.

Osteological examination of the remains of the eight individuals in the possession of California State University, Bakersfield revealed significantly worn teeth and shovel-shaped incisors, which may be indicative of prehistoric or protohistoric Native American populations. Midden material found associated with some of the human remains in the 1976 excavations is consistent with a prehistoric or protohistoric date for some of the burials. The Crest Drive-In site was long recognized by local residents as an old Indian burial ground.

However, historic period artifacts recovered during the 1976 excavations indicate that the latest burials date to the latter part of the 19th century, after the local Yokut Indians that had traditionally used the area had been relocation to the first Tule River Indian Reservation (called the Alta Vista Reservation) in 1857. The stratigraphic context encountered during the 1976 excavations was highly disturbed. According to local residents, around 1947 or 1948 the land-owner at the time attempted to level the burial ground area. When human remains were discovered, he reportedly scooped out a shallow pit, placed the remains in the hole, and covered the bones and associated funerary objects with a thin layer of dirt. None of the funerary objects recovered in 1976 are in the possession or control of California State University, Bakersfield.

While there is a possibility that some of the eight human remains in the possession of California State University, Bakersfield are of other than Native American ancestry, the preponderance of the evidence supports a determination that they are Native American.

Based on the above-mentioned information, officials of California State University, Bakersfield have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of eight individuals of Native American ancestry. Officials of California State University, Bakersfield also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Tule River Indian Tribe of the Tule River Reservation, California.

This notice has been sent to officials of the Tule River Indian Tribe of the Tule River Reservation, California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Robert M. Yohe II, Department of Sociology and Anthropology, California State University, Bakersfield, CA 93311-1099, telephone (661) 664-3457, before November 12, 2002. Repatriation of the human remains to the Tule River Indian Tribe of the Tule River Reservation, California may begin after that date if no additional claimants come forward.

Dated: August 28, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–25872 Filed 10–9–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Sam Noble Oklahoma Museum of Natural History, Norman, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Sam Noble Oklahoma Museum of Natural History, Norman, OK, that meets the definition of "sacred object" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The cultural item is a cedar pole 12 feet long, from which all bark has been removed. The pole is painted lengthwise, black on one side and green on the other side. Accession and catalog records of the Sam Noble Oklahoma Museum of Natural History (formerly known as the Stovall Museum of Science and History) indicate that the pole was donated to the museum in 1946 by Mrs. Joe Weller of Gracemont, OK.

According to museum records and consultation with representatives of the Caddo Tribe of Oklahoma, the pole was originally made about 1895 by Caddo Chief White Bread. The pole was used regularly in Caddo Ghost Dances from 1895 until 1946. About 1922, Chief White Bread died and the pole passed to Mr. Squirrel, another community Ghost Dance leader. Mr. Joe Weller was the third custodian of the pole and held Ghost Dances annually until his death in 1945. On July 14, 1946, Mrs. Weller sponsored a final Ghost Dance, after which she intended to "retire" the pole. University of Oklahoma anthropologist K.G. Orr was among those attending the July 14, 1946, Ghost Dance and, according to museum accession records, he "persuaded Mrs. Weller and the Caddo tribe to donate the pole to the museum rather than destroy it at the completion of the dance." The pole was accessioned into the collections of the museum's Division of Ethnology in 1946. Since that time, representatives of the Caddo Tribe of Oklahoma and Caddo traditional religious leaders have regularly visited the museum and consulted with the museum staff concerning the pole.

Consultations with representatives of the Caddo Tribe of Oklahoma confirm that this pole was made to be used in the Caddo Ghost Dance. Representatives of the Caddo Tribe of Oklahoma have provided evidence that the pole is needed by traditional religious leaders for the practice of the Ghost Dance by present-day adherents. Representatives of the Caddo Tribe of Oklahoma have provided evidence that the pole is of ongoing historical, traditional, and cultural importance to the Caddo Tribe of Oklahoma as a whole.

Based on the above-mentioned information, officials of the Sam Noble Oklahoma Museum of Natural History have determined that, pursuant to 43 CFR 10.2(d)(3), this item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Sam Noble Oklahoma Museum of Natural History have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be traced between this sacred object and the Caddo Tribe of Oklahoma.

This notice has been sent to officials of the Caddo Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Julie Droke, Registrar/Repatriation

Specialist, Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, 2401 Chautauqua Ave., Norman, OK 73072, telephone (405) 325-1035, before November 12, 2002. Repatriation of this sacred object to the Caddo Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: August 28, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–25870 Filed 10–9–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the UCLA Fowler Museum of Cultural History, University of California, Los Angeles, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the UCLA Fowler Museum of Cultural History, University of California, Los Angeles, Los Angeles, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the UCLA Fowler Museum of Cultural History professional staff in consultation with representatives of the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California.

At an unknown date, human remains representing one individual were recovered by Eugene Nickens under unknown circumstances from the Perris site (CA-RIV-126), Riverside County, CA. These human remains were donated by Mr. Nickens to the University of California, Los Angeles in 1951. No known individual was identified. The 18 associated funerary objects are 16 pottery sherds, 1 deer scapula, and 1 bird bone. The age of the site has not been determined, however, the presence of ceramics suggests a protocontact or postcontact date. The site is located within the traditional territory of the Luiseno Mission Indians. The artifacts are consistent with others documented as associated with the indigenous inhabitants of the area. Raymond Basquez, Chairperson of the tribal Cultural Resources Department, Elder, and traditional religious leader, identified the deer scapula as a ceremonial sweat scraper and the pottery sherds as possibly part of a ceremonial urn. He also identified the site as being within the ancestral territory of the Pechanga Band of the Luiseno Mission Indians of the Pechanga Reservation, California.

In 1965, human remains representing one individual were removed from the Rancho site (CA-RIV-364), Riverside County, CA, by Dr. Joseph L. Chartkoff. Dr. Chartkoff donated these human remains to the University of California, Los Angeles the same year. No known individual was identified. No associated funerary objects are present.

The Rancho site (CA-RIV-364) is close to the present-day Pechanga Reservation, in the valley of Temecula Creek. Geographical location and archeological and oral traditional evidence support the association of this site with precontact and historic village sites within the territory of the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California. The site is well known, by both oral tradition and archeological documentation, to be a precontact and postcontact cremation and burial site. Some artifacts collected from the surface, such as a plate fragment, broken glass, lathe-turned inkbottle, and metal button, appear to date to the Spanish or Mexican period in California. According to Mr. Basquez, when traditional cremation practices gave way after contact to inhumation, Luiseno peoples' personal possessions often were collected, burned, and placed at traditional cremation/cemetery areas even though the person may have been buried elsewhere. The Rancho site was visited by members of the Pechanga Band of Luiseno Indians Cultural Committee, who identified the human remains and artifacts collected there as part of the traditional Luiseno cremation and memorial offering rites. Tizon Brown pottery sherds found at the site are consistent with a Late Prehistoric and historic age.

Officials of the UCLA Fowler Museum of Cultural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the UCLA Fowler Museum of Cultural History have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 18 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, it has been determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Pechanga Band of Luiseno Mission Indians, Pechanga Reservation, California.

This notice has been sent to officials of the Pechanga Band of Luiseno Mission Indians, Pechanga Reservation, California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Diana Wilson, UCLA NAGPRA Coordinator, Office of the Vice Chancellor, Research, University of California, Los Angeles, Box 951405, Los Angeles, California 90095-1405, telephone (310) 825-1864, before November 12, 2002. Repatriation of the human remains and associated funerary objects to the Pechanga Band of Luiseno Mission Indians, Pechanga Reservation, California may begin after that date if no additional claimants come forward.

Dated: August 28, 2002

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–25873 Filed 10–9–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE, and in the Control of the U.S. Department of Defense, U.S. Army Corps of Engineers, Omaha District, Omaha, NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects

in the possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE, and in the control of the U.S. Department of Defense, U.S. Army Corps of Engineers, Omaha District, Omaha, NE.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains and associated funerary objects was made by the U.S. Army Corps of Engineers, Omaha District professional staff and University of Nebraska-Lincoln professional staff in consultation with representatives of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

In 1956, human remains representing seven individuals were excavated by David Baerreis of the University of Wisconsin for the Smithsonian River Basin Surveys during legally authorized excavations at the Bamble site (39CA6), Campbell County, SD. The repository for these materials is the University of Nebraska State Museum, University of Nebraska-Lincoln. No known individuals were identified. No associated funerary objects are present.

Based on archeological and ethnohistorical evidence, the Bamble site has been identified as an earthlodge village site belonging to the postcontact Coalescent period (circa A.D. 1675-1780). Archeological investigations and ethnohistorical data have shown that sites dating to the Coalescent cultural period are ancestral to the Arikara (south) and Mandan (north) tribes, today represented by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

At an unknown date, human remains representing one individual were found by Paul Cooper of the Smithsonian River Basin Surveys during legally authorized excavations at the White Swan Mound site (39CH9), Charles Mix County, SD, during construction of the Fort Randall dam by the U.S. Army Corps of Engineers, Omaha District. The repository for these materials is the University of Nebraska State Museum, University of Nebraska-Lincoln. No known individual was identified. No associated funerary objects are present.

Based on archeological evidence, the White Swan site has occupation components dating to the Woodland period (500 B.C.-A.D. 900) and the Coalescent period (A.D. 1400-1780). Archeological investigations and ethnohistorical data have shown that sites that are variants of the Plains Woodland, Middle Missouri, and Coalescent cultural phases in the Middle Missouri subarea of the Great Plains are ancestral to the Arikara (south) and Mandan (north) tribes, today represented by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

In 1962, human remains representing two individuals were excavated by P. Holder of the University of Nebraska during legally authorized excavations at the Leavenworth site (39CO9), Corson County, SD. No known individuals were identified. No associated funerary objects are present.

Based on archeological and ethnohistorical evidence, the Leavenworth site is an earthlodge village site attributed to the Extended Coalescent period (A.D. 1550-1675). Archeological investigations and ethnohistorical data have shown that sites that are variants of the Plains Woodland, Middle Missouri, and Coalescent cultural phases in the Middle Missouri subarea of the Great Plains are ancestral to the Arikara (south) and Mandan (north) tribes, today represented by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

In 1969, human remains representing one individual were removed by A. Osborn of the University of Nebraska during legally authorized excavations at the Norvald site (39CO32), Corson County, SD. No known individual was identified. No associated funerary objects are present.

Based on archeological and ethnohistorical evidence, the Norvald site is identified as an earthlodge village and cemetery belonging to the Extended Coalescent period (A.D. 1550-1675). On the basis of physical anthropological data, the human remains were identified as Arikara. Archeological and ethnohistorical data also have shown that sites that are variants of the Plains Woodland, Middle Missouri, and Coalescent cultural phases in the Middle Missouri subarea of the Great Plains are ancestral to the Arikara (south) and Mandan (north) tribes, today represented by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

At an unknown date, human remains representing one individual were found by an unknown individual on the surface of site 39GR5, near Old Fort Randall, on the U.S. Army Corps of Engineers Fort Randall project land in Gregory County, SD. No known individual was identified. No associated funerary objects are present.

The human remains consist of a poorly preserved foot phalange collected from the surface of site 39GR5. On the basis of ceramic evidence, the site has a component belonging to the Plains Woodland period (500 B.C.-A.D. 900). Archeological investigations and ethnohistorical data have shown that sites that are variants of the Plains Woodland, Middle Missouri, and Coalescent cultural phases in the Middle Missouri subarea of the Great Plains are ancestral to the Arikara (south) and Mandan (north) tribes, today represented by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

In 1962, human remains representing one individual were found by Warren Caldwell of the Smithsonian River Basin Surveys during legally authorized operations at the Medicine Creek Village site (39LM2), Lyman County, SD. The repository for these materials is the University of Nebraska State Museum, University of Nebraska-Lincoln. No known individual was identified. No associated funerary objects are present.

Based on archeological and ethnohistorical evidence, the Medicine Creek Village site has both Initial period (A.D. 900-1400) and Extended Coalescent period (A.D. 1550-1675) components. Archeological investigations and ethnohistorical data have shown that sites that are variants of the Plains Woodland, Middle Missouri, and Coalescent cultural phases in the Middle Missouri subarea of the Great Plains are ancestral to the Arikara (south) and Mandan (north) tribes, today represented by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

In 1967, human remains representing one individual were excavated by Donald J. Lehmer of the Smithsonian River Basin Surveys during legally authorized excavations at site 39LM222, Lyman County, SD. The repository for these materials is the University of Nebraska State Museum, University of Nebraska-Lincoln. No known individual was identified. No associated funerary objects are present.

Based on archeological evidence, site 39LM222 is identified as an Extended Coalescent period (A.D. 1550-1675) site. Archeological investigations and ethnohistorical data have shown that sites that are variants of the Plains Woodland, Middle Missouri, and Coalescent cultural phases in the Middle Missouri subarea of the Great Plains are ancestral to the Arikara (south) and Mandan (north) tribes, today

represented by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Between 1956 and 1962, human remains representing one individual were excavated by Robert Stephenson and William Bass of the Smithsonian River Basin Surveys during legally authorized excavations at the Sully site (39SL4), Sully County, SD. The repository for these materials is the University of Nebraska State Museum, University of Nebraska-Lincoln. No known individual was identified. No associated funerary objects are present.

Based on archeological evidence, the Sully site is an earthlodge village of the Extended Coalescent period (A.D. 1550-1675). The human remains consist of a fragmentary second metatarsal. Archeological investigations and ethnohistorical data have shown that sites that are variants of the Plains Woodland, Middle Missouri, and Coalescent cultural phases in the Middle Missouri subarea of the Great Plains are ancestral to the Arikara (south) and Mandan (north) tribes, today represented by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

In 1963, human remains representing one individual were excavated by J.J. Hoffman of the Smithsonian River Basin Surveys during legally authorized excavations at the La Roche site (also known as Over's) (39ST9), Stanley County, SD. The repository for these materials is the University of Nebraska State Museum, University of Nebraska-Lincoln. No known individual was identified. No associated funerary objects are present.

Based on archeological evidence, the La Roche site contains Plains Woodland (500 B.C.-A.D. 900), Initial Middle Missouri (A.D. 900-1400), and Extended Coalescent (A.D. 1550-1675) components. Archeological investigations and ethnohistorical data have shown that sites that are variants of the Plains Woodland, Middle Missouri, and Coalescent cultural phases in the Middle Missouri subarea of the Great Plains are ancestral to the Arikara (south) and Mandan (north) tribes, today represented by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Between 1964 to 1966, human remains representing a minimum of four individuals were excavated by David T. Jones of the Smithsonian River Basin Surveys during legally authorized excavations at the Ketchen site (39ST223), Stanley County, SD. The repository for these materials is the University of Nebraska State Museum, University of Nebraska-Lincoln. No known individuals were identified. No associated funerary objects are present.

Based on archeological evidence, the Ketchen site was occupied during the Extended Coalescent period (A.D. 1550-1675). Archeological investigations and ethnohistorical data have shown that sites that are variants of the Plains Woodland, Middle Missouri, and Coalescent cultural phases in the Middle Missouri subarea of the Great Plains are ancestral to the Arikara (south) and Mandan (north) tribes, today represented by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

In 1956, human remains representing one individual were excavated by David Baerreis of the University of Wisconsin for the Smithsonian River Basin Surveys during legally authorized excavations at the Spiry-Eklo site (39WW3), Walworth County, SD. The repository for these materials is the University of Nebraska State Museum, University of Nebraska-Lincoln. No known individual was identified. No associated funerary objects are present.

Based on archeological and ethnohistorical evidence, the Spiry-Eklo site is identified as a postcontact Coalescent period (A.D. 1675-1780) village. Archeological investigations and ethnohistorical data have shown that sites that are variants of the Plains Woodland, Middle Missouri, and Coalescent cultural phases in the Middle Missouri subarea of the Great Plains are ancestral to the Arikara (south) and Mandan (north) tribes, today represented by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Based on the above-mentioned information, officials of the U.S. Department of Defense, U.S. Army Corps of Engineers, Omaha District have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 21 individuals of Native American ancestry. Officials of the U.S. Department of Defense, U.S. Army Corps of Engineers, Omaha District also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

This notice has been sent to officials of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Sandra Barnum, Cultural Resources, U.S. Army Corps of Engineers, Omaha District, 215 North 17th Street, Omaha, NE 68102, telephone (402) 221-4895, before November 12, 2002. Repatriation of the human remains to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota may begin after that date if no additional claimants come forward.

Dated: August 28, 2002

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–25869 Filed 10–9–02; 8:45 am]

BILLING CODE 4310–70–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–422 (Final)]

Certain Cold-Rolled Steel Products From Argentina

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On October 3, 2002, the Department of Commerce published notice in the **Federal Register** of a negative final determination of subsidies in connection with the subject investigation (67 FR 62106). Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the countervailing duty investigation concerning certain cold-rolled steel products from Argentina (investigation No. 701–TA–422 (Final)) is terminated.

EFFECTIVE DATE: October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179 or *ffischer@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public*.

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: October 4, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–25795 Filed 10–9–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: extension of a current approved collection; Public Safety Officer Medal of Valor Application.

The Department of Justice (DOJ), Office of Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 83, page 21276 on April 30, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 12, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of a Current Approved Collection.

(2) *The title of the form/collection:* Public Safety Officer Medal of Valor Application.

(3) *The agency form number, if any, and the applicable components of the department sponsoring the collection: Form Number:* OJP Form Number 1121. National Medal of Valor Office, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Government. Other: Federal Government. The information collected on this application will provide the nomination of public safety officers who demonstrate courage and bravery above and beyond the call of duty without regard for their personal safety. A Medal of Valor Board will be appointed by the Congress and the President. The Board shall select candidates as recipients of the Medal of Valor from among those applications received by the National Medal of Valor Office. Annually, the Board shall present, to the Attorney General, the name or names of those recommended as medal of valor recipients.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 500 respondents will complete the application in approximately 60 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this application is 500 minutes.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: October 4, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–25719 Filed 10–9–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of September, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,318 & A, B; Specialty Minerals, Inc., Oswego, NY, Lockhaven, PA and Erie, PA

TA–W–41,523; BRA–VOR Tool and Die, Inc., Meadville, PA

TA–W–41,656; Hancock Manufacturing Co., a Subsidiary of Renaissance Industries, Inc., Toronto, OH

TA–W–41,688; Stork H and E Blading, Inc., Auburn, NY
TA–W–41,839; Ergo Systems, Inc., Green Lane, PA
TA–W–41,952; FCI USA, Inc., Mil/Aero Industrial Div., York, PA
TA–W–40,173; Benson Corp., Weyauwega, WI
TA–W–41,633; Specialty Machine Co., Gastonia, NC
TA–W–41,905 & A; Penn Compression Moulding, Inc., Irwin, PA and Liberty, SC

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,462; Astec Semiconductor, Inc., Astec Power, Milpitas, CA
TA–W–41,789; General Electric Motors Operations, Murfreesboro, TN
TA–W–41,795; Edward Vogt Valve Co., Jeffersonville, IN

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–41,896; McManus Wyatt Produce Co., Weslaco, TX
TA–W–41,549; Philips Consumer Electronics, Knoxville, TN
TA–W–42,026; Timex Corp., a Subsidiary of Timex Group B.V., Middlebury, CT

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–40,567; Ivaco Steel Processing LLC, Tonawanda, NY
TA–W–41,621; Gorham/Lenox, Inc., Smithfield, RI

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–41,911; Sappi Fine Paper Mill, North America, Muskegon, MI: March 26, 2001.
TA–W–41,908; PSM Fastener Corp., a Subsidiary of McKechnie Investments, Inc, Ferguson, MO
TA–W–41,891; American Uniform Co., Blue Ridge, GA: July 11, 2001.
TA–W–41,862; Gino and Jack Manufacturing, Inc., Bath, PA: June 28, 2001.
TA–W–41,324; Spring Ford Industries, Tucson, AZ: April 1, 2001.
TA–W–41,050; Quality Components, Inc., Ridgway, PA: February 11, 2001.
TA–W–42,001; Wain Manufacturing, a Subsidiary of California Optical Corp., Lynn, MA: August 9, 2001.
TA–W–41,994; Lucedale Industries, Lucedale, MS: August 5, 2001.
TA–W–41,985; DeRoyal Patient Care, a Div. Of DeRoyal Industries, Inc., Maynardville, TN: July 31, 2001.
TA–W–41,960; Hartford Ball/Hartford Bearings, a Subsidiary of Virginia Industries, Inc., Rocky Hill, CT: July 24, 2001.
TA–W–41,959; Amory Garment Co.,a Div. Of Block Corp., Amory, MS: July 18, 2001.
TA–W–41,930; Lapcor Plastics, Div. Of Mirro/Wearever Co., Manitowoc, WI: July 25, 2001.
TA–W–41,927; David Stevens Manufacturing, Inc., Blackwood, NJ: July 25, 2001.
TA–W–41,913; Barrick Gold Corp., Ruby Hill Mine, Eureka, NV: July 18, 2001.
TA–W–41,758; Parker Hosiery Co., Inc., Old Fort, NC: June 13, 2001.
TA–W–41,708; Rosemount Analytical, Inc., Process Analytical Div., Orrville, OH: May 27, 2001.
TA–W–41,425; Tzipi, Inc., Brooklyn, NY: April 8, 2001.
TA–W–41,303; McKechnie Tooling and Engineering, Staples, MN: April 4, 2001.
TA–W–41,120; American Xtal Technology,Inc. (AXT), High Performance Compound Semiconductor Substrates Div., Fremont, CA: March 25, 2001.
TA–W–41,583; Ceco Door Products, Harlingen, TX: April 24, 2001.
TA–W–40,939; P.S.W. Industries, Inc., Chicago, IL: January 11, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchaper D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of September, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–06235; Mechanical Products Co., LLC, Aerospace Div., Jackson, MI
NAFTA–TAA–06244; Specialty Machine Co., Gastonia, NC
NAFTA–TAA–6167; Weatherford—Fabrication Div., Grand Junction, CO
NAFTA–TAA–06199; Hahn Equipment Company, Evansville, IN
NAFTA–TAA–06351; FCI USA, Inc. Mil/Aero Industrial Div., York, PA
NAFTA–TAA–06418; Lapcor Plastics, Div. Of Mirro/Wearever Co., Manitowoc, WI
NAFTA–TAA–04664; Sterling Fibers, Inc., Pace, FL

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–06390; McManus Wyatt Produce Co., Weslaco, TX
NAFTA–TAA–06164; Philips Consumer Electronics, Knoxville, TN

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–06398; American Uniform Co., Blue Ridge, GA: July 11, 2001.
NAFTA–TAA–06420; Seton Co., Leather Div., Saxton, PA: July 12, 2002.
NAFTA–TAA–06431; Celestica Corp., Mt. Pleasant, IA: August 1, 2001.
NAFTA–TAA–06462; American Marketing Industries, Inc., d/b/a/ Dunbrooke Industries, Inc., cut and Sew Facility, El Dorado Springs, MO: August 1, 2001.
NAFTA–TAA–05942; BBI Enterprises, LP, Alpena, MI: March 6, 2001.
NAFTA–TAA–06048; McKechnie Tooling and Engineering, Staples, MN: April 4, 2001.
NAFTA–TAA–06279; Lexstar Technologies, Alexander Technologies, Mason City, IA: May 16, 2001.
NAFTA–TAA–06303; Parker Hosiery Co., Inc., Old Fort, NC: June 25, 2001.
NAFTA–TAA–06367; Harvard Industries, Inc., Albion Div., Albion, MI: July 8, 2001.
NAFTA–TAA–06393; Ergo Systems, Inc., Green Lane, PA: July 1, 2001.
NAFTA–TAA–06473; Lucedale Industries, Lucedale, MS: August 9, 2001.
NAFTA–TAA–06479; Kraft Foods, Lifesavers Co., Holland, MI: May 15, 2001.
NAFTA–TAA–06494; Doncasters, Inc., Turbo Products Div., a Subsidiary of Doncasters, LLC, Ivoryton, CT: August 8, 2001.
NAFTA–TAA–06500; Marconi, Outside Plant and Power Products Div., Toccoa, GA: August 20, 2001.

I hereby certify that the aforementioned determinations were issued during the months of September, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 20, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–25787 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of September, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,477; Volex, Inc., Dartmouth, MA
TA–W–41,571; FCI USA, Inc., Communications, Data and Consumer Div (CDC), Fiber Optics Group, A Member of The Areva Group, Etters, PA
TA–W–41,763; Pabst Meat Supply, Inc., Invergrove Heights, MN
TA–W–42,031; Celestica Corp. a Div. Of EMS, Formerly Lucent Technologies, Oklahoma City, OK
TA–W–41,864; Rock-Tenn Co., Laminated Paperboard Products Plant, Vineland, NJ
TA–W–41,181; Motorola, Integrated Electronics Systems Sector, Automotive Communication Electronic Systems, Elma, NY

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,841; E and A Technology, Inc., El Paso, TX
TA–W–41,855; Fibermark, Inc., Decorative Specialty Int'l, West Springfield, MA
TA–W–42,030; Becton Dickinson, Hancock, NY
TA–W–41,944; John Deere Vehicle Group, Inc., Worldwide Commercial and Consumer Equipment Div., Williamsburg, VA
TA–W–41,872; Breed Technologies, Inc., Knoxville, TN
TA–W–41,439; Shiloh Industries—Canton Die Div., Canton, MI

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–41,639; Sony Electronics, Procurement Div., San Diego, CA
TA–W–42,010; The Montgomery Co., Inc., Opelika, AL
TA–W–42,011; London Fog Industries, Eldersburg, MD
TA–W–41,676; Tool and Die Dept., Thomson Multimedia, Inc., Lancaster, PA
TA–W–39,685; Karin Stevens, Inc., Grading and Marking Department, New York, NY
TA–W–41,347, A, B; Imation Corp., Staffing/Human Resources Department, Oakdale, MN, Information Management Systems Department, Oakdale, MN and Color Systems Research and Development Lab, Oakdale, MN

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–41,193; Progressive Technologies, Inc., Pilot Mountain, NC

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–42,008; Kraft Foods, Lifesavers Co., Holland, MI: August 14, 2001.
TA–W–41,942; Encompass Group, LLC, Eastman, GA: July 30, 2001.
TA–W–41,885; Custom Sewing, Inc., Rib Lake, WI: July 12, 2001.
TA–W–41,818; Robinson Manufacturing Co., Oxford, ME: July 2, 2001.
TA–W–41,410; Wellman, Inc., Marion, SC: April 22, 2001.
TA–W–41,409; Wellman, Inc., Fayetteville, NC: April 22, 2001.
TA–W–41,101; Black and Decker Tools, Nashville, TN: February 9, 2001.
TA–W–42,084; Laurel Mould, Inc., Greensburg, PA: August 22, 2001.
TA–W–42,003; Olson Technologies, Inc., Allentown, PA: August 19, 2001.
TA–W–41,984; Emerson Appliance Controls, Sparta, TN: July 29, 2001.

TA–W–41,980; Young American Clothing Co., Inc., Newark, NJ: July 29, 2001.
TA–W–41,958; Scranton Lace Co., Scranton, PA: July 19, 2001.
TA–W–41,925 & A; Flowserve, Provo, UT and Springville, UT: July 18, 2001.
TA–W–41,902; O.S. Walker, Worcester, MA: July 11, 2001.
TA–W–41,823; Austin Farms, Indianola, MS: June 18, 2001.
TA–W–41,810; Mid-Western Machinery Co., Inc., Joplin, MO: June 6, 2001.
TA–W–41,791; Neuroscan, Inc., Formerly Neurosoft, Inc., El Paso, TX: June 18, 2001.
TA–W–41,787; Strattec Security Corp., Key Finishing Department (Dept—90), Milwaukee, WI: June 19, 2001.
TA–W–41,785; Cairn Studio, Ltd, Mooresville, NC: June 13, 2001.
TA–W–41,538; Tyson Bearing Company, Inc., a Wholly Owned Subsidiary of Roller Bearing Co of America, Glasgow, KY: April 17, 2001.
TA–W–41,423; DDG, Inc., d/b/a Windsurfing Hawaii, Hood River, OR: March 15, 2001.
TA–W–41,267; Limited Edition Shirt Co., Inc., Ranshaw, PA: March 5, 2001.
TA–W–41,166; Goetz Dolls, Inc., Baldwinsville, NY: January 15, 2001.
TA–W–41,106; Hunter Fan Co., Memphis, TN: February 15, 2001.
TA–W–40,900; Holland Binkley Co., Axle Products Div., Delphos, OH: November 3, 2000.
TA–W–40,815; Bernhardt Furniture Co., Plants 1, 2, 3, 5, 6, 7, 10 and 11, Plant 9, Shelby, NC, Plant 14, Cherryville, NC: January 17, 2001.
TA–W–39,911; ABC Pressing and Finishing, Inc., Los Angeles, CA: August 13, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchaper D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of September, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increased imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–06043; Contract Embroidery, El Paso, TX
NAFTA–TAA–06114; Wellman, Inc., Fayette Ville, NC
NAFTA–TAA–6278; Sony Electronics, Inc., Procurement Div., San Diego, CA
NAFTA–TAA–06335; Fibermark, Inc., Decorative Specialty International, West Springfield, MA
NAFTA–TAA–06446; Pabst Meat Supply, Inc., Invergrove Heights, MN
NAFTA–TAA–06025 &A, B; Imation Corp., Staffing/Human Resources Dept, Oakdale, MN, Information Management Systems Dept., Oakdale, MN and Color Systems Research and Development Lab, Oakdale, MN
NAFTA–TAA–06076; Shiloh Industries, Canton Die Div., Canton, MI
NAFTA–TAA–06043; Contract Embroidery, El Paso, TX
NAFTA–TAA–06114; Wellman, Inc., Fayetteville, NC
NAFTA–TAA–6249; Jarvis East, A Subdivision of Standex International Corp., Palmer, MA
NAFTA–TAA–06272; Trinity Rail Group, (Formerly Trinity Industries, Inc.), Beaumont, TX
NAFTA–TAA–06324; Neuroscan, Inc., Formerly Neurosoft, Inc., El Paso, TX
NAFTA–TAA–06430; Scranton Lace Co., Scranton, PA
NAFTA–TAA–06460; Damas, Inc., Sample Room and Shipping Dept., Long Island City, NY
NAFTA–TAA–05107; Michigan Rag Co., Inc., Grand Haven, MI

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–06472; Ericsson, Inc., Brea, CA

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–06300; Strattec Security Corp., Key Finishing Dept. (Dept 90), Milwaukee, WI: April 19, 2001.
NAFTA–TAA–05727; Burlington Industries, Inc., Performance Wear Div., Richmond Plant, Cordova, NC, A; Raeford Plant, B; Hurt Plant, Hurt, VA, C; Halifax Plant, Halifax, VA, D; BM Combing, Clarksville, VA, E; Clarksville Finishing, Clarksville, VA, F; Mt. Holly Plant, Mt. Holly, NC, G; Casual Wear Div., Stonewall Plant, Stonewall, MS, and H; Corporate Headquarters, Greensboro, NC: January 8, 2001
NAFTA–TAA–06356; Breed Technologies, Inc., Molding Unit, Knoxville, TN: July 3, 2001.
NAFTA–TAA–06414; Harris Welco, Div. Of J.W. Harris Co., Inc., Flux Department, Kings Mountain, NC and Personnel Services Unlimited, Kings Mountain, NC (Employed in the Flux Department, Harris Welco, Kings Mountain, NC): July 26, 2001.
NAFTA–TAA–06419; GL&V USA, Inc., Manufacturing Section, Nashua, NH: July 22, 2001
NAFTA–TAA–06442; Flextronics Enclosure Systems, Including Contract Workers of Accurate Personnel, Elk Grove Village, IL: July 22, 2001.
NAFTA–TAA–06496; Wyman Gordon Forgings, LP, Precision Castparts Corp., Houston, TX: August 19, 2001.
NAFTA–TAA–06506; Motorola, Inc., Semiconductor Products Sector, Bipolar Manufacturing Center, Mesa, AZ: August 26, 2001.
NAFTA–TAA–06515; Laurel Mould, Inc., Greensburg, PA: August 22, 2001.
NAFTA–TAA–06080; Wellman, Inc., Marion, SC: April 2, 2001.
NAFTA–TAA–06354; E and A Technology, Inc., El Paso, TX: July 3, 2001.
NAFTA–TAA–06383; New York Air Brake Components, TCJ Hose Products, Akron, OH: July 19, 2001.
NAFTA–TAA–06439; Encompass Group, LLC, Eastman, GA: July 30, 2001.
NAFTA–TAA–06451; Celestica Corp., Midwest Campus, Rochester, MN: August 8, 2001.
NAFTA–TAA–6514; Emglo Products LLC, Div. Of Black and Decker (USA), Inc., Johnstown, PA: August 16, 2001.

I hereby certify that the aforementioned determinations were issued during the months of September, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 27, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–25770 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,983]

ADC Telecommunications, Minnetonka, MN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 19, 2002 in response to a worker petition, which was filed on behalf of workers at ADC Telecommunications, Minnetonka, Minnesota.

An active certification covering the petitioning group of workers remains in effect (TA–W–40,300). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 17th day of September, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–25773 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,068]

Ansewn Footwear, Bangor, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 27, 2002, applicable to workers of Ansewn Footwear, Bangor, Maine. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce footwear and leather belts.

New findings show that there was a previous certification, TA–W–36,066, issued on June 17, 1999, for workers of Ansewn Footwear, Bangor, Maine who were engaged in employment related to the production of footwear and leather belts. That certification expired June 17, 2001. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from February 4, 2001 to June 18, 2001, for workers of the subject firm.

The amended notice applicable to TA–W–41,068 is hereby issued as follows:

All workers of Ansewn Footwear, Bangor, Maine, who became totally or partially separated from employment on or after June 18, 2001, through August 27, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 10th day of September, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–25784 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,525E]

The Boeing Company; Boeing Defense and Space Group; Commercial Airplane Group, Corinth, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on July 18, 2002, applicable to workers of The Boeing Company, Commercial Airplane Group, Corinth, Texas. The notice was published in the **Federal Register** on July 29, 2002 (67 FR 49039–49040).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of large commercial aircraft and the components thereof.

New information shows that workers of the Corinth, Texas location of the Commercial Airplane Group of The Boeing Company, are part of the Boeing Defense and Space Group of The Boeing Company. Information also shows that workers at the Corinth, Texas location that were separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for The Boeing Company, Boeing Defense and Space Group, Commercial Airplane Group.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of The Boeing Company, Boeing Defense and Space Group, Commercial Airplane Group who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,525 is hereby issued as follows:

All workers of The Boeing Company, Boeing Defense and Space Group, Commercial Airplane Group, Corinth, Texas (TA–W–40,525E) who became totally or partially separated from employment on or after December 18, 2000, through March 18, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 25th day of September, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–25781 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,711, et al.]

Carolina Glove Co., Wilkes Plant, Conover, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 18, 2002, applicable to workers of Carolina Glove Co., Wilkes Plant, Conover, North Carolina. The notice was published in the **Federal Register** on July 9, 2002 (67 FR 45544).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred at the Marshall Plant, Marshall, North Carolina facility of Carolina Glove Co. The workers were engaged in the production of work gloves until all production ceased in June 2002.

Accordingly, the Department is amending the certification to cover workers at Carolina Glove Co., Marshall Plant, Marshall, North Carolina.

The intent of the Department's certification is to include all workers of Carolina Glove Co. who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,711 is hereby issued as follows:

All workers of Carolina Glove Co., Wilkes Plant, Conover, North Carolina (TA—W–40,711) and Carolina Glove Co., Marshall Plant, Marshall, North Carolina (TA–W–40,711A) who became totally or partially separated from employment on or after January 9, 2001, through June 18, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 11th day of September, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–25783 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,583]

Ceco Door Products; Harlingen, TX; Notice of Termination of Certification

Pursuant to section 223 of the Trade Act of 1974, on August 26, 2002, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to workers of the subject firm. The notice will be published soon in the **Federal Register**.

The State agency requested that the Department review the certification for workers of the subject firm engaged in the production of steel doors and frames. Information shows that a previous certification, TA–W–41,539, was issued on July 16, 2002, for workers of Ceco Door Products, Harlingen, Texas who were engaged in employment related to the production of steel doors and frames.

Consequently, continuance of this certification would serve no purpose and the certification is terminated.

Signed in Washington, DC, this 27th day of September, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–25771 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,112]

Elsevier Science Illustration Specialists, Philadelphia, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 16, 2002 in response to a petition filed on behalf of workers who are illustration specialists at Elsevier Science, Philadelphia, Pennsylvania.

An active certification covering the workforce, in its entirety, at Elsevier Science, Philadelphia, Pennsylvania was issued on June 21, 2002 and remains in effect (TA–W–41,058). Thus, separated workers who are illustration specialists are included as eligible under that certification. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 30th day of September 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–25774 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,091, et al.]

Halliburton Energy Services; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 15, 2002, applicable to workers of Halliburton Energy Services, Tucson, Arizona. The notice was published in the **Federal Register** on July 29, 2002 (67 FR 49038).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at Halliburton Energy Services, Houston, Texas, Evansville, Wyoming, Rock Springs, Wyoming, Williston, North Carolina, Denver, Colorado, Grand Junction, Colorado, Vernal, Utah and Farmington, New Mexico. The workers provide oil and gas drilling services and field operations, office and management support services to unaffiliated firms in the oil and gas industry.

The intent of the Department's certification is to include all workers of Halliburton Energy Services adversely affected by increased imports.

Accordingly, the Department is amending the certification to cover workers of Halliburton Energy Services, Houston, Texas, Evansville, Wyoming, Rock Springs, Wyoming, Williston, North Dakota, Denver, Colorado, Grand Junction, Colorado, Vernal, Utah, and Farmington, New Mexico.

The amended notice applicable to TA–W–41,091 is hereby issued as follows:

All workers of Halliburton Energy Services in Tucson, Arizona. (TA–W–41,091), Houston, Texas (TA–W–41,091E), Evansville, Wyoming (TA–W–41,091F), Rock Springs, Wyoming (TA–W–41,091G), Williston, North Dakota (TA–W–41,091H), Denver, Colorado (TA–W–41,091I), Grand Junction, Colorado (TA–W–41,091J), Vernal, Utah (TA–W–41,091K) and Farmington, New Mexico (TA–W–41,091L) who became totally or partially separated from employment on or after February 21, 2001, through July 15, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 10th day of September, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–25785 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,225]

Jideco of Bardstown, Bardstown, KY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 1, 2002 in response to a petition, which was filed by a company official on behalf of workers at Jideco of Bardstown, Bardstown, Kentucky.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 1st day of October, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–25769 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,092, Canonsburg, PA, et al.]

MICTEC, Inc., Including Employees of MICTEC, Inc. Operating at Various Locations; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 26, 2001, applicable to workers of MICTEC, Inc., Canonsburg, Pennsylvania. The notice was published in the **Federal Register** on December 18, 2001 (66 FR 65220).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred involving employees of the Canonsburg, Pennsylvania facility of MICTEC, Inc. operating at various locations in the following states: Illinois, Pennsylvania, Indiana, Michigan, Ohio and Georgia. These employees provide support function services for the production of refractory materials and related machinery at the Canonsburg, Pennsylvania location of the subject firm.

Based on these findings, the Department is amending this certification to include employees of the Canonsburg, Pennsylvania location of MICTEC, Inc. operating at various locations in the following states: Illinois, Pennsylvania, Indiana, Michigan, Ohio and Georgia.

The intent of the Department's certification is to include all workers of MICTEC, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,092 is hereby issued as follows:

All workers of MICTEC, Canonsburg, Pennsylvania (TA–W–40,092), including employees of MICTEC, Canonsburg, Pennsylvania operating at various locations in the following states: Illinois (TA–W–40,092A), Pennsylvania, Excluding Canonsburg, (TA–W–40,092B), Indiana (TA–W–40,092C), Michigan (TA–W–40,092D), Ohio (TA–W–40,092E) and Georgia (TA–W–40,092F), who became totally or partially separated from employment on or after September 7, 2000, through November 26, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 3rd day of September, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–25780 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,302]

Motorola, Inc., Arlington Heights, IL; Notice of Negative Determination Regarding Application for Reconsideration

By application dated June 25, 2002, a petitioner requested that the Department of Labor amend a Trade Adjustment Assistance certification issued on May 2, 2002 for workers of Motorola, Inc., Global Telecom Solutions (GTSS) and Commercial, Government, Industrial Solutions Sector (CGISS), Schaumburg, Illinois (TA–W–40,501 & TA–W–40,501A, respectively) to include workers of Motorola, Inc., Arlington Heights, Illinois (TA–W–41,302). Based on the information supplied in the petitioner's letter, it appears the petitioner is actually requesting administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm (TA–W–41,302). The denial notice was signed on June 27, 2002, and published in the **Federal Register** on July 9, 2002 (67 FR 45550).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Motorola, Inc., Arlington Heights, Illinois was denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The investigation revealed that the predominate cause of worker separations at the subject facility was related to a domestic shift of production to another facility located in Illinois.

The petitioner believes that the workers at the subject plant were in direct support of a facility under an existing Trade Adjustment Assistance (TAA) Certification (TA–W–40,501) Motorola, Inc., Global Telecom Solutions Sector (GTSS), formerly Network Solutions Sector (NSS), Schaumburg, Illinois and therefore believes they should be considered for TAA certification. The petitioner further believes that the workers do the same work as the Schaumburg plant.

A review of the data supplied by the company during the initial investigation shows that subject plant workers were primarily engaged in activities related to the production of cable modems and cable hardware. The workers at the TAA certified facility located in Schaumburg were engaged in the production of IDEN and CGISS radio system units.

The company supplied further information concerning any potential

Arlington Heights support activities directed towards the Schaumburg facility. The data provided by the company indicates that the portion of Arlington Heights work directed towards the Schaumburg plant was negligible during the relevant period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 1st day of October, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–25786 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,733]

Oremet, Wah Chang, Division of Allegheny Technologies, Inc., Albany, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 2, 2001, applicable to workers of Oremet, a Division of Allegheny Technologies, Inc., Albany, Oregon. The notice was published in the **Federal Register** on May 2, 2001 (66 FR 22006).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of titanium ingot, sponge and forged products.

New information shows that Oremet and Wah Chang are divisions of Allegheny Technologies, Inc.

Information also shows that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Oremet, Wah Chang, a Division of Allegheny Technologies, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Oremet, a Division of Allegheny Technologies, Inc., Albany, Oregon who were adversely affected by increased imports.

The amended notice applicable to TA–W–38,733 is hereby issued as follows:

All workers of Oremet, Wah Chang, a Division of Allegheny Technologies, Inc., Albany, Oregon, who became totally or partially separated from employment on or after February 10, 2000, through April 2, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 3rd day of September, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–25779 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,475]

Ruger Equipment, Inc., Urichsville, OH; Notice of Revised Determination on Reconsideration

On August 12, 2002, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on August 20, 2002 (67 FR 53973).

The Department initially denied TAA to workers of Ruger Equipment, Inc., Urichsville, Ohio engaged in the production of load lifting and material handling equipment because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met.

On reconsideration, the Department conducted a survey of the major customers of the subject firm regarding their purchases of load lifting and material handling equipment during the relevant period. The survey revealed that a major customer increased their imports, while decreasing their purchases from the subject firm during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with load lifting and material handling equipment, contributed importantly to the declines in sales or production and to the total or partial separation of workers of Ruger Equipment, Inc., Urichsville, Ohio. In accordance with the provisions of the Act, I make the following certification:

All workers of Ruger Equipment, Inc., Urichsville, Ohio who became totally or partially separated from employment on or after April 1, 2001 through two years from date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 30th day of September, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–25788 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,596]

Tyco International, Ltd., a Division of Tyco Electronic Power Systems, Formerly Lucent Technologies; Including Leased Workers of Adecco Employment, Mesquite, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 19, 2002, applicable to workers of Tyco International, LTD, a Division of Tyco Electronic Power Systems, Formerly Lucent Technologies, Mesquite, Texas. The notice was published in the **Federal Register** on February 28, 2002 (67 FR 9325).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State shows that leased workers of Adecco Employment, Garland, Texas were employed at Tyco International, LTD, a Division of Tyco Electronic Power Systems to produce power supplies at the Mesquite, Texas location of the subject firm.

Based on these findings, the Department is amending the certification to include leased workers of Adecco Employment, Garland Texas employed at Tyco International, LTD, a Division of Tyco Electronic Power Systems, Mesquite, Texas.

The intent of the Department's certification is to include all workers of Tyco International, LTD, a Division of Tyco Electronic Power Systems who were adversely affected by increased imports of power supplies.

The amended notice applicable to TA–W–40,596 is hereby issued as follows:

All workers of Tyco International LTD, a Division of Tyco Electronics Power Systems, Mesquite, Texas including leased workers of Adecco Employment, Garland, Texas engaged in employment related to the production of power supplies at Tyco International, LTD, a Division of Tyco Electronic Power Systems, Mesquite, Texas, who became totally or partially separated from employment on or after October 22, 2000, through February 19, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC this 3rd day of September, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–25782 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,938]

Valeo Switches and Detection Systems, Ft. Worth, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 12, 2002 in response to a petition filed by a company official on behalf of workers at Valeo Switches and Detection Systems, Ft. Worth, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 30th day of September, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–25772 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—6364]

Computer Sciences Corporation, Credit Services Division, Houston, TX; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on July 11, 2002, in response to a petition filed on behalf of workers at Computer Sciences Corporation, Credit Services Division, Houston, Texas. Workers were engaged in activities related to mailroom functions at the subject firm.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 20th day of September, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–25776 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6350]

Medtronic, Vascular-World Medical Division, Sunnse, FL; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on June 18, 2002, in response to a petition filed by a company official on behalf of workers at Medtronic, Vascular-World Medical Division, Sunnse, Florida.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 13th day of September, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–25775 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6486]

Midwest Electric Products, Inc., Mankato, MN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 19, 2002, in response to a worker petition filed by a company official on behalf of workers at Midwest Electric Products, Inc., Mankato, Minnesota.

An active certification covering the petitioning group of workers remains in effect until October 12, 2002 (NAFTA–4090). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 24th day of September, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–25778 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—6429]

Valeo Switches and Detection Systems, Ft. Worth, TX; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on August 2, 2002, in response to a petition filed by a company official on behalf of workers at Valeo Switches and Detection Systems, Ft. Worth, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would

serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 30th day of September, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–25777 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Monterey Coal Company

[Docket No. M–2002–074–C]

Monterey Coal Company, 14300 Brushy Mound Road, Carlinville, Illinois 62626 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35(a) (Portable trailing cables and cords) to its No. 1 Mine (I.D. No. 11–00726) located in Macoupin County, Illinois. The petitioner proposes to install a Hubbel/Ensign Electric Division Class 1401 Permissible Distribution Box certified by the MSHA Approval and Certification Center under X/P–1733–3, so that two Fletcher Model CDR–15 slim line roof bolters could be used near the end of the longwall panel for additional support of the face when transferring equipment to the next panel. The distribution box would have a maximum of 750 feet of No. 4/0 AWG G–GC trailing cable extending from the power center located outby. The roof bolters would be equipped with No. 2 AWG G–GC portable cables with 1000 feet of the cable extended across the face from the distribution box. The petitioner was granted a petition in December 1994, docket number M–94–131–C, to extend the trailing cables to the Fletcher roof bolters to 1200 feet with short circuit protection set at 800 Amps Maximum and a longwall panel width of 750 feet Maximum. The petitioner states that since the granting of its previous petition, the longwall panel has been increased to 1100 feet Maximum, and is approved and accepted by the MSHA Approval and Certification Center under 2G–3955A–0. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Knott County Mining Company

[Docket No. M–2002–075–C]

Knott County Mining Company, P.O. Box 2805, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Mallet Branch Mine (I.D. No. 15–18393), Mine 582 (I.D. No. 15–18522), and Hollybush Mine (I.D. No. 15–15289) located in Knott County, Kentucky. The petitioner proposes to use permanently installed, spring-loaded locking devices on battery plug connectors on battery-powered equipment to prevent the plug connectors from unintentionally loosening from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Coemont Construction, Inc.

[Docket No. M–2002–076–C]

Coemont Construction, Inc., P.O. Box 297, Glen Daniel, West Virginia 25844 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Coemont No. 1 Mine (I.D. No. 46–08945) located in Boone County, West Virginia. The petitioner proposes to use a threaded ring and a spring-loaded device instead of a padlock on battery plug connectors on mobile battery-powered machines to prevent the plug connector from accidentally disengaging while under load. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Lone Mountain Processing, Inc.

[Docket No. M–2002–077–C]

Lone Mountain Processing, Inc., Drawer C, St. Charles, Virginia 24282 has filed a petition to modify the application of 30 CFR 75.1002 (Location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Huff Creek Mine No. 1 (I.D. No. 15–17234) located in Harlan County, Kentucky. The petitioner proposes to use a 2400-volt power center to power a continuous miner with high-voltage trailing cable inby the last open crosscut and within 150 feet of pillar workings. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Lone Mountain Processing, Inc.

[Docket No. M–2002–078–C]

Lone Mountain Processing, Inc., Drawer C, St. Charles, Virginia 24282 has filed a petition to modify the application of 30 CFR 75.1002 (Location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Darby Fork Mine No. 1 (I.D. No. 15–02265) located in Harlan County, Kentucky. The petitioner proposes to use a 2400-volt power center to power a continuous miner with high-voltage trailing cable inby the last open crosscut and within 150 feet of pillar workings. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. White County Coal, LLC

[Docket No. M–2002–079–C]

White County Coal, LLC, 1525 County Road 1300 N, P.O. Box 457, Carmi, Illinois 62821 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) to its Pattiki I Mine (I.D. No. 11–02662) located in White County, Illinois. The petitioner proposes to operate a 13 horse power "Flygt" pump outby the last open crosscut 6700 feet from the power source, using AWG2 cable rated at 600-volt, minimum temperature rating 75 degrees C, and the overall jacket heavy duty and flame resistant. The petitioner states that the circuit breaker at the power source would be set at 80 amps. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. Kentucky May Mining

[Docket No. M–2002–080–C]

Kentucky May Mining, P.O. Box 249, Stanville, Kentucky 41659 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Lakeview Mine (I.D. No. 15–18507) located in Pike County, Kentucky. The petitioner proposes to use permanently installed spring-loaded locking devices to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. Remington Coal Company, Inc.

[Docket No. M–2002–081–C]

New River Engineering, Inc., 2971C East DuPont Avenue, Shrewsbury, West Virginia 25015, has filed a petition for the Remington Coal Company, Inc., 430 Harper Park Drive, Beckley, West Virginia 25801, to modify the application of 30 CFR 75.1700 (Oil and gas wells) to its Stockburg No. 1 Mine (I.D. No. 46–08634) located in Kanawha County, West Virginia. The petitioner proposes to plug and mine through oil and gas wells. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

9. Debra Lynn Coals, Inc.

[Docket No. M–2002–083–C]

Debra Lynn Coals, Inc., P.O. Box 297, Grays Knob, Kentucky 40829 has filed a petition to modify the application of 30 CFR 77.214 (Refuse piles; general) to its Liggett Preparation Plant (I.D. No. 15–12428) located in Harlan County, Kentucky. The petitioner requests a modification of the standards to allow placement of refuse material over abandoned mine portals and associated mine workings. The petitioner proposes to construct a refuse pile over abandoned underground mine works in the Harlan coal bed, and de-water rock drains from two existing mine adits within the abandoned mine works. The petitioner states that the massive sandstone unit immediately above the Harlan coal bed would prevent any adverse effects of mine subsidence on the refuse pile. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before November 12, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 4th day of October 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–25762 Filed 10–9–02; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos: (Redacted), License Nos: (Redacted), EA–XX–XXX (Redacted)]

In the Matter of All Power Reactor Licensees, Research and Test Reactor Licensees, and Special Nuclear Material Licensees Who Possess and Ship Spent Nuclear Fuel; Order Modifying License (Effective Immediately)

The licensees identified in Attachment 1 to this Order have been issued a specific license by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing the possession of spent nuclear fuel and a general license authorizing the shipment of spent nuclear fuel [in a transportation package approved by the Commission] in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR parts 50, 70 and 71. This Order is being issued to all such licensees who ship spent nuclear fuel. Commission regulations for shipment of spent nuclear fuel at 10 CFR 73.37(a) require these licensees to maintain a physical protection system that meets the requirements contained in 10 CFR 73.37(b), (c), (d), and (e).

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility or regulated activity. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 of this Order, on all licensees identified in Attachment 1 of this Order.[1] These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect pending notification from the Commission that a significant change in the threat environment has occurred, or the Commission determines that other changes are needed.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued Safeguards and Threat Advisories or on their own. It is also recognized that some measures may not be possible or necessary for all shipments of spent nuclear fuel, or may need to be tailored to accommodate the licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe transport of spent nuclear fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of common defense and security, in light of the current threat environment, the Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all licenses identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above which warrant the issuance of this Order, the public health, safety, and interest require that this Order be immediately effective.

[1] Attachments 1 and 2 contain SAFEGUARDS Information and will not be released to the public.

Accordingly, pursuant to Sections 53, 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 70 and 71, *It is hereby ordered, effective immediately, that all licenses identified in Attachment 1 to this Order are modified as follows:*

A. All Licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the Licensee's security plan. The Licensees shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by November 2, 2002, unless otherwise specified in Attachment 2, or before the licensee's next shipment, whichever is later.

B. 1. All Licensees shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

2. Any Licensee that considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact the safe transport of spent nuclear fuel must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the activity to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. All Licensees shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 2.

2. All Licensees shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding any provisions of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained pending notification from the Commission that a significant change in the threat environment has occurred, or the Commission determines that other changes are needed.

Licensee responses to Conditions B1, B2, C1, and C2 above, shall be submitted to the NRC to the attention of the Director, Office of Nuclear Reactor Regulation or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, under either 10 CFR 50.4, 70.5. In addition, Licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as applicable, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555–0001. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as applicable, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*, and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[2]

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

[2] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714 (d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714 (d), please see 67 FR 20884; April 29, 2002.

Dated at Rockville, Maryland, this 3rd day of October 2002.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Margaret Federline,

Duputy Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–25842 Filed 10–9–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[EA–02–124; Dockets Nos. 50–456; 50–457, 50–454; 50–455, 50–461, 50–10; 50–237; 50–249, 50–373; 50–374, 50–352; 50–353, 50–219, 50–171; 50–277; 50–278, 50–254; 50–265, 50–289, 50–295; 50–304; Licenses Nos. NPF–72; NPF–77, NPF–37; NPF–66, NPF–62, DPR–2; DPR–19; DPR–25, NPF–11; NPF–18, NPF–39; NPF–85, DPR–16, DPR–12; DPR–44; DPR–56, DPR–29; DPR–30, DPR–50, DPR–39; DPR–48]

Exelon Generation Company, LLC and AmerGen Energy Company, LLC; Braidwood Station, Units 1 & 2, Byron Station, Units 1 & 2, Clinton Power Station, Units 1, 2 & 3, LaSalle County Station, Units 1 & 2, Limerick Generating Station, Units 1 & 2, Oyster Creek Nuclear Generating Station, Peach Bottom Atomic Power Station, Units 1, 2 & 3, Quad Cities Nuclear Power Station, Units 1 & 2, Three Mile Island Nuclear Station, Unit 1, Zion Nuclear Power Station, Units 1 & 2; Confirmatory Order Modifying Licenses (Effective Immediately)

Exelon Generation Company, LLC (Exelon) and AmerGen Energy Company, LLC (AmerGen) (Licensees) are the holders of twenty-one NRC Facility Operating Licenses issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50, which authorizes the operation of the specifically named facilities in accordance with the conditions specified in each license. Licenses No. NPF–72 and NPF–77 were issued on July 2, 1987, and May 20, 1988, to operate the Braidwood Station, Units 1 and 2. Licenses No. NPF–37 and NPF–66 were issued on February 14, 1985, and January 30, 1987, to operate Byron Station, Units 1 and 2. License No. NPF–62 was issued on April 17, 1987 to operate the Clinton Power Station. Licenses No. DPR–2 and DPR–25 were issued on September 28, 1959, and January 12, 1971, to operate Dresden Nuclear Power Station, Units 1 and 3 (Dresden Station Unit 1 is currently in decommissioning). License No. DPR–19 was extended on February 20, 1991, for Dresden Nuclear Power Station, Unit 2. Licenses No. NPF–11 and NPF–18 were issued on April 17, 1982, and February 16, 1983, to operate LaSalle County Station, Units 1 and 2. Licenses No. NPF–39 and NPF–85 were issued on August 8, 1985, and August 25, 1989, to operate the Limerick Generating Station, Units 1 and 2. License No. DPR–16 was extended on July 2, 1991, for the Oyster Creek Nuclear Generating Station. License No. DPR–12 was issued on January 24, 1966, to operate Peach Bottom Atomic Power Station, Unit 1, which was shut down on October 31, 1974, and is in safe storage. Licenses No. DPR–44 and DPR–56 were issued on October 25, 1973, and July 2, 1974, to operate Peach Bottom Atomic Power Station, Units 2 & 3. Licenses No. DPR–29 and DPR–30 were issued on December 14, 1972, for the operation of both units at the Quad Cities Nuclear Power Station, Units 1 and 2. License No. DPR–50 was issued on April 19, 1974, to operate the Three Mile Island Nuclear Power Station, Unit 1. Licenses No. DPR–39 and DPR–48 were issued on October 19, 1973, and November 14, 1973, for operation of the Zion Nuclear Power Station, Units 1 and 2 (the Zion Station is currently in decommissioning).

On January 29, 2001, the NRC Office of Investigations (OI) initiated an investigation to determine if a former Exelon employee performing work at the Byron Station had been discriminated against for raising safety concerns. In its Report No. 3–2001–005, issued March 26, 2002, OI concluded that an Exelon corporate manager deliberately discriminated against the former employee on August 25, 2000, in violation of the NRC regulations prohibiting employment discrimination, 10 CFR 50.7, "Employee Protection," by not selecting the employee for a new position. On June 17, 2002, the NRC staff contacted Exelon management to schedule a predecisional enforcement conference. To expedite resolution of this matter, Exelon requested the opportunity to present a settlement proposal to the NRC prior to a predecisional enforcement conference. The NRC staff agreed to this request.

Representatives of Exelon met with the NRC staff on July 2, July 18, July 30, September 9 and September 11, 2002, to discuss the terms of the Exelon settlement proposal. In an August 5, 2002 letter, Exelon described the proposed settlement and on September 27, 2002, the Licensees committed to a number of corrective actions with respect to employee protection, agreed to have the corrective actions confirmed by Order, and admitted that a violation of 10 CFR 50.7 had occurred. The corrective actions include, but are not limited to, counseling management personnel involved in the violation of 10 CFR 50.7, and training all vice-presidents and plant managers throughout the Licensees' organization (at every nuclear station and at corporate headquarters) on the provisions of the employee protection regulation. These individuals, in turn, will train their subordinate managers. The Licensees will also modify management training programs as appropriate regarding the provisions of 10 CFR 50.7.

On September 27, 2002, the Licensees consented to issuance of this Order with the commitments described in Section V below, waived any right to a hearing on this Order, and agreed to all terms of this Order, including that it shall be effective immediately.

I find that the Licensees' commitments as set forth in Section V, below, are acceptable and necessary, and conclude that since Exelon admitted the violation of 10 CFR 50.7 and since the Licensees committed to taking comprehensive corrective actions by implementing this Confirmatory Order, the NRC staff's concern regarding employee protection can be resolved through confirmation of the Licensees' commitments by this Order. I further find that the Licensees' approach to resolving this matter is salutary and efficient, and that this resolution is in the public interest. Accordingly, the NRC staff exercises its enforcement discretion pursuant to Section VII.B.6 of the NRC Enforcement Policy and will not issue Notices of Violation or a civil penalty in this case.

Accordingly, pursuant to sections 103, 104b, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *it is hereby ordered, effective immediately, that license Nos. NPF–72, NPF–77, NPF–37, NPF–66, NPF–62, DPR–2, DPR–19, DPR–25, NPF–11, NPF–18, NPF–39, NPF–85, DPR–16, DPR–12, DPR–44, DPR–56, DPR–29, DPR–30, DPR–50, DPR–39, and DPR–48 are modified as follows:*

1. Exelon will counsel and coach personnel involved in the violation of 10 CFR 50.7, which occurred on August 25, 2000, to emphasize the importance of a safety conscious work environment and provisions of 10 CFR 50.7. The counseling will be conducted by a corporate Exelon executive not involved in the violation described herein and who shall be senior to those counseled.

2. An Exelon corporate executive will train and coach every executive-level employee (defined to include plant managers and all vice-president level personnel) throughout the licensed organizations, including every nuclear station and headquarters, on the employee protection provisions of 10 CFR 50.7. The sessions will be conducted by an Exelon executive knowledgeable about the issues involved in the August 25, 2000, violation and will be held in small groups to assure focus and interactive involvement of every executive. The sessions will include a case study of the selection decision that caused this enforcement action and a discussion of the lessons learned.

3. Each executive trained pursuant to Paragraph 2 above will be provided a communications package for use in training the managers in that executive's chain-of-command regarding these issues and the Licensees' expectations for handling employee interactions.

4. The Licensees will enhance training on the prevention of employment discrimination beyond that in its existing management training programs. Lesson plans and other materials used in management training programs on the prevention of employment discrimination will be reviewed and revised as appropriate to address maintaining a safety conscious work environment and the employee protection provisions of 10 CFR 50.7. The on-going training will be conducted at a frequency consistent with the Licensees' existing policies, practices and procedures.

5. The Licensees will review the internal candidate selection process to ensure that the process incorporates the principles of employee protection under 10 CFR 50.7.

6. A communication will be distributed to all employees of the Licensees' organizations that strongly reaffirms management's commitment to fostering a safety-conscious work environment in all organizations at all sites and in its headquarters organization. The Licensees will also reaffirm to all employees the Licensees' commitments to a strong and viable Employee Concerns Program and will reiterate the various means that all employees may employ to raise issues that may be of concern to them.

7. Exelon will review all work environment surveys conducted since September 2000 at the Byron Station (where the former employee previously worked) to assure that management responses to any findings were implemented to assure that no residual effect exists in the safety-conscious work environment at the station as a result of the selection decision. Exelon will provide to the Regional Administrator, NRC Region III, Lisle, Illinois, a written description of the results of this review and any actions taken or planned to be taken to assure that a safety conscious work environment exists at the Byron Station.

8. The Licensees will accomplish these actions within six months of the date of this Order and will furnish a written report of the results achieved to the Director, Office of Enforcement, within 30 days following completion.

The Director, Office of Enforcement may relax or rescind, in writing, any of the above conditions upon a showing by the Licensees of good cause.

Any person adversely affected by this Confirmatory Order, other than the Licensees, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit a request for a hearing must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532–4351; to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406–1415; and to the Licensees. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR § 2.714(d).[1]

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. A request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 3rd Day of October 2002.

For the U.S. Nuclear Regulatory Commission.

Frank J. Congel,

Director, Office of Enforcement.

[FR Doc. 02–25844 Filed 10–9–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–33887; License No. 49–26808–02; EA–01–302]

In the Matter of High Mountain Inspection Service, Inc., Mills, WY; Order Imposing Civil Monetary Penalty

I

High Mountain Inspection Service, Inc., (Licensee) is the holder of Materials License No. 49–26808–02 issued by the Nuclear Regulatory Commission (NRC or Commission) on October 3, 1995. The license authorizes the Licensee to conduct radiography activities in accordance with the conditions specified therein.

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things: (i) The nature of the petitioner's right under the Act to be made a party to the proceeding. (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding. (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest. (2) The admissibility of a contention, refuse to admit a contention if: (i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or (ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

II

An inspection of the Licensee's activities was completed on January 24, 2002. The results of that inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated May 7, 2002. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in a letter dated June 18, 2002. In its response, the Licensee admitted to the violations associated with the civil penalty but asserted mitigating extenuating circumstances. Further, the Licensee stated that the NRC did not fully and properly consider the facts presented in the February 27, 2002, predecisional enforcement conference and in the licensee's letter dated April 4, 2002. The licensee requested remission or at least significant mitigation of the civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendices to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $6,000 within 30 days of the date of this Order, in accordance with NUREG/BR–0254. In addition, at the time of making the payment, the licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

In accordance with 10 CFR 2.202, the licensee, and any other person adversely affected by this Order, may request a hearing on this Order within thirty (30) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing". Any request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011; and to the licensee if the hearing request is by a person other than the licensee. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*.

If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[1]

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated this 30th day of September, 2002.

For The Nuclear Regulatory Commission.

Frank J. Congel,

Director, Office of Enforcement.

[FR Doc. 02–25845 Filed 10–9–02; 8:45 am]

BILLING CODE 7590–01–P

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things: (i) The nature of the petitioner's right under the Act to be made a party to the proceeding. (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding. (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest. (2) The admissibility of a contention, refuse to admit a contention if: (i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or (ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

Rochester Gas and Electric Corporation R.E. Ginna Nuclear Power Plant; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

Rochester Gas and Electric Corporation (RG&E) has submitted an application for renewal of Facility Operating License DPR–18 for an additional 20 years of operation at the R.E. Ginna Nuclear Power Plant (Ginna). Ginna is located in Wayne County, New York, approximately 20 miles east of Rochester, New York. The application for renewal was submitted by letter dated July 30, 2002, pursuant to 10 CFR part 54. A notice of receipt of application, including the environmental report (ER), was published in the **Federal Register** on August 26, 2002 (67 FR 54825). A notice of acceptance for docketing of the application for renewal of the facility operating license was published in the **Federal Register** on September 30, 2002 (67 FR 61354). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) in support of the review of the license renewal application and to provide the

public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29.

In accordance with 10 CFR 54.23 and 10 CFR 51.53(c), RG&E submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR part 51 and is available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html*, which provides access through the NRC's Public Electronic Reading Room (PERR) link. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*. The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/ginna.html*. In addition, the Ontario Public Library, located at 1850 Ridge Road, Ontario, New York 14519, and the Rochester Public Library, located at 115 South Avenue, Rochester, New York 14604, have agreed to make the ER available for public inspection.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants," (NUREG–1437) in support of the review of the application for renewal of the Ginna operating license for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. Section 51.95 of 10 CFR requires that the NRC prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with the National Environmental Policy Act (NEPA) and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate, from detailed study, those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, and include any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, Rochester Gas and Electric Corporation.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the Ginna license renewal supplement to the GEIS. The scoping meetings will be held in the Betty Rissberger Community Room of the Webster Public Library in Webster, New York, on Wednesday, November 6, 2002. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour before the start of each session in the Webster Public Library. No comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting Mr. Robert G. Schaaf, by telephone at 1–800–368–5642, extension 1312, or by Internet to the NRC at *GinnaEIS@nrc.gov* no later than October 30, 2002. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Mr. Schaaf will need to be contacted no later than October 30, 2002, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the Ginna license renewal review to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6 D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by December 11, 2002. Electronic comments may be sent by the Internet to the NRC at *GinnaEIS@nrc.gov*. Electronic submissions should be sent no later than December 11, 2002, to be considered in the scoping process. Comments will be available electronically and accessible through the NRC's PERR link at *http://www.nrc.gov/reading-rm/adams.html*.

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application was the subject of the aforementioned **Federal Register** notice of acceptance for docketing. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection through the PERR link. The staff will then prepare and issue, for comment, the draft supplement to the GEIS, which will be the subject of separate notices and separate public meetings. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Schaaf at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 7th day of October, 2002.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–25983 Filed 10–9–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Second Pre-PIRT Meeting on Triso Coated Fuel Particles

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

PURPOSE: The Nuclear Regulatory Commission will hold the second pre-PIRT (Phenomena Identification and Ranking Table) meeting to identify phenomena and issues related to TRISO coated fuel particles in order to develop research program. PIRTs have been used at NRC since 1988, and they provide a structured way to obtain a technical understanding that is needed to address certain issues.

DATES: Oct. 31-Nov. 1, 2002 (9 a.m.–5 p.m. and 9 a.m.–4:15 p.m. respectively).

ADDRESSES: Room O–13B4 of the Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD.

Participants

This is a technical workshop to be conducted as roundtable discussions and presentation of handouts between the NRC staff and NRC contractors. The agenda is attached. All handouts will be published as part of a NUREG/CR report. The list of invited contractors are as follows:

Brent Boyack, Contractor,
Syd Ball, Oak Ridge National Laboratory,
Robert Morris, Oak Ridge National Laboratory,
David Petti, Idaho National Engineering Laboratory,
Dana Powers, Sandia National Laboratory.

Public Attendance

The meeting will be conducted as roundtable discussions between the invited participants and NRC staff. Although the focus of discussions will be among invited participants and NRC staff, the meeting is open to public. Members of the audience will be given opportunity to comment at the end of the meetings each day. They may also submit written comments after the meeting. All written comments should be received within 15 days of the conclusion of the meeting. All written comments which are received within this period, will be published as part of the NUREG/CR report.

SUPPLEMENTARY INFORMATION: The meeting agenda will be posted on the NRC Web site at *http://www.nrc.gov/RES/meetings.html* by Oct 15, 2002. Attendees will need to obtain a visitor badge at the OWFN building lobby and an escort is required.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Odar, SMSAB, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research, Washington, DC 20555–0001, telephone (301) 415–6500.

Dated at Rockville, Maryland, this 3rd day of October 2002.

For the Nuclear Regulatory Commission.

Farouk Eltawila,

Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.

Agenda—The Second TRISO Fuel Particle Pre-PIRT Meeting, Oct. 31–Nov. 1, 2002, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852

Participants

Brent Boyack, Contractor, Chairman,
Dana Powers, Sandia National Laboratory,
David Petti, Idaho National Engineering Laboratory,
Robert Morris, Oak Ridge National Laboratory,
Syd Ball, Oak Ridge National Laboratory,
NRC Staff.

Objectives

- Identify essential points, phenomena and processes associated with TRISO fuel during transient and accident conditions.
- Select importance ranking criteria and scale.
- Perform testing of importance ranking process for a postulated accident scenario.

Thursday, Oct. 31, 2002, Room O–13B4 (North Building, 13th Floor, Room B4)

8:45 a.m. Check-in at front desk.
9:00 Convene meeting, review results of the first meeting (B. Boyack/all).
10:30 Break.
10:45 ORNL presentation/discussion on TRISO particles during accidents/transients.
11:00 INEEL presentation/discussions on TRISO particles during accidents/transients.
12:00 Lunch.
1:00 p.m. Identify essential phenomena/issues associated with TRISO particles during accidents and transients.
3:00 Break.
3:15 Identify essential phenomena/issues associated with TRISO particles during accidents and transients (cont.).
4:45 Public Comment Period.
5:00 Adjourn.

Friday, Nov. 1, 2002, Room O–13B4 (North Building, 13th Floor, Room B4)

8:45 a.m. Check-in front desk.
9:00 Convene meeting, identify essential phenomena/issues associated with TRISO particles during accidents and transients (cont.).
10:30 Break.
10:45 Confirm importance ranking criteria and scale, start performing testing of the PIRT process for a postulated accident.
12:00 Lunch.
1:00 p.m. Perform testing of the PIRT process for a postulated accident.
3:15 Break.
3:30 Confirmation of post-meeting action items (format and content) and due dates.
4:00 Public comment period.
4:15 Adjourn.

[FR Doc. 02–25843 Filed 10–9–02; 8:45 am]
BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, October 24, 2002
Thursday, November 7, 2002
Thursday, November 21, 2002
Thursday, December 5, 2002
Thursday, December 19, 2002

The meetings will start at 10 a.m. and will be held in Room 5A–06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: September 30, 2002.

Mary M. Rose,

Chairperson, Federal Prevailing Rate Advisory Committee.

[FR Doc. 02–25847 Filed 10–9–02; 8:45 am]
BILLING CODE 6325–49–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25763; File No. 812–12834]

Acacia National Life Insurance Company, et al.; Notice of application

October 4, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an order pursuant to Sections 17(b) and 11(a) of the Investment Company Act of 1940 ("1940 Act" or "Act"), and Rule 17d–1 thereunder.

APPLICANTS: Acacia National Life Insurance Company ("Acacia National"), Acacia National Variable Annuity Separate Account II ("Acacia VA Account"), Acacia National Variable Life Insurance Separate Account I ("Acacia VUL Account," collectively with the Acacia VA Account, the "Acacia Accounts"), Ameritas Variable Life Insurance Company ("AVLIC"), Ameritas Variable Separate Account VA ("AVLIC VA Account"), Ameritas Variable Separate Account VL ("AVLIC VUL Account," collectively with the AVLIC VA Account, the "AVLIC Accounts") and The Advisors Group, Inc. ("TAG") (collectively, "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order of the Commission (1) permitting the transfer of assets from the Acacia Accounts to the AVLIC Accounts in connection with the assumption reinsurance by AVLIC from Acacia National of the individual variable annuity contracts (the "Acacia Contracts") and individual variable life insurance policies (the "Acacia Policies") to which those assets relate; (2) permitting any joint arrangement that could be deemed to be associated with those reinsurance transactions; and (3) approving the terms of any offers of exchange that may be deemed to be involved in those reinsurance transactions.

FILING DATES: The application was filed on May 31, 2002 and amended and restated on September 26, 2002, and October 2, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this Application by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on October 29, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: c/o Jorden Burt LLP, 1025 Thomas Jefferson Street, NW, Suite 400 East, Washington, DC 20007–5208, Attention: W. Randolph Thompson, Esq.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Acacia National is a stock life insurance company organized under the laws of the Commonwealth of Virginia and a wholly owned subsidiary of Acacia Life Insurance Company ("Acacia Life"). Acacia Life is wholly owned by Ameritas Holding Company, a subsidiary of Ameritas Acacia Mutual Holding Company ("Ameritas Acacia"). On March 29, 2001, Acacia National was re-domesticated in the District of Columbia. Acacia National is engaged in the business of issuing life insurance and annuities throughout the United States, except Alaska, Maine, New Hampshire and New York.

2. The Acacia VA Account is a separate account established by Acacia National on November 30, 1995, for the purpose of funding certain individual variable annuity contracts ("Acacia Contracts"). The Acacia VA Account is registered as a unit investment trust under the 1940 Act (File No. 811–07627), and registration statements filed pursuant to the Securities Act of 1933 ("1933 Act") are in effect with respect to two Acacia Contracts (File Nos. 333–53732 and 333–03963).

3. The Acacia VUL Account is a separate account established by Acacia National on January 31, 1995, under Virginia law for the purpose of funding certain individual variable life insurance policies ("Acacia Policies"). The Acacia VUL Account is registered as a unit investment trust under the 1940 Act (File No. 811–8998), and registration statements filed pursuant to the 1933 Act are in effect with respect to three Acacia Policies (File Nos. 33–90208, 333–95593 and 333–81057).

4. All assets of the Acacia Accounts are invested in shares of portfolios of various investment companies ("Underlying Portfolios") each of which is registered under the 1940 Act, and the shares of each of which are registered pursuant to the 1933 Act.

5. AVLIC is a stock life insurance company organized under the laws of the State of Nebraska. AVLIC is engaged in the business of issuing life insurance and annuities throughout the United States, except New York. AVLIC is an indirect majority-owned subsidiary of Ameritas Acacia, the ultimate parent of Ameritas Life Insurance Corp. ("Ameritas Life"). In 1996, Ameritas Life entered into a joint venture with AmerUs Life Insurance Company ("AmerUs") forming AMAL Corporation ("AMAL"), a holding company that initially owned the common stock of AVLIC and Ameritas Investment Corporation. As of April 1, 2002, shares of AMAL were also transferred to Acacia Life, Acacia National and Acacia Financial Corp. ("AFCO").

AmerUs is a life insurance company with its principal place of business in Des Moines, Iowa. It is a wholly-owned subsidiary of AmerUs Group Co. and is not affiliated with Ameritas Life other than through the joint ownership of AMAL. Both Ameritas Life and AmerUs now guarantee the obligations of AVLIC through their agreement forming AMAL Corporation ("AMAL"), a holding company that owns the common stock of AVLIC, and is in turn a majority-owned subsidiary of Ameritas Life.

6. The AVLIC VA Account is a separate account newly established by AVLIC under Nebraska law for the purpose of funding certain individual variable annuity contracts ("AVLIC Contracts" collectively with the Acacia Contracts, "Variable Contracts"). The AVLIC VA Account is registered as a unit investment trust under the 1940 Act, and registration statements filed under the 1933 Act are in effect with respect to the AVLIC Contracts.

7. The AVLIC VUL Account is a separate account newly established by AVLIC under Nebraska law for the purpose of funding certain individual variable life insurance policies ("AVLIC Policies" collectively with the Acacia Policies, "Variable Policies"). The AVLIC VUL Account is registered as a unit investment trust under the 1940 Act, and registration statements filed pursuant to the 1933 Act are in effect with respect to the AVLIC Policies.

8. All assets of the AVLIC Accounts, like those of the Acacia Accounts, will be invested in shares of the Underlying Portfolios. There will be no change in the investment advisers, or sub-advisers to, assets of, or charges imposed by, the Underlying Portfolios in connection with, or by virtue of, any of the transactions described below. The AVLIC Contracts are identical to the Acacia Contracts, and the AVLIC Policies are identical to the Acacia Policies in all material respects, including current and maximum permitted charges. The AVLIC Contracts will be issued in exchange for the variable portion of the Acacia Contracts, and the AVLIC Policies will be issued in exchange for the variable portion of the Acacia Policies as part of the assumption reinsurance transactions described below.

9. TAG is an affiliate of Acacia National and wholly owned by AFCO, a subsidiary of Acacia Life, and serves as the distributor of the Acacia Contracts and Policies. TAG is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act") and is a member of the National Association of Securities Dealers, Inc. (the "NASD"). TAG enters into selling group agreements with affiliated and unaffiliated broker-dealers. The Acacia Contracts and Policies are sold by licensed insurance agents who are registered representatives of TAG or other broker-dealers that are registered under the 1934 Act and are members of the NASD.

10. Applicants propose to implement, as part of a larger reorganization plan to consolidate their product lines and corporate organization, a restructuring that would permit AVLIC, through the AVLIC Accounts, to serve as the issuer of the Variable Contracts and Policies. The restructuring would be accomplished through an asset transfer agreement, modified coinsurance agreement and assumption reinsurance agreement.

11. On April 1, 2002, Acacia National entered into a modified coinsurance agreement (the "Coinsurance Agreement") with AVLIC relating to the Acacia Contracts and Policies. Under that agreement, AVLIC agreed to accept, and to reinsure and indemnify, and Acacia National agreed to "cede" (*i.e.*, transfer to) and reinsure with AVLIC, all of Acacia's National's obligations with respect to the variable portion of the Acacia Contracts and the variable portion of the Acacia Policies, including any and all riders and any supplementary contracts associated therewith, and any Acacia Contracts or Policies in the process of 1035 exchanges. AVLIC agreed that the reinsurance under the Coinsurance Agreement would (a) be coinsurance on all of the rights, obligations and liabilities of Acacia National under the Acacia Contracts and Policies, (b) follow the forms of Acacia National, and (c) be in the amount of the benefit provided by the Acacia Contracts and Policies. Coinsurance involves reinsurance of the obligations of an issuer of insurance contracts where both the issuer of the contracts and the reinsurer remain fully obligated under the contracts, and the owner of the contract may look to either or both for performance of the issuer's obligations under those contracts. If Acacia Contracts or Policies are surrendered or terminated before the effective date of the Coinsurance Agreement but are reinstated before the effective date, those Contracts and Policies will be covered under the Coinsurance Agreement. For all other

incidents occurring at any time. AVLIC is responsible for any and all rights, obligations or liabilities under the Acacia Contracts and Policies, to the extent not paid for prior to the effective date of the Coinsurance Agreement, and for the maintenance of any assets or reserves in connection therewith. Concurrently with the execution of the Coinsurance Agreement, Acacia National and AVLIC also entered into and executed an assumption reinsurance agreement (the "Assumption Agreement"). The Assumption Agreement is a true novation or substitution of one insurer (AVLIC) for the other (Acacia National) after which owners of Acacia Contracts or Policies which have been "assumption reinsured" could look only to AVLIC (and no longer to Acacia National) for performance of the obligations under the AVLIC Contracts and Policies.

12. In accordance with the Agreement of Merger and Plan of Reorganization ("TAG Merger Agreement") with an effective date of April 1, 2002, AMAL will transfer 2.97% of the outstanding stock of AMAL to AFCO. In return, AFCO agrees to transfer all outstanding stock of TAG to AMAL. Following the closing of the TAG Merger Agreement, AMAL will continue to be a directly majority-owned subsidiary of Ameritas Life.

13. In accordance with the Asset Transfer Agreement with an effective date of April 1, 2002, AVLIC will transfer 7.43% of the outstanding stock of AMAL to Acacia National. Following the closing of the Asset Transfer Agreement, AMAL will continue to be a directly majority-owned subsidiary of Ameritas Life.

14. In accordance with the Distribution Commitment Agreement for Variable Business ("Distribution Agreement") with an effective date of April 1, 2002, AVLIC will transfer 3.48% of the outstanding stock of AMAL to Acacia Life. Following the closing of the Distribution Agreement, AMAL will continue to be a directly majority-owned subsidiary of Ameritas Life.

Prior to all stock transfers, 61% of AMAL's stock was owned by Ameritas Life and 39% was owned by AmerUs. When all of these transactions have been completed, AMAL's stock ownership will be: Ameritas Life, 52.53%; AmerUs, 33.59%; Acacia Life, 3.48%; Acacia National, 7.43%; and AFCO, 2.97%.

15. Acacia National and AVLIC entered into the Assumption Agreement with an effective date of April 1, 2002. Assumption reinsurance is reinsurance where only the company reinsuring the issuing company assumes all of the obligations under the contracts or policies reinsured; the company that issued the contracts or policies would no longer be obligated in any way on those contracts and policies covered by the assumption reinsurance. In the Assumption Agreement, Acacia National agreed to transfer to AVLIC (by way of assumption reinsurance) all of its obligations and liabilities under the Acacia Contracts and Policies and all of its rights thereunder (*e.g.*, the rights to receive contract or policy charges), and AVLIC agreed to assume all of those obligations (*e.g.*, the obligation to pay surrender values and death benefits), liabilities and rights. AVLIC will issue an "assumption certificate" approved for use by the appropriate state insurance regulatory authorities, to each owner of an Acacia Contract or Policy (an "Owner") to be reinsured by it. The assumption certificate will inform the Owner of AVLIC's assumption of Acacia National's obligations, liabilities and rights under the Acacia Contracts and Policies, that the Owner will become a contract or policy owner of AVLIC and that there will be no impact on his or her contract or policy Value as a result of the Assumption Agreement. No fee or commission is payable by or to Acacia National or by or to any other party to the Assumption Agreement.

16. The Assumption Agreement is also subject to the satisfaction of various conditions, including the making of all required filings with and obtaining all necessary approvals of applicable state insurance authorities. All of the conditions precedent to the obligations of AVLIC and Acacia National pursuant to the Assumption Agreement are to be fulfilled or satisfied by the closing date of the Assumption Agreement, including the assignment or novation of the Coinsurance Agreement for the benefit of AVLIC. However, it is anticipated that the transfer and assumption will take place in a series of transactions, because all required clearances from state insurance authorities to the assumption reinsurance of the Acacia Contracts and Policies may not have been obtained at the time of the closing date. Until any Acacia Contracts or Policies that cannot be assumption reinsured on the closing date of the Assumption Agreement can be assumption reinsured, they will continue to be governed by the Coinsurance Agreement, under which AVLIC will perform all functions necessary for the proper administration of the Acacia Contracts and Policies, but Acacia National will remain obligated under those Contracts and Policies.

17. The assumption reinsurance of the Acacia Contracts and Policies is subject to, among other things, the parties having obtained from the Commission any order necessary to permit the transactions; and having effective registration statements under the 1933 Act relating to the AVLIC Contracts and Policies that are to be issued in exchange for the Acacia Contracts and Policies. Consequently, Applicants expect the assumption reinsurance of the Acacia Contracts and Policies to take place at dates subsequent to the closing date of the Assumption Agreement. When all conditions to the closing of the agreement as it relates to the Acacia Contracts and Policies have been satisfied, assets of the Acacia Accounts equal to the contract liabilities attributable to the fixed and variable portions of the Acacia Contracts and Policies being assumption reinsured will be transferred to AVLIC. Because many states require that Owners be given the opportunity to voice their opinion on the assumption of their contracts or policies ("opt in" and "opt out" rights), Applicants expect AVLIC to initially assumption reinsure Acacia Contracts and Policies in approximately four states, and thereafter to reinsure Acacia Contracts and Policies in the remaining jurisdictions upon obtaining the necessary state authority or approvals. Subsequent assumption reinsurance with respect to the Acacia Contracts and Policies will take place in a series of transactions as state authority or approvals are obtained and required notifications have been made to Owners.

18. Upon the assumption reinsurance of an Acacia Contract or Policy, AVLIC will issue an assumption certificate to the Owner. The assumption certificate will inform the Owner of the assumption by AVLIC of all of Acacia National's liabilities under the Acacia Contracts and Policies. In addition, because the charges against assets of the AVLIC Accounts (sometimes referred to herein as the "Reinsuring Accounts") under AVLIC Contracts and Policies are identical to the charges against assets of the Acacia Accounts under the corresponding Acacia Contracts and Policies, the assumption certificate will also inform the Owner that there will be no impact on the Owner's contract or policy value because of the assumption reinsurance transactions contemplated in the Assumption Agreement. After receipt of an assumption certificate, an Owner will deal directly with AVLIC, and any further premiums the Owner wishes to apply to an Acacia Contract or Policy will be forwarded directly to AVLIC for allocation to the appropriate AVLIC Account.

19. The terms of the AVLIC Contracts or Policies are the same as those of the Acacia Contracts and Policies, but for the issuer of the respective Contracts or Policies. The assumption reinsurance of the Acacia Contracts and Policies will not change the number of accumulation or annuity units credited under the Variable Contracts or Policies or the value of such units, which will continue to be affected only by the investment performance of the Underlying Portfolios. Further, because shares of the Underlying Portfolios held by the Acacia Accounts will be transferred to the Reinsuring Accounts on the date a reinsurance transaction is effected, and because both the Acacia Accounts and the Reinsuring Accounts are administered at the same location using the processing system, there will be no interruption of investment performance. No charges or expenses will be incurred by the Acacia Accounts, the Reinsuring Accounts or the Underlying Portfolios in connection with the transfer of shares of the Underlying Portfolios because the transfer will be made by book entry on the shareholder records of the Underlying Portfolios. There will be no change in the values of any amounts allocated to fixed account funding options under the Acacia Contracts or Policies, and no charges to those accounts will be made as a result of the assumption reinsurance transactions. Any costs of the transactions will be born by ALVIC. Accordingly, contract values under AVLIC Contracts and Policies will be the same as they would have been under the Acacia Contracts and Policies had the assumption reinsurance transaction not occurred. The AVLIC Contracts and Policies will be sold through the same principal underwriter (TAG) after the assumption reinsurance transactions. There will be no tax consequences, adverse or otherwise, to Owners as a result of the assumption reinsurance of their Acacia Contracts or Policies. Finally, the fixed guarantee obligations that are not allocated to the AVLIC Accounts (*e.g.*, minimum death benefit and fixed account accumulations) will be supported by the general account assets of AVLIC and by guarantees of AVLIC's obligations by two of its parents, Ameritas Life and AmerUs. These fixed obligations are thus supported by far greater assets than those of Acacia National.

20. Applicants anticipate that one or more jurisdictions may require that Owners of Acacia Contracts or Policies assumption reinsured by AVLIC be afforded the right to "opt out" of or "opt in" to the assumption reinsurance of their Contracts or Policies. Thus, a state may require that an Owner be permitted to object to the assumption reinsurance of his or her Acacia Contract or Policy within a specified number of days after the Owner receives notice by means of a negative consent ("opt out") or affirmative consent ("opt in") to the assumption reinsurance transaction. If, under such an opt out provision, timely objection from the Owner were received by the reinsuring company, the Acacia Contract or Policy would be not be assumption reinsured, and the Owner would continue to deal directly with Acacia National as to all aspects of his or her Acacia Contract or Policy. However, the Acacia Contract or Policy would continue to be coinsured by AVLIC and AVLIC would perform all administrative services with respect to the Acacia Contract or Policy pursuant to the Coinsurance Agreement. The assumption reinsurance transaction and related requests to Owners for consents in connection with opt in or opt our rights will comply in all respects with applicable state insurance laws.

21. Acceptance of an opt out right after the assumption reinsurance transaction has occurred will result in the Owner being restored to the same position he or she would have had if the transaction had not taken place. The number of accumulation units or annuity units credited under a Variable Contract or Policy will remain unchanged, and the value of such units will be identical to what it would have been had the reinsurance transaction not occurred. In addition, there will be no tax consequences to the Owner resulting from the election of the opt out right.

22. AVLIC may continue to afford Owners who have previously opted out of (or have not opted in to) the assumption reinsurance of their Acacia Contracts or Policies a second opportunity to have their contract or policy assumed by AVLIC by issuing to them a second assumption certificate which would include any state-mandated opt out (or opt in) provision. Owners opting out (or opting in to) the reinsurance of their Acacia Contracts or Policies at this time would thereafter remain with Acacia National and have their contract or policy values based on the applicable Acacia Account. Because Applicants anticipate that only a few Owners will remain with Acacia National, Acacia National may seek at a future date to deregister the Acacia Accounts pursuant to Section 8(f) of the 1940 Act or to take such other steps as it deems appropriate to reduce the number of Acacia Contracts and Policies outstanding or the administrative burdens presented by such contracts and policies.

23. On or about September 25, 2002, AVLIC sent assumption certificates to Owners in those states where the assumption has received state insurance regulatory approval. Concurrent with this mailing, ALVIC sent, under separate cover letter, the applicable ALVIC prospectus to each Owner. The majority of these states allow for the assumption reinsurance to be become effective either: (a) Immediately upon mailing of this notice; or (b) upon the passage of time (anywhere from 10 to 30 days) after the mailing of the certificate, assuming the Owners fail to send an "opt out" notice during this time period. The "opt out" rights were explained in the written materials sent to each Owner with the AVLIC prospectuses. For Owners in such states, the assumption certificate and cover letter stated that Acacia National and AVLIC will assumption reinsure this portion of the Acacia Policies effective November 1, subject to receiving an order from the Commission granting the application. (Any mention of receiving an order in this or other communications stated or will state that there can be no assurance of the order being issued.)

Another category of Owners receiving the mailings made on or about September 25th, including the current prospectus, were those in states that require affirmative election from Owners to "opt in" to the assumption reinsurance transaction. Materials provided to those individuals explained that the reinsurance will become effective only: (a) After receiving an order from the Commission granting the application; (b) after receiving an affirmative ballot from the Owner electing to participate in the assumption transaction; and (c) in any case, not before November 1, 2002.

Finally, Owners in states that had not approved the assumption reinsurance transaction by September 25 will be mailed assumption certificates, current prospectuses, and other appropriate materials as their states approve the transaction. Owners in such states will in all instances receive these materials at least 30 days (assuming reasonable mail delivery) prior to the assumption becoming effective, and always subject to the state opt-in or opt-out requirements and Applicants having received the order requested in their application with the Commission.

Applicants' Legal Analysis

1. Section 17(a)(1) of the 1940 Act, in pertinent part, prohibits any affiliated

person or promoter of or principal underwriter for a registered investment company, or any affiliated person of such an affiliated person, promoter or principal underwriter, acting as principal from knowingly selling to or purchasing from such registered company any security or other property with exceptions not relevant to the transactions described in the application.

2. Section 2(a)(3) of the Act defines "affiliated person" of another person in pertinent part as (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (b) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with, such other person; or (d) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof.

3. Applicants state that the prohibitions of section 17(a) would apply to the Acacia Accounts' sale of shares of the Underlying Portfolios to AVLIC in connection with the assumption reinsurance of the Acacia Contracts and Policies if the Acacia Accounts were deemed to have been at that time under common control with the Reinsuring Accounts and, therefore, an affiliated person of registered investment companies. Similarly, section 17(a) would prohibit the Reinsuring Accounts' purchase of shares of the Underlying Portfolios from the Acacia Accounts if the Reinsuring Accounts were deemed to have been affiliated persons of the Acacia Accounts, also registered investment companies. Moreover, section 17(a) applies to the Reinsuring Accounts' purchases of shares of the Underlying Portfolios because of AVLIC's affiliation with TAG, which will continue to act as principal underwriter for the Acacia Accounts.

4. Section 17(b) of the 1940 Act provides that, notwithstanding section 17(a), a person may file with the Commission an application for an order exempting a proposed transaction of the applicant from one or more of the prohibitions of section 17(a). The Commission shall grant such application if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and in reports filed under the Act; and (c) the proposed transaction is consistent with the general purposes of the Act.

5. Applicants seek an order of the Commission under section 17(b) of the 1940 Act granting an exemption from the prohibitions of section 17(a) to the extent necessary to permit the transfer of shares of the Underlying Portfolios from the Acacia Accounts to the Reinsuring Accounts in connection with the assumption reinsurance of the Acacia Contracts and Policies. Applicants submit that the proposed transfer of shares meets the standards for relief imposed by section 17(b) of the Act.

6. Applicants submit that the terms of the proposed arrangement are fair and reasonable and do not involve overreaching. The proposed arrangement is not susceptible to the kinds of serious harms that could result from a violation of section 17(a). Applicants state that there is no possibility of any overreaching or disadvantageous pricing because the only consideration to be received by the Acacia Accounts and to be paid by the Reinsuring Accounts' assumption of the obligations and liabilities held in the Acacia Accounts with respect to the Acacia Contracts and Policies being assumption reinsured. The value of the shares of the Underlying Portfolios to be transferred will equal the amount of the liabilities assumed, and that value will be computed in accordance with provisions of the 1940 Act and the rules thereunder.

7. Applicants also submit that the terms of the transactions will be consistent with the investment objectives and policies of the Acacia Accounts and Reinsuring Accounts because the objectives and policies of the Acacia Accounts and Reinsuring Accounts are to invest exclusively in shares of the Underlying Portfolios.

8. Finally, Applicants submit that the proposed transactions are consistent with the general purposes of the 1940 Act because the interests of the Owners are not adversely affected by the assumption reinsurance of their Acacia Contracts or Policies. As noted, the terms of the Variable Contracts and Policies remain unchanged, and the value of the Variable Contracts and Policies are unaffected by the transactions. AVLIC has been providing administrative services for the Acacia Contracts and Policies, so services provided will remain the same. Further, the proposed assumption reinsurance of the Acacia Contracts and Policies affords Owners the opportunity to have their contracts and policies remain with a company that is part of the Ameritas Acacia group and that is committed to the issuance of variable annuities and other variable products.

9. Section 17(d) of the 1940 Act, in pertinent part, prohibits any affiliated person of or principal underwriter for a registered investment company, or any affiliated person of such an affiliated person or principal underwriter, acting as principal from effecting any transaction in which such registered company is a joint or joint and several participant with such person, principal underwriter or affiliated person in contravention of rules and regulations adopted by the Commission if the participation of the registered company is on a basis different from or less advantageous than that of other participants.

10. Rule 17d–1 under the Act provides, in pertinent part, that no affiliated person of or principal underwriter for any registered investment company and no affiliated person of such a person or principal underwriter, acting as principal, shall participate in, or effect any transaction in connection with, any "joint enterprise or other joint arrangement or profit-sharing plan" in which such registered company is a participant unless an application with regard thereto has been granted by order of the Commission. Rule 17d–1(c) defines "joint enterprise or other joint arrangement or profit-sharing plan" as any arrangement or any practice or understanding concerning an enterprise or undertaking whereby a registered investment company and any affiliated person of or a principal underwriter for such registered investment company, or any affiliated person of such a person or principal underwriter, have a joint or a joint and several participation, or a share in the profits of such enterprise or undertaking.

11. Applicants state that it is possible that the assumption reinsurance arrangements could be deemed to be subject to Rule 17d–1. Accordingly, Applicants request an order pursuant to Rule 17d–1 to permit, to the extent necessary, the proposed assumption reinsurance arrangements. Rule 17d–1 provides that in passing upon an application filed pursuant to the rule, the Commission will consider "whether the participation of such registered or controlled company in such joint enterprise, joint arrangement or profit-sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants."

12. Applicants assert that if the relief from the provisions of Sections 17(a) and 11 requested herein is granted, the proposed assumption reinsurance agreement will not otherwise be inconsistent with any provision, policy or purpose of the 1940 Act. As noted, the principal effect of the reinsurance transactions will be to substitute a new insurance company responsible for the performance of the obligations of the Acacia Contracts and Policies. Applicants state that although the participation of each registered investment company in the reinsurance arrangement is different from that of the other participants, such difference is attributable to the separate and distinct interests of each party to the transaction. Applicants maintain that because the assumption reinsurance agreement is fair to Owners and will not affect the underlying investments on which the performance of their Variable Contracts or Policies depends, the requested relief should be granted.

13. Section 11(a) of the 1940 Act makes it unlawful for a registered open-end investment company, or its principal underwriter, to offer securities of an open-end investment company in exchange for other securities of the same or another open-end investment company unless the exchange either is based on the respective net asset values of the securities or the terms of the offer have received prior approval of the Commission. Section 11(c) of the Act provides that in the case of a unit investment trust the prohibition of Section 11(a) is applicable regardless of the basis of exchange.

14. Rule 11a–2 under the 1940 Act permits an offer by a registered variable annuity separate account or any principal underwriter for such an account to the holder of a security of any other registered variable annuity separate account having an insurance company depositor or sponsor that is an affiliate of the offering account's depositor or sponsor to exchange his or her security for a security of the offering account when both contracts are subject to a deferred sales load if: (a) The exchange is made at the relative net asset values of the securities to be exchanged, with exceptions not here applicable; (b) the deferred sales load imposed on the acquired security is calculated as if the holder of such security had been the holder thereof from the date on which he or she became the holder of the exchanged security and purchase payments made for the exchanged security had been made for the acquired security on the dates on which they were made for the exchanged security; and (c) the deferred sales load imposed on the acquired security does not exceed nine percent of the sum of the purchase payments made for the acquired security and the exchanged security.

15. The assumption reinsurance of the Acacia Contracts and Policies by AVLIC will involve the issuance of AVLIC Contracts and Policies in exchange for the Acacia Contracts and Policies. Applicants believe that in most states this may be done without the consent of Owners. However, certain states may require that Owners resident in that state be given the right to object to the exchange by requiring that they be afforded the right to opt out of (or not opt in to) the reinsurance of their Acacia Contracts or Policies. Where such right is provided, an offer of exchange may be deemed to exist to which the provisions of Sections 11(a) and (c) may apply.

16. Applicants assert that any offers of exchange involved in the assumption reinsurance of the Acacia Contracts will satisfy all of the conditions of Rule 11a–2 and will be permitted by that rule. Accordingly, no Section 11 relief is requested in connection with that aspect of the reinsurance transactions. However, Applicants state that there is uncertainty that the relief in Rule 11a–2(b)(2) would extend to an offer of exchange of variable life insurance contracts. Accordingly, Applicants request approval, to the extent necessary, of any exchange offers that may be deemed to be entailed in the assumption reinsurance of the Acacia Policies.

17. Applicants assert that any offers of exchange involved in the assumption reinsurance of the Acacia Policies would satisfy all of the conditions of Rule 11a–2 because they will be made at the relative net asset values of the securities to be exchanged; any deferred sales load imposed on the AVLIC Policies will be calculated as if the Owner had been the holder thereof from the date on which he or she became the holder of the Acacia Policy, and purchase payments applied to the Acacia Policy had been made for the AVLIC Policy on the dates on which they were applied to the Acacia Policy; and the deferred sales load imposed under the AVLIC Policy will not exceed nine percent of the sum of the purchase payments made for the Acacia and AVLIC Policies.

18. Applicants request an order pursuant to Section 11(a) under the 1940 Act to the extent necessary to permit the offers of exchange that may be deemed to be involved in the assumption reinsurance of the Acacia Policies. Applicants assert that, because no new sales or other charges will be assessed in connection with the assumption reinsurance of the Acacia Policies by AVLIC, the principal abuse at which Section 11(a) is directed will not be present. Section 11(c) of the 1940 Act requires Commission approval, irrespective of the basis of exchange, where a unit investment trust security is exchanged for another investment company security. The requirement of approval of such exchanges appears to have been designed to avoid possible unfairness latent in such exchanges, even if they are made at net asset value.

19. Applicants submit that the terms of any offers of exchange involved in the proposed assumption reinsurance of the Acacia Policies by AVLIC are fair and should be approved by the Commission. As previously stated, no new sales or other charges will be assessed at the time of, or as a result of, the assumption reinsurance of the Acacia Policies, and no provisions of the Variable Policies will be changed at the time of, or as a result of, assumption reinsurance of the Policies. Owners will have the same opportunity as they currently have to invest in the same Underlying Portfolios, and the number and value of the accumulation and annuity units credited under an AVLIC Policy at the time an Acacia Policy is assumption reinsured will be the same as they would have been if the assumption reinsurance transaction had not taken place. If an Owner should elect to opt out of the assumption reinsurance of his or her Acacia Policy after the transaction has occurred, the number and value of the accumulation units and annuity units credited under his or her Acacia Policy upon its reissue will be the same as if the reinsurance had not taken place. As noted, neither the reinsurance of the Acacia Policies nor the election to opt out of (or not opt in to) the reinsurance transaction will have any adverse tax consequences to Owners. Finally, any exchange of variable life policies will be made at the relative net asset values of the securities to be exchanged and any deferred sales loads imposed under the AVLIC Policies will comply with the provisions of Rule 11a–2(d) under the 1940 Act.

20. Applicants state that, in effect, the only material change resulting from the reinsurance of the Acacia Policies is a change in the insurance company directly responsible to Owners for the performance of Variable Policy obligations, for under the Coinsurance Agreement described above, AVLIC will

not only perform all administrative services with respect to the Acacia Policies not assumption reinsured but it will bear any gain or loss that Acacia National would otherwise incur with respect to such Acacia Policies. Applicants state that AVLIC has substantial assets, and capital and surplus to assure the performance of its respective obligations under the Variable Policies. Further, Owners will receive current prospectuses for the AVLIC Policies and will have sufficient information on which to base any opt-in or opt-out decision.

Conclusion

For the reasons stated herein, Applicants submit that the terms of the proposed transaction meet all of the requirements of Sections 17(b) and 11(a) of the 1940 Act, and of Rule 17d–1 thereunder and that an order should, therefore, be granted.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–25743 Filed 10–9–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46587; File No. SR–CHX–2002–32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Reinstate and Extend a Pilot Rule Interpretation Relating to Trading of Nasdaq/NM Securities in Subpenny Increments

October 2, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2002, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reinstate and extend through January 31, 2003, the pilot rule interpretation relating to the trading of Nasdaq/NM securities in subpenny increments. The pilot expired on September 30, 2002. The CHX does not propose to make any substantive or typographical changes to the pilot; the only change is a reinstatement and extension of the pilot's expiration date through January 31, 2003. The text of the proposal is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 6, 2001, the Commission approved, on a pilot basis through July 9, 2001, a pilot rule interpretation (CHX Article XXX, Rule 2, Interpretation and Policy .06 "Trading in Nasdaq/NM Securities in Subpenny Increments")[5] that requires a CHX specialist (including a market maker who holds customer limit orders) to better the price of a customer limit order in his book which is priced at the national best bid or offer ("NBBO") by at least one penny if the specialist determines to trade with an incoming market or marketable limit order. The pilot was extended on three occasions and expired on September 30, 2002.[6] The CHX now proposes to reinstate and extend the pilot through January 31, 2003. The CHX proposes no other changes to the pilot, other than reinstating and extending it through January 31, 2003.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[7] In particular, the CHX believes the proposal is consistent with Section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The Commission waived the 5-day pre-filing notice requirement.

[5] *See* Securities Exchange Act Release No. 44164 (April 6, 2001), 66 FR 19263 (April 13, 2001)(SR-CHX–2001–07).

[6] *See* Securities Exchange Act Release No. 44535 (July 10, 2001), 66 FR 37251 (July 17, 2001) (SR–CHX–2001–15); Securities Exchange Act Release No. 45062 (November 15, 2001), 66 FR 58768 (November 23, 2001) (SR–CHX–2001–21); Securities Exchange Act Release No. 45386 (February 1, 2002), 67 FR 6062 (February 8, 2002) (SR–CHX–2002–02); Securities Exchange Act Release No. 45755 (April 15, 2002) 67 FR 19607 (April 22, 2002) (SR–CHX–2002–10).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive both the 5-day notice and the 30-day operative delay. The Commission believes waiving the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to be reinstated and to continue uninterrupted through January 31, 2003, and allow the Commission to further study the trading of Nasdaq/NM securities in subpenny increments. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR–CHX–2002–32 and should be submitted by October 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25744 Filed 10–9–02; 8:45 am]

BILLING CODE 8010–01–P

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46586; File No. SR–NASD–2002–132]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for Limit Order Protection of Securities Priced in Decimals

October 2, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 26, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through January 31, 2003, the current pilot price-improvement standards for decimalized securities contained in NASD Interpretative Material 2110–2—Trading Ahead of Customer Limit Order ("Manning Interpretation" or "Interpretation"). Without such an extension these standards would terminate on September 30, 2002. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through January 31, 2003. Nasdaq requests that the Commission waive both the 5-day notice and 30-day operative requirements contained in Rule 19b–4(f)(6)(iii)[5] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD's Manning Interpretation requires NASD member firms to provide a minimum level of price improvement to incoming orders in NMS and SmallCap securities if the firm chooses to trade as principal with those incoming orders at prices superior to customer limit orders they currently hold. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders. Generally, if a firm fails to provide the requisite amount of price improvement and also fails to execute its held customer limit orders, it is in violation of the Manning Interpretation.

On April 6, 2001,[6] the Commission approved, on a pilot basis, Nasdaq's proposal to establish the following price improvement standards whenever a market maker wished to trade proprietarily in front of its held customer limit orders without triggering an obligation to also execute those orders:

(1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is $0.01; and

(2) For customer limit orders priced outside the best inside market displayed in Nasdaq, the market maker must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01).[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (order approving proposed rule change modifying NASD's Interpretative Material 2110–2—Trading Ahead of Customer Limit Order).

[7] Pursuant to the terms of the Decimals Implementation Plan for the Equities and Options

Continued

Since approval, these standards have operated on a pilot basis and are currently scheduled to terminate on September 30, 2002. After consultation with Commission staff, Nasdaq seeks an extension of its current Manning pilot until January 31, 2003. Nasdaq believes that such an extension provides for an appropriate continuation of the current Manning price-improvement standard while the Commission analyzes the issues related to customer limit order protection for decimalized securities, and reviews Nasdaq's separately filed rule proposal to make this pilot permanent.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[9] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive both the 5-day notice and the 30-day operative delay. The Commission believes waiving the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through January 31, 2003, and will allow Nasdaq and the Commission to analyze the issues related to customer limit order protection in a decimals environment. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2002–132 and should be submitted by October 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25745 Filed 10–9–02; 8:45 am]

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Markets, the minimum quotation increment for Nasdaq securities (both National Market and SmallCap) at the outset of decimal pricing is $0.01. As such, Nasdaq displays priced quotations to two places beyond the decimal point (to the penny). Quotations submitted to Nasdaq that do not meet this standard are rejected by Nasdaq systems. *See* Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001).

[8] *See* SR–NASD 2002–10.

[9] 15 U.S.C. 78o–3 (b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46585; File No. SR–NASD–2002–131]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for the Operation of the Short Sale Rule in a Decimals Environment

October 2, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 26, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through January 31, 2003, the penny ($0.01) legal short sale standard contained in NASD Interpretative Material 3350 ("IM–3350"). Without such an extension this standard would terminate on September 30, 2002. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through January 31, 2003. Nasdaq requests that the Commission waive both the 5-day notice and 30-day operative requirements contained in Rule 19b–4(f)(6)(iii)[5] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 2, 2001, the Commission approved, on a one-year pilot basis ending March 1, 2002,[6] Nasdaq's proposal to establish a $0.01 above the bid standard for legal short sales in Nasdaq National Market securities as part of the Decimals Implementation Plan for the Equities and Options Markets. The pilot program has been continuously extended since that date and is currently set to expire on September 30, 2002.[7] Nasdaq now proposes to extend, through January 31, 2003, that pilot program. Extension until January 31st, will allow Nasdaq and the Commission to continue to evaluate the impact of the penny short sale pilot and thereafter take action on Nasdaq's separate pending proposal to make the penny short sale standard permanent.[8] If approved, Nasdaq would continue during the pilot period to require NASD members seeking to effect "legal" short sales when the current best (inside) bid displayed by Nasdaq is lower than the previous bid, to execute those short sales at a price that is at least $0.01 above the current inside bid in that security. Nasdaq believes that continuation of this pilot standard appropriately takes into account the important investor protections provided by the short sale rule and the ongoing relationship of the valid short sale price amount to the minimum quotation increment of the Nasdaq market (currently also $0.01).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[9] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive both the 5-day notice and the 30-day operative delay. The Commission believes waiving the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through January 31, 2003, and will provide Nasdaq and the Commission with an opportunity to evaluate the impact of the penny short sale pilot. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2002–131 and should be submitted by October 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25746 Filed 10–9–02; 8:45 am]

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[6] Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001).

[7] Securities Exchange Act Release No. 45761 (April 16, 2002), 67 FR 19788 (April 23, 2002).

[8] *See* SR–NASD 2002–09.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46595; File No. SR–OCC–2002–06]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Adjustment Procedures for Stock Futures

October 3, 2002.

I. Introduction

On April 12, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange

Commission ("Commission") proposed rule change File No. SR–OCC–2002–06 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on August 9, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The proposed rule change amends OCC's adjustment procedures for stock futures to provide for adjusting stock futures contracts to compensate for special cash dividends and for rights distributions that expire in the money during the life of the futures contract. Security futures markets and certain firms interested in trading stock futures have expressed to OCC their belief that in order for stock futures to be successful they must replicate a position in the underlying stock as closely as possible. This means that, among other things, if an unanticipated corporate event (*i.e.*, an event that cannot be discounted in futures prices) materially affects the value of an underlying stock, the terms of futures contracts on that stock should be adjusted to compensate for the event. There are two types of corporate events that cause particular concern from this perspective: (1) Special (*i.e.*, non-recurrent) cash dividends and (2) rights distributions.

OCC does not, as a general rule, adjust options for cash dividends unless the amount of the dividend exceeds 10 per cent of the value of the underlying stock. If the holder of a call option wants to capture a dividend below that threshold, he can do so by exercising his option. Because stock futures, like other futures products, are not exercisable, the holder of a long stock future would not have that ability. Recurrent cash dividends are not regarded as a problem because they can be anticipated and discounted in futures settlement prices. But there is no economical way for holders of long stock futures positions to ensure themselves the benefit of unscheduled dividends.

Similarly, if the issuer of an underlying stock declares a rights distribution and the rights will expire before the options do, the holder of a call option can capture the value of the rights by exercising the option before the rights expire. In contrast, the holder of a long stock future would have no way of obtaining the benefit of a rights distribution if the rights expire before the future does.

OCC's by-laws currently specify adjustment procedures for stock futures that generally parallel the adjustment rules for options. These procedures do not take into account the economic differences between options and futures discussed above. The security futures markets and firms interested in trading stock futures strongly believe that OCC's adjustment provisions should accommodate these differences.[3]

This rule change addresses that concern. OCC's by-laws presently provide that, as a general rule, outstanding stock futures contracts will not be adjusted to compensate for "ordinary" cash dividends. A cash dividend is deemed "ordinary" if the amount does not exceed 10 per cent of the value of the underlying stock on the declaration date. This rule change amends Article XII, Section 3, of the by-laws to provide that in the case of stock futures, a cash dividend would be deemed "ordinary" if OCC determined that it was declared pursuant to a policy or practice of paying such dividends on a quarterly or other regular basis regardless of the size of the cash dividend.[4] This change recognizes that market pricing mechanisms can compensate for anticipated cash dividends, but because the market cannot anticipate and cannot price for special dividends, the rule change provides for adjustments to outstanding stock futures when a company pays a special (*i.e.*, non-recurring) cash dividend without regard to size. This will be done through a one-time adjustment in the futures settlement price that has the effect of causing the short holder to pass the value of the dividend to the long holder.

Article XII, Section 3, of OCC's By-Laws currently provides that outstanding stock futures will not be adjusted to compensate for rights distributions where the rights expire before the maturity date of the future. Under the rule change, if rights will expire before they are to be delivered under a stock futures contract, the futures contract will be adjusted through a one-time adjustment in the futures settlement price in an amount equal to the value of the rights as determined by OCC. OCC's good-faith determination of value will be conclusive and binding on investors.

Because Interpretation and Policy .11 to Article XIII applies only to certain types of adjustments, it is being deleted because OCC has concluded that it is likely to be more confusing than useful.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the protect investors and the public interest.[5] Because OCC's current procedures do not allow for price adjustments to stock futures, which include securities futures, in the event of special cash dividends and rights distributions, there can be a disconnect between the value of stock futures and the value of the underlying stock. This proposed rule change, which allows OCC to make adjustments to stock futures contracts in these circumstances, will address this possible disconnect and will allow the price of stock futures to more accurately reflect the price of the underlying stock.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2002–06) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25747 Filed 10–9–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 46112 (August 5, 2002), 67 FR 51919.

[3] Although this would cause the adjustment procedures for stock futures to diverge from those applicable to equity options, the consensus among prospective markets and market participants appears to be that it is more important to avoid discontinuity between stock futures and the underlying stocks than between futures and options.

[4] Quarterly stock dividends will be deemed "ordinary" regardless of size. Stock futures contracts will ordinarily be adjusted for other stock distributions, even if recurrent (e.g., annual), to avoid creating an unnecessary discontinuity with equity options.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Emergency Request and Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. SSA has submitted the information collection listed below for emergency consideration by OMB. SSA has requested OMB approval has within 30 days from the date of this notice. Therefore, your comments will be most useful if received before the 30 days concludes. You can obtain copies of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

Voice Print Proof of Concept—0960–NEW. SSA provides Internet-based electronic services to the business community in order to conduct business with the Agency. As part of the registration process for these services, SSA uses a negative verification option to allow a business' management to stop SSA from sending a password to a registrant to act on behalf of the business. SSA plans to test the use of voice technology, saving a biometric voice-print, as a positive verification by the business that a registrant is allowed to act on their behalf. This technology is expected to be more secure, less burdensome, faster and provide better customer service than other available options. SSA will initiate a 2-month Proof of Concept project to test the business community's acceptance of this technology. This is strictly voluntary. SSA will collect the name, phone number and e-mail address of the registrant's supervisor. In addition, SSA may survey both the registrant and the supervisor to gauge their reactions to this new process.

Type of Request: New information collection.

Number of Respondents: 1,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 83 hours.

II. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Statement of Marital Relationship (by One of the Parties)—20 CFR 404.726—0960–0038.* SSA uses the information collected on Form SSA–754 to determine whether the conditions for establishing a common-law marriage under state law are met. The respondents are applicants for spouse's benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 15,000 hours.

2. *Marital Relationship Questionnaire—20 CFR 416.1826—0960–0460.* The information collected on Form SSA–4178 is needed by SSA to determine whether unrelated individuals of the opposite sex who are living together, and present themselves to the public as husband and wife, should be paid as a couple or two eligible individuals. The information is used to determine whether correct payment is being made to Supplemental Security Income (SSI) couples and individuals. The respondents are applicants for and recipients of SSI who are living together in a questionable relationship.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 5,100.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 425 hours.

3. *Statement of Living Arrangements, In-Kind Support and Maintenance—20 CFR, 416.1130–.1148—0960–0174.* Form SSA–8006 provides a national uniform vehicle for collecting information from SSI applicants and recipients about whether they receive income from in-kind support and maintenance. Responses are used to determine eligibility for SSI benefits. The respondents are individuals applying for SSI or whose eligibility is being reevaluated.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 173,380.

Frequency of Response: 1.

Average Burden Per Response: 7 minutes.

Estimated Annual Burden: 20,228 hours.

4. *Application for Widow's or Widower's Insurance Benefits—20 CFR 404.335–.338—0960–0004.* SSA uses the information collected on the Form SSA–10–BK to determine if the applicant meets the statutory and regulatory conditions for entitlement to widow(er)'s benefits. The respondents are applicants for Widow(er)'s benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 288,580.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 72,145 hours.

5. *Student Reporting Form—20 CFR 404.352(b), 422.135, .415, .434, .367–.368—0960–0088. Form SSA–1383 is used by Social Security student beneficiaries to report events or changes that may affect continuing entitlement to these benefits. The respondents are Social Security Student Beneficiaries.*

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 75,000.

Frequency of Response: 1.

Average Burden Per Response: 6 minutes.

Estimated Annual Burden: 7,500 hours.

Dated: October 4, 2002.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 02–25724 Filed 10–9–02; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization Functions, and Delegations of Authority

This statement amends part S of the Statement of Organization, Functions, and Delegations of Authority which covers the Social Security

Administration (SSA). Chapter S9 covers the Office of the General Counsel. Notice is given that there are organizational and functional changes within OGC. The changes are as follows:

Section S9.00 The Office of the General Counsel—(Mission)

Replace in its entirety:

The Office of the General Counsel advises the Commissioner on legal matters, is responsible for providing all legal advice to the Commissioner, Deputy Commissioner, and all subordinate organizational components (except OIG) of SSA in connection with the operation and administration of SSA. Responsible for the policy formulation and decision making related to the collection, access, and disclosure of such information in the records of the Social Security Administration; and processing of Freedom of Information requests and appeals (under the Freedom of Information and Privacy Acts).

Section S9.10 The Office of the General Counsel—Organization

Retitle:

B. The Principal Deputy General Counsel (S9) to The Deputy General Counsel (S9).

C. The Immediate Office of the General Counsel (S9A) which includes:

Delete:

1. The Deputy General Counsel (S9A–1).

Renumber:

2. The Executive Operations Staff (S9A–3) to 1. The Executive Operations Staff (S9A–3).

Establish:

G. The Office of Public Disclosure (S9).

Reletter:

H. The Offices of the Regional Chief Counsels (S9G–F1—S9G–FX).

Section S9.20 The Office of the General Counsel—(Functions)

Replace in its entirety:

B. The Deputy General Counsel (S9) assists the General Counsel in carrying out his/her responsibilities and performs other duties as the General Counsel may prescribe. In the event of the General Counsel's absence or disability, or in the event of a vacancy in the position of General Counsel, the Deputy General Counsel acts for him/her unless the Commissioner directs otherwise. The Deputy General Counsel also serves as the Designated Agency Ethics Official with responsibility for coordinating and managing the Social Security Administration's (SSA) ethics program.

Replace in its entirety:

C. The Immediate Office of the General Counsel (S9A) includes the Executive Operations Staff (S9A–3).

Replace in its entirety:

1. The Executive Operations Staff (S9A–3) provides internal organizational planning, management analysis and review, staff support and assistance to the General Counsel, Deputy General Counsel, OGC Executive Staff, OGC Executive Officer, and other OGC managers. Plans, develops, and coordinates OGC's financial, personnel, and administrative management regional offices. Plans, directs and provides day-to-day operational support services on all areas of administrative, budget, space and facilities, communications, and systems management. Identifies, coordinates, and implements OGC's training program. Formulates, justifies, and presents annual and multi-year budget submissions. Controls the collection, recording, and reporting of all financial, personnel, and administrative data in connection with budget and staffing formulation and executive functions.

Replace in its entirety:

D. The Office of General Law (S9B).

1. Provides legal services on business management activities and administrative operations throughout SSA, including procurement, contracting, patents, copyrights, budget, appropriations, personnel, ethics, adverse employment actions, employment discrimination, compensation, travel, personnel and tort claims by and against SSA, electronic service delivery, labor-management relations and Touhy requests.

2. Provides legal services and advice regarding SSA's civil defense, civil rights and security programs as well as for SSA's administration of the Freedom of Information and Privacy Acts and Computer Matching Agreements. Provides liaison with the Department of Justice on administering the Freedom of Information and Privacy Acts. Serves as liaison with the Comptroller General.

3. Working under the direction of the Designated Agency Ethics Official, provides liaison with the Office of Government Ethics, as appropriate.

4. Furnishes litigation support and litigation related advice to the Commissioner and all components of SSA in both administrative and court litigation in connection with each of the areas mentioned above. Represents SSA in all such litigation when such direct representation is authorized by law. In other cases, makes and supervises contacts with attorneys responsible for the conduct of such litigation.

Establish:

G. The Office of Public Disclosure (S9).

1. Develops and interprets SSA policy governing the collection, use, maintenance and disclosure of personally identifiable information under the Privacy Act and requests for information made under the provisions of the Freedom of Information Act (FOIA).

2. Develops national standards relating to the release and exchange of personal data in SSA databases to federal, state, and local agencies.

3. Assures Agency-wide sensitivity to the importance of privacy considerations in all situations involving disclosure of SSA data about individuals. Ensures necessary privacy protections are built into new systems and processes developed to deliver more efficient service to Agency customers.

4. Reviews Agency projects and initiatives to ensure compliance with the Privacy Act and related laws and regulations.

5. Examines public service issues related to handling various information requests from the public.

6. Acts on Privacy Act and FOIA appeals.

7. Directs FOIA activities in SSA, develops SSA's FOIA policies and procedures and prepares the Annual Report to Congress on these activities.

8. Reviews requests and determines whether records are required to be disclosed to members of the public.

9. Serves as the Agency focal point for all data sharing activities with outside organizations.

Reletter:

H. The Offices of Regional Chief Counsels (S9G–F1—S9G–FX).

Dated: October 1, 2002.

Jo Anne B. Barnhart,

Commissioner.

[FR Doc. 02–25723 Filed 10–9–02; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. (Section 182 is commonly referred to as the "Special 301" provisions in the Trade Act.) On April 30, 2002 USTR announced the results of the 2002 Special 301 review. As part of that announcement it was stated that several Out-of-Cycle Reviews (OCRs) would be conducted this fall.

USTR requests written comments from the public concerning the acts, policies, and practices of those trading partners that are relevant to the decision as to whether particular trading partners should be identified under Section 182 of the Trade Act. In addition, USTR is seeking comment on the United States Government's 1998 Memorandum of Understanding with Paraguay on intellectual property matters, including enforcement.

DATES: Submissions must be received on or before 12:00 noon on Wednesday, October 30, 2002.

ADDRESSES: All comments should be sent to Sybia Harrison, Special Assistant to the Section 301 Committee, at the following e-mail address: *FR0037@USTR.GOV*, with "Special 301 Out-of-Cycle Review" in the subject line. Please note, only electronic submissions will be accepted.

FOR FURTHER INFORMATION CONTACT: Kira Alvarez, Director for Intellectual Property, (202) 395–6864; or Victoria Espinel or Daniel Mullaney, Associate General Counsels, (202) 395–7305 or (202) 395–3581, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Pursuant to Section 182 of the Trade Act, the USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are to be identified as Priority Foreign Countries. Acts, policies or practices that are the basis of a country's designation as a Priority Foreign Country are normally the subject of an investigation under the Section 301 provisions of the Trade Act.

On April 30, 2002 USTR announced the results of the 2002 Special 301 review, including an announcement that several Out-of-Cycle Reviews (OCRs) would be conducted this fall. USTR is presently conducting OCRs on: Croatia, Indonesia, Israel, Mexico, the Phillipines, Poland, Qatar and Thailand. Additional countries may also be reviewed as a result of the comments received pursuant to this notice, or as warranted by events.

In addition, this fall, USTR is also reviewing its policy with regard to Paraguay, which is is currently subject to monitoring. In 1998, Paraguay was designated as a Priority Foreign Country, which resulted in a nine-month Section 301 investigation. The investigation was terminated upon the negotiation of a Memorandum of Understanding ("MOU") between the United States and Paraguay on the enforcement and protection of intellectual property rights, and consequently Paraguay has been monitored annually under the provisions of Section 306 of the Trade Act. This MOU is subject to review by January 2003.

Requirements for Comments

USTR requests written comments on relevant countries concerning the acts, policies, and practices of those countries that are relevant to the decision as to whether particular trading partners should be identified under Section 182 of the Trade Act.

Comments should include a description of the problems experienced and the effect of the acts, policies and practices on U.S. industry. Comments should be as detailed as possible and should provide all necessary information for assessing the effect of the acts, policies and practices. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses.

With respect to Paraguay, USTR requests comments on whether the MOU has been effective in furthering the protection and enforcement of intellectual property rights in Paraguay consistent with Paraguay's international obligations, and on options for proceeding with respect to the upcoming review of the U.S.-Paraguay MOU.

Comments must be in English and sent electronically. No submissions will be accepted via postal service mail. A submitter requesting that information contained in a comment be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked "business confidential" in a contrasting color ink at the top of each page of each copy. A non-confidential version of the comment must also be provided.

All comments should be sent to Sybia Harrison, Special Assistant to the Section 301 Committee, at the following e-mail address: *FR0037@USTR.GOV*, with "Special 301 Out-of-Cycle Review" in the subject line. Please note, only electronic submissions will be accepted.

Public Inspection of Submissions

Within one business day of receipt, non-confidential submissions will be placed in a public file, open for inspection at the USTR reading room, Office of the United States Trade Representative, Annex Building, 1724 F Street, NW, Room 1, Washington, DC. An appointment to review the file may be made by calling Sybia Harrison at (202) 395–3419. The USTR reading room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Kira M. Alvarez,

Director for Intellectual Property.

[FR Doc. 02–25875 Filed 10–9–02; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning Proposed United States-Morocco Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of intent to initiate negotiations on a free trade agreement between the United States and Morocco, request for comments, and notice of public hearing.

SUMMARY: The United States intends to initiate negotiations with Morocco on a free trade agreement. The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the United States Trade Representative (USTR) in amplifying and clarifying negotiating objectives for the proposed agreement and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement.

DATES: Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as their testimony, by November 1, 2002. A hearing will be held in Washington, DC, beginning on November 21, 2002, and will continue as necessary on subsequent days. Written comments are due by noon, November 25, 2002.

ADDRESSES: Submissions by electronic mail:

FR0039@ustr.gov (notice of intent to testify and written testimony);

FR0040@ustr.gov (written comments).

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–3475. All other questions should be directed to Douglas Bell, Director North Africa, at (202) 395–4620.

SUPPLEMENTARY INFORMATION:

1. Background

Under section 2104 of the Bipartisan Trade Promotion Authority Act of 2002 (TPA Act) (19 U.S.C. 3804), for agreements that will be approved and implemented through TPA procedures, the President must provide the Congress with at least 90 days written notice of his intent to enter into negotiations and must identify the specific objectives for the negotiations. Before and after the submission of this notice, the President must consult with appropriate Congressional committees and the Congressional Oversight Group regarding the negotiations. Under the Trade Act of 1974, as amended, the President must (i) afford interested persons an opportunity to present their views regarding any matter relevant to any proposed agreement, (ii) designate an agency or inter-agency committee to hold a public hearing regarding any proposed agreement, and (iii) seek the advice of the U.S. International Trade Commission (ITC) regarding the probable economic effects on U.S. industries and consumers of the removal of tariffs and non-tariff barriers on imports pursuant to any proposed agreement.

On October 1, 2002, after consulting with relevant Congressional committees and the Congressional Oversight Group, the USTR notified the Congress that the President intends to initiate free trade agreement negotiations with Morocco and identified specific objectives for the negotiations. In addition, the USTR has requested the ITC's probable economic effects advice. The ITC intends to provide this advice on November 28, 2002. This notice solicits views from the public on these negotiations and provides information on a hearing which will be conducted pursuant to the requirements of the Trade Act of 1974.

2. Public Comments and Testimony

To assist the Administration as it continues to develop its negotiating objectives for the proposed agreement, the Chairman of the TPSC invites written comments and/or oral testimony of interested persons at a public hearing. Comments and testimony may address the reduction or elimination of tariffs or non-tariff barriers on any articles provided for in the Harmonized Tariff Schedule of the United States (HTSUS) that are products of Morocco, any concession which should be sought by the United States, or any other matter relevant to the proposed agreement. The TPSC invites comments and testimony on all of these matters and, in particular, seeks comments and testimony addressed to:

(a) General and commodity-specific negotiating objectives for the proposed agreement.

(b) Economic costs and benefits to U.S. producers and consumers of removal of tariffs and non-tariff barriers to U.S.-Moroccan trade.

(c) Treatment of specific goods (described by Harmonized System tariff numbers) under the proposed agreement, including comments on (1) Product-specific import or export interests or barriers, (2) experience with particular measures that should be addressed in the negotiations, and (3) in the case of articles for which immediate elimination of tariffs is not appropriate, a recommended staging schedule for such elimination.

(d) Adequacy of existing customs measures to ensure Moroccan origin of imported goods, and appropriate rules of origin for goods entering the United States under the proposed agreement.

(e) Existing Moroccan sanitary and phytosanitary measures and technical barriers to trade.

(f) Existing barriers to trade in services between the United States and Morocco that should be addressed in the negotiations.

(g) Relevant trade-related intellectual property rights issues that should be addressed in the negotiations.

(h) Relevant investment issues that should be addressed in the negotiations.

(i) Relevant government procurement issues that should be addressed in the negotiations.

(j) Relevant environmental and labor issues that should be addressed in the negotiations.

Comments identifying as present or potential trade barriers laws or regulations that are not primarily trade-related should address the economic, political and social objectives of such regulations and the degree to which they discriminate against producers of the other country.

At a later date, the USTR, through the TPSC, will publish notice of reviews regarding (a) the possible environmental effects of the proposed agreement and the scope of the U.S. environmental review of the proposed agreement, and (b) the impact of the proposed agreement on U.S. employment and labor markets.

A hearing will be held on November 21, 2002, in Rooms 1 and 2, 1724 F Street, NW., Washington, DC. If necessary, the hearing will continue on subsequent days. Persons wishing to testify at the hearing must provide written notification of their intention by November 1, 2002. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the subject matter and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement) to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC. Persons with mobility impairments who will need special assistance in gaining access to the hearing should contact the TPSC Executive Secretary.

Interested persons, including persons who participate in the hearing, may submit written comments by noon, November 25, 2002. Written comments may include rebuttal points demonstrating errors of fact or analysis not pointed out in the hearing. All written comments must state clearly the position taken, describe with particularity the supporting rationale, and be in English. The first page of written comments must specify the subject matter, including, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement).

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, the Office of the United States Trade Representative strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: "United States—Morocco Free Trade Agreement" followed by (as appropriate) "Notice of Intent to Testify," "Testimony," or "Written Comments." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notice of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 02–25876 Filed 10–9–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–13482]

Response Boat Replacement Project; Programmatic Environmental Assessment

AGENCY: U.S. Coast Guard, DOT.

ACTION: Notice of intent and request for public comments.

SUMMARY: The U.S. Coast Guard announces its intent to prepare a draft Programmatic Environmental Assessment (PEA) for the replacement of response boats. The PEA will assess the decision to acquire, homeport, and operate approximately 880 new response boats (approximately 180 Response Boat—Medium (RB–M) and approximately 700 Response Boat—Small (RB–S) to add to or replace existing Coast Guard boat capability at 43 Groups/Activities, 187 multi-mission stations, and 26 Marine Safety Offices that operate Coast Guard boats. The Coast Guard seeks public and agency input on the scope of the PEA. Specifically, the Coast Guard requests input on any environmental concerns that the public may have related to existing response boats, the proposal to replace these assets, sources of relevant data or information, and any suggested analysis methods for inclusion in the PEA.

DATES: Comments and related material must reach the Docket on or before November 25, 2002.

ADDRESSES: Comments may be submitted in several ways. To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2002–13482), U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to Room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(3) By fax to the Docket Management Facility at (202) 493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*.

In choosing from these means, please give due regard to the continuing difficulties and delays associated with delivery of mail through the U.S. Postal Service to federal facilities.

The Docket Management Facility maintains the public docket for this notice. Comments will become part of this docket and will be available for inspection or copying in Room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except for federal holidays. You may also view this docket, including this notice and comments, on the Internet at *http://dms.dog.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions about the project, you may contact CAPT James Maes, Commandant (G–OCS–2) at (202) 267–1085 or *jmaes@comdt.uscg.mil*. For questions on viewing, or submitting materials to the docket, contact Dorothy Beard, Chief, Dockets, DOT, at (202) 366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related materials on this notice. Persons submitting comments should include their names and addresses, this notice reference number (USCG–2002–13482), and the reasons for each comment. You may submit your comments and materials by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address given under **ADDRESSES.** If you choose to submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, and suitable for copying and electronic filing. If you submit them by mail and would like to know if they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and materials received during the comment period. (For additional information about this notice or the PEA, contact Ms. Kebby Kelley at (202) 267–6034 or *Kkelley@comdt.uscg.mil*.)

Background Information

Domestic port safety and security has long been a core Coast Guard mission. However, in the wake of the terrorist attacks committed on September 11, 2001, emerging threats to the U.S. homeland have prompted an increased Coast Guard focus on protecting domestic ports and the U.S. Maritime Transportation System from terrorist threats.

As part of the U.S. response to these threats, the Coast Guard is undertaking a PEA for the decision to acquire, homeport and operate approximately 880 new response boats (approximately 180 Response Boat—Medium (RB–M)

and 700 Response Boat—Small (RB–S) to add to or replace existing USCG boat capability at 43 Groups/Activities, 187 multi-mission stations, and 26 Marine Safety Offices that operate Coast Guard boats. They will be located in multiple locations along the east and west coasts, the Gulf of Mexico, the Great Lakes, Puerto Rico, U.S. Virgin Islands, Alaska, Hawaii and Guam. The PEA will discuss in general that additional personnel as well as additional boat allowances may be needed at currently unknown locations sometime in the future. However, because the numbers of personnel and boats and the time frame for these site-specific actions is currently unknown, they will not be discussed in detail in this PEA. Any unforeseen new boat allowances and additional personnel needed at specific locations will be addressed in site-specific follow on National Environmental Protection Act (NEPA) documentation as necessary. Furthermore, changes to infrastructure are frequently a response to homeporting decisions. The PEA will discuss, in general, the possibility of infrastructure changes resulting from this acquisition. However, detailed analysis of any necessary site-specific infrastructure changes will be discussed in follow on NEPA documentation as necessary

The Coast Guard's current fleet of 41-foot utility boats is aging and technologically obsolete. In addition, the current fleet of small utility boats is an assorted mix of various makes and models that have been acquired with more attention to the immediate mission requirement rather than the long-term supportability of the vessel or training considerations. Few of the existing fleet of boats meet emerging requirements for homeland security, such as higher intercept speeds and endurance. As a result, the current fleet of Coast Guard boat assets lacks the technology, full mission capability, and standardized training and maintenance necessary for efficient and effective mission performance.

Proposed Action

In accordance with the National Environmental Policy Act (NEPA) of 1969 (Section 102(2)(c), as implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), Department of Transportation (DOT) Order 5610.1C (Procedures for Considering Environmental Impacts), and USCG Policy (NEPA: Implementing Procedures and Policy for Considering Environmental Impacts, (COMDTINST (Commandant's Instruction) M16475.1D), the Coast Guard intends to prepare a PEA on the Response Boat Replacement Project. The purpose of this PEA is to develop a high-level approach and direction for implementing this program.

NEPA requires federal agencies to consider all significant aspects of environmental impacts that may result from a proposed action, to inform the public of potential impacts and alternatives, and to facilitate public involvement in the assessment process. The core of our impact assessment process is our Environmental Assessment, or EA. The EA must include, among other topics, discussions of the purpose and need for the proposed action, a description of alternatives, a description of the affected environment, and an evaluation of the environmental impacts of the proposed action and alternatives. Once an EA is completed, and there are no significant impacts found, the lead agency prepares either a finding of no significant impact (FONSI) or a mitigated FONSI. A mitigated FONSI is one in which, although the preferred alternative will have some significant impacts to the environment, the FONSI and EA analysis include mitigation, into the preferred alternative, to reduce such impacts to the point where they are no longer significant.

When preparing a PEA, the agency may evaluate the program based on common geographic locations, similarities of impacts, or states of development. Because no site-specific homeporting decisions—allocated assets to Coast Guard facilities—will be made during this stage of the project, the PEA is expected to facilitate and expedite the preparation of subsequent project-specific NEPA documents.

The PEA will address the general environmental impacts of the Proposed Action and the No Action Alternative, while subsequent analyses will address specific implementing actions, such as homeporting of specific response boats at specific locations. Hence, as the first tier EA, the PEA will cover general issues in a broader-program analysis. Subsequent NEPA documentation will concentrate on the issues specific to the action being considered.

The environment potentially affected by the Proposed Action may be the entire marine and terrestrial coastal region of the continental U.S., Alaska, Hawaii, the Caribbean, Guam, and the Great Lakes where the Coast Guard has facilities, as well as the areas where the response boats currently conduct operations.

Because personnel levels are expected to remain 'status quo,' and only minor infrastructure changes, if any, are expected, the PEA will not evaluate socioeconomic or environmental justice or land use changes in detail in this programmatic document. Since any major infrastructure changes would be addressed in future site-specific NEPA documents, the PEA will not evaluate land use, cultural resources, or geological resources in detail. The PEA will focus its discussion on the general aspects of the affected environment, such as air quality; water quality, terrestrial and marine vegetation and wildlife, endangered species and their habitat, wetlands, and public safety. The PEA will compare the potential environmental impacts and benefits that would result from the proposed action and the no action alternative. For the purposes of this programmatic document, the location of these assets throughout the country will be designated on a regional level.

As required by NEPA, the Coast Guard also will analyze the No Action Alternative as a baseline for comparing the impacts of the proposed project. For the purposes of this document, the No Action Alternative is defined as the Coast Guard keeping the current fleet of 41-foot utility boats and small utility non-standard boats and replacing them on a one-for-one basis as they deteriorate or become obsolete. The 41-foot utility boats are aging and technologically obsolete and as they age, will increasingly not be able to meet homeland security requirements (high speed intercept and endurance). Also, as these boats continue to age, they will require more 'down-time' for maintenance and repairs. The current fleet of small utility non-standard boats is an assorted mix of makes and models that were required for immediate mission requirements. Since they are 'non-standard' boats, maintenance, repairs, and personnel training vary from one type of model to another. This situation results in higher maintenance and repair costs, and additional training for personnel for each make and model. As any boat becomes too outdated to fulfill its mission, it would be replaced on a one-for-one basis. This would further complicate maintenance and repair costs and personnel training and result in continuing inefficiencies.The Coast Guard encourages public participation in the PEA process. The scoping period will start with publication of this notice in the **Federal Register**. Multiple methods for providing comments will be available, including mail, Internet and fax.

Public meetings will only be held if there is sufficient interest shown. Because this is a programmatic document, meetings, if held, will be at a district or national level. If public hearings are held, the time and place of the hearings will be announced in the **Federal Register**. You may request a public hearing by writing to the address under **ADDRESSES.**

Following the scoping process, the Coast Guard will prepare a draft PEA. A Notice of Availability will be published in the **Federal Register** when the draft PEA is available. Public notices will be mailed or emailed to those who have requested a copy of the Draft PEA. This period will provide the public with an opportunity to review the document and to offer appropriate comments.

Comments received during the draft PEA review period will be available in the public docket and made available in the Final PEA. A Notice of Availability of the Final PEA and FONSI will be published in the **Federal Register**.

Dated: October 3, 2002.

C.D. Wurster,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Acquisition.

[FR Doc. 02–25792 Filed 10–9–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–12528; Notice 2]

Uniroyal Goodrich Tire Manufacturing, Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety

Uniroyal Goodrich Tire Manufacturing (Uniroyal) has determined that approximately 3,023 P235/70R16 BFGoodrich Radial Long Trail tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Uniroyal has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

Notice of receipt of the application was published, with a 30-day comment period, on June 25, 2002, in the **Federal Register** (67 FR 42846). NHTSA received no comment on this application.

During the period of the 8th through the 10th and the 12th through the 14th weeks of 2002, the Ardmore, Oklahoma plant of Uniroyal Goodrich Tire Manufacturing produced and cured a number of tires with erroneous marking. FMVSS No. 109 (S4.3(d)) requires that each tire shall have permanently molded the generic name of each cord material used in the plies (both sidewall and tread area) of the tire. Also, S4.3(e) requires that each tire shall have permanently molded into or onto both sidewalls the actual number of plies in the sidewall, and the actual number of plies in the tread area if different.

The noncompliance with S4.3(d) and (e) relates to the mold. The tires were marked "Tread Plies: 2 Polyester + 2 Steel + 1 Nylon," instead of the correct marking "Tread Plies: 2 Polyester + 2 Steel."

Uniroyal states that of the total 3,023 tires produced, 1,460 have been isolated and will be brought into compliance or scrapped. Uniroyal does not believe that this marking error will impact motor vehicle safety because the tires meet all applicable Federal Motor Vehicle Safety performance standards, conform to the original specifications, and the noncompliance is one solely of labeling.

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act (Public Law 106–414) required, among other things, that the agency initiate rulemaking to improve tire label information. In response, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 1, 2000 (65 FR 75222). The agency received more than 20 comments on the tire labeling information required by 49 CFR Sections 571.109 and 119, Part 567, Part 574, and Part 575. With regard to the tire construction labeling requirements of FMVSS 109, S4.3(d) and (e), most commenters indicated that the information was of little or no safety value to consumers. However, according to the comments, when tires are processed for retreading or repairing, it is important for the retreader or repair technician to understand the make-up of the tires and the types of plies. This enables them to select the proper repair materials or procedures for retreading or repairing the tires. A steel cord radial tire can experience a circumferential or "zipper" rupture in the upper sidewall when it is operated underinflated or overloaded. If information regarding the number of plies and cord material is removed from the sidewall, technicians cannot determine if the tire has a steel cord sidewall ply. As a result, many light truck tires will be inflated outside a restraining device or safety cage where they represent a substantial threat to the technician. This information is critical when determining if the tire is a candidate for a zipper rupture. In this case, since the steel cord construction is properly identified on the sidewall, the technician will have sufficient notice.

In addition, the agency conducted a series of focus groups, as required by the TREAD Act, to examine consumer perceptions and understanding of tire labeling. Few of the focus group participants had knowledge of tire labeling beyond the tire brand name, tire size, and tire pressure.

Based on the information obtained from comments to the ANPRM and the consumer focus groups, we have concluded that it is likely that few consumers have been influenced by the tire construction information (number of plies and cord material in the sidewall and tread plies) provided on the tire label when deciding to buy a motor vehicle or tire.

The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is the effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. This labeling noncompliance has no effect on the performance of tires of 2 Polyester and 2 Steel Ply construction.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety. Accordingly, its application is granted and the applicant is exempted from providing the notification of the noncompliance as required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: October 4, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–25791 Filed 10–9–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA 2002–11270, Notice No. 02–8]

Safety Advisory: Unauthorized Stamping of DOT specification Compressed Gas Cylinders

AGENCY: Research and Special Programs Administration.

ACTION: Safety advisory notice.

SUMMARY: This is to notify the public that RSPA has documented the unauthorized stamping of indentations in the side walls of high-pressure

compressed gas cylinders by Blue Water Divers (Blue Water), Ltd., Road Town, Tortola, British Virgin Islands. The cylinders are being used in the SCUBA industry. An undetermined number of the SCUBA cylinders or "dive tanks" owned by Blue Water Divers were stamped with month and year markings in the side walls of the cylinders. RSPA has determined that some of the cylinders may have been sold to individuals or U.S. companies and possibly are being used for transportation of hazardous materials in commerce in the U.S. All cylinders observed were DOT 3AL aluminum cylinders, but other cylinder types may be involved.

The Hazardous Materials Regulations (HMR) specifically prohibit stamping in the side wall of compressed gas cylinders, except DOT 3E cylinders, because doing so could compromise the structural integrity of the cylinder. The HMR prohibit the charging or filling of DOT specification or exemption cylinders with compressed gas or other hazardous materials and the offering for transportation of cylinders with markings stamped in the side walls. Furthermore, the HMR prohibit hydrostatic retesting and the return to service of cylinders that have been stamped on the side wall of the cylinder. Any cylinders that are marked on the side wall should be condemned in accordance with the HMR. Serious personal injury, death, or property damage could result from rupture of a cylinder.

FOR FURTHER INFORMATION CONTACT: Robert Bunn, Hazardous Materials Enforcement Specialist, Southern Region, Office of Hazardous Materials Enforcement, Research and Special Programs, U.S. Department of Transportation, 1701 Columbia Avenue, Suite 520, College Park, GA 30337. Telephone: (404) 305–6120. Fax: (404) 305–6125.

SUPPLEMENTARY INFORMATION: RSPA has documented the unauthorized marking of high-pressure compressed gas cylinders on the side wall of the cylinder by Blue Water Divers (Blue Water), Ltd., Road Town, Tortola, British Virgin Islands. The tanks are being used in the SCUBA industry. An undetermined number of the SCUBA cylinders or "dive tanks" owned by Blue Water Divers were stamped with month and year markings in the side walls of the cylinders. RSPA has determined that some of the cylinders may have been sold to individuals or U.S. companies and possibly are being used for transportation of hazardous materials in commerce in the U.S. Some of the cylinders have been requalified in DOT-certified hydrostatic retest facilities in the U.S. Virgin Islands. The cylinders in question may have stickers on the side walls that may cover the side-wall stamps. All cylinders observed were DOT 3AL aluminum cylinders, but other cylinder types may be involved.

The HMR specifically prohibit the stamping of markings in the side walls of compressed gas cylinders because doing so could compromise the structural integrity of the cylinder. The HMR prohibit the charging or filling of cylinders with compressed gas or other hazardous materials when the cylinders have been stamped on their side walls. Furthermore, the HMR prohibit hydrostatic retesting and return to service of cylinders with markings stamped in the side walls. Any cylinder found to have been stamped with markings on the side wall of the cylinder should be condemned in accordance with the HMR. Serious personal injury, death, or property damage could result from rupture of a cylinder.

Based on its preliminary investigation, RSPA learned that Blue Water has submitted some of these cylinders for requalification in the U.S. Virgin Islands or has sold some of these cylinders that are now being used in the U.S. Virgin Islands. Some of these cylinders may have a sticker on the side of the cylinder with the name "Blue Water Divers" on the sticker. Others may simply be stamped on the side of the cylinder. Any cylinder that has a sticker as described above should be closely inspected. You should remove the sticker and inspect for any unauthorized markings or stamping on the side of the cylinder.

The cylinders observed are stamped on the side wall with a marking of a month and a year. For example:

2 00

Some cylinders have multiple months and years stamped on the sides of the cylinders. All labels, stickers and bands should always be removed from cylinders prior to requalification. Cylinders described in this safety advisory, or any cylinder with side-wall stamping or unauthorized markings, should not be filled, refilled, retested or requalified for use in underwater breathing or for any hazardous material purpose. These cylinders should be condemned in accordance with the HMR. RSPA requests that any person possessing a cylinder described in this safety advisory telephone, or provide a facsimile to, Robert Bunn with the following information for each cylinder: (1) The cylinder manufacturer's name, (2) the serial number of the cylinder, (3) the DOT specification or exemption information for the cylinder, and (4) details concerning the acquisition and subsequent disposition of the cylinders.

Issued in Washington, DC on October 4, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–25790 Filed 10–9–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC, on October 29, 2002, of the following debt management advisory committee:

The Bond Market Association Treasury Borrowing Advisory Committee

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9 a.m. Eastern time and will be open to the public. The remaining sessions and the committee's reporting session will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Public Law 103–202, § 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads by departments by 5 U.S.C. App. 2, § 10(d) and vested in me by the Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with discussions of the issues presented to the Committee by the Secretary and recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, § 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized,such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C., 552b. The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Paul Malvey, Director, Office of Market Finance at 202–622–2630.

Dated: October 4, 2002.

Brian C. Roseboro,

Assistant Secretary, Financial Markets.

[FR Doc. 02–25761 Filed 10–9–02; 8:45 am]

BILLING CODE 4810–25–M

Corrections

Federal Register
Vol. 67, No. 197
Thursday, October 10, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 36, and 91

[Docket No. FAA–2000–7587 Amdt No. 21–81, 36–24 & 91–275]

RIN 2120–AH03

Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes

Correction

In rule document 02–15385 beginning on page 45194 in the issue of Monday, July 8, 2002, make the following corrections:

1. On page 45194, in the first column, under the heading "**ACTION:**", in the first line, "requests" should read "request".

2. On page 45194, in the second column, under the heading "**Availability of Rulemaking Documents**", in the 20th line, "Office of Bulemaking's" should read "Office of Rulemaking's".

3. On page 45194, in the second column, under the same heading, in the 31st line, " of " should read "or".

4. On page 45194, in the third column, under the heading "*Current Regulations*" in the 3rd line, "directed to prescribed" should read "directed to prescribe".

5. On the same page, in the same column, under the same heading, in the 12th line, "Subpart" should read "Subparts".

6. On the same page, in the same column, under the same heading, in the 14th line, "standards and" should read "standards that".

7. On the same page, in the same column, under the heading "*Government and Industry Cooperation*", in the 4th line, "Administrators" should read "Administrator".

8. On the same page, in the same column, in the third full paragraph, in the eighth line from the bottom, "part 36" should read "of part 36".

9. On page 45196, in the third column, in the second full paragraph, in the first line, "The final rule" should read "This final rule".

10. On page 45198, in the first column, in the third full paragraph, correct "***" to read "..." in the four places it appears.

11. On page 45198, in the first column, in the seventh full paragraph, in the fourth line, "A36.4.9.11" should read "A36.3.9.11".

12. On page 45198, in the third column, in the 10th line, "align part and JAR 36" should read "align part 36 and JAR 36".

13. On the same page, in the same column, under the heading "*Section 36.1*", in the second line, "Amendments" should read "Amendment".

14. On page 45199, in the first column, in the first full paragraph, in the last line, "past" should read "part".

15. On the same page, in the same column, under the theading *Section 36.2*, in the first paragraph, in the first line, "context" should read "content".

16. On the same page, in the same column, under the same heading, in the same paragraph, in the 12th line, "date of certification)" should read "date of certification application)".

17. On the same page, in the same column, under the heading, "*Section 36.6*", in the second line, "the reference form" should read "the reference for".

18. On the same page, in the third column, under the heading "*A 36.2 Noise Certification Test and Measurement Conditions*", in the second full paragraph, in the 12th line, "not" should read "now ".

19. On the same page, in the same column, under the same heading, in the second full paragraph, in the 18th line "circuit" should read "circular".

20. On the same page, in the same column, under the same heading, in the fourth full paragraph, in the second line, "A26.2.2.2(b)" should read "A36.2.2.2(b)".

21. On page 45200, in the first column, in the second full paragraph, in the first line, "requirements" should read "requirement".

22. On the same page, in the third column, in the eighth full paragraph, in the third line, "lease" should read "least".

23. On page 45201, in the first column, in the fifth full paragraph, in the second and fifth lines, "lease" should read "least".

24. On the same page, in the same column, in the seventh full paragraph, in the fourth line, "allow" should read "allows".

25. On the same page, in the second column, in the third full paragraph, in the ninth line, "can be calculated for the equations contain" should read "can be calculated from the equations contained".

26. On the same page, in the third column, under the heading "*Section A36.5 Data Reporting*" in the second full paragraph, in the seventh line, "measure" should read "measured".

27. On page 45202, in the first column, under the heading "*Section A 36.7 Sound Attenuation in Air*", in the second line, "must use be" should read "must be".

28. On the same page, in the second column, in the third full paragraph, in the second line, "described" should read "describe".

29. On the same page, in the second column, in the fifth full paragraph, in the seventh line, "APNL" should read "EPNL".

30. On page 45203, in the first column,in the first full paragraph, in the seventh and eighth lines, "will harmonize" should read "will further harmonize".

31. On the same page, in the same column, under the heading *Section B36.4 Test Noise Measurement* in the second full paragraph, in the second line, "sidelines" should read "sideline" and in the 13th line "measurement" should read "measurements".

32. On the same page, in the second column, under the heading *Section B36.5 Maximum Noise Levels*, in the first full paragraph, in the seventh line, "FR 26360" should read "FR 16360" and in the eighth line, "references" should read "reference".

33. On the same page, in the same column, under the heading *Section B36.6*, in the third full paragraph, in the third line, "367(d)(3)(i)(B)" should read "36.7(d)(3)(i)(B)".

34. On the same page, in the same column, under the heading *Section B36.7 Noise Certification Reference Procedures*, in the second line, "limitation" should read "limitations".

35. On the same page, in the third column,of the third full paragraph, in the 10th line, "speed" should read "speeds".

36. On the same page, in the same column, of the fourth full paragraph, in the first line, "FA" should read "FAA".

37. On page 45204, in the second column,of the first full paragraph, in the 12th line, "determined" should read "determining".

38. On page 45204, in the third column, the heading "**Appendix H—Noise Requirements for Helicopters Under Subpart H Section H36.101 Noise Certification Test and Measurement Conditions.**" should read "**Appendix H—Noise Requirements for Helicopters Under Subpart H** *Section H36.101 Noise Certification Test and Measurement Conditions.*"

39. On page 45204, in the third column, in the Table, under the column "New section", in the fifth entry, "A36.7(b)(3)" should read "B36.7(b)(3)".

40. On page 45205, in the third column, in the table "CROSS REFERENCE TABLE", and under the second column "Old section", in the third entry from the bottom, "A36.1(b)(5), A36.1(d)" should read "A36.1(b)(5), A36.9(b)(1)".

41. On page 45206, in the second and third columns column, in the tables "REDESIGNATION TABLE FOR APPENDICES A AND B—Continued", the headings of the first column "Old section" should read "New section" and the headings of the second column "New section" should read "Old section".

42. On page 45206, in the second column, in the table "REDESIGNATION TABLE FOR APPENDICES A AND B—Continued", under the corrected second column "Old section", in the 22nd entry, "A36.11(c)" should read "B36.11(c)".

43. On the same page, in the same column, in the same table, and under the corrected second column "Old section", at the sixth entry, "C36.5(c)(2), C36.9(c)" should read "A36.5(c)(2), C36.9(c)".

44. On the same page, in the third column, in the same table, and under the corrected second column "Old section", in the 10th entry, "C36.5(c)(2)" should read "A36.5(c)(2)".

45. On page 45207, in the first column, in the ninth line, "Section A36.2.2.2(e)" should read "Section 2.2.2(e)".

46. On the same page, in the first column,in the second full paragraph, in the first line, "*requires*" should read "*require*".

47. On the same page, in the second column, in the second full paragraph, in the fifth line, "AFM/REM" should read "AFM/RFM".

48. On page 45209, in the first column, under the heading "*Cost Savings*", in the second full paragraph, in the sixth line, "if" should read "is".

49. On the same page, in the second column, in the 15th line, a period should appear after the word "period".

50. On the same page, in the same column, in the same paragraph, in the same line, "nit" should read "not".

51. On the same page, in the same column, in the first full paragraph, in the 11th line, "however." should read "however, ".

52. On the same page, in the same column, in the second full paragraph, in the 14th line, "sideline array.". should read "sideline array.)".

53. On the same page, in the third column, in the first full paragraph, in the ninth and 10th lines, "no more than 10 tests and that the derived estimated cost savings" should read "no more than 10 tests will be conducted over the next 10 years and that the derived estimated cost savings".

54. On page 45210, in the second column, in the third full paragraph, in the ninth line, "$95,250" should read "$95,240".

55. On the same page, in the third column, in the fourth line, "years " should read "year".

56. On the same page, in the same column, in the 10th line, "$770" should read "$780".

57. On the same page, in the same column, in the 13th line, "annualize" should read "annualized".

58. On the same page, in the same column, in the second full paragraph, in the third and fourth lines, "economic impact to the Regulatory Flexibility Act," should read "economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act,".

59. On page 45211, in the first column, in the fourth full paragraph, in the third line, "Title Ii" should read "Title II".

PART 36—CORRECTED

60. On the same page, in the second column, under the heading "**Authority:**", in the fourth line, "E.O. 11513" should read "E.O. 11514".

§ 36.1 [Corrected]

61. On the same page, in the same column, in § 36.1, under amendatory instruction 5b., in the first line, "(b)" should read "(d)" and in the second line, "turboject" should read "turbojet".

62. On the same page, in the same column, in § 36.1, under amendatory instruction 5e., in the third line, "ins" should read "its".

63. On the same page, in the third column, in the same section, under amendatory instruction 5i., in the third line, "remove" should read " and remove".

64. On the same page, in the same column, in the same section, under amendatory instruction 5j., in the fourth line, remove the repeated text "and add 'appendix B' in its place".

§ 36.2 [Corrected]

65. On the same page, in the same column, in § 36.2, in paragraph (b), in the fourth line, ' § 21.95(b)" should read "§ 21.93(b)".

§ 36.6 [Corrected]

66. On page 45212, in the first column, in § 36.6, above the section heading add the words "The additions and revisions read as follows:".

67. On the same page, in the same column, in § 36.6, under paragraph (c)(1)(iv), "(iv)" should read "(vi)".

Appendix A to Part 36—[Corrected]

68. On page 45214, in the first column, at paragraph A36.3.1.5, in the sixth line, "means" should read "mean".

69. On the same page, in the second column, at paragraph A36.3.1.16, in the fourth line, "angel" should read "angle".

70. On the same page, in the third column, at paragraph A36.3.4.1, in the third line, "insertion loss" should read "the insertion loss".

71. On the same page, in the same column, at paragraph A36.3.5.1, in the fourth line, "basic" should read "basis".

72. On page 45215, in the first column, at paragraph A36.3.6.1, in the seventh line, "away" should read "a way".

73. On page 45216, in the first column, at paragraph A36.3.6.6, in the first line, before "calibration", insert "reference level range, the level corresonding to the".

74. On the same page, in the same column, at paragraph A36.3.6.7, "Analysis systems." should read "*A36.3.7 Analysis systems.*".

75. On the same page, in the second column, at paragraph A36.3.7.4, in the eighth line, "is" should read "1s" and in the 12th line, "failing" should read "falling" and in the 18th line, "failing" should read "falling".

76. On the same page, in the same column, at paragraph A36.3.7.5, in the 15th line, "press" should read "pressure".

77. On the same page, in the third column, in the sixth line, "A36.3.76" should read "A36.3.7.6".

78. On the same page, in the same column, at paragraph A36.3.9.3, in the third line, "razing" should read "grazing".

79. On page 45217, in the first column, at paragraph A36.3.9.8", in the fourth line, "know" should read "known" and in the seventh line, "differences" should read "difference".

80. On the same page, in the second column, at paragraph A36.3.9.10", in the 21st line, "note" should read "not ".

81. On page 45218, in the first column, at paragraph A36.4.3.1(b) Step 2, "$|\Delta(i,k)|=$" should read "$|\Delta s(i,k)|=$".

82. On page 45219, in the first column, at paragraph A36.4.3.1(j) Step 10, in the seventh line, "value" should read "values".

83. On page 45223, in the table, under the column Meaning, in the 11th line from the bottom, "The perceived noisiness at the k–th instant of time that occurs in the i–th one–third octave band." should read "The perceived noisiness at any instant of time that occurs in a specified frequency.".

84. On the same page, in the same table, under the column titled Symbol, and under the column titled Unit, and under the column titled Meaning, after "n", as the fifth entry from the the bottom, add the following:

SECTION A36.6 NOMENCLATURE: SYMBOLS AND UNITS

Symbol	Unit	Meaning
n(i,k)	noy	The percieved noisiness at the k–th instant of time that occurs in the i–th one–third octave band.

85. On page 45224, in the table, under the column titled Meaning, in the 10th line, after "PNLT(k)", add the phrase "is obtained by adjusting the value of PNL(k)" and on the same page, in the table, under the column titled Meaning, in the 10th line, "PNLT(k) for the spectral" should read "PNLT(k) is obtained by adjusting the value of PNL(k) for the spectral".

86. On the same page, in the same Table, and under the same column, in the 20th line from the bottom, "*Reference atmospheric absorption.*" should read "*Test atmospheric absorption.*".

87. On the same page, in the same Table, and under the same column, in the 16th line from the bottom, after "sound" insert the words "that occurs in the i–th one–third octave band at a reference air temperature and relative humidity.".

88. On page 45226, in the third column, in the seventh line, "qualify" should read "quantify".

89. On page 45228, in the third column, at paragraph A36.9.3.2(a), in the first line, "portion" should read "portions".

90. On page 45229, in the first column, in the 9th line, "the same angle with" should read "the same angle θ with".

91. On the same page, in the second column in the eighth line, "AQ36–7(b)" should read "A36–7(b)".

92. On the same page, in the third column, in the eighth line, "assumption" should read "assumptions".

93. On page 45230, in the first column, at paragraph A36.9.3.2.1(a), in the fourth line, "+0.0001 $\alpha(i)_0$" should read "+0.001 $\alpha(i)_0$".

94. On the same page, in the same column, at paragraph A36.9.3.2.1(a)(1), in the fifth line, "atmosphere" should read "atmospheric".

95. On the same page, in the second column, at paragraph A36.9.3.2.1.1(b), in the third line, "PNT," should read "PNLT,".

96. On page 45231, in the third column, at paragraph A36.9.3.5.1(b), in the fifth line, "sides," should read "sides;".

97. On page 45232, in the first column, at paragraph A36.9.4.2(a)(2), in the sixth line, "at a time" should read "at time".

98. On the same page, in the third column, at paragraph A36.9.4.2(b)(2), in the 12th line, "reference noise propagation paths Q_{r0}" should read "reference noise propagation paths. Q_{r0}".

99. On page 45233, in the first column, at paragraph A36.9.4.2(b)(2), in the second line, "computed as" should read "(computed as".

100. On page 45234, in the first column, at paragraph A36.9.4.2.1, in the third line, before the words "separate amounts" add ""than t_1 by two".

101. On the same page, in the third column, at paragraph A36.9.4.2.2, in the second line, "section A36.4.2" should read "section A36.4.2.".

102. On the same page, in the same column, at paragraph A36.9.4.3.1, in the fourth line, "($PNLT_{f1}$ at time t_{r1}. The" should read "($PNLT_{f1}$ at time t_{r1}). The".

103. On the same page, in the table heading "A37.9.5 FLIGHT PATH IDENTIFICATION", "A37.9.5" should read "A36.9.5".

104. On the same page, in table A37.9.5, under the column "Description", in the fourth entry, "thurst" should read "thrust".

Appendix B to Part 36—[Corrected]

105. On page 45235, in the first column, in "section B36.3(a)(1)", in the second line, "an" should read "and", and in the 18th line, "State" should read "Stage".

106. On the same page, in the third column, in section B36.5(c)(1)(iii), in the second line, "engines;" should read "engines:", and in the fifth line, after the ;, remove the replicated text "reduce the limit by 4 EPNdB;".

107. On page 45236, in the first column, section B36.7(b)(1), in the second line, "state" should read "start".

108. On the same page, in the same column, section B36.7(b)(4), in the ninth line, "Concord" should read "Concorde".

109. On the same page, in the second column, section B36.7(b)(5), in the 11th line, "engines" should read "engine".

110. On the same page, in the same column, section B36.7(c)(2), in the fifth line, "points" should read "point", and in the seventh line, "airplanes" should read "airplane".

111. On the same page, in the third column, section B36.7(c)(5), in the fourth line, "devices." should read "devices,".

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Federal Register

Thursday,
October 10, 2002

Part II

Department of Housing and Urban Development

24 CFR Part 200

FHA Inspector Roster; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–4720–P–01]

RIN 2502–AH76

FHA Inspector Roster

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to establish the Federal Housing Administration (FHA) Inspector Roster, and to provide placement, recertification and removal procedures for Roster applicants. The rule also identifies when a mortgagee must use an inspector listed on the Roster.

DATES: *Comment Due Date:* December 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Office of Single Family Program Development, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–2121 (this is not a toll-free number). Persons with hearing or speech disabilities may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

FHA-approved mortgagees rely upon FHA compliance inspectors to determine if the construction quality of a property is acceptable as security for an insured loan. Before 1996, FHA's 81 field offices maintained a panel of fee inspectors and they were assigned on a rotating basis to perform inspections. Since 1996, mortgagees have selected inspectors from a panel of inspectors listed on the Internet at: *https://entp.hud.gov/idapp/html/insplook.cfm?in_fha=No*. Although there is still a panel of inspectors, it is a compilation of the local panels established by the FHA's field offices.

This rule would establish the FHA Inspector Roster (also referred to as the Roster) and provide eligibility requirements and procedures and requirements for applicants to follow to be placed on the Roster. In addition to demonstrating professional experience and familiarity with HUD requirements, an applicant for the Roster would be required to provide verification of passing HUD's comprehensive examination for inspectors, after such an examination becomes available.

All inspectors currently listed on the Internet by HUD must be recertified according to the new procedures and requirements to continue to be eligible to inspect properties for FHA insurance. Current inspectors will be permitted to conduct inspections for six months after this rule becomes effective, but during that six-month period they must apply and be approved for placement on the FHA Roster to qualify as inspectors after that six-month period.

The rule also identifies when mortgagees must use Roster inspectors. The FHA requires three inspections for new construction when the local jurisdiction in which the property is located does not perform inspections and has not issued both a building permit prior to construction and a certificate of occupancy or equivalent document. If an appraiser who is on FHA's Roster appraises the newly constructed property after the two inspections are performed and the construction is 100% completed, the final inspection by an inspector on the Roster is not necessary. In the case of existing construction, Roster inspectors must be used where structural repairs have been made requiring an inspection and this inspection is not performed by a licensed, bonded, registered engineer, a licensed home inspector, or other person specifically registered or licensed to conduct such inspections.

Finally, the rule also includes a procedure for removing an inspector from the Roster for cause, generally for actions detrimental to the FHA's interests.

II. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and assigned OMB control number 2502–0548. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538)(UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the UMRA.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan or mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would establish uniform requirements and procedures for being placed on or removed from HUD's new FHA Inspector Roster. In doing so, it does not affect the amount of HUD-related business that will continue to be available for inspectors. This rule would, however, replace the existing system under which local HUD offices periodically select inspectors competitively according to standards that vary from office to office with nation-wide, uniform requirements that open the doors of participation with HUD to all inspectors who qualify. The rule also clearly defines the terms for continued participation with HUD, and provides a uniform, expeditious and equitable procedure for removal from the Roster. As such, the rule would result in an industry-wide and governmental benefit in that it clarifies the terms of the relationship between HUD and its fee inspectors. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this proposed rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410–0500.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

Accordingly, for the reasons discussed in this preamble, HUD proposes to amend 24 CFR part 200 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

2. Add a subpart F, consisting of §§ 200.170 through 200.172, under a new undesignated center heading reading "FHA Inspector Roster" to read as follows:

Subpart F—Placement and Removal Procedures for Participation in FHA Programs

FHA Inspector Roster

Sec.

200.170 Purpose of FHA Inspector Roster.
200.171 Placement on the Inspector Roster.
200.172 Removal from the Inspector Roster.

§ 200.170 Purpose of FHA Inspector Roster.

(a) *General.* HUD maintains the FHA Inspector Roster (Roster), a list of the inspectors eligible to determine if the construction quality of a property is acceptable as security for an FHA insured loan.

(b) *Mortgagee requirement.* Only an inspector included on the Roster may be selected by a lender to determine if the construction quality of a property is acceptable as security for an FHA insured loan, as follows:

(1) For new construction, the FHA requires three inspections by Roster inspectors; and

(2) For existing construction, the FHA requires an inspection by a Roster inspector where structural repairs have been made requiring an inspection and this inspection is not performed by a licensed, bonded, registered engineer, or a licensed home inspector, or other person specifically registered or licensed to conduct such inspections.

(3) The requirements of paragraph (b)(1) of this section do not apply if:

(i) The local jurisdiction where the newly constructed one- to four-family property is located performs the inspection(s) and issues a building permit prior to construction and a certificate of occupancy or equivalent document; or

(ii) When the new construction is 100% complete, an appraiser who is on FHA's Appraiser Roster appraises the property and two inspections have already been performed by an FHA Roster inspector.

(c) *Inspector requirement.* To be eligible to conduct inspections as required by paragraph (b) of this section, an inspector must be listed on the Roster, except that any inspector already otherwise listed by HUD as eligible to conduct inspections as of [effective date of final rule for this section] may conduct inspections until [date that is six months after effective date of final rule for this section] without being listed on the Roster.

(d) *Effect of placement on the Roster.* Placement of an inspector on the Roster only qualifies an inspector to be selected by a mortgagee to determine if the construction quality of a property is acceptable as security for an FHA insured loan. Placement on the Roster does not guarantee that an inspector will be selected by any mortgagee. Use of an inspector placed on the Roster also does not create or imply any warranties or endorsements concerning the inspected property by HUD to a prospective homebuyer or any other party.

§ 200.171 Placement on the Inspector Roster.

(a) *Application.* To be considered for placement on the Roster, an inspector must apply to HUD using an application (or materials) in a form prescribed by HUD.

(b) *Eligibility.* To be eligible for placement on the Roster, an inspector must demonstrate the following to HUD:

(1) A minimum of three years experience in construction-related fields;

(2) Possession of an inspector's State or local license or certification if licensing or certification is required by the State or local jurisdiction where the inspector will operate;

(3) That the applicant inspector certifies that he/she has read and fully understands the inspection requirements, and any updates to those requirements, of:

(i) HUD Handbook 4905.1 REV–1 (Requirements for Existing Housing, One to Four Family Units);

(ii) HUD Handbook 4910.1 (Minimum Property Standards for Housing);

(iii) HUD Handbook 4145.1 REV–2 (Architectural Processing and Inspections for Home Mortgage Insurance);

(iv) HUD Handbooks 4150.1 and 4150.2 (Valuation Analysis for Home Mortgage Insurance);

(v) HUD Handbook 4930.3 (Permanent Foundations Guide for Manufactured Housing);

(vi) The applicable local, State or Council of American Building Officials (CABO) code; and

(viii) The HUD requirements at 24 CFR 200.926;

(4) Verification that the inspector has taken and passed HUD's comprehensive examination for inspectors, after such

an examination becomes available. Inspectors who are included on the Roster on [the effective date of the final rule] have until [6 months following the effective date] to pass the comprehensive exam. Failure to pass the examination by the deadline date constitutes cause for removal under § 200.172.

§ 200.172 Removal from the Inspector Roster.

(a) *Cause for removal.* HUD may remove an inspector from the Roster for any cause that HUD determines to be detrimental to HUD or its programs. Cause for removal includes, but is not limited to:

(1) Poor performance on a HUD quality control field review;

(2) Failure to comply with applicable regulations or other written instructions or standards issued by HUD;

(3) Failure to comply with applicable civil rights requirements;

(4) Being debarred or suspended, or subject to a limited denial of participation;

(5) Misrepresentation or fraudulent statements;

(6) Failure to retain standing as a State or local government licensed or certified inspector, where such a license or certificate is required;

(7) Failure to respond within a reasonable time to HUD inquiries or requests for documentation; or

(8) Being listed on HUD's Credit Alert Interactive Voice Response System (CAIVRS).

(b) *Procedure for removal.* An inspector that is debarred or suspended, or subject to a limited denial of participation will be *automatically* removed from the Roster. In all other cases, the following procedure for removal will be followed:

(1) HUD will give the inspector written notice of the proposed removal. The notice will state the reasons for, and the duration of, the proposed removal.

(2) The inspector will have 20 days from the date of the notice (or longer, if provided in the notice) to submit a written response appealing the proposed removal and to request a conference. A request for a conference must be in writing and must be submitted along with the written response.

(3) A HUD official will review the appeal and send a response either affirming, modifying, or canceling the removal. The HUD official will not be someone who was involved in HUD's initial removal decision. HUD will respond with a decision within 30 days of receiving the appeal or, if the inspector has requested a conference, within 30 days after the completion of the conference. HUD may extend the 30-day period by providing written notice to the inspector.

(4) If the inspector does not submit a timely written response, the removal will be effective 20 days after the date of HUD's initial removal notice (or after a longer period provided in the notice). If a written response is submitted, and the removal decision is affirmed or modified, the removal will be effective on the date of HUD's notice affirming or modifying the initial removal decision.

(c) *Placement on the list after removal.* An inspector that has been removed from the Roster may apply for placement on the Roster (in accordance with § 200.171) after the period of the inspector's removal from the Roster has expired. An application will be rejected if the period for the consultant's removal from the list has not expired.

(d) *Other action.* Nothing in this section prohibits HUD from taking such other action against an inspector, as provided in 24 CFR part 24, or from seeking any other remedy against an inspector available to HUD by statute or otherwise.

Dated: August 6, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–25730 Filed 10–9–02; 8:45 am]

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Federal Register

Thursday,
October 10, 2002

Part III

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2002; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4767–N–02]

Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2002

AGENCY: Office of the Secretary, HUD.

ACTION: Public notice of the granting of regulatory waivers from April 1, 2002, through June 30, 2002.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice must cover the quarterly period since the most recent **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the quarter beginning on April 1, 2002, and ending on June 30, 2002.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500; telephone (202) 708–3055 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

For information concerning a particular waiver action for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the HUD Reform Act, the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by HUD. Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (2 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver-grant action may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). This notice covers HUD's waiver-grant activity from April 1, 2002, through June 30, 2002. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Housing, the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the section of title 24 being waived. For example, a waiver-grant action involving the waiver of a provision in 24 CFR part 58 would come before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in title 24 of the Code of Federal Regulations and that is being waived as part of the waiver-grant action. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver-grant action.

Should HUD receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occurred during July 1, 2002, through September 30, 2002.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: September 27, 2002.

Alphonso Jackson,

Deputy Secretary.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development April 1, 2002, Through June 30, 2002

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulations:* 24 CFR 91.520(a).

Project/Activity: The State of Wisconsin requested a waiver of the Consolidated Annual Performance and Evaluation Report (CAPER) Deadline.

Nature of Requirement: Section 91.520(a) requires each grantee to submit a performance report to HUD within 90 days after the close of the grantee's program year. The State of Wisconsin's program year ended on March 31, 2002; thus, its CAPER was due on June 30, 2002. The state requested an extension of its submission deadline until September 30, 2002.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: June 6, 2002.

Reasons Waived: While HUD desires timely reports, it is also interested in ensuring that the performance reports prepared by grantees are complete and accurate. Therefore, under the authority of 24 CFR 91.600, the requirements of 24 CFR 91.520(a) were waived and the State of Wisconsin was given an extension to September 30, 2002, to submit its 2001 CAPER to HUD.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulations:* 24 CFR 92.212(b).

Project/Activity: Washington County Consortium in Texas requested a waiver of the pre-award costs requirements set forth at 24 CFR 92.212(b) of the HOME regulations.

Nature of Requirements: Section 92.212(b) provides that administrative and planning costs may be incurred at the beginning of the participating jurisdiction's consolidated program year, or the date the Consolidated Plan is received by HUD, whichever is later. Such costs may be charged to the HOME allocation after its award, provided the costs meet the statutory and regulatory requirements of the HOME program.

Granted by: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: April 29, 2002.

Reasons Waived: The Department found that the need of the Washington County Consortium to develop and execute various documents to complete the process of becoming a participating jurisdiction constitutes good cause for a waiver to permit the county to incur pre-award costs for eligible HOME planning and administrative activities. The waiver granted covers those costs incurred in forming the consortium and developing the Consolidated Plan that are incurred after the date the consortium notifies HUD of its intention to participate in the HOME program. The waiver is consistent with the provisions of 24 CFR 570.200(h)(1)(i) of the Community Development Block Grant regulations which authorize new grantees to incur pre-award costs for the development of the first Consolidated Plan.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulations:* 24 CFR 92.252(a).

Project Activity: The Commonwealth of Massachusetts, on behalf of Boston Aging Concerns Young and Old United, Inc. (BAC–YOU) and its "GrandFamilies House" in Dorchester, Massachusetts, requested a waiver of the HOME rent requirements.

Nature of Requirement: Section 92.252(a) provides for the use of Section 8 fair market rents in HOME units if the units are occupied by a head-of-household caring for grandchildren if three conditions are met. First, a qualified family receiving Section 8 tenant-based rental assistance must occupy the unit. Second, the rent for the unit must not exceed the fair market rent for comparable units in the area. Third, additional revenue from the higher rent must be expended for improved affordable housing for the grandfamilies.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: May 22, 2002.

Reasons Waived: The Department determined that 18 high HOME rent units in the BAC–YOU– GrandFamilies House satisfy the three conditions required by Section 215 of National Affordable Housing Act. Good cause for waiver exists because the revenue generated by the waiver enables BAC–YOU– to enhance the services provided by the GrandFamilies House to its residents. The waiver was granted to permit BAC–YOU– to charge the Section 8 rent in the 18 high HOME rent units in the GrandFamilies House. The Commonwealth of Massachusetts requested that the waiver be granted retroactively to the date of the statutory amendment. The Department does not grant retroactive waivers. The waiver was granted prospectively only.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulations:* 24 CFR 92.254(a)(2)(iii).

Project/Activity: DeKalb County, Georgia, requested a waiver for the City of Decatur of the HOME regulation requiring participating jurisdictions to use the Single Family Mortgage Limits.

Nature of Requirement: Section 92.254(a)(2)(iii) of the HOME regulation requires participating jurisdictions to use the Single Family Mortgage Limits established under Section 203(b) of the National Housing Act to determine maximum after rehabilitation value of the single family homeownership units assisted with HOME funds. As an alternative to the Section 203(b) limits, HOME regulations at 24 CFR 92.254 (a)(2)(iii) allow participating jurisdictions to perform a local market survey to determine 95 percent of the median area purchase price for single-family housing; this figure then serves as the maximum value limit for single family homeownership units.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: May 10, 2002.

Reasons Waived: Dekalb County requested a waiver to permit it to use the survey data of the City of Decatur to establish 95 percent of median area purchase price for the single-family housing located in the city instead of using county-wide survey data. The remainder of the county will continue to use the Section 203(b) Single Family Mortgage Limit. There is good cause to grant the waiver because DeKalb County has documented a significant disparity in the value of housing between the City of Decatur and the rest of the county. The waiver applies to the City of Decatur's owner occupied rehabilitation program. The county must resubmit a survey of sales prices within the city to HUD annually.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulations:* 24 CFR 92.258(a) and 92.258(d)(1).

Project Activity: The State of Kansas requested a waiver to allow two HOME-assisted Elder Cottage Housing Opportunity (ECHO) units to be relocated to the site of a multifamily housing project for the developmentally disabled.

Nature of Requirement: Section 92.258(a) states that ECHO units are to be designed to be installed adjacent to existing single-family dwellings. The regulations at 24 CFR 92.258(d)(1) also state that, "only one ECHO unit may be provided per host property."

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Dated Granted: May 10, 2002.

Reasons Waived: The Department found that there was good cause to grant this waiver because doing so will preserve the availability of affordable housing in Kansas. The Department considers this arrangement between the Northeast Kansas Community Action Program and Achievement Services to be acceptable given that eligible persons will occupy the units and the units will maintain their affordability.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulations:* 24 CFR 92.503(b).

Project/Activity: The State of Iowa requested waiver of the repayment requirement of the HOME Investment Partnerships Program final rule.

Nature of Requirement: Section 92.503(b) requires that a participating jurisdiction must repay HOME funds invested in housing that does not meet the affordability requirements for the period specified. While the period of affordability for the original house will not be met, the participating jurisdiction is proposing to substitute a larger unit that better suits the needs of the occupants and that satisfies all HOME requirements for the remaining period of affordability.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: April 9, 2002.

Reasons Waived: The Department determined that there was good cause for the waiver because the interest of the low-income residents will be protected and the objective of the HOME program will continue to be met.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulations:* 24CFR 570.206(g).

Project/Activity: The City of Moorhead, Minnesota, requested a waiver so that the city could pay eligible administrative costs to facilitate the development of 34 units of affordable rental housing.

Nature of Requirement: Section 570.206(g) provides that assistance under this part of the regulation is limited to units that are identified in the grantee's HUD approved housing assistance plan (HAP). In as much as the Consolidated Plan includes non-housing activities and is not exclusively limited to low- and moderate-income persons, the Department determined that 24 CFR 570.206(g) cannot be read as only allowing a substitution costs related to the Consolidated Plan for costs formerly eligible in connection with the HAP. However, if a specific activity is construed to include a HAP-type of implementing activity for costs statutorily permitted, the Department is willing to consider a waiver of 24 CFR 570.206(g) to permit the expenditure of Community

Development Block Grant (CDBG) funds for administrative expenses designed to facilitate the development of housing.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: April 12, 2002.

Reasons Waived: The use of CDBG funds in this instance, to pay for pre-development costs related to the development of 34 units of affordable rental housing, is a HAP type of implementing activity for costs statutorily permitted. If a waiver is not approved and the city is unable to raise the funds to provide the required local funding for this project, these affordable rental housing units would be lost. This would create an undue hardship and adversely affect the purposes of the program because there is a need for these housing units for low-and-moderate income households, therefore a waiver was granted.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

• *Regulations:* 24 CFR 882.408(b).

Project/Activity: Miami Dade Housing Agency (MDHA) and Carrfour Corporation of Miami, Florida, requested a waiver of the current Moderate Rehabilitation Single Room Occupancy (SRO) Fair Market Rent (FMR) for the Little Haiti Gateway SRO project.

Nature of Requirement: Section 882.408(b) provides that, with Field Office approval, a public housing agency (PHA) may approve initial gross rents which exceed the applicable FMR by up to 10 percent for all units of a given size in specified areas.

Granted By: Roy A. Bernardi, Assistant Secretary for Community Planning and Development.

Date Granted: April 18, 2002.

Reasons Waived: The provision of 24 CFR 882.408(b) which allows pre-agreement exception rents to be approved only on an area-wide basis has been waived. The reasons are: MDHA has been working since 1993, when the project was conditionally approved, to bring this project to completion. The ACC was effective on June 1, 1995. During the last six years there have been many obstacles that have caused project delays. The delays included change in owner, change in sites, obtaining financial resources, and change in developer. When the original owner was unable to develop the project, MDHA initiated a request for proposals process for a new owner and Carrfour was selected in March 1997, to develop the Little Haiti project. Carrfour identified a site but the site fell through since the owner of the property, which was occupied, failed to obtain consent of the beneficiaries within the prescribed time frame. Therefore, another site had to be located and this took approximately six months. The change in sites affected the use of acquisition funds allocated by the State for the project. The funds originally set aside for the other proposed site had to be reprogrammed for the new site, which took over two years.

Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Room 7152, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2565, extension 4556.

II. Regulatory Waivers Granted by the Office of Housing

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: W.H. Block Building, Indianapolis, IN; Project Number: 073–35552.

Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and Federal Housing Administration (FHA) insured mortgage proceeds for the subject property.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 9, 2002.

Reason Waived: Since the front money escrow is so large, the insured proceeds would not be disbursed for 6 to 8 months after initial endorsement, resulting in payment of extension fees to the investors who purchased the Government National Mortgage Association (GNMA) mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) will permit the Indianapolis Multifamily Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: Clyburn Apartments, Denver, CO; Project Number: 101–35555.

Nature of Requirement: Section 200.54(a) establishes the procedures for a pro-rata disbursement of the mortgagor's front money escrow funds and FHA insured mortgage proceeds for the subject project.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 20, 2002.

Reason Waived: Since the front money escrow is so large, the insured proceeds would not be disbursed for several months, resulting in the payment of extension fees to the investors who purchased the GNMA mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) will permit the Denver Hub to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 200.54(a).

Project/Activity: The Villas at Metro Center Apartments, Nashville, TN; Project Number: 086–35273.

Nature of Requirement: Section 200.54(a) establishes the procedures for a Pro-rata Disbursement of the Mortgagor's Front Money Escrow Funds and FHA insured mortgage proceeds for the subject property.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 21, 2002.

Reason Waived: Since the front money escrow is so large, the insured proceeds would not be disbursed for several months, resulting in payment of extension fees to the investors who purchased the GNMA mortgage-backed securities. Providing a waiver of 24 CFR 200.54(a) will permit the Nashville Multifamily Program Center to approve a pro-rata disbursement of front money and mortgage proceeds, thereby allowing the mortgagee not to pay GNMA extension fees.

Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–7000; telephone: (202) 708–1142.

• *Regulation:* 24 CFR 203.42(a).

Project/Activity: Housing Authority of the City of Spokane (SHA), Spokane, WA.

Nature of Requirement: Section 203.42(a) prohibits the placing of FHA mortgage insurance on any rental property if the property is part of a project, subdivision, or group of rental properties in which the mortgagor has a financial interest in eight or more dwelling units.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 20, 2002.

Reason Waived: The waiver allowed the Housing Authority of the City of Spokane, Washington, to acquire and sell, using FHA mortgage insurance, sixty newly constructed homes to low- and moderate-income homebuyers under a lease purchase option program called "The Welcome Home Program."

Contact: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–2121.

• *Regulation:* 24 CFR 203.49(c).

Project/Activity: Mortgagee, First Mortgage Corporation of Diamond Bar, California.

Nature of Requirement: Section 203.49(c) provides that lenders may extend the initial interest rate adjustment dates on ARM loans to any time within a 12 to 18 month window thus rendering the loans eligible for placement in GNMA pools. Ineligibility of the loans for delivery to GNMA would result in financial hardship to the mortgagee and will not have an adverse impact on any mortgagors.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 29, 2002.

Reason Waived: The Corporation requested extensions of the initial change date for four ARM loans beyond the 12–18 month window period as required by 24 CFR 203.49(c).

Approving the waiver enabled the lender to scrutinize the loans and rendered them no harm to the borrowers or the Department.

Contact: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone (202) 708–2121.

• *Regulation:* 24 CFR 203.674(b)(1), 24 CFR 203.675, 24 CFR 203.676, 24 CFR 203.677, 24 CFR 203.678.

Project/Activity: Predatory Lending Assistance/St. Ambrose Housing Aid, Baltimore, MD.

Nature of Requirement: Section 203.674(b)(1) specifies that occupants must make timely request for occupied conveyance. Section 203.675 sets out the requirements for adequate notice to occupants of pending acquisition. Section 203.676 identifies the required time frames for occupants to request occupied conveyance. Section 203.677 pertains to time frames for HUD's written decision to allow occupied conveyance. Section 203.678 references time frames for borrowers to request occupied conveyance.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 16, 2002.

Reason Waived: These regulations were waived in order to allow the Department to accept occupied conveyance of up to 20 properties in Baltimore that were determined to be impacted by predatory lending schemes. Occupied conveyance will facilitate and expedite a direct sale of the properties to St. Ambrose Housing Aid Center which will supervise rehabilitation and resell or lease the properties back to borrowers who were victims of predatory lending.

Contact: Joe McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone: (202) 708–1672.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Church Manor, Smithfield, VA; Project Number: 051–35012.

Nature of Requirement: Section 219.220(b) governs the repayment of assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996, requiring that assistance paid to project owners must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage or at sale of the project.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 10, 2002.

Reason Waived: The Richmond Multifamily Program Center requested waiver of this regulation in order to subordinate the Flexible Subsidy financing following the refinancing/rehabilitation of the subject property through Low Income Housing Tax Credits and non-FHA insured loans. The owner requested permission to make a payment toward the Flexible Subsidy loan and the subordinate the remainder following the refinancing/rehabilitation of the property. If the waiver was not granted, the owner would not have funds to repay the Flexible Subsidy loan and would not be able to close on the new financing package, thereby losing the opportunity to improve this much needed affordable rural housing for the low-income citizens of Smithfield.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6160, Washington, DC 20410–7000; telephone: (202) 708–3730.

• *Regulations:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
10135289	Mountain View Place	CO
10135284	Normandy Gardens	CO
01755027	Bristol Court Apartments	CT
00035194	Hunter Pines West Apartments	DC
14035022	Hilo Val Hala	HI
07335337	Woodland East II Apartments	IN
08335333	Pegasus 80	KY
02335169	Bel-Air Homes	MA
08435238	Gotham Apartments	MO
09335087	El Dorita Apartments	MT
03135175	Livingston Homes	NJ
03135174	Somerset Homes	NJ
03135212	Willow Court Apartments	NJ
01257157	Parkway Plaza	NY
04235276	Clinton Circle Apartments	OH
04235185	Regency Square Apartments	OH
04335228	Marion Green Apartments	OH
05635040	San Fernando Apartments	PR
01657007	New City Apartments	RI
07535271	Timber Ridge Apartments	WI
04535119	Wildwood House	WV

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their Federal Housing Administration (FHA) insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 3, 2002.

Reasons Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Alberta Zinno, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone (202) 708–0001.

• *Regulations:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
06535336	Berwood Apartments	MS
01257153	East 21st Street Apartments	NY
04235330	Shaker Park Garden Apartments II	OH

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 25, 2002.

Reasons Waived: The projects listed above were not assigned to the PAEs in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Alberta Zinno, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone (202) 708–0001.

- *Regulations:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
800002463	South Bay Villa	CA
800002539	Sunnyview Villa	CA
800001364	Dakota Woods II	CA
800001364	Dakota Woods II	CA
800003075	Lincoln Square	CO
800003611	Twin Towers	CT
800030044	Prestwyck Apts	DE
800005011	The Pines Apartments	GA
800007311	Mission Woods Apartments	KS
800007137	Bonita Terrace	KS
800007702	Irvin Cobb Apartments	KY
800007738	Lincoln Village	KY
800000061	Pegasus 80	KY
800008152	Rayville West	LA
800008501	Garand Court	MA
800009380	Orchard Mews Apartments	MD
800011601	Hamilton Apartments	MO
800011936	Tiffany Rehab	MO
800013100	Old Farm Apartments	NC
800013100	Old Farm Apartments	NC
800015008	Crestview Gardens	NY
800015201	Green Acres Apartments	NY
800016070	Schoolhouse Apartments	NY
800015693	Prospect Arms Apartments	NY
800016158	South Fulton Rehabilitation	NY
800017340	Courtyard	OH
800016243	Ashland Manor	OH
800016911	McArthur Park	OH
800017336	Sunset Square	OH
800017388	Uptown Village Apartments	OH
800017407	Victorian Heritage	OH
800018190	Anthracite Apartments	PA
800018697	Mulberry Tower	PA
800019795	Swift Creek Apartments	SC
800046298	Pebble Creek Apartments	TX
800022757	The Sundowner Apartments	WA
800023231	Orchard Court Apartments	WI
800023733	Williamson Towers	WV

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 30, 2002.

Reasons Waived: The projects listed above were not assigned to the PAEs in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Alberta Zinno, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone (202) 708–0001.

- *Regulations:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
06235331	Oak Ridge Apartments	AL
06235332	Town Creek Apts	AL
06235328	Westgate Apts	AL
07135408	Deerfield Woods Phase II	IL
07335378	Swiss Meadows	IN
07335349	Willow Glen Apartments	IN
08335314	Dupont Manual Apartments	KY
08335267	Lakeland Wesley Village I	KY

FHA No.	Project name	State
05235338	Sharp Leadenhall II	MD
05335287	R.M. Wilson Apartments	NC
01257016	Mohegan Apartments	NY

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 27, 2002.

Reasons Waived: The projects listed above were not assigned to the PAEs in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Alberta Zinno, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone (202) 708–0001.

- *Regulation:* 24 CFR 891.100(d).

Project/Activity: Reggie's Place, Suffolk, VA; Project Number: 051–HD096/VA36–Q001–011.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 3, 2002.

Reason Waived: The project is economically designed, comparable to other similar projects developed in the area, and the sponsor has obtained additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone: (202) 708–3000.

- *Regulation:* 24 CFR 891.100(d).

Project/Activity: Westlake Apartments, Pittsburgh, PA; Project Number: 033–EE101/PA28–S991–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 3, 2002.

Reason Waived: The project is economically designed, comparable to other similar projects developed in the area, and the sponsor/owner has exhausted all efforts to secure additional funds from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

- *Regulation:* 24 CFR 891.100(d).

Project/Activity: Meadow Brook Apartments, San Antonio, TX; Project Number: 115–HD033/TX59–Q001–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 16, 2002.

Reason Waived: The project was economically designed, comparable in cost to similar projects, and the sponsor could not contribute any additional funds.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

- *Regulation:* 24 CFR 891.100(d).

Project/Activity: Employment Options, Incorporated, Marlboro, MA; Project Number: 023–HD131/MA06–Q971–012.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 25, 2002.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

- *Regulation:* 24 CFR 891.100(d).

Project/Activity: Lakeside Place, Orlando, FL; Project Number: 067–HD068/FL29–Q991–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 25, 2002.

Reason Waived: The project is economically designed, is comparable to other similar projects developed in the area, and the sponsor has exhausted all efforts to find additional funds from outside sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

- *Regulation:* 24 CFR 891.100(d).

Project/Activity: Checed Warwick, Newport News, VA; Project Number: 051–EE070/VA36–S991–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 30, 2002.

Reason Waived: The project was economically designed, comparable to other projects in the area, and the sponsor exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

- *Regulation:* 24 CFR 891.100(d).

Project/Activity: Faye Street Group Home, Chesapeake, VA; Project Number: 051–HD078/VA36–Q991–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 30, 2002.

Reason Waived: The project is economically designed, comparable to other similar projects in the area, and the sponsor has exhausted all efforts to obtain additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

- *Regulation:* 24 CFR 891.100(d).

Project/Activity: Together With Friends, Saginaw, MI; Project Number: 048–HD009/MI28–Q001–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 30, 2002.

Reason Waived: The project is economically designed, is comparable to other similar projects in the area, and the owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant

Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Barrett House, Suffolk, VA; Project Number: 051–HD097/VA36–Q001–012.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: April 30, 2002.
Reason Waived: The project is economically designed, is comparable in cost to similar projects, and the sponsor cannot contribute any additional funds.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: St. Andrews of Jennings Phase II, St. Louis, MO; Project Number: 085–EE049/MO36–S001–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: May 16, 2002.
Reason Waived: The project is economically designed, is comparable in cost to similar projects, and the sponsor cannot contribute any additional funds.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Guide Texler Homes, Incorporated, Lanham, MD; Project Number: 000–HD048/MD39–Q001–003.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: May 17, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding from other sources; the project is economically designed and is comparable to other similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Kane Cook Homes, Elgin, IL; Project Number: 071–HD113/IL06–Q991–003.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: May 17, 2002.
Reason Waived: The project is economically designed, is comparable to other similar projects developed in that area, and the sponsor has exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: The McDowell County Housing Action Network, Gary, WV; Project Number: 045–EE014/WV15–S001–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: May 21, 2002.
Reason Waived: The sponsor exhausted all efforts to obtain additional funding from other sources; the project is economically designed and comparable to other similar projects developed in the area.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Piney Ridge Apartments, Danville, VA; Project Number: 051–HD077/VA36–Q981–008.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: May 22, 2002.
Reason Waived: The project is economically designed, is similar in construction to other projects developed in the area, and the sponsor has no other resources to contribute additional funds.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: National Church Residences of Manhattan II, Manhattan, KS; Project Number: 102–EE024/KS16–S001–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: May 22, 2002.
Reason Waived: The project is economically designed and comparable to other similar projects developed in the area, and the sponsor has exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Concerned Care, Kansas City, MO; Project Number: 084–HD033/MO16–Q001–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 16, 2002.
Reason Waived: The project is economically designed, comparable to other similar projects developed in the area, and the sponsor cannot contribute any additional funds.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Meadow Park, Sarasota, FL; Project Number: 067–EE106/FL29–S001–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 20, 2002.
Reason Waived: The project is economically designed, comparable in cost to similar projects, and the sponsor cannot contribute any additional funds.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Elm Street Home, Webster, IA; Project Number: 074–HD022/IA05–Q001–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 26, 2002.
Reason Waived: The project is economically designed, comparable to other similar projects developed in the area, and the sponsor cannot contribute any additional funds.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant

Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Mental Health Care, Inc., Brandon, FL; Project Number: 067–HD066/FL29–Q991–011.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 26, 2002.
Reason Waived: The project is economically designed, comparable to other similar projects developed in the area, and the sponsor has contributed to the project.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Village Apartments, Rantoul, IL; Project Number: 072–HD111/IL06–Q001–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 26, 2002.
Reason Waived: The project is economically designed, comparable to other similar projects developed in the jurisdiction, and the sponsor has exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: Thomaston VOA Elderly Housing, Bath, ME; Project Number: 024–EE038/ME36–S971–003.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: April 16, 2002.
Reason Waived: The project is economically designed and comparable to other similar projects developed in your jurisdiction. Further $71,388 in additional funding is being provided through the Maine State Housing Authority. The sponsor has exhausted all means to find the funds through other sources. The project has also incurred significant delays associated with the need to change sites several times.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: Manor House, Austin, TX; Project Number: 115–HD030/TX59–Q991–003.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: April 16, 2002.
Reason Waived: The project is economically designed, is comparable to other similar projects developed in the jurisdiction, and the sponsor has exhausted all efforts to obtain additional funding from other sources. Also, delays were caused while the owner located additional funds for construction and resolved legal issues involving the site.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: The Pavilion at Immaculate Conception, Bronx, NY; Project Number: 012–EE247/NY36–S981–003.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: April 23, 2002.
Reason Waived: Additional time was needed to find another general contractor, and determine a feasible construction budget. The project is economically designed, is comparable to other projects developed in the area, and the sponsor has exhausted all efforts to find additional funds from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: Agua Azul, Albuquerque, NM; Project Number: 116–HD013/NM16–Q991–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: April 25, 2002.
Reason Waived: The project is economically designed, is comparable to other projects developed in the area, and the sponsor has exhausted all efforts to obtain additional funding from other sources other than the $250,000 it is receiving from the City of Albuquerque in HOME funds. Additional time is necessary to issue the firm commitment and arrange for the initial closing.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: Gene Gilbert Manor, Albuquerque, NM; Project Number: 116–HD011/NM16–Q981–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: April 30, 2002.
Reason Waived: The sponsor had to change contractors because the original contractor was unable to obtain a bond. The project is economically designed, is comparable to other similar projects developed in the area, and the Sponsor has exhausted all efforts to obtain additional funding from outside sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: Santa Fe Homeward Bound Apartments, Santa Fe, NM; Project Number: 116–HD014/NM16–Q991–003.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24

months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 30, 2002.

Reason Waived: Additional time is needed for the firm commitment application to be processed and the initial closing to take place. The project is economically designed, is comparable to other projects developed in the area, and the sponsor has exhausted all efforts to find additional funds from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Boniface Gardens, Inc., Pembroke Pines, FL; Project Number: 066–EE074/FL29–S991–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 2, 2002.

Reason Waived: There was an unexpected delay in getting a plat recorded.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hale O Man'o Lana Hou II, Maui, HI; Project Number: 140–HD015/HI10–Q961–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 3, 2002.

Reason Waived: The project experienced delays in securing approval for a partial release of the Section 202/8 mortgage on the existing site and the lengthy process for the County of Maui to approve the subdivision of the site, and an amendment of the ground lease.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: AHEPA 156 Apartments, Canonsburg, Washington County, PA; Project Number: 033–EE098/PA28–S991–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 3, 2002.

Reason Waived: The project has incurred delays due to the local municipality's preference for relocating the storm detention area from what was originally proposed on the architectural drawings.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Abraham Lincoln Center, Chicago, IL; Project Number: 071–HD095/IL06–Q961–010.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 8, 2002.

Reason Waived: The owner needed additional time to obtain building permits, solidify secondary financing, and resolve site and design issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: NC Orange Senior Housing Corporation, Orange, Essex County, NJ; Project Number: 031–EE048/NJ39–S981–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 16, 2002.

Reason Waived: The project has incurred delays due to a change in the project architect, revisions to the project's design and plans, and time needed by the Federal Home Loan Bank to reissue documentation (destroyed in the attack on the World Trade Center) of the $250,000 in subordinate financing being provided to the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Lalo Guerrero Barrio Viejo, Tucson, AZ; Project Number: 123–EE073/AZ20–S991–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 16, 2002.

Reason Waived: The sponsor/owner has experienced lengthy delays due to lawsuits and protests from third parties regarding the development of the project, and unexpected changes involving the architect and project design.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Presbyterian Home at Franklin Township, Franklin Township, NJ; Project Number: 031–EE045/NJ39–S971–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 16, 2002.

Reason Waived: The sponsor needed additional time to satisfy the needs of the zoning board and community prior to obtaining approval of the design and site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Union Seniors, Los Angeles, CA; Project Number: 122–EE133/CA16–S981–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 16, 2002.

Reason Waived: The project has experienced inordinate delays due to complications arising from the plan check process of the City of Los Angeles with regard to legal unit count, and the subsequent permission of the planned rehabilitated units.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Stanton Accessible Apartments, Stanton, CA; Project Number: 143–HD008/CA43–Q981–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 17, 2002.

Reason Waived: The project has incurred delays due to neighborhood opposition, and to the amount of time it took to get a zoning variance request approved to reduce the parking requirements.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: AHEPA National Housing Corporation, Cheektowaga Town, NY; Project Number: 014–EE078/NY06–S941–017.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 17, 2002.

Reason Waived: The development of the project incurred inordinate delays due to lengthy litigation.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Jefferson Elderly Housing, Jefferson, WI; Project Number: 075–EE081/WI39–S991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 19, 2002.

Reason Waived: The project has incurred delays attributable to site problems and additional time is needed for the project architect to cure deficiencies in the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Cottonwood Manor VI, Cottonwood, AZ; Project Number: 123–EE069/AZ20–S991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 19, 2002.

Reason Waived: The project has experienced delays resulting from obtaining local approval of the design, and the need to redesign the roadway when the adjacent property owner declined to grant a required right-of-way.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Cinnaminson Consumer Home, Cinnaminson, NJ; Project Number: 035–HD044/NJ39–Q991–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 22, 2002.

Reason Waived: Additional time is needed for HUD to process the firm commitment application in order for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Berlin Housing, Berlin, WI; Project Number: 075–HD055/WI39–Q981–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 23, 2002.

Reason Waived: Additional time is needed for the closing documents to be submitted and processed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Judson Terrace Lodge, San Luis Obispo, CA; Project Number: 122–EE163/CA16–S991–014.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 23, 2002.

Reason Waived: The sponsor/owner is negotiating with the city to resolve their responsibility for the city's "water-offset" rule and ongoing negotiations with adjacent property owners concerning the project design.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Timothy Manor, Cleveland, OH; Project Number: 042–EE111/OH12–S991–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 23, 2002.

Reason Waived: The sponsor was forced to seek a site change due to local neighborhood opposition.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Jude Manor, Norton, OH, Project Number: 042–EE112/OH12–S991–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 23, 2002.

Reason Waived: Sponsor was forced to seek two site changes due to local neighborhood opposition.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Mt. Gilead Estates, Mt. Gilead, OH; Project Number: 043–HD028/OH16–Q991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 25, 2002.

Reason Waived: The project was delayed while the owner/sponsor addressed budget overruns and site issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: PROCAP Housing, Providence, RI; Project Number: 016–HD030/RI–43–Q991–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 25, 2002.

Reason Waived: Significant time was expended in locating an alternate site, the Sponsor/Owner is currently awaiting approval of a zoning variance, and the architect needs additional time to finalize the plans.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Lytle Trace, Williamsburg, OH; Project Number: 046–EE050/OH10–S991–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 25, 2002.

Reason Waived: Project has been delayed while the owner/sponsor sought additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Morrow Woods, Mt. Gilead, OH; Project Number: 043–EE068/OH16–S991–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 25, 2002.

Reason Waived: The project was delayed while the owner/sponsor sought additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Luther Ridge, Middletown, CT; Project Number: 017–EE053/CT26–S991–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 25, 2002.

Reason Waived: The project was delayed because the design had to be changed and the civil engineering firm had to be replaced.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Inglis Gardens at Evesham, Evesham Township, NJ; Project Number: 035–HD040/NJ39–Q981–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 25, 2002.

Reason Waived: Additional time is needed for the Township of Evesham to issue the building permits.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Howard Street Senior Apartments, San Francisco, CA; Project Number: 121–EE121/CA39–S981–014.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 25, 2002.

Reason Waived: The project has experienced lengthy delays due to the complexity of negotiating agreements between diverse stakeholders concerning some predevelopment financing, coordinating inter-agency approvals, and addressing complex community acceptance issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Accessible Space, Inc., Florence, AL; Project Number: 062–HD043/AL09–Q991–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 25, 2002.

Reason Waived: The sponsor is currently addressing the screening deficiencies found in the application, and additional time is needed to review the application and issue the Firm Commitment.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Mental Health Care, Inc., Brandon, Hillsborough County, FL; Project Number: 067–HD066/FL29–Q991–011.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 25, 2002.

Reason Waived: The project was delayed due to the complexity of negotiating agreements between diverse stakeholders concerning some predevelopment financing, coordinating inter-agency approvals, and addressing complex community acceptance issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Orlando VOA Elderly Housing, Inc. Orlando, Orange County, FL; Project Number: 067–EE104/FL29–S991–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 25, 2002.

Reason Waived: The sponsor encountered difficulty in obtaining local approval for a revised plot of the property, and additional time is needed for HUD's review of the closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Rhinelander Disable Housing, Rhinelander, WI, OH; Project Number: 075–HD063/WI39–Q991–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 29, 2002.

Reason Waived: The Sponsor has incurred delays in securing an acceptable site, and additional time is needed for the site to be properly zoned.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Lakeside Place, Orlando, Orange County, FL; Project Number: 067–HD068/FL29–Q991–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 30, 2002.

Reason Waived: The project has incurred delays while the sponsor resolved site control and local issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Valentino Square Apartments, West Allis, WI; Project Number: 075–EE077/WI39–S981–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 30, 2002.

Reason Waived: The project has incurred delays while the owner resolved a funding problem, and while HUD reviewed their request to combine this project with another Section 202 project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Dr. Charles H. Moore—Westminster Arms, Los Angles, CA; Project Number: 122–EE143/CA16–S981–012.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 30, 2002.

Reason Waived: The project has incurred inordinate delays due to site and zoning issues, and the city's lengthy process for reviewing and approving the project design.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Honoka'a Knolls Senior Apartments, Honoka'a, HI; Project Number: 140–EE020/HI10–S991–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 3, 2002.

Reason Waived: The sponsor is requesting approval to combine two Section 202 projects; and additional time is needed to finalize the drawings, complete the processing of the Firm Commitment Application, close the project, and start construction.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Honoka'a Knolls Senior Apartments II, Honoka'a, HI; Project Number: 140–EE023/HI10–S001–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 3, 2002.

Reason Waived: The sponsor is requesting approval to combine two Section 202 projects; and additional time is needed to finalize the drawings, complete the processing of the firm commitment application, close the project, and start construction.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: The Lambs Farm of Green Oaks, Green Oaks, IL; Project Number: 071–HD115/IL06–Q991–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 8, 2002.

Reason Waived: The project was delayed while the sponsor obtained final approval of the project, and funding for the services from the Illinois Department of Human Services.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Ft. Washington Adventist Apartments, Oxon Hill, MD; Project Number: 000–EE045/MD39–S971–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 10, 2002.

Reason Waived: The project was delayed due to the local governmental approval of the water/sewer allocation, untimely issuance of building permits, and unresolved zoning issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: YMCA of Metropolitan Chicago, Chicago, IL; Project Number: 071–EE141/IL06–S981–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 10, 2002.

Reason Waived: The sponsor had to change sites and additional time was needed for approval requirements of the new site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.
Project/Activity: La Playa Apartments, San Francisco, CA; Project Number: 121–HD065/CA39–Q981–002.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: May 16, 2002.
Reason Waived: The project incurred delays in getting design documents through the City of San Francisco's plan review process and the owner was attempting to secure additional funds for construction.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Nanaikeola Senior Apartments, Waianae, HI; Project Number: 140–EE019/HI10–S991–001.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: May 16, 2002.
Reason Waived: The Sponsor needs additional time to finalize their drawings, complete the Firm Commitment application, and close the project.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Accessible Space, Inc., Birmingham, IL; Project Number: 062–HD041/AL09–Q981–004.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 7, 2002.
Reason Waived: The owner/sponsor needs additional time to resolve environmental problems and zoning issues relative to the new site. Additional time is also needed for the owner/sponsor to prepare and HUD to review the firm commitment application.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Stanton Accessible Apartments, Stanton, CA; Project Number: 143–HD008/CA43–Q981–002.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 13, 2002.
Reason Waived: The project was delayed due to neighborhood opposition to the project and additional time for the Sponsor to secure community involvement and revise the design.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Hayworth Housing, Los Angeles, CA; Project Number: 122–HD118/CA16–Q991–002.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 13, 2002.
Reason Waived: The project was delayed due to the need for a full seismic retrofit, consultation with a structural engineer on the new design, and the additional time taken for the cost to be agreed upon.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Evergreen Village Senior Apartments, Everett, WA; Project Number: 127–EE024/WA19–S991–002.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 16, 2002.
Reason Waived: The project has incurred delays as a result of changes in the county building codes during the past year, conflicting zoning and building requirements, and the local requirement for completion of certain work prior to construction of the Section 202 project.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.
Project/Activity: HFL Ashtabula Homes, Pasadena, CA; Project Number: 122–HD117/CA16–Q991–001.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 16, 2002.
Reason Waived: Local opposition caused multiple delays in securing the necessary city planning approval for the project.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Accessible Space, Inc., Florence, AL; Project Number: 062–HD043/AL09–Q991–002.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 16, 2002.
Reason Waived: The sponsor recently addressed the deficiencies within the firm commitment application and additional time is needed to process and issue the firm commitment and to reach initial closing on the development.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Palms Manor, Los Angeles, CA; Project Number: 122–HD113/CA16–Q981–005.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 18, 2002.
Reason Waived: The sponsor had to obtain a swing loan to purchase the site and it took several months for the newly formed owner organization to receive their tax exemption status.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Cantebria Senior Homes, Encinitas, CA; Project Number: 129–EE021/CA33–S991–001.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 18, 2002.
Reason Waived: The project was delayed due to an extended community design and outreach process that was necessary for obtaining neighborhood support, and the additional 60-day review process taken by the city to approve entitlement for the site.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Helms Manor, Los Angeles, CA: Project Number: 122–HD115/CA16–Q981–007.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: June 18, 2002.
Reason Waived: The sponsor had to obtain a swing loan to purchase the site, and it took several months for the newly formed owner organization to receive their tax exemption status.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.
Project/Activity: West Street, Needham, MA; Project Number: 023–HD138/MA06–Q981–001.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 20, 2002.
Reason Waived: Additional time is needed to proceed to initial closing.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Valentine Court III, Santa Maria, CA; Project Number: 122–HD129/CA16–Q991–013.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 26, 2002.
Reason Waived: The project was delayed while the sponsor was finalizing the initial design development plans, obtaining a conditional use permit from the City of Santa Maria, and securing additional funding sources from the California State Department of Housing and Community Development.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.
Project/Activity: G.R. Vale Home, Huntington, WV; Project Number: 045–HD030/WV15–Q991–001.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 26, 2002.
Reason Waived: An alternate site had to be obtained, the size of the structure to be rehabilitated on the new site became an issue that was recently resolved after numerous meetings, the owner is currently revising the firm commitment application, and additional time is needed for submission and review of closing documents.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.
Project/Activity: VHH–JG Commons Senior Apartments, Vashon, WA; Project Number: 127–EE026/WA19–S991–004.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 26, 2002.
Reason Waived: Additional time was needed for the sponsor to meet all the secondary funding requirements imposed by the state and local agencies providing the secondary financing.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Lakeside Place, Orlando, Orange County, FL; Project Number: 067–HD068/FL29–Q991–004.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 26, 2002.
Reason Waived: The project experienced delays due to site control problems, and issues beyond the sponsor's control.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.
Project/Activity: St. Isaac Jogues, Wheatfield, NY; Project Number: 014–EE191/NY06–S991–009.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 27, 2002.
Reason Waived: The original contractor unexpectedly withdrew from the project, forcing the owner to obtain another contractor and re-negotiate the costs.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.
Project/Activity: St. Peter Claver Courts, Country Club Hills, IL; Project Number: 071–EE152/IL06–S991–011.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 28, 2002.
Reason Waived: The sponsor was forced to change sites several times and the new site still had some unresolved environmental issues.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.205.
Project/Activity: Southbury Senior Housing, Southbury, CT; Project Number: 017–EE068/CT26–S011–004.

Nature of Requirement: Single-Purpose Corporation. Section 891.205 requires that Section 202 project owners be single-purpose corporations.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 8, 2002.

Reason Waived: The project will be built adjacent to the sponsor's existing Section 202 project and one owner-entity would promote greater service provision as well as coordinated administrative maintenance.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.310(b)(1) and (b)(2).

Project/Activity: TWB Residential Opportunities II, Port Jefferson Station, NY; Project Number: 012–HD093/NY36–Q991–004.

Nature of Requirement: HUD's regulation at 24 CFR 891.310(b)(1) and (b)(2) requires that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 30, 2002.

Reason Waived: The project consists of four group homes for the independent living of the chronically mentally ill, each serving three residents. The sites will be designed to allow one bedroom and all common spaces in one home to be fully accessible. To make all 12 units fully accessible for persons with mobility impairments would make the project financially infeasible. The sponsor has indicated that less than 5 percent of the individuals that are served under their programs require accessible housing. Therefore, accessibility of the one site is more than adequate for potential residents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.410(c) and 24 CFR 5.110.

Project/Activity: Hampton Woods Retirement and Hampton Woods II, Jackson, NC; Project Numbers: 053–EH469 and 053–EE009.

Nature of Requirement: Section 891.410(c) limits occupancy to very low income elderly persons, *i.e.*, households of one or more persons at least one of whom is 62 years of age at the time of initial occupancy. Section 5.110 relates to admission of families to projects for elderly or handicapped families that received reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 8, 2002.

Reason Waived: The Greensboro Multifamily Hub requested an age waiver for the subject project because the current occupancy level of eligible persons and families does not support successful operation of the projects. This waiver would allow the project owner/management agent to rent units to persons between the ages of 55 and 62 years of age with or without disabilities, thus, allowing the owner flexibility in renting up these vacant units. This waiver is in effect for one year from date of approval.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000; telephone: (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c) and 24 CFR 5.110.

Project/Activity: Friendship Community Care, Clarksville, AR; Project Number: 082–HD048.

Nature of Requirement: Section 891.410(c) limits occupancy to very low income elderly persons, *i.e.*, households of one or more persons at least one of whom is 62 years of age at the time of initial occupancy. Section 5.110 relates to admission of families to projects for elderly or handicapped families that received reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 14, 2002.

Reason Waived: The Little Rock Multifamily Program Center requested waiver of the income requirements for the subject property because the property has only maintained an 88 percent occupancy rate since receiving permission to occupy in December 2000. The project has no waiting list and only 16 of the 18 units are occupied. Granting this waiver would allow flexibility to market to low-income families and enable property management to lease the vacant units and start a waiting list. This waiver is effective for one year from date of approval.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000; telephone: (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c) and 24 CFR 5.110.

Project/Activity: Echo Valley Village, Pittsburgh, NH; Project Number: 024–EE040.

Nature of Requirement: Section 891.410(c) limits occupancy to very low-income elderly persons, *i.e.*, households of one or more persons at least one of whom is 62 years of age at the time of initial occupancy. Section 5.110 relates to admission of families to projects for elderly or handicapped families that received reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 22, 2002.

Reason Waived: The Manchester Multifamily Program Center requested waiver of the age and income requirements for the subject property. The owner/management agent of the subject project has requested permission to waive the elderly and low-income requirements to alleviate the current occupancy and financial problems the property is experiencing. The property will be allowed to rent to the non-elderly, disabled, and handicapped between the ages of 55 and 62 years and allow the applicants to meet the low-income eligibility requirements. This waiver will attempt to rent up vacant units and allow the property to operate successfully. This waiver is effective for one year from date of approval.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000; telephone: (202) 708–3730.

• *Regulation:* 24 CFR 891.410(c) and 24 CFR 5.110.

Project/Activity: Sugarloaf Village, Diamond City, AR; Project Number: 082-EE091.

Nature of Requirement: Section 891.401(c) limits occupancy to very low income elderly persons, *i.e.*, households of one or more persons at least one of whom is 62 years of age at the time of initial occupancy. Section 5.110 relates to admission of families to projects for elderly or handicapped families that received reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 23, 2002.

Reason Waived: The Fort Worth Multifamily Hub requested an age waiver for the subject project because the current occupancy level will not support the project. Vacant units will be marketed to people between the ages of 55 and 62 with or without disabilities. Providing for a waiver of the elderly and handicapped requirements will allow the owner additional flexibility to rent up units. This waiver is in effect for one year from the date of approval.

Contact: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000; telephone: (202) 708–3730.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following waiver actions, please see the name of the contact person who immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR Part 761.

Project/Activity: Houma Housing Authority, Houma, LA; LA48DEP0900199/ Public Housing Drug Elimination Program.

Nature of Requirement: Request for waiver of 24 CFR 761.30(b) to allow an extension of time to implement the subject grant activities.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: May 13, 2002.

Reason Waived: The Houma Housing Authority (HHA) was designated a troubled performer on December 21, 2001. HHA was transferred to the jurisdiction of the Memphis Troubled Agency Recovery Center (TARC) effective January 25, 2002. Upon being transferred, it was noted that the 1999 Public Housing Drug Elimination Program (PHDEP) Grant funds had not been obligated due to the ongoing investigation by the Local District Attorney and HUD's investigation by the Office of Inspector General hindered the draw down of funds. Medical absences of an Executive Director delayed implementation of selected PHDEP projects. The Executive Director was eventually terminated by the Board of Directors on November 18, 2001.

Contact: Sonia L. Burgos, Director, Community Safety and Conservation Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4206 Washington, DC 20410; telephone: (202) 708–1197, extension 4227.

• *Regulation:* 24 CFR 761.30(b).

Project/Activity: Roanoke Housing Authority, Roanoke, VA; VA36DEP0110197/ Public Housing Drug Elimination Program.

Nature of Requirement: Request for waiver of 24 CFR 761.30(b) to allow an extension of time to implement the subject grant activities.

Granted By: Michael Liu, Assistant Secretary, Office of Public and Indian Housing.

Date Granted: May 1, 2002.

Reason Waived: The waiver was granted to allow the housing authority to use the balance of the grant for reimbursement for services rendered and to cover grant related administrative expenses. There was a misunderstanding of the grant expenditure deadline and requests for draw down of funds from the Line of Credit Control System (LOCCS) were put on HUD Field Office review.

Contact: Sonia L. Burgos, Director, Community Safety and Conservation Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4206, Washington, DC 20410; telephone: (202) 708–1197, extension 4227.

• *Regulation:* 24 CFR 982.306(d).

Project/Activity: Becker County Economic and Redevelopment Authority, Detroit Lakes, Minnesota; Housing Choice Voucher Program.

Nature of Requirement: Section 982.306(d) limits the circumstances under which a public housing agency (PHA) may approve the leasing of a unit if the owner of the unit is a close relative of the family.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: May 2, 2002.

Reason Waived: Approval of the waiver permitted a large family to lease a unit from a relative because of the unavailability of suitable vacant rental housing in the PHA's jurisdiction.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Boston Housing Authority, Boston, Massachusetts; Housing Choice Voucher Program.

Nature of Requirement: Section 982.505(d) allows a PHA to approve a higher payment within the basic range for a family that includes a person with disabilities as a reasonable accommodation.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 16, 2002

Reason Waived: Approval of the waiver was granted to allow a housing choice voucher participant with disabilities to lease her current unit, which rents for an amount that exceeds 120 percent of the fair market rent. Due to the participant's age and health, it would be an undue hardship for the program participant to seek a unit to lease within the established payment standard amount and relocate.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Riverside County Housing Authority (RCHA), Riverside, CA; Housing Choice Voucher Program. RCHA requested an exception payment standard on behalf of a voucher holder that exceeds 120 percent of the fair market rent as a reasonable accommodation.

Nature of Requirement: Section 982.505(d) allows a PHA to approve a higher payment within the basic range for a family that includes a person with disabilities as a reasonable accommodation.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: May 20, 2002.

Reason Waived: Approval of the waiver permitted a voucher holder to lease a unit large enough for the family with ample space for dialysis equipment.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: The City of Tucson Community Services Department, Tucson, Arizona; Housing Choice Voucher Program.

Nature of Requirement: Section 982.505(d) allows a PHA to approve a higher payment within the basic range for a family that includes a person with disabilities as a reasonable accommodation.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: May 28, 2002.

Reason Waived: Approval of the waiver was granted to allow a housing choice voucher participant with disabilities to locate a suitable unit that will accommodate her disabilities.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: The New York City Housing Authority (NYCHA), New York, New York; Housing Choice Voucher Program.

Nature of Requirement: Section 982.505(d) allows a PHA to approve a higher payment within the basic range for a family that includes a person with disabilities as a reasonable accommodation.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 20, 2002.

Reason Waived: Approval of the waiver was granted to allow the NYCHA to approve an exception payment standard in excess of 120 percent of the published fair market rent to make it possible for a family that includes a person with disabilities to locate a suitable unit.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 983.7(c)(4) and Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-based Assistance Program; Initial Guidance.

Project/Activity: Akron Metropolitan Housing Authority (AMHA), Akron, Ohio; Project-based Assistance (PBA) Program. The AMHA requested a waiver of the regulation and an exception to the initial guidance to permit the AMHA to attach PBA to 97 units in Callis Tower, a 277-unit elderly building in a 551-unit Section 236 project, Channelwood. The project is located in a census tract with a poverty rate of 32 percent.

Nature of Requirement: Section 983.7(c)(4) prohibits the use of PBA in a Section 236 project. Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 26, 2002.

Reason Waived: Approval of the waiver was granted to ensure that the affected elderly families would not be rent burdened. Approval of the exception was granted because the project was in the HUD-designated City of Akron's Enterprise

Community whose goals of creating jobs; housing, and new educational and healthcare opportunities are consistent with the goal of deconcentration and expanding housing and economic opportunities.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 983.51(a) and (b).

Project/Activity: New Hampshire Housing Finance Authority (NHHFA), Bedford, New Hampshire; Project-based Assistance Program. The NHHFA requested a waiver of the aforementioned program regulation to allow for the selection of units for project-based assistance that were competitively selected for tax credits and units selected under the NHHFA's Multifamily Housing Production Initiative Program without requiring HUD review and approval of a written selection policy and without advertising for a competitive selection of units under the project-based program.

Nature of Requirement: Section 983.51(a) and (b) require HUD review and approval of a written selection policy and advertisement for the competitive selection of units to receive project-based assistance.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 1, 2002.

Reason Waived: The waiver was granted based on the urgent need for affordable rental housing in New Hampshire and the NHHFA's desire to use project-based assistance for high-ranking proposals under its Multifamily Housing Initiative Program and for projects that were competitively selected for low-income housing tax credits.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart F of the January 16, 2001, **Federal Register** *Notice*, Revisions to PHA Project-based Assistance Program; Initial Guidance.

Project/Activity: Columbus Metropolitan Housing Authority (CMHA), Columbus, Ohio; Project-based Assistance (PBA) Program. The CMHA requested an exception to the initial guidance to attach PBA to a greater number of family units than the 25 percent limit to which project-based assistance can be attached to any one building.

Nature of Requirement: Section II subpart F of the initial guidance requires that unless waived, no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 19, 2002.

Reason Waived: The exception was approved to allow for the attachment of project-based assistance to 100 percent of the units. The exception was approved based on the self-sufficiency nature of the services to be provided at the project. Specifically, the supportive services included assistance with finding and retaining employment, financial responsibility (building income and savings), and encouraging neighborhood and community involvement.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart E and subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-based Assistance Program; Initial Guidance.

Project/Activity: Boston Housing Authority (BHA), Boston, Massachusetts; Project-based Assistance (PBA) Program. The BHA requested an exception to Section II subpart E of the initial guidance for three projects to permit attachment of project-based assistance to units in census tracts with poverty rates of greater than 20 percent. Additionally, the BHA requested an exception to Section II subpart F of the initial guidance for one project to attach project-based assistance to a greater number of family units than the 25 percent limit to which project-based assistance can be attached to any one building.

Nature of Requirement: Section II subpart E requires that all new project-based assistance agreements or HAP contracts be for units in census tracts with poverty rates of less than 20 percent. Section II subpart F of the initial guidance requires that unless waived, no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 19, 2002.

Reason Waived: Approval of the requests for an exception to subpart E include the planned neighborhood revitalization, creation of mixed-income housing and job opportunities, and the significant State investment in each area. The approval of the exception to subpart F was based on the self-sufficiency nature of the services to be offered to families residing at the development. The services include child care; parenting education, job re-entry guidance, support and adult basic education instruction.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-based Assistance Program; Initial Guidance.

Project/Activity: St. Paul Public Housing Agency (SPPHA), St. Paul, Minnesota; Project-Based Assistance (PBA) Program. The SPPHA requested an exception to the initial guidance to permit the SPPHA to attach PBA to Rivertown Apartments which is in a census tract with a poverty rate of 39 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: April 26, 2002.

Reason Waived: Approval of the exception was granted since the project was in the HUD-designated St. Paul Enterprise Community whose goals of creating jobs, housing, and new educational and healthcare opportunities are consistent with the goal of deconcentration and expanding housing and economic opportunities.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-based Assistance Program; Initial Guidance.

Project/Activity: Dayton Metropolitan Housing Authority (DMHA), Dayton, Ohio; Project-based Assistance (PBA) Program. The DMHA requested an exception to the initial guidance to permit the DMHA to attach PBA to Ecumenical Homes that are in census tracts 0036 and 0037 with poverty rates of 43 and 41 percent, respectively.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: May 28, 2002.

Reason Waived: Approval of the exception was granted since the project was in four specific neighborhoods, MacFarland, Wright-Dunbar, Paul Laurence Dunbar and Wolf Creek that make up part of a development plan known as Dayton's Inner Ring Strategy. This strategy is a comprehensive economic, housing development and infrastructure improvement initiative directly impacting 14 center city neighborhoods that form a ring around the downtown area. The goals of Dayton's Inner Ring Strategy and the revitalization activities within the neighborhoods in which Ecumenical Homes will be located are consistent with the goal of deconcentration and expanding housing and economic opportunities.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-based Assistance Program; Initial Guidance.

Project/Activity: Housing Authority of the City of Atlanta (HACA), Atlanta, Georgia; Project-based Assistance (PBA) Program. The HACA requested an exception to the requirement to permit attachment of project-based assistance to 100 units at Park Place South Senior Apartments located in a census tract with a poverty rate of more than 20 percent.

Nature of Requirement: Section II subpart E requires that all new project-based assistance agreements or HAP contracts be for units in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: May 28, 2002.

Reason Waived: Approval of the waiver was granted because the significant public investment, mixed-income nature of the area in which the project is located, and the expansion of housing and economic opportunities, are consistent with the goal of the deconcentration requirement under the project-based voucher program.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-based Assistance Program; Initial Guidance.

Project/Activity: Isothermal Planning and Development Commission (IPDC), Rutherfordton, North Carolina; Project-based Assistance (PBA) Program. The IPDC requested an exception to the initial guidance to permit the IPDC to attach PBA to units in Cameron Farms and Ashley Meadows that exceed the 25 percent cap on the number of units in a building to which PBA can be attached for families receiving supportive services.

Nature of Requirement: Section II subpart F of the initial guidance requires that unless waived, no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 3, 2002.

Reason Waived: Approval of the exception was granted because the families living in Cameron Farms and Ashley Meadows will receive educational classes, health seminars, legal workshops, life skills workshops, parenting classes, crime prevention programs, financial workshops and homeownership sessions. All families will be given the opportunity to participate in the IPDC's Family-Self Sufficiency Program. These supportive services are consistent with the statute.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart E and subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-based Assistance Program; Initial Guidance.

Project/Activity: Minneapolis Public Housing Authority (MPHA), Minneapolis, Minnesota; Project-based Assistance (PBA) Program. The MPHA requested an exception to the initial guidance to permit the MPHA to attach PBA to Armadillo Flats, Franklin Portland Gateway, Park Plaza, Collaborative and Families Moving Forward that are in census tracts with poverty rates that exceed 20 percent. The MPHA also requested an exception to waive the requirement that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services for Collaborative Village and Families Moving Forward.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent. Section II subpart F requires that no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments (HAP) contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families and families receiving supportive services.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 7, 2002.

Reason Waived: Approval of the exception for deconcentration was granted since four of the projects are in the Minneapolis Empowerment Zone and one was within blocks of it. The goals of establishing empowerment zones (to open new businesses, create jobs, housing, and new educational and healthcare opportunities) are consistent with the goal of deconcentration and expanding housing and economic opportunities. Approval of the exception for the number of units in a building that may be project-based was granted because the families living in Collaborative Village will receive supportive services for chemical dependence support, job training, and educational counseling. Families living in Families Moving Forward will receive supportive services for child advocacy and care, a father's program, parenting support, and an aftercare program, all of which will focus on self-sufficiency. These supportive services are consistent with the statute.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-based Assistance Program; Initial Guidance.

Project/Activity: Burlington Housing Authority (BHA), Burlington, Vermont; Project-based Assistance (PBA) Program. The BHA requested an exception to the aforementioned requirement to permit attachment of project-based assistance to units in a census tract with a poverty rate of greater than 20 percent.

Nature of Requirement: Section II subpart E requires that all new PBA agreements or housing assistance payments contracts be for units in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 12, 2002.

Reason Waived: The poverty rate in the census tract at issue is 22 percent. The development is located in the same census tract as the University of Vermont. College students have an over-riding impact on the income characteristics of the census tract. If the college age individuals are excluded from the calculation, the census tract poverty rate drops to approximately 8 percent. In light of the unusual skew in the poverty rate data as a result of the University population living in the census tract, the commitment of public funds, the expansion of housing opportunities, and the education opportunities, the request for an exception was granted.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-based Assistance Program; Initial Guidance.

Project/Activity: Metropolitan Council Housing and Redevelopment Authority (Metro HRA), Fridley, Minnesota; Project-based Assistance (PBA) Program. The Metro HRA requested an exception to the initial guidance to permit the Metro HRA to attach PBA to units at Brandes Place that exceed the 25 percent cap on the number of units in a building to which PBA can be attached for families receiving supportive services.

Nature of Requirement: Section II subpart F of the initial guidance requires that unless waived, no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments contract for PBA except for dwelling units

that are specifically made available for elderly families, disabled families and families receiving supportive services.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 20, 2002.

Reason Waived: Approval of the exception was granted because the families living in Brandes Place will participate in the Metro HRA's Family Self-Sufficiency program and there will be a close collaboration between the developer and Catholic Charities who will provide a network to the local work force. These supportive services are consistent with the statute.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* Section II subpart F of the January 16, 2001, **Federal Register** Notice, Revisions to PHA Project-based Assistance Program; Initial Guidance.

Project/Activity: Winston-Salem Housing Authority (WSHA), Winston-Salem, North Carolina; Project-based Assistance (PBA) Program. The WSHA requested an exception to the initial guidance to permit the WSHA to attach PBA to 88 units in Kimberly Park Terrace that exceeds the 25 percent cap on the number of units in a building to which PBA can be attached for families receiving supportive services.

Nature of Requirement: Section II subpart F of the initial guidance requires that unless waived, no more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payments contract for PBA except for dwelling units that are specifically made available for elderly families, disabled families, and families receiving supportive services.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: June 20, 2002.

Reason Waived: Approval of the exception was granted because the families living in Kimberly Park Terrace, a HOPE VI project, will receive supportive services provided by the Community Affordable Housing Equity Corporation that will include an adult scholarship program, a community grants program to fund such items as furniture for community space and books for the on-site library, a first-time homebuyers program, a technology learning center, and a youth recognition program. These supportive services are consistent with the statute.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone: (202) 708–0477.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Augusta, GA, Housing Authority. A request was made to permit the authority to benefit from energy performance contracting for developments that have resident-paid utilities. The housing authority estimates that it could increase energy savings substantially if it were able to undertake energy performance contracting for both its PHA-paid and resident-paid utilities.

Nature of Requirement: Under 24 CFR Part 990, Operating Fund Formula energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Augusta Housing Authority has both PHA-paid and resident-paid utilities.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: May 3, 2002.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the housing authority to benefit from energy performance contracting for developments with resident-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Augusta Housing Authority requested a waiver based on the same approved methodology. The waiver permits the housing authority to exclude from its Performance Funding System calculation of rental income the increased rental income due to the difference between updated baseline utility allowances (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Regina McGill, Director, Attn: Peggy Mangum, extension 4039, Funding and Financial Management Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, 451 Seventh Street, SW., Washington, DC 20410; Room 4216; (202) 708–1872.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Opelika, AL, Housing Authority. A request was made to permit the authority to benefit from energy performance contracting for developments that have resident-paid utilities. The housing authority estimates that it could increase energy savings substantially if it were able to undertake energy performance contracting for resident-paid utilities.

Nature of Requirement: Under 24 CFR Part 990, Operating Fund Formula energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities. The Opelika Housing Authority has resident-paid utilities.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: May 3, 2002.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the authority to benefit from energy performance contracting for developments with resident-paid utilities. The waiver was granted on the basis that the authority presented a sound and reasonable methodology for doing so. The Opelika Housing Authority requested a waiver based on the same approved methodology. The waiver permits the HA to exclude from its PFS calculation of rental income the increased rental income due to the difference between updated baseline utility allowances (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Regina McGill, Director, Attn: Peggy Mangum, extension 4039, Funding and Financial Management Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, 451 Seventh Street, SW., Washington, DC 20410; Room 4216; (202) 708–1872.

• *Regulation:* 24 CFR 1000.327(b).

Project/Activity: Nondalton Tribal Council's submission of an Indian Housing Plan (IHP) for FY 2002 funding made available under the Native American Housing Assistance and Self-Determination Act of 1996.

Nature of Requirement: The regulation notifies Indian tribes not located on a reservation, including each Alaska Native village, regional Indian tribe, regional corporation, or its tribally designated housing entity (TDHE) that they must notify HUD in writing by September 15 each year whether it or its TDHE intends to submit an IHP. If an Alaska Native village notifies HUD that it does not intend either to submit an IHP or to designate a TDHE to do so, or if HUD receives no response from the Alaska Native village or its TDHE, the formula data which would have been credited to the Alaska Native village will be credited to the regional Indian tribe, or if there is no regional Indian tribe, to the regional corporation.

Granted By: Mr. Michael Liu, Assistant Secretary, Office of Public and Indian Housing.

Date Granted: June 7, 2002.

Reason Waived: The Alaska Office of Native American Programs may not have received the Tribe's notification of intent to submit an IHP by the deadline due to the state of affairs surrounding September 11, 2001, and the Tribal Administrator's medical condition.

Contact: Deborah Lalancette, Director, Grants Management, Denver Program ONAP, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202; telephone: (303) 675–1600, extension 3325.

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October 10, 2002

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; Atlantic Deep-Sea Red Crab Fishery Management Plan; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 020531136–2224–02; I.D. 041802C]

RIN 0648–AP76

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; Atlantic Deep-Sea Red Crab Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement approved measures contained in the Atlantic Deep-Sea Red Crab Fishery Management Plan (FMP). These regulations implement the following measures: A limited access program for the directed fishery; a target total allowable catch (TAC) level; a Days-at-Sea (DAS) allocation effort control program; permitting and reporting requirements, including an Interactive Voice Response (IVR) system for limited access vessels; trip limits and incidental harvest allowances; trap/pot limits; processing-at-sea restrictions; and a framework adjustment process among other measures. The intended effect of this final rule is to implement permanent management measures for the Atlantic deep-sea red crab (red crab) (*Chaceon quinquedens*) fishery pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP and to prevent overfishing of the red crab resource. Also, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for these collections.

DATES: This final rule is effective on October 21, 2002.

ADDRESSES: Copies of the FMP, its Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA), and the Final Environmental Impact Statement (FEIS), as prepared by the New England Fishery Management Council (Council), are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery—Mill 2, Newburyport, MA 01950.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272.

SUPPLEMENTARY INFORMATION: This final rule implements approved measures contained in the FMP, which was approved by NMFS on behalf of the Secretary of Commerce (Secretary) on July 31, 2002.

Details concerning the justification for and development of the FMP and the implementing regulations were provided in the preamble to the proposed rule (67 FR 41936, June 20, 2002) and are not repeated here.

Maximum Sustainable Yield (MSY)

MSY is estimated at 6.24 million lb (2,830.4 mt) for the male-only red crab fishery. It was calculated based on a 1974 NMFS survey of the red crab resource and the resulting stock assessment (Serchuk, 1977). Several assumptions underlie the calculation of MSY: (1) That the fishery continues to retain and land only male crabs larger than 4 inches (10.2 cm); that the natural mortality rate for red crabs is 0.15; and (3) that the management unit extends to Cape Hatteras, NC. The status of the red crab fishery will be updated if and when new scientific data are obtained.

Overfishing Definition

The overfishing definition considers both the rate of exploitation and the condition of the stock. Overfishing is defined as any rate of exploitation that causes the ratio of current exploitation to an idealized exploitation under MSY conditions to exceed 1.0. Several methods may be used to define idealized exploitation, depending on the type of data available.

The red crab stock is considered to be in an overfished condition if any one of the following three conditions is met:

Condition 1—The current biomass of red crab in the red crab management unit is below ½ Bmsy.

Condition 2—The annual fleet average catch per unit effort (CPUE), measured as marketable crabs landed per trap haul, continues to decline below a baseline level for 3 or more consecutive years.

Condition 3—The annual fleet average CPUE, measured as marketable crabs landed per trap haul, falls below a minimum threshold level in any single year.

Optimum Yield (OY)

OY is specified at 95 percent of MSY, or 5.928 million lb (2,689 mt). This approach is intended to incorporate future changes in MSY into the estimate of OY, to account for any uncertainty about the status or vulnerability of the resource or the current levels of fishing effort.

Approved Measures

Management Unit

The boundaries of the management unit are limited to the waters north of 35°15.3′ N. lat., bounded by the coastline of the continental United States in the west and north, and the Hague Line and seaward extent of the U.S. Exclusive Economic Zone (EEZ) in the east. The proposed boundaries reflect the traditional extent of the red crab fishery in the Northeast United States, are consistent with prior action taken by the Secretary (the emergency regulations) (66 FR 23183, May 8, 2001 and 66 FR 56781, November 13, 2001), incorporate a well-known bio-geographic boundary (Cape Hatteras, NC), and are consistent with other New England Council FMPs.

Fishing Year

The fishing year begins on March 1 of each year, which reflects traditional fishing practices prior to times of relatively higher effort and landings. The timing of the fishing year is anticipated to reduce the margin of error associated with projections of landings made about future fishing years. It also reflects the time after which the cumulative landings for the first 6 months of the fishery are expected to be the highest, which will reduce the margin of error associated with projected landings during the second half of the year.

Permitting Requirements

The owner of any commercial vessel who wants to fish for, catch, possess, transport, land, sell, trade, or barter red crab or red crab parts in or from the red crab management unit is required to obtain a Federal red crab permit. One of two types of Federal permits is required: (1) A limited access red crab permit is required for vessels to participate in the directed fishery (this permit is issued only to vessels that meet specified eligibility criteria); and (2) a red crab incidental catch permit is required in order for any vessel to land an incidental catch of red crabs up to 500 lb (226.8 kg) per fishing trip. All vessels are eligible for this permit. Vessels issued the limited access permit are also allowed to fish under the red crab incidental catch rules if they do not declare their intent to use a red crab DAS.

Owners of vessels issued a limited access red crab permit may, upon permit renewal beginning with the second fishing year, declare out of the red crab fishery for the following fishing year by submitting a binding declaration to the Administrator, Northeast Region, NMFS (Regional Administrator) at least 180 days prior to the following fishing year. NMFS will presume that a vessel owner intends to fish the following fishing year unless such a declaration is received. The requirement for owners of vessels to declare if their intent is not to fish prior to each fishing year is necessary in order to facilitate any needed adjustment of the annual allocation of DAS per vessel, which is based on the expected number of vessels that would actually participate in the fishery. A vessel owner who declares out of the fishery for the following year must wait until the next year's permit renewal application process to declare back into the fishery for the next full fishing year.

Vessel owners have 180 days from the effective date of this final rule to apply for their initial limited access permits. Therefore, a vessel owner must apply for an initial limited access red crab permit before April 8, 2003. No vessel owner may apply for an initial limited access red crab permit after this date. Pursuant to § 648.4(a)(1)(i)(B), any owner who fails to renew his/her limited access permit for any fishing year will be ineligible to renew it in subsequent years.

As part of the application for a limited access red crab permit, vessel owners must declare the maximum number of traps/pots they use per string and the maximum number of strings they intend to employ annually, such that the product of the maximum number of traps/pots per string and the maximum number of strings declared is no more than 600 traps/pots.

Dealers who purchase red crab product from any vessel are required to obtain a Federal dealer permit. Red crabs harvested from the red crab management unit may only be sold by a federally permitted vessel to federally permitted dealers.

Operators of vessels issued a Federal red crab vessel permit must obtain a Federal operator permit. An individual who already holds an operator permit for another federally managed fishery need not reapply, since there is no qualification or test for this permit.

Qualification Criteria for Limited Access

Subject to the restrictions defined in this rule, a vessel may qualify for a limited access red crab permit if the vessel demonstrates that its average landings of red crabs per year during the 3-year period prior to the March 1, 2000, control date were greater than 250,000 lb (113,398 kg).

Reporting Requirements

This rule extends the existing Northeast Region Vessel Trip Report (VTR) system to vessels with red crab permits. The owner or operator of vessels issued either a limited access or incidental catch permit must submit monthly reports on fishing effort, landings, and discards within 15 days of the end of the reporting month. Both limited access and incidental catch vessels must complete and submit accurate VTRs for all fishing trips, regardless of whether they fish for or land any red crab.

Owners or operators of vessels participating in the limited access fishery must also report their total red crab landings through an IVR system within 24 hours of the termination of any trip that lands red crab.

Dealers issued a red crab dealer permit must submit a weekly dealer report on forms provided by or approved by the Regional Administrator. If authorized in writing by the Regional Administrator, the form(s) may be submitted electronically or through other media. The report must be provided weekly, and must be postmarked and received within 16 days after the end of each reporting week. A negative report is required if there are no purchases of any species during the reporting week.

Target TAC

An annual specifications process provides the mechanism to make adjustments to the amount of target TAC available to the fishery and the number of DAS to be allocated to each vessel authorized to participate in the limited access fishery. Specifications also include the specification of OY and/or adjustments to trip/possession limits. The Council's Plan Development Team (PDT) will review the most recent landings and effort data on an annual basis in order to provide the information necessary for the Council to recommend the specifications for the following fishing year. Each fishing year, the landings in the red crab fishery will be counted against a target TAC. The target TAC will be set annually through the annual specification process at a level equal to the most current estimate of OY for the fishery. The target TAC will be adjusted based on any projected overage or underage expected for the current fishing year. For example, when the Council is setting the annual specifications for the following fishing year, if OY is 5.928 million lb (2,689 mt) and the Council projects that 6.75 million lb (3,062 mt) will be harvested in the current fishing year (i.e., a 822,000 lb (372,853 kg) overage), then the target TAC for the following year may be set no higher than 5.106 million lb (2,316 mt) (5.928 million lb - 822,000 lb = 5.106 million lb). If, on the other hand, the Council projects that only 5.25 million lb (2,381 mt) will be harvested in the current fishing year (a 678,000 lb (307,536 kg) underage), then the target TAC may be set at 6.606 million lb (2,996 mt). The target TAC for the first full fishing year, March 1, 2003 through February 29, 2004, is 5.928 million lb (2,689 mt) of whole red crab or its equivalent. The target TAC for the initial fishing year is discussed under "DAS allocation for Initial Implementation Year", below.

Allocations of Red Crab DAS

Along with the annual target TAC, the annual specification process involves calculation of the total DAS that may be utilized by the directed fishery, based on the average catch per DAS from the previous year. Total DAS are allocated equally to all vessels issued a limited access red crab permit, divided by the number of vessels that intend to participate in the fishery for the fishing year. Any unused DAS allocated to a vessel in one fishing year may be carried over to the next fishing year, up to a maximum of 10 DAS or 10 percent of the total allocated DAS, whichever is less. The partial end of the year DAS carry-over is intended to ensure that at least some unused fishing effort will not be wasted, while providing no incentive to hoard DAS. In addition, a carry-over provision enhances safety at sea by creating a disincentive for a vessel to use up remaining DAS at the end of a fishing year, notwithstanding bad weather conditions. This measure also limits the potential annual fishing capacity to roughly 10 percent above the baseline. An initial baseline of 130 DAS is established for each limited access vessel for the fishing year that ends February 28, 2003, because this rule first implements the red crab management measures well after the start of the initial fishing year (March 1, 2002). Therefore, the management measures

will not be in effect for a full fishing year.

From March 1, 2003, through February 29, 2004, each participating vessel will be allocated 156 DAS, unless this allocation were changed because of one or more vessel owners declaring out of the fishery or under the FMP specification process. The allocation of 156 DAS per participating vessel will remain the baseline unless modified through the specification process in the FMP.

A DAS is counted as a whole day (24 hours). Any portion of a day on which a vessel is out of port counts as a full DAS. For example, if a vessel embarks on a fishing trip at 11:00 p.m. on June 1, that day of departure counts as one DAS. If it returns from the trip at 1:00 a.m. on June 10, that day of return also counts as one DAS. The vessel will have used 10 DAS during the fishing trip, rather than the 8.0833 DAS that would be counted as used if DAS were counted on an hourly basis, as is the case in the Northeast multispecies and Atlantic sea scallop fisheries.

DAS Allocation for Initial Implementation Year

During the initial year of implementation of the FMP, to account for red crab removed from the resource during the regulatory hiatus period between the expiration of the red crab emergency regulations on May 14, 2002, and implementation of the FMP, the Regional Administrator will calculate the amount of red crab landed during that period. This landings total will be deducted from the target TAC (5.928 million lb) (2,689 mt) and the remainder is the amount of target TAC available for the initial fishing year under the DAS program. The percentage of the target TAC remaining will be calculated and vessels participating in the DAS program will be allocated the calculated percentage of the initial baseline of DAS (for example, if landings during the hiatus period equal 20 percent of the target TAC, the allocation of 130 DAS will be reduced by 20 percent, with the result rounded down to the nearest whole number). The calculated DAS allocation will be provided to permit holders by letter.

Trip Limits During a Red Crab DAS

All vessels issued a limited access red crab permit will be subject to a baseline trip limit of at least 75,000 lb (34,019 kg) of whole red crab or its equivalent. If a vessel can document at least one trip with higher landings during the limited access qualification period, then that vessel will qualify for a trip limit equal to the larger trip, rounded to the nearest 5,000 lb (2,268 kg). A vessel that landed crab in other than whole form must apply the more appropriate of two recovery rate formulas, or a formula approved by the Regional Administrator, in accordance with § 648.263(a)(2) to determine its highest landings on a trip during the qualification period. Documentation of the highest landings on a trip must be received by NMFS within 30 days after receipt of a vessel owner's application for an initial limited access red crab vessel permit. A vessel owner must fish consistent with the 75,000 lb (34,019 kg) trip limit until authorized for a trip higher than 75,000 lb (34,019 kg) by NMFS through issuance of an updated vessel permit.

Incidental Catch Limit

An incidental catch limit of 500 lb (226.8 kg) per trip, in whole weight equivalent, will be implemented for all vessels issued a red crab incidental catch permit. This incidental catch limit will also apply to vessels issued a limited access red crab permit when they are not fishing under a red crab DAS.

Female Red Crab Possession Restrictions

The retention and landing of female red crabs in the limited access red crab fishery is prohibited, except for an incidental catch allowance equal to the amount that will fill one standard U.S. fish tote (approximately 100 lb (45.4 kg)) per vessel per trip. This measure does not apply to vessels fishing under the provisions of the red crab incidental catch permit, because the Council did not want to provide any incentive to seek any more than the first 500 lb (227 kg) of red crab harvested.

Processing-At-Sea Restrictions

This rule prohibits the full processing of red crabs at sea, but allows landing of crabs in less than whole form, provided crabs are landed as described below. "Full processing" is defined as any activity that removes meat from any part of a red crab.

Crabs must be landed whole or split in half along the length of the carapace, with legs and claws still attached to the carapace parts. To determine the equivalent whole crab weight for crabs landed in half sections, this rule provides two different calculations, depending on whether the gills and other detritus are removed. For crab halves where gills and other detritus have not been removed (typically referred to as "butchering"), the equivalent whole weight is equal to the weight of the halves multiplied by 1.56 (a 64-percent recovery rate). For crab halves where all of the gills and other detritus have been removed (typically referred to as "partial processing"), the equivalent whole weight is equal to the weight of the halves multiplied by 1.72 (a 58-percent recovery rate).

This requirement is intended to remove the incentive for and prevent the harvesting of red crabs for their claws and/or legs alone. This measure will also facilitate the administration and enforcement of the male-only restriction in the directed fishery, because the sex could be discerned either by the shape of the tail flap on whole crabs, or by the outline of the tail flap on partially processed or butchered crabs.

Vessels issued a limited access red crab permit and fishing under a red crab DAS may possess red crab claws and legs separate from crab bodies equal to the amount that will fill one standard U.S. fish tote (approximately 100 lb (45.4 kg)) per vessel per trip. This mutilation allowance is intended to account for incidental and unintended loss of claws and/or legs during normal fishing operations. Vessels fishing under the provisions of the red crab incidental catch permit may possess no more than two claws and eight legs per crab on board the vessel.

Gear Requirements and Restrictions

Vessels issued a limited access red crab permit and fishing under a red crab DAS are subject to a maximum limit of 600 red crab traps/pots. If the total number of traps/pots declared by the owner of a vessel on the annual vessel permit application is less than 600, the vessel is subject to that declared limit on traps/pots.

Vessels issued a limited access red crab permit and fishing under a red crab DAS are prohibited from deploying, hauling, or removing fish from any fishing gear other than red crab gear. Red crab gear is identifiable through required markings on the buoys used at the end of each set of traps/pots.

The maximum allowable size of all traps/pots used in the limited access red crab fishery when under a red crab DAS is 18 ft^3 (0.51 m^3) in volume. In addition, all red crab traps/pots must be rectangular, trapezoidal or conical, unless other designs whose volume does not exceed 18 ft^3 (0.51 m^3) are authorized by the Regional Administrator. In conjunction with the trap/pot limit described above, this will prevent a potential increase in the per-day efficiency of vessels fishing under a red crab DAS.

Only red crab traps/pots may be used by a vessel fishing in the limited access red crab fishery when fishing under a red crab DAS, in order to enhance conservation of red crabs and reduce the possibility of ghost fishing (i.e., fishing that continues when traps/pots or buoys are lost). Because red crab traps/pots, unlike parlor traps/pots, do not prevent the eventual escape of crabs from the trap, many of the crabs that might enter the traps during the period between trips will be gone before the vessel returns to haul the traps on a subsequent trip. Therefore, by prohibiting the use of compartments in red crab traps/pots there is no longer the possibility of red crabs dying in a trap/pot before the trap/pot is hauled. Also, lost red crab traps do not present a ghost fishing problem, because the crabs can escape from the traps. Vessels fishing under the red crab incidental catch provisions, including vessels in the red crab fishery when not fishing under a red crab DAS, are not prohibited from deploying, hauling, or removing fish from parlor traps/pots or using non-trap/pot gear.

Annual Monitoring and Framework Adjustment Measures

The Council must prepare a biennial Stock Assessment and Fishery Evaluation (SAFE) Report for the red crab fishery and its resource. The Red Crab PDT must meet at least annually to review the status of the stock and the fishery. The PDT must report any necessary adjustments to the measures and recommendations for the specifications and TACs to the Council's Red Crab Committee, which in turn must recommend appropriate changes to the Council. Specifications must be recommended to NMFS, and changes to management measures may be adopted through a framework adjustment or FMP amendment.

The framework adjustment process, on an annual basis or at any other time during the fishing year, is similar to that used in other Northeast Region fisheries. This process allows changes to be made to the regulations in a timely manner without going through the FMP amendment process.

During the framework adjustment process, the Council must meet to develop new management measures to the FMP. Either during or at the conclusion of the framework process, the public will be provided an opportunity to offer comments on the Council's framework adjustment process and the newly-developed management measures.

The management measures and/or changes to them may be implemented and adjusted through the framework process and specifically include the following: (1) OY; (2) management unit; (3) technical parameters for MSY; (4) description and identification of essential fish habitat (EFH); (5) description and identification of habitats of particular concern (HAPCs); (6) incidental catch limits; (7) minimum size of landed crabs; (8) restricting directed fishing to male crabs only; (9) butchering/processing restrictions; (10) trap/pot limits; (11) gear requirements/restrictions; (12) TAC; (13) trip limits; (14) controlled access; (15) DAS; and (16) any other measure currently included in the FMP.

Pursuant to section 304(b) of the Magnuson-Stevens Act, the Secretary has made minor modifications to the framework process as described in the FMP. These modifications help to clarify the Secretary's authority and discretion to publish framework measures as a final rule without prior notice and comment. Although the Council, after consideration of numerous criteria, may recommend that regulations be published directly as a final rule, this recommendation does not affect the Secretary's authority or discretion in deciding whether it is appropriate to publish the rule without prior notice and comment. However, in order to publish a final rule without prior notice and comment, the Secretary must make a finding under the Administrative Procedure Act that good cause exists to waive prior notice and comment.

Essential Fish Habitat

Depth zone affinities are used to describe EFH for red crab. EFH for red crab includes those areas of the offshore waters (out to the offshore U.S. boundary of the EEZ), in depths of 200–1,800 m, as identified and described in section 3.7.4 of the FMP. The activity managed by the FMP occurs in a limited area and a narrow depth band along the continental slope of the United States, from the southern flank of Georges Bank south to Cape Hatteras, NC. The range of this activity occurs across the designated EFH of 11 species managed by the New England, Mid-Atlantic and South Atlantic Fishery Management Councils. As discussed in Section 3.7.6 of the FMP, no adverse impacts are expected on the EFH of these species and no further mitigation is practicable or necessary. Potential impacts to EFH associated with this fishery are expected to decrease as a result of this action, based on the overall controls on the fishery, the trap/pot limit, the non-trap/pot gear prohibition, and the controlled access program, which will limit the number of participants.

This rule also revises the definitions of "Council," "Day(s)-at-Sea," "Fishing year," "Processor," "Processing, or to process, in the Atlantic herring fishery," and "Sorting machine," to clarify the meaning of each and to provide consistency with text used in like definitions from other species regulations.

Comments and Responses

Three sets of written comments on the FMP were received during the comment period on the FMP, which ended July 1, 2002. The comments were considered by NMFS before it approved the FMP on July 31, 2002, and are included below.

NMFS also received four sets of written comments on the proposed rule, some of which included comments on the FMP, during the comment period specified in the proposed rule, which ended on July 23, 2002. Because the comment period for the proposed rule was distinct from, and followed, the comment period for the FMP, comments received during the proposed rule comment period were not considered in NMFS' determination to approve the FMP. However, the comments addressing the proposed rule were considered in approval and implementation of this final rule effecting the FMP and its management measures and are responded to here.

Comment 1: The United States Coast Guard (USCG) expressed concern with the enforceability of the proposed trap/pot limits. While it said that gear marking and declaration requirements will help mitigate its enforcement concerns, it would be problematic to confirm the actual number of traps per set and number of sets deployed on the fishing grounds. It further stated that it would also be difficult to confirm the use and ownership of any unmarked gear on the fishing grounds. Because USCG cutters are not equipped to haul fixed fishing gear, especially in deep water, inspections, it stated, would have to be limited to random opportunities when cutters detect fishing vessels actively retrieving gear.

Response: The problem raised by USCG about enforcing trap/pot and set limits is an unavoidable one for trap/pot fisheries. However, because this fishery is so small, NMFS believes that the potential for at-sea intervention by the USCG will serve as a sufficient deterrent.

Comment 2: The United States Environmental Protection Agency (EPA) commented that its previous concerns with the draft EIS had been resolved with one exception—ghost fishing (as it relates to entrapment of marine life). EPA stated that it would like to see a

ghost panel required, preferably on two adjacent trap/pot surfaces, in the traps/pots used by the directed fishery, because trap materials of wood and wire mesh can last a long time in the marine environment, especially in a deep-sea cold water environment. As stated in the draft EIS, an average of 10.5 red crab traps/pots are lost/damaged per fishing trip. EPA calculated that approximately 2,000 traps/pots are potentially lost or broken annually. It said that over a 10-year period, this would put a substantial amount of gear on the sea floor.

Response: Ghost fishing by red crab traps/pots is not an issue of concern. Red crab traps/pots, unlike the parlor traps/pots used in the lobster fishery, do not prevent the escapement of crabs or other fish that enter the trap.

Comment 3: Three commenters were concerned with the method of counting DAS. Under the proposed rule, any portion of a day on which a vessel is out of port would count as a full DAS. They stated that this method of counting DAS has no bearing on the conservation of the red crab resource but has serious implications for the safety and operational economics of red crab vessels and crew, which one commenter believes to be contrary to National Standards 5, 8 and 10. In illustration, the commenter pointed out that, in order to conserve a DAS, a vessel would wait until midnight to sail; that sailing during darkness will increase the risk of collision; and that the captains and crews would be hampered by darkness and operating when their biological clocks tell them they are expected to be asleep. The commenter further stated that disruptions to existing operating practices will reduce efficiency, create an unnecessary burden on fishing communities, and create incentives that compromise safe operations. The commenters urge NMFS to modify this method of counting DAS by counting on an hourly basis.

Response: The commenters' arguments are based on their contention that leaving at midnight is contrary to current practice. In fact, NMFS believes that leaving at midnight, or even a few hours after midnight, is not unusual. NMFS also believes that crews often work in the dark, sometimes during long shifts. Vessels are free to sail at any time, and sailing at a time perceived to be safe is totally within the discretion of the vessel owner or captain.

As for operational economics, NMFS disagrees that the FMP's method of counting DAS reduces efficiency or creates an unnecessary burden on fishing communities. The method of counting DAS applies equally to all vessels in the fishery, which is controlled by a target Total Allowable Catch. Under the FMP, the allocation of DAS to vessels each year will take overages and underages into consideration. If more DAS are required due to underages, even if they are perceived to have occurred as a result of the method of counting DAS, more DAS would be allocated.

Comment 4: The SAFMC expressed concern regarding the southern boundary. The proposed southern border of the Red Crab Management Area includes the area between the VA/NC border and Cape Hatteras, NC. The northernmost border for the SAFMC's Golden Crab FMP is the VA/NC border. Red crab and Jonah crab are included in the golden crab fishery but are not managed under the Golden Crab FMP. The SAFMC commented that, because of this proposed area overlap, significant negative impacts to the SAFMC's golden crab fishery would result from approval of this measure in the FMP. The SAFMC stated that, under the FMP, vessels could fish within the area of overlap but would have to discard all golden crabs, which would be wasteful and result in conflict with South Atlantic fishermen deploying golden crab traps. It also stated that the potential for having red crab vessels fishing in the area of overlap may deter Southern Zone vessels that had planned to transfer to the Northern Zone from doing so, thereby exacerbating conflicts within the Southern Zone. The SAFMC requested that NMFS disapprove the proposed management unit and approve the alternative with the boundary at the VA/NC border.

Response: During the public review phase of the FMP development process, the NEFMC received reports that the Atlantic deep-sea red crab fishery extended south to Cape Hatteras, NC (although most activity was reported to be constrained to the area north of Norfolk Canyon). The reason reported for not fishing south of Cape Hatteras, NC was that there is a significant diminishment in the abundance of market-sized crabs south of Cape Hatteras. Although there are no known boundaries of different red crab stocks, Cape Hatteras, NC is a well-known bio-geographic boundary that may keep separate red crab larvae from north and south of this line. The Northeast Fisheries Science Center is exploring genetic differences between red crabs found north of Cape Hatteras, south of Cape Hatteras, and in the Gulf of Mexico. The establishment of Cape Hatteras, NC, as the southernmost boundary of the Atlantic deep-sea red crab fishery not only comports with the aforementioned rationale, but is consistent with the management areas specified in the previous red crab emergency rule and in most other NEFMC FMPs.

Red crabs are not included in the management unit of the Golden Crab FMP, and golden crabs are not included in the management unit of the Red Crab FMP; therefore, there is no direct conflict in management jurisdiction. Extending the red crab management unit to Cape Hatteras is intended to prevent overfishing of the red crab resource by controlling fishing effort in this area. If the southern boundary of the management unit were established at the VA/NC border, any vessel would be able to fish for red crab between the border and Cape Hatteras with no restrictions on effort, landings, or gear. In fact, this could result in localized overfishing of the red crab resource and an increase in potential gear conflicts if vessels moved into this area to avoid the regulations that exist north of the management unit boundary.

NMFS believes the SAFMC's concern that red crab vessels fishing in the area between the VA/NC border and Cape Hatteras would deter Southern Zone vessels from transferring to the Northern Zone because of gear conflict possibilities is likely unwarranted. First, due to the establishment of a limited access program in the red crab fishery, NMFS anticipates that no more than four or five red crab vessels will be authorized to fish at more than incidental catch levels (most Northeast red crab vessels fish north of Hudson Canyon). Second, the area of overlap is small relative to SAFMC's entire Northern Zone, which runs from the VA/NC border to a point just south of Daytona Beach, FL. Given the very broad range of the two fisheries (Daytona Beach, FL, to the VA/NC border and Georges Bank to Cape Hatteras, NC for golden crab and red crab, respectively), and the limited number of vessels allowed to operate in these areas, it seems unlikely that there would be significant gear conflicts in the relatively small area of overlap.

Finally, regulating the harvest of red crabs north of Cape Hatteras, NC would not negatively impact or retard development of the golden crab fishery north of Daytona Beach, FL. Vessels permitted to fish for red crab will not be allowed to retain any golden crabs, unless they also possess a golden crab permit issued by the Southeast Region, NMFS.

Changes from the Proposed Rule

In § 648.264, paragraph (a)(6) is added. Paragraph (a)(6) corrects an inadvertent omission in the proposed rule to reflect that the red crab fishery falls under the Marine Mammal Protection Act Category I Lobster Trap/Pot fishery. The effect is that vessels in this fishery are required to comply with the applicable gear restrictions for that fishery, including a required weak link at the buoy that breaks away knotless at 3,780 lb (1,714.6 kg) and a requirement for marking of gear as specified at § 229.32. Also, red crab fishing gear, fished in 200 fathoms (365.8 m) or less by a vessel issued a limited access lobster permit under § 697.4(a), must comply with the trap tagging requirements specified at § 697.19.

NOAA codifies its OMB control numbers for information collection 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number for 0648–0202 for § 648.262 and 0648–0351 for § 648.264. Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere, NOAA, has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

The Administrator, Northeast Region, NMFS, determined that the FMP implemented by this rule is necessary for the conservation and management of the Atlantic deep-sea red crab fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive all but 10 days of the 30-day delayed effectiveness period of the implementing regulations contained in this final rule. It is contrary to the public interest to delay for more than 10 days the effective date of regulatory provisions establishing the specification process and management measures because, there exist currently, no measures to protect the red crab resource or to limit catching and landing red crabs from the 2002 TAC.

Vessels are currently fishing on the red crab resource and the threat of overfishing the resource is the primary problem needing management action. In order to address this threat, NMFS implemented emergency regulations on May 8, 2001, through November 14, 2001, to prevent overfishing of the resource. The emergency regulations were extended from November 15, 2001, through May 14, 2002. The fishery has been unregulated since the expiration of the emergency rule.

Overfishing is of particular concern due to the nature of the species because red crabs are typically slow-growing and major recruitment events are believed to rarely occur. The best scientific information available indicates that when the fishable stock of this resource was under virgin conditions, the maximum sustainable yield of red crab was 5.5 million pounds. Since this estimation was derived, commercial landings have exceeded this amount several times. All the current information available on the red crab and its fishery indicates that there is a limited MSY that can be harvested by only four to six vessels fishing at existing levels of capacity. Without regulations in place to limit the effort and total catch of the resource, overfishing is likely to occur. Therefore, there is also an immediate conservation benefit that would arise by waiving all but 10 days of the delayed effectiveness period, as there would be measures in place to protect the resource. This 10-day delay period is the minimum necessary to allow fishers and dealers to obtain newly required permits. Therefore, the Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive all but 10 days of the 30-day delayed effectiveness period of the implementing regulations.

A final environmental impact statement was prepared for this FMP; a notice of availability was published on May 31, 2002 (67 FR 38100). NMFS determined, upon review of the FMP/FEIS and public comments, that approval and implementation of the FMP is environmentally preferable to the status quo. The FEIS demonstrates that it contains management measures able to mitigate, to the extent possible, all possible social and economic adverse effects while minimizing risks to the resource and its environment; and will have significant positive effects on the red crab resource relative to the no action alternative.

An FRFA was completed for this action that contains the items specified in 5 U.S.C. 604(a). The FRFA consists of the IRFA, the comments and responses to the proposed rule, and a summary of the analyses completed in support of this action. A copy of the analyses is available from the Council (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here. A description of the action, a discussion of why it is being considered, and its legal basis are also contained in the preamble to the proposed rule and are not repeated here. The summary of the analyses of the potential impacts of the management alternatives considered in the FMP are provided in the Classification section of the proposed rule and are not repeated here. The items specified in 5 U.S.C. 604(a) are summarized as follows:

Public Comments

Four comments were received on the measures contained in the proposed rule. Comments did not address the economic impact of the rule. No changes were made to the measures outlined in the proposed rule as a result of the comments received.

Number of Small Entities

The IRFA identified 86 individual vessels that reported some landings of red crab during 1991–2001, all of which appear to be small entities.

Permits and Reporting Requirements

Vessels landing red crab would be required to have permits, as would dealers purchasing red crab from permitted vessels. Operators of vessels with red crab permits would be required to obtain operator permits. Vessels landing red crab would need to submit logbook reports, and dealers purchasing this species would need to submit dealer reports. Some vessels and dealers are currently issued the required permits as a result of their participation in other managed fisheries. For those entities, the red crab fishery would be added to an existing permit and there would be no new impacts.

Some vessel owners and dealers may have to obtain Federal permits for the first time. In these instances, the costs associated with completing the necessary applications would be: Vessel permit, $7.50/applicant; dealer permit, $7.50/applicant; and operator permit, $15.00. Annual costs associated with completing vessel trip reports are estimated at $20.00. Annual costs associated with dealer reporting are estimated at $30.00. No professional skills are necessary to comply with any of the reporting requirements associated with this action.

Minimizing Significant Economic Impacts on Small Entities

Alternatives considered by the Council to lessen impacts on small entities are summarized below. The Council considered establishing less restrictive eligibility criteria, and

expected a minimum of eight vessels to meet the least restrictive criteria considered, which would have required a vessel to have landed 40,000 lb (18,143.7 kg) or more during the eligibility period of March 1, 1997–February 29, 2000. This implies that three entities may be negatively impacted by this final rule compared to that alternative because the limited access program will exclude them from the directed fishery. These three vessels landed at least 10,000 lb (4,535.9 kg) of red crab for 3 years prior to the control date, for an average of 3,333 lb (1,511.8 kg) per year. The IRFA estimated the maximum revenue loss to be $2,833 per year for each of these vessels. The Council selected the more restrictive criteria because all of the information available indicated that four to six vessels fishing at existing levels of capacity represented the maximum amount of harvesting that could be sustained by the resource.

The IRFA also evaluated the impact of the limited access program by comparing the qualifying vessels with the vessels that fished multiple times under LOAs issued under the emergency regulations. This comparison indicated that one entity might be excluded from the directed fishery under the approved qualification criteria, because the vessel entered the fishery after the control date of March 1, 2000. This vessel does not currently participate in the fishery and has left the New England area. The impacts on this vessel would have been severe if it had intended to fish for red crabs, but cannot be detailed in the IRFA because of data confidentiality restrictions.

The revenue effects on these impacted entities will be moderated if they can adapt their fishing activities and redirect their fishing activity onto other species. It appears that most will have this option. Of the 17 vessels noted above that were issued LOAs under the emergency action, 14 had the vessel permits necessary to fish in other fisheries, including other limited access fisheries such as American lobster, summer flounder, scup and black sea bass.

In addition to the management program implemented by this final rule, the Council considered and rejected eight other management alternatives and a "no action" alternative, which are incorporated by reference in the FRFA. When compared with the "no action" alternative, all of the alternatives would have a positive economic effect on the level of harvest. An analysis indicated that the management program implemented by this final rule would best minimize significant economic impacts while achieving the conservation goals and objectives of the FMP. The preferred alternative will reverse recent overcapacity in the fishery (which could have severely impacted the full-time small entities), and provides operational flexibility to the full-time small entities participating in the fishery (which minimizes the economic impacts of necessary constraints on fishing effort). For a description of the alternatives considered but rejected, see the IRFA discussion in the Classification section of the proposed rule (67 FR 41936).

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of permits issued for the Atlantic deep-sea red crab fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following web site: *http://www.nmfs.gov/ro/doc/nero.html*.

Need for and Objectives of the Final Rule

This final rule is necessary to implement approved measures contained in the Atlantic Deep-Sea Red Crab FMP. The intent of this final rule is to manage the red crab fishery pursuant to the Magnuson-Stevens Act and the FMP in order to prevent overfishing of the red crab resource.

This rule contains eight collection-of-information requirements subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget. The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The new reporting requirements and the estimated time for a response are as follows:

Vessel trip reports, OMB control number 0648–0212 (5 minutes/response).

Dealer purchase reports, OMB control number 0648–0229 (10 minutes/response).

Limited access vessel permits, OMB control number 0648–0202 (5 minutes/response).

Incidental catch vessel permits, OMB control number 0648–0202 (5 minutes/response).

Dealer permits, OMB control number 0648–0202 (5 minutes/response).

Operator permits, OMB control number 0648–0202 (60 minutes/response).

Observer deployments, OMB control number 0648–0202 (2 minutes/response).

Gear marking requirements, OMB control number 0648–0351 (36 minute/response).

No professional skills are necessary for preparation of reports or records specified above.

Public comment is sought regarding: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection-of-information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: October 1, 2002.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX, part 902 and 50 CFR chapter VI, part 648 are amended as follows:

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 350 *et seq.*

2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding entries for § 648.262 and § 648.264 to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number(all numbers begin with 0648–)
. . . . .	
50 CFR	
. . . . .	
648.262	–0202
648.264	–0351
. . . . .	

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.1, the first sentence of paragraph (a) is revised to read as follows:

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Scallop FMP); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the NE multispecies and monkfish fisheries ((NE Multispecies FMP) and (Monkfish FMP)); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); the Atlantic herring fishery (Atlantic Herring FMP); the spiny dogfish fishery (Spiny Dogfish FMP); the Atlantic deep-sea red crab fishery (Deep-Sea Red Crab FMP); and the tilefish fishery (Tilefish FMP). * * *

3. In § 648.2, the definitions of "Processing, or to process, in the Atlantic Herring fishery" and "Processor" are removed; the definitions of "Council", "Day(s)-at-Sea", and "Fishing year" are revised; the definition of "Sorting machine" is removed and a definition of "Sorting machine, with respect to the Atlantic sea scallop fishery" is added in its place; and new definitions for "Atlantic deep-sea red crab (red crab)", "Full-processing (fully process or fully processed), with respect to the Atlantic deep-sea red crab fishery", "Parlor trap/pot", "Processing, or to process with respect to the Atlantic herring fishery", "Processor, with respect to the Atlantic surf clam and ocean quahog fisheries", "Red Crab Management Unit", and "Red crab trap/pot" are added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Atlantic deep-sea red crab (red crab) means *Chaceon quinquedens*.

* * * * *

Council means the New England Fishery Management Council (NEFMC) for the Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, and NE multispecies and monkfish fisheries; or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; Atlantic surf clam and ocean quahog; summer flounder, scup, and black sea bass; spiny dogfish; Atlantic bluefish; and tilefish fisheries.

* * * * *

Day(s)-at-Sea (DAS), with respect to the NE multispecies and monkfish fisheries (except as described in § 648.82(k)(1)(iv)), Atlantic sea scallop fishery, and Atlantic deep-sea red crab fishery, means the 24-hour period of time or any part thereof during which a fishing vessel is absent from port to fish for, possess, or land, or fishes for, possesses or lands, regulated species, monkfish, scallops, or red crabs. With respect to the red crab fishery, any portion of a calendar day in which a vessel is declared into the red crab DAS fishery, shall count as a full DAS.

* * * * *

Fishing year means:

(1) For the Atlantic sea scallop and Atlantic deep-sea red crab fisheries, from March 1 through the last day of February of the following year.

(2) For the NE multispecies and monkfish fisheries, from May 1 through April 30 of the following year.

(3) For all other fisheries in this part, from January 1 through December 31.

* * * * *

Full-processing (fully process or fully processed), with respect to the Atlantic deep-sea red crab fishery, means any activity that removes meat from any part of a red crab.

Parlor trap/pot means any structure or other device, other than a net, with more than one compartment inside designed to impede escape of lobsters or crabs from the device or structure, which is placed, or designed to be placed, on the ocean bottom and is designed for, or is capable of, catching lobsters and/or red crabs.

Processing, or to process, with respect to the Atlantic herring fishery, means the preparation of Atlantic herring to render it suitable for human consumption, bait, commercial uses, industrial uses, or long-term storage, including but not limited to cooking, canning, roe extraction, smoking, salting, drying, freezing, or rendering into meat or oil.

Processor, with respect to the Atlantic surf clam and ocean quahog fisheries, means a person who receives surf clams or ocean quahogs for a commercial purpose and removes them from a cage.

* * * * *

Red Crab Management Unit means an area of the Atlantic Ocean from 35° 15.3′ N. Lat., the approximate latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, extending eastward from the shore to the outer boundary of the exclusive economic zone and northward to the U.S.-Canada border in which the United States exercises exclusive jurisdiction over all Atlantic deep-sea red crab fished for, possessed, caught, or retained in or from such area.

Red crab trap/pot means any structure or other device, other than a net or parlor trap/pot, that is placed, or designed to be placed, on the ocean bottom and is designed for, or is capable of, catching red crabs.

* * * * *

Sorting machine, with respect to the Atlantic sea scallop fishery, means any mechanical device that automatically sorts whole scallops by shell height, size, or other physical characteristics.

* * * * *

4. In § 648.4, paragraph (a)(13) is added to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(13) Red Crab vessels. Any vessel of the United States must have been issued and have on board a valid red crab vessel permit to fish for, catch, possess, transport, land, sell, trade, or barter, any red crab or red crab part in or from the EEZ portion of the Red Crab Management Unit.

(i) *Limited access red crab permit—*(A) *Eligibility.* A vessel, or its replacement, may be issued a limited access red crab permit if the vessel's total landings averaged greater than 250,000 lb (113,400 kg) of red crab per year for the 3 years beginning March 1, 1997, through February 29, 2000. To calculate the average value per year, the total landings of whole red crab, or its equivalent by weight, between March 1, 1997, and February 29, 2000, inclusive, shall be divided by 3. If the quotient is greater than 250,000 lb (113,400 kg), the vessel meets the landings criteria. For example, if a vessel caught greater than 750,000 lb (340,200 kg) in the 3-year qualifying time span—even if it fished just 2 of those 3 years—the average per year would be greater than 250,000 lb (113,400 kg).

(B) *Application/renewal restriction—(1) Initial application for 2002.* A vessel owner must apply for an initial limited access red crab permit before April 8, 2003. No vessel owner may apply for an initial limited access red crab permit after this date.

(2) Fishing years 2003 and beyond. (*i*) For fishing years beyond the initial year, the provisions of paragraph (a)(1)(i)(B) of this section apply.

(*ii*) A limited-access permit holder may choose to declare out of the red crab fishery for the next fishing year by submitting a binding declaration on a form supplied by the Regional Administrator, which must be received by NMFS at least 180 days before the last day of the current fishing year. NMFS will presume that a vessel intends to fish during the next fishing year unless such binding declaration is received at least 180 days before the last day of the current fishing year. Any limited-access permit holder who has submitted a binding declaration must submit either a new binding declaration or a renewal application for the year after which they were declared out of the fishery.

(C) *Qualification restrictions.* The provisions of paragraph (a)(1)(i)(C) of this section apply.

(D) *Change in ownership.* The provisions of paragraph (a)(1)(i)(D) of this section apply.

(E) *Replacement vessels.* (*1*) To be eligible for a limited access permit under this section, the replacement vessel's length, GRT, and NT may not exceed by greater than 10 percent the length, GRT, and NT of the vessel's baseline specifications. The replacement vessel must also meet any other applicable criteria under paragraph (a)(13)(i)(F) of this section.

(*2*) A vessel that lawfully replaced a vessel that meets the qualification criteria set forth in paragraph (a)(13)(i)(A) of this section may qualify for and fish under the permit category for which the replaced vessel qualified.

(*3*) A vessel that replaced a vessel that fished for and landed red crab between March 1, 1997, and February 29, 2000, may use the replaced vessel's history in lieu of or in addition to such vessel's fishing history to meet the qualification criteria set forth in paragraph (a)(13)(i)(A) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provisions in paragraph (a)(1)(i)(D) of this section.

(F) *Upgraded vessel.* A vessel may be upgraded, whether through refitting or replacement, and be eligible to retain or renew a limited access permit, provided that the vessel's length, GRT, and NT is increased no more than once. Any increase in any of the aforementioned specifications of vessel size may not exceed 10 percent of the vessel's baseline specifications, as applicable. If any increase in any of the aforementioned specifications of vessel size occurs, any increase in the other specifications must be performed at the same time.

(G) *Consolidation restriction.* The provisions of paragraph (a)(1)(i)(G) of this section apply.

(H) *Vessel baseline specifications.* The vessel baseline specifications in this section are the respective specifications (length, GRT, and NT) of the vessel indicated on the vessel's initial limited access permit as of the date the initial vessel applies for such permit.

(I) *Limited access permit restrictions.* A vessel issued a limited access red crab permit may not be issued a red crab incidental catch permit during the same fishing year.

(J) *Confirmation of permit history (CPH).* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person and has not been replaced, must apply for and receive a CPH that confirms the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel met the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (a)(1)(i)(K) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form refers to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (a)(13)(i)(E) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* The provisions of paragraph (a)(1)(i)(K) of this section apply.

(L) *Restriction on permit splitting.* The provisions of paragraph (a)(1)(i)(L) of this section apply.

(M) *Notification of eligibility for 2002.* (*1*) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence that they meet the qualification criteria described in paragraph (a)(13)(i)(A) of this section and that they qualify for a limited access red crab permit. Vessel owners must still apply by April 8, 2003 to complete the qualification requirements.

(*2*) If the vessel owner has not been notified that the vessel is eligible to be issued a limited access red crab permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access red crab permit by April 8, 2003 by submitting evidence that the vessel meets the requirements described in paragraph (a)(13)(i)(A) of this section.

(N) *Appeal of denial of a permit.* (*1*) Any applicant denied a limited access red crab permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria in paragraph (a)(13)(i)(A) of this section. The appeal must set forth in writing the basis for the applicant's belief that the decision of the Regional Administrator was made in error.

(*2*) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator. The hearing officer shall make a recommendation to the Regional Administrator. The decision on the appeal by the Regional Administrator is the final decision of the Department of Commerce.

(*3*) *Status of vessels pending appeal.* A vessel denied a limited access red crab permit may fish for and land red crab as if a limited access permit had been issued, provided that the denial has been appealed, the appeal is pending, the vessel owner has presented prima facie evidence that the decision was made in error, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish. During the appeal, the vessel may only land up to 75,000 lb (34,019 kg) of red crab per trip. The Regional Administrator will issue such a letter for the pendency of any appeal. The decision on the appeal is the final administrative action of the Department of Commerce. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter shall become invalid 5 days after receipt of the notice of denial.

(ii) *Red crab incidental catch permit.* A vessel of the United States that is subject to these regulations and that has not been issued a red crab limited access permit is eligible for and may be issued a red crab incidental catch permit to catch, possess, transport, land, sell, trade, barter, up to 500 lb (226.8 kg) of red crab, or its equivalent as specified at § 648.263(a)(2)(i) and (ii), per fishing trip in or from the Red Crab Management Unit. Such vessel is subject to the restrictions in § 648.263(b).

* * * * *

5. In § 648.5, the first sentence in paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing Atlantic sea scallops in excess of 40 lb (18.1 kg), NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, black sea bass, or bluefish, harvested in or from the EEZ, or tilefish harvested in or from the EEZ portion of the Tilefish Management Unit, or Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit, issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. * * *

* * * * *

6. In § 648.6, paragraph (a)(1) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) * * *

(1) All dealers of NE multispecies, monkfish, Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, spiny dogfish, summer flounder, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, bluefish, tilefish, and black sea bass; Atlantic surf clam and ocean quahog processors; and Atlantic herring processors or dealers, as described in § 648.2; must have been issued under this section, and have in their possession, a valid permit or permits for these species. A person who meets the requirements of both the dealer and processor definitions of any of the aforementioned species' fishery regulations may need to obtain both a dealer and a processor permit, consistent with the requirements of that particular species' fishery regulations. Persons aboard vessels receiving small-mesh multispecies and/or Atlantic herring at sea for their own use exclusively as bait are deemed not to be dealers, and are not required to possess a valid dealer permit under this section, for purposes of receiving such small-mesh multispecies and/or Atlantic herring, provided the vessel complies with the provisions of § 648.13.

* * * * *

7. In 648.7, paragraphs (b)(1)(iii) and (b)(1)(iv) are removed and paragraph (b)(2) is added to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(2) *IVR system reports—*(i) *Atlantic herring owners or operators.* The owner or operator of a vessel described here must report catches (retained and discarded) of herring each week to an IVR system. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, reporting week in which species are caught, pounds retained, pounds discarded, management area fished, and pounds of herring caught in each management area for the previous week. Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight, Eastern Time, each Tuesday for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of § 648.7.

(A) The owner or operator of any vessel issued a permit for Atlantic herring subject to the requirements specified by § 648.4(c)(2)(vi)(C) that is required by § 648.205 to have a VMS unit on board must submit an Atlantic herring catch report via the IVR system each week (including weeks when no herring is caught), unless exempted from this requirement by the Regional Administrator.

(B) An owner or operator of any vessel issued a permit for Atlantic herring that is not required by § 648.205 to have a VMS unit on board and that catches ≥ 2,000 lb (907.2 kg) of Atlantic herring on any trip in a week must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

(C) An owner or operator of any vessel that catches ≥ 2,000 lb (907.2 kg) of Atlantic herring, some or all of which is caught in or from the EEZ, on any trip in a week, must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

(D) Atlantic herring IVR reports are not required from Atlantic herring carrier vessels.

(ii) *Tilefish vessel owners or operators.* The owner or operator of any vessel issued a limited access permit for tilefish must submit a tilefish catch report via the IVR system within 24 hours after returning to port and offloading as required by the Regional Administrator. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel

identification, trip during which species are caught, and pounds landed. IVR reporting does not exempt the owner or operator from other applicable reporting requirements of this section.

(iii) *Red crab vessel owners and operators.* The owner or operator of any vessel issued a limited access permit for red crab must submit a red crab catch report via the IVR system within 24 hours after returning to port and offloading as required by the Regional Administrator. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, DAS confirmation number, trip during which species are caught, date landed, condition (whole, half sections with gills, half sections without gills), and pounds landed. IVR reporting does not exempt the owner or operator from other applicable reporting requirements of this section.

* * * * *

8. In § 648.10, paragraph (c) introductory text, and paragraphs (c)(2) and (c)(5) are revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(c) *Call-in notification.* Owners of vessels issued limited access multispecies, monkfish or red crab permits who are participating in a DAS program and who are not required to provide notification using a VMS, scallop vessels qualifying for a DAS allocation under the occasional category and who have not elected to fish under the VMS notification requirements of paragraph (b) of this section, and vessels fishing pending an appeal as specified in § 648.4(a)(1)(i)(M)(*3*), (a)(9)(i)(N)(*3*) and (a)(13)(i)(N)(*3*) are subject to the following requirements:

* * * * *

(2) The vessel's confirmation numbers for the current and immediately prior multispecies, monkfish or red crab fishing trip must be maintained on board the vessel and provided to an authorized officer upon request.

* * * * *

(5) Any vessel that possesses or lands per trip greater than 400 lb (181 kg) of scallops, and any vessel issued a limited access multispecies permit subject to the multispecies DAS program and call-in requirement that possesses or lands regulated species, except as provided in §§ 648.17 and 648.89, any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possesses or lands monkfish above the incidental catch trip limits specified in § 648.94(c), and any vessel issued a limited access red crab permit subject to the red crab DAS program and call-in requirement that possesses or lands red crab above the incidental catch trip limits specified in § 648.263(b)(1), shall be deemed in its respective DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provided adequate notification as required by paragraph (c) of this section.

* * * * *

9. In § 648.11, the first sentence of paragraph (a) and paragraph (e) are revised to read as follows:

§ 648.11 At-sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or Atlantic deep-sea red crab, or a moratorium permit for summer flounder, to carry a NMFS-approved sea sampler/observer. * * *

* * * * *

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, a scup moratorium permit, a black sea bass moratorium permit, a bluefish permit, a spiny dogfish permit, an Atlantic herring permit, an Atlantic deep-sea red crab permit, or a tilefish permit, if requested by the sea sampler/observer, also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, tilefish, or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, tilefish, or other specimens taken by the vessel.

* * * * *

10. In § 648.12, the introductory text to this section is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General provisions), B (Atlantic mackerel, squid, and butterfish), D (Atlantic sea scallop), E (Atlantic surf clam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (Atlantic bluefish), K (Atlantic herring), L (spiny dogfish), M (Atlantic deep-sea red crab), and N (tilefish) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC regarding such exemptions for the Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, spiny dogfish, bluefish, and tilefish fisheries.

* * * * *

11. In § 648.13, paragraph (g) is added to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(g) All persons are prohibited from transferring at sea, either directly or indirectly, or attempting to transfer at sea to any vessel, any red crab or red crab parts, taken in or from the EEZ portion of the Red Crab Management Unit.

12. In § 648.14, paragraphs (x)(12) and (dd) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(x) * * *

(12) *Red crab.* All red crab retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested in or from the Red Crab Management Unit, unless the preponderance of all submitted evidence demonstrates that such red crab were harvested by a vessel fishing exclusively outside of the Red Crab Management Unit or in state waters.

* * * * *

(dd) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person to do any of the following:

(1) Catch, possess, transport, land, sell, trade, or barter, any red crab or red crab parts in or from the EEZ portion of the Red Crab Management Unit, unless in possession of a valid limited access red crab vessel permit or red crab incidental catch permit issued by the Regional Administrator under this subpart.

(2) Land, or possess on board a vessel, greater than the possession or landing limits specified in § 648.263.

(3) Fail to comply with the recordkeeping and reporting requirements of § 648.7.

(4) Transfer at sea, either directly or indirectly, or attempt to transfer at sea to any vessel, any red crab or red crab parts, taken in or from the EEZ portion of the Red Crab Management Unit.

(5) Purchase, possess, or receive greater than 500 lb (226.8 kg) of whole red crab, or its equivalent in weight as specified at § 648.263(a)(2)(i) and (ii), caught in the EEZ portion of the Red Crab Management Unit by a vessel that has not been issued a valid limited access red crab permit under this subpart.

(6) Purchase, possess, or receive up to 500 lb (226.8 kg) of whole red crab, or its equivalent in weight as specified at § 648.263(a)(2)(i) and (ii), caught in the EEZ portion of the Red Crab Management Unit by a vessel that has not been issued a valid limited access red crab permit or red crab incidental catch permit under this subpart.

(7) Fish for, catch, possess, transport, land, sell, trade, or barter, greater than 500 lb (226.8 kg) of whole red crab, or its equivalent in weight as specified at § 648.263(a)(2)(i) and (ii), per fishing trip, in or from the Red Crab Management Unit, unless in possession of a valid limited access red crab vessel permit issued by the Regional Administrator under this subpart and fishing under a red crab DAS.

(8) Fail to comply with the provisions of the DAS notification program specified in §§ 648.262(b)(5) and 648.10, if the vessel has been issued a valid limited access red crab permit.

(9) Fish for, catch, possess, transport, land, sell, trade, or barter, in the Red Crab Management Unit under a red crab DAS if the vessel has declared out of the fishery prior to the start of the fishing year.

(10) Fish for, catch, possess, transport, land, sell, trade, or barter, red crab in excess of landing limits specified in § 648.263.

(11) Possess, deploy, fish with, haul, harvest red crab from, or carry on board a vessel in excess of the trap/pot and/or string limit specified at § 648.264(a)(2) when fishing under a red crab DAS.

(12) Retain, possess, or land female red crabs in excess of one standard U.S. fish tote if the vessel has been issued a valid limited access red crab permit and is fishing under a red crab DAS.

(13) Retain, possess, or land red crab claws and legs separate from crab bodies in excess of one standard U.S. fish tote if the vessel has been issued a valid limited access red crab permit and is fishing under a red crab DAS.

(14) Retain, possess, or land any red crab claws and legs separate from crab bodies if the vessel has not been issued a valid limited access red crab permit or has been issued a valid limited access red crab permit and is not fishing under a red crab DAS.

(15) Retain, possess, or land in excess of two claws and eight legs per crab if the vessel has been issued a valid red crab incidental catch permit or has been issued a valid limited access red crab permit and is not fishing under a red crab DAS.

(16) Fully process red crabs at sea, i.e., any activity that removes meat from any part of a red crab, unless a preponderance of the evidence shows that the vessel fished exclusively in state waters and has not been issued a valid federal permit.

(17) Fail to comply with any gear marking requirement specified at § 648.264(a)(5).

(18) Possess, fish, or deploy parlor traps/pots if the vessel has been issued a valid limited access red crab permit and is fishing under a red crab DAS.

(19) Possess, fish, or deploy red crab traps/pots larger than the maximum size specified at § 648.263(a)(4), if the vessel has been issued a valid limited access red crab permit and is fishing under a red crab DAS.

13. Subpart M is added to read as follows:

Subpart M—Management Measures for the Atlantic Deep-Sea Red Crab Fishery

Sec.

648.260 Annual specifications.
648.261 Framework adjustment process.
648.262 Effort-control program for red crab limited access vessels.
648.263 Red crab possession and landing restrictions.
648.264 Gear requirements/restrictions.

Subpart M—Management Measures for the Atlantic Deep-Sea Red Crab Fishery

§ 648.260 Annual specifications.

(a) *Process for setting annual specifications.* The Council's Red Crab Plan Development Team (PDT) will meet at least annually to review the status of the stock and the fishery. Based on this review, the PDT will report to the Council's Red Crab Committee, no later than October 1, any necessary adjustments to the management measures and recommendations for the specifications. Specifications include the specification of OY, the setting of any target TACs, allocation of DAS, and/or adjustments to trip/possession limits. The PDT will specifically recommend target TACs for the following year and an estimated target TAC for the year after.

(1) *Target total allowable catch.* The target TAC for each fishing year will be 5.928 million lb (2,688.9 mt), unless modified pursuant to this paragraph.

(2) *Adjustments to DAS allocation based on target TAC.* For purposes of determining the appropriate DAS allocation, any overage of the target TAC that occurs in a given fishing year will be subtracted from the target TAC in the following fishing year and, conversely, any underage of the target TAC that occurs in a given fishing year will be added to the target TAC in the following fishing year.

(3) *In-season adjustments.* The specifications established pursuant to this section may be adjusted by NMFS, after consulting with the Council, during the fishing year by publishing notification in the **Federal Register** stating the reasons for such action and providing an opportunity for prior public comment. Any adjustments must be consistent with the Atlantic Deep-Sea Red Crab FMP objectives and other FMP provisions.

(b) *Development of annual specifications.* In developing the management measures and recommendations for the annual specifications, the PDT will review the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of red crabs; and any other relevant information.

(1) Based on recommendations from the Council's Red Crab PDT after its review of the available information on the status of the stock and the fishery, the Red Crab Committee may recommend to the Council changes to the appropriate specifications, as well as any measures necessary to assure that the specifications will not be exceeded.

(2) The Council shall review these recommendations and any public comment received and shall submit its recommendation to the Regional Administrator after at least one Council meeting. If the Council submits a recommendation to the Regional Administrator after one Council meeting and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the **Federal Register** as a proposed rule unless there is adequate justification to waive prior notice and comment . The Council may instead choose to follow the framework adjustment process specified at § 648.261 and request that the Regional Administrator publish the recommendation as a proposed or final rule. If the Regional Administrator concurs that the Council's recommendation meets the Red Crab

FMP objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**. If the Regional Administrator concurs that the recommendation meets the FMP objectives and is consistent with other applicable law, and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on March 1, fishing may continue under the specifications for the previous year. However, DAS used by a vessel on or after March 1 will be counted against any DAS allocation the vessel ultimately receives for that year.

§ 648.261 Framework adjustment process.

(a) To implement a framework adjustment for the Red Crab FMP, the Council shall develop and analyze proposed actions over the span of at least two Council meetings and provide advance public notice of the availability of both the proposals and the analyses. Opportunity to provide written and oral comments shall be provided throughout the process before the Council submits its recommendations to the Regional Administrator.

(1) In response to an annual review of the status of the fishery or the resource by the Red Crab PDT, or at any other time, the Council may recommend adjustments to any of the measures proposed by the Red Crab FMP. The Red Crab Oversight Committee may request that the Council initiate a framework adjustment. Framework adjustments shall require one initial meeting (the agenda must include notification of the impending proposal for a framework adjustment) and one final Council meeting. After a management action has been initiated, the Council shall develop and analyze appropriate management actions within the scope identified below. The Council may refer the proposed adjustments to the Red Crab Committee for further deliberation and review. Upon receiving the recommendations of the Oversight Committee, the Council shall publish notice of its intent to take action and provide the public with any relevant analyses and opportunity to comment on any possible actions. After receiving public comment, the Council must take action (to approve, modify, disapprove, or table) on the recommendation at the Council meeting following the meeting at which it first received the recommendations. Documentation and analyses for the framework adjustment shall be available at least 2 weeks before the final meeting.

(2) After developing management actions and receiving public testimony, the Council may make a recommendation to the Regional Administrator. The Council's recommendation shall include supporting rationale, an analysis of impacts required under paragraph (a)(1) of this section and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued directly as a final rule, the Council shall consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts;

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) If the Regional Administrator concurs with the Council's recommended management measures, they shall be published in the **Federal Register**. If the Council's recommendation is first published as a proposed rule and the Regional Administrator concurs with the Council's recommendation after receiving additional public comment, the measures shall then be published as a final rule in the **Federal Register**.

(4) If the Regional Administrator approves the Council's recommendations, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in so doing, shall publish only the final rule. Submission of recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the **Federal Register**.

(5) The Regional Administrator may approve, disapprove, or partially disapprove the Council's recommendation. If the Regional Administrator does not approve the Council's specific recommendation, the Regional Administrator must notify the Council in writing of the reasons for the action prior to the first Council meeting following publication of such decision.

(b) [Reserved]

§ 648.262 Effort-control program for red crab limited access vessels.

(a) *General.* A vessel issued a limited access red crab permit may not fish for, catch, possess, transport, land, sell, trade, or barter, greater than 500 lb (226.8 kg) of red crab, or its equivalent in weight as specified at § 648.263(a)(2)(i) and (ii), per fishing trip in or from the Red Crab Management Unit, except during a DAS as allocated under and in accordance with the applicable DAS program described in this section, unless otherwise provided in this part.

(1) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(13)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of February of any year may carry over a maximum of 10 unused DAS, or 10 percent of the total allocated DAS, whichever is less, into the next fishing year. Any DAS that have been forfeited due to an enforcement proceeding will be deducted from all other unused DAS in determining how many DAS may be carried over.

(2) [Reserved]

(b) *DAS program*—(1) *For fishing year 2002.* For the fishing year beginning March 1, 2002, each limited access permit holder's allocation of DAS shall be based on a baseline of 130 DAS per vessel and, if necessary, adjusted as specified in this paragraph (b). Based upon the best available information, the Regional Administrator shall estimate the landings from May 15, 2002, which is the first day following the expiration of the red crab Secretarial interim rule, up to the implementation date of the red crab limited access program. These estimated total landings shall be deducted from the target TAC and the percentage of the TAC that remains available shall be used to reduce the initial baseline of DAS (i.e., a percentage of 130 DAS to an equivalent percentage). For example, if estimated landings equal 20 percent of the target TAC, thereby leaving 80 percent of the target TAC, the DAS allocation shall be reduced by 20 percent to 104 DAS. Each vessel shall be allocated the adjusted DAS for the remainder of the fishing year. The Regional Administrator shall notify permit holders by letter of the newly calculated DAS allocation.

(2) *For fishing years 2003 and thereafter.* Each limited access permit holder shall be allocated 156 DAS unless one or more vessels declares out of the fishery consistent with § 648.4(a)(13)(B)(2) or the TAC is adjusted consistent with § 648.260(c).

(3) *Accrual of DAS.* Any portion of a day in which a vessel is out of port, after having declared into the DAS fishery, shall count as a full DAS. For example, if a vessel calls into the fishery at 11 p.m. on Thursday and calls out of the fishery at 10 p.m. on Friday, the next day, that vessel shall be assessed 2 full DAS (48 hours) for the fishing trip, even though the trip lasted only 23 hours.

(4) *Good Samaritan credit.* Same as § 648.53(f).

(5) *Declaring red crab DAS.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the red crab DAS program using the notification requirements specified in § 648.10.

(6) *Adjustments in annual red crab DAS allocations.* Adjustments to the annual red crab DAS allocation, if required to meet fishing mortality goals, may be implemented pursuant to § 648.260(c).

§ 648.263 Red crab possession and landing restrictions.

(a) *Vessels issued limited access red crab permits*—(1) *Possession and landing restrictions.* (i) A vessel or operator of a vessel that has been issued a valid limited access red crab permit under this subpart may fish for, catch, possess, transport, land, sell, trade, or barter, up to 75,000 lb (34,019.4 kg) per trip, unless adjusted consistent with paragraph (a)(1)(ii) of this section, of whole red crab, or its equivalent in weight as specified at paragraphs (a)(2)(i) and (ii) of this section, when fishing under a red crab DAS.

(ii) A vessel owner or operator who shows credible proof of landings on at least one trip higher than 75,000 lb (34,019.4 kg) during the limited access qualification period shall qualify for a larger trip limit, rounded to the nearest 5,000 lb (2,268 kg) of the higher trip landed. Such proof must be in writing and received by NMFS within 30 days after receipt of a vessel owner's application for an initial limited access red crab vessel permit. A vessel owner shall fish consistent with the provisions and trip limit specified at paragraph (a)(1)(i) of this section until credible proof of a trip higher than 75,000 lb (34,019.4 kg) is approved by NMFS.

(2) *Conversion to whole crab weight.* (i) For red crab that is landed in half sections, with all gills and other detritus still intact, the recovery rate is 64 percent of a whole red crab, which is equal to the weight of red crab half sections multiplied by 1.56.

(ii) For red crab that is landed in half sections, with all gills and other detritus removed, the recovery rate is 58 percent of a whole red crab, which is equal to the weight of red crab half sections multiplied by 1.72.

(3) *Female red crab restriction.* A vessel may not fish for, catch, possess, transport, land, sell, trade, or barter, female red crabs in excess of one standard U.S. fish tote of incidentally caught female red crabs per trip when fishing under a red crab DAS.

(4) *Full-processing prohibition.* No person may fully process at sea, possess, or land, fully-processed red crab.

(5) *Mutilation restriction.* A vessel may not retain, possess, or land red crab claws and legs separate from crab bodies in excess of one standard U.S. fish tote per trip when fishing under a red crab DAS.

(b) *Vessels issued red crab incidental catch permits.* (1) *Possession and landing restrictions.* A vessel or operator of a vessel that has been issued a red crab incidental catch permit may catch, possess, transport, land, sell, trade, or barter, up to 500 lb (226.8 kg) of red crab, or its equivalent in weight as specified at paragraphs (a)(1)(i) and (ii) of this section, per fishing trip in or from the Red Crab Management Unit.

(2) *Full-processing prohibition.* No person may fully process at sea, possess, or land, fully-processed red crab.

(3) *Mutilation restriction.* A vessel may not retain, possess, or land red crab claws and legs separate from crab bodies.

§ 648.264 Gear requirements/restrictions.

(a) *Limited access red crab permitted vessels.* (1) No vessel may haul or harvest red crab from any fishing gear other than red crab traps/pots, marked as specified by paragraph (a)(5) of this section, when on a red crab DAS.

(2) A vessel owner or operator of a vessel that holds a valid limited access red crab permit may fish with, deploy, possess, haul, harvest red crab from, or carry on board a vessel, up to a total of 600 traps/pots when fishing for, catching, or landing red crab. A vessel owner is required to declare, on the annual permit application, the maximum number of traps/pots used per string and the maximum number of strings employed, such that the product of the maximum number of traps/pots per string and the maximum number of strings declared is no more than 600 traps/pots. The vessel is restricted to the product of the maximum number of traps/pots per string multiplied by the maximum number of strings declared on the annual vessel permit application.

(3) *Parlor traps/pots.* No person may haul or remove lobster, red crab or fish from parlor traps/pots when fishing under a red crab DAS.

(4) *Maximum trap/pot size.* The maximum allowable red crab trap/pot size of red crab traps/pots used or deployed on a red crab DAS is 18 cubic feet (0.51 cubic meters) in volume. Red crab traps/pots may be rectangular, trapezoidal or conical only, unless other red crab trap/pot designs whose volume does not exceed 18 cubic feet (0.51 cubic meters) are authorized by the Regional Administrator.

(5) *Gear markings.* The following is required on all buoys used at the end of each red crab trawl:

(i) The letters "RC" in letters at least 3 inches (7.62 cm) in height must be painted on top of each buoy.

(ii) The vessel's permit number in numerals at least 3 inches (7.62 cm) in height must be painted on the side of each buoy to clearly identify the vessel.

(iii) The number of each trap trawl relative to the total number of trawls used by the vessel (i.e., "3 of 6") must be painted in numerals at least 3 inches (7.62 cm) in height on the side of each buoy.

(iv) High flyers and radar reflectors are required on each trap trawl.

(6) *Additional gear requirements.* (i) In addition to complying with the gear regulations found at § 229.32, vessels must include a weak link at the buoy that breaks away knotless at 3,780 lb (1,714.6 kg).

(ii) Red crab traps/pots, fished in 200 fathoms (365.8 m) or less by a vessel issued a limited access lobster permit under § 697.4(a), must comply with the trap tagging requirements specified at § 697.19.

(b) [Reserved]

[FR Doc. 02–25459 Filed 10–9–02; 8:45 am]
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Procedures Relating to Awards Under the Equal Access to Justice Act

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture ("USDA") amends its regulations implementing the Equal Access to Justice Act ("EAJA"). The amendments incorporate modifications enacted in the Small Business Regulatory Enforcement Fairness Act of 1996.

DATES: Effective October 11, 2002.

FOR FURTHER INFORMATION CONTACT: Barbara S. Good, Attorney Advisor, Room 3311 South Building, Office of the General Counsel, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250–1415; telephone (202) 720–8045.

SUPPLEMENTARY INFORMATION: The USDA published proposed revisions to its EAJA regulations on March 20, 2002, at 67 FR 12898 through 12903. The Department solicited comments on the proposed rule, but did not receive any. Accordingly, the Department is publishing the proposed rule as a final rule without changes.

In the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. 104–121, Title II, Mar. 29, 1996, 100 Stat. 857 to 874, Congress amended EAJA in two significant respects with regard to administrative proceedings.

First, Congress amended 5 U.S.C. 504(a) to add a new basis for recovery under EAJA. Under prior law, only a "prevailing party" other than the United States in an adversary adjudication before an agency was eligible for recovery of fees and expenses. 5 U.S.C. 504(a)(1). Pursuant to new paragraph (a)(4), a party to an adversary adjudication arising from an agency action to enforce the party's compliance with a statutory or regulatory requirement may also be entitled to reimbursement of fees and expenses, even though not a "prevailing party." In those enforcement cases where the demand by the agency is "substantially in excess" of the decision of the adjudicative officer and is "unreasonable" when compared with the eventual decision under the facts and circumstances of the case, the agency adjudicative officer is directed to award to an eligible party the fees and other expenses related to defending against the excessive demand. Award is qualified if the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust.

SBREFA further amended section 504(b)(1) to add new subparagraph (F), which defines the term "demand" as "the express demand of the agency which led to the adversary adjudication, but does not include a recitation by the agency of the maximum statutory penalty (i) in the administrative complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount."

SBREFA also added, in 5 U.S.C. 504(b)(1)(B), a new category of applicants eligible for fees based on a claim of excessive demand. In addition to the other categories of eligible applicants, a small entity as defined in 5 U.S.C. 601 will be eligible for reimbursement with respect to a claim of excessive demand in a regulatory or statutory enforcement action.

The second major change, in 5 U.S.C. 504(b)(1)(A), increased from $75 per hour to $125 per hour the maximum rate for fees awardable. The qualifying language "unless the agency determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorney or agents for the proceeding involved justifies a higher fee" remains. Departmental rules at 7 CFR 1.186 currently implementing EAJA attorney fees set a cap of $75 per hour. Amended language at 7 CFR 1.186 reflects the statutory increase to $125 per hour.

In view of the legislative changes, the Department is revising its regulations to conform to statute. In addition, the Department is making minor changes to modify obsolete provisions related to effective dates, and to correct minor errors, and to make minor stylistic changes.

The Department retains its stance concerning the applicability of EAJA to National Appeals Division proceedings as set forth in the preamble to the final rule for National Appeals Division rules of procedure at 64 FR 33367, June 23, 1999.

This rule has been reviewed under Executive Order No. 12866 and has been determined not to be a "significant regulatory action" since it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, of State, local or tribal governments or communities. This rule will not create any serious inconsistencies, or otherwise materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or principles set forth in E.O. 12866. Therefore, this rule has not been reviewed by the Office of Management and Budget.

USDA certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96–534, as amended (5 U.S.C. 601 *et seq.*).

USDA has determined that the provisions of the Paperwork Reduction Act as amended, 44 U.S.C. chapter 35, do not apply to any collections of information contained in this rule because any such collections of information are made during the conduct of administrative action involving an agency against specific individuals or entities. 5 CFR 1320.4(a)(2).

List of Subjects in 7 CFR Part 1

Administrative practice and procedures.

For the reasons set forth in the preamble, revise subpart J of part 1 of title 7 of the Code of Federal Regulations to read as follows:

Subpart J—Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department

Authority: 5 U.S.C. 504(c)(1).

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General Provisions

§ 1.180 Definitions.

(a) The definitions contained in § 1.132 of this part are incorporated into and made applicable to this subpart.

(b) *Adjudicative Officer* means an administrative law judge, administrative judge, or other person assigned to conduct a proceeding covered by EAJA.

(c) *Agency* means an organizational unit of the Department whose head reports to an official in the Office of the Secretary.

(d) *Agency counsel* means the attorney from the Office of the General Counsel representing the agency of the Department administering the statute involved in the proceeding.

(e) *Days* means calendar days.

(f) *Department* means the United States Department of Agriculture.

§ 1.181 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "EAJA" in this subpart), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Department. An eligible party may receive an award when it prevails over the Department unless the position of the Department was substantially justified or special circumstances make an award unjust. Alternatively, an eligible party may receive an award in connection with an adversary adjudication arising from an agency action to enforce the party's compliance with a statutory or regulatory requirement where the demand by the agency is substantially in excess of the decision of the adjudicative officer and is unreasonable when compared with such decision under the facts and circumstances of the case. The rules in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Department will use to make awards.

§ 1.182 When EAJA applies.

EAJA applies to any adversary adjudication pending or commenced before the Department on or after August 5, 1985, except with respect to a proceeding covered under § 1.183(a)(1)(iii) of this part, which is effective on or after October 21, 1986. In addition, the provisions of § 1.185(b) relating to award for excessive demand apply only to adversary adjudications commenced on or after March 29, 1996. Changes in maximum rates for attorney fees are effective as of October 11, 2002.

§ 1.183 Proceedings covered.

(a)(1) The rules in this subpart apply to adversary adjudications. These are:

(i) Adjudications required by statute to be conducted by the Department under 5 U.S.C. 554 in which the position of the Department or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding.

(ii) Appeals of decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Agriculture Board of Contract Appeals as provided in section 8 of that Act (41 U.S.C. 607), and

(iii) Any hearing conducted under chapter 38 of title 31, United States Code.

(2) Any proceeding in which the Department may prescribe a lawful present or future rate is not covered by EAJA. Proceedings to grant or renew licenses also are excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications." The proceedings covered include adversary adjudications under the following statutory provisions.

Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(15)(A))
Animal Quarantine Laws (21 U.S.C. 104, 117, 122, 127, 134e, and 135a)
Animal Welfare Act (7 U.S.C. 2149)
Archaeological Resources Protection Act (16 U.S.C. 470ff)
Beef Research and Information Act (7 U.S.C. 2912)
Capper-Volstead Act (7 U.S.C. 292)
Cotton Research and Promotion Act (7 U.S.C. 2111)
Egg Products Inspection Act (21 U.S.C. 1047)
Egg Research and Consumer Information Act (7 U.S.C. 2713, 2714(b))
Endangered Species Act (16 U.S.C. 1540(a))
Federal Land Policy and Management Act (43 U.S.C. 1766)
Federal Meat Inspection Act (21 U.S.C. 604, 606, 607(e), 608, 671)
Federal Seed Act (7 U.S.C. 1599)
Horse Protection Act (15 U.S.C. 1823(c), 1825)
Packers and Stockyards Act (7 U.S.C. 193, 204, 213, 218d, 221)
Perishable Agricultural Commodities Act (7 U.S.C. 499c(c), 499d(d), 499f(c), 499h(a), 499h(b), 499h(c), 499i, 499m(a))
Plant Protection Act (7 U.S.C. 2279e, 7734(b), 7736)
Potato Research and Promotion Act (7 U.S.C. 2620)
Poultry Products Inspection Act (21 U.S.C. 455, 456, 457(d), 467)
Swine Health Protection Act (7 U.S.C. 3804(b), 3805(a))
U.S. Cotton Standards Act (7 U.S.C. 51b, 53)
U.S. Grain Standards Act (7 U.S.C. 79(g)(3), 85, 86)
U.S. Warehouse Act (7 U.S.C. 246, 253)
Virus-Serum-Toxin Act (21 U.S.C. 156)
Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3409)

(b) The failure of the Department to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by EAJA; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by EAJA and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 1.184 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under EAJA, the applicant must meet one of the following conditions:

(1) The applicant must be a prevailing party to the adversary adjudication for which it seeks an award; or

(2) The applicant must be a party to an adversary adjudication arising from an agency action to enforce the party's compliance with a statutory or regulatory requirement in which the demand by the agency was substantially in excess of the decision of the adjudicative officer and the demand is unreasonable when compared with such decision under the facts and circumstances of the case.

(b) In addition to the criteria set out in paragraph (a) of this section, a party seeking an award must be one of the following:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (2 U.S.C. 1141j(a)) with not more than 500 employees;

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and nor more than 500 employees;

(6) For purposes only of paragraph (a)(2) of this section, a small entity as defined in 5 U.S.C. 601.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the adversary adjudication was initiated: Provided, that for purposes of eligibility in proceedings covered by § 1.183(a)(1)(ii) of this part, the net worth and number of employees of an applicant shall be determined as of the date the applicant filed its appeal under 41 U.S.C. 606.

(d) In interpreting the criteria set forth in paragraph (b) of this section, the following apply:

(1) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(2) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(3) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this subpart, unless the adjudicative officer determines such treatment would be unjust and contrary to the purposes of EAJA in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(4) An applicant that participates in a proceeding primarily on behalf of one or more other person or entity that would be ineligible is not itself eligible for an award.

§ 1.185 Standards for awards.

(a) Prevailing party. (1) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Department was substantially justified. The position of the Department includes, in addition to the position taken by the Department in the adversary adjudication, the action or failure to act by the Department upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant because the position of the Department was substantially justified is on the agency.

(2) An award to a prevailing applicant will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(b) Excessive demand. (1) If, in an adversary adjudication arising from an agency action to enforce a party's compliance with a statutory or regulatory requirement, the demand by the agency is substantially in excess of the decision of the adjudicative officer and is unreasonable when compared with such decision under the facts and circumstances of the case, the adjudicative officer shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this paragraph shall be paid only as a consequence of appropriations provided in advance.

(2) "Demand" means the express demand of the agency which led to the adversary adjudication, but does not include a recitation by the agency of the maximum statutory penalty:

(i) In the administrative complaint, or

(ii) Elsewhere when accompanied by an express demand for a lesser amount.

§ 1.186 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under the rules in this subpart may exceed $125.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Department pays expert witnesses, which is set out at § 1.150 of this part. However, an award also may include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 1.187 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the

Department may adopt regulations providing that attorney fees may be awarded at a rate higher than $125 per hour in some or all of the types of proceedings covered by this part. The Department will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with the Department a petition for rulemaking to increase the maximum rate for attorney fees in accordance with § 1.28 of this part. The petition should identify the rate the petitioner believes the Department should establish and the types of proceedings in which the rate should be used. It also should explain fully the reasons why the higher rate is warranted. The Department will respond to the petition within 60 days after it is filed, by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

§ 1.188 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Department and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

§ 1.189 Delegations of authority.

The Secretary of Agriculture delegates to the Judicial Officer, except as otherwise delegated, authority to take final action on matters pertaining to EAJA in proceedings covered by the rules in this subpart. The Secretary by order or regulation may delegate authority to take final action on matters pertaining to EAJA in particular cases or categories of cases to other subordinate officials or bodies. With respect to proceedings covered under § 1.183(a)(1)(ii) of this part, the Board of Contract Appeals is authorized by statute (41 U.S.C. 607) to take final action.

Information Required From Applicants

§ 1.190 Contents of application.

(a) An application for an award of fees and expenses under EAJA shall identify the applicant and the proceeding for which an award is sought. Unless the applicant is an individual, the application shall state the number of employees of the applicant and describe briefly the type and purpose of its organization or business. The application shall also:

(1) Show that the applicant has prevailed and identify the position of the Department that the applicant alleges was not substantially justified and shall briefly state the basis for such allegation; or

(2) Show that the demand by the Department in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the proceeding.

(b) The application also shall, as appropriate, include a declaration that the applicant is a small entity as defined in 5 U.S.C. 601 or a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 114j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application also may include any other matters that the applicant wishes the Department to consider in determining whether, and in what amount, an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It also shall contain or be accompanied by a written verification under oath or affirmation under penalty of perjury that the information provided in the application and all accompanying material is true and complete to the best of the signer's information and belief.

§ 1.191 Net worth exhibit.

(a) An applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 1.184 of this part) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this subpart. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b) (1) through (9). The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the established procedures of the Department under the Freedom of Information Act (§§ 1.1 through 1.23 of this part).

§ 1.192 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project, or similar matter, for which an award is sought.

(b) The documentation shall include an affidavit from any attorney, agent, or expert witness representing or appearing on behalf of the party, stating the actual time expended and the rate at which fees and other expenses were computed and describing the specific services performed.

(1) The affidavit shall state the services performed. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed and paid by the majority of clients during the relevant time periods.

(2) If no hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide information about two attorneys or agents with similar experience, who perform similar work, stating their hourly rate.

(c) The documentation also shall include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided.

(d) The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any fees or expenses claimed, pursuant to § 1.199 of this part.

§ 1.193 Time for filing application.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after final disposition of the proceeding by the Department.

(b) For the purposes of this subpart, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, become final and unappealable, both within the Department and to the courts.

(c) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

Procedures for Considering Applications

§ 1.194 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding except as provided in § 1.191 of this part for confidential financial information. The provisions relating to filing, service, extensions of time, and computation of time contained in § 1.147 of this part are incorporated into and made applicable to this subpart, except that the statutory 30 day time limit on filing the application as set out in § 1.193 of this part may not be extended.

§ 1.195 Answer to application.

(a) Within 30 days after service of an application, agency counsel may file an answer. If agency counsel fails to timely answer or settle the application, the adjudicative officer, upon a satisfactory showing of entitlement by the applicant, may make an award for the applicant's allowable fees and expenses.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1.199 of this part.

§ 1.196 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1.199 of this part.

§ 1.197 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application, unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 1.198 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 1.199 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether the position of the Department was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the adjudicative officer order further proceedings under this section shall identify specifically the information sought or the disputed issues, and shall explain specifically why the additional proceedings are necessary to resolve the issues.

(c) In the event that an evidentiary hearing is held, it shall be conducted pursuant to §§ 1.130 through 1.151 of this part, except that any hearing in a proceeding covered by § 1.183(a)(1)(ii) of this part shall be conducted pursuant to Rules 17 through 25 of the Board of Contract Appeals contained in § 24.21 of this title.

§ 1.200 Decision.

The adjudicative officer or Board of Contract Appeals shall issue an initial decision on the application as expeditiously as possible after completion of proceedings on the application. Whenever possible, the decision shall be made by the same administrative judge or panel that decided the contract appeal for which fees are sought. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. This decision also shall include, if at issue, findings on whether the position of the Department was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for

payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 1.201 Department review.

(a) Except with respect to a proceeding covered by § 1.183(a)(1)(ii) of this part either the applicant or agency counsel may seek review of the initial decision on the fee application, in accordance with the provisions of §§ 1.145(a) and 1.146(a) of this part or in accordance with any delegation made pursuant to § 1.189 of this part. If neither the applicant nor agency counsel seeks review, the initial decision on the fee application shall become a final decision of the Department 35 days after it is served upon the applicant. If review is taken, it will be in accord with the provisions of §§ 1.145(b) through (i) and 1.146(b) of this part, or

(b) With respect to a proceeding covered by § 1.183(a)(1)(ii) of this part, either party may seek reconsideration of the decision on the fee application in accordance with Rule 29 of the Board of Contract Appeals contained in § 24.21 of this title. In addition, either party may appeal a decision of the Board of Contract Appeals to the Court of Appeals for the Federal Circuit in accordance with 41 U.S.C. 607.

§ 1.202 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 1.203 Payment of award.

An applicant seeking payment of an award shall submit to the head of the agency administering the statute involved in the proceeding a copy of the final decision of the Department granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The agency will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Dated: October 7, 2002.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 02-26002 Filed 10-10-02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1470

RIN 0560-AG85

Apple Market Loss Assistance Payment Program III

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements the Apple Market Loss Assistance Payment Program III under the Farm Security and Rural Investment Act of 2002 (Public Law 107–171) (the 2002 Act). The program will provide direct payments to apple producers to provide relief due to the low prices received for their 2000 crop.

DATES: Effective October 8, 2002.

FOR FURTHER INFORMATION CONTACT: Danielle Cooke, Price Support Division, FSA/USDA, Stop 0512, 1400 Independence Ave., SW., Washington, DC, 20250–0512; telephone (202) 720–1919; facsimile (202) 690–3307; e-mail: *Danielle_Cooke@wdc.fsa.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the 2002 Act requires that regulations needed to implement Title I of the 2002 Act, which includes this program, be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture (the Secretary) effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Executive Order 12866

This rule was determined to be significant for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget.

Federal Assistance Programs

The title and number of the Federal assistance program found in the Catalog of Federal Domestic Assistance to which this final rule applies is:

Special Apple Program—10.075

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking on the subject matter of this rule.

Environmental Assessment

The environmental impacts of this final rule have been considered under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. FSA has completed a final environmental assessment and concluded that the proposed action will have no significant impacts upon the human environment as documented through the completion of a Finding of No Significant Impact (FONSI). A copy of the final environmental assessment and FONSI are available for inspection and review upon request.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking about this rule. Also, this rule contains no mandates as defined in sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement these provisions be issued as soon as practical after the date of enactment of Pub. L. 107–171 and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 553. Section 1601(c) also requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121 (SBREFA), which allows an agency to forgo SBREFA's usual 60-day Congressional review delay of the effective date of a major regulation if the agency find that there is good cause to do so. These regulations affect the planting and marketing decisions of a large number of agricultural producers. Accordingly, this rule is effective upon filing for public inspection by the Office of the Federal Register.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be done without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Information Collection

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program implemented under this rule are not yet fully implemented for the public to conduct business with FSA electronically. However, the application form will be available electronically through the USDA eForms Web site at *http://www.sc.egov.usda.gov* for downloading. The regulation will be available at FSA's Price Support Division internet site at *http://www.fsa.usda.gov/dafp/psd*. Applications may be submitted at the FSA county offices, by mail or by FAX. At this time, electronic submission is not available because signatures from multiple producers with shares in the apple operation's production are required. Still, full implementation of electronic submission is underway.

Background

Section 10105 of the 2002 Act directs the Secretary of Agriculture to use $94 million of funds of the Commodity Credit Corporation (CCC) to provide assistance to producers for loss of markets during the 2000 crop year.

Apples are grown in every state in the continental United States, and are grown commercially in 36 states. During the past few years a number of factors have produced a serious economic crisis that threatens the existence of apple producers throughout the United States. Twenty years of increasing world production, stagnant domestic consumption, natural disasters and low-priced juice imports have altered the blueprint for economic success in the apple industry.

This rule addresses the situation by continuing with an ongoing series of rulemaking that authorizes continuation of a program for the market loss of apples for 2000 crop production utilizing the forgoing authority. The payments provided by this rule will offset a portion of the per-bushel losses producers have incurred marketing apples in the U.S. Those eligible will receive an immediate payment to help pay operating expenses and meet other financial obligations.

Section 801 of Public Law 106–387 authorized the first Apple Market Loss Assistance Program (AMLAP I) for the 1998 and 1999 crops of apples. Regulations for that program were published on March 8, 2001 (66 FR 13839). A similar program (AMLAP II) was authorized in section 741 of Public Law 107–76, as amended by Public Law 101–117, for the 2000 crop of apples, which provided that there could be no duplicative benefits made under another act for the same losses covered by AMLAP I. Because there was no exemption from rulemaking, as provided in section 1601(c) of the 2002 Act, a proposed rule was issued on July 19, 2002 for AMLAP II (67 FR 47477), and a final rule was published on September 12, 2002 (67 FR 57719).

The 2002 Act does not contain any reference to duplicative payments. Because (1) the 2002 Act was later enacted, and there is no legislative history to indicate that Public Law 107–76, as amended by Public Law 107–117, was to be applied to subsequently-enacted statutory provisions, and (2) the funds available to make payments under AMLAP II are not sufficient to cover all of the losses incurred by producers with respect to their 2000 crop of apples, AMLAP III payments made to producers who receive AMLAP II payments are not considered duplicative payments, which are prohibited under AMLAP II.

The 2002 Act provides that producers of apples can receive a payment on a per-pound basis for 2000-crop production from a qualifying operation, up to a maximum of 5 million pounds per separate apple operation. To be eligible, apple producers must: (1) Have produced and harvested apples during the 2000 crop year, and (2) apply for cash payments during the application period for each apple operation. The 2002 Act also specified that benefits under the program would not be subject to payment or income eligibility limitations, other than those provided for in the statute. Therefore, producers do not have to be in the business of producing and marketing agricultural products at the time of application if the producer was actively producing and marketing agricultural products during the 2000 crop year. At the close of the sign-up period, a national per-pound payment rate will be determined by dividing the available $94,000,000 by the total pounds of apples from all applicants, with no operation exceeding 5 million pounds. Because funds for this program are fixed, the national average payment rate and individual payments can only be calculated after the total eligible quantity of apple production has been determined. Information provided on applications will be subject to verification by FSA. Applications to be verified will be selected randomly. Penalties for false certifications can be easily assessed and are expected to minimize such certifications. Apple operations may, during the application period, apply in person at FSA county offices during regular business hours. Alternatively, program applications may be obtained by mail, telephone, and facsimile from their designated FSA county office or obtained via the Internet. The Internet Web site is located at *http://www.fsa.usda.gov/dafp/psd/*.

List of Subjects in 7 CFR Part 1470

Apples, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR part 1470 is amended as follows:

PART 1470—APPLE MARKET LOSS ASSISTANCE PAYMENT PROGRAM

1. The authority citation for part 1470 is revised to read as follows:

Authority: Sec. 811, Pub. L. 106–387, 114 Stat. 1549; Sec. 741, Pub. L. 107–76, 115 Stat. 704; Sec. 102, Pub. L. 107–117, 115 Stat. 2230; Sec. 10105, Pub. L. 107–171, 116 Stat. 489.

2. Add subpart C to part 1470 to read as follows:

Subpart C—Apple Market Loss Payment Program III

Sec.

1470.201 Applicability.
1470.202 Administration.
1470.203 Definitions.
1470.204 Time and method of application.
1470.205 Eligibility.
1470.206 Proof of production.
1470.207 Availability of funds.
1470.208 Applicant payment quantity.
1470.209 Payment rate and apple operation payment.
1470.210 Offsets and withholdings.
1470.211 Assignments.
1470.212 Appeals.
1470.213 Misrepresentation and scheme or device.
1470.214 Estates, trusts, and minors.
1470.215 Death, incompetency, or disappearance.

1470.216 Maintenance and inspection of records.
1470.217 Refunds; joint and several liability.
1470.218 Violations of highly erodible land and wetland conservation provisions.

Subpart C—Apple Market Loss Assistance Payment Program III

§ 1470.201 Applicability.

(a) The regulations in this subpart are applicable to producers of the 2000 crop of apples. These regulations set forth the terms and conditions under which the Commodity Credit Corporation (CCC) shall provide payments to apple producers who have applied to participate in the Apple Market Loss Assistance Payment Program III in accordance with section 10105 of Public Law 107–171. Additional terms and conditions may be set forth in the payment application that must be executed by participants to receive a market loss payment for apples.

(b) Payments shall be available only for apples produced and harvested in the United States.

§ 1470.202 Administration.

(a) The Apple Market Loss Assistance Payment Program III shall be administered under the general supervision of the Executive Vice President, CCC, or a designee, and shall be carried out in the field by FSA State and county committees (State and county committees) and FSA employees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by the regulations of this subpart that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require the county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this subpart; and

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this subpart.

(d) No provision or delegation of this subpart to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not adversely affect the operation of the Apple Market Loss Assistance Payment Program III and do not violate statutory limitations on the program.

(f) Payment applications and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution outside of the dates authorized by CCC, shall be null and void unless the Executive Vice President, CCC, shall otherwise allow.

§ 1470.203 Definitions.

The definitions set forth in this section shall apply to the Apple Market Loss Assistance Payment Program III as follows:

Administrator means the Administrator, Farm Service Agency.

Apple operation means any person or group of persons who, as a single unit as determined by CCC, produces and markets apples in the United States.

Application means the Apple Market Loss Assistance Payment Application.

Application period means the period beginning September 30, 2002, and ending on November 8, 2002, for producers to apply for program benefits.

CCC means the Commodity Credit Corporation.

County committee means the FSA county committee.

County office means the local FSA office.

Department or USDA means the United States Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency, or a designee.

Eligible production means apples that were produced and harvested in the United States anytime during the 2000 crop year, up to a maximum of 5 million pounds per apple operation.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Payment pounds means the pounds of apples for which an operation is eligible to be paid under this subpart.

Person means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen of, or legal resident alien or aliens in the United States.

Secretary means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in this subpart.

United States means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

Verifiable production records means evidence that is used to substantiate the amount of harvested production reported and that can be verified by CCC through an independent source.

§ 1470.204 Time and method of application.

(a) Apple producers may obtain an application, in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the application at *http://www.sc.egov.usda.gov*.

(b) A request for benefits under this subpart must be submitted on a completed application as defined in § 1470.203. Applications should be submitted to the FSA county office serving the county where the apple operation is located but, in any case, must be received by the FSA county office by the close of business on November 8, 2002. Applications not received by the close of business on such date will be disapproved as not having been timely filed and the apple operation will not be eligible for benefits under this program.

(c) All persons who share in the risk of an apple operation's total production must certify to the information on the application before the application will be considered complete.

(d) The apple operation requesting benefits under this subpart must certify to the accuracy and truthfulness of the information provided in their application. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program benefits will not be approved. Providing a false certification to the government is punishable by imprisonment, fines and other penalties.

§ 1470.205 Eligibility.

(a) To be eligible to receive a payment under this subpart, an apple operation must:

(1) Have produced and harvested apples in the United States at some time during the 2000 crop year;

(2) Apply for payments during the application period according to § 1470.204.

(b) Payments may be made for losses suffered by an eligible producer who is

now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer signs the application for payment. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution, or their duly authorized representatives, must sign the application for payment.

(c) An apple operation must submit a timely application and comply with all other terms and conditions of this subpart and instructions issued by CCC, as well as comply with those instructions that are otherwise contained in the application to be eligible for benefits under this subpart.

(d) All payments under this subpart are subject to the availability of funds.

§ 1470.206 Proof of production.

(a) Apple operations selected for spot checks by CCC must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof of the apples produced and harvested during the 2000 crop year to verify production. The documentary evidence of apple production claimed for payment shall be reported to CCC together with any supporting documentation under paragraph (b) of this section. The 2000 crop year production must be documented using actual records.

(b) All persons involved in such apple operation producing apples during the 2000 crop year must provide any available supporting documents to assist the county FSA office in verifying the operation's apple production indicated on the Application. Examples of supporting documentation include, but are not limited to: picking, packout, and payroll records, RMA records, sales documents, copies of receipts, ledgers of income, or any other documents available to confirm the production and production history of the apple operation. In the event that supporting documentation is not presented to the county FSA office requesting the information, apple operations will be determined ineligible for benefits.

§ 1470.207 Availability of funds.

The total available program funds shall be $94 million as provided by § 10105 of Public Law 107–171 except as determined appropriate by the Executive Vice President of CCC and authorized by law. Any discretion in such matters shall be the discretion of the Executive Vice President alone.

§ 1470.208 Applicant payment quantity.

(a) The applicants payment quantity of apples will be determined by CCC, based on the production of the 2000 crop of apples that was produced and harvested by each operation.

(b) The maximum quantity of apples for which producers are eligible for a payment under this subpart shall be 5 million pounds per operation. The Deputy Administrator shall determine what may be considered a distinct operation and that decision shall be final.

§ 1470.209 Payment rate and apple operation payment.

(a) A national per-pound payment rate will be determined after the conclusion of the application period, and shall be calculated, to the extent practicable, by dividing the $94 million available for the Apple Market Loss Assistance Payment Program III by, for all applicants taken together, the total pounds of eligible production approved for payment.

(b) Each eligible apple operation's payment will be calculated by multiplying the payment rate determined in paragraph (a) of this section by the apple operation's eligible production.

(c) In the event that approval of all eligible applications would result in expenditures in excess of the amount available, CCC shall reduce the payment rate in such manner as CCC, in its sole discretion, finds fair and reasonable.

(d) A reserve may be created to handle claims but claims shall not be payable once the available funding is otherwise expended.

§ 1470.210 Offsets and withholdings.

CCC may offset or withhold any amount due CCC under this subpart in accordance with the provisions of part 1403 of this chapter.

§ 1470.211 Assignments.

Any person who may be entitled to a payment may assign his rights to such payment in accordance with part 1404 of this chapter or successor regulations as designated by the Department.

§ 1470.212 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this subpart may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at parts 11 and 780 of this title.

§ 1470.213 Misrepresentation and scheme or device.

(a) An apple operation shall be ineligible to receive assistance under this program if it is determined by the State committee or county committee to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a determination under this program.

CCC will notify the appropriate investigating agencies of the United States and take steps deemed necessary to protect the interests of the government.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, shall be refunded to CCC in accordance with § 1470.217(a). The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.

§ 1470.214 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible for assistance under this part must also:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) Show that a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1470.215 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in part 707 of this chapter may receive such benefits, as determined appropriate by FSA.

§ 1470.216 Maintenance and inspection of records.

(a) Persons making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein, as may be requested by CCC. Such records and accounts must be retained for 3 years after the date of payment to the apple operation under this program. Destruction of the records 3 years after the date of payment shall

be at the risk of the party undertaking the destruction.

(b) At all times during regular business hours, authorized representatives of CCC, the United States Department of Agriculture, or the Comptroller General of the United States shall have access to the premises of the apple operation in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Any funds disbursed pursuant to this part to any person or operation who does not comply with the provisions of paragraphs (a) or (b) of this section, or who otherwise receives a payment for which they are not eligible, shall be refunded with interest.

§ 1470.217 Refunds; joint and several liability.

(a) In the event of an error on an application, a failure to comply with any term, requirement, or condition for payment arising under the application, or this subpart, all improper payments shall be refunded to CCC together with interest and late payment charges as provided in part 1403 of this title.

(b) All persons signing an apple operation's application for payment as having an interest in the operation shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application or this part with respect to such operation.

§ 1470.218 Violations of highly erodible land and wetland conservation provisions.

The provisions of part 12 of this title apply to this subpart.

Signed in Washington, DC, on September 25, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–25984 Filed 10–8–02; 1:07 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR 217

[INS No. 2219–02]

RIN 1115–AG73

Passenger Data Elements for the Visa Waiver Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule serves to further implement the automated entry and exit control system mandated by section 217(h) and other provisions of the Immigration and Nationality Act (Act) by specifying those passenger data elements that must be electronically transmitted to the Immigration and Naturalization Service (Service) by carries seeking to transport Visa Waiver Program (VWP) passengers into and out of the United States on or after publication of this rule. This rule will also ensure that legitimate VWP travel is not disrupted. This rule is necessary for the proper identification and monitoring of VWP aliens.

DATES: *Effective date:* October 11, 2002. *Comment date:* Written comments must be submitted on or before November 12, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street NW, Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2219–02 on your correspondence. Comments may also be submitted electronically to the Service at *insregs@usdoj.gov*. Comments submitted electronically must include the INS No. 2219–02 in the subject heading to ensure that the comments can be transmitted electronically to the appropriate program office. Comments are available for public inspection at the above address by calling (202) 514–3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Michael J. Flemmi, Assistance Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., Room 5237, Washington, DC 20536, telephone number: (202) 305–9247.

SUPPLEMENTARY INFORMATION:

Background

Congress mandated that, by 2005, the U.S. Department of Justice must complete deployment at all ports-of-entry (POE) of an entry-exit system that integrates the available alien arrival and departure data that exists in the systems of the Department and the U.S. Department of State (DOS). The Immigration and Naturalization Service Data Management Improvement Act of 2000, Public Law 106–215, 114 Stat. 337 (2000), codified, as amended, at 8 U.S.C. 1365a. This system also must include the arrival and departure for any visitor who transits through the air and seaports and is admitted under the Visa Waiver Program.

What Is the Visa Waiver Program (VWP)?

The Visa Waiver Program (VWP) permits nationals from participating countries to apply for admission to the United States for a duration of 90 days or fewer, as nonimmigrant visitors for business or pleasure, without first obtaining a nonimmigrant visa, provided that all other statutory and regulatory requirements are met. If arriving by air or sea, a VWP traveler must arrive on a carrier that signed an agreement (signatory carrier) with the Service guaranteeing that it will transport its VWP passengers deemed inadmissible or deportable out of the United States at no expense to the United States government. *See* 8 CFR part 217. The VWP has been expanded and made permanent. This rule implements one of the steps to making the VWP system permanent.

How Does the Permanent VWP Change the Pilot Program?

The Visa Waiver Permanent Program Act (VWPPA), Public Law 106–396, 114 Stat. 1637 (Oct. 30, 2000), converted the Vias Waiver Pilot Program which was first launched in 1988 into a permanent program with several modifications. Congress modified the pilot program in order to safeguard the United States' law enforcement and security interests and to reduce the ability of inadmissible aliens to enter the United States under the program. *See* H.R. Rep. No. 106–564, at 7 (2000); *see* also H.R. Rep. No. 106–1048, p. unavail. (2001). Among other modifications, the VWPPA required the Attorney General to develop and implement, on or before October 1, 2001, at automated entry and exit control system to collect the arrival and departure record for each VWP passenger admitted at a U.S. air or sea port-of-entry (POE). The automated control system was to be based, to the maximum extent practicable, on passenger data collected and electronically transmitted by each carrier that has an agreement with the Service to transport aliens to the United States. The Service has worked with and informed the Air Transport Association (ATA), International Air Transport Association (IATA), International Council of Cruise Lines (ICCL), and other interested stakeholders of the development of the electronic arrival passenger data transmittal system. Currently, over 140 carriers submit electronic arrival passenger information. Of those carriers who do not currently have this system in place, most are fully aware of both the arrival and departure requirements of the system and the statutory deadline being implemented in this rule. The departure requirements are the same as the current APIS arrival information.

Upon publication of this rule, travelers will not be admitted to the United States under the VWP unless they arrive on carriers that are electronically transmitting to the automated entry and exit control system, VWP passenger data that is sufficient to carry out the purpose of section 217(h) of the Act including the calculation of the percentage of nationals from each program country who received a waiver after arriving at a U.S. air or sea POE and for whom no record of departure exists.

Why Is the Development and Implementatin of an Automated Entry and Exit Control System Important for Protecting the Integrity of the VWP?

Controlling our borders requires collecting information regarding the movement of aliens in, through, and out of the United States. Such information allows the U.S. Government to make informed policy and management decisions, to identify and take action against those who violate the law, to locate individual aliens of interest to law enforcement entities, to track the immigration status of individual aliens so that only those eligible receive immigration benefits, and to keep out terrorists and other malafides. To meet these objectives Congress has mandated that the Service create an electronic Entry-Exit System. Developing an effective entry and exit control system to monitor VWP admissions and departures is a significant step in building this system. Additionally, advance manifests provide the Service with an opportunity to more thoroughly analyze information regarding persons from countries participating in the Visa Waiver program, who are seeking to enter into or depart from the United States upon arrival under the VWP and to identify individuals who may be inadmissible to the United States or otherwise of interest to the Service or another law enforcement agency. Submission of early advance passenger information also facilitates the ability of the Service to notify other law enforcement authorities that an arriving passenger on board may present a potential safety or security risk. Furthermore, the development of an automated entry and exit control system will allow the Service to fulfill the reporting requirements mandated by sectin 217(h)(1)(C) of the Act.

For Which Passengers Must the Requested Information Be Transmitted Electronically on or After the Date of Publication of This Rule?

Carriers must electronically transmit passenger arrival data in accordance with this regulation for every applicant for admission under the VWP that the carrier transports by air or sea to a U.S. port-of-entry on or after the date of publication of this rule. Carriers must electronically transmit passenger departure data in accordance with this regulation for every passenger who was admitted to the United States under the VWP that the carrier transports by air or sea from the United States to a foreign port or place on or after the date of publication of this rule. Carriers are only required to transmit departure passenger information for those departing VWP passengers who were admitted under the VWP after arriving at a port-of-entry via sea or air.

What Are the Timeframes for the Electronic Transmission of the Required VWP Passenger Information?

This rule provides final implementation for commercial carriers to submit the required VWP passenger arrival data to the Service electronically no later than 15 minutes after the flight or vessel has departed from the last foreign port or place. This is the current transmission requirement for air carriers submitting electronic arrival information under the APIS program and this requirement will also conform to the U.S. Customs Service's rule published at 66 FR 67482 (Dec. 31, 2001). This will allow the Service to check the requested information against appropriate law enforcement and security databases prior to the passenger's arrival. Carriers transporting passengers who were admitted uner the VWP to points outside of the United States must electronically submit the required pasenger departure information to the Service no later than 15 minutes before the flight or vessel departs from the United States. If additional passengers board after the original manifest has been submitted, or if passengers exit after boarding but prior to departure, carriers will also be required to submit amended or updated passenger manifest information electronically to the Service no later than 15 minutes after the flight or vessel has departed from the United States.

What Passenger Information Must Carriers Submit for Arriving and Departing VWP Passengers?

This regulation specifically provides that the following information must be electronically transmitted for each passenger seeking admission under the VWP or seeking to depart after having been admitted under the VWP:

Passenger information:

Last Name;
First Name;
Middle name or middle initial;
Date of birth;
Gender or sex (F—Female; M—Male);
Nationality;
Document number;
Country of document issuance;
Document type (*e.g.*, P=Passport, V=Visa, A=Alien registration card);

Flight or vessel information (Advance Passenger Information (API) header message)

Airline International Air Transport Association (IATA) carried code or vessel name;

Airline flight number, or tail number for private or Corporate aircraft;

Date and time of scheduled flight or vessel arrival into the United States;

Date and time of scheduled flight or vessel departure from the United States;

Port of arrival;
Port of departure;
Contact name and number; and
Traveler status (*e.g.*, P=Passenger, C=Crewmember).

For each arriving and departing VWP passenger, carriers will submit electronically only data elements that most carriers are already transmitting electronically under the Advanced Passenger Information System (APIS) Program administered jointly by the Service and the United States Customs Service and/or pursuant to section 115 of the Aviation and Transportation Security Act, Public Law 107–71. Accordingly carriers that electronically transmit complete and accurate passenger information in accordance with either the memorandum of understanding that governs the APIS program or section 115 of the Aviation Security Act will be in compliance with the passenger arrival information requirements of this regulation. In this light, it must be noted that effectively the only new requirement being implemented on current VWP carriers by promulgating this rule is that of submitting the prescribed data elements electronically prior to department as well as arrival.

How Is the Required Information To Be Transmitted?

The required data for each VWP passenger must be transmitted to the Service via the U.S. Customs Data Center, U.S. Customs Service Headquarters, by means of an electronic data interchange system that is approved by the U.S. Customs Service

in conjunction with the Service. Carriers that are not currently transmitting data via the U.S. Customs Data Center must contact the U.S. Customs Data Center, U.S. Customs Service Headquarters for technical guidance. All of the APIS data is currently transmitted to a centralized data base known as the Interagency Border Inspection System (IBIS), which is jointly operated and accessible by the Service and the U.S. Customs Service. IBIS allows all of the carriers to submit the electronic arrival and passenger information to one centralized location that meets both the service and the USCS's requirements.

What Are the Penalties for Failure to Electronically Transmit the Required VWP Passenger Data Information?

There are no fines provided for by section 217 of the Act; however, in cases where the carrier inexcusably fails to transmit an electronic record in accordance with this rule and an alien arrives without the necessary documentation needed for admission in the absence of the VWP, the Service may impose fines under section 273 of the Act. Prior to the Service issuing any fines, the Service will evaluate carriers on a Good Faith Effort, which will be based upon the following criteria: (1) The carrier notifies the Service of any technical or other issues in submitting the departure information; (2) the carrier has a backorder of the purchase of additional equipment, such as document readers; (3) the carrier is using an alternative temporary method such as, the U.S. Customs Service e-main account, in lieu of the carrier's reservation system; (4) the carrier is utilizing a third party vendor as a temporary solution in lieu of the carrier's reservation system to transmit departure manifests; or (5) the totality of circumstances of each carrier to comply with this regulation. Additionally, the Service may seek to cancel the carrier's VWP contract for continued infractions that could include untimely as well as incomplete data. Finally, it should be noted that the Service may refuse admission under the VWP to aliens for whom the carrier has not electronically transmitted the required data elements.

Will Carriers Who Submit VWP Passenger Data Elements in the Required Electronic Format Remain Responsible for the Submission of Passenger Manifests as Well?

Yes. The obligation of carriers to submit information on VWP passengers in support of the automated entry exit control system mandated by section 217(h) of the Act is separate from a carrier's obligation to submit arrival and departure manifests for all persons transported on commercial aircraft or vessels pursuant to section 231 of the Act. However, section 402 of the Enhanced Border Security Act of 2002 recently amended section 231 of the Act by mandating, among other things, that the manifest information required under section 231 must be transmitted electronically not later than January 1, 2003. The Service plans to publish a regulation implementing the manifest provisions of Public Law 107–173, including the electronic transmission requirement, shortly. It is the goal of the Service to develop a single procedure for the electronic transmission of passenger and crew arrival and departure information that will satisfy the requirements of both sections 217 and 231 of the Act.

Good Cause Exception

Implementation of this rule as an interim rule with provision for post-promulgation public comments is based upon the "good cause" exception found at 5 U.S.C. 553(b)(B). In accordance with section 217(h)(1)(B)(1) of the act, effective on the date of publication of this rule, no waiver may be provided under section 217 of the Act to an alien arriving by air or sea on a carrier unless the carrier is electronically transmitting passenger data determined by the Attorney General to be sufficient to permit the Attorney General to carry out his obligations under 217(h) of the Act. In addition, this regulation will provide the Service with valuable advanced information regarding persons who are arriving and departing the United States from air and sea ports-of-entry. Additionally, this information will allow the Service to better able to identify and monitor individuals who violate their immigration status. The electronic arrival and departure manifest will also enable the Service to determine overstay rates by Visa Waiver Countries. For these reasons, promulgation of this rule as a proposed rule would be contrary to the public interest.

Regulatory Flexibility Act

Because this regulation is not subject to the requirements of the notice and comment provisions of the Administrative Procedure Act for good cause noted above it is likewise not subject to the provisions of the Regulatory Flexibility Act. Should it become necessary, a regulatory flexibility analysis will be provided in connection with the promulgation of a final rule.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

All of the air carriers currently transmnit arrival information electronically, however, it is unknown what the cost is to the airlines to reprogram their systems for departure manifests. However, a majority of carriers already collect passenger information during the passenger's arrival check-in process and this information is maintained in the reservation system. In addition, the ATA and IATA have not been able to provide cost estimates to the Service but expect most of the costs to be associated with reprogramming the carrier's existing reservation system to meet the departure requirement. Other costs may also include the purchase of additional document readers to scan travel documents. The price range of a document reader is approximately $900.00 to $2,000.00.

There will be additional staff hours if the departure manifest requirements are entered manually, however, most airlines already have automated systems, especially for the arrival APIS process. The U.S. Customs system also provides an e-mail account for carriers with no systems and is developing a Web account.

For carriers without reservation systems or APIS access, the USCS has developed an e-m,ail account to transmit and is also in the process of developing web APIS to allow carriers to transmit the electronic arrival and departure manifests. This option provides minimum costs to carriers who wish to utilize the e-mail or Web access. Third party vendors are also available to submit an electronic arrival or department on the carrier's behalf.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act (PRA)

This interim rule requires that carriers collect and electronically transmit certain arrival and departure information concerning Visa Waiver Program passengers to the Service. This requirement is considered an information collection under the Paperwork Reduction Act. Accordingly, the Service has submitted an information collection request to the Office of Management and Budget (OMB) for emergency review and clearance in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

All comments and suggestions, or questions regarding additional information, should be directed to the Immigration and Naturalization Service, Regulations and Forms Services Division, 425 I Street NW., Room 4034, Washington, DC 20536; Attention: Richard A Sloan, Direction, (202) 514–3291.

We request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Any comments on the information collection must be submitted on or before December 10, 2002. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* New.

(2) *Title of Form/Collection:* Visa Waiver Program Passenger Arrival and Departure Data.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No form number (File number OMB–32), Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Business or Individuals. Section 217(h) of the Immigration and Nationality Act (Pub. L. 106–396), requires that certain passenger data elements must be collected and electronically transmitted to the Immigration and Naturalization Service by carriers seeking to transport VWP passengers into and out of the United States on or after October 1, 2002. The information collection is necessary to ensure that the Service receives accurate passenger arrival and departure information in a timely manner.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 600 respondents at 10 minutes multiplied by 365 days.

(6) *An estimate of the total of public burden (in hours) associated with the collection:* Approximately 36,500 burden hours. This collection is OMB No. 1115–0255.

If additional information is required contact Richard A. Sloan, Director, (202) 514–3291.

List of Subjects in 8 CFR Part 217

Air Carriers, Aliens, Maritime carriers, Passports and Visas.

Accordingly, part 217 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 217—VISA WAIVER PROGRAM

1. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

2. Section 217.7 is added as follows:

§ 217.7 Electronic data transmission requirement.

(a) *No waivers granted.* An alien who applies for admission under the provisions of the Visa Waiver Program pursuant to section 217 of the Act after arriving via sea or air at a port of entry will not be granted a waiver of the visa requirement of section 212(a)(7)(B)(i)(II) of the Act unless the carrier transporting such an alien is electronically transmitting the data required in paragraphs (b) and (c) of this section.

(b)(1) *Passenger arrival data.* Each carrier shall transmit the data elements set forth in paragraph (c) of this section for each passenger transported by the carrier under section 217 of the Act. The information must be transmitted to the Service via the U.S. Customs Data Center, U.S. Customs Service Headquarters, by means of an electronic data interchange system that is approved by the U.S. Customs Service in conjunction with the Service. The Service must receive the information for each passenger no later than 15 minutes after the flight or the vessel has departed from the last foreign port or place.

(2) *Passenger departure data.* Each carrier shall transmit the data elements set forth in paragraph (c) of this section for each passenger departing the United States aboard the carrier after having been admitted under section 217 of the act. The information must be transmitted to the Service via the U.S. Customs Data Center, U.S. Customs Service Headquarters by means of an electronic data interchange system that is approved by the U.S. Customs Service in conjunction with the Service. The Service must receive the information for each passenger no later than 15 minutes before the flight or vessel has departed from the United States. If additional passengers board after the original manifest has been submitted, or if passengers exit after boarding but prior to departure, carriers will also be required to submit amended or updated passenger manifest information electronically to the Service no later than 15 minutes after the flight or vessel has departed from the United States.

(c) *Required passenger and flight or vessel data elements.*

(1) Last name.
(2) First name.
(3) Middle name or middle initial.
(4) Date of birth.
(5) Gender or sex (F=Female; M=Male).
(6) Nationality.
(7) Document number.
(8) Country of document issuance.
(9) Document type (*e.g.*, P=Passport, V=Visa, A=Alien registration card).
(10) Airline International Air Transport Association (IATA) carrier code or vessel name.
(11) Airline flight number, or tail number for private or corporate aircraft;
(12) Date and time of scheduled flight or vessel arrival into the United States.
(13) Date and time of scheduled flight or vessel departure from the United States.
(14) Port of arrival.
(15) Port of departure.
(16) Contact name and number.
(17) Traveler status (*e.g.*, P=Passenger, C=Crewmember).

Dated: October 7, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–26027 Filed 10–10–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM231; Special Conditions No. 25–216–SC]

Special Conditions: Boeing Model 777–200 Series Airplanes; Overhead Crew Rest Compartments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 777–200 series airplanes. These airplanes, modified by Flight Structures Inc., will have a novel or unusual design feature associated with an overhead flightcrew rest compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 3, 2002. Comments must be received on or before November 12, 2002.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration (FAA), Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM231, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM231. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2195; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

FAA's Determination as to Need for Public Process

The FAA has determined that notice and opportunity for prior public comment are unnecessary in accordance with 14 CFR 11.38, because the FAA has provided previous opportunities to comment on substantially identical special conditions, and has fully considered and addressed all the substantive comments received. Based on a review of the comment history and the comment resolution, the FAA is satisfied that new comments are unlikely. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Although this action is in the form of final special conditions, and for the reasons stated above, is not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to participate in this rulemaking by submitting comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On September 17, 2001, Flight Structures Inc., 4407 172 Street NE., Arlington, Washington, 98223, applied for a supplemental type certificate (STC) for installation of a Door 1 overhead flightcrew rest (OFCR) compartment in Boeing Model 777–200 series airplanes. The certification of the Alitalia Model 777–200 overhead crew rest is currently scheduled for October 9, 2002. The Boeing Model 777–200 series airplanes are large twin engine airplanes with various passenger capacities and ranges depending upon airplane configuration.

The OFCR compartment, adjacent to Door 1, is located in the overhead above the main passenger cabin and will include a maximum of two private berths, two seats, and a lavatory. Occupancy of the OFCR compartment will be limited to a maximum of four occupants.

The OFCR will be accessed from the main deck by stairs. In addition, an emergency hatch that opens directly into the main passenger cabin area will be provided for the compartment. A smoke detection system, an oxygen system, and occupant amenities will also be provided. This compartment will only be occupied in flight, not during taxi, takeoff, or landing.

Compliance with these proposed special conditions does not relieve the applicant from the existing airplane certification basis requirements. One particular area of concern is that the OFCR installation creates a smaller compartment volume within the overhead area of the airplane. The applicant must comply with the requirements of §§ 25.365(e), (f), and (g), for the overhead area compartment, as well as any other airplane compartments whose decompression characteristics are affected by the installation of a crew rest compartment. Compliance with § 25.831 must be demonstrated for all phases of flight where occupants will be present.

The FAA considers OFCR compartment smoke or fire detection and fire suppression systems (including airflow management features that prevent hazardous quantities of smoke or fire extinguishing agent from entering any other compartment occupied by crewmembers or passengers) complex with respect to paragraph 6d of Advisory Circular (AC) 25.1309–1A, "System Design and Analysis." In addition, the FAA considers failure of the crew rest compartment fire protection system (*i.e.*, smoke or fire detection and fire suppression systems) in conjunction with a crew rest fire to be a catastrophic event. Based on the "Depth of Analysis Flowchart" shown in Figure 2 of AC 25.1309–1A, the depth of analysis should include both qualitative and quantitative assessments (reference paragraphs 8d, 9, and 10 of AC 25.1309–1A). In addition, it should be noted that flammable fluids, explosives, or other dangerous cargo are prohibited from being carried in the crew rest area.

The requirements to enable crewmember(s) quick entry to the crew rest compartment and to locate a fire source inherently places limits on the amount of baggage that may be carried and the size of the crew rest area. The FAA notes that the crew rest area is limited to stowage of crew personal luggage and it is not intended to be used for the stowage of cargo or passenger baggage. The design of such a system to include cargo or passenger baggage would require additional requirements to ensure safe operation.

The addition of galley equipment or a kitchenette incorporating a cook top or other heat source, or a stowage compartment greater than or equal to 25 ft^3, into the crew rest compartment may require further special conditions to be considered.

Amendment 25–38 modified the requirements of § 25.1439(a) by adding, "In addition, protective breathing equipment must be installed in each isolated separate compartment in the airplane, including upper and lower lobe galleys, in which crewmember occupancy is permitted during flight for the maximum number of crewmembers expected to be in the area during any operation." The requirements of § 25.1439(a) apply to the OFCR compartment, which is an isolated separate compartment. However, the PBE requirements for isolated separate compartments of § 25.1439(a) are not appropriate because the OFCR compartment is novel and unusual in terms of the number of occupants. In 1976 when amendment 25–38 was adopted, small galleys were the only isolated compartments that had been certificated. A maximum of two crewmembers were expected to occupy those galleys. Special Condition No. 9 addresses crew rest compartments which can accommodate up to four crewmembers. This large number of occupants in an isolated compartment was not envisioned at the time amendment 25–38 was adopted. It is not appropriate for all occupants to don PBE in the event of a fire because the first action should be to leave the confined space unless the occupant is fighting the fire. Taking the time to don the PBE would prolong the time for the emergency evacuation of the occupants and possibly interfere with efforts to extinguish the fire.

Operational Evaluations and Approval

These special conditions outline requirements for OFCR compartment design approvals (*i.e.* type design changes and supplemental type certificates) administered by the FAA's Aircraft Certification Service. Prior to operational use of an OFCR compartment, the FAA's Flight Standards Service must evaluate and approve the "basic suitability" of the OFCR compartment for crew occupation. Additionally, if an operator wishes to utilize a flightcrew rest area as "sleeping quarters," the crew rest area must undergo an additional evaluation and approval (Reference §§ 121.485(a), 121.523(b) and 135.269(b)(5)). Compliance with these special conditions does not ensure that the requirements of part 121 or part 135 have been demonstrated.

In order to obtain an operational evaluation, the type design holder must contact the Aircraft Evaluation Group (AEG) in the Flight Standards Service and request a "basic suitability" evaluation or a "sleeping quarters" evaluation of their crew rest. The results of these evaluations must be documented in a 777 Flight Standardization Board (FSB) Report Appendix. Individual operators may then reference these standardized evaluations in discussions with their FAA Principal Operating Inspector (POI) as the basis for an operational approval, in lieu of an on-site operational evaluation.

Any changes to the approved OFCR compartment configuration that effect crewmember emergency egress or any other procedures affecting the safety of the occupying crewmembers and/or related training shall require a re-evaluation and approval. The applicant for a crew rest design change that affects egress, safety procedures, or training is responsible for notifying the FAA's AEG that a new crew rest evaluation is required.

Procedures must be developed to assure that a crewmember entering the OFCR through the vestibule to fight a fire will examine the vestibule and the lavatory areas for the source of the fire prior to entering the remaining areas of the crew rest compartment. These procedures are intended to assure that the source of the fire is not between the crewmember and the primary exit.

Type Certification Basis

Under the provisions of § 21.101, Amendment 21–69, effective September 16, 1991, Flight Structures Inc., must show that the Boeing Model 777–200, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet No. T00001SE or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. T00001SE for the Boeing Model 777–200 series airplanes include 14 CFR part 25, as amended by Amendments 25–1 through 25–82. The U.S. type certification bases for the Boeing Model 777–200 series airplanes is established in accordance with 14 CFR 21.17 and 21.29 and the type certification application date. The type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777–200 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 777–200 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1). Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

While the installation of a crew rest compartment is not a new concept for large transport category airplanes, each compartment design has unique features by virtue of its design, location, and use on the airplane. Previously, crew rest compartments have been evaluated that are installed within the main passenger compartment area of the Boeing Model 777–200 and Model 777–300 series airplanes and the overhead area of the passenger compartment of the 777–200. Other crew rest compartments have been installed below the passenger cabin area, adjacent to the cargo compartment. Similar overhead crew rest compartments have also been installed on the Boeing Model 747 airplane. The interfaces of the modification are evaluated within the interior and assessed in accordance with the certification basis of the airplane. However, part 25 does not provide all the requirements for crew rest compartments within the overhead area of the passenger compartment. Further, these special conditions do not negate the need to address other applicable part 25 regulations.

Due to the novel or unusual features associated with the installation of this crew rest compartment, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations incorporated by reference in the type certificate.

Prior Comment

During a previous publication of the substantially identical special conditions a comment was received after the comment period had closed. The commenter thought requiring placards prohibiting storage of "hazardous quantities of flammable fluids" was unnecessary and a duplication of International Air Transport Association (IATA) Dangerous Goods Regulations, specially, "Provisions for Dangerous Goods Carried by Passengers or Crew." The FAA concurs with the commenter that the placard requirement is similar to the IATA requirement, however based on several factors the FAA finds that the duplication is warranted and consistent with maintaining an equivalent level of safety. While flammable fluid placards are not required in the passenger cabin, it is also an occupied area with a high degree of monitoring by passengers and crew. By contrast the crew rest may go unoccupied for long periods of time. The fire protection methods employed for this type of remote area are predicated on minimization of flammable materials.

Applicability

As discussed above, these special conditions are applicable to the Model 777–200 series airplanes. Should Flight Structures Inc., apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate Data Sheet No. T00001SE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1) Amendment 21–69, effective September 16, 1991.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 777–200 series airplanes, modified by Flight Structures Inc., with an overhead flightcrew rest (OFCR) compartment.

1. Occupancy of the OFCR compartment is limited to the total number of installed bunks and seats in each compartment. There must be an approved seat or berth able to withstand the maximum flight loads when occupied for each occupant permitted in the OFCR compartment. The maximum occupancy is four in the OFCR compartment.

(a) There must be appropriate placards, inside and outside each entrance to the OFCR compartment to indicate:

(1) The maximum number of occupants allowed,

(2) That occupancy is restricted to crewmembers that are trained in the evacuation procedures for the OFCR compartment,

(3) That occupancy is prohibited during taxi, take-off and landing,

(4) That smoking is prohibited in the OFCR compartment, and

(5) That hazardous quantities of flammable fluids, explosives, or other dangerous cargo are prohibited from the OFCR compartment.

(b) There must be at least one ashtray on the inside and outside of any entrance to the OFCR compartment.

(c) There must be a means to prevent passengers from entering the OFCR compartment in the event of an emergency or when no flight attendant is present.

(d) There must be a means for any door installed between the OFCR compartment and passenger cabin to be capable of being quickly opened from inside the compartment, even when crowding occurs at each side of the door.

(e) For all doors installed, there must be a means to preclude anyone from being trapped inside the OFCR compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the compartment at any time.

2. There must be at least two emergency evacuation routes, which could be used by each occupant of the OFCR compartment to rapidly evacuate to the main cabin and be able to be closed from the main passenger cabin after evacuation. In addition—

(a) The routes must be located with sufficient separation within the OFCR compartment, and between the evacuation routes, to minimize the possibility of an event rendering both routes inoperative.

(b) The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing below or against the escape route. One of the two evacuation routes should not be located where, during times in which occupancy is allowed, normal movement by passengers occurs (*i.e.* main aisle, cross aisle or galley complex) that would impede egress of the OFCR compartment. If an evacuation route utilizes an area where normal movement of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If there is low headroom at or near the evacuation route, provisions must be made to prevent or to protect occupants (of the OFCR area) from head injury. The use of evacuation routes must not be dependent on any powered device. If the evacuation path is over an area where there are passenger seats, a maximum of one row of passengers may be displaced from their seats temporarily during the evacuation process of an incapacitated person(s). If the evacuation procedure involves the evacuee stepping on seats, the seats must not be damaged to the extent that they would not be acceptable for occupancy during an emergency landing.

(c) Emergency evacuation procedures and the emergency evacuation of incapacitated occupant procedures must be established and transmitted to the operator for incorporation into their training programs and appropriate operational manuals. If the evacuation path is over an area where there are passenger seats, a maximum of one row of passengers may be displaced from their seats temporarily during the evacuation process.

(d) There must be a limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the use of evacuation routes.

3. There must be a means for the evacuation of an incapacitated person (representative of a ninety-fifth percentile male) from the OFCR compartment to the passenger cabin floor.

(a) The evacuation must be demonstrated for all evacuation routes. A flight crewmember or other crewmember (a total of one assistant within the OFCR area) may provide assistance in the evacuation. Additional assistance may be provided by up to three persons in the main passenger compartment. These additional assistants must be standing on the floor while providing assistance. For evacuation routes having stairways, the additional assistants may ascend up to one half the elevation change from the main deck to the OFCR compartment, or to the first landing, whichever is lower.

(b) Procedures for the evacuation of an incapacitated person from the OFCR compartment must be established.

4. The following signs and placards must be provided in the OFCR compartment:

(a) At least one exit sign, located near each exit, meeting the requirements of § 25.812(b)(1)(i), except that a sign of reduced background area with no less than 5.3 square inches (excluding the letters) may be utilized, provided that it is installed such that the material surrounding the exit sign is light in color (*e.g.* white, cream, light beige). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch wide background border around the letters would also be acceptable.

(b) An appropriate placard located near each exit defining the location and the operating instructions for each evacuation route.

(c) Placards must be readable from a distance of 30 inches under emergency lighting conditions.

(d) The exit handles and evacuation path operating instruction placards must be illuminated to at least 160 microlamberts under emergency lighting conditions.

5. There must be a means in the event of failure of the aircraft's main power system, or of the normal OFCR compartment lighting system, for emergency illumination to be automatically provided for the crew rest compartment.

(a) This emergency illumination must be independent of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient for the occupants of the OFCR compartment to locate and transfer to the main passenger cabin floor by means of each evacuation route.

6. There must be means for two-way voice communications between crewmembers on the flightdeck and occupants of the OFCR compartment. There must also be two-way communications between the occupants of the OFCR compartment and each flight attendant station required to have a public address system microphone per § 25.1423(g) in the passenger cabin.

7. There must be a means for manual activation of an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flightdeck and at each pair of required floor level emergency exits to alert occupants of the OFCR compartment of an emergency situation. Use of a public address or crew interphone system would be acceptable, providing an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight, after the shutdown or failure of all engines and auxiliary power units (APU), or the disconnection or failure of all power sources dependent on their continued operation (*i.e.* engine and APU), for a period of at least ten minutes.

8. There must be a means, readily detectable by seated or standing occupants of the OFCR compartment, which indicates when seat belts should be fastened. In the event there are no seats, at least one means must be provided to cover anticipated turbulence (*e.g.* sufficient handholds). Seat belt type restraints must be provided for berths and must be compatible for the sleeping attitude during cruise conditions. There must be a placard on each berth requiring that seat belts must be fastened when occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head location, there must be a placard identifying the head position.

9. In lieu of the requirements specified in § 25.1439(a) that pertain to isolated compartments and to provide a level of safety equivalent to that which is provided occupants of a small isolated galley, the following equipment must be provided in the OFCR compartment:

(a) At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur;

(b) Two protective breathing equipment (PBE) devices, approved to Technical Standard Order (TSO)–C116 or equivalent, suitable for fire fighting or one PBE for each hand-held fire extinguisher, whichever is greater; and

(c) One flashlight.

10. A smoke or fire detection system (or systems) must be provided that monitors each area within the OFCR compartment including those areas partitioned by curtains. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication to the flightdeck within one minute after the start of a fire;

(b) An aural warning in the OFCR compartment; and

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

11. The OFCR compartment must be designed such that fires within the compartment can be controlled without a crewmember having to enter the compartment, or the design of the access provisions must allow crewmembers equipped for fire fighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, to don the fire fighting equipment, and to gain access must not exceed the time for the compartment to become smoke-filled, making it difficult to locate the fire source.

12. There must be a means provided to exclude hazardous quantities of smoke or extinguishing agent originating in the OFCR compartment from entering any other compartment

occupied by crewmembers or passengers. This means must include the time periods during the evacuation of the crew rest compartment and, if applicable, when accessing the crew rest compartment to manually fight a fire. Smoke entering any other compartment occupied by crewmembers or passengers after opening the OFCR access door must dissipate within five minutes after closing the access to the OFCR compartment. Flight tests must be conducted to show compliance with this requirement.

If a built-in fire extinguishing system is used in lieu of manual fire fighting, then the fire extinguishing system must be designed so that no hazardous quantities of extinguishing agent will enter other compartments occupied by passengers or crew; the system must have adequate capacity to suppress any fire occurring in the OFCR compartment, considering the fire threat, volume of the compartment and the ventilation rate.

13. There must be a supplemental oxygen system equivalent to that provided for main deck passengers for each seat and berth in the OFCR compartment. The system must provide an aural and visual warning to warn the occupants of the crew rest compartment to don oxygen masks in the event of decompression. The warning must activate before the cabin pressure altitude exceeds 15,000 feet. The aural warning must sound continuously until a reset push button in the OFCR compartment is depressed.

14. The following requirements apply to OFCR compartments that are divided into several sections by the installation of curtains or partitions:

(a) To compensate for sleeping occupants, there must be an aural alert that can be heard in each section of the OFCR compartment that accompanies automatic presentation of supplemental oxygen masks. A minimum of two supplemental oxygen masks are required in each section whether or not seats or berths are installed in each section. There must also be a means by which the oxygen masks can be manually deployed from the flightdeck.

(b) A placard is required adjacent to each curtain that visually divides or separates, for privacy purposes, the OFCR compartment into small sections. The placard must require that the curtain(s) remain open when the private section it creates is unoccupied. The vestibule section adjacent to the stairway is not considered a private area and, therefore, does not require a placard.

(c) For each OFCR section created by the installation of a curtain, the following requirements of these special conditions must be met with the curtain open or closed:

(1) No smoking placard (Special Condition No. 1),

(2) Emergency illumination (Special Condition No. 5),

(3) Emergency alarm system (Special Condition No. 7),

(4) Seat belt fasten signal or return to seat signal as applicable (Special Condition No. 8), and

(5) The smoke or fire detection system (Special Condition No. 10).

(d) Overhead crew rest compartments visually divided to the extent that evacuation could be affected must have exit signs that direct occupants to the primary stairway exit. The exit signs must be provided in each separate section of the OFCR compartment, and must meet the requirements of § 25.812(b)(1)(i).

(e) Sections within an OFCR compartment that are created by the installation of a rigid partition with a door physically separating the sections, the following requirements of these special conditions must be met with the door open or closed:

(1) There must be a secondary evacuation route from each section to the main deck, or alternatively, it must be shown that any door between the sections has been designed to preclude anyone from being trapped inside the compartment. Removal of an incapacitated occupant within this area must be considered.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) There may be no more than one door between any seat or berth and the primary stairway exit.

(4) There must be exit signs in each section meeting the requirements of § 25.812(b)(1)(i) that direct occupants to the primary stairway exit. An exit sign with reduced background area as described in Special Condition No. 4(a) may be used to meet this requirement.

(f) For each smaller section within the main OFCR compartment created by the installation of a partition with a door, the following requirements of these special conditions must be met with the door open or closed:

(1) No smoking placards (Special Condition No. 1),

(2) Emergency illumination (Special Condition No. 5),

(3) Two-way voice communication (Special Condition No. 6),

(4) Emergency alarm system (Special Condition No. 7),

(5) Seat belt fasten signal or return to seat signal as applicable (Special Condition No. 8),

(6) Emergency fire fighting and protective equipment (Special Condition No. 9), and

(7) Smoke or fire detection system (Special Condition No. 10).

15. The requirements of two-way voice communication with the flightdeck and provisions for emergency firefighting and protective equipment are not applicable to lavatories or other small areas that are not intended to be occupied for extended periods of time.

16. Where a waste disposal receptacle is fitted, it must be equipped with an automatic fire extinguisher that meets the performance requirements of § 25.854(b).

17. Materials (including finishes or decorative surfaces applied to the materials) must comply with the flammability requirements of § 25.853(a) as amended by Amendment 25–83. Mattresses must comply with the flammability requirements of § 25.853(c), as amended by Amendment 25–83.

Issued in Renton, Washington, on October 3, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–25929 Filed 10–10–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 47

RIN 1219–AA47

Hazard Communication (HazCom)

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule; correction.

SUMMARY: This document corrects errors that appeared in MSHA's preamble and final rule for Hazard Communication.

EFFECTIVE DATE: October 11, 2002.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 202–693–9440.

SUPPLEMENTARY INFORMATION: On June 21, 2002, we (MSHA) published, in the **Federal Register** (67 FR 42314), our final rule on Hazard Communication for the mining industry. This document contained errors and omissions that must be corrected; therefore, the document is corrected as follows:

1. On page 42335, third column, second paragraph, ninth line, correct "provides valuable," to read "provides valuable guidance,".

2. On page 42343, first column, first paragraph after the heading *3. Section 47.2 Label Contents*, tenth line, correct "The label must also contain" to read "For customers, the label must also contain".

3. On page 42343, third column, first paragraph, seventeenth line, correct "the name, address, and telephone number of the operator or other responsible party be included in the contents of the label" to read "the name and address of the operator or another responsible party be included in the contents of the product's label for customers.".

4. On page 42345, second column, sixth paragraph, eighth line, correct "Although you do not have to label it" to read "Although you do not have to label it while on mine property".

5. On page 42365, first column, second paragraph, fifteenth line, correct "§ 47.32" to read "§ 47.42".

6. On page 42373, second column, first paragraph, third line, correct "4015 Wilson Boulevard, Arlington, VA 22203" to read "1100 Wilson Boulevard, Arlington, VA 22209".

7. On page 42375, first column, second paragraph, fourteenth line, correct "to about $370" to read "to about $390".

8. On page 42379, third column, second paragraph, eighth line, correct "At concentrations between 2–10%," to read "At concentrations between 2–10%,".

§ 47.42 [Corrected]

9. On page 42385, second column, paragraph (d) of § 47.42, correct "(d) Include the name and address" to read "(d) Include on labels for customers, the name and address".

§ 47.92 [Corrected]

10. On page 42388, Table 47.92—Hazardous Chemicals Exempt from Labeling, first column, first entry after the heading *Exemption*, second line, correct "presticide" to read "pesticide".

Dated: October 4, 2002.

John R. Caylor,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 02–25928 Filed 10–10–02; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–091]

RIN 2115–AE47

Drawbridge Operation Regulations; Miami River, Miami-Dade County, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule; request for comments.

SUMMARY: The Coast Guard is temporarily changing the operating regulations of all the drawbridges on the Miami River from the mouth of the River to, and including, the NW 27th Avenue Bridge, mile 3.7, Miami, Florida, to allow tugs and tugs with tows to pass through these bridges, except the new Second Avenue Bridge, upon proper signal to the bridge tender at all times, including during the normal rush hour traffic curfew periods. This rule allows the new Second Avenue Bridge to keep a single leaf in the horizontal (down) position for up to nine hours each day except Wednesdays, beginning three hours after one of the two daily high tides. This rule is intended to facilitate construction of the new Second Avenue Bridge and provide increased relief for tugs and tugs with tows on the Miami River. The construction is scheduled to be accomplished in two phases, the first running from October 7, 2002 to November 18, 2002. The second is scheduled from approximately December 16, 2002 to January 27, 2003. This temporary rule covers the entire period from October 7, 2002 to January 27, 2003, but leaves open the potential for the Coast Guard to change this rule based on comments received.

DATES: This rule is effective from 12:01 a.m. on October 7, 2002 until 11:59 p.m. on January 27, 2003. Comments must be received by November 18, 2002.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, Room 432, 909 SE 1st Ave., Miami, FL 33131–3050.

Comments and material received from the public as well as documents indicated in this preamble as being available in the docket are part of docket [CGD07–02–091] and are available for inspection or copying at the Seventh Coast Guard District Bridge Branch, located at the above address, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Branch, telephone 305–415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–02–091], indicate the specific section of this document to which each comment applies, and give the reason for each comment. The Coast Guard is interested in comments that, among other issues, detail specific economic impact to stakeholders on the Miami River. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Regulatory Information

On August 6, 2002 we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Miami River, Miami-Dade County, Florida" in the **Federal Register** (67 FR 50842). We received twenty-three letters commenting on the proposed rule. A public meeting was requested; none was held for reasons discussed later in this preamble.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The Coast Guard is making this rule effective on October 7, 2002 because the contractor will solicit input weekly from the tugboat companies responsible for moving large commercial vessels on the Miami River to develop a coordinated construction schedule to minimize disruption to the large vessel and construction schedules of the Miami River and Second Avenue Bridge, respectively. Allowing the rule to go into effect in less than 30 days will allow construction to begin closer to the scheduled start, thus expediting the completion of the Second Avenue Bridge and elimination of obstructions to navigation due to its construction.

Background and Purpose

On August 6, 2002 we published a Notice of Proposed Rulemaking (NPRM) outlining a request from the Florida Department of Transportation (FDOT)

(the bridge owner) and Gilbert Southern Corp. (GSC) (the bridge contractor) to keep a single-leaf of the Second Avenue Bridge in the closed position for periods of time not to exceed eighteen hours daily to facilitate installation of the two bridge leaves.

At an August 21, 2002 meeting, the Coast Guard briefed the bridge owner and contractor of the negative tone of the comments to the proposed rule the Coast Guard had in the docket at that point. Based on this meeting, the owner and contractor met with key stakeholders and requested the Coast Guard change the window originally requested, allowing a single leaf opening of the Second Avenue Bridge for not more than nine hours per day, three hours after one of the two daily high tides. This temporary rule allows this each day except Wednesdays, because that is the busiest day for shipping on the Miami River. The temporary rule better provides for the reasonable needs of navigation while still allowing installation of the two leaves, and thus completion of the bridge, to progress. Additionally, because the comments indicated that large ship movements on the Miami River can only occur on the high tide, the temporary rule reduces the negative economic impact to commercial users of the Miami River by allowing use of one, and part of the second, daily high tide on the River to facilitate large vessel movement. This temporary rule is an effort to meet the reasonable needs of navigation and provide for the construction of the Second Avenue Bridge, which will ultimately improve the navigability of the Miami River.

Discussion of Comments

The Coast Guard received twenty-one comments on the proposed rule; four were in support of it, while seventeen were opposed to it.

Supporting Comments

Comments in support of the proposed rule were by submitted FDOT, the City of Miami City Manager's Office, the Miami-Dade County Public Works Department, and Miami-Dade County Manager's Office. The comment submitted by FDOT listed eight coordination meetings with various Miami River interests, along with the general attendees and discussion topics at the meetings to show the level of attempted coordination between FDOT and various Miami River stakeholders. The Coast Guard acknowledges these comments, but for reasons stated in the "Background and Purpose" section, has modified the original proposed rule and has implemented this temporary rule.

The proposed rule also had a provision temporarily eliminating the operating regulations that allowed Miami River bridges to not open during morning and afternoon vehicle traffic rush hours. Four comments were also in favor of this aspect of the proposed rule and requested it be made permanent. Thus, the Coast Guard kept this provision of the temporary rule. However, the permanency of this elimination is beyond the scope of this rulemaking.

Opposing Comments

Seventeen comments were opposed to the provision of the proposed rule that would allow the bridge owner and contractor to keep a single-span of the Second Avenue Bridge in the horizontal (down) position daily from 4 a.m. to 10 p.m. The Coast Guard changed this provision in this temporary rule as detailed throughout this document.

Eleven comments were in general opposition to allowing a single leaf of the bridge to be in the horizontal (down) position for a maximum of eighteen-hour timeframe. Some comments cited the general negative economic impact that allowing a single leaf of the Second Avenue Bridge to remain in the horizontal (down) position would have on the Miami River cargo industry (two comments) and indirect negative impact on the commenters' businesses because they rely on the larger vessel traffic flow for their businesses (seven comments). One comment asserted that shipping must get "the priority use" of rivers. One comment suggested that the obstruction of the Miami River due to installation of the Second Avenue Bridge leafs be limited to eight hours and any time beyond those eight hours where the Miami River is obstructed be mitigated by a financial subsidy from the bridge contractor to companies negatively impacted. The Coast Guard has no authority to require a subsidy of this type. Thus, it was not incorporated into the temporary rule.

Nine comments cited the negative economic impact that the proposed rule would likely have on the Miami River cargo shipping industry, which uses large vessels to ship goods.

The Coast Guard has considered these comments, and has changed the proposed rule based in part on them, in part on the comments from the bridge owner and contractor requesting to halve the maximum eighteen hour window reflected in the NPRM (*see* "Background and Purpose"), and in part on other more detailed comments discussed below regarding the proposed rule. This temporary rule allows the Second Avenue Bridge to have single leaf openings six days a week for a maximum of nine hours per day, starting three hours after one of the two daily high tides. The rule requires both leaves of the Second Avenue Bridge to open on Wednesdays because Wednesdays are the busiest day for shipping on the Miami River. These changes directly address the comments about the economic impacts of the rule and will insure that the reasonable needs of navigation are met.

Construction Methodology

Two comments commented on the construction method of the Second Avenue Bridge, declaring that construction of the bridge in the horizontal position is unreasonable and that construction of the bridge must be done in the upright position. In June 2001, July 2002, and August 2002 representatives from the Coast Guard Seventh District Bridge Branch met with representatives of the bridge owner and contractor. The bridge owner and contractor explained the construction methodology behind the bridge and that it could not be practically constructed with leaves in the vertical (upright) position due to the sheer size of each bridge leaf and due to safety concerns for bridge construction workers. Miami River vessel traffic would be impacted for an equal amount of time if the bridge leaves were installed in the vertical (up) position as it would in the horizontal (down) position because of the safety hazard over the waterway that would exist while installing the leaves.

Construction Methodology

Two comments commented on the construction method of the Second Avenue Bridge, declaring that construction of the bridge in the horizontal position is unreasonable and that construction of the bridge must be done in the upright position. In June 2001, July 2002, and August 2002 representatives from the Coast Guard Seventh District Bridge Branch met with representatives of the bridge owner and contractor. The bridge owner and contractor explained the construction methodology behind the bridge and that it could not be practically constructed with leaves in the vertical (upright) position due to the sheer size of each bridge leaf and due to safety concerns for bridge construction workers. The Coast Guard notes that Miami River vessel traffic would be impacted for an equal amount of time if the bridge leaves were installed in the vertical (up) position as it would in the horizontal (down) position because of the safety hazard that would exist over the waterway requiring the limitation of the

River's horizontal clearance while installing the leaves. Two commenters requested a public meeting to provide a forum to review the assertion that the Second Avenue Bridge could not be constructed in the vertical (up) position because of the bridge's size and design. Because safety hazards would still exist on the waterway requiring a similar reduction in the horizontal clearance of the Miami River, the Coast Guard sees no new issues arising from a public meeting on this topic, so none was held.

The Proposed Rule Will Shut Down Shipping on the Miami River

Seven comments were opposed to the proposed rule's six-hour time window that the Second Avenue Bridge be open to all traffic because it was too small of a period to have unimpeded vessel traffic flow on the Miami River. Five comments declared that the proposed rule would "basically shut down the river" to all vessel traffic for the duration the rule would be in effect. Two comments cited the tug bottleneck that the proposed rule would create because the six-hour window would force all larger vessel traffic into that window for transiting the Miami River, and traffic would necessarily be delayed. The Coast Guard considered the impact of the proposed rule on the Miami River vessel traffic, noting that large vessel traffic flow is one way on the River due to the limited available width. Two comments mention that the period described in the proposed rule is the "peak season" on the Miami River, and thus would have "devastating" effects on the commerce that runs on the Miami River. One comment discussed Miami River tidal patterns and that at best there would be one high tide and one low tide during the six-hour window from 10 p.m. and 4 a.m. every six days, and large commercial vessel traffic is restricted to movements corresponding with the high tides. The changes in this temporary rule creates a fifteen-hour window that should reduce the traffic concerns that resulted from the limited six-hour window of unimpeded River navigability contained in the original proposed rule.

One of the comments from a marine terminal on the River asserted that the proposed rule would create an additional $2K to $5K expense per vessel. This terminal had over 100 sailings last year. As discussed in detail below, the Coast Guard has adopted a temporary rule that makes explicit the intent to obstruct the Miami River for not more than nine hours per day, six days per week. This should mitigate the economic impact to this terminal because large vessels will be able to use one high tide daily, and part of the second, for movements on the River. Also, the schedule will be published in advance, and should allow for flexibility in scheduling for parties involved on either side of this issue. The temporary rule should also reduce the bottleneck concern. Additionally, the Coast Guard will continue to accept comments on the temporary rule through the first construction phase, and may change it depending on the comments. Comments detailing specific economic impacts such as the one in this paragraph are particularly helpful in evaluating this rule.

The Proposed Rule Was Unfair to Shipping Industry

Three comments stated the proposed rule was unfair to the Miami River shipping industry. The comments state that the proposed rule would instill economic woes on the River shipping industry to benefit the bridge contractor, that it would be unfair to allow the bridge contractor and owner to reap benefits from this planned bridge construction despite their poor planning with local River stakeholders, that the marine industry is severely penalized by bridge design and building contracts that are beyond their control, and that the Coast Guard has chosen to sacrifice an important economic engine in favor of the bridge contractor's prospective profit.

One comment alleged bias shown by the Coast Guard in favor of construction of the Second Avenue Bridge over the needs of navigation.

The Coast Guard uses the "reasonable needs of navigation" as the standard when evaluating projects that potentially impact navigation. The bridge owner and contractor requested the proposed rule. The Coast Guard's view was that to better determine what the needs of navigation were, the proposed rule should be released to solicit comments which would provide the Coast Guard with a basis to determine the reasonable needs of navigation. The Coast Guard has considered these comments and, as noted above, has changed the proposed rule to mitigate the impact to commercial navigation. Through the additional comment period, the Coast Guard encourages comments on this temporary rule, and may make further changes in light of them.

Bridge Owner's Requested Revision

On 21 August 2002 the Coast Guard met with representatives of the bridge owner and contractor and made them aware of the generally negative tone of the comments in the docket at that time. Based on these objections, the bridge owner and contractor modified their request and put forth a proposal that cut in half the amount of time the Miami River could be obstructed by the Second Avenue Bridge. They requested that the Coast Guard revise the proposed rule to allow the Second Avenue Bridge to have one leaf in the down position for not more than nine hours starting three hours after one of the two daily high tides that occur on the Miami River. At all other times, both leaves would open on signal. GSC, as bridge contractor, and on behalf of the bridge owner, in consultation with the two major tug companies that assist in large vessel movements on the River, will submit a coordinated construction schedule to the Coast Guard, specifically, the Captain of the Port of Miami (COTP). The schedule will be reviewed by the COTP, who will promptly announce the schedule through broadcast local notices to mariners and local notices to mariners.

Commenters' Requested Changes

One tug operator on the Miami River commented that the proposed rule should not allow the Second Avenue Bridge to be in the horizontal (down) position for more than six hours, that it should fluctuate with the tidal cycles, that tug operators and GSC must coordinate when the Miami River would be obstructed by the single leaf in the horizontal (down) position, and that on Wednesdays the Miami River must remain unobstructed. The Miami River Commission (MRC), an entity created by the State of Florida to be an official clearinghouse for all public policy and projects on the Miami River, recommended similar provisions. The MRC's comment, however, included a six to ten hour daily window where the Miami River would be obstructed by the single leaf of the Second Avenue Bridge in the horizontal (down) position. Additionally, the MRC reiterates the bridge contractor's comment that details two separate six-week periods where bridge construction would occur. The Miami River Marine Group, a port cooperative trade association made up of stakeholders of the Miami River, commented that the leaf should be in the horizontal (down) position for not more than eight hours per day.

The Coast Guard has considered these comments in conjunction with the comment by the bridge owner and contractor to revise the proposed rule. The Coast Guard notes that MRC's proposal leaves open the option for a maximum ten-ho window daily period where th Miami River would be obstructed due to construction, and the

bridge contractor's stated commitment to working with Miami River stakeholders to minimize the impact to commercial marine interests, who necessarily rely on larger vessels that require both leaves to be in the vertical (up) position. The bridge owner and contractor indicated in the August 21, 2002 meeting that they required one hour at either end of their work day to set up and then secure. The Coast Guard has determined, based on all comments received, that nine hours is an appropriate maximum window to allow the installation of the Second Avenue Bridge leaves, which necessarily must be done in the horizontal (down) position, thus restricting the Miami River to an approximately 70-foot horizontal navigation clearance.

Changes to the Proposed Rule

After reviewing the comments received from the NPRM, the Coast Guard has revised the proposed rule to allow GSC to keep a single-leaf of the bridge in the horizontal (down) position nine hours each day except Wednesdays, starting three hours after one of the two daily high tides, generally the first daily high tide. The COTP will review and broadcast the bridge schedule. The bridge owner has agreed to publish the schedule each week, with a proposed schedule for the following week. In addition, tugs and tugs with tows will be exempt from the rush hour curfews on the drawbridges from the mouth of the Miami River to and including the N.W. 27th Avenue Bridge, except the new Second Avenue Bridge.

The bridge owner and contractors' requested revision includes two separate time windows of approximately six weeks each when they would install the two bridge leaves. The bridge contractor anticipates approximately one month between the two time windows. During the approximately one month period between the two construction windows, the Coast Guard does not anticipate the need to approve any schedule that requires the Second Avenue Bridge to impede navigability on the Miami River. The Coast Guard is also allowing an additional comment period and may change this rule based on comments received, and will terminate the rule early if construction is completed early.

This temporary rule incorporates the changes requested by the bridge owner and contractor, those recommended by the MRC as the State of Florida legislated clearinghouse for Miami River issues, and some requested changes from the Miami River Group as a representative entity of stakeholders on the Miami River. The Coast Guard regulates bridges across waterways to provide for the "reasonable needs of navigation." The Coast Guard must ensure the public right of navigation is preserved while maintaining a reasonable balance between the competing needs of land and waterborne modes of transportation. The Coast Guard strives to promote and expedite projects that facilitate commerce and provide for the reasonable needs of present and prospective land and marine transportation. In this temporary rule the Coast Guard meets the reasonable needs of navigation while still permitting the construction of the Second Avenue Bridge, which will ultimately assist with navigation and the movement of vessel commerce on the Miami River. This temporary rule reduces the Second Avenue Bridge single leaf operations to not more than nine hours per day, six days a week. The Coast Guard may also allow minor deviations to the nine-hour maximum single leaf operation if large vessel traffic will not be affected by the deviation. Expansion of the construction windows through minor deviations should expedite bridge construction ultimately reducing the length of time that large commercial navigation will be potentially obstructed.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because this rule requires a multi-interest coordinated schedule based on the high tides that provides for fifteen hours of daily unobstructed vessel flow on the Miami River and use of at least part of both high tides by vessel traffic, the Miami River will be unimpeded by the Second Avenue Bridge on Wednesdays (the busiest day for cargo shipping on the River), approximately seventy feet of horizontal clearance be available twenty four hours each day (although short periods of under one hour with less horizontal clearance are possible due to temporary safety hazards), and the rule only temporarily restricts the waterway.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard has considered whether this rule will have a significant economic effect upon a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because this rule requires a multi-interest coordinated schedule based on the high tides that provides for fifteen hours of daily unobstructed vessel flow on the Miami River and use of at least part of both high tides by large vessel traffic, the Miami River will be unimpeded by the Second Avenue Bridge on Wednesdays (the busiest day for cargo shipping on the River), approximately seventy feet of horizontal clearance will be available twenty four hours each day (although short periods of under one hour with less horizontal clearance are possible due to temporary safety hazards), and the rule only temporarily restricts the waterway.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard has created an additional comment period for this temporary rule, and is particularly interested in comments describing specific economic impacts to small entities. This will allow the Coast Guard to better evaluate impacts to small entities. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Execute Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard has considered the environmental impact of this action and has concluded that under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket we have indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.305 [Suspended]

2. From 12:01 a.m. October 7, 2002 until 11:59 p.m. on January 27, 2003, temporarily suspend § 117.305.

3. From 12:01 a.m. October 7, 2002 until 11:59 p.m. on January 27, 2003, add a new § 117.T306 to read as follows:

§ 117.T306 Miami River, Florida.

(a) The draws of each bridge from the mouth of the Miami River to and including N.W. 27th Avenue bridge, mile 3.7 at Miami, but excluding the new Second Avenue bridge, mile 0.5, Miami, Florida, shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday except Federal holidays, the draws need not open for the passage of vessels other than public vessels of the United States, tugs and tugs with tows, and vessels in an emergency involving danger to life or property, which shall be passed at any time.

(b) The new Second Avenue Bridge, mile 0.5, Miami Florida, need open only a single-leaf of the bridge nine (9) hours per day, starting three (3) hours after one of the two high tides, every day except Wednesday. The Captain of the Port of Miami will review and announce a weekly schedule coordinated between the bridge contractor and tugboat operators on the Miami River. At all other times, including all day on Wednesdays, the bridge will open on signal.

Dated: October 1, 2002.

James S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 02–25930 Filed 10–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR part 117

[CGD01–02–020]

RIN 2115–AE47

Drawbridge Operation Regulations: Mystic River, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has changed the drawbridge operation regulations that govern the S99 Alford Street Bridge, mile 1.4, across the Mystic River at Boston, Massachusetts. This final rule will allow the bridge to open on an advance notice from 3 p.m. to 7 a.m., November through March, when there have been few requests to open the bridge. This action is expected to relieve the bridge owner from the burden of crewing the bridge during the winter months at night when there have been few requests to open the bridge.

DATES: This rule is effective November 12, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–02–020) and are

available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 3, 2002, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Mystic River, Massachusetts, in the **Federal Register** (67 FR 44582). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The S99 Alford Street Bridge has a vertical clearance of 7 feet at mean high water and 16 feet at mean low water.

The existing regulations for the bridge listed at § 117.609, require the bridge to open on signal from 7 a.m. to 11 p.m.; except that, Monday through Saturday, excluding holidays, the draw need not open for the passage of vessel traffic from 7:45 a.m. to 9 a.m., 9:10 a.m. to 10 a.m., and 5 p.m. to 6 p.m. From 11 p.m. to 7 a.m., at least an eight hour advance notice is required for bridge openings.

The bridge owner, the City of Boston, asked the Coast Guard to change the drawbridge operation regulations to allow the bridge to open on signal, from November 1 through March 31, between 7 a.m. and 3 p.m. In addition, all opening requests between 3 p.m. and 7 a.m. shall require an eight hour advance notice.

The number of bridge openings November through March, from 3 p.m. to 7 a.m., for the last two years were 11 requests in 2000, and 5 requests in 2001.

The Coast Guard believes it is reasonable to allow the bridge owner to not be required to crew this bridge during the 3 p.m. to 7 a.m. shift in the winter months as a result of the low number of requests to open the bridge during that time period. We also believe the eight hour advance notice is appropriate and will meet the reasonable needs of navigation. It will allow any vessel the opportunity to transit the bridge provided they give the required advance notice.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and as a result, no changes have been made to this final rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

This conclusion is based on the fact that the bridge will open at all times for the passage of vessel traffic provided the eight hour notice is given.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the bridge will open at all times for the passage of vessel traffic provided the eight hour notice is given.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.609 is revised to read as follows:

§ 117.609 Mystic River

(a) The draw of the S99 Alford Street Bridge, mile 1.4, shall open on signal; except that, Monday through Saturday, excluding holidays, the draw need not open for the passage of vessel traffic from 7:45 a.m. to 9 a.m., 9:10 a.m. to 10 a.m., and 5 p.m. to 6 p.m., daily. From November 1 through March 31, between 3 p.m. and 7 a.m., at least an eight-hour advance notice is required for bridge openings by calling the number posted at the bridge.

(b) The draw of the Wellington Bridge, mile 2.5, need not open for the passage of vessel traffic.

Dated: October 3, 2002.

J.L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 02–26007 Filed 10–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–023]

RIN 2115–AA97

Safety and Security Zone; Liquefied Natural Gas Carrier Transits and Anchorage Operations, Boston, Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing safety and security zones for liquefied natural gas carrier (LNGC) vessels and a liquefied natural gas facility within the Boston Captain of the Port Zone. Entry into or movement within these zones is prohibited without prior authorization from the Captain of the Port (COTP), Boston, MA. These zones are needed to safeguard the LNGC vessels and Liquid Natural Gas (LNG) facility, the public and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature, and are needed to protect persons, vessels and others in the maritime community from the safety hazards associated with the transit and limited maneuverability of an LNGC vessel.

DATES: This rule is effective November 12, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD01–02–023] and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA 02109 between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Daniel Dugery, Marine Safety Office Boston, Waterways Security and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 26, 2002, we published a notice of proposed rulemaking (NPRM) entitled Safety and Security Zone; Liquefied Natural Gas Carrier (LNGC) Transits and Anchorage Operations, Boston, Marine Inspection Zone and Captain of the Port Zone in **Federal Register** (67 FR 48834). We received 1 letter commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

In light of the terrorist attacks in New York City and Washington, DC on September 11, 2001, safety and security zones are being established to safeguard the LNGC vessels and LNG facilities, the public, and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature, and to protect persons, vessels and others in the maritime community from the hazards associated with the transit and limited maneuverability of a LNGC vessel. These safety and security zones prohibit entry into or movement within the specified areas.

This rule establishes safety and security zones around LNGC vessels while the vessels are anchored in the waters of Broad Sound or moored at the Distrigas facility in Everett, MA. This rule also creates a moving safety zone around any LNGC vessel within navigable waters of the United States in the COTP Boston zone, as defined in 33 CFR 3.05–10. Under the Ports and Waterways Safety Act, navigable waters of the United States include all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988. This Presidential Proclamation declared that the territorial sea of the United States extends to 12 nautical miles from the baseline of the United States determined in accordance with international law.

The Captain of the Port anticipates some impact on vessel traffic due to this regulation. However, the safety and security zones are deemed necessary for the protection of life and property within the COTP Boston zone.

Discussion of Comments and Changes

The only comment received on this rulemaking commended the Coast Guard on protecting the LNGCs entering the port. In light of this comment and the lack of additional comments, no changes have been made to this rule.

Discussion of Rule

Safety and Security Zones

This rule establishes three safety and security zones with identical boundaries, within the COTP Boston zone. The first safety and security zones

are all waters of Broad sound within a 500 yard radius of any anchored LNGC vessel located within an area bounded by a line starting at position 42°25′ N, 070°58′ W; then running southeast to position 42°22′ N, 070°56′ W; then running east to position 42°22′ N, 070°50′ W; then running north to position 42°25′ N, 070°50′ W; then running west back to the starting point. The second safety and security zones are all waters of the Mystic River within a 400-yard radius of any LNGC vessel moored at the Distrigas LNG facility in Everett, MA. Finally, except as enumerated above, safety and security zones will be two miles ahead and one mile astern, and 500 yards on each side of any LNGC vessel underway within the COTP Boston zone. All coordinates are NAD 83.

This rulemaking replaces the established safety zone listed at 33 CFR 165.110. That safety zone does not provide the current necessary level of protection. Section 165.110 recognizes the safety concerns with transits of LNGC vessels, but is inadequate to protect LNGC vessels from possible terrorist attack, sabotage or other subversive acts. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. Due to the flammable nature of LNGC vessels and impact the ignition of this cargo could have on the port of Boston and surrounding areas, increased protection of these vessels and the Distrigas facility is necessary.

This rulemaking provides increased protection for LNGC vessels moored at the Distrigas facility and establishes protection for the vessels in Broad Sound. It also provides continuous protection for LNGC vessels 2 miles ahead, 1 mile astern, and 500-yards on each side of an LNGC vessel anytime a vessel is underway within the COTP Boston zone, rather than limiting this protection to the limits of the Boston Main Ship Channel while a vessel is transiting Boston Harbor and Boston North Channel (as the previous zone in § 165.110).

The increased protection provided in this rule also recognizes the safety concerns associated with an unloaded LNGC vessel. 33 CFR 165.110 only establishes safety zones around loaded LNG tank vessels or while these vessels are transferring their cargo. This rule establishes safety and security zones around any LNGC vessel, loaded or unloaded, while anchored in Broad Sound, at the Distrigas facility pier, and any time a LNGC vessel is located in the Boston Marine Inspection Zone and Captain of the Port Zone, including the internal waters and out to 12 nautical miles from the baseline of the United States. These zones provide necessary protection to unloaded vessels, which continue to pose a safety and security risk if unprotected. This rulemaking also recognizes the continued need for safety zones around LNGC vessels, which are necessary to protect persons, facilities, vessels and others in the maritime community, from the hazards associated with the transit and limited maneuverability of a LNGC vessel laden with LNG or residual cargo.

No person or vessel will be able to enter or remain in these safety and security zones at any time without the permission of the Captain of the Port. Each person or vessel in a safety and security zone will be required to obey any direction or order of the Captain of the Port. The Captain of the Port will be able to take possession and control of any vessel in a security zone and remove any person, vessel, article or thing from a security zone. No person will be able to board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port. These regulations are issued under authority contained in 50 U.S.C. 191, 33 U.S.C. 1225, 1226, and 1231.

Any violation of any safety or security zone described herein, is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

There may be some adverse effects on the maritime community by this rule, but those effects will be minimized by: the minimal time that vessels will be restricted from the areas, the ample room for vessels to navigate around the zones in Broad Sound and, in most portions of the navigable waters of the United States, the fact that vessels can transit ahead, behind, or after the passage of LNGC vessels. In addition, vessels will be able to request permission from the Captain of the Port or representatives on scene to pass through the zones, and advance notifications will be made to the local maritime community by marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Broad Sound or Boston Harbor. For the reasons enumerated in the Regulatory Evaluation section above, in addition to the fact that small entities have been operating in the Captain of the Port Boston, MA, Zone under a similar regulation for over 18 years, these safety and security zones will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization will be affected by this rule and you have questions concerning its provisions or options for compliance, please call Chief Daniel Dugery, at (617) 223–3000. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comments on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

The Coast Guard analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those costs. This rule does not impose an unfunded mandate.

Taking of Private Property

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Security Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to security that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine security, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Revise § 165.110 to read as follows:

§ 165.110 Safety and Security Zone; Liquefied Natural Gas Carrier Transits and Anchorage Operations, Boston, Massachusetts.

(a) *Definition.* For purposes of this section, navigable waters of the United States includes all waters of the territorial sea as described in Presidential Proclamation No. 5928 of December 27, 1988. Presidential Proclamation No. 5928 of December 27, 1988 declared that the territorial sea of the United States extends to 12 nautical miles from the baseline of the United States.

(b) *Location.* The following areas are safety and security zones:

(1) *Vessels underway.* All navigable waters of the United States within the Captain of the Port (COTP) Boston zone, as defined in 33 CFR 3.05–10, two miles ahead and one mile astern, and 500 yards on each side of any liquefied natural gas carrier (LNGC) vessel while underway.

(2) *Vessels anchored in the Broad Sound.* All waters within a 500-yard radius of any anchored LNGC vessel located in the waters of Broad Sound bounded by a line starting at position 42 deg. 25′ N, 070 deg. 58′ W; then running southeast to position 42 deg. 22′ N, 070 deg. 56′ W; then running east to position 42 deg. 22′ N, 070 deg. 50′ W; then running north to position 42 deg. 25′ N, 070 deg. 50′ W; then running west back to the starting point (NAD 83).

(3) *Vessels moored at the Distrigas LNG facility.* All waters within a 400-yard radius of any LNGC vessel moored at the Distrigas LNG facility in Everett, MA.

(c) *Regulations.* (1) In accordance with the general regulations in Sec. 165.23 and Sec. 165.33 of this part, entry into or movement within these zones is prohibited unless authorized by the Captain of the Port Boston, or his/her authorized representative.

(2) All vessel operators shall comply with the instructions of the COTP or his/her designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, State, and Federal law enforcement vessels.

(3) No person may enter the waters within the boundaries of the safety and security zones in this section unless previously authorized by the Captain of the Port, Boston, or his/her authorized patrol representative.

Dated: September 24, 2002.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–25794 Filed 10–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–227]

RIN 2115–AA97

Safety and Security Zones; High Interest Vessels—Boston Harbor, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing safety and security zones for vessels determined to be in need of a Coast Guard escort by the Captain of the Port (COTP), Boston. The safety and security zones close all waters of Boston Harbor one thousand (1000) yards ahead and astern and one hundred (100) yards on each side of an escorted vessel (EV) in transit. The zone prohibits entry into or movement within this portion of the COTP Boston zone without COTP authorization. The safety and security zone is needed to safeguard the vessels, the public, and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature. The zones will prohibit entry into or movement within this portion of the COTP Boston zone without COTP authorization.

DATES: This final rule is effective November 12, 2002.

ADDRESSES: Documents as indicated in this preamble are part of docket CGD01–01–227 and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Daniel Dugery, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 29, 2002, we published "Interim rule with request for comments" in the **Federal Register** (67 FR 20909). As of the end of the comment period, June 28, 2002, the Coast Guard has not received additional comments on this rule. No additional public hearings were requested, and none were held. Public comments received in response to the NPRM, published on January 18, 2002 at 67 FR 2614, were incorporated into the interim final rule. No comments were received on the interim final rule and, therefore, no changes have been made in this final rule

Background and Purpose

The September 11, 2001 terrorist attacks on New York City and Washington, DC inflicted catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks are likely. Due to these heightened security concerns, safety and security zones are necessary for vessels that may be targets of terrorist acts. This final rule establishes safety and security zones for vessels the Captain of the Port (COTP) Boston determines are in need of a Coast Guard escort.

Discussion of Comments and Changes

In the interim rule with requests for comments (67 FR 20909), the Coast Guard incorporated 22 comments from the public regarding this proposal. All comments received were considered in the development of this Final Rule. As of June 28, 2002 no additional changes have been proposed

Regulatory Evaluation

This final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this final rule will prevent some traffic from moving within a portion of Boston Harbor during EV transits, the effect of this regulation will not be significant due to the minimal time that vessels will be restricted from the area; vessels can pass safely around the zones at most points in the Harbor; vessels will only have to wait a short time for the EV to pass if they cannot safely pass outside the zones; and advance notifications will be made to the local maritime community by marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Boston Harbor during EV transits. This final rule will not have a significant economic impact on a substantial number of small entities due to the minimal time that vessels will be restricted from the area of the zones; vessels can pass safely around the zones at most points in Boston Harbor; vessels will only have to wait a short time for the EV to pass if they cannot safely pass outside the zones; and advance notifications will be made to the local maritime community by marine information broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Daniel Dugery at the address listed under **ADDRESSES.**

Collection of Information

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this final rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Accordingly, the interim rule amending 33 CFR part 165 which was published at 67 FR 20909 on April 29, 2002, is adopted as a final rule with the following change:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.

2. Revise § 165.114(b) to read as follows:

§ 165.114 Safety and Security Zones: Escorted Vessels—Boston Harbor, Massachusetts.

* * * * *

(b) *Escorted vessel definition.* For the purposes of this section, escorted vessels operating in Boston Harbor include the following: Any vessels deemed to be in need of escort protection by the Captain of the Port, Boston for security reasons.

* * * * *

Dated: September 24, 2002.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–25793 Filed 10–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–02–117]

RIN 2115–AE46

Special Local Regulations; Columbus Day Regatta, Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being established for the Columbus Day Regatta. The event will be held from 9 a.m. to 5 p.m. on October 12 and 13, 2002 in Biscayne Bay, Miami, Florida. These regulations create a regulated area that limits the movement of non-participant vessels and are needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 9 a.m. on October 12, 2002 until 5 p.m. on October 13, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD07–02–117] and are available for inspection or copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 7:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BMC Victor Sorensen, Coast Guard Group Miami at (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM, which would incorporate a comment period before a final rule was issued, would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public due to the high volume of vessel traffic and risk of collision posed by the approximately 500 participant vessels, the approximately 50 spectator vessels, and the several hundred vessels which congregate annually for Columbus Day in Biscayne Bay.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

Columbus Day Regatta, Inc., is sponsoring a sailboat race with approximately 500 sailboats, ranging in length from 20 to 60 feet participating in the event. The race will take place in Biscayne Bay from Dinner Key to Soldier Key on October 12 and 13, 2002. There will also be approximately 50 spectator craft and several hundred additional vessels in the area for an annual Columbus Day gathering. These regulations are intended to promote safe navigation on the waters of Biscayne Bay by controlling the traffic in the regulated area.

Discussion of Rule

This rule creates a regulated area and prohibits non-participant persons and vessels from entering the regulated area without the permission of the Coast Guard Patrol Commander. The regulated area encompasses all waters bound by a line connecting the following points:

Beginning with the point at 25°43.399′N, 080°12.500′W; thence to 25°43.399′N, 080°10.500′W; thence to 25°33.000′N, 080°11.500′W; thence to 25°33.000′N, 080°15.900′W; thence to 25°40–000′N, 080°15.000′W and then returning to the starting point.

All coordinates are North American Datum 1983.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary because entry into the regulated area is prohibited for a limited time and vessels may be allowed to enter the regulated area with permission of the Coast Guard Patrol Commander.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the regulations will only be in effect for two days in an area of limited commercial traffic and the Coast Guard Patrol Commander may permit vessels to enter the regulated area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may contact the person listed under **FOR MORE INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.lD, that this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

33 CFR PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46.

2. A new temporary § 100.35T–07–117 is added to read as follows:

§ 100.35T–07–117 Columbus Day Regatta, Biscayne Bay, Miami, FL.

(a) *Regulated area.* A regulated area is established for the Columbus Day Regatta, Biscayne Bay, Miami Florida. The regulated area encompasses all waters bound by a line connecting the following points:

Beginning with the point at 25°43.399′N, 080°12.500′W; thence to 25°43.399′ N, 080°10.500′ W; thence to 25°33.000′ N, 080°11.500′ W; thence to 25°33.000′ N, 080°15.900′ W; thence to 25°40–000′ N, 080°15.000′ W, and then returning to the starting point.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Coast Guard Station Miami Beach.

(c) *Special local regulations.* (1) Entry into the regulated area by non-participant persons or vessels is prohibited unless authorized by the Coast Guard Patrol Commander.

(2) At the completion of scheduled races and exhibitions, and departure of participants from the regulated area, the Coast Guard Patrol Commander may permit traffic to resume normal operations.

(3) Between scheduled racing events, the Coast Guard Patrol Commander may permit traffic to resume normal operations for a limited time.

(4) A succession of not fewer than 5 short whistle or horn blasts from a Coast Guard patrol vessel will be the signal for any and all vessels to take immediate steps to avoid collision.

(d) *Dates.* This section is effective from 9 a.m. on October 12 until 5 p.m. October 13 2002.

Dated: October 2, 2002.

James S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 02–25931 Filed 10–10–02; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1201

RIN 3095–AA77

Debt Collection

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration (NARA) is adopting as final regulations governing the collection of debts owed to it and other Federal agencies. Federal agencies are required to try to collect debts owed to the Federal Government. These regulations describe actions that NARA may take to collect debts, and apply, with certain exceptions, to any person or entity. These regulations also provide that NARA may enter into a cross-servicing agreement with the U.S. Department of the Treasury (Treasury) under which the Treasury will take authorized action to collect amounts owed to NARA.

EFFECTIVE DATE: This rule is effective on August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301–713–2902 or fax number 301–713–0319.

SUPPLEMENTARY INFORMATION: The interim rule was published in the July 5, 2002, **Federal Register** (67 FR 44757) for a 60-day comment period. NARA did not receive any comments. Therefore, NARA is adopting the interim rule as final without change. This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications. This rule is not a major rule.

List of Subjects in 36 CFR Part 1201

Administrative practice and procedure, Claims, Debts, Government employees, Wages.

PART 1201—COLLECTION OF CLAIMS

Accordingly, the interim rule adding 36 CFR part 1201 which was published at 67 FR 44757 on July 5, 2002, is adopted as a final rule without change.

Dated: October 4, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–25971 Filed 10–10–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1254

RIN 3095–AB14

Researcher Identification Cards

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is revising the general regulations concerning availability of records and donated historical materials to change the time period researcher identification cards are valid. NARA is reducing the valid time period to increase NARA's ability to obtain accurate address and telephone information. This will allow NARA to contact researchers if necessary and will ensure better protection of NARA's holdings, buildings, personnel, and the public. This final rule will affect individuals who do research in archival materials at NARA facilities.

EFFECTIVE DATE: November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis Heaps on 301–837–1801 or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the July 10, 2002, **Federal Register** (67 FR 45684) for a 60-day public comment period. NARA notified several researcher organizations of the availability of the proposed rule. A copy of the proposed rule was also posted on the NARA Web site.

NARA received no comments on the proposed rule. The final rule is published without change. The rule will apply to researcher identification cards issued on or after the effective date. Cards issued prior to that date will remain valid for the period indicated on the card.

This final rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it applies only to individuals. This rule has no federalism or tribalism implications. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

List of Subjects in 36 CFR Part 1254

Archives and records, Confidential business information, Freedom of information, Micrographics.

For the reasons set forth in the preamble, NARA amends part 1254 of title 36, Code of Federal Regulations, as follows:

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

1. The authority citation for part 1254 continues to read as follows:

Authority: 44 U.S.C. 2101–2118; 5 U.S.C. 552; and E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

2. Revise § 1254.6(a) to read as follows:

§ 1254.6 Researcher identification card.

(a) An identification card is issued to each person whose application is approved to use records other than microfilm. Cards are valid for 1 year and may be renewed upon application. Cards issued at one NARA facility are valid at each facility, except as described in paragraph (b) of this section. They are not transferable and must be presented if requested by a guard or research room attendant.

* * * * *

Dated: October 4, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–25972 Filed 10–10–02; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN144–1a; FRL–7390–3]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to Particulate Matter (PM) control requirements for certain natural gas combustion sources in Indiana. EPA is also approving various cleanup revisions to Indiana's PM rules and contingency measures for the Lake County, Indiana PM nonattainment area. The Indiana Department of Environmental Management (IDEM) submitted these revisions to Title 326 of the Indiana Administrative Code. Section 6–1 (326 IAC 6–1) as a requested revision to the Indiana State Implementation Plan (SIP) on December 19, 2001. The requested SIP revision eliminates PM emissions limits on certain natural gas combustion sources in specified counties, and replaces the limits with a requirement that such sources may only burn natural gas. The requested SIP revision also contains many cleanup provisions such as eliminating limits for sources which have shut down and updating names of sources. Third, the requested SIP revision adds PM contingency measures for the Lake County, Indiana PM nonattainment area.

DATES: This rule is effective on December 10, 2002, unless EPA receives relevant adverse written comments by November 12, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at:

Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Matthew Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we", "us", or "our" are used we mean EPA.

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III. What are the environmental effects of this action?
IV. EPA rulemaking action.
V. Administrative requirements.

I. What Is the EPA Approving?

EPA is approving changes to 326 IAC 6–1 as a revision to the Indiana SIP. These changes eliminate PM emissions limits on certain natural gas combustion sources, and replace the limits with a requirement that such sources may only burn natural gas. The changes also contain many cleanup provisions such as eliminating limits for sources which have shut down and updating names of sources. Third, the changes add PM contingency measures for the Lake County, Indiana PM nonattainment area.

a. Provisions for Natural Gas Combustion Sources

Revised 326 IAC 6–1–1(c) states that PM limitations shall not be established for combustion units that burn only natural gas at sources or facilities identified in sections 8.1, 9, and 12 through 18 of the rule, as long as the units continue to burn only natural gas.

This revision replaces PM limitations on gas fired combustion units with the requirement that they only burn natural gas. Since natural gas combustion sources generally have very low PM emissions, enforcement of the "natural gas only" requirement will ensure that these units do not emit PM in excess of what would have been required under the previously approved rules.

Since this revised rule does not allow increased emissions over the current version, this change is not expected to have an adverse effect on air quality. Therefore, we are approving this requested SIP revision.

b. Cleanup Revisions

These revisions affect 326 IAC 6–1–1 through 6–1–6, and 6–1–8.1 through 6–1–18. They generally consist of minor wording changes, updating of source and facility names, and elimination of reference to sources or facilities which have ceased operations. While these changes will not result in a decrease in actual PM emissions, removal of sources and facilities which have shut down will result in a decrease in the emissions allowed under the rules.

c. Continuous Compliance Plan Requirements

In addition, IDEM has submitted "Continuous Compliance Plan" provisions in 326 IAC 6–1–10.1(l–v). These provisions have been a part of the State rules since 1993, but have not previously been submitted for EPA approval. These provisions required certain large sources in Lake County to submit "Continuous Compliance Plans" to the Indiana Department of Environmental Management by December 10, 1993. The plans were to contain documentation on operation and maintenance practices, a compliance schedule, and various recordkeeping requirements. The Continuous Compliance Plan provisions also contain 20% 3-minute average opacity limits on disposal and reclamation on iron and steel; maintenance of process vessels; and steel scrap burning or cutting and oxygen lancing operations. Approval of these regulations will strengthen the existing SIP.

These revisions improve the rule and have no impact on previously approved emissions limitations. Therefore, we are approving these requested SIP revisions.

d. Contingency Measures

Indiana has established certain PM contingency measures in 326 IAC 6–1–11.2. The contingency measures require emissions reductions from Lake County sources which are "culpable" for an exceedance of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). Culpability is defined as a contribution of 25 $\mu g/m^3$ for a source (entire plant) or 5 $\mu g/m^3$ for a facility (individual emissions unit). If there is a violation of either the 24-hour average (150 $\mu g/m^3$) or annual average (50 $\mu g/m^3$) PM_{10} NAAQS, culpable sources and facilities will be required to submit reduction measures to reduce actual PM_{10} emissions by 25%. Contributions are to be determined by the Indiana Department of Environmental Management.

Please note that we are making no determination at this time as to whether these contingency measures meet applicable Clean Air Act requirements, but we are approving the submitted contingency measures for the strengthening effect they will have on the SIP.

II. Analysis of the Requested SIP Revision

This SIP revision will not result in an increase in PM emissions, and several components of the revision will have a strengthening effect on the SIP, as discussed above. Therefore, we are approving the requested SIP revision.

III. What Are the Environmental Effects of This Action?

Since this SIP revision does not relax any emissions limits it will not have an adverse effect on PM air quality. The elimination of limits on sources which have shut down will result in lower overall allowed emissions of PM. Also, approval of the Continuous Compliance Plan provisions and the Lake County Contingency Measures will strengthen the SIP.

IV. EPA Rulemaking Action

We are approving, through direct final rulemaking, revisions to PM control requirements for natural gas combustion sources in Indiana, as well as various cleanup revisions to Indiana's PM rules and contingency measures for the Lake County, Indiana PM_{10} nonattainment area. We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless we receive relevant adverse written comment by November 12, 2002. Should we receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action will be effective on December 10, 2002.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 10, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: September 19, 2002.

William E. Muno,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(152) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(152) On December 19, 2001, Indiana submitted revised Particulate Matter (PM) control requirements for certain natural gas combustion sources in Indiana, as well as various cleanup revisions to Indiana's PM rules and contingency measures for the Lake County, Indiana PM_{10} nonattainment area. The submittal eliminates PM emissions limits on natural gas combustion sources and replaces the limits with a requirement that such sources may only burn natural gas. The submittal also contains many cleanup provisions such as eliminating limits for sources which have shut down and updating names of sources. Third, the requested State Implementation Plan revision adds PM contingency measures for the Lake County, Indiana PM nonattainment area. (i) Incorporation by reference. Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: Nonattainment Area Limitations, Section 1: Applicability, Section 1.5: Definitions, Section 2: Particulate emission limitations; fuel combustion steam generators, asphalt concrete plant, grain elevators, foundries, mineral aggregate operations; modification by commissioner, Section 3: Nonattainment area particulate limitations; compliance determination, Section 4: Compliance schedules, Section 5: Control strategies, Section 6: State Implementation Plan revisions, Section 8.1: Dearborn County particulate matter emissions limitations, Section 9: Dubois County, Section 10.1: Lake County PM^{10} emission requirements, Section 11.1: Lake County fugitive particulate matter control requirements, Section 11.2: Lake County particulate matter contingency measures, Section 12: Marion County, Section 13: Vigo County, Section 14: Wayne County, Section 15: Howard County, Section 16: Vanderburgh County, Section 17: Clark County, and Section 18: St. Joseph County. Added at 25 In. Reg. 709, Effective December 8, 2001.

[FR Doc. 02–25854 Filed 10–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV 047—6021a; FRL–7391–3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; To Prevent and Control Air Pollution From the Operation of Hot Mix Asphalt Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the West Virginia State Implementation Plan (SIP). These revisions establish emission limitations for hot mix asphalt plants. The revision to this rule will streamline the requirements to specify standards for opacity and particulate test methods. This revision will also clarify the relationship between the New Source Performance Standards and the West Virginia Office of Air Quality's permit requirements for hot mix asphalt plants. EPA is approving this revision to the SIP in accordance with the Clean Air Act.

DATES: This rule is effective on December 10, 2002 without further notice, unless EPA receives adverse written comment by November 12, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Walter K. Wilkie, Acting Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Janice Lewis, (215) 814–2185, or by e-mail at *Lewis.Janice@epa.gov*. Please note any comments on this rule must be submitted in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On September 21, 2000, the West Virginia Division of Environmental Protection submitted a revision to its SIP to address the requirements for the Operation of Hot Mix Asphalt Plants. The revision consists of the adoption of Rule 45CSR3—To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants.

A. Summary of the SIP Revisions

This revision restructures and reorganizes Regulations 45CSR3, governing the prevention and control air pollution from the operation of hot mix asphalt plants. This revision specifies standards for opacity and particulate test methods. This revision also changes the opacity standard during start-up and shutdown from 60% to 40% with averaging of emissions using approved EPA test methods.

B. EPA's Evaluation of the SIP Revisions

The EPA has determined that this revision to 45CSR3—To Prevent and Control Air Pollution From the Operation of Hot Mix Asphalt Plants meet all Federal criteria for approval.

II. Final Action

EPA is approving West Virginia's Rule 45CSR3, submitted as a SIP revision on September 21, 2000, into the West Virginia SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 10, 2002 without further notice unless EPA receives adverse comment by November 12, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 10, 2002. Filing a petition for reconsideration by the Administrator of this final rule approving revisions to West Virginia's regulation to prevent and control air pollution from the operation of hot mix asphalt plants does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 30, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(48) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(48) Revisions to West Virginia Rule 45CSR3 submitted on September 21, 2000, by the West Virginia Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000, from the Secretary of the West Virginia Department of Environmental Protection, pertaining to Regulation 45CSR3—To Prevent and Control Air Pollution from the Operating of Hot Mix Asphalt Plants.

(B) Revised Regulation 45CSR3, effective August 31, 2000.

(ii) Additional Material—Other materials submitted by the State of West Virginia in support of and pertaining to Rules 45CSR3 listed in paragraph (c)(48)(i)of this section.

[FR Doc. 02–25852 Filed 10–10–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7793]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this

rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Program Marketing and Partnership Division, Federal Insurance and Mitigation Administrator, 500 C Street, SW.; Room 435, Washington, DC 20472, (202) 646–3443.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management programs aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Maine: Brighton Plantation, Somerset County.	230538	April 25, 1975, Emerg.; April 30, 1984, Reg; October 4, 2002.	October 4, 2002	October 4, 2002
Region IV				
Georgia: White County, Unincorporated Areas.	130191	November 9, 1987, Emerg.; September 1, 1989, Reg; October 18, 2002	October 18, 2002	October 18, 2002
Region V				
Illinois:				

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Andalusia, Village of, Rock Island County.	170583	February 18, 1975, Emerg.; January 20, 1982, Reg; October 18, 2002.	.....do	Do.
Carbon Cliff, Village of, Rock Island County.	170584	May 23, 1975, Emerg.; June 1, 1982, Reg; October 18, 2002.	.....do	Do.
Coal Valley, Village of, Rock Island County.	170585	September 26, 1974, Emerg.; December 4, 1979, Reg; October 18, 2002.	.....do	Do.
Cordova, Village of, Rock Island County.	170586	April 18, 1975, Emerg.; December 1, 1981, Reg; October 18, 2002.	.....do	Do.
East Moline, City of, Rock Island County.	170587	March 5, 1976, Emerg.; October 15, 1982, Reg; October 18, 2002.	.....do	Do.
Hampton, Village of, Rock Island County.	170588	May 29, 1975, Emerg.; January 6, 1982, Reg; October 18, 2002.	.....do	Do.
Hillsdale, Village of, Rock Island County.	170589	February 11, 1974, Emerg.; July 19, 1982, Reg; October 18, 2002.	.....do	Do.
Milan, Village of, Rock Island County.	170590	April 3, 1975, Emerg.; March 18, 1980, Reg; October 18, 2002.	.....do	Do.
Moline, City of, Rock Island County.	170591	March 4, 1975, Emerg.; February 1, 1980, Reg; October 18, 2002.	.....do	Do.
Port Byron, Village of, Rock Island County.	170592	October 2, 1974, Emerg.; September 2, 1981, Reg; October 18, 2002.	.....do	Do.
Rapids City, Village of, Rock Island County.	170593	April 1, 1975, Emerg.; January 6, 1982, Reg; October 18, 2002.	.....do	Do.
Reynolds, Village of, Rock Island County.	170883	March 24, 1998, Emerg.; October 18, 2002 October 18, 2002.	.....do	Do.
Rock Island, City of, Rock Island County.	175171	July 9, 1971, Emerg.; June 9, 1972, Reg; October 18, 2002.	.....do	Do.
Rock Island County, Unincorporated Areas.	170582	May 14, 1971, Emerg.; August 2, 1982, Reg; October 18, 2002.	.....do	Do.
Silvis, City of, Rock Island County.	170595	April 27, 1979, Emerg.; September 19, 1983, Reg; October 18, 2002.	.....do	Do.
Region VIII				
Missouri: Greene County, Unincorporated Areas.	290782	April 15, 1975, Emerg.; June 15, 1983, Reg; October 18, 2002.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 3, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance Administration and Mitigation Administration.

[FR Doc. 02–25959 Filed 10–10–02; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–D–7529]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt

or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida:					
Seminole	City of Altamonte Springs.	May 1, 2002, May 8, 2002, *The Orlando Sentinel*	Mr. Phillip D. Penland, Manager of the City of Altamonte Springs, 225 Newburyport Avenue, Altamonte Springs, Florida 32701.	Aug. 7, 2002	120290 E
Seminole	City of Altamonte Springs.	Aug. 30, 2002, Sep. 6, 2002, *The Orlando Sentinel.*	Mr. Phillip D. Penland, Manager of the City of Altamonte Springs, 225 Newburyport Avenue, Altamonte Springs, Florida 32701.	Dec. 6, 2002	120290 E
Seminole	Unincorporated Areas.	May 1, 2002, May 8, 2002, *The Orlando Sentinel.*	Mr. Kevin Grace, Manager of Seminole County, County Seminole Services Building, 1101 East First Street, Sanford, Florida 32771.	Aug. 7, 2002	120289 E
Seminole	Unincorporated Areas.	Aug. 30, 2002, Sep. 6, 2002, *The Orlando Sentinel.*	Mr. Kevin Grace, Manager of Seminole County, County Seminole Services Building, 1101 East First Street, Sanford, Florida 32771.	Dec. 6, 2002	120289 E
Illinois:					
Kane	Village of Sleepy Hollow.	Aug. 9, 2002, Aug. 16, 2002, *The Courier News.*	Mr. Stephen K. Pickett, Village of Sleepy Hollow President, 1 Thorobred Lane, Sleepy Hollow, Illinois 60118.	Aug. 1, 2002	170331
Kane	Village of West Dundee.	Aug. 9, 2002, Aug. 16, 2002, *The Daily Herald.*	Mr. Larry Keller, Village of West Dundee President, 102 South 2nd Street, West Dundee, Illinois 60118.	Aug. 1, 2002	170335
Maine: Knox	Town of Camden.	Aug. 15, 2002, Aug. 22, 2002, *The Camden Herald.*	Mr. Roger Moody, Manager of the Town of Camden, P.O. Box 1207, Camden, Maine 04843.	July 17, 2002	230074 B
North Carolina: Wake.	Town of Wake Forest.	May 9, 2002, May 16, 2002, *The Wake Weekly.*	The Honorable George C. Mackie, Jr., Mayor of the Town of Wake Forest, 401 Elm Street, Wake Forest, North Carolina 27587.	May 2, 2002	370244 E
Ohio: Franklin	City of Grove City	June 5, 2002, June 12, 2002, *Grove City Record.*	The Honorable Cheryl Grossman, Mayor of the City of Grove City, 4035 Broadway, Grove City, Ohio 43123.	Sep. 11, 2002	390173 G

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: September 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–25961 Filed 10–10–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
CONNECTICUT	
Newtown (Town), Fairfield County (FEMA Docket No. D–7516)	
Pond Brook:	
Approximately 850 feet downstream of Currituck Road	*331
Approximately 440 feet upstream of U.S. Route 6	*403
Maps available for inspection at the Edmond Town Hall, 45 Main Street, Newtown, Connecticut.	
ILLINOIS	
Milan (Village), Rock Island County (FEMA Docket Nos D–7512 and D–7528)	
Eckhart Creek (Zone AO):	
East of Chaney Lane and approximately 500 feet south of Interstate Route 280	#1
Approximately 600 feet north of W 10th Avenue and approximately 450 feet east of 9th Street	#1
Northwest of Missouri Kansas and Texas Railroad and approximately 600 feet south of Interstate Route 280	#1
Rock River:	
Approximately 0.63 mile downstream of Missouri, Kansas, and Texas Railroad	*564
Approximately 530 feet upstream of U.S. Route 67	*564
North Channel Rock River:	
At confluence with Rock River	*564
Approximately 300 feet downstream of the Sears Dam	*564
Maps available for inspection at the Village of Milan Administrative Office, 321 West 2nd Avenue, Milan, Illinois.	
INDIANA	
Carmel (City), Hamilton County (FEMA Docket No. D–7512)	
Cool Creek:	
Approximately 0.975 mile upstream of confluence with West Fork White River	*743
At East 146th Street	*818

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) • Elevation in feet (NAVD)
Hot Lick Creek:	
At confluence with Cool Creek	*770
Approximately 450 feet upstream from confluence with Cool Creek	*770
Little Cool Creek:	
At confluence with Cool Creek	*806
Approximately 150 feet downstream of most upstream crossing of East 136th Street	*845
Little Eagle Creek:	
At county boundary	*861
At West 146th Street	*865
Kirkendall Creek:	
At confluence with Vestal Ditch	*768
At East 146th Street	*770
Mitchener Ditch:	
Approximately 100 feet downstream of Cherry Tree Road	*771
At East 146th Street	*804
Spring Mill Run:	
Approximately 300 feet upstream of confluence with Williams Creek	*794
At confluence with Well Run	*853
Vestal Ditch:	
At confluence with West Fork White River	*746
At East 146th Street	*769
Well Run:	
At confluence with Spring Mill Run	*853
Approximately 1,000 feet downstream of Torrey Pines Circle	*860
Maps available for inspection at the City of Carmel Department of Community Services, 1 Civic Square, Carmel, Indiana.	
Cicero (Town), Hamilton County (FEMA Docket No. D–7510)	
Morse Reservoir:	
Entire shoreline within community	*814
Maps available for inspection at the Cicero Town Hall, 70 North Byron Street, Cicero, Indiana.	
Fishers (Town), Hamilton County (FEMA Docket No. D–7510)	
Mud Creek:	
At East 96th Street	*781
At East 126th Street	*815
Sand Creek:	
At East 106th Street	*785
At Interstate 69	*806
West Fork White River:	
Approximately 1.2 miles downstream of confluence of Britton Branch	*745
Approximately 0.8 mile upstream of confluence of Britton Branch	*748
Britton Branch:	
At confluence with West Fork White River	*746
Approximately 100 feet downstream of State Route 37	*809
Maps available for inspection at the Town of Fishers Administrative Offices, One Municipal Drive, Fishers, Indiana.	
Hamilton County (Unincorporated Areas) (FEMA Docket No. D–7510)	
Mud Creek:	
Approximately 180 feet downstream of East 146th Street	*831
At Atlantic Road	*845
Sand Creek:	
At East 146th Street	*821
At Prairie Baptist Road	*840
Musselman Ditch:	
Approximately 1,400 feet upstream of Promise Road	*780
Approximately 0.5 mile upstream of Victory Chapel Road	*795
Kirkendall Creek:	
At East 146th Street	*770
At Hinkle Road	*821
Vestal Ditch:	
At East 146th Street	*769
Approximately 1,600 feet downstream of East 161st Street	*775
Maps available for inspection at the Hamilton County Government and Judicial Center, One Hamilton County Square, Noblesville, Indiana.	
Noblesville (City), Hamilton County (FEMA Docket No. D–7510)	
Britton Branch:	
Just upstream of Allisonville Road	*751
Just downstream of Norfolk and Western Railroad	*800
Elmwood-Wilson Ditch:	
At confluence with Stony Creek	*756
Approximately 500 feet downstream of State Route 37	*768
Kirkendall Creek:	
Just upstream of abandoned railroad	*785
Just downstream of East 156th Street	*793
Mallery Granger Ditch:	
At confluence with West Fork White River	*765
Approximately 800 feet downstream of East 211th Street	*805
Mill Creek:	
At confluence with Sly Run	*766
Approximately 600 feet upstream of Little Chicago Road	*819
Morse Reservoir:	
Entire shoreline within community	*814
Musselman Ditch:	
At confluence with West Fork White River	*771
Approximately 1,400 feet upstream of Promise Road	*780
Sly Run:	
At confluence with Cicero Creek	*762
At confluence of Sly Run East Fork and Sly Run West Fork	*821
Vestal Ditch:	
Approximately 200 feet downstream of abandoned railroad	*772
Just downstream of East 161st Street	*776
Sly Run East Fork:	
At confluence of Sly Run West Fork	*821
Just downstream of Hinkle Road	*865
Sly Run West Fork:	
At confluence of Sly Run East Fork	*821
Approximately 125 feet upstream of Little Chicago Road	*830
Maps available for inspection at the City of Noblesville Department of Planning and Development, 16 South Tenth Street, Noblesville, Indiana.	
Westfield (Town), Hamilton County (FEMA Docket No. D–7510)	
Cool Creek:	
Just upstream of East 146th Street	*818
Just downstream of East 186th Street	*870
Grassy Branch:	
Approximately 600 feet downstream of Westfield Park Road	*894
Approximately 0.57 mile upstream of State Route 32	*906
Kirdendall Creek:	
Just upstream of Hinkle Road	*822
Just downstream of East 161st Street	*832
Little Eagle Creek:	
Approximately 1,250 feet downstream of West 146th Street	*861
Just downstream of Casey Road	*911
North Cool Creek:	
Just upstream of East 186th Street	*870
Just downstream of intersection of Tomlinson Road and East 191st Street	*892
Sly Run East Fork:	
Just upstream of Hinkle Road	*866
Approximately 0.4 mile upstream of Hinkle Road	*872

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) • Elevation in feet (NAVD)
Maps available for inspection at the Westfield Town Hall, 130 Penn Street, Westfield, Indiana.	
NEW HAMPSHIRE	
Errol (Town), Coos County (FEMA Docket No. D–7516)	
Akers Pond:	
Entire shoreline within community	*1,231
Maps available for inspection at the Errol Town Office Building, 33 Main Street, Errol, New Hampshire.	
NORTH CAROLINA	
Belmont (City), Gaston County (FEMA Docket No. D–7512)	
Catawba River:	
Approximately 3,650 feet downstream of Norfolk Southern Railroad	*585
Approximately 250 feet upstream of Interstate 85	*587
South Fork Catawba River:	
Approximately 3.18 miles downstream of Armstrong Ford Road	*571
At Armstrong Ford Road	*571
Curtis Branch:	
At the confluence with South Fork Catawba River	*571
Approximately 980 feet upstream of the confluence with South Fork Catawba River	*571
Maps available for inspection at the Belmont City Hall, 115 North Main Street, Belmont, North Carolina.	
Bessemer City (City), Gaston County (FEMA Docket No. D–7512)	
Unnamed Tributary 2 to Long Creek:	
Approximately 1,645 feet downstream of Iowa Avenue	*793
Approximately 325 feet upstream of Maine Avenue	*820
Oates Creek:	
Approximately 1.12 miles upstream of Interstate 85	*790
Approximately 1.5 miles upstream of Interstate 85	*840
Unnamed Tributary 1 to Long Creek:	
Approximately 290 feet downstream of Arrowood Dam	*788
Approximately 1,190 feet upstream of Arrowood Dam	*830
Unnamed Tributary to Abernathy Creek:	
Approximately 650 feet upstream of Eleventh Street	*789
Approximately 875 feet upstream of Eleventh Street	*790
Maps available for inspection at the Bessemer City Hall, 132 West Virginia Avenue, Room 207, Bessemer City, North Carolina.	
Cherryville (Town), Gaston County (FEMA Docket No. D–7512)	
Beaverdam Creek:	
Approximately 150 feet downstream of Sullivan Drive	*868
Approximately 500 feet upstream of Pink Street	*916
Maps available for inspection at the Cherryville Town Hall, 116 South Mountain Street, Cherryville, North Carolina.	
Cramerton (Town), Gaston County (FEMA Docket No. D–7524)	
Duharts Creek:	
At the confluence with South Fork Catawba River	*577
Approximately 1.31 miles upstream of 8th Avenue	*611
Maps available for inspection at the Cramerton Town Hall, 155 North Main Street, Cramerton, North Carolina.	
Gaston County (Unincorporated Areas) (FEMA Docket No. D–7512)	
Catawba Creek:	
Approximately 838 feet downstream of Union New Hope Road	*588
Approximately 1,475 feet upstream of Beaty Road	*626
Catawba River:	
At the confluence with Lake Wylie	*571
Approximately 2.8 miles upstream of the confluence with Dutchman's Creek	*594
Duharts Creek:	
Approximately 0.60 mile downstream of Cramerton Road	*604
Approximately 0.35 mile upstream of Lowell-Bethesda Road	*656
Fites Creek:	
Approximately 25 feet downstream of CSX Transportation	*615
Approximately 1.1 miles upstream of West Catawba Avenue	*674
Tributary R–5:	
Approximately 150 feet downstream of Interstate 85	*714
Approximately 0.50 mile upstream of Oates Road	*814
Unnamed Tributary 1 to Long Creek:	
Approximately 625 feet upstream of the confluence with Long Creek	*773
Approximately 325 feet downstream of Arrowood Dam	*788
Unnamed Tributary 2 to Long Creek:	
At the confluence with Long Creek	*741
Approximately 1,645 feet downstream of Iowa Avenue	*793
Unnamed Tributary to Abernathy Creek:	
At the confluence with Abernathy Creek	*721
Approximately 625 feet upstream of Eleventh Street	*789
Abernathy Creek:	
Approximately 2,250 feet downstream of the confluence of Unnamed Tributary to Abernathy Creek	*716
Approximately 660 feet upstream of Interstate 85	*771
Beaverdam Creek:	
Approximately 425 feet downstream of Dallas Cherryville Highway/State Route 277	*834
Approximately 25 feet upstream of Pink Street	*916
Oates Creek:	
Approximately 100 feet downstream of Interstate 85	*726
Approximately 1.1 miles upstream of Interstate 85	*790
Tributary C–10:	
At the confluence of Tributary C–10–1	*715
Approximately 100 feet upstream of East Hudson Boulevard	*732
Tributary C–10–1:	
Approximately 575 feet downstream of East Hudson Boulevard	*720
Approximately 650 feet upstream of East Hudson Boulevard	*731
Kittys Branch:	
At the confluence with Catawba River	*585
Approximately 40 feet downstream of CSX Transportation	*585
South Fork Catawba River:	
At the confluence with Catawba River	*571
At Armstrong Ford Road	*571
Nancy Hanks Branch:	
At confluence with Catawba River	*585
Approximately 3,620 feet upstream of the confluence with Catawba River	*585
Stowe Branch:	
At the confluence with Catawba River	*585
Approximately 1,470 feet upstream of the confluence of Stowe Tributary	*585
Stowe Tributary:	
At the confluence with Stowe Branch	*585

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
Approximately 1,260 feet upstream of the confluence with Stowe Branch	*585
Maps available for inspection at the Gaston County Planning/Code Enforcement Office, 212 West Main Avenue, Gastonia, North Carolina.	
Gaston County (Unincorporated Areas) (FEMA Docket No. D–7512)	
Gastonia (City), Gaston County (FEMA Docket No. D–7512)	
Forest Brook Branch:	
At confluence with Catawba Creek	*635
Approximately 125 feet upstream of Pinendge Avenue	*821
Duharts Creek:	
Approximately 1,200 feet upstream of Cramerton Road	*629
Approximately 450 feet upstream of Redbud Drive	*666
Catawba Creek:	
Approximately 0.85 mile downstream of the confluence with Forest Brook Branch	*625
Approximately 650 feet upstream of Vance Street	*769
Crowders Creek:	
Approximately 2,000 feet upstream of the confluence of Tributary R–4	*688
Approximately 850 feet upstream of the confluence of Tributary R–5	*688
Tributary C–3:	
At the confluence with Catawba Creek	*649
Approximately 1,200 feet upstream of Steeple Chase Road	*696
Tributary C–4:	
At the confluence with Catawba Creek	*655
Approximately 2,000 feet upstream of the confluence with Catawba Creek	*681
Tributary C–5:	
At the confluence with Catawba Creek	*658
Approximately 1,350 feet upstream of East Hudson Boulevard	*681
Tributary C–5–1	
Approximately 25 feet upstream of the confluence with Tributary C–5	*658
Approximately 1,325 feet upstream of East Hudson Boulevard	*680
Tributary C–6:	
At the confluence with Catawba Creek	*680
Approximately 0.4 mile upstream of East Hudson Boulevard	*735
Tributary C–7:	
Approximately 250 feet upstream of the confluence with Catawba Creek	*695
Approximately 480 feet upstream of Laurel Lane	*731
Tributary C–8:	
At the confluence with Catawba Creek	*699
Approximately 0.34 mile upstream of Scotch Drive	*736
Tributary C–9:	
At the confluence with Catawba Creek	*702
Approximately 0.30 mile upstream of confluence with Catawba Creek	*717
Tributary C–10:	
At the confluence with Catawba Creek	*715
Approximately 100 feet upstream of East Hudson Boulevard	*732
Tributary C–10–1:	
At the confluence with Tributary C–10	*715
Approximately 575 feet downstream of East Hudson Boulevard	*720
Tributary C–11:	
At the confluence with Catawba Creek	*717
Approximately 1,210 feet upstream of Efird Street	*759
Tributary C–12:	
At the confluence with Catawba Creek	*718
Approximately 275 feet upstream of Oakland Street (Abandoned)	*760
Tributary C–14:	
At the confluence with Catawba Creek	*728
Approximately 300 feet upstream of Tenth Avenue	*735
Tributary C–15:	
At the confluence with Catawba Creek	*737
Approximately 540 feet upstream of Home Trail	*746
Tributary C–16:	
At the confluence with Catawba Creek	*744
Approximately 475 feet upstream of the confluence of Tributary C–16–1	*753
Tributary C–16–1:	
At the confluence with Tributary C–16	*747
Approximately 1,310 feet upstream of the confluence with Tributary C–16	*758
Tributary R–5:	
Approximately 140 feet downstream of the confluence of Oates Creek	*707
Approximately 410 feet upstream of the confluence of Oates Creek	*714
Avon Creek:	
At the confluence with Catawba Creek	*703
Approximately 75 feet downstream of U.S. Route 29/74	*778
Oates Creek:	
At the confluence with Tributary R–5	*708
Approximately 100 feet downstream of Interstate 85	*726
Maps available for inspection at the City of Gastonia Engineer's Office, 181 South Street, Gastonia, North Carolina.	
McAdenville (Town), Gaston County (FEMA Docket No. D–7512)	
South Fork Catawba River:	
Approximately 2,950 feet downstream of Main Street	*584
Approximately 1.9 miles upstream of Highway 85	*611
Maps available for inspection at the McAdenville Town Hall, 125 Main Street, McAdenville, North Carolina.	
Mount Holly (City), Gaston County (FEMA Docket No. D–7512)	
Catawba River:	
Approximately 230 feet upstream of Interstate 85	*587
Approximately 1,910 feet upstream of confluence of Dutchmans Creek	*591
Fites Creek:	
At confluence with Catawba River	*589
Approximately 75 feet downstream of CSX Transportation	*613
Dutchmans Creek:	
At confluence with Catawba River	*592
Approximately 3,750 feet upstream of North Main Street	*592
Maps available for inspection at the Mount Holly City Hall, 131 South Main Street, Mount Holly, North Carolina.	
Wisconsin	
Lincoln County (Unincorporated Areas) (FEMA Docket No. D–7528)	
Wisconsin River:	
Approximately 1.37 miles downstream of Alexander Dam	*1,258
At downstream side of Alexander Dam	*1,261
Prairie River:	
Approximately 660 feet downstream of Mill Street	*1,263
Approximately 1.1 miles upstream of U.S. Business Highway 51	*1,274
Maps available for inspection at the Lincoln County Zoning Office, 1110 East Main Street, Merrill, Wisconsin.	
River Falls (City), St. Croix and Pierce Counties (FEMA Docket No. D–7528)	
Kinnickinnic River:	
Approximately 1.1 miles downstream of the confluence of South Fork Kinnickinnic River	*806
Approximately 400 feet upstream of State Route 35/65	*898
Rocky Branch:	
Approximately 850 feet upstream of confluence with Kinnickinnic River	*805
Approximately 2,230 feet upstream of confluence with Kinnickinnic River	*814
South Fork Kinnickinnic River:	
At confluence with Kinnickinnic River	*828
Approximately 575 feet upstream of State Route 35/65	*906
South Fork Kinnickinnic River Tributary No. 2:	
At confluence with South Fork Kinnickinnic River	*906
Approximately 950 feet upstream of South Fork Kinnickinnic River	*907
Maps available for inspection at the River Falls City Hall, 123 East Elm Street, River Falls, Wisconsin.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: September 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–25958 Filed 10–10–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 90 and 95

[WT Docket No. 98–182; FCC 02–139]

1998 Biennial Regulatory Review—Private Land Mobile Radio Services

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses six petitions for reconsideration or clarification of the Report and Order in WT Docket No. 98–182. The Commission affirms the decision to create a new Citizens Band Radio Service named the Multi-Use Radio Service (MURS), updates the Airport Terminal Use (ATU) and adopts additional revisions to the Commission's rules on its own motion. The Commission also adopts a rule revision to remove the low power restriction from certain frequencies currently reserved for low power operation on a primary basis for cargo handling purposes at docksides. The Commission also eliminates the eligibility restriction on school and park operations in the Public Safety Pool.

DATES: Effective November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Guy Benson, Esquire at (202) 418–2946 <*gbenson@fcc.gov*>, Mr. Brian Marenco at 418–0838 <*bmarenco@fcc.gov*>, or John Evanoff, Esquire at 418–0848 <*jevanoff@fcc.gov*>, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Memorandum Opinion and Order and Second Report and Order, FCC 02–139, adopted on May 2, 2002 and released on May 23, 2002 as corrected in Erratum DA–02–2256 adopted September 12, 2002 and released September 13, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

1. The major decisions we adopt in the *Memorandum Opinion and Order* today nclude:

• *MURS:* We affirm the decision to license by rule (*i.e.*, eliminate individual licensing for, and instead license by rule) five VHF frequencies that were formerly licensed under Part 90 for low-power, industrial/business use, by placing frequencies in a new Part 95 Citizens Band Radio Service named the Multi-Use Radio Service (MURS).

• *Eligibility:* We decline to restrict the use of MURS to Part 90 Industrial/Business Pool eligibles. The general public is licensed by rule to use MURS for communications related to personal or business activities.

• *Technical provisions:* We revise the MURS technical rules to balance the benefits of adding technical flexibility against the disadvantages of potential degradation of the existing operations of business and industrial users. As with other services licensed by rule, the rules we adopt for MURS focus on technical equipment certification requirements. We also clarify that MURS is a two-way, short-distance, voice or data communication service intended for transmissions that do not typically require long duty cycles.

Under the revised rules, MURS units are:

• Permitted to have detachable antennas;

• Permitted to have external antennas up to 6.1 meters (20 feet) above a structure or 18.3 meters (60 feet) above the ground, whichever is higher;

• Permitted to have a total power output (TPO) of up to two (2) watts (instead of two (2) watts effective radiated power);

• Not permitted to be used as cordless telephones, radiofacsimile (imaging), or for continuous carrier mode operations; and

• Not permitted to be used for repeater operations.

• *ATU list:* We update the Airport Terminal Use (ATU) list found in Section 90.35(c)(61) of the Rules. The ATU list identifies, by name and reference coordinates, the airports at which certain 450 MHz band frequencies are reserved for stations located on or near the airports and used in connection with the servicing and supplying of aircraft.

2. The major decisions we adopt in the *Second Report and Order* include:

• *"Dockside" frequencies for high-power:* We also address the comments and other filings in response to the *Further Notice* in this proceeding. Specifically, we adopt the proposal of the American Automobile Association (AAA) to revise the power limit on certain frequencies currently reserved for low power operations on a primary basis for cargo handling purposes at docksides. We are not, however, adopting AAA's proposal to require all applicants to obtain AAA's concurrence to use these frequencies.

• *Public Safety Pool eligibility:* We adopt our proposal to eliminate the eligibility restriction on school and park operations in the Public Safety Pool under Section 90.20 of our Rules. We also eliminate the restriction prohibiting State highway maintenance systems from operating on certain Public Safety Pool channels.

I. Procedural Matters

Final Regulatory Flexibility Analysis

3. A Supplemental Final Regulatory Flexibility Analysis with respect to this *Memorandum Opinion and Order* has been prepared and is included. A Final Regulatory Flexibility Analysis has been prepared for the *Second Report and Order* and is included.

II. Supplemental Final Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated in Appendix D of the *Report and Order and Further Notice of Proposed Rule Making (R&O)*, 65 FR 60869, October 13, 2000. This Supplemental Final Regulatory Flexibility Analysis (SFRFA) considers the current *Memorandum Opinion and Order and Second Report and Order (MO&O)* and updates information contained in the FRFA. The present SFRFA, contained in the *MO&O*, conforms to the RFA.

Need for, and Objectives of, the MO&O

5. This proceeding was initiated in conjunction with the Commission's 1998 biennial review of regulations pursuant to section 11 of the Communications Act of 1934, as amended (the Communications Act). On September 30, 1998, the Commission adopted a *NPRM*, 63 FR 65568, November 27, 1998, proposing a comprehensive review of the rules applicable to the PLMR services to determine which regulations were not in the public interest, obsolete, overly complex, required editorial change, or were redundant in nature. In the *R&O* adopted June 29, 2000, the Commission, among other things: expanded the availability of thirty-one "dockside" frequencies, doubled the PLMR license term from five years to ten years, and increased the time period in which certain PLMR stations must be placed in operation. The Commission also clarified the frequency coordination process for Public Safety Pool channels in the 220–222 MHz band and authorized Public Safety Pool licensees to share their licensed radio facilities with federal public safety providers. In addition, the Commission clarified the definitions of centralized and decentralized trunking and established a new process for licensing trunked systems. Finally, the Commission "licensed by rule," *i.e.*, eliminated the individual licensing requirements for, five VHF frequencies that were allocated to the Part 90 Industrial/Business Pool for low power (1- or 2-watt) operations. Under this decision, the Commission reallocated the five VHF frequencies to the Part 95 Personal Radio Services and established a new Multi-Use Radio Service (MURS) under the Citizens Band Radio Services.

6. The rules adopted in this *MO&O* continue our efforts to consolidate and streamline the Part 90 Rules, allow more efficient use of the spectrum, and provide Part 90 licensees with greater flexibility and clarity concerning their operations. In particular, we affirm the decision to license by rule (*i.e.*, eliminate individual licensing for, and instead license by rule) five VHF frequencies that were formerly licensed under Part 90 for low-power, industrial/business use, by placing frequencies in a new Part 95 Citizens Band Radio Service named the Multi-Use Radio Service (MURS). In addition, we decline to restrict the use of MURS to Part 90 Industrial/Business Pool eligibles. The general public is licensed by rule to use MURS for communications related to personal or business activities, and we revise the MURS technical rules to balance the benefits of adding technical flexibility against the disadvantages of potential degradation of the existing operations of business and industrial users.

Summary of Significant Issues Raised by the Public in Response to the FRFA

7. No reconsideration petitions discussed issues directly in response to the previous FRFA.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

8. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

9. *Public Safety radio services and Governmental entities.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. The SBA rules contain a definition for small radiotelephone (wireless) companies, which encompasses business entities engaged in radiotelephone communications employing no more that 1,500 persons. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (91 percent) are small entities.

10. *Estimates for PLMR Licensees.* Private land mobile radio systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a definition of small entities specifically applicable to PLMR users, nor has the SBA developed any such definition. The SBA rules do, however, contain a definition for small radiotelephone (wireless) companies. Included in this definition are business entities engaged in radiotelephone communications employing no more that 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz.

11. *Equipment Manufacturers.* We anticipate that radio equipment manufacturers will be affected by our decisions in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

12. We expect that, at most, the rules adopted herein will result in nominal new reporting, recordkeeping, or other compliance requirements imposed on entities affected in this proceeding.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

13. The RFA requires an agency to describe any significant alternative that it has considered in reaching its proposed approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage.

14. Regarding our decision to express maximum operating power in terms of transmit power output (TPO) rather than effective radiated power (ERP), we do not believe that this will significantly impact small entities. Prior to the creation of MURS, the subject frequencies were restricted in terms of TPO, and our decision to retain this standard will provide continuity as well as the ability for users to utilize detachable gain-adding antennas (which would not be feasible were we to use the ERP standard).

15. Regarding our decision to restrict antenna height to 20 feet above structure or 60 feet above ground, whichever is higher, we do not anticipate any significant impact on small entities. Prior to the creation of MURS, transmitting antennas using the subject frequencies were limited in height due to a provision that restricted the distance between the radio control point and the center of the radiating portion of the antenna. Consequently, the new antenna height limits should not affect small entities that continue to operate on the subject frequencies. Moreover, we believe that antenna height restrictions will benefit small entities in that such restrictions promote spectrum sharing and re-use of the frequencies, thus enabling more small entities to take advantage of this radio service.

16. Regarding our decision to prohibit repeater operations, small (and other) entities wishing to extend the range of communications will not be allowed to do so. On balance, however, this restriction should benefit small entities in that it promotes spectrum sharing and frequency re-use, thus allowing a greater number of users to take advantage of this radio service. Moreover, any potential negative impact on small entities is mitigated due to our decision to grandfather existing operations on the subject frequencies. Consequently, any user that was authorized to use repeaters on the subject frequencies prior to the creation of MURS will continue to be allowed to do so. An alternative would be to allow repeater operations, but we believe that the resulting benefits of extended communications capabilities are outweighed by accommodating a greater number of users on these channels.

17. Regarding our decision to prohibit MURS radios from interconnecting with the Public Switched Network (PSN), small (and other) entities that want to use MURS frequencies for telephone or other interconnected types of service will not be allowed to do so. Allowing interconnection, however, would be inconsistent with the intent of this radio service, which is a two-way, short distance voice and data communications service of *short duration*. Typically, communications over the PSN last longer than the types of communications envisioned for MURS. An alternative would be to allow interconnection, but because PSN interconnected communications are typically duplex in nature, thus occupying two of five channels in a given area, this would severely limit the number of available channels at one time. In this connection, we believe that the prohibition on PSN interconnection will likely generally benefit small entities in that such restrictions promote spectrum sharing and re-use of the frequencies, thus enabling more small entities to take advantage of this radio service. Finally, any potential negative impact on small entities is mitigated due to our decision to grandfather existing operations on the subject frequencies. Consequently, any user that was authorized to interconnect with the PSN on the subject frequencies prior to the creation of MURS will continue to be allowed to do so.

18. Our decision to prohibit MURS users from operating in the continuous carrier mode, could impact small (and other) entities in that they will be prevented from doing so, and the alternative would be to allow such operations. As with antenna height limits, repeater use, and PSN interconnection, however, we believe that the benefits of increased spectrum sharing and frequency re-use far outweigh the potential negative impact on small entities. Moreover, the potential impact on small entities is mitigated due to our decision to grandfather existing operations on the subject frequencies. Consequently, any user that was authorized to operate in the continuous carrier transmit mode on the subject frequencies prior to the creation of MURS will continue to be allowed to do so.

19. Regarding our decision to prohibit the transmission of lengthy data image signals over MURS, we do not anticipate any significant impact on small entities. Transmissions of this type of communications was never allowed on the subject frequencies and allowing them now in MURS would be inconsistent with the intent of the service.

20. We do not anticipate that our decision to change the permissible bandwidth from 12.5 kHz to 20 kHz for frequencies 154.570 MHz and 154.600 MHz, will have any significant impact on small entities. Prior to the creation of MURS, the permissible bandwidth for these frequencies was 20 kHz, and changing it in the *R&O* to 12.5 kHz was an inadvertent error.

21. Our decision to prohibit the integration of MURS frequencies and FRS frequencies into a single radio unit, should not have a significant adverse impact on small entities. FRS is a narrowly tailored service intended for private two-way, very short distance voice communications for facilitating family and group activities. Small (and other) businesses are currently not

eligible to operate on FRS frequencies and therefore, this prohibition should not have any adverse impact.

22. We also decline to delay the implementation of MURS by declining to adopt a transition/migration period, which might have assisted small entities that might face increased congestion and potential interference from the introduction of non-business operations on the subject frequencies. We have, however, adopted technical restrictions in this *Memorandum Opinion and Order* to mitigate the potential for harmful interference to small (and other) business operations. Furthermore, as noted above, as the subject frequencies are shared, business users were never insured of interference-or congestion-free operations. Finally, Motorola's suggested migration plan is too speculative, as it relies on the outcome of a pending proceeding. Consequently, based on the totality of the record, we believe that the public interest would not be served were we to delay MURS, and the impact, if any, of this decision on small entities is likely to be minimal.

23. Regarding our decision to update the airport terminal use (ATU) list, we do not anticipate any significant impact on small entities. Small entities that wish to operate on these ATU frequencies will have expanded opportunities to do so. Moreover, this decision should have little impact on small entity non-airport terminal business radio users located near these airports, because such operations will continue to be allowed.

III. Final Regulatory Flexibility Analysis

24. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Report and Order and Further Notice of Proposed Rule Making (Further Notice). The Commission sought written public comment on the proposals in the Further Notice, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Adopted Rules

25. To further consolidate and streamline the Part 90 of the rules, reduce regulatory requirements, provide Part 90 licensees with greater flexibility concerning their operations, and promote increased spectrum sharing, the Commission amends Part 90 of its rules to (1) remove the restriction preventing school districts and authorities and park districts and authorities from being eligible for licenses in the Public Safety Pool; (2) remove the restriction preventing State highway maintenance systems from operating on certain channels in the Public Safety Pool; and (3) remove the power restriction on seven "dockside" channels in the Industrial/Business Pool.

26. These rule changes are needed in order to give park districts and authorities and school districts and authorities access to spectrum needed for important communications functions. Additionally, we believe that allowing such entities to operate on the Public Safety Pool channels will facilitate interoperability between park or school district personnel and other public safety entities, which can be very important especially during emergencies. Similarly, the inclusion of State highway maintenance systems on certain Public Safety Pool frequencies should give such systems access to spectrum needed for important communications functions. Finally, removal of the power restriction on the dockside channels will facilitate increased range and more reliable communications for Industrial/Business Pool eligibles.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

27. No comments were submitted specifically in response to the IRFA. We have nonetheless considered the effect of these rule changes on small entities and considered other alternatives. We expect, however, that our actions will benefit all entities subject to these rule changes, including small entities.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

28. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

29. *Public Safety radio services and Governmental entities.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. The SBA rules contain a definition for small radiotelephone (wireless) companies, which encompasses business entities engaged in radiotelephone communications employing no more that 1,500 persons. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (91 percent) are small entities.

30. *Estimates for PLMR Licensees.* Private land mobile radio systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a definition of small entities specifically applicable to PLMR users, nor has the SBA developed any such definition. The SBA rules do, however, contain a definition for small radiotelephone (wireless) companies. Included in this definition are business entities engaged in radiotelephone communications employing no more that 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz.

31. *Equipment Manufacturers.* We anticipate that radio equipment manufacturers will be affected by our decisions in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

32. The Rules adopted in this Order have minimal additional reporting or recordkeeping requirements for PLMR licensees.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

33. The RFA requires an agency to describe any significant alternative that it has considered in reaching its proposed approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage.

34. Regarding our decision to eliminate eligibility restrictions on park districts and authorities and school districts and authorities so that these entities may obtain licenses to operate on Public Safety Pool channels, *see* paras. 52–54, *supra*, there should be no significant adverse impact on small entities. Indeed, small entities should benefit from this decision, as they will have greater opportunities for licensing now that they will be allowed to operate on the Public Safety Pool frequencies. An alternative to this proposal would be to retain the current rule, which would be unsatisfactory because it would leave the parks without any possibility of operating radio stations for the transmission of communications essential to their official activities.

35. Regarding our decision to eliminate the rule restricting State highway maintenance systems from operating on certain Public Safety Pool frequencies, we do anticipate any adverse impact on small entities. An alternative to this decision would be to continue the prohibition. This would, however, be unsatisfactory, as allowing State highway maintenance systems to operate on the subject frequencies furthers the important Commission goals of increased spectrum sharing and interoperability of public safety communications.

36. Finally, our decision to eliminate the power restriction on seven of the thirty-one "dockside" channels, should not have any adverse impact on small entities. The potential to pair these dockside frequencies with the AERS or other Industrial/Business Pool frequencies will result in greater opportunities for small (and other) business due to increased signal coverage and more reliable communications. In addition, concerns of harmful interference to existing low power users on the subject frequencies are mitigated, because operation on these frequencies will continue to require frequency coordination from a Commission-certified frequency coordinator.

IV. Ordering Clause

37. Pursuant to sections 1, 4(i), 303(f) and (r), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 303(f) and (r), 332, and 405 the Petition for Reconsideration filed by Motorola, Inc. on November 13, 2000, *is denied.*

38. Pursuant to sections 1, 4(i), 303(f) and (r), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 303(f) and (r), 332, and 405 the Petition for Reconsideration filed by RadioShack Corporation on January 3, 2001, *is denied.*

39. Pursuant to sections 1, 4(i), 303(f) and (r), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 303(f) and (r), 332, and 405 the Petition for Reconsideration filed by the Personal Radio Steering Group, Inc. on November 13, 2000, *is granted* to the extent indicated herein and otherwise *denied.*

40. Pursuant to sections 1, 4(i), 303(f) and (r), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 303(f) and (r), 332, and 405 the Petition for Reconsideration filed by William C. Easterday on November 13, 2000, *is dismissed* as moot.

41. Pursuant to sections 1, 4(i), 303(f) and (r), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 303(f) and (r), 332, and 405 the Petition for Reconsideration filed by the Personal Communications Industry Association, Inc. on November 13, 2000, is *granted.*

42. Pursuant to sections 1, 4(i), 303(f) and (r), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 303(f) and (r), 332, and 405 the Petition for Reconsideration filed by the American Association of State Highway and Transportation Officials on November 13, 2000, *is granted* to the extent indicated herein and otherwise *denied.*

43. The amendments of the Commission's Rules as set forth in the rule changes *are adopted,* effective November 12, 2002.

44. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Memorandum Opinion and Order and Second Report and Order,* WT Docket No. 98–182, including the Supplemental Final and Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 0, 90 and 95

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble the Federal Communications Commission amends 47 CFR parts 0, 90 and 95 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.331 is amended by revising paragraph (d) introductory text to read as follows:

§ 0.331 Authority delegated.

* * * * *

(d) *Authority concerning rulemaking proceedings.* The Chief, Wireless Telecommunications Bureau shall not have the authority to act upon notices of proposed rulemaking and inquiry, final orders in rulemaking proceedings and inquiry proceedings, and reports arising from any of the foregoing except such orders involving ministerial conforming amendments to rule parts, or orders conforming any of the applicable rules to formally adopted international conventions or agreements where novel questions of fact, law, or policy are not involved. In addition, revisions to the airport terminal use list in § 90.35(c)(61) of this chapter need not be referred to the Commission. Also, the addition of new Marine VHF frequency coordination committee(s) to § 80.514 of this chapter need not be referred to the Commission if they do not involve novel questions of fact, policy or law, as well as requests by the United States Coast Guard to:

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

3. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended; 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

4. Amend § 90.20 as follows:

a. Revise paragraph (a)(1)(i).

b. In paragraph (c)(3) remove Limitation code 43 from all frequencies wherever it appears and remove coordinator codes PP and PS from the following frequencies 220.8025 through 220.8475 and 221.8025 through 221.8475.

c. Remove and reserve paragraph (d)(43).

The revisions read as follows:

§ 90.20 Public Safety Pool.

(a) * * *

(1) * * *

(i) A district and an authority;

* * * * *

5. Amend § 90.35 as follows:

a. Revise paragraph (b)(2)(iii).

b. In paragraph (b)(3), remove limitation code 11, from the following frequencies: 457.525, 457.550, 457.5625, 457.575, 457.5875, 457.600 and 457.6125.

c. Revise paragraph (c)(60)(ii) and (c)(60)(iii).

d. Revise paragraph (c)(61)(iii) and (c)(61)(iv).

The revisions read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(b) * * *

(2) * * *

(iii) For frequencies above 150 MHz, applications for new or modified facilities on frequencies shared prior to radio service consolidation by the former Manufacturers Radio Service, the Forest Products Radio Service, the Power Radio Service, the Petroleum Radio Service, the Motor Carrier Radio Service, the Railroad Radio Service, the Telephone Maintenance Radio Service and the Automobile Emergency Radio Service may be coordinated by any certified Industrial/Business Pool coordinator. However, in the event that the interference contour of a proposed station would overlap the service contour of an existing station licensed on one of these previously shared frequencies, the written concurrence of the coordinator associated with the industry for which the existing station license was issued, or the written concurrence of the licensee of the existing station, shall be obtained. For the purposes of this § 90.35, the service contour for UHF stations is the 39 dBu contour; and the interference contour for UHF stations is the 21 dBu contour; the service contour for VHF stations is the 37 dBu contour; and the interference contour for VHF stations is the 19 dBu contour.

* * * * *

(c) * * *

(60) * * *

(ii) This frequency is also available for low power non-cargo handling operations, both voice and non-voice, on a secondary basis to cargo handling communications. Such operations are not subject to the power limitations in paragraph (c)(60)(i) of this section on the following frequencies: 457.525 MHz, 457.550 MHz, 457.5625 MHz, 457.575 MHz, 457.5875 MHz, 457.600 MHz, and 457.6125 MHz. This frequency will not be assigned for non-cargo handling operations at temporary locations.

(iii) For mobile relay operations under paragraph (c)(60)(i) of this section, frequency pairing is as follows:

Mobile relay (MHz) [1]	Mobile (MHz)
457.525	467.750
457.53125	467.75625
457.5375	467.7625
457.54375	467.76875
457.550	467.775
457.55625	467.78125
457.5625	467.7875
457.56875	467.79375
457.575	467.800
457.58125	467.80625
457.5875	467.8125
457.59375	467.81875
457.600	467.825
457.60625	467.83125
457.6125	
457.61875	

[1] The mobile relay frequencies may also be used for single frequency simplex.

(61) * * *

(iii) To stations in the Industrial/Business Pool for secondary use at locations 16 km (10 miles) or more from the coordinates of the listed airports at a maximum transmitter power output of 2 watts. Use of the frequency is restricted to the confines of an industrial complex or manufacturing yard area. Stations licensed prior to November 12, 2002 may continue to operate with facilities authorized as of that date.

(iv) The airports and their respective reference coordinates are (coordinates are referenced to North American Datum 1983 (NAD83)):

City and airport	Reference coordinates	
	N. Latitude	W. Longitude
Aberdeen, SD: Aberdeen Regional (ABR)	45°26'56.6"	98°25'18.6"
Agana, GU: Guam International (GUM)	13°29'00.4	144°47'45.5" E
Akron, OH: Akron-Canton Regional (CAK)	40°54'58.7"	81°26'32.9"
Alamosa, CO: San Luis Valley Regional/Bergman Field (ALS)	37°26'05.7"	105°51'59.6"
Albany, NY: Albany Int'l (ALB)	42°44'53.2"	73°48'10.7"
Albuquerque, NM: Albuquerque International Sunport (ABQ)	35°02'24.8"	106°36'33.1"
Allentown-Bethlehem, PA: Lehigh Valley Int'l (ABE)	40°39'08.5"	75°26'25.5"
Amarillo, TX: Amarillo International (AMA)	35°13'09.7"	101°42'21.3"

City and airport	Reference coordinates	
	N. Latitude	W. Longitude
Anchorage, AK: Ted Stevens Anchorage International (ANC)	61°10'27.6"	149°59'46.3"
Appleton, WI: Outagamie County Regional (ATW)	44°15'26.7"	88°31'10.1"
Aspen, CO: Aspen-Pitkin County/Sardy Field (ASE)	39°13'23.4"	106°52'07.9"
Atlanta, GA:		
Atlanta International (ATL)	33°38'25.6"	84°25'37.0"
Dekalb-Peachtree (PDK)	33°52'32.2"	84°18'07.1"
Fulton County (FTY)	33°46'44.9"	84°31'16.9"
Austin, TX: Austin Bergstrom International (AUS)	30°11'40.3"	97°40'11.5"
Bakersfield, CA: Meadows Field (BFL)	35°26'00.9"	119°03'24.4"
Baltimore, MD: Baltimore-Washington Int'l (BWI)	39°10'31.5"	76°40'05.5"
Baton Rouge, LA: Baton Rouge Metropolitan (BTR)	30°31'59.4"	91°08'58.7"
Billings, MT: Billings Logan International (BIL)	45°48'27.6"	108°32'34.3"
Birmingham, AL: Birmingham Int'l (BHM)	33°33'46.6"	86°45'12.8"
Bismarck, ND: Bismarck Municipal (BIS)	46°46'21.8"	100°44'44.7"
Boise, ID: Boise Air Terminal (BOI)	43°33'52.0"	116°13'22.0"
Boston, MA: Logan International (BOS)	42°21'51.7"	71°00'18.7"
Bozeman, MT: Gallatin Field (BZN)	45°46'36.8"	111°09'10.8"
Bridgeport, CT: Sikorsky Memorial (BDR)	41°09'48.5"	73°07'34.2"
Buffalo, NY: Buffalo Niagara Int'l (BUF)	42°56'25.9"	78°43'55.8"
Burlington, VT: Burlington Int'l (BTV)	44°28'18.7"	73°09'11.8"
Cedar Rapids, IA: The Eastern Iowa (CID)	41°53'04.5"	91°42'39.1"
Charleston, SC: Charleston AFB/International (CHS)	32°53'55.1"	80°02'25.8"
Charlotte, NC: Charlotte-Douglas Int'l (CLT)	35°12'50.4"	80°56'35.3"
Chattanooga, TN: Lovell (CHA)	35°02'06.9"	85°12'13.6"
Chicago, IL-Northwest, IN:		
Chicago-Wheeling-Palwaukee (PWK)	42°06'51.1"	87°54'05.3"
Meigs (CGX)	41°51'31.8"	87°36'28.5"
South Bend Regional (SBN)	41°42'32.2"	86°19'06.5"
Midway (MDW)	41°47'09.5"	87°45'08.7"
O'Hare International (ORD)	41°58'46.5"	87°54'16.1"
West Chicago-Dupage (DPE)	41°54'24.8"	88°14'54.3"
Cincinnati, OH:		
Cincinnati-Blue Ash (ISZ)	39°14'48.1"	84°23'20.3"
Lunken (LUK)	39°06'12.0"	84°25'07.0"
Cleveland, OH:		
Burke Lakefront (BKL)	41°31'03.0"	81°41'00.0"
Cuyahoga County (CGF)	41°33'54.5"	81°29'10.9"
Hopkins International (CLE)	41°24'39.2"	81°50'57.8"
Columbia, SC: Columbia Metropolitan (CAE)	33°56'19.8"	81°07'10.3"
Columbus, GA: Columbus Metropolitan (CSG)	32°30'58.8"	84°56'19.9"
Columbus, OH:		
Port Columbus Int'l (CMH)	39°59'52.8"	82°53'30.8"
Rickenbacker International (LCK)	39°48'49.5"	82°55'40.3"
Corpus Christi, TX: Corpus Christi International (CRP)	27°46'13.3"	97°30'04.4"
Covington/Cincinnati, KY: Cincinnati/Northern Kentucky Int'l (CVG)	39°02'46.1"	84°39'43.8"
Crescent City, CA: Jack McNamara Field (CEC)	41°46'48.6"	124°14'11.5"
Dallas, TX:		
Addison (ADS)	32°58'06.8"	96°50'11.2"
Dallas-Ft. Worth Int'l (DFW)	32°53'45.4"	97°02'13.9"
Dallas-Love Field (DAL)	32°50'49.6"	96°51'06.4"
Red Bird (RBD)	32°40'51.1"	96°52'05.5"
Davenport, IA (Rock Island, Moline, IL):		
Davenport Municipal (DVN)	41°36'37.0"	90°35'18.0"
Quad City (MLI)	41°26'54.7"	90°30'27.1"
Dayton, OH: Dayton International (DAY)	39°54'08.6"	84°13'09.8"
Denver, CO:		
Centennial (APA)	39°34'12.5"	104°50'57.5"
Colorado Springs Municipal (COS)	38°48'20.9	104°42'00.9"
Jeffco (BJC)	39°54'31.6"	105°07'01.9"
Denver International (DEN)	39°51'30.3"	104°40'01.2"
Des Moines, IA: Des Moines Int'l (DSM)	41°32'05.8"	93°39'38.5"
Detroit, MI:		
Detroit City (DET)	42°24'33.1"	83°00'35.5"
Detroit Metro-Wayne County (DTW)	42°12'43.4"	83°20'55.8"
Oakland-Pontiac (PTK)	42°39'54.7"	83°25'07.4"
Willow Run (YIP)	42°14'16.5"	83°31'49.5"
Duluth, MN: Duluth International (DLH)	46°50'31.5"	92°11'37.1"
Durango, CO: Durango-La Plata County (DRO)	37°09'05.5"	107°45'13.6"
Eagle, CO: Eagle County Regional (EGE)	39°38'33.2"	106°55'03.7"
El Paso, TX: El Paso International (ELP)	31°48'24.0"	106°22'40.1"
Eugene, OR: Mahlon Sweet Field (EUG)	44°07'23.7"	123°13'07.3"
Eureka, CA: Eureka Municipal (033)	40°46'51.4"	124°12'44.2"

City and airport	Reference coordinates	
	N. Latitude	W. Longitude
Fargo, ND: Hector International (FAR)	46°55'09.7"	96°48'53.9"
Flint, MI: Bishop (FNT)	42°57'55.8"	83°44'36.4"
Ft. Lauderdale-Hollywood, FL:		
Ft. Lauderdale Executive (FXE)	26°11'50.2"	80°10'14.6"
Ft. Lauderdale-Hollywd Int'l (FLL)	26°04'21.3"	80°09'09.9"
Ft. Meyers, FL: Page Field (FMY)	26°35'11.8"	81°51'47.7"
Ft. Meyers, FL: Southwest Florida International (RSW)	26°32'10.2"	81°45'18.6"
Ft. Wayne, IN: Fort Wayne International (FWA)	40°58'42.5"	85°11'42.5"
Ft. Worth, TX:		
Fort Worth Alliance (AFW)	32°59'12.5"	97°19'07.7"
Meacham (FTW)	32°49'11.2"	97°21'44.8"
Fresno, CA:		
Fresno-Chandler Downtown (FCH)	36°43'56.5"	119°49'11.6"
Fresno Yosemite Int'l (FAT)	36°46'34.3"	119°43'05.3"
Gainesville, FL: Gainesville Regional (GNV)	29°41'24.2"	82°16'18.4"
Grand Forks, ND: Grand Forks International (GFK)	47°56'57.3"	97°10'34.0"
Grand Rapids, MI: Gerald R. Ford Int'l (GRR)	42°52'51.0"	85°31'22.1"
Great Falls, MT: Great Falls International (GTF)	47°28'55.2"	111°22'14.5"
Green Bay, WI: Austin Straubel Int'l (GRB)	44°29'06.3"	88°07'46.5"
Greensboro, NC: Piedmont Tirad International (GSO)	36°05'51.9"	79°56'14.3"
Greer, SC: Greenville-Spartanburg Int'l (GSP)	34°53'44.4"	82°13'07.9"
Gunnison, CO: Gunnison County (GUC)	38°32'02.2"	106°55'58.9"
Hana, HI: Hana (HNM)	20°47'44.3"	156°00'52.0"
Harlingen, TX: Valley International (HRL)	26°13'42.6"	97°39'15.8"
Harrisburg, PA:		
Capital City (CXY)	40°13'01.7"	76°51'05.3"
Harrisburg Int'l (MDT)	40°11'36.6"	76°45'48.3"
Hartford, CT (Windsor Locks):		
Bradley Int'l (BDL)	41°56'20.0"	72°40'59.6"
Hartford-Brainard (HFD)	41°44'10.6"	72°39'00.8"
Hayden, CO: Yampa Valley (HDN)	40°28'52.2"	107°13'03.6"
Hilo, HI: Hilo Int'l (ITO)	19°43'12.9"	155°02'54.5"
Honolulu, HI: Honolulu International (HNL)	21°19'07.3"	157°55'20.7"
Houston, TX:		
W.P. Hobby (HOU)	29°38'43.5"	95°16'44.0"
D.W. Hooks Memorial (DWH)	30°03'42.7"	95°33'10.0"
George Bush Intercontinental (IAH)	29°58'49.7"	95°20'23.0"
Indianapolis, IN: Indianapolis Int'l (IND)	39°43'02.4"	86°17'39.8"
Jackson Hole, WY: Jackson Hole (JAC)	43°36'26.4"	110°44'15.9"
Jacksonville, FL:		
Craig Municipal (CRG)	30°20'10.8"	81°30'52.0"
Jacksonville Int'l (JAX)	30° 29'38.6"	81°41'16.3"
Kalamazoo, MI: Kalamazoo/Battle Creek International (AZO)	42°14'05.5"	85°33'07.4"
Kalispell, MT: Glacier Park International (FCA)	48°18'41.1"	114°15'18.2"
Kansas City, MO–KS:		
Kansas City Int'l (MCI)	39°17'51.4"	94°42'50.1"
Kansas City Municipal Dntn (MKC)	39°07'23.7"	94°35'33.9"
Kauna Kakai, HI: Molokai (MKK)	21°09'10.4"	157°05'46.5"
Knoxville, TN: McGhee Tyson (TYS)	35°48'44.9"	83°59'34.3"
Lacrosse, WI: Lacrosse Municipal (LSE)	43°52'46.5"	91°15'24.6"
Lansing, MI: Capital City (LAN)	42°46'43.3"	84°35'14.5"
Las Vegas, NV: McCarran Int'l (LAS)	36°04'49.3"	115°09'08.4"
Lihue, HI: Lihue (LIH)	21°58'33.5"	159°20'20.3"
Lincoln, NE: Lincoln Municipal (LNK)	40°51'03.5"	96°45'33.3"
Little Rock, AR: Adams Field (LIT)	34°43'48.8"	92°13'27.3"
Los Angeles,CA:		
Burbank-Glendale-Pasadena (BUR)	34°12'02.2"	118°21'30.6"
Catalina (AVX)	33°24'17.8"	118°24'57.1"
Long Beach-Daugherty Field (LGB)	33°49'03.8"	118°09'05.8"
Los Angeles Int'l (LAX)	33°56'33.1"	118°24'29.1"
Ontario Int'l (ONT)	34°03'21.6"	117°36'04.3"
Santa Ana-John Wayne-Orange City (SNA)	33°40'32.4"	117°52'05.6"
Louisville, KY: Louisville Int'l-Standiford Field (SDF)	38°10'27.8"	85°44'09.6"
Lubbock, TX: Lubbock International (LBB)	33°39'49.1"	101°49'22.0"
Lynchburg, VA: Lynchburg Regional-Preston Glen Field (LYH)	37°19'36.1"	79°12'01.6"
Madison, WI: Dane County Regional-Truax Field (MSN)	43°08'23.5"	89°20'15.1"
Manchester, NH: Manchester (MHT)	42°56'04.3"	71°26'13.4"
Memphis, TN: Memphis Int'l (MEM)	35°02'32.7"	89°58'36.0"
Miami, FLA:		
Miami Int'l (MIA)	25°47'35.7"	80°17'26.0"
Opa Locka (OPF)	25°54'25.2"	80°16'42.2"
Kendall-Tamiami Executive (TMB)	25°38'52.4"	80°25'58.0"

City and airport	Reference coordinates	
	N. Latitude	W. Longitude
Milwaukee, WI: General Mitchell Int'l (MKE)	42°56'50.0"	87°53'47.7"
Minneapolis-St. Paul, MN: Minneapolis-St. Paul Int'l (MSP)	44°52'49.9"	93°13'00.9"
Minot, ND: Minot International (MOT)	48°15'33.8"	101°16'49.2"
Missoula, MT: Missoula International (MSO)	46°54'58.7"	114°05'26.0"
Mobile, AL: Mobile Regional (MOB)	30°41'29.1"	88°14'34.2"
Modesto, CA: Modesto City-County (MOD)	37°37'32.9"	120°57'15.9"
Monterey, CA: Monterey Peninsula (MRY)	36°35'13.1"	121°50'34.6"
Montrose, CO: Montrose Regional (MTJ)	38°30'31.9"	107°53'37.8"
Nashville, TN: Nashville Int'l (BNA)	36°07'28.1"	86°40'41.5"
New Haven, CT: Tweed-New Haven Municipal (HVN)	41°15'50.0"	72°53'13.6"
New Orleans, LA:		
Lakefront (NEW)	30°02'32.7"	90°01'41.7"
New Orleans Int'l (MYS)	29°59'36.2"	90°15'28.9"
Newburgh, NY: Stewart International (SWF)	41°30'14.7"	74°06'17.4"
Newport News-Hampton,VA: Newport News/Williamsburg (PHF)	37°07'54.8"	76°29'34.8"
New York-Northeast, NJ:		
Republic (FRG)	40°43'43.6"	73°24'48.3"
JFK International (JFK)	40°38'23.1"	73°46'44.1"
LaGuardia (LGA)	40°46'38.1"	73°52'21.4"
Long Island-McArthur (ISP)	40°47'42.8"	73°06'00.8"
Morristown Municipal (NJ) (MMU)	40°47'57.7"	74°24'53.5"
Newark Int'l (FWR)	40°41'32.9"	74°10'07.2"
Teterboro (NJ) (TEB)	40°51'00.4"	74°03'39.0"
Norfolk, VA: Norfolk Int'l (ORF)	36°53'40.6"	76°12'04.4"
Oklahoma City, OK:		
Wiley Post (PWA)	35°32'04.4"	97°38'49.9"
Will Rogers World (OKC)	35°23'35.1"	97°36'02.6"
Omaha, NE: Eppley Airfield (OMA)	41°18'09.1"	95° 53'39.0"
Orlando, FL:		
Orlando Executive (ORL)	28°32'43.7"	81°19'58.6"
Orlando Int'l (MCO)	28°25'44.0"	81°18'57.7"
Palm Springs, CA: Palm Springs International (PSP)	33°49'46.8"	116°30'24.1"
Peoria, IL: Greater Peoria Regional (PIA)	40°39'51.3"	89°41'35.9"
Philadelphia, PA–NJ:		
Northeast Philadelphia (PNE)	40°04'55.0"	75°00'38.1"
Philadelphia Int'l (PHL)	39°52'19.0"	75°14'28.1"
Phoenix, AZ:		
Phoenix-Sky Habor Int'l (PHX)	33°26'03.0"	112°00'29.0"
Scottsdale (SDL)	33°37'22.3"	111°54'37.9"
Pittsburgh, PA:		
Allegheny County (AGC)	40°21'15.9"	79°55'48.9"
Pittsburgh Int'l (PIT)	40°29'29.3"	80°13'58.3"
Portland, ME: Portland International Jetport (PWM)	43°38'46.2"	70°18'31.5"
Portland, OR:		
Portland-Hillsboro (HIO)	45°32'25.4"	122°56'59.4"
Portland International (PDX)	45°35'19.4"	122°35'51.0"
Portland-Troutdale (TTD)	45°32'57.7"	122°24'04.5"
Providence-Pawtucket, RI–MA:		
North Central State (SFZ)	41°55'14.7"	71°29'29.0"
T.F. Green State (PVD)	41°43'26.4"	71°25'41.6"
Pueblo, CO: Pueblo Memorial (PUB)	38°17'20.7"	104°29'47.7"
Raleigh/Durham, NC: Raleigh-Durham International (RDU)	35°52'39.5"	78°47'14.9"
Rapid City, SD: Rapid City Regional (RAP)	44°02'43.2"	103°03'26.5"
Reno, NV: Reno/Tahoe International (RNO)	39°29'54.8"	119°46'05.0"
Richmond, VA: Richmond International (RIC)	37°30'18.6"	77°19'10.8"
Roanoke, VA: Roanoke Regional/Woodrum Field (ROA)	37°19'31.7"	79°58'31.5"
Rochester, MN: Rochester International (RST)	43°54'26.0"	92°29'56.4"
Rochester, NY: Greater Rochester Int'l (ROC)	43°07'07.9"	77°40'20.6"
Sacramento, CA:		
Sacramento Executive (SAC)	38°30'45.1"	121°29'36.5"
Sacramento Int'l (SMF)	38°41'43.5"	121°35'26.8"
Saginaw, MI: MBS International (MBS)	43°31'58.5"	84°04'46.7"
Saipan Isl., CQ: Saipan International (GSN)	15°07'08.4"	145°43'45.7" E
St. Louis, MO–IL:		
Spirit of St. Louis (SUS)	38°39'42.7"	90°39'04.4"
St. Louis-Lambert Int'l (STC)	38°44'51.7"	90°21'35.9"
St. Petersburg, FL:		
Albert Whitted Municipal (SPG)	27°45'54.4"	82°37'37.1"
St. Petersburg Clearwater Int'l (PIE)	27°54'38.8"	82°41'14.9"
Salt Lake City, UT: Salt Lake City Int'l (SLC)	40°47'18.2"	111°58'39.9"
San Antonio, TX: San Antonio Int'l (SAT)	29°32'01.3"	98°28'11.2"
San Diego, CA: San Diego Lindbergh Int'l (SAN)	32°44'00.8"	117°11'22.8"

City and airport	Reference coordinates	
	N. Latitude	W. Longitude
San Francisco-Oakland, CA:		
Metropolitan Oakland Int'l (OAK)	37°43'16.7"	122°13'14.6"
San Francisco Int'l (SFO)	37°37'08.4"	122°22'29.4"
San Jose, CA: San Jose Int'l (SJC)	37°21'42.7"	121°55'44.4"
San Juan, PR: Luis Munoz (SJU)	18°26'21.9"	66°00'06.6"
Santa Barbara, CA: Santa Barbara Municipal (SBA)	34°25'34.4"	119°50'25.3"
Santa Fe, NM: Santa Fe Municipal (SAF)	35°37'00.4"	106°05'17.3"
Sarasota, FL: Sarasota/Bradenton International (SRQ)	27°23'43.2"	82°33'14.8"
Savannah, GA: Savannah International (SAV)	32°07'39.3"	81°12'07.7"
Seattle, WA:		
Boeing/King County Int'l (BFI)	47°26'47.9"	122°18'33.5"
Seattle-Tacoma Int'l (SEA)	47°26'56.3"	122°18'33.5"
Shreveport, LA:		
Shreveport Downtown (DTN)	32°32'24.8"	93°44'42.1"
Shreveport Regional (SHV)	32°26'47.9"	93°49'32.2"
Sioux City, IA: Sioux Gateway (SUX)	42°24'09.4"	96°23'03.7"
Sioux Falls, SD: Joe Foss Field (FSD)	43°34'52.9"	96°44'30.1"
South Bend, IN: South Bend Regional (SBN)	41°42'32.2"	86°19'06.5"
Spokane, WA:		
Grant County Int'l (MWH)	47°12'27.5"	119°19'12.7"
Spokane Int'l (GEG)	47°37'11.5"	117°32'01.8"
Springfield, MA:		
Barnes Municipal (BAF)	42°09'27.8"	72°42'56.2"
Westover ARB/Metropolitan (CEF)	42°11'53.8"	72°32'03.3"
Springfield, MO: Springfield-Branson Regional (SGF)	37°14'39.6"	93°23'12.7"
Syracuse, NY: Syracuse-Hancock Int'l (SYR)	43°06'40.3"	76°06'22.7"
Tacoma, WA: Tacoma Narrows (TIW)	47°16'04.6"	122°34'41.2"
Tallahassee, FL: Tallahassee Regional (TLH)	30°23'47.5"	84°21'01.2"
Tampa, FL: Tampa Int'l (TPA)	27°58'31.7"	82°31'59.7"
Telluride, CO: Telluride Regional (TEX)	37°57'13.5"	107°54'30.5"
Toledo, OH: Toledo Express (TOL)	41°35'12.5"	83°48'28.2"
Trenton, NJ–PA: Trenton Mercer (TTN)	40°16'36.1"	74°48'48.5"
Tucson, AZ: Tucson Int'l (TUS)	32°06'57.9"	110°56'27.7"
Tulsa, OK:		
R.L. Jones, Jr. (RVS)	36°02'22.7"	95°59'04.7"
Tulsa Int'l (TUL)	36°11'54.1"	95°53'17.7"
Washington, DC:		
Dulles International (IAD)	38°56'40.3"	77°27'20.9"
Ronald Reagan National (DCA)	38°51'07.5"	77°02'15.8"
Waterloo, IA: Waterloo Municipal (ALO)	42°33'25.5"	92°24'01.2"
West Palm Beach, FL: Palm Beach International (PBI)	26°40'59.4"	80°05'44.1"
White Plains, NY: Westchester County (HPN)	41°04'01.1"	73°42'27.3"
Wichita, KS: Mid-Continent (ICT)	37°38'59.9"	97°25'58.9"
Scranton, PA: Wilkes-Barre/Scranton Int'l (AVP)	41°20'17.3"	75°43'27.4"
Wilmington, DE: New Castle County (ILG)	39°40'43.4"	75°36'23.5"
Worcester, MA: Worcester Regional (ORH)	42°16'02.4"	71°52'32.6"
Youngstown-Warren, OH–PA: Youngstown-Warren Regional (YNG)	41°15'38.7"	80°40'44.8"

[1] Coordinates followed by an "E" are east longitude.

6. Section 90.175 is amended by revising paragraph (b)(1) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(b) * * * (1) A statement is required from the applicable frequency coordinator as specified in §§ 90.20(c)(2) and 90.35(b) recommending the most appropriate frequency. In addition, for frequencies above 150 MHz, if the interference contour of a proposed station would overlap the service contour of a station on a frequency formerly shared prior to radio service consolidation by licensees in the Manufacturers Radio Service, the Forest Products Radio Service, the Power Radio Service, the Petroleum Radio Service, the Motor Carrier Radio Service, the Railroad Radio Service, the Telephone Maintenance Radio Service or the Automobile Emergency Radio Service, the written concurrence of the coordinator for the industry-specific service, or the written concurrence of the licensee itself, must be obtained. Requests for concurrence must be responded to within 20 days of receipt of the request. The written request for concurrence shall advise the receiving party of the maximum 20 day response period. The coordinator's recommendation may include comments on technical factors such as power, antenna height and gain, terrain and other factors which may serve to minimize potential interference. In addition:

* * * * *

7. Section 90.210 is amended by revising the introductory text of paragraphs (b), (c), (g), (h), (i), and (j) to read as follows:

§ 90.210 Emission masks.

* * * * *

(b) *Emission Mask B.* For transmitters that are equipped with an audio low-pass filter, the power of any emission must be attenuated below the unmodulated carrier power (P) as follows:

* * * * *

(c) *Emission Mask C.* For transmitters that are not equipped with an audio low-pass filter, the power of any emission must be attenuated below the unmodulated carrier output power (P) as follows:

* * * * *

(g) *Emission Mask G.* For transmitters that are not equipped with an audio low-pass filter, the power of any emission must be attenuated below the unmodulated carrier power (P) as follows:

* * * * *

(h) *Emission Mask H.* For transmitters that are not equipped with an audio low-pass filter, the power of any emission must be attenuated below the unmodulated carrier power (P) as follows:

* * * * *

(i) *Emission Mask I.* For transmitters that are equipped with an audio low pass filter, the power of any emission must be attenuated below the unmodulated carrier power of the transmitter (P) as follows:

* * * * *

(j) *Emission Mask J.* For transmitters that are not equipped with an audio low-pass filter, the power of any emission must be attenuated below the unmodulated carrier power of the transmitter (P) as follows:

* * * * *

§ 90.242 [Amended]

8. In § 90.242 remove and reserve paragraph (a)(1).

PART 95—PERSONAL RADIO SERVICES

9. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

10. Section 95.401 is amended by revising paragraph (f) to read as follows:

§ 95.401 (CB Rule 1) What are the Citizens Band Radio Services?

* * * * *

(f) The Multi-Use Radio Service (MURS)—a private, two-way, short-distance voice or data communications service for personal or business activities of the general public. The rules for this service are contained in subpart J of this part.

11. Section 95.603 is amended by revising paragraph (g) to read as follows:

§ 95.603 Certification required.

* * * * *

(g) Each Multi-Use Radio Service transmitter (a transmitter that operates or is intended to operate in the MURS) must be certificated in accordance with Subpart J of Part 2 of this chapter, Provided however, that those radio units certificated as of November 12, 2002 need not be recertificated.

12. Section 95.631 is amended by revising paragraph (j) as follows:

§ 95.631 Emission types.

* * * * *

(j) A MURS transmitter must transmit only emission types A1D, A2B, A2D, A3E, F2B, F1D, F2D, F3E, G3E. Emission types A3E, F3E and G3E include selective calling or tone-operated squelch tones to establish or continue voice communications. MURS transmitters are prohibited from transmitting in the continuous carrier mode.

13. Section 95.632 is amended by revising paragraph (b) to read as follows:

§ 95.632 MURS transmitter frequencies.

* * * * *

(b) The authorized bandwidth is 11.25 kHz on frequencies 151.820 MHz, 151.880 MHz and 151.940 MHz. The authorized bandwidth is 20.0 kHz on frequencies 154.570 and 154.600 MHz.

* * * * *

14. Section 95.633 is amended by revising paragraph (f) to read as follows:

§ 95.633 Emission bandwidth.

* * * * *

(f) The authorized bandwidth for any emission type transmitted by a MURS transmitter is specified as follows:

(1) Emissions on frequencies 151.820 MHz, 151.880 MHz, and 151.940 MHz are limited to 11.25 kHz.

(2) Emissions on frequencies 154.570 and 154.600 MHz are limited to 20.0 kHz.

(3) Provided, however, that all A3E emissions are limited to 8 kHz.

15. Section 95.635 is amended by revising paragraph (e) to read as follows:

§ 95.635 Unwanted radiation.

* * * * *

(e) For transmitters designed to operate in the MURS, transmitters shall comply with the following:

Frequency	Mask with audio low pass filter	Mask without audio low pass filter
151.820 MHz, 151.880 MHz and 151.940 MHz	(1)	(1)
154.570 MHz and 154.600 MHz	(2)	(3)

(1) *Emission Mask 1*—For transmitters designed to operate with a 12.5 kHz channel bandwidth, any emission must be attenuated below the power (P) of the highest emission contained within the authorized bandwidth as follows:

(i) On any frequency from the center of the authorized bandwidth f_o to 5.625 kHz removed from fo: Zero dB.

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 5.625 kHz but no more than 12.5 kHz: at least $7.27(f_d - 2.88$ kHz) dB.

(iii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 12.5 kHz: at least 50 + 10 log (P) dB or 70 dB, whichever is the lesser attenuation.

(2) *Emission Mask 2*—For transmitters designed to operate with a 25 kHz channel bandwidth that are equipped with an audio low-pass filter, the power of any emission must be below the unmodulated carrier power (P) as follows:

(i) On any frequency removed from the assigned frequency by more than 50 percent, but not more than 100 percent of the authorized bandwidth: at least 25 dB.

(ii) On any frequency removed from the assigned frequency by more than 100 percent, but not more than 250 percent of the authorized bandwidth: at least 35 dB.

(iii) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth: at least 43 + 10 log (P) dB.

(3) *Emission Mask 3*—For transmitters designed to operate with a 25 kHz channel bandwidth that are not equipped with an audio low-pass filter, the power of any emission must be attenuated below the unmodulated carrier output power (P) as follows:

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 5 kHz, but not more than 10 kHz: at least 83 log (f_d/5) dB.

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 10 kHz, but not more than 250 percent of the authorized bandwidth: at least 29 log (f_d^2/11) dB or 50 dB, whichever is the lesser attenuation.

(iii) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the authorized bandwidth: at least 43 + 10 log (P) dB.

16. Section 95.639(h) is amended by revising paragraph (h) to read as follows:

§ 95.639 Maximum transmitter power.

* * * * *

(h) No MURS unit, under any condition of modulation, shall exceed 2 Watts transmitter power output.

17. Section 95.655 is amended by adding paragraph (d) to read as follows:

§ 95.655 Frequency capability.

* * * * *

(d) No transmitter will be certificated for use in MURS if it is equipped with a frequency capability not listed in § 95.632.

18. Section 95.1307 is revised to read as follows:

§ 95.1307 Permissible communications.

(a) MURS stations may transmit voice or data signals as permitted in this subpart.

(b) A MURS station may transmit any emission type listed in § 95.631(j) of this chapter.

(c) MURS frequencies may be used for remote control and telemetering functions. MURS transmitters may not be operated in the continuous carrier transmit mode.

(d) MURS users shall take reasonable precautions to avoid causing harmful interference. This includes monitoring the transmitting frequency for communications in progress and such other measures as may be necessary to minimize the potential for causing interference.

19. Section 95.1311 is added to read as follows:

§ 95.1311 Repeater operations and signal boosters prohibited.

MURS stations are prohibited from operating as a repeater station or as a signal booster. This prohibition includes store-and-forward packet operation.

20. Section 95.1313 is added to read as follows:

§ 95.1313 Interconnection prohibited.

MURS stations are prohibited from interconnection with the public switched network. *Interconnection Defined.* Connection through automatic or manual means of multi-use radio stations with the facilities of the public switched telephone network to permit the transmission of messages or signals between points in the wireline or radio network of a public telephone company and persons served by multi-use radio stations. Wireline or radio circuits or links furnished by common carriers, which are used by licensees or other authorized persons for transmitter control (including dial-up transmitter control circuits) or as an integral part of an authorized, private, internal system of communication or as an integral part of dispatch point circuits in a multi-use radio station are not considered to be interconnection for purposes of this rule part.

21. Section 95.1315 is added to read as follows:

§ 95.1315 Antenna height restriction.

The highest point of any MURS antenna must no be more than 18.3 meters (60 feet) above the ground or 6.10 meters (20 feet) above the highest point of the structure on which it is mounted.

22. Section 93.1317 is added to read as follows:

§ 95.1317 Grandfathered MURS Stations.

Stations that were licensed under Part 90 of the Commission's Rules to operate on MURS frequencies as of November 13, 2000, are granted a license by rule that authorizes continued operations under the terms of such nullified part 90 authorizations, including any rule waivers.

[FR Doc. 02–25396 Filed 10–10–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 73

[MM Docket 00–39; FCC 02–230]

Conversion to Digital Television

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to require that new broadcast television receiving equipment include the capability to receive digital television (DTV) signals and to reference the most recent version of the Advanced Television System Committee's (ATSC) DTV standard. It also refrains at this time from adopting labeling requirements for TV receivers that are not able to receive over-the-air digital broadcast signals and denies a petition for reconsideration requesting that the Commission consider imposing minimum performance thresholds for DTV receivers if manufacturers do not promptly implement performance standards on their own.

DATES: This rule is effective November 12, 2002. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Office of Engineering and Technology, (202) 418–2925, TTY (202) 418–2989, e-mail: *astillwe@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order and Second Memorandum Opinion and Order* in MM Docket 00–39, FCC 02–230, adopted August 8, 2002 and released August 9, 2002. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. It is also available on the Commission's internet site at *http://www.fcc.gov.* The complete text of this document also may be purchased from the Commission's duplication contractor Qualex International, (202) 863–2893 voice, (202) 863–2898 Fax, *qualexint@aol.com* email, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Summary of Second Report and Order and Second Memorandum Opinion and Order

1. DTV Reception Capability. In the *Report and Order and Further Notice of Proposed Rule Making* (*Report and Order/Further NPRM*), 66 FR 65122, January 18, 2001, the Commission recognized the arguments of broadcasters that DTV receivers are not yet available in the market in large quantities, and certainly not in sufficient volume to support a rapid transition to an all-digital broadcast television service. It therefore requested comment on whether it should require that new TV receivers have the capability to demodulate and decode over-the-air DTV signals, and if so, on how to implement such a requirement. The Commission recognized that it would not be economically feasible at this point to require that DTV reception capability in smaller screen receivers. It stated that it intended to consider an approach that would minimize the cost of a DTV reception capability requirement by phasing it in over time. The Commission indicated that it believed this approach would allow manufacturers to take advantage of the declining costs associated with increasing manufacturing volumes.

2. Based on analysis of the record, the Commission concludes that consumer electronics manufacturers are not voluntarily incorporating DTV reception capability into new receivers on a schedule that will enable the transition to proceed towards the December 31, 2006, target completion date set forth in the Communications Act by Congress (47 U.S.C. 309(j)(14). It therefore is amending its rules to require that new broadcast television receiving equipment include the capability to receive DTV signals. The Commission stated that this requirement will be phased in over time to avoid imposing undue costs on manufacturers or consumers and to minimize any disruption of the TV receiver market. In this regard, the Commission stated that the implementation plan it is adopting reflect and account for the facts that: (1) Including DTV reception capability in new television receivers will require the redesign of product lines, (2) the cost of including that capability in receivers will initially result in an incremental price increase on the order of approximately $200, and perhaps more, per unit, and (3) prices will decline significantly as economies of scale are achieved with increasing volumes of production and production efficiencies that are introduced over time. It stated that this plan will ensure that consumers are provided the capability to receive broadcasters' DTV signals so that the transition of the broadcast television service from analog to digital transmission technology can progress rapidly.

3. The new rules will require that a party responsible for television receiving equipment ("responsible party") under the Commission's rules, generally the manufacturer or importer, include DTV tuners in a certain percentage of that party's entire production or importation of receivers in specific categories. Responsible parties will be required to equip new television receiving equipment that manufactured is shipped in interstate commerce or manufactured in the United States and for which they are responsible with the capability to tune and decode over-the-air DTV signals on all of the channels allocated for TV service in accordance with the following schedule:

—Receivers with screen sizes 36″ and above – 50% of a responsible party's units must include DTV tuners effective July 1, 2004; 100% of such units must include DTV tuners effective July 1, 2005;

—Receivers with screen sizes 25″ to 36″ – 50% of a responsible party's units must include DTV tuners effective July 1, 2005; 100% of such units must include DTV tuners effective July 1, 2006;

—Receivers with screen sizes 13″ to 24″ – 100% of all such units must include DTV tuners effective July 1, 2007.

—Other Devices (videocassette recorders (VCRs), digital video disk and digital versatile disk (DVD) players/recorders, etc.) that receive television signals-100% of all such units must include DTV tuners effective July 1, 2007.

4. For purposes of these requirements, screen sizes are to be measured diagonally across the picture viewing area. The rules will also allow responsible parties to include combinations of DTV monitors and set-top DTV tuners in meeting the required percentages of units with a DTV tuner if such combinations are marketed together with a single price. Where set-top boxes and DTV monitors are sold as a combination, the screen size of the DTV monitor will determine the receiver size category towards which the combination may be counted.

5. *Update of the DTV Transmission Standard.* In comments responding to the *Notice of Proposed Rule Making* (*NPRM*), 65 FR 15600, March 23, 2000, in this proceeding, ATSC indicated that it has made a number of changes to its "ATSC Digital Television Standard (A/53)," since 1996, when that standard was adopted by the Commission as the standard for terrestrial DTV broadcast service. ATSC indicated that these changes include removing constraints associated with the "program paradigm," updating references to the underlying MPEG standards, replacing references to obsolete ATSC standards for Electronic Program Guide and System Information with a reference to the subsequently developed "ATSC Program and System Information Protocol (PSIP) Standard, A/65," and requiring a signal to identify colorimetry. It further noted that it was considering an increase in the maximum allowable audio bit rate. ATSC requested that the Commission revise its rules to reference the latest version of the ATSC DTV Standard A/53. In the *Report and Order/Further NPRM*, the Commission sought comment on whether is should revise its rules to include reference the latest version of the standard as requested by ATSC.

6. The Commission found that it is desirable and appropriate to revise the rules to update its DTV rules to specify the August 7, 2001, version of ATSC DTV Standard A/53B in place of the September 16, 1995, version originally adopted. It stated that updating the rules to reflect improvements in the standard will benefit both the public and broadcasters by allowing broadcasters to make technical improvements in their service that will enhance the quality of DTV services they provide. Accordingly, the Commission is revising § 73.682(d) of its rules to specify ATSC Doc A/53B (ATSC Digital Television Standard, 7 Aug 01), except for Section 5.1.2 ("Compression format constraints") of Annex A ("Video Systems Characteristics") and the phrase "see Table 3" in Section 5.1.1 Table 2 and Section 5.1.2 Table 4. These exceptions are as provided in the current § 73.682(d) and were set forth in the Commission's decision adopting the ATSC standards for DTV service in *Fourth Report and Order* in the DTV proceeding.

7. In its comments responding to the *NPRM*, ATSC also requested that the Commission require use of the ATSC PSIP Standard as part of the DTV transmission standard. In responding to this request in the *Report and Order/Further NPRM*, the Commission stated that it believes that an industry approach is generally the most appropriate means for managing the implementation of a PSIP system. However, the Commission recognized that the transport stream identifiers (TSIDs) used with the PSIP system must be unique to each individual television station and that there is a need to coordinate TSID assignments for stations in the border areas with our neighbors in Canada and Mexico. The Commission therefore agreed that TSID assignments should be made part of its process for broadcast television stations and stated that it will begin the process to incorporate this function into that process in the near future.

8. In *Second Report and Order and Second Memorandum Opinion and Order*, the Commission stated that it recognizes the benefits for broadcasters and consumers of the service features offered by the ATSC PSIP specification. It stated that in view of the of the broadcast and consumer electronics industries' support for incorporation of this specification in the rules, it will address the possible adoption of the ATSC PSIP specification into the rules in the Notice of Proposed Rule Making in our forthcoming Second Review of our policies for the DTV transition. The Commission further stated that in the interim, it we will include a reference to the ATSC PSIP Standard in § 73.682(d) of the rules as a document that licensees may consult for guidance.

9. *Other Issues.* The Commission also refrained at this time from adopting its proposal to require that TV receivers that are not able to receive over-the-air digital broadcast signals be labeled that they are not able to receive such signals. The Commission indicated at that at this point, it does not know when—or if—such products will become commercially available or how they will be marketed. It stated that it will continue to monitor the state of the

marketplace and will take additional steps if necessary to protect consumers' interests.

Final Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Report and Order and Further Notice of Proposed Rule Making* in MM Docket No. 00–39 (*Report and Order/Further NPRM*)." [2] The Commission sought written public comment on several issues concerning the transition to digital television (DTV), including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need For, and Objectives of, the Report and Order

12. Beginning in 1987, the Commission undertook to bring the most up-to-date technology to broadcast television. That resulted in several Commission decisions including those adopting a digital television (DTV) standard, DTV service rules, and a Table of DTV Allotments. The Table of DTV Allotments provides each existing television broadcaster with a second channel on which to operate a DTV station for the transition period after which one of its channels will revert to the government for use in other services. The transition deadline established by Congress is December 31, 2006. The Commission is permitted to extend that deadline on a market-by-market basis if more than 15 percent of viewers will be left without service from (1) a digital television receiver; (2) an analog television receiver equipped with a digital/analog converter; or (3) a multi-channel video provider that carries local broadcast stations.

13. The Commission has determined that a requirement to include DTV reception capability in new television sets is necessary due to the lack of progress by the market in including DTV reception capability in new television receivers. In particular, the Commission is concerned that continued marketing of analog-only TV sets can only serve to delay the transition. In order for the DTV transition to move forward towards the year 2006 target completion date established by Congress, or thereafter as close to that date as possible, receivers with DTV capability need to be on the market in quantity and at reasonable prices very soon. Since it was adopted by the Commission in 1996, the DTV transmission standard has been updated by its developers to include new features and to improve several aspects of its performance. The rules need to be revised to allow television stations to implement these new features and improvements.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

14. No comments were filed in response to the IRFA.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

15. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[4] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act.[6] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[7]

16. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the [SBA] and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[8] Nationwide, as of 1992, there were approximately 275,801 small organizations.[9] "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000." [10] As of 1992, there were approximately 85,006 local governments in the United States.[11] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[12] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

17. Rules adopted in this proceeding will apply to manufacturers of television transmitting and receiving equipment and to television stations. The SBA has established a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. Under this standard, business firms are considered small if they have 750 or fewer employees.[13] Census data for 1997 indicate that, for that year, there were a total of 1,215 establishments [14] in this category.[15] Of those, there were 1150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of broadcast equipment manufacturers to others in this category is approximately 22%,[16] so we estimate that the number of broadcast equipment manufacturers with employment under 500 was actually closer to 253, with an additional 8 establishments having employment of between 500 and 999. Television manufacturers alone (*i.e.*, without radio) accounted for yet smaller numbers. Given the above, we estimate that the great majority of television broadcasting equipment manufacturers are small.

18. The SBA has also established a small business size standard for Audio and Video Manufacturing, which includes the manufacturing of television sets. Under this standard, business firms are considered small if they have 750 or fewer employees.[17] Census data for 1997 indicate that, for that year, there were a total of 554 establishments in this category.[18] Of those, there were 542 that had employment under 500, and an additional 9 that had employment of 500 to 999.[19] The percentage of television set manufacturers to others in this category is approximately 6.3%, [FN H] so we estimate that the number of broadcast equipment manufacturers with employment under 500 was actually closer to 34, with an additional zero or one establishment having employment of between 500 and 999. Given the above, we estimate that virtually all television set manufacturers are small.

19. The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts.[20] According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database, fewer than 800 commercial TV broadcast stations (65%) subject to our proposal have revenues of less than $10.5 million dollars. We note, however, that under SBA's definition, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. Therefore, our estimate may overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-television affiliated companies. It would appear that there will be no more than 800 entities affected.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

20. The actions taken in the Second Report and Order and Second Memorandum Opinion and Order impose no reporting or recordkeeping requirements on television broadcast stations, large or small, or on manufacturers of television transmitting or receiving equipment, large or small. The only compliance burden adopted in this Second Report and Order and Second Memorandum Opinion and Order is the requirement that new television receivers be capable of tuning over-the-air DTV signals, which is described in Section E, *infra*.[21]

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

21. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[22]

22. The Commission recognizes that requiring DTV reception capability in new television receivers that action will pose new burdens on consumer electronics manufacturers, especially in the initial period when production volumes are relatively low. It further recognizes that the cost considerations associated with DTV reception capability are such that it would not be economically feasible at this point in time to include DTV capability in smaller screen receivers. However, as production increases, the price and size of the components needed for DTV reception will decline substantially, so that the incremental cost of including that capability in TV receivers will eventually become low.

23. The plan for implementing the DTV tuner requirement adopted in the Second Report and Order and Second Memorandum Opinion and Order is designed to be as simple and inexpensive to manufacturers as possible, including any small entities. This plan will minimize the impact on receiver manufacturers by phasing the requirement in over time. By applying the requirement first to large screen receivers, some models of which now already include an integrated DTV tuner, the plan will provide time for manufacturers to develop the economic efficiencies needed to produce TV sets with DTV tuners at lower cost. Over time the percentage of units that will have to have DTV reception capability will increase and the requirement would also be extended to smaller screen units in the same incremental manner. To minimize the impact on costs to manufacturers, receivers will only be required to have the capability to receive and decode over-the-air DTV signals. Thus, TV sets subject to the requirement will only have to provide useable picture and sound commensurate with their video and sound capabilities when receiving any of the recognized ATSC video formats; there is no requirement for full HDTV capability.

24. While extending the phase in period beyond July 1, 2007,[23] would have provided additional time for manufacturers to develop cost reductions, the Commission found that imposing the requirement on all receivers by this date was necessary in order to be consistent with the statutory specification of this date as the target for completing the DTV transition. The Commission also chose not to adopt an alternative that would have based the measure of compliance on the percentage of models that a manufacturer produces with DTV tuners. The plan adopted bases the measure of compliance on a manufacturer's total production of TV receivers. However, the Commission did allow manufacturers to include set-top DTV tuners marketed together with a DTV-ready receiver in the number of units that count towards meeting this requirement.

25. The Commission's action to update the DTV transmission standard to reflect the most recent version that has been issued by the Advanced Television Systems Committee is expected to have no adverse on any small entity. In this regard, the changes in the most recent version are all backwards compatible with the specifications of the version of the standard that was previously adopted and thereby with the capabilities of existing DTV transmission and receiving equipment.

26. As noted, we received comments asking, *inter alia*, that requirements we adopt be phased in more quickly,[24] and we chose instead to adopt the phase in schedule described. We believe that rejecting the alternative of a quicker transition will assist those manufacturers that are also small entities.

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[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *Report and Order and Further Notice of Proposed Rule Making* in MM Docket No. 00–39, 16 FCC Rcd 5946 (2001).

[3] *See* 5 U.S.C. 604.

[4] 5 U.S.C. 603(b)(3).

[5] *Id.* 601(6).

[6] *Id.* 601(3).

[7] 15 U.S.C. 632.

[8] 5 U.S.C. 601(4).

[9] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[10] 5 U.S.C. 601(5).

[11] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[12] *Id.*

[13] 13 CFR 121.201, NAICS code 334220.

[14] The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small bueinsses. In this category, the census breaks-out data for firms or companies only to give the total number of such entities for 1997, which was 1,089.

[15] U.S. Census Bureau, 1997 Economic Census, Industry Series: Manufacturing, "Industry Statistics by Employment Size," Table 4, NAICS code 334220 (issued Aug. 1999).

[16] *Id.* Table 5, "Industry Statistics by Industry and Primary Product Class Specialization: 1997."

[17] 13 CFR 121.201, NAICS code 334310.

[18] U.S. Census Bureau, 1997 Economic Census, Industry Series: Manufacturing, "Industry Statistics by Employment Size: 1997," Table 4, NAICS code 334310 (issued Aug. 1999). In this category, the census breaks-out data for firms or companies only to give the total number of such entities for 1997, which was 524.

[19] *Id.* Table 5, "Industry Statistics by Industry and Primary Product Class Specialization: 1997."

[20] 13 CFR 121.201 (NACIS Code 513120).

[21] *See also* para. 2, *supra*, describing receiver cost/price increases.

[22] 5 U.S.C. 603(c).

[23] *See* para. 3, *supra*, describing the implementation schedule for the DTV tuner requirement.

[24] *See* paras. 11 and 13, *supra*.

F. Report to Congress

27. The Commission shall send a copy of the Second Report and Order and Second Memorandum Opinion and Order in MM Docket No. 00–39, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission shall send a copy of the Second Report and Order and Second Memorandum Opinion and Order in MM Docket No. 00–39, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Second Report and Order and Second Memorandum Opinion and Order in MM Docket No. 00–39 and FRFA (or summaries thereof) will also be published in the **Federal Register**, see 5 U.S.C. 604(b).

List of Subjects in 47 CFR Parts 15 and 73

Digital television broadcasting, Incorporation by reference, Radio, and television.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR parts 15 and 73 as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 303, 304, 307, and 554A.

2. Section 15.117 is amended by revising paragraph (a); redesignating paragraph (h) as paragraph (j); and adding new paragraphs (h) and (i) to read as follows:

§ 15.117 TV broadcast receivers.

(a) All TV broadcast receivers shipped in interstate commerce or imported into the United States, for sale or resale to the public, shall comply with the provisions of this section, except that paragraphs (f) and (g) of this section shall not apply to the features of such sets that provide for reception of digital television signals. The reference in this section to TV broadcast receivers also includes devices, such as TV interface devices and set-top devices that are intended to provide audio-video signals to a video monitor, that incorporate the tuner portion of a TV broadcast receiver and that are equipped with an antenna or antenna terminals that can be used for off-the-air reception of TV broadcast signals, as authorized under part 73 of this chapter.

* * * * *

(h) *Digital television reception capability.* TV broadcast receivers are required only to provide useable picture and sound commensurate with their video and audio capabilities when receiving digital television signals.

(i) *Digital television reception capability implementation schedule.* (1) Responsible parties, as defined in § 2.909 of this chapter, are required to equip new TV broadcast receivers that are shipped in interstate commerce or imported from any foreign country into the United States and for which they are responsible to comply with the provisions of this section in accordance with the following schedule:

—Receivers with screen sizes 36″ and above—50% of all of a responsible party's units must include DTV tuners effective July 1, 2004; 100% of such units must include DTV tuners effective July 1, 2005

—Receivers with screen sizes 25″ to 36″—50% of all of a responsible party's units must include DTV tuners effective July 1, 2005; 100% of such units must include DTV tuners effective July 1, 2006

—Receivers with screen sizes 13″ to 24″—100% of all such units must include DTV tuners effective July 1, 2007

—Other devices (videocassette recorders (VCRs), digital video disk and digital versatile disk (DVD) players/recorders, etc.) that receive television signals—100% of all such units must include DTV tuners effective July 1, 2007.

(2) For purposes of this implementation schedule, screen sizes are to be measured diagonally across the picture viewing area. The requirement for equipping new TV broadcast receivers with DTV reception capability does not apply to units with integrated tuners/displays that have screen sizes measuring less than 7.8 inches vertically, *i.e.*, the vertical measurement of a screen in the 4:3 aspect ratio that measures 13″ diagonally across the picture viewing area.

(3) Responsible parties may include combinations of DTV monitors and set-top DTV tuners in meeting the required percentages of units with a DTV tuner if such combinations are marketed together with a single price.

* * * * *

PART 73—RADIO BROADCAST SERVICES

3. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

4. Section 73.682(d) is revised to read as follows:

§ 73.682 TV transmission standards.

* * * * *

(d) *Digital broadcast television transmission standard.* Transmission of digital broadcast television (DTV) signals shall comply with the standards for such transmissions set forth in Advanced Television Systems Committee (ATSC) Doc. A/52, ATSC Standard Digital Audio Compression (AC–3), December 20, 1995 and ATSC Doc. A/53B, Revision B, with Amendment 1, ATSC Digital Television Standard, August 7, 2001, except for Section 5.1.2 (''Compression format constraints'') of Annex A (''Video Systems Characteristics'') and the phrase ''see Table 3'' in Section 5.1.1 Table 2 and Section 5.1.2 Table 4. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Federal Communications Commission, 445 12th St., SW, Washington, DC 20554 or at the Office of the Federal Register, 800 N. Capitol St., NW, Suite 700, Washington, DC. Copies of ATSC A/52, A/53, A/54, and A/65 can be obtained from the Commission's contract copier or from the Advanced Television Systems Committee, 1750 K St., NW, Washington, DC 20006. They are also available in their entirety on the Internet at *http//:www.atsc.org*. Although not incorporated by reference, licensees may also consult ATSC Doc. A/54, Guide to Use of the ATSC Digital Television Standard, October 4, 1995, and ATSC Doc. A/65A, Program System and Information Protocol (PSIP) for Terrestrial Broadcast and Cable, December 23, 1997 for guidance.

[FR Doc. 02–25767 Filed 10–10–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 579

[Docket No. NHTSA 2001–10773; Notice 3]

RIN 2127–AI26

Reporting of Information About Foreign Safety Recalls and Campaigns Related to Potential Defects

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document adopts amendments that implement the foreign safety recall and safety campaign reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Section 3(a) of the TREAD Act requires a manufacturer of motor vehicles or motor vehicle equipment to report to the National Highway Traffic Safety Administration (NHTSA) whenever it has decided to conduct a safety recall or other safety campaign in a foreign country covering vehicles or equipment that are identical or substantially similar to vehicles or equipment offered for sale in the United States. The manufacturer must also report whenever it has been notified by a foreign government that a safety recall or safety campaign must be conducted covering such vehicles or equipment.

DATES: Effective Date: The effective date of the final rule is November 12, 2002. Petitions for Reconsideration: Petitions for reconsideration of the final rule must be received not later than November 25, 2002.

ADDRESSES: Petitions for reconsideration of the final rule must refer to the docket and notice number set forth above and be submitted to Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA (phone: 202–366–5226). For legal issues, contact Taylor Vinson, Office of Chief Counsel, NHTSA (phone: 202–366–5263).

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I. Background

The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (Public Law 106–414) was enacted on November 1, 2000. The TREAD Act, among other things, amended 49 U.S.C. 30166 to add new subsection (l), ''Reporting of defects in motor vehicles and products in foreign countries,'' and new subsection (m), ''Early warning reporting requirements.'' Because the TREAD Act required us to publish a final rule on early warning reporting by June 30, 2002, and did not impose a deadline for reporting of foreign defects, we accorded priority to implementing Section 30166(m). We issued an advance notice of proposed rulemaking (ANPRM) on January 22, 2001 (66 FR 6532) in which we sought comments on two issues that were also related to the reporting of foreign defects: manufacturers to be covered by the new regulations and the definition of ''substantially similar'' motor vehicles and equipment. The comments on the ANPRM assisted us in addressing both these issues in the NPRM on the reporting of foreign defects, to be codified in Subpart B of 49 CFR part 579, published on October 11, 2001 (66 FR 51907), and in the NPRM on early warning reporting, to be codified in Subpart C of 49 CFR part 579, published on December 21, 2001 (66 FR 66190). In addition, the NPRM on early warning proposed a Subpart A to Part 579, which contains a statement of application and terminology that would apply to both Subpart B and Subpart C.

We encouraged readers to review the two NPRMs in parallel to ensure consistency (66 FR 66191). The comments in response to both these NPRMs raised some issues applicable to both rulemakings, which were resolved in the early warning final rule, published on July 10, 2002 (67 FR 45822). To the extent that the resolution of these issues is equally applicable to the foreign defect reporting final rule, we shall not discuss them in the detail that we did in the early warning final rule, but shall incorporate relevant discussions by reference and provide page citations for them.

Comments on the October 11, 2001 NPRM were submitted by manufacturers of motor vehicles (the Alliance of Automobile Manufacturers (the Alliance) (whose members are BMW, DaimlerChrysler, Fiat, Ford, General Motors, Isuzu, Mazda, Mitsubishi, Nissan, Porsche, Toyota, Volvo and Volkswagen), the Association of International Automobile Manufacturers, Inc. (AIAM), Ford Motor Company (Ford), Volkswagen of America, Inc. (VW) including Volkswagen AG and Audi AG, Nissan North America, Inc. (Nissan), the Truck Manufacturers Association (TMA), and Harley-Davidson Motor Company (Harley-Davidson), equipment manufacturers (the Motor Equipment Manufacturers Association (MEMA) together with the Original Equipment Suppliers Association, Breed Technologies (Breed), Delphi Automotive Systems, LLC (Delphi), Johnson Controls (Johnson), and Bendix Commercial Vehicle Systems, LLC (Bendix)), public interest groups (Advocates for Highway and Auto Safety (Advocates) and Public Citizen (PC)), and the National Automobile Dealers Association (NADA). The Juvenile Products Manufacturers Association (JPMA) represented the views of child restraint system manufacturers. The Rubber Manufacturers Association (RMA) represented those of the tire industry. The early warning rule identifies entities that commented on the term ''manufacturer'' and the phrase ''substantially similar motor vehicles and equipment'' in the context of that rulemaking.

As the preamble to the October 2001 NPRM noted, during 2000, NHTSA's Office of Defects Investigation (ODI) became aware of three ''Owner Notification Programs'' that Ford Motor Company (Ford) had conducted on

Ford-manufactured sport utility vehicles equipped with ATX and Wilderness tires manufactured by Bridgestone/Firestone, Inc. (Firestone). These vehicles had been sold for use in the Persian Gulf region, Thailand, and Venezuela. In each case, Ford explained to owners that it was offering to replace the tires because they might experience interior tire degradation and tread separation, due to usage patterns and environmental conditions unique to each geographical region, "resulting in a loss of vehicle control." In none of the three cases did Ford immediately notify NHTSA that it was taking this action, because, as it explained later, there was no regulation requiring it to do so.

Manufacturers of motor vehicles and replacement equipment were, and are, under a longstanding obligation to notify NHTSA if the manufacturer "learns the vehicle or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety." (49 U.S.C. 30118(c)(1)). Similarly, under Section 30118(c)(2), when the manufacturer decides in good faith that a vehicle or equipment item does not comply with an applicable Federal motor safety standard, it must report the noncompliance to NHTSA. The precursor to Section 30118(c), which contained substantially similar language, has been held to impose upon a manufacturer the duty "to notify and remedy *whether it actually determined, or it should have determined*, that its [products] are defective and the defect is safety-related." *United States* v. *General Motors Corp. (X-Cars)*, 656 F. Supp. 1555, 1559 n.5 (D.D.C. 1987) (emphasis added), *affirmed*, 841 F. 2d 400 (D.C. Cir. 1988), citing *United States* v. *General Motors Corp.*, 574 F. Supp. 1047, 1050 (D.D.C. 1983).

Pursuant to 49 U.S.C. 30166, NHTSA has extensive investigative authority. However, until the TREAD Act, the only regulatory requirements to provide information to NHTSA about *potential* defects were established by 49 U.S.C. 30166(f), "Providing copies of communications about defects and noncompliance," as implemented by 49 CFR 573.8, "Notices, bulletins, and other communications" (now 49 CFR 579.5(a)). Section 30166(f) provides that:

> A manufacturer shall give [NHTSA] a true or representative copy of each communication to the manufacturer's dealers or to owners or purchasers of a motor vehicle or replacement equipment produced by the manufacturer about a defect or noncompliance with a motor vehicle safety standard * * * in a vehicle or equipment that is sold or serviced.

To implement Section 30166(f), NHTSA adopted 49 CFR 573.8, which specifies that:

> Each manufacturer shall furnish to the NHTSA a copy of all notices, bulletins, and other communications (including those transmitted by computer, telefax or other electronic means, and including warranty and policy extension communiques and product improvement bulletins), other than those required to be submitted by Sec. 573.5(c)(9), sent to more than one manufacturer, distributor, dealer, lessor, lessee, or purchaser, regarding any defect in its vehicles or items of equipment (including any failure or malfunction beyond normal deterioration in use, or any failure of performance, or flaw or unintended deviation from design specifications), whether or not such defect is safety related. Copies shall be in readable form and shall be submitted monthly, not more than five (5) working days after the end of each month.[1]

PC accurately commented that the regulation does not explicitly exclude the submission of communications provided to dealers overseas. However, NHTSA has never interpreted Section 573.8 to specifically address manufacturer communications only to overseas dealers, and this question was not within the scope of the NPRM. Accordingly, we are not addressing it further in this rule.

To address foreign reporting and other issues, the TREAD Act (Public Law 106–414) was enacted on November 1, 2000. Section 3(a) of the TREAD Act amended 49 U.S.C. 30166 to add a new subsection (l), which reads as follows:

> (1) REPORTING OF DEFECTS IN MOTOR VEHICLES AND PRODUCTS IN FOREIGN COUNTRIES—
>
> (1) REPORTING OF DEFECTS, MANUFACTURER DETERMINATION—Not later than 5 working days after determining to conduct a safety recall or other safety campaign in a foreign country on a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States, the manufacturer shall report the determination to the Secretary.
>
> (2) REPORTING OF DEFECTS, FOREIGN GOVERNMENT DETERMINATION—Not later than 5 working days after receiving notification that the government of a foreign country has determined that a safety recall or other safety campaign must be conducted in the foreign country on a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States, the manufacturer shall report the determination to the Secretary.
>
> (3) REPORTING REQUIREMENTS—The Secretary shall prescribe the contents of the notification required by this subsection.

The obligation to report under the first two paragraphs above was effective on the day that the TREAD Act was signed into law, November 1, 2000. Since that date, NHTSA has, in fact, received numerous notifications of foreign safety campaigns being conducted by vehicle and equipment manufacturers. The content, format, and scope of these reports have varied, which supports the need for a regulation that defines and standardizes the information provided, as required by the third subparagraph. For example, at the time of the NPRM, Ford was conducting a "field action" in Thailand, Malaysia, and Fiji to replace faulty brake caliper bodies on certain Mazda Fighter and Ford Ranger J97 vehicles. Ford advised us that "This model is not marketed in the United States." This leaves unanswered the question whether the model is substantially similar to one marketed in the United States, or whether the brake caliper bodies are identical or substantially similar to brake caliper bodies on Ford/Mazda vehicles that are sold in the United States. At the same time, Firestone was conducting a "Customer Satisfaction Program" in the Middle East covering certain tires manufactured in its Wilson, North Carolina plant that were original equipment on 589 vehicles manufactured by Ford, specifically model year 1998 and 1999 Ford Taurus and Mercury Sable sedans and station wagons. Its letter to us did not state whether similar tires were used on vehicles in the United States.

II. Part 579, Subparts A and B

A. Introduction

With the recent publication of the early warning reporting final rule (67 FR 45822), 49 CFR part 579 was reissued with the title "Reporting of Information and Communications About Potential Defects," and the previous provisions of Part 579 were moved and incorporated into 49 CFR Part 573. The notice issuing the early warning final rule established both Subparts A (General) and C (Reporting of Early Warning Information) of Part 579. Subpart A is comprised of sections that establish the scope of Part 579, and its purpose, application, and terminology. That subpart also specifies the address and manner for submitting reports and other information under Part 579, and establishes requirements governing certain notices, bulletins, and other communications to more than one manufacturer, distributor, dealer, lessor, lessee, owner, or purchaser in the United States. See Section 579.5(a). The rule we are issuing today on foreign campaign reporting establishes Subpart B (Reporting of Safety Recalls and Other Safety Campaigns in Foreign Countries).

The October 2001 NPRM proposed to establish Sections 579.11, "Additional definitions for subpart B," 579.12, "Identical or substantially similar vehicles and equipment," 579.13, "Reporting responsibilities," 579.14, "Content of reports," and 579.15, "Who may submit reports." As mentioned above, thereafter the December 2001 NPRM on early warning reporting, among other things, noted that it included in Subpart A provisions, applicability, and terminology that would apply to both Subpart B on foreign defect reporting and Subpart C on early warning reporting. We address applicability and the term "manufacturer" under point B below. For organizational purposes of locating all definitions in Subpart A, we will add definitions of "foreign country," "foreign government," "safety recall," and "other safety campaign" to Section 579.4 rather than provide a separate definitions section in Subpart B. These definitions and substantive issues related to them are addressed in under point C below.

B. Applicability

In Subpart A of Part 579, which was published on July 10, 2002 and applies to today's rule, we defined manufacturer as:

> a person manufacturing or assembling motor vehicles or motor vehicle equipment, or importing motor vehicles or motor vehicle equipment for resale. This term includes any parent corporation, any subsidiary or affiliate, and any subsidiary or affiliate of a parent corporation of such a person.

Under Application (Section 579.3(a)), the rule states that:

> [t]his part applies to all manufacturers of motor vehicles and motor vehicle equipment with respect to all motor vehicles and motor vehicle equipment that have been offered for sale, sold, or leased in the United States by the manufacturer, including any parent corporation, any subsidiary or affiliate of the manufacturer, or any subsidiary or affiliate of any parent corporation, and with respect to all motor vehicles and motor vehicle equipment that have been offered for sale, sold, or leased in a foreign country by the manufacturer, including any parent corporation, any subsidiary or affiliate of the manufacturer, or any subsidiary or affiliate of any parent corporation, and are [identical or] substantially similar to any motor vehicles or motor vehicle equipment that have been offered for sale, sold, or leased in the United States [emphasis supplied]. [The statutory words "identical or" were inadvertently omitted and have been added by this final rule.]

In developing these provisions, we considered numerous comments. A number of commenters had taken the same positions in their comments on both the October 2001 and the December 2001 NPRMs, which was understandable given that both addressed foreign events involving substantially similar vehicles and equipment and the statement in the preamble to the December 2001 NPRM that Subpart A would apply to both foreign defect reporting and early warning reporting. For example, on foreign defect reporting VW urged NHTSA "to refrain from attempting to assert jurisdiction over entities with no nexus to the United States." Nissan had a similar comment. They made similar comments in response to the early warning NPRM (see 67 FR 45825–45828). Inasmuch as we addressed these and other comments related to applicability and the definition of manufacturer in the course of the final rule published on July 10, 2002, there is no need to repeat our response here. We incorporate that notice by reference. See 67 FR 45825–45834.

In the October 2001 NPRM, we proposed that "manufacturer" would include agents of manufacturers, through the proposed definitions of "safety recall" and "other safety campaign" (the proposed text is set out in point C below). Nissan and the Alliance specifically objected to the inclusion of "agent." The Alliance asserted that even in the United States, case law does not establish a "bright line" test to determine in advance whether an entity, such as a dealer, is an "agent" of a vehicle manufacturer. The Alliance asserted that use of the term "agent" in a foreign business environment is "particularly problematic" because manufacturers in foreign countries "may have entities (such as independent distributorships) acting on their behalf for certain purposes, but not others." We have carefully considered these comments. Noting that we did not use the term "agent" in the early warning reporting final rule, we have decided that we do not need it for purposes of foreign defect reporting. The definition of "manufacturer" in Section 579.4(c) provides adequate breadth.

Also, both the foreign defect reporting NPRM and the early warning reporting NPRM proposed transferring the provisions of Section 573.8 on notices, bulletins, and other communications to Part 579, the latter NPRM adding the limitation that its provisions applied to documents sent "in the United States." The early warning reporting final rule adopted this proposal, Section 573.8 becoming Section 579.5(a). The limitation addresses AIAM's comment to the foreign defect reporting NPRM expressing concern that, without limiting it to documents sent in the United States, the provision could be construed to require submission of documents relating to foreign non-safety defect communications.

There were additional comments on the foreign defect reporting NPRM that were not raised in the early warning reporting rulemaking and thus not addressed in the July 10 rule. NADA suggested that "Section 579.3 should include language similar to that in 49 CFR 577.3 indicating that *manufacturers* should include all 'stage' manufacturers." Section 577.3 applies in part to "manufacturers of incomplete motor vehicles," and, in the case of vehicles manufactured in two or more stages, allows compliance with the obligation to notify and remedy noncompliances or safety-related defects by either the manufacturer of the incomplete vehicle or any subsequent manufacturer.

We have reviewed this comment and have concluded that vehicle safety concerns do not require that manufacturers of incomplete vehicles be included in the foreign defect reporting requirements with respect to those vehicles. On an average, NHTSA receives only 10 to 15 Part 573 reports each year that apply only to incomplete vehicles. Given the widely varying configurations of incomplete vehicles when completed, and given the relatively few such vehicles that are either exported from or imported into the United States, we believe that the number of foreign safety recalls or other safety campaigns on these unfinished vehicles will be even fewer than experienced in this country, and information about such recalls is likely to be of no real added value in detecting defect trends. Therefore, we have not adopted this suggestion.

In addition, NADA suggested that "registered importers subject to Part 573 and Part 577 defect and noncompliance reporting and notification requirements also should be subject to the Part 579 [foreign defect campaign] reporting requirements." Parts 573 and 577 apply to registered importers (RIs) because 49 U.S.C. 30147 specifically requires RIs to notify and remedy safety-related defects and noncompliances in vehicles they import. However, because RIs are not original manufacturers exporting vehicles, they will not be conducting, or ordered to conduct, campaigns outside

[1] The notices, bulletins, and other communications required to be submitted by Sec. 573.5(c)(9), which Sec. 573.8 excludes, are those that relate directly to a noncompliance or a safety-related defect that NHTSA or a manufacturer has determined to exist under 49 U.S.C. 30118(b) or (c).

the United States. To the extent that there is a campaign conducted abroad covering vehicles that are identical or substantially similar to those that an RI imports, the campaign will usually be reported to NHTSA by the fabricating manufacturer or its representative. Although foreign campaigns might not be reported which cover vehicles that RIs are authorized to import that have no U.S. certified counterpart (see VCP column, Appendix A, Part 593), these vehicles are few in number and their overall impact upon safety is negligible. Thus, there is little reason to require RIs to report under Subpart B.

C. Additional Definitions in Section 579.4(c), Including "Safety Recall" and "Other Safety Campaign."

Section 30166(l) requires that a manufacturer of motor vehicles or motor vehicle equipment report to us when it has decided, or has been required by a foreign government, to conduct "a safety recall or other safety campaign" outside the United States that involves vehicles or equipment that are identical or substantially similar to products sold in the United States. As we noted in the NPRM, the TREAD Act does not define "safety recall or other safety campaign." Further, NHTSA does not have comprehensive information about the laws of jurisdictions outside the United States relating to recalls of motor vehicles and motor vehicle equipment, and thus does not have detailed knowledge of the terminology or specific practices used in foreign countries to address potential safety problems. For example, some countries may not differentiate defects from noncompliances with safety standards or with safety guidelines. Accordingly, we cannot presume that a procedure abroad will follow that specified in 49 U.S.C. 30118–30120 and 49 CFR Part 573; *e.g.*, a notification to a government agency within 5 days after the manufacturer determines that its product contains a safety-related defect or noncompliance, followed by notification to owners, purchasers, and dealers containing an offer to remedy through repair, repurchase, or replacement.

In the United States, the elements of a "safety recall" are established by 49 U.S.C. 30118–30120. In general, these elements are (1) a determination by a manufacturer of motor vehicles or motor vehicle equipment, or by NHTSA, that a safety-related defect or noncompliance exists, (2) notification by the manufacturer to NHTSA within a reasonable time (defined in redesignated 49 CFR 573.6(b) to be within 5 business days of its determination), and (3) notification by the manufacturer to owners, purchasers, and dealers advising of the determination and potential safety consequences, and offering a free remedy.

We proposed to characterize a "safety recall" abroad as involving a determination by a manufacturer or one of its affiliates or subsidiaries (or a foreign government) that there is a problem with specific motor vehicles or motor vehicle equipment that relates to motor vehicle safety (*e.g.*, a defect or noncompliance with a local safety standard or governmental guideline), followed by an offer by the manufacturer to provide remedial action. The offer could be made either by notifying the owner directly or through notifying dealers, who would then communicate with owners. Such safety recalls would have to be reported, whether or not the problem at issue would constitute a safety-related defect or noncompliance under U.S. law.

The TREAD Act also does not define "other safety campaign." As discussed in the NPRM, we would distinguish an "other safety campaign" from a "safety recall" in two ways. First, a manufacturer would not necessarily make any acknowledgement, express or otherwise, that a safety problem existed. Second, the "campaign" would not necessarily involve the provision of a remedy. It could include such actions as an extended warranty or simply a warning to owners or dealers about a possible problem that could relate to safety. It would not include ad hoc good will repairs or replacements solely by local dealers for individual owners. Thus, a "safety campaign" would be defined as an action in which a manufacturer communicates with owners and/or dealers with respect to conditions under which a vehicle or equipment item should be operated, repaired, or replaced, that relate to safety. As used above, the words "relate to" would have the same broad meaning they do in 49 U.S.C. 30118(b) and (c). See, *e.g.*, *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992).

Taking these factors into consideration, we proposed that a "safety recall" be defined as:

> An offer by a manufacturer, including but not limited to a foreign subsidiary or affiliate or agent of a manufacturer, to owners of vehicles or equipment in a foreign country to provide remedial action to address a defect that relates to motor vehicle safety or a failure to comply with an applicable safety standard or guideline.

We proposed that "other safety campaign" mean:

> An action in which a manufacturer, including but not limited to a foreign subsidiary or affiliate or agent of a manufacturer, communicates with owners and/or dealers in a foreign country with respect to conditions under which vehicles or equipment should be operated, repaired, or replaced, that relate to safety.

Before turning to the terms "safety recall" and "other safety campaign," we note that these proposed definitions included references to subsidiaries, affiliates, and agents of manufacturers. However, as finally defined in Section 579.4(c) and as discussed above, "manufacturer" includes subsidiaries and affiliates, and does not include agents. To avoid redundancy, and consistent with the approach taken with respect to early warning reporting, we are eliminating those references in the definitions of "safety recall" and "other safety campaign" adopted in this final rule, and simply use the term "manufacturer" as defined in Section 579.4(c).

There was little comment on the proposed definition of "safety recall." Nissan noted with approval that the core elements of a safety recall established by the Vehicle Safety Act are present in the proposed definition of "safety recall." However, one of these core elements is that the remedy be without charge. We are not familiar with the laws of other countries on safety recalls and do not wish to imply that provision of free remedy or reimbursement is a necessary component of a "safety recall" under the TREAD Act. We are clarifying this in the final definition of "safety recall," which means:

> An offer by a manufacturer to owners of vehicles or equipment in a foreign country to provide remedial action to address a defect that relates to motor vehicle safety or a failure to comply with an applicable safety standard or guideline, whether or not the manufacturer agrees to pay the full cost of the remedial action.

Some commenters contended that the definition of "other safety campaign" should relate more closely to that of "safety recall." Nissan contended that "Congress intended to capture only those 'other safety campaigns' that would be equivalent to a recall if conducted in the United States." Noting NHTSA's comment (66 FR 51910) that a manufacturer "would not necessarily make any acknowledgement, express or otherwise, that a safety problem existed," Nissan commented that this statement was inconsistent with the "determination" language of the statute. Nissan recommended that "other safety campaign" should be defined "to refer to any campaign that would meet the definition of a safety recall but, because of variations in foreign regulatory schemes, was not conducted as part of a formal remedy system." This in essence was also the position of JPMA and of the Alliance, which suggested that "other safety campaign" be defined to mean "an offer by a manufacturer to owners of two or more vehicles or equipment in a foreign country to provide remedial action to address a defect that relates to motor vehicle safety, when that foreign country does not have a statutory or regulatory program requiring safety recalls."

We believe that this is too narrow and misreads congressional intent. It would require a manufacturer to reach the conclusion that a defect exists and that that defect relates to motor vehicle safety. It has been our experience that manufacturers often conduct campaigns in the United States that relate to safety without acknowledging that a defect exists or that there is a safety relationship of a defect. In many cases, after becoming aware of such campaigns pursuant to 49 CFR 573.8 (2001) (now 49 CFR 579.5(a)), NHTSA has required manufacturers to conduct them as safety recalls and also has required manufacturers to broaden the scope of the campaigns. In our view, under the TREAD Act, NHTSA should be apprised of these campaigns in foreign countries at least to the extent we are aware of them in the United States. Moreover, we view the term "offer" as a narrower term than our proposed term "communication by a manufacturer." Under our proposal, no safety defect need be identified even implicitly. Precautionary advice provided by a manufacturer on the conditions under which the vehicle is to be operated, repaired, or replaced may reflect the existence of a safety problem. In order to effectuate the purpose of the foreign defect reporting requirement, we have concluded that it is appropriate to adopt an encompassing definition of "other safety campaign" that goes beyond a "safety recall."

Nissan, RMA, the Alliance, Bendix, AIAM, MEMA, Breed, and JPMA also asserted that the proposed definition of "other safety campaign" was too broad. Illustrative of this viewpoint was Nissan's comment that "other safety campaign" would cover a wide range of communications including many unrelated to the purpose of Section 3(a) of the TREAD Act. For example, "a general owner communication campaign providing consumers with tips on safety winter driving of a Nissan vehicle in Europe would be included * * * and thus reportable to NHTSA." AIAM expressed concern that the term might be construed to include "routine maintenance instructions in an owner's manual, advertising relating to maintenance, or even seat-belt use campaign or anti-drunk driving materials." MEMA commented that the final definition should exclude "materials such as promotional information, operational instructions or owner's manuals which accompany the vehicle or equipment at the time of first sale." RMA would add a qualifier: "This definition does not include customer satisfaction, general maintenance, operating or safety information applicable to a broad range of vehicles or equipment and is not directed toward a particular identified safety issue or safety defect in such vehicles or equipment."

These comments are similar to those we received on the definition we proposed in the early warning reporting rule for "Customer satisfaction campaign, consumer advisory, recall, or other activity involving the repair or replacement of motor vehicles or motor vehicle equipment." We responded to these comments by modifying the definition adopted in the final rule to specifically exclude:

> promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale; or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment [67 FR 45822, 45874].

We are adding the same exclusions to the definition of "other safety campaign."

PC would replace the ending phrase "that relate to safety" with the phrase "as a result of a defect or potential defect." PC would not leave to manufacturers the determination of whether an action is safety-related. However, substitution of the suggested phrase would still leave it to a manufacturer to decide whether the subject of its communications involved a "defect" or "potential defect." Moreover, contrary to PC's comment, our definition does not leave the determination of a safety relationship to the manufacturer. A communication either relates to safety or it does not, regardless of the express words used. Therefore, we are not adopting this suggestion.

Section 30166(l)(2) requires each manufacturer to report to NHTSA after notification by "the government of a foreign country" that it must conduct a safety recall or other safety campaign. We proposed in Section 579.13(b) to also require manufacturers to report to NHTSA if they had been ordered by a political subdivision of a foreign country to conduct such a campaign.

RMA objected to including political subdivisions in the foreign reporting requirements. The commenter asserted that the TREAD Act does not require this, and that a political subdivision should not be included unless it has been given the specific authority to make determinations of recalls or other safety campaigns.

It is settled that a political subdivision of a country may be included within the term "foreign country." In *Burnet* v. *Chicago Portrait Co.*, 285 U.S. 1 (1932), the Court recognized that the term "foreign country" "may mean a foreign government which has authority over a particular area or subject-matter, although not an international person but only a component part, or a political subdivision, of the larger international unit." 285 U.S. 1, 5–6. The Court observed that "the term 'foreign country' is not a technical or artificial one, and the sense in which it is used in a statute must be determined by reference to the purpose of the particular legislation." See also, *Wisconsin Public Intervenor* v. *Mortier*, 501 U.S. 597, 607 (1991).

This principle is equally applicable to the TREAD Act's foreign campaign reporting requirement. The purpose of this requirement is to alert NHTSA to the possibility of safety-related defects existing in foreign countries that might also exist in the United States. Some foreign countries may have political subdivisions that have authority to direct the manufacturer of a product to conduct a recall or safety campaign. In at least one foreign country, Canada, its Provinces, which are political subdivisions, may issue their own safety standards and enforce them. It is possible to envision a defect whose consequences only occur under conditions of use prevalent in one political subdivision of a foreign country and not another, and that the government of the locale where the condition is occurring might institute action rather than the central government. Thus, we are requiring reporting when any foreign governmental unit with authority to do so orders a manufacturer to conduct a safety recall or other safety campaign on substantially similar vehicles or equipment.

To remove any doubt that may exist as to the scope of foreign recall or campaign reporting, we are adopting definitions of "foreign country" and "foreign government" in Section 579.4(c). A "foreign country" means a country other than the United States. The term "foreign government" means the central government of a foreign country as well as the government of

any political subdivision of that country.

D. Definitions of "Identical or Substantially Similar" Motor Vehicles, Motor Vehicle Equipment Other Than Tires, and Tires

The obligation to report foreign campaigns to NHTSA applies to recalls and campaigns involving vehicles or equipment items that are "identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States." A parallel reporting obligation also exists under the early warning reporting provisions (Section 30166(m)(3)(C)), under which manufacturers of vehicles or equipment must report:

> all incidents of which the manufacturer receives actual notice which involve fatalities or serious injuries which are alleged or proven to have been caused by a possible defect in such manufacturer's motor vehicle or motor vehicle equipment * * * in a foreign country when the possible defect is in a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States.

1. The Meaning of "Identical"

In the NPRM, we tentatively concluded that a definition of "identical" was not needed (66 FR 51907 at 910–911) because if there were good faith doubts whether a vehicle or equipment item is exactly "identical" to one that is sold in the United States, it is likely that the vehicle or equipment would be "substantially similar" to the U.S. vehicle or equipment, and therefore be covered by the reporting requirement in any case. We came to the same conclusion in the early warning NPRM and final rule, and did not adopt a definition of "identical." No commenter specifically addressed this issue, and we have not defined "identical" in this final rule either.

2. Substantially Similar Motor Vehicles

In the October 2001 NPRM, we proposed that substantial similarity of motor vehicles be determined on the basis of meeting one or more of five criteria (66 FR 51917–51918; see 66 FR 51911–51913):

> (a) A motor vehicle sold or in use outside the United States is identical or substantially similar to a motor vehicle sold or offered for sale in the United States if such a vehicle (1) has been sold in Canada or has been certified as complying with the Canadian Motor Vehicle Safety Standards; (2) is listed in Appendix A to part 593 of this chapter or determined to be eligible for importation into the United States in any agency decision issued between amendments to Appendix A to part 593; (3) is manufactured in the United States for sale in a foreign country; (4) is a counterpart of a vehicle sold or offered for sale in the United States or (5) and a vehicle sold or offered for sale in the United States both contain the component or system that gave rise or contributed to a safety recall or other safety campaign in a foreign country, without regard to the vehicle platform on which the components or systems is installed and regardless of whether the part numbers are identical.

With the exception of the fifth criterion, we proposed the identical criteria for substantial similarity of vehicles in the early warning NPRM. 66 FR 66199–66200. On the basis of comments received on that NPRM, we adopted the following definition of "substantially similar" motor vehicles in the early warning final rule (49 CFR 579.4(d)):

> (1) A motor vehicle sold or in use outside the United States is identical or substantially similar to a motor vehicle sold or offered for sale in the United States if—
> (i) Such a vehicle has been sold in Canada or has been certified as complying with the Canadian Motor Vehicle Safety Standards;
> (ii) Such a vehicle is listed in the VSP or VSA columns of Appendix A to part 593 of this chapter;
> (iii) Such a vehicle is manufactured in the United States for sale in a foreign country; or
> (iv) Such a vehicle uses the same vehicle platform as a vehicle sold or offered for sale in the United States.

It will be noted that we did not adopt the proposed criterion of "a counterpart of a vehicle sold or offered for sale in the United States." For the reasons expressed in the early warning final rule preamble, we are also not adopting the vehicle counterpart criterion in the foreign defect reporting final rule. However, we are adopting each of the other criteria established by the early warning final rule. The first three of these criteria were adopted largely on the basis of the discussion in the October 2001 NPRM (66 FR 51907 at 51911–51913).

The first criterion in section 579.4(d) is that a vehicle will be substantially similar to a vehicle sold in Canada or certified to conform to the Canadian motor vehicle safety standards (CMVSS). To be sold in Canada, a vehicle has to be certified to conform to the CMVSS. Over 99 percent of gray market vehicles imported into the United States each year are certified to conform to the CMVSS. Generally, they have required only a few modifications of labels (and perhaps modifications to daytime running lamp systems) to meet the U.S. FMVSS. Because of the near identicality of the safety standards of the two countries, Canadian and American vehicles are substantially similar to each other.

The second criterion is that the vehicle is listed in the VSP or VSA columns of Appendix A to 49 CFR part 593. This is a list of gray market vehicles that NHTSA has found to be "substantially similar" under 49 U.S.C. 30141(a)(1)(A)(i) to U.S."certified vehicles of the same make, model, and model year.

The Alliance, NADA, and Nissan questioned the applicability of the third criterion, commenting that it should not apply unless the vehicle that is manufactured in the United States for sale in a foreign country is also sold in the United States. However, none of these commenters gave a specific example of a vehicle manufactured in the United States for sale abroad that is not also sold in the United States. Also, the United States is not a low cost manufacturing environment that, based on economics, would be selected for assembly operations of such vehicles. Further, if a manufacturer produced such a vehicle, the vehicle would ordinarily contain a substantial number of parts manufactured in the United States and used in vehicles produced by that manufacturer, which could be involved in a foreign recall or other safety campaign. The comments have not persuaded us, and we are applying the third criterion to Subpart B.

This leaves us to consider the final criterion that we proposed for foreign defect campaign reporting:

> both [vehicles] contain the component or system that gave rise or contributed to a safety recall or other safety campaign in a foreign country, without regard to the vehicle platform on which the components or systems is installed and regardless of whether the part numbers are identical.

This criterion reflected a components or system-based approach that is different from the final criterion of the early warning reporting rule, which is platform-based. As we noted in the preamble to the October 2001 NPRM, when a vehicle is the subject of a defect recall or safety campaign, the vehicle in its entirety is not defective; instead, a manufacturer will recall a vehicle because of a defect or problem in one or more of its components or systems that may or may not be used in other vehicles that the manufacturer builds. Therefore, we proposed to require a manufacturer to report a foreign campaign that the manufacturer conducts in which the defective component or system is substantially similar to the component or system that the manufacturer used on a vehicle which it sells in the U.S., even if the vehicle itself is on a different platform or would not be "substantially similar" under other criteria.

TMA supported this concept, commenting that substantial similarity for purposes of medium and heavy duty trucks should be defined around major component systems rather than the vehicle make and model. Thus, if medium and heavy duty trucks share identical component parts, they would be considered substantially similar.

However, there were a number of objections to this criterion. The Alliance objected for four principal reasons. First, the Alliance asserted that the proposal would be unworkable because it would require new, extensive recordkeeping systems to track worldwide the application of parts. In accord was AIAM, which commented that it knew of no company that tracks at the component or subcomponent level. VW also commented that it would be burdensome to maintain lists of utilization for the over 10,000 components per vehicle.

Second, in the Alliance's opinion, "the proposal will not produce much information of value that NHTSA would not obtain anyway." The Alliance asserted that manufacturers "already have a routine practice of determining whether components involved in an actual safety recall in a foreign country might also have made their way into the U.S. market, and whether the same safety risk is presented in the U.S. market."

The Alliance also argued that there was no definition of what a substantially similar component might be. It asked whether, for example, an air bag inflator would be considered "'substantially similar' to all other air bag inflators, because they perform the same intended function? Or must two air bag inflators have to contain the same lot number and be built at the same factory before they would be considered 'substantially similar'? Or is the 'substantial similarity' found somewhere in between?"

In the Alliance's opinion, the proposal also appeared to require a vehicle manufacturer to report if it finds that the part involved in a foreign vehicle recall is installed on another manufacturer's vehicle in the United States. We do not understand this reasoning. Section 30166(l) clearly requires a manufacturer to report only campaigns that the manufacturer conducts, and not to report other manufacturer's campaigns, even if they involve substantially similar vehicles or equipment.

Harley-Davidson raised the scenario of equipment incorporated from outside suppliers that may have been subject to a recall that is not relevant to its application in a Harley-Davidson product, and of which it might be unaware. The company argued that this possibility may "place a burden on an ultimate vehicle manufacturer that cannot be met." Harley-Davidson misunderstood the thrust of the foreign defect reporting requirement. Harley-Davidson must report on campaigns that Harley-Davidson itself (or its subsidiaries or affiliates) conducts in a foreign country. If Harley-Davidson determines that a campaign by one of its foreign equipment suppliers relates to equipment that Harley-Davidson uses on one of its foreign (or domestic) vehicles, and then determines to conduct a campaign, only at that point would the company be required to report its vehicle campaign to NHTSA.

Advocates commented that the component-based approach "unduly restricts reporting only to those situations involving 'substantially similar' defective components." It "believes that Congress intended [Section 30166(l)] to cast a wider net and requires notification of foreign recalls and campaigns on 'substantially similar' vehicles even if the particular defective part is not 'substantially similar.'"

We have carefully reviewed these comments and considered the possible burden adduced by manufacturers against the safety value of the information that might be provided were we to adopt the proposed fifth criterion. We have concluded that the simplest, most productive course is to adopt the same approach as we did in the early warning final rule: to dispense with a component-based approach and to consider vehicles substantially similar if they use the same vehicle platform (this takes into account our proposal and comments and is an outgrowth from them). In Section 579.4(c), we defined "platform" to mean:

> * * * the basic structure of a vehicle including, but not limited to, the majority of the floorpan or undercarriage, and elements of the engine compartment. The term includes a structure that a manufacturer designates as a platform. A group of vehicles sharing a common structure or chassis shall be considered to have a common platform regardless of whether such vehicles are of the same type, are of the same make, or are sold by the same manufacturer.

The term "platform" is commonly used in conjunction with light vehicles. TMA pointed out in its comment to the early warning reporting NPRM that manufacturers of medium-heavy vehicles, buses, and trailers generally do not use the term "platform" to apply to their products. We observed (67 FR 45843) that

> The terminology used by manufacturers is not determinative in this context. In addition to reporting on the basis of a structure that a manufacturer designates as a platform, we expect these manufacturers to report foreign deaths involving vehicles built with a structure similar to those used in the United States. To guard against possible underreporting of such incidents, we are including the word "chassis" in the definition of "platform" in this rule.

This means, under the uniform criteria that we are adopting, that vehicles that are substantially similar for early warning reporting purposes will also be substantially similar for reporting of foreign recalls and other safety campaigns (we are making an appropriate modification in the heading and first sentence of Section 579.4(d) to accomplish this). We believe that many of these vehicles will share identical or substantially similar components or systems which could be the subject of a foreign campaign.

3. Substantially Similar Motor Vehicle Equipment Other Than Tires

Section 30166(l) also requires reports of foreign recalls and safety campaigns pertaining to substantially similar motor vehicle equipment. As we noted in the preamble to the NPRM, recalls and other safety campaigns involving problems with original equipment (OE) components or systems abroad, as here in the United States, are likely to be conducted by the manufacturer of the vehicle in which they were installed, although under certain circumstances an OE manufacturer is required to notify NHTSA of a defect or noncompliance in U.S. vehicles. *See* 49 CFR 573.5(e) and (f) (2001) and the discussion at 66 FR 51907 at 51913. Nevertheless, in those instances in which an OE manufacturer decides to conduct a foreign recall or safety campaign involving substantially similar equipment, it would have the duty to report that campaign to us. Similarly, if a foreign government notified an OE manufacturer that it was required to conduct a safety recall or other campaign, the OE manufacturer would be obligated to provide notice to us under Section 30166(l)(2). However, if all vehicle manufacturers using the item in question timely provide us with a report of a foreign safety recall or other safety campaign, we proposed that the OE component manufacturer would not be obligated to provide notice under Section 30166(l)(1) (66 FR 51907 at 51913).

Ordinarily, recalls and other safety campaigns involving problems with replacement equipment, abroad or in

the United States, would be conducted by the replacement equipment manufacturer. Examples of replacement equipment recalls conducted in the United States are those involving defects and noncompliances in child restraint systems, lighting equipment, suspension components, brake hoses, and brake fluids.

We proposed, at 66 FR 51918, that motor vehicle equipment other than tires would be substantially similar:

> * * * if such equipment and the equipment sold or offered for sale in the United States are the same component or system, or both contain the component or system that gave rise or contributed to a safety recall or other safety campaign in a foreign country, regardless of whether the part numbers are identical.

We also stated that we would regard foreign child restraint systems as substantially similar (if not identical) to U.S. child restraint systems if they incorporated one or more parts that are used in U.S. models of child restraint systems, regardless of whether the restraints are designed for children of different sizes than those sold in the United States and regardless of whether they share the same model number or name. For example, if buckles, tether hooks, anchorages, or straps are common throughout a manufacturer's range of models, the child restraint systems would be substantially similar even though the buckles, hooks, anchorages, or straps might be used on a variety of add-on, backless, belt positioning, rear-facing, or booster seats produced by the manufacturer. However, a manufacturer would not have to report a foreign campaign on its child seats if the problem that led to the foreign campaign involved a component or part that was not used on any child restraint system sold or offered for sale in the United States.

JPMA commented that it had "three important reservations." The first of these was based upon its belief that the proposed definition "would impute a reporting obligation on a manufacturer conducting a foreign recall if the component or part involved in the foreign recall was used on a child restraint sold in the United States by *another manufacturer*." JPMA related that child restraint manufacturers frequently obtain the same component from a common supplier. "Because the manufacturer conducting a recall in this example would not necessarily know that one of its competitors was installing on a U.S. child restraint a component or part that was also installed on the recalled product in the foreign country, the recalling manufacturer cannot be expected to report that foreign recall to NHTSA." To address this reservation, JPMA suggested language clarifying that the equipment that is sold in the United States must be manufactured by the same manufacturer that conducted the foreign campaign.

We do not understand the basis for this JPMA concern. Under the proposed and final rules, a manufacturer is required only to report its own foreign safety recalls and campaigns, and it is not obliged to report safety recalls by other manufacturers of products even if those products incorporate components common to its own recalled product. If the safety recall is conducted by the component manufacturer itself, the component manufacturer would have to notify NHTSA if the component is used in substantially similar vehicles or equipment sold in the United States. We have concluded that no amendment is required to clarify this aspect of the reporting obligation.

The second reservation was that "it is unclear whether NHTSA intended to limit the foreign recall reporting to instances in which the *same* component or system is used in both the foreign and the U.S. model, or whether * * * the foreign recall reporting [extends] to instances in which the component or system at issue is *substantially similar* to a component or system used in a U.S. child restraint model manufactured by that manufacturer." JPMA explained that the regulatory text indicated the same component or system but that the preamble suggested that NHTSA may want reports on substantially similar components. In our preamble language at 66 FR 51914, we observed that "if * * * buckles * * * are common throughout a manufacturer's range of models, the child restraints would be substantially similar even though the buckles * * * might be used on a variety of add-on, backless, belt positioning, rear-racing or booster seats produced by the manufacturer." JPMA then commented that all child restraint system buckles are to some extent substantially similar to other such buckles because they all perform the same function using similar designs and materials, but that there can be substantial differences in buckle performance based on hardware specifications, quality of the manufacturer, and interaction among the buckle components.

We do not consider the variations in buckle performance that JPMA mentioned as relevant as to whether a manufacturer ought to report. Foreign recalls or campaigns involving substantially similar child restraint systems must be reported to NHTSA; however, the reporting manufacturer may include its arguments as to why a defect would not exist in identical or substantially similar child restraint systems sold in the United States. This resolves JPMA's comment.

Finally, JPMA argued that the definition of "substantially similar equipment" proposed for purposes of foreign defect reporting could not be applied for early warning reporting purposes. We addressed early warning issues in the December 2001 early warning NPRM and modified the proposal in the early warning final rule. We note that for equipment, there is no "platform" comparable to that for motor vehicles. Therefore, a platform-based definition would not be workable.

The Alliance commented that, considering the separate definitions for original and replacement equipment, the proposed rule "appears to require reports of foreign recalls involving subcomponents used on *dissimilar* vehicles in the United States." Because, in its opinion, this interpretation would make the definition of "substantially similar motor vehicle" unnecessary, the Alliance recommended restricting the definition to replacement equipment. However, we have not adopted the proposed criterion under which campaigns involving dissimilar vehicles with the same components would be reported, and the Alliance's comment is therefore moot.

Our proposed definition was almost identical to the one we adopted for substantially similar equipment in the early warning reporting final rule. Under that final rule, motor vehicle equipment is substantially similar:

> * * * if such equipment and the equipment sold or offered for sale in the United States have one or more components or systems that are the same, and the component or system performs the same function in vehicles or equipment sold or offered for sale in the United States, regardless of whether the part numbers are identical.

Given our decision above to adopt the same definition for "substantially similar" motor vehicles for both the early warning reporting and foreign defect reporting rules, as discussed above, and for "substantially similar" tires, as discussed below, we have decided that we should adopt the same definition for "substantially similar" motor vehicle equipment. However, we have added a provision stating that a foreign campaign involving substantially similar equipment need not be reported under Subpart B if the component or system that gave rise to a safety recall or other safety campaign does not perform the same function in any vehicles or equipment sold or offered for sale in the United States. See

Section 579.11(d)(2). This addresses comments by Bendix and MEMA. In Bendix's view, a similar or identical product in other countries many have entirely different failure modes with different impacts on safety. MEMA asserted that any definition of substantially similar equipment should also include an application-specific reference.

Finally, we note that Delphi commented that "suppliers of equipment should also be responsible for reporting recalls and campaigns of their equipment in a foreign country when the OEM does not sell the vehicle it is used on in the United States but where the same equipment or component that caused the foreign recall or campaign is used in another application that is sold in the US." We do not believe that the language suggested by Delphi needs to be added. To the extent that any equipment (original or replacement) covered by a recall in a foreign country is sold as replacement equipment in the United States, reporting is already required under our definition. The Delphi comment would require reports of foreign campaigns on equipment sold in the United States but used in a different application than in the foreign country. It is likely that in most cases any such original equipment would also be sold in the United States as replacement equipment, and thus covered by the rule. Requiring reporting in those rare circumstances where that is not the case would create extensive burdens without yielding much relevant information.

4. Substantially Similar Tires

In the NPRM, we proposed that tires would be substantially similar if they have "the same model name and size designation, or if they are identical except for the model name." This was identical to the definition we proposed two months later in the early warning NPRM. However, the early warning final rule defines a substantially similar tire differently:

> A tire sold or in use outside the United States is substantially similar to a tire sold or offered for sale in the United States if it has the same size, speed rating, load index, load range, number of plies and belts, and similar ply and belt construction and materials, placement of components, and component materials, irrespective of plant of manufacture or tire line.

The definition we adopted in the early warning final rule was based upon comments by RMA. In its comments on the NPRM, RMA asserted that there should be a common definition for both rules. For a discussion of these issues, see the preamble to the early warning rule (67 FR 45822 at 844–845). We find these reasons equally applicable to this final rule, and for this reason, we are adopting the same definition previously established at Section 579.4(d) for early warning reporting.

III. Section 579.11, Reporting Responsibilities

Proposed section 579.13 contained five paragraphs referring to reporting responsibilities relating to foreign campaigns. Paragraphs (a) and (b) proposed the time frames within which a manufacturer must submit a report to NHTSA. Paragraph (c) proposed to establish a due date for reports pertaining to foreign campaigns conducted before the effective date of the final rule. Paragraph (d) specified certain exclusions from reporting. Finally, paragraph (e) proposed to require manufacturers to provide a yearly list of substantially similar vehicles. These subjects are now addressed in Section 579.11.

A. Time Frames for Reporting: Paragraphs (a) and (b)

Proposed paragraph (a) would require a manufacturer to submit a report within 5 working days of its determination to conduct a foreign safety recall or other safety campaign covering vehicles or equipment substantially similar to a vehicle or equipment offered for sale or sold in the United States. Paragraph (b), as proposed, would require a manufacturer to submit a report, also within 5 working days, after it receives notification that a foreign government (or a political subdivision of that government) has determined that a safety recall or other safety campaign must be conducted on a substantially similar vehicles or equipment.

Comments were submitted regarding the sufficiency of a 5-working day period for submitting information, the character of the determination by the foreign government, and the appropriateness of including political subdivisions as a component of a foreign government. (We have addressed the last issue earlier in this notice.)

1. The Requirement To Report Within 5 Working Days

The principal concern of commenters was whether 5 working days afforded sufficient time to file reports with NHTSA.

Our proposal was based upon the specific language of Section 30166(l), which requires that manufacturers notify NHTSA "not later than 5 working days after determining to conduct a safety recall or other safety campaign in a foreign country" on substantially similar vehicles and equipment, or after receiving notification from a foreign government that such a campaign must be conducted. Congress did not provide direction on the meaning or implementation of the 5 working days period for submission of these reports. In the NPRM, we assumed that this 5-day period was based upon the time period in regulations NHTSA had adopted to implement the defect and noncompliance notification provisions of the Vehicle Safety Act. Section 30119(c)(2) of the Vehicle Safety Act states in pertinent part that notification to the Secretary of such defects or noncompliances under Section 30118 "shall be given within a reasonable time after the manufacturer first decides that a safety-related defect or noncompliance exists." After notice and comment, we adopted a regulation specifying that "not more than 5 working days" is a "reasonable time" for notifying NHTSA of decisions that will lead to domestic recall campaigns (49 CFR 573.6(b)(2002)).

Based on our tentative reading of the TREAD Act, we proposed that the time period for reporting foreign safety recalls or other safety campaigns be 5 working days from the date that the manufacturer, including one of its subsidiaries or affiliates, decides to conduct, or is notified by a foreign government (including a foreign governmental unit) that it must conduct, the recall or other campaign. As we noted in the NPRM, "the 5-day period in Section 30166(l) is very achievable in those cases in which the decision to conduct the recall or other campaign is made by, or with the concurrence of, the manufacturer's headquarters and there is little doubt that the foreign vehicles or equipment in question are identical or substantially similar to vehicles offered for sale in the U.S." We thought it reasonable to assume that, in most cases, local subsidiaries or affiliates of multinational manufacturers are not authorized to decide to conduct safety recalls or other safety campaigns without the concurrence of the corporate headquarters, or at least without contemporaneously advising such headquarters of the action. Thus, the headquarters would have at least basic information on the recall or campaign.

As we further noted in the NPRM, as a practical matter, we would expect few difficulties when a foreign government provides notification of its determination that a recall or other campaign must be conducted (there have been very few recalls ordered by foreign governments). We would expect

that there would be communications between the foreign government and the manufacturer's headquarters or its local subsidiary or affiliate before a government-directed recall, so that any formal notification would not be a complete surprise to the manufacturer. In any event, in our view, the notification would be in the form of a written communication to the manufacturer or its local entity. The addressee would be deemed to "receive" the notification when it is delivered by mail, facsimile or other mechanism to the addressee. This document could readily be forwarded to a manufacturer's headquarters and then to NHTSA.

We recognized that it may be difficult for a local subsidiary or affiliate to know whether the vehicles or equipment covered by the recall or other campaign in its country are substantially similar to products offered for sale in the United States. However, we expected that the parent corporation could readily address this question. Manufacturers could assure that all recalls and campaigns in foreign countries be brought to the attention of appropriate persons at the company's headquarters, who would be able to decide promptly whether they must be reported to NHTSA. In addition, the annual list of similar vehicles to be submitted by the manufacturer to NHTSA pursuant to section 579.11(e) could be sent to all foreign subsidiaries and affiliates of a vehicle manufacturer, which would assist them to know whether a recall or other campaign needed to be reported.

There were a number of comments on the meaning of "5 working days." VW, Delphi, and Bendix recommended that "5 working days" be defined as 5 business days in the foreign country involved in the report at issue. The Alliance would interpret the term to mean the days that a manufacturer conducts business, and would not include days in which the manufacturer might be closed for "scheduled factory and headquarters shutdowns (which occur with regularity in foreign markets for a period of a week or more at a time)." VW recommended that there should be a maximum number of U.S. days encompassed in the phrase. Comments by AIAM and TMA were much the same, and quantified the maximum number of days as 15 U.S. business days.

We do not believe that the reporting will involve a complex sequences of events, and our experience and the comments did not show otherwise. The statute addresses identical or substantially similar vehicles and equipment in at least one foreign country and the United States. To satisfy reporting obligations, ordinarily offices in no more than one or two foreign countries would be involved.

Reports of foreign recalls and campaigns that the agency has received to date pursuant to 49 U.S.C. 30166(l) reflect a variety of practices, as the following examples show. Where a multinational manufacturer has its world headquarters in the United States, reports have been submitted by the U.S.-based entity stating that the company and its various subsidiaries and affiliates were conducting field actions in markets other than the United States. In addition, a report has been submitted by the North American operations arm of a U.S.-based company informing the agency that a foreign subsidiary had notified a foreign government of a particular matter. Where a multinational manufacturer is based in a foreign country, ordinarily the U.S. subsidiary submits the report. On some, the U.S. subsidiary submitted a report on behalf of the foreign parent. On others, the U.S. subsidiary simply submitted a report. One foreign company reported on the U.S. subsidiary's letterhead. With regard to the lines of communications, in some cases, the foreign parent communicated directly to authorities in countries other than the United States. In others, the foreign subsidiary (*e.g.*, in Australia) provided information that there has been a campaign. In yet others, the report simply stated that the manufacturer was submitting information on a particular campaign, and identified the country and vehicles involved. In one, the manufacturer referred to the factory as having provided information. Some identified a manufacturer, which often is identified as the foreign parent, but other times is a subsidiary in a foreign country. One reported that its foreign licensee planned to recall vehicles assembled by the licensee. Although the examples above reflect a variety of practices, each of them is straightforward.

The decision to conduct a recall or other safety campaign ordinarily would be made by or at least approved by the corporate parent. For example, if a Ford or General Motors product were involved, the decision to conduct the recall or campaign ordinarily would be made or at least approved in the United States. If a Toyota, BMW, or Hyundai product were involved, the decision ordinarily would be made or approved in a foreign corporate headquarters.

We recognize that, in theory, recalls or campaigns ordered by a foreign government could raise additional concerns (*e.g.*, the possibility of delay in notifying the corporate headquarters and the possible need for translation of the recall order). However, such government-ordered recalls are very rare, and translation is not an issue since, as noted by RMA, only three countries other than the United States have statutes authorizing the government to recall vehicles or equipment, and all of these are English-speaking (Canada, the United Kingdom, and Australia). Also, the statutory obligation to report under 49 U.S.C. 30166(l) had been in place for over one year by the time that the comment period on the NPRM closed, and the comments did not demonstrate any insurmountable problems.

The statute establishes a deadline that counts working days. We believe that it is appropriate to base this period on the general business practice of the involved offices of each individual manufacturer, including its relevant subsidiaries or affiliates. As discussed above, this could include offices in the country where the recall or campaign is directed by the government, the multinational headquarters, and the U.S. subsidiary, if any. In some countries, general business practice may be a matter of law; in others, a matter of custom, but it is the framework within which all manufacturers conduct their business operations. By "general business practice," we mean the days that the corporate offices of a company conduct business (in the United States, generally Monday through Friday) as contrasted with the days that its plants are in operation (in the United States, this often includes Saturday). For example, on a certain day, a factory may be closed for inventory but its corporate office remains open; that day would be a "working" day. We have not adopted a maximum reporting date of 15 U.S. working days because working days may be determined on the basis of the general business practices of countries other than the United States, and it is possible that "5 working days" in a foreign country, under some circumstances such as corporate shutdown for an annual summer vacation, could exceed 15 U.S. working days.

MEMA commented that the 5-day period should begin on the date that the manufacturer determines that the vehicle or equipment recalled is substantially similar to a U.S. product rather than the date the manufacturer or government determines that a recall is required. This comment is posited on the presumed difficulty of identifying substantially similar vehicles and equipment in the United States at the time a foreign campaign is determined to be conducted. However, the statute is clear that 5 working days is counted from the day of a manufacturer's determination or its receipt of notice from a foreign government. We believe that MEMA's suggestion would introduce too much potential delay into the process.

Accordingly, the final rule states that, where a determination is made by a manufacturer, the 5-working day period "is determined by reference to the general business practice of the office in which such determination is made, and to the office reporting to NHTSA (Section 579.11(a)). Where a determination is made by a foreign government, the 5-working day period "is determined by reference to the business practice of the office where the manufacturer receives such notification, the manufacturer's international headquarters office (if involved), and the office reporting to NHTSA (Section 579.11(b)).

In determining the 5-working day period, the particular working days of the offices involved in individual reports would be considered in toto. The rule does not provide separate 5-working day periods to each office within the multinational manufacturer that is involved in the determination and reporting process. The following hypothetical illustrates how working days are computed. It assumes that a vehicle manufacturer's world headquarters is in Germany, with subsidiaries in Asia and the United States. The Asian subsidiary receives a governmental notice on Thursday, September 1, that it must conduct a safety recall of certain vehicles. That day does not count in the computation of the relevant period, particularly in view of the fact that the notice might not be received until late in the day. On Friday, September 2, the subsidiary reviews the notice, and perhaps translates it into German (Day 1). The subsidiary observes a Saturday and Sunday weekend, and Monday is a national and corporate holiday. On Tuesday, September 6, the subsidiary faxes the original and the translation to Germany (Day 2). On Wednesday, September 7, the German headquarters confirms that the vehicles are substantially similar to those sold in the United States, and that the recall must be reported to NHTSA (Day 3). The headquarters office is closed on Thursday and Friday, as well as the weekend. On Monday, September 12, the headquarters office prepares the report and an English-language translation of the notice (Day 4). Headquarters faxes the report, notice, and translation to its U.S. subsidiary on Tuesday, September 13, but the subsidiary is closed that day. On Wednesday, September 14, the U.S. subsidiary would be required to submit the materials to NHTSA (the 5th working day).

2. A Manufacturer Must Report to NHTSA Even if the Determination by a Foreign Government Is Not a Final Determination

We proposed that a manufacturer report to NHTSA whenever it has been notified that the government of a foreign country has determined that it should or must conduct a safety recall or other safety campaign involving covered vehicles or equipment, whether or not the subject of the campaign would be a safety-related defect or noncompliance under the laws of the United States. For example, if the foreign government moves to prohibit further sales of a vehicle for reasons relating to motor vehicle safety, we would consider that action to be the equivalent of a "safety campaign."

The Alliance and MEMA commented that the notification by a foreign government should be one that is "written." In the NPRM, we had assumed, as noted above, that such notification would be in written form, but we did not specify it in the regulatory text. We are clarifying this in the final rule, and the text of the final rule clarifies that reporting is only required with respect to written notifications.

There may be occasions when the manufacturer will contest a foreign government's determination or order, be it proposed or final. In the United States, NHTSA may make an initial decision that a defect or noncompliance exists pursuant to 49 U.S.C. 30118(a), affording the manufacturer and public an opportunity to present data, views, and arguments. Then NHTSA may make a final decision that a defect or noncompliance exists and order a recall under 49 U.S.C. 30118(b). Such an order can be challenged in court.

We are not fully conversant with the administrative and judicial practices of countries other than the United States, and we asked for comments on the vehicle and equipment safety recall laws and practices of other countries as they might relate to implementation of reporting of foreign governmental defect determinations. RMA advised that "only the United States, Canada, the United Kingdom, and Australia have statutes authorizing the federal (or national) government to recall motor vehicles or motor vehicle equipment in use in those countries)." However, RMA did not discuss these statutes in detail, and there were no other comments on possibly relevant laws or regulations of other countries.

The Alliance did not provide any information on countries with statutes authorizing recalls or on particular difficulties that its members would likely encounter with respect to them. Instead, the Alliance asserted that NHTSA's lack of familiarity with the practices of other countries justified excluding any determination other than a final one. It commented that a term such as a "conditional" determination might be meaningful when used in the context of some of NHTSA's regulatory proceedings but much less clear in other unspecified countries. It asked "is a foreign government's expression of interest in a potential defect a 'conditional' determination that a recall is required? At what point during a pending investigation does official curiosity become a 'conditional' determination?" In our view, an "expression of interest" or "curiosity" is nothing more than that. However, a conditional determination reflects at least some belief on the part of the foreign government that a recall should be conducted, and thus is of interest to NHTSA, even if a further step is needed prior to a directive that a recall take place.

RMA would apply the criterion that "the determination would be considered a safety-related defect under U.S. law," and that only final determinations should be reported. At the present time, we do not expect foreign law to mirror the Vehicle Safety Act with respect to such determinations, and we do not know whether elements of U.S. law would be met. The RMA formulation could result in non-reporting where a foreign recall was based on a somewhat different standard than governs under U.S. law. Also, this could result in extensive delays before a resolution of whether a condition was a defect under foreign law. Even in the United States, some cases have remained unresolved for an extended period of time following an initial decision under Section 30118(a). Further, RMA's criterion would not encompass determinations covering "other safety campaigns," which could be ordered in the absence of a defect determination. Information about interim determinations or safety campaigns where a defect has not explicitly been found to exist will enhance NHTSA's ability to give earlier consideration to potential defects in vehicles operated abroad that might also exist in substantially similar vehicles in the United States. We therefore are adopting the proposal to require reporting of all determinations by foreign governmental entities, whether

proposed, interim, or final, that a recall or other safety campaign must be conducted and regardless of whether there has been a finding of a safety-related defect.

B. One-time Historical Reporting: Paragraph (c)

Manufacturers have been required to report determinations or notifications of applicable foreign recalls and other safety campaigns to us since November 1, 2000, the effective date of Section 30166(l). Some have done so. In order to be certain that we are aware of all such determinations and notifications, we proposed that manufacturers provide us with reports of all relevant determinations and notifications between November 1, 2000, and the effective date of the final rule, if they had not already been reported to us. This one-time historical reporting would assure that we receive information on recalls and campaigns that might not previously have been reported to us because of uncertainty whether such campaigns covered substantially similar vehicles and equipment within the meaning specified in the final rule. We proposed that reports would be due within 30 days of the effective date of the final rule.

We had no comments on this proposal, and we are adopting it as section 579.11(c). However, to avoid unnecessary burdens and duplicative reporting, we are including a provision stating that, if a foreign recall or campaign has already been reported to NHTSA, it need not be resubmitted under section 579.11(c) if the original report identified the model(s) and model year(s) of the products that were the subject of the foreign recall or campaign, identified the identical or substantially similar U.S. products, and identified the defect or other condition that led to the foreign recall or campaign.

C. Exemptions From Reporting: Paragraph (d)

In the NPRM, we recognized that manufacturers may conduct identical recalls in the U.S. and abroad. We proposed that a manufacturer would not be required to report foreign recalls or campaigns to us under this rule if it had filed a Part 573 report covering the same safety defect or noncompliance in substantially similar products offered for sale or in use in the United States, provided that the manufacturer's remedy in the foreign campaign is identical to that provided in the U.S. campaign, and the scope of the foreign campaign is not broader than that of the U.S. campaign.

The Alliance commented that it was "inappropriate and unnecessary to condition the availability of this exemption on the motivations of the manufacturer to undertake the campaigns, which may well be different from country to country." For example, Section 30118 motivates a manufacturer files a Part 573 report but that would not be the motivation for a parallel campaign outside the United States. In its view, "the objective fact that a foreign campaign is being undertaken" should be sufficient. We believe the Alliance is reading this phrase in a manner different than we intended. In our view, the phrase "for the same or substantially similar reasons" means that a manufacturer is conducting a foreign campaign for the same or substantially reasons relating to motor vehicle safety that it filed a Part 573 report. We are therefore modifying the phrase in section 579.11(d)(1) of the final rule to read "for the same or substantially similar reasons relating to motor vehicle safety."

In addition, the Alliance expressed concern "about the limitation of the exemption to campaigns in which the remedies are identical." For example:

> An illustration of a campaign in which remedies might differ is one in which the failure is likely to occur only in cold or cool temperatures, such that all consumers in the United States receive a replacement component to protect against the possibility of failure, but consumers in countries with hot climates year-round need only receive an inspection with a replacement as necessary.

On reflection, we have decided that the exemption should apply even if the remedies in foreign countries and the United States are not identical. Pursuant to 49 U.S.C. 30120(a)(1), a manufacturer may elect the remedy for a defect or noncompliance. In general, NHTSA does not question the appropriateness of a remedy selected by a manufacturer unless there is some reason to believe that it is not adequate. If we do open an investigation into the adequacy of a remedy in the United States, we can and will obtain any relevant information about foreign remedies.

The Alliance was also concerned about limiting the exemption to campaigns in which the "scope" of the foreign campaign "is identical to the scope of the U.S. campaign." In its view, if "scope" means the population of potentially affected vehicles, then the exemption will become meaningless, as vehicle models abroad will differ from those in the United States. According to the Alliance, the "scope" of the campaign should not matter "as long as NHTSA has received a Part 573 report about the same alleged defect on U.S. vehicles with a proposed scope that is suitable and appropriate for the U.S. market."

The Alliance misquoted the regulatory text. The exemption applies not if the scope is "identical," but if "the scope of the foreign recall or campaign is not broader than the scope of the recall campaign in the United States." By "scope," we meant the subject matter of the recall and the time frame in which the recalled vehicles were manufactured. For example, if both the U.S. and foreign campaigns related to the same defect in a hydraulic brake system, the scope may be identical. But if the foreign recall included a recall of hydraulic brake hoses used in vehicles with the brake system that was not included in the U.S. recall, the scope would not be identical and the campaign would have to be reported. Similarly, if the foreign recall covered three model years and the U.S. recall covered only one of those years, the foreign recall would have to be reported. Of course, the manufacturer would have the opportunity to provide an explanation of why the smaller scope of the U.S. recall was appropriate.

The Alliance recommended expanding the exemption to cover circumstances in which a foreign safety recall is properly and timely reported to NHTSA, and is later expanded by the manufacturer to other foreign countries. In its view, as long as NHTSA has been informed of the first foreign recall, "and has the necessary information to make a judgment about whether a similar campaign is warranted in the United States, it should not need to receive redundant reports when that campaign is extended to other foreign countries." We disagree. The decision to broaden the scope of a foreign recall and extend it to other foreign countries may be based upon factors that differ from those which resulted in the initial foreign campaign reported to NHTSA, such as the climate or road conditions in which a vehicle is operated. Given the wide variety of vehicle operating environments in the United States, information on the extension of campaigns could prove of assistance in fulfilling the purpose of the TREAD Act of earlier detection of potential safety defects. We therefore have not adopted a new exemption.

As noted above, we are exempting from reporting any safety campaign involving substantially similar motor vehicle equipment that does not perform the same function in vehicles or equipment sold or offered for sale in the United States. See Section 579.11(d)(2).

In addition, we are not requiring manufacturers to report to us a foreign safety recall (or other safety campaign) whose sole subject is a label affixed to a vehicle or equipment. See Section 579.11(d)(3). Some foreign recalls involve failure to follow requirements for labels in a foreign language that are not germane. Even if the label is in English, the governmental requirement in the foreign country is likely to be different from the applicable U.S. requirements. Moreover, the agency has often judged errors in labels to be inconsequential to safety when manufacturers reporting such noncompliances under Part 573 have petitioned for determinations under Part 556 that they be relieved of further notification and remedy obligations. For these reasons, we have concluded that reports of foreign recalls or campaigns involving only labels are not likely to lead to discovery of defects or noncompliances in identical or substantially similar U.S. vehicles and equipment that require remedial action.

TMA noted that differences in various regions worldwide could influence recalls that might not be necessary under the Vehicle Safety Act. TMA would report these foreign recalls, but commented that it would be appropriate for a manufacturer to provide its views of why such recalls should not be conducted in the United States. Nothing in today's final rule requires or prohibits such an addition to a report, but if a manufacturer chooses to amplify a report, its views should follow the information that the rule requires in the report.

Harley-Davidson pointed out that the European Union (EU) has mandated a uniform two-year warranty on new vehicles, and that manufacturers may conduct campaigns in order to honor the warranties. In its opinion, such campaigns ought to be excluded from reporting. We do not agree; if an EU warranty campaign meets the definition of "safety recall" or "other safety campaign," it must be reported.

D. Annual Identification of Substantially Similar Vehicles: Paragraph (e)

In commenting on the early warning reporting ANPRM, the Alliance suggested that each vehicle manufacturer submit to NHTSA annually, at the beginning of each model year, a list of the vehicles that the manufacturer intends to sell abroad during that year that the manufacturer believes are "substantially similar" to vehicles sold or planned for sale in the United States. We thought that such a list could help both the manufacturers and NHTSA in determining whether foreign recalls and other campaigns need to be reported. Accordingly, we proposed that manufacturers identify, not later than November 1 of each year, any vehicles they plan to sell abroad in the next year that they believe to be substantially similar to vehicles sold or offered for sale in the United States, or planned for sale in the United States during the next year.

AIAM commented in the context of the component-based proposed criterion of the definition of "substantially similar" motor vehicle, and its comment is moot since we are adopting a platform-based criterion. Harley-Davidson asserted that it does not know as of each November 1 all the motorcycles that will be substantially similar to its U.S. models in the 12 months of the next calendar year, as its model year ends on June 30 of any given year, and decisions regarding models for the second half of that calendar year are not made until January of that year. The regulation does not require that a manufacturer provide a definitive and final list, only an identification of the vehicles it "plans" to sell in the coming year as of November 1. If its plans change thereafter, a manufacturer would not be required to amend the list.

Given the lack of comments by other manufacturers, there appears to be no problem in providing NHTSA with an annual list of vehicles as of November 1. Generally, manufacturers will have made advance announcements of their plans for the following calendar year by that date. If there are confidentiality concerns, manufacturers may request confidential treatment pursuant to 49 CFR part 512.

Accordingly, we are adopting our proposal. See Section 579.11(e). We are adding the requirement that the manufacturer also identify the vehicle sold in the United States that is identical or substantially similar to the identified vehicle being sold in a foreign country.

IV. Section 579.12, Contents of Reports

Under the NPRM, proposed Section 579.14 (adopted as Section 579.12) contained two subsections, the first specifying the contents of the report to NHTSA and the second dealing with the reporting of information that is not available at the time of the initial report.

A. Contents of the Report

When a manufacturer of motor vehicles or motor vehicle equipment decides to conduct a notification and remedy campaign in the United States to address a safety-related defect or a noncompliance with a FMVSS, or is ordered to do so by NHTSA, it must furnish information to the agency as specified in 49 CFR part 573, "Defect and noncompliance reports." The contents of the required notification are set out in Section 573.6(c)(1–11) (formerly Section 573.5(c)(1–11)). These include the manufacturer's name (paragraph (c)(1)), identification of the vehicles or items of motor vehicle equipment potentially containing the defect or noncompliance, including a description of the manufacturer's basis for its determination of the recall population and a description of how the vehicles or items of equipment to be recalled differ from similar vehicles or items of equipment that the manufacturer has not included in the recall (paragraph (c)(2)), the supplier of the defective or noncomplying equipment where applicable (paragraph (c)(2)(iv)), the total number of vehicles or items of equipment potentially containing the defect or noncompliance (paragraph (c)(3)), the percentage of vehicles that actually contain the defect or noncompliance (paragraph (c)(4)), a description of the defect or noncompliance (paragraph (c)(5)), in the case of a defect, a chronology of principal events that were the basis for the determination including summaries of field or service reports, warranty claims, and the like (paragraph (c)(6)), in the case of a noncompliance, the test results or other basis upon which the manufacturer made its determination (paragraph (c)(7)).

We proposed that this same information be provided in the manufacturer's notification to NHTSA of a safety recall or other safety campaign in a foreign country. In addition, the manufacturer would have to identify the foreign country, state whether the determination was made by the manufacturer or by a foreign government, state the date of the determination, state whether the action in question was a safety recall or other safety campaign, and identify with specificity the motor vehicles or motor vehicle equipment sold or offered for sale in the United States that are identical or substantially similar to those covered by the foreign campaign. Manufacturers who are reporting campaigns ordered by a foreign government would also be required to furnish copies of the determination by the foreign government in the original language and translated into English (if necessary).

We recognized that this is more information than is currently required in connection with some campaigns in the United States that are not safety recalls under the Vehicle Safety Act. Under former 49 CFR 573.8 (now section 579.5(a)), manufacturers must

merely submit the documents that they send to more than one owner or dealer regarding vehicle and equipment malfunctions, and they need not provide all the information set out in 49 CFR 573.6(c). We proposed to require more complete information, in part, because of the difficulty in distinguishing between "safety recalls" and "other safety campaigns" in foreign countries. We asked for comments on whether and how the level of detail can be reduced for certain type of foreign safety campaigns.

The Alliance, Nissan, and MEMA each commented that it would be burdensome and unnecessary to provide all the information proposed to be submitted.

With respect to the seven items of information we proposed to require based on former section 573.5(c), Nissan, MEMA, and AIAM recommended limiting these to paragraphs (c)(1)(identification of manufacturer), (c)(2)(identification of vehicle or equipment), and (c)(5) (description of the defect). Each suggested that NHTSA could request further information if the agency desired it. These commenters contended that some of the seven items of information may not have been developed, and that their collection would be time-consuming. RMA would limit reports to only information covered by former section 573.8 (notices, bulletins, and other communications).

After reviewing these comments, we have decided that it is not necessary for purposes of foreign recall and campaign reporting to require information specified by 49 CFR 573.6 paragraphs (c)(4) (the percentage of vehicles or equipment items estimated to contain the defect), (c)(6)(in the case of a defect, a chronology of principal events that were the basis for the determination including summaries of field or service reports, warranty claims, and the like), and (c)(7) (in the case of a noncompliance, the test results or other basis upon which the manufacturer made its determination). By not requiring these three items of information, the burden upon manufacturers will be lessened. However, in addition to those that the manufacturers did not object to, we will adopt our proposal to require the information specified in paragraph (c)(3) (the total number of vehicles or items of equipment covered by the foreign campaign). This information has been provided in numerous reports of foreign recalls received to date, and its collection is unlikely to be burdensome. As for RMA's comment, as we stated above, we believe it is important to require more complete information than is required for domestic actions that are not safety recalls, in part because of the difficulty in distinguishing between "safety recalls" and "other safety campaigns" in foreign countries.

No commenter addressed the other information regarding foreign campaigns that we proposed to require, and we are adopting those requirements in the final rule. We are also adding the requirements that the report itself be dated, and that, in the case of a recall, it describe the manufacturer's program for remedying the defect or noncompliance, information presently required by section 573.6(c)(8) for U.S. recalls.

B. Information Not Available at the Time of the Initial Report

As discussed above, foreign recalls and other safety campaigns must be reported within 5 working days. We recognized that some of the required information might not be available within 5 working days. Consistent with redesignated section 573.6(b), we proposed that such information be submitted as it becomes available. There were no comments on this aspect of our proposal, and we are adopting it. See section 579.12(b).

V. Section 579.3(b), Who May Submit Reports

In its defect and noncompliance reporting regulations, the agency has addressed the question of who may file a defect or noncompliance report related to an imported item. Under 49 CFR 573.3(b), in the case of vehicles or equipment imported into the United States, a defect or noncompliance report may be filed by either the fabricating manufacturer or the importer of the vehicle or equipment. Defect and noncompliance reports covering vehicles manufactured outside of the United States have generally been submitted by the importer of the vehicles, which is usually a subsidiary of a foreign parent corporation (*e.g.*, defects in vehicles made in Japan by Honda Motor Co. Ltd. are reported by American Honda Motor Co., Inc., even if the vehicle was certified by Honda Motor Co. Ltd).

We proposed in section 579.15 to apply the reporting requirements for foreign campaigns in the same manner as we currently utilize for reporting noncompliance and defect determinations to NHTSA under part 573. That is to say, the report might be filed by either the fabricating manufacturer or by the importer of the vehicle that is identical or substantially similar to that covered by the foreign recall or other safety campaign. The Alliance recommended that the final rule "contain a provision authorizing manufacturers engaged in joint ventures or other similar enterprises to allocate between or among themselves which entity will assume responsibility for reporting to NHTSA." The Alliance asserted that allocation of responsibility would be similar to that between component suppliers and OE manufacturers in part 573.

In the early warning NPRM, we also proposed that fabricating manufacturers or importers could file early warning reports. However, in the final rule, we expanded these entities and adopted section 579.3(b), which specifies that:

> In the case of any report required under subpart C of this part, compliance by the fabricating manufacturer, the importer, the brand name owner, or a parent or United States subsidiary of such fabricator, importer, or brand name owner of the motor vehicle or motor vehicle equipment, shall be considered compliance by all persons.

We are adopting largely the same reporting provision for manufacturers who report foreign campaigns. We believe that this is responsive to the Alliance's recommendation. In any event, we note that historically, Alliance members' U.S. headquarters (if the multinational headquarters is in the U.S.) or U.S. subsidiary (if the multinational headquarters is in a foreign country) have submitted reports under section 30166(l) and that this has sufficed. However, rather than adopting a separate provision in Subpart B, we are amending section 579.3 to redesignate paragraphs (b) and (c) as paragraphs (c) and (d) respectively, and to adopt a new paragraph (b) which reads:

> In the case of any report required under subpart B of this part, compliance by the fabricating manufacturer, the importer, the brand name owner, or a parent or subsidiary of such fabricator, importer, or brand name owner of the motor vehicle or motor vehicle equipment that is identical or substantially similar to that covered by the foreign recall or other safety campaign, shall be considered compliance by all persons.

It should be noted that this differs from the early warning reporting paragraph in that a report may be filed by a "subsidiary," not just a "United States subsidiary." This means that any of the named entities, including a foreign subsidiary who makes a determination or receives a notice from a foreign government, may file a report, whether it is located in the United States or in a foreign country. As we noted in the NPRM, a multinational corporation must ensure that all relevant campaign information

throughout the world is made available to whatever entity makes those reports so that its designated entity timely provides the information to NHTSA. Thus, it would be a violation of law for a foreign manufacturer to designate its U.S. importer as its reporting entity, and then fail to assure that it is provided with information about relevant foreign recalls and campaigns. All manufacturers will have to adopt and implement practices to assure the proper flow of information regarding relevant foreign recalls and campaigns.

There was one further reporting issue. Under proposed section 579.13(a), after a manufacturer determines to conduct a foreign safety campaign "covering" substantially similar motor vehicles and equipment, the manufacturer "of the vehicle or equipment covered by the recall or other campaign" would report the determination to NHTSA. Johnson found it unclear whether "the manufacturer who makes [the recall] determination is the one who needs to make the report." Johnson noted that "in the case of original equipment or replacement equipment, the equipment manufacturer can make the determination of defect. In those cases, the equipment manufacturer should be the person who makes the report required under section 579.13(a)." It argued that "imposing an obligation on the manufacturer 'covered by' the recall is ambiguous, particularly in a case where a recall by a vehicle manufacturer is undertaken as a result of a defect discovered by the vehicle manufacturer in an original component made by an equipment manufacturer." It would clarify that the manufacturer making the report is the manufacturer making the determination to recall.

The issue of alternative reporting responsibilities has been addressed with respect to notification of defects and noncompliances that lead to domestic recall campaigns in section 573.3(e). This paragraph permits either a vehicle manufacturer or an OE manufacturer to notify NHTSA if the OE manufacturer's defective equipment is used only in the vehicles of that manufacturer, and the reporting manufacturer to conduct the remedial campaign. This paragraph appears to be the basis of Johnson's comment.

We did not address the issue of alternative reporting responsibilities in the context of foreign campaigns in the NPRM. Under our proposed fifth criterion, substantially similar vehicles would be those sharing the component that led to the safety recall or campaign. Thus, it did not seem likely that the foreign manufacturer of the defective OE would be the person determining to conduct a safety recall of foreign motor vehicles equipped with its defective OE. However, in the final rule, as discussed above, we have moved to a platform-based criterion. This means that, even if the same defective OE is used in both U.S. and foreign vehicles and in the same application, the vehicle manufacturer is not required to report the campaign to NHTSA if the two vehicles do not share a common platform (or qualify as substantially similar vehicles under one of the other three criteria). We have concluded that Johnson's suggestion provides greater clarity, and we are including language in final section 579.11(a) to clarify that the manufacturer making the determination to conduct a safety recall or other safety campaign is the manufacturer required to report to NHTSA. We are making a corresponding clarification in section 579.11(b) that it is the manufacturer that receives the notification from a foreign government that must report to NHTSA.

VI. Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures. This document was not reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures.

We estimate that fewer than 500 reports of foreign recalls and other safety campaigns will be submitted annually; some of these would involve parallel campaigns in multiple countries. The costs associated with this rule are minimal and are principally related to hours of burden. There would be costs in determining whether vehicles or equipment that are covered by a foreign recall or campaign are identical or substantially similar to vehicles and equipment sold in the United States, and there will be costs associated with preparing and submitting the annual list of substantially similar vehicles. The cost of determining which vehicles are substantially similar will be less under the final rule because the most relevant criterion will be commonality of the vehicle platform, rather than commonality of parts giving rise to the foreign campaign, as initially proposed. Moreover, the existence of the annual list will simplify this decision.

There will be costs to manufacturers to prepare and submit reports of these recalls and campaigns to the agency. If a determination has been made by a foreign government in a language other than English, a manufacturer would also have the cost of translating the determination before supplying it to us; however, currently such determinations are not made in any language other than English. Finally, there may be costs involved in searching out and filing reports with NHTSA that are related to foreign determinations made between November 1, 2000 and the effective date of the final rule. The costs would appear to be principally those of man-hours. We estimate that the costs will be less than $200,000 per year industry-wide. We sought comments from manufacturers on the estimated costs of meeting a final rule based on this proposal and received none.

Regulatory Flexibility Act. We have also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this rulemaking action does not have a significant economic impact upon a substantial number of small entities. The basis for this certification is that most manufacturers of motor vehicles and motor vehicle equipment that operate internationally are not small entities. Any small business that operates internationally is likely to have less than one report per year to send to NHTSA. Thus, the final rule is not economically significant, and no regulatory flexibility analysis has been prepared.

Executive Order 13132 (Federalism). Executive Order 13132 on "Federalism" requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of "regulatory policies that have federalism implications." The E.O. defines this phrase to include regulations "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule regulates the manufacturers of motor vehicles and motor vehicle equipment, will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132.

Civil Justice Reform. This final rule will not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act. The final rule requires a manufacturer of motor vehicles and motor vehicle equipment

to report information and data to NHTSA if it decides to conduct, or if it is informed by a foreign government that it must conduct, a safety recall or other safety campaign in a country outside the United States. These provisions are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1329. We published a Paperwork Reduction Act Notice on August 9, 2002 (67 FR 51925). Following receipt of comments, due by October 8, 2002, we will submit the required materials to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 49 CFR Part 579

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

1. The authority citation for part 579 continues to read as follows:

Authority: Sec. 3, Pub. L. 106–414, 114 Stat. 1800 (49 U.S.C. 30102–103, 30112, 30117–121, 30166–167); delegation of authority at 49 CFR 1.50.

Subpart A—General

2. Section 579.2 is revised to read as follows:

§ 579.2 Purpose.

The purpose of this part is to enhance motor vehicle safety by specifying information and documents that manufacturers of motor vehicles and motor vehicle equipment must provide to NHTSA with respect to possible safety-related defects and noncompliances in their products, including the reporting of safety recalls and other safety campaigns that the manufacturer conducts outside the United States.

3. Section 579.3 is amended by revising paragraph (a), by redesignating paragraphs (b) and (c) as (c) and (d) respectively, and by adding a new paragraph (b), to read as follows:

§ 579.3 Application.

(a) This part applies to all manufacturers of motor vehicles and motor vehicle equipment with respect to all motor vehicles and motor vehicle equipment that have been offered for sale, sold, or leased in the United States by the manufacturer, including any parent corporation, any subsidiary or affiliate of the manufacturer, or any subsidiary or affiliate of any parent corporation, and with respect to all motor vehicles and motor vehicle equipment that have been offered for sale, sold, or leased in a foreign country by the manufacturer, including any parent corporation, any subsidiary or affiliate of the manufacturer, or any subsidiary or affiliate of any parent corporation, and are identical or substantially similar to any motor vehicles or motor vehicle equipment that have been offered for sale, sold, or leased in the United States.

(b) In the case of any report required under subpart B of this part, compliance by the fabricating manufacturer, the importer, the brand name owner, or a parent or subsidiary of such fabricator, importer, or brand name owner of the motor vehicle or motor vehicle equipment that is identical or substantially similar to that covered by the foreign recall or other safety campaign, shall be considered compliance by all persons.

* * * * *

4. Section 579.4(c) is amended by adding in alphabetical order the terms "foreign country," "foreign government," "other safety campaign," and "safety recall," to read as follows:

§ 579.4 Terminology.

* * * * *

(c) *Other terms.* * * *

* * * * *

Foreign country means a country other than the United States.

Foreign government means the central government of a foreign country as well as any political subdivision of that country.

* * * * *

Other safety campaign means an action in which a manufacturer communicates with owners and/or dealers in a foreign country with respect to conditions under which motor vehicles or equipment should be operated, repaired, or replaced that relate to safety (excluding promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale); or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment.

* * * * *

Safety recall means an offer by a manufacturer to owners of motor vehicles or equipment in a foreign country to provide remedial action to address a defect that relates to motor vehicle safety or a failure to comply with an applicable safety standard or guideline, whether or not the manufacturer agrees to pay the full cost of the remedial action.

* * * * *

5. Section 579.4(d) is amended by removing the title and introductory phrase "*Terms related to foreign claims.* For purposes of subpart C of this part:" and by adding in its place "*Identical or substantially similar motor vehicle, item of motor vehicle equipment, or tire.*"

6–7. Subpart B is revised to read as follows:

Subpart B—Reporting of Safety Recalls and Other Safety Campaigns in Foreign Countries

Sec.
579.11 Reporting responsibilities.
579.12 Contents of reports.
579.13–579.20 [Reserved]

Subpart B—Reporting of Safety Recalls and Other Safety Campaigns in Foreign Countries

§ 579.11 Reporting responsibilities.

(a) *Determination by a manufacturer.* Not later than 5 working days after a manufacturer determines to conduct a safety recall or other safety campaign in a foreign country covering a motor vehicle, item of motor vehicle equipment, or tire that is identical or substantially similar to a vehicle, item of equipment, or tire sold or offered for sale in the United States, the manufacturer shall report the determination to NHTSA. For purposes of this paragraph, this period is determined by reference to the general business practices of the office in which such determination is made, and the office reporting to NHTSA.

(b) *Determination by a foreign government.* Not later than 5 working days after a manufacturer receives written notification that a foreign government has determined that a safety recall or other safety campaign must be conducted in its country with respect to a motor vehicle, item of motor vehicle equipment, or tire that is identical or substantially similar to a vehicle, item of equipment, or tire sold or offered for sale in the United States, the manufacturer shall report the determination to NHTSA. For purposes of this paragraph, this period is determined by reference to the general business practices of the office where the manufacturer receives such notification, the manufacturer's international headquarters office (if involved), and the office reporting to NHTSA.

(c) *One-time historical reporting.* Not later than 30 calendar days after November 12, 2002, a manufacturer that has made a determination to conduct a recall or other safety campaign in a foreign country, or that has received written notification that a foreign government has determined that a safety recall or other safety campaign must be conducted in its country in the period between November 1, 2000 and November 12, 2002, and that has not reported such determination or notification of determination to NHTSA in a report that identified the model(s) and model year(s) of the vehicles, equipment, or tires that were the subject of the foreign recall or other safety campaign, the model(s) and model year(s) of the vehicles, equipment, or tires that were identical or substantially similar to the subject of the recall or campaign, and the defect or other condition that led to the foreign recall or campaign, as of November 12, 2002, shall report such determination or notification of determination to NHTSA if the safety recall or other safety campaign covers a motor vehicle, item of motor vehicle equipment, or tire that is identical or substantially similar to a vehicle, item of equipment, or tire sold or offered for sale in the United States. However, a report need not be resubmitted under this paragraph if the original report identified the model(s) and model year(s) of the vehicles, equipment, or tires that were the subject of the foreign recall or other safety campaign, identified the model(s) and model year(s) of the identical or substantially similar products in the United States, and identified the defect or other condition that led to the foreign recall or other safety campaign.

(d) *Exemptions from reporting.* Notwithstanding paragraphs (a), (b), and (c) of this section a manufacturer need not report a foreign safety recall or other safety campaign to NHTSA if:

(1) The manufacturer has determined that for the same or substantially similar reasons relating to motor vehicle safety that it is conducting a safety recall or other safety campaign in a foreign country, a safety-related defect or noncompliance with a Federal motor vehicle safety standard exists in identical or substantially similar motor vehicles, motor vehicle equipment, or tires sold or offered for sale in the United States, and has filed a defect or noncompliance information report pursuant to part 573 of this chapter, provided that the scope of the foreign recall or campaign is not broader than the scope of the recall campaign in the United States;

(2) The component or system that gave rise to the foreign recall or other campaign does not perform the same function in any vehicles or equipment sold or offered for sale in the United States; or

(3) The sole subject of the foreign recall or other campaign is a label affixed to a vehicle, item of equipment, or a tire.

(e) *Annual list of substantially similar vehicles.* Not later than November 1 of each year, each manufacturer of motor vehicles that sells or offers a motor vehicle for sale in the United States shall submit to NHTSA a document that identifies both each model of motor vehicle that the manufacturer sells or plans to sell during the following year in a foreign country that the manufacturer believes is identical or substantially similar to a motor vehicle sold or offered for sale in the United States (or to a motor vehicle that is planned for sale in the United States in the following year), and each such identical or substantially similar motor vehicle sold or offered for sale in the United States.

§ 579.12 Contents of reports.

(a) Each report made pursuant to § 579.11 of this part must be dated and must include the information specified in § 573.6(c)(1), (c)(2), (c)(3), and (c)(5) of this chapter. Each such report must also identify each foreign country in which the safety recall or other safety campaign is being conducted, state whether the foreign action is a safety recall or other safety campaign, state whether the determination to conduct the recall or campaign was made by the manufacturer or by a foreign government, describe the manufacturer's program for remedying the defect or noncompliance (if the action is a safety recall), specify the date of the determination and the date the recall or other campaign was commenced or will commence in each foreign country, and identify all motor vehicles, equipment, or tires that the manufacturer sold or offered for sale in the United States that are identical or substantially similar to the motor vehicles, equipment, or tires covered by the foreign recall or campaign. If a determination has been made by a foreign government, the report must also include a copy of the determination in the original language and, if the determination is in a language other than English, a copy translated into English.

(b) Information required by paragraph (a) of this section that is not available within the 5-working day period specified in § 579.11 of this part shall be submitted as it becomes available.

Issued on: October 7, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–25849 Filed 10–10–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020215032–2127 02; I.D. 100102E]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Commercial Quota Transfers

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota transfers.

SUMMARY: NMFS announces that the Commonwealth of Virginia and the States of Florida and Rhode Island have transferred 100,000 lb (45,372 kg), 200,000 lb (90,744 kg), and 125,000 lb (56,689 kg), respectively, of their 2002 adjusted commercial quotas to New York. The revised quotas for the calendar year 2002 following the transfer are: Virginia, 1,095,283 lb (496,952 kg), Florida, 856,269 lb (388,507 kg), Rhode Island 589,851 lb (267,506 kg), and New York, 1,299,372 lb (589,284 kg).

NMFS has adjusted the quotas and announces the revised commercial quotas for Virginia, Florida, Rhode Island, and New York. This action is permitted under the regulations implementing the Fishery Management Plan for the Bluefish Fishery (FMP) and is intended to reduce discards and prevent negative economic impacts to the New York commercial bluefish fishery.

DATES: Effective October 10, 2002 through December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, (978) 281–9104, fax (978) 281–9135, e-mail *Myles.A.Raizin@noaa.gov*.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through Florida. The process to set the annual commercial

quota and the percent allocated to each state is described in § 648.160.

The total commercial quota for bluefish for the 2002 calendar year was set equal to 10,500,000 lb (4,762,720 kg) (66 FR 23625, May 9, 2002). The resulting quotas for New York, Virginia, Florida, and Rhode Island were 1,090,436 lb (494,753 kg), 1,247,348 lb (565,787 kg), 1,056,269 lb (479,115 kg), and 714,851 lb (324,251 kg), respectively. Effective, September 12, 2002, (67 FR 57758) New York's quota was reduced by 216,064 lb (98,033 kg) to 874,372 lb (396,721 kg) and, effective October 8, 2002, (FR) Virginia's quota was reduced by 52,065 lb (23,623 kg) to 1,195,283 lb (541,833 kg).

The FMP allows two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), to transfer or combine part or all of their annual commercial bluefish quotas. The Regional Administrator must consider the criteria set forth in § 648.160(f)(1) in the evaluation of requests for quota transfers or combinations.

Virginia, Florida, and Rhode Island have agreed to transfer 100,000 lb (45,372 kg), 200,000 lb (90,744 kg), and 125,000 lb (56,689 kg), respectively, of their 2002 adjusted commercial quotas to New York. The revised quotas for the calendar year 2002 following the transfer are: Virginia, 1,095,283 lb (496,952 kg), Florida, 856,269 lb (388,507 kg), Rhode Island 589,851 lb (267,506 kg), and New York, 1,299,372 lb (589,284 kg).

The Regional Administrator has determined that the criteria set forth in § 648.160(f)(1) have been met.

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 2, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–26014 Filed 10–10–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 100802B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2002 Pacific cod total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 8, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, or Mary.Furuness@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area is 2,479 metric tons (mt) as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002 and 67 FR 34860, May 16, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component of the Central Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,979 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 8, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–26013 Filed 10–8–02; 3:09 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 198
Friday, October 11, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 212, 214, 245, 248 and 299

[INS 2080–00]

RIN 1115–AE73

Certificates for Certain Health Care Workers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule specifies the organizations already authorized to issue health care workers certificates, and sets up procedures for authorizing additional organizations, including an appeals process in the event that requests for authorization are denied. In addition, this rule proposes to add the requirement that all nonimmigrants coming to the United States for the primary purpose of labor as health care workers, including those seeking a change of status, be required to submit a health care worker certification. Previously, the Service had implemented health care worker certification requirements through three interim regulations. This proposed rule expands on those three interim rules and allows for a comment period. Finally, the Immigration and Naturalization Service (Service) proposes amendments to a previously created form that will allow organizations to formally seek authorization to issue certificates to health care workers in a uniform manner. Publication of this proposed rule will ensure more uniformity in the adjudication of petitions and admissibility determinations for aliens seeking to enter the United States to engage in labor as health care workers.

DATES: Written comments must be submitted on or before December 10, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2080–00 on your correspondence. Comments may also be submitted electronically to the Service at *insregs@usdoj.gov*. When submitting comments electronically, please include INS No. 2080–00 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Mari F. Johnson, Adjudications Officer, Office of Adjudications, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 353–8177.

SUPPLEMENTARY INFORMATION:

What Are the Provisions of Sections 212(a)(5)(C) and (r) of the Immigration and Nationality Act (Act)?

Section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Public Law 104–208, 110 Stat. 3009, 636–37 (1996), created a new ground of inadmissibility now codified at section 212(a)(5)(C) of the Act, 8 U.S.C. 1182(a)(5)(C). It provides that, subject to section 212(r) of the Act, an alien who seeks to enter the United States for the purpose of performing labor as a health care worker, other than a physician, is inadmissible unless the alien presents a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS) or an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of the Department of Health and Human Services (HHS) verifying that:

(1) The alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States under the classification specified in the application; are comparable with that required for an American health care worker of the same type; are authentic; and, in the case of a license, unencumbered;

(2) The alien has the level of competence in oral and written English considered by the Secretary of HHS, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write English; and

(3) If a majority of States licensing the profession in which the alien intends to work recognize a test predicting an applicant's success on the profession's licensing or certification examination, the alien has passed such a test, or has passed such an examination.

Section 4(a) of the Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA), Public Law 106–95, now codified at section 212(r) of the Act, 8 U.S.C. 1182(r), created an alternative certification process for aliens who seek to enter the United States for the purpose of performing labor as a nurse. In lieu of a certification under the standards of section 212(a)(5)(C) of the Act, an alien nurse can present to the consular officer (or in the case of an adjustment of status, the Attorney General) a certified statement from CGFNS (or an equivalent independent credentialing organization approved for the certification of nurses) that:

(1) The alien has a valid and unrestricted license as a nurse in a State where the alien intends to be employed and that such State verifies that the foreign licenses of alien nurses are authentic and unencumbered;

(2) The alien has passed the National Council Licensure Examination (NCLEX); and

(3) The alien is a graduate of a nursing program that meets the following requirements:

(i) The language of instruction was English; and

(ii) The nursing program was located in a country which:

(A) was designated by CGFNS no later than 30 days after the enactment of the NRDAA, based on CGFNS'' assessment that designation of such country is justified by the quality of nursing education in that country, and the English language proficiency of those who complete such programs in that country; or

(B) was designated on the basis of such an assessment by unanimous agreement of CGFNS and any equivalent credentialing organizations which the Attorney General has approved for the certification of nurses; and

(iii) The nursing program:

(A) was in operation on or before November 12, 1999; or

(B) has been approved by unanimous agreement of CGFNS and any equivalent credentialing organizations which the Attorney General has approved for the certification of nurses.

CGFNS designated the following countries for purposes of this alternate certification: Australia, Canada, Ireland, New Zealand, South Africa, the United Kingdom, and the United States.

How Has the Service Implemented These Requirements?

Section 212(a)(5)(C) of the Act became effective upon enactment on September 30, 1996. Shortly thereafter, the Service met and conferred with HHS, the Department of Labor (DOL), the Department of Education (DoED), the Department of Commerce (DOC), the Office of the United States Trade Representative (USTR), and DOS to reach consensus on the best approach for implementation of the new provision. In addition, the Service met with interested private organizations including CGFNS, the American Occupational Therapists Association, the National Board for Certification in Occupational Therapy (NBCOT), the Federated State Board of Physical Therapy, and the American Physical Therapy Association.

The Service has implemented section 343 of IIRIRA and NRDAA, via three interim rules published in the **Federal Register** as follows:

(1) Interim Procedures for Certain Health Care Workers, 63 FR 55007 (Oct. 14, 1998) (codified at 8 CFR 212.15 and 245.14)(the first Interim Rule);

(2) Additional Authorization to Issue Certificates for Foreign Health Care Workers, 64 FR 23174 (April 30, 1999) (amending § 212.15)(the second Interim Rule); and

(3) Additional Authorization to Issue Certificates for Foreign Health Care Workers; Speech Language Pathologists and Audiologists, Medical Technologists and Technicians, and Physician Assistants, 66 FR 3440 (Jan. 16, 2001) (amending § 212.15)(the third Interim Rule).

These current regulatory provisions shall remain in effect until this proposed rule is adopted as a final rule.

What Were the Provisions of the First Interim Rule?

The Service in consultation with HHS initially identified, on the basis of the legislative history, seven categories of health care workers subject to the provisions of section 212(a)(5)(C) of the Act. *See* H.R. CONF. REP. NO. 104–828 at 227 (1996). The seven categories are nurses, physical therapists, occupational therapists, speech-language pathologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians) and physician assistants. *See* 63 FR at 55008.

In the first Interim Rule, the Service authorized CGFNS and the NBCOT to issue certificates to immigrant nurses and occupational therapists respectively, established the appropriate English language competency levels for foreign nurses and occupational therapists, and specified exemptions from English language proficiency testing. The first Interim Rule was adopted without the notice and comment period ordinarily required by 5 U.S.C. 553, the Administrative Procedure Act, because the Service found that delay in the establishment of a certification process could adversely affect the provision of health care, particularly in medically underserved areas for nursing and occupational therapy. The Service identified two criteria to support the temporary authorization of CGFNS and the NBCOT to issue certificates to immigrant nurses and occupational therapists: (1) The existence of a sustained level of demand for foreign workers for the particular occupation exists; and (2) the fact that these are both organizations with an established track record in providing credentialing services.

The first Interim rule applied only to immigrants. The Service and DOS exercised their discretion under section 212(d)(3) of the Act, 8 U.S.C. 1182(d)(3), to waive the foreign health care worker certification requirement for nonimmigrant health care workers until promulgation of final implementing regulations. The Service and DOS exercised their waiver discretion after carefully considering the complexity of the implementation issues, including how the health care certificate requirements affect United States obligations under international agreements, and the need for health care facilities across the country to remain fully staffed and provide a high quality of service to the public. The waiver of inadmissibility applies to nonimmigrant health care workers already in possession of nonimmigrant visas and visa exempt aliens, including Canadians applying for classification under section 214(e) of the Act, 8 U.S.C. 1184(e)(TN classification). Under current procedures, a formal application or fee is not required for a nonimmigrant health care worker to obtain the waiver. Nonimmigrant health care workers are admitted on a multiple entry Form I–94, Arrival—Departure Record, for one year. In addition, otherwise admissible dependents are also authorized admission into the United States for the specific dates of stay authorized for the principal alien. A new waiver is not required if the nonimmigrant health care worker makes an application for admission to the United States during the validity period of the previously issued Form I–94. Nonimmigrants applying for TN classification are not required to pay the admission fee described at 8 CFR 214.6(f) when applying for admission during the validity period of the previously issued Form I–94. Finally, nonimmigrant health care workers are eligible for extensions of the waiver and corresponding extensions of stay in increments of one year.

What Were the Provisions of the Second Interim Rule?

In the second Interim Rule, the Service temporarily authorized CGFNS to issue certificates to immigrant occupational therapists and physical therapists, temporarily authorized the Foreign Credentialing Commission on Physical Therapy (FCCPT) to issue certificates to immigrant physical therapists, and established the appropriate English language competency levels for physical therapists.

The Service, in consultation with HHS, evaluated CGFNS' and FCCPT's applications for authorization to issue certificates under the criteria in the first Interim Rule. The Service found that both CGFNS and FCCPT met the "established track record" criterion, and concluded that there was a sustained level of demand for occupational therapists and for physical therapists.

What Were the Provisions of the Third Interim Rule?

In the third Interim Rule, the Service temporarily authorized CGFNS to issue certificates to immigrant speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory scientists), physician assistants, and medical technicians (also known as clinical laboratory technicians), listed the passing scores for the English language tests for those health care occupations, and amended the regulations concerning which organizations may administer the English language tests. The Service also modified the criteria it had used in the first and second Interim Rules to temporarily authorize organizations to issue certificates to immigrant health care workers.

By the time the third Interim Rule was adopted, the Service had experienced tremendous administrative difficulty in promulgating permanent regulations implementing 8 U.S.C. 1182(a)(5)(C) due to the complexity of the issues to be addressed, particularly the issues concerning the impact on United States obligations under various international agreements. While the Service and DOS had exercised their discretion under section 212(d)(3) of the Act to temporarily waive the inadmissibility of nonimmigrant health care workers, thereby permitting nonimmigrant health care workers to be admitted to the United States without a certification, they lacked the statutory authority to waive the inadmissibility of immigrant health care workers. Accordingly, the Service and DOS were unable to adjudicate the petitions of those immigrant health care workers not covered by the first or second Interim Rules. The immigrant petitions and adjustment applications for speech-language pathologists and audiologists, medical technologists/clinical laboratory scientists, physician assistants, and medical technicians/clinical laboratory technicians had been held in abeyance for several years. Recognizing that it was unable to execute its adjudicative functions with respect to this growing backlog, the Service did not rely on the criterion of a "sustained level of demand" for the immigrant workers in question. The Service found that CGFNS had an established track record in issuing certificates for the additional occupations.

What Were the Provisions of the H–1C Rule?

The Service also published a related rule in response to the passage of the NRDAA, Petitioning Requirements for the H–1C Nonimmigrant Classification under Public Law 106–95, 66 FR 31107 (June 11, 2001) (amending 8 CFR 214.2(h)). Among other things, the NRDAA created an alternative certification process for foreign nurses only, as provided in section 212(r) of the Act. In the H–1C rule, the Service announced that it would continue to waive the certification requirements for nonimmigrant nurses, pending the promulgation of new regulations implementing both certification processes. That is the purpose of this proposed rule.

It should be noted that in the H–1C Rule, the Service incorrectly stated that *two* interim rules had been promulgated, which authorized credentialing organizations to issue certifications to immigrant health care workers in *three* occupations. In fact, as previously described, with the publication of the third Interim Rule, the Service had authorized credentialing organizations to issue certifications in all *seven* of the health care occupations initially identified as subject to the certification requirements.

What Does This Rule Propose?

This rule proposes to implement a comprehensive process for the certification of foreign health care workers under sections 212(a)(5)(C) and (r) of the Act. It addresses foreign health care workers coming to the United States on a temporary basis (nonimmigrant aliens) as well as on a permanent basis (immigrants).

This rule proposes to amend 8 CFR 212.15 by:

(1) Specifying which organizations are authorized to issue certificates (§ 212.15(e));

(2) Describing the required content of the certificate itself (§ 212.15(f));

(3) Specifying the English language requirements for certification (§ 212.15(g));

(4) Implementing the alternative certification process for foreign nurses and the required content of the certified statement (§ 212.15(h));

(5) Describing the procedure to qualify as a certifying organization (§ 212.15(j));

(6) Listing the standards that an organization must meet in order to obtain and retain authorization to issue foreign health care worker certifications (§ 212.15(k)); and

(7) Providing for periodic review of the performance of certifying organizations (§ 212.15(l)) and the termination of their authority (§ 212.15(m)).

This rule proposes to amend 8 CFR 103.1 by specifying at new paragraphs (f)(3)(iii)(QQ) and (RR) that the Associate Commissioner for Examinations exercises appellate jurisdiction over applications for authorization to issue foreign health care worker certifications, and the termination of authorization to issue foreign health care worker certifications.

This rule proposes to amend 8 CFR 103.7(b)(1) by adding a fee for filing Form I–905, Application for Authorization to Issue Certification for Health Care Workers. This form was previously approved for use in order to ensure that organizations formally seeking authorization to issue health care worker certificates or certified statements will be able to submit complete and uniform applications. This form has not yet been implemented by the Service.

This rule proposes to amend 8 CFR 214.1(h) by adding a requirement that an alien who seeks to enter the United States for the purpose of performing labor in a health care occupation must present a foreign health care worker certification to the Service in accordance with 8 CFR 212.15(d).

This rule proposes to remove text at 8 CFR 245.14 relating to the adjustment of status of certain health care workers. This provision is duplicated by the provisions of 8 CFR 212.15(d).

This rule proposes to amend 8 CFR 248.3 by adding paragraph (i) to mandate that a nonimmigrant seeking a change of status to perform labor in a health care occupation must submit a foreign health care worker certification.

Who Is Subject to the Health Care Certification Requirements?

After the Service's consideration of the relevant statutory provisions, legislative history, judicial precedent, international agreements, and other proposed rulemakings, and after extensive consultations that the Service has had with other agencies, this proposed rule takes the position that the requirements of section 212(a)(5)(C) apply to both immigrants and nonimmigrants who seek to enter the United States for the purpose of performing labor as a health care worker. Physicians, however, are explicitly exempted from the certification requirement by the statute and, therefore, are not covered by this rule.

With respect to immigrants, the certification requirement applies to both aliens overseas who are seeking an immigrant visa before traveling to the United States, and aliens in the United States who are applying for adjustment of status to that of a permanent resident. The Service interprets the statutory language, "any alien who seeks to enter the United States for the purpose of performing labor as a health care worker * * *" with respect to immigrants, to limit the scope of this provision to aliens with an approved employment-based (EB) preference petition under section 203(b) of the Act, 8 U.S.C. 1153(b), to perform labor in a covered health care occupation. Therefore, an alien who has applied for an immigrant visa or adjustment of status, pursuant to a family-sponsored petition under section 203(a) of the Act, 8 U.S.C. 1153(a), or pursuant to an EB preference petition for a non-health care occupation, or pursuant to section 209 of the Act, 8 U.S.C. 1159 (adjustment of status of refugees), or pursuant to section 210 of the Act, 8 U.S.C. 1160 (special agricultural workers), or

pursuant to section 240A of the Act, 8 U.S.C. 1229(b) (cancellation of removal), or pursuant to section 249 of the Act, 8 U.S.C. 1259 (record of admission for permanent residence), or pursuant to any other statutory provision relating to admission as an immigrant, is not subject to the requirements of section 212(a)(5)(C) of the Act.

With respect to nonimmigrants, the proposed rule applies the certification requirement to all aliens who have obtained nonimmigrant status for the purpose of performing labor as a health care worker, including, but not limited to, those aliens described in sections 101(a)(15)(H), (J), and (O) of the Act, 8 U.S.C. 1101(a)(15), and aliens entering pursuant to section 214(e) of the Act, 8 U.S.C. 1184(e), as TN professionals.

The Service is proposing that a nonimmigrant entering the United States to receive training in an occupation listed at 8 CFR 212.15(c) will not be required to obtain a health care certification. This includes F–1 nonimmigrants receiving practical training and J–1 nonimmigrants coming to the United States to undertake a training program in a medical field. In the Service's view, nonimmigrants entering the United States to receive training in a health care occupation fall outside the ambit of section 212(a)(5)(C) of the Act because they are not independently performing the full range of duties of their occupation, and therefore are not entering for the purpose of performing labor as a health care worker.

Finally, the Service has concluded that the health care certification requirement should not be applied to the spouse and dependent children of an immigrant or nonimmigrant alien. Dependent aliens enter the United States for the primary purpose of accompanying the principal alien, not to perform labor as a health care worker, or in any other field. A dependent alien derives his or her nonimmigrant status from his or her familial relationship with the principal alien. Therefore, while he or she may be permitted to work in some circumstances, he or she is not required to work in a particular occupational field or for a specific employer to maintain his or her status. Accordingly, regardless of whether or not a dependent alien may intend to work in a health care occupation listed at 8 CFR 212.15(c), while accompanying the principal alien to the United States, he or she would not be subject to the health care worker certification requirement.

The Service is very interested in and invites public comment on the appropriate scope of the certification requirement.

Are Foreign Health Care Workers Who Have Been Trained in the United States, or Who Are In Possession of a Valid State License, Subject to the Health Care Certification Requirement?

After passage of IIRIRA, the Service received a number of inquiries and comments regarding whether a foreign health care worker in possession of a full and unrestricted license issued by the State of intended employment would be required to obtain a certificate under section 212(a)(5)(C) of the Act. After carefully considering the plain language of the statute, and upon consultation with HHS, the Service has concluded that possession of a State license does not exempt a foreign health care worker from compliance with the certification requirement. First, section 212(a)(5)(C) of the Act applies to all aliens coming to perform labor as health care workers, except for physicians and for registered nurses who can meet the alternative requirements in section 212(r) of the Act. Nothing in the text of section 212(a)(5)(C) of the Act relieves alien health care workers of this requirement, on the ground that they were trained in the United States or are already licensed here. Moreover, one aspect of the required certification is the certification that any State license the alien may already have is unencumbered. Indeed, had Congress intended to exempt such aliens from the certification requirement, it would not have explicitly provided that the certification must document the fact of an alien's successful passage of any test or examination that is accepted as evidence of an applicant's likely success on a State licensing examination, if a majority of States recognize such a pre-licensing test or examination. In addition, in NRDAA, Congress explicitly addressed whether a foreign nurse, in possession of a full and unrestricted license issued by the State of intended employment, should be subject to the certification requirement. NRDAA created a less onerous, alternative method of certification for foreign nurses who have unrestricted State licenses and meet certain other conditions, as provided in section 212(r) of the Act. The fact that Congress has chosen not to provide a less rigorous alternative certification option to State-licensed foreign health care workers other than nurses supports the inference that Congress intended State-licensed foreign health care workers to comply with the certification process.

In addition to the statutory scheme, there are policy considerations that mitigate in favor of applying the certification requirement to State-licensed foreign health care workers. The State screening process alone would not demonstrate that the other two prongs of the certification requirement, English language competency, and comparable training and unencumbered licensing, had been met. First, the State screening process does not always measure English proficiency. Secondly, HHS has advised the Service that the State screening process may not always discover encumbrances and restrictions on a license.

The statute and legislative history are silent with respect to whether foreign health care workers, who received their training in the United States, are subject to the certification process. While such aliens would satisfy the comparable training certification requirements, their licensure would not be verified, as required by the statute. Given the lack of evidence of congressional intent that such aliens be exempt from the reach of section 212(a)(5)(C) of the Act, the Service has concluded that foreign health care workers who received their training in the United States must comply with the certification requirement.

The Service, however, would not be opposed to permitting credentialing organizations to develop a modified or streamlined certification process for foreign health care workers who hold an unrestricted State license, or who have been trained in the United States. The Service invites comments regarding the feasibility of having a more streamlined certification process for those who train in the United States or who are already licensed here, and regarding specific proposals on how to adopt such a policy. The critical issue would be whether, as a matter of its own professional judgment, the appropriating credentialing organization considers its appropriate to certify an alien's satisfaction of the substantive requirements of section 212(a)(5)(C) of the Act on the basis of the alien's having been trained or licensed in the United States.

Which Health Care Occupations Are Subject to 8 U.S.C. 1182(a)(5)(C)?

As previously noted, after passage of IIRIRA the Service identified, on the basis of the legislative history, seven categories of health care workers subject to the health care certification requirements. *See* H.R. CONF. REP. NO. 104–828 at 227 (1996). The seven categories are nurses, physical therapists, occupational therapists, speech-language pathologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians) and physician assistants. *See* the first Interim Rule. The conference report also provided that the Service could designate additional health care occupations subject to certification by regulation. Since the Service has limited agency expertise with health care occupations and issues, it has consulted extensively with HHS, the agency generally responsible for overseeing health care occupations and other related health care issues in the United States, with respect to the question of whether aliens in additional health care occupations should be required to comply with 8 U.S.C. 1182(a)(5)(C).

The Service and HHS have identified two factors relevant to the consideration of which health care occupations fall under the ambit of section 212(a)(5)(C) of the Act. The first factor is whether the health care occupation generally requires a license in a majority of the States. This factor reflects the States' historical and practical experience in distinguishing between those health care occupations requiring extensive regulation and those occupations that do not. The second factor is whether the health care worker has a direct effect on patient care, or in other words whether a health care worker in that occupation could reasonably pose a risk to patient health.

Under this rule, health care workers such as, but not limited to, medical teachers, medical researchers, managers of health care facilities, and medical consultants to the insurance industry would not be required to comply with the certification requirement. In contrast, health care workers, such as supervisory physical therapists, who may not typically be involved in hands-on patient care but do have a direct effect on patient care, would be subject to the certification requirements. The Service invites comments on whether the list of health care occupations should be expanded, addressing its use of these two factors to determine which health care workers are subject to certification, and whether particular occupations should be added to the list.

The Service acknowledges that the job description of certain occupations that could be added to the list, such as a "clinical social worker," may differ in other countries from the U.S. definition of a "clinical social worker." These differences may create confusion about who exactly is subject to certification. A solution may lie in explicitly defining each health care occupation, subject to certification, in the final rule. Accordingly, the Service invites comments regarding the need to define a health care occupation that is subject to certification.

How Will an Alien Submit the Foreign Health Care Worker Certification to the Service?

The statutory language at section 212(a)(5)(C) of the Act requires certain aliens seeking to enter the United States for the purpose of performing labor as a health-care worker to present a certificate from CGFNS or an equivalent credentialing organization to the consular officer or, in the case of an adjustment of status, the Attorney General. Accordingly, the requirement that the certificate be presented to a consular officer at the time of visa issuance and to the Service at the time of admission or adjustment of status will continue.

When an alien seeking entry to the United States to perform labor in a particular health care occupation has already presented the certification and been admitted as a nonimmigrant, an immigrant, or has adjusted to permanent resident status, he or she will not be required to present the certificate again when he or she makes future applications for admission to the United States to perform labor in that particular health care occupation. The presentation of a Form I–94 issued to the alien at the initial admission to the United States, or a fee receipt showing that the alien was processed for admission under the North American Free Trade Agreement after this rule is adopted in final form, can be used, if required, as evidence that the alien has previously presented a foreign health care worker certificate for a particular health care occupation. Similarly, such an alien will not be required to again present the foreign health care worker certificate to the Service, with an application for extension of status to perform labor in that particular health care occupation. It should be noted that these proposed regulations do not affect or diminish the authority of State regulatory bodies with respect to whether an alien is permitted to continue employment as a health care worker in that particular State.

This rule proposes to add a new § 248.3(i) to outline the procedure for submitting the certificate to the Service when an application is made to change nonimmigrant status within the United States.

Upon the effective date when this rule is published as a final rule, nonimmigrants who have already entered the United States under a waiver of inadmissibility under section 212(d)(3) of the Act and are working as health care workers will be required to present a certificate to the Service only if, at any point in the future, they file an application for an extension of stay, or apply for admission to the United States, whichever event occurs first.

The Service welcomes comments and suggestions on how this procedure can be modified or altered to better accommodate the aliens affected by this provision.

How Will an Organization Obtain Authorization To Issue Health Care Certificates?

The statute provides that a foreign health care worker must present a certificate from CGFNS or an equivalent credentialing organization or, in the case of certain foreign nurses, a certified statement from CGFNS or an equivalent credentialing organization. In the legislative history to IIRIRA, the conferees identified seven health care occupations (which are currently reflected in § 212.15(c)). It is reasonable to infer from the statutory designation of CGFNS as a credentialing organization that Congress considered CGFNS to possess the resources and expertise to issue certificates in at least those seven designated health care occupations. Accordingly, the Service will not require CGFNS to apply for credentialing status with respect to those seven health care occupations. However, CGFNS will be required to submit information regarding its certification processes via filing of Form I–905, Application for Authorization to Issue Certification for Health Care Workers, without fee with the Director, Nebraska Service Center, in order to enable the Service to review the content of certificates for the seven health care occupations, and content of certified statements for nurses, and ensure compliance with the universal standards set forth in this rule. Like other credentialing organizations, CGFNS will also be subject to ongoing review by the Service, and termination of credentialing status for noncompliance with this rule.

It is less clear, however, that Congress considered whether CGFNS possessed the expertise to issue certificates for health care occupations other than the seven identified in the legislative history. Therefore, although CGFNS' statutory designation creates a strong presumption of expertise with respect to all health care occupations, the Service will require CGFNS to file an application on Form I–905 with fee under the procedures outlined at proposed § 212.15(j), for credentialing status with respect to any health care

occupation other than the seven identified in the legislative history.

Organizations, other than CGFNS, may be approved to issue certificates or certified statements by submission of Form I–905 to the Director, Nebraska Service Center, with fee. The fee for Form I–905 will be $230. The Service will submit Form I–905 to the Office of Management and Budget for approval pursuant to the Paperwork Reduction Act of 1995.

For purposes of administrative ease and efficiency, the Service will centralize all requests for designation as a credentialing organization at the Nebraska Service Center, regardless of the geographical location of the requesting organization. Centralization of these requests will enable personnel at the Nebraska Service Center to establish and maintain the appropriate contacts with HHS and DoED to assist in the adjudication of applications for credentialing status. The Service will accord significant weight to the opinion of HHS in the adjudication of applications for credentialing status because of that agency's expertise with credentialing requirements for health care occupations and health care issues. It should be noted, however, that the Service may deny a request for authorization on grounds unrelated to credentialing requirements for health care occupations or health care issues, despite a favorable HHS opinion.

The Form I–905 will require the organization seeking credentialing status to:

(1) Provide a point of contact and a written, detailed description of the organization and how the organization meets the standards described in 8 CFR 212.15(k);

(2) List the health care occupations for which the organization is seeking approval to issue certificates, and describe the organization's expertise in each health care occupation for which approval to issue certificates is sought;

(3) Describe how it will process applications and issue certificates on a timely basis; and

(4) Describe the procedure it has designed in order for the Service to verify the validity of a certificate.

The Service will provide the organization with a written decision on its application. An organization granted authorization to issue certificates must agree to provide the Service with all requested documentation and to allow the Service access to its records relating to the certification process. If the application is denied, the Service will explain the reason(s) for the denial. Applications that are denied by the Service may be appealed to the Administrative Appeals Office pursuant to 8 CFR 103.3.

The Service is planning to add new organizations that are approved to issue certificates and certified statements to § 212.15(e) via publication of an interim rule in the **Federal Register**. In the alternative, the Service is considering designating, by a separate and comprehensive public notice in the **Federal Register**, the list of organizations approved to issue certification. The Service would also maintain this list on its website at *http://www.ins.usdoj.gov*. This method would allow the Service to update the list of authorized organizations more quickly than through publication of interim rules. The Service seeks comment on whether this alternative method of maintaining a list of authorized organizations would better serve the public.

More than one organization may be approved by the Service to issue certificates for the same health care occupation. An alien may obtain a certificate from any organization authorized to issue certificates for that occupation. This rule also provides that the Service's approval will be for a 5-year period of time subject to the review process described in 8 CFR 215.15(l).

The Service proposes to extend the temporary authorization of CGFNS, NBCOT, and FCCPT to issue health care certificates and/or certified statements until adjudication of their credentialing status under this final rule.

How Did the Service Decide That the Form I–905 Application Fee Should Be $230?

The Service believes that it is reasonable to identify a current application whose process is similar to the requirements outlined under § 212.15(k) in order to select an appropriate fee to charge organizations who wish to be authorized to issue health care worker certifications. Organizations filing health care worker certification applications are requesting that the Service review their resources, including staffing and financial and material resources, their ability to evaluate foreign credentials, and their ability to conduct examinations outside the United States. The current Service petition whose process is most similar to the application process for authorization to issue health care worker certification is the Form I–17, Petition for Approval of School for Attendance by Nonimmigrant Student, which is currently used by other organizations that seek approval to admit nonimmigrant students. In developing fees, the Service must comply with guidance provided in the Office of Management and Budget (OMB) Circular A–25. This guidance directs Federal agencies to charge the "full cost" of providing benefits when calculating fees that provide a special benefit to recipients. Section 6(d) of OMB Circular A–25 defined "full cost" as including "all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service." In its most recent review of immigration and naturalization benefits, the Service identified the current full cost of the Form I–17 to be $230. The Service determined that a $230 fee for the Form I–17 would underwrite the Service's processing and administrative costs incurred in the Form I–17 adjudication process, such as staffing, training of Service personnel, and adjudication of the petitions. The Service will thus use $230 for the fee for the Form I–905 until the next biennial fee review, as required by the Chief Financial Officers Act of 1990, Public Law 101–576, 104 Stat. 2838.

What Are the Standards an Organization Must Meet in Order To Obtain Authorization To Issue Certificates?

This proposed rule lists the standards an organization must substantially meet in order to be authorized to issue certificates at § 212.15(k). An organization seeking approval to issue certificates or certified statements should submit evidence addressing each of the standards. These standards were developed by HHS in order to ensure that an organization meets the requirements contemplated by Congress. In drafting these standards, HHS drew upon the legislative history to IIRIRA, and drew extensively from the standards of the National Commission for Certifying Agencies, a nationally recognized body that accredits certifying organizations. There are four guiding principles to the standards:

(1) The Attorney General should not approve a credentialing organization, unless the organization is independent and free of material conflicts of interest regarding whether an alien receives a visa;

(2) The organization should demonstrate an ability to evaluate both the foreign credentials appropriate for the profession, and the results of examinations for proficiency in the English language appropriate for the health care field in which the alien will be engaged;

(3) The organization should also maintain comprehensive and current information on foreign educational institutions, ministries of health, and foreign health care licensing jurisdictions; and

(4) If the health care field is one for which a majority of the States require a predictor examination (currently, this is done only for nursing), the organization should demonstrate an ability to conduct the examination outside the United States.

Since the statute and the report language intend to ensure that aliens entering the United States for purposes of performing labor as a health care worker are of the same quality as United States trained workers, the HHS has determined that this can be assured by requiring that organizations issuing certificates be held to a select group of standards. The Service is concerned that in the absence of strict standards, unqualified organizations may obtain authorization from the Service to issue certificates that could ultimately have adverse consequences for health care in the United States. Since the provisions of section 212(r) of the Act appear to share with section 212(a)(5)(C) the goal of ensuring a high quality of health care service in the United States, the Service will use the same standards to adjudicate applications from credentialing organizations under either provision.

The Service welcomes comments from the public and from interested organizations regarding the proposed standards. Specifically, the Service is concerned that an organization seeking authorization to issue certificates may meet most, but not all of the proposed standards. The Service seeks comment on the question of whether a prospective credentialing organization's inability to meet all of the proposed standards should preclude the Service from authorizing the organization to issue certificates. Also, the Service seeks public comment on the question of whether the proposed standards should be considered as guidelines, or as strict criteria that would preclude an organization from qualifying. Finally, the Service invites public comment on the question of how a prospective credentialing organization can meet the requirement that it demonstrate that it is independent and free of material conflicts of interest regarding whether an alien receives a visa.

How Will the Service Monitor Organizations Authorized To Issue Certificates or Certified Statements?

The Service intends to develop a regulatory process to monitor credentialing organizations, including CGFNS. This process will ensure that a credentialing organization continues to follow the standards described in this rule. The Service proposes to review and reauthorize the credentialing organizations every 5 years. This rule proposes that the Service will notify the credentialing organization in writing of the results of the review and reauthorization. If the Service develops adverse information with respect to the performance of the organization, the Service may institute termination proceedings. Comments from the public regarding the frequency of review, *e.g.*, review as part of the 5-year reauthorization, or an annual or biannual review, the nature of the review, and whether reviews, if conducted separately from reauthorization, should be targeted versus random, would be of great assistance in the development of a review process.

In particular, as part of the review process, the Service proposes to assess whether an authorized credentialing organization has issued certificates in a timely manner so as to minimize any delays that may affect an alien's ability to proceed with his or her application for an immigration benefit, and to assess whether the fee charged for a certificate unduly impairs an alien's ability to seek an immigration benefit. Accordingly, the Service seeks comments on what might constitute a reasonable period of time within which a credentialing organization would be required to issue certificates, and regarding what methodology the Service should use in assessing whether a fee constitutes an obstacle to obtaining an immigration benefit.

How will the Service terminate an Organization's Authorization?

Upon notification that an authorized credentialing organization has been convicted, or the directors or officers of an authorized credentialing organization have individually been convicted of a violation of state or federal laws, such that the fitness of the organization to continue to issue certificates is called into question, the Service shall automatically terminate authorization to issue certificates via notice to the credentialing organization.

Upon receipt of information that the credentialing organization is no longer complying with the standards contained in § 212.15(k), or upon receipt of information that termination of the organization's approval is otherwise warranted, the Service will issue a Notice of Intent to Terminate Authorization to Issue Certificates to Foreign Health Care Workers to the credentialing organization. The credentialing organization will be given 30 days from the date of the Notice of Intent to Terminate Authorization to Issue Certificates to Foreign Health Care Workers to rebut or cure the allegations made in the Service's notice.

Thirty days after the date of the Notice of Intent to Terminate, the Service will request an opinion from HHS regarding whether the organization's authorization should be terminated. The Service shall accord HHS' opinion great weight in determining whether the authorization should be terminated. After consideration of the organization's response, if any, to the Notice of Intent to Terminate, and of HHS' opinion, the Service will provide the organization with a written decision.

The Service's decision terminating an organization's authorization may be appealed to the Administrative Appeals Office pursuant to 8 CFR 103.3. Termination of credentialing status will occur on the date of the decision and remain in effect until and unless the terminated organization reapplies, with fee, for credentialing status and is approved, or its appeal of the termination decision is sustained by the Administrative Appeals Office. There is no waiting period for an organization to re-apply for credentialing status.

What Actions Will the Service Take When It Finds That an Alien Certificate Holder Was Not Eligible To Receive the Certificate at the Time That It Was Issued?

A credentialing organization must develop policies and procedures for revocation of certificates at any time if it finds that the certificate holder was not eligible to receive the certificate at the time it was issued. These policies and procedures include notification to the Service that a certificate has been revoked. The Service may then take any appropriate action, including revocation of the petition, and initiation of removal proceedings against the individual alien under section 240 of the Act.

What Will the Foreign Health Care Worker Certificate or Foreign Nurses Certified Statement Look Like?

The proposed regulation at § 212.15(f) describes the content of the certificate. The proposed regulation at § 212.15(h) describes the content of the certified statement. They will generally contain the following information:

(1) the name, designated point of contact to verify the validity of the certificate, address, and telephone number of the certifying organization;

(2) the date the certificate was issued;

(3) the health care occupation for which the certificate was issued; and

(4) the alien's name, and date and place of birth.

It should be noted that the certificate or certified statement does not constitute professional authorization to practice in that health care occupation.

What Are the Requisite English Language Scores for Certification?

HHS, in consultation with DoED, is required to establish a level of competence in oral and written English appropriate for the health care field in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write. The statute vests the Secretary of HHS with the "sole discretion" to determine the standardized tests and appropriate minimum scores. In developing the English language test scores, HHS consulted with DoED and appropriate health care professional organizations. HHS also examined a study sponsored in part by NBCOT entitled "Standards for Examinations Assessing English as a Second Language." The scores reflect the current industry requirements for particular health care occupations.

HHS has identified four testing services which conduct a nationally recognized, commercially available, standardized assessment as contemplated in the statute. The four testing services are the Educational Testing Service (ETS), the Michigan English Language Assessment Battery (MELAB), the Test of English in International Communication (TOEIC) Service International, and the International English Language Testing System (IELTS). The proposed regulation at § 212.15(g) lists the tests and appropriate scores as determined by HHS for each occupation.

As an alternative to listing the tests and appropriate scores by regulation or interim rule, the Service is considering designating, by a separate and comprehensive public notice in the **Federal Register**, the list of tests and appropriate scores. The Service would also maintain this list on its website at *http://www.ins.gov*. This method would allow the Service to update the list of tests and scores more quickly than through publication of interim rules. The Service seeks comment on whether this alternative method of providing the public with the lists of tests and appropriate scores would better serve the public.

Other testing services are encouraged to submit information concerning their testing services to the Service, for HHS and DoED review, and credentialing organizations are encouraged to develop a test specifically designed to measure English language skills and to seek HHS approval of the test. This rule provides that the Service will notify the public of new approved testing services in the future by publishing an interim rule in the **Federal Register**.

HHS has advised the Service that graduates of health profession programs in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, and the United States are deemed to have met the English language requirements. HHS has determined that aliens who have graduated from these programs have the requisite competency in oral and written English. The level of English that the graduates of these health profession programs would need to graduate is deemed equivalent to the level that would be demonstrated by achieving the minimum passing score on the tests previously described. Nurses who are eligible to present an alternate certified statement under section 212(r) of the Act also by definition have satisfied the English language requirements.

Finally, HHS has advised the Service that the MELAB will no longer offer the English-speaking portion of its test outside the United States and Canada. As a result, individuals who seek to meet the English language requirements will be required to do one of the following:

(1) Take the three tests offered by ETS; or

(2) Take the TOEIC offered by TOEIC Service International, in addition to the test of spoken English and the test of written English offered by ETS; or

(3) Take Parts 1, 2, and 3 of MELAB overseas and then take the test of spoken English offered by ETS; or

(4) Take Parts 1, 2, and 3 of MELAB overseas and then take the test of spoken English in the United States or Canada; or

(5) Take the IELTS examination.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. It is projected that there will be, at most, 21 small businesses that apply to the Service to issue certificates for health care workers. Although these small entities are required to pay a fee when submitting their applications, these small entities may recoup this expense if they charge aliens who must obtain a foreign health care worker certificate. The Service invites comment on whether and how this rule may have a significant impact on small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review.

Executive Order 13132

The rule will not have substantial direct effects on the States, on the relationship between the National Government and L 3 States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act of 1995

The information collection requirements contained in this rule (Form I–905 (OMB Control Number 1115–0238) and the information required on the health care certificate or certified statement (OMB Control Number 1115–0226)) are being revised. Accordingly, these revisions will be submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government Agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

Administrative practice and procedures, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICER; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 522a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

2. Section 103.1 is amended by:

a. Removing the word "and" at the end of paragraph (f)(3)(iii)(NN);

b. Removing the period at the end of paragraph (b)(3)(iii)(oo) and adding a semicolon and the word "and" in it's place, and adding and reserving paragraph (f)(3)(iii)(PP); and by

c. Adding paragraphs (f)(3)(iii)(QQ) and (RR).

The additions read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(3) * * *

(iii) * * *

(PP) Reserved.

(QQ) Application for authorization to issue certificates to foreign health care workers under 8 CFR part 215; and

(RR) Termination of authorization to issue certificates to foreign health care workers under 8 CFR part 215.

* * * * *

3. Section 103.7(b)(1) is amended by adding a new entry for the "Form I–905" to the list in alpha/numeric sequence, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–905, Application for Authorization to Issue Certification for Health Care Workers—$230.00.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

4. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227; 8 CFR part 2.

5. Section 212.15 is revised to read as follows:

§ 212.15 Certificates for foreign health care workers.

(a) *General.*

(1) Any alien who seeks to enter the United States for the primary purpose of performing labor in a health care occupation listed in paragraph (c) of this section is inadmissible unless the alien presents a credentialing organization, listed in paragraph (e) of this section.

(2) In the alternative, an eligible alien who seeks to enter the United States for the primary purpose of performing labor as a nurse may present a certified statement as provided in paragraph (h) of this section.

(3) A certificate or certified statement described in this section does not constitute professional authorization to practice in that health care occupation.

(b) *Inapplicability of the ground of inadmissibility.* This section does not apply to:

(1) Physicians;

(2) Aliens seeking admission to the United States to perform services in a non-clinical health care occupation. A non-clinical care occupation is one in which the alien is not required to perform direct or indirect patient care. Occupations which are considered to be non-clinical include, but are not limited to, medical teachers, medical researchers, and managers of health care facilities;

(3) The spouse and dependent children of any immigrant or nonimmigrant alien;

(4) Any alien applying for adjustment of status to that of a permanent resident under any provision of law other than under section 245 of the Act, or any alien who is seeking adjustment of status under section 245 of the Act on the basis of a relative visa petition approved under section 203(a) of the Act, or any alien seeking adjustment of status under section 245 of the Act on the basis of an employment-based petition approved pursuant to section 203(b) of the Act for employment that does not fall under one of the covered health care occupations listed in paragraph (c) of this section.

(c) *Covered health care occupations.* With the exception of the aliens described in paragraph (b) of this section, this section applies to any alien seeking admission to the United States to perform labor in one of the following health care occupations, regardless of where he or she received his or her education or training:

(1) Licensed Practical Nurses, Licensed Vocational Nurses, and Registered Nurses.

(2) Occupational Therapists.

(3) Physical Therapists.

(4) Speech Language Pathologists and Audiologists.

(5) Medical Technologists (Clinical Laboratory Scientists).

(6) Physician Assistants.

(7) Medical Technicians (Clinical Laboratory Technicians)

(d) *Presentation of certificate or certified statements.*—(1) *Aliens requiring a nonimmigrant visa.* An alien described in paragraph (a) of this section who is applying for admission as a nonimmigrant seeking to perform labor in a health care occupation as described in this section must present a certificate or certified statement to a consular officer at the time of visa issuance and to the Service at the time of admission. The certificate or certified statement must be valid at the time of visa issuance and admission at a port-of-entry. An alien who has previously presented a foreign health care worker certification or certified statement for a particular health care occupation will

not be required to present it again at the time of visa issuance or admission to the United States.

(2) *Aliens not requiring a nonimmigrant visa.* An alien described in paragraph (a) of this section who, pursuant to § 212.1, is not required to obtain a nonimmigrant visa to apply for admission to the United States must present a certificate or certified statement as provided in this section to an immigration officer at the time of initial application for admission to the United States to perform labor in a particular health care occupation. An alien who has previously presented a foreign health care worker certification or certified statement for a particular health care occupation will not be required to present it again at the time of a subsequent application for admission.

(3) *Immigrant aliens.* An alien described in paragraph (a) of this section, who is coming to the United States as an immigrant or is applying for adjustment of status pursuant to 8 U.S.C. 1255, section 245 of the Act, to perform labor in a health care occupation described in paragraph (c) of this section, must submit the certificate or certified statement as provided in this section to the Service at the time of adjustment of status. An alien who has previously presented a foreign health care worker certification or certified statement for a particular health care occupation will not be required to present it again at the time of an adjustment of status.

(4) *Expiration of certificate or certified statement.* The individual's certification or certified statement must be used for an initial admission into the United States, change of status within the United States, or adjustment of status within 5 years of the date that it is issued.

(5) *Revocation of certificate or certified statement.* When a credentialing organization notifies the Service that an individual's certification or certified statement has been revoked, the Service will take appropriate action, including revocation of approval of any related petitions, consistent with the Act and Service regulations at 8 CFR 205.2, 8 CFR 214.2(h)(11)(iii), and 8 CFR 214.6(d)(5)(iii).

(e) *Approved credentialing organizations for health care workers.* An alien may present a certificate from any credentialing organization listed in this paragraph (e) with respect to a particular health care field.

(1) The Commission on Graduates of Foreign Nursing Schools (CGFNS) is authorized to issue certificates under section 212(a)(5)(C) of the Act for nurses, physical therapists, occupational therapists, speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians), and physician assistants.

(2) The National Board for Certification in Occupational Therapy (NBCOT) is authorized to issue certificates in the field of occupational therapy pending final adjudication of its credentialing status under this part.

(3) The Foreign Credentialing Commission on Physical Therapy (FCCPT) is authorized to issue certificates in the field of physical therapy pending final adjudication of its credentialing status under this part.

(4) The Service will notify the public of additional credentialing organizations through interim rules published in the **Federal Register**.

(f) *Contents of the health care certificate.* A certificate issued under section 212(a)(5)(C) of the Act must contain the following:

(1) The name, address, and telephone number of the credentialing organization, and a point of contact to verify the validity of the certificate;

(2) The date the certificate was issued;

(3) The health care occupation for which the certificate was issued; and

(4) The alien's name, and date and place of birth.

(g) *English language requirements.* (1) With the exception of those aliens described in paragraph (g)(2) of this section, every alien must meet certain English language requirements in order to obtain a certificate. The Secretary of HHS has determined that an alien must have a passing score on one of five combinations of the four tests listed in paragraph (j)(3) of this section before he or she can be granted a certificate.

(2) The following aliens are exempt from the English language requirements:

(i) Alien nurses who are presenting a certified statement under section 212(r) of the Act.

(ii) Aliens who have graduated from a college, university, or professional training school located in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, and the United States.

(3) The following English testing services have been approved by the Secretary of HHS:

(i) Michigan English Language Assessment Battery (MELAB).

(ii) Educational Testing Service (ETS).

(iii) Test of English in International Communication (TOEIC) Service International.

(iv) International English Language Testing System (IELTS).

(4) Passing English test scores for various occupations.

(i) *Occupational and physical therapists.* An alien seeking to perform labor in the United States as an occupational or physical therapist must obtain the following scores on the English tests administered by ETS: Test Of English as a Foreign Language (TOEFL): Paper-Based 560, Computer-Based 220; Test of Written English (TWE): 4.5; Test of Spoken English (TSE): 50. The certifying organizations shall not accept the results of the MELAB, the TOEIC, or the IELTS for the occupation of occupational therapy or physical therapy.

(ii) *Registered nurses and other health care workers requiring the attainment of a baccalaureate degree.* An alien coming to the United States to perform labor as a registered nurse (other than a nurse presenting a certified statement under section 212(r) of the Act) or to perform labor in another health care occupation requiring a baccalaureate degree (other than occupational or physical therapy) must obtain one of the following five combinations of scores to obtain a certificate:

(A) ETS: TOEFL: Paper-Based 540, Computer-Based 207; TWE: 4.0; TSE: 50;

(B) MELAB: Final Score 79; Oral Interview: 3+;

(C) MELAB: Final Score 79; plus TSE: 50;

(D) TOEIC Service International: TOEIC: 725; plus TWE: 4.0 and TSE: 50; or

(E) IELTS: 6.5 overall with a spoken band score of 7.0.

(iii) *Occupations requiring less than a baccalaureate degree.* An alien coming to the United States to perform labor in a health care occupation that does not require a baccalaureate degree must obtain one of the following five combinations of scores to obtain a certificate:

(A) ETS: TOEFL: Paper-Based 530, Computer-Based 197; TWE: 4.0; TSE: 50;

(B) MELAB: Final Score 77; Oral Interview: 3+;

(C) MELAB: Final Score 77; plus TSE: 50;

(D) TOEIC Service International: TOEIC: 700; plus TWE 4.0 and TSE: 50; or

(E) IELTS: 6.0 overall with a spoken band score of 7.0.

(h) *Alternative certified statement for certain nurses.*—(1) CGFNS is authorized to issue certified statements under section 212(r) of the Act for aliens seeking to enter the United States to perform labor as nurses. The Service will notify the public of new organizations that are approved to issue certified statements through interim rules published in the **Federal Register**.

(2) An approved credentialing organization may issue a certified statement to an alien if:

(i) The alien has a valid and unrestricted license as a nurse in a State where the alien intends to be employed and such State verifies that the foreign licenses of alien nurses are authentic and unencumbered;

(ii) The alien has passed the National Council Licensure Examination (NCLEX);

(iii) The alien is a graduate of a nursing program in which the language of instruction was English;

(iv) The nursing program was located in:

(A) Australia, Canada (except Quebec), Ireland, New Zealand, South Africa, the United Kingdom, or the United States; or

(B) Another country designated by unanimous agreement of CGFNS and any equivalent credentialing organizations which have been approved for the certification of nurses and which are listed at paragraph (e) of this section; and

(v) The nursing program was in operation on or before November 12, 1999, or has been approved by unanimous agreement of CGFNS and any equivalent credentialing organizations that have been approved for the certification of nurses.

(3) An individual who obtains a certified statement need not comply with the certificate requirements of paragraph (f) or the English language requirements of paragraph (g) of this section.

(4) A certified statement issued to a nurse under section 212(r) of the Act must contain the following information:

(i) The name, address, and telephone number of the credentialing organization, and a point of contact to verify the validity of the certified statement;

(ii) The date the certified statement was issued; and

(iii) The alien's name, and date and place of birth.

(i) [Reserved]

(j) *Application process for credentialing organizations.*—(1) *Organizations other than CGFNS.* An organization, other than CGFNS, seeking to obtain approval to issue certificates to health care workers, or certified statements to nurses shall submit Form I–905, Application for Authorization to Issue Certification for Health Care Workers, and all accompanying required evidence, to the Director, Nebraska Service Center, in duplicate with the appropriate fee contained in 8 CFR 103.7(b)(1). An organization seeking authorization to issue certificates or certified statements must agree to submit all evidence required by the Service and, upon request, allow the Service to review the organization's records related to the certification process. As required on Form I–905, the application must:

(i) Clearly describe and identify the organization seeking authorization to issue certificates;

(ii) List the occupations for which the organization desires to provide certificates;

(iii) Describe how the organization substantially meets the standards described at 8 CFR 212.15(k);

(iv) Describe the organization's expertise, knowledge, and experience in the health care occupation(s) for which it desires to issue certificates;

(v) Provide a point of contact;

(vi) Describe the verification procedure the organization has designed in order for the Service to verify the validity of a certificate; and

(vii) Describe how the organization will process and issue in a timely manner the certificates.

(2) *Applications filed by CGFNS.* (i) Prior to issuing certificates to nurses, physical therapists, occupational therapists, speech-language pathologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians), and physician assistants under section 212(a)(5)(C) of the Act, or issuing certified statements to nurses under section 212(r) of the Act, CGFNS shall submit Form I–905 to the Director, Nebraska Service Center, to ensure that it will be in compliance with the regulations governing the issuance and content of certificates and certified statements.

(ii) Prior to issuing certificates for any other health care occupation listed in paragraph (c) of this section, CGFNS shall submit Form I–905, Application for Authorization to Issue Certification for Health Care Workers, to the Director, Nebraska Service Center with the appropriate fee contained in 8 CFR 103.7(b)(1) for authorization to issue such certificates. The Service will evaluate CGFNS' expertise with respect to the particular health care occupation for which authorization to issue certificates is sought, in light of CGFNS' statutory designation as a credentialing organization.

(3) *Procedure for review of applications by credentialing organizations.* (i) After receipt of Form I–905, the Director, Nebraska Service Center shall, in all cases, forward a copy of the application and supporting documents to the Secretary of HHS in order to obtain an opinion on the merits of the application. The Service will not render a decision on the request until the Secretary of HHS provides an opinion. The Service shall accord the Secretary of HHS' opinion great weight in reaching its decision. The Service may deny the organization's request notwithstanding the favorable recommendation from the Secretary of HHS, on grounds unrelated to the credentialing of health care occupations or health care services.

(ii) The Service will notify the organization of the decision on its application in writing and, if the request is denied, of the reasons for the denial. Approval of authorization to issue certificates to foreign health care workers or certified statements to nurses will be made in 5 year increments, subject to the review process described at paragraph (l) of this section.

(iii) If the application is denied, the decision may be appealed pursuant to 8 CFR 103.3 to the Associate Commissioner for Examinations.

(k) *Standards for credentialing organizations.* The Service will evaluate organizations, including CGFNS, seeking to obtain approval from the Service to issue certificates for health care workers, or certified statements for nurses, under the following standards.

(1) *Structure of the organization.* (i) The organization shall be incorporated as a legal entity.

(ii) (A) The organization shall be independent of any organization that functions as a representative of the occupation or profession in question or serves as or is related to a recruitment/placement organization.

(B) The Service shall not approve an organization that is unable to render impartial advice regarding an individual's qualifications regarding training, experience, and licensure.

(C) The organization must also be independent in all decision making matters pertaining to evaluations and/or examinations that it develops including, but not limited to: policies and procedures; eligibility requirements and application processing; standards for granting certificates and their renewal; examination content, development, and administration; examination cut-off scores, excluding those pertaining to English language requirements; grievance and disciplinary processes; governing body and committee meeting rules; publications about qualifying for a certificate and its renewal; setting fees for application and all other services provided as part of the screening

process; funding, spending, and budget authority related to the operation of the certification organization; ability to enter into contracts and grant arrangements; ability to demonstrate adequate staffing and management resources to conduct the program(s) including the authority to approve selection of, evaluate, and initiate dismissal of the chief staff member.

(D) An organization whose fees are based on whether an applicant receives a visa may not be approved.

(iii) The organization shall include the following representation in the portion of its organization responsible for overseeing certification and, where applicable, examinations:

(A) Individuals from the same health care discipline as the alien health care worker being evaluated who are eligible to practice in the United States; and

(B) At least one voting public member to represent the interests of consumers and protect the interests of the public at large. The public member shall not be a member of the discipline or derive significant income from the discipline, its related organizations, or the organization issuing the certificate.

(iv) The organization must have a balanced representation such that the individuals from the same health care discipline, the voting public members, and any other appointed individuals have an equal say in matters relating to credentialing and/or examinations.

(v) The organization must select representatives of the discipline using one of the following recommended methods, or demonstrate that it has a selection process that meets the intent of these methods:

(A) Be selected directly by members of the discipline eligible to practice in the United States;

(B) Be selected by members of a membership organization representing the discipline or by duly elected representatives of a membership organization; or

(C) Be selected by a membership organization representing the discipline from a list of acceptable candidates supplied by the credentialing body.

(vi) The organization shall use formal procedures for the selection of members of the governing body which prohibit the governing body from selecting a majority of its successors.

(vii) The organization shall be separate from the accreditation and educational functions of the discipline, except for those entities recognized by the Department of Education as having satisfied the requirement of independence.

(viii) The organization shall publish and make available a document which clearly defines the responsibilities of the organization and outlines any other activities, arrangements, or agreements of the organization that are not directly related to the certification of health care workers.

(2) *Resources of the organization.* (i) The organization shall demonstrate that its staff possess the knowledge and skills necessary to accurately assess the education, work experience, licensure of health care workers, and the equivalence of foreign educational institutions, comparable to those of United States-trained health care workers and institutions.

(ii) The organization shall demonstrate the availability of financial and material resources to effectively and thoroughly conduct regular and ongoing evaluations on an international basis.

(iii) If the health care field is one for which a majority of the States require a predictor test, the organization shall demonstrate the ability to conduct examinations in those countries with educational and evaluation systems comparable to the majority of States.

(iv) The organization shall have the resources to publish and make available general descriptive materials on the procedures used to evaluate and validate credentials, including eligibility requirements, determination procedures, examination schedules, locations, fees, reporting of results, and disciplinary and grievance procedures.

(3) *Candidate evaluation and testing mechanisms.* (i) The organization shall publish and make available a comprehensive outline of the information, knowledge, or functions covered by the evaluation/examination process, including information regarding testing for English language competency.

(ii) The organization shall use reliable evaluation/examination mechanisms to evaluate individual credentials and competence that is objective, fair to all candidates, job related, and based on knowledge and skills needed in the discipline.

(iii) The organization shall conduct ongoing studies to substantiate the reliability and validity of the evaluation/examination mechanisms.

(iv) The organization shall implement a formal policy of periodic review of the evaluation/examination mechanism to ensure ongoing relevance of the mechanism with respect to knowledge and skills needed in the discipline.

(v) The organization shall use policies and procedures to ensure that all aspects of the evaluation/examination procedures, as well as the development and administration of any tests, are secure.

(vi) The organization shall institute procedures to protect against falsification of documents and misrepresentation.

(vii) The organization shall establish policies and procedures that govern the length of time the applicant's records must be kept in their original format.

(viii) The organization shall publish and make available, at least annually, a summary of all screening activities for each discipline including, at least, the number of applications received, the number of applicants evaluated, the number receiving certificates, the number who failed, and the number receiving renewals.

(4) *Responsibilities to applicants applying for an initial certificate or renewal.* (i) The organization shall not discriminate among applicants as to age, sex, race, religion, national origin, disability, or marital status and shall include a statement of nondiscrimination in announcements of the evaluation/examination procedures and renewal certification process.

(ii) The organization shall provide all applicants with copies of formalized application procedures for evaluation/examination and shall uniformly follow and enforce such procedures for all applicants. Instructions shall include standards regarding English language requirements.

(iii) The organization shall implement a formal policy for the periodic review of eligibility criteria and application procedures to ensure that they are fair and equitable.

(iv) Where examinations are used, the organization shall provide competently proctored examination sites at least once annually.

(v) The organization shall report examination results to applicants in a uniform and timely fashion.

(vi) The organization shall provide applicants who failed either the evaluation or examination with information on general areas of deficiency.

(vii) The organization shall implement policies and procedures to ensure that each applicant's examination results are held confidential and delineate the circumstances under which the applicant's certification status may be made public.

(viii) The organization shall have a formal policy for renewing the certification if an individual's original certification has expired before the individual first seeks admission to the United States or applies for adjustment of status. Such procedures shall be restricted to updating information on licensure to determine the existence of any adverse actions and the need to re-establish English competency.

(ix) The organization shall publish due process policies and procedures for applicants to question eligibility determinations, examination or evaluation results, and eligibility status.

(x) The organization shall provide all qualified applicants with a certificate in a timely manner.

(5) *Maintenance of comprehensive and current information.* (i) The organization shall maintain comprehensive and current information of the type necessary to evaluate foreign educational institutions and accrediting bodies for purposes of ensuring that the quality of foreign educational programs is equivalent to those training the same occupation in the United States. The organization shall examine, evaluate, and validate the academic and clinical requirements applied to each country's accrediting body or bodies, or in countries not having such bodies, of the educational institution itself.

(ii) The organization shall also evaluate the licensing and credentialing system(s) of each country or licensing jurisdiction to determine which systems are equivalent to that of the majority of the licensing jurisdictions in the United States.

(6) *Ability to conduct examinations outside of the United States.* An organization undertaking the administration of a predictor examination, or a licensing or certification examination shall demonstrate the ability to conduct such examination fairly and impartially.

(7) *Criteria for awarding and governing certificate holders.* (i) The organization shall issue a certificate after the education, experience, license, and English language competency have been evaluated and determined to be equivalent to their United States counterparts. In situations where a United States nationally recognized licensure or certification exam is offered overseas, the applicant must pass such an examination prior to receiving a certification. In situations where both a licensure and certification examination are offered overseas, the licensure examination, or its equivalent, shall be the standard for receiving a certification, provided a license is required in at least a majority of the licensing jurisdictions in the United States. If a majority of the licensing jurisdictions do not require licensure, then the certification examination shall be the standard.

(ii) The organization shall have policies and procedures for the revocation of certificates at any time if it is determined that the certificate holder was not eligible to receive the certificate at the time that it was issued. If the organization revokes an individual's certificate, it must notify the Service and the appropriate State regulatory authority with jurisdiction over the individual's health care profession.

(8) *Criteria for maintaining accreditation.* (i) The organization shall advise the Service of any changes in purpose, structure, or activities of the organization or its program(s).

(ii) The organization shall advise the Service of any major changes in the evaluation of credentials and examination techniques, if any, or in the scope or objectives of such examinations.

(iii) The organization shall, upon the request of the Service, submit to the Service, or any organization designated by the Service, information requested of the organization and its programs for use in investigating allegations of non-compliance with standards and for general purposes of determining continued approval as an independent credentialing organization.

(iv) The organization shall establish performance outcome measures that track the ability of the certificate holders to pass United States licensure or certification examinations. The purpose of the process is to ensure that certificate holders pass United States licensure or certification examinations at the same pass rate as graduates of United States programs. Failure to establish such measures, or having a record showing an inability of persons granted certificates to pass United States licensure examinations at the same rate as graduates of United States programs, may result in a ground for termination of approval. Information regarding the passage rates of certificate holders shall be maintained by the organization and provided to HHS on an annual basis, to the Service as part of the 5 year reauthorization application, and at any other time upon request by HHS or the Service.

(v) The organization shall be in ongoing compliance with other policies specified by the Service.

(l) *Service review of the performance of certifying organizations.* The Service will review credentialing organizations every 5 years to ensure continued compliance with the standards described in this section. Such review will occur concurrent with the adjudication of the request for reauthorization to issue health care worker certificates. The Service will notify the credentialing organization of the results of the review and request for reauthorization in writing. If the Service determines that an organization is not complying with the terms of its authorization or if other adverse information is developed, the Service may initiate termination proceedings.

(m) *Termination of certifying organizations.* (1) If the Service determines that an organization has been convicted, or the directors or officers of an authorized credentialing organization have individually been convicted of the violation of state or federal laws, such that the fitness of the organization to continue to issue certificates or certified statements is called into question, the Service shall automatically terminate authorization for that organization to issue certificates or certified statements by issuing to the organization a notice of termination of authorization to issue certificates to foreign health care workers. The notice shall reference the specific conviction that is the basis of the automatic termination.

(2) If the Service determines that an organization is not complying with the terms of its authorization or other adverse information is brought to the Service's attention, the Service will issue a notice of intent to terminate authorization to issue certificates to the credentialing organization. The Notice shall set forth reasons for the proposed termination.

(i) The credentialing organization shall have 30 days from the date of the Notice of Intent to Terminate Authorization to rebut the allegations, or to cure the noncompliance identified in the Service's notice of intent to terminate.

(ii) Thirty days after the date of the Notice of Intent to Terminate, the Service shall request an opinion from HHS regarding whether the organization's authorization should be terminated. The Service shall accord HHS' opinion great weight in determining whether the authorization should be terminated. After consideration of the rebuttal evidence, if any, and consideration of HHS' opinion, the Service will promptly provide the organization with a written decision. If termination of credentialing status is made, the written decision shall set forth the reasons for the termination.

(3) An adverse decision may be appealed pursuant to 8 CFR 103.3 to the Associate Commissioner for Examinations. Termination of credentialing status shall remain in effect until and unless the terminated organization reapplies for credentialing status and is approved, or its appeal of the termination decision is sustained by the Administrative Appeals Office. There is no waiting period for an

organization to re-apply for credentialing status.

PART 214—NONIMMIGRANT CLASSES

6. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1282; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

7. Section 214.1 is amended by adding a new paragraph (h) to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(h) *Employment in a health care occupation.* Any alien described in 8 CFR 212.15(a) who is coming to the United States to perform labor in a heath care occupation described in 8 CFR 212.15(c) must obtain a certificate from a credentialing organization described in 8 CFR 212.15(e). The certificate or certified statement must be presented to the Service in accordance with 8 CFR 212.15(d). In the alternative, an eligible alien seeking admission as a nurse may obtain a certified statement as provided in 8 CFR 212.15(h).

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

8. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681, 8 CFR part 2.

§ 245.14 [Removed and reserved]

9. Section 245.14 is removed and reserved.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

10. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

11. Section 248.3 is amended by adding a new paragraph (i) to read as follows:

§ 248.3 Application.

* * * * *

(i) *Change of nonimmigrant status to perform labor in a health care occupation.* A request for a change of nonimmigrant status filed by, or on behalf of, an alien seeking to perform labor in a health care occupation as provided in 8 CFR 212.15(c), must be accompanied by a certificate as described in 8 CFR 212.15(f), or if the alien is eligible, a certified statement as described in 8 CFR 212.15(h).

PART 299—IMMIGRATION FORMS

12. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

13. Section 299.1 is amended in the table by adding "Form I–905" to the list of prescribed forms in proper alpha/numeric sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
.	.	.
I–905	.....	Application for Authorization to Issue Certification for Health Care Workers.
.	.	.

14. Section 299.5 is amended in the table by:
a. Adding the Form "I–905" in proper alpha/numeric sequence; and by
b. Adding the entry "Certificates for Health Care Benefits" at the end of the table.
The additions read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS Form No.	INS form title	Current assigned OMB control no.
.	.	.
I–905	Application for Authorization to Issue Certification for Health Care Workers	1115–0238
.	.	.
.....	Certificates for Health Care Benefits	1115–0226

Dated: October 7, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–25974 Filed 10–10–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM01–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design

October 2, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of conferences and revisions to public comment schedule for proposed rule.

SUMMARY: On July 31, 2002, the Commission issued a Notice of Proposed Rulemaking (NOPR) in the above-captioned docket, proposing to amend its regulations to remedy undue discrimination through open access transmission service and standard electricity market design. The Commission is scheduling a series of public conferences to discuss areas of concern about the proposed rule and extending the deadline for filing comments that address the following issues: Market design for the Western Interconnection; transmission planning and pricing, including participant funding; Regional State Advisory Committees and state participation; resource adequacy; and Congestion Revenue Rights and transition issues.

DATES: Initial comments on specified issues are due on or before January 10, 2003. Initial comments on all other issues are due on or before November 15, 2002. Reply comments are due on or before February 17, 2003. All initial and reply comments should include an executive summary that should not exceed ten pages.

Conferences will be held on: November 4, 2002, November 6, 2002, November 10–13, 2002, November 19, 2002 and December 3, 2002.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. See **SUPPLEMENTARY INFORMATION** for conference locations.

FOR FURTHER INFORMATION CONTACT: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8004.

SUPPLEMENTARY INFORMATION:

Notice of Conferences and Revisions to Public Comment Schedule

1. In the nine weeks since the Commission issued its Notice of Proposed Rulemaking (NOPR) in the above-captioned docket (67 FR 55452, August 29, 2002), Commission members and staff have participated in numerous meetings and conferences throughout the country to discuss the proposed rule. These meetings have been a valuable source of information about the response of the general public, and specifically the electric utility industry, to the proposed Standard Market Design rule and the issues that the Commission must address going forward.

2. Commission staff has identified areas of public concern about the proposed rule and recommended that the Commission hold meetings that will address and attempt to resolve these issues. A copy of the staff memorandum that makes these recommendations is attached to this notice.

3. Standard Market Design is an important initiative that will bring the public significant benefits, but the rule must be formulated properly in order to work as the Commission envisions. We understand the public concerns, and we want to work through them individually and in detail. As a first step, the Commission will hold a series of public meetings to discuss specific items of concern.

4. The public meetings will be held as follows. Unless otherwise noted, these meetings are open to the public, and registration is not required; however, in-person attendees are asked to notify the Commission of their intent to attend by sending an e-mail message to *customer@ferc.gov*. Members of the Commission may attend and participate in the discussions. Further details about each Commission conference will be provided in supplemental documents.

- *November 4, 2002:* (Portland, Oregon) This conference will address the unique operating characteristics of Western bulk power markets. It will also attempt to identify aspects of the proposed Standard Market Design for which regional flexibility may be appropriate for the West, and corresponding degrees of flexibility.
- *November 6, 2002:* (Washington, DC) This conference will focus on pricing proposals for network upgrades and expansions. In particular, the discussions will attempt to clarify the definition of "participant funding" and seek consensus on the types of facilities that should be eligible for participant funding.
- *November 10–13, 2002:* (Chicago, Illinois) Commissioners and staff propose to participate in the National Association of Regulatory Utilities Commissioners Annual Convention. The Commission will make a presentation on the morning of Wednesday, November 13, and the Chairman will deliver a keynote address.

Registration is required for this conference. You may obtain a copy of the registration form and information about fees at *http://www.naruc.org/Meetings/annualconv/2002/index.html*, under the "Registration" link.

- *November 19, 2002:* (Washington, DC) This conference will focus on aspects of the resource adequacy requirement proposed in the NOPR, specifically: (1) The sufficiency of proposed penalties; (2) the function of the resource adequacy requirement in areas that have retail access; and (3) how to accommodate regional variations in proposals to satisfy the resource adequacy requirement without interfering with state jurisdiction.
- *December 3, 2002:* (Washington, DC) This conference will discuss specific issues related to the transition to congestion revenue rights (CRRs), such as: (1) Ensuring that native load and load serving entities receive sufficient CRRs; (2) guarding against the use of CRRs to exercise market power; and (3) the possibility of regional variation on how rights are allocated to load.

5. Each Washington, DC conference will be held from approximately 9:30 a.m. to 5:00 p.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. Transcripts of the conferences will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646), for a fee. They will be available for the public on the Commission's FERRIS system two weeks after the conference. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on "FERC."

6. The Commission will extend to January 10, 2003, the deadline for submission of comments that address the following issues: (1) Market design for the Western Interconnection; (2) transmission planning and pricing, including participant funding; (3) Regional State Advisory Committees and state participation; (4) resource adequacy; and (5) CRRs and transition issues. The deadline for submission of all other comments remains November 15, 2002.

7. The Commission will extend the deadline for all reply comments to February 17, 2003. All initial and reply comments should include an executive summary that should not exceed ten pages.

By direction of the Commission

Magalie R. Salas,

Secretary.

Memo to Members of the Federal Energy Regulatory Commission Regarding Industry Outreach on Standard Market Design

September 30, 2002

To: Pat Wood, III, Chairman, William L. Massey, Commissioner, Linda K. Breathitt, Commissioner, Nora M. Brownell, Commissioner

From: FERC SMD Outreach Team

Re: Report on SMD Outreach activities, summary of issues raised, and staff recommendations

On July 31, 2002 the Federal Energy Regulatory Commission issued its Notice of Proposed Rulemaking on Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design (SMD NOPR). Since that date, the staff of the Commission (Staff) has engaged in extensive outreach, both to state regulatory commissions, industry trade groups and the industry at large. Specifically, we have held six SMD briefings exclusively for state commissions and staff, three SMD briefings for state commissions and the industry at large, and ten meetings with groups representing different sectors of the industry. In addition, Staff has attended dozens of industry meetings, both in Washington, DC, and across the country. Our contacts have now included several thousand industry representatives, covering a wide spectrum of interests.

Identified Areas of Concern

Several broad areas of concern have been identified as a result of this outreach effort. Most of these areas are ones that were not addressed in great detail in the NOPR because the details were to be worked out on a regional basis. However, because of the lack of detail, parties are interpreting the proposals in different ways and sometimes interpreting them based on their worst fears. Clarifying that the Commission intends to permit additional regional flexibility would satisfy many of the concerns. Staff recommends that the Commission obtain further input from states and the industry before comments are due, so that it can provide greater clarification on these issues and identify areas where regional flexibility would be allowed. Discussed below are brief summaries of these areas and a proposed process for addressing these concerns.

1. The Unique Operational Characteristics of the Western Interchange

State regulators and industry representatives have pointed out that the Western North American market has unique characteristics that may not readily lend itself to the Standard Market Design proposed by the Commission. Specifically, they are concerned that a market design that has evolved over a long period of time in the Eastern U.S. cannot be readily adapted to the West. Many participants believe that the Commission does not have a grasp of the inherent differences, which include:

- The complexities of hydroelectric production, based on agreements and international treaties negotiated over several decades, and which include the accommodation of many regional concerns, including agricultural uses, fishing and recreational requirements, and environmental constraints.
- The major role of public power in the West, and the difficulties that might be encountered if public power chooses not to join an ITP/RTO.
- Changes in transmission prices for long-distance purchases, which would create hardship for some customers, as well as operational anomalies brought about by distance-related issues, including large loop flow patterns.

Some Western regulators have requested that the Commission consider a separate market design for the West. They are also concerned about the amount of flexibility that the Commission would consider to accommodate their concerns, including flexibility in designing and allocating Congestion Revenue Rights (CRRs), and operational issues related to hydro and other intermittent generator resources.[1]

To resolve these issues, there needs to be a process to identify the specific issues where there are concerns and start developing solutions in these areas. Staff recommends doing this through a two stage process. First, we recommend that the Commission schedule a staff-level technical meeting to discuss specific technical concerns and potential solutions. Second, the commissioners should also hold a conference to discuss the specific concerns that have been raised by the West. At this conference the Commission could explore the level and areas where flexibility would be appropriate. Staff recommends that both of these meetings be held in the West.

2. Planning and Pricing Transmission Expansions, Including Participant Funding

In the SMD NOPR the Commission expressed a preference for participant funding and noted that it would consider participant funding for proposed transmission facilities that are included in a regional planning process conducted by an independent entity. The Commission also indicated that it would look favorably on a pricing proposal, whether it is roll-in, an assignment to beneficiaries, or some combination of the two, by a Regional State Advisory Committee (RSAC) if it is consistent with the FPA. However, it did not attempt to clearly define the types of network upgrades that would be priced through "participant funding" and those that would be priced through rolled-in pricing.

There has been considerable reaction to this proposal in the outreach sessions. Southern state commissioners and southern utilities have been supportive of the use of participant funding. One rationale used is that participant funding would protect native load customers from paying for network upgrades constructed to export power to other regions. However, transmission owners in other areas, public power, and industrial customers are concerned that if participant funding is the main vehicle for pricing network upgrades, there will be inadequate investment to relieve transmission congestion and thus limit wholesale competition. While their positions differ in some areas, they all argue for the ability to roll-in at least some upgrades that relieve constraints and thus increase competition. This will be an important issue in the Commission's approval of SeTrans, which is expected to be considered in the near future.

Staff believes that the Commission's proposal needs to be clarified. During the outreach, it has become clear that there is not a consistent definition of participant funding. It could be defined to include only upgrades that a market participant volunteers to pay for, or it could be defined as upgrades that the beneficiaries would pay for, either on a voluntary or cost-allocation basis. If load benefits from the upgrades, the costs could be rolled-in to the access charge paid by the load that benefits. That load would receive CRRs. If a generator benefits, then the generator would pay for the upgrades, and receive CRRs. Many observers assume that construction to relieve transmission constraints could not be rolled-in to the access charge under a participant funding scenario. In that case, there would be little construction to relieve transmission congestion. Staff believes that this issue could be clarified through a technical conference that discusses this pricing issue.

A related issue is the requirement for regional planning. Transmission owners in particular are concerned that the process is reminiscent of central planning and that it could be used to slow construction of necessary upgrades, including construction to relieve congestion. Additionally, state commissioners and others are concerned that the use of four large regions will unnecessarily delay the planning process. This concern is especially strong in the Midwest and the Mid-Atlantic, which was identified as one of the four regions. There is support for having the planning process done within the territory covered by each RTO or ISO. RTOs could then coordinate the regional plans in each Interconnection.

Staff believes the Commission needs to further define how the regional planning process will work. Also, the Commission may want to explore the size of the regions used in the planning process. Staff believes these topics could be addressed at the same technical conference as participant funding.

3. State Concerns and Regulatory Participation in Regional State Advisory Committees

State commissions were particularly concerned about their ability to protect native load from cost shifting, particularly in those states that have not chosen electric restructuring. They were concerned that the rule might have an impact on their ability to continue regulating vertically integrated utilities under traditional cost-of-service ratemaking and bundled rates that these states continue to favor.

Commissioners from low-cost states were also concerned that the new market envisioned by the Commission might result in low-cost power being exported from their states, to the detriment of local ratepayers. They also want assurances that their native load will be protected from paying the cost of new transmission that would serve customers in other states or regions. They also seek clarification that CRRs will fully protect ratepayers as well as they are protected today.

States are also concerned about their role in establishing resource adequacy, whether the Commission's plan conflicts with ongoing state efforts to set reserve margins, and the extent to which states will be able to ensure future supplies.

Commissioners in all regions of the country expressed concern about the organization of "Regional State Advisory Committees" and what that would represent. They want to know who will become members of such an organization, how it would be funded, what its duties would encompass, how large a region it would serve and whether commissioners would be required to belong to more than one RSAC. Most importantly, state commissioners want to know the exact nature of the organization and what its responsibilities would include, and whether that conflicts with existing state law or with existing regional cooperative efforts. Finally, many state commissioners also would like to create a new name for these committees that does not use the word "advisory".

Staff recommends that the Commission use the NARUC meeting scheduled for November to develop a process for resolving these types of concerns and coming to a common understanding of the role of state commissions in the RSACs and how SMD might affect retail rates. Staff and state commission staff in the various regions could also hold a series of meetings to work on a common understanding and potential solutions.

4. Resource Adequacy

While there has been general support for load to meet some form of resource adequacy requirement, there has been a good deal of criticism of the proposal in the NOPR. Generators are concerned that the types of penalties proposed are insufficient and unworkable. Specifically, they are concerned that penalties may not be sufficient to keep load from "leaning on the system" in real time. State commissioners, ISOs and many market participants in the Northeast and Mid-Atlantic states also believe it is unworkable in areas that have retail access. They want to have a form of capacity obligation for load to ensure resource adequacy. State commissions in areas where there has been little or no divestiture see the requirement for a 12% reserve margin as intruding on their authority to review the purchasing decisions of utilities.

Staff believes this issue would benefit from a full discussion at a public conference. At the conference, the commissioners could explore how much regional flexibility there should be for satisfying the resource adequacy requirement. For example, could regions with retail access use a capacity obligation? In regions without retail access, could state commissions require vertically integrated utilities to satisfy a minimum reserve requirement? If so, would there be any additional requirements needed to satisfy the requirements of SMD?

5. Transition Issues and Congestion Revenue Rights

Many industry participants are concerned that they will not have adequate protection from congestion costs when they move from the current system to SMD. Transmission dependent utilities and industrial customers are concerned that they will not receive sufficient CRRs through the initial allocation process and will be vulnerable to the exercise of market power by vertically integrated utilities. They also raised market power concerns, particularly if generators held CRRs in load pocket areas. They also are concerned that they will not be adequately protected if the CRRs are auctioned and they receive the auction revenues. They believe they have better protection if CRRs are allocated to load. They also believe it is necessary to retain the allocated CRRs on a long-term basis.

State commissions have raised similar issues regarding protecting native load. There also is concern about load growth and how load serving entities would be able to get CRRs for increased needs, or how the use of CRRs would impact construction of new transmission capacity. Finally, there is a concern that CRRs need to be available for resources used to satisfy the resource adequacy requirement. The SMD NOPR left the regions a great deal of discretion in designing the transition process. There seems to be a desire among load in some industry segments for additional guidance on how the transition process will work.

Staff believes a public conference would be a good forum for airing and developing these issues and perhaps additional principles to be used in the transition process. Staff will prepare a paper providing more details on how

[1] The Commission has already expressed its willingness to offer regional flexibility in its order on RTO West, Docket Nos. RT01–35–005 and RT01–35–007, issued September 18, 2002.

CRR allocation would work. Additionally, the Commission could explore whether there should be eventual auction of CRRs or if a region could decide that an allocation process should be used for the foreseeable future.

6. Timing of Industry Responses

There are two areas of concern on timing. First, SMD contains a multiplicity of details and getting the details right is very important to ensure customer protection. Load and state commissions in areas that have not previously used an LMP system have expressed concern that they do not have sufficient time to fully work through and understand all of the details of the proposal and how they work together. They are unwilling to support concepts in SMD unless they fully understand how they can protect themselves. Second, many have expressed concern that the implementation timeline (SMD in place by 2004) is too ambitious. They believe it will take more time to make the changes.

Based on the concerns we have heard, Staff believes that the timetable for issuing a Final Rule and for full implementation of SMD should be revised. Staff anticipates that a Final Rule could be issued in summer 2003. We also anticipate that the Commission may not see full implementation of SMD in all regions of the country at the same time. Certain aspects of the Final Rule should move forward at a faster pace than others. Formation of RSACs, for example, could begin soon after the Final Rule is issued. Staff recommends that the Commission communicate these revised expectations on timelines to the industry in the near future.

Staff Recommendations

Based on the feedback gathered by Staff, we are recommending additional meetings and public conferences with state commissions and the industry at large. The following is a proposed schedule of activities that would help address and resolve the major issues identified to date.

Staff-to-Staff Meeting With Southern Commissions

Suggested Date: Week of October 13, 2002.

Suggested Site: Atlanta, Georgia.

Note: FERC staff would confer with Southern Commissions to determine the exact date and location.

This non-public meeting would consist of staff members of the Commission and state regulatory agencies. It would focus on identifying specific issues for southern states, including the ability to protect native load customers from cost shifts, assigning costs for transmission expansions, how public power would operate under SMD, the allocation of CRRs and other issues of concern.

Staff-to-Staff Meeting on Western Operations

Suggested Date: October 22, 2002.

Suggested Site: Denver, Colorado.

This non-public meeting, attended by senior FERC staff with technical staff from the industry, would identify major operational concerns by Western operators, including the unique characteristics of the Western hydro and public power systems.

Policy Meeting on Western Issues

Suggested Date: November 4, 2002.

Suggested Site: Portland, Oregon.

This meeting would be open to the public and attended by FERC commissioners and staff. It would address policy issues related to the West, proposals for flexibility in certain areas of the NOPR, and differences in market design within the Western Interconnection.

Working Group Meeting on Participant Funding

Suggested Date: November 6, 2002.

Suggested Site: FERC Headquarters, Washington, DC.

This meeting would be open to the public and would address the concerns outlined above in the memo.

Discussion of RSACs and State Issues

Suggested Dates: November 10–13, 2002.

Suggested Site: NARUC Annual Conference in Chicago, Illinois.

This event would include participation in the NARUC Annual Conference by FERC commissioners and members of the FERC staff, a major presentation by FERC on Wednesday morning, November 13, and a keynote address by FERC Chairman Pat Wood.

Working Group Meeting on Resource Adequacy

Suggested Date: November 19, 2002.

Suggested Site: FERC Headquarters, Washington, DC.

This meeting would be open to the public and would address the concerns outlined above in the memo.

Working Group Meeting on CRRs and Transition Issues

Suggested Date: December 3, 2002.

Suggested Site: FERC Headquarters, Washington, DC.

This meeting would be open to the public and would address the concerns outlined above in the memo.

Recommendations on Extension of Time for Comments

Because of the extensive outreach and discussion that FERC staff is recommending, we believe the Commission should consider extending the deadline for comments on this proposed rulemaking.

1. The Commission would retain the November 15 deadline for comments covering most issues raised in the proposed rulemaking, but would establish a January 10, 2003 deadline for initial comments on the following topics:

- Market Design for the Western Interconnection
- Transmission Planning and Pricing, including Participant Funding
- RSACs and State Participation
- Resource Adequacy
- CRRs and Transition Issues

2. Staff recommends retaining a single deadline for reply comments, but rescheduling it for February 17, 2003 for the entire series of comments.

[FR Doc. 02–25736 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, and 25

[REG–115781–01]

RIN 1545–A031

Definition of Guaranteed Annuity and Lead Unitrust Interests; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels the public hearing on proposed regulations under sections 1701, 2522, and 2055 relating to proposed regulations conforming the income, gift, and estate tax regulations to the Tax Court's decision in *Estate of Boeshore* v. *Commissioner*, 78 T.C. 523 (1982), *acq. in result*, 1987–2 C.B. 1, holding portions of § 20.2055–2(e)(2)(vi)(e) of the Estate Tax Regulations invalid.

DATES: The public hearing originally scheduled for October 16, 2002, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Sonya M. Cruse of the Regulations Unit at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice or public hearing that appeared in the **Federal Register** on Tuesday, July 23, 2002, (67 FR 48070), announced that a public hearing was scheduled for October 16, 2002 at 10 a.m., in room 4718. The subject of the public hearing is proposed regulations under sections 170, 2522, and 2055 of the Internal Revenue Code. The public comment period for these proposed regulations expired on September 25, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Wednesday, October 9, 2002, no one has requested to speak. Therefore, the public hearing scheduled for October 16, 2002 is cancelled.

LaNita Van Dyke,

Acting Chief, Regulations Unit, Associate Chief Counsel, Income Tax and Accounting.

[FR Doc. 02–26190 Filed 10–10–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154 and 155

[USCG–2001–8661]

RIN 2115–AG05

Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes changes to its requirements for oil-spill removal equipment under vessel response plans and marine transportation-related facility response plans. These changes would increase the minimum available spill removal equipment required for tank vessels and facilities, add requirements for new response technologies, and clarify methods and procedures for responding to oil spills in coastal waters.

DATES: Comments and related material must reach the Docket Management Facility on or before January 9, 2003. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before January 9, 2003.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–8661), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*. In choosing among these means, please give due regard to the recent difficulties with delivery of mail by the U.S. Postal Service to Federal facilities.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, would become part of this docket and would be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

You may inspect the material proposed for incorporation by reference at room 2100, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–0448. Copies of the material are available as indicated in the "Incorporation by Reference" section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rulemaking, call or e-mail Mr. Robert Pond, G–MOR, Coast Guard, at telephone 202–267–6603, or *rpond@comdt.uscg.mil*. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2001–8661), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We would consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we would hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Under the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) and Executive Order 12777, the Coast Guard is authorized to issue regulations requiring the owners and operators of tank vessels and marine transportation-related (MTR) facilities to prepare and submit response plans. The Oil Pollution Act of 1990 amended the Federal Water Pollution Control Act to require the preparation and submission of oil spill response plans by the owners or operators of certain facilities and vessels. It also requires that these vessels and facilities be operated in compliance with their submitted response plans. Failure to have submitted a response plan, and to have received approval of that plan or authorization from the Coast Guard to operate according to the submitted plan, results in the prohibition of that vessel or facility from the handling, storing or transporting of oil. In 1996, the Coast Guard published final tank vessel response plan regulations (61 FR 1052)

and final MTR facilities response plan regulations (61 FR 7890). These regulations contain minimum on-water oil removal equipment requirements that planholders transporting or transferring petroleum oil are required to meet in planning for an oil discharge. These regulations also state that the Coast Guard would periodically review the existing oil removal equipment requirements to determine if increases in mechanical recovery systems and additional requirements for new response technologies are practicable.

On January 27, 1998, the Coast Guard published a Notice of Request for Comments (63 FR 3861) regarding our intent to conduct a review of response plan removal equipment requirements. In the notice we stated that the 1993 removal equipment requirements would remain in effect pending the results of that review, and that the removal equipment requirements increases as originally scheduled would not be implemented until the review was complete. On June 24, 1998, the Coast Guard published a Notice of Meetings (63 FR 34500) that announced three public workshops. They were set up to solicit comments on potential changes to removal equipment requirements within the response plan regulations (33 CFR parts 153, 154 and 155) for mechanical recovery, dispersants, and other spill removal technologies. Based on comments to the **Federal Register** Notice and the three Workshops, the Coast Guard commissioned an in-depth assessment of advances in oil spill response equipment since 1993. The Coast Guard completed the assessment in May 1999.

Based on the recommendations contained in the assessment (Summary Report of Public Workshop for Response Plan Equipment CAPs), the Coast Guard published a Notice of Decision (65 FR 710, January 6, 2000) that provided for a 25% increase for on-water mechanical recovery equipment for response plans of MTR facilities and tank vessels, effective April 6, 2000. The Coast Guard also initiated a regulatory project to evaluate the potential for additional increases in mechanical on-water recovery and new requirements for other response technologies, which would, if practicable, become effective in 2003.

To ensure that a broad range of environmental issues are adequately considered in the rulemaking, the Coast Guard is preparing a Programmatic Environmental Impact Statement (PEIS) for revising the oil removal equipment requirements for tank vessels and MTR facilities response plans. On September 1, 2000, the Coast Guard published a Notice of Intent to prepare and circulate a draft PEIS (65 FR 53335). The Coast Guard requested input on environmental concerns of the public related to the alternatives for increasing spill removal equipment requirements for an oil discharge, and suggested analyses or methodologies for inclusion in the PEIS.

Discussion of Comments From Public Workshops

We received 70 letters commenting on this proposed rulemaking from the three public workshops. In the following paragraphs, the Coast Guard discusses the comments received and explains any changes made to the proposed rulemaking. The Coast Guard first discusses general comments, and secondly discusses comments regarding specific sections of the rulemaking. The respondents offering comments included MTR facilities, Oil Spill Removal Organizations, the oil industry, tanker associations, Federal and State agencies, environmental and marine safety non-profit organizations, and private citizens.

General Comments

Several respondents supported adoption of requirements (or credits against existing mechanical recovery equipment requirements) for establishment of dispersant and in-situ burning capabilities for a number of reasons including

- These methods have been demonstrated to have higher effectiveness ratings, under certain conditions, than mechanical recovery;
- Regional Response Teams (RRTs) around the country have pre-authorized their use under certain conditions;
- Adding dispersant and in-situ burning equipment requirements is more cost-effective because those response methods would result in greater mitigation of spill impacts than the addition of more mechanical recovery equipment; and
- Having three response options provides greater opportunity for effective response regardless of environmental conditions at the time of a spill.

Several respondents expressed concern regarding the use of dispersants and in-situ burning because, in their view-

- The effectiveness and effects of these technologies have not been proven; and
- These technologies do not remove the oil from the environment but only transfer it to the water column or the atmosphere.

These options pose a greater potential for adverse environmental impacts than mechanical recovery methods. These technologies have been studied extensively. The conclusions and recommendations of the Summary Report of Public Workshop for Response Plan Equipment CAPs, as well as the requirements proposed in this rulemaking, address the concerns expressed in these comments.

The Coast Guard believes that potential effectiveness and effects of dispersants and in-situ burning have been sufficiently documented, and that use of either or both of those options in certain circumstances would produce a net environmental benefit compared to reliance on mechanical methods alone. The Coast Guard also agrees with the conclusions of the 1989 National Academy of Sciences report "Using Oil Spill Dispersant on the Sea" which concludes that * * * "Sensitive inshore habitats, such as salt marshes, coral reefs, sea grasses and mangroves, are best protected by preventing oil from reaching them. Dispersion of oil at sea, before a slick reaches a sensitive habitat, generally will reduce overall and particularly the chronic impact of oil on many habitats." This study stimulated the adoption of dispersant and in-situ burning preauthorization agreements around the country, as well as a series of government-industry workshops dealing with comparative effects and effectiveness of various response countermeasures in the mid to late 1990's, the 1999 Summary Report of Public Workshop for Response Plan Equipment CAPs, and successful dispersant use in response to several spill incidents in the U.S. More detailed discussion of the comparative environmental impacts of response options (mechanical recovery, dispersant use and in-situ burning) will be included in the PEIS we are preparing for this rulemaking. Current dispersant and in situ burning pre-authorization/expedited approval zones around the country generally extend seaward from .5 to 3 miles offshore in coastal waters. There are no pre-authorizations/pre-approvals in estuarine or fresh water areas at this time, although, as required by the National Oil and Hazardous Substances Pollution Contingency Plan in 40 CFR 300.900, Regional Response Teams and Area Committees continue to give consideration to pre-approvals in those waters.

Several respondents stated that they were in favor of the use of dispersants as a primary oil spill response tool.

The Coast Guard agrees with this comment. Dispersants have been used effectively in numerous oil spill responses both in the U.S., and abroad within the last several years. The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) states that all technologies that may minimize impact to the environment are potential primary response options. The use of all response technologies would be used in accordance with those strategies contained within the Area Contingency Plans (ACPs). The effects of dispersants on an ecosystem are discussed in the PEIS.

Several respondents stated that both the dispersant and in-situ burning equipment requirements should offset mechanical recovery requirements, that is, reduce the amount of mechanical recovery equipment a planholder is required to have available.

The Coast Guard disagrees with this comment regarding dispersants. The weather and sea state conditions for the two options are opposite. The calmer the seas and winds the more effective mechanical recovery would be and the less effective dispersants would be and vice versa. If mechanical recovery equipment requirements were reduced by 10,000 barrels (bbls), there would be many spills that would not be compensated by the newly added dispersant equipment requirement because dispersant use would not fit the scenario. Thus, if mechanical recovery equipment requirements were reduced because dispersant equipment requirements are added, there could be an overall reduction in the nation's ability to mitigate effects of an oil spill. On the other hand, mechanical recovery and in-situ burning equipment work in nearly identical circumstances. Thus in pre-authorization areas, for most spills the two technologies are interchangeable so that a reduction of 10,000 bbls of mechanical recovery capability is directly offset by the 10,000 barrel increase in in-situ burning capability. Therefore, a limited offset is practicable for in-situ burning.

Several respondents stated that the United States must develop a consistent national policy on the use of dispersants before adopting a mandatory requirement for a dispersant capability.

National policy does exist and has been in place since the NCP (40 CFR part 300) was first published in 1972. The NCP contains the national policy regarding decisions on the use of dispersants and in-situ burning. The NCP details the procedures for establishing use criteria and deciding whether or not to use either dispersants or in-situ burning in a specific incident. It requires that all pre-approval and incident specific approval decisions related to these response options be made with the consent of the Environmental Protection Agency and the affected state(s)—including State Representative(s) to the RRT—and in consultation with all affected Federal natural resource trustees. At the same time, certain baseline guidance, such as the Special Monitoring of Applied Response Technologies (SMART) protocol for monitoring dispersant effectiveness are being adopted on the national level where appropriate.

It should also be emphasized that this proposed rulemaking does not require dispersants or in-situ burning to be used in any circumstance. It does not set national, regional, or local policy. This rulemaking is only intended to facilitate execution of those policies established in accordance with the NCP by requiring that the personnel and materials to accomplish those policies be ensured available if the local response community's criteria for use are met in a specific incident.

Several respondents recommended that dispersant equipment requirements should be broad-based, that is, applied to all potential end-users including offshore oil production facilities. The respondents suggested that the Coast Guard work with the Minerals Management Service (MMS) to harmonize any dispersant requirements.

The Coast Guard is currently working with MMS, EPA, and the Office of Pipeline Safety to keep them apprised of this effort and to ensure cooperation in developing and applying consistent requirements to all segments of the oil industry.

Several respondents stated that a complete dispersant response system should include mobilization procedures, a dispersant stockpile, handling, transportation and staging plans, pre-identified staging areas with refueling and loading capabilities, a spotter aircraft, tracking capabilities, communication systems, application platforms, ground crews for loading, monitoring equipment, stockpiles, ground crews for maintenance, training and exercise programs, trained observers, and communications procedures.

The Coast Guard believes that it is in the best interest of the response community to avoid regulations that are over-prescriptive. Therefore, this proposed rulemaking establishes a minimum quantity of oil to be treated with dispersant within certain time periods. It emphasizes the responsibility of the planholder to identify type and location of dispersant stockpiles, dispersant delivery platforms, maintenance, and loading responsibilities and procedures, communications, etc.

Several respondents recommended that responders be capable of starting either dispersant application or in-situ burning operations at times ranging from 6 to 12 hours after the time a decision is made to use. Based on our evaluation of risk and capabilities and the development of mobilization factors, the Coast Guard is proposing that dispersant operations be planned to start within 7 hours and in-situ burning operations within 12 hours of the decision to use.

Several respondents stated that dispersant capabilities should be available to treat a quantity of oil over time. The Coast Guard has opted to structure the proposed rulemaking slightly differently, specifying a minimum dispersant spraying capacity over time. Equipment requirements calculators in the proposed rulemaking are based on existing platform types and capabilities as documented in the Summary Report of Public Workshop for Response Plan Equipment CAPs. The requirements are based on a planning assumption of 5 gallons/acre (1:20 dispersant to oil application ratio).

The aforementioned planning assumption relies on the generally agreed upon estimate of the effectiveness of current dispersant formulations. If significant advances are made in dispersant effectiveness, through improvements in dispersant technology, the Coast Guard will consider a greater oil: dispersant ratio. Such consideration will be based on submission of credible peer review evidence that a higher ratio can be achieved over a range of oils and environmental conditions.

Appendices B and C of the proposed rulemaking incorporate this methodology as Tables 7 and 8 and contain further procedures for calculating overall capability based on the locations and numbers of dispersant stock piles and delivery platforms. Proposed requirements represent flexible, operationally viable, and economically feasible tier 1 response amounts. These amounts are intended to allow use of a variety of regionally based assets in response to 99% of all spills for which dispersants are a viable option. Tiers 2 and 3 are designed to accommodate a cascade of assets from a central location.

Several respondents said that oil spill response equipment requirements should not mandate a specific type of application platform, but allow planholders to choose one. We agree and are not requiring a specific type of application platform in this rulemaking.

Several respondents believe that dispersant exercise requirements should be handled through the Preparedness for Response Exercise Program (PREP). We agree and have proposed changes to the PREP Guidelines to include both a dispersant and where appropriate an in-situ burning equipment exercise requirement.

Several respondents stated that the ability to track oil has improved tremendously with the development of tracking buoys, Global Positioning Systems, and satellite and aerial imaging systems. This allows for much better employment of resources than was possible in 1993.

The Coast Guard agrees that continuous improvement has occurred in these areas of oil tracking. However, these technologies need further development and are not practical at this time.

At least one respondent suggested that the Coast Guard should consider requiring industry to stockpile equipment and materials for use of bioremediation in addition to dispersants and in-situ burning.

Bioremediation agents are intended to enhance the natural biodegradation of oil. One bioremediation product is essentially a fertilizer, providing nutrients that act to stimulate rapid growth of naturally occurring, oil-eating bacteria. A second type of bioremediant is a microbiological culture (an actual oil-eating bacteria) that can be introduced into the spilled oil. Both types act over weeks or months in removing oil from the environment.

This alternative has received widespread consideration for use at the national, regional, and local area levels in many parts of the country, similar to the attention paid to chemical dispersants and in-situ burning. To date, response decision-makers have concluded that bioremediants are most useful as a "polishing tool," that is, being applied to oil remaining on shoreline beaches and marsh areas after all visible and accessible oil has been removed. Thus, decisions whether, when, and how to use a bioremediant are typically made once the oil has been stabilized in place on shore. No pre-approvals have been developed in part because there is time and opportunity to locate and acquire suitable bioremediants as the response moves from the emergency to the remediation phase.

On the other hand on-water mechanical recovery, dispersant use, and in-situ burning use decisions must be made quickly during a spill because a primary objective with each of these options is to intercept and remove or divert the spilled oil from the water before it affects highly sensitive nearshore and onshore environments. This short window of opportunity for use makes it imperative that necessary materials and equipment be readily available at the start of an incident. Therefore, it is appropriate to require industry to arrange for their use in advance.

There were several comments made regarding the effects dispersants have on the environment. These comments will be addressed in the PEIS.

Discussion of Comments From the Federal Government-Oil Spill Response Industry Partnership Action Team

The Federal Government-Oil Spill Response Industry Partnership Action Team recommended that the Coast Guard consider regulations to target tier response based on historical spill data. Historically, the Gulf of Mexico region is the area of most intense activity including tank vessel transits, offshore oil production, and underwater oil pipelines. As a consequence of the high volume of these activities, the area also has the highest incidence of large volume oil spills as well. Therefore, the Gulf of Mexico region should have a larger Tier 1 dispersant equipment requirement than other regions of the country.

The Coast Guard agrees and the proposed dispersant tiers reflect the historical differences in incidence and volume between the Gulf and other areas of the country.

The Federal Government-Oil Spill Response Industry Partnership Action Team recommended that industry be required to maintain all dispersant stockpiles and equipment as well as the tier 1 delivery capability. According to the team, Tier 2 and 3 equipment requirements would have to be provided by large aircraft and, therefore, the Federal government should provide delivery capability for those two tiers.

The Coast Guard acknowledges that high-volume oil spills are extremely rare events, that there are currently few commercially available large dispersant-capable aircraft, and that the cost of acquiring and maintaining such aircraft in every region of the country could be substantial. The Coast Guard does not agree that the solution to these problems is to assign responsibility for providing such aircraft to the Federal government for the following reasons:

- The Federal Water Pollution Control Act, Clean Water Act, and Oil Pollution Act of 1990 have consistently assigned responsibility for maintaining large incident response capabilities to the private sector regardless of the cost of establishing and maintaining those capabilities to within practicable limits. The industry is currently required to maintain extensive mechanical recovery capabilities in all offshore areas of the U.S., including large skimmers, temporary storage vessels, offshore containment booms, and other oil spill response vessels, for the sake of preparedness for response to an extremely rare event.
- The Coast Guard has made every effort in this regulation not to be overly prescriptive in terms of types and quantities of equipment that would be required to meet the proposed response tiers. No particular platform is specifically required, not even large aircraft for any response tier.
- The use of government aircraft is not specifically prohibited by the regulation and would be evaluated similarly to the way any other proposed commercial resource would be evaluated. That is, the resource would have to be guaranteed available by the providing source (through some form of written agreement with the planholder) to meet the response delivery capabilities within the prescribed timeframes. In general however, because government aircraft are multi-mission assets with other higher priority operational missions, it is unlikely that government resources will be able to satisfy the guaranteed availability criteria.

The Action Team stated that the Federal government is tasked in the OPA 90 to direct response to spills that present an imminent and substantial threat to the public health and welfare. They suggested that tasking implies a requirement for the government to have government-owned spill response assets capable of large volume incident response and available in the event industry fails to respond adequately. They point to the Coast Guard owned, pre-positioned response equipment around the country, Navy response assets, and the long-standing specialized expertise of the National Strike Force (NSF) as evidence to support this contention.

The Coast Guard believes the responsibility to direct all public and private response to certain spills in no way implies or suggests that the government establish and maintain its own large incident response capability.

Further, OPA 90 clearly requires planholders to identify and ensure by contract the availability of private resources sufficient to remove a worst-case discharge. If private-sector resources are required to be available everywhere around the country, it is not reasonable or practicable for the government to duplicate those private-sector capabilities using public resources. Thus, in the absence of an identified or cooperative responsible party, the government typically relies on basic ordering agreements with private-sector oil spill response organizations to ensure availability of adequate response resources, rather than maintaining its own suite of government response assets.

The Coast Guard's pre-positioned response resources are intended as a "first response" capability to assist in initial containment and recovery until the full complement of private-sector response resources can be brought to bear. The Navy-owned resources are intended primarily for use in responding to incidents on or near Navy facilities or vessels. The NSF primarily provides operational advice and tactical and logistics management support. The NSF does have a limited amount of specialized lightering and containment equipment that is typically only employed until suitable private sector equipment can be brought to bear.

Discussion of Proposed Rule

The proposed rulemaking would revise 33 CFR 154.1020, 154.1045, 155.1020, and 155.1050; part 154, appendix C; and part 155, appendix B. The following is a summary of the proposed revisions:

1. On-Water Mechanical Recovery

Based on the conclusions in the Caps Report and the Regulatory Analysis for this rule, the Coast Guard is not proposing an increase in the mechanical response equipment requirements levels. Specifically, given the rate at which oil spreads on the water, and the current technological limitations in the ability to contain oil for recovery in an open water environment, it would not be practicable to require such an increase at this time.

2. Dispersants

This proposed rulemaking would require planholders to have pre-spill planning arrangements to use dispersants. This capability would not result in an offset in the mechanical recovery capability. As such, the mandatory requirements for dispersants would replace the existing credit provisions for dispersants. Therefore, the credit provisions would be removed from the existing regulations. The regulatory assessment would include the costs and benefits of this requirement. Planholders carrying Groups II, III, and IV cargoes, operating in inland, nearshore, offshore and open ocean areas, in waters where a dispersant pre-approval or expedited approval agreement exists, would be required to maintain a dispersant stockpile.

For the purpose of analysis, we propose that planholders should be able to supply two levels of dispersants, one level for the Gulf of Mexico (Gulf Coast) and one level for the rest of the United States. See proposed Table 155.1050(l) for an illustration of the required daily capability. The proposed rulemaking would allow planholders to employ a mix of vessels, rotary and fixed-wing aircraft in meeting this requirement, however, fixed-wing aircraft should provide at least 50 percent of every planholder's dispersant delivery capability. For implementation, planholders would be required to have dispersant delivery equipment sufficient to commence application within 7 hours of incident-specific dispersant approval.

Planholders would have 8 months after the final rule is published to come into compliance.

3. In-Situ Burning

There would be no proposed requirements for in-situ burning; however, planholders would receive credit for establishing and maintaining in-situ burn equipment if they are—

- Carrying Groups II, III, and IV cargoes; and
- Operating in inland, nearshore, offshore and open ocean areas in waters where an in-situ burn pre-approval or expedited approval agreement exists.

Adding and maintaining an in-situ burn capability will be encouraged by allowing an offset to mechanical recovery requirements of up to 10,000 bbls for planholders who establish and maintain an in-situ burn capability as follows:

- 5,000 BPD at tier 1.
- 10,000 BPD at tier 2.
- 10,000 BPD at tier 3 (The credit is held at 10,000 bpd for tier 3 because of the limited window of opportunity for use after 72 hours).

Tier timeframes would correspond with the tier response times for mechanical recovery requirements, including the shorter response times established for high-volume ports.

With the current state of technology for in-situ burn-boom, an individual boom package would be expected to survive for one 8 to 10-hour day. To meet the three tier requirements, a planholder would have to arrange by contract or other approved means for five fire-resistant burn-boom packages. If stainless steel and water-cooled technologies are perfected, burn-boom service life could be extended, thereby reducing the planholder's contracting requirements.

Tying a credit to existing pre-authorization agreements targets those areas where the technique is most likely to be used, and areas of most probable use are automatically targeted. These credits would provide incentive for RRTs to finalize policies for pre-authorization and expedited approval. They would also provide an incentive to vessel and facility planholders to further develop in-situ burn capabilities while maintaining a balanced response capability consisting of mechanical recovery, dispersants, and in-situ burn resources as applicable. Proposed Table 154.1050(k) illustrates the maximum allowable tiers for effective daily burn capability.

Planholders would have 8 months after the final rule is published to come into compliance.

4. Oil Spill Aerial Tracking

Currently there are no requirements for planholders to visually monitor oil spills from aircraft. Visual monitoring has been proven both practicable and effective in directing on-water mechanical recovery systems, dispersant operations, and in-situ burning to the thickest portions of an oil slick. Therefore, this proposed rulemaking would require planholders to have the ability to conduct visual monitoring from aircraft. The regulatory assessment will contain the costs and benefits of this proposed measure.

All planholders would be required to have available by contract or other approved means sufficient suitable aircraft and trained personnel to maintain visual observation of spill response operations up to 50 nautical miles from shore and in remote inland, Great Lakes, and river areas. Required aircraft should be capable of sustained operations during daylight hours up to 50 nautical miles from shore. Aerial oil tracking resources must be capable of supporting oil spill removal operations for three, 10-hour operational periods during the initial 72 hours of the discharge. The aircraft providing the initial surveillance and observation of a discharge would be required to arrive at the discharge site within 3 hours from the time of discovery of the discharge (based on 2 hours of recall/preparation time and 1 hour of flight time). Observation personnel should be separate from aircraft operations personnel. Observation personnel should be able to maintain continuous communications with command and control personnel on the ground and with on-water response resources. Observation personnel must be trained

in the protocols of oil spill reporting and assessment, including estimation of slick size, thickness, and quantity. Observation personnel should be fully trained in the use of assessment techniques as outlined in the American Society of Testing Materials (ASTM) standard [ASTM F 1779–97], "Standard Practice for Reporting Visual Observations of Oil on Water." Observation personnel should also be familiar with the use of other guides such as the National Oceanic and Atmospheric Administration's (NOAA's) "Open Water Oil Identification Job Aid for Aerial Observation" and NOAA's "Characteristic Coastal Habitats" Guide.

Incorporation by Reference

Material proposed for incorporation by reference appears in §§ 154.106 and 155.140. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES.** Copies of the material are available from the sources listed in §§ 154.106 and 155.140.

Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Assessment

This proposed rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). A draft Assessment is available in the docket as indicated under **ADDRESSES.** A summary of the Assessment follows:

The Assessment addresses the economic impacts of changes that the Coast Guard is proposing to the regulations for Vessel Response Plans (VRPs) and Facility Response Plans (FRPs) (Title 33 of the Code of Federal Regulations (CFR) parts 154 and 155). Spill response requirements were originally established in a 1993 rulemaking as part of the OPA 90 and, at that time, were scheduled to increase by 25 percent twice—once in 1998 and again in 2003. The increases were contingent on Coast Guard review of the industry and assessment of new requirements for other oil-removal technologies. A Notice of Decision (64 FR 710, January 6, 2000) implemented the 1998 increase. The purpose of the Assessment (in the public docket for this rule) is to assess the cost and benefit of the Coast Guard's proposed rulemaking for the 2003 increase in response equipment requirements. The rulemaking would apply to vessels carrying oil in bulk and MTR oil facilities that are required to have an oil response plan under the current VRP and FRP rules. These planholders contract with Oil Spill Removal Organizations (OSROs) to ensure that response resources required by regulation are available in the case of a Worst Case Discharge (WCD) oil spill. Response resources include—

- Mechanical recovery—physical removal of spilled oil from the water using equipment such as boom and skimmers;
- Dispersants—diffusion of spilled oil into the water column through the application of chemicals;
- In-situ burning—controlled ignition of the spilled oil; and
- Aerial tracking of the oil spill—operations from aircraft that enhance on-water response operations.

The Assessment analyzes the cost and benefit of five regulatory alternatives, including a "no action" alternative, that emphasize either mechanical or non-mechanical response assets. This spectrum of regulatory alternatives is illustrated in Figure 1. In addition to addressing different modes of oil-spill response, the alternatives have differing capabilities within each response mode. The five regulatory alternatives are as follows:

Alternative 1

No Action: 2000 response requirements remain effective without further modification.

Alternative 2

Mechanical recovery: Increase of 25 percent (over 2000 response-requirement levels) for inland, nearshore, offshore, open ocean, Great Lakes, and river and canal operating areas of water.

Dispersants: No response requirements established.

In-situ burning credit: No response requirements established.

Aerial tracking: Required to enhance on-water response capabilities.

Alternative 3

Mechanical recovery: Increase of 25 percent (over 2000 response-requirement levels) for inland, nearshore, offshore, open ocean, Great Lakes, and river and canal operating areas of water.

Dispersants: New application capabilities for a given response time.

In-situ burning: No response requirements, but credit offered (can offset the requirements for mechanical recovery).

Aerial tracking: Required to enhance on-water response capabilities.

Alternative 4

Mechanical recovery: Increase of 25 percent (over 2000 response-requirement levels) for inland, Great Lakes, and river and canal operating areas of water.

Dispersants: New application capabilities for a given response time that are more stringent than capabilities under Alternative 3.

In-situ burning: No response requirements, but credit offered (can offset the requirements for mechanical recovery).

Aerial tracking: Required to enhance on-water response capabilities.

Alternative 5

Mechanical recovery: No increase of 2000 response-requirement levels.

Dispersants: New application capabilities for a given response time that are more stringent than capabilities under Alternative 3 (same as Alternative 4).

In-situ burning: No response requirements, but credit offered (can offset the requirements for mechanical recovery).

Aerial tracking: Required to enhance on-water response capabilities

Figure –1

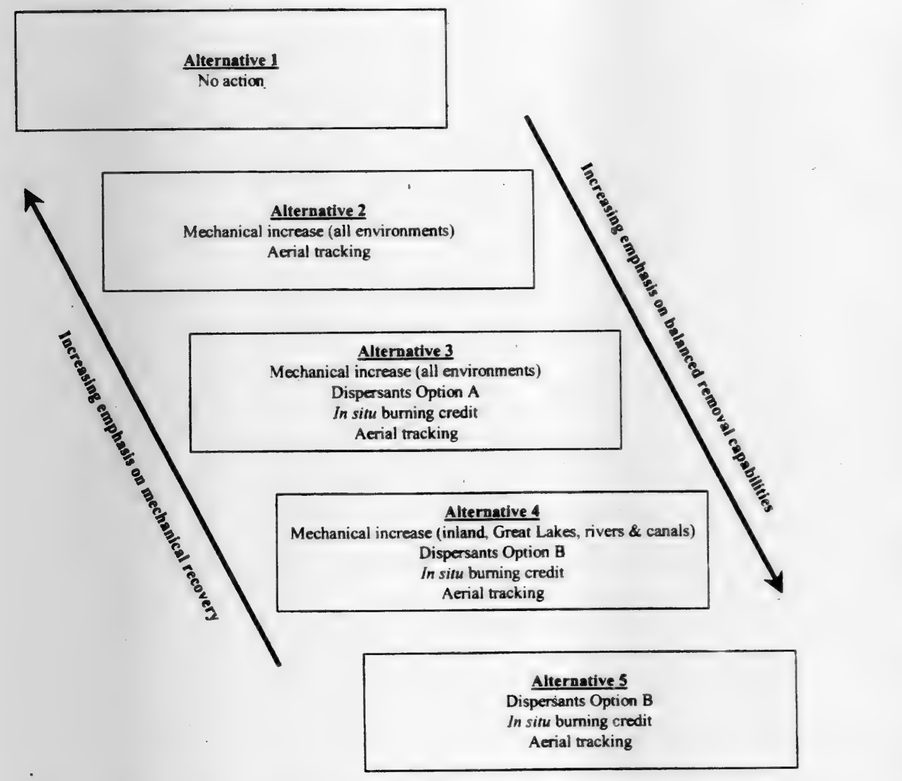

The Coast Guard supports Alternative 5 as the preferred regulatory option. This alternative meets the objectives of the Coast Guard to protect the marine environment and promote maritime safety at reasonable cost, substantial benefit.

The RA for this rule estimates the cost and benefit of the regulatory alternatives from 2001–2030. Cost and benefit are discounted at 7 percent to estimate the net present value (NPV) of the proposed rule. Cost of the proposed rule is expressed in 2001 constant dollars. Equipment and personnel costs were developed using information from OSRO representatives and the Coast Guard. Paperwork costs were based on previous regulatory analysis of paperwork requirements for the original vessel response plan rulemaking. We believe that the capital and annual costs incurred by OSROs will be, to the extent possible, passed on to vessel planholders through retainer fees or increased costs for services provided.

Benefit is expressed in barrels of oil recovered from the marine environment (or treated in the marine environment if considering dispersants or *in situ* burning). We assessed the benefit of the proposed rule using a modeling tool developed for the Oil Pollution Act of 1990 Programmatic Regulatory Assessment (OPA 90 PRA). The PRA assessed the costs and benefits of 11 "core group" rules enacted under OPA 90. These included such rules as double hulls, financial responsibility, and the original vessel response plan rulemakings. The PRA assessed the overlapping effects (and therefore benefits) of these 11 major rulemakings and avoided the double counting of barrels of oil not spilled. A copy of the OPA 90 PRA can be found in the Docket for this proposed rulemaking.

The benefit analysis for the proposed rulemaking used the PRA modeling tool and adjusted estimates of effectiveness specific to this proposed rulemaking. Effectiveness factors (*i.e.*, the quantified effect of the proposed rule) were developed through an expert panel.

A cost effectiveness ratio compares cost and benefit and represents the value to society to recover (treat) a barrel of oil from the marine environment. Cost, benefit, and cost

effectiveness of the regulatory alternatives are presented in Table 1:

TABLE 1.—NPV COST, BENEFIT, AND COST EFFECTIVENESS BY REGULATORY ALTERNATIVE (7 PERCENT DISCOUNT RATE, ASSESSMENT PERIOD 2001–2030)

	NPV total national cost ($Millions)	NPV total national benefit (Barrels)	NPV total national cost effectiveness ($/Barrel)
Alternative 1	$0	$0	NA
Alternative 2	141.65	8,000	$17,700.
Alternative 3	254.53	22,100	11,500.
Alternative 4	240.57	22,300	10,800.
Alternative 5	223.46	22,300	10,000.

For Alternative 5, the total NPV cost for the period 2001–2030 is $223.46 million (7 percent discount rate, 2001 dollars). Of this, $17.88 million ($15.62 million NPV) is for the initial acquisition of response equipment in 2003, when the proposed rule will become effective. An estimated $15.12 million ($13.21 million NPV) is for initial paperwork requirements in 2003 for response providers and planholders. This rule is estimated to cost $18.05 million annually (undiscounted) for operations, maintenance, and paperwork costs. This cost will first be incurred in 2004 and will be incurred through the assessment period (until 2030). Capital equipment initially acquired in 2003 will be replaced at various times throughout the assessment period.

Paperwork costs for planholders and equipment costs for OSROs drive the national cost of the proposed rule. While planholder paperwork costs are constant across all regulatory alternatives, OSROs must invest in different response equipment depending on the provisions of a specific alternative. Alternative 3 is the most expensive option because OSROs must purchase mechanical recovery equipment for all operating areas, ensure some dispersants capabilities, and provide aerial tracking capabilities. Alternative 2 is the least expensive of the change alternatives because it includes requirements for mechanical recovery and aerial tracking only.

National benefit is driven by the effectiveness of dispersants application and aerial tracking. Our analysis found there is essentially no benefit from increasing response requirements for mechanical recovery over 2000 levels. It also found that planholders would not take advantage of the in-situ burning credit to reduce the need for mechanical recovery assets. Alternatives 4 and 5 are the most beneficial because they include rigorous requirements for dispersants application capability. Alternative 2 is the least beneficial because it includes increased mechanical recovery requirements, which yield no benefit, and aerial tracking requirements, which yield modest benefit.

When cost is compared to benefit, Alternative 5 is the most cost-effective regulatory alternative—$10,000/barrel. Alternative 2 is the least cost-effective—$17,700/barrel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

We do not believe this rulemaking will have a significant impact on a substantial number of small entities. Nevertheless, we prepared an Initial Regulatory Flexibility Analysis discussing the impact of this proposed rule on small entities is available in the docket where indicated under **ADDRESSES**. Our analysis indicates that the proposed rulemaking would have a less-than-5-percent impact on annual revenues for small businesses in the first year. Annual costs would have a lesser impact on small businesses because costs following the first year decrease significantly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Robert Pond, G-MOR, Coast Guard, telephone 202–267–6603 or email *RPond@comdt.uscg.mil*.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for an increase in an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden are detailed in the chapter 8 of the Assessment in the docket. We found that the proposed rule would require 158,770 labor hours in the first year after implementation and 90,496 labor hours in subsequent years. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule and the Assessment to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for the collection of information become effective, we would publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. For example, a rule has federalism implications under EO 13132, if it is intended to preempt a state from regulating the entities covered by the federal regulation. This proposed regulation is not intended to preempt state regulations on the same subject, unless the state's regulation actually conflicts with the requirements of this proposed regulation or would frustrate its purpose.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order, though it is a "significant regulatory action" under Executive Order 12866, and that it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that preparation of a Programmatic Environmental Impact Statement (PEIS) is necessary. A PEIS will be prepared as announced September 1, 2000 (65 FR 53335, Draft Programmatic Environmental Impact Statement for Vessel and Facility Response Plans for Oil; On-Water Mechanical Recovery Capacity Increase for 2003 and Alternative Removal Technologies). The PEIS is considered necessary because the proposed rulemaking would require planholders to establish and maintain chemical dispersant stockpiles—and encourage establishing an in-situ burning capability—around the country. While dispersant and in-situ burning use are currently pre-authorized under certain conditions in most port areas, their use has been limited in the past, in part due to the lack of availability of those capabilities in the vicinity of the spill. Therefore, this regulation is likely to result in an increase in the number of dispersant and in-situ burning uses in spill response. A PEIS is necessary to ensure that any such effects are adequately considered because of public concern over the potential environmental effects of these technologies.

List of Subjects

33 CFR Part 154

Facilities, Hazardous substances, Oil pollution.

33 CFR Part 155

Hazardous substances, Oil pollution, Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 154 and 155 as follows:

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

1. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(c), (j)(5), (j)(6), and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Subpart F is also issued under 33 U.S.C. 2735.

2. In § 154.106(b), under "American Society for Testing and Materials (ASTM)", add, in numerical order, entries for ASTM F 1413–92, ASTM F 1737–96, and ASTM F 1779–97 to read as follows:

§ 154.106 Incorporation by reference.

* * * * *

(b) * * *

* * * * *

American Society for Testing and Materials (ASTM)

* * * * *

ASTM F 1413–92, Standard Guide for Oil Spill Dispersant Application Equipment: Boom and Nozzle Systems—154.1045

ASTM F 1737–96, Standard Guide for Use of Oil Spill Dispersant Application Equipment During Spill Response: Boom and Nozzle Systems—154.1045

ASTM F 1779–97, Standard Practice for Reporting Visual Observations of Oil on Water—154.1045

* * * * *

3. In § 154.1020, add definitions in alphabetical order to read as follows:

§ 154.1020 Definitions.

* * * * *

Dispersant operations group supervisor means the person in charge of the dispersant operations under the operations section of the Incident Command System (ICS) organization.

Dispersant monitor means a person responsible for monitoring the effectiveness of the dispersant operation through measures and guidelines established by the National Response Team, Regional Response Teams, and Area Committees.

Dispersant spotter means the person who controls, guides, or lines up the dispersant-application platform over the spill target.

Dispersant-application platform means the vessel or aircraft outfitted with the dispersant-application equipment acting as the delivery system for the dispersant onto the oil spill.

* * * * *

Effective daily application capacity or EDAC means the estimated amount of dispersant that can be applied to a discharge by an application system given the availability of supporting dispersant stockpiles.

Effective daily burn capacity or EDBC means the estimated amount of oil that can be effectively removed from the surface of the water by burning in one day.

* * * * *

Fireproof boom means an oil containment boom constructed out of fireproof materials and designed to withstand prolonged periods of exposure to heat and flame during in-situ burning operations and have a demonstrated service life that extends through multiple days of burning operations. Stainless steel and water-cooled boom designs are examples of potential fireproof boom that may be credited with extended service lives if such durability can be properly demonstrated and documented.

Fire-resistant boom means an oil containment boom constructed out of fire-retardant fabrics and reinforced internal strength members and designed to withstand exposure to heat and flame during in-situ burning operations. Fire resistant booms typically undergo material degradation when subjected to intense heat and flame for extended periods as is associated with the in-situ burning of oil. Fire resistant booms have a planning service life of one operational day.

* * * * *

Gulf Coast means, for the purposes of dispersant-application requirements, the region encompassing the following Captain of the Port Zones:

(1) Corpus Christi, TX.
(2) Houston/Galveston, TX.
(3) Port Arthur, TX.
(4) Morgan City, LA.
(5) New Orleans, LA.
(6) Mobile, AL.
(7) Tampa, FL.

* * * * *

In-situ burn operations group supervisor means the person in charge of the in-situ burn operations functional group under the operations section of the ICS organization.

* * * * *

Operational effectiveness monitoring means monitoring concerned primarily with determining whether the dispersant was properly applied and how the dispersant is affecting the oil.

* * * * *

Pre-authorization for dispersant use means an agreement, adopted by a Regional Response Team or an Area Committee, that authorizes the use of dispersants at the discretion of the Federal On-Scene Coordinator (in some cases in the context of the Unified Command) without the further approval of other Federal or State authorities. These pre-authorization areas are generally limited to particular geographic areas within each region.

Pre-authorization for in-situ burning means an agreement, adopted by a Regional Response Team and an Area Committee, that authorizes the in-situ burning of oil at the discretion of the Federal On-Scene Coordinator (in some cases in the context of the Unified Command) without the further approval of other Federal or State authorities. These pre-authorization areas are generally limited to particular geographic areas within each region.

Primary dispersant staging site means a site designated within a Captain of the Port zone that has been identified as a forward staging area for dispersant application platforms and the loading of dispersant stockpiles. Primary staging sites are typically the planned locations where platforms load or reload dispersants before departing for application at the site of the discharge and may not be the locations where dispersant stockpiles are stored or application platforms are home based.

* * * * *

Quick or expedited approval for dispersant use means an arrangement that limits the information the Federal On-Scene Coordinator must provide in order to obtain concurrence from a limited number of agencies, generally associated with a limited time in which a decision must be reached (typically less than two hours).

Quick or expedited approval for in-situ burning means an arrangement that limits the information the Federal On-Scene Coordinator must provide in order to obtain concurrence from a limited number of agencies, generally associated with a limited time in which a decision must be reached (typically less than two hours).

* * * * *

4. In § 154.1035, revise paragraphs (b)(3)(iv) and (b)(3)(v), and add paragraphs (b)(3)(vi) through (b)(3)(ix) to read as follows:

§ 154.1035 Specific requirements for facilities that could reasonably be expected to cause significant and substantial harm to the environment.

* * * * *

(b) * * *

(3) * * *

(iv) This subsection must identify the oil spill removal organizations and the spill management team to be capable of providing the following resources:

(A) Equipment and supplies to meet the requirements of §§ 154.1045, 154.1047 or subparts H or I of this part, as appropriate.

(B) Trained personnel necessary to continue operation of the equipment and staff of the oil spill removal organization and spill management team for the first seven days of the response.

(v) This subsection must include job descriptions for each spill management team member within the organizational structure described in paragraph (b)(3)(iii) of this section. These job descriptions should include the responsibilities and duties of each spill management team member in a response action.

(vi) For facilities that handle, store, or transport Group II through Group IV petroleum oils (and that operate in waters where dispersant use pre-authorization or expedited approval exists) this subsection must also separately list the resource providers and specific resources, including appropriately trained dispersant-application personnel, necessary to provide the dispersant capabilities required in this subpart. All resource providers and resources must be available by contract or other approved means as described in § 154.1028(a). The dispersant resources to be listed within this section must include the following:

(A) The identification of each primary dispersant staging site to be used by each dispersant-application platform to meet the requirements of this subpart.

(B) The identification of the platform type, providing-resource organization, location, dispersant payload, and readiness/mobilization category (as provided for in Table 6 of appendix C to this part) for each dispersant-application platform identified. Location data must identify the distance between the platform's home base and the identified primary dispersant staging site for this section.

(C) The identification of the dispersant product resource provider, location, and amount for each unit of dispersant stockpile required to support the required Effective Daily Application Capacity (EDAC) of each dispersant-application platform necessary to sustain each intended response tier of operation. Location data must include the stockpile's distance to the primary staging sites where the stockpile would be loaded onto the corresponding platforms.

(D) If an oil spill removal organization is approved by the Coast Guard and its capability is equal to or exceeds the response capability needed by the owner or operator, the section may identify the oil spill removal organization only and not the information required in paragraphs (b)(3)(vi)(A) through (C) of this section.

(vii) This subsection must also separately list the resource providers and specific resources necessary to provide, if appropriate, the in-situ burn capabilities as required in this subpart. The in-situ burn resources to be listed within this section must include the following:

(A) The identification of the amount, type, resource provider, and location of in-situ burn boom.

(B) The identification of the amount, type, resource providers, and location of support vessels to deploy, and if necessary, tow, the in-situ burn boom during burning operations.

(C) The identification of the amount, type, resource provider, and location for each ignition device required to support the required Effective Daily Burn Capacity (EDBC) of each in-situ burn package.

(D) The identification of the amount, location, resource provider of trained personnel necessary to support the required EDBC of each in-situ burn package.

(E) If an oil spill removal organization has been approved by the Coast Guard and its capability is equal to or exceeds the response capability needed by the owner or operator for the credit level requested, the section may identify the oil spill removal organization and the level of in-situ-burn removal capability being provided, and not the information required in paragraphs(b)(3)(vii)(A)–(D).

(viii) This subsection must also separately list the resource providers and specific resources necessary to provide oil tracking capabilities required in this subpart. The oil tracking resources to be listed within this section must include the following:

(A) The identification of a resource provider.

(B) Type and location of aerial surveillance aircraft that are ensured available, through contract or other approved means, to meet the oil tracking requirements of § 154.1045(k).

(ix) For mobile facilities that operate in more than one captain of the port zone, the plan must identify the oil spill removal organization and the spill management team in the applicable geographic-specific appendix. The oil spill removal organization(s) and the spill management team discussed in paragraph (b)(3)(iv) of this section must be included for each COTP zone in which the facility will handle, store, or transport oil in bulk.

* * * * *

5. In § 154.1045—

a. Revise paragraph (i) as set forth below;

b. Remove paragraph (n);

c. Redesignate paragraphs (j), (k), (l), and (m) as paragraphs (l), (m), (n), and (o) respectively; and

d. Add new paragraphs (j) and (k) to read as follows:

§ 154.1045 Response plan development and evaluation criteria for facilities that handle, store, or transport Group I through Group IV petroleum oils.

* * * * *

(i) The owner or operator of a facility that handles, stores, or transports Groups II through IV petroleum oils within the inland, nearshore, or offshore area where pre-authorization or expedited approval for dispersant use exists must identify in their response plan, and ensure the availability of, through contract or other approved means, response resources capable of conducting dispersant operations within those areas.

(1) Dispersant response resources must be capable of commencing dispersant-application operations at the site of a discharge within 7 hours of the decision by the Federal On-Scene Coordinator to use dispersants.

(2) Dispersant response resources must include the following:

(i) Sufficient volumes of dispersants for application as required by paragraph (i)(3) of this section. Any dispersants identified in a response plan must be of a type listed on the National Oil and Hazardous Substances Pollution Contingency Plan Product Schedule (40 CFR part 300), as maintained by the Environmental Protection Agency.

(ii) Dispersant-application platforms capable of delivering and applying the dispersant on a discharge in the amounts as required by paragraph (i)(3) of this section. At least 50 percent of each EDAC tier requirement must be achieved through the use of fixed-wing, aircraft-based application platforms.

(iii) Dispersant-application systems that are consistent in design with, and are capable of applying dispersant within the performance criteria in ASTM F 1413–92. For dispersant-application systems not fully covered by ASTM F 1413–92, such as fire monitor-type applicators, adequacy of performance criteria must be documented by presentation of independent evaluation materials (*e.g.*, laboratory tests, field tests, and reports of actual use) that document the design of performance specifications.

(iv) Dispersant-application personnel trained in and capable of applying dispersants according to the recommended procedures contained within ASTM F 1737–96.

(3) Dispersant stockpiles, application platforms, and other supporting resources must be available in a quantity and type sufficient to treat a facility's worst case discharge (as determined by using the criteria in appendix B, section 8) or in quantities sufficient to meet the requirements in Table 154.1045(i) of this section, whichever is the lesser amount.

TABLE 154.1045(i).—TIERS FOR EFFECTIVE DAILY APPLICATION CAPABILITY

Tier	Response time for completed application (hours)	Dispersant application—Dispersant: oil treated in gallons (Gulf Coast)	Dispersant application—Dispersant: oil treated in gallons (All other U.S.)
Tier 1	12	8,250:165,000	4,125:82,500
Tier 2	36	23,375:467,000	23,375:467,000
Tier 3	60	23,375:467,000	23,375:467,000
Total	60	55,000:1,100,000	50,875:1,017,500

Note: Gulf Coast Tier 1 is higher due to greater potential spill size and frequency in that area, and it is assumed that dispersant stockpiles would be centralized in the Gulf area. Also note the 1:20 dispersant-to-oil application ratio is a planning assumption which relies on the generally agreed upon estimate of the effectiveness of current dispersant formulations. Alternative application ratios may be considered based on submission to the Coast Guard (G-MOR) of peer-reviewed scientific evidence of improved capability.

(j) The owner or operator of a facility that handles, stores, or transports Groups II through IV petroleum oil within any inland, nearshore, or offshore area with pre-authorization or expedited approval for in-situ burning may request credit that will count toward the facility's on-water mechanical recovery capability for worst case discharge response Tiers 2 and 3 up to the amounts identified in Table 154.1045(j) of this section. No credit is available for Tier 1. To receive this credit, the vessel owner or operator must identify and ensure, through contract or other approved means, the availability of the necessary resources to sustain in-situ burning operations for the level of credit being requested.

(1) In-situ burn response resources must be capable of commencing ignition of oil at the site of a discharge within 12 hours of the initial authorization of the Federal On-Scene Coordinator to conduct in-situ burning to receive credit against Tier 2 requirements.

(2) In-situ burn response resources for all response tiers must include the following:

(i) Sufficient in-situ burn boom.

(ii) Vessel platforms capable of towing and tending in-situ burn boom in the operating environments where credit is requested.

(iii) Sufficient ignition devices to support burning operations.

(iv) Personnel trained in conducting in-situ burning operations.

(v) All equipment ensured available as required in paragraphs (j)(2)(i) through (iii) of this section must be capable of sustained use in the operating environments for which credit is requested.

TABLE 154.1045(j).—MAXIMUM ALLOWABLE TIERS FOR EFFECTIVE DAILY BURN CAPABILITY

Tier	Response time for completed burning[1] (in hrs.)	Daily burn capacity (EDBC)[2] (in bbls)	Cumulative equipment requirements					
			Fire proof boom (feet)[3]	Fire resistant boom (feet)[3]	Hand-held or igniter		Heli-torch igniter[4]	Support vessel
Tier 1	24	5,000	500	500	4	or	1	2
Tier 2	48	10,000	1,000	1,500	12	or	1	4
Tier 3	72	10,000	1,000	2,500	20	or	1	4

[1] Tiered response times represent the maximum allowable time from the instant when in-situ burning is authorized for use by the Federal On-scene coordinator to the completion of the operational burn period for that tier.

[2] EDBC amounts for Tiers 2 and 3 above may be applied against the corresponding tiers for on-water mechanical recovery (EDRC) as required to respond to an owner or operator's worst case discharge.

[3] Assumes fireproof boom is reusable in all three tiers. The fire will consume fire-resistant boom, therefore, it will require a replacement at the start of each new operational period.

[4] If a helitorch igniter system is identified and ensured available, one-time igniters are not required. Alternatives may be considered based on submission to the Coast Guard of peer-reviewed scientific evidence of improved capability.

(3) In areas that have ice-bound conditions throughout prolonged periods of the year, credit levels for Effective Daily Burn Capacity (EDBC) against on-water mechanical recovery requirements can be elevated, as deemed appropriate, by the respective Area Committee for the area where the extra credit is being considered. Extra EDBC levels are at the discretion of the Area Committee, however, it is not recommended that EDBC levels comprise more than 50 percent of the total on-water recovery capability for a planholder in any one particular Captain of the Port area.

(k) The owner or operator of a facility handling Groups I through IV petroleum oil as a primary cargo must identify in the response plan, and ensure the availability of through contract or other approved means, response resources necessary to provide aerial oil tracking to support oil spill assessment and cleanup activities. Aerial oil tracking resources must—

(1) Be capable of arriving at the site of a discharge within 3 hours from the time of the initial notification of the discharge for a distance up to 50 nautical miles from shore;

(2) Be capable of supporting oil spill removal operations continuously for three 10-hour operational periods during the initial 72 hours of the discharge; and

(3) Include the following:

(i) Appropriately located aircraft and personnel capable of meeting the response time requirement for oil tracking from paragraph (k)(1) of this section.

(ii) Sufficient numbers of aircraft, pilots, and trained observation personnel to support oil spill operations, commencing upon initial assessment, and capable of coordinating on-scene cleanup operations, including dispersant, in-situ burn, and mechanical recovery operations. Observation personnel must be trained in—

(A) The protocols of oil spill reporting and assessment, including estimation of slick size, thickness, and quantity; and

(B) The use of assessment techniques in ASTM F 1779–97, and familiar with the use of other guides, such as NOAA's "Open Water Oil Identification Job Aid for Aerial Observation," (available at *http://response.restoration.noaa.gov/order/jobaid.html*) and NOAA's "Characteristic Coastal Habitats" Guide (available at *http://response.restoration.noaa.gov/oilaids/coastal/coastal.html*).

* * * * *

6. In appendix C to Part 154, revise section 8, and following Table 5, add Tables 6, 7, and 8 to read as follows:

Appendix C to Part 154—Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans

* * * * *

8. Determining the Capability of High-Rate Response Methods 8.1 Calculating Cumulative Dispersant-Application Capacity Requirements.

8.1.1 A facility owner or operator should plan either for a dispersant capacity to respond to a facility's worst case discharge (WCD) of oil or for the amount of the dispersant resource cap as required by § 154.1045(i)(3) of this part, whichever is the lesser amount. When planning for the cumulative application capacity that is required, the calculations should account for the loss of some oil to the environment due to natural dissipation causes (primarily evaporation). The following procedure should be used to determine the cumulative application requirements:

8.1.2 Determine the WCD volume of oil in gallons and the appropriate cargo group for the type of petroleum oil (persistent Groups II, III, IV). For facilities with mixed petroleum oils, assume a total WCD volume using the group that constitutes the largest portion of the oil being handled or the group with the smallest natural dissipation factor.

8.1.3 Multiply the total WCD amount in gallons by the natural dissipation factor for the appropriate cargo group as follows: Group II factor is 0.50; Group III is 0.30 and Group IV is 0.10 associated with the nearshore area for the cargo type carried. This represents the amount of oil that can be expected to be lost to natural dissipation. Subtract the oil amount lost to natural dissipation from the total WCD amount to determine the remaining oil cargo available for treatment by dispersant-application.

8.1.4 Multiply the oil available for dispersant treatment by the dispersant to oil planning application ratio of 1 part dispersant to 20 parts oil (0.05). The resultant number represents the cumulative total dispersant-application capability that should be ensured available within the first 60 hours.

8.1.5 The following is an example of the procedure described above: A facility with a 1,000,000 gallon WCD of crude oil (specific gravity 0.87) is located in an area with pre-authorization for dispersant use in the nearshore environment on the U.S. East Coast.

WCD: 1,000,000 gallons, Group III oil.

Natural Dissipation Factor for Group III: 30%.

General formula to determine oil available for dispersant treatment: (WCD) − [(WCD) × (natural dissipation factor)] = available oil.

E.g., 1,000,000 gal − (1,000,000 gal × .30) = 700,000 gallons of available oil.

Cumulative application capacity = Available oil × planning application ratio (1 gal disp/20 gals oil = 0.05), 700,000 gal oil × (0.05) = 35,000 gallons cumulative dispersant-application capacity.

The requirements for cumulative dispersant-application capacity (35,000 gallons) for this facility's WCD is less than the overall dispersant capability for non-Gulf Coast waters as required by § 155.1045(i)(3) of this chapter. As such, this vessel would not need to meet the entire amount for Tier 3, but would be required to meet the following tier requirements (totaling 35,000 gallons application):

Tier 1 4,125 gallons—Completed in 12 hours

Tier 2 23,375 gallons—Completed in 36 hours

Tier 3 7,500 gallons—Completed in 60 hours

8.2 Determining Effective Daily Application Capacities "EDAC" for Dispersant Response Systems.

8.2.1 This section discusses methods to be used for the purposes of determining the EDAC of a dispersant response system. This methodology considers mobilization factors for dispersant platforms as well as dispersant stockpiles and platform application rates (as published in the 1999 Summary Report of Public Workshop for Response Plan Equipment CAPs. This report is available at *http://www.uscg.mil/vrp/reg/caps.shtml*).

8.2.2 For each Captain of the Port zone where a dispersant response capability is required, the response plan should identify:

- The type, number, and location of each dispersant-application platform intended for use in meeting dispersant delivery requirements specified in § 155.1050(j)(3) of this chapter.
- The amount and location of available dispersant stockpiles to support each platform.
- A primary staging site for each platform that will serve as its base of operations for the duration of the response.

8.2.3 Using the readiness factors from Table 6 of this appendix and platform capability factors in Table 7 of this appendix, calculate mobilization times and dispersant delivery capabilities for each platform. For each aircraft platform—

MP = R + T + L

MP = Mobilization of platform

R = Recall time in hours (time it takes for dispersant operations personnel to arrive at the storage location and to prepare the dispersant-application system for transport)

T = Transit time (time it takes for dispersant-application system to be transported to the staging area mobilization)

L = 1 hour to load dispersant at staging site if platform is not preloaded. Total time for platform mobilization should be less than 7 hours for Tier 1, less than 24 hours Tier 2, and less than 48 hours Tier 3;

For each stockpile—

MS = R + T + L

MS = Mobilization of Stockpile

R = Recall of loading personnel/ transportation assets and loading dispersant for transport if applicable

T = Transit time to staging site

L = 1 hour for loading on delivery platform. The transit time to the spill site is included in delivery capability calculations for aircraft but not for vessels. Total time for stockpile mobilization should be less than 7 hours for Tier 1, less than 24 hours for Tier 2, and less than 48 hours for Tier 3.

Delivery capability for Tier 1 should be calculated as follows:

R/10 × 12—T

R = EDAC Rate (from Table 7)

10 = hours in operational period

12 = assumed hours of daylight for planning purposes

T = mobilization time (either for platform or stockpile time whichever is greater). Delivery capability for all Tier 1 platforms should at least equal amount specified for Tier 1 in § 155.1050(l)(3) of this chapter.

For Tiers 2 and 3, delivery capability for each platform is the EDAC Rate in Table 7 of this appendix, which shows delivery capability for each resource assuming 10-hour operating period. Delivery capability for all Tier 2 and 3 platforms must at least equal amount specified for Tiers 2 and 3 in § 155.1050(l)(3) of this chapter.

For each vessel platform—

MP = R + T + S + L

MP = Mobilization of platform

R = Recall time in hours (time it takes for dispersant operations personnel to arrive at the storage location and to prepare the dispersant-application system for transport)

T = Transit time (time it takes for dispersant-application system to be transported to the staging area mobilization

S = Transit time from staging site or usual location of vessel to the spill site

L = 1 hour to load dispersant at staging site if platform is not preloaded. Total time for platform mobilization should be less than 7 hours for Tier 1, less than 24 hours for Tier 2, and less than 48 hours for Tier 3. Usual location of the vessel is the location where the vessel is typically employed when not engaged in dispersant-application operations. Spill site is the location in the Captain of the Port zone up to 50 miles offshore furthest from the dispersant platform staging site or the usual location of the vessel.

MS = R + T

MS = Mobilization of Stockpile

R = Recall of loading personnel/ transportation assets and loading dispersant for transport if applicable

T = Transit time to staging site. Total time for stockpile mobilization should be less

than 6 hours for Tier 1, less than 23 hours for Tier 2, and less than 47 hours Tier 3 to allow time for loading dispersant on delivery platform.

Delivery capability for Tier 1 should be calculated as follows:

R/10 × 12 − T

R = EDAC Rate (from Table 7 of this appendix)
10 = 10 hours in operational period
12 = assumed hours of daylight for planning purposes
T = mobilization time (either for platform or stockpile time whichever is greater)]. Delivery capability for all Tier 1 platforms must at least equal the amount specified for tier 1 in § 155.1050(l)(3) of this chapter.

For Tiers 2 and 3, delivery capability for each platform is the EDAC Rate in Table 7 of this appendix, which shows delivery capability for each resource assuming 10-hour operating period. Delivery capability for all Tier 2 and 3 platforms must at least equal amount specified for Tiers 2 and 3 in § 155.1050(l)(3) of this chapter.

8.2.3.1 EDAC must be calculated for each platform and supporting stockpile, and added together as appropriate to meet the dispersant-application tier requirements.

8.2.3.2 The following is an example of the procedure described above: A plan lists a stockpile of 5,000 gallons of dispersant located 35 miles from a central staging site (*e.g.*, a coastal airport) but not loaded for transport, and a DC–3 aircraft based at a facility approximately 75 miles from the staging site. The DC–3 is dedicated to dispersant spraying operations. The EDAC allowed toward tier 1 for this dispersant-application system can be calculated as follows:

Stockpile: Amount—5,000 gallons.
Stockpile Mobilization time: R = 4 hours, T = 35 miles/35 miles per hour or 1 hour, hours = 4 + 1 + 1 hour loading = 6 hours.
Platform Mobilization: R = 2 hours, T = 75 miles/150 miles per hour or 0.5 hours + 1 hour loading at staging site = 2 + 1.5 + 1 = 3.5 hours.
Operational period "OP" = 12 hours daylight—5 hours (use longer of stockpile or platform mobilization time) = 7 hours (commencing 6 hours after notification of approval and continuing until the end of the first 12 hour daylight period.)
Tier 1 delivery capability for this platform = (Table 7 of this appendix) EDAC rate = 5000 gallons/10 hours x 6 = 3000 gallons application capacity.

8.2.3.3 Other platform types do exist, and additional platform types are expected to develop with time. The Coast Guard will review requests to establish EDAC rates for other platform types at its discretion. EDAC calculations for additional platforms use the same methodology as used to establish the existing rates already in Table 7 of this appendix. Table 7 is based on average characteristics (for planning and review purposes) for most types of application platforms typically used for spraying dispersants.

8.3 Determining Effective Daily Burn Capacities "EDBC" for In-situ Burn Response Systems.

8.3.1 For the purposes of determining the effective daily burn capacity of in-situ burn resources, the information within this section applies.

8.3.2 For each Captain of the Port zone where an in-situ burn response capability is ensured available, the response plan should identify—

- The type, location, and amount of in-situ burn boom available;
- The amount and location of available ignition sources. If ignition system ensured available is a helitorch, a source of pilots trained in the use of the helitorch and suitable aircraft must be identified that can respond within the required response times; and
- The identification of supporting vessels and trained operators capable of towing, deploying, and tending the fire boom.

8.3.3 Using the readiness factors from Table 8 of this appendix, mobilization times are calculated for each in-situ burn system. The General Formula for calculating Tier 1 mobilization time is as follows:

T = (MB + MV) or (MH), whichever is greater (in hours).
T = Total Mobilization
MB = Mobilization of In-situ burn boom/hand held igniters
MB = R + L + T1
R = Recall of loading personnel/transportation assets
L = Loading to truck
T1 = Transit time to vessel staging site
MV = Mobilization of Support Vessels = L + T2
L = Boom loading to vessel
T2 = Transit time to spill site
MH = Mobilization of Helitorch = R + T1 + L + T2
R = Recall of personnel/platform
T1 = Transit time to staging site
L = Torch loading
T2 = Transit time to spill site

8.3.4 The mobilization times are used to ensure that a full 12-hour "operational period" or "OP" for in-situ burning is available for Tier 1. All operational period calculations assume approval for use is granted at zero hour, and that a maximum of 12 hours is available to support oil collection and burning within the initial 24-hour period. The available time allowed to support in-situ burning is slightly longer (12 hours) in comparison to dispersant operations (10 hours) as in-situ burning operations can continue for a limited period during darkness where dispersant spraying would be suspended due to decreased visibility. The 12-hour period is divided into four, 1-hour burning cycles, each preceded by a 2-hour oil containment and collection cycle.

8.3.4.1 The general formula for calculating the tier 1 operational period of a system is:

OP = Operational Period = 24 hours − (the mobilization time for the boom + platform or the mobilization time for the supporting helitorch igniter (if used, whichever is greater).

8.3.5 For planning purposes, an in-situ burning system is comprised of the following minimum components that must be ensured available: Minimum 500 ft. fire boom, two support vessels to tend and tow the boom, and four hand-held igniters or one helitorch system. 500 ft. sections of fire resistant boom are credited with a 5,000 bpd burning capacity and are also considered to have a service life of one operational period. For example, a second (Tier 2) and third (Tier 3) section of 500 ft. boom must be ensured available if the planholder desires to claim a 5,000 bpd credit for all three tiers.

8.3.6 Planholders may request extensions of boom service lives beyond one operational period for "fire-proof" type boom, such as stainless steel, or water-cooled boom designs, when such boom has been tested and can be adequately documented as providing extended service capabilities. Planholders may receive credit for multiple operational periods using the same 500 ft. section of boom dependant upon the documentation presented to the Coast Guard for review and approval.

* * * * *

TABLE 6.—READINESS/MOBILIZATION FACTORS

[All times listed in hours]

Resource/status	Recall period "R"	Transit to staging site "T"[1]	Transit to spill site "S"[2]
Aircraft dedicated to dispersant response operations	2	D/150+1	N/A
Aircraft dedicated to spraying operations	3	D/150+1	N/A
Aircraft nondedicated	4	D/150+1	N/A
Vessel dedicated (preloaded)	2	0	D/5
Vessel dedicated (not loaded)	2	D/5+1	D/5
Vessel non-dedicated (preloaded)	4	0	D/5
Vessel non-dedicated (not loaded)	[3]4	D/5+1	D/5
Dispersant Stockpile (preloaded for transport to staging site)	2	D/35+1	N/A

TABLE 6.—READINESS/MOBILIZATION FACTORS—Continued

[All times listed in hours]

Resource/status	Recall period "R"	Transit to staging site "T"[1]	Transit to spill site "S"[2]
Dispersant Stockpile (not preloaded for transport to staging site)	[3]4	D/35+1	N/A

[1] Transit times to staging site for aircraft based on average speed of advance of 150 kts and "D" distance between aircraft home base and forward staging site for dispersant operations. Transit times for vessels from usual location of vessel to staging site based on average speed of advance of 5 kts and "D" is distance to spill site "D". Speed waivers for transit speeds may be granted based on actual performance of platform. Transit times for stockpile based on average speed of advance of 35 mph by truck and "D" distance from stockpile location to dispersant staging site, such as a coastal airport.

[2] Transit times to spill site for aircraft is included in the calculations contained in Table 7 because of the relatively high speed of these platforms compared to vessels. Transit times for vessels to the spill site are calculated from the usual location of vessel to staging site based on average speed of advance of 5 kts and "D" is distance to spill site "D". Speed waivers for transit speeds may be granted based on actual performance of platform.

[3] Assume 2 hours to load dispersant stockpiles on to trucks for transport to the staging site.

[4] For a facility, the spill site is the facility location. For a vessel, the spill site in a particular pre-authorization or expedited approval zone is that point furthest from the stockpile location where the vessel typically operates, not to exceed 50 miles from shore.

TABLE 7.—PLATFORM CAPABILITY FOR OIL DISPERSANT DELIVERY OVER A 10-HOUR PERIOD

Platform	Distance out (N. miles)	EDAC rate estimated dispersant applied in 10 hours††
Helicopter	50	1,500.00
Air tractor	50	8,000.00
DC–3	50	5,000.00
DC–4	50	17,495.38
DC–6	50	18,000.00
C–130	50	32,972.28
P–3	50	20,000.00
Fire Monitor-Equipped Vessel	50	6,000.00

TABLE 8.—READINESS/MOBILIZATION FACTORS

[All times listed in hours]

Resource/status	Recall period "R" + "L" load time	Transit to staging site "T1"	Transit to spill site "T2"
In-situ Burn Boom/HH Igniters	2 + 2[1]	D/35[4]	N/A
Support Vessels	N/A + 2[2]	N/A	(10 or D/5)[3]
Aircraft/helitorch igniter	4 + 1	D/90	D/90

[1] Loading Time for boom onto a truck would be zero if the boom is co-located at the same waterfront facility as the vessels used to ferry the boom to the spill.

[2] Loading Time for in-situ boom onto a support vessel would be zero if the boom is already loaded onto a support vessel.

[3] Transit times for support vessels based on average speed of advance of 5 kts and maximum distance from shore to spill site of fifty miles. Speed waivers for transit speeds may be granted based on actual performance of platform.

[4] Transit times for in-situ boom from warehouse to vessel dock based on average speed of advance of 35 mph by truck and "D" distance from storage location to vessel staging site.

[5] Transit times for aircraft/helitorch based on average speed of advance of 90 kts and combined distance "D" between aircraft home base, forward staging site and spill location.

[6] For a facility, the spill site is the facility location. For a vessel, the spill site in a particular pre-authorization or expedited approval zone is that point furthest from the stockpile location where the vessel typically operates, not to exceed 50 miles from shore.

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

7. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; sec.2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p 351; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110 through 155.1150 also issued under 33 U.S.C. 2735.

Note: Additional requirements for vessels carrying oil or hazardous materials are contained in 46 CFR parts 30 through 36, 33 CFR parts 150, 151, 153, and 157.

8. In § 155.140(b), under "American Society for Testing and Materials (ASTM)", add, in numerical order, entries for ASTM 1413–92, ASTM 1737–96, and ASTM 1779–97 to read as follows:

* * * * *

(b) * * *

* * * * *

American Society for Testing and Materials (ASTM)

* * * * *

ASTM F 1413–92, Standard Guide for Oil Spill Dispersant Application Equipment: Boom and Nozzle Systems	155.1050

ASTM F 1737–96, Standard Guide for Use of Oil Spill Dispersant-Application Equipment During Spill Response: Boom and Nozzle Systems	155.1050
ASTM F 1779–97, Standard Practice for Reporting Visual Observations of Oil on Water ..	155.1050

* * * * *

9. In § 155.1020, add definitions in alphabetical order to read as follows:

§ 155.1020 Definitions.

* * * * *

Dispersant operations group supervisor means the person in charge of the dispersant operations under the operations section of the ICS organization.

Dispersant monitor means a person who is responsible for monitoring the effectiveness of the dispersant operation through measures and guidelines established by the National Response Team, Regional Response Teams, and Area Committees.

Dispersant-application platform means the vessel or aircraft outfitted with the dispersant-application equipment acting as the delivery system for the dispersant onto the oil spill.

Dispersant spotter means the person who controls, guides, or lines up the dispersant-application platform over the spill target.

* * * * *

Effective daily application capacity or EDAC means the estimated amount of dispersant that can be applied to a discharge by an application system given the availability of supporting dispersant stockpiles.

Effective daily burn capacity or EDBC means the estimated amount of oil that can be effectively removed from the surface of the water by burning in one day.

* * * * *

Fireproof boom means an oil containment boom constructed out of fireproof materials and designed to withstand prolonged periods of exposure to heat and flame during in-situ burning operations and have a demonstrated service life that extends through multiple days of burning operations. Stainless steel and water-cooled boom designs are examples of potential fireproof boom that may be credited with extended service lives if such durability can be properly demonstrated and documented.

Fire-resistant boom means an oil containment boom constructed out of fire-retardant fabrics and reinforced internal strength members and designed to withstand exposure to heat and flame during in-situ burning operations. Fire resistant booms typically undergo material degradation when subjected to intense heat and flame for extended periods as is associated with the in-situ burning of oil. Fire resistant booms have a planning service life of one operational day.

* * * * *

Gulf Coast means for the purposes of dispersant-application requirements, the region encompassing the following Captain of the Port Zones:

(1) Corpus Christi, TX.
(2) Houston/Galveston, TX.
(3) Port Arthur, TX.
(4) Morgan City, LA.
(5) New Orleans, LA.
(6) Mobile, AL.
(7) Tampa, FL.

* * * * *

In-situ burn operations group supervisor means the person in charge of the in-situ burn operations functional group under the operations section of the ICS organization.

* * * * *

Operational effectiveness monitoring means monitoring concerned primarily with determining whether the dispersant was properly applied and how the dispersant is affecting the oil.

* * * * *

Pre-authorization for dispersant use means an agreement, adopted by a Regional Response Team or an Area Committee, that authorizes the use of dispersants at the discretion of the Federal On-Scene Coordinator (in some cases in the context of the Unified Command) without the further approval of other Federal or State authorities. These pre-authorization areas are generally limited to particular geographic areas within each region.

Pre-authorization for in-situ burning means an agreement, adopted by a Regional Response Team or an Area Committee, that authorizes the in-situ burning of oil at the discretion of the Federal On-Scene Coordinator (in some cases in the context of the Unified Command) without the further approval of other Federal or State authorities. These pre-authorization areas are generally limited to particular geographic areas within each region.

Primary dispersant staging site means a site designated within a Captain of the Port zone where identified as a forward staging area for dispersant-application platforms and the loading of dispersant stockpiles. Primary staging sites would normally be the planned location where the platform would load or reload dispersants prior to departing for application at the site of the discharge and may not be the location where dispersant stockpiles are stored or application platforms are home based.

* * * * *

Quick or expedited approval for dispersant use means an arrangement that limits the information the Federal On-Scene Coordinator must provide in order to obtain concurrence from a limited number of agencies, generally associated with a limited time in which a decision must be reached (typically less than two hours).

Quick or expedited approval for in-situ burning means an arrangement that limits the information the Federal On-Scene Coordinator must provide in order to obtain concurrence from a limited number of agencies, generally associated with a limited time in which a decision must be reached (typically less than two hours).

* * * * *

10. In § 155.1035, revise paragraph (i)(9) and add paragraphs (i)(10), (i)(11), and (i)(12) to read as follows:

§ 155.1035 Response plan requirements for manned vessels carrying oil as a primary cargo.

* * * * *

(i) * * *

(9) For vessels that handle, store, or transport Group II through Group IV petroleum oils, the section must also separately list the resource providers identified to provide the salvage, vessel firefighting, and lightering capabilities required in this subpart.

(10) For vessels that handle, store, or transport Group II through Group IV petroleum oils (and that operate in waters where dispersant use pre-authorization or expedited approval exists) this section must also separately list the resource providers and specific resources, including appropriately trained dispersant-application personnel, necessary to provide, if appropriate, the dispersant capabilities required in this subpart. All resource providers and resources must be available by contract or other approved means. The dispersant resources to be listed within this section must include the following:

(i) The identification of each primary dispersant staging site to be used by each dispersant-application platform to meet the requirements of § 155.1050(j).

(ii) The identification of the platform type, resource provider, location, dispersant payload, and readiness/mobilization category (as provided for in Table 7 of appendix B to this part) for each dispersant-application platform identified. Location data should identify the distance between the platform's home base and the identified primary dispersant staging site(s) for this section.

(iii) The identification of the dispersant product resource provider, location and amount for each unit of dispersant stockpile required to support the required Effective Daily Application Capacity (EDAC) of each dispersant-application platform necessary to sustain each intended response tier of operation. Location data should include the stockpile's distance to the primary staging sites where it would be loaded onto the corresponding platforms. If an oil spill removal organization has been evaluated by the Coast Guard and its capability has been determined to equal or exceed the response capability needed by the owner or operator, the section may identify the oil spill removal organization only, and not the information required in paragraphs (i)(10)(i) through (10)(iii) of this section.

(11) This section must also separately list the resource providers and specific resources necessary to provide, if appropriate, the in-situ burn capabilities as required in this subpart. The in-situ burn resources to be listed within this section must include the following:

(i) The identification of the amount, type, providing-resource organization, and location of in-situ burn boom identified and ensured available.

(ii) The identification of the amount, type, resource provider, and location of support vessels, identified and ensured available, to deploy, and if necessary, tow the in-situ burn boom during burning operations.

(iii) The identification of the amount, type, resource provider, and location for each ignition device required to support the required Effective Daily Burn Capacity (EDBC) of each in-situ burn package.

(iv) The identification of the amount, location, and resource provider of trained personnel necessary to support the required EDBC of each in-situ burn package.

(v) If an oil spill removal organization has been evaluated by the Coast Guard and its capability has been determined to equal or exceed the response capability needed by the owner or operator for the credit level requested, the section may identify the oil spill removal organization and the level of in-situ burn removal capability being provided, and not the information required in paragraphs (i)(11)(i) through (11)(iv) of this section.

(12) The section must also separately list the resource providers and specific resources necessary to provide oil-tracking capabilities required in this subpart. The oil tracking resources to be listed within this appendix must include the following:

(i) The identification of a resource provider.

(ii) Type and location of aerial surveillance aircraft that have been ensured available, through contract or other approved means, to meet the oil tracking requirements of § 155.1050(k).

* * * * *

11. In § 155.1040, revise paragraph (j)(9) and add paragraphs (j)(10), (j)(11), and (j)(12) to read as follows:

§ 155.1040 Response plan requirements for unmanned tank barges carrying oil as a primary cargo.

* * * * *

(j) * * *

(9) The section must also separately list the resource providers identified to provide the salvage, vessel firefighting, and lightering capabilities required in this subpart.

(10) The section must also separately list the resource providers and specific resources necessary to provide, if appropriate, the dispersant capabilities required in this subpart. The dispersant resources to be listed within this section must include the following:

(i) The identification of a primary dispersant staging site or sites to be used by each dispersant-application platform that is ensured available, through contract or other approved means, to meet the requirements of § 155.1050(j).

(ii) The identification of the type, resource provider, location, dispersant payload, and readiness/mobilization category (as provided for in Table 7 of appendix B to this part) for each dispersant-application platform identified and ensured available. Location data should identify the distance between the platform's home base and the identified primary dispersant staging sites for this section.

(iii) The identification of the resource provider, location and amount for each unit of stockpile required to support the required Effective Daily Application Capacity of each dispersant-application platform, as necessary to sustain each intended response tier of operation. Location data should include the stockpile's distance to the primary staging sites where it will be loaded onto the corresponding platforms. If an oil spill removal organization has been evaluated by the Coast Guard and its capability has been determined to equal or exceed the response capability needed by the owner or operator, the section may identify the oil spill removal organization only, and not the information required in paragraphs (j)(10)(i) through (10)(iii) of this section.

(11) This section must also separately list the resource providers and specific resources necessary to provide, if appropriate, the in-situ burn capabilities as required in this subpart. The in-situ burn resources to be listed within this section must include the following:

(i) The identification of the amount, type, resource provider, and location of in-situ burn boom identified and ensured available.

(ii) The identification of the amount, type, resource provider, and location of support vessels, identified and ensured available, to deploy, and if necessary, tow the in-situ burn boom during burning operations.

(iii) The identification of the amount, type, resource provider, and location of each ignition device required to support the required Effective Daily Burn Capacity (EDBC) of each in-situ burn package.

(iv) The identification of the amount, location, and resource provider of trained personnel necessary to support the required EDBC of each in-situ burn package.

(v) If an oil spill removal organization has been approved by the Coast Guard and its capability is equal to or exceeds the response capability needed by the owner or operator for the credit level requested, the section may identify the oil spill removal organization and the level of in-situ burn removal capability being provided, and not the information required in paragraphs (j)(11)(i) through (11)(iv) of this section.

(12) The section must also separately list the resource providers and specific resources necessary to provide oil-tracking capabilities required in this subpart. The oil tracking resources to be listed within this section must include the following:

(i) The identification of resource provider.

(ii) Type and location of aerial surveillance aircraft that have been ensured available, through contract or other approved means, to meet the oil tracking requirements of § 155.1050(k).

* * * * *

12. In § 155.1050—

a. Remove and reserve paragraph (j);

b. Redesignate paragraphs (l), (m), (n), (o), and (p), as paragraphs (o), (p), (q), (r), and (s) respectively; and

c. Add new paragraphs (l), (m), and (n) to read as follows:

§ 155.1050 Response plan development and evaluation criteria for vessels carrying groups I through IV petroleum oil as a primary cargo.

* * * * *

(l) The owner or operator of a vessel carrying Groups II through IV petroleum oil as a primary cargo that operates in any inland, nearshore, or offshore area with pre-authorization or expedited

approval for dispersant use must identify in their response plan, and ensure the availability of, through contract or other approved means, response resources capable of conducting dispersant operations within those areas.

(1) Dispersant response resources must be capable of commencing dispersant-application operations at the site of a discharge within 7 hours of the decision by the Federal On-Scene Coordinator to use dispersants.

(2) Dispersant response resources must include the following:

(i) Sufficient dispersant capability for application as required by paragraph (l)(3) of this section. Any dispersants identified in a response plan must be of a type listed on the National Oil and Hazardous Substances Pollution Contingency Plan Product Schedule (40 CFR part 300) as maintained by the Environmental Protection Agency.

(ii) Dispersant-application platforms capable of delivering and applying the dispersant on a discharge in the amounts as required by paragraph (l)(3) of this section. At least 50 percent of each effective daily application capacity (EDAC) tier requirement must be achieved through the use of fixed wing aircraft-based application platforms.

(iii) Dispersant-application personnel trained in and capable of applying dispersant within the performance criteria as outlined in ASTM F 1413–92. For dispersant-application systems not fully covered by ASTM F 1413–92, such as fire monitor-type applicators, adequacy of performance criteria must be documented by presentation of independent evaluation materials (*e.g.* laboratory tests field tests, reports of actual use, etc.) which document the design and performance specifications.

(iv) Dispersant-application systems ensured available, including trained personnel, that are capable of applying dispersants in accordance with the recommended procedures contained within ASTM F 1737–96.

(3) Dispersant stockpiles, application platforms, and other supporting resources must be ensured available in a quantity and type sufficient to treat a vessel's worst case discharge (as determined by using the criteria in Section 8 of appendix B to this part), or in quantities sufficient to meet the requirements in Table 155.1050(l), whichever is the lesser amount.

TABLE 155.1050(L).—TIERS FOR EFFECTIVE DAILY APPLICATION CAPABILITY

	Response time for completed application (hours)	Dispersant application—Dispersant: oil treated in gallons (Gulf Coast)	Dispersant application—Dispersant: oil treated in gallons (All Other U.S.)
Tier 1	12	8,250:165,000	4,125:82,500
Tier 2	36	23,375:467,000	23,375:467,000
Tier 3	60	23,375:467,000	23,375:467,000
Total	60	55,000:1,100,000	50,875:1,017,500

Note: Gulf Coast Tier 1 is higher due to greater potential spill size and frequency in that area, and it is assumed that dispersant stockpiles would be centralized in the Gulf area. Alternative application ratios may be considered based on submission to the Coast Guard (G–MOR) of peer-reviewed scientific evidence of improved capability.

(m) The owner or operator of a vessel carrying Groups II, IV petroleum oil as a primary cargo that operates in any inland, nearshore, or offshore area with pre-authorization or expedited approval for in-situ burning may request credit which will count toward his or her on-water mechanical recovery capability for worst case discharge response Tiers 2 and 3 up to the amounts identified in paragraph (m)(2) of this section. No credit is available for Tier 1. To receive this credit, the vessel owner or operator must identify and ensure, through contract or other approved means the availability of the necessary resources to sustain in-situ burning operations for the level of credit being requested.

(1) In-situ burn response resources must be capable of commencing ignition of oil at the site of a discharge within 12 hours of the initial authorization of the Federal On-Scene Coordinator to conduct in-situ burning to receive credit against Tier 1 requirements.

(2) In-situ burn response resources for all response tiers must include the following:

(i) Sufficient in-situ burn boom.

(ii) Vessel platforms capable of towing and tending in-situ burn boom in the operating environments where credit is requested.

(iii) Sufficient ignition devices to support burning operations.

(iv) Personnel trained in conducting in-situ burning operations.

(v) All equipment ensured available as required in paragraphs (m)(2)(i) through (m)(2)(iii) of this section must be capable of sustained use in the operating environments for which credit is requested.

TABLE 155.1050(M).—MAXIMUM ALLOWABLE TIERS FOR EFFECTIVE DAILY BURN CAPABILITY

	Response time for completed burning [1] (hours)	Daily burn capacity (EDBC) [2] (bbls)	Cumulative equipment requirements				
			Fireproof boom (feet) [3]	Fire resistant boom (feet) [3]	Hand-held igniter	Heli-torch igniter [4]	Support vessels
Tier 1	24	5,000	500	500	4	1	2
Tier 2	48	10,000	1,000	1,500	12	1	4
Tier 3	72	10,000	1,000	2,500	20	1	4

[1] Tiered response times represent the maximum allowable time from the instant when in-situ burning is authorized for use by the Federal On-scene coordinator to the completion of the operational burn period for that tier.

[2] EDBC amounts for Tiers 2 and 3 above may be applied against the corresponding tiers for on-water mechanical recovery (EDRC) as required to respond to an owner or operator's worst case discharge.

[3] Assumes fireproof boom is reusable for all three tiers. Fire resistant boom will be consumed by the fire and therefore, require replacement at the start of each new operational period.

[4] If a helitorch igniter system is identified and ensured available, one-time igniters are not required. Alternative application ratios may be considered based on submission to the Coast Guard (G–MOR) of peer-reviewed scientific evidence of improved capability.

(3) In areas that have ice-bound conditions throughout prolonged periods of the year, credit levels for EDBC against on-water mechanical recovery requirements can be elevated, as deemed appropriate, by the respective Area Committee for the area where the extra credit is being considered. Extra EDBC levels are at the discretion of the Area Committee, however, it is not recommended that EDBC levels comprise more than 50 percent of the total on-water recovery capability for a planholder in any one particular Captain of the Port area.

(n) The owner or operator of a vessel carrying Groups I through IV petroleum oil as a primary cargo must identify in the response plan, and ensure the availability of, through contract or other approved means, response resources necessary to provide aerial oil tracking to support oil spill assessment and cleanup activities.

(1) Aerial oil tracking resources must be capable of arriving at the site of a discharge within three hours from the time of the initial notification of the discharge for a distance up to 50 nautical miles from shore. Aerial oil tracking resources should plan on a minimum of two hours for a recall period and one hour of flight time to arrive on-scene.

(2) Aerial oil tracking must include the following resources:

(i) Appropriately located aircraft and personnel capable of meeting the response time requirement for oil tracking in paragraph (n)(1) of this section.

(ii) Sufficient numbers of aircraft, pilots, and trained observation personnel to support oil spill operations, commencing upon initial assessment, and capable of coordinating on-scene cleanup operations, including dispersant, in-situ burn, and mechanical recovery operations.

(iii) Observation personnel must be trained in the protocols of oil spill reporting and assessment, including estimation of slick size, thickness, and quantity. Observation personnel must be trained in the use of assessment techniques as outlined in ASTM F 1779–97, and familiar with the use of other guides, such as NOAA's "Open Water Oil Identification Job Aid for Aerial Observation," and NOAA's "Characteristic Coastal Habitats" Guide.

(iv) Aerial oil tracking resources must be capable of supporting oil spill removal operations continuously for three ten-hour operational periods during the initial seventy-two hours of the discharge.

* * * * *

13. In appendix B to part 155, revise section 8, and following Table 6, add Tables 7, 8, and 9 to read as follows:

Appendix B to Part 155—Determining and Evaluating Required Response Resources for Vessel Response Plans

* * * * *

8. Determining the Capability of High-Rate Response Methods

8.1 Calculating Cumulative Dispersant-Application Capacity Requirements.

8.1.1. A vessel owner or operator should plan either for a dispersant capacity to respond to a vessel's worst case discharge (WCD) of oil, or for the amount of the dispersant resource capability as required by § 155.1050(l)(3) of this part, whichever is the lesser amount. When planning for the cumulative application capacity that is required, the calculations should account for the loss of some oil to the environment due to natural dissipation causes (primarily evaporation). The following procedure should be used to determine the cumulative application requirements:

8.1.2. Determine the volume of oil carried in gallons, and the appropriate cargo group for the type of petroleum oil carried (Groups II, III, IV). For vessels carrying mixed cargoes, assume a total cargo volume using the cargo group that constitutes the largest portion of the oil being carried, or the cargo group with the smallest natural dissipation factor.

8.1.3. Multiply the total cargo amount in gallons by the natural dissipation factor for the appropriate cargo group as follows: Group II factor is 0.50; Group III factor is 0.30, and Group IV factor is 0.10. This represents the amount of cargo that can be expected to be lost to natural dissipation. Subtract the cargo amount lost to natural dissipation from the total cargo amount carried to determine the remaining oil cargo available for treatment by dispersant-application.

8.1.4. Multiply the cargo available for dispersant treatment by the dispersant to oil planning application ratio of 1 part dispersant to 20 parts oil (0.05). The resultant number represents the cumulative total dispersant-application capability that must be ensured available within the first 60 hours.

8.1.5. The following is an example of the procedure described above: A vessel with a 1,000,000 gallons capacity of crude oil (specific gravity 0.87) will transit through an area with pre-authorization for dispersant use in the nearshore environment on the U.S. East Coast.

Cargo carried: 1,000,000 gallons, Group III oil.

Natural Dissipation Factor for Group III: 30%

General formula to determine oil available for dispersant treatment: [(WCD)—[(WCD) × (natural dissipation factor)] = available oil.

E.g., 1,000,000 gal—(1,000,000 gal × 0.30) = 700,000 gallons available oil.

Cumulative application capacity = Available oil × planning application ratio (1 gal dispersant to 20 gals oil = 0.05), 700,000 gal oil × (0.05) = 35,000 gallons cumulative dispersant-application capacity.

The requirements for cumulative dispersant-application capacity (35,000) for this vessel's WCD is less than the overall dispersant capability cap for non-Gulf Coast waters as required by § 155.1050(l)(3) of this part. As such, this vessel would not need to meet the entire amount for Tier 3, but would be required to meet the following tier requirements (totaling 35,000 gallons application):

Tier 1 4,125 gallons
Completed in 12 hours
Tier 2 23,375 gallons
Completed in 36 hours
Tier 3 7,500 gallons
Completed in 60 hours

8.2 Determining Effective Daily Application Capacities "EDAC" for Dispersant Response Systems.

8.2.1. This section discusses methods to be used for the purposes of determining the effective daily application capacity of a dispersant response system. This methodology considers mobilization factors for dispersant platforms as well as dispersant stockpiles and platform application rates (as published in the 1999 Summary Report of Public Workshop for Response Plan Equipment CAPs).

8.2.2. For each Captain of the Port Zone where a dispersant response capability is required, the response plan must identify the following:

- The type, number, and location of each dispersant-application platform intended for use in meeting dispersant delivery requirements specified in § 155.1050(l)(3) of this part.
- The amount and location of available dispersant stockpiles to support each platform.
- A primary staging site for each platform that will serve as its base of operations for the duration of the response.

8.2.3. Using the readiness factors from Table 7 of this appendix and platform capability factors in Table 8 of this appendix, calculate mobilization times and dispersant delivery capabilities for each platform. For each aircraft platform—

MP = R + T + L
MP = Mobilization of platform
R = Recall time in hours (time it takes for dispersant operations personnel to arrive at the storage location and to prepare the dispersant application system for transport)
T = Transit time it takes for dispersant-application system to be transported to the staging area mobilization (in hours)
L = 1 hour to load dispersant at the staging site if platform is not preloaded. Total time for platform mobilization should be less than 7 hours for Tier 1, less than 24 hours

for Tier 2, and less than 48 hours for Tier 3.

For each stockpile—

MS= R + T + L
MS = Mobilization of Stockpile
R = Recall of loading personnel/ transportation assets and loading dispersant for transport if applicable
T = Transit time to staging site
L = 1 hour for loading on delivery platform.

Note that transit time to the spill site is included in delivery capability calculations for aircraft but not for vessels. Total time for stockpile mobilization should be less than 7 hours for Tier 1, less than 24 hours for Tier 2, and less than 48 hours for Tier 3.

Delivery capability for Tier 1 should be calculated as follows:

R/10 × 12—T
R = EDAC Rate (from Table 8)
10 = 10 hours in operational period
12 = assumed hours of daylight for planning purposes
T = mobilization time (either for platform or stockpile time whichever is greater). Delivery capability for all Tier 1 platforms should at least equal amount specified for Tier 1 in § 155.1050(l)(3) of this part; and

For Tiers 2 and 3, delivery capability for each platform is the EDAC Rate in Table 8 of this appendix, which shows delivery capability for each resource assuming 10-hour operating period. Delivery capability for all Tier 2 and 3 platforms must at least equal amount specified for Tiers 2 and 3 in § 155.1050(l)(3) of this part.

For each vessel platform—

MP = R + T + L
MP = Mobilization of platform
R = Recall time in hours (time it takes for dispersant operations personnel to arrive at the storage location and to prepare the dispersant-application system for transport
T = Transit time (time it takes for dispersant application system to be transported to the staging area mobilization Transit time from staging site or usual location of facility to the spill site
L = 1 hour to load dispersant at staging site if platform is not preloaded. Total time for platform mobilization should be less than 7 hours for Tier 1, less than 24 hours for Tier 2, and less than 48 hours for Tier 3. Usual location of the vessel is the location where the vessel is typically employed when not engaged in dispersant-application operations. Spill site is the location in the Captain of the Port zone furthest from the dispersant platform staging site or the usual location of the vessel.

MS = R + T
MS = Mobilization of Stockpile
R = Recall of loading personnel/ transportation assets and loading dispersant for transport if applicable
T = Transit time to staging site. Total time for stockpile mobilization should be less than 6 hours for Tier 1, less than 23 for hours Tier 2, and less than 47 hours for Tier 3 to allow time for loading dispersant on delivery platform.

Delivery capability for tier 1 should be calculated as follows:

R/10 × 12—T
R = EDAC Rate (from Table 8 of this appendix)
10 = 10 hours in operational period
12 = assumed hours of daylight for planning purposes
T = mobilization time either for platform or stockpile time whichever is greater. Delivery capability for all Tier 1 platforms should be at least equal the amount specified for Tier 1 in § 155.1050(l)(3) of this part.

For Tiers 2 and 3, delivery capability for each platform is the EDAC Rate in Table 8 of this appendix, which shows delivery capability for each resource assuming 10-hour operating period. Delivery capability for all Tier 2 and 3 platforms must at least equal amount specified for Tiers 2 and 3 in § 155.1050(l)(3) of this part: and

8.2.3.1 EDAC must be calculated for each platform and supporting stockpile, and added together as appropriate to meet the dispersant-application tier requirements.

8.2.3.2 The following is an example of the procedure described above: A plan lists a stockpile of 5,000 gallons of dispersant located 35 miles from a central staging site (a coastal airport) but not loaded for transport, and a DC–3 aircraft based at a facility approximately 75 miles from the staging site. The DC–3 is dedicated to dispersant spraying operations. The EDAC allowed toward Tier 1 for this dispersant-application system can be calculated as follows:

Stockpile: Amount – 5000 gallons.
Stockpile Mobilization time: R = 4 hours, T = 35 miles/35 miles per hour or 1 hour. hours = 4 + 1 + 1 hour loading = 6 hours.
Platform Mobilization: R = 2 hours, T = 75 miles/150 miles per hour or 0.5 hours + 1 hour loading at staging site = 2 + 1.5 + 1 = 3.5 hours.
Operational period "OP" = 12 hours daylight—5 hours (use longer of stockpile or platform mobilization time) = 7 hours (i.e., commencing 6 hours after notification of approval and continuing until the end of the first 12 hour daylight period).
Tier 1 delivery capability for this platform = (Table 8) EDAC rate = 5000 gallons/10 hours × 6 = 3000 gallons application capacity.

8.2.3.3 Table 8 of this appendix is based on average characteristics (for planning and review purposes) for most types of application platforms typically used for spraying dispersants. However, other platform types do exist, and additional platform types are expected to develop with time. The Coast Guard will review requests to establish EDAC rates for other platform types at their discretion. EDAC calculations for additional platforms will use the same methodology as used to establish the existing rates already contained within Table 8 of this appendix.

8.3 Determining Effective Daily Burn Capacities "EDBC" for In-situ Burn Response Systems.

8.3.1 For the purposes of determining the effective daily application capacity of in-situ burn resources, the information within this section applies.

8.3.2 For each Captain of the Port zone where an in-situ burn response capability is ensured available, the response plan must identify the following:

- The type, location, and amount of in-situ burn boom available.
- The amount and location of available ignition sources. If ignition system ensured available is a helitorch, a source of pilots trained in the use of the helitorch and suitable aircraft must be identified that can respond within the required response times.
- The identification of supporting vessels and trained operators capable of towing, deploying, and tending the fire boom.

8.3.3 Using the readiness factors from Table 9, mobilization times are calculated for each in-situ burn system. The General Formula for calculating Tier 1 mobilization time is as follows:

T = (MB + MV) or (MH), whichever is greater (in hours)
T = Total Mobilization
MB = Mobilization of In-situ burn boom/ hand held igniters
MB = R + L + T1
R = Recall of loading personnel/ transportation assets
L = Loading to truck
T1 = Transit time to vessel staging site
MV = Mobilization of Support Vessels = L + T2
L = Boom loading to vessel
T2 = Transit time to spill site
MH = Mobilization of Helitorch = R + T1 + L + T2
R = Recall of personnel/platform +
T1 = Transit time to staging site
L = Torch loading
T2 = Transit time to spill site

8.3.4 The mobilization times are used to ensure that a full 12 hour "operational period" or "OP" for in-situ burning is available for Tier 1. All operational period calculations assume approval for use is granted at zero hour, and that a maximum of 12 hours is available to support oil collection and burning within the initial 24-hour period. The available time allowed to support in-situ burning is slightly longer (12 hours) in comparison to dispersant operations (10 hours) as in-situ burning operations can continue on for a limited period during darkness where dispersant spraying would be suspended due to decreased visibility. The 12-hour period is divided into four 1-hour burning cycles, each preceded by a 2-hour oil containment and collection cycle.

8.3.4.1 The general formula for calculating the tier 1 operational period of a system is: Operational Period "OP" = 24 hours—(the mobilization time for the boom + platform or the mobilization time for the supporting helitorch igniter (if used), whichever is greater.

8.3.5 For planning purposes, an in-situ burning system is comprised of the following minimum components that must be ensured available: minimum 500 ft. fire boom, two support vessels to tend and tow the boom, and four hand-held igniters or one helitorch system. 500 ft. sections of fire resistant boom are credited with a 5,000 bpd burning capacity, and are also considered to have a service life of one operational period. For example, a second (Tier 2) and third (Tier 3) section of 500 ft. boom must be ensured available if the planholder desires to claim a 5,000 bpd credit for all three tiers.

8.3.6 Planholders may request extensions of boom service lives beyond one operational period for "fire-proof" type boom, such as stainless steel, or water-cooled boom designs, when such boom has been tested and can be adequately documented as providing extended service capabilities. Planholders may receive credit for multiple operational periods using the same 500 ft. section of boom dependent upon the documentation presented to the Coast Guard for review and approval.

* * * * *

TABLE 7.—READINESS/MOBILIZATION FACTORS

[All times listed in hours]

Resource/status	Recall period "R"	Transit to staging Site "T" [1]	Transit to Spill Site "S" [2]
Aircraft dedicated to dispersant response operations	2	D/150+1	N/A
Aircraft dedicated to spraying operations	3	D/150+1	N/A
Aircraft nondedicated	4	D/150+1	N/A
Vessel dedicated (preloaded)	2	0	D/5
Vessel dedicated (not loaded)	2	D/5+1	D/5
Vessel non-dedicated (preloaded)	4	0	D/5
Vessel non-dedicated (not loaded)	4	D/5+1	
Dispersant Stockpile (preloaded for transport to staging site)	2	D/35	D/5
Dispersant Stockpile (not preloaded for transport to staging site)	[3] 4	D/35	N/A

[1] Transit times to staging site for aircraft based on average speed of advance of 150 kts and "D" distance between aircraft home base and forward staging site for dispersant operations. Transit times for vessels from usual location of vessel to staging site based on average speed of advance of 5 kts and "D" is distance to spill site "D". Speed waivers for transit speeds may be granted based on actual performance of platform. Transit times for stockpile based on average speed of advance of 35 mph by truck and "D" distance from stockpile location to dispersant staging site, such as a coastal airport.

[2] Transit times to spill site for aircraft is included in the calculations contained in table 8 because of the relatively high speed of these platforms compared to vessels. Transit times for vessels to the spill site are calculated from the usual location of vessel to staging site based on average speed of advance of 5 kts and "D" is distance to spill site "D". Speed waivers for transit speeds may be granted based on actual performance of platform.

[3] Assume 2 hours to load dispersant stockpiles on to trucks for transport to the staging site.

[4] For a facility, the spill site is the facility location. For a vessel, the spill site in a particular pre-authorization or expedited approval zone is that point furthest from the stockpile location where the vessel typically operates, not to exceed 50 miles from shore.

TABLE 8.—PLATFORM CAPABILITY FOR OIL DISPERSANT DELIVERY OVER A 10–HOUR PERIOD

Platform	Distance out (N. Miles) [1]	EDAC Rate estimated dispersant applied in 10 Hours
Helicopter	50	1,500.00
Air tractor	50	8,000.00
DC–3	50	5,000.00
DC–4	50	17,495.38
DC–6	50	18,000.00
C–130	50	32,972.28
P–3	50	20,000.00
Fire Monitor-Equipped Vessel	50	6,000.00

TABLE 9.—READINESS/MOBILIZATION FACTORS

[All times listed in hours]

Resource/status	Recall Period "R" + "L" load time	Transit to staging site "T1"	Transit to Spill Site "T2"
In-situ Burn Boom/HH Igniters to staging sites (MB)	2 + 2 [1]	D/35 [4]	N/A
Support Vessels (MV)	NA + 2 [2]	N/A	(10 or D/5) [3]
Aircraft/helitorch igniter (MH)	4 + 1	D/90 [5]	D/90

[1] Loading Time for in-situ boom onto a truck would be zero if the boom is co-located at the same waterfront facility as the vessels used to ferry the boom to the spill.

[2] Loading Time for in-situ boom onto a support vessel would be zero if the boom is already loaded onto a support vessel.

[3] Transit times for support vessels based on average speed of advance of 5 kts and maximum distance from shore to spill site of fifty miles. Speed waivers for transit speeds may be granted based on actual performance of platform.

[4] Transit times for in-situ boom from warehouse to vessel dock based on average speed of advance of 35 mph by truck and "D" distance from storage location to vessel staging site.

[5] Transit times for aircraft/helitorch based on average speed of advance of 90 kts and combined distance "D" between aircraft home base, forward staging site and spill location.

[6] For a facility, the spill site is the facility location. For a vessel, the spill site in a particular pre-authorization or expedited approval zone is that point furthest from the stockpile location where the vessel typically operates, not to exceed 50 miles from shore.

Dated: April 12, 2002.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK21

Definition of Psychosis for Certain VA Purposes

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) adjudication regulations to define the term "psychosis." The term is used but not defined in certain statutes that provide presumptive service connection for compensation or health care purposes. The intended effect of this proposed amendment is consistent application of these statutory provisions.

DATES: Comments must be received on or before December 10, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AK21." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7284.

SUPPLEMENTARY INFORMATION:

Statutory and Regulatory Provisions

There are three sections in title 38, United States Code, that refer to psychosis in veterans and are pertinent to this regulation.

Section 1112(a)(1) of title 38, United States Code, presumes that certain chronic diseases that become manifest to a compensable degree within one year of a veteran's separation from active service were incurred or aggravated during that service. The term "chronic disease," as defined at 38 U.S.C. 1101(3), includes "psychoses." Section 3.309(a) of title 38, Code of Federal Regulations, implements 38 U.S.C. 1112(a)(1) and 1101(3).

Section 1112(b)(8) of title 38, United States Code, presumes that a "psychosis" that becomes manifest to a compensable degree at any time after service in a former prisoner-of-war was incurred or aggravated during that service. Section 3.309(c) of title 38, Code of Federal Regulations, implements this statutory provision.

Section 1702 of title 38, United States Code, presumes that "active psychosis" that develops in certain wartime veterans within two years of separation from active service was incurred during active service. This presumption is only for purposes of hospital, nursing home, domiciliary, and medical care.

None of these statutory or regulatory provisions defines the term "psychosis" or specifies which mental disorders are included in that category. In addition, the legislative histories of the relevant statutory provisions provide no guidance with regard to interpreting these terms.

Medical Interpretation

VA's Schedule for Rating Disabilities requires that mental disorders be diagnosed according to the diagnostic criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (APA Manual), Fourth Edition (DSM–IV). Although the term "psychosis" continues to be widely used, it has not served as an organizing principle in the APA Manual since 1980 when DSM–III was published. DSM–IV does not have a "psychosis" category of mental disorders.

Appendix C of DSM–IV, at page 770, states that the term "psychotic" has historically had a number of definitions, "none of which has achieved universal acceptance." It therefore appears that the term "psychosis," and its plural form "psychoses," have no commonly accepted meaning.

Proposed Definition

DSM–IV, Appendix A, pages 689 and 694–695, in addressing differential diagnoses of psychotic disorders, generally includes mental disorders in which at least one of the following psychotic symptoms is a defining feature: delusions; hallucinations; disorganized speech; or grossly disorganized behavior. In our judgment, these defining features are reasonable and appropriate for VA purposes.

According to DSM–IV, pages 19 and 694–695, the following mental disorders contain at least one of the above-mentioned DSM–IV, Appendix A, psychotic symptoms: psychotic disorder due to a general medical condition; substance-induced psychotic disorder; schizophrenia; schizophreniform disorder; schizoaffective disorder; mood disorder with psychotic features; delusional disorder; psychotic disorder not otherwise specified; brief psychotic disorder; and shared psychotic disorder. If one of these conditions is diagnosed in a veteran, all other regulations involved in determining entitlement to service connection must be considered.

We propose to add new § 3.384 to title 38, Code of Federal Regulations, to state that for purposes of 38 CFR part 3, those conditions are defined as psychoses.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: October 4, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is proposed to be amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.384 is added under the undesignated center heading "Rating Considerations Relative to Specific Diseases" to read as follows:

§ 3.384 Psychosis.

For purposes of this part, the following conditions are considered psychoses:

(a) Psychotic disorder due to a general medical condition;

(b) Substance-induced psychotic disorder;

(c) Schizophrenia;

(d) Schizophreniform disorder;

(e) Schizoaffective disorder;

(f) Mood disorder with psychotic features;

(g) Delusional disorder;

(h) Psychotic disorder not otherwise specified;

(i) Brief psychotic disorder; and

(j) Shared psychotic disorder.

(Authority: 38 U.S.C. 501(a))

[FR Doc. 02–25995 Filed 10–10–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[IN144–1b; FRL–7390–4]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to Particulate Matter (PM) control requirements for certain natural gas combustion sources in Indiana. EPA also proposes to approve various cleanup revisions to Indiana's PM rules and contingency measures for the Lake County, Indiana PM nonattainment area. The Indiana Department of Environmental Management (IDEM) submitted these revisions to Title 326 of the Indiana Administrative Code, Section 6–1 (326 IAC 6–1) as a requested revision to the Indiana State Implementation Plan (SIP) on December 19, 2001. The requested SIP revision eliminates PM emissions limits on certain natural gas combustion sources in specified counties, and replaces the limits with a requirement that such sources may only burn natural gas. The requested SIP revision also contains many cleanup provisions such as eliminating limits for sources which have shut down and updating names of sources. Third, the requested SIP revision adds PM contingency measures for the Lake County, Indiana PM nonattainment area.

DATES: EPA must receive written comments on this proposed rule by November 12, 2002.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. *You may inspect copies of the State submittal and EPA's analysis of it at:* Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Matthew Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used we mean EPA.

Table of Contents

I. What action is EPA taking today?
II. Where can I find more information about this proposal and the corresponding direct final rule?

I. What Action Is EPA Taking Today?

We are proposing to approve revisions to PM control requirements for certain natural gas combustion sources in Indiana. We are also proposing to approve various cleanup revisions to Indiana's PM rules and contingency measures for the Lake County, Indiana PM nonattainment area. The requested SIP revision eliminates PM emissions limits on certain natural gas combustion sources in specified counties, and replaces the limits with a requirement that such sources may only burn natural gas. The requested SIP revision also contains many cleanup provisions such as eliminating limits for sources which have shut down and updating names of sources. Third, the requested SIP revision adds PM contingency measures for the Lake County, Indiana PM nonattainment area.

II. Where can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: September 19, 2002.

William E. Muno,

Acting Regional Administrator, Region 5.

[FR Doc. 02–25855 Filed 10–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV047–6021b; FRL–7391–4]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing emission limitations for hot mix asphalt plants. In the Final Rules section of this **Federal Register**, EPA is approving West Virginia's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 12, 2002.

ADDRESSES: Written comments should be mailed to Walter K. Wilkie, Acting Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Janice Lewis, (215) 814–2185, at the EPA Region III address above, or by e-mail at Lewis.Janice@epa.gov. Please note any comments on this rule must be submitted in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: On September 21, 2000, the West Virginia Division of Environmental Protection submitted a revision to its SIP to address requirements for the Operation of Hot Mix Asphalt Plants. The revision consists of the adoption of Rule 45CSR3—To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants. For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: September 30, 2002

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–25853 Filed 10–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 078–0030; FRL–7393–2]

Revisions to the Arizona State Implementation Plan, Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a simultaneous limited approval and limited disapproval of revisions to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP) concerning definitions, volatile organic compound (VOC) emissions from dry cleaning and spray painting and as well as visible emissions from mobile equipment. We are also proposing full approval of revisions to the ADEQ portion of the Arizona State SIP concerning VOC emissions from petroleum storage tanks and visible emissions from mobile equipment.

We are proposing action on local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by November 12, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions at the following locations:

Air and Radiation Docket and Information Center (6102T), U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, AZ 85007.

A copy of the rule may also be available via the Internet at *http://www.sosaz.com/public_services/Title_18/18_table.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules proposed for limited approval and limited disapproval with the date that they were adopted and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
ADEQ	R18–2–701	Definitions	11/15/93	07/15/98
ADEQ	R18–2–725	Standards of Performance for Existing Dry Cleaning Plants	11/15/93	07/15/98
ADEQ	R18–2–727	Standards of Performance for Spray Painting Operations	11/15/93	07/15/98
ADEQ	R18–2–801	Classification of Mobile Sources	11/15/93	07/15/98
ADEQ	R18–2–802	Off-Road Machinery	11/15/93	07/15/98

On December 18, 1998, we determined that the rule submittals in Table 1 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

Table 2 lists the rules proposed for full approval with the date that they were adopted and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 2.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
ADEQ	R18–2–710	Standards of Performance for Existing Vessels for Petroleum Liquids.	11/15/93	07/15/98
ADEQ	R18–2–803	Heater-Planer Units	11/15/93	07/15/98
ADEQ	R18–2–804	Roadway and Site cleaning Machinery	11/15/93	07/15/98
ADEQ	R18–2–805	Asphalt or Tar Kettles	11/15/93	07/15/98

On December 18, 1998, we determined that the rule submittals in Table 2 met the completeness criteria.

B. Are There Other Versions of These Rules?

There is no prior version of submitted Rule R18–2–701. We approved versions of submitted Rules R18–2–710, R18–2–725, and R18–2–727 as SIP Rules R9–3–510, R9–3–525, and R9–3–527, respectively, on April 23, 1982 (47 FR 17485). We approved versions of submitted Rules R18–2–801, R18–2–802, R18–2–803, R18–2–804, and R18–2–805 as SIP Rules R9–3–601, R9–3–602, R9–3–603, R9–3–604, and R9–3–605, respectively, on April 23, 1982 (47 FR 17485).

C. What Are the Changes in the Submitted Rules?

- The new Rule R18–2–701 lists 33 definitions that apply to the rules in article 7 (the R18–2–7xx series).
- Rule R18–2–710 deletes section E concerning seasonal volatility adjustments of gasoline. Section E required a seasonal schedule for delivery of four different volatility grades of gasoline.
- Rule R18–2–725 adds a definition for "photochemically reactive solvents."
- Rule R18–2–727 adds a definition for "photochemically reactive solvents," adds a prohibition on the use of a photochemically reactive solvent in architectural coatings for commercial purposes, and adds a prohibition on the dilution of architectural coatings with a photochemically reactive solvent.
- Rules R18–2–801, R18–2–802, and R18–2–803 are renumbered, and Rule R18–2–801 is renamed.
- Rules R18–2–804 and R18–2–805 are renumbered and reformatted.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). All areas regulated by ADEQ rules are ozone attainment (*see* 40 CFR part 81), and VOC rules need not meet the requirements of RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements for VOC rules include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 Federal Register Notice*, (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
- *Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks*, EPA–450/2–77–036 (December 1977).
- *Control of Volatile Organic Emissions Petroleum Liquid Storage in External floating Roof Tanks*, EPA–450/2–78–047 (December 1978).
- *Control of Volatile Organic Emissions from Perchloroethylene Dry Cleaning Systems*, EPA–450/2–78–050 (December 1978).
- *Control of Volatile Organic Emissions from Large Petroleum Dry Cleaners*, EPA–450/3–82–009 (September 1982).
- *Control of Volatile Organic Emissions from Existing Stationary Sources—Volume I: Control Methods for Surface-Coating Operations*, EPA–450/2–76–028 (November 1976).

Sections 172(c)(1) and 189(a) of the CAA require moderate PM–10 nonattainment areas to implement reasonably available control measures (RACM), including RACT for stationary sources of PM–10. The areas regulated by the rules include PM–10 nonattainment areas. RACM/RACT is required to be fulfilled for all source categories unless there are no major sources of PM–10 and a particular source category does not contribute significantly to PM–10 levels in excess of the NAAQS (*i.e., de minimis* sources). *See General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 57 FR 13498, 13540 (April 16, 1992) and *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 59 FR 41998, 42011 (August 16, 1994). The activities subject to Rules R18–2–801, R18–2–802, R18–2–803, R18–2–804 and R18–2–805 do not have major sources or emit a significant amount of PM–10 according to the PM–10 attainment plans in the relevant nonattainment areas and therefore the rules are not required to meet RACM/RACT control levels.

The guidance and policy documents that we used to define specific enforceability and SIP relaxation requirements for PM–10 rules are as follows:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR Part 51.
- *PM–10 Guideline Document*, (EPA–452/R093–008).

B. Do the Rules Meet the Evaluation Criteria?

The rules are largely consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSDs.

C. What Are the Rule Deficiencies?

Rule R18–2–701 has the following deficiencies:

- "Calcine" should not be limited to only lime plants.
- "Process Weight" should be eliminated, because it has no meaning unless it is given for a specific time period.
- "Process Weight Rate" should be defined in the rule and not be based on Rule R18–2–702, which is not in the SIP.

Rule R18–2–725 has the following deficiencies:

- The enforceability is limited, because there are no monitoring and recordkeeping requirements.
- The enforceability is limited, because there is no test method given for the efficiency of recovery of solvent emmissions.

Rule R18–2–727 has the following deficiencies:

Rules R18–2–801 and R18–2–802 have the following deficiencies:

- The rules should be restricted to apply to used or in-use nonroad engines and not to new nonroad engines. Section 209(e) of the CAA prohibits states from adopting or attempting to enforce any standard relating to the control of emissions from (A) new engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower and (B) new (or remanufactered) locomotives or new (or remanufactered) engines which are used in locomotives. States are not precluded under section 209(e) from regulating the use and operation of nonroad engines, including regulating daily mass emission limits (such as through an opacity standard), once the engine is no longer new, according to 40 CFR part 89, subpart A, appendix A.
- The rules should exclude from applicability locomotives or engines which are used in locomotives. Locomotives are required to be in compliance with Federal emission standards throughout their useful life.
- The rules should exempt nonroad engines from any potential requirement to retrofit in order to meet the opacity standard unless California has an identical retrofitting requirement. States are precluded from requiring retrofitting of used nonroad engines to meet emission standards, except that states may adopt and enforce retrofitting requirements identical to California retrofitting requirements which have been authorized by EPA, according to 40 CFR part 89, subpart A, appendix A.

D. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is proposing a limited approval of Rules R18–2–701, R18–2–725, R18–2–727, R18–2–801, and R18–2–802 to improve the SIP. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rules under section 110(k)(3). If this limited disapproval is finalized, sanctions will not be imposed under section 179 of the CAA because these are not required submittals. Note that the submitted rules have been adopted by the ADEQ, and our final limited disapproval would not prevent the local agency from enforcing them.

We are also granting full approval to Rules R18–2–710, R18–2–803, R18–2–804, and R18–2–805.

We will accept comments from the public on the proposed limited approval and limited disapprovals and the proposed full approvals for the next 30 days.

III. Background Information

A. Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 3 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 3.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP–Call). See section 110(a)(2)(H) of the pre-amended CAA.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

PM–10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions. Table 4 lists some of the national milestones leading to the submittal of local agency PM–10 rules.

TABLE 4.—PM–10 NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977. 43 FR 8964; 40 CFR 81.305.
July 1, 1987	EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM–10). 52 FR 24672.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
November 15, 1990	PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated nonattainment by operation of law and classified as moderate pursuant to section 188(a). States are required by section 110(a) to submit rules regulating PM–10 emissions in order to achieve the attainment dates specified in section 188(c).

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's proposed disapproval of the state request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 19, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–25856 Filed 10–10–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7542]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator, Federal Insurance and Mitigation Administration, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Connecticut	Newtown (Town), Fairfield County.	Pond Brook	Approximately 850 feet downstream of Currituck Road.	None	*331
			Approximately 440 feet upstream of U.S. Route 6.	None	*403

Maps available for inspection at Edmond Town Hall, 45 Main Street, Newtown, Connecticut.
Send comments to Mr. Robert Rosenthal, Town of Newtown First Selectman, 45 Main Street, Newtown, Connecticut 06470.

Maine	Newry (Town), Oxford County.	Sunday River	At downstream corporate limits	None	*648
			At upstream corporate limits	None	*845
		Barkers Brook	At the confluence with Sunday River	None	*651
			A point approximately 240 feet upstream of Broadway Drive.	None	*1,112

Maps available for inspection at the Newry Town Hall, 422 Bear River Road, Newry Maine.
Send comments to Mr. Stephen Wight, Chairman of the Town of Newry Board of Selectmen, 422 Bear River Road, Newry, Maine 04261.

New Jersey	Estell Manor (City), Atlantic County.	Tuckahoe River	Approximately 0.7 mile upstream of Cumberland Avenue.	None	*56
			At State Route 49	None	*22
		Great Egg Harbor	At the confluence of Great Egg Harbor River and South River.	None	*9

Maps available for inspection at the Estell Manor City Municipal Building, 148 Cumberland Avenue, Estell Manor, New Jersey.
Send commments to The Honorable Gary Buck, Mayor of the City of Estell Manor, P.O. Box 102, 148 Cumberland Avenue, Estell Manor, New Jersey 08319.

Tennessee	Rockwood (City), Roane County.	North Fork Black Creek	Approximately 300 feet downstream of South Front Avenue.	*875	*872
			Approximately 200 feet upstream of South Lenoir Avenue.	*885	*882
		East Fork Black Creek	At the upstream side of West Wheeler Street.	*879	*880
			Approximately 380 feet upstream of North Front Avenue.	*915	*912
		Black Creek Side Channel	At the confluence with Black Creek	*868	*866
			At the divergence from North Fork Black Creek.	*875	*872
		Black Creek	Approximately 1,580 feet upstream of U.S. Route 70.	*858	*854
			Approximately 220 feet upstream of West Rockwood Street.	877	*878
		Middle Fork Black Creek	Approximatley 140 feet downstream of North Chamberlain Avenue.	*879	*878
			Approximately 2,420 feet upstream of Strang Street.	None	*924

Maps available for inspection at the City Hall Building, 110 North Chamberlain Avenue, Rockwood, Tennessee 37854.
Send comments to The Honorable Mike Miller, Mayor of the City of Rockwood, 110 North Chamberlain Avenue, Rockwood, Tennessee 37854.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: September 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–25960 Filed 10–10–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7540]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a

newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator, Federal Insurance and Mitigation Administration, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
KENTUCKY				
Whitley County (Unincorporated Areas)				
Cumberland River	Approximately 2.1 miles upstream of State Route 25 West.	*935	*934	City of Williamsburg, Whitley
	Approximately 7.7 miles upstream of State Route 25 West.	*944	*943	County (Unincorporated Areas)
ADDRESSES				
Whitley County (Unincorporated Areas)				
Maps available for inspection at the City of Williamsburg Mayor's Office, 116 North Second Street, Williamsburg, Kentucky.				
Send comments to The Honorable Bill Nighbert, Mayor of the City of Williamsburg, P.O. Box 119, Williamsburg, Kentucky 40769.				
Whitley County (Unincorporated Areas)				
Maps available for inspection at the Whitley County Courthouse, 210 Main Street, Williamsburg, Kentucky.				
Send comments to The Honorable Mike Patrick, Whitley County Judge Executive, Whitley County Courthouse, P.O. Box 237, Williamsburg, Kentucky 40769.				
NORTH CAROLINA				
Hyde County (Unincorporated Areas)				
Pungo River Canal	Approximately 2.5 miles upstream of Shallop Creek	None	•7	Hyde County (Unincorporated Areas)
	Approximately 1,100 feet upstream of Tiffany Trail	None	•10	

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
ADDRESSES				
Hyde County (Unincorporated Areas)				
Maps available for inspection at the Hyde County Inspection Department, 1129 Main Street, Swan Quarter, North Carolina.				
Send comments to Mr. Bryan Steens, Hyde County Manager, P.O. Box 188, 20 Oyster Creek Road, Swan Quarter, North Carolina 27885.				
NORTH CAROLINA				
Hoke County (Unincorporated Areas) and City of Raeford				
Big Marsh Swamp	At the county boundary	None	•188	Hoke County (Unincorporated Areas)
	Approximately 100 feet downstream of Conoly Road	None	•230	
Big Marsh Swamp Tributary	At the confluence with Big Marsh Swamp	None	•198	Hoke County (Unincorporated Areas)
	Approximately 1.0 mile upstream of Old Wire Road	None	•226	
Big Middle Swamp	At the confluence with Raft Swamp	None	•205	Hoke County (Unincorporated Areas)
	Approximately 1,750 feet downstream of L McLaughlin Road.	None	•276	
Big Middle Swamp Tributary.	At the confluence with Big Middle Swamp	None	•244	Hoke County (Unincorporated Areas)
	Approximately 680 feet downstream of Laurinburg Road.	None	•254	
Buffalo Creek	At the confluence with the Lumber River	None	•235	Hoke County (Unincorporated Areas)
	Approximately 1.7 miles upstream of the confluence of Buffalo Creek Tributary 1.	None	•383	
Buffalo Creek Tributary 1	At the confluence with Buffalo Creek	None	•274	Hoke County (Unincorporated Areas)
	Approximately 0.6 mile upstream of the confluence with Buffalo Creek.	None	•289	
Buffalo Creek Tributary 2	At the confluence with Buffalo Creek	None	•289	Hoke County (Unincorporated Areas)
	Approximately 1.3 miles upstream of the confluence with Buffalo Creek.	None	•360	
Gum Swamp	At the county boundary	None	•219	Hoke County (Unincorporated Areas)
	Approximately 120 feet upstream of Spring Hill Road	None	•230	
Jordan Swamp	At the county boundary	None	•218	Hoke County (Unincorporated Areas)
	Approximately 0.6 mile upstream of Old Maxton Road	None	•234	
Little Creek	At the confluence with the Lumber River	None	•246	Hoke County (Unincorporated Areas)
	Approximately 1.3 miles upstream of Pendergrass Road.	None	•290	
Little Marsh Swamp	At the county boundary	None	•191	Hoke County (Unincorporated Areas)
	Approximately 30 feet downstream of Golf Course Road.	None	•222	
Little Middle Swamp	At the confluence with Raft Swamp	None	*205	Hoke County (Unincorporated Areas)
	Approximately 1,300 feet downstream of Old Maxton Road.	None	*230	
Little Raft Swamp	At the county boundary	None	*187	Hoke County (Unincorporated Areas)
	Approximately 0.6 mile upstream of Laurinburg Road	None	*258	
Little Raft Swamp Tributary	At the confluence with Little Raft Swamp	None	*197	Hoke County (Unincorporated Areas)
	Approximately 0.4 mile upstream of Wilson Road	None	*223	
Long Swamp	Approximately 500 feet upstream of Bullard Road	None	*207	Hoke County (Unincorporated Areas)
	Approximately 0.5 mile upstream of Wilson Road	None	*225	
Lumber River	At the downstream county boundary	None	*205	Hoke County (Unincorporated Areas)
	At the upstream county boundary	None	*268	
Lumber River Tributary	At the confluence with the Lumber River	None	*259	Hoke County (Unincorporated Areas)
	Approximately 0.6 mile upstream of Ashemont Road	None	*360	

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
McNeills Mill Creek	At the confluence with Big Marsh Swamp	None	*195	Hoke County (Unincorporated Areas)
	Approximately 1,100 feet upstream of Pate Road	None	*226	
Mountain Creek	At the confluence with the Lumber River	None	*247	Hoke County (Unincorporated Areas)
	Approximately 0.6 mile upstream of Army Road	None	*329	
Mountain Creek Tributary	At the confluence with Mountain Creek	None	*280	Hoke County (Unincorporated Areas)
	Approximately 0.7 mile upstream of the confluence with Mountain Creek.	None	*300	
Quewhiffle Creek	At the confluence with the Lumber River	None	*255	Hoke County (Unincorporated Areas)
	Approximately 1.2 miles upstream of Calloway Road	None	*347	
Quewhiffle Creek Tributary 1.	At the confluence with Quewhiffle Creek	None	*288	Hoke County (Unincorporated Areas)
	Approximately 40 feet downstream of Strother Road	None	*328	
Quewhiffle Creek Tributary 2.	At the confluence with Quewhiffle Creek	None	*289	Hoke County (Unincorporated Areas)
	At the county boundary	None	*313	
Tributary to Quewhiffle Creek Tributary 1.	At the confluence with Quewhiffle Creek Tributary 1	None	*297	Hoke County (Unincorporated Areas)
	Approximately 0.8 mile upstream of Calloway Road	None	*353	
Raft Swamp	At the county boundary	None	*182	Hoke County (Unincorporated Areas)
	Approximately 100 feet downstream of Turnpike Road	None	*279	
Raft Swamp Tributary 1	At the confluence with Raft Swamp	None	*205	Hoke County (Unincorporated Areas)
	Approximately 375 feet downstream of Redsprings Road.	None	*219	
Raft Swamp Tributary 2	At the confluence with Raft Swamp	None	*252	Hoke County (Unincorporated Areas)
	Approximately 0.4 mile upstream of the confluence with Raft Swamp.	None	*265	
Toneys Creek	At the confluence with Raft Swamp	None	*211	Hoke County (Unincorporated Areas), City of Raeford
	Approximately 800 feet downstream of Turnpike Road	None	*265	
Toneys Creek Tributary 1	At the confluence with Toneys Creek	None	*215	Hoke County (Unincorporated Areas), City of Raeford
	Approximately 0.5 mile upstream of Laurinburg Road/ Interstate 40.	None	*260	

ADDRESSES

Hoke County (Unincorporated Areas)

Maps available for inspection at the Hoke County Planning and Zoning Department 227 North Main Street, Raeford, North Carolina.

Send comments to Mr. Michael N. Wood, Hoke County Manager, P.O. Box 210, 227 North Main Street, Raeford, North Carolina 28376

City of Raeford

Maps available for inspection at the Raeford City Public Works Department, 315 North Main Street, Raeford, North Carolina

Send comments to the Honorable Bob Gentry, Mayor of the City of Raeford, 315 North Main Street, Raeford, North Carolina 28376.

NORTH CAROLINA
Moore County (Unincorporated Areas)

Aberdeen Creek	At the confluence with Drowning Creek	None	*273	Moore County (Unincorporated Areas), Town of Southern Pines, Village of Pinehurst
	Approximately 250 feet downstream of Williams Drive	None	*470	
Aberdeen Creek Tributary 1	At Plantation Drive	None	*385	Town of Southern Pines
	Approximately 0.7 mile upstream of Plantation Drive	None	*442	
Aberdeen Creek Tributary 2	At the confluence with Aberdeen Creek	None	•386	Village of Pinehurst
	Approximately 0.6 mile upstream of the confluence	None	•426	
Aberdeen Creek Tributary 3	At the confluence with Aberdeen Creek	None	•386	Village of Pinehurst, Town of Southern Pines
	Approximately 100 feet upstream of National Drive	None	•463	
Aberdeen Creek Tributary 4	At the confluence with Aberdeen Creek	None	•418	Town of Southern Pines
	Approximately 1,175 feet upstream of the confluence	None	•442	

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Deep Creek	At the confluence with Horse Creek	None	•302	Moore County (Unincorporated Areas), Village of Foxfire
	Approximately 1.0 mile upstream of the confluence with Sandy Run.	None	•367	
Drowning Creek	At the county boundary	None	•268	Moore County (Unincorporated Areas)
	Approximately 400 feet downstream of Purdue Road	None	•672	
Drowning Creek Tributary 2	At the confluence with Drowning Creek	None	•458	Moore County (Unincorporated Areas), Village of Foxfire
	Approximately 1.4 miles upstream of Martin Road	None	•545	
Horse Creek	At the confluence with Drowning Creek	None	•284	Moore County (Unincorporated Areas), Village of Pinehurst
	Approximately 0.4 mile upstream of Linden Road	None	•374	
Horse Creek Tributary 1	At the confluence with Horse Creek	None	•319	Moore County (Unincorporated Areas)
	Approximately 1.2 miles upstream of the confluence with Horse Creek.	None	•431	
Horse Creek Tributary 2	At the confluence with Horse Creek	None	•342	Moore County (Unincorporated Areas), Town of Aberdeen, Village of Pinehurst
	Approximately 1.2 miles upstream of the confluence	None	•401	
Horse Creek Tributary 4	At the confluence with Horse Creek	None	•366	Moore County (Unincorporated Areas), Village of Pinehurst
	Approximately 1,300 feet upstream of Linden Road	None	•441	
Jackson Creek	At the confluence with Drowning Creek	None	•370	Moore County (Unincorporated Areas), Village of Foxfire
	Approximately 1,975 feet upstream ofCurrie Mill Road	None	•437	
Jackson Creek Tributary 1	At the confluence with Jackson Creek	None	•373	Moore County (Unincorporated Areas), Village of Foxfire
	Approximately 0.4 mile upstream of the confluence of Tributary to Jackson Creek Tributary 1.	None	•394	
Jackson Creek Tributary 3	At the confluence with Jackson Creek	None	•415	Moore County (Unincorporated Areas)
	Approximately 1.7 miles upstream of the confluence with Jackson Creek.	None	•443	
Lake Auman	Entire shoreline of Lake Auman within community	None	•525	Moore County (Unincorporated Areas)
McCallum Branch	At the confluence with Aberdeen Creek	None	•340	Town of Aberdeen, Village of Pinehurst
	Approximately 0.4 mile upstream of confluence	None	•340	
Pinehurst Lake	Entire shoreline of Pinehurst Lake within community	None	•413	Village of Pinehurst
Quewhiffle Creek Tributary 2.	At the county boundary	None	•313	Moore County (Unincorporated Areas), Town of Aberdeen
	Approximately 0.4 mile downstream of Lockey Drive	None	•401	
Tributary to Drowning Creek Tributary 2.	At the confluence with Drowning Creek Tributary 2	None	•470	Moore County (Unincorporated Areas)
	Approximately 1,800 feet upstream of Eagle Branch Road.	None	•516	
Tributary to Jackson Creek Tributary 1.	At the confluence with Jackson Creek Tributary 1	None	•380	Moore County (Unincorporated Areas), Village of Foxfire
	Approximately 1,750 feet downstream of Jackson Springs Road.	None	•402	
Tributary to Quewhiffle Creek Tributary 2.	At the confluence with Quewhiffle Creek Tributary 2	None	•316	Moore County (Unincorporated Areas)
	Approximately 0.4 mile upstream of confluence of Quewhiffle Creek Tributary 2.	None	•343	

ADDRESSES

Town of Aberdeen

Maps available for inspection at the Aberdeen Planning Department, 115 North Poplar Street, Aberdeen, North Carolina.

Send comments to The Honorable Betsy Mofield, Mayor of the Town of Aberdeen, P.O. Box 785, 115 North Poplar Street, Aberdeen, North Carolina 28315.

Village of Foxfire

Maps available for inspection at the Foxfire Village Zoning Department, 1 Town Hall Drive, Foxfire Village, North Carolina.

Send comments to The Honorable Samuel Brandes, Mayor of the Village of Foxfire, 1 Town Hall Drive, Foxfire Village, North Carolina 27281.

Moore County (Unincorporated Areas)

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

Maps available for inspection at the Moore County Planning Department, 101A Monroe Street, Carthage, North Carolina.
Send comments to Mr. David McNeil, Moore County Manager, P.O. Box 905, Courthouse Square, Carthage, North Carolina 28327.

Town of Pinebluff

Maps available for inspection at the Pinebluff Zoning Department, 325 East Baltimore Avenue, Pinebluff, North Carolina.
Send comments to The Honorable Earlene Lamb, Mayor of the Town of Pinebluff, P.O. Box 367, 325 East Baltimore Avenue, Pinebluff, North Carolina 28373.

Village of Pinehurst

Maps available for inspection at the Pinehurst Planning Department, 395 Magnolia Road, Pinehurst, North Carolina.
Send comments to Mr. Andrew Wilkinson, Pinehurst Village Manager, P.O. Box 5589, 395 Magnolia Road, Pinehurst, North Carolina 28374.

Town of Southern Pines

Maps available for inspection at the Southern Pines Planning Department, 180 Southwest Broad Street, Southern Pines, North Carolina.
Send comments to the Honorable Frank Quis, Mayor of the Town of Southern Pines, 125 Southeast Broad Street, Southern Pines, North Carolina 28387.

SOUTH CAROLINA
(City of Goose Creek, City of Hanahan, and the unincorporated areas of Berkeley County)

Lake Marion	Entire shoreline within Berkeley County	None	*77	Berkeley County (Unincorporated Areas).
Atlantic Ocean (Wambaw Creek).	From confluence with South Santee River to Forest Road 204.	None	*8	Berkeley County (Unincorporated Areas).
Atlantic Ocean (South Santee River).	From confluence with Wambaw Creek to confluence with Santee River.	None	*9	Berkeley county (Unincorporated Areas).
Atlantic Ocean (Santee River).	At confluence of South Santee River	None	*9	Berkeley County (Unincorporated Areas).
	Approximately 8.1 miles upstream of confluence of South Santee River.	None	*8	
Atlantic Ocean (Clouter Creek).	At the confluence of Cooper River and Clouter Creek	*14	*16	Berkeley County (Unincorporated Areas).
	Approximately 500 feet east of Cooper River Levee along Mark Clark Expressway (I–526).	None	*12	
Wando River	Approximately 1,000 feet northeast of intersection of Bluffview Lane and Cainboy Village Road.	None	*11	Berkeley County (Unincorporated Areas).
	Approximately 650 feet southeast of intersection of Ashmont Drive and Jamesbury Road.	*11	*9	
Beresford Creek	Approximately 1,000 feet south of intersection of Legrand Boulevard and Clements Ferry Road.	*10	*12	Berkeley County (Unincorporated Areas).
	Approximately 0.871 mile southeast of intersection of Greenan Court and Clemens Ferry Road.	*11	*14	
Atlantic Ocean (Goose Creek).	Approximately 1,000 feet north of intersection of Yeamanshall Road and North Rhett Avenue.	None	*11	City of Hanahan, City of Goose Creek.
	Approximately 4,500 feet south of intersection of Wilkinson Way and Torpedo Road.	None	*13	
Atlantic Ocean (Cooper River).	Approximately 1 mile east of intersection of Missile Haul Road and Bushy Park Road.	None	*13	City of Goose Creek.
	Approximately 1,000 feet south of intersection of Wilkinson Way and Red Bank Road.	None	*12	
Back River	At confluence of Cooper River	None	*13	City of Goose Creek.
	Approximately 1 mile downstream of confluence of Chicken Creek.	None	*7	
Foster Creek	At confluence with Back River	None	*7	City of Goose Creek.
	Approximately 0.5 mile downstream of Pearl Street	None	*11	

ADDRESSES

Berkeley County (Unincorporated Areas)

Maps available for inspection at the Berkeley County Office Building, 223 North Live Oak Drive, Moncks Corner, South Carolina.
Send comments to Mr. Jim Rozier, Berkeley County Supervisor, 223 North Live Oak Drive, Moncks Corner, South Carolina 29461–2331.

City of Goose Creek

Maps available for inspection at the Goose Creek City Hall, 519 North Goose Boulevard, Goose Creek, South Carolina.
Send comments to The Honorable Michael J. Heitzler, Mayor of the City of Goose Creek, P.O. Drawer 1768, South Carolina 29445.

City of Hanahan

Maps available for inspection at the Hanahan City Administration Building, 1255 Yeamans Hall Road, Hanahan, South Carolina.
Send comments to Mr. Dennis Pieper, City of Hanahan Manager, 1255 Yeamans Hall Road, South Carolina 29406–2744.

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

TENNESSEE
Carter County (Unincorporated Areas)

Doe River	Approximately 1,150 feet downstream of U.S. Highway 19E.	None	*2,496	Carter County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Julian Road	None	*2,663	
Doe River Overland Flow	Approximately 175 feet upstream of the confluence with Doe River.	*2,569	*2,568	Carter County (Unincorporated Areas).
	At divergence with Doe River	*2,587	*2,585	
Buck Creek	At confluence with Shell Creek	None	*2,642	Carter County (Unincorporated Areas).
	Approximately 1,775 feet upstream of Buck Creek Road.	None	*2,692	
Hampton Creek	At confluence with Doe River	*2,598	*2,597	Carter County (Unincorporated Areas).
	Approximately 2 miles upstream of confluence with Doe River.	None	*2,825	
Shell Creek	At confluence with Doe River	*2,577	*2,576	Carter County (Unincorporated Areas).
	Approximately 140 feet upstream of Ellis Hollow Road	None	*2,780	

ADDRESSES

Carter County (Unincorporated Areas)

Maps available for inspection at the Carter County Courthouse, 801 Elk Avenue, Elizabethton, Tennessee.
Send comments to Mr. Truman Clark, Carter County Executive, Carter County Courthouse, 801 Elk Avenue, Elizabethton, Tennessee 37643.

VIRGINIA
Shenandoah County and Incorporated Areas

North Fork Shenandoah River.	At the downstream county boundary	None	*517	Shenandoah County (Unincorporated Areas), Town of Strasburg, Town of Mount Jackson, Town of New Market.
	Approximately 4,000 feet upstream of State Route 953	None	*952	
Spring Hollow	At the confluence with North Fork Shenandoah River	None	*676	Shenandoah County (Unincorporated Areas), Town of Woodstock.
	Approximately 1,500 feet upstream of State Route 763	None	*930	
Stony Creek	At the confluence with North Fork Shenandoah River	None	*781	Shenandoah County (Unincorporated Areas), Town of Edinburg.
	Approximately 400 feet downstream of State Route 760.	*780	*781	

ADDRESSES

Shenandoah County (Unincorporated Areas)

Maps available for inspection at the Shenandoah County Planning and Zoning Department, 600 North Main Street, Suite 107, Woodstock, Virginia.
Send comments to Mr. Vincent Poling, Shenandoah County Administrator, 600 North Main Street, Suite 102, Woodstock, Virginia 22664.

Town of Edinburg

Maps available for inspection at the Edinburg Town Office, 101 Town Hall Avenue, Edinburg, Virginia.
Send comments to The Honorable Daniel J. Harshman, Mayor of the Town of Edinburg, P.O. Box 85, Edinburg, Virginia 22824.

Town of Mount Jackson

Maps available for inspection at the Mount Jackson Town Hall, 5945 Main Street, Mount Jackson, Virginia.
Send comments to The Honorable Joseph Williams, Mayor of the Town of Mount Jackson, P.O. Box 487, Mount Jackson, Virginia 22842.

Town of New Market

Maps available for inspection at the New Market Town Office, 9418 John Sevier Road, New Market, Virginia.
Send comments to The Honorable Ripley Click, Mayor of the Town of New Market, 217 Shenvalee Drive, New Market, Virginia 22844.

Town of Strasburg

Maps available for inspection at the Strasburg Town Office, 174 East King Street, Strasburg, Virginia.
Send comments to The Honorable Richard Orndorff, Jr., Mayor of the Town of Strasburg, P.O. Box 351, Strasburg, Virginia 22657.

Town of Toms Brook

Maps available for inspection at the Toms Brook Town Office, 3356 South Main Street, Toms Brook, Virginia.
Send comments to The Honorable Philip Fauber, Mayor of the Town of Toms Brook, Town Hall, P.O. Box 162, 3356 South Main Street, Toms Brook, Virginia 22660.

Town of Woodstock

Maps available for inspection at the Woodstock Municipal Building, 135 North Main Street, Woodstock, Virginia.

Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

Send comments to The Honorable William C. Moyers, Mayor of the Town of Woodstock, Municipal Building, 135 North Main Street, Woodstock, Virginia 22664.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: September 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–25962 Filed 10–10–02; 8:45 am]

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Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number LS–02–13]

Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Authority of the Agricultural Marketing Act of 1946

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) amended the Agricultural Marketing Act of 1946 to require the Department of Agriculture's Agricultural Marketing Service (AMS) to issue country of origin labeling guidelines for voluntary use by retailers who wish to notify their customers of the country of origin of beef (including veal), lamb, pork, fish, perishable agricultural commodities, and peanuts. The guidelines contained within this notice include definitions that can be used by retailers and their suppliers and understood by other market participants, to facilitate the voluntary labeling or identification of commodities covered by this program by their respective country of origin. These voluntary guidelines also outline what the Agency believes represents the framework of a consumer notification, product marking, and recordkeeping program that would be required to carry out this program. AMS is committed to providing the industry and consumers with a workable voluntary program that will carry out the intent of the law. Public Law 107–171 also requires the Secretary to promulgate a regulation for mandatory labeling by September 30, 2004. Development of this mandatory regulation will begin in April 2003 and will likely be based on these voluntary guidelines from the current interim period as well as related input the Agency receives. AMS encourages submissions on the utility of these voluntary guidelines during the next 180 days. The forthcoming mandatory regulation will be developed through the rulemaking process, which will include a proposal and an opportunity for public comment. Although the benefits and costs of the voluntary program are difficult to quantify, the Agency believes that retailers will choose to participate if the benefits outweigh the costs. However, as the Agency moves toward the development of the regulation that will implement the mandatory program as required by Public Law 107–171, information concerning the benefits and the estimated or actual costs of implementing a program in compliance with the voluntary guidelines will be of great benefit to the Agency.

DATES: These voluntary guidelines are effective October 11, 2002. Submissions must be received by April 9, 2003.

ADDRESSES: Send written submissions to: Country of Origin Labeling Program, Agricultural Marketing Service, USDA, Stop 0249, Room 2092–S, 1400 Independence Avenue, SW, Washington, D.C. 20250–0249, or by fax to (202) 720–3499, or by e-mail to *cool@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Eric Forman, Associate Deputy Administrator, Fruit and Vegetable Programs, AMS, USDA, by phone at: (202) 690–0262, or via e-mail at: *eric.forman@usda.gov*; or William Sessions, Associate Deputy Administrator, Livestock and Seed Program, AMS, USDA, by phone at: (202) 720–5705, or via e-mail at: *william.sessions@usda.gov*. Additional information may also be obtained over the Agency's website at: *www.ams.usda.gov/cool/*.

SUPPLEMENTARY INFORMATION:

Background

Section 10816 of Public Law 107–171 (7 U.S.C. 1638–1638d) amends the Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. 1621 *et seq.*) to require retailers to inform consumers of the country of origin for covered commodities. The term "covered commodity" is defined in the law as muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities (fresh and frozen fruits and vegetables); and peanuts. The terms "retailers" and "perishable agricultural commodities" are defined in the law as in the Perishable Agricultural Commodities Act of 1930 (PACA) (7 U.S.C. 499a(b)).

Interest has been expressed in expanding these covered commodities to include other commodities, such as pecans. The Department of Agriculture (USDA), however, does not have the authority to include commodities in this program other than those specified in the statute. For agricultural commodities that cannot be covered under these guidelines, the Department has different authority to develop voluntary user-fee programs to certify that a non-covered commodity is a product of the United States. Under such a program, a participating handler or processor could label its product as a USDA certified product of the United States. Any person interested in such a program should contact the Agricultural Marketing Service (AMS).

In the case of beef, lamb, and pork products, the law states that a retailer may use a "United States Country of Origin" label only if the product is from an animal that was exclusively born, raised, and slaughtered in the United States. However, in the case of beef, this definition also includes cattle exclusively born and raised in Alaska or Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States. In the case of farm-raised fish and shellfish, the product must be fish or shellfish hatched, raised, harvested, and processed in the United States. For wild fish and shellfish, it must either be harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel. In addition, the label must distinguish between farm-raised and wild fish products. In the case of peanuts and perishable agricultural commodities, they must be exclusively produced in the United States to carry that label.

To convey country of origin information to consumers, the law states that retailers may use a label, stamp, mark, placard, or other clear and visible sign on the covered commodity, or on the package, display, holding unit, or bin containing the commodity at the

final point of consumption. Food-service establishments—such as restaurants, bars, food stands, and similar facilities—are exempt.

The law makes reference to the definition of "retailer" in the PACA as the meaning of "retailer" for the application of country of origin labeling requirements. Under the PACA, a "retailer" is any person who buys or sells perishable agricultural products solely for sale at retail with a cumulative invoice value in any calendar year of more than $230,000. This definition excludes butcher shops, fish markets, and small grocery stores that either purchase fruit and vegetables at a level below this dollar volume threshold or do not purchase fruit and vegetables at all.

The law directs the Secretary to first issue guidelines for voluntary labeling and then, by September 30, 2004, to promulgate requirements for mandatory labeling. When the mandatory labeling program takes effect, the law states that the Secretary may require any person who prepares, stores, handles, or distributes a covered commodity for retail sale to maintain a verifiable recordkeeping audit trail. According to the law, under the mandatory labeling program, suppliers are required to provide information to retailers indicating the country of origin of the covered commodity. Although the law states that the Secretary shall not use a mandatory identification system to verify country of origin under the mandatory labeling program, it does state that the Secretary may use, as a model, identity verification programs already in place. The law also provides enforcement procedures for the mandatory labeling program that includes fines, civil penalties, and cease and desist orders for retailers, packers, or other persons for willful violations.

Key Components of the Law

These voluntary guidelines describe a program that allows retailers, as defined by the law, to label covered commodities by their country of origin. It is important to note that industry is not required to participate in this voluntary labeling program that will be in effect until a mandatory program is implemented. However, for those retailers and other market participants who choose to adopt these voluntary guidelines, all of the requirements contained within must be followed. It also is important to note that retailers and other market participants can place country of origin information on labels independent of these voluntary guidelines, provided that current labeling laws are followed.

Defining a Covered Commodity

Covered commodities are muscle cuts of beef, lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish; wild fish; perishable agricultural commodities; and peanuts.

Ingredient in a Processed Food Item

The law excludes food items from country of origin labeling when a covered commodity is an "ingredient in a processed food item." However, Public Law 107–171 does not define a "processed food item." Therefore, the Agency must define what constitutes a "processed food item" for each covered commodity in the context of Public Law 107–171 for the purposes of these guidelines.

In developing the definition of "processed food item", the Agency considered using existing definitions of processing. For example, the National Organic Program defines processing as: cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, extracting, slaughtering, cutting, fermenting, distilling, eviscerating, preserving, dehydrating, freezing, chilling, or otherwise manufacturing and includes the packaging, canning, jarring, or otherwise enclosing food in a container. While this definition was useful as a starting point, the Agency believes that such a definition would exempt commodities that Congress clearly intended to be subject to these guidelines. For example, with the coverage of muscle products of beef, lamb, and pork, Congress clearly intended that the slaughtering, cutting, and chilling of these commodities would not exempt them from the guidelines.

The Agency considered defining this exemption to exclude any "ingredient" listed on an ingredient label. Such an interpretation, however, would exclude many products that Congress intended to be covered by this statute. For example, if such an interpretation would be adopted, an item such as bagged lettuce, which lists only lettuce on the ingredients statement, could be excluded. The Agency believes that the mere listing of an otherwise covered commodity in an ingredient statement or list on a packaged covered commodity does not meet the threshold set forth in the law.

To determine when a covered commodity is an ingredient in a processed food item and excluded from these guidelines, the Agency has chosen to define a "processed food item" in two ways. First, a processed food item is defined as a combination of ingredients that result in a product with an identity that is different from that of the covered commodity. Such items include raw salmon when combined with other ingredients to produce sushi and peanuts when combined with other ingredients to produce a candy bar. However, blended and mixed covered commodities, which will be discussed in more detail later in this notice, where the covered commodities retain their identity are still covered by these guidelines. Such items include mixed vegetables such as peas and carrots.

Second, a commodity that is materially changed to the point that its character is substantially different from that of the covered commodity is also deemed to be a processed food item. This includes, but is not limited to, changes that occur as a result of cooking, curing, or restructuring. However, covered commodities that retain their identity when combined with other ingredients, such as water enhanced case ready steaks, are not considered to be "processed food items" under these guidelines. To the extent that this applies to specific covered commodities, further guidance is provided under the particular section for each category of covered commodity.

Whole Muscle Beef, Lamb, and Pork

All raw fresh and frozen whole muscle beef, lamb, and pork products are covered under these guidelines unless they are an ingredient in a processed food item or have been materially changed before retail marketing.

Where there are added ingredients, so long as the character of the whole muscle beef, lamb or pork is retained, the resulting products are covered. This includes such products as needle-tenderized steaks; seasoned, vacuum packaged pork loins; and water enhanced case ready steaks, chops and roasts. These items would be covered because combination of the ingredients and the whole muscle beef, lamb, or pork in does not result in a product with an identity that is different from that of the covered commodity.

In situations where the whole muscle beef, lamb, and pork is an ingredient in a processed food item and the identity of the processed food item is significantly different from that of the covered commodity, the processed food item is excluded from country of origin labeling. For example, items such as ready-to-cook Beef Wellington would be exempt because the combination of ingredients with the covered commodity (muscle cut of beef) creates a product with an identity different from the covered commodity.

When items are materially changed to the point that they do not retain their raw, whole muscle character they would also be excluded from country of origin labeling. This includes such products as restructured steaks and lamb pita meats, which contain pieces of whole muscle beef, pork or lamb that are formed back together. The cooking and curing of products (*e.g.*, the addition of nitrites) also excludes products from labeling. Examples of these products include corned beef briskets and bacon. This is because cooked and cured products, including raw whole muscle cured products, are functionally different products and are not typically marketed with fresh and frozen whole muscle meats at a retail establishment, but instead they are marketed with other excluded meat products.

Ground Beef, Lamb, and Pork

Public Law 107–171 specifically covers "ground beef, ground lamb, and ground pork." The FSIS Food Standards and Labeling Policy Book (1998) defines products labeled as ground meats as not containing added water, cereal, soy derivatives, or other extenders. The Policy Book also specifically defines ground beef as not being able to have any salt, sweetening agents, flavorings, spices, or other seasonings added.

Using the FSIS standards for ground meat and ground beef as a guide, the Agency does not believe that any added ingredient items or further processed products produced from ground beef, ground lamb, or ground pork are covered.

Fresh and Frozen Fruits and Vegetables

The Perishable Agricultural Commodities Act defines perishable agricultural commodities as "any of the following, whether or not frozen or packed in ice: Fresh fruits and vegetables of every kind and character; and * * * includes cherries in brine as defined by the Secretary in accordance with trade usages". Therefore, frozen fruits and vegetables (*e.g.*, a package of frozen strawberries, or frozen French fried potatoes made from sliced potatoes) are covered commodities and fall under these country of origin labeling guidelines.

To maintain consistency with PACA, a frozen fruit or vegetable will be a covered commodity so long as its "kind or character" has not been altered. Therefore, for all perishable agricultural commodities, an "ingredient in a processed food item" is defined to mean an otherwise covered commodity that is a constituent in a food item where the identity of the food item is different from that of the covered commodity (*e.g.*, a frozen prepared pie that includes frozen sliced apples) or is included in a package with significant other foods (*e.g.*, a frozen entree consisting of a pre-cooked meat item and frozen vegetables). Alternatively, when a perishable agricultural commodity is processed (*i.e.*, frozen so as to remain subject to the PACA) and packaged with only preservatives, seasoning, sweeteners or other minor ingredients, the covered commodity would fall under these voluntary country of origin labeling guidelines.

Peanuts

Because the vast majority of peanuts sold at retail are shelled, roasted, and salted, the Agency believes these products were intended to be covered by the law. Accordingly, shelling, roasting, salting, and flavoring of peanuts would not exclude these products from being subject to Public Law 107–171. However, further processed peanut products, including such items as candy coated peanuts, peanut brittle, and peanut butter would not be covered by country of origin labeling guidelines. Similarly, where the peanuts are ingredients in other food products, such as peanuts in a candy bar, they would be excluded.

Wild and Farm-Raised Fish and Shellfish

All fresh and frozen fish and shellfish items are covered by these country of origin labeling guidelines. All cooked and canned fish products, including such items as canned tuna and canned sardines, and restructured fish products, such as fish sticks and surimi, are excluded. Similarly, processed products where the fish or shellfish is an ingredient, such items as sushi, crab salad, and clam chowder, are excluded.

Labeling Country of Origin for Products Produced Exclusively in the United States

If following these guidelines, a retailer shall label a covered commodity as having a "United States Country of Origin" only if the following criteria are met:

1. Beef: Covered commodities must be derived exclusively from animals born, raised, and slaughtered in the United States (including animals that were born and raised in Alaska or Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States).

2. Lamb and Pork: Covered commodities must be derived exclusively from animals born, raised, and slaughtered in the United States.

3. Farm-raised Fish and Shellfish: Covered commodities must be derived exclusively from fish or shellfish hatched, harvested, and processed in the United States.

4. Wild Fish and Shellfish: Covered commodities must be derived exclusively from fish or shellfish either harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel.

5. Fresh and Frozen Fruits and Vegetables, and Peanuts: Covered commodities must be derived exclusively from produce or peanuts grown, packed and, if applicable, processed in the United States.

Product otherwise meeting the requirements of "United States Country of Origin" may retain that designation after export for further processing in a foreign country and reentry into the United States for retail sale so long as a verifiable recordkeeping audit trail is maintained and such labeling is consistent with other Federal labeling requirements.

Labeling Country of Origin for Imported Products (*i.e.*, Produced Entirely Outside of the United States)

Currently, Federal law—the Tariff Act of 1930 as amended (19 U.S.C. 1304), the Federal Meat Inspection Act, the Poultry Products Inspection Act as amended (21 U.S.C. 451 *et seq.*), and other legislation requires most imports, including food items, to bear labels informing the "ultimate purchaser" of their country of origin. Ultimate purchaser has been defined as the last U.S. person who will receive the article in the form in which it was imported. Containers (*e.g.*, cartons and boxes) holding imported fresh fruits and vegetables, for example, must be labeled with country of origin information when entering the United States. (**Note:** The PACA requires all labels on subject commodities to be accurate, but requires no specific labeling information.) Consumer-ready packages, including food products (*e.g.*, a vacuum packaged imported lamb leg, a bundle of asparagus, or a package of frozen strawberries), although they are packed in a box, currently must have country of origin labels on each consumer-ready package. In contrast, a retailer may take loose produce out of a container and display it in an open bin, selling each individual piece of produce that has not been labeled. A placard or other label indicating country of origin is not currently required. If the article is destined for a U.S. processor or manufacturer where it will undergo "substantial transformation," that

processor or manufacturer is considered the ultimate purchaser. As a result, meat and other items have not been required to carry a country of origin mark after cutting or processing in the United States and may presently be labeled product of the United States.

Under these guidelines, the country of origin for products produced entirely outside of the United States shall be the country as specified by the requirements of existing Federal laws at the time the product arrives at the U.S. port of entry. For example, an imported lamb carcass may have actually resulted from an animal slaughtered in the exporting country but born in a country other than the exporting country. However, for the purposes of these labeling guidelines, the imported lamb carcass may be labeled as the product of the exporting country.

Using this country of origin information for imported products, retailers (and their suppliers) will have to maintain the country of origin identity of this class of products to the final point of sale of a covered commodity. So, for the imported lamb carcass example above, under these guidelines if the carcass is fabricated into cuts in the United States, a resulting lamb loin marketed at retail would be marked as product of the exporting nation as it is not eligible for a United States origin claim.

Labeling Country of Origin When the Product Has Entered the United States During the Production Process (*i.e.*, Mixed Origin That Includes the United States)

The law explicitly defines the requirements for covered commodities to be labeled with a "United States Country of Origin." However, the law is considerably less prescriptive for products produced completely or in part outside of the United States. In these cases, the law only requires that retailers inform consumers at the point of sale of a covered commodity of the country of origin.

A number of animals born in foreign countries are raised and slaughtered in the United States. Also, some animals born in the U.S. are raised in foreign countries and then may be slaughtered in either that foreign country or returned to the United States for slaughter. As all three criteria (*i.e.*, born, raised, slaughtered for beef, lamb, and pork) are needed for product to be considered "United States Country of Origin," the Agency has to define how the products from mixed origin animals should most appropriately be labeled. Similarly, the law states that peanuts and perishable agricultural commodities must be "produced" in the United States to be labeled "United States Country of Origin." Since many such products may be grown, packed, or processed in different countries, the Agency must determine how they should be labeled.

The Agency recognizes that the definition provided in the law does not allow products that were produced in both the United States and in a foreign country to be called "United States Country of Origin" or even "Product of the United States and Country X." However, the Agency also recognizes that products such as pork products derived from a pig that was born in a foreign country (*e.g.*, Country X), raised, and slaughtered in the United States cannot be labeled as "Product of Country X" as much of the production of that animal was in the United States. Accordingly, these guidelines provide a system where such products that were produced in both foreign markets and in the United States would be labeled to identify what production processes occurred in a foreign market and what production processes occurred in the United States, up to the point that the country of origin definition was determined. For the pork example above, the product label could either read, "From Country X hogs Raised and Slaughtered in the United States," or alternatively, "Born in Country X, Raised and Slaughtered in the United States." A different example would be vegetables grown in the United States, frozen (processed) in a foreign country, and imported back into the United States for retail sale. This product could be labeled as, "Grown in the United States, Processed in Country X."

The Agency is aware that in some cases, a covered commodity will undergo production processes in two or more foreign countries prior to entering the United States for additional processing or a final process such as slaughter. In these cases, verifiable product information will not always be available for all points in the production process (*i.e.*, born, raised, or grown and packed) prior to the port of entry. In these cases, the product label will designate the country of origin as specified by existing Federal laws (*e.g.*, requirements of the U.S. Customs Service) at the time the product arrives at the U.S. port of entry and any additional major processes (*e.g.*, slaughter for beef or processing for peanuts) performed in the United States be listed on the product label. For example, if a calf was born in Country X and raised in Country Y before being imported for slaughter in the United States, an acceptable product label under these guidelines for the covered commodities derived from this animal would be: "From Cattle Imported from Country Y, Slaughtered in the United States." However, alternatively, if all of the production process information is known for the product that occurred in both Country X and Country Y, it may be included on the product label. So, for the previous example, a label of, "Born in Country X, Raised in Country Y, and Slaughtered in the United States" would be acceptable under these guidelines if a verifiable recordkeeping trail was available, but it would not be required since two or more countries (prior to the product entering the United States) are involved.

The Agency believes this level of detail is required under the statute and will be consistent with the law's purpose of providing meaningful information to consumers. However, the Agency does have concerns that requiring meat products to carry labels that refer to the slaughtering of livestock could be viewed negatively by consumers. As a result, the Agency will allow the term "Processed" to be used in lieu of the term "Slaughtered" on meat products.

Defining Country of Origin for Blended or Mixed Products

The law requires the Agency to formulate guidelines for country of origin labeling for ground beef (and to a lesser extent ground lamb and pork), mixed fruit and vegetables, and blended seafood products that are covered commodities. For the purposes of these labeling provisions, blended or mixed products are those that contain one or more covered commodities from one or more countries. The Agency recognizes that these items are often a mixture of raw materials that are derived from covered commodities produced both in the United States and in countries outside of the United States. Each of the raw material sources for mixed or blended items would have a country of origin as defined by these guidelines.

In addition, the Agency recognizes that it could be misleading to consumers if only a small percentage of a mixture of a covered commodity met the definition of United States origin and yet the mixture could list the United States first ahead of other countries in a country of origin declaration on the package. Therefore, under these guidelines the applicable country of origin labeling for each raw material source (as defined in the guidelines) must be reflected in the labeling of the mixed or blended retail item by order of prominence by weight. This being the case, ground beef would be labeled with the applicable country of origin information as required by the guidelines for each raw material source in descending order of prominence by weight.

For example, the label "From Country X Cattle Slaughtered in the United States; Product of Country Y; and United States Product" could be the label on a package of ground beef for a mixture of three beef raw material sources where the most substantial raw material source was from cattle born and raised in Country X and slaughtered in the United States, followed by imported Country Y beef trimmings, and then followed by trimmings from beef completely of United States origin. Likewise, the labeling for a bag of shrimp tails containing shrimp that were sourced from multiple countries must, under these guidelines, specify the country of origin of each of the sources of the shrimp in order of their prominence by weight for those shrimp tails in the bag. It is important to note that these guidelines do not require the label to list the actual percentage of weight for each constituent ingredient (*e.g.*, 50 percent United States, 40 percent Country X, 10 percent Country Y).

In the case of mixed or blended products where the individual constituents can be separately identified, the guidelines would require the container to be labeled to individually identify the country of origin of each constituent. An example of a mixed or blended product where the individual constituents can be separately identified is a bagged salad. For a bagged salad that contains lettuce, spinach, and peppers from three different countries, the package label would list the applicable country of origin separately for each constituent ingredient.

Method of Notification

The law states that country of origin notification may be provided to consumers by means of a label, stamp, mark, placard, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers. However, it is important to note that this requirement does not supercede any existing labeling requirements and any such country of origin notification must not obscure other labeling information required by existing regulatory requirements.

The guidelines allow market participants to utilize a variety of different labeling nomenclatures to denote the country of origin of a covered commodity. For example, "U.K." and "United Kingdom of Great Britain and Northern Ireland" are both allowed under the guidelines. Similarly, covered commodities meeting the guidelines for a "United States Country of Origin" may be labeled by any commonly understood designations such as:

1. Country of Origin—United States;
2. Product of the United States;
3. Produced in the United States; or
4. Product of USA.

The Agency kept this portion of the guidelines non-prescriptive to provide the industry with the most flexibility in implementing the program in the least costly manner possible.

State and Regional Labeling Programs

Under this voluntary program, the law states that retailers notify consumers of the country of origin of covered commodities. The Agency has determined that State and regional labeling programs, such as "Washington Apples," "Idaho Potatoes," and "California Grown" do not meet this requirement. Therefore, such State and regional labeling claims cannot be accepted in lieu of country of origin labeling.

Remotely Purchased Products

For sales of a covered commodity where the customer purchases a covered commodity prior to having an opportunity to observe the final package (*e.g.*, Internet sales, home delivery sales, *etc.*), the retailer, as defined by these guidelines, shall provide the country of origin information on the sales vehicle (*i.e.*, Internet site, home delivery catalog, *etc.*) as part of the information describing the covered commodity being offered for sale. This is because of the Agency's belief that consumers must be made aware of the country of origin of the covered commodity before the purchase is made.

Verification and Enforcement of Country of Origin Labeling Claims Under the Voluntary Program

A distinction was made by Congress when constructing the legislation authorizing this program between the voluntary labeling program and the mandatory labeling program. During the voluntary labeling timeframe covered by these guidelines, the Agency will not perform compliance visits pursuant to Public Law 107–171 and has no authority under the law to pursue enforcement action against entities participating in this voluntary program. However, it is important to note that when retailers and their suppliers choose to adopt the guidelines that all of the provisions contained within must be followed. Any reference by retailers and their suppliers to the use of these guidelines when certain provisions are not being met could be considered a labeling claim that is not truthful and therefore may be a violation of the PACA and other applicable labeling laws and subject to enforcement under these laws.

The law contains several provisions for the verification of country of origin claims. The law states that, "The Secretary may require that any person that * * * distributes a covered commodity for retail sale maintain a verifiable record keeping audit trail * * * to verify compliance * * *" However, the law also sets forth that, "The Secretary shall not use a mandatory identification system to verify the country of origin of a covered commodity." To have a meaningful program, retailers and their down-line suppliers will have to maintain a verifiable audit trail on covered commodities to substantiate country of origin labeling claims. The law states that, "To certify the country of origin of a covered commodity, the Secretary may use as a model certification programs in existence on the date of enactment of this Act." The Agency encourages all retailers who voluntarily choose to adopt these guidelines to contact the Agency to gain a better understanding of the various verification programs operated by the Agency that are already in place in certain market segments that would meet the requirements of this program.

Verification and Enforcement of Country of Origin Labeling Claims Under the Mandatory Program

Enforcement of the country of origin labeling provisions of Public Law 107–171 relative to the frequency and extent of surveillance activities, complaint response, retailer and violation tracking, and public disclosure of information obtained by the Agency are all areas that will be addressed in the mandatory program. Accordingly, the Agency will not perform surveillance activities, investigate complaints, prosecute violations, or otherwise enforce the voluntary guidelines (except as might normally occur under other program authorities). However, as a preparatory measure, retailers and others may request that the Agency perform advisory audits on a user-fee basis to receive feedback on their application of the voluntary system.

Retention of Records

These guidelines require a two-year records retention policy. This timeframe was chosen because it is consistent with

the current records retention requirements of the PACA, which govern these same retailers.

Economic Implications

Though the benefits and costs of the voluntary program are difficult to quantify, the Agency believes that retailers will only choose to participate if the benefits outweigh the costs. As the Agency moves toward the development of a regulation to implement the mandatory program as required by Public Law 107–171, information concerning the benefits and the estimated or actual costs of implementing a program in compliance with the voluntary guidelines will be of great benefit to the Agency. The Agency is aware that studies have been conducted by USDA's Food Safety and Inspection Service (FSIS) and the United States General Accounting Office regarding implications of country of origin labeling and will use this information accordingly.

Labeling of Covered Commodities Marketed to Others Besides Retailers

It is important to note that these guidelines do not apply to covered commodities marketed to others besides retailers, as defined in the law. This includes covered commodities sold to such businesses as food service establishments, butcher shops, and foreign outlets. So, for example, boxed whole muscle beef cuts sold to an importer in Japan would be labeled as they currently are labeled under existing regulations.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Agency has requested emergency approval from the Office of Management and Budget for the information collection burden imposed by this program.

The Guidelines

These guidelines include definitions that can be used by retailers and their suppliers and understood by other market participants, to facilitate the labeling or identification of commodities covered by this program by their respective country of origin. These guidelines also outline what the Agency believes represents the framework of a consumer notification, product marking, and recordkeeping program that would be required to carry out this program.

Voluntary Country of Origin Labeling Guidelines

Definitions

Unless otherwise defined, the following terms should be construed as follows:

"Act" means the Agricultural Marketing Act of 1946, (7 U.S.C. 1621 *et seq.*).

"Agency" means the Agricultural Marketing Service, United States Department of Agriculture.

"Beef" means meat produced from cattle, including veal.

"Consumer package" means any container or wrapping in which any covered commodity is enclosed for use in the delivery or display of such commodity to retail purchasers.

"Covered commodity" means fresh or frozen muscle cuts of beef (including veal), lamb, and pork, ground beef, lamb, and pork, as well as farm-raised fish, wild fish, and shellfish (including steaks, nuggets, any other flesh from farmed raised fish and shellfish), perishable agricultural commodities as defined in the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)), and peanuts. Covered commodities are excluded from these guidelines if the commodity is an ingredient in a processed food item.

"Department" means the United States Department of Agriculture.

"Farm-raised fish" means net-pen aquaculture or other farm-raised fish or shellfish; and fillets, steaks, nuggets, and any other flesh from a farm-raised fish or shellfish.

"Food service establishment" means a restaurant, cafeteria, lunchroom, food stand, saloon, tavern, bar, lounge, or other similar facility operated as an enterprise engaged in the business of selling food to the public. Food service establishments include salad bars, delicatessens, and other prepared food enterprises that provide ready-to-eat foods that are consumed either on or outside of the retailer's premises.

"Ground beef" means ground beef of skeletal origin produced in conformance with all applicable Food Safety and Inspection Service labeling guidelines. This product contains no added ingredients.

"Ground lamb" means ground lamb of skeletal origin produced in conformance with all applicable Food Safety and Inspection Service labeling guidelines. This product contains no added ingredients.

"Ground pork" means ground pork of skeletal origin produced in conformance with all applicable Food Safety and Inspection Service labeling guidelines. This product contains no added ingredients.

"Ingredient" means the component, either in part or in full, of a finished food product.

"Lamb" means meat, other than mutton, produced from sheep.

"Legibly" means English language text that can be easily read.

"Material change" means altered prior to retail to the extent that the product does not meet the definition of covered commodity. To be considered "materially changed," changes to a commodity must be of such magnitude that its character is substantially different from that of the covered commodity. Specifically, for the following:

1. Whole muscle beef, lamb, and pork: Altered to the point that its character is no longer that of the covered commodity; such as through restructuring, cooking, and curing. Examples include ham, raw corned beef brisket, and restructured beef steaks.

2. Ground beef, lamb, and pork: The addition of any ingredients or cooking. Examples include ground beef with vegetable protein, cooked ground beef crumbles, bratwurst, fresh pork sausage, and lamb sausage.

3. Fresh and frozen fruits and vegetables: Altered to the point that its character is no longer that of the covered commodity. Examples include orange and other fruit juices.

4. Peanuts: Altered to the point that its character is no longer that of the covered commodity. An example is peanut butter.

5. Wild fish and farm-raised fish: Altered to the point that its character is no longer that of the covered commodity. Includes the cooking and canning of fish and shellfish. Examples include canned tuna and canned sardines as well as surimi and restructured fish sticks.

"Perishable agricultural commodity" means fresh and frozen fruits and vegetables of every kind and character where the original character has not been changed (for example, frozen green beans would be included, but frozen concentrated orange juice would be excluded) and includes cherries in brine as defined by the Secretary in accordance with trade usages.

"Person" means any individual, partnership, corporation, association, or other legal entity.

" Pork" means meat produced from hogs.

"Processed food item" means either:

1. A combination of ingredients that may include a covered commodity but the identity of the processed food item is different from that of the covered commodity; or

2. A covered commodity that has undergone a material change.

"Produced in any country other than the United States" means born, raised, slaughtered, grown, packed, processed, or harvested (as applicable to the covered commodity), outside the fifty U.S states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, the Trust Territories of the Pacific Islands, and the waters of the United States (as defined in these guidelines), or by a vessel not registered in the United States.

"Raised" means, in the case of beef, lamb, and pork, the period of time following weaning until slaughter.

"Retailer" has the meaning given the term in section 1(b) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)), *i.e.*, a person who is a dealer engaged in the business of selling any perishable agricultural commodity solely at retail with an invoice value in any calendar year of more than $230,000.

"Secretary" means the Secretary of Agriculture of the United States or any person to whom the Secretary's authority has been delegated.

"Slaughter" means the point in which a livestock animal (including cattle, swine, and sheep) is prepared into meat products fit for human consumption. For labeling purposes, the term "slaughtered" is interchangeable with the term "processed."

"United States" means the fifty U.S states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, the Trust Territories of the Pacific Islands, and the waters of the United States (as defined in these guidelines).

United States country of origin" means in the case of:

1. Beef: From animals born, raised, and slaughtered in the United States (including animals born and raised in Alaska and Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States).

2. Lamb and pork: From animals born, raised, and slaughtered in the United States.

3. Farm-raised fish: From fish hatched, raised, harvested, and processed in the United States.

4. Wild-fish: From fish either harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel.

5. Fresh and frozen fruits and vegetables, and peanuts: From products produced in the United States.

"U.S. flagged vessel" means a ship or boat registered in the United States or documented under chapter 121 of title 46, United States Code.

"Vessel flag" means the country of registry for a vessel, ship, or boat.

"Waters of the United States" means those fresh and ocean waters contained within the 200-mile boundary of the Exclusive Economic Zone (EEZ) surrounding the United States.

"Wild fish" means fish and shellfish, regardless of origin, harvested in the wild; and fillets, steaks, nuggets, and any other flesh from a wild fish or shellfish.

Country of Origin Notification

In voluntarily providing notice of the country of origin as covered by this statute, the following guidelines shall be followed:

1. Consumer Notification

A. General

I. All covered commodities offered for sale individually, in bulk bins, cartons, crates, barrels, clusters, or consumer packages shall be legibly marked with the country of origin.

II. Country of origin labeling may be applied prior to or after delivery to the United States.

B. Exemptions

I. Food service establishments are exempted from the country of origin guidelines.

C. Exclusions

I. Covered commodities are excluded from country of origin labeling if they are an ingredient in a processed food item. Examples include:

i. Whole muscle beef, lamb, and pork: Ready-to-cook Beef Wellington.

ii. Ground beef, ground lamb, ground pork: A meal kit that includes ground beef and other ingredients.

iii. Fresh and frozen fruit and vegetables: Frozen prepared pie that includes frozen sliced apples.

iv. Peanuts: Peanuts in a candy bar.

v. Wild and farm-raised fish and shellfish: Salmon sushi.

D. Designation of Wild Fish and Farm-Raised Fish

I. The notice of country of origin for wild fish and farm-raised fish shall specify and distinguish between wild fish and farm-raised fish.

E. Labeling Covered Commodities of United States Country of Origin

I. They must fully meet the definition of United States Country of Origin as put forth in the Definitions section of these guidelines.

II. Products further processed or handled in foreign countries after reaching the threshold point in which the country of origin of the covered commodity is determined may still qualify for "United States Country of Origin" under these guidelines if the product's identity is maintained under a verifiable recordkeeping system. Otherwise, such products shall be labeled with the country from which it was exported in conformance with existing Federal laws. An example is a beef carcass meeting the definition of "Product of United States Origin" exported to another country for cutting into steaks. The resulting steaks from this carcass that are imported back into the United States may either be marked as product of "Country X" or, alternatively, if a verifiable recordkeeping system is in place, "Product of United States Origin."

F. Labeling Imported Products

I. Shall be labeled with the country from which it was exported in conformance with existing Federal laws.

II. For covered commodities that undergo different phases of preparation, production or processing in various countries prior to export to the United States, the label may also include additional country of origin information if the product's identity is maintained under a verifiable recordkeeping system. This includes referencing production processes which may have occurred in the United States prior to export to a foreign country and ultimate import back into the United States.

G. Labeling Covered Commodities From Multiple Countries That Include the United States

I. Beef, Lamb, Pork:

i. If an animal was born or raised in a foreign country prior to slaughter in the United States, the resulting meat products shall be labeled to show the processing steps that occurred in a foreign country prior to slaughter in the United States consistent with existing Federal law at the time the animal entered the United States. For example, if a calf is born and raised in a foreign country, and then exported for further raising and slaughtering in the United States, the label could either read, "From Country X" cattle Raised and Slaughtered in the United States," or, alternatively, "Born and Raised in Country X and Raised and Slaughtered in the United States."

ii. If the animal was born or raised in two or more foreign countries prior to slaughter in the United States, the resulting meat products shall be labeled as originating from animals from the

country as determined under existing Federal law at the time they entered the United States and for the process(es) occurring in the United States. For example, a steer born in Country X, exported to Country Y for raising, and then exported to the United States for slaughter could have the label, "From Country Y cattle Slaughtered in the United States." However, such products may instead be labeled to identify each specific country (*e.g.*, "Born in Country X, Raised in Country Y, and Slaughtered in the United States") if the animal's identity was maintained under a verifiable recordkeeping system.

II. Fresh and Frozen Fruits and Vegetables, and Peanuts

i. In the case where a covered commodity was grown and packed in a foreign country prior to processing in the United States, the product shall be labeled with the foreign country where it was grown and/or packed in accordance with existing Federal law at the time when the product entered the United States. For example, the product label could be applied as: "Grown and packed in Country X and Processed in the United States."

ii. In the case where a covered commodity was grown and packed in two or more foreign countries prior to processing in the United States, the product shall be labeled with the foreign country it was grown and/or packed in accordance with existing Federal law at the time when the product entered the United States. For example, product may have been grown in Country X, packed in Country Y, and processed in the United States. When the product entered the United States, under existing Federal law it would be identified as product of Country Y and could carry the label "Product of Country Y, Processed in the United States." However, such products may instead be labeled to identify each specific country and in applicable chronological order by country if the product's identity was maintained under a verifiable recordkeeping system.

III. Wild Fish and Farm-raised Fish: In the case where a covered commodity was harvested in the waters of or by a flagged vessel of one country and processed in another country or onboard a vessel with a different flag, the product label shall be applied as: "Harvested in (Country X, as applicable) and Processed in (Country Y, as applicable)."

H. Blended Products

I. For commingled, blended, or mixed covered commodities offered for retail sale that are prepared from raw materials originating from different countries (*e.g.*, ground beef, salads, or fresh or frozen mixed fruits or vegetables) the label shall indicate the country of origin information of each constituent or component covered commodity raw material source in accordance with these guidelines by order of prominence by weight.

II. The product label shall be applied as: "Produced from covered commodities with the following countries of origin: (Raw material source A, with born, raised, slaughtered, grown, packed, harvested, or processed information as applicable to the commodity as defined by these guidelines), (Raw material source B, with born, raised, slaughtered, grown, packed, harvested, or processed as applicable to the commodity as defined by these guidelines)," and so forth until all covered commodity raw material sources are accounted for by order of prominence by weight.

III. Products made from commingled, blended, or mixed covered commodities where processing has altered the commodity's character (*e.g.*, cooked vegetables in a soup), do not have to be labeled as to the country of origin of the constituent items.

I. Remotely Purchased Products

I. For sales of a covered commodity where the customer purchases a covered commodity prior to having an opportunity to observe the final package (*e.g.*, Internet sales, home delivery sales, *etc.*), the retailer, as defined by these guidelines, shall provide the country of origin information on the sales vehicle (*i.e.*, Internet site, home delivery catalog, *etc.*) as part of the information describing the covered commodity being offered for sale.

2. Markings

A. Country of origin notification markings can either be in the form of a placard, sign, label, sticker, or other format that allows consumers to identify the country of origin of particular covered items. The placard, sign, label, sticker or other display must be placed in a conspicuous location. Country of origin information may be typed, printed, or handwritten. Labels must be written in English; additional accompanying languages are permissible. Country of origin notification shall be written in a form that allows the consumer to read them when selecting items to be purchased.

B. Abbreviations and variant spellings, which unmistakably indicate the country such as: "U.K." for "The United Kingdom of Great Britain and Northern Ireland" and "Brasil" for "Brazil" are acceptable. The adjectival form of the name of a country or region/city within a country may not be used as proper indication of the country of origin of imported commodities. For example, product names such as "Spanish peanuts" which are most commonly used to designate a product variety and not the actual origin of the product, would, without a further designation of country of origin, be unacceptable even if the products did actually originate from that country. Symbols (flags, national symbols, *etc.*) may not be used to denote a country of origin, but may be used in conjunction with an acceptable country of origin label.

C. State or regional labeling programs will not be accepted in lieu of country of origin labeling.

D. The phrases "Product of Country X," and/or "Grown in Country X," and/or "Imported from Country X," can be used to denote the country of origin for products produced entirely in any country other than the United States.

3. Recordkeeping

A. Every person that prepares, stores, handles, or distributes a covered commodity for retail sale must keep records on the country of origin for a period of at least two years.

B. Any person engaged in the business of supplying a covered commodity to a retailer must make available information to the retailer indicating the country of origin of the covered commodity. Such persons, which include but are not limited to, producers, growers, handlers, packers, processors, and importers, must maintain auditable records documenting the origin of covered commodities. Self-certification by such persons is not sufficient.

C. Retailers must ensure that a verifiable audit trail is maintained through contracts or other means, recognizing that suppliers throughout the production/marketing chain have a responsibility to maintain the necessary supporting records.

D. All records must be legible and written in English, and may be maintained in either electronic or hard copy formats. To ensure accurate labeling and provide an auditable document trail, retailers must have records at the place of final sale that identify the country of origin of all covered commodities sold at that facility. In addition, records of any person who prepares, stores, handles, or distributes a covered commodity and/or comprehensive records maintained by the retailer may be located at points of distribution and sale, warehouses, or at central offices. Wherever maintained and in whatever format, these records must be readily accessible to review by the retailer and the Department.

E. Records for domestically produced and/or processed products must clearly identify the location of the growers and production facilities. When similar covered commodities may be present from more than one country or different production regimes, a verifiable segregation plan must be in place. For imported commodities, records must provide clear product tracking from the port of entry into the United States.

F. Recognizing retailers and their suppliers may have different accounting and inventory documentary systems; various forms of documentation will be acceptable provided the necessary tracking information is available.

4. Enforcement

A. The Secretary will not perform surveillance of retailers, investigate complaints, prosecute violations, or otherwise enforce the provisions of the voluntary guidelines.

B. The voluntary guidelines will not interfere with or supercede any other statutory requirement for country of origin labeling for the covered commodities. (*i.e.*, all other Federal and/or state labeling requirements remain in force).

C. As a preparatory measure, retailers and any other person that prepares, stores, handles, or distributes a covered commodity for retail sale may request that the Agency perform advisory audits on a user-fee basis to receive feedback on their application of the voluntary system.

Authority: 7 U.S.C. 1621 *et seq.*

A.J. Yates,

Administrator.

[FR Doc. 02–25734 Filed 10–8–02; 3:00 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Advisory Committee on Beginning Farmers and Ranchers

AGENCY: Farm Service Agency, USDA.

ACTION: Notice requesting nominations.

SUMMARY: The Secretary of Agriculture intends to renew the charter of the Advisory Committee on Beginning Farmers and Ranchers (Committee). The Committee provides advice to the Secretary on ways to encourage Federal and State beginning farmer programs to provide joint financing to beginning farmers and ranchers, and other methods of creating new farming and ranching opportunities. Nominations of persons to serve on the Committee are invited.

DATES: Nominations will be accepted through November 12, 2002, and should be submitted to Mark Falcone, Designated Federal Official (DFO) for the Committee, at the address below.

ADDRESSES: Mark Falcone, DFO for the Advisory Committee on Beginning Farmers and Ranchers, Farm Service Agency, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0522, Washington, DC 20250–0522; telephone (202) 720–1632; FAX (202) 690–1117; e-*mail mark_falcone@wdc.fsa.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Falcone at (202) 720–1632.

SUPPLEMENTARY INFORMATION: Section 5 of the Agricultural Credit Improvement Act of 1992 (Pub. L. 102–554) required the Secretary of Agriculture to establish the Committee for the purpose of advising the Secretary on the following: (1) The development of a program of coordinated financial assistance to qualified beginning farmers and ranchers under section 309(i) of the Consolidated Farm and Rural Development Act (Federal and State beginning farmer programs provide joint financing to beginning farmers and ranchers); (2) methods of maximizing the number of new farming and ranching opportunities created through the program; (3) methods of encouraging States to participate in the program; (4) the administration of the program; and (5) other methods of creating new farming or ranching opportunities.

The law requires that members include representatives from the following groups: (1) The Farm Service Agency (FSA); (2) State beginning farmer programs (as defined in section 309(i)(5) of the Consolidated Farm and Rural Development Act); (3) commercial lenders; (4) private nonprofit organizations with active beginning farmer or rancher programs; (5) the Cooperative State Research, Education, and Extension Service; (6) Community colleges or other educational institutions with demonstrated experience in training beginning farmers or ranchers; and (7) other entities or persons providing lending or technical assistance to qualified beginning farmers or ranchers. The Secretary has also appointed farmers and ranchers to the Committee.

Departmental Regulation 1042–119 dated November 25, 1998, formally established the Committee and designated FSA to provide support. One-third of the Committee membership was replaced when the Committee charter was reestablished on January 15, 2001. Approximately one-third of the 19 existing members will be replaced when the charter is renewed in January 2003. FSA is now accepting nominations of individuals to serve for a 2-year term on the Committee. Reappointments are made to assure effectiveness and continuity of operations. The duration of the Committee is indefinite. No member, other than a USDA employee, can serve for more than 6 consecutive years.

Nominations are being sought through the media, the **Federal Register**, and other appropriate methods. Persons nominated for the Committee will be required to complete and submit an Advisory Committee Membership Background Information Questionnaire (Form AD 755). The questionnaire is available on the Internet at http://www.fsa.usda.gov/dafl/Downloads/ad755.pdf. Questionnaires can be completed on-line. However, nominees must print their completed forms from an Adobe PDF file and mail or fax them to the above address or fax number. The form may also be requested by telephone, fax, or e-mail. All inquiries about the nomination process and submissions of the AD 755 should be made to Mark Falcone at the addresses and numbers listed above.

Appointments to the Committee will be made by the Secretary of Agriculture. Equal opportunity practices, in line with USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, persons with disabilities, and senior citizens.

The Committee meets at least once a year and all meetings are open to the public. Committee meetings provide an opportunity for members to exchange ideas and provide advice on ways to increase opportunities for beginning farmers and ranchers. Members discuss various issues and draft recommendations, which are submitted to the Secretary in writing.

Signed in Washington, DC, on October 4, 2002.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. 02–25923 Filed 10–10–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss 2003 project development and 2002 project monitoring. Agenda topics will include future project development and a public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393). The meeting is open to the public.

DATES: The meeting will be held on October 22, 2002, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Jeanne Higgins, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *jmhiggins@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: October 4, 2002.

David T. Bull,

Forest Supervisor.

[FR Doc. 02–25951 Filed 10–10–02; 8:45 am]

BILLING CODE 3410–11–M

ARCTIC RESEARCH COMMISSION

Sunshine Act Meeting

September 30, 2002.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 66th Meeting in Hanover, NH on October 17–18, 2002. The Business Session open to the public will convene at 8:15 a.m. Friday, October 18, in the Agenda items include:

(1) Call to order and approval of the Agenda.
(2) Approval of the Minutes of the 65th Meeting.
(3) Reports from Congressional Liaisons.
(4) Agency Reports.

The focus of the Meeting will be reports and updates on programs and research projects affecting the U.S. Arctic. Presentations include a review of the research needs for civil infrastructure in Alaska.

The Business Session will begin at 8:15 a.m., Thursday, October 17, 2002. An Executive Session will follow adjournment of the Business Session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 02–26140 Filed 10–9–02; 12:58 pm]

BILLING CODE 7555–01–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 10, 2002.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. If approved, the action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Base Supply Center, Space and Naval Warfare Systems Center, San Diego, California.
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington.
Contract Activity: Space and Naval Warfare Systems Center, San Diego, California.

Service Type/Location: Custodial and Refuse Removal Services, Fort Johnson Military Family Housing, Southport, North Carolina, U.S. Army Military Ocean Terminal, Sunny Point (MOTSU), North Carolina.
NPA: Coastal Enterprises of Jacksonville, Inc., Jacksonville, North Carolina.
Contract Activity: 597th U.S. Army Transportation Terminal Group, Southport, North Carolina.

Service Type/Location: Grounds Maintenance, Army Research Laboratory (ARL), Adelphi, Maryland.
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland.
Contract Activity: Army Research Lab, Adelphi, Maryland.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.
2. If approved, the action will result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

The following products are proposed for deletion from the Procurement List:

Products

Product/NSN: Cleaner, Water Soluble, 6840–01–367–2912, 7930–01–367–2910, 7930–01–367–2959, 7930–01–367–2961, 7930–01–367–2963.
NPA: Association for the Blind & Visually Impaired & Goodwill-Industries of Greater Rochester, Rochester, New York.
Contract Activity: GSA, General Products Center, Fort Worth, Texas.

G. John Heyer,

General Counsel.

[FR Doc. 02–26032 Filed 10–10–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 10, 2002.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 5, August 2, and August 9, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 44808, 50416 and 51819) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.
2. The action will result in authorizing small entities to furnish the commodities and products and service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

Accordingly, the following products and service are added to the Procurement List:

Products

Product/NSN: Cup, Paper, Disposable, Hot
7350–00–NIB–0177
7350–00–NIB–0178
NPA: The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana
Contract Activity: GSA, General Products Center, Fort Worth, Texas
Product/NSN: Paper, Toilet Tissue, 48 Ct., 2-ply
8540–00–NIB–0043
NPA: Outlook-Nebraska, Incorporated, Fremont, Nebraska
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

Service

Service Type/Location: Janitorial & Related Services, Social Security Administration, Southeastern Program Service Center, Birmingham, Alabama
NPA: Alabama Goodwill Industries, Inc., Birmingham, Alabama
Contract Activity: Social Security Administration, Baltimore, Maryland

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

G. John Heyer,

General Counsel.

[FR Doc. 02–26033 Filed 10–10–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Submission for OMB Approval; Comment Request; Proposal and Application for Federal Assistance, and Civil Rights Guidelines

ACTION: Extension of a currently approved collection, comment request.

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

AGENCY: Economic Development Administration (EDA).

Title: Proposal for Federal Assistance, Application for Federal Assistance and Civil Rights Guidelines.

Agency Form Number: ED–900P and ED–900A.

OMB Approval Number: 0610–0094.

Type of Request: Extension of a currently approved collection.

Burden: 48,700 hours (9,900 for ED–900P and 38,800 for ED–900A).

Average Hours Per Response: ED–900P Proposal for Federal Assistance—9 hours, ED–900A–Application for Federal Assistance and Civil Rights Guidelines—48.5 hours.

Number of Respondents: Approximately 1,900 respondents.

Needs and Uses: The Economic Development Administration (EDA) provides investments that will help our partners across the nation (states, regions and communities) create wealth and minimize poverty by promoting a favorable business environment to attract private capital investment and high skill, high wage jobs through world-class capacity building, infrastructure, business assistance, research grants and strategic initiatives. The information in the application is needed to determine conformance to statutory and regulatory requirements, the quality of the scope of work proposed to address the pressing needs and other economic problem(s) of the area, the merits of the activity for which funding is requested and the ability of the prospective applicants to carry out the proposed activities successfully. Those interested in obtaining a grant are to first submit a preapplication and then be invited to submit an application. The Civil Rights Guidelines are required by the Department of Justice Regulations at 28 CFR 42.404, which directs Federal agencies to publish (Title VI of the Civil Rights Act of 1964, as amended) guidelines for each type of program to which they extend financial assistance, where such guidelines would be appropriate to provide detailed information of the requirements of Title VI of the Civil Rights Act of 1964. To responsibly administer its programs, EDA must obtain certain data on the jobs to be created and saved, by those that apply for and receive its assistance (applicants and recipients), and by those that create or save 15 or more jobs as a result of EDA's assistance.

Affected Public: State, local or Tribal Government and not-for-profit organizations.

Frequency: One time for preapplication and application, and on occasion for the Civil Rights Guidelines for post-approval and monitoring compliance.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, U.S. Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via Internet at *dhynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 7, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–25916 Filed 10–10–02; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100702B]

Proposed Information Collection; Comment Request; Limits of Application of Take Prohibitions

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before December 10, 2002.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Lamont Jackson at (301) 713–1401 or Steve Stone at (503) 231–2317, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 4(d) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et. seq.*) requires the National Marine Fisheries Service (NMFS) to adopt such regulations as it "deems necessary and advisable to provide for the conservation of" threatened species. Those regulations may include any or all of the prohibitions provided in section 9(a)(1) of the ESA, which specifically prohibits "take" of any endangered species ("take" includes actions that harass, harm, pursue, kill, or capture). The first salmonid species listed by NMFS as threatened were protected by virtually blanket application of the section 9 take prohibitions. There are now 20 separate Evolutionarily Significant Units (ESUs) of west coast salmonids listed as threatened, covering a large percentage of the land base in California, Oregon, Washington and Idaho. NMFS is obligated to enact necessary and advisable protective regulations.

NMFS makes section 9 prohibitions generally applicable to many of those threatened ESUs, but also seeks to respond to requests from states and others to both provide more guidance on how to protect threatened salmonids and avoid take, and to limit the application of take prohibitions wherever warranted. The regulations describe programs or circumstances that contribute to the conservation of, or are being conducted in a way that adequately limits impacts on, listed salmonids. The regulations do not apply the take prohibitions to those programs and circumstances. Some of these limits on the take prohibitions entail voluntary submission of a plan to NMFS and/or annual or occasional reports by entities wishing to take advantage of these limits, or continue within them.

II. Method of Collection

Submissions may be in paper or electronic format.

III. Data

OMB Number: 0648–0399.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, Local, or Tribal Government; business or other for-profit organizations; and farms.

Estimated Number of Respondents: 201.

Estimated Time Per Response: 20 hours for a road maintenance agreement; 5 hours for a diversion screening limit project; 30 hours for an urban development package; 10 hours for an urban development report; 20 hours for a tribal plan; and 5 hours for a report of aided, salvaged, or disposed of salmonids.

Estimated Total Annual Burden Hours: 500.

Estimated Total Annual Cost to Public: $843.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 2, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–26015 Filed 10–10–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 100702C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Applications and Reports for Registration as a Tanner or Agent.

Form Number(s): None.

OMB Approval Number: 0648–0179.

Type of Request: Regular submission.

Burden Hours: 102.

Number of Respondents: 51.

Average Hours Per Response: 2.

Needs and Uses: The Marine Mammal Protection Act (MMPA) mandates the protection and conservation of marine mammals and makes the taking, killing or serious injury of marine mammals, except under permit or exemption, a violation of the Act. An exemption is provided for Alaskan natives to take marine mammals if the taking is for subsistence or for creating and selling authentic native articles of handicraft and clothing. Possession of marine mammals and marine mammal parts by other than Alaskan natives is therefore prohibited. As native handicrafts are allowed by the MMPA to enter interstate commerce, an exemption is also needed to allow non-natives to handle the skins or other marine mammal product, whether to tan the pinniped hide or to act as an agent for the native to sell his handicraft products. Persons register for an exemption, and registered parties must file annual reports. The information is needed by NOAA to manage the program and provide for effective law enforcement.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion; annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 1, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–26016 Filed 10–10–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 100802A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Report of Whaling Operations.

Form Number(s): None.

OMB Approval Number: 0648–0311.

Type of Request: Regular submission.

Burden Hours: 48.

Number of Respondents: 52.

Average Hours Per Response: 30 minutes for a Captain to report and to mark gear; 5 minutes for a Native American whaling commission to enter a Captain's report into its report; and 5 minutes for a commission to fax a report to NOAA.

Needs and Uses: Native Americans are allowed to conduct certain aboriginal subsistence whaling in accordance with the provisions of the International Whaling Commission (IWC). Captains participating in these operations must submit certain information to the relevant Native American whaling organization about strikes on and catch of whales. Anyone retrieving a dead whale is also required to report. Captains must place a distinctive permanent identification mark on any harpoon, lance, or explosive dart used, and must also provide information on the mark and self-identification information. The relevant Native American whaling organization receives the reports, compiles them, and submits the information to NOAA. The information is used to monitor the hunt and to ensure that quotas are not exceeded. The information is also provided to the International Whaling Commission, which uses it to monitor compliance with its requirements.

Affected Public: Individuals or households, not-for-profit institutions.

Frequency:

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 3, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–26017 Filed 10–10–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Docket No. 010222048–2229–04

The Wills, Codicils, and Testamentary Trusts Exception to the Electronic Signatures in Global and National Commerce Act

AGENCY: National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce

ACTION: Notice, Request For Comments

SUMMARY: Section 101 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106–229, *codified at* 15 U.S.C. §§ 7001 *et seq.* ("ESIGN" or "the Act"), preserves the legal effect, validity, and enforceability of signatures and contracts relating to electronic transactions and electronic signatures used in the formation of electronic contracts. 15 U.S.C. § 7001(a). Section 103 (a) and (b) of the Act, however, provides that the provisions of section 101 do not apply to contracts and records governed by statutes and regulations regarding court documents; probate and domestic law matters; certain provisions of state uniform commercial codes; utility service cancellations, real property foreclosure and defaults; insurance benefits cancellations; product recall notices; and documents related to hazardous materials and dangerous substances. 15 U.S.C. §§ 7003(a),(b). Section 103 of the Act also requires the Secretary of Commerce, through the Assistant Secretary for Communications and Information, to review the operation of these exceptions to evaluate whether they continue to be necessary for consumer protection, and to make recommendations to Congress based on this evaluation. 15 U.S.C. § 7003(c)(1). This Notice is intended to solicit comments from interested parties for purposes of this evaluation, specifically

on the wills, codicils, and testamentary trusts exception to the ESIGN Act. *See* 15 U.S.C. § 7003(a)(1). NTIA will publish separate notices requesting comment on the other exceptions listed in section 103 of the ESIGN Act.[1]

DATES: Written comments and papers are requested to be submitted on or before December 10, 2002.

ADDRESSES: Written comments should be submitted to Josephine Scarlett, National Telecommunications and Information Administration, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Paper submissions should include a three and one-half inch computer diskette in HTML, ASCII, Word, or WordPerfect format (please specify version). Diskettes should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. In the alternative, comments may be submitted electronically to the following electronic mail address: *esignstudy wills@ntia.doc.gov*. Comments submitted via electronic mail also should be submitted in one or more of the formats specified above.

FOR FURTHER INFORMATION CONTACT: For questions about this request for comment, contact: Josephine Scarlett, Attorney, Office of the Chief Counsel, NTIA, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, telephone (202) 482–1816 or electronic mail: *jscarlett@ntia.doc.gov*. Media inquiries should be directed to the Office of Public Affairs, National Telecommunications and Information Administration, at (202) 482–7002.

SUPPLEMENTARY INFORMATION:

Background: Electronic Signatures in Global and National Commerce Act

Congress enacted the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106–229, 114 Stat. 464 (2000), to facilitate the use of electronic records and signatures in interstate and foreign commerce and to remove uncertainty about the validity of contracts entered into electronically. Section 101 requires, among other things, that electronic signatures, contracts, and records be given legal effect, validity, and enforceability. Sections 103(a) and (b) of the Act provides that the requirements of section 101 shall not apply to contracts and records governed by statutes and regulations regarding: court documents and records, probate and domestic law matters; documents executed under certain provisions of state commercial law; consumer law covering utility services, real property foreclosures and defaults, and insurance benefit notices; product recall notices; and hazardous materials documents.

The statutory language providing for an exception to section 101 of ESIGN for wills, codicils and testamentary trusts is found in section 103(a) of the Act:

Sec. 103. [15 U.S.C. 7003] Specific Exceptions.

(a) Excepted Requirements.— The provisions of section 101 shall not apply to a contract or other record to the extent it is governed by—

* * * *

(1) a State statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts;

* * * *

The statutory language requiring the Assistant Secretary for Communications and Information to submit a report to Congress on the results of the evaluation of the section 103 exceptions to the ESIGN Act is found in section 103(c)(1) of the Act as set forth below.

(c) Review of Exceptions.—

(1) Evaluation required.— The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall review the operation of the exceptions in subsections (a) and (b) to evaluate, over a period of 3 years, whether such exceptions continue to be necessary for the protection of consumers. Within 3 years after the date of enactment of this Act, the Assistant Secretary shall submit a report to Congress on the results of such evaluation.

Wills, Codicils, and Testamentary Trusts

Wills, codicils, and testamentary trusts are documents used by an owner (donor or testator) of real or personal property to transfer that property from the testator to other persons or entities (beneficiaries) after the death of the testator. State legislatures and state courts have primary jurisdiction for establishing procedures and rules that govern wills, codicils, and testamentary trusts when there is some relationship between the state, and either the property or the testator. The ESIGN exception for wills, codicils, and testamentary trusts means that when either of these documents is executed electronically or using an electronic signature, the document is *not* required to be accorded the same legal validity or effect as a paper document. Section 102(a)(1) of ESIGN provides that the states may adopt electronic transactions statutes, however, that give the state exclusive jurisdiction with regard to electronic transactions that occur within the state. *See* 15 U.S.C. § 7002(a). This section allows states to modify, limit, or supersede the application of ESIGN to electronic transactions that occur within the state law by adopting either the Uniform Electronic Transactions Act (known as UETA) as approved and recommended for enactment by the National Conference of Commissioners on Uniform State Laws (NCCUSL) or a statute that specifies an alternative procedure for the use and acceptance of electronic signatures, which complies with the provisions of ESIGN. *See id.*

States have used section 102(a)(1) of ESIGN to adopt electronic transactions laws that exclude state-exclusive areas from the application of ESIGN or the state's electronic transactions law. Approximately thirty-nine states have adopted the version of UETA recommended by NCCUSL or their own version of UETA. *See* National Conference of Commissioners on Uniform State Laws at http://www.nccusl.org/nccusl/LegislativeByState.pdf. The legislative history of UETA enunciated by the NCCUSL provides a rationale for excluding certain types of documents from the scope of the law. *Id.* According to the legislative notes of the Drafting Committee for UETA, some exclusions were warranted while other areas should not be omitted from the state UETA laws. *See id.* at 13–16. The comments on the UETA final draft states that the exclusion of wills, codicils, and testamentary trusts is largely salutary given the unilateral context in which the records are created and the unlikely use of such records in "transactions" as defined by UETA. *Id.* at 14, n. 4. The notes provide that an electronic transaction is an interaction between two or more persons, while a document such as a will, trust, or health care power of attorney evidences a unilateral act that is not covered by the Act. *Id.* at 13.

The majority of the states that have passed UETA laws have expressly excluded wills, codicils, testamentary trusts from the operation of the state electronic transactions laws. *Id.* The absence of an exception in a state's UETA law for wills, codicils, and testamentary trusts, however, does not automatically make these documents subject to that law. If the underlying substantive law requires a paper writing or prohibits the use of an electronic signature for the formation of these documents, electronic documents for wills, codicils, and testamentary trusts would not be legally valid. For example, the Maryland Code provides that every will shall be in writing, signed by the testator, attested to and signed by two or more credible witnesses in the presence of the testator. Md. Code Ann., Estates and Trusts, § 4–102. Although the law does not expressly preclude the use of electronic signatures or documents, the Maryland Rules do not consider a photocopy or facsimile copy of a will or codicil as an original document for purposes of filing with the Register of Wills. *See* Md. Code Ann., Estates and Trusts, Rule 6–108 (b). Alternatively, another state's substantive law governing wills and probate matters may allow documents to be formed in an electronic format or established using an electronic signature.

The legislative history of the ESIGN Act does not indicate the intent of the drafters in making an exception for wills, codicils, and testamentary trusts. However, the personal nature of the information disclosed in these documents and the relative privacy interests of the donor and beneficiaries may raise issues that do not arise in legal proceedings involving commercial or other civil matters. Information regarding changes in state law to allow electronic filings or access to documents pertaining to testamentary documents would assist in the evaluation of whether consumers would be adequately protected if the wills, codicils, and testamentary trusts exception to ESIGN is eliminated from the Act.

The ESIGN Section 103 Evaluation

The ESIGN Act directs the Assistant Secretary of Communications and Information to conduct an evaluation of the exceptions set out in section 103 of the Act to determine whether the exceptions continue to be necessary for the protection of consumers, and to submit a report to Congress on the results of the evaluation no later than June 30, 2003. The Assistant Secretary for Communications and Information is the chief administrator of NTIA. As the President's principal advisor on telecommunications policies pertaining to the Nation's economic and technological advancement, NTIA is the executive branch agency responsible for developing and articulating domestic and international telecommunications policy.

The ESIGN section 103 evaluation of the wills, codicils, and testamentary trusts exception is intended to evaluate the current status of the law and procedure regarding this issue, in preparation for a report to Congress on whether this exception remains necessary to protect consumers. This evaluation is not a review or analysis of laws relating to these documents for the purpose of recommending that Congress draft legislation or propose changes to those laws but to advise Congress of the current state of law, practice, and procedure regarding this issue. Comments filed in response to this Notice should not be considered to have a connection with or impact on ongoing specific federal and state procedures or rulemaking proceedings concerning wills, codicils, or testamentary trusts.

Invitation to Comment

NTIA requests that all interested parties submit written comment on any issue of fact, law, or policy that may assist in the evaluation required by section 103(c). We invite comment from all parties that may be affected by the removal of the wills, codicils, and testamentary trusts exception from the ESIGN Act including, but not limited to, state agencies and organizations, national and state bar associations, consumer advocates, and estate law practitioners. The comments submitted will assist NTIA in evaluating the potential impact of the removal of the wills, codicils, and testamentary trusts exception from ESIGN on state estate law, and state electronic transactions laws. The following questions are intended to provide guidance as to the specific subject areas to be examined as a part of the evaluation. Commenters are invited to discuss any relevant issue, regardless of whether it is identified below.

1. Describe state laws, if any, that allow for the creation, access, filing or probate wills, codicils, or testamentary trusts are by electronic means, including video or audio versions.

2. Discuss how statutes that require written documents for trusts, wills, and testamentary trusts may be affected if the exception is eliminated from the ESIGN Act.

3. State how consumers would be affected if the exception is eliminated from the ESIGN Act. Describe the laws or methods that would be available for consumer protection if the exception for wills, codicils, and testamentary trusts is eliminated from the Act.

4. Describe any state or federal law, other than ESIGN or UETA, that requires wills, codicils, and testamentary trusts to be excluded from the operation of ESIGN or the state uniform electronic transactions law.

5. Describe uniform laws that allow wills, codicils, or testamentary trusts to be created, authenticated, filed, or admitted to probate in an electronic format or using an electronic signature.

6. Discuss any unique issues surrounding the execution of wills, codicils, and testamentary trusts that may be considered in determining whether these documents may be processed in an electronic format. This list is not exhaustive and any other issue relevant to the execution of wills, codicils, or testamentary trusts may be discussed.

a. privacy and security of information contained in the will;

b. authentication of signatures for testator and witnesses;

c. retention and storage of electronic documents;

d. software compatibility and development; and

e. the impact of advances in technology during the lifetime of the donor on the probate process.

7. Discuss any other documents related to the probate, filing, or execution of wills, codicils and testamentary trusts that courts accept in electronic form (including but not limited to, letters of administration, notice of appointment of personal representative, notice of publication, personal notice to heirs).

8. Discuss whether any uniform laws governing wills, codicils, or testamentary trusts have been adopted and the impact on these laws if the ESIGN exception for these documents is eliminated (*e.g.*, the Uniform Probate Code, the Uniform Intestacy, Wills, and Donative Transfers Act).

9. Provide a description of any instance in which wills, codicils, or testamentary trusts have been executed in an electronic format. Discuss whether there are plans to implement procedures for the on-line execution of such documents.

Please provide copies of studies, reports, opinions, research or other empirical data referenced in the responses.

Dated: October 7, 2002.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 02–25942 Filed 10–10–02; 8:45 am]

BILLING CODE 3510–60–S

[1] Comments submitted in response to **Federal Register** notices requesting comment on the other exceptions to ESIGN will be considered as part of the same section 103 evaluation and not as a separate review of the Act. NTIA is also evaluating the court documents exception to ESIGN. *See* 67 *Fed.Reg.* 56277 (Sept. 3, 2002).

CONSUMER PRODUCT SAFETY COMMISSION

Information Quality Guidelines: Notice of Availability

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission is announcing the availability of its final Guidelines for Ensuring the Quality, Objectivity, Utility, and Integrity of Information disseminated by the Commission.

EFFECTIVE DATE: October 11, 2002.

ADDRESSES: Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or that office, room 502, East-West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Mary Kelsey, Office of Information Services, Consumer Product Safety Commission, 301–504–0000 ext. 2230, e-mail *mkelsey@cpsc.gov;* or Terry Hardy, Office of Planning and Evaluation, 301–504–0416 ext. 2191, e-mail *thardy@cpsc.gov.*

SUPPLEMENTARY INFORMATION: These guidelines and supporting documents are available on the internet at *http://www.cpsc.gov//library/infoguideliness.html* and are issued pursuant to section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106–554, which mandated that the Office of Management and Budget (OMB) issue government-wide guidelines that "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies." The statute further requires OMB to require each Federal agency to issue its own guidelines. OMB's amended final guidance appears at 67 FR 8452, February 22, 2002, and at *http://www.whitehouse.gov/omb/fedreg/final_information_quality.htm.* The OMB guidelines, as further revised at 67 FR 9797, March 4, 2002, required each Federal agency to post its own draft guidelines on the internet by May 1, 2002, which the Consumer Product Safety Commission has done. These final guidelines incorporate comments from the public and OMB. Hereafter, starting on January 1, 2004, agencies must file annual fiscal year reports to OMB on the number, nature and resolution of complaints about alleged noncompliance with the agency guidelines.

A paper copy of the guidelines may also be obtained by telephoning Mary Kelsey at 301–504–0000 ext. 2230.

Dated: October 7, 2002.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–25914 Filed 10–10–02; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office if the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 10, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Force Management Policy) (Military Community and Family Policy) Educational Opportunities Directorate, ATTN: Rebecca Posante, 1745 Jefferson Davis Highway, Suite 302, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call Rebecca Posante at (703) 602–4949 x114.

Title, Applicable Form, and OMB Control Number: Exceptional Family Member Medical and Educational Summary Form; DD Form 2792, OMB Control Number 0704–0411.

Needs and Uses: This information collection requirement is necessary to screen members of military families to determine if they have special medical or educational conditions so that these conditions can be taken into consideration when the service member is being assigned to a new location with his/her family. The information is used by the personnel system to identify special considerations necessary for future assignments. The DD Form 2792, *Exceptional Family Member Medical and Educational Summary,* associated with this information collection, will also be used by civilian personnel offices to identify family members of civilian employees who have special needs in order to advise the civilian employee of the availability of services in the location where they will be potentially employed. Local and state school personnel will complete the educational portion of DD Form 2792 for children requiring special educational services.

Affected Public: Individuals or households; State, local and tribal government.

Annual Burden Hours: 3,188.

Number of Respondents: 12,757.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: tri-annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Military Departments of the Department of Defense screen all family members prior to a service member and Federal employee being assigned to an overseas location and to some assignments in the United States. DD Form 2792, *Exceptional Family Member Medical and Educational Summary Form,* will be completed for family members who have been identified with a special medical or educational need to document the medical or educational needs and service requirements. Their needs will be matched to the resources available at the overseas location to determine the feasibility of receiving appropriate services in that location. The information is used by the Military Service's personnel offices for purposes of assignment only. DD Form 2792 will also be completed for family members of civilian employees to document their special health or educational needs in order to advise the civilian employee of the availability of the needed services.

Dated: October 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–25939 Filed 10–10–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–62]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–62 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

30 SEP 2002

In reply refer to:
I-02/013049

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-62 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Hungary for defense articles and service estimated to cost $55 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

Richard J. Millies
Acting Director

Attachment
As stated

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 02-62

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Hungary

(ii) Total Estimated Value:

Major Defense Equipment*	$25 million
Other	$30 million
TOTAL	$55 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 160 AIM-9M-8/9 Sidewinder missiles, training missiles, All-Up-Round containers, software integration, test and tool sets, support equipment, maintenance facilities, spare and repair parts, personnel training and equipment, publications, U.S. Government and contractor engineering and other related elements of logistics support.

(iv) Military Department: Navy (AAB)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 30 SEP 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Hungary – AIM-9M-8/9 Sidewinder Missiles

The Government of the Republic of Hungary has requested a possible sale of 160 AIM-9M-8/9 Sidewinder missiles, training missiles, All-Up-Round containers, software integration, test and tool sets, support equipment, maintenance facilities, spare and repair parts, personnel training and equipment, publications, U.S. Government and contractor engineering and other related elements of logistics support. The estimated cost is $55 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Hungary and further weapon system standardization and interoperability with U.S. forces. These missiles will enhance the Hungarian Air Force's air-to-air intercept defensive capability.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Systems Corporation of Tucson, Arizona. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require the assignment of several U.S. Government and contractor representatives for one-week intervals to participate in program review and technical reviews to Hungary.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-62

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended (U)

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The external view of the AIM-9M-8/9 Sidewinder missile is Unclassified and not sensitive. Advanced technology included in the missile: Active Optical Target Detector (AOTD), Gyro Optics Assembly within the Guidance Control Section (GCS), Infrared Countermeasures (IRCM), Detection and Rejection Circuitry, and a reduced smoke rocket motor. The equipment/hardware, software, and maintenance are classified Confidential. Pilot training is classified Secret. Manuals and technical documents are classified Secret. Performance and operating information is classified Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that could reduce overall effectiveness.

3. A determination has been made that Hungary can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–25941 Filed 10–10–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.
ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Advisory board has been scheduled as follows:

DATES: 6–7 November 2002 (0900 a.m. to 1700 p.m.).

ADDRESSES: The Pentagon, Defense Intelligence Agency, Director's conference room, 3E267.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence R. Carnegie, Program Manager, DIA Advisory Board, 7400 Defense Pentagon, Washington, DC 30301–7400, 703/697–7898.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The board will receive briefings on and discuss several current intelligence issues and advise the Acting Director, DIA, on related departmental matters.

Dated: October 3, 2002.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–25938 Filed 10–10–02; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.
ACTION: Notice of Advisory Committee meeting date change.

SUMMARY: On Wednesday, March 13, 2002 (67 FR 11293) the Department of Defense announced closed meetings of the Defense Science Board Task Force on Discriminant Use of Force. The meeting scheduled for October 21–22, 2002, has been rescheduled to December 3–4, 2002. The meeting will be held at SAIC, 4001 N. Fairfax Drive, Arlington, VA.

Dated: October 3, 2002.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–25940 Filed 10–10–02; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Commander, Naval Sea Systems Command

AGENCY: Department of the Navy, DOD.
ACTION: Notice.

SUMMARY: The Naval Sea Systems Command (NAVSEASYSCOM) announces a proposed extension of a previously approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 10, 2002.

ADDRESSES: Send written comments and recommendations on the proposed information collection to Commander, Naval Sea Systems Command (SEA 04X13), 2531 Jefferson Davis Highway, Arlington, VA 22242–5160.

FOR FURTHER INFORMATION CONTACT: Sherrell Smith or Leonard Thompson, respectively at (703) 602–4170 (Ext. 139 or 137), to request additional information or to obtain a copy of the proposal and associated collection instruments.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: Facilities Available for the Construction or Repair of Ships; OMB Control No. 0703–0006.

Needs and Uses: This collection of information provides NAVSEASYSCOM and the Maritime Administration with a list of facilities available for the construction or repair of ships and information utilized in a data base for assessing the production capacity of the individual shipyards. Respondents are businesses involved in shipbuilding and/or repair.

Affected Public: Businesses or other for profit institutions.

Annual Burden Hours: 621.

Number of Respondents: 138.

Responses per Respondent: 1.

Average Burden per Response: 4.5 hours.

Frequency: Annually and as requested.

(Authority: 44 U.S.C. Sec. 3506(c)(2)(A)).

Dated: October 3, 2002.

R.E. Vincent II,
Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–25935 Filed 10–10–02; 8:45 am]
BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.
ACTION: Notice.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 12, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the e-mail address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 7, 2002.

John D. Tressler,
Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Early Reading First Program **Federal Register** Notice Inviting Applications, and Application Packet.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 900.

Burden Hours: 12,000.

Abstract: The Early Reading First program will provide grants to eligible local educational agencies (LEAs) and public and private organizations located in those LEAs to transform early childhood education programs into centers of excellence to help young at-risk children achieve the language, cognitive, and early reading skills they need to succeed when they enter Kindergarten.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2021. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the e-mail address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–25925 Filed 10–10–02; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.
ACTION: Notice.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 12, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the e-mail address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 7, 2002.

John D. Tressler,
Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Child Care Access Means Parents in School (CCAMPIS) Program—A Guide for Preparation of Applications.

Frequency: Annually.

Affected Public: Not-for-profit institutions; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden: Responses: 300. Burden Hours: 300.

Abstract: Collection of information is necessary in order for the Secretary of Education to make new grants under the Child Care Access Means Parents in School Program. This collection will also be used to obtain the programmatic and budgetary information needed to evaluate applications and make funding decisions based on the authorizing statute of Section 419N of subpart 7, Title IV of the Higher Education Act of 1965, as amended.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2170. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the e-mail address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–25926 Filed 10–10–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.359B]

Early Reading First Program

AGENCY: Department of Education.

ACTION: Notice extending Full Application deadline date for Early Reading First Program for fiscal year (FY) 2002.

SUMMARY: The Secretary extends the deadline date for the submission of Full Applications by certain applicants (*see* the "Eligibility" section of this notice) under the Early Reading First Program discretionary grant competition for FY 2002. The Secretary takes this action to allow more time for the preparation and submission of applications by potential applicants and their partners in the State of Louisiana that were adversely affected by severe weather conditions resulting from Hurricane Lili. This extension is intended to help these potential applicants and their partners compete fairly with other applicants.

Eligibility: The extension of the deadline date in this notice applies to you if (1) You are an eligible applicant for the Full Application phase of the Early Reading First grant competition for FY 2002, and (2) you or one of your official partners is located in one of the areas of Louisiana listed below that the President has declared a disaster area as a result of Hurricane Lili.

Potential eligible applicants for Early Reading First for the purpose of this notice are defined as those eligible applicants who submitted Pre-Applications and that were invited by the Secretary (through the Office of Elementary and Secondary Education) to submit Full Applications

The areas of Louisiana affected include the following cites, counties, or parishes: Acadia, Ascension, Assumption, Avoyelles, Beauregard, Calcasieu Cameron East Baton Rouge, Evangeline, Iberia, Iberville, Jefferson Davis, Jefferson, Lafayette, Lafourche, Livingston, Natchitoches, Orleans, Plaquemines, Pointe Coupee, Rapides, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermillion, Washington, and West Baton Rouge.

DATES: The new deadline date for receipt of Full Applications under the Early Reading First Program from applicants eligible for this extension is October 18, 2002. If you or a courier or delivery service delivers an application by hand, the deadline on October 18 is 4:30 p.m. For applicants in the above Louisiana areas only, this deadline replaces the original October 11, 2002 receipt deadline for Full Applications. All other instructions for transmitting applications in the Early Reading First application package (pp. E–3 and E–4) remain in effect. The deadline date for the transmittal of State process recommendations by State Single Points of Contact (SPOCs) and comments by other interested parties remains as originally posted.

The invitation to submit applications was originally published in the **Federal Register** on June 7, 2002 (67 FR 39369–39374).

FOR FURTHER INFORMATION CONTACT: Tracy Bethel or Mary Ann Lesiak, Office of Elementary and Secondary Education, 400 Maryland Avenue SW., Washington, DC 20202–6132. Telephone: (202) 260–4555, or via Internet: *erf@ed.gov*. Applications for, and information about, the Early Reading First program competition are available here: *http://www.ed.gov/offices/OESE/earlyreading/index.html*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

If you want to transmit a recommendation or comment under Executive Order 12372, you can find the latest list and addresses of individual SPOCs on the Web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants*.

If you are an individual with a disability, you may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to either of the contact persons listed in this notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Dated: October 8, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–26048 Filed 10–10–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

State Flexibility Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of final application requirements, selection criteria, and competition schedule.

SUMMARY: The Secretary announces final application requirements, selection criteria, and the competition schedule for the State Flexibility (State-Flex) program.

EFFECTIVE DATE: November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Milagros Lanauze. Telephone: (202) 401–0039 or via Internet: *StateFlex@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

SUPPLEMENTARY INFORMATION: On April 22, 2002, we published in the **Federal Register** (67 FR 19626–19629) a notice of proposed application requirements, selection criteria, and competition schedule for the State-Flex program, which is authorized under sections 6141 through 6144 of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110). This notice announces final application requirements, selection criteria, and the competition schedule for the program.

Note: This notice does not solicit applications. A notice inviting applications under the State-Flex competition is published separately in this issue of the **Federal Register**.

Analysis of Comments and Changes

Four parties submitted various comments in response to the notice of proposed application requirements, selection criteria, and competition schedule.

Comment: Two commenters expressed concern about the competition schedule and suggested that the second State-Flex competition be held after the date by which States must submit their definitions of adequate yearly progress (AYP) to the Department. The commenters indicated that a later schedule would also give States sufficient time to prepare their State-Flex applications.

Response: We recognize that some States may need additional time to develop their State-Flex proposals.

Changes: We are revising the competition schedule and will hold the second State-Flex competition no earlier than Spring 2003.

Comment: One commenter recommended that States not be required to submit their State definition of AYP in order to be considered eligible for State-Flex. Instead, the commenter suggested that in applying for State-Flex in the initial round of competition, States be permitted to submit an assurance that they will submit their AYP definition by January 2003.

Response: Implementation of the AYP requirements is fundamental to the State-Flex program. One of the primary purposes of the State-Flex program is to assist States and districts in meeting AYP. Given that the Department has not yet published final Title I AYP regulations, the Department will not require an SEA to submit its State AYP definition at the time it applies for State-Flex authority.

If the Department has not approved a State's AYP definition by the time it applies for State-Flex authority, an SEA may only be granted conditional State-Flex authority. The Department will not grant final approval of an SEA's State-Flex application unless the State submits its AYP definition by the AYP deadline established by the Department and the Department approves that definition.

Changes: The Department has revised the State-Flex application requirements. An SEA will not be required to submit its State AYP definition prior to or as part of its State-Flex application. Instead, in its application, an SEA will be required to provide an assurance that it will submit the definition by the AYP deadline established by the Department.

In conducting this competition, the Department will review the quality of State-Flex plans, including the quality of the local performance agreements that are submitted as part of those plans. Based on that review, the Department will grant State-Flex authority to up to four SEAs. If an SEA selected for State-Flex authority has not yet had its AYP definition approved by the Department, that SEA will receive conditional State-Flex authority. An SEA with conditional State-Flex authority will not be able to exercise its State-Flex authority or implement any portion of its State-Flex plan (including the local performance agreements) unless the Department approves the SEA's AYP definition by March 31, 2003.

Comment: One commenter recommended that a State not be required to include in its State-Flex application the five-year performance agreements that the State proposes to enter into with its LEAs. Instead, the commenter suggested that the State be allowed to submit the format for the performance agreements along with LEA demographics and a signed assurance from participating LEAs that they will participate in the program and comply with its requirements.

Response: Section 6141 of ESEA specifically requires a State to submit, as part of its State-Flex application, the performance agreements that the State proposes to enter into with eligible LEAs.

Changes: None.

Comment: One commenter suggested that applicants be required to submit the following information to enable the Secretary to evaluate whether they are focusing on serving the needs of students most at risk of educational failure: (1) Data indicating the gap between low- and high-achieving students in the districts for which local performance agreements are proposed, as well as data indicating the achievement gap statewide; (2) The number and percentage of schools in each district that qualify for Title I schoolwide programs; (3) The amount of local education funds spent per pupil at Title I schools compared to the per-pupil spending at non-Title I schools; and (4) Any formula the State and districts would use to target consolidated Federal funds to students most at risk of education failure, as well as strategies to target State-level activities to address the achievement gap.

Response: We agree that there is a need for applicants to provide statewide and LEA student achievement data to enable the Department to assess whether State-Flex authority will be used to address the needs of students most at risk of educational failure. However, we do not believe that the additional information suggested by the commenter is necessary for us to evaluate adequately a State-Flex proposal. On the basis of the selection criteria and the revised application requirements for this competition, we will be able to focus State-Flex agreements on SEAs serving the needs of students most at risk of educational failure.

Changes: We will require applicants to submit statewide baseline academic data, as well as LEA student achievement profiles. We have clarified in the application requirements section of this notice the contents of local performance agreements, which include baseline academic data for those LEAs.

Comment: One commenter expressed concern that States may use the State-Flex program in a manner that undermines the parent involvement provisions contained in ESEA. The commenter suggested that the Secretary evaluate State-Flex applications based on the degree to which parent involvement requirements contained in ESEA are maintained, and also recommended that the Secretary require an assurance that States will provide parents and other stakeholders with notice and opportunity to comment on the State-Flex application.

Response: In the April 22, 2002 **Federal Register** notice, we did not include all of the statutory application requirements. We did not believe that it was necessary to seek public comments on some of the more explicit requirements included in the legislation. However, all of the statutory application requirements, including required assurances, are discussed in the application package.

In addition, we agree that the Department should evaluate applications, in part, based on the degree to which the SEA and LEAs with proposed performance agreements have included parents in the development of their proposals.

Changes: We have revised the selection criteria to include a factor relating to parental involvement in the development of the proposals.

Comment: One commenter argued that the Department incorrectly stated that the five-year period of State-Flex authority may be shortened or extended contingent on a State's compliance with the State-Flex requirements, and should delete this statement. The commenter suggested, instead, that the overall application process outline a process for reviewing and deciding issues of continued participation in State-Flex or renewal of State-Flex authority.

Response: The legislation states that the Secretary must, after providing notice and an opportunity for a hearing, promptly terminate a State-Flex agreement if an SEA fails to make adequate yearly progress for two

consecutive years. The legislation also provides that, after providing notice and an opportunity for a hearing, the Secretary may terminate a State-Flex agreement if there is evidence that an SEA has failed to comply with the terms of the agreement. In addition, the legislation provides that the Secretary must renew a State's State-Flex authority if the State has met all the terms and requirements of the State-Flex program.

The Secretary does not believe that it is necessary to issue, at this time, additional guidance on the termination or renewal of a State-Flex agreement.

Changes: None.

Comment: One commenter suggested that the Secretary evaluate applications for State-Flex based on the degree to which States decline to direct how their LEAs use Title V, Part A funds, as the purpose of Title V, Part A is to support local reform efforts.

Response: The statute allows SEAs that are granted State-Flex authority to specify how all LEAs in the State will use their Title V, Part A funds. This is one of the benefits an SEA receives under its grant of State-Flex authority; discouraging State-Flex participants from taking full advantage of the flexibility afforded to them under the program would be inconsistent with the intent of the legislation.

Changes: None.

Comment: One commenter suggested that an SEA be required to include in its State-Flex proposal a description of how each proposed local performance agreement will meet the general purposes of the programs that the applicable LEAs would consolidate under their agreements.

Response: Although we did not intend to seek public comments on some of the more explicit requirements included in the legislation, we agree that this description should be part of the applications.

Changes: We have modified the application requirements to state expressly that each local performance agreement must, as part of its five-year proposal, include a description of how the LEA will meet the general purposes of the programs that are consolidated.

Comment: One commenter urged us to require each applicant to explain how it will continue to comply with all applicable civil rights requirements, and to include in its application a description of the accounting procedures and safeguards that it would employ to ensure proper disbursement of, and accounting for, Federal funds.

Response: In the April 22, 2002 **Federal Register** notice of proposed application requirements, selection criteria, and competition schedule (67 FR 19626–19629), we did not include all of the statutory application requirements. We did not believe that it was necessary to seek public comments on some of the more explicit requirements included in the legislation. However, all of the statutory application requirements, including those addressed in this notice, are discussed in the application package.

With respect to the comment on civil rights compliance, all applicants, as mandated by the legislation, will be required to submit an assurance that they are complying and will continue to comply with all applicable civil rights requirements. We will also require applicants to submit an assurance regarding fiscal control and fund accountability.

Changes: None.

I. Application Requirements

Each State-Flex applicant must submit—

(a) *An assurance that it will submit its State AYP definition required under section 1111(b)(2) of the ESEA by the AYP deadline established by the Department.* Each SEA seeking a grant of State-Flex authority from the Secretary must provide, as part of its application, an assurance that it will submit to the Department its State AYP definition by the AYP deadline established by the Department.

Note: If an SEA selected for State-Flex authority has not yet had its AYP definition approved by the Department, that SEA will receive conditional State-Flex authority. An SEA with conditional State-Flex authority will not be able to exercise its State-Flex authority or implement any portion of its State-Flex plan (including the local performance agreements) unless the Department approves the SEA's AYP definition by March 31, 2003.

(b) *Statewide baseline academic data and LEA achievement profiles.* Each SEA seeking to enter into a State-Flex agreement with the Secretary must provide, as part of its proposed agreement, statewide student achievement data for the most recent available school year, including data from assessments consistent with section 1111(b)(3) of the predecessor ESEA, as well as descriptions of achievement trends. To the extent possible, an SEA must provide data for both mathematics and reading or language arts, and the SEA must disaggregate the results by each major racial and ethnic group, by English proficiency status, by disability status, and by status as economically disadvantaged. (These are the categories, among others, by which an LEA will disaggregate data for determining AYP under section 1111(b)(2) of the reauthorized ESEA. Furthermore, these are the categories, among others, by which an LEA had to disaggregate data for reporting assessment results under section 1111(b)(3) of the predecessor ESEA.)

In addition to submitting baseline achievement data that are disaggregated, to the extent possible, by the categories noted above, SEAs may also submit baseline achievement data that are further disaggregated by gender and by migrant status, and baseline data on other academic indicators, such as grade-to-grade retention rates, student dropout rates, and percentages of students completing gifted and talented, advanced placement, and college preparatory courses. To the extent possible, the baseline data on other academic indicators should also be disaggregated.

The SEA must also provide a profile of student achievement trends in LEAs across the State, and indicate why it proposes to enter into agreements with particular LEAs rather than others.

(c) *The SEA's strategies for consolidating funds, making AYP, narrowing achievement gaps, and advancing the education priorities of the State.* Each SEA seeking State-Flex authority must submit a five-year plan that describes—

(i) How the SEA would consolidate and use State-level Federal funds from programs included in the scope of the State-Flex authority to assist the SEA in making AYP, narrowing achievement gaps, and advancing the education priorities of the State and the LEAs within the State;

(ii) How the strategies and goals in the LEA agreements support the State's strategies described in this proposal and will assist the State in making AYP and narrowing achievement gaps; and

(iii) The specific limitations, if any, that it would impose on the use of funds provided to LEAs in the State under section 5112(a) of the ESEA, and how these limitations would assist all LEAs in the State in making AYP and narrowing achievement gaps.

(d) *Proposed performance agreements with LEAs.* Each SEA seeking State-Flex authority must submit, as part of its application, five-year performance agreements that the SEA proposes to enter into with not fewer than four, and not more than ten, LEAs (at least half of which must be high-poverty LEAs). The SEA should indicate why it proposes to enter into agreements with these LEAs, rather than with other LEAs in the State.

Each proposed LEA agreement must include:

(i) *Baseline academic data.* For each LEA with which it proposes to enter into a local performance agreement, the SEA must provide, on behalf of that LEA, student achievement data for the most recent available school year, including data from assessments under section 1111(b)(3) of the predecessor ESEA, as well as descriptions of achievement trends. To the extent possible, the SEA must provide data for that LEA for both mathematics and reading or language arts, and must disaggregate the results by each major racial and ethnic group, by English proficiency status, by disability status, and by status as economically disadvantaged. (These are the categories by which an LEA will disaggregate data for determining AYP under section 1111(b)(2) of the reauthorized ESEA. Furthermore, these are the categories, among others, by which an LEA had to disaggregate data for reporting assessment results under section 1111(b)(3) of the predecessor ESEA.)

In addition to submitting baseline achievement data that are disaggregated, to the extent possible, by the categories noted above, the SEA may also submit baseline achievement data on behalf of that LEA that are further disaggregated by gender and by migrant status, and baseline data on other academic indicators, such as grade-to-grade retention rates, student dropout rates, and percentages of students completing gifted and talented, advanced placement, and college preparatory courses. To the extent possible, the baseline data on other academic indicators should also be disaggregated.

(ii) *Specific, measurable education goals.* For each proposed local performance agreement, the SEA must submit, on behalf of that LEA, a five-year local performance agreement plan that contains specific, measurable educational goals, with annual objectives, that the LEA seeks to achieve by consolidating and using funds in accordance with the terms of its proposed agreement. The goals must relate to meeting AYP, raising student achievement, and narrowing achievement gaps relative to the baseline achievement data and other baseline data that are submitted.

(iii) *Strategies for meeting its goals and the general purposes of the consolidated programs.* For each proposed local performance agreement, the SEA must submit, on behalf of that LEA, a five-year plan that contains specific strategies for reaching its stated goals. In particular, the plan must describe how the LEA will consolidate and use funds received under Subpart 2 of Part A of Title II (Teacher and Principal Training and Recruitment); Subpart 1 of Part D of Title II (Enhancing Education Through Technology); Subpart 1 of Part A of Title IV (Safe and Drug-Free Schools and Communities); and Subpart 1 of Part A of Title V (Innovative Programs).

As part of each five-year plan, the SEA must also describe how the LEA will meet the general purposes of the programs that are consolidated under the local performance agreement. In particular, an SEA must describe how each proposed plan would—

(A) Improve teacher and principal quality and increase the number of highly qualified teachers in classrooms (Title II, Part A);

(B) Improve teaching and student academic achievement through the use of technology in schools (Title II, Part D);

(C) Support programs that prevent violence in and around schools and that prevent the illegal use of alcohol, tobacco, and drugs (Title IV, Part A); and

(D) Support local education reform efforts that are consistent with and support statewide education reform efforts (Title V, Part A).

II. Selection Criteria

The Secretary will use the following criteria to select the SEAs with which he will enter into State-Flex agreements:

(a) *Identification of the Need for the State-Flex Authority and the Proposed Performance Agreements.* (25 points) The Secretary considers the SEA's need for State-Flex authority, including the need for the performance agreements that the SEA proposes in its State-Flex application. In determining need, the Secretary considers the extent to which—

(i) The SEA's proposal identifies achievement gaps among different groups of students, particularly in each of the LEAs with which the SEA proposes to enter into a performance agreement.

(ii) The State-Flex authority and proposed performance agreements will address the needs of students most at risk of educational failure.

(iii) The LEAs that would enter into performance agreements with the SEA serve a substantial portion of the students in the State who are most at risk of educational failure.

(iv) Requirements in the Federal programs that the SEA and LEAs with performance agreements plan to consolidate create barriers to implementing specific State and local education reform strategies.

(b) *Quality of SEA and LEA Strategies for Making Adequate Yearly Progress (AYP), Narrowing Achievement Gaps, and Enhancing Education Priorities.* (30 points) The Secretary considers the quality of the strategies that the SEA will implement under its grant of State-Flex authority, including the quality of the strategies in each of the proposed performance agreements, for making AYP, narrowing achievement gaps, and for enhancing State and local education priorities. In determining the quality of these strategies, the Secretary considers the extent to which—

(i) The strategies that the SEA proposes for consolidating and using funds under the scope of the State-Flex authority and for directing how LEAs in the State will use funds under section 5112(a) of the ESEA will likely assist the State in meeting its definition of AYP, narrowing achievement gaps, and advancing its education priorities.

(ii) The performance agreements that the SEA proposes to enter into with LEAs in the State will likely assist the State in meeting its definition of AYP, narrowing achievement gaps, and advancing its education priorities.

(iii) The strategies in each of the proposed performance agreements, especially the strategies for consolidating and using funds under the scope of the agreements, will likely assist each affected LEA in meeting the State's definition of AYP and specific, measurable goals for improving student achievement and narrowing achievement gaps.

(iv) The extent to which the SEA and LEAs with proposed performance agreements included parents, especially parents of children most at risk of educational failure, in the development of the State-Flex proposal and proposed local performance agreements.

(v) The State-Flex proposal and each of the proposed performance agreements represent a coherent, sustained approach for meeting the purposes of the State-Flex program.

(vi) The timelines for implementing the strategies in the State-Flex proposal, including timelines in the proposed performance agreements, are reasonable.

(c) *Quality of the Management Plans.* (30 points) The Secretary considers the quality of the management plans that the SEA and affected LEAs would follow in implementing State-Flex activities. In reviewing the quality of the management plans, the Secretary considers the extent to which—

(i) The SEA will provide effective technical assistance and support to LEAs with performance agreements.

(ii) The SEA and each LEA with a performance agreement will use disaggregated student achievement data and data on other academic indicators

to manage their proposed activities, to monitor their own progress on an ongoing basis, and to make appropriate adjustments to their implementation strategies.

(iii) The SEA will monitor LEA activities under each of the performance agreements, evaluate the effectiveness of each agreement, and propose modifications to LEA activities or to the agreements, as appropriate.

(d) *Adequacy of the Resources.* (15 points) The Secretary considers the adequacy of the resources for the grant of State-Flex authority and the proposed performance agreements. In considering the adequacy of the resources, the Secretary considers the extent to which—

(i) The funds that the SEA proposes to consolidate under the grant of State-Flex authority are adequate to support the strategies that it seeks to implement with these funds.

(ii) The funds that each LEA plans to consolidate under its respective performance agreement are adequate to support the strategies in its agreement.

(iii) The SEA will coordinate the activities supported with funds consolidated under its grant of State-Flex authority with activities funded with other resources to meet the purposes of the State-Flex initiative.

(iv) Each LEA with a performance agreement will coordinate the activities supported with funds consolidated under its agreement with activities funded with other resources to meet the purposes of the agreement.

(v) The costs that the SEA and affected LEAs will incur under the grant of State-Flex authority and the proposed performance agreements are reasonable in relationship to the goals that will be achieved.

III. Application Process

The Secretary will conduct two separate State-Flex competitions. A notice inviting applications for the initial group of State-Flex SEAs is published elsewhere in this issue of the **Federal Register**. Depending on the number and quality of the applications submitted, the Secretary intends to select up to four SEAs to receive State-Flex authority during the initial competition.

In conducting this competition, the Department will review the quality of State-Flex plans, including the quality of the local performance agreements that are submitted as part of those plans. Based on that review, the Department will grant State-Flex authority to up to four SEAs. If an SEA selected for State-Flex authority has not yet had its AYP definition approved by the Department, that SEA will receive conditional State-Flex authority. An SEA with conditional State-Flex authority will not be able to exercise its State-Flex authority or implement any portion of its State-Flex plan (including the local performance agreements) unless the Department approves the SEA's AYP definition by March 31, 2003.

The remaining State-Flex slots will be awarded during a second State-Flex competition to be held no earlier than Spring 2003.

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll-free, at 1–888–293–6498; or in the Washington DC, area at (202) 512–1530.

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Program Authority: Sections 6141 through 6144 of the ESEA, as amended by the No Child Left Behind Act of 2001 (Pub.L. 107–110).

Dated: October 8, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–26003 Filed 10–10–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

State Flexibility Program; Office of Elementary and Secondary Education, Department of Education; Notice Inviting Applications for State Flexibility Authority

Purpose of the Program: To provide State educational agencies (SEAs), and the local educational agencies (LEAs) with which they have performance agreements, with additional flexibility in order to assist them in meeting the State's definition of adequate yearly progress (AYP) and specific, measurable goals for improving student achievement and narrowing achievement gaps.

Eligible Applicants: SEAs with AYP definitions approved by the Department or SEAs that submit an assurance that they will provide the Department with a State AYP definition that meets the requirements of section 1111(b)(2) of the Elementary and Secondary Education Act (ESEA) by the AYP deadline established by the Department.

Note: Hawaii, Puerto Rico, and the outlying areas are not eligible to apply for State-Flex because they do not have the minimum number of LEAs required for State-Flex authority.

If one of its LEAs has entered into a Local-Flex agreement with the Secretary, an SEA may subsequently seek State-Flex authority only if that LEA agrees to have its Local-Flex agreement submitted as one of the proposed performance agreements in the SEA's State-Flex application.

Applications Available: October 11, 2002.

Deadline for Transmittal of Applications: January 17, 2003.

Supplementary Information: Sections 6141 through 6144 of the ESEA, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110), authorize the Secretary of Education to grant State flexibility (State-Flex) authority to up to seven SEAs, permitting them to (1) consolidate certain Federal education funds that are provided for State-level activities and State administration and use those funds for any educational purpose authorized under the ESEA in order to meet the State's definition of AYP and advance the education priorities of the State and its LEAs; and (2) specify how LEAs in the State will use funds allocated under section 5112(a) of the ESEA (State Grants for Innovative Programs). In addition, an SEA with State-Flex authority must enter into performance agreements with not fewer than four, but no more than ten, LEAs (at least half of which must be high-poverty LEAs), giving those LEAs the flexibility to consolidate certain Federal education funds and to use those funds for any educational purpose permitted under the ESEA in order to meet the State's definition of AYP and specific, measurable goals for improving student achievement and narrowing achievement gaps.

The Secretary will select State-Flex SEAs on a competitive basis in accordance with the selection criteria contained in a notice published elsewhere in this issue of the **Federal Register**. The application requirements and a description of the application process are also provided in that notice.

The Secretary intends to select up to four SEAs for participation in State-Flex under this competition. In conducting this competition, the Department will review the quality of State-Flex plans, including the quality of the local performance agreements that are submitted as part of those plans. Based on that review, the Department will grant State-Flex authority to up to four SEAs. If an SEA selected for State-Flex authority has not yet had its AYP definition approved by the Department, that SEA will receive conditional State-Flex authority. An SEA with conditional State-Flex authority will not be able to exercise its State-Flex authority or implement any portion of its State-Flex plan (including the local performance agreements) unless the Department approves the SEA's AYP definition by March 31, 2003.

The Department will select the additional State-Flex SEAs in a subsequent competition.

For Further Information Contact: Ms. Milagros Lanauze. Telephone: (202) 401–0039 or via Internet: *StateFlex@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

Applications: You may obtain a copy of the application on the Department's web site at: *http://www.ed.gov/GrantApps/#stateflex*.

You may also obtain a copy of the application from the contact person identified under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

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Program Authority: Sections 6141 through 6144 of the ESEA, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110).

Dated: October 8, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–26004 Filed 10–10–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.170A]

Office of Postsecondary Education; Jacob K. Javits Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The purpose of the Jacob K. Javits Fellowship (JKJ) Program is to award fellowships to eligible students of superior ability, selected on the basis of demonstrated achievement, financial need, and exceptional promise to undertake graduate study in selected fields in the arts, humanities, and social sciences leading to a doctoral degree, or to a master's degree in those fields in which the master's degree is the terminal highest degree awarded in the selected field of study at accredited institutions of higher education. The selected fields in the arts are: Creative writing, music performance, music theory, music composition, music literature, studio arts (including photography), television, film, cinematography, theater arts, playwriting, screenwriting, acting, and dance. The selected fields in the humanities are: Art history (including architectural history), archeology, area studies, classics, comparative literature, English language and literature, folklore, folklife, foreign languages and literature, history, linguistics, philosophy, religion, speech, rhetoric, and debate. The selected fields in the social sciences are: Anthropology, communications and media, economics, ethnic and cultural studies, geography, political science, psychology (excluding clinical psychology), public policy and public administration, and sociology (excluding the master's and doctoral degrees in social work).

Eligible Applicants: Individuals who at the time of application: Intend to pursue, at accredited U.S. institutions of higher education in academic year 2003–2004, doctoral or master's degrees (if the master's degree is the terminal highest degree awarded) in fields selected by the JKJ Board; have not completed their first full year of study for doctoral or master's degrees in the fields for which the individuals are applying; and are eligible to receive grants, loans, or work assistance pursuant to section 484 of the Higher Education Act, as amended. An individual must be a citizen or national of the United States, a permanent resident of the United States, in the United States for other than a temporary purpose and intending to become a permanent resident, or a citizen of any one of the Freely Associated States.

Note: An individual who has had a JKJ Fellowship in any field of study is ineligible.

Applications Available: October 11, 2002.

Deadline for Transmittal of Applications: December 11, 2002 for the JKJ Program. January 31, 2003 for the Free Application for Federal Student Aid.

Estimated Available Funds: $10,000,000.

Estimated Average Size of Awards: $36,000.

Estimated Number of Awards: 107 individual fellowships.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except as provided in 34 CFR 650.3(b)), 77, 82, 85, 86, 97, 98 and 99; and (b) The regulations for this program in 34 CFR part 650.

SUPPLEMENTARY INFORMATION: *Stipend Level:* The Secretary will determine the JKJ fellowship stipend for the academic year 2003–2004 based on the level of support provided by the National Science Foundation (NSF) graduate fellowships as of February 1, 2003, except that the amount will be adjusted as necessary so as not to exceed the JKJ fellow's demonstrated level of financial need.

Institutional Payment: The Secretary will determine the institutional payment for the 2003–2004 academic year by adjusting the previous academic year institutional payment, which is $11,031 per fellow, by the U.S. Department of Labor's Consumer Price Index for the 2002 calendar year. The institutional payment will be reduced by the tuition and fees the institution charges and collects from a JKJ fellow.

Instructions for Transmittal of Applications

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive

policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project For Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The JKJ Program—CFDA No. 84.170A is one of the programs included in the pilot project. If you are an applicant under the JKJ Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit the Applicant Information Sheet and Personal Statement electronically, however, you must submit all other application materials in hardcopy, including your letters of recommendation, transcripts, GRE report (if required for your field of study), and supporting materials in the arts.
- Within three working days of submitting your electronic application fax a signed copy of the Applicant Information Sheet to the Application Control Center after following these steps:

1. Print the Applicant Information Sheet from the e-APPLICATION system.
2. Make sure that you sign this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of Applicant Information Sheet.
5. Fax the Applicant Information Sheet to the Application Control Center at (202) 260–1349.

You may access the electronic grant application for the JKJ Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications Contact: Federal Student Aid Information Center, P.O. Box 84, Washington DC 20044–0084. Telephone (toll free): 1–800–433–3243, FAX: (319) 358–4316. The application may also be accessed on the JKJ Web site: *http://www.ed.gov/offices/OPE/HEP/iegps/javits.html.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at 1–800–730–8913.

FOR FURTHER INFORMATION CONTACT: Carolyn Proctor, Jacob K. Javits Fellowship Program, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K St., NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7542 or via Internet: *ope_javits_program@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Program Authority: 20 U.S.C. 1134–1134d.

Dated: October 8, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–26011 Filed 10–8–02; 3:02 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 02–57–NG, et al.]

Office Of Fossil Energy

[FE Docket NO. 02–57–NG, et al.]

Avista Corporation, et al.; Orders Granting and Amending Authority To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during September 2002, it issued Orders granting and amending authority to import and export natural gas. These Orders are summarized in the attached appendix and may be found on the FE web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 7, 2002.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas and Petroleum, Import and Export Activities, Office of Fossil Energy.

APPENDIX—ORDERS GRANTING AND AMENDING IMPORT/EXPORT AUTHORIZATIONS

[DOE/FE Authority]

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume (Bcf)	Export volume (Bcf)	Comments
1806	9–04–02	Avista Corporation, 02–57–NG	100		Import of natural gas from Canada, beginning on June 26, 2002, and extending through June 25, 2004.
1149–B	9–12–02	BC Gas Utility Ltd., 96–07–NG	8		Amendment to import authority to increase volumes from 6 Bcf per year to 8 Bcf per year, and extend the term of the authority until April 30, 2004.
1808	9–16–02	BC Gas Utility Ltd., 02–60–NG	35	35	Import and export natural gas from and to Canada, beginning on December 19, 2002, and extending through December 18, 2004.
1750–A	9–17–02	Enbridge Gas Distribution Inc. (Formerly The Consumers' Gas Company Ltd.), 01–86–NG.			Name change on blanket import and export authority.
1739–A	9–17–02	Aquila, Inc. (Formerly UtiliCorp United Inc.), 01–78–NG.			Name change on blanket import authority.
1809	9–19–02	BP Canada Energy Marketing Corp., 02–62–NG.	500		Import and export a combined total of natural gas from and to Canada, beginning on September 24, 2002, and extending through September 23, 2004.
1810	9–20–02	Cook Inlet Energy Supply L.L.C., 02–61–NG.	400		Import and export a combined total of natural gas from and to Canada and Mexico, beginning on September 20, 2002, and extending through September 19, 2004.
1811	9–23–02	Dominion Exploration Canada Ltd. 02–64–NG.	25		Import of natural gas from Canada, beginning on October 1, 2002, and extending through September 30, 2004.
1809	9–25–02	BP Canada Energy Marketing Corp., 02–62–NG.			Errata Notice. Term of the authority incorrectly stated.
1812	9–30–02	Montana-Dakota Utilities Co., A Division of MDU Resources Group, Inc., 02–63–NG.	10		Import of natural gas from Canada, beginning on December 1, 2002, and extending through November 30, 2004.

[FR Doc. 02–25989 Filed 10–10–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–1–002]

ANR Pipeline Company; Notice of Compliance Filing

October 4, 2002.

Take notice that on September 30, 2002, ANR Pipeline Company (ANR) filed a revised tariff sheet to eliminate two service agreements with Alcoa, Inc. and Alcoa Building Products, Inc. from its list of non-conforming agreements. The two agreements no longer contain MDQ adjustments provisions that the Commission found to constitute unacceptable material deviations in ANR Pipeline Company, 98 FERC ¶ 61,247 (2002).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25800 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–056]

ANR Pipeline Company; Notice of Negotiated Rate

October 4, 2002.

Take notice that on October 1, 2002, ANR Pipeline Company (ANR) tendered for filing three negotiated rate agreements between ANR and BP Energy Company (BP) pursuant to ANR's Rate Schedules PTS–2, ITS and ITS (Liquefiables). ANR tenders these agreements pursuant to its authority to enter into negotiated rate agreements. ANR requests that the Commission accept and approve the agreements to be effective October 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25827 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket Nos. ER02–1367–000 and ER02–1367–001]

Federal Energy Regulatory Commission Calpine Oneta Power, L.P.; Notice of Issuance of Order

October 4, 2002

Calpine Oneta Power, L.P. (Calpine Oneta) submitted for filing a tariff under which Calpine Oneta will engage in the sales of capacity, energy and certain ancillary services at market-based rates. Calpine Oneta also requested waiver of various Commission regulations. In particular, Calpine Oneta requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Calpine Oneta.

On July 17, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Calpine Oneta should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Calpine Oneta is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Calpine Oneta, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Calpine Oneta's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 17, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25797 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–5–000]

CMS Trunkline Gas Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 4, 2002

Take notice that on October 1, 2002, CMS Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing to become effective November 1, 2002.

Trunkline states that this filing is being made in accordance with Section 22 (Fuel Reimbursement Adjustment) of Trunkline's FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets listed on Appendix A reflect: a 0.27% increase (Field Zone to Zone 2), a 0.32% increase (Zone 1A to Zone 2), a 0.24% increase (Zone 1B to Zone 2), a 0.06% increase (Zone 2 only), a 0.42% increase (Field Zone to Zone 1B), a 0.47% increase (Zone 1A to Zone 1B), a 0.39% increase (Zone 1B only), a 0.24% increase (Field Zone to Zone 1A), a 0.29% increase (Zone 1A only) and a 0.16% increase (Field Zone only) to the currently effective fuel reimbursement percentages.

Trunkline states that copies of this filing are being served on all affected shippers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25813 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–190–020]

Colorado Interstate Gas Company; Notice of Negotiated Rate

October 4, 2002.

Take notice that on October 1, 2002, Colorado Interstate Gas Company (CIG) tendered for filing three Firm Transportation Service Agreements (FTSAs) between CIG and Williams Energy Marketing & Trading Company (successor to Barrett Resources Corporation), El Paso Energy Raton, L.L.C and Primero Gas Marketing Company. The FTSAs are being submitted for Commission acceptance of negotiated rate provisions to be effective October 1, 2002.

CIG states the FTSA's are being filed to implement negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25820 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1959–000]

CPN Bethpage 3rd Turbine Inc.; Notice of Issuance of Order

October 4, 2002.

CPN Bethpage 3rd Turbine Inc. (CPN) submitted for filing an application for authority to engage in the sale of wholesale energy, capacity replacement reserves and ancillary services at market-based rates. CPN also requested waiver of various Commission regulations. In particular, CPN requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by CPN.

On July 23, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by CPN should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, CPN is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of CPN, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of CPN's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 17, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25798 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket Nos. ER02–2227–000, ER02–2228–000, ER02–2229–000, ER02–2230–000, ER02–2231–000, and ER02–2232–000]

Federal Energy Regulatory Commission Creed Energy Facility, LLC; Feather River Energy Center, LLC; Goose Haven Energy Center, LLC; Lambie Energy Center, LLC; Pajaro Energy Center, LLC; Wolfskill Energy Center, LLC; Notice of Issuance of Order

October 4, 2002.

Creed Energy Facility, LLC (Creed), Feather River Energy Center, LLC (Feather River), Goose Haven Energy Center, LLC (Goose Haven), Lambie Energy Center, LLC (Lambie), Pajaro Energy Center, LLC (Pajaro), and Wolfskill Energy Center, LLC (Wolfskill) (collectively, "Applicants"), filed applications requesting that the Commission accept rate schedules under which the Applicants will make wholesale sales of electric energy, capacity, replacement reserves, and certain ancillary services at market-based rates; reassign transmission capacity; and resell firm transmission rights. In addition, Applicants requested waiver of various Commission regulations. In particular, Applicants requests that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability.

On August 30, 2002, the Commission issued an Order granting requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, the Applicants are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be

adversely affected by continued approval of the Applicants' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 17, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–25799 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–34–010]

Dauphin Island Gathering Partners; Notice of Compliance Filing

October 4, 2002.

Take notice that on September 30, 2002, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheet listed below to become effective October 30, 2002.

First Revised Sheet No. 359

Dauphin Island states that the revised tariff sheets are being filed to comply with § 154.1(d) of the Commission's Regulations which state that any contract or executed service agreement that deviates in any material aspect from the form of service agreement must be filed with the Commission and such nonconforming agreement must be referenced in the pipeline's tariff.

Dauphin Island states that copies of its filing are being served on its customers and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25815 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–566–000]

Dominion Transmission, Inc.; Notice of Annual EPCA Filing

October 4, 2002.

Take notice that on September 30, 2002, Dominion Transmission Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourteenth Revised Sheet No. 31; Seventeenth Revised Sheet No. 32; Ninth Revised Sheet No. 34; Twelfth Revised Sheet No. 35; and Fifth Revised Sheet No. 39, with an effective date of November 1, 2002.

DTI states that the purpose of its filing is to comply with the Electric Power Cost Adjustment provision of the General Terms and Conditions of its FERC Gas Tariff, as that provision will be revised effective November 1, 2002, in accordance with the Stipulation and Agreement filed on June 22, 2001, in Docket No. RP00–632–003, and approved by Commission letter order issued in that proceeding on September 13, 2001.

DTI states that copies of the filing have been sent to DTI's customers and interested stated commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25806 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–21–000]

Duke Energy Guadalupe Pipeline, Inc.; Notice of Petition for Rate Approval

October 4, 2002.

Take notice that on September 10, 2002, Duke Energy Guadalupe Pipeline, Inc. (Guadalupe) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve the proposed rates as fair and equitable for transportation and storage services performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Guadalupe proposes to establish a rate of $0.1852 per MMBtu for system-wide firm and interruptible transportation services and interruptible parking and loaning services. In addition, Guadalupe proposes a two-part rate consisting of a demand charge of $2.059 per MMBtu and a commodity charge of $0.2529 per MMBtu for its proposed power and peaking services. Guadalupe also proposes to charge a 1.9 percent fuel charge for all services

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before October 18, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is on file with the Commission and are available for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.200(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25819 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket Nos. RP00–466–002 and RP00–618–003]

Federal Energy Regulatory Commission Enbridge Offshore Pipelines (UTOS) LLC; Notice of Compliance Filing

October 4, 2002.

Take notice that on October 1, 2002, Enbridge Offshore Pipelines (UTOS) LLC, (UTOS) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of October 1, 2002:

First Revised Sheet No. 125
Substitute First Revised Sheet No. 135
Substitute First Revised Sheet No. 144
Substitute First Revised Sheet No. 145

UTOS states that the filing is being made in compliance with the Commission's September 19, 2002 order in these proceedings.

UTOS states that complete copies of its filing are being mailed to all of the parties on the Commission's Official Service list for these proceedings, all of its jurisdictional customers, and applicable State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25832 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–400–002]

Enbridge Pipelines (Midla) Inc.; Notice of Compliance Filing

October 4, 2002.

Take notice that on October 1, 2002, Enbridge Pipelines (Midla) Inc., (Midla) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, with an effective date of June 1, 2002:

Substitute First Revised Sheet No. 111
Substitute First Revised Sheet No. 130
Substitute First Revised Sheet No. 134

Midla states that the filing is being made in compliance with the Commission's September 6, 2002 order in these proceedings.

Midla states that complete copies of its filing are being mailed to all of the parties on the Commission's Official Service list for these proceedings, all of its jurisdictional customers, and applicable State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25831 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–9–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes to FERC Gas Tariff

October 4, 2002.

Take notice that on October 2, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Seventh Revised Sheet No. 20; First Revised Sheet No. 3600; and Third Revised Sheet No. 3613, to become effective November 4, 2002.

As the Commission has not extended its policy, which provided for the removal of the rate ceiling for short-term

capacity release transactions of less than one year until September 30, 2002, Gulf South proposes to remove tariff provisions associated with the former policy.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25838 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–10–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes to FERC Gas Tariff

October 4, 2002.

Take notice that on October 2, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective November 1, 2002:

Second Revised Sheet No. 2
Second Revised Sheet No. 102
First Revised Sheet No. 105
First Revised Sheet No. 201
First Revised Sheet No. 204
First Revised Sheet No. 302
Third Revised Sheet No. 306
First Revised Sheet No. 405
First Revised Sheet No. 503
Third Revised Sheet No. 604
Second Revised Sheet No. 605
First Revised Sheet No. 720
First Revised Sheet No. 2446
First Revised Sheet No. 2501
Original Sheet No. 4020
Second Revised Sheet No. 4100
Reserved Sheet Nos. 4101–4199
Second Revised Sheet No. 4200
Reserved Sheet Nos. 4201–4299
Second Revised Sheet No. 4300
Reserved Sheet Nos. 4301–4399
Second Revised Sheet No. 4400
Reserved Sheet Nos. 4401–4499
Second Revised Sheet No. 4500
Reserved Sheet Nos. 4501–4599
Second Revised Sheet No. 4600
Reserved Sheet Nos. 4601–4699
Original Sheet No. 4703
Reserved Sheet Nos. 4704–4749
Second Revised Sheet No. 4804
Reserved Sheet Nos. 4903–5199

Gulf South is revising the tariff sheets listed above in order simplify Gulf South's pro forma service agreements and to eliminate any possibility of confusion between the service agreement terms and conditions and other tariff provisions. The language from the standard terms and conditions of such agreements has either been eliminated or moved to another part of the tariff as more fully described below. Gulf South is also updating its tariff to eliminate its proprietary Operational Balancing Agreement form and proposes to utilize the NAESB Model Operational Balancing Agreement as the form document for its OBA agreements.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25839 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP02–361–003 and RP02–361–004]

Gulfstream Natural Gas System, LLC; Notice of Compliance Filings

October 4, 2002.

Take notice that on September 3 and September 12, 2002, Gulfstream Natural Gas System, L.L.C. (Gulfstream) submitted revised negotiated rate agreements with Seminole Electric Cooperative, Inc. and the City of Lakeland, Florida, respectively, pursuant to the Commission's July 3, 2002 order in Docket No. RP02–361–000. Gulfstream is requesting privileged treatment for the agreements pursuant to Section 388.112 of the Commission's regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 11, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25833 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–567–000]

High Island Offshore System, L.L.C.; Notice of Tariff Filing

October 4, 2002.

Take notice that on September 30, 2002, High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 36. HIOS requests that this revised tariff sheet be made effective November 1, 2002.

HIOS states that the revised tariff sheet is being filed to modify HIOS's Rate Schedule FT–2 to give a shipper the ability to provide HIOS only thirty (30) days notice (in lieu of six months notice) of a change in the shipper's monthly maximum daily quantity (MDQ) in the event a federal lessor elects to take natural gas royalties-in-kind.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25816 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG02–7–000]

Kern River Gas Transmission Company; Notice of Filing

October 4, 2002.

On September 23, 2002, Kern River Gas Transmission Company filed its revised standards of conduct under Part 161 of the Commission's regulations, 18 CFR part 161.

Kern River Gas Transmission Company states that it served copies of the filing on all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. (18 CFR 385.211 or 385.214) All such motions to intervene or protest should be filed on or before October 21, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to assess the document. For assistance, call (202) 502–8222 or TTY (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25807 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2366–000]

Louis Dreyfus Energy LLC; Notice of Issuance of Order

October 4, 2002.

Louis Dreyfus Energy LLC (LDE) submitted for filing an application for authority to engage in the sales of electric power, energy transactions and ancillary services at wholesale at market-based rates. LDE also requested waiver of various Commission regulations. In particular, LDE requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by LDE.

On September 18, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by LDE should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, LDE is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of LDE, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of LDE's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 18, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the

internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–25796 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–6–000]

Maritimes & Northeast Pipeline L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

October 4, 2002.

Take notice that on October 1, 2002, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective on November 1, 2002.

Fourth Revised Sheet No. 11
Second Rev First Revised Sheet No. 265

Maritimes states that it is making this Fuel Retainage Quantity filing, pursuant to Section 20 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff. Maritimes is proposing a reduction of 0.60% to the Winter Period Fuel Reimbursement Percentages (FRP) and also a reduction of 0.50% to the Spring Shoulder Period. The projected FRPs for each of the four periods will be 0.90%. In addition, Maritimes respectfully requests to revise its tariff to reflect an Index Price defined as the average of the daily Midpoint prices as published by Platts, Gas Daily for Dracut, Mass.during the relevant month, less the 100% load factor Rate Schedule MN365 maximum recourse rate in effect for such month.

Maritimes also states that it is submitting the calculation of the fuel retainage quantity (FRQ) Deferred Account amount, pursuant to Section 20 of the GT&C, which provides that Maritimes will calculate surcharges or refunds designed to amortize the net monetary value of the balance in the FRQ Deferred Account at the end of the previous accumulation period.

Maritimes states that for the period August 1, 2001 through July 31, 2002, the FRQ Deferred Account resulted in a net credit balance of approximately $863,848.29, inclusive of carrying charges, that will be refunded to Maritimes' customers.

Maritimes states that copies of this filing were mailed to all affected customers of Maritimes and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25835 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–7–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

October 4, 2002.

Take notice that on October 1, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to become effective November 1, 2002.

Natural states that the purpose of this filing is to revise the provisions of the General Terms and Conditions in Natural's Tariff relating to shipper creditworthiness. These changes are important to preserving the integrity of Natural's firm capacity in light of the deteriorating credit being experienced by some shippers, particularly energy trading companies.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at http://www.ferc.gov using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25836 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–38–000]

Northern Natural Gas Company; Notice of Technical Conference

October 4, 2002.

In the Commission's order issued on September 20, 2002,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Tuesday, November 12, 2002, at 10 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please contact Charles B. Spencer in the Office of the Secretary on (202) 502–8897, for further information.

All interested parties and Staff are permitted to attend.

[1] Northern Natural Gas Company, 100 FERC ¶ 61,278 (2002).

Magalie R. Salas,

Secretary.

[FR Doc. 02–25801 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–410–001]

Paiute Pipeline Company; Notice of Compliance Filing

October 4, 2002.

Take notice that on October 1, 2002, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective October 1, 2002:

Fourth Revised Sheet No. 61A
First Revised Sheet No. 61A.1
First Revised Sheet No. 61B

Paiute states that the purpose of its filing is to effectuate changes to the General Terms and Conditions of Paiute's tariff to comply with Order No. 587–O and a letter order issued September 16, 2002 in Docket No. RP02–410–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25834 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–4–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

October 4, 2002.

Take notice that on October 1, 2002, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing to become effective November 1, 2002.

Panhandle states that this filing is made in accordance with Section 24 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Panhandle's FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets filed herewith reflect the following changes to Fuel Reimbursement Percentages:

(1) A 0.01% increase in the Gathering Fuel Reimbursement Percentage;

(2) A 0.04% increase in the Field Zone Fuel Reimbursement Percentage;

(3) A 0.04% decrease in the Market Zone Fuel Reimbursement Percentage;

(4) A 0.22% increase in the Injection and a 0.22% increase in the Withdrawal Field Area Storage Reimbursement Percentages; and

(5) A 0.22% increase in the Injection and a 0.22% increase in the Withdrawal Market Area Storage Reimbursement Percentages.

Panhandle further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25812 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket No. RP99–518–030]

Federal Energy Regulatory Commission

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rate

October 4, 2002.

Take notice that on October 1, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, First Revised Sheet No. 15.

GTN states that this sheet is being filed to reflect the implementation of one negotiated rate agreement and the removal of five negotiated rate agreements. GTN requests that this tariff sheet become effective October 1, 2002.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This

filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25829 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–020]

Questar Pipeline Company; Notice of Negotiated Rate

October 4, 2002.

Take notice that on October 1, 2002, Questar Pipeline Company's (Questar) filed a tariff filing to implement a negotiated-rate contract for Dominion Exploration & Production, Inc. as authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, *et al.* The Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers. Questar submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 (Policy Statement) issued January 31, 1996.

Questar states that a copy of this filing has been served upon all parties to this proceeding, Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25828 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–3–000]

Southwest Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

October 4, 2002.

Take notice that on October 1, 2002, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Seventh Revised Sheet No. 5, proposed to become effective November 1, 2002.

Southwest states that this filing is made in accordance with Section 16 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Southwest's FERC Gas Tariff, First Revised Volume No. 1. The Fuel Reimbursement Adjustment filed herewith reflects the following Fuel Reimbursement Percentages: (1) West Area Storage Facilities Injection 1.21% and Withdrawal 0.46%; and (2) East Area Storage Facilities Injection 2.51% and Withdrawal 1.17%.

Southwest further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25811 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–109]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate

October 4, 2002.

Take notice that on October 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Northern Utilites, Inc. Tennessee requests that the Commission grant such approval effective November 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25821 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–110]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate

October 4, 2002.

Take notice that on October 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and NSTAR Gas Company. Tennessee requests that the Commission grant such approval effective November 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25822 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–111]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate

October 4, 2002.

Take notice that on October 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Bay State Gas Company. Tennessee requests that the Commission grant such approval effective November 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25823 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–112]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

October 4, 2002.

Take notice that on October 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing and approval (1) a copy of a Gas Transportation Agreement between Tennessee and Columbia Gas of Ohio (COH) pursuant to Tennessee's Rate Schedule FT-A (Service Package 8403) and (2) a copy of the June 6, 2002 Firm Transportation Negotiated Rate Letter Agreement entered into between Tennessee and COH ("Negotiated Rate Letter"). The filed Service Package 8403 and the Negotiated Rate Letter reflect a negotiated rate arrangement between Tennessee and COH to be effective November 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly

encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25824 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–113]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate

October 4, 2002.

Take notice that on October 1, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and NSTAR Gas Company. Tennessee requests that the Commission grant such approval effective November 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25825 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–495–003 and RP01–97–002]

Texas Gas Transmission Corporation; Notice of Compliance Filing

October 4, 2002.

Take notice that on September 30, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective on November 1, 2002.

Texas Gas states that these tariff sheets filed herewith are being submitted in compliance with the Commission's "Order on Order Nos. 637, 567–Gand 587–L Settlement" issued August 27, 2002 in Docket Nos. RP00–495–000, *et al.*, (the Order).[1] Texas asserts that in that Order, the Commission found that Texas Gas states that it has generally complied with the requirements of Order No. 637,[2] subject to certain modifications discussed in the Order.

Texas Gas states that it was directed to file revised actual (not pro forma) tariff sheets within 30 days consistent with the discussion in the Order, but that the order directs that Texas Gas may not place the revised tariff sheets into effect before further order of the Commission.

Texas Gas states that copies of the revised tariff sheets are being mailed to all parties on the official service list, to Texas Gas's jurisdictional customers and to interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25802 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

[1] Texas Gas Transmission Corporation, 100 FERC 61,218 (2002).

[2] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, FERC Stats. & Regs., Regulations Preambles (July 1996—December 2000) 31,091 (Feb. 9, 2000); order on rehearing, Order No. 637–A, FERC Stats. & Regs., Regulations Preambles (July 1996—December 2000) 31,099 (May 19, 2000); order on rehearing, Order No. 637–B, 92 FERC 61,062 (July 26, 2000); aff'd in part and remanded in part, Interstate Natural Gas Association of America v. FERC, 285 F.3d 18 (DC Cir. Apr. 5, 2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–260–013]

Texas Gas Transmission Corporation; Notice of Filing of Refund Report

October 4, 2002.

Take notice that on October 2, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a refund report pursuant with the provisions of Article XII of the Stipulation and Agreement (S&A) in the above-referenced docket and complying with Subpart F of Part 154 of the Commission's regulations.

Texas Gas states that the refund report details the amount of refunds made in accordance with the provisions of Article II, Section 2 of the S&A, which required Texas Gas to refund within 60 days of a Final Commission Order the difference between the amounts computed under the retroactive settlement base rates approved in Docket No. RP00–260 and the base tariff rates that were actually charged for service provided by Texas Gas for the period November 1, 2000 through July 31, 2002. Interest was computed in accordance with Subpart F, Section 154.501(d).

Texas Gas states that the refunds were made on September 16, 2002, accompanied by associated customer reports to all of Texas Gas's jurisdictional customers receiving such refunds, as well as interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 11, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25830 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–052]

TransColorado Gas Transmission Company; Notice of Compliance Filing

October 4, 2002.

Take notice that on October 1, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 Fifty-First Revised Sheet No. 21 and Twenty-Fourth Revised Sheet No. 22A, to be effective October 1, 2002.

TransColorado states that the filing is being made in compliance with the Cmmission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect one amended negotiated-rate contract with National Fuel Marketing Company.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25826 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–8–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

October 4, 2002.

Take notice that on October 1, 2002 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 Seventeenth Revised Sheet No. 29, to become effective November 1, 2002.

Transco states that the filing is submitted pursuant to Section 38 of the General Terms and Conditions of Transco's FERC Gas Tariff which provides that Transco will file a redetermination of its fuel retention percentage applicable to Rate Schedules LG–A, LNG, LNG–R and LG–S (LNG Rate Schedules) to be effective each November 1. The derivation of the revised fuel retention percentage included therein is based on Transco's actual gas required for operations (GRO) for the period September 1999 through August 2002 plus the balance accumulated in the Deferred GRO Account at August 31, 2002. Appendix A contains workpapers supporting the derivation of the revised fuel retention percentages.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25837 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–422–001]

Transwestern Pipeline Company; Notice of Compliance Filing

October 4, 2002.

Take notice that on September 30, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, 6th Revised Sheet No. 50, to become effective October 1, 2002.

Transwestern states that on May 1, 2002, in Docket No. RM96–1–020, the Commission issued Order No. 587–O (Order), whereby the Commission amended its open access regulations that govern standards for conducting business and electronic communications with interstate pipelines. The Order, Transwestern states, required pipelines to make tariff filings by August 1, 2002, to implement provisions of the Order to become effective on October 1, 2002.

Transwestern states that it filed its 587–O Compliance filing on August 1, 2002 in Docket No. RP02–422–000. On September 16, 2002, the Commission issued the Compliance Filing Order in which Transwestern's Compliance filing was accepted subject to Transwestern reflecting NAESB Standard 5.3.24 Version 1.5 in its tariff. The instant filing adds the numeric reference of this Standard to Transwestern's tariff.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25805 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–1–000]

Transwestern Pipeline Company; Notice of Tariff Filing

October 4, 2002.

Take notice that on October 1, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Thirteenth Revised Sheet No. 5B.02, to become effective November 1, 2002.

Transwestern's Stipulation and Agreement filed on May 2, 1995, in Docket Nos. RP95–271, *et al.*, as amended by Transwestern's Stipulation and Agreement filed on May 21, 1996, provided for annual adjustments to the Settlement Base Rates ("SBRs") beginning November 1, 1998.

Transwestern states that the purpose of the instant filing is to set forth the factors and calculations used in determining the adjustments to the SBRs and to revise the SBRs to be effective November 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25809 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–2–000]

Transwestern Pipeline Company; Notice of Tariff Filing

October 4, 2002.

Take notice that on October 1, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eleventh Revised Sheet No. 5B.03, to become effective November 1, 2002.

Pursuant to Section 25 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Transwestern is filing a tariff sheet, which sets forth the new TCR II Reservation Surcharges that Transwestern proposes to put into effect on November 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25810 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–404–001]

Viking Gas Transmission Company; Notice of Compliance Filing

October 4, 2002.

Take notice that on September 30, 2002, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective October 1, 2002:

Substitute Tenth Revised Sheet No. 39
Substitute Eighth Revised Sheet No. 41A
Substitute Third Revised Sheet No. 46A

Viking states that the purpose of this filing is to remove tariff language that is currently pending before the Commission in Docket No. RP00–497–000 from tariff sheets that were accepted by the Commission in its September 26, 2002, Letter Order issued in Docket No. RP02–404–000.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers, to affected state regulatory commissions and to the parties listed on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25804 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–241–001]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Penalty Revenue Report

October 4, 2002.

Take notice that on July 23, 2002, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing revised schedules to its report of penalty revenue collected during Periods of Daily Balancing (PODB), filed April 30, 2002 in docket No. RP02–241–000.

Williams states that it made a filing on April 30, 2002 to report the amount of penalty revenue collected pursuant to the provisions of Article 9.6 of the General Terms and Conditions of its FERC Gas tariff during Periods of daily Balancing (PODB) occurring in the 1995–96 and 1996–97 winter heating seasons, and the proposed distribution of such revenue. Williams's April 30, 2002 filing contained several inadvertent errors related to Williams's interest calculations, the allocation of interest received between penalty categories, and an allocation of refunds to a party who should not have received a refund. A revised penalty Revenue Collected and revised penalty Distribution reports known as Revised Schedule 1 was filed.

Williams states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above, as well as all of Williams's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before October 11, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25803 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–572–000]

Williston Basin Interstate Pipeline Company; Notice of Annual Report

October 4, 2002.

Take notice that on September 30, 2002, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 358I, with an effective date of September 30, 2002.

Williston Basin states that as of July 31, 2002 it had a zero balance in FERC Account No. 191. As a result, Williston Basin will neither refund nor bill its former sales customers for any amounts under the conditions of Section No. 39.3.1 of its Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number

field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–25808 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–37–002]

Williston Basin Interstate Pipeline Company; Notice of Amendment

October 7, 2002.

Take notice that on September 27, 2002, Williston Basin Interstate Pipeline Company (Williston Basin), P.O. Box 5601, Bismarck, North Dakota 58506–5601, filed an amendment to its pending application filed on November 30, 2001, in Docket No. CP02–37–000, pursuant to sections 7(c) and 7(b) of the Natural Gas Act (NGA), to modify the construction of the Grasslands Project by proposing 72 miles of reroutes, modifying facility construction to reduce the proposed maximum firm daily design delivery capacity from 120,000 dekatherms of natural gas per day to 80,000 dekatherms of natural gas per day and abandoning certain facilities, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY (202) 502–8659.

Specifically, Williston Basin states that it no longer requests authorization to construct and operate the Cabin Creek South and Recluse compressor stations. Williston Basin further states that it will no longer be necessary to construct an amine treatment facility as part of its proposal.

In addition, Williston Basin seeks authority in the amended proposal to:

- Install an additional 1,200 horsepower (hp) compressor unit at the existing Cabin Creek compressor station;
- Install electric coolers at the proposed Manning compressor station instead of running the coolers off the horsepower produced at the station;
- Increase the maximum allowable operating pressure (MAOP) on 28 miles of the existing 8-inch diameter Bitter Creek supply lateral in Wyoming from 1,203 psig to 1,440 psig;
- Replace three existing underground road crossings on the existing 8-inch Bitter Creek supply lateral with heavier grade pipeline to meet Department of Transportation requirements and to abandon in place the three existing underground road crossings being replaced;
- Modify the pipeline route by proposing 72 miles of pipeline re-routes due to landowner, environmental and construction concerns;
- Construct an alternate route, referred to as the Gunsite Pass Route, should Williston Basin not be able to utilize its originally proposed route;
- Change the method of calculating the volume-pressure relationship from the Panhandle Eastern method to the Colebrook method; and
- Defer $1.0 million of depreciation expense annually for the first three and one-half years of the Grasslands Project to be recovered over the following three and one-half years.

Williston Basin also proposes to revise its original construction schedule and construct the project in three phases with the option to construct Phase II and/or Phase III earlier than scheduled should Williston Basin determine that sufficient additional requests for capacity justify the earlier construction. It is stated that Williston Basin currently plans to construct Phase I to be in service effective November 1, 2003, Phase II to be in service effective November 1, 2004 and Phase III to be in service effective November 1, 2005.

Any questions regarding the amendment should be directed to Keith A. Tiggelaar, Director of Regulatory Affairs, Williston Basin Interstate Pipeline Company, P.O. Box 5601, Bismarck, North Dakota 58506–5601, at (701) 530–1560, or E-mail: *keith.tiggelaar@wbip.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before October 28, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

The Commission strongly encourages electronic filings. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the amendment for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

All persons who have heretofore filed need not file again.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25976 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1417–080]

Central Nebraska Public Power and Irrigation District; Notice of Availability of Final Environmental Assessment

October 7, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed a Land and Shoreline Management Plan for the Kingsley Dam Hydroelectric Project, located on the North Platte and Platte Rivers, in Garden, Keith, Lincoln, Dawson, and Gosper Counties, Nebraska, and has prepared a Final Environmental Assessment (FEA). The Kingsley Dam Project does not occupy any federal or tribal lands.

The FEA contains the staff's analysis of the potential environmental impacts and concludes that approving the Shoreline Management Plan, with staff recommended changes, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the FEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at http://www.ferc.gov using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document.

For assistance, call (202) 502–8222 or for TTY (202) 502–8659 For further information, contact Steve Hocking at (202) 502–8753 or *steve.hocking@ferc.gov*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25977 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 11834–000 and 4026–033—Maine]

FPL Energy Maine Hydro, LLC and Androscoggin Reservoir Company; Notice of Availability of Final Environmental Assessment

October 4, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for an original license for the Upper and Middle Dam Storage Project located on the Rapid River, in Oxford and Franklin Counties, Maine, and has prepared an Final Environmental Assessment (FEA) for the project. In addition, the FEA analyzes the proposed permanent flow pursuant to Article 32 of the existing license for the Aziscohos Project, located on the Magalloway River, in Oxford County, Maine. In the FEA, the Commission's staff has analyzed the potential environmental effects of the project, and permanent minimum flow and has concluded that approval of the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

On May 21, 2002, the Commission staff issued a draft Environmental Assessment (EA) for the Upper and Middle Dam Storage Project and the proposed permanent minimum flow from the Aziscohos Project and requested that any comments be filed within 30 days. Comments were filed by four entities and are addressed in the FEA.

The FEA contains the staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY (202) 502–8659, or e-mail *FERCONLINESUPPORT@FERC.GOV*.

For further information, contact Mark Pawlowski at (202) 502–6052.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25818 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–385–000]

Williams Gas Pipelines Central, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Redbud Power Pipeline Project and Request for Comments on Environmental Issues

October 4, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Redbud Power Pipeline Project involving construction and operation of facilities by Williams Gas Pipelines Central, Inc.(Williams) in Oklahoma County, Oklahoma.[1] These facilities would consist of about 12.6 miles of various diameter pipeline and a meter station with appurtenant facilities. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about

[1] Williams' application was originally filed under the blanket certificate authority issued to Williams in Docket No. CP82–479–000 and the certificate procedures of Part 157 of the Commission's regulations. Williams' application was subsequently protested, however, and on September 5, 2002, its application was converted to a section 7(c) filing under the Natural Gas Act (NGA).

the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Williams provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*www.ferc.gov*).

Summary of the Proposed Project

Williams wants to construct and operate 12.6 miles of a 30-inch and 24-inch-diameter pipeline lateral and a 12-inch-diameter delivery meter station with appurtenant facilities located in Oklahoma County, Oklahoma. The proposed facilities would transport up to 51,980 million British thermal units per day of natural gas to Redbud Energy, LP (Redbud) for its new non-jurisdictional 1,100 megawatt power generation station.

The new 12.6-mile-long lateral would commence at a point within Williams' existing Edmond Compressor Station and terminate on a site owned by Redbud. The lateral would consist of 12.3 miles of 30-inch-diameter pipeline and 0.3 miles of 24-inch-diameter pipeline. Pigging facilities are proposed at both ends of the lateral. Williams would construct a 100-foot by 150-foot meter station within the Redbud Power Plant.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 136.8 acres of land. Following construction, about 76.4 acres would be maintained as permanent right-of-way. The remaining 60.4 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use
- Water resources, fisheries, and wetlands
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Endangered and threatened species
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas 1, PJ–11.1.
- Reference Docket No. CP02–385–000.
- Mail your comments so that they will be received in Washington, DC on or before November 4, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCONLINESUPPORT@FERC.GOV*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25814 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site at the "FERRIS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call 1–866–208–3676. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

October 4, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 487–034.

c. *Date Filed:* September 25, 2002.

d. *Applicant:* PPL Holtwood, LLC.

e. *Name of Project:* Lake Wallenpaupack Hydroelectric Project.

f. *Location:* On Wallenpaupack Creek, in Wayne and Pike Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact:* Gary Petrewski, PPL Generation, LLC, Two North Ninth Street, Allentown, PA 18101–1179, (610) 774–5996, *gpetrewski@pplweb.com*.

i. *FERC Contact:* Patrick K. Murphy (202) 502–8755, *patrick.murphy@ferc.gov*.

j. *Deadline for filing comments:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *The existing Lake Wallenpaupack Project consists of:* (1) A dam, comprised of a gravity type concrete structure and earthen embankments, totaling about 1,300 feet long; (2) a 2.5-mile-long, 14-foot-diameter steel pipeline, connecting to a surge tank, and two penstocks; (2) a 5,700-acre reservoir; (3) a powerhouse with a total installed capacity of 44 megawatts; and (4) appurtenant facilities. The applicant estimates that the average annual generation is 80,500 megawatt hours.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch located at 888 First Street, NE, Room 2-A, Washington, DC 20426, or by calling (202) 502–8371. The application may be viewed on the Web at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, call 1–866–208–3676, or send an e-mail to ferconline *support@ferc.gov*. A copy is also available for inspection and reproduction at the address in item h above.

m. *Relicensing procedures and final amendments:* The Commission staff proposes to issue a single Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA before final action is taken on the license application. If any person or organization objects to this staff proposed procedure, they should file comments as stipulated in item j above, explaining the basis for their objection. The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency or Acceptance Letter with request for additional information—November 2002

Notice soliciting final terms and conditions—March 2003

Notice of the availability of the EA—August 2003

Ready for Commission's decision on the application—January 2004

Final amendments to the application must be filed with the Commission no later than 45 days from the issuance date of the notice soliciting final terms and conditions.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25817 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

October 7, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12250–000.

c. *Date filed:* June 18, 2002.

d. *Applicant:* Wesley E. Seale Hydro, LLC.

e. *Name and Location of Project:* The Wesley E. Seale Dam Hydroelectric Project would be located on the Nueces River in Jim Wells County, Texas. The proposed project would be located on an existing dam owned by the City of Corpus Christi and would not occupy any federal lands or facilities.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834, fax (208) 145–0835.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12250–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would consist of: (1) an existing 81-foot-high, 5,980-foot-long concrete dam, (2) an existing impoundment, Lake Corpus Christi, with a surface area of 19,521 acres and a storage capacity of 531,000 acre-feet at normal maximum water surface elevation 93 feet, (3) a proposed 200-foot-long, 6.5-foot-diameter steel penstock, (4) a proposed powerhouse containing one generating unit with an installed capacity of 1.3 megawatts, (5) a proposed 1-mile-long, 15-kv transmission line, and (6) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 3.9 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at http://www.ferc.gov using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at Wesley E. Seale Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25978 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

October 7, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12282–000.

c. *Date filed:* June 26, 2002.

d. *Applicant:* Rankin Hydro, LLC.

e. *Name and Location of Project:* The John Rankin Lock and Dam Hydroelectric Project would be located on the Tombigbee River in Itawamba County, Mississippi. The proposed project would utilize an existing dam administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, Telephone (208) 745–0834.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12282–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing John Rankin Lock and Dam and Reservoir, would consist of: (1) a proposed 200-foot-long, 8-foot-diameter steel penstock, (2) a proposed powerhouse containing one generating unit with an installed capacity of 1.8 megawatts, (3) a proposed 1-mile-long, 15-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 13.2 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, (202) 502–8659. A copy is also available for inspection and reproduction at Rankin Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and

Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25979 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing

October 7, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:*

b. *Project No.:* 12291–000.

c. *Date filed:* July 5, 2002.

d. *Applicant:* Beach City Hydro, LLC.

e. *Name and Location of Project:* The Beach City Dam Hydroelectric Project would be located on Sugar Creek in Tuscarawas County, Ohio. The proposed project would utilize an existing dam administered by the U.S. Army Corps of Engineers (Corps).

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834, fax (208) 745–0835.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12291–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Beach City Dam and Reservoir, would consist of: (1) a proposed 200-foot-long, 6-foot-diameter steel penstock, (2) a proposed powerhouse containing one generating unit with an installed capacity of 1 megawatt, (3) a proposed 1-mile-long, 15-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 6 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25980 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

October 7, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12329–000.

c. *Date filed:* August 2, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Jennings Randolph Dam Hydroelectric Project would be located on the North Branch Potomac River in Garrett County, Maryland and Mineral County, West Virginia, at the existing Jennings Randolph Dam administered by the Army Corps of Engineers (Corps).

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, Telephone (330) 535–7115.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12329–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Jennings Randolph Dam and Reservoir, would consist of: (1) a proposed 350-foot-long, 6-foot-diameter penstock, (2) a proposed powerhouse with an installed capacity of 2.6 megawatts, (3) a proposed 500-foot-long, 14.7-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 8.4 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION",

"PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25981 Filed 10–10–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6634–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–E60006–KY Rating EC2, Daniel Boone National Forest Land Exchange Project, Exchanging two Federal Tracts for 98.17 Acres of Privately Owned Land located in Owsley County. Federal Lands to be considered are Tract 107AB (52.15 acres) located on Langdon Branch in Leslie County and Tract 745 (39.96 acres) located on Spicer Fork in Perry County, KY.

Summary

EPA expressed environmental concerns with potential adverse impacts from the proposed land exchange and reasonably foreseeable surface mining activities on the long-term quality of headwater streams. The final EIS should describe how the water quality of Buckhorn Lake will be protected.

ERP No. D–AFS–F65032–MN Rating EC2, Holmes/Chipmunk Timber Sale Project, Implementation, Superior National Forest, LaCroix Ranger District, Saint Louis County, MN.

Summary

EPA expressed environmental concerns with potential impacts to 219 acres of wetlands under the preferred alternative. The final EIS should describe restoration methodologies and the details of contingency mitigation measures.

ERP No. D–BLM–G65083–NM Rating EC2, Farmington Resource Management Plan, Implementation, Managing Public Lands within the Farmington Field Office (FFO) Boundaries and Federal Oil and Gas Resources within the New Mexico Portion of San Juan Basin, San Juan, McKinley, Rio Arriba and Sandoval Counties, NM.

Summary

EPA expressed environmental concerns for potential impacts to water quality, riparian habitat and air quality. The final EIS should give more detail on mitigation measures and discuss contrasts between the various alternatives.

ERP No. D–FHW–E40320–NC Rating EO1, US 321 Highway Improvement Project (TIP), from NC–1500 (Blackberry Road) north to U.S. 221 in Blowing Rock, Funding and U.S. Army COE Section 404 Permit Issuance, Town of Blowing Rock, Caldwell and Watauga Counties, NC.

Summary

EPA expressed environmental objections to Alternative 4A due to impact to the Blue Ridge Escarpment and cut-and fill construction.

ERP No. D–FHW–E40795–NC Rating EC2, US–17 Interstate Corridor Improvements, south of NC–1127 (Possum Track Road) to north of NC–1418 (Roberson Road) Funding and Permit Issuance, City of Washington and Town of Chocowinity Vicinity, Beaufort and Pitt Counties, NC.

Summary

EPA had environmental concerns and requested more information regarding noise analysis, farmland losses, and mitigation of potential impacts.

ERP No. D–FHW–K40252–CA Rating EO2, Willits Freeway Bypass Project, Construction and Operation of a New Segment of U.S. 101, Funding, U.S. Army COE Section 404 Permit, NPDES Permit and Endangered Species Act Incidental Take Permit, City of Willits, Mendocino County, CA.

Summary

EPA expressed environmental objections to the magnitude of impact to waters of the U.S. from the proposed project. Additionally, sufficient information regarding feasibility and commitment to appropriate mitigation measures was not provided. EPA had concerns about the scope of analysis, indirect and cumulative impacts, and the avoidance and minimization of these impacts.

ERP No. D–NPS–K65365–AZ Rating LO, Navajo National Monument, General Management Plan and Development Concept Plan, Implementation, Navajo Counties, AZ.

Summary

EPA expressed lack of objections and supports protecting cultural and natural resources and providing improved visitor services by emphasizing partnerships with tribes and other stakeholders.

ERP No. D–USN–D52000–00 Rating EC1, Introduction of F/A 18 E/F (Super Hornet) Aircraft, Replacing the F–14 (TOMCAT) and F/A–18 C/D (Hornet) Aircraft, Homebasing and Operation, Possible Homebase sites include Naval Air Station (NAS) Oceana, VA; Marine Corps Air Station (MCAS) Beaufort, SC and MCAS Cherry Point.

Summary

EPA expressed environmental concern regarding noise impacts associated with the introduction of the Super Hornet aircraft. EPA believes that Alternative 6 would have lesser overall adverse consequences to the natural environment than Alternative 4A.

Final EISs

ERP No. F–AFS–F05123–00, Adoption—Bond Falls Hydroelectric Project, New License Issuance for an Existing Hydroelectric License (FECR No. 1864–005), Ontonagon River Basin, Ontonagon and Gogebic Counties, MI and Vilas County, WI.

Summary

EPA has no objections to this project. The project has not changed significantly since the Draft stage.

ERP No. F–BIA–K65237–CA, Agua Caliente Indian Reservation Project, Proposed Section 14 Specific Plan and Master Development Plan, Agua Caliente Band of Cahulla Indians, City of Palm Springs, Riverside County, CA.

Summary

EPA expressed continued environmental concerns about impacts to air quality and water sustainability. EPA requested that BIA address the applicability of the Clean Air Act's General Conformity Rule and discuss current regional water management efforts in the Record of Decision.

ERP No. F–BLM–J02011–00, Programmatic EIS—Southern Ute Indian Reservation Oil and Gas Development, Implementation, San Juan Basin, LaPlata, Archuleta, Montezuma Counties, CO and Rio Arriba and San Juan Counties, NM.

Summary

EPA continues to express environmental concerns about uncontrolled methane migration to the surface. The final EIS does include additional information on wetland impacts and avoidance and permitting procedures in response to EPA comments on the DEIS.

ERP No. F–FAA–K51040–CA, Santa Barbara Airport Improvements, Extension of Runway Safety Areas for Runway 7/25, Expansion of the Airline Terminal Building, Construction of New Cargo Building, New Taxiway M, New On-Airport Service Road and Additional T-Hangers and Pavement of Taxiway B, Funding and U.S. Army COE Section 404 and 10 Permits Issuance, Santa Barbara County, CA.

Summary

EPA had no objections to the proposed action. EPA did request that the Record of Decision address whether further air quality mitigation measures by the airport are feasible and available to reduce non-project-related emissions at the airport; and whether FAA can assist in the implementation of additional air quality-related mitigation measures.

ERP No. F–FHW–C40152–NJ, NJ–52(1) Causeway (known as MacArthur Boulevard) Construction Project, between NJ–9 in Somers Point, Atlantic County to Bay Avenue in Ocean City, Cape May County, Funding, U.S. Army COE Section 404 and 10 Permits and U.S. Coast Guard Permit Issuance, Atlantic and Cape May Counties, NJ.

Summary

EPA expressed no further concerns regarding the project as proposed.

Dated: October 8, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–26000 Filed 10–10–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6633–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed September 30, 2002 through October 04, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020407, Draft EIS, AFS, ID, North Kennedy-Cottonwood Stewardship Project, Proposal to Modify the Existing Transportation System and to Manage Vegetation through both Commercial and Non-Commercial methods to Improve the Forest Health, Boise National Forest, Emmett Ranger District, Gem and Valley Counties, ID, Comment Period Ends: November 25, 2002, Contact: Terry Hardy (208) 373–4235.

EIS No. 020408, Draft EIS, EPA, FL, Peace River/Manasota Regional Surface Water Supply Authority's Surface Water Supply, Storage, and Interconnect Project, Construction and Operation, To Increase Finished Water Delivery Capacity of 32.7 Million Gallon Per Day To Meet Year 2015 Potable Water Demand, DeSoto, Manatee, Sarasota and Charlotte Counties, Fl, Comment Period Ends: November 29, 2002, Contact: John Hamilton (404) 562–9617.

EIS No. 020409, Final EIS, NPS, GA, Fort Frederica National Monument General Management Plan, Implementation, Saint Simons Island, Glynn County, GA, Wait Period Ends: November 12, 2002, Contact: Mike Tennent (912) 638–3630.

EIS No. 020410, Final Supplement, FRC, WA, Irene Creek Hydroelectric Project, (FERC No.10100–002) and Anderson Creek Hydroelectric Project (FERC No. 10416–003), Construction and Operation, Issuance of Amended License Applications, Skagit and Whatcom Counties, WA, Wait Period Ends: November 12, 2002, Contact: Alan Mitchnick (202) 502–6074.

EIS No. 020411, Final EIS, BIA, CA, NV, Truckee River Water Quality Settlement Agreement—Federal Water Right Acquisition, Implementation, Truckee River, Placer County, CA and Washoe, Storey and Lyon Counties, NV, Wait Period Ends: November 12, 2002, Contact: Tom Strekal (775) 887–3500.

EIS No. 020412, Final EIS, COE, KS, Tuttle Creek Dam Safety Assurance Program, Proposal for Flood Control, Water Supply, Water Quality, Fish & Wildlife, Recreation and Navigation Support, Big Blue River, Riley and Potawatomie Counties, KS, Wait Period Ends: November 12, 2002, Contact: William B. Empson (816) 983–3556.

EIS No. 020413, Final EIS, FHW, LA, Louisiana 1 Improvements Project, Golden Meadow to Port Fourchon Highway Construction, Funding, U.S. Army COE Section 10 and 404, NPDES and Coast Guard Bridge Permits Issuance, Lafoufche Parish, LA, Wait Period Ends: November 20, 2002, Contact: William C. Farr (225) 757–7615.

EIS No. 020414, Final EIS, AFS, MT, Black Ant Salvage Project, Salvage of 739 Acres of Dead Merchantable Trees from the Lost Fork Fire of 2001, Lewis and Clark National Forest, Meagher Basin County, MT, Wait Period Ends: November 12, 2002, Contact: George Weldon (406) 791–7700.

EIS No. 020415, Final Supplement, COE, FL, Central and Southern Florida Project, Indian River Lagoon—South Feasibility Study, Additional Information, Selection of Plan, Alternative 6, Restoration of the Southern Indian River Lagoon and the St. Lucie Estuary Ecosystem, Martin, St. Lucie, Okeechobee Counties, FL, Wait Period Ends: November 12, 2002, Contact: Laura Mahoney (904) 232–2646.

EIS No. 020416, Final EIS, DOE, ID, Idaho High-Level Waste and Facilities Disposition, Alternatives for Managing High-Level Waste, Mixed Transuranic Waste/Sodium Bearing Waste and Associated Radioactive Wastes Evaluation, Bannock, Bingham, Bonneville, Butte, Madison, Clark, and Jefferson Counties, ID, Wait Period Ends: November 12, 2002, Contact: Richard Kimmel (208) 526–5583.

EIS No. 020417, Draft EIS, FTA, CA, Transbay Terminal/Caltrain Development Downtown Extension/ Redevelopment Project, New Multi-Modal Terminal Construction, Peninsula Corridor Service Extension

and Establishment of a Redevelopment Plan, Funding, San Francisco, San Mateo and Santa Clara Counties, CA, Comment Period Ends: November 25, 2002, Contact: Jerome Wiggins (415) 744–3115.

EIS No. 020418, Draft EIS, USN, CA, Advanced Amphibious Assault Vehicle (AAAV) Development, Replacement and Establishment, Implementation, Del Mar Basin Area of Marine Base Corps (MCB) Camp Pendelton, San Diego County, CA, Comment Period Ends: November 25, 2002, Contact: Lisa Seneca (619) 532–4744.

Amended Notices

EIS No. 020343, Draft EIS, SFW, CA, Natomas Basin Habitat Conservation Plan, Issuance of Incidental Take Permit and the Adoption of an Implementing Agreement or Agreements, Natomas Basin, Sacramento and Sutter Counties, CA, Comment Period Ends: October 28, 2002, Contact: Vicki Campbell (916) 414–6600. Revision of FR Notice Published on 8/16/2002: CEQ Comment Period Ending 9/30/2002 has been Extended to 10/28/2002.

Dated: October 8, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–26001 Filed 10–10–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7393–8]

EPA Science Advisory Board; Emergency Notification of Public Advisory Committee Teleconference Meeting; Human Health Research Strategy Review Panel

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of a teleconference of the Human Health Research Strategy Review Panel (HHRS Review Panel) of the U.S. Environmental Protection Agency's (EPA) Science Advisory Board (SAB). The HHRS Review Panel will meet on October 23, 2002 via teleconference from 3 p.m. to 4 p.m. Eastern Time. This teleconference meeting will be hosted out of Conference Room 6013, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The meeting is open to the public, but, due to limited space, seating will be on a first-come basis. The public may also attend via telephone, however, lines may be limited. For further information concerning the meeting or how to obtain the Teleconference phone number, please contact the individuals listed below.

The background for this review and the charge to the panel were published in 67 FR 41718–41721 on June 19, 2002. The notice also included a call for nominations for members of the panel in certain technical expertise areas needed to address the charge and described the process to be used in forming the panel.

The draft document that is the subject of this SAB review, *Human Health Research Strategy*, May 2002, is available on the SAB Web site (*see* below). Any questions on the strategy should be directed to the program contact listed below.

Purpose of the Meeting—The purpose of this public teleconference meeting is for the HHRS Review Panel to: (a) Discuss the charge and the adequacy of the review materials provided to the HHRS Review Panel; (b) clarify any questions and issues relating to the charge and the review materials; (c) discuss specific charge assignments to the HHRS Review Panelists; and (d) clarify specific points of interest raised by the Panelists in preparation for the face-to-face meeting planned for November 2002.

FOR FURTHER INFORMATION CONTACT: To enquire about public participation in the meeting identified above please contact Sue Shallal, Ph.D., Designated Federal Officer, HHRS Review Panel, USEPA Science Advisory Board (1400A), Suite 6450DD, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4566; fax at (202) 501–0323; or via e-mail at *shallal.suhair@epa.gov*. Brief oral comments will be taken *only on the topics given above under Purpose of the Meeting* [a formal public comment period will be advertised for the planned November face-to-face meeting]. Requests for oral comments must be in writing (e-mail, fax or mail) and received by Dr. Shallal no later than noon Eastern Time on October 18th. The SAB will have a brief period (no more than 10 minutes total) available during the teleconference meeting which will be divided among the speakers who register. Registration is on a first come basis. Those wishing to speak but who are unable to register in time may provide their comments in writing.

Members of the public desiring additional information about the meeting location or the call-in number for the teleconference, must contact Ms. Zisa Lubarov-Walton, Management Assistant, EPA Science Advisory Board (1400A), Suite 6450FF, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4537; fax at (202) 501–0582; or via e-mail at *lubarov-walton.zisa@epa.gov*. A copy of the draft agenda for the meeting will be posted on the SAB Web site *http://www.epa.gov/sab* (under the AGENDAS subheading) approximately a week before the meeting.

Availability of Review Material—There is one primary document that is the subject of the review. This draft review document is available electronically at the following site *http://www.epa.gov/sab/pdf/hhrs.pdf*. For questions and information pertaining to the review document, please contact Dr. Hugh Tilson, (Mail Code B30502), U.S. Environmental Protection Agency, National Health and Environmental Effects Research Laboratory, Research Triangle Park, NC 27711; tel. (919) 541–4607, Fax (919) 685–3252, *e-tilson.hugh@epa.gov*.

General Information on Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated above). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total (unless otherwise indicated above). Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 25 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Dr. Shallal at least five business days prior to the meeting so that appropriate arrangements can be made.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Web site *http://www.epa.gov/sab* and in the EPA Science Advisory Board FY2001 Annual Staff Report which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Dated: October 8, 2002.

A. Robert Flaak,

Acting Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 02–26170 Filed 10–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0266; FRL–7276–1]

Methamidophos; Organophosphate Pesticide; Availability of Interim Risk Management Decision Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the Interim Reregistration Eligibility Decision (IRED) document and technical support documents for the organophosphate (OP) pesticide, methamidophos. These documents have been developed using a public participation process designed by EPA and the U.S. Department of Agriculture to involve the public in the reassessment of pesticide tolerances under the Food Quality Protection Act and the reregistration of individual OPs under the Federal Insecticide, Fungicide, and Rodenticide Act.

FOR FURTHER INFORMATION CONTACT: Mark Hartman, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0734; fax number: (703) 308–8041; e-mail address: hartman.mark@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, but will interest a widerange of stakeholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. The Agency has not attempted to describe all the persons or entities who may be interested in or affected by this action. If you have questions in this regard, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0266. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805. Please note that technical supporting documents for methamidophos can be found under legacy docket number OPP–34166 and may not be available in EPA Dockets.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number. Please note that technical supporting documents for methamidophos can be found under legacy docket number OPP–34166 and may not be available in EPA Dockets.

II. Background

A. What Action is the Agency Taking?

For the OP pesticide methamidophos, the Agency is announcing the availability of the IRED document and supporting technical documents. EPA has assessed the risks associated with the use of methamidophos and reached an interim reregistration eligibility decision for methamidophos. The methamidophos IRED and supporting technical documents were developed using the OP public participation process, which was designed to increase transparency and maximize stakeholder involvement and to provide numerous opportunities for public comment. You can read more about the OP public participation process at http://www.epa.gov/pesticides/op/process.htm. Below is a brief summary of EPA's interim decision, which is fully described in the methamidophos IRED document.

EPA has determined that methamidophos is eligible for reregistration, pending a full reassessment of the cumulative risk from all OP pesticides, and provided that all the conditions identified in the IRED document are satisfied, including implementation of risk mitigation measures. Without implementation of the risk mitigation measures, the Agency has determined that methamidophos products may pose unreasonable adverse effects on human health and the environment. Therefore, EPA expects that registrant will implement the risk mitigation measures as soon as possible. The IRED document describes, in detail, what is necessary for implementing the risk mitigation measures, such as submission of label amendments for end-use products and submission of any required data. Mitigation measures for methamidophos include a phase out of methamidophos use on cotton by 2007. Should a registrant fail to implement any of the risk mitigation identified in the IRED document, the Agency may take regulatory action to address risk concerns from the use of methamidophos.

B. What is the Agency's Authority for Taking this Action?

The legal authority for this action falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product-specific data on individual end-use products, and either reregistering products or taking "other appropriate regulatory action."

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: September 24, 2002.

Lois Ann Rossi,

Director, Special Review and Reregistration Division, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–25861 Filed 10–10–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0261; FRL–7275–9]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request on the **Federal Register**.

DATES: The deletions are effective on April 9, 2003, or on November 12, 2002, for products with registration numbers 007401–00267, 062719–00081, and 062719–84, unless the Agency receives a withdrawal request on or before April 9, 2003, or on before November 12, 2002, for products with registration numbers 007401–00267, 062719–00081, and 062719–00084.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before dates given above.

ADDRESSES: Withdrawal requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0261 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5761; e-mail address: *hollins.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2002–0261. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in the following Table 1 by registration number, product name/active ingredient, and specific uses deleted:

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration Number	Product Name	Active Ingredient	Delete from Label
006959–00092	Cesso Fire Ant Killer	Piperonyl butoxide; tetramethrin; permethrin, mixed cis, trans	Indoor uses and use on outside surfaces of buildings
007401–00267	Hi Yield 5% Malathion Dust	Malathion dust	Use on corn
062719–00081	Lontrel F Technical	Clopyralid	Residential turf
062719–00084	Lontrel 35A	Clopyralid	Residential turf

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

Registration Number	Product Name	Active Ingredient	Delete from Label
062719–00330	Esteron 638	2,4-Dichlorophenoxyacetic acid, 2-butoxyethyl ester	Cereals underseeded with legumes, orchard floors and sugarcane

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before dates indicated in **DATES** section of this notice to discuss withdrawal of the application for amendment. This 180–day period, or 30–day where indicated, will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company Number	Company Name and Address
006959	Cessco Inc. 3609A River Road Johns Island, SC 29455
007401	Brazos Associates, Inc. Agent For: Voluntary Purchasing Group Inc. 2001 Diamond Ridge Drive Carrollton, TX 75010
062719	Dow Agrosciences LLC. 9330 Zionsville Road 308/2E225 Indianapolis, IN 46268

III. What is the Agency Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address under **FOR FURTHER INFORMATION CONTACT**, postmarked on or before April 9, 2003, or on or before November 12, 2002, for products with registration numbers 007401–00267, 062719–00081, and 062719–00084.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions. There is a 12–month existing stocks provision for Dow AgroSciences, EPA registration numbers 062719–00081, and 062719–00084, after approval of revised label.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 23, 2002.

Linda Vlier Moos,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 02–25423 Filed 10–10–02; 8:45 am]

BILLING CODE 6560–50–S

OFFICE OF NATIONAL DRUG CONTROL POLICY

Appointment of Members of Senior Executive Services Performance Review Board

AGENCY: Office of National Drug Control Policy (ONDCP).

ACTION: Notice of Appointments.

SUMMARY: The following persons have been appointed to the ONDCP Senior Executive Service Performance Review Board: Dr. Albert E. Brandenstein; Mr. Robert Brown; Mr. Norman R. Deck; and Mr. Edward H. Jurith.

FOR FURTHER INFORMATION CONTACT: Please direct any questions to Linda V. Priebe, Assistant General Counsel (202) 395–6622, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503.

Linda V. Priebe,

Assistant General Counsel.

[FR Doc. 02–25933 Filed 10–10–02; 8:45 am]

BILLING CODE 3180–02–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1435–DR]

Louisiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1435–DR), dated September 27, 2002, and related determinations.

EFFECTIVE DATE: September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or Magda.Ruiz@fema.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from Tropical Storm Isidore beginning on September 21, 2002, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Carlos Mitchell of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared major disaster:

The parishes of Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany, Tangipahoa, and Terrebonne for Individual Assistance.

The parishes of East Baton Rouge, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Mary, St. Tammany, and Terrebonne for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program.

All parishes within the State of Louisiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–25964 Filed 10–10–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1434–DR]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–1434–DR), dated September 26, 2002, and related determinations.

EFFECTIVE DATE: September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 30, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director

[FR Doc. 02–25963 Filed 10–10–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Adjustment of Disaster Grant Amounts

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA gives notice that we are increasing the maximum amounts for Individual and Family Grants and Small Project Grants to State and local governments and private nonprofit facilities for disasters declared on or after October 1, 2002.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705, or (e-mail) *magda.ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act) prescribes that we (FEMA) must adjust annually grants made under section 411, Individual and Family Grant Program, and Small Project Grants made under section 422, Simplified Procedure, relating to the Public Assistance program, to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

We give notice that we are increasing the maximum amount of any grant made to an individual or family for disaster-related serious needs and necessary expenses under section 411 of the Act, with respect to any single disaster, to $15,000 for all disasters declared on or after October 1, 2002.

We also give notice that we are increasing the amount of any Small Project Grant made to the State, local government, or to the owner or operator of an eligible private nonprofit facility, under Sec. 422 of the Act, to $53,000 for all disasters declared on or after October 1, 2002.

We base the adjustments on an increase in the Consumer Price Index for All Urban Consumers of 1.8 percent for the 12-month period ended in August 2002. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 18, 2002.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joe M. Allbaugh,

Director.

[FR Doc. 02–25965 Filed 10–10–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Adjustment of Statewide Per Capita Impact Indicator

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA gives notice that we are increasing the statewide per capita impact indicator under the Public Assistance program for disasters declared on or after October 1, 2002.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705, or (e-mail) *magda.ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: 44 CFR 206.48 prescribes that we (FEMA) must adjust the statewide per capita impact indicator under the Public Assistance program to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

We give notice that we are increasing the statewide per capita impact indicator to $1.09 for all disasters declared on or after October 1, 2002.

We base the adjustments on an increase in the Consumer Price Index for All Urban Consumers of 1.8 percent for the 12-month period ended in August 2002. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 18, 2002.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joe M. Allbaugh,

Director.

[FR Doc. 02–25966 Filed 10–10–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Adjustment of Countywide Per Capita Impact Indicator

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA gives notice that we are increasing the countywide *per capita* impact indicator under the Public Assistance program for disasters declared on or after October 1, 2002.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705, or (email) *magda.ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Response and Recovery Directorate Policy No. 9122.1 prescribes that we (FEMA) will adjust the countywide *per capita* impact indicator under the Public Assistance program to reflect annual changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

We give notice that we are increasing the countywide *per capita* impact indicator to $2.71 for all disasters declared on or after October 1, 2002.

We base the adjustments on an increase in the Consumer Price Index for All Urban Consumers of 1.8 percent for the 12-month period ended in August 2002. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 18, 2002.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joe M. Allbaugh,

Director.

[FR Doc. 02–25967 Filed 10–10–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL LABOR RELATIONS AUTHORITY

[FLRA Docket Nos. CH–RP–01–0033 and WA–RP–00085]

Notice of Opportunity To Submit Amicus Curiae Briefs in Representation Proceedings Pending Before the Federal Labor Relations Authority

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of the opportunity to file briefs as amici curiae in two proceedings before the Federal Labor Relations Authority in which the Authority is determining the bargaining unit eligibility of employees performing civilian personnel work in other than a purely clerical capacity for fellow agency employees in bargaining units other than the one at issue.

SUMMARY: The Federal Labor Relations Authority is providing an opportunity for all interested persons to file briefs as amici curiae on a significant issue in cases pending before the Authority. The Authority is considering the cases pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (2000) (the Statute) and its regulations, set forth at 5 CFR part 2422. The issue concerns the bargaining unit eligibility of employees performing civilian personnel work in other than a purely clerical capacity for fellow agency employees in bargaining units other than the one at issue.

DATES: Briefs submitted in response to this notice will be considered if received by mail, commercial delivery, or personal delivery in the Authority's Case Control Office by 5 p.m. on November 15, 2002. Placing submissions in the mail by this deadline will not be sufficient. Extensions of time to submit briefs will not be granted.

FORMAT: All briefs shall be captioned "*United States Department of the Army, North Central Civilian Personnel Operations Center, Rock Island, Illinois,* Case No. CH–RP–01–0033 and *United States Department of Justice, Immigration and Naturalization Service, Washington, DC,* Case No. WA–RP–00085." Parties must submit five copies, one of which must contain an original signature, of each amicus brief, on 8½ by 11 inch paper. Briefs must include a signed and dated statement of service that complies with the Authority's regulations showing service of one copy of the brief on all counsel of record or other designated representatives. 5 CFR 2429.27(a) and (c).

The designated representatives in *United States Department of the Army, North Central Civilian Personnel Operations Center, Rock Island, Illinois,* Case No. CH–RP–01–0033 (*North Central Civilian Personnel Operations Center*) are: David A. Helmer, Labor Relations Officer, Policy and Program Development Division, Office of the Deputy Chief of Staff for Personnel (G–1), ATTN: DAPE–CP–PPL, 2461 Eisenhower Avenue (Hoffman 1, Room 152), Alexandria, VA 22331; Thomas R. Esparza, Union Representative, AFGE, Local 15, AFL–CIO, Rock Island Arsenal, Bldg. 350, Room 435, Rock Island, IL 61299–6000; William E. Washington, Regional Director, Federal Labor Relations Authority, 55 West Monroe, Suite 1150, Chicago, IL 60603–9729.

The designated representatives in *United States Department of Justice, Immigration and Naturalization Service, Washington, DC,* Case No. WA–RP–00085 (*INS*) are: Susan Dole, Agency Representative, Immigration and Naturalization Service, Human Resources Division, 800 K Street NW., Suite 5000, Washington, DC 20536; Linda Church, Union Representative, AFGE, Local 511, AFL–CIO, 7201 South Airport Road, Pembroke Pines, FL 33023; Marjorie K. Thompson, Regional Director, Federal Labor Relations Authority, 1244 Speer Boulevard, Suite 100, Denver, CO 80204–3581.

ADDRESSES: Mail or deliver briefs to Gail D. Reinhart, Director, Case Control Office, Federal Labor Relations Authority, 607 14th Street NW., Room 415, Washington, DC 20424–0001.

FOR FURTHER INFORMATION CONTACT: Gail D. Reinhart, Director, Case Control Office, Federal Labor Relations Authority, (202) 482–6540.

SUPPLEMENTARY INFORMATION: On August 9, 2002, in 58 FLRA No. 3, the Authority granted an application for review of the Regional Director's Decision and Order and Direction of Election in *North Central Civilian Personnel Operations Center.* In addition, on August 26, 2002, in 58 FLRA No. 4, the Authority granted, in part, an application for review of the Regional Director's Decision and Order on Petition for

Clarification of Unit in *INS*. Summaries of the cases follow. Copies of the Authority's complete decisions may be obtained by telephoning Gail D. Reinhart at the number listed above.

A. Background

1. North Central Civilian Personnel Operations Center

American Federation of Government Employees, Local 15, AFL–CIO (Union), filed a petition seeking an election for representation of certain employees of the Department of the Army, North Central Civilian Personnel Operations Center (Activity), located at the Rock Island, Illinois Arsenal. The Activity provides staffing and classification services to Department of the Army (Agency) employees in the Agency's North Central region. During the processing of this petition, the Activity asserted that employees who performed personnel work for Agency employees outside the proposed bargaining unit should be excluded from the proposed unit under 5 U.S.C. 7112(b)(3), which excludes employees engaged in personnel work in other than a purely clerical capacity from bargaining units.

2. INS

American Federation of Government Employees, Local 511, AFL–CIO (Union), filed a petition seeking to clarify the bargaining unit to include certain employees of the United States Department of Justice, Immigration and Naturalization Service, Washington, D.C. (Activity). During the processing of this petition, the Activity asserted that employees who performed personnel work for Activity employees outside the bargaining unit should be excluded from the bargaining unit under 5 U.S.C. 7112(b)(3).

B. The Regional Directors' Decisions

1. North Central Civilian Personnel Operations Center

The Regional Director (RD) determined that the disputed positions were not excluded from the proposed unit under 5 U.S.C. 7112(b)(3) because these employees were not directly involved in performing personnel work affecting the proposed unit. Accordingly, the RD found that the inclusion of the disputed positions in the proposed unit would not create a conflict of interest between union representation and their job duties. Therefore, the RD concluded that the employees in the disputed positions are not engaged in personnel work within the meaning of 5 U.S.C. 7112(b)(3) and thus were not excluded from the proposed bargaining unit.

2. INS

The RD determined that the disputed positions were excluded from the proposed unit under 5 U.S.C. 7122(b)(3). The RD found that the employees, who provide personnel services for Agency employees in bargaining units other than the unit in which the Union seeks to include them, perform internal personnel work that is directly related to the personnel operations of their Agency. Accordingly, the RD found that the inclusion of the disputed positions in the bargaining unit would create a conflict of interest between union representation and their job duties. Therefore, the RD concluded that the employees in the disputed positions are engaged in personnel work within the meaning of 5 U.S.C. 7112(b)(3) and thus were excluded from the bargaining unit.

C. The Applications for Review

1. North Central Civilian Personnel Operations Center

The Agency filed the application for review, contending that review of the RD's decision is warranted under 5 CFR 2422.31(c), because the decision raises an issue for which there is an absence of precedent and there is a genuine issue over whether the RD failed to apply established precedent.

2. INS

The Union filed the application for review, contending that review of the RD's decision is warranted under 5 CFR 2422.31(c), because the decision raises an issue for which there is an absence of precedent and there is a genuine issue over whether the RD failed to apply established precedent.

D. Questions on Which Briefs are Solicited

In each case, the Authority granted the application for review under 5 CFR 2422.31(c) and directed the parties to file briefs addressing the following questions:

Section 7112(b)(3) of the Statute provides that a bargaining unit is not appropriate if it includes "an employee engaged in personnel work in other than a purely clerical capacity." Does section 7112(b)(3) operate to exclude employees who perform personnel work concerning other employees of the same agency who are not included in the bargaining unit at issue? In this regard, does the term "personnel work" refer to personnel work of the agency or only to work that concerns other employees of the same bargaining unit?

Because this issue is likely to be of concern to the federal sector labor-management relations community in general, the Authority finds it appropriate to provide for the filing of amicus briefs addressing these questions.

Dated: October 8, 2002.

For the Authority.

Gail D. Reinhart,

Director, Case Control Office.

[FR Doc. 02–26036 Filed 10–10–02; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011828.

Title: Yangming Marine Transport Corporation/Wan Hai Lines Ltd. (YM/WHL) Asia/U.S. Pacific Coast Slot Allocation & Sailing Agreement.

Parties: Yangming Marine Transport Corporation Wan Hai Lines Ltd.

Synopsis: The agreement authorizes Yangming to charter space to Wan Hai in the trade from ports on the U.S. West Coast, on the one hand, to ports in Asia, on the other hand. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: October 8, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–26031 Filed 10–10–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 25, 2002.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Lewis W. and Bonnie C. Donaghey, Trenton, Texas; to acquire additional voting shares of Trenton Bankshares, Inc., Trenton, Texas, and thereby indirectly acquire additional voting shares of First National Bank, Trenton, Texas.

Board of Governors of the Federal Reserve System, October 7, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–25946 Filed 10–10–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 25, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Crystal Valley Financial Corporation, Middlebury, Indiana; to acquire a 19.79 percent limited partner interest in a partnership that will develop and own a low-income housing tax credit project containing 144 units, and thereby engage in community development activities, pursuant to § 225.28(b)(12)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, October 7, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–25945 Filed 10–10–02; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR); Revision of SF 504, Medical Record—History—Part 1

AGENCY: Office of Communications, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration/ICMR revised the SF 504, Medical Record—History—Part 1 to add sponsor information, update the patient identification information and make the form authorized for local reproduction. You can obtain the updated form in two ways: On the internet. Address: *http://www.gsa.gov/forms/* or; From GSA, Forms-CAP, Attn.: Barbara Williams, (202) 501–0581.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

DATES: Effective October 11, 2002.

Dated: September 26, 2002.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 02–25918 Filed 10–10–02; 8:45 am]

BILLING CODE 6820–34–M

ELECTRONIC ELEMENTS FOR SF 504

Item	Placement *
History—Part 1 (Title)	Top of form.
Standard Form 504 (Rev. 8/2001) (Form ID)	Bottom right corner of form.

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR)

Automation of Medical Standard Form 504

AGENCY: Office of Communications, GSA.

ACTION: Guideline on Automating Medical Standard Forms.

BACKGROUND: The Interagency Committee on Medical Records (ICMR) is aware of numerous activities using computer-generated medical forms, many of which are not mirror-like images of the genuine paper Standard/Optional Form. With GSA's approval the ICMR eliminated the requirement that every electronic version of a medical Standard/Optional form be reviewed and granted an exception. The committee proposes to set required fields standards and that activities developing computer-generated versions adhere to the required fields but not necessarily to the image. The ICMR plans to review medical Standard/Optional forms which are commonly used and/or commonly computer-generated. We will identify those fields which are required, those (if any) which are optional, and the required format (if necessary). Activities may not add or delete data elements that would change the meaning of the form. This would required written approval from the ICMR. Using the process by which overprints are approved for paper Standard/Optional forms, activities may add other data entry elements to those required by the committee. With this decision, activities at the local or headquarters level should be able to develop electronic versions which meet the committee's requirements. This guideline controls the "image" or required fields but not the actual data entered into the field.

SUMMARY: With GSA's approval, the Interagency Committee of Medical Records (ICMR) eliminated the requirement that every electronic version of a medical Standard/Optional form be reviewed and granted an exception. The following fields must appear on the electronic version of the following form:

ELECTRONIC ELEMENTS FOR SF 504

Item	Placement*
Data Entry Fields:	
Nature and Duration of Complaints (Include circumstances of admission)	
History of Present Illnesses	
Relationship to Sponsor	
Sponsor's Name—Last	
Sponsor's Name—First	
Sponsor's Name—MI	
Sponsor's ID Number (SSN or Other)	
Department/Service	
Hospital or Medical Facility	
Records Maintained At	
Register No.	
Ward No.	
Patient Information (Text)	Above below listed items.
Last Name	
First Name	
Middle Name	
ID No. or SSN	
Sex	
Date of Birth	
Rank/Grade	

*If no specific placement, data element may be in any order.

FOR FURTHER INFORMATION CONTACT: CDR Katherine Ciacco Palatianos, Indian Health Service, Department of Health and Human Services, 5600 Fishers Lane, Room 6A–55, Rockville, MD 20857 or E-Mail at *kciacco@hqe.ihs.gov*.

Dated: February 12, 2002.

Katherine Ciacco Palatianos,

Chairperson, Interagency Committee on Medical Records.

[FR Doc. 02–25919 Filed 10–10–02; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. HHS Acquisition Regulations (HHSAR) part 342; Contract Administration—0990–0131—Extension/no change—HHSAR 342.7101 requires reporting information when a cost overrun is anticipated. The information is used to determine if the anticipated overrun is reasonable. Respondents: State or local governments, business or other for-profit, non-profit institutions, small businesses; Number of Annual Respondents: 110; Average Burden per Response: 20 hours; Total Burden: 2,200 hours.

2. HHS Acquisition Regulations (HHSAR) part 324; Protection of Privacy and Freedom of Information—0990–0136–Extension/no change—The confidentiality of information reporting requirements are needed to prevent the disclosure of confidential information. Respondents: State or local governments, business or other for-profit, non-profit institutions, small businesses; Annual Number of Respondents: 430; Average Burden per Response: 8 hours; Total Burden: 3,440 hours.

3. Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments—0990–0169–Extension/no change–Pre-award, post-award and subsequent reporting and recordkeeping requirements are necessary to award, monitor, close out and manage grant programs, assure minimal fiscal control and accountability for Federal funds and deter fraud, waste and abuse. Respondents: State or local governments; Annual Number of Respondents: 4,000; Average Burden per Respondent: 70 hours; Total Annual Burden: 280,000 hours. OMB Desk Officer: Allison Herron Eydt

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address:

Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington DC, 20201. Written comments should be received within 30 days of this notice.

Dated: September 30, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 02–25985 Filed 10–10–02; 8:45 am]

BILLING CODE 4151–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Anticipated Availability of Funds for Family Planning Services Grants

AGENCY: Office of the Secretary, Office of Public Health and Science, Office of Population Affairs, HHS.

ACTION: Notice; correction.

SUMMARY: The Office of Population Affairs, OPHS, HHS published a notice in the **Federal Register** of July 5, 2002 announcing the anticipated availability of funds for family planning services grants. Table I of the document omitted two eligible populations/areas to be served. These omissions caused the total amount of funding, as stated in Table 1, to be incorrect. This document corrects those items.

FOR FURTHER INFORMATION CONTACT: Kathleen Woodall, 301–594–0190; e-mail: *kwoodall@osophs.dhhs.gov*.

SUPPLEMENTARY INFORMATION:

Correction

On page 45014, in the third column, correct the eighth line from the bottom of the page to read "approximately $105.2 million will be."

On page 45015, correct Table I to read:

Populations/areas to be served	Funding available	Application due date	Approx. grant funding date
Region I			
Massachusetts-Central/Southeast	$1,471,813	09–01–02	01–01–03
Region II			
New Jersey	7,974,484	09–01–02	01–01–03
New York, NY	3,522,462	03–01–03	07–01–03
Region III			
Delaware	1,009,643	12–01–02	04–01–03
Maryland	3,729,883	12–01–02	04–01–03
Pennsylvania	11,951,606	03–01–03	07–01–03
Virginia	4,299,203	12–01–02	04–01–03
West Virginia	2,008,201	12–01–02	04–01–03
Region IV			
Alabama	4,315,101	03–01–03	07–01–03
Florida	7,652,636	03–01–03	07–01–03
Georgia	7,080,259	03–01–03	07–01–03
Kentucky	4,759,359	03–01–03	07–01–03
Mississippi	4,508,789	03–01–03	07–01–03
North Carolina	6,076,410	03–01–03	07–01–03
Region V			
Minnesota	2,242,934	09–01–03	01–01–03
Minneapolis, Minnesota	187,945	05–29–03	09–29–03
Ohio	5,202,414	12–01–02	03–01–03
Portage, Summit & Medina Counties, Ohio	749,745	03–01–03	07–01–03
Region VI			
Louisiana	3,743,201	03–01–03	07–01–03
Region VII			
Iowa	2,206,340	03–01–03	07–01–03
Iowa	951,128	05–30–03	09–30–03
Region VIII			
Montana	1,707,000	03–01–03	07–01–03
Region IX			
Arizona	3,811,522	09–01–02	01–01–03
California	20,123,818	09–01–02	01–01–03
Washoe County, Nevada	613,415	03–01–03	07–01–03
Region X			
Idaho	949,660	03–01–03	07–01–03
Seattle, WA	163,438	05–30–03	09–30–03

Dated: October 3, 2002.

Alma L. Golden,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 02–25986 Filed 10–10–02; 8:45 am]

BILLING CODE 4150–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Panel Discussion—Health Effects of Asbestos and Synthetic Vitreous Fibers: The Influence of Fiber Length

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: ATSDR is holding a panel discussion to review and discuss the current state-of-the-art understanding of health effects related to asbestos and synthetic vitreous fibers (SVFs), especially those of less than 5 microns in length. ATSDR has invited a cross-section of scientists with expertise in the fields of toxicology, epidemiology, pulmonology/pathology, and medicine to participate in 1½ days of discussions on a variety of topics, including depositional patterns of fibers in the lung and mechanisms of toxic action, the relationship of fiber size to toxicity, irritant effects of fibers, relationships

between measured fiber levels and observed adverse health outcomes, and data gaps/research needs. ATSDR will use the scientific input received from the discussions of each of the individuals to aid in developing scientifically defensible public health evaluations for human exposures to smaller-than-5-micron fibers and in the formulation of future research proposals.

DATES: The panel discussion will be held on October 29, 2002, from 1 p.m. to approximately 6 p.m., and October 30, 2002, from 8 a.m. to approximately 5:30 p.m.

Location: The panel discussion will be held at the Jacob K. Javitz Federal Building, 26 Federal Plaza, 6th Floor, New York, NY 10278. It is located on Broadway between Worth and Duane Streets. Participants must enter through the Broadway Street "Federal Employees Entrance" and show picture identification and a registration confirmation e-mail from ERG. To make hotel reservations at the nearby Holiday Inn Downtown/SoHo, please call the hotel directly at 212–966–8898. Reference the "ATSDR Fibers Panel" to receive the group rate of $195.00/night plus 13.25 percent tax and $2.00 occupancy tax. You must make your reservation before October 14, 2002. After this date, any remaining rooms will be released from our block and sold on a space- and rate-available basis.

Attending the Panel Discussion: The public is welcome to attend the panel discussions. There is no charge for attending the meeting; however, you must pre-register as seating is limited. To register, send your full contact information (name, affiliation, mailing address, phone, fax, and email) to ATSDR's contractor, Eastern Research Group, Inc. (ERG) by email (*meetings@erg.com*) or fax (781–674–2906), referencing the "ATSDR Fibers Panel." If you have any questions about registration, please call ERG directly at 781–674–7374.

A limited amount of time will be set aside for members of the public to present brief oral comments regarding asbestos- and synthetic vitreous fiber-related scientific issues. Oral presentations will be limited to 5 minutes, and the number of people giving oral comments may be limited by the time available. Opportunity for making oral comment will be provided on a first-come, first-served basis; therefore, the public is encouraged to pre-register and sign-up to present oral comments by emailing (*meetings@erg.com*) or faxing (781–674–2906) ERG. After the meeting, ATSDR will prepare a summary report that will capture the salient points of each of the panel members and observers. The agency will consider the scientific information received during the meeting to aid in developing scientifically defensible public health evaluations for human exposures to smaller-than-5-micron fibers and in the formulation of future research proposals.

FOR FURTHER INFORMATION: For general questions about the asbestos and synthetic vitreous fibers panel discussion, contact Dr. Allan Susten, Assistant Director for Science, Division of Health Assessment and Consultation, ATSDR, at 404–498–0007.

For questions about logistics, contact ERG at 781–674–7374.

Background Information: ATSDR conducts public health assessments to evaluate possible public health implications of contaminants associated with hazardous waste sites and other environmental releases. A crucial part of this evaluation is the understanding of toxicological implications of exposure to substances that may be present. Recent events have highlighted a need to further explore the potential for health effects from exposure to biopersistent fibers, specifically asbestos and some SVFs. ATSDR is currently involved in several site assessments that address the potential for residential and community exposures to persistent fibers from past industrial operations (*e.g.*, vermiculite processing plants across the country), hazardous waste sites, and dust generated from the World Trade Center (WTC) collapses in lower Manhattan. These sites are unique in that contaminant materials are/may be present in people's homes and communities. Additionally, there are potential concerns surrounding smaller length fibers which may have been generated by each of these past activities, especially in relation to the materials found in lower Manhattan.

Smaller fibers and non-fibrous particles may be generated as fibrous materials are processed, disposed of, or damaged, as in the case of the WTC collapses. In these situations, traditional fiber counting techniques may not quantify all of the materials present. Standard assessment methodology addresses fibers greater than 5 microns in length, based on the relative risk of longer fibers being greater than that of shorter fibers. Significant toxicology and occupational health research has focused on asbestos fibers and SVF greater than 5 microns in length, however, it seems that much less is known about the potential health effects of smaller fibers. ATSDR has identified a need to understand the potential for fibers less than 5 microns in length to contribute to adverse health effects. ATSDR is convening this panel to gain a greater understanding of asbestos and SVF toxicity, especially as it relates to fibers less than 5 microns in length. Research needs identified during these deliberations may lead to the development of specific research projects.

ATSDR's overall goal is to receive individual expert opinions on the following three general questions related to asbestos and SVF toxicity. A number of specific questions related to these issues will also be discussed. (1) What is the physiological fate of asbestos and vitreous fibers less than 5 microns in length? (2) What are the potential health effects (cancer and non-cancer) of asbestos and vitreous fibers less than 5 microns in length? (3) What data gaps are evident when addressing the above questions? What research is needed to fill these data gaps?

Dated: October 4, 2002.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 02–25922 Filed 10–10–02; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02189]

The Safety of Measles-Mumps-Rubella (MMR) Vaccine; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a cooperative agreement program for the Safety of Measles-Mumps-Rubella Vaccine. This program addresses the "Healthy People 2010" focus areas of Immunization and Infectious Diseases.

The purpose of the program is to ensure the safety of vaccines contained in the recommended childhood immunization schedule, specifically the safety of the measles-mumps-rubella vaccine (MMR) by performing the following:

1. Determine the presence of measles vaccine strain gene sequences in intestinal tissue obtained from children with autistic spectrum disorder (ASD).
2. Determine the presence of measles vaccine strain gene sequences in intestinal tissue obtained from matched controls.
3. Compare results between the two groups.
4. Provide the results of these studies to practicing physicians and other health care professionals.

Measurable outcomes of the program will be in alignment with the following performance goals for the National Immunization Program: (1) Reduce the number of indigenous cases of vaccine-preventable diseases, (2) ensure that two year olds are appropriately vaccinated, and (3) work with global partners to reduce the cumulative global measles related mortality rate.

B. Eligible Applicants

Assistance will be provided only to the American Academy of Pediatrics (AAP). No other applications are solicited. The potential role of the MMR vaccine as a cause of autism has divided segments of the medical, scientific and public communities and threatens to adversely effect the MMR immunization program in the United States as it has in the United Kingdom and Ireland, where MMR immunization rates have dropped sharply from above 95 percent to just over 70 percent. This sharp decrease came as a result of two published papers alleging an association between the MMR vaccine and Autism. To provide definitive data as to the potential link between measles antigen in the intestine and autistic disorder, groups and organizations which feel strongly that there either is or is not an association between MMR and autistic disorder must be involved in this study to ensure acceptance of the results. Groups that must be involved in this study include autism community representatives (MIND Institute, Cure Autism Now, Autism Society of America); research groups at Harvard University, Columbia University, Coombe Women's Hospital, Dublin, Ireland; CDC; other government representatives; and members of the general medical and scientific communities. AAP is the only organization that can ensure that these diverse groups, organizations and individuals come together to implement and complete this proposal. This is because AAP is the only major scientific and professional body with credibility among all of the groups with a stake in the outcome. AAP has made significant scientific contribution in the investigation of the possible association of MMR vaccine and Autism. AAP has been the only organization that has pulled these groups together in the past to evaluate MMR vaccine and autistic spectrum disorder. In June 2000, AAP convened a conference at which parents, practitioners, and scientists presented information on MMR and ASD. AAP then formed a multidisciplinary panel of experts who reviewed data on the pathogenesis, epidemiology, and genetics of ASD and the available data on the hypothesized associations with Intestinal Bowel Disease, measles, and MMR vaccine. AAP's findings were published in the May 2001 issue of Pediatrics. ['Measles-mumps-rubella vaccine and autistic spectrum disorder: report from the new challenges in childhood immunizations conference convened in Oak Beach, Illinois, June 12–13, 2000". Pediatrics 2001; 107(5) *url:http//www.pediatrics.org/cgi.content/full/107/5/e84/*].

Additionally, because of AAP's broad scope of contacts, the organization's respect among pediatricians and other healthcare providers, data from this project can be facilitated and disseminated rapidly. The immunization recommendations and guidelines developed by AAP are considered among the most reliable and up-to-date information available to the pediatric community. When study findings are disseminated by AAP, immunization practices could be affected significantly.

C. Funds

Approximately $450,000 is being awarded FY 2002. It is expected that the award will begin on or about August 30, 2002 and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

For business management technical assistance, contact: Ms. Peaches Brown, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone number 770–488–2738. E-mail address: *prb0@cdc.gov.*

For program technical assistance, contact: Maureen Kolasa, Epidemiologist, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop E–52, Atlanta, Georgia 30333. Telephone number 404–639–8759. E-mail address: *mxk2@cdc.gov.*

Dated: October 4, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–25952 Filed 10–10–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02186]

Oral Vaccine Institute; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a grant for Oral Vaccine Institute (OVI) research on liposome-based delivery systems for oral or nasal vaccination. This program addresses the "Healthy People 2010" focus areas of Immunization and Infectious Diseases; Maternal, Infant and Child Health; Medical Product Safety; and Sexually Transmitted Diseases.

The purpose of the program is to develop a platform of liposome constructs containing vaccine antigens that can immunize through the oral or nasal routes, rather than via parenteral injection with conventional needle and syringes.

B. Eligible Applicant

This grant is to be awarded to the Oral Vaccine Institute, which is affiliated with Oral Vaccine Technologies, Inc. (OVT), a for-profit company based in Las Vegas, Nevada and incorporated in Nevada. OVT owns several patents currently issued by the U.S. Patent office. They have assembled a team of scientists with considerable expertise in the areas of liposome development, vaccine development and mucosal immunity. OVT has executed an agreement allowing the Oral Vaccine Institute the right to use its intellectual property that is set forth and described in its Executive Summary for certain research purposes.

BioMedical Research Models, Inc. (BRM) is under contract to provide certain laboratory facility capabilities and personnel to accomplish the mission of the Oral Vaccine Institute. The facility is fully prepared to

administer and assist the proposed animal-based studies.

Acting in concert with these three organizations (OVI, OVT and BRM), and their scientific staffs and consultants, the Institute will develop platform technologies that could significantly impact the response to a bioterrorism attack.

Justification: This grant is awarded sole source by virtue of Congressional earmark evidenced in the following records of Congress: Senate-House Conference Committee, Calendar No. 193, 107th Congress Report-Senate; assessable in pages 88–89 of 229 of pdf document: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_reports&docid=f:hr342.107.pdf*

Note: Title 2 United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Funds

Approximately $1.2 million is being awarded in FY 2002. It is expected that the award will begin on or before September 15, 2002, and will be made for a 12 month budget period within a project period of one year. The funding estimate may change.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

For business management assistance contact: Peaches Brown, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2738, e-mail address: *prb0@cdc.gov*.

For program technical assistance, contact: Dr. Bruce Weniger, Vaccine Safety and Development Activity, National Immunization Program, Centers for Disease Control and Prevention, 1600 Clifton Road mailstop E–61, Atlanta, GA 30333, Telehone: 404–639–8779, e-mail *address: bgw2@cdc.gov*.

For program administrative assistance, contact: Sharon Holmes, Program Analyst, Vaccine Safety and Development Activity, National Immunization Program, Centers for Disease Control and Prevention, 1600 Clifton Road mailstop E–61, Atlanta, GA 30333, Telephone: 404–639–8582, e-mail address: *sholmes@cdc.gov*.

Dated: October 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–25953 Filed 10–10–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–3109–N]

Medicare Program; Town Hall Meeting on the Hospital "1-hour" Rule Related to the Use of Restraint and Seclusion

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a town hall meeting to obtain and discuss general comments from the public concerning the impact of the hospital "1-hour" rule related to the use of restraint and seclusion. Specifically, the meeting will attempt to solicit individual comments and experiences from providers, advocates, consumers, and other interested parties concerning the application of the "1-hour" rule requiring a physician or a licensed independent practitioner to make a face-to-face assessment within 1 hour of any patient being placed in restraint or seclusion for behavioral reasons. We are particularly interested in data that show how this requirement may be imposing burdens on patient care, including, but not limited to, financial burdens on hospitals and physicians. We would be happy to address/discuss other concerns related to the provision of hospital services to this population of patients.

Hospitals, provider representatives, advocacy groups, physicians, and other interested parties are invited to this meeting to present their views on this issue. The opinions and alternatives provided during this meeting will assist us as we evaluate our policy on the "1-hour" rule. The meeting is open to the public, but attendance is limited to space available.

DATES: *Meeting Date:* The town hall meeting announced in this notice will be held on Tuesday, October 29, 2002, from 10 a.m. to 1 p.m. (eastern standard time).

ADDRESSES: The town hall meeting will be held in the auditorium at the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

FOR FURTHER INFORMATION CONTACT: Nancy Archer (410) 786–0596. You may also send inquiries about this meeting via e-mail to *narcher@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 2, 1999, we published an interim final rule with comment introducing a new Patients' Rights Condition of Participation (CoP) that hospitals must meet to be approved for, or to continue participation in, the Medicare and Medicaid programs (64 FR 36070). One of the requirements mandates that, for restraint or seclusion applied for behavioral reasons, a physician, or licensed independent practitioner (LIP), must make a face-to-face assessment of that patient within 1 hour of implementation of the intervention (64 FR 26088).

The "1-hour" requirement was subsequently challenged in the United States District Court for the District of Columbia. Although the Court ruled in the Secretary's favor with respect to this provision, hospitals and their provider groups have continued to inform us that requiring a physician or LIP to perform the 1-hour face-to-face assessment causes undue burden on hospitals, without specific evidence that the quality of care has improved.

II. Meeting Format

The meeting will begin with an overview of the goals of the meeting and an introduction of the meeting moderator, followed by remarks from Thomas A. Scully, Administrator, Centers for Medicare & Medicaid Services, and Charles G. Curie, Administrator, Substance Abuse and Mental Health Services Administration. The Acting Director, Office of Clinical Standards and Quality, will present the context for the discussion. Participants that have requested to speak will then be given time to present their information. The moderator will solicit comments and recommendations from the audience about issues concerning the implementation of the 1-hour rule, as time permits.

The information about the town hall meeting will be posted at the following website address: *http://www.cms.hhs.gov/opendoor/hospitals.asp*. At this address, interested parties will find an agenda for the meeting and instructions on how to call into the meeting if unable to attend in person.

We will limit the time for participants to make formal statements according to the number of participants who have registered in advance to speak at the meeting. Individuals who wish to make formal statements must contact Nancy Archer at (410) 786–0596 or via e-mail, *narcher@cms.hhs.gov* as soon as possible. Those individuals must subsequently submit their formal statements in writing no later than 5 p.m., Thursday, October 24, 2002. Send written submissions to: Nancy Archer, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop S3–02–01, Baltimore, Maryland 21244 or *narcher@cms.hhs.gov*. Comments from individuals not registered to speak will be heard following individuals with scheduled statements, as time permits.

III. Registration Instructions

The Clinical Standards Group is coordinating registration for the meeting. While there is no registration fee, all individuals must register to attend. Because this meeting will be located on Federal property, for security reasons, any persons wishing to attend this meeting must call or e-mail Nancy Archer at (410) 786–0596 (*narcher@cms.hhs.gov*) to register at least 72 hours in advance. Attendees must show photographic identification to the Federal Protective Service or Guard Service personnel before they will be permitted to enter CMS grounds. Individuals who have not registered in advance will not be allowed to enter the building to attend the meeting. Seating capacity is limited to the first 250 registrants. Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Aileen Bullock at (410) 786–5637 (*abullock@cms.hhs.gov*) at least 10 days before the meeting. There will be a TTY system access number available.

Authority: 42 U.S.C 1395x(e) and (f).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: October 7, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare and Medicaid Services.

[FR Doc. 02–25948 Filed 10–10–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: ACF–196.

OMB No.: 0970–0199.

Description: The form provides specific data regarding claims and provides a mechanism for States to request grant awards and certify the availability of state matching funds. Failure to collect this data would seriously compromise ACF's ability to monitor expenditures. This information is also used to estimate Outlays and may be used to prepare ACF budget submissions to Congress. The following citations should be noted in regard to this collection: 405(c)(1); 409(a)(7); and 409(a)(1).

Respondents: State TANF Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196	54	4	8	1,728
Estimated Total Annual Burden Hours				1,728

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20508, Attn: Desk Officer for ACF.

Dated: October 7, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–25975 Filed 10–10–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: September 2002

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of September 2002, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ADEKOLA, ADEMOLA J CHICAGO, IL	10/20/2002
ALEMAN, ALBERTO MIAMI, FL	10/20/2002
AMABILE, JOHN C WRIGHTSTOWN, NJ	10/20/2002
ANTONOV, ROMAN	10/20/2002

Subject, city, state	Effective date
LONG BEACH, CA	
ARUTYUNYAN, POGOS	10/20/2002
MONTEBELLO, CA	
ATIKYAN, VAGINAK	10/20/2002
PASADENA, CA	
AYNEHCHI, YAGHOUB	10/20/2002
BEVERLY HILLS, CA	
BADGER, MILDRED	10/20/2002
JACKSONVILLE, FL	
BAEZ, ELIAS	10/20/2002
FT LAUDERDALE, FL	
BAEZ, ONELIO	10/20/2002
MIAMI, FL	
BARRERA, PATTI KAY	10/20/2002
HOUSTON, TX	
BARRISH, BRYAN G	06/10/2002
NORTHBROOK, IL	
BELL, YNOLIA T	10/20/2002
HOUSTON, TX	
BERNSTEIN, SCOTT EVAN	10/20/2002
MIAMI, FL	
BESHARA, LOUIS	10/20/2002
LOXAHATCHEE, FL	
BRADLEY, TONIA M	10/20/2002
FRANKLIN, VA	
BRITO, EVA	10/20/2002
MIAMI, FL	
BROOKS, WILLIAM EDWARD	10/20/2002
EL RENO, OK	
BROWN, KENT BERKELEY	10/20/2002
FORT SMITH, AR	
BRUGGISSER, ARTHUR T	10/20/2002
PLANTATION, FL	
BURTON, EMMA	10/20/2002
MAUNELLE, AR	
BUTLER, LAURA A	10/20/2002
SEARSPORT, ME	
CARPIO, LESLIE	10/20/2002
MIAMI, FL	
CARRERA, MIRNA AMARILIS	10/20/2002
EL MONTE, CA	
CHHET, SAMNANG	10/20/2002
TAFT, CA	
CHHET, SAMNANG	10/20/2002
TAFT, CA	
CHUN, BYUNG W	10/20/2002
MILLBROOK, AL	
CLOPTON, TOMMY RAY	10/20/2002
SEAGOVILLE, TX	
COHEN, RONALD I	10/20/2002
ROCKVILLE CENTRE, NY	
CUMMINGS, KEVIN JOHN	10/20/2002
GARDNER, MA	
DANIEL, ALAN L	10/20/2002
ANCORA, NJ	
DANIELS, SAMUEL RAY	10/20/2002
MISSOURI CITY, TX	
DAVIS, LYDIA CALDWELL	10/20/2001
LOS ANGELES, CA	
DIAZ, GUSTAVO	10/20/2002
EL PASO, TX	
DOOLIN, ROBYN	10/20/2002
PARAGONAH, UT	
EADEN, CHARGOIS JUAN	10/20/2002
HOUSTON, TX	
EKPO, GENEVIEVE	10/20/2002
HOUSTON, TX	
ELLIS, FELIX	10/20/2002
NEW YORK, NY	
ELTAYEB, AZIZ IBRAHIM	10/20/2002
WINTON, NC	
ESCARIZ, MARIA DEL CARMEN	10/20/2002
MIAMI BEACH, FL	
EXCEL CENTER, INC	10/20/2002
CINNAMINSON, NJ	
FELICIANO-ARIETA, RAUL	10/20/2002
RIO PIEDRAS, PR	
FORTE, ROBERT A	10/20/2002
BILLERICA, MA	
FRAGA, ANNETTE	10/20/2002
MIAMI, FL	
GARCIA, TERESA D	10/20/2002
HIALEAH, FL	
GERMAN, MARIA	10/20/2002
MIAMI, FL	
GIANNINI, MICHAEL RAYMOND	06/10/2002
PALATINE, IL	
GIRARD, RENEE E	10/20/2002
WAKEFIELD, RI	
GOINS, SHEILA	10/20/2002
CONVOY, OH	
GOLDSTEIN, BARRY JAY	10/20/2002
MIAMI, FL	
GOMEZ, JOSE MIGUEL	10/20/2002
MIAMI, FL	
GOYINGS, CAROL L	10/20/2002
PAULDING, OH	
GRIFFIN, DAVID L	10/20/2002
LONG BEACH, CA	
GRIGORYAN, ARAM	10/20/2002
GLENDALE, CA	
HALL, SANDRA RENITA	10/20/2002
SAN BERNARDINO, CA	
HALL, JOHN WESLEY SR	10/20/2002
N LITTLE ROCK, AR	
HALL, SUSANA	10/20/2002
PHILADELPHIA, PA	
HARRINGTON, RICHARD	10/20/2002
LEVITTOWN, NY	
HEDGEMON, CHARLENA RASHAY	10/20/2002
TALULLAH, LA	
HEDGEMON WATKINS, SARAH ANN	10/20/2002
SEATTLE, WA	
HERBERGER, PHYLLIS JEAN	10/20/2002
TEXARKANA, TX	
HERD, ERIN	10/20/2002
UTICA, OH	
HERRING, JOHN M	10/20/2002
BATON ROUGE, LA	
HICKMAN, JOYCE LEE	10/20/2002
HOUSTON, TX	
HODGES, EDWARD	10/20/2002
APPLE VALLEY, CA	
HOFSTETTER, DAVID	10/20/2002
SARASOTA, FL	
HOUSE, WANDA G	10/20/2002
CORAL SPRINGS, FL	
HUSSAIN, IFTIKHAR	10/20/2002
NEW BRUNSWICK, NY	
JANES, SANDRA S	10/20/2002
TOWNSEND, MT	
JONES, VENITA	10/20/2002
FT LAUDERDALE, FL	
JONES, KIMBERLY RENEE	10/20/2002
CORPUS CHRISTI, TX	
KARAPETIAN, ALEXANDER	10/20/2002
REGO PARK, NY	
KATZ, IRA	10/20/2002
MARIETTA, GA	
KEAGY, THERA M	10/20/2002
CAVE JUNCTION, OR	
KEIGLEY, HOLLY VICTORIA	10/20/2002
AMES, IA	
KIRSCH, GARY A	10/20/2002
AKRON, OH	
LAWRENCE, THOMAS RICHARD	10/20/2002
LITTLETON, CO	
LEBRON-HUERTA, VILMA DEL CARME	10/20/2002
SAN JUAN, PR	
LEE, ROBERT C	10/20/2002
FAIRTON, NJ	
LOPEZ, JAIME ANTONIO MART	10/20/2002
BELL, CA	
LOVE, MARY H	10/20/2002
GRIFFIN, GA	
LUNDY, CARMETTA	10/20/2002
DETRIOT, MI	
LUTZ, STEVEN A	10/20/2002
LAKE WORTH, FL	
LUTZKER, STEVEN W	10/20/2002
LOMPOC, CA	
MAIER, DAVID P	10/20/2002
GLEN CARBON, IL	
MALIK, MOHAMMAD SALEEM	10/20/2002
MANHASSETT HILL, NY	
MANSELL, GRETCHEN	10/20/2002
HYDE PARK, NY	
MCCOY, THEODORE J JR	10/20/2002
SUGARCREEK, OH	
MELANIDIS, KONSTANTINOS	10/20/2002
MADISON, CT	
MIGNOLA, ANNE	10/20/2002
NEW ROCHELLE, NY	
MILLER, ROBERT B	10/20/2002
PETERSBURG, VA	
MILLIEN, JEAN MOISE	10/20/2002
BROOKLYN, NY	
MIRANDA, MICHAEL V	10/20/2002
ATLANTIC BEACH, NY	
MUBANG, THERESA S	10/20/2002
ALDERSON, WV	
MURRY, TOMMIE JR	10/20/2002
CINNAMINSON, NJ	
NAVARRO, LOURDES	10/20/2002
GLENDALE, CA	
NAVARRO, LOURDES	10/20/2002
GLENDALE, CA	
NAVARRO, LOURDES	10/20/2002
GLENDALE, CA	
NAVARRO, LOURDES	10/20/2002
GLENDALE, CA	
NEWBERRY, RONDA	10/20/2002
DAYTON, OH	
NOEL-UYLOAN, CATHERINE	10/20/2002
LONG BEACH, CA	
OESTMANN, ROSS ERIC	10/20/2002
RAPID CITY, SD	
OLIVER, MELANIE J	10/20/2002
SPRINGFIELD, TN	
PEASLEE, GERALDINE ELIZABETH	10/20/2002
HIGHLAND, CA	
PENN, MARYANN ELIZABETH	10/20/2002
PHOENIX, AZ	
PERRY, KEITH O'NEIL	10/20/2002
LOS ANGELES, CA	
PIERNO, THOMAS	10/20/2002
BAYVILLE, NY	
POARCH, GROVER FRANKLIN	10/20/2002
ROWLETT, TX	
PONS, ROSA	10/20/2002

Subject, city, state	Effective date
MIAMI, FL	
QUIJADA, NANCY MICHELLE	10/20/2002
PUEBLO, CO	
RAJA, ABDUL HAFEEZ	10/20/2002
HOLBROOK, NY	
REVELS, ROBERT STEVEN	10/20/2002
ROCK HILL, SC	
ROSICH-BACHS, ROBERTO	10/20/2002
MIAMI, FL	
RYBAK, JOHN P	10/20/2002
HUNTINGTON, WV	
SAING, CHHAYLEE	10/20/2002
LOMPOC, CA	
SALZ, JOSEPH ALAN	10/20/2002
REDONDO BEACH, CA	
SCHREIDELL, JILL LYNN	10/20/2002
TALLAHASSEE, FL	
SEWELL, MARTHA HERRING	10/20/2002
BATON ROUGE, LA	
SHELBY, CRAIG T	10/20/2002
LITHONIA, GA	
SINGH, RAMPERSAUD HARDAT	10/20/2002
LONG BEACH, NY	
SOSA, MERCEDES M	10/20/2002
MIAMI, FL	
STUYVESANT HGTS MEDICAL GROUP	10/20/2002
BROOKLYN, NY	
SWEAT, JAMES DANIEL JR	10/20/2002
JACKSONVILLE, FL	
TKACHENKO, YELENA	10/20/2002
N WOODMERE, NY	
TOFANI, NANCY	10/20/2002
LEBANON, NJ	
VALENTINE, EUGENE	10/20/2002
ARNOLD, MD	
VELASCO, DELORES	10/20/2002
MIAMI, FL	
VEREGGE, CONSTANCE JANE	10/20/2002
KINGSTON, WA	
WAITES, REGINA	10/20/2002
MOUNT SAVAGE, MD	
WEITZMAN, WARREN	10/20/2002
BETHESDA, MD	
WHITE, DANIEL DEAN	10/20/2002
KENTWOOD, MI	
WILLIAMS, NICHOLE M	10/20/2002
CRESSON, PA	
YADEGARI, NOSRATOLAH	10/20/2002
ROSLYN, NY	

FELONY—CONVICTION FOR HEALTH CARE FRAUD

BATES, ALLEN	10/20/2002
MONTGOMERY, AL	
BUCHHOLZ, CONNIE M	10/20/2002
PEKIN, IL	
CALHOUN, JIM	10/20/2002
OXFORD, WI	
CAMPA, JOHN A III	10/20/2002
SAN ANTONIO, TX	
COOPERSMITH, GLENNA MERYL	10/20/2002
OAKLAND PARK, FL	
FINCH, DONJA LOSHONE	10/20/2002
AUSTIN, TX	
GARSON, ALAN	10/20/2002
MIAMI, FL	
GOLDBERG, RICHARD J	10/20/2002
EL PASO, TX	
LUZE, KATHERINE E	10/20/2002
LEAD, SD	
MCCANNA, JANET	10/20/2002
BRONX, NY	
MOORE, LILLIE RUTH	10/20/2002
ORANGE, NJ	
PIROVOLOS, NICHOLAS G	10/20/2002
OCEAN, NJ	
POWELL, RICHARD BENNETT JR	10/20/2002
EGLIN AFB, FL	
RATNER, NEIL W	10/20/2002
FORT DIX, NJ	
ROBINSON, JEREMY	10/20/2002
PENSACOLA, FL	
SEIGEL, ARTHUR M	10/20/2002
OTISVILLE, NY	
STAVITSKI, MICHAEL D	10/20/2002
AVON BY THE SEA, NJ	
WHITE, COREY E C	10/20/2002
ORLANDO, FL	
WHITED, RUTH M	10/20/2002
LUZERNE, PA	

FELONY—CONTROL SUBSTANCE CONVICTION

ANDREJIC, ANTHONY	10/20/2002
GRAFTON, OH	
BALDERAS, CHARLOTTE STAMPER	10/20/2002
WINCHESTER, KY	
BRODWIN, GORDON	10/20/2002
COLEMAN, FL	
BYRNE, MARIE ANN	10/20/2002
EL CAJON, CA	
CAPONERA, PAUL S	10/20/2002
E HAVEN, CT	
CLARK, FREEMAN LOWELL	10/20/2002
PENSACOLA, FL	
DAVIDIAN, MARGIE ANN	10/20/2002
CUTLER, CA	
FORWARD, LISA CAROL	10/20/2002
PEORIA, AZ	
HEDGECORTH, JULIA ANNE	10/20/2002
CHICAGO, IL	
HORDGE, DANIEL EUGENE	10/20/2002
HOUSTON, TX	
HUGHES, JANET LYNN	10/20/2002
GATESVILLE, TX	
KREMPEL, MARCO	10/20/2002
TORONTO, CANADA,	
LITTLE, PAUL MICHAEL JR	10/20/2002
ORO VALLEY, AZ	
LOPEZ, JOHN LEE	10/20/2002
GREELEY, CO	
MILLER, NANCY L	10/20/2002
AKRON, OH	
NICHOLS, STUART ALAN	10/20/2002
CASTRO VALLEY, CA	
PAIVA, MICHELLE	10/20/2002
ANTIOCH, CA	
ROJAS, HUMBERTO	10/20/2002
OWOSSO, MI	
SESAY, CHERYL	10/20/2002
SOMERDALE, NJ	
SMITH, LINDA JO	10/20/2002
VANDALIA, MO	
SMUTEK, MICHELLE M	10/20/2002
HAZLET, NJ	
SOSA, ISMAEL	10/20/2002
FORT DIX, NJ	
SUTHERLAND, FRANKLIN J	10/20/2002
ASHLAND, KY	
WINOKUR, LEWIS	10/20/2002
SOMERSET, PA	

PATIENT ABUSE/NEGLECT CONVICTIONS

ALLEN, LINDA	10/20/2002
PINE BLUFF, AR	
ASANTE, TONY	10/20/2002
DENVER, CO	
BANKS, PEARL M	10/20/2002
ROCHESTER, NY	
BROWN, AUDRIE	10/20/2002
BRONSON, FL	
CHOW, ALBERT C	10/20/2002
SOMERVILLE, MA	
CHUNG, PAULINE MONICA	10/20/2002
YUCCA VALLEY, CA	
COLE, SCOTT L	10/20/2002
PINACLE, NC	
CULP, LOUIS MAX	10/20/2002
ELLSWORTH, KS	
CUNNINGHAM, TINA MARIE	10/20/2002
HOWARD, SD	
EDINGS, CHARIETT KAY	10/20/2002
PRAGUE, OK	
EDWARDS, INEZ AGRASSIE	10/20/2002
TACOMA, WA	
FELLOWS, DASHAWN MICHELLE	10/20/2002
PRESCOTT, AR	
HARTWELL, HORACE	10/20/2002
MERIDIAN, MS	
HIBLER, DONNIE L JR	10/20/2002
BOWLING GREEN, MO	
HUNTER, SANDRA KAY	10/20/2002
HENRYETTA, OK	
HUNTSBERRY, GERALDINE ANN BOB	10/20/2002
LAFAYETTE, LA	
JAMES, TANGELYN	10/20/2002
FT WALTON BEACH, FL	
JOHNSON, JAMES	10/20/2002
GUTHRIE, OK	
LUDER, JOAN	10/20/2002
N COLLINS, NY	
MARCUS, ALAN L	10/20/2002
WOODBRIDGE, NJ	
MARTINEZ, AGUSTIN	10/20/2002
BRONX, NY	
MASON, ARTHUR RALPH III	10/20/2002
SOLIDAD, CA	
MILLS, THOMASENA	10/20/2002
ROCK HILL, SC	
MITCHELL, RENEE	10/20/2002
CROTON-ON-HUDSON, NY	
NATO, JOHN A	10/20/2002
CASTLETON, NY	
PEREZ, ROMAN	10/20/2002
DENVER, CO	
PHILLIPS, REGINALD CARL	10/20/2002
CENTURY, FL	
POWERS, WILL	10/20/2002
SANTA MARIA, CA	
SANCHO, CHIMESE A	10/20/2002
BROOKLYN, NY	
SWANGO, MICHAEL	10/20/2002
FLORENCE, CO	
WOODS, VIOLA	10/20/2002
ALBION, NY	

CONVICTION FOR HEALTH CARE FRAUD

GREEN, DAVID LOREN II	10/20/2002
POSTVILLE, IA	
JACKSON, PAULETTE WHITE	10/20/2002

Subject, city, state	Effective date
BATON ROUGE, LA	
SOLES, BETTY MAY	10/20/2002
LONE TREE, IA	
CONVICTION—OBSTRUCTION OF AN INVESTIGATION	
CORUM, B H	10/20/2002
SAN ANTONIO, TX	
THOMASON, PATSY JANE	10/20/2002
BEAUMONT, TX	
CONTROLLED SUBSTANCE CONVICTIONS	
DUFOE, DONALD L	
BARRE, VT	
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ADAMS, CHERE A HOLMAN	10/20/2002
DEMOPOLIS, AL	
AHTES, RENEE S	10/20/2002
ROCK HILL, SC	
ALLEN, RHONDA DIANE	10/20/2002
CLARKSVILLE, IN	
ANDERSON, DAVID E	10/20/2002
E HOLDEN, ME	
ANDERSON, SHERRI LYNN	10/20/2002
ATCHISON, KS	
ANDRADE, BARBARA J	10/20/2002
NEW BEDFORD, MA	
BECERRA, FRANK GALVEZ	10/20/2002
ORO VALLEY, AZ	
BENAVIDEZ, LINDA	10/20/2002
RATON, NM	
BENNETT, JACLYN	10/20/2002
DENVER, CO	
BETHEA, ALFREDA	10/20/2002
TRENTON, NJ	
BJORK, JACKIE APPERSON	10/20/2002
OMAHA, NE	
BLAKE, CYNTHIA M	10/20/2002
TUCSON, AZ	
BOSLEY, MATTHEW MERRILL	10/20/2002
LINCOLN, NE	
BOUFFARD, ANNE B	10/20/2002
OXFORD, ME	
BRATTON, DONNA LUCIA	10/20/2002
KANSAS CITY, KS	
BROWN, SAMUEL SCOTT	10/20/2002
NEWVILLE, AL	
BYERS, LISA BROOKS	10/20/2002
DE WITT, AR	
CAHILL, ROXANE M	10/20/2002
MOORHEAD, MN	
CALDER, ELIZABETH B	10/20/2002
PORTLAND, ME	
CALKINS, BONNIE F	10/20/2002
PITTSFIELD, MA	
CAMERON, JANICE GAYLE	10/20/2002
TWIN FALLS, ID	
CARLSON, MORRIS E	10/20/2002
KANSAS CITY, MO	
CASH, JOHN LYNN	10/20/2002
STOCKTON, CA	
CASPOLI, NICHOLAS III	10/20/2002
WEST WARWICK, RI	
CASSELL, RAYMOND A	10/20/2002
WELLINGTON, KS	
CASSES, FERNANDO	10/20/2002
QUESNEL, BC V2J2K7, AZ	
CASSIDY, VICTOR A	10/20/2002
BELFAST, NY	
CATLETT, THERESA A	10/20/2002
UPPER DARBY, PA	
CHELATION CTR OF NAPLES-BONITA	10/20/2002
NAPLES, FL	
CHRISTOPHERSON, JULIE ANN	10/20/2002
MEMPHIS, TN	
CLIFFORD, RALPH A JR	10/20/2002
TELFORD, TN	
COMFORT, CHRISTOPHER A	10/20/2002
PITTSFIELD, ME	
COPPA, GEORGE	10/20/2002
STATEN ISLAND, NY	
CORNELL, LINDA ELEANOR	10/20/2002
OMAHA, NE	
COUNTRYMAN, CAROL J (ROBINETT)	10/20/2002
MESA, CO	
COURTLEY, CHRISTINE H	10/20/2002
WESTFIELD, MA	
COUSE, LORRI J	10/20/2002
CATSKILL, NY	
COYNER MADDEN, WANDA GAIL	10/20/2002
OKLAHOMA CITY, OK	
CRAIG, JOSEPH A	10/20/2002
BROOKLYN, NY	
CROUTHAMEL, SUSAN L	10/20/2002
LEESBURG, VA	
CRUZ, ANTHONY H	10/20/2002
BRIDGEPORT, CT	
DAHLKE, SHARON	10/20/2002
MERIDIAN, MS	
DALRYMPLE, SHARON M	10/20/2002
ANDOVER, MA	
DAVIS, KARIN B	10/20/2002
WILDWOOD, NJ	
DAVIS, LISA R	10/20/2002
CHARLESTON, SC	
DICKENS, CHARLES E	10/20/2002
GRAND BAY, AL	
DOUGLAS, CHRISTOPHER	10/20/2002
JACKSON, MS	
DUYCK, WAKENDA LEE	10/20/2002
SCOTTSBLUFF, NE	
EDDLEMAN SIRMONS, SHIRLEY	10/20/2002
MCALLEN, TX	
EFFLER, ELIZABETH	10/20/2002
PICAYUNE, MS	
ELLER, THOMAS EDWARD	10/20/2002
BLOOMINGTON, IN	
ESTRADA, ROBERT ANTHONY	10/20/2002
SANTA ANA, CA	
EVERETT, SPAULDING FRED	10/20/2002
FARGO, ND	
FAHRNEY, MARQUITA RENEE	10/20/2002
HILLSBORO, KS	
FARRELL, WALTER MICHAEL	10/20/2002
UKIAH, CA	
FEAZELL, KATRESCA ANNETTE	10/20/2002
ALEXANDRIA, AL	
FELDER, JAMES P	10/20/2002
ST CHARLES, MO	
FINK, WILLIAM	10/20/2002
OPELOUSAS, LA	
FONTENOT, MICHELLE	10/20/2002
LAKE JACKSON, TX	
FOWLER, ROBERT LEON	10/20/2002
BOUNTIFUL, UT	
FULLER, CATHY	10/20/2002
DENISON, TX	
FULTZ, JEAN M	10/20/2002
THERESA, NY	
FUSCHETTI, BARBARA L	10/20/2002
NASHUA, NH	
GADDIS, THOMAS D	10/20/2002
E MACHIAS, ME	
GANDLEY, DREW S	10/20/2002
MONTAUK, NY	
GERMANI, EILEEN L	10/20/2002
DOYLESTOWN, PA	
GIBBONS, LISA ANN	10/20/2002
MYRTLE BEACH, SC	
GILL, SHENNA	10/20/2002
PICAYUNE, MS	
GOOCH, JOSETTE	10/20/2002
KAPLAN, LA	
GRANT, MELODY A	10/20/2002
BRISTOL, CT	
GRASSER, JENNIFER B	10/20/2002
WALL, NJ	
GRIFFIN, KAREN LYNN COVETTS	10/20/2002
HAWESVILLE, KY	
GUFFY, DEBORAH C	10/20/2002
DES MOINES, IA	
HARDBECK, CHRISTOPHER D	10/20/2002
SUWANEE, GA	
HAROLD, MICHAEL DUANE	10/20/2002
VICTORVILLE, CA	
HART, RICHARD E	10/20/2002
HAMILTON, OH	
HASSAN, MOHAMED A	10/20/2002
NASHVILLE, TN	
HICKS, GINA RENEE	10/20/2002
WHITLEY CITY, KY	
HIGGINS, GARY W	10/20/2002
NEPTUNE, NJ	
HOLLY, SUSANNE M	10/20/2002
PAWCATUCK, CT	
INGRAO, FRANK	10/20/2002
POUGHKEEPSIE, NY	
JARRETT; CINDY LOU	10/20/2002
WAGONER, OK	
JOHNSTON, TONI DIANE	10/20/2002
HOUSTON, TX	
JUDGE, TONYA LEE WILCOXSON	10/20/2002
EWING, KY	
JUSTICE, CRYSTAL	10/20/2002
LONGVIEW, TX	
KAMARA, HELEN H	10/20/2002
PALMYRA, NJ	
KELSO, JESSIE	10/20/2002
PHOENIX, AZ	
KESTER, MARCIA	10/20/2002
DEPEW, NY	
KOZIUPA, HELENE ANN	10/20/2002
TRENTON, NJ	
KURIAN, LISSYAMMA	10/20/2002
UNION, NJ	
KWAK, CHOON JA	10/20/2002
SOUTH GATE, CA	
LANDRY, MELISSA	10/20/2002
YOUNGSVILLE, LA	
LANG, DEBRA A	10/20/2002
TEANECK, NJ	
LANGE, JUDITH GRAVES	10/20/2002

Subject, city, state	Effective date
KINGMAN, AZ	
LARASON, LINDA LEE	10/20/2002
INDIANAPOLIS, IN	
LATHAM, SHEILA JANE	10/20/2002
DECATUR, AL	
LEE, BRIAN L	10/20/2002
CAMDEN, NJ	
LEE, JUDITH A	10/20/2002
LEXINGTON, MA	
LEONARD, JACQUELINE DENISE	10/20/2002
LAGRANGE, GA	
LEWIS, AMANDA GALE	10/20/2002
NAVASOTA, TX	
LIN, TSU-CHUN	10/20/2002
MILLERSVILLE, MD	
LUCERO, RICHARD THORVALD	10/20/2002
SAN JOSE, CA	
MAHONEY, LISA A	10/20/2002
FRANKLIN, MA	
MARFORI, CARLO ROBERTO	10/20/2002
SAN DIEGO, CA	
MARSH, RAYMOND GLENN	10/20/2002
WICHITA, KS	
MARTIN, SCOTT ALAN	10/20/2002
CITRUS HGTS, CA	
MARTIN, TIFFANY LYNNE	10/20/2002
GRACEVILLE, FL	
MCALLISTER, KRISTINE JOYCE ALL	10/20/2002
SAN DIEGO, CA	
MELDROM, CAROLE J	10/20/2002
CROWNSVILLE, MD	
MIER, MISTY	10/20/2002
CROWLEY, LA	
MIS, KIM ANDRE	10/20/2002
REED CITY, MI	
MOFFIE, CALVIN A	10/20/2002
WALLINGFORD, CT	
MOORE, BONNIE	10/20/2002
WHEELER, MS	
MUNDO, GLADYS	10/20/2002
BRONX, NY	
NARDUCCI, BARBARA LEE	10/20/2002
TWAIN HARTE, CA	
NELSON, TERESA ELAINE	10/20/2002
GREENVILLE, AL	
NEWTON, CHERYL L	10/20/2002
WATERBURY, VT	
NICHOLS, BERNADETTE CARROLL	10/20/2002
TUCSON, AZ	
NUSSRALLAH, STEPHANIE ANN	10/20/2002
HOCKESSIN, DE	
O'BRIEN, DENNIS FRANCIS	10/20/2002
BETHANY, MO	
O'CALLAGHAN, TERESE M	10/20/2002
PENSAUKEN, NJ	
O'TOOLE, JULIE A	10/20/2002
RANDOLPH, MA	
OLIVERA, SMIRNA	10/20/2002
NEW BRUNSWICK, NJ	
OLIVERI, JOYCE MARIE	10/20/2002
ROCKFORD, IL	
OMARRAH, JO ANNE	10/20/2002
OAK LAWN, IL	
OSLAY, RUSSELL C	10/20/2002
DEKALB, IL	
PAGE, CATHERINE M	10/20/2002
BIG STONE GAP, VA	
PARCO, MARY LYNN	10/20/2002
ORLANDO, FL	
PARKS, SHEILA CALLAHAN	10/20/2002
ABINGDON, VA	
PEARSON, JACKIE MERLE	10/20/2002
OLATHE, KS	
PERALTA, LEE ANN	10/20/2002
LIVERMORE, CA	
PERILLO, DAVID J	10/20/2002
GOWANDA, NY	
PETTERSEN, LINDA A	10/20/2002
CHERRY HILL, NJ	
PHILLIPS, DENISE R	10/20/2002
FESTUS, MO	
POPE, LINDA S	10/20/2002
CARTHAGE, MS	
PRUITT, LOIS A	10/20/2002
PAWNEE, IL	
PURCELL, ANNE P	10/20/2002
LYMAN, ME	
RAYBURN, ALMA	10/20/2002
BATON ROUGE, LA	
RAYMOND, NATALIE	10/20/2002
WEST MONROE, LA	
REDNER, NANCY CLAUSEN	10/20/2002
BENSALEM, PA	
REED, KATHY	10/20/2002
PHOENIX, AZ	
REYNOLDS, PAUL DAVID	10/20/2002
BLOOMINGTON, IL	
RHONE, PATRICIA	10/20/2002
MANDAN, ND	
RICHARDS, JENNIFER	10/20/2002
BALCH SPRINGS, TX	
RIGSBEE, STEPHEN TRENT	10/20/2002
RALEIGH, NC	
RIVERA, MARCO ANTONIO	10/20/2002
OMAHA, NE	
RODEKAMP, RUTH ELAINE	10/20/2002
STERLING, IL	
ROSANE, LORI DILON	10/20/2002
ALLIANCE, NE	
ROSE, SUSAN ELIZABETH	10/20/2002
LAWRENCE, KS	
ROSEMOND, HELLEN DORIS	10/20/2002
HOUSTON, TX	
ROWE, JAMES K	10/20/2002
NEBRASKA CITY, NE	
RUSSELL-TAILLEFER, DEBORAH ANN	10/20/2002
SPARKS, NV	
SANDERS, EDWIN	10/20/2002
VICKSBURG, MS	
SAVAGE, SANDRA L	10/20/2002
GOOSE CREEK, SC	
SCHANCK, FRED J III	10/20/2002
NEPTUNE, NJ	
SCHNURER, CHARLES IRWIN	10/20/2002
WHITE OAK, PA	
SCOTT, GERALDINE L	10/20/2002
NEWPORT NEWS, VA	
SEFTON, BARBARA	10/20/2002
HOLDERNESS, NH	
SENINI, MARY ELIZABETH	10/20/2002
DE MAR, CA	
SESSOMS, MARK DESMOND	10/20/2002
VALLEJO, CA	
SHARP, ROBBIE	10/20/2002
INDIANAPOLIS, IN	
SHROPSHIRE, JAMES B	10/20/2002
OMAHA, NE	
SISSON, MISTY MAXSON	10/20/2002
SHINGLEHOUSE, PA	
SLUSZKA, KATHRYN J	10/20/2002
SEAFORD, NY	
SMITH, JIMMY D	10/20/2002
AMARILLO, TX	
SPERRY, KATHLEEN	10/20/2002
JACKSONVILLE, FL	
SPINETO, COLLEEN	10/20/2002
BLOOMFIELD, NJ	
SPRAGUE, ROSEMARY	10/20/2002
NORTHFIELD, VT	
STEELE, ROBYN	10/20/2002
PRICE, UT	
STEIN, HAZEL R CHILD	10/20/2002
BURNET, TX	
STERK, SAM	10/20/2002
SCOTTSDALE, AZ	
STEVENS, SEAN KARL	10/20/2002
LIBERAL, KS	
STILLMAN, VILETTA L	10/20/2002
ATCHISON, KS	
STRASSER, JENNIFER J	10/20/2002
HOBOKEN, NJ	
TAYLOR, JUDITH F	10/20/2002
WEAVERVILLE, NC	
TEEGARDEN, LISA	10/20/2002
BATON ROUGE, LA	
TEFFT, GREGORY H	10/20/2002
LAGUNA HILLS, CA	
THOMAS, PAUL R	10/20/2002
KING OF PRUSSIA, PA	
TROXELL, JEAN A	10/20/2002
ATCHISON, KS	
TRUMBULL, JENNIFER MARIE	10/20/2002
ST PETERSBURG, FL	
VALDISERRI, LAURIE A	10/20/2002
BELLE VERNON, PA	
VANHORN, CHERYL C HOWARD	10/20/2002
LOUISA, KY	
VRANESCU, AURELIA	10/20/2002
HOLLYWOOD, FL	
WALKER, BRETTA	10/20/2002
BRUSLY, LA	
WALLACE BALL, RACHEL LYNN	10/20/2002
SAN ANGELO, TX	
WALLENDA, WILLIAM L	10/20/2002
CHICAGO, IL	
WALP, BETH	10/20/2002
ISLAND PARK, NY	
WALZAK, BERNARD D	10/20/2002
MORRISVILLE, VT	
WEISER, ROBERT GERALD	10/20/2002
SAN ANTONIO, TX	
WEISS, JANET C	10/20/2002
ANTIOCH, IL	
WESHNAK, NADIA K	10/20/2002
LAKEWOOD, NJ	
WESLEY, JOSEPH W	10/20/2002
WOODCLIFF LAKE, NJ	
WHITE, GAIL LEE	10/20/2002
STOCKTON, CA	
WIGTON, CLETIS MAHONEY	10/20/2002
BISMARCK, ND	
WILSON, DONNA M	10/20/2002
PORT JEFFERSON STA, NY	
WINTERS, KENNETH B	10/20/2002
LONG BEACH, CA	
WISNER, LLOYD ARTHUR	10/20/2002
TOPEKA, KS	
WRIGHT, KIMBERLY ANN	10/20/2002
SUMMIT, NJ	
WRIGHT, TIMOTHY C	10/20/2002

Subject, city, state	Effective date
BRADENTON, FL	
WRIGHT, JUDITH A	10/20/2002
LYNDONVILLE, VT	
ZAGALA, ROBERTO N	10/20/2002
ARLINGTON HGTS, IL	
FEDERAL/STATE EXCLUSION/ SUSPENSION	
ASSAD, HANY YOUSSEF	10/20/2002
SAN RAMON, CA	
BEHAR, NISSIN	10/20/2002
SKOKIE, IL	
CAL'S MEDICAL MANAGEMENT INC	10/20/2002
OXFORD, WI	
KRITCHEVSKAYA, MARINA YURI	10/20/2002
STUDIO CITY, CA	
PIERCE, LINDA ANN	10/20/2002
VALLEY CENTER, KS	
FRAUD/KICKBACKS	
CARDIOTEL, INC	06/20/2002
GAITHERSBURG, MD	
FRALEY, ALAN R	07/18/2002
COLUMBIA, SC	
GERSHONI, DANIEL	06/20/2002
FT LAUDERDALE, FL	
MILLER, ROBERT B	04/14/2000
PETERSBURG, VA	
OWNED/CONTROLLED BY CONVICTED ENTITIES	
A LOVING TOUCH	10/20/2002
STONE MOUNTAIN, GA	
ALOSTA FAMILY DENTAL	10/20/2002
GLENDORA, CA	
BALAU CARE, INC	10/20/2002
MIAMI, FL	
BRUCE B FIGOTEN, DC, PC	10/20/2002
WOODLAND HILLS, CA	
FARMACIA CAPARRA HEIGHTS, INC	10/20/2002
PORT SAINT, FL	
HOMETOWN HOMECARE	10/20/2002
FOLEY, AL	
LITTLE FIVE POINTS PHARMACY	10/20/2002
ATLANTA, GA	
MED PAY, INC	10/20/2002
METAIRIE, LA	
MEDICAL EMPORIUM CORP	10/20/2002
MIAMI, FL	
MEDICAL OUTLET, INC	10/20/2002
LARGO, FL	
NANY'S MEDICAL SUPPLY, INC	10/20/2002
MIAMI, FL	
NATIONAL PHARMACEUTICALS, INC	10/20/2002
BOCA RATON, FL	
OBATA CHIROPRACTIC CLINCI, P C	09/11/2002
COLLEGE PARK, GA	
PEDIAPLUS MEDICAL CENTER	10/20/2002
MONROE, GA	
S A L WHOLESALE, INC	10/20/2002
BOCA RATON, FL	
SOUTH FLORIDA ORTHOTICS	10/20/2002
GARDNER, MA	
SPA ACUPUNCTURE/ ACUPRESSURE	10/20/2002
INGLEWOOD, CA	
VERO BEACH COMMUNITY CARE CTR	10/20/2002
VERO BEACH, FL	
FAILURE TO PROVIDE PAYMENT INFORMATION	
BUEGEL, DALE M.	10/20/2002
SHOREWOOD, WI	
DEFAULT ON HEAL LOAN	
BERRY, SHELLIE J	09/11/2002
DALLAS, TX	
NEWSOME, RAYMOND E	09/11/2002
DE SOTO, TX	
OBATA, NWAEBUNI M	09/11/2002
RIVERDALE, GA	
ROBINSON, KENNETH E	09/16/2002
AMERICUS, GA	
TUEL, MARC A	09/12/2002
FARMINGTON, CT	

Dated: September 3, 2002.

Kathi Petrowski,

Acting Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 02–25936 Filed 10–10–02; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

GPRA Client Outcomes for the Substance Abuse and Mental Health Services Administration (SAMHSA)—(OMB No. 0930–0208, revision)—The mission of the Substance Abuse and Mental Health Services Administration (SAMHSA) is to improve the effectiveness and efficiency of substance abuse and mental health treatment and prevention services across the United States. All of SAMHSA's activities are designed to ultimately reduce the gap in the availability of substance abuse and mental health services and to improve their effectiveness and efficiency.

Data are collected from all SAMHSA knowledge application and targeted capacity expansion grants and contracts where client outcomes are to be assessed at intake and post-treatment.

SAMHSA-funded projects are required to submit this data as a contingency for their award. The analysis of the data will also help determine whether the goal of reducing health and social costs of drug use to the public is being achieved.

The primary purpose of this data collection activity is to meet the reporting requirements of the Government Performance and Results Act (GPRA) by allowing SAMHSA to quantify the effects and accomplishments of SAMHSA programs. In addition, the data will be useful in addressing goals and objectives outlined in ONDCP's *Performance Measures of Effectiveness*. Following is the estimated annual response burden for this effort.

Center/number of annual clients-participants	Data collections per client/participant	Hours per data collection	Total hours	Added burden prop.	Total hour burden
CMHS:					
3,750	3	.33	3,713	0.70	2,599
CSAP:					
12,150	3	.33	12,029	0.72	8,661
CSAT:					
26,031[1]	3	.33	25,771	0.47	12,112

Center/number of annual clients-participants	Data collections per client/participant	Hours per data collection	Total hours	Added burden prop.	Total hour burden
3,500[2]	[3]4	.33	4,620	0.47	2,171
Total: 45,431					25,543

[1] Adults.
[2] Adolescents.
[3] Four data collections for adolescents.

Note: This is the maximum additional burden if all clients/participants complete three sets of items. CSAP and CSAT adolescent clients/participants do not usually receive all four data collections. Added burden proportion is an adjustment reflecting the extent to which programs typically already collect the data items.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 7, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–25957 Filed 10–10–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–41]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: October 11, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 3, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–25636 Filed 10–10–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No FR–4463–N–11]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under section 221(g)(4) of the Act during the 6-month period beginning July 1, 2002, is 6⅝ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning July 1, 2002, is 5¾ percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Room 6164, Washington, DC 20410. Telephone (202) 708–3944, extension 2612, or TDD (202) 708–4594 for hearing- or speech-impaired callers. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a satisfactory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning July 1, 2002, is 5¾ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 5¾ percent for the 6-month period beginning July 1, 2002. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with insurance commitment or

endorsement date (as applicable) within the second 6 months of 2002.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan. 1, 1999.
5½	Jan. 1, 1999	July 1, 1999.
6⅛	July 1, 1999	Jan. 1, 2000.
6½	Jan. 1, 2000	July 1, 2000.
6½	July 1, 2000	Jan. 1, 2001.
6	Jan. 1, 2001	July 1, 2001.
5⅞	July 1, 2001	Jan. 1, 2002.
5¼	Jan. 1, 2002	July 1, 2002.
5¾	July 1, 2002	Jan. 1, 2003.

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate" is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8-to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the 6-month period beginning July 1, 2002, is 6⅝ percent.

HUD expects to publish its next notice of change in debenture interest rates in January 2003.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

(Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715*l*, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d)).

Dated: August 29, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–25943 Filed 10–10–02; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Approved Recovery Plan for the Illinois Cave Amphipod (*Gammarus acherondytes*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce the availability of the approved recovery plan for the Illinois cave amphipod (*Gammarus acherondytes.*) The endangered Illinois cave amphipod is known only to occur in Monroe and St. Clair Counties in southwestern Illinois. It is a groundwater dwelling invertebrate found in gravel or cobble sections of cave streams. The quality and condition of groundwater in the amphipod's habitats are tied to land use practices within cave recharge areas. The plan proposes to develop partnerships with Federal and state agencies, organizations, and private landowners that will provide mechanisms for protecting Illinois cave amphipod populations through voluntary and incentive-driven stewardship efforts.

ADDRESSES: U.S. Fish and Wildlife Service's approved recovery plans are available from:

1. Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814 (the fee for the plan varies depending on the number of pages of the plan).

2. Field Supervisor, U.S. Fish and Wildlife Service, Rock Island Ecological Services Field Office, 4469–48th Avenue Court, Rock Island, Illinois 61201

3. The World Wide Web at: *http://endangered.fws.gov/RECOVERY/RECPLANS/Index.htm*

FOR FURTHER INFORMATION CONTACT: Ms. Jody Gustitus Millar (see **ADDRESSES** section No. 2 above) or telephone at (309) 793–5800. The Fish and Wildlife Reference Service may be reached at (301) 492–6403 or (800) 582–3421. TTY users may contact Ms. Millar and the Fish and Wildlife Reference Service through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals or plants is a primary goal of the Service's endangered species program. A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for reclassification to threatened status or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires that recovery plans be developed for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that during recovery plan development, we provide public notice and an opportunity for public review and comment. Information presented during the comment period has been considered in the preparation of the approved recovery plan, and is summarized in an appendix to the recovery plan. We will forward substantive comments regarding recovery plan implementation to appropriate Federal Agencies and other entities so that they can take these comments into account during the course of implementing recovery actions.

The Illinois cave amphipod was listed as an endangered species under the Act on September 3, 1998 (63 *FR* 46900). It is a groundwater dwelling invertebrate found in gravel or cobble sections of cave streams. The principle threats to the existence of the species are degradation of karst terrain habitat through groundwater contamination (resulting from urbanization, agricultural activities, and human and animal waste from residential septic systems and livestock feedlots), inadequate protection of water quality in a sensitive geological formation (such as karst) through current state and local regulations, and natural events (*i.e.*, a heavy spring snowmelt or rainstorm) that could cause a flushing of all systems at one time.

Historically, the Illinois cave amphipod was known to occur in six cave systems in Monroe and St. Clair Counties, Illinois. Its presence has not been confirmed in Madonnaville Cave, Monroe County and it appears to be extirpated from Stemler Cave, St. Clair County. Additional populations have been found within the known range of the species in eight additional groundwater systems in Monroe County.

The quality and condition of groundwater in the amphipod's habitats are tied to land use practices within cave recharge areas. The plan proposes to develop partnerships with Federal and state agencies, organizations, and private landowners that will provide mechanisms for protecting Illinois cave amphipod populations through voluntary and incentive-driven stewardship efforts.

The objective of this plan is to provide a framework for the recovery of the Illinois cave amphipod so that protection by the Act is no longer necessary. As recovery criteria are met, the status of the species will be reviewed and it will be considered for removal from the List of Endangered and Threatened Wildlife and Plants (50 CFR part 17). The Illinois cave amphipod will be considered for reclassification to threatened when five viable, stable populations in five separate groundwater basins with distribution in two of three sub-regions remain extant, and when there is a significant increase in the use of best management practices in the groundwater recharge areas in each of the five groundwater basins. The subregions are Columbia, Waterloo, and Renault Sub-regions of the Illinois Salem Plateau. The cave amphipod may be considered for delisting when five viable, stable populations in five separate groundwater basins with distribution in two of three sub-regions remain extant and are supported by persistent use of best management practices substantially protecting the groundwater recharge areas of the five groundwater basins. The subregions are Columbia, Waterloo, and Renault Sub-regions of the Illinois Salem Plateau.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 19, 2002.

Lynn M. Lewis,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 02–25954 Filed 10–10–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Approved Recovery Plan for the Pitcher's Thistle (*Cirsium pitcheri*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce the availability of the approved recovery plan for the Pitcher's thistle (*Cirsium pitcheri*), a species that is federally listed as threatened under the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). This species occurs on the shoreline dunes of Lakes Michigan, Huron and Superior. Actions needed for recovery of the Pitcher's thistle include managing and protecting its current highest quality and extirpated historic sites.

ADDRESSES: U.S. Fish and Wildlife Service's approved recovery plans are available from:

1. Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814 (the fee for the plan varies depending on the number of pages of the plan).
2. Field Supervisor, U.S. Fish and Wildlife Service, East Lansing Ecological Services Field Office, 2651 Coolidge Road, East Lansing, Michigan 48823
3. The World Wide Web at *http://endangered.fws.gov/RECOVERY/RECPLANS/Index.htm*

FOR FURTHER INFORMATION CONTACT: Mr. Mike DeCapita, East Lansing Ecological Services Field Office (see **ADDRESSES** section No. 2 above); telephone (517) 351–2555. The Fish and Wildlife Reference Service may be reached at (301) 492–6403 or (800) 582–3421. TTY users may contact Mr. DeCapita and the Fish and Wildlife Reference Service through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals or plants is a primary goal of the Service's endangered species program. A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for reclassification to threatened status or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Endangered Species Act of 1973, as amended, requires that recovery plans be developed for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that during recovery plan development, we provide public notice and an opportunity for public review and comment. Information presented during the comment period has been considered in the preparation of the approved recovery plan, and is summarized in an appendix to the recovery plan. We will forward substantive comments regarding recovery plan implementation to appropriate Federal Agencies and other entities so that they can take these comments into account during the course of implementing recovery actions.

The Pitcher's thistle, a rare, distinctive, perennial plant, was listed as a threatened species under the Act in July 1988 (53 *FR* 27137). It is endemic to the shoreline dune systems of Lakes Michigan, Huron and Superior. The species ranges from the north shore of Lake Superior south to Indiana, and formerly occurred in northern Illinois. Pitcher's thistle occurs only on dynamic open sand dunes subject to natural processes that maintain habitat in early successional stages. It is currently threatened by human recreational activities and development that obliterate habitat, stabilize sand dune areas, and directly harm individual plants. Introduction of biological agents to control noxious weeds may also threaten this plant.

The objective of this plan is to provide a framework for the recovery of the Pitcher's thistle so that protection by the Act is no longer necessary. As recovery criteria are met, the status of the species will be reviewed and it will be considered for removal from the List of Endangered and Threatened Wildlife

and Plants (50 CFR part 17). The Pitcher's thistle will be considered for delisting when: (1) The essential habitat associated with a total of 115 priority occurrences representing each biogeographic region and dune type is protected and managed under a management plan for each management unit; (2) regular field surveys to verify occurrences and record new occurrences have been established; (3) landowner contacts have been initiated and protection has been investigated for the remaining (rank<BC) public and private occurrences; (4) monitoring of known sites shows a stable or increasing trend toward recovery, and that protective plans are being implemented; (5) restoration of two occurrences from among historical sites where sufficient habitat remains in Illinois, Indiana, Wisconsin, and southern Lower Michigan has been completed; and (6) research necessary to protect, manage and restore Pitcher's thistle has been conducted.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: September 19, 2002.

Lynn M. Lewis,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 02–25955 Filed 10–10–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Gosnell Habitat Conservation Plan, San Luis Obispo County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

SUMMARY: Robert C. and Holly R. Gosnell (Applicants), have applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed permit would authorize take of the federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) incidental to otherwise lawful activities. Such take would occur as a result of development of one single-family residence within a 27,273-square-foot parcel owned by the Applicants and located in Los Osos, San Luis Obispo County, California. Development will result in the loss of 12,245 square feet of degraded coastal sage scrub habitat. The parcel is known to support the Morro shoulderband snail.

We request comments from the public on the permit application, which is available for review. The application includes a Low-Effect Habitat Conservation Plan (HCP). The HCP describes the proposed project and the measures that the Applicants would undertake to minimize and mitigate take of the Morro shoulderband snail, as required in section 10 (a)(2)(B) of the Act.

We also request comments on our preliminary determination that the HCP qualifies as a "low-effect" Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in an Environmental Action Statement, which is also available for public review.

DATES: Written comments should be received on or before November 12, 2002.

ADDRESSES: Send written comments to Ms. Diane Noda, Field Supervisor, U.S. Fish and Wildlife Service, 2493 Portola Road Suite B, Ventura, California 93003. Comments may be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Kirkland, Fish and Wildlife Biologist, at the above address or call (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Document Availability

Please contact the above office if you would like copies of the application, HCP, and Environmental Action Statement. Documents also will be available for review by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and Federal regulation prohibit the "take" of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to include kill, harm, or harass. The Service may, under limited circumstances, issue permits to authorize incidental take; *i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

The Gosnell single-family residence project site is located at 1194 Al Sereno Lane (APN 74–323–057), Los Osos, San Luis Obispo County. The Applicants are requesting a 25-year incidental take permit for the Morro shoulderband snail.

The proposed project is development of a single-family residence on a 27,273-square-foot parcel. The project would disturb a 12,245-square-foot area (development area) (44.9 percent of the lot) dominated by non-native veldt grass (*Ehrharta calycina*). The Applicants have submitted an HCP to minimize and mitigate for impacts to the Morro shoulderband snail. The project site also contains the federally threatened Morro Manzanita (*Arctostaphylos morroensis*). However, no Morro Manzanita plants will be impacted by the proposed project. No critical habitat for any listed species occurs on the project site. Approximately 15,022 square feet of the 27,273-square-foot parcel is characterized by the coastal sage scrub plant community, which is habitat for the Morro shoulderband snail.

Under the HCP, the Applicants propose to implement measures to minimize and mitigate for the removal of habitat for the Morro shoulderband snail. Specifically, they propose to (1) dedicate a conservation easement for the 15,022 square feet of coastal sage scrub habitat (55.1 percent of the lot) to the County of San Luis Obispo; and (2) enhance and maintain the coastal sage scrub habitat by removing at least 95 percent of the veldt grass prior to any ground disturbing activities and by maintaining the plant cover at no more than 5 percent veldt grass. Furthermore, the Applicants propose to donate $15,325 (equal to 17,820 square feet) toward the purchase of the 40-acre Powell II property, which contains Morro shoulderband snail habitat and is adjacent to protected lands within the Northeast Los Osos conservation planning area identified in the Recovery Plan for the snail.

The Service's Proposed Action consists of the issuance of an incidental take permit and implementation of the HCP, which includes measures to minimize and mitigate impacts of the project on the Morro shoulderband snail. Two alternatives to the taking of a listed species under the Proposed Action are considered in the HCP. Under the No-Action Alternative, the project site would not be developed and no permit would be issued. Without the HCP, conservation measures for the Morro shoulderband snail, such as exotic weed eradication, would not be implemented, resulting in further degradation of habitat on the site for the snail. This alternative would also result in unnecessary economic burden on the Gosnell family.

Under the Redesigned Project alternative, the development footprint for the project would be reduced or located to another portion of the parcel. However, the configuration and location of the development area was selected to minimize impacts to the portion of the property that is dominated by native species and which offers the best habitat for Morro shoulderband snails. Relocation of the development area would result in a greater disturbance to intact, coastal sage scrub habitat resulting in greater impacts to Morro shoulderband snails. A reduction in the size of the development area is not economically feasible because the proposed project has already been designed to meet the minimum needs of the Applicants. The Applicants also consider the proposed development area more desirable than elsewhere on the property.

The Service has made a preliminary determination that the HCP qualifies as a "low-effect" plan as defined by its Habitat Conservation Planning Handbook (November 1996). Our determination that a habitat conservation plan qualifies as a low-effect plan is based on the following three criteria: (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in our Environmental Action Statement, the Habitat Conservation Plan for the Gosnell Project Site qualifies as a "low-effect" plan for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the Morro shoulderband snail and its habitat. The Service does not anticipate significant direct or cumulative effects to the Morro shoulderband snail resulting from development of the Gosnell single-family residence project.

2. Approval of the HCP would not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any cumulative or growth inducing impacts and, therefore, would not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the HCP would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

The Service therefore has made a preliminary determination that approval of the HCP qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

The Service provides this notice pursuant to section 10(c) of the Act. We will evaluate the permit application, the HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10 (a) of the Act. If the requirements are met, the Service will issue a permit to the Applicants for the incidental take of the Morro shoulderband snail from development of the Gosnell Project site. We will make the final permit decision no sooner than 30 days from the date of this notice.

Dated: October 4, 2002.

Miel R. Corbett,

Acting Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–25921 Filed 10–10–02; 8:45 am]

BILLING CODE 4130–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability of the Final Environmental Impact Statement for the Truckee River Water Quality Settlement Agreement, Federal Water Rights Acquisition Program for Washoe, Storey, and Lyon Counties, NV

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) intends to file with the U.S. Environmental Protection Agency a Final Environmental Impact Statement (FEIS) for a proposed water rights acquisition program to fulfill federal obligations identified in the Truckee River Water Quality Settlement Agreement, and that the FEIS is available for final public review. Details of the proposed action, alternatives and areas of environmental concern addressed in the FEIS are provided in the **SUPPLEMENTARY INFORMATION** section.

DATES: Written comments must arrive by November 8, 2002. The Record of Decision will be issued on or after November 12, 2002.

ADDRESSES: You may mail, hand carry or telefax comments to Tom Strekal, Bureau of Indian Affairs, Western Nevada Agency, 1677 Hot Springs Road, Carson City, Nevada 89706, telefax (775) 887–3531.

Copies of the FEIS have been mailed to interested agencies, to local libraries, to individuals who participated in the scoping process and public hearings and to parties who requested a copy of the document. To obtain a copy of the FEIS, contact Tom Strekal at (775) 887–3500. Please specify whether you wish a paper or CD–ROM version of the document.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Strekal at (775) 887–3500.

SUPPLEMENTARY INFORMATION: The BIA has completed a FEIS for a proposal to initiate a federal water rights acquisition program to acquire Truckee River water rights. The Truckee River Water Quality Settlement Agreement (WQSA), signed on October 10, 1996, establishes a joint program to improve Truckee River water quality by increasing flows in the river through the purchase and dedication of Truckee River water rights for instream flow. The acquisition program would fulfill federal obligations identified in the WQSA.

The FEIS evaluates the proposed action, two action alternatives, and a no action alternative. It describes the existing environment and potential environmental consequences of a water rights acquisition program. The FEIS considers the following issues: air quality, groundwater and surface water supply, river flow, water quality, biological resources including desert vegetation, riparian vegetation, fish, threatened and endangered species, and socio-economic resources including cultural resources, recreation, and land use.

The BIA's proposed action is the preferred alternative. This is an acquisition strategy that would allow water rights to be acquired from willing sellers located in any portion of the study area. The proposed action presumes most water rights would be acquired from the Truckee Division of the Newlands Project, due to the greater potential availability of water rights and

the lower cost per acre-foot. Additional water rights would be acquired from the Reno-Sparks metropolitan area and from lands located within the Truckee River corridor from Vista downstream to Wadsworth, Nevada. Water associated with acquired rights would be stored, whenever possible, in Truckee River reservoirs owned and operated by the Bureau of Reclamation. Stored WQSA water would be released from storage to enhance Truckee River flow during periods of low flow (primarily June–September) according to a schedule prepared by the parties acquiring water rights under WQSA and the Pyramid Lake Tribe (Joint Program Parties).

Other alternatives considered in the FEIS evaluate strategies that would focus acquisition efforts in the Reno-Sparks metropolitan area or in the Truckee Division. Acquiring water rights exclusively from the Reno-Sparks metropolitan area would likely result in acquisition of the least amount of water rights due to the high cost per acre-foot. A strategy focused on water rights in the Truckee Division would result in the acquisition of the greatest amount of water rights.

The Draft EIS (DEIS) was released for public review on October 5, 2001. Public hearings were held on November 27, 28, 29, and 30, 2001, in Fernley, Nixon, Fallon, and Sparks, Nevada, respectively. At those public hearings, formal comments were received from seven individuals. The DEIS was available for public review from October 5 through December 5, 2001. Responses to comments received on the DEIS are addressed in the FEIS.

Public Comment Availability

Comments, including names and home addresses of respondents, will be available for public review at the location shown in the **ADDRESSES** section during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish the BIA to withhold your name and/or address from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. The BIA will not, however, consider anonymous comments. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: September 26, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–26034 Filed 10–10–02; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1430–EU; N–75369]

Notice of Realty Action: Competitive Sale of Public Land and Partial Termination of Recreation and Public Purposes Classifications in Douglas County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: In accordance with section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and Executive Order No. 6910, the described lands are classified for disposal by sale. The following public land has been examined and found suitable for disposal by method of competitive sale pursuant to section 203 and section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750, 43 U.S.C. 1713 and 1719) at not less than the appraised fair market value (FMV).

Mount Diablo Meridian

T. 14 N., R. 20 E.,
Sec. 5, NE¼NW¼W½ of lot 1 of NW¼, W½NW¼W½ of lot 1 of NW¼, NE¼SW¼W½ of lot 1 of NW¼, W½SW¼W½ of lot 1 of NW¼, lots 5–8, 13 and 16, and NW¼NW¼SW¼, N½SW¼NW¼SW¼, and SW¼SW¼NW¼SW¼;
Sec. 6, N½NE¼E½ of lot 1 of NE¼, SE¼NE¼E½ of lot 1 of NE¼, NE¼NW¼E½ of lot 1 of NE¼, SE¼SW¼E½ of lot 1 of NE¼, SE¼E½ of lot 1 of NE¼, lots 3 and 4, 9–13, 16–18, and 20, and E½NE¼SE¼, SE¼NW¼NE¼SE¼, S½SW¼NE¼SE¼, NE¼SE¼SE¼, S½NW¼SE¼SE¼, and N½SW¼SE¼SE¼.

Comprising 146 acres, more or less.

Upon publication of this notice the land described is hereby segregated from appropriation under the public land laws, including the mining laws, but not from disposal by sale under the above cited statutes for 270 days from publication of this notice in the **Federal Register**, or until title transfer is completed, whichever occurs first. On April 16, 2002, this land was segregated from appropriation under the public land laws for exchange. The exchange segregation is herein terminated, affecting the described land, and is replaced by the sale segregation in this notice as published. The public land will remain closed to appropriation under the public land laws. The subject land meets sale criteria under Section 203 of FLPMA and is identified for disposal from federal ownership in the Carson City Consolidated Resource Management Plan and the North Douglas Specific Area Plan Amendment. Previous classifications for Recreation and Public Purposes under case numbers N–3742, N–3743 and N–12656, as they affect the described land, are no longer appropriate and are hereby terminated. In addition, the subject land is relieved of the segregative effect of those classifications. Proceeds from the sale will be deposited and expended in accordance with the Federal Land Transaction Facilitation Act, Pub. L. 106–248.

Conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for sale have no known mineral value. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50.00 non-refundable filing fee for processing the conveyance of the mineral interests.

Patent (title document), will be issued with a reservation for a right-of-way for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945), and will be subject to valid existing rights, including rights to Douglas County for Topsy Lane and the following encumbrances of record:

(1) Those rights for highway purposes which have been granted to Nevada Department of Transportation by Right-of-Way CC–018400, and its assigns, under the Act of November 9, 1921 (42 Stat. 216).

(2) Those rights for gas pipeline purposes which have been granted to Paiute Pipeline Company, and its assigns, by Right-of-Way Nev-064632 and N–17001 under the Act of February

25, 1920 (41 Stat. 0437; 30 U.S.C. 185, sec. 28).

(3) Those rights for communication line purposes which have been granted to Verizon California, Inc., and its assigns, by Right-of-Way N–353 under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961) and Rights-of-Way N–16649, N–32152 and N–40377 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

(4) Those rights for electric line purposes which have been granted to Sierra Pacific Power Company, and its assigns, by Rights-of-Way N–7836 and N–11602 under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

(5) Those rights for access road purposes which have been granted to Hilltop Community Church, and its assigns, by Right-of-Way N–39139 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

(6) Those rights for access road, utility line and gas line purposes which have been granted to Richard and Hazel Wheaton, and their assigns, by Right-of-Way N–56235 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) and Right-of-Way N–75420 under the Act of February 25, 1920 (41 Stat. 0437; 30 U.S.C. 185, sec. 28).

(7) Those rights for access road and utility line purposes which have been granted to Douglas County, and its assigns, by Right-of-Way N–56768 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

(8) Those rights for access road purposes which have been granted to Norman and Betty Metcalf and Anne Sullivan, and their assigns, by Right-of-Way N–56867 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

(9) Those rights for gas line purposes which have been granted to Southwest Gas Corporation, and its assigns, by Right-of-Way N–59816 under the Act of February 25, 1920 (41 Stat. 0437; 30 U.S.C. 185, sec. 28).

The purchaser/patentee, by accepting a patent, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of federal, state, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by federal and state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

The land will be offered by method of competitive sale through sealed bid and at oral auction. All sealed bids must be received at the BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, no later than 4:15 p.m., PST, December 6, 2002. Sealed bid envelopes must be marked on the lower front left corner, "Bid for Land Sale N–75369, December 10, 2002". Bids must be for not less than the appraised FMV of $6,500,000.00. Each sealed bid shall be accompanied by a certified check, money order, bank draft, or cashier's check made payable to the Bureau of Land Management, for not less than 10 percent of the amount bid. The highest qualified sealed bid will become the starting bid for oral bidding. If no sealed bids are received, oral bidding will begin at the appraised FMV. The land will be offered for competitive sale by oral auction beginning at 10:00 a.m., PST, December 10, 2002, at the Douglas County Administration Building, 1616 8th Street, Minden, Nevada 89423. Registration for oral bidding will begin at 8:30 a.m. the day of sale and will continue throughout the auction. All oral bidders are required to register. The highest qualifying bid, whether sealed or oral, will be declared the high bid. The apparent high bidder, must submit the required bid deposit immediately following the close of the sale in the form of cash, personal check, bank draft, certified check, cashier's check, money order or any combination thereof, made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid. The remainder of the full bid price, whether sealed or oral, must be paid within 180 calendar days of the sale date. Failure to submit sufficient funds for the bid deposit or failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM. The land will then be offered to the next highest bidder that meets sale qualifications. If that offer is declined, the land may be offered for sale on the Internet at a later date. Contact the Carson City BLM Field Office for Internet auction procedures.

Federal law requires bidders to be U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity including, but not limited to, associations or partnerships capable of holding property or interests therein under the law of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit. The BLM may not issue a patent or deed to a person other than the declared successful bidder and qualified conveyee or patentee in a disposal action.

In order to determine the fair market value of the subject public land through appraisal, certain assumptions have been made of the attributes and limitations of the land and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the land offered for sale, and conveyance of the subject land will not be on a contingency basis. It is the buyers' responsibility to be aware of all applicable local government policies and regulations that would affect the subject land. It is also the buyers' responsibility to be aware of existing or projected use of nearby properties. When conveyed out of federal ownership, the land will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer. Portions of the land are adjacent to U.S.

Highway 395 and the land is accessible from Topsy Lane and North Sunridge Drive.

Detailed information concerning the sale, including reservations, sale procedures and conditions, and planning and environmental documents, is available for review at the Bureau of Land Management, Carson City Office, 5665 Morgan Mill Road, Carson City, NV 89701, or by calling (775) 885–6115. For a period of 45 days from the date of publication of this notice in the **Federal Register**, the general public and interested parties may submit comments to the Manager, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of any adverse comments, this realty action will become the final determination of the Department of Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws or is determined to not be in the public interest. Any comments received during this process, as well as the commentator's name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish your name and/or address be made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commentator's request to have their name and/or address withheld from public release will be honored to the extent permissible by law.

The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: September 18, 2002.

John O. Singlaub,

Manager, Carson City Field Office.

[FR Doc. 02–26171 Filed 10–9–02; 1:36 pm]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Intent To Prepare a Resource Management Plan (RMP) for the King Range National Conservation Area

AGENCY: Bureau of Land Management; Arcata Field Office.

ACTION: Notice of Intent to Prepare a Resource Management Plan (RMP) for the King Range National Conservation Area and associated Environmental Impact Statement (EIS).

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare an RMP with an associated EIS for the King Range National Conservation Area (KRNCA), managed by the Arcata Field Office. The planning area is located in Humboldt and Mendocino Counties, California. This planning activity encompasses approximately 63,000 acres of land within the National Conservation Area (NCA) boundary. The plan will fulfill the obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), the King Range Act, and BLM management policies. The plan will serve to update the 1974 King Range Management Program (KRMP) and associated amendments. Decisions in the original plan and amendments that are still current will be carried forward in the new plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The public scoping process will identify planning issues, develop planning criteria, and outline a vision for area management that reflects the needs and interests of the public and protection of the areas resource values as called for by the King Range Act.

DATES: This notice initiates the public scoping process. Comments on issues and planning criteria can be submitted in writing to the address listed below. All public meetings will be announced through the local news media, newsletters, and the BLM web site (*www.ca.blm.gov/arcata/*) at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

PUBLIC PARTICIPATION: Public meetings will be held throughout the plan scoping and preparation period. Participation is encouraged and will help determine the future management of the KRNCA public lands. In addition to the ongoing public participation process, formal opportunities for public input will be provided through comment on the alternatives and upon publication of the BLM draft RMP/EIS.

ADDRESSES: Written comments should be sent to, Bureau of Land Management, Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521. Fax (707) 825–2301. Email comments to *CAweb330@ca.blm.gov*. Documents pertinent to this proposal may be examined at the Arcata Field Office located in Arcata, California. Comments, including names and street addresses of respondents, will be available for public review at the Arcata Field Office located in Arcata, CA during regular business hours 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, call (707) 825–2300.

SUPPLEMENTARY INFORMATION: The creation of the KRNCA along with the changing needs and interests of the public necessitates a revision to the KRMP, which was completed in 1974. Various supplementary plans, amendments, and implementation of new laws have served to update the 27 year old plan. Decisions in these existing plans that are still current will be carried forward in the new plan. However, changing uses, public interests, and resource conditions indicate that it is timely to update the plan in a comprehensive manner.

Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in discussions with individuals and user groups. They represent the BLM's knowledge to date on the existing issues and concerns with current management. The major issue themes that will be addressed in the plan effort include: Management and protection of natural/cultural resources and primitive values; recreation/visitor use and safety; and integrating planning and management with community, tribal, and other agency needs.

After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase.

Preliminary planning criteria have also been identified to guide development of the plan decisions and selection of a preferred alternative. Some key criteria are as follows. The plan decisions will: 1. Be completed in compliance with FLPMA, NEPA, King Range Act and other applicable laws and policies; 2. Recognize lifestyles and concerns of area residents; 3. Be consistent with NW Forest Plan; and 4. Carry forward the zoning concept of the original KRMP, and existing relevant decisions from the original plan and amendments/supplements. The public will have an opportunity to provide comments and update planning criteria as part of the scoping process.

An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified.

Background Information

On October 21, 1970, Congress passed the King Range Act (Pub. L. 91–476) creating the KRNCA. The area encompasses approximately 63,000 acres in Humboldt and Mendocino Counties, California. The KRNCA includes 35 miles of Pacific coastline backed by peaks climbing to 4,000 feet. The area is bordered on the north and east by a mixture of public and private lands, and on the south by the Sinkyone Wilderness State Park.

The KRMP was completed in 1974 and has been amended a number of times to reflect changing public needs, new laws, and executive orders. Several significant multi-discipline and activity plans have also been completed, including the KRNCA Extension Plan (1981), Allotment Management Plan (1984), Transportation Plan (1986), Cultural Resources Management Plan (1988), Wilderness Recommendations/EIS (1988), and Northwest Forest Plan (1994). Information and decisions from these existing plans may be incorporated into this plan revision.

The King Range Act requires that the "plan will be reviewed and reevaluated periodically". To date, updates have been completed on an as-needed basis to respond to changing public demands, resource needs or public policies affecting a specific aspect of the management program. This effort will serve as the first comprehensive plan update since the original KRMP was completed in 1974.

Lynda Roush,

Arcata Field Manager.

[FR Doc. 02–25924 Filed 10–10–02; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–450]

Certain Integrated Circuits, Processes for Making Same, and Products Containing Same; Notice of Final Determination and Issuance of Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) as to one claim of one patent and has issued a limited exclusion order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3012. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Copies of the Commission order, the Commission opinion in support thereof, and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation by notice published in the **Federal Register** on March 6, 2001. 66 FR 13567 (2001). The complainants were United Microelectronics Corporation, Hsinchu City, Taiwan; UMC Group (USA), Sunnyvale, CA; and United Foundry Service, Inc., Hopewell Junction, NY. *Id.* The Commission named two respondents, Silicon Integrated Systems Corp., Hsinchu City, Taiwan, and Silicon Integrated Systems Corporation, Sunnyvale, CA (collectively, "SiS"). *Id.* The complaint, as supplemented, alleged violations of section 337 in the importation, the sale for importation, and the sale within the United States after importation of certain integrated circuits and products containing same by reason of infringement of claims 1, 2, and 8 of U.S. Letters Patent 5,559,352 ("the '352 patent") and claims 1, 3–16, and 19–21 of U.S. Letters Patent 6,117,345 ("the '345 patent"). *Id.* On November 2, 2001, the presiding administrative law judge ("ALJ") issued an initial determination ("ID") (ALJ Order No. 15) granting complainants" motion for summary determination on the issue of importation and denying respondents' motion for summary determination of lack of importation. That ID was not reviewed by the Commission. A tutorial session was held on November 5, 2001, and an evidentiary hearing was held from November 7, 2001, through November 16, 2001, and from December 10, 2001, through December 12, 2001. The ALJ issued his final ID on May 6, 2002, concluding that there was no violation of section 337. With respect to the '352 patent, the ALJ found that: Complainants have not established that the domestic industry requirement is met; none of respondents' accused devices infringe any asserted claim of the '352 patent literally or under the doctrine of equivalents; and claims 1 and 2 of the '352 patent are invalid as anticipated under 35 U.S.C. 102 and claim 8 of the '352 patent is invalid for obviousness under 35 U.S.C. 103. With respect to the '345 patent, the ALJ found each of the claims listed in the notice of investigation, *i.e.*, claims 1, 3–16, 19–20, and 21, invalid as anticipated by and made obvious by certain prior art. The ALJ stated that, in their post-hearing filings, complainants asserted only claims 1, 3–5, 9, 11–13, and 20–21 of the '345 patent against respondents. He found that, if valid, each of the asserted claims of the '345 patent, *i.e.*, claims 1, 3–5, 9, 11–13, and 20–21, is literally infringed by SiS's existing (or old) SiON manufacturing process, but that respondents' new N_2O process does not infringe any asserted claim of the '345 patent. The ALJ further found that a

domestic industry exists with respect to the '345 patent. On May 13, 2002, the ALJ issued his recommended determination on remedy and bonding. On May 20, 2002, complainants and the Commission investigative attorney ("IA") petitioned for review of the subject ID, and respondents filed a contingent petition for review of the ALJ's final ID. On June 21, 2002, the Commission determined to review the ID in part. Specifically, the Commission determined to review and clarify that the ALJ found claim 13 of the '345 patent made obvious, but not anticipated, by the Tobben patent. The Commission also determined to review: (1) the ALJ's findings and conclusions of law regarding the '352 patent with respect to infringement of the asserted claims and domestic industry under the doctrine of equivalents; (2) the ALJ's finding that respondents' old E5 model ESD transistor does not infringe any asserted claim of the '352 patent, either literally or equivalently; (3) the ALJ's claim construction of the limitations "an ESD protection device" (claims 1, 2, and 8 of the '352 patent), "a gate" (claims 1 and 2), "gates" (claim 8), and "source/drain regions * * * with each source/drain region comprising" (claims 1, 2, and 8), and the ALJ's invalidity, domestic industry, and infringement findings and conclusions of law with respect to those limitations; (4) the ALJ's finding that claim 8 of the '352 patent is invalid as made obvious by a combination of prior art references; (5) whether the economic prong of the domestic industry requirement is met with respect to the '352 patent; (6) the ALJ's findings that the "second antireflective coating" (claim 1 and asserted dependent claims 3–8 of the '345 patent) and "cap layer" (claims 9–16, 19–20, and 21 of the '345 patent) are disclosed in the Tobben patent, and consequently (a) the ALJ's findings with respect to etching the second antireflective coating or cap layer (claims 4 and 12), (b) the ALJ's ultimate finding that the Tobben patent anticipates claims 1, 3–16, 19–20, and 21 of the '345 patent, and (c) the ALJ's conclusion that claim 13 is made obvious by the Tobben patent and other prior art; (7) the ALJ's conclusion that claim 13 of the '345 patent is invalid as obvious in light of the Tobben patent; and (8) the ALJ's conclusion that claims 1, 3–16, 19–20, and 21 of the '345 patent are invalid as made obvious by the Abernathey patent in combination with the Pan, Yagi, and/or Yota publications. The Commission determined not to review the remainder of the ID, including the ID's conclusions and findings of fact with respect to whether the Tobben patent is prior art to the '345 patent, infringement of the asserted claims of the '345 patent, domestic industry concerning the '345 patent, and failure to disclose the best mode of practicing the invention of the '345 patent. The Commission requested briefs on the issues under review, and posed briefing questions for the parties to answer. The Commission also requested written submissions on the issues of remedy, the public interest, and bonding. 67 FR 43338. Initial briefs were filed on July 9, 2002, and reply briefs were filed on July 16, 2002, and July 17, 2002. Having examined the record in this investigation, including the briefs and the responses thereto, the Commission determined that there is a violation of section 337 as to claim 13 of the '345 patent, but no violation of the statute as to the remaining claims in issue of the '345 patent (*viz.*, claims 1, 3–5, 9, 11–12, 20, and 21) and no violation as to the claims in issue of the '352 patent (viz., claims 1, 2, and 8). With respect to the '352 patent, the Commission determined to modify the ALJ's construction of certain limitations in the asserted claims of the '352 patent, and to affirm the ALJ's findings and conclusions that (a) the asserted claims are not infringed, and (b) complainants failed to establish the technical prong of the domestic industry requirement under the revised claim construction. The Commission also determined to affirm the ALJ's finding that claims 1 and 2 of the '352 patent are invalid as anticipated, to reverse the ALJ's finding that claim 8 of the '352 patent is invalid as made obvious, and to take no position as to whether complainants established the economic prong of the domestic industry requirement with respect to the '352 patent. With respect to the '345 patent, the Commission determined to vacate the ALJ's findings and conclusions as to invalidity with respect to claims 6–8, 10, 14–16, and 19; to reverse the ALJ's finding that claims 1, 3–5, 9, 11–12, 20, and 21 are invalid as anticipated; to affirm the ALJ's conclusion that claims 1, 3–5, 9, 11–12, 20, and 21 of the '345 patent are invalid as obvious; and to clarify that claim 13 is not anticipated and reverse the ALJ's conclusion that claim 13 is invalid as obvious. The Commission also made determinations on the issues of remedy, the public interest, and bonding. The Commission determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of integrated circuits, including chipsets and graphics chips, that are made by a process covered by claim 13 of U.S. Letters Patent 6,117,345 and manufactured by or on behalf of respondents, and motherboards containing such integrated circuits. The Commission also determined that the public interest factors enumerated in 19 U.S.C. 1337(d) do not preclude the issuance of the limited exclusion order, and that the bond during the Presidential review period should be set at 100 percent of the entered value of integrated circuits subject to the Commission's order and 39 percent of the entered value of motherboards containing such integrated circuits. The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.45–210.51 of the Commission's Rules of Practice and Procedure (19 CFR 210.45–210.51).

By order of the Commission.
Issued: October 7, 2002.

Marilyn R. Abbott,
Secretary to the Commission.

[FR Doc. 02–25997 Filed 10–10–02; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–029]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING:
International Trade Commission.

TIME AND DATE: October 16, 2002 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes
3. Ratification List
4. Inv. Nos. 701–TA–423–425 and 731–TA–964, 966–970, 973–978, 980, and 982–983 (Final)(Certain Cold-Rolled Steel Products from Argentina, Belgium, Brazil, China, France, Germany, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Taiwan, Turkey, and Venezuela)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before October 28, 2002.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 8, 2002.
By order of the Commission:

Marilyn R. Abbott,
Secretary to the Commission.

[FR Doc. 02–26072 Filed 10–9–02; 10:52 am]
BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations is these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decision

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and States:

Volume II
Delaware
DE020011 (Oct. 11, 2002)

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I
None

Volume II
Delaware
DE020001 (Mar. 1, 2002)
DE020002 (Mar. 1, 2002)
DE020006 (Mar. 1, 2002)
DE020008 (Mar. 1, 2002)
DE020009 (Mar. 1, 2002)
DE020010 (Mar. 1, 2002)
Pennsylvania
PA020006 (Mar. 1, 2002)

Volume III
None

Volume IV
None

Volume V
None

Volume VI
None

Volume VII
None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage

determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 3d day of October 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–25699 Filed 10–10–02; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–122]

NASA Advisory Council, Advanced Space Transportation Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aerospace Technology Advisory Committee (ATAC), Advanced Space Transportation Subcommittee (ASTS).

DATES: Monday, November 18, 2002, 12:30 p.m. to 4:45 p.m.; and Tuesday, November 19, 2002, 9 a.m. to 1:45 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 7H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aerospace Technology, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4729.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Overview of Space Launch Initiative (SLI) Since Last Meeting
—Integrated Space Transportation Plan (ISTP) Update
—How SLI is Using Lessons Learned
—Review of SLI Partnerships and their Structure
—SLI Development Technology Readiness Level Progression
—Composite vs. Metallic Fuel Tanks
—3rd Generation Space Transportation Update
—Panel Member Discussion

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–26028 Filed 10–10–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COMMUNICATIONS SYSTEM

Telecommunications Service Priority System Oversight Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Wednesday, October 30, 2002 from 9 a.m. to 12 p.m. The meeting will be held at 701 South Court House Road, Arlington, VA in the NCS conference room on the 2nd floor.

—TSP/WPS Program Update
—TSP Sponsorship Policies
—OSS Concept

Anyone interested in attending or presenting additional information to the Committee, please contact Deborah Bea, Office of Priority Telecommunications, (703) 607–4933.

Peter M. Fonash,

Certifying Officer, National Communications System.

[FR Doc. 02–26012 Filed 10–10–02; 8:45 am]

BILLING CODE 5001–08–M

NATIONAL CREDIT UNION ADMINISTRATION

Guidelines for Ensuring the Quality of Disseminated Information

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final guidelines.

SUMMARY: NCUA is issuing final guidelines for ensuring the quality of disseminated information. The guidelines are in response to Office of Management and Budget (OMB) issued government-wide guidelines. The goal of the guidelines is to ensure that information disseminated by NCUA is: Useful to the intended user of the information; presented in an accurate, clear, complete and unbiased manner; and protected from unauthorized access or revision. The guidelines also provide an administrative mechanism for an affected person to request correction of information disseminated by NCUA.

DATES: Effective October 1, 2002.

FOR FURTHER INFORMATION CONTACT: The final guidelines are available at *www.ncua.gov*. For additional information contact Neil McNamara, Deputy Chief Information Officer, Office of the Chief Information Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428 or telephone number: (703) 518–6440 or Mary F. Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone number: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

Section 515 of the Treasury and General Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554, 114 Stat. 2763) directs each agency subject to the Paperwork Reduction Act (44 U.S.C. chapter 35) to issue customized guidelines for ensuring the quality of the information it disseminates. The agencies were to base their guidelines on final guidelines issued by OMB and to post proposed guidelines by May 1, 2002. 67 FR 8452 (February 22, 2002).

NCUA posted proposed guidelines on its Web site on May 1, 2002, and they were published in the **Federal Register** on May 8, 2002. 67 FR 30976 (May 8, 2002). NCUA received no comments specific to its guidelines. It received two, generic comment letters sent to all federal agencies. Based on those comments, NCUA has amended its guidelines to address specifically whether administrative correction methods in rulemaking proceedings.

The goal of these guidelines is to ensure that information disseminated by the NCUA Board is: useful to the intended users of the information; presented in an accurate, clear, complete and unbiased manner; and protected from unauthorized access or revision. Section 515 also requires the agencies to include in their guidelines "administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency."

Guidelines

Policy

NCUA will undertake to ensure that the information it disseminates to the public is objective (accurate, clear, complete, and unbiased), useful and has integrity. Most information disseminated by NCUA is subject to the basic standard described in these guidelines. Additional levels of quality standards are adopted as appropriate for specific categories of disseminated information. The OMB guidelines require "influential scientific, financial or statistical information" to meet a higher standard of quality. OMB defines "influential" to mean, "the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions." *Id.* at 8455. Influential information disseminated by NCUA is subject to a level higher than the basic standard. The NCUA's Chief Information Officer (CIO) serves as the agency official charged with overseeing the agency's compliance with OMB guidelines for the quality of information disseminated by NCUA.

Scope

NCUA will review all information disseminated for its quality before it is disseminated. The agency's pre-dissemination review and the guidelines in this document will apply to information that the agency first disseminates on or after October 1, 2002. The agency's administrative mechanism for correcting information will apply to information that the agency disseminates on or after October 1, 2002, regardless of when the agency first disseminated the information.

These guidelines apply to NCUA information dissemination in all media and formats, including print, electronic, audio/visual, or some other form. Information includes books, papers, CD–ROMs, electronic documents, or other documentary material disseminated to the public by NCUA. The guidelines apply to information disseminated by NCUA from a web page, but they do not apply to hyperlinks from NCUA's Web site to information that others disseminate. Nor do the guidelines apply to opinions if it is clear that what is being offered is someone's opinion, rather than fact or the agency's views. The guidelines do not apply to distribution limited to correspondence with individuals or persons, press releases, archival records, library holdings, public filings, subpoena, or adjudicative processes. Documents and information disseminated but neither authored by NCUA nor adopted as representing NCUA's views are not covered by these guidelines.

Dissemination means agency initiated or sponsored distribution of information to the public. Dissemination does not include: distribution limited to government employees or agency contractors or grantees; intra-agency or inter-agency use or sharing of governmental information; or responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law.

Process for Ensuring Quality of Information at the Basic Standard

The Section 515 guidelines issued by OMB focus primarily on the dissemination of substantive information, for example, reports, studies and summaries, rather than information pertaining to basic agency operations. NCUA reviews all information before dissemination to assure that it meets the basic quality standard. Most information disseminated by NCUA does not require the higher standard of review associated with influential information.

As stated in the Policy section of these guidelines, NCUA's basic quality standard for information involves objectivity, utility, and integrity. Objectivity involves two distinct elements: presentation and substance. Objective presentation means the information is presented within a proper context to ensure an accurate, clear, complete and unbiased presentation. Objective substance means the data, the analytical process, and the resulting reports are accurate, reliable and unbiased. To the extent possible, and consistent with confidentiality protections, NCUA will identify the source of disseminated information so the public can assess whether the information is objective. The utility of information refers to its usefulness to its intended users, including the public. Integrity refers to the security of information, in other words, the protection of information from unauthorized access or revision.

NCUA's CIO is charged with primary oversight responsibility for assuring that all disseminated information meets the basic quality standard. The CIO relies on the Office Director with primary responsibility for the disseminated information to ensure that the pre-dissemination review process is performed and documented at a level appropriate for the type of information disseminated. The OfficeDirectors will use internal peer reviews and other review mechanisms to ensure that disseminated information is objective, unbiased, and accurate in both presentation and substance. The approval of information before dissemination will be documented. This documentation may include routing slips, clearance forms, e-mails and other approval mechanisms currently used to assure the quality of disseminated information.

The Office Director with primary responsibility is also responsible for ensuring the utility and integrity of the information disseminated by his or her office. Information is useful only if it can be retrieved. Therefore, the Office Director should ensure that information published on the NCUA's Web site is retrievable by the public.

For all proposed collections of information under the Paperwork Reduction Act (PRA), NCUA should demonstrate in its PRA clearance submissions to OMB that the proposed collection of information will result in information that will be collected, maintained and used in a way consistent with OMB and NCUA information quality guidelines.

The security and integrity of agency information is addressed in NCUA Instruction No. 13500.04, "Agency-Wide Information Security Policy & Procedures" and the NCUA agency-wide electronic systems records retention schedule. Office Directors are responsible for ensuring that information is protected from unauthorized revision, falsification, corruption, and intentional or inadvertent destruction. In particular, the originating Office Director is responsible for ensuring that the record copy of information products is filed in the appropriate official record keeping system and included in an approved records retention schedule. All NCUA employees are responsible for following security procedures intended to safeguard sensitive information. The originating Office Directors are required to review and update the security plans for their systems each year. The CIO provides an ongoing security-training program for agency staff. NCUA also has a comprehensive internal control program, including management, operational and technical controls, designed to protect the integrity of agency systems and information. The CIO, the Information Security Officer, and the Records Officer of NCUA advise the Office Directors and other employees, as needed on the implementation of appropriate security and records management procedures.

The originating Office Director is to review disseminated information on a regular basis, including information on the NCUA Web site, to ensure that information is current, timely, and correct.

Process for Ensuring Quality of Information at a Level Higher Than the Basic Standard

Some of the information disseminated by NCUA is influential, meaning that the "information will have or does have a clear and substantial impact on

important public policies or important private sector decisions." *Id.* at 8455.

OMB has instructed the agencies to take into account their missions in determining whether the information they disseminate is influential. NCUA's primary mission is to ensure the safety and soundness of federally insured credit unions. NCUA collects financial data from credit unions and produces statistical reports based on that data. This information is potentially influential. Both the individual credit union data and the statistical reports are made available to the public. These reports assist the NCUA in its functions as regulator and insurer, as well as credit unions and the public in their financial decisions. The information is considered influential if important public policies or important private sector decisions are made based on it. To ensure the accuracy of the original data, NCUA staff or the appropriate state regulator reviews it for accuracy. The data is then collected by NCUA's Office of Examination and Insurance (E&I) and reviewed for discrepancies. E&I then prepares summary statistical and trend reports for distribution to the general public. The original data on which these statistical and trend reports are based is available to the public, making the statistical and trend reports reproducible. Every possible step is taken to ensure the accuracy of the underlying data. The computer program used by credit unions for their initial submission of the call report data is designed to detect errors before submission. Next, the credit union's examiner or the appropriate state regulator reviews the call report to assure that the information is accurate. Finally, the summary information for federally-insured credit unions is reviewed by E&I to detect any errors. With these steps in place, NCUA is assuring the accuracy and reproducibility of information that is potentially influential.

Administrative Correction Methods

Background

NCUA has developed a procedure to seek correction of information under Section 515. These procedures are designed to be flexible, appropriate to the nature and timeliness of the information disseminated and incorporated into NCUA's information resources management and administrative practices. An affected person may request correction of information disseminated by NCUA. An affected person means anyone who may benefit or be harmed by the disseminated information. Documents and information disseminated but neither authored by NCUA nor adopted as representing NCUA's views are not covered by these guidelines.

Certain disseminations of information include a comprehensive public comment process, *e.g.*, notices of proposed rulemaking. The administrative correction method described in these guidelines does not apply to such documents. Persons questioning information disseminated in such a document must submit comments as directed in that document. In cases where NCUA disseminates a study, analysis, or other information prior to the final agency action, request for correction will be considered prior to the final agency action if NCUA has determined that an earlier response would not unduly delay issuance of the agency action and the complainant has shown a reasonable likelihood of suffering actual harm from NCUA's dissemination if NCUA does not resolve the complaint prior to the final agency action.

Procedure

An affected person may submit his or her request to NCUA's CIO, and the CIO will forward it to the appropriate NCUA Office Director for a determination. All requests should be addressed to: Chief Information Officer, Office of Chief Information Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

The request should state that the correction of information is submitted under section 515 of Public Law 106–554 and include the requester's name and mailing address. The request should describe the information asserted to be incorrect, including the name of the report or data product where the information is located, the date of issuance, and a detailed description of the information to be corrected. The request should also state specifically why the information does not comply with NCUA or OMB guidelines and should be corrected, and, if possible, recommend specifically how it should be corrected, and provide any supporting documentary evidence, such as comparable data or research results on the same topic to help in the review of the request.

If the Office Director determines that a request does not reasonably describe the disseminated information the requester asserts to be incorrect, the Office Director will either advise the requester what additional information is needed to identify the particular information or otherwise state why the request is insufficient.

The Office Director will coordinate with the appropriate NCUA officials to determine whether or not to correct information. The nature, influence, and timeliness of the information involved, the significance of the correction on the use of the information, and the magnitude of the correction will determine the level of review and the degree and manner of any corrective action.

The Office Director will respond to a request within 60 calendar days. The response will explain the findings of the review and the actions NCUA will take. If NCUA denies the request, the response will explain the right to an appeal and how to apply for it. The Office Director may extend the 60 days for up to 30 more business days. If extended, the Office Director will send an interim response that states why more time is needed and when a response may be expected. The 60-day response period begins on the day the request is received by the CIO.

A denial of a request to correct a record may be appealed to the CIO within 30 calendar days of the date of the denial letter. Appeals must be in writing, state the basis for the appeal, and provide any supporting documentation. Appeals must be addressed to the Chief Information Officer, Office of the Chief Information Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Appeals must be decided within 60 calendar days unless the CIO, for good cause, extends the period for an additional 30 calendar days. If extended, the CIO will send an interim response that states why more time is needed and when a response may be expected. The CIO will notify the appellant whether his or her request was granted or denied and what corrective action, if any, the NCUA will take.

These procedures for correcting information will apply to information that NCUA disseminates on or after October 1, 2002, regardless of when the agency first disseminated the information.

Annual Reports to OMB

NCUA will submit an annual fiscal year report to OMB providing information, both quantitative and qualitative, on the number, nature and resolution of complaints received by the agency regarding the accuracy of information it disseminates. The report is to be submitted on an annual fiscal year basis no later than January 1 of the following year. The first report will cover fiscal year 2003 and will be submitted to OMB by January 1, 2004.

Definitions

1. *Dissemination* means NCUA initiated or sponsored distribution of information to the public. Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra-agency or inter-agency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law.

2. *Influential* means that NCUA can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions.

3. *Information* means any communication or representation of knowledge such as fact or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative or audiovisual forms, whether on paper, film or electronic media and whether disseminated via fax, recording, machine readable data or Web site. This definition includes information from NCUA's web page, but does not include the provision of hyperlinks to information that others disseminate. It also does not include distribution limited to correspondence with individuals or persons, press releases that announce or give public notice of information that the NCUA has disseminated elsewhere, archival records, public filings, subpoenas, adjudicative processes or opinions, unless that opinion is the NCUA's official point of view.

4. *Integrity* refers to the security of information—protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

5. *Objectivity* involves two distinct elements, presentation and substance. Objectivity in presentation requires NCUA to present disseminated information in an accurate, clear, complete, and unbiased manner. To accomplish this, NCUA must assure that the information is presented within a proper context. NCUA will identify the sources of the disseminated information (to the extent possible, consistent with confidentiality protections) and, in a financial or statistical context, the supporting data and models, so that the public can assess for itself whether there may be some reason to question the objectivity of the sources. Where appropriate, data will have full, accurate, transparent documentation, and error sources affecting data quality will be identified and disclosed to users.

Objectivity in substance requires NCUA to disseminate accurate, reliable and unbiased information. To accomplish this, in a financial or statistical context, NCUA must assure that sound statistical and research methods are used to generate the original and supporting data and the conclusions that flow from the data. If NCUA disseminates influential information, it must assure that its conclusions are capable of being substantially reproduced.

6. *Quality* is an encompassing term comprising utility, objectivity, and integrity. Therefore, the guidelines sometimes refer to these four terms collectively, as "quality."

7. *Reproducibility* means that information is capable of being substantially reproduced subject to an acceptable degree of imprecision.

8. *Utility* refers to the usefulness of the information to its intended users, including the public. In assessing the usefulness of information that NCUA disseminates to the public, NCUA will consider the uses of the information not only from the perspective of the agency but also from the perspective of the public. As a result, when transparency of information is relevant for assessing the information's usefulness from the public's perspective, NCUA will take care to ensure that transparency has been addressed in its review of the information. Transparency refers to a clear description of the methods, data sources, assumptions, outcomes and related information that will allow a data user to understand how information was produced.

Authorities: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the Office of Management and Budget Final Guidelines, 67 FR 8452 February 22, 2002.

By the National Credit Union Administration Board on October 4, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–25932 Filed 10–10–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* October 22, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2002 deadline.

2. *Date:* October 25, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2002 deadline.

3. *Date:* October 29, 2002.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Library & Archival

Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2002 deadline.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. 02–26035 Filed 10–10–02; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

SES Performance Review Board

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of members of the Performance Review Board for the National Endowment for the Arts. This notice supercedes all previous notices of the PRB membership of the Agency.

DATES: Upon publication.

FOR FURTHER INFORMATION CONTACT: Maxine C. Jefferson, Director of Human Resources, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 627, Washington, DC 20506, (202) 682–5405.

SUPPLEMENTARY INFORMATION: Sec. 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any response by the senior executive, and make recommendations to the appointing authority relative to the performance of the senior executive.

The following persons have been selected to serve on the Performance Review Board of the National Endowment for the Arts: Eileen B. Mason, Senior Deputy Chairman, Laurence M. Baden, Deputy Chairman for Management and Budget, Alfred B. Spellman, Jr., Deputy Chairman for Guidelines, Panel, and Council Operations, Ann G. Hingston, Congressional and White House Liaison, Michael R. Burke, Chief Information Officer.

Murray R. Welsh,

Director of Administrative Services, National Endowment for the Arts.

[FR Doc. 02–25968 Filed 10–10–02; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 5, 2002. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation,as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

[Permit Application No. 2003–013]

1. *Applicant:* Arthur L. DeVries, 524 Burrill Hall, Department of Animal Biology, University of Illinois, Urbana, IL 61801.

Activity for Which Permit is Requested: Introduce non-indigenous species into Antarctica. The applicant plans to bring approximately 5 million frozen brine shrimp (Artemia franciscana) egg cysts to Antarctica to be used as food for Antarctic larval fishes. The brine shrimp will be hatched in +20°C seawater in incubators in the Crary Science and Engineering Center at McMurdo Station. The hatched larva will be concentrated to the consistency of a thick soup, frozen into 2 cubic centimeter cubes at −80°C and fed to Dragon fish larva (Gymonodraco acuticeps). The larva will be held in small running seawater aquaria with the outlet screened with a mesh sufficiently small to prevent escape of the dead brine shrimp, as well as the fish larva. Residual dead brine shrimp will be retrieved from the aquaria, autoclaved and disposed of as biological waste.

Location: Crary Science and Engineering Center, McCrudo Station, Antarctica.

Dates: November 5, 2002 to February 28, 2003.

[Permit Application No. 2033–014]

2. *Applicant:* Gary D. Miller, Biology Department, University of New Mexico, Albuquerque, NM 87131.

Activity for Which Permit is Requested: Take and Import into the United States. The applicant plans to continue analysis of the phylogenetic relationships, population genetics, and diseases of Antarctic seabirds. The applicant will embark on a circumnavigation cruise of the Antarctic this season and plans to collect small tissue samples from fresh or frozen carcasses of various seabirds, with a main focus on collecting samples from Emperor penguin carcasses. The cruise will allow access to a number of Emperor penguin rookeries, as well as other sites. No more than fifteen samples will be collected from a single site. Tissue samples will be homogenized and put into a buffer solution to stabilize the DNA. As part of this collaborative work, chick carcasses will be inspected for the presence of Bursa of Fabricius, which will be excised and preserved for PCR testing for the presence of viruses. The Bursa samples will be returned to Dr. Geoff Shellam's lab in Perth, Australia, whereas all other samples will be imported to the U.S. and processed at the University of New Mexico.

Location: Balleny Islands, Shirley Island, Haswell Island, Vestfold Hills, Larsemann Hills, Scullin and Murray Monoliths, Cape Darnley, Auster Rookery, Kloa Point, Proclamation Island, Lazarev Ice Shelf, Atka Bay, Elephant Island, Pourquoi Pas Island, Cape Hallett, and Cape Adare.

Dates: November 15, 2002 to November 15, 2003.

[Permit Application No. 2003–014]

3. *Applicant:* Joan Miller, P.O. Box 237, Tesuque, NM 87574.

Activity for Which Permit is Requested: Enter Antarctica Specially Protected Areas. The applicant proposes to enter several ASPA's on Ross Island to photograph the exterior and interior of the historic huts. The photographs will be used to illustrate the efforts to preserve historic materials from attack by fungi and bacteria. In addition, images will be used in a book documenting the history of human habitation in Antarctica, and will chronicle the use of various materials used for structures, clothing, transport, and communication from the early 1900's through the present.

Location:

ASPA #154—Cape Evans Historic Site
ASPA #156—Hut and Associated artifacts, Backdoor Bay, Cape Royds, Ross Island
ASPA #157—Discovery Hut, Hut Point, Ross Island

Dates: October 7, 2002 to January 23, 2003.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 02–26029 Filed 10–10–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–188]

Notice of License Renewal Application for Facility Operating License; Kansas State University

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received a license renewal application from the Kansas State University dated September 12, 2002, filed pursuant to section 104c of the Atomic Energy Act of 1954, as amended (the Act), for the necessary license to operate a TRIGA nuclear reactor for an additional 20-year period. The reactor is located at the Kansas State University, Manhattan, Kansas. It is also proposed for operation for educational training and research at a steady state power level of 500 kilowatts, an increase of 250 kilowatts from its previous steady state power level of 250 kilowatts, and with pulse maximum reactivity insertions of $3.00, an increase of $1.00 from its previous limit of $2.00. The acceptability of the tendered application for docketing and other matters, including an opportunity to request a hearing, will be the subject of a subsequent **Federal Register** notice.

Copies of the application are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the Publicly Available Records (PARS) component of the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible from the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.*

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, please contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to pdr@nrc.gov.

Dated in Rockville, Maryland, this 4th day of October 2002.

For the Nuclear Regulatory Commission.

Robert L. Dennig,

Acting Program Director, Operating Reactor Improvements Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–25992 Filed 10–10–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 40–08155]

Notice of Consideration of Amendment Request for H.C. Starck, Inc., Coldwater, MI, Site and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Material License No. STB–1161 to authorize decommissioning of the H.C. Starck, Inc. facilities in Coldwater, Michigan. This license issued to H.C. Starck, Inc., authorizes the possession of a maximum of 44 kilograms of natural thorium for the processing of thorium oxide in the form of a thorium-nickel powder into ingots and sheets. As a result of conducting these licensed operations, the H.C. Starck site is radiologically contaminated with loose and fixed surface contamination on some interior building surfaces and equipment.

On June 4, 2002, the licensee submitted a site decommissioning plan (SDP) to NRC for review. The SDP indicates that long-term doses from the contaminated material at current levels are in excess of the requirements of the Radiological Criteria for License Termination rule (10 CFR part 20, Subpart E). Therefore, the licensee proposes to decontaminate the site to levels that will meet the requirements of the Radiological Criteria for License Termination rule and allow the site to be released for unrestricted use.

If the NRC approves this request, the approval will be documented in a license amendment to NRC License STB–1161. However, prior to the approval and issuance of the amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to Sec. 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with Sec. 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary by mail or facsimile (301–415–1101) addressed to: The Rulemaking and Adjudications Staff of the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemaking and Adjudications Staff.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally, or by mail, to:

1. The applicant, H.C. Starck, Inc., 460 Jay Street, Coldwater, MI 49036, Attention Dave Meendering, Plant Manager, and,

2. The NRC staff, General Counsel, by mail, addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

a. The interest of the requester in the proceeding;

b. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in Sec. 2.1205(h);

c. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and.

3. The circumstances establishing that the request for a hearing is timely in accordance with Sec. 2.1205(d).

For Further Information: The application for the license amendment and supporting documentation are available for review at NRC's Public Electronic Reading Room, at *http://www.nrc.gov/reading-rm/adams.html*. The accession [file] number for this document is ML022550372. Any questions with respect to this action should be referred to Mr. William Snell, Decommissioning Branch, Region III, U.S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, IL 60532–4351. Telephone: (630) 829–9871.

Dated at Lisle, Illinois, this 4th day of October 2002.

Christopher G. Miller,

Chief, Decommissioning Branch, Division of Nuclear Material Safety, Region III.

[FR Doc. 02–25993 Filed 10–10–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–17]

Portland General Electric Company; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Amendment to Materials License No. SNM–2509

The U. S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an amendment, pursuant to 10 CFR 72.56, to Special Nuclear Material License No. 2509 (SNM–2509) held by Portland General Electric Company (PGE) for the Trojan independent spent fuel storage installation (ISFSI). The requested amendment would revise the ISFSI license (SNM–2509) and the Technical Specifications (TS) of SNM–2509 to specifically permit the use of portions of the Holtec International dry storage cask system to store spent fuel at the Trojan ISFSI.

Environmental Assessment (EA)

Identification of Proposed Action: By letter dated October 26, 2001, as supplemented, PGE requested an amendment to revise the license (SNM–2509) and the TS of SNM–2509 for the Trojan ISFSI. The changes would specifically permit the use of the Holtec International Multi-Purpose Canister (MPC) to store spent fuel. The Holtec International MPC is proposed to be compatible, with minor modification, to the pre-existing TranStor concrete cask design at the Trojan ISFSI currently designed for use with the TranStor pressurized water reactor fuel (PWR) basket. This amendment requests the TranStor PWR basket design be supplanted with the Holtec International MPC design. No changes to the specifications for the fuel to be stored at the Trojan ISFSI were requested.

Need for the Proposed Action: The proposed action is necessary to allow for storage of spent fuel in dry casks. PGE was licensed to use the TranStor Storage System for SNF comprised of the concrete cask and PWR basket. The PWR basket design was subsequently determined to be unusable. Without this amendment PGE will be unable to load spent nuclear fuel (SNF) at the Trojan site. If unable to store SNF, PGE will not be able to continue decommissioning of the Trojan site unless an alternative means for storing SNF is found.

Environmental Impacts of the Proposed Action: In 1999 the NRC issued a license to PGE to construct and operate the Trojan ISFSI. Prior to this action the NRC examined the environmental impacts of constructing and operating the Trojan ISFSI and issued an environmental assessment and finding of no significant impact. See 61 FR 64378, December 4, 1996. The NRC has completed its evaluation of the proposed action and concludes that granting the request for amendment to allow the storage of spent fuel assemblies using the TranStor concrete cask and Holtec International MPC, will not increase the probability or consequence of accidents beyond that bounded by previous analysis. No changes are being made in the types of any effluents that may be released offsite. With regard to radiological impacts, the change from the TranStor PWR basket design to the Holtec International MPC design will yield an increase in neutron and gamma dose rates at the cask surface. However, the dose rates remain below regulatory limits for occupational exposures and public radiation exposures. Moreover, the dose rates comply with the applicable regulatory criteria specified in 10 CFR part 20, and 10 CFR 72.104 and 72.106. As a result, there are no significant radiological environmental impacts associated with the proposed action.

The amendment only affects the requirements associated with the design of the fuel basket and does not affect non-radiological plant effluents or any other aspects of the environment. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action: The alternative to the proposed action would be to deny the request for amendment (*i.e.*, the "no-action" alternative). Denial of the proposed action would result in PGE continuing to store SNF in the Trojan spent fuel storage pool. Without dry cask storage, PGE would be unable to continue with decommissioning of the Trojan site. The Trojan Nuclear Power Plant has been permanently shut down. Delaying decommissioning of the Trojan site and maintaining the SNF in the spent fuel storage pool could potentially lead to greater occupational exposure than dry cask storage due to the proximity of workers to the fuel. The environmental impacts of the alternative action could be greater than the proposed action.

Given that the alternative action of denying the approval for amendment has no lesser environmental impacts associated with it, and considering that the proposed action would result in storage of fuel at the Trojan ISFSI, which has already been approved under a site specific license, the Commission concludes that the preferred alternative is to grant this amendment.

Agencies and Persons Consulted: On September 17, 2002, Mr. Adam Bless of the Oregon Office of Energy, Energy Resources Division, was contacted regarding the proposed action and had no concerns.

Finding Of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of granting an amendment to permit the use of the Holtec International MPC and the TranStor concrete cask to store SNF at the Trojan ISFSI will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this amendment, see the application dated October 26, 2001, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publically available records component of NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML013060075. The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1 (800) 397–4209, (301) 415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 4th day of October, 2002.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–25991 Filed 10–10–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Nuclear Waste (ACNW). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACNW advises the NRC on technical issues related to nuclear materials and waste management. The bases of ACNW review include 10 CFR parts 20, 60, 61, 63, 70, 71, and 72 and other applicable regulations and legislative mandates, such as the Nuclear Waste Policy Act, the Low-Level Radioactive Waste Policy Act and amendments, and the Uranium Mill Tailings Radiation Control Act, as amended. The Committee's reports become a part of the public record.

The ACNW meetings are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. The meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process. ACNW meetings are conducted in accordance with the Federal Advisory Committee Act.

General Rules Regarding ACNW Meetings

An agenda is published in the **Federal Register** for each full Committee meeting and is available on the internet at *http://www.nrc.gov/ACRSACNW*. There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day during another meeting. Persons planning to attend the meeting may contact the Designated Federal Official specified in the individual **Federal Register** Notice prior to the meeting to be advised of any changes to the agenda that may have occurred. This individual can be contacted between 7:30 a.m. and 3:30 p.m., Eastern Time.

The following requirements shall apply to public participation in ACNW meetings:

(a) Persons wishing to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the Designated Federal Official specified in the **Federal Register** Notice for the individual meeting in care of the Advisory Committee on Nuclear Waste, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments should be in the possession of the Designated Federal Official prior to the meeting to allow time for reproduction and distribution. Comments should be limited to topics being considered by the Committee. Written comments may also be submitted by providing a readily reproducible copy to the Designated Federal Official at the beginning of the meeting.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the Designated Federal Official. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 3:30 p.m., Eastern Time.

(d) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. The Designated Federal Official will have to be notified prior to the meeting and will authorize the installation or use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(e) A transcript is kept for certain open portions of the meeting and will be available in the NRC Public Document Room (PDR), One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852–2738. ACRS meeting agenda, transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, by calling the PDR at 1–800–394–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/*. A copy of the certified minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges.

(f) Video teleconferencing service is available for observing open sessions of some ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:30 p.m. Eastern Time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

ACNW Working Group Meetings

ACNW Working Group meetings will also be conducted in accordance with these procedures, as appropriate. When Working Group meetings are held at

locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACNW meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The Designated Federal Official should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting for admittance to the closed session.

Dated: October 7, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–25987 Filed 10–10–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Reactor Safeguards (ACRS) pursuant to the Federal Advisory Committee Act (FACA). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACRS is a statutory group established by Congress to review and report on nuclear safety matters and applications for the licensing of nuclear facilities. The Committee's reports become a part of the public record.

The ACRS meetings are conducted in accordance with FACA; they are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those related to radiological safety.

The ACRS meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process.

General Rules Regarding ACRS Meetings

An agenda is published in the **Federal Register** for each full Committee meeting. There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day on another meeting day. Persons planning to attend the meeting may contact the Designated Federal Official specified in the **Federal Register** Notice prior to the meeting to be advised of any changes to the agenda that may have occurred. This individual can be contacted between 7:30 a.m. and 3:30 p.m., Eastern Time.

The following requirements shall apply to public participation in ACRS full Committee meetings:

(a) Persons wishing to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the Designated Federal Official specified in the **Federal Register** Notice, care of the Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments should be limited to items being considered by the Committee. Comments should be in the possession of the Designated Federal Official prior to the meeting to allow time for reproduction and distribution. Written comments may also be submitted by providing a readily reproducible copy to the Designated Federal Official at the beginning of the meeting.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the Designated Federal Official. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 3:30 p.m., Eastern Time.

(d) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. The Designated Federal Official will have to be notified prior to the meeting and will authorize the installation or use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(e) A transcript is kept for certain open portions of the meeting and will be available in the NRC Public Document Room (PDR), One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852–2738. ACRS meeting agenda, transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, by calling the PDR at 1–800–394–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/*. A copy of the certified minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges.

(f) Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:30 p.m. Eastern Time at least 10 days before the meeting to ensure the availability of this service.

Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

ACRS Subcommittee Meetings

In accordance with the revised FACA, the agency is no longer required to apply the FACA requirements to meetings conducted by the Subcommittees of the NRC Advisory Committees, if the Subcommittee's recommendations would be independently reviewed by its parent Committee.

The ACRS, however, chose to conduct its Subcommittee meetings in accordance with the above procedures, as appropriate, to facilitate public participation and to provide a forum to stakeholders to express their views on regulatory matters being considered by the ACRS. When Subcommittee meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The Designated Federal Official should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting for admittance to the closed session.

Dated: October 7, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–25988 Filed 10–10–02; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Survey of Nonparticipating Single Premium Group Annuity Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of a collection of information that is not contained in a regulation (OMB control number 1212–0030; expires January 31, 2003). This voluntary collection of information is a quarterly survey of insurance company rates for pricing annuity contracts. The survey is conducted by the American Council of Life Insurers for the PBGC. This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by December 10, 2002.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address during normal business hours.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's regulations prescribe actuarial valuation methods and assumptions (including interest rate assumptions) to be used in determining the actuarial present value of benefits under single-employer plans that terminate (29 CFR part 4044) and under multiemployer plans that undergo a mass withdrawal of contributing employers (29 CFR part 4281). Each month the PBGC publishes the interest rates to be used under those regulations for plans terminating or undergoing mass withdrawal during the next month.

The interest rates are intended to reflect current conditions in the investment and annuity markets. To determine these interest rates, the PBGC gathers pricing data from insurance companies that are providing annuity contracts to terminating pension plans through a quarterly "Survey of Nonparticipating Single Premium Group Annuity Rates." The survey is distributed by the American Council of Life Insurers and provides the PBGC with "blind" data (*i.e.*, is conducted in such a way that the PBGC is unable to match responses with the companies that submitted them).

The survey is directed at insurance companies that have volunteered to participate, most or all of which are members of the American Council of Life Insurers. The survey is conducted quarterly and will be sent to approximately 22 insurance companies. Based on experience under the current approval, the PBGC estimates that 11 insurance companies will complete and return the survey. The PBGC further estimates that the average annual burden of this collection of information is 41 hours and $88.

The collection of information under the regulation has been approved by OMB under control number 1212–0030 through January 31, 2003. The PBGC intends to request that OMB extend its approval for another three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Issued in Washington, DC, this 8th day of October, 2002.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 02–26010 Filed 10–10–02; 8:45 am]

BILLING CODE 7708–01–P

POSTAL RATE COMMISSION

Briefing on the Domestic Mail Manual

ACTION: Notice of briefing.

SUMMARY: The Commission will host a briefing by Postal Service representatives on Thursday, October 24, 2002 at 10 a.m. The topic is revisions to the Domestic Mail Manual. Chapter One, which describes various postal retail products, is intended for use by individual mailers. Subsequent chapters are intended to be used by various categories of business mailers. The briefing which is open to the public, will be held in the Commission's hearing room.

DATES: October 24, 2002.

ADDRESSES: Postal Rate Commission (hearing room), 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 202–789–6815.

Steven W. Williams,

Secretary.

[FR Doc. 02–25937 Filed 10–10–02; 8:45 am]

BILLING CODE 7710–FW–M

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Gross Earnings Report; OMB 3220–0132.

In order to carry out the financial interchange provisions of section 7(c)(2) of the Railroad Retirement Act (RRA), the RRB obtains annually from railroad employer's the gross earnings for their employees on a one-percent basis, *i.e.*, 1% of each employer's railroad employees. The gross earnings sample is based on the earnings of employees whose social security numbers end with the digits "30." The gross earnings are used to compute payroll taxes under the financial interchange.

The gross earnings information is essential in determining the tax amounts involved in the financial interchange with the Social Security Administration and Centers for Medicare and Medicaid Services. Besides being necessary for current financial interchange calculations, the gross earnings file tabulations are also an integral part of the data needed to estimate future tax income and corresponding financial interchange amounts. These estimates are made for internal use and to satisfy requests from other government agencies and interested groups. In addition, cash flow projections of the social security equivalent benefit account, railroad retirement account and cost estimates made for proposed amendments to laws administered by the RRB are dependent on input developed from the information collection.

The RRB utilizes Form BA–11 or its electronic equivalent to obtain gross earnings information from railroad employers. One response is requested of each railroad employer. Completion is mandatory. No changes are proposed to Form BA–11.

Estimate of Annual Respondent Burden

Gross earnings reports are required annually from all employers reporting railroad service and compensation. There are approximately 637 railroad employers who currently report gross earnings to the RRB. Most large railroad employers include their railroad subsidiaries in their gross earnings reports. This results in the RRB collecting *less* than 637 earnings reports. Also, there are a large number of railroad employers having work forces so small that they do not have employees with social security numbers ending in "30." Currently, there are 373 such employers in this category who file "negative" BA–11 responses to the RRB. Overall, on an annual basis, the RRB receives 54 reports consisting of computer prepared tapes or diskettes and 100 by means of manually prepared Form BA–11. The RRB estimates an average preparation time of 5 hours for each gross earnings report submitted by computer tape or diskette and 30 minutes for each manually prepared BA–11.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–25934 Filed 10–10–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Regulations 13D and 13G; Schedules 13D and 13G, SEC File No. 270–137, OMB Control No. 3235–0145.

Form F–6, SEC File No. 270–270, OMB Control No. 3235–0292.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995(44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Schedules 13D and 13G are filed pursuant to sections 13(d) and 13(g) of the Securities Exchange Act of 1934 ("Exchange Act") and Regulation 13D and 13G thereunder are intended to report beneficial ownership of equity securities registered under Section 12 of the Exchange Act. Regulations 13D and 13G are intended to provide investors and the subject issuers with information about accumulations of securities that may have the potential to change or influence control of the issuer. Schedule 13G and Schedule 13D are used by persons including small entities to report their ownership of more than 5% of a class of equity securities registered under Section 12. Schedule 13D takes approximately 43,500 total burden hours and is filed by 3,000 respondents. The filer prepares 25% of the 43,500 annual burden hours for a total reporting burden of 10,875 hours. Schedule 13G takes approximately 98,800 total burden hours and is filed by 9,500 respondents. The filer prepargs 25% of the 98,800 annual burden hours for a total reporting burden of 24,700 hours. Therefore, the reporting burden for both Schedules is 35,575 and they are prepared by a total of 12,500 respondents. Respondents file either Schedule 13D or Schedule 13G only when necessary.

The information provided by respondents is mandatory. All information provided to the Commission is public. However, Rules 0–6 and 24b-2 under the Exchange Act permits reporting persons to request confidential treatment for certain sensitive information concerning national security, trade secrets, or privileged commercial or financial information.

The Commission under section 19 of the Securities Act of 1933 established Form F–6 for registration of American Depositary Receipts (ADRs) of foreign companies. Form F–6 requires disclosure of information regarding the terms of depository bank, fees charged, and a description of the ADRs. No special information regarding the foreign company is required to be prepared or disclosed, although the foreign company must be one, which periodically furnishes information to the Commission. Such information is available to the public for inspection. The information is needed to ensure that investors in ADRs have full disclosure of information concerning the deposit agreement and foreign company. Approximately 150 respondents file Form F–6 and it take .9 hours to prepare for a total of 135 annual burden hours. It is estimated that 25% of the 135 total burden hours (33.75 hours) is prepared by the company. The information provided on Form F–6 is mandatory to best ensure full disclosure of ADRs being issued in the U.S. All information provided to the Commission is available for public review upon request.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 3, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26020 Filed 10–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 10b–17, SEC File No. 270–427, OMB Control No. 3235–0476

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

- Rule 10b–17, Untimely announcements of record dates (17 CFR 240.10b–17)

Rule 10b–17 requires any issuer of a class of securities publicly traded by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to give notice of the following actions relating to such class of securities: (1) A dividend; (2) a stock split; or (3) a rights or other subscription offering. Notice shall be (1) given to the National Association of Securities Dealers, Inc.; (2) in accordance with the procedures of the national securities exchange upon which the securities are registered; or (3) may be waived by the Commission.

The information required by Rule 10b–17 is necessary for the execution of the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers. The consequence of not requiring the information collection pursuant to Rule 10b–17 is that sellers who have received distributions as recordholders may dispose of the cash or stock dividends or other rights received as recordholders without knowledge of possible claims of purchasers.

It is estimated that, on an annual basis, there are approximately 29,430 respondents and that each response takes about 10 minutes to complete, thus imposing approximately 4,905 burden hours annually (29,430 × 10 minutes). It is believed that the average hourly cost to produce and file a response under the rule is about $50. Therefore, the annual reporting cost burden for complying with this rule is about $245,250 (4,905 × $50).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 3, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26022 Filed 10–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 27574; File No. 3–10909]

Public Utility Holding Company Act of 1935; Administrative Proceeding; Applications of Enron Corp. for Exemptions Under the Public Utility Holding Company Act of 1935, (Nos. 70–9661 and 70–10056)

October 7, 2002.

Order Scheduling Hearing Pursuant to Section 19 of the Public Utility Holding Company Act of 1935

Enron Corp. ("Enron"), an Oregon corporation with headquarters at 1400 Smith Street, Houston, Texas 77002–7361, has filed two applications with the Securities and Exchange Commission ("Commission") seeking orders exempting Enron from all provisions of the Public Utility Holding Company Act of 1935 (the "Act") except section 9(a)(2). Enron represents that it is a public utility holding company by reason of its ownership of all of the outstanding voting securities of Portland General Electric Company ("Portland General"). In one application, Enron requests exemption under section 3(a)(1) of the Act.[1] In the other application, Enron requests exemption under sections 3(a)(3) and 3(a)(5) of the Act.[2]

We have reviewed the applications. For the reasons described below, we conclude that it is appropriate to hold a hearing on Enron's applications before ruling on them.

An exemption under section 3(a)(1) is available to a public-utility holding company if—

> such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly intrastate in character and carry on their business substantially in a single state in which such holding company and every such subsidiary company thereof are organized.[3]

We cannot, from the face of Enron's application for an exemption under section 3(a)(1), determine facts sufficient to conclude that Enron meets the statutory criteria. Among other things, we must determine whether Portland General is predominantly intrastate in character and carries on its business substantially in a single state.[4] That issue is clouded by representations in the application that raise questions concerning (1) Portland General's 20% ownership stake in the Pacific Northwest Intertie,[5] (2) the extent to which Portland General uses its stake in the Pacific Northwest Intertie to facilitate sales of electricity outside of Oregon delivered at the Mid-Columbia trading hub, and (3) the percentage of Portland General's revenue that is generated through its ownership of a station in Colstrip, Montana.

An exemption under section 3(a)(3) is available to a public-utility holding company if—

> such holding company is only incidentally a holding company, being primarily engaged or interested in one or more businesses other than the business of a public utility company and (A) not deriving, directly or indirectly, any material part of its income from any one or more subsidiary companies, the principal business of which is that of a public utility company, or (B) deriving a material part of its income from any one or more such subsidiary companies, if substantially all the outstanding securities of such companies are owned, directly or indirectly, by such holding company.[6]

We cannot, from the face of Enron's application for an exemption under section 3(a)(3), determine facts sufficient to conclude that Enron meets the statutory criteria. To find that these criteria are satisfied, we must determine, among other things, that Enron's ownership of Portland General bears a necessary functional relationship to, and primarily serves the needs of, Enron's nonutility operations.[7] We must also make determinations concerning, among other things, Enron's income derived through Portland General in comparison with Enron's other income.[8] Because Enron is currently being reorganized under the supervision of the United States Bankruptcy Court for the Southern District of New York, and because of related disruptions to its business and financial affairs,[9] the record must be more fully developed before we can determine whether Enron satisfies the 3(a)(3) criteria.

An exemption under section 3(a)(5) is available to a public-utility holding company if—

> such holding company is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company.[10]

We cannot, from the face of Enron's application for an exemption under section 3(a)(5), determine facts sufficient to conclude that Enron meets the statutory criteria. An application for exemption under section 3(a)(5) requires us to make some of the same determinations as are required for an exemption under section 3(a)(3), including determinations about relationships between Enron's income derived from Portland General and Enron's other income.[11] For the reasons described above, a more fully developed record is required to make that determination. In addition, determining whether to grant an exemption pursuant to section 3(a)(5) requires us to determine whether Enron is the type of holding company to which section 3(a)(5) was intended to apply.

Finally, if a more fully developed record shows that Enron satisfies the more specific statutory criteria for any one of the three exemptions discussed above, we must nevertheless decline to grant the exemption if we find that the exemption would be "detrimental to the public interest or the interest of investors or consumers."[12] In this particular matter, in light of the acknowledged disruptions to Enron's business and financial affairs,[13] we believe that the question of whether an exemption would be detrimental to the public interest or the interest of investors and consumers is itself a question that should be the subject of a hearing before any exemption is granted.

We also recognize, however, that the question of whether an exemption would be detrimental to the public interest or the interest of investors and consumers is a question that we need reach only if it first appears that Enron satisfies any of the specific statutory criteria for an exemption. We therefore conclude that the most efficient way to proceed with a hearing on Enron's applications is in two phases. Phase I will be for the limited purpose of determining whether Enron satisfies any of the particular statutory criteria for an exemption under section 3(a)(1), section 3(a)(3), or section 3(a)(5) of the Act, and evidence and arguments presented shall be limited to those specific questions. Phase II, if the hearing officer determines it to be necessary, will be for the purpose of determining whether granting an exemption to Enron would be detrimental to the public interest or the interest of investors or consumers.

For the foregoing reasons,

It Is Ordered that a hearing shall be commenced, pursuant to section 19 of the Act and in accordance with the Commission's Rules of Practice,[14] at a time and place to be fixed by further order, for the purpose of determining whether Enron satisfies the statutory criteria for an exemption under section 3(a)(1), section 3(a)(3), or section 3(a)(5) of the Act and, if so, whether granting such an exemption would be detrimental to the public interest or the interest of investors or consumers;

It Is Further Ordered that Commissioner Roel C. Campos shall preside as hearing officer at the hearing, shall exercise the authority described in Commission Rule of Practice 111,[15] and shall, pursuant to Commission Rule of Practice 360,[16] prepare an initial decision;

It Is Further Ordered that Enron and the Division of Investment Management shall be parties to the proceeding and that Enron, as the proponent of the exemptive orders it seeks, shall, pursuant to 5 U.S.C. § 556(d), bear the burden of proving that it is entitled to such exemptive orders;

It Is Further Ordered that any person who seeks to intervene as a party pursuant to Rule of Practice 210(b)[17] shall file a motion to intervene with the Secretary of the Commission no later than October 21, 2002, and any person who seeks to participate on a limited basis pursuant to Rule of Practice 210(c)[18] shall file a motion for leave to participate with the Secretary of the Commission no later than 20 days prior to the date fixed for the Phase I hearing. A movant shall serve a copy of any such motion upon Enron at the address noted above in accordance with Rule 150(c) of the Commission's Rules of Practice, and proof of such service shall be filed with the Secretary of the Commission contemporaneously with the motion. Any such motion shall state whether the movant seeks to intervene or participate for purposes of Phase I only, Phase II only, or both Phases, and shall describe the nature and extent of the movant's interest with respect to each such Phase. Such motions as have already been received concerning Enron's applications shall be considered as timely filed in this matter,[19] although movants may supplement those motions in light of this Order if such supplements are received no later than October 21, 2002;

It Is Further Ordered that, without prejudice to the ability of the hearing officer to decide that additional factual or legal issues should be considered as part of the hearing in this matter, particular attention should be given at the hearing to the questions described above; and

It Is Further Ordered that the Secretary of the Commission shall give notice of the hearing by sending copies of this Order by certified mail to Enron at the address noted above; that the Secretary of the Commission shall mail a copy of this Order to each of the persons that have sought to intervene concerning Enron's applications; and that notice to all other persons shall be given by publication of this Order in the **Federal Register**.

By the Commission.

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 02–26025 Filed 10–10–02; 8:45 am]

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[1] SEC File No. 70–10056 (filed Feb. 28, 2002; Amendment No. 1 filed May 31, 2002). Enron had previously been exempt under section 3(a)(1) by virtue of making certain representations on Form U–3A–2, pursuant to Rule 2 under the Act (17 CFR § 250.2). Enron states that it "is presently unable to collect and produce the information required by Form U–3A–2," and it therefore seeks an order of exemption rather than exemption by operation of Rule 2.

[2] SEC File No. 70–9661 (filed Apr. 12, 2000). At the time that Enron filed this application for exemption under sections 3(a)(3) and 3(a)(5), Enron was already exempt under section 3(a)(1) by operation of Rule 2. Enron nevertheless requested exemption under sections 3(a)(3) and 3(a)(5) because an exemption under those provisions (unlike an exemption under section 3(a)(1)) would have the effect of affording Enron relief from the "qualifying facility" (or "QF") ownership restrictions under the Public Utility Regulatory Policies Act of 1978 and the rules of the Federal Energy Regulatory Commission thereunder.

[3] 15 U.S.C. § 79c(a)(1).

[4] See NIPSCO Industries, Inc., Holding Co. Act Release No. 26975 (Feb. 10, 1999).

[5] According to Enron's application, the Pacific Northwest Intertie is a 4,800 MW transmission facility between the towns of John Day in Northern Oregon, and Malin, in Southern Oregon which is near the California border. Enron represents that this line is primarily used for interstate sales and purchases of electric energy among the Bonneville Power Administration (a federal agency that markets electric energy generated by federal hydroelectric dams located on the Columbia River in Oregon and Washington), utilities in the Pacific Northwest, and certain California utilities.

[6] 15 U.S.C. § 79c(a)(3).

[7] See generally Electric Bond and Share Company, 33 S.E.C. 21, 41–43 (1952); Standard Oil Company, 10 S.E.C. 1122, 1125–28 (1942); Manufacturer's Trust Company, 9 S.E.C. 283, 288 note 5 (1941); Cities Service Co., 8 S.E.C. 318, 329–32 (1940). In its application, Enron asserts that it is "only incidentally" a holding company in that its affiliation with Portland General has given Enron "insight and access to new business opportunities in the broader energy industry," and that Portland General has provided Enron with "valuable expertise in evaluating regional electric distribution assets that complement Enron's strategy."

[8] See, *e.g.*, Cities Service Co., 8 S.E.C. 318 (1940). We must also consider whether Portland General is small other than in relation to Enron, which requires us to consider Portland General's size in relation to the state, regional and national electricity markets in which it operates. Id.

[9] In its application for exemption under section 3(a)(1), Enron has acknowledged this disruption, stating that "[a]s a consequence of the bankruptcy, the loss of a substantial portion of its staff, and the dismissal of its auditor Arthur Andersen LLP, Enron is presently unable to collect and produce the information required by Form U–3A–2, including the consolidating financial statements of Enron and its subsidiaries for the year ended December 31, 2001."

[10] 15 U.S.C. § 79c(a)(5).

[11] See, *e.g.*, AES Corporation, Holding Co. Act Release No. 27063 (Aug. 20, 1999); Cities Service Co., 8 S.E.C. 318 (1940).

[12] 15 U.S.C. § 79c(a).

[13] See note 9, *supra*.

[14] 17 CFR Part 201.

[15] 17 CFR § 201.111.

[16] 17 CFR § 201.360.

[17] 17 CFR § 201.210(b).

[18] 17 CFR § 201.210(c).

[19] Motions to intervene have been received from Southern California Edison Company (received March 27, 2002), Sithe/Independence Power Partners, L.P. (received April 16, 2002), and the Electric Power Supply Association (received April 16, 2002).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27573]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 4, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 29, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 29, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Energy East Corporation, et al. (70–9609)

Energy East Corporation ("Energy East"), P.O. Box 12904, Albany, New York 12212–2904, a registered holding company under the Act, along with its direct and indirect subsidiaries listed below, has filed a post-effective

amendment to its previously filed Application/Declaration ("Application") under sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 13(b) of the Act and Rules 45, 46, 54 and 80–92 under the Act. The other applicants are (i) Energy East Enterprises, Inc. ("Energy East Enterprises"), a Maine corporation that is a wholly-owned subsidiary of Energy East and a public utility holding company exempt from registration by order under section 3(a)(1); (ii) Maine Natural Gas Corporation ("Maine Natural Gas"), a Maine corporation and a wholly-owned subsidiary of Energy East; (iii) Energy East Capital Trust 1, a wholly-owned subsidiary of Energy East, all of P.O. Box 12904, Albany, New York 12212–2904; (iv) RGS Energy Group, Inc. ("RGS"), a New York corporation that is a wholly-owned subsidiary of Energy East and a public utility holding company exempt from registration by order under section 3(a)(1); (v) RGS's wholly-owned subsidiary, New York State Electric & Gas Corporation ("NYSEG"), a New York corporation; (vi) RGS's wholly-owned subsidiary, Rochester Gas and Electric Corporation ("RG&E"), a New York corporation, all of 89 East Avenue, Rochester New York 14649–0001; (vii) CMP Group, Inc. ("CMP"), a Maine corporation that is a wholly-owned subsidiary of Energy East and is a public utility holding company exempt from registration by order under section 3(a)(1); (viii) CMP's wholly-owned subsidiary, Central Maine Power Company ("Central Maine Power"), a Maine corporation and a public utility holding company exempt by order under section 3(a)(2); (ix) Maine Electric Power Company, Inc., ("MEPCo"), a Maine corporation in which CMP has a 78.3% voting interest;[1] (x) Central Maine Power's wholly-owned subsidiary, NORVARCO,[2] a Maine corporation, all of 83 Edison Drive, Augusta, Maine 04336; (xi) Energy East's wholly-owned subsidiary, Connecticut Energy Corporation ("Connecticut Energy"), 855 Main Street, Bridgeport, Connecticut 06604, a Connecticut corporation and a public utility holding company exempt from registration by order under section 3(a)(1) of the Act; (xii) The Southern Connecticut Gas Company ("SCG"), a Connecticut corporation and wholly-owned subsidiary of Connecticut Energy at the same address as Connecticut Energy; (xiii) Energy East's wholly-owned subsidiary, CTG Resources, Inc. ("CTG"), 10 State House Square, Hartford, Connecticut 06144–1500, a public utility holding company exempt from registration by order under section 3(a)(1); (xiv) CTG's wholly-owned subsidiary, Connecticut Natural Gas Corporation ("CNG"), a Connecticut corporation at the same address as CTG; (xv) Energy East's wholly-owned subsidiary, Berkshire Energy Resources ("Berkshire Energy"), 115 Cheshire Road, Pittsfield, Massachusetts 01201, a Massachusetts corporation and a public utility holding company exempt from registration by order under section 3(a)(1); and (xvi) Berkshire Energy's wholly-owned subsidiary, The Berkshire Gas Company ("Berkshire Gas"), a Massachusetts corporation, at the same address as Berkshire Energy. Connecticut Energy, RGS, CMP, CTG Resources, and Berkshire Energy are referred to as the "Intermediate Holding Companies." NYSEG, Southern Connecticut Gas, Maine Natural Gas, Central Maine Power, MEPCo, NOVARCO, Connecticut Natural Gas, Berkshire Gas and RG&E are referred to as the "Utility Subsidiaries." Energy East also owns other subsidiary companies that are not public-utility companies under the Act (collectively, "Nonutility Subsidiaries").

On August 31, 2000, the Commission issued an order (Holding Company Act Release No. 27224) ("First Merger Order") authorizing Energy East's acquisition of CMP, CTG, and Berkshire Energy ("First Merger").

On September 12, 2000, the Commission issued an order (Holding Company Act Release No. 27228) ("Financing Order") authorizing (i) ongoing financing activities of Energy East and its subsidiaries; (ii) intrasystem extensions of credit; (iii) the creation, acquisition or sale of Nonutility Subsidiaries; (iv) the payment of dividends out of capital and unearned surplus; and (v) other related matters pertaining to Energy East and its subsidiaries.

On June 27, 2002, the Commission issued an order authorizing the acquisition of RGS by Energy East (Holding Company Act Release No. 27546) ("RGS Merger Order"), by which RGS became a direct subsidiary of Energy East ("RGS Merger").

The amended application seeks several modifications of the authorizations granted in the Financing Order with respect to the ongoing financing activities of Energy East and its subsidiaries and other related matters. The proposed modifications are required in order to reflect the acquisition of RGS and the inclusion of RGS and its subsidiaries as new direct and indirect subsidiaries of Energy East.

In the Financing Order, the following authorizations, among others, were granted for the authorization period beginning September 12, 2000, and ending March 21, 2003:

1. Energy East was granted authorization to issue and sell common stock, preferred stock, and unsecured debentures having maturities of up to 50 years ("Debentures") in an aggregate amount not to exceed $2.5 billion, and unsecured short-term indebtedness having maturities of one year or less ("Short-Term Debt") in an aggregate principal amount at any time outstanding not to exceed $750 million, provided that the aggregate principal amount of all indebtedness of Energy East at any time outstanding (including Short-Term Debt, Debentures, and debt incurred to finance the First Merger and the RGS Merger) would not exceed $1.5 billion ("Energy East Debt Limitation").

2. The Nonutility Subsidiaries were authorized to enter into guaranties, obtain letters of credit, enter into expense agreements and otherwise provide credit support to or on behalf of other Nonutility Subsidiaries in an aggregate principal amount not to exceed $700 million outstanding at any one time, exclusive of any guaranties and other forms of credit support that are exempt under rule 45(b) and rule 52, provided that the amount of any Nonutility Subsidiary guaranties with respect to obligations of any rule 58 subsidiary shall also be subject to the limitations of rule 58(a)(1). The Nonutility Subsidiaries providing this credit support were also authorized to charge each subsidiary a fee for each guaranty provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the guaranty.

3. The Nonutility Subsidiaries were authorized to acquire or construct Nonutility energy assets in the United States ("Energy-Related Assets") that would be incidental to their energy marketing, brokering and trading operations in an amount up to $500 million.

Financings authorized in the Financing Order were subject to the following limitations: (1) The effective cost of money on Energy East short-term debt will not exceed the competitive market rates available at the time of issuance to companies with comparable credit ratings with respect to debt having similar maturities; the effective cost of money on all short-term financing with respect to Utility Subsidiaries will not at the time of issuance exceed 300 basis points over the comparable term London Interbank Offered Rate ("LIBOR"); (2) maturity of long-term indebtedness will not exceed 50 years; (3) the underwriting fees, commissions, or similar remuneration paid in connection with the issue, sale, or distribution of a security are estimated not to exceed 5% of the principal amount of the financing; and (4) Energy East's common equity, as reflected on its most recent From 10–K or Form 10–Q and as adjusted to reflect subsequent events that affect capitalization, will be at least 30% of its pro forma consolidated capitalization throughout the authorization period. Similarly, the common stock equity of each Intermediate Holding Company and each Utility Subsidiary will be at least 30% of total capitalization throughout the authorization period. The Financing Order stated that proceeds from the financings would be used for general corporate purposes, including: (1) Financing, in part, investments by and capital expenditures of Energy East and its subsidiaries, including the funding of future investments in exempt wholesale generators, as defined in section 32 of the Act, foreign utility companies, as defined in section 33 of the Act, companies engaged or formed to engage in activities permitted by rule 58 ("Rule 58 Subsidiaries"), and exempt telecommunications companies; (2) the repayment, redemption, refunding or purchase by Energy East or any subsidiary of any of its own securities under rule 42 under the Act; and (3) financing working capital requirements of Energy East and its subsidiaries.

Energy East and its subsidiaries request approval of the following modifications to the authorizations granted by the Commission in the Financing Order:

1. Energy East requests authority to extend the authorization period (currently ending March 31, 2003) so that the new authorization period will end on September 30, 2005 ("Authorization Period").

2. Energy East requests authority to increase, from $2.5 billion to $3.9 billion, Energy East's authority to issue and sell from time to time during the Authorization Period common stock, preferred stock, and unsecured debentures having maturities of up to 50 years ("Debentures"), subject to the sublimit on outstanding indebtedness in paragraph 3 below.[3]

3. Energy East requests authority to increase the Energy East Debt Limitation from $1.5 billion to $2.3 billion, and to increase to $2.3 billion the aggregate principal amount of Debentures it is authorized to issue and sell.

4. Energy East requests authority for RG&E to issue, sell and have outstanding at any one time during the Authorization Period debt securities, to the extent not otherwise exempt in accordance with Rule 52(a), with maturities of one year or less in the aggregate principal amount of $200 million. This short-term financing could include, without limitation, commercial paper sold in established commercial paper markets, bank lines and debt securities issued under RG&E's respective indentures and note programs.

5. Energy East requests authority for RGS to issue, sell and have outstanding at any one time during the Authorization Period debt securities with maturities of one year or less in the aggregate principal amount of $100 million. This short-term financing could include, without limitation, commercial paper sold in established commercial paper markets, bank lines and debt securities issued under RGS's respective indentures and note programs. In addition, RGS will not issue any indebtedness in contravention of any pre-existing orders of any state utility commission.

6. Energy East requests authority for RGS during the Authorization Period to provide guaranties and other forms of credit support with respect to the securities or other obligations of subsidiaries of RGS ("RGS Guaranties") in an aggregate principal amount not to exceed $100 million, provided that the amount of any RGS Guaranties in respect of any Rule 58 Subsidiary shall also be subject to the limitations of Rule 58(a)(1). RGS may charge its subsidiaries a fee for each guaranty provided on its behalf that is not greater than the cost, if any, of providing the liquidity necessary to perform the guaranty (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses). RGS will not issue any guaranties in contravention of any orders of any state utility commission.

7. Energy East requests authority to increase from $700 million to $750 million Energy East's Nonutility Subsidiaries' authority during the Authorization Period to provide guaranties and other forms of credit support with respect to obligations of other Nonutility Subsidiaries, exclusive of any guaranties that are exempt in accordance with rule 45(b) and rule 52 ("Nonutility Subsidiary Guaranties"). Nonutility Subsidiary Guaranties would be subject to the terms and conditions of the Financing Order.

8. Energy East requests authority to increase from $500 million to $750 million the authority of Energy East's Nonutility Subsidiaries during the Authorization Period to invest in certain types of nonutility energy-related assets ("Energy-Related Assets") that are incidental to the energy marketing activities of those companies or the capital stock of companies substantially all of whose physical assets consist of Energy-Related Assets, in accordance with the terms and conditions of the Financing Order. Energy East intends to file a post-effective amendment in this proceeding which will describe the general terms and amounts of each non-exempt security and request a supplemental order of the Commission authorizing the issuance of those securities.

In order to be exempt under rule 52(b), any loans by Energy East to a Nonutility Subsidiary or by one Nonutility Subsidiary to another must have interest rates and maturities that are designed to parallel the lending company's effective cost of capital. Applicants request that in the limited circumstances where the Nonutility Subsidiary making the borrowing is not wholly-owned by Energy East, directly or indirectly,[4] that Energy East or a Nonutility Subsidiary, as the case may be, be authorized to make loans to these subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. Applicants state that if these loans are made to a Nonutility Subsidiary, that company will not sell any services to any associate Nonutility Subsidiary unless that company falls within one of the categories of companies to which goods and services may be sold on a basis other than "at cost."[5] Furthermore, in

[1] The remaining interests are owned by two other Marine utilities. MEPCo owns and operates a 345kV transmission interconneciton between the Maine-New Brunswick, Canada, international border at Orient, Maine.

[2] NORVASRCO holds a 50% general partnership interest in Chester SVC Partnership, a general partnership that owns a static var compensator located in Chester, Maine, adjacent to MEPCo's transmission interconnection.

[3] Energy East proposes to leave the amount of Short-Term Debt authorized in the Financing Order unchanged at $750 million.

[4] Energy East's current, less-than-wholly-owned Nonutility Subsidiaries are: Downtown Cogeneration Associates, LP, South Jersey Energy Solutions, LLC, PEI Power II, LLC, and South Glens Falls Energy, LLC.

[5] These companies include:

(i) A FUCO or foreign EWG which derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(ii) An EWG which sells electricity at market-based rates which have been approved by the

Continued

the event any of these loans are made, Energy East will include in the next certificate filed under rule 24 in this matter substantially the same information as that required on Form U–6B–2 with respect to each transaction.

9. As a result of the accounting treatment of the RGS Merger, the retained earnings of RGS were greatly reduced. For this reason RGS requests authorization to pay dividends out of capital and unearned surplus in an amount up to its retained earnings prior to the Merger. In addition, RGS and its subsidiaries seek authorization to pay dividends out of earnings before any amortization of intangibles recognized as a result of the Merger and any impairment of either goodwill or other intangibles recognized as a result of the Merger.[6]

Applicants state that the transactions authorized under the requested supplemental order would be undertaken in accordance with the terms and conditions set forth in the Financing Order and in the amended Application. To the extent that the following listed general terms and conditions set forth in the amended Application and recited below conflict with any general terms and conditions set forth in the Financing Order, the general terms and conditions set forth in the Financing Order would be deemed to be modified:

The effective cost of money on long-term debt borrowings in accordance with authorizations granted under the Application will not exceed the greater of (a) 500 basis points over the comparable-term U.S. Treasury securities or (b) a gross spread over U.S. Treasuries that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The effective cost of money on short-term debt borrowings in accordance with the authorizations granted in the Application will not exceed the greater of (a) 500 points over the comparable-term LIBOR or (b) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The dividend rate on any series of Preferred Stock will not exceed the greater of (a) 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of that series of Preferred Stock or (b) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The maturity of indebtedness will not exceed 50 years. Preferred Stock may not have any mandatory redemption provisions. The underwriting fees, commissions, or other similar remuneration paid in connection with the non-competitive issue, sale, or distribution of a security in a accordance with the Application (not including any original issue discount) will not exceed 5% of the principal or total amount of the security being issued.

All outstanding Debentures issued by Energy East under the Financing Order were at the time of issuance, and will continue to be, rated at least investment grade by a nationally recognized statistical rating organization. In addition, Energy East undertakes that it will not issue any Debentures that are not at the time of original issuance rated at least investment grade by a nationally recognized statistical rating organization. NYSEG, RG&E and Central Maine Power commit to maintain at least investment grade senior secured and senior unsecured debt ratings by at least one nationally recognized rating agency.

Energy East also requests that the Commission release jurisdiction over the Tax Allocation Agreement previously filed as Exhibit B in Pre-effective Amendment No. 1 to the Application. Energy East seeks to retain the benefit (in the form of the reduction in consolidated tax) that is attributable to its interest expense associated with the Debentures issued to help finance the cash portions of the consideration paid in the RGS Merger and the unsecured debt issued to help finance the cash portions of the consideration in the First Merger.

In all other respects, Energy East proposes that the Financing Order remain unchanged as a result of the amended Application and any supplemental order issued by the Commission in response, except that the new Authorization Period shall also apply to all other authorizations in the Financing Order that are not modified in any supplemental order.

National Fuel Gas Company, et al. (70–10074)

National Fuel Gas Company (NFG), a registered holding company; National Fuel Gas Distribution Corporation ("Distribution"); National Fuel Gas Supply Corporation; Horizon Energy Development Inc. and its subsidiaries; Highland Forest Resources Inc.; Leidy Hub Inc.; Data-Track Account Services Inc.; Seneca Independence Pipeline Company, all of 10 Lafayette Square, Buffalo, New York 14203; Seneca Resources Corporation and its subsidiaries; Upstate Energy Inc.; Niagara Independence Marketing Company, all of 1201 Louisiana Street, Suite 400, Houston, Texas 77002; National Fuel Resources Inc. and Horizon Power Inc. ("Horizon Power"), both of 165 Lawrence Bell Drive, Suite 120, Williamsville, New York 14221, (collectively, "Applicants"), have filed an application-declaration ("Application") under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(e) and 12(f) of the Act and rules 43, 45, 46, 62, and 65 under the Act.

The Applicants include one utility subsidiary, which is Distribution. The remaining Applicants, excluding NFG, are nonutility subsidiaries ("Nonutility Subsidiaries"). Distribution and the Nonutility Subsidiaries are collectively referred to as "Subsidiaries."

In summary, the Applicants request approval to: (a) Carry out a program of external financing, credit support arrangements, and intrasystem financing; (b) acquire financing subsidiaries ("Financing Subsidiaries") and special purpose subsidiaries ("Special Purpose Subsidiaries"); (c) continue the NFG money pool; (d) enter into hedging transactions; (f) make changes in the capital structure of majority-owned Subsidiaries; and (g) reorganize Nonutility Subsidiaries. Authority for the various requests is sought for the period through December 31, 2005 ("Authorization Period"). The financing authority sought in this proceeding will replace the current financing order for NFG ("Current Financing Order") (HCAR No. 26847, March 20, 1998, as modified by HCAR No. 27170, April 21, 2000).

External Financing by NFG

NFG requests authority to increase its equity and long-term debt capitalization during the Authorization Period in an aggregate amount of up to an additional $1.5 billion through the issuance and sale from time to time, directly or indirectly through one or more Financing Subsidiaries or Special Purpose Subsidiaries, of any combination of common stock, preferred securities, unsecured long-term debt, stock purchase contracts and/or stock purchase units, excluding any shares of common stock that may be issued under NFG's shareholder rights plan.

Except in accordance with a further order of the Commission, NFG will not publicly issue any long-term debt or preferred securities (or to the extent they are rated, stock purchase contracts and/or stock purchase units) unless these securities are rated at the time of issuance at the investment grade level as established by at least one "nationally recognized statistical rating organization," as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934. Applicants request that the Commission reserve jurisdiction over the issuance by NFG of any securities that are rated below investment grade.

NFG proposes to use the proceeds of the financings authorized by the this Application, together with other available funds, to (i) make investments in Subsidiaries so they can finance capital expenditures, (ii) fund short-term loans to certain Subsidiaries either directly or through the NFG money pool as described below, (iii) finance future investments in "exempt wholesale generators" ("EWGs") and "foreign utility companies" ("FUCOs"), subject to the limitations of rule 53 or other order of the Commission, and "energy-related" and "gas-related" companies, subject to the limitations of rule 58, (iv) acquire, retire or redeem securities issued by NFG or any Financing Subsidiary or Special Purpose Subsidiary as described below, and (v) provide working capital and other general corporate needs of NFG and its Subsidiaries. Distribution proposes to utilize the proceeds of authorized money pool borrowings temporarily to fund capital projects, to finance inventories, and for other general corporate purposes.

The terms of inter-company loans by NFG to its Subsidiaries will be designed to parallel the effective cost of NFG's long-term debt or short-term debt, as applicable, and the terms will reflect an equitable allocation of placement fees, commitment fees, underwriting or selling fees and commissions and discounts, if any, as well as any associated rating agency fees paid or incurred by NFG in connection with the issuance of long-term debt or short-term debt.

The Applicants represent that no financing proceeds will be used to acquire the equity securities of any new company unless this acquisition has been approved by the Commission or is in accordance with an available exemption under the Act. NFG further represents that it will not undertake any transaction otherwise authorized by the Commission during the Authorization Period that would cause the common equity of NFG, as a percentage of its consolidated capitalization (inclusive of short-term debt), to fall below 30%, and will not undertake any transaction otherwise authorized by the Commission during the Authorization Period that would cause the common equity of Distribution, as a percentage of capitalization of Distribution, to fall below 30%. NFG's forecasted cash flow analysis and capitalization forecast for the calendar years 2002 through 2005, which assumes that NFG will issue $351 million of common stock out of the $1.5 billion overall long-term financing authority requested, indicate that NFG's common equity will remain above 30% of its consolidated capitalization for the period.

Common Stock: NFG seeks authority to issue and sell additional shares of its authorized common stock, par value $1.00 per share ("Common Stock"), or options or warrants exercisable for Common Stock, according to underwriting or purchase agreements of a type generally standard in the industry. Public distributions may be according to private negotiation with underwriters, purchasers, dealers or agents, as discussed below, or effected through competitive bidding. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All Common Stock sales will be at prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

Specifically, NFG may issue and sell Common Stock through underwriters or dealers, through agents, or directly to a limited number of purchasers or a single purchaser. If underwriters are used in the sale of Common Stock, the securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Common Stock may be offered to the public either through underwriting syndicates (which may be represented by a managing underwriter or underwriters designated by NFG) or directly by one or more underwriters acting alone. Common Stock may be sold directly by NFG or through agents. If dealers are utilized in the sale of Common Stock, NFG will sell the Common Stock to the dealers as principals. Any dealer may then resell the Common Stock to the public at varying prices to be determined by the dealer at the time of resale.

NFG may also issue Common Stock and/or purchase shares of its Common Stock in the open market for purposes of reissuing the shares, and/or options, warrants or other stock purchase rights exercisable for Common Stock, in public or privately negotiated transactions in exchange for the equity securities or assets of other companies, provided that the acquisition of any equity securities or assets has been authorized in a separate proceeding or is exempt under the Act or the rules under the Act. The value of Common Stock issued in exchange for equity securities or assets of another company will be counted against the overall limitation on financing. The value will be as determined in accordance with any agreement with the seller or, if no value is specified in any agreement, then the value will be the closing price of NFG's Common Stock on the New York Stock Exchange on the trading day next preceding the date of the acquisition.

NFG also proposes to issue Common Stock under plans ("Stock Plans") that allow shareholders, customers, officers, employees, non-employee directors and new investors to acquire shares of

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Federal Energy Regulatory Commission ("FERC"), provided that the purchaser is not one of the Utility Subsidiaries.

(iii) A "qualifying facility" ("QF") within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), that sells electricity exclusively (a) at rates negotiated at arms-length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale, and/or (ii) to an electric utility company (other than a Utility Subsidiary) at the purchaser's "avoided cost" as determined in accordance with the regulations under PURPA;

(iv) A domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser thereof is not one of the Utility Subsidiaries; or

(v) A Rule 58 Subsidiary or any other Nonutility Subsidiary that (a) is partially-owned by Energy East, provided that the ultimate purchaser of such goods or services is not a Utility Subsidiary or EE Management (or any other entity that Energy East may form whose activities and operations are primarily related to the provision of goods and services to the Utility Subsidiaries or EE Management), (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Subsidiaries described in clauses (i) through (iv) immediately above, or (c) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public-utility company operating within the United States.

[6] As a result of the Merger, RGS recognized approximately $634 million of goodwill and $12 million of intangible assets. Statement of Financial Accounting Standards No. 142 requires that goodwill no longer be amortized, but instead be tested at least annually for impairment. Statement 142 also requires an intangible asset with an indefinite life that is not amortized to be tested for impairment annually, or more frequently if circumstances indicate it might be impaired. Approximately $4 million of the intangible assets recognized as a result of the Merger are being amortized. The annual amortization expense is $1.4 million.

In the Financing Order, the Commission authorized the companies Energy East previously acquired to pay dividends out of earnings before amortization of goodwill. Because goodwill and certain intangible assets recognized as a result of the RGS' Merger with Energy East are not amortized, any decrease in the value of those assets is recognized as an impairment instead of amortization expense. Therefore, RGS is requesting authorization to pay dividends out of earnings before any impairment of goodwill and any impairment or amortization of intangible assets recognized as a result of the Merger.

Common Stock. Currently, NFG maintains the National Fuel Direct Stock Purchase and Dividend Reinvestment Plan, which provides for purchasing shares of Common Stock directly from NFG and permits participants to reinvest cash dividends in shares of Common Stock without the payment of any brokerage commissions or service charges. NFG also maintains (i) 401(k) and Employee Stock Ownership Plans that allow employees to invest in Common Stock and reinvest cash dividends paid on the Common Stock, in addition to a variety of other investment alternatives, (ii) various award and option plans that provide for the issuance of one or more of the following to key employees: Incentive stock options, nonqualified stock options, stock appreciation rights, restricted stock, and performance units or performance shares, and (iii) a Director Stock Plan, under which it issues shares of Common Stock to its non-employee directors as partial consideration for their services as directors.

NFG proposes to issue shares of its Common Stock, as well as stock options, restricted stock awards, performance units, performance shares, and other Common Stock-based awards in order to satisfy its obligations under the Stock Plans. Shares of Common Stock issued or purchased for delivery under the Stock Plans may either be newly issued shares, treasury shares or shares purchased by NFG in the open market with its own funds (either currently or under forward contracts) for purposes of reissuance under any Stock Plan. NFG will make open-market purchases of Common Stock in accordance with the terms of or in connection with the operation of the Stock Plans as provided for in rule 42 under the Act. NFG also proposes, within the limitations set forth in the Application, to issue and/or purchase shares of Common Stock, according to these existing Stock Plans as they may be amended or extended, and similar plans or plan funding arrangements adopted without any additional Commission order. Stock transactions of this variety would, therefore, be treated the same as other stock transactions for which authority is sought in this Application. Finally, in connection with the adoption of any new Stock Plan or any extension of or amendment to an existing Stock Plan, NFG requests authorization to solicit any required shareholder approvals without further order of the Commission.

Preferred Securities: NFG, directly or through a Financing Subsidiary or Special Purpose Subsidiary, also proposes to issue and sell shares of its authorized preferred stock, par value $1.00 per share and/or other types of unsecured preferred securities (collectively, "Preferred Securities") in one or more series with rights, preferences, and priorities as may be designated in the instrument creating each series, as determined by NFG's board of directors or a committee of the board. Preferred Securities may be redeemable or may be perpetual in duration. The dividend or distribution rate on any series of Preferred Securities will not exceed at the time of issuance 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal or closest to the term of the Preferred Securities. Dividends or distributions on any series of Preferred Securities will be made periodically and to the extent funds are legally available for that purpose, but may be made subject to terms which allow the issuer to defer dividend payments or distributions for specified periods. Preferred Securities may be convertible or exchangeable into shares of Common Stock.

Long-term Debt: NFG, directly or through a financing subsidiary, also proposes to issue and sell from time to time additional long-term indebtedness ("Long-term Debt"). Long-term Debt of a particular series (a) will be unsecured, (b) may be convertible into any other authorized securities of NFG, (c) will have a maturity ranging from one year to 50 years, (d) will bear interest at a rate not to exceed at the time of issuance 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal or closest to the term of the Long-term Debt, (e) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount, (f) may be entitled to mandatory or optional sinking fund provisions, (g) may provide for reset of the coupon according to a remarketing arrangement, and (h) may be called from existing investors by a third party. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to the Long-term Debt of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding.

Stock Purchase Contracts and Stock Purchase Units: NFG, directly or through a financing subsidiary, may also issue and sell from time to time stock purchase contracts ("Stock Purchase Contracts"), including contracts obligating holders to purchase from NFG and/or NFG to sell to the holders, a specified number of shares or aggregate offering price of Common Stock at a future date. The consideration per share of Common Stock may be fixed at the time the Stock Purchase Contracts are issued or may be determined by reference to a specific formula set forth in the Stock Purchase Contracts. The Stock Purchase Contracts may be issued separately or as part of units ("Stock Purchase Units") consisting of a Stock Purchase Contract and Long-term Debt and/or Preferred Securities and/or debt securities of third parties, including U.S. Treasury securities, securing holders' obligations to purchase Common Stock under the Stock Purchase Contracts. The Stock Purchase Contracts may require holders to secure their obligations in a specified manner.

Short-term Debt: To provide financing for general corporate purposes, including making advances to participating subsidiaries through the NFG money pool, making advances directly to nonutility subsidiaries, and temporarily funding investments in new or existing subsidiaries, NFG requests authorization to issue and reissue from time to time during the Authorization Period, up to $750 million at any time outstanding of unsecured short-term debt securities in the form of promissory notes evidencing borrowings under its credit facilities, commercial paper notes, and other forms of short-term financing generally available to borrowers with investment grade credit ratings. The maturity of all Short-term Debt will be less than one year and will bear interest at a rate not to exceed at the time of issuance 300 basis points over the London Interbank Offered Rate (LIBOR) for maturities of up to one year.

Commercial Paper: Commercial paper may be sold by NFG, from time to time, in established domestic or foreign commercial paper markets directly or through dealers and placement agents at prevailing discount rates, or at prevailing coupon rates, at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers and placement agents acquiring commercial paper from NFG will re-offer the paper at a discount to corporate, institutional and, with respect to foreign commercial paper, also to individual investors. Corporate and institutional investors may include, among others, commercial banks, insurance companies, pension funds, investment trusts, mutual funds, foundations, colleges and universities, finance companies and nonfinancial corporations. Back-up bank lines of credit for 100% of the outstanding amount of commercial paper may be required in order to obtain an investment grade rating by the credit rating agencies. NFG currently has a committed credit facility which acts as back-up to its commercial paper program.

Other Credit Facilities: National also proposes to establish credit facilities with various banks and/or other financial institutions and to issue and sell, from time to time, short-term notes. These notes would bear interest at rates comparable to, or lower than, those available through other forms of short-term borrowing with similar terms as contemplated in this Application. The total amount of notes outstanding at any time, when added to the aggregate amounts of short-term borrowing outstanding under other forms of short-term borrowing contemplated in this Application, would not exceed the total amount of Short-term Debt for which authorization is requested. Borrowing arrangements with banks and financial institutions may require compensating balances and/or commitment fees or similar fees. NFG, at all times, will attempt to negotiate the most favorable effective borrowing rate taking into account any compensating balances and/or other fees.

Other Securities: NFG may also engage in other types of short-term financing as it may deem appropriate in light of its needs and market conditions at the time of issuance. This short-term financing may include, without limitation, bank borrowings under uncommitted lines and issuance of bid notes to individual banks.

Financing Subsidiaries and Special Purpose Subsidiaries

NFG requests authority to acquire, directly or indirectly, the equity securities of one or more Financing Subsidiaries or Special Purpose Subsidiaries, which would be organized specifically for the purpose of facilitating the issuance of certain types of long-term securities described above. Certain of the Nonutility Subsidiaries also propose to organize and acquire the equity securities of Financing Subsidiaries or Special Purpose Subsidiaries in order to facilitate financing of their operations. NFG represents that it has in place sufficient internal controls to enable it to monitor the creation and use of any of these entities. No Financing Subsidiary or Special Purpose Subsidiary shall acquire or dispose of, directly or indirectly, any interest in any "utility asset," as that term is defined under the Act. Of the overall $1.5 billion authorization for long-term securities requested in this Application, NFG requests authority to issue up to $500 million outstanding at any one time through Financing Subsidiaries and/or Special Purpose Subsidiaries.

Financing Subsidiaries: NFG proposes to acquire all of the outstanding shares of common stock or other equity interests of one or more Financing Subsidiaries. A separate Financing Subsidiary may be used by NFG with respect to financings of different types of non-core businesses. In connection with these financing transactions, NFG may enter into one or more guarantees or other credit support agreements in favor of the Financing Subsidiary. The amount of any guarantees or credit support would not count against the limit on guarantees that is proposed in this Application.

NFG has not created to date any direct Financing Subsidiary under the authority contained in the current financing order. However, NFG's natural gas and oil exploration and production subsidiary, Seneca Resources Corporation, is currently in the process of organizing certain Financing Subsidiaries, which are expected to increase the tax efficiencies of its operations in Canada. Any Financing Subsidiary or Special Purpose Subsidiary organized by NFG under the authority granted by the Commission in this proceeding shall be organized only if, in management's opinion, the creation and utilization of a Financing Subsidiary or Special Purpose Subsidiary, will likely result in tax savings, increased access to capital markets and/or lower cost of capital for NFG.

Special Purpose Subsidiaries: In connection with the issuance of certain types of Preferred Securities, NFG and/or a Financing Subsidiary proposes to organize one or more separate Special Purpose Subsidiaries as any one or any combination of (a) a limited liability company, (b) a limited partnership, (c) a business trust, or (d) any other entity or structure, foreign or domestic, that is considered advantageous by NFG. In the event that any Special Purpose Subsidiary is organized as a limited liability company, NFG or the Financing Subsidiary may also organize a second special purpose wholly-owned subsidiary ("Partner Sub") for the purpose of acquiring and holding Special Purpose Subsidiary membership interests in order to comply with any requirement under the applicable law that a limited liability company have at least two members. In the event that any Special Purpose Subsidiary is organized as a limited partnership, NFG or the Financing Subsidiary also may organize a Partner Sub for the purpose of acting as the general partner of a Special Purpose Subsidiary and may acquire, either directly or indirectly through the Partner Sub, a limited partnership interest in a Special Purpose Subsidiary to ensure that the Special Purpose Subsidiary will have a limited partner to the extent required by applicable law.

NFG, the Financing Subsidiary and/or a Partner Sub will acquire all of the common stock or all of the general partnership or other common equity interests, as the case may be, of any Special Purpose Subsidiary for an amount not less than the minimum required by any applicable law (*i.e.*, the aggregate of the equity accounts of the Special Purpose Subsidiary). The aggregate of the investment by NFG, the Financing Subsidiary and/or a Partner Sub is referred to in this Application as the equity contribution ("Equity Contribution"). NFG and/or the Financing Subsidiary may issue and sell to any Special Purpose Subsidiary, at any time or from time to time in one or more series, unsecured subordinated debentures, unsecured promissory notes or other unsecured debt instruments (individually, a "Note" and collectively, the "Notes") governed by an indenture or other document, and the Special Purpose Subsidiary will apply both the Equity Contribution made to it and the proceeds from the sale of Preferred Securities by it from time to time to purchase Notes. Alternatively, NFG and/or the Financing Subsidiary may enter into a loan agreement or agreements with any Special Purpose Subsidiary under which the Special Purpose Subsidiary will loan to NFG and/or the Financing Subsidiary (individually, a "Loan" and collectively, the "Loans") both the Equity Contribution to the Special Purpose Subsidiary and the proceeds from the sale of Preferred Securities by the Special Purpose Subsidiary from time to time, and NFG and/or the Financing Subsidiary will issue to the Special Purpose Subsidiary Notes evidencing these borrowings. The terms (*e.g.*, interest rate, maturity, amortization, prepayment terms, and default provisions) of any Notes would be designed to parallel the terms of the Preferred Securities to which the Notes relate.

NFG or any Financing Subsidiary also proposes to guarantee solely in connection with the issuance of Preferred Securities by a Special Purpose Subsidiary (i) payment of dividends or distributions on the securities by the Special Purpose

Subsidiary if and to the extent the Special Purpose Subsidiary has funds legally available for this use, (ii) payments to the holders of the securities due upon liquidation of the Special Purpose Subsidiary or redemption of the Preferred Securities of the Special Purpose Subsidiary, and (iii) certain additional amounts that may be payable in respect of the Preferred Securities. Alternatively, NFG may provide credit support for any guarantee that is provided by a Financing Subsidiary. The amount of any guarantees or credit support provided by NFG for this purpose would not be counted against the limitation on guarantees as set forth in this Application.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of any Special Purpose Subsidiary, the holders of Preferred Securities issued by the Special Purpose Subsidiary will be entitled to receive, out of the assets of the Special Purpose Subsidiary available for distribution to its shareholders, partners or other owners (as the case may be), an amount equal to the par or stated value or liquidation preference of the Preferred Securities, plus any accrued and unpaid dividends or distributions.

The constituent instruments of each Special Purpose Subsidiary will provide, among other things, that the Special Purpose Subsidiary's activities will be limited to the issuance and sale of Preferred Securities from time to time and the lending to the Financing Subsidiary or Partner Sub of (i) the proceeds any issuance or sale and (ii) the Equity Contribution to a Special Purpose Subsidiary, and certain other related activities.

Financing by Subsidiaries

Distribution seeks authority to issue short-term debt securities as set forth in the Application. The Nonutility Subsidiaries seek authority to engage in financing transactions to develop and expand energy-related or functionally related nonutility businesses. Most often these financing transactions by the Nonutility Subsidiaries will be exempt under rule 52(b) of the Act; however, in the limited circumstances where the Nonutility Subsidiary making the borrowing is not wholly-owned by NFG, directly or indirectly, authority is requested for NFG or any other Nonutility Subsidiary to make loans to nonutility subsidiaries at interest rates and maturities designed to provide a return to the lending entity of not less than its effective cost of capital. However, no loans will be made to a Nonutility Subsidiary that is less than wholly-owned if the Nonutility Subsidiary sells any services or goods to Distribution or to any other Nonutility Subsidiary which, in turn, sells goods or services to Distribution.

Certain of the Nonutility Subsidiaries may be able to achieve tax and other benefits by issuing securities through Financing Subsidiaries or Special Purpose Subsidiaries, and, accordingly, request authorization to organize and acquire the equity securities of these entities in the same manner as described above in connection with proposed financings by NFG.

Continuation of Money Pool Arrangements

Under the current financing order, Distribution, National Fuel Gas Supply Corporation, Seneca Resources Corporation, Highland Forest Resources Inc., Leidy Hub Inc., Horizon Energy Development Inc., Data-Track Account Services Inc., National Fuel Resources Inc., Upstate Energy Inc., Niagara Independence Marketing Company, and Seneca Independence Pipeline Company are authorized to participate in a money pool as both borrowers and lenders. Horizon Power is authorized to invest surplus funds in the money pool and to withdraw those funds when needed, but may not borrow through the money pool. NFG is authorized to lend funds through the money pool but may not borrow funds through the money pool. The Applicants propose to continue participation in, and, with the exception of NFG and Horizon Power, to incur short-term borrowings through the money pool on the same terms as approved under the current financing order. Authority is sought for the money pool participants, other than NFG and Horizon Power, ("Eligible Borrowers") to borrow short-term funds through the money pool. The maximum amount of money pool borrowings outstanding for each Eligible Borrower will be determined by NFG and each Eligible Borrower in accordance with business needs.

NFG will administer the money pool and coordinate short-term borrowings by Eligible Borrowers. NFG proposes to make loans available to Eligible Borrowers through the money pool utilizing the proceeds of borrowings under various credit facilities, including but not limited to commercial paper, short-term lines of credit, demand credit facilities, and committed credit facilities ("Credit Facilities"), as determined by NFG, and issued in accordance with the authorization sought in this proceeding. In addition, at certain times during the year, NFG and certain of its Subsidiaries may generate surplus funds, which they may choose to invest in the money pool. Therefore, funds available for borrowings through the money pool will be derived from one or more of the following sources: (1) Surplus funds of NFG or one or more of its Subsidiaries; (2) proceeds from NFG's sale of commercial paper; and (3) borrowings by NFG under other Credit Facilities.

NFG will match, to the extent possible, the short-term cash surpluses and borrowing requirements of itself and its Subsidiaries. In the event that at any time during the Authorization Period there are insufficient funds available from money pool sources to satisfy money pool borrowing requirements of all Eligible Borrowers, Distribution will receive borrowing priority over the Nonutility Subsidiaries. Borrowings through the money pool would be met first from available surplus funds of the Subsidiaries and then from available surplus funds of NFG. Once these sources of funds become insufficient to meet the short-term loan requests, borrowings will be made by NFG through the issuance and sale of commercial paper or borrowings under other Credit Facilities.

Distribution seeks approval to make borrowings through the money pool in an amount not to exceed $500 million at any time outstanding. Distribution proposes to repay money pool borrowings principally by means of funds received as a result of providing services to its customers under its tariffs, and from the possible sale of debt (including long-term notes issued to NFG) or equity securities.

Borrowings through the money pool and repayments will be adequately documented and will be evidenced on the books of each participant that is borrowing funds or lending surplus funds. If only internal funds (surplus funds of NFG and the Subsidiaries) make up the funds available in the money pool, the interest rate applicable and payable to or by Subsidiaries for all loans from internal funds will be the rates for high-grade, unsecured, 30-day commercial paper sold through dealers by major corporations, as quoted in *The Wall Street Journal* or other national financial publications. Borrowings consisting wholly or in part of funds obtained through the sale of commercial paper or borrowings under other Credit Facilities by NFG will bear interest at a rate equal to NFG's net weighted daily average cost for external borrowings. Interest will be payable by the borrowing Subsidiary until the principal amount borrowed is fully repaid. Fees, commissions and expenses incurred by NFG to establish and maintain Credit Facilities used to fund loans through the money pool, including rating agency fees, bank commitment fees, and transaction costs (such as legal fees incurred in connection with negotiating and documenting credit facilities), will be allocated to all Eligible Borrowers. Each Eligible Borrower's share of allocated expenses is a fraction of the total expenses. The numerator of the fraction is the respective per book capitalization plus the average daily balance of short-term borrowings outstanding during the twelve months ended as of the date of the most recent quarterly consolidating financial statements for each Eligible Borrower. The denominator of the fraction is the sum of all the numerators used in the calculation.

To the extent that there are excess funds available in the money pool from time to time because (a) there are no borrowings under the Credit Facilities that may be currently repaid, or (b) there is no commercial paper that is maturing, or (c) no Eligible Borrower has a need for excess funds available from other money pool participants, the excess funds will normally be invested in one or more short-term investments. The Applicants propose amendment of Article IV of the Money Pool Agreement to provide that these short-term investments may include any of the following: (i) Interest-bearing accounts with banks; (ii) obligations issued or guaranteed by the U.S. government or its agencies and instrumentalities, or by any state or political subdivision of a state; (iii) tax exempt notes; (iv) tax exempt bonds; (v) tax exempt preferred stock; (vi) commercial paper rated not less than A–1 or P–1 or their equivalent by a nationally recognized statistical rating organization; (vii) money market funds; (viii) bank certificates of deposit and bankers acceptances; (ix) Eurodollar certificates of deposit or time deposits; (x) repurchase agreements with respect to any of the foregoing; and (xii) other investments as are permitted by the Act and the rules under the Act. With the exception of Article IV, no other substantive changes to the Money Pool Agreement as currently in effect are proposed.

Guarantees

NFG requests authority to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support (collectively, "Guarantees") with respect to the obligations of any Subsidiary. Authority is sought to enter into Guarantees in an aggregate principal amount not to exceed $2 billion outstanding at any time, provided that any Guarantee outstanding on December 31, 2005, shall terminate or expire in accordance with its terms and provided further that the amount of any Guarantees with respect to the obligations of any Subsidiaries shall be subject to the limitations of rule 53(a)(1) or rule 58(a)(1), as applicable. Guarantees of the obligations of any Financing Subsidiary or Special Purpose Subsidiary, as described above, will not count against this limitation.

NFG requests authority to charge each Subsidiary a fee for providing credit support. The fee will be determined by multiplying the amount of the Guarantee provided by the cost of obtaining the liquidity necessary to perform the Guarantee (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses, if any) for the period of time the Guarantee remains outstanding.

Hedging Transactions

Interest Rate Hedges: NFG and, to the extent not exempt under rule 52, the Subsidiaries, request authorization to enter into Interest Rate Hedges, subject to certain limitations and restrictions, in order to manage interest rate cost. Interest Rate Hedges would only be entered into with counterparties ("Approved Counterparties") whose senior debt ratings, or the senior debt ratings of the parent companies of the counterparties, as published by Moody's Investors Service, are equal to or greater than "Baa," or an equivalent rating from Standard and Poor's Ratings Group or Fitch Inc.

Interest Rate Hedges will involve the use of financial instruments commonly used in today's capital markets to manage the volatility of interest rates, including but not limited to interest rate swaps, swaptions, caps, collars, floors, forwards, rate locks, structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), and short sales of U.S. Treasury securities. The Applicants would use Interest Rate Hedges as a means of prudently managing the risk associated with any outstanding debt by, for example, (i) converting variable rate debt to fixed rate debt, (ii) converting fixed rate debt to variable rate debt, or (iii) limiting the impact of changes in interest rates resulting from variable rate debt. The transactions would be for fixed periods and stated notional amounts, which in no case would exceed the principal amount of the underlying debt instrument. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

Anticipatory Hedges: In addition, NFG and the Subsidiaries request authorization to enter into Anticipatory Hedges, subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (i) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury securities and/or a forward swap (each a "Forward Sale"), (ii) the purchase of put options on U.S. Treasury securities (a "Put Options Purchase"), (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury securities (a "Zero Cost Collar"), (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury securities, or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges.

Anticipatory Hedges may be executed on-exchange ("On-Exchange Trades") with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade ("CBOT"), the opening of over-the-counter positions with one or more counterparties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. NFG or a Subsidiary will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution.

NFG represents that each Interest Rate Hedge and Anticipatory Hedge will be treated for accounting purposes under generally accepted accounting principles. NFG will comply with Statement of Financial Accounting Standard ("SFAS") 133 (Accounting for Derivative Instruments and Hedging Activities) and SFAS 138 (Accounting for Certain Derivative Instruments and Certain Hedging Activities) or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board.

Changes in Capital Structure of Majority-Owned Subsidiaries

The portion of an individual Subsidiary's aggregate financing to be effected through the sale of stock to NFG or other immediate parent company during the Authorization Period according to rule 52 and/or according to

an order issued in this proceeding cannot be ascertained at this time. The proposed sale of capital securities may in some cases exceed the then authorized capital stock of a Subsidiary. In addition, the Subsidiary may choose to use capital stock with no par value. Also, a Subsidiary may wish to engage in a reverse stock split to reduce franchise taxes or for other corporate purposes. As needed to accommodate these types of proposed transactions and to provide for future issuances of securities, the Applicants request authority to change the terms of any majority-owned Subsidiary's authorized capitalization by an amount deemed appropriate by NFG or other parent company, provided that the consent of all other shareholders has been obtained for the change. A Subsidiary would be able to change the par value, or change between par value and no-par value stock, or change the form of equity from common stock to limited partnership or limited liability company interests or similar instruments, or from these types of instruments to common stock, without additional Commission approval. Any action by Distribution would be subject to and would only be taken upon receipt of necessary approvals from state regulators.

Nonutility Subsidiary Reorganizations

NFG requests approval to consolidate or otherwise reorganize all or any part of its direct and indirect ownership interests in Nonutility Subsidiaries and the activities and functions related to these investments. To effect any consolidation or other reorganization, NFG may wish to either contribute the equity securities of one Nonutility Subsidiary to another Nonutility Subsidiary or sell (or cause a Nonutility Subsidiary to sell) the equity securities or all or part of the assets of one Nonutility Subsidiary to another one. These transactions may also take the form of a Nonutility Subsidiary selling or transferring the equity securities of a subsidiary or all or part of a subsidiary's assets as a dividend to NFG or to another Nonutility Subsidiary, and the acquisition, directly or indirectly, of the equity securities or assets of a subsidiary, either by purchase or by receipt of a dividend. The purchasing company in any transaction structured as an intrasystem sale of equity securities or assets may execute and deliver its promissory note evidencing all or a portion of the consideration given. Each transaction would be carried out in compliance with all applicable U.S. or foreign laws and accounting requirements, and any transaction structured as a sale would be carried out for consideration equal to the book value of the equity securities being sold.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25944 Filed 10–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 67 FR 62997, October 9, 2002.

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, October 10, 2002 at 2:30 p.m.

CHANGE IN THE MEETING: Additional item.

The following item has been added to the Closed Meeting scheduled for Thursday, October 10, 2002 at 2:30 p.m.: formal order of investigation.

Commissioner Goldschmid, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: October 9, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26150 Filed 10–9–02; 12:58 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46590; File No. S7–966]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing of the Agreement Among the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc., Pursuant to Rule 17d–2 Under the Securities Exchange Act of 1934

October 2, 2002.

Pursuant to section 17(d) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 17d–2 thereunder,[2] notice is hereby given that on August 21, 2002, the American Stock Exchange LLC ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), the International Securities Exchange, Inc. ("ISE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (collectively the "SRO participants") filed with the Securities and Exchange Commission ("SEC" or "Commission") a plan for the allocation of regulatory responsibilities.

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every national securities exchange and registered securities association ("SRO") to examine for, and enforce, compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or 19(g)(2)[4] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). This regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[5] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[6] Rule 17d–1, adopted on April 20, 1976,[7] authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules. When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules.

On its face, Rule 17d–1 deals only with an SRO's obligations to enforce broker-dealers' compliance with the financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices, and trading activities and practices.

To address regulatory duplication in these other areas, on October 28, 1976, the Commission adopted Rule 17d–2 under the Act.[8] This rule permits SROs to propose joint plans allocating regulatory responsibilities with respect to common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to and foster the development of a national market system and a national clearance and settlement system, and in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On September 8, 1983, the Commission approved the SRO participants' plan for allocating regulatory responsibilities pursuant to Rule 17d–2.[9] The plan reduces regulatory duplication for a large number of firms currently members of two or more of the SRO participants by allocating regulatory responsibility for certain options-related sales practice matters to one of the SRO participants.

Under the plan, the SRO participant responsible for conducting options-related sales practice examinations of a firm, and investigating options-related customer complaints and terminations for cause of associated persons of that firm, is known as the firm's "Designated Options Examining Authority" ("DOEA"). Pursuant to the plan, any other SRO of which the firm is a member is relieved of these responsibilities during the period the firm is assigned to a DOEA.

III. Proposed Amendment to the Plan

On August 21, 2002, the SRO participants submitted a proposed amendment to the plan. The primary purpose of the amendment is to allocate regulatory responsibilities among all of the SRO participants.[10] The amended agreement replaces the previous agreement in its entirety.

Agreement among the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange Inc., and the Philadelphia Stock Exchange, Inc., Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934.

This Agreement, among the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange Inc., and the Philadelphia Stock Exchange, Inc., hereinafter collectively referred to as the Participants, is made this first day of July, 2002 pursuant to the provisions of Rule 17d–2 under the Securities Exchange Act of 1934 (the "Act"), which allows for plans among self-regulatory organizations to allocate regulatory responsibility.

Whereas, the Participants are desirous of allocating regulatory responsibilities with respect to their common members (members of two or more of the Participants) for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants (collectively, "Covered Securities"); and

Whereas, the Participants are desirous of executing a plan for this purpose pursuant to the provisions of Rule 17d–2 and filing such plan with the Securities and Exchange Commission ("SEC" or the "Commission") for its approval;

Now, therefore, in consideration of the mutual covenants contained hereafter, the Participants agree as follows:

I. Except as otherwise provided herein, each Participant shall assume Regulatory Responsibility (as hereinafter defined) for its members that are both (i) members of more than one Participant (hereinafter the "Common Members") and (ii) allocated to it in accordance with the terms hereof. For purposes of this Agreement, a Participant shall be considered to be the Designated Options Examining Authority ("DOEA") of each Common Member allocated to it.

II. As used herein, the term "Regulatory Responsibility" shall mean the inspection, examination and enforcement responsibilities relating to compliance by the Common Members and persons associated therewith with the rules of the applicable Participant that are substantially similar to the rules of the other Participants (the "Common Rules") and the provisions of the Act and the rules and regulations thereunder, insofar as they apply to the conduct of accounts for Covered Securities. In discharging its Regulatory Responsibility, a DOEA may act directly and perform such responsibilities itself or may make arrangements for the performance of such responsibilities on its behalf by The Options Clearing Corporation, a national securities exchange registered with the SEC under Section 6(a) of the Act or a national securities association registered with the SEC under Section 15A of the Act, but excluding an association registered for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products. Without limiting the foregoing, a non-exhaustive list of the current, Common Rules of each Participant applicable to the conduct of accounts for Covered Securities is attached hereto as Exhibit A. Notwithstanding anything herein to the contrary, it is explicitly understood that the term "Regulatory Responsibility" does not include, and each of the Participants shall (unless allocated

[1] 15 U.S.C. 78q(d).
[2] 17 CFR 240.17d–2
[3] 15 U.S.C. 78s(g)(1).
[4] 15 U.S.C. 78s(g)(2).

[5] Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session. 32 (1975).
[6] 17 CFR 240.17d–1 and 17 CFR 240.17d–2.
[7] Securities Exchange Act Release No. 12352, 41 FR 18809 (May 3, 1976).
[8] Securities Exchange Act Release No. 12935, 41 FR 49093 (November 8, 1976).
[9] Securities Exchange Act Release No. 20158, 48 FR 41256 (September 14, 1983).
[10] Under the previous agreement, only the Amex, the CBOE, the NASD, and the NYSE were DOEAs.

pursuant to Rule 17d–2 otherwise than under this Agreement) retain full responsibility for:

(a) Surveillance and enforcement with respect to trading activities or practices involving its own marketplace, including without limitation its rules relating to the rights and obligations of specialists and other market makers;

(b) Registration pursuant to its applicable rules of associated persons;

(c) Discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Act;

(d) Evaluation of advertising, responsibility for which shall remain with the Participant to which a Common Member submits same for approval; and

(e) Any rules of a Participant that are not substantially similar to the rules of all of the other Participants.

III. Apparent violations of another Participant's rules discovered by a DOEA, but which rules are not within the scope of the discovering DOEA's Regulatory Responsibility, shall be referred to the relevant Participant for such action as the Participant to which such matter has been referred deems appropriate. Notwithstanding the foregoing, nothing contained herein shall preclude a DOEA in its discretion from requesting that another Participant conduct an enforcement proceeding on a matter for which the requesting DOEA has Regulatory Responsibility. If such other Participant agrees, the Regulatory Responsibility in such case shall be deemed transferred to the accepting Participant. Each Participant agrees, upon request, to make available promptly all relevant files, records and/or witnesses necessary to assist another Participant in an investigation or enforcement proceeding.

IV. This Agreement shall be administered by a committee known as the Options Self-Regulatory Council (the "Council"). The Council shall be composed of one representative designated by each of the Participants. Each Participant shall also designate one or more persons as its alternate representative(s). In the absence of the representative of a Participant, such alternate representative shall have the same powers, duties and responsibilities as the representative. Each Participant may, at any time, by notice to the then Chair of the Council, replace its representative and/or its alternate representative on such Council. A majority of the Council shall constitute a quorum and, unless specifically otherwise required, the affirmative vote of a majority of the Council members present (in person, by telephone or by written consent) shall be necessary to constitute action by the Council. From time to time, the Council shall elect one member of the Council to serve as Chair and another to serve as Vice Chair (to substitute for the Chair in the event of his or her unavailability) for such term as shall be designated and until his or her successor is duly elected, provided that in the event a Participant replaces a representative who is acting as Chair or Vice Chair, such representative shall also assume the position of Chair or Vice Chair, as applicable. All notices and other communications for the Council shall be sent to it in care of the Chair or to each of the representatives.

V. The Council shall determine the times and locations of Council meetings, provided that the Chair, acting alone, may also call a meeting of the Council in the event the Chair determines that there is good cause to do so. To the extent reasonably possible, notice of any meeting shall be given at least ten business days prior thereto. Notwithstanding anything herein to the contrary, representatives shall always be given the option of participating in any meeting telephonically at their own expense rather than in person.

VI. For the purpose of fulfilling the Participants' DOEA Regulatory Responsibilities, the Council shall allocate Common Members that conduct a public options business among Participants from time to time in such manner as the Council deems appropriate, provided that any such allocation shall be based on the following principals except to the extent all affected Participants consent:

(a) The Council may not allocate a member to a Participant unless the member is a member of that Participant.

(b) To the extent practical, Common Members that conduct a public options business shall be allocated among the Participants of which they are members in such manner as to equalize as nearly as possible the allocation among such Participants. For example, if sixteen Common Members that conduct a public options business are members only of three Participants, such members shall be allocated among such Participants such that no Participant is allocated more than six such members and no Participant is allocated less than five such members.

(c) To the extent practical, the allocation of Common Members shall take into account the amount of customer activity conducted by each member in Covered Securities such that Common Members shall be allocated among the Participants of which they are members in such manner as most evenly divides the Common Members with the largest amount of customer activity among such Participants.

(d) Insofar as practical, it is intended that allocation of Common Members to Participants will be rotated among the applicable Participants and, more specifically, that Common Members shall not be allocated to a Participant as to which such member was allocated within the previous two years.

(e) The Council shall make general reallocations of Common Members from time-to-time as it deems appropriate.

(f) Whenever a Common Member ceases to be a member of its DOEA, the DOEA shall promptly inform the Council, which shall promptly review the matter and allocate the Common Member to another Participant.

(g) A DOEA may request that a Common Member that is allocated to it be reallocated to another Participant by giving thirty days written notice thereof. The Council, in its discretion, may approve such request and reallocate such Common Member to another Participant.

(h) All determinations by the Council with respect to allocations shall be by the affirmative vote of a majority of the Participants that, at the time of such determination, share the applicable Common Member being allocated; a Participant shall not be entitled to vote on any allocation relating to a Common Member unless the Common Member is a member of such Participant.

(i) Allocations for calendar years 2003 and 2004 shall also be subject to the provisions set forth at Appendix A hereof, which provisions shall control in the event of any conflict between them and the provisions set forth above.

VII. Each DOEA shall conduct a routine inspection and examination of each Common Member allocated to it on a cycle not less frequently than determined by the Council. The other Participants agree that, upon request, relevant information in their respective files relative to a Common Member will be made available to the applicable DOEA. At each meeting of the Council, each Participant shall be prepared to report on the status of its examination program for the previous quarter and any period prior thereto that has not previously been reported to the Council. In the event a DOEA believes it will not be able to complete the examination cycle for its allocated firms, it will so advise the Council. The Council will undertake to remedy this situation by allocating selected firms and, if necessary, lengthening the cycles for selected firms.

VIII. Each Participant will, upon request, promptly furnish a copy of the report, or applicable portions thereof relating to Covered Securities, of any examination made pursuant to the provisions of this Agreement to each other Participant of which the Common Member examined is a member.

IX. Each Participant will, routinely, forward to each other Participant of which a Common Member is a member, copies of all communications regarding deficiencies relating to Covered Securities noted in a report of examination conducted by each Participant. If an examination relating to Covered Securities conducted by a Participant reveals no deficiencies, such fact will also, upon request, be communicated to each other Participant of which the Common Member concerned is a member.

X. Each DOEA's Regulatory Responsibility shall include investigations into terminations "for cause" of associated persons relating to Covered Securities, unless such termination is related solely to another Participant's market. In the latter instance, that Participant to whose market the termination for cause relates shall discharge Regulatory Responsibility with respect to such termination for cause. In connection with a DOEA's examination, investigation and/or enforcement proceeding regarding a Covered Security-related termination for cause, the other Participants of which the Common Member is a member shall furnish, upon request, copies of all pertinent materials related thereto in their possession. As used in this Section, "for cause" shall include, without limitation, terminations characterized on Form U–5 under the label "Permitted to Resign," "Discharge" or "Other."

XI. Each DOEA shall discharge the Regulatory Responsibility relative to a Covered Securities-related customer complaint or Form U–4 filing, unless such complaint or filing is uniquely related to another Participant's market. In the latter instance, the DOEA shall forward the matter to that Participant to whose market the matter relates, and the latter shall discharge Regulatory Responsibility with respect thereto. If a Participant receives a customer complaint for a Common Member related to a Covered Security for which the Participant is not the DOEA, the Participant shall promptly forward a copy of such complaint to the DOEA.

XII. Any written notice required or permitted to be given under this Agreement shall be deemed given if sent by certified mail, return receipt requested, to each Participant entitled to receipt thereof, to the attention of the Participant's representative on the Council at the Participant's then principal office or by e-mail at such address as the representative shall have filed in writing with the Chair.

XIII. The costs incurred by each Participant in discharging its Regulatory Responsibility under this Agreement are not reimbursable. However, any Participants may agree that one or more will compensate the other(s) for costs.

XIV. The Participants shall notify the Common Members of this Agreement by means of a uniform joint notice approved by the Council.

XV. This Agreement may be amended in writing duly approved by each Participant.

XVI. Any of the Participants may manifest its intention to cancel its participation in this Agreement at any time upon the giving to the Council of written notice thereof at least 90 days prior to such cancellation. Upon receipt of such notice the Council shall allocate, in accordance with the provisions of this Agreement, those Common Members for which the petitioning party was the DOEA. Until such time as the Council has completed the reallocation described above, the petitioning Participant shall retain all its rights, privileges, duties and obligations hereunder.

XVII. The cancellation of its participation in this Agreement by any Participant shall not terminate this Agreement as to the remaining Participants. This Agreement will only terminate following notice to the Commission, in writing, by the then Participants that they intend to terminate the Agreement and the expiration of the applicable notice period. Such notice shall be given at least six months prior to the intended date of termination, provided that in the event a notice of cancellation is received from a Participant that, assuming the effectiveness thereof, would result in there being just one remaining member of the Council, notice to the Commission of termination of this Agreement shall be given promptly upon the receipt of such notice of cancellation, which termination shall be effective upon the effectiveness of the cancellation that triggered the notice of termination to the Commission.

Limitation of Liability

No Participant nor the Council nor any of their respective directors, governors, officers, employees or representatives shall be liable to any other Participant in this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibility as provided hereby or for the failure to provide any such Responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or more of the Participants and caused by the willful misconduct of one or more of the other participants or their respective directors, governors, officers, employees or representatives. No warranties, express or implied, are made by any or all of the Participants or the Council with respect to any Regulatory Responsibility to be performed by each of them hereunder.

Relief From Responsibility

Pursuant to section 17(d)(1)(A) of the Securities Exchange Act of 1934 and Rule 17d–2 promulgated pursuant thereto, the Participants join in requesting the Securities and Exchange Commission, upon its approval of this Agreement or any part thereof, to relieve those Participants which are from time to time participants in this Agreement which are not the DOEA as to a Common Member of any and all Regulatory Responsibility with respect to the matters allocated to the DOEA.

In Witness Whereof, the Participants hereto have executed this Agreement as of the date and year first above written.

Appendix A—Allocation Provisions for Calender Years 2003 and 2004

The allocation for calendar year 2003 shall be performed in accordance with the provisions of Section VI, provided that immediately following the initial allocation there shall be a partial reallocation whereby one-half of the Common Members allocated to the International Stock Exchange, Inc., the Pacific Exchange, Inc. and the Philadelphia Stock Exchange, Inc. (such Participants being herein called the "New DOEAs") are reallocated among the other Participants that have such member in common. In the event that an initial allocation results in a New DOEA being allocated an odd number of Common Members, for purposes of the reallocation, such number shall be deemed to be increased by one or decreased by one to the extent this will result in the number of Common Members allocated to the remaining DOEAs being more equal. For example, if sixteen Common Members are members of one New DOEA as well as two DOEAs that are not New DOEAs, such members shall be allocated among such DOEAs in the normal manner such that two DOEAs are allocated five such members and the remaining DOEA is allocated six members. Thereafter and assuming only five Common Members were allocated to the New DOEA, three of the members allocated to the New DOEA would be reallocated among the DOEAs that are not New DOEAs such that the New DOEA shall end up with two Common Members allocated to it and the remaining two DOEAs shall both end up with seven Common Members. Again by way of example, if twenty-one Common

Members are members of one New DOEA as well as three DOEAs that are not New DOEAs and the New DOEA received an allocation of five members and two of the remaining DOEAs also received an allocation of five members with the fourth DOEA receiving an allocation of six members, only two of the five Common Members allocated to the New DOEA would be reallocated since such reallocation would result in an equal allocation of six each among the remaining DOEAs. For calendar year 2004, the Common Members reallocated from the New DOEAs to the remaining DOEAs as part of the allocation for calendar year 2003 shall be reallocated back to the New DOEA to which such Common Member was originally allocated.

Exhibit A—Participant Rules Applicable To The Conduct Of Covered Securities:

RULES ENFORCED UNDER 17D–2 AGREEMENT

Opening of Accounts	
AMEX	Rules 411 and 921
CBOE	Rule 9.7
ISE	Rule 608
NASD	Rule 2860(b)(16); IM–2860–2
NYSE	Rules 721 and 405
PHLX	Rule 1024(b)
PCX	Rule 9.2(a) and Rule 9.18(b)

Supervision	
AMEX	Rules 411 and 922
CBOE	Rule 9.8
ISE	Rule 609
NASD	Rule 2860(b)(20)
NYSE	Rules 722, 342 and 343
PHLX	Rule 1025
PCX	Rule 9.2(b)

Suitability	
AMEX	Rule 923
CBOE	Rule 9.9
ISE	Rule 610
NASD	Rule 2860(b)(19)
NYSE	Rule 723
PHLX	Rule 1026
PCX	Rule 9.18(c)

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the amended plan. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the amended plan that are filed with the Commission, and all written communications relating to the amended plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of each of the SRO participants. All submissions should refer to File No. S7–966 and should be submitted by November 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26024 Filed 10–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46598; File No. SR–CBOE–2002–56]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Broker-Dealer Access on RAES

October 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to allow broker-dealer ("BD") orders in equity options to be eligible for routing through the Exchange's Retail Automatic Execution System ("RAES"). The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently allows BD orders in certain index option series to receive automatic execution through RAES, subject to the conditions contained in Interpretation and Policy .01 ("I&P .01") to CBOE Rule 6.8. CBOE hereby proposes to amend I&P .01 to allow BDs to submit orders through RAES in certain equity option classes and/or series.[3] Under the proposal, the Exchange intends to vest the appropriate floor procedure committee ("FPC") with the authority to determine the classes and/or series in which BDs may submit orders through RAES.[4] As such, the Equity Floor Procedure Committee ("EFPC") would have responsibility for determining the eligible equity option classes and/or series while the Index FPC ("IFPC") would have the authority for determining the eligible index option classes and/or series (with the exception of the S&P 500, which falls under the jurisdiction of the SPX FPC). In this regard, the Exchange notes that with respect to equity options, the EFPC could determine to make BD orders eligible for automatic execution in the 100 most active classes, or conversely, the EFPC may allow BD orders in all series in all equity option classes. Pronouncements regarding eligible classes and/or series will be made by Regulatory Circular. The Exchange does not propose any changes to the types of BD orders eligible for automatic execution.[5]

Currently, there are three primary limitations on BD access to RAES: (1) BD orders may not automatically execute against orders in the book;[6] (2) the eligible size limit for BD orders may be established at a level lower than that for public customer orders;[7] and (3) BD orders may not be eligible for automatic step-up.[8] The Exchange proposes to retain these three limitations (with the modifications described in the accompanying footnotes.)

BD orders executed through RAES will continue to be subject to the requirements of CBOE Rule 6.8. In this regard the Exchange notes that BD orders and public customer orders will both be subject to CBOE Rule 6.8(e)(iii), which prohibits the entry of multiple orders in a put and/or call class within a 15-second period for an account or accounts of the same beneficial owner.[9] Correspondingly, the Exchange proposes herein to amend CBOE Rule 6.8A (*Electronically Generated and Communicated Orders*) to clarify its applicability to BD orders executed through RAES. CBOE Rule 6.8A currently applies to all RAES-eligible orders, however, because it was adopted prior to the allowance of BD orders in RAES, it makes reference to the term "public customers." Now that BD orders are eligible for execution through RAES, the reference to public customers in CBOE Rule 6.8A is incorrect. This proposal therefore eliminates that reference. The Exchange notes that Phlx Rule 1080, Commentary .05(i) codifies this same principle (*i.e.*, BD orders are subject to the restriction against electronically generated orders).

Finally, the current rule was approved on a pilot basis until November 20, 2002.[10] The Exchange proposes to eliminate the pilot status of the current rule and seek permanent approval of the new rule. The Exchange believes there are several reasons why permanent approval is justified. First, CBOE initially proposed the pilot program as a way to allow it to evaluate the effectiveness of the program after six months of operation. The pilot program was NOT proposed due to any SEC concerns. Therefore, the Exchange believes that there are no attendant regulatory concerns that would require continued operation under pilot status. Second, the pilot program has worked well and has attracted order flow to the Exchange without causing any operational problems or difficulties. Expanding the rule to apply to equities similarly will not cause any operational problems and will enhance the Exchange's competitive position. Third, the PCX rule was approved on a permanent basis,[11] accordingly, there is precedent for permanent approval. In this respect, the Exchange notes that all floor-based exchanges have (or are in the process of adopting) approved rules that grant BD access to automatic execution systems. Finally, the pilot expires in November and it is likely that SEC approval of this filing will not occur until late September or early October. By that time, the Exchange would have to submit an additional rule filing to seek permanent approval anyways. In short, this filing raises no new or unique issues of substance and, therefore, the Exchange believes it is practical to request permanent approval in this proposal instead of having to submit an additional filing a few weeks later.

2. Statutory Basis

The Exchange believes that this proposal will enhance the ability of BD orders to receive automatic executions in equity options, which should provide greater certainty to BDs with respect to their routing decisions. The Exchange further believes that this proposal, by allowing BD orders to receive automatic executions, will also increase depth and liquidity in those affected classes. Accordingly, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to section 19(b)(3)(A)(i) of the Act[15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16] Consequently, because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4 thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally does not become operative prior to thirty days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange seeks to have the proposed rule change become operative immediately so that it may compete with other options exchanges.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change effective as of the date of this order.[18] The Commission

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[11] 17 CFR 200.30–3(a)(34).

[1] 15 U.S.C. 78(b)(1).

[2] 17 CFR 240.19b–4.

[3] Correspondingly, BDs will be eligible to submit orders in certain index option classes and/or series. Currently, BDs may submit orders in certain index option series.

[4] The current rule allows the Exchange to determine the products in which BD orders may be submitted to RAES.

[5] Currently, the Exchange may allow all categories of BD orders to receive automatic execution or it may allow only those BD orders that are not for the accounts of market makers or specialists to qualify for automatic execution.

[6] CBOE Rule 6.8.01(b). The Exchange proposes to keep this provision but renumber it as 6.8.01(b)(1).

[7] This provision has been renumbered from 6.8.01(c)(1) to 6.8.01(b)(2).

[8] This provision has been renumbered from 6.8.01(c)(2) to 6.8.01(b)(3). In addition, the Exchange amends this provision to clarify that BD orders that are ineligible for automatic execution by opertion of this section shall be routed either to PAR or BART for manual handling.

[9] *See also* Phlx Rule 1080, Commentary .05(iii), which contains the identical restriction and was approved by the SEC. Exchange Act Release No. 45484 (February 27, 2002), 67 FR 10465 (March 7, 2002).

[10] *See* Securities Exchange Act Release Nos. 45967 (May 20, 2002), 67 FR 37888 (May 27, 2002) and 46113 (June 25, 2002), 67 FR 44486 (July 2, 2002).

[11] *See* Securities Exchange Act Release No. 45032 (November 6, 2001), 66 FR 57145 (November 14, 2001).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] Commission staff has provided interpretative guidance to the Exchange regarding the application of Section 11(a) of the Act, 15 U.S.C. 78k(a), to the RAES system. *See* letter from Paula Jenson, Deputy Chief Counsel, Division of Market Regulation, Commission, to Joanne Moffic-Silver, General Counsel and Corporate Secretary, CBOE, dated May 16, 2002.

[15] 15 U.S.C. 78s(b)(3)(A)(i).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6).

[18] For purposes of only accelerating the operative date of this proposal, the Commission has

Continued

notes that the other options exchanges currently permit BD orders to access their automatic execution systems and the Commission believes that this proposed rule change could enhance competition for BD orders in the options markets.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–2002–56 and should be submitted by November 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

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considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46600; File No. SR–CBOE–2002–39]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. To Make Certain Changes Pertaining to the Enforcement of Trading Conduct and Decorum Policies

October 4, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 15, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On August 30, 2002, CBOE submitted Amendment No. 1 to the proposed rule change.[3] On September 17, 2002, CBOE submitted Amendment No. 2 to the proposed rule change.[4] The Commission is 2 publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 6.20(c) (Admission to and Conduct on the Trading Floor—Fines Imposed by Floor Officials) to authorize two Floor Officials, in consultation with a designated senior executive officer of the Exchange, to summarily exclude a member or person associated with a member from the Exchange premises for not longer than the remainder of the trading day for any violation of the Exchange's trading conduct and decorum policies that is classified as a Class A offense, except for those Class A offenses specified by Exchange Regulatory Circulars as not qualifying the offender for summary exclusion. The Exchange also proposes to amend CBOE Rule 17.50(g)(6) (Imposition of Fines for Minor Rules Violations—Violations of Trading Conduct and Decorum Policies) to reflect the incorporation into the fine policies of specified higher fine levels for "subsequent" offenses. Finally, the Exchange proposes to issue a new Regulatory Circular setting forth the fines that may be imposed under CBOE Rule 17.50 for violations of CBOE Rule 6.20. The proposed Regulatory Circular also sets forth those violations that may qualify the offender for summary expulsion. Below is the text of the proposed rule change. Proposed new language is italicized; deletions are in brackets.

* * * * *

CHAPTER VI—Doing Business on the Exchange Floor

Section B: Member Activities on the Floor

* * * * *

Admission to and Conduct on the Trading Floor; Member Education

RULE 6.20.

(a) No Change.
(b) No Change.
(c) Fines Imposed by Floor Officials. The Exchange shall periodically issue fine schedules setting forth which violations of the Exchange's trading conduct and decorum policies are subject to fines pursuant to CBOE Rule 17.50 and the specific dollar amounts of such fines. Floor Officials may (i) fine members and persons employed by or associated with members pursuant to CBOE Rule 17.50 for trading conduct and decorum violations which are subject to fine under such fine schedule, (ii) direct members and persons employed by or associated with members to act or cease to act in a manner to ensure compliance with Exchange Rules and accepted and established standards of trading conduct and decorum and/or (iii) refer violations of the foregoing to the Business Conduct Committee for disciplinary action pursuant to Chapter XVII of the Rules. *In addition, two Floor Officials in consultation with a designated senior executive officer of the Exchange, may summarily exclude a member or person associated with a member from the Exchange premises for not longer than the remainder of the trading day for any violation of the Exchange's trading conduct and decorum policies that is classified as a Class A offense, except for those Class A offenses specified by Exchange Regulatory Circulars as not qualifying the offender for summary exclusion.* Any action taken by Floor Officials under this paragraph (c) shall not preclude additional disciplinary action by the Business Conduct Committee under Chapter XVII of the Rules. Any application or interpretation of Rules, and any decision to impose a fine under this paragraph (c), shall be agreed upon by at least two Floor Officials. Floor Officials shall file with the Exchange a written report of any action taken pursuant to authority specifically granted them by the Rules and of any interpretation of the Rules.

(d) No Change.
(e) No Change.

* * * Interpretations and Policies:

.01–.09 No Change.

.10 Where a member or person associated with a member is summarily excluded from the trading floor pursuant to Rule 6.20(c), that member or associated person shall have the right to request reinstatement from Floor Officials after a sufficient "cooling-off" period has elapsed. If, in the judgment of two Floor Officials, the member or associated person no longer poses an immediate threat to the safety of persons or property, the member or associated person shall be permitted to return to the trading floor.

* * * * *

CHAPTER XVII—Discipline

RULE 17.50. Imposition of Fines for Minor Rule Violations

(a)–(f) No Change.

(g) The following is a list of the rule violations subject to, and the applicable fines that may be imposed by the Exchange pursuant to, this Rule:

(1) No Change.
(2) No Change.
(3) No Change.
(4) No Change.
(5) No change.
(6) Violations of Trading Conduct and Decorum Policies. (Rule 6.20)

The Exchange's trading conduct and decorum policies shall be distributed to the membership periodically and shall set forth the specific dollar amounts that may be imposed as a fine hereunder with respect to any violations of those policies. If warranted under the circumstances in the view of two floor officials, the fine authorized under those policies for a second, [or]third *or subsequent* offense may be imposed for a first offense and the fine authorized for a third *or subsequent* offense may be imposed for a second offense.

* * * * *

(The following Regulatory Circular will supersede and replace RG98–123)

02– Violations of Trading Conduct and Decorum Policies

Date: , 2002

To: Exchange Members and Associated Persons of Member Organizations

From: Floor Officials Committee

The purpose of this circular is to advise members and their personnel of the provisions of Exchange Rule 17.50, Imposition of Fines for Minor Rule Violations, as they relate to violations of the Exchange's trading conduct and decorum policies under Exchange Rule 6.20, Admission to and Conduct on the Trading Floor.

(1) The Rule. Rule 17.50(g)(6) provides for the imposition of fines for violations of the Exchange's trading conduct and decorum policies under Rule 6.20. The following schedule identifies certain conduct deemed to violate those policies and lists the applicable fines that may be imposed for such violations by the Exchange under Rule 17.50(g)(6). Please be advised that Rule 17.50(g)(6) enables the Exchange, if warranted under the circumstances, to impose for a first offense the fine authorized for a second, third or subsequent offense; to impose for a second offense the fine authorized for a third or subsequent offense; and to impose for a third offense the fine authorized for a subsequent offense.

(2) Two Floor Officials may impose a summary fine in a rolling twelve month period (except for firm quote violations, which will be assessed using a 24-month look back period) not to exceed $5,000 for violative conduct classified as a Class A offense within the following ranges:

1st Offense	*2nd Offense*	*3rd Offense*	*Subsequent Offenses*
$500 to $1,500	*$1,000 to $3,000*	*$2,000 to $5,000*	*$3,500 to $5,000*

(3) Two Floor Officials may impose a summary fine in a rolling twelve month period not to exceed $2500.00 for violative conduct classified as a Class B offense within the following ranges:

1st Offense	*2nd Offense*	*Subsequent Offenses*
$100 to $500	*$500 to $1,000*	*$1,000 to $2,500*

TRADING CONDUCT AND DECORUM VIOLATIONS

Class A Offenses:

- *Physical Violence (Shoving, Fighting)*
- *Unbusinesslike Conduct*
- *Harassment (as set forth in Exchange Rule 4.19)*
- *Failure to Abide by a Floor Official Determination*
- *Property Damage (plus repair or replacement costs)*
- *Enabling/Assisting Suspended Member or Associated Person to Gain Improper Access to Floor*
- *Failure to Supervise a Visitor*
- *Failure to Attend Exchange Mandated Educational Training ‡*
- *Effecting or Attempting to Effect a Transaction with No Public Outcry ‡*
- *Violation of Rule 8.51 (Firm Quote)[5] ‡*

‡ Does not qualify the offender for summary exclusion pursuant to Exchange Rule 6.20(c).

Class B Offenses:

- *Abusive Language*
- *Abusing Exchange Property (no damage)*
- *Dress Code Violation*
- *Failure to Display I.D.*
- *Food or Drink on Floor*
- *Gaining or Enabling Improper Access to Floor*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 received on August 30, 2002 ("Amendment No. 1"). Amendment No. 1 replaced the original filing in its entirety. In Amendment No. 1, the Exchange clarified that not all Class A offenses qualified the offender for summary exclusion, explained why three types of offenses previously set forth as "Violations of Trading Conduct and Decorum Policies" had been omitted from the proposed list of such violations, clarified that the "rolling look back" period used to determine the appropriate fine for Firm Quote violations will be 24 months, and cross-referenced the appeal procedure for the imposition of fines for minor rule violations.

[4] *See* letter from Christopher R. Hill, Attorney II, Legal Division, CBOE, to Nancy Sanow, Division of Market Regulation ("Division"), Commission, dated September 16, 2002 ("Amendment No. 2"). In Amendment No. 2, the Exchange underlined the entire subsection of Exhibit B to Amendment No. 2 labeled "Class A Offenses" to reflect that it is new text, and added the offense "Trading in the Aisle" to the subsection of Exhibit B to Amendment No. 2 labeled "Class B Offenses."

[5] *In any Rolling Twenty-Four Month "Look-Back" Period.*

- *Improper Use of Runners' Aisle*
- *Smoking in Unauthorized Areas*
- *Running*
- *Impermissible Use of Member Phones*
- *Visitor Badge Returned Late or Not Returned*
- *Failure of Market-Maker to Respond to Request for Market by Order Book Official or to Bid or Offer within Ranges Specified by Rule 8.7(b)*
- *DPM Failure to Activate or Deactivate RAES*

(2) *Floor Officials. Fines under Rule 17.50(g)(6) may be imposed upon the determination of two Floor Officials that the person fined has committed any of the 4 trading conduct and decorum violations enumerated in the fine schedule above. Any application or interpretation of the Rules relating to conduct on Exchange premises shall be agreed upon by at least two Floor Officials. Floor Officials shall file with the Exchange a written report of any action taken pursuant to authority specifically granted them by the Rules and of any interpretation of the Rules.*

(3) *Persons Subject to Fine. The Exchange may impose the preceding fines against either or both of the following: (a) the individual responsible for the subject violation and/or (b) if such individual is employed by or associated with a member, the member and/or any supervisory personnel of the member that failed to adequately supervise such individual to ensure compliance with Exchange rules. Any member or supervisory person who is fined more than one (1) time in any twelve month period for failure to supervise shall be subject to the fines specified above for second offenses, third offenses and subsequent offenses, regardless of the number of offenses committed by the individual subject to fine for the underlying violation.*

(4) *Right to Contest Fines. Any person against whom a fine is imposed pursuant to Rule 17.50(g)(6) may contest that fine. Specifically, fines imposed under Rule 17.50(g)(6) that do not exceed $2,500 may be contested before the Appeals Committee in accordance with the provisions of Rule 17.50(d), and fines imposed under Rule 17.50(g)(6) that exceed $2,500 may be contested before the Business Conduct Committee in accordance with the provisions of Rule 17.50(c). Persons wishing to contest such fines must comply with the deadlines and all other requirements set forth in Rule 17.50(d) or Rule 17.50(c), as applicable. Please be advised that if a fine imposed under Rule 17.50(g)(6) is contested and the reviewing body finds that the person fined committed the rule violation(s) alleged, the reviewing body may impose any one or more of the disciplinary sanctions authorized by the Exchange's Constitution and Rules, including but not limited to a higher fine than the fine imposed pursuant to Rule 17.50(g)(6). In addition, if a person contests a fine imposed under Rule 17.50(g)(6) and the fine is upheld by the reviewing body, the reviewing body will impose a forum fee against the person in the amount of $100 if the reviewing body's determination was reached without a hearing, or in the amount of $300 if a hearing was conducted.*

(5) *Additional Floor Official Action. In addition to, or instead of, issuing a fine pursuant to Rule 17.50(g)(6), Rule 6.20(c) provides that Floor Officials may direct members and their associated persons to act or cease to act in a manner to ensure compliance with Exchange Rules and accepted and established standards of trading conduct and decorum and/or refer violations of the foregoing to the Business Conduct Committee for disciplinary action pursuant to Chapter XVII of the Rules. Furthermore, any action taken by Floor Officials under Rules 17.50(g)(6) and 6.20(c) does not preclude additional disciplinary action by the Business Conduct Committee under Chapter XVII. In addition, as set forth in Rule 6.20(c), two Floor Officials in consultation with a designated senior executive officer of the Exchange, may summarily exclude a member or person associated with a member from the Exchange premises for not longer than the remainder of the trading day for any violation of the Exchange's trading conduct and decorum policies that is classified as a Class A offense.*

Any questions in connection with this circular should be directed to Andrew Spiwak of the Legal Division at (312) 786–7483 or to Rod Ely of the Trading Floor Liaison Group at (312) 786–7794.

(RG98–123, Revised)

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Temporary Exclusion

The Exchange proposes to amend CBOE Rule 6.20(c) (Admission to and Conduct on the Trading Floor—Fines Imposed by Floor Officials) to authorize two Floor Officials, in consultation with a designated senior executive officer of the Exchange, to summarily exclude a member or person associated with a member from the Exchange premises for not longer than the remainder of the trading day for any violation of the Exchange's trading conduct and decorum policies that is classified as a Class A offense, except for those Class A offenses specified by Exchange Regulatory Circulars as not qualifying the offender for summary exclusion.

Class A offenses are the most serious offenses against trading conduct and decorum policies, including but not limited to violations such as physical violence (e.g., shoving or fighting), unbusinesslike conduct,[6] harassment, failure to abide by a floor official determination, or property damage. Most Class A offenses affect the safety or security of personnel and/or property on the Exchange in ways that may be ameliorated by temporarily excluding the offender from Exchange premises. The Exchange also proposes that members be summarily excluded from Exchange premises for enabling or assisting a suspended member or associated person to gain improper access to the floor, and failing to supervise a visitor. As specified in the proposed Regulatory Circular, the Exchange currently proposes to distinguish three Class A offenses as not qualifying the offender for summary exclusion. These are (1) Failure to Attend Exchange Mandated Educational Training; (2) Effecting or Attempting to Effect a Transaction with No Public Outcry; and (3) Violation of CBOE Rule 8.51 (Firm Quote). These offenses are so categorized because unlike the other Class A offenses, they do not raise significant issues of safety or security at the Exchange.

The Exchange believes that it is important for Floor Officials, in consultation with a designated senior Exchange executive, to have the authority to temporarily exclude certain such violators from the Exchange premises, in order to be able to defuse volatile situations, safeguard trading floor personnel and facilities, and minimize disruptions to the maintenance of fair and orderly markets. The proposed rule will enable an excluded 5 member or associated person to request reinstatement to the Trading Floor from Floor Officials after a sufficient "cooling off period" has elapsed.

The Exchange represents that this part of its proposal is closely patterned on Article XII, Rule 3(c) of the Rules of the Chicago Stock Exchange.

Penalties for Violations of Trading Conduct and Decorum Policies

The Exchange also proposes to amend CBOE Rule 17.50(g)(6) (Imposition of Fines for Minor Rules Violations—Violations of Trading Conduct and Decorum Policies) to reflect the incorporation into the fine policies of specified higher fine levels for "subsequent" offenses. For example, the amended provision would enable the imposition of the fine authorized for a Class A "subsequent" offense to be imposed for a first, second or third Class A offense, if such is deemed warranted under the circumstances in the view of two floor officials.[7] The Exchange believes this update will help Exchange officials safeguard people, property, and fair and orderly markets at the Exchange by enabling them to impose fine levels for violations of Trading and Decorum Policies that are most appropriate to the circumstances of particular offenses.

Regulatory Circular

The Exchange proposes to issue a new Regulatory Circular to update and replace Regulatory Circular RG 98–123, and classify trading conduct and decorum offenses as either Class A or Class B offenses. The Exchange believes the schedule of offenses is consistent with the recently revised Minor Rule Violation Plan.[8]

The Exchange notes that it has added the violation "DPM Failure to Activate or Deactivate RAES" to the new proposed regulatory circular in order to encourage DPM's to comply with their obligations under Exchange Rule 6.8 (RAES Operations).[9]

The Exchange notes the following reasons why three types of offenses previously set forth as "Violations of Trading Conduct and Decorum Policies" in RG–98–123 are omitted from the list of such violations in the new proposed regulatory circular. First, "Disruptive Announcements of Stock Prints" are no longer a focus of regulatory concern due to technological advances that have changed and improved the dissemination of such information. Second, "Failure to Abide by Floor Official Request for Information," has been omitted because it is now deemed to be included within the broader offense entitled "Failure to Abide by Floor Official Determination." Finally, "Book Priority Violations" are no longer included in the list of Trading Conduct and Decorum violations because under a recent Exchange rule change approved by the SEC, (Securities Exchange Act Release No. 34–45571, 67 FR 13382 (March 15, 2002), approving SR–CBOE–2001–71), such violations are now addressed separately in CBOE Rule 17.50(g)(5).

The Exchange also proposes that as set forth in the first footnote of the proposed regulatory circular, the "rolling look back" period used to determine the appropriate fine for Firm Quote violations will be 24 months.[10]

Finally, the Exchange notes that the appeal procedure for the imposition of fines for minor rule violations as set forth in CBOE Rule 17.50(d)(1) is described in paragraph (4) in the proposed draft regulatory circular.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(5)[12] and 6(b)(7)[13] of the Act, in particular, because the proposed rule change will refine and enhance the Exchange's Minor Rule Violation Plan to make it more efficient and effective. The Exchange believes the proposed rule change is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to transactions in securities, to protect investors and the public interest, and enhances the effectiveness and fairness of the Exchange's disciplinary procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CBOE consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE.

All submissions should refer to File No. SR–CBOE–2002–39 and should be submitted by November 1, 2002.

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[6] In general, "unbusinesslike conduct" is conduct, other than harassment, that disrupts trading. Telephone call between Christopher R. Hill, Attorney II, Legal Division, CBOE, and Jennifer Lewis, Attorney, Division, Commission, on September 30, 2002.

[7] The amended provision would also enable the imposition of the fine authorized for a Class B "subsequent" offense to be imposed for a first or second Class B offense, if such is deemed warranted under the circumstances in the view of two floor officials.

[8] *See* Securities Exchange Act Release No. 45571 (March 15, 2002), 67 FR 13382 (March 22, 2002).

[9] Telephone call between Christopher R. Hill, Attorney II, Legal Division, CBOE, and Jennifer Lewis, Attorney, Division, Commission, on October 3, 2002.

[10] *See* note 5 *supra*.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(7).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26019 Filed 10–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46599; File No. SR–CSE–2002–04]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 1 and 2 to a Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to the Introduction of Order Delivery and Automated Response

October 4, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2002, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on May 10, 2002.[3] On September 13, 2002, the CSE filed Amendment No. 1 to the proposed rule change[4] and on September 17, 2002, filed Amendment No. 2 to the proposed rule change.[5] Amendment Nos. 1 and 2 are described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on Amendment Nos. 1 and 2 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As discussed in the Initial Notice, the Exchange proposed to amend CSE Rule 11.9, National Securities Trading System ("NSTS" or "System"), to modify CSE's execution functionality from a process of automatically matching and executing like-priced displayed orders and quotes to an optional process of delivering orders to quoting CSE members and requiring automated responses from such members back to the CSE System.[6] The Exchange filed Amendment No. 1 to delete proposed rule language in Paragraph 11.9(i)(2)(a) regarding price/time and agency/principal priorities, which was inadvertently included in the original proposal. The Exchange filed Amendment No. 2 to expand the proposed order delivery and automated response alternative to all securities traded through the Exchange's NSTS, rather than simply Nasdaq National Market Securities. In addition, Amendment No. 2 made certain non-substantive grammatical changes. The text of the proposed rule change, incorporating Amendment Nos. 1 and 2, is set forth below in its entirety. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Chapter XI

Trading Rules

Rule 11.9(i)

The System [shall automatically match and execute like-priced orders, bids and offers in accordance with the price-time and agency/principal priorities set forth in Rule 11.9(l) and (m).] *offers two modes of order interaction selected by members:*

(1) *If automatic execution is selected, the System shall match and execute like-priced orders, bids and offers on an order by order basis only at the specific instruction of Users, including Designated Dealers.*

(2) *If order delivery and automated response is selected, the System will deliver contra-side orders against displayed orders and quotations on an order by order basis and only at the specific instruction of Users, including Designated Dealers. To be eligible for order delivery service, Users must demonstrate to Exchange examiners that the User's system can automatically process the inbound order and respond appropriately within 1 second.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As discussed in the Initial Notice and Amendment Nos. 1 and 2, the purpose of the proposed rule change is to increase the flexibility of CSE execution systems to accommodate member needs. Specifically, CSE proposes to modify CSE's execution functionality within the CSE System from a process of automatically matching and executing like-priced displayed orders and quotes to an optional process of delivering orders to quoting CSE members and requiring automated responses from such members back to the CSE System. CSE is proposing this modification to facilitate a diverse membership base while promoting a fair and orderly market. CSE members that operate as electronic communications networks ("ECNs")[7] or alternative trading systems ("ATSs") subject to SEC Regulation ATS,[8] as well as members that act as Designated Dealers or specialists on CSE will have the option of selecting the type of centralized execution system that best fits their business model.

In an order delivery and automated response system, a member's quotation or displayed order will be held in the CSE System, and when a contra-side order is received in the CSE System, CSE will immediately forward the order

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 45873 (May 3, 2002), 67 FR 31856 ("Initial Notice"). No comments have been received on the proposal.

[4] See letter from Jennifer M. Lamie, CSE, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission (September 12, 2002) ("Amendment No. 1").

[5] See letter from Jennifer M. Lamie, CSE, to Katherine England, Assistant Director, Division, Commission (September 16, 2002) ("Amendment No. 2").

[6] In the Initial Notice, reference was made to a defined term, the CSE Over-the-Counter Unlisted Trading Privileges System ("CSE OTC–UTP System"). This reference created ambiguity, because the term CSE OTC–UTP System is defined in and ostensibly created by a pending CSE rule filing (File No. SR–CSE–2001–04) that has been published in the **Federal Register** for comment, but has not been approved by the Commission. See Securities Exchange Act Release No. 45405 (February 6, 2002), 67 FR 6558 (February 12, 2002). Because of this ambiguity and because of the lack of need for such a defined term in the instant proposal, the Exchange requested that the Commission remove the defined term, CSE OTC–UTP System, from the purpose section of the instant proposal. Telephone discussion between Jeffrey T. Brown, Vice President, Regulation and General Counsel, CSE, and Katherine England, Assistant Director, and Christopher B. Stone, Attorney Advisor, Division, Commission (October 3, 2002).

[7] ECNs are defined in SEC Rule 11Ac1–1(a)(8), 17 CFR 240.11Ac1–1(a)(8), as any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or OTC market maker, and permits such orders to be executed against in whole or in part.

[8] 17 CFR 242.300–303.

message to the quoting member, who will be obligated by rule to respond instantaneously to the order message. Moreover, the quoting member must have a demonstrated capability to respond instantaneously to the order message. On receipt of the order message delivered by CSE, the quoting member will automatically determine whether its quote is still active. If so, the member will automatically deliver to the CSE System matched orders representing its quote and the contra-side for execution. If the member's quote is in the process of changing due to a prior internal match at the displayed price, consistent with the Firm Quote Rule,[9] the member will reject the inbound order and send it back to the CSE System. The CSE System will then automatically send a cancellation message to the member submitting the order. The entire duration of the order delivery and automated response process likely will be less than one second.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of Section 6(b) of the Act,[10] in general, and Section 6(b)(5) of the Act,[11] in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Further, the Exchange believes that the proposal, as amended, is consistent with Section 6(b)(8) of the Act [12] in that it is not designed to impose any burden on competition not necessary or appropriate in furtherance of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended by Amendment Nos. 1 and 2, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change, including Amendment Nos. 1 and 2.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether the amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–2002–04 and should be submitted by November 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26023 Filed 10–10–02; 8:45 am]

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[9] 17 CFR 240.11Ac1–1.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(8).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46594; File No. SR–NASD–2002–109]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees for Nasdaq's InterMarket

October 3, 2002.

On August 8, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (i) Modify the execution fees for Nasdaq InterMarket trades executed through the Intermarket Trading System ("ITS") and Nasdaq's Computer Assisted Execution System ("CAES"); and (ii) establish a credit for the liquidity provider for executions via ITS and CAES.[3] The proposed rule change was published in the **Federal Register** on September 3, 2002.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[5] Specifically, the Commission believes that the proposal is consistent with Section 15A(b)(5) of the Act,[6] which requires that the rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls, and Section 15A(b)(6) of the Act,[7] which requires, among other things, that the rules of an association promote just and equitable

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On June 13, 2002, the NASD, through its subsidiary, Nasdaq, filed a similar proposed rule change that was effective upon filing pursuant to Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A). See Securities Exchange Act Release No. 46153 (July 1, 2002), 67 FR 45164 (July 8, 2002) (SR–NASD–2002–68). The proposal was summarily abrogated by Commission order on July 2, 2002. See Securities Exchange Act Release No. 46159, 67 FR 45775 (July 10, 2002).

[4] See Securities Exchange Act Release No. 46419 (August 27, 2002), 67 FR 56333.

[5] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–3(b)(5).

[7] 15 U.S.C. 78o–3(b)(6).

principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest. The Commission believes that the proposed fee structure, which is similar to the fee structures in place for Nasdaq's SuperSOES and SuperMontage systems,[8] may encourage members to provide additional liquidity to support executions through Nasdaq's InterMarket and thereby enhance its competitiveness.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASD–2002–109) is approved.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26026 Filed 10–10–02, 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46620; File No. SR–NYSE–2002–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Shareholder Approval of Equity Compensation Plans and the Voting of Proxies

October 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 7, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On August 16, 2002, the NYSE filed with the Commission amendments to its Listed Company Manual to implement significant changes to its listing standards aimed at helping to restore investor confidence by empowering and ensuring the independence of directors and strengthening corporate governance practices ("SR–NYSE–2002–33" or the "Corporate Governance Proposals").[3] The Exchange represents that this filing excerpts certain proposed rule changes from the Corporate Governance Proposals relating to shareholder approval of equity-compensation plans and the voting of proxies, in compliance with a request from the Commission staff to address these issues separately from the remainder of the Corporate Governance Proposals.

The text of the proposed rule change is available at the Office of the Secretary, NYSE, at the Commission, and is also incorporated into the language of Item II, Section A below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE states that it has long pioneered advances in corporate governance. The NYSE represents that it has required companies to comply with listing standards for nearly 150 years, and has periodically amended and supplemented those standards when the evolution of our capital markets has demanded enhanced governance standards or disclosure. On February 13, 2002, SEC Chairman Harvey Pitt asked the Exchange to review its corporate governance listing standards. In conjunction with that request, the NYSE appointed a Corporate Accountability and Listing Standards Committee (the "Committee") to review the NYSE's current listing standards, along with recent proposals for reform, with the goal of enhancing the accountability, integrity and transparency of the Exchange's listed companies. On August 16, 2002, the NYSE filed the Corporate Governance Proposals with the Commission, proposing rule changes to its corporate governance standards which reflect the findings of the Committee and which are designed to further the ability of honest and well-intentioned directors, officers and employees to perform their functions effectively. The proposals for new corporate governance listing standards for companies listed on the Exchange are proposed to be codified in a new Section 303A of the Exchange's Listed Company Manual.[4]

Subsequent to the filing of the Corporate Governance Proposals, the Commission staff requested that the NYSE file proposed Section 303A(8) (relating to shareholder approval of equity-compensation plans) and proposed NYSE Rule 452 (which prohibits member organizations from giving a proxy to vote on equity-compensation plans absent specific instructions from a beneficial holder) separately from its remaining proposals to expedite review and processing of these portions of the Corporate Governance Proposals. The proposed rule change filed herewith amends proposed Section 303A(8) as originally filed to clarify its meaning in several respects,[5] and also proposes to make conforming changes to current Sections 303.00 and 312.03 of the Listed Company Manual and NYSE Rule 452.

As amended, rule language of proposed Section 303A(8) of the Exchange's Listed Company Manual is as follows:

[8] *See* Securities Exchange Act Release Nos. 44910 (October 5, 2001), 66 FR 52167 (October 12, 2001) (SR–NASD–2001–67); and 45906 (May 10, 2002), 67 FR 34965 (May 16, 2002) (SR–NASD–2002–44).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* File No. SR–NYSE–2002–33 (August 16, 2002).

[4] In its Report to the NYSE Board, the Committee set forth basic principles followed in many cases by explanation and clarification. The NYSE is adopting the recommendations as standards in substantially the form they were made by the Committee and adopted by the NYSE Board. Accordingly, the format used will state a basic principle, with the additional explanation and clarifications included as "commentary."

While many of the requirements set forth in this new rule are relatively specific, the Exchange is articulating a philosophy and approach to corporate governance that companies are expected to carry out as they apply the requirements to the specific facts and circumstances that they confront from time to time. Companies and their boards are expected to apply the requirements carefully and in good faith, making reasonable interpretations as necessary, and disclosing the interpretations that they make.

[5] Section 303A(11) of the Corporate Governance Proposals clarifies that the NYSE will continue its practice of accommodating the home country practices of our listed foreign private issuers with respect to the proposed corporate governance standards. In light thereof, the NYSE will not require foreign private issuers to comply with Section 303A(8) as proposed herein, assuming that they have provided to the Exchange the home country practice certification referred to in Section 303.00 of the Listed Company Manual.

8. To increase shareholder control over equity-compensation plans, shareholders must be given the opportunity to vote on all equity-compensation plans, except inducement awards, plans relating to mergers or acquisitions, and tax qualified and parallel nonqualified plans.

Commentary: Equity-compensation plans[6] can help align shareholder and management interests, and equity-based awards have become very important components of employee compensation. In order to provide checks and balances on the process of earmarking shares to be used for equity-based awards, and to provide shareholders a voice regarding the resulting dilution, the Exchange requires that all equity-compensation plans, and any material revisions to the terms of such plans, be subject to stockholder approval.[7]

For these purposes, a "material revision" would include, but not be limited to, a revision that: materially increases the number of shares available under the plan (other than an increase solely to reflect a reorganization, stock split, merger, spinoff or similar transaction);[8] changes the types of awards available under the plan; materially expands the class of persons eligible to receive awards under or otherwise participate in the plan; materially extends the term of the plan; or materially changes the method of determining the strike price of options under the plan.[9] In addition, if a plan contains a provision that prohibits repricing of options, any revision that deletes or limits the scope of such a provision will be considered a material revision for purposes of this rule. If a plan does not contain a provision that specifically permits repricing of options, the plan will be considered for this purpose as prohibiting repricing, and any actual repricing of options will be considered a material revision of the plan, even if the plan itself is not revised.[10]

There are certain types of plans and awards, however, which are appropriately exempt from this shareholder approval requirement. Employment inducement awards—that is, grants of options or shares as a material inducement to such person's first becoming an employee of the issuer or any of its subsidiaries—will not be subject to shareholder approval under this rule. The Exchange recognizes the urgency that may attach to the granting of options and other equity-based compensation in the context of inducing a candidate to accept employment and the resulting impracticality of obtaining a shareholder vote in these situations.

In the case of corporate acquisitions and mergers, two exceptions are appropriate. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in corporate acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that were previously approved by shareholders. These shares may be used for post-transaction grants of options and other equity awards by the listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or another plan, without further shareholder approval, so long as (1) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company at the time the merger or acquisition was consummated. The Exchange would view a plan adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. The NYSE believes that this exception is appropriate because it believes that it will not result in any increase in the aggregate potential dilution of the combined enterprise.[11]

Because inducement awards and mergers or acquisitions are not routine occurrences, and are not likely to be abused, the Exchange considers these exceptions to be consistent with the fundamental policy involved in this standard.

Similarly, any plan intended to meet the requirements of Section 401(a)[12] of the Internal Revenue Code (*e.g.*, ESOPs), any parallel nonqualified plan,[13] and any plan intended to meet the requirements of Section 423[14] of the Internal Revenue Code is exempt from the shareholder approval requirement. Plans such as Section 401(a) plans and Section 423 plans are already regulated under the Internal Revenue Code and Treasury regulations. Section 423 plans, which are stock purchase plans under

[6] For these purposes, and "equity compensation plan" would not include any plan that is made available to shareholders generally (such as typical dividend reinvestment plan). In addition, an "equity compensation plan" would not include a plan that merely provides a convenient way (for example, through payroll deductions) for employees, directors or other service providers to buy shares on the open market or from the issuer, even if the brokerage and other costs of the plan are subsidized. However, if employees, directors or service providers pay less than fair market value for shares under the plan, and the plan is not made available to shareholders generally, the plan would be considered to be an "equity compensation plan" for these purposes.

[7] For the sake of clarity, the Exchange notes that its traditional "treasury stock exception" will no longer be available with respect to this requirement.

[8] For these purposes, an automatic increase in the shares available under a plan pursuant to a formula set forth in the plan (sometimes referred to as an "evergreen" formula) will not be considered a revision if the term of the plan is limited to a specified period of time not in excess of ten years. *See also* footnote 15 below with respect to plans with evergreen formulas that were adopted before the effective date of this rule.

[9] A change in the method of determining "fair market value" from the closing price on the date of grant to the average of the high and low price on the date of grant is an example of a formula change that the Exchange would not view as material.

[10] For these purposes, a "repricing" means any of the following (or any other action that has the same effect as any of the following): (1) Amending the terms of an option after it is granted to lower its strike price; (2) any other action that is treated as a repricing under generally accepted accounting principles; and (3) canceling an option at a time when its strike price is equal to or less than the fair market value of the underlying stock, in exchange for another option, restricted stock, or other equity, unless the cancellation and exchange occurs in connection with a merger, acquisition, spin-off or other similar corporate transaction. A cancellation and exchange described in clause (3) of the preceding sentence will be considered a repricing regardless of whether the option, restricted stock or other equity is delivered simultaneously with the cancellation, regardless of whether it is treated as a repricing under generally accepted accounting principles, and regardless of whether it is voluntary on the part of the option holder.

[11] Note that any such shares reserved for listing in connection with the transaction would be counted by the Exchange in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock and thus required stockholder approval under Listed Company Manual Section 312.03(c).

[12] 26 U.S.C. 401(a) (1988).

[13] The term "parallel nonqualified plan" means a plan that is a "pension plan" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. 1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may hereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless (1) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitations that may hereafter be enacted) and (2) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence.

[14] 26 U.S.C. 423(1988).

which an employee can purchase no more than $25,000 worth of stock per year at a plan-specified discount capped at 15%, are also required under the Internal Revenue Code to receive shareholder approval. While Section 401(a) plans and their parallel nonqualified plans are not required to be approved by shareholders, the shares issued under these plans must be "expensed" (*i.e.*, treated as a compensation expense on the income statement) by the company issuing the shares. Equity compensation plans that would qualify for the exception described in this paragraph but for features necessary to comply with foreign tax law in the non-U.S. jurisdiction in which the employees covered by the plan reside, are also exempt from shareholder approval under this section.

In circumstances in which equity compensation plans and amendments thereto are not subject to shareholder approval, the plans and amendments still must be subject to the approval of the company's compensation committee or a majority of the company's independent directors.

This rule will be applicable to a plan adopted before the effective date of this rule only upon any subsequent material revision of the plan.[15]

In addition, the Exchange will preclude its member organizations from giving a proxy to vote on equity compensation plans unless the beneficial owner of the shares has given voting instructions. This will be codified in proposed changes to NYSE Rule 452.[16]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Shareholder Vote on Equity Compensation Plans

The Exchange represents that this recommendation received particular support from the institutional investor community. They urged the NYSE Board not to dilute either the shareholder vote requirement or the broker vote prohibition. However, numerous constituents expressed concerns about both recommendations.

A. Shareholder Approval

The Exchange represents that more than half of the larger companies, financial institutions and associations that commented on this issue maintained that only plans that offer options to officers and/or directors should be subject to shareholder approval. Many companies argued that subjecting broad-based equity compensation plans to the shareholder approval requirement would lessen their ability to compensate rank-and-file employees with stock options, putting NYSE-listed companies at a competitive disadvantage in the labor market. They urged that the board should be able to adopt stock option plans for non-executive employees without shareholder approval; some suggested instead a requirement that all plans be approved by an independent compensation committee.

Some commentators advocated exceptions for inducement awards or new hire grants (citing competitive employment markets) and tax-qualified plan awards (citing the alternative regulatory framework provided by the tax code), subject perhaps to approval by the independent compensation committee. One company suggested that there should be an exemption for situations where full-value stock is used to deliver an award that would otherwise be paid in cash. Another company noted that some plans are part of collective bargaining arrangements and urged that these be excluded from the shareholder approval requirement. Another comment advocated excepting "inducement awards" made to *any* employee of a merger or acquisition target.

In addition, there were a number of detailed questions regarding plans approved prior to effectiveness of the new rules, amendments to plans, and plans run by an acquired company.

The Exchange responds that it has clarified that inducement awards acquired in certain mergers or acquisitions, tax qualified plans and parallel nonqualified plans would be exempt, but all other plans would require shareholder approval.

B. Elimination of Broker Voting

The Exchange represents that the institutional investor community gave strong support to this proposal. Many large companies, however, strongly urged the NYSE to maintain its existing rules, fearing primarily the increased proxy costs and increased uncertainty that the proposed change would entail. Large and small companies alike cited quorum difficulties and solicitation expenses that result when brokers are not allowed to vote uninstructed shares after a 10-day period. One such commentator warned that because of retail investor confusion about voting mechanics, there is a risk that the elimination of the discretionary broker vote will disenfranchise investors if not accompanied by an aggressive and vigorous program to educate them about how to vote their shares. Many commentators also expressed concern that institutional shareholders may simply vote their shares in accordance with strict internal or third-party guidelines or policies, rather than giving each plan individual consideration. One organization suggested proportional or mirror voting by brokers of uninstructed shares.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[15] A plan adopted before the effective date of this rule that contains an evergreen formula rather than setting forth a specific number of shares available under the plan must be submitted to shareholders for approval before the next increase in shares pursuant to the evergreen formula that occurs on or after the effective date of this rule, unless the plan (including the evergreen formula) was approved by shareholders before the effective date of this rule. *See also* footnote 8 above.

[16] The NYSE will establish a working group to advise with respect to the need for, and design of, mechanisms to facilitate implementation of the proposal that brokers may not vote on equity compensation plans presented to shareholders without instructions from the beneficial owners. This will not delay the immediate effectiveness of the broker-may-not-vote proposal.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2002–46 and should be submitted by November 1, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26037 Filed 10–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46606; File No. SR–OCC–2002–12]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Accelerating the Maturity Date for Certain Adjusted Security Futures Contracts

October 4, 2002.

I. Introduction

On June 25, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change OCC–2002–12 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on August 13, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The purpose of the proposed rule change is to permit OCC to accelerate the maturity date of stock futures contracts that have been adjusted to call only for delivery of a fixed amount of cash. If the issuer of an underlying security were party to a cash merger in which its stock was converted into a right to receive cash only, futures on that stock would ordinarily be adjusted to call for delivery of the cash. Under the proposed rule change, OCC would have authority to accelerate the maturity dates of the adjusted futures to fall on or shortly after the effective date of the merger. The final settlement price for all accelerated futures, regardless of maturity date, will be fixed at the amount of cash into which the underlying security has been converted.

The proposed rule change parallels OCC Rule 807, which governs the acceleration of European-style FLEX equity options. Acceleration of the expiration date for European-style options that have been adjusted to call for delivery of cash results in the acceleration of the options' ability to be exercised and therefore in the acceleration of payment of the exercise settlement amount to the holder if the option is in the money. Futures contracts, by contrast, are marked to market daily and settlement of an accelerated contract will occur through a final mark-to-market payment based on the amount of cash into which the underlying security has been converted.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to protect investors and the public interest.[3] By enabling OCC to advance the maturity dates of stock futures contracts when those contracts have been adjusted to call for a fixed amount of cash, the proposed rule change allows OCC to relieve market participants of the burden of continuing to maintain and account for open interest in contracts that no longer are subject to increases or decreases in value. Accordingly, the Commission finds that the rule change is consistent with OCC's obligation under Section 17A of the Act to protect investors and the public interest.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2002–12) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26021 Filed 10–10–02; 8:45 am]

BILLING CODE 8010–01–P

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 46319 (August 6, 2002), 67 FR 52766.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; as Amended; New System of Records and New Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

ACTION: New System of Records and Proposed Routine Uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to establish a new system of records entitled the *Visitor Intake Process/Customer Service Record (VIP/CSR) System*, 60–0350, together with routine uses applicable to this system of records. The proposed system of records will consist of information collected from and about visitors to SSA field offices (FOs). This proposed system would assist SSA in improving the services it provides to visitors to our FOs.

DATES: We filed a report of the proposed system of records and routine uses with the Chairman of the Senate Governmental Affairs Committee, the Chairman of the House Government Reform Committee, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on October 2, 2002. The proposed system of records will become effective on November 11, 2002, unless we receive comments on or before that date that would warrant our not implementing the system of records.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be

available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela McLaughlin, Social Insurance Specialist, Social Security Administration, Room 3–C–2 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone (410) 965–3677, e:mail: *pam.mclaughlin@ssa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed New System of Records, the VIP/CSR System, 60–0350

A. General Background

The *VIP/CSR System*, 60–0350, is designed to simplify and control all stages of interview and appointment tracking. The proposed *VIP/CSR System* will maintain information that SSA will use for management information and administrative purposes, such as tracking scheduled appointments and monitoring visitor information, and programmatic purposes associated with individuals' claims for benefits under programs administered by SSA.

B. Collection and Maintenance of the Data for the Proposed VIP/CSR System, 60–0350

SSA will collect the information that will be housed in the *VIP/CSR System* from visitors to SSA FOs, from other SSA Privacy Act systems of records such as the *Master Beneficiary Record, Supplemental Security Income and Special Veterans Benefits Record and Claims Folders System*, and via SSA processes used in conducting business with visitors (*e.g.*, appointment dates and times). The information will be maintained in manual and electronic formats. The information maintained will include personal information of the visitor such as name, Social Security number (SSN) and date of birth, appointment information and other information relating to the purpose of the visit. (See the "Categories of Records" section of the notice below for a description of the records that will be maintained in the *VIP/CSR System*.) We will retrieve information from the proposed system of records by using the visitor's/claimant's name and/or SSN. Thus, the *VIP/CSR System* will constitute a system of records under the Privacy Act.

II. Proposed Routine Use Disclosures of Data Maintained in the Proposed VIP/CSR System, 60–0350

A. Proposed Routine Use Disclosures

We are proposing to establish routine uses of information that will be maintained in the proposed new system as discussed below.

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that Office's assistance in a matter relating to information contained in this system of records. Information will be disclosed when the Office of the President makes an inquiry and indicates that it is acting on behalf of the individual whose record is requested.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

We will disclose information under this routine use only in situations in which an individual may ask his or her congressional representative to intercede in a matter relating to information contained in this system of records. Information will be disclosed when the congressional representative makes an inquiry and indicates that he or she is acting on behalf of the individual whose record is requested.

3. To the Department of Justice (DOJ), a court, or other tribunal, or other party before such tribunal when:

(a) SSA, or any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components

is party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court, or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

We will disclose information under this routine use only as necessary to enable DOJ to effectively defend SSA, its components or employees in litigation involving the proposed new system of records and ensure that courts and other tribunals have appropriate information.

4. To contractors and other Federal agencies, as necessary, to assist SSA in the efficient administration of its programs.

We will disclose information under this routine use only in situations in which SSA may enter into a contractual agreement or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

5. To student volunteers, individuals working under a personal services contract, and other individuals performing functions for SSA but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

Under certain Federal statutes, SSA is authorized to use the service of volunteers and participants in certain educational, training, employment and community service programs. Examples of such statutes and programs include: 5 U.S.C. 3111 regarding student volunteers and 42 U.S.C. 2753 regarding the College Work-Study Program. We contemplate disclosing information under this routine use only when SSA uses the services of these individuals, and they need access to information in this system to perform their assigned agency duties.

6. Non-tax return information which is not restricted from disclosure by federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. 2904, as amended, with promulgating standards, procedures and guidelines regarding record management and conducting records management studies. 44 U.S.C. 2906, as amended, provides that GSA and NARA are to have access to federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use will facilitate disclosure.

B. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulations (20 CFR part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. Section 401.150(c) of SSA Regulations permits us to disclose information under a routine use where necessary to carry out SSA programs. Section 401.120 of SSA Regulations provides that we will disclose information when a law specifically requires the disclosure. The proposed routine uses numbered 1 through 5 above will ensure efficient administration of the *VIP/CSR System*; the disclosure that would be made under routine use number 6 is required by Federal law. Thus, all the routine uses are appropriate and meet the relevant statutory and regulatory criteria.

III. Records Storage Medium and Safeguards for the Proposed New System, the VIP/CSR System, 60–0350

SSA will maintain information in the *VIP/CSR System* in electronic and paper form. Only authorized SSA personnel who have a need for the information in the performance of their official duties will be permitted access to the information. We will safeguard the security of the information by requiring the use of access codes to enter the computer system that will maintain the data and will store computerized records in secured areas that are accessible only to employees who require the information to perform their official duties. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas.

Contractor personnel having access to data in the proposed system of records will be required to adhere to SSA rules concerning safeguards, access and use of the data.

SSA and contractor personnel having access to the data on this system will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system. See 5 U.S.C. 552a(i)(1).

IV. Effect of the Proposed New System of Records, the VIP/CSR, 60–0350 on the Rights of Individuals

The information that will be maintained in the *VIP/CSR System* will enable SSA to provide more timely and efficient service to visitors conducting business in SSA FOs. This will increase customer satisfaction with the services SSA provides to the public. Additionally, SSA will adhere to all applicable provisions of the Privacy Act, Social Security Act and other Federal statutes that govern our use and disclosure of the information. Thus, we do not anticipate that this system of records will have an unwarranted effect on the privacy of individuals that will be covered by the *VIP/CSR System*.

Dated: October 1, 2002.

Jo Anne B. Barnhart,

Commissioner.

60–0350

SYSTEM NAME:

Visitor Intake Process/Customer Service Record (VIP/CSR) System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems, 6401 Security Boulevard, Baltimore, Maryland 21235

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system covers visitors to the Social Security Administration (SSA—field offices (FOs) for various purposes (see "Purpose(s):" section below).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the following information about each visitor: (1) Visitor information such as Social Security number (SSN), full name and date of birth, when such information is provided by the visitor; (2) visit information such as the time visitor entered and left the office, an assigned group number, number of interviews associated with the visit and remarks associated with the visit; (3) appointment information such as date/time of appointment, source of appointment and appointment unit number (unit establishing appointment); (4) notice information such as close-out notice type (*e.g.*, title II 6-month closeout letter, title XVI SSA–L991) and close-out notice date/time when sent; (5) interview information such as each occurrence, subject of interview, estimated waiting time, preferred language, type of translator, number of interview in queue, interview disposition (*e.g.*, completed, deleted, left without service), interview priority, start and ending time and name of interviewer; and (6) SSN, full name and relationship to claimant/beneficiary, when such information is provided.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 222, 223, 225, 1611, 1615, 1631 and 1633 of the Social Security Act (42 U.S.C. 422, 423, 425, 1382, 1382d, 1383 and 1383b); the Federal Records Act of 1950 (Pub. L. 81–754, 64 Stat. 583), as amended.

PURPOSE(S):

Information in this system will be used to:

- Provide a means of collecting waiting time data on all in-office interviews in SSA FOs;
- Provide management information on other aspects of all in-office interviews in SSA FOs;
- Provide a source for customer service record data collection for such interviews, and
- Capture discrete data about the volume and nature of inquiries to support management decisions in the areas of process improvement and resource allocation.

Also, information collected from visitors to SSA FOs will be used for filing claims for benefits under title II, transacting post-entitlement actions if currently entitled to benefits under title II, filing claims for benefits under title XVI, transacting post-eligibility actions if currently eligible for benefits under title XVI, obtaining an SSN, transacting other actions related to a SSN, or other actions/queries that may require an interview at the Social Security Administration (SSA).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures may be made for routine uses as indicated below.

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

3. To the Department of Justice (DOJ), a court, or other tribunal, or other party before such tribunal when:

(a) SSA, or any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components

is party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court, or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

4. To contractors and other Federal agencies, as necessary, to assist SSA in the efficient administration of its programs.

5. To student volunteers, individuals working under a personal services

contract, and other individuals performing functions for SSA but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

6. Non-tax return information which is not restricted from disclosure by federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in both electronic and paper form (*e.g.*, magnetic tape and disc and microfilm).

RETRIEVABILITY:

Records in this system will be retrieved by the individual's SSN and/or name.

SAFEGUARDS:

Security measures include the use of access codes to enter the computer system which will maintain the data, and storage of the computerized records in secured areas which are accessible only to employees who require the information in performing their official duties. SSA employees who have access to the data will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in the system. *See* 5 U.S.C. 552a(i)(1).

Contractor personnel and/or alternate participants having access to data in the system of records will be required to adhere to SSA rules concerning safeguards, access and use of the data.

RETENTION AND DISPOSAL:

Records in this system are retained for one year when they pertain to documents provided by and returned to an individual, denial of requests for confidential information, release of confidential information to an authorized third party, and undeliverable material. Records are maintained for 4 years when they contain information and evidence pertaining to Social Security coverage, wage, and self-employment determinations or when they affect future claims development. Additional information collected such as waiting time information may be retained for longer periods for purposes of analysis and process improvement, without regard to individual records.

The means of disposal of the information in this system will be appropriate to the storage medium (*e.g.*, deletion of individual electronic records or shredding of paper records).

SYSTEM MANAGER(S) AND ADDRESS:

Associate Commissioner, Office of Systems, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURE(S):

An individual can determine if this system contains a record about him/her by writing to the system manager(s) at the above address and providing his/her name, SSN or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license. If an individual does not have identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth along with one other piece of information such as mother's maiden name) and ask for his/her consent in providing information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

RECORD ACCESS PROCEDURE(S):

Same as "Notification" procedure(s). Requesters also should reasonably specify the record contents they are seeking. These procedures are in accordance with SSA Regulations (20 CFR 401.50).

CONTESTING RECORD PROCEDURE(S):

Same as "Notification" procedures. Requesters also should reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is untimely, incomplete, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from information collected from individuals interviewed in person in SSA FOs, from existing systems of records, such as the Claims Folders System, (60–0089), Master Beneficiary Record, (60–0090), Supplemental Security Income Record and Special Veterans Benefits, (60–0103), and from information generated by SSA, such as computer date/time stamps at various points in the interview process.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–25917 Filed 10–10–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–13537]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before December 10, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas W. Harrelson, Maritime Administration, MAR–590, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–4610, FAX: 202–366–5522 or e-mail: *thomas.harrelson@marad.dot.gov*. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Information Collection Activities Under Cargo Preference Statutes and Regulations, Including PR 17 and 46 CFR Part 381.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0013.

Form Numbers: MA–518.

Expiration Date of Approval: May 31, 2003.

Summary of Collection of Information: Title 46, App. U.S.C. 1241–1, Public Resolution 17, requires MARAD to monitor and enforce the U.S.-flag shipping requirements relative to the loans/guarantees extended by the Export-Import Bank (Eximbank) to foreign borrowers. Public Resolution 17 requires that shipments financed by Eximbank and that move by sea, must be transported exclusively on U.S.-flag registered vessels unless a waiver is obtained from MARAD.

Need and Use of the Information: The prescribed monthly report is necessary for MARAD to fulfill its responsibilities under Public Resolution 17, to ensure compliance of ocean shipping requirements operating under Eximbank financing, and to ensure equitable distribution of shipments between U.S.-flag and foreign ships. MARAD will use this information to report annually to Congress the total shipping activities during the calendar year.

Description of Respondents: Shippers subject to Eximbank financing.

Annual Responses: 336.

Annual Burden: 168 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. *EDT (or EST)*, Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

By Order of the Maritime Administrator,
Dated: October 7, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–26005 Filed 10–10–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–02–13546; Notice 1]

RIN 2127–AI72

Event Data Recorders

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: Over the past several years, NHTSA has been actively involved with Event Data Recorders (EDRs) in motor vehicles. EDRs collect vehicle and occupant-based crash information. The agency's involvement has included sponsoring two working groups, using data from EDRs in crash investigations, and conducting research and development. Particularly since the two working groups have completed their work, we request comments on what future role the agency should take related to the continued development and installation of EDRs in motor vehicles.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than January 9, 2003.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590:

For technical and policy issues: Dr. William Fan, Office of Crashworthiness Standards, NPS–11, telephone (202) 366–4922, facsimile (202) 366–4329.

For legal issues: J. Edward Glancy, Office of the Chief Counsel, NCC–20, telephone (202) 366–2992, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION:

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d. Role of NHTSA
III. Rulemaking Analyses and Notices
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I. Introduction

Over the past several years, there has been considerable interest in the safety community regarding possible safety benefits from the use of Event Data Recorders (EDRs) in motor vehicles.

Types and uses of EDRs. EDRs collect vehicle and occupant-based crash information. They can be simple or complex in design, scope, and reach. Some systems collect only vehicle acceleration/deceleration data, while others collect these data plus a host of complementary data, such as driver inputs (*e.g.*, braking and steering) and vehicle systems status. [1]

The information collected by EDRs aids investigations of the causes of crashes and injury mechanisms, and makes it possible to better define safety problems. The information can ultimately be used to improve motor vehicle safety.

EDRs have been installed as standard equipment in an increasingly large number of light motor vehicles in recent years. Moreover, these devices have become more advanced with respect to the amount and type of data recorded. We estimate that essentially all model year 2002 passenger cars and other light vehicles have some recording capability, and that more than half record such things as crash pulse data.

Research and development. In 1997, the National Transportation Safety Board (NTSB) issued Safety Recommendation H–97–18 to NHTSA, recommending that we "pursue crash information gathering using EDRs." Also, in that year, the National

[1] Since the term "EDR" can be used to cover many different types of devices, we believe it is important to define the term for purposes of this document. When we use the term "EDR" in this document, we are referring to a device that is installed in a motor vehicle to record technical vehicle and occupant-based information for a *brief* period of time (*i.e.*, seconds, not minutes) before, during and after a crash. For instance, EDRs may record (1) pre-crash vehicle dynamics and system status, (2) driver inputs, (3) vehicle crash signature, (4) restraint usage/deployment status, and (5) certain post-crash data such as the activation of an automatic collision notification (ACN) system. We are *not* using the term to include any type of device that either makes an audio or video record, or logs data such as hours of service for truck operators.

Aeronautics and Space Administration (NASA) Jet Propulsion Laboratory (JPL) recommended that NHTSA "study the feasibility of installing and obtaining crash data for safety analyses from crash recorders on vehicles." In 1999, NTSB issued a second set of recommendations to NHTSA related to EDRs, H–99–53 and 54, recommending that we require EDRs to be installed on school buses and motor coaches.

In early 1998, NHTSA's Office of Research and Development (R&D) formed a Working Group comprised of industry, academia, and other government organizations. The group's objective was to facilitate the collection and utilization of collision avoidance and crashworthiness data from on-board EDRs.

The NHTSA EDR Working Group held six meetings between October 1998 and December 2000. The Working Group explored both original equipment manufacturer (OEM) and aftermarket systems, and also looked into data collection and storage.

In August 2001, the NHTSA EDR Working Group published a final report on the results of its deliberations.[2] Highlights of the Working Group findings were the following:

1. EDRs have the potential to greatly improve highway safety, for example, by improving occupant protection systems and improving the accuracy of crash reconstructions.

2. EDR technology has potential safety applications for all classes of motor vehicles.

3. A wide range of crash related and other data elements have been identified which might usefully be captured by future EDR systems.

4. NHTSA has incorporated EDR data collection in its motor vehicle research databases.

5. Open access to EDR data (minus personal identifiers) will benefit researchers, crash investigators, and manufacturers in improving safety on the highways.

6. Studies of EDRs in Europe and the U.S. have shown that driver and employee awareness of an on-board EDR reduces the number and severity of drivers' crashes.

7. Given the differing nature of cars, vans, SUVs, and other lightweight vehicles, compared to heavy trucks, school buses, and motor coaches, different EDR systems may be required to meet the needs of each vehicle class.

8. The degree of benefit from EDRs is directly related to the number of vehicles operating with an EDR and the current infrastructure's ability to use and assimilate these data.

9. Automatic crash notification (ACN) systems integrate the on-board crash sensing and EDR technology with other electronic systems, such as global positioning systems and cellular telephones, to provide early notification of the occurrence, nature, and location of a serious collision.

10. Most systems utilize proprietary technology and require the manufacturer to download and analyze the data.

The record of the NHTSA EDR Working Group, including both minutes of the meetings and the final report, is in Docket NHTSA–99–5218. Persons interested in additional information about EDRs may wish to examine section 12 of the final report, which sets forth a bibliography and references.

Meanwhile, in 2000, NHTSA sponsored a second working group related to EDRs, the NHTSA Truck & Bus EDR Working Group. This Working Group collected facts related to use of EDRs in trucks, school buses, and motor coaches. The record of this second Working Group is in Docket NHTSA–2000–7699. Its final report was published in May 2002.[3]

In 2001, NHTSA developed a website for highway-based EDRs located at the following address: *http://www-nrd.nhtsa.dot.gov/edr-site/index.html.*

Federal Register notices. On two previous occasions, the agency has published documents in the **Federal Register** addressing particular questions about its role with respect to EDRs. Both occasions involved the denial of a petition for rulemaking asking us to require the installation of EDRs in new motor vehicles. (63 FR 60270; November 9, 1998 and 64 FR 29616; June 2, 1999.) The first petitioner, Mr. Price T. Bingham, a private individual, asked the agency to initiate rulemaking to require air bag sensors to be designed so that data would be recorded during a crash, allowing it to be read later by crash investigators. The petitioner cited a concern about air bag deployments that might be "spontaneous," but did not limit the petition to that issue. The second petitioner, Ms. Marie E. Birnbaum, also a private individual, asked us to initiate rulemaking to require passenger cars and light trucks to be equipped with "black boxes" (*i.e.*, EDRs) analogous to those found on commercial aircraft.

In responding to these petitions, NHTSA stated that it believed EDRs could provide information that is very valuable in understanding crashes, and that can be used in a variety of ways to improve motor vehicle safety. The agency denied the petitions because the motor vehicle industry was already voluntarily moving in the direction recommended by the petitioners, and because the agency believed "this area presents some issues that are, at least for the present time, best addressed in a non-regulatory context."

The agency has also received a third petition, from Dr. Ricardo Martinez, President of Safety Intelligence Systems Corporation, asking us to require the installation of EDRs in new motor vehicles. We have not yet responded to that petition. Copies of our responses to the two earlier petitions, and a copy of the petition submitted by Dr. Martinez, are being placed in the docket for this document.

Future actions. In light of the foregoing, the agency believes that it is appropriate to consider what role the agency should now be taking regarding the continued development of EDRs and their installation in motor vehicles.

II. Discussion of Issues

This section discusses a range of issues and presents a series of questions for public comment to aid the agency in evaluating what role it should take at this time relating to EDRs. The issues and questions are grouped as follows: (a) safety benefits, (b) technical issues, and (c) privacy issues. Finally, in section (d), we ask a general question about NHTSA's role in this area.

a. Safety Benefits

As we noted earlier, the information collected by EDRs aids investigations of the causes of crashes and injury mechanisms, and makes it possible to better define safety problems. This information can ultimately be used to improve motor vehicle safety. By way of illustration, the more that is known about such things as the change in velocity in real crashes and the more that is known about how key safety countermeasures work in real crashes (*e.g.*, which stage of a multi-stage air bag fired), the better the chances are of developing improved safety countermeasures and test procedures.

We invite comments on the following questions related to safety benefits:

(1) *Safety potential.* The NHTSA EDR Working Group concluded in its August 2001 final report (section 11.1) that EDRs have the potential to improve highway safety greatly. Do you agree with this finding? What do you see as the most significant safety potential of EDRs?

(2) *Application.* EDR technology has potential safety applications for all classes of motor vehicles. Do you believe different types of EDRs should be used for different vehicle types, such as light duty vehicles, heavy trucks, intercity motor coaches, city transit buses and school buses? If so, why? If not, why not? Do you believe different types of EDRs should be used for different applications, such as private vehicles and commercial vehicles? If so, why? If not, why not?

(3) *Use of EDR data.* NHTSA has used EDR data primarily to improve its investigations and analyses of crashes. In some cases, EDR data includes information that the agency could not otherwise obtain; *e.g.*, which stage(s) of a multi-stage air bag deployed in a crash and when. In other cases, EDR data provide a more accurate indication of matters, *e.g.*, level of crash severity, that have previously been estimated based on crash reconstruction programs. NHTSA includes the new or improved information from EDRs in its crash databases as appropriate. We request comments concerning how other parties, including government agencies, vehicle manufacturers, insurance companies, and researchers, are using these data. We also request comments concerning other potential uses of these data, by NHTSA and/or other parties, which are related to improving vehicle safety, either in the short term or long term.

(4) *Future safety benefits.* What additional safety benefits are likely from continued development, installation, collection, storage, and use of EDRs?

(5) *Research databases.* NHTSA acquires EDR data in its Special Crash Investigations (SCI), National Automotive Sampling System Crashworthiness Data System (NASS–CDS), and Crash Injury Research and Engineering Network (CIREN) and incorporates them in its motor vehicle research databases. Have you ever used the EDR data stored in these databases? How could the presentation and/or use of EDR data be improved?

(6) *Prevention of crashes.* Several researchers have documented that the use of EDRs could have the potential to prevent crashes. Some studies of European fleets found that driver and employee awareness of an on-board EDR reduced the number of crashes by 20 to 30 percent, lowered the severity of such crashes, and decreased the associated costs. (See section 2.5.1.1 of the August 2001 NHTSA EDR Working Group final report.) These studies have generally been based on small samples and concentrated on commercial application of EDRs. We request comments on other studies of this type and on this potential benefit from EDRs, particularly for the U.S. driving population.

(7) *Possible new databases.* As more and more vehicles are equipped with EDRs, more EDR crash data will be generated. Collection of these data is likely to increase as state and local officials collect these data as part of their investigations. Do you have any recommendations for storing and maintaining a national or other database? Do you believe maintaining a database would be beneficial to motor vehicle safety? Please provide specific examples.

(8) *Standards.* What standards exist for collecting EDR data? The Society of Automotive Engineers (SAE) has a recommended practice (SAE J211) that provides guidance for collecting crash test data. Would it be possible to use this or similar standards for collecting EDR data regarding real-world crashes? The Institute of Electrical and Electronics Engineers, Inc. (IEEE) has recently initiated a new program to develop a standard for motor vehicle EDRs.[4] We request comments on the current activities of SAE, IEEE, and other standards organizations (U.S. and international) in developing standards for EDRs, and on what types of standards should be developed.

(9) *Standardization.* We request comments on whether there would be any safety benefits from standardizing certain aspects of EDRs, *e.g.*, defining specific data elements such as vehicle speed, brake application, air bag deployment time, etc. Would such standardization promote further development and implementation of automatic crash notification systems or other safety devices?

b. Technical Issues

(10) *Data elements.* The NHTSA EDR Working Group identified many data elements that could be collected by an EDR. See section 4 of the August 2001 final report.[5] More recently, the Truck & Bus EDR Working Group generated a list of 28 data elements. See section 4 of the May 2002 final report.[6] What data elements should be considered for inclusion in an EDR? Should they vary by vehicle type and/or application? Please provide a rationale for each element, with particular emphasis on how it would lead to improvements in safety. What costs are related to each of your proposed data elements?

(11) *Amount of data.* Many late-model vehicles are equipped with OEM-installed EDRs, but even among the vehicles of a given manufacturer, the type and amount of data collected vary. Do you have any recommendations for the amount of data to collect; *e.g.*, how long before the crash occurs should the data be collected? How should the data integrity be maintained?

(12) *Storage and collection.* Currently, data are accessed by a physical connection to the EDR unit. Manufacturers are developing wireless connections, *e.g.*, using a wireless probe near the crashed vehicle, or by having the on-board device upload the stored data to a central location using a telecommunications link, but such devices are not in widespread production. How should data be collected and stored in a motor vehicle? What measures should be in place to control traceability of EDR data to an actual vehicle or crash, such as EDR IDs or location and date stamping?

(13) *Training.* What training is needed for EDR data collection officials?

(14) *Survivability.* Recording and power systems need to withstand temperature and environmental effects, power failures, and the forces of different types and modes of crashes. They also need to be tamper proof. How can all these be accomplished? What needs to be done to ensure survivability of an EDR? What level of crash severity should an EDR be able to survive? What are the costs associated with producing an EDR with this level of crash survivability?

(15) *Effect of EDR technologies on your responses.* Indicate how the nature of the EDRs currently being installed in motor vehicles affects your answers to the questions in this notice. To the extent that future EDR technologies are foreseeable, how would the implementation of those technologies affect your answers?

c. Privacy Issues

The recording of information by EDRs raises a number of privacy issues.[7] These include the question of who owns the information that has been recorded, the circumstances under which other persons may obtain that information, and the purposes for which those other persons may use that information.

We recognize the importance of these privacy and related legal issues. The EDR Working Group, too, recognized their importance and devoted a considerable amount of time to discussing them. It also included a chapter on them in its August 2001 final report. Among other things, the chapter summarizes the positions that various participants in the EDR Working Group took on privacy issues.

[2] Event Data Recorders, Summary of Findings by the NHTSA EDR Working Group, August 2001. Final Report. (Docket No. NHTSA–99–5218–9)

[3] Event Data Recorders, Summary of Findings by the NHTSA EDR Working Group, May 2002, Final Report, Volume II, Supplemental Findings for Trucks, Motorcoaches, and School Buses. (Docket No. NHTSA–2000–7699–6)

[4] IEEE's program is titled IEEE Project 1616: Draft Standard, Motor Vehicle Event Data Recorders (MVEDRs). The web address for this program is *http://grouper.ieee.org/groups/1616/home.htm.*

[5] Docket No. NHTSA–99–5218–9.

[6] Docket No. NHTSA–2000–7699–6.

[7] We note that, in some press articles and op-ed pieces, persons have cited privacy issues as a reason for opposing the basic concept of EDRs.

We also recognize the importance of public acceptance of this device, whether voluntarily provided by vehicle manufacturers or required by the government. We note that General Motors informed the EDR Working Group (Docket No. NHTSA–99–5218–9; section 8.3.5) that it believes the risk of private citizens reacting negatively to the "monitoring" function of the EDR can be addressed through honest and open communications to customers by means of statements in owners' manuals informing them that such data are recorded. That company indicated that the recording of these data is more likely to be accepted if the data are used to improve the product or improve the general cause of public safety.

While we believe that continued attention to privacy issues is important, we observe that, from the standpoint of statutory authority, our role in protecting privacy is a limited one. For example, we do not have authority over such areas as who owns the information that has been recorded, or the circumstances under which other persons may obtain and use that information. These areas are covered by a variety of Federal and State laws not administered by NHTSA.

In our own use of information from EDRs, we are careful to protect privacy. As part of our crash investigations, including those with EDRs, we often obtain personal information. In handling this information, we are careful to comply with applicable provisions of the Privacy Act of 1974 and other statutory requirements that limit the disclosure of personal information by Federal agencies. In order to gain access to EDR data to aid our crash investigations, we obtain a release for the data from the owner of the vehicle. We assure the owner that all personally identifiable information will be held confidential.

We invite comments on the general topic of privacy as it relates to EDRs.

(16) *Privacy.* What organizations are analyzing privacy issues in the context of roadways, vehicles, and vehicle owners? Are any additional types of analyses needed? Are privacy concerns adequately met by the current Federal and State law and practices relating to the collection and use of the information recorded by EDRs? Are there significant differences in privacy and/or liability law among states, in the circumstances under which persons or institutions other than vehicle owners may obtain that information, and the purposes for which those other persons or institutions may use that information? In what circumstances are police officers and crash investigators (from government agencies or the private sector) allowed to access EDR data? What damages may result from inappropriate access to EDR data? What roles do technical solutions, such as data partitioning, encryption, and secure databases/vaults, play in addressing privacy concerns?

d. Role of NHTSA

(17) *Role of NHTSA.* Over the past several years, NHTSA has been actively involved with EDRs, through the two working groups discussed above, as part of its crash investigations, and in research and development. Particularly since one working group has completed its work and the other is nearing completion, we request comments on what future role the agency should take related to the continued development and implementation of EDRs in motor vehicles.

III. Rulemaking Analyses and Notices

NHTSA has considered the potential impacts of this request for comments under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This document was reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." This document has been determined to be significant under the Department's regulatory policies and procedures.

This document seeks comment on what future role the agency should take related to the continued development and implementation of EDRs in motor vehicles. The agency could take a variety of nonregulatory and/or regulatory actions.

This document does not contain any regulatory actions. Further, this agency has not identified any regulatory actions sufficiently likely to warrant calculation of possible benefits and costs. The EDRs currently installed in motor vehicles cost very little as they take advantage of the existing sensors, processor and memory that the vehicles have. We estimate that an EDR that records basic air bag related data such as air bag deployment, deployment timing, and seat belt status, with moderate survivability, typically costs five dollars or less. We believe that a substantial percentage of light vehicles are already being equipped with such an EDR. However, EDRs with additional sensors, processing capability and memory, and greater survivability capabilities, could cost more.

Given the costs associated with various EDRs, and the fact that 17 million light vehicles are produced each year, a rulemaking proposal for EDRs could, but would not necessarily, have cost impacts that exceed $100 million annually. If NHTSA were to initiate rulemaking and develop a rulemaking proposal, the agency would calculate the costs and benefits associated with the specific proposal and place its analysis in the docket for that proposal. The agency would also conduct the various other rulemaking analyses required by applicable statutes and Executive Orders.

IV. Submission of Comments

How Do I Prepare and Submit Comments?

Interested persons are invited to submit comments in response to this request for comments. For easy reference, the agency has consecutively numbered its questions. We request that commenters respond to each question by these numbers and provide all relevant factual information of which they are aware to support their conclusion or opinions, including but not limited to statistical data and estimated cost and benefits, and the source of such information.

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESS.**

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESS.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted By Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are 9 a.m. to 5 p.m., Monday to Friday, except Federal holidays.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

- Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).
- On that page, click on "search."
- On the next page (*http://dms.dot.gov/search/*), type in the five-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–2001–12345," you would type "12345." After typing the docket number, click on "search."
- On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued: October 8, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–26006 Filed 10–10–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application For Refund Of Purchase Price Of United States Savings Bonds For Organizations.

DATES: Written comments should be received on or before December 12, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application For Refund Of Purchase Price Of United States Savings Bonds For Organizations.

Form Number: PD F 5410.

Abstract: The information is requested to support refund of purchase price of savings bonds to and organization.

Current Actions: None.

Type of Review: Extension.

Affected Public: Business or other for-profit/not-for-profit institutions.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 500.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 7, 2002.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 02–25956 Filed 10–10–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Record

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of establishment of New System of Records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled "Telephone Care and Service Records–VA" (113VA112).

DATES: Comments on this new system of records must be received no later than November 12, 2002. If no public comment is received, the new system will become effective November 12, 2002.

ADDRESSES: You may mail or hand-deliver written comments concerning the proposed new system of records to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *"OGCRegulations@mail.va.gov"*. All relevant material received before

November 12, 2002 will be considered. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (727) 320–1839.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed System of Records

The primary purpose of telephone care and service function is to provide veterans with clinical advice and education related to symptoms or problems an enrolled veteran caller may be experiencing. Calls may be made by family members but records of the calls will be maintained in the enrolled veteran's record. Except in the case of emergencies, clinical advice and education may only be provided to enrolled veterans. In order to better track and retrieve information about previous calls, all records of calls will be maintained under the name of the enrolled veteran. Records will not be retrievable by the name of the caller. Telephone care and service provides another mode of access for veterans that is available 24 hours a day, seven days a week from any place in the country.

The telephone care function acts as a part of the primary and ambulatory care delivery system and augments that system by providing advice to callers over the telephone. When patients or family members call with a concern or request, a record of the call is developed, whether it be a clinical or administrative issue. Clinical symptom calls are managed through the use of pre-approved clinical algorithms that ask a series of questions and based on the answers to each question moves to the next question, which eventually leads to the advice that is to be provided to the caller. The record of the call captures the questions asked, answers given, particularly those answers that reflect something abnormal, and the advice provided. Documentation of this type of information is consistent with standard requirements for medical record documentation, which captures symptoms and findings as they relate to how specific questions are answered and a plan of action established. This information is also recorded in the patient's medical record. At a minimum, documentation includes the complaint(s) and symptoms of the enrolled veteran, the algorithm and/or protocol used and the advice given. Information is recorded either electronically or in handwritten notes in the progress notes of the medical record and in the Call Center database.

Acting as a part of the primary and ambulatory care delivery system, the telephone care function may provide private sector providers or facilities with relevant clinical information about enrolled veterans in urgent or emergent situations. Information such as allergies, results of recent lab tests, medications, recent health history or procedures may be provided.

Telephone care and service for clinical symptom calls are provided in a number of ways, including contracts with private sector vendors, contracts with VA facilities or Networks that have developed clinical Call Centers, or through medical center-based Call Centers in primary care and other types of clinics. A number of VA facilities and Networks are providing access to telephone care and service through clinics or medical center-based Call Centers during the day and through Network or contracted Call Centers during non-administrative hours. Protocols or algorithms are used at any of these sites when advice is given by a registered nurse without first consulting with a clinician and all of these calls must be documented in the medical record and Call Center database.

Keeping records of all calls to a clinical Call Center in a separate database is the standard of practice for clinical Call Centers and is a required accreditation standard of the Utilization Review Accreditation Commission (URAC) for clinical Call Centers. Accreditation by URAC or another clinical Call Center accrediting body, if one should become available, is required by the VHA Directive 2000–35, Telephone Care and Service.

This system allows a record of all previous calls made by or for a veteran to be accessed whenever patients or family members call, which improves both the quality and the timeliness of addressing callers' concerns. Records are generally collected and stored electronically for ease of retrieval by the veteran's name or other personal identifier. The primary purpose of the data in this system of records is for rapid retrieval and ease of access to a record of all calls made by or for veterans, including the complaints of the patient, the findings according to the algorithms and the advice provided. This information is also used for follow-up calls to some patients. Information is also used for aggregation of data for the purposes of monitoring and improving quality. Though information is retrievable by individual patient identifier, when reporting aggregate information for purposes, such as quality, patient identifiers are not provided.

Access to such records provide Call Center staff with information about previous contacts and the clinical symptoms reported by veterans in those contacts. The protocol used, education provided, advice given and actions taken by the caller in previous calls are readily available to Call Center staff each time a veteran or family member calls, which improves the quality of the services.

Access to patient-specific information located in Call Center databases and storage areas is restricted to VA employees and contract personnel on a "need-to-know" basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA Call Center file areas are locked after normal duty hours or when the Call Center is closed and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

VA and contracted Call Centers are held to the Department of Veterans Affairs Computer Security Policy and all free standing and contracted Call Centers are required to develop and implement a Computer Security Policy that is consistent with the National Policy. Call Centers located within a medical center are required to meet the requirements of that medical center's computer security policy.

Access to VA and contracted Call Centers and computer rooms is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Information in the Veterans Health Information Systems and Technology Architecture (VistA) may be accessed by authorized VA employees or authorized contract employees. Access to file information is controlled at two levels; the systems recognize authorized employees or contract employees by a series of individually unique passwords/codes as a part of each data message, and personnel are limited to only that information in the file which is needed in the performance of their official duties. Information that is downloaded from VistA and maintained on VA or contract personal computers is afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA and contract locations is controlled by individually unique passwords/codes.

Remote access to VHA information in VistA is provided to those Call Center employees, either VA or contract staff, that require access to information stored in the medical record. Access to this information is protected through hardened user access and is controlled by individual unique passwords. Additionally, contracted Call Centers, either VA or private sector, are required to have a separate computer security plan that meets national information security requirements.

II. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following Routine Use disclosures of information maintained in the system:

1. Disclosure to a member of Congress or staff person acting for the member when the member or staff person requests the records on behalf of and at the request of that individual.

Individuals sometimes request the help of a member of Congress in resolving some issues relating to a matter before VA. The member of Congress then writes VA, and VA must be able to give sufficient information to be responsive to the inquiry.

2. Disclosure may be made to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

3. Disclosure may be made to a Federal agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar nongovernment entity which maintains records concerning individual's employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the Department to obtain information relevant to a Department decision concerning the hiring, retention or termination of an employee or to inform a Federal agency or licensing boards or the appropriate nongovernment entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients receiving medical care in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

VA must be able to report information regarding the care a health care practitioner provides to agencies and boards charged with maintaining the health and safety of patients.

4. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Joint Commission on Accreditation of Healthcare Organizations, College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

VA health care facilities undergo certification and accreditation by several national accreditation agencies or boards to comply with regulations and good medical practices. VA must be able to disclose information for program review purposes and the seeking of accreditation and/or certification of health care facilities and programs.

5. Disclosure may be made to a State or local government entity or national certifying body which has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity or national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

6. Disclosure to the National Practitioner Data Bank at the time of hiring and/or clinical privileging/reprivileging of health care practitioners, and other times as deemed necessary by VA.

VA must be able to obtain information relevant to a Department decision concerning the hiring, privileging/reprivileging, retention or termination of the applicant or employee from the National Practitioner Data Bank in order to ensure VA has competent and qualified employees to provide patient care services.

7. Disclosure to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

VA must be able to report information to agencies and boards charged with tracking the practices of health care professionals.

8. Disclosure of information related to the performance of a health care student or provider may be made to a medical or nursing school or other health care related training institution or other facility with which there is an affiliation, sharing agreement, contract or similar arrangement when the student or provider is enrolled at or employed by the school or training institution or other facility and the information is needed for personnel management, rating and/or evaluation purposes.

9. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, *etc.*, with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

VA occasionally contracts out certain of it functions, such as clinical care and the provision of Call Center services, when this would contribute to effective and efficient operations. VA must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

10. Disclosure may be made to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, reporting of an investigation of an employee, the letting of a contract, or the issuance or continuance of a license, grant or other benefit given by that agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

VA must be able to provide information to agencies conducting background checks on applicants for employment or licensure.

11. Disclosure of information may be made to the next-of-kin and/or the person(s) with whom the patient has a meaningful relationship to the extent necessary and on a need-to-know basis consistent with good medical-ethical practices.

12. On its own initiative, VA may disclose information, except for the names and home addresses of veterans and their dependents, to a Federal, State, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

VA must be able to comply with the requirements of agencies charged with enforcing the law and conducting investigations. VA must also be able to provide information to State or local agencies charged with protecting the public health as set forth in State law.

13. Disclosure of relevant information may be made to a non-VA physician or medical facility staff caring for a veteran for the purpose of providing relevant clinical information in an urgent or emergent situation.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which VA collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or where disclosure is required by law.

A "Report of New System" and an advance copy of the new system notice have been sent to the appropriate Congressional committees and the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: September 25, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

113VA112

SYSTEM NAME:

Telephone Care and Service Records—VA.

SYSTEM LOCATION:

Records are located at each Call Center, which are operated at VA health care facilities or at contractor locations. Address locations for VA facilities are listed in VA Appendix 1 of the biennial publication of VA Privacy Act Issuances. In addition, information from clinical symptom calls is maintained in the patient's medical record at VA health care facilities and at the Department of Veterans Affairs (VA), 810 Vermont Avenue, NW., Washington, DC; Veterans Integrated Service Network Offices (VISNs); and Employee Education Systems.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning individual enrolled patients.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information related to:

1. Clinical care such as clinical symptoms, questions asked about symptoms, answers received, clinical protocol used and advice provided. It might include doctors' orders for patient care including nursing care, current medications, including their scheduling and delivery, consultations, radiology, laboratory and other diagnostic and therapeutic examinations and results; clinical protocol and other reference materials; education provided, including title of education material and reports of contact with individuals or groups. It includes information related to the patient's or family member's understanding of the advice given and their plan of action and, sometimes, the effectiveness of those actions.

2. Record of all calls made to the Call Center, including caller questions about medications, their uses and side effects; requests for renewals of prescriptions, appointment changes, benefits information and the actions taken related to each call, including the notification of providers and other staffs about the call.

3. Contact information from private sector medical facilities or clinicians contacting the VA about issues such as enrolled veterans' visits to an emergency department or admissions to a community medical center.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, section 501.

PURPOSE(S):

The purpose of these records is to provide clinical and administrative support to patient care and provide medical and administrative documentation of the care and/or services provided in Call Centers. The records may be used for such purposes as improving Call Center staff's ability to provide telephone care services to veterans and the quality of the service by having immediate access to records of calls made previously by the veteran. Records may be used for purposes of notifying VA providers of the patient's condition and status, the criteria used to judge the status of the patient and/or the information given to the external provider on follow-up steps that they must take to receive authorization for the care.

Records may be used to assess and improve the quality of the services provided through telephone care services and to produce various management and patient follow-up reports. Records may be used to respond to patient, family and other inquiries, including at times non-VA clinicians and Joint Commission for Accreditation of Healthcare Organizations (JCAHO) or the Utilization Review Accreditation Commission (URAC) for the accreditation of a Call Center or facility. Records may also be used to conduct health care related studies, statistical analysis, and resource allocation planning using data that has been stripped of individual patient identifiers. The clinical information is integrated into the patient's overall medical record, into quality improvement plans, and activities of the facility, such as utilization review and risk management. They are also used to improve Call Center services, such as patient education, the improved integration of clinical care, the provision of telephone care services, and communication.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information contained in the record system may include information protected by 38 U.S.C. 7332, *i.e.*, medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that cannot be disclosed under a routine use unless there is also specific statutory authority permitting disclosure.

1. Disclosure may be made to a member of Congress or staff person acting for the member when the member or staff person requests the records on behalf of and at the request of that individual.

2. Disclosure may be made to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

3. Disclosure may be made to a Federal agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar nongovernment entity which maintains records concerning individual's employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the Department to obtain information relevant to a Department decision concerning the hiring, retention or termination of an employee or to inform a Federal agency or licensing boards or the appropriate nongovernment entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients receiving medical care in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

4. Disclosure may be made for program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Joint Commission on Accreditation of Healthcare Organizations, College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

5. Disclosure may be made to a State or local government entity or national certifying body which has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity or national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

6. Disclosure may be made to the National Practitioner Data Bank at the time of hiring and/or clinical privileging/reprivileging of health care practitioners, and other times as deemed necessary by VA.

7. Disclosure may be made to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

8. Disclosure of information related to the performance of a health care student or provider may be made to a medical or nursing school or other health care related training institution or other facility with which there is an affiliation, sharing agreement, contract or similar arrangement when the student or provider is enrolled at or employed by the school or training institution or other facility and the information is needed for personnel management, rating and/or evaluation purposes.

9. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

10. Disclosure may be made to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, reporting of an investigation of an employee, the letting of a contract, or the issuance or continuance of a license, grant or other benefit given by that agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

11. Disclosure of information may be made to the next-of-kin and/or the person(s) with whom the patient has a meaningful relationship to the extent necessary and on a need-to-know basis consistent with good medical-ethical practices.

12. On its own initiative, VA may disclose information, except for the names and home addresses of veterans and their dependents, to a Federal, State, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

13. Disclosure of relevant information may be made to a non-VA physician or medical facility staff caring for a veteran for the purpose of providing relevant clinical information in an urgent or emergent situation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and automated storage media, such as

magnetic tape, disc or laser optical medial.

RETRIEVABILITY:

Records are retrieved by name, social security number or other assigned identifier of the enrolled veteran who is calling or about whom the call is being made.

SAFEGUARDS:

1. Access to patient-specific information located in Call Center databases and storage areas is restricted to VA employees and contract personnel on a "need-to-know" basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA Call Center file areas are locked after normal duty hours or when the Call Center is closed, and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to VA and contracted Call Centers and computer rooms is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. ADP peripheral devices are placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in the Veterans Health Information Systems and Technology Architecture (VistA) may be accessed by authorized VA employees or authorized contract employees. Access to file information is controlled at two levels; the systems recognize authorized employees or contract employees by a series of individually unique passwords/codes as a part of each data message, and personnel are limited to only that information in the file which is needed in the performance of their official duties. Information that is downloaded from VistA and maintained on VA or contract personal computers is afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA and contract locations is controlled by individually unique passwords/codes.

3. Remote access to VHA information in VistA is provided to those Call Center employees, either VA or contract staff, that require access to information stored in the medical record. Access to this information is protected through hardened user access and is controlled by individual unique passwords. Additionally, contracted Call Centers, either VA or private sector, are required to have a separate computer security plan that meets national information security requirements.

RETENTION AND DISPOSAL:

Records are to be disposed of in accordance with the Veterans Health Administration Records Control Schedule; 10–1. Paper records and information stored on electronic storage media are maintained and disposed of in accordance with the records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures: Chief Consultant for Primary and Ambulatory Care (112), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Officials maintaining the system: Network and/or facility director at the Network and/or facility where the individuals are associated.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA health care facility where care was rendered. Addresses of VA health care facilities may be found in VA Appendix 1 at the end of this document. Inquiries should include the person's full name, social security number, dates of employment, date(s) of contact, and return address.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write or visit the VA facility location where they normally receive their care.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Record sources include: enrolled patients, patients' families and friends, private medical facilities and their clinical and administrative staffs, health care professionals, Patient Medical Records-VA (24VA136), VistA (79VA19), VA health care providers, and Call Center nurses and administrative staff.

[FR Doc. 02–25996 Filed 10–10–02; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 67, No. 198
Friday October 11, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 996, 997, 998, and 999

[Docket No. FV02–996–1 IFR]

Establishment of Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States and Termination of the Peanut Marketing Agreement and Associated Rules and Regulations

Correction

In rule document 02–22700 beginning on page 57129 in the issue of Monday, September 9, 2002, make the following correction:

On page 57142, in the table, under the column titled "Type and grade category", in the third entry from the top, the table is corrected in part to read as set forth below.

MINIMUM QUALITY STANDARDS: PEANUTS FOR HUMAN CONSUMPTION—WHOLE KERNELS AND SPLITS: MAXIMUM LIMITATIONS

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Excluding lots of "splits"							
Virginia with splits (not more than 15% sound splits).	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 15/64 × 1 inch slot screen.	4.00% Both screens.	.20	9.00

[FR Doc. C2–22700 Filed 10–10–02; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0235; FRL–7198–4]

Clopyralid; Pesticide Tolerance

Correction

In rule document 02–24232 beginning on page 60152, in the issue of Wednesday, September 25, 2002, make the following correction:

On page 60154, in Table 1, in the second and third entries from the bottom, the table is corrected in part to read as set forth below.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY OF CLOPYRALID

Guideline No.	Study Type	Results
870.5450	Dominant lethal assay in rats.	No evidence of treatment related resorptions up to 400 mg/kg/day for 5 days.
870.5550	*In vitro* unscheduled DNA synthesis assay	There was no evidence of unscheduled DNA synthesis in initial or supplementary assays.

[FR Doc. C2–24232 Filed 10–10–02; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
October 11, 2002

Part II

Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1421

2002 Farm Bill Regulations—Marketing Assistance Loans and Loan Deficiency Payments for Peanuts, Pulse Crops, Wheat, Feed Grains, Soybeans and Other Oilseeds; Final Rule

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560–AG72

2002 Farm Bill Regulations—Marketing Assistance Loans and Loan Deficiency Payments for Peanuts, Pulse Crops, Wheat, Feed Grains, Soybeans and Other Oilseeds

AGENCIES: Commodity Credit Corporation, USDA.

ACTION: Final Rule.

SUMMARY: This final rule implements a portion of Title I of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) relating to the farm commodity price support programs of the Farm Service Agency (FSA) and Commodity Credit Corporation (CCC). The 2002 Act authorizes Marketing Assistance Loans and Loan Deficiency Payments (LDP) for peanuts, wool, mohair, pulse crops (lentils, small chickpeas, dry peas), wheat, feed grains, soybeans and other oilseeds. Peanuts, wool, mohair and pulse crops, have not been eligible for these programs prior to enactment of this law and this rule adds these new commodities. Other provisions of the 2002 Act will be implemented under separate rules. The intended effect of this rule is to implement legislative requirements, add new crops to those eligible for assistance and increase the number of farm operators who may receive FSA and CCC program benefits.

EFFECTIVE DATE: October 8, 2002.

FOR FURTHER INFORMATION CONTACT: Grady Bilberry, Director, Price Support Division, FSA/USDA, STOP 0512, 1400 Independence Ave. SW., Washington, DC 20250–0512; telephone (202) 720–7901; facsimile (202) 690–3307; e-mail: *Grady_Bilberry@wdc.usda.gov*. Persons with disabilities who require alternative means of communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement Title I of the 2002 Act are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Executive Order 12866

This final rule is economically significant according to Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment of the changes made by this rule was completed and is summarized after the background section.

Federal Assistance Programs

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance to which this final rule applies is 10.051—Commodity Loans and Loan Deficiency Payments.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Office of the Secretary, FSA and CCC are not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Review

An environmental assessment is being completed to consider the potential impacts of this proposed action on the human environment in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. Section 1601 of the 2002 Act mandated that these regulations be promulgated no later than 90 days after the law's enactment. Further, this rule affects a large number of agricultural producers who are dependent upon its provisions for income support and need to know of its details as soon as possible because it has a profound effect on their planting and marketing decisions. Thus, FSA and CCC are attempting to satisfy both the Congressional mandate and their public missions by publishing this rule now, while continuing a good faith effort to comply with NEPA in as timely a fashion as possible, given the above-mentioned statutory and mission requirements. A copy of the draft environmental assessment will be made available for public review and comment upon request.

Executive Order 12778

The final rule has been reviewed under Executive Order 12778. This rule preempts State laws that are inconsistent with its provisions. This rule is not retroactive. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because the Office of the Secretary, FSA and CCC are not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking about the subject matter of this rule. Further, this rule imposes no unfunded mandates, as define in UMRA, on any local, State, or tribal government or the private sector.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement Title I of the 2002 Act must be issued within 90 days of enactment and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 553. Section 1601(c) also requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA), which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. These regulations affect the planting and marketing decisions of an extraordinarily large number of agricultural producers. Accordingly, this rule is effective upon the date of filing for public inspection by the Office of the **Federal Register**.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be made without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms, and other information collection activities needed to administer the program authorized by these regulations, are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are not yet fully implemented for the public to conduct business with FSA electronically.

Currently, however, loan application forms are available electronically through the USDA eForms website for downloading. The regulation is available at FSA's Price Support Division internet site. Applications may be submitted at the FSA county offices, by mail or by FAX. At this time, electronic submission is not available. Full development of electronic submission is underway.

Background

The 2002 Act provides for Marketing Assistance Loans and Loan Deficiency Payments (LDP's) for the 2002 through 2007 crop years. Marketing Assistance Loans and Loan Deficiency Payments are intended to: (1) Minimize potential loan forfeitures; (2) subsequent government accumulation of stocks; (3) minimize the cost incurred by the Federal Government in storing the commodity and; (4) allow a commodity produced in the United States to be marketed freely and competitively both domestically and internationally.

Producers of commodities that are eligible for loans can request marketing assistance loans or LDP's on their harvested commodities. Eligible producers request loans and LDP's on or before the final loan availability date for the applicable commodity. Marketing assistance loans are 9-month loans. Producers may repay the loan at a rate that is less than the original loan rate plus interest when market prices are below the commodity loan rates, which are established by law. Marketing assistance loans accomplish two objectives. First they provide producers with interim financing by providing money for continued farming operations while not requiring the crop to be marketed during a period which commonly coincides with a producer's peak labor demands. Second, they facilitate the orderly marketing and distribution of loan eligible commodities throughout the year, since it gives the producer another option beyond sale of the crop whenever funds may be needed.

As an alternative to a marketing assistance loan, a producer may obtain an LDP on their crop. An LDP is available to a producer who, although eligible to obtain a marketing assistance loan, agrees to forgo a marketing assistance loan for the commodity in return for an LDP. The payment is the established loan rate for the applicable loan commodity less the repayment rate multiplied by the eligible quantity of the commodity. The specific material changes made to the marketing assistance loan and LDP programs by the 2002 Act being implemented in this rule are as follows:

Loan Commodities Eligible

The previous law that authorized FSA and CCC to make marketing assistance loans was the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act). The 1996 Act limited marketing assistance loans to wheat, feed grains, oilseeds, cotton and rice. The specific oilseeds were eligible for marketing assistance loans, including sunflower, flaxseed, canola, rapeseed, safflower seed, mustard seed, crambe, and sesame seed.

The 2002 Act also authorizes marketing assistance loans for wheat, feed grains, oilseeds, cotton and rice. However, using the 2002 Act authority, USDA announced that loan eligible oilseeds for the 2002 crop year will be sunflower, flaxseed, canola, rapeseed, safflower seed and mustard seed. Thus, crambe and sesame seed are NOT eligible loan commodities for the marketing assistance loan and LDP programs.

More significantly, the 2002 Act extended eligibility for marketing assistance loans and LDP's to peanuts, wool, mohair, honey, small chickpeas, lentils, and dry peas. The 2002 Act refers to these new loan commodities as "first time" loan commodities in section 1205(f)(1). The revisions necessary to incorporate these new commodities into the programs covered by 7 CFR part 1421 are made throughout this rule, and several major crop specific revisions are discussed below. Conforming changes are being made to other CCC regulations in distinct final rules as a result of these expanded commodity provisions of the 2002 Act.

Other Eligibility Requirements for Producers

The 2002 Act also added conditions for a producer to receive a marketing assistance loan or LDP. The major requirement added is that producers must report all cropland on the applicable farm in which the eligible loan commodity is produced. Another restriction is that the producer must be in compliance with all wetland conservation requirements and other applicable conservation programs.

Another change that affects both the crop and producer who may be eligible is that program eligibility is no longer linked to "contract" commodities. The term "contract" commodities refers to provisions in the 1996 Act authorizing marketing assistance loans to eligible producers who produced commodities on a farm covered by a Production Flexibility Contract (PFC). The 2002 Act terminated the PFC program and authorizes marketing assistance loans to eligible producers of any eligible loan commodity produced on a farm for the 2002 through 2007 crop years covered. Thus, farms are not required to be covered by a PFC to be eligible. This relaxed requirement also applies to 2001-crop marketing assistance loans. Thus, commodities produced in 2001 on a farm not covered by a PFC are eligible for LDP's.

Beneficial Interest

As used in this rule beneficial interest in a commodity, means that all of the following remain with the producer: (1) Control of the commodity; (2) risk of loss; (3) title to the commodity. Beneficial interest requirements remain unchanged for most loan commodities, and, typically, all producers must retain beneficial interest in the commodity offered as collateral for a marketing assistance loan or LDP. However, the 2002 Act provides special treatment for 2001-crop and the "first time" loan commodities. Producers who lost "beneficial interest" in an eligible 2001 commodity before applying for a loan or LDP on that crop, may be eligible. Furthermore, producers of 2002-crop wool, mohair, honey, dry peas, lentils, and small chickpeas who lost beneficial interest in the 2002 crop prior to publication of the regulations are also eligible for LDP's. Likewise, producers of 2002 crop peanuts who before applying for a loan or LDP lost beneficial interest in a 2002 crop of peanuts are eligible for LDP's. Producers must request the LDP on or before the applicable final loan availability date which is January 31, 2003, for peanuts. For those LDP requests submitted after beneficial interest has been lost, the LDP rate will be based on the date it was lost. The exemptions provided in the 2002 Act are limited to those specified here. Beneficial interest must be maintained in order to receive a loan or an LDP in 2003 and subsequent crop years.

Hay, Silage and Unshorn Pelts

The 1996 Act authorized marketing assistance loans or LDP's for hay or silage. However, the 2002 Act, limits hay or silage and unshorn pelts derived from lambs to being eligible for an LDP only.

Warehouse Licensing Requirements

Eligible loan commodities offered as collateral for marketing assistance loans must be stored in an on-farm storage structure or warehouse approved by CCC. As the programs were administered under the 1996 Act, unlicensed storage facilities were not approved for storing collateral for a marketing assistance loan. The 2002 Act authorizes loan commodities serving as marketing assistance loan collateral to be stored in unlicensed warehouses if the producer redeems the marketing assistance loan immediately with a commodity certificate.

Treatment of First Time Loan Commodities

The 2002 Act directed USDA to make "first time" loan commodities available for marketing assistance loans and LDP's. Thus, for the first time, wool, mohair, honey, peanuts, lentils, small chickpeas and dry peas are eligible for the marketing assistance loan and LDP programs. As with all of the currently eligible loan commodities these loans are nonrecourse. Thus, producers may deliver the commodity pledged or repay the loan at the alternative repayment rate, a rate less than principal plus accrued interest. If such loans were, on the other hand, recourse loans, they would have to be repaid with principal plus interest, and the collateral could not be delivered or forfeited.

Wool and Mohair

The National Wool Act (Wool) Act has served as the basis for the FSA and CCC wool and mohair price support programs from 1955 to 1995. Public Law 103–130 enacted in November, 1993, was passed by Congress especially to phase out the USDA Wool Act programs over the 1994 and 1995 marketing years. However, subsequent legislation provided that the Secretary make recourse loans for mohair produced in 1999 and 2000. Under the recourse loans, producers had to repay marketing assistance loans at principal plus interest and commodities pledged as collateral for recourse loans could not be delivered or forfeited to settle a outstanding loan. The 2002 Act provides for wool and mohair nonrecourse loans. Thus, now, producers who offer wool or mohair as collateral to secure a nonrecourse loan may repay their loan at the alternative repayment rate or forfeit the wool or mohair to satisfy the loan, just like other eligible commodities.

Peanuts

The 2002 Act made profound changes to the FSA and CCC peanut program. Under title III of the Agricultural Adjustment Act of 1938, USDA administered a two-tiered price support program for peanuts. Eligible producers were limited to an established quota for domestic marketing. The old program limited the producers ability to market peanuts domestically and the old peanut price support program designated and authorized three area Marketing Associations to manage the commercial marketing of peanuts grown in the U.S. This program was terminated by the 2002 Act, which now extends the marketing assistance loan and LDP program coverage to peanuts for the 2002 through 2007 crops. The 2002 Act provides producers with the responsibility for and flexibility of marketing their own peanuts. Producers will be more involved in the orderly marketing of their peanuts. The 2002 Act revokes the authority of the Marketing Associations to manage and sell peanuts on behalf of the Commodity Credit Corporation. Producers may request marketing assistance loans from FSA. USDA will pay storage, and associated costs, according to this rule, for marketing assistance loan peanuts.

National Loan and Repayment Rates

Congress announced the national loan rates for the 2002 through 2007 crop years for the eligible loan commodities. The loan rates specified by 2002 Act are as follows:

	2002–03 crop year	2004–07 crop year
Wheat	$2.80/bu.	$2.75/bu.
Corn	1.98/bu.	1.95/bu.
Grain sorghum	1.98/bu.	1.95/bu.
Barley	1.88/bu.	1.85/bu.
Oats	1.35/bu.	1.33/bu.
Rice	6.50/cwt.	6.50/cwt.
Soybeans	5.00/bu.	5.00/bu.
Other oilseeds	0.096/lb	0.093/lb
Peanuts	355/ton	355/ton
Graded wool	1.00/lb	1.00/lb
Nongraded wool	0.40/lb	0.40/lb
Mohair	4.20/lb	4.20/lb
Small chickpeas	7.56/cwt.	7.43/cwt.
Lentils	11.94/cwt.	11.72/cwt.
Dry peas	6.33/cwt.	6.22/cwt.

The 2002 through 2007 crop year loans rates were increased for wheat, corn, grain sorghum, and oilseed from those provided in the 1996 Act.

In addition, the Secretary may differentiate other oilseed loan rates to reflect market price relationships among the different other oilseed types—an authority not provided in the 1996 Act. To the extent practicable, USDA will make adjustments to ensure "weight averaged" base county loan rates are consistent and reflect current market conditions. Also, the basis for adjustments to base county loan rates, will be used when determining alternative repayment rates for the applicable loan commodity, considering location and quality of the loan commodities. Beyond adjustments for market conditions, the Secretary may adjust repayment rate as necessary to minimize loan forfeitures, minimize the Federal Government-owned inventory of the commodities, minimize the storage costs incurred by the Federal Government domestically and internationally, and minimize discrepancies in marketing loan benefits between States and counties.

Payments In Lieu Of Loan Deficiency Payments For Grazed Acreage

The 2002 Act also provides a new payment program for producers who graze livestock on land that may otherwise be used to produce LDP eligible crops, also known as "graze-out" provisions. Producers who would be eligible for a wheat, barley, oats, or triticale LDP but instead use those planted crops to graze livestock will be eligible for LDP's if they agree to forgo harvesting of that acreage. The yield for the purposes of calculating the payment on graze-out wheat, barley and oats are those established for direct payments under the Direct and Counter-Cyclical Payment Program (DCP) authorized by the 2002 Act (7 U.S.C. 7913). The payment yield for triticale is the farm's wheat payment yield for direct payments under the DCP. For farms where a program payment yield is unavailable, USDA will establish an appropriate payment yield considering the yields applicable to the commodity for at least three similar farms. The payment amount per commodity is the payment rate multiplied by the payment yield, multiplied by the number of acres grazed. Triticale will be based on the predominant class of wheat in the county. Graze-out acreage planted to this wheat, barley, oat, or triticale will not be eligible for an indemnity payment under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*) or a payment under the noninsured crop disaster assistance program under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7201 *note*).

Cost/Benefit Assessment Summary

The changes made by the 2002 Act will have a significant impact on CCC and FSA funding and expenditures. The 2002 Act expands eligibility considerably for marketing assistance loans, loan deficiency payments and the price support programs governed by the regulations amended by this rule. Also, while the loan rate for soybeans is decreased, the rate for wheat, barley, and corn is increased, and other eligible crops are added, such as pulse crops, and peanuts. The net fiscal impact of the changes made by the 2002 Act and promulgated by this rule compared with continuing 1996 Act provisions will be to increase governmental outlays as shown in the Table 1.

TABLE 1.—AVERAGE ANNUAL CHANGE IN GOVERNMENT OUTLAYS BY PROGRAM, FISCAL YEARS 2002–2007

[In million of dollars]

Program	Average [1]
Loan Rates for Covered Commodities [2]	859
Loan Deficiency-like Payments for Grazed—Wheat, Barley, Oats	12
Triticale	26
Pulse Crops [3]	18
Wool and Mohair	2
Honey	80
Peanuts	997
Total	1,994

[1] Average annual outlay change.
[2] Includes wheat, corn, grain sorghum, barley, oats, upland cotton, rice, soybeans, and other oilseeds.
[3] Dry peas, lentils, and small chickpeas.

Covered Commodities, Except Other Oilseeds

Outlays for marketing assistance loan and loan deficiency payments are projected to average about $4.1 billion during FY's 2002–2007. The outlays progressively decline during the period. Market prices for each commodity are estimated to increase in this period, eroding LDP rates and marketing loan benefits. For some crops, outlays disappear completely by 2007. Outlays for marketing assistance loans and LDP's are projected to be about $859 million higher per year than they were under the 1996 Act. The increase is mainly due to higher loan rates (except for rice). Soybean projected loan outlays decrease because soybean acreage is projected to shift to other crops, demand remain constant, soybean supplies decrease and prices increase, according to capitalist market forces. For rice, the loan rate is unchanged and projected loan outlays decline slightly.

Other Oilseeds

Setting Differentiated National Loan Rates

Market prices vary substantially among the various types of other oilseeds (oil-type sunseed, other-type (confection) sunseed, flaxseed, canola, rapeseed, safflower, and mustard seed). The 1996 Act required that loan rates be set "individually" for the other oilseed types based on the all-sunflower seed price. The 2002 Act gives the Secretary the latitude necessary to differentiate other oilseed loan rates to reflect market price relationships among the different other oilseed types.

Setting loan rates to reflect market price relationships among the other oilseed types reduces past market distortions that have resulted from using a single loan rate for all the other (minor) oilseeds types. Loan rate-driven distortions occur during low-price periods when large LDP's for the lower-valued oilseeds (oil-type sunflower seed, canola, and flaxseed) have the undesirable effect of creating incentives to shift acreage away from the higher-valued oilseeds (confection sunflower seed and safflower).

Establishing differentiated other oilseed loan rates eliminates the incentive to shift acreage from higher-valued to lower-valued oilseeds. This is particularly important for sunseed where low prices and high oil-type sunseed LDP'S during recent years resulted in USDA setting 2000 and 2001 loan and loan repayment rates equal for oil-type and confection sunseed. (Confection repayment rates were not allowed to drop more than $3.00 per cwt. below loan rates, thus limiting confection LDP'S to $3.00 per cwt.). This change was necessary to maintain confection sunseed acreage as oil-type sunseed LDP'S raised relative per-acre returns to levels that discouraged confection planting.

The announced 2002 loan rates for oil-type and confection sunseed reflect a $2.95-per-cwt. spread at the national level. This spread is consistent with the spread that existed during the early 1990's before the loan program began to distort sunseed plantings and prices. It also establishes a guaranteed price spread that the sunseed industry indicates is critical to maintaining a balance of production between the sunseed types.

Differentiating other oilseed loan rates based on market price relationships is projected to cost less than setting all other oilseed loan rates at the same level over the 7-year life of the 2002 Act. Other oilseed loan program outlays are projected to average $24 million per year for crop years 2002–2007. Loan program outlays under the alternative of setting loan rates at the same level are projected to average $48 million per year.

The use of market-based loan rates is expected to reduce canola, flaxseed, and oil-type sunseed acreage and increase confection sunseed, mustardseed, and safflower acreage. This will bring acreage, production, and prices among the other oilseeds more in line with market demand. Planted acreage is expected to average about 250,000 acres lower for crop years 2003–2007 than it would be under a single loan rate. This represents a relatively small 5-percent annual reduction in total other oilseed acreage. Historically, other oilseed acreage has varied widely. Since 1995, plantings have ranged from 3.2 million acres in 1996 to 5.4 million acres in 1999.

Designating Other Oilseeds Eligible for Loans and LDP

Crambe is not designated as an "other oilseed" under the 2002 Act, although it was loan-eligible under the 1996 Act for crop years 1999, 2000 and 2001. This change is expected to eliminate $367,000 in loan program outlays during the 2002–2007 crop years. Some of these savings will be offset as producers shift production into other covered commodities. Without the substantial level of price support provided to crambe during recent years, acreage is expected to continue to decline. Crambe plantings have declined from 42,000 acres in 1998 to an estimated 14,000 acres for 2002. Lack of designation as an other oilseed will eliminate the potential of an additional $1.3 million in projected direct payments to crambe producers during the life of the 2002 Act.

Sesame also is not designated as an other oilseed under the 2002 Act. It was designated as loan-eligible under the 1996 Act for crop years 2000 and 2001. Because of its relatively high price, sesame has not generated any loan program benefits and was not expected to under the 2002 Act, even if it were designated as loan-eligible. Lack of designation as an "other oilseed," will eliminate the potential for a projected $210,000 in direct payments to sesame producers.

Wool and Mohair

USDA does not publish official wool or mohair supply-use-price projections. Private analysts and university researchers expect that sheep and lamb numbers in the United States will continue on a long-term downward trend. Falling domestic demand for

lamb meat and strong competition from imports of foreign lamb will weigh on domestic production. Falling numbers of sheep and a focus on selection of sheep based on meat attributes are expected to result in falling wool production for the foreseeable future. However, tightening supplies of wool, both domestically and abroad, are expected to result in a slow rebound in wool prices from their current depressed levels. Consequently, wool program outlays are expected to decrease in subsequent years. Mohair production, prices and program outlays are expected to follow a similar path.

Wool program costs are expected to range from about $25 million in 2002 to $6.4 million in 2007. Mohair program costs are expected to range from about $3.6 million in 2002, to $2.0 million in 2007. Government outlays are expected to increase producer income about $28 million in the initial program year, declining steadily to about $8.4 million in 2007. Neither domestic use nor exports of wool and mohair are expected to be significantly impacted by the program.

Pulses (Dry Peas, Lentils, and Small Chickpeas)

The 2002 Act provides nonrecourse marketing assistance loans and loan deficiency payments to dry peas, lentils and small chickpeas for the first time. It is likely that the availability of these provisions will increase the supply for the 2002–2007 crops of dry peas and lentils resulting in a minor decrease in wheat production. Small chickpea production is expected to be unchanged due to planting flexibility provisions with no change in expected returns including program benefits. Producers of dry peas and lentils are expected to receive additional marketing loan/loan deficiency benefits of $156 million over the 2002–2007 period. Wheat producers will receive $374 million less in benefits (loan outlays—$15 million lower and counter-cyclical payments—$359 million lower) as the decline in acreage increases the market price of wheat which lowers its LDP and counter-cyclical payment rates. Hence, a net decrease of $218 million in program outlays is expected. Likewise, taxpayer burden will decrease by $218 million over the same period. Even though food use demand for dry peas and lentils is believed to be relatively price-inelastic, consumers are expected to gain $12 million in additional income over the program period due to lower expected prices. The cost savings for feed purchases to livestock producers is expected to total $13 million over the program period as increases in feed pea production reduce prices.

Loan Deficiency-like Payments for Grazed Acreage of Wheat, Barley, Oats, and Triticale

The 2002 Act makes wheat, barley, oats and triticale available for grazing LDP's if the commodity is grazed. It is assumed that the availability of grazing LDP's will not affect the supply, demand, and price of these commodities for the 2002–2007 crops. Thus, these commodities LDP rates will not be impacted. Producers are expected to receive grazing LDP's of $71 million over the 2002–2007 period, increasing projected total revenues the same amount. The additional grazing LDP's also increase program outlays and, therefore, taxpayer burden by $71 million over the same period. The consumer impact will be negligible because crop and livestock prices are expected to be unchanged. Thus, food prices will not change.

Peanuts

Under the previously existing USDA peanut program producers delivered the peanuts to a buying point where the peanuts were graded and a check was written based on the weight of the peanuts adjusted for grade and minus fees. Quota peanuts received $610 per ton and additional peanuts received a lower support rate ($132 in 2001). Contract additional peanuts for export received a price less than $610 but generally above the additional support price. The storage of loan collateral was paid by one of three Marketing Associations (Associations) authorized under the previous statute. The Associations managed the peanuts and any profits or loss were passed on to the producers of quota peanuts. Any losses incurred under the program were paid the following year by an assessment on producers.

The new 2002 Act peanut program requires producers to be more involved in the marketing process. They can apply for a market assistance loan and place the peanuts in storage, request a loan deficiency payment or sell the peanuts commercially. Peanuts placed under loan can be redeemed by the producer prior to loan maturity, and sold to commercial handlers. The loan will be repaid at a rate determined by the Secretary of Agriculture. If the peanuts are not redeemed they will be forfeited and become the property of CCC.

Producer income is not expected to decline significantly under the new program despite the gap between the $355 loan rate and the old $610 support price. Under the 2002 Act producers may receive funds from three sources other than the marketing loan or the loan deficiency payment. These include a direct payment of $36 per ton, compensation for lost quota at a rate of 11 cents per pound per year for 5 years, and a counter-cyclical payment equal to the difference between the market price (or market loan rate if it is higher) plus the direct payment of $36 per ton and the $495 target price. DCP is being promulgated under a rule to follow this one. Furthermore, all of the peanuts produced are eligible for the $355 per ton marketing assistance loan or an LDP. Under the old program the average price received by the producer was a blend of the $610 quota support for quota peanuts, the contract additional price and the support price for additional peanuts.

Total peanut production is expected to increase slightly under the new program. Consumers may pay slightly less for peanut products because of the projected lower peanut prices paid by manufacturers. However, because of the very inelastic price elasticity of demand for peanuts, this is expected to be insignificant.

Shellers and manufacturers will be paying significantly less for peanuts under the 2002 program. The actual price they pay will be determined by the market price of peanuts, which is expected to be significantly below the $610 support price under the old program.

The loan repayment rate established by the Secretary will to some degree influence the market price for peanuts. This price will be determined on a weekly basis after several factors are evaluated. These factors may include, but not be limited to, marketing loan activity, domestic commercial prices and price and sales activity in the Western Europe and other international peanut markets. The process will be evaluated on a continuous basis and refined, as better information becomes available.

It is likely that the supply of peanuts will meet the demand for domestic edible peanuts in the U.S. This market is relatively stable and grows at about the same rate as the general population. Any significant growth in the production of U.S. peanuts will be in the export sector. This market will depend on the world equilibrium market price of peanuts.

The cost of marketing loans will be the cost of handling and storing the peanuts during the 9-month loan period plus any loses incurred disposing of forfeited peanuts. The storage and handling costs have been estimated by the Congressional Budget Office at $74 million during the 2002–2007 period. The cost of the loan deficiency portion of the program has been estimated at $406 million over the 2002–2007 period. Because food use demand for peanuts is extremely price inelastic, consumers are expected to gain little in additional income over the program period, but peanut prices are not expected to drop.

There are many aspects of the 2002 Act that make the cost of the program open-ended. There is no limit on the amount of peanuts that can be produced. The price of peanuts will be determined in the market place and the cost of the LDP and the counter-cyclical payments could be significantly above the $406 million if production increases and prices drop. U.S. peanuts are currently moving into international trade at about $200 per farmer stock short ton, well below the average loan rate of $355. Thus, while these estimates are valid based on what the Agency knows, the real economic effects of the new peanut program are very likely to vary.

For specific details or further information regarding the cost/benefit assessment contact Mr. Phil Sronce at 202–720–2711.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Reporting and record keeping requirements.

For the reasons set out in the preamble, 7 CFR part 1421 is amended as set forth below.

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES—MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS FOR THE 2002 THROUGH 2007 CROP YEARS

1. The authority citation for 7 CFR part 1421 is revised to read as follows:

Authority: 7 U.S.C. 7231–7237 and 7931 *et seq.*; 15 U.S.C. 714b, 714c.

2. The title of part 1421 is revised as set forth above.

3. Subpart—Loan and Loan Deficiency Payment Regulations for the 1996 Through 2002 Crops of Wheat, Feed Grains, Rice, Oilseeds, (Canola, Crambe, Flaxseed, Mustard Seed, Rapeseed, Safflower, Soybeans, and Sunflower Seed) and Farm-Stored Peanuts (§§ 1421.1–1421.32) is removed and Subparts A, B and C are added in its place as set forth below.

4. Subpart—Grazing Payments for 2001 Crop of Wheat, Barley, or Oats (§§ 1421.300–1421.307) is designated as Subpart D.

5. The subpart entitled Subpart—Regulations Governing the Wheat and Feed Grain Farmer-Owned Reserve Program for 1990 Through 1995 Crops (§ 1421.200) is removed.

Subpart E—Standards for Approval of Warehouses for Grain, and Similarly Handled Commodities

6. Subpart—Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans and Seed (§§ 1421.5551–1421.5559) is designated as Subpart E and the heading is revised to read as set forth above.

7. For the convenience of the user, the table of contents for subparts A through E follows:

Subpart A—General

Sec.
1421.1 Applicability.
1421.2 Administration.
1421.3 Definitions.
1421.4 Eligible producers.
1421.5 Eligible commodities.
1421.6 Beneficial interest.
1421.7 Requesting marketing assistance loans and loan deficiency payments.
1421.8 Eligible quantity.
1421.9 Basic loan rates.
1421.10 Market rates.
1421.11 Spot checks.
1421.12 Production evidence.
1421.13 Handling payments and collections.
1421.14 Obtaining peanut loans.

Subpart B—Marketing Assistance Loans

1421.100 Applicability.
1421.101 Maturity dates.
1421.102 Adjustment of basic loan rates.
1421.103 Approved storage.
1421.104 Marketing assistance loan making.
1421.105 Farm-stored marketing assistance loans.
1421.106 Warehouse-stored marketing assistance loan collateral.
1421.107 Warehouse receipts.
1421.108 Transfers and reconcentrations.
1421.109 Personal liability of the producer.
1421.110 Repayments.
1421.111 Commodity certificate exchanges.
1421.112 Loan settlement.
1421.113 Foreclosure.
1421.114 Recourse loans.

Subpart C—Loan Deficiency Payments

1421.200 Applicability.
1421.201 Loan deficiency payment rate.
1421.202 Loan deficiency payment quantity.
1421.203 Personal liability of the producer.

Subpart D—Grazing Payments for 2002–2007 Crop Years of Wheat, Barley, Oats and Triticale

1421.300 Applicability.
1421.301 Administration.
1421.302 Definitions.
1421.303 Eligible producer and eligible land.
1421.304 Time and method for application.
1421.305 Payment amount.
1421.306 Misrepresentation and scheme or device.
1421.307 Refunds; joint and several liability.

Subpart E—Standards for Approval of Warehouses for Grain, and Similarly Handled Commodities

1421.5551 General statement and administration.
1421.5552 Basic standards.
1421.5553 Bonding requirements for net worth.
1421.5554 Examination of warehouses.
1421.5555 Exceptions.
1421.5556 Approval of warehouses, requests for reconsideration.
1421.5557 Exemption from requirements.
1421.5558 Contract and application and inspection fees.
1421.5559 OMB control numbers assigned pursuant to Paperwork Reduction Act.

Authority: 7 U.S.C. 7231–7237 and 7931 *et seq.*; 15 U.S.C. 714b, 714c.

8. The text of the new subparts A, B and C reads as follows:

Subpart A—General

§ 1421.1 Applicability.

(a) The regulations of this subpart are applicable to the 2002 through 2007 crops of barley, small chickpeas, corn, grain sorghum, lentils, oats, dry peas, peanuts, rice, wheat, wool, mohair, oilseeds and other crops designated by Commodity Credit Corporation (CCC). These regulations set forth the general provisions under which marketing assistance loans and loan deficiency payments (LDP) will be administered by the CCC. Additional terms and conditions are in the note and security agreement and the loan deficiency payment application that must be executed by a producer to receive marketing assistance loans and LDP's.

(b)(1) The basic loan rates, the schedule of premiums and discounts, and forms applicable to the marketing assistance and loan deficiency payment programs for the commodities specified in paragraph (a) of this section are available in Farm Service Agency (FSA) State and county offices. The forms for use in these programs will be prescribed by CCC.

(2) Loan deficiency payments shall be available for unshorn pelts, hay and silage.

(c) Marketing assistance loans and loan deficiency payments will not be available for any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

(d) Producers who produced eligible loan commodities are eligible for

marketing assistance loans or loan deficiency payments.

§ 1421.2 Administration.

(a) The marketing assistance loan and loan deficiency payment program shall be administered under the general supervision of the Executive Vice President, CCC and shall be carried out in the field by FSA State and county committees, respectively.

(b) State and county committees, and representatives and employees thereof, cannot modify or waive any requirement of this part, except as provided in paragraph (e) of this section.

(c) The State committee shall take any required action not taken by the county committee. The State committee shall also:

(1) For the 2001 crop year only, allow producers who violated the terms and conditions of the note and security agreement which resulted in the producer losing beneficial interest in the commodity before repaying the loan and the county committee determined the producer acted in good faith, to repay the loan at a rate that is the lesser of the loan plus interest; or the alternative repayment rate, as determined under § 1421.10, in effect on the date the beneficial interest was lost. In cases, where a locked-in repayment rate under § 1421.110 was applicable, the prescribed form is considered null and void.

(2) Correct or require correction of an action taken by a county committee that is not in compliance with this part; or

(3) Require a county committee to not take an action or implement a decision that is not under the regulations of this part.

(d) The Executive Vice President, CCC, or a designee, may determine any question arising under these programs, or reverse or modify a determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the marketing assistance loan and loan deficiency payment program.

(f) A representative of CCC may execute marketing assistance loan and loan deficiency payment applications and related documents only under the terms and conditions determined and announced by CCC. Any document not executed under such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void.

§ 1421.3 Definitions.

The definitions in this section apply for all purposes of program administration. Terms defined in part 718 of this title and parts 1412 and 1425 of this chapter also apply, except where they conflict with the definitions in this section.

Basic loan rate means the loan rate established by CCC for a commodity before any adjustment for premiums and discounts.

Charges means all fees, costs, and expenses incurred in insuring, carrying, handling, storing, conditioning, and marketing the commodity tendered to CCC for loan. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such commodity.

Commodity certificate exchange means the exchange, as provided for in part 1401 of this chapter, of commodities pledged as collateral for a marketing assistance loan at a rate determined by CCC in the form of a commodity certificate bearing a dollar denomination. Such certificate may not be transferred or exchanged for the inventory of CCC.

Designated marketing association means a marketing association or cooperative, approved by the Secretary, to issue marketing loan benefits on behalf of CCC for peanuts.

Field direct loan deficiency payment means a loan deficiency payment issued to producers who:

(1) Will lose beneficial interest immediately at harvest or;

(2) Immediately feed the commodity during harvest.

High moisture commodities means corn and grain sorghum normally harvested and intended to be stored or marketed in a high moisture condition.

Incorrect certification means the certifying of a quantity of a commodity for the purpose of obtaining a marketing assistance loan or a loan deficiency payment in excess of the quantity eligible for such marketing assistance loan or loan deficiency payment or the making of any fraudulent representation with respect to obtaining loans or loan deficiency payments.

Loan commodities means wheat, corn, grain sorghum, barely, oats, rice, soybeans, other oilseeds, peanuts, wool, mohair, dry peas, lentils, and small chickpeas and other crops designated by CCC.

Loan deficiency payment means a payment received in lieu of a loan when the CCC-determined value is below the applicable county loan rate.

Mohair means the hair sheared from a live Angora goat. Mohair does not include pelts, or hides or mohair shorn from pelts or hides.

Oilseeds means any crop of sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, and other oilseeds as determined and announced by CCC.

Other crops designated by CCC means with respect to eligibilities for benefits under this part:

(1) Those crops harvested as other than grain, such as silage, haulage, earlage;

(2) Specific crops designated for grazing; or

(3) As otherwise designated by CCC.

Pulse crops means any crop of dry peas, lentils, and small chickpeas as defined by CCC.

Servicing agent bank means the bank designated as the financial institution for a CMA or a designated marketing association.

Small chickpea means any chickpea that meets the definition of a chickpea according to the Grain Inspection, Packers and Stockyards Administration (GIPSA), Federal Grain Inspection Service (FGIS) and falls below a 20/64th sieve.

Unauthorized disposition means the conversion of any loan quantity pledged as collateral for a farm-stored loan without prior written authorization from the county committee.

Unauthorized removal means the movement of any farm-stored loan quantity from the storage structure in which the commodity was stored or structures that were designated when the loan was approved to any other storage structure, whether or not such structure is located on the producer's farm, without prior written authorization from the county committee.

Unshorn pelt means the removed skin and attached wool from a slaughtered lamb that has never been shorn.

Warehouse receipt means a receipt containing the required information prescribed in this part and is:

(1) A pre-numbered, negotiable warehouse receipt issued under the authority of the U.S. Warehouse Act, a state licensing authority, or by an approved CCC warehouse in such format authorized and approved, in advance, by CCC;

(2) An electronic warehouse receipt issued by such warehouse recorded in a central filing system or system maintained in one or more locations which are approved by FSA to operate such system; or

(3) Other such acceptable evidence of title, as determined by CCC.

Wool means the fiber sheared from a live sheep.

§ 1421.4 Eligible producers.

(a) To be an eligible producer, the producer must:

(1) Be an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity that produces an eligible commodity as a landowner, landlord, tenant, or sharecropper, or in the case of rice, furnishes land, labor, water, or equipment for a share of the rice crop. With respect to wool and mohair, the producer must own, other than through a security interest mortgage, or lien, the sheep and goats that produced the wool and mohair respectively for a period of not less than 30 days.

(2) Comply with all provision of this part and:

(i) 7 CFR part 12—Highly Erodible Land and Wetland Conservation;

(ii) 7 CFR part 718—Provisions Applicable to Multiple Programs;

(iii) 7 CFR part 1400—Payment Limitation & Payment Eligibility;

(iv) 7 CFR part 1403—Debt Settlement Policies and Procedures;

(v) 7 CFR part 1405—Loans, Purchases and Other Operations.

(3) Have made a acreage certification with respect to all the cropland on the farm.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively. The production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trustee. Marketing assistance loans and loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer is eligible to receive marketing assistance loans or loan deficiency payments only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable marketing assistance loan or loan deficiency payment documents are signed by the guardian;

(3) Any note or loan deficiency payment program application signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations in this part. Each such producer shall also remain liable for repayment of the entire marketing assistance loan amount until the loan is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or loan proceeds, after execution of the note and security agreement by CCC.

(e)(1) The county committee may deny a producer a marketing assistance loan on farm-stored commodities if the producer has:

(i) Made a misrepresentation in connection with the marketing assistance loan or LDP program;

(ii) Previously not allowed a representative access to the site where commodities pledged as collateral for CCC loans were stored or otherwise failed to corporate in the settlement of a marketing assistance loan; or

(iii) Failed to adequately protect the interests of CCC in the commodity pledged as collateral for a farm-stored loan.

(2) A producer who is denied a farm-stored loan will be eligible to pledge a commodity as collateral for a warehouse-stored loan or provide some other form of financial assurance to obtain a farm-stored loan.

(f) A CMA may obtain a marketing assistance loan and loan deficiency payment on eligible production of a loan commodity on behalf of its members who are eligible to receive marketing assistance loans or loan deficiency payments with respect to a crop of a commodity. For purposes of this subpart, the term "producer" includes a CMA.

(g) In case of the death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a marketing assistance loan or loan deficiency payment, payment shall, upon proper application to the FSA county service center that disbursed the marketing assistance loan or loan deficiency payment, be made to the persons who would be entitled to such producer's payment under the regulations contained in part 707 of this title.

§ 1421.5 Eligible commodities.

(a) Commodities eligible to be pledged as collateral for a loan made under this part are:

(1) Barley, corn, grain sorghum, oats, canola, peanuts, soybeans, oilseeds, wheat, dry peas, lentils, small chickpeas, rice and other crops designated by CCC produced and mechanically harvested in the United States;

(2) Dual purpose sorghum varieties as determined by CCC; and

(3) Wool and mohair produced and shorn from live animals in the United States.

(b) A commodity produced on land owned or otherwise in the possession of the United States that is occupied without the consent of the United States is not an eligible commodity.

(c)(1) To be an eligible commodity, the commodity must be merchantable for food, feed, or other uses determined by CCC and must not contain mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals. A commodity containing vomitoxin, aflatoxin or Aspergillus mold may not be pledged for a loan made under this part, except as provided by CCC in the marketing assistance loan note and security agreement.

(2) The determination of class, grade, grading factor, milling yields, and other quality factors, including the determination of type, quality, and quantity for peanuts:

(i) With respect to barley, canola, corn, flaxseed, grain sorghum, oats, rice, soybeans, sunflower seed for extraction of oil, wheat and other commodities designated by CCC, shall be based upon the Official United States Standards for Grain, United States Standards for Whole Dry Peas, Split Peas, and Lentils for dry peas and lentils, United States Standards for Beans for small chickpeas and the United States Standards for Rice as applied to rough rice whether or not such determinations are made on the basis of an official inspection.

(ii) With regard to mustard seed, rapeseed, safflower seed, flaxseed and sunflower seed used for a purpose other than to extract oil, shall be based on quality requirements established and announced by CCC, whether or not such determinations are made on the basis of an official inspection. The costs of an official quality determination may be

paid by CCC. The quality requirements that are used in administering marketing assistance loans and loan deficiency payments for the oilseeds in this paragraph are available in USDA State and county FSA service centers.

(iii) With regard to farm-stored peanuts, shall be determined at the time of delivery to CCC by a Federal or State Inspector authorized or licensed by the Secretary.

(d) Eligible wool and mohair must:

(1) Have been produced and sheared from live sheep and goats, of domestic origin and located in the U.S. for a period of not less than 30 calendar days prior to shearing.

(2) Be of merchantable quality deemed by CCC to be suitable for loan and must have been shorn in the United States.

(e) When certifying acreage on farms in which an interest is held, the producer must provide acceptable evidence of the commodity from which the county committee may determine whether the eligible production claimed by the producer is reasonable for the production practices on such farm or similar farms in the same county; or have either the eligible or ineligible commodity measured by a representative of the county FSA service center at the producer's expense, before commingling.

§ 1421.6 Beneficial interest.

(a)(1) To be eligible to receive marketing assistance loans or loan deficiency payments, a producer must have the beneficial interest in the commodity that is tendered to CCC for a marketing assistance loan or loan deficiency payment. The producer must always have had the beneficial interest in the commodity unless, before the commodity was harvested, sheared or slaughtered in the case of unshorn pelts, the producer, and a former producer whom the producer tendering the commodity to CCC has succeeded, had such an interest in the commodity. Commodities obtained by gift, barter or purchase shall not be eligible to be tendered to CCC for marketing assistance loans or loan deficiency payments. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing marketing assistance loan or loan deficiency payment shall be eligible to receive marketing assistance loans and loan deficiency payments whether succession to the commodity occurs before or after harvest, shearing or slaughter so long as the heir otherwise complies with this part.

(2) A producer shall not be considered to have divested the beneficial interest in the commodity if the producer retains control, title, and risk of loss in the commodity, including the right to make all decisions regarding the tender of such commodity to CCC for marketing assistance loans or loan deficiency payments, including those cases where the producer takes either of the actions in paragraph (a)(2)(i) or (a)(2)(ii) of this section as follows:

(i) Executes an option to purchase, whether or not a payment is made by the potential buyer for such option to purchase, for such commodity if all other eligibility requirements are met and the option to purchase contains the following:

Notwithstanding any other provision of this option to purchase, title; risk of loss; and beneficial interest in the commodity, as specified in 7 CFR 1421.6, shall remain with the producer until the buyer exercises this option to purchase the commodity. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of:

(1) The maturity of any Commodity Credit Corporation (CCC) loan that is secured by such commodity;

(2) The date CCC claims title to such commodity; or

(3) Such other date as provided in this option;

(ii) Enters into a contract to sell the commodity if the producer retains title, risk of loss, and beneficial interest in the commodity and the purchaser pays no advance payment amount or any incentive payment amount to enter into such contract to the producer, except as provided in part 1425 of this chapter.

(3) If marketing assistance loans and loan deficiency payments are made available to producers through an approved CMA under part 1425 of this chapter, the beneficial interest in the commodity must always have been in the producer-member who delivered the commodity to the CMA or its member CMA's, except as otherwise provided in this section. Commodities delivered to such a CMA shall not be eligible to receive marketing assistance loans or loan deficiency payments if the producer-member who delivered the commodity does not retain the right to share in the proceeds from the marketing of the commodity as provided in part 1425 of this chapter.

(b) With respect to wool, mohair, dry peas, lentils and small chickpeas produced in the 2002 crop year, producers who lost beneficial interest before October 11, 2002 are eligible for a loan deficiency payment based on the date the producer lost beneficial interest in the applicable commodity.

(c) For peanuts produced in the 2002 crop year, producers who lost beneficial interest in the 2002 crop of peanuts are eligible for a loan deficiency payment based on the date the producer lost beneficial interest in the applicable commodity.

§ 1421.7 Requesting marketing assistance loans and loan deficiency payments.

(a) A producer must, unless authorized by CCC, request marketing assistance loans and loan deficiency payments at the county office that, under part 718 of this title, is responsible for administering programs for the farm on which the commodity was produced.

(b) A marketing assistance loan or loan deficiency payment may be requested in person, by mail or electronic format designated by CCC. Forms prescribed by CCC may be obtained from the USDA, Farm Service Agency Web site.

(c) To receive marketing assistance loans or loan deficiency payments for a crop of a commodity, a producer must execute a note and security agreement or loan deficiency payment application on or before the applicable final loan availability date, as follows:

(1) March 31 of the year following the year in which the following crops are normally harvested: barley, canola, flaxseed, oats, rapeseed, and wheat.

(2) May 31 of the year following the year in which the following crops are normally harvested: corn, grain sorghum, mustard seed, rice, safflower, soybeans, sunflower seed, dry peas, lentils, and small chickpeas.

(3) January 31 of the year following the year in which peanuts are normally harvested or wool and mohair are normally sheared.

(d) With respect only to loan deficiency payments for eligible loan commodities produced in the 2001 crop year, whether or not produced on a farm covered by a production flexibility contract, the applicable final loan availability for such payment is November 12, 2002.

§ 1421.8 Eligible quantity.

(a) With respect to marketing assistance loans and loan deficiency payments for:

(1) Farm-stored commodities, all determinations of weight, and quality, except as otherwise agreed to or required by CCC, shall be determined at the time of delivery of the commodity to CCC or at the time the loan deficiency payment application is filed for measured requests, if applicable or selected for spot-check for certified requests.

(2) Warehouse-stored commodities, all determinations of grade, weight and quality, except as otherwise agreed to or required by CCC, shall be determined at the time the loan or LDP is requested when acceptable documentation, under § 1421.106, accompanies the loan or LDP request.

(b)(1) A producer may, before the final date for obtaining a marketing assistance loan for a commodity, repledge as collateral for securing a marketing assistance loan any commodity that had been previously pledged as collateral for a marketing assistance loan, except with respect to:

(i) Commodities that have been acquired with commodity certificate exchanges under part 1401 of this chapter;

(ii) Commodities that have been redeemed at the prevailing world market price for rice, or the alternative repayment rate for all other commodities, as determined by CCC.

(iii) Commodities on which a loan deficiency payment has been received.

(2) The commodity repledged as security for the subsequent loan shall have the same maturity date, under § 1421.101 as the original loan.

(c)(1) The marketing assistance loan documents shall not be presented for disbursement unless the commodity subject to the note and security agreement is an eligible harvested commodity, is in existence, and is in approved farm or warehouse storage, as determined by CCC. If the commodity was not either an eligible commodity, in existence, or in approved storage at the time of disbursement, the total amount disbursed under the marketing assistance loan and charges plus interest shall be refunded promptly by the producer.

(2) Marketing assistance loans may be disbursed to eligible producers who store eligible commodities in unlicensed storage facilities only if the producer agrees to redeem the marketing assistance loan on the date in which the loan is disbursed with a commodity certificate exchange.

(3) CCC shall limit the total marketing assistance loan quantity for a loan disbursement, or loan deficiency payment quantity for a loan deficiency payment, based on a subsequent increase in the quantity of an eligible commodity by the final loan availability date to 100 percent of the outstanding quantity of such marketing assistance loan or loan deficiency payment application. A producer may obtain a separate marketing assistance loan or loan deficiency payment before the final loan availability date for the commodity for quantities in excess of 100 percent of such quantity if such quantities are an otherwise eligible commodity.

§ 1421.9 Basic loan rates.

(a) Basic marketing assistance loan rates for a commodity may be established on a State, regional, county basis or other basis and may be adjusted by CCC to reflect quality and location and other factors applicable to the commodity and as otherwise provided in this section.

(b) The basic marketing assistance loan rates for wheat, corn, barley, oats, grain sorghum, rice, peanuts, soybean, canola, flaxseed, mustard seed, rapeseed, safflower, sunflower seed, dry peas, lentils, small chickpeas, wool, mohair and other crops designated by CCC will be determined by CCC and made available at State and county offices.

(c)(1) For all commodities except rice, warehouse-stored loans shall be disbursed at levels based on the basic county marketing assistance loan rate for the county where the commodity is stored, adjusted for the schedule of premiums and discounts established for the commodity on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

(2) For rice, warehouse-stored loans shall be disbursed at levels based on the milling yields times the whole and broken kernel marketing assistance loan rates, adjusted for the schedule of discounts on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

§ 1421.10 Market rates.

(a)(1) For the 2002 through 2007 crops of barley, corn, grain sorghum, oats, wheat, dry peas, lentils, small chickpeas, oilseeds, and other crops as designated by CCC, a producer may repay a nonrecourse marketing assistance loan at a rate that is the lesser of:

(i) The marketing assistance loan rate and charges, plus interest determined for such crop; or

(ii) The alternative repayment rate for such crop.

(2) To the extent practicable, CCC shall determine and announce the alternative repayment rate, based upon the market prices at appropriate U.S. markets as determined by CCC, to minimize loan forfeitures, minimize the Federal Government-owned inventory of the commodities, minimize the storage costs incurred by the Federal Government domestically and internationally, and minimize discrepancies in marketing loan benefits across State boundaries and across county boundaries. The alternative repayment rate may be adjusted to reflect quality and location for each crop of a commodity as follows:

(i) On a weekly basis in each county for oilseeds, except soybeans;

(ii) On a daily basis in each county for barley, corn, grain sorghum, oats, soybeans, and wheat; and

(iii) On a weekly basis nationally for dry peas, lentils and small chickpeas.

(b)(1) For the 2002 through 2007 crops of peanuts, wool and mohair, a producer may repay a nonrecourse loan at a rate that is the lesser of:

(i) The loan rate and charges interest, plus interest determined for such crop; or

(ii) The alternative repayment rate for such crop.

(2) To the extent practicable, CCC shall determine and announce periodically an alternative repayment rate for peanuts, wool, and mohair to minimize loan forfeitures, minimize the Federal Government-owned inventory of the commodities, minimize the storage costs incurred by the Federal Government domestically and internationally, and minimize discrepancies in marketing loan benefits across State boundaries and across county boundaries.

(c)(1) The prevailing world market price for a class of rice shall be determined by CCC based upon a review of prices at which rice is being sold in world markets and a weighting of such prices through the use of information such as changes in supply and demand of rice, tender offers, credit concessions, barter sales, government-to-government sales, special processing costs for coatings or premixes, and other relevant price indicators, and shall be expressed in U.S. equivalent values F.O.B. vessel, U.S. port of export, per hundredweight as follows:

(i) U.S. grade No. 2, 4 percent broken kernels, long grain milled rice;

(ii) U.S. grade No. 2, 4 percent broken kernels, medium grain milled rice; and

(iii) U.S. grade No. 2, 4 percent broken kernels, short grain milled rice.

(2) Export transactions involving rice and all other related market information will be monitored on a continuous basis. Relevant information may be obtained for this purpose from USDA field reports, international organizations, public or private research entities, international rice brokers, and other sources of reliable information.

(3) The prevailing world market price for a class of rice adjusted to U.S. quality and location the adjusted world

price (AWP), as determined under paragraph (c)(5) of this section, shall apply to this section.

(4) The adjusted world price for each class of rice shall equal the prevailing world market price for a class of rice (U.S. equivalent value) as determined under paragraphs (a)(2) and (3) of this section and adjusted to U.S. quality and location as follows:

(i) The prevailing world market price for a class of rice shall be adjusted to reflect an F.O.B. mill position by deducting from such calculated price an amount that is equal to the estimated national average costs associated with:

(A) The use of bags for the export of U.S. rice, and

(B) The transfer of such rice from a mill location to F.O.B. vessel at the U.S. port of export with such costs including, but not limited to, freight, unloading, wharfage, insurance, inspection, fumigation, stevedoring, interest, banking charges, storage, and administrative costs.

(ii) The price determined under paragraph (c)(4)(i) of this section shall be adjusted to reflect the market value of the total quantity of whole kernels contained in milled rice by deducting the world value of broken kernels it contains, with the value of the broken kernels determined by multiplying the quantity of broken kernels (4 percent per hundredweight) by the world market value of broken kernels. The world market value of broken kernels shall be based upon the relationship of whole and broken kernel world prices as estimated from observations of prices at which rice is being sold in world markets.

(iii) The price determined under paragraph (c)(4)(ii) of this section shall be adjusted to reflect the per-pound market value of whole kernels by dividing the price by the quantity of whole milled kernels contained in the milled rice (96 percent per hundredweight).

(iv) The price determined under paragraph (c)(4)(iii) of this section shall be adjusted to reflect the market value of whole kernels contained in 100 pounds of rough rice by multiplying such price by the estimated national average quantity of whole kernel rice by class obtained from milling 100 pounds of rough rice.

(v) The price determined under paragraph (c)(4)(iv) of this section shall be adjusted to reflect the total market value of rough rice by:

(A) Adding to such price:

(*1*) The market value of bran contained in the rough rice, computed by multiplying the domestic unit market value of bran by the estimated national average quantity of bran produced in milling 100 pounds of rice; and

(*2*) The market value of broken kernels contained in the rough rice, computed by multiplying the estimated world market value of broken kernels by the estimated national average quantity of broken kernels produced in milling 100 pounds of rice;

(B) Deducting from such price:

(*1*) An estimated cost of milling rough rice; and

(*2*) An estimated cost of transporting rough rice from farm to mill locations.

(vi) The price determined under paragraph (c)(4)(v) of this section may be adjusted to a whole kernel loan rate basis by deducting the estimated world market value of the total quantity of broken kernels contained in such rice and dividing the resulting value by the estimated national average quantity of milled whole kernels produced in milling 100 pounds of rice.

(5)(i) The adjusted world price for each class for rice, loan rate basis, shall be determined by CCC and announced, to the extent practicable, on or after 3:00 p.m. Eastern Standard time each Tuesday, or more frequently, as determined necessary by CCC, continuing through the later of:

(A) The last Tuesday of July 2007; or

(B) The last Tuesday of the latest month the 2007-crop rice loans mature.

(ii) In the event that Tuesday is a non-workday, the determination will be made on the next workday, on or after 3:00 p.m. Eastern Standard time.

(iii) The announced prices will be effective upon announcement and will remain in effect for a period as announced by the CCC.

(6) On the day of the announcement of the adjusted world price, applications for loan deficiency payments for rice that specify the payment rate will not be accepted between 2:00 p.m. Eastern Standard time and the time of the world price announcement.

§ 1421.11 Spot checks.

(a) CCC may inspect the collateral for marketing assistance loans, and producers with such loans shall allow CCC access to the farm and storage facility as necessary to conduct collateral inspections, or "spot checks" as they are called. Spot checks will verify that the quality and quantity of farm-stored commodities pledged as collateral for marketing assistance loans are maintained by the producer.

(b) Loan deficiency payments are selected for spot check to ensure that all eligibility requirements, as required by CCC, are met in order to receive such loan deficiency payment.

(c) Producers must present production evidence for commodities acceptable to CCC when a spot check is conducted.

§ 1421.12 Production evidence.

(a) Producers who redeem marketing assistance loan collateral at the prevailing world market price for rice, or the alternative repayment rate for all other commodities, as CCC determines or receives a loan deficiency payment may be required to provide CCC with:

(1) Evidence of production of the collateral such as:

(i) Evidence of sales,

(ii) Delivery evidence,

(iii) Load summaries from warehouse, processor, or buyer,

(iv) Warehouse receipts

(v) Paid measurement service

(vi) Spot check measurements with paid measurement service

(vii) Cleaning tickets for seed (viii) Scale tickets, if not issued by the producer for the producer's own production

(ix) Core tests for wool and mohair

(x) Maximum eligible quantity as determined by CCC

(2) The storage location of the collateral that has not been otherwise disposed of and access to such collateral;

(3) Permission to inspect, examine, and make copies of the records and other written data as deemed necessary to verify the eligibility of the producer and commodity;

(4) In the case of wool and mohair, permission to examine and inspect the sheep herd; and

(5) Any other evidence requested by the county FSA service center or the Deputy Administrator, FSA.

(b) A producer who fails to provide acceptable evidence of production shall be required to repay the market gain or loan deficiency payment and charges, plus interest, as determined by CCC.

§ 1421.13 Handling payments and collections.

(a) Amounts of $9.99 or less due a producer will be paid only upon the producer's request.

(b) Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

§ 1421.14 Obtaining peanut loans.

(a) Peanuts loans to individual producers may be obtained through:

(1) County offices; or

(2) A designated Marketing Association or a CMA approved by CCC.

(b) The loan documents shall not be presented for disbursement unless the peanuts pledged as collateral for the marketing assistance loan is eligible in accordance with § 1421.8. If the peanuts were ineligible at the time of the disbursement, the total amount disbursed under loan, or as an LDP, plus charges and interest shall be refunded promptly.

Subpart B—Marketing Assistance Loans

§ 1421.100 Applicability.

This subpart provides the terms and conditions for marketing assistance loans offered by CCC. Additional terms and conditions are also in the note and security agreement which the producer must sign to receive such marketing assistance loans.

§ 1421.101 Maturity dates.

(a)(1) All marketing assistance loans shall mature on demand by CCC and no later than the last day of the 9th calendar month following the month in which the note and security agreement is filed and approved except, for transferred marketing assistance loan collateral. The maturity date for transferred marketing assistance loan collateral will be the maturity date applicable to the original loan that was transferred.

(2) CCC may at any time call the marketing assistance loan by notifying the producer at least 30 days in advance of the accelerated maturity date.

§ 1421.102 Adjustment of basic loan rates.

(a) Basic loan rates are established under § 1421.9 and will be adjusted or not adjusted as follows:

(1) For farm-stored commodities, except for peanuts, that exceed acceptable levels of contamination, the loan rate will be discounted to 10 percent of the base county marketing assistance loan rate.

(2) For farm-stored commodities where the test weight discounts are on the:

(i) Crop year specific schedules of premiums and discounts, the loan rate shall be adjusted for the higher of the discount for test weight or grade based on test weight.

(ii) Additional schedule of discounts, the marketing assistance loan rate shall be reduced to 20 percent of the county average marketing assistance loan rate.

(3) With respect to commodities harvested, excluding silage or hay, as other than grain and pledged as collateral for a nonrecourse marketing assistance loan, the marketing assistance loan rate shall be discounted to 30 percent of the base county loan rate.

(4) With respect to farm-stored wheat, the basic county marketing assistance loan rate shall not be adjusted to reflect the protein content.

(5) With respect to Segregation 2 and 3 peanuts as determined by CCC, the marketing assistance loan rate shall be discounted to 35 percent of the applicable loan rate.

§ 1421.103 Approved storage.

(a) Approved farm storage is:

(1) A storage structure located on or off the farm, (excluding public warehouses that do not enter into an agreement with CCC), that CCC determines to be controlled by the producer which affords safe storage of collateral pledged for a marketing assistance loan;

(2) If determined and announced to be available in a State or county, on ground storage and other temporary storage structures approved by CCC.

(3) As determined by CCC, temporary approved storage may also include:

(i) On-ground storage or;

(ii) Other storage arrangements.

(b) CCC may reduce the quantity of a commodity pledged as collateral for a loan made available under paragraph (a)(2) of this section to not more than 75 percent of such otherwise eligible quantity in order to protect the interests of CCC. CCC may also limit the length of time the commodity may be stored on-ground or in temporary structures to not more than 90 days. A marketing assistance loan made with respect to such commodity which is not moved to a structure specified in (a)(2) within 90 days of the date the loan was disbursed may be called by CCC.

(c) Approved warehouse storage shall consist of a public warehouse for which a CCC storage agreement for the commodity is in effect that is approved by CCC for price support purposes. Such a warehouse is referred to in this by part as an approved warehouse. The names of approved warehouses may be obtained from the FSA, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205, from State and county offices, or at the FSA web site on the Internet.

§ 1421.104 Marketing assistance loan making.

(a)(1) The FSA county service center shall file or record, as required by State law, all security agreements that are issued with respect to commodities pledged as collateral for marketing assistance loans.

(i) The cost of filing and recording shall be paid by CCC.

(ii) The cost for terminating the financing statement before the end of the term shall be paid by the producer.

(2) If there are any liens or encumbrances on the commodity, waivers that fully protect the CCC's interest must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the commodity after the marketing assistance loan is approved.

(b) Fees, charges, and interest must be paid by the producer to CCC at a rate CCC determines. Such fees, charges, and interest include:

(1) A non-refundable loan service fee;

(2) Interest that accrues on a loan under part 1405 of this chapter;

(3) For each soybean crop, the producer as defined in the Soybean Promotion, Research and Consumer Information Act (7 U.S.C. Chapter 6301), shall remit to CCC an assessment that CCC determines when it acquires the commodity and shall be equal to one-half of 1 percent of the amount determined under § 1412.112.

(c) For peanuts, charges associated with warehouse stored loans including but not limited to storage and in charges, as determined by CCC are paid by CCC to the producer.

(d) The cost of terminating a financing statement shall be paid by the producer.

§ 1421.105 Farm-stored marketing assistance loans.

(a) The producer of a commodity pledged as security for a farm-storage loan shall:

(1) Certify the quantity of such commodity on the loan application, or;

(2) Have such quantity measured by CCC at the measurement service rate established by CCC.

(b) The State committee may establish a marketing assistance loan percentage not to exceed a percentage CCC establishes or it may apply quality discounts to the loan rate in each year for each commodity on a Statewide basis or for specified areas within the State. Before approving a county committee request to establish a different loan percentage, or to apply quality discounts, the State committee shall consider conditions in the State or areas within a State to determine if the marketing assistance loan percentage should be reduced below the maximum marketing assistance loan percentage or the quality discounts should be applied to the basic county marketing assistance loan rate to provide CCC with adequate protection. Marketing assistance loans disbursed based upon loan percentages previously lowered and loan rates adjusted for quality shall not be altered if conditions within the State or areas within the State change to substantiate removing such reductions. Percentages established or loan rates adjusted for quality under this section shall apply

only to new marketing assistance loans and not to outstanding marketing assistance loans. In determining loan percentages or the necessity to apply quality discounts, the State committee shall consider any factor at its discretion, including the following:

(1) General crop conditions;

(2) Factors affecting quality peculiar to an area within the State; and

(3) Climatic conditions affecting storability.

(c) An eligible quantity of a commodity that is commingled with an ineligible quantity of the commodity is not eligible to be collateral for a marketing assistance loan unless the producer, when requesting a marketing assistance loan designates all structures that may be used for storage of the marketing assistance loan collateral.

(1) In such cases, the producer is not required to obtain prior written approval from the county committee before moving marketing assistance loan collateral from one designated structure to another designated structure.

(2) In all other instances, if the producer intends to move marketing assistance loan collateral from a designated structure to another undesignated structure, the producer must request prior approval from the county committee. Such approval shall be written and the eligible or ineligible commodity must be measured by a representative of the county office, at the producer's expense, before commingling. Prior to commingling, with respect to wool and mohair, a representative of the county committee may determine an average production of the wool and mohair in a manner approved by CCC.

(d)(1) Two or more producers may obtain:

(i) A single joint marketing assistance loan for commodities that are stored in the same farm storage facility; or

(ii) Individual marketing assistance loans for their share of the commodity that is commingled in a farm storage facility with commodities owned by other producers if such other producers execute an agreement that provides th such producers shall obtain the permission of a representative of the county committee before removal of any quantity of the commodity from the storage facility. All producers who store a commodity in a farm storage facility in which commodities that have been pledged as collateral for a marketing assistance loan shall be liable for any damage incurred by CCC for the deterioration or unauthorized removal or disposition of such commodities.

(2) In such cases, each producer must execute a note and security agreement with CCC, and each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the requirements of this part. Each producer is also liable for repayment of the entire marketing assistance loan amount until the marketing assistance loan is fully repaid without regard to their share in the commodity pledged as collateral. In addition, such producer may not amend the note and security agreement for the producer's claimed share in such commodities, or marketing assistance loan proceeds, after execution of the note and security agreement by CCC.

(e)(1) A producer, when requesting a marketing assistance loan, shall designate in writing specific storage structures.

(2) The producer is not required to request prior approval before moving marketing assistance loan collateral between such designated structures.

(3) Movement of marketing assistance loan collateral to any other structures not designated or the disposal of such loan collateral without prior written approval of the county committee, shall subject the producer to administrative actions.

(4) The producer is responsible for any loss in quantity or quality of the farm-stored commodity pledged as collateral.

(5) CCC shall not assume any loss in quantity or quality of the marketing assistance loan collateral for farm-stored loans.

§ 1421.106 Warehouse-stored marketing assistance loan collateral.

(a) A commodity may be pledged as collateral for a warehouse-stored marketing assistance loan in the quantity delivered to CCC for storage at a warehouse that meets standards for approval at part 1423 of this chapter. Such quantity shall be the net weight specified on the warehouse receipt or supplemental certificate.

(b) Two or more producers may obtain a single joint marketing assistance loan for commodities stored in an approved warehouse if the warehouse receipt pledged as collateral is issued jointly to the producers.

(c) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations in this part. Each such producer shall also remain liable for repayment of the entire marketing assistance loan amount until the marketing assistance loan is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the marketing assistance loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or marketing assistance loan proceeds, after execution of the note and security agreement by CCC.

(d) Handling and storage rates that CCC has approved to be deducted from marketing assistance loan proceeds are available in USDA State and county FSA service centers. Deductions shall be based upon entries on the warehouse receipt or supplemental certificate, but the storage rate shall not exceed the storage rate CCC has approved. No storage deduction shall be made if written evidence acceptable to CCC is submitted indicating that:

(1) Storage charges through the maturity date have been prepaid; or

(2) The producer has arranged with the warehouse operator for the payment of storage charges through the maturity date and the warehouse operator enters an endorsement in substantially the following form on the warehouse receipt:

Storage arrangements have been made by the depositor of the commodity covered by this receipt through (date through which storage has been provided). No lien will be asserted by the warehouse operator against CCC or any subsequent holder of the warehouse receipt for the storage charges that accrued before the specified date.

(e) The beginning date to be used for computing storage deductions on the commodity stored in an approved warehouse shall be the later of the following:

(1) The date the commodity was received or deposited in the warehouse;

(2) The date the storage charges start; or

(3) The day following the date through which storage charges have been paid.

(f) For hard red winter and hard red spring wheat tendered to CCC and stored in an approved warehouse, producers must obtain official protein content determinations or, as CCC determines is acceptable, protein content may be determined by mutual agreement between the producer and the warehouse operator. Costs of determinations shall not be paid by CCC.

(g) For warehouse-stored peanuts, CCC will pay storage charges and in-charges and other fees as determined by CCC, to ensure proper storage of CCC loan collateral. The beginning date to be used for computing storage deductions on the CCC peanut loan collateral stored in an approved warehouse shall be the later of the following:

(1) The date the commodity was received or deposited in the warehouse;

(2) The date the storage charges start; or

(3) The day following the date through which storage charges have been paid.

(4) The date all required marketing assistance loan documents are received in the county office.

§ 1421.107 Warehouse receipts.

(a) Warehouse receipts tendered to CCC under § 1421.3 for marketing assistance loans must meet the provisions of this section and all other provisions of this part, and CCC program documents.

(b) Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipt must be properly endorsed on its reverse side certifying that the crop is free of encumbrances in order for title to vest in the holder. Receipts must be issued by an approved warehouse and must represent a commodity that is deemed to be stored commingled. The receipts must be negotiable and must represent a commodity that is the same quantity and quality as the eligible commodity actually in storage in the warehouse of the original deposit.

(c) If the receipt is issued for a commodity that is owned by the warehouse operator either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouse operator on the warehouse operator's commodity is invalid, the warehouse operator may offer the commodity to CCC for a marketing assistance loan if such warehouse is licensed under the U.S. Warehouse Act.

(d) Each warehouse receipt or accompanying supplemental certificate representing a commodity stored in an approved warehouse that has a storage agreement with CCC shall indicate that the commodity is insured under such agreement. CCC shall not be responsible for the cost of such insurance.

(e) A separate warehouse receipt must be submitted for each grade and class of any commodity tendered to CCC and, for rice, such receipt must also state the milling yield of the rice, and for wool, such receipts must also state the yield and micron of the wool.

(f) With respect to peanuts, a warehouse receipt must be submitted exhibiting grade, type, and segregation for peanuts tendered to CCC.

(g)(1) Each warehouse receipt, or a supplemental certificate (in duplicate) that properly identifies the warehouse receipt, must be issued under the applicable CCC storage agreement or the U.S. Warehouse Act, as applicable, and must indicate:

(i) The name and location of the storing warehouse;

(ii) The warehouse code assigned by CCC;

(iii) The warehouse receipt number;

(iv) The date the receipt was issued;

(v) The type of commodity;

(vi) The date the commodity was deposited or received;

(vii) The date to which storage has been paid or the storage start date;

(viii) Whether the commodity was received by rail, truck or barge;

(ix) The amount per bushel, pound, or hundredweight of prepaid in or out charges;

(x) The signature of the warehouse operator or the authorized agent; and

(xi) For warehouses operating under a merged warehouse code agreement (KC–385), the location and county to which the producer delivered the commodity.

(2) In addition to the information specified in paragraph (f)(1) of this section, additional commodity specific requirements shall be determined by CCC and be available at State and county offices and the Kansas City Commodity Office.

(h) If a warehouse receipt indicates that the commodity tendered for loan grades "infested" or "contains excess moisture", or both, the receipt must be accompanied by a supplemental certificate in order for the commodity to be eligible for a marketing assistance loan. The grade, grading factors, and quantity to be delivered must be shown on the certificate as follows:

(1) When the warehouse receipt shows "infested" and the commodity has been conditioned to correct the infested condition, the supplemental certificate must show the same grade without the "infested" designation and the same grading factors and quantity as shown on the warehouse receipt.

(2)(i) When the warehouse receipt shows that the commodity contained excess moisture and the commodity has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending of the commodity. Such entries shall reflect a drying or blending shrinkage as provided in paragraph (g)(2)(iv) of this section.

(ii) When a supplemental certificate is issued under paragraphs (g)(1) and (g)(2)(i) of this section, the grade, grading factors and the quantity shown on such certificate shall supersede the entries for such items on the warehouse receipt.

(iii) If the commodity has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate shall represent the quantity after drying or blending.

(iv) For commodities dried or blended under paragraph (g)(2)(iii) of this section, such quantity shall reflect a minimum shrinkage in the receiving weight excluding dockage:

(A) For the following commodities, 1.3 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:

(*1*) Barley: 14.5 percent;

(*2*) Corn: 15.5 percent;

(*3*) Grain sorghum: 14.0 percent;

(*4*) Oats: 14.0 percent;

(*5*) Rice: 14.0 percent;

(*6*) Soybeans: 14.0 percent;

(*7*) Wheat: 13.5 percen; and

(*8*) Peanuts: 10.0 percent.

(B) For the following commodities, 1.1 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:

(*1*) Canola: 10.0 percent;

(*2*) Flaxseed: 9.0 percent;

(*3*) Mustard Seed: 10.0 percent;

(*4*) Rapeseed: 10.0 percent;

(*5*) Safflower Seed: 10.0 percent;

(*6*) Sunflower Seed: 10.0 percent;

(*7*) Crambe: 10.0 percent; and

(*8*) Sesame Seed: 10.0 percent.

(i)(1) If, under paragraph (g) of this section, a supplemental certificate is issued in connection with a warehouse receipt, such certificate must state that no lien for processing will be asserted by the warehouse operator against CCC or any subsequent holder of such receipt.

(2) Warehouse receipts and the commodities represented by such receipts that are stored in an approved warehouse that is operating under a CCC storage agr ment may be subject to a lien for w house charges as specified in th applicable storage agreement. For all commodities except peanuts, the producer who pledged such a receipt as collateral for a loan under this part shall pay to CCC all costs incurred by CCC as result of the existence of the lien. In no event shall a warehouse operator be entitled to satisfy such a lien by sale of the commodities when CCC is the holder of such receipt.

(j) Warehouse receipts representing commodities that have been shipped by rail or by barge, must be accompanied by supplemental certificates completed under paragraph (f) of this section.

§ 1421.108 Transfers and reconcentrations.

(a) Upon request by the producer before transfer, the county committee may approve the transfer of a quantity of a commodity that is pledged as collateral for a farm-stored loan to a warehouse-stored loan at any time during the loan period.

(1) Liquidation of the farm-stored loan or part thereof shall be made through the pledge of warehouse receipts for the commodity placed under warehouse-stored loan and the immediate payment by the producer of the amount by which the warehouse-stored loan is less than the farm-stored loan or part thereof and charges plus interest. The loan quantity for the warehouse-stored loan cannot exceed 110 percent of the loan quantity transferred from the farm-stored loan.

(2) Any amounts due the producer shall be disbursed by the FSA county service center.

(b) Upon request by the producer before the transfer, the county committee may approve the transfer of a warehouse-stored loan or part thereof to a farm-stored loan at any time during the marketing assistance loan period. Quantities pledged as collateral for a farm-stored loan shall be based on a measurement or a calculation of average production of wool and mohair, such measurement or calculation to be made by a representative of the county office before approving the farm-stored loan. The producer must immediately repay the amount by which the farm-stored loan is less than the warehouse-stored loan and charges plus interest on the shortage. The maturity date of the farm-stored loan shall be the maturity date applicable to the warehouse-stored loan that was transferred.

(c) Upon the filing of the Reconcentration Agreement and Trust Receipt by the producer and warehouse operator, CCC may, during the marketing assistance loan period, approve the reconcentration in another CCC-approved warehouse for all or part of a commodity that is pledged as collateral for a warehouse-stored loan. Any such approval shall be subject to the terms and conditions in the Reconcentration Agreement and Trust Receipt. A producer may, before the new warehouse receipt is delivered to CCC, pay to CCC:

(1) The principal amount of the marketing assistance loan and charges plus interest and applicable charges; or

(2) If CCC so announces, an amount less than the principal amount of the marketing assistance loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such marketing assistance loan.

§ 1421.109 Personal liability of the producer.

(a) When a producer obtains a commodity marketing assistance loan, the producer agrees, in writing, not to:

(1) Provide an incorrect certification of the quantity or make any fraudulent or erroneous representation for the marketing assistance loan; or

(2) Remove or dispose of a quantity of commodity that is collateral for a CCC farm-stored loan without prior written approval from CCC.

(3) The violation of the terms and conditions of the note and security agreement, will cause harm or damage to CCC in that funds may be disbursed to the producer for a quantity of a commodity that is not actually in existence or for a quantity on which the producer is not eligible.

(b) Such violations as are referred to in paragraph (a)(3) of this section may include:

(1) Incorrect certification;

(2) Unauthorized removal; and

(3) Unauthorized disposition.

(c) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for such violations. Accordingly, if the county committee determines that the producer has committed such violations, liquidated damages shall be assessed on the quantity of the commodity that is involved in the violation.

(d) In the case of violations, if CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the marketing assistance loan rate applicable to the loan note for the first offense; or

(ii) 25 percent of the marketing assistance loan rate applicable to the loan note for the second offense; or

(2) Did not act in good faith about the violation, or for cases other than the first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the marketing assistance loan rate applicable to the loan note.

(e) For violations and the liquidated damages under paragraph (d)(1) of this section, the county committee shall:

(1) Require repayment of the marketing assistance loan quantity incorrectly certified or the loan quantity removed or disposed at the lesser of:

(i) The applicable loan principal, and charges, plus interest or;

(ii) The announced alternative repayment rate in effect on date the violation occurred, plus 15 percent of the loan rate, as otherwise determined by the Deputy Administrator, and

(2) If the producer fails to pay such amount within 30 days from the date of notification, accelerate the marketing assistance loan in default and require repayment of all loan principal, charges, and interest.

(f) For violations committed and the liquidated damages were assessed under paragraph (d)(2) of this section, the county committee shall call the loan involved in the violation, and require repayment of the entire loan principal, charges and interest.

(g) The county committee may waive the liquidated damages if it determines that the violation was inadvertent, accidental, and unintentional.

(h) If, for any violation, the county committee determines that CCC's interest is not or will not be protected, the county committee shall call all of the producer's farm-stored loans, and deny future farm-stored loans and loan deficiency payments without production evidence for 24 months after the date the violation is discovered. Depending on the severity of the violation, the county committee may deny future farm-stored loans and loan deficiency payments without production evidence for an additional period CCC designates.

(i) If the county committee determines that the producer has committed a violation, the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances that caused the violation, to the county committee; and

(2) Administrative actions will be taken.

(j) If the loan is accelerated, the producer may not repay the loan at the lower alternative loan repayment rate and may not utilize commodity certificate exchanges, unless authorized by CCC.

(k) Producers rejected for a farm-stored loan under this section may apply for a warehouse-stored loan.

(l) The loan plus other charges shall be payable to CCC upon demand if a producer:

(1) Makes any fraudulent representation in obtaining a marketing assistance loan, maintaining, or settling a loan; or

(2) Disposes or moves the loan collateral without the approval of CCC.

(m) A producer shall be personally liable for damages resulting from a commodity delivered to or removed by CCC containing mercurial compounds, toxin producing molds, or other substances poisonous or harmful to humans or animals or property.

(n) If the amount disbursed under a marketing assistance loan or in settlement thereof, exceeds the amount authorized by this part, the producer shall be liable for repayment of such excess and charges, plus interest.

(o) If the amount collected from the producer in satisfaction of the marketing assistance loan is less than the amount required under this part, the producer shall be personally liable for repayment of the amount of such deficiency and charges, plus interest.

(p) In the case of joint loans or loan deficiency payments, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the note or loan deficiency payment application.

(q) Any or all of the liquidated damages assessed may be waived as determined by CCC.

§ 1421.110 Repayments.

(a) CCC may allow a producer to repay a nonrecourse marketing assistance loan at a rate that is the lesser of:

(1) The loan rate and charges, plus interest determined for a crop; or

(2) The prevailing world market price, as determined by CCC, for rice or the alternative repayment rate for all other commodities, as determined by CCC.

(b)(1) On a form prescribed by CCC, a producer may request to lock in the applicable repayment rate for a period of:

(i) 60 calendar days; or

(ii) not less than 14 calendar days before the maturity date of the loan, but not both.

(2) The request to lock in the applicable repayment rate must be received in the FSA county service center that disbursed the loan.

(3) The repayment rate that is locked in is the rate in effect when the request to lock in is approved.

(4) The repayment rate may be locked in on outstanding farm-stored or warehouse-stored loans.

(5) The repayment rate that is locked in will expire the earlier of:

(i) 60 calendar days from date of approval, or;

(ii) 14 calendar days before loan maturity.

(6) The requests can only be completed one time for a designated quantity.

(7) The requests can be made in person or by facsimile.

(8) The requests cannot be canceled, terminated, or changed after approval.

(9) The locked-in applicable repayment rate will not transfer to any loan disbursed outside of the originating county where the commodity was stored.

(10) Once a repayment rate is locked in it cannot be extended.

(c) If a producer fails to repay a marketing assistance loan within the time prescribed by CCC under the terms and conditions of the request to lock in a market loan repayment rate, the producer may repay the loan:

(1) On or before maturity, at the lesser of:

(i) Principal plus interest as determined by CCC;

(ii) The repayment rate in effect on the day the repayment is received in the FSA county service center.

(2) After maturity at principal plus interest.

(d) When the proceeds of the sale of the commodity are needed to repay all or a part of a farm-stored loan, the producer must request and obtain prior written approval on a CCC approved form and comply with the terms and conditions of such form, to remove a specified quantity of the commodity from storage. Approval does not constitute release of CCC's security interest in the commodity or release of producer liability for amounts due CCC for the marketing assistance loan indebtedness if payment in full is not received by the county office. Failure to repay a marketing assistance loan within the time period prescribed by CCC in the case of a farm-stored loan and delivery of the pledged collateral to a buyer, is a violation of the agreement. In the case of such violation, the producer must repay the loan principal and interest or another amount as determined by the Deputy Administrator, FSA, under § 1421.109.

(e) The producer may obtain county committee approval of a release of all or part of pledged collateral for a warehouse-stored loan at or before the maturity of such loan by paying to CCC:

(1) The principal amount of the marketing assistance loan and charges plus interest, or

(2) An amount less than the principal amount of the marketing assistance loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the collateral for such loan.

(f) A partial release of marketing assistance loan collateral must cover all of the commodity represented by one warehouse receipt. Warehouse receipts redeemed by repayment of the marketing assistance loan shall be released only to the producer. However, such receipt may be released to persons designated in a written authorization that is filed with the county office by the producer within 15 days before the date of repayment.

(g) The note and security agreement shall not be released until the marketing assistance loan has been satisfied in full.

(h)(1) If the commodity is moved from storage without obtaining prior approval to move such commodity, such removal shall constitute unauthorized removal or disposition, as applicable under § 1421.109(b), unless the removal occurred on a non-workday and the producer notified the county office on the next workday of such removal.

(2) Any loan quantities involved in a violation of § 1421.109 must be repaid under § 1421.109(e).

§ 1421.111 Commodity certificate exchanges.

(a) For any outstanding marketing assistance loan, a producer may purchase a commodity certificate and exchange that commodity certificate for the marketing assistance loan collateral.

(b) The exchange rate is the lessor of:

(1) The loan rate and charges, plus interest applicable to the loan;

(2) The prevailing world market price, as determined by CCC, for rice or the alternative repayment rate for all other commodities, as determined by CCC.

(c) Commodity certificate exchanges may not be used when locking in a repayment rate under § 1421.110.

(d) Producers must request a commodity certificate exchange in person at the FSA county service center that disbursed the marketing assistance loan by:

(1) Completing a written request as CCC determines.

(2) Purchasing a commodity certificate for the exact amount required to exchange the marketing assistance loan collateral.

(3) Immediately exchanging the purchased commodity certificate for the outstanding loan collateral.

§ 1421.112 Loan settlement.

(a) The value of the settlement of marketing assistance loan shall be made by CCC on the following basis:

(1) For nonrecourse marketing assistance loans, the schedule of premiums and discounts for the commodity provided that:

(i) If, the value of the collateral at settlement is less than the amount due, the producer shall pay to CCC the amount of such deficiency and charges, plus interest on such deficiency; or

(ii) If, the value of the collateral at settlement is greater than the amount due, such excess shall be retained by CCC and CCC shall have no obligation to pay such amount to any party.

(2) For recourse marketing assistance loans, the proceeds from the sale of the commodity provided that:

(i) If, the value of the collateral at settlement is less than the amount due, the producer shall pay to CCC the amount of such deficiency and charges, plus interest on such deficiency; or

(ii) If, the proceeds received from the sale of the commodity are greater than the sum of the amount due, plus any cost incurred by CCC in conducting the sale of the commodity, the amount of such excess shall be paid to the producer or, if applicable, to a secured creditor of the producer.

(3) If CCC sells the commodity described in paragraphs (a)(1) or (a)(2) of this section in settlement of the marketing assistance loan, the sales proceeds shall be applied to the amount owed CCC by the producer. The producer shall be responsible for any costs incurred by CCC in completing the sale. CCC may deduct such amount from the sales proceeds.

(b) Settlements made by CCC for eligible commodities that are acquired by CCC and that are stored in an approved warehouse shall be made on the basis of the entries in the applicable warehouse receipt, supplemental certificate, and accompanying documents.

(c) Settlements made by CCC for peanuts acquired by CCC and stored in an approved warehouse shall be based on the settlement value at the time of the loan disbursement and the entries in the applicable warehouse receipt, supplemental certificate, and accompanying documents subject to adjustments for changes in quality and other factors.

(1) All eligible commodities that are stored in other than approved warehouses shall be delivered to CCC as CCC instructs. Settlement shall be based on entries in the applicable warehouse receipt, supplemental certificate, and accompanying documents.

(2) For eligible loan commodities that are delivered from other than an approved warehouse, settlement shall be made by CCC on the basis of the basic marketing assistance loan rate that is in effect for the commodity at the producer's customary delivery point, as determined by CCC.

(d) In all cases, settlements may be adjusted for changes in quality and other factors affecting the value of the commodity.

§ 1421.113 Foreclosure.

(a)(1) Upon maturity and nonpayment of a warehouse-stored loan, title to the unredeemed collateral securing the marketing assistance loan shall immediately vest in CCC.

(2) Upon maturity and nonpayment of a farm-stored marketing assistance loan, title to the unredeemed collateral shall automatically transfer to CCC upon CCC demand.

(3) When CCC acquires title to the unredeemed collateral, CCC shall not pay for any market value that such collateral may have in excess of the marketing assistance loan indebtedness, (the unpaid amount of the note and charges plus interest).

(b) If the total amount due on a farm-stored loan (the unpaid amount of the note plus charges, and interest) is not satisfied upon maturity, CCC may remove the commodity from storage, and assign, transfer, and deliver the commodity or documents evidencing title thereto when, how, and upon terms as CCC determines. Disposition may also be effected without removing the commodity from storage. The commodity may be processed before sale and CCC may become the purchaser of the whole or any part of the commodity at either a public or private sale.

(1) The value of settlement for a farm-stored commodity removed by CCC from storage and shall be as provided in § 1421.112.

(2) If a deficiency exists after the collateral is sold, a claim for such deficiency will be established in accordance with part 1403 of this title.

§ 1421.115 Recourse marketing assistance loans.

(a) CCC shall make recourse marketing assistance loans available to eligible producers of high moisture corn, high moisture grain sorghum and other eligible loan commodities as determined by the Deputy Administrator, Farm Programs.

(b) Repayment must be paid in full on or before the loan maturity date.

(c) Recourse marketing assistance loan collateral may not be delivered or forfeited to CCC in satisfaction of the loan indebtedness.

Subpart C—Loan Deficiency Payments

§ 1421.200 Applicability.

(a) During the loan availability period, loan deficiency payments will be made available to eligible producers when the alternative repayment rate is less than the applicable county loan rate.

(b) To be eligible to receive loan deficiency payments a producer must:

(1) Comply with all marketing assistance loan eligibility including beneficial interest requirements.

(2) Agree to forgo obtaining such loan, if applicable; and

(3) File in person, by mail or electronically a request for payment on a form prescribed by CCC; and

(4) Otherwise comply with all program requirements.

(c) A producer must submit a completed request for:

(1) A field direct loan deficiency payment to CCC on or before the date of harvesting or shearing a quantity of an eligible commodity, provided further that the producer must have beneficial interest in such quantity on the date the commodity is harvested or sheared.

(2) A field direct loan deficiency payment to CCC for unshorn pelts on or before the date of slaughter of the quantity of live lambs, before the loss by the producer of beneficial interest in the lamb and the unshorn pelt produced from such lamb.

(3) All other types of loan deficiency payment requests after harvest or shearing and before beneficial interest is lost in the commodity, but not later than the loan availability date.

(d) For unshorn pelts, the lamb must be owned for a period of not less than 30 days in advance of the application and sold for immediate slaughter or slaughtered for personal use. Producers must submit acceptable production evidence to CCC under § 1421.12 at the time of request. Producers who do not sell lambs for immediate slaughter are ineligible for a loan deficiency payment.

§ 1421.201 Loan deficiency payment rate.

(a) The loan deficiency payment rate for a crop shall be the amount by which the loan rate for the crop exceeds the rate at which CCC has announced that producers may repay their loans under § 1421.10.

(b) Such rate shall be the amount determined:

(1) For loan deficiency payments other than field direct:

(i) On the day the producer submits a completed request for a loan deficiency payment to the FSA county service center;

(ii) Using the rate in effect for the FSA county service center where the commodity is stored.

(2) For field direct loan deficiency payments:

(i) On the date the commodity was delivered to the processor, buyer, warehouse or CMA;

(ii) Using the rate in effect for the FSA county service center where the farm records are kept.

(3) For rice loan deficiency payments, the adjusted world price under § 1421.10(c).

(c) The loan deficiency payment applicable to such crop shall be computed by multiplying the loan deficiency payment rate, as determined under paragraph (b) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a nonrecourse loan for which the loan deficiency payment is requested.

§ 1421.202 Loan deficiency payment quantity.

(a) A loan deficiency payment may be based on 100 percent of the net eligible quantity specified on acceptable evidence of production of the commodity certified as eligible for loan deficiency payment if such production evidence is provided for such commodity under § 1421.12.

(b) Two or more producers may obtain a single joint loan deficiency payment for commodities that are stored in the same storage facility. Two or more producers may obtain individual loan deficiency payments for their share of the commodity that is stored commingled in a farm storage facility with commodities for which a loan deficiency payment has been requested and shall be liable for any damage incurred by CCC for incorrect certification of such commodities under § 1421.203.

(c) Two or more producers may obtain a single joint loan deficiency payment for commodities that are stored in an approved or unapproved warehouse if the acceptable documentation representing an eligible commodity for which a loan deficiency payment is requested is completed jointly for such producers.

§ 1421.203 Personal liability of the producer.

(a) When a producer requests a loan deficiency payment, the producer agrees:

(1) When signing the Loan Deficiency Payment Application and Certification or the Direct Loan Deficiency Payment Agreement, as applicable, that the producer will not provide an incorrect certification of the quantity or make any fraudulent representation for loan deficiency payment purpose; and

(2) That violation of the terms and conditions of the loan deficiency payment request, as applicable, will cause harm or damage to CCC in that funds may be disbursed to the producer for a quantity of a commodity that is not actually in existence or for a quantity on which the producer is not eligible, if CCC determines that the producer has violated the terms and conditions of the applicable forms prescribed by CCC, liquidated damages shall be assessed on the quantity of the commodity that is involved in the violation.

(b) If CCC determines that the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan deficiency payment rate for the first offense; or

(ii) 25 percent of the loan deficiency payment rate for the second offense.

(2) Did not act in good faith about the violation, or for cases other than the first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan deficiency payment rate.

(c) For violations to which paragraph (b)(1) of this section applies, the producer must repay the loan deficiency payment applicable to the loan deficiency quantity incorrectly certified, and charges, plus interest applicable to the amount repaid. If the producer fails to pay such amounts within 30 days from the date of notification, the producer must repay the entire loan deficiency payment and charges plus interest.

(d) For violations to which paragraph (b)(2) of this section applies, the producer shall repay of the entire loan deficiency payment and charges plus interest.

(e) CCC may waive the liquidated damages taken applicable to paragraph (b) of this section if the CCC determines that the violation occurred inadvertently, accidentally, or unintentionally.

(f) If, for any violation to which paragraph (b) of this section applies, the county committee determines that CCC's interest is not or will not be protected, the county committee shall:

(1) Call the producer's farm-stored loans;

(2) Deny future farm-stored loans for the current and 2 following crop years;

(3) Deny loan deficiency payments for the current and 2 following crop years unless production evidence is presented to CCC. Depending on the severity of the violation, the county committee may deny future farm-stored loan and loan deficiency payments without production evidence.

(g) If the county committee determines that the producer has committed a violation, the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances that caused the violation, to the county committee; and

(2) Administrative action will be taken under this section.

(h) If the amount disbursed under loan deficiency payments exceeds the amount authorized by this part, the producer shall be liable for repayment of such excess and charges, plus interest.

(i) In the case of joint loan deficiency payments, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the loan deficiency payment application.

(j) Any or all of the liquidated damages assessed under the provisions of paragraph (b) of this section may be waived as determined by CCC.

9. The heading of newly designated subpart D is revised to read as set forth below, and subpart D is further amended as follows:

Subpart D—Grazing Payments for 2002–2007 Crop Years of Wheat, Barley, Oats and Triticale

A. In § 1421.300, paragraph (a) is revised to read as follows:

§ 1421.300 Applicability.

(a) The regulations in this subpart are applicable to the 2002–2007 crops of eligible acreage planted to wheat, barley, oats or triticale that is grazed by livestock and not harvested in any other manner. This subpart sets forth the terms and conditions under which a grazing payment in lieu of a loan deficiency payment will be made by CCC.

* * * * *

B. In § 1401.303, paragraphs (a), (d) and (e) are revised and paragraph (f) is added to read as follows:

§ 1421.303 Eligible producer and eligible land.

(a) To be an eligible producer for a payment under this subpart, the person must be a producer of wheat, barley, oats, or triticale in the 2002 through 2007 crop years. Also, to be an eligible producer, the person must meet all other qualifications for payment that are set out in this subpart, set out in parts 12, 718, 1400, and 1405 of this title. A person will not be considered the producer of the crop unless that person was responsible for the planting of the crop and had the risk of loss in the crop at all times, including, at the time of planting and the time of the request for a payment under, this subpart.

* * * * *

(d)(1) A producer must, at the time of the agreement made under this part to obtain a payment, meet all other eligible criteria for obtaining loan deficiency payments.

(2) For producers of triticale who obtain a payment under this subpart the

producer must enter into an agreement with CCC to forgo any harvesting of triticale on the acreage for which such a payment is made.

(e)(1) No payment will be made if the crop could not have been harvested because of weather conditions or any other reason.

(2) The producer must retain the control, title and risk of loss in the commodity for which the payment is sought from the date of planting through the date on which mechanical harvesting of the crop would normally occur.

(f) Producers who elect to graze 2002–2007 crop wheat, barley, oats, or triticale will not be eligible for an indemnity under the Federal Crop Insurance Program provision of Chapter IV of this title or a payment under Noninsured Crop Assistance Program authorized under part 1437 of this chapter.

C. In § 1421.304 revise the first sentence to read as follows:

§ 1421.304 Time and method for application.

Application for the program provided in this subpart must be received, at the county office that is responsible for administering programs for the farm, no earlier than the date on which eligible crops would normally be harvested and no later than the final loan availability date as determined in accordance with § 1421.5. * * *

D. In § 1421.305 revise paragraphs (a), (c) and (f) to read as follows:

§ 1421.305 Payment amount.

(a) The grazing payment rate shall be the loan deficiency payment in effect for the farm on the date which the producer submits a complete program application to CCC. For triticale, the loan deficiency payment rate will be equal to the rate for the predominant class of wheat in the county where the farm is located in effect as of the date of the application is filed.

* * * * *

(c) The payment yield shall be the yield in effect for the calculation of direct payments under part 1412 of this chapter. In a case of a farm for which a farm program payment yield is unavailable for a covered commodity, an appropriate payment yield for the covered commodity on the farm will be determined by CCC taking into consideration the farm program payment yields applicable to the commodity using three (3) similar farms. For triticale, the payment yield shall be the yield for wheat from three (3) similar farms in that county.

* * * * *

(f) To receive the payment, the eligible producer must submit a request for payment on an application form as prescribed by CCC or FSA. The application may be obtained from the county FSA office, or from the USDA or FSA web site in the Internet. The form must be submitted to the county by the close of business on or before March 31 of the applicable crop year.

Signed in Washington, DC, on October 8, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–25969 Filed 10–8–02; 10:55 am]

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Federal Register

Friday,
October 11, 2002

Part III

The President

Proclamation 7605—Leif Erikson Day, 2002

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Presidential Documents

Title 3—

The President

Proclamation 7605 of October 8, 2002

Leif Erikson Day, 2002

By the President of the United States of America

A Proclamation

More than 1,000 years ago, Leif Erikson and his crew journeyed across the Atlantic seeking unknown lands. Their pioneering spirit of courage, determination, and discovery helped to open the world to new exploration and unprecedented development. Each October, we join our friends in Iceland, Norway, Denmark, Sweden, and Finland in honoring this historic voyage and in celebrating the strong transatlantic bonds that exist between those countries and the United States.

Our Nation is committed to promoting prosperity and stability throughout Northern Europe. Through the Northern Europe Initiative, we have partnered with other nations in the region to enhance security and economic growth in the Baltic region. This Initiative addresses concrete needs in six areas: the environment; public health; law enforcement and rule-of-law; civil society; energy; and trade. Our Nation also supports the European Union's "Northern Dimension" strategy, which aims to strengthen the integration of Northwest Russia and the accession countries to the European Union. These important efforts, along with the bilateral programs of all Nordic countries, are helping to build a brighter future for the entire region.

As we defend ourselves against terrorism, we are grateful for the support of our coalition partners around the world, including our Nordic friends and allies. The goodwill demonstrated by the people of this region has reinforced our close ties and strengthened our resolve to overcome the evil that is before us. As we celebrate Leif Erikson Day, we recommit ourselves to a world of innovation, prosperity, and opportunity.

To honor Leif Erikson, the brave son of Iceland and grandson of Norway, and to recognize our Nation's Nordic-American heritage, the Congress, by joint resolution (Public Law 88–566) approved on September 2, 1964, has authorized and requested the President to proclaim October 9 of each year as "Leif Erikson Day."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 9, 2002, as Leif Erikson Day. I call upon all Americans to observe this day with appropriate ceremonies, activities, and programs to honor our rich Nordic-American heritage.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

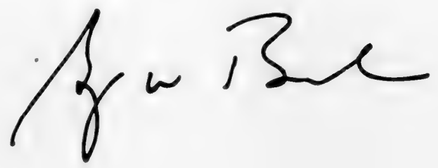

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Federal Register

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Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300, 301, and 319

[Docket No. 02–071–1]

Cold Treatment of Fruits

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations, by revising the cold treatment schedules under which fruits are treated for the Mediterranean fruit fly (Medfly) and other specified pests. Based on a review of those treatment schedules, we have determined that it is necessary to extend the duration of cold treatment for Medfly. We are also amending the regulations for importing fruits and vegetables to provide that inspectors at the port of first arrival will sample and cut fruit from each shipment cold treated for Medfly to monitor the effectiveness of the cold treatment. These actions are necessary to protect against the introduction and dissemination of Medflies into and within the United States.

DATES: This interim rule is effective October 15, 2002. The incorporation by reference provided for by this rule is approved by the Director of the Federal Register as of October 15, 2002. We will consider all comments that we receive on or before December 16, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–071–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–071–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–071–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. I. Paul Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual), which is maintained by the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS), contains approved treatment schedules for agricultural commodities and is incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1.

The PPQ Treatment Manual contains three cold treatment schedules for the treatment of fruits for the Mediterranean fruit fly (Medfly). Those schedules are prescribed to treat commodities for a variety of pests, including Medfly, that occur in the regions from which the commodities originate. The three schedules are:

T107–a. Target pests: *Ceratitis capitata* (Medfly) or *Eutetranychus orientalis* (Oriental citrus mite).

Temperature	Exposure Period (days)
32 °F or below	10
33 °F or below	11
34 °F or below	12
35 °F or below	14
36 °F or below	16

T107–c. Target pests: Species of *Anastrepha* (other than *Anastrepha ludens*) or *C. capitata* (Medfly).

Temperature	Exposure period (days)
32 °F or below	11
33 °F or below	13
34 °F or below	15
35 °F or below	17

T107–f. Target pests: *Bactrocera cucurbitae* (Melon fly), *Bactrocera dorsalis* (Oriental fruit fly), *C. capitata* (Medfly), and *Eutetranychus orientalis* (Oriental citrus mite).

Temperature	Exposure period (days)
32 °F or below	10
33 °F or below	11
34 °F or below	12
35 °F or below	14

T107–a generally applies to commodities imported from Europe, Africa, western Asia, and Central America, while T107–c generally applies to commodities from South America and the Caribbean. T107–f applies to a few select commodities imported from eastern Asia. T107–a and T107–f are also used to treat fruits moving interstate from Hawaii or from any areas of the continental United States that may, from time to time, be quarantined because of Medfly.

Medfly in Cold-Treated Clementines

Between November 20 and December 11, 2001, live Medfly larvae were intercepted in clementines from Spain that had been imported into the United States subject to cold treatment schedule T107–a. In response to the Medfly interceptions, APHIS suspended the importation of Spanish clementines pending an investigation into the cause of the infestations. Prior to November and December 2001, there had never been multiple confirmed finds of

Medfly larvae in fruit of any kind that had been legally imported into the mainland United States from any source.

As part of its response to the Medfly larvae finds in Spanish clementines, APHIS is sponsoring additional research on the application of cold treatments for imported fruits. In addition, APHIS asked a panel composed of APHIS regulatory personnel and USDA technical experts on fruit flies to conduct a review of available scientific literature related to the efficacy of the T107–a cold treatment for Medfly, with the intention of using the panel's findings as guidelines on the future application of cold treatment for Medfly.

The panel completed its evaluation and found that the previously approved T107–a cold treatment schedule, while providing a very high level of Medfly mortality, lacks evidence to support that it provides Probit 9 level quarantine security (*e.g.*, a survival rate of no more than 0.0032 percent of target pests) in all cases. Based on its review of the available scientific literature and of all factors involved in quarantine cold treatments against Medfly eggs and larvae, the panel recommended increasing the length of the required cold treatment at each temperature by 2 days. The panel's recommendations are contained in a document entitled "Evaluation of cold storage treatment against Mediterranean Fruit Fly, *Ceratitis capitata* (Wiedemann) (Diptera:Tephritidae)" (May 2, 2002) (referred to elsewhere in this document as the "cold treatment evaluation"). To provide support for the panel's recommendations, USDA's Office of Risk Assessment and Cost-Benefit Analysis did a quantitative analysis of available data, including data recently made available by the Australian Department of Agriculture. This analysis, entitled "Quantitative Analysis of Available Data on the Efficacy of Cold Treatment Against Mediterranean Fruit Fly Larvae" (September 2002) (referred to elsewhere in this document as the "quantitative analysis"), concluded that there is uncertainty as to whether treatments of less than 14 days and at temperatures in the 32–33 °F range will achieve the Probit 9 level of security. Therefore, we have decided to eliminate those treatment options. Both the cold treatment evaluation and the quantitative analysis can be viewed on the Internet at *http://www.aphis.usda.gov/oa/clementine/index.html*. Copies may also be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Determination by the Secretary

In this document, APHIS is revising the cold treatment schedules that are used to treat fruits for infestation with Medfly in order to prevent the introduction of Medfly into the United States or the dissemination of Medfly within the United States.

Under § 412(a) of the Plant Protection Act (7 U.S.C. 7712), the Secretary of Agriculture may prohibit or restrict the importation, entry, and interstate movement of any plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or dissemination of a plant pest or noxious weed into or within the United States.

The Secretary has determined that it is not necessary to prohibit the importation or interstate movement of the fruits that have been eligible for entry or interstate movement if cold treated with schedules T107–a, T107–c, or T107–f. This determination is based on the finding that the application of the extended cold treatment as described in this document, in addition to all other existing applicable requirements, will provide the protection necessary to prevent the introduction and dissemination of plant pests into the United States. The factors considered in arriving at this determination include: (1) The findings of the cold treatment evaluation, (2) the findings of the quantitative analysis on the efficacy of cold treatment, and (3) the findings of USDA technical experts.

Therefore, we are amending the PPQ Treatment Manual by revising treatment schedules T107–a, T107–c, and T107–f. Treatment T107–a is revised by eliminating cold treatment options of less than 14 days and lower than 34 °F and extending the remaining treatments by 2 days, as shown in the following table, and by removing the Oriental citrus mite from the list of target pests. (Cold treatment for the Oriental citrus mite will now be applied according to the revised T107–f, which is described later in this document.) There should be no effect on fruit quality due to the increased holding times, based on anecdotal information from New Zealand's Ministry of Agriculture and Forestry. We are confident that the revised treatment schedules will provide Probit 9 level quarantine security.

T107–a. Target pests: *Ceratitis capitata* (Medfly).

Temperature	Previous exposure period (days)	Revised exposure period
32 °F or below.	10	No longer an approved treatment.
33 °F or below.	11	No longer an approved treatment.
34 °F or below.	12	14 days.
35 °F or below.	14	16 days.
36 °F or below.	16	18 days.

We are also establishing a new treatment schedule for use in cases where commodities need to be treated for both Medfly and *Anastrepha* spp. fruit flies (other than *A. ludens*). Such commodities, which have been subject to treatment T107–c in the past, will now need to be treated in accordance with treatment T107–a–1, as follows:

T107–a–1. Target pests: *Ceratitis capitata* (Medfly) and species of *Anastrepha* (other than *A. ludens*).

Temperature	Exposure period (days)
34 °F or below	15
35 °F or below	17

In conjunction with changing treatment schedule T107–a and establishing treatment schedule T107–a–1, we are changing treatment schedules T107–c and T107–f by removing Medfly from the list of target pests for each treatment. Treatment T107–c, which had been used for commodities requiring treatment for Medfly and *Anastrepha* spp. fruit flies (except *A. ludens*), will now be limited to species of *Anastrepha* (other than *A. ludens*). Similarly, treatment T107–f, which had been used for commodities requiring treatment for Medfly, melon fly, Oriental fruit fly, or Oriental citrus mite, will now be limited to melon fly, oriental fruit fly, or oriental citrus mite. The revised T107–c and T107–f treatment schedules are as follows:

T107–c. Target pests: Species of *Anastrepha* (other than *Anastrepha ludens*).

Temperature	Exposure period (days)
32 °F or below	11
33 °F or below	13
34 °F or below	15
35 °F or below	17

T107–f. Target pests: *Bactrocera cucurbitae* (Melon fly), *Bactrocera dorsalis* (Oriental fruit fly), and *Eutetranychus orientalis* (Oriental citrus mite).

Temperature	Exposure period (days)
32 °F or below	10
33 °F or below	11
34 °F or below	12
35 °F or below	14

Following is a list of all fruits, by country, that are affected by these changes to the PPQ Treatment Manual.

(**Note:** In the following table, which was drawn from the PPQ Treatment Manual, varieties of *Citrus reticulata* such as clementines and satsumas are covered by the general term "tangerines.")

Country	Commodity	Previous treatment	New treatment
Algeria	Ethrog Grape,[1] Grapefruit, Tangerine, Pear, Plum	T107–a	T107–a (revised).
Argentina	Apple, Apricot, Cherry, Grape,[2] Kiwi, Peach, Pear, Plum, Nectarine, Quince, Pomegranate.	T107–c	T107–a–1.
Armenia	Grape[1]	T107–a	T107–a (revised).
Austria	Grape[1]	T107–a	T107–a (revised).
Azerbaijan	Grape[1]	T107–a	T107–a (revised).
Belarus	Grape[1]	T107–a	T107–a–1.
Belize	Ethrog	T107–a	T107–a (revised).
	Carambola	T107–c	T107–c.
Bosnia	Ethrog	T107–a	T107–a (revised)
Brazil	Apple, Grape	T107–c	T107–a–1.
Bulgaria	Grape[1]	T107–a	T107–a (revised).
Chile[3]	Apple, Apricot,[4] Cherry, Grape[5] Kiwi,[6] Loquat, Nectarine,[4] Peach,[4] Pear, Persimmon, Plum, Plumcot, Quince, Sand Pear.	T107–a	T107–a (revised).
China	Sand Pear, Ya Pear	T107–f	T107–f.
Columbia	Grape	T107–c	T107–c.
Costa Rica	Ethrog	T107–a	T107–a (revised).
Croatia	Ethrog	T107–a	T107–a (revised).
Cyprus	Ethrog, Grape[1], Grapefruit, Orange, Tangerine	T107–a	T107–a (revised).
Dominican Republic	Grape	T107–c	T107–c.
Ecuador	Ethrog	T107–a	T107–a (revised).
	Apple, Grapefruit, Orange, Tangerine	T107–c	T107–a–1.
Egypt	Grape[1], Orange, Pear	T107–a	T107–a (revised).
El Salvador	Ethrog	T107–a	T107–a (revised).
Estonia	Grape[1]	T107–a	T107–a (revised).
France	Apple, Ethrog, Grape[1], Kiwi, Pear	T107–a	T107–a (revised).
Georgia	Grape[1]	T107–a	T107–a (revised).
Germany	Grape[1]	T107–a	T107–a (revised).
Greece	Ethrog, Grape,[1] Kiwi, Orange, Pomegranate, Tangerine	T107–a	T107–a (revised).
Guatemala	Ethrog	T107–a	T107–a (revised).
Guyana	Apple, Orange	T107–c	T107–c.
Haiti	Apricot, Pomegranate	T107–c	T107–c.
Honduras	Ethrog	T107–a	T107–a (revised).
Hungary	Grape[1]	T107–a	T107–a (revised).
India	Litchi	T107–f	T107–f.
Israel, incl. Gaza	Apple, Apricot, Ethrog, Grape,[1] Grapefruit, Litchi, Loquat, Nectarine, Orange, Peach, Pear, Persimmon, Pomegranate, Pummelo, Plum, Tangerine.	T107–a	T107–a (revised).

Country	Commodity	Previous treatment	New treatment
Italy	Ethrog (North Atlantic ports only), Grape,[1] Grapefruit, Kiwi, Orange, Persimmon, Tangerine.	T107–a	T107–a (revised).
Jordan	Apple Persimmon	T107–a	T107–a (revised).
Kazakhstan	Grape [1]	T107–a	T107–a (revised).
Kyrgyzstan	Grape [1]	T107–a	T107–a (revised).
Latvia	Grape [1]	T107–a	T107–a (revised).
Lebanon	Apple	T107–a	T107–a (revised).
Libya	Grape [1]	T107–a	T107–a (revised).
Lithuania	Grape [1]	T107–a	T107–a (revised).
Luxembourg	Grape [1]	T107–a	T107–a (revised).
Macedonia	Ethrog	T107–a	T107–a (revised).
Martinique	Ethrog	T107–a	T107–a (revised).
Mexico	Carambola	T107–c	T107–c.
Moldova	Grape [1]	T107–a	T107–a (revised).
Morocco	Apricot, Ethrog, Grape,[1] Grapefruit, Orange, Peach, Pear, Plum, Tangerine.	T107–a	T107–a (revised).
Panama	Ethrog	T107–a	T107–a (revised).
Peru	Grape	T107–c	T107–a–1.
Portugal	Ethrog, Grape [1]	T107–a	T107–a (revised).
Russia	Grape [1]	T107–a	T107–a (revised).
Slovenia	Ethrog	T107–a	T107–a (revised).
South Africa	Apple, Grape, Pear	T107–a	T107–a (revised).
Spain	Apple, Ethrog, Grape,[1] Grapefruit, Loquat, Orange, Ortanique, Tangerine.	T107–a	T107–a (revised).
	Kiwi	T107–c	T107–a (revised).
Switzerland	Grape [1]	T107–a	T107–a (revised).
Syrian Arab Republic	Ethrog, Grape [1]	T107–a	T107–a (revised).
Taiwan	Carambola	T107–f	T107–f.
Tajikistan	Grape [1]	T107–a	T107–a (revised).
Trinidad & Tobago	Grapefruit, Orange, Tangerine	T107–c	T107–c.
Tunisia	Ethrog, Grape,[1] Grapefruit, Orange, Peach, Pear, Plum, Tangerine.	T107–a	T107–a (revised).
Turkey	Ethrog, Grape, Orange	T107–a	T107–a (revised).
Turkmenistan	Grape [1]	T107–a	T107–a (revised).
Ukraine	Grape [1]	T107–a	T107–a (revised).
Uruguay	Apple, Grape,[1] Nectarine, Peach, Pear, Plum	T107–c	T107–a–1.
Uzbekistan	Grape [1]	T107–a	T107–a (revised).
Venezuela	Grape, Grapefruit, Orange, Tangenne	T107–c	T107–a–1.
Zimbabwe	Apple, Kiwi, Pear	T107–a	T107–a (revised).

[1] Treatment T101–h–2 also required for this commodity if imported from designated country.
[2] Treatment T101–i–2 also required for this commodity if imported from designated country.
[3] From Arica Province of Region 1 or Chanaral Township of Region 3 only.
[4] Treatment T101–a–3 also required for this commodity if imported from designated country.
[5] Treatment T101–i–2–1 also required for this commodity if imported from designated country.
[6] Treatment T104–a–1 also required for this commodity if imported from designated country.

Movement of Domestically Produced Fruits

In our domestic quarantine notices in 7 CFR part 301, Subpart-Mediterranean Fruit Fly (§§ 301.78 through 301.78–10) contains regulations pertaining to the interstate movement of host material from areas of the continental United States that may, from time to time, be quarantined because of Medfly. In § 301.78–10, paragraph (b)(3) sets out a cold treatment schedule for regulated citrus fruit that has been harvested. That schedule has been the same as schedule T107–a in the PPQ Treatment Manual, so we are revising § 301.78–10(b)(3) in this interim rule so that the schedule set out in that paragraph is consistent with the revised schedule T107–a in the PPQ Treatment Manual.

• The Hawaiian and Territorial Quarantine Notices are contained in 7 CFR part 318. Part 318 does not set out any cold treatment schedules, but refers instead to the PPQ Treatment Manual. Therefore, no changes need to be made to part 318.

Monitoring Treatment Effectiveness

In our foreign quarantine notices in 7 CFR part 319, Subpart-Fruits and Vegetables (§§ 319.56 through 319.56–6) contains regulations for importing fruits and vegetables into the United States. In conjunction with the changes to the cold treatment schedules for Medfly, we are also amending § 319.56–2d, "Administrative instructions for cold treatments of certain imported fruits." Specifically, we are providing that, at the port of first arrival in the United States, an inspector will sample and cut fruit from each shipment that has been cold treated for Medfly to monitor treatment effectiveness. If a single live Medfly in any stage of development is found, the shipment will be held until an investigation is completed and appropriate remedial actions have been implemented. If APHIS determines at any time that the prescribed cold treatments do not appear to be effective against Medfly, APHIS may suspend the importation of fruit from the originating country and conduct an investigation into the cause of the deficiency. We believe that these additional precautions will provide assurance that the revised cold treatment schedules are effective against Medfly.

This rule does not allow the importation or interstate movement of any commodities that were not previously allowed to be imported or moved interstate subject to cold treatment and other applicable requirements.

Immediate Action

Immediate action is necessary to protect against the introduction into and dissemination within the United States of Medflies. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the economic effects of this interim rule on small entities. Based on the information we have, there is no basis to conclude that adoption of this interim rule will result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this interim rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this interim rule.

The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture to prohibit or restrict the importation, entry, and interstate movement of any plant, plant product, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or dissemination of a plant pest into or within the United States.

In this interim rule, we are amending the PPQ Treatment Manual, which is incorporated by reference into the Code of Federal Regulations, by revising the cold treatment schedules under which fruits are treated for Medfly and other specified pests. We are also amending the cold treatment schedule in our domestic Medfly regulations to be consistent with the changes to the PPQ Treatment Manual. Based on a review of those treatment schedules, we have determined that it is necessary to extend the duration of cold treatment for Medfly.[1] The revisions are described in detail earlier in this document. This action is necessary to protect against the introduction or dissemination of Medflies into and within the United States.

In addition, we are amending the regulations for importing fruits and vegetables to provide that inspectors at the port of first arrival will sample and cut fruit from each shipment cold treated for Medfly to monitor the effectiveness of the cold treatment. If a single live Medfly in any stage of development is found, the shipment will be held until an investigation is completed and appropriate remedial actions have been implemented. If APHIS determines at any time that the prescribed cold treatments do not appear to be effective against Medfly, APHIS may suspend the importation of fruit from the originating country and conduct an investigation into the cause of the deficiency.

Fruit cutting and inspection charges associated with the interim rule will more than likely be small. APHIS, in a regulatory impact analysis (RIA) conducted for a rulemaking related to the importation of clementines from Spain (referred to below as the clementine RIA),[2] indicates that bulk shipments of fruit will more than likely pass inspection because the proportion of fruit infested with live Medfly will more than likely be extremely low after the application of the revised cold treatment schedules. In addition, the amount of fruit that is cut in the United States will more than likely be low relative to the value of imports, amounting to between 0.24 percent and 0.31 percent of gross import value. As a result, we state at the outset that costs associated with cutting and inspecting fruit will not have a significant negative economic impact on a substantial number of small importers.

The United States Small Business Administration (SBA) defines a small fruit importer (NAICS 42248, Fresh Fruit and Vegetable Wholesalers) as one with 100 or fewer employees. It is not clear if the majority of U.S. importers of fruits from countries known to be infested with Medfly are designated as small entities under SBA's size standards; however as we demonstrate below, economic impacts associated with this rule are not expected to be significant.

Import data for 1996–2000 for fruits that require cold treatment for Medfly under the revised schedule T107–a are shown in Table 1. Import data are not reported separately for all of the fruits that are subject to cold treatment for Medfly, so similar fruits are combined into categories in Table 1.[3] Import data for litchis, pomegranates, and carambola are not available, and there were no imports of mountain papaya and very few imports of cherries that required cold treatment for Medfly during 1996–2000; therefore, data for these fruits are not included in Table 1.

In order to estimate costs associated with extending Medfly cold treatment periods, it is necessary to estimate 2002 import levels, because additional cold treatment expenses vary with the amount of imported fruit. We base the 2002 import level for ethrogs on the 5-year average, because annual growth rates were extremely volatile during 1996–2000. We base the 2002 import level for pears and quinces on the 2000 import level because the import data provided little guidance regarding a likely value for 2002. We base the 2002 import level for clementines, ortaniques, and tangerines on the 2000 import level and annual import growth in 2000 because growth rates were highly volatile during the preceding years and imports apparently leveled off in 1999.[4] We report estimates of 2002 import levels for these and the remaining fruits in Table 1.

[1] Certain commodities that are subject to the extended cold treatment, *i.e.*, commodities that are subject to treatment for Medfly and Anastrepha spp. (except Anastrepha ludens), will not necessarily be subject to additional days of cold treatment due to the fact that treatment for Anastrepha spp. is already longer than the extended Medfly treatment requires. Thus, such commodities may be subject to 1 additional day of treatment, or none at all, depending on the temperature at which they are held. Nevertheless, for the purposes of this analysis, we assume that all commodities will be subject to additional days of treatment.

[2] "Amending Import Rules for Clementines from Spain: Regulatory Impact Analysis." Animal and Plant Health Inspection Service. Riverdale, MD. Available on the Internet at *http://www.aphis.usda.gov/oa/clementine/index.html*.

[3] USDA–FAS, "U.S. imports and import values for various fruit." Available on the Internet at: *http://www.fas.usda.gov/ustrade/*.

[4] In particular, expected imports for 2002 are given by $x(1 + y)^2$, where x denotes the import value for 2000 and y denotes import growth for 2000.

TABLE 1.—FRUIT IMPORTS THAT ARE SUBJECT TO T107 COLD TREATMENT FOR MEDFLY.*

Commodity	Average import level (1,000 kg)	Weighted import level ($/kg)	Average import value ($1,000)	Percentage of world imports	Expected imports 2002 (1,000 kg)
Apple	4,128	$0.86	$3,550	2.52	[1] 4,128
Apricot	4	2.48	10	0.23	[1] 4
Clementine, ortanique, and tangerine	52,176	1.43	74,354	86.32	[2] 95,952
Ethrog	160	2.79	446	32.17	[1] 160
Grape	33,399	426.18	14,234	3.29	[3] 52,369
Grapefruit and pummelo	356	0.91	323	3.31	[1] 356
Kiwi	6,080	1.05	6,384	6.91	[1] 6,080
Orange	6,361	1.07	6,776	8.34	[1] 6,361
Peach and nectarine	10	0.95	10	0.02	[3] 17
Pear and quince	35,915	0.96	34,478	44.81	[4] 58,228
Plum, loquat, persimmon, and plumcot	124	0.99	123	0.54	[4] 513

* Imports, prices, and percentages of world imports are averages for 1996–2000. Prices are weighted averages converted to 2002 dollars, using the consumer price index for fresh fruit (from U.S. Bureau of Labor Statistics). Data are from USDA–FAS, "U.S. imports and import values for various fruit," except for grapes, which are from Bureau of Census data: 080610, U.S. fresh grape imports. Quantity data for grapes are in cubic meters; grape prices are in dollars per cubic meter.

[1] Five-year average.
[2] Based on the 2000 import level and annual import growth for 2000.
[3] Based on the 2000 import level and average annual import growth for 1999 and 2000.
[4] The 2000 import level.

As shown in Table 1, very low percentages of apple, apricot, cherry, grape, grapefruit and pummelo, kiwi, mountain papaya, orange, peach and nectarine, and plum, loquat, persimmon, and plumcot imports undergo cold treatment for Medfly; as a result, the interim rule will likely not affect a substantial number of small importers of these fruits. Thirty-two percent of ethrogs, 44 percent of pears and quinces, and 86 percent of clementines, ortaniques, and tangerines must be cold treated for Medfly. Therefore, the interim rule may affect a substantial number of U.S. importers of these fruits and we estimate economic impacts for these fruits. We do not estimate economic impacts for the remaining fruits because it is unlikely that a substantial number of small importers of those fruits will be significantly affected by the interim rule. Furthermore, economic impacts for ethrogs, pears and quinces, and clementines, ortaniques, and tangerines can be considered as representative of the economic impacts for the other fruits.

The overwhelming majority of cold-treated fruit imports are treated aboard ship while in transit to the United States, although treatment can also be carried out at authorized ports. When cold treatment is conducted in transit, the treatment period must be met before unloading For countries with sailing times to the United States longer than the extended treatment periods, the interim rule will only lead to increases in cold treatment costs. For countries with sailing times to the United States shorter than the extended treatment periods, the interim rule will lead to increases in cold treatment and shipping costs. To account for the extended treatment periods in these instances, vessels will either adjust sailing times to coincide with the length of the treatment period, sit at the dock, or go into anchorage near the U.S. port. As a result, labor, fuel, and opportunity costs associated with delaying shipments of other cargoes will more than likely be added to shipping charges.

Costs associated with extending treatment periods have been estimated for clementine imports from Spain, in the clementine RIA cited earlier in this analysis. We use the same parameters and methods to estimate additional cold treatment expenses for clementines, ortaniques, and tangerines. It costs approximately $0.50 per day to cold treat a pallet of fruit at U.S. ports. This provides an approximate upper bound on cold treatment costs because most fruits are cold treated in transit, which may be less expensive on average. We therefore use this as our unit cost to calculate cold treatment expenses in the analysis.

Historically, the Spanish have exported clementines, ortaniques, and tangerines to the United States under the 11 day (33 °F) or 12 day (34 °F) cold treatment schedules. As a result, Spanish clementines, ortaniques, and tangerines shipped to the United States will undergo at least 2 to 3 days (34 °F) of extra cold treatment. We assume the average bulk shipment will undergo an additional 2.5 days of cold treatment. The following daily charges will likely be added to the cost of shipping clementines, ortaniques, and tangerines to the United States: $10,000 chartering fee (although this fee is highly variable depending on the availability of bulk ships); $2,160 docking fee ($0.27 per metric ton with an average ship size of 8,000 metric tons); $990 fuel at anchorage fee (five to six tons at $180 per ton); and $0.50 per pallet cold treatment fee.

These cost figures are based on recent charges quoted by a representative from Lauritzen, a company that specializes in the bulk shipment of fruit. Ninety percent of clementines, ortaniques, and tangerines shipments come into the United States in bulk shipments. Using a bioeconomic model, which incorporates variation in clementines designated for export to the United States and fruit cutting and rejection of shipments in Spain according to farm-level variation in numbers of fruit infested with Medflies, additional shipping and cold treatment expenses averaged $1.23 million (±$15,000, with 95 percent confidence). U.S. imports of clementines averaged 88,461 metric tons (±1,042 metric tons). As a result, total regulatory expenses were $13.92 per metric ton, or $5.57 per metric ton per day. Average import price in the United States was $1.05 per kilogram, thus import value averaged $92.65 million. Total regulatory expenses were therefore 1.33 percent of gross value.

These estimates can be used to estimate regulatory costs associated with shipments of clementines, ortaniques, and tangerines from Spain, Morocco, Israel, and Italy. Applying the $13.92 per metric ton fee to 95,952 metric tons (Table 1), total regulatory costs, assuming fruits are cold treated for an additional 2.5 days on average, are $1.34 million. To determine whether these costs are significant, we estimated the value of clementine, ortanique, and tangerine imports for 2002 using the Spanish clementine import demand curve estimated in the clementine RIA. Plugging in the expected 2002 import level and converting the price to 2002 dollars using the consumer price index for oranges, including tangerines,[5] gives a price of $0.84 per kilogram.[6] Using this expected price, the expected value of imports for 2002 is approximately $78.47 million. Additional treatment expenses associated with the interim rule amount to only 1.7 percent of this total and, as a result, the interim rule will likely not have a significant negative economic impact on small importers of clementines, ortaniques, and tangerines, even in the unlikely event that importers bear the entire economic burden.[7]

We use the same parameters and methods to estimate additional cold treatment expenses for ethrogs, pears, and quinces under the assumption that these fruits and clementines, ortaniques, and tangerines have roughly the same dimensions. For ethrogs, assuming an additional 2.5 days of cold treatment and shipping expenses, total regulatory costs for 2002 came to $2,227. This amounts to only 0.5 percent of the estimated value of ethrog imports for 2002 ($446,400), which is based on the estimated import level (160 metric tons) and the weighted average price ($2.79 per kilogram) during 1996–2000 (see Table 1). As a result, the interim rule will more than likely not have a significant negative economic impact on small importers of ethrogs.

For pears and quinces, additional cold treatment expenses for 2002 came to $1.3 million, which amounts to 2.32 percent of the estimated value of pear and quince imports for 2002 ($56 million), based on the estimated import level (58,228 metric tons) and weighted average price ($0.96 per kilogram) during 1996–2000 (*see* Table 1). During 1996–2000, 95 percent of the pear and quince imports from regions with Medfly came from Argentina, and the remainder came from China, South Africa, and Spain. The direct sailing time from Argentina is approximately 10 days, which is 4 days less than the shortest treatment period. As a result, this rule will add an additional 4 days of cold treatment and shipping charges for shipments of pears and quinces to the United States from Argentina. Total regulatory expenses for 2002 are $1.30 million, which amounts to 2.32 percent of the estimated value of pear and quince imports for 2002 ($56 million), based on the estimated import level (58,228 metric tons) and weighted average price ($0.96 per kilogram) during 1996–2000 (Table 1).

Countries that import citrus from the United States may change their cold treatment guidelines to reflect the changes being made to our cold treatment requirements; however, such changes would only affect U.S. exporters in the event of a Medfly outbreak in the continental United States. Indirect impacts of this rule, therefore, are highly uncertain and depend on the probability that Medflies are introduced and become established, as well as the regional extent of outbreaks and the efficiency with which they are controlled and eradicated. Because potential economic impacts on U.S. fruit importers are low relative to import values and because Medfly outbreaks within the United States will more than likely be confined to particular areas and eradicated efficiently, this rule will likely not have a significant negative economic impact on a substantial number of small exporters in the United States. However, in the event of a Medfly outbreak, exporters who wish to export affected commodities from areas quarantined for Medfly should expect to pay an additional $5.57 per metric ton per day of extra cold treatment. For example, exports from quarantined areas on the west coast to Asia would have to undergo an additional 2.5 days of cold treatment; therefore, each metric ton of affected produce would cost an additional $13.92 to ship. The same cost schedule applies to affected commodities on the east coast destined for European markets. Because shipment times from the west coast to Europe and from the east coast to Asia are longer than the revised cold treatment periods, this rule would have no impact on the cost schedules associated with those exports.

Summary

With the exception of small importers of ethrogs, clementines, ortaniques, pears, quinces, and tangerines, our analysis shows that the interim rule will more than likely not significantly affect a substantial number of small importers of fruits in the United States. Further, our analysis shows that the economic impact on small importers of ethrogs, clementines, ortaniques, pears, quinces, and tangerines will more than likely not be significant. Further, our analysis shows that the interim rule will not significantly affect a substantial number of small fruit exporters. Nonetheless, we request public comments on our analysis and invite the submission of additional data regarding affected entities, whether small or large.

This interim rule contains no new information collection requirements.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR Chapter III as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

2. In § 300.1, paragraph (a) is amended as follows:

a. In paragraph (a)(3), by removing the word "and".

b. In paragraph (a)(4), by removing the period and adding the word "; and" in its place.

c. By adding a new paragraph (a)(5) to read as set forth below.

[5] U.S. Bureau of Labor Statistics, "Consumer price index-oranges, including tangerines, not seasonally adjusted." Available on the Internet at *http://data.bls.gov/labjava/outside.jsp?survey=cu*.

[6] The y-intercept of the demand curve is $3.71 and the coefficient on kilograms of imports is − 3.01E–08.

[7] This would be the case, for example, if import demand was perfectly inelastic and export supply was perfectly elastic. Available data indicate that import demand is elastic and that export supply is not perfectly elastic.

§ 300.1 Plant Protection and Quarantine Treatment Manual.

(a) * * *

(5) Treatments T107–a, T107–a–1, T107–c, and T107–f, dated September 2002.

* * * * *

PART 301—DOMESTIC QUARANTINE NOTICES

3. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

4. In § 301.78–10, paragraph (b)(3) is revised to read as follows:

§ 301.78–10 Treatments.

* * * * *

(b) * * *

(3) *Cold treatment:* 14 days at 1.11 °C. (34 °F.) or below; 16 days at 1.67 °C. (35 °F) or below; or 18 days at 2.22 °C. (36 °F.) or below.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

5. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

6. In § 319.56–2d, a new paragraph (b)(8) is added to read as follows:

§ 319.56–2d Administrative instructions for cold treatments of certain imported fruits.

* * * * *

(b) * * *

(8) *Inspection of fruits after cold treatment for Mediterranean fruit fly.* An inspector will sample and cut fruit from each shipment cold treated for Mediterranean fruit fly (Medfly) to monitor treatment effectiveness. If a single live Medfly in any stage of development is found, the shipment will be held until an investigation is completed and appropriate remedial actions have been implemented. If APHIS determines at any time that the safeguards contained in this section do not appear to be effective against the Medfly, APHIS may suspend the importation of fruits from the originating country and conduct an investigation into the cause of the deficiency.

* * * * *

Done in Washington, DC, this 8th day of October, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–26063 Filed 10–11–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 1942

RIN 0570–AA32

Rural Business Enterprise Grants and Television Demonstration Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) adopts its interim rule published May 16, 2001 (66 FR 27013–27014), as a final rule without change. This action makes the revision to the definition of small and emerging private business enterprise final. The intended effect will ensure that grantees can assist small businesses in rural areas without eligibility restrictions for the use of technological innovations or commercialization of new products or processes.

EFFECTIVE DATE: October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Amy Cavanaugh, Rural Development Specialist, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave. SW, Washington, DC 20250, Telephone (202) 690–2516. The TDD number is (800) 877–8339 or (202) 708–9300.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be non-significant and has not been reviewed by the Office of Management and Budget.

Programs Affected

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.769, Rural Development Grants.

Paperwork Reduction Act

There are no reporting and recordkeeping requirements associated with this rule.

Intergovernmental Review

The Rural Business Enterprise Grant (RBEG) Program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. RBS will conduct intergovernmental consultation in the manner delineated in RD Instruction 1940–J, "Intergovernmental Review of Rural Development Programs and Activities," and in 7 CFR part 3015, subpart V.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) retroactive effect will be given to this rule starting August 11, 1988; and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." RBS has determined that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq*, an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under Executive Order 13132, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Background

This regulatory package is an RBS initiative to make the RBEG Program more effective at stimulating economic development by reducing certain eligibility requirements for small and emerging private business enterprises (small business) located in rural areas. There has been much confusion on the definition of small business since it was first published in the **Federal Register** on August 11, 1988. At that time, the RBEG Program was called the Industrial Development Grant Program. The name of the program was changed in 1992 and still contained the small and emerging business definition. The RBEG Program has been administered by two separate agencies since inception of the program. The Farmers Home Administration (FmHA) originally administered the RBEG Program. In 1996, it was transferred to RBS. FmHA misinterpreted the definition of small and emerging business in its regulations as only needing to meet the first two parts of the definition in order to be eligible for assistance and funded grants based on this misinterpretation. RBS has recently determined that the FmHA interpretation is not consistent with the actual regulatory language. Therefore, the Agency wants to correct the definition language and make it retroactive from August 11, 1988, so the revised definition will be applicable to existing grants. Retroactive application of the definition will validate existing grants, which might not otherwise have been eligible under a strict application of the regulatory criteria defining a small business. This will ultimately streamline the regulation and reduce the burden to the applicant in meeting the restricted definition.

Discussion of Comments

This rule was published in the **Federal Register** as an interim rule on May 16, 2001 (66 FR 27013–27014). There were five comments received regarding the small and emerging private business enterprise definition change. Three comments were actually requests for general program information. One comment concerned the need to do a survey to prove that those benefiting from the program were all low-income residents. There is no such regulatory requirement in the RBEG Program. This program directly benefits small businesses rather than residents. The last comment suggested that for-profit business enterprises be eligible to receive grant funds to do technical assistance services. The authorizing statute for the RBEG program, section 310B(c) of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1932(c), only allows for private nonprofit corporations and public bodies, which includes Federally recognized Indian Tribes, to be eligible to receive grant funds. However, if a grantee does not have the expertise, it may contract with a for-profit business to provide the necessary technical assistance services to the benefiting small businesses.

List of Subjects in 7 CFR Part 1942

Business and industry, Grant programs—Housing and community development, Industrial park, Rural areas.

PART 1942—ASSOCIATIONS

Accordingly, the interim rule amending 7 CFR part 1942 which was published May 16, 2001 (66 FR 27013–27014), is adopted as a final rule without change.

Dated: October 4, 2002.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. 02–26108 Filed 10–11–02; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4284

RIN 0570–AA37

Rural Business Opportunity Grants; Definition of "Rural and Rural Area"

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) revises its regulation to amend the definition of rural and rural area. This action is needed to comply with the amendment to Section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)) made by Section 6020 of the Farm Security and Rural Investment Act of 2002. The intended effect of this action is to provide a consistent definition of rural and rural area for programs administered by RBS under the Rural Community Advancement Program. This action will result in additional eligible areas and demand for the RBOG Program.

EFFECTIVE DATE: October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Amy Cavanaugh, Rural Development Specialist, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave., SW., Washington, DC 20250, Telephone (202) 690–2516. The TDD number is (800) 877–8339 or (202) 708–9300.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be non-significant under Executive Order 12866 and was reviewed by the Office of Management and Budget (OMB).

Programs Affected

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.773, Rural Business Opportunity Grants.

Paperwork Reduction Act

There are no reporting and recordkeeping requirements associated with this final rule.

Intergovernmental Review

The Rural Business Opportunity Grants Program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. RBS will conduct

intergovernmental consultation in the manner delineated in RD Instruction 1940–J, "Intergovernmental Review of Rural Development Programs and Activities," and in the notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983).

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given to this rule, and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule, unless those regulations specifically allow bringing suit at an earlier time.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." RBS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L 91–190, an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132, Federalism

It has been determined under Executive Order 13132, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Background

This regulatory package is an initiative mandated from Congress to provide a consistent definition of rural and rural area for programs administered by RBS under the Rural Community Advancement Program. This action will increase eligible areas and demand for the Rural Business Opportunity Grants Program by amending the definition of rural and rural areas. The current definition of rural and rural areas limits eligible areas to any area of a State that is not within the boundaries of a city with a population in excess of 10,000 inhabitants. The amended definition will increase the eligible area to 50,000 or less inhabitants.

List of Subjects in 7 CFR Part 4284

Business and industry, Economic development, Grant programs—Housing and community development, Rural areas.

Accordingly, Chapter XLII, title 7, of the Code of Federal Regulations is amended as follows:

PART 4284—GRANTS

1. The authority citation for part 4284 is revised to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 7 U.S.C. 1991, 16 U.S.C. 1005.

Subpart G—Rural Business Opportunity Grants

2. Section 4284.603 is amended by revising the definition of "rural and rural area" to read as follows:

§ 4284.603 Definitions.

* * * * *

Rural and rural area. Any area other than a city or town that has a population of greater than 50,000 inhabitants including the urbanized area contiguous and adjacent to such a city or town. The population figure used must be in accordance with the latest decennial census of the United States.

* * * * *

Dated: October 4, 2002.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. 02–26109 Filed 10–11–02; 8:45 am]

BILLING CODE 3410–XY–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 145

Commission Records and Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (the "Commission" or "CFTC") has adopted amendments to Part 145 of its rules, which governs Commission records and information. These amendments are necessary to conform Part 145 to recent amendments to the Commission's Part 3 rules and recent changes in the organizational structure of Commission staff.

EFFECTIVE DATE: October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Deputy Director, or Michael A. Piracci, Attorney-Advisor, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background

On May 30, 2002, the Commission adopted amendments to its Part 3 rules governing the registration of intermediaries in the futures industry. These amendments were adopted to facilitate the change from a paper-based registration system to an online registration system.[1] Although

[1] The National Futures Association ("NFA") began processing applications for almost all registration categories through the online registration system on June 3, 2002. Agricultural trade option merchants as well as applicants for registration as futures commission merchants and introducing brokers pursuant to Section 4f(a)(2) of the Commodity Exchange Act (notice-registration of securities broker-dealers whose only futures-related activity involves security futures products) still file paper applications.

[2] These forms include, among others: Form 7–R (application for registration as a futures commission merchant, introducing broker, commodity pool operator, and commodity trading advisor); Form 8–R (application for registration as an associated person, floor broker, and floor trader, and for being listed as a principal of a registrant); and Form 7–W (withdrawal from firm registration).

applications are now filed electronically through NFA's online registration system, the Commission's rules and NFA's rules both retain the same titles for the forms that applicants and registrants are required to file as those used under the previous paper-based system.[2] The online forms do not, however, retain the line item numbering from the paper forms. The online forms, instead, contain headings for the sections that include fillable text boxes and check-off boxes for submitting the required information.

Commission Rule 145.6(b)(2) provides that fingerprint cards and supplementary attachments filed in response to certain items on the registration forms generally will not be available for public inspection. The item numbers of the registration forms referenced in the rule include requests for information regarding, among other things: (1) Disciplinary history; (2) social security number; (3) any pending or anticipated actions; and (4) the reasons for termination of a registrant or principal.

As noted above, the online forms no longer number the line items required to be completed, but do contain section headings. Accordingly, Rule 145.6(b)(2) has been amended to include the relevant sections of the online forms for which the supplementary filings are not available for public inspection. No change has been made, however, in the type of information that generally will not be made available. For example, the rule previously cited to items 6–9 and 14–21 on Form 8–R, which asked for personal identifying information, such as the individual's social security number and date of birth, and a disciplinary history, respectively. The rule has been amended to provide that, additionally, supplementary attachments filed in response to the "Personal Information" and the "Disciplinary Information" sections of Form 8–R will not generally be available for public inspection.

The Commission has also adopted certain technical amendments to Part 145. For example, the Commission has amended Appendix A to Part 145 so as to reference the appropriate divisions of the Commission, the names of which have changed as a result of the reorganization of the Commission's staff, effective July 1, 2002.

II. Related Matters

Administrative Procedure Act

The Commission has determined that the amendments discussed herein relate solely to agency organization, procedure, and practice. Accordingly, the provisions of the Administrative Procedure Act that generally require notice of proposed rulemaking and that provide other opportunities for public participation are not applicable.[3] The Commission further finds that, because the amendments have no adverse effect upon a member of the public, there is good cause to make them effective immediately upon publication in the **Federal Register.**[4]

Lists of Subjects in 17 CFR Part 145

Confidential business information, Freedom of information.

For the reasons discussed in the foregoing, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 145—COMMISSION RECORDS AND INFORMATION

1. The authority citation for Part 145 continues to read as follows:

Authority: Pub. L. 99–570, 100 Stat. 3207; Pub. L. 89–554, 80 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)); unless otherwise noted.

2. Section 145.6 is amended as follows:

a. By revising paragraph (b)(2) to read as follows:

§ 145.6 Commission offices to contact for assistance; registration records available.

* * * * *

(b) * * *

(2) The fingerprint card and any supplementary attachments filed in response to:

(i) Items 6–9, 14–21, the "Personal Information," or the "Disciplinary Information" sections on Form 8–R;

(ii) Item 3 on Form 8–S;

(iii) Items 3–5, 9–11, the "Withdrawal Reasons," the "Disciplinary Information," or the "Matter Information" sections on Form 8–T;

(iv) Items 9–10 on Form 7–R;

(v) Item 7 and the "Additional Customer Information" section on Form 7–W; and

(vi) Item 7 on Form 8–W generally will not be available for public inspection and copying unless such disclosure is required under the Freedom of Information Act. Changes or corrections to those items reported on Form 3–R will be treated similarly. When such fingerprint cards or supplementary attachments are on file, the FOI, Privacy and Sunshine Acts compliance staff will decide any request for access in accordance with the procedures set forth in §§ 145.7 and 145.9.

3. Part 145 Appendix A paragraph (a) is amended by removing "*Office of Public Affairs*" and adding in its place "*Office of External Affairs*".

4. Part 145 Appendix D paragraph (c) is amended by removing "Office of Public Affairs" and adding in its place "Office of External Affairs".

Issued in Washington, DC, on October 9, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–26124 Filed 10–11–02; 8:45 am]

BILLING CODE 6351–01–P

[3] 5 U.S.C. 553(b)(3)(A) (1994).

[4] *See* 5 U.S.C. 553(d)(3) (1994).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. FHWA—2000–7122]

RIN 2125–AE88

Discretionary Bridge Candidate Rating Factor

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the regulation on the discretionary bridge program rating factor in order to incorporate several administrative considerations that have proven effective in the project selection process and to update the rating factor formula to reflect the most current highway system designation. The changes make the selection process easier for the FHWA to administer and the application process easier for the States to understand. Except for the formula change for defense highway status, these changes only incorporate selection procedures that have been used effectively for many years. In addition, formerly designated defense highway bridges are included in the national highway system designation, so the formula change will have minimal impact. None of the changes have an appreciable effect on either program eligibility or the application process.

DATES: This rule is effective on November 14, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Steven L. Ernst, Office of Bridge Technology, 202–366–4619, or Mr. Steven Rochlis, Office of the Chief Counsel, 202–366–1395, FHWA, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e. t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resources locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.archives.gov* and at the Government Printing Office's web page at *http://www.access.gpo.gov/nara*.

Background

This rule implements 23 U.S.C. 144(g), as amended by sections 1109 and 1311 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107 (1988). Section 161 of the Surface Transportation Assistance Act of 1982 (STAA), Public Law 97–424, 96 Stat. 2097, at 2135, directed the Secretary of Transportation (Secretary) to establish a rating factor for each discretionary bridge program candidate based on seven specific items. Section 1311 of the TEA–21, as added by Public Law 105–206, 112 Stat. 836 (1998), requires the Secretary to establish criteria for all discretionary programs, including the discretionary bridge program. On November 17, 1983, using the criteria from the STAA, the FHWA issued a final rule on the discretionary bridge regulations (48 FR 52292).

The funding for the discretionary bridge program is derived from contract authority for the bridge program provided in section 1101(a)(3) of the TEA–21. The allocation of the discretionary bridge funding by fiscal year for the discretionary bridge program is codified at 23 U.S.C. 144(g)(1).

This final rule is based on the notice of proposed rulemaking (NPRM) published on January 22, 2002, at 67 FR 2837 where the FHWA requested comments on proposed revisions to the regulation on the discretionary bridge program rating factor. This final rule is based on the NPRM and all comments received in response to the NRPM.

These revisions in this final rule incorporate several administrative considerations that have proven effective in the project selection process and will update the rating factor formula to reflect the most current highway system designation. These changes will:

(1) Require that candidate projects be ready to begin construction in the fiscal year in which funds are available for obligation. This will incorporate the administrative practice that has proven effective to provide that candidate projects are sufficiently developed and ready for construction and that funds are used in a timely manner. Projects that are not ready for construction may languish for years, encountering design, environmental, or funding problems that tie up scarce Federal funding and deny funding for other projects which are ready to build.

(2) Permit additional funds contributed from local, State, county, or private sources or donations from third parties which reduce the total cost or Federal contribution to a project to be used to reduce the total cost for use in the rating factor formula. Reducing the total project cost with additional State, local or third party contributions provides an efficient and equitable assessment of the non-Federal participation, over and above the usual State match. This also continues the FHWA commitment to provide an accurate cost-benefit analysis of candidate projects.

(3) Disallow any discretionary allocation to a State that has transferred Highway Bridge Replacement and Rehabilitation Program funds to other categories of Federal funding in the previous fiscal year. Transferring bridge funds to other categories is an indication that a State does not have a pressing need for bridge funds. This administrative requirement has been used effectively to assure that States first exhaust their regularly apportioned bridge funds before applying for discretionary funds.

(4) Change the term "D" in the rating factor formula from defense highway status to "N" for national highway system status (NHS). This change is necessary because the defense highways are no longer a recognized national system. The factor "D" originated in section 161 of the STAA of 1982, and data is no longer collected for this item. Using the national highway system status is a reasonable alternative, since the NHS is recognized as the nation's premier highway system in 23 U.S.C. 103, and one criteria in the code is that the NHS "meets national defense requirements." In addition, formerly designated defense highway bridges are included in the national highway system, and this change will have little effect on project rankings or selection.

In light of the events of September 11, 2001, and the heightened awareness of security issues, we have determined that discretionary bridge funds could be used for security improvements on eligible bridges.

Discussion of Comments

In response to the NRPM published on January 22, 2002, at 67 FR 2837, we received six comments to the docket. These comments were from three State DOTs, one city DOT, and two private individuals. The following is a summary and discussion of these comments:

One commenter suggested that the FHWA reduce the requirement that the cost of one bridge must be $10 million to be eligible. This is a statutory requirement and cannot be changed by regulation.

There were four comments concerning the proposal to disallow any discretionary allocation to a State that has transferred its Highway Bridge Replacement and Rehabilitation Program funds to other categories of Federal funding in the previous fiscal year. Two commenters supported the proposed change, and two commenters considered the change overly restrictive. We feel that transferring bridge funds to other categories is an indication that a State does not have a pressing need for bridge funds, and that this requirement is therefore not overly restrictive.

There were five comments concerning the change of the term "D" in the rating factor formula from defense highway status to "N" for national highway system status (NHS). Three commenters supported the change. One commenter suggested using the strategic highway network (STRAHNET) indicator to replace the term "D." One commenter suggested that no distinction be made between NHS and non-NHS bridges. One commenter suggested that bridges over the NHS should also be considered in this term. We believe that using the STRAHNET indicator is overly restrictive and that the change to use the NHS for this term is sufficiently broad to meet national defense requirements.

There were four comments questioning the clarity of the use of the words "leveraged funds" as a means to reduce the total project cost for use in the rating factor formula. Three commenters supported the change. One comment thought that this change would allow the use of "creative financing" or "Federal innovative financing techniques." We agree that the use of the term "leverage" requires clarification. It is the FHWA's intent that only funding or contributions from State, county, local, or private sources be considered as a special consideration under § 650.709. These additional funds or contributions must be non-Federal. This final rule clarifies that the FHWA's intent is to give consideration to additional non-Federal contributions made to a project by the project sponsor or third parties. One commenter in support of using leveraged funds suggested that the FHWA add a term to the formula to reflect the change. The FHWA concluded that this change would over-complicate the formula, and therefore the formula will not be changed, but additional contributions from non-Federal sources will be allowed to reduce the total project cost to compute the rating factor.

There were two comments about the requirement that projects be ready for construction within the fiscal year for which funds are requested. Both of these commenters indicated that the term "ready for construction" is not well defined and may be overly restrictive. On the contrary, it is our intent that projects be ready to advertise for bids and that funds be obligated within the fiscal year for which such funds are requested. Additionally, the term "ready for construction" is meant to be the least restrictive way to capture this intent.

Section-by-Section Analysis

Section 650.703 Eligible Projects

Paragraph (b) is revised to require that only those projects not previously selected which will be ready to begin construction in the fiscal year in which funds are available for obligation will be eligible for funding. This incorporates the administrative practice that has proven effective to provide that candidate projects are sufficiently developed and ready for construction and that funds are used in a timely manner. Projects that are not ready for construction may languish for years, encountering design, environmental, or funding problems that tie up scarce Federal funding and deny funding for other projects that are ready to build.

Paragraph (c) is added to make any State that has transferred Highway Bridge Replacement and Rehabilitation funds to other fund categories ineligible for following fiscal year funding. Transferring bridge funds to other categories is an indication that a State does not have a pressing need for bridge funds. This administrative requirement has been used effectively to assure that States first exhaust their regularly apportioned bridge funds before applying for discretionary funds.

Section 650.707 Rating Factor

In paragraph (b) the term "D", "Defense Highway System Status," is changed to "N", "National Highway System Status." This revision brings the formula in line with the current definition of the Federal-Aid Highway Systems found in 23 U.S.C. 103.

Section 161 of the Surface Transportation Assistance Act of 1982 (STAA) required the Secretary of Transportation to develop a selection process for discretionary bridges authorized to be funded under 23 U.S.C. 144(g). Section 161 further outlined the seven criteria that must be considered in evaluating bridge eligibility. One of these seven criteria was the "defense highway system status."

Created under the Defense Highway Act of 1941 (Public Law 77–295, 55 Stat. 765), the Defense Highway System was designed to be a "strategic network of highways that conforms to routes designated on the diagrammatic map of principal highway traffic routes of military importance, dated October 25, 1940, revised to May 15, 1941, and approved by the Secretary of War."

Since the passage of the STAA of 1982, the Defense Highway System is now an element of the National Highway System, created by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914 (1991). Section 1006 of the ISTEA redefined the Federal-aid Highway System to include the Interstate System and the National Highway System. One of the components of the National Highway System is "a strategic highway network consisting of a network of highways that are important to the United States strategic defense policy and that provide defense access, continuity, and emergency capabilities of the movement of personnel, materials, and equipment in both peacetime and wartime. The highways may be on or off the Interstate System and shall be designated by the Secretary in consultation with the appropriate Federal agencies and the States." (23 U.S.C. 103(b)(2)(D)).

In comparing the components that make up the National Highway System to the elements of the former Defense Highway System, the "strategic network of highways" is an essential element of both of these highway systems. Therefore, the elements of the former Defense Highway System make up one of the components of what is now referred to as the National Highway System. Consequently, by changing the definition of the factor "D" in the formula from the Defense Highway System Status to "N" for National Highway System Status, we do not change the original intent of the formula asestablished in the ISTEA.

Section 650.709 Special Considerations

Paragraph (a) is revised so that additional funds or contributions made by local, State, county, or private sources may be used to reduce the total project cost to calculate the rating factor. Reducing the total project cost with these additional funds provides an efficient and equitable assessment of the non-Federal participation, over and above the usual State match. This also continues the FHWA commitment to provide an accurate cost-benefit analysis of candidate projects.

Paragraph (c) is revised so that only those continuing projects which will be ready to begin construction in the fiscal year in which funds are available for obligation will be considered for funding. This extends the requirement established in section 650.703(b) so that previously selected projects must be ready for construction to the same extent as new projects. As with new projects, previously selected projects that are not ready for construction tie up Federal funds that can be used for ready-to-build projects.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 nor significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. These changes will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. These proposed changes will not affect the total Federal funding available. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this

rule on small entities, such as city and county governments. The modifications are substantially dictated by the statutory provisions of 23 U.S.C. and the TEA–21 and will substantially improve the selection process. Accordingly, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities for the purposes of the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rule will not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined this action does not have a substantial direct affect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this rule does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13211 (Energy Effects)

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 650

Bridges, Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements, Soil conservation.

Issued on: October 4, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, part 650, subpart G as set forth below:

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS [REVISED]

1. Revise the authority citation for part 650 to read as follows:

Authority: 23 U.S.C. 109(a) and (h), 144, 151, 315, and 319; 33 U.S.C. 401, 491 *et seq.*; 511 *et seq.*; sec. 4(b) of Pub. L. 97–134, 95 Stat. 1699 (1981); sec. 161 of Pub. L. 97–424, 96 Stat. 2097, at 3135 (1983); sec. 1311 of Pub. L. 105–178, as added by Pub. L. 105–206, 112 Stat. 842 (1998); 23 CFR 1.32; 49 CFR 1.48(b); E.O. 11988 (3 CFR, 1977 Comp., p. 117); Department of Transportation Order 5650.2, dated April 23, 1979 (44 FR 24678).

2. Revise § 650.703(b) and add § 650.703(c) to read as follows:

§ 650.703 Eligible projects.

* * * * *

(b) After November 14, 2002 only candidate bridges not previously selected with a computed rating factor of 100 or less and ready to begin construction in the fiscal year in which funds are available for obligation will be eligible for consideration.

(c) Projects from States that have transferred Highway Bridge Replacement and Rehabilitation funds to other funding categories will not be eligible for funding the following fiscal year.

3. Revise § 650.707(a) and (b) to read as follows:

§ 650.707 Rating factor.

(a) The following formula is to be used in the selection process for ranking discretionary bridge candidates.

$$\text{Rating Factor (RF)} = \frac{SR}{N} \times \frac{TPC}{ADT'} \times \left[1 + \frac{\text{Unobligated HBRRP Balance}}{\text{Total HBRRP Funds Received}}\right]$$

The lower the rating factor, the higher the priority for selection and funding.

(b) The terms in the rating factor are defined as follows:

(1) SR is Sufficiency Rating computed as illustrated in appendix A of the Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges, USDOT/FHWA (latest edition); (If SR is less than 1.0, use SR=1.0);

(2) ADT is Average Daily Traffic in thousands taking the most current value from the national bridge inventory data;

(3) ADTT is Average Daily Truck Traffic in thousands (Pick up trucks and light delivery trucks not included). For load posted bridges, the ADTT furnished should be that which would use the bridge if traffic were not restricted. The ADTT should be the annual average volume, not peak or seasonal;

(4) N is National Highway System Status. N=1 if not on the National Highway System. N=1.5 if bridge carries a National Highway System road;

(5) The last term of the rating factor expression includes the State's unobligated balance of funds received under 23 U.S.C. 144 as of June 30 preceding the date of calculation, and the total funds received under 23 U.S.C. 144 for the last four fiscal years ending with the most recent fiscal year of the FHWA's annual call for discretionary bridge candidate submittals; (if unobligated HBRRP balance is less than $10 million, use zero balance);

(6) TPC is Total Project Cost in millions of dollars;

(7) HBRRP is Highway Bridge Replacement and Rehabilitation Program;

(8) ADT' is ADT plus ADTT.

* * * * *

4. In § 650.709, revise paragraphs (a) and (c) to read as follows:

§ 650.709 Special considerations.

(a) The selection process for new discretionary bridge projects will be based upon the rating factor priority ranking. However, although not specifically included in the rating factor formula, special consideration will be given to bridges that are closed to all traffic or that have a load restriction of less than 10 tons. Consideration will also be given to bridges with other unique situations, and to bridge candidates in States that have not previously been allocated discretionary bridge funds. In addition, consideration will be given to candidates that receive additional funds or contributions from local, State, county, or private sources, but not from Federal sources which reduce the total Federal cost or Federal share of the project. These funds or contributions may be used to reduce the total project cost for use in the rating factor formula.

* * * * *

(c) Priority consideration will be given to the continuation and completion of projects previously begun with discretionary bridge funds which will be ready to begin construction in the fiscal year in which funds are available for obligation.

[FR Doc. 02–26130 Filed 10–11–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 103

RIN 1076–AE29

Loan Guaranty, Insurance, and Interest Subsidy; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; correction.

SUMMARY: The Office of Economic Development, Bureau of Indian Affairs published a final rule in the **Federal Register** of January 17, 2001. We are amending this rule to correct wording on how BIA calculates interest subsidy payments in the Loan Guaranty, Insurance and Interest Subsidy Program. The current wording is inaccurate and potentially misleading. This change will make clear that BIA retains the flexibility to recover administrative costs in establishing an interest rate.

EFFECTIVE DATE: October 15, 2002.

FOR FURTHER INFORMATION CONTACT: George Gover, Director, Office of Economic Development Programs, 202–208–5324.

SUPPLEMENTARY INFORMATION: The final rule was published in the **Federal Register** on January 17, 2001 (66 FR 3861) with an effective date of April 17, 2001. One feature of the Program, interest subsidy, lets qualified borrowers seek reimbursement of a portion of the interest they pay on a loan guaranteed or insured by BIA. Section 103.22 addresses how BIA calculates the amount of the reimbursement. Section 103.22 is supposed to follow the statutory scheme established in 25 U.S.C. 1511, which directs BIA to pay a borrower the difference between the lender's rate and the interest rate established in 25 U.S.C. 1464 (*i.e.*, the interest rate that BIA would charge a borrower if BIA were making the loan itself). Section 103.22 inadvertently suggests that the calculation of an interest rate under 25 U.S.C. 1464 would equal the rate the Secretary of the Treasury sets. *See*, 25 U.S.C. 1464(a). Section 103.22 fails to account for the flexibility that Interior has to increase this interest rate to recover associated administrative costs. *See*, 25 U.S.C. 1464(b). BIA has not historically used 25 U.S.C. 1464(b) to increase an interest rate established under 25 U.S.C. 1464(a), but it has never consciously abandoned the right to do so.

This document contains a correction to the final regulation, 25 CFR part 103, which was published in the **Federal Register**, Doc. 01–1249, on January 17, 2001 (66 FR 3861).

List of Subjects in 25 CFR 103

Indians—Insurance, Interest subsidy, and Loan guaranty.

Accordingly, 25 CFR part 103, subpart C is corrected by making the following correcting amendment:

Subpart C—Interest Subsidy

1. The authority citation for Subpart C continues to read as follows:

Authority: 25 U.S.C. 1498, 1511.

2. In § 103.22, in the first sentence, remove the words "by the Secretary of the Treasury."

Dated: October 8, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–26163 Filed 10–11–02; 8:45 am]

BILLING CODE 4310–XN–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 46

[T.D. ATF–472a]

RIN 1512–AC59

Delegation of Authority; Correction

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to a final rule published by the Bureau of Alcohol, Tobacco and Firearms in the February 7, 2002, **Federal Register**. The final rule concerned the delegation of the Director's authorities in two parts of the Bureau's tobacco regulations. The final

rule did not contain an amendatory instruction for one section of the miscellaneous regulations relating to tobacco products and cigarette papers and tubes.

DATES: This rule is effective October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226; telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Background

We published a final rule (T.D. ATF 472) in the **Federal Register** on February 27, 2002, (67 FR 8878) placing all of the Director's delegated authorities in parts 45 and 46 of title 27 of the Code of Federal Regulations with the "appropriate ATF officer." The final rule also removed references to specific officers subordinate to the Director.

Along with T.D. ATF 472, we published ATF Order 1130.28, Delegation of the Director's Authorities in 27 CFR Parts 45 and 46, which delegated certain of these authorities to the appropriate organizational level. The issuance of Order 1130.28 consolidated all delegations of authority into one delegation instrument. This action simplified the process for determining which ATF officer is authorized to perform a particular function and will facilitate the updating of such delegations in the future.

Need for Correction

As published, T.D. ATF 472 did not amend 27 CFR 46.8, Data to be shown in claim. Paragraph 13 of the final rule's amendatory instructions should have contained an additional instruction removing the words "regional director (compliance)" and adding the words "appropriate ATF officer" in the last sentence of § 46.8. This document corrects this inadvertent error, which may prove misleading if it is not clarified.

List of Subjects in 27 CFR Part 46

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

Accordingly, 27 CFR part 46 is corrected by making the following correcting amendment:

PART 46—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Paragraph 1. The authority citation for part 46 continues to read as follows:

Authority: 18 U.S.C. 2341–2346, 26 U.S.C. 5708, 5751, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805, 44 U.S.C. 3504(h), 49 U.S.C. 782, unless otherwise noted.

§ 46.8 [Amended]

Par. 2. In the last sentence of § 46.8(f), remove the words "regional director (compliance)" and add, in substitution, the words "appropriate ATF officer".

Signed: October 3, 2002.

Bradley A. Buckles,

Director.

[FR Doc. 02–25999 Filed 10–11–02; 8:45 am]

BILLING CODE 4810–31–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in November 2002. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: November 1, 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to part 4022).

Accordingly, this amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during November 2002, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during November 2002, and (3) adds to appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during November 2002.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.00 percent for the first 25 years following the valuation date and 4.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for October 2002) of 0.30 percent for the first 25 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for October 2002) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during November 2002, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. *See* 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 109, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
109	11–1–02	12–1–02	3.75	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 109, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
109	11–1–02	12–1–02	3.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i^t are:					
	i^t	for t =	i^t	for t =	i^t	for t =
November 2002	.0500	1–25	.0425	>25	N/A	N/A

Issued in Washington, DC, on this 8th day of October 2002.

Joseph H. Grant,

Deputy Executive Director and Chief, Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 02–26111 Filed 10–11–02; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–113]

RIN 2115–AE47

Drawbridge Operation Regulations: Harlem River, Newtown Creek, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the drawbridge operation regulations that govern the operation of the Willis Avenue Bridge, mile 1.5, and the Madison Avenue Bridge, mile 2.3, both across the Harlem River, and the Pulaski Bridge, mile 0.6, across Newtown Creek in New York City, New York. This temporary final rule allows the bridge owner to close the above three bridges on November 3, 2002, as follows: Willis Avenue and Madison Avenue bridges from 10 a.m. to 5 p.m. and the Pulaski Bridge from 8:30 a.m. to 3 p.m. This action is necessary to facilitate public safety during the running of the New York City Marathon.

DATES: This rule is effective on November 3, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD01–02–113) and are available for inspection or copying at the First Coast Guard District, Bridge Administration Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM in the **Federal Register**.

Conclusive information about the New York City Marathon was not provided to the Coast Guard until September 12, 2002, making it impossible to draft or publish a NPRM. This closure is not expected to have a significant impact on navigation because vessel traffic on the Harlem River and Newtown Creek is mostly commercial vessels that normally pass under the draws without openings. The commercial vessels that do require openings are work barges that do not operate on Sundays. Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest since immediate action is needed to close the bridge in order to provide for public safety and the safety of marathon participants.

Background and Purpose

The Willis Avenue Bridge, mile 1.5, across the Harlem River has a vertical clearance of 24 feet at mean high water (MHW) and 30 feet at mean low water (MLW) in the closed position. The Madison Avenue Bridge, mile 2.3, across the Harlem River has a vertical clearance of 25 feet at MHW and 29 feet at MLW in the closed position. The Pulaski Bridge across Newtown Creek, mile 0.6, has a vertical clearance of 39 feet at MHW and 43 feet at MLW in the closed position.

The current operating regulations for the Willis Avenue and Madison Avenue bridges, listed at 33 CFR 117.789(c), require the bridges to open on signal from 10 a.m. to 5 p.m., if at least four-hours notice is given. The current operating regulations for the Pulaski Bridge listed at 117.801(g) require it to open on signal if at least a two-hour advance notice is given.

The bridge owner, New York City Department of Transportation (NYCDOT), requested a temporary change to the operating regulations governing the Willis Avenue Bridge, the Madison Avenue Bridge, and the Pulaski Bridge, to allow the bridges to remain in the closed position at different times on November 3, 2002, to facilitate the running of the New York City Marathon. Vessels that can pass under the bridges without bridge openings may do so at all times during these bridge closures.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

This conclusion is based on the fact that the requested closures are of short duration and on Sunday when there have been few requests to open these bridges.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the bridge closures are of short duration and on Sunday when there have been few requests to open these bridges.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addfesses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. On November 3, 2002, from 10 a.m. to 5 p.m., § 117.789 paragraph (c) is temporarily suspended and a new paragraph (h) is added to read as follows:

§ 117.789 Harlem River.

* * * * *

(h) The draws of the bridges at 103rd Street, mile 0.0, 3rd Avenue, mile 1.9, 145th Street, mile 2.8, Macombs Dam, mile 3.2, 207th Street, mile 6.0, and the two Broadway Bridges, mile 6.8, shall open on signal if at least four-hours notice is given to the New York City Highway Radio (Hotline) Room. The Willis Avenue Bridge, mile 1.5, and Madison Avenue Bridge, mile 2.3, need not open for vessel traffic.

3. On November 3, 2002, from 8:30 a.m. to 3 p.m., in § 117.801, paragraph (g) is temporarily suspended and a new paragraph (h) is added to read as follows:

§ 117.801 Newtown Creek, Dutch Kills, English Kills, and their tributaries.

* * * * *

(h) The draw of the Pulaski Bridge, mile 0.6, across Newtown Creek, need not open for vessel traffic. The Greenpoint Avenue Bridge, mile 1.3, across Newtown Creek between Brooklyn and Queens, shall open on signal if at least a two-hour advance notice is given to the New York City Department of Transportation (NYCDOT) Radio Hotline or NYCDOT Bridge Operations Office.

Dated: October 3, 2002.

J.L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 02–26008 Filed 10–11–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–112]

RIN 2115–AE47

Drawbridge Operation Regulations; Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary final rule governing the operation of the Atlantic Beach Bridge, at mile 0.4, across Reynolds Channel at New York. This rule allows the bridge owner to open only one lift span for bridge openings, 7 a.m. to 5 p.m., from November 1, 2002 through November 30, 2002. Two span openings will be granted, provided a two-hour advance notice is given, from one hour before to one hour after predicted high tide. This single span operation is necessary to facilitate bridge painting operations at the bridge.

DATES: This rule is effective from November 1, 2002 through November 30, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD01–02–112) and are available for inspection or copying at the First Coast Guard District, Bridge Administration Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Schmied, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

The Coast Guard believes notice and comment are unnecessary because the bridge painting work that will be performed under this temporary final rule is a continuation, for one extra month, of work previously approved by a temporary final rule published on April 25, 2002 (67 FR 20442) entitled

Drawbridge Operation Regulations, Massachusetts.

This second temporary final rule will continue the temporary operating schedule for an extra month in order to complete the work at the bridge. The mariners who normally use this waterway have agreed to the continuation of the single lift span operation from November 1, 2002 through November 30, 2002.

Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest because the bridge painting work must continue until the end of November to finish this project.

Background and Purpose

The Atlantic Beach Bridge has a vertical clearance of 25 feet at mean high water, and 30 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at § 117.799.

The bridge owner, Nassau County Bridge Authority, requested a temporary regulation to facilitate painting operations at the bridge. The Coast Guard and the bridge owner held a meeting with the mariners who normally use this waterway to coordinate this bridge painting project and minimize the impacts on the marine transportation system. The single span operation was determined to be acceptable to the mariners because double span openings will be available from one hour before to one hour after the predicted high tide, provided a two-hour advance notice is given.

The bridge owner requested a second temporary final rule to complete the bridge painting that will not be finished by October 31, 2002, the end date of the first temporary final rule. The mariners agreed to the extension of the temporary operating schedule through the end of November to allow the bridge painting work to be completed.

Discussion of Rule

The drawbridge operation regulations at § 117.799, for the Atlantic Beach Bridge, at mile 0.4, across the Reynolds Channel, will be temporarily changed. From November 1, 2002 through November 30, 2002, the bridge will open on signal; however, only one lift span will be opened for the passage of vessel traffic between 7 a.m. to 5 p.m., daily. From 4 p.m. to 7 p.m. on weekdays, and from 11 a.m. to 9 p.m. on weekends and holidays, the bridge will open on signal only on the hour and half hour. From one hour before to one hour after predicted high tide, two lift spans will be opened for the passage of vessel traffic, provided at least a two hour advance notice is given by calling the number posted at the bridge.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

This conclusion is based on the fact that the single span operation was found acceptable by the mariners who normally use this waterway.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the single span operation was found acceptable by the mariners who normally use this waterway.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1d, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From November 1, 2002 through November 30, 2002, § 117.799 is temporarily amended by suspending paragraph (e) and adding a new paragraph (k) to read as follows:

§ 117.799 Long Island, New York inland Waterway from East Rockaway Inlet to Shinnecock Canal.

* * * * *

(k) The Atlantic Beach Bridge, mile 0.4, across Reynolds Channel, from November 1, 2002 through November 30, 2002, shall open on signal, except as follows:

(1) Only one lift span need be opened for the passage of vessel traffic between 7 a.m. to 5 p.m., daily, except as provided in paragraph (k)(3) of this section.

(2) From 4 p.m. to 7 p.m. on weekdays, and from 11 a.m. to 9 p.m. on weekends and holidays, the draw shall open on signal only on the hour and half hour, except as provided in paragraph (k)(3) of this section.

(3) From one hour before to one hour after the predicted high tide, two lift spans may be opened for the passage of vessel traffic, provided at least a two-hour advance notice is given by calling the number posted at the bridge. For the purposes of this section, predicted high tide occurs 10 minutes earlier than that predicted for Sandy Hook, as given in the tide tables published by the National Oceanic and Atmospheric Administration.

Dated: September 30, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–26009 Filed 10–11–02; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual Change To Revise the Five Percent Error Limit for Sequenced Mailings

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule adopts a proposal to revise Domestic Mail Manual (DMM) M050 to clarify how additional postage is assessed for Standard Mail Enhanced Carrier Route (ECR) and Periodicals carrier route mailings found to be out of sequence. Concurrent with the DMM amendment, the Postal Service will implement new policies and guidelines for assessing additional postage for Standard Mail and Periodicals carrier route mailings found to be out of sequence. Under the revised policies, for all mail required to be sequenced, no more than 5 percent of the total pieces in the entire carrier route portion of the mailing may be out of sequence.

EFFECTIVE DATE: This final rule is effective November 14, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Bronson, (703) 292–3539.

SUPPLEMENTARY INFORMATION: As a result of classification reform (Postal Rate Commission Docket No. MC95–1), the Postal Service required that both Standard Mail items and Periodicals mail claiming the high density or saturation rates be in walk sequence within a tray or package. For Standard Mail items, basic carrier route rate mail was required to be in either walk-sequence or line-of-travel (LOT) order. With the implementation of Commission Docket No. 2000–1, a sequencing requirement (either walk-sequence or LOT) was added for Periodicals basic carrier route rates.

Current standards state that, for each carrier route receiving mail, no more than 5 percent of the total pieces for each carrier route may be out of sequence or sorted to the wrong carrier route. The standard establishing a 5 percent limit for missequenced or missorted mail to an individual carrier route may cause confusion because it appears that the Postal Service has established a separate standard of compliance for sequencing as compared to other eligibility requirements for ECR or carrier route rates. Actually, the Postal Service routinely uses tolerances when evaluating discounted mailings to ensure compliance with eligibility standards. This policy change will standardize the procedure for determining eligibility for carrier route rates with the procedures for determining eligibility for other workshare discounts.

In addition, the 5 percent limit for missequenced or missorted mail currently is applied to an individual carrier route because, until recently, the Postal Service was able to detect such errors only at the delivery unit and could not easily determine the percentage of error for the entire mailing. Due to advances in technology, this is no longer the case. Tools to assist postal employees when evaluating discounted mailings either during the acceptance process or when conducting audits are now available.

In view of the capabilities provided by these tools, the Postal Service is amending the current standards to apply the 5 percent limit for walk-sequence and LOT errors to the entire mailing, not to an individual carrier route.

One such tool is the Mailing Evaluation Readability and Look-up Instrument (MERLIN) currently being deployed to business mail entry units (BMEUs) and detached mail units (DMUs). The Postal Service will announce when it will start using MERLIN to determine sequencing accuracy at a future date. At that time, the Postal Service will use the established statistically valid sampling methods BMEU and DMU employees currently use when operating MERLIN to determine whether the 5 percent error limit for sequencing is exceeded.

On August 8, 2001, the Postal Service published a proposed rule in the **Federal Register** (66 FR 41485) amending the postal standards to clarify the application of the 5 percent error limit for carrier route sequenced mailings. The Postal Service received eight comments, all of which generally supported the proposal. Most of the comments also included questions and suggestions about how compliance with the sequencing standards would be determined and how any postage adjustments would be assessed. Because these administrative issues need not be addressed in the DMM standards, the Postal Service will clarify these policy issues in this notice and amend the DMM by deleting section M050.2.0, Accuracy, for out-of-sequence mail.

Six commenters asked that the Postal Service reconsider the proposed method for calculating additional postage on

missequenced carrier route pieces. Most asserted that charging a non-carrier route presorted rate was too severe or "punitive." Several also asked that the Postal Service clearly state what rate of postage a mailer would default to if errors exceeding the 5 percent tolerance were found. Two respondents argued that the resequencing option (in lieu of paying higher postage rates) is impractical and should not be considered as a way to mitigate the application of non-carrier route presorted rates. In response to these concerns, the Postal Service and mailing industry representatives jointly developed a process for determining the next higher rate for which missequenced carrier route pieces would be eligible.

Currently, an out-of-sequence carrier route mailing is charged the next higher non-carrier route rate for which the mail qualifies. This can often result in large assessments that do not reflect the value that the Postal Service receives from a tray or bundle of mail sorted to the carrier route, even if it is not appropriately sequenced within the route. The Postal Service and the mailing industry developed a policy that uses the current rate structure to promote effective sequencing while recognizing the value of mail sorted to the carrier route. The Postal Service has determined that this new policy is a reasonable application of existing rates to carrier route mailings for which the only problem is improper sequencing.

Effective November 14, 2002, the Postal Service will implement the following policy and guidelines for assessing additional postage for Standard Mail and Periodicals carrier route mailings found to be out of sequence.

For mail that meets all other requirements for high density or saturation rates, if the pieces are found to exceed the 5 percent sequencing error limit (including being found in reverse walk sequence), the number of pieces that are out of sequence will be determined by multiplying the error percentage by the total pieces in the mailing claimed at the carrier route rates. That portion of the mailing will be charged the basic carrier route rate. This rate is available only when the mailer can demonstrate that an approved sequencing product was used in preparing the mail.

For basic carrier route rate mailings only, reverse sequencing will not disqualify a mailing from the basic rates as long as the mailer used an approved sequencing product in preparing the mail. Therefore, no additional postage is assessed for basic carrier route mailings found to be in reverse sequence. If the 5 percent sequencing error limit is exceeded for other reasons, the percentage of error will be assessed against the carrier route portion of the mailing. That percentage of the carrier route portion of the mailing will be charged the next higher rate for which the mail qualifies. For example, if a basic carrier route mailing is found to be 30 percent out of sequence, 30 percent of the pieces in the mailing claimed at the carrier route rates will be charged the next higher rate for which the pieces qualify. The remaining 70 percent of the basic carrier route rate pieces are not considered out of sequence and are charged the basic carrier route rate.

Two commenters asked whether the application of a barcode to carrier route pieces would make any difference in determining the next higher rate. The presence of a barcode may make a difference, since the next higher rate may be an automation rate if the pieces meet automation standards and are properly barcoded.

One respondent asked whether the Postal Service would take into consideration the work done by the mailing industry to ensure that errors are minimized and quality is maintained. The new policies take these efforts into consideration. The Postal Service included the provision to allow mailers who demonstrate that an approved sequencing product was used in preparing the mail to pay the basic carrier route rates for missequenced carrier route pieces originally claimed at high density and saturation rates. In addition, basic carrier route rate pieces found to be in reverse LOT order may still be considered eligible for that rate as long as the mailer can demonstrate that an approved sequencing product was used in preparing the mail.

One commenter expressed concern about how the new rule will be interpreted with respect to carrier route mailings containing mail eligible for different carrier route rates. The writer suggests that LOT and walk-sequence prepared pieces in the same mailing should be evaluated separately with respect to the 5 percent rule. The Postal Service does not concur with the writer's suggestion. Mailings containing pieces claimed at different carrier route rates are similar to mailings containing pieces claimed at different presorted rates. A verification is conducted on a portion of the mailing to determine whether the entire mailing is properly presorted and the results are applied across the entire mailing.

Four commenters asked for clarification regarding how errors are determined for missequenced versus missorted carrier route pieces. Several writers wanted to know whether there would be two separate 5 percent tolerance levels for missequenced and missorted pieces. One writer asked, "Are there different error percentages for sorting (that is, to the appropriate carrier route) and sequencing (that is, in proper line of travel)?" Under this policy, sortation and sequencing are evaluated separately and each has a 5 percent tolerance level for errors.

Two respondents asked whether mailers would have access to the same "technological innovations" that the Postal Service now has to detect errors. The MERLIN machines used by the Postal Service to evaluate mailings are commercially available. Mailers may contact the Business Mail Acceptance office at Postal Service Headquarters for information about where to purchase MERLIN machines. Information regarding other tools used by postal employees when conducting audits or reviews of ECR and carrier route rate mailings will be announced in a future **Federal Register** notice.

The following table shows some examples of the cost differential between the carrier route rate and the next higher rate in the event that the pieces are found to be out of sequence. The rates shown are for pieces for which no destination rate is claimed. The table does not include every possible rate combination.

Standard mail letters	ECR rate	Next higher non-auto rate	Difference
Basic [4]	$0.194	$0.248 (PRST 3/5 rate) [1]	$0.054
High Density	0.164	$0.194 (Basic ECR letter rate)	0.030
Saturation	0.152	$0.194 (Basic ECR letter rate)	0.042
Standard mail nonletters (3.3 oz. or less) [2]	**ECR rate**	**Next higher rate**	**Difference**
Basic [4]	$0.194	$0.288 (PRST 3/5 rate) [1]	$0.094
High Density	0.169	$0.194 (Basic ECR nonletter)	0.025

Standard mail letters	ECR rate	Next higher non-auto rate	Difference
Saturation	0.160	$0.194 (Basic ECR nonletter)	0.034
Periodicals (Outside-County)	**CR rates**	**Next higher rate**	**Difference**
Basic	$0.163	$0.256 (5-digit nonauto) [3]	$0.093
High Density	0.131	$0.163 (Basic CR rate)	0.032
Saturation	0.112	$0.163 (Basic CR rate)	0.051
Periodicals (In-County)	**CR rates**	**Next higher rate**	**Difference**
Basic	$0.050	$0.087 (5-digit nonauto) [3]	$0.037
High Density	0.034	$0.050 (Basic CR rate)	0.016
Saturation	0.028	$0.050 (Basic CR rate)	0.022

[1] For ECR basic rate pieces, the next higher rate may also be the Presorted basic rate or an automation rate for which the mail qualifies.
[2] Standard Mail letters and nonletters weighing more than 3.3 ounces are subject to both a per-piece charge and a pound rate. The cost differential between the applicable carrier route rate and the applicable next higher rate for pieces weighing more than 3.3 ounces is not shown on this chart.
[3] For Periodicals carrier route basic rate pieces, the next higher rate may also be the 3-digit rate or an applicable automation rate for which the mail qualifies.
[4] The nonmachinable surcharge that is assessed on Standard Mail letter-size pieces meeting the criteria in DMM C050.2.2 does not apply to pieces mailed at the ECR or automation letter rates. When pieces claimed at the ECR basic rates are found to be ineligible for that rate, the pieces may be subject to the nonmachinable surcharge in addition to the applicable presort rate, depending upon the physical characteristics of the pieces. The nonmachinable surcharge is $0.04 per piece for Standard Mail regular Presorted rate pieces and $0.02 for nonprofit Presorted rate pieces.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following section of the Domestic Mail Manual (DMM) as set forth below:

M Mail Preparation and Sortation

M000 General Preparation Standards

* * * * *

M050 · Delivery Sequence

* * * * *

2.0 ACCURACY

[Delete 2.0 in its entirety; renumber 3.0 and 4.0 as 2.0 and 3.0.]

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–26162 Filed 10–11–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA085–WDL; FRL–7393–6]

Partial Withdrawal of Approval of 34 Clean Air Act Part 70 Operating Permits Programs in California; Announcement of a Part 71 Federal Operating Permits Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to our authority under the federal operating permits program regulations, EPA is taking final action to withdraw, in part, approval of the following 34 Clean Air Act title V operating permits programs in the State of California: Amador County Air Pollution Control District (APCD), Bay Area Air Quality Management District (AQMD), Butte County AQMD, Calaveras County APCD, Colusa County APCD, El Dorado County APCD, Feather River AQMD, Glenn County APCD, Great Basin Unified APCD, Imperial County APCD, Kern County APCD, Lake County AQMD, Lassen County APCD, Mariposa County APCD, Mendocino County APCD, Modoc County APCD, Mojave Desert AQMD, Monterey Bay Unified APCD, North Coast Unified AQMD, Northern Sierra AQMD, Northern Sonoma County APCD, Placer County APCD, Sacramento Metro AQMD, San Diego County APCD, San Joaquin Valley Unified APCD, San Luis Obispo County APCD, Santa Barbara County APCD, Shasta County APCD, Siskiyou County APCD, South Coast AQMD, Tehama County APCD, Tuolumne County APCD, Ventura County APCD, and Yolo-Solano AQMD. Our partial withdrawal of title V program approval is based upon EPA's finding that the State's agricultural permitting exemption at Health and Safety Code 42310(e) unduly restricts the 34 local districts' ability to adequately administer and enforce their title V programs, which have previously been granted full approval status. Therefore, EPA is withdrawing approval of those portions of the 34 district title V programs that relate to sources that are subject to title V but are not being permitted because of the state's agricultural permitting exemption ("state-exempt major stationary agricultural sources"). This notice also fulfills EPA's obligation to inform the public of the implementation of a part 71 federal operating permits program ("part 71 program") for state-exempt major stationary agricultural sources in California.

EFFECTIVE DATE: This action will become effective on November 14, 2002.

ADDRESSES: Copies of the documentation in the administrative record for this action are available for inspection during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105.

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA Region 9, Air Division, Permits Office (AIR–3), at (415) 972–3974 or *rios.gerardo@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," or "our" means EPA.

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I. Background

Title V of the CAA Amendments of 1990 required all state permitting authorities to develop operating permits programs that met certain federal criteria codified at 40 Code of Federal Regulations (CFR) part 70. On November 30, 2001, we promulgated final full approval of 34 California districts' title V operating permits programs. *See* 66 FR 63503 (December 7, 2001).[1] Our final rulemaking was challenged by several environmental and community groups alleging that the full approval was unlawful based, in part, on an exemption in section 42310(e) of the California Health and Safety Code of major agricultural sources from title V permitting. EPA entered into a settlement of this litigation which required, in part, that the Agency propose to partially withdraw approval of the 34 fully approved title V programs in California.

Sections 70.10(b) and 70.10(c) provide that EPA may withdraw a 40 CFR part 70 program approval, in whole or in part, whenever the permitting authority's legal authority does not meet the requirements of part 70 and the permitting authority fails to take corrective action. To commence regulatory action to partially withdraw title V program approval, EPA's part 70 regulations require as a prerequisite that the affected permitting authority be notified of any finding of deficiency by the Administrator and that the notice be published in the **Federal Register**. Our determination regarding the inadequacy of the 34 districts' title V programs was published in a Notice of Deficiency (NOD). *See* 67 FR 35990 (May 22, 2002). Publication of the NOD fulfilled our obligation under part 70 to provide notice to the title V permitting authorities in the State that they are not adequately administering or enforcing their title V operating permits programs. Pursuant to 40 CFR 70.10(b)(2), publication of the NOD commenced a 90-day period during which the State of California had to take significant action to assure adequate administration and enforcement of the local districts' programs. As described in EPA's NOD, the Agency determined that "significant action" in this instance meant the revision or removal of California Health and Safety Code 42310(e), so that the local air pollution control districts could adequately administer and enforce the title V permitting program for stationary agricultural sources that are major sources of air pollution.

During the 90-day period that the State was provided to take the necessary corrective action, EPA proposed to partially withdraw title V program approval in each of the 34 California districts with full program approval. *See* 67 FR 48426 (July 24, 2002). Our notice indicated that we were proposing the partial withdrawal of program approval in anticipation that the State of California would not effect the necessary change in state law prior to the end of the 90-day period on August 19, 2002, but that the Agency's final action on the proposal would only occur after the 90 days for the State to take significant action had fully elapsed. Since the State did not take the necessary action to assure adequate administration and enforcement of the title V program within the required time frame, EPA is now taking final action, pursuant to our authority at 40 CFR 70.10(b)(2)(i), to partially withdraw approval of the title V programs for the 34 local air districts listed above.

[1] Although there are 35 separate permitting authorities in California, one permitting authority, Antelope Valley APCD, was not included in our final action because it only recently obtained its authority to issue part 70 permits and is still under its initial interim approval status granted on December 19, 2000 (65 FR 79314).

II. Comments Received by EPA on Our Proposed Rulemaking and EPA's Responses

EPA received ten sets of comments on our proposal to partially withdraw approval of the 34 local districts' title V programs. Copies of these comments are available for inspection during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105. A summary of the significant comments, and our response thereto, follow.

Comment 1: One commenter argues that EPA's proposed partial withdrawal exceeded the Agency's authority because, although the Act authorizes partial state programs, the Act does not authorize "hybrid" programs. The commenter claims that "partial" in the context of part 70 has a "solely geographic meaning." Thus, the commenter continues, a permissible partial withdrawal of approval of California's part 70 program would be one in which EPA withdrew approval for some but not all of California district title V programs. The commenter concludes that title V allows only geographic partial programs because simultaneous operation of federal and state permitting programs in a single geographic area could lead to confusion, inconsistency and inefficiency.

Response: The Act does allow for a partial part 70 program that is not based on geographic distinctions. The Act grants EPA broad discretion to withdraw approval of a title V program, without regard to whether the basis for withdrawal is geographic or not. Section 502(i) states: "Whenever the Administrator makes a determination that a permitting authority is not adequately administering or enforcing a program, or portion thereof * * * the Administrator shall provide notice to the State. * * * [U]nless the State has corrected such deficiency within 18 months after the date of such finding, the Administrator shall * * * promulgate, administer, and enforce a program under this subchapter for that State." The statute does not impose a geographic limitation on partial withdrawal of approval of a title V program.

EPA's title V regulations also do not limit the Agency's ability to *withdraw approval* of a state's title V program according to non-geographic criteria. Unlike partial approvals, which EPA did limit to geographic areas per regulation, partial withdrawals are not so limited. The commenter refers to EPA's authority *to approve* state program submittals under 40 CFR 70.4 for its position that 'a partial part 70 program is one that applies to "all part 70 sources within a limited geographic area.'" As the full context of this provision makes clear, 40 CFR 70.4(c) sets forth EPA's authority to grant *approval* to a part 70 program based on geographic criteria. This provision is distinct from the authority under which we are acting today. California has had interim approval for its title V programs since 1995 and final approval of its programs since December 2001; thus, we are not partially approving programs under 40 CFR 70.4, but rather partially withdrawing approval under 40 CFR 70.10.

Section 70.10(b), which authorizes EPA to "withdraw approval of the program *or portion thereof* * * *" does not limit EPA's authority to partially withdraw approval of approved title V programs to geographic boundaries. We therefore, interpret part 70 as allowing us the discretion to partially withdraw approval of an approved title V program in a manner that is appropriate to the scope and scale of the determination of inadequate administration or enforcement. The approach EPA has taken here is more appropriate than the full withdrawal of the 34 part 70 programs supported by commenters. The commenters' approach would require EPA to assume full responsibility from California's local air agencies for permitting all types of sources in the title V program, from refineries to power plants to wood products manufacturers, because of a state law problem that pertains only to the agricultural sector. Today's action is appropriately tailored to the problem it has identified—the inability of California's air districts to require major stationary agricultural sources of air pollution to apply for and obtain title V permits because of an exemption in state law. To subject all major sources within California to part 71 without regard to a problem that is actually narrow in scope would be an overly broad remedy that could also entail substantial confusion and inefficiency. Such disruption to the programs that the California air districts have been implementing for approximately 7 years is unwarranted.

We also do not agree with the comment that having some sources subject to a local part 70 program and other sources subject to a federal part 71 program would lead to confusion. First, many sources already successfully comply with multiple permitting schemes; for instance, a new or modified major source may have to comply with both nonattainment New Source Review and Prevention of Significant Deterioration ("PSD") permitting programs. In fact, in some locations in California, the nonattainment program is administered by the local agency and the PSD program is administered by EPA. Second, EPA does not anticipate that major agricultural sources covered by the federal part 71 program will also be subject to a local part 70 program.

Finally, we note that it is EPA's preference for the State and the local air districts to be the permitting authorities for the agricultural sources affected by today's rule. If and when these agencies have the ability to administer and enforce the title V program as required by the Act and its implementing regulations, EPA intends to take the actions necessary to hand regulatory authority over these sources to the State and local air agencies.

Comment 2: One commenter claims that EPA's proposed action is inconsistent with 40 CFR § 71.4(f). According to the commenter, section 71.4(f) does not authorize a permitting authority to be subject to portions of a part 71 program. This commenter also states that section 71.4(f) contemplates borrowing from a state program to implement a federal program, not vice versa. To be lawful, the commenter continues, EPA's action should completely withdraw approval of the California air districts' part 70 programs and implement a part 71 program covering all sources within the air districts' geographic area; EPA could then borrow portions of California's former part 70 program to help implement the new federal part 71 program.

Response: We disagree with the commenter's statement, as our action is consistent with our authority in part 71. Section 71.4(f) describes EPA's discretionary authority for issuing permits to individual sources, which we may do under "any or all of the provisions of [part 71] * * * or [after appropriate rulemaking, under] * * * portions of a state or Tribal permit program in combination with the provisions of [part 71]." By our action today, EPA intends to issue permits to state-exempt major stationary agricultural sources under the provisions of part 71. We do not believe at this time that additional rulemaking to adopt portions of the California programs will be necessary to complete this process. In addition, contrary to the comment, our action today does not require us to "borrow" from a federal program to implement a state program. As explained elsewhere in this notice, we are not implementing a state program; rather, we are using our authority under section 502(i) of the Act and 40 CFR 71.4(c) to implement a Federal operating permits program where a state has failed to adequately administer and enforce its own state operating permits program.

Comment 3: One commenter notes that EPA's action is inconsistent with the timing requirements of title V. The commenter contends that EPA's action should be governed by 40 CFR 70.10(a) ("Failure to submit an approvable program"), not, as EPA has proposed, 40 CFR 70.10(b) ("Failure to adequately administer or enforce") and (c) ("Criteria for withdrawal of State programs"). The commenter claims that if EPA were proceeding under 40 CFR 70.10(a), rather than 70.10(b) and (c), California would have had 18 months to correct the deficiency before mandatory sanctions would apply, and a part 71 program for California would not be effective until June 1, 2003. The commenter states that according to EPA's current view of section 42310(e), California never submitted an approvable program; therefore, EPA should have disapproved the programs and allowed California's interim approvals to expire.

Response: We disagree with the comment and believe that today's action is an appropriate exercise of our authority under 40 CFR 70.10(b) and (c) and that the timing of sanctions and a federal program are consistent with the Act and our regulations. The provisions of 40 CFR 71.4(a)(2) explain that the effective date of a federal operating permit program will be the date of expiration of interim approval of a state program. The expiration date of the interim approvals for California's title V programs was December 1, 2001; therefore, if EPA had allowed the interim approvals to expire, the effective date of a federal operating permits program would have been December 1, 2001 (not, as the commenter suggests, June 1, 2003), and EPA would have been required to set the due date for applications no later than December 1, 2002.

To the extent the comment should be read as stating that EPA should have made a finding that the California air districts had failed to submit fully-approvable programs or required revisions thereto, we believe that such a comment would have been more appropriately raised during the rulemaking we took approximately one year ago in which we proposed and finalized action on the submitted programs by granting them full approval. *See e.g.*, 66 FR 53354; 66 FR 63503. In that rulemaking, EPA allowed the public an adequate opportunity to comment on our action with respect to the California air districts' submittals. After we took action granting full approval, several entities challenged our action by filing petitions for review with the U.S. Court of Appeals for the Ninth Circuit. This particular commenter, however, did not petition the court for review of our action to approve the submitted programs rather than making a finding of failure to submit an approvable program.

Comment 4: One commenter claims that the timeline in 40 CFR 70.4(i)(1) should govern EPA's action because the agricultural permitting exemption is actually an issue of adequate legal authority. The commenter contends that if a permitting authority lacks legal authority to make a necessary revision, 40 CFR 70.4(i)(1) gives a permitting authority two years to make the revisions.

Response: We disagree with the commenter because we believe that our action is an appropriate exercise of our authority under 40 CFR 70.10(b) and (c). Section 70.4(i)(1) states, in part: "The program shall be revised * * * within 2 years if the State demonstrates that additional legal authority is necessary to

make the program revision." Thus, this section allows, but does not require, EPA to grant a State up to two years to revise the deficient part 70 program. *See, e.g.*, Part 70 NPRM, 56 FR 21712, 21731 (May 10, 1991) ("The Agency *might set a longer time up to 2 years* where legislative action is required at the State level to address problems") (emphasis added); Part 70 NFRM, 57 FR 32250, 32271 (July 21, 1992) ("If the State demonstrates that additional legal authority is necessary to correct the deficiency, the period *may be extended up to 2 years.*") (emphasis added).

Moreover, this provision must be read in conjunction with 40 CFR 70.10, which allows EPA to withdraw approval of the program (or a portion of the program) 90 days after issuing a Notice of Deficiency to the state, if the state fails to take significant action to correct the deficiency within that 90-day period. EPA interprets 40 CFR 70.4(i)(1) as placing an outer limit on the amount of time that EPA may give to a state to take the necessary steps to supply additional legal authority. EPA does not agree with the commenter that 40 CFR 70.4(i)(1) demands that EPA allow any state a full two years to correct a legal deficiency without regard to the facts and circumstances surrounding the issue.

In addition, it would not be appropriate to give the State another full two years in this instance. First, we note that the State of California has made no demonstration to EPA that two years is necessary to correct the deficiency we have identified. In certain instances, two years might be necessary for a state to address a shortcoming in the legislation relied upon for administration or enforcement of a state's title V program. For example, EPA is aware that some state legislatures meet only every other year. States with such a legislative calendar might be able to demonstrate to EPA that two years is necessary to provide additional legal authority. California's legislature, however, is in session throughout the year, except for various relatively limited periods of recess.[2] EPA's Notice of Deficiency was issued in May 2002 and efforts were under way to repeal the agricultural permitting exemption before August 31, which was the last day for each house to pass bills for the 2002 legislative session. The commenter did not provide a reason why the State might require a full two years to correct the problem we identified in our Notice of Deficiency. Given the state's legislative calendar, we believe that it is feasible for the California Legislature to supply the additional authority in a time frame less than two years.

Second, we informed California more than six years ago that the agricultural exemption (which has existed in the Health and Safety Code since the late 1970's) was a defect in the program that required correction. Indeed, the California Attorney General identified the exemption as defect in the state's legal authority in the legal opinion the State submitted with the original programs in the early 1990's. In addition, EPA's proposed and final interim approval notices in the mid-1990's confirmed that the defect would have to be corrected in order for the state's programs to secure full approval. Thus, the State's long-standing awareness of this issue also weighs in favor of our invoking our discretion inherent in the part 70 regulations to establish a time frame for legislative action that is less than two years.

Comment 5: One commenter argues that EPA has overreached in defining "significant action" by requiring action that must be taken within 90 days to avoid 40 CFR 70.10(b)(2) sanctions. The commenter contends that 40 CFR 70.10(b) allows California 18 months to revise or repeal the agricultural exemption before sanctions or implementation of a part 71 program may occur. The commenter continues that EPA's NOD and proposed rule, however, improperly treat complete correction of the identified deficiency as the "significant action" that California must take within 90 days. The commenter notes that other EPA NODs have distinguished between the "significant action" and actual correction of the identified deficiencies. Finally, the commenter states that EPA is also unreasonable to expect a state law to be revised or repealed in 90 days because generally, the legislative process required to revise or repeal a statute under California law cannot be completed in 90 days.

Response: We disagree with the comment for several reasons. First, EPA is not aware of any significant action taken by the State of California to assure adequate administration and enforcement of the title V program during the 90-day period provided, and none of the commenters provided any evidence that the State took a "significant action" within that time frame that EPA should consider as such. Thus, even if we had not specifically identified removal of the exemption as the necessary "significant action," no "significant action" occurred within the 90 days provided for in the regulations. Morever, the Clean Air Act and EPA's regulations do not require us to distinguish the "significant action" a state must take within 90 days from the actual correction that must occur. The fact that we may have given a different State with different deficiencies and facts a different timeline does not indicate that our actions here were unlawful. In fact, the existence of statutory and regulatory authorities for discretionary sanctions demonstrate that no such distinction is required. For the reasons stated earlier (*e.g.*, the State's longstanding knowledge the exemption was a problem; the legislature's calendar), we believe it was reasonable for us to identify removal of the exemption as the significant action in the NOD.

The comment suggests that a distinction is essential because it entitles the state to an 18-month period following the issuance of an NOD to completely correct the issue during which time the state is insulated from the imposition of sanctions. However, section 502(i)(1) of the Act and our implementing regulations authorize us to impose discretionary sanctions earlier than 18 months after notifying the state of the deficiency. 42 U.S.C. 7661a(i)(1); 40 CFR 70.10(b)(2)(ii) and (iii). Thus, the suggestion that the State automatically has 18 months during which it is "insulated" from sanctions before it must correct the deficiency is premised on a false assumption, since the State enjoys no 18-month period of insulation. Finally, we note that EPA has not imposed discretionary sanctions against California; rather, our NOD started an 18-month clock, expiration of which would result in mandatory sanctions if the State has not corrected the deficiency we identified. *See* 67 FR 35990 (May 22, 2002).

Comment 6: One commenter contends that in a variety of prior correspondence, EPA has acknowledged that there are unique issues regarding the application of title V to agricultural operations and claims that the proposed rule ignores these previously acknowledged positions regarding agriculture's unique position. The commenter also claims that EPA's proposed action breaches our 1998 Memorandum of Understanding (MOU) with the U.S. Department of Agriculture (USDA) where the agencies agreed to confer on agricultural air quality issues.

Response: EPA agrees that agriculture is a unique industry and that the application of title V for this industry poses some special challenges. Section 502(a) of the Clean Air Act (CAA or the Act), however, requires that a title V permitting program apply to every major source; it does not provide for an exemption based on the unique characteristics of the agricultural industry. As discussed in more detail below, the unique aspects of the agricultural industry can and will be addressed in how the title V program is implemented.

With respect to the correspondence from Agency officials submitted by the commenter, we believe that in some cases the commenter misunderstood the meaning of the letters cited, and in other instances EPA's position has evolved from the time the letter was written. For example, the commenter references several EPA letters from the mid-1990s explaining that a source's fugitive criteria pollutant emissions (such as fugitive dust) do not count when determining whether a source is subject to title V permitting requirements. Although EPA has not changed its position on this issue, the commenter appears to have misinterpreted these letters as assurances from EPA that agricultural sources would not be subject to title V *at all*. Non-fugitive emissions from stationary agricultural sources, however, do count toward title V applicability determinations. Thus, putting into place a title V program that considers non-fugitive emissions for applicability purposes is consistent with the correspondence cited by the commenter.

In other letters referenced by the commenter, EPA officials committed to working with the USDA on agricultural emissions issues and acknowledged the lack of sound emission factors for animal agriculture. EPA disagrees that our proposed rule somehow negates the MOU between our Agency and the USDA. EPA has conferred, and continues to confer, with USDA in an effort to develop a reasonable approach for implementing the title V program for major agricultural sources. We will continue to work with USDA on a host of issues related to the identification of major agricultural sources and the appropriate permitting of these sources under title V of the CAA.

Comment 7: Several commenters argue that emission factors and other data used by environmental groups to argue that there are major agricultural sources in California are outdated and inaccurate. They contend that there is very little data on emissions from agricultural practices and those data are unreliable; therefore, they conclude, it is inappropriate to regulate these sources under title V at this time. Commenters state that, in December 2001, EPA admitted that reliable data and a complete inventory of emissions from agricultural operations were not available and supported deferred implementation for a three-year period. They argue that this three-year deferral period is necessary to make informed and scientifically sound determinations as to agricultural emission inventories.

Response: As noted above, section 502(a) of the Clean Air Act specifically prohibits EPA from exempting major sources of air pollution from title V. California has had numerous opportunities over several years to demonstrate that there are no major agricultural sources in California and has failed to do so. Thus, EPA's final action today is necessary to lay the legal groundwork for the permitting of major stationary agricultural sources in California, where the local permitting authorities are restricted by State law from issuing permits to such sources. Thus, while we may agree that data regarding emission factors could be better in three years, implementation of the title V permitting program for major stationary agricultural sources must move ahead based on the best data available at this time.

Nonetheless, EPA's approach for implementing the title V program for major agricultural sources does, and will continue to, address concerns regarding emissions data. For example, today's action calls for applications from state-exempt stationary agricultural sources that are major due to emissions from diesel-powered engines first, to be followed approximately 3 months later by applications from any other state-exempt major stationary agricultural sources. This staggered application deadline is based, in part, upon the fact that more and better data are available with respect to emissions from agricultural engines than are available for other potentially major agricultural sources, such as Concentrated Animal Feeding Operations (CAFOs). Agricultural sources using stationary diesel engines have more than enough information available to them to determine whether they are subject to title V based on emissions from these engines. Both EPA and the State of California have valid emission factors that can be used to calculate diesel engine emissions based on such considerations as the engine age, size, load factor, and annual hours of operation or fuel usage.

With respect to other potential major agricultural sources of air pollution, EPA agrees that the level of information available is not as robust as it is for agricultural engines. For example, emissions from large animal feeding operations (*e.g.*, dairies, poultry operations, swine facilities) are not as well characterized as are those from diesel agricultural engines. Although we acknowledge that implementation of title V must commence before concerns regarding data are fully resolved, we anticipate that the results of a study by the National Academy of Sciences (NAS), "The Scientific Basis for Estimating Emissions from Animal Feeding Operations" will be instrumental to the Agency in making the necessary implementation policy decisions. This study, which has received funding and support from both the EPA and USDA, is intended to assess "the scientific issues involved in estimating air emissions from individual animal feeding operations (swine, beef, dairy, and poultry) as related to current animal production systems and practices in the United States." The Agency will continue its commitment to working closely with our sister federal agency, USDA, as we evaluate the NAS findings and results from other ongoing research efforts, and develop specific guidance for the implementation of the title V permitting program for animal agriculture. The additional guidance, which EPA will make widely available through direct outreach to potentially subject sources and through other means, will provide clearer direction as to the types and sizes of operations that are presumptively major under the title V program.

Comment 8: One commenter stated that there is a lack of clarity in EPA's proposed rule as to which operations or agricultural activities meet the definition of "major source." Specifically regarding dairies, the commenter argued that there is no reliable scientific basis at present for determining air emissions from these operations, and that California's estimates for ROGs/VOCs from dairies have been thoroughly discounted in the regulatory and scientific community.

Response: This comment is similar to Comment 7 in that it, in part, argues that scientific information is not available to determine whether agricultural sources are major sources under title V. To the extent the comment is raising this concern, please see our response to Comment 7.

As a general matter, it is a source's responsibility to determine whether it is a major source subject to permitting requirements. Nonetheless, we agree that agricultural sources in California may not be familiar with this process and we intend to provide additional guidance over the next several months.

As for the comment that the proposed withdrawal notice was unclear in explaining which sources may be subject to title V, EPA disagrees. EPA

[2] The California Legislature's calendar may be consulted at *http://www.leginfo.ca.gov/legislative_calendar.html*.

has provided information regarding the types of agricultural sources that may be subject to title V requirements, as well as information about certain activities that are not subject to the program. For example, stationary diesel irrigation engines are subject to title V permitting if their emissions alone, or in combination with other stationary source emissions at the same contiguous or adjacent site, rise above the title V threshold for the area in which they are located. In addition, EPA has made clear that, pursuant to our existing regulations, nonroad engines are not required to be permitted, and fugitive emissions of criteria pollutants (such as fugitive dust) are not considered in determining a source's title V applicability.

In addition, a September 2001 letter submitted to EPA by CARB Executive Officer Michael P. Kenny describes numerous agricultural emission sources in California that are already subject to permitting. Post-harvest, out-of-field agricultural activities such as fumigation, ginning, milling, drying, and refining are not exempt under California law and are subject to permitting requirements, including title V. These sources are not, therefore, subject to part 71 permitting by EPA.

Moreover, we also note that the part 71 program that applies once the partial withdrawal takes effect applies only to sources that were exempt under the state agricultural exemption. Thus, it is likely that sources know whether they were covered by the state exemption in the past and, therefore, that they may need to determine whether they are a major source for the part 71 program.

With respect to the ROG emission factor currently used by the State of California to estimate dairy emissions, we acknowledge that there have been a number of concerns recently raised regarding the validity of the factor and the appropriateness of its use to characterize emissions from dairies. However, this factor has been relied upon for regulatory analysis by the State and EPA considers it to be part of the existing data that are currently under review by the NAS. Also, as we previously noted, EPA expects to take into account the final NAS report, as well as the results of other relevant research efforts, in making determinations regarding the appropriate emission factors for various types of animal agriculture, including dairies, sufficiently far in advance of the permit application deadline for subject sources.

Comment 9: One commenter argues that multiple agricultural sources should not be grouped together as one source. The commenter contends that irrigation pumps should be classified separately from other farming activities because "water mining" has a distinct standard industrial classification (SIC) code. Another commenter urges EPA to develop a definition of "source" for title V that results in each individual diesel pump engine being a separate source.

Response: These issues all address how EPA should implement the part 71 program that will become effective once the partial withdrawal occurs. They do not address the issue before EPA in this action, which is whether to partially withdraw approval of the California part 70 programs and impose a federal part 71 program for state-exempt major stationary agricultural sources at this time.

EPA is working with the USDA to determine how to best implement the part 71 program for agricultural sources. We will consider these comments as we move forward and develop our implementation strategy. The Agency will be providing more specific guidance on this subject sufficiently far in advance of the permit application deadlines to allow sources to determine and meet their permitting obligations.

Comment 10: Some commenters note that many irrigation pumps are non-road engines and are therefore excluded from the definition of stationary source. Another commenter asserts that many potential emission sources at dairies should be considered mobile sources, and thus not counted for major source applicability purposes.

Response: EPA agrees that emissions from engines that meet the "nonroad engine" definition at 40 CFR 89.2 are not considered stationary source emissions and would not be regulated by title V. Irrigation pumps that meet the 40 CFR 89.2 definition of a nonroad engine would be those internal combustion engines that are "portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform." EPA's regulations further clarify that portable or transportable engines would be considered stationary (as opposed to nonroad) if the engine remains at a location (*i.e.*, any single site at a building, structure, facility, or installation) "for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source." Although EPA agrees that some irrigation pumps would meet the 40 CFR 89.2 nonroad engine definition, others would not meet this definition under the current rules.

The commenter that asserts that many potential emission sources at dairies should be considered mobile did not provide any specific examples of the types of emission sources at dairies that they consider to be "mobile sources." This term is typically used to describe a wide variety of vehicles, engines, and equipment that generate air pollution and that move, or can be moved, from place to place. "On-road," or highway, sources include vehicles used on roads for transportation of passengers or freight. "Nonroad," (also called "off-road") sources include vehicles, engines, and equipment used for construction, agriculture, transportation, recreation, and many other purposes. The title V program is a stationary source permitting program and does not, therefore, require the permitting of mobile sources. Emissions from any mobile source at dairies (or at any other potentially major agricultural facility) are not regulated by title V.

Comment 11: One commenter argues that CAFOs are indirect sources of emissions, rather than stationary sources, and thus are not subject to title V permitting requirements. The commenter notes that the Clean Air Act defines an indirect source as "a facility, building, structure, installation, real property, road or highway which attracts, or may attract, mobile sources of pollution." Thus, the commenter continues, similar to a highway or a parking lot, a CAFO itself emits nothing; rather, it is the cows that are housed in barns and other structures that create organic emissions, not the facility itself. Furthermore, the commenter argues, the cattle located in a CAFO may be analogized to the automobiles on a highway or in a parking lot; their emissions potentially make the CAFO an indirect source of emissions.

Response: EPA disagrees that CAFOs are indirect, as opposed to stationary, sources. The definition of "indirect source" cited by the commenter is located in section 110(a)(5)(C) of the Act and applies only to that paragraph, which addresses State Implementation Plans for indirect source review programs. The appropriate portion of the statute to consult for title V purposes is section 302(z) of the Act, which defines the term "stationary source" as "generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle." Section 71.2 defines "stationary source" as "any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act." CAFOs plainly fit the definition of stationary source under section 302(z) of the CAA and the title V regulations.

EPA also disagrees with the commenter's assertion that "a CAFO itself emits nothing." CAFOs directly emit a variety of air pollutants from waste storage lagoons, barns, and other buildings, structures, and facilities where animals are confined. Moreover, we note that cows are not mobile sources regulated under title II of the Act.

Comment 12: One commenter argues that the emissions from many operational practices and components of dairies *are* fugitive emissions and thus not subject to title V. Another commenter argues that emissions from certain CAFO sources (*e.g.*, waste lagoons, hog barns, and poultry houses) *are not* fugitive and should be included in determining major source status. The commenter submitted several Agency documents discussing precedents and existing guidance relevant to the definition of "fugitive emissions" for purposes of title V.[3]

Response: EPA agrees that any criteria pollutant emissions that are fugitive, even if emitted by a stationary source, would not count toward determination of major source status. See 40 CFR 71.2 (definition of "major source"). Thus, fugitive dust emissions from a dairy (or other livestock or crop-producing operation) are not counted for title V applicability.

Section 71.2 defines "fugitive emissions" as "those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening." Some of the concepts regarding fugitive emissions articulated in the EPA documents cited by commenters are: (1) Emissions which are actually collected are not fugitive emissions; (2) where emissions are not actually collected at a particular site, the determination as to whether emissions are fugitive or not should be made by the permitting authority on a case-by-case basis, depending on the specific factual circumstances present; (3) in determining whether emissions could "reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening," reasonableness should be construed broadly and "the existence of collection technology in use by other sources in a source category creates a presumption that collection is reasonable;" and (4) where a source is not actually collecting its emissions but there is a presumption that it is reasonable for them to do so (based on such collection at other, similar sources), a permitting authority could consider costs in determining the validity of the presumption.

While EPA believes that these concepts are important guideposts for determining the presumptive fugitive and non-fugitive emission sources at CAFOs, EPA is not making such policy decisions in this rulemaking. As noted above, EPA intends to provide more detailed guidance on the implementation of the title V permitting program for CAFOs and other potential major stationary agricultural sources.

Comment 13: One commenter asserts that EPA is unfairly applying title V to agricultural sources only in California. The commenter argues that if the Agency is going to focus on permitting agricultural sources, then it should adopt a comprehensive approach that applies this program nationally, not just in one state.

Response: EPA does not agree that we are unfairly applying the title V permitting program requirements to agricultural sources in California. The reason EPA is taking action to withdraw approval of the portions of the California title V programs that relate to state-exempt major stationary agricultural sources, thereby obligating the Agency to implement a part 71 federal operating permits program for these sources, is that California state law exempts these sources from permitting by state and local authorities. Since other states do not have such an exemption, title V permitting requirements already apply to any major stationary agricultural sources in other states.[4] In addition, as noted in the September 2001 letter from CARB Executive Officer Michael P. Kenny, many agricultural emission sources in California are already subject to permitting. Post-harvest, out-of-field agricultural activities such as fumigation, ginning, milling, drying, and refining are not exempt under California law and are subject to permitting requirements, including title V. EPA's final rule merely extends the title V permitting requirements to all major sources of air pollution in California, as required by the Clean Air Act.

Comment 14: One commenter suggests that, although EPA's regulations authorize the Agency to establish an accelerated schedule for submittal of part 71 permit applications, the accelerated schedule is not realistic or supportable in this instance because of the difficulty in estimating emissions from agricultural sources. The commenter believes that EPA should have granted all sources the full 12 months to apply for a part 71 permit.

Response: EPA does not agree that the application schedule established in our final rule is "accelerated." As the commenter notes, 40 CFR 71.5(a)(1)(i) provides that major stationary sources which do not have an existing operating permit issued by a State (or local permitting authority) under an approved part 70 program, and which are applying for a part 71 permit for the first time, must submit an application within 12 months after becoming subject to the permit program *or on or before such earlier date as the permitting authority may establish*. Section 71.5(a)(1)(i) further provides that sources required to submit permit applications earlier than 12 months after becoming subject to part 71 must be notified of the earlier submittal date at least 6 months in advance of the date. With EPA's final rule, we are notifying state-exempt major stationary agricultural sources that they are subject to part 71 permitting requirements as of the effective date of this final rule, which provides these sources at least 6 months notice from the effective date. In fact, EPA is establishing a longer application period than the minimum required by our regulations for some agricultural sources (*i.e.*, those that are major due to emissions other than from stationary diesel engines).[5]

Moreover, 40 CFR 71.4(i) requires EPA to take action on one-third of all applications annually over a period not to exceed three years after the effective date of the part 71 program. If we did not require any applications until the end of the first year, we would not be able to take action on one-third of them

[3] *See, e.g.*, memorandum from Thomas C. Curran, Director, Information Transfer and Program Integration Division, to Judith M. Katz, Director, Air Protection Division, EPA Region III, entitled "Interpretation of the Definition of Fugitive Emissions in Parts 70 and 71," dated February 10, 1999, memorandum from Lydia Wegman, Deputy Director, OAQPS, to EPA Regional Air Directors, entitled "Consideration of Fugitive Emissions in Major Source Determinations," dated March 8, 1994, and memorandum from John S. Seitz, Director, OAQPS, to EPA Regional Air Directors, entitled "Classification of Emissions from Landfills for NSR Applicability Purposes," dated October 21, 1994.

[4] The one exception that EPA is aware of is the State of Oregon, which has a similar permitting exemption in their state law. However, the Oregon Attorney General issued a letter confirming that none of the state-exempt agricultural operations are subject to title V (*i.e.*, none of these operations are major sources of air pollution). EPA Region X granted the Oregon title V program full approval in 1995.

[5] In addition, we note that if we had allowed the interim approval to lapse due to the state agricultural exemption, all part 71 permit applications would have been due no later than December 1, 2002, less than two months away.

annually over a three-year period and still have all permits issued within three years of the effective date of the part 71 program. Rather, we would only have taken action on two-thirds of the applications at the end of three years because we would not have been able to take any actions during the first year. Thus, it was appropriate to require some applications early enough into the first year to ensure we could take action on one-third within 12 months of the effective date of the program.

Finally, EPA is committing to provide additional guidance regarding applicability and implementation of the title V permitting program for major stationary agricultural sources well in advance of the actual permit application deadlines. This guidance will assist individual sources in determining their permitting obligations, and will help ensure that all sources that are required to obtain a part 71 permit are able to submit their applications by the appropriate deadline.

Comment 15: One commenter claims that EPA should not have created two separate categories for permit applications. In particular, the commenter finds EPA's reference to any "remaining" sources (other than stationary diesel-powered engines) to be unclear.

Response: The Agency does not agree that the part 71 permitting strategy for major agricultural sources is unclear or that we erred in establishing two separate categories for permit application. EPA's final rule establishes a clear obligation for sources with stationary diesel engine emissions above the major source threshold to apply for a part 71 permit by the earlier deadline (May 2003). State-exempt stationary agricultural sources which do not have such emissions above the major source threshold, but which are otherwise major sources of air pollution, would need to apply by the later application deadline (August 2003). The specific guidance that EPA will be providing in the coming months on applicability and implementation of the title V permitting program for major stationary agricultural sources will further assist individual sources in determining their permitting obligations, as well as the appropriate deadline they must meet. As noted above, EPA's staggered application deadlines are based, in part, upon the fact that more and better data are available with respect to emissions from agricultural engines than are available for other potentially major stationary agricultural sources (such as CAFOs). Given this situation, it is appropriate to provide some additional time for the submittal of applications from sources which are major due to emissions other than from stationary diesel engines.

Comment 16: One commenter cites several passages from the June 2002 Interim Report of the NAS Committee on Air Emissions from Animal Feeding Operations and suggests that given the scientific uncertainty and lack of established emission factors for certain agricultural emission sources, EPA should provide a definitive exemption, by regulation, for certain categories of agricultural sources until such time as EPA has established emission factors.

Response: As previously noted, the NAS study of air emissions from animal feeding operations, which is expected to be issued in final form by the end of 2002, will be instrumental to the Agency in making the necessary policy decisions (such as identifying appropriate emission factors or alternative approaches for estimating emissions for various animal agricultural operations) for implementing the title V permitting program in this sector. EPA does not agree that the NAS' interim report provides the basis to exempt any category of agricultural source from the requirements of title V. Also, as noted by other commenters, the Clean Air Act does not authorize any exemption from title V for major sources.

Once the final report is released, the Agency intends to carefully evaluate the NAS findings and results, as well as the results of any other relevant research, and develop specific guidance for the implementation of the title V permitting program for animal agriculture.

Comment 17: Two commenters note that title V must apply to all major sources, with one commenter specifically citing section 502(a) of the Act as explicitly prohibiting the Administrator from exempting any major source from the title V permitting requirements.

Response: We agree that the Clean Air Act does not provide for any exemption from title V permitting for major sources. This clear prohibition compelled the Agency to find the California title V programs, which exempt certain major stationary agricultural sources, deficient, and to take action to partially withdraw title V program approval in the State.

Comment 18: One commenter argues that dairy, chicken, and swine CAFOs all emit significant amounts of criteria air pollutants, including ozone precursor (VOC) emissions. The commenter further argues that the fact that many sources of agricultural emissions have not historically been quantified because of the State's exemption does not justify continued regulatory exemption of the agricultural industry. The commenter believes there should be a title V program implemented for CAFOs in California using currently available data, even while more research is conducted to develop a more rigorous model. Finally, the commenter notes that the title V permitting process itself is an important vehicle by which information on agricultural source emissions can be gathered.

Response: EPA agrees that dairy, poultry, and swine CAFOs are all sources of criteria pollutant emissions. The NAS' Interim Report on air emissions from animal feeding operations (AFOs) notes that, "substantial emission of nitrogen,, sulfur, carbon, particulate matter, and other substances from AFOs do occur." However, as we stated above, emissions from large animal feeding operations (*e.g.*, dairies, poultry operations, swine facilities) are not as well characterized as are those from diesel agricultural engines. While EPA expects that the state of CAFO emission data will improve in the future, the implementation of the title V permitting program for state-exempt major stationary agricultural sources must move ahead based on the best data available at this time.

Comment 19: Two commenters state that EPA should review its action in more detail for consistency with the Regulatory Flexibility Act (RFA). One commenter notes that EPA's proposed action inappropriately relied on previous analyses conducted in connection with the original rulemakings for parts 70 and 71. Commenters also challenged EPA's certification that the action would not have a significant impact on a substantial number of small entities for various reasons. For example, one commenter notes that the agricultural industry has unique needs for expediency and variability that will be affected by part 71 requirements for public notification and permit issuance. These commenters also note that the lack of certainty surrounding emissions from agricultural sources will affect numerous small operations that must determine whether they need to submit applications for part 71 permits. One commenter also states that although EPA's proposed rule stated that sources can become synthetic minors, this process is not necessarily simple.

Response: The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. For the following reasons, EPA believes that its certification that this action will not result in a significant impact on a substantial number of small entities (SISNOSE) is appropriate; therefore, we disagree with the commenters.

First, this action is a partial withdrawal of the part 70 program in 34 California air districts. It does not entail any substantive change to part 70. Rather, it merely revises Appendix A, which sets forth the status of state program approvals. Moreover, it involves no changes to part 71. Our action today withdraws part 70 approval for state-exempt major stationary agricultural sources; as a consequence of that partial withdrawal, the separate, existing part 71 program applies by operation of law. Because our action involves no revision to the regulations themselves, it is appropriate for EPA to rely on the RFA certifications of no SISNOSE made for those regulations.[6] To the extent the comments reflect a concern that these 1992 and 1996 RFA certifications inadequately addressed small entities in the agricultural industry, these concerns would have been more appropriately raised during the comment period for the part 70 and part 71 rulemakings, and in any challenges to those rulemakings. The part 71 program, which becomes effective in California for state-exempt major stationary agricultural sources as a result of this action, was not challenged in the courts for any reason, let alone the RFA certification.

Moreover, EPA continues to believe that any "impact" on the few small businesses that also are state-exempt major stationary agricultural sources potentially subject to part 71 would not be significant. Briefly, the primary, and in many cases only, impact will be the annual costs of applying for and maintaining the part 71 permit. State-exempt major stationary agricultural sources will not be required to purchase and install air pollution control equipment or purchase offsets under title V as at least one commenter alleged. It appears that this commenter was confusing the requirements of the New Source Review program with the requirements of title V.

With regard to comments discussing the burdens small entities may face in evaluating their emissions to determine whether they must submit applications, these comments do not take into account a number of important factors. According to CARB, the state's agricultural permitting exemption does not apply to post-harvest, out-of-field activities; because the scope of today's action is limited to state-exempt sources, it should have no effect on small businesses engaged in these non-exempt activities. In addition, as stated elsewhere in today's action, reliable data are available with respect to emissions from diesel engines used in agriculture. Sources with such units should be able to determine whether they must submit a part 71 application without a significant expenditure of resources. Finally, EPA and the local air districts will be working with the agricultural community to provide guidance for those state-exempt major stationary agricultural sources that may have to apply for a permit in order to minimize any burden associated with the applicability determination and permit application processes.

In addition, although EPA recognizes that the agricultural industry desires flexibility in the timing and implementation of a permit program, EPA believes that such needs are compatible with an operating permit program and, thus, implementation of the part 71 program will not have a significant impact. Many manufacturing and industrial operations also desire a regulatory system that is flexible and adaptable to changes in market supply and demand. In response to a mandate from Congress in this regard (see, *e.g.*, section 502(b)(10) of the Clean Air Act), EPA developed its title V regulations to allow for streamlined and flexible implementation of the state and federal operating permits programs. The part 71 program provisions for timely applications, application and permit shields, permit revisions, and operational flexibility are intended to allow any type of industry sector, including the agricultural industry, the ability to add or change equipment with minimal, if any, interference in daily operations. For example, part 71's application shield allows a source that submits a complete application for its initial part 71 permit to operate in compliance with that application until it receives its permit, which should address any concerns regarding the timing of actual permit issuance. *See* 40 CFR 71.5(a)(2). In addition, part 71's permit revision procedures do not require public notification for many types of changes at a facility and allow a facility to make these changes upon submittal of its application. *See*, 40 CFR 71.7(e)(1).

Moreover, any impact should occur at only a few state-exempt major stationary agricultural sources that are small businesses for several reasons. Those reasons, discussed in more detail in the Administrative Requirements section of this notice, include (1) the monetary threshold for small agricultural businesses; (2) the fact that part 71 applies only to major sources of air pollution, which tend to be larger operations; and (3) the fact that fugitive emissions from farming operations (*e.g.*, harvesting) are not counted towards major source applicability, reducing the number of agricultural sources likely to be subject to the program.

With respect to the option of becoming a synthetic minor source, there are many other mechanisms available to limit potential emissions from a farm, including prohibitory rules and general permits. We note that USDA's comments to our proposed action observed that there are "relatively few" small business farms that have actual emissions above the applicable major source thresholds. We intend to work with the USDA and local air districts to implement mechanisms for limiting potential emissions in time for the title V permit application deadlines and thereby appropriately limit the number of sources subject to the part 71 program.

Comment 20: One commenter takes issue with EPA's view that E.O. 13045 does not apply to the proposed rule because "it does not involve decisions intended to mitigate environmental health or safety risks." This commenter states that it does not seem reasonable for EPA to include major stationary agricultural sources in part 71 if no mitigation of environmental health risks is expected.

Response: Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885. April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. Today's action involves the exercise of our authority under part 70 and the implementation of part 71, which are title V operating permit programs that basically record and assure compliance with already-existing applicable requirements; they do not require new

[6] Indeed, it is questionable whether today's action has any direct impact on state-exempt agricultural sources because it is, in essence, a withdrawal of regulatory authority—we are partially withdrawing approval of the existing state program. That a federal program is automatically put into place upon such withdrawal is a requirement of the existing part 70 and part 71 regulations and not a new requirement established by today's actions.

reductions in emissions or other emissions restrictions. Therefore, it does not involve any major new decisions directed towards the mitigation of environmental health or safety risks. Likewise we do not believe that today's decision will have a disproportional adverse effect on children. In addition, as discussed above, the regulation of state-exempt major stationary agricultural sources is required by title V of the Act. Finally, the thrust of commenter's claim that is that we should not apply part 71 to agricultural sources absent mitigation of environmental risks. By helping to assure compliance with applicable requirements, the application of part 71 to agricultural sources moves in the direction of reducing environmental risks to children (as well as adults). Thus, today's decision would be consistent with the purposes of Executive Order 13045 if it applied.

III. Description of EPA's Final Action

After thorough consideration of the comments submitted in response to our proposed rule, EPA is taking action to withdraw, in part, approval of the 34 fully approved Clean Air Act title V (part 70) Operating Permits Programs in the State of California. We are only withdrawing approval of the portions of the programs that relate to state-exempt major stationary agricultural sources; because they have the ability to adequately administer and enforce their part 70 programs for non-exempt major stationary sources, each of the 34 local air districts will continue to administer their existing title V program for all other title V sources. As described more fully in the sections above and in our proposed rule, EPA's action is necessary because the local air districts in the State cannot issue, administer or enforce operating permits for certain major stationary agricultural sources, which are required to obtain permits under title V of the Act.

IV. Effect of EPA's Rulemaking

As a result of the partial withdrawal of part 70 program approval effected by today's action, EPA will be implementing (as of the effective date of today's final rule) a federal operating permits program under 40 CFR part 71 ("part 71 program") for state-exempt major stationary agricultural sources within the jurisdiction of the 34 California air districts listed at the beginning of this notice. EPA is not promulgating a part 71 program with today's action, since such a program has already been promulgated by the Agency. See 61 FR 34202 (July 1, 1996). Today's action to partially withdraw approval of the fully approved part 70 programs in the State merely establishes the effective date of the Agency's implementation of this existing part 71 program for state-exempt major stationary agricultural sources.

Pursuant to 40 CFR 71.5(a)(1)(i), major stationary sources which do not have an existing operating permit issued by a State (or local permitting authority) under an approved part 70 program, and which are applying for a part 71 permit for the first time, must submit an application within 12 months after becoming subject to the permit program or on or before such earlier date as the permitting authority may establish. Section 71.5(a)(1)(i) further provides that sources required to submit permit applications earlier than 12 months after becoming subject to part 71 shall be notified of the earlier submittal date at least 6 months in advance of the deadline. We are today notifying state-exempt major stationary agricultural sources within the jurisdiction of the 34 California air districts that they are subject to part 71 permitting requirements as of the effective date of this final rule. We are also notifying these sources of the following permit application deadlines: (1) State-exempt stationary agricultural sources that are major sources, as defined in 40 CFR 71.2, due to emissions from diesel-powered engines must submit part 71 permit applications to the EPA Region IX Permits Office no later than May 14, 2003; and (2) any remaining state-exempt major stationary agricultural sources must submit part 71 permit applications to the EPA Region IX Permits Office no later than August 1, 2003.

As we noted above in our response to comments, EPA is committing to provide additional guidance on the implementation of the part 71 program for state-exempt major stationary agricultural sources. The additional guidance, which EPA will make widely available through direct outreach to potentially subject sources and through other means, will provide clearer direction as to the types and sizes of operations that are presumptively major under the title V program. It is also EPA's intention to develop, as part of this guidance, streamlined application forms, user-friendly instructions, and general permit templates and to disseminate these documents for use by subject sources.[7] However, it is ultimately the responsibility of the source to submit a permit application if it is subject to the part 71 program, regardless of whether contact is initiated by EPA or any other regulatory authority. An owner or operator of a source may choose to submit a written request to EPA for a part 71 applicability determination. Pursuant to 40 CFR 71.3(e), the written request shall be made by the source's responsible official to the EPA Region IX Regional Administrator, shall include identification of the source and relevant facts about the source, and shall meet the certification requirements of 40 CFR 71.5(d).

V. Notification of Part 71 Program Effectiveness

Section 71.4(g) requires that, in taking action to implement and enforce a part 71 program, EPA shall publish a notice in the **Federal Register** informing the public of such action and the effective date of any part 71 program. By this notice, EPA is informing the public of the Agency's implementation of a part 71 federal operating permits program for state-exempt major stationary agricultural sources located within the jurisdiction of the 34 California air districts listed at the beginning of this notice. The effective date of this program is November 14, 2002.

In addition to the requirement to publish notice of the effectiveness of a part 71 program in the **Federal Register**, 40 CFR 71.4(g) also requires that the Agency, "to the extent practicable, publish notice in a newspaper of general circulation within the area subject to the part 71 program effectiveness." EPA will, to the extent practicable, publish notice in one or more newspapers of general circulation within the areas subject to the part 71 program effectiveness. Finally, in accordance with 40 CFR 71.4(g), EPA will be providing a letter to Winston H. Hickox, Secretary, California Environmental Protection Agency, as California Governor Gray Davis' designee, to provide notice of the effectiveness of EPA's part 71 program for state-exempt major stationary agricultural sources.

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

[7] If an owner or operator of a subject source prefers to use the standard part 71 permit application, those forms, as well as instructions for completing the forms, are available electronically at *www.epa.gov/air/oaqps/permits/p71forms.html*. Part 71 permit applicants may also contact the EPA Region IX Air Permits Office as described in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

B. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. Moreover, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicited comment on the proposed rule from tribal officials.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities. In developing the original part 70 regulations and the proposed revisions to part 70, the Agency determined that they would not have a significant economic impact on a substantial number of small entities. *See* 57 FR 32250, 32294 (July 21, 1992), and 60 FR 45530, 45563 (August 31, 1995). Similarly, the same conclusion was reached in an initial regulatory flexibility analysis performed in support of the 1996 part 71 rulemaking. *See* 61 FR 34202, 34227 (July 1, 1996); see also 64 FR 8262 (Feb. 19, 1999). Only a small subset of sources subject to the part 71 rule would be affected by today's action. The prior screening analyses for the part 70 and part 71 rules were done on a nationwide basis without regard to whether sources were located within California and are, therefore, applicable to sources in California. Accordingly, EPA believes that the screening analyses are valid for purposes of today's action. And since the screening analyses for the prior rules found that the part 70 and 71 rules as a whole would not have a significant impact on a substantial number of small entities, today's action, which would affect a much smaller number of entities than affected by the earlier rules, also will not have a significant impact on a substantial number of small entities.

EPA believes that few if any small businesses involved in the production of crops or animals in California would be subject to part 71 as a result of this rule. First, EPA notes that the Small Business Administration, pursuant to its authority under 15 U.S.C. 632(a) and 634(b)(6), has established thresholds for various business sectors to be used in the determination of whether a business is "small." *See*, 13 CFR part 121. For most businesses involved in the production of crops or animals (those that would most likely be subject to part 71 because of this rule), the SBA has set the "small business" threshold as $750,000 in annual receipts. (The threshold for cattle feedlots is $1.5 million; the threshold for chicken egg production is $10.5 million.) *See* 13 CFR 121.201; *see* also, 13 CFR 121.104. Businesses that have annual receipts in excess of that threshold are not "small businesses." Second, EPA's rule would require only major sources of air pollution to obtain a part 71 operating permit. For instance, in the San Joaquin Valley, the threshold for major sources of oxides of nitrogen or volatile organic compounds is 25 tons per year; the threshold for major sources of particulate matter is 70 tons per year.

Most other air districts in California have higher thresholds and consequently fewer sources in those districts would be subject to part 71. Furthermore, EPA does not include a source's fugitive emissions of criteria pollutants in determining whether part 71 applies to it. In addition, for sources that might have the potential to emit above the major source threshold, but have actual emissions below the threshold, the Agency has issued several policy memoranda explaining mechanisms for these sources to become "synthetic minors." These sources are recognized as not emitting pollutants in major quantities and may avoid the requirement to apply for a part 71 permit. Moreover, to the extent there is any impact, it will not be significant because part 71 imposes few if any additional substantive requirements. EPA intends to provide assistance to all sources that would become subject to part 71 as a result of this rulemaking.

Consequently, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

I. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in this action under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0336. The information is planned to be collected to enable EPA to carry out its obligations under the Act to determine which sources are subject to the Federal Operating Permits Program and what requirements should be included in permits for sources subject to the program. Responses to the collection of information will be mandatory under 40 CFR 71.5(a) which requires owners or operators of sources subject to the program to submit a timely and complete permit application and under 40 CFR 71.6 (a) and (c) which require that permits include requirements related to recordkeeping and reporting. As provided in 42 U.S.C. 7661b(e), sources may assert a business confidentiality claim for the information collected under section 114(c) of the Act.

In the Information Collection Request (ICR) document for the July 1996 final part 71 rule (ICR Number 1713.02), EPA estimated that 1,980 sources in 8 states would potentially be subject to part 71. EPA also estimated that the annual burden per source would be 329 hours, and the annual burden to the Federal government is 243 hours per source. EPA believes that these burden estimates are significantly higher than the burdens associated with today's rule. First, EPA estimates that the number of agricultural sources in California will be significantly less than the number on which the July 1996 estimates were based. In addition, State and local laws have traditionally exempted agricultural sources from many air pollution regulations. Therefore, agricultural sources will have fewer applicable requirements than the average part 71 source; accordingly, the burdens associated with permit applications and recordkeeping and reporting requirements should be minimal and far less than those for the typical part 71 source. Today's action would impose no burden on State or local governments and no burden on Tribal agencies. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

J. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 16, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 2, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

40 CFR part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by revising paragraphs (a) through (hh) under California to read as follows:

Appendix A To Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

California

The following district programs were submitted by the California Air Resources Board on behalf of:

(a) *Amador County Air Pollution Control District (APCD):*

(1) Complete submittal received on September 30, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on April 10, 2001. Amador County Air Pollution Control District was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(b) *Bay Area Air Quality Management District (AQMD):*

(1) Submitted on November 16, 1993, amended on October 27, 1994, and effective as an interim program on July 24, 1995. Revisions to interim program submitted on March 23, 1995, and effective on August 22, 1995, unless adverse or critical comments are received by July 24, 1995. Approval of interim program, including March 23, 1995, revisions, expires December 1, 2001.

(2) Revisions were submitted on May 30, 2001. Bay Area Air Quality Management District was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(c) *Butte County APCD:*

(1) Complete submittal received on December 16, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 17, 2001. Butte County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(d) *Calaveras County APCD:*

(1) Complete submittal received on October 31, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on July 27, 2001. Calaveras County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(e) *Colusa County APCD:*

(1) Complete submittal received on February 24, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on August 22, 2001 and October 10, 2001. Colusa County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(f) *El Dorado County APCD:*

(1) Complete submittal received on November 16, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on August 16, 2001. El Dorado County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(g) *Feather River AQMD:*

(1) Complete submittal received on December 27, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 22, 2001. Feather River AQMD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(h) *Glenn County APCD:*

(1) Complete submittal received on December 27, 1993; interim approval effective on August 14, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on September 13, 2001. Glenn County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(i) *Great Basin Unified APCD:*

(1) Complete submittal received on January 12, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 18, 2001. Great Basin Unified APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(j) *Imperial County APCD:*

(1) Complete submittal received on March 24, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on August 2, 2001. Imperial County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(k) *Kern County APCD:*

(1) Complete submittal received on November 16, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 24, 2001. Kern County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(l) *Lake County AQMD:*

(1) Complete submittal received on March 15, 1994; interim approval effective on August 14, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on June 1, 2001. Lake County AQMD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(m) *Lassen County APCD:*

(1) Complete submittal received on January 12, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on August 2, 2001. Lassen County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(n) *Mariposa County APCD:*

(1) Submitted on March 8, 1995; approval effective on February 5, 1996 unless adverse or critical comments are received by January 8, 1996. Interim approval expires on December 1, 2001.

(2) Revisions were submitted on September 20, 2001. Mariposa County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(o) *Mendocino County APCD:*

(1) Complete submittal received on December 27, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on April 13, 2001. Mendocino County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(p) *Modoc County APCD:*

(1) Complete submittal received on December 27, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on September 12, 2001. Modoc County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(q) *Mojave Desert AQMD:*
(1) Complete submittal received on March 10, 1995; interim approval effective on March 6, 1996; interim approval expires December 1, 2001.
(2) Revisions were submitted on June 4, 2001 and July 11, 2001. Mojave Desert AQMD was granted final full approval effective on November 30, 2001.
(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.
(r) *Monterey Bay Unified Air Pollution Control District:*
(1) Submitted on December 6, 1993, supplemented on February 2, 1994 and April 7, 1994, and revised by the submittal made on October 13, 1994; interim approval effective on November 6, 1995; interim approval expires December 1, 2001.
(2) Revisions were submitted on May 9, 2001. Monterey Bay Unified Air Pollution Control District was granted final full approval effective on November 30, 2001.
(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.
(s) *North Coast Unified AQMD:*
(1) Complete submittal received on February 24, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.
(2) Revisions were submitted on May 24, 2001. North Coast Unified AQMD was granted final full approval effective on November 30, 2001.
(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.
(t) *Northern Sierra AQMD:*
(1) Complete submittal received on June 6, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.
(2) Revisions were submitted on May 24, 2001. Northern Sierra AQMD was granted final full approval effective on November 30, 2001.
(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.
(u) *Northern Sonoma County APCD:*
(1) Complete submittal received on January 12, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.
(2) Revisions were submitted on May 21, 2001. Northern Sonoma APCD was granted final full approval effective on November 30, 2001.
(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.
(v) *Placer County APCD:*
(1) Complete submittal received on December 27, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.
(2) Revisions were submitted on May 4, 2001. Placer County APCD was granted final full approval effective on November 30, 2001.
(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.
(w) *The Sacramento Metropolitan Air Quality Management District:*
(1) Complete submittal received on August 1, 1994; interim approval effective on September 5, 1995; interim approval expires December 1, 2001.
(2) Revisions were submitted on June 1, 2001. The Sacramento Metropolitan Air Quality Management District was granted final full approval effective on November 30, 2001.
(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.
(x) *San Diego County Air Pollution Control District:*
(1) Submitted on April 22, 1994 and amended on April 4, 1995 and October 10, 1995; approval effective on February 5, 1996, unless adverse or critical comments are received by January 8, 1996. Interim approval expires on December 1, 2001.
(2) Revisions were submitted on June 4, 2001. The San Diego County Air Pollution Control District was granted final full approval effective on November 30, 2001.
(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.
(y) *San Joaquin Valley Unified APCD:*
(1) Complete submittal received on July 5 and August 18, 1995; interim approval effective on May 24, 1996; interim approval expires May 25, 1998. Interim approval expires on December 1, 2001.
(2) Revisions were submitted on June 29, 2001. San Joaquin Valley Unified APCD was granted final full approval effective on November 30, 2001.
(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.
(z) *San Luis Obispo County APCD:*
(1) Complete submittal received on November 16, 1995; interim approval effective on December 1, 1995; interim approval expires December 1, 2001.
(2) Revisions were submitted on May 18, 2001. San Luis Obispo County APCD was granted final full approval effective on November 30, 2001.
(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.
(aa) *Santa Barbara County APCD:*
(1) Submitted on November 15, 1993, as amended March 2, 1994, August 8, 1994, December 8, 1994, June 15, 1995, and September 18, 1997; interim approval effective on December 1, 1995; interim approval expires on December 1, 2001.
(2) Revisions were submitted on April 5, 2001. Santa Barbara County APCD was granted final full approval effective on November 30, 2001.
(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.
(bb) *Shasta County AQMD:*
(1) Complete submittal received on November 16, 1993; interim approval effective on August 14, 1995; interim approval expires December 1, 2001.
(2) Revisions were submitted on May 18, 2001. Shasta County AQMD was granted final full approval effective on November 30, 2001.
(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.
(cc) *Siskiyou County APCD:*
(1) Complete submittal received on December 6, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.
(2) Revisions were submitted on September 28, 2001. Siskiyou County APCD was granted final full approval effective on November 30, 2001.
(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.
(dd) *South Coast Air Quality Management District:*
(1) Submitted on December 27, 1993 and amended on March 6, 1995, April 11, 1995, September 26, 1995, April 24, 1996, May 6, 1996, May 23, 1996, June 5, 1996 and July 29, 1996; approval effective on March 31, 1997. Interim approval expires on December 1, 2001.
(2) Revisions were submitted on August 2, 2001 and October 2, 2001. South Coast AQMD was granted final full approval effective on November 30, 2001.
(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.
(ee) *Tehama County APCD:*
(1) Complete submittal received on December 6, 1993; interim approval effective on August 14, 1995; interim approval expires December 1, 2001.
(2) Revisions were submitted on June 4, 2001. Tehama County APCD was granted final full approval effective on November 30, 2001.
(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.
(ff) *Tuolumne County APCD:*
(1) Complete submittal received on November 16, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.
(2) Revisions were submitted on July 18, 2001. Tuolumne County APCD was granted final full approval effective on November 30, 2001.
(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.
(gg) *Ventura County APCD:*
(1) Submitted on November 16, 1993, as amended December 6, 1993; interim approval effective on December 1, 1995; interim approval expires December 1, 2001.
(2) Revisions were submitted on May 21, 2001. Ventura County APCD was granted final full approval effective on November 30, 2001.
(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.
(hh) *Yolo-Solano AQMD:*
(1) Complete submittal received on October 14, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.
(2) Revisions were submitted on May 9, 2001. Yolo-Solano AQMD is hereby granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

* * * * * *

[FR Doc. 02–26174 Filed 10–11–02; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3430 and 3470

[WO–320–1430–PB–24 1A]

RIN 1004–AD43

Coal Management: Noncompetitive Leases; Coal Management Provisions and Limitations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule corrects a technical error relating to coal lease modifications made in a 1999 final rule. It also amends the regulations to reflect the statutory increase in the maximum acreage of Federal leases for coal that an individual or entity may hold in any one state and nationally.

EFFECTIVE DATE: November 14, 2002.

ADDRESSES: You may send inquiries or suggestions to Director (320), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, VA 22153. We will maintain the administrative record for this rule at the Bureau of Land Management, Regulatory Affairs Group (630), Room 401, 1620 L Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Mary Linda Ponticelli at (202) 452–0350.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Comments
III. Discussion of the Rule
IV. Procedural Matters

I. Background

A. Lease Modifications

This rule amends the regulations of the Bureau of Land Management (BLM) to reflect correction of a technical error regarding the requirement of a public hearing and publication in the **Federal Register** and a general circulation newspaper of a notice of availability of environmental analysis documents for coal lease modifications. This error was made in conjunction with the BLM's September 1999 regulatory revisions incorporating public participation procedures into the competitive coal leasing regulations. For a detailed discussion of how the error occurred and its effects, see the proposed rule published January 18, 2002 (67 FR 2618).

B. Acreage Limitation

This final rule also changes the regulations on coal lease acreage limitations to conform them to a recent statutory change. On October 23, 2000, the United States Senate passed S. 2300, which became Public Law 106–463 on November 7, 2000. This law, known as the Coal Competition Act of 2000, amended Section 27(a) of the Mineral Leasing Act (30 U.S.C. 184(a)) to increase the amount of acreage of Federal coal leases, or permits that an individual or entity may hold in a single state from 46,080 acres to 75,000 acres and raised the national acreage limit from 100,000 acres to 150,000 acres. This final rule changes the acreage limitations in the regulations to conform to those in the statute. For a complete discussion of the reasons for the statutory changes and their effects, see the preamble of the proposed rule (67 FR 2618).

II. Discussion of Comments

Three letters, one from a law firm and two from state government agencies, addressed the proposed rule. All of the comment writers either supported the proposed rule generally or stated that they had no comment on it.

III. Discussion of the Rule

In light of the lack of substantive comments suggesting changes in the regulations, we are publishing the rule as it was proposed in the correction and extension document published April 12, 2002 (67 FR 17962), without change. That document corrected a drafting error in the original proposed rule published on January 18, 2002 (67 FR 2618).

IV. Procedural Matters

National Environmental Policy Act

BLM prepared an environmental assessment (EA) and found that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). As discussed fully in the proposed rule, this rule implements a technical correction to the public participation rule completed on September 28, 1999 (64 FR 52239) and a change to the Mineral Leasing Act which was made by Congress. The Mineral Leasing Act amendment changed the acreage limitations for coal leases. As stated in the EA, the final rule should lead to more efficient production and economic recovery of the coal resource. However, it should not in and of itself lead to new mining. While more efficient mining may have environmental consequences, BLM will consider these consequences on a case-by-case basis in preparing environmental analyses before issuing a new coal lease or modifying an existing one. Therefore, a detailed statement under NEPA is not required. We have placed the EA and the Finding of No Significant Impact (FONSI) on file in our Administrative Record at the address specified in the **ADDRESSES** section.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action and was not subject to review by the Office of Management and Budget under Executive Order 12866. This rule will not have an annual effect of $100 million or more on the economy. The rule affects coal leasing in only two ways: shortening the lease modification procedure, and increasing lease acreage limitations.

Further, historically, lease modifications have not had significant economic effects on the economy. In Fiscal Year 2001, there were 317 coal leases of various kinds, generating royalties of $337,750,444 on production of 393,509,351 tons of Federal coal, with an average market value of $7.85 per ton, from 473,303 acres of public lands. Of these leases, in FY 2001, only 2 leases were subjects of lease modification. Since a lessee can only add maximum of 160 acres by lease modification over the entire term of the lease, it is clear that the economic effect of lease modifications is tiny compared with the coal program as a whole. The largest number of lease modifications that BLM has processed in the past few years has been 6, in FY 1998, affecting a total of 733 acres. Analyzing this strictly from averages, and using the value from FY 2001, the market value of coal affected by these modifications should have been about $4,784,701 in FY 1998, assuming, of course, that it all would have been immediately available for mining in that year. Total value for other recent years, based on the lower numbers and acreages of lease modifications shown in the accompanying chart, should have been only a fraction of this value. The following table summarizes lease modifications over the past few years.

BLM COAL LEASE MODIFICATIONS, FY1997–FY2001

State	FY1997		FY1998		FY1999		FY2000		FY2001	
	Lease Mods	Acres	Lease Mods	Acres	Lease Mods	Acres	Lease Mods	Acres	Lease Mods	Acres
Colorado	1	100	1	160			2	288		
Kentucky									1	160
Montana			3	303	1	10				
Utah	1	133	2	240	2	200			1	122
*Total	2	233	6	703	3	210	2	288	2	282

Of course, since we do not know precisely how much coal was produced from the lease modifications shown, we state the 1998 dollar figures only to provide a sense of how small the effect of lease modifications is, compared with the threshold in the executive order. Further, the effects of the mistake that we are correcting in this rule were—

- Somewhat longer time for processing a lease modification,
- Somewhat higher cost for processing a lease modification.

(Neither of these effects was required by law or policy; rather, they were solely a consequence of the drafting error.) Therefore, the effects of this final rule amount to a financial benefit to the coal industry and BLM due to reducing the time required for lease modifications and the administrative cost of processing them.

The reduced costs to BLM and the lease modification applicant from avoiding a 2 to 3 month delay to allow the public participation inadvertently required by the 1999 rule are difficult to segregate and quantify. As a minimum, we estimate the savings in processing costs (for **Federal Register** processing and document preparation) will approach $10,000 per lease modification application. Assuming an average number of lease modification applications per year of 3, the total savings may be nearly $30,000.

The other element of savings created by this final rule is the reduction in opportunity costs. The unintended consequence of the 1999 rule was that some operators may not have been able to develop the resources contained in the lease modifications in a timely manner, or at all. Those costs would have been imposed if, due to the additional processing time, BLM could not approve the lease modification in time to allow recovery of the resources. If the lease modification is not processed in time for the coal it contains to be mined with the rest of the coal in the lease, the public will lose revenues from bonus payments and royalties. We estimate that this final rule will enable the public to avoid bonus and royalty revenue losses of about $2,200 per acre on average, and with an expected 3 modifications at a maximum of 160 acres each, the total revenue impact is about $1,056,000 per year, which, though substantial, is less than 1 percent of the total coal royalty revenues for FY 2001, and far less than the $100 million annual threshold in the Executive Order.

The second change amends our regulations to reflect acreage limitations changed by Public Law 106–463. We cannot quantify the economic impact of increasing the acreage limitations, because it would involve what would amount to speculation about future coal leases or mergers of current coal lessees. We do, however, see this as positive for industry in that it will allow greater flexibility for coal operators to maintain coal reserves that are readily available for production and consumption. Currently, to allow for proof of successful reclamation, lessees must wait as long as 10 years before they can relinquish a lease after production has ended. The acreage in a lease that has been mined out but not reclaimed counts the same to the state and national acreage limitations as a new lease that has never been mined.

The rule will not—

- Adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. It will enhance economic recovery of coal, minimize bypasses, and improve mining efficiency.
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.
- Alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients.
- Raise novel legal or policy issues.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This rule, as described above, merely implements a statutory change to the regulations that apply to leasing Federal coal resources, and the rule change itself will not have a significant impact on any small entities. Rather, it is the legislation which affects these entities. The regulations make no substantive change beyond what Congress has already enacted. Further, the rule corrects a technical error in the final rule published on September 28, 1999 (64 FR 52239), which was fully analyzed for RFA compliance when published. Therefore, BLM has determined under the RFA that this final rule does not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This final rule is not a "major rule" as defined at 5 U.S.C. 804(2). This rule merely makes a technical correction in the final rule published on September 28, 1999 (64 FR 52239), and implements a change to the state acreage limits that has been made by Congress. This rule is limited to making BLM's regulations consistent with the law.

Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor will the rule have a significant or unique effect on state, local, or tribal governments or the private sector. As discussed above, this rule merely changes BLM's coal leasing regulations regarding acreage limitations to comply with Public Law 106–463 and makes a technical correction to the coal leasing regulations regarding lease modifications. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

This rule does not represent a government action capable of interfering with constitutionally protected property rights. The rule is limited to changes reflecting Congress's amendment raising the state and nationwide acreage limits for coal leases, and correcting a technical error relating to regulations governing coal lease modifications. Therefore, the Department of the Interior has determined that the rule will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

This rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The rule is limited to changes to reflect Congress's amendment raising the acreage limits for coal leases and to correct a technical error pertaining to coal lease modifications. Therefore, in accordance with Executive Order 13132, BLM has determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this final rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. The rule should have a favorable effect on energy production. It should improve efficiency in production by increasing acreage limitations and by removing procedural requirements inadvertently and erroneously applied to lease modifications in an earlier rule.

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, we have found that this final rule does not include policies that have tribal implications. Since this rule does not make significant changes to BLM policy and does not specifically involve Indian reservation lands, we have determined that the government-to-government relationships should remain unaffected.

Principal Author

The principal author of this rule is Mary Linda Ponticelli of the Solid Minerals Group, assisted by Ted Hudson of the Regulatory Affairs Group, Bureau of Land Management, Washington, DC.

List of Subjects

43 CFR Part 3430

Administrative practice and procedure, Coal, Government contracts, Intergovernmental relations, Mines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements.

43 CFR Part 3470

Coal, Government contracts, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Dated: September 26, 2002.

Rebecca W. Watson,

Assistant Secretary of the Interior.

Under the authorities cited below, and for the reasons stated in the Supplementary Information, BLM amends Subchapter C, Chapter II, Subtitle B of Title 43 of the Code of Federal Regulations, as follows:

PART 3430—NONCOMPETITIVE LEASES

1. The authority citation for part 3430 continues to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351—359; 30 U.S.C. 521—531; 30 U.S.C. 1201 *et seq.*; and 43 U.S.C. 1701 *et seq.*

Subpart 3432—Lease Modifications

2. Amend § 3432.3 by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 3432.3 Terms and conditions.

* * * * *

(c) Before modifying a lease, BLM will prepare an environmental assessment or environmental impact statement covering the proposed lease area in accordance with 40 CFR parts 1500 through 1508.

(d) For coal lease modification applications involving lands in the National Forest System, BLM will submit the lease modification application to the Secretary of Agriculture for consent, for completion or consideration of an environmental assessment, for the attachment of appropriate lease stipulations, and for making any other findings prerequisite to lease issuance.

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

3. The authority citation for part 3470 continues to read as follows:

Authority: 30 U.S.C. 189 and 359 and 43 U.S.C. 1733 and 1740.

Subpart 3472—Lease Qualification Requirements

§ 3472.1–3 [Amended]

4. Amend § 3472.1–3 by—

a. removing from paragraph (a)(1) the terms "46,080 acres" and "100,000 acres", and adding in their place the terms "75,000 acres" and "150,000 acres", respectively; and

b. removing from the first sentence of paragraph (a)(2) the date "August 4, 1976," and adding in its place the date "November 7, 2000," and removing from each place it appears in paragraph (a)(2) the term "100,000 acres" and adding in its place the term "150,000 acres".

[FR Doc. 02–26064 Filed 10–11–02; 8:45 am]

BILLING CODE 4310–84–P

Proposed Rules

Federal Register
Vol. 67, No. 199
Tuesday, October 15, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV02–993–2 PR]

Dried Prunes Produced in California; Revising the Regulations Concerning Compensation Rates for Handlers' Services Performed Regarding Reserve Prunes Covered Under the California Dried Prune Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on revising the regulations concerning compensation rates for handlers' services performed in connection with reserve prunes covered under Marketing Order No. 993 (order). The order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule would establish a procedure in the administrative rules and regulations which the Committee would follow to compute the level of handler payments for holding reserve prunes during and beyond the crop year of acquisition. These payment rates would reflect current industry costs. The rule also would establish time frames for changing the payment rates, and procedures for informing interested persons of the payment rates and payment procedures. The Committee also recommended that no payment for handler services be made for reserve prunes released through the handler acceptance of diversion certificates if the released prunes have not been stored by the handler.

DATES: Comments received by December 16, 2002 will be considered prior to the issuance of a final rule. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by December 16, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on revising the regulations concerning compensation to handlers for services they perform pertaining to reserve prunes covered under the order. Under the order, handlers are compensated for such costs as inspection, receiving, storing, grading, and fumigation of reserve prunes held for the account of the Committee. In the administrative rules and regulations, the compensation rate has been $25 per ton since the early 1970's. This rule would establish a procedure in the administrative rules and regulations which the Committee would follow to compute the level of handler payments that reflect current industry costs instead of having the compensation rate stated in the rule. The Committee would obtain current industry costs through surveys of dried prune handlers and compute average costs based on the number of handlers participating in the survey. Abnormally high or low results would not be considered in the average. The average may be rounded to the nearest $0.25. The compensation rate computed by the Committee would require approval by USDA. The Committee would announce the compensation rate for handling reserve prunes at the time when the Committee reviews the industry statistics during the latter part of June and notify all handlers accordingly. Additional payment for handler services

for reserve prunes held beyond the crop year of acquisition would be updated through a stated percentage of the handler compensation rate during the crop year of acquisition. The Committee unanimously recommended this action on November 29, 2001.

The order provides authority for volume regulation designed to promote orderly marketing conditions, to stabilize prices and supplies, and to improve producer returns. When volume regulation is in effect, a certain percentage of the California prune crop may be sold by handlers to any market (salable tonnage) while the remaining percentage must be held by handlers in a reserve pool (or reserve) for the account of the Committee. Reserve prunes are disposed of through various programs authorized under the order, including government purchases. Net proceeds generated from sales of reserve prunes are distributed to the reserve pool's equity holders, primarily producers.

Definitions

Section 993.21c of the prune marketing order defines salable prunes as prunes which are free to be handled pursuant to any salable percentage established by the USDA pursuant to § 993.54.

Section 993.21d of the order defines reserve prunes as prunes which must be withheld in satisfaction of a reserve obligation arising from the application of a reserve percentage established by the USDA pursuant to § 993.54.

Section 993.54 of the order provides authority for the USDA, based on recommendations by the Committee and supporting information supplied by the Committee, or from other available information, to establish salable and reserve percentages for dried prunes received by handlers during a crop year. The crop year begins August 1 and runs through July 31. When salable and reserve percentages are in effect, § 993.57 requires handlers to hold in their possession or under their control, for the account of the Committee, the quantity of prunes necessary to meet their reserve obligation.

Authority To Pay Handlers for Reserve Pool Services

Section 993.59 of the order specifies that handlers be compensated for necessary services performed in connection with reserve prunes including, but not limited to inspection, receiving, storing, grading, and fumigation. The payment is made on the tonnage of reserve prunes held by the handler for the account of the Committee, in accordance with a schedule of payments.

Handler Service Payments and Conditions for Reserve Prunes

Pursuant to § 993.59 of the order, details of the criteria and procedures for compensating prune handlers in connection with reserve prunes are established by regulation after recommendation by the Committee. They may be found in § 993.159 of the administrative rules and regulations. Since the early 1970's, the compensation rate has been $25 per ton. The prune industry has not implemented salable and reserve percentages since 1971; therefore, the compensation rate does not reflect current costs. In recent years, the Committee has considered implementing a reserve.

The Committee normally meets during the end of June or early July to discuss marketing policy issues and decides whether to recommend implementing a reserve. The Committee met on November 29, 2001, and unanimously recommended revising the rules and regulations pertaining to the compensation rate for handler services in connection with reserve prunes. One change recommended would establish a procedure in the administrative rules and regulations for computing the compensation rates instead of having the rates stated in the rule. To aid in formulating the compensation rates, the Committee would obtain current costs through surveys of dried prune handlers and compute average costs based on the number of handlers participating in the survey. Abnormally high or low results would not be considered in the average. The average may be rounded to the nearest $0.25.

An updated compensation rate for handling reserve prunes would be computed when the Committee considers its annual marketing policy, but no later than July 20. This date could be extended up to 10 days, if warranted by a late crop. During marketing policy discussions, the Committee reviews, among other things, industry production and marketing statistics for dried prunes here and abroad, pricing information for domestic and foreign produced dried prunes, and handler costs for holding reserve prunes, including, but not limited to inspection, receiving, storing, grading, and fumigating prunes. Any recommended change in compensation rate would be reviewed, and would have to be approved by USDA. Upon approval, the Committee would inform all handlers of the changed compensation rate for the upcoming crop year. The crop year begins August 1 and the process would be completed by that time.

On November 29, 2001, the Committee also recommended that no payment for handler services be made for reserve prunes released by handler acceptance of diversion certificates under §§ 993.62 and 993.162, if the handler has not stored the prunes. For example, a handler may have a reserve obligation of 1,000 tons and received 900 tons worth of diversion certificates. The handler submits the 900 tons of diversion certificates to the Committee and requests that he be relieved of 900 tons of reserve prune obligation, leaving a reserve obligation of 100 tons. In this situation, the Committee would only reimburse the handler for reserve pool costs on the 100 tons.

The Committee intends to pay up to one-half the compensation rate (first payment) as soon as practicable after the majority of the deliveries have been made and funds are available. During normal years, the first payment would occur after the second quarter of the crop year (usually during February) and quarterly payments would be made thereafter, as funds are available. The crop year runs from August 1 through July 31.

The Committee also recommended a number of administrative changes to the rules and regulations. They include: (1) Correcting a reference in § 993.159(a) from § 993.57 to § 993.59; (2) adding a provision in § 993.159(a)(1) stating that in crop years when the Committee recommends a reserve pool, it shall meet by July 20 to review costs for handler services in connection with reserve prunes pursuant to § 993.59, except that the Committee may extend this date by not more than 10 business days if warranted by a late crop; (3) adding weighing and stacking prunes as part of the direct labor costs in § 993.159(a)(2); (4) adding clean-up, health insurance, pension plan contributions, vacation pay, holiday and other paid days off as part of the plant overhead costs in § 993.159(a)(2); and (5) eliminating reference to personal pronouns and replacing them with a descriptive noun so the regulatory text is not gender specific. Paragraphs (a)(1), (2), and (3) of § 993.159 are proposed to be modified accordingly.

In addition, the Committee recommended that the provisions in § 993.159(c)(2) regarding payments to handlers for services rendered in connection with reserve prunes held beyond the end of the crop year of acquisition also be updated. The regulations currently establish the reimbursement rate for storage and

fumigation at $2 per ton for the first quarter of the year beyond the crop year of acquisition. This approximates 10 percent of the current handler compensation rate for the crop year of acquisition. The Committee recommended that handlers be compensated at 10 percent of the yearly rate computed by the Committee and approved by USDA for the crop year of acquisition for the first quarter after the crop year of acquisition, rather than establishing a specific rate. That paragraph also specifies specific amounts per ton for storage and fumigation for the second, third, and fourth quarters after the crop year of acquisition at $1.00, $0.25, and $0.25 per ton, respectively. This equates to 50 percent of the first quarter's amount for the second quarter and 25 percent each for the third and fourth quarters. Rather than maintaining specific rates for the second, third, and fourth quarters, the Committee recommended that the rates be expressed as these percentages in the administrative rules and regulations. Expressing these rates paid to handlers for services rendered beyond the crop year of acquisition as percentages would add flexibility to the regulatory scheme and eliminate the need to revise that part of the regulations when the rates for handler services during the crop year are changed.

The Committee also recommended that it be allowed to determine the rate per ton for bin rental within the industry for the succeeding crop year and inform handlers in accordance with paragraph (e) of § 993.159. Handlers would be compensated at that rate for use of their bins in storing reserve prunes for the account of the Committee. Paragraphs (c)(1) and (2) of § 993.159 are proposed to be modified accordingly.

New paragraph (e) of § 993.159 would specify that the Committee shall give reasonable publicity to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider handler payment rates or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each payment rate modification submitted to USDA for review and approval. The Committee shall notify producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and cooperative bargaining association(s) of USDA's action on payment rates and conditions for payment by first class mail and/or by electronic communications.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,205 producers of dried prunes in the production area and approximately 24 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated industry profile shows that 9 out of 24 handlers (37.5 percent) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Fifteen of the 24 handlers (62.5 percent) shipped under $5,000,000 worth of prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, would be considered large growers with annual incomes over $500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

Pursuant to § 993.59 of the order, this proposed rule would allow the Committee to compute and announce the level of payments paid to handlers for services performed in connection with holding reserve prunes for the account of the Committee. Each handler holding reserve prunes for the account of the Committee would complete such services so that the Committee is assured that the prunes are maintained in good condition. The Committee would use the procedure specified in the administrative rules and regulations for computing the payment levels. This flexibility would allow for cost updates in a timely and efficient manner and at less cost to implement. This rule would allow the Committee to survey each of the prune handlers to obtain their costs for each category of expenses for handling reserve prunes listed in § 993.159 of the administrative rules and regulations. These costs would be averaged according to the formula in the rules and regulations. After reviewing and computing these costs, the Committee would submit the compensation rates to USDA for approval. After USDA approves the compensation rates, the payment rates would be publicized as required in paragraph (e) of this section. No payments for handler services would be made for reserve prunes released by handler acceptance of diversion certificates if the handler has not stored the released dried prunes for the account of the Committee.

The Committee also recommended a number of administrative changes to the rules and regulations. They include: (1) Correcting a section reference in § 993.159(a) from § 993.57 to § 993.59; (2) Adding a provision to § 993.159(a)(1) stating that in crop years when the Committee recommends a reserve pool, it shall meet by July 20 to review the costs incurred by handlers in connection with holding reserve prunes for the account of the Committee, except that the Committee may extend this date up to 10 business days if warranted by a late crop; (3) Adding weighing and stacking prunes as part of the direct labor costs in § 993.159(a)(2); (4) Adding clean-up, health insurance, pension plan contributions, vacation pay, holiday and other paid days off as part of the plant overhead costs in § 993.159(a)(2); and (5) Eliminating references to personal pronouns and replacing them with descriptive nouns so the regulatory text is not gender specific. Paragraphs (a)(1), (2), and (3) of § 993.159 are proposed to be modified accordingly.

In addition, the Committee recommended that the provisions in § 993.159(c)(2) also be updated and be formula based. These provisions regard payments to handlers for services (storage and fumigation) rendered in connection with reserve prunes held beyond the crop year of acquisition. The regulations currently establish the reimbursement rate at $2 per ton for the first quarter of the crop year after acquisition. This approximates 10 percent of the current handler compensation rate for the crop year of acquisition. The Committee recommended that the handler payment rate for the first quarter of the crop year after acquisition be 10 percent of the yearly rate for the crop year of acquisition, rather than establishing a specific payment rate. That paragraph also specifies specific amounts per ton for storage and fumigation for the second, third, and fourth quarters of the crop year following acquisition at $1.00, $0.25, and $0.25 per ton, respectively. This equates to 50 percent of the first quarter's amount for the second quarter and 25 percent each for the third and fourth quarters. Rather than maintaining specific rates for the second, third, and fourth quarters, the Committee recommended that the rates be expressed as these percentages in the administrative rules and regulations. Expressing these rates paid to handlers for services rendered beyond the crop year of acquisition as percentages would add flexibility to the regulatory scheme and eliminate the need to revise that part of the regulations when the rates for handler services during the crop year are changed.

The Committee also recommended that it be allowed to determine the rate per ton for bin rental within the industry for the succeeding crop year and inform handlers in accordance with paragraph (e) of § 993.159. Handlers would be compensated at that rate for the use of their bins in storing reserve prunes for the account of the Committee. Paragraphs (c)(1) and (2) of § 993.159 are proposed to be modified accordingly.

New paragraph (e) of § 993.159 would specify that the Committee give reasonable publicity to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider handler payment rates or any modification thereof, and each such meeting shall be open to them. Similar publicity would be given to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each payment report submitted to USDA for review and approval. The Committee would notify producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and cooperative bargaining association(s) of USDA's action on payment rates and conditions for payment by first class mail and/or by electronic communication.

Regarding the impact of this rule on affected entities, the order provides that handlers shall store reserve prunes for the account of the Committee. Net proceeds from sales of such reserve prunes are distributed back to the reserve pool's equity holders, primarily producers. Handlers are compensated from reserve pool funds for their costs in inspecting, receiving, storing, grading, fumigation, and handling reserve prunes. Currently, handlers are compensated at a rate of $25 per ton for reserve prunes acquired during a particular crop year. The $25 per ton rate has been the compensation rate since the early 1970's. Costs have increased dramatically in the past 30 years. The Committee recommended that a procedure be added to the administrative rules and regulations that allows the Committee to adjust the compensation rate for handling reserve prunes in a timely manner instead of specifying them in the rules and regulations. The industry meets during the end of June or early July to discuss marketing policy issues, including reserve pooling, for the next crop year, which begins August 1. A procedure in the administrative rules and regulations would allow the Committee to update the compensation rate during a particular crop year in a timely, efficient, and less expensive manner. The computed payment rates would be recommended by the Committee and approved by USDA. After USDA approval the payment rates would be publicized as required in § 993.159(e).

This rule would allow the Committee to reimburse handlers their actual costs incurred in holding reserve prunes for the account of the Committee. While this may reduce net proceeds to the equity holders, it shifts the costs to the appropriate entities. There should be no disproportionate impact of this proposed action on small entities. Costs of the reserve pool are taken out of the proceeds of the pool and each equity holder shares in the expenses based on their proportionate share of prunes in the reserve pool.

The Committee discussed other alternatives to this change on November 29, 2001, including doing nothing. However, that would leave reserve pooling as a less viable supply management option due to the outdated schedule of handler payments. Another option discussed was to update the data for a given crop year; however, the survey and formula procedure was considered more viable.

This action would allow the Committee to survey prune handlers to obtain their costs applicable to holding reserve prunes for the account of the Committee. Reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data to administer the program. This rule would impose some additional reporting and recordkeeping requirements on both small and large California dried prune handlers. The information collection requirements are discussed in the following section. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee=s Supply Management Subcommittee meeting on November 28, 2001, and the Committee meeting on November 29, 2001, where this action was deliberated were both public meetings widely publicized throughout the prune industry. All interested persons, both large and small, were invited to attend the subcommittee and Committee meetings and participate in the industry=s deliberations. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

-Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that AMS is seeking approval for a new information collection request.

Title: Dried Prunes Produced in California, Marketing Order No. 993; Revision of Compensation Rates for Handler Services.

OMB Number: 0581–NEW.

Type of Request: New collection.

Abstract: The information requirements in this request are essential to carryout the intent of the Act, to provide the respondents the type of service they request, and to administer the dried prune marketing order program, which has been operating since 1949.

On November 29, 2001, the Committee unanimously recommended revising the order's administrative rules and regulations pertaining to the compensation rate for handler services in connection with reserve prunes. To help the Committee formulate the rates, current costs would be obtained through a survey voluntarily submitted by dried prune handlers, and average costs would be computed based on the

number of handlers participating in the survey. The Committee will send the survey to all prune handlers. The survey will request that they submit their costs for services performed with respect to reserve tonnage prunes, such as inspection, receiving, storing, grading, and fumigation.

The survey is needed so the Committee can compute the average industry cost for holding reserve pool prunes. It would also allow the Committee to evaluate this information, update the compensation rate, and reimburse handlers their actual costs incurred in holding reserve prunes.

The information collection is used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters staff, and authorized Committee employees. Authorized Committee employees will be the primary users of the information and AMS is the secondary user.

The request for approval for the new information collection under the order is as follows:

Handler Compensation Survey

Estimate of Burden: Public reporting and recordkeeping burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Dried prune handlers who handle reserve prunes.

Estimated Number of Respondents: 24.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6 hours.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–NEW and the dried prune marketing order, and be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

As mentioned before, AMS is seeking approval from OMB for the additional burden imposed by the *Handler Compensation Survey*. Upon OMB approval, the additional burden will be merged into the information collection currently approved under OMB No. 0581–0178, Vegetable and Specialty Crop Marketing Orders.

In addition to the information collection burden, this rule also invites comments on revising the regulations concerning compensation to handlers for services they perform pertaining to reserve prunes covered under the order. A 60-day comment period is invited to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is proposed to be amended as follows:

PART 993—B DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 993.159 is revised to read as follows:

§ 993.159 Payments for services performed with respect to reserve tonnage prunes.

(a) *Payment for crop year of acquisition.* Each handler shall, with respect to reserve prunes held by the handler for the account of the Committee pursuant to § 993.59, be paid at a rate computed by the Committee (natural condition rate) for necessary services rendered by the handler in connection with such prunes so held during all or any part of the crop year in which the prunes were physically received from producers or dehydrators. Each handler holding reserve prunes shall perform such services to assure that the prunes are maintained in good condition. No payment will be made for prunes released by handler acceptance of diversion certificates if the handler has not stored the released prunes. The rate of payment shall be established by the Committee and must be approved by the Secretary. Following such approval, it shall be publicized as required in paragraph (e) of this section.

(1) On or before July 20 of each crop year when the Committee recommends a reserve pool (except the Committee may extend this date by not more than ten business days if warranted by a late crop), the Committee shall hold a meeting to review the costs for necessary services rendered by handlers in connection with reserve prunes.

(2) Such amount shall, together with the additional payments, as provided in this section, be in full payment for the costs incurred in connection with but not be limited to the following services: Inspection, receiving, storing, grading, fumigation, and handling. The costs include, but are not limited to:

(i) Acquisition costs, which include those for salaries, commission, or brokerage fees, transportation and handling between plants and receiving stations, inspection, and other costs, including container expenses, incidental to acquisition or storage;

(ii) Direct labor costs, which include those for weighing, receiving and stacking, grading, preliminary sorting and storing (including that performed by the handler at the receiving station), and loading for shipment or other delivery to the Committee or its designee;

(iii) Plant overhead costs, which include those for supervision, indirect labor, fuel, power and water, taxes and insurance on facilities, depreciation and rent, repairs and maintenance (clean-up, etc.), factory supplies and expense, and employee benefits (payroll taxes, compensation insurance, health insurance, pension plan contributions, vacation pay, holiday and other paid days off, and other such costs).

(3) The Committee shall survey all handlers to obtain their costs for services performed with respect to reserve tonnage prunes. The Committee will compute the average industry cost for holding reserve pool prunes by adding each handlers' cost data, and dividing the composite figure by the number of handlers participating in the survey. In the event that any handler's cost data is too low or too high, the Committee may choose to exclude the high and low data in computing an industry average. The industry average costs may be rounded to the nearest $0.25. The industry average costs computed by the Committee shall be publicized by the Committee pursuant to paragraph (e) of this section.

(b) *Reimbursement for required insurance costs.* Each handler holding reserve prunes for the account of the Committee shall maintain proper insurance thereon, including fire and extended coverage, in valuations (according to grade and/or size) established by, or acceptable to, the Committee for the particular crop year. The Committee shall reimburse the handler for the actual costs of such insurance. Prior to the receipt of reserve prunes at the beginning of each crop year, the handler shall certify to the Committee and the Secretary of Agriculture, on Form PMC 4.5, that such handler has a fire and extended coverage policy fully insuring all reserve prunes received by the handler during such crop year. Such certification shall contain the following information:

(1) The name and address of the handler;

(2) The location(s) where reserve prunes will be held for the account of the Committee and the premium rate per $100 value per annum at each location;

(3) The value per ton at which the reserve prunes are insured; and

(4) The name and address of the insurance underwriter.

(c) *Certain additional payments in connection with the holding of reserve prunes for the account of the Committee.*

(1) Whenever a handler is directed by the Committee to move and dump containers or reserve prunes held by the handler for the account of the Committee for the purpose of causing an inspection to be made of the prunes as provided in § 993.75, but without taking delivery of the prunes at that time, the handler shall be paid for such services at a rate per ton (natural condition weight) determined by the Committee and approved administratively by the Secretary of Agriculture. Such reimbursement rate shall be computed as described in paragraph (a)(3) of this section and publicized as required in paragraph (e) of this section.

(2) Additional payment for reserve tonnage prunes held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler holding reserve prunes shall complete such services so that the Committee is assured that the prunes are maintained in good condition.

(i) For storage and necessary fumigation, each handler shall be compensated at a per ton rate announced by the Committee in accordance with paragraph (a)(3) of this section:

(A) For all or any part of the first 3 months of the succeeding crop year, the rate per ton shall be 10 percent of the yearly rate established for the crop year of acquisition;

(B) For all or any part of the second 3 months of the succeeding crop year, the rate per ton shall be 50 percent of the rate established for the first 3 months of the succeeding crop year;

(C) For all or any part of the third 3 months of the succeeding crop year, the rate per ton shall be 25 percent of the rate established for the first 3 months of the succeeding crop year;

(D) For all or any part of the fourth 3 months of the succeeding crop year, the rate per ton shall be 25 percent of the rate established for the first 3 months of the succeeding crop year;

(ii) For all or part of the succeeding crop year, the Committee shall determine the per ton rate for bin rental within the industry and announce bin rental rate to the industry pursuant to paragraph (e) of this section.

(iii) For insurance as prescribed in paragraph (b) of this section.

(d) *Certain additional payments in connection with the delivery of reserve prunes to the Committee or its designee.*

(1) Whenever a handler is directed by the Committee to deliver to it or its designee reserve prunes in natural condition, the Committee shall furnish the handler with the containers in which to deliver the prunes, or reimburse the handler, at cost, for any containers which the handler furnishes pursuant to an agreement with the Committee.

(2) Whenever the Committee arranges with a handler for the reserve prunes delivered to it or its designee to be in processed and packaged condition, the Committee shall reimburse the handler at the agreed rate, determined by the Committee to be reasonable, for the processing, container, and packaging costs.

(e) The Committee shall give reasonable publicity to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider handler payment rates or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each payment rate modification submitted to USDA for review and approval. The Committee shall notify producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and cooperative bargaining association(s) of USDA's action on payment rates and conditions for payment by first class mail and/or by electronic communications.

Dated: October 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–26054 Filed 10–11–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–45–AD]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft, Inc., SA226 Series and SA227 Series

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Fairchild Aircraft, Inc. (Fairchild Aircraft) SA226 and SA227 series airplanes. This proposed AD would require you to inspect the fuel boost pump wiring for any chafing, cracked insulation material, or evidence of bare wire(s) (referred to herein as damage), and replace any damaged wiring. This proposed AD would also require you to install a protective tubing around the fuel boost pump wiring harness. This proposed AD is the result of reports of chafed fuel boost pump wiring to either the inboard or outboard boost pump wiring. The actions specified by this proposed AD are intended to prevent the fuel boost pump wiring from chafing, which could result in electrical arcing. This could serve as an ignition source inside the fuel tank and result in fire or explosion.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before December 16, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–45–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain

"Docket No. 2000–CE–45–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490; telephone: (210) 824–9421; facsimile: (210) 820–8609. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Ingrid Knox, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5139; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment On This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–45–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The FAA has received reports indicating problems with 6 Fairchild Aircraft SA227–AC airplanes. Evidence of chafing to either the inboard or outboard fuel boost pump wiring has been found on all 6 airplanes. In one case, evidence of arcing between the chafed wiring and the fuel check valve was found.

All airplane models within the Fairchild Aircraft SA226 and SA227 series incorporate this fuel boost pump wiring design.

What Are the Consequences If the Condition Is Not Corrected?

Damage to the fuel boost pump wiring, if not detected and corrected, could result in electrical arcing. This could serve as an ignition source inside the fuel tank and result in fire or explosion.

Is There Service Information That Applies to This Subject?

Fairchild Aircraft has issued the following service letters:

—Service Letter 226–SL–023, dated September 6, 2000, which applies to model SA226–T, SA226–AT, SA226–T(B), and SA226–TC airplanes;

—Service Letter 227–SL–039, dated September 6, 2000, which applies to model SA227–AT, SA227–TT, SA227–AC (C–26A), SA227–PC, and SA227–BC (C–26A) airplanes; and

—Service Letter CC7–SL–031, dated September 6, 2000, which applies to model SA227–CC and SA227–DC (C–26B) airplanes.

What Are the Provisions of This Service Information?

These service letters:

—Include procedures for inspecting the fuel boost pump wiring;

—Specify replacing any damaged wire(s) in accordance with the appropriate wiring manual; and

—Include procedures for installing a protective tubing around the fuel boost pump wiring harness.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service information.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 490 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection of the fuel boost pump wiring:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 per hour = $120	$96	$120 + $96 = $216	$216 × 490 = $105,840

We estimate the following costs to accomplish the proposed installation of the convoluted tubing:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. Operators
1 workhour × $60 per hour = $60	$48	$60 + $48 =$108	$108 × 490 = $52,920

The FAA has no method of determining the number of repairs or replacements each owner/operator would incur based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such repair. The extent of damage may vary on each airplane.

Compliance Time of this Proposed AD

What Would Be the Compliance Time of this Proposed AD?

The compliance time of this proposed AD is whichever of the following that occurs first:

—Within the next 3 months after the effective date of this AD; or

—Within the next 600 hours time-in-service (TIS) after the effective date of this AD.

Why Is the Compliance Time of This Proposed AD Presented in Both Hours TIS and Calendar Time?

Chafing damage is a direct result of airplane usage. However, chafing damage is not necessarily a result of repetitive airplane operation. For example, damage could occur on an affected airplane within a short period of airplane operation while you could operate another affected airplane for a considerable amount of time without experiencing wiring damage. Therefore, to assure that any damaged wiring is detected and corrected in a timely manner without inadvertently grounding any of the affected airplanes, we are utilizing a compliance based upon both hours TIS and calendar time.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Fairchild Aircraft, Inc.: Docket No. 2000–CE–45–AD

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models, all serial numbers, that are certificated in any category:

Models

SA226–T, SA226–AT, SA226–T(B), SA226–TC, SA227–AT, SA227–TT, SA227–AC (C–26A), SA227–PC, SA227–BC (C–26A), SA227–CC, and SA227–DC(C–26B)

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the fuel boost pump wiring from chafing, which could result in electrical arcing. This could serve as an ignition source inside the fuel tank and result in fire or explosion.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Visually inspect the left-hand and right-hand main/auxiliary fuel boost pump wiring for evidence of chafing, damage, or exposed bare wire(s).	Within the next 3 calendar months after the effective date of this AD or within the next 600 hours time-in-service (TIS) after the effective date of this AD, whichever occurs first.	Accomplish the inspection in accordnace with the Accomplishment Instructions in Fairchild Service Letter 226–SL–023; Fairchild Service Letter 227–SL–039, or Fairchild Service Letter CC7–SL–031, all dated September 6, 2000, as applicable.
(2) Replace any chafed, damaged or exposed bare wire(s).	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	Accomplish replacement(s) in accordance with the applicable wiring manual as specified in the applicable Fairchild Service Letter.
(3) Install HEYCO–FLEX V, Slit Convoluted Tubing, part-number (P/N) 1634, around each fuel boost pump wiring harness.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	Accomplish the installation in accordance with the Accomplishment Instructions in Fairchild Service Letter 226–SL–023; Fairchild Service Letter 227–SL–039; or Fairchild Service Letter CC7–SL–031, all dated September 6, 2000, as applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Fort Worth Airplane Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)

of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Ingrid Knox, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5139; facsimile: (817) 222–5960.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 7, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–26053 Filed 10–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 111

RIN 1515–AD14

Performance of Customs Business by Parent and Subsidiary Corporations

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed amendments to Part 111 of the Customs Regulations to specify that corporate compliance activity engaged in for the purpose of exercising "reasonable care" under 19 U.S.C. 1484 is not customs business and, therefore, such activity is not subject to the customs broker licensing requirements of 19 U.S.C. 1641. The proposed amendments make clear that this corporate compliance activity concept does not extend to document preparation and filing, which is customs business subject to licensing requirements. It is anticipated that the proposed amendments will improve the operational efficiency of the affected corporate entities and, thereby, enhance their ability to ensure compliance with applicable customs laws and regulations.

DATES: Comments must be submitted on or before December 16, 2002.

ADDRESSES: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gina Grier, Office of Regulations and Rulings (202–572–8730).

SUPPLEMENTARY INFORMATION:

Background

Statutory and Regulatory Framework

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of broker's licenses and permits, provides for disciplinary action against brokers in the form of suspension or revocation of such licenses and permits or assessment of monetary penalties, and provides for the assessment of monetary penalties against other persons for conducting customs business without the required broker's license. Section 641 also authorizes the Secretary of the Treasury to prescribe rules and regulations relating to the customs business of brokers as may be necessary to protect importers and the revenue of the United States and to carry out the provisions of section 641.

The regulations issued under the authority of section 641 are set forth in part 111 of the Customs Regulations (19 CFR part 111). Part 111 includes detailed rules regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, including the qualifications required of applicants and the procedures for applying for licenses and permits. Part 111 also prescribes recordkeeping and other duties and responsibilities of brokers, sets forth in detail the grounds and procedures for the revocation or suspension of broker licenses and permits and for the assessment of monetary penalties, and sets forth fee payment requirements applicable to brokers under section 641 and 19 U.S.C. 58c(a)(7).

Section 111.1 of the Customs Regulations (19 CFR 111.1) defines "customs business" as follows for purposes of part 111:

"Customs business" means those activities involving transactions with Customs concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by Customs on merchandise by reason of its importation, and the refund, rebate, or drawback of those duties, taxes, or other charges. "Customs business" also includes the preparation, and activities relating to the preparation, of documents in any format and the electronic transmission of documents and parts of documents intended to be filed with Customs in furtherance of any other customs business activity, whether or not signed or filed by the preparer. However, "customs business" does not include the mere electronic transmission of data received for transmission to Customs.

Section 111.1 also defines "person" for purposes of part 111 as including "individuals, partnerships, associations, and corporations."

Section 111.2 of the Customs Regulations (19 CFR 111.2) sets forth the basic rules regarding when a person must obtain a customs broker license and permit. Paragraph (a)(2) of § 111.2 specifies several exceptions to the license requirement including, in subparagraph (i), an exception for an importer or exporter (and his authorized regular employees or officers acting only for him) transacting customs business solely on his own account and in no sense on behalf of another. Section 111.4 of the Customs Regulations (19 CFR 111.4) provides that any person who intentionally transacts customs business, other than as provided in § 111.2(a)(2), without holding a valid broker's license, will be liable for a monetary penalty for each such transaction as well as for each violation of any other provision of section 641.

Reasons for Proposed Change

The amendments made in 1993 by the Customs Modernization Act provisions of the North American Free Trade Agreement Implementation Act (Public Law 103–182, 107 Stat. 2057) included the requirement to exercise "reasonable care" in connection with the entry requirements set forth in 19 U.S.C. 1484. To foster compliance with the customs laws and regulations under this added statutory responsibility, many importer groups consisting of a parent corporation and one or more subsidiary corporations have chosen to centralize their in-house customs experts into one corporate entity and to make the services of those experts available to the group as a whole. However, when requested to issue an administrative ruling on the issue, Customs has consistently taken the position that many of the activities performed under this type of arrangement would involve the transaction of "customs business," which would require a broker license under § 111.2(a)(1). *See* HQ 115248 dated August 26, 2001, and HQ 115278 dated November 13, 2001. In this regard, Customs has considered the fact that (1) the parent corporation and each subsidiary corporation is a separate legal "person" both under longstanding legal precedent and under the definition of "person" in § 111.1, and (2) therefore, the parent or subsidiary corporation in which the customs expertise resides would be transacting customs business not solely on its own account as provided under § 111.2(a)(2)(i) but rather on behalf of another "person."

Members of the trade community have indicated to Customs that the present situation is unsatisfactory because it does not afford importers sufficient opportunity to address multiple related aspects of an individual customs transaction or groups of transactions and thus is an impediment to their ensuring that reasonable care is exercised by all corporate affiliates for purposes of 19 U.S.C. 1484.

An example will illustrate the basis for the trade community concerns: Under the current regulations as interpreted by Customs, if an unlicensed corporation in a parent and subsidiary relationship wished to engage a licensed individual broker as an employee of the corporation to give customs business advice to its related company regarding specific transactions, there would be certain legal limitations. The rendering of advice under the described circumstances would be permissible only if the licensed broker employee were to become a bona fide employee of each of the two involved companies, or if the employing corporation were to obtain a corporate broker license, or if the licensed broker employee were to set up business to operate as a broker during non-work hours.

Accordingly, Customs is proposing for public comment amendments to the Customs Regulations that would expand the permissible use of in-house experts by corporations and their affiliates to include activity that is intended to meet the corporation's "reasonable care" obligations under 19 U.S.C. 1484 and that, as such, does not fall within the definition of "customs business" in 19 U.S.C. 1641. The proposed amendments are discussed below.

Discussion of Proposed Amendments

Customs believes that the definition concepts in § 111.1 should be amended to recognize corporate compliance activity as falling under the term reasonable care and, as such, as not falling within the term "customs business." This would allow parent, subsidiary, and sister subsidiary corporations to structure their corporate compliance activities to ensure an effective and efficient exercise of "reasonable care" under 19 U.S.C. 1484. Accordingly, this document proposes to add a definition of the term "corporate compliance activity" to § 111.1 and to amend the existing definition of "customs business" by adding conforming exception language at the end of the last sentence. Under these proposed amendments, the limitations on the activities described in the previously discussed example would no longer apply because those activities would not be considered "customs business." Rather, they would be allowed as a corporate compliance activity under the "reasonable care" standard in 19 U.S.C. 1484.

The new definition limits the corporate compliance activity that the in-house experts may perform to those activities that do not involve the preparation of documents or their electronic equivalents to be filed with Customs and the filing of documents or their electronic equivalents with Customs, because Customs believes that these specialized activities clearly fall within the term "customs business."

Finally, this document proposes to amend § 111.2 by adding a new paragraph (a)(2)(vii) which states that a company performing a corporate compliance activity is not required to be licensed as a broker.

Comments

Before adopting the proposed amendments as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, NW., Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Customs believes that the proposed amendments will have only a minimal impact on overall customs broker operations because they do not authorize the preparation of documents and the filing of documents with Customs, which constitute the bulk of customs business services provided by brokers, and the proposed amendments will provide positive economic and related benefits to other members of the import community. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to revise Part 111 of the Customs Regulations (19 CFR Part 111) as set forth below.

PART 111—CUSTOMS BROKERS

1. The authority citation for Part 111 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 1641;

* * * * *

2. In § 111.1, the definition of "customs business" is amended by adding at the end of the last sentence before the period the words "and does not include a corporate compliance activity", and a new definition of "corporate compliance activity" is added in appropriate alphabetical order to read as follows:

§ 111.1 Definitions.

* * * * *

Corporate compliance activity. "Corporate compliance activity" means activity performed by a parent company or subsidiary company or sister subsidiary company to ensure that

documents for a parent company or subsidiary company or sister subsidiary company are prepared and filed with Customs using "reasonable care", but such activity does not extend to the actual preparation or filing of the documents or their electronic equivalents. For purposes of this definition, a parent company is a corporation that owns more than 50 percent of the voting shares of another corporation, a subsidiary company is a corporation in which a parent company owns more than 50 percent of the voting shares, and a sister subsidiary company is one of two or more corporations in which the same parent company owns more than 50 percent of the voting shares.

* * * * *

3. In § 111.2, a new paragraph (a)(2)(vii) is added to read as follows:

§ 111.2 License and district permit required.

(a) * * *

(2) * * *

(vii) *Corporate compliance activity.* A company performing a corporate compliance activity is not required to be licensed as a broker.

* * * * *

Douglas M. Browning,

Acting Commissioner of Customs.

Approved: October 8, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–26039 Filed 10–11–02; 8:45 am]

BILLING CODE 4820–02–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2002–4]

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office of the Library of Congress is preparing to conduct proceedings mandated by the Digital Millennium Copyright Act, which provides that the Librarian of Congress may exempt certain classes of works from the prohibition against circumvention of technological measures that control access to copyrighted works. The purpose of this rulemaking proceeding is to determine whether there are particular classes of works as to which users are, or are likely to be, adversely affected in their ability to make noninfringing uses due to the prohibition on circumvention. This notice requests written comments from all interested parties, including representatives of copyright owners, educational institutions, libraries and archives, scholars, researchers and members of the public, in order to elicit evidence on whether noninfringing uses of certain classes of works are, or are likely to be, adversely affected by this prohibition on the circumvention of measures that control access to copyrighted works.

DATES: Written comments are due by December 18, 2002. Reply comments are due by February 19, 2003.

ADDRESSES: Electronic Internet submissions must be made through the Copyright Office Web site: *http://www.copyright.gov/1201/comment_forms; See* section 3 of the **SUPPLEMENTARY INFORMATION** section for file formats and other information about electronic and non-electronic filing requirements. If delivered by hand, comments should be delivered to the Office of the General Counsel, Copyright Office, LM–403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC. If delivered by means of the United States Postal Service (*see* section 3 of the **SUPPLEMENTARY INFORMATION** about continuing mail delays), comments should be addressed to David O. Carson, General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024–0400. See **SUPPLEMENTARY INFORMATION** section for information about requirements and formats of submissions.

FOR FURTHER INFORMATION CONTACT: Rob Kasunic, Office of the General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024–0400. Telephone (202) 707–8380; telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION:

1. Mandate for Rulemaking Proceeding

On October 28, 1998, President Clinton signed into law the Digital Millennium Copyright Act, Pub. L. 105–304 (1998). Section 103 (subtitled "Copyright Protection Systems and Copyright Management Information") of Title I of the Act added a new Chapter 12 to title 17 United States Code, which among other things prohibits circumvention of access control technologies employed by or on behalf of copyright owners to protect their works. Specifically, subsection 1201(a)(1)(A) provides, inter alia, that "No person shall circumvent a technological measure that effectively controls access to a work protected under this title." Subparagraph (B) limits this prohibition. It provides that prohibition against circumvention "shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title" as determined in this rulemaking. This prohibition on circumvention became effective two years after the date of enactment, on October 28, 2000.

At the end of the 2-year period between the enactment and effective date of the provision, the Librarian of Congress made an initial determination as to classes of works to be exempted from the prohibition for the first triennial period. Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 65 FR 64556, 64574 (2000) (hereinafter Final Reg.). This determination was made upon the recommendation of the Register of Copyrights following an extensive rulemaking proceeding. The exemptions promulgated by the Librarian in the first rulemaking will remain in effect until October 28, 2003. At that point, the exemptions created in the first anticircumvention rulemaking will expire and any exemptions promulgated in this second anticircumvention rulemaking will take effect for a new 3-year period.

2. Background

Title I of the Digital Millennium Copyright Act was, inter alia, the congressional fulfillment of obligations of the United States under the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. For additional information on the historical background and the legislative history of Title I, See Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 64 FR 66139, 66140 (1999) (*http://www.loc.gov/copyright/fedreg/1999/64fr66139.html*).

Section 1201 of title 17 of the United States Code prohibits two general types of activity: (1) The conduct of "circumvention" of technological protection measures that control access and (2) trafficking in any technology, product, service, device, component, or part thereof that protects either access to a copyrighted work or that protects the "rights of the copyright owner," if that

device or service meets one of three conditions. The first type of activity, the conduct of circumvention, is prohibited in section 1201(a)(1). The latter activities, trafficking in devices or services that circumvent (1) access or (2) the rights of the copyright owner are contained in sections 1201(a)(2) and 1201(b) respectively. In addition to these prohibitions, section 1201 also includes a series of section-specific limitations and exemptions to the prohibitions of section 1201.

The Anticircumvention Provision at Issue

Subsection 1201(a)(1) applies when a person who is not authorized by the copyright owner to gain access to a work does so by circumventing a technological measure put in place by the copyright owner to control access to the work. See the Report of the House Committee on Commerce on the Digital Millennium Copyright Act of 1998, H.R. Rep. No. 105–551, pt. 2, at 36 (1998) (hereinafter Commerce Comm. Report).

That section provides that "No person shall circumvent a technological measure that effectively controls access to a work protected under this title." 17 U.S.C. 1201(a)(1)(A) (1998). The relevant terms are defined:

(3) As used in this subsection—

(A) To "circumvent a technological measure" means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner; and

(B) A technological measure "effectively controls access to a work" if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.

17 U.S.C. 1201(a)(3).

Scope of the Rulemaking

The statutory focus of this rulemaking is limited to one subsection of section 1201: The prohibition on the conduct of circumvention of technological measures that control access to copyrighted works. 17 U.S.C. 1201(a)(1)(C). The Librarian has no authority to limit either of the anti-trafficking provisions contained in subsections 1201(a)(2) or 1201(b). This narrow focus was the subject of a great deal of confusion during the first rulemaking and, therefore, demands some clarification.

This rulemaking addresses only the prohibition on the conduct of circumventing measures that control "access" to copyrighted works, *e.g.*, decryption or hacking of access controls such as passwords or serial numbers. The structure of section 1201 is such that there exists no comparable prohibition on the conduct of circumventing technological measures that protect the "rights of the copyright owner," *e.g.*, the section 106 rights to reproduce, adapt, distribute, publicly perform, or publicly display a work. Circumventing a technological measure that protects these section 106 rights of the copyright owner is governed not by section 1201, but rather by the traditional copyright rights and the applicable limitations in the Copyright Act. For example, if a person circumvents a measure that prohibits printing or saving an electronic copy of an article, there is no provision in section 1201 that precludes this activity. Instead, it would be actionable as copyright infringement of the section 106 right of reproduction unless an applicable limitation applied, *e.g.*, fair use. The trafficking in, inter alia, any device or service that allowed others to circumvent such a technological protection measure may, however, be actionable under section 1201(b).

Since section 1201 contains no prohibition on the circumvention of technological measures that protect the "rights of the copyright owner," sometimes referred to as "use" or "copy" control measures, any effect these measures may have on noninfringing uses would not be attributable to a section 1201 prohibition. Since there is a prohibition on the act of circumventing a technological measure that controls access to a work, and since traditional Copyright Act limitations are not defenses to the act of circumventing a technological measure that controls access, Congress chose to create the current rulemaking proceeding as a "fail-safe mechanism" to monitor the effect of the anticircumvention provision in 1201(a)(1)(A). Commerce Comm. Report, at 36. This anticircumvention rulemaking is authorized to monitor the effect of the prohibition on "access" circumvention on noninfringing uses of copyrighted works. In this triennial rulemaking proceeding, effects on noninfringing uses that are unrelated to section 1201(a)(1)(A) may not be considered. *See* 1201(a)(1)(C).

Burden of Proof

In the last rulemaking, the Register concluded from the language of the statute and the legislative history that a determination to exempt a class of works from the prohibition on circumvention must be based on a showing that the prohibition has a substantial adverse effect on noninfringing uses of a particular class of works. It was determined that proponents of an exemption bear the burden of proof that an exemption is warranted for a particular class of works and that the prohibition is presumed to apply to all classes of works unless an adverse impact has been shown. *See* Commerce Comm. Report, at 37; *see also* Final Reg., 65 FR 64556, 64558.

In order to meet the burden of proof, proponents of an exemption must provide evidence either that actual harm exists or that it is "likely" to occur in the ensuing 3-year period. Actual instances of verifiable problems occurring in the marketplace are necessary to satisfy the burden with respect to actual harm and a compelling case will be based on first-hand knowledge of such problems. While "likely" adverse effects will also be examined in this rulemaking, this standard requires proof that adverse effects are more likely than not to occur and cannot be based on speculation alone. The House Manager's Report stated that an exemption based on "likely" future adverse impacts during the applicable period should only be made "in extraordinary circumstances in which the evidence of likelihood is highly specific, strong and persuasive." Staff of the House Committee on the Judiciary, 105th Cong., Section-By-Section Analysis of H.R. 2281 as passed by the United States House of Representatives on August 4, 1998 (hereinafter House Manager's Report) at 6. While such a statement could be interpreted as raising the burden beyond a standard of a preponderance of the evidence, the statutory language enacted—"whether persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition"—does not specify a standard beyond more likely than not. Nevertheless, as the Register's final recommendation explained, the expectation of "distinct, verifiable and measurable impacts" in the legislative history as to actual harm suggests that conjecture alone would be insufficient to support a finding of "likely" adverse effect. Final Reg., 65 FR 64556, 64559. A showing of "likely" adverse impact will necessarily involve prediction, but the burden of proving that the expected adverse effect is more likely than other possible outcomes is on the proponent of the exemption.

The identification of a specific problem and the meeting of a burden of proof as to a problem is not, however, the end of the analysis. For an

exemption to be warranted in a particular class of works, a proponent must show that such problems are or are likely to become of such significance that they would constitute a substantial adverse effect. De minimis or isolated problems would be insufficient to warrant an exemption for a class of works. Similarly, mere inconveniences to noninfringing uses or theoretical critiques of Section 1201 would not satisfy the requisite showing. House Manager's Report, at 6. There is a presumption that the prohibition will apply to any and all classes of works, including those as to which an exemption of applicability was previously in effect, unless a new showing is made that an exemption is warranted. Final Reg., 65 FR 64556, 64558. Exemptions are reviewed de novo and prior exemptions will expire unless the case is made in the rulemaking proceeding that the prohibition has or will more likely than not have an adverse effect on noninfringing uses. A prior argument that resulted in an exemption may be less persuasive within the context of the marketplace in the next 3-year period. Similarly, proposals that were not found to warrant an exemption in the last rulemaking could find factual support in the present rulemaking.

Availability of Works in Unprotected Formats

Other factors must also be balanced with any adverse effects attributable to the prohibition on circumvention of technological protection measures that protect access to copyrighted works. In making her recommendation to the Librarian, the Register is instructed to consider the availability for use of copyrighted works. 17 U.S.C. 1201(a)(1)(C)(i). The Register must also consider whether works protected by technological measures that control access are also available in the marketplace in formats that are unprotected. The fact that a work is available in a format without technological protection measures would allow the public to make noninfringing uses of the work even if that is not the preferred or optimal format for use. For example, in the last rulemaking, although many users claimed that the technological measures on motion pictures contained on Digital Versatile Disks (DVDs) restricted noninfringing uses of works, a balancing consideration was that the vast majority of these works were also available in analog format on VHS tapes. Final Reg., 65 FR 64554, 64568. Such availability is a factor to consider in assessing the need for an exemption to the prohibition on circumvention.

Another consideration relating to the availability for use of copyrighted works is whether the measure supports a model that is likely to benefit the public. For example, while a measure may limit the length of time of access to a work or may limit access to only a portion of work, those limitations may benefit the public by providing "use-facilitating" models that will allow users to obtain access to works at a lower cost than they would otherwise be able to obtain were such restrictions not in place. Similarly, if there is compelling evidence that particular classes of works would not be offered at all without the protection afforded by technological protection measures that control access, this use-facilitating factor must be considered. House Manager's Report, at 6. Accord: Final Reg., 65 FR 64556, 64559.

The Scope of the Term "Class of Works"

Section 1201 does not define a critical term for the rulemaking process: "class of works." In the first rulemaking, the Register elicited views on the scope and meaning of this term. After review of the statutory language, the legislative history and the extensive record in the proceeding,[1] the Register reached certain conclusions on the scope of this term. For a more detailed discussion, *see* Final Reg., 65 FR 64556, 64559.

The Register found that the statutory language required that the Librarian identify a "class of works" primarily based upon attributes of the works themselves, and not by reference to some external criteria such as the intended use or the users of the works. The phrase "class of works" connotes that the shared, common attributes of the "class" relate to the nature of authorship in the "works." Thus a "class of works" was intended to be a "narrow and focused subset of the the broad categories of works of authorship * * * identified in section 102." Commerce Comm. Report, at 38. The starting point for a proposed exemption of a particular class of works must be the section 102 categories of authorship: literary works; musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works.

This determination is supported by the House Manager's Report which discussed the importance of appropriately defining the proper scope of the exemption. House Manager's Report, at 7. The legislative history stated that it would be highly unlikely for all literary works to be adversely affected by the prohibition and therefore, determining an appropriate subcategory of the works in this category would be the goal of the rulemaking. *Id.*

Therefore, the Register concluded that the starting point for identifying a particular "class of works" to be exempted must be one of the section 102 categories. Final Reg., 65 FR 64559–64561. From that starting point, it is likely that the scope or boundaries of a particular class would need to be further limited to remedy the particular harm to noninfringing uses identified in the rulemaking.

In the first anticircumvention rulemaking, the Register recommended and the Librarian agreed that two classes of works should be exempted:

(1) Compilations consisting of lists of websites blocked by filtering software applications; and

(2) Literary works, including computer programs and databases, protected by access control mechanisms that fail to permit access because of malfunction, damage or obsoleteness.

While the first class exempted fits comfortably within the approach to classification discussed above, the second class includes the entire category of literary works, but narrows the exemption by reference to attributes of the technological measures that controls access to the works. The Register found that this second class probably reached the outer limits of a permissible definition of "class" under the approach adopted in the first rulemaking.

Commenters should familiarize themselves with the Register's recommendation in the first rulemaking, since many of these issues which were unsettled at the start of that rulemaking have been addressed in the final decision. Since the bases of those determinations were the statute and the legislative history relevant to these issues, and since Congress has not provided any additional guidance to the Register or the Librarian since that rulemaking's conclusion, interested parties should presume that these determinations will be applied to the evidence submitted during this second anticircumvention rulemaking as well. Of course, commenters may argue for adoption of alternative approaches, but a persuasive case will have to be made to warrant reconsideration of decisions regarding interpretation of section 1201.

[1] See Final Reg., 65 FR 64556, 64557 for a description of the record in the last rulemaking proceeding.

The exemptions that were published for the first 3-year period of the effective date of section 1201(a)(1)(A) are temporary and will expire on the last day of such 3-year period, October 27, 2003. This rulemaking will examine adverse effects in the current marketplace and in the next 3-year period to determine whether any exemptions to the prohibition on circumvention of technological protection measures that effectively control access to copyrighted works are warranted by the evidence raised during this rulemaking.

This notice requests written comments from all interested parties. In addition to the necessary showing discussed above, in order to make a *prima facie* case for a proposed exemption, certain critical points must be established. First, a proponent must identify the technological measure that is the ultimate source of the alleged problem, and the technological measure must effectively control access to a copyrighted work. Second, a proponent must specifically explain what noninfringing activity the prohibition on circumvention is preventing. Third, a proponent must establish that the prevented activity is, in fact, a noninfringing use under current law. The nature of the Librarian's inquiry is further delineated by the statutory areas to be examined:

(i) The availability for use of copyrighted works;

(ii) The availability for use of works for nonprofit archival, preservation, and educational purposes;

(iii) The impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;

(iv) The effect of circumvention of technological measures on the market for or value of copyrighted works; and

(v) Such other factors as the Librarian considers appropriate.

17 U.S.C. 1201(a)(1)(C).

These statutory considerations require examination and careful balancing. The harm identified by a proponent of an exemption must be balanced with the harm that would result from an exemption. In some circumstances, an exemption could have a greater adverse effect on the public than would the adverse effects identified. The ultimate determination of the Librarian must take all of these factors into consideration.

Proponents and opponents of exemptions should address each of these statutory factors. Because the statute invites the Librarian to take into account "such other factors as the Librarian considers appropriate," commenters are invited to identify any such factors, explain why any factors identified should be considered, and discuss how such factors would affect the analysis relating to any proposed class of works that the commenters are addressing.

For the entire record of the first anticircumvention rulemaking, including all comments, testimony and notices published, See the Copyright Office's Web site at: *http://www.loc.gov/copyright/1201/anticirc.html.*

3. Written Comments

In the last rulemaking the Register determined that the burden of proof is on the proponent of an exemption to come forward with evidence supporting an exemption for a particular class of works. Therefore, the initial comment period in this rulemaking specifically seeks the identification of this information from proponents of exemptions. First, the commenter should identify the particular class of works that is being proposed as an exemption, followed by a summary of the argument for the exemption. The commenter should then specify the facts and evidence providing a basis for this exemption and any legal arguments in support of the exemption. Finally, the commenter may include in the comment any additional information or documentation which supports the commenter's position.

If a commenter proposes that more than one class of works be exempted, each individual class proposed should be numbered and followed by a summary of the argument for that proposed class and the factual support and legal arguments in support of that class. This format of class/summary/facts/argument should be sequentially followed for each class of work proposed as necessary.

As discussed above, the best evidence in support of an exemption would consist of concrete examples or cases of specific instances in which the prohibition on circumvention of technological measures controlling access has had or is likely to have an adverse effect on noninfringing uses. It would also be useful for the commenter to quantify the adverse effects in order to explain the scope of the problem, e.g., evidence of widespread or substantial impact through data or supplementary material.

In the reply comments, persons who oppose or support any exemptions proposed in the initial comments will have the opportunity to respond to the proposals made in the initial comments and to provide factual information and legal argument addressing whether a proposed exemption should be adopted. Since the reply comments are intended to be responsive to the initial comments, reply commenters must identify what proposed class they are responding to, whether in opposition, support, amplification or correction. As with initial comments, reply comments should first identify the proposed class, provide a summary of the argument, and then provide the factual and/or legal support for their argument. This format of class/summary/facts and/or legal argument should be repeated for each reply to a particular class of work proposed.

The Copyright Office intends to place the comments and reply comments that are submitted in this proceeding on its Web site (*http://www.copyright.gov/1201*). Regardless of the mode of submission, all comments must, at a minimum, contain the legal name of the submitter and the entity on whose behalf the comment was submitted, if any. If persons do not wish to have their address, telephone number, or email address publicly displayed on the Office's website, the comment itself should not include such information, but should only include the name of the commenter. The Office prefers that comments and reply comments be submitted in electronic form and strongly encourages commenters to submit their comments electronically. However, the Office recognizes that it must provide a means of delivery for persons who are unable to submit their comments through the Office's website or to deliver their comments in person. Therefore, comments may also be delivered through the United States Postal Service, addressed to the General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024–0400. Because private carriers such as Airborne Express, DHL Worldwide Express, Federal Express, and United Parcel Service cannot deliver to post office boxes or directly to the office of the General Counsel, commenters are cautioned not to use such services to deliver their comments. Moreover, due to continuing mail delays at the Library of Congress, submission by means of the United States Postal Service is strongly discouraged and the submitter assumes the risk that the comment will not be received at the Copyright Office by the due date. Comments submitted by means of the United States Postal Service must be physically received by an employee of the General Counsel's Office of the Copyright Office by the applicable

deadline to be considered. Commenters who use the postal service should consider using Express Mail. Electronic filing or hand-delivery will help insure timely receipt of comments by the Office. Electronic comments successfully submitted through the Office's website will generate a confirmation receipt to the submitter and submitters hand-delivering comments may request a date stamp on an extra copy provided by the submitter.

If submitted through the Copyright Office's website: The Copyright Office's website will contain a submission page at: *http://www.copyright.gov/1201/comment_forms.* Approximately thirty days prior to each applicable deadline (*see* **DATES**), a form will be activated on the Copyright Office website allowing information to be entered into the required fields, including the name of the person making the submission, his or her title, organization, mailing address, telephone number, and email address. For initial comments, there will be two additional fields required: (1) The proposed class or classes of copyrighted work(s) to be exempted, and (2) a brief summary of the argument(s). The comment or reply comment itself must be sent as an attachment, and must be in a single file in either Adobe Portable Document File (PDF) format (preferred), in Microsoft Word Version 2000 or earlier, or in WordPerfect 9 or earlier, or in ASCII text. There will be a browse button on the form that will allow submitters to attach the comment file to the form and then to submit the completed form to the Office. The personal information entered in the required fields will not be publicly posted on the website, but the Office intends to post on its website the proposed class and the summary of the argument, as well as the entire comment. Only the commenter's name (and, if applicable, the entity on whose behalf the comment is submitted) is required on the comment document itself and a commenter who does not want other personal information posted on the Office's website should avoid including other private information on the comment itself. Except in exceptional circumstances, changes to the submitted comment will not be allowed and it will become a part of the public record of this rulemaking.

If by means of the United States Postal Service or hand delivery: Send, to the appropriate address listed above, two copies, each on a 3.5-inch write-protected diskette or CD–ROM, labeled with the name of the person making the submission and the entity on whose behalf the comment was submitted, if any. The document itself must be in a single file in either Adobe Portable Document File (PDF) format (preferred), or in Microsoft Word Version 2000 or earlier, in WordPerfect Version 9 or earlier, or in ASCII text. If the comment is hand delivered or mailed to the Office and the submitter does not wish to have the address, telephone number, or email address publicly displayed on the Office's website, the comment should not include such information on the document itself, but only the name and affiliation, if any, of the commenter. In that case, a cover letter should be included that contains the commenter's address, telephone number, email address, and for initial comments, the proposed class of copyrighted work to be exempted and another field for a brief summary of the argument.

Anyone who is unable to submit a comment in electronic form (on the website as an attachment or by means of hand delivery or the United States Postal Service on disk or CD–ROM) should submit an original and fifteen paper copies by hand or by means of the United States Postal Service to the appropriate address listed above. It may not be feasible for the Office to place these comments on its website.

General Requirements for all submissions: All submissions (in either electronic or non-electronic form delivered through the website, by means of hand delivery or the United States Postal Service) must contain on the comment itself, the name of the person making the submission and, if applicable, the entity on whose behalf the comment is submitted. The mailing address, telephone number, telefax number, if any, and email address need not be included on the comment itself, but must be included in some form, *e.g.*, on the website form or in a cover letter, with the submission. All submissions must also include the class/summary/factual and/or legal argument format in the comment itself for each class of work proposed or for each reply to a proposal. Initial comments and reply comments will be accepted for a 30-day period in each round, and a form will be placed on the Copyright Office website at least 30 days prior to the deadline for submission. Initial comments will be accepted from November 19, 2002, until December 18, 2002, at 5 P.M. Eastern Standard Time, at which time the submission form will be removed from the website. Reply comments will be accepted from January 21, 2003, until February 19, 2003, at 5 P.M. Eastern Standard Time.

4. Hearings and Further Comments

The Register intends to hold hearings in this rulemaking in the spring of 2003. Following these hearings, the Register will make a determination as to whether there is a need for additional written comments in the form of post-hearing comments specifically addressing matters raised in the record of this proceeding. Details on hearings and any post-hearing comments will be announced at a future date.

In order to provide flexibility in this proceeding to take into account unforeseen developments that may occur and that would significantly affect the Register's recommendation, an opportunity to petition the Register for consideration of new information will be made available after the deadlines specified. A petition, including proposed new classes of works to be exempted, must be in writing and must set forth the reasons why the information could not have been made available earlier and why it should be considered by the Register after the deadline. A petition must also set forth the proposed class of works to be exempted, a summary of the argument, the factual basis for such an exemption and the legal argument supporting such an exemption. Fifteen copies of the petition must be hand-delivered to the Office of the General Counsel of the Copyright Office at the address listed above. The Register will make a determination whether to accept such a petition based on the stage of the rulemaking process at which the request is made and the merits of the petition. If a petition is accepted, the Register will announce deadlines for comments in response to the petition.

Dated: October 4, 2002.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 02–26183 Filed 10–11–02; 8:45 am]

BILLING CODE 1410–30–P

POSTAL SERVICE

39 CFR Part 111

Change in Administrative Charges for Refunds of Unused Meter Stamps and Returned Business Reply Mail Mailpieces With Postage Affixed

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to revise the *Domestic Mail Manual* (DMM) to increase the administrative charges for processing refunds for unused meter stamps and business reply mail (BRM) pieces returned with postage affixed. These charges have not been increased for the past 20 years, and are updated to reflect the current hourly cost for processing the refunds. This proposed rule also splits the discussion of refunds for unused metered postage and refunds for PC Postage indicia into separate sections.

DATES: Comments must be received on or before November 14, 2002.

ADDRESSES: Written comments should be mailed or delivered to Manager, Mail Preparation and Standards, Postal Service, 1735 N. Lynn St., Arlington, VA 22209–6038. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in the Library, Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC 20260–1540.

FOR FURTHER INFORMATION CONTACT: Patricia Bennett (703) 292–3639 or Sam Koroma (703) 292–3990.

SUPPLEMENTARY INFORMATION:

Background

The Postal Service has provisions in place to process refunds for unused metered postage, as well as for postage affixed to returned business reply mail (BRM) pieces. To cover the costs of the Postal Service labor used to process such requests for refunds, the Postal Service reduces the amount of the refund by an administrative charge. The current charges reflect old labor costs, which have not been updated for more than 20 years. The proposed amendments would update the charges to better reflect current hourly labor costs (including benefits).

For metered postage refunds, the current charge is calculated as 10 percent of the face value of the indicia, if that value is $250 or less. If the face value of the indicia is more than $250, the current charge is $10 per hour, with a minimum charge of $25. The proposed amendment would charge 10 percent for values up to $350. For values above $350, the charge is $35 per hour, with a minimum of $35. Thus, there would be no change in the charge for indicia values up to $250, an increase from $25 to 10 percent of the face value for values between $250 and $350, and an increase in the minimum charge from $25 to $35 for greater indicia values. When more than one hour of processing time is needed, the increase will vary depending on the time required.

For BRM pieces with affixed postage, the current administrative charge is $15 per hour. The proposed amendment would increase that charge to $35 per hour, reflecting current labor costs for processing the refund request.

While the amended charges would increase customer costs for obtaining a refund, the increases are needed so that the Postal Service can cover the costs of providing the refund.

The separate treatment of unused metered indicia printed by PC Postage products reflects the different refund procedures for this type of postage.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. of 533 (b), (c) regarding proposed rulemaking by 39 U.S.C. 410(a)), the Postal Service invites public comment of the following proposed revisions to the *Domestic Mail Manual*, incorporated by reference in the *Code of Federal Regulations*. See 39 CR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201 3219, 3403–3406, 3621, 3626, 5001.

2. Amend the *Domestic Mail Manual* (DMM) as set forth below:

Domestic Mail Manual (DMM)

* * * * *

P Postage and Payment Methods

* * * * *

P000 Basic Information

P010 General Standards

* * * * *

P014 Refunds and Exchanges

* * * * *

2.0 POSTAGE AND FEES REFUNDS

* * * * *

[Revise title and text to read as follows:]

2.5 Refunds for Metered Postage, Except for PC Postage Indicia

A refund for complete, legible, and valid unused indicia printed on unmailed envelopes, wrappers, or labels is made under 3.2. The request is submitted as follows:

a. Only the meter licensee may request the refund.

b. The licensee must submit the refund request within 60 days from the dates shown in the indicia.

c. The licensee must submit the request, along with the items bearing the unused postage, to the licensing post office. The request is processed by the Postal Service.

d. Charges for processing a refund request are as follows:

(1) If the total face value of the indicia is $350 or less, the Postal Service charges 10% of the face value.

(2) If the total face value is more than $350, the Postal Service charges $35 per hour, or fraction thereof, for the actual hours to process the refund, with a minimum charge of $35.

[Renumber current 2.6 through 2.11 as new 2.7 through 2.12, respectively.]

[Add new 2.6 to read as follows:]

2.6 Refunds for PC Postage

A refund for complete, legible, and valid unused PC Postage indicia printed on unmailed envelopes, wrappers, or labels is made under 3.2. The request is submitted as follows:

a. Only the PC Postage licensee may request the refund.

b. The licensee must submit the refund request within 30 days from the dates shown in the indicia.

c. The licensee must submit the request, along with the items bearing the unused postage, to the system provider. The request is processed by the provider, not the Postal Service. The provider may charge for processing refund requests.

d. The provider may charge for processing refund requests.

* * * * *

2.12 Business Reply Mail

[Revise new 2.12 by replacing "$15" with "$35" to read as follows:]

* * * A charge of $35 per hour, or fraction thereof, is assessed for the workhours used to process the refund.* * *

* * * * *

We will publish an appropriate amendment to 39 CFR 111.3 to reflect these changes if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–26161 Filed 10–11–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA087–7215; A–1–FRL–7393–9]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP)

revision submitted by the Commonwealth of Massachusetts on August 9, 2002 and August 26, 2002 which amends the Massachusetts Low Emission Vehicle (LEV) Program that is currently contained in the federally approved SIP. The regulations adopted by Massachusetts now include the California LEV II light-duty motor vehicle emission standards effective in model year 2004, the California LEV I medium-duty standards effective in model year 2003, and the smog index label specification effective model year 2002. In addition, revisions have been made to the zero emission vehicle (ZEV) requirements of the Massachusetts program in an attempt to keep these requirements consistent with California's. Massachusetts has adopted these revisions to reduce emissions of volatile organic compounds (VOC) and nitrogen oxides (NO_X) in accordance with the requirements of the Clean Air Act (CAA). In addition, they have worked to ensure that their program is identical to California's, as required by section 177 of the CAA. EPA is proposing to approve the necessary emission reductions associated with Massachusetts' LEV requirements into the Massachusetts SIP because EPA has found that the requirements and the associated emission reductions are necessary for Massachusetts to achieve the national ambient air quality standard (NAAQS) for ozone. The intended effect of this action is to propose approval of Massachusetts LEV program's emission reductions. This action is being taken under section 110 of the Clean Air Act.

DATES: Written comments must be received on or before November 14, 2002.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the Massachusetts' submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 918–1045.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Description of the SIP Revision and EPA's Action
A. What is the Background for this Action?
B. What is the California LEV Program?
C. What are the relevant EPA and CAA requirements?
D. What is the History of the Massachusetts Low Emission Vehicle Program?
E. What about the zero emission vehicle requirements?
II. Proposed Action
III. What Are the Administrative Requirements?

I. Description of the SIP Revision and EPA's Action

A. What Is the Background for This Action?

Under the Clean Air Act Amendments of 1990, all of Massachusetts was divided into two separate serious ozone nonattainment areas: the Eastern Massachusetts area and the Western Massachusetts area. The ozone attainment deadline for these areas was initially November 15, 1999.

To bring these areas into attainment, the Commonwealth has adopted and implemented a broad range of ozone control measures including stage II vapor recovery, numerous stationary and area source VOC and NO_X controls, a vehicle inspection and maintenance (I/M) program, and the federal reformulated gasoline program. In addition, the Commonwealth has required that all model year 1995 and newer light duty vehicles newly sold in the Commonwealth meet California LEV emission standards. Massachusetts air pollution control regulations apply statewide.

EPA issued a direct final rule to approve the Massachusetts LEV program effective as of January 31, 1992 in the **Federal Register** on February 1, 1995 (60 FR 6027). Since that time, California has modified its LEV program. As California modified its program, Massachusetts was obligated to make similar changes to its program. Section 177 of the CAA provides that states may adopt California vehicle standards provided that the standards are identical to California's. As such, as California makes modifications to its program, states that have adopted California standards are compelled to make similar changes. The current version of the Massachusetts program is intended to be identical to the current California program.

B. What Is the California LEV Program?

The California Air Resources Board (ARB or Board) adopted California's second generation low emission vehicle regulations (LEV II) following a November 1998 hearing. These regulations are a continuation of the low emission vehicle (LEV I) regulations originally adopted in 1990 which were effective through the 2003 model year. The LEV II regulations increase the scope of the LEV I regulations by lowering the emission standards for all light- and medium-duty vehicles (including sport utility vehicles) beginning with the 2004 model year. There are several tiers of increasingly stringent LEV II emission standards to which a manufacturer may certify: low-emission vehicle (LEV); ultra-low-emission vehicle (ULEV); super-ultra low-emission vehicle (SULEV); partial zero-emission vehicle (PZEV); and zero-emission vehicle (ZEV). In addition to very stringent emission standards, the LEV II regulations provide flexibility to manufacturers by allowing them to choose the standards to which each vehicle is certified provided the overall fleet meets the specified phase-in requirements according to a fleet average hydrocarbon requirement that is progressively lower with each model year. The LEV II fleet average requirements commence in 2004 and apply through 2010 and beyond. In addition to the LEV II requirements, minimum percentages of passenger cars and the lightest light-duty trucks marketed in California by a large or intermediate volume manufacturer must be ZEVs. The program includes a "smog index" label for each vehicle sold, the intent of which is to inform consumers about the amount of pollution coming from that vehicle relative to other vehicles.

Subsequent to the adoption of the LEV II program, the U.S. EPA adopted its own substantially more stringent emission standards known as the Tier 2 regulations. In December 2000, the Board modified the LEV II program to take advantage of some elements of the recently adopted federal Tier 2 program to ensure that only the cleanest vehicle models will continue to be sold in California.

C. What Are the Relevant EPA and CAA Requirements?

Section 209(a) of the CAA prohibits states from adopting or enforcing standards relating to the control of emissions from new motor vehicles or new motor vehicle engines. However, section 209(b) of the CAA allows the State of California to adopt its own motor vehicle emissions standards if a waiver is granted by the U.S. Environmental Protection Agency (EPA.) EPA must approve a waiver unless it finds that California's determination that its standards will be "* * *in the aggregate, at least as protective of public health and welfare as such Federal standards* * *" to be arbitrary and capricious, California "does not need such State standards to meet compelling and extraordinary conditions," or California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Clean Air Act.

Section 177 of the Clean Air Act authorizes other states to adopt and enforce California motor vehicle emission standards relating to the control of emissions if the standards are identical to California's for which a waiver has been granted and California and the state adopt such standards at least two years prior to the commencement of the model year to which the standards will apply.

D. What Is the History of the Massachusetts Low Emission Vehicle Program?

In 1990, the Massachusetts Legislature enacted Chapter 410 of the Acts of 1990, which is codified at M.G.L. c. 111, Section 142K. This law mandates that the Massachusetts Department of Environmental Protection (DEP) adopt and implement California motor vehicle emission standards unless, after a public hearing, the DEP establishes, based on substantial evidence, that said emission standards and a compliance program similar to the State of California's will not achieve, in the aggregate, greater motor vehicle pollution reductions than the federal standards and compliance program for any such model year.

In 1992, the DEP adopted the California LEV program by promulgating 310 CMR 7.40, the Low Emission Vehicle Program regulation. The DEP submitted the Massachusetts LEV Program to the EPA as part of the Massachusetts SIP as one of a number of air pollution strategies and programs designed to meet the milestones of the Clean Air Act Amendments of 1990 and to attain and maintain the NAAQS for ozone. The implementation of the LEV Program has resulted in emission reductions from Massachusetts vehicles.

In 1995, the Massachusetts regulation was amended to adopt the non-methane organic gas (NMOG) fleetwide emission average and clarify certain sections of the regulation. In 1999, the regulation was further amended to adopt the next generation of California emission standards know as "LEV II" effective in model year 2004, the LEV I medium-duty standards effective in model year 2003, and also the smog index effective beginning with model year 2002.

The 1992 version of the LEV program previously approved by EPA included ZEV requirements consistent with the requirements in the California program at that time. Since that time, California has made a number of changes to the ZEV requirements, and, subsequently, Massachusetts had made a number of revisions to the ZEV requirements in attempts to keep its program identical to California's. In light of the numerous changes regarding the ZEV requirement in Massachusetts, in its August 26, 2002 submittal to EPA, Massachusetts requested that we not take action on 310 CMR 7.40(2)(a)6, 310 CMR 7.40(2)(c)3, 310 CMR 7.40(10), and 310 CMR 7.40(12). 310 CMR 7.40(2)(a)5, which establishes ZEV requirements for model year 2003 and beyond is the only portion of the Massachusetts ZEV program for which they have requested EPA approval. For the reasons articulated below, EPA is not taking action on section 310 CMR 7.40(2)(a)5 at this time. However, EPA is proposing to approve all other sections of the rule except for those specifically noted in the Commonwealth's August 26, 2002 submittal letter and section 310 CMR 7.40(2)(a)5.

E. What About the Zero Emission Vehicle Requirements?

As discussed earlier in this document, States adopting the California LEV program must adopt a program which is identical to California's. The zero emission vehicle program has undergone several modifications through the years in California. And Massachusetts has made several changes to their ZEV program in attempts to ensure their program is consistent with California. In fact, the Commonwealth has made changes regarding ZEV requirements since the time they adopted the rule that is currently before EPA. Nevertheless, the Massachusetts LEV II program is designed to be a comprehensive program which will secure necessary emission reductions. Those emission reductions are a necessary part of the Massachusetts' attainment demonstration for the one-hour ozone NAAQS. For that reason, and since the emission reductions from the California program are controlled by the fleet average hydrocarbon curve and can be achieved without any specific ZEV sales mandates, we are proposing to approve all of the emissions reductions associated with the LEV II program and the Massachusetts rules adopted on December 24, 1999 without taking action on the ZEV portions of the program at this time. In the case of sections 310 CMR 7.40(2)(a)6, 310 CMR 7.40(2)(c)3, 310 CMR 7.40(10), and 310 CMR 7.40(12), EPA was not requested to take action. For section 310 CMR 7.40(2)(a)5, which establishes ZEV requirements beginning in model year 2003, EPA is not taking any action at this time but intends to do so in the future as the manufacturers' requirements for ZEVs in California, and Massachusetts, become clarified. EPA does believe that the ZEV mandate, which remains part of the Commonwealth's program, may result in advanced technology vehicles being introduced.

II. Proposed Action

EPA is proposing to approve a SIP revision at the request of the Massachusetts DEP. This version of the rule was adopted on December 24, 1999. It was submitted to EPA for approval on August 9, 2002. That submittal was later clarified to exclude certain sections of the rule from consideration on August 26, 2002. In addition, for the reasons articulated above, at this time we are not taking action on section 310 CMR 7.40(2)(a)5 which includes ZEV requirements beginning in model year 2003. As such we are proposing to approve all of the December 24, 1999 version of 310 CMR 7.40, the "Low Emission Vehicle Program" except for 310 CMR 7.40(2)(a)5, 310 CMR 7.40(2)(a)6, 310 CMR 7.40(2)(c)3, 310 CMR 7.40(10), and 310 CMR 7.40(12). This proposed approval would justify all of the emission reductions of the current California LEV standards for light and medium duty vehicles. The regulations adopted by Massachusetts now include the California LEV II light-duty motor vehicle emission standards effective in model year 2004, the California LEV I medium-duty standards effective in model year 2003, and the smog index label specification effective model year 2002. EPA is proposing to approve Massachusetts' low emission vehicle program requirements into the SIP because EPA has found that the requirements are necessary for Massachusetts to achieve the NAAQS for ozone and to reduce emissions of VOC and NO_X from new vehicles in accordance with the requirements of the CAA.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this document.

III. What Are the Administrative Requirements?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 4, 2002.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 02–26173 Filed 10–11–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA069–7205b;FRL–7394–1]

Approval and Promulgation of Implementation Plans; MA; One-hour Ozone Attainment Demonstration for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to fully approve the one-hour ozone attainment demonstration State Implementation Plan (SIP) for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area, submitted by the Massachusetts Department of Environmental Protection on July 27, 1998, and supplemented on September 6, 2002. This action is based on the requirements of the Clean Air Act (CAA) as amended in 1990, related to one-hour ozone attainment demonstrations.

DATES: Comments must be received on or before November 14, 2002.

ADDRESSES: Written comments (two copies if possible) should be sent to: David B. Conroy at the EPA Region I (New England) Office, One Congress Street, Suite 1100–CAQ, Boston, Massachusetts 02114–2023.

Copies of the state submittal and EPA's technical support document are available for public inspection during normal business hours (9 a.m. to 4 p.m.) at the following addresses: U.S. Environmental Protection Agency, Region 1 (New England), One Congress St., 11th Floor, Boston, Massachusetts, telephone (617) 918–1664, and at the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, Massachusetts 02108. Please telephone in advance before visiting.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, (617) 918–1664.

SUPPLEMENTARY INFORMATION: This notice provides an analysis of the one-hour ozone attainment demonstration SIP submitted by the Massachusetts Department of Environmental Protection (Massachusetts DEP) for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious nonattainment area.

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I. Clean Air Act Requirements for Serious Ozone Nonattainment Areas

The Clean Air Act requires EPA to establish national ambient air quality standards (NAAQS or standards) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. CAA sections 108 and 109. In 1979, EPA promulgated the one-hour 0.12 parts per million (ppm) ground-level ozone standard. 44 FR 8202 (February 8, 1979). Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone.

An area exceeds the one-hour ozone standard each time an ambient air quality monitor records a one-hour average ozone concentration of 0.125 ppm or higher.[1] An area is violating the standard if, over a consecutive three-year period, more than three exceedances are expected to occur at any one monitor. The area's 4th highest ozone reading at a single monitor is its design value. The CAA, as amended in 1990, required EPA to designate as nonattainment any area that was violating the one-hour ozone standard, generally based on air quality monitoring data from the three-year period from 1987–1989. CAA section 107(d)(4); 56 FR 56694 (November 6, 1991). The CAA further classified these areas, based on the area's design value, as marginal, moderate, serious, severe or extreme. CAA section 181(a). Marginal areas were suffering the least significant air pollution problems while the areas classified as severe and extreme had the most significant air pollution problems.

The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas were required to attain the one-hour ozone standard by November 15, 1999 and severe areas are required to attain by November 15, 2005 or November 15, 2007. The Boston-Lawrence-Worcester, MA–NH ozone nonattainment area is classified as serious and its attainment date is November 15, 1999.

Under section 182(c)(2) of the CAA, serious areas were required to submit by November 15, 1994 demonstrations of how they would attain the one-hour ozone standard and how they would achieve reductions in VOC emissions of 9 percent for each three-year period until the attainment year. In some cases, NO_X emission reductions can be substituted for the required VOC emission reductions.

In general, an attainment demonstration SIP includes a modeling analysis component showing how the area will achieve the standard by its attainment date and the control measures necessary to achieve those reductions. Another component of the attainment demonstration SIP is a motor vehicle emissions budget for transportation conformity purposes. Transportation conformity is a process for ensuring that states consider the effects of emissions associated with new or improved federally-funded roadways and transit on attainment of the standard. As described in section 176(c)(2)(A) of the CAA, attainment demonstrations necessarily include the estimates of motor vehicle emissions that are consistent with attainment, which then act as a budget or ceiling for the purposes of determining whether federally-supported transportation plans and projects conform to the attainment demonstration SIP.

II. Background and Current Air Quality Status of the Boston-Lawrence-Worcester, MA–NH Ozone Nonattainment Area

The Boston-Lawrence-Worcester, MA–NH ozone nonattainment area is a multi-state nonattainment area consisting of a small portion of southern New Hampshire and the entire eastern half of Massachusetts. In New Hampshire, the nonattainment area consists of 28 individual cities and towns in portions of Hillsborough and Rockingham counties. In Hillsborough County, the individual cities and towns included in the nonattainment area are: Amherst Town, Brookline Town, Hollis Town, Hudson Town, Litchfield Town, Merrimack Town, Milford Town, Mont Vernon Town, Nashua City, Pelham Town, and Wilton Town. In Rockingham, the individual towns included in the nonattainment area are: Atkinson Town, Brentwood Town, Danville Town, Derry Town, E. Kingston Town, Hampstead Town, Hampton Falls Town, Kensington Town, Kingston Town, Londonderry Town, Newton Town, Plaistow Town, Salem Town, Sandown Town, Seabrook Town, South Hampton Town, and Windham Town. In Massachusetts, the nonattainment area includes a much larger area, consisting of 10 counties in their entirety (*i.e.*, Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk, and Worcester counties).

Historically and throughout most of the 1990's, ozone monitors throughout the Boston-Lawrence-Worcester, MA–NH nonattainment area violated the one-hour ozone standard. Directly downwind of the Boston-Lawrence-Worcester, MA–NH nonattainment area, there were also a number of other nonattainment areas violating the one-hour ozone standard during the 1990's in other parts of New Hampshire and in portions of southern Maine. On June 9, 1999, however, EPA determined that the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area had attained the 1-hour ozone standard (64 FR 30911).[2] This determination was based on data collected from 1996–1998. On June 9, 1999, EPA also determined that the Portsmouth-Dover-Rochester, New Hampshire ozone nonattainment area and the Portland, Maine ozone nonattainment area had also attained the 1-hour ozone standard based on data collected from 1996–1998. See 64 FR 30911. At the time of these determinations of attainment, there were no areas in any portion of New Hampshire or Maine that violated the one-hour ozone standard.

The Boston-Lawrence-Worcester, MA–NH nonattainment area continued to have air quality meeting the one-hour ozone standard in 1999 (based on data from 1997–1999) and in 2000 (based on data from 1998–2000). Based on data collected in 1999–2001, however, the Boston-Lawrence-Worcester, MA–NH area now has air quality violating the one-hour ozone standard. The violating monitors are in the southern portion of the multi-state nonattainment area in Fairhaven and Truro, Massachusetts. The other nine ozone air quality monitors in the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area (*i.e.*, in the Massachusetts cities and towns of Easton, Stow, Boston (two sites), Lynn, Lawrence, Worcester, and Newbury, and in Nashua, New Hampshire) show attainment of the one-hour ozone NAAQS, based on 1999–2001 data. Preliminary (not quality assured) ozone data readings from the monitors for the area from the summer of 2002 show only the Truro monitor registering a violation of the one-hour ozone NAAQS for the three-year period 2000–2002.

III. History and Time Frame for the State's Attainment Demonstration SIP

A. Ozone Transport Assessment Group and the NO_X SIP Call

Notwithstanding significant efforts by the states, in 1995 EPA recognized that many states in the eastern half of the United States could not meet the November 1994 time frame for submitting an attainment demonstration SIP because emissions of NO_X and

[1] The one-hour ozone standard is 0.12 ppm. EPA's long-standing practice is that monitored values of 0.125 ppm or higher are rounded up, and thus considered an exceedance of the NAAQS and values less than 0.125 ppm are rounded down and are not an exceedance.

[2] In that notice, EPA also determined the one-hour ozone standard no longer applied to the Boston-Lawrence-Worcester, MA–NH area. Subsequently, due to continued litigation regarding the 8-hour ozone standard, EPA reinstated the applicability of the one-hour ozone standard in all areas. See 65 FR 45182 (July 20, 2000). EPA, however, did not modify its determination that the Boston-Lawrence-Worcester, MA–NH area had attained the one-hour ozone standard.

VOCs in upwind states (and the ozone formed by these emissions) affected these nonattainment areas and the full impact of this effect had not yet been determined. This phenomenon is called ozone transport.

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by states but noting the remaining difficulties in making attainment demonstration SIP submittals.[3] Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the states in the eastern half of the country to evaluate and address transport of ozone and its precursors. This memorandum led to the formation of the Ozone Transport Assessment Group (OTAG)[4] and provided for the states to submit the attainment demonstration SIPs based on the expected time frames for OTAG to complete its evaluation of ozone transport.

In June 1997, OTAG concluded and provided EPA with recommendations regarding ozone transport. The OTAG generally concluded that transport of ozone and the precursor NO_X is significant and should be reduced regionally to enable states in the eastern half of the country to attain the ozone NAAQS.

In recognition of the length of the OTAG process, in a December 29, 1997 memorandum, Richard Wilson, EPA's then Acting Assistant Administrator for Air and Radiation, provided until April 1998 for states to submit the following elements of their attainment demonstration SIPs for serious and severe nonattainment areas: (1) Evidence that the applicable control measures in subpart 2 of part D of title I of the CAA were adopted and implemented or were on an expeditious course to being adopted and implemented; (2) a list of measures needed to meet the remaining rate-of-progress (ROP) emissions reduction requirement and to reach attainment; (3) for severe areas only, a commitment to adopt and submit target calculations for post-1999 ROP and the control measures necessary for attainment and ROP plans through the attainment year by the end of 2000; (4) a commitment to implement the SIP control programs in a timely manner and to meet ROP emissions reductions and attainment; and (5) evidence of a public hearing on the state submittal.[5] This submission is sometimes referred to as the Phase 2 submission. Motor vehicle emissions budgets can be established based on a commitment to adopt the measures needed for attainment and identification of the measures needed. Thus, state submissions due in April 1998 under the Wilson policy should have included motor vehicle emissions budgets.

Building upon the OTAG recommendations and technical analyses, in November 1997, EPA proposed action addressing the ozone transport problem. In its proposal, EPA found that current SIPs in 22 states and the District of Columbia (23 jurisdictions) were insufficient to provide for attainment and maintenance of the one-hour ozone standard because they did not regulate NO_X emissions that significantly contribute to ozone transport. 62 FR 60318 (November 7, 1997). The EPA finalized that rule in September 1998, calling on the 23 jurisdictions to revise their SIPs to require NO_X emissions reductions within the state to a level consistent with a NO_X emissions budget identified in the final rule. 63 FR 57356 (October 27, 1998). This final rule is commonly referred to as the NO_X SIP Call.

B. Massachusetts Ozone Attainment Demonstration Submittals

On July 27, 1998, Massachusetts DEP submitted an ozone attainment demonstration for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area as a revision to its SIP. On June 9, 1999, however, EPA determined that the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area had attained the 1-hour ozone standard (64 FR 30911). This determination was based on data collected from 1996–1998. Consistent with EPA policy,[6] since the Boston-Lawrence-Worcester, MA–NH area had attained the standard by November 15, 1999, its statutory attainment date, EPA took no action on the Massachusetts attainment demonstration SIP submittal for the Boston-Lawrence-Worcester, MA–NH area. The Boston-Lawrence-Worcester, MA–NH nonattainment area continued to have air quality meeting the one-hour ozone standard through the summer of 2000.

As mentioned above, based on data collected in 1999–2001, the Boston-Lawrence-Worcester, MA–NH area now has air quality violating the one-hour ozone standard. Thus, this nonattainment area is once again required to have an approved attainment demonstration and 9% ROP plan with respect to section 182(c)(2) of the CAA. Today, in this proposed rule, EPA is proposing action on the attainment demonstration SIP submitted by the Massachusetts DEP on July 27, 1998 and supplemented on September 6, 2002 for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH area. EPA approved the state's 15% and 9% ROP plans for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH area via a direct final rulemaking on August 28, 2002 (67 FR 55121). In a subsequent action, EPA will propose action on the attainment demonstration for the New Hampshire portion of this same nonattainment area. EPA will also take action separately on contingency measures for both the New Hampshire and Massachusetts portions of the Boston-Lawrence-Worcester, MA–NH nonattainment area.

The supplement that Massachusetts submitted on September 6, 2002 to its 1998 Attainment Demonstration contained the following elements: (1) A revised and updated "weight of evidence" analysis showing how attainment would be achieved in the nonattainment area by 2007; (2) an analysis showing that Massachusetts is implementing all reasonably available control measures (RACM) and that no other RACM could be adopted in Massachusetts that would advance the attainment year; and (3) new mobile source conformity budgets for the 2007 attainment year. Massachusetts also requested that a new attainment date of November 15, 2007 be established for the area. Massachusetts Department of Environmental Protection held a public hearing on this supplement to its 1998 Attainment Demonstration on July 25, 2002.

The statutory attainment date for the Boston Area was November 15, 1999. The area attained the standard as of its attainment date, but then subsequently experienced a violation. The CAA does not expressly address the appropriate attainment date for an area that attains the standard by its attainment date but then subsequently violates the standard nor does it address the planning requirements that apply to such an area. (CAA sections 179(c) and (d) and 181(b)(2) establish requirements only for those areas that EPA determines do not attain the standard by their attainment date.) With respect to the attainment date, both subparts 1 and 2 specify outside dates for attainment and provide that attainment must be "as expeditiously as practicable." CAA sections 172(a)(2) and 181(a)(1). With respect to control obligations, EPA generally attempts first to work with the State to submit a revised SIP and, where necessary, would issue a SIP Call pursuant to section 110(k)(5). See *e.g.*, 65 FR 64352 (Oct. 27, 2000). Here, Massachusetts has already submitted an attainment demonstration and has indicated that the demonstration provides for attainment as expeditiously as practicable. We review Massachusetts' submission in the following sections.

IV. What Are the Components of a Modeled Attainment Demonstration?

The EPA provides that states may rely on a modeled attainment demonstration supplemented with additional evidence to demonstrate attainment.[7] In order to have a complete modeling demonstration submission, states should have submitted the required modeling analysis and identified any additional evidence that EPA should consider in evaluating whether the area will attain the standard.

A. Modeling Requirements

For purposes of demonstrating attainment, section 182(c) of the CAA requires serious areas to use photochemical grid modeling or an analytical method EPA determines to be as effective.[8] The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone. Emissions for a base year are used to evaluate the model's ability to reproduce actual monitored air quality values and to predict air quality changes in the attainment year due to the emission changes which include growth up to and controls implemented by the attainment year. A modeling domain is chosen that encompasses the nonattainment area. Attainment is demonstrated when all predicted concentrations inside the modeling domain are at or below the NAAQS or at an acceptable upper limit above the NAAQS consistent with conditions specified by EPA's guidance. When the predicted concentrations are above the NAAQS, an optional Weight of Evidence (WOE) determination which incorporates, but is not limited to, other analyses, such as air quality and emissions trends, may be used to address uncertainty inherent in the application of photochemical grid models.

The EPA guidance identifies the features of a modeling analysis that are essential to obtain credible results. First, the state must develop and implement a modeling protocol. The modeling protocol describes the methods and procedures to be used in conducting the modeling analyses and provides for policy oversight and technical review by individuals responsible for developing or assessing the attainment demonstration (state and local agencies, EPA Regional offices, the regulated community, and public interest groups). Second, for purposes of developing the information to put into the model, the state must select air pollution days, *i.e.*, days in the past with poor air quality, that are representative of the ozone pollution problem for the nonattainment area. Third, the state needs to identify the appropriate dimensions of the area to be modeled, *i.e.*, the domain size. The domain should be larger than the designated nonattainment area to reduce uncertainty in the boundary conditions and should include large upwind sources just outside the nonattainment area. In general, the domain is considered the local area where control measures are most beneficial to bring the area into attainment. Fourth, the state needs to determine the grid resolution. The horizontal and vertical resolutions in the model affect the dispersion and transport of emission plumes. Artificially large grid cells (too few vertical layers and horizontal grids) may dilute concentrations and may not properly consider impacts of complex terrain, complex meteorology, and land/water interfaces. Fifth, the state needs to generate meteorological data that describe atmospheric conditions and emissions inputs. Finally, the state needs to verify that the model is properly simulating the chemistry and atmospheric conditions through diagnostic analyses and model performance tests. Once these steps are satisfactorily completed, the model is ready to be used to generate air quality estimates to support an attainment demonstration.

The modeled attainment test compares model-predicted one-hour daily maximum concentrations in all grid cells for the attainment year to the level of the NAAQS. A predicted concentration above 0.124 ppm ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to attain the standard. This type of test is often referred to as an exceedance test. The EPA's guidance recommends that states use either of two modeled attainment or exceedance tests for the one-hour ozone NAAQS: a deterministic test or a statistical test.

The deterministic test requires the state to compare predicted one-hour daily maximum ozone concentrations for each modeled day[9] to the attainment level of 0.124 ppm. If none of the predictions exceed 0.124 ppm, the test is passed.

The statistical test takes into account the fact that the form of the one-hour ozone standard allows exceedances. If, over a three-year period, the area has an average of one or fewer exceedances per year, the area is not violating the standard. Thus, if the state models a very extreme day, the statistical test provides that a prediction above 0.124 ppm up to a certain upper limit may be consistent with attainment of the standard. (The form of the one-hour ozone standard allows for up to three readings above the standard over a three-year period before an area is considered to be in violation.)

The acceptable upper limit above 0.124 ppm is determined by examining the size of exceedances at monitoring sites which meet the one-hour NAAQS. For example, a monitoring site for which the four highest one-hour average concentrations over a three-year period are 0.136 ppm, 0.130 ppm, 0.128 ppm and 0.122 ppm is attaining the standard. To identify an acceptable upper limit, the statistical likelihood of observing ozone air quality exceedances of the standard of various concentrations is equated to the severity of the modeled day. The upper limit generally represents the maximum ozone concentration observed at a location on

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[3] Memorandum, "Ozone Attainment Demonstrations," issued March 2, 1995. A copy of the memorandum may be found on EPA's Web site at http://www.epa.gov/ttn/oarpg/t1pgm.html.

[4] Letter from Mary A. Gade, Director, State of Illinois Environmental Protection Agency to Environmental Council of States (ECOS) Members, dated April 13, 1995.

[5] Memorandum, "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM 10 NAAQS," issued December 29, 1997. A copy of this memorandum may be found on EPA's Web site at http://www.epa.gov/ttn/oarpg/t1pgm.html.

[6] Policy guidance contained in a May 10, 1995 memorandum from John Seitz, Director of EPA's Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard" recommends that ROP and attainment demonstration requirements, along with certain other related requirements, of Part D of Title 1 of the Clean Air Act are no longer applicable to an area once it has air quality data indicating that the one hour ozone standard has been attained.

[7] The EPA issued guidance on the air quality modeling that is used to demonstrate attainment with the one-hour ozone NAAQS. See U.S. EPA, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013, (July 1991). A copy may be found on EPA's Web site at *http://www.epa.gov/ttn/scram/* (file name: "UAMREG"). See also U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS. EPA–454/B–95–007, (June 1996). A copy may be found on EPA's Web site at *http://www.epa.gov/ttn/scram/* (file name: "O3TEST").

[8] *Ibid.*

[9] The initial, "ramp-up" days for each episode are excluded from this determination.

a single day and it would be the only reading above the standard that would be expected to occur no more than an average of once a year over a three-year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 0.136 ppm, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 0.124 ppm are very unusual at monitoring sites meeting the NAAQS. Thus, these upper limits are rarely substantially higher than the attainment level of 0.124 ppm.

B. Additional Analyses Where Modeling Fails To Show Attainment

When the modeling does not conclusively demonstrate attainment, additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with modeling and its results. For example, there are uncertainties in some of the modeling inputs, such as the meteorological and emissions data bases for individual days and in the methodology used to assess the severity of an exceedance at individual sites. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely. The process by which this is done is called a weight of evidence (WOE) determination.

Under a WOE determination, the state can rely on and EPA will consider factors such as: other modeled attainment tests, *e.g.*, a rollback analysis; other modeled outputs, *e.g.*, changes in the predicted frequency and pervasiveness of exceedances and predicted changes in the design value; actual observed air quality trends; estimated emissions trends; analyses of air quality monitored data; the responsiveness of the model predictions to further controls; and, whether there are additional control measures that are or will be approved into the SIP but were not included in the modeling analysis. This list is not an exclusive list of factors that may be considered and these factors could vary from case to case. The EPA's guidance contains no limit on how close a modeled attainment test must be to passing to conclude that other evidence besides an attainment test is sufficiently compelling to suggest attainment. However, the further a modeled attainment test is from being passed, the more compelling the WOE needs to be.

The EPA's 1996 modeling guidance also recognizes a need to perform a mid-course review as a means for addressing uncertainty in the modeling results. Because of the uncertainty in long term projections, EPA believes a viable attainment demonstration that relies on WOE needs to contain provisions for periodic review of monitoring, emissions, and modeling data to assess the extent to which refinements to emission control measures are needed. The mid-course review is discussed below.

V. What Is the Framework for Proposing Action on the Attainment Demonstration SIPs?

In addition to the modeling analysis and WOE support demonstrating attainment, the EPA has identified the following key elements which generally must be present in order for EPA to approve the one-hour attainment demonstration SIPs. These elements are: measures required by the CAA and measures relied on in the modeled attainment demonstration SIP; NO_X reductions affecting boundary conditions; motor vehicle emissions budgets; any additional measures needed for attainment;[10] and a Mid-Course Review (MCR).

A. CAA Measures and Measures Relied on in the Modeled Attainment Demonstration SIP

The states should have adopted the control measures already required under the CAA for the area classification. In addition, a state may have included control measures in its attainment strategy that are in addition to measures required in the CAA. For purposes of fully approving the state's SIP, the state needs to adopt and submit all VOC and NO_X controls within the local modeling domain that were relied on for purposes of the modeled attainment demonstration.

The information in Table 1 is a summary of the CAA requirements that should be met for a serious area for the one-hour ozone NAAQS. These requirements are specified in section 182 of the CAA. EPA must have taken final action approving all measures relied on for attainment, including the required ROP control measures and target calculations, before EPA can issue a final full approval of the attainment demonstration as meeting CAA section 182(c)(2). This was done for all the measures for Massachusetts.

TABLE 1.—CAA REQUIREMENTS FOR SERIOUS AREAS

—NSR for VOC and NO_X[a], including an offset ratio of 1.2:1 and a major VOC and NO_X source cutoff of 50 tons per year.
—Reasonable Available Control Technology (RACT) for VOC and NO_X[a].
—Enhanced Inspection and Maintenance (I/M) program.
—15% volatile organic compound plans.
—Emissions inventory.
—Emission statements.
—Periodic inventories.
—Attainment demonstration.
—9 percent ROP plan through 1999.
—Clean fuels program or substitute.
—Enhanced monitoring Photochemical Assessment Monitoring Stations.
—Stage II vapor recovery.
—Contingency measures.
—Reasonably Available Control Measures Analysis.

[a] Unless the area has in effect a NO_X waiver under section 182(f). The Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH is not such an area.

[10] As discussed in detail below, the Massachusetts attainment demonstration shows attainment without the need for additional measures beyond what has been adopted into the SIP or will be required by federal regulations. Therefore additional measures are not required for Massachusetts.

1. Control Measures Adopted by Massachusetts

Adopted and submitted rules for all previously required CAA mandated measures for the specific area classification that are being relied on in the attainment demonstration are required. This also includes measures that may not be required for the area classification but that the state relied on in the SIP submission for attainment. As explained in Table 2, Massachusetts has submitted SIPs for all of the measures they are relying on for attainment.

TABLE 2.—CONTROL MEASURES IN THE ONE-HOUR OZONE ATTAINMENT PLAN FOR THE MASSACHUSETTS PORTION OF THE BOSTON-LAWRENCE-WORCESTER, MA–NH SERIOUS OZONE NONATTAINMENT AREA

Name of control measure	Type of measure	Approval status
On-board Refueling Vapor Recovery	Federal rule	Promulgated at 40 CFR part 86.
Federal Motor Vehicle Control program (Tier 0)	Federal rule	Promulgated at 40 CFR part 86 (pre-1990).
CA Low Emission Vehicle (CA LEV)	State initiative	SIP approved (60 FR 6027; 2/1/95).
CA LEV II	State initiative	SIP approval pending. EPA will publish final rules for the CA LEV II SIP before or at the same time as we publish final rules on the attainment demonstration.
Heavy Duty Diesel Engines (On-road)	Federal rule	Promulgated at 40 CFR part 86.
Federal Non-road Heavy Duty diesel engines	Federal rule	Promulgated at 40 CFR part 89.
Federal Non-road Gasoline Engines	Federal rule	Promulgated at 40 CFR part 90.
Federal Marine Engines	Federal rule	Promulgated at 40 CFR part 91.
Rail Road Locomotive Controls	Federal rule	Promulgated at 40 CFR part 92.
AIM Surface Coatings	State initiative	SIP approved (60 FR 65242; 12/19/95).
Consumer & commercial products	State initiative	SIP approved (60 FR 65242; 12/19/95).
Automotive Refinishing	State initiative	SIP approved (61 FR 5696; 2/14/96).
Enhanced Inspection & Maintenance	CAA SIP Requirement	SIP approved (65 FR 69254; 11/16/00).
NO_X RACT	CAA SIP Requirement	SIP approved (64 FR 48095; 9/2/99).
VOC RACT pursuant to sections 182(a)(2)(A) and 182(b)(2)(B) of CAA.	CAA SIP Requirement	SIP approved (58 FR 34908; 6/30/93 and 64 FR 48297; 9/3/99).
VOC RACT pursuant to section 182(b)(2)(A) and (C) of CAA.	CAA SIP Requirement	SIP approved (Portions approved 64 FR 48297; 9/3/99) Final approval (67 FR 62179; 10/04/02).
Stage II Vapor Recovery	CAA SIP Requirement	SIP Approved (65 FR 78974; 12/18/2000).
Reformulated Gasoline	State opt-in	SIP approved (67 FR 55121; 8/28/02).
Clean Fuel Fleets	CAA SIP Requirement	SIP approved (60 FR 6027; 2/1/95). Massachusetts used CAL LEV reductions to meet the Clean Fuel Fleet requirement.
Base Year Emissions Inventory	CAA SIP Requirement	SIP approved (62 FR 37510; 7/14/97).
15% VOC Reduction Plan	CAA SIP Requirement	SIP approved (67 FR 55121; 8/28/02).
9% rate of progress plan	CAA SIP Requirement	SIP approved (67 FR 55121; 8/28/02).
Emissions Statements	CAA SIP Requirement	SIP approved (61 FR 11556; 3/21/96).
Enhanced Monitoring (PAMS)	CAA SIP Requirement	SIP approved (62 FR 37510; 7/14/97).
OTC NO_X MOU Phase II	State initiative	SIP approved (64 FR 29567; 6/2/99).
NO_X SIP Call	EPA requirement	SIP approved (65 FR 81743; 12/27/00).

B. NO_X Reductions Consistent With the Modeling Demonstration

On October 27, 1998, EPA completed rulemaking on the NO_X SIP call which required states to address transport of NO_X and ozone to other states. To address transport, the NO_X SIP call established emissions budgets for NO_X that 23 jurisdictions were required to show they would meet by 2007 through enforceable SIP measures adopted and submitted by September 30, 1999. The NO_X SIP call is intended to reduce emissions in upwind states that significantly contribute to nonattainment problems. The EPA did not identify specific sources that the states must regulate nor did EPA limit the states' choices regarding where to achieve the emission reductions. The courts have largely upheld EPA's NO_X SIP Call, *Michigan* v. *United States Env. Prot. Agency*, 213 F.3d 663 (D.C. Cir. 2000), cert. denied, U.S., 121 S.Ct. 1225, 149 L.Ed. 135 (2001); *Appalachian Power* v. *EPA*, 251 F.3d 1026 (D.C. Cir. 2001). Although a few issues were vacated or remanded to EPA for further consideration, states subject to the NO_X SIP call have largely adopted the controls necessary to meet the budgets set for them under the NO_X SIP call rule. The controls to achieve these reductions should be in place by May 2004.

Massachusetts used the best available NO_X SIP Call information in its modeling analysis. The modeling analysis is discussed in more detail below. Furthermore, Massachusetts adopted control measures to meet the requirements of the NO_X SIP call. EPA approved the regulation Massachusetts adopted pursuant to the NO_X SIP call on December 27, 2000 (65 FR 81743).

C. Motor Vehicle Emissions Budgets (MVEBs)

The estimates of motor vehicle emissions from SIPs that EPA finds adequate or approves are used to determine the conformity of transportation plans and programs, as described by CAA section 176(c)(2)(A). The budgets serve as a ceiling on emissions from the on-road mobile source sector in conformity determinations. Control strategy SIPs, such as attainment demonstrations, 15 percent plans, and post-1996 rate-of-progress plans all contain budgets. Attainment demonstration SIPs must estimate the motor vehicle emissions that will be produced in the attainment year and demonstrate that these emissions levels, when considered with emissions from all other sources, are consistent with attainment. Similarly, SIPs submitted for other Clean Air Act requirements, such as 15% plans and post-1996 rate-of-progress plans, also contain motor vehicle emissions budgets. In these SIPs, the budgets are the amount of emissions from motor vehicles that are consistent with the SIP's purpose of progress in achieving the standard. Once EPA finds a SIP

adequate or approves it, the budgets from that SIP must be used for conformity. In a conformity determination, the budget that applies for a particular analysis year is the adequate or approved budget for the most recent prior year.

Massachusetts submitted an ozone attainment demonstration plan to EPA in 1998 with budgets for eastern Massachusetts for the year 2003. EPA found these budgets adequate on February 19, 1999. These 2003 budgets are more restrictive than those in the post-1996 rate-of-progress plan. The specific 2003 budgets for eastern Massachusetts are 117.118 tons per summer day for VOC, and 243.328 tons per summer day for NO_X.

On September 6, 2002, Massachusetts submitted its supplement to its 1998 Attainment Demonstration which contains motor vehicle emissions budgets for both VOC and NO_X for the year 2007. With this supplement to the attainment demonstration, it is clear that the area will not attain in the year 2003. Therefore, the budgets for the year 2003 are not consistent with attainment, and therefore EPA believes they are no longer adequate. Therefore, EPA proposes to find the 2003 budgets inadequate, and proposes to approve the 2007 motor vehicle emissions budgets into the SIP. On the date of publication of EPA's final rulemaking action approving Massachusetts's ozone attainment demonstration, the 2007 budgets would apply in a conformity determination for an analysis year of 2007 and later. Note that the post-1996 rate-of-progress budgets would apply, as of the effective date of the direct final notice described above, if there was an analysis year between the present and 2006. However, at this time there is no analysis year required prior to 2007. The 2007 motor vehicle emissions budgets are shown in Table 3 below.

TABLE 3.—2007 EMISSIONS BUDGETS FOR ON-ROAD MOBILE SOURCES IN TONS PER SUMMER DAY (TPSD)

Area	2007 VOC budget	2007 NO_x budget
Massachusetts portion of the Boston-Lawrence Worcester, MA–H area	86.700	226.363

D. Mid-Course Review

A mid-course review (MCR), which generally is performed midway between approval of the attainment demonstration and the attainment date, is a reassessment of modeling analyses and more recent monitored data to determine if a prescribed control strategy is resulting in emission reductions and air quality improvements needed to attain the ambient air quality standard for ozone as expeditiously as practicable. The states have worked with EPA in a public consultative process to develop a methodology for performing the MCR and developing the criteria by which adequate progress would be judged.[11] Massachusetts has submitted a commitment with its September 6, 2002 attainment demonstration supplement committing to complete a mid-course review pursuant to EPA requirements and guidance. Massachusetts committed to perform this mid-course review by December 31, 2004.

E. Reasonably Available Control Measures Analysis

Section 172(c)(1) of the CAA requires SIPs to contain all RACM and provide for attainment as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of 172(c)(1). *See* 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM. Finally, EPA indicated that states could reject measures as not being RACM because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, or would be economically or technologically infeasible. The EPA also issued a memorandum re-confirming the principles in the earlier guidance, entitled, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

When EPA presented this statutory argument in support of its RACM policy to the U.S. Court of Appeals for the DC Circuit in defense of its approval of the Washington DC ozone SIP, the DC Circuit found reasonable EPA's interpretation that measures must advance attainment to be RACM. *Sierra Club* v. *EPA*, 294 F.3d 155, 162 (DC Cir. 2002). Specifically, the Court found that:

EPA reasonably concluded that because the Act "use[s] the same terminology in conjunction with the RACM requirement" as it does in requiring timely attainment, *compare* 42 U.S.C. § 7502(c)(1) (requiring implementation of RACM "as expeditiously as practicable but no later than" the applicable attainment deadline), *with id.* § 7511(a)(1) (requiring attainment under same constraints), the RACM requirement is to be understood as a means of meeting the deadline for attainment. *Id.* Morever, the D.C. Circuit rejected, as a "misreading of both text and context," Sierra Club's arguments that EPA's interpretation of RACM conflicts with the Act's text and purpose and lacks any rational basis. The D.C. Circuit also found reasonable EPA's interpretation that it could consider costs in a RACM analysis and that measures may be rejected if they would require an intensive and costly effort for regulation of many small sources. *Sierra Club* v. *EPA*, 294 F.3d at 162,163.

VI. What Are the Relevant Policy and Guidance Documents?

This proposal has cited several policy and guidance memoranda. The documents and their location on EPA's web site are listed below; these documents will also be placed in the docket for this proposal action.

Relevant Documents

1. "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: *http://www.epa.gov/ttn/scram* (file name: "ADDWOE1H").

2. "Serious and Severe Ozone Nonattainment Areas: Information on Emissions, Control Measures Adopted or Planned and Other Available Control Measures." November 24, 1999. OAQPS. U.S. EPA, RTP, NC.

[11] The EPA issued guidance on the MCR. A copy dated March 26, 2002 may be found on EPA's Web site at *http://www.epa.gov/scram001/tt25.htm* (file name: "MCRGUIDE").

3. Memorandum, "Guidance on Motor Vehicle Emissions Budgets in One-Hour Attainment Demonstrations," from Merrylin Zaw-Mon, Office of Mobile Sources, to the Air Division Directors, Regions I–VI. November 3, 1999. Web site: *http://www.epa.gov/oms/transp/trafconf.html*.

4. Memorandum from Lydia Wegman and Merrylin Zaw-Mon to the Air Division Directors, Regions I–VI, "1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking." November 8, 1999. Web site: *http://www.epa.gov/oms/transp/trafconf.html*.

5. Memorandum from John Seitz, Director, Office of Air Quality Planning and Standards, "Mid-Course Review Guidance for the 1-Hour Ozone Nonattainment Areas that Rely on Weight-of-Evidence for Attainment Demonstration." Web site: *http://www.epa.gov/scram001/tt25.htm* (file name: "MCRGUIDE").

6. Memorandum, "Guidance to Clarify EPA's Policy on What Constitutes 'As Expeditiously as Practicable' for Purposes of Attaining the One-Hour Ozone Standard for Serious and Severe Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 1999. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

7. U.S. EPA, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013, (July 1991). Web site: *http://www.epa.gov/ttn/scram/* (file name: "UAMREG").

8. U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996). Web site: *http://www.epa.gov/ttn/scram/* (file name: "O3TEST").

9. Memorandum, "Ozone Attainment Demonstrations," from Mary D. Nichols, issued March 2, 1995. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

10. December 29, 1997 Memorandum from Richard Wilson, Acting Assistant Administrator for Air and Radiation "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS." Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

VII. How Do the Massachusetts Submittals Satisfy the Framework?

This section provides a review of Massachusetts' submittal and an analysis of how this submittal satisfies the framework discussed in section V. of this notice.

A. What Did the State Submit?

The attainment demonstration SIP submitted by the Massachusetts Department of Environmental Protection for the Boston-Lawrence-Worcester, MA-NH area includes a modeling analysis using the CALGRID model. The SIP was submitted on July 27, 1998. The SIP was subject to public notice and comment and a hearing was held in June 1998. Supplementary information on the 1998 attainment demonstration, including a RACM analysis and motor vehicle emissions budgets was submitted on September 6, 2002. The supplemental SIP was also subject to public notice and comment, and a hearing was held on July 25, 2002. Information on how the photochemical grid modeling and RACM analysis is consistent with the CAA and EPA guidance is summarized below.

B. How Was the Photochemical Grid Modeling Conducted?

The one-hour attainment demonstration submitted by Massachusetts is for both the Boston-Lawrence-Worcester, MA–NH serious area as well as the Springfield (Western Massachusetts) serious area. EPA approved the attainment demonstration for the Springfield (Western Massachusetts) serious area in a previous action (66 FR 665; January 3, 2001).

The key element of the attainment demonstration is the photochemical grid modeling required by the CAA. The Massachusetts SIP used the CALGRID model which was approved for use by EPA since it was found to be at least as effective as the guideline model which is UAM–IV. The modeling domain for CALGRID extends from southwest Connecticut, northward 340 km to northern Vermont, and eastward to east of Nantucket, Massachusetts. For the Boston-Lawrence-Worcester, MA–NH nonattainment area, the domain meets EPA guidance since it contains adequate areas both upwind and downwind of the nonattainment area. The domain also includes the monitors with the highest measured peak ozone concentrations in Massachusetts and coastal Maine and New Hampshire. Since the original modeling was done for a much larger domain that includes not only all of Massachusetts but also includes all of Rhode Island, most of Connecticut, southern New Hampshire, southern Vermont, and most of southern Maine, the CALGRID model has several "source" areas and several receptor areas. The only receptor area of import to this notice and the Massachusetts SIP submittal is the Boston-Lawrence-Worcester, MA–NH nonattainment area. For the purposes of this notice, only model results in this geographic area will be used, unless otherwise noted. As shown below, EPA believes the modeling portion of the attainment demonstration meets EPA guidance.

The model was run for 10 days during four distinct episodes (August 14–17, 1987, June 21–22, 1988, July 7–8, 1988 and July 10–11, 1988). These episodes represent a variety of ozone conducive weather conditions, and also include the three worst ranked ozone episodes (1987 to 1998) for the Boston-Lawrence-Worcester, MA–NH area. The episodes selected also reflect days with high measured ozone in a variety of areas within the entire domain. This is because, as stated above, the domain covers several nonattainment areas, and in order to model the meteorology that causes high ozone, several different episodes were needed. The model results for the first day of each episode are not used for attainment demonstration purposes, because they are considered "ramp-up days." Ramp-up days help reduce impacts of initial conditions; after ramp-up days, model results are more reflective of actual emissions being emitted into the atmosphere. Since the first day of each episode was not considered, this leaves six days for strategy assessment.

The CALGRID model was run using the CALMET meteorological processor. This processor took actual meteorological data collected by the National Weather Service and the State Air Pollution Agencies and using extrapolation and other analysis techniques provided winds, temperatures and other meteorological parameters at approximately 400 specific grid points for each hour of the episode up to 14 levels (*i.e.*, from the surface to top of the model which is about 5000 feet). CALMET is described in detail in the Massachusetts attainment demonstration, and was approved by EPA for use in the CALGRID modeling system.

The CALGRID model was run with emissions data prepared by EPA Region I and/or a contractor working with EPA Region I. The data were taken from the EPA Aerometric Informational Retrieval System (AIRS) data base in late 1993 and reflect the emission data supplied from the six New England States. The emission data for the small portion of New York state that forms the western edge of the domain was supplied by New York. EPA Region I quality assured all the New England AIRS data, the New York supplied data and all necessary modifications to the data. The data was further processed through the Emissions

Preprocessor System (EPS Version 2.0). To more accurately model ozone in New England, day specific emissions were simulated for on-road mobile sources (cars, trucks, busses, etc.), and for large fossil-fueled fired power plants in New England. The base case CALGRID model is consistent with EPA guidance on model performance.

Future emissions were projected to 1999 and 2007 accounting for both emission increases due to industrial growth, population growth and growth in the number of miles traveled by cars, as well as emission reductions due to cleaner gasoline, cleaner cars and controls on industrial pollution. Growth factors were derived using the EPA-approved Bureau of Economic Analysis (BEA) factors and all the emissions were processed using the EPS 2.0 system.

Model runs were also performed for the year 2007. The runs employed 2007 emission estimates inside the New England Domain, along with boundary condition files reflecting EPA's NO_X SIP Call emission estimates in upwind areas. Year 2007 emissions estimates for the states inside the modeling domain reflected EPA's NO_X SIP call as well as other federal and state control strategies being implemented by the beginning of the 2007 ozone season. This was accomplished using a two-step process. The first step was to project emissions using growth factors to account for increases or decreases in economic activity by industrial sector. In general, the states projected their emissions using the same growth factors that were used in the OTAG modeling effort. The second step involved applying control factors to source categories that would be regulated by the year 2007. States used a combination of information for control levels: those used for the OTAG modeling effort, and state-specific information relating to the effectiveness of control programs planned or in place. These 2007 emission estimates did not, however, include the Tier 2/Gasoline Sulfur program that was subsequently adopted by EPA on February 10, 2000 (65 FR 6698). The ozone reductions in 2007 from the Tier 2/Gasoline Sulfur program are discussed in Section VII.C.4.

C. What Are the Conclusions From the Modeling?

The EPA guidance for approval of the modeling aspect of a one-hour ozone attainment demonstration is to use the one-hour ozone grid modeling to apply one of two modeled attainment tests (deterministic or statistical) with optional weight of evidence analyses to supplement the modeled attainment test results when the modeled attainment test is failed. The modeling performed for the Boston-Lawrence-Worcester, MA–NH area does not show attainment of the one-hour ozone standard (0.124 ppm) at every grid cell for every hour of every episode day modeled. The maximum predicted 2007 concentration in the Boston-Lawrence-Worcester, MA–NH nonattainment area for the relevant episodes is 0.177 ppm. The 2007 modeling was performed for two episode days: July 8 and July 11. Only these two days could be run for 2007, because 2007 boundary conditions were not available for the other four days. This concentration is north of Boston. This does not pass the deterministic test. Since the CALGRID model, as run for this analysis, does not show attainment, additional weight-of-evidence analyses were performed. When these additional weight-of-evidence analyses are considered, attainment is demonstrated.

Massachusetts performed a separate weight of evidence analysis using the model predicted change in ozone to estimate a future air quality design value. Massachusetts uses the air quality modeling in a relative sense. An analysis of the modeled ozone data, from the EPA-approved CALGRID model used in the Massachusetts attainment demonstration, in conjunction with monitored air quality data shows that, with the planned emission reductions in the two precursor emissions (VOC and NO_X), ground-level ozone concentrations will be below the ambient standard by the 2007 attainment date. More specifically, Massachusetts conducted a four-step analysis which shows how the photochemical modeling results, when applied to ozone design values at the Truro and Fairhaven monitors (the only two monitors in the Boston-Lawrence-Worcester, MA–NH monitoring 1-hour ozone violations based on 1999–2001 ozone data), predict attainment at these two monitors by 2007 after taking into account anticipated emission reductions from the NO_X SIP call and the Tier 2/Low Sulfur program. The four steps are discussed in the next four subsections.

1. Base Year Ozone Design Values

In the 1998 Attainment Demonstration, DEP reviewed ozone monitoring data to determine a base-year design value for each monitor in the New England Domain. Ozone data collected in 1995, 1996, and 1997 were used for calculating 1997 design values, and design values for all monitors in the New England Domain located in Massachusetts, southern New Hampshire and Maine (areas impacted by Massachusetts emissions) are provided in the September 1998 submittal. When the state submitted its Attainment Demonstration in 1998, ozone data for 1998 and 1999 was not yet available, and that is why 1997 design values were used. In their 2002 supplemental submittal, Massachusetts did not update the base year design values using this data since the Boston-Lawrence-Worcester, MA–NH area was in attainment during the 1997–1999 time period, and all design values were below the one-hour ozone standard. Thus, using 1997 design values versus 1999 design values results in a conservative analysis.

2. Ozone Reduction Between 1999 and 2007

The second step of this approach consists of comparing photochemical modeling run results in order determine the predicted ozone reduction at each ozone monitor in Massachusetts, southern New Hampshire and Maine between 1999 and 2007. Modeling runs were not performed for 1997 but were performed for 1999. The DEP's use of modeling results for 1999 is conservative since as emissions reductions that occurred between 1997 and 1999 are not accounted for and relied on. Modeling results for 1999 were then compared with modeling results for 2007 to estimate changes between 1999 and 2007.

The results of the 1999 runs and the 2007 runs were compared (only two strategy days, July 8 and July 11, are used for 2007, because these are the only two days for which 2007 boundary conditions are available), and the predicted change in ozone levels was determined at each 5 by 5 kilometer surface cell in the New England Domain. The change in ozone level (for each cell) was then divided by the 1999 modeled concentration (for each cell), in order to calculate the percent ozone reduction in each cell between 1999 and 2007. The percent ozone reduction for each cell that contained an ozone monitor was then extracted from this information. The percent ozone reductions for monitoring locations in Massachusetts, southern New Hampshire and Maine are presented in the state's submittal.

3. Predicted Ozone Design Values for 2007

The third step was to determine a 2007 ozone design value for each ozone monitoring station location. This was accomplished by reducing the 1997 ozone design value by the percent ozone reduction predicted for each monitoring location derived in step 2, above. If the resulting design value dropped below the one-hour ozone standard, it is reasonable to assume that the monitor can attain the one-hour ozone standard by 2007. Massachusetts showed in their submittal that the predicted 2007 design values for all monitors in Massachusetts, southern New Hampshire, and Maine (areas impacted by Massachusetts emissions) are all below the one-hour ozone NAAQS.

For the Truro monitor (the monitor currently with the highest design value), there was a reduction in ozone levels of 11 percent for the July 8 episode and a reduction in ozone levels of 16 percent at the Truro monitor for the July 11 episode. For both episodes, the future adjusted design value for the Truro monitor is predicted to be well below the one-hour ozone standard (0.117 ppm for July 8 and 0.110 ppm for July 11.)

4. Predicted Ozone Design Values for 2007 With the Tier 2/Gasoline Sulfur Program

As previously noted, the CALGRID runs for 2007 included the benefits of the NO_X SIP call as well as other CAA measures, but did not account for the Tier 2/Gasoline Sulfur program. The Tier 2/Gasoline Sulfur program consists of emission reductions due to more protective tailpipe emissions standards for all passenger vehicles, including sport utility vehicles (SUVs), minivans, vans and pick-up trucks, as well as lower standards for sulfur in gasoline. These new standards require passenger vehicles to be 77 to 95 percent cleaner than those on the road today and reduce the sulfur content of gasoline by up to 90 percent. This program, which does not achieve emission reductions until 2004 and beyond, was not incorporated into the 1998 Attainment Demonstration's weight of evidence analysis.

In their 2002 supplemental submittal, Massachusetts looked at the EPA modeling performed in 1999[12] to assess the effectiveness of the Tier 2/Gasoline Sulfur. For three episodes in the summer of 1995, EPA performed two sets of modeling runs: one run with 2007 CAA emission files including emission reductions associated with Tier 2/Gasoline Sulfur program and a second run that did not include Tier 2/Gasoline Sulfur Program emission reductions. In both cases, the CAA emission files included EPA's NO_X SIP Call emission reductions. After the modeling runs were completed, EPA used the modeling results in a relative manner to estimate the percent ozone reduction associated with the Tier 2/Gasoline Sulfur program.

In their 2002 supplemental submittal, Massachusetts included the predicted ozone design values for the 2007 CAA run and the 2007 Tier 2 run for each Massachusetts county in the Boston-Lawrence-Worcester, MA–NH nonattainment area. As shown in their submittal, the largest benefit (0.002 ppm) occurred at the Truro monitor. The Tier 2 program was predicted to reduce ozone levels from 0.119 ppm to 0.117 ppm, a 1.7 percent reduction in ozone levels, at that location. Note, these values are well below the level of the one-hour ozone standard.

Massachusetts believes it is reasonable to conclude that the design value at the Truro monitor for 2007 will be reduced by approximately 1.7 percent once the Tier 2/Gasoline Sulfur program is implemented.

5. Conclusions From the Future Air Quality Design Value Analysis

Through these additional analyses, Massachusetts has demonstrated that substantial ozone reductions can be expected to occur after implementation of a number of control strategies that are in place both within and upwind of the New England Domain. Those strategies include EPA's NO_X SIP Call as well as EPA's Tier 2/Gasoline Sulfur program. Therefore, EPA believes it is reasonable to conclude that the Boston-Lawrence-Worcester, MA–NH nonattainment area will attain the one-hour ozone standard by 2007. While the absolute modeling results do not demonstrate attainment, the modeling results are useful in demonstrating a relative reduction in ozone levels sufficient to demonstrate attainment in 2007.

In summary, the modeling submitted for the Boston-Lawrence-Worcester, MA–NH area is consistent with the CAA and EPA guidance and demonstrates attainment. Other information, which provides additional support for concluding the Boston-Lawrence-Worcester, MA–NH will attain in 2007 are the ambient ozone data trends and a trajectory analysis of exceedance days in the area.

D. What Are the Conclusions From the Ozone Data Trends?

There are 11 ozone air quality monitors in the Boston-Lawrence-Worcester, MA–NH nonattainment area that have data from 1999–2001. They are in the Massachusetts cities and towns of Boston (2 sites), Easton, Fairhaven, Lawrence, Lynn, Newbury, Stow, Truro, and Worcester, and Nashua, New Hampshire. All of the monitors show attainment with the one-hour ozone NAAQS except for the Fairhaven and Truro, MA sites.

The original serious classification of the nonattainment area was based on data from the 1987 through 1989 time period. Since then and up to and including 2001 ozone data, the latest available quality assured ozone data for the area, all 11 sites show a decrease in ozone due to emission reductions, both within Massachusetts and New Hampshire and also upwind. The monitoring sites north of the city of Boston (which are downwind of Boston during ozone conducive meteorology) are showing the greatest decline. For example, the one-hour ozone design value for the site in Newbury has dropped from 0.139 ppm in 1989 to 0.112 ppm in 2001, a drop of 19 percent. At the Nashua, NH site, the only site in the nonattainment area in New Hampshire, the design value has dropped from 0.121 ppm in 1989 to 0.103 ppm in 2001, a drop of 15 percent.

If we look at three additional monitors downwind of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area, we see similar downward trends. The three monitors are Rye, NH, Kennebunkport, ME and Cape Elizabeth, ME. At the Rye, NH site, the design value has dropped from 0.156 ppm in 1989 to 0.123 ppm in 2001, a drop of 21 percent. At the Kennebunkport, ME site, the design value has dropped from 0.152 ppm in 1989 to 0.120 ppm in 2001, also, a drop of 21 percent. At the Cape Elizabeth, ME site the design value has dropped from 0.156 ppm in 1989 to 0.111 ppm in 2001, a drop of 29 percent. These substantial decreases in ozone are the result of emission reductions both within the tri-state area of Massachusetts, New Hampshire and Maine, as well as reduction in longer-range transport emissions from upwind areas. Additional emission reductions in Massachusetts will occur in the intervening years from now until 2007.

At the two eastern Massachusetts monitors recording violations of the ozone standard in 2001 (*i.e.*, Fairhaven and Truro, Massachusetts), the ozone trend is also downward. These two sites are in the extreme southern portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area, and were monitoring attainment until the summer of 2001. At the Fairhaven, MA site, the one-hour ozone design value has dropped from 0.150 ppm in 1989 to 0.125 ppm in 2001, a drop of 17 percent. This site is not in attainment, based on 1999–2001 ozone data. At the Truro, MA site, the one-hour design value has dropped from 0.146 ppm in 1989 to 0.138 ppm in 2001, for a drop

[12] *See* "Technical Support Document for the Tier 2/Gasoline Sulfur Ozone Modeling Analyses," EPA420–R–99–031, December 1999.

of 5 percent. This site, too, is not in attainment, based on 1999–2001 ozone data. To show how close Fairhaven and Truro are to meeting the NAAQS one can look at the fifth highest value over the same 3-year period 1999–2001. The fifth highest value for Fairhaven is below the level of the standard. The fifth highest value for Truro is 0.127 ppm, and the sixth highest value for Truro is below the level of the standard. Furthermore, preliminary ozone data for the Boston-Lawrence-Worcester, MA–NH area collected during the summer of 2002, a hot summer, show that of the 11 monitors that have recorded ozone data for the past three years, only the Truro, MA monitor has an ozone design value of 0.125 ppm or above. Truro's preliminary design value for 2000–2002 is 0.130 ppm, a drop of 0.008 ppm from 2001. During 2000–2002, the fifth highest value at the Truro site is below the level of the one-hour ozone standard.

Based on the overall downward trend in one-hour ozone concentrations in this area, and because precursor emissions are projected to keep falling, both within the nonattainment area and upwind from it, there is no reason to believe that the downward trend in ozone concentrations will not continue over the near term. The future emission reductions will be a result of the following: continued benefits from tighter standards on vehicles (California Low Emission Vehicles (CA LEV) in Massachusetts and National Low Emission Vehicles or CA LEV in upwind areas) due to fleet turnover; the reductions from large point sources due to the OTC NO_X Budget Program and EPA's NO_X SIP call; other federal control measures such controls on non-road engines; and the Tier 2 vehicle and low sulfur gasoline program.

E. What Do the Ozone Exceedance Day Trajectory Analyses Show?

Trajectory analysis is a tool for assessing atmospheric transport and identifying likely source regions of locally measured air contaminants. The Massachusetts DEP used the HYSPLIT–4 (Hybrid Single-Particle Lagrangian Integrated Trajectory) model, developed by NOAA's Air Resources Lab (ARL), to compute backward trajectories.

To assess airflow patterns on days when either the Truro or Fairhaven monitor recorded exceedances of the one-hour ozone NAAQS during the period 1999–2001, 24-hour backward trajectories were computed by the Massachusetts DEP. The surface-based trajectories (start height of 10 meters) for these days, indicators of shorter range transport, follow a general track that crosses near the New York metropolitan area before turning northeastward toward the Massachusetts south coast and Cape Cod. These trajectories cross no high emission areas in Massachusetts. Upper-level trajectories (200 and 500 meters elevation), indicators of long-range transport, generally begin farther west over New York State or Pennsylvania and follow a more west-to-east track, passing north of the New York metropolitan area. Since the trajectories for the six exceedance days strongly resemble one another, the DEP concluded that there is a consistent meteorological pattern and source region for ozone and precursors when monitors in southeastern Massachusetts exceed the one-hour ozone NAAQS. Furthermore, the DEP concluded that one-hour exceedance level ozone concentrations will occur at the Truro or Fairhaven monitors only if the air reaching these monitors had previously crossed nearby high emission areas such as the greater New York metropolitan area. It should be noted, that on all days when there are exceedances at Truro and/or Fairhaven, there are also exceedances in Connecticut. Without the influence of the emissions from the greater New York metropolitan area the DEP concluded, no exceedances would have occurred at these monitors. Attainment demonstrations already approved by EPA for Connecticut and the New York city area show attainment will be achieved in 2007, and likewise this attainment demonstration for Massachusetts concludes that attainment will be achieved in 2007.

To corroborate the DEP's results, EPA performed its own trajectory analyses for those days when there were exceedances of the one-hour ozone standard on Cape Cod, in southeastern Massachusetts, and/or in Rhode Island, over the last three years (1999–2001). This area encompasses the ozone monitoring sites in Truro, MA; Fairhaven, MA; Narragansett, RI; East Providence, RI; and West Greenwich, RI. The exceedance days at these sites during 1999–2001 are as follows: June 7, 1999, July 6, 1999, July 16, 1999, June 10, 2000, June 30, 2001, July 25, 2001, August 7, 2001, and August 9, 2001.

EPA's trajectory analyses of the days with ozone exceedances at these sites (Truro, MA, Fairhaven, MA, Narragansett, RI, East Providence, RI and West Greenwich, RI) support the CALGRID modeling which shows that the most probable source region of the exceedances at these sites is southern New England and areas to the south and west of Massachusetts, including Connecticut and the New York City area. Connecticut is less than 60 miles from Fairhaven or about four hours of typical meteorological transport time. Details of this analysis are found in the TSD for this action. Both the analyses done by the DEP and EPA support the conclusion that without the influence of emissions from upwind, no exceedances would have occurred at the Truro, MA and Fairhaven, MA monitors. This further supports the conclusion that the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area will attain in 2007.

F. Are the Causes of the Recent Violation Being Addressed?

The Boston-Lawrence-Worcester, MA–NH ozone nonattainment area was in attainment for three consecutive, three-years periods from 1998–2000 (*i.e.*, 1996–1998, 1997–1999, and 1998–2000). The violations based on the three-year period from 1999–2001 occurred at two monitors in the southeastern portion of Massachusetts.

Sensitivity runs presented in the 1998 Attainment Demonstration looked at the effectiveness of NO_X reductions versus VOC reductions by reducing each pollutant individually within the domain by varying percentages (*i.e.*, 25%, 50%, 75% and 100%). These sensitivity runs concluded that reducing nitrogen oxide emission reductions is a more effective ozone control strategy for the New England Domain. Furthermore, in order to assess the role of transport into the New England domain, Massachusetts did sensitivity modeling runs where very clean boundary conditions are assumed. These runs use boundary conditions from the OTAG run IN60, which assumed the reductions similar to NO_X SIP call emissions, plus an additional 60 percent reduction in NO_X from the ozone nonattainment areas classified as serious or above. These runs show that upwind NO_X reductions would be effective at reducing ozone throughout southern New England, including in southeastern Massachusetts where the current one-hour ozone violations occur. From these sensitivity runs as well as its trajectory analyses, Massachusetts DEP concluded that elevated ozone levels at the Fairhaven and the Truro monitors are principally due to ozone and NO_X generated in southern New England and upwind areas. Massachusetts DEP further concluded based on CAMx Source Apportionment Modeling described in EPA's October 27, 1998 Final Rulemaking on the NO_X SIP Call (63 FR 57355), that reducing NO_X emissions in adjacent upwind areas—Connecticut, Rhode Island, New York City and New Jersey—will significantly reduce ozone levels at the Fairhaven and Truro monitors. Emissions of NO_X and VOC will also be lowered in Massachusetts as well, as a result of the emission control programs listed in Table 2. These local controls, combined with upwind controls will result in the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area attaining in 2007.

As part of its 2002 supplemental submittal, DEP included the NO_X emission reductions anticipated to occur in Connecticut, Rhode Island, New York City and New Jersey between 1999 and 2007 and between 2002 and 2007. The reduction between 2002 and 2007 was intended to illustrate the reductions that can be expected to reduce current air quality levels being monitored in southeastern Massachusetts. The NO_X reduction expected to occur in Connecticut, Rhode Island, New York City and New Jersey between 1999 and 2002 is expected to be 190.0 tons per summer day. Those emission reductions have already occurred, and presumably affect the current ozone levels measured in 2002. Between 2002 and 2007, the NO_X reduction expected to occur in Connecticut, Rhode Island, New York City and New Jersey is expected to be quite a bit higher, at 320.2 tons per summer day. These reductions, which largely have not occurred yet, will benefit future ozone levels in southeastern Massachusetts and will help the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area meet attainment by 2007.

As part of its 2002 supplemental submittal, DEP also calculated the NO_X and VOC emission reductions projected to occur between 1999 and 2007 in the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH area. VOC emissions in eastern Massachusetts are projected from 1999 to 2007 to go from 619 tons per summer day (tpsd) to 491 tpsd, which is a reduction of 128 tpsd or 21 percent. NO_X emissions in eastern Massachusetts are projected from 1999 to 2007 to go from 829 tpsd to 606 tpsd, which is a reduction of 223 tpsd or 27 percent. When combined with the significant reductions in NO_X emissions expected in upwind states by 2007, the eastern Massachusetts emissions inventory data provides additional reason to anticipate that the area will attain the one-hour ozone standard by 2007.

G. Is the Massachusetts RACM Analysis Consistent With the CAA and EPA Guidance?

The EPA has reviewed the SIP and the RACM submittal for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH area to determine if it includes all required RACM measures and sufficient documentation concerning available RACM measures. The RACM analysis was subject to a public hearing on July 25, 2002, and submitted to EPA on September 6, 2002.

Before estimating how much emission reduction could be achieved by certain control measures implemented in Massachusetts, the DEP assessed where geographically emission reductions would help most to alleviate the violations being measured in the Boston-Lawrence-Worcester, MA–NH area to determine if any measures could advance the attainment date for the area. To do this, Massachusetts relied on various trajectory and modeling analyses.

The trajectory analyses, which are discussed in greater detail in section VII.E, indicate that elevated ozone levels at the Fairhaven and Truro monitors are largely the result of local transport from upwind high emission areas in Connecticut, New York City and New Jersey.[13] In addition to what the MA DEP submitted, EPA performed a trajectory analysis of each of the days during 1999 through 2001 when exceedances of the one-hour ozone NAAQS were monitored in the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area. That analysis shows similar results, *i.e.*, that the source region for these exceedances is areas to the south and west of Massachusetts.

In addition to the MA DEP trajectory analyses, the MA DEP used the results of the CALGRID model runs, to help demonstrate that Massachusetts' emissions contribute primarily to a "Boston Plume," which flows north of Boston,[14] and much less to the five southeastern counties in Massachusetts (the only part of the Boston-Lawrence-Worcester, MA–NH area violating the ozone standard in 2001). The results of the first CALGRID run, which employed July 8, 1988 meteorological conditions and 1999 CAA controls for each state in the New England Domain, show elevated ozone levels in Connecticut and Western Massachusetts and a large "Boston Plume" extending up the coastline into southern Maine. In a separate CALGRID run, all anthropogenic NO_X and VOC emissions in Massachusetts were reduced to zero. The "zero-out" CALGRID run reflects a large reduction of 911.6 tons per day of VOC, and 712.7 tons per day of NO_X. The difference plot for these two runs indicates that reducing Massachusetts emissions will substantially reduce ozone levels in the "Boston Plume," but have less effect on reducing ozone levels in southeastern Massachusetts, where the 2001 nonattainment was monitored. This was further illustrated for all episode days in modeling performed by New Hampshire where they reduced NO_X emissions in the northern half of eastern Massachusetts by an additional 60 percent beyond 1999 projected emission levels. For those sensitivity runs, there is no apparent ozone benefit in the southeastern portions of Massachusetts.

The trajectory analyses and sensitivity runs discussed above indicate that Massachusetts must rely on significant emission reductions from upwind states in order to attain the one-hour ozone standard, and that additional emission reduction measures adopted in Massachusetts alone would have a sufficiently small impact on ozone levels that they could not advance the attainment date in the Boston-Lawrence-Worcester, MA–NH area. Nonetheless, the DEP RACM analysis does review control measures that could reduce emissions of VOC and NO_X in EMA and analyzed whether adoption of such measures might lead to attainment earlier than 2007.

Because the trajectory analyses and zero-out runs discussed above demonstrate that emissions from counties in the northern portion of the Boston-Lawrence-Worcester, MA–NH area do not have an impact on the Fairhaven and Truro monitors, the DEP limited its RACM analysis to a review of potential controls in the counties where local emissions could have an impact on these two monitors. These are the southeastern MA counties of: Barnstable, Bristol, Dukes, Plymouth and Nantucket.

DEP examined emissions from all significant emission source categories in the stationary point, stationary area, and non-road mobile sectors to assess whether there are any additional RACM that could be adopted. The methodology used, is a two-step procedure. First the procedure performed an emission inventory screen to identify significant source categories; and second, the MA DEP screened potential control measures to determine if they first, could provide sufficient benefits to accelerate attainment in the Boston-Lawrence-Worcester, MA–NH area, and, if so, if they are feasible.

[13] These areas have approved attainment demonstrations and also have EPA-enforceable emission reduction strategies to bring about attainment of the 1-hour standard by 2007.

[14] The Massachusetts WOE analysis discussed in section VII.C. above shows the Boston Plume will be below the one-hour ozone NAAQS by 2007.

The methodology used by the MA DEP is based on the RACM analysis performed by EPA for the Greater Connecticut serious ozone nonattainment area. See 66 FR 634; January 3, 2001. The RACM analysis for Greater Connecticut looked at projected 2007 emissions from various source categories after taking into account CAA-mandatory controls, additionally adopted regional and national controls, and State-adopted SIP controls. The RACM analysis then assumed that stationary sources that have already been controlled nationally, regionally or locally in the SIP would not be effective candidates for additional controls that could be considered RACM, since these categories have only recently been required to reduce emissions or are about to shortly. The state concluded that additional controls on these sources would not be feasible within the time frame to advance attainment. The analysis eliminated these categories that were subject to controls from further consideration. The analysis then reviewed the uncontrolled sources and of those, eliminated from consideration the bottom 20 percent of emitters in any source category on the assumption that the individual category contribution would be too small and/or the number of source types too numerous to regulate. Control measures for the remaining source categories were then reviewed for economic and technological feasibility and their potential to result in an earlier attainment year.

Massachusetts' conclusion from this analysis was that, based on the types of measures reviewed and the costs of these programs in association with the potential emission reduction benefits for the five southeastern counties in the Boston-Lawrence-Worcester, MA–NH area, there are no RACM that could be adopted in the Boston-Lawrence-Worcester, MA–NH area that would advance attainment prior to 2007. The MA DEP analysis meets EPA requirements, which as noted above were recently upheld by the DC Circuit Court.

Massachusetts also analyzed whether there were any additional mobile source measures that could be implemented that represent RACM. The DEP's conclusion is that Massachusetts is currently implementing all of the reasonably available TCMs listed in the Clean Air Act, and noted that included in the Massachusetts SIP, are a wide range of statewide mobile source emissions-reducing programs, including California LEV, Stage 2 vapor recovery, enhanced inspection and maintenance, and reformulated gasoline. Massachusetts also noted that over $3 billion in transit improvements and transportation-related environmental actions are being implemented as an integral part of the $14 billion Central Artery/Third Harbor Tunnel project.

The DEP further did an analysis where they calculated VOC and NO_X reductions for all projects submitted to the Massachusetts Highway Department for state and/or federal funding over the last three years in the five southeastern counties in Massachusetts. Funding limitations prevented many of these projects from being implemented, however, Massachusetts believes that the entire list constitutes an accurate sample of the hypothetically reasonable and available TCMs for this area. DEP found that potential TCMs would have a minimal impact [15] on reducing 2007 on-road mobile source emissions, the year the Boston-Lawrence-Worcester, MA–NH area is expected to achieve attainment. The DEP concluded that inclusion of these TCMs in the SIP would not allow the Boston-Lawrence-Worcester, MA–NH area to attain the one-hour ozone standard sooner than 2007 and are therefore not RACM.

EPA concludes that based on the available information, there are no additional technologically and economically feasible emission control measures in Massachusetts that will advance the attainment date for the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area. Thus no potential measure can be considered RACM for purposes of section 172(c)(1) for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH area for its one-hour ozone attainment demonstration. The EPA therefore proposes that the Massachusetts SIP meets the requirements for RACM.

Although EPA does not believe that section 172(c)(1) requires implementation of additional measures for this area, this conclusion is not necessarily valid for other areas.

H. Is the Attainment Date as Expeditiously as Practical?

As explained earlier, the Boston-Lawrence-Worcester, MA–NH area attained the one-hour ozone standard as of 1999, its statutory deadline under the CAA. Moreover, the Boston-Lawrence-Worcester, MA-NH nonattainment area continued to have air quality meeting the one-hour ozone standard until the 1999 through 2001 time period. In its 2002 supplement to its 1998 attainment demonstration, Massachusetts provides evidence that the area will once again attain by 2007.

Massachusetts chose a 2007 attainment date because it has determined that the current violations are due to upwind emissions, some of which cannot be reduced until as late as the beginning of the 2007 ozone season. The additional reductions that will occur in upwind areas, as well as in Massachusetts, include the following programs: (1) EPA's NO_X SIP call, which will be implemented by May 31, 2004, with states expected to fully comply with their budgets by 2007; (2) EPA's Tier 2 standards, which will impose new tailpipe standards for motor vehicles and reduce the sulfur content of fuel, and will be phased in beginning in 2004; (3) EPA's NO_X requirements for highway heavy-duty engines (*i.e.*, trucks and buses), which beginning in 2004 require new diesel trucks and buses to be 50 percent cleaner than today's models; (4) new nonroad diesel NO_X standards, which started in 1996 with increasingly more stringent standards being phased in through 2006; and (5) a number of upwind states will adopt new VOC controls for architectural coatings and consumer products that will go into effect in 2004.

Massachusetts also notes that New York, New Jersey and Connecticut have CAA attainment dates of 2007, which is when these upwind states will have implemented all measures necessary for them to attain the standard. Based on this information, EPA agrees that an attainment date of November 15, 2007 is as expeditiously as practicable and EPA proposes approval of this attainment date for the Boston-Lawrence-Worcester, MA–NH area.

I. Contingency Measures

The EPA continues to believe the contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9) are independent requirements from the attainment demonstration requirements under sections 172(c)(1) and 182(c)(2)(A) and the rate-of-progress (ROP) requirements under sections 172(c)(2) and 182(c)(2)(B). The contingency measure requirements are to address the event that an area fails to meet a ROP milestone or fails to attain the ozone NAAQS by the attainment date established in the SIP. The contingency measure requirements have no bearing on whether a state has submitted a SIP that projects attainment of the ozone NAAQS or the required ROP reductions toward attainment. The attainment or ROP SIP provides a demonstration that attainment or ROP requirements ought to be fulfilled, but the contingency measure SIP requirements concern what is to happen only if attainment or ROP is not actually achieved. The EPA acknowledges that contingency measures are an independently required SIP revision, but does not believe that submission of contingency measures is necessary before EPA may approve an attainment or ROP SIP.[16]

[15] The MA DEP RACM analysis shows that potential TCMs would reduce 2007 on-road mobile emissions for the Massachusetts portion of the nonattainment area by only 0.12 percent for VOC and 0.07 percent for NO_X.

[16] The U.S. Court of Appeals for the D.C. Circuit recently addressed this issue in the context of a challenge to the Washington D.C. ozone attainment demonstration SIP, and concluded that contingency measures were required as part of an attainment demonstration SIP. *See Sierra Club* v. *EPA*, 294 F.3d 155, 164 (D.C. Cir. 2002). However, EPA believes that the court misconstrued the statute, and declines to follow the court's reasoning outside of the D.C. Circuit. EPA believes that the statute does not compel contingency measures as part of attainment demonstration SIPs because they are required as a separate submission under a separate statutory provision. *See* sections 172(c)(9) and 182(c)(2).

VIII. Proposed Action

EPA is proposing to fully approve as meeting CAA section 182(c)(2) the ground-level one-hour ozone attainment demonstration State Implementation Plan for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH nonattainment area submitted by Massachusetts on July 27, 1998, and supplemented on September 6, 2002. EPA is proposing an attainment date of November 15, 2007 for the area, and is proposing that the RACM analysis for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH area meets the requirements of section 172(c)(1). This notice also proposes to approve 2007 motor vehicle emissions budgets for eastern Massachusetts into the SIP.

EPA is soliciting public comments on the issues discussed in this proposal. These issues will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section of this document.

IX. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 4, 2002.

Ira W. Leighton,

Acting Regional Administrator, New England Region.

[FR Doc. 02–26172 Filed 10–11–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 092402E]

RIN 0648–AP87

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fishery; Notice of Availability of Amendment 10; Corrections.

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to notice of availability of an amendment to a fishery management plan.

SUMMARY: This document corrects the address and phone number for the Pacific Fishery Management Council (Council) in the notice of availability of Amendment 10, which was published October 3, 2002.

DATES: Effective October 15, 2002.

SUPPLEMENTARY INFORMATION:

Background

The notice of availability of Amendment 10 to the Coastal Pelagic Species Fishery Management Plan was published in the **Federal Register** on October 3, 2002 (67 FR 62001), and requested comments by December 2, 2002. The interested public was directed to obtain a copy of Amendment 10 from the Council, but the Council's former address and phone number was cited, not its current address and phone number.

Correction

In the **ADDRESSES** section and **FOR FURTHER INFORMATION CONTACT** section of the Notice of availability FR Doc. 02–25171, in the issue of Thursday, October 3, 2002, (67 FR 62001), make the following corrections.

1. On page 62001, in the last paragraph in the second column, delete the given address for the Pacific Fishery Management Council and replace it with the following address:

"7700 NE Ambassador Place, Suite 200, Portland, OR 97220".

2. On page 62001, in the third column under **FOR FURTHER INFORMATION CONTACT**, delete the phone number for the Pacific Fishery Management Council and replace it with the following phone number:

"503–820–2280".

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: October 8, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–26137 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic Atmospheric Administration

50 CFR Part 679

[Docket No. 020920220–2220–01; I.D. 090302E]

RIN 0648–AL97

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes amendments to the regulations governing the halibut fishery under the Western Alaska Community Development Quota (CDQ) Program. The proposed amendments would increase the Regulatory Area (Area) 4E trip limit from 6,000 lb. (2.72 metric tons (mt)) to 10,000 lb. (4.54 mt) and modify the Area 4 Catch Sharing Plan (CSP) to allow CDQ Program participants to harvest allocations of Area 4D halibut CDQ in Area 4E. This proposed action is intended to enhance harvesting opportunities for halibut CDQ fishermen and to further the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to the CDQ program and the Pacific halibut fishery, consistent with the regulations and resource management objectives of the International Pacific Halibut Commission (IPHC).

DATES: Comments on this proposed rule must be received by November 14, 2002.

ADDRESSES: Comments should be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel-Durall, or delivered to the Federal Building, 709 West 9th Street, Room 413–1, Juneau, AK. Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this proposed regulatory action may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228, e-mail *obren.davis@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Commerce (Secretary) is responsible for implementing the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, as provided by the Northern Pacific Halibut Act of 1982 (Halibut Act), at 16 U.S.C. 773. Section 773c(c) of the Halibut Act authorizes the Regional Fishery Management Council having authority for the geographical area concerned to develop regulations governing the allocation and catch of Pacific halibut (*Hippoglossus stenolepis*) in U.S. Convention waters. Such regulations must be approved by the Secretary before being implemented and may be in addition to regulations developed by the IPHC.

In December 1991, the Council adopted a limited access system for managing the halibut fishery in and off Alaska under authority of the Halibut Act. This limited access system included an Individual Fishing Quota (IFQ) program for Areas 2C through 4D, and the CDQ program for Areas 4B through 4E. These programs were designed to allocate specific harvesting privileges among U.S. fishermen and eligible western Alaska communities to resolve management and conservation problems associated with "open access" fishery management, and to promote the development of fishery-based economic opportunities in western Alaska. The IFQ and CDQ programs initially were implemented by regulations published in the **Federal Register** on November 9, 1993 (58 FR 59375). Fishing for halibut under these two programs began March 15, 1995.

Under the regulations established for the halibut IFQ and CDQ programs, the catch limit of halibut that is annually established for each area by the IPHC is divided among qualified halibut quota share holders. Halibut catch limits in Areas 4B, 4C, and 4D are divided between the IFQ and CDQ programs. Twenty percent of the Area 4B, 50 percent of the Area 4C, and 30 percent of the Area 4D annual catch limits are allocated to the CDQ Program. One hundred percent of the Area 4E annual catch limit is allocated to the CDQ program. The halibut CDQ reserves are divided among eligible CDQ communities in accordance with Community Development Plans (CDP) submitted by CDQ managing organizations (CDQ groups) and approved by NMFS. This proposed action affects only halibut CDQ harvested in Areas 4D and 4E.

Since 1995, four different CDQ groups have received annual allocations of Area 4D halibut and two CDQ groups have received annual allocations of Area 4E halibut. Between 1995 and 2001, the annual halibut CDQ reserve ranged from 231,000 to 609,000 lb. (104.78 to 276.24 mt) in Area 4D and from 120,000 to 390,000 lb. (54.43 to 176.9 mt) in Area 4E. Amounts specified for halibut catch limits, reserves, and allocations are all in net (headed and gutted) weight. Halibut CDQ in Areas 4D and 4E must be allocated to the CDQ groups that represent eligible communities located in, or proximate to, Areas 4D and 4E, respectively.

Catch Sharing Plan (CSP) for Area 4

The CSP for Area 4 originally was developed by the Council to apportion the IPHC's halibut catch limit for Area 4 among Areas 4A, 4B, 4C, 4D, and 4E as necessary to carry out the socioeconomic objectives of the IFQ and CDQ programs. The Area 4 CSP was published in the **Federal Register** on March 20, 1996 (61 FR 11337), and implemented by the IPHC that same year.

NMFS subsequently modified the Area 4 CSP to remove Areas 4A and 4B from the CSP in 1998. This change was to allow the catch limits for these two areas and a combined Area 4C–4E to be set according to the IPHC's revised area specific biomass-based methodology. The IPHC considers that Areas 4A, 4B, and 4C-E each have a separate halibut population. A complete description of the proposed revisions to the Area 4 CSP, catch limit apportionments, and geographical description of each subarea was published in the **Federal Register** on January 12, 1998 (63 FR 1812). These modifications were approved March 17, 1998 (63 FR 13000). Beginning in 1998, the IPHC has annually implemented the measures specified in the Area 4 CSP to apportion the combined Area 4C-E catch limit among Areas 4C, 4D, and 4E. The annual management measures for halibut fisheries in 2002 were published on March 20, 2002 (67 FR 12885).

Four out of six CDQ groups have received halibut CDQ allocations in Area 4D since 1995, including Bristol Bay Economic Development Corporation (BBEDC), Coastal Villages Region Fund (CVRF), Norton Sound Economic Development Corporation (NSEDC), and Yukon Delta Fisheries Development Association (YDFDA). Past and current allocations recommended by the State of Alaska and approved by the Secretary have allocated both Area 4D and Area 4E halibut CDQ to only two groups, BBEDC and CVRF, based on their historical participation in the Area 4E halibut fishery and the contents of their CDP applications. NSEDC and YDFDA have received only Area 4D halibut CDQ: residents of communities represented by these two groups (with the exception of two of NSEDC's communities) must travel extended distances offshore to harvest Area 4D halibut CDQ or the quota must be harvested by large, non-local vessels.

In 1999, CDQ groups that received Area 4D quota expressed a desire to increase the amount of halibut CDQ that could be harvested in their locally-based inshore halibut fishery by being allowed to harvest Area 4D halibut CDQ in Area 4E. All four of these groups represent communities along the western Alaska coast, ranging from Bristol Bay (south) to the Bering Strait (north). Almost all of the 56 communities represented by these groups are adjacent to Area 4E: only two are in Area 4D. In January 1999, these groups approached the IPHC at its annual meeting and requested a determination as to whether it would be acceptable to harvest halibut CDQ allocated to Area 4D in Area 4E. The IPHC had no objection to the request because it considers the halibut in Areas 4C, 4D,and 4E to be a single stock unit. This issue was also raised at the February 1999 Council meeting. The Council requested that NMFS prepare an analysis of the proposal to allow Area 4D halibut CDQ to be harvested in Area 4E. The Council also recommended modifying the Area 4E halibut catch limit (see Area 4E Trip Limit, below).

NMFS prepared an EA/RIR/IRFA that examined the proposal to allow Area 4D halibut CDQ to be harvested in Area 4E. In October 2001, the Council approved the release of the EA/RIR/IRFA for public review. In December 2001, the Council recommended allowing halibut CDQ that was allocated in Area 4D to be harvested in Area 4E. In January 2002, the IPHC noted that allowing Area 4D halibut CDQ to be harvested in Area 4E would constitute a change to the Area 4 CSP that would need to be addressed by NMFS in rulemaking. Hence, if approved by the Secretary, this proposed rule would modify the Area 4 CSP to incorporate the Council's specific recommendation that Area 4D halibut CDQ may be harvested either in Area 4D or in Area 4E.

The Proposed Revision of the CSP

This rule proposes to change the Area 4 CSP to allow Area 4D halibut CDQ to be harvested in Area 4E. However, no changes are proposed to the existing Area 4 CSP framework that apportions the combined Area 4C-E annual catch limit among Areas 4C, 4D, and 4E. The authority to allocate the annual Area 4 catch limit according to the Area 4 CSP is specified at 50 CFR 300.63(b) and will continue to be implemented by the IPHC in its annual management measures pursuant to 50 CFR 300.62. The following paragraph would be added to the Area 4 CSP:

A CDQ group with an allocation of Area 4D halibut CDQ may harvest all or part of that allocation in Area 4E. This provision is based on the Council's recommendation in December 2001 to allow CDQ fishermen in Area 4E additional halibut CDQ harvesting opportunities. The framework that allocates the IPHC catch limits among Areas 4C, 4D, and 4E remains unchanged.

For example: under the existing Area 4 CSP, an annual combined Area 4C-E catch limit of 4,450,000 lb. (2,018.5 mt) would be apportioned as follows: 2,030,000 lb. (920.8 mt) to Area 4C, 2,030,000 lb. (920.8 mt) to Area 4D, and 390,000 lb. (176.9 mt) to Area 4E. These amounts are further split between the IFQ and CDQ halibut fisheries. Thirty percent, or 609,000 lb. (276.3 mt), of the Area 4D catch limit is allocated to the Area 4D CDQ reserve. One hundred percent of the Area 4E catch limit is allocated to the Area 4E CDQ reserve. Under the proposed revision to the Area 4 CSP, a combined total of 999,000 lb. (453.1 mt) of halibut potentially could be harvested in Area 4E, an amount equal to 22 percent of the combined Area 4C-E catch limit.

The Council recommended allowing the harvest of Area 4D halibut in Area 4E and allowing amounts of Area 4D halibut CDQ that had been transferred to Area 4E to be transferred back to Area 4D. NMFS proposes to implement the Council's intent without requiring the CDQ groups to submit documents requesting transfers of halibut CDQ between Areas 4D and 4E. The Council intended that the maximum amount of halibut CDQ that could be caught in Area 4D would be the amount of halibut CDQ allocated to each CDQ group for Area 4D. In addition, they intended that the maximum amount of halibut CDQ that could be caught in Area 4E would be the sum of the amount of halibut CDQ allocated for Areas 4D and 4E combined.

NMFS proposes to monitor each CDQ group's halibut CDQ catch in Areas 4D and 4E. If the catch in Area 4E exceeds the group's initial allocation for Area 4E, then NMFS will automatically subtract this additional catch from the group's Area 4D allocation. Halibut CDQ catch from Area 4D also will be subtracted from each group's Area 4D allocation. Any amount of halibut CDQ catch in Area 4E that exceeds the 4E allocation and is subtracted from the Area 4D allocation will no longer be available for harvest in Area 4D. This procedure would allow each CDQ group to decide where to catch its Area 4D halibut CDQ allocation without requiring transfers. Each CDQ group would be required to monitor the harvest of Area 4D and 4E halibut CDQ to ensure that: (1) its total catch in Area 4D does not exceed its Area 4D allocation, minus any portion of its Area 4D quota harvested in Area 4E, (2) its total catch in Area 4E does not exceed the sum of its Area 4D and Area 4E allocations, minus any portion of its Area 4D allocation harvested in Area 4D, and (3) its total catch in Areas 4D and 4E does not exceed the sum of its Area 4D and Area 4E allocations.

This proposed change would provide an opportunity for CDQ groups that receive Area 4D halibut CDQ to increase the amount of halibut CDQ available to local, nearshore fishermen. If the CDQ groups chose to do this, the halibut CDQ harvesting opportunities for large vessels in the Area 4D halibut CDQ fishery would have a corresponding decrease in available halibut CDQ because Area 4D quota could shift to local nearshore fishermen. However, most of the annual Area 4D halibut CDQ harvest in recent years has been made by large catcher/processors that are targeting groundfish CDQ species such as Pacific cod. These vessels catch halibut incidentally along with cod and

other groundfish. CDQ groups may choose to account for this incidentally caught halibut by accruing it towards either their annual Area 4D halibut CDQ allocation or to their annual halibut Prohibited Species Quota (PSQ). CDQ groups receive annual allocations of halibut PSQ to account for halibut catch in directed groundfish fisheries. If a group chooses to shift part or all of its Area 4D halibut CDQ allocation to its nearshore halibut fishery, it still has an alternative allocation of halibut to use for catch accounting purposes.

Area 4E Trip Limit

In 1988, the Council developed, and the Secretary of Commerce (Secretary) approved, fishing trip limits for Area 4C of 10,000 lb. (4.54 mt) and Area 4E of 6,000 lb. (2.72 mt) (53 FR 20327, June 3, 1988). In 1994, the Council recommended and the Secretary approved a fishing trip limit for Area 4B of 10,000 lb. (4.54 mt) (59 FR 22522, May 2, 1994). These provisions were intended to enhance fishing opportunities for operators of vessels that landed their total annual catch within either Areas 4B, 4C, or 4E. Specifically, the Area 4E trip limit was devised to protect fishermen who landed their total annual catch of halibut at ports in Area 4E from competition with fishermen using vessels large enough to land their Area 4E halibut catch at ports in other regulatory areas. The Area 4E trip limit was incorporated into the Pacific halibut fishery regulations in 1988, and into 50 CFR part 676 (now promulgated as 50 CFR part 679) in 1993, as one of the rules implementing the halibut and sablefish IFQ and CDQ programs (58 FR 59375, November 9, 1993).

In December 1994, the Council recommended eliminating the trip limits in Areas 4B, 4C, and 4E, as these limits were deemed unnecessary due to the forthcoming implementation of the IFQ and CDQ programs. Subsequently, these restrictions were removed from the Pacific halibut regulations at 50 CFR part 301 (now 50 CFR part 300) (60 FR 14651, March 20, 1995). The Area 4E trip limit restriction, however, was inadvertently kept in 50 CFR part 679. In October 1998, NMFS informed the Council that this oversight would be corrected by removing the Area 4E trip limit from 50 CFR part 679. The Council declined to approve this correction, and voted instead to retain the 6,000 lb. (2.72 mt) trip limit through September 1 of each year. The Council also recommended that CDQ groups with unharvested Area 4E halibut CDQ offer such quota to other CDQ groups during the last half of August, prior to the date when the trip limit would be lifted. The Council's rationale for retaining an Area 4E trip limit was to prevent consolidation of the halibut fishery in this area, to the possible detriment of local fishermen.

In December 2001, the Council confirmed its intent to retain the trip limit in Area 4E, but recommended that it be increased to 10,000 lb. (4.54 mt) and that it be in effect annually only through September 1. The Council reasoned that retention of the trip limit would continue to foster the near-shore small-scale halibut CDQ fishery in western Alaska, which is typically conducted by small vessels under 32 feet (9.73 m) length overall. Moderately increasing the trip limit, however, could allow harvesters greater operational flexibility during the spring and summer months, particularly for local vessels capable of packing more than 6,000 lb. (2.72 mt) of halibut during a fishing trip. Eliminating the trip limit during the fall months would offer CDQ groups the ability to harvest halibut CDQ using vessels large enough to safely operate in adverse weather and sea conditions. Typically, the trip limit is an economic constraint to using larger vessels in the Area 4E halibut CDQ fishery. This proposed rule would modify the Area 4E trip limit to increase it from 6,000 to 10,000 lb. (2.72 to 4.54 mt) and would specify that the Area 4E trip limit would be effective only through September 1 of each year.

Classification

The Council recommended this action to the Secretary for adoption pursuant to its authority under the Halibut Act. NMFS prepared an EA/RIR/IRFA for the proposed revisions to the Area 4 CSP and the Area 4E trip limit regulatory amendment that describes the management background, the purpose and need for action, the management alternatives, and the socioeconomic impacts of the alternatives (see **ADDRESSES**).

The IRFA estimates the total number of small entities that would be affected by this action, and analyzes the potential economic impact of the proposed action on those small entities as required by the Regulatory Flexibility Act (RFA). A summary of the IRFA follows.

The Area 4 CSP modification and the proposed revision to 50 CFR part 679 would have no negative impacts in and of themselves, but are intended to increase the harvesting flexibility for participants in the halibut CDQ fishery in Areas 4D and 4E. These changes would allow CDQ groups with halibut CDQ in these areas to tailor their halibut CDQ fishing operations to enhance economic opportunities for the western Alaska communities that they represent.

NMFS considers most of the fishing operations that would be affected by this proposed rule to be small entities, based on criteria established by the RFA. The universe of small entities is comprised of four CDQ groups, 58 CDQ-eligible villages, 224 catcher vessels, and 31 halibut registered buyers for a total of 317 small entities.

A range of alternatives was considered for each proposed action. Three alternatives were considered in association with the action that would modify the Area 4 CSP: a no action alternative; allowing Area 4D halibut CDQ to be harvested in Area 4E (the preferred alternative); and, allowing halibut CDQ specifically allocated to Area 4D or 4E to be harvested in either of these two areas. There are four alternatives associated with the action to modify the Area 4E trip limit: a no action alternative; increasing the trip limit to 10,000 pounds through September 1 each year (the preferred alternative); suspending the Area 4E trip limit predicated on a given CDQ group first making its unharvested Area 4E halibut CDQ available to other CDQ groups each fall; and, removing the trip limit entirely.

The IRFA shows that the selection of the no action alternative for either proposed action would unnecessarily limit the further development of the local inshore halibut CDQ fishery and the complete utilization of the Area 4D or Area 4E halibut CDQ allocations.

The preferred alternatives for Actions 1 and 2 constitute the least burdensome alternatives to regulated small entities, among the suite of options available, while simultaneously achieving the objectives of the proposed actions. In other words, no other alternatives were identified which would reduce the potential adverse impacts on small entities, while achieving the Council's objectives for the Area 4 Halibut CDQ Program.

This proposed rule does not contain a collection-of-information requirement subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act. This proposed rule does not duplicate, overlap, or conflict with other Federal regulations.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 7, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 is amended to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105–277, Title II of Division C; Pub. L. 106–31, Sec. 3027; and Pub. L. 106–554, Sec. 209.

2. In § 679.31, paragraph (b)(3)(iv) is revised to read as follows:

§ 679.31 CDQ reserves

* * * * * *

(b) * * *

(3) * * *

(iv) *Area 4E.* In IPHC regulatory area 4E, 100 percent of the halibut quota shall be made available to eligible communities located in, or proximate to, IPHC regulatory area 4E. A fishing trip limit of 10,000 lb. (4.54 mt) applies to halibut CDQ harvested in IPHC regulatory area 4E through September 1.

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Notices

Federal Register
Vol. 67, No. 199
Tuesday, October 15, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Upper Blue Stewardship Project; White River National Forest, Summit County, Colorado.

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a Environmental Impact Statement in conjunction with planning the Upper Blue Stewardship Project (hereafter referred to as the Stewardship Project).

SUMMARY: The USDA Forest Service, White River National Forest, gives notice of the agency's intent to prepare an environmental impact statement (EIS) to disclose the environmental effects of timber harvest, prescribed fire, watershed rehabilitation, reconstruction/closure/obliteration of roads, trail reconstruction, non-system trail obliteration, and historic site interpretation, in conjunction with designing the Stewardship Project for the Dillon Ranger District of the White River National Forest. These proposed actions are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). This notice describes the purpose and need for action, the proposed activities, environmental issues considered, information concerning public participation, estimated dates for filing the environmental impact statement, and the names and addresses of the agency officials who can provide additional information.

Project Area: The Stewardship Project is using an interdisciplinary approach to manage 14,000 acres between the towns of Frisco, CO to the north and Breckenridge, CO to the south, Highway 9 to the east, and the top of the Tenmile Range to the west. The area is located in T5S, R77W, Sec. 31. T6S, R78W, Sec. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36 on the Dillon Ranger District of the White River National Forest, Summit County, CO. The elevation in the area is between 9,000–12,933 feet.

Background: The Upper Blue Stewardship Project was originally proposed in 1999. It involved extensive scoping and public involvement on a local, regional and national level. The original NOI was published on April 5, 1999. The FEIS for the Stewardship Project was completed in December 2000 and the ROD was signed in March 2001. Because the White River Forest Plan revision was nearing completion and conditions had changed, the White River Forest Supervisor decided to withdraw the Decision in May 2001. After the issuance of the Revised White River Land and Resource Management Plan in July 2002, it was deemed timely to readdress the Upper Blue Stewardship Project. The decision was made to revise the EIS. This EIS will tier to the Final EIS for the White River Land and Resource Management Plan—2002 Revision and will be consistent with the Goals, Objectives, Standards and Guidelines of the 2002 Forest Plan. It will also consider the significant issues identified during the original scoping effort and the comments received on the original DEIS.

Purpose & Need: The project area, as well as the remainder of Summit County, was heavily logged during the mining era (1870–1910). Many trees were removed, particularly Douglas-fir and ponderosa pine due to their superior lumber qualities. Other stands of trees were burned for a variety of reasons including carelessness, opening up foraging areas for livestock, or to expose mineral deposits. The result is a dense, relatively even-aged forest between 90–130 years old that is dominated by lodgepole pine, a relatively short-lived, disturbance-dependent species. In addition, the landscape lacks diversity of tree species and forest structure (mixed-size forests, young stands, old growth). This lack of diversity affects both long-term forest health (homogenous forests are more susceptible to insects, disease and uncontrolled fire spread) and habitat for wildlife (the even-age forest has limited understory forage for species such as elk).

These largely unbroken landscapes of single-species forests are nearing the stage in development where they are becoming increasingly at risk for insect, disease and fire disturbances due to their size, age and homogeneity. Add to this the continuous influx of urban growth at the forest interface, and the risk for catastrophic fire events and associated consequences will increase over time. Adding human life and property to the wildland mix requires forest management practices that take human values into consideration.

Under the revised Forest Plan, a large portion of the project area has a management prescription that emphasizes elk, particularly calving habitat. There is a management need to establish levels of motorized travel and non-motorized recreation that are compatible with elk use in the area.

The riparian area in the Miner's Creek drainage has deteriorated over time due to the close proximity of system and non-system roads and trails and the high density of dispersed campsites within the stream corridor. This has resulted in sedimentation of the creek from eroding streamsides and runoff from roads. In addition there are potential sanitation issues from camping in close proximity to the creek.

This Stewardship Project aims to:

- improve forest health and wildlife habitat effectiveness by increasing species and structural diversity;
- reduce the fire hazards to nearby private lands and improvements in the long-term by increasing species and structural diversity within the project area, and in the short-term by reducing dead fuels in old clearcuts and reducing tree crown density in the wildland/urban interface;
- protect elk calving habitat by assuring travelways open to motorized travel will not exceed an average travelway density of one-half mile per square mile during calving season;
- improve water quality and riparian areas by reducing runoff from roads and trails and promoting responsible recreation use;

The Project proposes to use a variety of techniques to improve biodiversity and consequently the health of the forest, while protecting and enhancing the heritage, recreation, visual, watershed and wildlife resources. The Forest Service seeks to develop a strong partnership with local government, private landowners and forest users to help implement the necessary

treatments on the ground and monitor the results using adaptive management techniques.

Proposed Action

Purpose—Improve forest health and wildlife habitat effectiveness by improving biodiversity

Objective—Increase species and structural diversity through vegetation treatments—Approximately 2,691 acres of vegetation management is proposed. This includes 502 acres of planting Douglas-fir, or a mix of ponderosa pine, Douglas-fire, and limber pine. These species would be planted in existing clearcuts, in new clearcuts (up to 58 acres proposed) or underplanted in lodgepole pine stands. The site preparation associated with this planting includes a combination of thinning and/or prescribed burning.

The proposed action includes 1,654 acres of group selection/patch clearcuts to promote aspen regeneration, increase spruce/fir and/or increase age class diversity of lodgepole pine. All openings to regenerate aspen would be broadcast burned or ripped to promote sprouting.

This proposed action also includes 445 acres of stand replacement prescribed burns, and 90 acres of special cuts/burns within the Nordic ski area permit boundary.

This proposal would make available for personal use and to some extent commercial use, approximately 10,500 Christmas trees for approximately 340 acres.

Purpose—Reduce the fire hazards to nearby private lands

Objective—Increase species/structural diversity and decrease stand density through vegetation treatments—The vegetation treatments described above to increase the aspen component would also help reduce the fire hazards since fire behavior typically becomes less extreme when pure aspen stands are encountered. The Christmas tree cutting would create an almost pure aspen stand adjacent to the Town of Frisco, greatly increasing fire resistance of this aspen stand. Openings created in the canopy by patch clearcuts or stand-replacement burns will also help to mitigate crown fire behavior. Due to an overall increase in tree species (especially aspen), structural diversity, canopy openings and fuel treatments, fire hazard within the project area would decrease.

Reduce tree crown density in the urban interface zone—The vegetation along 12 miles of the national forest/private land boundary on the east and north side of the project area would receive thinnings and group selection cuts to reduce fuels. The only interior private land boundary included is the Whatley Ranch. This stand density management may occur on up to 450 acres of National Forest System (NFS) land within 100–300 feet of private lands (the Interface Zone), in areas where a similar amount is occurring on private lands. In conjunction with vegetation treatments on the private lands, fire hazard within the urban interface zone would decrease.

Purpose—Protect elk calving habitat

Objective—Mitigate against disruption of calving by motorized vehicles—Provide seasonal motorized road and trail closures to assure travelways open to motorized travel will not exceed an average travelway density of one-half mile per square mile during calving season.

Purpose—Improve riparian areas and watershed conditions

Objective—Reduce impacts from camping by promoting responsible recreation use—The Miners Creek riparian area would be improved by converting the Miners Creek drainage to a "camping in designated sites only area". Ninetten (19) campsites would be designated in that drainage and 12 dispersed sites within 100' of the creek would be closed and rehabilitated. To improve sanitation, campers would be required to carry and use a personal self-contained portable toilet similar to ones typically used when river rafting. In addition, material would be removed from the Iron Springs meadow. One 10 car parking area would be designated west of Rainbow Lake. The current parking area south of Rainbow Lake would remain a dispersed parking area.

Interpretive Sites—Six sites (approximately 10 signs) would be developed: Two historical signs (Masontown, Breckenridge end of the Peaks Trail), five vegetation interpretive signs (the Gold Hill Trailhead, and both ends of the Peaks Trail, Miners Creek Road and Sapphire Point), and three wildlife signs (Masontown, Peaks Trailhead in Breckenridge, and Gold Hill Trailhead).

Reduce impacts from roads and trails—Riparian areas and watershed condition would be improved through road and trail closures. Eleven miles of roads and 5.8 miles of trails would be decommissioned. Total road and non-motorized trail miles remaining in this proposal would be 10.3 and 32.5 respectively (includes all USFS, county and private roads and trails). Summer motorized and non-motorized miles available would decrease. Winter use would remain unchanged. Roads would be managed at the minimum level necessary for erosion control.

Project Design and Mitigation Measures: All proposed treatments and activities would follow the standards and guidelines found in the Revised White River Land and Resource Management Plan—2002.

Roadless: No prescribed fire, road construction or vegetation treatments are proposed in the inventoried roadless areas designated by the Revised Forest Plan; furthermore no actions are proposed within the boundaries of the old Tenmile RARE II roadless area.

Preliminary Issues: Issues identified to date include: impacts of timber harvesting and prescribed burning on visual quality in a recreation setting; changes in winter snow compaction in lynx habitat; quantity of system and non-system roads and trails and their impacts on water quality and wildlife habitat; the impacts of timber harvesting and prescribed burning on water quality, specifically sedimentation and phosphorus; potential impacts to heritage resources; potential spread of noxious weeds; air quality impacts from burning; recreation user conflicts; and effects on threatened, endangered, sensitive and management indicator species.

Project Funds: K–V Funds, project funds or value would be generated under this alternative. Therefore, post-sale projects may be completed using K–V Funds, project funds or exchanging goods for services.

Involving the Public: Pursuant to Part 36 Code of Federal Regulations (CFR) 219.10(g), the Forest Supervisor for the White River National Forest gives notice of the agency's intent to prepare an environmental impact statement for the Stewardship Project described above. The Forest Service is seeking information, comments, and assistance from individuals, organizations and federal, state, and local agencies who may be interested in or affected by the proposed action (36 CFR 219.6).

Public participation will be solicited by notifying in person and/or by mail known interested and affected publics. A legal notice and news releases will be used to give the public general notice. Public participation activities will include requests for written comments. The public is invited to help identify issues and define the range of alternatives to be considered in the environmental impact statement.

A reasonable range of alternatives will be evaluated and reasons will be given for eliminating some alternatives from detailed study. A "no-action

alternative" is required, meaning that management will not change the present condition. Alternatives will provide different ways to address and respond to public issues, management concerns, and resource opportunities identified during the scoping process. Scoping comments and existing condition reports will be used to develop alternatives.

DATES: Comments concerning the proposed action should be received in writing by November 9, 2002.

ADDRESSES: Send written comments to: Upper Blue Stewardship Project, Dillon Ranger District P.O. Box 620, Silverthorne, CO 80498.

FOR FURTHER INFORMATION CONTACT: Peech Keller or Sarah Pearson, at (970) 468–5400. For road and trail questions and concerns, contact Angela Glenn (970) 262–3446.

Release and Review of the EIS

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment in March 2003. At that time, the EPA will publish a notice of availability for the DEIS in the **Federal Register**. The comment period on the DEIS will be 45 days from the date the EPA publishes the notice of availability in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposed so that it is meaningful and alerts an agency to the reviewer's position and contentions; *Vermont Yankee Nuclear Power Corp.* v. *NRDC*. 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the Final Environmental Impact Statement (FEIS) may be waived or dismissed by the courts; *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritage, Inc.*, v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the DEIS, comments will be analyzed, considered, and responded to by the Forest Service in preparing the Final EIS. The FEIS is scheduled to be completed in June 2003. The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making decisions regarding these revisions. The responsible official will document the decisions and reasons for the decisions in a Record of Decision for the revised Plan. The decision will be subject to appeal in accordance with 36 CFR part 217.

Responsible Official

Martha J. Ketelle, Forest Supervisor, White River National Forest. PO. Box 948, Glenwood Springs, CO 81602–0948 "As the Responsible Official, I will decide which, if any, of the proposed projects will be implemented. I will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations."

Dated: October 7, 2002.

Stephen C. Sherwood,

Deputy Forest Supervisor, White River National Forest.

[FR Doc. 02–25950 Filed 10–11–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 8–2002]

Foreign-Trade Zone No. 181: Application for Expansion and, Amendment of Application

Notice is hereby given that the application of the Northeast Ohio Trade & Economic Consortium (NEOTEC), grantee of FTZ 181, for authority to expand FTZ 181 in the Akron/Canton, Ohio area (Doc. 8–2002, 67 FR 6679, 2/13/02), has been amended to delete Proposed New Site 6 (43 acres), located within the 143-acre Colorado Industrial Park, Lorain County. The application otherwise remains unchanged.

Comments on the change may be submitted to the Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230, by October 30, 2002.

Dated: October 4, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26180 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 021001228–2228–01]

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of Proposed Stockpile Disposals in FY 2003 and FY 2004

AGENCY: U.S. Department of Commerce.

ACTION: Notice of inquiry.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee (co-chaired by the Departments of Commerce and State) is seeking public comments on the potential market impact of proposed increases in the disposal levels of excess materials from the National Defense Stockpile under the Fiscal Year 2003 Annual Materials Plan and proposed commodity disposal levels under the Fiscal Year 2004 Annual Materials Plan.

DATES: Comments must be received by November 14, 2002.

ADDRESSES: Written comments should be sent to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; FAX (202) 482–5650; e-mail: *rmeyers@bis.doc.gov*.

FOR FURTHER INFORMATION CONTACT: The co-chairs of the National Defense Stockpile Market Impact Committee. Contact either Richard V. Meyers, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, (202) 482–3634 or Terri L. Robl, Office of International Energy and Commodity Policy, U.S. Department of State, (202) 647–3423.

SUPPLEMENTARY INFORMATION: Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense ("DOD"), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year ("FY") 1993 National Defense Authorization Act ("NDAA") (50 U.S.C. 98h–1) formally established a Market Impact Committee ("the Committee") to "advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *" The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury, and the Federal Emergency Management Agency, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to "consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile."

The National Defense Stockpile Administrator is proposing (1) revision of the previously approved FY 2003 Annual Materials Plan ("AMP") quantities for three materials, and (2) the new FY 2004 AMP, as set forth in Attachment 1. The Committee is seeking public comments on the potential market impact of the sale of these materials as proposed in revision of the FY 2003 AMP and the FY 2004 AMP.

The AMP quantities are not targets for either sale or disposal. They are only a statement of the proposed maximum disposal quantity of each listed material that may be sold in a particular fiscal year. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time of the offering as well as on the quantity of each material approved for disposal by Congress.

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these AMP commodities. Although comments in response to this Notice must be received by November 14, 2002, to ensure full consideration by the Committee, interested parties are encouraged to submit comments and supporting information at any time thereafter to keep the Committee informed as to the market impact of the sale of these commodities. Public comments are an important element of the Committee's market impact review process.

Public comments received will be made available at the Department of Commerce for public inspection and copying. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. The Committee will seek to protect such information to the extent permitted by law.

The records related to this Notice will be made accessible in accordance with the regulations published in part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*). Specifically, the Bureau of Industry and Security's Freedom of Information Act ("FOIA") reading room is located on its web page, which can be found at *http://www.bis.doc.gov*, and copies of the public comments received will be maintained at that location (see Freedom of Information Act (FOIA) heading). If requesters cannot access the web site, they may call (202) 482–2165 for assistance.

Dated: October 9, 2002.

James J. Jochum,

Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce.

ATTACHMENT 1.—PROPOSED REVISIONS TO FY 2003 ANNUAL MATERIALS PLAN (AMP) AND PROPOSED FY 2004 AMP

Material	Unit	Current FY 2003 Quanity	Revised FY 2003 quantity	Revised FY03 notes	Proposed FY2004 quantity	Proposed FY 04 notes
Aluminum Oxide, Abrasive	ST	6,000			6,000	
Antimony	ST	5,000		1	0	
Bauxite, Metallurgical Jamaican	LDT	2,000,000		1	0	
Bauxite, Refractory	LCT	43,000		1	43,000	1
Beryl Ore	ST	4,000			4,000	1
Beryllium Metal	ST	40			40	
Beryllium Copper Master Alloy	ST	1,000	1,200	1	1,200	1
Cadmium	LB	1,200,000			400,000	1
Celestite	SDT	3,600	12,794	2	12,794	1
Chromite, Chemical	SDT	100,000		1	100,000	1
Chromite, Metallurgical	SDT	100,000		1	0	
Chromite, Refractory	SDT	100,000			100,000	1
Chromium, Ferro	ST	150,000			150,000	1
Chromium, Metal	ST	500			500	
Cobalt	LB Co	6,000,000			6,000,000	
Columbium Carbide Powder	LB Cb	21,500		1	0	
Columbium Concentrates	LB Cb	560,000			560,000	
Columbium Metal Ingots	LB Cb	20,000			20,000	
Diamond Stone	ct	600,000	1,000,000	1	600,000	1
Fluorspar, Acid Grade	SDT	12,000		1	12,000	1
Fluorspar, Metallurgical Grade	SDT	60,000		1	60,000	1
Germanium	Kg	8,000			8,000	
Graphite	ST	3,760	4,800	1	2,000	1
Iodine	LB	1,000,000			1,000,000	
Jewel Bearings	PC	82,051,558		1	82,051,558	1
Kyanite	SDT	150		1	0	
Lead	ST	60,000			60,000	
Manganese, Battery Grade, Natural	SDT	30,000			30,000	
Manganese, Battery Grade, Synthetic	SDT	3,011		1	3,011	1
Manganese, Chemical Grade	SDT	40,000			40,000	

ATTACHMENT 1.—PROPOSED REVISIONS TO FY 2003 ANNUAL MATERIALS PLAN (AMP) AND PROPOSED FY 2004 AMP—Continued

Material	Unit	Current FY 2003 Quanity	Revised FY 2003 quantity	Revised FY03 notes	Proposed FY2004 quantity	Proposed FY 04 notes
Manganese, Ferro	ST	25,000			50,000	
Manganese, Metal, Electrolytic	ST	2,000			2,000	
Manganese, Metallurgical Grade	SDT	250,000			250,000	1
Mica, All	LB	8,500,000		1	5,000,000	1
Palladium	Tr Oz	350,000		1	200,000	1
Platinum	Tr Oz	50,000		1	25,000	1
Platinum—Indium	Tr Oz	6,000			6,000	
Quartz Crystals	Lb	216,648		1	150,000	1
Quinidine	OZ	750,000	2,211,122	2	2,211,122	1
Rubber	LT	75,000		1	0	
Sebacic Acid	LB	600,000		600,000		
Silver (Coins)	Tr Oz	5,000,000		1	0	
Talc	ST	2,000		1	1,000	1
Tantalum Carbide Powder	LB Ta	4,000			4,000	1
Tantalum Metal Ingots	LB Ta	40,000			40,000	
Tantalum Metal Powder	LB Ta	50,000		1	40,000	1
Tantalum Minerals	LB Ta	500,000			500,000	
Tantalum Oxide	LB Ta	20,000			20,000	
Thorium	LB	7,100,000		1/3	7,100,000	1/3
Tin	MT	12,000			12,000	
Titanium Sponge	ST	7,000			7,000	
Tungsten Ferro	LB W	300,000			300,000	
Tungsten Metal Powder	LB W	300,000			300,000	
Tungsten Ores & Concentrates	LB W	4,000,000			4,000,000	
VTE, Chestnut	LT	250		1	0	
VTE, Quebracho	LT	50,000			50,000	
VTE, Wattle	LT	6,500		1	0	
Zinc	ST	50,000			50,000	

Notes: 1. Actual quantity will be limited to remaining sales authority or inventory. 2. Previously approve by MIC. Submission to Congress pending. 3. The radioactive nature of this material may restrict sales or disposal options. Efforts are underway to determine the environmentally and economically feasible disposition of the material.

[FR Doc. 02-26165 Filed 10-11-02; 8:45 am]
BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-804]

BALL BEARINGS AND PARTS THEREOF FROM JAPAN; AMENDED FINAL RESULTS OF ANTIDUMPING DUTY ADMINISTRATIVE REVIEW

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: October 15, 2002.

SUMMARY: On August 30, 2002, the Department of Commerce published in the **Federal Register** the final results of the administrative review of the antidumping duty order on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom. The period of review is May 1, 2000, through April 30, 2001. Based on the correction of certain ministerial errors, we have changed the margins for ball bearings and parts thereof for two Japanese companies, Koyo Seiko Co., Ltd., and NTN Corporation.

FOR FURTHER INFORMATION CONTACT: Please contact Lyn Johnson at (202) 482-5287 or Dave Dirstine at (202) 482-4033; AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2001).

Background

On August 30, 2002, the Department published in the **Federal Register** the final results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof (ball bearings) from France, Germany, Italy, Japan, and the United Kingdom (67 FR 55780) (*Final Results*).

We received timely allegations from Koyo Seiko Co., Ltd. (Koyo), and NTN Corporation (NTN) that we made ministerial errors in the *Final Results*. In its September 4, 2002, comments Koyo alleges that the Department did not use Koyo's updated databases in the calculation of the final margin. The petitioner, The Torrington Company (Torrington), did not comment.

We agree with Koyo that we did not use its updated databases and, therefore, we have amended the final results to correct this error. *See* the analysis memorandum from the analyst to the file dated September 17, 2002, for a detailed description of the changes we made to correct our calculations of Koyo's dumping margin.

In its September 3, 2002, comments NTN alleges that the Department made a ministerial error that resulted in the treatment of all U.S. sales of samples as zero-priced sales even though there were non-zero-priced sample sales. We agree with NTN's assertion that this is a ministerial error and have removed only zero-priced sample sales from our margin calculations for the amended final results of review. See the analysis memorandum from the analyst to the file dated September 17, 2002, for a detailed description of the changes we made to correct NTN's margin calculation. On September 9, 2002, Torrington submitted an allegation that there was a typographical error in the draft liquidation instructions we had prepared for merchandise NTN had exported during the period of review. We agree with Torrington and have corrected the error in our liquidation instructions reflecting these amended final results of review.

Amended Final Results of Review

As a result of the correction of ministerial errors, the following weighted-average margins exist for exports of ball bearings by Koyo and NTN for the period May 1, 2000, through April 30, 2001:

Company	Margin (percent)
Koyo Seiko Co., Ltd.	7.68
NTN Corporation	9.34

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these amended final results of review.

We will also direct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the *Final Results* and at the rates as amended by this determination. The amended deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

We are issuing and publishing these determinations and notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: October 3, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02-26113 Filed 10-11-02; 8:45 am]
BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-874]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Ball Bearings and Parts Thereof from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination.

EFFECTIVE DATE: October 15, 2002.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Cindy Lai Robinson, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3965, and (202) 482-3797, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department) regulations are to the regulations codified at 19 CFR part 351 (2001).

Preliminary Determination

We preliminarily determine that ball bearings and parts thereof (ball bearings) from the People's Republic of China (PRC) are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

This investigation was initiated on March 25, 2002. *See Notice of Initiation of Antidumping Duty Investigation: Certain Ball Bearings and Parts Thereof From the People's Republic of China*, 67 FR 15787 (April 3, 2002) (*Initiation Notice*).[1] Since the initiation of the investigation, the following events have occurred.

On April 10, 2002, the Department requested the PRC's Ministry of Foreign Trade and Economic Cooperation (MOFTEC) to distribute a mini-section A questionnaire to the top 10 exporters and/or producers, based on their export sales volume or value, who manufactured and exported subject merchandise to the United States, or who manufactured the subject merchandise that was exported to the United States through an another company, during the period of investigation (POI). We received no reply to this letter from MOFTEC.

Between April 16 and April 25, 2002, we received mini-section A responses from 21 producers and exporters of ball bearings in the PRC.

On April 26, 2002, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of ball bearings imports from the PRC. *See Ball Bearings From China*, 67 FR 22449 (May 3, 2002).

On May 6, 2002, pursuant to section 777A(c) of the Act, the Department determined that, due to the large number of exporters/producers of the subject merchandise, it would limit the number of mandatory respondents in this investigation. *See* "Respondent Selection" section below.

On May 7, 2002, the Department issued its antidumping questionnaire[2] to MOFTEC. The Department requested that MOFTEC send the questionnaire to Xinchang Peer Bearing Company Ltd. (Peer) and Wanxiang Group Corporation (Wanxiang), the two mandatory respondent companies selected by the Department. In addition, the Department also sent a separate memorandum to MOFTEC concerning those producers and exporters who submitted a complete response to section A of the questionnaire and whether they may be considered for treatment other than inclusion under the rate applicable to the government-controlled enterprise. *See Memorandum from James Terpstra to Melissa Skinner*

[1] The petitioner in this case is the American Bearing Manufacturers Association (ABMA).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the factors of production (FOP) of the subject merchandise under investigation. Section E requests information on further manufacturing.

Re: Selection of Respondents (respondent selection memo), dated May 6, 2002, on file in the Central Records Unit (CRU) located in Room B–099, main Commerce Building. Also *see* the "Margins for Exporters Whose Responses Were Not Analyzed" section below.

On May 7, May 13, and May 14, 2002, we received comments from respondents and petitioner urging the Department to select additional mandatory respondents. Based on these comments, on May 15, 2002, the Department added an additional mandatory respondent, Ningbo Cixing Group Corp. and its U.S. affiliate, CW Bearings USA, Inc. (collectively, "Cixing").

On April 22, April 23, and May 28, 2002, the Department received scope inquiries from the following parties: Caterpillar Inc., Nippon Pillow Block Sales Company Limited, Nippon Pillow Block Manufacturing Company Limited and FYH Bearing Units USA, Inc. (collectively, "NPBS"), the ABMA, and Wanxiang. *See* the "Scope Clarification" section below.

The Department received responses to sections A, C, D, and E, where applicable, from the three mandatory respondents on June 13, July 11, and July 15, 2002. In addition, 45 exporters submitted section A responses. The Department issued supplemental questionnaires to all three mandatory respondents and the 45 exporters that submitted section A responses in July and August, where appropriate. The supplemental responses were received in August and September.

On July 16, 2002, the petitioner made a request pursuant to 19 CFR 351.205(e) for a 50–day postponement of the preliminary determination, pursuant to section 733(c)(1)(A) of the Act. On July 26, 2002, pursuant to section 733(c)(1)(B) of the Act, the Department postponed the preliminary determination of this investigation 50 days, from August 12, 2002, to October 1, 2002. *See Certain Ball Bearings and Parts Thereof from the People's Republic of China: Notice of Extension of Preliminary Antidumping Duty Determination*, 67 FR 48878 (July 26, 2002).

On September 13, 2002, we received untimely section A responses from Fuzhou YongShunDa Machinery & Electrical Co. Ltd., Fuzhou Yongdong Xinxing Machinery & Hardware Co. Ltd., and Fuzhou Fujia Machinery & Electrical Mfg. Co. Ltd. Due to the fact that these responses were submitted in an untimely manner, we returned them to the submitters. *See* September 30, 2002, letter from James Terpstra to Fuzhou YongShunDa, et. al.

The petitioner and the three mandatory respondents submitted their comments on factors of production in September 2002.

Postponement of the Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months.

On September 20, 2002, the three mandatory respondents requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. Accordingly, since we have made an affirmative preliminary determination, and the parties requesting postponement account for a significant proportion of exports of the subject merchandise, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination and are extending the provisional measures accordingly.

Scope of Investigation

The scope of the investigation includes all antifriction bearings, regardless of size, precision grade or use, that employ balls as the rolling element (whether ground or unground) and parts thereof (inner ring, outer ring, cage, balls, seals, shields, *etc.*) that are produced in China. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts and parts thereof, ball bearings (including thrust, angular contact, and radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. The scope includes ball bearing type pillow blocks and parts thereof; and wheel hub units incorporating balls as the rolling element. With regard to finished parts, all such parts are included in the scope of the petition. With regard to unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by the petition are those that will be subject to heat treatment after importation.

Imports of these products are classified under the following Harmonized Tariff Schedules of the United States (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.93.30, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4000, 8708.99.4960, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

Specifically excluded from the scope are unfinished parts that are subject to heat treatment after importation. Also excluded from the scope are cylindrical roller bearings, mounted or unmounted, and parts thereof (CRB) and spherical plain bearings, mounted and unmounted, and parts thereof (SPB). CRB products include all antifriction bearings that employ cylindrical rollers as the rolling element. SPB products include all spherical plain bearings that employ a spherically shaped sliding element and include spherical plain rod ends. Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (Customs) purposes, the written description of the merchandise under investigation is dispositive.

Scope Clarification

On April 22, 2002, Caterpillar Inc. requested that XLS (English) series ball bearings and pin-lock slot XLS (English) series ball bearings having an inside diameter of between 1 3/4 inches and 5 1/2 inches be excluded from the scope of the investigation. Caterpillar Inc. also claimed that there is an insufficient domestic supply of XLS series ball bearings and parts. On May 6, 2002, the petitioner responded that these bearings are within the scope. Petitioner also contends that at least four domestic producers manufacture and sell XLS series ball bearings in the U.S. market, and, therefore, there is not an insufficient domestic supply of XLS series ball bearings.

On April 23, 2002, NPBS requested that the Department clarify whether split pillow block housings and non-split pillow block housings, which are imported separately from ball bearings, are excluded from the scope of the investigation. On May 6, 2002, petitioner stated that non-split pillow blocks, even when imported separately, are used primarily as a housing for ball bearings, and are rightly included in the scope.

On May 28, 2002, Wanxiang, one of the three mandatory respondents, requested guidance as to whether the language in the scope stating that the investigation covers "wheel hub units incorporating balls as the rolling element" also includes wheel hub units that do not contain ball bearings or any other type of rolling element at the time of importation. Wanxiang pointed out that every HTSUS subheading in the scope as applicable to subject wheel hub units describes articles either directly as "bearings" or indirectly as "incorporating ball bearings." In addition, Wanxiang claimed that the empty wheel hub units that it produces are designed to be used with either ball bearings or tapered roller bearings. On May 29 and May 30, 2002, petitioner stated that both complete wheel hub units incorporating balls as the rolling element and empty wheel hub units capable of incorporating balls as the rolling elements are covered by the investigation.

The scope of the investigation includes all antifriction bearings, regardless of size, precision grade or use. Therefore, XLS (English) series ball bearings and pin-lock slot XLS (English) series ball bearings are clearly within the scope.

With respect to NPBS's request for clarification of whether split pillow block housings and non-split pillow block housings that are imported separately from ball bearings are excluded from the scope of this investigation, the Department previously determined in *Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Republic of Germany*, 54 FR 18992, 19015 (May 3, 1989) (*Antifriction Bearings*), to exclude split pillow block housings (not containing antifriction bearings) from the order. The Department stated that pillow block housings were not mentioned in the petition, and based on the factual information available, determined that pillow block housings are not bearings, do not contain bearings, and are not parts or subassemblies of bearings. *See id.* Therefore, consistent with that determination and the facts of this investigation, we find that split pillow block housings (not containing antifriction bearings) are excluded from the scope of this investigation. However, the scope of the current investigation includes ball bearing type pillow blocks and parts thereof. Thus, non-split pillow blocks, even when imported separately, are included in the scope.

The scope covers all antifriction bearings that employ balls as the rolling element (whether ground or unground) and parts thereof. Wheel hub units are designed to use either ball bearings or tapered roller bearings. Empty wheel units that are designed to employ balls as the rolling elements have characteristic raceways that are dedicated to ball bearings. Therefore, for purposes of the preliminary determination, empty wheel hub units are included in the scope. However, we will address this issue further to determine whether the empty wheel hub units produced by Wanxiang use balls or tapered roller bearings interchangeably.

Period of Investigation

The POI is July 1, 2001, through December 31, 2001. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (i.e., February 2002). See 19 CFR 351.204(b)(1).

Respondent Selection

The Department determined that the resources available to it for this investigation limited its ability to analyze any more than the responses of the three largest exporters/producers of the subject merchandise in this investigation. Based on mini-section A questionnaire responses, the Department originally selected the two largest exporters, Peer and Wanxiang, to be the mandatory respondents in this proceeding. (*See* the respondent selection memo.) On May 7, May 13, and May 14, 2002, we received comments from respondents and petitioner urging the Department to select additional mandatory respondents. Subsequently, based on these comments, on May 15, 2002, the Department added a third mandatory respondent, Cixing. (See May 15, 2002, Letter to Cixing from James Terpstra on file in the CRU.)

Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy (NME) country in previous antidumping investigations (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000); and the *Notice of Final Determination of Sales at Less Than Fair Value Certain: Hot-Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 49632 (September 28, 2001)). In accordance with section 771(18)(C) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked. No party to this investigation has sought revocation of the NME status of the PRC. Therefore, pursuant to section 771(18)(C) of the Act, the Department will continue to treat the PRC as an NME country.

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. *See* the "Surrogate Country" section below. The sources of individual factor prices are discussed under the "Normal Value" section below.

Separate Rates

In an NME proceeding, the Department presumes that all companies within the country are subject to governmental control and should be assigned a single antidumping duty rate unless the respondent demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996). Peer, Wanxiang, Cixing, and the cooperative nonselected exporters named in the "Suspension of Liquidation" section below have provided the requested company-specific separate rates information and have indicated that there is no element of government ownership or control over their operations. We have considered whether the mandatory respondents are eligible for a separate rate as discussed below.

The Department's separate-rates test is not concerned, in general, with macroeconomic/ border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over the export-related investment, pricing, and output decision-making process at the individual firm level. *See Notice of*

Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey From the People's Republic of China*, 60 FR 14725, 14726 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as modified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this test, the Department assigns separate rates in NME cases only if an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over its export activities. *See Silicon Carbide* and the *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22545 (May 8, 1995) (*Furfuryl Alcohol*).

1. *Absence of De Jure Control*

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

The mandatory respondents have placed on the record a number of documents to demonstrate the absence of de jure control, including their business licenses, and the "Company Law of the People's Republic of China." Other than limiting the mandatory respondents' operations to the activities referenced in the respective licenses, we noted no restrictive stipulations associated with these licenses. In addition, in previous cases, the Department has analyzed the "Company Law of the People's Republic of China" and found that it establishes an absence of de jure control. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 54472, 54474 (October 24, 1995); and *Furfuryl Alcohol*. We have no information in this proceeding which would cause us to reconsider this determination. Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control.

2. *Absence of De Facto Control*

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. With regard to the issue of *de facto* control, the mandatory respondents have reported the following: (1) There is no government participation in setting export prices; (2) its managers have authority to bind sales contracts; (3) it does not have to notify any government authorities of its management selection; and (4) there are no restrictions on the use of its export revenue and it is responsible for financing its own losses. Additionally, the mandatory respondents' questionnaire responses do not suggest that pricing is coordinated among exporters. Furthermore, our analysis of the mandatory respondents' questionnaire responses reveals no other information indicating governmental control of export activities. Therefore, based on the information provided, we preliminarily determine that there is an absence of *de facto* government control over the mandatory respondents' export functions. Consequently, we preliminarily determine that the mandatory respondents have met the criteria for the application of a separate rate.

Margins for Cooperative Exporters Not Selected

For those exporters: (1) who submitted a timely response to Section A of the Department's questionnaire, but were not selected as mandatory respondents, and (2) for whom the Section A response indicates that the exporter is eligible for a separate rate, we assigned a weighted-average of the rates of the fully analyzed companies excluding any rates that were zero, *de minimis* or based entirely on facts available. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China*, 67 FR 36570 (May 24, 2002) (*Welded Steel Pipe*). Companies receiving this rate are identified by name in the "Suspension of Liquidation" section of this notice.

PRC-Wide Rate

In all NME cases, the Department makes a rebuttable presumption that all exporters located in the NME country comprise a single exporter under common government control, the "NME entity."

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. As explained above, MOFTEC and some exporters of the subject merchandise failed to respond to the Department's request for information. The failure of these exporters to respond also has significantly impeded this proceeding. Thus, pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have based the PRC-wide rate on adverse facts available.

In applying facts otherwise available, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, "affirmative evidence of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997). The complete failure of these exporters to respond to the Department's requests for information constitutes a failure to cooperate to the best of their ability.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act. However, section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. *See* SAA at 870. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

For our preliminary determination, as adverse facts available, we have used as the PRC-wide rate the highest recalculated dumping margin from the petition (*see* below). In the petition, for the normal value calculation, the petitioner based the factors of production, as defined by section 773(c)(3) of the Act, on the quantities of inputs used to produce four representative ball bearings (6201–2RS, 6201ZZ, 6203–2RS, and 6203ZZ) reported by one of its major member companies. The petitioner used the actual usage rates of a U.S. production facility in accordance with 19 CFR § 351.202(b)(7)(B) because information on actual usage rates of representative Chinese bearing producers is not reasonably available to the petitioner. The petitioner based export price (EP) on price lists and quotes of four representative sample products from Chinese distributors of Chinese ball bearings and U.S. distributors of Chinese ball bearings for the period October to December 2001. For further discussion, *see Initiation Notice*.

To corroborate the petitioner's EP calculations, we compared the prices in the petition to the average unit values from import statistics released by the Census Bureau. To corroborate the petitioner's NV calculations, we compared the petitioner's factor consumption and surrogate value data for those same four products to the data reported by the respondents for the most significant factors (steel, factory overhead, and selling, general, and administrative expenses), and the surrogate values for these factors in the petition to the values selected for the preliminary determination, as discussed below.

Our analysis shows that, with the exception of the steel value, the petitioner's data was either reasonably close to the data submitted by the respondents and the surrogate values chosen by the Department, or conservative. For the steel value we found that the information in the petition did not have probative value. In valuing the steel input, petitioner relied on an Indian Harmonized Tariff Schedule (HTS) category for finished bearing parts, not unfinished steel used to produce bearings parts. Petitioner alleged that this value was conservative because it was lower than the actual purchase price of these components by certain U.S. producers. In contrast to this assertion, the record of this case is abundantly clear that ball bearing manufacturers in the PRC purchase unfinished steel to make finished bearing parts. The steel value used by petitioner is significantly higher than the value we are using in our calculations. Thus, we find that this information has no probative value regarding the normal value of the subject merchandise. Therefore, we recalculated the petition margins using other steel factor values on the record. The recalculated petition margins range from 6.00 to 59.30 percent. For a more detailed discussion, see *Memorandum From David Salkeld to James Terpstra Re: Corroboration of Secondary Information* dated October 1, 2002, on file in the CRU.

Fair Value Comparison

To determine whether the mandatory respondents' sales of ball bearings to customers in the United States were made at LTFV, we compared EP or constructed export price (CEP), as appropriate, to NV, calculated using our NME methodology, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs or CEPs.

Export Price and Constructed Export Price

During the POI, of the three mandatory respondents, Peer and Wanxiang made only CEP sales, while Cixing made both EP and CEP sales during the POI. In accordance with section 772(a) of the Act, for Cixing, we used EP where the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation. As explained below, for Peer, Wanxiang, and Cixing, we used CEP, where appropriate.

We calculated EP in accordance with section 772(a) of the Act. Specifically, we calculated Cixing's EP based on the FOB, CIF, or C&F prices charged to the first unaffiliated customer for exportation to the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, brokerage and handling, international freight, domestic inland insurance, and marine insurance. Where foreign inland freight, marine insurance, domestic inland insurance, and brokerage and handling were provided by NME companies, we used surrogate values from India to value these expenses (*see* Factors of Production Valuation Memorandum dated October 1, 2002, on file in the CRU).

For Peer, Wanxiang, and Cixing, where appropriate, we used CEP in accordance with section 772(b) of the Act, because the first sales to unaffiliated purchasers were made after importation. We calculated CEP based on packed prices from the U.S. affiliate's warehouse to the first unaffiliated purchaser in the United States. We made the following deductions from the starting price (gross unit price), where applicable: discounts and rebates, foreign inland freight and brokerage and handling, international (ocean) freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, and U.S. movement expenses. In accordance with section 772(d)(1) of the Act, we deducted from CEP direct and indirect selling expenses (*i.e.*, commissions, credit and indirect selling expenses) that were associated with the respondents' economic activities occurring in the United States. For Peer, we also deducted further manufacturing and re-packing costs. See sections 772(c) and (d) of the Act.

To calculate foreign inland freight expenses, we multiplied the reported distance from the plant to the port of exit by a surrogate rail or truck rate from India. Because U.S. customs duty, brokerage and handling expenses, credit expenses, and selling expenses are

market-economy costs incurred in U.S. dollars, we used actual costs rather than surrogate values for these deductions to gross unit price.

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires that the Department value the NME producers' factors of production, to the extent possible, on the prices or costs of factors of production in one or more market economy countries that are 1) at a level of economic development comparable to that of the NME country; and 2) significant producers of comparable merchandise. The Department's Office of Policy initially identified five countries that are at a level of economic development comparable to the PRC in terms of per capita GNP and the national distribution of labor. Those countries are India, Pakistan, Indonesia, Sri Lanka and the Philippines (*see* the June 13, 2002, memorandum from Jeffrey May to Melissa Skinner). According to the information available on the record, we have determined that India meets the statutory requirements for an appropriate surrogate country for the PRC and is the largest producer, among the countries listed above, of like merchandise. In addition, for most factors of production, India has quantifiable, contemporaneous, and publicly available data. Therefore, for purposes of the preliminary determination, we have selected India as the surrogate country, based on the quality and contemporaneity of the currently available data. Accordingly, we have calculated NV using Indian values for the PRC producers' factors of production, except, as noted below, in certain instances where an input was sourced from a market economy and paid for in a market economy currency. We have obtained and relied upon publicly available information wherever possible.

2. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the companies in the PRC who produced ball bearings for the exporters who sold ball bearings to the United States during the POI. Factors of production include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. *See* section 773(c) of the Act. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indian values, where possible.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the surrogate values. For those values not contemporaneous with the POI, we adjusted the values to account for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics*. As appropriate, we included freight costs in input prices to make them delivered prices. Specifically, we added to the surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997).

We valued material inputs and packing materials (including steel bar, steel tube, steel balls, steel sheets, steel plates, grease, paper boxes, plastic bags, tape, and pallets) using values from the appropriate Harmonized Tariff Schedule (HTS) number for contemporaneous Indian imports statistics reported in the Indian Import Statistics. In accordance with the Department's practice, we used export values to calculate NV when import values for like products were not available. *See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 64 FR 69503 (December 13, 1999).

Certain producers in this investigation purchased material inputs from market economy suppliers and paid for the inputs with market economy currency. In accordance with 19 CFR 351.408(c)(1), we generally valued these material inputs using the actual price reported. However, consistent with Department practice concerning subsidized inputs, we have not used the actual prices paid by PRC producers of material inputs which we have reason to believe or suspect are subsidized. Instead, we have relied on surrogate values. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China: Preliminary Results of 2000–2001 Administrative Review, Partial Rescission of Review, and Notice of Intent to Revoke Order In Part (TRB Review)*, 67 FR 45451, 45454 (July 9, 2002). See also Calculation Memoranda for Peer, Wanxiang, and Cixing, on file in the CRU, dated October 1, 2002, for further discussion of company-specific issues.

As appropriate, for these imported materials, we calculated PRC brokerage and inland freight from the port to the factory using surrogate rates from India. We valued the remaining factors using publicly available information from India. Where a producer did not report the distance between the material supplier and the factory, as facts available, we used either the distance to the nearest seaport (if an import value was used as the surrogate value for the factor) or the farthest distance reported for a supplier, as facts available.

In addition, certain producers used market economy carriers to ship subject merchandise to the United States. Because the majority of their shipments were provided by market economy entities and the entities were paid in market economy currencies, we applied the market economy price for these transactions to calculate all ocean freight expenses, in accordance with 19 CFR 351.408(a)(1).

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value electricity, we calculated our surrogate value for electricity based on electricity rate data from the *Energy Data Directory & Yearbook (1999/2000)* published by Tata Energy Research Institute.

To value truck freight rates, we used a collection of seventeen November 1999 price quotes from six different Indian trucking companies which were obtained by the Department in India and used in the *Final Determination of Sales at Less than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 33805 (May 25, 2000). We valued rail freight using the average of two November 1999 rail freight price quotes for domestic bearing quality steel shipments within India. These quotes were obtained by the Department from two Indian rail freight transporters. *See id. See also, TRB Review*, 67 FR at 45454–5.

We based our calculation of selling, general and administrative (SG&A) expenses, overhead, and profit on the 2001 annual reports of five Indian bearings producers.

For a complete analysis of surrogate values used in the preliminary determination, *see* the Factors of Production Valuation Memorandum.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service (Customs Service) to suspend liquidation of all entries of ball bearings from the PRC, that are entered, or withdrawn from warehouse, for consumption, on or after the date on which this notice is published in the **Federal Register**. In addition, we are instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

We determine that the following percentage weighted-average margins exist for the POI:

Manufacturer/exporter	Weighted-Average Margin (percent)
Xinchang Peer Bearing Company Ltd	2.39
Wanxiang Group Corporation	39.93
CW Bearings USA, Inc. and Ningbo Cixing Group Corp.	32.69
B&R Bearing Co.	22.99
Changshan Import & Export Company, Ltd.	22.99
Changzhou Daya Import and Export Corporation Limited	22.99
China Huanchi Bearing Group Corp. AND Ningbo Huanchi Import & Export Co. Ltd.	22.99
China National Automobile Industry Guizhou Import & Export Corp.	22.99
China National Machinery & Equipment Import & Export Wuxi Co., Ltd.	22.99
Chongqing Changjiang Bearing Industrial Corporation	22.99
CSC Bearing Company Limited	22.99
Dongguan TR Bearing Corporation, Ltd.	22.99
Fujian Nanan Fushan Hardware Machinery Electric Co., Ltd.	22.99
Guangdong Agricultural Machinery Import & Export Company	22.99
Harbin Bearing Group AND Heilongjiang Machinery and Equipment Import and Export Corporation	22.99
Jiangsu CTD Imports & Exports Co., Ltd.	22.99
Jiangsu General Ball & Roller Co., Ltd.	22.99
Jiangsu Hongye Intl. Group Industrial Development Co., Ltd.	22.99
Jinrun Group Ltd. Haining	22.99
Ningbo Cixi Import Export Co.	22.99
Ningbo Economic and Technological Development Zone AND Tiansheng Bearing Co. Ltd AND TSB Group USA Inc. AND TSB Bearing Group America, Co. (TSB Group)	22.99
Ningbo General Bearing Co., Ltd.	22.99
Ningbo Jinpeng Bearing Co., Ltd. AND Ningbo Mikasa Bearing Co. Ltd. AND Ningbo Cizhuang Bearing Co. Tahsieh Development Zone	22.99
Ningbo MOS Group Corporation, Ltd.	22.99
Norin Optech Co., Ltd.	22.99
Premier Bearing & Equipment, Ltd.	22.99
Sapporo Precision Inc./Shanghai Precision Bearing Co., Ltd.	22.99
Shaanxi Machinery & Equipment Import & Export Corp.	22.99
Shandong Machinery Import & Export Group Corp.	22.99
Shanghai Bearing (Group) Company Limited	22.99
Shanghai Foreign Service and Economic Cooperation Co. Ltd.	22.99
Shanghai General Pudong Bearing Co., Ltd.	22.99
Shanghai Hydraulics & Pneumatics Corp.	22.99
Shanghai Nanshi Foreign Economic Cooperation & Trading Co., Ltd.	22.99
Shanghai SNZ Bearings Co., Ltd.	22.99
Shanghai Zhong Ding I/E Trading Co., Ltd. AND Shanghai Li Chen Bearings	22.99
Shaoguan Southeast Bearing Co. Ltd.	22.99
Sin NanHwa Bearings Co. Ltd. AND Sin NanHwa Co. Ltd.	22.99
TC Bearing Manufacturing Co. Ltd.	22.99
Wafangdian Bearing Company Ltd.	22.99
Wholelucks Industrial Limited	22.99
Wuxi New-way Machinery Co., Ltd.	22.99
Zhejiang Rolling Bearing Co. Ltd.	22.99
Zhejiang Shenlong Bearing Co. Ltd.	22.99
Zhejiang Wanbang Industrial Co., Ltd.	22.99
Zhejiang Xinchang Xinzhou Industrial Co. Ltd.	22.99
Zhejiang Xinchun Bearing Co. Ltd.	22.99
Zhejiang ZITIC Import & Export Co. Ltd.	22.99
PRC-Wide Rate	59.30

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose the calculations performed in the preliminary determination to interested parties within five days of the date of publication of this notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the final determination in this proceeding is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of ball bearings from the PRC are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 351.301(c)(3)(i), interested parties may submit publicly available information to value the factors of production for purposes of the final determination

within 30 days after the date of publication of this preliminary determination. Case briefs or other written comments must be submitted to the Assistant Secretary for Import Administration no later than one week after issuance of the verification report. Rebuttal briefs, whose content is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). The Department will make its final determination no later than 135 days after the date of publication of this preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: October 1, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–26114 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On June 7, 2002, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on polyester staple fiber from Korea. The period of review is November 8, 1999, through April 30, 2001. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and an examination of our calculations, we have made certain changes for the final results. The final weighted-average dumping margins for the seven manufacturer/exporters are listed below in the "Final Results of the Review" section of this notice.

EFFECTIVE DATE: October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Jarrod Goldfeder, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1174, or (202) 482–0189, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department") regulations are to 19 CFR part 351 (April 2001).

Background

Since the publication of the preliminary results in this review (*see Certain Polyester Staple Fiber from Korea: Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 39350 (June 7, 2002) ("*Preliminary Results*")), the following events have occurred:

We invited parties to comment on the preliminary results of the review. On July 17, 2002, E.I. DuPont de Nemours, Inc., Arteva Specialties S.a.r.l., d/b/a KoSa, Wellman, Inc., and Intercontinental Polymers, Inc., (collectively "the petitioners"), and Estal Industry Co., Ltd. ("Estal"), Keon Baek Co., Ltd. ("Keon Baek"), Mijung Ind., Co., Ltd. ("Mijung"), Sam Young Synthetics Co., Ltd. ("SamYoung"), Stein Fibers, Ltd. ("Stein Fibers"), and Sunglim Co., Ltd. ("Sunglim") filed case briefs. On July 24, 2002, the above-mentioned parties and Huvis Corporation ("Huvis") filed rebuttal briefs.

Scope of the Order

For the purposes of this order, the product covered is certain polyester staple fiber ("PSF"). PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable under the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheading 5503.20.00.20 is specifically excluded from this order. Also specifically excluded from this order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from this order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65.[1] Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

Period of Review

The period of review ("POR") is November 8, 1999, through April 30, 2001.

Fair Value Comparisons

To determine whether sales of PSF from Korea to the United States were made at less than normal value, we compared export price ("EP") to normal value ("NV"). Our calculations followed the methodologies described in the *Preliminary Results*, except as noted below and in each individual respondent's calculation memorandum, dated October 7, 2002, which is on file in the Import Administration's Central Records Unit ("CRU"), Room B–099 of the main Department of Commerce building.

[1] These HTSUS numbers have been revised to reflect changes in the HTSUS numbers at the suffix level.

Export Price

We used EP as defined in section 772(a) of the Act. We calculated EP based on the same methodologies described in the Preliminary Results.

Normal Value

We used the same methodology as that described in the Preliminary Results to determine the cost of production ("COP"), whether comparison market sales were at prices below the COP, and the NV.

Changes from the Preliminary Results

In the *Preliminary Results*, we miscalculated the per-unit assessment rates of Huvis, Keon Baek, Mijung, and Sam Young. This error has been corrected in these final results. Also, for all respondents, we have added programming language to determine whether the importer-specific duty assessment rates were *de mimimis* (*i.e.*, less than 0.50 percent).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the "Issues and Decision Memorandum" from Richard W. Moreland, Deputy Assistant Secretary, Import Administration to Faryar Shirzad, Assistant Secretary, Import Administration, dated October 7, 2002 ("*Decision Memorandum*"), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/frnhome.htm*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Results of the Review

We determine that the following percentage margins exist for the period November 8, 1999, through April 30, 2001:

Exporter/manufacturer	Weighted-average margin percentage
Daeyang Industrial Co., Ltd.	1.39
Estal Industry Co., Ltd.	0.20 (de minimis)
Huvis Corporation	3.37
Keon Baek Co., Ltd.	0.31 (de minimis)
Mijung Ind., Co., Ltd.	1.00
Sam Young Synthetics Co., Ltd.	0.75
Sunglim Co., Ltd.	0.61

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting assessment rates against each of the importer's/customer's entries during the review period.

We have calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all U.S. sales examined and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* rates based on the EPs.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be those established above in the "Final Results of Review" section, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.35 percent, the "All Others" rate made effective by the less-than-fair-value investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as the only reminder to parties subject to the administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are published in accordance with sections 751(a)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: October 7, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX I

List of Comments in the Issues and Decision Memorandum

Comment 1: De Minimis Threshold
Comment 2: Treatment of Sales Above Normal Value
Comment 3: Imposition of Margins and Injury to the Domestic Injury
Comment 4: Individual-Rate Duty Drawback Scheme
Comment 5: Fixed-Rate Duty Drawback Scheme
Comment 6: Treatment of Disqualified Duty Drawback Benefits
Comment 7: Sunglim G&A and Financial Expense Ratios
Comment 8: Sunglim Foreign Movement Charges
Comment 9: Estal U.S. Credit Expense
Comment 10: Estal General and Administrative Expenses
Comment 11: Estal Financial Expenses
Comment 12: Huvis Home Market Sales in U.S. Dollars
Comment 13: Huvis Matching Criteria
Comment 14: Huvis G&A Expense Ratio
Comment 15: Mijung G&A Expenses

[FR Doc. 02–26179 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–822]

Final Results of Antidumping Administrative Review: Stainless Steel Plate in Coils From Italy

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Final Results in the Antidumping Duty Administrative Review of Stainless Steel Plate in Coils from Italy.

SUMMARY: In response to a request from ThyssenKrupp Acciai Speciali Terni S.p.A ("TKAST") and ThyssenKrupp AST USA, Inc. ("TKASTUSA"), the U.S. Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on stainless steel plate in coils ("SSPC") from Italy for the period May 1, 2000 through April 30, 2001.

We received no comments on the preliminary results, and we have made no changes in our analysis. Therefore, the final results do not differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Robert Bolling, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–1102, or 202–482–3434, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

Background

On June 10, 2002, the Department published in the **Federal Register** (67 FR 39677) the preliminary results of its administrative review of the antidumping duty order on stainless steel plate in coils from Italy ("*Preliminary Results*"). We invited parties to comment on our preliminary results of review. No party submitted comments on our preliminary results. We have now completed the administrative review in accordance with section 751(a) of the Act.

Scope of Review

For purposes of this administrative review, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this petition are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of these orders. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219110030, 7219110060, 7219120005, 7219120020, 7219120025, 7219120050, 7219120055, 7219120065, 7219120070, 7219120080, 7219310010, 7219900010, 7219900020, 7219900025, 7219900060, 7219900080, 7220110000, 7220201010, 7220201015, 7220201060, 7220201080, 7220206005, 7220206010, 7220206015, 7220206060, 7220206080, 7220900010, 7220900015, 7220900060, and 7220900080. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Analysis of Comments Received

Because no interested party submitted comments, the Department hereby adopts all findings from the *Preliminary Results* in these final results.

Final Results of Review

We determine that the following percentage margin exists for the period May 1, 2000, through April 30, 2001:

Producer/Manufacturer/Exporter	Weighted-Average Margin (percent)
TKAST	0.00

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by the entered quantity of those reviewed sales for TKAST. We will direct the Customs Service to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period (*see* 19 CFR 351.212(b)(1)).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel plate in coils from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for TKAST will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the "all others" rate, which is 48.80 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 3, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–26181 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–821]

Stainless Steel Wire Rod From Italy: Notice of Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Stainless Steel Wire Rod from Italy: notice of final results of countervailing duty administrative review.

SUMMARY: On June 7, 2002, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on stainless steel wire rod from Italy for the period January 1, 2000, through December 31, 2000.

Upon review of the comments received, the Final Results remain unchanged from the Preliminary Results. For information on the subsidy rate for the reviewed company, see the "Final Results of Review" section of this notice.

EFFECTIVE DATE: October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Farley at (202) 482–0395 or Eric B. Greynolds at (202) 482–6071, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Background

On June 7, 2002, the Department published the preliminary results of the administrative review of the countervailing duty order on stainless steel wire rod from Italy. *See Stainless Steel Wire Rod from Italy*, 67 FR 39357 (June 7, 2002) (*Preliminary Results*). This review covers one manufacturer/exporter, Acciaierie Valbruna S.p.A. This review covers the period January 1, 2000, through December 31, 2000 and 17 programs.

Scope of Review

For purposes of this administrative review, certain stainless steel wire rod (SSWR or subject merchandise) comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, and are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar. The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter. Two stainless steel grades SF20T and K–M35FL are excluded from the scope of the investigation. The percentages of chemical makeup for the excluded grades are as follows:

SF20T:	
Carbon	0.05 max
Manganese	2.00 max
Phosphorous	0.05 max
Sulfur	0.15 max
Silicon	1.00 max
Chromium	19.00/21.00
Molybdenum	1.50/2.50
Lead	added (0.10/0.30)
Tellurium	added (0.03 min)
K–M35FL:	
Carbon	0.015 max
Manganese	0.40 max
Phosphorous	0.04 max
Sulfur	0.03 max
Silicon	0.70/1.00
Chromium	12.50/14.00
Nickel	0.30 max
Lead	added (0.10/0.30)
Aluminum	0.20/0.35

The products covered by this administrative review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this review is dispositive.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum (*Decision Memorandum*), dated October 7, 2002, which is hereby adopted by this notice. A list of issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099 of the Main Commerce Building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov*, under the heading "Federal Register Notices." The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Results of Review

In accordance with 19 CFR 351.221(b)(5), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. We determine the total estimated net countervailable subsidy rate to be:

Producer/exporter	Net subsidy rate
Acciaierie Valbruna S.p.A.	0.27 percent *ad valorem*

As provided for in the *Statement of Administrative Action (SAA)* accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, vol. 1 (1994) at 939 and 19 CFR 351.106(c)(1), any rate less than 0.5 percent *ad valorem* in an administrative review is *de minimis*. Normally, we would instruct the U.S. Customs Service (Customs) to liquidate without regard to countervailing duties, shipments of the subject merchandise that are covered by this review. However, because liquidation of entries of subject merchandise manufactured or exported by Acciaierie Valbruna S.r.l and/or Acciaierie Bolzano S.r.l. is barred by the terms of an injunction, we will not issue liquidation instructions at this time. However, we will instruct Customs to set the cash deposit rate at zero for Acciaierie Valbruna S.p.A.[1] *See SAA* at 939.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g), the predecessor to 19 CFR 351.222(c)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding conducted under the URAA. *See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy*, 63 FR 40474 at 40503. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 2000 through December 31, 2000, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Assessment Rates

We will not liquidate entries covered by this review until the injunction covering this order is lifted.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1)and 777(i)(1) of the Act.

Dated: October 7, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I—Issues Discussed in the Decision Memorandum

Methodology and Background Information

I. Background Information
A. Corporate History
B. Changes in Ownership
II. Subsidies Valuation Information
A. Allocation Period
B. Benchmark for Loans and Discount Rates
III. Programs Determined to Be Countervailable
A. Government of Italy Law 451/94 Early Retirement Benefits
B. Province of Bolzano Law 25/81, Articles 13 through 15
C. European Social Fund
D. Lease of Bolzano Industrial Site to Valbruna
E. Environmental and Research and Development Assistance to Bolzano Under Law 25/81
IV. Programs Determined To Be Not Used
A. Capacity Reduction Payments under Articles 3 and 4 of Law 193/1984
B. Law 796/76 Exchange Rate Guarantees
C. Article 33 of Law 227/77, Export Credit Financing Under Law 227/77, and Decree Law 143/98
D. Grants under Laws 46/82 and 706/85
E. Law 181/89 and Law 120/89
F. Law 488/922, Legislative Decree 96/93 and Circolare 38522
G. Law 341/95 and Circolare 50175/95
H. Law 675/77
1. Interest Grants on Bank Loans
2. Mortgage Loans
3. Interest Contribution on IRI Loans
4. Personnel Retraining Aid
I. Law 394/81 Export Marketing Loans
J. Law 481/94 (and Precursors) Grants for Reduced Production
K. Law 489/94
L. Law 10/91
V. Total Ad Valorem Rate
VI. Analysis of Comments
Comment 1: Selection of Discount Rate
Comment 2: Government of Italy Law 451/94 Early Retirement Benefits
Comment 3: Attribution of Law 25/81 Grants to Valbruna
Comment 4: Bolzano Industrial Site Lease and Extraordinary Maintenance
Comment 5: Final Results Should Identify The Producer/Exporter as Acciaierie Valbruna S.p.A.

[FR Doc. 02–26178 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–DS–P

[1] We note that Acciaierie Valbruna S.r.l and Acciaierie Bolzano S.r.l. merged, effective January 1, 2000, and that the name of the merged companies was changed to Acciaierie Valbruna S.p.A. Thus, for liquidation purposes, we will refer to the companies Acciaierie Valbruna S.r.l and Acciaierie Bolzano S.r.l. Because it is possible that subject merchandise also entered the United States during the POR under the new name of the merged companies, we will also use the name Acciaierie Valbruna S.p.A. for liquidation purposes. For cash deposit purposes, we refer to Acciaierie Valbruna S.p.A.

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description of each trade mission, obtain a copy of the mission statement from the Project Officer indicated for each mission below.

Explore BC

Vancouver, Canada; November 18–19, 2002. Recruitment closes on October 18, 2002.

For further information contact: Ms. Cheryl Schell, U.S. Department of Commerce. Telephone 604–642–6679, or e-mail *Cheryl.Schell@mail.doc.gov*.

RepCom Mexico City 2002

Mexico City, Mexico, December 2–5, 2002. Recruitment closes on October 26, 2002.

For further information contact: Mr. Bryan Larson, U.S. Department of Commerce. Telephone 011–52–55–5140–2612, or e-mail *Bryan.Larson@mail.doc.gov*.

Textile and Apparel Trade Mission to South Africa

Cape Town, Durban and Johannesburg, December 8–14, 2002. Recruitment closes on November 8, 2002.

For further information contact: Ms. Pamela Kirkland, U.S. Department of Commerce.

Telephone 202–482–3587, or e-mail *Pamela.Kirkland@mail.doc.gov*.

Recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997. For further information contact Mr. Thomas Nisbet, U.S. Department of Commerce, telephone 202–482–5657, or e-mail *Tom_Nisbet@ita.doc.gov*.

Dated: October 4, 2002.

Thomas H. Nisbet,

Director, Export Promotion Coordination, Office of Planning, Coordination and Management.

[FR Doc. 02–26062 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 981028268–1287–05]

Announcing Approval of Changes to Federal Information Processing Standard (FIPS) 186–2, Digital Signature Standard

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The Secretary of Commerce has approved changes to Federal Information Processing Standard (FIPS) 186–2, Digital Signature Standard (DSS). These changes extend the transition period for the implementation of FIPS 186–2 to December 2002 and clarify that a private sector algorithm (PKCS #1, version 1.5 or higher) may be used during the extended transition period.

DATE: These changes are effective October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Barker, (301) 975–2911, National Institute of Standards and Technology, 100 Bureau Drive, STOP 8930, Gaithersburg, MD 20899–8930.

SPECIFICATIONS: These changes are available electronically from the NIST Web site at *http://csrc.nist.gov/encryption/tkdigsigs.html*.

SUPPLEMENTARY INFORMATION: In January 2000, the Secretary of Commerce approved FIPS 186–2, Digital Signature Standard (DSS), which adopts three techniques for the generation and verification of digital signatures. These are the Digital Signature Algorithm (DSA) and two techniques specified in industry standards (ANSI X9.31–1998, Digital Signatures Using Reversible Public Key Cryptography for the Financial Services Industry and ANSI 9.62, 1998, Public Key Cryptography for the Financial Services Industry: Elliptical Curve Digital Signature Algorithm). When the standard was approved, it provided for a transition period from July 2000 to July 2001 to enable federal agencies to continue to use their existing digital signature systems and to acquire additional equipment that might be needed to interoperate with these legacy digital signature systems. Several agencies notified NIST that commercial equipment implementing the digital signature algorithms adopted by FIPS 186–2 is not readily available, and that existing systems would be jeopardized by adherence to the original implementation schedule.

A notice was published in the **Federal Register** (Volume 66, Number 133, pp. 36254–5) on July 11, 2001, seeking public review or comment on proposed changes to ease transition to FIPS 186–2. The proposed changes extended the transition period for the implementation of FIPS 186–2 from July 2001 until December 2002 and specified that a private sector algorithm (PKCS #1, version 1.5 or higher) may be used during the extended transition period. The **Federal Register** notice solicited comments from the public, academic and research communities, manufacturers, voluntary standards organizations, and Federal, state, and local government organizations. In addition to being published in the **Federal Register**, the notice was posted on the NIST Web pages; information was provided about the submission of electronic comments. Responses were received from four individuals and private sector organizations. Below are three comments received; the fourth response was a "no comments" response. None of the responses received opposed the changes.

Comment: The extended transition period will give government agencies a longer period in which to implement FIPS 186–2 and insure its interoperability with existing systems. Overall, these changes to FIPS 186–2 are favorable, and should be adopted as soon as possible.

Comment: This office concurs with the document as written and has no additional comments to offer.

Comment: I support the indefinite continuation to ANSI X9.31 as a data formatting approach approved under FIPS 186. NIST is to be congratulated on its continuing interaction with the PKI industry to ensure compatible standards as reflected in the continuing support for PKCS #1.

Therefore, the Secretary of Commerce approved the changes to Federal Information Processing Standard (FIPS) 186–2, Digital Signature Standard (DSS). These changes extend the transition period for the implementation of FIPS 186–2 from July 2001 to December 2002 and clarify that a private sector algorithm (PKCS #1, version 1.5 or higher) may be used during the extended transition period.

Authority: Under Section 5131 of the Information Technology Management Reform Act of 1996 and the Computer Security Act of 1987, the Secretary of Commerce is authorized to approve standards and guidelines for the cost effective security and privacy of sensitive information processed by Federal computer systems.

E.O. 12866: This notice has been determined to be non-significant for purposes of E.O. 12866.

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in E. O. 13132.

Dated: October 8, 2002.

Arden L. Bement, Jr.,

Director.

[FR Doc. 02–26132 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advanced Technology Program Advisory Committee, National Institute of Standards and Technology (NIST), will meet Tuesday, October 29, 2002, from 8:45 a.m. to 3:45 p.m. The Advanced Technology Program Advisory Committee is composed of eight members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, education, and management consulting. The purpose of this meeting is to review and make recommendations regarding general policy for the Advanced Technology Program (ATP), its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an ATP update, a panel from the international community on technology programs, an update on the ATP competition and a presentation on emerging knowledge about ATP's impacts on firm behavior, collaboration, etc. Discussions scheduled to begin at 8:45 a.m. and to end at 9:50 a.m. and to begin at 2:30 p.m. and to end at 3:45 p.m. on October 29, 2002, on the ATP budget issues and staffing of positions will be closed. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Carolyn Peters no later than Thursday, October 24, 2002, and she will provide you with instructions for admittance. Ms. Peters's email address is *carolyn.peters@nist.gov* and her phone number is 301/975–5607.

DATES: The meeting will convene October 29, 2002, at 8:45 a.m. and will adjourn at 3:45 p.m. on October 29, 2002.

ADDRESS: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room B, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Peters, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1004, telephone number (301) 975–5607.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 3, 2002, that portions of the meeting of the Advanced Technology Program Advisory Committee which involve discussion of proposed funding of the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of staffing of positions in ATP may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: October 8, 2002.

Arden L. Bement, Jr.,

Director.

[FR Doc. 02–26131 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100902A]

Caribbean Fishery Management Council (CFMC); Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council's Habitat Advisory Panel (HAP), and the Scientific and Statistical Committee (SSC), and the Sustainable Fisheries Act (SFA) Committee will hold meetings.

DATES: The SFA Committee will meet on October 23–24, 2002, and the HAP/SSC meeting will be held on October 25, 2002.

ADDRESSES: The meetings will be held at the Embassy Suites Hotel, 8000 Tartak St., Isla Verde, Carolina, PR.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577, telephone 787–766–5926.

SUPPLEMENTARY INFORMATION: The SFA Committee, the HAP, and the SSC will meet to discuss the items contained in the following agendas:

October 23, 2002

SFA Committee Meeting

Presentation of SFA Parameter Tables

Review of Section I of the SFA Amendment Options Paper

The SFA Committee will need to review the various SFA parameter options and offer recommendations to the CFMC based on group consensus. These recommended alternatives will then be utilized to construct the table of SFA parameters for CFMC managed species.

Additionally, the SFA Committee will need to review the various alternatives regarding the aquarium trade species in the Reef Fish and Coral Fishery Management Plans, in order to produce a recommendation to the CFMC on how to pursue management of these species. This discussion will have ramifications on the generation of stock status determination criteria for these species.

Construction of SFA Parameters

The SFA Committee will need to evaluate the various biological and socio-economic data, as well as personal knowledge and experience, on all managed species and species groups, in order to recommend prudent stock status determination criteria to the CFMC. This process may, in turn drive additional management measures, based on the resulting stock status determination (i.e., approaching overfished or overfished status).

October 24, 2002

Discussion on Sections I and II of the SFA Amendment OptionsPaper

The SFA Committee will need to review the various proposed alternatives and offer recommendations to the CFMC based on group consensus that will comply with Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and National Environmental Policy Act requirements.

Discussion on Sections I and II of the SFA Amendment OptionsPaper (continued)

October 25, 2002

HAP/SSC

Call to Order

Decision Making Process for Essential Fish Habitat (EFH)

Alternatives (Decision Tree)

Mapping EFH

Fishing Impacts on EFH

Alternatives for Habitat Areas of Particular Concern (HAPC)

Environmental Consequences

Other Business

The SFA Committee will meet on Wednesday, October 23, and Thursday, October 24, 2002. The HAP/SSC will convene on Friday, October 2002, from 10–4 p.m.

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Act, those issues may not be the subject of formal Council action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issue arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address this emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: October 9, 2002.

Matteo Milazzo,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–26135 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100802D]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee, Habitat Oversight Committee and Groundfish Oversight Committee in October, 2002 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be between October 28 - 30, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Wakefield, MA, Plymouth, MA and Portsmouth, NH. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

*Monday, October 28, 2002, 9:30 a.m.--*Research Steering Committee Meeting.

Location: Sheraton Colonial, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300.

The committee will hear an update on the status of current projects, recent contract awards and funding for the NOAA Fisheries Cooperative Research Partners Initiative. They will also discuss development of procedures for tracking cooperative research projects, project evaluation, and the integration of results into the management process. Also on the agenda will be discussion and planning for a public process to identify habitat research priorities that could be addressed through collaborative research.

*Tuesday, October 29, 2002, 9:30--*Habitat Oversight Committee Meeting.

Location: Sheraton Inn, 180 Water Street, Plymouth, MA 02360; telephone: (508) 747–4900.

The Committee will review the analysis for the Essential Fish Habitat Sections of the Draft Supplementary Environmental Impact Statement (DSEIS) for Amendment 13. They may select preferred alternatives for Amendment 13 to be recommended to the full Council.

Wednesday, October 30, 2002, 9:30 a.m.--Groundfish Oversight Committee Meeting.

Location: Holiday Inn, 300 Woodbury Ave., Portsmouth, NH 03801; telephone: (603) 431–8000.

The committee will meet to review the Draft Environmental Impact Statement (DEIS) for Amendment 13 to the Northeast Multispecies Fishery Management Plan. The Committee will review alternatives and analyses, provide advice on improving the DEIS, and will consider recommending a preferred alternative for Council consideration. In addition, the Committee will meet in a closed session to review applications to fill several vacant advisory panel positions.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: October 9, 2002.

Matteo J. Milazzo,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–26139 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100802E]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory bodies will hold public meetings.

DATES: The Council and its advisory bodies will meet October 28, 2002 through November 1, 2002. The Council session will begin on Monday, October 28 at 3:30 p.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held at 3:30 p.m. on Monday, October 28 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Crowne Plaza Hotel, 1221 Chess Drive, Foster City, CA 94404; telephone: 650–570–5700.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: 503–820–2280 or 866–806–7204.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order. All items listed are subject to potential Council action.

A. Call to Order

1. Opening Remarks, Introductions
2. Council Member Appointments
3. Roll Call
4. Executive Director's Report
5. Approve Agenda
6. Approve April 2002 Minutes

B. Habitat Issues

Essential Fish Habitat (EFH) Issues

C. Salmon Management

1. NMFS Report on Salmon Management
2. Update of Ongoing Fisheries
3. Salmon Management 2003 Option Hearing Sites and Preseason Schedule
4. Scientific and Statistical Committee (SSC) Methodology Review Report

D. Highly Migratory Species (HMS) Management

1. NMFS Report on HMS Management
2. Adoption of Final HMS Fishery Management Plan (FMP)

E. Pacific Halibut Management

Proposed Changes to the 2003 Catch Sharing Plan and Annual Regulations

F. Coastal Pelagic Species (CPS) Management

1. NMFS Report on CPS Management
2. Pacific Sardine Stock Assessment and Harvest Guideline for 2003
3. Consideration of Long-Term Sardine Harvest Allocation

G. Groundfish Management

4. NMFS Report on Groundfish Management
5. Status of Fisheries and Inseason Adjustments
6. Status of Vessel Monitoring System (VMS) Plans
7. Stock Assessment Review (STAR) Panel Process
8. Amendment 17 - Multi-Year Management
9. Exempted Fishing Permits (EFPs): Update and New Proposals
10. Groundfish FMP Programmatic Environmental Impact Statement (EIS)
11. Groundfish FMP EFH EIS
12. Groundfish Strategic Plan Two-Year Review
13. Further Refinement of Amendment 16 - Rebuilding Plans
14. Planning for Bycatch and B0/Maximum Sustainable Yield Workshops

H. Administrative and Other Matters

1. Legislative Matters
2. Financial Matters
3. Appointments to Advisory Bodies, Standing Committees, and Other Forums
4. Election of Council Chair and Vice Chair
5. Council Staff Work Load Priorities
6. March 2003 Council Meeting Draft Agenda

SCHEDULE OF ANCILLARY MEETINGS

MONDAY, OCTOBER 28, 2002

Council Secretariat 8 a.m.
Highly Migratory Species Plan Development Team 8 a.m.
Scientific and Statistical Committee 8 a.m.
Habitat Committee 10 a.m.
Legislative Committee 10 a.m.
Groundfish Advisory Subpanel 1 p.m.
Groundfish Management Team 1 p.m.
Budget Committee 1 p.m.

TUESDAY, OCTOBER 29, 2002

Council Secretariat 7 a.m.
California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Scientific and Statistical Committee 8 a.m.
STAR Panel Debriefing (GAP/GMT/SSC) 10 a.m.
Enforcement Consultants Immediately following Council Session

WEDNESDAY, OCTOBER 30, 2002

Council Secretariat 7 a.m.
California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team As necessary
Enforcement Consultants As necessary

THURSDAY, OCTOBER 31, 2002

Council Secretariat 7 a.m.
California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.- noon
Groundfish Management Team As necessary
Enforcement Consultants As necessary

FRIDAY, NOVEMBER 1, 2002

Council Secretariat 7 a.m.
California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503)820–2280 or (866)806–7204 at least 5 days prior to the meeting date.

Dated: October 9, 2002.

Matteo J. Milazzo,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–26138 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Burma (Myanmar)

October 8, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Burma (Myanmar) and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2003 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 8, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Burma (Myanmar) and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	102,781 dozen.
342/642	27,761 dozen.
347/348	143,995 dozen.
351/651	43,630 dozen.
448	2,533 dozen.
647/648	26,342 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 23, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–26149 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Arab Republic of Egypt

October 8, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Egypt and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 8, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Egypt and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Fabric Group	
218–220, 224–227, 313–O [1], 314–O [2], 315–O [3], 317–O [4] and 326–O [5], as a group	182,709,318 square meters.
Sublevels within Fabric Group	
218	2,508,000 square meters.
219	42,987,425 square meters.
220	42,987,425 square meters.
224	42,987,425 square meters.
225	42,987,425 square meters.
226	42,987,425 square meters.
227	42,987,425 square meters.
313–O	78,937,229 square meters.
314–O	42,987,425 square meters.
315–O	50,480,520 square meters.
317–O	42,987,425 square meters.
326–O	2,508,000 square meters.
Levels not in a group	
300/301	17,071,349 kilograms of which not more than 5,354,175 kilograms shall be in Category 301.
338/339	4,717,195 dozen.
340/640	1,954,268 dozen.
369–S [6]	2,474,710 kilograms.
448	20,894 dozen.

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 23, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–26148 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Fiji

October 8, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limit for textile products, produced or manufactured in Fiji and exported during the period January 1, 2003 through December 31, 2003 is based on a limit notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limit for the 2003 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 8, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 338/339/638/639, produced or manufactured in Fiji and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of 2,113,052 dozen of which not more than 1,760,880 dozen shall be in Categories 338–S/339–S/638–S/639–S [1].

The limit set forth above is subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the

[1] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers in Category 638 except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers in Category 639 except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

applicable category limit for that year (see directive dated November 14, 2001) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–26147 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

October 8, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Indonesia and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC), a Memorandum of Understanding (MOU) dated November 1, 1996 between the Governments of the United States and Indonesia, and an exchange of notes dated December 10, 1997 and January 9, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 8, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Uruguay Round Agreement on Textiles and Clothing (ATC); a Memorandum of Understanding dated November 1, 1996 between the Governments of the United States and Indonesia, and an exchange of notes dated December 10, 1997 and January 9, 1998, you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Indonesia and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
200	1,330,628 kilograms.
219	14,781,156 square meters.
225	10,350,643 square meters.
300/301	6,325,394 kilograms.
313–O [1]	26,820,249 square meters.
314–O [2]	93,649,603 square meters.
315–O [3]	42,552,636 square meters.
317–O [4]/617/326–O [5]	41,099,712 square meters of which not more than 6,072,930 square meters shall be in Category 326–O.
331pt./631pt. [6]	1,666,284 dozen pairs.
334/335	345,858 dozen.
336/636	966,065 dozen.
338/339	1,867,716 dozen.
340/640	2,300,141 dozen.
341	1,383,424 dozen.
342/642	575,035 dozen.
345	668,871 dozen.
347/348	2,530,157 dozen.
351/651	747,545 dozen.
359–C/659–C [7]	2,185,136 kilograms.
359–S/659–S [8]	2,300,141 kilograms.
360	2,047,118 numbers.
361	2,047,118 numbers.
369–S [9]	1,411,928 kilograms.
433	12,449 dozen.
443	92,357 numbers.
445/446	61,888 dozen.

Category	Twelve-month restraint limit
447	18,473 dozen.
448	22,746 dozen.
604–A [10]	1,098,159 kilograms.
611–O [11]	6,886,642 square meters.
613/614/615	38,987,416 square meters.
618–O [12]	9,200,572 square meters.
619/620	14,260,885 square meters.
625/626/627/628/629–O [13]	43,513,216 square meters.
634/635	460,028 dozen.
638/639	2,392,151 dozen.
641	3,507,034 dozen.
643	511,782 numbers.
644	716,490 numbers.
645/646	1,210,497 dozen.
647/648	5,014,922 dozen.
Group II	
201, 218, 220, 224, 226, 227, 237, 239pt. [14], 332, 333, 352, 359–O [15], 362, 363, 369–O [16], 400, 410, 414, 434, 435, 436, 438, 440, 442, 444, 459pt. [17], 469pt. [18], 603, 604–O [19], 624, 633, 652, 659–O [20], 666pt. [21], 845, 846 and 852, as a group	138,437,136 square meters equivalent.
Subgroup in Group II	
400, 410, 414, 434, 435, 436, 438, 440, 442, 444, 459pt. and 469pt., as a group	3,259,744 square meters equivalent.
In Group II subgroup	
435	51,178 dozen.

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.
[2] Category 314–O: all HTS numbers except 5209.51.6015.
[3] Category 315–O: all HTS numbers except 5208.52.4055.
[4] Category 317–O: all HTS numbers except 5208.59.2085.
[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.
[6] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.
[7] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.
[8] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.
[9] Category 369–S: only HTS number 6307.10.2005.
[10] Category 604–A: only HTS number 5509.32.0000.
[11] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.
[12] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.
[13] Category 625/626/627/628; Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.
[14] Category 239pt.: only HTS number 6209.20.5040 (diapers).
[15] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545 (Category 359pt.).
[16] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).
[17] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.
[18] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.
[19] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).
[20] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540 (Category 659pt.).
[21] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 27, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–26146 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

October 8, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Korea and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

Category	Twelve-month restraint limit
Group I	
200–220, 224–V [1], 224–O [2], 225–227, 300–326, 360–363, 369pt., [3], 400–414, 469pt., [4], 603, 604, 611–620, 625-629, 666pt. [5], as a group	253,720,844 square meters equivalent.
Sublevels within Group I	
200	561,429 kilograms.
201	3,457,628 kilograms.
218	11,380,348 square meters.
219	10,362,594 square meters.
224–V	13,063,634 square meters.
300/301	3,817,516 kilograms.
313	62,212,568 square meters.
314	34,687,000 square meters.
315	20,582,834 square meters.
317/326	23,119,807 square meters.
363	1,332,334 numbers.
410	3,846,388 square meters.
604	491,879 kilograms.
611	4,552,140 square meters.
613/614	7,586,898 square meters.
617	6,291,576 square meters.
619/620	102,373,098 square meters.
624	11,102,779 square meters.
625/626/627/628/629	19,422,460 square meters.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 8, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group II	
237, 239pt.[6], 331pt.[7], 332–348, 351, 352, 359pt.[8], 433–438, 440–448, 459–W[9], 459pt.[10], 631pt.[11], 633–648, 651, 652, 659–H[12], 659–S[13] and 659pt.[14], as a group	578,811,286 square meters equivalent.
Sublevels within Group II	
237	75,497 dozen.
239pt.	305,271 kilograms.
333/334/335	341,411 dozen of which not more than 174,500 dozen shall be in Category 335.
336	72,150 dozen.
338/339	1,517,380 dozen.
340	789,038 dozen of which not more than 409,694 dozen shall be in Category 340–D[15].
341	205,830 dozen.
342/642	274,411 dozen.
345	147,411 dozen.
347/348	561,429 dozen.
351/651	288,275 dozen.
352	224,328 dozen.
433	14,504 dozen.
434	7,439 dozen.
435	38,152 dozen.
436	16,151 dozen.
438	64,753 dozen.
440	206,758 dozen.
442	54,579 dozen.
443	322,056 numbers.
444	59,475 numbers.
445/446	54,411 dozen.
447	92,830 dozen.
448	38,397 dozen.
459–W	103,865 kilograms.
631pt.	76,980 dozen pairs.
633/634/635	1,391,680 dozen of which not more than 157,813 dozen shall be in Category 633 and not more than 588,121 dozen shall be in Category 635.
636	305,832 dozen.
638/639	5,418,295 dozen.
640–D[16]	3,264,604 dozen.
640–O[17]	2,720,502 dozen.
641	1,105,410 dozen of which not more than 41,753 dozen shall be in Category 641–Y[18].
643	818,942 numbers.
644	1,232,061 numbers.
645/646	3,739,567 dozen.
647/648	1,438,155 dozen.
659–H	1,509,879 kilograms.
659–S	225,828 kilograms.
Group III–only 852	13,315,835 square meters equivalent.
Levels not in a group	
845	2,315,056 dozen.
846	825,385 dozen.

[1] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[2] Category 224–O: all remaining HTS numbers in Category 224.

[3] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[5] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[8] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[9] Category 459–W: only HTS number 6505.90.4090.

[10] Category 459pt.: all HTS numbers except 6505.90.4090 (Category 459–W); 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[11] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[12] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[13] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[14] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[15] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[16] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[17] 640–O: only HTS numbers 6203.23.0080, 6203.29.2050, 6205.30.1000, 6205.30.2050, 6205.30.2060, 6205.30.2070, 6205.30.2080 and 6211.33.0040.

[18] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 23, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factors for the following merged categories are listed below:

Category	Conversion factor (Square meters equivalent/category unit)
333/334/335	33.75
633/634/635	34.1
638/639	12.96

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–26145 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

October 8, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended, and Memorandum of Understanding (MOU) dated July 13, 2000 between the Governments of the United States and Nepal establish limits for the period January 1, 2003 through December 31, 2003.

These limits may be revised if Nepal becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Nepal.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 8, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended; and the Memorandum of Understanding dated July 13, 2000 between the Governments of the United States and Nepal, you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Nepal and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
336/636	344,775 dozen.
340	452,694 dozen.
341	1,257,755 dozen.
342/642	395,100 dozen.
347/348	1,019,668 dozen.
363	9,220,374 numbers.
369–S[1]	1,074,647 kilograms.
640	227,839 dozen.
641	513,718 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Nepal.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 23, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such

products shall be charged to the limits set forth in this directive.

These limits may be revised if Nepal becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Nepal.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–26144 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

October 8, 2002

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Philippines and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 8, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
237	2,817,254 dozen.
331pt./631pt.[1]	2,508,042 dozen pairs.
333/334	441,328 dozen of which not more than 63,358 dozen shall be in Category 333.
335	287,260 dozen.
336	1,045,361 dozen.
338/339	3,010,898 dozen.
340/640	1,337,015 dozen.
341/641	1,206,487 dozen.
342/642	904,185 dozen.
345	269,264 dozen.
347/348	3,167,764 dozen.
351/651	986,193 dozen.
352/652	3,873,037 dozen.
359–C/659–C[2]	1,339,891 kilograms.
361	3,010,999 numbers.
369–S[3]	682,518 kilograms.
433	3,638 dozen.
443	43,984 numbers.
445/446	30,042 dozen.
447	8,352 dozen.
611	9,036,247 square meters.
633	58,261 dozen.
634	722,860 dozen.
635	406,743 dozen.
636	2,724,275 dozen.
638/639	3,093,012 dozen.
643	1,391,609 numbers.
645/646	1,110,327 dozen.
647/648	1,911,398 dozen.

Category	Twelve-month restraint limit
659–H[4]	2,244,769 kilograms.
Group II	
200–220, 224–227, 300–326, 332, 359pt.[5], 360, 362, 363, 369pt.[6], 400–414, 434–438, 442, 444, 448, 459pt.[7], 469pt.[8], 603, 604, 613–620, 624–629, 644, 659–O[9], 666pt.[10], 845, 846 and 852, as a group	223,178,785 square meters equivalent.
Sublevel in Group II	
604	3,192,230 kilograms.

[1] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[5] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[6] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[7] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[8] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[9] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[10] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 27, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–26143 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

October 8, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Thailand and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001).

Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 8, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended, and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Thailand and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003.

Category	Twelve-month restraint limit
Level not in a Group	
239pt.[1]	2,883,381 kilograms.
Levels in Group I	
200	1,881,872 kilograms.
218	28,031,246 square meters.
219	10,036,662 square meters.
300	7,527,496 kilograms.
301–P[2]	7,527,496 kilograms.
301–O[3]	1,505,502 kilograms.
313–O[4]	35,128,315 square meters.
314–O[5]	80,293,288 square meters.
315–O[6]	50,183,304 square meters.
317–O/326–O[7]	21,067,437 square meters.
363	32,619,148 numbers.
369–S[8]	501,833 kilograms.
604	1,174,119 kilograms of which not more than 752,749 kilograms shall be in Category 604–A[9].
611–O[10]	14,061,435 square meters.
613/614/615	75,842,768 square meters of which not more than 44,161,309 square meters shall be in Categories 613/615 and not more than 44,161,309 square meters shall be in Category 614.
617	27,387,665 square meters.
619	11,291,242 square meters.
620	11,291,242 square meters.
625/626/627/628/629	22,120,806 square meters of which not more than 17,564,156 square meters shall be in Category 625.
Group II	
237, 331pt.[11], 332–348, 351, 352, 359pt.[12], 433–438, 440, 442–448, 459pt.[13], 631pt.[14], 633–648, 651, 652, 659–H[15], 659pt.[16], 845, 846 and 852, as a group	430,013,156 square meters equivalent.
Sublevels in Group II	
331pt./631pt.	824,914 dozen pairs.
334/634	978,575 dozen.
335/635	758,632 dozen.
336/636	501,833 dozen.
338/339	2,606,139 dozen.
340	451,651 dozen.
341/641	1,066,396 dozen.
342/642	928,392 dozen.
345	476,742 dozen.
347/348	1,280,778 dozen.
351/651	376,374 dozen.
659–H	2,006,898 kilograms.
433	10,442 dozen.
434	12,890 dozen.
435	58,571 dozen.
438	19,334 dozen.
442	22,452 dozen.
638/639	3,071,521 dozen.
640	828,022 dozen.
645/646	501,833 dozen.
647/648	1,786,525 dozen.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 301–P: only HTS numbers 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000 and 5206.45.0000.

[3] Category 301–O: only HTS numbers 5205.21.0020, 5205.21.0090, 5205.22.0020, 5205.22.0090, 5205.23.0020, 5205.23.0090, 5205.24.0020, 5205.24.0090, 5205.26.0020, 5205.26.0090, 5205.27.0020, 5205.27.0090, 5205.28.0020, 5205.28.0090, 5205.41.0020, 5205.41.0090, 5205.42.0020, 5205.42.0090, 5205.43.0020, 5205.43.0090, 5205.44.0020, 5205.44.0090, 5205.46.0020, 5205.46.0090, 5205.47.0020, 5205.47.0090, 5205.48.0020 and 5205.48.0090.

[4] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[5] Category 314–O: all HTS numbers except 5209.51.6015.

[6] Category 315–O: all HTS numbers except 5208.52.4055.

[7] Category 317–O: all HTS numbers except 5208.59.2085; Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[8] Category 369–S: only HTS number 6307.10.2005.

[9] Category 604–A: only HTS number 5509.32.0000.

[10] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[11] Categories 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[12] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[13] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[14] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[15] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[16] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directives dated Nobember 27, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factors for Category 659–H and merged Categories 638/639 are 11.5 and 12.96, respectively.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–26142 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in the Republic of Uruguay

Octobert 8, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Uruguay and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 8, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Uruguay and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
334	255,440 dozen.
335	219,897 dozen.
410	3,168,972 square meters of which not more than 1,810,843 square meters shall be in Category 410–A[1] and not more than 2,917,464 square meters shall be in Category 410–B[2].
433	18,923 dozen.
434	28,230 dozen.
435	57,013 dozen.
442	40,331 dozen.

[1] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[2] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.3030, 5112.11.3060, 5112.11.6030, 5112.11.6060, 5112.19.6010, 5112.19.6020, 5112.19.6030, 5112.19.6040, 5112.19.6050, 5112.19.6060, 5112.19.9510, 5112.19.9520, 5112.19.9530, 5112.19.9540, 5112.19.9550, 5112.19.9560, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 27, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–26141 Filed 10–11–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 14, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the e-mail address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing

proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 8, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Annual Progress Reporting Form for the American Indian Vocational Rehabilitation Services (AIVRS) Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 66.

Burden Hours: 1,056.

Abstract: This data collection will be conducted annually to obtain program and performance information from the AIVRS grantees on their project activities. The information collected will assist federal Rehabilitation Services Administration (RSA) staff in responding to the Government Performance and Results Act (GPRA). Data will primarily be collected through an Internet form.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2121. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the e-mail address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–26115 Filed 10–11–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–086]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate

October 8, 2002.

Take notice that on October 4, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective November 1, 2002:

Original Sheet No. 655
Sheet Nos. 656–699

CEGT states that the purpose of this filing is to reflect the implementation of a new negotiated rate contract.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document.

For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26092 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–087]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

October 8, 2002.

Take notice that on October 4, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective November 4, 2002:

Third Revised Sheet No. 240
Original Sheet No. 653
Sheet Nos. 655–699
Original Sheet No. 461
Original Sheet No. 652
Original Sheet No. 654
Sheet Nos. 462–466;

CEGT states that the purpose of this filing is to describe the provisions of new negotiated rate transactions and also to submit one of the agreements as a non-conforming service agreement along with revised tariff sheets to reference such agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Dated:

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26093 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–402–001]

Clear Creek Storage Company, L.L.C.; Notice of Compliance Filing

October 8, 2002.

Take notice that on October 4, 2002, Clear Creek Storage Company, L.L.C., (Clear Creek) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of October 1, 2002:

Substitute Third Revised Sheet No. 41
Substitute Second Revised Sheet No. 41A
Substitute First Revised Sheet No. 41B
Substitute Third Revised Sheet No. 77

Clear Creek states that the filing is being made in compliance with the Commission's September 23, 2002, letter order in Docket No. RP02–402–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26097 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–444–001]

Colorado Interstate Gas Company; Notice of Compliance Filing

October 8, 2002.

Take notice that on October 3, 2002, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, with an effective date of October 1, 2002:

Sub Fourteenth Revised Sheet No. 231

CIG states that this filing is being submitted to revise the North American Energy Standards Board (NAESB) Standards contained in CIG's Tariff in compliance with the Commission's order in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26100 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–068]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

October 8, 2002.

Take notice that on September 27, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate tranaction: PAL Service Agreement No. 73536 between Columbia Gulf Transmission Company and Occidental Energy Marketing, Inc. dated September 26, 2002.

Service is to commence October 1, 2002 and end October 31, 2002 under the agreement.

Columbia Gulf states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26094 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–485–001]

Enbridge Pipelines (AlaTenn) Inc.; Notice of Compliance Filing

October 8, 2002.

Take notice that on October 4, 2002, Enbridge Pipelines (AlaTenn) Inc. (AlaTenn) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute First Revised Sheet No. 141, Substitute First Revised Sheet No. 142, Substitute First Revised Sheet No. 195, and Substitute First Revised Sheet No. 196, with an effective date of October 1, 2002:

AlaTenn states that the filing is being made in compliance with the Commission's September 26, 2002, Order in the captioned proceeding and the Commission's Order No. 587–O.

AlaTenn states that complete copies of its filing are being mailed to all of the parties on the Commission's Official Service list for these proceedings, all of its jurisdictional customers, and applicable State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26101 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–486–001]

Enbridge Pipelines (Midla) Inc.; Notice of Compliance Filing

October 8, 2002.

Take notice that on October 4, 2002, Enbridge Pipelines (Midla) Inc. (Midla) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Substitute First Revised Sheet No. 191, and Substitute Original Sheet No. 192, with an effective date of October 1, 2002.

Midla states that the filing is being made in compliance with the Commission's September 25, 2002, Order in the captioned proceeding that accepted, subject to certain conditions, Midla's Order No. 587–O compliance filing.

Midla states that complete copies of its filing are being mailed to all of the parties on the Commission's Official Service list for these proceedings, all of its jurisdictional customers, and applicable State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26102 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–487–001]

Enbridge Pipelines (UTOS) LLC; Notice of Compliance Filing

October 8, 2002.

Take notice that on October 4, 2002, Enbridge Pipelines (UTOS) LLC (UTOS) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Second Revised Sheet No. 164, with an effective date of October 1, 2002.

UTOS states that the filing is being made in compliance with the Commission's September 26, 2002, Order in the referenced proceeding that accepted, subject to certain conditions, UTOS's Order No. 587–O compliance filing.

UTOS states that complete copies of its filing are being mailed to all of the parties on the Commission's Official Service list for these proceedings, all of its jurisdictional customers, and applicable State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26103 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–413–001]

Florida Gas Transmission Company; Notice of Compliance Filing

October 8, 2002.

Take notice that on October 4, 2002, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Sixth Revised Sheet No. 165A; Seventh Revised Sheet No. 166; and Second Revised Sheet No. 166A, to become effective October 1, 2002.

FGT states that on August.1, 2002, FGT filed revised tariff sheets to comply with Order No. 587–0. In the August 1 filing, FGT did not include tariff revisions incorporating North American Energy Standards Board (NAESB) Standards 5.3.2, 5.3.31 and 5.3.32 because revisions to incorporate these standards were included in FGT's June 17, 2002 Order No. 637 Compliance Filing as required by Commission Order dated May 16, 2002 in Docket No. RP00–387 et. al. Subsequently, on September 25, 2002, the Commission issued an order accepting FGT's August 1 filing and directing FGT to file revised tariff sheets, within 15 days of the date of the order, to incorporate NAESB Standards 5.3.2, 5.3.31 and 5.3.32. In the instant filing FGT is filing tariff revisions implementing these standards as required by the order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26099 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–12–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

October 8, 2002.

Take notice that on October 4, 2002, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–B, Sixth Revised Sheet No. 4 and Original Sheet No. 95, to be effective November 4, 2002.

KMIGT states that the purpose of this filing is to add a new Section 39 to the General Terms and Conditions (GT&C) of KMIGT's FERC Gas Tariff addressing the use of offsystem capacity acquired by KMIGT and a waiver of the Commission's "shipper must hold title" requirement.

KMIGT states that a copy of this filing has been served upon all of its customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26105 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–52–000]

MDU Resources Group, Inc.; Notice of Application

October 4, 2002.

Take notice that on September 24, 2002, MDU Resources Group, Inc. (MDU Resources) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue a combination of securities not to exceed in the aggregate of $750 million and not to exceed the following amounts:

(1) $750,000,000 of common stock;

(2) $112,500,000 worth of preferred stock;

(3) $262,000,000 worth of new mortgage bonds, senior notes, debentures, subordinated and unsubordinated debentures, or other evidences of indebtedness and/or guarantees from time to time;

(4) $262,500,000 worth or other evidences of indebtedness of stock purchase contracts, stock purchase units, and/or warrants; and

(5) $262,500,000 worth of other securities, including, without limitation, hybrid securities and any related guarantees.

MDU Resources seeks a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the

applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: October 25, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26107 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–54–000]

Midwest Independent Transmission System Operator, Inc.; Notice of Application

October 4, 2002.

Take notice that on September 24, 2002, Midwest Independent Transmission System Operator, Inc. submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to assume unsecured debt previously issued by Southwest Power Pool, Inc. in the amount of $25 million.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: October 25, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26106 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–409–001]

MIGC, Inc.; Notice of Compliance Filing

October 8, 2002.

Take notice that on October 3, 2002, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective October 1, 2002:

Sub Sixth Revised Sheet No. 51
Sub Third Revised Sheet No. 52A
Sub Third Revised Sheet No. 74
Sub Third Revised Sheet No. 90A
Sub Original Sheet No. 90B

MIGC asserts that the purpose of this filing is to comply with the Commission's Letter Order issued September 23, 2002, in Docket No. RP02–409, requiring MIGC to revise certain tariffs which were originally filed in MIGC's Order No. 587–O compliance filing in RM96–1–020.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26098 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–34–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

October 8, 2002.

Take notice that on October 2, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets, to be effective November 1, 2002, except that the requested effective date for Substitute Original Sheet No. 315A is September 16, 2002.

Natural states that the purpose of this filing is to comply with the Commission's "Order Conditionally Accepting Tariff Sheets" issued on September 13, 2002, in Docket No. GT02–34–000.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. GT02–34–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26077 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–38–001]

Northern Natural Gas Company; Notice of Compliance Filing

October 8, 2002.

Take notice that on October 4, 2002, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, with an effective date of September 23, 2002:

Substitute Fifth Revised Sheet No. 289

Northern states that the filing is being made in compliance with the Commission's order issued on September 20, 2002, in Docket No. GT02–38–000.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26078 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–30–002]

OkTex Pipeline Company; Notice of Compliance Filing

October 8, 2002.

Take notice that on October 2, 2002 OkTex Pipeline Company (OkTex), filed a tariff sheet to cancel Dynegy Midstream Pipeline, Inc. (Midstream) First Revised Volume No. 1 as instructed by the Order approving abandonment and issuing certificate in Docket Nos. CP01–30–000 dated December 1, 2000.

OkTex states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26074 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–397–004 and RP01–33–006]

Questar Pipeline Company; Notice of Compliance Filing

October 8, 2002.

Take notice that on September 26, 2002, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain tariff sheets, with an effective date of August 1, 2002.

Questar states that the filing is being made in compliance with the Commission's August 27, 2002 order in Docket No. RP00–397.

Questar states that a copy of the filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before October 15, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26095 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–17–002 and CP02–45–002]

Texas Eastern Transmission, L.P.; Notice of Compliance Filing

October 8, 2002.

Take notice that on October 1, 2002, Texas Eastern Transmission, L.P. (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, FERC Gas Tariff, Seventh Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing.

Texas Eastern states that the purpose of this filing is to comply with the Order issuing Certificates and Granting Abandonment Authority issued by the Commission on June 12, 2002 in Docket Nos. CP02–17–000 and CP02–45–000. Texas Eastern states that the tariff sheets listed in Appendix A (i) implement Texas Eastern's new Rate Schedule MLS–1 and related form of service agreement; (ii) establish maximum recourse rate and the related negotiated rate for service to New Jersey Natural Gas Company on Texas Eastern's Freehold Lateral under Rate Schedule MLS–1; (iii) establish the maximum recourse rate for service to Duke Energy Hanging Rock, LLC on Texas Eastern's Hanging Rock Lateral under Rate Schedule MLS–1; and (iv) effect the relocation of the primary delivery point to New Jersey Natural under Texas Eastern's Rate Schedules X–127 and X–129.

Texas Eastern states that copies of its filing have been mailed to all affected customer and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26075 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–472–002, and RP01–31–002]

USG Pipeline Company; Notice of Compliance Filing

October 8, 2002.

Take notice that on October 3, 2002, USG Pipeline Company (USGPC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, with an effective date of October 1, 2002:

Substitute First Revised Sheet No. 51
Substitute Original Sheet No. 51A

USGPC states that the filing is being made pursuant to the Commission's September 25, 2002, letter order in compliance with the September 25 letter order and Order Nos. 637, 587–G, and 587–L.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26096 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–11–000]

Vector Pipeline L.P.; Notice of Proposed Changes in FERC Gas Tariff

October 8, 2002.

Take notice that on October 3, 2002, Vector Pipeline L.P. (Vector), tendered for filing for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 137 and Second Revised Sheet No. 140, with an effective date of December 1, 2002.

Vector states that the revised tariff sheets are being filed in compliance with the Commission's determination not to extend after September 30, 2002 the experimental removal of the price cap on short-term capacity release transactions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26104 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–232—Oklahoma]

Grand River Dam Authority; Notice of Availability of Draft Environmental Assessment

October 8, 2002.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR part 380), Commission staff have reviewed an application for non-project use of project lands and waters at the Pensacola Project (FERC No. 1494), and have prepared a draft Environmental Assessment (EA) on the application. The project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

Specifically, the project licensee (Grand River Dam Authority) has requested Commission approval to permit Joe Harwood d/b/a Arrowhead Investment & Development Company to expand and modernize an existing marina located on the Duck Creek arm of Grand Lake, the project reservoir. In the draft EA, Commission staff have analyzed the probable environmental effects of the proposed marina improvements and have concluded that approval of the proposal, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the draft EA are available for review in Public Reference Room 2-A of the Commission's offices at 888 First Street, NE, Washington, DC. The draft EA also may be viewed on the Commission's Internet Web site (*www.ferc.gov*) using the "FERRIS" link. Additional information about the project is available from the Commission's Office of External Affairs, at (202) 502–8004 or on the Commission's Web site using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at (202) 502–8222, TTY (202) 502–8659. The FERRIS link on the FERC's Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

This notice, which was previously issued on September 19, 2002, is being reissued with a new 30-day comment period to allow for its publication in local area newspapers. Any comments on the draft EA should be filed within 30 days of the date of this notice and should be addressed to Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please reference "Pensacola Project, FERC Project No. 1494–232" on all comments. Comments may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26079 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–37–000]

Williston Basin Interstate Pipeline Company; Amended Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Grasslands Project and Request for Comments on Environmental Issues

October 8, 2002.

As previously noticed on February 5, 2002, and amended herein, the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Grasslands Project, as amended, involving construction, operation, and abandonment of facilities by Williston Basin Interstate Pipeline Company (WBI).[1] WBI proposes to construct new pipeline and appurtenant facilities in Wyoming, Montana, and North Dakota to transport 80,000 (rather than the originally proposed 120,000) thousand cubic feet per day (Mcf/d) of natural gas from the Powder River Basin to its storage facilities in Montana and to the Northern Border Pipeline Company's system in North Dakota. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

The FERC will be the lead Federal agency for the preparation of the EIS. The Miles City Field Office of the U.S. Department of the Interior's Bureau of Land Management (BLM), the Medora Ranger District of the U.S. Department of Agriculture's Forest Service (FS), and the Montana Department of Environmental Quality (MTDEQ) will be cooperating with us in the preparation of the EIS. Meetings with the MTDEQ, BLM, and FS were held January 14, 15, and 16, 2002, respectively, to discuss procedural and potential environmental issues for this project.[2] Other Federal, state, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues may also request cooperating agency status.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice WBI provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*www.ferc.gov*).

This notice is being sent to landowners of property crossed by and adjacent to both WBI's originally proposed route and their currently proposed route, as filed in WBI's September 27, 2002 Amendment filing (the EIS will evaluate both routes); tenants and lessees on affected public land; Federal, state, and local agencies; elected officials; Indian tribes that might attach religious and cultural significance to historic properties in the

[1] WBI's application was filed with the Commission under sections 7(b) and (c) of the Natural Gas Act on November 30, 2001, and amended on September 27, 2002.

[2] Summaries of these meetings have been placed in the public file in this docket.

area of potential effects; environmental and public interest groups; and local libraries and newspapers. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Summary of the Proposed Project (as Amended on September 27, 2002)

The proposed facilities consist of about 248 miles of pipeline and 5,329 (rather than the originally proposed 12,540) horsepower (hp) of compression. Additionally, WBI is seeking to abandon certain other pipeline facilities in Wyoming and Montana. WBI also has revised its construction schedule, proposing to construct the Grasslands Project in three phases. Specifically, WBI seeks authority to:

- Construct approximately 219 miles of new 16-inch-diameter pipeline from near Belle Creek, Montana, to the proposed Manning Compressor Station in Dunn County, North Dakota (no change, except for approximately 69.5 miles of proposed route realignments);
- Construct approximately 28 miles of 16-inch-diameter pipeline loop [3] adjacent to its existing Bitter Creek supply lateral pipeline in Wyoming (no change, except for approximately 2.6 miles of proposed route realignments);
- Increase the maximum allowable operating pressure (MAOP) on approximately 28 miles of its existing 8-inch-diameter Bitter Creek supply lateral pipeline in Wyoming from 1,203 pounds per square inch gauge (psig) to 1,440 psig, and abandon in place segments of existing pipe at three road crossings and replace them with heavier walled pipe (new, per amended filing);
- Increase the MAOP on approximately 40 miles of its existing 8-inch-diameter Recluse-Belle Creek supply lateral pipeline in Wyoming and Montana from 1,203 pounds per square inch gauge (psig) to 1,440 psig, and abandon in place segments of existing pipe at eight road crossings and replace them with heavier walled pipe (no change);
- Construct 4,180 hp of gas fired compression (comprised of two 2,090 hp compressors) at one new compressor station located in Dunn County, North Dakota (Manning Compressor Station), and install electric coolers rather than running the coolers off the horsepower produced at the station (previously, WBI was proposing two more additional compressor stations, each with 4,180 hp);
- Install an additional transmission compressor unit (1,200 hp) at the existing Cabin Creek Compressor Station in Fallon County, Montana (new, per amended filing);
- Construct 0.9 mile of 12-inch-diameter pipeline from the proposed mainline to the existing Cabin Creek Compressor Station in Fallon County, Montana (no change, except that this line would have connected the previously proposed Cabin Creek South Compressor Station to the existing Cabin Creek Compressor Station);
- Construct 1.0 mile of 16-inch-diameter pipeline from the proposed Manning Compressor Station to interconnect with Northern Border Pipeline Company's Compressor Station 5 in Dunn County, North Dakota (no change); and
- Construct various additional facilities, including 14 mainline valves, 4 cathodic protection units, 8 pig launchers/receivers (2 fewer than previously proposed), 5 metering stations (2 fewer than previously proposed), and 2 regulators (3 fewer than previously proposed).

WBI indicates in its September 27, 2002 Amended filing that it will no longer be necessary to build an amine treatment facility as part of its proposal.

The general location of the project facilities is shown in appendix 1.[4]

Land Requirements for Construction

Construction of WBI's proposed pipeline facilities would require about 3,124.8 acres of land including the construction right-of-way, extra workspaces, and contractor/pipe yards, and access roads. WBI proposes to use a 100-foot-wide construction right-of-way. Following construction and restoration of the right-of-way and temporary work spaces, WBI would retain a 50-foot-wide permanent pipeline right-of-way. Total land requirements for the permanent right-of-way would be about 1,526.1 acres, some of which would overlap existing rights-of-way.

WBI proposes to acquire 10 acres for the proposed Manning Compressor Station. The entire 10 acre parcel could be disturbed during construction and would be fenced following construction. WBI also will require 0.33 acre of land for the Cabin Creek tie-in in Fallon County, Montana.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [5] to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Our independent analysis of the impacts that could occur as a result of the construction and operation of the proposed project will be in the Draft EIS. The Draft EIS will be mailed to Federal, state, and local agencies, public interest groups, affected landowners and other interested individuals, Indian tribes, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received on the Draft EIS and will be used by the Commission in its decision-making process to determine whether to approve the project.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 6.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the environmental information provided by WBI and discussions with the cooperating agencies. This preliminary list of issues may be changed based on your comments and our analysis.

- Geology

—Impact on mineral resources

—Paleontological concerns

- Cultural Resources

—Impact on the proposed Custer-Sully Historic Corridor

- Soils and Vegetation
- Construction on steep slopes

—Noxious weeds

—Seed mixes for restoration

—Loss of riparian vegetation

- Water Resources and Wetlands

—Use of directional drilling

—Ensuring pipe is placed below scour depth

- Wildlife and Fisheries

—Impact on bighorn sheep habitat

—Impact on raptor nesting and roosting areas

—Impact on sage grouse habitat

- Endangered and Threatened Species

—Impact on Federally-listed species

—Impact on FS, BLM, and state sensitive species

- Socioeconomic Impacts
- Public Safety
- Cumulative Impacts

—Discussion of regional coal bed methane development

- Air Quality and Noise

—Visibility degradation

—Compressor station emissions

—Noise from compressor stations

- Alternative Routes and Site Locations

—Co-location with other pipelines may not be feasible in certain areas across Little Missouri National Grasslands

—Abandonment method for road crossings (in-place vs. removal)

- Land Use

—Use of access roads on public land

—Impact on planned residential or commercial development

—Ensuring access across the right-of-way for cattle during construction

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of OEP—Gas 1, PJ–11.1.
- Reference Docket No. CP02–37–000.
- Mail your comments so that they will be received in Washington, DC on or before November 8, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on "Login to File" and then "New User Account."

All commentors will be retained on our mailing list. If you do not want to send comments at this time but still want to stay informed and receive copies of the Draft and Final EISs, you must return the attached Information Request (appendix 3). Note: If you have already sent comments in response to the February 5, 2002 Notice, you do not need to send them again to be retained on the mailing list. If you do not send, or have not sent, comments or return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214) (see appendix 2).[6] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies to express their interest in becoming cooperating agencies for the preparation of the EIS.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *ferconlinesupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26076 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–243]

Notice of Application To Amend License and Soliciting Comments, Motions To Intervene, and Protests

October 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available

[3] A loop is a segment of pipeline that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

[4] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site at the "FERRIS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call 1–866–208–3676. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[5] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

[6] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

for public inspection. This notice was previously issued on September 12, 2002. Due to an error in publishing the notice in local area newspapers, the notice is being reissued with a new comment period.

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No.:* 1494–243.

c. *Date Filed:* July 15, 2002.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola Dam.

f. *Location:* The project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma. The proposed non-project use would be located on the Duck Creek arm of Grand Lake 'O the Cherokees, the project reservoir. The project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Mary Von Drehle or Teresa Hicks, Grand River Dam Authority, PO Box 409, Vinita, OK 74301. Phone: (918) 256–5545.

i. *FERC Contact:* Steve Naugle, *steven.naugle@ferc.gov*, 202–502–6061.

j. *Deadline for filing comments and or motions:* November 8, 2002.

All documents (original and eight copies) should be filed with Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please reference "Pensacola Project, FERC Project No.1494–243" on any comments or motions filed.

k. Description of the Application: The applicant requests Commission approval to permit the reconfiguration of docks at the Thunder Bay Marina previously approved pursuant to a Commission order dated July 25, 1996. The reconfigured docks would consist of a total of eight docks containing 209 boat slips as originally approved.

l. Locations of the Application: This filing is available for review at the Commission in the Public Reference Room or may viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Mail Stop PJ–12.1, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26080 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2067–019]

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

October 8, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No:* 2067–019.

c. *Date Filed:* September 24, 2002.

d. *Applicant:* Oakdale & San Joaquin Irrigation Districts.

e. *Name of Project:* Tulloch.

f. *Location:* The project is located on the Stanislaus River, in Calavaras Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and § § 799 and 801.

h. *Applicant Contact:* Steve Felte, General Manager, Tri-Dam Project, PO Box 1158, Pinecrest, California 95364, (209) 965–3996.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Jean Potvin at (202) 502–8928, or e-mail address: *jean.potvin@ferc.gov.*

j. *Deadline for filing comments and or motions:* November 8, 2002.

All documents (original and eight copies) should be filed with: Ms. Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2067–019) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Request:* The licensee proposes to permit those elements of a commercial business proposed by Merle & Beverly Holman (permittee) that would be located within the project boundary. The elements of the development that would occupy project lands include: a waterfront park with shade trees, lawn, picnic tables and barbeques; a 16-slip marina; a kayak & cartop boat launch pier; a rock retaining wall (existing) at elevation 511′ to elevation 518′; a 6-foot-wide sidewalk along the lakefront, at the top of the existing rock wall, at elevation 511′; and a handicap access ramp from elevation 518′ down to the docks at elevation 511′. Outside of the project boundary but in the conjunction with this development, the permitte plans on building a parking lot for 36 vehicles and a building housing an office and public restrooms.

l. *Location of the Application:* This filing is available for review at the Commission in the Public Reference Room , located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call the Helpline at (202) 502–8222 or contact *ferconlinesupport@ferc.gov.* For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26081 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Project No. 3218–040, et al.]

Federal Energy Regulatory Commission

October 8, 2002.

Notice of Extension of Time to Complete Project Construction and Soliciting Comments

Take notice that the following request for extension of time has been filed with the Commission and is available for public inspection:

a. *Application Type:* Extension of Time to Complete Project Construction.

b. *Project Nos:* 3218–040, 6901–048, and 6902–061.

c. *Date Filed:* June 21, 2002 and Supplemented on September 19, 2002.

d. *Applicants:* City of Orrville, Ohio (FERC Project No. 3218) and the City of New Martinsville, West Virginia (FERC Project Nos. 6901, and 6902).

e. *Project Names:* Pike Island Hydroelectric Project, FERC No. 3218, New Cumberland Hydroelectric Project, FERC No. 6901 and Willow Island Hydroelectric Project, FERC No. 6902.

f. *Locations of Projects:* FERC Project No. 3218 is located at the U.S. Army Corps of Engineers' (Corps) Pike Island Locks and Dam on the Ohio River in Ohio County, West Virginia, and Belmont County, Ohio. FERC Project No. 6901 is located at the Corps' New Cumberland Lock and Dam on the Ohio River in Hancock County, West Virginia. FERC Project No. 6902 is located at the Corps' Willow Island Lock and Dam on the Ohio River in Pleasants County, West Virginia.

g. *Filed Pursuant to:* 18 CFR 375.308 (c)(4)

h. *Applicant Contact:* Mr. E. J. Garceau, Bedford Energy Associates LLC, 214 North Amherst Road, Bedford, New Hampshire 03110, (603) 472–5731.

i. *FERC Contact:* Any questions on this notice should be directed to Mr. Lynn R. Miles at (202) 502–8763.

j. *Deadline for filing comments, protests, and motions to intervene:* November 8, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project numbers (P–3218–040, P–6901–048, and P–6902–061) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Proposal:* The Cities jointly and severally request to extend the deadlines for completion of their respective projects to September 23, 2006.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the

filing refers. An additional copy must be sent to the Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26082 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

October 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 7725–005.

c. *Date Filed:* September 27, 2002.

d. *Applicant:* Barton Village Inc.

e. *Name of Project:* Barton Village Hydroelectric Project.

f. *Location:* On the Clyde River in the Town of Charleston, Vermont.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. *Applicant Contact:* Denis H. Poirier, Village Supervisor, Barton Village Inc., 17 Village Square, PO Box 519, Barton, Vermont 05822. (802) 525–4747.

i. *FERC Contact:* Kenneth Hogan at (202) 502–8434 or *kenneth.hogan@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, state local and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preperation of the environmental document. Agencies who would like to request cooperating status should follow instructions for filing comments described in item k below.

k. *Deadline for filing additional study requests:* December 9, 2002.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

l. This application is not ready for environmental analysis at this time.

m. *The existing Barton Village Hydroelectric Project consists of:* (1) A 77-foot-long, 24-foot-high masonry and concrete gravity dam; (2) 1.5 foot high flashboards extending 57 feet across a concrete spillway; (3) a 187-acre impoundment at elevation 1,140.9 feet mean sea level (msl); (4) a 665-foot-long, 7-foot-diameter steel penstock; (5) two 105-foot-long, 5.8-foot-diameter steel penstocks leading to: (6) a powerhouse with two units having a total installed capacity of 1,4 MW; and (7) other appurtenant facilities.

n. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "FERRIS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

o. With this notice, we are initiating consultation with the Vermont State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

p. *Procedural schedule and final amendments:* The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Issue Deficiency Letter, January, 2003.

Notice of application accepted for filing, April, 2003.

Issuance of NEPA Scoping Document 1, for comments May, 2003.

Request for Additional Information, July, 2003.

Issuance of NEPA Scoping Document 2, August, 2003.

Notice of application is ready for environmental analysis, August, 2003.

Notice of the availability of the draft NEPA document, February, 2004.

Notice of the availability of the final NEPA document, May, 2004.

Order issuing the Commission's decision on the application, May, 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26083 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

October 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12255–000.

c. *Date filed:* June 20, 2002.

d. *Applicant:* Blue Mountain Hydro, LLC.

e. *Name and Location of Project:* The Blue Mountain Dam Hydroelectric Project would be located on the Petit Jean River in Yell County, Arkansas. The project would occupy lands administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Brent Smith, President, Northwest Power Services, Inc., PO Box 535, Rigby, ID 83442, (208) 745–0834.

h. *FERC Contact:* Elizabeth Jones (202) 502–8246.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12255–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed run-of-river project would utilize the Corps' existing Blue Mountain Dam and would consist of: (1) A proposed 84-inch steel penstock approximately 200 feet long, (2) a proposed powerhouse containing one turbine with a total installed capacity of 1.6 MW, (3) a proposed switchyard, (4) approximately two miles of proposed 25kV transmission line, and (5) appurtenant facilities.

The project would have an estimated annual generation of 5.2 GWH.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov* . For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at Blue Mountain Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26085 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12280–000.

c. *Date filed:* June 26, 2002.

d. *Applicant:* MR L&D 3 Hydro, LLC.

e. *Name and Location of Project:* The Monongahela Lock and Dam #3 Hydroelectric Project would be located on the Monongahela River in Allegheny County, Pennsylvania. The project would occupy lands administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Brent Smith, President, Northwest Power Services, Inc., PO Box 535, Rigby, ID 83442, (208) 745–0834.

h. *FERC Contact:* Elizabeth Jones (202) 502–8246.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12280–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed run-of-river project would utilize the Corps' existing Monongahela Lock and Dam #3 and would consist of: (1) A proposed 156-inch concrete penstock approximately 50 feet long, (2) a proposed powerhouse containing one turbine with a total installed capacity of 2.5 MW, (3) a proposed switchyard, (4) approximately one mile of proposed 15kV transmission line, and (5) appurtenant facilities.

The project would have an estimated annual generation of 18 GWH.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at MR L&D 3 Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26086 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12293–000.

c. *Date filed:* July 5, 2002.

d. *Applicant:* Taylorsville Hydro, LLC.

e. *Name and Location of Project:* The Taylorsville Dam Hydroelectric Project would be located on the Great Miami River in Montgomery County, Ohio. The project would utilize a dam owned by the Miami Conservancy District. The project would not occupy Federal or Tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Brent Smith, President, Northwest Power Services, Inc., PO Box 535, Rigby, ID 83442, (208) 745–0834.

h. *FERC Contact:* Elizabeth Jones (202) 502–8246.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12293–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would operate in a run-of-river mode and would consist of: (1) An existing gravity dam 90-feet high, and 2,980-feet-crest-length, (2) an existing reservoir with a surface area of 2,560 acres, a storage capacity of 23,040 acre-feet, and a normal maximum water surface elevation of 818 feet, (3) a proposed 66-inch steel penstock approximately 200 feet long, (4) a proposed powerhouse containing one turbine with a total installed capacity of 1.28 MW, (5) a proposed switchyard, (6) approximately one mile of proposed 15kV transmission line, and (7) appurtenant facilities.

The project would have an estimated annual generation of 9.25 GWH.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at Taylorsville Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26087 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12296–000.

c. *Date filed.* July 5, 2002.

d. *Applicant:* Holbrook Hydro, LLC.

e. *Name and Location of Project:* The Holbrook Diversion Dam Hydroelectric Project would be located on the Arkansas River in Crowley County, Colorado. The project would utilize a dam owned by the Holbrook Mutual Irrigation Company. The project would not occupy Federal or Tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Brent Smith, President, Northwest Power Services, Inc., PO Box 535, Rigby, ID 83442, (208) 745–0834.

h. *FERC Contact:* Elizabeth Jones (202) 502–8246

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12296–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would operate in a run-of-river mode and would consist of: (1) An existing gravity dam 23-feet high, and 3,168-feet long, (2) a proposed 108-inch steel penstock approximately 100 feet long, (3) a proposed powerhouse containing one turbine with a total installed capacity of 1.2 MW, (4) a proposed switchyard, (5) approximately two miles of proposed 15kV transmission line, and (6) appurtenant facilities.

The project would have an estimated annual generation of 5.5 GWH.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at Holbrook Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26088 Filed 10–11–02; 8: 45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12315–000]

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12315–000.

c. *Date Filed:* July 1, 2002.

d. *Applicant:* Midwest Hydro, Inc.

e. *Name of Project:* Brandon Road Lock & Dam Hydroelectric Project.

f. *Location:* The proposed project would be located on an existing dam owned by the U.S. Army Corps of Engineers, on the Des Plaines River in Will County, Illinois. Part of the project would be on lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William Pickrell, Midwest Hydro, Inc., 695 Garland Avenue, Winnetka, IL 60093, (847) 501–3030.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 502–8763.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12315–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed run-of-river project using the existing Corps of Engineers' Brandon Lock & Dam would consist of: (1) Three 54-inch-diameter 80-foot-long steel penstocks, (2) a proposed powerhouse containing three generating units with an installed capacity of 3 MW, (3) a 14.7 kv transmission line approximately 1 mile long, and (4) appurtenant facilities. The project would have an annual generation of 18 GWh.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned

address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26089 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12360–000.

c. *Date filed:* September 3, 2002.

d. *Applicant:* City of Broken Bow, Oklahoma.

e. *Name and Location of Project:* The Pine Creek Lake Hydroelectric Project would be located on the Little River in McCurtain County, Oklahoma. The project would utilize the U.S. Army Corps of Engineers' existing Pine Creek Dam and Reservoir.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. W. B. Smith, Hydropower International Services, L.L.C., 28508 West 41st Street South, Mannford, OK 74044, (918) 865–6977.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12360–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. Description of Project: The proposed project, using the existing the Pine Creek Dam and Reservoir, would consist of: (1) A diversion structure connecting to the existing outlet conduit, (2) a penstock connecting the diversion structure to the powerhouse, (3) a 48-foot by 60-foot powerhouse containing two 3.25-megawatt generating units, (4) a tailrace returning flows to the Little River, (5) a six-mile-long, 6.9-kilovolt transmission line connecting to an existing distribution line, and (6) appurtenant facilities. The project would have an average annual generation of 28.5 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application— Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the

Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26090 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting; Federal Register Citation of Previous Announcement: October 7, 2002, 67 FR 62463.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: October 9, 2002, 10 a.m.

CHANGE IN THE MEETING: The following Docket Nos. and Companies have been added to Item A–3 on the Commission Meeting agenda of October 9, 2002.

Item No., Docket No. and Company

A–3

ER02–1326–001 and ER02–1326–002, PJM Interconnection, L.L.C.
ER02–2330–000, New England Power Pool and ISO-New England, Inc.
EL00–62–039, ISO-New England, Inc.

Magalie R. Salas,

Secretary.

[FR Doc. 02–26252 Filed 10–10–02; 11:16 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

October 8, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659.

EXEMPT

Docket no.	Date filed	Presenter or requester
1. CP01–384–000	9–23–02	Frank P. Petrone.
2. Project No. 2042–013	9–23–02	Lloyd K. Harding.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26091 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12120–001]

North Unit Irrigation District; Notice of Surrender of Preliminary Permit

October 8, 2002.

Take notice that North Unit Irrigation District, permittee for the proposed Wickiup Dam Project, has requested that its preliminary permit be terminated. The permit was issued on February 7, 2002, and would have expired on January 31, 2005. The project would have been located on the Deschutes River in Deschutes County, Oregon.

The permittee filed the request on August 5, 2002, and the preliminary permit for Project No. 12120 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR

385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26084 Filed 10–11–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2002–0006; FRL–6724–6]

Toxic Chemical Release Reporting; Community Right-To-Know; Notice of On-Line Dialogue

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: EPA will hold an on-line public dialogue for 60-days from October 16, 2002 to December 17, 2002 as part of a national Stakeholder Dialogue on the Toxics Release Inventory (TRI) Program that the Environmental Protection Agency (EPA) is launching. EPA is seeking suggestions and ideas on the Agency's methods for reporting, collecting, processing, and releasing the TRI data. Instructions for participating in the on-line dialogue are posted at EPA's TRI Web site, see *http://www.epa.gov/tri/programs/stakeholders/outreach.htm*. EPA is announcing the availability of three issue papers which are intended to provide background to help focus the on-line dialogue.

DATES: The Stakeholder Dialogue online comment process will be held from October 16, 2002 to December 17, 2002.

ADDRESSES: The On-line Dialogue will be accessible via the Internet at *http://www.epa.gov/tri/programs/stakeholders/outreach.htm*. Please follow the instructions provided in Section I of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on this stakeholder process, contact: Annette Marion, Environmental Protection Agency, Office of Environmental Information, Office of Information Analysis and Access, Toxics Release Inventory Program Division: telephone: (202) 566–0731; Fax number: (202) 566–0715; e-mail: *marion.annette@epa.gov*. For general information on the Toxics Release Inventory contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346, or (703) 412–9810, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Apply to Me?

You may be interested in this notice if you use data collected under the Emergency Planning and Community Right-to-know Act (EPCRA) section 313, or if you manufacture, process, or otherwise use any of the EPCRA section 313 chemicals and you are required to report annually to EPA their environmental releases and other waste management quantities. Potentially affected entities may include, but are not limited to:

Category	Examples of potentially interested entities
Public	Environmental groups, community groups, researchers.
Industry	SIC major group codes (Except 1011, 1081, and 1094), 12 (except 1231), or 20 through 39; industry codes 4911 (limited to facilities that combusts coal and/or oil for the purpose of generating power for distribution in commerce); or 4939 (limited to facilities that combusts coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 *et seq.*), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis).
Federal Government.	Federal facilities in any SIC code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of Information Associated With This Stakeholder Dialogue Process?

1. *Electronic Access.* Electronic copies of the issue papers are available from EPA's TRI Web site at *http://www.epa.gov/tri/programs/stakeholders/outreach.htm*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket, EPA Dockets (*http://www.epa.gov/edocket/*). To view the contents of the docket, go to the EPA Dockets web site. Once in the system, select "search," then key in the appropriate docket identification number, OEI–2002–0006.

2. *Docket.* EPA has established an official public docket for this action under Docket ID No. OEI–2002–0006. The official public docket consists of the documents specifically referenced in this action and other information related to this action. The official public dockets are the collection of materials available for public viewing at the EPA Docket Center Public Reading Room located in the basement of EPA West, 1301 Constitution Avenue, NW., Washington, DC 20460. This Docket Facility is open from 8:30 am to 4:30 pm, Monday through Friday, excluding legal holidays. The Docket telephone number is (202)–566–1752.

C. How Do I Participate in the On-line Dialogue?

You may submit your ideas and suggestions electronically through the TRI Stakeholder Outreach Web site at: *http://www.epa.gov/tri/programs/stakeholders/outreach.htm* during the time period specified in this notice.

D. How Should I Handle Confidential Business Information (CBI) That I Want To Submit to the Agency?

Do not submit any information that you consider to be confidential business information (CBI) under this notice.

II. Background

EPA is undertaking a stakeholder dialogue for the Toxics Release Inventory (TRI) program. While the TRI program has been very successful, EPA is continuing to seek ways to improve the program. Given the community focus of the TRI program and the broad and varied uses of the TRI data, it is important that EPA receive input from all stakeholders—the states, the reporting community and other businesses, community and environmental groups, researchers, and the public.

The stakeholder dialogue process will have two phases. Phase 1 will focus on the reporting, collecting, processing, and annual release of the TRI data. Specifically, EPA is seeking comment on ways to: (1) Improve the compliance assistance provided by the TRI program, both at Headquarters and in the Regions, to aid the reporting community; (2) streamline the collection and processing of the more than 90,000 TRI forms that EPA receives annually; and (3) improve the materials, including the context, documents and tools, that EPA develops for its annual public release of the TRI data to support their use and analysis of the data.

The on-line dialogue will be the first opportunity for stakeholder input in Phase 1. Once the dialogue has been analyzed, additional opportunities may be extended in the form of public meetings, more formal comment periods, or other methods which will be described in future notices.

Phase 2 of the stakeholder dialogue will focus on future directions for the program, including what data are collected in the TRI, how these data are characterized, and whether additional data should be collected. One key element will be clarifying the data elements on recycling and other waste management activities required by the Pollution Prevention Act. A future **Federal Register** notice will announce Phase 2.

III. Availability of Documents

EPA is making available three papers which describe aspects of the TRI Program and raise issues for stakeholder discussion. The scope of each paper corresponds to a phase of the annual TRI reporting cycle. TRI data for a calendar year must be reported to EPA by July 1st after the end of that calendar year. Therefore, reporting years are the same as calendar years. The "reporting cycle" begins with EPA's compliance assistance activities, including the development of reporting forms and instructions that are generally mailed to facilities in March each year. Once EPA receives the forms, it enters the data from the forms (over 91,000 in 2000) in the TRI database. After entry into the database, EPA runs a series of data quality checks on both the facility identification information and on the chemical-specific data. After the data entry and data quality steps are completed, the TRI database is "frozen" for analysis and development of data products for release to the public. Generally, EPA announces the annual release of the TRI data by holding a press event or issuing a press release, and simultaneously notifying a wide range of stakeholders.

The first background paper for this stakeholder dialogue is entitled TRI Data Collection, Processing and Management, and addresses the TRI data process beginning with submission of the forms and ending at the data "freeze." The second paper, TRI Data Release Issue Paper discusses TRI data products, the process for analyzing and releasing the TRI data, uses of the data, and issues and considerations associated with these aspects of the TRI program. The third paper is TRI Compliance Assistance Activities. TRI compliance assistance activities are carried out throughout the year with certain of the activities being closely aligned with the reporting cycle.

Dated: October 4, 2002.

Elaine G. Stanley,

Director, Office of Information Analysis and Access.

[FR Doc. 02–26175 Filed 10–11–02; 8:45 am]

BILLING CODE 6561–07–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2002–0008; FRL6724–5]

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency

AGENCY: Environmental Protection Agency, EPA.

ACTION: Notice of availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has developed final *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* (herein after referred to as Information Quality Guidelines), in response to final Office of Management and Budget (OMB) information quality guidelines directing all federal agencies to develop and implement their own guidelines by October 1, 2002 (67 FR 8451, February 22, 2002). The EPA Information Quality Guidelines build upon on-going efforts to improve the quality of the data and analyses that support Agency policy and regulatory decisions and programs. EPA is announcing the availability of the Agency's final Information Quality Guidelines at the EPA Web site, *www.epa.gov/oei/qualityguidelines*. As described in the new Information Quality Guidelines, EPA is also introducing a Request for Correction process to allow affected persons to seek and obtain correction of information that EPA disseminates that they believe does not meet the EPA Information Quality Guidelines or the OMB information quality guidelines (67 FR 8451, February 22, 2002). Please read the Information Quality Guidelines to learn more about this new Request for Correction process including where and how to submit a request for correction.

DATES: The EPA final Information Quality Guidelines were made available on October 2, 2002.

ADDRESSES: The Information Quality Guidelines can be found at the EPA Web site at *http://www.epa.gov/oei/qualityguidelines*. To obtain a written copy of the Information Quality Guidelines, you may contact: Ms. Evangeline Tsibris Cummings, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Code 2842T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; Telephone: 202–566–0621; or e-mail: *cummings.evangeline@epa.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the OMB information quality guidelines, EPA published a notice in the **Federal Register** on April 30, 2002 (67 FR 21234) announcing the availability of EPA's draft Information Quality Guidelines and soliciting public comment by May 31, 2002. EPA extended the comment period to June 21, 2002 (67 FR 42254). After considering the extensive public comment, EPA revised its Information Quality Guidelines and submitted the revised draft to OMB in accordance with OMB's guidelines so OMB could review the draft Information Quality Guidelines for consistency with OMB's information quality guidelines. OMB completed its review and approved of the final EPA Information Quality Guidelines. EPA's general discussion of and responses to the public comments appears in Appendix A of EPA's Information Quality Guidelines.

FOR FURTHER INFORMATION CONTACT: Ms. Evangeline Tsibris Cummings, Environmental Protection Agency, Office of Environmental Information, Mail Code 2842T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Telephone: 202–566–0621; e-mail: *cummings.evangeline@epa.gov*.

Elaine Stanley,

Director, Office of Information Analysis and Access, Office of Environmental Information, EPA.

[FR Doc. 02–26176 Filed 10–11–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

[Notice 2002—18]

Filing Dates for the Hawaii Special Election in the 2nd Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Hawaii has scheduled a special election on November 30, 2002, to fill the U.S. House of Representatives seat in the Second Congressional District held by the late Congresswoman Patsy T. Mink.

Committees participating in the Hawaii special election are required to file pre- and post-election reports.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates participating in the Hawaii Special General shall file a 12-day Pre-General Report on November 18, 2002; and a 30-day Post-General Report on December 30, 2002. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political Committees that file on a quarterly basis during 2002 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Hawaii Special General Election by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that support candidates in the Hawaii Special General should continue to file according to the election year monthly reporting schedule.

CALENDAR OF REPORTING DATES FOR HAWAII SPECIAL ELECTION

Report	Close of books [1]	Reg./cert. mailing date [2]	Filing date
Committees Involved in the Special General (11/30/02) Must File			
Pre-General	11/10/02	11/15/02	11/18/02
Post-General	12/20/02	12/30/02	12/30/02
Year-End	12/31/02	01/31/03	01/31/03

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Reports sent registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

Dated: October 7, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–26119 Filed 10–11–02; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1437–DR]

Louisiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana, (FEMA–1437–DR), dated October 3, 2002, and related determinations.

EFFECTIVE DATE: October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 3, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from Hurricane Lili beginning on October 1, 2002, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (Stafford Act).

I, therefore, declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Carlos Mitchell of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared major disaster:

Acadia, Ascension, Assumption, Avoyelles, Beauregard, Calcasieu, Cameron, Evangeline, Iberia, Iberville, Jefferson Davis, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, and Vermillion Parishes for Individual Assistance.

Acadia, Ascension, Assumption, Avoyelles, Beauregard, Calcasieu, Cameron, East Baton Rouge, Evangeline, Iberia, Iberville, Jefferson Davis, Jefferson, Lafayette, Lafourche, Livingston, Natchitoches, Orleans, Plaquemines, Pointe Coupee, Rapides, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermillion, and West Baton Rouge Parishes for debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program.

All parishes within the State of Louisiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–26118 Filed 10–11–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1436–DR]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1436–DR), dated October 1, 2002, and related determinations.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 1, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Mississippi, resulting from Tropical Storm Isidore on September 23, 2002, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael Bolch of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Mississippi to have been affected adversely by this declared major disaster:

Amite, Hancock, Harrison, Jackson, Pearl River, Pike, and Stone Counties for Individual Assistance.

Hancock, Harrison, Jackson, Lincoln, Pearl River, and Pike Counties for Public Assistance.

Amite, Hancock, Harrison, Jackson, Lincoln, Pearl River, and Pike Counties are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–26117 Filed 10–11–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1434–DR]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1434–DR), dated September 26, 2002, and related determinations.

EFFECTIVE DATE: October 4, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 26, 2002: Jim Wells County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–26116 Filed 10–11–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL HOUSING FINANCE BOARD

[No. 2002–N–10]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) is seeking public comments concerning a three-year extension by the Office of Management and Budget (OMB) of the

previously approved information collection entitled "Community Support Requirements."

DATES: Interested persons may submit comments on or before December 16, 2002.

ADDRESSES: Address comments and requests for copies of the information collection to Elaine L. Baker, Secretary to the Board, by telephone at (202) 408–2837, by electronic mail at *bakere@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Emma Fitzgerald, Program Analyst, Community Investment and Affordable Housing Division, Office of Supervision, by telephone at 202/408–2874, by electronic mail at *fitzgeralde@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service that Federal Home Loan Bank (FHLBank) members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). In establishing these community support requirements for FHLBank members, the Finance Board must take into account factors such as the FHLBank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901, *et seq.*, and record of lending to first-time homebuyers. 12 U.S.C. 1430(g)(2). Part 944 of the Finance Board's regulations implements section 10(g) of the Bank Act. *See* 12 CFR part 944. The rule provides uniform community support standards all FHLBank members must meet and review criteria Finance Board staff must apply to determine compliance with section 10(g). More specifically, section 944.2 of the rule implements the statutory community support requirement. 12 CFR 944.2. Section 944.3 establishes community support standards for the two statutory factors—CRA and first-time homebuyer performance—and provides guidance to a respondent on how it may satisfy the standards. 12 CFR 944.3. Sections 944.4 and 944.5 establish the procedures and criteria the Finance Board uses in determining whether FHLBank members satisfy the statutory and regulatory community support requirements. 12 CFR 944.4 and 944.5.

The information collection contained in Form 96–01, the Community Support Statement Form, and sections 944.2 through 944.5 of the rule is necessary to enable and is used by the Finance Board to determine whether FHLBank members satisfy the statutory and regulatory community support requirements. Only FHLBank members that meet these requirements may maintain continued access to long-term FHLBank advances. *See* 12 U.S.C. 1430(g).

The OMB number for the information collection is 3069–0003. The OMB clearance for the information collection expires on January 31, 2003.

The likely respondents are institutions that are members of an FHLBank.

B. Burden Estimate

The Finance Board estimates the total annual average number of respondents at 3970 FHLBank members, with one response per member. The estimate for the average hours per response is one hour. The estimate for the total annual hour burden is 3970 hours (3970 members × 1 response per member × 1 hour).

C. Comment Request

The Finance Board requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

By the Federal Housing Finance Board.

Dated: October 2, 2002.

Donald Demitros,

Chief Information Officer.

[FR Doc. 02–26057 Filed 10–11–02; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2002–N–11]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it has submitted the information collection currently known as "Advances to Housing Associates" to the Office of Management and Budget (OMB) for review and approval of a three-year extension of the OMB control number, which is due to expire on November 30, 2002. The information collection formerly was titled "Advances to Nonmember Mortgagees."

DATES: Interested persons may submit comments on or before November 14, 2002.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Housing Finance Board, Washington, DC 20503. Address requests for copies of the information collection and supporting documentation to Elaine L. Baker, Secretary to the Board, by telephone at (202) 408–2837, by electronic mail at *bakere@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Jonathan F. Curtis, Senior Financial Analyst, Financial and Quantitative Analysis Division, Office of Supervision, by telephone at (202) 408–2866, by electronic mail at *curtisj@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

Section 10b of the Federal Home Loan Bank Act (Bank Act) authorizes the Federal Home Loan Banks (FHLBanks) to make advances under certain circumstances to certified nonmember mortgagees.[1] The Finance Board refers to nonmember mortgagees as housing associates. In order to be certified as a housing associate, an applicant must meet the eligibility requirements set forth in section 10b of the Bank Act. Part 926 of the Finance Board regulations implements the statutory eligibility requirements and establishes uniform review criteria an applicant must meet in order to be certified as a housing associate by an FHLBank.[2]

[1] *See* 12 U.S.C. 1430b.

[2] *See* 12 CFR 926.1–926.6. Formerly codified at 12 CFR 935.22–935.23. *See* 65 FR 8253, at 8256 (Feb. 18, 2000) and 65 FR 44414, at 44424–25, 44426–28 (July 18, 2000).

More specifically, sections 926.3 and 926.4 of the rule implement the statutory eligibility requirements and provide guidance to an applicant on how it may satisfy such requirements.[3] Section 926.5 authorizes the FHLBanks to approve or deny all applications for certification as a housing associate, subject to the statutory and regulatory requirements.[4] Section 926.6 permits an applicant to appeal an FHLBank decision to deny certification to the Finance Board.[5]

Section 950.17 of the Finance Board regulations establishes the terms and conditions under which an FHLBank may make advances to a certified housing associate. Section 950.17 also imposes a continuing obligation on a housing associate to provide information necessary for the FHLBank to determine if the housing associate remains in compliance with applicable statutory and regulatory requirements.[6]

The information collection contained in sections 926.1 through 926.6 and section 950.17 of the Finance Board regulations is necessary to enable the FHLBanks to determine whether an applicant satisfies the statutory and regulatory requirements to be certified initially and to maintain its status as a housing associate eligible to receive FHLBank advances. The Finance Board requires and uses the information collection to determine whether to uphold or overrule an FHLBank decision to deny housing associate certification to an applicant.

The OMB control number for the information collection is 3069–0005. The OMB clearance for the information collection expires on November 30, 2002.

The likely respondents include applicants for housing associate certification and current housing associates.

B. Burden Estimate

The Finance Board estimates the total annual average number of applicants at five, with one response per applicant. The estimate for the average hours per application is 15 hours. The estimate for the annual hour burden for applicants is 75 hours (5 applicants × 1 response per applicant × 15 hours).

The Finance Board estimates the total annual average number of maintenance respondents, that is, certified housing associates, at 57, with 1 response per housing associate. The estimate for the average hours per maintenance response is 0.5 hours. The estimate for the annual hour burden for certified housing associates is 28.5 hours (57 certified housing associates × 1 response per associate × 0.5 hours).

The estimate for the total annual hour burden is 103.5 hours (57 housing associates × 1 response per associate × 0.5 hours + 5 applicants × 1 response per applicant × 15 hours).

C. Comment Request

In accordance with 5 CFR 1320.8(d), the Finance Board published a request for public comments regarding this information collection in the **Federal Register** on June 28, 2002. *See* 67 FR 43602 (June 28, 2002). The 60-day comment period closed on August 27, 2002. The Finance Board received no public comments. Written comments are requested on: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on applicants and housing associates, including through the use of automated collection techniques or other forms of information technology. Comments may be submitted to OMB in writing at the address listed above.

By the Federal Housing Finance Board.

Dated: October 2, 2002.

Donald Demitros,

Chief Information Officer.

[FR Doc. 02–26056 Filed 10–11–02; 8:45 am]

BILLING CODE 6725–01–P

[3] *See* 12 CFR 926.3–926.4. Formerly codified at 12 CFR 935.22. *See* 65 FR at 8256 and 65 FR at 44427.

[4] *See* 12 CFR 926.5. Formerly codified at 12 CFR 935.23(a). *See* 65 FR at 8256 and 65 FR at 44427.

[5] *See* 12 CFR 926.6. Formerly codified at 12 CFR 935.23(c)(4). *See* 65 FR at 8256 and 65 FR at 44428.

[6] *See* 12 CFR 950.17. Formerly codified at 12 CFR 935.24. *See* 65 FR at 8256 and 65 FR at 444330–31.

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 02-25215) published on page 62246 of the issue for October 4, 2002.

Under the Federal Reserve Bank of Minneapolis heading, the entry for Robert B. Whitlock, Minneapolis, Minnesota, is revised to read as follows:

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Robert B. Whitlock, Minneapolis, Minnesota, and Marie Gillespie, LaGrange Park, Illinois; as trustees; to acquire voting shares of Lake Bank Shares, Inc., Employee Stock Ownership Plan, Emmons, Minnesota, and thereby indirectly control Lake Bank Shares, Inc., Emmons, Minnesota and its subsidiaries, Security Bank of Minnesota, Albert Lea, Minnesota, and First State Bank of Emmons, Emmons, Minnesota.

In connection with this application Jonathon H. Berg, M.D., Northwood, North Dakota, has applied to become a trustee of the Herbert A. Lund Revocable Trust, and thereby indirectly acquire voting shares of Lake Bank Shares, Inc.

Comments on this application must be received by October 21, 2002.

Board of Governors of the Federal Reserve System, October 8, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–26061 Filed 10–11–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank

holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 8, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. RBC Centura Banks, Inc., Rocky Mount, North Carolina, and Royal Bank of Canada, Montreal, Canada; to merge with Admiralty Bancorp, Inc., Palm Beach Gardens, Florida, and thereby indirectly acquire voting shares of Admiralty Bank, Palm Beach Gardens, Florida.

Board of Governors of the Federal Reserve System, October 8, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–26060 Filed 10–11–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Office at (202) 619–2118 or e-mail *Geerie.Jones@HHS.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project 1. "Request for Review of Medicare Hearing Decision/Order"—NEW—The Departmental Appeals Board (DAB) proposes to discontinue use of the existing SSA form HA–520 and establish a new HHS form to obtain information relevant to Medicare appeals. The HA–520 was originally developed by the Social Security Administration (SSA) for use in requesting review of Administrative Law Judges (ALJs) actions in both Social Security and Medicare cases. After SSA became an independent agency, SSA regulations beginning at 20 CFR 404.967 governing review of cases by the SSA Appeals Council were adopted by HHS to govern the DAB's review of ALJ decisions in Medicare cases. We are now establishing a new form which reflects the changed responsibilities of HHS, and includes the proper address for submission of requests for review of ALJ actions in Medicare cases. Revision of the form would allow for the collection of accurate information to facilitate sending these requests directly to the appropriate HHS office for processing and review. Respondents: Individuals; Number of Respondents: 1,000; Average Burden per Response: 15 minutes; Total Burden: 250 hours.

Send comments via e-mail to *Geerie.Jones@HHS.gov* or mail to OS Reports Clearance Office, Room 503H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Comments should be received within 60 days of this notice.

Dated: October 7, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 02–26182 Filed 10–11–02; 8:45 am]

BILLING CODE 4150–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Community/Tribal Subcommittee and the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following subcommittee and committee meetings.

Name: Community/Tribal Subcommittee.

Times and Dates: 9 a.m.–5 p.m., November 5, 2002. 8:30 a.m.–5 p.m., November 6, 2002.

Place: Westin Peachtree Plaza Hotel, 210 Peachtree Street, Atlanta, Georgia 30303.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 50 people.

Purpose: This subcommittee brings to the Board advice, citizen input, and recommendations on community and tribal programs, practices, and policies of the Agency.

Matters to be Discussed: Agenda items include a presentation on ATSDR's role in public health and disease prevention in Brownfields; update on Chemical Mixtures Guidance Document; discussion on ATSDR's marketing and outreach activities; discussion on community involvement in ATSDR's Public Health Assessment Process; presentation on cumulative risks and impacts in preparation for the joint CTS and National Environmental Justice Advisory Council workgroups; update on the CTS Evaluation Process; discussion and a presentation by Indian Health Services (IHS) on efforts to link ATSDR's Pediatric Environmental Health Specialty Units and IHS to analyze health trends in Native Americans.

Name: Board of Scientific Counselors, ATSDR.

Times and Dates: 8:30 a.m.–4:30 p.m., November 7, 2002. 8:30 a.m.–12:30 p.m., November 8, 2002.

Place: Westin Peachtree Plaza Hotel, 210 Peachtree Street, Atlanta, Georgia 30303.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 50 people.

Purpose: The Board of Scientific Counselors, ATSDR, advises the Secretary; the Assistant Secretary for Health; and the Administrator, ATSDR, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of science in ATSDR-supported research, emerging problems that require scientific investigations, accuracy and currency of the science in ATSDR reports, and program areas to emphasize or de-emphasize. In addition, the Board recommends research programs and conference support for which the Agency awards grants to universities, colleges, research institutions, hospitals, and other public and private organizations.

Matters to be Discussed: Agenda items will include a review of Action Items; Agency updates; updates on Environmental and Health Tracking; update on Libby and the World Trade Center registries; discussion on National Vermiculite Response; discussion on ATSDR and Indian Health Service involvements in Environmental Health; review of the ATSDR Public Health Guidance Manual; update on the Florida Anthrax Investigation; review of the Childhood Longitudinal Study; and a discussion on the new CDC/ATSDR peer review policy.

Written comments are welcomed and should be received by the contact person listed below prior to the opening of the meeting.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Robert Spengler, Sc.D., Executive Secretary, BSC, ATSDR, M/S E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/498–0003.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 8, 2002.

Burma Burch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–26070 Filed 10–11–02; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–01]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: The National Birth Defects Prevention Study (OMB 0920–0010)—Extension—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC) has been monitoring the occurrence of serious birth defects and genetic diseases in Atlanta since 1967 through the Metropolitan Atlanta Congenital Defects Program (MACDP). The MACDP is a population-based surveillance system for birth defects in the 5 counties of Metropolitan Atlanta. Its primary purpose is to describe the spatial and temporal patterns of birth defects occurrence and serve as an early warning system for new teratogens. From 1993 to 1996, NCBDDD conducted the Birth Defects Risk Factor Surveillance (BDRFS) study, a case-control study of risk factors for selected birth defects. Infants with birth defects were identified through MACDP and maternal interviews, and clinical/laboratory tests were conducted on approximately 300 cases and 100 controls per year. Controls were selected from among normal births in the same population.

In 1997 the BDRFS became the National Birth Defects Prevention Study (NBDPS). The major components of the study did not change.

The NBDPS is a case-control study of major birth defects that includes cases identified from existing birth defect surveillance registries in ten states (including metropolitan Atlanta). Control infants are randomly selected from birth certificates or birth hospital records. Mothers of case and control infants are interviewed using a computer-assisted telephone interview. Parents are asked to collect cheek cells from themselves and their infants for DNA testing. Information gathered from both the interviews and the DNA specimens will be used to study independent genetic and environmental factors as well as gene-environment interactions for a broad range of carefully classified birth defects.

OMB approval for NBDPS was obtained in September 1999 and will expire 30 November 2002. This request is submitted to obtain approval for current NBDPS activities for three more years with one change indicated below:

The CDC NBDPS currently remunerates participants for the biologic sample collection portion of the study. The cheek cell kits include $20.00 as an incentive to complete them and send them back. Overall, only 50% of participants completing the interview send in a completed cheek cell kit. While some subjects have stated that they do not wish to provide buccal samples due to their concerns about genetic testing, many subjects state that it is time consuming and difficult to remember to complete the kit and mail it back. An additional $20.00 incentive will be added that is linked to the return of the cheek cell kits. It is appropriate to have a higher level of compensation for those who spend the additional time to complete the cheek cell collection and return the kit than for those who only receive the kit and invest no time in further participation. This would make a total of $60.00 compensation ($20.00 for the completing of the interview, $20.00 for receiving the cheek cell kit and $20.00 for returning the kit) for subjects who choose to complete the entire study including the return of the cheek cell samples for herself and the baby or for just herself if the baby is deceased. While samples are requested from the father, the third incentive would not be dependent on the cooperation of the father since this may pose a hardship to those mothers who are not in regular contact with the father. Given the time and inconvenience required for the entire study (interview and cheek cell), a total of $60.00 is an appropriate level of compensation. The additional $20.00 money order is expected to increase the number of kits that are completed and returned and will be included in the thank you letter that each participant receives upon completion of the study. This is no cost to respondents.

Survey	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden in hours
NBDPS Case/Control Interview	400	1	1	400
Cheek Cell Collection (mother/father/infant)	1,200	2	20/60	800
Completion of Entire Study	400	1	1	400
Total				1600

Dated: October 7, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–26049 Filed 10–11–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02163]

Support for Civil Society Organizations Responding to HIV/AIDS in Zimbabwe; Notice of Availability of Funds; Amendment III

A notice announcing the availability of Fiscal Year 2002 funds for cooperative agreements for Support for Civil Society Organizations Responding to HIV/AIDS in Zimbabwe was published in the **Federal Register** on May 23, 2002, Volume 67, Number 100, Pages 36194–36196. Amendment II to the original notice was published in the **Federal Register** on August 6, 2002, Volume 67, Number 101, Pages 50891–50892 to communicate a set of Funding Priorities established by the CDC-Zimbabwe AIDS Program Office.

This Amendment serves to announce that CDC has elected to rescind Amendment II to this Program Announcement. The responsiveness of all applications received under this Program Announcement will be evaluated against the Evaluation Criteria set forth in the original Program Announcement published May 23, 2002. Applicants are not required to submit any additional information or applications.

Dated: October 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–26066 Filed 10–11–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee (INEELHES)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee (INEELHES).

Times and Dates: 8:30 a.m.–4:30 p.m., November 6, 2002. 8:30 a.m.–11:15 p.m., November 7, 2002.

Place: The Coeur d'Alene, 115 South 2nd Street, Coeur d'Alene, Idaho 83816, telephone (208)767–4000, fax (208)664–7276.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, and replaced by MOUs signed in 1996 and 2000, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992, 1996, and in 2000, between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community interaction and to serve as a vehicle for community concerns to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include DOE Research Program and discussion of the National Council on Radiation Protection and Measurement Report 136; Status Report on Dose Reconstruction; Biological Bases of Cancer; Projected Future Doses from Snake River Aquifer Contaminants; Idaho National Engineering and Environmental Laboratory (INEEL) Public Health Assessment; Combining Doses from Nevada Test Site Fallout, Global Fallout, and Hanford; and Presentation on INEEL Meteorological Issues. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Natasha Friday, Executive Secretary, INEELHES, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 1600 Clifton Road, N.E. (E–39), Atlanta, Georgia 30333, telephone (404)498–1800, fax (404)498–1811.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: October 8, 2002.

Burma Burch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–26069 Filed 10–11–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Health And Nutrition Examination Survey III (NHANES)DNA Specimens: Guidelines for Proposals To Use Samples and Proposed Cost Schedule; Amendment

A notice announcing the availability of DNA Specimens from the National Health and Nutrition Examination Survey III (NHANES) with guidelines for proposals to use samples and a proposed cost schedule was published in the **Federal Register** on August 8, 2002, [Vol.67 Number 153, Pages 51585–51589]. The notice is amended as follows:

(1) On page 51585,second column under Summary: replace the first sentence of the last paragraph with: Although all researchers are encouraged to submit letters of intent, proposals will be accepted without a letter of intent. If a researcher wishes to submit a letter of intent the deadline (third column) will be extended to October 18, 2002. The NHANES program will review letters of intent to clarify any issues that may help in proposal development. Proposal application receipt deadline is November 18,2002. All other dates are not changed.

(2) On page 51585, third column under Dates: delete the second bullet, Submission of Proposals: October 7, 2002.

(3) The following clarifications are added to the potential research proposals section: page 51586, first column, under the heading Potential Research Proposals: insert the following as paragraph 1:

If several researchers submit proposals for the same genetic assessments, they may be asked to collaborate in the publication of the estimates. The willingness to do this should be addressed in the proposal.

Umbrella category A proposals where researchers collaborate to use the same set of DNA specimens, to address several specific research questions, requiring different genetic assessments, are encouraged. In this case, each research question will be reviewed as a separate entity by the Technical Panel, but the fact that only one set of specimens will be used, will be noted.

(4) On page 51588, first column, first full paragraph, replace the first sentence with the following: Although all researchers are encouraged to submit letters of intent, proposals will be accepted without a letter of intent.

(5) Also on page 51588, first column, second paragraph, replace the first sentence with the following: Letters of intent should be submitted by October 18, 2002.

(6) On page 51589, first column, under Submission of Proposals, replace the first paragraph with: The proposal application receipt deadline is November 18, 2002.

Dated: October 8, 2002.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–26065 Filed 10–11–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)-443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Evaluation of the Health Care for the Homeless Respite Pilot Initiative—New

The Bureau of Primary Health Care (BPHC), HRSA, proposes to conduct an evaluation of the Health Care for the Homeless (HCH) Respite Pilot Initiative. Data will be collected from the ten HCH grantees participating in the Pilot Initiative. The evaluation will be developed and conducted by the National Health Care for the Homeless Council through a cooperative agreement with the BPHC. The focus of the evaluation will be on assessing the effect of respite services on the health of homeless people as well as looking at any differences in outcomes based on client or program characteristics. The evaluation will be conducted throughout the 3-year period of the Pilot Initiative.

The estimated response burden is as follows:

Type of respondent	Number of respondents	Response per respondents	Hours per response	Total hour burden
Client-Level Data	10	200	.25	500
Program Descriptive Data	10	1	.5	5
Total	10			505

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 7, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–26110 Filed 10–11–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Organ Procurement and Transplantation Network

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of meeting of the Advisory Committee on Organ Transplantation.

SUMMARY: Pursuant to Public Law 92–463, the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the third meeting of the Advisory Committee on Organ Transplantation (ACOT), Department of Health and Human Services (HHS). The meeting will be held from approximately 9 a.m. to 5:30 p.m. on November 18, 2002, and from 9 a.m. to 5:30 p.m. on November 19, 2002, at the Sheraton National Hotel, 900 S. Orme Street, Arlington, Virginia 22204. The meeting will be open to the public; however, seating is limited and pre-registration is encouraged (see below).

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. section 217a, Section 222 of the Public Health Service Act, as amended, and 42 CFR 121.12 (2000), the ACOT was established to assist the Secretary in enhancing organ donation, ensuring that the system of organ transplantation is grounded in the best available medical science, and assuring the public that the system is as effective and equitable as possible, and, thereby, increasing public confidence in the integrity and effectiveness of the transplantation system. The ACOT is

composed of 41 members, including the Chair. Members are serving as Special Government Employees and have diverse backgrounds in fields such as organ donation, health care public policy, transplantation medicine and surgery, critical care medicine and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics and statistics, as well as representatives of transplant candidates, transplant recipients, organ donors, and family members.

The ACOT will hear and discuss reports from the following ACOT subcommittees: Kidney/Pancreas Allocation Review; Heart/Lung Allocation Review; Liver Allocation Review; Education and Recognition of Donors; Improving Systemic Performance [The Law]; Improving Systemic Performance [The Professions]; Meeting the Needs of Multicultural Populations; and Clinical Issues.

The draft meeting agenda will be available on November 1 on the Division of Transplantation's Web site *http://www.hrsa.gov/osp/dot/whatsnew.htm* or the Department's donation Web site at *http://www.organdonor.gov/news.htm*.

A registration form is available on the Division of Transplantation's Web site: http://www.hrsa.gov/osp/dot/whatsnew.htm or the Department's donation Web site at http://www.organdonor.gov/news.htm. The completed registration form should be submitted by facsimile to McFarland and Associates, Inc., the logistical support contractor for the meeting, at FAX number (301) 589–2567. Individuals without access to the Internet who wish to register may call Paulette Wiggins with McFarland and Associates, Inc., at 301–562–5337. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the ACOT Executive Director, Jack Kress, in advance of the meeting. Mr. Kress may be reached by telephone at 301–443–8653, by e-mail at: *jkress2@hrsa.gov*, or in writing at the address of the Division of Transplantation provided below. Management and support services for ACOT functions are provided by the Division of Transplantation, Office of Special Programs, HRSA, Room 7C–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number 301–443–7577.

After the presentation of the subcommittee reports, members of the public will have an opportunity to provide comments on the subcommittee reports. Because of the Committee's full agenda and the time frame in which to cover the agenda topics, public comment will be limited. All public comments will be included in the record of the ACOT meeting.

Dated: October 7, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–26196 Filed 10–11–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee A—Cancer Centers.

Date: December 6, 2002.

Time: 7:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: David E. Maslow, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard—Room 8117, Bethesda, MD 20892–7405. 301/496–2330.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 7, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–26042 Filed 10–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Clinical Research.

Date: October 22, 2002.

Time: 1 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Rockledge Drive, Msc 7965, One Rockledge Center, Room 6018, Bethesda, MD 20892–7965. (301) 435–0815. *browne@ncrr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: October 7, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–26046 Filed 10–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Mesenchymal Stem Cell.

Date: November 21–22, 2002.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Robert B. Moore, PhD, Review Branch, Room 7192, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892. 301–435–3541.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources, Research, National Institutes of Health, HHS)

Dated: October 7, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–26041 Filed 10–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, MBRS Review Subcommittee B.

Date: November 19–20, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shiva P. Singh, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13J, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 7, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–26043 Filed 10–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in according with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, SEP on Minority Student Training.

Date: October 25, 2002.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6143, MSC 9608, Bethesda, MD 20892–9608, 301–443–1178. *benxu1@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Collaboration for Low Resource Communities of Color.

Date: October 30, 2002.

Time: 10:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 7, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–26044 Filed 10–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.c. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Neuroscience SEP.
Date: October 28, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jeffrey M. Chernak, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, AD K Awards.
Date: November 12, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Alfonso R. Latoni, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892. 301/496–9666. *latonia@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Genetic Changes in Aging Muscle.
Date: November 12–13, 2002.
Time: 7 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Ramesh Vemuri, PhD, National Institute of Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Health Indexes.
Date: November 13, 2002.
Time: 11 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: 7201 Wisconsin Avenue, Bethesda, MD 20814. (Telephone Conference Call).
Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Therapeutics Of Bone Loss.
Date: November 13–14, 2002.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin New York at Times Square, 270 West 43rd Street, New York, NY 10036.
Contact Person: James P. Harwood, PhD, Deputy Chief, Scientific Review Office, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814. (301) 496–9666. *harwoodj@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging, Vasculature, Ischemia, and Behavior.
Date: November 13–14, 2002.
Time: 7 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. (301)496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Proteopathies.
Date: November 21–22, 2002.
Time: 7 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Palomar, 12 Fourth Street at Market, San Francisco, CA 94103.
Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892. (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 7, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–26045 Filed 10–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Experimental Virology Study Section.
Date: October 15–16, 2002.
Time: 8 am to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.
Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7808, Bethesda, MD 20892. 301–435–1050. *freundr@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Risk and Protective Factors in Child and Adolescent Development.
Date: October 16, 2002.
Time: 3 p.m. to 6 p.m..
Agenda: To review and evaluate grant applications.
Place: Madison Hotel, Fifteenth & M Streets NW., Washington, DC 20005.
Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7848, Bethesda, MD 20892. 301–435–3554. *shirleym@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Family Processes and Close Relationships.
Date: October 18, 2002.
Time: 3 p.m. to 6 p.m..
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7848, Bethesda, MD 20892. 301–435–3554. *shirleym@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Center Group, Virology Study Section.
Date: October 22–23, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.
Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892. 301–435–1151. *pyperj@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RG1 SSS–O (02)M: Tissue Activator.
Date: October 22, 2002.
Time: 3 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892. 301–435–1739. *gangulyc@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Health Promotion and Lifestyle Behaviors.
Date: October 23, 2002.
Time: 3 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7848, Bethesda, MD 20892. 301–435–3554. *shirleym@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Integrated Review Group, Genome Study Section.
Date: October 27–29, 2002.
Time: 7:30 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Sally Ann Amero, PhD, Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892–7890. (301)–435–1159. *ameros@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS T: 10B: Small Business: Endocrinology, Metabolism, Nutrition, & Reproductive Sciences.
Date: October 28, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892. (301) 435–1041.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–X (10B): Small Business: Ultrasound.
Date: October 28, 2002.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892. (301) 435–1171.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular, Cellular and Developmental Neurosciences 2.
Date: October 28–29, 2002.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Madison hotel, Fifteenth & M Streets, NW., Washington, DC 20005.
Contact Person: Gillian Einstein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7850, Bethesda, MD 20892. (301) 435–4433.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG SSS 8 10B: Small Business: Bioengineering and Physiology..
Date: October 28–29, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Paul Parakkal, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892. 301–435–1176. *parakkap@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS2 10B Proteomics, Protein Expression, and Protein Therapeutics.
Date: October 28–29, 2002.
Time: 8:30 a.m. to 3 p.m.
Agenda: .To review and evaluate grant applications.
Place: Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National institutes of Health, 6701 Rockledge Drive, Room 5156. MSC 7842, Bethesda, MD 20892. (301) 435–8367. *atreyap@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–L (10) B Drug Delivery & Drug Discovery SBIR/STTR Panel.
Date: October 28–29, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910.
Contact Person: Sergei Ruvinov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892. (301) 435–1180. *ruvinser@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group, Radiation Study Section.
Date: October 28–30, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Westin Fairfax Hotel, 2100 Massachusetts Ave., NW., Washington, DC 20008.
Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7816, Bethesda, MD 20892. (301) 435–1716. *strudlep@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pain: Neurophysiology.
Date: October 28, 2002.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892. (301) 435–1250.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–X (12) Small Business: Ultrasound.
Date: October 28, 2002.
Time: 3 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892. (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Migration.

Date: October 28, 2002.

Time: 4:15 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Robert Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892. (301) 435–0694.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Integrated Review Group, Mammalian Genetics Study Section.

Date: October 29–30, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Cheryl M. Corsaro, PhD, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892. (301) 435–1045. *corsaroc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CAMP 04 (M) Mechanisms of Colon Carcinogenesis.

Date: October 29, 2002.

Time: 12 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7804, Bethesda, MD 20892. (301) 435–1779. *riverse@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Collaborative Groups.

Date: October 29, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House, 1625 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC7890, Bethesda, MD 20892–7890 301–435–1159. *ameros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CVB(02)S: Aldosterone & CV damage.

Date: October 29, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center For Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7818, Bethesda MD 20892 (301) 435–1169. *dowellr@drg/nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CDF–1 01 Panel on Cell Signaling and Growth Control.

Date: October 29, 2002.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael H. Sayre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892 (301) 435–1219.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Bioengineering and Physiology (BISTI).

Date: October 29, 2002.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Paul Parakkal, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892 301–435–1176. *parakkap@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–C (01) BBBP–1 Member reviews in Animal Learning.

Date: October 30, 2002.

Time: 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892 301–435–0902. *krausem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 GRM (02) SMB Conflicts.

Date: October 30, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892. (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CVB(01)M: Salt-induced hypertension.

Date: October 30, 2002.

Time: 2:15 p.m. to 3:15 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7818, Bethesda, MD 20892. (301) 435–1169. *dowellr@drg.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 FO5 (20) L Fellowships: Cell and Developmental Biology.

Date: October 31–November 1, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Richard D. Rodewald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892. (301) 435–1024. *rodewalr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CDF 01P: Program Project: Cell Development and Function—4.

Date: October 31, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892. (301) 435–1023. *steinberm@csr.nih.gov.*

Name of Committee: Center for Scientific Special Emphasis Panel, Computational Biology.

Date: October 31–November 1, 2002.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4202, MSC: 7812, Bethesda, MD 20892. 301–435–1220. *chackoge@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Disease Management and Health Promotion.

Date: October 31–November 1, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, Washington, DC 20037.

Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892. 301–435–0676. *siroccok@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–X (41) Resource Research Site Visit.

Date: October 31–November 2, 2002.

Time: 7 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Hotel Metrodome, 615 Washington, Ave., SE., Minneapolis, MN 55414.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892. (301) 435–1171.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SOH Member Application.

Date: October 31, 2002.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892. 301–435–0695.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 7, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–26047 Filed 10–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4679–N–05]

Reduction in Certain FHA Multifamily Mortgage Insurance Premiums

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice reissues the notice published on August 30, 2002, effective October 1, 2002, lowering the mortgage insurance premiums (MIPs) for certain Federal Housing Administration (FHA) multifamily mortgage insurance programs whose commitments will be issued in Fiscal Year 2003, and republishing others at the rate that was in effect in Fiscal Year 2002 (hereafter, "the August notice"). This notice includes responses to comments from the public that HUD received on the August notice.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–1142. Hearing- or speech-impaired individuals may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. The Interim Rule and August Notice

The interim rule on "Mortgage Insurance Premiums in Multifamily Programs," published on July 2, 2001, at 66 Federal Register 35070, revised previous regulations that set mortgage insurance premiums (MIPs) at a specific figure. The Secretary may now change MIPs within the full range of HUD's statutory authority of one fourth of one percent to one percent. That rule stated that HUD would provide a 30-day period for public comment on future notices changing mortgage insurance premiums in multifamily insured housing programs (66 FR 35071).

On August 30, 2002, HUD published a notice pursuant to the interim rule setting new mortgage insurance premiums for FY 2003, which became effective on October 1, 2002 (67 FR 55859). HUD accepted public comments on the August notice. HUD is now publishing its response to the public comments and republishing the FY 2003 mortgage insurance premiums and transition provisions.

B. Public Comments

HUD received two public comments on the August notice, both from trade associations. Both comments were generally favorable to the new premiums, but they did raise some issues for HUD's consideration. HUD is making no change to the rates or other aspects of the notice, however, as a result of those comments for reasons explained in the responses to the comments.

Comment: Two commenters supported the reduction in the mortgage insurance premiums. One commenter specifically praised the premium reduction in the Section 221(d)(4) program. The other commenter stated that "the reductions proposed in the notice are a step in the right direction."

HUD Response: No response is necessary.

Comment: The commenters expressed views on the data and assumptions underlying the rates. Both commenters praised HUD's willingness to share the formula and data, or what one commenter referred to as the "model," underlying the mortgage insurance premium calculation. One commenter was satisfied with the revisions to the model, while the other commenter stated that HUD should continue to update its data to assure that the mortgage insurance premium for each program reflects the actual risk to the government. Both commenters stated that they wanted to be included in discussions of any future revisions to the formula and data, or model.

HUD Response: The MIP reductions were a result of a comprehensive review of the credit subsidy calculations instituted by the Secretary in response to industry concerns. HUD staff had several meetings with the industry and considered industry input in the re-analysis of the credit subsidy rates and assumptions. HUD is required to update the data and assumptions each year and we expect to have similar discussions with the industry in the future.

Comment: Regarding the transition provisions of the notice, one commenter praised HUD's decision to reprocess applications with outstanding firm commitments but which have not yet been initially endorsed at the new, lower rates, and did not object to the fact that certain applications will have to be reviewed to ensure that the underwriting conclusions remain valid. However, this commenter suggested that HUD begin reprocessing these cases "prior to October 1" at the request of the mortgagee to assure that the loans can close as soon as possible.

HUD Response: HUD has directed the field staff to begin reprocessing of outstanding commitments at the lower MIP.

Comment: Both commenters urged HUD to publish the final notice as quickly as possible.

HUD Response: No response is needed.

II. This Notice

This notice restates and republishes the August notice at the same premium rates as stated in that notice. The rates effective as of October 1, 2002 continue to be as follows for the remainder of FY 2003:

Multifamily loan program	FY 2003 basis points
Section 207—Multifamily Housing—New Construction/Substantial Rehabilitation	61

Multifamily loan program	FY 2003 basis points
Section 207—Manufactured Home Parks	61
Section 220—Housing In Urban Renewal Areas	61
Section 221(d)(3)—Moderate Income Housing	80
Section 221(d)(4)—Moderate Income Housing	57
Section 223(a)(7)—Refinancing of Insured Multifamily Project	50
Section 223(d)—Operating Loss Loans	80
Section 207/223(f)—Purchase or Refinance Housing	50
Section 231—Housing for the Elderly	61
Section 232—Health Care Facilities	50
Section 232 pursuant to Section 223(f)—Purchase or Refinance Health Care Facilities	50
Section 234(d)—Condominium Housing	50
Section 241(a)—Additions & Improvements for Apartments	80
Section 241(a)—Additions & Improvements for Health Care Facilities	50
Section 242—Hospitals	50
Title XI—Group Practice	50
HOPE VI Projects with or without LIHTC—[221(d)(4)]	57
HOPE VI Projects with or without LIHTC—[207, 220 and 231]	61
Low Income Housing Tax Credit Projects—221(d)(4), 207, 220, and 231 without HOPE VI	50

III. Applicable Mortgage Insurance Premium Regulations

The MIP regulations are contained in 24 CFR 207.252, 207.252a, and 207.254, published at 66 FR 35072 (July 2, 2001). This notice is published in accordance with the procedures stated in those regulations.

IV. Transition Guidelines

A. General

If a firm commitment has been issued at a higher mortgage insurance premium (MIP) and FHA has not initially endorsed the note, the lender may request the field office to reprocess the commitment at the lower MIP and issue an amended commitment on or after October 1, 2002. If the initial endorsement has occurred, the MIP cannot be changed.

B. Extension of Outstanding 80 basis point Firm Commitments

FHA may extend outstanding firm commitments when the HUB/Program Center determines that the underwriting conclusions (rents, expenses, construction costs, mortgage amount and cash required to close) are still valid.

C. Reprocessing of Outstanding 80 basis point Firm Commitments

FHA will consider requests from mortgagees to reprocess outstanding firm commitments at the lower mortgage insurance premium once the new premiums become effective in Fiscal Year 2003:

1. *Outstanding commitments with initial 60 day expiration dates on or after the effective date of the MIP notice.* FHA Multifamily HUB/Program Center staff will simply reprocess these cases to reflect the impact of the lower MIP and issue amended commitments;

2. *Outstanding commitments with initial expiration dates prior to the effective date of the MIP notice which have pending extension requests or have had extensions granted by FHA beyond the initial 60 day period.* These cases will require more extensive reprocessing by FHA staff. Reprocessing will include an updated FHA field staff analysis and review of rents, expenses, construction costs, particularly considering any changes in Davis-Bacon wage rates and cash required to close. (An updated appraisal may be required from the mortgagee depending on the age of the appraisal.) If reprocessing results in favorable underwriting conclusions, HUB/Program Center staff will issue amended commitments at the new MIP.

D. Reopening of Expired 80 Basis Point Firm Commitments

FHA will consider requests from mortgagees, which requests may be either updated Traditional Application Processing (TAP) firm commitment applications or updated Multifamily Accelerated Processing (MAP) applications with updated exhibits, to reopen expired 80 basis point commitments on or after the effective date of the MIP notice, provided that the reopening requests are received within 90 days of the expiration of the commitments and include the $.50 per thousand of requested mortgage reopening fee. Reopening requests will be reprocessed by FHA field staff under the instructions in paragraph C.2 above.

After expiration of the 90 day reopening period, mortgagees are required to submit new applications with the $3 per thousand application fee. (MAP applications must start at the preapplication stage.)

Credit Subsidy

Mortgagee Letters will be issued from time to time to advise mortgagees of any requirements for credit subsidy, and the availability of credit subsidy. In Fiscal Year 2003, it is anticipated that only three programs will require credit subsidy: Section 221(d)(3) for nonprofit sponsors and cooperatives for new construction or substantial rehabilitation, Section 223(d) for operating loss loans for both apartments and health care facilities, and Section 241(a) for supplemental loans for additions or improvements to existing apartments only. FHA will not issue amended commitments for increased mortgage amounts nor obligate additional credit subsidy for projects requiring credit subsidy in Fiscal Year 2003.

Dated: October 9, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

[FR Doc. 02–26197 Filed 10–9–02; 3:52 pm]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

Information Quality Guidelines

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Availability of information quality guidelines.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is publishing a notice of availability of the OFHEO's "Guidelines for Ensuring Quality of Disseminated Information and Procedures for Correction by the Public" (Guidelines). The purpose of this notice is to publish the location of the Guidelines on the OFHEO web site at *http://www.ofheo.gov*.

DATES: On October 1, 2002, OFHEO's "Guidelines for Ensuring Quality of Disseminated Information and Procedures for Correction by the Public" were posted on the OFHEO Web site.

FOR FURTHER INFORMATION CONTACT: Andrew Varrieur, Chief Information Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414–8883 (not a toll free number). Alternatively, questions or comments may also be sent by electronic mail to *infoquality@ofheo.gov*. The telephone number for the Telecommunications Device for the Deaf is: (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Guidelines are based largely on the "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies" (Government-wide guidance) published by the Office of Management and Budget (OMB) in the **Federal Register**.[1] That Government-wide guidance was issued pursuant to Section 515 of the Treasury and General Government Appropriations Act for FY 2001, Pub. L. 106–554, which directed OMB to provide guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information, including statistical information, disseminated by Federal agencies. In accordance with these provisions, each Federal agency was obligated to:

1. Issue their own information quality guidelines ensuring and maximizing the quality, objectivity, utility and integrity of information, including statistical information, disseminated by the agency;

2. Establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the agency's guidelines; and

3. Report annually to the Director of OMB, beginning January 1, 2004, the number and nature of complaints received by the agency regarding agency compliance with its guidelines concerning the quality, objectivity, utility and integrity of information and how such complaints were resolved.

Consistent with the Government-wide guidance, the Guidelines ensure and maximize the quality, objectivity, utility, and integrity of information that is disseminated by the agency to the public. The Guidelines also provide an administrative process allowing affected individuals to seek and obtain correction of information maintained and disseminated by OFHEO. The Guidelines reflect OFHEO's internal procedures for reviewing and substantiating information to ensure and maximize the quality, including the objectivity, utility and integrity of information, before it is disseminated. The administrative mechanism allows affected persons to seek and obtain, where appropriate, obtain correction of information disseminated by OFHEO that does not comply with the Guidelines.

[1] 66 FR 49718 (Sept. 28, 2001), updated 67 FR 369 (Jan. 3, 2002), and corrected at 67 FR 8452 (Feb. 22, 2002).

Comments

In accordance with OMB guidance, OFHEO published a notice in the **Federal Register** on April 2, 2002, entitled "Solicitation of Public Comments on Proposed Information Quality Guidelines"[2] requesting public comments on OFHEO's proposed Guidelines. Three comments were received from private persons in response to this notice and the proposed Guidelines. Those comments were received from the Federal National Mortgage Association (Fannie Mae); the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises); and the Center for Regulatory Effectiveness.

Both Enterprises commented on the proposed Guidelines' statement that "OFHEO disseminates very little information that would be subject to section 515 legislation" and that OFHEO cites only the House Price Index as an example of such information. Both Enterprises disagreed that very little information falls within the scope of the Government-wide guidance and suggested that other examples of information should be included in the Guidelines. OFHEO deleted the single citation to the House Price Index as an example. Instead, the scope of the Guidelines' applicability will become more clearly defined in light of experience and the accumulation of precedents over time.

OFHEO's proposed Guidelines also provided that they do not "apply to opinions if it is clear that what is being offered is someone's opinion, rather than fact or the agency's views. For example, the guidelines do not apply to staff working papers that are preliminary in nature and do not represent the views of the agency."[3] OFHEO deleted the citation to working papers. Instead, the scope of the Guidelines' applicability will become more clearly defined in light of experience and the accumulation of precedents over time.

Freddie Mac commented that OFHEO should not exempt all press releases from the scope of the Guidelines. Freddie Mac also asserted that a press release that "only discloses an agency's position on political or policy issues would appropriately fall outside of the scope of the information quality guidelines."[4] Freddie Mac also commented that OFHEO should not exempt all correspondence with individuals from the scope of the Guidelines. OMB's Government-wide guidance explicitly exempts press releases and correspondence with individuals from the definition of "dissemination," thus removing both from the scope of the Guidelines.

Both Enterprises commented that the proposed Guidelines do not contain procedures for review of influential information subject to higher standards of data quality. Freddie Mac noted that the proposed Guidelines do not include a definition of "influential information." Both Enterprises also asserted that much of the information that OFHEO disseminates is within the scope of influential information and thus subject to higher standards of data quality. Although OFHEO need not identify the information within the purview of "influential information" for purposes of the Guidelines, the Government-wide guidance suggested agencies adopt a definition of "influential." OFHEO clearly adopts a definition of "influential" in the Guidelines in section VI.9. However, in accordance with OMB guidance, the definition of "influential" has been narrowed. The amended definition of "influential," when used in the phrase "influential scientific, financial, or statistical information," is amended to provide that "the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions." Consistent with OMB's guidance, the intent of the new phrase "clear and substantial" is to reduce the need for speculation on the part of agencies of the breadth of the definition of "influential."[5]

Fannie Mae asserted in its comment letter that the Guidelines may be judicially reviewable. The statute upon which the Government-wide guidance is based is wholly silent on the matter. Speculation as to future judicial treatment of such guidelines is, however, beyond the scope of this rulemaking and will not be addressed here.

Finally, Fannie Mae commented that the proposed Guidelines are confusing as to the responsibilities of each division of OFHEO with respect to data quality. Specifically, Fannie Mae suggests that, inasmuch as compliance with law is generally the function of the General Counsel, OFHEO's General Counsel should be vested with primary responsibility for compliance with the Government-wide guidance. The Guidelines have been clarified as to the

[2] 67 FR 15580 (April 2, 2002).

[3] 3 *Id.*

[4] Letter from Allan Ratner, Freddie Mac to Andrew Varrieur, Office of Federal Housing Enterprise Oversight, at 3.

[5] 67 FR 8455 (2002).

responsibility of each office within OFHEO to ensure and maximize the quality, including the objectivity, utility and integrity, of the data originating from it. The General Counsel has overarching responsibility to advise and counsel the Director and agency personnel as to compliance with the applicable law. The Guidelines so reflect and preserve the respective responsibilities of the various agency officials.

The Center for Regulatory Effectiveness (CRE) outlined a number of broad cross-cutting policy issues of general concern to all agencies related to "Data Quality Guidelines" and provided recommendations on how such issues should be addressed. The CRE identified and evaluated a number of differing agency approaches to these issues, which it suggested might be emulated or avoided. OFHEO considered these comments in conjunction with OMB guidance in fashioning the final information quality guidelines.

Dated: October 8, 2002.

Jimmy F. Barton,

Deputy Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 02–26186 Filed 10–11–02; 8:45 am]

BILLING CODE 4220–01U–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Delta National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of application for a natural gas pipeline right-of-way on Delta National Wildlife Refuge, Plaquemines Parish, Louisiana.

SUMMARY: Notice is hereby given that under Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449: 30 U.S.C. 185), as amended by Public Law 93–153, the Southern Natural Gas Company has applied for a permit to remove a 14" underground natural gas pipeline, and install a new 14" underground natural gas pipeline in a 50-foot wide right-of-way which will run approximately 10,421 feet in length.

This pipeline right-of-way will be on, over, and across a strip of land lying in Plaquemines Parish, State of Louisiana, Sections 10, 15, and 22 of Township 20 South, Range 19 East, on the West Bank of East Fork of Romere Pass. The Southern Natural Gas Company currently operates a 14" pipeline and wants to install a new pipeline 200—1,200 feet west of its current location. The land described herein contains approximately 12.59 acres with 7.79 acres in a temporary (1 year) construction servitude. The existing pipeline will be completely removed after the new line has been installed and is operational.

The purpose of this notice is to inform the public that the Fish and Wildlife Service is currently considering the merits of approving this application.

ADDRESSES: Interested persons desiring to comment on this application should do so within thirty (30) days following the date of publication of this notice. If you wish to comment, you may do so by one of the following methods. You may mail comments to Mr. Dwight Stanley, Fish and Wildlife Service, 1875 Century Boulevard, Suite 420, Atlanta, Georgia 30345. You may also comment via the Internet at the following address: *dwight_stanley@fws.gov*. If you submit comments by electronic mail, please submit them as an ASCII file, avoiding the use of special characters and any form of encryption. Please include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us at the phone number or address listed in this notice. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law.

FOR FURTHER INFORMATION CONTACT: Mr. Dwight Stanley at 404–679–7235; fax 404–679–7273.

Authority: Right-of-way applications are filed in accordance with Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449:30 U.S.C. 185), as amended by Public Law 93–153.

Dated: September 19, 2002.

Christine Eustis,

Acting Regional Director.

[FR Doc. 02–26051 Filed 10–11–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Rate Adjustments for Indian Irrigation Facilities

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of rate adjustments.

SUMMARY: The Bureau of Indian Affairs (BIA) owns or has an interest in irrigation facilities located on various Indian reservations throughout the United States. The BIA establishes irrigation assessment rates to recover its costs to administer, operate, maintain, and rehabilitate certain of those facilities. We are notifying you that we have adjusted the irrigation assessment rates at several of our irrigation facilities where we are required to recover our full costs of operation and maintenance.

EFFECTIVE DATE: The irrigation assessment rates shown in the tables were effective on January 1, 2002.

FOR FURTHER INFORMATION CONTACT: For details about a particular BIA irrigation facility, please use the tables in the **SUPPLEMENTARY INFORMATION** section to contact the regional or agency office where the facility is located.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rate Adjustment was published in the **Federal Register** on March 8, 2002 (67 FR 10748–10752), to adjust the irrigation rates at several BIA irrigation facilities. A correction of the March 8, 2002, notice was published on April 26, 2002, at 67 FR 20820–20321 for all units of the Wapato Irrigation Project. The public and interested parties were provided an opportunity to submit written comments during the 60 day-periods subsequent to March 8, 2002, and April 26, 2002.

Did the BIA Receive Any Comments on the Proposed Irrigation Assessment Rate Adjustments?

Written comments were received only for the proposed irrigation assessment rate adjustment at the Blackfeet Irrigation Project, Montana (Project).

What Issues Were of Concern by the Commentators?

All of the comments were concerned with one or more of three issues: (1) Consultation with stakeholders; (2) how are funds expended on operation and maintenance; and (3) the impact of a rate increase on the local agricultural economy.

How Does BIA Respond to the Concern of Consultation With Stakeholders?

Consultations between stakeholders and any of the BIA irrigation facilities are ongoing through local meetings held periodically at different locations convenient to the stakeholders of the individual irrigation facilities. At those consultation meetings, any issue of concern by a stakeholder can be brought up and discussed such as water operations, facility maintenance, and financial management. For example, a BIA representative attended meetings of the Seville Water Users Association of the Project on May 27, 2000, April 30, 2001, and April 25, 2002. During those meetings, the BIA representative notified stakeholders of the need for an increase in irrigation assessment rates. Concurrent with the **Federal Register** notice of March 8, 2002, the local BIA agency at the Project also publicized the proposed rate adjustment in a local newspaper asking for comments.

How Does BIA Respond to the Concern of How Funds Are Expended for Operation and Maintenance?

The BIA's records for expenditures on all of its irrigation facilities are public records and available for review by stakeholders or interested parties. These records can be reviewed during normal business hours at the individual agency offices. To review these records, stakeholders and interested parties are directed to contact the BIA representative at the specific facility serving them using the tables in the **SUPPLEMENTARY INFORMATION** section.

How Does BIA Respond to the Concern of an Irrigation Assessment Rate Increase and Its Impact on the Local Agricultural Economy?

The irrigation operations and maintenance rate for the 2001 irrigation season at the Project was $11.00 per acre. Based on a financial analysis for the 2002 irrigation season, the rate to sustain the Project should be $15.85 per acre. The BIA realized that a $4.85 rate increase, a 44 percent increase over the 2001 rate, had the potential to place an economic strain on the agricultural community served by the facility. The BIA took this into consideration and is raising the 2002 assessment rate $2.00, an increase of 18 percent, for a total assessment rate for the 2002 irrigation season of $13.00. This is an increase of less than half necessary to sustain the facility. To accommodate the lesser increase, the facility will continue to defer some maintenance. A rate of $13.00 per acre will provide funding for operation of the facility and perform minimal maintenance.

Does the BIA Have Any Other Justification for Increasing Its Irrigation Assessment Rates at the Project or at Any Other Irrigation Facilities?

Over the past several years the BIA's irrigation program has been the subject of several Inspector General (IG) audits. In the most recent audit, No. 96–I–641, 1996, the IG concluded, "Operation and maintenance revenues were insufficient to maintain the projects, and some projects had deteriorated to the extent that their continued capability to deliver water was in doubt. This occurred because operation and maintenance rates were not based on the full cost of delivering water, including the costs of systematically rehabilitating and replacing project facilities and equipment, and because project personnel did not seek regular rate increases to cover the full cost of operation." This audit recommendation is still outstanding.

Previous IG audits reached the same conclusion. This showed a lack of response in addressing this critical issue by the BIA over an extended period of time. Irrigation assessment rates must be systematically reviewed and adjusted when necessary to reflect the BIA's actual full costs to properly operate and perform all appropriate maintenance on the irrigation facility infrastructure. If this is not accomplished, a rate deficiency can accumulate. Overcoming rate deficiencies can result in having to raise rates in larger increments and over shorter time frames than would have been otherwise necessary.

Does the BIA Have Any Proposed Rate Adjustments That Were Not Put Into Effect?

The proposed rate adjustment for the 2003 irrigation season at the Flathead Irrigation Project from $19.95 to $21.45 is not being put into effect. After further consultation with the stakeholders, the BIA agreed a rate adjustment could be delayed.

Where Can I Get Information on the Regulatory and Legal Citations in This Notice?

You can contact the individuals listed in the contact tables below or you can use the Internet site for the Government Printing Office at *http://www.gpo.gov*.

What Authorizes Us To Issue This Notice?

Our authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs under Part 209, Chapter 8.1A, of the Department of the Interior's Departmental Manual.

Does This Notice Affect Me?

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation facilities, or you have a carriage agreement with one of our irrigation facilities.

Who Can I Contact for Further Information?

The following tables list the regional and agency contacts for the irrigation facilities where the BIA recovers its costs for local administration, operation, maintenance, and rehabilitation.

Project name	Project/agency/contacts
Northwest Region Contacts	
Stanley Speaks, Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169. Telephone (503) 231–6702	
Flathead Irrigation Project	Ernest T. Moran, Superintendent, Flathead Agency Irrigation Division, P.O. Box 40, Pablo, Montana 59855–5555, Telephone: (406) 675–2700.
Fort Hall Irrigation Project	Eric J. LaPointe, Superintendent, Fort Hall Agency, P.O. Box 220, Fort Hall, Idaho 83203–0220, Telephone: (208) 238–2301.
Wapato Irrigation Project	Pierce Harrison, Project Administrator, Wapato Irrigation Project, P.O. Box 220, Wapato, WA 98951–0220, Telephone: (509) 877–3155.
Rocky Mountain Region Contacts	
Keith Beartusk, Regional Director, Bureau of Indian Affairs, Rock Mountain Regional Office, 316 North 26th Street, Billings, Montana 59101, Telephone: (406) 247–7943	
Blackfeet Irrigation Project	Ross Denny, Superintendent, Cliff Hall, Irrigation Manager, Box 880, Browning, MT 59417, Telephones: (406) 338–7544, Superintendent, (406) 338–7519, Irrigation.

Project name	Project/agency/contacts
Crow Irrigation Project	Gordon Jackson, Superintendent, Dan Lowe, Irrigation Manager, P.O. Box 69, Crow Agency, MT 59022, Telephones: (406) 638–2672. Superintendent, (406) 638–2863, Irrigation.
Fort Belknap Irrigation Project	Cleo Hamilton, Superintendent, Ted Hall, Acting Irrigation Manager, R.R.1, Box 980, Harlem, MT 59526, Telephones: (406) 353–2901, Superintendent, (406) 353–2905, Irrigation.
Fort Peck Irrigation Project	Dennis Whiteman, Superintendent, P.O. Box 637, Poplar, MT 59255, Marvin Azure, Irrigation Manager (acting), 602 6th Avenue North, Wolf Point, MT 59201, Telephones: (406) 768–5312, Superintendent, (406) 653–1752, Irrigation.
Wind River Irrigation Project	Perry Baker, Superintendent, Sheridan Nicholas, Irrigation Manager, P.O. Box 158, Fort Washakie, WY 82514, Telephones: (307) 332–7810, Superintendent, (307) 332–2596, Irrigation.
Southwest Region Contacts	
Bob Baracker, Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 615 First Street, NW., Albuquerque, New Mexico 87102, Telephone: (505) 346–7587	
Pine River Irrigation Project	Michael Stancampiano, Superintendent, Kenneth Caveny, Irrigation Engineer, P.O. Box 315, Ignacio, CO 81137–0315, Telephones: (970) 563–4511, Superintendent, (970) 563–1017, Irrigation.
Western Region Contacts	
Wayne Nordwall, Regional Director, Bureau of Indian Affairs, Western Regional Office, PO Box 10, Phoenix, Arizona 85001, Telephone: (602) 379–6600	
Colorado River Irrigation Project	Allen Anspach, Superintendent, R.R. 1 Box 9–C, Parker, AZ 85344, Telephone: (928) 669–7111.
Duck Valley Irrigation Project	Paul Young, Superintendent, Pete LeFebvre, Nat'l Resources Specialist, 1555 Shoshone Circle, Elko, Nevada 89801, Telephones: (775) 738–0569, Superintendent, (775) 738–0590, Irrigation.
Fort Yuma Irrigation Project	William Pyott, Land Operations Officer, P.O. Box 11000, Yuma, Arizona, Telephone: (520) 782–1202.
San Carlos Irrigation Project Joint Works	Randy Shaw, Irrigation Manager, 13805 N. Arizona Boulevard, Coolidge, AZ 85228, Telephone: (520) 723–6216.
San Carlos Irrigation Project Indian Works	Joe Revak, Pima Agency, Land Operations, Box 8, Sacaton, AZ 85247, Telephone: (520) 562–3372.
Uintah Irrigation Project	Lynn Hansen, Irrigation Manager, P.O. Box 130, Fort Duchesne, UT 84026, Telephone: (435) 722–4341.
Walker River Irrigation Project	Chuck O'Rourke, Natural Resource Officer, 1677 Hot Springs Road, Carson City, Nevada 89706, Telephone: (775) 887–3550.

What Will BIA Charge for the 2002 or 2003 Irrigation Seasons?

The rate table below shows how we will bill at each of our irrigation facilities for the 2002 or 2003 irrigation season as indicated. The irrigation facilities where rates were adjusted are noted by an asterisk immediately following the name of the facilities.

NORTHWEST REGION RATE TABLE

Project name	Rate category	Current 2002 rate	Proposed 2003 rate
Flathead Irrigation Project	Basic per acre	$19.95	$19.95
Fort Hall Irrigation Project	Basic per acre	20.00	To be Determined (See Note below).
Fort Hall Irrigation Project Minor Units	Basic per acre	14.00	
Fort Hall Irrigation Project* Michaud	Basic per acre	28.00	
	Pressure per acre	41.00	
Wapato Irrigation Project* Ahtanum Unit	Billing Charge Per Tract	5.00	
	Farm unit/land tracts up to one acre (minimum charge).	10.35	
	Farm unit/land tracts over one acre—per acre	10.35	
Wapato Irrigation Project* Toppenish/Simcoe Units	Billing Charge Per Tract	5.00	
	Farm unit/land tracts up to one acre (minimum charge).	10.40	
	Farm unit/land tract over one acre—per acre	10.40	
Wapato Irrigation Project* Wapato/Satus Unit	Billing Charge Per Tract	5.00	
	Farm unit/land tracts up to one acre (minimum charge).	41.40	
	"A" farm unit/land tracts over one acre—per acre	41.40	

NORTHWEST REGION RATE TABLE—Continued

Project name	Rate category	Current 2002 rate	Proposed 2003 rate
	Additional Works farm unit/land tracts over one acre—per acre.	45.76	
	"B" farm unit/land tracts over one acre—per acre	49.68	
	Water Rental Agreement Lands—per acre	50.96	

Note—"To be determined," means that future rates will become effective only after we have published another rate notice for comments, followed by a final rate notice.

ROCKY MOUNTAIN REGION RATE TABLE

Project name	Rate category	2002 season rate
Blackfeet Irrigation Project*	Basic-per acre	$13.00
Crow Irrigation Project (See note below)	Basic-per acre	16.00
Fort Belknap Irrigation Project	Indian per acre	6.25
	Non-Indian per acre	12.50
Fort Peck Irrigation Project	Basic-per acre	14.00
Wind River Irrigation Project	Basic-per acre	12.00

Note—The Crow Project rate adjustment was previously announced in the FEDERAL REGISTER for the 2002 irrigation season and is being provided for informational purposes only, reference Fed. Reg., Vol. 64, No. 95, Page 27003, May 18, 1999.

SOUTHWEST REGION RATE TABLE

Project name	Rate category	2002 rate
Pine River Irrigation Project	Minimum Charge per tract	$25.00
	Basic-per acre	8.50

WESTERN REGION RATE TABLE

Project name	Rate category	Current 2002 rate	Proposed 2003 rate
Colorado River Irrigation Project	Basic per acre up to 5.0 acre feet	$37.00	To be Determined.[1]
	Excess Water per acre foot 5.0–5.5 acre-feet	7.40	
	Excess Water per acre-foot over 5.5 acre-feet	17.00	
Duck Valley Irrigation Project	Basic-per acre	5.30	
Fort Yuma Irrigation Project (See note below)	Basic-per acre up to 5.0 acre-feet	60.00	
	Excess Water per acre-foot over 5.0 acre-feet	10.50	
San Carlos Irrigation Project (Joint Works)	Basic-per acre	20.00	$20.00
San Carlos Irrigation Project (Indian Works)	Basic-per acre	56.00	To be Determined.[1]
Uintah Irrigation Project	Basic-per acre	8.50	
Walker River Irrigation Project	Indian per acre	7.32	
	Non-Indian per acre	15.29	

[1] "To be determined," means that future rates will become effective only after we have published another rate notice for comments, followed by a final rate notice.

Note—The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation (Reclamation). The irrigation rates assessed for operation and maintenance are established by Reclamation and are provided for informational purposes only. The BIA only collects the irrigation assessments on behalf of Reclamation.

Consultation and Coordination With Tribal Governments (Executive Order 13175)

The BIA irrigation facilities are vital components of the local agriculture economy of the reservations on which they are located. To fulfill its responsibilities to the tribes, tribal organizations, water user organizations, and the individual water users, the BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, costs of administration, operation, maintenance, and rehabilitation. This is accomplished at the individual irrigation facilities by agency and regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of the BIA's overall coordination and consultation process to provide notice and request comments from these entities on adjusting irrigation assessment rates.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

The rate adjustments will have no adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies) should the proposed rate adjustments be implemented. This is a notice for rate adjustments at BIA owned and operated irrigation facilities, except for the Fort Yuma Irrigation Project. The Fort Yuma Irrigation Project is owned and operated

by the Bureau of Reclamation with a portion serving the Fort Yuma Reservation.

Regulatory Planning and Review (Executive Order 12866)

These rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rate making is not a rule for the purposes of the Regulatory Flexibility Act because it is "a rule of particular applicability relating to rates." 5 U.S.C. 601(2).

Unfunded Mandates Act of 1995

These rate adjustments impose no unfunded mandates on any governmental or private entity and are in compliance with the provisions of the Unfunded Mandates Act of 1995.

Takings Implications (Executive Order 12630)

The Department has determined that these rate adjustments do not have significant "takings" implications. The rate adjustments do not deprive the public, state, or local governments of rights or property.

Federalism (Executive Order 13132)

The Department has determined that these rate adjustments do not have significant Federalism effects because they pertain solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995

These rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires November 30, 2002.

National Environmental Policy Act

The Department has determined that these rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(d)).

Dated: September 24, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–26038 Filed 10–11–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–600–03–1010–BN–241A]

Notice of Public Meetings, Southwest Colorado and Northwest Colorado Resource Advisory Council Meetings

AGENCY: Bureau of Land Management.

ACTION: Notice of Public Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Southwest Colorado Resource Advisory Council (RAC) and Northwest Colorado RAC will meet as indicated below.

DATES: The Southwest Colorado RAC meeting will be held November 22, 2002 at the Bill Heddles Recreation Center located at 180 Gunnison River Drive in Delta, Colorado.

The Northwest Colorado RAC meeting will also be held November 22, 2002 at the Bill Heddles Recreation Center located at 180 Gunnison River Drive in Delta, Colorado.

Both the Southwest and Northwest Colorado RAC meetings will begin at 9 a.m. and adjourn at approximately 4 p.m. Public comment periods at the meetings will be in the morning at 9:30 a.m and in the afternoon, to start no later than 3 p.m.

FOR FURTHER INFORMATION CONTACT: Larry J. Porter, RAC Coordinator, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3012.

SUPPLEMENTARY INFORMATION: The Southwest and Northwest Colorado RACs advise the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Colorado.

Purpose of the Southwest Colorado RAC meeting is to consider several resource management related topics including County Partnership Restoration Project; Coal Bed Methane Development; Phoenix RAC Conference Report; RAC Goals; and Cooperative Management Opportunities.

Purpose of the Northwest Colorado RAC meeting is to consider several resource management related topics including Wildlife, Cultural, Weeds, and Wild Horse Management Plan Subcommittee reports; Travel Management Update; RAC's Functioning; and Moffat County Pilot Proposal.

These meetings are open to the public. The public may present written comments to the RACs. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals planning to attend the meetings who need special assistance should contact the RAC Coordinator listed above.

Dated: October 7, 2002.

Dave Atkins,

Acting Western Slope Center Manager.

[FR Doc. 02–26050 Filed 10–11–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that the National Park System Advisory Board will meet October 30–31, 2002, in the St. Francis Suite of The Westin St. Francis, Union Square, 335 Powell Street, San Francisco, California. On October 30, the Board will tour and receive briefings on the Golden Gate National Recreation Area and partnership programs. On October 31, the Board will convene its business meeting at 8:00 a.m., and adjourn at 5:30 p.m. During the morning session, National Park Service Director Fran Mainella will address the Board, followed by the Board's consideration of National Historic Landmark nominations. In the afternoon, the Board will receive reports from its National Parks Science Committee, Education Committee, and Partnerships Committee, and discuss pending business.

Other officials of the National Park Service and the Department of the Interior may address the Board, and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Mr. Loran Fraser, Office of Policy, National Park Service, 1849 C Street, NW., Washington, DC 20240; telephone 202–208–7456.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 7252, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: October 3, 2002.

Loran Fraser,

Chief, Office of Policy.

[FR Doc. 02–26185 Filed 10–11–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 28, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–343–1836. Written or faxed comments should be submitted by October 30, 2002.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

Solano County

Brown, Jackson Fay, House, 6751 Maine Prairie Rd., Dixon, 02001289.

GEORGIA

Candler County

Candler County Jail, 349 N. Rountree St., Metter, 02001291.

Chatham County

Eastside Historic District, Roughly bounded by E. Broad, Cedar, Gwinnett and Anderson Sts., Savannah, 02001292.

Glynn County

Colored Memorial School and Rinsley High School, 1800 Albany St., Brunswick, 02001290.

Laurens County

Stubbs Park—Stonewall Street Historic District, Roughly bounded by W. Moore St., Roosevelt St., Bellevue Ave., Marion St., Academy Ave., Lancaster and Thompson Sts., Dublin, 02001293.

Wilkes County

Smith, Robert Shand, House, 902 S. Spring St., Washington, 02001294.

KANSAS

Barton County

Wolf Hotel, 104 E. Santa Fe, Ellinwood, 02001295.

LOUISIANA

Vermilion Parish

Landry Plantation House, (Louisiana's French Creole Architecture MPS), 1320 Gallett Rd., Youngsville, 02001296.

MONTANA

Flathead County

Middle Fork Bridge, Across Middle Fork of Flathead R., West Glacier, 02001297.

PENNSYLVANIA

Washington County

Bethel African American Episcopal Church of Monongahela City, Jct. 7th and Main Sts., Monongahela City, 02001298.

[FR Doc. 02–26184 Filed 10–11–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decisionmaking concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (the AMWG), a technical work group (the TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

Date and Location: The Glen Canyon Dam Technical Work Group will conduct the following public meeting:

Phoenix, Arizona—November 7–8, 2002. The meeting will begin at 9:30 a.m. and conclude at 5 p.m. on the first day and will begin at 8 a.m. and conclude at 2 p.m. on the second day. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, Conference Rooms A and B (12th floor), 400 North 5th Street, Phoenix, Arizona.

Agenda: The purpose of the meeting will be to discuss the experimental flow status, Low Steady Summer Flow (LSSF) Report on integrated sediment studies, warm water science plan, FY 2004 Annual Work Plan and Budget, the target development process, environmental compliance, and other administrative and resource issues pertaining to the AMP.

Agenda items may be revised prior to any of the meetings. Final agendas will be posted 15 days in advance of each meeting and can be found on the Bureau of Reclamation Web site under Environmental Programs at *http://www.uc.usbr.gov/amp.* Time will be allowed on each agenda for any individual or organization wishing to make formal oral comments (limited to 10 minutes) at the meetings.

To allow full consideration of information by the AMWG or TWG members, written notice must be provided to Randall Peterson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147; telephone (801) 524–3758; faxogram (801) 524–3858; e-mail at *rpeterson@uc.usbr.gov* at least five (5) days prior to the meeting. Any written

comments received will be provided to the AMWG and TWG members at their respective meetings.

FOR FURTHER INFORMATION CONTACT: Randall Peterson, telephone (801) 524–3758; faxogram (801) 524–3858; or via e-mail at *rpeterson@uc.usbr.gov*.

Dated: October 2, 2002.

Randall V. Peterson,

Manager, Adaptive Management and Environmental Resources Division.

[FR Doc. 02–26067 Filed 10–11–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–030]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 18, 2002 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. TA–421–1 (Market Disruption)(Pedestal Actuators from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination on market disruption to the President on October 18, 2002.).
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: October 10, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–26331 Filed 10–10–02; 2:36 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–031]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 21, 2002 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none
2. Minutes
3. Ratification List
4. Inv. Nos. 731–TA–1014–1018 (Preliminary) (Polyvinyl Alcohol from China, Germany, Japan, Korea, and Singapore)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on October 21, 2002; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before October 28, 2002.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: October 10, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–26332 Filed 10–10–02; 2:36 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–032]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: October 22, 2002 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–426 and 731–TA–984–985 (Final) (Sulfanilic Acid from Hungary and Portugal)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before November 1, 2002.)
5. Inv. No. 731–TA–749 (Review) (Persulfates from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before October 31, 2002.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 10, 2002.

By order of the Commission:

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–26355 Filed 10–10–02; 3:30 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Douglas L. Geiger, M.D.; Denial of Application

On September 24, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Douglas L. Geiger, M.D. (Dr. Geiger), proposing to deny his pending application for DEA Certificate of Registration as a practitioner, and deny any pending modifications of such application pursuant to 21 U.S.C. 823(f). As a basis for the denial of his pending application, the Order to Show Cause alleged that Dr. Geiger is not currently authorized to handle controlled substances in the State of Georgia. 21 U.S.C. 824(a)(3). The order also notified Dr. Geiger that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Geiger at a location in Riverdale, Georgia. A second copy of the Order to Show Cause was sent by certified mail to Dr. Geiger at a location in College Park, Georgia. DEA received a signed receipt indicating that the Order to Show Cause was received on behalf of Dr. Geiger at that location. Subsequently, and at Dr. Geiger's request, a copy of the Order to Show Cause was sent to him by facsimile on October 9, 2001. DEA received a printed report indicating that the show cause order had been successfully transmitted to the number provided by Dr. Geiger. DEA has not received a request for hearing or any other reply from Dr. Geiger or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Geiger is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Geiger was issued a temporary medical license #0142 on October 6, 1994. That license was extended until December 8, 1994, and subsequently extended on separate occasions until its expiration on October 5, 1995. A second temporary medical license was issued to Dr. Geiger on December 21, 1998, and on February 4, 1999, that license also expired. According to a August 6, 2001 letter contained within the investigative file from the Executive Director of the Composite State Board of Medical Examiners, Dr. Geiger has never been issued a permanent license to practice medicine in the State of Georgia.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Carla Johnson, M.D., 66 FR 52939 (2001); Graham Travers Schuler, M.D., 65 FR 50570 (2000); Demetris A. Green, M.D., 61 FR 60,728 (1996).

DEA has also consistently held that a DEA registration may not be maintained if the applicant or registrant lacks state authority to dispense controlled substances, even if such lack of state authorization was the result of the expiration of his/her state registration without further action by the state. *See e.g.*, Mark L. Beck, D.D.S., 64 FR 40899 (1999); Gary D. Benke, M.D., 58 FR 65734 (1993); Carlyle Balgobin, D.D.S., 58 FR 46992 (1993); Charles H. Ryan, M.D., 58 FR 14430 (1993); James H. Nickens, M.D., 57 FR 59847 (1992).

In the instant case, the Deputy Administrator finds that there is evidence demonstrating that Dr. Geiger is not authorized to handle controlled substances in Georgia, the State in which he seeks a DEA registration. Since Dr. Geiger lacks such authority, he is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for DEA Certificate of Registration, submitted by Douglas L. Geiger, M.D. be, and it hereby is denied. This order is effective November 14, 2002.

Dated: September 30, 2002.

John B. Brown III,

Deputy Administrator.

[FR Doc. 02–26164 Filed 10–11–02; 8:45 am]

BILLING CODE 4410–09–M

LEGAL SERVICES CORPORATION

Development of a National Reporting System To Collect Performance and "Outcomes" Information on the Results of the Services Provided by LSC-funded Grantees to Eligible Clients

AGENCY: Legal Services Corporation.

ACTION: Request for Information on the Development of a National Reporting System to Collect Performance and "Outcomes" Information on the Results of the Services Provided by LSC-funded Grantees to Eligible Clients.

SUMMARY: This notice is a request for information for use by the Legal Services Corporation regarding the Development of a National Reporting System to Collect "Outcomes" Information on the Results of the Services Provided by LSC-funded grantees to Eligible Clients.

ADDRESSES: Two (2) copies of written submissions should be addressed to Wendy Burnette, Legal Services Corporation, 750 First Street NE., Washington, DC 20002–4250.

DATES: Information must be submitted by 5 p.m., January 17, 2003. This is an extension of submission date of September 28, 2002 included in a previously published notice for this RFI.

FOR FURTHER INFORMATION CONTACT: Randi Youells or Michael Genz, Legal Services Corporation, 750 1st Street NE., Washington, DC 20002–4250.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation (LSC) is a private, nonprofit corporation established by the Congress of the United States to ensure equal access to justice under the law by providing legal assistance in civil matter to low-income individuals. LSC is headed by an 11-member board of directors, appointed by the President and confirmed by the Senate.

LSC does not itself provide legal services to low-income Americans. The Corporation is authorized by Congress to make grants and contracts to support the provision of civil legal assistance to clients who meet eligibility requirements. LSC develops and administers policy consistent with Congressional mandate, secures and receives federal appropriations and allocates these appropriations to not-for-profit legal services organizations throughout the county; assures that grantees of LSC funds comply with federal law and regulations; and guarantees the delivery of high quality services to eligible low-income people in the United States and its territories. LSC makes grants to organizations that provide legal assistance to indigent persons throughout the United States, Puerto Rico, the District of Columbia, the U.S. Virgin Islands, Guam, and Micronesia. LSC grants federal dollars to independent local programs chosen through a system of competition.

As a delivery system, legal services programs provide a full range of services to eligible clients. While grantees provide many kinds of services to clients, all are reported to LSC as either cases (the CSR reporting system) or matters (the MSR reporting system). However, neither CSR nor MSR statistics give any information on the outcome of a particular case. In fact, the CSR system reveals very little about a case closed by and LSC-funded grantee other than the following:

- That the grantee accepted the case, that is, the case met the eligibility guidelines established by the program's board and by LSC;
- That the case was "completed" or closed within the calendar year covered by the CSR submission;
- The manner in which the case was handled, such as 'advice'; and
- The general area of law in which the case falls (*e.g.*, housing law, family law).

This is perceived as problematic for several reasons:

(1) By simply counting closed cases the CSR system reduces the provision of legal services to a number rather than helping us understand what changes grantees have made in the lives of our clients and their communities.

(2) Reducing to a single number (a "closed case") the services that a grantee provides to a client makes the work of grantees seem easy and undemanding.

(3) Because the CSR data do not measure performance and outcomes, it does not allow LSC and its grantees to objectively track whether we are expanding access and improving performance quality as required by LSC's five-year Strategic Plan.

(4) CSR data do not allow for comparisons of grantees in terms of the efficiency and effectiveness of grantees' work for clients. Although we are able to extrapolate "cost-per-case" from the CSR data, the data do not enable us to identify which grantees are working ineffectively or do not otherwise meet the standards commonly expected of high quality legal services providers. Conversely, we cannot objectively identify our strongest programs so that we can understand what makes them "best" in order to replicate them.

(5) The CSR/MSR data do not present information that allows the legal service community to draw reasonable conclusions about what happened to

those clients who were given advice or brief service, or who received assistance through a service classified by LSC as a "matter", such as the receipt of community legal education materials.

Request for Information

LSC invites interested parties to submit written information relevant to the development of outcomes measures for legal services programs. Information provided through public submission will be considered by the Legal Services Corporation in developing a strategy to design a data system to supplant or supplement the current CSR and MSR systems.

Materials submitted should be confined to the specific topic of the study. In particular, the LSC is seeking written submissions on the following topics: Outcomes and related performance measurement systems for legal services programs currently in use across the country; optimal ways to assess equity, quality, and efficiency within and across legal services agencies; the types of performance information that can and should be tracked in a viable performance measurement system; performance measurement in relation to other evaluation activities; the performance measurement development process; and optimal ways of assessing the accuracy and usefulness of performance measurement systems.

Information acquired through this Request for Information process is provided voluntarily, will not be compensated, and will not obligate LSC to pursue any particular course of action or strategy.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

[FR Doc. 02–26160 Filed 10–11–02; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 10 a.m., Thursday, October 17, 2002.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Quarterly Insurance Fund Report.
2. Request from a Federal Credit Union to Expand its Community Charter.
3. Requests from two Federal Credit Unions to Add Underserved Areas to their Fields of Membership.
4. Approval and Funding for the 2003 Computer Replacement Project.
5. *Final Rule:* Part 704 of NCUA's Rules and Regulations, Corporate Credit Unions.
6. Approval of NCUA's Strategic Plan for 2003–2008.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, October 17, 2002.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action Under Part 702 of NCUA's Rules and Regulations. Closed pursuant to Exemptions (8), (9)(A)(ii) and (9)(B).
2. One (1) Personnel Matter. Closed pursuant to Exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone: 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–26333 Filed 10–10–02; 2:36 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On June 3, 2002, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on July 26, 2002 to: David Ainley, Permit No. 2003–002; Paul J. Ponganis, Permit No. 2003–003; William R. Fraser, Permit No. 2003–004, 005, 006; and Mark Buckley, Permit No. 2003–007.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 02–26188 Filed 10–11–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: The National Science Foundation published notices in the **Federal Register** of permit applications received. Permits were issued on October 4, 2002 to:

Notice Published

Randall Davis, June 3, 2002, Permit No. 2003–001; Scott Kelley, September 6, 2002, Permit No. 2003–008; Donal Manahan, September 6, 2002, Permit No. 2003–009; Brenda Hall, September 6, 2002, Permit No. 2003–010; Michael Castellini, September 6, 2002, Permit No. 2003–011; and Robert A. Garrott, September 6, 2002, Permit No. 2003–012.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 02–26189 Filed 10–11–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Business and Operations Advisory Committee

Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Business and Operations Advisory Committee (9556).

Date/Time: October 22, 2002; 8:30 a.m. to 5 p.m. (EST). October 23, 2002; 8:30 a.m. to 2 p.m. (EST).

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA.

Type of Meeting: Open.

Contact Person: Mary Ann Birchett, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 292–8100.

Purpose of Meeting: To provide advice concerning issues related to the oversight, integrity, development and enhancement of NSF's business operations.

Agenda

October 22, 2002

AM: Introductions and Updates—Office of Budget, Finance, and Award Management and Office of Information and Resource Management activities.

Presentation and Discussion—NSF Business Analysis; NSF Academy.

PM: Presentation and Discussion—Meet with NSF Deputy Director; Office of Management Discussion—Performance Assessment; Integrating Budget, Cost, and Performance; NIH Presentation on Compliance.

PM: Discussion—Planning for next meeting; feedback; other business.

Reason for Late Notice: This notice is late because there were last minute revisions to the agenda.

Dated: October 9, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–26133 Filed 10–11–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources

Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Education and Human Resources (ACEHR) (#1119).

Date and Time: November 6, 8:30 a.m.–6 p.m., November 7, 8:30 a.m.–3 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Jane T. Stutsman, Deputy Assistant Director Directorate for Education and Human Resources, National Science Foundation, 4201 Wilson Boulevard, Room 805, Arlington, VA 22230, 703–292–8601.

Purpose of Meeting: To provide advice and recommendations concerning NSF support for Education and Human Resources.

Agenda: Discussion of FY 2002 programs of the Directorate for Education and Human Resources and planning for future activities.

Dated: October 8, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–26134 Filed 10–11–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

Nine Mile Point Nuclear Station, LLC; Nine Mile Point Nuclear Station, Unit No. 2; Exemption

1.0 Background

Nine Mile Point Nuclear Station, LLC (NMPNS, or the licensee) is the holder of Facility Operating License Nos. DPR–63 and NPF–69, which authorize operation of Nine Mile Point Nuclear Station, Unit Nos. 1 and 2 (NMP1 and NMP2), respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two boiling-water reactors (BWRs) located in Oswego County in New York; this exemption addresses only NMP2.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), part 54, Section 54.17(c) (10 CFR 54.17(c)) stipulates that an application for a renewed license may not be submitted to the Commission earlier than 20 years before the expiration of the operating license currently in effect.

NMPNS, however, requested a schedular exemption from the 20-year restriction specified in 10 CFR 54.17(c) to allow it to submit a renewal application for NMP2 earlier than 20 years before expiration of its operating license. Such an exemption would allow NMPNS to submit one application for renewal of the operating licenses of both NMP1 and NMP2, with the goal of attaining efficiencies for preparation and review of the application. The current operating license for NMP1 (DPR–63) expires on August 22, 2009, and for NMP2 (NPF–69) on October 31, 2026. By the end of 2003, NMP1 will have more than 34 years of operating experience and NMP2 will have more than 17 years of experience.

By application dated January 4, 2002, as supplemented by letter dated June 27, 2002, NMPNS proposed a schedular exemption from the 20-year restriction in 10 CFR 54.17(c) to allow it to submit a renewal application for NMP2 earlier than 20 years before expiration of its operating license.

3.0 Discussion

Pursuant to 10 CFR 54.15, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 54, in accordance with the provisions of 10 CFR 50.12, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

The current operating licenses for NMP1 and NMP2 were issued in accordance with the Atomic Energy Act (AEA), as amended, and 10 CFR 50.51, which limit the duration of an operating license to a maximum of 40 years. In accordance with 10 CFR 54.31, the renewed license will be of the same class as the operating license currently in effect and cannot exceed a term of 40 years. Therefore, the term of the renewed licenses for NMP1 and NMP2, are limited both by Federal statute and the Commission's regulations to 40 years. Additionally, Section 54.31(b) of 10 CFR states that:

> A renewed license will be issued for a fixed period of time, which is the sum of the additional amount of time beyond the expiration of the operating license (not to exceed 20 years) that is requested in a renewal application plus the remaining number of years on the operating license currently in effect. The term of any renewed license may not exceed 40 years.

The potential exists, due to NMPNS's decision to apply early for license renewal for NMP2, that the renewed NMP2 license may not have the maximum 20-year period of extended operation permitted by 10 CFR 54.31(b). Any actual reduction from the maximum of 20 years will depend on the date the renewed NMP2 license is issued.

The Commission's basis for establishing the 20-year limit contained in 10 CFR 54.17(c) is discussed in the 1991 Statement of Consideration for 10 CFR part 54 (56 FR 64963). The limit was established to ensure that substantial operating experience was accumulated by a licensee before a renewal application is submitted, such that any plant-specific concerns regarding aging would be disclosed. While amending the rule in 1995, the Commission sought public comment on whether the 20-year limit should be reduced. The Commission determined that sufficient basis did not exist to generically reduce the 20-year limit. However, the Commission indicated in the Statement of Consideration for the amended rule (60 FR 22488), that it was willing to consider plant-specific exemption requests by applicants who believe that sufficient information is available to justify applying for license renewal prior to 20 years from

expiration of the current license. NMPNS's exemption request is consistent with the Commission's intent to consider plant-specific requests and is permitted by 10 CFR 54.15 (regarding specific exemptions to provisions in part 54).

NMPNS stated that the two units have similar operation, maintenance, use of operating experience, and environment, and, as such, NMP1 operating experience is directly applicable to NMP2. Both units employ BWRs with nuclear steam supply systems provided by General Electric Company, and were constructed by Stone & Webster Engineering Corporation. NMPNS reported that materials of construction for systems, structures, and components on both units are typically identical or similar. Moreover, NMPNS stated that many of the maintenance activities and other existing aging management programs are common to both units; thus, the effectiveness of aging management programs is demonstrated by the experience at both units.

NMPNS also stated that many of the procedures that govern site activities are not unit-specific and require the consideration of operating experience at both units. If an item is potentially applicable to both units, the item is addressed in the plant's corrective action process. Nonconforming or degraded equipment on one unit necessitates consideration of the same condition on the other unit because of the similarities between the two units. Further, NMPNS does not divide the plant organizations by unit and typically assigns personnel to work on either unit.

While the units have common operation, maintenance, use of operating experience, and environment, NMP1 and NMP2 are of different BWR design. NMP1 is a BWR/2 design and NMP2 is a BWR/5 design. The containment designs and thermal output of these two designs are significantly different. In a letter dated May 15, 2002, the NRC requested additional information from NMPNS to justify the applicability of NMP1's BWR/2 operating experience as the basis for the schedular exemption request for NMP2, or to discuss how industry-wide BWR/5 operating experience can supplement NMP2's lack of sufficient operating experience.

In its June 27, 2002, letter, NMPNS compared the NMP1 and NMP2 containment structures and components to those in the applicable sections of the Generic Aging Lessons Learned (GALL) Report. NMPNS stated that the operating experience from NMP1 is applicable to NMP2 with regard to identifying containment structure-related aging effects. The NRC staff reviewed the June 27, 2002, letter and determined that, although there are differences in containment design and configurations between NMP1 and NMP2, both units do exhibit similar aging effects, and their aging effects are comparable to those of the GALL Report. The NRC staff also reviewed NMPNS's assertions that (1) NMP2 also has the benefit of industry operating experience, particularly for those BWRs that have Mark II containments; (2) by October 2003, when NMPNS anticipates submitting the license renewal application (LRA) for NMP2, two BWR units (*i.e.*, LaSalle 1 and Susquehanna 1) with Mark II containments will have accumulated at least 20 years of operating experience and two other units (Columbia and LaSalle 2) will have close to 20 years of operating experience; and (3) the NMP2 LRA will also reflect industry experience identified in the GALL Report as well as other industry programs. The NRC staff finds that the justifications provided by NMPNS for these assertions are based on factual information and are reasonable.

NMPNS compared the NMP1 and NMP2 thermal output, which results in differences in neutron flux and fluence to which the reactor vessel internals (RVI) and reactor vessels are exposed. NMPNS indicated that the differences in thermal output do not significantly affect the reactor coolant temperature. In addition, NMPNS stated that the NMP1 and NMP2 reactor vessel operating temperatures are similar and closely match those specified in the GALL Report for the BWR reactor vessel environment. The NRC staff compared the operating temperatures through the reactor vessel integrity database with those in the GALL Report and found NMPNS's justification reasonable.

NMPNS also provided additional information regarding neutron flux. As a result of higher power density, the NMP2 RVI experience greater neutron flux than the NMP1 RVI. However, as a result of reactor vessel geometry (*i.e.*, a larger annulus between the core shroud and the vessel wall), the NMP2 reactor vessel actually experiences a lower flux than the NMP1 reactor vessel, which results in a lower predicted end-of-life fluence.

In addition, NMPNS indicated that the higher core power density and, correspondingly, a higher fluence for NMP2 may result in the emergence of certain aging effects earlier in plant life than would be the case for NMP1. However, NMPNS stated that it noted no unique aging effects for the NMP2 RVI.

NMPNS also stated that, on an industry-wide basis, the BWR Vessel and Internals Project (BWRVIP) addresses RVI. The BWRVIP reviewed the function of each internal BWR component (including the BWR/2 and BWR/5 designs). For those internals that could impact safety, the BWRVIP considered the aging mechanisms that could cause degradation of such components and developed an inspection program that would enable degradation to be detected before component function was adversely affected. Therefore, NMPNS indicated that the operating experience gained from the BWRVIP could be applied to NMP2 in assisting the identification of plant-specific concerns regarding aging. The NRC staff finds this approach acceptable.

An exemption will not be granted unless special circumstances are present, as defined in 10 CFR 50.12(a)(2). Specifically, 10 CFR 50.12(a)(2)(ii) states that a special circumstance exists when "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule." As discussed above, the purpose of the time limit specified in 10 CFR 54.17(c) was "to ensure that substantial operating experience is accumulated by a licensee before it submits a renewal application." The 20-year limit was imposed to ensure that sufficient operating experience was accumulated to identify any plant-specific aging concerns. Although the 20-year requirement of 10 CFR 54.17(c) is specifically applicable to the unit applying for a renewed operating license, the operating experience available to a license renewal applicant is not limited solely to the operating experience accumulated by the unit itself. In the supplementary information accompanying the 1991 publication of the rule, the NRC stated: "* * * both renewal applicants and the NRC will have the benefit of the operational experience from the nuclear industry and are not limited to information developed solely by the utility seeking a renewed license." As discussed above, such operational experience aspect has been acceptably addressed by NMPNS. Therefore, sufficient combined operating experience exists to satisfy the intent of 10 CFR 54.17(c), and the application of the regulation in this case is not necessary to achieve the underlying purpose of the rule. The NRC staff concludes that special circumstances are present in accordance with 10 CFR 50.12(a)(2)(ii).

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants NMPNS a schedular exemption from the requirements of 10 CFR 54.17(c). Specifically, this schedular exemption allows NMPNS to apply for a renewed license for NMP2 earlier than 20 years before the expiration of the operating license currently in effect.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (67 FR 62503).

This exemption is effective upon issuance.

Dated in Rockville, Maryland, this 8th day of October, 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–26167 Filed 10–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–312]

Sacramento Municipal Utility District; Rancho Seco Nuclear Generating Station; Exemption

1.0 Background

The Sacramento Municipal Utility District (the licensee) is the holder of Facility Operating License No. DPR–54, which authorizes possession of the Rancho Seco Nuclear Generating Station (Rancho Seco). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor located in Sacramento County in California. The facility is permanently shut down and defueled and the licensee is no longer authorized to operate or place fuel in the reactor.

2.0 Request/Action

Section 50.54(p) of Title 10 of the Code of Federal Regulations states that "The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with Appendix C of part 73 of this chapter for effecting the actions and decisions contained in the Responsibility Matrix of the Safeguards Contingency Plan."

Part 73 of Title 10 of the Code of Federal Regulations, "Physical Protection of Plant and Materials," states that "This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used." Section 73.55 of Title 10 of the Code of Federal Regulations, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," states that "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

On March 17, 1992, the NRC amended the Rancho Seco operating license to Possession-Only status. On March 20, 1995, the NRC issued the Rancho Seco Decommissioning Order. The Order authorized Rancho Seco decommissioning and accepted the Rancho Seco decommissioning funding plan. By letter dated February 20, 2001, the licensee requested exemptions from the security requirements of 10 CFR 50.54(p) and 10 CFR part 73. Sections 50.54(p) and 73.55 provide security requirements to protect the spent fuel while within the boundary of a licensed power reactor site. The requested exemptions from the security requirements for the Rancho Seco Nuclear Generating Staion would be effective after the spent fuel has been removed from the reactor site by the licensee and relocated to the new independent spent fuel storage installation (ISFSI), which is not physically associated with the reactor site. The new ISFSI has been licensed under 10 CFR part 72 for storage facilities not associated with a reactor site and possesses an approved physical security plan, as required by 10 CFR 72.180 and 10 CFR 73.51. The licensee completed the transfer of the spent nuclear fuel from the spent fuel pool to the ISFSI on August 21, 2002.

Subpart H of 10 CFR part 72 establishes requirements for physical protection for the independent storage of spent nuclear fuel and high-level radioactive waste and refers to 10 CFR 73.51 to define the requirements for physical protection of spent nuclear fuel stored under a specific license issued pursuant to 10 CFR part 72. The Rancho Seco ISFSI has an NRC-approved security plan to protect the spent nuclear fuel stored there from radiological sabotage and diversion, as required by 10 CFR part 72, subpart H.

In summary, by letter dated February 20, 2001, the licensee requested exemptions from the security requirements of 10 CFR 50.54(p) and 10 CFR part 73 to eliminate the security requirements at the 10 CFR part 50 licensed site once all the spent nuclear fuel had been moved to the 10 CFR part 72 licensed ISFSI.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule and when compliance would result in costs significantly in excess of those incurred by others similarly situated. Also, pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may grant exemptions from the regulations in this part as it determines are authorized by law and will not endanger life or property, and are otherwise in the public interest.

With the completion of the spent fuel movement into the ISFSI on August 21, 2002, there is no longer any special nuclear material located within the 10 CFR part 50 licensed site. At this time, the potential for radiological sabotage or diversion of special nuclear material at the 10 CFR part 50 licensed site would be eliminated. The security requirements of 10 CFR part 73, as applicable to a 10 CFR part 50 licensed site, presume that the purpose of the facility is to possess and utilize special nuclear material. Therefore, the continued application of the 10 CFR part 73 requirements to the Rancho Seco facility would no longer be necessary to achieve the underlying purpose of the rule. Additionally, with the transfer of the spent nuclear fuel to the ISFSI, the 10 CFR part 50 licensed site would be comparable to a source and byproduct

licensee in terms of the level of security needed to protect the public health and safety. The continued application of 10 CFR part 73 security requirements would cause the licensee to expend significantly more funds for security requirements than other source and byproduct facilities. Therefore, compliance with 10 CFR part 73 would result in costs significantly in excess of those incurred by others similarly situated. Based on the above, the NRC has determined that the removal of all special nuclear material from the 10 CFR part 50 licensed site constitutes special circumstances. The security of the special nuclear material will be maintained following relocation of the spent nuclear fuel to the 10 CFR part 72 licensed ISFSI since new assurance objectives and general performance requirements will be in place to protect the spent fuel by the security requirements in 10 CFR part 72. Therefore, protection of the special nuclear material will continue following relocation of the spent nuclear fuel from the 10 CFR part 50 licensed site.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest based on the continued maintenance of appropriate security requirements for the special nuclear material. Additionally, special circumstances are present based on the relocation of the spent nuclear fuel from the 10 CFR part 50 licensed site to the 10 CFR part 72 site. Therefore, the Commission hereby grants Sacramento Municipal Utility District an exemption from the requirements of 10 CFR 50.54(p) at the Rancho Seco Nuclear Generating Station.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest based on the maintenance of appropriate security requirements for the special nuclear material under the 10 CFR part 72 license. Therefore, the Commission hereby grants Sacramento Municipal Utility District an exemption from the physical protection requirements of 10 CFR part 73 at the Rancho Seco Nuclear Generating Station.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (66 FR 36017, July 10, 2001).

These exemptions are effective immediately.

Dated in Rockville, Maryland, this 8th day of October, 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–26168 Filed 10–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–16]

Virginia Electric and Power Company; Notice of Docketing of the Materials License SNM–2507 Amendment Application for the North Anna Independent Spent Fuel Storage Installation

By letter dated May 28, 2002, Virginia Electric and Power Company (Dominion) submitted an application to the U.S. Nuclear Regulatory Commission (NRC or Commission) in accordance with 10 CFR part 72 requesting an amendment of the North Anna independent spent fuel storage installation (ISFSI) license (SNM–2507) for the ISFSI located in Louisa County, Virginia. Dominion is seeking Commission approval to amend its license to change the ISFSI's technical specifications regarding the type of spent fuel authorized for storage. Dominion has requested to change the technical specifications to allow the storage of spent nuclear fuel with higher initial enrichment and burnup than currently specified.

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–16 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

For further details with respect to this application, see the application dated May 28, 2002, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS). The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–(800)–397–4209, (301)–415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 4th day of October, 2002.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–26169 Filed 10–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION 2002

Nuclear Safety Research Conference

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The 2002 Nuclear Safety Research Conference (NSRC), formerly known as the Water Reactor Safety Meeting, will be held October 28–30, 2002, from 8:30 a.m. to 5 p.m. at the Marriott Hotel at Metro Center, 775 12th Street, NW., Washington, DC.

The NSRC is an international conference focused on regulatory issues, and it attracts researchers, regulators, and utility representatives from the United States and more than twenty other countries. The NSRC continues to be a leading forum in which participants interact with the Nuclear Regulatory Commission (NRC) staff and colleagues and obtain research results and insights from research programs performed in support of the mission of the NRC.

Ashok C. Thadani, Director of the Office of Nuclear Regulatory Research, will open the conference on Monday, October 28, 2002, at 8:30 a.m., and NRC Executive Director for Operations, William D. Travers, will follow as the keynote speaker.

An expert panel on advanced reactors will discuss the regulatory research needed to support the licensing of advanced reactor designs and focus on the kind of research needed to resolve technical and policy issues. Panel members will include NRC Commissioner Jeffrey S. Merrifield, Salomon Levy (Levy & Associates), Eugene Grecheck (Dominion Energy, Inc.), Andrew Kadak (Massachusetts Institute of Technology), F. Peter Ford (NRC's Advisory Committee on Reactor Safeguards), and Tom Miller (U.S. Department of Energy).

Technical sessions on advanced reactors and the degradation of reactor coolant boundary materials will be held in the afternoon.

On Tuesday, October 29, 2002, NRC Chairman, Richard A. Meserve, will be the guest speaker at 8:30 a.m.; he will be followed by the first of two fuels sessions. An expert panel on formal decision methods and nuclear safety research will discuss research activities for developing the technical basis and enhancing the transparency and objectivity of decisionmaking in the regulatory environment. Panel members include James W. Johnson (NRC), Martin Virgilio (NRC), Theodore Marston (Electric Power Research Institute), Brian Sheron (NRC), and Robert Youngblood (ISL).

Technical sessions on dry cask storage and transportation of spent nuclear fuels as well as fuels research will be held in the afternoon.

On Wednesday, October 30, 2002, NRC Commissioner Greta J. Dicus will be the quest speaker at 8:30 a.m. An expert panel on risk-informed initiatives will communicate recent improvements in how NRC uses risk information in regulatory decisionmaking and how work in the NRC's Office of Nuclear Regulatory Research supports such uses. Panel members include George Apostolakis (Massachusetts Institute of Technology), Jukka Laaksonen (Finnish Radiation and Nuclear Safety Authority (STUK)), Stephen Floyd (Nuclear Energy Institute), David Lochbaum (Union of Concerned Scientists), and Luis Reyes (NRC).

Technical sessions on control of slightly contaminated materials and on probabilistic risk assessment will be held for the remainder of the day.

This conference includes presentations by personnel from the U.S. Government, national laboratories, private contractors, universities, reactor vendors, and a number of foreign organizations.

Those who wish to attend are encouraged to register in advance on the NSRC website (*http://www.bnl.gov/NSRC*) or by contacting Susan Monteleone, Brookhaven National Laboratory, Department of Nuclear Energy, Building 130, Upton, NY 11973, telephone (631) 344–7235; or Sandra Nesmith (301) 415–6437, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 2nd day of October, 2002.

For the Nuclear Regulatory Commission.

Karen M. Fitch,

Deputy Director, Program Management, Policy Development & Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 02–26166 Filed 10–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, September 20, 2002, through October 3, 2002. The last biweekly notice was published on October 1, 2002 (67 FR 61674).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By November 14, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a

petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov*.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: August 28, 2002.

Description of amendments request: The proposed change will revise the expiration date of the facility operating licenses for Palo Verde Nuclear Generating Station Units 1, 2, and 3, to recapture low-power testing time.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Response: No.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not involve a change to design configuration or operation of the facilities. In addition, each PVNGS [Palo Verde Nuclear Generating Station] unit was designed and constructed to ensure a 40-year service life. Design features were incorporated that provide for inspectability of structures, systems and components during the 40-year service life. Surveillance, inspectability and maintenance practices which have been implemented in accordance with the American Society of Mechanical Engineers Boiler and Pressure Vessel Code and the unit Technical Specifications provide assurance that any degradation in plant safety-related equipment will be identified and corrected to provide continued safe operation of each unit throughout the duration of the applicable facility operating license.

The largest recapture period requested by the proposed amendment requests is 8 months (Unit 3). This recapture period represents less than 1.7% of the 40-year service life of the respective unit, and is insignificant from an aging effects perspective. Therefore, the proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Response: No.

The proposed amendments would revise the expiration of each facility operating license such that the expiration of each facility operating license is based upon issuance of the respective FPOL [full power operating license] and not upon issuance of the respective LPOL [low power operating license]. No physical changes are being made to the design features or operation of the facilities. Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Response: No.

The proposed amendments would revise the expiration of each facility operating license such that the expiration of each facility operating license is based upon issuance of the respective FPOL and not upon issuance of the respective LPOL. No physical changes are being made to the design features or operation of the facilities.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.*, fuel cladding, reactor coolant system pressure boundary and the containment structure) to limit the radiological dose to the public and control room operators in the event of an accident. The proposed amendments to the facility operating licenses are administrative in nature and have no impact on the margin of safety and robustness provided in the design and construction of the facilities. In addition, the proposed amendments will not relax any of the criteria used to establish safety limits, nor will the proposed amendments relax safety system settings or limiting conditions of operation as defined in the Technical Specifications. Therefore, the proposed amendments do not result in a significant reduction in the margin of safety.

Based on the above information, APS [Arizona Public Service Company] concludes that the proposed amendments present no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: June 11, 2002.

Description of amendments request: The proposed amendment revises Technical Specification (TS) 3.7.11, Spent Fuel Pool Exhaust Ventilation System, for Units 1 and 2 to redefine the applicability of the TS to limit the types of fuel assemblies to which it applies. This proposed amendment revises TS 3.7.11 to not require the ventilation be operable or in operation for the movement of fuel assemblies with an appropriate amount of decay time. An evaluation has determined that 32 days is adequate time to allow for sufficient radioactive decay of short lived isotopes resulting in no increase in offsite dose if the ventilation system were not operable. This change is consistent with changes previously approved for the Improved Standard Technical Specifications as described in Technical Specification Task Force—51.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The system affected by this proposed amendment is the spent fuel pool exhaust ventilation system (SFPEVS). This system mitigates the consequences of a Fuel Handling Incident (FHI) by filtering radioactive iodine from the air above the spent fuel pool prior to that air being exhausted to the environment. This limits the offsite dose possible from a[n] FHI. This proposed amendment revises the Technical Specification applicability for the SFPEVS by defining when the ventilation system is required to limit offsite dose due to a[n] FHI. Because this system is used for the mitigation of an accident, it is not an accident initiator. Therefore, the probability of an accident previously evaluated is not increased.

The only design basis accident originating in the spent fuel pool is the FHI. This accident is evaluated in the Updated Final Safety Analysis Report. The analysis assumed credit for the filtration system. However, a more recent evaluation shows that 32 days after a fuel assembly has been removed from the critical reactor core, adequate radioactive decay has occurred which compensates for the filtration of the ventilation system. Thus, no increase in offsite dose occurs under these conditions. Therefore, the consequences of an accident previously evaluated have not increased.

Therefore, the probability or consequences of an accident previously evaluated have not significantly increased.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The SFPEVS is not being altered by this amendment request. No changes are made in the way in which the SFPEVS is operated or in the way fuel is moved in the spent fuel pool. The only change made would allow some irradiated fuel assemblies to be moved in the spent fuel pool without requiring the operation of the ventilation system. Since no changes are being made to the operation of the SFPEVS when it is needed for offsite dose control and the SFPEVS is a[n] accident mitigating system only, changes in when this system is needed to operate cannot create a new type of accident.

Therefore, the possibility of a new or different [kind] of accident from any previously evaluated is not created.

3. Would not involve a significant reduction in a margin of safety.

The margin of safety provided by the SFPEVS is to limit offsite dose due to a[n] FHI to the limits described in the Updated Final Safety Analysis Report. The evaluation performed indicates that radioactive decay can compensate for the filtration system. Thirty-two days after fuel occupied a critical reactor core, enough radioactive decay has occurred that the offsite dose from a[n] FHI assuming no filtration is the same as the dose determined in the Updated Final Safety Analysis Report. Therefore, no reduction in the margin of safety has occurred because the

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714 (d), please see 67 FR 20884; April 29, 2002.

offsite dose is the same as the previously approved dose limits.

Therefore, the proposed changes do not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard J. Laufer.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: July 17, 2002.

Description of amendment request: The proposed amendment would allow the installation of up to four lead fuel assemblies (LFAs) Manufactured by Westinghouse Electric Company (Westinghouse) into the Unit 2 Cycles 15 and 16 cores. Currently, Technical Specification (TS) 4.2.1, Fuel Assemblies, only allows fuel that is clad with either zircaloy or ZIRLO. The Westinghouse LFAs utilizes advance zirconium-based material for cladding. In addition, the statements currently in TS 4.2.1 concerning the lead test assemblies that were allowed to be inserted for Unit 1 Cycles 13, 14, and 15 will be deleted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Calvert Cliffs Technical Specification 4.2.1, Fuel Assemblies, states that fuel rods are clad with either zircaloy or ZIRLO. This reflects the requirements of 10 CFR 50.44, 50.46, and 10 CFR Part 50, Appendix K, which also restricts fuel rod cladding materials to zircaloy or ZIRLO. Calvert Cliffs Nuclear Power Plant, Inc. proposes to insert up to four Westinghouse fuel assemblies into Calvert Cliffs Unit 2 that have some fuel rods clad in zirconium alloys that do not meet the definition of zircaloy or ZIRLO. An exemption to the regulations has also been requested to allow these fuel assemblies to be inserted into Unit 2. The proposed change to the Calvert Cliffs Technical Specifications will allow the use of cladding materials that are not zircaloy or ZIRLO for two fuel cycles once the exemption is approved. To obtain approval of new cladding materials, 10 CFR 50.12 requires that the applicant show that the proposed exemption is authorized by law, is consistent with common defense and security, will not present an undue risk to the public health and safety, and is accompanied by special circumstances. The proposed change to the Technical Specification is effective only as long as the exemption is effective. In addition, the statements concerning the exemption for Unit 1 Cycles 13, 14, and 15 have been deleted, since Unit 1 Cycle 15 is completed, and therefore the exemption has expired. The addition of what will be an approved temporary exemption for Unit 2 and the deletion of an expired exception to Technical Specification 4.2.1 does not change the probability or consequences of an accident previously evaluated.

Supporting analyses indicate that since the lead fuel assemblies (LFAs) will be placed in non-limiting locations, the placement scheme and the similarity of the advanced alloy to ZIRLO will assure that the behavior of the fuel rods with this alloy are bounded by the fuel performance and safety analyses performed for the ZIRLO clad fuel rods in the Unit 2 Core. Therefore, the addition of these advanced claddings does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The proposed change does not add any new equipment, modify any interfaces with existing equipment, change equipment's function, or change the method of operating the equipment. The proposed change does not affect normal plant operations or configuration. Since the proposed change does not change the design, configuration, or operation, it could not become an accident initiator.

Therefore, the proposed change does not create the possibility of a new or different [kind] of accident from any previously evaluated.

3. Would not involve a significant reduction in [a] margin of safety.

The margin of safety for the fuel cladding is to prevent the release of fission products. Supporting analyses indicate that since the LFAs will be placed in non-limiting locations, the placement scheme and the similarity of the advanced alloy to ZIRLO will assure that the behavior of the fuel rods with these alloys are bounded by the fuel performance and safety analyses performed for the ZIRLO clad fuel rods in the Unit 2 cores. Therefore, the addition of the advanced cladding does not involve a significant reduction in the margin of safety.

The proposed change will add an approved temporary exemption to the Unit 2 Technical Specifications allowing the installation of up to four Westinghouse LFAs. The assemblies use the advanced cladding materials that are not specifically permitted by existing regulations or Calvert Cliffs' Technical Specifications. A temporary exemption to allow the installation of these assemblies has been requested. The addition of an approved temporary exemption to Technical Specification 4.2.1 is simply intended to allow the installation of the LFAs under the provisions of the temporary exemption. The license amendment is effective only as long as the exemption is effective. This amendment does not change the margin of safety since it only adds a reference to an approved, temporary exemption to the Technical Specifications.

In addition, the words concerning the exemption for Unit 1 Cycles 13, 14, and 15 will be deleted since Unit 1 Cycle 15 is completed, and therefore, the exemption has expired. This change does not change the margin of safety since it only deletes a reference to an expired exemption to the Technical Specifications.

Therefore, the proposed change does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard J. Laufer.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: August 6, 2002.

Description of amendments request: The proposed amendment would revise Technical Specification (TS) 3.9, Refueling Operations, to incorporate two changes previously approved in NUREG–1432, Revision 2, "Combustion Engineering Improved Standard Technical Specifications" dated April 2001. One change would add a note to Limiting Condition for Operation 3.9.3 allowing penetration flow path(s) that have direct access from containment atmosphere to the outside atmosphere to be unisolated under administrative control. The other change would replace the requirement in TSs 3.9.4 and 3.9.5 to "[c]lose all containment penetrations providing direct access from the containment atmosphere to outside atmosphere" with a set of more detailed and less restrictive requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR part 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Closing the containment penetrations is considered to be a mitigator of the radiological consequences of a fuel handling incident and a loss of SDC [Shutdown Cooling], not an initiator. Therefore, allowing containment penetration flow paths to be unisolated and the containment purge valves to be opened during these outage activities does not involve a significant increase in the probability of an accident previously evaluated.

The consequence of a fuel handling incident is the release of radioactivity from Containment. The impact of the proposed change to the calculated offsite dose resulting from a fuel handling incident has been evaluated and determined to be acceptable. The fuel handling incident analysis assumes no containment closure. The amount of radioactivity that could be released as a result of the proposed change is bounded by the current analysis of record. Therefore, having containment penetration flow paths unisolated during core alterations and fuel handling does not involve an increase in the consequences of an accident previously evaluated.

The consequences of a loss of SDC is the potential for release of radioactivity to the atmosphere outside Containment. Closing containment penetrations is a mitigator of that consequence. Administrative controls will be put in place to ensure that in an emergency containment closure can be quickly achieved. The containment purge system isolation valves are closed automatically on a containment high radiation signal and can be shut by remote manual operation. Therefore, the proposed changes do not involve a significant increase in the consequences of a loss of SDC.

Therefore, the proposed Technical Specification changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

This requested change does not involve a significant change in the operation of the plant and no new accident initiation mechanism is created by the proposed changes. Closing containment penetrations is considered to be a mitigator of the radiological consequences of any accident in the Containment, not an initiator. The containment penetration flow paths are currently opened and closed during the course of an outage. The proposed changes allow them to remain open during a period when they are currently required to be closed.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The margin of safety for containment closure during core alteration/fuel handling is based on the amount of offsite dose resulting from a fuel handling incident. An offsite dose calculation previously approved by the Nuclear Regulatory Commission for a fuel handling incident assumes no containment closure, and any activity released from the Containment is unfiltered. The analysis will apply to the containment penetration flow paths that could be opened under administrative controls and therefore, does not involve a significant reduction in the margin of safety.

The margin of safety for containment closure in the case of a loss of SDC is twofold: (1) The time required to close the Containment to prevent a radioactive release to the atmosphere outside Containment if SDC is lost; and (2) the ability to retain the pressure generated by boiling of reactor coolant as a result of a loss of SDC.

Currently the Technical Specifications are vague and overly restrictive concerning the requirement for containment closure when SDC is lost. The proposed change eliminates unclear requirements and provides a clear way to establish containment closure that meets the Bases description for the Action, which is to prevent fission products from being released from the Containment during a loss of SDC incident. The containment purge isolation valves close rapidly on a high radiation signal or are closed by remote manual operation. The proposed changes do not increase the possibility of a release of radiation following a loss of SDC incident.

Therefore, the ability to provide containment closure is maintained and the margin of safety is not significantly reduce[d] by this proposed activity.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard J. Laufer.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: August 28, 2002.

Description of amendment request: The amendment, proposed by Carolina Power & Light Company to the Harris Nuclear Plant (HNP) Technical Specifications (TS), revises TS 6.9.1.6.2 to add analytical methodology references, which are used to determine core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes incorporate additional references to methodologies used to evaluate core operating limits. These methodologies have been approved by the NRC for use in licensing applications. Plant structures, systems, and components will not be operated in a different manner as a result of these proposed changes and no physical modifications to equipment are involved. Adding these references to the Core Operating Limits Report section of Technical Specifications does not increase the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes incorporate additional references to methodologies used to evaluate core operating limits. These methodologies have been approved by the NRC for use in licensing applications. Plant structures, systems, and components will not be operated in a different manner as a result of these changes and no physical modifications to equipment are involved. Adding these references to the Core Operating Limits Report section of Technical Specifications does not create the possibility of a new or different type of accident from any previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed changes incorporate additional references to methodologies used to evaluate core operating limits. These methodologies have been approved by the NRC for use in licensing applications. Plant structures, systems, and components will not be operated in a different manner as a result of these changes and no physical modifications to equipment are involved. Adding these references to the Core Operating Limits Report section of Technical Specifications does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Allen G. Howe

Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: August 7, 2002.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) related to safety system settings. Specifically, the proposed changes would revise: (1) TS 1.0 "Definitions;" (2) TS 2.2.1 "Limiting Safety System Settings—Reactor Trip System Instrumentation Setpoints;" (3) TS 3.3.1 "Reactor Trip System Instrumentation;" (4) TS 3.3.2 "Engineered Safety Features Actuation System Instrumentation;" (5) TS 3.7.7 "Control Room Emergency Ventilation System;" (6) TS 3.8.3.1 "Onsite Power Distribution—Operating." In addition, the appropriate TS Bases would be revised to conform with the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes associated with the operability requirements, surveillance requirements and allowed outage times will improve usability of the facility Technical Specifications. The proposed changes will clearly reflect the existing plant design for the Reactor Trip System (RTS), Engineered Safety Features Actuation System (ESFAS), Control Room, Emergency Ventilation System, and Electrical Power Systems Instrumentation. The proposed changes will also provide consistency within the individual technical specifications tables (e.g. Table 2.2–1, Table 3.3–1, and Table 4.3–1). In addition, there are no hardware changes associated with the proposed changes. Therefore, these systems will continue to perform within the bounds of the previously performed accident analyses.

The proposed changes to the operability requirements will not affect the instrumentation's ability to mitigate the design basis accidents. The proposed allowed outage times (*i.e.* the required action times) are reasonable and consistent with industry guidelines to ensure the affected instrumentation will be restored in a timely manner and provide consistency with the existing plant design. The design basis accidents will remain the same postulated events described in the Millstone Unit No. 3 Final Safety Analysis Report (FSAR), and the consequences of these events will not be affected. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. The proposed changes do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will not reduce the margin of safety since they have no impact on any accident analysis assumption. The proposed changes do not decrease the scope of equipment currently required to be operable or subject to surveillance testing, nor do the proposed changes affect any instrument setpoints or equipment safety functions. The effectiveness of Technical Specifications will be maintained since the changes will not alter the operation of any component or system, nor will the proposed changes affect any safety limits or safety system settings which are credited in a facility accident analysis. Therefore, there is no reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: James W. Andersen, Acting.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: September 12, 2002.

Description of amendment request: The proposed amendments would temporarily revise Technical Specification (TS) 3.5.2, "Emergency Core Cooling System (ECCS);" TS 3.6.6, "Containment Spray System;" TS 3.7.5, "Auxiliary Feedwater (AFW) System;" TS 3.7.7, "Component Cooling Water (CCW) System;" TS 3.7.8, "Nuclear Service Water System (NSWS);" and TS 3.8.1, "AC Sources—Operating" for Catawba Nuclear Station, Units 1 and 2. The proposed TS changes will allow the "A" NSWS header for each unit to be taken out of service for 7 days for pipe replacement. This pipe replacement is scheduled to occur when Units 1 and 2 are at power operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Catawba is currently pursuing a project to replace a portion of the 'A' train of the nuclear service water system (NSWS) piping for both units. This is necessary to maintain the long-term reliability of the NSWS. This project represents a challenge in that it is not possible to isolate, drain, replace, restore and test the NSWS during the current TS action time frame. The purpose of this submittal is to request a temporary change to the existing TS for the systems affected during the project. This will permit an orderly and efficient project implementation during power operation on both units. The specific change is to extend the TS required action time from 72 hours to 168 hours.

The following discussion is a summary of the evaluation of the changes contained in this proposed amendment against the 10 CFR 50.92(c) requirements to demonstrate that all three standards are satisfied. A no significant hazards consideration is indicated if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

First Standard

The pipe replacement project for the NSWS and proposed TS changes have been evaluated to assess their impact on normal operation of the systems affected and to ensure that the design basis safety functions are preserved. During the pipe replacement the other NSWS train will be operable and no major maintenance or testing will be done on the operable train. The operable train will be protected to help ensure it would be available if called upon.

This pipe replacement project will enhance the long term structural integrity in the NSWS system. This will ensure that the 'A' NSWS header maintains its flow margin to ensure its ability to comply with design basis requirements and increase the overall reliability for many years.

The increased NSWS train unavailability as a result of the implementation of this amendment does involve a one time increase in the probability or consequences of an accident previously evaluated during the time frame the NSWS header is out of service for pipe replacement. Considering this small time frame for the 'A' NSWS train outage with the increased reliability and the decrease in unavailability of the NSWS system in the future because of this project, the overall probability or consequences of an accident previously evaluated will decrease.

An evaluation was performed utilizing PRA [probabilistic risk analysis] for extending the NSWS TS time limit from 72 hours to 168 hours. The [CDF] core damage frequency contribution from the proposed outage extension is judged to be acceptable for a one-time, or rare, evolution. Considering the change in CDF associated with the outage extension in the framework of an average over a five-year period, the average annual contribution is considered a low-to-moderate increase in the CDF for consideration of permanent changes to the licensing basis.

Therefore, because this is a temporary and not a permanent change, the time averaged risk increase is acceptable. The increase in the overall reliability of the NSWS along with the decreased unavailability in the future because of the pipe replacement project will result in an overall increase in the safety of both Catawba units. Therefore, the consequences of an accident previously evaluated remains unaffected and there will be minimal impact on any accident consequences.

Second Standard

Implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed temporary TS changes do not affect the basic operation of the ECCS [emergency core cooling system], containment spray system, NSWS, AFW [auxiliary feedwater], CCW [component cooling water], or EDG [emergency diesel generator] systems. The only change is increasing the required action time frame from 72 hours to 168 hours (ECCS, containment spray system, NSWS, AFW, CCW, and EDG). During the project, contingency measures will be in place to provide additional assurance that the affected systems will be able to complete their design functions. No new accident causal mechanisms are created as a result of NRC approval of this amendment request. No changes are being made to the plant, which will introduce any new accident causal mechanisms.

Third Standard

Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this proposed temporary TS amendment. During the 'A' NSWS train outage, the affected systems will still be capable of performing their required functions and contingency measures will be in place to provide additional assurance that the affected systems will be maintained in a condition to be able to complete their design functions. No safety margins will be impacted.

The probabilistic risk analysis conducted for this proposed amendment demonstrated that the CD[F] associated with the outage extension is judged to be acceptable for a one-time or rare evolution. Therefore, there is not a significant reduction in the margin of safety.

Based upon the preceding discussion, Duke Energy has concluded that the proposed amendment for a temporary one time TS change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: September 3, 2002.

Description of amendment request: The proposed changes to the Columbia Generating Station Technical Specifications (TSs) are to: (1) Add depleted uranium to the fuel assembly composition description in TS 4.2.1, (2) revise TS 5.6.5.b to incorporate references to the analytical methods used to determine core operating limits and remove those that are no longer used, and (3) format the revised references as described in Industry/Technical Specification Task Force (TSTF) Traveler, TSTF–363, "Revised Topical Report References in ITS [Improved Technical Specifications] 5.6.5, COLR [Core Operating Limits Report]."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Assembly and core designs employing depleted uranium are employed in other reactors and are within the FRA–ANP fuel design methods and experience base. There will be no change to the composition of the fuel pellets (*i.e.*, UO_2) containing the depleted uranium except for a slight decrease in the amount of U_{235}. Therefore the use of depleted uranium in the fuel rods does not affect the mechanical performance of the rods. Flux profile measurements performed on these core designs correlate with calculated values in a manner consistent with fuel assembly designs that do not include depleted uranium.

Core operating limits are established to support Technical Specification 3.2, Power Distribution, requirements which ensure that fuel design limits are not exceeded during any conditions of normal operation or in the event of any Anticipated Operational Occurrence (AOO). The methods used to determine the core operating limits for each operating cycle are based on methods previously found acceptable by the NRC and listed in TS section 5.6.5.b. A change to TS section 5.6.5.b is requested to include the FRA–ANP methods in the list of approved methods applicable to Columbia Generating Station. Application of these approved methods will continue to ensure that acceptable operating limits are established to protect the fuel cladding integrity during normal operation and AOOs.

The requested Technical Specification changes do not involve any plant modifications or operational changes that could affect system reliability, performance, or possibility of operator error. The requested changes do not affect any postulated accident precursors, do not affect any accident mitigation systems, and do not introduce any new accident initiation mechanisms.

Therefore, these changes do not increase the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Assembly and core designs employing depleted uranium are within the capability of the NRC-approved FRA–ANP fuel design methods. There will be no change to the composition of the fuel pellets (*i.e.*, UO_2) containing the depleted uranium except for a slight decrease in the amount of U_{235}. Therefore the use of depleted uranium in the fuel rods does not affect the mechanical performance of the rods.

Changes to the methodologies listed in the TS are administrative. The proposed changes do not involve any new modes of operation, any changes to setpoints, or any plant modifications. The core operating limits will continue to be developed using NRC-approved methods that account for the mixed fuel core design. The proposed methods do not result in any new precursors to an accident.

Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Assembly and core designs employing depleted uranium are within the capability of the NRC-approved FRA–ANP fuel design methods. There will be no change to the composition of the fuel pellets (*i.e.*, UO_2) containing the depleted uranium except for a slight decrease in the amount of U_{235}. Therefore the use of depleted uranium in the fuel rods does not affect the mechanical performance of the rods.

The core operating limits will continue to be determined using methodologies that have been approved by the NRC.

On this basis, the implementation of the changes does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: September 19, 2002.

Description of amendment request: The proposed amendments would add a new analytical method to Technical Specifications (TS) Section 5.6.5, "Core Operating Limits Report (COLR)." The proposed change supports the core design efforts currently in process for the upcoming Unit 2 refueling outage scheduled to begin in January 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to LaSalle County Station, Unit 1 and Unit 2 Technical Specifications (TS), involves reference to a new fuel analytical method in TS Section 5.6.5, "Core Operating Limits Report (COLR)." This code package supports the methodology currently being used by Framatome-ANP in the reload design and analysis process.

The proposed change to TS Section 5.6.5 will add to the list of methods used to determine the core operating limits, the fuel analytical method that supports design of the LaSalle County Station Unit 2 Cycle 10 reload that is currently scheduled to startup on February 5, 2003. The addition of the approved method to TS Section 5.6.5 has no effect on any accident initiator or precursor previously evaluated and does not change the manner in which the core is operated. The NRC approved method has been reviewed to ensure that the output accurately models predicted core behavior, has no affect on the type or amount of radiation released, and has no affect on predicted offsite doses in the event of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to TS Section 5.6.5 does not affect the performance of any LaSalle County Station structure, system, or component credited with mitigating any accident previously evaluated. The use of a new analytical method, which has been reviewed and approved by the NRC for the design of a core reload, will not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. The proposed change does not introduce any new modes of system operation or failure mechanisms.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to TS Section 5.6.5 adds the current analytical method for design and analysis of core reloads to the list of methods used to determine the core operating limits. The NRC has approved for use by licensees the analytical method being added. The proposed change does not modify the safety limits or setpoints at which protective actions are initiated, and does not change the requirements governing operation or availability of safety equipment assumed to operate to preserve the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, Exelon Generation Company concludes that the proposed amendment presents a no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania

Date of amendment request: August 7, 2002.

Description of amendment request: The proposed amendments would: (1) Revise the surveillance frequency for air or smoke flow testing of containment spray nozzles, as specified in surveillance requirements (SRs) 4.6.2.1.d and 4.6.2.2.f, from once per 10 years to following maintenance which results in the potential for nozzle blockage and allows the use of a visual examination in lieu of an air or smoke flow test; (2) eliminate the SR 4.6.2.2.e.3 criteria for the river water flow rate through the Recirculation Spray System heat exchangers; and (3) make minor clarifying changes to the text in Technical Specification 3.3.1.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes to the containment spray system nozzle surveillance frequency, the manner in which the nozzles are verified to be unobstructed, and the elimination of the associated Recirculation Spray System (RSS) flow rate requirement does not introduce an initiator of any design basis accident or event. The proposed changes do not adversely affect accident initiators or precursors nor alter the configuration of the facility or the manner in which the plant is maintained. The river/service water system monitoring program ensures that the river/service water flow through the RSS heat exchangers will be maintained. The proposed changes to provide alternate wording for the P–13 function in the Reactor Protection System solely for clarification of the current criteria does not adversely affect accident initiators or precursors. Thus, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. Introduction of foreign materials into the containment spray system from the exterior is unlikely due to the location of the spray headers, the passive nature of the nozzles, station foreign material controls, and the fact that the containment spray headers are maintained dry above the water level maintained in the Recirculation Water Storage Tank which inhibits active degradation mechanisms such as corrosion. The proposed amendment to eliminate the associated RSS flow rate requirements and the text clarification for the P–13 function do not introduce an initiator of any design basis accident or event. The proposed changes are consistent with the safety analysis assumptions and resultant consequences. Accident analyses potentially affected by the proposed change have been reviewed and none are adversely affected. Thus, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes to the containment spray nozzle surveillance frequency, the manner in which the nozzles are verified to be unobstructed, the elimination of the associated RSS flow rate requirement, and the text clarifications for the P–13 function do not involve any physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed), subsequently no new or different failure modes or limiting single failures are created. The plant will not be operated in a different manner due to the proposed change. All SSCs will continue to function as currently designed. Thus, the proposed change does not create any new or different accident scenarios.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed changes to the containment spray system nozzle surveillance frequency, the manner in which the nozzles are verified to be unobstructed, the elimination of the associated RSS flow rate requirement, and the text clarifications for the P–13 function do not involve revisions to any safety limits or safety system settings that would adversely impact plant safety. No current setpoints are altered by this change. The proposed amendment does not alter the functional capabilities assumed in a safety analysis for any SSCs important to the mitigation and control of design bases accident conditions within the facility. The river/service water system monitoring program ensures that the river/service water flow through the RSS heat exchangers will be maintained.

All of the applicable acceptance criteria for each of the analyses affected by the proposed change continue to be met. The conclusions of the [Updated Final Safety Analysis Report] remain valid. Thus, since the operating parameters and system performance will remain within design requirements and safety analysis, safety margin is maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Richard J. Laufer.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: August 23, 2002.

Description of amendment requests: The proposed amendments would revise Facility Operating Licenses (OLs) DPR–58 and DPR–74, for Unit 1 and Unit 2, respectively, and Technical Specifications (TS) for Unit 1 and Unit 2. The licensee proposes to delete obsolete and/or expired license conditions from the Unit 1 and Unit 2 OLs, and make editorial changes to the Unit 1 and Unit 2 OLs. Administrative changes to specific TS for Unit 1 and Unit 2 are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The proposed deletion of obsolete and/or expired license conditions from the Unit 1 and Unit 2 OLs is administrative in nature. The deletion of these license conditions has no impact on plant operations since these requirements are no longer applicable. The proposed TS changes, the renumbering of the Unit 2 OL pages, and the correction of a typographical error in the Unit 1 OL are also administrative in nature and do not impact CNP's current design and licensing basis. Since the proposed changes are administrative and do not impact plant operations or design, the changes do not involve any significant increase in the probability or the consequences of any accident or malfunction of equipment important to safety previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed deletion of obsolete and/or expired license conditions from the Unit 1 and Unit 2 OLs is administrative in nature. The proposed TS changes, the renumbering of the Unit 2 OL pages, and the correction of a typographical error in the Unit 1 OL are also administrative in nature. These proposed changes do not impact plant operations or plant equipment in any manner or involve a physical alteration to the plant, nor a change in the methods used to respond to plant transients that has not been previously analyzed. No new or different equipment is being installed and no installed equipment is being removed or operated in a different manner. Consequently, no new failure modes are introduced and the proposed administrative changes to the Unit 1 and Unit 2 OL do not create the possibility of a new or different kind of accident or malfunction of equipment important to safety from any previously evaluated. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed deletion of obsolete and/or expired license conditions from the Unit 1 and Unit 2 OLs does not affect alarm or trip setpoints. The proposed TS changes, the renumbering of the Unit 2 OL pages, and the correction of a typographical error in the Unit 1 OL are administrative in nature and do not impact the condition, design, or performance of any plant structure, system or component. Thus, the results of the accident analyses will not be affected as any input assumptions are protected. The format changes improve readability and appearance and do not alter any requirements. Thus, the proposed changes do not involve a significant reduction in a margin of safety.

In summary, based upon the above evaluation, [Indiana Michigan Power Company] I&M has concluded that the proposed changes involve no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: L. Raghavan.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: August 30, 2002.

Description of amendment requests: The proposed amendments would revise the reactor trip system (RTS) and engineered safety features actuation system (ESFAS) Technical Specification (TS) Surveillance Requirements in TS 3/4.3.1 and TS 3/4.3.2, respectively, by increasing (1) the channel operational test surveillance intervals for analog channels, logic cabinets, and reactor trip breakers (RTBs), and (2) the completion time (CT) and bypass time (BT) for the RTBs in accordance with the evaluation and justifications presented in the referenced document, WCAP–15376, Revision 0, "Risk-Informed Assessment of the RTS and ESFAS Surveillance Test Intervals and Reactor Trip Breaker Test and Completion Times," dated October 2000. Additionally, the proposed amendments would remove Mode 2 applicability for the RTS low pressurizer pressure and high pressurizer water level trips and to add a note to TS Table 4.3–1 clarifying that channel functional testing requirements for the reactor trip bypass breakers are only applicable when they are racked in

and closed for bypassing an RTB. The proposed amendments would also make format and capitalization changes to the affected TS pages that improve the appearance of the TS pages, but do not affect any requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the STIs [surveillance test intervals] and RTB CT and BT reduce the potential for inadvertent reactor trips and spurious actuations, and therefore do not increase the probability of any accident previously evaluated. The proposed changes do not change the response of the plant to any accidents and have an insignificant impact on the reliability of the RTS and ESFAS signals. These changes satisfy the acceptance criteria specified in the NRC's regulatory guidance for evaluating risk-informed changes in RG 1.174 ["An Approach for Using Probabilistic Risk Assessment In Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," dated July 1998] and RG 1.177 ["An Approach for Plant-Specific Risk-Informed Decisionmaking: Technical Specifications," dated August 1998]. The RTS and ESFAS will continue to perform their functions with high reliability as originally assumed in the safety analysis, and the increase in risk is within the acceptance criteria of existing regulatory guidance; therefore, there will not be a significant increase in the consequences of any accidents.

The RTS and ESFAS are not accident initiators or precursors in the safety analysis. No new initiators are created by this activity. The proposed changes do not change any RTS or ESFAS setpoints, nor do they alter the accident mitigation function of any system, structure or component, design assumptions, conditions or configuration of the facility, or the manner in which the plant is operated and maintained. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed changes do not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

No new system interfaces or interactions are created. The proposed changes do not involve a physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed changes do not result in a change in the manner in which the RTS and ESFAS provide plant protection. The RTS and ESFAS will continue to have the same setpoints after the proposed changes are implemented. The proposed changes to STI, CT, and BT do not change any existing accident scenarios, do not alter assumptions made in the safety analysis, nor create any new or different accident scenarios.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by these changes. Redundant RTS and ESFAS trains are maintained, and diversity with regard to the signals that provide reactor trip and engineered safety features actuation is also maintained. All signals credited as primary or secondary, and all operator actions credited in the accident analyses will remain the same. The proposed changes will not result in plant operation in a configuration outside the design basis. The calculated impact on risk is insignificant and meets the acceptance criteria contained in RG 1.174 and RG 1.177.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: March 1, 2002.

Description of amendment request: The proposed amendment would revise the containment spray nozzle inspection frequency contained in Technical Specification Surveillance Requirement (SR) 3.6.6.9. Specifically, the inspection frequency would be conducted "[f]ollowing maintenance which could result in nozzle blockage," rather than at the currently specified 10-year frequency. Maintenance which could result in nozzle blockage is controlled by procedures which establish foreign material exclusion (FME) controls. The FME controls require post-maintenance verification of system cleanliness and freedom from foreign materials.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following evaluation supports the finding that operation of the facility in accordance with the proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the surveillance frequency for containment spray nozzle inspections from every ten years to following maintenance which could result in nozzle blockage. Analyzed events are initiated by the failure of plant structures, systems or components. The containment spray system is not considered as an initiator of any analyzed event. The proposed change does not have a detrimental impact on the integrity of any plant structure, system or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. As a result, the probability of any accident previously evaluated, is not significantly increased.

This change does not affect the plant design. Due to the plant design, the spray headers are maintained dry at the level of the nozzles. Formation of corrosion products is unlikely due to the corrosion resistant materials used in spray header construction. Due to their location at the top of the containment, introduction of foreign material from sources external to the spray nozzles is unlikely. Since loss of foreign material control when working within the affected boundary is the most likely cause for obstruction, testing or inspection following such an occurrence would verify nozzle condition, and the system would be capable of performing its safety function. As a result, the consequences of any accident previously evaluated are not significantly affected.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant or a change in the methods governing normal plant operation. No new or different type of equipment will be installed. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The margin of safety for this system is based on the capacity of the spray headers. Since the system is not susceptible to corrosion induced obstruction or obstruction from sources external to the spray nozzles, and performance of maintenance on the system would require evaluation of the potential for nozzle blockage and the possible need for a test or inspection, the likelihood that the spray nozzles might be blocked would not be affected by the reduction in surveillance frequency. Therefore, the capacity of the system would remain unaffected. Hence, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Arunas T. Udrys, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Section Chief: L. Raghavan.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant (BFN), Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: July 31, 2002.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS). The proposed amendments represent a full implementation of an alternative source term (AST) for the Units 1, 2, and 3 operating licenses. The amendments adopt the AST methodology by revising the current accident source term and replacing it with an accident source term as prescribed in 10 CFR 50.67.

The AST analyses were performed using the guidance provided by Regulatory Guide 1.183, "Alternative Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors," dated July 2000, and Standard Review Plan Section 15.0.1, "Radiological Consequences Analyses Using Alternative Source Terms." The four limiting design basis accidents (DBAs) considered were the Control Rod Drop Accident, the Refueling Accident, the Loss of Coolant Accident, and the Main Steam Line Break Accident.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The AST and those plant systems affected by implementing AST do not initiate DBAs. The AST does not affect the design or operation of the facility; rather, once the occurrence of an accident has been postulated, the new source term is an input to evaluate the consequences. The implementation of the AST has been evaluated in the analyses for the limiting DBAs at BFN. The equipment affected by the proposed change is mitigative in nature and relied upon following an accident. The proposed changes to the TS do revise certain performance requirements. However, these changes will not involve a revision to the parameters or conditions that could contribute to the initiation of a design basis accident discussed in Chapter 14 of the BFN Updated Final Safety Analysis Report.

Plant specific radiological analyses have been performed and, based on the results of these analyses, it has been demonstrated that the dose consequences of the limiting events considered in the analyses are within the regulatory guidance provided by the NRC for use with the AST. This guidance is presented in 10 CFR 50.67, Regulatory Guide 1.183, and Standard Review Plan Section 15.0.1. Therefore, the proposed amendment does not result in a significant increase in the consequences or a significant increase in the probability of any previously evaluated accident.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of AST does not alter any design basis accident initiators. These changes do not affect the design function or mode of operations of systems, structures, or components in the facility prior to a postulated accident. Since systems, structures, and components are operated essentially no differently after the AST implementation, no new failure modes are created by this proposed change. Therefore, the proposed license amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The changes proposed are associated with a revision to the licensing basis for BFN. The results of accident analyses revised in support of the proposed change are subject to the acceptance criteria in 10 CFR 50.67. The analyzed events have been carefully selected, and the analyses supporting this submittal have been performed using approved methodologies. The dose consequences of these limiting events are within the acceptance criteria provided by the regulatory guidance as presented in 10 CFR 50.67, Regulatory Guide 1.183, and SRP 15.0.1.

Therefore, because the proposed changes continue to result in dose consequences within the applicable regulatory limits, the changes are considered to not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and based on this review, it appears that the three standards are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: August 1, 2002.

Description of amendment request: The proposed amendment would revise the Browns Ferry design and licensing basis as described in section 14.5.2.8 of the Updated Final Safety Analysis Report (UFSAR) to eliminate consideration of a pressure regulator downscale failure event as an abnormal operational transient.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment involves a change in transient analysis assumptions and does not change the plant or the manner in which it is operated. Therefore, the amendment has no affect on the probability of an accident. The proposed amendment is based upon upgrades and reliability improvements made to the main turbine generator electro-hydraulic control system, which render the analysis of a Pressure Regulator Downscale Failure event and consideration of the associated consequences unnecessary. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment involves a change in transient analysis assumptions and does not change the plant or the manner in which it is operated. The only event affected, the Pressure Regulator Failure Downscale transient, is of a type already considered. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed amendment eliminates the consideration of the Pressure Regulator Downscale Failure event as an abnormal

operational transient based on the low likelihood of occurrence of such an event due to improvements in the system design of the main turbine electro-hydraulic control system. Other abnormal operational pressurization transients as described in the UFSAR will continue to be analyzed and ensure required margins of safety to fuel thermal limits are maintained. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety. In conclusion, the proposed amendment does not adversely affect the public health and safety, and does not involve any significant safety hazards.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 7902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: September 3, 2002.

Description of amendment request: The proposed amendment would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement would be added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC in its application dated September 3, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of amendment request: August 20, 2002.

Description of amendment request: The proposed amendment would revise Technical specifications (TSs) Table 3.3.6.1–1, Function 5.a, Reactor Water Cleanup (RWCU) System Isolation, Main Steam Valve Vault Area Temperature—High, to extend the frequency of the channel calibration Surveillance Requirement (SR) from 122 days to 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment changes the channel calibration surveillance frequency from 122 days to 24 months. Under certain circumstances, TS SR would allow a maximum surveillance interval of 30 months for the SR. An instrumentation calculation in accordance with the guidelines of Generic Letter 91–04 has shown that the reliability of protective instrumentation will be preserved for the maximum allowable surveillance interval. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of new or different kind of accident from any accident previously evaluated?

No. The proposed change simply extends the channel calibration interval of instrumentation from 122 days to 24 months and does not affect plant modes of operation. Hence, the change does not create the possibility of any new failure mechanisms. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed amendment changes the instrument channel calibration surveillance interval from 122 days to 24 months. An instrumentation calculation in accordance with the guidelines of Generic Letter 91–04 has shown safety margins are preserved with the extended surveillance interval and that the TS allowable values are not changed. Therefore, it is concluded that the proposed amendment does not involve a significant reduction in a margin of safety.

The proposed amendment changes the instrument channel calibration surveillance internal from 122 days to 24 months. An instrumentation calculation in accordance with the guidelines of Generic Letter 91–04 has shown safety margins are preserved with the extended surveillance interval and that the TS allowable values are changed. Therefore, it is concluded that the Proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: September 3, 2002.

Description of amendment request: The proposed amendment would revise technical specifications Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of up to 24 hours, or up to the limit of the surveillance frequency interval, whichever is "less," to up to 24 hours, or up to the limit of the surveillance frequency interval, whichever is "greater." In addition, the following requirement would be added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). TVA reviewed the following proposed NSHC determination published in the **Federal Register** as part of the Consolidated Line Item Improvement Process for Technical Specification Task Force item 358, and concluded in its application of September 3, 2002, that the proposed NSHC determination applied to Watts Bar.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Nuclear Management Company, LLC, Docket No. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Manitowoc County, Wisconsin

Date of amendment request: April 30, 2002.

Brief description of amendment request: The proposed amendment would increase the licensed reactor core power level by 1.4 percent from 1518.5 MWt to 1540 MWt.

Date of publication of individual notice in ***Federal Register:*** September 11, 2002 (67 FR 57630).

Expiration date of individual notice: October 11, 2002.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: August 1, 2001, and as supplemented by letters dated June 19 and September 9, 2002.

Brief description of amendment: The amendment revises technical specification requirements that have been superseded based on the licensed operator training program being accredited by the Institute of Nuclear Power Operations, promulgation of the revised 10 CFR Part 55, and adoption of a systems approach to training as required by 10 CFR 50.120.

Date of issuance: September 24, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 154.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55009). The supplemental letters dated June 19 and September 9, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 2002.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: June 26, 2002, as supplemented on August 1, 2002.

Brief description of amendment: The amendment revised the safety limit minimum critical power ratio values for Cycle 19 in Section 2.1.A of the Technical Specifications, and made several editorial or administrative corrections.

Date of Issuance: September 26, 2002.

Effective date: September 26, 2002, and shall be implemented before Cycle 19 startup.

Amendment No.: 233.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 6, 2002 (67 FR 50949). The August 1, 2002, letter provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 26, 2002.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: August 1, 2001 as supplemented by letters dated June 19, July 19, and September 9, 2002.

Brief description of amendment: The amendment revised, clarified, and deleted, as appropriate, requirements regarding Facility Staff Qualifications and licensed operator and non-licensed personnel training programs. The changes revised requirements that have been superseded based on licensed operator training programs being accredited by the Institute for Nuclear Power Operations, promulgation of the revised 10 CFR Part 55, "Operator's Licenses," which became effective on May 26, 1987, and adoption of a systems approach to training as required by 10 CFR 50.120, "Training and qualification of nuclear power plant personnel."

Date of issuance: September 23, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 241.

Facility Operating License No. DPR–50: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55009). Exelon's June 19, July 19, and September 9, 2002, letters provided clarifying information within the scope of the original application and did not change the NRC staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 2002.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: May 23, 2002, as supplemented July 16, 2002.

Brief description of amendment: The amendment eliminates the requirement to perform response time testing for two reactor protection system functions and two primary containment isolation functions.

Date of issuance: October 2, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 151.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42818). The July 16, 2002, supplemental letter provided additional clarifying information that was within the scope of the original application and did not change the Nuclear Regulatory Commission staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket Nos. 50–245, 50–336, and 50–423 Millstone Power Station, Unit Nos. 1, 2, and 3 New London County, Connecticut

Date of application for amendment: November 8, 2001, as supplemented August 14, 2002.

Brief description of amendment: The amendments incorporate administrative and editorial changes into the Millstone Unit No. 1 Permanently Defueled Technical Specifications (PDTS) and the Millstone Unit Nos. 2 and 3 Technical Specifications (TSs).

Date of issuance: September 17, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 111, 270 and 212.

Facility Operating License Nos. DPR–21, DPR–65, and NPF–49: This amendment revises the Unit No. 1 PDTS and the Units 2 and 3 TSs.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64290). The August 14, 2002, letter provided clarifying information that did not change the scope of the proposed action or the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 17, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: October 7, 2001, as supplemented by letter dated August 7, 2002.

Brief description of amendments: The amendments revised the Technical Specifications 5.6.5.a by adding a few parameter limits currently included in the Core Operating Limits Report.

Date of issuance: October 1, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 202 and 195.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 23, 2002 (67 FR 54680). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 1, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: October 7, 2001, as supplemented by letter dated August 7, 2002.

Brief description of amendments: The amendments revised the Technical Specifications 5.6.5.a by adding a few parameter limits currently included in the Core Operating Limits Report.

Date of issuance: October 1, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 208 & 189.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 23, 2002 (67 FR 54680). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 1, 2002.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: January 10, 2002.

Brief description of amendment: The amendment revised the technical specifications to extend the surveillance test interval of certain instrument channels from the current 18 months to 24 months.

Date of issuance: September 20, 2002.

Effective date: September 20, 2002, to be implemented within 30 days from the date of issuance.

Amendment No.: 179.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 6, 2002 (67 FR 50951). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 20, 2002.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: September 24, 2001, as supplemented by letters dated April 22 and July 29, 2002.

Brief description of amendment: The amendment extends the allowed outage time for a Division I or Division II

Emergency Diesel Generator (EDG) from 72 hours to 14 days. The changes are intended to provide flexibility in scheduling EDG maintenance activities, reduce refueling outage duration, and improve EDG availability during plant shutdowns.

Date of issuance: September 25, 2002.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 125.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64292). The April 22 and July 29, 2002, supplemental letters provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: January 31, 2002, as supplemented by letter dated September 9, 2002.

Brief description of amendment: The amendment changed administrative Technical Specification 5.5.16 regarding the Containment Integrated Leak Rate Testing (ILRT) to allow a one-time extension of the interval (to 15 years) for performance of the next ILRT.

Date of issuance: September 24, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 219.

Renewed Facility Operating License No. DPR–51: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 19, 2002 (67 FR 7417). The September 09, 2002, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: August 1, 2001, as supplemented by letters dated June 19 and September 9, 2002.

Brief description of amendments: The amendments would revise requirements that have been superseded based on licensed operator training programs being accredited by the Institute for Nuclear Power Operations, promulgation of the revised 10 CFR Part 55, "Operators" Licenses," which became effective on May 26, 1987, and adoption of a systems approach to training as required by 10 CFR 50.120, "Training and qualification of nuclear power plant personnel."

Date of issuance: September 24, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 130 and 125.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55018). The supplements dated June 19 and September 09, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 24, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: April 15, 2002, as supplemented July 8, 2002.

Brief description of amendments: The amendments change Technical Specification surveillance requirements and allowable values for reactor vessel steam dome pressure—high instrumentation to reflect replacement of pressure switches with analog units.

Date of issuance: October 2, 2002.

Effective date: As of the date of issuance and shall be implemented within 90 days for Unit 3 and prior to startup from the next refueling outage for Unit 2.

Amendment Nos.: 195 & 188.

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 28, 2002 (67 FR 36930). The supplement dated July 8, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 2, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: May 14, 2002, as supplemented by letter dated September 5, 2002.

Brief description of amendments: These amendments revised technical specification (TS) Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. A TS Bases Control Program is added to the TSs. Additionally, two administrative changes affecting TS Section 6.2.2, "Unit Staff," and Section 6.5.1.2, "Composition," were incorporated.

Date of issuance: October 2, 2002.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment Nos.: 162 and 124.

Facility Operating License Nos. NPF–39 and NPF–85: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 27, 2002 (67 FR 55041). The supplement dated September 5, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on August 27, 2002 (67 FR 55041).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 2, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket No. 50–277, Peach Bottom Atomic Power Station, Unit 2, York County, Pennsylvania

Date of application for amendment: June 10, 2002, as supplemented August 2, 2002.

Brief description of amendment: This amendment revises the Technical Specifications (TSs) for the safety limit for the minimum critical power ratio from its current value of 1.09 to 1.07 for two recirculation-loop operation, and from 1.10 to 1.09 for single recirculation-loop operation.

Date of issuance: September 23, 2002.

Effective date: As of the date of issuance, to be implemented prior to startup for cycle 15 operations, scheduled for September 2002.

Amendment No.: 246.

Facility Operating License No. DPR–44: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 6, 2002 (67 FR 50953). The August 2, 2002, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 23, 2002.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: January 21, 2002.

Brief description of amendment: The amendment modifies the Technical Specification Surveillance Requirement 3.7.3.1 to improve consistency with Cooper Nuclear Station (CNS) Amendment No. 185, approved on March 13, 2001, and eliminate unnecessary restrictions regarding how the reactor equipment cooling system surge tank level is monitored.

Date of issuance: September 18, 2002.

Effective date: September 18, 2002.

Amendment No.: 194

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 2, 2002 (67 FR 15624). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 2002.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: June 24, 2002.

Brief description of amendment: The amendment revised Surveillance Requirement 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period was extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * *up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement was added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

Date of issuance: October 2, 2002.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 107.

Facility Operating License No. NPF–69: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 20, 2002 (67 FR 53987). The staff's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: December 19, 2001, as supplemented April 19, 2002.

Brief description of amendment: The amendment extends the time for completing required action A.1 of TS 3.8.4, "Electrical Power Systems—DC Sources—Operating," for restoring the 125 volt direct current (VDC) electrical power subsystem to operable status. The change, in effect, provides for replacement of 125 VDC batteries 1D1 and 1D2 while the plant is at power. The time is extended on a one-time basis, and for each battery division separately, from 8 hours to 10 days. The one-time change also requires that required features be declared inoperable when the associated 125 VDC source is inoperable and the redundant required features are also inoperable for at least 4 hours.

Date of issuance: October 1, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 247.

Facility Operating License No. DPR–49: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 5, 2002 (67 FR 5329). The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 1, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: February 8, 2002, as supplemented June 21, 2002.

Brief description of amendment: Amendment changes Technical Specification 5.0 to be consistent with Technical Specifications Task Force Change No. 258, Revision 4, "Changes to Section 5.0, Administrative Controls."

Date of issuance: October 2, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 248.

Facility Operating License No. DPR–49: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 2, 2002 (67 FR 15625). The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: June 7, 2002, as supplemented August 20 and 29, 2002.

Brief description of amendment: The amendment would revise the Kewaunee Nuclear Power Plant Technical Specification (TS) Sections for administrative changes:

(1) Section 1–"Definitions," (2) Section 2–"Safety Limits and Limiting Safety System Settings," (3) Section 5–"Design Features," and (4) Section 6–"Administrative Controls."

The administrative changes include capitalizing defined words, formatting section titles, renumbering pages and correcting miscellaneous grammar and punctuation errors.

Date of issuance: September 19, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 162.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 23, 2002 (67 FR 48220). The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: May 7, 2002, as supplemented July 19 and September 11, 2002.

Brief description of amendment: The amendment revised the Kewaunee Nuclear Power Plant technical specification (TS) requirements for meeting surveillances in TS 4.0.a, TS requirements for missed surveillances in TS 4.0.c, and TS requirements for a Bases control program consistent with TS Bases Control Program described in Section 5.5 of NUREG–1431, Standard TS for Westinghouse Plants, Revision 2.

Date of issuance: September 24, 2002.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 163.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42829). The supplements dated July 19 and September 11, 2002, provided clarifying information that did not change the scope of the May 7, 2002, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: December 21, 2001, as supplemented April 26, 2002.

Brief description of amendment: The amendment revises Technical Specifiction (TS) Sections 3.7/4.7, "Containment Systems," to (1) clarify existing requirements, (2) make editorial changes, (3) revise limiting conditions for operation (LCOs) and surveillance requirements, and (4) add certain LCOs.

Date of issuance: September 23, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 130.

Facility Operating License No. DPR–22: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 14, 2002 (67 FR 34490). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: October 17, 2001, as supplemented June 25, 2002.

Brief description of amendment: The amendment revises the multiplier values for the single-loop operation average planar linear heat generation rate to account for the use of General Electric (GE)14 fuel.

Date of issuance: October 2, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 131.

Facility Operating License No. DPR–22: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 14, 2001 (66 FR 57122). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2002.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: September 13, 2001, as supplemented by letter dated February 27, 2002.

Brief description of amendments: The amendment revises Technical Specification (TS) 3.7.16, "Spent Fuel Pool Boron Concentration"; TS 3.7.17, "Spent Fuel Assembly Storage—Region 1/Region 2"; and TS 4.3, "Fuel Storage," for Diablo Canyon Nuclear Power Plant Units 1 and 2, to allow the use of credit for soluble boron in the spent fuel pool criticality analysis.

Date of issuance: September 25, 2002.

Effective date: September 25, 2002, and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–154; Unit 2–154.

Facility Operating License Nos. DPR–80 and DPR–82: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55020). The February 27, 2002, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket No. 50–348, Joseph M. Farley Nuclear Plant, Unit 1, Houston County, Alabama

Date of amendment request: March 4, 2002, as supplemented by letter dated July 11, 2002.

Brief Description of amendment: The proposed amendment revises Technical Specifications (TS) 5.5.9.3.a, "Steam Generator Tube Surveillance Program, Inspection Frequencies." Specifically, the proposed changes revise the Farley Nuclear Plant, Unit 1 TS to allow a 40-month inspection interval after its first (post-replacement) inservice inspection, rather than after two consecutive inspections resulting in C–1 classification.

Date of issuance: September 20, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 157.

Facility Operating License No. NPF–2: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 20, 2002 (67 FR 53991). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 20, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: September 20, 2001, as supplemented by letters dated January 24, April 25, July 3, and July 16, 2002.

Brief description of amendments: The amendments revise the Technical Specifications to support extension of certain surveillance requirements from "92 days" to "92 days on an alternate test basis."

Date of issuance: September 26, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 234 and 176.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 28, 2001 (66 FR 59514). The supplements dated January 24, April 25, July 3, and July 16, 2002, provided clarifying information that did not change the scope of the September 20, 2001, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 26, 2002.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 2, 2001, as supplemented by letters dated March 6, April 2, and June 25, 2002. The supplemental information provided clarification that did not change the scope or the initial no significant hazards consideration determination.

Brief description of amendments: The amendments revise the Technical Specification permitting a one time extension of Title 10 of the *Code of Federal Regulations*, Part 50, Appendix J, Option B, Performance-Based Leakage-Test Requirements.

Date of issuance: September 17, 2002.

Effective date: September 17, 2002.

Amendment Nos.: Unit 1–143; Unit 2–131.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 6, 2002 (67 FR 50959). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 17, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: March 4, 2002 (TSC 00–04).

Description of amendment request: The amendments relocated certain Technical Specification (TS) surveillance requirements to the Sequoyah Technical Requirements Manual.

Date of issuance: September 5, 2002.

Effective date: September 5, 2002.

Amendment Nos: 277 and 268.

Facility Operating License No. DPR–79: Amendments revise the TSs.

Date of initial notice in ***Federal Register:*** April 16, 2002 (67 FR 18648). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 5, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 21, 2001, as supplemented by letters dated June 11, July 19, August 9 and 30, and September 5 and 12, 2002 (TS 00–06).

Brief description of amendments: The amendments revised the Technical Specifications (TSs) to allow irradiation of up to 2256 tritium-producing burnable absorber rods.

Date of issuance: September 30, 2002.

Effective date: As of the date of issuance and shall be implemented prior to irradition of TPBARs.

Amendment Nos.: Unit 1–278, Unit 2–269.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the TSs.

Date of initial notice in ***Federal Register:*** December 17, 2001 (66 FR 65000). The supplemental letters provided clarifying information that did not expand the application beyond the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in an Environmental Assessment dated September 23, 2002 (67 FR 59581) and in a Safety Evaluation dated September 30, 2002.

No significant hazards consideration comments received: Comments were received in response to the staff's proposed no significant hazards consideration determination that was published in the December 17, 2001, **Federal Register**, from Dr. Kenneth D. Bergeron and The Blue Ridge Environmental Defense League (BREDL). BREDL's comments incorporated Mr. Bergeron's comments by reference. These comments were addressed by the staff in a letter from Dr. Brian Sheron to Mr. Bergeron dated September 6, 2002, with a copy to BREDL (Accession No. ML022410310).

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 12, 2001, as supplemented September 17, 2002 (TS 01–04).

Brief description of amendments: The proposed amendments would change the Sequoyah Nuclear Plant, Units 1 and 2 Technical Specification (TS) 3/4 6.5.1 and associated Bases to reflect an increase in the ice condenser basket weight from 1071 pounds to 1145 pounds and the total ice condenser ice weight from 2,082,024 pounds to 2,225,880 pounds. This change is being made in response to a reanalysis by Westinghouse Electric Company that identified a modeling input error used in the original analysis.

Date of issuance: September 30, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 279 & 270.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the TS.

Date of initial notice in ***Federal Register:*** January 8, 2002 (67 FR 934). The September 17, 2002, supplement contained clarifying information only, and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: August 20, 2001, as supplemented by letters of October 29, November 14, November 21, December 7, December 19, 2001, and January 14, February 19, February 21, May 21, May 23, and July 30, 2002.

Brief description of amendment: The amendment allows Watts Bar Nuclear Plant, Unit 1, to irradiate up to 2304 tritium-producing burnable absorber rods in the reactor core each fuel cycle.

Date of issuance: September 23, 2002.

Effective date: As of the date of issuance and shall be implemented prior to starting up from the outage where TVA inserts tritium-producing burnable absorber rods in the core.

Amendment No.: 40.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register***: December 17, 2001 (66 FR 65005). The supplemental letters provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated August 20, 2002 (ADAMS Accession No. ML022320905) and in a Safety Evaluation dated September 23, 2002.

No significant hazards consideration comments received: Comments were received in response to the staff's proposed no significant hazards consideration determination (66 FR 65005) from Dr. Kenneth D. Bergeron and The Blue Ridge Environmental Defense League (BREDL). BREDL's comments incorporated Dr. Bergeron's comments by reference. These comments were addressed by the staff in a letter from Dr. Brian Sheron to Dr. Bergeron dated September 6, 2002, with a copy to BREDL (Accession No. ML022410310). The staff made a final determination that the amendment involves no significant hazards consideration, which is contained in the Safety Evaluation dated September 23, 2002.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: October 23, 2001, as supplemented by letters dated July 23, August 29, and September 6, 2002.

Brief description of amendments: The amendments revise TS 5.5.9, "Steam Generator Tube Inspection Report," to permit installation of leak-tight sleeves in the Comanche Peak Steam Electric Station, Unit 1, steam generators as an alternative to plugging defective steam generator tubes.

Date of issuance: September 25, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 101.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: December 26, 2001 (66 FR 66473). The July 23, August 29, and September 6, 2002, supplemental letters provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 25, 2002.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: June 17, 2002.

Brief description of amendment: The amendment revises Limiting Conditions for Operation (LCOs), Required Actions for LCOs, Surveillance Requirements, and Tables specifying requirements on instrumentation in the following Technical Specifications: (1) TS 3.3.6, "Containment Purge Isolation Instrumentation"; (2) TS 3.3.7, "Control Room Emergency Ventilation System (CREVS) Instrumentation"; (3) TS 3.3.8, "Emergency Exhaust System (EES) Actuation Instrumentation"; and (4) TS 3.9.4, "Containment Penetrations." The revisions allow the equipment hatch and the emergency air lock to be open in refueling outages during core alterations and/or movement of irradiated fuel within containment.

Date of issuance: September 9, 2002.

Effective date: September 9, 2002, and shall be implemented, including the incorporation of the changes to the Bases of the Technical Specifications and to the Final Safety Analysis Report for Callaway, as described in the licensee's letter of June 17, 2002, prior to entry into Mode 6 during Refueling Outage 12 that is scheduled for the Fall of 2002.

Amendment No.: 152.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: July 23, 2002 (67 FR 48222). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 2002.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendment: February 26, 2002, as supplemented by letter dated July 15, 2002.

Brief description of amendment: These amendments revise the surveillance frequency of the quench and recirculation spray system nozzles, from a time period of every 10 years to whenever maintenance is conducted that could contribute to nozzle blockage.

Date of issuance: October 1, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 233 and 215.

Facility Operating License Nos. NPF–4 and NPF–7: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register***: April 30, 2002 (67 FR 21296). The supplemental letter dated July 15, 2002, provided clarifying information that did not change the scope of the February 26, 2002, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 1, 2002.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 4th day of October 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–25990 Filed 10–11–02; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in October 2002. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in November 2002. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the fourth quarter (October through December) of 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in October 2002 is 4.76 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between November 2001 and October 2002.

For premium payment years beginning in:	The required interest rate is:
November 2001	4.52
December 2001	4.35
January 2002	5.48
February 2002	5.45
March 2002	5.40
April 2002	5.71
May 2002	5.68
June 2002	5.65
July 2002	5.52
August 2002	5.39
September 2002	5.08
October 2002	4.76

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-Employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the fourth quarter (October through December) of 2002, as announced by the IRS, is 6 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From—	Through—	Interest rate (percent)
7/1/96	3/31/98	9
4/1/98	12/31/98	8
1/1/99	3/31/99	7
4/1/99	3/31/00	8
4/1/00	3/31/01	9
4/1/01	6/30/01	8
7/1/01	12/31/01	7
1/1/02	12/31/02	6

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the fourth quarter (October through December) of 2002 (*i.e.*, the rate reported for September 16, 2002) is 4.75 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Interest rate (percent)
4/1/96	6/30/97	8.25
7/1/97	12/31/98	8.50
1/1/99	9/30/99	7.75
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75
7/1/00	3/31/01	9.50
4/1/01	6/30/01	8.50
7/1/01	9/30/01	7.00
10/1/01	12/31/01	6.50
1/1/02	12/31/02	4.75

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in

November 2002 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of October, 2002.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 02–26112 Filed 10–11–02; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25766; File No. 812–12742]

Minnesota Life Insurance Company, et al.; Notice of Application

October 8, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to section 11(a) of the Investment Company Act of 1940 (the "Act") approving the terms of an offer of exchange.

APPLICANTS: Minnesota Life Insurance Company ("Minnesota Life"), Minnesota Life Variable Life Account (the "Variable Life Account"), and Securian Financial Services, Inc. ("Securian Financial," collectively with Minnesota Life and the Variable Life Account, the "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 11(a) of the Act approving the terms of a proposed offer of exchange of new variable adjustable life insurance policies issued by Minnesota Life and made available through the Variable Life Account (the "New Policies") for certain outstanding variable adjustable life insurance policies issued by Minnesota Life and made available through the Variable Life Account ("VAL "87" or "VAL "95," collectively, the "Old Policies;" collectively with the New Policies, the "Policies").

FILING DATE: The Application was filed on December 31, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 1, 2002, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Anna Marie Ettel, Esq., Minnesota Life, 400 Robert Street North, St. Paul, MN 55101–2098; copies to W. Randolph Thompson, Esq., Of Counsel, Jones & Blouch L.L.P., 1025 Thomas Jefferson Street, NW., Suite 410E, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Martha Atkins, Senior Counsel, or Lorna J. MacLeod, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 ((202) 942–8090).

Applicants' Representations

1. Minnesota Life is a life insurance company organized under the laws of Minnesota. Minnesota Life was formerly known as The Minnesota Mutual Life Insurance Company, a mutual life insurance company organized in 1880 under the laws of Minnesota. Effective October 1, 1998, The Minnesota Mutual Life Insurance Company reorganized by forming a mutual insurance holding company named "Minnesota Mutual Companies, Inc." The Minnesota Mutual Life Insurance Company continued its corporate existence following conversion to a Minnesota stock life insurance company. All of the shares of the voting stock of Minnesota Life are owned by a second tier intermediate stock holding company named "Securian Financial Group, Inc.," which is a wholly-owned subsidiary of a first tier intermediate stock holding company named "Securian Holding Company," which in turn is a wholly-owned subsidiary of the ultimate parent, Minnesota Mutual Companies, Inc.

2. The Variable Life Account was established on October 21, 1985, by the Minnesota Life Board of Trustees in accordance with certain provisions of Minnesota insurance law. Minnesota Life is the legal owner of the assets in the Variable Life Account. The obligations to Policy owners and beneficiaries arising under the Policies are general corporate obligations of Minnesota Life and thus Minnesota Life's general assets back the Policies. The Minnesota law under which the Variable Life Account was established provides that the assets of the Variable Life Account shall not be chargeable with liabilities arising out of any other business which Minnesota Life may conduct, but shall be held and applied exclusively to the benefit of the holders of those variable life insurance policies for which the separate account was established. The investment performance of the Variable Life Account is entirely independent of both the investment performance of Minnesota Life's General Account and of any other separate account which Minnesota Life may have established or may later establish. The Variable Life Account is organized and registered under the Act as a unit investment trust (File No. 811–4585) and is a "separate account" as defined in section 2(a)(37) of the Act.

3. Securian Financial is registered with the Commission as a broker-dealer and is a member of the National Association of Securities Dealers, Inc. Securian Financial is the principal underwriter for the Policies. Securian Financial is a wholly-owned subsidiary of Advantus Capital Management, Inc., which in turn is a wholly-owned subsidiary of Minnesota Life.

The New Policies

4. The New Policies are offered pursuant to a registration statement under the Securities Act of 1933 (the "1933 Act") filed on February 8, 2000 (File No. 333–96383).

5. The New Policies are variable adjustable life insurance policies that permit the Policy owner to determine the amount of life insurance protection he or she requires and the amount of money the Policy owner can afford to pay. Based on the Policy owner's selection of the premium, face amount and death benefit option, Minnesota Life will calculate the guaranteed plan of insurance. Subject to certain minimums, maximums, and Minnesota Life's underwriting standards, a Policy owner may choose any level of premium or death benefit he or she wishes. This flexibility results in a broad range of plans of insurance.

6. The New Policies have a level premium for a specified number of years, for the life of the insured, or until the Policy becomes paid up.

7. Policy values of the Old and New Policies may be invested in the Variable Life Account or in the general account option. The Variable Life Account currently has 25 sub-accounts to which a Policy owner may allocate premiums (the "Sub-Accounts"). Each Sub-Account invests in shares of a corresponding portfolio of the underlying mutual funds ("Underlying Funds"). Following is a list of the Underlying Funds: Advantus Series Fund, Inc.: Growth Portfolio, Bond Portfolio, Money Market Portfolio, Asset Allocation Portfolio, Mortgage Securities Portfolio, Index 500 Portfolio, Capital Appreciation Portfolio, International Stock Portfolio, Small Company Growth Portfolio, Value Stock Portfolio, Small Company Value Portfolio, Global Bond Portfolio, Index 400 Mid-Cap Portfolio, Macro-Cap Value Portfolio, Micro-Cap Growth Portfolio, Real Estate Securities Portfolio; Franklin Templeton Variable Insurance Products Trust: Templeton Developing Markets Securities Fund—Class 2 Shares, Templeton Asset Strategy Fund—Class 2 Shares, Franklin Small Cap Fund—Class 2 Shares; Fidelity Variable Insurance Products Funds: Mid Cap Portfolio—Service Class Shares, Contrafund® Portfolio—Service Class 2 Shares, Equity-Income Portfolio—Service Class 2 Shares; and Janus Aspen Series: Capital Appreciation Portfolio—Service Shares, International Growth Portfolio—Service Shares. Amounts invested in the Sub-Accounts are subject to the management fees paid and other expenses incurred by the Underlying Funds.

8. Policy values may also be accumulated on a guaranteed basis by allocation to Minnesota Life's general account (the "Guaranteed Principal Account"). Guaranteed Principal Account interest is guaranteed to be credited at a rate of at least 4% on an annual basis.

9. Actual cash value may be transferred between the Guaranteed Principal Account and the Variable Life Account or among the Sub-Accounts of the Variable Life Account. A Policy owner may request a transfer at any time while the Policy remains in force, or the Policy owner may arrange in advance for systematic transfers. A transfer is subject to a transaction charge, not to exceed $10, for each transfer of actual cash value among the Sub-Accounts and the Guaranteed Principal Account. Currently, there is a charge only for non-systematic transfers in excess of four per year.

10. Policy values under the New Policies may be accessed by means of partial surrenders, policy loans or total surrender. Interest payable on policy loans will not be more than that permitted in the state in which the Policy is delivered; interest credited on loan accounts established in connection with outstanding loans will be at a rate which is not less than the policy loan interest rate minus 1% per year. If the Policy has been in force for ten years or more, the loan is credited at a rate equal to the policy loan rate minus 0.5% per year.

11. The New Policies offer a choice of two death benefit options: a level death benefit equal to the New Policy's face amount (the "Cash Option") or a death benefit equal to the face amount plus policy value (the "Protection Option"). In either case, the death benefit may be greater if necessary for a New Policy to continue to comply with the tax law definition of life insurance.

12. The minimum face amount of a New Policy is $25,000 if the insured is greater than age 15, and $10,000 if the insured is age 0 to 15.

13. From base premiums, Minnesota Life deducts a Sales Charge, an Additional Face Amount Charge, and a Premium Charge. Premium Charges vary depending on whether the premium is a scheduled premium or a non-repeating premium.

(a) The Sales Charge consists of a deduction from each premium of up to 44% and applies only to base premiums scheduled to be paid in the 12-month period following the policy date, or any policy adjustment involving an increase in base premium or any policy adjustment occurring during a period when a Sales Charge is being assessed. It will also apply only to that portion of an annual base premium necessary for an original issue whole life plan of insurance under the Cash Option. In other words, the amount of any base premium in excess of this amount will not be subject to the Sales Charge. The Sales Charge is designed to compensate Minnesota Life for distribution expenses incurred with respect to the Policies. Only adjustments that involve an increase in base premium will result in an additional Sales Charge being assessed on that increase in premium.

(b) The Additional Face Amount Charge is an amount not to exceed $5 per $1,000 of face amount of insurance. This amount may vary by the age of the insured and the premium level for a given amount of insurance. This charge is made ratably from premiums scheduled to be paid during the first policy year and during the 12 months following certain policy adjustments. The Additional Face Amount Charge is designed to compensate Minnesota Life for the administrative costs associated with issuance or adjustment of the Policies, including the cost of processing applications, conducting medical exams, classifying risks, determining insurability and risk class, and establishing policy records.

(c) The Premium Charge of 6% is deducted from each base premium, approximately 2.5% of which is attributable to state and local premium tax obligations of Minnesota Life in connection with receipt of premiums under the New Policies. This charge is designed to cover the expenses related to premiums, including but not limited to administration, sales load, and taxes.

14. Non-repeating premiums are currently subject to a Premium Charge of 3%. Minnesota Life does not assess a Sales Charge or an Additional Face Amount Charge against non-repeating premiums.

15. In addition to deductions from premiums and non-repeating premiums, Minnesota Life assesses from actual cash value of a Policy, a Monthly Policy Charge, a Cost of Insurance Charge, and certain transaction charges.

(a) The Monthly Policy Charge is $8 plus $0.02 per $1,000 of face amount. The maximum Monthly Policy Charge will never exceed $10 plus $0.03 per $1,000 of face amount. The Monthly Policy Charge is designed to cover certain administrative expenses, including those attributable to a Policy owner's records created and maintained by Minnesota Life.

(b) The Cost of Insurance Charge compensates Minnesota Life for providing the death benefit under a Policy and is calculated based on rates that cannot exceed the maximum charges for mortality derived from the 1980 Commissioners Standard Ordinary Mortality Tables.

(c) Transaction charges consist of up to a $25 charge for each policy adjustment, which compensates Minnesota Life for expenses associated with processing transactions. If the only policy adjustment is a partial surrender, the transaction charge will be the lesser of $25 or 2% of the amount surrendered. Minnesota Life also reserves the right to make a charge, not to exceed $25, for each transfer of actual cash value among the Guaranteed Principal Account and the Sub-Accounts of the Variable Life Account. Currently, there is a $10 charge only for non-systematic transfers in excess of four per year.

16. From the assets held in the Variable Life Account, Minnesota Life assesses a Mortality and Expense Risk charge, deducted on each valuation date at an annual rate of 0.50% of the average daily net assets of the Variable Life Account. Although Minnesota Life reserves the right to charge or make provision for any taxes payable by

Minnesota Life with respect to the Variable Life Account or the Policies by a charge or adjustment to such assets, no such charge or provision is made at the present time. The Mortality and Expense Risk Charge compensates Minnesota Life for assuming the risks that cost of insurance charges will be insufficient to cover actual mortality experience and that the other charges will not cover Minnesota Life's expenses in connection with the Policy.

17. Additional Benefits are offered by Minnesota Life as riders to the New Policies, subject to underwriting approval. These Additional Benefits may require the payment of additional premium. The Additional Benefits include a Waiver of Premium Agreement, an Inflation Agreement, a Business Continuation Agreement, a Family Term Rider, an Exchange of Insureds Agreement, and an Accelerated Benefits Agreement.

The Old Policies

18. The Old Policies are offered pursuant to registration statements under the Securities Act of 1933 (File Nos. 333–03233 and 333–64395).

19. The Old Policies are variable adjustable life insurance policies that permit the Policy owner to select any two of the three components of a Policy—face amount, premium and plan of insurance—and Minnesota Life will then calculate the third. Subject to certain minimums, maximums and Minnesota Life's underwriting standards, a Policy owner may choose any level of premium or face amount that he or she wishes.

20. The Old Policies have a level premium for a specified number of years, for the life of the insured, or until the Policy becomes paid up. If, however, the Policy owner selects a premium amount which is less than the premium required for a whole life plan of insurance (or, in other words, if the Policy owner selects a "protection plan" of insurance, described below), premiums will be payable for the life of the insured or to age 100, but the guaranteed face amount of insurance provided by the Policy will not be level during the life of the insured.

21. Whole life insurance plans provide life insurance in an amount at least equal to the initial face amount at the death of the insured whenever that occurs. Premiums may be payable for a specified number of years or for the life of the insured. Whole life insurance plans assume an eventual tabular cash value accumulation, at or before the insured's age 100, equal to the net single premium required for that face amount of insurance.

22. "Protection plans" of insurance provide life insurance in an amount at least equal to the initial face amount for a specified period. After the initial protection period, there is insurance coverage in a reduced amount on the life of the insured. "Protection plans" of insurance assume the exhaustion of the tabular cash value at the end of the initial protection period, except for the cash value associated with the reduced amount of insurance coverage at the end of the initial protection period.

23. The highest premium amount permitted at the time of issue, or the maximum plan of insurance, for a specific face amount is one which will provide a fully paid-up Policy after the payment of ten annual premium payments. Whole life plans become paid up upon the payment of a designated number of annual premiums or at a designated age of the insured. If the Policy owner selects a premium amount which is less than the premium required for a whole life plan of insurance, premiums will be payable for the life of the insured or to age 100, but the guaranteed face amount of insurance provided by the Policy will not be level during the life of the insured. The initial face amount will be in effect until the Policy's tabular cash value, *i.e.*, the cash value which is assumed in designing the Policy and which would be guaranteed in a conventional fixed-benefit is exhausted. At that time a lower amount of insurance will become effective. This reduced face amount is calculated on the basis of the continued payment of the scheduled premiums and a whole life plan of insurance. The result is that the Policy, on issue, will have an initial guaranteed death benefit extending to a stated date; after that date, a lower death benefit is guaranteed for the life of the insured.

24. Policy values of the Old Policies may be invested in the Variable Life Account or in the general account option. The Variable Life Account currently has the same 25 Sub-Accounts as the New Policies have, to which a Policy owner may allocate premiums. Amounts invested in the Sub-Accounts are subject to the management fees paid and other expenses incurred by the Underlying Funds.

25. Policy values may also be accumulated on a guaranteed basis by allocation to the Guaranteed Principal Account. Guaranteed Principal Account interest is guaranteed to be credited at a rate of at least 4% on an annual basis.

26. Actual cash value may be transferred between the Guaranteed Principal Account and the Variable Life Account or among the Sub-Accounts of the Variable Life Account. A Policy owner may request a transfer at any time while the Policy remains in force, or the Policy owner may arrange in advance for systematic transfers, subject to a maximum of 20 accounts. A transfer is subject to a transaction charge, not to exceed $10, for each transfer of actual cash value among the Sub-Accounts and the Guaranteed Principal Account. Currently, there is a charge only for non-systematic transfers in excess of four per year.

27. Policy values under the Old Policies may be accessed by means of partial surrenders, policy loans or total surrender. Interest payable on policy loans will not be more than that permitted in the state in which the Policy is delivered; interest credited on loan accounts established in connection with outstanding loans will be at a rate which is not less than the policy loan interest rate minus 2% per year. If certain conditions are met, the loan is credited at a rate equal to the policy loan rate minus 0.75% per year.

28. The Old Policies offer a choice of two death benefit options: the Cash Option or the Protection Option. Under the Cash Option, the death benefit will be the current face amount at the time of the insured's death. The death benefit will not vary unless the policy value exceeds the net single premium for the then-current face amount. At that time, the death benefit will be the greater of the face amount of the Policy or the amount of insurance which could be purchased at the date of the insured's death by using the policy value as a net single premium. Under the Protection Option for VAL '87, the death benefit is the current face amount or, if the policy value is greater than the tabular cash value at the date of the insured's death, the current face amount plus an additional amount of insurance which could be purchased by using that difference between values as a net single premium. Under the Protection Option for VAL '95 and Amended VAL '95, before the policy anniversary nearest the insured's age 70, the amount of the death benefit is the policy value plus the larger of: (a) the then current face amount; and (b) the amount of insurance which could be purchased using the policy value as a net single premium. At the policy anniversary nearest the insured's age 70, Minnesota Life will automatically adjust the face amount of the policy to equal the death benefit immediately preceding the adjustment. The Protection Option of VAL '95 is only available until the policy anniversary nearest the insured's age 70, at which time Minnesota Life converts the death benefit option to the cash option.

29. With the Amended VAL '95 Protection Option, after the policy anniversary nearest the insured's age 70, the amount of the death benefit is equal to the current face amount or, if the policy value is greater than the tabular cash value at the date of the insured's death, the current face amount plus an additional amount of insurance which could be purchased by using that difference between values as a net single premium.

30. The minimum face amount of an Old Policy is $50,000.

31. From base premiums, Minnesota Life deducts a Sales Load, an Underwriting Charge, a Premium Tax Charge and a Face Amount Guarantee Charge. The base premium excludes any charge deducted from the premium to provide for any additional benefits provided by rider and, in the case of VAL '95, any charge deducted for sub-standard risks.

(a) The Sales Load consists of a deduction from each premium of 7% and it may also include a first year sales load deduction not to exceed 23%. The first year sales load applies only to base premiums, scheduled to be paid in the 12-month period following the policy date, or any policy adjustment involving an increase in base premium or any policy adjustment occurring during a period when a first year sales load is being assessed. The Sales Load will also apply only to that portion of an annual base premium necessary for an original issue whole life plan of insurance. The Sales Load is designed to compensate Minnesota Life for distribution expenses incurred with respect to the Policies.

(b) The Underwriting Charge currently is an amount not to exceed $5 per $1,000 of face amount of insurance. This amount may vary by the age of the insured and the premium level for a given amount of insurance. This charge is made ratably from premiums scheduled to be paid during the first policy year and during the twelve months following certain policy adjustments. The Underwriting Charge is designed to compensate Minnesota Life for the administrative costs associated with issuance or adjustment of the Policies, including the cost of processing applications, conducting medical exams, classifying risks, determining insurability and risk class and establishing policy records.

(c) The Premium Tax Charge of 2.5% is deducted from each base premium. This charge is designed to cover the aggregate premium taxes Minnesota Life pays to state and local governments for this class of policies.

(d) The Face Amount Guarantee Charge of 1.5% is deducted from each base premium. This charge is designed to compensate Minnesota Life for its guarantee that the death benefit will always be at least equal to the current face amount in effect at the time of death regardless of the investment performance of the sub-accounts in which net premiums have been invested.

32. Non-repeating premiums are currently subject to the 2.5% Premium Tax Charge, but not to a Sales Load Charge. Minnesota Life does not assess a Face Amount Guarantee Charge or an Underwriting Charge against non-repeating premiums.

33. In addition to deductions from premiums and non-repeating premiums, Minnesota Life assesses from the actual cash value of a Policy, an Administration Charge, the Cost of Insurance Charge and certain transaction charges (and in the case of a VAL '87 Policy, any charge for sub-standard risks).

(a) The Administration Charge is designed to cover certain of Minnesota Life's administrative expenses, including those attributable to the records maintained for the Policies. The Administration Charge is $60 for each policy year.

(b) The Cost of Insurance Charge compensates Minnesota Life for providing the death benefit under a Policy. The charge is calculated by multiplying the net amount at risk under the Policy by a rate that varies with the insured's age, sex, risk class, the level of scheduled premiums for a given amount of insurance, duration of the Policy, and the tobacco use of the insured. The rate is guaranteed not to exceed the maximum charges for mortality derived from the 1980 Commissioners Standard Ordinary Mortality Tables.

(c) Transaction charges are for expenses associated with processing transactions. There is a charge of up to $25 for each policy adjustment. If the only policy adjustment is a partial surrender, the transaction charge will be the lesser of $25 or 2% of the amount surrendered. Minnesota Life also reserves the right to make a charge, not to exceed $25, for each transfer of actual cash value among the Guaranteed Principal Account and the sub-accounts of the Variable Life Account. Currently there is a $10 charge only for non-systematic transfers in excess of four per year.

34. From the assets held in the Variable Life Account, Minnesota Life assesses a Mortality and Expense Risk charge, deducted on each valuation date at an annual rate of 0.50% of the average daily net assets of the Variable Life Account. Although Minnesota Life reserves the right to charge or make provision for any taxes payable by Minnesota Life with respect to the Variable Life Account or the Policies by a charge or adjustment to such assets, no such charge or provision is made at the present time. The Mortality and Expense Risk Charge compensates Minnesota Life for assuming the risks that cost of insurance charges will be insufficient to cover actual mortality experience and that the other charges will not cover Minnesota Life's expenses in connection with the Policy.

35. Additional Benefits are offered by Minnesota Life as riders to the Old Policies, subject to underwriting approval. These Additional Benefits may require the payment of additional premium. The Additional Benefits include a Waiver of Premium Agreement, a Policy Enhancement Agreement and Cost of Living Agreement, a Face Amount Increase Agreement, a Survivorship Life Agreement, a Family Term Rider, an Exchange of Insurance Agreement, an Accelerated Benefits Agreement, and a Short Term Agreement.

The Exchange Offer

36. The exchange offer will be made only to Policy owners who have held their Old Policy for at least two years from the original issue date of the Old Policy and at least one year from their most recent policy adjustment on the Old Policy.

37. Eligible owners of Old Policies will be advised of the exchange offer in a notice accompanying the annual report. The notice will contain an overview of the offer and will instruct the Policy owner to contact his or her agent if the Policy owner is interested in the offer. Policy owners who express an interest will be provided two personalized illustrations and two prospectuses, accompanied by a letter explaining the offer and the administration fees associated with the offer, as well as a piece of sales literature that compares the two Policies.

38. The description of the proposed exchange offer in letters to Old Policy owners and in the New Policy's prospectus will provide full disclosure of the material differences in the two Policies. Each Old Policy owner will be provided, at no charge, personalized hypothetical illustrations that compare the Old and New Policies. The New Policies should be less expensive than the Old Policies for most Policy owners. The disclosure and illustrations provided give Old Policy owners

sufficient information to determine which Policy is best for them.

39. The exchange offer will provide that, upon acceptance of the offer, a New Policy will be issued with the same face amount as the Old Policy surrendered in the exchange, and with a policy value adjusted to reflect a $200 processing charge (see below). The Policy owner and the insured must be the same person(s) under the New Policy acquired as under the exchanged Old Policy.

40. The risk class for a New Policy acquired by exchange will be the one most similar to the risk class for the exchanged Old Policy. New evidence of insurability will not be required as a condition of the exchange.

41. No premium charges will be deducted upon the acquisition of a New Policy in connection with an exchange, except that a one-time $200 charge for the costs of processing the exchange will be imposed. Applicants represent that this charge will not exceed their costs of processing the exchange.

42. No additional sales load will be imposed at the time of the exchange. The first-year Sales Charge of the New Policies will apply only if the Policy owner chooses to make a policy adjustment that will increase the base premium of the policy. The additional Sales Charge would not exceed 44% of the increase in the base premium.

43. Optional Additional Benefits attached to an Old Policy surrendered in an exchange will carry over to the New Policy acquired in the exchange only if that additional benefit (or a substantially equivalent additional benefit) is available under the New Policies. Optional insurance additional benefits available under the New Policies but not the Old Policies may be acquired at the time of the exchange, but, as noted above, may occasion the need for new evidence of insurability. Optional additional benefits available under the Old Policies but not the New Policies and their related charges, if any, will not be carried over to the New Policies.

44. Loans under an Old Policy must be repaid in cash or by means of a partial surrender (in the amount of the unpaid loan and interest thereon) prior to the exchange. In the event a loan is repaid by taking a partial surrender, the face amount of the Old Policy will be reduced, as with any partial surrender, and the face amount of the New Policy received will be the face amount of the Old Policy after that partial surrender. Any letters to Old Policy owners describing the exchange offer will include the fact that loans must be repaid prior to the exchange and disclosure that repayment of a loan by means of a partial surrender could have adverse tax consequences to the Old Policy owner. Minnesota Life will waive the transaction charge that would otherwise be applicable to a partial surrender made in connection with accepting the exchange offer and that is used solely to pay off an outstanding loan.

45. To accept the exchange offer, an Old Policy owner must return his or her Old Policy (or else submit a lost policy statement) and must submit a supplemental application that indicates how Policy values are to be allocated among the investment options of the New Policy. Payments submitted with the supplemental application requesting the exchange will be assumed to be payments under the New Policy as of the date of issue of the New Policy.

46. The suicide clause time period(s), incontestability time period(s), and free look time period(s) of the Old Policy will apply to the New Policy acquired in an exchange.

Applicants' Legal Analysis

47. Section 11(a) of the Act makes it unlawful for any registered open-end investment company, or any principal underwriter for such a company, to make or cause to be made an offer to the holder of a security of such company, or of any other open-end investment company, to exchange that security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with Commission rules adopted under section 11.

48. Section 11(c) of the Act, in pertinent part, requires, in effect, that any offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company be approved by the Commission or satisfy applicable rules adopted under section 11, regardless of the basis of the exchange.

49. The Account is registered under the Act as a unit investment trust. Accordingly, the proposed exchange offer constitutes an offer of exchange of two securities, each of which is offered by a registered unit investment trust. Thus, unless the terms of the exchange offer are consistent with those permitted by Commission rule, Applicants may make the proposed exchange offer only after the Commission has approved the terms of the offer by an order pursuant to section 11(a) of the Act.

50. As noted by the Commission when proposing Rule 11a–3 under the Act, the purpose of section 11 of the Act is to prevent "switching," the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company "solely for the purpose of exacting additional selling charges." That type of practice was found by Congress to be widespread in the 1930's prior to adoption of the Act.

51. Section 11(c) of the Act requires Commission approval (by order or by rule) of any exchange, regardless of its basis, involving securities issued by a unit investment trust, because investors in unit investment trusts were found by Congress to be particularly vulnerable to switching operations.

52. Applicants assert that the legislative history of section 11 makes it clear that the potential for harm to investors perceived in switching was its use to extract additional sales charges from those investors. Applications under section 11(a) and orders granting those applications appropriately have focused on sales loads or sales load differentials and administrative fees to be imposed for effecting a proposed exchange and have ignored other fees and charges, such as relative advisory fee charges of the exchanged and acquired securities.

53. Rule 11a–2, adopted in 1983 under section 11 of the Act, by its express terms, provides blanket Commission approval of certain types of offers of exchange of one variable annuity contract for another or of one variable life insurance contract for another. However, there is Commission language in the release adopting Rule 11a–2 that suggests that the rule may have been intended to permit exchanges of funding options within a single variable life insurance policy but not the exchange of one such policy for another. Variable annuity exchanges are permitted by Rule 11a–2 provided that the only variance from a relative net asset value exchange is an administrative fee disclosed in the offering account's registration statement and a sales load or sales load differential calculated according to methods prescribed in the rule. Variable life insurance exchanges may vary from relative net asset exchanges only by reason of disclosed administrative fees; no sales loads or sales load differentials are permitted under the rule for such exchanges. Applicants believe that the exchange of the Old Policies for the New Policies would satisfy Rule 11a–2, if Rule 11a–2 applied.

54. Adoption of Rule 11a–3, which takes a similar approach to that of Rule 11a–2, represents the most recent Commission action under Section 11 of the Act. As with Rule 11a–2, the focus of Rule 11a–3 is primarily on sales or administrative charges that would be incurred by investors for effecting exchanges. Applicants assert that the terms of the proposed offer are consistent with the Commission's recent substantive approach in Rule 11a–3, because no additional sales charges will be incurred as a result of the exchange and no administrative fees will be charged to effect the exchange. However, because the investment company involved in the proposed exchange offer is a separate account and because it is organized as a unit investment trust rather than as a management investment company, Applicants may not rely upon Rule 11a–3 despite the fact that their proposal would satisfy its substantive provisions.

55. Applicants assert that the terms of the proposed exchange offer do not present the abuses against which Section 11 was intended to protect. No additional sales load will be imposed at the time of exchange. No charge will be imposed at that time, other than a $200 exchange fee to reimburse Minnesota Life for all or a portion of its administrative costs associated with the exchange. No new evidence of insurability will be required for the exchange.

56. The policy value and death benefit of a New Policy acquired in the proposed exchange will be precisely the same immediately after the exchange as that of the Old Policy exchanged immediately prior to the exchange. Accordingly, the exchanges, in effect, will be relative net asset value exchanges that would be permitted under Section 11(a) if the Account were registered as a management investment company rather than as a unit investment trust.

57. Policy owners will receive sufficient information to determine which Policy is best for them.

Conclusion

For the reasons summarized above, Applicants represent that the Exchange Offer is consistent with the protections provided by Section 11 of the Act and does not involve any of the switching abuses that led to the adoption of Section 11. Permitting Policy owners to evaluate the relative merits of the Old and New Policies and to select the one that best suits their circumstances and preferences fosters competition and is consistent with the public interest and the protection of investors. Approval of the terms of the Exchange Offer is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to the delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26154 Filed 10–11–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 14, 2002: an Open Meeting will be held on Wednesday, October 16, 2002 at 10 a.m., and a Closed Meeting will be held on Thursday, October 17, 2002, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Open Meeting scheduled for Wednesday, October 16, 2002 will be:

1. The Commission will consider publication of acknowledgements of receipt of Forms 1–N from the Chicago Mercantile Exchange Inc., OneChicago, LLC and Nasdaq LIFFE Markets, LLC to trade security futures.

The Commission will also consider whether to delegate authority to the Director of the Division of Market Regulation to publish in the **Federal Register** acknowledgements of receipt of Forms 1–N filed pursuant to Section 6(g) of the Securities Exchange Act of 1934.

2. The Commission will consider whether to propose rules relating to Sections 404, 406 and 407 of the Sarbanes-Oxley Act of 2002. The proposed rules would require companies to include in their Exchange Act filings: (1) an annual internal control report, (2) disclosure regarding whether a company has adopted a code of ethics that applies to certain senior officers, and (3) disclosure regarding whether a company has a financial expert on its audit committee.

3. The Commission will consider whether to propose amendments to implement Section 303 of the Sarbanes-Oxley Act of 2002. Section 303(a) prohibits an issuer's officers, directors, and persons acting under the direction of an officer or director, from taking any action to fraudulently influence, coerce, manipulate or mislead the auditor of the issuer's financial statements for the purpose of rendering those financial statements materially misleading.

The subject matter of the Closed Meeting scheduled for Thursday, October 17, 2002 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: October 9, 2002.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–26221 Filed 10–9–02; 4:34 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [67 FR 62997, October 9, 2002.]

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, October 10, 2002 at 2:30 p.m.

CHANGE IN THE MEETING: Additional Item.

The following item has been added to the Closed Meeting scheduled for Thursday, October 10, 2002 at 2:30 p.m.: regulatory matter.

Commissioner Goldschmid, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted

or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 10, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26267 Filed 10–10–02; 11:33 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46618; File No. SR–Amex–2002–79]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC To Extend a Suspension of Transaction Charges for Certain Exchange Traded Funds

October 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On October 2, 2002, the Amex amended the proposed rule change.[3] The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend until October 31, 2002, the suspension of Amex transaction charges for the Lehman 1–3 year Treasury Bond Fund; iShares Lehman 7–10 year Treasury Bond Fund; Lehman 20+ year Treasury Bond Fund; and iShares GS $ InvesTop Corporate Bond Fund for specialist, Registered Trader, and broker-dealer orders. The text of the proposed rule change is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex has suspended transaction charges for transactions in the iShares Lehman 1–3 year Treasury Bond Fund (Symbol: SHY); iShares Lehman 7–10 year Treasury Bond Fund (Symbol: IEF); iShares Lehman 20+ year Treasury Bond Fund (Symbol: TLT); and iShares GS $ InvesTop Corporate Bond Fund (Symbol: LQD)("Funds") (collectively, "Securities") for (1) customer orders and (2) until September 30, 2002, specialist, Registered Trader, and broker-dealer orders.[7] With this proposed rule change, the Amex is extending until October 31, 2002, the suspension of transaction charges for specialist, Registered Trader, and broker-dealer orders. No other changes are proposed with this filing, and this filing has no bearing on the suspension of transaction charges as they pertain to customer orders.

The Exchange believes a suspension of fees for the Securities is appropriate to enhance the competitiveness of executions in the Securities on the Amex. The Exchange will reassess the fee suspension as appropriate, and will file any modification to the fee suspension with the Commission.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4)[9] in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among the Amex's members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the 5-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the notice requirement and acceleration of the operative date will permit the Amex to suspend these fees immediately. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* September 30, 2002 letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaces and supersedes the original filing. The Commission considers the 60-day abrogation period to have commenced on October 2, 2002, the date the Amex filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Exchange asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[7] *See* Securities Exchange Act Release No. 46486 (September 10, 2002), 67 FR (September 17, 2002)(SR–Amex–2002–71).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2002–79 and should be submitted by November 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26156 Filed 10–11–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46610; File No. SR–Amex–2002–72]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Extend the eQPriority Pilot Until October 11, 2002

October 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 13, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. Amex has designed the proposed rule change as "non-controversial" under Rule 19b–4(f)(6),[3] thus rendering it immediately effective. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through October 11, 2002, Commentary .03 to Amex Rule 126 to continue a pilot program for processing electronically transmitted orders for the common stock of business corporations admitted to dealings on the Exchange ("eQPriority[sm]"). The text of the proposed rule change is available at the Office of the Secretary of the Exchange and from the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 12, 2000, the Commission approved Amex's eQPriority initiative on a six-month pilot basis.[4] The pilot program was extended for six-month periods in each of March 2001,[5] August 2001,[6] and March 2002.[7] Amex now seeks to extend the pilot through October 11, 2002.

eQPriority is intended to encourage persons to route marketable electronic orders to the Exchange by assuring them that orders sent to the specialist electronically will be filled either: (i) At the Amex Published Quote ("APQ") up to the displayed size at the time the order is announced, or (ii) at an improved price.[8] Amex believes that the program provides orders for stocks sent to the floor electronically with the optimal combination of speed, certainty of execution, and price improvement opportunities. eQPriority applies only to orders for common stock admitted to dealings; it is not available for orders for options, Exchange Traded Funds, or other Amex-listed securities. It also does not apply to openings and reopenings and to block trades executed at a "clean-up" price pursuant to Amex Rule 155.

eQPriority works in the following manner. Once the specialist announces the electronic order, members may not withdraw or modify bids and offers incorporated into the APQ on the opposite side of the market from the incoming order *except* to provide price improvement. When an eQPriority order is executed in part at an improved price, the remainder of the order is executed at the APQ up to the number of shares then available (*i.e.*, the size of the APQ at the time the order was announced, less any shares that provided price improvement). The eQPriority order does not have to match with any other trading interest on the same side of the market. In the event that an eQPriority order is larger than the APQ at the time the order is announced, the order is filled up to the size of the APQ according to the eQPriority procedures, and the unexecuted balance is filled according to the Exchange's customary auction market processes.

The purpose of eQPriority is to provide incoming electronic orders with an execution at the displayed offer (or lower) in the case of an electronic buy order, or at the displayed bid (or higher) in the case of an electronic sell order. eQPriority is not intended to allow an incoming electronic order to obtain priority over orders that already have established priority in the market. Thus, an eQPriority order does not have priority over bids and offers that were announced prior to the time that the eQPriority order is represented. This arises only in situations where the market is quoted at the minimum fractional variation and is best

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 43284 (September 12, 2000), 65 FR 57410 (September 22, 2000).

[5] *See* Securities Exchange Act Release No. 44049 (March 7, 2001), 66 FR 14947 (March 14, 2001).

[6] *See* Securities Exchange Act Release No. 44702 (August 15, 2001), 66 FR 43925 (August 21, 2001).

[7] *See* Securities Exchange Act Release No. 45536 (March 11, 2002), 67 FR 12065 (March 18, 2002).

[8] Amex records both the time and the quoted market at the time the electronic orders are received by the specialist's limit order book. The Exchange has an exception report that identifies situations where an electronic limit order is executed at a price that is inferior to the quoted market at the time that it is received by the limit order book. Amex has represented that the Exchange's regulatory staff reviews any situation identified by this exception report to determine if the specialist's actions were consistent with the Commission's Firm Quote Rule, 17 CFR 240.11Ac1–1, and the Exchange's eQPriority rule.

illustrated by an example provided by the Exchange:

Assume the market is quoted 20.00 to 20.01, 5,000 x 5,000, and the bid represents a limit order on the book. Further assume that the specialist announces an eQPriority order to buy 1,000 and that a broker in the crowd is willing to sell 1,000 at 20.00. In this example, the limit order to buy on the book had established a bid of 20.00 prior to the representation of the eQPriority order. The booked limit order, consequently, would buy the 1,000 shares sold by the broker at 20.00, and the eQPriority order would be filled at 20.01.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with section 6(b) of the Act [9] in general and furthers the objectives of section 6(b)(5) [10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Amex also believes that the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex has stated that the proposed rule change would impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Amex has stated that, because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), it has become effective pursuant to section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

[9] 15 U.S.C. 78f(b).
[10] 15 U.S.C. 78f(b)(5).
[11] 15 U.S.C. 78s(b)(3)(A).
[12] 17 CFR 240.19b–4(f)(6).

Amex has requested that the Commission waive the 30-day pre-operative period under Rule 19b–4(f)(6)(iii). Under that rule, the Commission may designate that the rule will become effective in less than 30 days if such action is consistent with the protection of investors and the public interest.[13] Acceleration of the operative date will allow the pilot program to continue without disruption to market participants. Therefore, the Commission finds that waiving the 30-day pre-operative period meets these criteria, and the proposed rule change may become operative immediately.[14]

Rule 19b–4(f)(6) also requires the self-regulatory organization to provide the Commission written notice of its intent to file the proposed rule change at least five business days before doing so (or such shorter time as designated by the Commission). Amex also has requested that the Commission waive this five-day pre-filing requirement. The Commission hereby waives the five-day pre-filing period.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–72 and should be submitted by November 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26157 Filed 10–11–02; 8:45 am]

BILLING CODE 8010–01–P

[13] *See id.*
[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).
[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46619; File No. SR–BSE–2002–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Boston Stock Exchange, Inc. To Amend Its Transaction Fee Schedule To Revise the Monthly Transaction Related Revenue It Must Generate Before Sharing Excess Revenue With Eligible Firms

October 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2002, the Boston Stock Exchange, Incorporated ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the BSE under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend its Transaction Fee Schedule to revise the monthly transaction related revenue the BSE must generate before it shares excess revenue with eligible firms. The text of the proposed rule change is available at the BSE and at the Commission.

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78s(b)(3)(A)(ii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Revenue Sharing Program that is currently part of the BSE's Transaction Fee Schedule. Currently, the minimum amount of monthly transaction related revenue the BSE must generate before it shares excess revenue with eligible member firms is $1,700,000. The BSE proposes to revise this amount to $1,900,000, to meet the budgeted costs of operating the Exchange in the upcoming fiscal year.[4]

The Exchange is seeking to amend only its existing revenue sharing program, and only in the area of the amount of revenue the Exchange must generate before sharing excess revenue. No changes are being sought to the fundamental structure of the existing program.

[4] The Exchange notes that this revision would apply to the Transaction Fee Schedule currently in place for the BSE. On September 11, 2002, the Commission approved a proposed rule change that amended the BSE's Floor Operations and Transactions Fees Schedules. *See* Securities Exchange Act Release No. 46488 (September 11, 2002), (SR–BSE–2002–11). Normally, such changes are sought to run concurrent with the BSE's fiscal year, which begins on October 1. However, as part of the changes to its overall fee structure, the BSE sought to replace its current revenue sharing program with two new programs. The amendments to the BSE's revenue sharing program were the subject of a separate, but related, rule proposal, which has been published for notice and public comment. *See* Securities Exchange Act Release No. 46496 (September 19, 2002), (SR–BSE–2002–10). In seeking the changes to its Transaction Fee Schedule sought in SR–BSE–2002–11, which have been approved by the Commission, the Exchange stated that it would implement such changes only upon approval of its new revenue sharing programs, which were the basis of SR–BSE–2002–10. Since SR–BSE–2002–10 is still pending with the Commission, the BSE will not amend its Transaction Fee Schedule on October 1, 2002. Thus, the existing Transaction Fee Schedule (the one that was operative for the BSE's fiscal year that ends on September 30, 2002) will remain in effect, until such time as it is amended in response to Commission action on SR–BSE–2002–10.

The BSE is seeking to make this change operative only until the Commission acts on SR–BSE–2002–10. Upon such Commission action, the BSE will either implement the proposed revenue sharing program detailed in SR–BSE–2002–10, and the accompanying changes to the Transaction Fee Schedule that have been approved in SR–BSE–2002–11, or reevaluate its revenue sharing program and accompanying fee schedule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4) of the Act,[6] in particular, in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among the BSE's members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [7] and subparagraph (f)(2) of Rule 19b–4 thereunder,[8] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions 2 should refer to file number SR–BSE–2002–17, and should be submitted by November 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26153 Filed 10–11–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b).
[6] 15 U.S.C. 78f(b)(4).
[7] 15 U.S.C. 78s(b)(3)(A)(ii).
[8] 17 CFR 240.19b–4(f)(2).
[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46607; File No. SR–CBOE–2002–51]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to a Safe Harbor From the Unbundling Rule

October 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 [2] thereunder, notice is hereby given that on September 6, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On September 27, 2002, CBOE submitted to the Commission Amendment No. 1 to the proposed rule change.[3] The Commission

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] Amendment No. 1 revised the text of the proposed rule change to clarify that the safe-harbor from the unbundling rule applies to orders entered *outside of* any 15-second period. *See* letter from Steve Youhn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 26, 2002.

is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE seeks to adopt a safe-harbor provision from its unbundling rule, Rule 6.8(c)(vii). Below is the text of the proposed rule change. Proposed deletions are in brackets; proposed new language is *italicized*.

* * * * *

Rule 6.8 RAES Operations

(a)–(b) No change.

(c)(i)–(vi) No change.

(c)(vii) For purposes of determining whether an order meets the maximum size requirement set forth in sub-paragraph (c)(v), a customer's order cannot be split up (*i.e., unbundled*) such that its parts are eligible for entry into RAES. *Orders entered in compliance with CBOE Rule 6.8(e)(iii) (i.e., outside of any 15-second period) will not be considered to have been unbundled.*

(d) No change.

(e)(i)–(ii) No change.

(e)(iii) Neither enter nor permit the entry of multiple orders *on the same side of the market* in [a call class and/or a put class for the same] *an* option issue within any 15-second period for an account or accounts of the same beneficial owner.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 6.8(c)(vii) states "for purposes of determining whether an order meets the maximum [RAES] size requirement, a customer's order cannot be split up such that its parts are eligible for entry into RAES." This "unbundling" provision is designed to prevent customers from splitting up non-RAES eligible orders into smaller RAES-eligible orders. Additionally, CBOE Rule 6.8(e)(iii) requires order-entry firms to prevent the entry of multiple orders in a call class and/or put class for the same option issue within any 15-second period for an account or accounts of the same beneficial owner. This "15-second" rule essentially prevents users from sending through RAES multiple orders in the same class within any 15-second period.

The purpose of this rule filing is to amend Rule 6.8(c)(vii) to create a "safe harbor" from the unbundling provision by referencing the 15-second rule.[4] In this respect, customers will not be deemed to have unbundled an order provided they comply with the 15-second rule (*i.e.*, they do not enter multiple orders within 15 seconds of each other).[5] Orders entered in compliance with the 15-second rule will not be deemed to have been unbundled. The Exchange believes the proposed rule change will provide more certainty to order-entry firms and customers alike by creating an objective, bright-line test as to activity that does not constitute unbundling.[6] Previously, a customer could enter orders more than 15 seconds apart in the same class; however, the order entry firm might not be able to determine if the orders had been unbundled. This rule change will eliminate the need to make this determination. The Exchange represents that this proposed rule change is virtually identical to existing Pacific Exchange Rule 6.87(d)(2).

The Exchange also proposes to restrict applicability of the 15-second rule by clarifying that it will only apply to orders on the same side of the market in a particular class. Currently, the rule applies to orders on either side of the market, which would prevent a customer from submitting two orders on opposite sides of the market within 15 seconds. The Exchange represents that this interpretation may hinder the ability of investors to engage in legitimate trading strategies through RAES (*e.g.*, legging into a spread). The changes proposed to Rule 6.8(e)(iii) will now allow customers to send in orders on the opposite side of the market within 15 seconds without violating the rule.

2. Statutory Basis

This proposal provides a safe harbor from the unbundling rule by creating an objective test, which the Exchange believes will aid customers and firms alike in determining what constitutes unbundling. The proposal also limits applicability of the 15-second rule by clarifying that it will apply only to orders submitted on the same side of the market within a particular class. Accordingly, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[4] CBOE has represented that this proposed rule change supersedes the effectiveness of its Regulatory Circular 00–27 and that it will advise its members accordingly. Telephone conversation between Nancy Sanow, Assistant Director, Division of Market Regulation, Commission and Steve Youhn, Legal Division, CBOE, October 4, 2002.

[5] Under Rule 6.8(e)(iii), if two orders on the same side of the market are entered exactly 15 seconds apart, entry of the second order would violate the rule and the safe-harbor would *not* be available. However, if the two orders are entered more than 15 seconds apart, entry of the second order would not violate the rule and the safe-harbor *would* be available. For example, if the first order is entered at 11:00:00 a.m. and the second order is entered at 11:00:15 a.m., entry of the second order would violate the rule. However, if the first order is entered at 11:00:00 a.m. and the second order is entered at 11:00:16 a.m., entry of the second order would *not* violate the rule. Telephone conversation between Steve Youhn, Legal Division, CBOE and Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission (September 25, 2002). Amendment No. 1 clarifies this point.

[6] The Exchange notes that the 15-second rule speaks to member firms (*i.e.*, "Order Entry Firms shall * * * neither enter nor permit the entry of multiple orders * * * within any 15-second period * * *") As such, disciplinary action for violations is against the Order Entry Firm that allows the orders to be transmitted and NOT against the customer that submitted the orders. In this regard, member firms have an obligation to have reasonable procedures in place to ensure that the rule is complied with.

[7] 15 U.S.C. 78(f)(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change[8] has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–CBOE–2002–51 and should be submitted by November 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26059 Filed 10–11–02; 8:45 am]

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[8] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78(b)(3)(C).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46616; File No. SR–CHX–2002–33]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Chicago Stock Exchange, Incorporated Relating to Execution of Limit Orders Following Exempted ITS Trade-Through

October 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2002, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been substantively prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend, for a period of 30 days, an existing pilot rule change that amends certain provisions of CHX Article XX, Rule 37, which governs, among other things, execution of limit orders in a CHX specialist's book following a trade-through in the primary market. Specifically, the CHX seeks to render voluntary a CHX specialist's obligation to fill limit orders in the specialist's book following a primary market trade-through, if such trade-through constitutes an Exempted Trade-Through (as defined below). The text of the proposed rule change, which would be in effect for a pilot period of 30 days, is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 28, 2002, the Commission issued an order granting a *de minimis* exemption (the "Exemption") for transactions in certain exchange-traded funds ("ETFs") from the trade-through provisions of the Intermarket Trading System ("ITS") Plan.[3] The Exemption was proposed by Commission staff to permit rapid execution of orders in certain ETFs at prices that may trade through the quotations of other markets, including the NBBO price. Because Exempted Trade-Throughs will, by definition, be exempt from ITS restrictions, a market participant that reports execution of an Exempted Trade-Through will not be required to satisfy an administrative request from any ITS participant for satisfaction following the Exempted Trade-Through.[4]

Article XX, Rules 37(a)(3) and 37(b)(6) of the CHX Rules, which govern execution of limit orders in a CHX specialist's book, provide for execution

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 46428, 67 FR 56607 (September 4, 2002). At present, the Exemption extends to transactions in three designated ETFs—the Nasdaq-100 Index ("QQQ"), the Dow Jones Industrial Average ("DIAMONDs") and the Standard & Poor's 500 Index ("SPDRs")—when the transactions are "executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS" (each, an "Exempted Trade-Through"). The Exemption is effective as of September 4, 2002.

[4] Under current ITS rules and practice, if an ITS participant trades through the quotation of another ITS participant, thereby violating the ITS trade-through prohibition, the non-violating participant is entitled to send an administrative message noting the trade-through and the violating participant is required to respond with a commitment to trade at the price and size quoted by the non-violating participant.

of such orders at the limit price when certain conditions occur in the primary market. Specifically, these provisions obligate a CHX specialist to fill limit orders in his book if there is a trade-through of the limit price in the primary market. These rule provisions were enacted as a means of attracting order flow to the CHX by guaranteeing that a limit order resident in a CHX specialist's book would receive a fill if the primary market traded through the limit price. The CHX specialist is willing to provide this "trade-through protection" to its customer limit orders because the CHX specialist can seek relief via ITS in the event of a trade-through.

Now that the Exemption has become effective, however, certain primary market trade-throughs in ETFs that will trigger a CHX specialist's obligation to provide trade-through protection will now constitute Exempt Trade-Throughs, and will leave the CHX specialist without recourse to seek satisfaction from the primary market. While the CHX believes that certain CHX specialists may still wish to provide trade-through protection to their limit orders for business and marketing reasons, the CHX believes that trade-through protection should no longer be mandated in the case of Exempted Trade-Throughs. The proposed rule change would permit, but would not require, a CHX specialist firm to fill limit orders in his book when an Exempted Trade-Through occurs in the primary market.

On September 4, 2002, the CHX filed an identical proposed rule change with the Commission; the rule change was effective upon filing, for a period of 30 days.[5] The CHX also filed the rule change seeking permanent approval thereof following notice and comment pursuant to Section 19(b)(2) of the Act, but the comment period following publication of the proposal in the **Federal Register** has not yet expired.[6] Accordingly, the CHX is filing this submission to extend the existing pilot for an additional period of 30 days, until November 3, 2002, during which time the CHX hopes to obtain the Commission's permanent approval of the proposed rule change.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[7] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and therefore, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[9] and subparagraph (f)(1) of Rule 19b–4 thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2002–33 and should be submitted by November 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26152 Filed 10–11–02; 8:45 am]

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[5] See Securities Exchange Act Release No. 46557 (September 26, 2002), 67 FR 61941 (October 2, 2002).

[6] See Securities Exchange Act Release No. 46556 (September 26, 2002), 67 FR 61940 (October 2, 2002).

[7] 15 U.S.C. 78(f)(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46605; File No. SR–PCX–2002–60]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Joint Accounts

October 4, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 23, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposal from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend PCX Rule 6.84 in order to allow a market maker to participate in more than two joint accounts. The text of the proposed rule change is below. The deleted text is in brackets.

Text of the Proposed Rule Change

Rule 6.84(a). No Market Maker shall, directly or indirectly, hold any interest or participate in any joint account for buying or selling any option contract or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

related security unless (1) each participant in such joint account is a member or member organization of the Exchange, and (2) such joint account agreement is filed with (in a form approved by the Exchange) and approved by the Exchange. [No Market Maker shall, directly or indirectly, concurrently hold any interest or participate in more than two joint accounts.]

(b)–(h)—No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of those statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PCX rules allow market makers to participate in joint accounts. Under PCX Rule 6.84, a market maker may not participate or hold an interest in more than two joint accounts. This limitation was incorporated into the PCX's rules in 1990.[3] The PCX believes that the joint account limitation may have been imposed originally for the administrative ease of the PCX, but that it does not currently provide any administrative benefit. Furthermore, the PCX believes that the limitation was never intended to create, and does not currently provide, any regulatory safeguards. For instance, the PCX notes that it may track a market maker's activity within a joint account by reference to the badge number associated with a given transaction, regardless of the number of joint accounts in which the market maker participates.

From time to time, market makers have found it necessary, for logistical reasons, to participate in more than two joint accounts. Because the PCX believes that there is no benefit to the investing public in limiting the number of joint accounts in which a market maker participates, the PCX now seeks to remove that limitation and allow market makers to enter into as many joint accounts as their business requires. The PCX believes that the proposed change is consistent with the joint account rules of other options exchanges that do not limit the number of joint accounts in which their market makers or specialists may enter.[4]

2. Basis

The PCX believes that the proposed rule change is consistent with Section 6(b) of the Act[5] and furthers the objectives of Section 6(b)(5) of the Act[6] in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PCX submitted a draft of this filing, including the proposed new rule text, to the Commission on September 11, 2002 in fulfillment of the five-day draft notice period of Rule 19b–4(f)(6).[7] The PCX has further designated that the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designated if consistent with the protection of investors and the public interest. Therefore, the proposed rule change has become effective immediately upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b-4(f)(6) thereunder.[9] At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

A proposed rule change filed under Rule 19b–4(f)(6)[10] does not become operative until 30 days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. The PCX has requested that the Commission accelerate the implementation of this proposed rule change so that it may take effect before the 30-day period specified in Rule 19b–4(f)(6)(iii).[11] The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day period and to designate that the proposed rule change has become operative as of September 23, 2002, the date the PCX filed the proposal with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No.

[3] See Securities Exchange Act Release No. 28134 (June 19, 1990), 55 FR 26320 (June 27, 1990).

[4] The PCX notes, for example, that current PCX Rule 6.84(a) is virtually identical to Chicago Board Options Exchange ("CBOE") Rule 8.9(c), except that the CBOE rule does not restrict the number of joint accounts in which a market maker may participate.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] *Id.*

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] The Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation for the sole purpose of accelerating the operative date of the proposed rule change. 15 U.S.C. 78c(f).

SR–PCX–2002–60 and should be submitted by November 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26058 Filed 10–11–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46617; File No. SR–PCX–2002–58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend the Definition of "Primary Only Order"

October 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 16, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by PCX. PCX filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange, the equities trading facility of PCXE, by amending the definition of "Primary Only Order" ("PO Order") to permit ETP Holders and Sponsored Participants [5] on the Archipelago Exchange to enter such orders at times other than just prior to the primary market opening. Under the proposal, PO Orders may be entered until a cut-off time determined from time to time by the PCXE. Below is the text of the proposed rule change. New text is in *italics*, while deletions appear in [brackets].

* * * * *

PCX Equities, Inc.

Rule 7

Equities Trading

Orders and Modifiers

Rule 7.31(a)–(w)—No change.

(x) Primary Only Order (PO Order). For exchange-listed securities only, a market order that is to be routed as a market[-on-open] order to the primary market [for participation in the primary market opening or re-opening process]. *Such PO Orders may be entered until a cut-off time as determined from time to time by the Corporation.*

(1)–(2)—No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Archipelago Exchange ("ArcaEx") commenced operations on March 22, 2002, replacing the PCXE's traditional trading floor facilities. As part of its continuing review of the system's functionality and rules, the Exchange proposes to amend the definition of a PO Order to permit ETP Holders and Sponsored Participants (collectively "Users") on ArcaEx to enter such orders at times other than just prior to the primary market opening. Under the proposal, PO Orders may be entered until a cut-off time determined from time to time by the Exchange.

As defined in Rule 7.31(x), a PO Order is a market order, for exchange-listed securities only, that is to be routed as a market-on-open order to the designated primary market for participation in the primary market opening or re-opening process. A PO Order bypasses the order execution processes of the ArcaEx Book and is routed directly to the designated primary market. Currently, a PO Order entered for participation in the primary market opening must be entered before 6:28 a.m. (Pacific Time). The Exchange proposes to modify the definition of a PO Order so they may be entered at times other than just prior to the primary market opening.

The proposed rule change is intended to provide Users with more flexibility as to when they may route PO Orders to the designated primary market. The Exchange believes that by expanding the time during which PO Orders may be entered, Users will have the ability to use other markets other than ArcaEx as an alternative order destination when it suits the User's investment needs. Accordingly, the Exchange believes that the proposed rule change promotes a more efficient and effective market operation, and enhances the investment choices available to Users in the handling of their orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) [6] of the Act, in general, and furthers the objectives of section 6(b)(5),[7] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the foregoing rule change as effecting a change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days from the date of filing. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. Accordingly, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

PCX has also requested that the Commission waive the 30-day waiting period so that the proposed rule change may become operative immediately. The proposed Primary Only Order, as amended, promotes a more efficient and effective market operation, and enhances the investment choices available to Users in the handling of their orders. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day waiting period.[10] For these reasons, the Commission designates the proposal as operative immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. PCX–2002–58 and should be submitted by November 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26155 Filed 10–11–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46615; File No. SR–Phlx–2002–58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a Thirty Day Extension of Interpretation of PACE Guarantees in Securities Subject to ITS Plan Exemption

October 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to continue to exempt transactions in certain exchange-traded fund ("ETF") shares from Supplementary Material Section .10(a)(iii) of Exchange Rule 229, Philadelphia Stock Exchange Automated Communication and Execution System ("PACE") beginning October 4, 2002, for a period of 30 days ending on November 3, 2002.[3] The text of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend a current limited exemption from Phlx Rule 229.10(a)(iii), with such extension beginning October 4, 2002 and ending on November 3, 2002. The exemption applies to the ETFs tracking the Nasdaq-100 Index ("QQQs"), the Dow Jones Industrial Average ("DIAMONDs"), and the Standard & Poor's 500 Index ("SPDRs").[4] The exemption would correlate with a recent exemption from the ITS Plan issued by the Commission (the "ITS Exemption").[5]

As discussed in the Exchange's earlier proposed rule change to temporarily adopt the exemption until October 4,

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] A "Sponsored Participant" means "a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] Rule 7.29." *See* PCXE Rule 1.1(tt).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PACE is the Exchange's Automated Communication and Execution System. PACE provides a system for the automatic execution of orders on the Exchange equity floor under predetermined conditions.

[4] The Exchange does not currently trade DIAMONDs or SPDRs but may determine to do so in the future. The Exchange does trade QQQs. The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the "Index") is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[5] *See* Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002)(Order Pursuant to Section 11A of the Securities Exchange Act of 1934 and Rule 11Aa3–2(f) thereunder Granting a De Minimis Exemption for Transactions in Certain Exchange-Traded Funds from the Trade-Through Provisions of the Intermarket Trading System.).

2002,[6] Section .10(a)(iii) provides generally that if 100 or more shares print through the limit price on any exchange(s) eligible to compose the PACE Quote[7] after the time of entry of any such order into PACE, the specialist shall execute all such orders at the limit price without waiting for an accumulation of 1000 shares to print at the limit price on the New York market.[8] The Exchange's earlier proposed rule change provided a limited exemption from this requirement. The limited exemption by its terms expires on October 4, 2002. The Exchange is now proposing to extend the effectiveness of the exemption until November 3, 2002.

Phlx Rule 229.10(a)(iii) requires a Phlx specialist to execute certain orders that are traded-through by another market center. Prior to the Commission's issuance of the ITS Exemption, although the specialist had this obligation the specialist was, in turn, entitled to "satisfaction" of those orders pursuant to Section 8(d) of the ITS Plan. Now, where trading through is no longer prohibited by the ITS Plan, as enumerated in the ITS Exemption, the specialist does not have recourse to seek "satisfaction" for these orders and is alone responsible for those executions. Thus, the Phlx believes that its provision guaranteeing an execution no longer makes sense. Moreover, the provision now unduly burdens the specialist by requiring the specialist to execute orders in situations where the specialist does not have access to trading at that price.

[6] See Securities Exchange Act Release No. 46481 (September 10, 2002), 67 FR 58669 (September 17, 2002) (File No. SR–Phlx–2002–48).

[7] PACE Quote is defined in Rule 229 as the best bid/ask quote among the American, Boston, Cincinnati, Chicago, New York, Pacific or Philadelphia Stock Exchange, or the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") quote, as appropriate.

[8] To be understood, Section .10(a)(iii) must be read in conjunction with the preceding Section of the PACE Rule. Supplementary Material Section .10(a)(ii) provides as follows:

Non-Marketable Limit Orders—Unless the member organization entering orders otherwise elects, round-lot limit orders up to 500 shares and the round-lot portion of PRL limit orders up to 599 shares which are entered at a price different than the PACE Quote will be executed in sequence at the limit price when an accumulative volume of 1000 shares of the security named in the order prints at the limit price or better on the New York market after the time of entry of any such order into PACE. For each accumulation of 1000 shares which have been executed at the limit price on the New York market, the specialist shall execute a single limit order of a participant up to a maximum of 500 shares for each round-lot limit order up to 500 shares or the round-lot portion of a PRL limit order up to 599 shares.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act[9] in general and furthers the objectives of Section 6(b)(5)[10] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. By adopting the proposed exemption, the Exchange avoids burdening specialists with the obligation to fill an order in circumstances where an external event triggered the execution obligation and the specialist could not access trading at that price.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and therefore, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[11] and subparagraph (f)(1) of Rule 19b–4 thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(i).

[12] 17 CFR 240.19b-4(f)(1).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–58 and should be submitted by November 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26151 Filed 10–11–02; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3452]

State of Louisiana

As a result of the President's major disaster declaration on October 3, 2002, I find that Acadia, Ascension, Assumption, Avoyelles, Beauregard, Calcasieu, Cameron, Evangeline, Iberia, Iberville, Jefferson Davis, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne and Vermillion Parishes in the State of Louisiana constitute a disaster area due to damages caused by Hurricane Lili occurring on October 1, 2002, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 2, 2002 and for economic injury until the close of business on July 3, 2003 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous parishes and counties may be filed until the specified date at the above location: Allen, Catahoula, Concordia, East Baton Rouge, East Feliciana, La Salle, Pointe Coupee, Rapides, St. Helena, Vernon, Washington, West Baton Rouge and West Feliciana in the State of Louisiana; Amite, Hancock, Pearl River and Pike counties in the State of Mississippi; and Jefferson, Newton and Orange counties in the State of Texas.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.625
Homeowners without credit available elsewhere	3.312
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 345208. For economic injury the number is 9R9100 for Louisiana; 9R9200 for Mississippi; and 9R9300 for Texas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 4, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–26073 Filed 10–11–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3448]

State of Texas; (Amendment #2)

In accordance with a notice received from the Federal Emergency Management Agency, dated October 4, 2002, the above numbered declaration is hereby amended to include Jim Wells County in the State of Texas as a disaster area due to damages caused by Tropical Storm Fay beginning on September 6, 2002, and continuing through September 30, 2002.

In addition, applications for economic injury loans from small businesses located Brooks County may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary county have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 25, 2002, and for economic injury the deadline is June 26, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 8, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–26187 Filed 10–11–02; 8:45 am]

BILLING CODE 8025–05–P

DEPARTMENT OF STATE

[Public Notice 4161]

30-Day Notice of Proposed Information Collection: Form DS–86, Statement of Non-Receipt of Passport (Formerly Form DSP–86); OMB Control Number 47–R0178

AGENCY: Department of State; Bureau of Consular Affairs, Passport Services.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection: Statement of Non-Receipt of a Passport.

Frequency: On Occasion.

Form Number: DS–86 (formerly DSP–86).

Respondents: Individuals or Households.

Estimated Number of Respondents: 20,000.

Average Hours Per Response: 1/12 hr. (5 min).

Total Estimated Burden: 1,667 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW., Room H904, Washington, DC 20522, and at 202–633–2460. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: September 30, 2002.

Florence G. Fultz,

Acting Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–26158 Filed 10–11–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secre ary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending October 4, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1997–2946.

Date Filed: October 1, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 22, 2002.

Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Sections 41102 and 41108, and Subpart B, requesting renewal of its certificate authority to engage in scheduled foreign air transportation of persons, property, and mail between New York and Boston, on the one hand, and Nairobi, Kenya, on the other hand.

Docket Number: OST–2002–13495.

Date Filed: October 2, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 23, 2002.

Description: Application of BBJ Charter, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart B, requesting a certificate of public convenience and necessity to engage in foreign air transportation of persons, property, and mail on a world wide basis.

Docket Number: OST–2002–13496.

Date Filed: October 2, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 23, 2002.

Description: Application of BBJ Charters, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart B, requesting a certificate of public convenience and necessity to engage in interstate charter air transportation of persons, property, and mail.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–26125 Filed 10–11–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR) Section 211.41, and 49 U.S.C. 20103, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance with certain requirements of the Federal railroad safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being sought.

Hillsborough Area Regional Transit

[Docket Number FRA–2002–13398]

Hillsborough Area Regional Transit (Hartline) seeks a permanent waiver of compliance from Title 49 of the CFR for operation of a new light rail line at a "limited connection" with CSX Transportation (CSXT). In this regard, Hartline has constructed the "TECO Line Streetcar System," which intersects with the CSXT Tampa Terminal Subdivision at a rail crossing located in the City of Tampa, Florida.

Hartline seeks relief from all applicable FRA rules based on the safety precautions already in place at the crossing. Specifically, CSXT is subject to FRA's regulations and maintains and operates the rail crossing for the proposed project, and the TECO Line Streetcar System is a light rail transit operation except for the minor crossing connection. See *Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment*, 65 FR 42529 (July 10, 2000). See also *Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems*, 65 FR 42626 (July 10, 2000).

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with the request for a waiver of certain regulatory provisions. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. All communications concerning these proceedings should identify the appropriate docket number (Docket Number FRA–2002–13398) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket, including Hartline's detailed waiver request, are also available for inspection and copying on the Internet at the docket facility's Web site at *http:\\dms.dot.gov*.

Issued in Washington, DC, on October 3, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–26127 Filed 10–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

[Docket Number FRA–2002–13239]

Applicant: Union Pacific Railroad Company, Mr. Phil M. Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the interlocking protection, on the single main track, Harvey Canal Drawbridge, milepost 4.3, on the Livonia Subdivision, at Harvey, Louisiana. The proposed changes consist of the discontinuance and removal of controlled signals 3 and 11 and the associated power-operated derails, and installation of stop signs on both approaches to the drawbridge.

The reasons given for the proposed changes are that signals are no longer required due to removal of one track and reduction in traffic to one local train in each direction daily over the bridge, and there is a 10 mph speed restriction governing movements over the bridge.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on October 3, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–26128 Filed 10–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations CFR part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number: FRA–2002–13241.

Applicant: CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–370), Jacksonville, Florida 32256.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system at South End Erie Siding, milepost BE127.00, at Lima, Ohio, on the Toledo Subdivision, Louisville Service Lane, consisting of the discontinuance and removal of the derail and associated electric lock at the location.

The reason given for the proposed changes is the elimination of equipment no longer needed for present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on October 3, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. 02–26129 Filed 10–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2002–13325

Applicant: Union Pacific Railroad Company, Mr. Phil M. Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

Union Pacific Railroad Company seeks approval of the proposed reduction to the limits of the automatic block signal (ABS) system, from milepost 349.3 to 347.4, at South St. Paul, Minnesota, on the Albert Lea Subdivision. The proposed changes consist of the discontinuance and removal of southbound automatic signal 3493, relocation of End ABS and Begin ABS signs from milepost 349.3 to 347.4, and conversion of the northbound signal leaving the ABS territory from yellow to stationary lunar.

The reason given for the proposed changes is that the application area is within yard limits and the signal system is no longer required, as it presently inhibits switching operations.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on October 3, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–26126 Filed 10–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 187X)]

Union Pacific Railroad Company—Abandonment Exemption—in Boone and Dallas Counties, IA

On September 25, 2002, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 12.2-mile line of railroad known as the Ankeny Subdivision, between milepost 341.1 near Slater and milepost 353.5 near Woodward (Equation 346.4=346.6) in Boone and Dallas Counties, Iowa. The line traverses United States Postal Service Zip Codes 50156 and 50276, and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 13, 2003.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 4, 2002. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 187X) and must be sent to: (1) Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001; and (2) Mack H. Shumate, Jr., Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Replies to the petition are due on or before November 4, 2002.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov.*"

Decided: October 7, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–26159 Filed 10–11–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 955]

Appointment of Individuals To Serve as Members of the Performance Review Board (PRB); Senior Executive Service

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Performance Review Board for the Bureau of Alcohol, Tobacco and Firearms (ATF) for the rating period beginning October 1, 2001, and ending September 30, 2002. This notice effects changes in the membership of the ATF PRB previously appointed October 18, 2001 (66 FR 52972).

The names and titles of the ATF PRB members are as follows:

(1) John J. Manfreda, Chief Counsel, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury;

(2) John Dooher, Director, Washington Office, Federal Law Enforcement Training Center, Department of the Treasury;

(3) James L. Dunlap, Deputy Assistant Director, Office of Investigations, United States Secret Service, Department of the Treasury.

FOR FURTHER INFORMATION CONTACT: Dennis Snyder, Personnel Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone (202) 927–8610.

Signed: October 4, 2002.

Bradley A. Buckles,

Director.

[FR Doc. 02–25998 Filed 10–11–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, "Release of Non-Public Information—12 CFR 4."

DATES: You should submit comments by December 16, 2002.

ADDRESSES: You should direct comments to the Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0200, 250 E Street, SW., Washington, DC 20219. Due to disruptions in the OCC's mail service since September 11, 2001, commenters are encouraged to submit comments by fax or e-mail. Comments

may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

A copy of the comments should also be sent to the OMB Desk Officer for the OCC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or by e-mail to *jlackeyj@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: You can request additional information from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Release of Non-Public Information.

OMB Number: 1557–0200.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements contained in 12 CFR part 4 are as follows:

Section 4.33 requires a person seeking non-public OCC information to submit a request in writing to the OCC.

Section 4.35(b)(3) requires a third party to submit to the OCC a separate request for information beyond the scope of a previous request for testimony.

Section 4.37(a)(2) requires current and former OCC employees subpoenaed or otherwise requested to provide information to notify the OCC.

Section 4.37(b)(1)(i) requires any person, national bank, or other entity to seek OCC approval before disclosing non-public OCC information.

Section 4.37(b)(3) requires any person, national bank, or other entity served with a request, subpoena, order, motion to compel, or other judicial or administrative process to provide non-public OCC information to notify the OCC.

Section 4.38(a) and (b) requires may a condition a decision to release non-public OCC information on a written agreement of confidentiality or agreement of the parties to appropriate limitations.

Section 4.39 requires requesters who require authenticated records or certificates to request certifications from the OCC.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 110.

Estimated Total Annual Responses: 170.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 467 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 8, 2002.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 02–26040 Filed 10–11–02; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Customs Service

List Of Foreign Entities Violating Textile Transshipment And Country of Origin Rules

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document notifies the public of foreign entities which have been issued a penalty claim under section 592 of the Tariff Act of 1930, for certain violations of the customs laws. This list is authorized to be published by section 333 of the Uruguay Round Agreements Act.

DATES: This document notifies the public of the semiannual list for the 6-month period starting October 1, 2002, and ending March 30, 2003.

FOR FURTHER INFORMATION CONTACT: For information regarding any of the operational aspects, contact Gregory Olsavsky, Fines, Penalties and Forfeitures Branch, Office of Field Operations, (202) 927–3119. For information regarding any of the legal aspects, contact Willem A. Daman, Office of Chief Counsel, (202) 927–6900.

SUPPLEMENTARY INFORMATION:

Background

Section 333 of the Uruguay Round Agreements Act (URAA) (Public Law 103–465, 108 Stat. 4809) (signed December 8, 1994), entitled Textile Transshipments, amended Part V of title IV of the Tariff Act of 1930 by creating a section 592A (19 U.S.C. 1592a), which authorizes the Secretary of the Treasury to publish in the **Federal Register**, on a semiannual basis, a list of the names of any producers, manufacturers, suppliers, sellers, exporters, or other persons located outside the Customs territory of the United States, when these entities and/or persons have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws, provided that certain conditions are satisfied.

The violations of the customs laws referred to above are the following: (1) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products; (2) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the Customs territory of the United States of textile or apparel products; (3) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labeled as to country of origin or source; and (4) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

If a penalty claim has been issued with respect to any of the above

violations, and no petition in response to the claim has been filed, the name of the party to whom the penalty claim was issued will appear on the list. If a petition or supplemental petition for relief from the penalty claim is submitted under 19 U.S.C. 1618, in accord with the time periods established by sections 171.2 and 171.61, Customs Regulations (19 CFR 171.2, 171.61) and the petition is subsequently denied or the penalty is mitigated, and no further petition, if allowed, is received within 60 days of the denial or allowance of mitigation, then the administrative action shall be deemed to be final and administrative remedies will be deemed to be exhausted. Consequently, the name of the party to whom the penalty claim was issued will appear on the list. However, provision is made for an appeal to the Secretary of the Treasury by the person named on the list, for the removal of its name from the list. If the Secretary finds that such person or entity has not committed any of the enumerated violations for a period of not less than 3 years after the date on which the person or entity's name was published, the name will be removed from the list as of the next publication of the list.

Reasonable Care Required

Section 592A also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to its origin. Reliance solely upon information regarding the imported product from a person named on the list is clearly not the exercise of reasonable care. Thus, the textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must involve reliance on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to section 592A of the Tariff Act of 1930, an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labeling is accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

(1) Has the importer had a prior relationship with the named party?

(2) Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?

(3) Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?

(4) Where a claim of an origin conferring process is made in accordance with 19 CFR 102.21, has the importer ascertained that the named party actually performed the required process?

(5) Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?

(6) Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?

(7) What is the history of this country regarding this commodity?

(8) Have you asked questions of your supplier regarding the origin of the product?

(9) Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

The law authorizes a semiannual publication of the names of the foreign entities and/or persons. On March 20, 2002, Customs published a Notice in the **Federal Register** (67 FR 13044) which identified 10 (ten) entities which fell within the purview of section 592A of the Tariff Act of 1930.

592A List

For the period ending September 30, 2002, Customs has identified 3 (three) foreign entities that fall within the purview of section 592A of the Tariff Act of 1930. This list reflects no new entities and seven removals to the 10 entities named on the list published on March 20, 2002. The parties on the current list were assessed a penalty claim under 19 U.S.C. 1592, for one or more of the four above-described violations. The administrative penalty action was concluded against the parties by one of the actions noted above as having terminated the administrative process.

The names and addresses of the 3 foreign parties which have been assessed penalties by Customs for violations of section 592 are listed below pursuant to section 592A. This list supersedes any previously published list. The names and addresses of the 3 foreign parties are as follows (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the **Federal Register**):

Everlite Manufacturing Company, P.O. Box 90936, Tsimshatsui, Kowloon, Hong Kong (3/01).

Fairfield Line (HK) Co. Ltd., 60–66 Wing Tai Commer., Bldg. 1/F, Sheung Wan, Hong Kong (3/01).

G.P. Wedding Service Centre, Lee Hing Industrial Building, 10 Cheung Yue Street 11th Floor, Cheung Sha Wan, Kowloon, Hong Kong. (10/00)

Any of the above parties may petition to have its name removed from the list. Such petitions, to include any documentation that the petitioner deems pertinent to the petition, should be forwarded to the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Additional Foreign Entities

In the March 20, 2002, **Federal Register** notice, Customs also solicited information regarding the whereabouts of 3 foreign entities, which were identified by name and known address, concerning alleged violations of section 592. Persons with knowledge of the whereabouts of those 3 entities were requested to contact the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

In this document, a new list is being published which contains the name and last known address of one entity. This reflects the removal of two entities from the list of 3 entities published on March 20, 2002.

Customs is soliciting information regarding the whereabouts of the following one foreign entity concerning alleged violations of section 592. Its name and last known address are listed below (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the **Federal Register**):

Lai Cheong Gloves Factory, Kar Wah Industrial Building, 8 Leung Yip Street, Room 101, 1–F, Yuen Long, New Territories, Hong Kong. (3/00)

If you have any information as to a correct mailing address for the above-named firm, please send that information to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Dated: October 9, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–26123 Filed 10–11–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2290

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2290, Heavy Highway Vehicle Use Tax Return.

DATES: Written comments should be received on or before December 16, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P, Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*carol.a.savage@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Heavy Highway Vehicle Use Tax Return.

OMB Number: 1545–0143.

Form Number: 2290.

Abstract: Form 2290 is used to compute and report the tax imposed by Internal Revenue Code section 4481 on the highway use of certain motor vehicles. The information is used to determine whether the taxpayer has paid the correct amount of tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 440,000.

Estimated Time Per Respondent: 39 hours, 38 minutes.

Estimated Total Annual Burden Hours: 17,443,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 7, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–26192 Filed 10–11–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 56

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 56, Notice Concerning Fiduciary Relationship.

DATES: Written comments should be received on or before December 16, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the internal (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Notice Concerning Fiduciary Relationship.

OMB Number: 1545–0013.

Form Number: 56.

Abstract: Form 56 is used to inform the IRS that a person is acting for another person in a fiduciary capacity so that the IRS may mail tax notices to the fiduciary concerning the person for whom he/she is acting. The data is used to ensure that the fiduciary relationship is established or terminated and to mail or discontinue mailing designated tax notices to the fiduciary.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 25,000.

Estimated Time Per Respondent: 11 hr. 43 min.

Estimated Total Annual Burden Hours: 292,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 7, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–26193 Filed 10–11–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4810

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4810, Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).

DATES: Written comments should be received on or before December 16, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*carol.a.savage@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).

OMB Number: 1545–0430.

Form Number: 4810.

Abstract: Fiduciaries representing a dissolving corporation or a decedent's estate may request a prompt assessment of tax under Internal Revenue Code section 6501(d). Form 4810 is used to help locate the return and expedite the processing of the taxpayer's request.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, farms, and the Federal government.

Estimated Number of Respondents: 4,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 8, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–26194 Filed 10–11–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 673

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 673, Statement for Claiming Benefits Provided by Section 911 of the Internal Revenue Code.

DATES: Written comments should be received on or before December 16, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*carol.a.savage@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Statement for Claiming Benefits Provided by Section 911 of the Internal Revenue Code.

OMB Number: 1545–0666.

Form Numbers: 673.

Abstract: Under section 911 of the Internal Revenue Code certain income earned abroad is excludable from gross income. Form 673 is completed by a citizen of the United States and is furnished to his or her employer in order to exclude from income tax withholding all or part of the wages paid the citizen for services performed outside the United States.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 25,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 8, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–26195 Filed 10–11–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Internal Revenue Service Advisory Council (IRSAC) will hold a public meeting on Friday October 18, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Lorenza Wilds, National Public Liaison, CL:NPL:PAC, Room 7567 IR, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone: 202–622–6440 (not a toll-free number). E-mail address: *public_liaison;@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), a public meeting of the IRSAC will be held on Friday, October 18, 2002, from 9 a.m. to 4 p.m. in Room 2140, main Internal Revenue Service building, 1111 Constitution Avenue, NW., Washington, DC 20224. Issues to be discussed include: offers-in-compromise, k–1 matching program, compliance, competent authority, abusive tax shelters, transfer-pricing. Reports from the three IRSAC sub-groups, Wage & Investment, Small Business/Self-Employed, and Large and Mid-size Business will also be presented and discussed. Last minute agenda changes may preclude advance notice. The meeting room accommodates approximately 50 people, IRSAC members and Internal Revenue Service officials inclusive. Due to limited seating and security requirements, please call Lorenza Wilds to confirm your attendance. Ms. Wilds can be reached at 202–622–6440. Attendees are encouraged to arrive at least 30 minutes before the meeting begins to allow sufficient time for purposes of security clearance. Please use the main entrance at 1111 Constitution Avenue to enter the building. Should you wish to the IRSAC to consider a written statement, please call (202) 622–6440, or write to: Internal Revenue Service, Office of National Public Liaison, CL:NPL:PAC, 1111 Constitution Avenue, NW., Room 7567 IR, Washington, DC 20224 or e-mail: *public_liaison@irs.gov.*

Dated: October 7, 2002.

Nancy A. Thoma,

Designated Federal Official, Branch Chief, Planning & Advisory Councils.

[FR Doc. 02–26191 Filed 10–11–02; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0205]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information used to notify contractors of available work, solicit and evaluate bids, and monitor work in progress.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 16, 2002.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *ann.bickoff@hq.med.va.gov.* Please refer to "OMB Control No. 2900–0205" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff at (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is

being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles

a. VA Form 10–2850, Application for Physicians, Dentists, Podiatrists and Optometrists.

b. VA Form 10–2850a, Application for Nurses and Nurse Anesthetists.

c. VA Form 10–2850b, Application for Residents.

d. VA Form 10–2850c, Application for Associated Health Occupations.

e. VA Form FL 10–341a, Appraisal of Applicant.

OMB Control Number: 2900–0205.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 10–2850 and 10–2850a through c are applications designed specifically to elicit appropriate information about each candidate's qualifications for employment with VA. VHA officials use the information to evaluate education, professional experience and credentials and to determine suitability and grade level of applications of physicians, dentists, podiatrists, optometrists, nurses and nurse anesthetists, residents, and associated health occupations, and appraisal of applicants. The forms require disclosure of details about all licenses ever held, Drug Enforcement Administration certification, board certification, clinical privileges, revoked certification or registrations, liability insurance history, and involvement in malpractice proceedings. Form Letter 10–341a is a pre employment reference form used to elicit information concerning the prior education and/or performance of the Title 38 applicant.

Affected Public: Individuals or Households, Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Annual Burden: 68,610 hours.

a. VA Form 10–2850, Application for Physicians, Dentists, Podiatrists and Optometrists—6,450 hours.

b. VA Form 10–2850a, Application for Nurses and Nurse Anesthetists—25,800 hours.

c. VA Form 10–2850b, Application for Residents—13,760 hours.

d. VA Form 10–2850c, Application for Associated Health Occupations—8,600 hours.

e. VA Form FL 10–341a, Appraisal of Applicant—14,000 hours.

Estimated Average Burden Per Respondent: 27 minutes.

a. VA Form 10–2850, Application for Physicians, Dentists, Podiatrists and Optometrists—30 minutes.

b. VA Form 10–2850a, Application for Nurses and Nurse Anesthetists—30 minutes.

c. VA Form 10–2850b, Application for Residents—30 minutes.

d. VA Form 10–2850c, Application for Associated Health Occupations—30 minutes.

e. VA Form FL 10–341a, Appraisal of Applicant—20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 151,220.

a. VA Form 10–2850, Application for Physicians, Dentists, Podiatrists and Optometrists—12,900.

b. VA Form 10–2850a, Application for Nurses and Nurse Anesthetists—51,600.

c. VA Form 10–2850b, Application for Residents—27,520.

d. VA Form 10–2850c, Application for Associated Health Occupations—17,200.

e. VA Form FL 10–341a, Appraisal of Applicant—42,000.

Dated: October 2, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–26120 Filed 10–11–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0208]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information used to notify contractors of available work, solicit and evaluate bids, and monitor work in progress.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 16, 2002.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *ann.bickoff@hq.med.va.gov*. Please refer to "OMB Control No. 2900–0208" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff at (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles

a. VA Form 10–6131, Daily Log—Formal Contract

b. VA Form 10–6298, Architect—Engineer Fee Proposal

c. VA Form 10–6299, Supplement to SF 129, Solicitation Mailing List Application

OMB Control Number: 2900–0208.

Type of Review: Extension of a currently approved collection.

Abstract:

a. VA Form 10–6131 is used by contractors to furnish daily reports verifying work progression and assures proper contract compliance.

b. VA Form 10–6298 is used by architect-engineering firms to submit a fee proposal on the scope and complexity of an individual project.

c. VA Form 10–6299 is mailed with SF 129, Solicitation Mailing List Application, is used to compile a list of potential bidders and by potential contractors who are afforded advance notification of projects.

Affected Public: Business or other for-profit, State, Local or Tribal Government.

Estimated Annual Burden: 7,400 hours.

Estimated Average Burden Per Respondent

a. VA Form 10–6131—12 minutes.

b. VA Form 10–6298—4 hours.

c. VA Form 10–6299—6 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents

a. VA Form 10–6131—18,000.

b. VA Form 10–6298—200.

c. VA Form 10–6299—3,000.

Dated: October 2, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–26121 Filed 10–11–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0609]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine an accurate projection of VA's ability to serve veterans who are seeking VA services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 16, 2002.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *ann.bickoff@hq.med.va.gov*. Please refer to "OMB Control No. 2900–0609" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff at (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Enrollees' Heath and Reliance Upon VA, VA Form 10–21034g.

OMB Control Number: 2900–0609.

Type of Review: Revision of a currently approved collection.

Abstract: Public Law 104–262, The Veterans Health Care Eligibility Reform Act of 1996, mandated VA to implement eligibility reforms with an annual enrollment. VA must enroll veterans by specified priorities as far down the priorities as the available resources permit. There is no valid, recent information available in administrative databases on all enrollees' health status, income, and their reliance upon the VA system. The magnitude of changes each year in enrollees, their characteristics, and system policies make annual surveys necessary to capture this critical information for input into VHA's Health Care Services Demand Model.

Affected Public: Individuals or Households.

Estimated Annual Burden: 9,375 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 37,500.

Dated: October 1, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–26122 Filed 10–11–02; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Tuesday,
October 15, 2002

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determinations of Prudency for Two Mammal and Four Bird Species in Guam and the Commonwealth of the Northern Mariana Islands and Proposed Designations of Critical Habitat for One Mammal and Two Bird Species; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AI25

Endangered and Threatened Wildlife and Plants; Determinations of Prudency for Two Mammal and Four Bird Species in Guam and the Commonwealth of the Northern Mariana Islands and Proposed Designations of Critical Habitat for One Mammal and Two Bird Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have reconsidered whether designating critical habitat for the Mariana fruit bat (*Pteropus mariannus mariannus*), little Mariana fruit bat (*Pteropus tokudae*), Guam Micronesian kingfisher (*Halcyon cinnamomina cinnamomina*), Mariana crow (*Corvus kubaryi*), Guam broadbill (*Myiagra freycineti*), and Guam subspecies of bridled white-eye (*Zosterops conspicillatus conspicillatus*) would be prudent. We propose designation of critical habitat for the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow pursuant to the Endangered Species Act of 1973, as amended (Act). We propose designating approximately 10,037 hectares (ha) (24,803 acres (ac)) on the island of Guam for the Mariana fruit bat and the Guam Micronesian kingfisher. For the Mariana crow, we propose designating approximately 9,309 ha (23,004 ac) on the island of Guam and approximately 2,462 ha (6,084 ac) on the island of Rota in the Commonwealth of the Northern Mariana Islands (CNMI). On Guam, the Mariana fruit bat and Guam Micronesian kingfisher proposed critical habitat unit boundaries are identical and the boundaries of the proposed critical habitat for the Mariana crow is contained within these identical boundaries. On Rota, critical habitat is proposed only for the Mariana crow.

We have determined that designation of critical habitat would not be prudent for the little Mariana fruit bat, Guam broadbill, and bridled white-eye because all three species likely are extinct. These species inhabited native forests similar to those required by the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow, and the designation of critical habitat for these species on Guam will provide some insurance in the event that any of the species presumed extinct are rediscovered.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: *Comments:* Comments from all interested parties must be received by December 16, 2002.

Public Hearings: A public hearing will be held on Rota from 6 to 8 p.m. on Wednesday, November 6, 2002. A public hearing will also be held on Guam from 6 to 8 p.m., Thursday, November 7, 2002. Prior to each public hearing, the Service will be available from 3:30 to 4:30 p.m. to provide information and to answer questions. We also will be available for questions after each of the hearings.

ADDRESSES: The Rota public hearing will be held at the Rota Resort, 2600 Bishop Drive, As Puladan. The Guam public hearing will be held at the Outrigger Guam Resort, 1255 Pale San Vitores Road, Tumon Bay.

Anyone wishing to make oral comments for the record at the public hearing is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll at 503/231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than 1 week before the hearing date.

You may submit your comments and materials concerning this proposal by any one of the following methods:

You may submit comments and information on this proposed rule to Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850.

You may hand-deliver written comments to our Pacific Islands Office at the address given above.

You may send comments by electronic mail (e-mail) to: *Mariana_CritHab@r1.fws.gov. See* the Public Comments Solicited section below for file format and other information about electronic filing.

Availability of Documents: Supporting documentation and references used in the preparation of this proposed rule and all comments and materials received will be available for public inspection, by appointment, during normal business hours in the Pacific Islands Fish and Wildlife Office in Honolulu at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, or Fred Amidon, Fish and Wildlife Biologist, Pacific Islands Fish and Wildlife Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

The Territory of Guam (Guam) is the largest and southernmost of the 16 islands in the Mariana Archipelago. Guam is located at 13o 30' N and 145o E and is approximately 49 kilometers (km) (30 miles (mi)) long and 7 to 15 km (4 to 9 mi) wide. The northern half of Guam is an upraised limestone plateau and the southern half is primarily of volcanic origin with a mountainous topography. The major habitat types found on Guam include limestone forest, grassland, swamp forest (including mangroves), ravine forest, secondary forest, agricultural forest (including coconut plantations), coastal forest, open ground (including pastures and cultivated areas), urban vegetation, and marshland (Fosberg 1960, Mueller-Dombois and Fosberg 1998). The majority of Northern Guam is secondary forest, with large areas cleared for military facilities and business and residential development. Southern Guam is a mosaic of grassland and patches of ravine, limestone, swamp, and secondary forests.

Rota is the fourth largest island in the Mariana Archipelago, and is located 49 km (30 mi) north of Guam at 14°10′ N and 145° E. The island is approximately 18 km (11 mi) long and 4 to 7 km (2.5 to 4 mi) wide. The western half of the island is dominated by an uplifted plateau, the Sabana, which supports a combination of limestone forest, grassland, and agricultural land. The Sabana encompasses 12 km^2 (5 mi^2) at an elevation of 450 meters (m) (1,476 feet (ft)). Steep cliffs border the Sabana on all but the northeast side, where the plateau slopes down to the eastern part of the island, which supports a combination of secondary forest and residential and agricultural lands. Because access is difficult, the cliffs surrounding the Sabana support primary limestone forest. Although approximately 60 percent of Rota is now forested (Falanruw *et al.* 1989), and the native vegetation on Rota is less disturbed than on Guam, much of the forest on Rota is of medium stature and

is degraded by development activities, introduced plants and animals, logging, and the effects of warfare from WWII (Fosberg 1960, Engbring *et al.* 1986, NRC 1997, Mueller-Dombois and Fosberg 1998). Prior to human colonization, both Guam and Rota likely were covered with forest and had similar vegetation and habitat types.

Taxonomy, Life History, Distribution, and Habitat

Mariana fruit bat—This species is a medium-sized fruit bat weighing from 330 to 577 grams (g) (12 to 20 ounces (oz)) with a wingspan of 860 to 1,065 millimeters (mm) (34 to 42 inches (in)) (Perez 1972). The abdomen, wings, and head are dark brown, while the back and sides of the neck are golden or pale brown. This species is a member of the Old World fruit bat family Pteropodidae, which is distributed throughout the Old World tropics. The Mariana fruit bat historically inhabited all of the major islands in the Mariana archipelago. This species typically roosts diurnally in colonies in undisturbed native forests and forages widely at night on nectar, fruit, and leaves of at least 22 plant species (Wiles 1983). The Mariana fruit bat is polygynous; colonies usually consist of harems of 2 to 15 females attended by one male and bachelor groups (Wiles 1982a, 1983). Females typically produce a single offspring per year; mating and nursing young have been observed throughout the year (Perez 1972, Wiles 1983, Wiles *et al.* 1995).

During the day, Mariana fruit bats roost in native and non-native trees alone or in groups or colonies of a few to over 800 animals (Wiles 1987, Pierson and Rainey 1992, Worthington and Taisacan 1995). Roosting bats sleep during much of the day but also perform other activities, such as grooming, breeding, and defending roosting territories within the colony (USFWS 1990a). Several hours after sunset, bats depart their roost sites to forage for fruit and other native and non-native plant materials such as leaves and nectar (USFWS 1990a). Little is known about their nightly movements, but fruit bats have been observed foraging as far as 12 km (7 mi) from known roosting sites on Guam (Wiles *et al.* 1995). Radio tracking of the Tongan or white-necked fruit bat (*Pteropus tonganus*) in Samoa indicates that individual animals may travel as far as 15 to 20 km (9 to 12 mi) from their roosts during a night's foraging (Suzanne Nelson, University of Florida, pers. comm., 2002). Similar to the Mariana fruit bat, this species roosts colonially during the day and forages widely at night, feeding on the fruit, nectar, and leaves of a range of native and non-native plants (Trail 1994, Banack 1998).

At present, only the Guam population of Mariana fruit bat is listed as endangered. A proposed rule to reclassify the Guam population of the species as threatened and also list the population in the CNMI as threatened was published on March 26, 1998 (63 FR 14641).

On Guam, the Mariana fruit bat was historically found throughout native forests. In 1958, Woodside (1958) estimated the population on Guam to number approximately 3,000 fruit bats. By 1995, the island population had been reduced to between 300 and 500 and was restricted primarily to forest on the northern tip of the island (Wiles *et al.* 1995), although there are occasional reports of bats from southern Guam around the Fena Reservoir (Morton and Wiles, in press). Illegal hunting is believed to be one of the major causes of decline in this species, but predation by the brown treesnake *(Boiga irregularis)* also may be an important limiting factor (Wiles 1987). The Mariana fruit bat forages and roosts primarily in native limestone forest, but coconut plantations and coastal forest are occasionally used as well (Wiles 1987, Worthington and Taisacan 1996). Most other species of Pacific fruit bats generally use a variety of forest types, including agricultural forest in close proximity to residential areas (Falunruw 1988, Wiles and Engbring 1992, Banack 1998). On Guam, however, residential areas generally are not used by the Mariana fruit bat, probably because they do not provide adequate protection from poaching (USFWS 1990a). Forested areas protected from human intrusion are necessary for conservation of the Mariana fruit bat on Guam.

Little Mariana fruit bat—This species is a small fruit bat weighing approximately 152 g (5 oz) with a wingspan of 650 to 709 mm (25 to 28 in) (Tate 1934, Perez 1972). The abdomen and wings of the little Mariana fruit bat are dark brown while the mantle and sides of the neck are golden or brown. The top of the head is grayish to yellowish brown while the throat is dark brown. This species was a member of the Old World fruit bat family Pteropodidae. It was first described in 1931 (Tate 1934), and is believed to have been endemic to the island of Guam. Only three specimens of this species have been collected, and virtually nothing is known of its life history or distribution. This species typically has been described as "rare" (Baker 1948, Perez 1972). It was last recorded in 1968, when one female was shot by hunters in mature limestone forest at Taraque Point in Northern Guam (Perez 1972). The little Mariana fruit bat likely is extinct (USFWS 1990a).

Guam Micronesian kingfisher—The Halcyon kingfishers are widespread in the Pacific, Australia, and Southeast Asia. The subspecies *Halcyon cinnamomina cinnamomina* is endemic to Guam. Other subspecies are endemic to Palau and Pohnpei. The Guam Micronesian kingfisher weighs approximately 56 to 76 g (2 to 3 oz) and is sexually dimorphic (Baker 1951). Males have a rusty brown head, neck, upper back, and underparts and a blue tail and wings. Females look similar to the male but the chin, throat, and underparts are white. The Guam Micronesian kingfisher preys on insects and small vertebrates such as skinks and geckoes, which it typically captures on the ground by ambush from exposed perches (Jenkins 1983). This species nests in cavities excavated in soft, rotten wood, and thus requires mature forest harboring relatively large-diameter, mature trees (Marshall 1989). Nesting activity in the wild on Guam was documented to occur primarily between December and July, and the average clutch size was two eggs (Jenkins 1983).

The Guam subspecies was common throughout Guam as recently as 1945 (Marshall 1949), and was found throughout most forest types (Jenkins 1983). Up to 3,000 birds were recorded in 1981 (Engbring and Ramsey 1984), but the kingfisher declined rapidly, and now is extinct in the wild. However, a captive population of 63 birds has been established and is maintained at 11 zoos in North America including the Bronx, Philadelphia, and National Zoos (B. Bahner, National Zoological Association, in litt. 2002), and the Guam Division of Marine and Aquatic Resources is initiating a captive translocation program on Guam. Once the brown tree snake is controlled or eradicated, progeny produced by this captive flock can be reintroduced to Guam. Adequate forest habitat containing large trees suitable for nesting is essential to the successful reintroduction of kingfishers to the wild.

Mariana crow—This species is endemic to Guam and Rota, and is one of the few members of the worldwide family Corvidae to inhabit oceanic islands. The Mariana crow is a small, black crow weighing approximately 205 to 270 g (7 to 10 oz) (Baker 1951). Most of the information about the life history of the Mariana crow comes from Rota, where the species is more abundant than on Guam, though still rare (Wiles

1998, Morton *et al.* 1999). The Mariana crow is omnivorous and forages on a wide range of invertebrates, small vertebrates, fruit, seeds, foliage, and bark (USFWS in prep.). Crows forage at all heights in the forest as well as on the ground. The Mariana crow associates in family groups, and pairs defend territories of a size dependent upon the distribution of resources (Morton *et al.* 1999). Prior to population declines on Guam (see below), aggregations of up to 66 birds were often observed prior to the breeding season (Wiles 1998). On Rota, nesting is concentrated between August and February, but active nests have been found in every month but June (Morton *et al.* 1999). Nests are built an average of 7 m (23 ft) off the ground, with nest trees averaging 17 centimeter (cm) (7 in) in diameter (Morton *et al.* 1999). In a 3-year period on Rota, an average of 44 percent of Mariana crow pairs successfully fledged young and averaged 1.2 fledglings per successful nest (Morton *et al.* 1999). On Guam, nest predation and low egg viability seem to account for a much shorter breeding season (Morton 1996).

On Guam, the crow historically was widely distributed in forest habitats, but densities were highest in limestone forests and lowest in grasslands and areas with human settlement (Jenkins 1983, Michael 1987). Similar to other Guam forest birds, the crow disappeared from most of the island with the spread of the brown treesnake, and was restricted to the northern cliff forests by the mid 1970s. The population on Guam now numbers 12 birds, 10 of which were translocated from Rota or mainland zoos (Aguon 2002). This wild population experiences little or no reproductive success, and captive propagation efforts on Guam and in mainland zoos since 1984 have produced few juvenile birds for release (USFWS in prep.).

On Rota, Mariana crows were considered relatively common and widely distributed in 1976 (Pratt *et al.* 1979). The first island-wide survey of crows on Rota in 1982 estimated a population of 1,318 individuals (Engbring *et al.* 1986). Crows still are distributed widely on Rota (Morton *et al.* 1999), but results of several surveys indicate that the crow population has declined since the early 1980s. Differences in survey methods and seasonal variation among surveys has generated debate over the rate of decline in this 20-year period. Surveys using the variable circular plot method have been conducted regularly since 1992, however, and these indicate that the current estimate of 343 to 654 crows represents a decline of roughly 38 percent in the Rota population in the last decade (Fancy *et al.*1999; Morton *et al.* 1999; USFWS in prep.).

The best information on the biology and current population size of the Mariana crows on Rota comes from a detailed study of six areas by Morton *et al.* from 1995 to 1999. Morton *et al.* (1999) mapped the locations of all known breeding pairs (n = 85 pairs) on Rota, and estimated the number of additional pairs inhabiting six non-surveyed areas by comparing the habitat in these areas to the surveyed habitats (n = 25 pairs), for a total of 110 breeding pairs on Rota. There likely are additional, nonbreeding crows on Rota, but it is difficult to estimate how many there may be (Morton *et al.* 1999).

Compared to other forest birds of Guam and Rota, Mariana crows have large territories and require relatively large tracts of limestone forest that have low levels of human activity or disturbance (Morton 1996, Morton *et al.* 1999). More forest is necessary to maintain a genetically viable population of crows than for other forest birds on Guam because each pair of crows requires more space than do smaller species. Research on Guam and Rota also indicates that human disturbance can affect nesting success and placement of nest sites (Morton 1996, Morton *et al.*1999).

Although human persecution of crows has occurred on Rota (National Research Council (NRC) 1997, USFWS in prep.), we believe the threat to the species will not be increased by the designation of critical habitat. The small crow population on Guam is located on refuge lands that overlie military lands where access is highly restricted. On Rota, the proposed critical habitat is occupied by crows, and critical habitat designation thus will not place additional regulatory burdens on the local community that might generate increased persecution of crows. However, we are seeking public input on this important question.

Guam broadbill—This flycatcher was a member of the family Monarchidae. Most of the eight or nine genera in this family are widespread in the tropical Pacific, and many species are endemic to a single island or archipelago (Pratt *et al.* 1987). The Guam broadbill was closely related to congeners in Palau *(Myiagra erythrops)*, Chuuk *(M. oceanica)*, and Pohnpei *(M. pluto)*. The Guam broadbill weighed approximately 12 g (0.4 oz) and had a bluish head, neck, back, wings, and tail and a white throat and light cinnamon breast (Baker 1951). Similar to other monarch flycatchers, the Guam broadbill was insectivorous and fed both by gleaning prey from twigs and foliage and by hawking insects from the air (Jenkins 1983). This species nested year-round, and nests usually were placed in a fork of branches in understory trees or shrubs (Jenkins 1983). Both sexes incubated eggs and brooded young (Jenkins 1983).

Although once widespread in all but grassland habitats, by 1979 the Guam broadbill was restricted primarily to mature limestone forests along the north end of the island (Jenkins 1983). In 1983, the population was restricted to the Pajon Basin, a small area on the north coast, and was estimated at less than 100 individuals (Beck 1984). The last sightings of this species took place in 1984, one in March in Northwest Field and one in August adjacent to the Navy golf course in Barrigada (52 FR 2239). Since 1984, spring bird surveys and other ornithological activities in areas where this species would likely occur have yielded no observations (Wiles *et al.* 1995). The primary cause of decline likely was predation by the introduced brown treesnake (Savidge 1986, 1987). The Guam broadbill likely is extinct, and the proposed rule to remove this species from the Endangered Species list was published in the **Federal Register** on January 25, 2002 (67 FR 3675).

Bridled white-eye—The white-eye family Zosteropidae is widespread in the Old World tropics and occurs in the tropical Pacific as far east as Samoa. The Guam subspecies of bridled white-eye, *Zosterops conspicillatus conspicillatus*, was endemic to Guam (Baker 1951), and was one of two subspecies in the Mariana Islands (Slikas *et al.* 2000). The bridled white-eye weighed approximately 10.0 g (0.3 oz) and had a white eye ring, greenish yellow back, wings, and tail, and a yellow throat, breast, and abdomen (Baker 1951). Although white-eyes are known to feed on fruit and nectar as well as insects, this subspecies was primarily insectivorous (Jenkins 1983). Similar to other white-eyes, the bridled white-eye on Guam was a flocking bird that displayed little territoriality, even while nesting (Jenkins 1983). Little is known of its nesting habitats on Guam.

The bridled white-eye was recorded historically in virtually all habitats at all elevations on Guam (Jenkins 1983). By the mid 1940s, however, the subspecies had dwindled in southern Guam (Stophet 1946), and in central Guam it was last observed in the early 1960s (Jenkins 1983). By 1983 the population was restricted to northern Guam and was thought to have dropped below 50 individuals (Beck 1984). The last family group, including a fledgling, was observed in the Pajon Basin in 1982, and the last individual was observed at this site in 1983 (Beck 1984). Since this sighting in 1983, spring bird surveys and other ornithological activities in areas where this species would likely occur have yielded no observations (Wiles *et al.* 1995). The primary cause of decline most likely was predation by the brown tree snake (Savidge 1986, 1987). The Guam subspecies of bridled white-eye likely is extinct.

Threats

The primary factor in the decline and disappearance of native bird and bat species on Guam certainly has been predation by non-native species, including the brown treesnake (on Guam), three species of rat *(Rattus rattus, R. norvegicus,* and *R. exulans)*, and the mangrove monitor lizard *(Varanus indicus)* (Savidge 1986, 1987). The effects of these predators likely have been most severe on birds, and the brown treesnake in particular has played a major role in the precipitous decline in Guam's native birds (Savidge 1987). Predation by the brown treesnake on juvenile Mariana fruit bats also is associated with the decline of this species on Guam (Wiles *et al.* 1995). On Rota, rats in particular are thought to be a major nest predator of the Mariana crow (Morton *et al.* 1999).

Habitat loss and degradation also have contributed to the decline of native species in the Marianas archipelago. Large areas of Guam were cleared of native vegetation during and immediately after World War II (Fosberg 1960), and the encroachment of weedy non-native plants, especially *Leucaena leucocephala* (tangentangen), has increased since 1945. Over the last five decades, the clearing of land for agricultural, housing, and private development (*e.g.*, golf courses and hotels) continued throughout Guam as tourism and the human population increased. Little development has occurred on military lands since they were first developed after the war. However, recently an area of approximately 100 ha (247 ac) on Andersen Air Force Base was cleared for military training purposes (USAF 2001). Significant areas of native forest and other vegetation types still remain, (Mueller-Dombois and Fosberg 1998).

On both Guam and Rota, some closed canopy forests have been degraded by a combination of human development and road building, alien weeds that flourish in disturbed areas, suppression of forest regrowth by introduced ungulates such as deer *(Cervus mariannus)*, pigs *(Sus scrofa)*, and, on Guam, carabao *(Bubalus bubalis)*, and invasive vines that cover regenerating forest. Between 1945 and 1976 there was approximately a 10 percent increase in forest coverage on Rota (Plentovich *et al.* unpubl. data), but between 1982 and 1995, 5 to 10 percent of closed-canopy forest habitat was lost again to development.

Typhoons are a common occurrence in the Mariana Islands. Guam, for example, has been affected by typhoons in 74 percent of the last 50 years (based on records compiled by U.S. Navy, Joint Typhoon Warning Center). Major typhoons hit Guam in 1961 and 1976 and Rota in 1988 and 1997, causing significant habitat destruction and probably direct mortality of bats and birds. The islands of Tinian and Saipan (CNMI), however, also have sustained major habitat losses and typhoon damage, but have retained their avian communities to a greater degree than has Guam, although some species survive in precariously low numbers (Engbring *et al.* 1986). Habitat loss and damage from typhoons has influenced the abundance of native birds and bats in the Marianas, but these species have evolved in an environment where typhoons have always been a natural occurrence. The habitat alteration caused by these storms has become a serious threat to these species only recently as their populations and distributions have declined for other reasons.

Direct human impacts (*e.g.*, hunting, persecution) do not appear to be a major factor in the decline of forest birds on Guam, although some evidence exists of killing and harassment of crows on Rota (NRC 1997; N. Johnson, CNMI Division of Fish and Wildlife, pers. comm., 2000). The harvest of native birds has been outlawed on Guam since the turn of the century (Executive Order No. 61, Naval Governor of Guam, 1903). In contrast, hunting has had a significant impact on the Mariana fruit bat and little Mariana fruit bat. Fruit bats were hunted extensively for human consumption in the early 1900s (Coultas 1931, Baker 1948), and although this hunting was outlawed in 1966, poaching of fruit bats has continued (USFWS 1990a).

Pesticides, disease, and competition with non-native species all have been examined to assess their role in the declines of native forest vertebrates in the Mariana Islands, but none of these variables has been found to have had a major impact on the six species treated in this document (Maben 1982; Grue 1985; Savidge 1986; USFWS 1990a, 1990b).

The likely extinctions of the little Mariana fruit bat, the Guam broadbill, and the bridled white-eye on Guam probably are attributable to a combination of predation by non-native animals, habitat loss, severe storms, and, in the case of the little Mariana fruit bat, hunting (USFWS 1990a, 1990b). The importance of these factors likely varied among the three species, but the lack of life history information and long-term monitoring data for these three species make it difficult to assess the exact degree of threat in each case.

All six species have been listed under the Federal Endangered Species Act since 1984 and receive protection through section 7 (interagency consultation) and section 9 (take prohibitions). However, the populations of all six species are extremely low or do not occur in the landscape. ESA sections 7 and 9 provide limited protection for unoccupied habitat. On Guam, approximately 9,106 ha (22,500 ac) of military land are included as refuge overlay lands that are managed under cooperative agreements between the Service and the U.S. Navy (Navy) and U.S. Air Force (Air Force) (U.S. Navy and USFWS 1994, and U.S. Air Force and USFWS 1994). However, these overlay lands are managed primarily for the military mission and secondarily for conservation purposes. Approximately 1,700 ha (4,200 ac) of Government of Guam land are zoned as conservation areas under the jurisdiction of the Chamorro Land Trust Commission. However, the Chamorro Land Trust Commission has the authority to change the status of these lands at any time, and we were unable to obtain information about what conservation activities take place on these lands.

On Rota, the critical habitat unit proposed for the Mariana crow includes a small portion of the Sabana Protected Area and most of the Afatung Wildlife Management Area and Ichenchon Bird Sanctuary. The conservation rules in the draft management plan for the Sabana Protected Area (SPAMC 1996) do not specifically address conservation of the Mariana crow, nor do they prohibit activities that have the potential to affect crows or crow habitat, such as forest clearing and hunting of non-protected bird species. Furthermore, this draft plan has not been finalized or implemented. No management documents exist for the Afatung Wildlife Management Area or the Ichenchon Bird Sanctuary.

Previous Federal Action

The six species treated here were listed as endangered along with three other vertebrate species in a final rule published in the **Federal Register** on

August 27, 1984 (49 FR 33881). A review of the status of 12 Guam and CNMI vertebrate species was published on May 18, 1979 (44 FR 29128). This review, which led to the listing of nine species in 1984, resulted from three separate petitions to the Service filed by three Governors or Acting Governors of Guam in 1978, 1979, and 1981, and a fourth petition filed by the International Council for Bird Preservation in 1980. In the Service's Review of Vertebrate Wildlife published December 30, 1981 (47 FR 58454), five of the six species treated in the present proposed rule were included in Category 1. Category 1 candidate species were taxa for which we had sufficient information on biological vulnerability and threats to support preparation of listing proposals. The little Mariana fruit bat was classified as Category 2. Category 2 candidates were taxa for which data in our possession indicated listing was possibly appropriate but for which substantial information on biological vulnerability and threats were not known or on file to support preparation of proposed rules. In a proposed rule published on November 29, 1983 (48 FR 53729), the Service determined endangered status for nine of the 12 species in the four petitions. The final listing rule for the nine species, including the six species treated in the current proposed rule, was published on August 27, 1984 (49 FR 33881).

A proposed rule to designate critical habitat for these six endangered species on Guam was published in the **Federal Register** on June 14, 1991 (56 FR 27485). This proposed rule was withdrawn on April 4, 1994, (59 FR 15696) because most of the lands proposed as critical habitat had by this time been incorporated in the Guam National Wildlife Refuge overlay lands, and the Service therefore determined that critical habitat designation was not prudent because it would not provide these species with any benefit beyond that already provided by the refuge overlay lands.

Since the withdrawal of the proposed critical habitat, several judicial decisions in court cases examining critical habitat determinations have rejected rationales used by the Service in "not prudent" findings. These cases included *Natural Resources Defense Council* v. *U.S. Department of the Interior*, 113 F. 3d 1121 (9th Cir. 1997) involving the threatened coastal California gnatcatcher, and *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Haw. 1998) involving 245 listed plant species. The decisions in these cases rejected the Service's rationales of "increased threat" and "no benefit" in the case of the gnatcatcher, and of "increased threat," "no benefit on private lands," and "no additional benefit on federal lands" in the case of the Hawaiian plants.

On April 3, 2000, the Marianas Audubon Society and the Center for Biological Diversity filed a suit to challenge the Service's 1994 withdrawal of critical habitat for the six species. On September 7, 2000, the Service filed a motion to voluntarily remand the withdrawal and non-prudency decision based on the subsequent court decisions. This motion set a deadline of June 3, 2003, for the Service to determine prudency and designate final critical habitat, if prudent, for these six species. On January 25, 2002, the Government of Guam filed a motion for preliminary injunction against the Service to prevent our re-consideration of the 1994 "not prudent" critical habitat determinations for the six species. On February 8, 2002, the Service filed its opposition to the Government of Guam's motion for preliminary injunction. On April 16, 2002, the Guam District Court dismissed the Government of Guam's motion for preliminary injunction and issued a ruling upholding the settlement based on a voluntary remand.

On December 7, 2001, we mailed letters to four major landowners (Chamorro Land Trust Commission, U.S. Air Force, U.S. Navy, and Guam National Wildlife Refuge) on Guam informing them that the Service was in the process of determining the prudency of designating critical habitat for the little Mariana fruit bat, Mariana crow, Guam broadbill, Guam Micronesian kingfisher, and the bridled white-eye and requested from them information on management of lands that currently or recently (within the past 30 years) support these six species. The letters contained a fact sheet describing the six listed species and critical habitat, the 1991 proposed rule to designate critical habitat, the 1994 withdrawal of the proposed rule, and a questionnaire designed to gather information about land management practices, which we requested be returned to us by January 14, 2002. We received three responses to our landowner mailing with varying types and amounts of information on current land management activities. Some responses included natural resource management plans, cooperative agreements, and descriptions of management activities such as brown treesnake and feral ungulate control.

On February 7 and 8, 2002, the Service met with several landowners and managers in Guam, including the Navy and Air Force, to obtain more specific information on management activities and suitability of certain habitat areas for these six species. On June 8 and July 31, 2002, we sent to landowners, other stakeholders, and scientific experts a request for comments on copies of draft maps of areas on Guam and Rota identified as being important to the species. The information provided by landowners and managers and scientists during the meetings, in subsequent informal discussions, and in the responses to our written request for comments was considered and incorporated into this proposed rule.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)(A)). "Conservation," as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary (16 U.S.C. 1532 (3)).

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies insure against destruction or adverse modification of critical habitat with regard to actions they carry out, fund, or authorize. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of regulatory protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

Critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species conservation and where management actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified or help to avoid accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

Section 4 generally requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. Habitat is often dynamic, however, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation may continue to be available for conservation actions that may be implemented under section 7(a)(1) or subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will be subject to review in light of future recovery plans, habitat conservation plans (HCP), or other species conservation planning and recovery efforts.

Prudency Determination

Designation of critical habitat is not prudent when one or both of the following situations exists: (i) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (ii) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)). To determine whether critical habitat would be prudent for each species, we analyzed the potential threats and benefits for each species.

The little Mariana fruit bat, Guam broadbill, and bridled white-eye are believed extinct on Guam. The little Mariana fruit bat was last observed in 1968 and subsequent surveys for this species in the 1970s and 1980s yielded no observations (USFWS 1990a). The Guam broadbill was last observed in 1984 and subsequent forest bird surveys and other ornithological activities in areas where this species would likely occur have yielded no observations (Wiles *et al.* 1995). A proposed rule to remove the Guam broadbill from the Endangered Species list was published in the **Federal Register** on January 25, 2002 (67 FR 3675). The bridled white-eye was last observed on Guam in 1984 and subsequent forest bird surveys and other ornithological activities in areas where this species would likely occur have yielded no observations (Wiles *et al.* 1995). Therefore, because these species are believed extinct on Guam, we propose that designation of critical habitat for the little Mariana fruit bat, Guam broadbill, and bridled white-eye is not prudent because such designation would be of no benefit to these species. If these species are rediscovered, we may revise this proposal to address the new information (*see* 16 U.S.C. 1532 (5)(B); 50 CFR 424.13(f)).

We examined the evidence available for the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow, and did not find that the taking of any of these species would be exacerbated by the designation of critical habitat. There is evidence that Mariana crows and Guam Micronesian kingfishers occasionally are killed on other islands in Micronesia (USFWS in prep., D. Kesler, U.S. Geological Survey, Biological Resources Division, *in litt.*, 2002). However, this is not considered a major factor in the decline of these two bird species on Guam or Rota (USFWS 1990b). We do not believe that designation of critical habitat will lead to increased taking of these species on Guam, but we believe some crows may be harassed in agricultural homestead areas on Rota. Poaching of roosting Mariana fruit bats is considered a major factor in the decline of this species and is still considered an important threat to their conservation (USFWS 1990a). However, because critical habitat designation does not identify the exact location of roost sites, we believe it will not lead to increased Mariana fruit bat poaching.

In the absence of a finding that critical habitat would increase the degree of threat to a listed species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits of critical habitat designation include: (1) The protection of unoccupied areas by the triggering of section 7 consultation, (2) focusing conservation activities on designated areas, and (3) potential public education and awareness benefits accruing to the species. All of the above benefits apply to the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow. Therefore, we propose that designation of critical habitat is prudent

for the Mariana fruit bat and Guam Micronesian kingfisher on Guam, and for the Mariana crow on Guam and Rota.

Proposed Critical Habitat Designations

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to identify areas that contain the physical and biological features that are essential for the conservation of the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow. This information included: peer-reviewed scientific publications (*e.g.*, Baker 1951, Jenkins 1983, Wiles *et al.* 1995, NRC 1997); published and draft revised recovery plans (USFWS 1990a, 1990b, 2002); the final listing rule (49 FR 33881); unpublished reports by the Guam Division of Aquatic and Wildlife Resources (GDAWR), CNMI Division of Fish and Wildlife (DFW), and the Service (*e.g.*, Wiles 1982a, Engbring and Ramsey 1984, Morton 1996, Morton *et al.* 1999); aerial photographs and satellite imagery of Guam and Rota; personal communications with scientists familiar with the species and habitats; and responses to critical habitat outreach packages mailed to Federal, Territory of Guam, CNMI, and private landowners. Specific information we used from these sources includes estimates of historic and current distribution, abundance, and territory sizes for the three species, as well as data on resource and habitat requirements. From recovery plans, we considered the recovery objectives and the assessments of the habitat necessary to meet these objectives, as well as life history information.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations and protection. Such features are termed "primary constituent elements", and include but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, light, minerals and other nutritional or physiological requirements; cover or shelter; sites for nesting and rearing of offspring; and habitats that are protected from disturbance and are representative of the historic geographical and ecological distributions of the species.

The primary constituent elements for each of the three species for which we are proposing critical habitat are found predominantly in the remaining tracts of mature limestone forest on Guam and Rota. These forests in general are disturbed little by human activities and exhibit the biotic and structural characteristics necessary for foraging, sheltering, roosting, nesting, and rearing of young of the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow on Guam, and for these same life functions of the crow on Rota. Guam and Rota experience a high frequency of severe storms, and these regularly and significantly alter forest structure (NRC 1997). Therefore, sufficient habitat area is necessary to absorb the variable impacts of these natural disturbances and still maintain the integrity of the primary constituent elements to support fruit bat, kingfisher, and crow populations. Specific details of primary constituent elements for each species are described below.

Mariana fruit bat—This species feeds on a variety of plant material but is primarily frugivorous (Wiles and Fujita 1992). Specifically, Mariana fruit bats forage on the fruit of at least 28 plant species, the flowers of 15 species, and the leaves of two plant species (Wiles and Fujita 1992). Some of the plants used for foraging include *Artocarpus* sp. (breadfruit), *Carica papaya* (papaya), *Cycas circinalis* (fadang), *Ficus* spp. (figs), *Pandanus tectorius* (kafu), *Cocos nucifera* (coconut), and *Terminalia catappa* (talisai). Many of these plant species are found in a variety of forested habitats on Guam including limestone, ravine, coastal, and secondary forests (Stone 1970, Raulerson and Rhinehart 1991).

During the day, Mariana fruit bats roost in trees in groups or colonies and occasionally alone (Wiles 1987, Pierson and Rainey 1992). These roost sites are an important aspect of their biology because they are used for sleeping, grooming, breeding, and intra-specific interactions (USFWS 1990a). Published reports of roost sites on Guam indicate these sites occur in mature limestone forest and are found within 100 m (328 ft) of 80 to 180 m (262 to 591 ft) tall clifflines (USFWS 1990a). On Guam, Mariana fruit bats prefer to roost in mature fig and *Mammea odorata* (chopak) trees but will also roost in other tree species such as *Casuarina equisetifolia* (gago), *Macaranga thompsonii* (pengua), *Guettarda speciosa* (panao), and *Neisosperma oppositifolia* (fagot) (Wheeler and Aguon 1978; Wiles 1981, 1982b). On other islands in the Mariana Archipelago, Mariana fruit bats have been observed in secondary forest and gago groves (Glass and Taisacan 1988, Marshall *et al.* 1995, Worthington and Taisacan 1996). Factors involved in roost site selection are not clear, but data from Guam indicate that some sites may be selected for their inaccessibility by humans and thus limited human disturbance. Fruit bats will abandon roost sites if disturbed and have been reported to move to new locations up to 10 km (6 mi) away (USFWS 1990a).

In summary, the primary constituent elements required by the Mariana fruit bat for the biological needs of foraging, sheltering, roosting, and rearing of young are found in areas supporting limestone, secondary, ravine, swamp, agricultural, and coastal forests composed of native and introduced plant species. These forest types provide the primary constituent elements of:

(1) Plant species used for foraging such as breadfruit, papaya, fadang, fig, kafu, coconut palm, and talisai; and

(2) Remote locations, often within 100 m (328 ft) of 80 to 180 m (262 to 591 ft) tall clifflines, with limited exposure to human disturbance, that contain mature fig, chopak, gago, pengua, panao, fagot, and other tree species that are used for roosting and breeding.

Guam Micronesian kingfisher—Jenkins (1983) recorded the Guam Micronesian kingfisher nesting and foraging in northern Guam in mature limestone forest, secondary forests, and coastal forests dominated by coconut trees. Kingfishers also were found historically in southern Guam in ravine and coastal forests (Jenkins 1983). Few data exist about specific kingfisher nest sites on Guam, but in one study nest sites in northern Guam were found in native limestone forest, and the location of these sites within the forest was correlated with closed canopy cover and dense understory vegetation (Marshall 1989). Recent studies of the Pohnpei Micronesian kingfisher *(Halcyon cinnamomina reichenbachii)* have documented that this subspecies also occurs in a wide range of forest types, however, territories of all 14 breeding pairs studied on Pohnpei included at least several hectares of mature native rainforest (D. Kesler, pers. comm., 2002).

Micronesian kingfishers are obligate cavity nesters, and require specific substrates for excavating nest cavities. On Guam, Marshall (1989) found that kingfishers excavated nest cavities in relatively soft, decaying wood in standing dead trees, including *Tristiropsis obtusangula* (faniok), *Pisonia grandis* (umumu), breadfruit, fig, and coconut palm, in the mud nests of *Nasutitermes* spp. termites, and in the root masses of epiphytic ferns. All nest cavities found in trees were in large-diameter trees (average dbh 42.7 ± 12.7 cm (16.8 ± 5.0 in)), and these trees contained an average of 19 excavations, most of which were incomplete (Marshall 1989). Multiple excavations in suitable nest trees suggest both the importance of these trees as nest sites and the importance of excavation in the kingfishers' courtship and nesting behavior (Jenkins 1983). The links between courtship behavior, excavation activity, and nest substrate requirements have been well documented in the captive population of this species as well (Bahner, *et al.* 1998; S. Derrickson, Conservation Research Center, *in litt.* 2002). Marshall (1989) concluded that the population density of kingfishers on Guam may be limited by the availability of nest sites.

Guam Micronesian kingfishers hold year-round territories which are aggressively defended (Jenkins 1983). Nothing is known about the territory size requirements of Micronesian kingfishers on Guam, but research on the Pohnpei subspecies indicates that territory sizes in upland forest are approximately 10 ha (25 ac) (Kesler, pers. comm., 2001).

Guam Micronesian kingfishers feed both on invertebrates and small vertebrates, including insects, segmented worms, hermit crabs, skinks, geckoes, and possibly other small vertebrates (Marshall 1949, Baker 1951, Jenkins 1983). This species typically forages by perching motionless on exposed perches and swooping down to capture prey on the ground (Jenkins 1983). Guam kingfishers also will capture prey from foliage and have been observed gleaning insects from tree bark (Maben 1982). Marshall (1989) observed no kingfishers foraging in dead trees.

In summary, the primary constituent elements required for the Guam Micronesian kingfisher for the biological needs of foraging, sheltering, roosting, nesting, and rearing of young are found in areas that support limestone, secondary, ravine, swamp, agricultural, and coastal forests containing native and introduced plant species. These forest types include the primary constituent elements of:

(1) Closed canopy and well-developed understory vegetation, large (approximately 43 cm (17 in) dbh), standing dead trees (especially *Tristiropsis obtusangula* (faniok), *Pisonia grandis* (umumu), breadfruit, fig, and coconut palm), mud nests of *Nasutitermes* spp. termites, and root masses of epiphytic ferns for breeding;

(2) Sufficiently diverse structure to provide exposed perches and ground surfaces, leaf litter, and other substrates that support a wide range of vertebrate and invertebrate prey species for foraging kingfishers; and

(3) Sufficient overall breeding and foraging area to support large kingfisher territories (approximately 10 ha (25 ac)).

Mariana crow—Historically, the distribution of Mariana crows among habitats was similar on Guam and Rota. Crows were known to use secondary, coastal, ravine, and agricultural forests including coconut plantations (Seale 1901, Stophet 1946, Marshall 1949, Baker 1951, Jenkins 1983), but all evidence indicates they were most abundant in native limestone forests (Michael 1987, Morton *et al.* 1999). Mariana crow nests on Guam have been found in 11 tree genera, all but one of which are native, but most nests are located high in emergent fig or *Elaeocarpus joga* (yoga) trees (Morton 1996; C. Aguon, Guam Division of Aquatic and Wildlife Resources, unpubl. data).

On Rota, crows use both mature and secondary limestone forests (Morton *et al.* 1999), but not exclusively (M. Lusk and E. Taisacan unpubl. data). Of 156 nest sites on Rota, 39 percent and 42 percent were in mature and secondary limestone forest, respectively (Morton *et al.* 1999). Between 1992 and 1994, 90 percent (n = 115) of observations of perching crows on Rota were in native trees, primarily in middle to low heights of the canopy (M. Lusk and E. Taisacan unpubl. data). Mariana crows nested in 20 tree genera on Rota (Morton *et al.* 1999). Of 161 nest trees found during 1996–99, 63 percent were of four species: fagot, *Eugenia reinwardtiana* (a'abang), *Intsia bijuga* (ifit), and *Premna obtusifolia* (ahgao) (Morton *et al.* 1999). Individual nest trees averaged 16.9 cm (6.7 in) diameter at breast height and 8.7 m (28.5 ft) high. Canopy cover over nest sites averaged 93 percent and was never less than 79 percent. Although 18 percent of the forested area of Rota is tangantangan or some other species of introduced tree (Falanruw *et al.* 1989), no crow nests have been found in any non-native tree species. Nests were located at least 290 m (950 ft) from the nearest road and 62 m (203 ft) from the nearest forest edge, in areas with forest canopy cover that averaged 93 percent. The distances from edges strongly suggest that nesting crows are sensitive to disturbance by humans (Morton *et al.* 1999). No detailed information is available on the historical nest site selection by crows on Guam, but the remaining crows on Guam nest and forage only in primary or mature limestone forest.

In Rota, Morton *et al.* (1999) found that breeding crows on six study areas averaged one pair per 22 ha (50 ac) of forested habitat, and each territory was dominated by native forest. Pair densities ranged from one per 37 ha (91 ac) in relatively fragmented forest, to as high as one pair per 12 ha (30 ac) in mostly intact limestone forest along a coastal terrace. Territories were aggressively defended from July through January, although established pairs occupied these areas throughout the year.

In addition to habitat for breeding territories, Mariana crows also require habitat for juvenile dispersal. When juvenile Mariana crows leave the nest, they are typically tended by their parents until the following breeding season, a period that ranges from 3 to 18 months (Morton *et al.* 1999). After this parental attendance period, these juveniles enter the non-breeding population of Mariana crows until they are recruited into the adult population at approximately three years of age (Morton *et al.* 1999). Little research has been done on the non-breeding population of crows and their habitat needs, but the territoriality of breeding adults and the time required before juveniles enter the breeding population indicate that foraging habitat outside established territories is needed to maintain juvenile Mariana crows.

Mariana crows may forage at any height in the forest or on the ground (Jenkins 1983, Tomback 1986). The crows forage in at least 18 tree genera, most of which are native (Tomback 1986; Jenkins 1983; C. Aguon, unpubl. data). Mariana crows are omnivorous. They have been observed to feed on a variety of native and non-native invertebrates, reptiles, young rats, and birds' eggs, as well as on the foliage, buds, fruits, and seeds of at least 26 plant species (Jenkins 1983; Tomback 1986; Michael 1987; C. Aguon, unpubl. data).

In summary, the primary constituent elements required by the Mariana crow for the biological needs of foraging, sheltering, roosting, nesting, and rearing of young are found in areas that support limestone, secondary, ravine, swamp, agricultural, and coastal forests composed of native and introduced plant species. These forest types provide the primary constituent elements of:

(1) Emergent and subcanopy trees with dense cover for breeding such as fagot, pengua, ifit, ahgao, aabang, fig, yoga, and faniok;

(2) Sufficient area of predominantly native limestone forest to allow nesting at least 290 m (950 ft) from the nearest road and 62 m (203 ft) from the nearest forest edge and to support Mariana crow breeding territories (approximately 12 to

37 ha (30 to 91 ac)) and foraging areas for nonbreeding juvenile crows; and

(3) Standing dead trees and plant species such as *Aglaia mariannensis* (maypunayo), breadfruit, coconut palm, fagot, *Hibiscus tiliaceus* (pago), ifit, tangentangen, *Ochrosia mariannensis* (langiti), kafu, ahgao, fig, and yoga for foraging.

Criteria Used To Identify Proposed Critical Habitat

We used several criteria to identify and select lands proposed for designation as critical habitat. For the Mariana fruit bat (Guam only) and Mariana crow, we began with all areas that are currently occupied. The Guam subspecies of Micronesian kingfisher is currently extirpated in the wild, so no habitat currently is occupied. We then examined unoccupied forested lands on Guam containing the primary constituent elements that are needed for the conservation of each species (*see* explanation below). We identified which unoccupied areas on Guam were needed for the conservation of each species using recovery habitat identified in recovery plans and information on the historical distribution of each species. Within the area of historical distribution, we gave preference to lands that provided the largest tracts of native forest and were more recently occupied by each species. We determined the boundaries of proposed critical habitat units by the extent of suitable forest containing the primary constituent elements. The location of these suitable forests in many areas coincided with the boundaries of military reservations, national wildlife refuges, and conservation areas on Guam. We also included some small non-forested areas interspersed with forested areas because of their potential for reforestation. We did not include urban and agricultural lands because they generally do not contain the primary constituent elements, do not meet the definition of critical habitat, and are not likely to be restored to native forest.

On Guam, we identified two units for each species using the guidelines provided by the Mariana fruit bat recovery plan (1990a), Guam forest bird recovery plan (1990b), and recommendations by the Mariana crow recovery team for the draft revised recovery plan (USFWS in prep). On Rota, we identified one unit for the Mariana crow using guidelines from the draft revised recovery plan (USFWS in prep). For the conservation of the Mariana crow, these recovery plans call for established populations in northern Guam, southern Guam, and on Rota.

The establishment of two geographically separated populations on Guam is important to decrease the risk of extinction of the species as a result of localized, stochastic events such as typhoons and disease outbreaks (Dobson and May 1986, NRC 1997). A long-accepted view developed from ecological research is that the existence of more than one population increases the long-term likelihood of species' persistence (Raup 1991, Meffe and Carroll 1996). The specific areas proposed as critical habitat in northern and southern Guam were selected based upon their current status as blocks of largely forested land containing the primary constituent elements required by each species. These areas include the last relatively large blocks of native forest on the island within each species' historical range.

Within the proposed critical habitat unit boundaries, only lands containing one or more of the primary constituent elements are proposed as critical habitat. Existing features and structures within the boundaries of the mapped units, such as buildings, roads, aqueducts, antennas, water tanks, agricultural fields, paved areas, lawns, and other urban landscaped areas do not contain the primary constituent elements and therefore are not proposed as critical habitat. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Section 3(5)(A)(ii) of the Act provides that areas outside the geographical area currently occupied by the species may meet the definition of critical habitat upon determination that they are essential for conservation of the species. We included unoccupied habitat in the proposed critical habitat for the Guam Micronesian kingfisher and Mariana crow on Guam because, as explained below, we believe the currently occupied habitat alone would not provide for the conservation of the species.

Guam Micronesian kingfisher—The last wild kingfisher on Guam was seen in 1988 and this subspecies is believed extinct in the wild (Beck *et al.* 2001). The total population now consists of 63 birds in 11 captive breeding institutions (Bahner, *in litt.* 2002). Because the Guam Micronesian kingfisher is extinct in the wild and all suitable habitat presently is unoccupied, inclusion of unoccupied areas containing the primary constituent elements is essential to the conservation of this species. Recovery to the point where the protection afforded by listing is no longer necessary will require restoration of the Guam Micronesian kingfisher through release of captive birds and subsequent natural dispersal in areas of Guam that formerly were inhabited but that are not now occupied.

Mariana crow—The critical habitat unit proposed for the Mariana crow on Rota reflects the recovery goal of maintaining a population of at least 75 breeding pairs on Rota and the Recovery Team's estimation of areas necessary to meet this goal (USFWS in prep). The lands proposed as critical habitat for the Mariana crow on Rota support at least 63 breeding pairs (Morton *et al.* 1999). We included all areas identified in the revised recovery plan as high priority, and incorporated lower priority areas known or believed to harbor crows to provide additional habitat to support the non-breeding crow population and create greater connectivity between high-priority areas.

On Guam, the distribution and abundance of Mariana crows have declined precipitously over the last three decades (USFWS in prep.). Currently, the population consists of 12 birds occupying 777 ha (1,920 ac) located in the munitions storage area of Andersen Air Force Base in northern Guam. This current distribution represents an 85 percent reduction in range from the estimated distribution in 1994 (5,112 ha, 12,633 ac) reported by Wiles *et al.* (1995).

Mariana crows are territorial; each pair defends an area of a size determined by forest type and structure (Morton *et al.* 1999). The maximum density or carrying capacity of crow pairs in a particular area depends on both habitat quality (for foraging and breeding) and the spatial arrangement of territories. On Rota, Mariana crow territories ranged from 12 to 37 ha (30 to 91 ac) in size with an average of one pair per 22 ha (54 ac) (Morton *et al.* 1999). The currently occupied area on Guam (777 ha; 1,920 ac) could be expected to support only about 35 pairs, which is less than the 75 pairs recommended by the recovery team and therefore too small to support a Mariana crow population large enough to be considered safe from extinction.

Because of the territorial nature of the Mariana crow, its small total population size, limited range, vulnerability to environmental threats, and recovery goals set for the species, inclusion of certain currently unoccupied areas on Guam that contain the primary constituent elements is essential to the conservation of the species. Recovery to the point where listing is no longer necessary will require restoration of Mariana crows on Guam through natural dispersal, translocation, and/or release of captive birds in areas that were formerly inhabited but that are not currently occupied. Unoccupied areas adjacent to currently occupied areas are needed for recovery to allow expansion of the existing population and help alleviate threats associated with small population size. Specifically, the 12 crows currently found on Andersen Air Force Base in northern Guam do not constitute a viable population of this species. These animals are unlikely to increase their numbers to a self-sustaining level in the area they presently occupy, even with human intervention. For this population to persist in the long-term, it must expand onto adjacent lands that now are unoccupied.

Mariana fruit bat—Although the current population of Mariana fruit bats on Guam is small and most bats roost in a limited area, the foraging behavior and diverse diet of the fruit bats cause them to use most of the island for foraging, as documented by Wiles *et al.* (1995). Thus, all of the proposed critical habitat for this species is used for foraging and/or roosting and is considered to be occupied.

Proposed Critical Habitat Designation

Lands proposed as critical habitat for the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow occur in two units for each species on Guam, one in northern Guam and one in southern Guam (see justification above), and in one unit for the Mariana crow on Rota. Because the primary constituent elements for each of the three species occur predominantly in the remaining tracts of native forest on Guam and Rota, the size, shape, and locations of the proposed critical habitat units largely represent these tracts of forest. The proposed northern unit on Guam is the same for the fruit bat and kingfisher, and the proposed southern unit on Guam is the same for all three species. The northern unit proposed for the Mariana crow is slightly smaller than for the Mariana fruit bat or Guam Micronesian kingfisher because of differences in the conservation goals set for each species in the recovery plans (USFWS 1990a, 1990b, in prep). The smaller extent of the proposed critical habitat for the Mariana crow on Guam reflects the lower target population size for Guam indicated in the revised recovery plan and the proposed critical habitat unit for the crow on Rota (USFWS, in prep.).

The proposed critical habitat units provide the full range of primary constituent elements needed by these three species, including a variety of undeveloped, forested areas that are used for foraging, roosting, shelter, nesting, and raising offspring. The approximate area and land ownership within each unit are shown in Table 1. Proposed critical habitat includes land under Federal, Territorial, Commonwealth, and private ownership, with Federal lands being managed by the Department of Defense and the Department of the Interior. All of the proposed critical habitat on Guam currently is occupied by the Mariana fruit bat. Approximately 8 percent of proposed critical habitat on Guam currently is occupied by the Mariana crow, but 52 percent was occupied as recently as 1994. None of the proposed lands on Guam are currently occupied by the Guam Micronesian kingfisher, but all were occupied historically. On Rota, all of the proposed critical habitat is occupied by the Mariana crow. A brief description of each unit for each species and reasons for proposing it as critical habitat are presented below.

TABLE 1.—APPROXIMATE AREA (HECTARES, ACRES) OF PROPOSED CRITICAL HABITAT UNITS BY LAND OWNERSHIP

Unit	Federal*	GovGuam	Private	Total
Unit A. *Northern Guam:*				
Mariana fruit bat & Guam Micronesian kingfisher	5,149 ha (12,724 ac)	591 ha (1,461 ac)	63 ha (153 ac)	5,803 ha (14,338 ac)
Mariana crow	4,997 ha (12,346 ac)	39 ha (97 ac)	39 ha (97 ac)	5,075 ha (12,540 ac)
Unit B. *Southern Guam:* All species	2,880 ha (7,116 ac)	551 ha (1,363 ac)	803 ha (1,985 ac)	4,234 ha (10,464 ac)
		CNMI gov't		
Unit C. *Rota:* Mariana crow		2,258 ha (5,581 ac)	204 ha (503 ac)	2,462 ha (6,084 ac)
Total:				
Mariana fruit bat & Guam Micronesian kingfisher	8,029 ha (19,840 ac)	1,142 ha (2,825 ac)	866 ha (2,138 ac)	10,037 ha (24,803 ac)
		GovGuam + CNMI		
Mariana crow	7,877 ha (19,463 ac)	2,848 ha (7,041 ac)	1,046 ha (2,585 ac)	11,771 ha (29,089 ac)

*Federal lands are under the ownership or jurisdiction of the Department of Defense or U.S. Fish and Wildlife Service.

Mariana Fruit Bat

Proposed Unit A: Northern Guam

Proposed Unit A consists of approximately 5,803 ha (14,338 ac) encompassing much of the undeveloped areas on the northern end of Guam. This proposed area includes both units of the Commander U.S. Naval Forces Marianas (COMNAVMARIANAS) Communications Annex and former Federal Aviation Administration (FAA) land currently administered by the Pacific Division of Base Realignment and Closure (PACDIV BRAC). The proposed unit also includes Andersen Air Force Base, the Guam National Wildlife Refuge, private property located near Uruno Basin and Jinapsen Beach, the Anao Conservation Area, private property at Janum Point, and Government of Guam lands located between the cliffline and coastline from Janum Point to Campanaya Point. The vegetation in proposed Unit A consists of coastal, limestone, agricultural, and secondary forests composed of native and introduced plant species and contains the full range of primary constituent elements needed for the conservation of the Mariana fruit bat. This proposed unit is important because it contains the only known Mariana fruit bat colony on Guam and large areas of current foraging and roosting habitat. This area also contains all the known historical roost sites along the northern coast of Guam and many of the reported foraging sites used by bats in northern

Guam since 1981 (*see* Wiles *et al.* 1995 for details). Unit A also encompasses all the essential conservation areas identified in the Mariana fruit bat recovery plan (USFWS 1990a).

The proposed areas in Unit A are divided into three sections. The first section consists of a thin projection of forested land between the coastline and approximately 1.0 km (0.6 mi) inland that extends from the boundary between the Communications Annex and former Air Force Harmon Annex and the boundary of Andersen Air Force Base. This section does not include the housing and other developed areas on the Communications Annex and former FAA land. The second section consists of most of the forested land between the southern boundary of Andersen Air Force Base and the coastline from Ritidian to Pati Points but does not include the housing, airfields, and other developed areas on Andersen Air Force Base, the recently cleared cargo drop zone in Northwest Field on Andersen Air Force Base, private land in the Uruno Basin below the cliffline (elevation: 122 m, 400 ft), and private land along Jinapsan Beach below the 12-meter (40-ft) elevation contour. The third section consists of the thin projection of forested land between the coastline and approximately 1 km (0.6 mi) inland that extends from Campanaya Point to the border of Andersen Air Force Base at Anao Point.

Proposed Unit B: Southern Guam

Unit B consists of approximately 4,234 ha (10,464 ac) encompassing much of the forested areas in central southern Guam. This proposed unit includes lands in the Bolanos Conservation Area, much of the COMNAVMARIANAS Ordnance Annex, and private property at Sinaje, Mapao, and Bubulao. This unit consists of limestone, agricultural, secondary, swamp, and ravine forests composed of native and introduced species and contains the full range of primary constituent elements needed for recovery of the Mariana fruit bat. Unit B contains the area occupied by the only known population of fruit bats in southern Guam, including large areas of foraging and roosting habitat in areas like the Fena Lake Watershed. Unit B also encompasses essential conservation areas identified in the Mariana fruit bat recovery plan (USFWS 1990a).

The critical habitat proposed in Unit B consists of three sections. The main section includes most of the forested areas within the Ordnance Annex and forested area above the 244-m (800-ft) elevation contour in the Sinaje region near Mount Lamlam. The second section consists of the forested areas at the headwaters of the Bubulao and Ugum Rivers and the forested areas along and between both rivers until their confluence approximately 1 km (0.6 mi) above Talofofo Falls. The third section consists of the forested areas outside Ordnance Annex that occur along and between the Maagas and Mahlac Rivers near where they converge and become the Talofofo River.

Guam Micronesian Kingfisher

Proposed Unit A: Northern Guam

Proposed Unit A consists of approximately 5,803 ha (14,338 ac) encompassing much of the undeveloped areas on the northern end of Guam. This section includes both units of the COMNAVMARIANAS Communications Annex, former FAA land currently administered by PACDIV BRAC, Andersen Air Force Base, the Guam National Wildlife Refuge, private property located in the Uruno Basin and along Jinapsan Beach, the Anao Conservation Area, private property at Janum Point, and Government of Guam lands located between the cliffline and coastline from Janum Point to Campanaya Point. The vegetation in proposed Unit A consists of coastal, limestone, agricultural, and secondary forests composed of native and introduced species that contain the full range of primary constituent elements required for the recovery of the Guam Micronesian kingfisher on northern Guam. Unit A includes forested areas along the northwest and northeast coasts of the island that were occupied by Guam Micronesian kingfishers in the 1970s and early 1980s (Drahos 1977, Maben and Aguon 1980, 1981) as well as other forested areas in northern Guam that supported high densities of Guam Micronesian kingfishers in 1981 (Engbring and Ramsey 1984). Unit A also encompasses essential conservation areas in the northern Guam forest bird recovery plan (USFWS 1990b).

The proposed areas in Unit A are divided into three sections. The first section consists of a thin projection of forested land between the coastline and approximately 1 km (0.6 mi) inland that extends from the boundary between the Communications Annex and former Air Force Harmon Annex and the boundary of Andersen Air Force Base. This section does not include the housing and other developed areas on the Communications Annex and former FAA land. The second section consists of most of the forested land between the southern boundary of Andersen Air Force Base and the coastline from Ritidian to Pati Points. This section does not include the housing, airfields, and other developed areas on Andersen Air Force Base; the recently cleared cargo drop zone in Northwest Field on Andersen Air Force Base; private land in the Uruno Basin below the cliffline (elevation: 122 m, 400 ft); and private land along Jinapsan Beach below the 12-m (40-ft) elevation contour. The third section consists of the thin projection of forested land between the coastline and approximately 1 km (0.6 mi) inland that extends from Campanaya Point to the border of Andersen Air Force Base at Anao Point.

Proposed Unit B: Southern Guam

Proposed Unit B consists of approximately 4,234 ha (10,464 ac) encompassing much of the forested areas in central southern Guam. This unit contains part of the Bolanos Conservation Area, much of the COMNAVMARIANAS Ordnance Annex, and private property at Sinaje, Mapao, and Bubulao. This proposed unit consists of limestone, secondary, agricultural, swamp, and ravine forests composed of native and introduced species and contains the full range of primary constituent elements required for the recovery of the kingfisher in southern Guam. This unit is important because it includes the location of the last known observations (Fena Lake region 1963–1964) of Guam Micronesian kingfishers in southern Guam (Drahos 1977). Unit B also contains some of the largest tracts of forest remaining in southern Guam and is believed to be essential for the conservation of the Guam Micronesian kingfisher.

The critical habitat proposed in Unit B consists of three sections. The main section includes most of the forested areas within the Ordnance Annex and forested area above the 244-m (800-ft) elevation contour in the Sinaje region near Mount Lamlam. The second section consists of the forested areas at the headwaters of the Bubulao and Ugum Rivers and the forested areas along and between both rivers until their confluence approximately 1 km (0.6 mi) above Talofofo Falls. The third section consists of the forested areas outside Ordnance Annex that occur along and between the Maagas and Mahlac Rivers near where they converge and become the Talofofo River.

Mariana Crow

Proposed Unit A: Northern Guam

Proposed Unit A consists of approximately 5,075 ha (12,540 ac) of forested land encompassing the northern end of Guam. This proposed unit includes forested areas on Andersen Air Force Base, Guam National Wildlife Refuge, COMNAVMARIANAS Communications Annex, and private property at Uruno Basin and Jinapsan Beach. Unit A includes limestone, secondary, agricultural, and coastal forests composed of native and non-native plants and contains the full range of primary constituent elements needed for recovery of the Mariana crow on Guam. This unit includes the area occupied by the last 12 Mariana crows in the munitions storage area on Andersen Air Force Base, much of the 1994 historical distribution of Mariana crows in northern Guam (Wiles *et al.* 1995), and the areas that contained the highest densities of crows in northern Guam in 1981 (Engbring and Ramsey 1984). Approximately 15 percent of the unit currently is occupied by the Mariana crow. Unit A also contains some of the largest tracts of mature limestone forest remaining on Guam and is identified as important recovery habitat in the draft revised Mariana crow recovery plan (USFWS in prep.).

The proposed areas in Unit A can be divided into two sections. The first section consists of the forested land (Federal, Territory, and private) between the southern boundary of Andersen Air Force Base and the coastline between Ritidian and Pati Point, not including the housing, airfields, and other developed areas on Andersen Air Force Base, the recently cleared cargo drop zone in Northwest Field on Andersen Air Force Base, private land in the Uruno Basin below the cliffline (elevation: 122 m, 400 ft), and private land along Jinapsan Beach below the 12-m (40-ft) elevation contour. The second section consists of forested areas on the Communications Annex between the coastline near Haputo Beach and Route 3, including forested areas on the northern part of the base near the antennae fields.

Proposed Unit B: Southern Guam

Proposed Unit B consists of approximately 4,234 ha (10,464 ac) of forested land encompassing much of central southern Guam. This proposed unit contains sections of the Bolanos Conservation Area, COMNAVMARIANAS Ordnance Annex, and private property at Sinaje, Mapao, and Bubulao. Unit B is composed of limestone, secondary, swamp, agricultural, and ravine forests consisting of native and non-native plants and contains the full range of primary constituent elements needed for recovery of the species on southern Guam. This unit includes sites of some of the last known observations of Mariana crows in southern Guam. Specifically, Mariana crows were observed in the forests around Fena Lake and Alamagosa Springs on the Ordnance Annex between 1963 and 1965 (Drahos 1977). This unit also encompasses some of the last remaining large tracts of native forest on southern Guam and is identified as important recovery habitat in the draft revised Mariana crow recovery plan (USFWS in prep.).

The critical habitat proposed in Unit B consists of three sections. The main section includes most of the forested areas within the Ordnance Annex and forested area above the 244-m (800-ft) elevation contour in the Sinaje region near Mount Lamlam. The second section consists of the forested areas at the headwaters of the Bubulao and Ugum Rivers and the forested areas along and between both rivers until their confluence approximately 1 km (0.6 mi) above Talofofo Falls. The third section consists of the forested areas outside Ordnance Annex that occur along and between the Maagas and Mahlac Rivers near where they converge and become the Talofofo River.

Proposed Unit C: Rota

Proposed Unit C consists of approximately 2,462 ha (6,084 ac) of forested land encompassing much of the undeveloped areas on Rota. This proposed unit contains the Afatung Wildlife Management Area, I Chenchon Bird Sanctuary, and forested areas on public and private lands around the Sabana and Sinapalu plateaus. Unit C is composed of limestone, secondary, agricultural, coastal, and ravine forests consisting of native and non-native plants and contains the full range of primary constituent elements needed for recovery of the Mariana crow on Rota. This unit includes the known breeding territories of at least 63 Mariana crow pairs and possibly those of an additional 25 crow pairs on Rota (Morton *et al.* 1999). This unit also includes all the areas identified as important conservation areas in the draft revised Mariana crow recovery plan (USFWS in prep.).

The critical habitat proposal in Unit C consists of five sections. The first section includes the Afatung Wildlife Management Area in the Palii region and the forested areas in the Finata, Alaguan, and I Koridot regions. The second section includes the I Chenchon Bird Sanctuary and the forested areas in the I Chiugai and As Dudo regions of eastern Rota. The third unit consists of much of the forested areas in the As Matmos, Mochong, Lalayak, Pekngasu, and I Batko regions as well as the forested areas adjacent to the Rota Resort. The fourth section includes much of the forested areas in the Mananana, Uyulan Hulo, Sailgai Hulo, Gayauga, Lempanai, and Lupok regions. The fifth section includes much of the forested areas, as well as some of the grassland areas, in the Talakhaya and Gaonan regions of southern Rota.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat by appreciably diminishing the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, states, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are only advisory. We may adopt the formal conference report as the biological opinion when critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat.

Actions on Federal lands that may affect critical habitat on Guam for the Mariana fruit bat, Guam Micronesian kingfisher, or Mariana crow would require section 7 consultation. Activities that may affect these species on private, Government of Guam, or CNMI lands but require a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, or Federal funding (*e.g.*, from the Federal Highway Administration, FAA, Federal Emergency Management Agency, or Natural Resources Conservation Service) also will continue to be subject to the section 7 consultation process.

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical habitat those Federal actions that may adversely modify such habitat or that may be affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the Mariana fruit bat, Guam Micronesian kingfisher, or Mariana crow is appreciably reduced. Activities that may directly or indirectly adversely affect the proposed critical habitat would include, but are not limited to:

(1) Removing, thinning, or destroying Mariana fruit bat, Guam Micronesian kingfisher, or Mariana crow forest habitat by burning, mechanical, chemical, or other means (*e.g.*, woodcutting, grading, overgrazing, construction, road building, mining, herbicide application, etc.).

(2) Appreciably decreasing habitat value or quality through introduction or promotion of potential nest predators, disease or disease vectors, vertebrate or invertebrate food competitors, invasive plant species, forest fragmentation, overgrazing, augmentation of feral ungulate populations, water diversion or impoundment, groundwater pumping or other activities that alter water quality or quantity to an extent that affects vegetation structure, or activities that increase the risk of fire.

To portray the Federal actions that might be affected by a critical habitat designation, we first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of both the survival and recovery of a listed species. Actions likely to result in the destruction or adverse modification of critical habitat are those that would appreciably reduce the value of critical habitat for both the survival and recovery of the listed species.

Federal agencies already consult with us on activities in areas currently occupied by these species to ensure that their actions are not likely to jeopardize the continued existence of these species. These actions include, but are not limited to:

(1) Regulation of waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Development on private, Government of Guam, or CNMI lands involving Federal permits or funding such as Housing and Urban Development projects;

(4) Military training or similar activities of the U.S. Air Force or Navy on lands under their jurisdiction at Andersen Air Force Base or COMNAVMARIANAS Communications and Ordnance Annex;

(5) Construction of communication sites licensed by the Federal Communications Commission;

(6) Road construction or maintenance, funded or approved by the Federal Highway Administration; or

(7) Disaster relief activities funded by the Federal Emergency Management Agency.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, please contact the Field Supervisor, Pacific Islands Ecological Services Field Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants and inquiries about prohibitions and permits should be directed to the U.S. Fish and Wildlife Service, Conservation Planning and Permit Program at the same address.

Critical Habitat Definition Exclusions

Some areas providing habitat essential to the species may not require special management or protection and therefore would not fall within the ESA definition of critical habitat (16 U.S.C. 1532(5)(A)(i)). Adequate special management or protection is provided by a legally operative plan or agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. If any areas containing the primary constituent elements are currently being managed to address the conservation needs of the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow and do not require special management or protection, we may exclude such areas from the proposed rule because they would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act.

We use the following three criteria to determine if a plan provides adequate management or protection: (1) A current plan specifying the management actions must be complete and provide sufficient conservation benefit to these species, (2) the plan must provide assurances that the conservation management strategies will be implemented, and (3) the plan must provide assurances that the conservation management strategies will be effective. In determining if management strategies are likely to be implemented, we consider whether: (a) A management plan or agreement exists that specifies the management actions

being implemented or to be implemented; (b) there is a timely schedule for implementation; (c) there is a high probability that the funding source(s) or other resources necessary to implement the actions will be available; and (d) the party(ies) have the authority and long-term commitment to the agreement or plan to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands. In determining whether an action is likely to be effective, we consider whether: (a) The plan specifically addresses the management needs, including reduction of threats to these species; (b) such actions have been successful in the past; (c) there are provisions for monitoring and assessment of the effectiveness of the management actions; (d) and adaptive management principles have been incorporated into the plan.

Based on information provided to us by landowners and managers to date, we have been unable to identify any areas on Guam or Rota that are adequately managed and protected to address the threats to the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow so as to qualify for exclusion under the Act's definition of critical habitat. Several areas are covered under current management plans and are being managed in a manner that meets some of the conservation needs of the Mariana fruit bat, Guam Micronesian kingfisher, or Mariana crow, but the management does not adequately reduce the primary threats to these species.

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land or water suitable for the conservation and management of natural resources to have completed, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. We believe that bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, because they require no additional special management or protection. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide sufficient conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat. To date, no military installation on Guam has completed a final INRMP that provides sufficient management and protection for the Mariana fruit bat, Guam Micronesian kingfisher, or Mariana crow, although many of the projects described in these documents are generally beneficial to Guam's natural environment and recovery of listed species.

Economic Exclusions

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available, and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat designation if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We are conducting an analysis of the economic impacts of designating the proposed areas as critical habitat and will use this information in our final determination. A notice of availability of the draft economic analysis will be published in the **Federal Register**.

In most instances the benefits of excluding Habitat Conservation Plan (HCP) areas from critical habitat designations have outweighed the benefits of including them. Currently, there are no HCPs on Guam that include the Mariana fruit bat, Guam Micronesian kingfisher, or Mariana crow as a covered species. However, the Service is working with the CNMI to develop an HCP to address impacts to the Mariana crow associated with the development of agricultural homesteads on Rota. The proposed agricultural homesteads are not included in the proposed critical habitat, but the anticipated conservation areas are. In the event that future HCPs are developed within the boundaries of designated critical habitat, assistance will be available to applicants to promote protection and management of habitat areas essential for the conservation of these species. Opportunities may exist to locate development and habitat modification activities in nonessential areas, or to mitigate activities within essential habitat areas so that such activities will not adversely modify the critical habitat. The Service will provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow as well as conservation measures for those lands.

Public Comments Solicited

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We are particularly interested in comments concerning:

(1) The reasons why any area should or should not be determined to be critical habitat as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including whether the benefits of designation will outweigh any threats to these species due to designation;

(2) Specific information on the current or former numbers and distribution of Mariana fruit bats, Guam Micronesian kingfishers, and Mariana crows, and what habitat is essential to the conservation of these species and why;

(3) Whether lands within proposed critical habitat are currently being managed to address conservation needs of the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(6) Whether future development and approval of conservation measures (*e.g.*, Conservation Agreements, Safe Harbor Agreements, etc.) should be excluded from critical habitat and, if so, by what mechanism;

(7) Whether military lands covered under an approved INRMP should be excluded from critical habitat;

(8) Economic and other values associated with designating critical habitat for the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow, such as those derived from non-consumptive uses (*e.g.*, hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs); and

(9) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

If we receive information that any of the areas proposed as critical habitat are currently being managed and protected to adequately address the conservation needs of the Mariana fruit bat, Guam Micronesian kingfisher, or Mariana crow, we may exclude such areas from any final designation as not meeting the definition of critical habitat in section 3(5)(A) of the Act.

In anticipation of public interest, public hearings have been scheduled on Rota for November 6, 2002, and on Guam for November 7, 2002, (*see* **ADDRESSES** section). Prior to each public hearing, the Service will be available to provide information and to answer questions. We also will be available for questions after each of the hearings. Anyone wishing to make oral comments for the record at the public hearing is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll at 503/231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (*see* **ADDRESSES** section). If submitting comments by electronic format, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: RIN 1018–AI25" and your name and return address in your e-mail message. Please note that the e-mail address *Mariana_CritHab@r1.fws.gov* will be closed at the termination of the public comment period.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Pacific Islands Fish and Wildlife Office in Honolulu.

Peer Review

Our policy published on July 1, 1994 (59 FR 34270), directs us to seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. We plan to expand this review to increase the number of reviewers. The purpose of such review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the proposed designations of critical habitat. We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final decision on the proposed critical habitat. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the supplementary information section of the preamble helpful in understanding the document? (5) Is the background information useful and is the amount appropriate? (6) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: *Execsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this proposal is a significant rule reviewed by the Office of Management and Budget (OMB). We have prepared a draft economic analysis of this proposed action. We will use this analysis to meet the requirement of section 4(b)(2) of the ESA to consider the economic and other consequences of designating the proposed areas as critical habitat and may exclude an area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of designating it, unless failure to designate such area as critical habitat would lead to the extinction of the Mariana fruit bat, Guam Micronesian kingfisher, or Mariana crow. This draft analysis will be available for public comment before any final decision on the proposed designation. The availability of the draft economic analysis will be announced in the **Federal Register**.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

The following discussion of the potential economic impacts of this proposed rule reflects the views of the Service, only. This discussion is based upon the information regarding potential economic impact that is available to the Service at this time. This assessment of economic effect may be modified prior to final rulemaking based upon development and review of the economic analysis being prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect the position of the Service on the type of economic analysis required by the judicial decision in *New Mexico Cattle Growers Assn.* v. *U.S. Fish & Wildlife Service*, 248 F.3d 1277 (10th Cir. 2001).

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. A "substantial number" of small entities is more than 20 percent of those small entities affected by the regulation, out of the total universe of small entities in the industry or, if appropriate, industry segment. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. Based on current information, the Service proposes to certify that this proposed rule will not have a significant effect on a substantial number of small entities.

We must determine whether the proposed rulemaking will affect a substantial number of small entities. According to the Small Business Administration, small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, *etc.*). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species are present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect Mariana fruit bats, Mariana crows, and Guam Micronesian kingfishers. If these critical habitat designations are finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, in areas where the species are present, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants because consultation would already be required because of the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. We have reviewed 209 informal consultations and 37 formal consultations conducted on the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher on Guam since these species were listed in 1984. In addition, we reviewed nine informal consultations conducted on the island of Rota, CNMI, since 1984. No formal consultations have been conducted on Rota since the Mariana crow was listed. Consultations on Federal grants to State wildlife programs, which do not affect small entities, were not reviewed for this proposed rule. Seventy-seven of the 209 informal consultations on Guam and three of the five informal consultations on Rota were conducted in response to requests for technical assistance or species lists for different locations on Guam and Rota. The majority of these requests were made by Federal agencies, some on their behalf by private consultants or contractors. Of the 246 total consultations on Guam, 57 informal and 20 formal consultations involved at least one of the species involved in this proposed rule. Of the nine consultations on Rota, six involved the Mariana crow.

Of the 20 formal consultations on Guam, two may have involved a small entity. Both of these concerned proposals by the Urunau Resort Corporation to have contractors conduct topographic survey work on private and Federal lands for a potential access road through Navy property to private lands. The Mariana fruit bat and Mariana crow were reported from the action areas. The biological opinions (Pacific Islands Fish and Wildlife Office log numbers 1–2–90–F–027 and 1–2–91–F–08) concluded that the proposed action would not result in jeopardy to either species. The reasonable and prudent measures required in the biological opinions to avoid or minimize incidental take of these species did not include major modifications to the proposed action that placed a significant economic burden on Urunau Resort Corporation. We do not believe this constitutes a substantial number of small entities (*see* earlier discussion on substantial number). Of the remaining 18 formal consultations on Guam involving the Mariana fruit bat, Mariana crow, and/or Guam Micronesian kingfisher, ten were conducted on behalf of the Air Force and eight were conducted on behalf of the Navy. In all of these consultations, the Service concluded that the proposed actions would not result in jeopardy to these three listed species.

Of the 57 informal consultations on Guam, one may have concerned a small entity (private individuals, consulting firms, or non-profit organizations). The proposed action in this case, the gathering of a large Chamorro family on the Guam National Wildlife Refuge, was determined not likely to adversely affect listed species, and was subject only to minor restrictions under a special use permit for the refuge. We do not believe this instance constitutes a substantial number of small entities (*see* earlier discussion on substantial number). Four informal consultations were conducted on behalf of Government of Guam agencies. One action was determined not likely to adversely affect listed species, and the other was determined

to have no effect on listed species. A third was determined not likely to adversely modify the critical habitat proposed in 1991. The fourth consultation on behalf of the Government of Guam concerned technical assistance from the Service, and resulted in no regulatory action by the Service or economic burden on the Government of Guam. We conclude, however, that the Government of Guam is not a small entity.

Of the six informal consultations on Rota that concerned the Mariana crow, none concerned a small entity and all consultations were conducted on behalf of the Government of the CNMI. Four of these consultations were requests for technical assistance or species lists and resulted in no regulatory action by the Service or economic burden on the Government of the CNMI. The remaining two actions were determined not likely to adversely affect the Mariana crow. We concluded, however, that the Government of the CNMI is not a small entity.

The remaining 52 informal consultations on Guam exclusively involved the following Federal agencies: U.S. Air Force (27 consultations), U.S. Department of the Navy (14 consultations), U.S. Department of Agriculture (four consultations), U.S. Fish and Wildlife Service (3 consultations), U.S. Army Corps of Engineers (2 consultations), U.S. Department of the Army (one consultation), and Natural Resources Conservation Service (formally the Soil Conservation Service) (one consultation). None of these agencies is a small entity. Of these consultations, seven included critical habitat proposed in 1991, and these proposed actions were determined not likely to adversely modify proposed critical habitat. Of the remaining 45 consultations, 38 concluded with our concurrence that the proposed action either would have no effect on, or was not likely to adversely affect, listed species; five consultations were responses to requests for either species lists or technical assistance and did not conclude with a regulatory determination; one concluded with a request by the Service for more information; and one concluded with a determination that the proposed action, Navy training maneuvers, was likely to adversely affect the Mariana crow.

In areas where the species clearly are not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act that otherwise would not be required. The majority of activities in the proposed critical habitat areas for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher that have Federal involvement likely will concern the U.S. Navy or Air Force. As mentioned above, however, only 77 of 246 informal consultations on Guam completed under section 7 of the Act involved any of the species for which critical habitat is being proposed. As a result, we cannot easily identify future consultations that may result from the listed status of the species or the increment of additional consultations that may be required by this critical habitat designation. Furthermore, a large proportion of the proposed designation on Guam is currently unoccupied by these species. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat on Guam likely will result from the critical habitat designations.

Of the total land area proposed as critical habitat on Guam for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher, approximately 9 percent is private land, 11 percent is Government of Guam land, and 80 percent is Federal land. Of the total land area proposed as critical habitat for the Mariana crow on Rota, approximately 8 percent is private land and 92 percent is Government of the CNMI land. Much of the land within the proposed critical habitat units has limited potential for development because of the remote locations, lack of access, and rugged terrain of these lands. On non-Federal lands, activities that lack Federal involvement would not be affected by the proposed critical habitat designations. Activities of an economic nature that are likely to occur on non-Federal lands in the area encompassed by these proposed designations consist of improvements to and construction of roads, communications and tracking facilities, and other infrastructure; residential and tourist-related development; ranching and farming; and recreational use such as camping, picnicking, game hunting, and fishing. With the exception of communications and tracking facilities improvements by the FAA or the Federal Communications Commission, road building or improvement by the Federal Highways Authority, and water or sewer system development by the Corps of Engineers, these activities are unlikely to have Federal involvement. On lands that are or may be in agricultural production, the types of activities that might trigger a consultation include irrigation ditch system projects that may require section 404 authorizations from the Corps of Engineers, and watershed management and restoration projects sponsored by the Natural Resources Conservation Service (NRCS). However the NRCS restoration projects typically are voluntary, and the irrigation ditch system projects within lands that are in agricultural production are rare and may affect only a small percentage of the small entities within these proposed critical habitat designations. Therefore, analysis of currently available information indicates that the proposed rule would not affect a substantial number of small entities. We are not aware of any commercial activities on the Federal lands included in these proposed critical habitat designations.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or would result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. However, the Act does not prohibit the take of listed plant species or require terms and conditions to minimize adverse effect to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to gather information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. Furthermore, these measures must be economically feasible, consistent with the intended purpose of the action, and within the scope of authority of the Federal agency involved in the consultation (*see* 50 CFR. 404.2, definition of reasonable and prudent alternative). Based on our consultation history, we can describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats they face, especially as described in the final listing rule and in this proposed critical habitat designation, as well as our experience with the listed species in Guam and Rota. The kinds of actions that may be included in future reasonable and prudent alternatives include, but are not limited to, management of competing non-native species and predators, restoration of degraded habitat, construction of protective fencing, and regular monitoring. Therefore, such measures are not likely to result in a significant economic impact to a substantial number of small entities.

As required under section 4(b)(2) of the Act, we are conducting an analysis of the potential economic and other impacts of this proposed critical habitat designation, and we will make that analysis available for public review and comment before finalizing these designations.

In summary, we are considering whether this proposed rule would result in a significant economic effect on a substantial number of small entities. Currently available information indicates it would not affect a substantial number of small entities. Approximately 11 percent of the lands proposed as critical habitat on Guam are on Government of Guam lands. In addition, approximately 92 percent of the lands proposed as critical habitat on Rota are on Government of the CNMI lands. The Territory of Guam and CNMI are not small entities. Approximately nine percent of the lands proposed as critical habitat on Guam and eight percent of lands proposed as critical habitat on Rota are on private lands. As discussed earlier, many of the actions likely to occur on the private land parcels included in this proposal are not likely to require any Federal authorization. In the remaining areas, section 7 application, the only trigger for regulatory impact under this rule, largely would be limited to a subset of the area proposed. The most likely future section 7 consultations resulting from this rule would be for informal consultations on actions proposed by the military, federally funded land and water conservation projects, species-specific surveys and research projects, and watershed management and restoration projects sponsored by NRCS. These consultations likely would occur on only a subset of the total number of parcels and, therefore, are not likely to affect a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even if it did occur, we would not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. Thus, currently available information indicates that the proposed designation of critical habitat for the Mariana fruit bat, Mariana crow, and Guam Micronesian kingfisher will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. However, should the economic analysis of this rule indicate otherwise, we will revisit this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Though current information indicates this proposed rule would be a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 August 25, 2000 *et seq.*):

(a) This rule, as proposed, will not "significantly or uniquely" affect small governments. A Small Government Agency Plan does not appear to be required. Small governments would be affected only to the extent that any programs having Federal funds, permits, or other authorized activities would have to ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to similar restrictions through the listing protections of the species, and further restrictions are not anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate the impact of designating unoccupied areas where section 7 consultations would not have occurred but for the critical habitat designation.

(b) This rule, as proposed, will not produce on State, local, or Tribal governments or the private sector a Federal mandate of $100 million or greater in any year, so it would not meet the criteria for a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have preliminarily analyzed the potential takings implications of the proposed critical habitat designation in a preliminary takings implication assessment, which indicates that this proposed rule would not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, the proposed rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by the Mariana fruit bat and Mariana crow would have little incremental impact on the Government of Guam or the CNMI and their activities. The designations may have some benefit to the Government of Guam and the CNMI in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of these species are identified. While this

definition and identification does not alter where and what federally sponsored activities may occur, it may assist the Government of Guam and the CNMI in long-range planning rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Act. The proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not have to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. The proposed designation of critical habitat on Guam and Rota for the Mariana fruit bat, Guam Micronesian kingfisher, and Mariana crow does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary authors of this document are Frederick A. Amidon and Holly B. Freifeld, Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 would continue to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entries for "Bat, Mariana fruit" under "MAMMALS", "Kingfisher, Guam Micronesian" under "BIRDS," and "Crow, Mariana" under "BIRDS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	*
Bat, Mariana fruit (=Mariana flying fox).	*Pteropus mariannus mariannus.*	Western Pacific Ocean: USA (Guam, Commonwealth of the Northern Mariana Islands).	Guam	E	156	17.95(a)	NA
*	*	*	*	*	*	*	*
BIRDS							
*	*	*	*	*	*	*	*
Crow, Mariana	*Corvus kubaryi*	Western Pacific Ocean: (Guam and Rota).	Entire Range	E	156	17.95(b)	NA
*	*	*	*	*	*	*	*
Kingfisher, Guam Micronesian.	*Halcyon cinnamomina cinnamomina.*	Western Pacific Ocean: (Guam).	Entire Range	E	156	17.95(b)	NA
*	*	*	*	*	*	*	*

3. Amend § 17.95 by adding the same order as the species appear in § 17.11:

a. In paragraph (a), critical habitat for the Mariana fruit bat (*Pteropus mariannus mariannus*); and

b. In paragraph (b), critical habitat for the Mariana crow (*Corvus kubaryi*) and Guam Micronesian kingfisher (*Halcyon cinnamomina cinnamomina*), as set forth below.

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Mariana Fruit Bat (*Pteropus mariannus mariannus*)

(1) Critical habitat units for the Mariana fruit bat are depicted for the Territory of Guam.

(2) Within these areas, the primary constituent elements required by the Mariana fruit bat for the biological needs of foraging, sheltering, roosting, and rearing of young are found in areas supporting limestone, secondary, ravine, swamp, agricultural, and coastal forests composed of native or introduced plant species. These forest types provide the primary constituent elements of:

(i) Plant species used for foraging such as *Artocarpus* sp. (breadfruit), *Carica papaya* (papaya), *Cycas circinalis* (fadang), *Ficus* spp. (fig), *Pandanus tectorius* (kafu), *Cocos nucifera* (coconut palm), and *Terminalia catappa* (talisai).

(ii) Remote locations, often within 100 m (328 ft) of 80 to 100 m (262 to 591 ft) tall clifflines, with limited exposure to human disturbance, that contain mature fig, *Mammea odorata* (chopak), *Casuarina equisetifolia* (gago), *Macaranga thompsonii* (pengua), *Guettarda speciosa* (panao), and *Neisosperma oppositifolia* (fagot), and other tree species that are used for roosting and breeding.

(3) Critical habitat does not include existing features and structures within the boundaries of the mapped units, such as buildings, roads, aqueducts, antennas, water tanks, agricultural fields, paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) **Note:** Map 1—General Locations of Units for Mariana Fruit Bat—follows:

BILLING CODE 4310–55–P

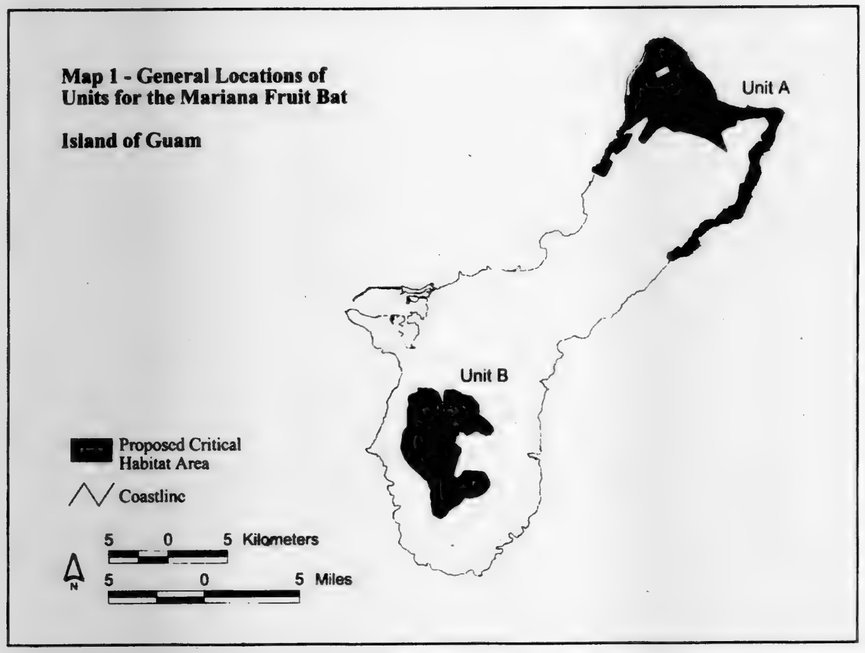

(5) Northern Guam, Unit A, Mariana fruit bat (5,803 ha; 14,338 ac).

(i) Unit A consists of 106 boundary points with the following coordinates in UTM Zone 55 with the units in meters using World Geodetic System 1984 (WGS84): 269645, 1491989; 269464, 1492175; 269501, 1492206; 269493, 1492433; 269892, 1492587; 270039, 1492791; 270215, 1492895; 270407, 1492769; 270592, 1492782; 270860, 1493156; 271182, 1493403; 271268, 1493585; 271268, 1493643; 271436, 1493753; 271559, 1494014; 271607, 1494236; 271813, 1494415; 272043, 1494477; 272129, 1494724; 272413, 1495015; 272655, 1495146; 272822, 1495101; 272918, 1495177; 273101, 1495192; 273263, 1495136; 273431, 1495202; 274161, 1496022; 274173, 1496089; 274601, 1496017; 274599, 1496283; 274931, 1496366; 275216, 1496545; 275446, 1497148; 275593, 1498173; 275675, 1498164; 276008, 1498280; 276052, 1498688; 276156, 1498965; 276437, 1499560; 276381, 1499660; 276493, 1500036; 276358, 1500432; 276358, 1500432; 276358, 1500435; 276374, 1500948; 277097, 1501696; 277216, 1501626; 277395,

1501709; 277565, 1501788; 277367, 1502247; 277556, 1502519; 277738, 1502614; 278104, 1503226; 277931, 1503680; 277528, 1504079; 276540, 1503998; 275541, 1503775; 275456, 1503878; 274960, 1503661; 275017, 1503428; 275017, 1503428; 274919, 1503336; 274350, 1503193; 273846, 1502898; 273696, 1502636; 273683, 1502394; 274082, 1501289; 272625, 1502266; 271544, 1502611; 270399, 1502902; 270276, 1502896; 269976, 1502855; 269819, 1502894; 269127, 1503348; 268873, 1503326; 268324, 1502996; 267317, 1501835; 267067, 1502058; 267891, 1503624; 267799, 1504039; 267471, 1504118; 267162, 1503935; 266993, 1503750; 266419, 1503365; 266115, 1503073; 265990, 1503021; 265865, 1503010; 265532, 1502708; 265443, 1502458; 265558, 1502239; 265719, 1502249; 265928, 1502401; 266157, 1502406; 265972, 1502034; 265720, 1501528; 265451, 1501304; 265451, 1501304; 265035, 1500959; 264833, 1501228; 264547, 1501077; 264338, 1500650; 264260, 1500311; 264547, 1500113; 264060, 1499171; 263865, 1499073; 263276, 1499383.

(ii) Excluding three areas:

(A) Bounded by the following four points (133 ha, 328 ac): 268056, 1507791; 269417, 1508433; 269771, 1507647; 268377, 1506972.

(B) Bounded by the following 15 points (17 ha, 43 ac): 272711, 1503822; 272730, 1503928; 272767, 1503961; 272872, 1503975; 272859, 1504070; 272879, 1504214; 272949, 1504372; 273070, 1504396; 273184, 1504331; 273199, 1503977; 273041, 1503917; 272949, 1503912; 272884, 1503703; 272828, 1503710; 272818, 1503785.

(C) Bounded by the following 12 points (20 ha, 48 ac): 273808, 1504727; 274234, 1504592; 274579, 1504430; 274572, 1504328; 274444, 1504247; 274295, 1504355; 274146, 1504389; 273930, 1504484; 273795, 1504464; 273686, 1504470; 273659, 1504585; 273707, 1504687.

(iii) **Note:** Map 2 of Unit A for Mariana fruit bat follows:

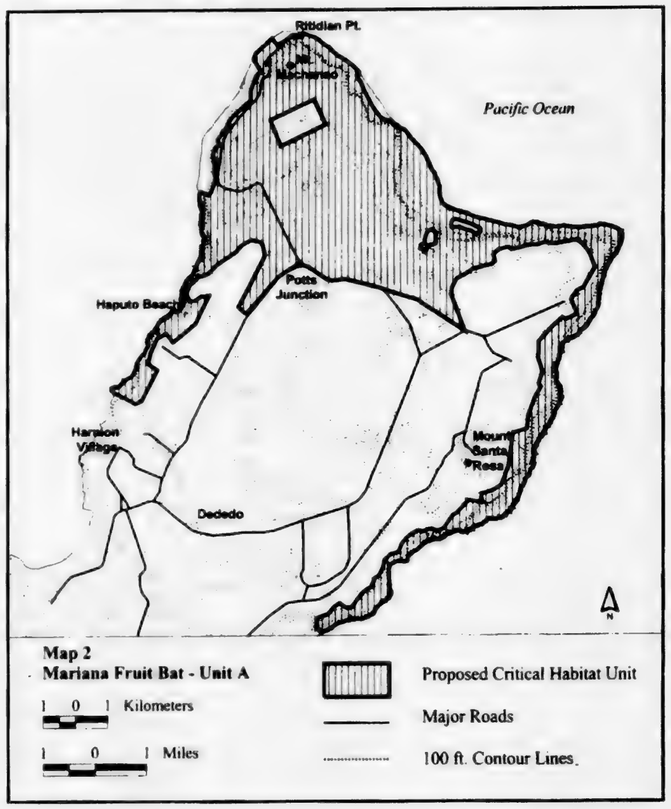

(6) Southern Guam, Unit B, Mariana fruit bat (4,234 ha; 10,464 ac):

(i) Unit B consists of 184 boundary points with the following coordinates in UTM Zone 55 with the units in meters using World Geodetic System 1984 (WGS84): 248002, 1474589; 247650, 1474901; 247495, 1475129; 247271,

1475466; 247014, 1476083; 246950, 1476271; 247074, 1476899; 247118, 1477285; 247235, 1477541; 247293, 1477723; 247508, 1477876; 247522, 1479447; 247658, 1479766; 247629, 1480138; 247571, 1480291; 247586, 1480324; 247611, 1480465; 247782, 1480608; 248018, 1480694; 248088, 1480673; 248307, 1480797; 248380, 1480844; 248434, 1480948; 248420, 1481047; 248423, 1481115; 248490, 1481114; 248732, 1481047; 248758, 1481043; 248787, 1481048; 248930, 1481119; 249268, 1481028; 249316, 1481047; 249377, 1481077; 249428, 1481064; 249874, 1480811; 250243, 1479980; 250246, 1479973; 250253, 1479957; 250272, 1479915; 250316, 1479645; 250511, 1479330; 250724, 1479237; 250997, 1479153; 251074, 1479008; 251187, 1478955; 251318, 1478939; 251419, 1478655; 251585, 1478663; 251706, 1478676; 251746, 1478741; 251615, 1479003; 251516, 1479035; 251486, 1479196; 251428, 1479358; 251344, 1479561; 251122, 1479654; 250863, 1479589; 250640, 1479700; 250614, 1479911; 250605, 1480129; 250652, 1480853; 250673, 1480921; 250741, 1480941; 250877, 1480941; 251212, 1480936; 251338, 1480936; 251405, 1480904; 251819, 1480706; 251886, 1480568; 252757, 1480381; 253342, 1479736; 253298, 1478854; 253597, 1478723; 253904, 1478475; 254210, 1478183; 254510, 1477855; 254526, 1477750; 254207, 1477835; 253963, 1477494; 253962, 1477494; 253743, 1477502; 253641, 1477652; 253589, 1477649; 253472, 1477667; 253389, 1477739; 253204, 1477694; 252993, 1477709; 252793, 1477566; 252561, 1477440; 252476, 1477486; 252472, 1477520; 252536, 1477618; 252532, 1477670; 252476, 1477716; 252416, 1477705; 252353, 1477501; 252322, 1477517; 252329, 1477634; 252265, 1477716; 252009, 1477683; 251888, 1477724; 251820, 1477781; 251730, 1477811; 251726, 1477875; 251748, 1477931; 251601, 1477871; 251583, 1477373; 251458, 1477343; 251258, 1477204; 251360, 1477030; 251349, 1476842; 251168, 1476619; 251428, 1476423; 251583, 1476231; 251816, 1476080; 251835, 1475891; 251563, 1475479; 251560, 1475465; 251484, 1475137; 251262, 1474361; 250994, 1473369; 251024, 1473358; 251092, 1473456; 251221, 1473456; 251262, 1473576; 251239, 1473655; 251292, 1473686; 251405, 1473531; 251496, 1473591; 251605, 1473546; 251767, 1473633; 252137, 1473874; 252125, 1473916; 252231, 1474142; 252318, 1474183; 252540, 1474161; 252992, 1474119; 253446, 1474105; 253722, 1474068; 253867, 1473973; 254079, 1473688; 254181, 1473477; 254247, 1473316; 254203, 1473017; 254064, 1472805; 253882, 1472586; 253306, 1472273; 253101, 1472258; 252919, 1472185; 252722, 1472141; 252533, 1472181; 252306, 1472229; 252175, 1472171; 251883, 1471842; 251657, 1471580; 251233, 1471383; 251000, 1471200; 250803, 1471003; 250701, 1470864; 250511, 1470624; 250241, 1470470; 250081, 1470478; 249913, 1470602; 249687, 1470704; 249672, 1470799; 249614, 1470981; 249599, 1471171; 249570, 1471390; 249519, 1471485; 249584, 1471645; 249584, 1471864; 249482, 1471966; 249468, 1472163; 249497, 1472258; 249460, 1472338; 249519, 1472543; 249535, 1472652; 249511, 1472820; 249358, 1473032; 249365, 1473229; 249322, 1473280; 249151, 1473567; 248928, 1473703; 248650, 1474031.

(ii) Excluding one area: Bounded by the following 114 points (4,346 ha; 45,338 ac): 250684, 1476986; 250614, 1477069; 250531, 1477232; 250595, 1477315; 250614, 1477358; 250718, 1477387; 250815, 1477358; 250855, 1477510; 250916, 1477596; 250868, 1477671; 250823, 1477681; 250823, 1477622; 250769, 1477609; 250713, 1477695; 250753, 1477791; 250742, 1477869; 250793, 1477893; 250951, 1477890; 250924, 1478061; 250940, 1478131; 251018, 1478286; 251114, 1478310; 251310, 1478543; 251425, 1478535; 251534, 1478484; 251596, 1478433; 251690, 1478460; 251802, 1478366; 251874, 1478058; 251656, 1477976; 251620, 1477975; 251516, 1477920; 251482, 1477886; 251330, 1477839; 251270, 1477914; 251189, 1477957; 251173, 1477906; 251248, 1477802; 251256, 1477663; 251245, 1477534; 251216, 1477505; 251141, 1477526; 250989, 1477400; 251011, 1477327; 250959, 1477224; 250890, 1477189; 250804, 1477184; 250737, 1477208; 250713, 1477192; 250841, 1477148; 250874, 1477111; 250978, 1477178; 251055, 1477177; 251090, 1477109; 251090, 1477036; 251072, 1476975; 250986, 1476921; 250981, 1476892; 251002, 1476879; 251029, 1476900; 251045, 1476871; 251013, 1476849; 251061, 1476784; 250945, 1476680; 251055, 1476498; 251121, 1476501; 251120, 1476456; 251090, 1476418; 250994, 1476413; 250970, 1476370; 250844, 1476314; 250858, 1476242; 250922, 1476162; 250970, 1476119; 250991, 1476089; 250973, 1476068; 250943, 1476100; 250887, 1476111; 250879, 1476065; 250924, 1476025; 250887, 1475948; 250866, 1475867; 250817, 1475886; 250815, 1475966; 250836, 1476020; 250817, 1476057; 250812, 1476113; 250817, 1476140; 250801, 1476162; 250775, 1476180; 250767, 1476279; 250783, 1476373; 250863, 1476421; 250740, 1476472; 250702, 1476542; 250721, 1476616; 250780, 1476619; 250903, 1476536; 250906, 1476552; 250855, 1476627; 250823, 1476638; 250796, 1476710; 250769, 1476731; 250745, 1476683; 250681, 1476665; 250625, 1476702; 250627, 1476721; 250710, 1476718; 250721, 1476780; 250772, 1476798; 250868, 1476756; 250906, 1476801; 250775, 1477023; 250780, 1477039.

(iii) **Note:** Map 3 of Unit B for Mariana fruit bat follows:

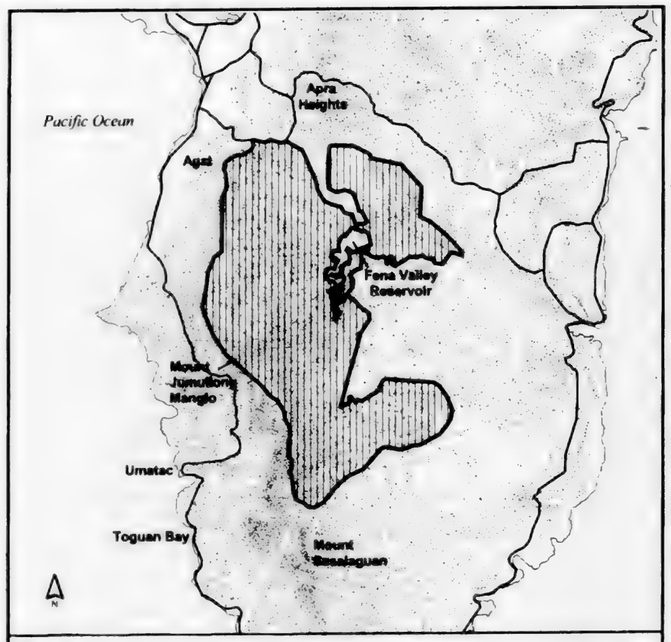

Map 3
Mariana Fruit Bat - Unit B

0 Kilometers

0 Miles

Proposed Critical Habitat Unit

Major Roads

100 ft. Contour Lines

* * * * *

(b) *Birds.*

* * * * *

Mariana crow (*Corvus kubaryi*)

(1) Critical habitat units for the Mariana crow are depicted for the Territory of Guam and the island of Rota, Commonwealth of the Northern Mariana Islands.

(2) The primary constituent elements required by the Mariana crow for the biological needs of foraging, sheltering, roosting, nesting, and rearing of young are found in areas that support limestone, secondary, ravine, swamp, agricultural, and coastal forests composed of native and introduced plant species. These forest types provide the primary constituent elements of:

(i) Emergent trees and subcanopy trees with dense cover for breeding such as *Neisosperma oppositifolia* (fagot), *Macaranga thompsonii* (pengua), *Intsia bijuga* (ifit), *Premna obtusifolia* (ahgao), *Eugenia reinwardtiana* (aabang), *Ficus* spp. (fig), *Elaeocarpus joga* (yoga), and *Tristiropsis obtusangula* (faniok);

(ii) Sufficient area under predominantly native forest to allow nesting at least 290 m (950 ft) from the nearest road and 62 m (203 ft) from the nearest forest edge and to support Mariana crow breeding territories (approximately 12 to 37 ha (30 to 91 ac)) and foraging areas for nonbreeding juvenile crows; and

(iii) Standing dead trees and plant species such as *Aglaia mariannensis* (maypunayo), *Artocarpus* spp. (breadfruit), *Cocos nucifera* (coconut palm), fagot, *Hibiscus tiliaceus* (pago), ifit, *Leucaena* spp. (tangentangen), *Ochrosia mariannensis* (langiti), *Pandanus tectorius* (kafu), ahgao, fig, and joga for foraging.

(3) Critical habitat does not include existing features and structures within the boundaries of the mapped units, such as buildings, roads, aqueducts, antennas, water tanks, agricultural fields, paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) **Note:** Map 1—General locations of units for Mariana crow follows:

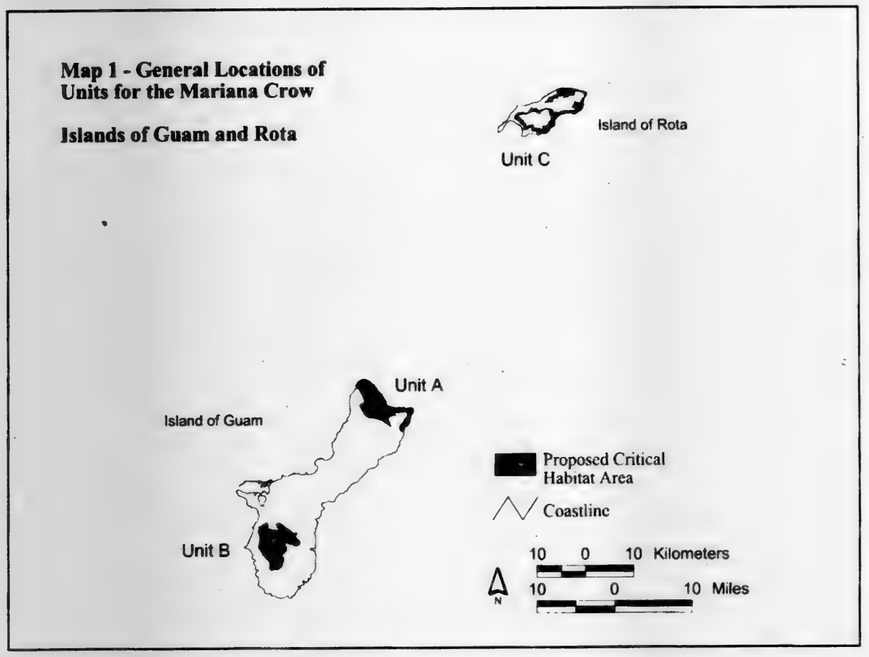

(5) Northern Guam, Unit A, Mariana crow (5,075 ha; 12,540 ac).

(i) Unit A consists of 58 boundary points with the following coordinates in UTM Zone 55 with the units in meters using World Geodetic System 1984 (WGS84): 276837, 1498680; 276836, 1498679; 276161, 1498972; 276437, 1499560; 276381, 1499660; 276493, 1500036; 276358, 1500432; 276374, 1500948; 277097, 1501696; 277216, 1501626; 277565, 1501788; 277367, 1502247; 277556, 1502519; 277738, 1502614; 278104, 1503226; 277931, 1503680; 277528, 1504079; 276540, 1503998; 275541, 1503775; 275456, 1503878; 274960, 1503661; 275017, 1503428; 274919, 1503337; 274350, 1503193; 273846, 1502898; 273696, 1502636; 273683, 1502394; 274082, 1501289; 272625, 1502266; 271544, 1502611; 270399, 1502902; 270276, 1502896; 269976, 1502855; 269819, 1502894; 269127, 1503348; 268873, 1503326; 268324, 1502996; 267317, 1501835; 267067, 1502058; 267891, 1503624; 267799, 1504039; 267471, 1504118; 267162, 1503935; 266993, 1503750; 266419, 1503365; 266115, 1503073; 265990, 1503021; 265865, 1503010; 265532, 1502708; 265443, 1502458; 265558, 1502239; 265719, 1502249; 265928, 1502401; 266157, 1502406; 265720, 1501528; 265451, 1501304; 264834, 1501755; 264835, 1501755.

(ii) Excluding three areas:

(A) Bounded by the following four points (133 ha, 328 ac): 268056, 1507791; 269417, 1508433; 269771, 1507647; 268377, 1506972.

(B) Bounded by the following 15 points (17 ha, 43 ac): 272711, 1503822; 272730, 1503928; 272767, 1503961; 272872, 1503975; 272859, 1504070; 272879, 1504214; 272949, 1504372; 273070, 1504396; 273184, 1504331; 273199, 1503977; 273041, 1503917; 272949, 1503912; 272884, 1503703; 272828, 1503710; 272818, 1503785.

(C) Bounded by the following 12 points (20 ha, 48 ac): 273808, 1504727; 274234, 1504592; 274579, 1504430; 274572, 1504328; 274444, 1504247; 274295, 1504355; 274146, 1504389; 273930, 1504484; 273795, 1504464; 273686, 1504470; 273659, 1504585; 273707, 1504687.

(iii) **Note:** Map 2 of Unit A for Mariana crow follows:

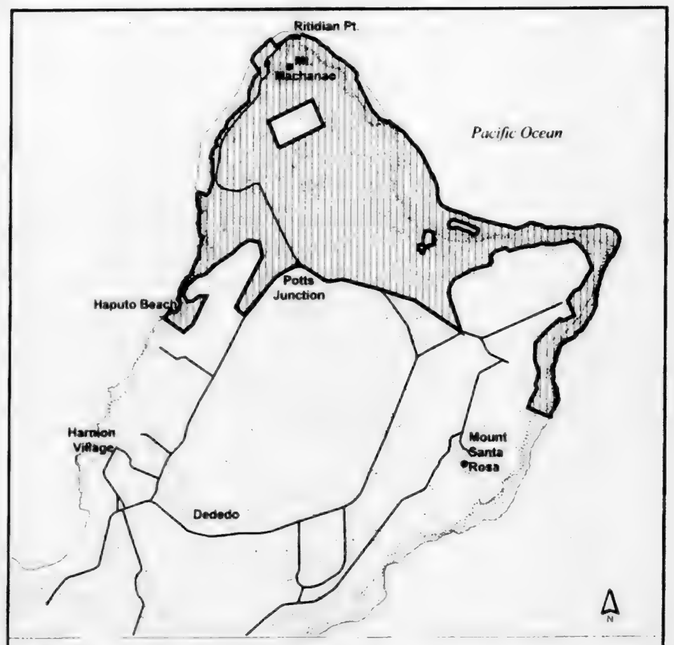

Map 2
Mariana Crow - Unit A

1 0 1 Kilometers

1 0 1 Miles

Proposed Critical Habitat Unit

Major Roads

100 ft. Contour Lines

(6) Southern Guam, Unit B, Mariana crow (4,234 ha; 10,464 ac).

(i) Unit B consists of 184 boundary points with the following coordinates in UTM Zone 55 with the units in meters using World Geodetic System 1984 (WGS84): 248002, 1474589; 247650, 1474901; 247495, 1475129; 247271, 1475466; 247014, 1476083; 246950, 1476271; 247074, 1476899; 247118, 1477285; 247235, 1477541; 247293, 1477723; 247508, 1477876; 247522, 1479447; 247658, 1479766; 247629, 1480138; 247571, 1480291; 247586, 1480324; 247611, 1480465; 247782, 1480608; 248018, 1480694; 248088, 1480673; 248307, 1480797; 248380, 1480844; 248434, 1480948; 248420, 1481047; 248423, 1481115; 248490, 1481114; 248732, 1481047; 248758, 1481043; 248787, 1481048; 248930, 1481119; 249268, 1481028; 249316, 1481047; 249377, 1481077; 249428, 1481064; 249874, 1480811; 250243, 1479980; 250246, 1479973; 250253, 1479957; 250272, 1479915; 250316, 1479645; 250511, 1479330; 250724, 1479237; 250997, 1479153; 251074, 1479008; 251187, 1478955; 251318, 1478939; 251419, 1478655; 251585, 1478663; 251706, 1478676; 251746, 1478741; 251615, 1479003; 251516, 1479035; 251486, 1479196; 251428, 1479358; 251344, 1479561; 251122, 1479654; 250863, 1479589; 250640, 1479700; 250614, 1479911; 250605, 1480129; 250652, 1480853; 250673, 1480921; 250741, 1480941; 250877, 1480941; 251212, 1480936; 251338, 1480936; 251405, 1480904; 251819, 1480706; 251886, 1480568; 252757, 1480381; 253342, 1479736; 253298, 1478854; 253597, 1478723; 253904, 1478475; 254210, 1478183; 254510, 1477855; 254526, 1477750; 254207, 1477835; 253963, 1477494; 253962, 1477494; 253743, 1477502; 253641, 1477652; 253589, 1477649; 253472, 1477667; 253389, 1477739; 253204, 1477694; 252993, 1477709; 252793, 1477566; 252561, 1477440; 252476, 1477486; 252472, 1477520; 252536, 1477618; 252532, 1477670; 252476, 1477716; 252416, 1477705; 252353, 1477501; 252322, 1477517; 252329, 1477634; 252265, 1477716; 252009, 1477683; 251888, 1477724; 251820, 1477781; 251730, 1477811; 251726, 1477875; 251748, 1477931; 251601, 1477871; 251583, 1477373; 251458, 1477343; 251258, 1477204; 251360, 1477030; 251349, 1476842; 251168, 1476619; 251428, 1476423; 251583, 1476231; 251816, 1476080; 251835, 1475891; 251563, 1475479; 251560, 1475465; 251484, 1475137; 251262, 1474361; 250994, 1473369; 251024, 1473358; 251092, 1473456; 251221, 1473456; 251262, 1473576; 251239, 1473655; 251292, 1473686; 251405, 1473531; 251496, 1473591; 251605, 1473546; 251767, 1473633; 252137, 1473874; 252125, 1473916; 252231, 1474142; 252318, 1474183; 252540, 1474161; 252992, 1474119; 253446, 1474105; 253722, 1474068; 253867, 1473973; 254079, 1473688; 254181, 1473477; 254247, 1473316; 254203, 1473017; 254064, 1472805; 253882, 1472586; 253306, 1472273; 253101, 1472258; 252919, 1472185; 252722, 1472141; 252533, 1472181; 252306, 1472229; 252175, 1472171; 251883, 1471842; 251657, 1471580; 251233, 1471383; 251000, 1471200; 250803, 1471003; 250701, 1470864; 250511, 1470624; 250241, 1470470; 250081, 1470478; 249913, 1470602; 249687, 1470704; 249672, 1470799; 249614, 1470981; 249599, 1471171; 249570, 1471390; 249519, 1471485; 249584, 1471645; 249584, 1471864; 249482, 1471966; 249468, 1472163; 249497, 1472258; 249460, 1472338; 249519, 1472543; 249535, 1472652; 249511, 1472820; 249358, 1473032; 249365, 1473229; 249322, 1473280; 249151, 1473567; 248928, 1473703; 248650, 1474031.

(ii) Excluding one area: Bounded by the following 114 points (99 ha, 245 ac): 250684, 1476986; 250614, 1477069; 250531, 1477232; 250595, 1477315; 250614, 1477358; 250718, 1477387; 250815, 1477358; 250855, 1477510; 250916, 1477596; 250868, 1477671; 250823, 1477681; 250823, 1477622; 250769, 1477609; 250713, 1477695; 250753, 1477791; 250742, 1477869; 250793, 1477893; 250951, 1477890; 250924, 1478061; 250940, 1478131; 251018, 1478286; 251114, 1478310; 251310, 1478543; 251425, 1478535; 251534, 1478484; 251596, 1478433; 251690, 1478460; 251802, 1478366; 251874, 1478058; 251656, 1477976; 251620, 1477975; 251516, 1477920; 251482, 1477886; 251330, 1477839; 251270, 1477914; 251189, 1477957; 251173, 1477906; 251248, 1477802; 251256, 1477663; 251245, 1477534; 251216, 1477505; 251141, 1477526; 250989, 1477400; 251011, 1477327; 250959, 1477224; 250890, 1477189; 250804, 1477184; 250737, 1477208; 250713, 1477192; 250841, 1477148; 250874, 1477111; 250978, 1477178; 251055, 1477177; 251090, 1477109; 251090, 1477036; 251072, 1476975; 250986, 1476921; 250981, 1476892; 251002, 1476879; 251029, 1476900; 251045, 1476871; 251013, 1476849; 251061, 1476784; 250945, 1476680; 251055, 1476498; 251121, 1476501; 251120, 1476456; 251090, 1476418; 250994, 1476413; 250970, 1476370; 250844, 1476314; 250858, 1476242; 250922, 1476162; 250970, 1476119; 250991, 1476089; 250973, 1476068; 250943, 1476100; 250887, 1476111; 250879, 1476065; 250924, 1476025; 250887, 1475948; 250866, 1475867; 250817, 1475886; 250815, 1475966; 250836, 1476020; 250817, 1476057; 250812, 1476113; 250817, 1476140; 250801, 1476162; 250775, 1476180; 250767, 1476279; 250783, 1476373; 250863, 1476421; 250740, 1476472; 250702, 1476542; 250721, 1476616; 250780, 1476619; 250903, 1476536; 250906, 1476552; 250855, 1476627; 250823, 1476638; 250796, 1476710; 250769, 1476731; 250745, 1476683; 250681, 1476665; 250625, 1476702; 250627, 1476721; 250710, 1476718; 250721, 1476780; 250772, 1476798; 250868, 1476756; 250906, 1476801; 250775, 1477023; 250780, 1477039.

(iii) **Note:** Map 3 of Unit B for Mariana crow follows:

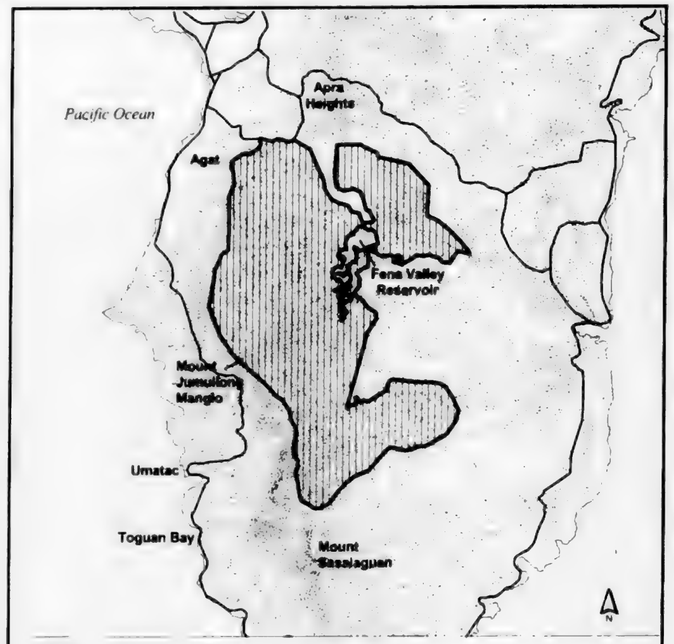

BILLING CODE 4310–55–C

(7) Rota, Unit C, Mariana crow (2,462 ha; 6,084 ac).

(i) Unit C consists of 719 points with the following coordinates in UTM Zone 55 with the units in meters using World Geodetic System 1984 (WGS84):

300709, 1564865; 300724, 1564935; 300733, 1564985; 300802, 1564997; 300809, 1565065; 300824, 1565186; 300889, 1565296; 300927, 1565332; 301139, 1565378; 301166, 1565499; 301310, 1565554; 301340, 1565496; 301493, 1565470; 301602, 1565455; 301726, 1565444; 301852, 1565428; 301951, 1565444; 302023, 1565520; 302279, 1565526; 302273, 1565424; 302522, 1565388; 302630, 1565372; 302914, 1565332; 303045, 1565414; 303213, 1565437; 303283, 1565463; 303299, 1565568; 303353, 1565617; 303429, 1565705; 303551, 1565855; 303589, 1565862; 303662, 1565909; 303709, 1565943; 303699, 1565972; 303790, 1566116; 303814, 1566104; 303914, 1566165; 303961, 1566093; 304048, 1566137; 304008, 1566221; 303912, 1566211; 303876, 1566200; 303784, 1566149; 303710, 1566324; 303725, 1566359; 303889, 1566367; 303933, 1566390; 303906, 1566437; 303985, 1566502; 304046, 1566507; 304164, 1566279; 304241, 1566149; 304173, 1566049; 304116, 1566004; 304118, 1565967; 304208, 1565992; 304274, 1566044; 304578, 1566092; 304532, 1566129; 304531, 1566215; 304506, 1566303; 304729, 1566316; 304773, 1566274; 304902, 1566268; 304962, 1566265; 305087, 1566248; 305070, 1566133; 305108, 1566102; 305082, 1566065; 305145, 1565958; 305177, 1565915; 305235, 1565955; 305421, 1565782; 305452, 1565756; 305596, 1565779; 305683, 1565792; 305791, 1565838; 305893, 1565886; 306023, 1565952; 306135, 1566064; 306203, 1566119; 306251, 1566060; 306555, 1566080; 306664, 1566164; 306780, 1566264; 306834, 1566273; 307071, 1566336; 307106, 1566329; 307223, 1566324; 307307, 1566290; 307304, 1566221; 307397, 1566214; 307647, 1566199; 307865, 1566154; 307896, 1566125; 307979, 1566062; 308031, 1566047; 308267, 1565952; 308267, 1565855; 308315, 1565841; 308359, 1565901; 308432, 1565806; 308535, 1565518; 308562, 1565402; 308545, 1565397; 308590, 1565223; 308676, 1565242; 308700, 1565190; 308860, 1565315; 309031, 1565486; 309093, 1565494; 309270, 1565486; 309332, 1565415; 309354, 1565337; 309367, 1565161; 309389, 1565153; 309440, 1565161; 309492, 1565131; 309497, 1565052; 309524, 1565041; 309568, 1565055; 309587, 1565096; 309570, 1565131; 309579, 1565174; 309560, 1565223; 309573, 1565261;

309608, 1565299; 309578, 1565369; 309820, 1565486; 310001, 1565592; 310154, 1565639; 310358, 1565685; 310369, 1565665; 310596, 1565693; 310642, 1565657; 310700, 1565655; 310795, 1565726; 310937, 1565754; 310976, 1565767; 311272, 1565802; 311282, 1565660; 311408, 1565703; 311494, 1565731; 311616, 1565734; 311782, 1565734; 311858, 1565745; 312021, 1565735; 312100, 1565743; 312203, 1565779; 312306, 1565776; 312392, 1565841; 312409, 1565811; 312398, 1565757; 312439, 1565681; 312479, 1565670; 312550, 1565678; 312596, 1565678; 312601, 1565730; 312574, 1565776; 312533, 1565838; 312950, 1565848; 312983, 1565823; 313055, 1565882; 313070, 1565943; 313113, 1566024; 313256, 1566157; 313460, 1566223; 313496, 1566305; 313555, 1566443; 313631, 1566481; 313723, 1566467; 313799, 1566489; 313878, 1566481; 313921, 1566505; 313929, 1566540; 313902, 1566559; 313864, 1566557; 313826, 1566521; 313788, 1566543; 313790, 1566603; 313783, 1566660; 313813, 1566703; 313862, 1566757; 313832, 1566768; 313788, 1566749; 313704, 1566717; 313615, 1566668; 313569, 1566627; 313498, 1566527; 313478, 1566478; 313376, 1566382; 313136, 1566223; 313101, 1566254; 313101, 1566366; 313059, 1566413; 313016, 1566416; 312962, 1566413; 312874, 1566387; 312529, 1566471; 312501, 1566632; 312565, 1566815; 312693, 1566785; 312693, 1566897; 312807, 1566917; 312813, 1566980; 312802, 1567132; 312937, 1567124; 312932, 1566925; 312996, 1566927; 313121, 1567027; 313135, 1567050; 313217, 1566988; 313282, 1566936; 313292, 1566858; 313309, 1566787; 313283, 1566731; 313320, 1566717; 313355, 1566728; 313360, 1566782; 313360, 1566833; 313368, 1566863; 313401, 1566887; 313431, 1566898; 313466, 1566955; 313562, 1566958; 313585, 1567052; 313455, 1567137; 313195, 1567213; 313129, 1567244; 313040, 1567253; 312907, 1567257; 312912, 1567448; 312909, 1567729; 313019, 1567652; 313276, 1567581; 313810, 1567411; 313916, 1567327; 313989, 1567327; 314106, 1567237; 314184, 1567248; 314220, 1567360; 314192, 1567421; 314225, 1567533; 314192, 1567611; 314198, 1567679; 314314, 1567766; 314371, 1567831; 314390, 1567888; 314428, 1568004; 314439, 1568107; 314482, 1568185; 314507, 1568231; 314596, 1568270; 314697, 1568359; 314764, 1568357; 314813, 1568378; 314844, 1568493; 314973, 1568590; 314995, 1568674; 314984, 1568766; 315011, 1568915; 315022, 1569162; 314960, 1569181; 314905, 1569200; 314843, 1569278; 314840, 1569343; 314846, 1569390; 314819, 1569406; 314783, 1569398; 314759, 1569406; 314743, 1569444; 314637, 1569506; 314553, 1569541; 314539, 1569571; 314569, 1569612; 314396, 1569652; 314317, 1569655; 314081, 1569785; 313920, 1569813; 313815, 1569818; 313257, 1569826; 312876, 1569836; 312896, 1569509; 312912, 1569188; 312915, 1568976; 312795, 1569012; 312588, 1568997; 312425, 1569062; 312181, 1569041; 312012, 1569001; 311943, 1568999; 311943, 1568953; 311818, 1568948; 311731, 1568905; 311711, 1568926; 311675, 1568917; 311649, 1568994; 311602, 1569082; 311636, 1569226; 311450, 1569290; 311381, 1569290; 311312, 1569132; 311517, 1569055; 311570, 1568854; 311700, 1568716; 311662, 1568629; 311565, 1568547; 311369, 1568683; 311170, 1568731; 311065, 1568532; 310647, 1568535; 310624, 1568581; 310820, 1568660; 310795, 1568734; 311062, 1568848; 311027, 1569012; 310690, 1568967; 310551, 1568963; 310396, 1568926; 310236, 1568926; 310126, 1568927; 310120, 1568838; 310077, 1568824; 309975, 1568770; 309799, 1568773; 309579, 1568794; 309474, 1568767; 309396, 1568760; 309247, 1568909; 309213, 1568855; 309372, 1568655; 309345, 1568604; 309386, 1568509; 309416, 1568424; 309399, 1568380; 309335, 1568424; 309288, 1568401; 309243, 1568452; 309196, 1568431; 309108, 1568428; 309054, 1568428; 308968, 1568389; 308922, 1568387; 308909, 1568356; 308422, 1568364; 308410, 1567913; 308390, 1567815; 308390, 1567740; 308362, 1567720; 308244, 1567737; 308173, 1567760; 308132, 1567750; 308105, 1567693; 308088, 1567642; 308013, 1567625; 307908, 1567625; 307634, 1567679; 307580, 1567659; 307475, 1567659; 307410, 1567632; 307391, 1567599; 307208, 1567603; 307154, 1567586; 306999, 1567537; 307000, 1567462; 306988, 1567448; 306749, 1567420; 306700, 1567489; 306815, 1567568; 307027, 1567721; 307024, 1567751; 307254, 1567843; 307310, 1567846; 307444, 1568042; 307502, 1568160; 307586, 1568258; 307614, 1568414; 307732, 1568533; 307837, 1568655; 307942, 1568733; 307986, 1568682; 308071, 1568641; 308190, 1568658; 308312, 1568709; 308444, 1568763; 308559, 1568814; 308634, 1568872; 308630, 1568950; 308684, 1568980; 308810, 1568956; 308942, 1569004; 309033, 1569041; 309100, 1569049; 309301, 1569048; 309410, 1569197; 309423, 1569292; 309304, 1569302; 309319, 1569585; 309357, 1569581; 309355, 1569603; 309339, 1569952; 309301, 1569932; 309216, 1570065; 309393, 1570214; 309698, 1570373; 309955, 1570475; 310209, 1570549; 310304, 1570532; 310484, 1570542; 310684, 1570556; 310823, 1570522; 310988, 1570530; 311235, 1570509; 311484, 1570490; 311620, 1570458; 311690, 1570436; 311807, 1570430; 312089, 1570412; 312189, 1570420; 312276, 1570402; 312346, 1570422; 312447, 1570412; 312539, 1570386; 312631, 1570349; 312734, 1570290; 312853, 1570230; 312913, 1570240; 313008, 1570257; 313130, 1570243; 313360, 1570238; 313441, 1570212; 313526, 1570211; 313598, 1570186; 313620, 1570151; 313479, 1570121; 313387, 1570081; 313382, 1570051; 313488, 1570070; 313550, 1570037; 313621, 1570022; 313704, 1570035; 313805, 1570011; 313843, 1569989; 313932, 1569975; 313986, 1569956; 314024, 1569934; 314116, 1569951; 314228, 1569932; 314336, 1569901; 314417, 1569879; 314482, 1569883; 314529, 1569853; 314810, 1569769; 315250, 1569625; 315296, 1569566; 315344, 1569506; 315399, 1569417; 315448, 1569341; 315469, 1569243; 315450, 1569091; 315369, 1568959; 315274, 1568839; 315222, 1568741; 315111, 1568557; 314963, 1568264; 314881, 1568159; 314832, 1568004; 314827, 1567899; 314786, 1567817; 314751, 1567701; 314753, 1567609; 314761, 1567278; 314810, 1567191; 314816, 1567112; 314767, 1567015; 314724, 1566831; 314648, 1566774; 314637, 1566722; 314642, 1566578; 314661, 1566508; 314564, 1566294; 314407, 1566085; 314241, 1565987; 314051, 1565865; 313943, 1565830; 313816, 1565771; 313656, 1565613; 313463, 1565456; 313333, 1565386; 313214, 1565304; 313076, 1565261; 312973, 1565250; 312916, 1565275; 312799, 1565334; 312734, 1565396; 312593, 1565475; 312311, 1565540; 312184, 1565554; 312037, 1565556; 311932, 1565551; 311799, 1565524; 311560, 1565537; 311433, 1565515; 311270, 1565453; 311140, 1565372; 311018, 1565334; 310901, 1565312; 310628, 1565283; 310525, 1565285; 310408, 1565293; 310272, 1565264; 310194, 1565226; 310132, 1565158; 310058, 1565104; 309912, 1564984; 309828, 1564908; 309734, 1564821; 309609, 1564707; 309492, 1564673; 309386, 1564583; 309213, 1564399; 309101, 1564206; 308944, 1564168; 308874, 1564128; 308849, 1564068; 308855, 1564017; 308852, 1563900; 308836, 1563803; 308814, 1563662; 308779, 1563537; 308779, 1563415; 308773, 1563328; 308806,

1563285; 308809, 1563212; 308863, 1563087; 308866, 1563011; 308814, 1562959; 308776, 1562905; 308741, 1562843; 308730, 1562778; 308665, 1562734; 308583, 1562702; 308535, 1562705; 308229, 1562564; 308080, 1562485; 307987, 1562390; 307929, 1562325; 307947, 1562257; 307914, 1562238; 307898, 1562192; 307833, 1562054; 307765, 1561919; 307705, 1561910; 307672, 1561903; 307667, 1561864; 307725, 1561834; 307724, 1561797; 307673, 1561715; 307535, 1561609; 307391, 1561447; 307228, 1561325; 307158, 1561333; 307012, 1561277; 306779, 1561394; 306697, 1561388; 306585, 1561380; 306533, 1561376; 306416, 1561344; 306336, 1561333; 306208, 1561331; 306166, 1561355; 306071, 1561420; 305925, 1561471; 305857, 1561483; 305811, 1561478; 305774, 1561437; 305748, 1561348; 305754, 1561287; 305801, 1561286; 305891, 1561175; 305848, 1561126; 305833, 1561094; 305864, 1561050; 305810, 1561036; 305734, 1561036; 305703, 1561001; 305674, 1560993; 305643, 1561014; 305580, 1560960; 305531, 1560933; 305492, 1560945; 305476, 1560972; 305452, 1560994; 305406, 1560991; 305370, 1561022; 305325, 1561047; 305327, 1561078; 305320, 1561099; 305274, 1561148; 305244, 1561170; 305238, 1561187; 305217, 1561215; 305156, 1561235; 305084, 1561233; 305054, 1561234; 305057, 1561263; 305042, 1561436; 305031, 1561528; 305041, 1561559; 305075, 1561668; 305091, 1561734; 305109, 1561806; 304845, 1561793; 304828, 1561737; 304789, 1561680; 304730, 1561636; 304682, 1561670; 304609, 1561726; 304537, 1561729; 304543, 1561756; 304426, 1561738; 304386, 1561662; 304317, 1561706; 304215, 1561666; 304099, 1561690; 304021, 1561789; 304088, 1561845; 304062, 1561922; 304177, 1561987; 304084, 1562103; 303922, 1562290; 303891, 1562318; 303867, 1562349; 303812, 1562414; 303739, 1562556; 303701, 1562508; 303676, 1562471; 303652, 1562522; 303575, 1562516; 303540, 1562487; 303542, 1562433; 303458, 1562411; 303434, 1562393; 303422, 1562453; 303317, 1562343; 303325, 1562313; 303302, 1562284; 303276, 1562282; 303240, 1562260; 303217, 1562242; 303167, 1562149; 303138, 1562129; 303111, 1562076; 303064, 1562084; 303038, 1562069; 302998, 1562079; 302959, 1562068; 302931, 1562030; 302862, 1562031; 302847, 1562023; 302823, 1562047; 302750, 1561973; 302708, 1561934; 302622, 1561980; 302539, 1561950; 302478, 1561980; 302420, 1561942; 302396, 1561965; 302352, 1562007; 302328, 1562056; 302315, 1562081; 302288, 1562112; 302262, 1562161; 302249, 1562185; 302232, 1562243; 302240, 1562278; 302258, 1562311; 302306, 1562355; 302355, 1562379; 302388, 1562398; 302411, 1562418; 302443, 1562470; 302456, 1562496; 302448, 1562537; 302402, 1562623; 302354, 1562673; 302366, 1562698; 302357, 1562716; 302346, 1562711; 302213, 1562810; 302163, 1562866; 302066, 1562946; 302056, 1562985; 302016, 1562990; 301955, 1563034; 301936, 1563076; 301882, 1563096; 301867, 1563093; 301822, 1563158; 301764, 1563244; 301677, 1563328; 301580, 1563379; 301518, 1563346; 301482, 1563379; 301494, 1563418; 301572, 1563445; 301601, 1563552; 301514, 1563608; 301374, 1563700; 301316, 1563740; 301140, 1563860; 300871, 1563988; 300689, 1564203; 300484, 1564307; 300566, 1564450; 300389, 1564638; 300472, 1564790; 300547, 1564683; 300696, 1564797.

(ii) Excluding three areas:

(A) Bounded by the following 225 points (1,828 ha, 4,517 ac): 304379, 1562567; 304411, 1562555; 304424, 1562519; 304395, 1562481; 304302, 1562446; 304273, 1562406; 304249, 1562358; 304254, 1562282; 304261, 1562234; 304267, 1562190; 304322, 1562154; 304363, 1562125; 304393, 1562154; 304450, 1562187; 304496, 1562219; 304553, 1562195; 304591, 1562252; 304677, 1562222; 304751, 1562222; 304756, 1562184; 304707, 1562097; 304732, 1562065; 304778, 1562078; 304848, 1562116; 304883, 1562133; 304897, 1562100; 304919, 1562054; 304965, 1562055; 305014, 1562130; 305027, 1562070; 305087, 1562070; 305138, 1562106; 305178, 1562184; 305273, 1562139; 305332, 1562082; 305502, 1562089; 305578, 1562186; 305634, 1562202; 305663, 1562153; 305654, 1562055; 305625, 1562051; 305559, 1561906; 305499, 1561766; 305502, 1561677; 305536, 1561661; 305583, 1561645; 305628, 1561651; 305657, 1561733; 305750, 1562039; 305797, 1562046; 305851, 1562027; 305884, 1561946; 305962, 1561919; 306000, 1561908; 306049, 1561932; 306083, 1561909; 306124, 1561894; 306125, 1561840; 306152, 1561740; 306149, 1561664; 306171, 1561612; 306196, 1561564; 306331, 1561523; 306475, 1561523; 306637, 1561536; 306678, 1561599; 306697, 1561618; 306795, 1561601; 306862, 1561696; 306865, 1561764; 306854, 1561781; 306837, 1561785; 306821, 1561831; 306726, 1561820; 306597, 1561737; 306383, 1561737; 306312, 1561775; 306280, 1561824; 306280, 1561867; 306328, 1561986; 306326, 1562043; 306369, 1562146; 306348, 1562193; 306359, 1562248; 306396, 1562413; 306211, 1562495; 306212, 1562642; 306491, 1562590; 306893, 1562575; 307497, 1563122; 307570, 1563395; 307632, 1563500; 307765, 1563576; 307881, 1563606; 307963, 1563657; 308014, 1563772; 308065, 1564029; 308062, 1564310; 308088, 1564565; 308044, 1564754; 307833, 1564944; 307768, 1565047; 307819, 1565112; 307805, 1565168; 307749, 1565378; 307765, 1565443; 307822, 1565486; 307811, 1565570; 307779, 1565654; 307817, 1565697; 307825, 1565828; 307842, 1565852; 307741, 1565909; 307639, 1565920; 307442, 1565987; 307386, 1566039; 307223, 1566107; 307152, 1566137; 307112, 1566137; 307082, 1566183; 307047, 1566199; 306955, 1566199; 306887, 1566191; 306824, 1566142; 306643, 1566020; 306544, 1565957; 306401, 1565931; 306247, 1565886; 306225, 1565841; 306113, 1565820; 306065, 1565846; 305956, 1565740; 305864, 1565621; 305851, 1565381; 305732, 1565386; 305724, 1565275; 305583, 1565276; 305305, 1565376; 305244, 1565424; 305104, 1565593; 304938, 1565657; 304768, 1565694; 304538, 1565717; 304173, 1565710; 304059, 1565694; 303985, 1565704; 303930, 1565725; 303903, 1565726; 303881, 1565697; 303879, 1565686; 303866, 1565617; 303819, 1565548; 303760, 1565524; 303670, 1565498; 303545, 1565484; 303504, 1565453; 303445, 1565416; 303355, 1565352; 303191, 1565289; 303022, 1565141; 302927, 1565120; 302874, 1565088; 302601, 1565117; 302527, 1565140; 302218, 1565153; 302086, 1565142; 301948, 1565092; 301810, 1565044; 301728, 1565024; 301675, 1565037; 301588, 1565018; 301416, 1565032; 301326, 1565030; 301284, 1565055; 301215, 1564939; 301207, 1564880; 301178, 1564669; 301199, 1564611; 301215, 1564529; 301236, 1564468; 301284, 1564460; 301363, 1564476; 301459, 1564476; 301604, 1564444; 301705, 1564365; 301734, 1564277; 301781, 1564145; 301827, 1564059; 301898, 1564026; 301972, 1563986; 302078, 1563923; 302144, 1563891; 302215, 1563817; 302318, 1563661; 302371, 1563526; 302605, 1563264; 302705, 1563179; 302736, 1563065; 302743, 1562848; 302859, 1562481; 302916, 1562366; 302961, 1562293; 302983, 1562274; 303027, 1562300; 303093, 1562406; 303115, 1562459; 303159, 1562565; 303190, 1562612; 303214, 1562638; 303250, 1562687; 303323, 1562713; 303478, 1562733; 303626, 1562749; 303778, 1562811; 303847, 1562837; 303900, 1562902; 303986,

1562937; 304081, 1562943; 304196, 1562928; 304284, 1562884; 304280, 1562804; 304302, 1562749; 304315, 1562704; 304363, 1562636; 304368, 1562613.

(B) Bounded by the following 80 points (34 ha, 84 ac): 307495, 1562490; 307624, 1562456; 307687, 1562504; 307700, 1562504; 307723, 1562493; 307768, 1562521; 307804, 1562511; 307827, 1562494; 307871, 1562552; 307897, 1562565; 307928, 1562565; 307943, 1562545; 307959, 1562519; 307976, 1562515; 308031, 1562572; 307996, 1562594; 307980, 1562618; 307978, 1562640; 307930, 1562655; 307908, 1562675; 307891, 1562697; 307891, 1562743; 307856, 1562771; 307851, 1562810; 307902, 1562852; 308068, 1562957; 308134, 1562964; 308164, 1562997; 308173, 1563049; 308204, 1563115; 308197, 1563150; 308171, 1563159; 308149, 1563172; 308158, 1563220; 308153, 1563290; 308153, 1563334; 308184, 1563347; 308234, 1563340; 308316, 1563418; 308398, 1563405; 308418, 1563437; 308367, 1563499; 308373, 1563676; 308215, 1563726; 308158, 1563576; 308126, 1563534; 308091, 1563547; 308052, 1563487; 308025, 1563486; 307965, 1563436; 307886, 1563373; 307872, 1563313; 307872, 1563199; 307896, 1563181; 307911, 1563141; 307871, 1563095; 307869, 1563073; 307904, 1563069; 307880, 1563003; 307862, 1563010; 307849, 1563025; 307803, 1563019; 307807, 1562964; 307792, 1562951; 307753, 1562946; 307713, 1562935; 307700, 1562911; 307704, 1562881; 307753, 1562828; 307768, 1562797; 307733, 1562745; 307731, 1562727; 307781, 1562683; 307729, 1562598; 307713, 1562633; 307689, 1562635; 307646, 1562613; 307495, 1562647; 307488, 1562556; 307488, 1562533.

(C) Bounded by the following 53 points (19 ha, 46 ac): 308671, 1564401; 308686, 1564398; 308762, 1564422; 308791, 1564444; 308793, 1564466; 308784, 1564497; 308797, 1564525; 308821, 1564528; 308848, 1564503; 308874, 1564514; 308905, 1564532; 308955, 1564666; 308979, 1564736; 308994, 1564814; 309056, 1564845; 309090, 1564889; 309126, 1564869; 309248, 1564976; 309277, 1565027; 309288, 1565060; 309280, 1565083; 309271, 1565117; 309213, 1565113; 309170, 1565106; 309132, 1565058; 309100, 1565068; 309047, 1565112; 308992, 1565145; 308979, 1565217; 308948, 1565228; 308887, 1565176; 308883, 1565150; 308900, 1565075; 308876, 1564990; 308839, 1564994; 308821, 1564996; 308791, 1564924; 308813, 1564898; 308839, 1564906; 308870, 1564928; 308878, 1564915; 308808, 1564760; 308756, 1564683; 308703, 1564628; 308672, 1564595; 308668, 1564571; 308677, 1564563; 308716, 1564574; 308718, 1564560; 308673, 1564489; 308647, 1564459; 308607, 1564406; 308654, 1564386.

(iii) **Note:** Map 4 of Unit C for Mariana crow follows:

BILLING CODE 4310-55-P

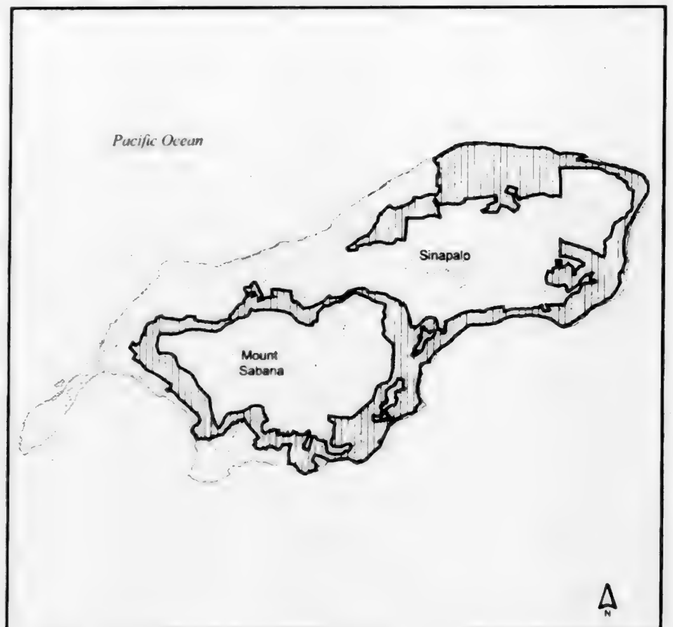

* * * * *

Guam Micronesian kingfisher (*Halcyon cinnamomina cinnamomina*)

(1) Critical habitat units for the Guam Micronesian kingfisher are depicted for the Territory of Guam.

(2) The primary constituent elements required by the Guam Micronesian kingfisher for the biological needs of foraging, sheltering, roosting, nesting, and rearing of young are found in areas that support limestone, secondary, ravine, swamp, agricultural, and coastal forests composed of native and introduced plant species. These forest types include the primary constituent elements of:

(i) Closed canopy and well-developed understory vegetation, large (approximately 43 cm (17 in) dbh), standing dead trees (especially *Tristiropsis obtusangula* (faniok), *Pisonia grandis* (umumu), *Artocarpus* spp. (breadfruit), *Ficus* spp. (fig), and *Cocos nucifera* (coconut palm)), mud nests of *Nasutitermes* spp. termites, and root masses of epiphytic ferns for breeding;

(ii) Sufficiently diverse structure to provide exposed perches and ground surfaces, leaf litter, and other substrates that support a wide range of vertebrate and invertebrate prey species for foraging kingfishers; and

(iii) Sufficient overall breeding and foraging area to support large kingfisher territories (approximately 10 ha (25 ac)).

(3) Critical habitat does not include existing features and structures within the boundaries of the mapped units, such as buildings, roads, aqueducts, antennas, water tanks, agricultural fields, paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) **Note:** Map 1—General locations of units for Guam Micronesian kingfisher—follows:

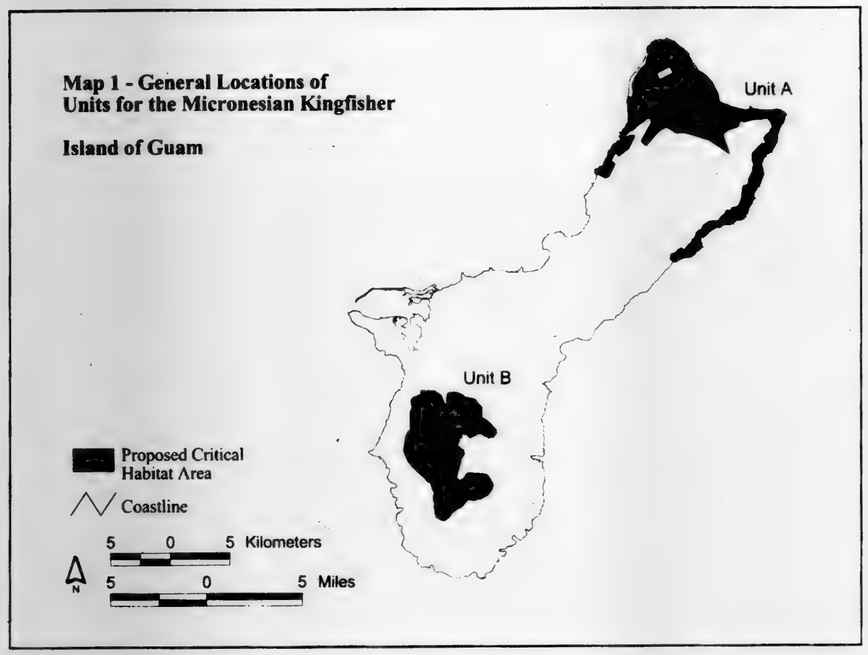

(5) Northern Guam, Unit A, Guam Micronesian kingfisher (5,803 ha; 14,338 ac).

(i) Unit A consists of 106 boundary points with the following coordinates in UTM Zone 55 with the units in meters using World Geodetic System 1984 (WGS84): 269645, 1491989; 269464, 1492175; 269501, 1492206; 269493, 1492433; 269892, 1492587; 270039, 1492791; 270215, 1492895; 270407, 1492769; 270592, 1492782; 270860, 1493156; 271182, 1493403; 271268, 1493585; 271268, 1493643; 271436, 1493753; 271559, 1494014; 271607, 1494236; 271813, 1494415; 272043, 1494477; 272129, 1494724; 272413, 1495015; 272655, 1495146; 272822, 1495101; 272918, 1495177; 273101, 1495192; 273263, 1495136; 273431, 1495202; 274161, 1496022; 274173, 1496089; 274601, 1496017; 274599, 1496283; 274931, 1496366; 275216, 1496545; 275446, 1497148; 275593, 1498173; 275675, 1498164; 276008, 1498280; 276052, 1498688; 276156, 1498965; 276437, 1499560; 276381, 1499660; 276493, 1500036; 276358, 1500432; 276358, 1500432; 276358, 1500435; 276374, 1500948; 277097, 1501696; 277216, 1501626; 277395, 1501709; 277565, 1501788; 277367, 1502247; 277556, 1502519; 277738, 1502614; 278104, 1503226; 277931, 1503680; 277528, 1504079; 276540, 1503998; 275541, 1503775; 275456, 1503878; 274960, 1503661; 275017, 1503428; 275017, 1503428; 274919, 1503336; 274350, 1503193; 273846, 1502898; 273696, 1502636; 273683, 1502394; 274082, 1501289; 272625, 1502266; 271544, 1502611; 270399, 1502902; 270276, 1502896; 269976, 1502855; 269819, 1502894; 269127, 1503348; 268873, 1503326; 268324, 1502996; 267317, 1501835; 267067, 1502058; 267891, 1503624; 267799, 1504039; 267471, 1504118; 267162, 1503935; 266993, 1503750; 266419, 1503365; 266115, 1503073; 265990, 1503021; 265865, 1503010; 265532, 1502708; 265443, 1502458; 265558, 1502239; 265719, 1502249; 265928, 1502401; 266157, 1502406; 265972, 1502034; 265720, 1501528; 265451, 1501304; 265451, 1501304; 265035, 1500959; 264833, 1501228; 264547, 1501077; 264338, 1500650; 264260, 1500311; 264547, 1500113; 264060, 1499171; 263865, 1499073; 263276, 1499383.

(ii) Excluding three areas:

(A) Bounded by the following four points (133 ha, 328 ac): 268056, 1507791; 269417, 1508433; 269771, 1507647; 268377, 1506972.

(B) Bounded by the following 15 points (17 ha, 43 ac): 272711, 1503822; 272730, 1503928; 272767, 1503961; 272872, 1503975; 272859, 1504070; 272879, 1504214; 272949, 1504372; 273070, 1504396; 273184, 1504331; 273199, 1503977; 273041, 1503917; 272949, 1503912; 272884, 1503703; 272828, 1503710; 272818, 1503785.

(C) Bounded by the following 12 points (20 ha, 48 ac): 273808, 1504727; 274234, 1504592; 274579, 1504430; 274572, 1504328; 274444, 1504247; 274295, 1504355; 274146, 1504389; 273930, 1504484; 273795, 1504464; 273686, 1504470; 273659, 1504585; 273707, 1504687.

(iii) **Note:** Map 2 of Unit A for Guam Micronesian kingfisher follows:

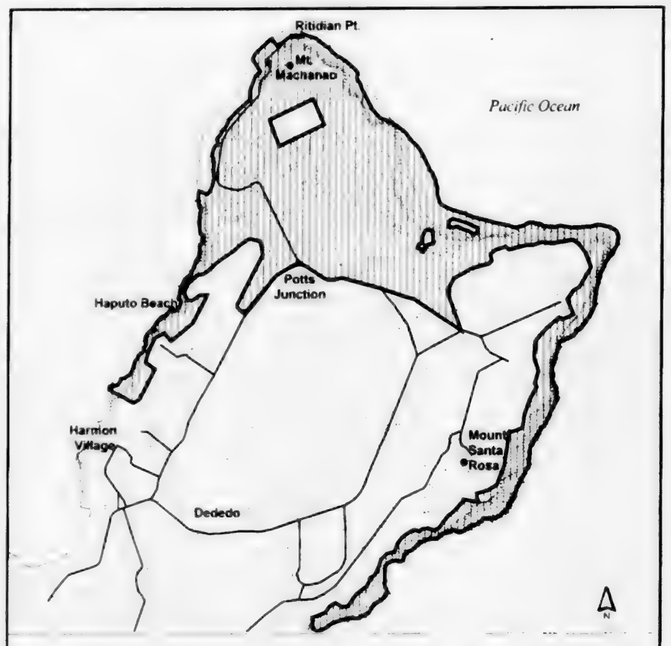

Map 2
Micronesian Kingfisher - Unit A

Proposed Critical Habitat Unit
Major Roads
100 ft. Contour Lines
Kilometers
Miles

(6) Southern Guam, Unit B, Guam Micronesian kingfisher (4,234 ha; 10,464 ac).

(i) Unit B consists of 184 boundary points with the following coordinates in UTM Zone 55 with the units in meters using World Geodetic System 1984 (WGS84): 248002, 1474589; 247650, 1474901; 247495, 1475129; 247271, 1475466; 247014, 1476083; 246950, 1476271; 247074, 1476899; 247118, 1477285; 247235, 1477541; 247293, 1477723; 247508, 1477876; 247522, 1479447; 247658, 1479766; 247629, 1480138; 247571, 1480291; 247586, 1480324; 247611, 1480465; 247782, 1480608; 248018, 1480694; 248088, 1480673; 248307, 1480797; 248380, 1480844; 248434, 1480948; 248420, 1481047; 248423, 1481115; 248490, 1481114; 248732, 1481047; 248758, 1481043; 248787, 1481048; 248930, 1481119; 249268, 1481028; 249316, 1481047; 249377, 1481077; 249428, 1481064; 249874, 1480811; 250243, 1479980; 250246, 1479973; 250253, 1479957; 250272, 1479915; 250316, 1479645; 250511, 1479330; 250724, 1479237; 250997, 1479153; 251074, 1479008; 251187, 1478955; 251318, 1478939; 251419, 1478655; 251585, 1478663; 251706, 1478676; 251746, 1478741; 251615, 1479003; 251516, 1479035; 251486, 1479196; 251428, 1479358; 251344, 1479561; 251122, 1479654; 250863, 1479589; 250640, 1479700; 250614, 1479911; 250605, 1480129; 250652, 1480853; 250673, 1480921; 250741, 1480941; 250877, 1480941; 251212, 1480936; 251338, 1480936; 251405, 1480904; 251819, 1480706; 251886, 1480568; 252757, 1480381; 253342, 1479736; 253298, 1478854; 253597, 1478723; 253904, 1478475; 254210, 1478183; 254510, 1477855; 254526, 1477750; 254207, 1477835; 253963, 1477494; 253962, 1477494; 253743, 1477502; 253641, 1477652; 253589, 1477649; 253472, 1477667; 253389, 1477739; 253204, 1477694; 252993, 1477709; 252793, 1477566; 252561, 1477440; 252476, 1477486; 252472, 1477520; 252536, 1477618; 252532, 1477670; 252476, 1477716; 252416, 1477705; 252353, 1477501; 252322, 1477517; 252329, 1477634; 252265, 1477716; 252009, 1477683; 251888, 1477724; 251820, 1477781; 251730, 1477811; 251726, 1477875; 251748, 1477931; 251601, 1477871; 251583, 1477373; 251458, 1477343; 251258, 1477204; 251360, 1477030; 251349, 1476842; 251168, 1476619; 251428, 1476423; 251583, 1476231; 251816, 1476080; 251835, 1475891; 251563, 1475479; 251560, 1475465; 251484, 1475137; 251262, 1474361; 250994, 1473369; 251024, 1473358; 251092, 1473456; 251221, 1473456; 251262, 1473576; 251239, 1473655; 251292, 1473686; 251405, 1473531; 251496, 1473591; 251605, 1473546; 251767, 1473633; 252137, 1473874; 252125, 1473916; 252231, 1474142; 252318, 1474183; 252540, 1474161; 252992, 1474119; 253446, 1474105; 253722, 1474068; 253867, 1473973; 254079, 1473688; 254181, 1473477; 254247, 1473316; 254203, 1473017; 254064, 1472805; 253882, 1472586; 253306, 1472273; 253101, 1472258; 252919, 1472185; 252722, 1472141; 252533, 1472181; 252306, 1472229; 252175, 1472171; 251883, 1471842; 251657, 1471580; 251233, 1471383; 251000, 1471200; 250803, 1471003; 250701, 1470864; 250511, 1470624; 250241, 1470470; 250081, 1470478; 249913, 1470602; 249687, 1470704; 249672, 1470799; 249614, 1470981; 249599, 1471171; 249570, 1471390; 249519, 1471485; 249584, 1471645; 249584, 1471864; 249482, 1471966; 249468, 1472163; 249497, 1472258; 249460, 1472338; 249519, 1472543; 249535, 1472652; 249511, 1472820; 249358, 1473032; 249365, 1473229; 249322, 1473280; 249151, 1473567; 248928, 1473703; 248650, 1474031.

(ii) Excluding one area: Bounded by the following 114 points (99 ha, 245 ac):

250684, 1476986; 250614, 1477069; 250531, 1477232; 250595, 1477315; 250614, 1477358; 250718, 1477387; 250815, 1477358; 250855, 1477510; 250916, 1477596; 250868, 1477671; 250823, 1477681; 250823, 1477622; 250769, 1477609; 250713, 1477695; 250753, 1477791; 250742, 1477869; 250793, 1477893; 250951, 1477890; 250924, 1478061; 250940, 1478131; 251018, 1478286; 251114, 1478310; 251310, 1478543; 251425, 1478535; 251534, 1478484; 251596, 1478433; 251690, 1478460; 251802, 1478366; 251874, 1478058; 251656, 1477976; 251620, 1477975; 251516, 1477920; 251482, 1477886; 251330, 1477839; 251270, 1477914; 251189, 1477957; 251173, 1477906; 251248, 1477802; 251256, 1477663; 251245, 1477534; 251216, 1477505; 251141, 1477526; 250989, 1477400; 251011, 1477327; 250959, 1477224; 250890, 1477189; 250804, 1477184; 250737, 1477208; 250713, 1477192; 250841, 1477148; 250874, 1477111; 250978, 1477178; 251055, 1477177; 251090, 1477109; 251090, 1477036; 251072, 1476975; 250986, 1476921; 250981, 1476892; 251002, 1476879; 251029, 1476900; 251045, 1476871; 251013, 1476849; 251061, 1476784; 250945, 1476680; 251055, 1476498; 251121, 1476501; 251120, 1476456; 251090, 1476418; 250994, 1476413; 250970, 1476370; 250844, 1476314; 250858, 1476242; 250922, 1476162; 250970, 1476119; 250991, 1476089; 250973, 1476068; 250943, 1476100; 250887, 1476111; 250879, 1476065; 250924, 1476025; 250887, 1475948; 250866, 1475867; 250817, 1475886; 250815, 1475966; 250836, 1476020; 250817, 1476057; 250812, 1476113; 250817, 1476140; 250801, 1476162; 250775, 1476180; 250767, 1476279; 250783, 1476373; 250863, 1476421; 250740, 1476472; 250702, 1476542; 250721, 1476616; 250780, 1476619; 250903, 1476536; 250906, 1476552; 250855, 1476627; 250823, 1476638; 250796, 1476710; 250769, 1476731; 250745, 1476683; 250681, 1476665; 250625, 1476702; 250627, 1476721; 250710, 1476718; 250721, 1476780; 250772, 1476798; 250868, 1476756; 250906, 1476801; 250775, 1477023; 250780, 1477039.

(iii) **Note:** Map 3 of Unit B for Guam Micronesian kingfisher follows:

BILLING CODE 4310-55-P

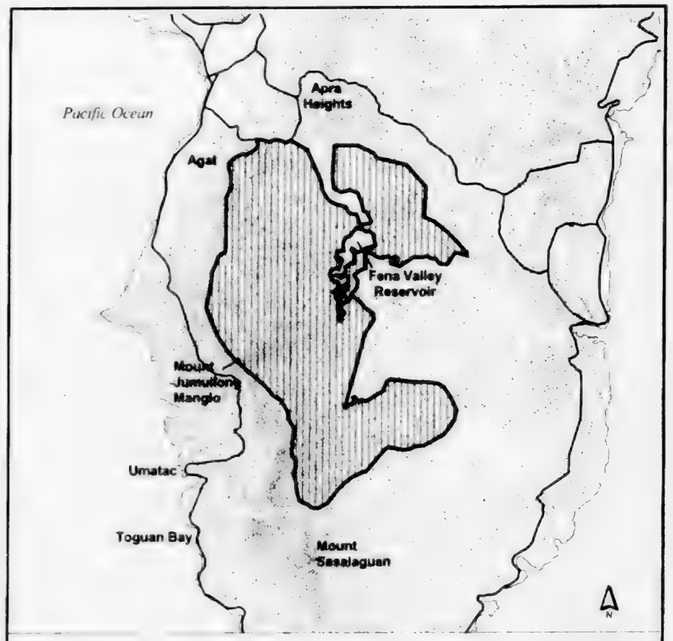

* * * * *

Dated: October 1, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–25649 Filed 10–11–02; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
October 15, 2002

Part III

Nuclear Regulatory Commission

Privacy Act of 1974; Republication of Systems of Records Notices; Notice

NUCLEAR REGULATORY COMMISSION

Privacy Act of 1974; Republication of Systems of Records Notices

AGENCY: Nuclear Regulatory Commission.

ACTION: Republication of systems of records notices.

SUMMARY: The Nuclear Regulatory Commission (NRC) has conducted a comprehensive review of all its Privacy Act Systems of Records. The NRC is revising and republishing all its systems of records (systems) notices as a result of this review. The systems revisions are minor corrective and administrative changes that do not meet the threshold criteria established by the Office of Management and Budget (OMB) for either a new or altered system of records. These changes are in compliance with OMB Circular No. A–130, Appendix I.

EFFECTIVE DATE: All revisions included in this republication are complete and accurate as of October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Sandra S. Northern, Privacy Program Officer, FOIA/Privacy Act Team, Web, Publishing and Distribution Services Division, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6879; email: *ssn@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Republication of NRC's Revised Systems of Records Notices

With the exception of 1 new system of records, these notices were last published in the **Federal Register** on September 18, 2000 (65 FR 56414–56449). The new system of records is NRC–12, Child Care Tuition Assistance Program Records, published in the **Federal Register** on December 19, 2001 (66 FR 65523), and became effective on January 28, 2002.

Two systems of records have been revoked, NRC–15, NRC Employees on Standards Developing Bodies Files, and NRC–34, Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW) Correspondence Index, Text/Imaging Management System and Associated Records.

Privacy Act Systems Nuclear Regulatory Commission

NRC Systems of Records

1. Parking Permit Records—NRC
2. Biographical Information Records—NRC.
3. Enforcement Actions Against Individuals—NRC.
4. Conflict of Interest Files—NRC.
5. Contracts Records Files—NRC.
6. Discrimination Cases—NRC.
7. Telephone Call Detail Records—NRC.
8. Employee Appeals, Grievances, and Complaints Records—NRC.
9. Office of Small Business and Civil Rights Discrimination Complaint Files—NRC.
10. Freedom of Information Act (FOIA) and Privacy Act (PA) Requests Records—NRC.
11. General Personnel Records (Official Personnel Folder and Related Records)—NRC.
12. Child Care Tuition Assistance Program Records—NRC.
13. Incentive Awards Files—NRC.
14. Employee Assistance Program Files—NRC.
15. [Revoked.]
16. Facility Operator Licensees Record Files (10 CFR part 55)—NRC.
17. Occupational Injuries and Illness Records—NRC.
18. Office of the Inspector General (OIG) Investigative Records—NRC.
19. Official Personnel Training Records Files—NRC.
20. Official Travel Records—NRC.
21. Payroll Accounting Records—NRC.
22. Personnel Performance Appraisals—NRC.
23. Office of Investigations Indices, Files, and Associated Records—NRC.
24. Property and Supply System (PASS)—NRC.
25. Oral History Program—NRC.
26. Full Share Program Records—NRC.
27. Radiation Exposure Information and Reports System (REIRS) Files—NRC.
28. Recruiting, Examining, and Placement Records—NRC.
29. [Revoked.]
30. Reactor Program System (RPS)/Regulatory Information Tracking System (RITS)—NRC.
31. Correspondence and Records, Office of the Secretary—NRC.
32. Office of the Chief Financial Officer Financial Transactions and Dept Collection Management Records—NRC.
33. Special Inquiry File—NRC.
34. [Revoked.]
35. Drug Testing Program Records—NRC.
36. Employee Locator Records Files—NRC.
37. Information Security Files and Associated Records—NRC.
38. Mailing Lists—NRC.
39. Personnel Security Files and Associated Records—NRC.
40. Facility Security Access Control Records—NRC.
41. Tort Claims and Personal Property Claims Records—NRC.
42. Skills Assessment and Employee Profile Records—NRC.
43. Employee Health Center Records—NRC.
44. Employee Fitness Center Records—NRC.

These systems of records are those systems maintained by the NRC that contain personal information about individuals, and from which personal information can be retrieved by reference to an individual identifier.

The notice for each system of records states the name and location of the record system, the authority for and manner of its operation, the categories of individuals that it covers, the types of records that it contains, the sources of information in those records, and the proposed "routine uses" of each system of records. Each notice also includes the business address of the NRC official who will inform interested persons of the procedures whereby they may gain access to and correct records pertaining to themselves.

One of the purposes of the Privacy Act (Act), as stated in section 2(b)(4) of the Act, is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to * * * "disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information." The NRC intends to follow these principles in transferring information to another agency or individual as a "routine use," including assurance that the information is relevant for the purposes for which it is transferred.

Prefatory Statement of General Routine Uses

The following routine uses apply to each system of records notice set forth below which specifically references this Prefatory Statement of General Routine Uses.

1. If a system of records maintained by the NRC to carry out its functions indicates a violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rules, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

2. A record from this system of records may be disclosed, as a routine use, to a Federal, State, local, or foreign agency, if necessary, to obtain information relevant to an NRC decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. A record from this system of records may be disclosed, as a routine use, to a Federal, State, local, or foreign agency in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, in the course of discovery and in presenting evidence to a court, magistrate, administrative tribunal, or grand jury, including disclosures to opposing counsel in the course of settlement negotiations.

5. Disclosure may be made, as a routine use, to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

6. A record from this system of records may be disclosed, as a routine use, to NRC-paid experts, consultants, and others under contract with the NRC, on a "need-to-know" basis for a purpose within the scope of the pertinent NRC contract. This access will be granted to an NRC contractor by a system manager only after satisfactory justification has been provided to the system manager.

NRC–1

SYSTEM NAME:

Parking Permit Records—NRC.

SYSTEM LOCATION:

Office of Administration, Administrative Services Center, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and contractors who apply for parking permits for NRC-controlled parking spaces.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records consist of the applications and the revenue collected for the headquarters buildings garage. The applications include, but are not limited to, the applicant's name, address, telephone number, length of service, and vehicle, rideshare and handicap information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3511 (1982), 41 CFR 101–20.104 (2001), Parking Facilities; Management Directive 13.4, "Transportation Management," Part I, "White Flint North Parking Procedures".

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To record amount paid and revenue collected for parking;

b. To contact permit holder;

c. To determine priority for issue of permits;

d. To provide statistical reports to city, county, State, and Federal government agencies; and

e. For the routine uses specified in paragraph numbers 1, 4, 5, and 6 in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders and on computer media.

RETRIEVABILITY:

Accessed by name, tag number and permit number.

SAFEGUARDS:

Paper records and backup disks are maintained in locked file cabinets under visual control of the Administrative Services Center. Computer files are maintained on a hard drive, access to which is password protected. Access to and use of these records are limited to those persons whose official duties require access.

RETENTION AND DISPOSAL:

Records are destroyed when 3 years old in accordance with GRS 3.3a(1)(b) by shredding or in the regular trash disposal system. The automated records are destroyed when no longer needed.

SYSTEM MANAGERS(S) AND ADDRESS:

Chief, Administrative Services Center, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Applications submitted by NRC employees and contractors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–2

SYSTEM NAME:

Biographical Information Records—NRC.

SYSTEM LOCATION:

Office of Public Affairs, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Commissioners and senior NRC staff members.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to education and training, employment history, and other general biographical data about the Commissioners and senior NRC staff members, including photographs of Commissioners.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 5841, 5843(a), 5844(a), 5845(a), and 5849 (1994–1996).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide information to the press;

b. To provide information to other persons and agencies requesting this information; and

c. For the routine uses specified in paragraph numbers 5 and 6 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders.

RETRIEVABILITY:

Records are accessed by name.

SAFEGUARDS:

Maintained in unlocked file cabinets. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Retained until updated or association with NRC is discontinued, then

destroyed through regular trash disposal system.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Office of Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by each individual and approved for use by the individual involved.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–3

SYSTEM NAME:

Enforcement Actions Against Individuals—NRC.

SYSTEM LOCATION:

Primary system—Office of Enforcement, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in whole or in part, at the NRC Regional Offices at the locations listed in Addendum I, Part 2, and in the Office of the General Counsel, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in NRC-licensed activities who have been subject to NRC enforcement actions or who have been the subject of correspondence indicating that they are being, or have been, considered for enforcement action.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes, but is not limited to, individual enforcement actions, including Orders, Notices of Violations with and without Civil Penalties, Orders Imposing Civil Penalties, Letters of Reprimand, Demands for Information, and letters to individuals who are being or have been considered for enforcement action. Also included are responses to these actions and letters. In addition, the files may contain other relevant documents directly related to those actions and letters that have been issued. Files are arranged numerically by Individual Action (IA) numbers, which are assigned when individual enforcement actions are considered. In instances where only letters are issued, these letters also receive IA numbers. The system includes a computerized database from which information is retrieved by names of the individuals subject to the action and IA numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2114, (1978); 42 U.S.C. 2167, as amended (1992); 42 U.S.C. 2201(i), as amended (1992); and 42 U.S.C. 2282, as amended, (1996); 10 CFR 30.10, 40.10, 50.5, 60.11, 61.9b, 70.10, 72.12, 110.7b (1998).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To respond to general information requests from the Congress;

b. To deter future violations, certain information in this system of records may be routinely disseminated to the public by means such as: Publishing in the **Federal Register** certain enforcement actions issued to individuals and making the information available in the Public Electronic Reading Room accessible through the NRC Web site, *http://www.nrc.gov*.

c. When considered appropriate for disciplinary purposes, information in this system of records, such as enforcement actions and hearing proceedings, may be disclosed to a bar association, or other professional organization performing similar functions, including certification of individuals licensed by NRC or Agreement States to perform specified licensing activities;

d. Where appropriate to ensure the public health and safety, information in this system of records, such as enforcement actions and hearing proceedings, may be disclosed to a Federal or State agency with licensing jurisdiction;

e. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906; and

f. For the routine uses specified in paragraphs 1, 2, 3, 4, and 5 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders, on computer printouts, and on computer media.

RETRIEVABILITY:

Records are accessed by individual action file number or by the name of the individual.

SAFEGUARDS:

Paper records are maintained in lockable file cabinets and are under visual control during duty hours. Access to computer records requires use of proper password and user identification codes. Access to and use of these records is limited to those NRC employees whose official duties require access.

RETENTION AND DISPOSAL:

Significant Enforcement Actions Case Files are permanent records and are transferred to NARA with related indexes when 20 years old in accordance with NARA approved schedule N1–431–00–05, Item 3.a(1) and 3.a(4). All other enforcement actions and violations are destroyed 10 years after the actions are cutoff, in accordance with NARA approved schedule N1–431–00–05, Item 3.b(1) and 3.b(4).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in the records is primarily obtained from NRC inspectors and investigators and other NRC employees, individuals to whom a record pertains, authorized representatives for these individuals, and NRC licensees, vendors, other individuals regulated by the NRC, and persons making allegations to the NRC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–4

SYSTEM NAME:

Conflict of Interest Files—NRC.

SYSTEM LOCATION:

Primary system—Office of the General Counsel, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are employees, special Government employees, former employees, advisory committee members, and consultants of NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to:

a. General biographical data (*i.e.*, name, birth date, home address, position title, home and business telephone numbers, citizenship, educational history, employment history, professional society memberships, honors, fellowships received, publications, licenses, and special qualifications);

b. Financial status (*i.e.*, nature of financial interests and in whose name held, creditors, character of indebtedness, interest in real property, monthly U.S. Civil Service Annuity, and status as Uniformed Services Retired Officer);

c. Certifications by employees that they and members of their families are in compliance with the Commission's stock ownership regulations;

d. Requests for approval of outside employment by NRC employees and NRC responses thereto;

e. Advice and determinations (*i.e.*, no conflict or apparent conflict of interest, questions requiring resolution, steps taken toward resolution); and

f. Information pertaining to appointment (*i.e.*, proposed period of NRC service, estimated number of days of NRC employment during period of service, proposed pay, clearance status, description of services to be performed and explanation of need for the services, justification for proposed pay, description of expenses to be reimbursed and dollar limitation, and description of Government-owned property to be in possession of appointee).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR parts 2634–2640, 5801 (1994–2002); 18 U.S.C. 201–209 (2002); Executive Order 12731 (October 17, 1990); Ethics in Government Act of 1978; as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide the Department of Justice, Office of Personnel Management, Office of Government Ethics, Office of Special Counsel, and/or Merit Systems Protection Board with information concerning an employee in instances where this office has reason to believe a Federal law may have been violated or where this office desires the advice of the Department, Office, or Board concerning potential violations of Federal law; and

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders. Records are also maintained on computer media.

RETRIEVABILITY:

Records are accessed by name.

SAFEGUARDS:

Records are maintained in locked file cabinets and in computer files that can only be accessed by the appropriate personnel.

RETENTION AND DISPOSAL:

Records are destroyed when 6 years old in accordance with GRS 1–24.a and GRS 1–24.b; except that documents needed in an ongoing investigation will be retained until no longer needed in the investigation. Computer files are deleted after the expiration of the retention period authorized for the disposable hard copy file or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant General Counsel for Legal Counsel, Legislation, and Special Projects, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies, or is derived from information he or she supplied, or comes from the office to which the individual is to be assigned, other NRC offices, or other persons such as attorneys.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–5

SYSTEM NAME:

Contracts Records Files—NRC.

SYSTEM LOCATION:

Primary system—Division of Contracts, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees substantially involved with contracting, such as Project Officers and Procurement Officials. Persons who are employed as NRC contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain personal information (such as technical qualifications, education, rates of pay, employment history) of contractors and their employees, and other contracting records. They also contain evaluations, recommendations, and reports of NRC procurement officials, assessment of

contractor performance, invoice payment records, and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3301 (1976); 31 U.S.C. 3511 (1982); 48 CFR subpart 4.8 (2001); NRC Management Directive 3.53, Records Management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide information to the Federal Procurement Data Center, Department of Health and Human Services, Defense Contract Audit Agency, General Accounting Office, and other Federal agencies for audits and reviews; and

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and computer media.

RETRIEVABILITY:

Paper records are accessed by contract number, taxpayer identification number (TIN), or purchase order number; and are cross-referenced to the automated system that contains the name of the contractor, vendor, project officer, procurement official, or contract manager.

SAFEGUARDS:

File folders are maintained in unlocked conserver files in a key code locked room. Access to and use of these records are limited to those persons whose official duties require such access. Electronic files are password protected.

RETENTION AND DISPOSAL:

Records for transactions of more than $100,000 are destroyed 6 years and 3 months after final payment, in accordance with GRS 3–3.a(1)(a). Transactions of $100,000 or less are destroyed 3 years after final payment in accordance with GRS 3–3.a(1)(b). Records are destroyed through regular trash disposal system, except for confidential business (proprietary) information which is destroyed by shredding. Electronic records in the Contracts System are retained until no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Contracts, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure." Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal confidential business (proprietary) information.

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the contractor or potential contractor or NRC employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1) and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–6

SYSTEM NAME:

Discrimination Cases—NRC.

SYSTEM LOCATION:

Primary system—Office of Enforcement, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in whole or in part, in the Office of the General Counsel, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, and in enforcement coordinators' offices at NRC Regional Offices at the addresses listed on Addendum I, Part 2. The duplicate systems in the Regional Offices would ordinarily be limited to the cases filed in each Region.

CATORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed complaints with the Department of Labor (DOL) concerning alleged acts of discrimination in violation of section 211 of the Energy Reorganization Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of files arranged alphabetically by name to track complaints filed by individuals with DOL under section 211 of the Energy Reorganization Act. These files include documents related to, and provided by, the DOL including copies of complaints, correspondence between the parties, and decisions by the Regional Administrators of DOL's Occupational, Safety, and Health Administration, Administrative Law Judges, and the Administrative Review Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2201, as amended, (1992); 42 U.S.C. 2282, as amended (2002); 42 U.S.C. 5851, as amended (1992); 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 70.7 (1996), and 10 CFR 72.10 (1999).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used for any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders, on computer printouts, and on computer media.

RETRIEVABILITY:

Records are accessed by the name of the individual who has filed a complaint with DOL.

SAFEGUARDS:

Paper records are maintained in lockable file cabinets. Access to computer records requires use of proper password and user identification codes. Access to and use of these records is limited to those NRC employees whose official duties require access.

RETENTION AND DISPOSAL:

Nonrecord materials are destroyed when no longer needed by NRC.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure." Information received from the Department of Labor is treated by DOL as public information and subject to disclosure under applicable laws.

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Individuals to whom a record pertains, attorneys for these individuals, union representatives serving as advisors to these individuals, NRC licensees, NRC staff, and DOL.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–7

SYSTEM NAME:

Telephone Call Detail Records—NRC.

SYSTEM LOCATION:

Office of the Chief Information Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals utilizing NRC telephones, including current and former NRC employees and contractors who make local or long-distance telephone calls and individuals who received telephone calls placed from NRC telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of the agency telephones to place local or long-distance calls, records indicating assignment of telephone numbers to employees, and records relating to the location of telephones.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 *et seq.* (1968); 41 CFR 101–35.1, Use of Government Telephones; 41 CFR 101, Subchapter B, Management and Use of Information and Records; NRC Management Directive 3.53, Records Management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information In these records may be used:

a. By individual employees of the agency to determine their individual responsibility for telephone calls; and

b. For the routine uses specified in paragraphs 1, 3, 5, and 6 of the Prefatory Statement of General Routine Uses.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures under 5 U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper files and on computer media.

RETRIEVABILITY:

Accessed by name, office, or telephone number.

SAFEGUARDS:

Maintained in locking file cabinets or locked rooms. Computer files are password protected. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records pertaining to employee phone use are destroyed when 3 years old in accordance with GRS 12–4. Records pertaining to location of telephone equipment, equipment requests, and phone service are destroyed when 3 years old in accordance with GRS 12–2.b.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Information Technology Infrastructure Division, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information is obtained from call detail listings, NRC Form 768, "Request for Information Technology Services," results of administrative inquiries relating to assignment of responsibility for placement of specific telephone calls, and certification of telephone bills.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–8

SYSTEM NAME:

Employee Appeals, Grievances, and Complaints Records—NRC.

SYSTEM LOCATION:

Primary system—Office of Human Resources, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—A duplicate system may be maintained, in whole or in part, in the Office of the General Counsel, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, and at locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for NRC employment, current and former NRC employees, and annuitants who have filed written complaints brought to the Office of Human Resource's attention or initiated grievances or appeal proceedings as a result of a determination made by the NRC, Office of Personnel Management, and/or Merit Systems Protection Board, or a Board or other entity established to adjudicate such grievances and appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes all documents related to disciplinary actions, adverse actions, appeals, complaints, grievances, arbitrations, and negative determinations regarding within-grade salary increases. It contains information relating to determinations affecting individuals made by the NRC, Office of Personnel Management, Merit Systems Protection Board, arbitrators or courts of law. The records consist of the initial appeal or complaint, letters or notices to the individual, records of hearings when conducted, materials placed into the record to support the decision or determination, affidavits or statements, testimony of witnesses, investigative reports, instructions to an NRC office or division concerning action to be taken to comply with decisions, and related correspondence, opinions, and recommendations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3591 (1978), 5 U.S.C. 4303, as amended (1990), 5 U.S.C. 7503 (1978); 42 U.S.C. 2201(d), as amended (1992).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To furnish information to the Office of Personnel Management and/or Merit Systems Protection Board under applicable requirements related to grievances and appeals;

b. To provide appropriate data to union representatives and third parties (that may include the Federal Services Impasses Panel and Federal Labor Relations Authority) in connection with grievances, arbitration actions, and appeals; and

c. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, binders, index cards, floppy disks, and a password-protected automated system.

RETRIEVABILITY:

These records are indexed annually by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Maintained in locked file cabinets and in a password-protected automated system available only to Labor Relations personnel. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records related to grievances, appeals, and adverse actions are destroyed seven years after the cases are closed in accordance with GRS 1–30.a and GRS 1–30.b, index cards are destroyed or deleted with the related records or sooner, if no longer needed, and computer files are destroyed after the period authorized for the related hard copy files or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Organization and Labor Relations, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure." Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains, NRC, Office of Personnel Management and/or Merit Systems Protection Board officials; affidavits or statements from employees, union representatives, or other persons; testimony of witnesses; official documents relating to the appeal, grievance, or complaint; Official Personnel Folder; and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–9

SYSTEM NAME:

Office of Small Business and Civil Rights Discrimination Complaint Files—NRC.

SYSTEM LOCATION:

Primary system—Office of Small Business and Civil Rights, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—A duplicate system may be maintained, in whole or in part, in the Office of the General Counsel, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for NRC employment and current and former NRC employees who have initiated EEO counseling and/or filed a formal complaint of employment discrimination under Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, and the Rehabilitation Act. Individuals in the United States in education programs or activities receiving Federal financial assistance from the NRC who initiated an informal complaint and/or filed a formal complaint of sex discrimination under Title IX of the Civil Rights Act. Individuals in the United States in programs or activities receiving Federal financial assistance from the NRC who initiated an informal complaint and/or filed a formal complaint of discrimination under Title VI of the Civil Rights Act, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, and Title IV of the Energy Reorganization Act of 1974, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records may contain copies of written reports by counselors; investigative files; administrative files, including documentation of withdrawn and/or dismissed complaints; complainant's name, title, and grade; types and theories of discrimination alleged; description of action and conditions giving rise to complaints, settlement agreements, and compliance documents; description of corrective and/or remedial actions; description of disciplinary actions, if any; request for hearings, procedural information, and hearing transcripts; procedural information and forms regarding Alternative Dispute Resolution (ADR); Equal Employment Opportunity Commission (EEOC), Merit System Protection Board (MSPB), Department of Education, and Department of Justice findings, analyses, decisions and orders; final agency decisions and final actions; and notices of intent to file in Federal District Court, notices of cases filed in Federal district court, and Federal court decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 206(d), as amended (1996); 29 U.S.C. 633a, as amended (1995); 29 U.S.C. 791 *et seq.* (1978); 42 U.S.C. 2000e–16, as amended (2002); 42 U.S.C. 5891 (1974); Executive Order (E.O.) 11246, September 24, 1965; E.O. 11375, October 13, 1967; E.O. 12086, October 5, 1978; 29 CFR part 1614 (1999); and 10 CFR part 4 (2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To furnish information related to discrimination complaints to the Equal Employment Opportunity Commission, the Office of Personnel Management, the Merit Systems Protection Board, the Department of Justice and the Department of Education, under applicable requirements; and

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, binders, and on computer media.

RETRIEVABILITY:

Accessed by name and docket number.

SAFEGUARDS:

Paper records are maintained in locked file cabinets. Computer records are password protected. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Official Discrimination Complaint Case Files are destroyed four years after the resolution of the case in accordance with GRS 1–25.a. Computer files are destroyed after the period authorized for the related hard copy files or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Small Business and Civil Rights, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure." Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, counselors, mediators, NRC staff, the Equal Employment Opportunity Commission, the Office of Personnel Management, the Merit Systems Protection Board, the Department of Justice and/or Department of Education officials, affidavits or statements from complainants, testimony of witnesses, and official documents relating to the complaints.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552(c)(3), (d), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–10

SYSTEM NAME:

Freedom of Information Act (FOIA) and Privacy Act (PA) Requests Records—NRC.

SYSTEM LOCATION:

Primary system—FOIA/Privacy Act Team, Web, Publishing, and Distribution Services Division, Office of the Chief Information Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have made FOIA or PA requests for NRC records.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains copies of the written requests from individuals or organizations made under the FOIA or PA, the NRC response letters, and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552 and 552a (2002); 42 U.S.C. 2201, as amended (1992).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. If an appeal or court suit is filed with respect to any records denied;

b. For preparation of reports required by 5 U.S.C. 552 and 5 U.S.C. 552a; and

c. For any of the routine uses specified in the Prefatory Statement of General Routine Uses. Some of the FOIA records are made publicly available in the Public Electronic Reading Room accessible through the NRC Web site, *http://www.nrc.gov.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, on microfiche, and computer media.

RETRIEVABILITY:

Accessed by unique assigned number for each request and by requester's name.

SAFEGUARDS:

Records are maintained in locked file cabinets that are kept in locked rooms. Computerized records are password protected. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained in hard copy or electronic record format for 2 years from date of reply if the request is granted in accordance with GRS 14–11.a(1), 6 years if denied in accordance with GRS 14–11.a(3)(a), and 6 years from date of final determination, if appealed, in accordance with GRS 14–12.a. The FOIA/PA official files are on paper and in electronic form. FOIA/PA records are disposed of by placement in receptacles designated for classified and sensitive unclassified waste.

SYSTEM MANAGER(S) AND ADDRESS:

Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Web, Publishing, and Distribution Services Division, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Requests are made by individuals. The response to the request is based upon information contained in NRC records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–11

SYSTEM NAME:

General Personnel Records (Official Personnel Folder and Related Records)—NRC.

SYSTEM LOCATION:

Primary system—For Headquarters and all Senior Executive Service (SES)

personnel, Office of Human Resources, NRC, One and Two White Flint North, 11555 and 11545 Rockville Pike, Rockville, Maryland. For Regional personnel, at Regional Offices I–IV listed in Addendum I, Part 2.

Duplicate system—Duplicate systems exist, in whole or in part at the locations listed in Addendum I, Parts 1 and 2, and at the National Institutes of Health Computer Facility, Bethesda, Maryland. The duplicate systems maintained in a particular office, division, or branch may contain information of specific applicability to employees in that organization in addition to that information contained in the primary system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current NRC employees and those formerly employed by the NRC (terminated through death, resignation, retirement, or separation).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains personnel records that document an individual's Federal career and includes notification of personnel action (SF–50) and documents supporting the action taken; life insurance, thrift savings plan, health benefits and related beneficiary forms; letters of disciplinary action; notices of reductions-in-force; and other records retained in accordance with Office of Personnel Management's Guide to Personnel Recordkeeping. These records include employment information such as personal qualification statements (OF612), resumes, and related documents including information about an individual's birth date, social security number, veterans preference status, tenure, minority group designator, physical handicaps, past and present salaries, grades, position titles; employee locator forms identifying home and work address, phone numbers and emergency contacts; and certain medical records related to initial appointment and employment. Some duplicate records may contain office-specific applications, personnel qualification statements (SF–171), resumes, conflict of interest correspondence, and other related personnel records in addition to those contained in the primary system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901 (2002); 42 U.S.C. 290dd–2; 42 U.S.C. 290ee–1 (2002); 42 U.S.C. 2201(d) (1992); Executive Order 9397, November 22, 1943.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. By the Office of Personnel Management and/or Merit Systems Protection Board for making a decision when an NRC employee or former NRC employee questions the validity of a specific document in an individual's record;

b. To provide information to a prospective employer of a Government employee. Upon transfer of the employee to another Federal agency, the information is transferred to such agency;

c. To update monthly the Office of Personnel Management systems concerning the Central Personnel Data File (CPDF), the Executive Inventory File, and security investigations, and to update adverse actions and termination records of the Merit Systems Protection Board;

d. To provide statistical reports to Congress, agencies, and the public on characteristics of the Federal work force;

e. To provide information to the Office of Personnel Management and/or Merit Systems Protection Board for review and audit purposes;

f. To provide members of the public with the names, position titles, grades, salaries, appointments (temporary or permanent), and duty stations of employees;

g. For medical records, to provide information to the Public Health Service in connection with Health Maintenance Examinations and to other Federal agencies responsible for Federal benefit programs administered by the Department of Labor (Office of Workmen's Compensation Programs) and the Office of Personnel Management; and

h. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on computer media.

RETRIEVABILITY:

Records are indexed by any combination of name, social security number, or identification number.

SAFEGUARDS:

Official Personnel Folders are maintained in locking cabinets and related documents may be maintained in unlocked file cabinets or an electromechanical file organizer. Computer files (Human Resources Management System (HRMS) Personnel Module) are password protected. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

The Official Personnel Folder is sent to the next Federal employing office if the employee transfers, or to the National Personnel Records Center within 30 days of the date of the employee's separation from the Federal service in accordance with GRS 1–1.b—OPF. Correspondence and forms maintained on the left side of the Official Personnel Folder are temporary records and are maintained for the periods of time specified in *The Guide to Personnel Recordkeeping* or other agency guidelines in accordance with GRS 1–10. Computer records are retained until no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

For Headquarters and all NRC SES employees—Chief, Human Resources Services and Operations Programs, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For Region I–IV non-SES employees—The appropriate Regional Personnel Officer at the locations listed in Addendum I, Part 2.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies; is derived from information supplied by that individual; or is provided by agency officials, other Federal agencies, universities, other academic institutions, or persons, including references, private and Federal physicians, and medical institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5) and (k)(6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–12

SYSTEM NAME:

Child Care Tuition Assistance Program Records—NRC.

SYSTEM LOCATION:

Office of Human Resources, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who voluntarily apply for child care tuition assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include application forms for child care tuition assistance containing personal information, including employee (parent) name, social security number, grade, home and work telephone numbers, home and work addresses, total family income, name of child on whose behalf the parent is applying for tuition assistance, child's date of birth; information on child care providers used, including name, address, provider license number and State where issued, tuition cost, and provider tax identification number; and copies of IRS Form 1040 and 1040A for verification purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 107–67, section 630, November 12, 2001, and Executive Order 9397, November 22, 1943.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To the Office of Personnel Management to provide statistical reports; and

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSITION OF RECORDS IN THE SYSTEM:

STORAGE:

Information may be collected on paper or electronically and may be stored as paper forms or on computers.

RETRIEVABILITY:

Information may be retrieved by employee name or social security number.

SAFEGUARDS:

When not in use by an authorized person, paper records are stored in lockable file cabinets and computer records are protected by the use of passwords.

RETENTION AND DISPOSAL:

The records in this system are currently unscheduled and must be retained until the National Archives and Records Administration (NARA) approves a records disposition schedule for this material.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from NRC employees who apply for child care tuition assistance. Furnishing of the information is voluntary.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–13

SYSTEM NAME:

Incentive Awards Files—NRC.

SYSTEM LOCATION:

Primary system—Office of Human Resources, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees who merit special recognition for achievements either within or outside the employee's job responsibilities. Awards include both NRC awards and awards of other agencies and organizations for which NRC employees are eligible.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains employee's name, title, office, grade, and salary; justification to support recommendation and authorization for cash award; monetary amount of cash award; actions by approving officials; record of individuals receiving awards; suggestions and evaluations of suggestions; citation to be used; and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4501–4513, 5336 (1993–2002).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. By the Office of Personnel Management to process and approve nominations or awards;

b. By the Office of the Attorney General and the President of the United States in reviewing recommended awards;

c. To make reports to the Office of Personnel Management and/or Merit Systems Protection Board;

d. By other Government agencies to recommend whether suggestions should be adopted in instances where the suggestion made by an NRC employee affects the functions or responsibilities of the agencies; and

e. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders and computer media.

RETRIEVABILITY:

Information is accessed by name, type of award, office, and year of award.

SAFEGUARDS:

Maintained in locking file cabinets and in a password-protected computer

system. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

a. Records relating to meritorious and distinguished service awards made at the Commission level, excluding those in the Official Personnel Folder, are permanent in accordance with NRCS 2–22.3.a;

b. Case files pertaining to NRC-sponsored awards, excluding those for departmental-level awards, are destroyed 2 years after approval or disapproval in accordance with GRS 1–12.a(1);

c. Correspondence pertaining to awards from other Federal agencies or non-Federal organizations are destroyed when 2 years old in accordance with GRS 1–12.a(2);

d. Letters of commendation and appreciation, excluding copies filed in the Official Personnel Folder, are destroyed when 2 years old in accordance with GRS 1–12.c;

e. Lists and indexes to agency award nominations are destroyed when superseded or obsolete in accordance with GRS 1–12.d; and

f. Computer files are continually updated and information deleted when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Human Resources Services and Benefits, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

NRC employees, other agencies and organizations, and Official Personnel Folders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–14

SYSTEM NAME:

Employee Assistance Program Files—NRC.

SYSTEM LOCATION:

Office of Human Resources, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees or family members who have been counseled by or referred to the Employee Assistance Program (EAP) for problems relating to alcoholism, drug abuse, job stress, chronic illness, family or relationship concerns, and emotional and other similar issues.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records of NRC employees or their families who have participated in the EAP and the results of any counseling or referrals which may have taken place. The records may contain information as to the nature of each individual's problem, subsequent treatment, and progress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; 21 U.S.C. 1101; 42 U.S.C. 290dd–1 and 290dd–2 (2002); 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. For statistical reporting purposes; and

b. Any disclosure of information pertaining to an individual will be made in compliance with the Confidentiality of Alcohol and Drug Abuse Patient Records regulation, 42 CFR part 2, as authorized by 42 U.S.C. 290dd–2, as amended.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders and on computer media.

RETRIEVABILITY:

Information accessed by the EAP identification number and name of the individual.

SAFEGUARDS:

Files are maintained in a safe under the immediate control of the Employee Assistance and Wellness Services Manager.

RETENTION AND DISPOSAL:

Employee counseling files are destroyed 3 years after termination of counseling in accordance with GRS 1–26.a. Information contained in the related statistical database is destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Employee Assistance and Wellness Services, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information compiled by the Manager, Employee Assistance and Wellness Services, during the course of counseling with an NRC employee or members of the employee's family.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–15 [Revoked]

NRC–16

SYSTEM NAME:

Facility Operator Licensees Record Files (10 CFR Part 55)—NRC.

SYSTEM LOCATION:

For power reactors, at the appropriate Regional Office at the address listed in Addendum I, Part 2; for nonpower (test and research) reactor facilities, at the Operator Licensing and Human Performance Section, Equipment and Human Performance Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The Operator Licensing Tracking System (OLTS) is located at NRC Headquarters and is accessible by the four Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals licensed under 10 CFR part 55, new applicants whose applications are being processed, and individuals whose licenses have expired.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information pertaining to 10 CFR part 55 applicants for a license, licensed operators, and individuals who previously held licenses. This includes applications for a license, license and denial letters, and related correspondence; correspondence relating to actions taken against a licensee; 10 CFR part 50.74 notifications; certification of medical examination and related medical information; fitness for duty information; examination results and other docket information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2137 and 2201(i) (1992).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To determine if the individual meets the requirements of 10 CFR part 55 to take an examination or to be issued an operator's license;

b. To provide researchers with information for reports and statistical evaluations related to selection, training, and examination of facility operators;

c. To provide for examination and testing material and obtain results from contractors;

d. To provide facility management with sufficient information to enroll the individuals in the licensed operator requalification program; and

e. For any of the routine uses specified in paragraph numbers 1, 2, 4, 5, and 6 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper logs, paper in file folders, and computer media.

RETRIEVABILITY:

Records are accessed by name and docket number.

SAFEGUARDS:

Maintained in locked file cabinets or an area that is locked. Computer access requires password. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

a. Reactor Operator Licensees Records: Inactive case files (*i.e.*, after latest license expiration/termination/revocation, application denial or withdrawal, or issuance of denial letter), are retired after 3 years to the Federal Records Center, and destroyed after 10 years in accordance with NRCS 2–24.13.

b. Operator Licensing Tracking System: Retained as long as system is operational. Destroyed 2 years after system terminates.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Operator Licensing and Human Performance Section, Equipment and Human Performance Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual applying for a license, the Part 50 licensee, a licensed physician, members of the Operator Licensing and Human Performance Section, Equipment and Human Performance Branch or Regional Operator licensing branches, and other NRC and contractor personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–17

SYSTEM NAME:

Occupational Injuries and Illness Records—NRC.

SYSTEM LOCATION:

Primary system—For Headquarters personnel, Office of Human Resources, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

For Regional personnel, at each of the Regional Offices listed in Addendum I, Part 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who report an occupational injury or illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information regarding the location and descriptions of the injury or illness, treatment, and disposition as well as copies of Workman's Compensation claim forms.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902, as amended (2002); 29 U.S.C. 657(c), as amended (1998); Executive Order (E.O.) 12196, February 26, 1980; E.O. 12223, June 30, 1980; E.O. 12608, September 9, 1987.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. By the Agency Safety and Health Officer and/or the Chief, Human Resources Services and Operations, Office of Human Resources, to prepare periodic statistical reports on employees' health and injury status for transmission to and review by the Department of Labor;

b. For transmittal to the Secretary of Labor or an authorized representative under duly promulgated regulations;

c. For transmittal to the Office of Personnel Management and/or Merit Systems Protection Board as required to support individual claims; and

d. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders and on computer media.

RETRIEVABILITY:

Indexed by assigned employee case number or name under report category.

SAFEGUARDS:

Maintained in locked file cabinet under visual control of HR staff. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Employee case files are destroyed when 5 years old in accordance with GRS 1–34. Computer files are deleted after the expiration of the retention period authorized for the disposable hard copy file or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

NRC Public Health Unit; NRC Headquarters and Regional Office feeder reports; and forms with original information largely supplied by employees concerned, supervisors, witnesses, medical personnel, etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–18

SYSTEM NAME:

Office of the Inspector General (OIG) Investigative Records—NRC.

SYSTEM LOCATION:

Office of the Inspector General, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities referred to in complaints or actual investigative cases, reports, accompanying documents, and correspondence prepared by, compiled by, or referred to the OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system comprises four parts: (1) An automated Text Management System containing reports of investigations and inspections closed since 1989 and brief descriptions of investigative cases open and pending in the OIG since 1989 that have not yet resulted, but will result, in investigative or inspection reports; (2) paper files of all OIG and predecessor Office of Inspector and Auditor (OIA) reports, correspondence, cases, matters, memoranda, materials, legal papers, evidence, exhibits, data, and work papers pertaining to all closed and pending investigations and inspections; (3) paper index card files of OIG and OIA cases closed from 1970 through 1989; and (4) an automated Allegations Tracking System that includes allegations referred to the OIG after 1985, whether or not the allegation progressed to an investigation or inspection, and dates that the investigation or inspection, if any, was opened and closed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended, 5 U.S.C. App. 3 (2002); 42 U.S.C. 2035(c), 2201(c) (1992), and 5841(f) (1986).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, OIG may disclose information contained in a record in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To any Federal, State, local, tribal, or foreign agency, or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity when records from this system of records, either by themselves or in combination with any other information, indicate a violation or potential violation of law, whether administrative, civil, criminal, or regulatory in nature.

b. To public or private sources to the extent necessary to obtain information from those sources relevant to an OIG investigation, audit, inspection, or other inquiry.

c. To a Federal, State, local, tribal, or foreign agency, or a public authority or professional organization if necessary to obtain information relevant to a decision by NRC or the requesting organization concerning the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit, or other personnel action related to the record subject.

d. To a court, adjudicative body before which NRC is authorized to appear, Federal agency, individual or entity designated by NRC or otherwise empowered to resolve disputes, counsel or other representative, or witness or potential witness when it is relevant and necessary to the litigation if any of the parties listed below is involved in the litigation or has an interest in the litigation:

1. NRC, or any component of NRC;

2. Any employee of NRC where the NRC or the Department of Justice has agreed to represent the employee; or

3. The United States, where NRC determines that the litigation is likely to affect the NRC or any of its components.

e. To a private firm or other entity that OIG or NRC contemplates it will contract or has contracted for the purpose of performing any functions or analyses that facilitate or are relevant to an investigation, audit, inspection, inquiry, or other activity related to this system of records. The contractor, private firm, or entity needing access to the records to perform the activity shall maintain Privacy Act safeguards with respect to information. A contractor, private firm, or entity operating a system of records under 5 U.S.C. 552a(m) shall comply with the Privacy Act.

f. To another agency to the extent necessary for obtaining its advise on any matter relevant to an OIG investigation, audit, inspection, or other inquiry related to the responsibilities of the OIG.

g. To a member of Congress or to a congressional staff member in response to his or her inquiry made at the written request of the subject individual.

h. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

DISCLOSURE PURSUANT TO 5 U.S.C. 552A(B)(12):

Disclosure of information to a consumer reporting agency is not considered a routine use of records. Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is stored manually on index cards, in files, and in various ADP storage media.

RETRIEVABILITY:

Information is retrieved from the Text Management System alphabetically by the name of an individual, by case number, or by subject matter. Information in the paper files backing up the Text Management System and older cases closed by 1989 is retrieved by subject matter and/or case number, not by individual identifier. Information is retrieved from index card files for cases closed before 1989 by the name or numerical identifier of the individual or entity under investigation or by subject matter. Information in the Allegations Tracking System is retrieved by allegation number, case number, or name.

SAFEGUARDS:

The automated Text Management System is accessible only on one terminal in the OIG, is password protected, and is accessible only to OIG investigative personnel. Paper files backing up the Text Management System and older case reports and work papers are maintained in approved security containers and locked filing cabinets in a locked room; associated indices, records, diskettes, tapes, *etc.*, are stored in locked metal filing cabinets, safes, storage rooms, or similar secure facilities. Index card files for older cases (1970–1989) are under visual control during working hours and are available only to authorized investigative personnel who have a need to know and whose duties require access to the information. The Allegations Tracking System is double-password-protected and is available to only two OIG investigative employees on only one terminal.

RETENTION AND DISPOSAL:

a. *Investigative Case Files:*

1. Files containing information or allegations that are of an investigative nature but do not relate to a specific investigation—Destroy when 5 years old in accordance with NARA approved schedule N1–431–00–2, Item 1.d.

2. All other investigative files, except those that are unusually significant—Place in inactive file when case is closed. Cut off inactive file at end of fiscal year. Destroy 10 years after cutoff in accordance with NARA approved schedule N1–431–00–2, Item 1.c.

3. Significant cases (those that result in national media attention, congressional investigation, or substantive changes in agency policy or procedures). PERMANENT. Cut off closed cases annually. Transfer to National Archives of the United States 20 years after cut off in accordance with NARA approved schedule N1–431–00–2, Item 1.b.

b. *Index/Indices.* Destroy or delete with the related records or sooner if no longer needed.

c. *Text Management System.* Delete after 10 years or when no longer needed, whichever is later.

d. *Allegation Tracking System.* Destroy when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure." Information classified under Executive Order 12958 will not be disclosed. Information received in confidence will be maintained under the Inspector General Act, 5 U.S.C. app. 3, and the Commission's Policy Statement on Confidentiality, Management Directive 8.8, "Management of Allegations."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to, the individual record subject; NRC officials and employees; employees of Federal, State, local, and foreign agencies; and other persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Under 5 U.S.C. 552a(j)(2), the Commission has exempted this system of records from subsections (c)(3) and (4), (d)(1)–(4), (e)(1)–(3), (5), and (8), and (g) of the Act. This exemption applies to information in the system that relates to criminal law enforcement and meets the criteria of the (j)(2) exemption. Under 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), and (k)(6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–19

SYSTEM NAME:

Official Personnel Training Records Files—NRC.

SYSTEM LOCATION:

Primary system—Office of Human Resources, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for or were selected for either NRC or other Government/non-Government training courses or programs

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to an individual's educational background and training courses including training requests and authorizations, evaluations, and supporting documentation, and other related personnel information, including but not limited to, individual's name, address, telephone number, position title, organization, and grade.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3396 (1991); 5 U.S.C. 4103 (2002); Executive Order (E.O.) 9397, November 22, 1943; E.O. 11348, April 20, 1967, as amended by E.O. 12107, December 28, 1978.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be:

a. Extracted from the records and made available to the Office of Personnel Management; other Federal, State, and local Government agencies; and educational institutions for use in training programs related to NRC employees; and

b. Disclosed for the routine uses specified in paragraph numbers 5 and 6 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders. Computerized training data is maintained in the Human Resources Management System (HRMS) Training Module.

RETRIEVABILITY:

Information is accessed by name, user identification number, course number, or course session number.

SAFEGUARDS:

Electronic records are maintained in a password-protected computer system,

HRMS Training Module. Paper is maintained in lockable file cabinets and file rooms. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Paper forms are retained for 5 years, then destroyed by shredding in accordance with GRS 1–29.b. Information in the HRMS Training module is maintained until no longer needed for statistical and historical reference.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Training and Development, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information is provided by the individual to whom it applies, the employee's supervisor, and training groups, agencies, or educational institutions and learning activities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–20

SYSTEM NAME:

Official Travel Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Accounting and Finance, Office of the Chief Financial Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees, prospective NRC employees, consultants, and invitational travelers for NRC programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain Request and Authorization for Official Travel, Travel Vouchers, and related documentation, which includes, but is not limited to, an individual's name and social security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701 (2002); 31 U.S.C. 716, 1104, 1108, 3511, 3512, 3701, 3711, 3717, 3718 (1982–2002); Federal Travel Regulations, 41 CFR parts 301–304; Federal Property Management Regulations, 41 CFR Part 101–41; Executive Order 9397, November 22, 1943.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. For transmittal to the U.S. Treasury for payment;

b. For transmittal to the Department of State or an embassy for passports or visas; and

c. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

DISCLOSURE PURSUANT TO 5 U.S.C. 552A(B)(12):

Disclosures of information to a consumer reporting agency are not considered a routine use of records. Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders, on computer media, and on magnetic tape.

RETRIEVABILITY:

Records are accessed by name, social security number, authorization number, and voucher payment schedule number.

SAFEGUARDS:

Maintained in key locked file cabinets in same room as users and in conserver files in a passcode locked room. Passports and visas are maintained in alarmed cashiers office. For electronic records, an identification number, a password, and assigned access to specific programs are required in order to retrieve information.

RETENTION AND DISPOSAL:

Paper records are retained for 6 years and 3 months after period covered by account, then destroyed through regular trash disposal system in accordance with GRS 9–1.a. Electronic records are deleted after the expiration of the retention period authorized for the disposable hard copy file or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Travel and Accounts Payable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information is provided by the individual, the organizational component approving the travel, outside transportation agents, and **Federal Register** for per diem rates.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–21

SYSTEM NAME:

Payroll Accounting Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Accounting and Finance, Office of the Chief Financial Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees, special Government Employees, and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Pay, leave, allowance histories, and labor activities, which includes, but is not limited to, an individual's name and social security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 104–193, Personal Responsibility and Work Opportunity Reconciliation Act of 1996; 5 U.S.C. 6334 (1988); 31 U.S.C. 716, 1104, 1108, 1114, 3325, 3511, 3512, 3701, 3711, 3717, 3718 (1982–2002); Executive Order 9397, November 22, 1943.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. For transmittal of data to U.S. Treasury to effect issuance of paychecks to employees and consultants and distribution of pay according to employee directions for savings bonds, allotments, financial institutions, and other authorized purposes including the withholding and reporting of Thrift Savings Plan deductions to the Department of Agriculture's National Finance Center;

b. For reporting tax withholding to Internal Revenue Service and appropriate State and local taxing authorities;

c. For FICA deductions to the Social Security Administration;

d. For dues deductions to labor unions;

e. For withholding for health insurance to the insurance carriers and the Office of Personnel Management;

f. For charity contribution deductions to agents of charitable institutions;

g. For annual W–2 statements to taxing authorities and the individual;

h. For transmittal to the Office of Management and Budget for financial reporting;

i. For withholding and reporting of retirement, re-employed annuitants, and life insurance information to the Office of Personnel Management;

j. For transmittal of information to State agencies for unemployment purposes;

k. For transmittal to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support, and for enforcement action;

l. For transmittal to the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the Federal Parent Locator System by the Office of Child Support Enforcement;

m. For transmittal to the Office of Child Support Enforcement for release to the Department of Treasury for purpose of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return;

n. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906; and

o. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

DISCLOSURE PURSUANT TO 5 U.S.C. 552A(B)(12):

Disclosures of information to a consumer reporting agency are not considered a routine use of records. Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained in computerized form, on microfiche, and in paper copy. Computerized form includes information stored in memory, on disk and magnetic tape, and on computer printouts.

RETRIEVABILITY:

Information is accessed by employee identification number, name and social security number.

SAFEGUARDS:

Records in the primary system of records are maintained in buildings where access is controlled by a security guard force. File folders, microfiche, tapes, and disks, including backup data, are maintained in secured locked rooms and file cabinets after working hours. All records are in areas where access is controlled by keycard and is limited to NRC and contractor personnel and to others who need the information to perform their official duties. Access to computerized records requires use of proper passwords and user identification codes.

RETENTION AND DISPOSAL:

a. Individual employee pay record for each employee and consultant maintained in the electronic Human Resources Management System (HRMS) Time and Labor/Payroll modules is updated in accordance with GRS 2–1.a.

b. Individual employee pay records containing pay data on each employee and consultant maintained in the Annual and Quarterly Employee History Records on microfiche are transferred to the National Personnel Records Center and destroyed when 56 years old in accordance with GRS 2–1.b.

c. Copies of non-current payroll data maintained on microfiche are destroyed 15 years after close of pay year in which generated in accordance with GRS 2–2.

d. Employee and Consultant Payroll Records:

1. U.S. savings bond authorizations are destroyed when superseded or after separation of employee in accordance with GRS 2–14.a.

2. Combined Federal Campaign allotment authorizations are destroyed after Government Accounting Office (GAO) audit or when 3 years old, whichever is sooner, in accordance with GRS 2–15.a.

3. Union dues and savings allotment authorizations are destroyed after GAO audit or when 3 years old, whichever is sooner, in accordance with GRS 2–15.b.

4. Payroll Change Files consisting of records used to change or correct an individual's pay transaction are destroyed after GAO audit or when 3 years old, whichever is sooner, in accordance with GRS 2–23.a.

5. Tax Files consisting of State and Federal withholding tax exemption certificates, such as Internal Revenue Service (IRS) Form W–4 and the equivalent State form are destroyed 4 years after the form is superseded or obsolete or upon separation of employee in accordance with GRS 2–13.a.

6. Agency copy of employee wages and tax statements, such as IRS Form W–2 and State equivalents, are destroyed when 4 years old in accordance with GRS 2–13.b.

7. Leave record prepared upon transfer or separation of employee maintained in the Payroll office is destroyed when 3 years old in accordance with GRS 2–9.b.

e. Time and attendance source records maintained by Time and Attendance

clerks and certifying officials are destroyed after GAO audit or when 6 years old, whichever is sooner, in accordance with GRS 2–7.

f. Electronic time and attendance input records maintained in the HRMS Time and Labor/Payroll modules are destroyed after GAO audit or when 6 years old, whichever is sooner, in accordance with GRS 2–8.

g. Payroll system reports providing fiscal information on agency payroll consisting of hardcopy and microfiche reports generated by the HRMS Time and Labor/Payroll modules are destroyed when 3 years old, excluding the long-term Employee History Reports, in accordance with GRS 2–22.c.

h. Payroll system reports serving as error reports, ticklers, system operation reports are destroyed when related actions are completed or when no longer needed, not to exceed 2 years, in accordance with GRS 2–22.a.

i. Official notice of levy or garnishment (IRS Form 668A or equivalent), change slip, work papers, correspondence, release and other forms, and other records relating to charge against retirement funds or attachment of salary for payment of back income taxes or other debts of Federal employees are destroyed 3 years after garnishment is terminated in accordance with GRS 2–18.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Payroll and Labor Reporting Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure".

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure".

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from sources, including but not limited to the individual to whom it pertains, the Office of Human Resources and other NRC officials, and other agencies and entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–22

SYSTEM NAME:

Personnel Performance Appraisals—NRC.

SYSTEM LOCATION:

Primary system—Part A: For Headquarters personnel, Office of Human Resources, NRC, 11545 and 11555 Rockville Pike, Rockville, Maryland. For Regional personnel, at Regional Offices I–IV listed in Addendum I, Part 2.

Part B: Office of Human Resources, NRC, 11545 and 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist in whole or in part at the locations listed in Addendum I, except for Part B, which is stored only at Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees other than contractor employees, Commissioners, or temporary personnel employed for less than 1 year.

Part A: Senior Level System employees, GG–1 through GG–15 employees, hourly wage employees, and administratively determined rate employees.

Part B: Senior Executive Service and equivalent employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains performance appraisals, including elements and standards, and other related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4301, *et seq.* (2002); 5 U.S.C. 4311 *et seq.* (1978); 42 U.S.C. 2201(d) (1992), 5841 (1986); and 5 CFR 293.404(a) (2000).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. By agency management and the Office of Human Resources for personnel functions; and

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained in computerized form and in paper copy in locking file cabinets. Computerized form includes information stored in memory, on disk and magnetic tape, and on computer printouts. Summary ratings are stored in a computer system protected by password and user identification codes.

RETRIEVABILITY:

Records are accessed by name. Computer records are accessed by name and social security number.

SAFEGUARDS:

Records are maintained in areas where access is controlled by keycard and is limited to NRC and contractor personnel and to others who need the information to perform their official duties. Access to the two Headquarters buildings in Rockville, Maryland, is controlled by a security guard force. Paper records are maintained in folders in locking file cabinets. Access to computerized records requires use of proper passwords and user identification codes.

RETENTION AND DISPOSAL:

Part A: Records are normally retained for 4 years, then destroyed by incineration in accordance with GRS 1–23.a(4). If an employee separates, the records are forwarded to the next Government agency employer or to the National Personnel Records Center in accordance with GRS 1–23.a(3)(a).

Part B: Retained for 5 years, or until the fifth annual appraisal is completed, whichever is later, then destroyed by incineration in accordance with GRS 1–23.b(3). If the employee separates, the records are forwarded to the next Government agency employer or to the National Personnel Records Center in accordance with GRS 1–23.b(2)(a).

Electronic records: Deleted after the expiration of the retention period authorized for the disposable hard copy file or when no longer needed, whichever is later in accordance with GRS 20–3.a.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Human Resources Services and Operations, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For Regional personnel, at Regional Offices I-IV listed in Addendum I, Part 2.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure".

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure".

RECORD SOURCE CATEGORIES:

Part A: Individual to whom record pertains and employee's supervisors.

Part B: Individual to whom record pertains and employee's supervisors and any documents and sources used to develop critical elements and performance standards for that Senior Executive Service position.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1) and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–23

SYSTEM NAME:

Office of Investigations Indices, Files, and Associated Records—NRC.

SYSTEM LOCATION:

Primary system—Office of Investigations, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities referred to in potential or actual cases and matters of concern to the Office of Investigations and correspondence on subjects directed or referred to the Office of Investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of alphabetical and numerical index files bearing individual names and identifiers, and a numerical index of case numbers. These indices provide access to associated records that are arranged by subject matter, title, or identifying number(s) or letter(s). The system incorporates the records of all Office of Investigations correspondence, cases, memoranda, materials including, but not limited to, investigative reports, confidential source information, correspondence to and from the Office of Investigations, memoranda, fiscal data, legal papers, evidence, exhibits, technical data, investigative data, work papers, and management information data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2035(c), 2201(c) (1992), and 5841(f) (1986).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. A record in the system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency or to an individual or organization if the disclosure is reasonably necessary to elicit information or to obtain the cooperation of a witness or an informant.

b. A record in the system of records relating to a case or matter falling within the purview of the Office of Investigations may be disclosed as routine use to the referring agency, group, organization, or individual.

c. A record in the system of records relating to an individual held in custody pending arraignment, trial, or sentence, or after conviction, may be disclosed as a routine use to a Federal, State, local, or foreign prison, probation, parole, or pardon authority, to any agency or individual concerned with the maintenance, transportation, or release of such an individual.

d. A record in the system of records relating to a case or matter may be disclosed as a routine use to a foreign country under an international treaty or agreement.

e. A record in the system of records may be disclosed as a routine use to a Federal, State, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to the agency.

f. A record in the system of records may be disclosed for any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is manually stored on index cards, in files, and in various ADP storage media.

RETRIEVABILITY:

Information is retrieved from indices by the name or identifier of the individual or entity, and from the files by number(s) and/or letter(s) assigned and appearing in the indices.

SAFEGUARDS:

The index is maintained in approved security containers and locking filing cabinets; and the indices, associated records, disks, tapes, etc., are located in locking metal filing cabinets, safes, storage rooms, or similar secure facilities. All records are under visual control during duty hours and are available only to authorized personnel who have a need to know and whose duties require access to the information.

RETENTION AND DISPOSAL:

a. Investigation Case Files:

1. Significant headquarters official case files (received media attention, were of significant interest to Congress, involved extensive litigation, etc.) are retained by the Government permanently in accordance with NRCS 2–17.2.a. Hold in office for 2 years after closing, then retire to the Office of the Chief Information Officer. Transfer closed case files in 20—year blocks to the National Archives.

2. Other headquarters official case files—Hold in office 2 years after closing, then retire to the Office of the Chief Information Officer. Destroy 20 years after cases are closed in accordance with NRCS 2–17.2.b.

3. Regional office or investigator working files—Retained in regional files for 6 months. At the end 6 months, they are forwarded to headquarters and combined with the headquarters files in accordance with NRCS 2–17.2.c.

b. Index/Indices—Destroy or delete with related records or sooner if no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Investigations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORDS ACCESS PROCEDURES:

Same as "Notification procedure." Information classified under Executive Order 12958 will not be disclosed. Information received in confidence will be maintained under the Commission's Policy Statement on Confidentiality,

Management Directive 8.8, "Management of Allegations" (formerly NRC Manual Chapter 0517), and the procedures covering confidentiality in Chapter 7 of the Office of Investigations Procedures Manual and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to, NRC officials and employees; Federal, State, local, and foreign agencies; and other persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–24

SYSTEM NAME:

Property and Supply System (PASS)—NRC.

SYSTEM LOCATION:

Primary system—Property and Acquisition Oversight Branch, Division of Contracts, Office of Administration, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland;

Duplicate system—Duplicate systems may exist, in whole or in part, at locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees and contractors who have custody of Government property.

CATEGORIES OF RECORDS IN THE SYSTEM:

PASS contains records of NRC sensitive and nonsensitive equipment, which includes but is not limited to, acquisition and depreciated costs, date of acquisition, item description, manufacturer, model number, serial number, stock number, tag number, property custodians, user id, office affiliation, office location, and furniture and supply records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 483(b), (c) (1981) and 487(a) (1994); Executive Order 9397, November 22, 1943.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To maintain an inventory and accountability of Government property;

b. To provide information for clearances of employees who separate from the NRC; and

c. For any of the routine uses specified in paragraph numbers 1, 3, 5, and 6 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in automated system with history files.

RETRIEVABILITY:

Accessed by NRC tag number, user id, organization, office location and stock number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Electronic records are password protected.

RETENTION AND DISPOSAL:

The hardcopy records are retained for up to 3 years after an individual's responsibility for the assigned equipment terminates; then they are destroyed by shredding or in the regular trash disposal system in accordance with GRS 8–3. The major automated records are destroyed when no longer needed, or at the same time as the hardcopy records, whichever is later. Minor automated tracking systems are destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Property and Acquisition Oversight Branch, Division of Contracts, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system is provided by property custodians, contract specialists, and purchase card holders and/or other individuals buying equipment or supplies on behalf of the NRC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–25

SYSTEM NAME:

Oral History Program—NRC.

SYSTEM LOCATION:

Office of the Secretary, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees, former employees, and other individuals who volunteer to be interviewed for the purpose of providing information for a history of the nuclear regulatory program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of interviews on magnetic tape and transcribed scripts of the interviews.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2161(b) (1992).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. For incorporation in publications on the history of the nuclear regulatory program; and

b. To provide information to historians and other researchers.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on magnetic tape and transcripts.

RETRIEVABILITY:

Information is accessed by the name of the interviewee.

SAFEGUARDS:

Maintained in locked file room. Access to and use of these records are limited to those authorized by the Historian or a designee.

RETENTION AND DISPOSAL:

Transcripts are retained permanently in accordance with NRCS 1–2.2.a. Tapes are retained until no longer needed then erased and reused.

SYSTEM MANAGER(S) AND ADDRESS:

NRC Historian, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from interviews granted on a voluntary basis to the Historian and his or her staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–26

SYSTEM NAME:

Full Share Program Records—NRC.

SYSTEM LOCATION:

Office of Administration, Administrative Services Center, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC Federal Government employees who apply for subsidized mass transit costs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records consist of an individual's application to participate in the program which includes, but is not limited to, the applicant's name, home address, office telephone number, social security number, and information regarding employee's commuting schedule and mass transit system(s) used.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 U.S.C. 132 (2001); 31 U.S.C. 3511 (1982); 41 CFR 101–201.104–3(a) (2001); Executive Order (E.O.) 9397, November 22, 1943; E.O. 13150, Federal Workforce Transportation; Qualified Transportation Fringe Benefits, 66 FR 2241 (2001); NRC Management Directive 3.53, Records Management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide statistical reports to the city, county, State, and Federal Government agencies;

b. To provide the basis for program approval and issue monthly subsides; and

c. For the routine uses specified in paragraph numbers 1, 4, 5, and 6 in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders and on computer media.

RETRIEVABILITY:

Accessed by scanned NRC badge and name. Access by social security number when an individuals photo identification badge is scanned to record receipt of their metro check.

SAFEGUARDS:

Paper records and backup disks are maintained in locked file cabinets under visual control of the Administrative Services Center. Computer files are maintained on a hard drive, access to which is password protected. Access to and use of these records are limited to those persons whose official duties require access.

RETENTION AND DISPOSAL:

Records are destroyed when 3 years old in accordance with GRS 9–7. Paper copies are destroyed by shredding. Computer files are destroyed by deleting the record from the file.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Administrative Services Center, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

NRC employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–27

SYSTEM NAME:

Radiation Exposure Information and Reports System (REIRS) Files—NRC.

SYSTEM LOCATION:

Primary system—Science Applications Interr tional Corporation (SAIC), 301 Labor ory Road, Oak Ridge, Tennessee 37830

Duplicate system—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals monitored for radiation exposure while employed by or visiting or temporarily assigned to certain NRC-licensed facilities; individuals who are exposed to radiation or radioactive materials in incidents required to be reported under 10 CFR 20.2201–20.2204 and 20.2206 by all NRC licensees; individuals who may have been exposed to radiation or radioactive materials offsite from a facility, plant installation, or other place of use of licensed materials, or in unrestricted areas, as a result of an incident involving byproduct, source, or special nuclear material.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to an individual's name, sex, social security number, birth date, period of employment, place and period date of exposure; name and license number of individual's employer; name and number of licensee reporting the information; radiation doses or estimates of exposure received during this period, type of radiation, part(s) or organ(s) exposed, and nuclide(s) involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, and 2201(o) (1992); 10 CFR 20.2106, 20.2201–20.2204, and 20.2206 (2002); Executive Order 9397, November 22, 1943.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide data to other Federal and State agencies involved in monitoring and/or evaluating radiation exposure received by individuals as enumerated in the paragraph "Categories of individuals covered by the system";

b. To return data provided by licensee upon request; and

c. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are computerized and maintained in a centralized database management system. Backup tapes of the database are generated and maintained at a secure, off site location for disaster recovery purposes. During the processing and data entry, paper records are temporarily stored in designated business offices that are locked when not in use and are accessible only to authorized personnel. Upon completion of data entry and processing, the paper records are stored in an off site security storage facility accessible only to authorized personnel.

RETRIEVABILITY:

Records are accessed by individual name, social security number, and by licensee name or number.

SAFEGUARDS:

Information maintained at SAIC is accessible only to the Office of Nuclear Regulatory Research, individuals that have been authorized for access by NRC, and SAIC employees that are directly involved in the REIRS project. Reports received and reviewed by the Office of Nuclear Regulatory Research are in file cabinets and bookcases in a secured building. A log is maintained of both telephone and written requests for information.

The data maintained in the REIRS database are protected from unauthorized access by several means. The database server resides in a protected environment with physical security barriers under key-card access control. Accounts authorizing access to the server and databases are maintained by the SAIC REIRS system administrator. In addition, SAIC maintains a computer security "firewall" that further restricts access to the SAIC computer network. Authorization for access must be approved by NRC, SAIC project management, and SAIC computer security. Transmittal of data via the Internet is protected by data encryption.

RETENTION AND DISPOSAL:

a. Original paper documents from which all data are entered into REIRS are destroyed 2 years after input into REIRS in accordance with NRCS 2–21.8.a;

b. Original paper documents from which only selected data are entered into REIRS are retained permanently in accordance with NRCS 2–21.8.b;

c. Log books are retained permanently;

d. Paper documents generated for QC purposes are destroyed 2 years after input into REIRS; and

e. Floppy disks and compact disks are destroyed 2 years after input into REIRS.

SYSTEM MANAGER(S) AND ADDRESS:

REIRS Project Manager, Radiation Protection, Environmental Risk, and Waste Management Branch, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from licensees required to report radiation exposure information; the subject individual; the individual's employer; the person in charge of the facility where the individual has been assigned; or NRC Form 5, Occupational Exposure Record for a Monitoring Period.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–28

SYSTEM NAME:

Recruiting, Examining, and Placement Records—NRC.

SYSTEM LOCATION:

Primary system—For Headquarters personnel, Office of Human Resources, NRC, One and Two White Flint North, 11555 and 11545 Rockville Pike, Rockville, Maryland. For Regional personnel, at each of the Regional Offices listed in Addendum I, Part 2.

Duplicate system—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied for Federal employment with the NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains application information of persons applying to NRC for Federal employment or merit promotion within the NRC, including application for Federal employment (OF–612, resume or similar documents); job descriptions; examination results; supervisory evaluation or performance appraisal forms; reference forms; and related correspondence. These records include applicant information relating to education, training, employment history, earnings, past performance, awards and commendations, citizenship, veteran's preference, birth date, social security number, and home address and telephone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301, 5101, 7201 (1966); 42 U.S.C. 2000e (1991); 42 U.S.C. 2201(d) (1992); Executive Order (E.O.) 9397, November 22, 1943; E.O. 11478, August 8, 1969, as amended by E.O. 11590, April 23, 1971; E.O. 12106, December 28, 1978.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To prepare reports for a variety of internal and external sources including the Office of Personnel Management, Merit Systems Protection Board; EEOC and EEO Investigators; Union representatives and EEO Committee representatives, and

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and on computer media.

RETRIEVABILITY:

Records are indexed by any combination of recruitment action number, applicant name, social security number or identification number.

SAFEGUARDS:

Maintained in lockable file cabinets and in a password protected automated system, NRCareers. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

a. Applications and related correspondence are destroyed when 2 years old in accordance with GRS 1–15;

b. Registers of eligibles are destroyed 5 years after an individual's eligibility terminates in accordance with GRS 1–33.f;

c. Canceled and ineligible applications are returned to the applicant or are destroyed 90 days after date of action in accordance with GRS 1–33.h;

d. Eligible applications are destroyed upon termination of the register unless brought forward to new register or placed on inactive register in accordance with GRS 1–33.k;

e. Electronic records contained in NRCareers are destroyed when 2 years old or when no longer needed, whichever is later; and

f. General correspondence records are destroyed when 3 years old in accordance with GRS 1–3.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Human Resources Services and Operations, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For applicants to the Honor Law Graduate Program—Chief, Program Support Branch, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure." Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies or is derived from information supplied by that individual, individual's current and previous supervisors within and outside NRC, preemployment evaluation data furnished by references and educational institutions whose names were supplied by applicant, and information from other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–29 [Revoked.] NRC–30

SYSTEM NAME:

Reactor Program System (RPS)/ Regulatory Information Tracking System (RITS)—NRC.

SYSTEM LOCATION:

Primary system—Office of the Chief Information Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2, and at the National Institutes of Health Computer Facility, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include, but are not limited to, the number of regular and non-regular hours worked, the nature of the work, work load projections, scheduling, and project assignments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2201(d), 2201(p) (1996).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. As a project management tool in various management records throughout the NRC; and

b. For the routine uses specified in paragraph numbers 5 and 6 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computer files, computer records, on tapes, and disks.

RETRIEVABILITY:

Accessed by name, NRC organization, activity code, docket number, Technical Assignment Control System (TACS) number, planned accomplishment number, and/or date range.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Automated system records are password protected.

RETENTION AND DISPOSAL:

Retained until no longer needed in accordance with GRS 23–8.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Applications Development Division, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it pertains, individual's supervisors, and NRC management.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–31

SYSTEM NAME:

Correspondence and Records, Office of the Secretary—NRC.

SYSTEM LOCATION:

Primary system—Office of the Secretary, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in whole or in part at the

locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The majority of records in this system consist of pre April 2000 internal NRC memoranda between NRC staff and the Chairman, a Commissioner, or the Secretary in the ordinary course of carrying out the official business of the NRC. Records also include correspondence from Members of Congress and their staffs including constituent referrals and White House correspondence referred to the NRC for response as well as correspondence from representatives of industries and other groups affected by NRC regulations, and the general public.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information concerning all subjects which directly or indirectly relate to the fulfillment of NRC's statutory mandate. Records include information dealing with the policy, legal, administrative, and adjudicatory functions of the NRC. Correspondence may identify an individual's social security number, birth date, address, and employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 (1968).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information in these records may be used for any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders, on computer media, and on microfiche.

RETRIEVABILITY:

Records may be accessed by subject matter headings, author's last name, addressee's last name, activity number, date of document, and date of receipt of document or file location.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Classified materials are maintained in approved safes, and unclassified records are maintained in file cabinets and rolling file equipment. Computer files are password protected.

RETENTION AND DISPOSAL:

Paper records are retained permanently in accordance with NRCS 1–2.2.a and the related computer indexes are retained permanently in accordance with NRCS 2–25.4.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant for Correspondence and Records, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure." Some information is classified under Executive Order 12958 and will not be disclosed.

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from communications to the Commission and responses thereto.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–32

SYSTEM NAME:

Office of the Chief Financial Officer Financial Transactions and Debt Collection Management Records—NRC.

SYSTEM LOCATION:

Primary system—Office of the Chief Financial Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2. Other NRC systems of records contain payment and/or collection transaction records and background information that may duplicate some of the records in this system. These other systems include, but are not limited to:

NRC–5, Contracts Records Files—NRC;

NRC–7, Telephone Call Detail Records—NRC;

NRC–10, Freedom of Information Act (FOIA) and Privacy Act (PA) Requests—NRC;

NRC–18, Office of the Inspector General (OIG) Investigative Records—NRC;

NRC–19, Official Personnel Training Records Files—NRC;

NRC–20, Official Travel Records—NRC;

NRC–21, Payroll Accounting Records—NRC;

NRC–24, Property and Supply System (PASS)—NRC; and

NRC–41, Tort Claims and Personal Property Claims—NRC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals the NRC owes/owed money to or who receive/received a payment from NRC and those who owe/owed money to the United States. Individuals receiving payments include, but are not limited to, current and former employees, contractors, consultants, vendors, and others who travel or perform certain services for NRC. Individuals owing money include, but are not limited to, those who have received goods or services from NRC for which there is a charge or fee (NRC licensees, applicants for NRC licenses, Freedom of Information Act requesters, etc.) and those who have been overpaid and owe NRC a refund (current and former employees, contractors, consultants, vendors, etc.).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system includes, but is not limited to, names, addresses, telephone numbers, Social Security Numbers (SSN), Taxpayer Identification Numbers (TIN), Individual Taxpayer Identification Numbers (ITIN), fee categories, application and license numbers, contract numbers, vendor numbers, amounts owed, background and supporting documentation, correspondence concerning claims and debts, credit reports, and billing and payment histories. The overall agency accounting system contains data and information integrating accounting functions such as general ledger, funds control, travel, accounts receivable, accounts payable, equipment, and appropriation of funds. Although this system of records contains information on corporations and other business entities, only those records that contain information about individuals that is retrieved by the individual's name or other personal identifier are subject to the Privacy Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a(b)(12) (1999); 5 U.S.C. 5514 (1996); 15 U.S.C. 1681a(f) (1970); 26 U.S.C. 6103(m)(2) (2002); 31 U.S.C. 37, subchapters I and II; 31 U.S.C. 3701(a)(3) (2001); 31 U.S.C. 3711 (1996); 31 U.S.C. 3716 (1999); 31 U.S.C. 3717 (1996); 31 U.S.C. 3718 (1997); 31 U.S.C. 3720A (1996); 42 U.S.C. 2201 (1992); 42 U.S.C. 5841 (1996); Cash Management Improvement Act Amendments of 1992 (Pub. L. 102–589); Debt Collection Improvement Act of 1996 (Pub. L. 104–134); 31 CFR Chapter IX, Parts 900–904; 10 CFR parts 15 (2002), 16 (1991), 170 (2001), 171 (2001); Executive Order 9397, November 22, 1943; section 201 of Executive Order 11222.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To debt collection contractors (31 U.S.C. 3718) or to other Federal agencies such as the Department of the Treasury (Treasury) for the purpose of collecting and reporting on delinquent debts as authorized by the Debt Collection Act of 1982 or the Debt Collection Improvement Act (DCIA) of 1996;

b. To Treasury; the Defense Manpower Data Center, Department of Defense; the United States Postal Service; government corporations; or any other Federal, State, or local agency to conduct an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, to identify and locate individuals, including Federal employees, who are delinquent in their repayment of certain debts owed to the U.S. Government, including those incurred under certain programs or services administered by the NRC, in order to collect debts under common law or under the provisions of the Debt Collection Act of 1982 or the Debt Collection Improvement Act of 1996 which include by voluntary repayment, administrative or salary offset, and referral to debt collection contractors.

c. To the Department of Justice, United States Attorney, Treasury, or other Federal agencies for further collection action on any delinquent account when circumstances warrant.

d. To credit reporting agencies/credit bureaus for the purpose of either adding to a credit history file or obtaining a credit history file or comparable credit information for use in the administration of debt collection. As authorized by the DCIA, NRC may report current (not delinquent) as well as delinquent consumer and commercial debt to these entities in order to aid in the collection of debts, typically by providing an incentive to the person to repay the debt timely. Revisions to the Federal Claims Collection Standards (FCCS) published in the **Federal Register** on November 22, 2000 (65 FR 70404), direct agencies to report information on delinquent debts to the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS). NRC will report this information to CAIVRS if this requirement is contained in the final rule amending the FCCS.

e. To any Federal agency where the debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect a debt owed the Federal Government on NRC's behalf by counseling the debtor for voluntary repayment or by initiating administrative or salary offset procedures, or other authorized debt collection methods under the provisions of the Debt Collection Act of 1982 or the Debt Collection Improvement Act of 1996. Under the DCIA, NRC may garnish non-Federal wages of certain delinquent debtors so long as required due process procedures are followed. In these instances, NRC's notice to the employer will disclose only the information that may be necessary for the employer to comply with the withholding order.

f. To the Internal Revenue Service (IRS) by computer matching to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by NRC against the taxpayer under 26 U.S.C. 6103(m)(2) and under 31 U.S.C. 3711, 3717, and 3718 or common law. Redisclosure of a mailing address obtained from the IRS may be made only for debt collection purposes, including to a debt collection agent to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982 or the Debt Collection Improvement Act of 1996, except that redisclosure of a mailing address to a reporting agency is for the limited purpose of obtaining a credit report on the particular taxpayer. Any mailing address information obtained from the IRS will not be used or shared for any other NRC purpose or disclosed by NRC to another Federal, State, or local agency which seeks to locate the same taxpayer for its own debt collection purposes.

g. To refer legally enforceable debts to the IRS or to Treasury's Debt Management Services to be offset against the debtor's tax refunds under the Federal Tax Refund Offset Program.

h. To prepare W–2, 1099, or other forms or electronic submittals, to forward to the IRS and applicable State and local governments for tax reporting purposes. Under the provisions of the DCIA, NRC is permitted to provide Treasury with Form 1099–C information on discharged debts so that Treasury may file the form on NRC's behalf with the IRS. W–2 and 1099 Forms contain information on items to be considered as income to an individual, including certain travel related payments to employees, payments made to persons not treated as employees (*e.g.*, fees to consultants and experts), and amounts written-off as legally or administratively uncollectible, in whole or in part.

i. To banks enrolled in the Treasury Credit Card Network to collect a payment or debt when the individual has given his or her credit card number for this purpose.

j. To another Federal agency that has asked the NRC to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States. Disclosure under this routine use is limited to name, address, SSN, TIN, ITIN, and other information necessary to identify the individual; information about the money payable to or held for the individual; and other information concerning the administrative offset.

k. To Treasury or other Federal agencies with whom NRC has entered into an agreement establishing the terms and conditions for debt collection cross servicing operations on behalf of the NRC to satisfy, in whole or in part, debts owed to the U.S. Government. Cross servicing includes the possible use of all debt collection tools such as administrative offset, tax refund offset, referral to debt collection contractors, and referral to the Department of Justice. The DCIA requires agencies to transfer to Treasury or Treasury-designated Debt Collection Centers for cross servicing certain nontax debt over 180 days delinquent. Treasury has the authority to act in the Federal Government's best interest to service, collect, compromise, suspend, or terminate collection action under existing laws under which the debts arise.

l. Information on past due, legally enforceable nontax debts more than 180 days delinquent will be referred to Treasury for the purpose of locating the debtor and/or effecting administrative offset against monies payable by the government to the debtor, or held by the

government for the debtor under the DCIA's mandatory, government-wide Treasury Offset Program (TOP). Under TOP, Treasury maintains a database of all qualified delinquent nontax debts, and works with agencies to match by computer their payments against the delinquent debtor database in order to divert payments to pay the delinquent debt. Treasury has the authority to waive the computer matching requirement for NRC and other agencies upon written certification that administrative due process notice requirements have been complied with.

m. For debt collection purposes, NRC may publish or otherwise publicly disseminate information regarding the identity of delinquent nontax debtors and the existence of the nontax debts under the provisions of the Debt Collection Improvement Act of 1996.

n. To the Department of Labor (DOL) and the Department of Health and Human Services (HHS) to conduct an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, to match NRC's debtor records with records of DOL and HHS to obtain names, name controls, names of employers, addresses, dates of birth, and TINs. The DCIA requires all Federal agencies to obtain taxpayer identification numbers from each individual or entity doing business with the agency, including applicants and recipients of licenses, grants, or benefit payments; contractors; and entities and individuals owing fines, fees, or penalties to the agency. NRC will use TINs in collecting and reporting any delinquent amounts resulting from the activity and in making payments.

o. If NRC decides or is required to sell a delinquent nontax debt under 31 U.S.C. 3711(i), information in this system of records may be disclosed to purchasers, potential purchasers, and contractors engaged to assist in the sale or to obtain information necessary for potential purchasers to formulate bids and information necessary for purchasers to pursue collection remedies.

p. If NRC has current and delinquent collateralized nontax debts under 31 U.S.C. 3711(i)(4)(A), certain information in this system of records on its portfolio of loans, notes and guarantees, and other collateralized debts will be reported to Congress based on standards developed by the Office of Management and Budget, in consultation with Treasury.

q. To Treasury in order to request a payment to individuals owed money by the NRC.

r. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

s. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

DISCLOSURES PURSUANT TO 5 U.S.C. 552A(B)(12):

Disclosures of information to a consumer reporting agency are not considered a routine use of records. Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored on paper and microfiche, and in computer media.

RETRIEVABILITY:

Information is retrieved a number of ways, including by name, SSN, TIN, license or application number, contract or purchase order number, invoice number, voucher number, and vendor code.

SAFEGUARDS:

Records in the primary system are maintained in a building where access is controlled by a security guard force. Records are kept in lockable file rooms or at user's workstations in an area where access is controlled by keycard and is limited to NRC and contractor personnel who need the records to perform their official duties. The records are under visual control during duty hours. Access to automated data requires use of proper password and user identification codes by NRC or contractor personnel.

RETENTION AND DISPOSAL:

Paper records are destroyed when six years and three months old in accordance with GRS 6–1.a except that administrative claims files, for which collection action is terminated without extension, are destroyed when ten years and three months old in accordance with GRS 6–10.b. Computer files are deleted after the expiration of the retention period authorized in accordance with GRS for the disposable hard copy file or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Accounting and Finance, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORDS ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Record source categories include, but are not limited to, individuals covered by the system, their attorneys, or other representatives; NRC; collection agencies or contractors; employing agencies of debtors; and Federal, State and local agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–33

SYSTEM NAME:

Special Inquiry File—NRC.

SYSTEM LOCATION:

Primary system—Special Inquiry Group, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals possessing information regarding or having knowledge of matters of potential or actual concern to the Commission in connection with the investigation of an accident or incident at a nuclear power plant or other nuclear facility, or an incident involving nuclear materials or an allegation regarding the public health and safety related to the NRC's mission responsibilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an alphabetical index file bearing individual names. The index provides access to associated records which are arranged by subject matter, title, or identifying number(s) and/or letter(s). The system incorporates the records of all Commission correspondence, memoranda, audit reports and data, interviews, questionnaires, legal papers, exhibits, investigative reports and data, and other material relating to or developed as a result of the inquiry, study, or investigation of an accident or incident.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2201(c), (i) and (o) (1992).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide information relating to an item which has been referred to the Commission or Special Inquiry Group for investigation by an agency, group, organization, or individual and may be disclosed as a routine use to notify the referring agency, group, organization, or individual of the status of the matter or of any decision or determination that has been made;

b. To disclose a record as a routine use to a foreign country under an international treaty or convention entered into and ratified by the United States;

c. To provide records relating to the integrity and efficiency of the Commission's operations and management and may be disseminated outside the Commission as part of the Commission's responsibility to inform the Congress and the public about Commission operations; and

d. For any of the routine uses specified in paragraph numbers 1, 2, 4, 5, and 6 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on microfiche, disks, tapes, and paper in file folders. Documents are maintained in secured vault facilities.

RETRIEVABILITY:

Accessed by name (author or recipient), corporate source, title of document, subject matter, or other identifying document or control number.

SAFEGUARDS:

These records are located in locking metal filing cabinets or safes in a secured facility and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Paper records relating to subject files are retained permanently in accordance with NRCS 1–2.2.a. Paper records relating to case files are retained permanently in accordance with NRCS 2–20.9.a. Alphabetical indexes are retained permanently in accordance with NRCS 1–2.2.a. Microfiche records are retained permanently in accordance with NRCS 2–20.9.a.

SYSTEM MANAGER(S) AND ADDRESS:

Records Manager, Special Inquiry Group, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure." Information classified under Executive Order 12958 will not be disclosed. Information received in confidence will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to, NRC officials and employees; Federal, State, local, and foreign agencies; NRC licensees; nuclear reactor vendors and architectural engineering firms; other organizations or persons knowledgeable about the incident or activity under investigation; and relevant NRC records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–34 [Revoked]

NRC–35

SYSTEM NAME:

Drug Testing Program Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Facilities and Security, Office of Administration, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2; and at contractor testing laboratories at collection/evaluation facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons including NRC employees, applicants, consultants, licensees, and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information regarding the drug testing program; requests for and results of initial, confirmatory and follow-up testing, if appropriate; additional information supplied by NRC employees, employment applicants, consultants, licensees, or contractors in challenge to positive test results; and written statements or medical evaluations of attending physicians and/or information regarding prescription or nonprescription drugs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 7301 (note) (1998); 42 U.S.C. 290dd–2 (1998); Executive Order 12564, September 15, 1986; Pub. L. 100–71, Title V Sec. 503 (July 11, 1987); Pub. L. 100–440, Title VI Sec. 628 (September 22, 1988); Executive Order 9397, November 22, 1943.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used by the Division of Facilities and Security and NRC management:

a. To identify substance abusers within the agency;

b. To initiate counseling and/or rehabilitation programs;

c. To take personnel actions;

d. To take personnel security actions; and

e. For statistical purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, on index cards, and on computer media. Specimens are maintained in appropriate environments.

RETRIEVABILITY:

Records are indexed and accessed by name, social security number, testing position number, specimen number,

drug testing laboratory accession number, or a combination thereof.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access, with records maintained and used with the highest regard for personal privacy. Records in the Division of Facilities and Security are stored in an approved security container under the immediate control of the Director, Division of Facilities and Security, or designee. Records at other NRC locations and in laboratory/collection/evaluation facilities will be stored under appropriate security measures so that access is limited and controlled.

RETENTION AND DISPOSAL:

Employee acknowledgment of notice forms are destroyed when employee separates from testing designated position in accordance with GRS 1–36.b. Selection and scheduling records, chain of custody records, and test results are destroyed when three years old in accordance with GRS 1–36.c, except for records used in disciplinary actions which are destroyed four years after the case is closed. Collection and handling record books are destroyed three years after date of last entry in accordance with GRS 1–36.d. Electronic records of the Employee Drug Testing System are deleted when no longer needed in accordance with GRS 20–3.b. Index cards are destroyed with related records or sooner if no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

NRC employees, employment applicants, consultants, and contractors who have been identified for drug testing who have been tested; physicians making statements regarding medical evaluations and/or authorized prescriptions for drugs; NRC contractors for processing including, but not limited to, specimen collection, laboratories for analysis, and medical evaluations; and NRC staff administering the drug testing program to ensure the achievement of a drug-free workplace.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–36

SYSTEM NAME:

Employee Locator Records Files—NRC.

SYSTEM LOCATION:

Primary system—Part 1: Office of Human Resources, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Part 2: Office of the Chief Information Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Part 3: Office of Administration, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Part 4: Office of the Chief Financial Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—A duplicate system exists, in whole or in part, in the Office of Nuclear Security and Incident Response, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system— Duplicate systems may exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees, contractors, and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include, but are not limited to, an individual's name, address (home and business), telephone number (home, business, and pager), social security number, organization, persons to be notified in case of emergency, and other related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 (1968); Executive Order 9397, November 22, 1943.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used for:

a. Notification (of individual identified by employee) in case of an emergency;

b. Notification of employee regarding matters of official business;

c. Verification of accuracy of and updates of payroll/personnel system files on employee home address and zip code;

d. Conducting statistical studies, and

e. The routine use specified in paragraph number 6 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained within computerized systems and on hardcopy listings.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Electronic records are password protected. Paper copies of records are maintained in locked files. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are destroyed when 6 months by shredding in accordance with GRS 1–17.c.

SYSTEM MANAGER(S) AND ADDRESS:

Part 1: Director, Office of Human Resources; Part 2: Chief Information Officer; Part 3: Director, Office of Administration; Part 4: Chief Financial Officer, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, NRC Form 15, "Employee Locator Notification", general personnel records, and other related records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–37

SYSTEM NAME:

Information Security Files and Associated Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Nuclear Security, Office of Nuclear Security and Incident Response, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons including present or former NRC employees, contractors, consultants, licensees, and other cleared persons.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information regarding:

a. Personnel who are authorized access to specified levels, categories and types of information, the approving authority, and related documents; and

b. Names of individuals who classify and/or declassify documents (*e.g.*, for the protection of information relating to the U.S. national defense and foreign relations) as well as information identifying the document.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C 2165 (1999) and 2201(i) (1992); Executive Order 12958, April 17, 1995.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system may be used for any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained primarily in file folders, on index cards, and on computer media.

RETRIEVABILITY:

Indexed and accessed by name and/or assigned number.

SAFEGUARDS:

Maintained in locked buildings, containers, or security areas under guard and/or alarm protection, as appropriate. Records are processed only on systems approved for processing classified information or accessible through password protected systems for unclassified information. The classified systems are stand alone systems located within secure facilities or with removable hard drives that are either stored in locked security containers or in alarmed vaults cleared for open storage of TOP SECRET information.

RETENTION AND DISPOSAL:

a. Classified documents, administrative correspondence, document receipts, destruction certificates, classified document inventories, and related records—retained 2 years, then destroyed by shredding in accordance with GRS 18–1;

b. Top Secret Accounting and Control files: Registers—retained 5 years after documents shown on form are downgraded, transferred, or destroyed by shredding; Accompanying forms—retained until related document is downgraded, transferred, or destroyed by shredding in accordance with GRS 18–5.a and 18–5.b; and

c. Automated records are updated monthly and quarterly, and are maintained until no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure." Some information is classified under Executive Order 12958 and will not be disclosed. Other information has been received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Persons, including NRC employees, contractors, consultants, and licensees, as well as information furnished by other Government agencies or their contractors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1) and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of NRC regulations.

NRC–38

SYSTEM NAME:

Mailing Lists—NRC.

SYSTEM LOCATION:

Primary system—Reproduction and Distribution Services Branch, Web, Publishing, and Distribution Services Division, Office of the Chief Information Officer, NRC, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, including NRC staff, with an interest in receiving information from the NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mailing lists include primarily the individual's name and address. Some lists also include title, occupation, and institutional affiliation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 (1968).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. For distribution of documents to persons and organizations listed on the mailing list; and

b. For the routine use specified in paragraph number 6 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer media and paper.

RETRIEVABILITY:

Records are accessed by company name, individual name, and file code identification number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Automated records are password protected.

RETENTION AND DISPOSAL:

Documents requesting changes are destroyed through the regular trash disposal system after appropriate revision of the mailing list or after 3 months in accordance with GRS 13.4.a, whichever is sooner; lists are retained until cancelled or revised, then destroyed through the regular trash disposal system in accordance with GRS 13.4.b. Computer files are deleted after cancelled or revised or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Reproduction and Distribution Services Branch, Web, Publishing and Distribution Services Division, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

NRC staff, NRC licensees, and individuals expressing an interest in NRC activities and publications.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–39

SYSTEM NAME:

Personnel Security Files and Associated Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Facilities and Security, Office of Administration, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2; and the Department of Energy, Germantown, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons including NRC employees, employment applicants, consultants, contractors, and licensees; other Government agency personnel, other persons who have been considered for a personnel clearance, special nuclear material access authorization, unescorted access to NRC buildings or nuclear power plants, NRC building access, access to Federal automated information systems or data, or participants in the criminal history program; aliens who visit NRC's facilities; and actual or suspected violators of laws administered by NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information about individuals, which include, but are not limited to, their name(s), address, date and place of birth, social security number, identifying information, citizenship, residence history, employment history, military history, financial history, foreign travel, foreign contacts, education, spouse/cohabitant and relatives, personal references, organizational membership, medical, fingerprint cards, criminal record, and security clearance history. These records also contain copies of personnel security investigative reports from other Federal agencies, summaries of investigative reports, results of Federal agency indices checks, records necessary for participation in the criminal history program, reports of personnel security interviews, clearance actions information (*e.g.*, grants and terminations), access approval/disapproval actions related to NRC building access or unescorted access to nuclear plants, or access to Federal automated information systems or data, violations of laws, reports of security infraction, and other related personnel security processing documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 318 (1988); 42 U.S.C 2165 (1999) and 2201(i) (1992); Executive Order (E.O.) 9397, November 22, 1943; E.O. 10450, April 27, 1953; E.O. 12958, April 17, 1995; E.O. 12968, August 2, 1995; E.O. 10865, February 20, 1960; 10 CFR part 11 (2000); Pub. L. 99–399 (100 Stat. 876) August 27, 1986; OMB Circular No. A–130, November 30, 2000; 5 CFR parts 731 and 732 and authorities cited therein; Pub. L. 99–500 (100 Stat. 1783–335) October 18, 1986.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used by the Division of Facilities and Security and on a need-to-know basis by appropriate NRC officials, Hearing Examiners, Personnel Security Review Panel members, Office of Personnel Management, Central Intelligence Agency, and other Federal agencies:

a. To determine clearance or access authorization eligibility;

b. To determine eligibility for access to NRC buildings or access to Federal automated information systems or data;

c. To certify clearance or access authorization;

d. To maintain the NRC personnel security program;

e. To provide licensees criminal history information needed for their unescorted access or access to safeguard information determinations; and

f. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained primarily in file folders, on tape, computer media, and microfiche.

RETRIEVABILITY:

Indexed and accessed by name, social security number, docket number, or a combination thereof.

SAFEGUARDS:

File folders and computer printouts are maintained in security or controlled areas under guard and/or alarm protection, as appropriate. Automated records are password protected.

RETENTION AND DISPOSAL:

a. Personnel security clearance/access authorization files—destroy case files upon notification of death or 5 years from date of termination of access authorization or final administrative action in accordance with GRS 18–22.a;

b. Request for Visit or Access Approval—maximum security areas retained 5 years after final entry or after date of document, as appropriate, in accordance with GRS 18–17.a; Other areas: Retained 2 years after final entry or after date of document, then destroyed by approved method of destruction in accordance with GRS 18–17.b;

c. Other security clearance/access authorization administration files—retained 2 years after final entry or after date of document, then destroyed by approved method of destruction in accordance with GRS 18–8; and

d. Criminal history record computer files are deleted when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure." Some information is classified under Executive Order 12958 and will not be disclosed. Other information has been received in confidence and will not be disclosed to the extent the disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Persons including NRC applicants, employees, contractors, consultants, licensees, visitors and others, as well as information furnished by other Government agencies or their contractors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

NRC–40

SYSTEM NAME:

Facility Security Access Control Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Facilities and Security, Office of Administration, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in whole or in part, at the locations listed in Addendum I, Part 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons including current and former NRC employees, consultants, contractors, other Government agency personnel, and approved visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information regarding: (1) NRC personal identification badges issued for continued access to NRC-controlled space; and (2) records regarding visitors to NRC. These records include, but are not limited to, an individual's name, social security number, electronic image, badge number, citizenship, employer, purpose of visit, person visited, date and time of visit, and other information contained on government issued credentials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2165 (1999) and 2201 (i), (k) and (p) (1992); 5 CFR part 2634; Executive Order (E.O.) 9397, November 22, 1943; E.O. 12958, April 20, 1995.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used to control access to NRC classified information and to NRC spaces by human or electronic means.

Information (identification badge) may also be used for tracking applications within the NRC for other than security access purposes.

The electronic image used for the NRC employee personal identification badge may be used for other than security purposes only with the written consent of the subject individual.

In addition to the disclosures permitted under subsection (b) of the Privacy Act, NRC may disclose information and digital image contained in a record in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper forms in logs and files, and on computer media.

RETRIEVABILITY:

Information is indexed and accessed by individual's name, social security number, identification badge number, employer's name, date of visit, or sponsor's name.

SAFEGUARDS:

All records are maintained in NRC-controlled space that is secured after normal duty hours or in security areas under guard presence. Automated records are protected by password.

RETENTION AND DISPOSAL:

a. Records and forms related to NRC identification badges are retained in files and destroyed when superseded or obsolete in accordance with GRS 18–23.

b. Manual visitor logs are retained in cabinets and destroyed 2 years after date of entry in accordance with GRS 18–17.b.

c. The automated access control system reflects access to controlled areas and employee/contractor/visitor identification information. These records are disposed of after the retention period for those records identified in a. and b., or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Persons including NRC employees, contractors, consultants, employees of other Government agencies, and visitors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–41

SYSTEM NAME:

Tort Claims and Personal Property Claims—NRC.

SYSTEM LOCATION:

Primary system—Office of the General Counsel, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, in the Office of the Chief Financial Officer (OCFO), NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland,

and at the locations listed in Addendum I, Parts 1 and 2. Other NRC systems of records, including but not limited to, NRC–18, "Office of the Inspector General (OIG) Investigative Records—NRC," and NRC–32, "Office of the Chief Financial Officer Financial Transactions and Debt Collection Management Records—NRC," may contain some of the information in this system of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed claims with NRC under the Federal Tort Claims Act or the Military Personnel and Civilian Employees' Claims Act and individuals who have matters pending before the NRC that may result in a claim being filed.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information relating to loss or damage to property and/or personal injury or death in which the U.S. Government may be liable. This information includes, but is not limited to, the individual's name, home address and phone number, work address and phone number, claim forms and supporting documentation, police reports, witness statements, medical records, insurance information, investigative reports, repair/replacement receipts and estimates, litigation documents, court decisions, and other information necessary for the evaluation and settlement of claims and pre-claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.* (2000); The Military Personnel and Civilian Employees' Claims Act of 1964, as amended, 31 U.S.C. 3721 (1996).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, NRC may disclose information contained in a record in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To third parties, including claimants' attorneys, insurance companies, witnesses, potential witnesses, local police authorities where an accident occurs, and others who may have knowledge of the matter to the extent necessary to obtain information that will be used to evaluate, settle, refer, pay, and/or adjudicate claims.

b. To the Department of Justice (DOJ) when the matter comes within their jurisdiction, such as to coordinate litigation or when NRC's authority is limited and DOJ advice or approval is required before NRC can award, adjust, compromise, or settle certain claims.

c. To the appropriate Federal agency or agencies when a claim has been incorrectly filed with NRC or when more than one agency is involved and NRC makes agreements with the other agencies as to which one will investigate the claim.

d. The Department of the Treasury to request payment of an award, compromise, or settlement of a claim.

e. Information contained in litigation records is public to the extent that the documents have been filed in a court or public administrative proceeding, unless the court or other adjudicative body has ordered otherwise. This public information, including information concerning the nature, status, and disposition of the proceeding, may be disclosed to any person, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

f. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

g. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

DISCLOSURE PURSUANT TO 5 U.S.C. 552A(B)(12):

Disclosure of information to a consumer reporting agency is not considered a routine use of records. Disclosures may be made from this system of records to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system of records is stored on paper, in log books, and on computer media.

RETRIEVABILITY:

Information is indexed and accessed by the claimant's name and/or claim number.

SAFEGUARDS:

The paper records and log books are stored in locked file cabinets or locked file rooms and access is restricted to those agency personnel whose official duties and responsibilities require access. Automated records are protected by password.

RETENTION AND DISPOSAL:

a. Tort claims and employee claims are destroyed six years and three months after payment or disallowance in accordance with GRS 6–10.a.

b. Claims affected by a court order or subject to litigation are destroyed after the related action is concluded, or when six years and three months old, whichever is later, in accordance with GRS 10–6.c.

c. Log books are destroyed or deleted when no longer needed in accordance with GRS 23–8.

d. Copies of memoranda contained on electronic media are deleted when no longer needed in accordance with GRS 20–13.

e. Copies of tort claims and personal property claims that become part of NRC's Litigation Case File are retained by the Government permanently in accordance with NRCS 2–13.4.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant General Counsel for Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information is obtained from a number of sources, including but not limited to, claimants, NRC employees involved in the incident, witnesses or others having knowledge of the matter, police reports, medical reports, investigative reports, insurance companies, and attorneys.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–42

SYSTEM NAME:

Skills Assessment and Employee Profile Records—NRC.

SYSTEM LOCATION:

Primary system—Office of Human Resources, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2. This system of records may contain some of the information contained in other system of records. These other systems may include, but are not limited to:

NRC–11, General Personnel Records (Official Personnel Folder and Related Records)—NRC; NRC–19, Official Personnel Training Records Files—NRC;

CATEGORIES OF INDIVIDUALS COVERED:

Current, prospective, and former NRC employees, experts, consultants, contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Specific information maintained on individuals includes individual skills assessments that identify the knowledge and skills possessed by the individual and the level of skills possessed, and may include a skills profile containing, but not limited to, their name; service computation date; series and grade; education; training; work and skills experience; special qualifications; licenses and certificates held; career interests, goals and objectives; and availability for travel or geographic relocation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3396 (1991); 5 U.S.C. 4103 (1994); 42 U.S.C. 2201 (1992); Executive Order (E.O.) 9397, November 22, 1943; E.O. 11348, February 20, 1967, as amended by E.O. 12107, December 28, 1978; Pub. L. 104–106, National Defense Authorization Act for Fiscal Year 1996, sec. 5125, Agency Chief Information Officer, February 10, 1996.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records will be to assess the knowledge and skills needed to perform the functions assigned to individuals and their organizations.

Information in the system may be used by the NRC to assess the skills of the staff to develop an organizational training plan/program; to prepare individual training plans; to develop recruitment plans; and to assign personnel. Other offices may maintain similar kinds of records relative to their specific duties, functions, and responsibilities.

In addition to the disclosures permitted under subsection (b) of the Privacy Act, which includes disclosure to other NRC employees who have a need for the information in the performance of their duties, NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the information was collected under the following routine uses:

a. To employees and contractors of other Federal, State, local, and foreign agencies or to private entities in connection with joint projects, working groups, or other cooperative efforts in which the NRC is participating.

b. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

c. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSITION OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained in computerized form (Strategic Workforce Planning System) and in paper copy. Computerized form includes information stored in memory, on disk, and on computer printouts.

RETRIEVABILITY:

Information may be retrieved in a number of ways, including but not limited to the individual's name, office, or skill level; various skills, knowledge, training, education, or work experience; or subject or key words developed for the system.

SAFEGUARDS:

Records are maintained in buildings where access is controlled by a security guard force. Records are maintained in areas where access is controlled by keycard and is limited to NRC and contractor personnel and to others who need the records to perform their official duties. Access to computerized records requires use of proper password and user identification codes.

RETENTION AND DISPOSAL:

System input records are destroyed after the information is converted to electronic medium and verified in accordance with GRS 20–2.a and b. System data maintained electronically are currently unscheduled and must be retained until a records disposition schedule for this information is approved by the National Archives and Records Administration. Hard copy records documenting skills requirements, assessments, strategies, and plans for meeting the requirements are currently unscheduled and must be retained until a records disposition schedule for this information is approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Workforce Planning and Information Management, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure".

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure".

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from a number of sources, including but not limited to the individual to whom it pertains, information derived from that supplied by the individual, other systems of records, supervisors and other NRC officials, contractors, and other agencies or entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–43

SYSTEM NAME:

Employee Health Center Records—NRC.

SYSTEM LOCATION:

Primary system—NRC Employee Health Center, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in whole or in part, at the NRC's regional and other offices listed in Addendum I, Parts 1 and 2, and/or at any other health care facilities operating

under a contract or agreement with NRC for health-related services. This system may contain some of the information maintained in other systems of records, including NRC–11, "General Personnel Records (Official Personnel Folder and Related Records)—NRC," NRC–17, "Occupational Injuries and Illness Records—NRC," and NRC–44, "Employee Fitness Center Records—NRC."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees, consultants, contractors, other Government agency personnel, and anyone on NRC premises who requires emergency or first-aid treatment.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is comprised of records developed as a result of voluntary employee use of health services provided by the Health Center, and of emergency health services rendered by Health Center staff to individuals for injuries and illnesses suffered while on NRC premises. Specific information maintained on individuals may include, but is not limited to, their name, date of birth, and Social Security number; medical history and other biographical data; test reports and medical diagnoses based on employee health maintenance physical examinations or health screening programs (tests for single medical conditions or diseases); history of complaint, diagnosis, and treatment of injuries and illness rendered by the Health Center staff; immunization records; records of administration by Health Center staff of medications prescribed by personal physicians; medical consultation records; statistical records; daily log of patients; and medical documentation such as personal physician correspondence, test results submitted to the Health Center staff by the employee; and occupational health records. Forms used to obtain or provide information include, but are not limited to, the following:

(1) Employee Health Record.
(2) Immunization/Health Profile.
(3) Problem List.
(4) Progress Notes.
(5) Consent for Release of Medical Information.
(6) Against Medical Advice (AMA) Release.
(7) Patient Treatment Record.
(8) Injection Record.
(9) Allergy.
(10) Respirator Certification Form.
(11) Pre-travel Questionnaire.
(12) Flu Vaccine Form.
(13) Pneumonia Vaccine Form.
(14) TB Test Form.
(15) Office of Workers' Compensation Programs (OWCP) Occupational Injury Form.
(16) Medical History.
(17) Medical Examination.
(18) Prostate Symptoms Questionnaire.
(19) Proctosigmoidoscopy Form.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901 (1996); Executive Order 9397, November 22, 1943.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To refer information required by applicable law to be disclosed to a Federal, State, or local public health service agency concerning individuals who have contracted certain communicable diseases or conditions in an effort to prevent further outbreak of the disease or condition.

b. To disclose information to the appropriate Federal, State, or local agency responsible for investigation of an accident, disease, medical condition, or injury as required by pertinent legal authority.

c. To disclose information to the Office of Workers' Compensation Programs in connection with a claim for benefits filed by an employee.

d. To Health Center staff and medical personnel under a contract or agreement with NRC who need the information in order to schedule, conduct, evaluate, or follow up on physical examinations, tests, emergency treatments, or other medical and health care services.

e. To refer information to private physicians designated by the individual when requested in writing.

f. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

g. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on microfiche, on computer media, and on file cards, logs, x-rays, and other medical reports and forms.

RETRIEVABILITY:

Records are retrieved by the individual's name, date of birth, and Social Security number, or any combination of those identifiers.

SAFEGUARDS:

Records in the primary system are maintained in a building where access is controlled by a security guard force and entry to each floor is controlled by keycard. Records in the system are maintained in lockable file cabinets with access limited to agency or contractor personnel whose duties require access. The records are under visual control during duty hours. Access to automated data requires use of proper password and user identification codes by authorized personnel.

RETENTION AND DISPOSAL:

Records documenting an individual employee's medical history, physical condition, and visits to Government health facilities, for nonwork-related purposes, are maintained for six years from the date of the last entry as are records on consultants, contractors, other Government agency personnel, and anyone on NRC premises who requires emergency or first-aid treatment in accordance with GRS 1–19. Health Center control records such as logs or registers reflecting daily visits are destroyed three months after the last entry if the information is summarized on a statistical report in accordance with GRS 1–20a and two years after the last entry if the information is not summarized in accordance with GRS 1–20b. Occupational health records/long-term medical records are retained in accordance with GRS 1–21a. Employees are given copies of their records if requested upon separation from the agency.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Employee Assistance and Wellness Services, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9; and provide their full name, any former name(s), date of birth, and Social Security number.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from a number of sources including, but not limited to, the individual to whom it pertains; laboratory reports and test results; NRC Health Center physicians, nurses, and other medical technicians or personnel who have examined, tested, or treated the individual; the individual's coworkers or supervisors; other systems of records; the individual's personal physician(s); NRC Fitness Center staff; other Federal agencies; and other Federal employee health units.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–44

SYSTEM NAME:

Employee Fitness Center Records—NRC.

SYSTEM LOCATION:

Primary system—NRC Fitness Center, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in whole or in part, at the NRC's regional and other offices listed in Addendum I, Parts 1 and 2, and/or at other facilities operating under a contract or agreement with NRC for fitness-related services. This system may contain some of the information maintained in other systems of records, including NRC–32, "Office of the Chief Financial Officer Financial Transactions and Debt Collection Management Records-NRC."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who apply for membership in the Fitness Center as well as current and inactive Fitness Center members.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes employees' applications to participate in NRC's Fitness Center, information on individuals' degree of physical fitness and their fitness activities and goals, and various forms, memoranda, and correspondence related to Fitness Center membership and financial/payment matters. Specific information contained in the application for membership includes the employee applicant's name, gender, age, Social Security number, height, weight, and medical information, including a history of certain medical conditions; the name of the individual's personal physician and any prescription or over-the-counter drugs taken on a regular basis; and the name and address of a person to be notified in case of emergency. Forms used to obtain or provide information include, but are not limited to, the following:

(1) Application Package.
(2) Release of Medical Information/Physician's Statement.
(3) Fitness Assessment.
(4) Pre-exercise Health Screening.
(5) Account Logs.
(6) Terminated Memberships.
(7) New Memberships.
(8) Monthly Dues Collected.
(9) Accident Report.
(10) "Dear Participant" Letter.
(11) Refund Request.
(12) Regional Employee Sign-in Log.
(13) Member of the Month.
(14) User Suggestion Form.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901 (1996) ; Executive Order 9397, November 22, 1943.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To the individual listed as an emergency contact, in the event of an emergency.

b. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 or 2906.

c. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

DISCLOSURES PURSUANT TO 5 U.S.C. 552A(B)(12):

Disclosures of information to a consumer reporting agency are not considered a routine use of records. Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer media and in paper form in logs and files.

RETRIEVABILITY:

Information is indexed and accessed by an individual's name and/or Social Security number.

SAFEGUARDS:

Records in the primary system are maintained in a building where access is controlled by a security guard force. Access to the Fitness Center is controlled by keycard and bar code verification. Records in paper form are stored alphabetically by individuals' names in lockable file cabinets maintained in the NRC Fitness Center where access to the records is limited to agency and Fitness Center personnel whose duties require access. The records are under visual control during duty hours. Automated records are protected by screen saver. Access to automated data requires use of proper password and user identification codes. Only authorized personnel have access to areas in which information is stored.

RETENTION AND DISPOSAL:

Fitness Center records are currently unscheduled and must be retained until the National Archives and Records Administration approves a records disposition schedule for this material.

SYSTEM MANAGER(S) AND ADDRESS:

Safety and Health Program Manager, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURE:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information in this system of records is principally obtained from the individuals upon whom the records are

maintained. Other sources of information include, but are not limited to, the NRC Fitness Center Director and other staff, physicians retained by the NRC, and the individuals' personal physicians.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Addendum I—List of U.S. Nuclear Regulatory Commission Locations.

Part 1—NRC Headquarters Offices.

1. One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738.

2. Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852–2738.

3. Warehouse, 5000 Boiling Brook Parkway, Rockville, Maryland 20852–2738.

Part 2—NRC Regional Offices.

1. NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406–1415.

2. NRC Region II, Atlanta Federal Center, 23 T85, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3415.

3. NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351.

4. NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011–8064.

5. High-Level Waste Management Office, 1551 Hillshire Drive, Las Vegas, Nevada 89134.

6. NRC Technical Training Center, 5746 Marlin Road, Suite 200, Chattanooga, Tennessee 37411–5677.

Dated in Rockville, Maryland, this 4th day of October, 2002.

For the Nuclear Regulatory Commission.

Stuart Reiter,

Chief Information Officer.

[FR Doc. 02–25994 Filed 10–11–02; 8:45 am]

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Federal Register

Tuesday,
October 15, 2002

Part IV

The President

Proclamation 7606—Columbus Day, 2002

Federal Register
Vol. 67, No. 199
Tuesday, October 15, 2002

Presidential Documents

Title 3—

The President

Proclamation 7606 of October 9, 2002

Columbus Day, 2002

By the President of the United States of America

A Proclamation

In August 1492, Christopher Columbus sailed from Palos, Spain, embarking on a westward voyage and intending to establish a new trade route from Spain to the Far East. With three ships and a crew of approximately 100 men, he journeyed across the Atlantic Ocean. Instead of finding a new route to the Indies, Columbus discovered the Bahama Islands. Today, more than five centuries later, Americans continue to celebrate Columbus' bold expedition and recognize his pioneering achievements as an enduring symbol of imagination, courage, and perseverance.

Columbus brought European settlers to North America and helped establish a new era of world exploration during his four journeys to the "New World." In the years following his voyage of discovery, others such as John Cabot, Vasco da Gama, and Ferdinand Magellan followed Columbus' example to explore and discover new lands, peoples, and cultures.

Today, Columbus' spirit of innovation and discovery flourishes in America as we seek to advance knowledge and ensure prosperity and hope for all people. We challenge our young men and women particularly to reach for all their dreams as the great explorers of the past did.

In commemoration of Columbus' remarkable journey 510 years ago, the Congress, by joint resolution of April 30, 1934, and modified in 1968 (36 U.S.C. 107), as amended, has requested that the President proclaim the second Monday of October of each year as "Columbus Day."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 14, 2002, as Columbus Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of Christopher Columbus.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

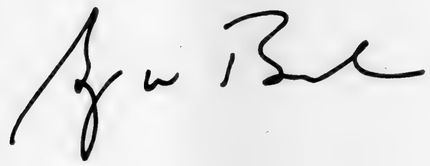

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

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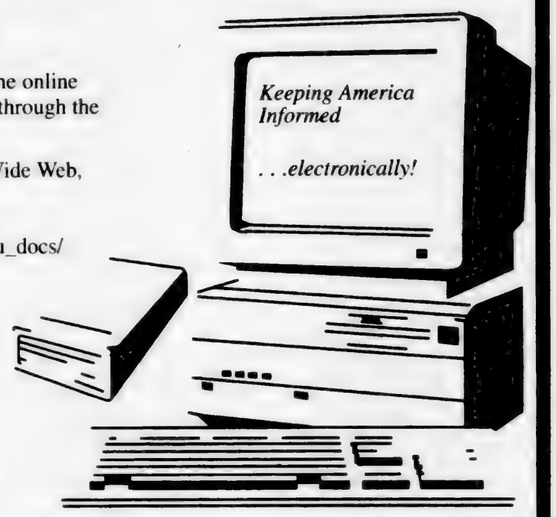

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Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–39–AD; Amendment 39–12906; AD 2002–20–09]

RIN 2120–AA64

Airworthiness Directives; Rockwell Collins, Inc. AFD–3010 Adaptive Flight Display Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Rockwell Collins, Inc. (Rockwell Collins) AFD–3010 adaptive flight display units that are installed on aircraft. This AD requires you to inspect the AFD–3010 unit to determine if it contains an MFP386 Application Specific Integrated Circuit (ASIC) device with a date code of 0128. This AD also requires you to have any AFD–3010 units with an MFP386 device with a date code of 0128 modified. This AD is the result of reports of a manufacturing defect. The actions specified by this AD are intended to prevent premature failure of the ASIC, which could result in the AFD–3010 unit displaying erroneous primary flight and engine parameter information. Such failure could lead to the pilot using incorrect information when making critical flight safety decisions.

DATES: This AD becomes effective on November 12, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of November 12, 2002.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before December 12, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–39–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002-CE–39-AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in this AD from Rockwell Collins Inc., Business and Regional Systems, 400 Collins Road Northeast, Cedar Rapids, Iowa 52498; telephone: (319) 295–1831. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–39–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407; e-mail: *roger.souter@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received reports of a manufacturing defect on the MFP386 Application Specific Integrated Circuit (ASIC) device, Collins part number (CPN) 351–4957–020. These are used on the A5 card in the input/output control circuitry of the AFD–3010 adaptive flight display units.

The manufacturing defect of the MFP386 ASIC device resulted in significant delamination around all of the die edges. This causes stress on the wire bonds that hold the device to the A5 card. Stress on the wire bonds could cause the bonds to break, which could result in failure of the device.

Failure of this device has been reported on AFD–3010 units containing an MFP386 ASIC device with a date code of 0128.

When the MFP386 ASIC fails, the AFD–3010 unit may display erroneous primary flight information and engine parameters. These systems affect the way the pilot makes critical flight safety decisions.

These Rockwell Collins AFD–3010 adaptive flight display units are installed on, but not limited to, the following aircraft:

—Bombardier Model CL–600–2A12(CL–601) airplanes;
—Cessna Model 525 and 525A airplanes;
—Dassault Model Mystere-Falcon 20—F5 and Mystere-Falcon 50 airplanes; and
—Raytheon Model 390 and Hawker 800XP airplanes.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not corrected, could result in failure of the ASIC, which could result in the AFD–3010 unit displaying erroneous primary flight and engine parameter information. Such failure could lead to the pilot using incorrect information when making critical flight safety decisions.

Is There Service Information That Applies to This Subject?

Rockwell Collins has issued Service Bulletin 12, Revision No. 2, AFD–3010–31–12, dated August 30, 2002.

The service bulletin includes procedures for:

—Inspecting the AFD–3010 unit to determine serial number of the installed unit;
—Inspecting the AFD–3010 unit (if serial number is one of the affected units) to determine the date code of the MFP386 ASIC device; and
—Replacing the MFP386 ASIC device if the date code is 0128.

The FAA's Determination and an Explanation of the Provisions of this AD

What Has FAA Decided?

The FAA has reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on type design aircraft that incorporate these Rockwell Collins AFD–3010 adaptive flight display units;
—The actions specified in the previously-referenced service should

be accomplished on affected Rockwell AFD–3010 adaptive flight display units; and

—AD action should be taken in order to correct this unsafe condition.

What Does This AD Require?

This AD requires you to incorporate the actions in the previously-referenced service bulletin.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in erroneous display of primary flight information, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the AD I Should Pay Attention To?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your written comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–39–AD." We will date stamp and mail the postcard back to you.

Compliance Time of This AD

What Is the Compliance Time of This AD?

The compliance time of this AD is "within the next 14 days after the effective date of this AD."

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

This unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 10 hours time-in-service (TIS) as it would be for an airplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

Does This AD Impact Various Entities?

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2002–20–09 Rockwell Collins, Inc.: Amendment 39–12906; Docket No. 2002–CE–39–AD.

(a) *What airplanes are affected by this AD?* This AD applies to AFD–3010 adaptive flight display units, part numbers 822–1084–012/–108/–202/–206/–302/–304/–402/–404/–406 (serial numbers as specified in Rockwell Collins Service Bulletin 12, Revision No. 2, AFD–3010–31–12, dated August 30, 2002), that are installed in aircraft. These AFD–3010 adaptive flight display units are installed in, but not limited to, the following aircraft that are certificated in any category:

(1) Bombardier Model CL–600–2A12 (CL–601) airplanes;

(2) Cessna Model 525 and 525A airplanes;

(3) Dassault Model Mystere-Falcon 20–F5 and Mystere-Falcon 50 airplanes; and

(4) Raytheon Model 390 and Hawker 800XP airplanes.

(b) *Who must comply with this AD?* Anyone who wishes to operate an aircraft equipped with one of the affected AFD–3010 adaptive flight display units must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent premature failure of the Application Specific Integrated Circuit (ASIC) device, which could result in the AFD–3010 unit displaying erroneous primary flight and engine parameter information. Such failure could lead to the pilot using incorrect information when making critical flight safety decisions.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance	Procedures
(1) Inspect the AFD–3010 adaptive flight display unit to determine the serial number.	Within the next 14 days after November 12, 2002 (the effective date of this AD), unless already accomplished.	In accordance with Rockwell Collins Service Bulletin 12, Revision No. 2 (AFD–3010–31–12), dated August 30, 2002.
(2) If the serial number of the AFD–3010 unit is listed as one of the affected units specified in Rockwell Collins Service Bulletin 12, Revision No. 2 (AFD–3010–31–12), dated August 30, 2002, then inspect the MFP386 ASIC device to determine the date code. (i) If the date code on the MFP386 ASIC device is 0128, return the unit to the manufacturer for modification and install the modified ADF–3010 unit. (ii) If the date code on the MFP386 ASIC is other than 0128, no manufacturer modification is necessary.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD, unless already accomplished.	In accordance with Rockwell Collins Service Bulletin 12, Revision No. 2 (AFD–3010–31–12), dated August 30, 2002.
(3) Do not install, on any aircraft, an affected ADF–3010 adaptive flight display that contains a MFP386 ASIC device with a date code of 0128.	As of November 12, 2002 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407; e-mail: *roger.souter@faa.gov.*

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Rockwell Collins Service Bulletin 12 (AFD–3010–31–12), Revision No. 2, dated August 30, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Rockwell Collins, Business and Regional Systems, 400 Collins Road Northeast, Cedar Rapids, Iowa 52498; telephone: (319) 295–1831. You may view this information at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on November 12, 2002.

Issued in Kansas City, Missouri, on October 3, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–25717 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–41–AD; Amendment 39–12908; AD 2002–21–02]

RIN 2120–AA64

Airworthiness Directives; Cirrus Design Corporation Model SR20 and SR22 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Cirrus Design Corporation (Cirrus) Model SR20 and SR22 airplanes. This AD requires you to replace the self-locking retaining nut on the roll and yaw trim cartridges with a new self-locking retaining nut with a higher axial load capability. This AD is the result of a report that, during a production flight test, the self-locking retaining nut on the yaw trim cartridge came off. The actions specified by this AD are intended to prevent loss of the self-locking retaining nut on the roll and yaw trim cartridges during flight, which could result in jamming of the corresponding flight control system. Such jamming could lead to loss of control of the airplane.

DATES: This AD becomes effective on November 8, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of November 8, 2002.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before December 10, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–41–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2002–CE–41–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in

Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in this AD from Cirrus Design Corporation, 4515 Taylor Circle, Duluth, MN 55811; telephone: (218) 727–2737; or electronically at the following address: *www.cirrusdesign.com/sb.* You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–41–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gregory J. Michalik, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone: (847) 294–7135; facsimile: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA received a report that, during a production flight test of one of the affected airplanes, the pilot attempted to apply right rudder but the control would not move. After investigation of this incident, we determined that the self-locking retaining nut on the shaft of the yaw trim cartridge came off and caused the yaw trim cartridge rod to jam when the right rudder was applied.

The yaw trim cartridge and the roll trim cartridge use the same shaft and self-locking retaining nut. The manufacturer has changed the design to include a new self-locking retaining nut with greater locking ability.

There have been no reports of this situation occurring on delivered airplanes in over 96,000 hours time-in-service on the fleet.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not corrected, could result in loss of the self-locking retaining nut on the roll and yaw trim cartridges. Such failure could lead to jamming of the corresponding flight control and cause loss of control of the airplane.

Is There Service Information That Applies to This Subject?

Cirrus Design Corporation has issued Alert Service Bulletin SB A20–27–06, Issued: September 20, 2002, and Alert Service Bulletin SB A22–27–03, Issued: September 20, 2002.

These service bulletins include procedures for installing a new self-locking retaining nut on the roll trim and the yaw trim cartridges.

The FAA's Determination and an Explanation of the Provisions of This AD

What Has FAA Decided?

The FAA has reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Cirrus Model SR20 and SR22 airplanes of the same type design;

—The actions specified in the previously-referenced service information (as specified in this AD) should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Does This AD Require?

This AD requires you to incorporate the actions in the previously-referenced service bulletin.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in loss of flight controls, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the AD I Should Pay Attention to?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your written comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–41–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

Does This AD Impact Various Entities?

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2002–21–02 Cirrus Design Corporation: Amendment 39–12908; Docket No. 2002–CE–41–AD.

(a) *What airplanes are affected by this AD?* This AD applies to the following airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
SR20	1005 through 1241, except 1235, 1237, and 1238.
SR22	0002 through 0333, except 0309, 0322, 0323, and 0328.

Actions	Compliance	Procedures
(1) Replace the self-locking retaining nut on the yaw trim cartridge and the roll trim cartridge with a new self-locking retaining nut, part number MS21044N3.	Within the next 10 hours time-in-service after November 8, 2002 (the effective date of this AD), unless already accomplished.	In accordance with Cirrus Alert Service Bulletin SB A20–27–06, Issued: September 20, 2002, and Cirrus Alert Service Bulletin SB A22–27–03, Issued: September 20, 2002, as applicable.
(2) Do not install any self-locking retaining nut on the yaw trim cartridge or the roll trim cartridge that is not part number MS21044N3.	As of November 8, 2002 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Chicago Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Gregory J. Michalik, Aerospace Engineer, FAA, Chicago ACO, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone: (847) 294–7135; facsimile: (847) 294–7834.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with in Cirrus Alert Service Bulletin SB A20–27–06, Issued: September 20, 2002, and Cirrus Alert Service Bulletin SB A22–27–03, Issued: September 20, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Cirrus Design Corporation, 4515 Taylor Circle, Duluth, MN 55811; telephone: (218) 727–2737; or electronically at the following address: *www.cirrusdesign.com/sb.* You may view this information at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on November 8, 2002.

Issued in Kansas City, Missouri, on October 7, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–26052 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–13–P

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent loss of the self-locking retaining nut on the roll and yaw trim cartridges during flight, which could result in jamming of the corresponding flight control system. Such jamming could lead to loss of control of the airplane.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–46–AD; Amendment 39–12910; AD 2002–21–04]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A119 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing emergency airworthiness directive (EAD) for Agusta S.p.A. (Agusta) Model A119 helicopters. EAD 2002–17–52, which was issued on August 21, 2002, was sent to all known U.S. owners and operators of Agusta Model A119 helicopters by individual letters. That AD currently requires installing a placard in the helicopter and marking the airspeed indication at 132 knots indicated airspeed (KIAS) before further flight; visually checking the tail rotor blades on both sides for a crack before each start of the helicopter engine; visually inspecting the tail rotor blades with a 5x or higher magnifying glass and conducting a dye-penetrant inspection if you are unable to determine by the visual inspection

whether or not there is a crack; replacing any cracked tail rotor blade; modifying the tail rotor hub and blade assembly, reidentifying the modified tail rotor hub and grips assembly and the modified tail rotor hub and blade assembly, which is a terminating action for the never-exceed speed (Vne) reduction; and establishing a retirement life for the tail rotor control rod. This amendment requires the same actions as that EAD, but corrects the airspeed indication marking, which should have been stated as 122 KIAS instead of 132 KIAS. This amendment is prompted by the failure of a tail rotor blade due to a fatigue crack. The actions specified by this AD are intended to prevent failure of the tail rotor blade and subsequent loss of control of the helicopter.

DATES: Effective October 31, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 31, 2002.

Comments for inclusion in the Rules Docket must be received on or before December 16, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–46–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*.

The applicable service information may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On July 9, 2002, the FAA issued Emergency AD 2002–14–51, Docket No. 2002–SW–35–AD, which applied to Agusta Model A109E and A119 helicopters with tail rotor blade, part number (P/N) 109–8132–01–111, installed. That AD required, before each flight, visually checking each tail rotor blade on both sides for a crack. That AD also required, within 5 hours TIS and thereafter at intervals not to exceed 5 hours TIS, inspecting each tail rotor blade for a crack with a 5x or higher magnifying glass. If you were unable to determine by the visual inspection whether there was a crack, the AD required conducting a dye-penetrant inspection. Replacing any cracked tail rotor blade with an airworthy blade was also required before further flight. After issuance of that EAD, the manufacturer determined, and we agreed, that reducing the Vne to 122 KIAS is necessary to reduce the tail rotor loading until the tail rotor hub and blade assembly, P/N 109–8131–02–149, is modified and reidentified as P/N 109–8131–02–155. Further, we determined that additional tail rotor hub and blades assembly modifications were necessary for the Agusta Model A119 helicopters that are not required for the Model A109E helicopters, so we superseded AD 2002–14–51 and issued a separate AD for each model. EAD 2002–17–52, issued on August 21, 2002, is applicable to Agusta Model A119 helicopters. That EAD requires reducing the helicopter Vne; checking and inspecting the tail rotor blades for cracks; replacing any cracked tail rotor blades; modifying and reidentifying certain assemblies; and establishing a retirement life for the tail rotor control rod.

Since the issuance of EAD 2002–17–52, we have determined that we incorrectly stated the KIAS that should be marked on the helicopter airspeed indicator. The EAD stated that the airspeed indication should be marked at 132 KIAS; it should be marked at 122 KIAS.

The FAA has reviewed Agusta Alert Bollettino Tecnico No. 119–6, Revision A, dated July 12, 2002 (BT), which describes procedures for checking and inspecting both sides of the tail rotor blades, P/N 109–8132–01–111, for a crack, reducing the helicopter Vne, modifying the tail rotor hub and blade assembly, and establishing a retirement life for the tail rotor control rod. The Ente Nazionale per l'Aviazione Civile (ENAC), which is the airworthiness authority for Italy, classified the BT as mandatory and issued AD No. 2002–367, dated July 16, 2002, to ensure the continued airworthiness of these helicopters in Italy.

This helicopter model is manufactured in Italy and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, ENAC has kept the FAA informed of the situation described above. The FAA has examined the findings of ENAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Agusta Model A119 helicopters of the same type design, this AD supersedes EAD 2002–17–52 to require reducing the helicopter Vne; checking and inspecting the tail rotor blades for cracks; replacing any cracked tail rotor blades; modifying and reidentifying certain assemblies; and establishing a retirement life for the tail rotor control rod. The actions must be accomplished in accordance with the BT described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore reducing the helicopter Vne; checking and inspecting the tail rotor blades for cracks; replacing any cracked tail rotor blades; modifying and reidentifying certain assemblies; and establishing a retirement life for the tail rotor control rod are required before further flight, and this AD must be issued immediately.

An owner/operator (pilot) may perform the visual check required by paragraph (b) of this AD and must enter compliance with that paragraph into the helicopter maintenance records in accordance with 14 CFR 46.11 and 91.417(a)(2)(v). A pilot may perform this check because it involves only a visual check for a crack in the tail rotor blade and can be performed equally well by a pilot or a mechanic.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 5 helicopters of U.S. registry will be affected by this AD. It will take approximately 1 work hour to install a placard on each helicopter, 0.5 work hour to perform each enhanced visual inspection, 1 work hour to perform each dye-penetrant inspection, 1 work hour to replace a blade, if necessary, and 6 work hours to replace both grip and bushing assemblies. The average labor rate is $60 per work hour. Required parts will cost approximately $9,765 per blade, if necessary, and $9,830 for each grip and bushing assembly. The manufacturer states in its BT that they will provide a new grip and bushing assembly to customers at no charge. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $81,685 per year, assuming that each helicopter, per year, flies 600 hours, gets 24 enhanced inspections, gets 24 dye-penetrant inspections, requires one blade replacement, and has both new grip and bushing assemblies installed.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–46–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2002–21–04 Agusta S.p.A.: Amendment 39–12910. Docket No. 2002–SW–46–AD. Supersedes Emergency AD 2002–17–52, Docket No. 2002–SW–43–AD and EAD 2002–14–51, Docket No. 2002–SW–35–AD.

Applicability: Model A119 helicopters with hub and tail rotor blades assembly, part number (P/N) 109–8131–02–149, or tail rotor blades, P/N 109–8132–01–111, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the tail rotor blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, install a placard in the helicopter and mark the airspeed indicator at 122 knots indicated airspeed (KIAS) to indicate a reduction in the helicopter never exceed speed (Vne) by 30 KIAS. Make and install the placard in accordance with the Compliance Instructions, Part I, of Agusta Alert Bollettino Tecnico No. 119–6, Revision A, dated July 12, 2002 (BT). On the glass of the airspeed indicator, apply a red mark over the value of 122 KIAS.

(b) Before each start of the helicopter engine, visually check both sides of each tail rotor blade for a crack in the area depicted in Figure 1 of this AD. An owner/operator (pilot) holding at least a private pilot certificate may perform this visual check and must enter compliance with this paragraph into the aircraft maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v). See Figure 1:

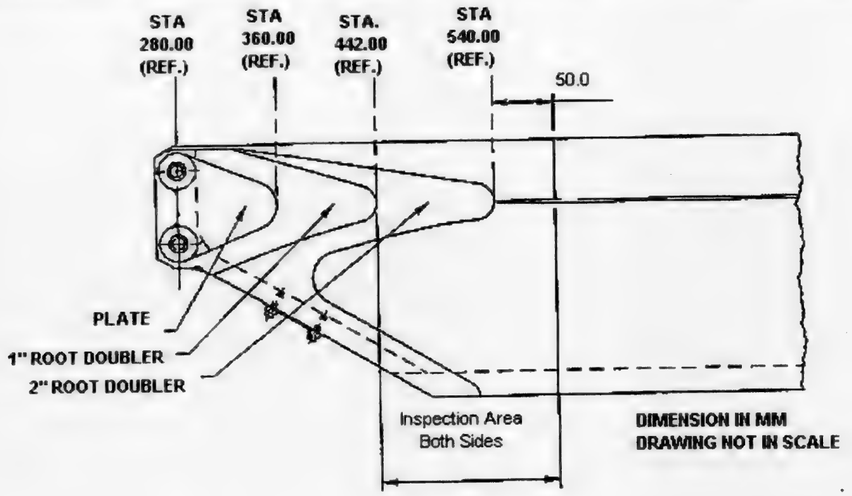

Part Number 109-8132-01-111 Tail Rotor Blade

FIGURE 1

Note 2: Paint irregularities on the tail rotor blade may be due to a crack.

(c) Within 25 hours time-in-service (TIS), and thereafter at intervals not to exceed 25 hours TIS, and any time an increase in vibration levels occur, using a 5x or higher magnifying glass, visually inspect each tail rotor blade for a crack in accordance with the Compliance Instructions, Part III, paragraphs 1. through 5., of the BT. Reporting to Agusta Service Engineering is not required. If you are unable to determine by the visual inspection whether there is a crack, dye penetrant inspect the tail rotor blade for a crack in accordance with the Compliance Instructions, Part III, paragraph 6., of the BT.

(d) Replace any cracked tail rotor blade with an airworthy blade before further flight.

(e) Not later than October 30, 2002, in accordance with the Compliance Instructions, Part IV, and Figure 2 of the BT:

(1) Install a new grip and bushing assembly, P/N 109–8131–02–147, into tail rotor hub and blade assembly, P/N 109–8131–02–149;

(2) Reidentify the modified tail rotor hub and grips assembly, P/N 109–8131–02–141, as P/N 109–8132–01–153; and

(3) Reidentify the modified tail rotor hub and blade assembly, P/N 109–8131–02–149, as P/N 109–8131–02–155.

Returning the grips to the manufacturer is not required by this AD.

(f) After completing the actions required by paragraph (e) of this AD, remove the Vne placard and the airspeed indicator marking at 122 KIAS that were installed in accordance with paragraph (a) of this AD. Modifying and reidentifying the parts as required by paragraph (e) of this AD is terminating actions for the requirements of paragraph (a) of this AD and restores the original Vne.

(g) After completing the actions required by paragraph (e) of this AD, establish a retirement life of 1,000 hours TIS for tail rotor control rod, P/N 109–0135–02–101.

(h) After completing the actions required by paragraph (e) of this AD, revise the helicopter Airworthiness Limitations Section of the Agusta Model A119 helicopter maintenance manual by inserting a 1,000 hour TIS retirement life for each tail rotor control rod, P/N 109–0135–02–101.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(j) Special flight permits will not be issued.

(k) Installing the placard, inspecting for cracks, modifying and reidentifying the tail rotor hub and blade assembly, and reidentifying the tail rotor hub and grip assembly shall be done in accordance with the Compliance Instructions, Part I, Part III, paragraphs 1 through 6, and Part IV, of Agusta Alert Bollettino Tecnico No. 119–6, Revision A, dated July 12, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on October 31, 2002.

Note 4: The subject of this AD is addressed in Ente Nazionale per l'Aviazione Civile (Italy) AD No. 2002–367, dated July 16, 2002.

Issued in Fort Worth, Texas, on October 8, 2002.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–26071 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–255–AD; Amendment 39–12909; AD 2002–21–03]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model G–V Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Gulfstream Model G–V series airplanes. This action requires performing a one-time general visual inspection of the pilot's overhead circuit breaker panel wiring for discrepancies; rerouting the P45–12 wire; and repair, if necessary. This action is necessary to prevent circuit breaker wiring from becoming pinched or damaged, causing arcing between the wire and attaching bracket, which could result in smoke and/or fire in the pilot's circuit breaker panel. This action is intended to address the identified unsafe condition.

DATES: Effective October 21, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 21, 2002.

Comments for inclusion in the Rules Docket must be received on or before December 16, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–255–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–255–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert S. Chupka, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6070; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The manufacturer has notified the FAA that a fire occurred in the pilot's overhead circuit breaker panel on a Gulfstream Model G–V series airplane while it was undergoing a landing gear cycling test. Investigation revealed that the P45–12 wire had been pinched between the circuit breaker panel and its attach bracket. The current wire routing within the pilot's circuit breaker panel allows the P45–12 wire to become pinched or damaged upon closing of the circuit breaker panel, which may arc to the metal attaching bracket during vibration. These conditions, if not corrected, could result in smoke and/or fire in the pilot's circuit breaker panel.

Explanation of Relevant Service Information

The FAA has reviewed and approved Gulfstream Alert Customer Bulletin No. 19, including Drawing 1159SB59301, dated September 26, 2002, including attachment, which describes procedures for a one-time general visual inspection of the pilot's overhead circuit breaker panel for discrepancies (*e.g.*, wire damage). The inspection involves paying special attention to the P45–12 wire that runs from circuit breaker F10 to G5. The alert customer bulletin also describes procedures for rerouting wire P45–12 inside the standoff on the front of the panel, and contacting the manufacturer if discrepancies are found. Accomplishment of the actions specified in the alert customer bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Gulfstream Model G–V series airplanes of the same type design, this AD is being issued to prevent circuit breaker wiring from becoming pinched or damaged, causing arcing between the wire and attaching bracket, which could result in smoke and fire in the pilot's circuit breaker panel. This AD requires a one-time general visual inspection of the pilot's overhead circuit breaker panel wiring for discrepancies; rerouting the P45–12 wire; and repair, if necessary. The actions are required to be accomplished in accordance with the alert customer bulletin described previously; except as discussed below.

Differences Between This AD and the Alert Customer Bulletin

Operators should note that, although the alert customer bulletin specifies that the manufacturer be contacted for disposition of discrepant conditions, this AD requires repair of those conditions to be accomplished per a method approved by the FAA.

The alert customer bulletin also recommends that the actions be accomplished before further flight for airplanes located at a maintenance facility; or, for airplanes not located at a facility where the inspection can be performed, it allows a one-time flight to a maintenance facility where it can be performed. However, this AD requires that the one-time inspection be accomplished within 5 days after the effective date of this AD. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, and the average utilization of the affected fleet. In light of these factors, we find a 5-day compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators should note that, although the Accomplishment Instructions of the referenced alert customer bulletin describe procedures for completing a Service Reply Card for reporting compliance with the alert customer bulletin, this AD does not require that action. The FAA does not need this information from operators.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–255–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–21–03 Gulfstream Aerospace Corporation: Amendment 39–12909. Docket 2002–NM–255–AD.

Applicability: Model G–V series airplanes; having serial numbers 501 through 686 inclusive, and 699; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the circuit breaker wiring from becoming pinched or damaged, causing arcing between the wire and attaching bracket, which could result in smoke and/or fire in the pilot's circuit breaker panel, accomplish the following:

Inspection

(a) Within 5 days after the effective date of this AD, perform a one-time general visual inspection of the pilot's circuit breaker panel wiring for discrepancies (*e.g.*, wire damage), in accordance with Gulfstream V Alert Customer Bulletin No. 19, including Drawing 1159SB59301, dated September 26, 2002, including attachment: except that it is not necessary to complete the Service Reply Card. Pay special attention to wire P45–12 that runs from circuit breaker F10 to G5.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no discrepancy is found, before further flight, reroute wire P45–12 in accordance with the alert customer bulletin.

(2) If any discrepancy is found, before further flight, reroute wire P45–12 and repair discrepancies per a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) Unless otherwise provided by this AD, the actions shall be done in accordance with Gulfstream V Alert Customer Bulletin No. 19, including Drawing 1159SB59301, dated September 26, 2002, including attachment. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on October 21, 2002.

Issued in Renton, Washington, on October 7, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–26208 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–16]

Amendment of Class E5 Airspace; Andrews-Murphy, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E5 airspace at Andrews-Murphy, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Murphy Medical Center, Murphy, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

EFFECTIVE DATE: 0901 UTC, November 28, 2002.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On August 20, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace at Andrews-Murphy, NC, (67 FR 53897). This action provides adequate Class E5 airspace for IFR operations at Murphy Medical Center, Murphy, NC. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Andrews-Murphy, NC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Andrews-Murphy, NC [Revised]

Andrews-Murphy Airport, NC
(Lat. 35°11′42″N, long. 83°51′50″W)
Murphy Medical Center
Point In Space Coordinates
(Lat. 35°05′10″N, long. 83°57′54″W)

That airspace extending upward from 700 feet or more above the surface within a 6.5-mile radius of the Andrews-Murphy Airport and that airspace within a 6.5-mile radius of the point in space (Lat. 35°05′10″N, long. 83°57′54″W) serving Murphy Medical Center; excluding that airspace within the Knoxville, TN, Class E airspace area.

* * * * *

Issued in College Park, Georgia October 4, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–26275 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–17]

Amendment to Class E5 Airspace; Morganton, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E5 airspace at Andrews-Murphy, NC. An Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Grace Hospital, Morganton, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

EFFECTIVE DATE: 0901 UTC, November 28, 2002.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On August 20, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) by amendment Class E5 airspace at Morganton, NC, (67 FR 5398). This action provides adequate Class E5 airspace for IFR operations at Grace Hospital, Morganton, NC. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace at Morganton, NC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO NC E5 Morganton, NC [Revised]

Morganton-Lenoir Airport, NC
(Lat. 35°49'15" N, long. 81°36'40" W)
Fiddlers NDB
(Lat. 35°42'37" N, long. 81°40'17" W)
Grace Hospital
Point in Space Coordinates
(Lat. 35°43'31" N, long. 81°39'59" W)

That airspace extending upward from 700 feet or more above the surface within a 9.5-mile radius of the Morganton-Lenoir Airport and within 2.5 miles each side of the 205° bearing from Fiddlers NDB, extending from the 9.5-mile radius to 7 miles southwest of the NDB and that airspace within a 6-mile radius of the point in space (lat. 35°43'31" N, long. 81°39'59" W) serving Grace Hospital; excluding that airspace within the Hickory, NC, Class E airspace area.

* * * * *

Issued in College Park, Georgia, October 4, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–26276 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–16]

Amendment of Class E Airspace, Matawan, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action removes the description of the Class E airspace designated for Matawan, NJ. Marlboro Airport has been closed and the Standard Instrument Approach Procedure (SIAP) for this airport has been cancelled. Class E airspace for Marlboro Airport is no longer needed and will be restored to less restrictive Class G airspace.

DATES: Effective Date: November 28, 2002.

Comment Date: Comments must be received on or before October 31, 2002.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 02–AEA–16, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4890.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809; telephone: (718) 553–3255.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION: Although this action is a final rule, which involves the amendment of the Class E airspace at Matawan, NJ, by removing that airspace designated for Marlboro Airport, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulation (14 CFR part 71) removes the description of the Class E airspace at Matawan, NJ, by removing that airspace designated for Marlboro Airport. The airport has been closed and abandoned for aeronautical use. As a result the Matawan, NJ, Class E airspace is no longer required for air safety. Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Under the circumstances presented, the FAA concludes that the more restrictive Class E airspace at Matawan, NJ is no longer supported and the flight rules pertinent to Class G airspace should apply. Accordingly, since this action merely reverts the Matawan, NJ, Class E Airspace to Class G and has no significant impact on aircraft operations at Marlboro Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[Amended]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002 and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Matawan, NJ [Removed]

* * * * *

Issued in Jamaica, New York on October 3, 2002.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–26278 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–15]

Establishment of Class E5 Airspace; Sylva, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E5 airspace at Sylva, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Jackson County Airport, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

EFFECTIVE DATE: 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On August 20, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E5 airspace at Sylva, NC, (67 FR 53896). This action provides adequate Class E airspace for IFR operations at Jackson County Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace at Sylva, NC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace area extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO NC E5 Sylva, NC [New]

Jackson County Airport
Point In Space Coordinates
(Lat. 35°19'46" N, long. 83°13'14" W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 35°19'46" N, long. 83°13'14" W) serving

Jackson County Airport; excluding that airspace within the Knoxville, TN, Class E airspace area.

* * * * *

Issued in College Park, Georgia, October 4, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 02–26280 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–13]

Establishment of Class E5 Airspace; Marion, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E5 airspace at Marion, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for McDowell Hospital, Marion, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

EFFECTIVE DATE: 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On August 16, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E5 airspace at Marion, NC (67 FR 53535). This action provides adequate Class E airspace for IFR operations at McDowell Hospital. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes Class E5 airspace at Marion, NC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103; 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp. p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASO NC E5 Marion, NC [New]

McDowell Hospital
Point In Space Coordinates
(Lat. 35°39′45″N, long. 82°02′49″W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 35°39′45″N, long. 82°02′49″W) serving McDowell Hospital; excluding that airspace with the Rutherfordton, NC, Class E airspace area.

* * * * *

Issued in College Park, Georgia, October 4, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–26281 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–12]

Establishment of Class E5 Airspace; Highlands, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action established Class E5 airspace at Highlands, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Highlands-Cashiers Hospital, Highlands, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

EFFECTIVE DATE: 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On August 16, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E5 airspace at Highlands, NC (67 FR 53536). This action provides adequate Class E airspace for IFR operations at Highlands-Cashiers Hospital. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace at Highlands, NC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASO NC E5 Highlands, NC [New]

Highlands-Cashiers Hospital
Point In Space Coordinates
(Lat. 35°03′18″ N, long. 83°12′30″ W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 35°03′18″ N, long. 83°12′30″ W) serving Highlands-Cashiers Hospital.

* * * * *

Issued in College Park, Georgia, on October 4, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–26282 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–11]

Amendment of Class E5 Airspace; Asheville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E5 airspace at Asheville, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for St. Josephs-Mission Hospital, Asheville, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) northeast of Asheville, NC is needed to contain the SIAP.

EFFECTIVE DATE: 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On August 16, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace at Asheville, NC, (67 FR 53536). This action provides adequate Class E airspace for IFR operations at Asheville, NC. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace at Highlands, NC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List Subject is 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p 389; 14 CFR 11.69

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective

September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO NC E5 Asheville, NC [Revised]

Asheville Regional Airport, NC
(Lat. 35°26'10" N, long. 82°32'30" W)
St. Josephs-Mission Hospital, Asheville, NC
Point In Space Coordinates
(Lat. 35°33'53" N, long. 82°33'06" W)

That airspace extending upward from 700 feet above the surface within 6 miles each side of Runway 16/34 centerline, extending 17 miles north and 21 miles south of the Asheville Regional Airport and that airspace within a 6-mile radius of the point in space (lat. 35°33'53" N, long. 82°33'06" W) serving St. Josephs-Mission Hospital.

* * * * *

Dated: Issued in College Park, Georgia, on October 4, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–26283 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–10]

Establishment of Class E5 Airspace; Franklin, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E5 airspace at Franklin, NC. An Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Angel Medical Center, Franklin, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

EFFECTIVE DATE: 0901 UTC, January 23, 2002.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On August 16, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E5 airspace at Franklin, NC, (67 FR 53538). This action provides adequate Class E airspace for IFR operations at Angel Medical Center. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace at Franklin, NC.

The FAA has determined that this regulation only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO NC E5 Franklin, NC

Angel Medical Center, Franklin, NC
Point In Space Coordinates
(Lat. 35°10'37" N, long. 83°22'04" W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 35°10'37" N, long. 83°22'04" W) serving Angel Medical Center.

* * * * *

Issued in College Park, Georgia, on October 4, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–26284 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–9]

Amendment of Class E5 Airspace; Prestonburg, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E5 airspace at Prestonburg, KY. A Area Navigation (RNAV), Global Positioning System (GPS), Runway (RWY) 3, a RNAV (GPS) RWY 21, and a VHF Omni-directional Range (VOR)/Distance Measuring Equipment (DME)—A Standard Instrument Approach Procedure (SIAP) has been developed for Big Sandy Regional Airport, KY. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs.

EFFECTIVE DATE: 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On August 7, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace at Prestonburg, KY, (67 FR 51149). This action provides adequate Class E airspace for IFR operations at Prestonburg, KY. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E5 airspace at Prestonburg, KY.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO KY E5 Prestonburg, KY [Revised]

Prestonburg, Big Sandy Regional Airport, KY
(Lat. 37°45'04" N, long. 82°38'12" W,

That airspace extending upward from 700 feet or more above the surface within a 6.5-mile radius of the Big Sandy Regional Airport.

* * * * *

Issued in College Park, Georgia, on October 4, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–26285 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, (FEMA).

ACTION: Final rule.

SUMMARY: Modified Base (1-percent-annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of the final determinations of modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator, Federal Insurance and Mitigation Administration, has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and record keeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Illinois:					
St. Clair (00–05–315P) (FEMA Docket No. 7610).	City of Belleville	January 8, 2002; January 15, 2002; Belleville News-Democrat.	The Honorable Mark A. Kern, Mayor, City of Belleville, 101 South Illinois Street, Democrat Belleville, Illinois 62220.	April 16, 2002	170618
Cook (02–05–0239P) (FEMA Docket No. 7610).	Unincorporated Areas.	January 17, 2002; January 24, 2002; *Northbrook Star.*	Mr. John H. Stroger, Jr., President, Cook County Board of Commissioners, 118 North Clark Street, Room 537, Northbrook, Illinois 60602.	December 20, 2001	170054
Cook (02–05–1825P) (FEMA Docket No. 7610).	Unincorporated Areas.	March 20, 2002; March 27, 2002; *The Chicago Tribune.*	Mr. John H. Stroger, Jr., President, Cook County Board of Commissioners, 118 North Clark Street, Room 537, Chicago, Illinois 60602.	June 26, 2002	170054
Cook (02–05–0239P) (FEMA Docket No. 7610).	City of Northbrook.	January 17, 2002; January 24, 2002; *Northbrook Star.*	Mr. Mark W. Damisch, President, Village of Northbrook, 1225 Cedar Lane, Northbrook, Illinois 60062–4582.	December 20, 2001	170132
Cook (02–05–1825P) (FEMA Docket No. 7610).	City of Oak Forest.	March 20, 2002; March 27, 2002; *The Chicago Tribune.*	The Honorable Patrick Gordon, Mayor, City of Oak Forest, 15440 South Central Avenue Oak Forest, Illinois 60452.	June 26, 2002	170136
Cook (01–05–3763P) (FEMA Docket No. 7612).	Village of Palos Park.	May 1, 2002; May 8, 2002; *Daily Southtown.*	The Honorable Jean Moran, Mayor, Village of Palos Park, 8999 West 123rd Street, Palos Park, Illinois 60464.	August 7, 2002	170144
Will (01–05–1864P) (FEMA Docket No. 7610).	Village of Plainfield.	February 20, 2002; February 27, 2002; *The Enterprise.*	Mr. Richard Rock, President, Village of Plainfield, 530 West Lockport Street Suite 206, Plainfield, Illinois 60544.	May 29, 2002	170771
Indiana:					
Dearborn (00–05–285P) (FEMA Docket No. 7610).	Town of Greendale.	February 7, 2002; February 14, 2002; *The Dearborn County Register.*	The Honorable Doug Hedrick, Mayor, Town of Greendale, 510 Ridge Avenue, Greendale, Indiana 47025.	January 9, 2002	180040
Johnson (02–05–0605P) (FEMA Docket No. 7610).	City of Greenwood.	April 3, 2002; April 10, 2002; *Greenwood and Southside Challenger.*	The Hon. Charles Henderson, Mayor, City of Greenwood, 2 North Madison Avenue, Greenwood, Indiana 46142.	April 22, 2002	180115

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Dearborn (00–05–285P) (FEMA Docket No. 7610).	City of Lawrenceburg.	February 7, 2002; February 14, 2002; *The Dearborn County Register.*	The Honorable Paul Tremain, Mayor, City of Lawrenceburg, 405 Main Street, Lawrenceburg, Indiana 47025.	January 9, 2002	180041
Kansas:					
Sedgwick (00–07–493P) (FEMA Docket No. 7614).	City of Wichita	May 24, 2001; May 31, 2001; *Wichita Eagle.*	The Honorable Bob Knight, Mayor, City of Wichita, 455 North Main Street, 5th Floor, Wichita, Kansas 67202.	August 31, 2001	200328
Michigan:					
Oakland (01–05–214P) (FEMA Docket No. 7610).	Village of Lake Orion.	April 3, 2002; April 10, 2002; *The Lake Orion Review.*	Ms. JoAnn Van Tassel, Manager, Village of Lake Orion, 37 East Flint Street, Lake Orion, Michigan 48362.	April 5, 2002	260588
Macomb (01–05–229P) (FEMA Docket No. 7610).	City of Warren	March 22, 2002; March 29, 2002; *The Macomb Daily.*	The Hon. Mark Steenbergh, Mayor, City of Warren, Warren Municipal Building, 29500 Van Dyke Avenue, Warren, Michigan 48093.	June 28, 2002	260129
Macomb (02–05–0025P) (FEMA Docket No. 7610).	Township of Washington.	February 8, 2002; February 15, 2002; *The Macomb Daily.*	Mr. Gary Kirsh, Supervisor, Township of Washington, P.O. Box 94067, Washington, Michigan 48094.	December 21, 2001	260447
Minnesota:					
Anoka (01–05–2586P) (FEMA Docket No. 7610).	City of Coon Rapids.	February 15, 2002; February 22, 2002; *The Herald.*	The Hon. Ilona McCauley, Mayor, City of Coon Rapids, 11155 Robinson Drive Coon Rapids, Minnesota 55433.	February 7, 2002	270011
Rice (02–05–0959P) (FEMA Docket No. 7610).	City of Dundas	January 23, 2002; January 30, 2002; *Northfield News.*	The Hon. Myron Malecha, Mayor, City of Dundas, 216 Railway Street North Dundas, Minnesota 55109.	December 18, 2001	270403
Missouri:					
Ste. Genevieve (01–07–425P) (FEMA Docket No. 7610).	City of Ste. Genevieve.	February 20, 2002; February 27, 2002; *Ste. Genevieve Herald.*	The Hon. Kathleen Waltz, Mayor, City of Ste. Genevieve, 165 South Fourth Street, Ste. Genevieve, Missouri 63670.	February 8, 2002	290325
Ste. Genevieve (01–07–425P) (FEMA Docket No. 7610).	Unincorporated Areas.	February 20, 2002; February 27, 2002; *Ste. Genevieve Herald.*	Mr. Dennis Huck, County Commissioner, Ste. Genevieve County, 165 South Fourth Street, Ste. Genevieve, Missouri 63670.	February 8, 2002	290833
New Mexico: Bernalillo (01–06–880P) (FEMA Docket No. 7610).	Unincorporated Areas.	February 21, 2002; February 28, 2002; *Albuquerque Journal.*	Mr. Tom Rutherford, Chairman, Bernalillo County, 2400 Broadway, S.E., Albuquerque, New Mexico 87102.	January 29, 2002	350001
Ohio:					
Lorain (01–05–665P) (FEMA Docket No. 7610).	City of Avon	March 22, 2002; March 29, 2002; *The Morning Journal.*	The Honorable James Smith, Mayor, City of Avon, 36080 Chester Road, Avon, Ohio 44011.	June 28, 2002	390348
Montgomery (01–05–740P) (FEMA Docket No. 7610).	City of Centerville.	March 15, 2002; March 22, 2002; *Dayton Daily News.*	The Honorable Sally D. Beals, Mayor, City of Centerville, 7875 Stonehouse Court, Centerville, Ohio 45459.	June 21, 2002	390408

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Delaware (01–05–1490P) (FEMA Docket No. 7610).	Unincorporated Areas.	March 6, 2002; March 13, 2002; *Westerville News and Public Opinion.*	Mr. James Ward, President, Delaware County, Board of Commissioners, 101 North Sandusky Street, Delaware, Ohio 43105.	June 12, 2002	390146
Franklin, (01–05–1490P) (FEMA Docket No. 7610).	Unincorporated Areas.	March 6, 2002; March 13, 2002; *Westerville News and Public Opinion.*	Mr. Dewey R. Stokes, President, Franklin County Board of Commissioners, 373 South High Street, 26th Floor, Columbus, Ohio 43215.	June 12, 2002	390167
Franklin (00–05–311P) (FEMA Docket No. 7610).	City of Grove City.	April 17, 2002; April 24, 2002; *Grove City News.*	The Hon. Cheryl L. Grossman, Mayor, City of Grove City, P.O. Box 427, Grove City, Ohio 43123.	July 24, 2002	390173
Lucas (01–05–2963P) (FEMA Docket No. 7610).	Unincorporated Areas.	February 19, 2002; February 26, 2002; *Farmland News.*	Ms. Sandy Isenberg, President, Lucas County, Board of Commissioners, One Government Center, Suite 800, Toledo, Ohio 43604.	May 28, 2002	390359
Franklin and Delaware (01–05–1490P) (FEMA Docket No. 7610).	City of Westerville.	March 6, 2002; March 13, 2002; *Westerville News and Public Opinion.*	The Hon. Stewart Flaherty, Mayor, City of Westerville, 21 South State Street, Westerville, Ohio 43081.	June 12, 2002	390179
Delaware and Franklin (02–05–2128P) (FEMA Docket No. 7610).	City of Westerville.	April 10, 2002; April 17, 2002; *Westerville News and Public Opinion.*	The Hon. Stewart Flaherty, Mayor, City of Westerville, 21 South State Street, Westerville, Ohio 43081.	April 8, 2002	390179
Oklahoma:					
Oklahoma (00–06–1829P) (FEMA Docket No. 7610).	City of Edmond ..	March 22, 2002; March 29, 2002; *The Edmond Sun.*	The Honorable Saundra Naifeh, Mayor, City of Edmond, P.O. Box 2970, Edmond, Oklahoma 73083.	February 28, 2002	400252
Tulsa (01–06–1178P) (FEMA Docket No. 7610).	Unincorporated Areas.	March 7, 2002; March 14, 2002; *Tulsa World.*	The Hon. Wilbert E. Colins, Chairman, Tulsa County, Board of Commissioners, 500 South Denver, Tulsa, Oklahoma 74103.	June 13, 2002	400462
Texas:					
Tarrant (01–06–780P) (FEMA Docket No. 7610).	City of Arlington	April 10, 2002; April 17, 2002; *The Arlington Morning News.*	The Honorable Elzie Odom, Mayor, City of Arlington, 101 West Abram Street, Arlington, Texas 76004.	July 16, 2002	485454
Travis (01–06–674P) (FEMA Docket No. 7610).	City of Austin	March 5, 2002; March 12, 2002; *Austin American Statesman.*	The Honorable Gus Gracia, Mayor, City of Austin, 124 West 8th Street, Austin, Texas 78701.	January 18, 2002	480624
Bexar (01–06–543P) (FEMA Docket No. 7610).	Unincorporated Areas.	January 17, 2002; January 24, 2002; *San Antonio Express News.*	The Hon. Cyndi T. Krier, Judge, Bexar County, 100 Dolorosa, Suite 101, San Antonio, Texas 78205.	April 25, 2002	480035
Bexar (01–06–1714P).	Unincorporated Areas.	February 21, 2002; February 28, 2002; *San Antonio Express News.*	The Hon. Nelson W. Wolff, Judge, Bexar County, 100 Dolorosa, Suite 101, San Antonio, Texas 78205.	May 30, 2002	480035
Johnson (00–06–1649P) (FEMA Docket No. 7610).	City of Burleson	February 20, 2002; February 27, 2002; *The Burleson Star.*	The Honorable Byron Black, Mayor, City of Burleson, 141 West Renfro, Burleson, Texas 76028.	May 29, 2002	485459

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Montgomery (01–06–225P) (FEMA Docket No. 7610).	City of Conroe ...	February 19, 2002; February 26, 2002; *The Courier.*	The Honorable Carter Moore, Mayor, City of Conroe, P.O. Box 3066, Conroe, Texas 77305.	May 28, 2002	480484
Denton (00–06–1241P) (FEMA Docket No. 7610).	Town of Corinth	April 3, 2002; April 10, 2002; *Lake Cities Sun Paper.*	The Hon. Shirley Spellerberg, Mayor, Town of Corinth, 2003 South Corinth, Corinth, Texas 76205.	July 10, 2002	481143
Dallas (01–06–1501P) (FEMA Docket No. 7610).	City of Dallas	January 24, 2002; January 31, 2002; *Dallas Morning News.*	The Honorable Laura Miller, Mayor, City of Dallas, 1500 Manilla Street, City Hall, Dallas, Texas 75201.	May 1, 2002	480171
Tarrant (02–06–373P) (FEMA Docket No. 7610).	City of Fort Worth.	April 3, 2002; April 10, 2002; *Fort Worth Star-Telegram.*	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	July 10, 2002	480596
Williamson (01–06–213P) (FEMA Docket No. 7610).	City of Hutto	February 21, 2002; February 28, 2002; *Hutto Herald.*	The Honorable Glen Pierce, Mayor, City of Hutto, P.O. Box 2803, Hutto, Texas 78634.	May 30, 2002	481047
Dallas (01–06–1643P) (FEMA Docket No. 7610).	City of Irving	April 4, 2002; April 11, 2002; *The Irving Morning News.*	The Honorable Joe H. Putnam, Mayor, City of Irving, 825 West Irving Boulevard, Irving, Texas 75060.	March 8, 2002	480180
Midland (01–06–1743P) (FEMA Docket No. 7610).	City of Midland ...	May 2, 2002; May 9, 2002; *Midland Reporter-Telegram.*	The Hon. Michael J. Canon, Mayor, City of Midland, City Hall, 300 North Loraine, Midland, Texas 79701.	August 8, 2002	480477
Montgomery (01–06–599P) (FEMA Docket No. 7610).	Unincorporated Areas.	March 6, 2002; March 13, 2002; *The Courier.*	The Honorable Alan B. Sadler, Judge, Montgomery County, 301 North Thompson Street, Suite 210, Conroe, Texas 77301.	June 12, 2002	480483
Montgomery (01–06–1170P) (FEMA Docket No. 7610).	Unincorporated Areas.	March 2, 2002; March 27, 2002; *The Courier.*	The Honorable Alan B. Sadler, Judge, Montgomery County, 301 North Thompson Street, Suite 210, Conroe, Texas 77301.	February 26, 2002	480483
Montgomery (01–06–1145P) (FEMA Docket No. 7610).	Unincorporated Areas.	March 21, 2002; March 28, 2002; *The Courier.*	The Honorable Alan B. Sadler, Judge, Montgomery County, 301 North Thompson Street, Suite 210, Conroe, Texas 77301.	March 1, 2002	480483
Tarrant (01–06–579P) (FEMA Docket No. 7610).	City of North Richland Hills.	January 8, 2002; January 15, 2002; *Fort Worth Star Telegram.*	The Honorable Charles Scoma, Mayor, City of N. Richland Hills, P.O. Box 820609, North Richland Hills, Texas 76182.	December 19, 2002	480607
Tarrant (01–06–1991) (FEMA Docket No. 7610).	City of North Richland Hills.	March 6, 2002; March 11, 2002; *Fort Worth Star Telegram.*	The Honorable Oscar Trevino, Mayor, City of N. Richland Hills, P.O. Box 820609, North Richland Hills, Texas 76182.	January 23, 2002	480607
Montgomery (01–06–599P) (FEMA Docket No. 7610).	City of Oak Ridge North.	March 6, 2002; March 13, 2002; *The Courier.*	The Honorable Joe Michels, Mayor, City of Oak Ridge North, City Hall, 2742 Robinson Road, Oak Ridge North, Texas 77385.	June 12, 2002	481560

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Collin (00–06–1193P) (FEMA Docket No. 7610).	City of Plano	February 20, 2002; February 27, 2002; *Plano Star Courier.*	The Honorable Pat Evans, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086.	May 29, 2002	480140
Rockwall (01–06–355P) (FEMA Docket No. 7610).	City of Rockwall	March 22, 2002; March 29, 2002; *The Rockwall/Rowlett Morning News.*	The Honorable Ken Jones, Mayor, City of Rockwall, 385 S. Goliad Street, Rockwall, Texas 75087.	March 1, 2002	480547
Tarrant (02–06–373P) (FEMA Docket No. 7610).	Unincorporated Areas.	April 3, 2002; April 10, 2002; *Fort Worth Strar Telegram.*	The Honorable Tom Vandergriff, Judge, Tarrant County, 100 East Weatherford Street, Forth Worth, Texas 76196.	July 10, 2002	4800582

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: September 23, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–26215 Filed 10–15–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–P–7616]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1-percent-annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator for Federal Insurance and Mitigation Administration reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator for Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and record keeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas:					
Faulkner (01–06–1902P).	City of Conway	August 19, 2002, August 26, 2002, *Log Cabin Democrat.*	The Honorable Tab Townsell, Mayor, City of Conway, 1201 Oak Street, Conway, Arkansas 72033.	November 25, 2002	050078
Washington ..... (02–06–1260P)	City of Fayetteville	August 1, 2002, August 8, 2002, *Northwest Arkansas Times.*	The Honorable Dan Coody, Mayor, City of Fayetteville, 113 West Markham Street, Fayetteville, Arkansas 72701.	July 23, 2002	050216
Illinois:					
Cook (01–05–3037P).	Village of Palos Park ...	August 8, 2002, August 15, 2002, *Daily Southtown.*	The Honorable Jean A. Moran, Mayor, Village of Palos Park, 8999 West 123rd Street, Palos Park, Illinois 60464.	November 14, 2002	170144
Will (02–05–1170P).	Village of Romeoville ..	August 1, 2002, August 8, 2002, *The Herald News.*	The Honorable Fred Dewald, Jr., Mayor, Village of Romeoville, Village Hall, 13 Montrose Drive, Romeoville, Illinois 60446.	November 7, 2002	170711
Kansas:					
Riley (02–07–667P).	City of Riley	August 15, 2002, August 22, 2002, *The Riley Countian.*	The Honorable Gerald Baer, Mayor, City of Riley, P.O. Box 333, Riley, Kansas 66531.	November 21, 2002	200303
Riley (02–07–666P).	Unincorporated Areas	August 15, 2002, August 22, 2002, *The Manhattan Mercury.*	Mr. Robert Newsome, Chairman, Riley County Commissioner, Courthouse Plaza East, 115 North 4th Street, Manhattan, Kansas 66502.	November 21, 2002	200298
Minnesota:					
Olmsted (01–05–746P).	Unincorporated Areas	August 1, 2002, August 8, 2002, *Post-Bulletin.*	Mr. Richard Devlin, County Administrator, Olmsted County, 151 4th Street SE, Rochester, Minnesota 55904.	July 18, 2002	270626
Olmsted (01–05–746P).	City of Rochester	August 1, 2002, August 8, 2002, *Post-Bulletin.*	The Honorable Chuck Canfield, Mayor, City of Rochester, City Hall, Room 281, 201 4th Street SE, Rochester, Minnesota 55904.	July 18, 2002	275246
Missouri: St. Charles ... (01–07–726P)	City of St. Peters	August 21, 2002, August 28, 2002, *St. Peters Journal.*	The Honorable Tom Brown, Mayor, City of St. Peters, 1 St. Peters Center Boulevard, St. Peters, Missouri 63376.	November 27, 2002	290319
New Mexico:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Dona Ana (02–06–1099P).	Unincorporated Areas	August 22, 2002, August 29, 2002, *Las Cruces Sun News.*	Mr. David R. King, County Manager, Dona Ana County, County Managers Complex, 180 West Amador Avenue, Las Cruces, New Mexico 88001.	August 8, 2002	350012
Dona Ana (02–06–1099P).	City of Las Cruces	August 22, 2002, August 29, 2002, *Las Cruces Sun News.*	The Honorable Ruben A. Smith, Mayor, City of Las Cruces, P.O. Box 2000, Las Cruces, New Mexico 88004.	August 8, 2002	355332
Ohio:					
Franklin and Delaware (02–05–1027P).	City of Dublin	August 21, 2002, August 28, 2002, *Dublin News.*	The Honorable Thomas McCash, Mayor, City of Dublin, 5200 Emerald Parkway, Dublin, Ohio 43017–1006.	November 27, 2002	390673
Franklin (02–05–1027P).	Unincorporated Areas	August 21, 2002, August 28, 2002, *Dublin News.*	Mr. Dewey R. Stokes, President, Franklin County, Board of Commissioners, 373 South High Street, 26th Floor, Columbus, Ohio 43215.	November 27, 2002	390167
Franklin (02–05–1849P).	Unincorporated Areas	August 30, 2002, September 6, 2002, *The Columbus Dispatch.*	Mr. Dewey R. Stokes, President, Franklin County Board of Commissioners, 373 South High Street, 26th Floor, Columbus, Ohio 43215.	December 6, 2002	390167
Greene (02–05–2322P).	Unincorporated Areas	August 23, 2002, August 30, 2002, *Xenia Daily Gazette.*	Mr. Stephen Stapleton, Greene County Administrator, 35 Greene Street, Xenia, Ohio 45385.	November 29, 2002	390193
Lucas (02–05–2988P).	Village of Holland	August 21, 2002, August 28, 2002, *The Blade.*	The Honorable Michael Yunker, Mayor, Village of Holland, 1245 Clarion Avenue, Holland, Ohio 43528.	July 25, 2002	390659
Montgomery (02–05–1438P).	City of Kettering	August 30, 2002, September 6, 2002, *Kettering Oakwood Times.*	The Honorable Marilou Smith, Mayor, City of Kettering, 3600 Shroyer Road, Kettering, Ohio 45429.	August 19, 2002	390412
Greene (02–05–2322P).	City of Xenia	August 23, 2002, August 30, 2002, *Xenia Daily Gazette.*	The Honorable John T. Saraga, Mayor, City of Xenia, 101 N. Detroit Street, Xenia, Ohio 45385.	November 29, 2002	390197
Texas:					
Bastrop (01–06–1169P).	Unincorporated Areas	August 29, 2002, September 5, 2002, *Bastrop Advertiser and County News.*	The Honorable Ronnie McDonald, Judge, Bastrop County, 804 Pecan Street, Bastrop, Texas 78602.	December 5, 2002	481193
Dallas (02–06–478P).	City of Cedar Hill	July 25, 2002, August 1, 2002, *DeSoto Today.*	The Honorable Robert L. Franke, Mayor, City of Cedar Hill, P.O. Box 96, Cedar Hill, Texas 75106.	July 12, 2002	480168
Dallas (01–06–1425P).	City of Dallas	August 30, 2002, September 6, 2002, *Dallas Morning News.*	The Honorable Laura Miller, Mayor, City of Dallas, 1500 Marilla Street, City Hall, Dallas, Texas 75201.	December 6, 2002	480171

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Denton (02–06–355P).	City of Denton	August 23, 2002, August 30, 2002, *Denton Record Chronicle.*	The Honorable Euline Brock, Mayor, City of Denton, 215 East McKinney Street, Denton, Texas 76201.	November 29, 2002	480194
Denton (01–06–1875P).	Unincorporated Areas	August 23, 2002, August 30, 2002, *Denton Record Chronicle.*	The Honorable Kirk Wilson, Judge, Denton County, Courthouse-on-the-Square, 110 West Hickory Street, Denton, Texas 76201.	November 29, 2002	480774
Tarrant (02–06–830P).	City of Forth Worth	August 23, 2002, August 30, 2002, *Fort Worth Star Telegram.*	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	November 29, 2002	480596
Tarrant (01–06–1571P).	City of Grapevine	August 22, 2002, August 29, 2002, *The Grapevine Sun.*	The Honorable William D. Tate, Mayor, City of Grapevine, P.O. Box 95104, Grapevine, Texas 76099.	July 29, 2002	480598
Tarrant (02–06–046P).	City of Keller	August 13, 2002, August 20, 2002, *The Keller Citizen.*	The Honorable David Phillips, Mayor, City of Keller, P.O. Box 770, Keller, Texas 76244-0770.	August 2, 2002	480602
Collin (02–06–823P).	City of Plano	August 21, 2002, August 28, 2002, *Plano Star Courier.*	The Honorable Pat Evans, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	August 6, 2002	480140
Tarrant (02–06–830P).	City of Saginaw	August 23, 2002, August 30, 2002, *Fort Worth Star Telegram.*	The Honorable Frankie Robbins, Mayor, City of Saginaw, 333 West McLeroy Boulevard, P.O. Box 79070, Saginaw, Texas 76179.	November 29, 2002	480610
Tarrant (02–06–830P).	Unincorporated Areas	August 23, 2002, August 30, 2002, *Fort Worth Star Telegram.*	The Honorable Tom Vandergriff, Judge, Tarrant County, 100 E. Weatherford, Fort Worth, Texas 76179.	November 29, 2002	480582

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: September 23, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–26214 Filed 10–15–02; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the

community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD)
CALIFORNIA	
Davis (City), Yolo County, (FEMA Docket No. B–7427)	
North Davis Overflow:	
At Union Pacific Railroad Bridge (confluence with Union Pacific Railroad Drain)	*42
Approximately 950 feet upstream of confluence with Union Pacific Railroad Drain	*43
Union Pacific Railroad Drain:	
At Union Pacific Railroad Bridge (confluence with North Davis Overflow)	*42
Approximately 340 feet downstream of Covell Boulevard	*43
Maps are available for inspection at City Hall, 23 Russell Boulevard, Davis, California.	
Lafayette (City), Contra Costa County, (FEMA Docket No. B–7427)	
Reliez Creek:	
Approximately 60 feet upstream of Old Tunnel Road	*252
Approximately 110 feet downstream of Quandt Road	*352
Approximately 160 feet upstream of Pleasant Hill Road	*368
Reliez Creek Overflow:	
Along Circle Road form its confluence with Reliez Creek to approximately 300 feet southeast of Ortega Avenue	*279
Maps are available for inspection at Lafayette Planning Office, 3675 Mt. Diablo Street, Lafayette, California.	
Walnut Creek (City), Contra Costa County, (FEMA Docket No. B–7416)	
East Fork Grayson Creek:	
Approximately 280 feet upstream of Oak Park Boulevard in (City of Pleasant Hill)	*73
Approximately 150 feet downstream of Sunnyvale Avenue	*83
Eccleston Avenue Tributary:	
At confluence with East Fork Grayson Creek	*80
Just downstream of Putnam Road	*87
Maps are available for inspection at the Community Development Department, 1666 North Main Street, Walnut Creek, California.	
Yolo County (Unincorporated Areas), (FEMA Docket No. B–7427)	
North Davis Overflow:	
At Union Pacific Railroad Bridge (confluence with Union Pacific Railroad Drain)	*42
At Highway 101 A and Union Pacific Railroad Bridge Over North Davis Drain	*46
Union Pacific Railroad Drain:	
At Union Pacific Railroad Bridge (confluence with North Davis Overflow)	*42
Maps are available for inspection at City Hall, 292 West Beamer Street, Woodland, California.	
HAWAII	
Kauai County (Unincorporated Areas), (FEMA Docket No. B–7424)	
Hanalei River:	
Approximately 1,300 feet upstream of the confluence with Hanalei Bay	*12
At Kuhio Highway (State Route 56)	*16
Approximately 6,000 feet upstream of the southern end of USFWS Pond D	*38
Maps are available for inspection at the Department of Public Works, Moikeha Building, 4444 Rice Street, Suite 175, Lihue, Hawaii.	
IOWA	
Johnston (City), Polk County, (FEMA Docket No. B–7310)	
Beaver Creek:	
Approximately 1,550 feet above its confluence with the Des Moines River	*805
At NW 70th Avenue	*824
Maps are available for inspection at City Hall, 6221 Merle Hay Road, Johnston, Iowa.	

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD)
Urbandale (City), Dallas and Polk Counties, (FEMA Docket No. B–7310 and 7242)	
Beaver Creek:	
Approximately 1,000 feet upstream of Merle Hay Road	*811
Approximately 3,600 feet upstream of Merle Hay Road	*812
Walnut Creek:	
Approximately 1,400 feet downstream of the 200th Street Bridge	*893
Approximately 360 feet upstream of the 200th Street Bridge	*896
Maps are available for inspection at the Community Development Department of Public Works, City Hall, 3600 86th Street, Urbandale, Iowa.	
LOUISIANA	
Tickfaw (Village), Tangipahoa Parish, (FEMA Docket No. B–7310)	
Ponchatoula Creek:	
Approximately 2,950 feet downstream of Highway 442	*60
At Niccio Road	*65
Ponchatoula Creek Tributary 1:	
Approximately 1,100 feet downstream of the Illinois Central Gulf Railroad	*57
Approximately 3,000 feet upstream of State Highway 442	*63
Ponchatoula Creek Tributary 2:	
Approximately 1,800 feet downstream of Chapel Road	*60
At Chapel Road	*61
Maps are available for inspection at Village Hall, 50081 Highway 51, Tickfaw, Louisiana.	
Tangipahoa Parish (Unincorporated Areas), (FEMA Docket No. B–7262 and 7310)	
Ponchatoula Creek:	
Upstream of U.S. Highway 51 bridge	*17
Upstream of New Genessee Road	*57
At Old Genessee Road	*54
Approximately 1,100 feet from confluence with Ponchatoula Creek Tributary 2	*60
Yellow Water River Canal:	
Downstream of U.S. Highway 190 bridge	*38
Approximately 1,600 feet upstream of Ward Line Road	*46
Ponchatoula Creek Tributary 1:	
At confluence with Ponchatoula Creek	*55
Approximately 3,300 feet upstream from confluence with Ponchatoula Creek	*57
Ponchatoula Creek Tributary 2:	
At confluence with Ponchatoula Creek	*58
Approximately 2,200 feet upstream from confluence with Ponchatoula Creek	*60
Maps are available for inspection at the Office of Building Permits, 15481 Club Delux Road, Hammond, Louisiana.	
MISSOURI	
Greene County (Unincorporated Areas), (FEMA Docket No. B–7424)	
South Creek:	
Approximately 0.53 miles (2,800 feet) upstream of County Road 160	*1,193
Approximately 1.16 miles (6125 feet) upstream of County Road 160	*1,205
Wilson Creek:	
Approximately 740 feet downstream of confluence with North Branch Wilsons Creek	*1,198
Approximately 0.69 miles (3650 feet) upstream of the U.S. Highway 160 Bypass	*1,206
South Branch:	
At confluence with South Creek	*1,169
Just downstream of Farm Road 141(Cox Avenue)	*1,238
Ward Branch:	
Approximately 130 feet downstream of confluence with Yarbarough Creek	*1,176
Approximately 350 feet upstream of Holland Avenue	*1,207
Mount Pleasant Branch:	
Just downstream of U.S. Highway 160	*1,182
Approximately 200 feet upstream of U.S. Highway 160	*1,185
Farmer Branch:	
At its confluence with James River	*1,133
Just downstream of Farm Road 194	*1,190
Pea Ridge Creek:	
At confluence with South Dry Sac River	*1,113
Just downstream of Farm Road 151	*1,175
Dickerson Branch:	
At confluence with Pea Ridge Creek	*1,156
South Dry Sac River:	
Approximately 300 feet upstream of its confluence with Little Sal River	*1,091
Approximately 670 feet upstream of Farm Road 151	*1,138
South Dry Sac River Tributary:	
Approximately 800 feet upstream of its confluence with South Dry Sac River	*1,200
Approximately 1,620 feet upstream of Farm Road 167	*1,253
Ward Branch Tributary:	
At its confluence with Ward Branch	*1,118
Approximately 260 feet upstream of Weaver Road (Farm Road 178)	*1,194
Wilson Creek Tributary:	
At its confluence with Wilsons Creek	*1,145
Approximately 300 feet upstream of Highway M (Republic Road)	*1,241
Wilson Creek Unnamed Tributary:	
At its confluence with Wilson Creek	*1,182
Just downstream of the San Francisco Railway	*1,259
Workman Branch:	
At its confluence with Ward Branch	*1,138
Just upstream of Farm Road 145	*1,195
Yarborough Creek:	
Approximately 1,350 feet upstream of confluence with Ward Branch	*1,204
Approximately 800 feet upstream of U.S. Highway 160	*1,233
Maps are available for inspection at the Greene County Resource Management Planning and Zoning Section, 833 Boonville Avenue, Springfield, Missouri.	
Steelville (City), Crawford County, (FEMA Docket No. B–7417)	
Whittenburg Creek:	
Approximately 600 feet downstream of County Road 545	*726
Just downstream of Highway 8	*732
Yadkin Creek:	
At confluence with Wittenburg Creek	*731
Approximately 5,000 feet upstream of Spring Street	*785
Maps are available for inspection at City Hall, 103 Brickey Street, Steeville, Missouri.	
OREGON	
Salem (City), Marin County, (FEMA Docket No. B–7424)	
Shelton Ditch:	
At confluence with Pringle Creek	*146
Approximately 100 feet upstream of Diversion Structure at Mill Creek	*191
Pringle Creek:	
At confluence with Willamette River (location shown as confluence of Shelton Ditch with Willamette River on effective Firm)	*143

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD)
At confluence of Pringle Creek and East Fork Pringle Creek	*174
Middle Fork Pringle Creek:	
At confluence of Pringle Creek and East Fork Pringle Creek	*174
Approximately 150 feet downstream of Interstate 5	*219
East Fork Pringle Creek:	
At confluence with Pringle Creek and Middle Fork Pringle Creek	*174
Approximately 150 feet downstream of Interstate 5	*219
Mill Creek B:	
At confluence with Williamette River	*141
Just upstream of Missouri Street	*199
Approximately 3,000 feet upstream of Penitentiary Annex Road	*254
Maps are available for inspection at the City of Salem, 555 Liberty Street, SE, Salem, Oregon.	
SOUTH DAKOTA	
Spearfish (City), Lawrence County, (FEMA Docket No. B–7424)	
West Chipmunk Gulch:	
At confluence with Spearfish Creek	*3,574
At 60 feet upstream of West Oliver Street	*3,663
Maps are available for inspection at the Department of Public Works, City Hall, 625 Fifth Street, Spearfish, South Dakota.	
Hill City (City), Pennington County, (FEMA Docket No. B–7424)	
Spring Creek:	
At approximately 50 feet upstream of Hill City power line located at 2,000 feet upstream of U.S. Highway 385 and 16	*4,937
Approximately 1,400 feet upstream of Popular Street and Bishop Mountain Avenue Intersection	*5,013
Newton Fork Creek:	
At Museum Drive	*4,967
Approximately 1,900 feet upstream of Museum Drive	*4,981
Maps are available for inspection at City Hall, 324 Main Street, Hill City, South Dakota.	
TEXAS	
Tom Green County (Unincorporated Areas), (FEMA Docket No. B–7310)	
Red Arroyo:	
Just downstream of eastbound Route 67	*1,888
Approximately 1,300 feet upstream of Earthen Lake Dam	*1,987
Stream RA–1:	
At confluence with Red Arroyo	*1,897
Just downstream of O.C. Fisher Dam spillway	*1,928
Stream RA–2:	
At confluence with Red Arroyo	*1,898
Just upstream of Arden Road	*1,941
Goodfellow Draw:	
120 feet downstream of Stock Tank Dam	*1,805
790 feet upstream of Stock Tank Dam	*1,810
Maps are available for inspection at the Public Health Building, Two City Hall Plaza, San Angelo, Texas.	
WASHINGTON	
Okanogan County Unincorporated Areas, (FEMA Docket No. B–7427)	
Conconully Reservior:	
At Conconually Reservior	*2,286
Maps are available for inspection at City Hall, 123 North Fifth Street, Okanogan, Washington.	
Prescott (City), Walla Walla County, (FEMA Docket No. B–7416)	
Whetstone Gulch Overflow:	
Approximately 100 feet downstream of A Street	*1,036
Approximately 40 feet upstream of Fourth Street	*1,040
Mill Slough:	
Just upstream of C Street	*1,038
Approximately 2,950 feet upstream of C Street	*1,049
Mill Slough Overflow:	
Just upstream of G Street	*1,043
Approximately 1,140 feet upstream of G Street	*1,051
Maps are available for inspection at City Hall, 110 D Street, Prescott, Washington.	
North Bonneville (City), Skamania County, (FEMA Docket No. B–7266)	
Hamilton Creek:	
Just upstream of confluence with the Columbia River	*36.0
Approximately 100 feet upstream of Evergreen Drive	*47.0
Columbia River:	
Approximately 1.6 miles upstream of confluence with Hamilton Creek	*37.6
Approximately 2 miles upstream of confluence with Hamilton Creek	*38.9
Greenleaf Creek:	
Just upstream of confluence with Hamilton Creek	*47.0
Approximately 550 feet upstream of Moffet Hot Springs Road	*58.0
Maps are available for inspection at the City of North Bonneville Clerk/Treasure's Office, P.O. Box 7, North Bonneville, Washington.	
Conconully (Town), Okanogan County, (FEMA Docket No. B–7427)	
Conconully Reservior:	
At Conconully Reservior	*2,286
Maps are available for inspection at the Town Office, 21 North Main Street, Conconully, Washington.	
Walla Walla County (Unincorporated Areas), (FEMA Docket No. B–7416)	
Mill Slough:	
Just upstream of C Street	*1,038
Just downstream of Hart Road	*1,062
Whetstone Gulch Overflow:	
Approximately 40 feet upstream of Fourth Street	*1,040
Approximately 1,530 feet upstream of Fourth Street	*1,048
Maps are available for inspection at the Walla Walla County Regional Planning Office, 310 West Poplar Street, Suite 001, Walla Walla, Washington.	
Anacortes (City), Skagit County, (FEMA Docket No. B–7425)	
Burrows Bay:	
Along shoreline to Fidalgo Head including Burrows Pass	*7
Guemes Channel:	
Along shoreline from Shannon Point to Fidalgo Bay	*9
Fidalgo Bay:	
Along shoreline to Guemes Channel	*7
Rosario Strait:	
Along shoreline from Fidalgo Head to Shannon Point	*9
Maps are available for inspection at City Hall, 904 6th Street, Anacortes, Washington.	
WYOMING	
Dubois (Town), Freemont County, (FEMA Docket No. B–7425)	
Wind River:	
Approximately 3,380 feet upstream of State Highway 26	+6,882
Approximately 450 feet upstream of Soda Springs Drive	+6,983
Horse Creek:	
At confluence with Wind River	+6,912
Approximately 1,950 feet upstream of Clendenning Street	+6,953
Maps are available for inspection at Town Hall, 712 Meckern Street, Dubois Wyoming.	

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD)
Freemont County (Unincorporated Areas), (FEMA Docket No. B–7425)	
Wind River:	
Approximately 2,400 feet upstream of State Highway 26	+6,878
Approximately 2,200 feet upstream of Soda Springs Drive	+6,993
Horse Creek:	
Approximately 2,000 feet upstream of Clendenning Street	+6,954
Approximately 1,950 feet upstream of Clending Street	+6,955
Maps are available for inspection at the Planning Department, 450 North 2nd Street, Room 360, Lander, Wyoming.	

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD)	Communities affected
COLORADO		
Boulder County and Incorporated Areas, (FEMA Docket No. B–7424)		
Bullhead Gulch:		
At confluence with Boulder Creek	4,991	Boulder County (Uninc. Areas).
Approximately 50 feet downstream of Burlington Northern Railroad	*5,360	
Rock Creek:		
Approximately 3,500 feet downstream of Burlington Northern Railroad	*5,371	Boulder County (Uninc. Areas).
Approximately 9,700 feet upstream of McCaslin Boulevard	*5,639	
Prince Tributary East Branch:		
At confluence with Boulevard Gulch	*5,026	Boulder County (Uninc. Areas).
At divergrence of East/West branches	*5,056	
Coal Creek:		
Approximately 1,650 feet downstream of Denver Boulder Turnpike	*5,439	Boulder County (Uninc. Areas) Town of Superior and City of Louisville.
Approximately 5,200 feet upstream of Community Ditch Diversion	*5,689	
Prince Tributary West Branch:		
At confluence with Bullhead Gulch	*5,036	Boulder County (Uninc. Areas).
Approximately 5,750 feet upstream of Isabelle Road	*5,178	
ADDRESSES		
Boulder County (Unincorporated Areas)		
Maps are available for inspection at Department of Public Works, 1739 Broadway, Suite 300, P.O. Box 791, Boulder, Colorado.		
City of Louisville:		
Maps are available for inspection at the City of Louisville, 749 Main Street, Louisville, Colorado.		
Town of Superior:		
Maps are available for inspection at the Town of Superior, 124 East Coal Creek Drive, Superior, Colorado.		
IDAHO		
Ada County and Incorporated Areas, (FEMA Docket No. B–7404)		
Boise River:		
Approximately 5,800 feet downstream of Star Road	+2,458	Ada County (Uninc. Areas), City of Garden City, City of Boise, and City of Eagle.
Approximately 50 feet upstream of Eagle Road	+2,559	
Approximately 3,150 feet upstream of South Eckert Road	+2,764	
Loggers Creek (Side Channel):		
Approximately 925 feet upstream of Broadway Avenue	+2,703	Ada County (Uninc. Areas), City of Garden City, City of Boise, and City of Eagle.
Approximately 4,450 feet upstream of Park Center Boulevard (at upstream confluence with Boise River).	+2,736	
Overflow Channel Boise River:		
At confluence with Boise River	+2,576	Ada County (Uninc. Areas), City of Garden City, City of Boise, and City of Eagle.

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD)	Communities affected
At confluence with South Channel Boise River Eagle Island	+2,585	
South Channel Boise River:		
Approximately 4,675 feet downstream of Linder Road (at downstream confluence with Boise River).	+2,510	Ada County (Uninc. Areas), City of Garden City, City of Boise, and City of Eagle.
At upstream confluence with Boise River	+2,593	

ADDRESSES

Ada County (Unincorporated Areas)

Maps are available for inspection at County Engineer's Office, 650 Main Street, 2nd floor, Boise, Idaho.

City of Boise:

Maps are available for inspection at the Community Planning and Development Office, 150 North Capitol Boulevard, 2nd floor, Boise, Idaho.

City of Eagle:

Maps are available for inspection at 310 East State Street, Eagle, Idaho.

City of Garden City:

Maps are available for inspection at City Hall, 201 East 50th Street, Garden City, Idaho.

KANSAS

Hamilton County and Incorporated Areas, (FEMA Docket No.# B–7427)

Arkansas River:		
Approximately 11,000 feet downstream of State Highway 27	*3,211	Hamilton County (Uninc. Areas).
Approximately 2.6 miles upstream of State Highway 27	*3,240	
Syracuse Creek:		
Just upstream of the Atchinson, Topeka, Santa Fe Railroad and U.S. Highway 50	*3,243	Hamilton County (Uninc. Areas).
Approximately 2,100 feet upstream of State Highway 27 (U.S. Highway 207)	*3,262	
Syracuse Creek Overflow:		
Approximately 500 feet southeast of the Interstate of State Highway 27 and G Avenue.	*3,244	City of Syracuse.

ADDRESSES

Hamilton County (Unincorporated Areas)

Maps are available for inspection at Hamilton County Superintendents Office, 219 North Main Street, Syracuse, Kansas.

City of Syracuse:

Maps are available for inspection at City Hall, 109 North Main Street, Syracuse, Kansas.

LOUISIANA

West Baton Rouge Parish and Incorporated Areas, (FEMA Docket No. B–7310)

Lateral 1–C:		
At confluence with the Gulf Intracoastal Waterway	*9	Parish (Uninc. Areas) and City of Port Allen.
At Intersection with Interstate 10	*10	
At Intersection with State Highway 986	*16	
Oaks Avenue Canal:		
At the confluence with the Gulf Intracoastal Waterway	*10	Parish (Uninc. Areas) and City of Port Allen.
Just upstream of LeBlanc Road	*19	
Oaks Avenue Canal Tributary No. 1:		
At the confluence with Oaks Avenue Canal	*10	Parish (Uninc. Areas) and City of Port Allen.
Just upstream of South Jefferson Avenue	*25	

ADDRESSES

West Baton Rouge Parish (Unincorporated Areas)

Maps are available for inspection at the Parish Zoning Office, 880 North Alexander, Port Allen, Louisiana.

City of Port Allen:

Maps are available for inspection at City Hall, 750 N. Jefferson Avenue, Port Allen, Louisiana.

MISSOURI

St. Louis County and Incorporated Areas, (FEMA Docket No. B–7310)

Grand Glaize Creek:		
Approximately 400 feet upstream of Dougherty Ferry Road	442	St. Louis County (Uninc. Areas) & City of Valley Park.
Approximately 3,000 feet upstream of Dougherty Ferry Road	*446	

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD)	Communities affected
Monsanto Sunswept Creek:		
Approximately 950 feet downstream of Private Bridge	*532	City of Creve Coeur.
Just upstream of Chilton Lane	*561	
Des Peres Creek:		
At confluence with Sugar Creek	*450	City of Des Peres.
Approximately 450 feet upstream of Hospital Drive	*459	
Sugar Creek:		
Approximately 1,150 feet downstream of Old Dougherty Ferry Road	*446	City of Des Peres.
Just upstream of Interstate 270	*462	
Deer Creek:		
Just upstream of Lindbergh Boulevard	*524	City of Frontenac.
Approximately 3,300 feet upstream of Spoede Road	*542	
Monsanto Sunswept Creek:		
Approximately 400 feet downstream of Glen Abbey Road	*528	City of Frontenac.
Approximately 180 feet upstream of Glen Abbey Road	*528	
Sugar Creek:		
Just upstream of Interstate 270	*462	City of Kirkwood.
Approximately 150 feet upstream of Interstate 270	*462	
Deer Creek:		
Approximately 3,300 feet upstream of Spoede Road	*542	Village of Westwood.
Approximately 4,500 feet upstream of Spoede Road	*549	

ADDRESSES

St. Louis County (Unincorporated Areas)

Maps are available for inspection at the Department of Planning, 41 South Central Avenue, Clayton, Missouri.

City of Creve Coeur

Maps are available for inspection at City Hall, 300 North New Ballas Road, Creve Coeur, Missouri.

City of Des Peres

Maps are available for inspection at City Hall, 12325 Manchester Road, Des Peres, Missouri.

City of Frontenac

Maps are available for inspection at City Hall, 10555 Clayton Road, Frontenac, Missouri.

City of Kirkwood

Maps are available for inspection at City Hall, 139 South Kirkwood Road, Kirkwood, Missouri.

City of Valley Park

Maps are available for inspection at City Hall, 320 Benton Street, Valley Park, Missouri.

Village of Westwood

Maps are available for inspection at 9 Westwood Country Club Ground Road, Westwood, Missouri.

NEVADA

Washoe County and Incorporated Areas, (FEMA Docket No. B–7310)

Golden Valley Wash:		
Approximately 2,180 feet upstream of Tholl Drive	*4,981	Washoe County (Uninc. Areas), and City of Sparks.
Approximately 2,700 feet upstream of Spearhead Way	*5,176	
Hidden Valley Wash:		
Approximately 1,800 feet upstream of its confluence with Steamboat Creek	*4,442	
Approximately 3,420 feet upstream of Parkway Drive	*4,647	
Sun Valley Wash:		
At the Sun Valley Flood Control Dentention Dam	*4,548	Washoe County (Uninc. Areas), and City of Sparks.
At East 7th Avenue	*4,725	
Sun Valley Wash Split Flow:		
At convergence with Sun Valley Wash	*4,647	
At divergence from Sun Valley Wash	*4,695	

ADDRESSES

Washoe County (Unincorporated Areas)

Maps are available for inspection at the County Engineering Department, 1001 E. 9th Street, Reno, Nevada.

City of Sparks:

Maps are available for inspection at the Engineering Department, 431 Prater Way, Sparks, Nevada.

OKLAHOMA

Oklahoma County and Incorporated Areas, (FEMA Docket No. B–7404)

Biddy Creek:

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD)	Communities affected
Approximately 3,200 feet upstream of confluence with Deer Creek	*1,054	Oklahoma County (Uninc. Areas), City of Edmond, City of Harrah, Town of Lake Aluma, Town of Luther, City of Midwest City, City of Oklahoma City, City of Spencer, and City of the Village.
At Oklahoma-Canadian County Boundary	*1,103	
Bloody Rush Creek:		
Just upstream of Portland Avenue	*1,014	
Just upstream of Rockwell Avenue	*1,096	
Chisholm Creek:		
At Oklahoma-Logan County Boundary	*1,016	
At West Coffee Creek Road	*1,035	
Approximately 150 feet upstream of West Coffee Creek Road	*1,037	
At Hefner Road	*1,167	
At Northwest Britton Road	*1,192	
Coon Creek:		
Approximately 50 feet upstream of Northeast 192nd Street	*919	
Approximately 1,550 feet upstream of Triple X Road	*922	
Just downstream of Northeast 206th Street	*929	
Just upstream of Northeast 206th Street	*932	
At confluence with Coon Creek	*965	
Just downstreasm of Waterloo Road	*970	
Coon Creek Tributary:		
Approximately 70 feet upstream of Choctaw Road	*1,007	
Crutcho Creek:		
Approximately 2,000 feet upstream of North Midwest Boulevard	*1,149	
Approximately 700 feet downstream of Northeast 36th Street	**1,158	
Crutcho Creek Tributary C:		
Just downstream of Sooner Road	*1,217	
Approximately 450 feet upstream of Epperly Drive	*1,246	
Crutcho Creek Tributary C–1:		
Approximately 400 feet upstream of confluence with Crutcho Creek C	*1,226	
Just downstream of Southeast 59th Street	*1,233	
Deep Fork:		
Just upstream of Northeast 192nd Street	*902	
Approximately 1,800 feet upstream of Northeast 192nd Street	*903	
Deep Fork Tributary 11:		
Approximately 1,300 feet downstream of Northeast 50th Street	*1,089	
Just upstream of Northeast 50th Street	*1,104	
Deer Creek:		
At Waterloo Road	*1,009	
Approximately 600 feet downstream of Northwest 164th Street	*1,072	
Dorf Creek:		
Approximately 4,900 feet upstream of Meridian Avenue	*1,040	
Approximately 1,000 feet upstream of Coffee Creek Road	*1,095	
North Canadian River:		
At intersection of North Sooner Road and Boundary Northeast 23rd Street	*1,157	
North Canadian Tributary:		
Approximately 1,750 feet downstream of Northeast 10th Street	*1,090	
Just downstream of Reno Avenue	*1,110	
Approximately 150 feet upstream of Reno Avenue	*1,114	
Approximately 200 feet downstream of Triple XXX Road	*1,167	
North Canadian Tributary 2 or Tributary 1:		
Approximately 1,050 feet downstream of Reno Avenue	*1,104	
Just upstream of Reno Road	*1,110	
North Canadian Tributary 2 or Tributary 2:		
Approximately 250 feet downstream of Southeast 15th Street	*1,132	
North Canadian Tributary 3 or Tributary 1:		
At confluence with North Canadian Tributary 1	*1,118	
Approximately 3,700 feet upstream of Peebly Road	*1,141	
Pond Creek (previously known as Chisholm Creek Tributary 3):		
Approximately 4,000 feet downstream of Danforth Avenue	None	
Just downstream of Danforth Avenue	None	
Soldier Creek Tributary to Deer Creek:		
At confluence with Deer Creek	*1,056	
At County Line Road	*1,074	
Walnut Creek:		
At confluence with Deer Creek	*1,042	

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD)	Communities affected
Approximately 150 feet downstream of Northwest 164th Street	*1,068	
Just upstream of Northwest 164th Street	*1,072	
Walnut Creek Tributary 1:		
Approximately 3,400 feet upstream of confluence with Walnut Creek	*1,049	
At Northwest 164th Street	*1,086	
Just upstream of Northwest 164th Street	*1,092	
West Captain Creek Tributary:		
At Oklahoma-Lincoln County Boundary	*950	
Approximately 2,500 feet upstream of Northeast 93rd Street	*1,051	
West Captain Creek Tributary 2:		
At confluence with West Captain Creek Tributary	*956	
Approximately 3,000 feet upstream of Northeast 93rd Street	*1,010	
West Captain Creek Tributary 3:		
At confluence with West Captain Creek Tributary	*989	
Approximately 2,000 feet upstream of Northeast 93rd Street	*1,021	
Whistler Creek:		
Approximately 2,900 feet upstream of confluence with Deer Creek	*1,029	
Approximately 2,800 feet downstream of MacArthur Boulevard	*1,069	

ADDRESSES

Oklahoma County (Unincorporated Areas)

Maps are available for inspection at the Oklahoma County Engineer Office, 320 Robert A. Kerr Avenue, Suite 101, Oklahoma City, Oklahoma.

City of Edmond:

Maps are available for inspection at 100 East First Street, Edmond, Oklahoma.

City of Harrah:

Maps are available for inspection at 1900 Church Avenue, Harrah, Oklahoma.

Town of Lake Aluma:

Maps are available for inspection at 104 Lake Aluma Drive, Lake Aluma, Oklahoma.

Town of Luther:

Maps are available for inspection at 119 South Main Street, Luther, Oklahoma.

City of Midwest City:

Maps are available for inspection at 100 North Midwest Boulevard, Midwest City, Oklahoma.

City of Oklahoma City:

Maps are available for inspection at 420 West Main Street, Oklahoma City, Oklahoma.

City of Spencer:

Maps are available for inspection at 8200 Northeast 36th Street, Spencer, Oklahoma.

City of the Village:

Maps are available for inspection at 2304 Manchester Drive, The Village, Oklahoma.

TEXAS

Bexar County and Incorporated Areas (FEMA Docket No. B–7414)

Culbera Creek:		
At confluence with Leon Creek	*773	Bexar County (Unic. Areas) City of San Antonio.
At Culebra Road	*849	
Just downstream of Galm Road	*952	
Culbera Creek Split No. 1:		
At confluence with Culbera Creek	*796	Bexar County (Unic. Areas).
Approximately 830 feet upstream of Tezel Road	*808	City of San Antonio.
Culbera Creek Split No. 2:		
At confluence with Culbera Creek Approximately 200 feet upstream of Tezel Road.	*810	Bexar County (Unic. Areas).
Approximately 3,620 feet upstream of Timberwilde	*827	
Culbera Creek Split No. 3:		
At confluence with Culbera Creek (Approximately 1,530 feet downstream of Charles W. Anderson Loop).	*853	Bexar County (Unic. Areas), City of San Antonio.
At Charles W. Anderson Loop	*865	
French Creek:		
Approximately 1,500 feet upstream of Clyde Dent	*806	Bexar County (Unic. Areas), City of San Antonio.
Approximately 1,040 feet downstream of Mainline Drive	*832	
At Charles W. Anderson Drive	*936	
Approximately 800 feet upstream of Circle North Trail	*980	

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD)	Communities affected
Helotes Creek (at San Antonio):		
At confluence with Culbera Creek	*853	Bexar County (Unic. Areas), City of San Antonio.
At Leslie Road	*915	
Approximately 320 feet upstream of Bandera Road	*997	
Hueber Creek:		
Approximately 220 feet upstream of Ingram Road	*765	Bexar County (Unic. Areas), City of San Antonio & City of Leon Valley.
At Huebner Road	*841	
Approximately 320 feet upstream of DeZavale Road	*966	
Huesta Creek:		
At confluence with Leon Creek	*915	Bexar County (Unic. Areas), City of San Antonio.
Approximately 2,050 feet upstream of Charles Anderson Drive	*1,006	
Leon Creek:		
At U.S. Highway 90	*693	Bexar County (Unic. Areas), City of San Antonio.
At U.S. 161	*736	
Approximately 2,450 feet downstream of Route 16	*824	
Approximately 1,100 feet upstream of Charles W. Anderson Drive	*993	
Leon Creek Overflow:		
Approximately 1,125 feet downstream of West Prue Road	*888	Bexar County (Unic. Areas), City of San Antonio.
At Babcock Road	*918	
Approximately 60 feet downstream of West Hausman Road	*953	
Mavenck Creek (Babcock Tributary):		
At confluence of Leon Creek	*916	Bexar County (Unic. Areas), City of San Antonio.
At Seco Creek Street	*1,014	
Approximately 1,750 feet upstream of Babcock Road	*1,137	
Tributary B to Culebra Creek:		
At confluence with Culebra Creek	*920	Bexar County (Unic. Areas).
Approximately 50 feet downstream of Galm Road	*950	

ADDRESSES

Bexar County (Unincorporated Areas)

Maps are available for inspection at the Bexar County Works Department, 233 N. Pecos, Suite 420, San Antonio, Texas.

City of Leon Valley:

Maps are available for inspection at the Leon Velley City Hall, 6400 El Verde Road, San Antonio, Texas.

City of San Antonio:

Maps are available for inspection at the Municipal Plaza, 114 W. Commerce, Seventh Floor, San Antonio, Texas.

Lubbock County and Incorporated Areas, (FEMA Docket No. B–7418)

Playa System C2:		
Near intersection of Erskin Street and Knoxville Avenue (Playa 53)	3,221	City of Lubbock.
Playa System C3:		
At confluence with North Fork Double Mountain Fork of the Brazos River	*3,146	City of Lubbock.
Near intersection of Clovis Road and Baylor Street (at Playa System C1)	*3,211	
Playa System D1:		
At confluence with North Fork Double Mountain Fork of The Brazos River	*3,128	City of Lubbock.
Near intersection of 25th Street and Geneva Avenue (Tech Terrace Playa)	*3,212	
Near intersection of Kewanee Avenue and 32nd Street (Playa 40)	*3,261	
Playa System D2:		
At Maxey Park (Playa 43)	*3,226	City of Lubbock.
Near intersection of Levelland Highway and Utica Drive (Playa 45)	*3,242	
Playa System D3:		
At confluence with North Fork Double Mountain Fork of The Brazos River Near 26th Street and Globe Avenue (at Playa System D1).	*3,142 *3,185	City of Lubbock.
Playa System E1:		
Just upstream of confluence with North Fork Double Mountain Fork of the Brazos River.	*3,094	Lubbock County (Uninc. Areas), City of Lubbock.
Near intersection of Milwaukee Avenue and County Road 6900 (Playa 39)	*3,269	
Playa System E2:		
Near intersection of Elgin Avenue and Loop 289 (at Playa System E1)	*3,223	City of Lubbock.
Northwest of intersection of 66th Street and Elgin Avenue	*3,224	
Playa System 3E:		
Near Brownfield Highway and Highway 62/82 split (at Playa System E1 Upper)	*3,276	City of Lubbock.

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD)	Communities affected
Near intersection of 59th Street and Upland Avenue (Playa 101)	*3,281	
Playa System E4 (A, B, & C):		
Just upstream of Route 327	*3,267	City of Lubbock.
Northwest of the intersection of 82nd Street and Iola Avenue	*3,283	
Playa System E5 & E7:		
Near intersection of Dowden Avenue and Brownfield Highway	*3,289	Lubbock County (Uninc. Areas), Town of Wolfforth.
Near intersection of 82nd Street and Hartland Avenue	*3,307	
Playa System E1 Upper & E8:		
Northwest of intersection of Frankford Avenue and Highway 82/62 (Playa 37)	*3,267	Lubbock County (Uninc. Areas), City of Lubbock.
Southeast of intersection of 66th Street and Inler Avenue (Playa 138)	*3,302	
Playa System E9:		
Southwest of intersection of 66th Street and Quincy Avenue (at Playa System E 48B).	*3,272	City of Lubbock.
Near intersection of Homestead Avenue and 82nd Avenue (Playa 32)	*3,289	
Playa System E12 & E13 (Western Area):		
Southeast of intersection of 34th Street and Hartland Avenue	*3,317	Lubbock County (Uninc. Areas).
Near intersection of Inler Avenue and 66th Street	*3,294	
Playa System F:		
Near intersection of 50th Street and Avenue A (Playa 161)	*3,182	City of Lubbock.
Near intersection of IH–27 and Highway 289	*3,184	
Approximately 1 mile south of Highway 289 and IH–27	*3,220	
Playa System G1, G2, G3, & G4:		
Near intersection of 98th Street and University Avenue (Playa 85)	*3,204	City of Lubbock.
Near intersection of 73rd Street and Bangor Avenue (Playa 30)	*3,260	
Playa System G5:		
Near intersection of 98th Street and Milwaukee Avenue (Playa 94)	*3,261	Lubbock County (Uninc. Areas), City of Lubbock.
Near intersection of 98th Street and Alcove Avenue (Playa 133)	*3,301	
Playa Lake 13 & 15:		
Near intersection of Slaton Road and Martin L. King Boulevard	*3,166	City of Lubbock.
Near intersection of Slaton Road and Martin L. King Boulevard	*3,171	
Playa Lake 89:		
Near intersection of 93rd Street and Memphis Avenue	*3,219	City of Lubbock.
Ransom Canyon Lake:		
Near Lake Shore Drive	*2,957	Lubbock County (Uninc. Areas), Village of Lake Ransom Canyon, Village of Buffalo Springs.
Slaton Playa System:		
Near intersection of Division Street and New Mexico Street (Twin Lakes Playa)	*3,072	City of Slaton.
Near intersection of Dawson Street and Fisher Street (Compress Lake Playa)	*3,081	
Woodrow Playa System:		
Near intersection of University Avenue and Woodrow Road	*3,194	Lubbock County (Uninc. Areas).
Yellowhouse Draw:		
At confluence with North Fork Double Mountain Fork of the Brazos River	*3,157	City of Lubbock.
Just upstream of Atchison, Topeka and Santa Fe Railway	*3,173	
Just upstream of University Avenue	*3,192	
Approximately 5,500 feet upstream of Loop 289 North Service Road	*3,200	

ADDRESSES

Lubbock County (Unincorporated Areas)

Maps are available for inspection at the Lubbock County Courthouse, 904 Broadway Street, Lubbock, Texas.

Village of Buffalo Springs:

Maps are available for inspection at City Hall, #2 Marina Point, Pony Express Drive, Buffalo Springs, Texas.

Village of Lake Ransom Canyon:

Maps are available for inspection at City Hall, 24 Lee Kitchens Drive, Ransom Canyon, Texas.

City of Lubbock:

Maps are available for inspection at City Hall, 1625 13th Street, Lubbock, Texas.

City of Slaton:

Maps are available for inspection at City Hall, 130 9th Street, Slaton, Texas.

Town of Wolfforth:

Maps are available for inspection at City Hall, 328 East Highway 64/82, Wolfforth, Texas.

Tarrant County and Incorporated Areas, (FEMA Docket No. B–7306)

Stream SB–1:

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD)	Communities affected
At confluence with Sulpher Branch	*520	Tarrant County (Uninc. Areas), City of Fort Worth, City of Arlington, City of Bedford, City of Benbrook, City of Euless, City of Halton City, City of Hurst, City of River Oaks, and Village of Westworth Village.
At Parkwood Drive	*603	
Sulpher Branch:		
At confluence with Walker Branch	*480	
Approximately 1,500 feet upstream of Spring Lake Drive	*606	
Clear Fork Tnnity River:		
At its confluence with the West Fork Trinity River	*536	
Just downstream from the Benbrook Lake Dam	*631	
West Fork Tnnity River:		
Approximately 16,000 feet downstream from the Union Pacific Railroad	*455	
Approximately 11,000 feet downstream from the Lake Worth Dam	*569	
At the Lake Worth Dam	*600	

ADDRESSES

Tarrant County (Unincorporated Areas)

Maps are available for inspection at the Engineering Department, 100 East Weatherford, Fort Worth, Texas.

City of Arlington:

Maps are available for inspection at City Hall, 101 West Abram, Arlington, Texas.

City of Bedford:

Maps are available for inspection at the Service Center, 1813 Reliance Parkway, Bedford, Texas.

City of Benbrook:

Maps are available for inspection at City Hall, 911 Winscott Road, Benbrook, Texas.

City of Euless:

Maps are available for inspection at the Engineering Department, City Hall, Building C, 201 North Ector Drive, Euless, Texas.

City of Fort Worth:

Maps are available for inspection at the Engineering Department, 1000 Throckmorton, Fort Worth, Texas.

City of Halton City:

Maps are available for inspection at City Hall, 5024 Broadway Avenue, Haltom City, Texas.

City of Hurst:

Maps are available for inspection at the Hurst Municipal Complex, 1505 Precinct Line Road, Hurst, Texas.

City of River Oaks:

Maps are available for inspection at River Oaks City Hall, 4900 River Oaks Boulevard, Fort Worth, Texas.

Village of Westworth Village:

Maps are available for inspection at Westworth Village Hall, 311 Burton Hill Road, Forth Worth, Texas.

UTAH

Salt Lake County and Incorporated Areas (FEMA Docket No. B–7420)

Willow Creek (West):		
Just upstream of 11400 South Street	*4,362	City of Draper.
Approximately 100 feet upstream of 1300 South Street	*4,409	
Approximately 1,250 feet upstream of 150 East Road	*4,322	
Midas Creek:		
At confluence with Jordan River	*4,322	Salt Lake County (Uninc. Areas),
Approximately 250 feet upstream of 3600 West Street	*4,603	City of Riverton, City of South Jordon.

ADDRESSES

Salt Lake County (Unincorporated Areas)

Maps are available for inspection at Salt Lake County Recorders Office, 2001 South State Street, Suite N–1600, Salt Lake City, Utah.

City of Draper:

Maps are available for inspection at City Hall, Engineering Department, 900 East 12441 South Street, Draper, Utah.

City of Riverton:

Maps are available for inspection at City Hall, 949 East 12400 South Street, Riverton, Utah.

City of South Jordan:

Maps are available for inspection at City Hall, 11175 South Redwood Road, South Jordan, Utah.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: September 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–26219 Filed 10–15–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: FEMA makes final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEse were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator of the Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of " § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified
Missouri	Dunklin County (Unincorporated Areas) (FEMA Docket No. 7609.	Shallow flooding	Area north of State Route 84 and south of railroad.	*259
Maps are available for inspection at the Courthouse, Courthouse Square, Kennett, Missouri.				
Missour	Pemiscot County (Unincorporated Areas) (FEMA Docket No. 7609).	Shallow flooding	Area along Route A about 2,000 feet north of State Route 84.	*259
			Area south of City of Bragg City, west of Main Street.	*259
			Area south of City of Bragg City, east of Main Street.	*259
Maps are available for inspection at the Courthouse, 610 Ward Avenue, Caruthersville, Missouri.				

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NAVD) Modified
Texas	Galveston County (Unincorporated Areas) (FEMA Docket No. 7609)	Gulf of Mexico	North of FM 3005, from approximately 1,000 feet west of its intersection with Pirates Beach Circle to approximately 300 feet east of 12 mile Road.	*17
			At the shoreline, near the Southern terminus of San Domingo Drive, about 100 feet west of the City of Galveston corporate limit, to the corporate limit.	*20
Maps are available for inspection at the 123 Rosenberg Street, Suite 4157, Galveston, Texas.				
Texas	Galveston (City), Galveston County (FEMA Docket No. 7609).	Gulf of Mexico	At the northern terminus of 9 Mile Road ..	*18
			Along the shoreline extending from approximately 1,500 feet east of the southern terminus of 11 Mile Road to Pabst Road.	*20
Maps ar available for inspection at City Hall, 823 Rosenberg Street, Galveston, Texas.				
Texas	Jamaica Beach (Village), Galveston County (FEMA Docket No. 7609).	Gulf of Mexico	From the canal northwest of Bahama Way to West Bay.	*14
			Along the shoreline extending from the western corporate limit to the southern terminus of Buccaneer Drive.	*20
Maps are available for inspection at 16628 San Luis Pass Road, Jamaica Beach, Texas.				

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: Septermber 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–26218 Filed 10–15–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 61, and 69

[CC Docket No. 96–187; FCC 02–242]

Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission declined to revise its streamlined tariff procedures in the manner requested by the AT&T Corporation, MCI Telecommunications Corporation, and Southwestern Bell Telephone Company. The intended effect of this document is to maintain the existing Commission rules regarding the filing of tariffs on a streamlined basis.

FOR FURTHER INFORMATION CONTACT: Joi Roberson Nolen, Wireline Competition Bureau, 202–418–1537.

SUPPLEMENTARY INFORMATION: In this document, the Commission denies the petitions for reconsideration filed by AT&T Corporation (AT&T), MCI Telecommunications Corporation (MCI), and Southwestern Bell Telephone Company (SWBT) (hereinafter "the petitioners") regarding the Commission's 1997 *Streamlined Tariff Report and Order*, 12 FCC Rcd 2170 (1997), 62 FR 5757–03, February 7, 1997. The Commission also denies the requests for clarification filed by AT&T and MCI. The *Streamlined Tariff Report and Order* implemented amendments to section 204(a) of the Communications Act (Act) made by the Telecommunications Act of 1996 (1996 Act). Specifically, the 1996 Act allowed local exchange carriers (LECs) to file new or revised charges, classifications, regulations or practices with the Commission on a streamlined basis. *See* 47 U.S.C. 204(a)(3). In particular, the *Streamlined Tariff Report and Order* implemented the "deemed lawful" tariff provisions that the 1996 Act added to section 204(a)(3) of the Act. AT&T and MCI sought reconsideration of the Commission's conclusion that "deemed lawful" status confers a conclusive presumption of lawfulness. In their petitions, AT&T and MCI assert that the Commission should have interpreted the phrase "deemed lawful" as creating a rebuttable presumption, *i.e.*, a tariff filed on a streamlined basis that becomes effective without suspension and investigation is presumed lawful, but that presumption may be rebutted. In support of their position, AT&T and MCI argue that the "deemed lawful" language in section 204(a)(3) is ambiguous. Subsequent to the filing of the petitions for reconsideration, the United States Court of Appeals for the District of Columbia Circuit considered the meaning of "deemed lawful" in section 204(a)(3) in the context of a section 208 complaint case. *ACS of Anchorage, Inc.* v. *FCC*, 290 F. 3d 406, 412 (D.C. Cir. 2002). The court focused on whether there was a distinction to be made between rates and rates of return for determining whether the deemed lawful standard was applicable to the case. In this context, however, the court specifically considered the Commission's statements in the *Streamlined Tariff Report and Order* that the term "deemed lawful" was "unambiguous" in the "consistent" interpretation of the courts. *Id.* That consideration led the court to say, "[t]his being so [that case law consistently found deemed lawful to be unambiguous], we find section 204(a)(3) equally unambiguous in banning refunds purportedly for rate-of-return

violations." *Id.* Given the court's conclusion, the Commission cannot adopt the reading urged by AT&T and MCI. The Commission thus denies the petitions filed by AT&T and MCI with respect to this issue.

The Commission also, however, denies SWBT's petition with respect to the issue of the Commission's interpretation of "deemed lawful." In its petition, SWBT asserts that "deemed lawful" creates a safe harbor in which LECs can operate without fear of an attack on their rates or other provisions once the tariffs become effective. The court's holding was limited to the question of refund liability for rates that were "deemed lawful"; it in fact acknowledged that the Commission might order prospective relief "[i]f a later reexamination shows them to be unreasonable." *See ACS of Anchorage, Inc.* v. *FCC*, 290 F. 3d at 411. Therefore, a rate that is deemed lawful within the meaning of section 204(a)(3) may be the subject of a complaint alleging that the rate has become unjust and unreasonable, and the Commission by order may prescribe a new rate to be effective prospectively, even if the Commission can not require a carrier to make refunds. The Commission also denies reconsideration and clarification of a number of other issues related to streamlined tariff filings.

Accordingly, it is ordered, pursuant to sections 1, 2, 4(i), 4(j), 201–205, and 405 of the Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 201–205, and 405, that the petitions for reconsideration filed by AT&T Corp., MCI Communications Corp., and Southwestern Bell Telephone Company *are hereby denied.*

List of Subjects

47 CFR Part 1

Administrative Practices and Procedures, Communications common carriers, Telecommunications.

47 CFR Part 61

Access Charges, Communications common carriers, Telephone.

47 CFR Part 69

Communications common carriers, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–26238 Filed 10–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; DA 02–2423]

Enhanced 911 Emergency Calling; Use of Non-Initialized Wireless Phones

AGENCY: Federal Communications Commission.

ACTION: Final rule; stay of effective date.

SUMMARY: This document responds to a petition for reconsideration of a previous decision in this proceeding, by granting a request for stay of two of the Commission's rules imposing requirements for programming donated non-service-initialized phones and newly manufactured "911-only" wireless handsets with a code number as the telephone number/mobile identification number. Such phones currently lack such an identifying number and therefore do not have "call-back" capability. This inability to reach a caller, when such phones are used in emergency situations, can lead to critical delays in response time. The action is taken because the importance of the call-back issue to public safety and the merits of the arguments raised in the petition for reconsideration warrant further investigation before any rules are implemented.

DATES: Sections 20.18(l)(1)(i) and (l)(2)(i), added at 67 FR 36112, May 23, 2002, are stayed indefinitely effective October 1, 2002. The Commission will publish a document in the **Federal Register** when a final decision regarding these rule sections is reached.

FOR FURTHER INFORMATION CONTACT: David Siehl, Attorney,202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Order in CC Docket No. 94–102; DA 02–2423, adopted and released on September 30, 2002. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com*. Alternative formats (computer diskette, large print, audio cassettes, and Braille) are available to persons with disabilities by contacting Brian Millin at 202–418–7426, TTY 202–418–7365, or at *bmillin@fcc.gov*.

Synopsis of the Order

1. The Order grants a Request for Stay of 47 CFR 20.28(l)(1)(i) and (l)(2)(i) as adopted in the Report and Order published at 67 FR 36112, May 23, 2002. These rules impose requirements for programming both donated non-service-initialized phones and newly manufactured "911-only" wireless handsets with the code 123–456–7890 as the telephone number/mobile identification number. The purpose of the rules is to address the lack of call-back capability when 911 calls are dialed from these wireless devices.

2. A Request for Stay of the rules was filed by the Emergency Services Interconnection Forum (ESIF), which is a sponsored committee of the Alliance for Telecommunications Industry Solutions and is comprised of Commercial Mobile Radio Service carriers, wireless handset vendors, and public safety representatives. A Public Notice soliciting comment on this Request for Stay was published at 67 FR 46909, July 17, 2002.

3. In examining ESIF's Request for Stay, the Order finds that a stay is warranted in this case based on the likelihood of success on the merits of a Petition for Reconsideration of the Report and Order (Reconsideration Petition), also filed by ESIF, and the lack of injury to third parties if the Stay Request is granted. Issuance of a stay will allow further consideration of a solution, raised by ESIF in its Reconsideration Petition, for 911 calls from donated non-initialized wireless phones and 911-only wireless handsets that the Commission has not previously reviewed in this proceeding and that possesses certain potential advantages over the approach adopted in the Report and Order.

Ordering Clause

4. *It is therefore ordered*, pursuant to Sections 4(i), 11, 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), and 303(r) that 1 the Request for Stay filed by Emergency Services Interconnection Forum on June 12, 2002, is granted and will remain in effect until the Commission resolves the Petition for Reconsideration. The Commission will then publish a document in the **Federal Register** regarding these rules.

List of Subjects in 47 CFR Part 20

Communications common carrier, Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–26237 Filed 10–10–02; 11:25 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2517, MB Docket No. 02–178, RM–10456]

Digital Television Broadcast Service; Lewisburg, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of High Mountain Broadcasting Corporation, substitutes DTV channel 8 for DTV channel 48 at Lewisburg, West Virginia. *See* 67 FR 46148, July 12, 2002. DTV channel 8 can be allotted to Lewisburg in compliance with the principle community coverage requirements of section 73.625(a) at coordinates 37–46–22 N. and 80–42–25 W. with a power of 3.8, HAAT of 568 meters and with a DTV service population of 401 thousand. With this action, this proceeding is terminated.

DATES: Effective November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–178, adopted October 3, 2002, and released October 10, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under West Virginia, is amended by removing DTV channel 48 and adding DTV channel 8 at Lewisburg.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–26269 Filed 10–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2505, MM Docket No. 01–244, RM–10234, and MM Docket No. 01–245, RM–10235]

Digital Television Broadcast Service; Tyler and Lufkin, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Civic License Holding Company, Inc., substitutes DTV channel 10 for DTV channel 38 at Tyler, Texas; and substitutes DTV channel 11 for DTV channel 43 at Lufkin, Texas. *See* 66 FR 48852, September 24, 2001; and 66 FR 48851, September 24, 2001. DTV channels 10 and 11 can be allotted to Tyler and Lufkin, Texas, respectively, in compliance with the principle community coverage requirements of Section 73.625(a). DTV channel 10 is allotted at coordinates 32–32–23 N. and 95–13–12 W. with a power of 7, HAAT of 302 meters and with a DTV service population of 213 thousand. DTV channel 11 is allotted at coordinates 31–25–09 N. and 94–48–03 W. with a power of 9.25, HAAT of 204 meters and with a DTV service population of 622 thousand. With this action, this proceeding is terminated.

DATES: Effective November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–244 and MM Docket No. 01–245, adopted October 2, 2002, and released October 9, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Texas, is amended by removing DTV channel 43 and adding DTV channel 11 at Lufkin.

3. Section 73.622(b), the Table of Digital Television Allotments under Texas, is amended by removing DTV channel 38 and adding DTV channel 10 at Tyler.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–26235 Filed 10–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2388; MB Docket No. 02–188; RM–10462]

Radio Broadcasting Services; Encinal, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 273A to Encinal, Texas, in response to a petition filed by Linda Crawford. *See* 67 FR 50851, August 6, 2002. The coordinates for Channel 273A at Encinal are 28–06–40 and 99–27–15. There is a site restriction 12.5 kilometers (7.8 miles) northwest of the community. With this action, this proceeding is terminated. A filing window for Channel 273A at Encinal will not be opened at this time. Mexican concurrence has been received for the allotment of Channel 273A at Encinal. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 02–188, adopted September 25, 2002, and released September 27, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Encinal, Channel 273A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26229 Filed 10–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2233; MB Docket No. 02–115; RM 02–10427]

Radio Broadcasting Services; Monroe and Luna Pier, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission reallots Channel 252A from Monroe to Luna Pier, Michigan, as the community's first local aural transmission service and modifies the license for Station WTWR–FM to reflect the changes. *See* 67 FR 40907 (06/14/2002). Station WTWR–FM has two preexisting short spacings grandfathered pursuant to Section 73.213 of the rules and the change of community is being implemented without any change in facilities at petitioner's existing transmitter site. Channel 252A is allotted at Luna Pier at petitioner's transmitter site which is 4.7 kilometers (2.9 miles) northwest of the community. Coordinates for Channel 252A at Luna Pier are 41–50–43 NL and 83–27–59 WL.

DATES: Effective November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–115, adopted September 4, 2002, and released September 20, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Luna Pier, Channel 252A, and removing Monroe, Channel 252A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26231 Filed 10–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2518, MB Docket No. 02–154, RM–10490]

Television Broadcast Service; Topeka, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Davis Television Topeka, LLC, substitutes channel 22+ for channel 43 at Topeka, Kansas. *See* 67 FR 44792, July 15, 2002. TV channel can be allotted to Topeka, Kansas, with a plus offset consistent with the requirements of Section 73.610 at coordinates 39–00–00 N. and 96–07–45 W. With this action, this proceeding is terminated.

DATES: Effective November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–154, adopted October 3, 2002, and released October 10, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Kansas, is amended by removing TV channel 43 and adding TV channel 22+ at Topeka.

Federal Communications Commission.
Barbara A. Kreisman,
Chief, Video Division, Media Bureau.
[FR Doc. 02–26268 Filed 10–15–02; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 100702A]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Quota transfers; General category daily retention limit adjustment.

SUMMARY: NMFS adjusts the October-December time-period subquota for the General category Atlantic bluefin tuna (BFT) fishery by transferring 60 metric tons (mt) from the Longline South subquota, 10 mt from the Longline North subquota, 60 mt from the Angling category large school/small medium size class subquota for the northern area, and including the quota underharvest from previous time periods, for a revised coastwide General category October - December time-period subquota of approximately 301.4 mt. NMFS has also determined that the BFT General category restricted fishing day (RFD) schedule should be adjusted to allow for maximum utilization of the General category October-December time-period subquota. Therefore, NMFS authorizes fishing under the General category quota the previously designated RFDs for the month of October, 2002. Additionally, the daily retention limit is increased to two large medium or giant BFT for the remainder of October, 2002. These actions are being taken to allow for maximum utilization of the U.S. landings quota of BFT while maintaining a fair distribution of fishing opportunities, preventing overharvest of the adjusted subquotas for the affected fishing categories, helping to achieve optimum yield in the General category fishery, and allowing the collection of a broad range of data for stock monitoring purposes, consistent with the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP).

DATES: The quota transfers are effective October 10, 2002, through May 31, 2003. The General category retention limit adjustments are effective October 13, 2002, through October 31, 2002.

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

Quota Adjustments

Under the implementing regulations at 50 CFR 635.27(a)(8), NMFS has the authority to transfer quotas among categories, or, as appropriate, subcategories, of the fishery, after considering the following factors: (1) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; (2) the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no allocation is made; (3) the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded; (5) the effects of the transfer on BFT rebuilding and overfishing; and (6) the effects of the transfer on accomplishing the objectives of the HMS FMP.

If it is determined, based on the factors listed here and the probability of exceeding the total quota, that vessels fishing under any category or subcategory quota are not likely to take that quota, NMFS may transfer inseason any portion of the remaining quota of that fishing category to any other fishing category or to the Reserve quota.

Annual BFT quota specifications issued under 50 CFR 635.27 provide for a quota of 647.0 mt of large medium and giant BFT to be harvested from the regulatory area by vessels fishing under the General category quota during the 2002 fishing year. The General category BFT quota is further subdivided into time period subquotas to provide for broad temporal and geographic distribution of scientific data collection and fishing opportunities. The October-December subquota was initially set at 63.7 mt for the 2002 fishing year, and is currently 171.4 mt, after the carryover of approximately 107.7 mt of unharvested subquota from previous time periods. An additional 10 mt has been set aside for the traditional fall New York Bight fishery.

After considering the factors for making transfers between categories, NMFS has determined that 60 mt of the remaining Longline South subcategory quota of approximately 109.0 mt, and 10 mt of the remaining Longline North subcategory quota of approximately 25.4 mt should be transferred to the General category. Sufficient quota remains in the Longline category to provide for additional landings by pelagic longline vessels for the remainder of the 2002 fishing year. NMFS has also determined that 60 mt of the remaining Angling North large school/small medium subcategory quota of approximately 112.5 mt should be transferred to the General category. Given these transfers totaling 130 mt, the adjusted subquota for the coastwide General category fishery for the October-December period is 301.4 mt.

Adjustment of General Category Daily Retention Limit

NMFS previously established an effort control schedule for the 2002 BFT General category fishery that included certain RFDs (67 FR 61537, October 1, 2002). Under the authority of 50 CFR 635.23(a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. Based on a review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds, NMFS has determined an adjustment to the RFD schedule is appropriate and necessary, and, therefore, increases the daily retention limit for certain previously designated RFDs for the month of October, 2002. An adjustment to the General category daily retention limit will allow full use of the adjusted October-December subquota, while preventing overharvest and ensuring reasonable fishing opportunities in all areas. Therefore, NMFS authorizes fishing under the General category quota for October 13, 14, 16, 30, 21, 23, 27, 28, and 30, 2002, and increases the daily retention limit to two large medium or giant BFT per vessel through October 31, 2002.

If the adjusted General category subquota for the October-December period is harvested, the coastwide fishery will be closed and NMFS will take action as necessary to release the set aside for the New York Bight fishery. Alternatively, NMFS may transfer additional quota from the Reserve or other fishing categories to allow the coastwide General category fishery to remain open. An announcement of closure, if any, will be filed with the Office of the **Federal Register**, stating the effective date of closure, and further communicated through the Highly Migratory Species Fax Network, the Atlantic Tunas Information Line, the www.nmfspermits.com website, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the Atlantic Tunas Information Line at (888) USA-TUNA or (978) 281–9305 or access the website mentioned above, to check the status of the fishery before leaving for a fishing trip.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds for good cause that providing prior notice and public comment for this action, as required under 5 U.S.C. 553(b)(B), is impracticable and contrary to the public interest. Without these inseason adjustments, NMFS would not be providing U.S. fishermen with a reasonable opportunity to catch the quota allocated to the United States by ICCAT. Additionally, given low catch rates to date, continued effort controls and a restrictive catch limit would not allow for maximum utilization of the General category October-December time-period subquota. As the fishery is currently underway, and fishing opportunities may be limited by weather-related factors and BFT migration, any delay in this action would be inconsistent with its objectives. For these reasons and because this action relieves a restriction (i.e., reallocates quota to avoid closure and increases daily catch limit thereby removing RFDs), the AA also finds good cause to waive the 30–day delay in effective date pursuant to 5 U.S.C. 553(d)(1) and (3). This action is authorized by 50 CFR 635.27 is exempt for review under Executive order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 9, 2002.

John H. Dunigan,
Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 02–26301 Filed 10–10–02; 4:23 pm]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 200
Wednesday, October 16, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NM-28-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes, that currently requires periodic inspections and cleaning of the drainage system cavity of the canted pressure deck, aft of the wing center section. This action would add new repetitive tests and inspections for discrepancies of the drainage system of the canted pressure deck located in the wheel wells of the main landing gear (MLG) of the left and right wings; and corrective actions, if necessary. The action would also terminate the requirements of the existing AD. The actions specified by the proposed AD are intended to prevent ice accumulation on the lateral flight control cables due to water entering the wheel well of the MLG and freezing, which could restrict or jam control cable movement, resulting in loss of controllability of the airplane.

DATES: Comments must be received by December 2, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-28-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002-NM-28-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1153; fax (425) 227-1181.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687-4243, fax (425) 687-4248. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM-28-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-28-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On May 24, 1989, the FAA issued AD 89-12-07, amendment 39-6232 (54 FR 24161, June 6, 1989), applicable to all Boeing Model 747 series airplanes, to require periodic inspections and cleaning of the cavity aft of the wing center section. The requirements of that AD are intended to prevent ice accumulation in the aileron control system which could result in reduced lateral control capability.

Actions Since Issuance of Previous Rule

Since the issuance of AD 89-12-07, we have received several reports indicating ice accumulation on the lateral flight control cables in the wheel well of the main landing gear (MLG) on certain Model 747 series airplanes during flight. The ice buildup was attributed to debris blocking the drainage system for the canted pressure deck area, which caused water accumulation in the canted pressure deck. The accumulation of water also caused excessive corrosion of the upper skin of the wing center section and the rear spar. Cabin pressufization caused the water to enter the wheel well of the MLG and solidify during flight. Such ice accumulation could restrict or jam control cable movement, resulting in loss of controllability of the airplane.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 747-51A2057, dated February 21, 2002, which describes procedures for repetitive tests and inspections for discrepancies of the drainage system for the canted pressure deck located in the wheel wells of the MLG in the left and right wings; and corrective actions, if necessary; as follows:

- Work Package 1 describes procedures for repetitive testing of the drainage system of the canted pressure deck for proper drainage. The test includes a visual inspection of the external drains, reducer, and drain lines for discrepancies. The discrepancies include damage, holes, signs of frozen water, and signs of blockage (3 to 5 pounds per square inch (PSI) compressed air is sent through the drain line to check for blockage). The corrective actions include cleaning the drain system to remove blockage if the air does not flow freely, and replacing any damaged drain line with a new drain line. The procedures also specify contacting the manufacturer for repair instructions for damaged drain lines.
- Work Package 2 describes procedures for repetitive cleaning and inspecting of the canted pressure deck drainage system as shown in the Boeing 747 Airplane Maintenance Manual.
- Work Package 3 describes procedures for repetitive inspections of the canted pressure deck for discrepancies (loose or missing fasteners; loose, missing, or cracked sealant; and leak paths). The corrective actions include replacing any loose or missing fastener, or loose, missing, or cracked sealant; and repair of any leak found. For other discrepancies, the procedures specify contacting the manufacturer for repair instructions.
- Work Package 4 describes procedures for repetitive cabin pressurization tests to check for leaks in the canted pressure deck, and repair of any leak found.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 89-12-07 to continue to require periodic inspections and cleaning of the drainage system cavity of the canted pressure deck, aft of the wing center section. This new action would add repetitive tests and inspections for discrepancies of the drainage system of the canted pressure deck located in the wheel wells of the MLG of the left and right wings; and corrective actions, if necessary. The new actions would terminate the requirements of the existing AD. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Difference Between Service Information and Proposed Rule

Although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repairs, this proposed AD would require such repairs to be accomplished per a method approved by us, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Cost Impact

There are approximately 1,127 airplanes of the affected design in the worldwide fleet. The FAA estimates that 255 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the actions that are currently required by AD 89-12-07, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $60 per airplane, per inspection cycle.

It would take approximately 12 work hours per airplane to accomplish the test/inspection/cleaning of the drainage system specified in Work Packages 1 and 2 of Boeing Alert Service Bulletin 747-51A2057, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the test/inspection/cleaning proposed by this AD on U.S. operators is estimated to be $183,600, or $720 per airplane, per cycle.

It would take approximately 4 work hours per airplane to accomplish the inspection specified in Work Package 3 of the service bulletin, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $61,200, or $240 per airplane, per inspection cycle.

It would take approximately 4 work hours per airplane to accomplish the cabin pressurization test specified in Work Package 4 of the service bulletin, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the test proposed by this AD on U.S. operators is estimated to be $61,200, or $240 per airplane, per test cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6232 (54 FR 24161, June 6, 1989), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2002-NM–28-AD. Supersedes AD 89–12–07, Amendment 39–6232.

Applicability: All Model 747 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ice accumulation on the lateral flight control cables due to water entering the wheel well of the main landing gear and freezing, which could restrict or jam control cable movement, resulting in loss of controllability of the airplane; accomplish the following:

Restatement of Requirements of AD 89–12–07

Repetitive Inspections/Cleaning

(a) Within 15 months after July 10, 1989 (the effective date of AD 89–12–07, amendment 39–6232), unless accomplished 3 months before July 10, 1989, and thereafter at intervals not to exceed 18 months: Gain access to the cavity aft of the wing center section and remove all debris and foreign material, clean the cavity, and verify all drains are open and clean.

New Requirements of This AD

Repetitive Tests of the Drainage System/ Corrective Action

(b) Within 18 months after the effective date of this AD, do the actions required by paragraphs (b)(1), (b)(2), and (b)(3) of this AD, as applicable, per the Work Instructions of Boeing Alert Service Bulletin 747–51A2057, dated February 21, 2002.

(1) Do a test (including a general visual inspection of the external drains, reducer, and drain lines, and sending 3 to 5 pounds per square inch (PSI) compressed air through the drain line) of the drainage system of the canted pressure deck for discrepancies (including damage, holes, signs of frozen water, and signs of blockage), per Work Package 1 of the service bulletin. Repeat the test at least every 18 months.

(2) Clean the drainage system for the canted pressure deck and do a general visual inspection of the system for discrepancies per Work Package 2 of the Work Instructions of the service bulletin. Repeat the cleaning and inspection at least every 18 months. Accomplishment of this paragraph terminates the requirements in paragraph (a) of this AD.

(3) Except as required by paragraph (e) of this AD: If any discrepancy is found during any inspection or test required by paragraphs (b)(1) and (b)(2) of this AD, before further flight, repair per the Work Instructions of the service bulletin.

Repetitive Inspections of the Canted Pressure Deck/Corrective Action

(c) *Within 36 months after the effective date of this AD:* Do a general visual inspection of the canted pressure deck for discrepancies (including loose or missing fasteners; loose, missing, or cracked sealant; and leak paths), per Work Package 3 of the Work Instructions of Boeing Alert Service Bulletin 747–51A2057, dated February 21, 2002. If any discrepancy is found, before further flight, repair (including replacing any loose or missing fastener or loose, missing, or cracked sealant; and repair of any leak found) per the service bulletin; except as required by paragraph (e) of this AD. Repeat the inspection at least every 36 months.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Repetitive Cabin Pressurization Tests/ Corrective Action

(d) Within 72 months after the effective date of this AD: Do a cabin pressurization test to check for leaks in the canted pressure deck per Work Package 4 of the Work Instructions of Boeing Alert Service Bulletin 747–51A2057, dated February 21, 2002. If any leak is found, before further flight, repair per the service bulletin; except as required by paragraph (e) of this AD. Repeat the cabin pressurization test at least every 72 months.

Corrective Action per Seattle Aircraft Certification Office (ACO)

(e) If any discrepancy is found during any inspection or test required by this AD and the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle ACO, FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 89–12–07, amendment 39–6232, are approved as alternative methods of compliance with paragraph (b)(2) of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 8, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–26203 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–25]

Proposed Amendment of Class E5 Airspace; Tampa, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E5 airspace at Tampa, FL. A Localizer Runway 23 Standard Instrument Approach Procedure (SIAP) has been developed for Vandenberg Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) northeast of Vandenberg Airport is needed to contain the SIAP.

DATES: Comments must be received on or before November 15, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–25, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, George 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–ASO–25." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E5 airspace at Tampa, FL. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air)

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR; 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 feet or More Above the Surface of the Earth.

* * * * *

ASO FL E5 Tampa, FL [Revised]

Tampa International Airport, FL
(Lat. 27°58'32"N, long. 82°31'59"W)
St. Petersburg-Clearwater International Airport
(Lat. 27°54'39"N, long. 82°41'14"W)
MacDill AFB
(Lat. 27°50'57"N, long. 82°31'17"W)
Peter O Knight Airport
(Lat. 27°54'56"N, long. 82°26'57"W)
Albert-Whitted Airport
(Lat. 27°45'54"N, long. 82°37'38"W)
Vandenberg Airport
(Lat. 28°00'33"N, long. 82°20'59"W)
Clearwater Air Park
(Lat. 27°58'35"N, long. 82°45'31"W)
Vandenberg Localizer
(Lat. 28°00'40"N, long. 82°20'55"W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Tampa International Airport, St. Petersburg-Clearwater International Airport, MacDill AFB, and Peter O Knight Airport, and within a within a 6.3-mile radius of Albert-Whitted Airport, and Clearwater Air Park, and within a 6.7-mile radius of Vandenberg Airport and within 4 miles south and 8 miles north of the Vandenberg Localizer northeast course extending from the 6.7-mile radius to 16 miles northeast of the airport; excluding that airspace within the Zephyrhills, FL, and Lakeland, FL, Class E airspace areas.

* * * * *

Issued in College Park, Georgia, on October 4, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–26277 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 020913214–2214–01]

RIN 0691—AA45

Direct Investment Surveys: BE–605, Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, With Foreign Parent, and BE–605 Bank, Transactions of U.S. Banking Affiliate With Foreign Parent

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice sets forth a proposed rule to amend the reporting requirements for the quarterly survey of foreign direct investment in the United States, which is comprised of two forms—the BE–605, Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, With Foreign Parent, and BE–605 Bank, Transactions of U.S. Banking Affiliate with Foreign Parent.

The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The BE–605 and BE–605 Bank are mandatory surveys and are conducted quarterly by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. BEA will send survey forms to potential respondents each quarter; responses will be due within 30 days after the close of each fiscal quarter, except for the final quarter of the fiscal year, when reports will be due within 45 days. These surveys are cut-off sample surveys that cover all U.S. affiliates above a size-exemption level and seek to obtain data on transactions and positions between U.S. affiliates and their affiliated foreign groups.

BEA proposes the following changes: Direct bank holding companies (BHC's) to file a fully consolidated report, including all banking and nonbanking operations, on the BE–605 Bank form. Previously, the banking and non-banking operations of a BHC filed separate reports: the nonbank operations of the BHC filed on the BE–605 form, and the BHC itself and its banking operations filed on the BE–605 Bank form. To reduce respondent burden for BHC's, BEA proposes that the BHC file a single, fully consolidated, report to include both its banking and nonbanking operations on the BE–605 Bank form. However, separate reports still will be filed in those special instances where a U.S. affiliate's primary line of business is not in banking (or related financial activities), such as a manufacturer or retailer, but the affiliate also has a direct or indirect ownership in a BHC (or other banking activities such as U.S. wholesale or limited purpose banks). In these instances, the BHC, including all of its subsidiaries or units, will file on the BE–605 Bank form and the nonbanking operations not owned by the BHC will file on the BE–605 form. Add questions to the BE–605 Bank form to collect data on loans from or to the foreign parent group by certain nonbanking subsidiaries (e.g., insurance companies) included in the consolidated report to maintain consistency of the U.S. international transactions accounts with international statistical standards and avoid gaps in coverage. Add questions to the BE–605 Bank form to collect detail on intercompany premiums earned and claims payable for insurance companies included in the consolidated report.

BEA believes that the proposed changes should result in no change in the overall respondent burden. Any increase in burden due to the addition of questions on the BE–605 Bank form will be offset by a reduction in burden for BHC's, because reporting for these entities will be more consistent with the filing of regulatory reports and annual reports to stockholders.

DATES: Comments on these proposed rules will receive consideration if submitted in writing on or before December 16, 2002.

ADDRESSES: Direct all written comments to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230. Because of slow mail, and to assure that comments are received in a timely manner, please consider using one of the following delivery methods: (1) Fax to (202) 606–5318, (2) deliver by courier to U.S. Department of Commerce, Bureau of Economic Analysis, BE–49(A), Shipping and Receiving, Section M100, 1441 L Street NW., Washington, DC, 20005, or (3) e-mail to *David.Belli@bea.gov*. Comments received will be available for public inspection in Room 7005, 1441 L Street NW., between 8:30 a.m. and 4:30 p.m., eastern time Monday through Friday.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: This proposed rule amends 15 CFR 806.15 to set forth reporting requirements for the BE–605, Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, With Foreign Parent, and BE–605 Bank, Transactions of U.S. Banking Affiliate with Foreign Parent. The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108) hereinafter, "the Act." Section 4(a) of the Act requires that with respect to foreign direct investment in the United States, the President shall, to the extent he deems necessary and feasible—

> Conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, the employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States.

In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns direct investment to the Secretary of Commerce, who has redelegated it to BEA.

The quarterly survey is a cut-off sample survey that covers all U.S. affiliates above a size-exemption level and obtains data on transactions and positions between U.S. affiliates and their affiliated foreign groups. (The affiliated foreign group is (i) the foreign parent, (ii) any foreign person, proceeding up the foreign parent's ownership chain, which owns more than 50 percent of the person below it up to and including that person which is not more than 50 percent owned by another foreign person, and (iii) any foreign person, proceeding down the ownership chain(s) of each of these members, which is owned more than 50 percent by the person above it.) The sample data are used to derive universe estimates in nonbenchmark years by extrapolating forward similar data reported in the BE–12, Benchmark Survey of Foreign Direct Investment in the United States, which is taken every five years. The data are used in the preparation of the U.S. international transactions accounts, the input-output accounts, and the national income and product accounts. The data are needed

to measure the size and economic significance of foreign direct investment in the United States, measure changes in such investment, and assess its impact on the U.S. economy. The data are disaggregated by industry of U.S. affiliate, by country of foreign parent, and, for selected items, by country of each member of the affiliated foreign group.

BEA proposes the following changes: (1) Direct bank holding companies (BHC's) to file a fully consolidated report, including all banking and nonbanking operations, on the BE–605 Bank form. Previously, the banking and non-banking operations of a BHC were required to file separate reports: the nonbank operations of the BHC filed on the BE–605 form, and the BHC itself and its banking operations filed on the BE–605 Bank form. To reduce respondent burden for BHC's, BEA proposes that the BHC file a single, fully consolidated, report to include both its banking and nonbanking operations on the BE–605 Bank form. However, separate reports still will be filed in those special instances where a U.S. affiliate's primary line of business is not in banking (or related financial activities), such as a manufacturer or retailer, but the affiliate also has a direct or indirect ownership in a BHC (or other banking activities such as U.S. wholesale or limited purpose banks). In these instances, the BHC, including all of its subsidiaries or units, will file on the BE–605 Bank form and the nonbanking operations not owned by the BHC will file on the BE–605 form. (2) Add questions to the BE–605 Bank form to collect data on loans from or to the foreign parent group by certain nonbanking subsidiaries (*e.g.*, insurance companies) included in the consolidated report to maintain consistency of the U.S. international transactions accounts with international statistical standards and avoid gaps in coverage. (3) Add questions to the BE–605 Bank form to collect detail on intercompany premiums earned and claims payable for insurance companies included in the consolidated report.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications, as that term is defined in E.O. 13132.

Executive Order 12866

These proposed rules have been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

This proposed rule contains a new collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act(PRA). The new requirement has been submitted to OMB for approval as a revision to a collection currently approved under OMB control number 0608–0009.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget control number.

An estimated 3,950 U.S. affiliates are expected to file responses quarterly, or 15,800 responses annually. The average burden for completing the BE–605 and BE–605 Bank remains unchanged at 1.25 hours per response, per quarter (five hours per year); the total annual respondent burden, from the current OMB inventory, also remains unchanged at 19,750 hours (15,800 responses times 1.25 hours average burden). This estimate covers the amount of time for respondents to review the instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. The burden estimates used in this submission are based upon experience with the same quarterly survey forms for several years and upon the burden estimates developed at the time of the benchmark survey.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0009, Washington, DC 20503 (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. Few, if any, small U.S. businesses are subject to the reporting requirements of this survey. Most small businesses are not foreign owned; those that are and have total assets, sales or gross operating revenues, and net income each equal to or less than $30 million are not required to report on the BE–605 or BE–605 Bank form.

List of Subjects in 15 CFR Part 806

International transactions, economic statistics, foreign investment in the United States, penalties, reporting and recordkeeping requirements.

Rosemary Marcuss,

Acting Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 806.15 (h)(1) and (2) are revised to read as follows:

§ 806.15 Foreign direct investment in the United States.

* * * * *

(h) * * *

(1) BE–605—Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, With Foreign Parent: One report is required for each U.S. affiliate exceeding an exemption level of $30,000,000, that does not qualify for reporting on form BE–605 Bank.

(2) BE–605 Bank—Transactions of U.S. Banking Affiliate with Foreign Parent: One report is required for each U.S. banking affiliate or U.S. bank holding company affiliate, including all of the subsidiaries and units of the bank holding company, exceeding an exemption level of $30,000,000.

* * * * *

[FR Doc. 02–26220 Filed 10–15–02; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 55

[Notice No. 956; Ref: Notice No. 906]

RIN 1512–AC25

Identification Markings Placed on Imported Explosive Materials and Miscellaneous Amendments (2000R–238P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend its regulations to require licensed importers to identify by marking all imported explosive materials. ATF believes that the proposed marking requirements will help ensure that imported explosive materials can be effectively traced for criminal enforcement purposes. We are also proposing to incorporate into the regulations the provisions of ATF Ruling 75–35, relating to methods of marking containers of explosive materials. In addition, we are proposing to amend the regulations to remove the requirement that a licensee or permittee file for an amended license or permit in order to change the class of explosive materials described in their license or permit from a lower to a higher classification.

DATES: ATF must receive all comments on or before January 14, 2003.

ADDRESSES: Send written comments to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; *Attn: Notice No. 956.* Written comments must be signed and may be of any length.

E-mail comments may be of any length and should be submitted to: *nprm@atfhq.atf.treas.gov.* E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this notice number and be legible when printed on paper that is 8½" × 11" in size. We will treat e-mail as originals and we will not acknowledge receipt of e-mail. See the "Public Participation" section at the end of this notice for requirements for submitting written comments by facsimile.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) is responsible for implementing Title XI, Regulation of Explosives (18 United States Code (U.S.C.) chapter 40), of the Organized Crime Control Act of 1970. One of the stated purposes of the Act is to reduce the hazards to persons and property arising from the misuse of explosive materials. Under section 847 of title 18, U.S.C., the Secretary of the Treasury "may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter." Regulations that implement the provisions of chapter 40 are contained in title 27, Code of Federal Regulations (CFR), part 55 ("Commerce in Explosives").

The term "explosive materials," as defined in section 55.11, means explosives, blasting agents, water gels, and detonators. The term includes, but is not limited to, all items in the "List of Explosive Materials" provided for in section 55.23. Section 55.202 provides for three classes of explosive materials: (1) High explosives (*e.g.*, dynamite, flash powders, and bulk salutes), (2) low explosives (*e.g.*, black powder, safety fuses, igniters, igniter cords, fuse lighters, and display fireworks (except bulk salutes)), and (3) blasting agents (*e.g.*, ammonium nitrate-fuel oil and certain water gels).

Section 55.109 requires licensed manufacturers of explosive materials to legibly identify by marking all explosive materials manufactured for sale or distribution. The marks required by this section include the identity of the manufacturer and the location, date, and shift of manufacture. This section also provides that licensed manufacturers must place the required marks on each cartridge, bag, or other immediate container of explosive materials for sale or distribution, as well as on the outside container, if any, used for their packaging.

Exceptions to the marking requirements are provided in section 55.109(b). Licensed manufacturers of blasting caps are only required to place the required identification marks on the containers used for the packaging of blasting caps. In addition, the Director may authorize other means of identifying explosive materials upon receipt of a letter application from the licensed manufacturer showing that other identification is reasonable and will not hinder the effective administration of part 55. Section 55.109(b) also provides that the Director may authorize the use of other means of identification on fireworks instead of the required markings specified above.

The current regulations, however, do not require the marking of imported explosive materials.

A. Petition—Institute of Makers of Explosives

The Institute of Makers of Explosives (IME) filed a petition with ATF, dated March 7, 2000, requesting an amendment of the regulations to require licensed importers to place the same identification marks on imported explosive materials that are currently required for explosive materials manufactured in the United States. As stated in the petition, IME is the safety association of the commercial explosives industry. Its mission is to promote safety and the protection of employees, users, the public and the environment, and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use, and disposal of explosive materials used in blasting and other operations.

According to the petitioner, commerce in explosives is a global enterprise and it expects the quantity of imported explosives to increase over time. For example, the petitioner stated that between 1994 and 1997, imports of high explosives increased 14-fold to account for approximately 17 percent of all high explosives used annually in the United States. IME further stated that while unmarked high explosives may have entered the United States over the years, it was not until 1999 that the association became aware of significant quantities of unmarked cast boosters being imported into the country. IME contended that, by the end of 1999, about two million unmarked units had been distributed in the United States. The petitioner further stated that many more thousands of tons of these high explosives are expected to be imported into the United States in the near future.

Without a change in the regulations, IME is concerned that these explosives will enter into the commerce of the U.S. without marks of identification, posing significant safety and security risks to the public. Although IME informed ATF that many of its member companies importing explosives into the U.S. mark their imported explosive materials in an effort to ensure the traceability and accountability of the materials, it believes that all imported explosive materials should be appropriately identified. Therefore, it petitioned ATF to amend the Federal explosives regulations.

By letter dated August 2, 2000, IME amended its petition to narrow its scope to importers of high explosives and blasting agents. IME stated that it did not understand that the scope of its initial petition would apply to importers of low explosives. IME noted that it has a specific standard recommending that high explosives and blasting agents be marked with a date/plant/shift code.

B. Discussion

In an effort to protect the public from the misuse of explosive materials, ATF generally requires domestic explosives manufacturers to mark all explosive materials with specific information, including the name of manufacturer, and the location, date, and shift of manufacture. Generally, licensees and permittees must record the manufacturer's marks of identification on all explosives they receive. These requirements help ensure that explosive materials can be effectively traced for criminal enforcement purposes through the records kept by licensees and permittees. This process often provides valuable information in explosion and bombing investigations and is useful for inspection purposes in verifying inventory and proper business practices. However, as noted, the current regulations do not require that imported explosive materials be marked.

C. Advance Notice of Proposed Rulemaking

Based on IME's petition, ATF published in the **Federal Register** on November 13, 2000, an advance notice of proposed rulemaking requesting information and comments from interested persons on the desirability and feasibility of marking imported explosive materials (Notice No. 906, 65 FR 67669). Although we solicited specific comments on the following questions, we also requested any relevant information on the subject.

1. Should explosive materials imported into the United States contain identification markings?
2. Should all imported explosive materials be marked, or should certain classes of explosive materials, such as low explosives, be exempt? If you believe certain classes of explosives should be exempt from marking, please provide the reason(s) why such an exemption is consistent with public safety.
3. What identification marks, if any, are currently being placed on imported explosive materials?
4. What information should appear on imported explosive materials? ATF believes that the name and address of the importer, the name of the country in which the explosive materials were manufactured, and the date that the explosive materials were manufactured would be sufficient.
5. Assuming that any required identification marks must be placed on each cartridge, bag, or other immediate container of explosive materials that are imported, as well as on any outside container used for their packaging, is it feasible for a U.S. importer to place the required marks on foreign explosive materials?
6. How many importers would be affected by a requirement to place identification markings on foreign explosive materials?
7. Of those importers that would be affected by such a requirement, how many would be considered a "small business concern" as provided in the Small Business Act (15 U.S.C. 631, *et seq.*)?
8. What would be the cost burden imposed on importers for purchasing or leasing equipment for marking foreign explosive materials, including installation and operation?
9. What would the cost be for importers to contract with a foreign manufacturer to place the required marks on explosive materials on behalf of the importer?

The comment period for Notice No. 906 closed on January 12, 2001.

D. Notice No. 906—Analysis of Comments

In response to Notice No. 906, ATF received three comments. Two commenters argued that licensed importers should place the same or similar identification marks on imported explosive materials that are currently required for explosive materials manufactured in the United States. One of these commenters expressed his opinion that "explosive items imported into the United States should have identification markings. Where there is no marking, there is no ability to trace the item." The other commenter, the International Association of Bomb Technicians and Investigators, representing over 4,500 members, stated the following:

> Identification markings placed on explosive materials serve to protect the public from the misuse of such materials and assist in effective tracking and inventory control for their lawful users. Moreover, these identification markings serve to facilitate bombing investigations leading to the apprehension of persons involved in the misuse of explosive materials.
>
> As imported explosive materials may be subject to misuse, it makes sense to insure that they possess essentially similar identification markings to those currently required for domestic manufactured explosive materials.

The petitioner, IME, submitted the third comment. IME reiterated its position that imported high explosives and blasting agents should contain the same identification markings prescribed in the regulations for domestically manufactured explosives.

IME also included an attachment as part of its comment that provided responses to the questions posed by ATF in the advance notice. In response to ATF's inquiry as to whether all imported explosives should be marked or if there should be an exception for certain classes of explosives, *e.g.*, low explosives, IME stated that it had no position on explosive materials other than high explosives and blasting agents. Regarding what identification marks, if any, are currently being placed on imported explosives, IME stated that nearly all explosive materials imported by its member companies have markings similar to those prescribed in the regulations for domestically manufactured explosives. It then provided examples of the import marking policies of IME member companies. In one instance, an IME member company imports shaped charges that are marked on the outer package by the manufacturer with the following information:

1. Manufacturer's name, address, and phone number;
2. Date of manufacture;
3. Product name and part number;
4. Transportation classification approval numbers;
5. Gross weight, net weight, and explosive weight;
6. Proper Shipping Name and UN ID#; and
7. Importer's name and address (as consignee).

Inside the package, the foreign manufacturer places a label (loosely, not attached to the inner packaging) that states all of the above mentioned information, except for items one and seven.

In another example, an IME member company requires sister companies to mark explosives with a date, plant, and shift code before importation into the United States. The explosives are also marked with the trade name and size. The outer packaging is marked with the country of manufacture and the manufacturer's name. This full-line company requires imported explosives from other manufacturers to be marked with the trade name, lot number or date, and product identification. In a third instance, an IME member company

imports a very small amount of explosives that are already marked in accordance with United States requirements.

As stated in the advance notice, ATF believes that the name and address of the importer, the name of the country in which the explosive materials were manufactured, and the date that the explosive materials were manufactured would be sufficient. In response to our question regarding what information should appear on imported explosives, IME stated that the same information required on domestically manufactured high explosives and blasting agents (identity of the manufacturer, and location, date, and shift of manufacture) should appear on imported high explosives and blasting agents. The commenter further stated that it did not see any benefit in requiring the importer's name and address and argued that this creates inconsistent and additional requirements for importers. IME also explained that identifying the manufacturer of explosives is routine while placing the importer's name and address on the products is not and could be prohibitive. In addition, IME contends that one of the benefits of the current required markings is manufacturer accountability in the use of explosive materials.

IME believes that imported high explosives and blasting agents should be marked with the shift of manufacture for the following reasons:

> The shift of manufacture markings divide lot sizes of a particular high explosive or blasting agent into quantities that make two major benefits of marking possible. These benefits are traceability for evidentiary and technical purposes. Modern explosives plants are capable of producing millions of pounds of explosives per day. Huge lot sizes of one particular high explosive or blasting agent makes (1) too many people part of the custody chain and may dilute the effectiveness of evidence, and (2) makes it impossible to trace a quality control problem to a specific manufacturing process for corrective action.

Another commenter also recommended that imported explosives be marked with a date/shift code.

IME believes that the current exceptions to the marking requirements provided in the regulations for domestically manufactured explosives should apply to imported explosives as well.

Assuming that any required identification marks must be placed on each cartridge, bag, or other immediate container of explosive materials that are imported, as well as on any outside container used for their packaging, ATF asked if it is feasible for a U.S. importer to place the required marks on foreign explosive materials. In its comment, IME stated that it would be cost prohibitive for U.S. importers to actually place the required marks on high explosives and blasting agents. IME also stated that it is not aware of any U.S. importers that mark individual units of high explosives and blasting agents at any time other than the point of manufacture. Furthermore, the commenter noted that it is "much less safe to mark at any time other than the point of manufacture and * * * importers may not know required information such as the shift of manufacture."

ATF asked how many importers would be affected by a requirement to place identification markings on foreign explosive materials and, of those importers that would be affected by such a requirement, how many would be considered a "small business concern" as provided in the Small Business Act. IME responded that an IME member that imports explosives and is a small business would not be affected by a requirement to place identification markings on foreign explosives because the company specifies that the product must be marked in accordance with ATF regulations prior to importation into the United States.

In response to ATF's inquiry regarding cost burdens that would be imposed on importers for purchasing or leasing equipment for marking foreign explosives, IME stated that it does not expect any importers of commercial high explosives or blasting agents to purchase or lease equipment to mark foreign explosives. Rather, the commenter recommended "that the markings be placed on the products by the foreign manufacturer during the manufacturing process." In that regard, ATF also asked in the advance notice what would be the cost for importers to contract with a foreign manufacturer to place the required marks on explosive materials on behalf of the importer. IME responded that it does not collect or identify data that relates to price information such as the cost of bringing a product to market. Following its initial comment, IME submitted estimated cost information both for equipment and for marking imported explosives. IME explained, however, that marks of identification ordinarily are applied at the time of manufacture. As a result, U.S. importers likely would structure contracts with foreign manufacturers to effect the marking at the time of manufacture resulting in reduced costs for U.S. importers. As such, this cost burden would not significantly affect or cause an undue burden to small businesses.

II. Proposed Amendments

A. Amendments to Section 55.109

In an effort to protect the public from the misuse of explosive materials, to more easily identify explosive materials, and to successfully trace misused explosive materials or explosive materials used in crimes, ATF believes that all explosive materials should contain marks of identification. As mentioned in the advance notice, explosive materials that contain identification marks can be tracked through the records kept by licensees and permittees. This process often provides valuable information in investigations involving bombings and explosions and is useful for inspection purposes in verifying inventory and proper business practices.

ATF recognizes that the importation of explosive materials and the use of imported explosives by explosive users and industry members are becoming increasingly more common. ATF shares IME's concern that these explosives are entering into the commerce of the U.S. without marks of identification, posing significant safety and security risks to the public. As such, ATF believes that all explosive materials imported into the United States, including low explosives, should contain identification marks similar to those required for domestically manufactured explosives.

Accordingly, we are proposing to amend section 55.109 to provide that licensed importers and permittees must identify by marking all explosive materials they import for sale or distribution, or import for their own use. The required marks must be legible and in the English language, using Roman letters and Arabic numerals. The marks must identify the importer's or permittee's name and address, the location (city and country) where the explosive materials were manufactured, as well as the date and shift of manufacture. ATF believes that the commenters presented valid arguments in support of requiring the date and shift of manufacture for imported explosive materials. ATF is not proposing to require the name of the foreign manufacturer on imported explosives as requested by IME. Rather, we believe that the identity of the importer is necessary to help ensure that explosive materials can be effectively traced for criminal enforcement purposes. Furthermore, ATF does not have regulatory oversight over foreign manufacturers, particularly with respect to their recordkeeping practices.

As noted earlier, licensees and permittees must record the manufacturer's marks of identification on all explosives they receive. This requirement helps ensure that explosive materials can be effectively traced for criminal enforcement purposes. This process is also useful for ATF inspection purposes in verifying inventory and proper conduct of business practices.

As proposed, the required marks must be placed on each cartridge, bag, or other immediate container of explosive materials that are imported, as well as on any outside container used for their packaging. This is consistent with current requirements for domestically manufactured explosives. The proposed regulations also provide that the required marks of identification must be placed on imported explosive materials within 24 hours of release from Customs custody.

In addition, under the proposed regulations, the exceptions to the marking requirements currently specified in the regulations will apply to imported explosive materials as well.

ATF is also proposing other amendments to section 55.109. We are clarifying that licensed manufacturers must place the required marks of identification on the explosive materials at the time of manufacture. We are also proposing to incorporate into the regulations the provisions of ATF Ruling 75–35 (1975-ATF C.B. 65). This ruling authorizes any method, or combination of methods, for affixing the required marks to the immediate container of explosive materials, or outside containers used for the packaging thereof, provided the identifying marks are legible, show all the required information, and are not rendered unreadable by extended periods of storage. The ruling also provides that where it is desired to utilize a coding system and omit printed markings on the containers, a letterhead application displaying the coding to be used and the manner of its application must be filed by the licensed manufacturer with, and approved by, the Director prior to the use of the proposed coding. Finally, the ruling provides that where a manufacturer operates his/her plant for only one shift during the day, the shift of manufacture need not be shown. Upon the effective date of a final rule in this matter, ATF Ruling 75–35 will be declared obsolete.

B. Miscellaneous—Amendment of Sections 55.55 and 55.41

Section 55.55 provides that a licensee or permittee who intends to change the class of explosive materials described in his or her license from a lower to a higher classification (*e.g.*, black powder to dynamite) must file an application on ATF Form 5400.13/ATF Form 5400.16 (Application for License or Permit) with the ATF National Licensing Center. If the change in class of explosive materials would require a change in magazines, the amended application must include a description of the type of construction as prescribed in part 55. Business or operations with respect to the new class of explosive materials may not be commenced before issuance of the amended license or amended permit. Finally, upon receipt of the amended license or amended permit, the licensee or permittee must submit his or her superseded license or superseded permit and any copies furnished with the license or permit to the ATF National Licensing Center.

ATF personnel have frequently encountered instances where the class of explosives listed on a particular explosives license is inconsistent with the type of explosive materials involved in a particular business' operations. The license classification system contained in section 55.55 has also caused confusion throughout the explosives industry as it is related to classification of explosive materials distributed, imported, or used, and the class of explosives authorized by the license or permit.

Accordingly, ATF is proposing to remove section 55.55. ATF believes that removing this section will provide more flexibility to the explosives industry in terms of the classes of explosive materials involved in their businesses, while not reducing the requirement to store explosive materials in accordance with the regulations contained in subpart K. Technical amendments are being made with respect to section 55.41 in order to be consistent with the proposed amendment of section 55.55.

III. How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

We have determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a Regulatory Assessment is not required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. We hereby certify that this proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities. As noted in IME's comment, U.S. importers that are considered small businesses should not be significantly affected by the proposed regulations because the foreign-manufactured explosives they import will already be marked in accordance with the provisions of section 55.109. Accordingly, a regulatory flexibility analysis is not required. We specifically request comments on whether small importers expect foreign explosives manufacturers to mark their explosives consistent with this proposed rule even though they are not legally subject to its requirements.

C. Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco and Firearms, at the address previously specified. Comments are specifically requested concerning:

(a) Whether the proposed collections of information are necessary for the proper performance of the functions of the Bureau of Alcohol, Tobacco and Firearms, including whether the information will have practical utility;

(b) The accuracy of the estimated burden associated with the proposed collections of information (see below);

(c) How the quality, utility, and clarity of the information to be collected may be enhanced; and

(d) How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

The collections of information in this proposed regulation are in 27 CFR 55.109(a)(2). This information is required to properly identify imported explosive materials. The collections of information are mandatory. The likely respondents are businesses.

- *Estimated total annual reporting and/or recordkeeping burden:* 45 hours.
- *Estimated average burden hours per respondent and/or recordkeeper:* 1 hour.
- *Estimated number of respondents and/or recordkeepers:* 15.
- *Estimated annual frequency of responses:* 3.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

IV. Public Participation

We are requesting comments on the proposed regulations from all interested persons. In addition, we are specifically requesting comments on the clarity of this proposed rule and how it may be made easier to understand.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

A. Submitting Comments by Fax

You may submit written comments by facsimile transmission to (202) 927–8602. Facsimile comments must:

- Be legible;
- Reference this notice number;
- Be 8½″ x 11″ in size;
- Contain a legible written signature; and
- Be not more than five pages long.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

B. Request for Hearing

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

C. Disclosure

Copies of the petition, the advance notice, the comments received in response to the advance notice and the comments received in response to this notice of proposed rulemaking will be available for public inspection by appointment during normal business hours at: ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC; telephone 202–927–7890.

For your convenience, ATF will post comments received in response to this notice on the ATF web site. All comments posted on our web site will show the name of the commenter, but will have street addresses, telephone numbers, and e-mail addresses removed. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comments will be available in the library as noted above, or you may request copies of the full comments by writing to the ATF Reference Librarian at the address shown above. To access online copies of the comments on this rulemaking, visit *http://www.atf.treas.gov/*, and select "Regulations," then "Notices of proposed rulemaking (Firearms, Explosives and Others)" and this notice number. Click on the "View comments" link.

D. Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the **Federal Register** in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

E. Drafting Information

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 55

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Authority and Issuance

For the reasons discussed in the preamble, ATF proposes to amend 27 CFR part 55 as follows:

PART 55—COMMERCE IN EXPLOSIVES

1. The authority citation for 27 CFR part 55 continues to read as follows:

Authority: 18 U.S.C. 847.

§ 55.41 [Amended]

2. Section 55.41(c) is amended by removing "of the class authorized by this permit" at the end of the second sentence.

Subpart D—[Amended]

3. Subpart D is amended by removing section 55.55.

4. Section 55.109 is revised to read as follows:

§ 55.109 Identification of explosive materials.

(a) *General.* Explosive materials, whether manufactured in the United States or imported, must contain certain marks of identification.

(b) *Required marks.* (1) *Licensed manufacturers.* Licensed manufacturers who manufacture explosive materials for sale, distribution, or their own use must place the following marks of identification on explosive materials at the time of manufacture:

(i) The name of the manufacturer; and

(ii) The location, date, and shift of manufacture. Where a manufacturer operates his plant for only one shift during the day, he does not need to show the shift of manufacture.

(2) *Licensed importers and permittees.* (i) Licensed importers who import explosive materials for sale or distribution or their own use and permittees who import explosive materials for their own use must place the following marks of identification on the explosive materials they import:

(A) The name and address (city and state) of the importer or permittee; and

(B) The location (city and country) where the explosive materials were manufactured, date, and shift of manufacture. Where the foreign manufacturer operates his plant for only one shift during the day, he does not need to show the shift of manufacture.

(ii) The required marks for imported explosive materials must be in the English language, using Roman letters and Arabic numerals.

(iii) Within 24 hours of the date of release from Customs custody, licensed importers and permittees must place the required marks on all explosive materials imported, if such explosive materials did not bear the required marks at the time of their release from Customs custody.

(c) *General requirements.* (1) The required marks prescribed in this section must be legible.

(2) Licensed manufacturers, licensed importers, and permittees importing explosive materials must place the required marks on each cartridge, bag, or other immediate container of explosive materials that they manufacture or import, as well as on any outside container used for the packaging of such explosive materials.

(3) Licensed manufacturers, licensed importers, and permittees importing explosive materials may use any method, or combination of methods, to affix the required marks to the immediate container of explosive materials, or outside containers used for the packaging thereof, provided the identifying marks are legible, show all the required information, and are not rendered unreadable by extended periods of storage.

(4) If licensed manufacturers, licensed importers or permittees importing explosive materials desire to use a coding system and omit printed markings on the container, they must file with ATF a letterhead application displaying the coding that they plan to use and explaining the manner of its application. The Director must approve the application before the proposed coding can be used.

(d) *Exceptions.* (1) *Blasting caps.* Licensed manufacturers, licensed importers, or permittees importing blasting caps, are only required to place the identification marks prescribed in this section on the containers used for the packaging of blasting caps.

(2) *Alternate means of identification.* The Director may authorize other means of identifying explosive materials, including fireworks, upon receipt of a letter application from the licensed manufacturer, licensed importer, or permittee, showing that such other identification is reasonable and will not hinder the effective administration of this part.

Signed: August 14, 2002.

Bradley A. Buckles,

Director.

Approved: September 16, 2002.

Timothy E. Skud,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 02–26253 Filed 10–15–02; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 450

[FRL–7394–2]

RIN 2040–AD42

Effluent Limitation Guidelines and New Source Performance Standards for the Construction and Development Category; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period and addition to docket.

SUMMARY: EPA is extending the comment period for the proposed rule and adding two documents to the rulemaking docket.

DATES: Comments on the proposed rule will be accepted through December 23, 2002.

ADDRESSES: Submit written comments to Comment Clerk, Water Docket (4101T), U.S. EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Please refer to Docket No. W–02–06. EPA requests an original and three copies of your comments and enclosures (including references). Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. For hand deliveries or e-mail comments, see the **SUPPLEMENTARY INFORMATION.** paragraph below.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Strassler at (202) 566–1026.

SUPPLEMENTARY INFORMATION: On June 24, 2002 (67 FR 42644), EPA proposed effluent guidelines and standards for storm water discharges from construction sites. The original comment deadline was October 22, 2002. EPA received requests to extend the comment period and the Agency has decided to do so due to the complexity of the issues involved with the proposed rule and its implementation. The comment period will now end on December 23, 2002.

EPA identified two documents which it considered during the development of the proposed rule but inadvertently omitted from the rulemaking docket. These documents are now available for public review.

1. National Association of Home Builders, "Erosion and Sediment Control Best Management Practices Research Project." Washington, DC, 2000.

2. EPA, "Final Report of the SBREFA Small Business Advocacy Review Panel on EPA's Planned Proposed Rule for Effluent Limitation Guidelines and Standards for the Construction and Development Industry." October 12, 2001.

EPA established the public record for the proposed rule under docket number W–02–06. The record is available for inspection at the EPA Docket Public Reading Room, EPA West Building, Room B102, 1301 Constitution Avenue, NW, Washington, DC 20004. Please call the Water Docket office at (202) 566–2426 to schedule an appointment. Please bring any hand-delivered comments to the Public Reading Room address.

Comments may also be sent via e-mail to *ow-docket@epa.gov*. Electronic comments must be identified by the docket number W–02–06 and must be submitted as a WordPerfect, MS Word or ASCII text file, avoiding the use of special characters and any form of encryption. EPA requests that any graphics included in electronic comments also be provided in hard-copy form. EPA also will accept comments and data on disks in the aforementioned file formats. Electronic comments received on this document may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent by e-mail.

Additional information on the proposed rule is available on EPA's Web site at *http://www.epa.gov/waterscience/guide/construction/*.

Dated: October 9, 2002.

G. Tracy Mehan III,

Assistant Administrator for Water.

[FR Doc. 02–26302 Filed 10–15–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–B–7430]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt

or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator, Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, § *67.4*

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	Colusa County	Elk Creek	At confluence with Salt Creek	None	*138
			Approximately 1,250 feet downstream of Reddington Road.	None	*156
		Salt Creek	Just upstream of Interstate 5 southbound	None	*125
			Approximately 1,250 feet upstream of Hillgate Road.	None	*172
		Stone Corral Creek	Right overbank overflow at landing strip in NW corner of Section 34, Township 17N, Range 3W.	None	*87
			Approximately 350 feet upstream of Cemetery Road.	None	*102
		Stone Corral Creek, Right Overbank.	Right overbank overflow at landing strip in NW corner of Section 34, Township 17N, Range 3W.	None	*87
			Approximately 350 feet upstream of Cemetery Road.	None	*102
		Stone Corral Creek, Left Overbank.	Approximately 2,200 feet downstream of Interstate 99.	None	*90
			Approximately 350 feet of Cemetery Road.	None	*102
		Salt Creek, Right Overbank.	Approximately 300 feet west of the intersection of Bailey Road and Southern Pacific Railroad.	None	*128
			Approximately 2,500 feet southwest of intersection of Hillgate Road and Almond Avenue.	None	#1
		Salt Creek, Left Overbank	Approximately 1,700 feet north of confluence of Salt Creek and Elk Creek.	None	#1
			Approximately 1,700 feet west of intersection of Hillgate Road and Almond Avenue.	None	#1
		Local Ponding	Approximately 1,000 feet southwest of Maxwell Sites Road and Interstate 5.	None	#1
			Approximately 1,500 feet northwest of Maxwell Sites Road and Interstate 5.	None	*87
			Approximately 1,700 feet west of intersection of E Street and Venice Boulevard.	None	*89
			Approximately 1,100 feet east of confluence of Salt Creek and Spring Creek.	None	*90
			Just upstream of intersection of Maxwell Sites Road and Southern Pacific Railroad.	None	*88
			At intersection of Finks Road and Cemetery Road.	None	#2
			Approximately 1,000 feet northeast of Hillgate Road and Interstate 5.	None	#1
			Approximately 1,200 feet southwest of Hillgate Road and Interstate 5.	None	#1
			Approximately 2,300 feet east of Hillgate Road and Southern Pacific Railroad.	None	#1
			Approximately 1,200 feet east of Hillgate Road and Southern Pacific Railroad.	None	#2
			Approximately 1,500 feet west of Hillgate Road and Southern Pacific Railroad.	None	#1

Maps are available for inspection at the Colusa County Courthouse Office of County Clerk, 547 Market Street, or the Coulsa County Department of Public Works, 1215 Market Street, Colusa, California 95932.

Send comments to Mr. John Wrysinski, Interim Director, Colusa County, Department of Public Works, 1215 Market Street, Colusa, California 95932.

California	Tehama County	Reeds Creek	Approximately 250 feet upstream of Paskenta Road.	None	*285
			Approximately 1,000 feet upstream of confluence of Pine Creek.	None	*309

Maps are available for inspection at the Tehama County Building Department, 444 Oak Street, Red Bluff, California 96080.

Send comments to The Honorable Rick Robinson, Chief Administrator, Tehama County, P.O. Box 927, Red Bluff, California 96080.

North Dakota	Langdon (City), Cavalier County.	Mulberry Creek	Approximately 250 feet downstream of Highway 5.	None	+1,597
			Confluence of 5th Street Coulee	None	+1,600
			Just downstream of Highway 1	None	+1,608
		ND Highway 1 Ditch	Approximately 450 feet upstream of Simplot Crossing.	None	+1,609
			Approximately 1,500 feet upstream of Highway 5.	None	+1,612
		Diversion Channel	Approximately 300 feet downstream of 10th Street.	None	+1,610
			Approximately 700 feet upstream of 10th Street.	None	+1,612
		5th Street Coulee	Confluence with Mulberry Creek	None	+1,600
			Just downstream of 12th Avenue	None	+1,605
			Approximately 1,400 feet upstream of 18th Street.	None	+1,609

Maps are available for inspection at City Hall, 324 Eighth Avenue, Langdon, North Dakota 58249.

Send comments to The Honorable Don Haugen, Mayor, City Hall, 324 Eighth Avenue, Langdon, North Dakota 58249.

South Dakota	Spearfish (City), Lawrence County.	False Bottom Creek	Approximately 700 feet downstream of westbound lane of Interstate 90.	*3,920	*3,919
			Just upstream of eastbound lane of Interstate 90.	*3,936	*3,935
			Approximately 390 feet upstream of U.S. Highway 14 (Alternate Route).	*3,944	*3,945

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD) Existing	Modified
Maps are available for inspection at City Hall, 625 Fifth Street, Spearfish, South Dakota 57783.					
Send comments to The Honorable Jerry Krambeck, Mayor, City of Spearfish, City Hall, 625 Fifth Street, Spearfish, South Dakota 57783.					
South Dakota	Minnehaha County	Skunk Creek	Approximately 4,400 feet downstream of U.S. Highway 16.	*1,429	*1,431
			Just upstream of County Route 139	*1,442	*1,444
			Approximately 150 feet upstream of County Route 142.	*1,448	*1,448
Maps are available for inspection at the County Administration Building, 415 North Dakota Avenue, Sioux Falls, South Dakota 57106.					
Send comments to The Honorable Robert Kolbe, Chairperson, Minnehaha County Board of Commissioners, County Administration Building, 415 North Dakota Avenue, Sioux Falls, South Dakota 57106.					
Wyoming	Lincoln County	Salt River	Approximately 2,500 feet downstream of McCox Road.	None	*5,623
			Just upstream of secondary Highway 239	None	*5,775
			Approximately 9,000 feet upstream of U.S. Highway 89.	None	*5,987
Maps are available for inspection at the Emergency Management Office, 520 Topaz Street, Kemmerer, Wyoming 83101.					
Send comments to The Honorable Kathleen Davison, Chairperson, Lincoln County Board of Commissioners, County Courthouse, 925 Sage Avenue, Kemmerer, Wyoming 83101.					

Flooding Source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet + (NAVD) Effective	Modified	Communities affected
OKLAHOMA				
Kingfisher County, and Incorporated Areas				
Cimarron River	Approximately 9,000 feet downstream of confluence with Campbell Creek.	None	*969	Kingfisher County (Uninc. Areas).
	Approximately 750 feet downstream of County Road NS282.	None	*1,044	
	Approximately 2,800 feet upstream of County Road EW60	None	*1,120	
Kingfisher Creek	At confluence with Cimarron River	None	*1,018	Kingfisher County (Uninc. Areas) and City of Kingfisher.
	Approximately 1,000 feet downstream of 13th Street	*1,048	*1,047	
Little Turkey Creek	Approximately 1,000 feet upstream of County Road EW68	None	*1,063	Kingfisher County (Uninc. Areas).
	Approximately 3,200 feet upstream of State Highway 81	None	*1,116	
Turkey Creek (Main Channel).	Approximately 60 feet upstream of County Road EW715	*1,039	*1,038	Kingfisher County (Uninc. Areas).
	Approximately 4,500 feet upstream of US Highway 51	None	*1,093	
Turkey Creek Split Flow.	Approximately 2,400 feet downstream of US Route 81	*1,029	*1,028	Kingfisher County (Uninc. Areas) and Town of Dover.
	Approximately 1,400 feet upstream of County Road EW71	*1,038	*1,043	

ADDRESSES

Kingfisher County (Unincorporated. Areas)

Maps are available for inspection at Kingfisher County Floodplain Administrator's Office, County Courthouse, 101 South Main Street, Room 5, Kingfisher, Oklahoma 73750.

Send comments to The Honorable Jim Shimanek, Chairman, Kingfisher County Board of Commissioners, County Courthouse, 101 South Main Street, Room 9, Kingfisher, Oklahoma 73750.

City of Kingfisher

Maps are available for inspection at City Hall, 301 North Main Street, Kingfisher, Oklahoma 73750.

Send comments to The Honorable Richard Reynolds, Mayor, City of Kingfisher, City Hall, 301 North Main Street, Kingfisher, Oklahoma 73750.

Town of Dover

Maps are available for inspection at Town Hall, 101 North Chisholm, Dover, Oklahoma 73734.

Send comments to The Honorable Lee McNulty, Mayor, Town of Dover, P.O. Box 195, Dover, OK 73734.

NEW MEXICO

Quay County, and Incorporated Areas

Arroyo 1	Confluence with Tucumcari Lake	None	+4,016	Quay County (Uninc. Areas).
	Just downstream Chicago Rock Island and Pacific Railroad.	None	+4,040	

Flooding Source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet + (NAVD) Effective	Modified	Communities affected
Arroyo 1A	Confluence with Arroyo 1	None	+4,033	Quay County (Uninc. Areas).
	Approximately 245 feet upstream of Quay Road AL	None	+4,080	
Arroyo 2	Confluence with Lake Tucumcari	None	+4,016	Quay County (Uninc. Areas).
	Approximately 4,100 feet upstream of confluence with Lake Tucumcari.	None	+4,043	
Arroyo 3	Confluence with Lake Tucumcari	None	+4,016	Quay County (Uninc. Areas). City of Tucumcari.
	Approximately 1,750 feet upstream of US Highway 54	*4,079	+4,079	
Arroyo 4	Confluence with Lake Tucumcari	*4,013	+4,016	Quay County (Uninc. Areas). City of Tucumcari.
	Just downstream New Mexico Highway 18	None	+4,139	
Arroyo 4D	Confluence with Arroyo 4	None	+4,036	Quay County (Uninc. Areas).
	Approximately 650 feet upstream of US Interstate 40	None	+4,063	
Arroyo 4 Overflow	Confluence with Tucumcari Lake	None	+4,016	Quay County (Uninc. Areas). City of Tucumcari.
	Just downstream of Tucumcari Boulevard	None	+4,033	
	Confluence with Tucumcari Lake	None	+4,016	
	Approximately 420 feet downstream of Laughlin Avenue	None	+4,023	
Arroyo 4F (Rankin Draw).	Just upstream of Tucumcari Boulevard	None	+4,034	Quay County (Uninc. Areas). City of Tucumcari.
	Approximately 180 feet upstream of South Monroe Street	None	+4,089	
Arroyo 5	Approximately 2,300 feet downstream of Chicago Rock Island and Pacific Railroad.	None	+4,057	Quay County (Uninc. Areas). City of Tucumcari.
	Approximately 2,650 feet upstream of the confluence of Arroyo 5.	None	+4,159	
Arroyo 5B	Confluence with Arroyo 5	None	+4,124	Quay County (Uninc. Areas).
	Approximately 1,910 feet upstream of the confluence with Arroyo 5.	None	+4,150	
Arroyo 6	Approximately 2,850 feet downstream of Chicago Rock Island and Pacific Railroad.	None	+4,068	Quay County (Uninc. Areas). City of Tucumcari.
	Approximately 4,100 feet upstream of Eastbound Interstate 40.	None	+4,185	
Arroyo 6A	Confluence with Arroyo 6	*4,094	+4,096	Quay County (Uninc. Areas). City of Tucumcari.
	Approximately 2,500 feet upstream of I–40 Ramp A	None	+4,169	
Arroyo 7 (Bluewater Creek).	Approximately 2,600 feet downstream of confluence of Arroyo 7A.	None	+4,061	Quay County (Uninc. Areas). City of Tucumcari.
	Approximately 4,500 feet upstream of confluence with Arroyo 7B.	*4,107	*4,109	
Arroyo 7B	At confluence with Arroyo 7	*4,089	+4,091	Quay County (Uninc. Areas). City of Tucumcari.
	Approximately 3,500 feet upstream of confluence of Arroyo 7C.	None	+4,131	
Arroyo 7C	At confluence with Arroyo 7B	*4,106	+4,108	Quay County (Uninc. Areas). City of Tucumcari.
	At Chicago Rock Island and Pacific Railroad	None	+4,155	
San Jon Creek	Approximately 1,000 feet upstream of sewage disposal area.	None	+4,021	Village of San Jon, Quay County (Uninc. Areas).
	Approximately 450 feet downstream of Fourth Street	None	+4,034	

ADDRESSES

Quay County (Unincorporated. Areas)

Maps are available for inspection at Quay County Clerks Office, 300 South 3rd Street, Tucumcari, New Mexico 88401.

Send comments to The Honorable Paula Chacon, County Manager, Quay County, P.O. Box 1246, Tucumari, New Mexico 88401.

City of Tucumcari

Maps are available for inspection at City Hall, 512 South 8th Street, Tucumcari, New Mexico 88401.

Send comments to The Honorable Calvin Litchfield, Mayor, City of Tucumcari, P.O. Box 1188, Tucumcari, New Mexico 88401.

Village of San Jon

Maps are available for inspection at City Hall, 507 Elm Avenue, San Jon, New Mexico 88434.

Send comments to The Honorable Joe Clark, Mayor, Village of San Jon, P.O. Box 37, San Jon, New Mexico 88434.

WASHINGTON

Whatcom County, and Incorporated Areas

Strait of Georgia at Point Roberts.	At Point Roberts Marina	None	*8	Whatcom County (Uninc. Areas).
	South Edwards Drive along southern shore	None	*11	(Uninc. Areas).
Birch Bay Northwest Shore.	At intersection of Seahome Road and Searshore Court	None	*8	Whatcom County (Uninc. Areas).
	At Cottonwood Beach	None	*9	

Flooding Source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet + (NAVD)		Communities affected
		Effective	Modified	
	Along shoreline near intersection of Halda Road and Nitinat Road.	None	*14	
Strait of Georgia at Sandy Point.	At marina	None	*8	Whatcom County (Uninc. Areas) and LummiIndian Reservation.
	Along eastern Shore Drive	None	*9	
	Along western shoreline	None	*14	
Strait of Georgia at Village Point.	Along West Shore Drive	None	*9	Whatcom County (Uninc. Areas).
	Along southern shoreline	None	*10	
Lummi Bay	Approximately 600 feet from intersection of East Turtle Lane and Shore Drive.	None	*8	Whatcom County (Uninc Areas).
	Along shoreline near intersection of Lummi Park Road and Lane Split Road.	None	*10	
Bellingham Bay at Hermosa Beach.	East of Lummi Shore Road	None	*8	Whatcom County (Uninc. Areas) and LummiIndian Reservation.
Lummi Bay at Gooseberry Point.	At intersection of Lummi View Drive and Haxton Way	None	*8	Whatcom County (Uninc. Areas) and LummiIndian Reservation.
	Approximately 300 feet west of intersection of Lummi View Drive and Haxton Way.	None	*9	
Bellingham Bay at Eliza Island.	In the south-facing valley of Eliza Island	None	*8	Whatcom County (Uninc. Areas).
	At the southern shore of Eliza Island	None	*10	
	At the western shore of Eliza Island	None	*10	

ADDRESSES

Whatcom County (Unincorporated. Areas)

Maps are available for inspection at the Watcom County Department of Public Works, Division of Engineering, 284 West Kellogg Street, Suite C, Bellingham, Washington 98226.

Send comments to The Honorable Pete Kremen, Whatcom County Executive, 285 West Kellogg Street, Bellingham, Washington 98226.

Lummi Indian Reservation

Maps are available for inspection at the Lummi Indian Business Council Planning Department, 2828 Kwina Road, Bellingham, Washington 98226.

Send comments to The Honorable Darrell Frye, Chairman, Lummi Indian Business Council, Tribal Office, 2616 Kwina Road, Bellingham, Washington 98226.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: September 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–26217 Filed 10–15–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–P–7615]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator for Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and record keeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. *(NGVD) ♦(NAVD)	
				Existing	Modified
OK	Prague, City of (Lincoln County).	Shan Creek		961—992	
		San Creek Tributary		975—983	

Maps are available for inspection at 1116 North Jim Thorpe Boulevard, Prague, Oklahoma.

Send comments to The Honorable Michael Fairbanks, Mayor, City of Prague, 1116 North Jim Thorpe Boulevard, Prague, Oklahoma 74862.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: September 23, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–26216 Filed 10–15–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2504, MB Docket No. 02–315, RM–10566]

Digital Television Broadcast Service; Moscow, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by the State Board of Education, State of Idaho, licensee of noncommercial station KUID, proposing the exchange of KUID's analog and digital allotments at Moscow. TV channel *35 can be substituted for TV channel *12-at Moscow with a minus offset at coordinates 46–41–07 N. and 116–50–34 W. DTV channel *12 can be substituted for DTV channel *35 at Moscow at coordinates 46–40–54 N. and 116–58–13 W. with a power of 128.5, a height above average terrain HAAT of 339.7 meters. Since the community of Moscow is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for these allotments.

DATES: Comments must be filed on or before December 2, 2002, and reply comments on or before December 17, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Anne Goodwin Crump, Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, Eleventh Floor,

Arlington, Virginia 22209 (Counsel for State Board of Education, State of Idaho).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–315, adopted October 2, 2002, and released October 9, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Idaho is amended by removing channel *12- and adding channel *35-at Moscow.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under Idaho is amended by removing DTV channel *35 and adding DTV channel *12 at Moscow.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–26233 Filed 10–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2320; MB Docket No. 02–288, RM–10525; MB Docket No. 02–289, RM–10526; MB Docket No. 02–290, RM–10527; MB Docket No. 02–291, RM–10528; MB Docket 02–292, RM–10540; MB Docket No. 02–293; RM–10541; and Docket No. 02–294; RM–10543]

Radio Broadcasting Services; Arthur, NE; Idaho Falls, ID; Manila, UT; McLean, TX; Opal, WY; Tignall, GA; and Wheeler, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes seven allotments to Arthur, NE; Idaho Falls, ID; Manila, UT; McLean, TX; Opal, WY; Tignall, GA; and Wheeler, TX. The Commission requests comments on a petition filed by proposing the allotment of Channel 244A at Tignall, Georgia, as the community's first local aural transmission service.. Channel 244A can be allotted to Tignall in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.8 kilometers (6.1 miles) northwest to avoid a short-spacing to the licensed site of Station WAKB(FM), Channel 245C3, Wrens, Georgia. The coordinates for Channel 244A at Tignall are 33–55–40 North Latitude and 82–48–58 West Longitude. *See* Supplementary Information, *infra*.

DATES: Comments must be filed on or before November 18, 2002, and reply comments on or before December 3, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Georgia-Carolina Broadcasting Co., LLC, c/o Robert Lewis Thompson, Esq., Thiemann, Aitken & Vohra, LLC, 908 King Street, Suite 300, Alexandria, Virginia 22314; Scott D. Parker, c/o Richard A. Helmick, Esq., Cohn & Marks, LLP, 1920 N Street, NW., Suite 300, Washington, DC 20036; Rural Pima Broadcasting, c/o Scott C. Cinnamon, 1090 Vermont Ave., Suite. 800, Washington, DC 20005; Arthur Radio Broadcasting, c/o John M. Pelkey, Esq., Garvey, Schubert & Barer, 1000 Potomac Street, NW., 5th Floor, Washington, DC 20007; Mr. Robert Fabian, 4 Hickory Crossing Lane, Argyle, Texas 76226; Maurice Salsa, 5615 Evergreen Valley Drive, Kingwood, Texas 77345; and Black Diamond Broadcasting, c/o Scott C. Cinnamon, 1090 Vermont Ave., Suite 800, Washington, DC 20005.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–288; MB Docket No. 02–289; and MB Docket No. 02–290, MB Docket No. 02–291; MM Docket No. 02–292; MB Docket No. 02–293 and MB Docket No. 02–294; adopted September 11, 2002, and released September 27, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

The Commission requests comments on a petition filed by Scott D. Parker proposing the allotment of Channel 300C1 at Idaho Falls, Idaho, as the community's six local commercial FM transmission service. Channel 300C1 can be allotted to Idaho Falls in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.6 kilometers (12.2 miles) north to avoid a short-spacing to the licensed and construction permit site for Station KUDD(FM), Channel 300C, Roy, Utah. The coordinates for Channel 330C1 at Idaho Falls are 43–39–59 North Latitude and 112–00–06 West Longitude.

The Commission requests comments on a petition filed by Rural Pima Broadcasting proposing the allotment of Channel 249A at Manila, Utah, as the community's first local aural transmission service. Channel 249A can be allotted to Manila in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 249A at Manila are 40–59–17 North Latitude and 109–43–19 West Longitude.

The Commission requests comments on a petition filed by Arthur Radio Broadcasting proposing the allotment of Channel 300C1 at Arthur, Nebraska, as the community's first local aural transmission service. Channel 300C1 at can be allotted to Arthur in compliance with the Commission's minimum distance separation requirements of with a site restriction of 8.0 kilometers (5.0 iles) northwest to avoid the vacant allotment site for Channel 297C1 at Hershey, Nebraska. The coordinates for Channel Arthur are 41–37–10 North Latitude and 101–45–57 West Longitude.

The Commission requests comments on a petition filed by Robert Fabian proposing the allotment of Channel 267C3 at McLean, Texas, as the community's first local aural transmission service. Channel 267C3 can be allotted to McLean in compliance with the Commission's minimum distance separation requirements with a site restriction of. 21.4 kilometers (13.3 miles) southwest to avoid a short-spacing to the licensed site of Station KNOX(FM), Channel 266C, Woodward, Oklahoma. The coordinates for Channel 267C3 at McLean are North Latitude and West Longitude.

The Commission requests comments on a petition filed by Maurice Salsa proposing the allotment of Channel 280C2 at Wheeler, Texas, as the community's first local aural transmission service.. Channel 280C2 can be allotted to Wheeler in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.7 kilometers (4.1 miles) northeast to avoid short-spacings to the licensed site of Station KKYN–FM, Channel 280C2, Plainview, Texas, and Station KHYM(FM), Channel 280C1, Copeland, Kansas The coordinates for Channel 280C2 at Wheeler are 35–28–55 North Latitude and 100–12–56 West Longitude.

The Commission requests comments on a petition filed by Black Diamond Broadcasting proposing the allotment of Channel 263A at Opal, Wyoming, as the community's first local aural transmission service. Channel 263A can be allotted to Opal in compliance with the Commission's minimum distance separation requirements with a site restriction of. 6.3 kilometers (3.9 miles) east to avoid a short-spacing to the licensed site of Station KSFI(FM), Channel 262C, Salt Lake City, Utah. The coordinates for Channel 263A at Opal are 41–46–16 North Latitude and 110–14–50 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Tignall, Channel 244A.

3. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by adding Channel 300C1 at Idaho Falls.

4. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Arthur, Channel 300C1.

5. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding McLean, Channel 267C3; and Wheeler, Channel 280C2.

6. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Manila, Channel 249A.

7. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Opal, Channel 263A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Divison, Media Bureau.

[FR Doc. 02–26225 Filed 10–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2311; MB Docket No. 02–287; RM–10569]

Radio Broadcasting Services; Stuart, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Robert Fabian proposing the allotment of Channel 228A at Stuart, Oklahoma, as that community's first commercial broadcast transmission service. Channel 228A can be allotted to Stuart in compliance with the minimum distance separation requirements of the Commission's Rules at the city reference coordinates without a site restriction. The coordinates for Channel 228A at Stuart are 34–54–18 and 96–06–00.

DATES: Comments must be filed on or before November 18, 2002, and reply comments on or before December 3, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Robert Fabian, 4 Hickory Crossing Lane, Argyle, Texas, 76226.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–287, adopted September 11, 2002, and released September 27, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554 (CYA257). The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Stuart, Channel 228A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26228 Filed 10–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2226; MB Docket No. 02–274, RM–10560; MB Docket No. 02–275, RM–10561]

Radio Broadcasting Services; Jasper, FL and Tigerton, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comment on a petition filed by Powerline NA, Inc. proposing the allotment of Channel 298A at Jasper, Florida, as the community's first local aural transmission service. Channel 298A can be allotted to Jasper in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.2 kilometers (1.4 miles) northwest to avoid a short-spacing to the vacant allotment site of Channel 299C3, Perry, Florida. The coordinates for Channel 298A at Jasper are 30–31–49 North Latitude and 82–57–58 West Longitude. The Audio Division also requests comment on a petition filed by Starboard Broadcasting, Inc. proposing the allotment of Channel 295A at Tigerton, Wisconsin, as the community's first local aural transmission service. Channel 295A can be allotted to Tigerton in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.1 kilometers (8.7 miles) northeast to avoid a short-spacing to the license sites of Station WLJY, Channel 293C1, Marshfield, Wisconsin, Station WJLW, Channel 294C3, Allouez, Wisconsin, and Station WUPM, Channel 295C1, Ironwood, Michigan. The coordinates for Channel 295A at Tigerton are 44–50–07 North Latitude and 88–56–41 West Longitude.

DATES: Comments must be filed on or before November 12, 2002, and reply comments on or before November 26, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Powerline NA, Inc., c/o Clyde Scott, Jr., EME Communications, 293 JC Saunders Road, Moultrie, GA 31768 and Starboard Broadcasting, Inc., c/o David Vacheresse, President, 1496 Bellevue St. Building 2, Green Bay, Wisconsin 54311.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 02–274, 02–275, adopted September 4, 2002, and released September 20, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Jasper, Channel 298A.

3. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Tigerton, Channel 295A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26234 Filed 10–15–02; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 67, No. 200

Wednesday, October 16, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on October 26, 2002, at the Tahoe Seasons Resort, 3901 Saddle Rd., South Lake Tahoe, CA 96150. The Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held October 26, 2002, beginning at 1 p.m. and ending at 4:30 p.m.

ADDRESSES: The meeting will be held at Tahoe Seasons Resort, 3901 Saddle Rd., South Lake Tahoe, CA 96150.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Federal Interagency Partnership's Lake Tahoe Basin Executives Committee and the Tahoe Regional Executive Committee. Items to be covered on the agenda include: (1) orientation of new members; (2) guest speaker; (3) Committee focus for 2002 through 2004; and (4) open public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: October 7, 2002.

Edmund A. Gee,

Deputy Forest Supervisor.

[FR Doc. 02–26206 Filed 10–15–02; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting with briefing of the California Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 4 p.m. on Wednesday, November 20, 2002, at the Sacramento Convention Center, Room 103, 1030 15th Street, Sacramento, California 95814. The Committee will discuss with local officials post-9/11 issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, October 9, 2002.

Les Jin,

Staff Director, Office of the Staff Director.

[FR Doc. 02–26265 Filed 10–15–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting with briefing of the Virginia Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 3 p.m. on October 31, 2002, at the Washington Suites Hotel, Board Room, 100 South Reynolds Street, Alexandria, Virginia 22304. The Committee will hold a planning session beginning at 9:30 a.m. to review its draft report entitled "Civil Rights Concern in the Metropolitan Washington Area in the Aftermath of the September 9/11 Tragedies: Muslims, Sikhs, Arab Americans, South Asian Americans, and Muslim Women," and decide on new projects. The Committee will hold a briefing from 1:45 p.m. to 3 p.m. on current civil rights developments in the state from knowledgeable community representatives.

Persons desiring additional information, or planning a presentation to the Committee, should contact Chairperson Richard E. Patrick, 703–719–6499, or Edward Darden of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, October 9, 2002.

Les Jin,

Staff Director, Office of the Staff Director.

[FR Doc. 02–26264 Filed 10–15–02; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) in response to

requests from the Crawfish Processors Alliance (petitioner) and the Louisiana Department of Agriculture & Forestry and Bob Odom, Commissioner; and from respondents China Kingdom Import & Export Co., Ltd., aka China Kingdoma Import & Export Co., Ltd., aka Zhongda Import & Export Co., Ltd. (China Kingdom) and Qingdao Zhengri Seafood Company, Ltd., aka Qingdao Zhengri Seafoods (Qingdao Zhengri). The period of review (POR) is from September 1, 2000, through August 31, 2001.

We preliminarily determine that sales have been made below normal value (NV). The preliminary results are listed below in the section titled "Preliminary Results of Review." If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP), as applicable, and NV. Interested parties are invited to comment on these preliminary results. *See* the "Preliminary Results of Review" section of this notice.

EFFECTIVE DATE: October 16, 2002.

FOR FURTHER INFORMATION CONTACT: Doug Campau or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1395 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 351 (2001).

Background

The Department published in the **Federal Register** an antidumping duty order on freshwater crawfish tail meat from the PRC on September 15, 1997. *See Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People's Republic of China*, 62 FR 48218 (September 15, 1997). On September 28, 2001, in accordance with 19 CFR 351.213(b)(1), the Department received a request from the petitioner to conduct an administrative review of several companies, covering the period from September 1, 2000, through August 31, 2001. On September 28, 2001, respondents China Kingdom and Qingdao Zhengri also requested review of their own shipments. The Department initiated an antidumping duty administrative review for this case on October 23, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 65 FR 54195 (October 26, 2001).

On May 20, 2002, the Department determined that it was not practicable to complete the preliminary results of this review within the statutory time limit. Consequently, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(1) of the Department's regulations, the Department extended the deadline for completion of the preliminary results of the administrative review by 120 days, to September 30, 2002. *See Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review: Freshwater Crawfish Tail Meat from the People's Republic of China*, 67 FR 36856 (May 28, 2002).

On July 31, 2002, in accordance with sections 351.213(d)(1) and (3) of its regulations, the Department rescinded, in part, this administrative review of the antidumping duty order on freshwater crawfish tail meat. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Rescission, in Part, of Antidumping Duty Administrative Review for the Period September 1, 2000, through August 31, 2001*, 67 FR 50860 (August 6, 2002). The Department rescinded the review only with respect to those companies which had no reportable U.S. entries or exports of subject merchandise during the period of review, or for which all applicable requests for review were withdrawn in a timely manner.

Following the rescission, this review now covers the following companies: China Kingdom; Fujian Pelagic Fishery Group Co. (Fujian Pelagic); Qingdao Rirong Foodstuff Co., Ltd., aka Qingdao Rirong Foodstuffs (Qingdao Rirong); Qingdao Zhengri/Yancheng Yaou Seafoods (Qingdao Zhengri/Yancheng Yaou); Shantou SEZ Yangfeng Marine Products Co. (Shantou SEZ); Suqian Foreign Trade Corp., aka Suqian Foreign Trading (Suqian Foreign Trade); Yancheng Foreign Trade Corp., aka Yancheng Foreign Trading, aka Yang Cheng Foreign Trading (Yancheng Foreign Trade); and Yangzhou Lakebest Foods Co., Ltd. (Yangzhou Lakebest).

Scope of the Antidumping Duty Order

The product covered by this antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the U.S. Customs Service in 2000, and HTS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

Treatment of Qingdao Zhengri and Yancheng Yaou

We determine that Qingdao Zhengri and Yancheng Yaou should be treated as a single entity for purposes of this administrative review. In their responses to the Department's questionnaires, both companies stated that they are related through a Hong Kong company that owns significant shares in both companies. In addition, the companies reported that the Hong Kong owner consolidated Qingdao Zhengri's selling activities with those of Yancheng Yaou in January 2000. *See Response of Yancheng Yaou Seafoods to Section A of the Department's Questionnaire; 2000–2001 Review* (March 11, 2002) at page 1; and *Response of Qingdao Zhengri Seafood Co., Ltd. to Section A of the Department's Questionnaire; Crawfish Tail Meat 2000–2001 Review Investigation* (March 11, 2002) at page 1. Qingdao Zhengri/Yancheng Yaou submitted three consolidated supplemental responses to sections A, C, and D of the Department's questionnaire. For the reasons cited above, the Department is treating these two companies as a single entity for these preliminary results.

Application of Facts Available

1. *Fujian Pelagic, Shantou SEZ, Suqian Foreign Trade, Yancheng Foreign Trade, and Yangzhou Lakebest*

As further discussed below, pursuant to sections 776(a)(2)(A) and (B) and section 776(b) of the Act, the Department determines that the application of total adverse facts available is warranted for respondents Fujian Pelagic, Shantou SEZ, Suqian Foreign Trade, Yancheng Foreign Trade, and Yangzhou Lakebest. All five of these respondents failed to respond to some or all of the Department's questionnaires for this POR. Yangzhou Lakebest and Suqian Foreign Trade responded to the Department's initial questionnaire, but then failed to respond to the Department's supplemental questionnaires. Fujian Pelagic, Shantou SEZ, and Yancheng Foreign Trade failed to respond to any of the Department's questionnaires. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. These five respondents failed to provide information explicitly requested by the Department; therefore, we must resort to the facts otherwise available. Because these respondents did not respond to the Department's questionnaires, sections 782(d) and (e) of the Act are not applicable. In addition, section 782(c)(1) does not apply because these parties did not indicate that they were unable to submit the information required by the Department.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent, if it determines that a party has failed to cooperate to the best of its ability. In applying the facts otherwise available, the Department has determined that an adverse inference is warranted pursuant to section 776(b) of the Act because the Department has determined that these respondents failed to cooperate to the best of their ability.

The Department finds that, by not providing the necessary responses to the questionnaires issued by the Department, these five companies have failed to cooperate to the best of their ability. None of these companies cited any reason for their failure to respond. Without this information, the Department cannot calculate margins for these companies nor determine that any merits a separate rate. This information was in the sole possession of the respondents, and could not be obtained otherwise. Thus, the Department is precluded from calculating margins for these companies or determining eligibility for separate rates. Therefore, in selecting from the facts available, the Department determines that an adverse inference is warranted. In accordance with sections 776(a)(2)(A) and (B), as well as section 776(b) of the Act, we are applying total adverse facts available to Fujian Pelagic, Shantou SEZ, Suqian Foreign Trade, Yancheng Foreign Trade, Yangzhou Lakebest and all other PRC exporters that have not established that they are entitled to a separate rate. As adverse facts available, the Department is assigning these companies the rate of 223.01 percent the highest rate determined in any previous segment of this proceeding. *See Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002). As discussed below, this rate has been corroborated.

2. *China Kingdom*

Pursuant to sections 776(a)(2)(A) and (B) and section 776(b) of the Act, the Department determines that the application of adverse facts available is also warranted for respondent China Kingdom. At verification, China Kingdom explained that the total production and factors of production reported in its answers to the Department's questionnaires were based on production outside the POR. China Kingdom then attempted to submit new factual information, consisting of new figures for total production and factors of production. *See Memorandum to the File: Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Verification Report for China Kingdom Import & Export Co., Ltd.* (September 16, 2002) (*China Kingdom Verification Report*). Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. China Kingdom failed to provide total production and factors of production for the relevant POR in a timely manner.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner," the Department may modify the requirements to avoid imposing an unreasonable burden on that party. Throughout the course of this review, China Kingdom had several opportunities to correct the reported data. However, at no time prior to the verification did China Kingdom notify the Department that it had any difficulty in obtaining the production or factors of production data from the relevant POR. At no point during the review did China Kingdom seek guidance on alternative reporting requirements, or propose an alternate form for submitting the required data, as contemplated in section 782(c)(1) of the Act.

Section 782(d) of the Act provides that if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. In its questionnaire, the Department asked China Kingdom to provide production and factors of production data for the POR (September 1, 2000, to August 31, 2001). Prior to the verification, the Department had no means of determining whether the data came from the relevant POR, and therefore could not inform the respondent that its response was deficient. On the other hand, China Kingdom had access to the necessary information, and was fully aware of the time period covered by the current review. In addition, China Kingdom had ample opportunities to correct its data prior to verification, but did not attempt to do so until verification had started.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. As discussed above, China Kingdom had ample time to submit the production and factors of production data for the relevant POR, but failed to do so. In addition, the Department had provided China Kingdom with the exact dates for verification well in advance. However, China Kingdom waited until verification

to submit the production data for the relevant POR. Thus, the data reported in the questionnaire response could not be verified. As set forth in section 351.307(d) of the Department's regulations, the purpose of verification is to verify the accuracy and completeness of the information in the questionnaire responses. China Kingdom did not act to the best of its ability to comply with the Department's request for information. The production and factors of production data for the relevant POR is critical to the calculation of a dumping margin. China Kingdom failed to provide this information in its February 27, 2002, responses to the Department's section A through D questionnaire. In addition, between February 27, 2002, and August 8, 2002, China Kingdom failed to note that the data it had provided was completely irrelevant to this administrative review, and failed to request an opportunity to submit corrected data. At no time did the respondent indicate that it had trouble obtaining or submitting the data for the relevant POR. Consequently, China Kingdom has not demonstrated that it acted to the best of its ability in providing the information requested by the Department. In addition, the information was so incomplete that it could not be used in the determination. The submitted questionnaire response for production and factors of production was unverifiable. *See Verification Report* at 10. For these reasons, the information could not be used without undue difficulty.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent, if it determines that a party has failed to cooperate to the best of its ability. In applying the facts otherwise available, the Department finds that an adverse inference is warranted, pursuant to

section 776(b) of the Act, because, as discussed above, the Department has determined that China Kingdom has failed to cooperate to the best of its ability. As adverse facts available, the Department is assigning China Kingdom the rate of 223.01 percent the highest rate determined in any previous segment of this proceeding. *See Memorandum to Joseph A. Spetrini: Freshwater Crawfish Tail Meat from the People's Republic of China (PRC): Application of Total Adverse Facts Available for China Kingdom Import & Export Co., Ltd. in the Preliminary Results of the Administrative Review for the Period 9/1/00 - 8/31/01* (September 30, 2002) (*China Kingdom AFA Memo*). As discussed further below, this rate has been corroborated.

3. *Qingdao Zhengri/Yancheng Yaou*

Pursuant to sections 776(a)(2)(A) and (B) and section 776(b) of the Act, the Department determines that the application of adverse facts available is also warranted for respondents Qingdao Zhengri and Yancheng Yaou. As noted above, we have determined that Qingdao Zhengri and Yancheng Yaou should be treated as a single entity. On June 4, 2002, Qingdao Zhengri/Yancheng Yaou informed us that Qingdao Zhengri "does not wish to participate in a verification." *See Letter from Qingdao Zhengri*, at 1 (June 4, 2002). This decision prevented the verification of information placed on the record. Section 776(a)(2)(D) warrants the use of facts otherwise available in reaching a determination when information is provided, but cannot be verified. Furthermore, on July 23, 2002, Qingdao Zhengri/Yancheng Yaou stated that Qingdao Zhengri "did not make any sales during the period of review prior to January 3, 2000." *See Letter from Qingdao Zhengri*, at 1 (June 23, 2002). This statement contradicted earlier responses where Qingdao Zhengri/Yancheng Yaou stated that Qingdao Zhengri did not have any sales during the POR. In addition, several submissions made by Qingdao Zhengri/Yancheng Yaou did not contain accurate certifications, as required by section 351.303(g) of the Department's regulations. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts otherwise available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required.

Since Qingdao Zhengri/Yancheng Yaou did not allow on-site verification of its responses at Qingdao Zhengri, none of the information submitted regarding Qingdao Zhengri could be verified, including its separate rate information. Furthermore, as discussed above, Qingdao Zhengri/Yancheng Yaou made contradictory statements regarding sales to the United States, and did not provide accurate certifications of its submissions by the deadline established by the Department. Thus, information submitted by Qingdao Zhengri/Yancheng Yaou cannot serve as a reliable basis for reaching a determination.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a respondent, if it determines that a party has failed to cooperate to the best of its ability. In applying the facts otherwise available, the Department finds that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, as discussed above, the Department has determined that Qingdao Zhengri/Yancheng Yaou has failed to cooperate to the best of its ability by refusing verification of Qingdao Zhengri. Furthermore, Qingdao Zhengri/Yancheng Yaou have submitted contradictory responses regarding whether Qingdao Zhengri had any sales of crawfish tail meat during the POR. In addition, Qingdao Zhengri/Yancheng Yaou's responses were accompanied by certifications that did not comply with the requirements of section 351.303(g) of the Department's regulations. In light of these developments, we conclude that Qingdao Zhengri/Yancheng Yaou did not act to the best of its ability in this review. As adverse facts available, the Department is assigning this entity, and all other PRC exporters subject to the PRC-wide rate, the rate of 223.01 percent the highest rate determined in any previous segment of this proceeding. *See Memorandum to Joseph A. Spetrini: Freshwater Crawfish Tail Meat from the People's Republic of China (PRC): Application of Total Adverse Facts Available for Qingdao Zhengri Seafood Co., Ltd. and Yancheng Yaou Seafood Co., Ltd. in the Preliminary Results of the Administrative Review for the Period September 1, 2000 through August 31, 2001* (September 30, 2002). As discussed further below, this rate has been corroborated.

4. *Qingdao Rirong*

At verification, Qingdao Rirong explained that the total production and factors of production (FOP) reported in its responses to the Department's questionnaires were incomplete because it omitted two months of production and consumption data for each factor. Qingdao Rirong then attempted to submit this new factual information, consisting of two months of previously unreported production and consumption data, as "minor corrections" to the questionnaire response. The Department declined to accept this new factual information as "minor corrections." *See Memorandum to Joseph A. Spetrini: Freshwater Crawfish Tail Meat from the People's Republic of China (PRC): Application of Partial Facts Available for Factors of Production: Qingdao Rirong Foodstuff Co., Ltd. Preliminary Results of the Administrative Review (September 1, 2000, through August 31, 2001)*

(September 30, 2002); *see also, Antidumping Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China (PRC) (A–570–848): Sales and Factors Verification Report for Qingdao Rirong Foodstuff Co., Ltd. (Qingdao Rirong)* (September 16, 2002) (*Qingdao Rirong Verification Report*), on file in the Central Records Unit (CRU), Room B–099 of the main Department building.

Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. Qingdao Rirong failed to provide accurate and complete factor values for the POR in a timely manner.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner," the Department may modify the requirements to avoid imposing an unreasonable burden on that party. Throughout the course of this review, Qingdao Rirong had several opportunities to correct the reported data. However, at no time, prior to the verification, did Qingdao Rirong notify the Department that it had any difficulty in obtaining accurate and complete FOP for the relevant POR. At no point during the review did Qingdao Rirong seek guidance on alternative reporting requirements, or propose an alternate form for submitting the required data, as contemplated in section 782(c)(1) of the Act.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. In its questionnaire, the Department asked Qingdao Rirong to provide production and FOP data for the POR (September 1, 2000, to August 31, 2001). Prior to the verification, the Department had no means of determining whether the data submitted were based on the entire POR, and therefore could not inform the respondent that its response was deficient. On the other hand, Qingdao Rirong had access to the necessary information and was fully aware of the time period covered by the current review. In addition, Qingdao Rirong had ample opportunities to correct its production and FOP data prior to verification, but did not do so until verification had started, although it was aware that the Department would no longer accept new factual information at that point.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. From the time it received the original questionnaire until verification, Qingdao Rirong had ample time to submit accurate and complete production and FOP for the relevant POR. In addition, the Department had provided Qingdao Rirong with the exact dates for verification well in advance, and had made it clear that all factual information should be submitted prior to the start of verification. However, Qingdao Rirong waited until verification to submit revised FOP based on revised production and consumption data.

Qingdao Rirong did not act to the best of its ability to comply with the Department's request for information. Qingdao Rirong should have been able to comply with the Department's requests for information in a timely manner. Qingdao Rirong's failure to provide essential information, namely, timely and complete production and FOP data, hindered the Department's ability to accurately calculate a dumping margin for this company. Qingdao Rirong failed to provide this information in its March 27, 2002, responses to the Department's section A through D questionnaire. In addition, between March 27, 2002, and July 29, 2002, Qingdao Rirong failed to detect that it had reported production volume and FOP that were incomplete and did not reflect the complete POR. At no time did Qingdao Rirong indicate that it had trouble obtaining or submitting the production and FOP data for all the months of the POR during which it produced subject merchandise. Consequently, Qingdao Rirong has not demonstrated that it acted to the best of its ability in providing the information requested by the Department.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent, if it determines that a party has failed to cooperate to the best of its ability. In applying the facts otherwise available, the Department finds that an adverse inference is warranted, pursuant to section 776(b) of the Act, because the Department has determined that Qingdao Rirong has failed to cooperate to the best of its ability. Qingdao Rirong did not report significant data regarding production and FOP during two months of the POR. In turn, the new data affected the calculation of the factors of production for the entire POR. Furthermore, the Department issued, in all, four requests for information to Qingdao Rirong, which required Qingdao Rirong to examine its information submitted to the Department. Nevertheless, on none of these four occasions did Qingdao Rirong ever revise its FOP, nor did it indicate that it had not included certain production and consumption data in its FOP calculations. *See Qingdao Rirong Verification Report*. We therefore determine that Qingdao Rirong did not cooperate to the best of its ability within the meaning of 776(b) of the Act, and the application of adverse facts available is warranted.

Although the failure to report FOP based on complete production and consumption data for the POR warrants the application of adverse facts available, we do not find that the application of total adverse facts available is warranted since Qingdao Rirong responded to the Department's questionnaires; Qingdao Rirong allowed for verification; and the reported sales information and the production and consumption information submitted to the Department in the original questionnaire responses could be verified and was confirmed to be accurate. *See Qingdao Rirong Verification Report*. As such, the Department has determined that partial adverse facts available should be applied to account for the unreported months of production and consumption.

As partial adverse facts available for the two months of the production season (September and October 2000) for which the Department rejected the production and consumption and FOP data at verification as untimely filed new factual information, we have applied the highest monthly factor value of one of the remaining months of production, except for the crawfish

scrap factor, for which we will take the lowest, as provided to and verified by the Department. To calculate each factor for the POR, we weighted each factor for September and October using the highest production quantity for any of the five reported months, and then weighted the factors for the reported months using the verified production quantity from each of those months. *See Memorandum to File through Maureen Flannery from Elfi Blum: Analysis for the Preliminary Results of the Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Qingdao Rirong Foodstuff Co., Ltd.*, dated September 30, 2002 (Calculation Memo); *see also, Memorandum to Joseph A. Spetrini: Freshwater Crawfish Tail Meat from the People's Republic of China (PRC): Application of Partial Facts Available for Factors of Production: Qingdao Rirong Foodstuff Co., Ltd. Preliminary Results of the Administrative Review (September 1, 2000 through August 31, 2001)* (September 30, 2002) (*Qingdao Rirong AFA Memo*).

Corroboration of Secondary Information Used As Adverse Facts Available

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The *Statement of Administrative Action*, H.R. Doc. 103–316 (SAA), states that "corroborate" means to determine that the information used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

With respect to China Kingdom, Fujian Pelagic, Qingdao Zhengri/Yancheng Yaou, Shantou SEZ, Suqian Foreign Trade, Yancheng Foreign Trade, and Yangzhou Lakebest, we are applying the highest rate from any previous segment of this administrative proceeding as adverse facts available, which is a rate calculated in the 1999–2000 review. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from the current or a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See, e.g., Grain-Oriented Electrical Steel From Italy: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 36551, 36552 (July 11, 1996). With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present here.

Accordingly, we determine that the highest rate from any previous segment of this administrative proceeding (*i.e.*, the calculated rate of 223.01 percent) is in accord with section 776(c)'s requirement that secondary information be corroborated (*i.e.*, that it have probative value). The information used in calculating this margin was based on sales and production data of a respondent in a prior review, as well as on the most appropriate surrogate value information available to the Department, chosen from submissions by the parties in that review, as well as information gathered by the Department itself. Furthermore, the calculation of this margin was subject to comment from interested parties in the proceeding. *See Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002). Moreover, as there is no information on the record of this review that demonstrates that this rate is not appropriately used as adverse facts available for Fujian Pelagic, Shantou SEZ, Suqian Foreign Trade, Yancheng Foreign Trade, Yangzhou Lakebest, China Kingdom, and Qingdao Zhengri/Yancheng Yaou, we determine that this rate has probative value.

With respect to Qingdao Rirong, the factors we are using for partial adverse facts available constitute primary information on the record of this review. Corroboration within the meaning of the SAA (*see* SAA at 870) and section 776(c) of the Act is therefore not necessary. In addition, there is no information on the record of this review demonstrating that the factors selected are not appropriate as adverse facts available for Qingdao Rirong.

Verification

As provided in section 782(i) of the Act, we attempted to verify the responses of Qingdao Rirong and China Kingdom. We used standard verification procedures, including on-site inspection of the manufacturers' facilities and the examination of relevant sales and financial records. However, as described in the "Application of Facts Available" section above, we encountered problems at the verification of the questionnaire responses submitted by both China Kingdom and Qingdao Rirong. *See China Kingdom Verification Report* at 10 and *Qingdao Rirong Verification Report* at 1–2; *see also China Kingdom AFA Memo* and *Qingdao Rirong AFA Memo*. Our verification results are outlined in the public versions of the verification reports, on file in the CRU, Room B–099 of the main Department building.

Separate Rates

To establish whether a company operating in a non-market economy country (NME) is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the Peõple's Republic of China*, 59 FR 22585 (May 2, 1994). Under this policy, exporters in NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: 1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management.

De Jure Control

In their questionnaire responses, both Qingdao Rirong and China Kingdom stated that they are independent legal entities. Qingdao Rirong also stated that it is a PRC-foreign joint venture. Evidence on the record indicates that the government does not have *de jure* control over either Qingdao Rirong's or China Kingdom's export activities. Both companies submitted evidence of their legal right to set prices independent of all government oversight. Furthermore, the business licenses of Qingdao Rirong and China Kingdom indicate that each is permitted to engage in the exportation of crawfish. We also found no evidence of de jure government control restricting either entity's exportation of crawfish.

In their responses, Qingdao Rirong and China Kingdom both stated that no export quotas apply to crawfish. Prior verifications have confirmed that there are no commodity-specific export licenses required and no quotas for the seafood category "Other," which includes crawfish, in *China's Tariff and Non-Tariff Handbook* for 1996. In addition, we have previously confirmed that crawfish is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities*. *See Freshwater Crawfish Tail Meat From the People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 8543 (February 22, 1999) and *Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review*, 64 FR 27961 (May 24, 1999) (*Ningbo New Shipper Review*).

The following laws, which have been placed on the record of this review, indicate a lack of *de jure* government control over companies owned by "all the people" and that control over these enterprises has been transferred from the government to the enterprises themselves. *The Administrative Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons* (*Legal Persons Law*), issued on July 13, 1988 by the State Administration for Industry and Commerce of the PRC provide that, to qualify as legal persons, companies must have the "ability to bear civil liability independently" and the right to control and manage their businesses. These regulations also state that as an independent legal entity, a company is responsible for its own profits and losses. Both Qingdao Rirong and China Kingdom also provided copies of the *Foreign Trade Law of the PRC*, which identifies the rights and responsibilities of business enterprises with foreign investment, grants autonomy to foreign trade operators in management decisions, and establishes the foreign trade operator's accountability for profits and losses. Both entities also provided copies of their business and export licenses. We therefore preliminarily determine that there is an absence of *de jure* control over the export activities of Qingdao Rirong and China Kingdom.

De Facto Control

With respect to the absence of *de facto* control over export activities, information on the record indicates that, for both Qingdao Rirong and China Kingdom, management for each company is responsible for all decisions concerning export strategies, export prices, profit distribution, and contract negotiations, and that there are no governmental policy directives that affect management's decisions. Furthermore, each company's pricing and export strategy decisions are not subject to any outside entity's review or approval. Information on the record also indicates that there is no government involvement in the daily operations or the selection of management for either company.

There are no restrictions on the use of revenues or profits including export earnings for either Qingdao Rirong or China Kingdom. Each company's general manager has the right to negotiate and enter into contracts, and may delegate this authority to employees within the company. There is no evidence that this authority is subject to any level of governmental approval. Qingdao Rirong has stated that its management is selected by its board of directors and/or its employees, while China Kingdom has stated that its management is selected by its board of directors alone. Both companies have indicated that there is no government involvement in the management selection process. Lastly, decisions made by Qingdao Rirong and China Kingdom concerning purchases of subject merchandise from other suppliers are not subject to government approval. We therefore preliminarily determine that there is an absence of de facto control over the export activities of Qingdao Rirong and China Kingdom.

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over their export activities, we preliminarily determine that Qingdao Rirong and China Kingdom are each eligible for a separate rate.

Normal Value Comparisons

To determine whether Qingdao Rirong's sales of the subject merchandise to the United States were made at prices below NV, we compared its export prices to NV, as described in the *Export Price* and *Normal Value* sections of this notice. As discussed above in the *Application of Facts Available* section, we have applied partial adverse facts available in determining the factors of production used in the calculation of NV.

Export Price

For Qingdao Rirong, we based United States price on EP in accordance with section 772(a) of the Act, because the first sales to unaffiliated purchasers were made prior to importation, and CEP was not otherwise warranted by the facts on the record. We calculated EP based on packed prices from the exporter to the first unaffiliated purchaser in the United States. Where applicable, we deducted foreign inland freight, inland insurance, and brokerage and handling expenses in the home market from the starting price (gross unit price) in accordance with section 772(c) of the Act.

Normal Value

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the

administering authority. None of the companies contested such treatment in these reviews. Accordingly, we have applied surrogate values to the factors of production to determine NV. *See Memorandum to the File, through Maureen Flannery, Program Manager, Office of AD/CVD Enforcement VII, from Adina Teodorescu, Case Analyst, Re.: Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China, Factor Values Memorandum*, dated September 30, 2002 (*Factor Values Memorandum*). We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the original investigation and prior administrative reviews of this order, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. *See Memorandum from the Office of Policy to Maureen Flannery, Program Manager, Group III/Office 7 of AD/CVD*, dated June 13, 2002 (*Policy Memo*). With the exceptions of the crawfish input and the shell scrap, we valued the factors of production using publicly available information from India. We adjusted the Indian import prices by adding freight expenses to make them delivered prices.

In the original investigation of sales at less than fair value (LTFV) and in previous reviews of this order, for the crawfish input, we used Spanish import statistics for live freshwater crawfish imported from Portugal. However, in the final results of two subsequent new shipper reviews and the most recently completed administrative review, the Department found that Spanish imports of live freshwater crawfish from Portugal had declined drastically. Consequently, the Department found that the most appropriate surrogate value was the price paid by crawfish processors to crawfish fishermen/harvesters for live crawfish up to 40 grams in weight in Australia. *See Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) (*99/00 Final Results*).

Submissions placed on the record of the current administrative review indicate that the appropriate basis for the valuation of the live crawfish input remains a significant issue. Consequently, the Department conducted additional research in an attempt to identify the best available information among the possible options for valuing the live crawfish input. Based on this research, we found that Spanish imports of Portugese crawfish increased significantly, and that the market appears to have recovered. *See Memorandum to Barbara E. Tillman, Director, Office of AD/CVD Enforcement VII, through Maureen Flannery, Program Manager, from Matthew Renkey and Scot Fullerton, Analysts: Selection of Surrogate for the Valuation of Whole, Live Freshwater Crawfish in the 2000 - 2001 Administrative and New Shipper Reviews for Freshwater Crawfish Tail Meat from the People's Republic of China* (August 5, 2002) (*Crawfish Valuation Memo*). Information concerning these imports is publicly available, published, and regularly maintained by the Spanish government. Section 773(c)(4) of the Act, as amended, provides that in valuing the factors of production, the Department should use, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. While Spain is not at the same level of economic development as the PRC, we find that there is no reliable or usable publicly available information to value live crawfish from the surrogate countries identified by the Office of Policy. *See Memorandum to the File, through Maureen Flannery, Program Manager, AD/CVD Enforcement VII, from Christian Hughes and Doug Campau, Case Analysts: Surrogate Value Research; Crawfish Tail Meat from the People's Republic of China (PRC): Administrative Review 9/1/00–8/31/01 and New Shipper Reviews 9/1/00–8/31/01 and 9/1/00–10/15/01* (August 5, 2002). Since the trade in live freshwater crawfish between Spain and Portugal recovered during the 2000–2001 POR, and since it appears that the recovery is not likely to be an aberration, such published official government import data is the preferred source of valuing the factors of production. Accordingly, the Department is using the Spanish import statistics to value the live freshwater crawfish input for purposes of this administrative review.

In previous reviews, the Department has used a Canadian free-on-board (FOB) factory price quote for dried crab and shrimp shells to value crawfish shell scrap. Because this surrogate price was on a dry-weight basis, whereas shells were sold wet by the Chinese exporter, we converted the dry-weight price to a wet-weight basis to reflect the value of the shell scrap. *See 99/00 Final Results* For this review, we have obtained price quotes from Indonesia for wet and dried crab and shrimp shells. Indonesia is the only country identified for this review as a surrogate country comparable to the PRC for which we were able to obtain public surrogate value information on shell scrap. *See Policy Memo*. Furthermore, we have a price from Indonesia for wet shells, as well as a price for dried shells. Therefore, we used the price of wet crab and shrimp shells from Indonesia to value the scrap shell in this administrative review. *See Memorandum to Barbara E. Tillman, Director, Office of AD/CVD Enforcement VII, through Maureen Flannery, Program Manager, from Christian Hughes and Adina Teodorescu, Case Analysts: Surrogate Valuation of Shell Scrap: Freshwater Crawfish Tail Meat from the People's Republic of China (PRC), Administrative Review 9/1/00–8/31/01 and New Shipper Reviews 9/1/00–8/31/01 and 9/1/00–10/15/01* (August 5, 2002).

We valued the factors of production as follows:

To value the input of whole live crawfish, we used publicly available Spanish import data of whole live crawfish from Portugal for September 2000 through August 2001. *See Crawfish Valuation Memo*. We adjusted the values of whole live crawfish to include freight costs incurred between the supplier and the factory. For transportation distances used in the calculation of freight expenses on whole live crawfish, we added to the surrogate values a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. *See Notice of Final Determination of Sales at Less than Fair Value: Collated Roofing Nails from the People's Republic of China*, 62 FR 51410 (October 1, 1997) (*Roofing Nails*).

To value crawfish scrap, we used a price quote from Indonesia for crab and shrimp shells. For further details, *see Factors Value Memorandum*.

To value coal, we relied upon Indian import data for steam coal for the period August 2000 through January 2001 from the *Monthly Statistics of the Foreign Trade of India* (*Monthly Statistics*). We adjusted the cost of coal to include an amount for transportation. To value electricity, we used the average of the 1997 total cost per kilowatt hour (KWH) for "Electricity for Industry" as reported in the International Energy Agency's publication, *Energy Prices and Taxes, First Quarter, 2000*. For water, we relied upon public information from the

October 1997 *Second Water Utilities Data Book: Asian and Pacific Region*, published by the Asian Development Bank. To achieve comparability of electricity and water prices to the factors reported for the POR, we adjusted these factor values to reflect inflation to the POR using the Wholesale Price Index (WPI) for India, as published in the 2001 *International Financial Statistics* (*IFS*) by the International Monetary Fund (IMF).

To value packing materials (plastic bags, cardboard boxes and adhesive tape), we relied upon Indian import data for the period August 2000 through January 2001 from the *Monthly Statistics*. We adjusted the values of packing materials to include freight costs incurred between the supplier and the factory. For transportation distances used in the calculation of freight expenses on packing materials, we added, to surrogate values from India, a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. *See Roofing Nails*.

To value factory overhead, selling, general, and administrative expenses (SG&A) and profit, we calculated simple average rates using publicly available 1996–97 financial statements of four Indian seafood processing companies, and applied these rates to the calculated cost of manufacture. *See Factor Values Memorandum*.

For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2002. See *http://ia.ita.doc.gov/wages/*. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's Web site is the *Year Book of Labour Statistics 2001*, International Labour Office (Geneva: 2001), Chapter 5B: Wages in Manufacturing.

We valued movement expenses as follows:

To value truck freight expenses we used nineteen Indian price quotes as reported in the February 14, 2000 issue of *The Financial Express*, which were used in the antidumping duty investigation of certain circular welded carbon-quality steel pipe from the PRC. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China*, 67 FR 36570 (May 24, 2002) (*China Pipe*). We adjusted the rates to reflect inflation to the POR of the finished product using the WPI for India from the IFS.

To value brokerage and handling, we used a publicly summarized version of the average value for brokerage and handling expenses reported in *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from India*, 67 FR 50406 (October 3, 2001) (*Hot-Rolled from India*), which was also used in *China Pipe*. We used the average of the foreign brokerage and handling expenses reported in the U.S. sales listing of the public questionnaire response submitted in the antidumping investigation of Essar Steel Ltd. in *Hot-Rolled from India*. Charges were reported on a per metric ton basis. We adjusted these values to reflect inflation to the POR using the WPI for India from the IFS. For further discussion, see *Factor Values Memorandum*.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank of New York. (See *http://ia.ita.doc.gov/exchange/index.html*.)

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist:

Manufacturer/Exporter	Time Period	Margin (percent)
Qingdao Rirong	9/1/00–8/31/01	0.00
China Kingdom	9/1/00–8/31/01	223.01
PRC-Wide Rate[1]	9/1/00–8/31/01	223.01

[1] Fujian Pelagic, Qingdao Zhengri/Yancheng Yaou, Shantou SEZ, Suqian Foreign Trade, Yancheng Foreign Trade, and Yangzhou Lakebest are included in the PRC-wide rate.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) If the margin for Qingdao Rirong remains zero, no cash deposits would be required for shipments exported by Qingdao Rirong. If Qingdao Rirong's margin is above *de minimis* in the final results, for subject merchandise exported by Qingdao Rirong, the cash deposit rate will be the total amount of antidumping duties due, divided by the total quantity exported during the POR. China Kingdom's rate will be the rate established in the final results. (2) For other exporters with separate rates, the deposit rate will be the company-specific per-kilogram or ad valorem rate established for the most recent period, as applicable. (3) For all other PRC exporters, the rate will be the PRC-wide rate, 223.01 percent. (4) For all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

Comments and Hearing

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication in accordance with 19 CFR 351.310(c). Any hearing would normally be held two days after the deadline for rebuttal briefs, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the Federal Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed

not later than 5 days after the due date for submission of case briefs. Parties who submit arguments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days from the date of publication of these preliminary results.

Assessment Rates

Upon completion of this administrative review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service upon completion of this review. For assessment purposes, for Qingdao Rirong, where appropriate, we will calculate importer-specific assessment rates for freshwater crawfish tail meat from the PRC. We will divide the total dumping margins (calculated as the difference between NV and EP) for each importer by the total quantity of subject merchandise sold by Qingdao Rirong to that importer during the POR. Upon the completion of this review, we will direct Customs to assess the resulting quantity-based rates against the weight in kilograms of each entry of the subject merchandise by the importer during the POR. *See Memorandum to Barbara E. Tillman through Maureen Flannery, from Mark Hoadley: Collection of Cash Deposits and Assessment of Duties on Freshwater Crawfish from the PRC* (August 27, 2001), and placed on the record of this review. Also upon completion of this review, for China Kingdom and all exporters subject to the PRC-wide rate, we will direct Customs to assess the resulting ad valorem rates against the entered value of each entry of the subject merchandise during the POR. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of the final results of review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are published in accordance with section 751(a)(1) of the Act, and sections 351.213 and 351.221 of the Department's regulations.

Dated: September 30, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–26311 Filed 10–15–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–447–801]

Notice of Initiation of a Changed Circumstances Review of the Antidumping Duty Order on Solid Urea From Estonia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and request for comments.

DATES: October 16, 2002.

FOR FURTHER INFORMATION CONTACT: George Smolik, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1843.

SUMMARY: The Department of Commerce is initiating a changed circumstances review in order to examine whether Estonia is still a non-market economy country for purposes of the antidumping and countervailing duty laws.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("Department") regulations are to 19 CFR part 351 (2002).

Background

The Department received a letter from the Republic of Estonia Ministry of Foreign Affairs dated July 10, 2002, requesting a review of Estonia's status as a non-market economy ("NME") country. In the letter, the Government of Estonia submitted documentation supporting its request for market economy status. The Department subsequently received a letter from the Ambassador of Estonia to the United States dated September 20, 2002, requesting a review of Estonia's non-market economy status under a changed circumstances review of the antidumping duty order on solid urea from Estonia.

In response to this latter request, the Department is initiating a changed circumstances review in order to examine whether Estonia is still a non-market economy country for purposes of the antidumping and countervailing duty laws, pursuant to sections 751(b) and 771(18)(C)(ii) of the Act.

The Department has treated Estonia as an NME country in all past antidumping duty investigations and administrative reviews. See, *e.g.*, Urea From the Union of Soviet Socialist Republics; Final Determination of Sales at Less Than Fair Value, 52 FR 19557 (May 26, 1987); and, Solid Urea from the Union of Soviet Socialist Republics—Transfer of the Antidumping Duty Order on Solid Urea From the Union of Soviet Socialist Republics to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment, 57 FR 28828 (June 29, 1992. A designation as an NME remains in effect until it is revoked by the Department. See section 771(18)(C)(i) of the Act.

Opportunity for Public Comment

As part of this inquiry to determine whether to revoke Estonia's NME status, the Department is interested in receiving public comment with respect to Estonia on the factors listed in section 771(18)(B) of the Act, which the Department must take into account in making a market/non-market economy determination: (i) The extent to which the currency of the foreign country is convertible into the currency of other countries; (ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management; (iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country; (iv) the extent of government ownership or control of the means of production; (v) the extent of government control over allocation of resources and over price and output decisions of enterprises; and (vi) such other factors as the administering authority considers appropriate.

Comments—Deadline, Format, and Number of Copies

The deadline for submission of comments will be 45 days after the date of publication of this notice in the **Federal Register**. All comments should be filed at the Department of Commerce Central Records Unit located at the address listed below. Rebuttal comments may be submitted up to 30 days after the date initial comments are due. Each person submitting comments should include his or her name and address, and give reasons for any recommendation. To facilitate their consideration by the Department, comments should be submitted in the following format: (1) Begin each comment on a separate page; (2) concisely state the issue identified and discussed in the comment and include any supporting documentation in exhibits or appendices; (3) provide a brief summary of the comment (a maximum of 3 sentences) and label this section "summary of comment;" (4) provide an index or table of contents; and (5) include the case number A–447–801 in the top right hand corner of the submission. To simplify the processing and distribution of comments, the Department requires the submission of documents in electronic form accompanied by an original and six copies in paper form. We require that documents filed in electronic form be on DOS formatted 3.5' diskettes and prepared in either WordPerfect 9 format or a format that the WordPerfect program can convert and import into WordPerfect 9. Please submit comments in separate files on the diskette. Comments received on diskette will be made available to the public on the Internet at Import Administration's Web site, *http://ia.ita.doc.gov*. Paper copies will be available for reading and photocopying in the Central Records Unit, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Any questions concerning file formatting, document conversion, access on the Internet, or other file requirements should be addressed to Andrew Lee Beller, Import Administration Webmaster, (202) 482–0866.

Hearing

After reviewing all comments and rebuttal comments, the Department will determine whether a public hearing on the NME country issue is warranted, if one is requested in the initial or rebuttal comments on this issue. If the Department determines that a hearing is warranted, the Department will announce a place and time for that hearing.

This determination is issued and published in accordance with sections 751(b) and 771(18)(C)(ii).

Dated: October 8, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–26312 Filed 10–15–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–831]

Stainless Steel Sheet and Strip in Coils from Taiwan: Notice of Court Decision

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Court Decision.

SUMMARY: On August 22, 2002, the United States Court of International Trade ("Court") sustained the final remand determination made by the Department of Commerce ("the Department") pursuant to the Court's remand of the final determination of the administrative review of stainless steel sheet and strip in coils from Taiwan. *See Tung Mung Development Co., Ltd. v. United States*, Ct. No. 99–07–00457, Slip Op. 02–93 (Ct. Int'l Trade August 22, 2002) ("*Tung Mung II*"). This case arises out of the Department's *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Taiwan*; 64 FR 30592 (June 8, 1999) ("*Final Determination*"). The final judgment in this case was not in harmony with the Department's June 1999 *Final Determination*.

EFFECTIVE DATE: September 2, 2002.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–4243.

SUPPLEMENTARY INFORMATION: The Court of International Trade in *Tung Mung II* affirmed the Department's remand redetermination, which related to the Department's middleman dumping methodology and the antidumping margin assigned to the Tung Mung Development Co., Ltd. ("Tung Mung") and Yieh United Steel Company Ltd. ("YUSCO").

In *Tung Mung Development Co., Ltd. v. United States*, Slip Op. 01–83, Ct. Int'l Trade LEXIS 94 (July 3, 2001) ("*Tung Mung I*"), the Court remanded the Department's determination on the issue of the single, weighted-average rate for producers and middlemen. The Court ordered the Department to "either provide a reasonable explanation of substantial evidence for its change in practice, or * * * apply a combination rate, consistent with its prior practice."

On November 8, 2001, the Department issued its draft results of redetermination of remand for comment by interested parties. On November 15, 2001, petitioners[1] and Tung Mung submitted comments in response to the Department's draft results of redetermination of remand. Plaintiff-Intervener YUSCO did not file comments in response to the Department's draft results of redetermination of remand. On November 20, 2001, petitioners, Tung Mung and YUSCO submitted rebuttal comments. On November 28, 2001, the Department issued its final results of redetermination of remand to the Court. The remand redetermination explained the legal authority under which the Department may apply *either* a single weighted-average rate or a combination rate in a middleman dumping case, depending on the facts of the case. The Department reconsidered its use of a single weighted-average rate in this case, in response to the Court's expressed concern, and applied instead combination rates to both Tung Mung's and YUSCO's merchandise.

On August 22, 2002, the Court affirmed the Department's analysis and recognized the authority of the Department to apply either a single weighted-average rate or a combination rate in a middleman dumping case, depending on the facts of the case. It then sustained the Department's redetermination of remand. *See Tung Mung II*.

In its decision in *Timkin Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) ("*Timkin*"), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. § 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend

[1] Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL-CIO/CLC.

liquidation of entries pending a "conclusive" court decision. The Court's decision in *Tung Mung II* on August 22, 2002, constitutes a final decision of that court which is "not in harmony" with the Department's final results of antidumping duty administrative review. This notice is published in fulfillment of the publication requirements of *Timkin*.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or, if appealed, upon a "conclusive" court decision.

Dated: October 3, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–26310 Filed 10–15–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230, or transmit by e-mail at *oetca@ita.doc.gov*. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 02–00003." A summary of the application follows.

Summary of the Application

Applicant: Corn Refiners Association, Inc. ("CRA"), 1701 Pennsylvania Avenue, NW., Suite 950, Washington, DC 20006.

Contact: M. Jean Anderson, Counsel, Telephone: (202) 682–7217.

Application No.: 02–00003.

Date Deemed Submitted: October 2, 2002.

Members (in addition to the applicant): A.E. Staley Manufacturing Company, Decatur, Illinois (subsidiary of Tate & Lyle plc, London, United Kingdom); Archer Daniels Midland Company, Decatur, Illinois; Cargill, Incorporated, Minneapolis, Minnesota; Corn Products International, Inc., Westchester, Illinois; National Starch and Chemical Company, Bridgewater, New Jersey (subsidiary of ICI plc, London, United Kingdom); Penford Corporation, Bellevue, Washington; and Roquette America, Inc., Keokuk, Iowa (subsidiary of Roquette Frères, Lestrem, France). CRA seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

Product

High fructose corn syrup ("HFCS"), a sweetener derived from the corn wet milling process. HFCS takes the following forms: 42 percent fructose (item 1702.40 of the U.S. Harmonized Tariff Schedule (HTS)); 55 percent fructose and enriched HFCS (greater than 55 percent fructose) (item 1702.60 of the HTS); and crystalline fructose (item 1702.50 of the HTS).

Export Markets

HFCS will be exported only to Mexico.

Purpose

The CRA will manage the system for allocating rights to ship under tariff-rate quotas (TRQs) permitting duty-free entry of U.S. HFCS into Mexico.

Organization and Membership

The CRA, a not-for-profit Delaware corporation, is a trade association for the corn refining industry. Its membership includes all U.S. producers of HFCS. Under the CRA bylaws, any U.S. entity engaged in the United States in the production and distribution of products produced from corn by the wet milling process (e.g., corn starch, corn syrup, corn sugar, corn alcohol) is eligible for membership in the CRA.

TRQ Administrator

The CRA shall contract with an independent third party who is not engaged in the production, distribution or sale of HFCS to administer the TRQ System. The third party Administrator will be subject to general oversight and supervision by the Board of Directors of the CRA.

TRQ System

The Administrator shall allocate TRQ rights based on each member's U.S. HFCS share of total U.S. HFCS production capacity. In accordance with those allocations, the Administrator shall issue certificates ("TRQ Certificates") to members evidencing the right to ship specified quantities of U.S. HFCS duty-free to Mexico. TRQ Certificates shall be freely transferable.

Confidential Information

Any confidential information submitted by an applicant for membership, by a member, or by any other person in connection with the TRQ System shall be marked "confidential" and submitted to the Administrator, who shall maintain its confidentiality. The Administrator shall not disclose such confidential

information to any member other than the submitter, or to any officers, agents, or employees of any member other than the submitter, and shall not disclose such confidential information to any other person except to another neutral third party as necessary to make the determination for which the information was submitted, to allocate TRQ quantities, or in connection with reports to the U.S. Department of Commerce as required by the Export Trade Certificate of Review or the arbitration of a dispute.

Cooperation With the U.S. and Mexican Governments

The CRA will provide whatever information and consultations may be necessary to facilitate cooperation between the U.S. Government and the Government of Mexico concerning the implementation and operation of the TRQ System. Furthermore, directly or through the U.S. Government, the CRA will endeavor to accommodate any information requests from the Government of Mexico (while protecting confidential information entrusted to the Administrator), and will consult with the Government of Mexico as appropriate.

Miscellaneous Implementing Provisions

The CRA and/or its members may (i) meet, discuss and provide for an administrative structure to implement the TRQ management system, assess its operations and provide modifications as necessary to improve its workability, (ii) meet, exchange, and discuss information regarding the structure and method for implementing the TRQ management system, (iii) meet, exchange and discuss the types of information needed concerning bilateral agreements between the U.S. and Mexican Governments, and any resulting legislation or regulations, affecting the TRQ management system, and (iv) otherwise meet, exchange and discuss information as necessary to implement the activities described above and take the necessary action to implement the foregoing TRQ management system.

Dated: October 10, 2002.

Jeffrey C. Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 02–26321 Filed 10–15–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100802G]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings of the Technical Review Panel, the User Review Panel, and the Standing Scientific and Statistical Committee (SSC) from October 30, 2002 through November 1, 2002.

DATES: The Council's Technical Review Panel, User Review Panel, and Standing SSC will convene in separate meetings at 1 p.m. on Wednesday, October 30, 2002 and will conclude by 3 p.m. on Friday, November 1, 2002.

ADDRESSES: The meetings will be held at the Hilton Tampa Airport Westshore Hotel, 2225 Lois Avenue, Tampa, FL; telephone: 813–877–6688.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Technical Review Panel will review the intermediate draft of the Essential Fish Habitat (EFH) Environmental Impact Statement (EIS) and provide the Council and contractor with suggestions for technical revisions. In addition the Technical Review Panel members serve as contract monitors.

The User Review Panel will review the intermediate draft of the EFH EIS and provide the Council and contractor with suggestions for revisions. In addition the User Review Panel members are asked to provide their comments on whether the documents properly address the issues of each user group represented. The User Review Panel is comprised of representatives from the following sectors: recreational, charter, commercial, environmental, oil and gas industry, and wetlands owners.

The Standing Scientific and Statistical Committee will review the intermediate draft of the EFH EIS and provide the Council and contractor with an evaluation of the scientific completeness and possible suggestions for revisions.

Although non-emergency issues not contained in the agendas may come before the Technical and User Review Panels and the SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act), those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Copies of the agendas of these meetings can be obtained by calling the Council office at 813–228–2815 (toll-free 888–833–1844).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by October 23, 2002.

Dated: October 10, 2002.

Matteo J. Milazzo,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–26322 Filed 10–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100802F]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of its Florida/Alabama, Mississippi/Louisiana, and Texas Habitat Protection Advisory Panels (APs) from October 30, 2002 through November 1, 2002.

DATES: The Joint Habitat Protection APs will convene at 1 p.m. on Wednesday, October 30, 2002 and will conclude by 3 p.m. on Friday, November 1, 2002.

ADDRESSES: The meeting will be held at the Hilton Tampa Airport Westshore

Hotel, 2225 Lois Avenue, Tampa, FL; telephone: (813) 877–6688.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Habitat Protection APs will convene to review the Council's Intermediate Draft of the Environmental Impact Statement (EIS) for the Generic Essential Fish Habitat (EFH) Amendment. The APs will also tentatively discuss methylmercury in marine fish and the possible impacts of explosive removal of oil and gas structures on marine fish populations.

The Habitat Protection APs are made up of representatives from the recreational and commercial fishing groups, conservation organizations, academia, and state and federal resource agencies. The principal role of the APs is to assist the Council in attempting to maintain optimum conditions within the habitat and ecosystems supporting the marine resources of the Gulf of Mexico. The Habitat Protection APs call to the Council's attention proposed projects being developed and other activities which may adversely impact the Gulf marine fisheries and their supporting ecosystems. The APs may also provide advice to the Council on its policies and procedures for addressing environmental issues and review habitat related documents as requested.

Although non-emergency issues not contained in the agendas may come before the APs for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act), those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Copies of the agendas of these meetings can be obtained by calling the Council office at 813–228–2815 (toll-free 888–833–1844).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by October 23, 2002.

Dated: October 10, 2002.

Matteo J. Milazzo,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–26323 Filed 10–15–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

October 10, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 16, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59409, published on November 28, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 10, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 21, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on October 16, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	339,183 dozen.
331pt. [2]	43,459 dozen pairs.
341	3,648,101 dozen.
363	43,187,993 numbers.
638/639	2,080,456 dozen.
641	817,540 dozen.
645/646	687,400 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–26319 Filed 10–15–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

October 9, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs announcing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in China and exported during the period January 1, 2003 through December 31, 2003 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001).

Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 9, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month limit
Group I 200, 218, 219, 226, 237, 239pt. [1], 300/301, 313–315, 317/326, 331pt. [2], 333–336, 338/339, 340–342, 345, 347/348, 351, 352, 359–C [3], 359–V [4], 360–363, 410, 433–436, 438, 440, 442–444, 445/446, 447, 448, 611, 613–615, 617, 631pt. [5], 633–636, 638/639, 640–643, 644, 645/646, 647, 648, 651, 652, 659–C [6], 659–H [7], 659–S [8], 666pt. [9], 845 and 846, as a group.	1,185,536,023 square meters equivalent.
Sublevels in Group I	
200	845,020 kilograms.
218	12,178,948 square meters.
219	2,719,488 square meters.
226	12,348,456 square meters.
237	2,314,084 dozen.
300/301	2,449,331 kilograms.
313	45,772,905 square meters.
314	55,612,767 square meters.
315	143,209,940 square meters.
317/326	24,701,692 square meters of which not more than 4,725,919 square meters shall be in Category 326.
331pt.	2,235,100 dozen pairs.
333	113,501 dozen.
334	348,819 dozen.
335	397,289 dozen.
336	194,753 dozen.
338/339	2,387,982 dozen of which not more than 1,812,739 dozen shall be in Categories 338–S/339–S [10].
340	820,993 dozen of which not more than 410,497 dozen shall be in Category 340–Z [11].
341	711,384 dozen of which not more than 426,831 dozen shall be in Category 341–Y [12].
342	281,841 dozen.
345	130,221 dozen.
347/348	2,368,152 dozen.
351	645,602 dozen.
352	1,683,581 dozen.
359–C	700,226 kilograms.
359–V	975,652 kilograms.
360	8,978,474 numbers of which not more than 6,124,187 numbers shall be in Category 360–P [13].
361	4,839,165 numbers.

Category	Twelve-month limit
362	7,936,865 numbers.
363	23,146,160 numbers.
410	1,045,704 square meters of which not more than 838,245 square meters shall be in Category 410–A [14] and not more than 838,245 square meters shall be in Category 410–B [15].
433	21,334 dozen.
434	13,641 dozen.
435	25,053 dozen.
436	15,435 dozen.
438	27,011 dozen.
440	38,588 dozen of which not more than 22,050 dozen shall be in Category 440–M [16].
442	40,848 dozen.
443	131,968 numbers.
444	216,580 numbers.
445/446	289,370 dozen.
447	72,251 dozen.
448	22,793 dozen.
611	6,075,097 square meters.
613	8,596,256 square meters.
614	13,508,401 square meters.
615	28,122,037 square meters.
617	19,648,584 square meters.
631pt.	329,501 dozen pairs.
633	63,408 dozen.
634	689,830 dozen.
635	727,652 dozen.
636	578,321 dozen.
638/639	2,550,646 dozen.
640	1,418,671 dozen.
641	1,343,897 dozen.
642	380,142 dozen.
643	554,054 numbers.
644	3,667,827 numbers.
645/646	832,680 dozen.
647	1,644,173 dozen.
648	1,174,750 dozen.
651	855,756 dozen of which not more than 150,661 dozen shall be in Category 651–B [17].
652	3,207,098 dozen.
659–C	453,046 kilograms.
659–H	3,176,633 kilograms.
659–S	699,762 kilograms.
666pt.	532,353 kilograms.
845	2,482,149 dozen.
846	187,471 dozen.
Group II	
332, 359–O [18], 459pt. [19] and 659–O [20], as a group	41,347,058 square meters equivalent.
Group III	
201, 220, 224–V [21], 224–O [22], 225, 227, 369–O [23], 400, 414, 469pt. [24], 603, 604–O [25], 618–620 and 624–629, as a group.	48,834,260 square meters equivalent.
Sublevels in Group III	
224–V	4,091,620 square meters.
225	7,058,825 square meters.
Group IV	
852	382,953 square meters equivalent.
Levels not in a Group	
369–S [26]	619,481 kilograms.
863–S [27]	8,862,156 numbers.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[4] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[5] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[6] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[7] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[8] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[9] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[10] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[11] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[12] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[13] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[14] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[15] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.3030, 5112.11.3060, 5112.11.6030, 5112.11.6060, 5112.19.6010, 5112.19.6020, 5112.19.6030, 5112.19.6040, 5112.19.6050, 5112.19.6060, 5112.19.9510, 5112.19.9520, 5112.19.9530, 5112.19.9540, 5112.19.9550, 5112.19.9560, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[16] Category 440–M: only HTS numbers 6203.21.9030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[17] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[18] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545 (Category 359pt.).

[19] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[20] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[21] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[22] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[23] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.0020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[24] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[25] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[26] Category 369–S: only HTS number 6307.10.2005.

[27] Category 863–S: only HTS number 6307.10.2015.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated December 28, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Committee for the Implementation of Textile Agreements.

[FR Doc. 02–26313 Filed 10–15–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

October 10, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 16, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63219, published on December 5, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 10, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on October 16, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Group I 200–220, 224–227, 300–326, 360–363, 369(1) [2], 369pt. [3], 400–414, 469pt. [4], 603, 604, 611–620, 624–629 and 666pt. [5], as a group.	174,636,380 square meters equivalent.
Within Group II sub-group	
336	279,656 dozen.
342	634,698 dozen.
636	364,547 dozen.
642	282,369 dozen.
Group III–only 852	9,006,889 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 369(1): only HTS number 6307.10.2005.

[3] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040, 9404.90.9505 and HTS number in 369(1).

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[5] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–26320 Filed 10–15–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Jamaica

October 9, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALs) for textile products, produced or manufactured in Jamaica and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for the period January 1, 2003 through December 31, 2003.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 9, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Jamaica and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
331pt./631pt. [1]	1,121,742 dozen pairs.
338/339/638/639	2,214,542 dozen.
340/640	1,035,578 dozen of which not more than 876,258 dozen shall be in shirts made from fabrics with two or more colors in the warp and/or the filling in Categories 340–Y/640–Y [2].
341/641	1,300,368 dozen.
345/845	320,871 dozen.
347/348/647/648	2,390,322 dozen.
352/652	3,571,590 dozen.
445/446	57,975 dozen.

[1] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 27, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC; and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), you are directed to establish guaranteed access levels for properly certified cotton, wool, man-made fiber and other vegetable fiber textile products in the following categories which are assembled in Jamaica from fabric formed and cut in the United States and re-exported to the United States from Jamaica during the twelve-month period which begins on January 1, 2003 and extends through December 31, 2003:

Category	Guaranteed access level
331pt./631pt. [1]	1,320,000 dozen pairs.
336/636	125,000 dozen.
338/339/638/639.	1,500,000 dozen.
340/640	300,000 dozen.
341/641	375,000 dozen.
342/642	200,000 dozen.
345/845	50,000 dozen.
347/348/647/648.	2,000,000 dozen.
352/652	10,500,000 dozen.
447	30,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of February 19, 1987 (52 FR 6049) shall be denied entry unless the Government of Jamaica authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–26314 Filed 10–15–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

October 9, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of November 7, 1997, as amended and extended by exchange of notes on June 22, 2000 and July 5, 2000, between the Governments of the United States and the Former Yugoslav Republic of Macedonia establishes limits for certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period January 1, 2003 through December 31, 2003.

These limits do not apply to goods entered under the Outward Processing Program, as defined in the notice and letter to the Commissioner of Customs published in the **Federal Register** on December 14, 1999 (see 64 FR 69746).

Any shipment for entry under the Outward Processing Program which is not accompanied by valid certification in accordance with the provisions established in the notice and letter to the Commissioner of Customs, published in the **Federal Register** on December 14, 1999 (see 64 FR 69743), shall be denied entry. However, the Government of Macedonia may authorize the entry and charges to the appropriate specific limits by the

issuance of a valid visa. Also see 63 FR 17156, published on April 8, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits.

These limits may be revised if the Former Yugoslav Republic of Macedonia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to the Former Yugoslav Republic of Macedonia.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 9, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of November 7, 1997, as amended and extended by exchange of notes on June 22, 2000 and July 5, 2000, between the Governments of the United States and the Former Yugoslav Republic of Macedonia, you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month limit
433	22,744 dozen.
434	11,372 dozen.
435	31,041 dozen.
443	191,282 numbers.
448	68,232 dozen.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Former Yugoslav Republic of Macedonia.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 27, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits do not apply to goods entered under the Outward Processing Program, as defined in the letter to the Commissioner of Customs, dated December 8, 1999 (see 64 FR 69746).

Any shipment for entry under the Outward Processing Program which is not accompanied by a valid certification in accordance with the provisions established in the letter to the Commissioner of Customs, dated December 9, 1999 (see 64 FR 69743), shall be denied entry. However, the Government of Macedonia may authorize the entry and charges to the appropriate specific limits by the issuance of a valid visa. Also see directive dated April 2, 1998, (63 FR 17156). Any shipment which is declared for entry under the Outward Processing Program but found not to qualify shall be denied entry into the United States.

These limits may be revised if the Former Yugoslav Republic of Macedonia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to the Former Yugoslav Republic of Macedonia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[Doc. 02–26315 Filed 10–15–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

October 9, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Malaysia and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 9, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following limits:

Category	Twelve-month restraint limit
Fabric Group 218–220, 225–227, 313–326, 611–O [1], 613/614/615/617, 619 and 620, as a group	195,978,516 square meters equivalent.
Sublevels within the group	
218	11,244,284 square meters.
219	54,472,310 square meters.
220	54,472,310 square meters.
225	54,472,310 square meters.
226	54,472,310 square meters.
227	54,472,310 square meters.
313	64,966,974 square meters.
314	78,160,182 square meters.
315	54,472,310 square meters.
317	54,472,310 square meters.
326	10,533,717 square meters.
611–O	6,320,231 square meters.
613/614/615/617	62,528,148 square meters.
619	8,426,974 square meters.
620	10,533,717 square meters.
Other specific limits	
200	474,165 kilograms.
237	637,988 dozen.
300/301	5,029,058 kilograms.
331pt./631pt. [2]	884,713 dozen pairs.
333/334/335	395,859 dozen of which not more than 237,585 dozen shall be in Category 333.
336/636	768,788 dozen.
338/339	1,906,007 dozen.
340/640	2,220,127 dozen.
341/641	2,877,368 dozen of which not more than 1,026,503 dozen shall be in Category 341.
342/642	687,058 dozen.
345	264,283 dozen.
347/348	807,769 dozen.
351/651	427,646 dozen.
363	6,699,443 numbers.
435	16,720 dozen.
438–W [3]	13,683 dozen.
442	20,376 dozen.
445/446	32,343 dozen.
604	2,205,129 kilograms.
634/635	1,342,953 dozen.
638/639	791,099 dozen.
645/646	605,079 dozen.
647/648	2,847,442 dozen of which not more than 1,993,206 dozen shall be in Category 647–K [4] and not more than 1,993,206 dozen shall be in Category 648–K [5]
Group II 201, 224, 239pt [6], 332, 352, 359pt. [7], 360–362, 369pt. [8], 400–414, 433, 434, 436, 438–O [9], 440, 443, 444, 447, 448, 459pt. [10], 469pt. [11], 603, 618, 624–629, 633, 643, 644, 652, 659pt. [12], 666pt. [13], 845, 846 and 852, as a group	29,124,333 square meters equivalent.

[1] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[3] Category 438–W: only HTS numbers 6104.21.0060, 6104.23.0020, 6104.29.2051, 6106.20.1010, 6106.20.1020, 6106.90.1010, 6106.90.1020, 6106.90.2520, 6106.90.3020, 6109.90.1540, 6109.90.8020, 6110.11.0080, 6110.12.2080, 6110.19.0080, 6110.30.1560, 6110.90.9074 and 6114.10.0040.

[4] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20,.1060 and 6113.00.9044.

[5] Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2006, 6104.63.2011, 6104.63.2026, 6104.63.2028, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[8] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[9] Category 438–O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.8020, 6109.90.1520, 6110.11.0070, 6110.12.2070, 6110.19.0070, 6110.30.1550, 6110.90.9072, 6114.10.0020 and 6117.90.9025.

[10] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90 0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99 1560.

[11] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[12] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[13] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see the November 27, 2001 directive) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–26316 Filed 10–15–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Pakistan

October 11, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 16, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

At the request of the Government of Pakistan, the current limit for Category 360 is being decreased for reduction of special shift from Category 361, increasing the limit for Category 361 to account for the reduction special shift being applied to Category 360. This special shift was originally applied in 67 FR 62444, published on October 7, 2002.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63683, published on December 10, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 11, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on October 16, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Specific limits	
360	8,717,116 numbers.
361	9,605,744 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–26401 Filed 10–11–02; 12:29 pm]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Ukraine

October 9, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of July 22, 1998, as amended and extended by exchange of notes on September 19, 2000 and January 15, 2001, between the Governments of the United States and Ukraine establishes limits for certain wool textile products, produced or manufactured in Ukraine and exported during the period beginning on January 1, 2003 and extending through December 31, 2003.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits.

These limits may be revised if Ukraine becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Ukraine.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 9, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of July 22, 1998, as amended and extended by exchange of notes on September 19, 2000 and January 15, 2001, between the Governments of the United States and Ukraine, you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in Ukraine and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month limit
435	99,478 dozen.
442	16,561 dozen.
444	71,766 numbers.
448	71,766 dozen.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and Ukraine.

These limits may be revised if Ukraine becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Ukraine.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 29, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

FR Doc. 02–26317 Filed 10–15–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the United Arab Emirates

October 9, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the United Arab Emirates and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 2003 period. The 2003 levels for Categories 315 and 361 are zero.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notices 66 FR 65178, published on December 18, 2001). Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 9, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textiles and textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003 in excess of the following levels of restraint:

Category	Twelve-month restraint limit
219	2,058,156 square meters.
226/313	3,519,496 square meters.
315	–0–
317	56,776,627 square meters.
326	3,322,410 square meters.
334/634	419,446 dozen.
335/635	270,202 dozen.
336/636	363,519 dozen.
338/339	1,037,432 dozen of which not more than 691,620 dozen shall be in Categories 338–S/339–S [1].
340/640	643,152 dozen.
341/641	563,179 dozen.
342/642	447,413 dozen.
347/348	770,664 dozen of which not more than 385,331 dozen shall be in Categories 347–T/348–T [2].
351/651	321,576 dozen.
352	592,820 dozen.
361	–0–
363	11,074,698 numbers.
369–O [3]	135,308 kilograms.
369–S [4]	154,161 kilograms.
638/639	419,446 dozen.
647/648	601,207 dozen.

[1] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[2] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[4] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 27, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–26318 Filed 10–15–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Protective Glove

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR part 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 6,457,182 B1 entitled "Protective Glove" issued October 1, 2002. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone: (508) 233–4928 or e-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–26334 Filed 10–15–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Potential Multipurpose Projects for Ecosystem Restoration, Flood Damage Reduction, and Recreation Development Within and Along the Clear and West Forks of the Trinity River in Fort Worth, Tarrant County, TX

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: A resolution by the United States Senate Committee on Environment and Public Works dated April 22, 1988, requested that the Board of Engineers review the report of the Chief of Engineers on the Trinity River and Tributaries, TX, House Document No. 276, Eighty-Ninth Congress, and other pertinent reports, with a view to determining the advisability of modifying the recommendations contained therein, with particular reference to providing improvements in the interest of flood protection, environmental enhancement, water quality, recreation, and other allied purposes in the Upper Trinity River Basin with specific attention on the Dallas-Fort Worth Metroplex. An initial assessment based on the resolution guidance indicates a Federal interest in continuing with more detailed studies for these purposes. In accordance with the National Environmental Policy Act, a Draft Environment Impact Statement (DEIS) will be prepared to evaluate and compare ecosystem restoration, flood damage reduction, and recreation alternatives within and along the Clear Fork and West Fork of the Trinity River in the Central City area of Forth Worth, TX. The DEIS will also assess the impacts to the quality of the human environment associated with each alternative. The study area will be bound by Interstate Highway 30 on the Clear Fork, Rockwood Park on the upstream end of the West Fork, Northeast 28th Street on Marine Creek, a tributary of the West Fork, and Riverside Drive on the downstream end of the West Fork. The construction and implemention of Benbrook Lake, Eagle Mountain Lake, Lake Worth, the Fort Worth Floodway project, and subsequent flood control projects, along with urbanization and development activities, have significantly degraded the terrestrial and aquatic habitat along and within the Trinity River. Consequently, ecosystem restoration measures will be developed and evaluated to address the degraded habitats. In addition, recreation measures will be developed and evaluated as complements to proposed ecosystem restoration measures. Although preliminary findings indicate that flood damage reduction opportunities would be limited, the floodway and the interior drainage in the study area will be evaluated for flood damage reduction opportunities and consistency with past improvements. Flood damage reduction measures will address the loss of the authorized level of flood protection for the area.

DATES: A public meeting will be held on October 29, 2002 from 6:30 p.m. to 8:30 p.m. at the YWCA (Grand Ballroom), 512 West 4th Street, Fort Worth, TX 76102

FOR FURTHER INFORMATION CONTACT: Questions pertaining to the proposed action and DEIS can be answered by: Ms. Marcia R. Hackett, CESWF–PM–C, U.S. Army Corps of Engineers, Fort Worth District, P.O. Box 17300, Fort Forth, TX 76102–0300, (817) 886–1787.

SUPPLEMENTARY INFORMATION: The Fort Worth Floodway was authorized by Section 2 of Public Law No. 14, 79th Congress, 2nd Session, approved March 2, 1945. The project, which was completed in September 1957, entailed the construction and/or strengthening of levees and the widening and straightening of the Clear Fork channel from Lancaster Street to its confluence with the West Fork and the West Fork channel from White Settlement Road to Riverside Drive, along with allied features such as removal of debris from the floodway, reconstruction and alteration of roads, bridges and public utilities, modifying channel diversions, and constructing drainage facilities. The Flood Control Act of 1960 provided for an extension upstream of the floodway project on the West Fork from White Settlement Road to just downstream of Meandering Road. Construction on the West Fork extension was initiated in March 1965 and completed in June 1971. Similar flood control features were authorized by the Flood Control Act dated October 23, 1962, for an extension of the Clear Fork of the Trinity River between the existing Fort Worth Floodway and State Highway 183. Construction of the Clear Fork Extension was initiated in January 1966 and completed in September 1971.

Alternatives for ecosystem restorations, flood damage reduction, and recreation will be developed and evaluated based on ongoing fieldwork and data collection and past studies conducted by the Corps of Engineers, the Tarrant Regional Water District, and the City of Fort Worth. Ecosystem restoration alternatives that will be evaluated include creating meanders within the Trinity River, restoring, protecting and expanding the riparian corridor, improving aquatic habitat, creating riffle-pool complexes, and constructing wetlands. it is anticipated that ecosystem restoration measures would aid in improving water quality, optimizing aquatic and terrestrial habitat, and minimizing erosion and scouring along and within the river. Alternatives for flood damage reduction measures will be evaluated from both a non-structural and structural aspect. Non-structural measures that will be evaluated include acquisition and removal of structures or flood proofing of structures for protection from potential future flood damage. Structural measures that will be evaluated include diversion channels and/or channel modifications of various widths and depths and/or a combination of these measures. Recreation measures that will be evaluated for the enjoyment of residents and visitors alike include multipurpose trails and passive recreation features, such as interpretive guidance and media and picnic areas. Recreation measures will be developed to a scope and scale compatible with proposed ecosystem restoration measures without significantly diminishing ecosystem benefits.

A Programmatic Environmental Impact Statement (PEIS) for the Upper Trinity River Basin Feasibility study addressing the potential cumulative effects of reasonable foreseeable projects, including the Clear Fork West Fork studies was completed in June 2000. The DEIS will be tiered to the PEIS.

The public will be invited to participate in the scoping process, invited to attend public meetings, and given the opportunity to review the DEIS. The first public meeting will be on October 29, 2002 at the Grand Ballroom of the Downtown YWCA (*see* **DATES**). Subsequent public meetings, if deemed necessary, will be announced in the local news media. Release of the DEIS for public comment is scheduled for Summer 2004. The exact release date, once established, will be announced in the local news media.

Future coordination with other agencies and public scoping will be conducted to ensure full and open participation and aid in the development of the DEIS. All affected Federal, state, and local agencies, affected Indian tribes, and other interested private organizations and parties are hereby invited to participate. Future coordination will also be conducted with the United States Fish and Wildlife Service (USFWS). The USFWS will furnish information on threatened and endangered species in accordance with the Endangered Species Act. In addition, the USFWS will also be requested to provide support with planning aid and to provide a Fish and Wildlife Coordination Act Report. The State Historic Preservation Office will be consulted as required by Section 106 of the National Historic Preservation Act.

Robert P. Morris, Jr.,

Lieutenant Colonel, Corps of Engineers, Deputy District Engineer.

[FR Doc. 02–26335 Filed 10–15–02; 8:45 am]

BILLING CODE 3710–20–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement for the Relocation of Bogue Inlet Channel between Emerald Isle and Hammocks Beach State Park, and the Placement of the Dredged Material onto Emerald Isle Beach, in Carteret County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (COE), Wilmington District, Wilmington Regulatory Field Office has received a request for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbor Act, from the Town of Emerald Isle for the relocation of Bogue Inlet Channel to protect residential homes and town infrastructures, and to place the dredged material on approximately 5.0 miles of beach for nourishment. The project is being proposed to move the main ebb channel in Bogue Inlet to a more central location between the west end of Bogue Banks and the east end of Bear Island (Hammocks Beach State Park). The main ebb channel through Bogue Inlet presently occupies a position juxtaposted to the west end of the Town of Emerald Isle and is causing severe erosion that threatens development in the subdivision known as The Pointe. The relocation of the main ebb channel to a central location would restore the channel to a position it occupied in the late 1970's and eliminate the erosive impact of tidal currents on the east shoulder of the inlet. A portion of the material removed to relocate the main ebb channel would be used to close the existing channel with the balance of the material used to nourish the shoreline on the west end of the Town of Emerald Isle.

The channel through Bogue Inlet has been maintained by the COE for commercial and recreational boating interest since 1981. The COE is authorized to maintain the channel to a depth of 8 feet mean low water (mlw) over a width of 150 feet. Any changes in the location of the ebb tide delta channel would be consistent with this maintenance criteria.

DATES: A public scoping meeting for the Draft Environmental Impact Statement (EIS) will be held at the White Oak River Elementary School, on NC Highway 24, in Cape Carteret, on October 29, 2002 at 6:30 p.m. Written comments will be received until November 24, 2002.

ADDRESSES: Copies of comments and questions regarding scoping of the Draft EIS may be addressed to: U.S. Army Corps of Engineers, Wilmington District, Regulatory Division. ATTN: File Number 2001–00632, Post Office Box 1890, Wilmington, NC 28402–1890.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be directed to Mr. Mickey Sugg, Wilmington Regulatory Field Office, telephone: (910) 251–4811.

SUPPLEMENTARY INFORMATION:

1. Project Descritpion

The Town of Emerald Isle, located along the western 11.2 miles of Bogue Banks, North Carolina, is proposing to reposition the main ebb tide channel (or bar channel) through Bogue Inlet as a means to address a severe erosion problem that is threatening development and town infrastructure located on the west end of the town in an area known as The Pointe. The severe erosion at the Pointe is occurring as a result of the eastward migration of the main ebb channel of Bogue Inlet. An analysis of historic photographs of the inlet indicates that the midpoint of the channel has experienced movements to both the west and east with the latest trend being toward the east. Since September 1981, the channel midpoint migrated a total of over 3,900 feet to the east, however, a majority of this movement occurred between September 1981 and February 1984. From February 1984 to September 2001, the channel moved slightly more than 1,500 feet to the east, which represents an annual rate of 104 feet/year. The eastward movement of the channel has been

accompanied by erosion of the Bogue Banks shoulder of the inlet (the Pointe shoreline) with the rate of erosion of this shoreline averaging 56 feet/year between February 1984 and September 2001. If this rate of erosion of the Pointe shoreline continues unabated, it is estimated that 30 to 50 structures could be lost or severely damaged during the next 5 to 10 years. In addition, 300 to 600 feet of Inlet Drive could be lost along with side streets and utilities serving the Pointe subdivision.

Secondary features of the proposed project includes using a portion of the dredged material to close the existing ebb channel with the balance of the material used to nourish the beach along the west end of the Town of Emerald Isle. In this regard, the Town of Emerald Isle presently has permits to nourish 51,00 feet (9.68 miles) of ocean shoreline using offshore borrow areas. Approximately 5.8 miles of this shoreline is to be nourished between November 16, 2002 and April 15, 2003. The Emerald Isle beach nourishment project is part of an island-wide project sponsored by Carteret County. The County project covers approximately 16.8 miles of ocean shoreline and begins at the east town limits of the Town of Pine Knoll Shores and ends at a point 8,000 feet (1.5 miles) east of Bogue Inlet.

2. Proposed Action

The primary purpose of the channel relocation project is to create a stable channel that will divert tidal flow away from the Pointe area of Emerald Isle. Therefore, the design focus is on developing channel dimensions that will capture the majority of the ebb tidal flow through the inlet. An added feature of the overall design would be the closure of the existing channel by constructing a sand dike across the existing channel in the vicinity of the Pointe. The dimensions of the relocated channel will be based on characteristics of the existing ebb tide channel, numerical model studies of tides and currents in the inlet, and channel stability criteria. The numerical model will also be used to evaluate the need for and impacts of closing the existing channel as well as assess the impacts of the repositioned channel on salinity intrusion and flow patterns throughout the entire inlet/estuary complex.

Apart from the channel dimensions, the new channel must be position so that it does not cause adverse impacts on the adjacent shorelines or result in unacceptable loss of estuarine habitat. The selection of a channel location is being based on detailed geomorphic analysis of the inlet and adjacent shorelines, conducted by Dr. William J. Cleary, University of North Carolina at Wilmington. The geomorphic analysis will utilize an assortment of aerial photographs of the inlet covering the period from 1938 to 2001. However the primary emphasis will be on changes in the inlet and the adjacent shorelines between 1973 and 2001. The geomorphic analysis consists of an evaluation of the following: (a) location of the channel midpoint relative to the Pointe; (b) the orientation of the inlet's ebb tide delta channel; (c) the configuration of the ebb tide delta *i.e.*, the percent of the ebb tide delta east and west of the main ebb channel; (d) inlet shoulder changes (the Pointe shoreline and the west tip of Bear Island); (e) changes in the ocean shoreline on the west end of Bogue Banks and the east end of Bear Island (Hammocks Beach State Park); and (f) changes in the interior marsh islands (primarily Dudley Island and Island 2). The measured changes the adjacent shorelines, inlet shoulders, and the interior marshes will be related to changes in the physical makeup of the inlet including the position and orientation of the ebb tide delta channel and the configuration of the ebb tide delta.

Geomorphic analysis indicates that the cumulative shoreline changes on each island were averaged over 3,500 feet of shoreline immediately adjacent to the inlet. When the percent of the ebb tide delta on the Bogue Banks side is small, as it was between 1984 and 2001, the bar channel was located close to Bogue Banks and the portion of the delta on the Bogue Banks side was providing some degree of wave sheltering for the west end of the island. This particular ebb tide delta configuration resulted in a considerable amount of accretion along of 3,500-foot shoreline immediately east of the inlet while Bear Island experienced an almost mirror image response on its ocean shoreline, *i.e.*, erosion. Even though the present ebb tide delta configuration is favorable for the extreme west end of Emerald Isle, the eastward migration of the inlet channel that led to the existing inlet configuration also caused the inlet shoreline of Bogue Banks (the Pointe shoreline) to erode. Not only has the Bogue Banks inlet shoreline eroded in response to the eastward movement of the channel, so has the Bear Island ocean and inlet shorelines. Based on these and numerous other comparisons, the preliminary results of the geomorphic analysis indicates that a centrally located channel, approximating the position and orientation of the channel in 1978, may be beneficial to the inlet shoreline on Bogue Banks (the Pointe shoreline) and the east end of Bear Island.

3. Issues

There are several potential environmental issues that will be addressed in the EIS. Additional issues may be identified during the scoping process. Issues initially identified as potentially significant include:

a. Potential impact to marine biological resources (benthic organisms, passageway for fish and other marine life, and bird nesting of foraging).

b. Potential impact to threatened and endangered marine mammals, birds, fish, and plants.

c. Potential impacts to water quality.

d. Potential increase in erosion rates to adjacent Hammocks Beach State park.

e. Sand budgeting.

f. Potential impacts to Navigation, commercial and recreational.

g. Potential impacts to the long-term Federal maintenance of the channel.

h. Potential impacts to private and public property.

i. Cumulative impacts of Inlet and Inlet channel relocations throughout North Carolina.

j. Cumulative impacts for using inlets as sand source in nourishment projects.

k. Potential impacts on public health and safety.

l. Potential impacts to recreational and commercial fishing.

m. The compatibility of the material for nourishment.

n. Potential economic impacts.

4. Alternatives

Several alternatives are being considered for the proposed project. These alternatives will be further formulated and developed during the scoping process and an appropriate range of alternatives, including the no federal action alternative, will be considered in the EIS.

5. Scoping Process

A public scoping meeting (see **DATES**) will be held to receive public comment and assess public concerns regarding the appropriate scope and preparation of the Draft EIS. Participation in the public meeting by federal, state, and local agencies and other interested organizations and persons is encouraged.

The COE will also be consulting with the U.S. Fish and Wildlife Service under the Endangered Species Act and the Fish and Wildlife Coordination Act, and with the National Marine Fisheries Service under the Magnuson-Stevens Act and Endangered Species Act. Additionally, the EIS will assess the potential water quality impacts pursuant to Section 401 of the Clean Water Act, and will be coordinated with the North Carolina Division of Coastal Management (DCM) to determine the projects consistency with the Coastal Zone Management Act. The COE will closely work the DCM through the EIS to ensure the process complies with all State Environmental Policy Act (SEPA) requirements. It is the COE and DCM's intentions to consolidate both NEPA and SEPA processes to eliminate duplications.

6. Availability of the Draft EIS

The Draft EIS is expected to be published and circulated sometime in 2003, and a public hearing will be held after the publication of the Draft EIS.

Dated: October 4, 2002.

Charles R. Alexander, Jr.,

Colonel, U.S. Army, District Engineer.

[FR Doc. 02–26336 Filed 10–15–02; 8:45 am]

BILLING CODE 3710–GN–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the North Palm Beach County Project, Part 1 in Palm Beach County, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps), intends to prepare an integrated Project Implementation Report and Draft Environmental Impact Statement (DEIS) for the North Palm Beach County (NPBC) Project, Part 1. The study is a cooperative effort between the Corps and the South Florida Water Management District (SFWMD), which is also a cooperating agency for this DEIS. One of the recommendations of the final report of the Central & South Florida (C&SF) Comprehensive Review Study (Restudy) was the NPBC Project. This project includes 6 separable components that together will provide environmental, urban, and agricultural water supply needs, flood attenuation, and some water quality improvements for NPBC. The components include the Pal-Mar and Corbett Hydropattern Restoration, L–8 Basin Modifications, C–51 and L–8 Basin Reservoir, Lake Worth Lagoon Restoration, C–17 Backpumping and Treatment, and C–51 Backpumping and Treatment.

DATES: A public scoping meeting is scheduled for October 29, 2002, 6:30 p.m., at the B1–Auditorium, SFWMD, 3301 Gun Club Road, West Palm Beach, Palm Beach County.

FOR FURTHER INFORMATION CONTACT: Ms. Rebecca Weiss, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL 32232–0019, or by telephone at 904–899–5025.

SUPPLEMENTARY INFORMATION:

a. *Authorization:* Entitled "Everglades and South Florida Ecosystem Restoration", section 528 of the Water Resources Development Act (WRDA) of 1996 authorized a number of ecosystem restoration activities, including the North Palm Beach County Project (Pub. L. 104–303). The restoration activities were a continuation of earlier efforts started during the Central and Southern Florida (C&SF) Project Comprehensive Review Study (Restudy), authorized by section 309(l) of the WRDA of 1992 (Pub. L. 102–580). Signed on December 11, 2000, section 601 of the WRDA of 2000 authorized a framework and guide for modifications to the C&SF Project to restore the south Florida ecosystem and to provide for the other water-related needs of the region.

b. *Project Scope:* The NPBC project will promote environmental restoration and sustainable water resources in Palm Beach County through 6 separable components. The Pal-Mar and J.W. Corbett Hydropattern Restoration involves acquisition of 3,000 acres of land to extend the spatial extent of protected natural areas and provide a hydrologic connection between the Pal-Mar and Corbett Wildlife Management Area. The L–8 Basin Modification consists of conveyance improvements to increase water supply availability and enhance hydroperiods in Loxahatchee Slough. C–51 and L–8 Basin Reservoir involves construction of 48,000 acre-feet reservoir or reservoirs for long term storage to meet water supply and to reduce discharges to Lake Worth Lagoon. Lake Worth Lagoon Restoration includes sediment removal to provide improvements to the lagoon environment and augment local habitat restoration efforts planned by Palm Beach County. The C–17 and the C–51 backpumping components include backpumping facilities and construction of a 550-acre and a 600-acre stormwater treatment area, respectively, to increase water supplies to West Palm Beach Water Catchment Area and enhance hydroperiods in Loxahatchee Slough.

c. *Preliminary Alternatives:* Formulation of alternative plans will involve the selection of the most suitable site for the reservoirs, pump stations, land acquisitions, and other surface facilities, impoundment depths and configurations, canal modifications, water treatment requirements, investigation of intake and discharge sites of stored water, and investigation of best configuration of surface facilities for the project.

The Environmental Impact Statement (EIS) will include an evaluation of adverse environmental impacts, including but not limited to, water quality, socio-economic, archaeological and biological. In addition, to adverse impacts, the evaluation will also focus on how well the plans perform with regard to specific ecological performance measures.

d. *Issues:* The EIS will consider impacts on water quality, ecosystem habitat, threatened and endangered species, health and safety, aesthetics and recreation, fish and wildlife resources, cultural resources, water availability, flood protection, and other potential impacts identified through scoping, public involvement, and interagency coordination.

e. *Scoping:* A public scoping meeting is scheduled for October 29, 2002 (see **DATES**). A scoping letter will also be issued October 2002 to interested parties. In addition, all parties are invited to participate in the scoping process by identifying any additional concerns on issues studies needed, alternatives, procedures, and other matters related to the scoping process.

f. *Public Involvement:* We invite the participation of affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties.

g. *Coordination:* The proposed action is being coordinated with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service under section 7 of the Endangered Species Act, with the FWS under the Fish and Wildlife Coordination Act, and with the State Historic Preservation Officer.

h. *Other Environmental Review and Consultation:* The proposed action would involve evaluation for compliance with guidelines pursuant to section 404(b) of the Clean Water Act; application (to the State of Florida) for Water Quality Certification pursuant to section 401 of the Clean Water Act; certification of state lands, easements and right of ways, and determination of Coastal Zone Management Act consistency.

i. *Agency Role:* As the cooperating agency, non-Federal sponsor, and leading local expert, SFWMD will provide information and assistance on the resources to be impacted and alternatives.

j. *DEIS Preparation:* The integrated Project Implementation Report,

including a DEIS, is currently scheduled for publication in June 2004.

Dated: October 8, 2002.

James C. Duck,

Chief, Planning Division.

[FR Doc. 02–26337 Filed 10–15–02; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by October 31, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before December 16, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: October 9, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Reading Excellence Act (REA) Performance Report.

Abstract: This Annual Performance Report will allow the Department of Education to collect information required by the Reading Excellence Act.

Additional Information: Emergency clearance is necessary due to unanticipated events related to the No Child Left Behind Act (NCLB). The No Child Left Behind Act, enacted in January 2002, increased Departmental expectations for State reporting, strengthened accountability provisions and emphasized the implementation of proven strategies, particularly those proven through scientific research, in NCLB programs. Clearance is requested for a new performance report that will provide accurate, timely and useful performance information from individual States. This performance report will also enhance the capability of the REA program office to ascertain technical assistance needs and identify compliance concerns. The third and final round of REA States completed their subgrant competitions in August 2002, resulting in several hundred new schools with Reading Excellence programs. This level of program growth necessitates performance reports for effective monitoring of each State's activities. To align with these unanticipated events, the Department is requesting approval to obtain performance reports from each State with an active REA grant. This will replace, not add to, the performance report information collection through the State-District-School Study. This applies to 23 States reporting in November 2002 and 13 States reporting in November 2003. We seek this information each November so that REA staff can quickly accommodate and align with the events described above, and to enable staff to provide relevant technical assistance during the second half of the school year. To give States adequate time to prepare the report, we are requesting OMB approval of the performance report by October 31, 2002.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 18. Burden Hours: 24.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2171. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–26248 Filed 10–15–02; 8:45 am]

BILLING CODE 4000–1–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 15, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the e-mail address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 9, 2002.

John D. Tressler,

Leader,Regulatory Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Education Longitudinal Study (ELS) of 2002, First Followup.

Frequency: One time.

Affected Public: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,270.

Burden Hours: 941.

Abstract: The ELS:2002 first followup is the second time this cohort of students who were in 10th grade in 2002 will be interviewed and assessed. The field test for this survey will be conducted in Spring 2003 with 53 schools in five states. Data will be collected from students, dropouts, and school administrators. The full scale study will be conducted in Spring 2004 in 754 schools in all 50 states and the District of Columbia. This longitudinal study is intended to measure school effectiveness and impact on postsecondary and labor market outcomes.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2125. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the e-mail address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–26247 Filed 10–15–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Advisory Board on Tribal Colleges and Universities Meeting

AGENCY: President's Advisory Board on Tribal Colleges and Universities.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the first meeting of the President's Advisory Board on Tribal Colleges and Universities and is intended to notify the general public of their opportunity to attend. This notice also describes the functions of the Board. Notice of the Board's meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

Date and Time: October 29, 2002–9 a.m. to 5:30 p.m.

Location: Institute of American Indian Arts (IAIA), 83 Avan Nu Po Road, Santa Fe, New Mexico 87508

Date and Time: October 29, 2002–8:30 a.m. to 12.

Location: Institute of American Indian Arts Museum, 108 Cathedral Place, Santa Fe, New Mexico 87501.

FOR FURTHER INFORMATION CONTACT: Victoria Vasques, Acting Executive Director, President's Advisory Board on Tribal Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 260–7485. Fax: (202) 260–4149.

SUPPLEMENTARY INFORMATION: The Board is established by Executive Order 13270 dated July 3, 2002 to provide advice regarding the progress made by federal agencies toward fulfilling the purposes and objective of the order. The Board shall also provide recommendations to the President and the Secretary of Education at least annually on ways Tribal Colleges can: (1) Use long-term development, endowment building, and master planning to strengthen institutional viability; (2) improve financial management and security, obtain private sector funding support, and expand and complement federal education initiatives; (3) develop institutional capacity through the use of new and emerging technologies offered by the federal and private sectors; (4) enhance physical infrastructure to facilitate more efficient operation and effective recruitment and retention of students and facility; and (5) help implement the No Child Left Behind Act of 2001 and meet other high standards of educational achievement.

The general public is welcome to attend. However, space is limited and is available on a first-come, first-served basis. Individuals who need accommodations for a disability in order to attend the meeting (*i.e.* interpreting services, assistive listening devices, materials in alternative format) should notify Betty Thompson at (202) 260–0223 no later than October 21, 2002. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

A summary of the activities of the meeting and other related materials, which are informative to the public and consistent with the policy of section 5

U.S.C. 552, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the White House Initiative on Tribal Colleges & Universities, United States Department of Education, 400 Maryland Avenue, SW., Washington, DC from 9 a.m. to 5:30 p.m.

Rod Paige,

Secretary, Department of Education.

[FR Doc. 02–26198 Filed 10–15–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Science

High Energy Physics Advisory Panel.

AGENCY: Department of Energy.

ACTION: Amendment in change of location of open meeting.

SUMMARY: This notice announces the change in location of the High Energy Physics Advisory Panel meeting on November 7–8, 2002, to the Radisson Hotel, Old Town Alexandria, Alexandria, VA 22314.

Issued in Washington, DC on October 10, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–26266 Filed 10–15–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–15–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

October 9, 2002.

Take notice that on October 7, 2002, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Second Revised Sheet No. 46, to be effective November 6, 2002.

National Fuel states that the purpose of the instant filing is to revise the EFT Operating Protocol to clarify that, upon termination of an FT service agreement with National Fuel Gas Distribution Corporation, for 30,000 Dth/day, the capacity in Line AM–60 utilized to provide service under such agreement will be utilized for service to National Fuel's EFT shippers, and would not be recontracted as FT transportation service.

National Fuel states that copies of this filing were served upon its customers, interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26258 Filed 10–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–14–000]

Pine Needle LNG Company, LLC; Notice of Tariff Filing

October 9, 2002.

Take notice that on October 4, 2002, Pine Needle LNG Company, LLC (Pine Needle), tendered for filing as part of its FERC Gas Tariff Original Volume No. 1, First Revised Sheet No. 80, with an effective date of December 1, 2002.

Pine Needle states that the instant filing is submitted pursuant to the Commission's Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98–10 and RM98–12, *et. al.* (Order No. 637). In Order No. 637, the Commission, among other things, revised its regulations regarding the availability of the Right-of-First-Refusal (ROFR).

Specifically, 18 CFR 284.221(d)(2)(ii) provides that the ROFR will be applicable to contracts at the applicable maximum rate with either (1) a term of service of at least 12 consecutive months or (2) for a service which is not available for 12 consecutive months, a contract term of more than one year. Additionally, a customer receiving firm service at less than the applicable maximum rate pursuant to a service agreement executed prior to March 26, 2000 that meets the foregoing term criteria, will also be eligible for a right of first refusal; provided however, the right of first refusal will not apply to a re-executed service agreement unless it is at the applicable maximum rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26257 Filed 10–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–114]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

October 9, 2002.

Take notice that on October 4, 2002, Tennessee Gas Pipeline Company (Tennessee), submitted for filing and approval an amendment to a Gas Transportation Agreement between Tennessee and eCORP Marketing, L.L.C., that has been previously accepted as a negotiated rate agreement. Tennessee requests that the Commission accept and approve the amendment to be effective on the later of October 1, 2002, or the date on which the Commission accepts and approves the amendment.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26254 Filed 10–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–99–005]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

October 9, 2002.

Take notice that on October 4, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets listed on Appendix A to the filing, with an effective date of September 5, 2002.

Transco submits the filing pursuant to Ordering Paragraph (C) of the Commission's Order on Initial Decision issued September 5, 2002 (September 5 Order) in Docket Nos. RP02–99–000 and RP02–144–000. The tariff sheets submitted therein contain a proposed rate schedule and form of service agreement for gathering service provided on the subject North Padre Island gathering facilities described in the September 5 Order.

Transco states that the purpose of this filing is to comply with the Commission's September 5 Order, by filing a new rate schedule and a new form of service agreement that governs the gathering service on the North Padre Island gathering facilities.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26255 Filed 10–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–13–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

October 9, 2002.

Take notice that on October 4, 2002, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, 1st Revised Fourth Revised Sheet No. 3740 and Original Sheet No. 3740.00, which tariff sheets are proposed to have an effective date of December 1, 2002.

Transco states that the instant filing is submitted pursuant to the Commission's Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98–10 and RM98–12, *et. al.* (Order No. 637). In Order No. 637, the Commission, among other things, revised its regulations regarding the availability of the Right-of-First-Refusal (ROFR).

Specifically, 18 CFR 284.221(d)(2)(ii) provides that the ROFR will be applicable to contracts at the applicable maximum rate with either (1) a term of service of at least 12 consecutive months or (2) for a service which is not available for 12 consecutive months, a contract term of more than one year. Additionally, a shipper receiving firm service at less than the applicable maximum rate pursuant to a service agreement executed prior to March 26, 2000 that meets the foregoing term criteria, will also be eligible for a right of first refusal; provided however, the right of first refusal will not apply to a re-executed service agreement unless it is at the applicable maximum rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26256 Filed 10–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–709–000, et al.]

Southwest Power Pool, Inc., et al.; Electric Rate and Corporate Regulation Filings

October 7, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Southwest Power Pool, Inc.

[Docket No. ER02–709–000]

Take notice that on October 2, 2002, Southwest Power Pool, Inc. (SPP), submitted a notice of withdrawal of the unexecuted service agreement filed January 7, 2002 in this proceeding. A copy of this filing was served on all parties included on the Commission's official service list established in this proceeding.

Comment Date: October 23, 2002.

2. Covanta Fairfax, Inc.

[Docket No. ER02–2515–001]

Take notice that on October 3, 2002, Covanta Fairfax, Inc. tendered for filing a Notice of Succession to reflect a name change from Ogden Fairfax, Inc. to Covanta Fairfax, Inc. Copies of the filing were served upon the Virginia Corporation Commission and on Dominion Virginia Power.

Comment Date: October 24, 2002.

3. Edison Source

[Docket No. ER02–2565–001]

Take notice that on October 3, 2002, Edison Source tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its filing in the above-referenced docket withdrawing its participation in the Western Systems Power Pool (WSPP) pursuant to the Power Purchase and Sale Agreement between Edison Source and the WSPP, dated August 26, 1996. Edison Source requests to withdraw its participation as of October 15, 2002.

Comment Date: October 24, 2002.

4. New England Power Pool

[Docket No. ER03–1–000]

Take notice that on October 1, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include WebGen Systems Inc. (WebGen). The Participants Committee requests an October 1, 2002 effective date for commencement of participation in NEPOOL by WebGen.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: October 22, 2002.

5. Ameren Services Company

[Docket No. ER03–2–000]

Take notice that on October 1, 2002, Ameren Services Company (ASC) tendered for filing a Service Agreement for Long-Term Firm Point-to-Point Services between ASC and Ameren Energy, Inc. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Ameren Energy, Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: October 22, 2002.

6. PPL Electric Utilities Corporation

[Docket No. ER03–3–000]

Take notice that on October 1, 2002, PPL Electric Utilities Corporation (PPL Electric) filed an unexecuted Interconnection Agreement between PPL Electric and Allegheny Electric Cooperative, Inc. for interconnection at the Renovo/Chapman delivery point.

Comment Date: October 22, 2002.

7. PPL Electric Utilities Corporation

[Docket No. ER03–4–000]

Take notice that on October 1, 2002, PPL Electric Utilities Corporation (PPL Electric) filed an unexecuted Interconnection Agreement between PPL Electric and Allegheny Electric Cooperative, Inc. for interconnection at the Fairfield delivery point.

PPL Electric requests an effective date of February 1, 2002.

Comment Date: October 22, 2002.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–5–000]

Take notice that on October 2, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.12 of the Commission's regulations, 18 CFR 35.12, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing an Interconnection and Operating Agreement among GM Transmission, LLC, the Midwest ISO and Northern States Power Company d/b/a Xcel Energy.

A copy of this filing was sent to the GM Transmission, LLC and Northern States Power Company d/b/a Xcel Energy.

Comment Date: October 23, 2002.

9. Quonset Point Cogen, L.P.

[Docket No. ER03–6–000]

Take notice that on October 2, 2002, Quonset Point Cogen, L.P. and PSEG Energy Technologies Inc. (Applicants) filed with the Federal Energy Regulatory Commission a Thermal and Electric Energy Purchase Agreement under Section 205 of the Federal Power Act. Applicants request an effective date of November 1, 2002.

Comment Date: October 23, 2002.

10. Public Service Company of New Hampshire

[Docket No. ER03–7–000]

Take notice that on October 2, 2002, Northeast Utilities Service Company (NUSCO), on behalf of its affiliate, Public Service Company of New Hampshire (PSNH), filed the executed Interconnection and Operations Agreement (IOA) by and between PSNH and Hawkeye Funding, Limited Partnership (Hawkeye), designated as Original Service Agreement No. 93 under Northeast Utilities System Companies' Open Access Transmission Tariff (Tariff No. 9). The IOA is a new agreement establishing the terms and conditions under which PSNH will provide interconnection service to Hawkeye's nominal 525-megawatt combined-cycle generating facility in Newington, New Hampshire.

NUSCO states that a copy of this filing has been mailed to Hawkeye and that Hawkeye fully consents to and supports this filing. NUSCO and Hawkeye request an effective date for the IOA of September 30, 2002, and request any waivers of the Commission's regulations that may be necessary to permit such an effective date.

Comment Date: October 23, 2002.

11. Southern Company Services, Inc.

[Docket No. ER03–8–000]

Take notice on October 2, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Georgia Power Company (Georgia Power), tendered for filing the Amendment to the Interchange Contract Between Georgia Power and Crisp County Power Commission (Crisp County) dated as of September 27, 2002 (the Amendment). The Amendment modifies that certain Interchange Contract between Georgia Power and Crisp County dated as of July 1, 1980. The amended Interchange Contract has been designated as First Revised Rate Schedule FERC No. 803.

The Amendment revises Service Schedule B and Service Schedule C of the Interchange Contract. SCS has requested an effective date of October 3, 2002, for the Amendment.

Comment Date: October 23, 2002.

12. Westar Energy, Inc.

[Docket No. ER03–9–000]

Take notice that on October 2, 2002, Westar Energy, Inc. (Westar Energy) filed a Notification of Change in Status and Petition for Acceptance of Revised Market Rate Schedules to reflect (1) Westar Energy's name change from Western Resources, Inc. and (2) cancellation of Westar Energy's proposed merger with Public Service Company of New Mexico, all as more fully described in the Application.

Comment Date: October 23, 2002.

13. ONEOK Energy Marketing and Trading Company, L.P.

[Docket No. ER03–10–000]

Take notice that on October 2, 2002, ONEOK Energy Marketing and Trading Company, L.P. (OEMT) tendered for filing Electric Tariff, Original Volume No. 1, which will supercede ONEOK Power Marketing Company's (OPMC) FERC Electric Tariff, Original Volume No. 1. This filing is the result of the merger by and between OEMT and OPMC, which was consummated on October 1, 2002. OEMT requests an effective date of April 1, 2001.

A copy of the filing was served upon the Oklahoma Corporation Commission.

Comment Date: October 23, 2002.

14. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER03–11–000]

Take notice that on October 3, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an unexecuted unilateral Service Sales Agreement between Companies and Southern Illinois Power Cooperative under the Companies' Rate Schedule MBSS.

Comment Date: October 24, 2002.

15. MidAmerican Energy Company

[Docket No. ER03–12–000]

Take notice that on October 3, 2002, MidAmerican Energy Company (MidAmerican), 401 Douglas Street, P. O. Box 778, Sioux City Iowa 51102, filed with the Federal Energy Regulatory Commission (Commission) an Electric Transmission Interconnection Agreement between Iowa Public Service Company n/k/a MidAmerican Energy Company, dated March 1, 1991, which incorporates the Fifth Amendment to the Agreement, dated June 28, 2002. The Agreement is pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment Date: October 24, 2002.

16. New York Independent System Operator, Inc.

[Docket No. ER03–13–000]

Take notice that on October 3, 2002, the New York Independent System Operator, Inc. (NYISO) filed revisions to its Market Administration and Control Area Services Tariff (Services Tariff) to implement an Unforced Capacity Deliverability Rights (UDR) product in the Installed Capacity market in New York.

The NYISO has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: October 24, 2002.

17. Southwest Power Pool, Inc.

[Docket No. ER03–14–000

Take notice that on October 3, 2002, Southwest Power Pool, Inc. (SPP) filed changes to the SPP Open Access Transmission Tariff (SPP Tariff) intended to implement certain rate changes applicable to the Southwestern Power Administration pricing zone. SPP seeks an effective date of October 1, 2002 for these changes.

A copy of this filing was served on all transmission customers under the SPP Tariff and on all affected state commission.

Comment Date: October 24, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–26259 Filed 10–15–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0268; FRL–7276–6]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by April 14, 2003, or unless indicated otherwise, orders will be issued canceling all of these registrations. Comments on EPA Registration Numbers 000655–00741, 000655–00742,

001812–00354, 001812–00448, 009688–00131, and 034911–00027 must be received by November 15, 2002.

FOR FURTHER INFORMATION CONTACT:
James A. Hollins, Information Resources Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5761; e-mail address: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2002–0268. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 33 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration Number	Product Name	Chemical Name
000100 OR–02–0016	Cyclone Concentrate/Gramoxone Max	1,1'-Dimethyl-4,4'-bipyridinium dichloride
000100 WA–02–0018	Cyclone Concentrate/Gramoxone Max	1,1'-Dimethyl-4,4'-bipyridinium dichloride
000352 AZ–01–0001	Dupont Staple Herbicide	Sodium 2-chloro-6-(4,6-dimethoxypyrimidin-2-ylthio)benzoate
000352 AZ–01–0002	Dupont PE 350/MON B In B Herbicide	Sodium 2-chloro-6-(4,6-dimethoxypyrimidin-2-ylthio)benzoate Isopropylamine glyphosate (N-(phosphonomethyl)glycine)
000524–00476	Harness Plus Herbicide	2'-Ethyl-6'-methyl-N-(ethoxymethyl)-2-chloroacetanilide
000655–00741	Prentox Methoxychlor 50W	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
000655–00742	Prentox 2 Lb. Methoxychlor Spray	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
001812–00351	Pro-Tex	Manganese ethylenebis(dithiocarbamate) Triphenyltin hydroxide
001812–00354	Indoor Roach Bait	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
001812–00448	Finitron Brand Sulfuramid RB MUP	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
003008–00069	Bardec Part I	Arsenic acid
003008–00070	Bardec Part 2	Cuprous oxide
003008–00071	Bardec Part 3	Zinc oxide
003125–00102	Guthion 2l Emulsifiable Insecticide	O,O-Dimethyl S-((4-oxo-1,2,3-benzotriazin-3(4H)-yl)methyl) phosphorodithioate

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration Number	Product Name	Chemical Name
004691–00157	Commando Insecticide Cattle Ear Tag	O,O,O',O'-Tetraethyl S,S'-methylene bis(phosphorodithioate)
008177–00073	Enterprise Clear Wood Preservative	3-Iodo-2-propynyl butylcarbamate
009688–00131	Chemsico Roach Control System CS	O,O-Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
010163–00166	Imidan 50–WP Agricultural Insecticide	N-(Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate)
010163–00170	Imidan 12.5–WP Home Garden Insecticide	N-(Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate)
010163–00173	Imidan 1-E Home Garden Insecticide	N-(Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate)
010163–00227	Prolate Technical Livestock Insecticide	N-(Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate)
034704–00691	Clean Crop Sniper 2-E Azinphos Methyl Insecticide	O,O-Dimethyl S-((4-oxo-1,2,3-benzotriazin-3(4H)-yl)methyl) phosphorodithioate
034704 OR–88–0014	Clean Crop Cheat Stop 90 WDG	2-Chloro-4-(ethylamino)-6-(isopropylamino)-s-triazine
034704 WA–88–0019	Clean Crop Cheat Stop 90 WDG	2-Chloro-4-(ethylamino)-6-(isopropylamino)-s-triazine
034911–00027	Hi-Yield Benomyl Systemic Fungicide	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
045385–00087	Cenol Dairy Cattle Spray	Dipropyl isocinchomeronate N-Octyl bicycloheptene dicarboximide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
051036–00073	Dibrom 8EC	1,2-Dibromo-2,2-dichloroethyl dimethyl phosphate
059639 GA–99–0001	Select Herbicide	2-Cyclohexen-1-one, 2-(1-(((3-chloro-2-propenyl)oxy)imino)propyl)-5-(2-
059639 WA–89–0026	Orthene 75 S Soluble Powder	O,S-Dimethyl acetylphosphoramidothioate
062190–00005	Wolmanac Concentrate 70%	Arsenic pentoxide Chromic acid Cupric oxide
062190–00011	CCA Type C 50% Chromated Copper Arsenate	Arsenic pentoxide Chromic acid Cupric oxide
066222–00016	Cotnion-Methyl Azinphos Methyl 2EC	O,O-Dimethyl S-((4-oxo-1,2,3-benzotriazin-3(4H)-yl)methyl) phosphorodithioate
070171–00004	Ioblend - 20	Nonylphenoxypolyethoxyethanol - iodine complex

Unless a request is withdrawn by the registrant within the 180 or 30–day comment period, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during either of these comment periods.

Registrations 001812–00448, Finitron Brand Sulfluramid RB MUP, 001812–00354, Indoor Roach Bait, and 009688–00131, Chemsico Roach Control System CS are registrations for which the terms and conditions for cancellation and disposition of existing stocks were previously agreed to between EPA, Griffin L.L.C. and Chemsico and expressed in the July 9, 2001 Registration/Amendment Notices for these products. Thus, EPA intends to grant Griffin and Chemsico's request for voluntary cancellation of these registrations on December 31, 2002. Griffin and Chemsico have waived the 180–day comment period provided for in FIFRA section 6(f). The comment period will be the required 30 days from notice in the **Federal Register.** After the registrations are canceled, EPA will permit Griffin to sell and distribute Registration 001812–00448, Finitron Brand Sulfluramid RB MUP until July 25, 2003, and Registration 001812–00354, Indoor Roach Bait until December 31, 2003, and permit

Chemisco to sell and distribute Registration 009688–0013, Chemsico Roach Control System CS until December 31, 2003.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in ascending sequence by EPA company number:

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company Number	Company Name and Address
000100	Syngenta Crop Protection, Inc. Box 18300 Greensboro, NC 27419
000352	E. I. Du Pont De Nemours and Company Dupont Crop Protection Stine-Haskell Research Center S300 Box 30 Newark, DE 19714
000524	Monsanto Company Agent For: Monsanto Company 600 13th Street, NW., Suite 660 Washington, DC 20005
000655	Prentiss Inc. C.B. 2000 Floral Park, NY 11001
001812	Griffin L.L.C. Box 1847 Valdosta, GA 31603
003008	Osmose Inc. 980 Ellicott Street Buffalo, NY 14209
003125	Bayer Corp. Agriculture Division 8400 Hawthorn Rd., Box 4913 Kansas City, MO 64120
004691	Boehringer Ingelheim Vetmedica, Inc. 15th & Oak Streets, Way, Box 338 Elwood, KS 66024
008177	Valspar Corp. 1101 Third Street South Minneapolis, MN 55415
009688	Chemsico, Division of United Industries Corp. Box 142642 St Louis, MO 63114
010163	Gowan Company Box 5569 Yuma, AZ 85366
034704	Jane Cogswell Agent For: Platte Chemical Co. Inc. Box 667 Greeley, CO 80632
034911	Brazos Associates, Inc. Agent For: Hi-Yield Chemical Co. 2001 Diamond Ridge Drive Carrollton, TX 75010
045385	CTX-Cenol, Inc. Box 472 Twinsburg, OH 44087
051036	Micro-Flo Co. LLC Box 772099 Memphis, TN 38117
059639	Valent U.S.A. Corp. 1333 N. California Blvd, Suite 600 Walnut Creek, CA 94596
062190	Arch Wood Protection, Inc. 1955 Lake Park Drive, Suite 250 Smyrna, GA 30080
066222	Makhteshim-Agan of North America Inc. 551 Fifth Avenue Suite 1100 New York, NY 10176
070171	Unicore Technologies Inc. Box 3877 Turlock, CA 95381

III. Loss of Active Ingredients

Unless the request for cancellation is withdrawn, the pesticide active ingredient listed in Table 3 below will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant to explore the possibility of the registrant withdrawing the request for cancellation. The active ingredient is listed in the following Table 3, with EPA company number and chemical name.

TABLE 3—ACTIVE INGREDIENT DISAPPEARING AS A RESULT OF REGISTRANT'S REQUEST TO CANCEL

EPA Company Number	Company Name and Address
034911	Benomyl

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register.** Thereafter, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT,** postmarked before either of the comment periods listed under **DATES.** This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

VI. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1–year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a Data-Call-In. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 30, 2002.

Lind Vlier Moos,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 02–26177 Filed 10–15–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0056; FRL–7275–8]

1,1,2-Trichloroethane Tier I Program Review Testing; Notice of Availability and Solicitation of Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under section 4 of the Toxic Substances Control Act (TSCA), EPA issued a testing consent order that incorporated an enforceable consent agreement (ECA) relating to 1,1,2-trichloroethane (TCE). The companies subject to this ECA agreed to conduct toxicity testing, develop a computational dosimetry model for route-to-route extrapolations, and develop pharmacokinetics and mechanistic testing data that are intended to satisfy the toxicological data needs for TCE identified in a TSCA section 4 proposed test rule for a number of hazardous air pollutant chemicals. This notice announces that EPA is starting the Program Review component of the TCE ECA alternative testing program, and solicits comment on data received under the Tier I Program Review testing segment of the TCE ECA. Comments are expected to inform EPA's decision on whether or not additional data and/or model development are needed before Tier II testing and computational dosimetry modeling for route-to-route extrapolations proceed for the Tier II endpoints listed in the TCE ECA.

DATES: Comments, identified by docket ID number OPPT–2002–0056, must be received on or before November 15, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information about EPA's Program Review contact: Richard Leukroth or John Schaeffer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8157; e-mail address: ccd.citb@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document or Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0056. OPPT–2002–0056 is the continuation docket for the TCE ECA which originated under OPPTS Docket Number 42198. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information for which disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2002–0056. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to oppt.ncic@epa.gov, Attention: Docket ID Number OPPT–2002–0056. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. The disk or CD must be labeled: Attention: Docket ID Number OPPT-2002-0056. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Attention: Docket ID Number OPPT-2002-0056, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0056. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

EPA invites interested parties to provide views on the Companies' Tier I Program Review testing reports titled: "Pharmacokinetics of 1,1,2-Trichloroethane in Rats and Mice" and "Physiologically Based Pharmacokinetic Model Development, Simulations, and Sensitivity Analysis for Repeated Exposure to 1,1,2-Trichloroethane." These reports describe a dosimetry model for route-to-route extrapolation and development of pharmacokinetics and mechanistic testing data (PK/MECH data) that will support the use of this model for quantitative route-to-route extrapolations specific to endpoints listed under Tier II of the TCE ECA. The model and PK/MECH data described in these reports, if deemed acceptable to EPA, will be applied to support the TCE ECA Tier II testing and computational dosimetry model extrapolation reporting called for under Tier II of the TCE ECA. EPA is interested in comments on the PK/MECH data, the TCE computational dosimetry model for route-to-route extrapolation, and the utility of resulting derived computational data from the TCE dosimetry model that will

be developed under Tier II of the TCE ECA. Additionally, EPA is interested in receipt of any data or information for the Agency to consider during development of EPA's Program Review of the TCE ECA alternative testing program with regard to approaches not considered as well as potential impacts of the various options (including possible unintended consequences). You may find the following suggestions helpful in preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the science.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. Why is EPA Requiring Health Effects Testing on TCE?

EPA proposed health effects testing under TSCA section 4(a) for a number of hazardous air pollutants ("HAPs" or "HAP chemicals"), including TCE in the **Federal Register** of June 26, 1996 (61 FR 33178) (FRL–4869–1), as amended in the **Federal Register** of December 24, 1997 (62 FR 67466) (FRL–5742–2), and April 21, 1998 (63 FR 19694) (FRL–5780–6). EPA's primary use of the data from this testing activity will be to implement several provisions of section 112 of the Clean Air Act (CAA), including determining residual risks (e.g., assessing risks remaining after imposition of technology-based emission standards (maximum achievable control technology or "MACT" standards)), estimating risks associated with accidental chemical releases, and determining whether or not subject chemicals should be removed ("delisted") from the CAA section 112(b) HAPs list. Other important uses of the data obtained via this testing activity will be to: (1) Help in better informing communities and citizens about chemical hazards in their own localities; (2) assist state and local permitting authorities with establishing appropriate standards within their programs; and (3) help other EPA Program Offices and other Federal agencies (e.g., the Agency for Toxic Substances and Disease Registry (ATSDR), the National Institute for Occupational Safety and Health (NIOSH), the Occupational Safety and Health Administration (OSHA), and the Consumer Product Safety Commission (CPSC)) in assessing chemical risks and taking appropriate action(s) within their own programs and under the Federal statutes that they administer.

B. How is EPA Obtaining Health Effects Testing on TCE?

In the proposed HAPs test rule, as amended, EPA identified the following testing needs for TCE: Acute toxicity, subchronic toxicity, developmental toxicity, reproductive toxicity, neurotoxicity, carcinogenicity, *in vivo* cytogenetics, and immunotoxicity to be conducted by the inhalation route of exposure.

EPA also invited the submission of proposals regarding the performance of pharmacokinetics studies which would permit extrapolation from oral data to predict risk from inhalation exposure. Such proposals could provide the scientific basis for alternative testing to the testing proposed and form the basis for developing needed HAPs data via ECAs (61 FR 33178, June 26, 1996; 62 FR 67466, December 24, 1997). EPA uses ECAs to accomplish testing where a consensus is reached concerning the need for and scope of testing. The procedures for ECA negotiations are described at 40 CFR 790.22(b).

In response to EPA's request for ECA proposals, the Dow Chemical Company; Vulcan Materials Company; Occidental Chemical Corporation; Oxy Vinyls, LP; Georgia Gulf Corporation; Westlake Chemical Corporation; PPG Industries, Inc.; Borden Chemicals and Plastics Operating Limited Partnership; and Formosa Plastics Corporation, U.S.A. ("the Companies"), under the auspices of the HAP Task Force, submitted a proposal for alternative testing of TCE that included physiologically based pharmacokinetics (PBPK) and model development to support route-to-route extrapolation of extant studies acceptable to EPA and new testing to be conducted by the oral route (Ref. 1). On December 19, 1997, EPA announced the initiation of ECA discussions to develop an acceptable alternative testing program for TCE and solicited the involvement of interested parties (62 FR 66628) (FRL–5632–2). These discussions resulted in an ECA for TCE which was announced in the **Federal Register** of June 15, 2000 (65 FR 37550) (FRL–6494–5). Under the TCE ECA alternative testing program (Ref. 2), these HAPs data needs are being addressed via an informed testing program that utilizes, wherever possible, extant data from acceptable studies performed by routes other than inhalation, testing by inhalation and the oral route, and development of PK/MECH data to support a computational dosimetry model to perform route-to-route extrapolations. The official public docket for the development of the TCE ECA is established under docket control number OPPTS–42198B, while the official public docket for the receipt of data under the TCE ECA is established under docket ID number OPPT–2002–0056 (which is the continuation of OPPTS–42198B).

C. What Testing Does the ECA for TCE Require?

The TCE ECA alternative testing program has four segments, as follows: Tier I HAPs testing; Tier I Program Review testing; EPA Program Review; and Tier II testing.

1. *Tier I HAPs testing.* This testing consisted of the following endpoint testing, conducted by inhalation exposure, that EPA deemed necessary to meet certain data needs identified in the proposed HAPs test rule: Acute and subchronic toxicity. In addition, EPA determined that existing cytogenicity studies conducted by Mazzulo *et al.* (1986) and Doherty *et al.* (1996) were adequate at this time to characterize the mutagenicity of TCE (Refs. 3 and 4).

2. *Tier I Program Review testing.* Under this segment of the TCE ECA alternative testing program, the test sponsor is to develop a computational dosimetry model, specific to TCE, for rats and mice, validate the model, and verify the model's ability to perform quantitative route-to-route extrapolations.

In addition, the test sponsor is to develop PK/MECH data to support the application of the model for the endpoints listed in Tier II of the TCE ECA. Model development and data from this testing are subject to the EPA Program Review. Specifically, the PK/MECH data will be applied to support: (1) Oral-to-inhalation extrapolation of existing immunotoxicity data in mice administered TCE via drinking water (Ref. 5); (2) oral-to-inhalation extrapolation of existing oral cancer bioassay data in mice administered TCE via corn oil gavage (Ref. 6); and (3) model simulations to demonstrate validation and verification of computational PBPK models for route-to-route extrapolation in order to

evaluate acceptability of oral drinking water exposure in rats for neurotoxicity testing, oral drinking water exposure in rats and mice for developmental toxicity testing, and oral drinking water exposure in rats for reproductive toxicity testing.

3. *EPA Program Review.* The use of PK/MECH data and computational dosimetry modeling to support route-to-route extrapolation is a new approach for EPA's Office of Pollution Prevention and Toxics under the TSCA section 4 chemical testing program. It is essential to the success of the TCE ECA alternative testing program for EPA to ensure that the model and the PK/MECH data used to support the route-to-route extrapolations are of the highest quality. For this reason, a Program Review requirement was incorporated into the TCE ECA.

The purpose of the EPA Program Review of the TCE ECA is to determine: (1) Whether it is feasible and appropriate to apply Tier I Program Review testing data and data from other studies acceptable to EPA to support computational route-to-route extrapolations for endpoints listed in the Tier II testing segment of the ECA; (2) whether the data from the Tier I Program Review testing segment provide a sufficient basis for conducting the endpoint testing and/or the computational route-to-route extrapolations specified in the Tier II testing segment; and (3) the nature and scope of any additional work that may be required before Tier II testing and application of the TCE model for route-to-route extrapolation reporting (e.g., development of additional PK/MECH data, modification to the TCE model)

4. *Tier II testing.* This segment of the TCE ECA alternative testing program consists of endpoint testing by oral exposure for neurotoxicity, developmental toxicity and reproductive toxicity. This segment also includes application of the TCE model for quantitative route-to-route extrapolation reporting (oral to inhalation) for Tier II endpoint testing (neurotoxicity, developmental toxicity, reproductive toxicity) and similar computational extrapolation reporting for certain extant studies for immunotoxicity (Ref. 5) and carcinogenicity (Ref. 6).

III. Next Steps

A. What is the Status of the Testing Program Developed in the ECA for TCE?

Tier I HAPs testing for TCE is completed and reports for Tier I Program Review testing have been submitted by the Companies. Receipt of these submissions was announced in **Federal Register** notices of April 10, 2002 (67 FR 17429) (FRL–6831–5); April 12, 2002 (67 FR 17996) (FRL–6831–4); and August 14, 2002 (67 FR 53001) (FRL–7193–1) and are available in the EPA Docket Center (OPPTS–2002–0056). As described in Unit II.C.3., and stated in Part VI. of the TCE ECA, the next step is for EPA to conduct a Program Review on the data collected from the Tier I Program Review testing segment of the TCE ECA alternative testing program. The outcome from this EPA review will determine whether or not additional PK/MECH data and/or model development are needed before Tier II testing and computational dosimetry model reporting for route-to-route extrapolations of Tier II endpoints can proceed as described in the TCE ECA.

B. Is there an Opportunity for Public Participation in EPA's Program Review?

This notice of availability and request for comments on the Companies' Tier I Program Review testing reports titled: "Pharmacokinetics of 1,1,2-Trichloroethane in Rats and Mice" and "Physiologically Based Pharmacokinetic Model Development, Simulations, and Sensitivity Analysis for Repeated Exposure to 1,1,2-Trichloroethane" provides an opportunity for public participation in the EPA Program Review of the TCE ECA. A description of EPA's objectives in conducting the Program Review for the TCE ECA alternative testing program is provided in Unit II.C.3.

C. What Happens at the Conclusion of EPA's Program Review?

A description of the possible outcomes of the EPA Program Review is provided in Part VII. of the TCE ECA document (Ref. 2). Following the EPA Program Review, EPA will place in the official public docket for this action (under docket ID number OPPTS–2002–0056) a copy of each comment received, and a copy of the letter informing the HAP Task Force of the outcome from EPA's Program Review.

IV. References

The official public docket for this action contains the following information:

1. The HAP Task Force. Letter from Peter E. Voytek to Charles M. Auer with attachment titled: Proposal for Pharmacokinetics Study of 1,1,2-Trichloroethane, November 22, 1996. (Available from docket control number OPPTS–42187B.)

2. U.S. EPA, Enforceable Consent Agreement for 1,1,2-Trichloroethane. September 30, 1999. (CAS No. 79–00–5) (Available from docket control number OPPTS–42198B.)

3. Mazzulo, M., Colacci, A., Grilli, S., Prodi, G., and Arfellini, G. 1,1,2-Trichloroethane: evidence of genotoxicity from short-term tests. *Japanese Journal of Cancer Research.* 77:532–539. 1986.

4. Doherty, A.T., Ellard, S., Parry, E.M., and Parry, J.M. An investigation into the activation and deactivation of chlorinated hydrocarbons to genotoxins in metabolically competent human cells. *Mutagenesis.* 11(3):247–274. 1996.

5. Sanders, V.M., White, Jr., K.L., Shopp, Jr., G.M., and Musson, A.E. Humoral and cell-mediated immune status of mice exposed to 1,1,2-trichloroethane. *Drug and Chemical Toxicology.* 8(5):357–372. 1985.

6. National Cancer Institute (NCI). Bioassay of 1,1,2-trichloroethane for possible carcinogenicity. Carcinogenesis: Technical Report Series No. 74. U.S. Department of Health, Education and Welfare, Public Health Service, National Institutes of Health. 1978.

List of Subjects

Environmental protection, Hazardous chemicals.

Dated: October 8, 2002.

Wardner G. Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–26308 Filed 10–15–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0064; FRL–7277–8]

Approval of Modifications to Test Marketing Exemption for a Certain Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of modifications of the test marketing period for a test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA). EPA designated the original test marketing application as TME–02–0006. The test marketing conditions are described in this notice.

DATES: This notice is effective October 7, 2002.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: Jamesine Rogers, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–3453; e-mail address: *rogers.jamesine@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME to EPA. This action may, however, be of interest to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0064. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the" **Federal Register**"-listings at *http://www.epa.gov/fedrgstr.* A frequently updated electronic version of 40 CFR part is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr_00.html,* a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

EPA approves the modifications of the test marketing period, production volume, and number of customers for TME–02–0006. EPA has determined that test marketing of the new chemical substance described in this notice, under the conditions set out in the TME applications and modification requests, and for the modified time periods specified in this notice, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed specifications in the application. All other conditions and restrictions described in the original notice of approval of test marketing application must be met.

TME–02–0006

Notice of approval of original application: February 27, 2002, (67 FR 8972) (FRL–6825–2).

Production volume: CBI.

Number of customers: CBI.

Modified test marketing period: 6 months.

Commencing on: October 8, 2002.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

III. What is the Agency's Authority for Taking this Action?

Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: October 7, 2002.

Rose A. Allison,

Acting Chief, New Chemicals Prenotice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 02–26304 Filed 10–15–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0062; FRL–7277–6]

Approval of Modifications to Test Marketing Exemption for a Certain Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of modifications of the test marketing period for a test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA). EPA designated the original test marketing application as TME–02–0004. The test marketing conditions are described in this notice.

DATES: This notice is effective October 7, 2002.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Jamesine Rogers, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–3453; e-mail address: rogers.jamesine@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME to EPA. This action may, however, be of interest to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0062. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the" **Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

EPA approves the modifications of the test marketing period, production volume, and number of customers for TME–02–0004. EPA has determined that test marketing of the new chemical substance described in this notice, under the conditions set out in the TME applications and modification requests, and for the modified time periods specified in this notice, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed specifications in the application. All other conditions and restrictions described in the original notice of approval of test marketing application must be met.

TME–02–0004

Notice of approval of original application: February 27, 2002, (67 FR 8973) (FRL–6825–4).

Production volume: CBI.

Number of customers: 0 (intermediate).

Modified test marketing period: 6 months.

Commencing on: October 8, 2002.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

III. What is the Agency's Authority for Taking this Action?

Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: October 7, 2002.

Rose A. Allison,

Acting Chief, New Chemicals Prenotice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 02–26305 Filed 10–15–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0058; FRL–7277–1]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 26, 2002 to September 11, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT– 2002–0058 and the specific PMN number or TME number, must be received on or before November 15, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0058. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e- mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select" search," and then key in docket ID number— OPPT–2002–0058. The system is an" anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to oppt.ncic@epa.gov, Attention: Docket ID Number OPPT–2002–0058 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail

system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0058 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 26, 2002 to September 11, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 38 PREMANUFACTURE NOTICES RECEIVED FROM: 08/26/02 TO 09/11/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0957	08/26/02	11/24/02	CIBA Specialty Chemicals Corporation	(S) Photoinitiator for coatings	(G) Aromatic mixed esters
P–02–0958	08/26/02	11/24/02	Von Roll Isola USA, Inc.	(S) Electrical insulating varnish for motors, generators, transformers	(G) Unsaturated polyester-imide
P–02–0959	08/26/02	11/24/02	CBI	(S) Thickener for water-based paints and adhesives	(G) Ethoxylate/urethane copolymer
P–02–0960	08/26/02	11/24/02	CBI	(G) Additive in radiation cured coatings, adhesives and inks.	(G) Metallic acrylate
P–02–0961	08/27/02	11/25/02	Oxford Organics, Inc.	(G) Colorant	(G) Spiro naphthoxazine
P–02–0962	08/27/02	11/25/02	DIC International (USA), Inc.	(G) Binder	(G) Acryl based copolymer
P–02–0963	08/28/02	11/26/02	Solutia Inc	(S) Binder for industrial coatings	(G) Modified alkyd resin
P–02–0964	08/29/02	11/27/02	Solutia Inc	(S) Binder for industrial coatings	(G) Modified alkyd resin

I. 38 PREMANUFACTURE NOTICES RECEIVED FROM: 08/26/02 TO 09/11/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0965	08/30/02	11/28/02	Forbo Adhesives, LLC	(G) Hot melt polyurethane adhesive	(G) Isocyanate functional polyester polyether urethane polymer
P–02–0966	08/29/02	11/27/02	CBI	(G) Structural material (open, non-dispersive)	(G) Modified polyacrylate
P–02–0967	08/29/02	11/27/02	CBI	(G) Structural material (open, non-dispersive)	(G) Modified polyacrylate
P–02–0968	08/29/02	11/27/02	CBI	(G) Structural material (open, non-dispersive)	(G) Modified polyacrylate
P–02–0969	08/30/02	11/28/02	CBI	(G) Sealant component	(G) Polymer of a carbomonocyclic diisocyanate, a modified polyalkene, hydroxyalkane and a substituted alkoxysilane
P–02–0970	08/29/02	11/27/02	BASF Corporation	(G) Internal press release	(G) Alkoxylated urethane
P–02–0971	08/29/02	11/27/02	BASF Corporation	(G) Internal press release	(G) Alkoxylated urethane
P–02–0972	08/29/02	11/27/02	BASF Corporation	(G) Surfactant	(G) Alkoxylated substituted phenol
P–02–0973	08/29/02	11/27/02	BASF Corporation	(G) Surfactant	(G) Alkoxylated substituted phenol
P–02–0974	09/04/02	12/03/02	Bedoukian Research, Inc.	(S) Use as specialty fragrance (ffdca); fragrance use: (soaps, detergents, air fresheners, scented papers).	(S) 3-octen-1-ol,propanoate, (3z)-
P–02–0975	09/04/02	12/03/02	CBI	(G) Toner binder for copiers or laser printers	(G) Polyester resin
P–02–0976	08/28/02	11/26/02	CBI	(G) Destructive use	(G) Tetrabromophthalate diol
P–02–0977	09/05/02	12/04/02	J.M. Huber Corporattion	(S) Industrial coating	(G) Surface treated kaolin
P–02–0978	09/05/02	12/04/02	CBI	(S) Substrate water	(S) Lanthanum aluminum oxide or lanthanum aluminate (the 9ci name is listed as aluminum lanthanum oxide)
P–02–0979	09/04/02	12/03/02	Solutia Inc.	(S) Wash primer for metal protection	(G) Epoxy modified polyvinyl butyral
P–02–0980	09/06/02	12/05/02	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Brominated epoxy resin
P–02–0981	09/06/02	12/05/02	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Aromatic diol, acrylate, acrylonitrile, butadiene rubber-extended epoxy resin
P–02–0982	09/06/02	12/05/02	CBI	(G) Thermostat polymer component, open nondispersive use	(G) Sulfonylamine extended epoxy resin
P–02–0983	09/06/02	12/05/02	CBI	(G) Raw material	(G) Substituted-alkyl-heteromonocycle
P–02–0984	09/06/02	12/05/02	Mitsubishi Gas Chemical Company America, Inc.	(S) Epoxy curing agent	(S) 1,3-benzenedimethanamine, .nu.-(2-phenylethyl) derivs.
P–02–0985	09/06/02	12/05/02	Reichhold, Inc.	(S) Stain vehicle	(G) Vegetable fatty acids, polymer with peroxide, alkyl acrylate, cyclic carboxlic acid, alkeneioc acid, tetra hydroxy alkane and alkenylbenzene.
P–02–0986	09/06/02	12/05/02	Reichhold, Inc.	(S) Intermediate	(G) Vegetable fatty acids, polymer with peroxide, alkyl acrylate, alkeneoic acid and alkenylbenzene.
P–02–0987	09/09/02	12/08/02*	CBI	(G) Use as adhesive component. non-dispersive use.	(G) The pmn polymers is: naphtha (petroleum), light steam-cracked debenzenized, polymers, hydrogenated polymers with carbomonocyclic diketone.
P–02–0988	09/10/02	12/09/02	AOC L.L.C.	(S) Reactive copolymer for unsaturated polyester resin for use in reinforced and non-reinforced plastic parts	(G) Urethane modified acyrlate
P–02–0989	09/10/02	12/09/02	CBI	(S) Moisture cure coating	(G) Aliphatic polyester polyurethane polymer
P–02–0991	09/11/02	12/10/02	CBI	(G) Moisture curing polyurethane adhesive	(G) Isocyanate terminated urethane polymer
P–02–0992	09/11/02	12/10/02	CBI	(G) Dispersing agent [destructive use]	(G) Ethylene oxide-propylene oxide copolymer allyl alkyl ether
P–02–0993	08/28/02	11/26/02	International Flavors and Fragrances, Inc.	(S) Ingredients for use in fragrances for soaps, detergents, cleaners and other household products	(S) Oils, persicana odorata
P–02–1003	08/29/02	11/27/02	CBI	(S) Optical plastics; coating materials,	(S) 2-propenethioic acid, 2-methyl-, s,s'-(thiodi-2,1-ethanediyl) ester

I. 38 PREMANUFACTURE NOTICES RECEIVED FROM: 08/26/02 TO 09/11/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–1004	08/29/02	11/27/02	CBI	(S) Optical plastics; coating materials	(S) 2-propenethioic acid, 2-methyl-, s,s'(8-methyl-7-oxo-3,6,10,13-tetrathiapentadecane-1,15-diyl) ester

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 29 NOTICES OF COMMENCEMENT FROM: 08/26/02 TO 09/11/02

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–1129	09/03/02	08/13/02	(S) 4,7-methano-1h-inden-6-ol, 3a,4,5,6,7,7a-hexahydro-, butanoate
P–01–0132	09/10/02	09/05/02	(S) Siloxanes and silicones, di-me, me vinyl, vinyl group-terminated, polymers with ethylene and me methacrylate
P–01–0216	09/10/02	08/28/02	(G) Hydrocarbon resin
P–01–0242	09/05/02	08/22/02	(S) Iodonium, (3-methylphenyl)phenyl-, ar'-C_{12-13}-branched alkyl derivs., (oc-6-11)-hexafluoroantimonates(1-)
P–01–0249	08/26/02	08/21/02	(S) Boric acid (h3bo3), mixed 2-[2-(2-methoxyethoxy)ethoxy]ethyl and 3,6,9,12-tetraoxatridec-1-yl triesters
P–02–0104	09/05/02	08/06/02	(G) Modified polyester
P–02–0253	08/27/02	05/17/02	(G) Substituted alkyl acrylate
P–02–0288	09/04/02	08/05/02	(G) Alkoxylated fatty acid esters
P–02–0338	08/26/02	08/10/02	(G) Copper azo dye
P–02–0343	08/27/02	07/22/02	(G) Aromatic acid diesters
P–02–0394	08/30/02	08/01/02	(G) Arylsulfonium compound
P–02–0407	09/10/02	08/20/02	(G) Urethane acrylate
P–02–0518	09/09/02	08/21/02	(G) Blocked aromatic isocyanate
P–02–0555	09/10/02	07/23/02	(S) Amides, from branched and linear C_{16-18} and C_{18}-unsaturated fatty acids and 1-piperazineethanamine
P–02–0556	09/10/02	07/24/02	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, reaction products with 2-[(2-aminoethyl)amino]ethanol
P–02–0557	09/10/02	07/25/02	(S) Amides, from branched and linear C_{16-18} and C_{18}-unsaturated fatty acids and triethylenetetramine
P–02–0558	09/10/02	07/26/02	(S) Amides, from branched and linear C_{16-18} and C_{18}-unsaturated fatty acids and pentaethylenehexamine
P–02–0559	09/10/02	07/29/02	(S) Amides, from branched and linear C_{16-18} and C_{18}-unsaturated fatty acids and polyethylenepolyamines
P–02–0560	09/10/02	07/30/02	(S) Amides, from branched and linear C_{16-18} and C_{18}-unsaturated fatty acids and tetraethylenepentamine
P–02–0561	09/10/02	07/31/02	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated branched and linear, reaction products with piperazineethanol
P–02–0599	09/09/02	08/30/02	(G) Blocked artomatic isocyanate
P–02–0609	08/30/02	08/08/02	(G) Fluorochemical urethane
P–02–0626	09/11/02	08/09/02	(G) Aromatic substituted diurea
P–02–0627	08/29/02	08/26/02	(G) Acrylic polymer
P–02–0630	08/26/02	08/14/02	(G) Modified polyester resin
P–02–0633	08/26/02	08/14/02	(G) Modified polyester resin
P–02–0649	08/29/02	08/08/02	(G) Aromatic polyester polyol
P–98–0848	09/04/02	08/12/02	(S) Silicic acid, magnesium, strontium salt, dyprosium, europium doped
P–98–1030	08/30/02	08/08/02	(G) Urethane acrylate

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: October 7, 2002.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–26306 Filed 10–15–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0063; FRL–7277–7]

Approval of Modifications to Test Marketing Exemption for a Certain Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of modifications of the test marketing period for a test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA). EPA designated the original test marketing application as TME–02–0005. The test marketing conditions are described in this notice.

DATES: This notice is effective October 7, 2002.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Jamesine Rogers, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–3453; e-mail address: *rogers.jamesine@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME to EPA. This action may, however, be of interest to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0063. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

EPA approves the modifications of the test marketing period, production volume, and number of customers for TME–02–0005. EPA has determined that test marketing of the new chemical substance described in this notice, under the conditions set out in the TME applications and modification requests, and for the modified time periods specified in this notice, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed specifications in the application. All other conditions and restrictions described in the original notice of approval of test marketing application must be met.

TME–02–0005

Notice of approval of original application: February 27, 2002, (67 FR 8971) (FRL–6825–3).

Production volume: CBI.

Number of customers: 0 (intermediate).

Modified test marketing period: 6 months.

Commencing on: October 8, 2002.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

III. What is the Agency's Authority for Taking this Action?

Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: October 7, 2002.

Rose A. Allison,

Acting Chief, New Chemicals Prenotice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 02–26307 Filed 10–15–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 02–60; DA 02–2551]

New Universal Service Deadline for Completing Funding Year 2001 Rural Healthcare Application Process

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the new deadline for completing Rural Healthcare Applications for filing the FCC Form 466/468 packet, for those rural healthcare providers seeking discounts for Funding Year 2001 under the rural healthcare universal service support mechanism.

DATES: Filing deadline is October 11, 2002.

FOR FURTHER INFORMATION CONTACT: Peter Trachtenberg, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: October 11, 2002, is the final deadline for filing the FCC Form 466/468 packet, for those rural healthcare providers seeking discounts for Funding Year 2001 under the rural healthcare universal service

support mechanism. The Form 466/468 packet informs the Rural Healthcare Division (RHCD) of the Universal Service Administrative Company that the health care provider has entered into an agreement with a telecommunications carrier for a service believed eligible for universal service support. Those entities that have applied for support for Funding Year 2001 (July 1, 2001—June 30, 2002) must have their completed packet postmarked by October 11, 2002.

The completed FCC Form 466/468 packet must include the following:

(1) FCC Form 466 (Services Ordered and Certification Form), completed by the health care provider;

(2) FCC Form 468 (Telecommunications Service Providers Support Form), completed by the telecommunications carrier;

(3) contract document or tariff designation, provided by either the health care provider or telecommunications carrier, and,

(4) if the health care provider is seeking support based on an urban/rural rate comparison, documentation must be included to show the rate for the selected service(s) in the nearest city of 50,000 or more within the state.

The forms and accompanying instructions may be obtained at the RHCD Web site <*http://www.rhc.universalservice.org/forms*> (they are called Funding Year 4 forms, because Funding Year 2001 was the fourth year of the program). Parties with questions or in need of assistance with the filing of their applications should contact RHCD's Customer Service Support Center at 1–800–229–5476.

Federal Communications Commission.

Mark G. Seifert,

Deputy Division Chief, Telecommunications Access Policy Division.

[FR Doc. 02–26270 Filed 10–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 02–277]

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Disseminated Information

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (Commission) has published its Information Quality Guidelines on its Internet web site. The guidelines were developed pursuant to the requirements of the Data Quality Act, Section 515 of Public Law No. 105–554, and the implementing rules of the Office of Management and Budget's (OMB's) Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies, 67 FR 8452, February 22, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Karen Wheeless, Office of Managing Director, 202–418–2910, or by e-mail to *kwheeles@fcc.gov*.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554) directed OMB to issue government-wide guidelines that "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information (including statistical information) disseminated by Federal agencies." The OMB guidelines required each agency to make a draft of its guidelines available for public review by May 1, 2002. Revised drafts were provided to OMB for review by August 1, 2002. Final guidelines were to be available on an agency's Internet site by October 1, 2002. The Guidelines can be found at *http://www.fcc.gov/omd/dataquality*. Information on how to file a complaint regarding an information dissemination product covered by these guidelines can also be found at the same location.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–26236 Filed 10–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P2–02]

Petition of the South Florida NVOCC-NAOCC Association, Inc. for an Investigation of the Service Contracting and Rating Practices of the Caribbean Shipowners Association; Notice of Filing and Request for Comments

Notice is hereby given that, by petition filed October 8, 2002, the South Florida NVOCC–NAOCC Association, Inc. ("Petitioner") has petitioned the Commission for an investigation under section 11(c) of the Shipping Act of 1984 ("Shipping Act") of certain activities by the members of the Caribbean Shipowners Association ("CSA").

In particular, Petitioner requests the Commission to determine whether CSA's members have violated the Shipping Act through discriminatory service contracting and rating practices in the Caribbean trades that intentionally discriminate against Ocean Transportation Intermediaries ("OTIs") in violation of sections 10(c)(1), 10(c)(3), 10(c)(7) and 10(c)(8) of the Shipping Act. Petitioner contends that these practices reduce competition in the involved trades and produce unreasonable reductions in transportation service and unreasonable increases in transportation cost to OTIs, their shippers and the shipping public within the meaning of section 6(g) of the Shipping Act. Petitioner further alleges that CSA and its members may be in violation of section 5(c) of the Shipping Act by either adopting mandatory agreements relating to OTI rates and services or failing to file true copies of their voluntary guidelines thereon with the Commission. Petitioner finally alleges that, in taking these actions, CSA is operating in violation of its agreement and is therefore also in violation of section 10(c)(3) of the Shipping Act.

In support of these contentions, Petitioner claims that Non-Vessel-Operating common carrier OTIs ("NVOs") depend upon CSA members to transport their shipments, approximately 90% of which move under service contracts. On or about July 1, 2002, CSA members announced a selective rate increase plan targeting service contract and tariff rates for the commodity descriptions almost exclusively used by NVOs for consolidated containers of less than container load ("LCL") cargo: Freight All Kinds ("FAK") and General Department Store Merchandise ("GDSM"). Petitioner states that the increases were substantial (from 10% to 40%); however, CSA purportedly did not take across-the-board increases for any other commodities or categories of shippers. Petitioner asserts that CSA's members' service contract offers to NVOs have eliminated all commodity rates other than FAK and GDSM, thereby depriving NVOs of a rate basis on which to compete for full container load ("FCL"), single commodity shipments. Petitioner further alleges that, at the same time, a wholly-owned NVO subsidiary of CSA member Tropical Shipping and Construction Co., Ltd. ("Tropical") (described by Petitioner as the largest vessel-operating carrier in most of the involved markets and virtually the only CSA member competing in the LCL market) reduced its LCL rates. Petitioner argues the combination of CSA members raising the FAK and GDSM rates on which NVOs base their LCL rates, and Tropical lowering its LCL rates, has created a "price squeeze" on the NVOs. Petitioner alleges that CSA's members' "obviously coordinated series of actions" has severely and unfairly injured the ability of Petitioner's members to compete. Moreover, Petitioner suggests that CSA's members' unreasonably raising rates may foreclose U.S. exporters from certain of the involved trades. Finally, Petitioner states that it has been advised that the CSA's goal and purpose in adopting the "selective" rate increase plan is to "destroy non-conference competition" and "diminish the influence of the NVOs".

If the Commission's investigation concludes that Shipping Act violations have occurred, Petitioner urges the Commission to: (1) Issue sanctions against CSA and its members pursuant to section 13 of the Shipping Act for violations found; (2) require CSA member lines to pay reparations pursuant to section 11(g) of the Shipping Act to those OTIs who have been damaged;[1] and (3) seek appropriate injunctive relief to enjoin further operation of CSA pursuant to sections 6(g) and (h) of the Shipping Act.

The Petition was filed under Rule 69 of the Commission's Rules of Practice and Procedure, 46 CFR 502.69, and states that it was served upon CSA. Replies to the petition, as provided by Rule 69 and Rule 74, 46 CFR 502.74, are due October 23, 2002. In order for the Commission to make a thorough evaluation of the petition, the Commission is also inviting interested persons to submit their comments on the petition no later than October 23, 2002. Comments shall consist of an original and 15 copies, or, if e-mailed, as an attachment in WordPerfect 8, Microsoft Word 97, or earlier versions of these applications; be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001 (e-mail to: *Secretary@fmc.gov*); and be served on Petitioner's counsel: David P. Street, Galland, Kharasch, Greenberg, Fellman & Swirsky, P.C., 1054 Thirty-First Street, NW., Washington, DC 20007–4492; and on CSA, Suite 414, Galleria Professional Building, 915 Middle River Drive, Fort Lauderdale, FL 22204–3561.

[1] Section 11(g) of the Shipping Act, 46 App. U.S.C. 1710(g), provides that, for any complaint filed within 3 years after the cause of action accrued, the Commission shall, upon petition of the complainant and after notice and hearing, direct payment of reparations to the complainant for injury caused by a violation of the Act.

Copies of the petition are available at the Office of the Secretary of the Commission, 800 N. Capitol Street, NW., Room 1046, by telephone request at 202–523–5725 or through email request directed to *Secretary@fmc.gov*.

Parties participating in this proceeding may elect to receive service of the Commission's issuances in this proceeding through e-mail in lieu of service by U.S. mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an e-mail address where service can be made.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–26246 Filed 10–15–02; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–02]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluating Toolbox Training Safety Program for Construction and Mining (OMB 0920–0535)—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC) proposes to evaluate the effectiveness of various educational approaches utilizing "toolbox" safety training materials targeted to construction and mining industries. The mission of the National Institute for Occupational Safety and Health is to promote safety and health at work for all people through research and prevention.

In comparison to other industries, construction and mining, workers continue to have the highest rates of occupational fatalities and injuries. The Bureau of Labor Statistics estimated for 1999 that while the construction industry comprises only 6% of the workforce, they account for 20% of the fatal occupational injuries across all industry types (BLS, 1999). Similarly, though the mining industry comprises less than .5% of the workforce, this industry reflects 2% of all fatal occupational injuries (BLS, 1999).

Research on the effectiveness of safety and health training programs has revealed that training can lead to increases in worker knowledge and awareness of workplace safety practices. However, fewer evaluations of safety training effectiveness have investigated the relationship between various instructional approaches and the actual transfer of safety training information into workplace practices. Preliminary input from employees, managers, and union leaders representing construction and mining concerns revealed a desire in these industries for affordable safety training materials that can be effectively administered in short sessions on the job.

Representatives from these industries reported that safety training sessions need to establish a closer connection between the safety recommendations and the background experiences and knowledge of the workers. An instructional approach that may address these needs is often called "toolbox" or "tailgate" training. This type of training is characterized by brief (15 minute) workplace safety lessons. Despite the popularity of toolbox safety talks, research is needed to identify the most effective format for this medium. NIOSH will investigate the impact of using a narrative, case-study instructional approach versus a more typical, didactic "learn the facts" approach. Comparative analyses will examine differences in knowledge gain, safety attitudes and

beliefs, and workplace behaviors. Findings from this research will help identify the conditions critical to effective toolbox safety training for mining and construction. The materials developed and evaluated during this study will be made available to the public at the conclusion of the evaluation.

Construction and mining companies who participate in the study will be randomly assigned to receive eight weekly toolbox safety training sessions that use either a case-study narrative or conventional instructional approach. The training sessions are designed to last fifteen minutes. The impact of these materials will be evaluated through the examination of changes in employee knowledge gains, attitudes toward safety practices, and the use of safety behaviors prior to and following their participation in the safety training program. Trainers will complete brief response cards each week. A sample of trainers will participate in structured interviews. Findings of the study will be reported to participants and in the literature. There is no cost to respondents.

Respondents	Number of respondent	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Worker Pre-training Survey (attitude survey)	640	1	15/60	160
Worker Post-training Survey (attitude survey)	640	1	15/60	160
Instructor Feedback Cards	64	8	5/60	43
Total				363

Dated: October 7, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–26204 Filed 10–15–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Survey Development: Child Stress and Toxics—New—Agency for Toxic Substances and Disease Registry (ATSDR). ATSDR is mandated pursuant to the 1980 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and its 1986 amendments, the Superfund Amendments and Reauthorization Act (SARA), to serve the public by using the best science, taking responsive public health actions, and providing trusted health information to prevent harmful exposures and disease related to toxic substances. For the past 6 years, ATSDR has worked with the U.S. Environmental Protection Agency (EPA), the Substance Abuse and Mental Health Services Administration (SAMSHA), state health departments, and local communities on the issue of psychosocial stress due to the presence of toxic hazards. A significant amount of research has focused on adult psychosocial stress in communities affected by hazardous substances. Comparatively little is known about levels of psychosocial stress among children or other susceptible populations in these settings.

There is a critical need to develop a research instrument to screen children who live in communities at or near hazardous waste sites for elevated stress levels. The instrument will facilitate the establishment of group norms for levels of stress in children and is not intended to provide clinical or diagnostic information on individual children.

The purposes of this project are to: (1) Develop and pilot-test a scale to assess levels and sources of psychosocial stress in children who live in communities at or near hazardous waste sites, (2) modify the scale based on pilot-test results, (3) validate the scale on children living in communities near hazardous waste sites, and (4) provide an evidence base for planning and conducting interventions in affected communities.

In year one, we will pilot test the scale in at least 100 children in two age groups (5th and 9th grade levels) at one or more test sites. We will also conduct semi-structured interviews or focus groups to determine whether additional variables need to be included in the scale. During the second and third years of the project, we will use the scale to screen up to 4,700 children in communities at or near hazardous waste sites. We will then, hopefully, be able to plan effective interventions and to further predict and explain levels of stress in children living around hazardous waste sites. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Children 10–17 years old	5,000	1	30/60	2,500
Total				2,500

Dated: October 8, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–26205 Filed 10–15–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Allotment Percentages to States for Child Welfare Services State Grants

AGENCY: Administration on Children, Youth and Families,Administration for Children and Families, Department of Health and Human Services.

ACTION: Biennial publication of allotment percentages for States under the Title IV–B subpart 1, Child Welfare Services State Grants Program.

SUMMARY: As required by section 421(c) of the Social Security Act (42 U.S.C. 621(c)), the Department is publishing the allotment percentage for each State under the Title IV–B subpart 1, Child Welfare Services State Grants Program. Under section 421(a), the allotment percentages are one of the factors used in the computation of the Federal grants awarded under the Program.

EFFECTIVE DATE: The allotment percentages shall be effective for Fiscal Years 2004 and 2005.

FOR FURTHER INFORMATION CONTACT: Doris Lee, Office of Grants Management, Office of Administration, Administration for Children and Families, 330 C Street, SW., Washington, DC 20201.

SUPPLEMENTARY INFORMATION: The allotment percentage for each State is determined on the basis of paragraphs (b) and (c) of section 421 of the Act. These figures are available on the ACF homepage on the internet: *http://www.acf.dhhs.gov/programs/cb/*. The allotment percentage for each State is as follows:

State	Allotment percentage
Alabama	59.69
Alaska	49.52
Arizona	57.35
Arkansas	62.49
California	46.25
Colorado	45.06
Connecticut	30.53
Delaware	47.05
District of Columbia	34.80
Florida	52.23
Georgia	52.61
Hawaii	52.22
Idaho	59.49
Illinois	45.81
Indiana	54.25
Iowa	55.24
Kansas	53.35
Kentucky	59.24
Louisiana	60.30
Maine	56.54
Maryland	42.71
Massachusetts	36.91
Michigan	50.50
Minnesota	45.84
Mississippi	64.32
Missouri	53.73
Montana	61.16
Nebraska	52.79
Nevada	49.96
New Hampshire	44.28
New Jersey	37.19
New Mexico	62.62
New York	41.19
North Carolina	54.57
North Dakota	58.04
Ohio	52.41
Oklahoma	59.34
Oregon	53.34
Pennsylvania	49.87
Rhode Island	50.58
South Carolina	59.08
South Dakota	56.33
Tennessee	55.53
Texas	52.99
Utah	60.36
Vermont	53.66
Virginia	47.22
Washington	46.96
West Virginia	62.87
Wisconsin	51.93
Wyoming	52.72
American Samoa	70.00
Guam	70.00
N. Mariana Islands	70.00
Puerto Rico	70.00
Virgin Islands	70.00

Dated: October 9, 2002.

Joan Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 02–26291 Filed 10–15–02; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0589]

Agency Information Collection Activities; Announcement of OMB Approval; Extralabel Drug Use in Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Extralabel Drug Use in Animals" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 14, 2002 (67 FR 34456), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0325. The approval expires on September 30, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: October 9, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–26328 Filed 10–15–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0131]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; FDA Rapid Response Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 15, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

FDA Rapid Response Surveys—New Collection

Section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355), requires that important safety information relating to all human prescription drug products be made available to FDA so that it can take appropriate action to protect the public health when necessary. Section 702 of the act (21 U.S.C. 372) authorizes investigational powers to FDA for enforcement of the act.

Under section 519 of the act (21 U.S.C. 360i), FDA is authorized to require manufacturers to report medical-device-related deaths, serious injuries, and malfunctions to FDA and to require user facilities to report device-related deaths directly to FDA and to manufacturers, and to report serious injuries to the manufacturer. Section 522 of the act (21 U.S.C. 360l) authorizes FDA to require manufacturers to conduct postmarket surveillance of medical devices. Section 705(b) of the act (21 U.S.C. 375(b)) authorizes FDA to collect and disseminate information regarding medical products or cosmetics in situations involving imminent danger to health or gross deception of the consumer. Section 903(d)(2) of the act (21 U.S.C. 393(d)(2)) authorizes the Commissioner of Food and Drugs to implement general powers (including conducting research) to carry out effectively the mission of FDA. These sections of the act enable FDA to enhance consumer protection from risks associated with medical products usage that are not foreseen or apparent during the premarket notification and review process.

FDA's regulations governing application for agency approval to market a new drug (21 CFR part 314), regulations governing biological products (21 CFR part 600, *et seq.*), and regulations governing medical devices (21 CFR part 803) implement these statutory provisions.

Currently FDA monitors medical product related postmarket adverse events via both the mandatory and voluntary MedWatch Reporting Systems using FDA Forms 3500 and 3500A (OMB control number 0910–0291), and the Vaccine Adverse Event Reporting System (VAERS).

FDA is seeking OMB clearance to collect vital information via a series of rapid response surveys. Participation in these surveys will be voluntary. This request covers rapid response surveys for community based health care professionals, general type medical facilities, specialized medical facilities (those known for cardiac surgery, obstetrics/gynecology services, pediatric services, etc.), other health care professionals, patients, consumers, and risk managers working in medical facilities.

FDA will use the information gathered from these surveys to obtain quickly vital information about medical product risks and interventions to reduce risks so the agency may take appropriate public health or regulatory action including dissemination of this information as necessary and appropriate.

In the **Federal Register** of April 30, 2002 (67 FR 21253), the agency requested comments on the proposed collection of information. FDA received four comments, but only one pertained to the information collection.

For the purpose of clarity and understanding, the comment will be divided into six sections. The first section is as follows:

The previous notice provides no description of the surveys being proposed, the nature of the information to be sought, the respondents to whom the surveys will be sent, the "triggers" for issuing survey, or proposed use of the results of these surveys.

FDA's response is there have been times when FDA has received notice of medical product problems through its various adverse event-reporting systems and often there is insufficient information to gauge whether or not a significant public health problem exists with respect to a specific medical product. If a significant problem exists, FDA seeks to understand quickly the nature of the problem.

FDA will propose the use of specific FDA Rapid Response Surveys through the submission of a memorandum requesting OMB approval of the survey. Included in this memorandum will be the need for the survey and the timeframe in which FDA needs OMB to make a decision on the survey, and the description of the statistical methods to be used. These include the respondent universe, the sample selection methods, the information collection procedures, the expected response rate and an estimate of the burden. Also included in the request will be a copy of the survey.

Also, if there is a very new problem to FDA, the agency needs to investigate it more before it decides on the proper action. For example, if the results of the survey indicate that problems are more widespread than just a few isolated incidents, the first anticipated action by FDA is to contact the manufacturers or sponsors of the product to discuss the issues. Depending on the manufacturers' responses, the issue could end up in a product recall, or information could be posted on the FDA web site stating that some problems exist with the use of these products. Additionally, the issue may be referred to a center ad-hoc committee or a working group to formulate additional actions. Without first knowing if there is an issue, and what the causes of the problem may be, it is difficult to state the final action. That is why the Rapid Response Survey becomes so important in helping FDA discern the issues.

By going to the manufacturers and sponsors, FDA often needs input from other stakeholders that have firsthand knowledge of the problem and the situation. Here is where the Rapid Response Survey can be invaluable.

The second section of the comment recommends that the notice be reissued with adequate details about the proposed collection of information to

enable the public to understand the proposal so that comments can then be made to the agency based on full knowledge of the proposal.

FDA responds to the comment by stating in the 30-day **Federal Register** notice and in the information collection requirement adequate details about the purpose were added to enable the public to understand the purpose of the proposal. Therefore, FDA is not going to reissue the 60-day **Federal Register** notice, but has considered and responded to all the comments received.

The third section of the comment states that risk management requires the involvement of all stakeholders, including government, industry, health-care professionals, and patients. The role of medical product sponsor appears to be left out of the process.

FDA's response is that medical product sponsors as a stakeholder was omitted inadvertently from the 60-day **Federal Register** notice seeking public comment. They will be included in the 30-day **Federal Register** notice announcing FDA's submission of this information collection to OMB as well as in the justification package sent to OMB.

The fourth section of the comment states that it is unclear to whom the surveys will be directed. Although the notice identifies general groups, there is no discussion of how members of these groups will be identified to participate in the surveys.

The FDA reply is that the agency will determine which groups to which groups will be asked to participate in each particular survey based on the type of medical product problem that occurred. For instance, if the problem dealt with clinical laboratory devices and a perceived problem with antibody assays for detection of the herpes virus and laboratory information systems mixing up pathology reports, FDA would survey the members of the American Society of Microbiology Division C and facilities that use such information that is retrieved from the MedSun system.

Section five deals with the voluntary nature of the surveys risks the collection of potentially confounded, biased, and unconfirmed information on which, according to the notice, the agency intends to "take: appropriate public health or regulatory action."

FDA responds that usually it expects a 70 percent response rate. The impact of a lower response rate to these surveys will be considered before FDA takes action to improve the response rate. FDA may determine that quicker action—development of a public position paper—can be taken based on consistent responses from each of the surveys conducted. If there is a low response rate with no clear pattern of response, the national organization representing that stakeholder group will send a letter to all respondents reminding them to fill out the survey form.

FDA proposes to draw purposeful samples for these surveys. Since the survey data will not be used for estimates of incidence, there is no need for a probability sample. Because these proposed data collections are qualitative, not quantitative, and because FDA resources for processing incoming data limited, FDA proposes to keep these data collection efforts to a manageable size.

The response universe will be kept to those stakeholders that have been identified as appropriate respondents. These will be groups that focus on those specialties and have experience and expertise in those areas.

The sixth and final section of the comment stated that the notice doesn't address the mechanism by which the surveys will produce "rapid responses" from those surveyed. Whether the surveys will be conducted by mail, facsimile, telephone, or the Internet, there is a need to validate the source(s) and medical accuracy of the information provided. One of the hallmarks of responsible risk management is confirmation of the information upon which decisions are based. Decision should not be based on information gathered in haste if/when the source and validity of the data have not been confirmed.

FDA's response is depending on the criticality of the survey and the speed in which the data needs to be returned to FDA, respondents can use mail, faxes, or e-mail for their survey responses. More use of Internet based surveys will be made in the future.

FDA will employ great care in determining the validity of the information received. This will be done through the design of the survey instruments and keeping identifiers for followup if the Center has concerns about the data received. After the data has been verified, the respondents identifying information will be deleted.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
200	30 (maximum)	6,000	.5	3,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA projects 30 emergency risk related surveys per year with a sample of between 50 and 200 respondents per survey. FDA also projects a response time of 0.5 hours (30 minutes) per response.

These estimates are based on the maximum sample size per questionnaire that FDA can analyze in a timely manner. The annual frequency of response was determined by the maximum number of questionnaires that will be sent to any individual respondent. Some respondents may be contacted only one time per year, while other respondents may be contacted several times annually, depending on the human drug, biologic, or medical device under evaluation. It is estimated that, given the expected type of issues that will be addressed by the surveys, it will take 0.5 hours (30 minutes) for a respondent to gather the requested information and fill in the answers.

Dated: October 9, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–26324 Filed 10–15–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0303]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 15, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level (OMB Control Number 0910–0430)—Extension

This information collection approval request is for an FDA guidance on the process for formally resolving scientific and procedural disputes in the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) that cannot be resolved at the division level. The guidance describes procedures for formally appealing such disputes to the office or center level and for submitting information to assist center officials in resolving the issue(s) presented. The guidance provides information on how the agency will interpret and apply provisions of the existing regulations regarding internal agency review of decisions § 10.75 (21 CFR 10.75) and dispute resolution during the investigational new drug application (IND) process (21 CFR 312.48) and the new drug application/abbreviated new drug application (NDA/ANDA) process (21 CFR 314.103). In addition, the guidance provides information on how the agency will interpret and apply the specific Prescription Drug User Fee Act (PDUFA) goals for major dispute resolution associated with the development and review of PDUFA products.

Existing regulations, which appear primarily in parts 10, 312, and 314 (21 CFR parts 10, 312, and 314), establish procedures for the resolution of scientific and procedural disputes between interested persons and the agency, CDER, and CBER. All agency decisions on such matters are based on information in the administrative file (§ 10.75(d)). In general, the information in an administrative file is collected under existing regulations in parts 312 (OMB control number 0910–0014), 314 (OMB control number 0910–0001), and part 601 (21 CFR part 601) (OMB control number 0910–0315), which specify the information that manufacturers must submit so that FDA may properly evaluate the safety and effectiveness of drugs and biological products. This information is usually submitted as part of an IND, NDA, or biologics license application (BLA), or as a supplement to an approved application. While FDA already possesses in the administrative file the information that would form the basis of a decision on a matter in dispute resolution, the submission of particular information regarding the request itself and the data and information relied on by the requestor in the appeal would facilitate timely resolution of the dispute. The guidance describes the following collection of information not expressly specified under existing regulations: The submission of the request for dispute resolution as an amendment to the application for the underlying product, including the submission of supporting information with the request for dispute resolution.

FDA's regulations (§§ 312.23(d), 314.50, 314.94, and 601.2) state that information provided to the agency as part of an IND, NDA, ANDA, or BLA is to be submitted in triplicate and with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs and Form FDA 356h must accompany submissions under NDAs, ANDAs, and BLAs. Both forms have valid OMB control numbers as follows: FDA Form 1571, OMB control number 0910–0014, expires November 30, 2002; and FDA Form 356h, OMB control number 0910–0001, expires March 31, 2005. In the guidance document, CDER and CBER ask that a request for formal dispute resolution be submitted as an amendment to the application for the underlying product and that it be submitted to the agency in triplicate with the appropriate form attached, either Form FDA 1571 or Form FDA 356h. The agency recommends that a request be submitted as an amendment in this manner for the following two reasons: (1) To ensure that each request is kept in the administrative file with the entire underlying application, and (2) to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in the agency's tracking databases enables the appropriate agency official to monitor progress on the resolution of the dispute and to ensure that appropriate steps will be taken in a timely manner.

CDER and CBER have determined and the guidance recommends that the following information should be submitted to the appropriate center with each request for dispute resolution so that the center may quickly and efficiently respond to the request: (1) A brief but comprehensive statement of each issue to be resolved, including a description of the issue, the nature of the issue (i.e., scientific, procedural, or both), possible solutions based on information in the administrative file, whether informal dispute resolution was sought prior to the formal appeal, whether advisory committee review is sought, and the expected outcome; (2) a statement identifying the review division/office that issued the original decision on the matter and, if applicable, the last agency official that attempted to formally resolve the matter; (3) a list of documents in the administrative file, or additional copies of such documents, that are deemed necessary for resolution of the issue(s); and (4) a statement that the previous supervisory level has already had the opportunity to review all of the material relied on for dispute resolution. The information that the agency suggests submitting with a formal request for dispute resolution consists of: (1) Statements describing the issue from the perspective of the person with a dispute, (2) brief statements describing the history of the matter, and (3) the documents previously submitted to FDA under an OMB approved collection of information.

Based on FDA's experience with dispute resolution, the agency expects that most persons seeking formal dispute resolution will have gathered the materials listed previously when identifying the existence of a dispute with the agency. Consequently, FDA anticipates that the collection of information attributed solely to the guidance will be minimal.

Description of Respondents: A sponsor, applicant, or manufacturer of a drug or biological product regulated by the agency under the act or section 351 of the Public Health Service Act who requests formal resolution of a scientific or procedural dispute.

Burden Estimate: Provided below is an estimate of the annual reporting burden for requests for dispute resolution. Based on data collected from review divisions and offices within CDER and CBER, FDA estimates that approximately seven sponsors and applicants (respondents) submit requests for formal dispute resolution to CDER annually and approximately one respondent submits requests for formal dispute resolution to CBER annually. The total annual responses are the total number of requests submitted to CDER and CBER in 1 year, including requests for dispute resolution that a single respondent submits more than one time. FDA estimates that CDER receives approximately 10 requests annually and CBER receives approximately 1 request annually. The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted with a request for formal dispute resolution in accordance with this guidance, including the time it takes to gather and copy brief statements describing the issue from the perspective of the person with the dispute, brief statements describing the history of the matter, and supporting information that has already been submitted to the agency. Based on experience, FDA estimates that approximately 8 hours on average would be needed per response. Therefore, FDA estimates that 96 hours will be spent per year by respondents requesting formal dispute resolution under the guidance.

In the **Federal Register** of July 18, 2002 (67 FR 47385), the agency requested comments on the proposed collections of information. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Request for Formal Dispute Resolution	No. of Respondents	No. of Respondents per Response	Total Annual Responses	Hours per Response	Total Hours
CDER	7	1.4	10	8	80
CBER	1	2	2	8	16
Total					96

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 9, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–26326 Filed 10–15–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0284]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Food Labeling: Health Claims; Record Retention Requirements for the Soy Protein and Risk of Coronary Heart Disease Health Claim

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 15, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Labeling: Health Claims; Record Retention Requirements for the Soy Protein and Risk of Coronary Heart Disease Health Claim—21 CFR 101.82(c)(2)(ii)(B) (OMB Control Number 0910–0428)—Extension

This regulation authorizes a health claim for food labels about soy protein and coronary heart disease (CHD). Section 403(r)(3)(A)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(r)(3)(A)(i)) provides for the use of food label statements characterizing a relationship of any nutrient of the type required to be in the label or labeling of the food to a disease or a health related condition only where that statement meets the requirements of the regulations issued by the Secretary of Health and Human Services to authorize the use of such a health claim. To bear the soy protein and CHD health claim, foods must contain at least 6.25-gram soy protein per reference amount customarily consumed. Analytical methods for measuring total protein can be used to quantify the amount of soy protein in foods that contain soy as the sole source of protein. At the present time, there is no validated analytical methodology available to quantify the amount of soy protein in foods that contain other sources of protein. For these latter foods, FDA must rely on information known only to the manufacturer to assess compliance with the qualifying amount of soy protein. Thus, FDA requires manufacturers to have and keep records to substantiate the amount of soy protein in a food that bears the health claim and contains sources of protein other than soy, and to make such records available to appropriate regulatory officials upon written request. The information collected includes nutrient databases or analyses, recipes or formulations, purchase orders for ingredients, or any other information that reasonably substantiates the ratio of soy protein to total protein.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeepers	Total Annual Records	Hours per Record-keeper	Total Hours
101.82(c)(2)(ii)(B)	25	1	25	1	25

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based upon its experience with the use of health claims, FDA estimates that only about 25 firms would be likely to market products bearing a soy protein/CHD health claim and that only, perhaps, one of each firm's products might contain nonsoy sources of protein along with soy protein. The records required to be retained by 21 CFR 101.82(c)(2)(ii)(B) are the records, e.g., the formulation or recipe, that a manufacturer has and maintains as a normal course of its doing business. Thus, the burden to the food manufacturer is that involved in assembling and providing the records to appropriate regulatory officials for review or copying.

Dated: October 9, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–26327 Filed 10–15–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0309]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Reclassification Petitions for Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 15, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Reclassification Petitions for Medical Devices—21 CFR 860.123 (OMB Control Number 0910–0138)—Extension

FDA has the responsibility under sections 513(e) and (f), 514(b), 515(b), and 520(l) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(e) and (f), 360d(b), 360e(b), and 360j(l)) and part 860 (21 CFR part 860), subpart C, to collect data and information contained in reclassification petitions. The reclassification provisions of the act allow any person to petition for reclassification of a device from any one of the three classes (I, II, and III) to another class. The reclassification content regulation (§ 860.123) requires the submission of sufficient, valid scientific evidence demonstrating that the proposed classification will provide a reasonable assurance of safety and effectiveness of the device for its intended use. The reclassification provisions of the act serve primarily as a vehicle for manufacturers to seek reclassification from a higher to a lower class, thereby reducing the regulatory requirements applicable to a particular device. The reclassification petitions requesting classification from class III to class II or class I, if approved, provide an alternative route to the market in lieu of premarket approval for class III devices.

Description of respondents: Device manufacturers.

FDA estimates the burden of this collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per response	Total Hours
860.123	6	1	6	500	3,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on current trends and actual reclassification petitions received, FDA anticipates that six petitions will be submitted each year. The time required to prepare and submit a reclassification petition, including the time needed to assemble supporting data, averages 500 hours per petition. This average is based upon estimates by FDA administrative and technical staff who are familiar with the requirements for submission of a reclassification petition, have consulted and advised manufacturers on these requirements, and have reviewed the documentation submitted.

Dated: October 9, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–26329 Filed 10–15–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Dermatologic and Ophthalmic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA'S regulatory issues.

Date and Time: The meeting will be held on November 4, 2002, from 8:30 a.m. to 5:30 p.m. and November 5, 2002, from 8 a.m. to 1 p.m.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, e-mail: SomersK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12534. Please call the Information Line for up-to-date information on this meeting.

Agenda: On both the days, committee will make recommendations for the development of a proposed draft guidance concerning the development of products for mild to moderate acne vulgaris. Issues to be considered include: (1) The evidence for effectiveness; (2) appropriate outcome measures and their analyses; (3) possible acceptable indications such as inflammatory, noninflammatory or just mild to moderate acne vulgaris; and (4) means for conveying evidence for effectiveness in the label to enhance its usefulness for clinicians and patients. Time will be included in the agenda for the pharmaceutical industry to present their views on the development of the draft guidance. Please register to present (see *Contact Person*) by October 18, 2002.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 18, 2002. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m. on November 4, 2002, and between approximately 8:15 a.m. and 8:45 a.m. on November 5, 2002. Time allotted for each presentation may be limited. If you wish to make a brief statement during the open public hearing, please contact the Executive Secretary (see Contact Person), by October 18, 2002.

You will be asked to submit a brief summary of your planned statement and provide information on how we may contact you before the meeting.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Karen Templeton-Somers at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 9, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–26330 Filed 10–15–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Infant Formula Subcommittee of the Food Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Infant Formula Subcommittee of the Food Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on scientific issues and principals related to FDA's regulatory issues.

Date and Time: The meeting will be held on November 18, 2002, from 8 a.m. to 6 p.m. and November 19, 2002, from 8 a.m. to 5 p.m.

Location: U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Conference Center, 4700 River Rd., Riverdale, MD, 301–734–8010.

Contact Person: Jeanne E. Latham, Center for Food Safety and Applied Nutrition (HFS–800), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1756, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

Agenda: The meeting's purpose is to discuss the scientific issues and principles involved in assessing and evaluating whether a "new" infant formula supports normal physical growth in infants when consumed as a sole source of nutrition. This is the second meeting of a series of advisory committee meetings to discuss the scientific issues involved in evaluating whether a new infant formula supports normal physical growth.

FDA will post information relating to this meeting on the Internet at *http://www.cfsan.fda.gov/~lrd/vidtel.html*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 1, 2002. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. on November 19, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 13, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jeanne E. Latham at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 9, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–26325 Filed 10–15–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Electroencephalogram and Event-Related Potential Intermediate Phenotypes for Alcoholism in a Low Prevalence American Indian Tribe

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, regarding the opportunity for public comment on proposed data collection projects, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection Title: Electroencephalogram (EEG) and Event-Related Potential (ERP) intermediate phenotypes for alcoholism in a low prevalence American Indian tribe. Type of Information Collection Request: New. Need and Use of Information Collection: An extensive data set has already been collected by the Laboratory of Neurogenetics, NIAAA, on 294 members of a Southeastern American Indian tribe. We propose to re-contact these individuals to collect additional information. Approximately 100 of the original participants were originally selected as a representative sample of the population. The remaining 194 individuals are family members of alcoholic probands from the population sample. We propose to expand the study to collect (a) measures of intermediate phenotypes for alcoholism and (b) survey-based selected personality characteristics from the same tribal members. Intermediate phenotypes are biological traits that may be influenced by variation at fewer genes and may mediate different aspects of the disease. The intermediate phenotype measurements that we will collect include resting EEG phenotypes (low voltage alpha (LVA) and beta spectral power), ERPs and heart rate variability (HRV). LVA has been found to be more abundant in alcoholics with co-morbid anxiety disorders. Increased beta power has been associated with increased risk of relapse. P300 ERP amplitude is reduced in alcoholics and their alcohol-naive children. HRV is a potential intermediate phenotype for alcoholism and major depression. We also propose to administer the Temperament and Character Inventory, a standard, survey-based measure of harm avoidance, novelty seeking, reward dependence, and persistence. The use of such intermediate phenotypes and personality measures is likely to increase our ability to find vulnerability genes for alcoholism. We will use these EEG and EKG intermediate phenotypes and personality dimensions in (1) candidate gene analyses and (2) linkage analyses, utilizing the existing DNA, in order to determine the genes that increase an individual's risk for alcoholism and anxiety disorders.

The re-recruitment of the original study participants will start in spring 2003. The study is expected to run for 6 months. Frequency of response: Once per respondent. Affected Public: Individuals. Type of Respondents: Adult members of the Southeastern American Indian tribe who were participants in the original study.

The reporting burden is as follows: Estimated Number of Respondents: It is estimated, after a survey by tribal members, that we will be able to re-recruit approximately 280 of the 294 original participants. Estimated Number of Responses per Respondent" One response per respondent. Average Burden Hours per Response: Three hours per individual, for a total respondent burden of 840 hours. Estimated Total Annual Burden Hours Requested: 840 hours. There are no Costs to Respondents to report. There are no Capital Costs to report. There are no Operating or Maintenance costs to report.

Request for Comments: Written comments and suggestions from the public and affected agencies are invited on the following points: (1) Whether the data collection is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Mary-Anne Enoch M.D., NIH/NIAAA/DICBR/LNG, 12420 Parklawn Drive, Park 5 Building, Room 451, MSC 8110, Bethesda, MD 20892–8110, or e-mail your request to: *maenoch@niaaa.nih.gov*. Dr. Enoch can be contacted by telephone at 301–496–2727.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: October 7, 2002.

Stephen Long,

Executive Officer, NIAAA.

[FR Doc. 02–26212 Filed 10–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Extended Lung Cancer Incidence Follow-Up for the Mayo Lung Project Participants

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 5, 2002, page 50679–50680 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Extended Lung Gancer Incidence Follow-Up for the Mayo Lung Project Participants. *Type of Information Collection Request:* EXTENSION, OMB No. 0925–0496, expiration date 10–31–2002. *Need and Use of Information Collection:* The Mayo Lung Project (MLP) was an NCI-funded randomized controlled trial (RCT) of lung cancer screening conducted among 9,211 male smokers from 1971 to 1983. No reduction in lung cancer mortality was observed in the MLP with an intense regimen of x-ray and sputum cytology screening. Recent analysis of updated mortality and case survival data (through 1996) suggests that lesions with little-to-no clinical relevance (over-diagnosis) may have been detected through screening in the MLP intervention arm. Over-diagnosis leads to unnecessary medical interventions, including diagnostic and treatment procedures that carry with them varying degrees of risk. Consequently, over-diagnosis can result in considerable harm, including premature death, that would not have occurred in the absence of screening. The persistence, after screening ends, of an excess of lung cancer cases in the intervention arm is the strongest evidence in support of over-diagnosis, but this information cannot be adequately obtained with available MLP data. Therefore, we propose to re-contact the MLP participants and/or their next-of-kin to determine the participants who were diagnosed with lung cancer after the formal end of the Project. These data will allow the NCI to either more-convincingly state or perhaps refute the possibility of over-diagnosis in lung cancer screening, and may be used to guide future research agendas and lung cancer screening policies. *Frequency of response:* Once. *Affected public:* Individuals. *Type of respondents:* MLP participants or their next-of-kin. The annual reporting burden is as follows: *Maximum number of respondents:* 6,223; *Estimated number of Responses per Respondent:* 1. *Average Burden Hours Per Response:* 0.25; *Estimated Maximum Total Annual Burden Hours Requested:* 1,556. The annualized cost to respondents is estimated at zero. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the colletion of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20530, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Pamela Marcus, Epidemiologist, Biometry, Research Group, Division of Cancer Prevention, National Cancer Institute, Suite 3131 EPN, 6130 Executive Blvd, Bethesda, MD 20892–7354; or call non-toll free 301–496–7468; or e-mail *pm145q@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: October 7, 2002.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 02–26213 Filed 10–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications and issued patents listed below may be obtained by contacting Peter A. Soukas, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 268; fax: 301/402–0220; e-mail: *soukasp@od.nih.gov*. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Novel Spore Wall Proteins and Genes From Microsporidia

J. Russell Hayman, John T. Conrad, Theodore Nash (NIAID)
DHHS Reference No. E–125–01/0
Filed 04 Dec 2001

Microsporidia are obligate intracellular organisms that infect a wide variety of animals ranging from insects and fish to mammals, including humans. Of over 1,000 microsporidial species identified, at least 13 are known to infect humans. The species most commonly identified in humans are members of the families Encephalitozoonidae and Enterocytozoonidae. In humans, microsporidiosis is most often found in HIV/AIDS patients and commonly results in severe diarrhea and wasting. However, microsporidiosis also occurs in immunocompetent individuals and common farm animals. The disease is transmitted via environmentally resistant spores.

This invention claims two spore wall constituents (SWP1 and SWP2) from the microsporidian *Encephalitozoon intestinalis* and the genes from which these two proteins are derived. Further claimed are methods of diagnosing and treating microsporidiosis in a subject. Also claimed are methods for producing an immunoprotective response in a subject. SWP1 is expressed on the surfaces of developing sporonts and SWP2 is expressed on the surfaces of fully formed sporonts. Therefore, they should be exposed to the host cell environment. Based on this theory, antibody responses to SWP1 and SWP2 were addressed in an in vivo mouse model. Immunoprecipitation and Western blot analyses indicated that SWP1 and SWP2 are immunogenic in mouse infections.

This invention is further described in Hayman *et al.*, "Developmental expression of two spore wall proteins during maturation of the microsporidian *Encephalitozoon intestinalis*," *Infect. Immun.* 2001 Nov;69(11):7057–66.

Method for Determining Sensitivity to a Bacteriophage

Carl R. Merril (NIMH), Sankar Adhya (NCI), Dean M. Scholl (NIMH)
DHHS Reference No. E–318–00/0
Filed 23 Jan 2002

Traditionally, chemical antibiotics have been used to treat a variety of bacterial infections. However, bacterial resistance to current antibiotics is an increasingly serious problem in human and veterinary health as well as agriculture. Many experts believe that strains of disease-causing bacteria resistant to all common antibiotics will arise in the next ten to twenty years. Bacteriophages offer a promising therapeutic alternative to antibiotics for these antibiotic resistant bacteria. There are also situations in which bacteriophage may be more suitable than antibiotics to treat infections caused by against antibiotic-sensitive bacteria. Bacteriophages are highly host-specific, thus determining whether a phage would be therapeutically useful against a particular bacterium or strain of bacteria is very important but can be a time-consuming and labor-intensive process.

The current invention claims a method for selecting a therapeutic bacteriophage that would be effective against a particular disease-causing bacteria, comprising a number of bacteriophages containing reporter nucleic acids capable of being expressed when the bacteriophage infects a bacterial cell. These bacteriophages are separately contacted with a sample contaminated by a bacterium. Expression of the reporter is then detected, indicating which bacteriophage has infected a bacterial cell and is thus a potential therapeutic phage against the particular bacteria. Also claimed in the application are kits allowing for the rapid identification of potentially therapeutic bacteriophages.

Four Chimpanzee Monoclonal Antibodies That Neutralize Hepatitis A Virus

Darren Schofield, Suzanne Emerson, Robert Purcell (NIAID)
DHHS Reference No. E–356–01/0
Filed 07 Nov 2001

This invention claims antibodies and/or fragments thereof specific for hepatitis A virus (HAV) and the use of the antibodies in the diagnosis, prevention, and treatment of hepatitis A. Hepatitis A is the most common type of hepatitis reported in the United States, which reports an estimated 134,000 cases annually, and infects at least 1.4 million people worldwide each year. HAV is a positive sense RNA virus that is transmitted via the fecal-oral route, mainly through contaminated water supplies and food sources. HAV is thought to replicate in the oropharynx and epithelial lining of the intestines, where it initiates a transient viremia and subsequently infects the liver. Humoral immunity has been shown to provide an effective defense against Hepatitis A. Prior to the availability of the current inactivated virus vaccines, pooled human immune globulin preparations were routinely used to protect individuals traveling to areas of the world where HAV is endemic. Chimpanzees are susceptible to infection with HAV and can produce antibodies that neutralize the virus. Chimpanzee immunoglobulins are virtually identical to those of humans; thus, they have the same potential as human antibodies for clinical applications. The inventors have shown that the four chimpanzee monoclonal antibodies described in the patent application neutralized HAV strains HM–175, AGM–27, and the HM–175 VP3–070 mutant. Since only a single serotype of HAV has been identified, these antibodies are predicted to neutralize most, if not all, isolates of HAV.

Efficient Inhibition of HIV–1 Viral Entry Through a Novel Fusion Protein Including CD4

James Arthos, Claudia Cicala, Anthony Fauci (NIAID)
DHHS Reference No. E–337–01/0
Filed 25 Oct 2001

This invention relates to CD4 fusion proteins for use in the treatment of an immunodeficiency virus infection such as human immunodeficiency virus (HIV). These polypeptides have been shown by the inventors to inhibit the entry of primary isolates of HIV–1 into CD4+ T cells by targeting the gp120 subunit of the HIV–1 envelope. The invention claims recombinant polypeptides comprising a CD4 polypeptide ligated at its C-terminus with a portion of a human immunoglobulin comprising a hinge region and two constant domains of an immunoglobulin heavy chain. The portion of the IgG is fused at its C-terminus with a polypeptide comprising a tailpiece from the C terminus of the heavy chain of an IgA antibody. This protein is very large (greater than 800 kilodaltons), which may contribute to its ability to inhibit entry of primary isolates of HIV–1 into T cells. It presents twelve gp120 binding domains (D1D2) and can bind at least ten gp120s simultaneously. The inventors have shown that the construct efficiently neutralizes primary isolates from different HIV subgroups. Also claimed are use of the construct as a component of a vaccine and as a diagnostic.

Novel Antimalarial Compounds, Methods of Synthesis Thereof, Pharmaceutical Compositions Comprising Same, and Methods of Using Same for Treatment and Prevention of Malaria

Michael R. Boyd (NCI), Gerhard Bringmann (EM), Sven Harmsen (EM) Roland Gotz (EM), T. Ross Kelly (EM), Matthias Wenzel (EM), Guido Francois (EM), J. D. Phillipson (EM), Laurent A. Assi (EM), Christopher Schneider (EM)
DHHS Reference No. E–090–94/0, Issued as U.S. Patent 5,639,761 on 17 Jun 1997
DHHS Reference No. E–090–94/1, Filed 16 Apr 1997
DHHS Reference No. E–200–94/0, Issued as U.S. Patent 5,552,550 on 03 Sep 1996
DHHS Reference No. E–200–94/1, Issued as U.S. Patent 5,763,613 on 09 Jun 1998
DHHS Reference No. E–200–94/2, Issued as U.S. Patent 6,140,339 on 31 Oct 2000
DHHS Reference No. E–200–94/4, Filed 16 Mar 2000
DHHS Reference No. E–201–94/0, Issued as U.S. Patent 5,571,919 on 05 Nov 1996
DHHS Reference No. E–201–94/2, Issued as U.S. Patent 5,578,729 on 26 Nov 1996
DHHS Reference No. E–201–94/3, Issued as U.S. Patent 5,789,594 on 04 Aug 1998
DHHS Reference No. E–201–94/4, Issued as U.S. Patent 5,786,482 on 28 Jul 1998

According to data recently reported by the World Health Organization (WHO), the death rate from malaria exceeds one million individuals per year. The Public Health Service seeks exclusive or non-exclusive licensee(s) to develop and commercialize the technology claimed within the portfolio of U.S. patents issued and pending, and corresponding international patents issued and pending. These patents and pending applications claim an exceptionally broad universe of novel naphthylisoquinoline alkaloid compounds, and methods of total synthesis thereof. Representative examples of these compounds have been shown to have potent *in vitro* activity against malaria parasites, including parasites that are highly resistant to available antimalarial drugs. Representative examples have also been shown to have potent *in vivo* activity against malaria parasites in animal models. Pharmaceutical compositions comprising these compounds, as well as methods of using the compounds to treat or prevent a malarial infection of a host, are claimed. The relative structural simplicity of this class of compounds, and the ready synthetic access thereto, provide unprecedented opportunities for structure-activity relationship (SAR), lead-optimization and antimalarial drug development. The technology is further described in the following publications: *J. Nat Prod.* 1997 Jul.;60(7):677–83 and *Bioorg. Med. Chem. Lett.* 1998 Jul.;8(13): 1729–34.

A Novel Chimeric Protein for Prevention and Treatment of HIV Infection

Edward A. Berger (NIAID), Christie M. Del Castillo
DHHS Reference No. E–039–99/0 Filed 16 Mar 1999; PCT/US00/06946 Filed 16 Mar 2000
DHHS Reference No. E–039–99/2 Filed 13 Sep 2001

This invention relates to bispecific fusion proteins effective in viral neutralization. Specifically, the invention is a genetically engineered chimeric protein containing a soluble extracellular region of human CD4 attached via a flexible polypeptide linker to a single chain human monoclonal antibody directed against a CD4-induced, highly conserved HIV gp120 determinant involved in coreceptor interaction. Binding of the sCD4 moiety to gp120 induces a conformational change that enables the antibody moiety to bind, thereby blocking Env function and virus entry. This novel bispecific protein displays neutralizing activity against genetically diverse primary HIV–1 isolates, with potency at least 10-fold greater than the best described HIV–1 neutralizing monoclonal antibodies. The agent has considerable potential for prevention of HIV–1 infection, both as a topical microbicide and as a systemic agent to protect during and after acute exposure (*e.g.* vertical transmission, post-exposure prophylaxis). It also has potential utility for treatment of chronic infection. Such proteins, nucleic acid molecules encoding them, and their production and use in preventing or treating viral infections are claimed.

Bacteriophage Having Multiple Host Range

Carl Merril (NIMH), Sankar Adhya (NCI), Dean Scholl (NIMH)
DHHS Reference No. E–257–00/0 Filed 25 Jul 2000; PCT/US01/22390 Filed 25 Jul 2001

Recently, there has been a renewed interest in the use of phages to treat bacterial infections. The inventors have discovered FK1–5, a highly lytic, non-lysogenic, stable bacteriophage with the ability to kill bacteria rapidly, making it a good candidate for phage therapy. The designation FK1–5 denotes the phage's ability to infect *E. coli* strains that contain the K1 polysaccharide in their outer capsule as well as *E. coli* strains that contain the K5 polysaccharide in their outer capsule. Sequence analysis of the tail proteins of phage FK1–5 by the inventors has shown that they are arranged in a cassette structure, suggesting that the host range of phages can be broadened to other K antigens, and even possibly other species of bacteria by recombinant techniques. FK1–5 has a particular advantage because it recognizes and attaches to the structures that confer virulence to bacteria. The inventors' demonstration that a phage can contain multiple tail proteins that expand its host range is useful for generating phage with broad-spectrum antibacterial properties for the treatment of infectious diseases. The inventors have completed *in vitro* studies on this phage. Furthermore, because of the possibility of engineering the expression of recombinant tail proteins, gene transfer to organisms that are not normally infected by phages is also contemplated by the invention.

Vaccine for Protection Against *Shigella sonnei* Disease

Dennis J. Kopecko, De-Qi Xu, John O. Cisar (FDA)
DHHS Reference No. E–210–01/0
Filed 16 Jan 2002

Shigellosis is a global human health problem. Transmission usually occurs by contaminated food and water or through person-to-person contact. The bacterium is highly infectious by the oral route, and ingestion of as few as 10 organisms can cause an infection in volunteers. An estimated 200 million people worldwide suffer from shigellosis, with more than 650,000 associated deaths annually. A recent CDC estimate indicates the occurrence of over 440,000 annual shigellosis cases in the United States alone, approximately eighty percent (80%) of which are caused by *Shigella sonnei*. *Shigella sonnei* is more active in developed countries. *Shigella* infections are typically treated with a course of antibiotics. However, due to the emergence of multidrug resistant *Shigella* strains, a safe and effective vaccine is highly desirable. No vaccines against *Shigella* infection currently exist. Immunity to *Shigellae* is mediated largely by immune responses directed against the serotype specific O-polysaccharide. Claimed in the invention are compositions and methods for inducing an immunoprotective response against *S. sonnei*. Specifically, an attenuated bacteria capable of expressing an *S. sonnei* antigen comprised of the *S. sonnei* form I O-polysaccharide expressed from the *S. sonnei* rfb/rfc gene cluster is claimed. The inventors have shown that the claimed vaccine compositions showed 100 percent protection against parenteral challenge with virulent *S. sonnei* in mice.

Vaccine Against *Eschericha coli* 0157 Infection, Composed of Detoxified LPS Conjugated to Proteins

Shousun C. Szu, Edward Konadu, and John B. Robbins (NICHD)
DHHS Reference No. E–158–98/0 Filed 20 July 1998 (PCT/US98/14976)
DHHS Reference No. E–158–98/1 Filed 22 Jan 2001

This invention is a conjugate vaccine to prevent infection, in particular in young children under 5 years of age, by *E. coli* 0157:H7, an emerging human pathogen which causes a spectrum of illnesses with high morbidity and mortality, ranging from diarrhea to hemorrhagic colitis and hemolytic-uremic syndrome (HUS). Infection is due to the consumption of water or meat contaminated by feces from infected animals, such as cattle. The conjugate is composed of the O-specific polysaccharide isolated from *E. coli* 0157, or other Shiga-toxin producing bacteria, conjugated to carrier proteins, such as non-toxic *P. aeruginosa* exotoxin A or Shiga toxin 1. A Phase I clinical trial, involving adult humans, showed the vaccine is safe and highly immunogenic. Adults, after one injection containing 25 μg of antigen, responded with high titers of bactericidal antibodies. Thus the conjugates of the invention are promising vaccines, especially for children and the elderly, who are most likely to suffer serious consequences from infection. The clinical study is described in *J. Infectious Diseases* 177, 383–387, 1998.

Murine Monoclonal Antibodies Effective To Treat Respiratory Syncytial Virus

Robert Chanock, Brian Murphy, Judy Beeler, and Kathleen van Wyke Coelingh (NIAID)
DHHS Reference No. B–056–94/1

Available for licensing through a Biological Materials License Agreement are the murine MAbs described in Beeler, J.A. *et al*, "Neutralization Epitopes of the F Glycoprotein of Respiratory Syncytial Virus: Effect of Mutation Upon Fusion Function," *J. Virology* 63:2941–2950 (1989). The

MAbs that are available for licensing are the following: 1129, 1153, 1142, 1200, 1214, 1237, 1121, 1112, 1269, and 1243. One of these MAbs, 1129, is the basis for a humanized murine MAb (see U.S. Patent Number 5,824,307 to humanized 1129 owned by MedImmune, Inc.), recently approved for marketing in the United States. MAbs in the panel reported by Beeler, *et al.* have been shown to be effective therapeutically when administered into the lungs of cotton rats by small-particle aerosol. Among these MAbs several exhibited a high affinity (approximately 10^{9-1}) for the RSV F glycoprotein and are directed at epitopes encompassing amino acid 262, 272, 275, 276 or 389. These epitopes are separate, nonoverlapping and distinct from the epitope recognized by the human Fab of U.S. Patent 5,762,905 owned by The Scripps Research Institute.

Cloned Genomes of Infectious Hepatitis C Virus and Uses Thereof

Masayuki Yanagi, Jens Bukh, Suzanne U. Emerson, Robert H. Purcell (NIAID)
DHHS Reference No. E–050–98/0, Issued as U.S. Patent 6,153,421 on 28 Nov 2000
DHHS Reference No. E–050–98/2 Filed 14 Sep 2000; Canadian Application 2295552; Australian Application 84889/98; European Application 98935702.5

The current invention provides nucleic acid sequences comprising the genomes of infectious hepatitis C viruses (HCV) of genotype 1a and 1b. It covers the use of these sequences, and polypeptides encoded by all or part of the sequences, in the development of vaccines and diagnostic assays for HCV and the development of screening assays for the identification of antiviral agents for HCV. Additional information can be found in Yanagi *et al.*, (1997) *Proc. Natl. Acad. Sci.*, USA 94, 8738–8743 and Yanagi *et al.*, (1998) *Virology* 244, 151–172.

Infectious cDNA Clone of GB Virus B and Uses Thereof

Jens Bukh, Masayuki Yanagi, Robert H. Purcell, Suzanne U. Emerson (NIAID)
DHHS Reference No. E–173–99/0 Filed 04 Jun 1999; PCT/US00/15293 Filed 02 Jun 2000
DHHS Reference No. E–173–99/2 Filed 03 Dec 2001

The current invention provides nucleic acid sequences comprising the genomes of infectious GB virus B, the most closely related member of the Flaviviridae to hepatitis C virus (HCV). It also covers chimeric GBVB–HCV sequences and polypeptides for use in the development of vaccines and diagnostic assays for HCV and the development of screening assays for the identification of antiviral agents for HCV. Additional information can be found in Bukh *et al.* (1999), *Virology* 262, 470–478.

HCV/BVDV Chimeric Genomes and Uses Thereof

Jae-Hwan Nam, Jens Bukh, Robert H. Purcell, Suzanne U. Emerson (NIAID)
DHHS Reference No. E–102–99/0
Filed 04 June 1999
PCT/US00/15527 Filed 02 Jun 2000
DHHS Reference No. E–102–99/2
Filed 04 Dec 2001

The current invention provides nucleic acid sequences comprising chimeric viral genome of hepatitis C Virus (HCV) and bovine viral diarrhea viruses (BVDV). The chimeric viruses are produced by replacing the structural region or a structural gene of an infectious BVDV clone with the corresponding region or gene of an infectious HCV. It covers the use of these sequences and polypeptides encoded by all or part of the sequences in the development of vaccines and diagnostic assays for HCV and the development of screening assays for the identification of antivifal agents for HCV.

Cloned Genome of Infectious Hepatitis C Virus of Genotype 2a and Uses Thereof

Jens Bukh, Masayuki Yanagi, Robert H. Purcell, Suzanne U. Emerson (NIAID)
DHHS Reference No. E–100–99/0 Filed 04 Jun 1999
PCT/US00/15466
Filed 02 Jun 2000
DHHS Reference No. E–100–99/2
Filed 03 Dec 2001

The current invention provides a nucleic acid sequence comprising the genome of infectious hepatitis C viruses (HCV) of genotype 2a. The encoded polyprotein differs from those of the infectious clones of genotypes 1a and 1b (U.S. Patent 6,153,421) by approximately 30 percent. It covers the use of this sequence and polypeptides encoded by all or part of the sequence, in the development of vaccines and diagnostic assays for HCV and the development of screening assays for the identification of antiviral agents for HCV. Additional information can be found in Yanagi *et al.* (1999), *Virology* 262, 250–263.

Dated: September 30, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–26211 Filed 10–15–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee 1—Clinical Sciences and Epidemiology.

Date: November 18, 2002.

Time: 8 a.m. to 9 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Cancer Institute, Building 31, C Wing, 6th Floor, Conference Rooms 6, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Abby B. Sandler, PhD, Scientific Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2114, Rockville, MD 20852, (301) 496–7628.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalog of Federal Domestic Assistant Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–26297 Filed 10–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee 2—Basic Sciences.

Date: November 18–19, 2002.

Time: 7 p.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Florence E. Farber, PhD, Executive Secretary, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2115, Rockville, MD 20852, (301) 496–7628.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–26298 Filed 10–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, Clinical AIDS Trial.

Date: November 21, 2002.

Time: 6 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, 4300 Military Road, NW., Chevy Chase, MD 20015.

Contact Person: Jeanette M. Hosseini, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, (301) 451–2020.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: October 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–26300 Filed 10–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, NEI Core (P30), Infrastructure (R24) and Basic Science (K08, K23) Award Applications.

Date: November 19, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, 4300 Military Road, NW., Chevy Chase, MD 20015.

Contact Person: Anne E. Schaffner, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, 6120 Executive Blvd., Suite 350, Bethesda, MD 20892, 301–451–2020.

(Catalog of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: October 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–26296 Filed 10–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Population Research Subcommittee, Demographic and Behavioral Sciences (DBS) Review Committee.

Date: October 31–November 1, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD., Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Blvd., Rm. 5E01, MSC 7510, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–26299 Filed 10–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Natural Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Molecular and Cellular Biophysics Study Section.

Date: October 17–18, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue NW, Washington, DC 20009.

Contact Person: Nancy Lamontagne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *lamontan@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Pathology A Study Section.

Date: October 22–23, 2002.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–C (03) BBBP–5 Member reviews in Mental Disorders.

Date: November 1, 2002.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0902, *krausem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–X (40) Site Visit at Irvine.

Date: November 3–5, 2002.

Time: 7 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Crown Plaza, 17941 Von Karman Avenue, Irvine, CA 92614–6253.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337–93.396, 93.837–93.844, 93.846–93.878, 93.893, National Institutes of Health, HHS)

Dated: October 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–26295 Filed 10–15–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Bureau of Indian Affairs

Office of the Special Trustee for American Indians

Tribal Consultation on Indian Trust Asset Management

AGENCY: Office of the Secretary, Bureau of Indian Affairs, Office of the Special Trustee for American Indians, Interior.

ACTION: Notice of Tribal Consultation Meeting.

SUMMARY: The Office of the Secretary, along with the Bureau of Indian Affairs and the Office of the Special Trustee for American Indians, will conduct a meeting on Indian trust asset management. The purpose of the meeting is to discuss any proposed reorganization of the Department's trust responsibility functions to improve the management of Indian trust assets. Any tribe, band, nation or individual is encouraged to attend the meeting and to submit written comments.

DATES: The meeting will be held on October 23, 2002, in Billings, Montana.

ADDRESSES: The address for the consultation meeting, which will begin promptly at 9 a.m. and continue until 3:30 p.m., is Billings Hotel and Convention Center, 1223 Mullowney Lane, Billings, Montana. Telephone number is 406/248–7151.

FOR FURTHER INFORMATION CONTACT: Aurene Martin, Deputy Assistant Secretary-Indian Affairs, 1849 C Street, NW., MS 4140 MIB, Washington, DC 20240, telephone 202/208–7163.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to involve affected and interested parties in the process of organizing the Department's trust asset management responsibility functions. The Department has determined that there is a need for dramatic change in the management of Indian trust assets. Accordingly, the Department has already held seven (7) tribal consultation meetings on this matter across the country. However, based upon the comments received from those meetings and further inquiries from tribal entities, this additional meeting was felt to be in the best interest of consultation.

Written comments may be submitted at the Billings, Montana, meeting or may be mailed to the address indicated under the heading **FOR FURTHER INFORMATION CONTACT.** Interested persons may examine written comments during regular business house (7:45 a.m. to 4:15 p.m. ET) in the Office of the Assistant Secretary—Indian Affairs, Washington, DC, Monday through Friday, except for Federal holidays. Commenters who wish to remain anonymous must clearly state this preference at the beginning of their written comments. The Department will honor requests for anonymity to the extent allowable by law.

These meetings support administrative policy on tribal consultation by encouraging maximum direct participation of representatives of tribal governments, tribal organizations and other interested persons in important Department processes.

Dated: October 10, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–26372 Filed 10–15–02; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–9262; Parcels A and B, CAA–11]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation for approximately 16 acres of land located on Nunivak Island. Notice of this decision will be published four consecutive weeks in the *Anchorage Daily News.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision, shall have until November 15, 2002 to file an appeal.

2. Parties receiving service by certified mail shall have until 30 days from the receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: Copies of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, # 13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Chris Sitbon, (907) 271–3226.

Chris Sitbon,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 02–26251 Filed 10–15–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1430–ET; MIES–12614, MIES–50201]

Public Land Order No. 7544; Revocation of Executive Order Dated October 16, 1866; Michigan

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety, an Executive Order which reserved 857.62 acres of public lands for use by the United States Coast Guard for the Gull Rock and Big Sable Lighthouses. The reservation is no longer needed. This action will open 57.5 acres to surface entry. The remaining lands have either been conveyed out of Federal ownership or have been declared as excess property and reported to the General Services Administration.

EFFECTIVE DATE: November 15, 2002.

FOR FURTHER INFORMATION CONTACT: Ed Ruda, BLM Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, (703) 440–1663.

SUPPLEMENTARY INFORMATION: The lands occupied by Gull Rock Lighthouse reservation have been determined to be unsuitable for return to public domain status and have been reported as excess property to the General Services Administration. All other lands, except those described in Paragraph 2 below, have been conveyed out of Federal ownership.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated October 16, 1866, which reserved 857.62 acres of public lands for lighthouse purposes, is hereby revoked in its entirety.

2. At 10 a.m. on November 15, 2002, the following described land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on November 15, 2002, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Michigan Meridian

T. 19 N., R. 18 W.,
Sec. 7, S½ lot 1 and lot 2.
The area described contains 57.5 acres in Mason County as shown by the May 28, 1839 survey plat.

Dated: October 1, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–26249 Filed 10–15–02; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–032–1430–EU; WIES–051103]

Realty Action: Direct Sale of Public Lands, Wisconsin

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; direct sale of public lands in Milwaukee County, Wisconsin.

SUMMARY: The Bureau of Land Management has determined that the below listed public lands located in Milwaukee County, Wisconsin are suitable for sale utilizing direct noncompetitive procedures, at not less than the fair market value. In accordance with section 7 of the Act of June 28, 1934, as amended, 43 U.S.C. 315f and EO 6964, the described lands are hereby classified as suitable for disposal under the authority of section 203 of the Act of October 21, 1976; 43 U.S.C. 1713.

Fourth Principle Meridian

T. 28 N., R. 39 W.,
Tract 37 and Tract 38

The above lands aggregate 3.97 acres.

FOR FURTHER INFORMATION CONTACT: Paul J. Salvatore, Realty Specialist, Bureau of Land Management, Milwaukee Field Office, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin 53203, (414) 297–4413.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface estate of the above described lands to the National Audubon Society—Schlitz Audubon Center, by direct sale, at fair market value. The disposal of this land will resolve an inadvertent unauthorized use

on public land. It has been determined that the subject lands contain no mineral values; therefore, mineral interests may be conveyed simultaneously.

The proposed sale is consistent with the Wisconsin Resource Management Plan Amendment and would serve important public objectives which could not be achieved by other means. The lands contain no other known public values. The planning document and environmental assessment covering the proposed sale are available for review at the Bureau of Land Management, Milwaukee Field Office, Milwaukee, Wisconsin.

Upon publication of this notice in the **Federal Register**, the above described lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws.

For a period of 45 days after issuance of this notice, interested parties may submit comments to the Field Manager, Milwaukee Field Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: July 2, 2002.

James W. Dryden,

Milwaukee Field Manager.

[FR Doc. 02–26250 Filed 10–15–02; 8:45 am]

BILLING CODE 4310–PN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Conservation Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: To meet the requirements of the Reclamation Reform Act of 1982 and the Central Valley Project Improvement Act of 1992 (CVPIA), the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Management Plans (Criteria). Note: For the purpose of this announcement, Water Management Plans are considered the same as Water Conservation Plans (Plans). The CVPIA requires Reclamation to evaluate, and revise if necessary, the Criteria every 3 years. Reclamation is publishing this notice to allow the public to comment on the revised draft 2002 Criteria. Public comment on the revised Criteria is invited at this time. The draft revision is available for review and comment. A copy of the draft revision can be found at the following website: *http://www.mp.usbr.gov/watershare/documents/files/cvpia/draft2002cvpiacriteria.pdf.*

A copy of the draft revision can be obtained by contacting persons at the address below. After the review period, if no significant changes are made based on comments from the public, the Criteria will be final. After the Criteria is final, it will be used to evaluate water conservation plans.

DATES: All public comments must be received by November 15, 2002.

ADDRESSES: Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure. We will honor such requests to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety. For copies contact Leslie Barbre, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, 916–978–5232 (TDD 978–5608), or e-mail at *lbarbre@mp.usbr.gov*. Please mail comments to Bryce White, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California, 95825, or contact at 916–978–5208 (TDD 978–5608), or e-mail at *bwhite@mp.usbr.gov*.

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Leslie Barbre or Bryce White at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on the revision of the Criteria. Section 3405(e) of the CVPIA (Title 34 Pub. L. 102–575), requires the "Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop Criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by Section 210 of the Reclamation Reform Act of 1982." Also, according to Section 3405(e)(1), these criteria must be developed "* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices." The Criteria have the following applicability statements:

Who Must Use These Criteria. These Criteria apply to water management plans submitted to Reclamation as required by applicable Central Valley Project water delivery contract or any contract that specifically invokes these criteria.

Exceptions. The following are excepted from the requirement to prepare a water management plan using these criteria:

- All Contractors that receive only irrigation water from any Federal Reclamation project, and deliver said water to less than 2,000 acres of land.
- All Contractors that receive only municipal and industrial (urban) water from any Federal Reclamation project, and provide said water to less than 3,300 people.
- All Contractors that receive less than an annual average of 2,000 acre-feet from any Federal Reclamation project.

Reclamation will evaluate Plans based on the Criteria. The CVPIA requires Reclamation to evaluate, and revise if necessary, the Criteria every 3 years. The Criteria were previously revised in 1996 and 1999.

Dated: October 1, 2002.

Donna E. Tegelman,

Regional Resources Manager.

[FR Doc. 02–26068 Filed 10–15–02; 8:45 am]

BILLING CODE 4310–MN–P

LEGAL SERVICES CORPORATION

Notice of Intent To Award—Grant Awards for the Provision of Civil Legal Services to Eligible Low-Income Clients Beginning January 1, 2003

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to make FY 2003 Competitive Grant Awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal services to eligible low-income clients, beginning January 1, 2003.

DATES: All comments and recommendations must be received on or before the close of business on November 15, 2002.

ADDRESSES: Legal Services Corporation—Competitive Grants, Legal Services Corporation, 750 First Street NE., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Reginald Haley, Office of Program Performance, (202) 336–8827.

SUPPLEMENTARY INFORMATION: Pursuant to LSC's announcement of funding availability on April 22, 2002 (67 FR 19596), June 24, 2002 (67 FR 42588), and Grant Renewal applications due on August 12, 2002, LSC will award funds to one or more of the following organizations to provide civil legal services in the indicated service areas. Funding amounts shown are based on the 2000 census data as discussed in LSC Program Letter 02–8. Amounts are subject to change.

State & service area	Applicant name	Anticipated FY 2003 award
Alabama:		
AL–1	Legal Services Corp of Alabama, Inc	$4,385,466.
AL–2	Legal Services of North-Central Alabama	556,985.
AL–3	Legal Services of Metro Birmingham	871,136.
MAL	Texas Rural Legal Aid, Inc	27,150.
Alaska:		
AK–1	Alaska Legal Services Corporation	672,721.
NAK–1	Alaska Legal Services Corporation	489,766.
Arkansas:		
AR–6	Legal Aid of Arkansas, Inc	1,356,494.
AR–7	Center for Arkansas Legal Services	2,029,575.
MAR	Texas Rural Legal Aid, Inc	59,127.
Arizona:		
AZ–2	DNA-Peoples Legal Services, Inc	479,861.
AZ–3	Community Legal Services, Inc	3,500,408.
AZ–5	Southern Arizona Legal Aid, Inc	1,708,028.
MAZ	Community Legal Services, Inc	157,226.
NAZ–5	DNA-Peoples Legal Services, Inc	2,363,143.
NAZ–6	Southern Arizona Legal Aid, Inc	577,248.
NM–1	DNA-Peoples Legal Services, Inc	196,533.
NNM–2	DNA-Peoples Legal Services, Inc	20,575.
California:		
CA–1	California Indian Legal Services, Inc	30,446.
CA–2	Greater Bakersfield Legal Assist	834,649.
CA–12	Inland Counties Legal Services, Inc	3,697,803.
CA–14	Legal Aid Society of San Diego, Inc	2,620,612.
CA–19	Legal Aid Society of Orange County, Inc	3,639,546.
CA–26	Central California Legal Services	2,634,576.
CA–27	Legal Services of Northern CA, Inc	3,256,152.
CA–28	Bay Area Legal Aid	3,870,775.
CA–29	Legal Aid Foundation of Los Angeles	7,298,912.
CA–30	Neigh. Legal Services of Los Angeles County	4,271,630
CA–31	California Rural Legal Assist. Inc	4,289,877.
MCA	California Rural Legal Assist. Inc	2,929,593.
NCA–1	California Indian Legal Services, Inc	800,093.
Colorado:		
CO–6	Colorado Legal Services	3,122,528.
MCO	Colorado Legal Services	131,700.
NCO–1	Colorado Legal Services	86,971.
Connecticut:		
CT–1	Statewide Legal Services of Connecticut, Inc	2,154,255.
NCT–1	Pine Tree Legal Assistance, Inc	14,178.
Delaware: DE–1	Legal Services Corporation of Delaware, Inc	558,441.
District of Columbia: DC–1	Neighborhood Legal Services Program of DC	916,149.
Florida:		
FL–1	Central Florida Legal Services, Inc	1,178,134.
FL–2	LA Service of Broward County	1,455,991.
FL–3	Florida Rural Legal Services, Inc	2,672,193.
FL–4	Jacksonville Area Legal Aid	855,173.
FL–5	Legal Services of Greater Miami Inc	3,194,314.
FL–6	Legal Services of North Florida, Inc	899,650.
FL–7	Greater Orlando Area Legal Services, Inc	1,149,026.
FL–8	Bay Area Legal Services, Inc	1,254,731.
FL–9	Withlacoochee Area Legal Services, Inc	522,280.
FL–10	Three Rivers Legal Services, Inc	688,233.
FL–11	Northwest Florida Legal Services, Inc	420,098.
FL–12	Gulfcoast Legal Services Inc	1,112,012.
MFL	Florida Rural Legal Services, Inc	935,141.
Georgia:		
GA–1	Atlanta Legal Aid Society, Inc	2,322,525.
GA–2	Georgia Legal Services Program	5,951,253.
MGA	Georgia Legal Services Program	375,613.
Guam: GU–1	Guam Legal Services Corporation	291,093.

State & service area	Applicant name	Anticipated FY 2003 award
Hawaii:		
HI–1	Legal Aid Society of Hawaii	1,176,963.
MHI	Legal Aid Society of Hawaii	81,709.
NHI–1	Native Hawaiian Legal Corporation	207,446.
Idaho:		
ID–1	Idaho Legal Aid Services, Inc	1,062,281.
MID	Idaho Legal Aid Services, Inc	182,109.
NID–1	Idaho Legal Aid Services, Inc	58,835.
Iowa:		
IA–3	Legal Services Corporation of Iowa	2,131,573.
MIA	Legal Services Corporation of Iowa	27,091.
Illinois:		
IL–3	Land of Lincoln Legal Assist Foundation	2,249,250.
IL–6	Legal Assistance of Metropolitan Chicago	5,850,995.
IL–7	Prairie State Legal Services, Inc	2,501,178.
MIL	Legal Assistance of Metropolitan Chicago	207,945.
Indiana:		
IN–5	Indiana Legal Services, Inc	4,586,149.
MIN	Indiana Legal Services, Inc	94,861.
Kansas:		
KS–1	Kansas Legal Services, Inc	2,147,620.
MKS	Kansas Legal Services, Inc	9,546.
Kentucky:		
KY–2	Legal Aid Society, Inc	1,066,857.
KY–5	Appalachian Res. and Defense Fund of Kentucky	1,841,275.
KY–9	Kentucky Legal Aid	1,105,963.
KY–10	Northern Kentucky Legal Aid Society, Inc	1,149,244.
MKY	Texas Rural Legal Aid, Inc	33,157.
Louisiana:		
LA–1	Capital Area Legal Services Corporation	1,282,433.
LA–10	Acadiana Legal Service Corp	1,816,794.
LA–11	Legal Services of North Louisiana, Inc	1,704,664.
LA–12	Southeast Louisiana Legal Services Corporation	2,296,346.
MLA	Texas Rural Legal Aid, Inc	20,733.
Maine:		
ME–1	Pine Tree Legal Assistance, Inc	1,068,924.
MMX–1	Pine Tree Legal Assistance, Inc	116,346.
NME–1	Pine Tree Legal Assistance, Inc	58,371.
Maryland:		
MD–1	Legal Aid Bureau, Inc	3,581,699.
MDE	Legal Aid Bureau, Inc	26,397.
MMD	Legal Aid Bureau, Inc	88,553.
Massachusetts:		
MA–1	Volunteer Lawyers Project Boston Bar	1,646,181.
MA–2	South Middlesex Legal Services, Inc	195,403.
MA–3	Legal Svc for Cape Cod & Islands	230,476.
MA–4	Merrimack Valley Legal Services, Inc	750,740.
MA–5	New Center for Legal Advocacy	594,928.
MA–10	Massachusetts Justice Project	1,364,158.
Micronesia: MP–1	Micronesian Legal Services, Inc	1,491,917.
Minnesota:		
MN–1	Legal Aid Service of Northeastern Minnesota	383,569.
MN–2	Judicare of Anoka County, Inc	98,609.
MN–3	Central Minnesota Legal Services, Inc	1,096,576.
MN–4	Legal Services of Northwest Minnesota Corp.	345,727.
MN–5	Southern Minnesota Regional Legal Services, Inc	1,109,260.
MMN	Southern Minnesota Regional Legal Services, Inc	149,571.
NMN–1	Anishinabe Legal Services, Inc	216,423.
Mississippi:		
MS–2	North MS Rural Legal Services, Inc	1,898,001.
MS–3	South MS Legal Services Corp	525,945.
MS–7	Central SW MS Legal Services Corp	1,231,338.
MS–8	SE Mississippi Legal Services Corp	887,903.
MMS	Texas Rural Legal Aid, Inc	42,402.
NMS–1	SE Mississippi Legal Services Corp	75,279.
Missouri:		
MO–3	Legal Aid of Western Missouri	1,608,607.
MO–4	Legal Services of Eastern Missouri, Inc	1,774,785.
MO–5	Mid-Missouri Legal Services Corporation	353,692.
MO–7	Legal Services of Southern Missouri	1,532,889.
MMO	Legal Aid of Western Missouri	67,042.
Montana:		
MT–1	Montana Legal Services Assoc	1,025,894.

State & service area	Applicant name	Anticipated FY 2003 award
MMT	Montana Legal Services Assoc	48,008.
NMT–1	Montana Legal Services Assoc	144,197.
Nebraska:		
NE–4	Nebraska Legal Services	1,315,096.
MNE	Nebraska Legal Services	34,186.
NNE–1	Nebraska Legal Services	29,935.
Nevada:		
NV–1	Nevada Legal Services, Inc	1,717,198.
MNV	Nevada Legal Services, Inc	3,698.
NNV–1	Nevada Legal Services, Inc	120,422.
New Hampshire: NH–1	Legal Advice & Referral Center, Inc	647,362.
New Jersey:		
NJ–8	Essex-Newark Legal Services Project, Inc	982,438.
NJ–12	Ocean-Monmouth Legal Services, Inc	599,153.
NJ–15	Warren County Legal Services, Inc	353,207.
NJ–16	Camden Regional Legal Services, Inc	1,208,321.
NJ–17	Legal Aid Society of Mercer County	983,157.
MNJ	Camden Regional Legal Services, Inc	126,002.
New Mexico:		
NM–5	Southern New Mexico Legal Services, Inc	2,475,208.
NNM–4	Southern New Mexico Legal Services, Inc	420,781.
MNM	Southern New Mexico Legal Services, Inc	80,328.
New York:		
NY–1	Legal Aid Society of Northeastern New York	767,490.
NY–3	Legal Aid for Broome and Chenango	262,370.
NY–4	Neighborhood Legal Services, Inc	928,381.
NY–6	Chemung County Legal Services	268,176.
NY–7	Nassau/Suffolk Law Services	1,254,287.
NY–8	Legal Aid Society of Rockland County, Inc	762,980.
NY–9	Legal Services for New York City	13,789,897.
NY–10	Niagara County Legal Aid Society, Inc	188,668.
NY–13	Legal Services of Central NY, Inc	826,165.
NY–14	Legal Aid Society of Mid-New York, Inc	635,263.
NY–15	Westchester/Putnam Legal Services	850,521.
NY–16	North Country Legal Services, Inc	316,544.
NY–18	Monroe Co Legal Assistance	984,990.
NY–19	Southern Tier Legal Services	409,071.
MNY	Legal Aid Society of Mid-New York, Inc	279,923
North Carolina:		
NC–5	Legal Aid of North Carolina	7,491,194.
MNC	Legal Aid of North Carolina	529,643.
NNC–1	Legal Aid of North Carolina	197,645.
North Dakota:		
ND–3	Legal Assistance of North Dakota, Inc	532,078.
MND	Southern Minnesota Regional Legal Services, Inc	82,512.
NND–3	Legal Assistance of North Dakota, Inc	243,946.
Ohio:		
OH–5	The Legal Aid Society of Columbus	1,154,130.
OH–17	Ohio State Legal Services	1,525,944.
OH–18	Legal Aid Society of Greater Cincinnati	1,237,679.
OH–19	Lgl. Assist. of West Cent. OH Regional Entity	1,226,393.
OH–20	Community Legal Aid Services, Inc	1,657,803.
OH–21	The Legal Aid Society of Cleveland	1,920,641.
OH–22	Legal Services of Northwest Ohio, Inc	977,083.
MOH	Legal Services of Northwest Ohio, Inc	95,154.
Oklahoma:		
OK–3	Legal Aid Services of Oklahoma	4,058,422.
MOK	Legal Aid Services of Oklahoma	51,572.
NOK–1	Oklahoma Indian Legal Services, Inc	741,501.
Oregon:		
OR–2	Lane County Legal Aid Service, Inc	317,280.
OR–4	Marion-Polk Legal Aid Service, Inc	307,667.
OR–5	Legal Aid Services of Oregon	2,090,392.
MOR	Legal Aid Services of Oregon	537,114.
NOR–1	Legal Aid Services of Oregon	167,176.
Pennsylvania:		
PA–1	Philadelphia Legal Assistance	2,775,546.
PA–5	Laurel Legal Services, Inc	692,006.
PA–8	Neighborhood Legal Services Assoc	1,506,801.
PA–11	Southwestern Pennsylvania Legal Aid Society	503,062.
PA–23	LA of Southeastern Pennsylvania	1,017,327.
PA–24	North Penn Legal Services, Inc	1,625,583.
PA–25	MidPenn Legal Services, Inc	1,989,072.

State & service area	Applicant name	Anticipated FY 2003 award
Rhode Island:		
RI–1	Rhode Island Legal Services, Inc	1,000,000.
South Carolina:		
SC–1	South Carolina Legal Services	2,000,000.
South Dakota:		
SD–3	Dakota Plains Legal Services, Inc	1,000,000.
Tennessee:		
TN–3	Legal Services of Upper East Tennessee, Inc	1,000,000.
TN–4	Legal Aid Society, Inc	1,000,000.
TN–5	Legal Services of Middle Tennessee, Inc	1,000,000.
TN–6	Memphis Area Legal Services, Inc	1,000,000.
Texas:		
TX–3	Legal Aid of NorthWest Texas	1,000,000.
TX–4	Legal Services of North Texas	1,000,000.
TX–5	Texas Rural Legal Aid, Inc	1,000,000.
TX–6	Legal Aid of NorthWest Texas	1,000,000.
TX–7	Legal Services of Central Texas	1,000,000.
TX–8	Texas Rural Legal Aid, Inc	1,000,000.
TX–9	Texas Rural Legal Aid, Inc	1,000,000.
TX–10	Texas Rural Legal Aid, Inc	1,000,000.

State & service area	Applicant name	Anticipated FY 2003 award
PA–26	Northwestern Legal Services	657,653.
MPA	Philadelphia Legal Assistance	144,049.
Puerto Rico:		
PR–1	Puerto Rico Legal Services, Inc	14,686,125.
PR–2	Community Law Office, Inc	310,353.
MPR	Puerto Rico Legal Services, Inc	219,851.
Rhode Island: RI–1	Rhode Island Legal Services, Inc	1,006,618.
South Carolina:		
SC–8	The SC Centers for Equal Justice	4,404,793.
MSC	The SC Centers for Equal Justice	179,038.
South Dakota:		
SD–2	East River Legal Services	365,907.
SD–4	Dakota Plains Legal Services, Inc	433,384.
MSD	Dakota Plains Legal Services, Inc	3,071.
NSD–1	Dakota Plains Legal Services, Inc	845,567.
Tennessee:		
TN–4	Memphis Area Legal Services	1,287,285.
TN–7	West Tennessee Legal Services, Inc	600,676.
TN–9	LA of East Tennessee	1,964,918.
TN–10	LAS of Middle TN and the Cumberlands	2,340,865.
MTN	Texas Rural Legal Aid, Inc	54,383.
Texas:		
TX–13	Lone Star Legal Aid	8,677,335.
TX–14	West Texas Legal Services	6,844,410.
TX–15	Texas Rural Legal Aid, Inc	9,327,617.
MTX	Texas Rural Legal Aid, Inc	1,234,600.
NTX–1	Texas Rural Legal Aid, Inc	28,343.
Utah:		
UT–1	Utah Legal Services, Inc	1,664,061.
MUT	Utah Legal Services, Inc	62,214.
NUT–1	Utah Legal Services, Inc	74,504.
Vermont: VT–1	Legal Services Law Line of Vermont, Inc	457,196.
Virginia:		
VA–15	Southwest Virginia Legal Aid Society, Inc	745,846.
VA–16	Legal Services of Eastern Virginia, Inc	1,283,428.
VA–17	Virginia Legal Aid Society, Inc	773,673.
VA–18	Central Virginia Legal Aid Society, Inc	910,259.
VA–19	Blue Ridge Legal Services, Inc	641,564.
VA–20	Potomac Legal Aid Society	994,268.
MVA	Central Virginia Legal Aid Society, Inc	144,852.
Virgin Islands: VI–1	Legal Services of the Virgin Islands, Inc	292,256.
Washington:		
WA–1	Northwest Justice Project	4,385,249.
MWA	Northwest Justice Project	738,240.
NWA–1	Northwest Justice Project	257,978.
Wisconsin:		
WI–2	Wisconsin Judicare, Inc	801,802.
WI–5	Legal Action of Wisconsin, Inc	2,906,903.
MWI	Legal Action of Wisconsin, Inc	69,159.
NWI–1	Wisconsin Judicare, Inc	140,479.
West Virginia:		
WV–5	Legal Aid of West Virginia, Inc	2,613,517.
MWV	Legal Aid of West Virginia, Inc	28,622.
Wyoming:		
WY–4	Wyoming Legal Services	447,189.
MWY	Wyoming Legal Services	11,111.
NWY–1	Wyoming Legal Services	156,492.

These grants and contracts will be awarded under the authority conferred on LSC by the Legal Services Corporation Act, as amended (42 U.S.C. 2996e(a)(1)). Awards will be made so that each service area is served, although none of the listed organizations are guaranteed an award or contract. This public notice is issued pursuant to the LSC Act (42 U.S.C. 2996f(f)), with a request for comments and recommendations concerning the potential grantees within a period of thirty (30) days from the date of publication of this notice. Grants will become effective and grant funds will be distributed on or about January 1, 2003.

Dated: October 9, 2002.

Michael A. Genz,

Director, Office of Program Performance, Legal Services Corporation.

[FR Doc. 02–26222 Filed 10–15–02; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–123]

NASA Advisory Council, Biological and Physical Research Advisory Committee Audio Teleconference

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee.

DATES: Tuesday, November 12, 2002, from 2 p.m. until 4 p.m.

ADDRESSES: This meeting will be conducted via teleconference; hence participation will require contacting Dr. Bradley Carpenter (202/358–0826) before 4:30 p.m. Eastern, November 8, 2002, and leaving your name, affiliation, and phone number.

FOR FURTHER INFORMATION CONTACT: Dr. Bradley Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0826.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capability of the teleconferencing system. The agenda for the meeting is as follows:

—Strategic Planning/Performance Measures
—Program Update

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–26209 Filed 10–15–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–124]

Aerospace Safety Advisory Panel; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting date change.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a change of date for the forthcoming meeting of the Aerospace Safety Advisory Panel; Notice No. 02–119.

PREVIOUSLY ANNOUNCED DATE: Thursday, October 31, 2002, 9 a.m. to 12 Noon Central Time.

CHANGES IN THE MEETING: Date changed to Thursday, November 7, 2002, 9 a.m. to 12 Noon Central Time.

ADDRESSES: Nassau Bay Hilton, 3000 NASA Road 1, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Lengyel, Aerospace Safety Advisory Panel Executive Director, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0391, if you plan to attend.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room (40). The agenda for the meeting is to conduct deliberations on CY '02 fact-finding activities and trip reports in preparation for the drafting of the Panel's annual report.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–26210 Filed 10–15–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission

DATE: Weeks of October 14, 21, 28, November 4, 11, 18, 2002.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockvillle, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 14, 2002

There are no meetings scheduled for the Week of October 14, 2002.

Week of October 21, 2002—Tentative

There are no meetings scheduled for the Week of October 21, 2002.

Week of October 28, 2002—Tentative

Wednesday, October 30, 2002.

2:00 p.m.
Discussion of Security Issues (Closed—Ex. 1 & 9).

Thursday, October 31, 2002.

9:25 a.m.
Affirmation Session (Public Meeting) (If needed).

9:30 a.m.
Briefing on EEO Program (Public Meeting) (Contact: Irene Little, 301–415–7380).

2:30 p.m.
Briefing on Proposed Rulemaking to Add New Section 10 CFR 50.69, "Risk-Informed Categorization and Treatment of Structures, systems, and Components for Nuclear Power Reactors" (Public Meeting) (Contact: Eileen McKenna, 301–415–2189, or Timothy Reed, (301) 415–1462.

This meeting will be webcast live at the Web address—www.nrc.gov

Week of November 4, 2002—Tentative

There are no meetings scheduled for the Week of November 4, 2002.

Week of November 11, 2002—Tentative

Thursday, November 14, 2002.

2:00 p.m.
Discussion of Management Issues (Closed—Ex. 2).

Week of November 18, 2002—Tentative

Thursday, November 21, 2002.

2:00 p.m.
Discussion of Security Issues (Closed—Ex. 1).

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: R. Michelle Schroll (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969. In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: October 10, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 02–26437 Filed 10–11–02; 2:22 pm]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Civilian Acquisition Workforce Personnel Demonstration Project; Department of Defense (DoD)

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice of intent to amend this demonstration by changing the method for determining and translating retention service credit.

SUMMARY: The Department of Defense (DoD), with the approval of OPM, may conduct a personnel demonstration within DoD's civilian acquisition workforce and those supporting personnel assigned to work directly with it. (*See* section 4308 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106; 10 U.S.C.A. 1701 note), as amended by section 845 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85)). This notice proposes to amend the project plan for this demonstration to change the method for determining and translating retention service credit.

DATES: OPM and DoD will consider written comments if received no later than November 15, 2002.

ADDRESSES: Send written comments to Mary Lamary, U.S. Office of Personnel Management, 1900 E Street NW., Room 7460, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT:
DoD: Anthony D. Echols, Civilian Acquisition Workforce Personnel Demonstration Project, 2001 North Beauregard Street, Suite 750, Alexandria, VA 22311, 703–681–3553.
OPM: Mary Lamary, U.S. Office of Personnel Management, 1900 E Street NW., Room 7460, Washington, DC 20415, 202–606–2820.

SUPPLEMENTARY INFORMATION:

1. Background

OPM approved and published the project plan for the Civilian Acquisition Workforce Personnel Demonstration Project in the **Federal Register** on January 8, 1999 (Volume 64, Number 5, part VII). Since that time, three amendments have been published. The first amendment was published in the May 21, 2001, **Federal Register**, Volume 66, Number 98 to (1) correct discrepancies in the list of occupational series included in the project and (2) authorize managers to offer a buy-in to Federal employees entering the project after initial implementation. The second amendment was published in the April 24, 2002, **Federal Register**, Volume 67, Number 79 to (1) make employees in the top broadband level of their career path eligible to receive a "very high" overall contribution score and (2) reduce the minimum rating period under the Contribution-based Compensation and Appraisal System (CCAS) to 90 calendar days. Finally, the third amendment was published in the July 1, 2002, **Federal Register**, Volume 67, Number 126 to (1) list all organizations that are eligible to participate in the project and (2) make the resulting adjustments to the table that describes the project's workforce demographics and union representation. This demonstration project involves hiring and appointment authorities, broadbanding, simplified classification, a contribution-based compensation and appraisal system, revised reduction-in-force procedures, academic degree and certificate training, and sabbaticals.

2. Overview

The project plan links employees' overall contribution scores (OCSs) to retention service credit for reduction in force. Experience during the first three rating cycles showed that the method for linkage causes two unintended results.

The first unintended result adversely affects high contributors (that is, employees with a high OCS for the expected contribution range of their broadband level). High contributors can only receive high retention service credit if their positions are toward the top of the salary rate range for the broadband level.

Second, high contributors receive less credit than lower contributors in some cases. The structure of Table 7, Retention Service Credit Associated with Appraisal Results, allows such outcomes.

This notice proposes to amend the project plan for this demonstration to change the method for determining retention service credit based on Contribution-based Compensation and Appraisal System (CCAS) process results. For consistency, this notice also proposes to change Table 8, Translation of Retention Service Credit.

Dated: October 4, 2002.

Office of Personnel Management.

Kay Coles James,

Director.

I. Executive Summary

The project was designed by a Process Action Team (PAT) under the authority of the Under Secretary of Defense for Acquisition and Technology, with the participation of and review by DoD and the Office of Personnel Management (OPM). The purpose of the project is to enhance the quality, professionalism, and management of the DoD acquisition workforce through improvements in the human resources management system.

II. Introduction

This demonstration project provides managers, at the lowest practical level, the authority, control, and flexibility they need to achieve quality acquisition processes and quality products. This project not only provides a system that retains, recognizes, and rewards employees for their contribution, but also supports their personal and professional growth.

A. Purpose

The purpose of this notice is to propose to amend this demonstration by changing the method for determining and translating retention service credit. Other provisions of the approved plan are unaffected by this proposal. Pursuant to 5 CFR 470.315, changes are hereby proposed to the **Federal Register**, Civilian Acquisition Workforce Personnel Demonstration Project; Department of Defense; Notice, Friday, January 8, 1999, Volume 64, Number 5, Part VII, pages 1479–82 and 1484.

B. Employee Notification and Collective Bargaining Requirements

The demonstration project program office shall notify employees of this proposed amendment by posting it on the demonstration project's web page (*http://www.acq.osd.mil/acqdemo/new_site*). Participating organizations must fulfill any collective bargaining obligations to unions that represent employees covered by the demonstration.

III. Personnel System Changes

Retention Service Credit

The following are the proposed changes to the demonstration project plan.

Delete all of Section III. D. 9., including Table 7.

Throughout the project plan, re-number Tables 8, 9, and 10 as Tables 7, 8, and 9, respectively.

Delete the second and third rows of the re-designated Table 7, Translation of Retention Service Credit, as follows: "20: Outstanding or equivalent, Level 5" and "16: Highly Successful or equivalent, Level 4." A copy of the revised re-designated Table 7 appears at the end of this amendment.

Delete the fourth paragraph of Section III. F. and insert the following:

Employees shall receive additional years of retention service credit in RIF, based on their CCAS process results. Refer to Figure 2, CCAS Compensation Categories, which depicts the three categories: A, B, and C. To calculate the number of additional years of retention service credit, average the number of additional years received for the employees' three most recent annual placements in category A, B, or C during the 4-year period before the issuance of RIF notices. Use the following rules to determine the number of years for a given annual placement.

Rule 1—Employees whose annual OCS places them above the upper rail in category A shall not receive any additional years.

Exception to Rule 1—Category A employees on retained pay may have lacked the opportunity to contribute at the level of their retained pay. Therefore, they shall receive 12 additional years.

Rule 2—Employees whose OCS places them in categories B or C shall receive 12 additional years.

Rule 3—Substitute the annual performance rating of record under the previous performance management system for one or more CCAS process results if, before the issuance of RIF notices, (1) three complete CCAS cycles have not yet occurred or (2) an individual has not completed three cycles to obtain three CCAS process results. In such cases, consistent with the re-designated Table 7, Translation of Retention Service Credit, employees with ratings of record at or above Fully Successful or equivalent (Level 3) shall receive 12 additional years, while those with lower ratings of record shall not receive any additional years. After including both CCAS results and previous ratings of record, employees who still have only received one or two of these shall receive credit for performance on the basis of adding the value and dividing by the number of CCAS results and/or ratings of record actually received. Those who have no annual performance rating of record or CCAS results shall receive 12 additional years.

Change Section V. B. 4. to read:

The demonstration project does not use summary level designators. In this regard, the project differs from non-demonstration appraisal systems and programs established under 5 U.S.C. Chapter 43 and 5 CFR part 430. To accommodate this difference and to allow the CCAS contribution information to be used as equivalent ratings under 5 CFR part 430, translate retention service credit based on the employee's OCS for the 3 most recent years of the last 4 years while under the demonstration project to summary level designators for use by the gaining agency. The re-designated Table 7, Translation of Retention Service Credit, shows how to do this translation.

Retention service credit	Appraisal rating level
12	Fully Successful or equivalent, Level 3.
0	Unsuccessful, Level 1.

[FR Doc. 02–26271 Filed 10–15–02; 8:45 am]

BILLING CODE 6325–43–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46629; File No. SR–CBOE–2002–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by Chicago Board Options Exchange, Incorporated Amending Listing Standards for Options on Narrow-Based and Broad-Based Security Indexes

October 9, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1034 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 7, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The CBOE filed Amendments No. 1 and 2 to the proposed rule change on August 6, 2002[3] and August 29, 2002,[4] respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding listing standards for options on narrow-based and broad-based security indexes. The text of the proposed rule change is set forth below. Additions are in italics; deletions are in brackets.

CHAPTER XXIV

Index Options

* * * * *

Rule 24.2 Designation of the Index

(a) The component securities of an index underlying an index option contract need not meet the requirements of Rule 5.3. Except as set forth in subparagraph (b) *and (c)* below, the listing of a class of index options on a new underlying index will be treated by the Exchange as a proposed rule change subject to filing with and approval by the Securities and Exchange Commission ("Commission") under Section 19(b) of the Exchange Act.

(b) Notwithstanding paragraph (a) above, the Exchange may trade options on a narrow-based *security* index pursuant to Rule 19b–4(e) of the Securities Exchange Act of 1934, if each of the following conditions is satisfied:

(1) *The index is a security index.* [The options are designated as A.M.-settled index options:]

(i) that has 9 or fewer component securities; or

(ii) in which a component security comprises more than 30 percent of the index's weighting; or

(iii) in which the 5 highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting or

(iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50,000,000 (or in the case of an index with 15 or more component securities, $30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security;

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter dated August 6, 2002 from Madge Hamilton, Legal Division, CBOE, to Kelly Riley, Senior Special Counsel, Division of Market Regulation ("Division"), Commission ("Amendment No. 1"). Amendment No. 1 makes certain technical corrections to the proposed rule change.

[4] *See* Letter dated August 29, 2002 from Madge Hamilton, Legal Division, CBOE, to Florence Harmon, Senior Special Counsel, Division, Commission ("Amendment No. 2"). Amendment No. 2 makes certain technical corrections to the proposed rule text and adds a requirement that component securities be registered under Section 12 of the Act. Amendment No. 2 also adds a requirement that the total number of securities in an index may not increase or decrease by more than 33⅓% from the number of component securities in the index at the time of its initial listing. Amendment No. 2 also adds a requirement that cash settled index options be designated as AM-settled index options. Finally, Amendment No. 2 adds a new index weighting methodology known as "share weighting."

(2) The index is capitalization-weighted, *modified capitalization-weighted*, price-weighted, *share weighted*, [or] equal dollar-weighted, *or modified equal-dollar weighted*[, and consist of ten or more component securities:];

(3) Each component security *in the index* has a *minimum* market capitalization of at lest $75 million, except that [for] each of the lowest weighted [component] securities in the index that in the aggregate account for no more than 10% of the weight of the index[,] *may have a minimum* [the] market capitalization *of only* [is at least] $50 million[:];

(4) *The average daily trading* [Trading] volume *in each* of *the preceding six months for* each component security *in the index is at least 45,500 shares*, [has been at least one million shares for each of the last six months,] except that [for] each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index[,] *may have an average daily* trading volume *of only 22,750* [has been at least 500,000] shares for each of the last six months[:];

(5) In a capitalization-weighted index the lesser of: *(1)* the five highest weighted component securities in the index *each have had an average daily trading volume of at least 90,000 shares over the past six months; or (2)* the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index each have had an average *daily* [monthly] trading volume of at least *90,000* [2,000,000] shares over the past six months[:];

[(6) No single component security represents more than 25% of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% (60% for an index consisting of fewer than 25 component securities) of the weight of the index;]

[(7)] *(6) Subject to subparagraphs (4) and (5) above, the c*[C]omponent securities that account for at least 90% of the *total index* weight [of the index] and at least 80% of the total number of component securities in the index [satisfy] *must meet* the requirements of Rule 5.3 applicable to individual underlying securities[:];

[(8)] *(7)(i) Each* [All] component [securities] *security in the index is a* [are] "reported *security* [securities]" as defined in Rule 11Aa3–1 under the Exchange Act[:]; *or*

[(9)] *(ii)* [Non-U.S. component] *Foreign* securities [(stocks or ADRs)] *or ADRs thereon* that are not subject to comprehensive surveillance *sharing* agreements do not [in the aggregate] represent more than 20% of the weight of the index[:];

[(10)] *(8)* The current underlying index value will be reported at least once every fifteen seconds during the time the index options are traded on the Exchange[:];

[(11)] *(9)* An equal dollar-weighted index will be rebalanced at least once every calendar [quarter] *year*[;];

[(12)] *(10)* If [an] *the* underlying index is maintained by a broker-dealer, the index is calculated by an third party who is not a broker-dealer, and the broker-dealer has *in place an information barrier* [erected a "Chinese Wall"] around its personnel who have access to information concerning changes in and adjustments to the index[.];

(11) *Each component security in the index is registered pursuant to section 12 of the Exchange Act; and*

(12) *Cash settled index options are designated as Am-settled index options.*

(c) Notwithstanding paragraph (a) above, the Exchange may trade options on a broad-based security index pursuant to Rule 19b–4(e) of the Securities Exchange Act of 1934, if each of the following conditions is satisfied;

(1) The index is a security index

(i) that has 10 or more component securities;

(ii) in which no component security comprises less than 30 percent of the index's weighting;

(iii) in which the 5 highest weighted component securities in the aggregate comprise less than 60 percent of the index's weighting; and

(iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of more than $50,000,000 (or in the case of an index with 15 or more component securities, $30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security;

(2) The index is capitalization-weighted, modified capitalization-weighted, price-weighted, share-weighted, equal dollar-weighted, or modified equal-dollar weighted;

(3) Each component security in the index has a minimum market capitalization of at least $75 million, except that each of the lowest weighted securities in the index that in the aggregate account for no more than 10% of the weight of the index may have a minimum market capitalization of only $50 million;

(4) The average daily trading volume in each of the preceding six months for each component security in the index is at least 45,500 shares, except that each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index may have an average daily trading volume of only 22,750 shares for each of the last six months;

(5) In a capitalization-weighted index the lesser of: (1) the five highest weighted component securities in the index each have had an average daily trading volume of at least 90,000 shares over the past six months; or (2) the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index each have had an average daily trading volume of at least 90,000 shares over the past six months;

(6) Subject to subparagraphs (4) and (5) above, the component securities that account for at least 90% of the total index weight and at least 80% of the total number of component securities in the index must meet the requirements of Rule 5.3 applicable to individual underlying securities;

(7)(i) Each component security in the index is a "reported security" as defined in Rule 11a 3–1 under the Exchange Act; or

(ii) Foreign securities or ADRs thereon that are not subject to comprehensive surveillance sharing agreements do not represent more than 20% of the weight of the index;

(8) The current underlying index value will be reported at least once every fifteen seconds during the time the index options are traded on the Exchange;

(9) An equal dollar-weighted index will be rebalanced at least once every calendar year;

(10) If the underlying index is maintained by a broker-dealer, the index is calculated by a third party who is not a broker-dealer, and the broker-dealer has in place an information barrier around its personnel who have access to information concerning changes in and adjustments to the index;

(11) Each component security in the index is registered pursuant to Section 12 of the Exchange Act; and

(12) Cash settled index options are designated as AM-settled index options.

[(c)]*(d)* The following maintenance listing standards shall apply to each class of index options originally listed pursuant to paragraph (b) *or (c)* above:

(1) *The index meets the criteria of paragraph (b)(1) or (c)(1) of this Rule;* [The conditions stated in subparagraphs (b)(1), (3), (6), (7), (8), (9), (10), (11) and (12) must continue to be satisfied, provided that the conditions stated in subparagraphs (b)(6) must be satisfied only as of the first day of January and July in each year:]

(2) Subject to subparagraphs (4) and (9) below, the component securities that account for at least 90% of the total index weight and at least 80% of the total number of component securities in the index must meet the requirements of Rule 5.3;

(3) Each component security in the index has a market capitalization of at least $75 million, except that each of the lowest weighted component securities that in the aggregate account for no more than 10% of the weight of the index may have a market capitalization of only $50 million;

(4) The average daily trading volume in each of the preceding six months for each component security in the index is at least 22,750 shares, except that each of the lowest weighted component securities in the index that in the aggregate account for not more than 10% of the weight of the index may have an average daily trading volume of at least 18,200 shares for each of the last six months;

(5) Each component security in the index is

(i) a "reported security" as defined in Rule 11A3–1 under the Exchange Act; or

(ii) Foreign securities or ADRs thereon that are not subject to comprehensive surveillance sharing agreements do not represent more than 20$ of the weight of the index;

(6) The current underlying index value will be reported at least once every fifteen seconds during the time the index options are traded on the Exchange;

(7) An equal dollar-weighted index will be rebalanced at least once every calendar year;

(8) If the underlying index is maintained by a broker-dealer, the index is calcualted by a third party who is not a broker-dealer, and the broker-dealer has in place an information barrier around its personnel who have access to information concerning changes in and adjustments to the index;

(9) In a capitalization-weighted index the lesser of: (1) the five highest weighted component securities in the index each have had an average daily trading volume of at least 45,500 shares over the past six months; or (2) the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index each have had an average daily trading volume of at least 45,500 shares over the past six months;

[(2)]*(10)* The total number of component securities in the index may not increase *n*or decrease by more than 33⅓% from the number of component securities in the index at the time of its initial listing; [and in no event may be less than nine component securities:

(3) Trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months:

(4) In a capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index each have had an average monthly trading volume of at least 1,000,000 shares over the past six months.]

(11) Each component security in the index is registered pursuant to Section 12 of the Exchange Act; and

(12) In the event a class of index options listed on the Exchange fails to satisfy the maintenance listing standards set forth herein, the Exchange shall not open for trading any additional series of options of that class unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of that class of index options has been approved by the Commission under section 19(b)(2) of the Exchange Act.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE states that the proposed rule change amends CBOE Rule 24.2 to make it consistent with listing standards applicable to futures on narrow-based security indexes, as defined and permitted under the Commodity Futures Modernization Act of 2000 ("CFMA"), and adds listing standards for options on broad-based security indexes. The CBOE states that the proposed rule change adopts criteria, which follows, for the most part, the definition of "narrow-based security index" in the CFMA and makes changes to CBOE's current listing standards for options on narrow-based security indexes to conform with the Bulletin issued by the Division that suggested listing standards for futures on a narrow-based security index ("Division's Bulletin").[5] The proposed rule change would amend the current initial listing standards for options on narrow-based security indexes in CBOE Rule 24.2, amend CBOE Rule 24.2 to add new initial listing standards for options on broad-based security indexes, and provide for maintenance standards for both narrow-based security indexes and broad-based security indexes.

The CBOE states that the proposed rule change incorporates the definition of a narrow-based security index in the CFMA[6] into the listing standards for options on a narrow-based security index. Thus, the proposed rule change would require that the index be a narrow-based security index:

(1) That has 9 or fewer component securities, or

(2) In which a component security comprises more than 30% of the index's weighting, or

(3) In which the 5 highest weighted component securities in the aggregate comprise more than 60% of the index's weighting, or

(4) In which the lowest weighted component securities comprising, in the

[5] U.S. Securities and Exchange Commission, Division of Market Regulation: Staff Legal Bulletin No. 15: Listing Standards for Trading Security Futures Products (September 5, 2001).

[6] Section 201 of the CFMA; 15 U.S.C. 78c(a)(55)(B).

aggregate, 25% of the index's weighting have an aggregate dollar value of averaged daily trading volume of less than $50 million (or in the case of an index with 15 or more component securities, $30 million), except that if there are 2 or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25% of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.

The CBOE states that the proposed rule change also makes other modifications to be consistent with the Division's Bulletin. The proposed rule change requires that all component securities of a narrow-based and broad-based security index be registered pursuant to Section 12 of the Act. Consistent with the Division's Bulletin, the proposed rule change would also permit an index to be modified capitalization-weighted index. The Division's Bulletin lists modified capitalization-weighted in its sample initial eligibility criteria for a security futures product based on an index composed of two or more securities as comparable to listing standards for options traded on a national securities exchange or national securities association.[7] The proposed rule change proposes two additional weighting methodologies, modified equal-dollar weighted and share-weighted. The CBOE states that it is relevant that Commission has approved options on certain individual modified equal-dollar weighted indexes.[8]

The CBOE states that a share-weighted index is designed to mimic the value of a portfolio consisting of two or more securities. The weight of each component security is calculated by multiplying the price of the component security by an adjustment factor. Adjustment factors are chosen to reflect the investment objective deemed appropriate by the designer of the index.[9] The value of the index is calculated by adding the weight of each component security and dividing the total by an index divisor.[10]

Unlike other indexes currently available, share-weighted indexes do not require divisor changes in order to adjust for corporate actions. Rather, a change is made to the adjustment factor for a particular stock undergoing the corporate action. Thus, only the stock undergoing the corporate action is affected, which mimics the impact on a replicating portfolio. For example, the index is adjusted for a stock split by multiplying the adjustment factor of the affected stock by its split ratio. The index is adjusted for spin-offs and other distributions, excluding regular cash dividends, by taking the value of the property being distributed and then changing the adjustment factor to reflect the purchase of additional shares of the index component. Unlike a capitalization-weighted index, share-weighted indexes are not adjusted to reflect changes in the number of outstanding shares of its constituents. For example, if a company issued additional shares, this would not impact a share-weighted index. Example: Adjusting a share-weighted index to reflect a 2-for-1 stock split in the shares of one of its components.

Consider the following share-weighted index. Stock 2 has declared a 2-for-1 split and the prices listed below represent the closing prices for each index component on the business day immediately prior to the ex-distribution date. The index divisor, which was chosen to yield a benchmark level of 100, is 1.00. Therefore, the closing index level prior to the ex-date is 91.00.

Component	Price (P_i)	Adjustment factor (A_i)	$P_i \times A_i$	Component weight (in percent)
Stock 1	$23	$1.25	28.75	31.59
Stock 2	92	0.5	46	50.55
Stock 3	5	1.25	6.25	6.87
Stock 4	8	1.25	10	10.99
Total			91	100.00

As shown in the table below, the adjustment to reflect the 2-for-1 split would require that the Adjustment Factor for Stock 2 be multiplied by the split ratio (2), thereby changing it from 0.5 to 1.0. The post-split price of Stock 2 ($46) is adjusted by dividing the pre-split price ($92) by the split ratio.

The product of the new Adjustment Factor and the post-split price of Stock 2 is exactly the same as product of the old Adjustment Factor and pre-split price of Stock 2. Furthermore, the sum of the products ($P_i \times A_i$ and individual component weights are exactly the same as before the split, and the index divisor remains unchanged at 1.00.

[7] *See* III.A.(ii)(a) of the Division's of Market Regulation: Staff Legal Bulletin No. 15: Listing Standards for Trading Security Futures Products (September 5, 2001). *See also* Securities Exchange Act Release No. 42787, 65 FR 33598 (May 24, 2000) (amending Rule 1000A to permit the index underlying a series of Index Fund Shares to be calculated based on modified market capitalization weighting methodology, among others); Securities Exchange Act Release No. 43912 (January 31, 2001), 66 FR 9401 (February 7, 2001) (permitting an index underlying a series of Index Fund Shares to be calculated on modified market capitalization); and Philadelphia Stock Exchange Rule 1009A(b)(2), which permits a narrow-based index to be modified capitalization-weighted.

[8] Securities Exchange Act Release No. 36623 (December 21, 1995), 60 FR 67379 (December 29, 1995) (approving options on the CBOE Automotive Index, which is modified equal-dollar weighted). In the Commission's release adopting final rules regarding new derivative securities products, it noted that "[t]he index underlying a new derivative securities product should be constructed according to established criteria for initial inclusion of new component securities. SROs seeking to rely on the proposed amendment should employ objective index construction standards that include a minimum number of component securities and a fixed and objective weighting methodology (e.g., capitalization weighted, price weighted, equal-dollar weighted or modified equal-dollar weighted.") (footnote omitted.) Securities Exchange Act Release No. 40761, 63 FR 70952, 70961] (December 22, 1998). *See also* Securities Exchange Act Release No. 42787, 65 FR 33598 (May 24, 2000) (amending Rule 1000A to permit the index underlying a series of Index Fund Shares to be calculated based on modified equal-dollar weighting methodology, among others).

[9] For example, an index designer might want to apply an adjustment factor in order to prevent one or a few components from dominating the weight of the index. This is similar to an adjustment factor in other types of weighting methods such as modified capitalization weighted indexes.

[10] The index "divisor" is calculated to yield a benchmark index level (50, 100, 200, etc. as of a particular date.

Component	Price (P_i)	Adjustment factor (A_i)	$P_i \times A_i$	Component weight (in percent)
Stock 1	$23	1.25	28.75	31.59
Stock 2	46	1.0	46	50.55
Stock 3	5	1.25	6.25	6.87
Stock 4	8	1.25	10	10.99
Total			91	100.00

The proposed rule change also amends paragraph (c) to add listing standards for options on a broad-based security index. The CBOE states that these listing standards follow, for the most part, the listing standards for options on narrow-based security indexes. However, the criteria specifically discussed above, regarding the composition of a narrow-based security index, was reversed for the composition of a broad-based security index. For example, for a broad-based security index the index must have 10 or more component securities.

The proposed rule change amends the maintenance standards by moving them to new paragraph (d) and making them applicable to both the narrow-based security indexes and the broad-based security indexes. The CBOE states that the maintenance standards listed in the proposed rule change also follows the Division's Bulletin for the most part. CBOE believes that the proposed rule change would assist CBOE in providing new products to the marketplace in an efficient and expeditious manner. The CBOE states that this in turn would benefit investors by providing them with new products, in a more timely fashion and provide more competition.

2. Statutory Basis

CBOE believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act[11] in general and furthers the objectives of Section 6(b)(5)[12] in particular in that it should promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. CBOE believes that the adoption of the proposed rule change will enable CBOE to act expeditiously in listing new options on narrow-based and broad-based security indexes. In addition, CBOE believes that the proposed rule change would remove impediments to a free and open market place by providing competition for new products. CBOE states that the proposed rule change would permit CBOE to more effectively bring new products to the marketplace for competition, as well as permit CBOE to compete with other new products in the marketplace, such as security futures.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE states that this proposed rule change, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CBOE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. The Commission solicits comment on whether the existing position limits are adequate to address manipulation concerns for both cash settled and physically settled index options, particularly narrow-based index options. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–2002–24 and should be submitted by November 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–26202 Filed 10–15–02; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4162]

Culturally Significant Objects Imported for Exhibition; Determinations: Giorgio De Chirico and the Myth of Ariadne

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Giorgio De Chirico and the Myth of Ariadne," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan

agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Philadelphia Museum of Art, Philadelphia, PA, from on or about November 3, 2002, to on or about January 5, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: October 10, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–26293 Filed 10–15–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4089]

Advisory Committee on International Economic Policy; Notice of Committee Renewal

1. *Renewal of Advisory Committee.* The Department of State has renewed the Charter of the Advisory Committee on International Economic Policy. The Committee serves in a solely advisory capacity concerning major issues and problems in international economic policy. The Committee provides information and advice on the effective integration of economic interests into overall foreign policy and on the Department of State's role in advancing American commercial interests in a competitive global economy. The Committee also appraises the role and limits of international economic institutions and advises on the formulation of U.S. economic policy and positions.

This Committee includes representatives of American organizations and institutions having an interest in international economic policy, including representatives of American business, labor unions, public interest groups, and trade and professional associations. The Committee meets at least annually to advise the Department on the full range of international economic policies and issues.

For further information, please call Eliza Koch, Office of Economic Policy and Public Diplomacy, Economic Bureau, U.S. Department of State, at (202) 647–1310.

Daniel A. Clune,

Director, Office of Economic Policy and Public Diplomacy, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 02–26292 Filed 10–15–02; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning Proposed United States—Central America Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of intent to initiate negotiations on a free trade agreement between the United States and Central America, request for comments, and notice of public hearing.

SUMMARY: The United States intends to initiate negotiations with five Central American countries on a free trade agreement. The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the United States Trade Representative (USTR) in amplifying and clarifying negotiating objectives for the proposed agreement and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement.

DATES: Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as their testimony, by November 12, 2002. A hearing will be held in Washington, DC, beginning on November 19, 2002, and will continue as necessary on subsequent days. Written comments are due by noon, December 2, 2002.

ADDRESSES: *Submissions by electronic mail: FR0041@ustr.gov* (notice of intent to testify and written testimony); *FR0042@ustr.gov* (written comments).

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–3475. All other questions should be directed to Andrea Gash Durkin, Director for Central America and the Caribbean, (202) 395–6135.

SUPPLEMENTARY INFORMATION:

1. Background

Under section 2104 of the Bipartisan Trade Promotion Authority Act of 2002 (TPA Act) (19 U.S.C. 3804), for agreements that will be approved and implemented through TPA procedures, the President must provide the Congress with at least 90 days written notice of his intent to enter into negotiations and must identify the specific objectives for the negotiations. Before and after the submission of this notice, the President must consult with appropriate Congressional committees and the Congressional Oversight Group regarding the negotiations. Under the Trade Act of 1974, as amended, the President must (i) afford interested persons an opportunity to present their views regarding any matter relevant to any proposed agreement, (ii) designate an agency or inter-agency committee to hold a public hearing regarding any proposed agreement, and (iii) seek the advice of the U.S. International Trade Commission (ITC) regarding the probable economic effects on U.S. industries and consumers of the removal of tariffs and non-tariff barriers on imports pursuant to any proposed agreement.

On October 1, 2002, after consulting with relevant Congressional committees and the Congressional Oversight Group, the USTR notified the Congress that the President intends to initiate free trade agreement negotiations with the five member countries of the Central American Economic Integration System (Costa Rica, El Salvador, Honduras, Guatemala, and Nicaragua) (hereinafter Central America) and identified specific objectives for the negotiations. In addition, the USTR has requested the ITC's probable economic effects advice. The ITC intends to provide this advice on December 27, 2002. This notice solicits views from the public on these negotiations and provides information on a hearing which will be conducted pursuant to the requirements of the Trade Act of 1974.

2. Public Comments and Testimony

To assist the Administration as it continues to develop its negotiating objectives for the proposed agreement, the Chairman of the TPSC invites written comments and/or oral testimony of interested persons at a public hearing. Comments and testimony may address the reduction or elimination of tariffs or non-tariff barriers on any articles provided for in the Harmonized Tariff Schedule of the United States (HTSUS) that are products of a Central American country, any concession which should be sought by the United States, or any other matter relevant to the proposed agreement. The TPSC invites comments and testimony on all of these matters and, in particular, seeks comments and testimony addressed to:

(a) General and commodity-specific negotiating objectives for the proposed agreement.

(b) Economic costs and benefits to U.S. producers and consumers of removal of tariffs and non-tariff barriers to U.S.-Central American trade.

(c) Treatment of specific goods (described by Harmonized System tariff numbers) under the proposed agreement, including comments on (1) product-specific import or export interests or barriers, (2) experience with particular measures that should be addressed in the negotiations, and (3) in the case of articles for which immediate elimination of tariffs is not appropriate, a recommended staging schedule for such elimination.

(d) Adequacy of existing customs measures to ensure Central American origin of imported goods, and appropriate rules of origin for goods entering the United States under the proposed agreement.

(e) Existing Central American sanitary and phytosanitary measures and technical barriers to trade.

(f) Existing barriers to trade in services between the United States and Central America that should be addressed in the negotiations.

(g) Relevant trade-related intellectual property rights issues that should be addressed in the negotiations.

(h) Relevant investment issues that should be addressed in the negotiations.

(i) Relevant government procurement issues that should be addressed in the negotiations.

(j) Relevant environmental issues that should be addressed in the negotiations.

(h) Relevant labor issues that should be addressed in the negotiations.

(i) Relevant government procurement issues that should be addressed in the negotiations.

(j) Relevant environmental issues that should be addressed in the Negotiations.

(h) Relevant labor issues that should be addressed in the negotiations.

Comments identifying as present or potential trade barriers laws or regulations that are not primarily trade-related should address the economic, political and social objectives of such regulations and the degree to which they discriminate against producers of the other country. At a later date, the USTR, through the TPSC, will publish notice of reviews regarding (a) the possible environmental effects of the proposed agreement and the scope of the U.S. environmental review of the proposed agreement, and (b) the impact of the proposed agreement on U.S. employment and labor markets.

A hearing will be held on November 19, 2002, in Rooms 1 and 2, 1724 F Street, NW., Washington, DC. If necessary, the hearing will continue on subsequent days. Persons wishing to testify at the hearing must provide written notification of their intention by November 12, 2002. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the subject matter and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement) to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC. Persons with mobility impairments who will need special assistance in gaining access to the hearing should contact the TPSC Executive Secretary.

Interested persons, including persons who participate in the hearing, may submit written comments by noon, December 2, 2002. Written comments may include rebuttal points demonstrating errors of fact or analysis not pointed out in the hearing. All written comments must state clearly the position taken, describe with particularity the supporting rationale, and be in English. The first page of written comments must specify the subject matter, including, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement).

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, the Office of the United States Trade Representative strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: "United States—Central America Free Trade Agreement" followed by (as appropriate) "Notice of Intent to Testify," "Testimony," or "Written Comments." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notice of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked "Business Confidential" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site *(http://www.ustr.gov)*.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 02–26200 Filed 10–15–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Six Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C 3501 *et seq.*), the FAA invites public comment on six currently approved

public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before December 16, 2002.

ADDRESSES: Comments must be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

1. 2120–0026, Domestic and International Flight Plans. Title 49 U.S.C., paragraph 40103(b) authorizes regulations governing the flight of the aircraft. 14 CFR 91 prescribes requirements for filing domestic and international flight plans. The information is collected to provide services to aircraft inflight and protection of persons and property of the ground. The current estimated annual reporting burden is 293,072 hours.

2. 2120–0039, Operating Requirements: Commuter and On-Demand Operation—14 CFR Part 135. Title 49 U.S.C., Section 44702, authorizes the issuance of air carrier operating certificates. 14 CFR Part 135 prescribes requirements for Air Carrier/Commercial Operators. The information collected shows compliance and applicant eligibility for these operating certificates. The current estimated annual reporting burden is 1,128,904 hours.

3. 2120–0043, Recording of Aircraft Conveyances and Security Documents. Title 49, U.S.C., Section 44108 provides for establishing and maintaining a system for recording of security conveyances affecting title to, or interest in, U.S. civil aircraft, as well as certain specifically identified engines, propellers, or spare parts locations, and for recording of releases relating to those conveyances. The information collected is used to ensure proper compliance with the provisions of this regulation and to ensure that the national air transportation system is secure. The current estimated annual reporting burden is 55,406 hours.

4. 2120–0606, Fleet and Operations Reporting: Grand Canyon National Park. The information is needed to establish accurate information on overflights of Grand Canyon National Park for noise and safety management purposes, validate noise models for use in mitigation studies, determine when and where noise mitigation is required, and provide the basis for a flexible and adaptable noise management system. The current estimated annual reporting burden is 48 hours.

5. 2120–0608, Commercial Space Transportation Licensing Regulations. The required information is used to determine if applicant proposals for conducting commercial space launches can be accomplished in a safe manner according to regulations and license orders by the Office of the Associate Administrator for Commercial Space Transportation. The current estimated annual reporting burden is 3,236 hours.

6. 2120–0652, Changes in Permissible Stage 2 Airplane Operations. The information collected is used by the FAA to issue special flight authorization for nonrevenue operations of Stage 2 airplanes at U.S. Airports. Since this information is voluntarily submitted, operators only need to provide information when they need a special flight authorization. The current estimated annual reporting burden is 25 hours.

Issued in Washington, DC, on October 8, 2002.

Judith D. Street,

FAA Information Collection Clearance Officer, APF–100.

[FR Doc. 02–26279 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–59]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 15, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–200X–XXXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Sandy Buchanan-Sumter, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–7271.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 10, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13154.

Petitioner: Lauda Air Luftfahrt AG.

Section of 14 CFR Affected: 14 CFR 129.28.

Description of Relief Sought: To permit Lauda Air Luftfahrt AG to operate its B–767 aircraft into U.S. airspace with cockpit doors that do not incorporate features to restrict the unwanted entry of persons into the flightdeck that are operable from the flightdeck only.

[FR Doc. 02–26287 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Santa Barbara Municipal Airport, Goleta, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Santa Barbara Municipal Airport under the provisions of the 49 United States Code (U.S.C.) section 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before November 15, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3012, Lawndale, CA 90261. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Karen Ramsdell, Airport Director, Santa Barbara Municipal Airport at the following address: 601 Firestone Road, Goleta, CA 93117. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Santa Barbara under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Kevin Flynn, Supervisor, Arizona Standards Section, FAA Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, Telephone: (310) 725–3632. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Santa Barbara Municipal Airport under the provisions of the 49 U.S.C. section 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 27, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the city of Santa Barbara was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 28, 2002.

The following is a brief overview of the impose and use application number 02–03–C–00–SBA.

Proposed charge effective date: July 1, 2005.

Proposed charge expiration date: May 1, 2006.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue approved in this application: $1,142,000.

Brief description of proposed use of PFC revenue projects: Master Plan Implementation Plan Project/Taxiway A and Safety Area; Master Plan Implementation Aviation Facilities Plan/Runway Safety Areas.

Brief description of proposed impose and use Projects: Taxiway B Runway Relocation; Master Plan Implementation Plan Project/Taxiway M Runway Incursion Projects; Master Plan Implementation Plan Project/New Taxiway Q. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Unscheduled Air Taxi Operators Operating under FAR part 135.

Any person may inspect the application in person at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of Santa Barbara.

Issued in Lawndale, California, on October 2, 2002.

Mia P. Ratcliff,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 02–26286 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Draft Environmental Impact Statement for the Monmouth-Ocean-Middlesex Rail; Monmouth, Ocean, and Middlesex Counties, NJ

AGENCY: Federal Transit Administration (FTA).

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: The Federal Transit Administration (FTA) is issuing this notice to advise agencies and the public that, in accordance with the National Environmental Policy Act, FTA and the NJ TRANSIT Corporation will prepare a Draft Environmental Impact Statement (DEIS) to evaluate and document the effects of potential rail service alternatives within a three county study area bounded by the Northeast Corridor, the North Jersey Coast Line and the southern Ocean County border, located within Monmouth, Ocean, and Middlesex Counties, New Jersey.

The purpose of the Monmouth-Ocean-Middlesex Rail Project DEIS is to examine the potential benefits, costs, and social, economic, and environmental impacts of feasible alternatives for improving mobility in the Monmouth-Ocean-Middlesex region. The DEIS will identify a preferred alternative that will improve mobility within that region. The DEIS will evaluate a Baseline Alternative and three Commuter Rail Alternatives of differing alignment. The Monmouth Junction Commuter Rail Alternative would use an existing rail corridor that runs from Monmouth Junction to Lakehurst along the Jamesburg Branch, the Freehold Secondary, and the Southern Secondary (Southern Branch) to provide diesel commuter rail service to communities in all three counties. The Red Bank Commuter Rail Alternative would also use an existing rail corridor—continuously from Red Bank to Lakehurst along the Southern Secondary (Southern Branch). The Matawan Commuter Rail Alternative would use the abandoned Freehold Branch, Freehold Secondary, and the Southern Secondary to provide diesel commuter rail service from Matawan to Lakehurst. All three alternatives would require improvements to the existing track and require the construction of some new transportation infrastructure, including tracks, stations and yards. The Commuter Rail Alternatives under consideration were identified and preliminarily assessed as part of the MOM Draft Major Investment Study (MIS) Report (February 1996), along with a recommended Enhanced Bus service.

DATES: *Comment Due Date:* Written comments on the scope of the DEIS should be sent to NJ TRANSIT by January 31, 2003. See **ADDRESSES** below.

Scoping meeting: Public scoping meetings for the Monmouth-Ocean-Middlesex Rail Project DEIS will be held on:

Middlesex County, Tuesday, December 3, 2002, 1:30 pm to 9:30 pm, Holiday

Inn—Monroe Township, 390 Forsgate Drive, Jamesburg, New Jersey 08831
Ocean County, Wednesday, December 4, 2002, 1:30 pm to 9:30 pm, Ramada Inn of Toms River, 2373 Route 9, Toms River, New Jersey 08755
Monmouth County, Monday, December 9, 2002, 1:30 pm to 9:30 pm, Freehold Gardens, 50 Gibbon Place, Freehold, New Jersey 07728

Registration to speak will begin at 1:30 pm and will remain open until 9 pm.

People with special needs should contact James Schwarzwalder at NJ TRANSIT at the address below or call the study toll-free information line at 1–866–MOM–DEIS. The buildings are accessible to people with disabilities. A sign language interpreter will be made available for the hearing impaired by calling the study toll-free information line at 1–866–MOM–DEIS.

Scoping material will be available at the meetings and may also be obtained in advance of the meetings by contacting James Schwarzwalder at the address below or by calling the study toll-free information line above. Oral and written comments may be given at the scoping meetings; a stenographer will record all comments.

ADDRESSES: Written comments on the project scope should be sent to James Schwarzwalder, Project Manager, NJ TRANSIT, One Penn Plaza East, Newark, NJ 07105–2246 or via e-mail to *MOMcomments@njtransit.com*. The scoping meetings will be held at the locations identified above.

FOR FURTHER INFORMATION CONTACT: If you wish to be placed on the mailing list to receive further information as the study develops, contact James Schwarzwalder at the above address or call the study toll-free information line at 1–866–MOM–DEIS. For further information you may also contact: Ms. Carmen Orta, AICP, Community Planner, Office of Planning and Program Development, Federal Transit Administration, Region II, One Bowling Green, Room 429, New York, 10004–1415; phone: 212–668–2170, fax: 212–668–2136.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and NJ TRANSIT invite all interested individuals and organizations, and federal, state, and local agencies to provide comments on the scope of the study. During the scoping process, comments should focus on identifying specific social, economic, or environmental issues to be evaluated and suggesting alternatives, which may be less costly or have less environmental impacts, while achieving the similar transportation objectives. Comments should focus on the issues and alternatives for analysis and not on a preference for a particular alternative. Scoping materials will be available at the meetings or in advance of the meetings by contacting James Schwarzwalder at NJ TRANSIT, as indicated above.

NJ TRANSIT is currently planning a major network expansion project that has relevance to the MOM DEIS. Access to the Region's Core Study (ARC) is a joint study being undertaken by NJ TRANSIT, the Port Authority of New York and New Jersey, and the Metropolitan Transportation Authority of New York. The ARC study is evaluating options for improved access to Midtown Manhattan from points east and west, with both near- and lone-term alternatives. Near-term alternatives focus on expanding the capacity of Penn Station, while the proposed long-term alternative would create a new trans-Hudson tunnel to Penn Station New York and potentially a new Midtown Manhattan rail tunnel connecting Penn Station and Grand Central Terminal. ARC will provide additional capacity to New York City, thereby potentially changing the effects of integrating MOM service into existing New Jersey Transit commuter rail services. The MOM DEIS will therefore incorporate these elements of ARC as needed.

Following the public scoping process, public outreach activities will include meetings with a Community Liaison Committee (CLC) established for the study and comprised of community leaders; public meetings and hearings; distribution of study newsletter(s); a MOM Study web site; and use of other outreach mechanisms. Every effort will be made to ensure that the widest possible range of public participants have the opportunity to attend general public meetings (e.g., scoping meetings and public hearing(s)) held by NJ TRANSIT to solicit input on the Monmouth-Ocean-Middlesex Rail Project DEIS. Attendance will be sought through mailings, notices, advertisements, and press releases.

II. Description of Primary Study Area and Transportation Needs

The primary study area is located in Monmouth, Ocean, and Middlesex Counties in New Jersey, east of the Northeast Corridor, and west of the North Jersey Coast Line. It is located approximately 22 to 50 miles south of Newark, NJ. The municipalities within the primary study area are listed below.

Monmouth County

Aberdeen
Colts Neck
Eatontown
Englishtown
Farmingdale
Freehold Borough
Freehold Township
Howell
Manalapan
Marlboro
Matawan
Red Bank
Shrewsbury Borough
Shrewsbury Township
Tinton Falls
Wall

Ocean County

Lakewood
Lakehurst
Manchester
Dover
Jackson

Middlesex County

Jamesburg
Monroe
South Brunswick

The purpose of the MOM DEIS is to examine in further detail the most promising solutions for addressing mobility issues in Monmouth, Ocean, and Middlesex Counties in New Jersey that were identified through the MIS process. The focus of the DEIS will be to identify a preferred alternative to improve mobility in the region while being sensitive to the economic and environmental considerations on a local and regional basis.

The following existing and forecasted reasons dictate the need for a transportation investment in the Monmouth-Ocean-Middlesex region:

- Growth and development in the region continue at high rates;
- Increased travel is causing congestion and stretching transit capability;
- Delay affects all transit users, but commutes by bus or rail from the southern part of the Study Area generally take at least two hours from door to door;
- Air quality is a serious problem;
- Most municipalities in the study area do not have direct access to public transit in their towns.
- Residents in these municipalities lack rail service and any nearly bus service is often inconvenient and limited.

III. Alternatives

The alternatives proposed for evaluation include: (1) The Baseline Alternative, which includes the current transportation network plus all ongoing, programmed, and committed projects, such as the Secaucus Transfer Station and the Hudson-Bergen Light Rail Transit (HBLRT) system; (2) the Monmouth Junction Commuter Rail Alternative, which would use an existing 40.1-mile rail corridor that runs from Monmouth Junction to Lakehurst, through Middlesex, Monmouth, and Ocean Counties. It is comprised of three distinct railroad segments: the Jamesburg Branch, the Freehold Secondary, and the Southern Secondary (Southern Branch). Trains on the Monmouth Junction Commuter Rail Line would also operate on the Northeast Corridor between Monmouth Junction and Newark. The system would provide diesel commuter service to communities in all three counties. The line would begin at Monmouth Junction (South Brunswick) and would continue southeast through Jamesburg, Englishtown, Manalapan; Freehold Borough, Freehold Township, Howell, and Farmingdale. It would proceed southward from Farmingdale to Lakehurst passing through Howell, Lakewood, Jackson, Dover, and Manchester; (3) the Red Bank Commuter Rail Alternative uses the 27.65-mile long Southern Secondary, which runs continuously from Red Bank to Lakehurst. The line would be accessed from a direct connection with NJ TRANSIT's North Jersey Coast Line (NJCL) in Red Bank. The railroad is owned by the NJ TRANSIT and is operated as a freight railroad by Conrail Shared Assets Corporation. This commuter rail alternative would establish diesel commuter rail service from Red Bank junction through Shrewsburg, Eatontown, Tinton Falls, Howell, Farmingdale, Lakewood, Jackson, Dover, Manchester, and Lakehurst; and (4) the Matawan Commuter Rail Alternative would use an approximately 35.8-mile rail corridor that runs from Matawan to Lakehurst. This alternative is comprised of three distinct railroad segments: the Freehold Branch (currently abandoned), the Freehold Secondary, and the Southern Secondary (Southern Branch). This alternative would provide diesel commuter rail service to communities in Monmouth and Ocean Counties. The line would begin at Matawan, where the Freehold Branch would connect to the North Jersey Coast Line (NJCL). It would proceed south from Matawan, Marlboro, Manalapan, Freehold Borough, and Freehold Township. It would then continue to proceed southward from Farmingdale to Lakehurst, passing through Howell, Lakewood, Jackson, Dover, Manchester, and South Lakewood. Trains would operate on the North Jersey Coast Line (NJCL) between Matawana and Rahway and on the Northeast Corridor (NEC) from Rahway to Newark. Each of the commuter rail alternatives will involve improvements to existing tracks and construction of new transportation infrastructure, such as tracks, station structures, and yards.

IV. Probable Effects

The FTA and NJ TRANSIT will evaluate all potential changes to the social, economic, and physical environment, including land acquisition and displacements; land use, zoning and economic development; parklands; community disruption; aesthetics; historic and archaeological resources; traffic and parking; air quality; noise and vibration; water quality; wetlands; ecologically sensitive areas; endangered species; energy requirements and potential for conservation; hazardous waste; environmental justice; safety and security; and cumulative impacts. Key areas of environmental concern would be in the areas of potential new construction (*e.g.* structures, new stations, new track, etc.) The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. Measures to mitigate any significant adverse impacts will be identified.

V. FTA Procedures

The DEIS is being prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508), the FTA/Federal Highway Administration's Environmental Impact regulations (23 CFR Part 771), and the FTA/FHWA Statewide Planning/Metropolitan Planning regulations (23 CFR Part 450). This study will also comply with the requirements of the National Historic Preservation Act of 1966, as amended, Section 4(f) of the 1966 U.S. Department of Transportation Act, the 1990 Clean Air Act Amendments, the Executive Order 12898 on Environmental Justice, and other applicable rules, regulations, and guidance documents. A Draft Major Investment Study has been prepared for this project (1996). The DEIS will reference the results of that study, as well as the various supplemental studies conducted subsequent to the Draft (MIS), including an evaluation of the potential social, economic, and environmental impacts of the alternatives. Upon completion, the DEIS will be available for public and agency review and comment. Public hearing(s) will be held within the study area. On the basis of the DEIS and the public and agency comments received, a locally preferred alternative will be selected, to be further detailed in the FEIS.

Dated: October 9, 2002.

Letitia Thompson,

Regional Administrator, TRO–II, Federal Transit Administrator.

[FR Doc. 02–26289 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Secretarial Extension of Authority: Marine War Risk Insurance Under Title XII of the Merchant Marine Act, 1936

On December 12, 2001, President George W. Bush approved the provision of vessel war risk insurance by memorandum to the Secretary of State and the Secretary of Transportation. The approval was for the provision by the Secretary of Transportation of insurance or reinsurance of vessels (including cargoes and crews) entering the Middle East region against loss or damage by war risks in the manner and to the extent approved in Title XII of the Act, 46 U.S.C. App. 128. 1281, *et seq.*

The President delegated to the Secretary of Transportation the authority vested in him by section 1202 of the Act to approve the provision of insurance or reinsurance after the expiration of six months and to bring this approval to the attention of all operators and to arrange for its publication in the **Federal Register.**

On August 23, 2002, the Secretary of Transportation approved the extension of the authority to provide such insurance for another six-month period, beginning June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Joe Strassburg, Chief, Division of Marine Insurance, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590, Phone Nunber (202) 366–4156.

By Order of the Maritime Administration.

Dated: October 9, 2002.

Joe C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–26241 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 02–13571]

Motor Vehicle Safety: Reimbursement Prior to Recall

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on a proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collection of information.

This document describes a collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before December 16, 2002.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and is submitted to Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590. Please identify the propose collection of information for which a comment is provided by referencing its OMB Clearance Number. It is requested, but not required, that one (1) original plus two (2) copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. George Person, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Room 5326, Washington, DC 20590. Mr. Person's telephone number is (202) 366–5210.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collections of information:

Reimbursement Prior to Recall

Type of Request—Revision to existing collection.

OMB Clearance Number—2127–0004.

Requested Expiration Date of Approval—Three years from effective date of final rule on reimbursement prior to recall.

Summary of Collection of Information—The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, was enacted on November 1, 2000, Pub. L. 106–414. Section 6(b) of the TREAD Act amended 49 U.S.C. 30120(d) to require a manufacturer's remedy program to include a plan for reimbursing an owner or purchaser who incurred the cost of the remedy within a reasonable time in advance of the manufacturer's notification under subsection (b) or (c) of section 30118. On December 11, 2001, NHTSA issued a notice of proposed rulemaking that would implement this section by amending 49 CFR 573.6 to require manufacturers to submit reimbursement plans to NHTSA and by adding a new section, 49 CFR 573.13, that sets forth what must be included in such plans.

Description of the Need for the Information and Proposed Use of the Information—This information is necessary to enable NHTSA to review manufacturers' reimbursement plans to ensure that they meet the requirements of the TREAD Act and 49 CFR 573.13, and to assure that the information will be available to the public.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Responses to the Collection of Information)—All manufacturers of motor vehicles and motor vehicle equipment that conduct safety recall campaigns would be required to comply with the reporting requirements. Based on recent history, we estimate that fewer than 500 safety recall campaigns will be conducted annually by no more than 170 different manufacturers. The rule would allow manufacturers to submit general reimbursement plans that may be incorporated into defect and noncompliance information reports submitted to NHTSA pursuant to 49 CFR part 573 (part 573 Reports) by reference rather than providing detailed plans to NHTSA for each safety recall campaign. Specific information regarding a particular campaign, such as the dates for the reimbursement period, would be submitted for each recall as part of the manufacturer's part 573 Reports.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—In order to provide the required information, manufacturers that conduct a recall must prepare a reimbursement plan and submit it to NHTSA. Ordinarily, we expect that this will consist of a general plan and supplemental information specific to each recall. We estimate that preparing the general plan would require 8 hours of a combination of types of staff at an average hourly rate of $60.00 per hour. Further, we estimate that no more than one hour would be required to include the additional information about a particular recall into individual part 573 Reports. The total burden hours would be 1,860 hours ((8×170)+(1×500)) and the total cost of the hours' burden would be $111,600 (1,860×$60).

Estimate of the Total Annual Costs of the Collection of Information—Other than the cost of the hours' burden, we estimate that there would be no additional annual costs associated with this information collection.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50. and 501.3(c).

Issued on: October 9, 2002.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 02–26201 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safey Administration

[U.S. DOT Docket Number NHTSA–02–13553]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before December 16, 2002.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Ronald Filbert NHTSA 400 Seventh Street, SW., 5238, NTI 200,Washington, DC 20590. Mr. Filbert's telephone number is (202) 366–2121. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: 23 CFR part 1313 Certificate Requirements for Section 410 State Grants for Drunk Driving Prevention Programs.

OMB Control Number: 2127–0501.

Affected Public: State Government.

Form Number: NA.

Abstract: The National Transportation Equity Act for the 21st Century (TEA–21), enacted in 1998, revised the law, altering the criteria to qualify for a grant. On November 18, 1988, President Reagan signed into law the Drunk Driving Prevention Act of 1988 (23 USC 410) establishing a new anti-drunk driving incentive program. The purpose of the grant program is to promote highway traffic safety by encouraging the states to establish certain measures to prevent drinking and driving. It provides grant funds to states that adopt these measures.

The program provides for a two-tier grant system as an incentive to states to implement effective laws and programs to reduce the drunk driving problem. The first tier provides basic grants for those states that comply with specific Programmatic or Performance criteria. The second tier provides supplemental grants for meeting additional traffic safety program criteria.

To establish eligibility for the grants (basic and supplemental), a state must submit to NHTSA documentation demonstrating that it complies with each of the requirements of the rule. Much of the information required for the 410 application is already generated by the states as part of the development of their Section 402 Highway Safety Plan (HSP) or other ongoing impaired driving programs. To keep the reporting burden on the states to a minimum, states prepare and submit their Section 410 plans, that indicate how they intend to use the grant funds, as part of their existing HSP. The required Highway Safety Program Cost Summary Form HS 217, OMB Clearance Number 2127–0003, is currently used by the states to comply with other highway safety grant programs. Consequently, the state is not required under the rule to prepare or fill out new forms or develop a separate process to receive grants under Section 410.

Estimated Annual Burden: 45 hours per respondent per year.

Number of Respondents: all 50 States and the District of Columbia.

Issued on: October 9, 2002.

Marlene Markison,

Chief of Program Resources, Office of Injury Control Operations and Resources.

[FR Doc. 02–26274 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Modification of a Previously Approved Antitheft Device; Saab

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for modification of a previously approved antitheft device.

SUMMARY: On May 8, 2002, Saab Cars, USA, Inc. (Saab) filed a petition with the National Highway Traffic Safety Administration (NHTSA) asking for a third modification to an agency-approved exemption from the vehicle theft prevention standard for its 9–3 vehicle line which replaced its 900 vehicle line in MY 1999. NHTSA is granting Saab's petition for modification of its exemption from the parts-marking requirements of the vehicle theft prevention standard for its model year (MY) 2003 9–3 vehicle line because it has determined, based on substantial evidence, that the antitheft device described in Saab's petition to be placed on the vehicle line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

DATES: The exemption granted by this notice is effective at the beginning of the 2003 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: On July 26, 1993, NHTSA published in the **Federal Register** a notice granting a petition from Saab for an exemption from the parts marking requirements of the vehicle theft prevention standard for the Saab 900 car line beginning with MY 1994 (See 58 FR 39853). By letters dated September 8 and 12, 1994, Saab petitioned for the first modification to its device. The agency determined that the proposed changes made on Saab 900's antitheft device for MY 1995 were *de minimis* changes and did not require it to submit a petition to modify its exemption pursuant to 49 CFR Part 543.9(c)(2).

On June 20, 1997, Saab submitted a second petition for modification of its previously approved antitheft system for MY 1999. On October 24, 1997, NHTSA published in the **Federal Register** a notice granting in full Saab's second petition for modification for the MY 1999 9–3 vehicle line (See 62 FR 55453).

Saab's submission of May 8, 2002 is a complete petition, as required by 49 CFR part 543.9(d), in that it meets the general requirements contained in 49 CFR part 543.5 and the specific content requirements of 49 CFR part 543.6. Saab's petition provides a detailed description of the identity, design and location of the components of the antitheft system in the vehicle beginning with the 2003 model year. On July 3, 2002, the agency contacted Saab by telephone and obtained additional information which clarified the nature of the changes to its antitheft system for its MY 2003 9–3 vehicle line.

In its MY 2003 petition for modification, Saab stated that for MY 2003 its immobilizer system has been improved. Specifically, the system incorporates several electronic control units (ECU's) in the immobilizer chain for component theft protection. This improvement will prevent stolen components from working if they are mounted in other vehicles. Another improvement is the elimination of the conventional ignition key. A transponder unit with remote arm/disarm features has replaced the traditional mechanical key, unlike the previous antitheft system in which the remote transmitter would not arm or disarm the starter immobilization feature of the system. This is a change from the previously approved system, in which the driver/operator will be able to arm the system, activate the central-locking feature and monitor the protected areas of the vehicle from unauthorized tampering either by using the remote transmitter or locking the driver's or passenger's door with the correct ignition key.

Saab also stated that for MY 2003, there is only one exterior accessible mechanical door lock on the 2003 Saab 9–3. The exterior locking mechanism is capped with a plastic cover and is only meant to be used in emergency situations in which the vehicle or remote battery is dead. In these situations, the plastic cap can be removed and the vehicle can be locked/unlocked with a mechanical key found within the transponder unit. However, using the emergency key will not arm/disarm the alarm.

In order to ensure reliability and durability of the device, Saab stated that its system is designed to work maintenance free throughout the life of the vehicle. Necessary precaution has been taken with regard to electromagnetic compatibility such that radiation from an external source will not render the system inoperative. Saab has used similar systems in the United States since 1997.

The modified system is armed whenever the vehicle is locked using the transponder/ignition key unit. It is disarmed when unlocking using the same unit. In case of an emergency in which the vehicle must be unlocked using the emergency mechanical key, the alarm will be activated and will only deactivate when the transponder/ignition key unit is placed in the ignition slot and turned to the on position. At this point, the system recognizes the security code within the transponder unit and deactivates the alarm.

Saab states that in the Highway Loss Data Institute (HLDI) data published in September 2001, the 4-door 1998–2000 Saab 900/9–3 had a theft index of 65 (100 being the average result).

Saab believes that the antitheft system for model years 2003 and later will provide essentially the same functions and features as found on its MY 1999–2002 systems and therefore, its modified system will provide at least the same level of theft prevention as parts-marking. Saab believes that the antitheft system proposed for installation on its MY 2003 9–3 line is likely to be as effective in reducing thefts as compliance with the parts-marking requirements of part 541.

The agency has evaluated Saab's MY 2003 petition for modification of the exemption for the 9–3 vehicle line from the parts-marking requirements of 49 CFR part 541, and has decided to grant it. It has determined that the system is likely to be as effective as parts-marking in preventing and deterring theft of these vehicles, and therefore qualifies for an exemption under 49 CFR part 543. The agency believes that the modified device will continue to provide five types of performance listed in Section 543.6(b)(3): Promoting activation; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; attracting attention to the efforts of an unauthorized person; and ensuring the reliability and durability of the device.

NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: October 8, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–26288 Filed 10–15–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 623X)]

CSX Transportation, Inc.—Abandonment Exemption—in Putnam County, IN

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.47-mile line of railroad between milepost OOQ–189.18 (north side of Grant Street) and the end of track at milepost OOQ–189.65, in Cloverdale, Putnam County, IN. The line traverses United States Postal Service Zip Code 46120.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R.Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 15, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 28, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 5, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to CSXT's representative: Natalie S. Rosenberg, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 21, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by CSXT's filing of a notice of consummation by October 16, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*WWW.STB.DOT.GOV.*"

Decided: October 8, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–26272 Filed 10–15–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–471 (Sub–No. 6X)]

South Kansas and Oklahoma Railroad Company—Abandonment Exemption—in Crawford County, KS

South Kansas and Oklahoma Railroad Company (SKO) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon a 0.4-mile line of railroad between milepost 134.3 and milepost 134.7, within the city of Pittsburg, in Crawford County, KS. The line traverses United States Postal Service Zip Code 66762.

SKO has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 15, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 28, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 5, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to SKO's representative: Karl Morell, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

SKO has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 21, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

Pursuant to the provisions of 49 CFR 1152.29(e)(2), SKO shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by SKO's filing of a notice of consummation by October 16, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: October 8, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–26273 Filed 10–15–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on this proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, is soliciting comments concerning the Application For Permit User Limited Display Fireworks (18 U.S.C. Chapter 40, Explosives).

DATES: Written comments should be received on or before December 16, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary Jo Hughes, Chief, Firearms, Explosives and Arson Services Division, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone (202) 927–8300.

SUPPLEMENTARY INFORMATION:

Title: Application For Permit User Limited Display Fireworks (18 U.S.C. Chapter 40, Explosives).

OMB Number: 1512–0399.

Form Number: ATF F 5400.21.

Abstract: ATF F 5400.21 is used to verify the eligibility of and grant permission to the holder to buy or transport explosives in interstate commerce on a one-time basis. The record retention requirement for this information collection is indefinitely.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 1,800.

Estimated Total Annual Burden Hours: 540.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 7, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–26199 Filed 10–15–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Illnesses

Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on October 28–29, 2002, at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 230, Washington, DC. The meeting on October 28 will convene at 8:30 a.m. and adjourn at 5:30 p.m. The meeting on October 29 will convene at 8 a.m. and adjourn at 4 p.m. Both meetings will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Persian Gulf War.

On October 28, the Committee will hear presentations on and discuss treatments and neurological mechanisms. On October 29, the panel will hear presentations on and discuss marker studies, merging databases and future health risks. The Committee will also develop recommendations and consider future topics. Time will be available for public comment on both days.

Members of the public may submit written statements for the Committee's review to Ms. Laura O'Shea, Committee Manager, Department of Veterans Affairs (008A1), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing future information should contact Ms. Laura O'Shea at (202) 273–5031.

Dated: October 9, 2002.

By direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–26245 Filed 10–15–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

National Commission on VA Nursing

Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 (Federal Advisory Committee Act) that the National Commission on VA Nursing will hold its third meeting on October 24–25, 2002 at the Sheraton Pentagon South Alexandria, 4641 Kenmore Ave, Alexandria, VA 22304. On October 24, the meeting will begin at 9 a.m. and adjourn at 5 p.m. On October 25, the meeting will begin at 8 a.m. and adjourn at 2 p.m. The meeting is open to the public.

The purpose of the Commission is to provide advice and make recommendations to Congress and the Secretary of VA regarding legislative and organizational policy changes to enhance the recruitment and retention of nurses and other nursing personnel in VA. The Commission is required to submit to Congress and the Secretary of Veterans Affairs a report, not later than two years from May 8, 2002, on its findings and recommendations.

The Commission will meet to continue work on information gathering and analysis. On October 24, nursing data extracted from the 2001 VA Employee Survey will be presented and an update on Commission activities will be discussed. On October 25, sub-groups will make presentations on assignments from the previous meeting. The Commission will determine what additional information is needed and how it should be obtained.

Members of the public may direct written questions or submit prepared statements for review by the Commission in advance of the meeting to Ms. Oyweda Moorer, Director of the National Commission on VA Nursing, at Department of Veterans Affairs (108N), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting should contact Ms. Stephanie Williams, Program Analyst at (202) 273–4944.

Dated: October 9, 2002.

By direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–26244 Filed 10–15–02; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 67, No. 200
Wednesday, October 16, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Changes in Divisional Structure and Delegations of Authority

Correction

In rule document 02–25049 beginning on page 62350, in the issue of Monday, October 7, 2002, make the following correction:

PART 1 — CORRECTED

On page 62353, in the first column, in amendatory instruction 3., in the first line, "1.4a" should read "1.41a".

[FR Doc. C2–25049 Filed 10–15–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Grant of Exclusive or Partially Exclusive Licenses

Correction

In notice document 02–25181 beginning on page 62039 in the issue of Thursday, October 3, 2002 make the following corrections:

1. On page 62040, in the first column, in paragraph 5., in the seventh line, "single" should read "suitable".

2. On page 62041, in the third column, in paragraph 20., in the sixth line, "ratably" should read "rotatably".

[FR Doc. C2–25181 Filed 10–15–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 460

[CMS–1201–IFC]

RIN 0938–AL59

Medicare and Medicaid Programs; Programs of All-inclusive Care for the Elderly (PACE); Program Revisions

Correction

In rule doccument 02–24858 beginning on page 61496 in the issue of Tuesday, October 1, 2002 make the following correction:

§460.26 [Corrected]

On page 61505, in the first column, in §460.26(b), subparagraph heading "(1)" was repeated and should read " (2)".

[FR Doc. C2–24858 Filed 10–15–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[FMCSA Docket No. FMCSA–97–2289]

RIN 2126–AA27

Development of a North American Standard for Protection Against Shifting and Falling Cargo

Correction

In rule document 02–23693 beginning on page 61212 in the issue of Friday, September 27, 2002 make the following correction:

§393.124 [Corrected]

On page 61233, in the second column, in §393.124, in the second paragraph from the top, designated as "(a)" should read "(e)".

[FR Doc. C2–23693 Filed 10–15–02; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Wednesday,
October 16, 2002

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for *Holocarpha macradenia* (Santa Cruz Tarplant); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG73

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for *Holocarpha macradenia* (Santa Cruz Tarplant)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Holocarpha macradenia* (Santa Cruz tarplant). Approximately 1,175 hectares (2,902 acres) of land in Contra Costa, Santa Cruz, and Monterey Counties, California, fall within the boundaries of the critical habitat designation. This critical habitat designation provides additional protection under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of the proposed rule, including data on economic and other impacts of the designation, and our approaches for handling any future habitat conservation plans.

DATES: This rule becomes effective on November 15, 2002.

ADDRESSES: Comments and materials received, as well as supporting documentation, used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Connie Rutherford, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, telephone 805/644–1766; facsimile 805/644–3958. Information regarding this proposal is available in alternate formats upon request.

SUPPLEMENTARY INFORMATION:

Background

Holocarpha macradenia (Santa Cruz tarplant) is an aromatic annual herb in the aster family (Asteraceae) that is restricted to coastal terrace prairie habitat along the coast of central California. *Holocarpha macradenia* is one of only four species of the genus *Holocarpha*. All four are geographically restricted to California. The plant is rigid with lateral branches that grow to the height of the main stem, which is 10 to 50 centimeters (cm) (4 to 20 inches (in)) tall. The lower leaves are broadly linear and up to 12 cm (5 in) long; the upper leaves are smaller, with rolled back margins, and are truncated by a distinctive craterform (open pitted) gland. The yellow daisy-like flower head is surrounded from beneath by individual bracts (small leaf-like structures associated with the flower head) that have about 25 stout gland-tipped projections (Keil 1993). *H. macradenia* is distinguished from other members of the genus by its numerous ray flowers and black anthers.

Holocarpha macradenia, like other closely related tarplants in the genus *Deinandra*, is self-incompatible, meaning that individuals will not produce viable seeds without cross pollinating with other individuals (B. Baldwin, *in litt.*, 2001). Gene flow from individual to individual and from population to population increases the likelihood of viability through the maintenance of genetic diversity; therefore gene flow is important for the long-term survival of self-incompatible species (Ellstrand 1992). Gene flow often occurs through pollen movement between populations, and likely occurs over short distances; most of the native insects thought to pollinate *H. macradenia* generally travel less than 0.5 kilometers (km) (0.3 miles (mi)) at one time (Waser, *in litt.*, 2002). Clusters of small populations of *H. macradenia* may facilitate greater gene flow; therefore, even the conservation of small occurrences may be critical to maintaining genetic diversity in this species. Native bees, bee flies, and wasps have been observed visiting *H. macradenia* flowers (Sue Bainbridge, Jepson Herbarium, University of California, Berkeley, pers. comm., 2001).

Seed production in *Holocarpha macradenia* is highly variable. A large, multi-branched individual may produce 25 seed heads with up to 15 seeds per head, while individuals growing in crowded conditions may be unbranched and produce only one seed head (S. Bainbridge, pers. comm., 2001). Floral heads produce two kinds of achenes (seeds), disc and ray. The disc achenes readily germinate under field and lab conditions, but appear to lose viability within 18 months of production (Bainbridge 1999; S. Bainbridge, pers. comm., 2001). In contrast, the ray achenes do not germinate readily under field and lab conditions; they represent the persistent soil seed bank (a reserve of dormant seeds, generally found in the soil) in the field, and germination may be delayed for many years until further environmental cues break their dormancy (Bainbridge 1999).

The disc achenes usually fall from the receptacle to the ground below the parent plant, while the ray achenes are enclosed in a sticky glandular phyllary (leaf-like structure) which aides dispersal by attaching to animals. Those animals likely to assist in seed dispersal include, but are not limited to, mule deer (*Odocoileus hemionus*), gray foxes (*Urocyon cinereoargenteus*), coyotes (*Canis latrans*), black-tailed jackrabbits (*Lepus californicus*), bobcats (*Felis rufus*), striped skunks (*Mephitis mephitis*), opossums (*Didelphis virginiana*), racoons (*Procyon lotor*), and other small mammals and small birds.

The *Holocarpha macradenia* seed bank is important to the species' year-to-year and long-term survival (Bainbridge 1999). A seed bank includes all seeds in a population and generally covers a larger area than the extent of observable plants seen in a given year. The extent of seed bank reserves is variable from population to population. For example, in 1999 at the Twin Lakes population of *H. macradenia* in Santa Cruz, the seed bank density averaged 240 seeds per square meter (m^2) (10 square feet (ft^2)); at the Watsonville Airport, the seed bank density averaged 887 seeds per m^2 (10 ft^2); at the Porter Ranch population in northern Monterey County, the seed bank density averaged 40,000 seeds per m^2 (10 ft^2) (Bainbridge 1999; S. Bainbridge, pers. comm., 2001).

The number and location of standing plants (observable plants) in a population varies annually. For example, the Graham Hill population near Santa Cruz comprised 12,000 standing plants in 1994 and 550 in 2001 (V. Haley, consultant, Felton, CA, pers. comm., 2001); the Apple Hill population near Watsonville comprised 0 standing plants in 1999; 4,049 in 2000; and 1,330 in 2002 (T. Edell, *in litt.*, 2000; 2002). This annual variation in standing plants is due to a number of factors, including the amount and timing of rainfall, temperature, soil conditions, and extent and nature of the seed bank.

Management activities can affect the balance between the number of standing plants and the extent of seed bank reserves. Burning, mowing, and scraping habitat for *Holocarpha macradenia* have been utilized to enhance populations at several sites, including Graham Hill, Arana Gulch, Twin Lakes, Tan, and Apple Hill, with variable results. At the Watsonville Airport site, *H. macradenia* habitat

adjacent to runways has been mowed, disced, and grazed to maintain visibility for airport operations. While this management has increased the density of *H. macradenia*, the vigor of individual plants appears to be in decline, and the seed bank reserve may be becoming depleted (Deb Hillyard, California Department of Fish and Game (CDFG), pers. comm., 2001).

Habitat for *Holocarpha macradenia* historically consisted of grasslands and prairies found on coastal terraces below 100 meters (m) (330 feet (ft)) in elevation, from Monterey County north to Marin County (CNDDB 2001). In the late 1800s, coastal prairies were estimated to cover 350,000 hectares (ha) (865,000 acres (ac)) in California (Huenneke 1989). Historically, four major factors contributed to changes in the distribution and composition of coastal prairies: Livestock grazing; the introduction of highly competitive, nonnative species; the elimination of periodic fire; and cultivation (Heady *et al.* 1988). The remaining coastal prairie habitat in the Monterey Bay area, as well as in the rest of the State, is becoming increasingly fragmented and restricted in distribution, largely due to these same factors as well as urban development.

In the Santa Cruz area, *Holocarpha macradenia* exists on flat to gently sloping marine terrace platforms that are separated by steep-sided gulches. A series of populations occur on older marine terraces inland from the communities of Santa Cruz and Soquel; these terraces range in elevation from about 34 to 122 m (110 to 400 ft). Two populations (Arana Gulch and Twin Lakes) occur on a more recent marine terrace at lower elevations (12 to 18 m (40 to 60 ft)) and closer to the ocean. In the Watsonville area in Santa Cruz County, a series of *H. macradenia* populations occur on a low-lying marine terrace (15 to 37 m (50 to 120 ft) in elevation) that is dissected by Harkins Slough, Hanson Slough, and Struve Slough; the close proximity of these populations suggest that they were once part of a larger population that has since been fragmented by changes in land use over the past 100 years. Approximately 6.4 km (4 mi) north of Watsonville, several *H. macradenia* populations are located on a marine terrace 55 m (180 ft) in elevation. Approximately 4.8 km (3 mi) south of Watsonville a population occurs at an elevation of 30 m (100 ft) on alluvium (sedimentary material deposited by flowing water) resulting from marine terrace deposits. On the east side of San Francisco Bay (Contra Costa County), the marine terraces are more extensively dissected, and *H. macradenia* populations historically occurred on the alluvium resulting from terrace deposits (Palmer 1986).

In Santa Cruz County, where most of the remaining native populations of *Holocarpha macradenia* occur, the soils most typically found on marine terraces and the alluvial deposits derived from them are of several soil series (Brabb 1989; SCS 1978, 1980). The Watsonville, Tierra, Elkhorn, and Pinto soil series are most frequently associated with occurrences of *H. macradenia*. These loams and sandy loams are deep and range from well drained to somewhat poorly drained. Other soil series, including Los Osos, Elder, and Diablo, are also located in the vicinity of known populations of *H. macradenia*, but due to the scale used for mapping the distribution of soils, we cannot determine the importance of these soils to this species.

Because the soils where *Holocarpha macradenia* occurs typically include a subsurface clay component, they hold moisture longer into the growing season compared to the surrounding sandy soils. As a summer-blooming species, *H. macradenia* may benefit from this late season moisture (CDFG 1995); alternatively, the saturated soil conditions during the spring season may be too wet for many other species to become established, and therefore maintain the reduced cover that *H. macradenia* prefers (Grey Hayes, University of California, Santa Cruz, pers. comm., 2001).

Today, the Santa Cruz tarplant is associated most frequently with grasses such as *Avena fatua* (nonnative wild oat), *Hordeum murinum* (barley), *Briza maxima* (rattlesnake grass), *Vulpia* spp. (vulpia), and *Bromus* sp. (bromes); frequent native associates include *Juncus* spp. (rushes) and *Danthonia californica* (California oatgrass). Associated native herbaceous species include other tarplants from the genus *Hemizonia*. At some locations, the plant is found with rare or sensitive species, including *Perideridia gairdneri* (Gairdner's yampah), *Plagiobothrys diffusus* (San Francisco popcorn flower), *Trifolium buckwestiorum* (Santa Cruz clover), and the Ohlone tiger beetle (*Cicindela ohlone*), a species listed as endangered (Service 2001). Other locally unique plant species such as *Plagiobothrys chorisianus* var. *chorisianus* (Choris's popcorn flower), *Triteleia ixiodes* (Triteleia), *Eryngium armatum* (coast coyote thistle), and *Grindelia hirsutula* var. *maritima* (San Francisco gumplant) also occur in these areas (CNDDB 2001; Hayes 2002; Stromberg, *et al.* 2001).

The distribution of *Holocarpha macradenia* has been severely reduced due to continuing destruction and alteration of coastal prairie habitat. All the native San Francisco Bay area populations have been extirpated. The last remaining native population in this area, known as the Pinole Vista population, consisting of 10,000 plants, was eliminated in 1993 by commercial development (CDFG 1997).

Along Monterey Bay in Santa Cruz and Monterey Counties, approximately 13 populations are extant. According to CNDDB, an additional nine populations along the Monterey Bay have been extirpated by development, most recently in 1993 when a population in Watsonville (Anna Street site) was destroyed during construction of office buildings and a parking lot (CDFG 1993, 1995). Other populations have declined or have recently disappeared due to changes in grassland management that favor species which compete with *Holocarpha macradenia*. Where habitat is still intact, management favorable to *H. macradenia* can reverse these trends and allow seeds in the dormant seed bank of the species to germinate and grow. The ability to provide appropriate management for the remaining occurrences of *H. macradenia* will be pivotal in the recovery of the species.

Holocarpha macradenia is currently known from approximately 13 native and 8 experimentally seeded populations (CNDDB 2001, CDFG 2000) in Contra Costa, Monterey, and Santa Cruz Counties. Some of the native populations may represent separate, fragmented patches of what historically was a single larger population. Seven of the native populations occur around the cities of Santa Cruz and Soquel. These populations, with the number of standing plants and year of the most recent survey, are: Graham Hill Road, 575–650 individuals (2002); De Laveaga, "several thousand" individuals (2001), Arana Gulch, 10,000 individuals (2002); Twin Lakes, 21 individuals (2002); O'Neill/Tan, 0 individuals (2001); Winkle (also referred to as Santa Cruz Gardens), 0 individuals (1994); and Fairway, 150 individuals (2001) (V. Haley, *in litt.*, 2002; Root 2001; Seals 2002; S. Bainbridge, *in litt.*, 2002; Rigney 2001; CNDDB 2001; Rutherford, pers. obs., 2001). The names of the populations used here are those used in the final rule to list the species published on March 20, 2000 (65 FR 14898).

The remaining six native populations occur around the city of Watsonville. Four of these are bounded generally by Corralitos Creek, Harkins Slough, Watsonville Slough, and the city of

Watsonville; they may represent remnants of a larger population. These four populations, with their number of standing plants and year of the most recent survey are: Watsonville Airport, 2,492,000 individuals (2001); Harkins Slough, 15,000 individuals (1993); Apple Hill, 1,330 individuals (2002); and Struve Slough, 1 individual (1994). Two outlying populations in the Watsonville area are: Spring Hills Golf Course, 4,000 individuals (1990); and Porter Ranch, 120,000 individuals (2001) (Duffy & Associates 2002; CNDDB 2001; Edell, *in litt.*, 2002; Bainbridge, *in litt.*, 2002).

The eight experimentally seeded populations of *Holocarpha macradenia* have resulted from the planting of seed in Wildcat Regional Park in the east San Francisco Bay area (East Bay). The final rule to list *H. macradenia* (65 FR 14898) included a discussion of these efforts to establish new populations within the historic range of the species. Twenty-two sites were seeded between 1982 and 1986 in what appeared to be suitable habitat but representing a range of conditions based on the following criteria: soil series (Tierra as well as five others), grazing pressure (light or moderate), and exposure to coastal fog (fog, wind but no fog, and out of wind). The seeds used for planting had been collected from East Bay populations at the northern end of the species' range. Although a number of populations did well for a few years, many have failed to persist. Of the eight populations that have persisted at least for 14 years, only one, Mezue, has consistently supported large numbers of individuals. In the year 2000, this population was the largest it has been since the initial seeding in 1983 and supported over 17,000 individuals (CDFG 2000).

Very recently, three population introductions have been attempted in conjunction with research on the effects of different grazing regimes on the suite of herb species (as opposed to grass species) within native coastal prairie. Two of the seeding attempts are located just north and west of the city of Santa Cruz, and one is in northern Monterey County within the Elkhorn critical habitat unit. Although it is too early to assess the degree of success these efforts will achieve, the population within the Elkhorn unit appears to be doing the best of the three at this point (Holl, *in litt.*, 2002).

Several agencies have taken the initiative to undertake efforts to enhance habitat for *H. macradenia*. In conjunction with the CDFG, the city of Santa Cruz has been applying a variety of habitat manipulations to plots within the Arana Gulch Open Space Preserve, including raking, scraping, mowing, and controlled burning with the objective of increasing the number of standing individuals, which had been in decline since grazing was terminated in the 1980s (CDFG 1997). The CDFG has been applying habitat manipulations (mowing, burning, and scraping) and carrying out seed bank studies (Bainbridge 1999). The California Department of Transportation (CalTrans) has been mowing the Apple Hill population west of Watsonville to reduce the biomass of nonnative grasses (T. Edell, *in litt.*, 1998). While the interpretation of results can be complex, these efforts generally show that the number of standing individuals may be increased by reducing the potential for competition between *H. macradenia* and nonnative grasses through these management practices. However, increasing the number of standing individuals may also deplete seed bank reserves; therefore, the goals of appropriate management should include not only increasing the number of standing individuals in small populations, but also maintaining the appropriate balance between standing individuals and seed bank reserves.

Several proposed development projects will impact habitat for *Holocarpha macradenia*. Housing developments have been approved for several sites including the Graham Hill site and the Fairway site, but management plans for *H. macradenia* have not yet been fully implemented. A management plan for *H. macradenia* has been initiated for the Tan population, but has not yet resulted in enhancement of the population. Approval for a housing development adjacent to the Winkle population is pending. A housing development for the Struve Slough was recently approved without any active management plan for *H. macradenia*. As a result of a legal challenge, Watsonville Wetlands Watch has been granted 3 years to raise funding to purchase a 2-ha (6-ac) portion of the site that supports *H. macradenia* for conservation purposes (Superior Court of the State of California 2001).

As has been observed at the Watsonville Airport, human activities, such as mowing and cattle grazing can favor the abundance of *Holocarpha macradenia* by reducing competition from other herbaceous species. However, because these activities can also promote the spread and establishment of nonnative species, they may need to be repeated at frequent intervals or at certain times to maintain the establishment of *H. macradenia*. Such intensive management may not be practical in all areas where *H. macradenia* habitat includes a complement of nonnative species. Moreover, while the presence of *H. macradenia* could be maintained in areas with a high abundance of nonnative species, the habitat quality of these areas for *H. macradenia* may be less than areas where the presence of nonnative species is minimal. Research on the effects of different frequencies of mowing, litter removal, and soil disturbances on habitat for *H. macradenia* is ongoing by researchers at the University of California (UC) at Santa Cruz and UC Berkeley's Jepson Herbarium (Holl, *in litt.*, 2002; Bainbridge, *in litt.*, 2002b) and will contribute to our understanding of how to optimize management efforts to benefit this species.

Based on the presence of other fragments of remaining coastal terrace prairie habitat, we believe that additional populations of *Holocarpha macradenia* may occur within the current range of the species but have not yet been detected. In particular, suitable habitat most likely remains on older coastal terraces that lie to the north of the cities of Santa Cruz and Soquel. These areas may contain a viable seed bank, even if no standing plants are found.

Holocarpha macradenia is threatened primarily by historic and recent habitat destruction caused by residential development and habitat alteration caused primarily by land management practices that favor the increase of other species which compete with *H. macradenia*. Most often, the establishment of invasive, competing species follows from the cessation of grazing by cattle or horses. Future loss of habitat may also result from recreational development, airport expansion, and agriculture. Habitat that has been set aside in preserves, conservation easements, and open spaces also suffers secondary impacts from: (1) Casual use by residents; (2) introduction of invasive species; (3) lack of active management; and (4) changes in hydrology. In particular, smaller preserve areas with *H. macradenia* suffer because they are cut off from many ecosystem functions dependent upon soil and hydrologic characteristics that would be present in larger, more contiguous sites. More often, these smaller areas are left as open spaces, but without the benefit of the grassland management needed to sustain them.

Nonnative species that have invaded and threaten habitat supporting native populations of *Holocarpha macradenia* include *Genista monspessulana* (French broom), *Eucalyptus* sp. (eucalyptus), *Acacia decurrens* and *A. melanoxylon* (acacia), and a number of nonnative grass species, particularly *Phalaris aquatica* (Harding grass) and *Bromus* spp. (bromes). In Wildcat Regional Park in the East Bay area, *Cynara cardunculus* (artichoke thistle) has invaded habitat for *H. macradenia* at the one site that is being designated as critical habitat (Mezue), as well as many of the other sites where introduced populations of *H. macradenia* were attempted. Picris echiodes (Bristly ox-tongue) has recently invaded the population of *H. macradenia* at the Elkhorn unit (Holl, *in litt.*, 2002).

Previous Federal Action

Federal action on this plant began when the Secretary of the Smithsonian Institution, as directed by section 12 of the Act, prepared a report on those native U.S. plants considered to be endangered, threatened, or extinct in the United States. This report (House Doc. No. 94–51), was presented to Congress on January 9, 1975, and included *Holocarpha macradenia* as endangered. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act and of our intention thereby to review the status of the plant taxa named therein. On June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) determining approximately 1,700 vascular plant species to be endangered pursuant to section 4 of the Act. *Holocarpha macradenia* was included in this June 16, 1976, **Federal Register** document.

In 1978, amendments to the Act required that all proposals over two years old be withdrawn. A one-year grace period was given to those proposed rules already more than two years old. Later, on December 10, 1979, we published a notice (44 FR 70796) of the withdrawal of the portion of the June 16, 1976, proposed rule that had not been made final, along with four other proposed rules that had expired. We published an updated notice of review (NOR) for plants on December 15, 1980 (45 FR 82480). This notice included *Holocarpha macradenia* as a category one candidate (species for which data in our possession was sufficient to support proposals for listing).

On February 15, 1983, we published a notice (48 FR 6752) of our prior finding that the listing of *Holocarpha macradenia* was warranted but precluded in accordance with section 4(b)(3)(B)(iii) of the Act as amended in 1982. Pursuant to section 4(b)(3)(C)(i) of the Act, this finding must be recycled annually, until the species is either proposed for listing, or the petitioned action is found to be not warranted. Each October from 1983 through 1990 further findings were made that the listing of *H. macradenia* was warranted, but that the listing of this species was precluded by other pending proposals of higher priority.

Holocarpha macradenia continued to be included as a category one candidate in plant NORs published September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). Upon publication of the February 28, 1996, NOR (61 FR 7596), we ceased using category designations and included *H. macradenia* as a candidate. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as threatened or endangered. The 1997 NOR, published September 19, 1997 (62 FR 49398) retained *H. macradenia* as a candidate, with a listing priority of 2. On March 20, 1998, we published a proposed rule in the **Federal Register** (63 FR 15142) to list *H. macradenia*. The final rule listing *H. macradenia* as a threatened species was published on March 20, 2000 (65 FR 14898).

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time *Holocarpha macradenia* was listed, we found that designation of critical habitat for *H. macradenia* was prudent, but that given our limited listing budget, designation of critical habitat would have to be deferred so as to allow us to concentrate limited resources on higher priority critical habitat and other listing actions.

On June 17, 1999, our failure to issue final rules for listing *Holocarpha macradenia* and eight other plant species as endangered or threatened, and our failure to make a final critical habitat determination for the nine species was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *Babbitt* (Case No. C99–2992 (N.D.Cal.)). On May 22, 2000, the judge signed an order for the Service to propose critical habitat for the species by September 30, 2001. In mid-September 2001, plaintiffs agreed to a brief extension of this due date until November 2, 2001. The proposed rule to designate critical habitat for the species was signed on November 2, 2001, and sent to the **Federal Register**.

The proposed rule to designate critical habitat for the species was published on November 15, 2001 (66 FR 57526). In the proposal, we determined it was prudent to designate approximately 1,360 ha (3,360 ac) of land in Santa Cruz and Monterey Counties as critical habitat for *Holocarpha macradenia*. Publication of the proposed rule opened a 60-day public comment period, which closed on January 14, 2002.

On May 7, 2002, we published a notice announcing the reopening of the comment period on the proposal to designate critical habitat for *Holocarpha macradenia* and a notice of availability of the draft economic analysis on the proposed determination (67 FR 30642). This second public comment period closed on June 6, 2002. On May 16, 2002, the plaintiffs agreed to extend the date upon which we are to make a final rule determination for critical habitat to September 30, 2002.

Summary of Comments and Recommendations

We contacted appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of notices in the Santa Cruz Sentinel on November 21; the Monterey Herald on November 20; the San Jose Mercury on November 20; and the Oakland Tribune on November 22; all in the year 2001. We received individually written letters from 18 parties, which included 4 designated peer reviewers, 1 Federal agency, 2 State agencies, and 3 local jurisdictions. Of these 18 parties, 13 supported the proposed designation and 5 were neutral regarding the designation of critical habitat for this species; however, 1 of those supporting the designation and 3 of those that were neutral requested that areas they own, manage, or have planning jurisdiction over, be excluded from critical habitat designation.

We reviewed all comments received for substantive issues and new information regarding critical habitat and *Holocarpha macradenia*. Similar comments were grouped into general

issues and are addressed in the following summary.

Biological Issues

1. *Comment:* The need for the 9 smaller units, ranging in size from 7 to 170 acres, is well justified given specific information about the status of the *Holocarpha macradenia* populations. However, the need for the two larger units (I and J near Watsonville), which together comprise almost half of the 3,360 acres proposed for designation, is not adequately justified.

Our Response: The varying size of the units is in part due to their location relative to the configuration of the coastal terraces in the vicinity as well as patterns of development. For instance, in the hills north of Santa Cruz and extending down to the Soquel area, the coastal terrace is strongly dissected by a series of drainages, leaving small fingers of terrace jutting southward. Populations of *Holocarpha macradenia* that occur on these terraces are necessarily restricted in distribution by geography, and then more so by human development. In contrast, the coastal terrace in the vicinity of Watsonville occurs as a larger block that is only weakly dissected by swales and drainages, resulting in a more rolling hill landscape. As discussed in this rule, numerous historic locations of *H. macradenia* have been noted in the Watsonville area. This leads us to conclude that *H. macradenia* was once widespread throughout the coastal terraces in the area. We believe the designation of larger critical habitat units in the Watsonville area is consistent with the available information on landforms, soils and historic occurrences of the species.

As discussed below, Units I and J are essential because they support many populations of *H. macradenia*, as well as the grassland habitat that is important to expanding existing populations and maintaining connectivity between them. These units also represent two of the three areas in the central Monterey Bay area and the southern end of the range of the species that support populations of *H. macradenia*. Unit J also contains the most inland distribution of the species. Preserving the genetic variability within a species, by conserving populations with unique characteristics such as the ability to persist at the edge of the species' range, allows it to adapt to changing environmental conditions, and is therefore is essential to the long-term survival and conservation of the species.

2. *Comment:* The proposed designation of 3,360 acres seems excessive for a species that is only listed as threatened.

Our Response: The Act and its implementing regulations do not provide for different standards when considering critical habitat for a threatened species as opposed to an endangered species. Other species listed as threatened have had much larger acreages designated. The extent of acreage designated in this rule, as in all of our critical habitat rules, is tied to the amount of habitat that supports the primary constituent elements for the species, and where the species is known to occur. Based on the remaining amount of habitat and what is known about the historic and current range of *Holocarpha macradenia*, we conclude that the amount of critical habitat being designated is essential for maintaining populations of *H. macradenia*, as well as the grassland habitat and the ecological functions that are important for the expansion of existing populations and maintaining connectivity between them.

3. *Comment:* Three commenters indicated that additional critical habitat should be designated in the East Bay region (Alameda and Contra Costa Counties) in support of additional reintroduction efforts for *Holocarpha macradenia* within its historic range. One commenter specified that habitat for at least five populations should be designated in this area and that seed used should represent the remains of the "northern" gene stock.

Our Response: We agree that maintaining the northern gene stock is important to the conservation and recovery of the species, and that attempting to establish additional populations in the East Bay region is an important recovery task. Although we are only designating one area in the East Bay region as critical habitat, we believe that the relatively large size and long-term stability of the population in this unit made it the most important to designate at this time. We are required to designate those areas we know to be critical habitat, using the best information available to us at the time. When we designate critical habitat at the time of listing, as required under Section 4 of the Act, or under court-ordered deadlines, we may not have the information necessary to identify all areas that are essential for the conservation of the species. Additional habitat outside the designated areas may later be discovered to be critical for the recovery of the species. We will soon be developing a recovery plan for *Holocarpha macradenia*, and look forward to developing specific recovery recommendations for the species, including the need for establishing additional populations within the historic range of the species in the East Bay.

Management Considerations

4. *Comment:* We received comments from several land managers as well as academic researchers that are currently evaluating the role that grazing and fire may have in maintaining habitat for *Holocarpha macradenia*. A number of suggestions were offered about how the species responds to different types of management and how discussion of these management options should be framed in the rule.

Our Response: We appreciate the numerous suggestions we received to expand discussions regarding management, and we have incorporated some of these suggestions into the rule in the Background section and the Special Management Considerations section. However, we have limited the level of detail to which the discussion has been expanded, because it could go well beyond the scope of the current critical habitat designation process. We suggest that these issues be discussed further at the time we are developing a recovery plan for the species.

Economic Comments

5. *Comment:* We received one comment recommending that we use the contingent valuation method (CVM) to determine the hypothetical nonuse values for the plant species and its habitat that comprise this rulemaking.

Our Response: Economists recognize that in addition to a "use value" that society places on natural resources these goods may also exhibit a "non-use value" by society. For example, while many people may elect to visit a public park and "use" it for a variety of recreational purposes, the presence of this park may provide a variety of benefits to additional members of society even though their enjoyment may not be directly observable. Certain individuals may also derive benefits from the park because of the protection it offers to certain natural resources including a diverse ecosystem that harbors endangered and threatened species. While these members of society may value the park merely for its existence, their behavior is not directly observable and thus economists have developed certain tools, including the CVM for measuring these values.

CVM is an approach used by economists to directly elicit non-use values from individuals through the use of carefully designed survey instruments. A CVM study will provide respondents with a framework wherein they are asked to value the resource given the parameters of the framework. For the CVM to work properly, and provide meaningful information on non-use values, considerable resources must be expended to adequately design and administer this tool. However, it is not currently feasible for us to conduct CVM studies to capture the non-use values certain individuals may place on critical habitat designation due to our limited resources.

In conducting our analyses, we do review economic literature to determine whether or not there are any existing studies that can provide information that would allow us to better describe and accurately quantify such benefits associated with the survival and recovery of the species and its habitat in question. However, even when such studies are identified, they usually do not allow for the separation of the benefits of listing (including the Act's take provisions) from the benefits of critical habitat designation.

While we are often unable to quantify benefits that may be associated with the designation, our analyses do discuss potential benefits in a qualitative manner. This discussion is not intended to provide a complete analysis of the benefits that could result from section 7 of the Act in general or critical habitat designation in particular. In short, we believe that we are currently best able to express the benefits of critical habitat designation in biological terms that can be weighed against the expected cost impacts of the rulemaking.

We believe that this approach is consistent with the statutory requirements of the Act. Section 4(b)(2) of the Act requires the Secretary to designate critical habitat on the basis of the best scientific data available after taking into consideration the economic impact and any other relevant impact of specifying any particular area as critical habitat. This section of the Act continues on to state that the Secretary may exclude areas from the designation if he (she) determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the designation. This language does not imply that the Secretary must apply a strict cost-benefit test to the exclusion process but instead gives her broad discretion in considering the best scientific and commercial data available when making a final decision. As a result, critical habitat decisions do not hinge solely on the results of a benefit-cost analysis. The designation of critical habitat units is first made on biological grounds, and when these decisions significantly impinge on economic activities, then the weighing of the costs and benefits of the proposed action are considered. In this particular instance, the economic analysis did not identify any significant economic impact associated with the designation.

6. *Comment:* One commenter asserted that the designation of critical habitat causes officials of California's resource agencies, namely the California Coastal Commission (CCC) and the CDFG to identify the designated areas as Environmentally Sensitive Habitat Areas (ESHA), and that land use within the ESHAs are restricted through the implementation of requirements of the California Coastal Act (CCA). Thus ESHAs could impose additional costs on the regulated community.

Our Response: As stated in our addendum to the draft economic analysis, the CCA charges the CCC with implementing coastal management policies in conjunction with local governments in coastal zones in 15 counties and 58 cities in California. These policies generally require the protection of fragile and/or scenic coastal habitat, improvement of public access (physical and visual) to the coast, the protection of agricultural land, and measures to direct growth towards urban areas and away from undeveloped coastal areas. The CCC also established the Local Coastal Program (LCP), which requires local coastal governments to prepare management plans for their coastal areas that must be approved by the CCC. Once a local government obtains CCC approval of its LCP, the authority to approve local development proposals is transferred from the CCC to the local government in most circumstances. The CCC maintains "original jurisdiction" over areas where no approved LCP exists, proposals on the immediate shoreline (below mean high tide), and proposals involving major public works or energy projects.

In the process of approving and/or amending LCPs, or through reviewing applications under "original jurisdiction," the CCC may establish certain coastal areas as ESHAs, depending on the habitat resources present and their role in healthy ecosystem function. ESHAs are established based on a site-specific field study of the project area in question by CCC biologists. Once established, the presence of an ESHA limits the type of development that can be approved to "uses dependent only on those resources" present in the ESHA.

The most likely potential effect of critical habitat on the CCC's implementation of the CCA would be through the increased likelihood that an ESHA might be established following its designation. CCC personnel indicate that the presence of listed species nearly always results in the establishment of an ESHA. As a result, the designation of critical habitat would increase the likelihood of ESHA establishment in areas not previously known to be occupied by endangered or threatened species.

While the presence of designated critical habitat is typically correlated with an ESHA, CCC staff confirm that the designation itself does not automatically result in an area becoming an ESHA. Rather, the designation of critical habitat is considered by CCC biologists as a potential source of additional information to be evaluated in the context of the quality of the underlying data and checked against existing knowledge and field surveys. CCC staff also indicate, however, that if habitat represents significant biological value for a State- or Federally-listed species, it is very likely this habitat would have already been identified through CCC biological surveys, and probably would have already been recommended as an ESHA. As a result, only if the designation of critical habitat adds new biological information might ESHAs be adjusted or established.

In the case of the designation of critical habitat for *Holocarpha macradenia*, staff from the CCC's Central Coast District Office indicate that the proposed designation is unlikely to result in the establishment of any new ESHAs. The proposed critical habitat area falls within existing LCPs and, more importantly, the designation adds no new information regarding occupied or essential habitat areas. Consequently, the proposed designation of critical habitat is not likely to result in additional costs associated with the implementation of the CCA.

Comments on Site-Specific Areas

7. *Comment:* The East Bay Regional Parks District (EBRPD) requested that we make minor modifications to the boundaries of Unit A (Mezue) that occurs on lands they manage. The modifications are based on more detailed topographic and vegetation data that they were able to provide. The proposed modifications would remove some riparian habitat from the unit and add one small area at the top of the watershed upslope to where a population of *Holocarpha macradenia* is located.

Our Response: We have modified the boundary to remove a few areas of riparian vegetation and a small area that was not within the subwatershed where the plant occurs. We are not able to include the small area at the top of the watershed within the final boundary

because we had not previously proposed to include it. These modifications resulted in a reduction of acreage in this unit from 61 ha (150 ac) to 52 ha (130 ac).

8. *Comment:* The California Army National Guard (CANG) requested that we remove 3 ha (7 ac) of lands that they own and manage known as the Santa Cruz Armory from Unit C (De Laveaga) of the proposed critical habitat designation. They fully support the efforts of the Service to protect *Holocarpha macradenia* and its habitat, and point out that they are directed by the Sikes Act (16USC 670a *et seq.*) to develop and implement an Integrated Natural Resources Management Plan (INRMP) for the Armory with certain criteria for maintaining biodiversity and using an adaptive management approach. They submitted a list of 11 management elements, some of which have already been implemented, that will be included in their INRMP.

Our Response: Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Special management and protection are not required if adequate management and protection are already in place. Adequate special management or protection is provided by a legally operative plan/agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and that manages for the long-term conservation of the species. Areas that are currently being managed to address the conservation needs of *Holocarpha macradenia*, in accordance with plans we have reviewed and determined to be adequate, do not require special management within the meaning of section 3(5)(a)(i) of the Act and will not be included in this final rule.

To determine if a plan provides adequate management or protection we consider—(1) Whether there is a current plan specifying the management actions and whether such actions provide sufficient conservation benefit to the species; (2) whether the plan provides assurances that the conservation management strategies will be implemented; and (3) whether the plan provides assurances that the conservation management strategies will be effective. In determining if management strategies are likely to be implemented, we consider whether—(a) A management plan or agreement exists that specifies the management actions being implemented or to be implemented; (b) there is a timely schedule for implementation; (c) there is a high probability that the funding source(s) or other resources necessary to implement the actions will be available; and (d) the party(ies) have the authority and long-term commitment to implement the management actions, as demonstrated, for example by a legal instrument providing enduring protection and management of the lands. In determining whether an action is likely to be effective, we consider whether—(a) The plan specifically addresses the management needs, including reduction of threats to the species; (b) such actions have been successful in the past; (c) there are provisions for monitoring and assessment of the effectiveness of the management actions; and (d) adaptive management principles have been incorporated into this plan.

The Sikes Act Improvement Act of 1997 (Sikes Act) requires each military installation that encompasses land and water suitable for the conservation and management of natural resources to have completed, by November 17, 2001, an INRMP. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the installation. Each INRMP includes an assessment of the ecological needs of the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. Under section 7 of the Act, we consult with the military on the development and implementation of INRMPs for installations with listed species. Military installations with approved INRMPs which address the needs of species generally do not meet the definition of critical habitat discussed above as they require no additional special management or protection. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for period monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat.

We conclude that the CANG does not yet have an INRMP for the Santa Cruz Armory that sufficiently addresses the criteria above. These lands do not warrant exclusion from critical habitat designation because the proposed management plan has not been approved and does not contain assurances that the management actions it describes will be implemented or effective. Concerning the likelihood that management actions will be implemented, we note that the plan does not include a timely schedule for implementation and does not contain a commitment of financial resources. Concerning the likelihood that management actions will be effective, we note that there are no provisions for monitoring or assessing of their effectiveness, and adaptive management principles have not been incorporated into the draft plan. We appreciate the efforts that CANG has already made toward restoring and protecting habitat on these lands, including the removal of eucalyptus logs from *Holocarpha macradenia* habitat, and the removal of wood chips that were inadvertently spread on top of a portion of the population. The Service has agreed to work with CANG in the development of their INRMP, particularly as it pertains to the conservation of *H. macradenia*. If the INRMP sufficiently meets the criteria for exclusion from critical habitat upon its completion, the Service will consider revising the critical habitat designation to exclude the Santa Cruz Armory lands at a future date.

Based upon a site visit with CANG staff to the Santa Cruz Armory, the Service has determined that a portion of the proposed critical habitat unit does not contain the primary constituent elements, specifically, the parking lot. By eliminating this area, the final critical habitat unit has been reduced from 3 ha (7 ac) to 2 ha (5 ac).

9. *Comment:* The Pajaro Valley Unified School District (District) requested that we remove 28 ha (70 ac) of land they own, known as the Millennium High School site, from Unit I (Watsonville) of the critical habitat designation for two reasons. They contend that the site has been under cultivation for over a decade and that there is no evidence of the species or the habitat conditions that would support it. In addition, they are concerned that the designation will "create obstacles" to the construction of the New Millennium High School. They also request the removal of Harkins Slough Road from critical habitat designation, because the planned improvements for this road, which will provide access to the High School, will be facing "considerable difficulties."

Our Response: Section 4(b)(2) of the Act states "The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat." Absent a finding by us that the economic or other relevant impacts of a critical habitat designation would outweigh the benefits of designation, the Act does not provide for the exclusion from critical habitat of private lands essential to the conservation of listed species. We believe that this parcel of land contains components essential to the conservation of *H. macradenia* because: (1) The site contains the primary constituent elements including the appropriate soils (Watsonville loams) and hydrology that are suitable for the species, and the site occurs within 1 km (0.5 mi) of 3 known locations for the species. Therefore, this site could provide habitat for the expansion of existing populations as well as maintain connectivity between existing populations by allowing gene flow between these populations through pollinator activity and seed dispersal. The importance of this site is also discussed in the description of the Watsonville unit. We believe that the designation of these lands in this final rule as critical habitat outweighs the benefits of their exclusion from being designated as critical habitat. The possible removal of these lands from the designation is also addressed in the Exclusions Under Section 4(b)(2) section of this rule.

With respect to the critical habitat designation creating "obstacles" and "difficulties" in completing construction of the High School, the District did not specify what they believed these to be. However, we believe that the designation at this site will have little additional regulatory burden for the District because there will probably be little federal nexus to the project and therefore minimal requirement for them to consult under section 7 of the Act, if any. Just as this rule was being finalized, we received information indicating that construction of the High School had been initiated. Because this construction will remove the primary constituent elements from approximately 32 acres of the parcel on which the High School is being built, we are removing this portion that will be converted to buildings, paved surfaces, and playing fields from critical habitat designation. Because this information was received so close to the time of publication, we did not have the opportunity to redraw the map for this unit. The remaining 36 acres of the site will be slated for conservation and protected from development through permanent deed restrictions. Because the planned Harkins Slough Road improvements are partially funded with Federal funds, the Federal Highway Administration (FHWA) will be consulting with us on the road due to the presence of California red-legged frog. The inclusion of critical habitat for *Holocarpha macradenia* in the same consultation is not expected to significantly increase the economic impact of the project on FHWA or the District.

10. *Comment:* The City of Watsonville requested that a number of areas be removed from the critical habitat designation, including the following: the Millennium High School site; the Sea View Ranch site; an illegal fill site with an existing grading permit for remediation; the City's golf driving range; and the State Highway 1 right of way within the city limits. They believe these areas should be removed because they have recently been surveyed for the presence of *Holocarpha macradenia* and it was found not to be present. The City provided some additional information extracted from planning documents for some of these projects. In addition, CalTrans requested that areas within their right of way be excluded because the disturbance from routine maintenance activities makes them inappropriate for species recovery activities.

Our Response: As stated in the section on Mapping in the body of this rule, some critical habitat units were mapped with greater precision than others, based on the available information, and the size of the unit. We appreciate the additional information that the City of Watsonville was able to provide to us. As discussed in the section on Primary Constituent Elements in this rule, we tried to map areas that contained soils associated with coastal terrace prairies, plant communities that support associated species, and the physical attributes, particularly the soils and hydrologic processes that produce the seasonally saturated soils characteristic of *Holocarpha macradenia* habitat. We have therefore removed portions of these areas from this critical habitat designation, including portions of the landfill parcel that are steep-sided canyons below the level of the coastal terrace, and the landfill itself. We have also removed the golf driving range because the soils have been altered by the placement of other soils on top of the native soils during the development of the range. Even though the proposed rule contains language to indicate that paved surfaces are not considered critical habitat, we have removed most of the State Highway 1 corridor from the area mapped as critical habitat. We have also removed 3 m (9 ft) on either side of the highway from critical habitat designation because this area needs to be kept free of vegetation for human health and safety reasons, and because the soil profile along the road shoulder has been modified such that it does not now contain the primary constituent elements for this taxon. However, we have not removed the remaining area within right of ways or other parcels from the critical habitat designation because, to the best of our knowledge, they occur on coastal terrace habitat that has native soils with the attendant hydrologic and edaphic processes still in place. They are essential to the conservation of the species because they are important for the expansion of existing populations and maintaining connectivity between them. Even though some of these locations have been converted to agriculture or have recently been graded, the native soils are still in place and these areas have the potential to be restored as habitat for *H. macradenia*. We believe that designating of these lands as critical habitat in this final rule outweighs the benefits of excluding them. The possible removal of these lands from the designation is also addressed in the Exclusions Under Section 4(b)(2) section of this rule.

11. *Comment:* The City of Watsonville requested that only those portions of the Watsonville Airport that are identified in the Tarplant Mitigation Plan (Gilchrist 2001) be included in the critical habitat designation, thus excluding other portions of the airport.

Our Response: The portions of the Airport that are paved with runways and roads or support buildings are not considered critical habitat for the species even though they are within the critical habitat boundaries; due to the scale of mapping, however, these areas could not be excluded on our maps. Of the remaining portions of the Airport, some are included in the Tarplant Mitigation Plan and some are not. However, we have included all of these areas within the critical habitat designation because they are contiguous

with areas that currently support *Holocarpha macradenia*, provide areas for expansion of the population, and provide connectivity between patches of the plant. In addition, this site supports the largest population of *H. macradenia*, and therefore is important as a seed bank should it become necessary to reseed other sites where populations are declining.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from the Sustainable Ecosystems Institute (which provided two peer reviewers) as well as two other knowledgeable individuals with expertise in one or several fields, including familiarity with the species, familiarity with the geographic region in which the species occurs, and familiarity with the principles of conservation biology. All four peer reviewers supported the proposal, and provided us with comments which we incorporated into the final rule. Their comments included discussion on the following issues: The importance of maintaining the genetic stock from the northern portion of the species' range, as represented by the introduced populations in the East Bay area; the importance of appropriate management in maintaining populations of the species; the necessity of maintaining all critical habitat units for the species; and the relationship between annual population fluctuations and the areas being designated. One peer reviewer suggested that the discussion concerning the role of offsite hydrology in maintaining habitat for the species needed to be strengthened.

Summary of Changes From the Proposed Rule

Based on a review of public comments received on the proposed determination of critical habitat, we reevaluated our proposed designation and the draft Economic Analysis and made several changes to the final designation of critical habitat. These include the following:

(1) We made minor changes to the boundary lines on the Mezue Unit to remove riparian corridors and a small portion of habitat outside the subwatershed where *Holocarpha macradenia* occurs. These changes resulted in a reduction of 9 ha (21 ac) in this unit.

(2) We made minor changes to the boundary lines on the De Laveaga Unit. The purpose of these changes was to draw the boundaries more precisely to eliminate the parking lot of the Santa Cruz Armory from within the boundary of the unit. This change resulted in a reduction of 1 ha (2 ac) in this unit.

(3) We made minor changes to the boundary lines on the Watsonville Unit. The purpose of these changes was to avoid areas that obviously did not contain the primary constituent elements, and for which we were unable to draw more precise boundaries at the time of the proposed designation. The use of recently acquired high-resolution aerial photographs dating from April 2000 enabled us to undertake this more precise mapping. These changes resulted in a total reduction of 174 ha (430 ac) in this final critical habitat designation. For all three of the units, the new boundary lines were drawn within the boundary lines shown in the proposed designation; in no case were the new boundary lines drawn outside of those described in the legal description for the units in the proposed designation.

(4) We corrected the acreage figure for the Graham Hill Unit (Unit B) from 14 ha (35 ac) to 12 ha (30 ac). We had intended to propose 2 additional hectares (5 ac) to the south of the current unit boundary. However, the boundaries showing this additional habitat and the Universal Transverse Mercator (UTM) coordinates describing their location were inadvertently left out of the proposed rule. The unit boundaries as depicted in this final rule encompass 12 ha (30 ac). Under the Act and the Administrative Procedure Act, we are required to allow the public an opportunity to comment on the proposed rulemaking. Therefore, because these new areas were not included in the proposed rule, we are not including them in the final rule. Although these areas were not included in the critical habitat proposal, they may be important to the recovery of the species and could be included in recovery activities in the future.

(5) We added a section describing the Special Management Considerations or Protections that *Holocarpha macradenia* may require. We believe that this new section will assist land managers in developing management strategies for *H. macradenia* on their lands.

Critical Habitat

Section 3 of the Act defines critical habitat as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition of destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional regulatory protections under the Act with regard to such activities.

Critical habitat also provides nonregulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features essential for the conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified, by helping people to avoid causing accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (*i.e.*, gray literature).

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas that support newly discovered populations in the future, but are outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods of Selecting Areas for Critical Habitat Designation

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Holocarpha macradenia*. This included information from the California Natural Diversity Data Base (CNDDB 2001), geologic and soil survey maps (Brabb 1989; SCS 1980, 1978), aerial photos available through TerraServer (*http://terraserver.homeadvisor.msn.com*), aerial photos on loan from the County of Santa Cruz Planning Department, recent biological surveys and reports, additional information provided by interested parties, and discussions with botanical experts. Frequently accompanied by agency representatives, we also conducted site visits, either cursory or more extensive, at a number of locations managed by, or with involvement from, local, State or Federal agencies, including Graham Hill, De Laveaga Park, Twin Lakes State Beach, Arana Gulch Open Space Area (City of Santa Cruz), Anna Jean Cummings County Park (Santa Cruz County), and the Watsonville Airport (City of Watsonville). We also visited the Porter Ranch site, which is owned and managed by the Elkhorn Slough Foundation.

Special Management Considerations or Protections

Much of what is known about the specific physical and biological requirements of *Holocarpha macradenia* is described in the Background section of this final rule. Additional information about appropriate management techniques is being generated by ongoing management efforts and research on life history. As discussed in the Background section, several agencies such as the CDFG, California Department of Parks and Recreation (CDPR), CalTrans, County of Santa Cruz, City of Santa Cruz, and EBRPD are undertaking efforts to learn how to better enhance habitat for *H. macradenia*. Some of these efforts are being carried out with the cooperation of researchers from UC Santa Cruz and Berkeley's Jepson Herbarium. Preliminary management and seed bank studies show that habitat manipulation such as burning, mowing, grazing, and scraping can increase standing numbers of plants and may be necessary to enhance and maintain populations of *H. macradenia*. Active management is often necessary to preserve habitat that is essential for the long-term conservation of *H. macradenia*.

Special management considerations or protections may be needed to maintain the primary constituent elements for *Holocarpha macradenia* within the units being designated as critical habitat. In some cases, protection of existing habitat and current ecological processes may be sufficient to ensure that populations of *H. macradenia* are maintained, and have the ability to reproduce and disperse into surrounding habitat at those sites. In other cases, however, active management may be needed to maintain the primary constituent elements for *H. macradenia*. We have outlined below the most likely special management or protection that *H. macradenia* may require.

(1) The native soils on which *Holocarpha macradenia* is found should be maintained to optimize conditions for the species. Physical properties of the soil, such as its chemical composition, salinity, texture, and drainage capabilities would best be maintained by limiting or restricting deep tilling and the use of herbicides, fertilizers, or other soil amendments.

(2) The hydrologic regime of the area surrounding *Holocarpha macradenia* habitat should be maintained to provide for the seasonally moist soils that the species favors. Increasing or decreasing surface and subsurface water flow to these areas through habitat alteration that either artificially adds water (*e.g.*, through irrigation) or reduces water (*e.g.*, through diversions associated with construction projects) could decrease the suitability of these areas to support *H. macradenia*.

(3) The grassland communities should be maintained to ensure that the habitat needs of pollinators and dispersal agents are maintained. The use of pesticides should be limited or restricted so that viable populations of pollinators are present to facilitate reproduction of *Holocarpha*

macradenia. Fragmentation of habitat through construction of roads and certain types of fencing should be sufficiently limited to allow seed dispersal agents to move *H. macradenia* seed throughout the unit.

(4) The grassland communities need to be maintained to facilitate germination and the establishment of seedlings, because this is a critical bottleneck in the life cycle of the species (Bainbridge, *in litt.*, 2002b). In particular, this portion of the species' life cycle requires a reduced litter layer and canopy height of surrounding vegetation. This can be achieved through either mowing or livestock grazing. A discussion of more detailed prescriptions is beyond the scope of this rule, as the optimal regime will vary from site to site, depending on a number of variables. However, research efforts that are currently underway will assist in developing more site-specific recommendations.

(5) In the grassland communities where *Holocarpha macradenia* occurs, invasive, nonnative species such as French broom, eucalyptus, acacia, Harding grass, bromes, artichoke thistle, and bristly ox-tongue and other species need to be actively managed to reduce competition and maintain the open habitat that *H. macradenia* needs.

(6) Certain areas where *Holocarpha macradenia* occurs may need to be fenced to protect them from accidental or intentional trampling by humans and livestock, and to facilitate management of the habitat through intentional grazing or other means.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographic and ecological distributions of a species.

Based on our knowledge to date, the primary constituent elements for *H. macradenia* consist of, but are not limited to:

(1) Soils associated with coastal terrace prairies, including the Watsonville, Tierra, Elkhorn, Santa Inez, and Pinto series.

(2) Plant communities that support associated species, including native grasses such as *Nassella* sp. (needlegrass) and *Danthonia californica* (California oatgrass); native herbaceous species such as members of the genus *Hemizonia* (other tarplants), *Perideridia* gairdneri (Gairdner's yampah), *Plagiobothrys diffusus* (San Francisco popcorn flower), and *Trifolium buckwestiorum* (Santa Cruz clover); and

(3) Physical processes, particularly soils and hydrologic processes, that maintain the soil structure and hydrology that produce the seasonally saturated soils characteristic of *Holocarpha macradenia* habitat.

Site Selection

We identified critical habitat areas essential for the conservation of *Holocarpha macradenia* in the three primary areas where it is known to occur: In the East Bay (Contra Costa County); in the Santa Cruz-Soquel area (Santa Cruz County); and the Watsonville area (Santa Cruz and Monterey Counties). Historic locations for which there are no recent records of occupancy (within the last 20 years) were not proposed for designation, including those previously found in Marin and Alameda Counties that have become urbanized over the last 100 years; locations to the north of Santa Cruz where *H. macradenia* has not been seen in over 50 years; and locations around the Watsonville area that have been destroyed by fill, agricultural activities, and parking lot construction. In the East Bay, only one of the eight sites that support an introduced population of *H. macradenia* in Wildcat Regional Park is being proposed for designation because it is the largest seeded population that represents the genetic variability of the northern portion of the species' range. Several commenters suggested that additional critical habitat should have been proposed in the northern portion of the species range (East Bay area). While we agree that additional areas in the northern portion of its range may be required for the long term conservation of the species, the information necessary to propose other areas was not available to us at the time the proposal was prepared, and is therefore not included here. However, additional habitat outside the designated areas may later be discovered to be critical for the recovery of the species, and may be included in recovery activities for the species in the future.

Due to the historic loss of the habitat that supported *Holocarpha macradenia*, we believe that future conservation and recovery of this species depends not only on protecting it in the limited areas that it currently occupies, but also on providing the opportunity to expand its distribution by protecting currently unoccupied habitat within its historic range. Protection of each of the locations where *H. macradenia* occurs is essential for the conservation of this species to reduce the risks of extirpation that is inherent in having so few extant populations, especially when so many of the populations comprise so few individuals. The slight variations in elevation, coastal influence, and soil types found among the critical habitat units are important in shaping the phenological (*e.g.*, timing of reproduction), morphological (*i.e.*, physical structure and form), and physiological adaptations of plant populations to specific environments (Clausen *et al.* 1948, Clausen 1951). For example, elevation and distance from the coast influence precipitation and average daily temperatures to which a population is subjected, while soil type can influence nutrient and water availability. The heritable local adaptations that develop as a result of such environmental variations reflect genetic variability within the species. Preserving this genetic variability in endemic species that allows for adaptation to changing climatic and other environmental influences is important to improve the likelihood that the species will be able to survive and adapt to such future environmental changes (Falk 1992).

In addition to maintaining existing populations, the persistence of the species requires surrounding habitat needed to maintain the ecological processes that allow the populations and the primary constituent elements to persist. These ecological processes include the expansion and shifting of populations over time, the maintenance of pollinator interactions that maintain the gene flow between populations over time, and the maintenance of seed dispersal vectors that serve to distribute seed between existing sites as well as to new sites. The ability to maintain disturbance factors (for example, grazing, mowing, or fire disturbance) that maintain the openness of vegetation that the species requires for successful germination is also critical to the long term persistence of the species. Threats to the remaining habitat of *H. macradenia* include: Urban development and its associated impacts, such as habitat fragmentation, recreational use, and changes in grazing regimes that may have facilitated the

increase in nonnative plant species that compete with *H. macradenia*. The areas we are designating as critical habitat provide some or all of the habitat components essential for the conservation of *H. macradenia*. Given the species' need for a reduced litter layer and canopy height and the threat of competition from nonnative species, we believe that these areas require special management considerations or protection.

In our delineation of the critical habitat units, we believe it is important to designate all areas that currently support native populations of *Holocarpha macradenia* because the number of populations that have been extirpated and the reduction in range that the species has undergone place a great importance on the conservation of all the known remaining sites. In the area just west of Watsonville, a number of populations that are in close geographic proximity to each other are included in the same unit because the distribution of *H. macradenia* in this area was probably once greater, prior to fragmentation of populations into smaller units. Maintaining the connectivity between these populations through gene flow and seed dispersal is important for maintaining the genetic variability that will contribute to the long term persistence of the species.

With regard to the experimental seeded populations of *H. macradenia*, we acknowledge the importance these seeding trials have offered with respect to understanding the range of habitat characteristics that *H. macradenia* may tolerate. However, based on current information, we believe that only the area that supports the Mezue population is essential to the recovery of the species. This population is the best expression of the genetic variability that once occurred in the northern end of the range of the species; native stands in this portion of the range have now been extirpated.

Even though we did not have sufficient information to propose sites other than where populations are currently known to occur, we do not imply that habitat outside the designation is unimportant or may not be required for recovery of the species. Areas that support newly discovered populations in the future, but are outside the critical habitat designation, will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act, as determined on the basis of the best available information at the time an action is being proposed.

Mapping

The critical habitat units were delineated by creating data layers in a geographic information system (GIS) format of the areas where *Holocarpha macradenia* is known to occur, using information from the California Natural Diversity Data Base (CNDDB 2001), aerial photos, recent biological surveys and reports, and discussions with botanical experts. These data layers were created on a base of USGS 7.5' quadrangles obtained from the State of California's Stephen P. Teale Data Center. Critical habitat units were mapped using UTM coordinates. Some units were mapped with a greater precision than others, based on the available information, and the size of the unit.

In selecting areas of designated critical habitat we made an effort to avoid developed areas, such as housing developments, that are unlikely to contain the primary constituent elements or otherwise contribute to the conservation of *Holocarpha macradenia*. However, we could not map critical habitat in sufficient detail to exclude all developed areas, or other lands unlikely to contain the primary constituent elements essential for the conservation of *H. macradenia*. Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, railroads, airport runways and other paved areas, lawns, and other urban landscaped areas will not contain any of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Critical Habitat Designation

The critical habitat areas described below constitute our best assessment at this time of the areas needed for the conservation and recovery of *Holocarpha macradenia*. Critical habitat being designated for *H. macradenia* consists of 11 units that currently sustain the species. The geographic range that *H. macradenia* occupies has been reduced to so few sites that the species may well be threatened with extinction in the near future, particularly if appropriate management of the remaining habitat is not employed. Protection of this designated critical habitat is essential for the conservation of the species because it would reduce the threat to the species from future population extirpations due to stochastic events. Further, because this species cannot self-pollinate, maintenance of adequate gene flow between populations, which is critical to producing the genetic variability necessary for the species' survival and recovery, is dependent on the retention of lands containing suitable habitat in sufficiently close proximity to existing populations to allow for their expansion as well as for gene flow to other nearby populations. The areas being designated as critical habitat are within the three primary areas that currently support *H. macradenia* and include the appropriate coastal terrace prairie habitat necessary for the species. We are designating approximately 2,902 ha (1,174 ac) of land as critical habitat for *H. macradenia*.

The approximate areas of designated critical habitat by land ownership are shown in Table 1. Lands proposed are under private, county, State, and Federal jurisdiction.

TABLE 1.—APPROXIMATE AREAS, GIVEN IN HECTARES (HA) AND ACRES (AC) [1] OF CRITICAL HABITAT FOR *Holocarpha macradenia* BY LAND OWNERSHIP

Unit name	State	Private	County/City	Federal	Total
A. Mezue	0 ha (0 ac)	0 ha (0 ac)	50 ha (130 ac)	0 ha (0 ac)	50 ha (130 ac)
B. Graham Hill	0 ha (0 ac)	12 ha (30 ac)	0 ha (0 ac)	0 ha (0 ac)	12 ha (30 ac)
C. De Laveaga	2 ha (5 ac)	0 ha (0 ac)	0 ha (0 ac)	0 ha (0 ac)	2 ha (5 ac)
D. Arana Gulch	0 ha (0 ac)	0 ha (0 ac)	26 ha (65 ac)	0 ha (0 ac)	26 ha (65 ac)

TABLE 1.—APPROXIMATE AREAS, GIVEN IN HECTARES (HA) AND ACRES (AC) [1] OF CRITICAL HABITAT FOR *Holocarpha macradenia* BY LAND OWNERSHIP—Continued

Unit name	State	Private	County/City	Federal	Total
E. Twin Lakes	11 ha (26 ac)	0 ha (0 ac)	0 ha (0 ac)	0 ha (0 ac)	11 ha (26 ac)
F. Rodeo Gulch	0 ha (0 ac)	11 ha (26 ac)	0 ha (0 ac)	0 ha (0 ac)	11 ha (26 ac)
G. Soquel	0 ha (0 ac)	18 ha (45 ac)	22 ha (55 ac)	0 ha (0 ac)	40 ha (100 ac)
H. Porter Gulch	0 ha (0 ac)	14 ha (35 ac)	0 ha (0 ac)	0 ha (0 ac)	14 ha (35 ac)
I. Watsonville	23 ha (56 ac)	340 ha (840 ac)	125ha (309 ac)	0 ha (0 ac)	488 ha (1,205 ac)
J. Casserly	0 ha (0 ac)	450 ha (1,110 ac)	0 ha (0 ac)	0 ha (0 ac)	450 ha (1,110 ac)
K. Elkhorn	0 ha (0 ac)	70 ha (170 ac)	0 ha (0 ac)	0 ha (0 ac)	70 ha (170 ac)
Total	27 ha (66 ac)	920 ha (2,270 ac)	230 ha (570 ac)	0 ha (0 ac)	1,175 ha (2,902 ac)

[1] Approximate acres from GIS map data have been converted to hectares (1 ha = 2.47 ac). Based on the level of imprecision of mapping, approximate hectares and acres greater than or equal to 30 (≥ 30) have been rounded to the nearest 5; totals are sums of columns and rows.

A brief description of each critical habitat unit is given below:

East Bay Area Unit

Unit A: Mezue

Unit A consists of grassland habitat on sloping alluvial deposits from old marine terraces within Wildcat Regional Park in Contra Costa County. This entire unit of approximately 50 ha (130 ac) is on lands managed by the EBRPD. Management activities at this site include controlled grazing, removal of invasive artichoke thistle, and annual population monitoring (EBRPD 1992, 2001). Of the 22 sites that were used as sites to introduce *Holocarpha macradenia* seed in the East Bay region between 1982 and 1986, this population has been the only one that has consistently supported a large population of *H. macradenia*. In the year 2000, this population supported over 17,000 individuals (CDFG 2000). Although this population is an introduced population, this unit is essential to the survival and conservation of the species because this population represents the genetic variability in the northernmost portion of the plant's range and is important for the expansion of the existing population. In recognition of the conservation value of this population, the Service is contributing funding toward nonnative species removal at this site (Service 2002).

Santa Cruz—Soquel Area Units

Unit B: Graham Hill

Unit B consists of grasslands on a relatively flat coastal terrace prairie on the west side of Graham Hill Road, approximately 1 mile north of the City of Santa Cruz in Santa Cruz County. This entire unit of approximately 12 ha (30 ac) is on privately owned lands. The unit includes a 7-ha (17-ac) area that has been set aside through a conservation easement to the County of Santa Cruz for conservation of coastal prairie habitat and *Holocarpha macradenia* as mitigation for an adjacent development that comprises 52 residences and associated amenities. The population has been fenced and nonnative species have been removed; however, efforts to enhance the population, as called for in a management plan (Environmental Science Associates 1996), have not yet been initiated. In 1994, this population numbered 12,000 individuals; by 1998, 675 individuals were counted; and in 2001, approximately 550 individuals were counted (V. Haley, consultant, Felton, California, pers. comm., 2001). This unit is important because it currently supports a population of *H. macradenia* and because it represents the western limit of the cluster of populations that are found on the northern end of Monterey Bay. This unit, along with the Fairway Unit, occurs at the highest elevation of the native populations (122 m (400 ft)) and consequently the farthest away from the influence of the coastal climate. Preserving the genetic variability within the species that has allowed it to adapt to these different environmental conditions is essential for the long-term survival and conservation of the species.

Unit C: De Laveaga

Unit C consists of grasslands on a relatively flat coastal terrace prairie within De Laveaga Park just north of the City of Santa Cruz in Santa Cruz County. This entire unit of approximately 2 ha (5 ac) is on State lands managed by the CANG and supported by Federal funds from the National Guard Bureau. The CANG does not anticipate undertaking any new military activities on this parcel beyond its current use as an assembly point for monthly drills and as storage for equipment. In 2001, a maintenance crew from the adjacent city-owned golf course spread wood chips from a felled tree over half the population. The CANG has initiated management actions to restore and enhance habitat for *H. macradenia*, including removal of the wood chips and chunks of eucalyptus logs. In addition, the CANG has initiated development of an INRMP (CANG 2002); if the final plan meets the criteria outlined earlier in our response to comment number eight, the critical habitat designation may be removed from this unit in the future. This unit is essential because it currently supports a population of *H. macradenia* and because it is one of only seven populations in the cluster of populations that are found on the northern end of Monterey Bay. Despite its small size, this unit is essential because it is located between the Graham Hill, Arana Gulch, and Rodeo Gulch Units, and is important for maintaining connectivity between these other units.

Unit D: Arana Gulch

Unit D consists of grasslands on a relatively flat coastal terrace prairie within an open space preserve just north of Woods Lagoon in the City of Santa Cruz. This entire unit of approximately 26 ha (65 ac) is on lands owned and managed by the City of Santa Cruz. It is bounded on the west, east, and north sides by existing development and on the south side by the Santa Cruz Harbor. Huge population fluctuations have occurred on this site, ranging from 100,000 individuals in the late 1980s when the site was being grazed by cattle, to no plants in 1995 (K. Lyons, *in litt.*, 2001). The City entered into a Memorandum of Understanding with the CDFG in 1997 to manage *Holocarpha macradenia*, which includes utilizing a variety of management techniques to enhance the population. As of 1998, individuals numbered approximately 12,820; in 2000, they numbered 234; and in 2002 they numbered approximately 10,000 (K. Lyons, *in litt.*, 2001; Seals 2002). This unit is essential because it currently supports a population of *H. macradenia* and because it is one of only seven populations in the cluster of populations that are found on the northern end of Monterey Bay. This unit and the Twin Lakes Unit occur at the lowest elevation of the native populations in the northern Monterey Bay area (12 to 18 m (40 to 60 ft)) and are consequently the closest to the influence of the coastal climate. Moreover, these two units are within one-half mile of each other and therefore could retain connectivity between them. It is also essential for the recovery of the species because current management by the City of Santa Cruz has allowed this site to support the third largest standing native population of tarplant. It therefore contributes significantly to the seed bank reserve for the species and is large enough to support management activities that may be necessary to maintain the population at this site.

Unit E: Twin Lakes

Unit E consists of grasslands on relatively flat coastal terrace prairie just north of Schwan Lagoon within the City of Santa Cruz. This entire unit of approximately 11 ha (26 ac) is on lands owned by the CDPR within Twin Lakes State Park. It is bounded on the west, north, and east sides by existing development, and on the south side by Schwan Lagoon. Since 1997, CDPR has been actively managing *Holocarpha macradenia* habitat by removing invasive, nonnative species and attempting various methods of enhancing the population (Service 2000). CDPR has also funded research on *H. macradenia* seed bank dynamics (Bainbridge 1999). This population has ranged in size from 120 individuals in 1986 to 21 individuals in 2002 (Hyland 2002). This unit is essential because it currently supports a population of *H. macradenia* and because it is one of only seven populations in the cluster of populations that are found on the northern end of Monterey Bay. As with the Arana Gulch Unit, it occurs at the lowest elevation of the native populations in the northern Monterey Bay area (12 to 18 m (40 to 60 ft)) and consequently the closest to the influence of the coastal climate. Moreover, the two units are within one-half mile of each other and therefore could retain connectivity between them.

Unit F: Rodeo Gulch

Unit F consists of sloping alluvial deposits and adjacent relatively flat coastal terrace prairie that straddles the Arana Gulch and Rodeo Gulch drainages north of the community of Soquel in Santa Cruz County. It is bounded on the north, east, and south sides by existing development; the western side is bounded by lands that have not been developed. This entire unit of approximately 11 ha (26 ac) is on privately owned lands. This unit includes a parcel that has recently been proposed for a housing development known as Santa Cruz Gardens Subdivision Unit 12 (Denise Duffy and Associates 2001). This parcel was previously set aside in a "temporary open space easement" as mitigation for destroying a portion of the *H. macradenia* population by an earlier phase of the development in 1986 (Service 2000). The current development proposal calls for setting aside approximately 23 ha (56 ac) for conservation and recreation purposes, and includes much of the habitat that supports *H. macradenia*. Salvage of soil and an *H. macradenia* seed bank is being proposed for another portion of the project site that will be impacted by development (Lyons 1999). This population numbered approximately 60 individuals in 1993; none have been observed since then (CNDDB 2001). However, a seed bank likely persists at this site. This unit is essential because of the likely presence of an *H. macradenia* seed bank and because it is one of only seven populations in the cluster of populations that are found on the northern end of Monterey Bay. In addition to the seed bank for this population, this unit supports grassland habitat that provides for future expansion of the population. Also, it is within one-half mile of the Soquel Unit, and therefore could retain connectivity between the units.

Unit G: Soquel

Unit G consists of grasslands on sloping alluvial deposits and adjacent relatively flat coastal terrace prairie that straddles the Rodeo Gulch and Soquel Creek drainages north of the community of Soquel in Santa Cruz County. It is bounded on the north, east, and south sides by existing development; the western side is bounded by lands that have not been developed. Approximately 22 ha (55 ac) of this 40-ha (100-ac) unit is within Anna Jean Cummings Regional Park (also known as O'Neill Ranch), which is managed by the County of Santa Cruz. The remaining portion is privately owned. On the park lands, the population has been fenced, and portions of the habitat for the plant are being mowed and raked in accordance with a management plan (Ecosystems West 1999; Joe Rigney, consultant, pers. comm., 2001). The County of Santa Cruz approved a housing development for the privately-owned parcel (previously known as Tan, but now called Seacrest) in 1997. The development included an approximately 4-ha (10-ac) parcel to be set aside for conservation and a plan to manage the habitat for *Holocarpha macradenia*. Although part of the same population, the CNDDB has maintained two separate entries (O'Neill and Tan) to reflect the two land ownerships. The total number of individuals in the combined population has never been larger than 200 individuals, with the private parcel supporting only a portion of those (CNDDB 2001). To date, management activities have not resulted in enhancing the population of the species on either parcel. This unit is essential because it has recently supported a population of *H. macradenia* and the seed bank is still present, and because it is one of only seven populations in the cluster of populations that are found on the northern end of Monterey Bay. In addition to the seed bank for this population, this unit supports grassland habitat that provides for future expansion of the population. Also, it is within one-half mile of the Rodeo Gulch Unit, and therefore could retain connectivity between the units. Moreover, the acreage in Anna Jean Cummings Park represents one of the best remaining fragments of habitat on which to attempt recovery activities for *H. macradenia*, as it has been subject to fewer impacts than other sites.

Unit H: Porter Gulch

Unit H consists of grasslands on gently sloping alluvial deposits derived from a coastal terrace that straddles the

Bates Creek and Porter Gulch drainages north of the community of Soquel in Santa Cruz County. It is bounded on all sides by undeveloped lands. This entire unit of approximately 14 ha (35 ac) is on privately owned lands. The population of *Holocarpha macradenia* at this site includes an approximately 12-ha (30-ac) parcel that was proposed for a lot split. A management plan for the species was developed as part of the proposed split (Greening Associates 1995); however, the management plan for *H. macradenia* has not been fully implemented. This unit also includes adjacent coastal prairie habitat, of which approximately 4 ha (9 ac) was deeded in 2001 to the Land Trust of Santa Cruz County for preservation. In 1993, the population of *H. macradenia* numbered approximately 1,500 individuals (CNDDB 2001). The population numbered only several hundred individuals in 2001 when the site was observed to support a large cover of rattlesnake grass that likely competed with *H. macradenia* (C. Rutherford, Service, pers. obs., 2001). This unit is essential because it currently supports a population of *H. macradenia*, and because it is one of only seven populations in the cluster of populations that are found on the northern end of Monterey Bay. Also, along with the Graham Hill Unit, this one occurs at the highest elevation of the native populations (122 m (400 ft)) and consequently the farthest away from the influence of the coastal climate. Preserving the genetic variability within the species that has allowed it to adapt to these slightly different environmental conditions is essential for the long-term survival and conservation of the species.

Watsonville Area Units

Unit I: Watsonville

Unit I consists of grasslands on alluvial fans and marine terraces west of the City of Watsonville in Santa Cruz County; during the remapping for the final rule we removed most of the low-lying drainages that interdigitate with the grasslands. The northern and eastern boundaries reach toward the Corralitos Creek drainage except where it runs up against existing development. The southeastern and southern boundary is formed by the Pajaro River drainage. The western boundary is formed by the Harkins Slough drainage and then generally follows Buena Vista Drive north until it intersects with the northern perimeter of the Watsonville Airport (Airport). This unit excludes paved areas of the Airport, but includes the unpaved portions surrounding the runways. This approximately 488-ha (1,205-ac) unit is partly owned by the City of Watsonville (the Airport and High School) (approximately 125 ha (309 ac)); a small portion is under easement to CalTrans (approximately 8 ha (19 ac)); a portion is designated as a Reserve by the CDFG (approximately 15 ha (37 ac)); and the remaining portion is privately owned (approximately 340 ha (840 ac)). This unit overlaps in part with an area that is targeted for regional conservation planning by the CDFG. Through its Conceptual Area Protection Plan process, CDFG, along with other Federal, State, and local agencies and organizations, are identifying opportunities to preserve sensitive species and habitats, including the Harkins Slough and Watsonville Slough wetlands and adjacent habitats (J. DeWald, *in litt.*, 2001). This unit is essential because it currently supports multiple populations of *H. macradenia* including the populations known from the Airport, Harkins Slough, Apple Hill, and Bay Breeze (see Background for additional population information). This unit also supports grassland habitat that is important for the expansion of existing populations and for maintaining connectivity between the populations. It is also one of only three areas that support populations of *H. macradenia* that are found in the central Monterey Bay area and in the southern end of the range of the species. Preserving any genetic variability within the species that has allowed it to adapt to these slightly different environmental conditions is essential for the long-term survival and conservation of the species. Just prior to publication of this final rule, we were informed that construction of the Millennium High School had been initiated. Therefore, with this unit description, we are removing the 32 acres that are being converted to building, paved surfaces, and playing fields because these areas will no longer support the primary constituent elements. Note, however, that the 32 acres have not been removed from the map depicting this unit; nor have they been subtracted from the unit total and overall total number of acres being designated as critical habitat for the species.

Unit J: Casserly

Unit J consists of open patches of grassland interspersed with golf course greens, cattle pastures, croplands, and orchards. This entire unit of approximately 450 ha (1,110 ac) consists of privately owned lands. It is the unit for which the least amount of information is available, particularly with respect to existing land uses. The Spring Hills population of *Holocarpha macradenia* occurs within this unit. The population numbered approximately 4,000 individuals in 1990 (CNDDB 2001); the population was observed in 1995 and 2001, though not counted. The population was fragmented by development of the Spring Hills Golf Course, and now consists of five separate occurrences. This unit is essential because it currently supports multiple occurrences of *H. macradenia* that are found in the Monterey Bay area, including the five populations known from the Spring Hills Golf Course. This unit also supports grassland habitat that is important for the expansion of existing populations, and for maintaining connectivity between these populations. It is one of only three areas that support populations of *H. macradenia* that are found in the central Monterey Bay area and in the southern end of the range of the species as well as the most inland distribution of the species. Preserving genetic variability within the species that has allowed it to adapt to these slightly different environmental conditions is essential for the long-term survival and conservation of the species.

Unit K: Elkhorn

Unit K consists of sloping terrain on the edges of a coastal terrace, just south of the Pajaro River in northern Monterey County. The population of *Holocarpha macradenia* that is found here is unusual in that it occurs on a canyon bottom; it is also the only population that occurs primarily on the Santa Ynez soil series. This unit of approximately 70 ha (170 ac) is privately owned by the Elkhorn Slough Foundation (Foundation). The CDFG holds a conservation easement on an approximately 16-ha (40-ac) parcel that overlaps in part with this unit; the Foundation is managing the parcel for its biological values. Multiple Federal, State, and local government and private agencies have recently developed a conservation plan for the Elkhorn Slough watershed; this critical habitat unit is within the 18,210-ha (45,000-ac) area on which the conservation plan focuses (Scharffenberger 1999). In 1993, the population at this site comprised approximately 3,200 individuals (CNDDB 2001). *Salix* spp. (willow) planting that has been undertaken as part of a riparian enhancement project may increase shading on an adjacent population of *H. macradenia*, leading to a reduction in the size of that population (Holl, *in litt.*, 2002). This unit is essential because it currently supports a population of *H. macradenia* and because it is one of only three areas that support populations of *H.*

macradenia that are found on the central Monterey Bay area and in the southern end of the range of the species. Also, this is the only population that occurs primarily on the Santa Ynez soil series. Preserving any genetic variability within the species that has allowed it to adapt to these slightly different environmental conditions is essential for the long-term survival and conservation of the species. In addition to the current population, this unit comprises grassland habitat that is important for the expansion of the population.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, permit, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing, or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist action agencies in eliminating conflicts that may be caused by their proposed action(s). The conservation measures in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained, or it is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat.

Activities that may affect *Holocarpha macradenia* or its critical habitat will require consultation under section 7 of the Act. Activities on private or State lands, that require a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), a section 10(a)(1)(B) of the Act permit from the Service, or any other activity requiring a Federal action (*i.e.*, funding or authorization from the Federal Highway Administration or Federal Emergency Management Agency), will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal land that are not federally funded, authorized, or permitted do not require section 7 consultation.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 ensures that actions funded, authorized, or carried out by Federal agencies are not likely to jeopardize the continued existence of a listed species, or destroy or adversely modify the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

The relationship between a species' survival and its recovery has been a source of confusion to some in the past. We believe that a species' ability to recover depends on its ability to survive into the future when its recovery can be achieved; thus, the concepts of long-term survival and recovery are intricately linked. However, in the March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434) regarding our previous not prudent finding, the Court found our definition of destruction or adverse modification as currently contained in 50 CFR 402.02 to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of *Holocarpha*

macradenia is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat for *Holocarpha macradenia* include, but are not limited to:

(1) Activities that alter watershed characteristics in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface flow of water needed to maintain the coastal terrace prairie habitat. Such activities adverse to *Holocarpha macradenia* could include, but are not limited to, maintaining an unnatural fire regime either through fire suppression or prescribed fires that are too frequent or poorly-timed; residential and commercial development, including road building and golf course installations; agricultural activities, including orchardry, viticulture, row crops, and livestock grazing; and vegetation manipulation such as harvesting firewood in the watershed upslope from *H. macradenia;* and

(2) Activities that appreciably degrade or destroy coastal terrace prairie habitat, including but not limited to livestock grazing, clearing, discing, introducing or encouraging the spread of nonnative species, and heavy recreational use. As noted earlier in the rule, some form of grazing may be helpful if it maintains open habitat and decreases competition from other species.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181 (503/231–6131, FAX 503/231–6243).

Exclusions Under Section 4(b)(2)

Subsection 4(b)(2) of the Act allows us to exclude areas from the critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in extinction of the species. We received requests for exclusion from critical habitat designation from the following parties: California Army National Guard, Pajaro Unified School District, City of Watsonville, and California Department of Transportation; our response to these requests are contained under Comment Nos. 8, 9, and 10 in the Response to Comments section earlier in this rule. As discussed in this final rule and in our economic analysis for this rulemaking, we have determined that the adverse economic effects resulting from this critical habitat designation will be minimal. We believe all the areas included in this designation, including those for which exclusions were requested, are essential for the conservation of *Holocarpha macradenia* because native populations have already been extirpated from the northern two-thirds of its range, and the only remaining expression of the northern gene stock persists as introduced populations in the middle portion of its range (East Bay area). This designation would protect the remaining existing populations, adjacent suitable areas needed for the expansion of populations and would maintain connectivity between populations through pollinator activity and seed dispersal mechanisms, and the ecological functions upon which the species depends. The role that these lands play in the long term persistence of the species is also discussed under the Site Selection and Critical Habitat Designation sections earlier in this rule. We believe that the designation of the lands in this final rule as critical habitat outweigh the benefits of their exclusion from being designated as critical habitat. Consequently, none of the proposed lands have been excluded from the designation based on economic impacts or other relevant factors pursuant to section 4(b)(2).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Currently, there are no habitat conservation plans (HCPs) that include *Holocarpha macradenia* as a covered species. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted take. Although "take" of listed plants is not prohibited by the Act, listed plant species may also be covered in an HCP for wildlife species. In most instances we believe that the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. In the event that future HCPs covering *H. macradenia* are developed within the boundaries of the designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *H. macradenia*. The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks.

We will provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *H. macradenia* and appropriate management for those lands. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, a draft economic analysis was conducted to estimate the potential economic effect of the designation. The draft analysis was made available for review on May 7, 2002 (67 FR 30642). We accepted comments on the draft analysis until this second public comment period closed on June 6, 2002.

Our economic analysis evaluated the potential future effects associated with the listing of *H. macradenia* as a threatened species under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a "without section 7" baseline and compared it to a "with section 7" scenario. The "without section 7" baseline represents the level of protection currently afforded to the species under the Act, absent section 7 protective measures, and includes protections afforded by other Federal, State, and local laws such as the California Environmental Quality Act. The "with section 7" scenario identifies land-use activities likely to involve a Federal nexus that may affect the species or its designated critical habitat, which accordingly may trigger future consultations under section 7 of the Act.

Upon identifying section 7 impacts, the analysis proceeds to consider the subset of impacts that can be attributed exclusively to the critical habitat designation. The upper-bound estimate includes both jeopardy and critical habitat impacts. The subset of section 7 impacts likely to be affected solely by the designation of critical habitat represents the lower-bound estimate of the analysis. The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with the listing or with the designation of critical habitat, including reinitiated consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat; and (4) potential offsetting beneficial costs associated with critical habitat including educational benefits.

Our economic analysis recognizes that there may be costs from delays associated with reinitiating completed consultations after the critical habitat designation is made final. There may also be economic effects due to the reaction of the real estate market to critical habitat designation, as real estate values may be lowered due to a perceived increase in the regulatory burden. However, we believe these impacts will be short-term.

Based on our analysis, we have concluded that the designation of critical habitat would not result in a significant economic impact, and estimate the potential economic effects over a 10-year period would be $338,000. Costs to Federal agencies are expected to be approximately $62,000, primarily resulting from consultations and project modifications in the Watsonville Unit. Costs to State agencies are expected to be approximately $57,000, primarily resulting from consultations and project modifications by CalTrans in the Watsonville Unit. Costs to local agencies are expected to be approximately $179,000, primarily resulting from consultations and project modifications in the Mezue and Watsonville Units. Costs to private landowners are expected to be approximately $32,000, primarily resulting from consultations and modifications within the Rodeo Gulch and Watsonville Units. These estimates are based on the existing consultation history with agencies in this area and increased public awareness regarding the actual impacts of critical habitat designation on land values. Because of *Holocarpha macradenia's* limited distribution and the small amount of available suitable habitat, it is assumed that most projects would be subject to consultation on their potential impacts to the species, regardless of this critical habitat designation. Therefore, most potential costs are attributable co-extensively to the listing of *H. macradenia*. The designation of critical habitat is not expected to result in any significant additional regulatory protection..

Following the close of the comment period on the draft Economic Analysis, a final addendum was completed which incorporated public comments on the draft analysis. The values presented above may be an overestimate of the potential economic effects of the designation because the final designation has been reduced to encompass 1,175 ha (2,902 ac) versus the 1,360 ha (3,360 ac) proposed as critical habitat, a difference of 185 ha (458 ac).

A copy of the final economic analysis and a description of the exclusion process with supporting documents are included in our administrative record and may be obtained by contacting our Ventura Fish and Wildlife Office (*see* **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB), as OMB determined that this rule may raise novel legal or policy issues. The Service has prepared an economic analysis of this action. The Service used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. This analysis was made available for public comment, and we considered comments on it during the preparation of this rule.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the Regulatory Flexibility Act to require a certification statement. In this rule, we are certifying that the critical habitat designation for *Holocarpha macradenia* will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration (*http://www.sba.gov/size/*), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. The Small Business Administration defines small businesses by their principal trade. For example, manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000 are considered by the Small Business Administration to be small. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term "significant

economic impact" is meant to apply to a typical small business firm's business operations.

In determining whether this rule could "significantly affect a substantial number of small entities," the economic analysis first determined whether critical habitat could potentially affect a "substantial number" of small entities in counties supporting critical habitat areas. While SBREFA does not explicitly define "substantial number," the Small Business Administration, as well as other Federal agencies, have interpreted this to represent an impact on 20 percent or greater of the number of small entities in any industry. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial; though this is not one of those circumstances. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Outside the existing developed areas, the projected land uses for the majority of the critical habitat consist of recreation, military storage, housing development, agriculture, cattle grazing, conservation lands for natural resource values, and possible airport expansion. Of the 11 critical habitat units identified in the proposed rule, 9 consist of fewer than 10 parcels each, and 6 of these are only 3 parcels or fewer. Future development is not likely in six of these nine units because they are primarily park lands or lands dedicated to conservation. Future development has already been permitted in the remaining three of these nine units; in these cases, we are coordinating with the appropriate State, county, and city agencies. We do not anticipate that this designation of critical habitat will result in any additional regulatory impacts on development projects already permitted in these units, and we are not aware of any Federal activities in these units that would require consultation or reinitiation of already-completed consultations for ongoing projects. As these three units are small (14 ha (35 ac) or less), it is unlikely that additional development beyond that already permitted could occur here.

The two remaining units are significantly larger in acreage and therefore encompass a more diverse array of possible future land uses. At the current time, the 450-ha (1,110-ac) Casserly Unit consists of lands primarily designated for noncommercial agriculture, and includes hobby farms, rural residences, cattle grazing, and small animal husbandry. It also includes two golf courses. Lands within this unit may be developed in the future, although we are not aware of any plans for development at this time. The 488-ha (1,205-ac) Watsonville Unit primarily consists of lands zoned for commercial agriculture, including row crops as well as cattle grazing. The remaining portion of the unit is within the city limits of the City of Watsonville. We are aware of several possible future projects in this unit, including airport expansion, a high school development, Federal Highway Administration projects (such as rebuilding bridges or widening freeways), and housing development. Future development projects in this area will also be affected by coastal zone permitting and other State and local planning and zoning requirements.

Several of these projects may have Federal involvement, including the airport expansion that is being funded and permitted by the Federal Aviation Administration; a high school development that may require section 404 authorizations from the Army Corps of Engineers and an incidental take permit, pursuant to section 10(a)(1)(B) of the Act, from the Service; housing developments that may require 404 authorizations; and watershed and restoration management projects sponsored by the Natural Resources Conservation Service (NRCS). The requirement in section 7(a)(2) to avoid jeopardizing listed species and destroying or adversely modifying designated critical habitat may result in Federal agencies requiring certain modifications to proposed projects.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternative measures. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a very limited consultation history for *Holocarpha macradenia*, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, especially as described in the final listing rule and in this critical habitat designation, as well as our experience with similar listed plants in California. In addition, the State of California listed *H. macradenia* as an endangered species under the California Endangered Species Act in 1979, and we have also considered the kinds of actions required through State consultations for this species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, construction of protective fencing, and regular monitoring.

Our economic analysis identified two categories of small entities that could potentially be affected by this rule: real estate developers and the Watsonville Municipal Airport, which is operated by the City of Watsonville. The Small Business Administration defines small businesses in this sector to be entities with $5.0 million or less in annual receipts. In determining whether this rule could "significantly affect a substantial number of these small entities," the economic analysis first determined whether critical habitat could potentially affect a "substantial number." While SBREFA does not explicitly define "substantial number," our economic analysis has interpreted this to represent an impact on 20 percent or greater of the number of small entities in any single industry. This standard is similar to that adopted by other Federal agencies in their rulemaking analyses.

To be conservative, (*i.e.*, more likely to overstate impacts than understate them), the analysis assumed that a unique company will undertake each of the projected consultations in a given year, and so the number of businesses affected is equal to the total annual number of consultations (both formal and informal). The analysis estimated that, over the next ten years, the annual number of small real estate developers and airport industries that would be affected by section 7 consultations would be 0.1 and 0.2, respectively. Given that the total number of small real estate development businesses in the area is approximately 286, the annual percentage of small real estate developers affected by this rulemaking was estimated to be 0.03 percent, well below the 20 percent threshold considered to be "substantial." Given that the total number of small airports and flying fields in the state (the area of analysis due to the regional aspects of the airport) is approximately 115, the annual percentage of small airports affected by this rulemaking was estimated to be 0.13 percent, also well below the 20 percent threshold considered to be "substantial." While the economic analysis concluded that a substantial number of small entities would not be affected, it further analyzed whether any of the businesses likely to be affected would be "significantly" affected. Operating under the assumption that an establishment would be significantly affected if the cost of compliance exceeded three percent of its sales, the analysis determined that less than one percent of small developers and airport industries would, on average, experience a significant effect as a result of this rulemaking. Therefore, we are certifying that the designation of critical habitat for *Holocarpha macradenia* will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

As discussed above, this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This final designation of critical habitat: (a) Does not have an annual effect on the economy of $100 million or more; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Proposed and final rules designating critical habitat for listed species are issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises will not be affected by the final rule designating critical habitat for this species. Therefore, we anticipate that this final rule will not place significant additional burdens on any entity.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The primary land uses within this designated critical habitat include urban and agricultural development, recreation, open space, conservation, airport facilities, and military storage facilities. We are not aware of any energy-related facilities located within designated critical habitat. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that they must ensure that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely modify or destroy designated critical habitat.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for *Holocarpha macradenia* in a takings implication assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of this critical habitat designation, with appropriate State resource agencies in California. We will continue to coordinate any future changes in the designation of critical habitat for the *Holocarpha macradenia* with the appropriate State agencies. Where the species is present, the designation of critical habitat imposes no additional restrictions to those currently in place, and therefore, has little incremental impact on State and local governments and their activities. The designation of critical habitat in unoccupied areas may require consultation under section 7 of the Act on non-Federal lands (where a Federal nexus occurs) that might otherwise not have occurred.

The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultation to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act, as amended. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Holocarpha macradenia*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. This rule will not impose new record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB Control Number.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reason for this determination in the **Federal**

Register on October 25, 1983 (48 FR 49244). This determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. The designated critical habitat for *Holocarpha macradenia* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The author of this final rule is Constance Rutherford, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section § 17.12(h) is amended by revising the entry for *Holocarpha macradenia* under "FLOWERING PLANTS," to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
.	.	.	.	.	.	.	.
Holocarpha macradenia	Santa Cruz tarplant	U.S.A. (CA)	Asteraceae—Sunflower.	T	690	17.96(a)	NA
.	.	.	.	.	.	.	.

3. In § 17.96, amend paragraph (a) by adding an entry for *Holocarpha macradenia* in alphabetical order under Family Asteraceae to read as follows:

§ 17.96 Critical habitat—plants.

* * * * *

(a) * * *

Family Asteraceae: *Holocarpha macradenia* (Santa Cruz tarplant)

(1) Critical habitat units are depicted for Contra Costa, Santa Cruz, and Monterey Counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Holocarpha macradenia* are the habitat components that provide:

(i) Soils associated with coastal terrace prairies, including the Watsonville, Tierra, Elkhorn, Santa Inez, and Pinto series.

(ii) Plant communities that support associated species, including native grasses such as *Nassella* sp.(needlegrass) and *Danthonia californica* (California oatgrass); native herbaceous species such as members of the genus *Hemizonia* (other tarplants), *Perideridia gairdneri* (Gairdner's yampah), *Plagiobothrys diffusus* (San Francisco popcorn flower), and *Trifolium buckwestiorum* (Santa Cruz clover); and

(iii) Physical processes, particularly soils and hydrologic processes, that maintain the soil structure and hydrology that produce the seasonally saturated soils characteristic of *Holocarpha macradenia* habitat.

(3) Critical habitat does not include existing features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) *Critical Habitat Map Units.*

(i) Data layers defining map units were created on a base of USGS 7.5' quadrangles obtained from the State of California's Stephen P. Teale Data Center. Critical habitat units were then mapped using UTM coordinates.

(ii) Map 1—Index map follows:

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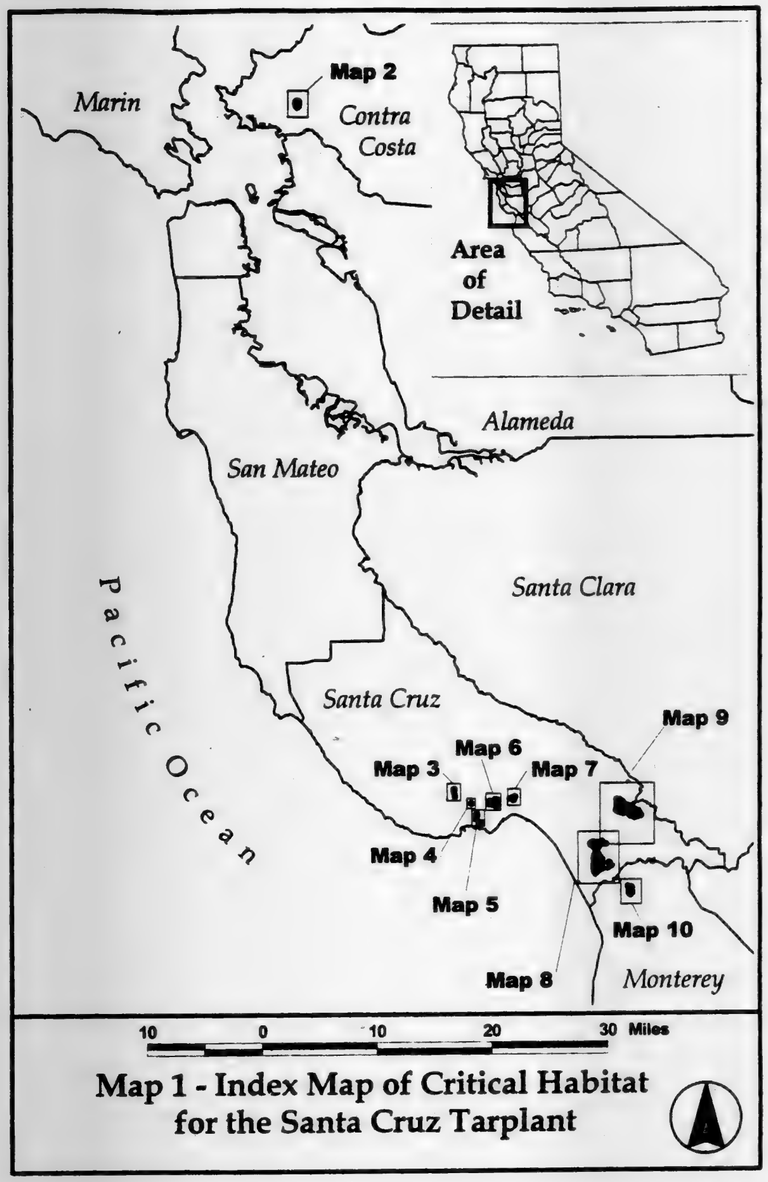

Map 1 - Index Map of Critical Habitat for the Santa Cruz Tarplant

(5) *Unit A: Mezue.* Contra Costa County, California.

(i) From USGS 1:24,000 quadrangle map Richmond. Lands bounded by the following UTM zone 10, NAD83 coordinates (E, N): 562046, 4199420; 562047, 4199460; 562063, 4199550; 562066, 4199570; 562070, 4199600; 562073, 4199650; 562074, 4199670; 562076, 4199690; 562076, 4199690; 562079, 4199700; 562085, 4199710; 562100, 4199720; 562116, 4199730; 562133, 4199740; 562149, 4199750; 562179, 4199780; 562190, 4199800; 562230, 4199800; 562270, 4199800; 562299, 4199800; 562324, 4199800; 562357, 4199820; 562382, 4199840; 562403, 4199860; 562466, 4199870; 562548, 4199840; 562579, 4199820; 562616, 4199790; 562703, 4199720; 562717, 4199700; 562723, 4199690; 562724, 4199680; 562722, 4199670; 562712, 4199650; 562705, 4199620; 562699, 4199600; 562690, 4199580; 562684, 4199550; 562687, 4199490; 562684, 4199440; 562683, 4199390; 562680, 4199340; 562686, 4199300; 562629, 4199340; 562599, 4199370; 562577, 4199410; 562556, 4199480; 562520, 4199680; 562513, 4199690; 562500, 4199690; 562496, 4199680; 562498, 4199650; 562520, 4199510; 562526, 4199420; 562537, 4199380; 562544, 4199340; 562567, 4199290; 562598, 4199250; 562615, 4199240; 562621, 4199200; 562629, 4199170; 562636, 4199120; 562637, 4199070; 562638, 4199010; 562640, 4198990; 562645, 4198960; 562649, 4198920; 562648, 4198910; 562632, 4198880; 562615, 4198860; 562592, 4198840; 562554, 4198820; 562530, 4198810; 562499, 4198800; 562483, 4198800; 562465, 4198790; 562417, 4198780; 562371, 4198800; 562314, 4198810; 562255, 4198850; 562280, 4198890; 562291, 4198910; 562299, 4198930; 562299, 4198950; 562301, 4198970; 562309, 4199010; 562308, 4199030; 562306, 4199040; 562293, 4199060; 562288, 4199070; 562276, 4199090; 562271, 4199090; 562264, 4199090; 562264, 4199090; 562258, 4199080; 562258, 4199060; 562253, 4199020; 562251, 4198990; 562252, 4198940; 562251, 4198930; 562250, 4198930; 562242, 4198920; 562229, 4198900; 562212, 4198880; 562188, 4198890; 562184, 4198920; 562174, 4198960; 562163, 4199000; 562155, 4199030; 562151, 4199050; 562146, 4199070; 562136, 4199130; 562135, 4199140; 562132, 4199150; 562118, 4199180; 562108, 4199190; 562092, 4199220; 562078, 4199230; 562058, 4199270; 562049, 4199280; 562045, 4199290; 562043, 4199300; 562041, 4199310; 562041, 4199330; 562042, 4199350; 562044, 4199360; 562046, 4199420.

(ii) Map 2 of Unit A follows:

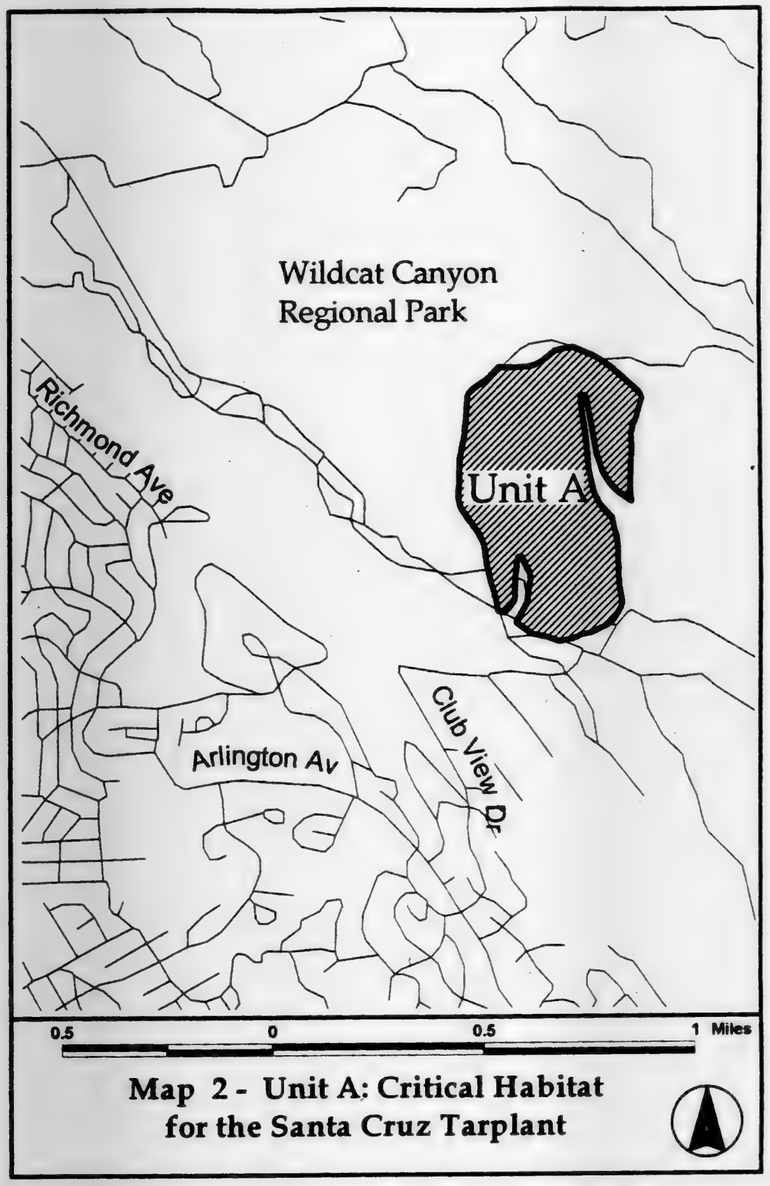

Map 2 - Unit A: Critical Habitat for the Santa Cruz Tarplant

(6) *Unit B: Graham Hill.* Santa Cruz County, California.

(i) Unit B (Graham Hill north subunit). From USGS 1:24,000 quadrangle map Felton. Lands bounded by the following UTM zone 10, NAD83 coordinates (E, N): 585905, 4096930; 585915, 4096850; 585930, 4096130; 585930, 4096110; 585879, 4096100; 585863, 4096100; 585841, 4096110; 585833, 4096130; 585817, 4096180; 585815, 4096210; 585819, 4096240; 585840, 4096280; 585850, 4096320; 585837, 4096350; 585810, 4096390; 585749, 4096430; 585721, 4096480; 585719, 4096560; 585710, 4096710; 585724, 4096750; 585701, 4096790; 585699, 4096820; 585739, 4096850; 585791, 4096860; 585839, 4096880; 585905, 4096930.

(ii) Unit B (Graham Hill central subunit). From USGS 1:24,000 quadrangle map Felton. Lands bounded by the following UTM zone 10, NAD83 coordinates (E, N): 585912, 4095900; 585919, 4095900; 585928, 4095910; 585942, 4095900; 585974, 4095840; 585954, 4095830; 585939, 4095840; 585925, 4095840; 585915, 4095850; 585912, 4095870; 585910, 4095880; 585910, 4095890; 585912, 4095900.

(iii) Unit B (Graham Hill south subunit). From USGS 1:24,000 quadrangle map Felton. Lands bounded by the following UTM zone 10, NAD83 coordinates (E, N): 586017, 4095760; 586058, 4095680; 585931, 4095640; 585928, 4095650; 585922, 4095670; 585920, 4095680; 585922, 4095690; 585930, 4095710; 585937, 4095730; 585944, 4095740; 585955, 4095740; 585976, 4095750; 586017, 4095760.

(iv) Map 3 of Unit B follows:

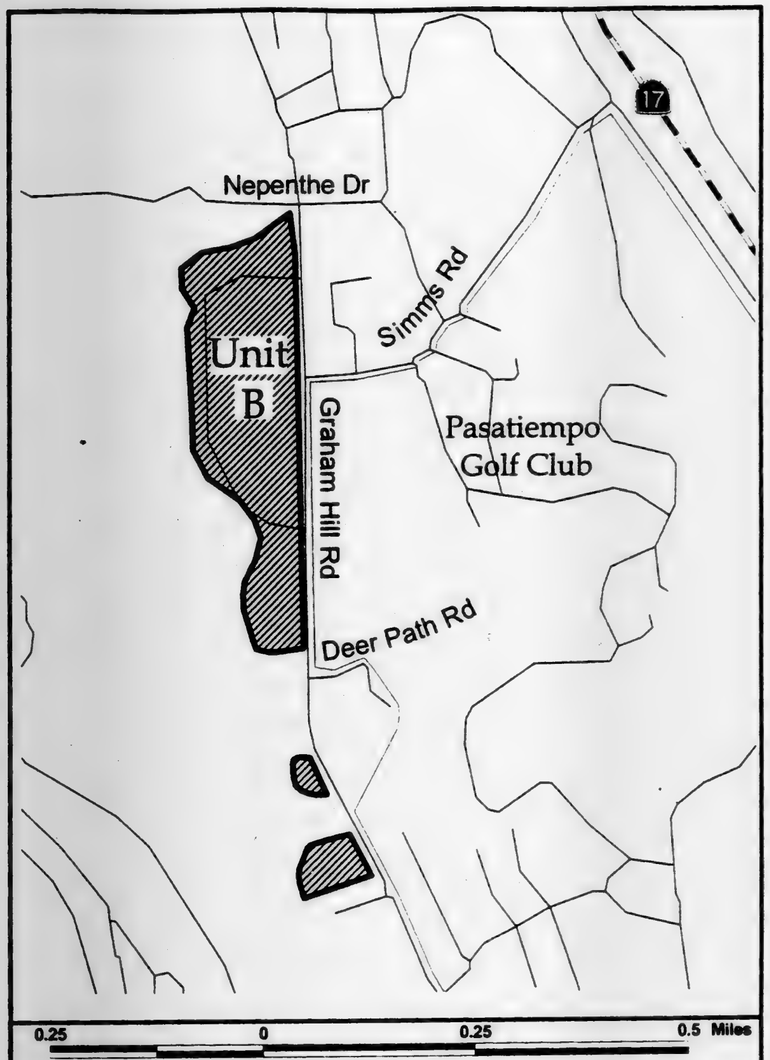

Map 3 - Unit B: Critical Habitat for the Santa Cruz Tarplant

(7) *Unit C: (De Laveaga).* Santa Cruz County, California.

(i) From USGS 1:24,000 quadrangle map Santa Cruz. Lands bounded by the following UTM zone 10, NAD83 coordinates (E, N): 588446, 4094810; 588468, 4094810; 588492, 4094800; 588510, 4094780; 588523, 4094760; 588523, 4094740; 588522, 4094730; 588519, 4094710; 588522, 4094690; 588522, 4094680; 588519, 4094660; 588515, 4094650; 588504, 4094630; 588488, 4094660; 588476, 4094660; 588459, 4094620; 588445, 4094620; 588440, 4094590; 588429, 4094590; 588417, 4094610; 588406, 4094620; 588401, 4094640; 588399, 4094660; 588401, 4094690; 588410, 4094720; 588416, 4094740; 588424, 4094770; 588432, 4094790; 588439, 4094810; 588446, 4094810.

(ii) Map 4 of Unit C follows:

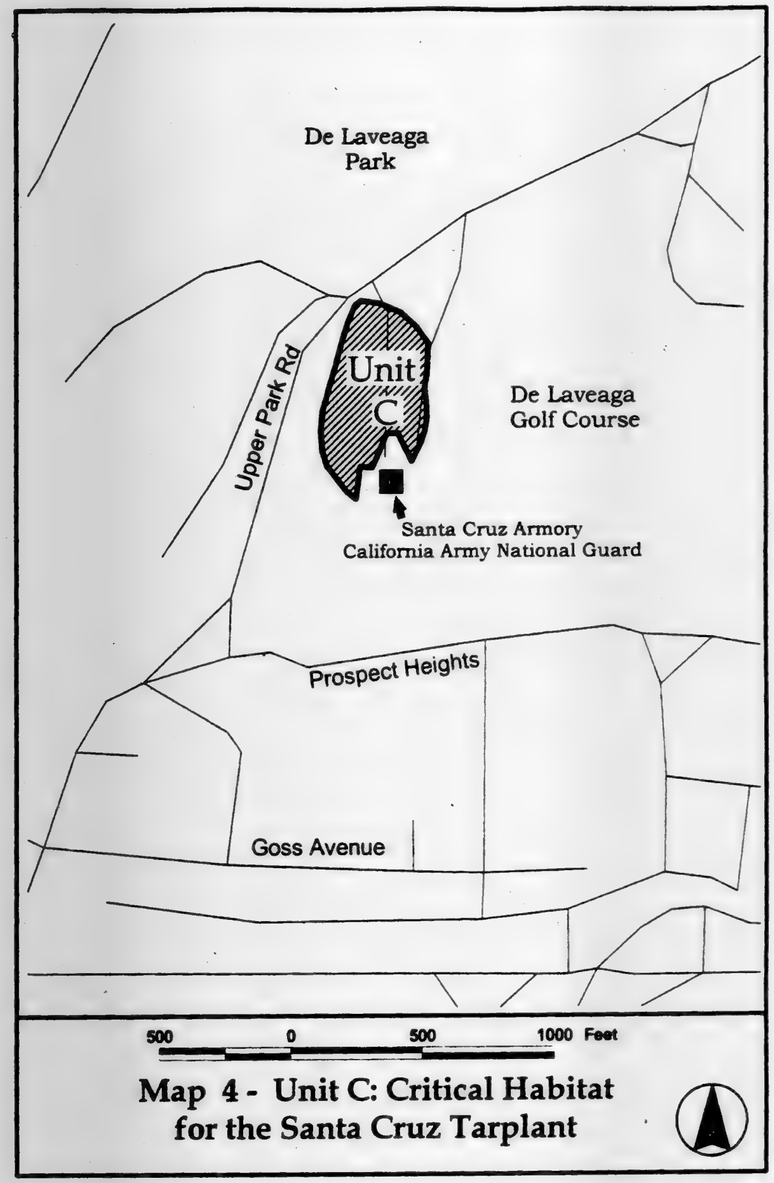

Map 4 - Unit C: Critical Habitat for the Santa Cruz Tarplant

(8) *Unit D: Arana Gulch.* Santa Cruz County, California.

From USGS 1:24,000 quadrangle maps Santa Cruz and Soquel. Lands bounded by the following UTM zone 10, NAD83 coordinates (E, N): 589295, 4093310; 589315, 4093270; 589338, 4093210; 589358, 4093170; 589399, 4093120; 589404, 4093100; 589399, 4093030; 589401, 4092990; 589400, 4092940; 589391, 4092900; 589386, 4092860; 589375, 4092830; 589353, 4092780; 589340, 4092750; 589340, 4092730; 589325, 4092690; 589310, 4092640; 589290, 4092600; 589272, 4092590; 589252, 4092570; 589238, 4092550; 589229, 4092530; 589221, 4092500; 589195, 4092460; 589161, 4092490; 589139, 4092530; 589120, 4092540; 589108, 4092540; 589092, 4092510; 589057, 4092450; 589033, 4092400; 588999, 4092360; 588929, 4092350; 588916, 4092360; 588894, 4092470; 588891, 4092560; 588890, 4092650; 588919, 4092710; 588946, 4092730; 588980, 4092760; 589053, 4092880; 589080, 4092950; 589119, 4093040; 589234, 4093080; 589178, 4093270; 589181, 4093310; 589214, 4093320; 589245, 4093330; 589268, 4093330; 589295, 4093310.

(9) *Unit E: Twin Lakes.* Santa Cruz County, California.

(i) From USGS 1:24,000 quadrangle map Soquel. Lands bounded by the following UTM zone 10, NAD83 coordinates (E, N): 589964, 4091950; 589967, 4091930; 589964, 4091890; 589918, 4091800; 589899, 4091780; 589871, 4091770; 589823, 4091760; 589784, 4091760; 589744, 4091750; 589722, 4091750; 589692, 4091760; 589667, 4091780; 589656, 4091770; 589640, 4091750; 589616, 4091740; 589559, 4091710; 589532, 4091690; 589521, 4091660; 589521, 4091640; 589522, 4091620; 589504, 4091610; 589489, 4091620; 589476, 4091640; 589455, 4091700; 589450, 4091730; 589449, 4091770; 589458, 4091800; 589472, 4091830; 589473, 4091840; 589465, 4091860; 589464, 4091890; 589463, 4091900; 589482, 4091920; 589506, 4091940; 589522, 4091950; 589964, 4091950.

(ii) Map 5 of Units D and E follows:

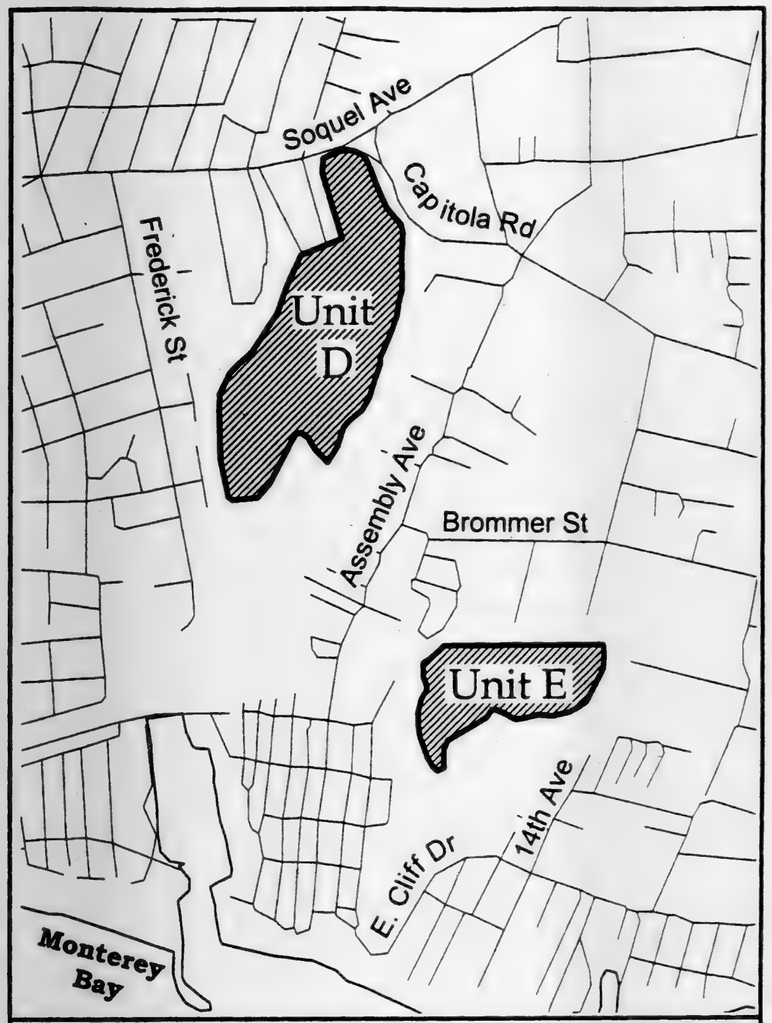

Map 5 - Units D & E: Critical Habitat for the Santa Cruz Tarplant

(10) *Unit F: Rodeo Gulch.* Santa Cruz County, California.

From USGS 1:24,000 quadrangle map Soquel. Lands bounded by the following UTM zone 10, NAD83 coordinates (E, N): 590971, 4094630; 590995, 4094740; 591007, 4094780; 591037, 4094830; 591069, 4094860; 591095, 4094900; 591125, 4094960; 591182, 4094940; 591196, 4094940; 591199, 4094950; 591207, 4094980; 591216, 4095000; 591225, 4095030; 591220, 4095050; 591225, 4095090; 591232, 4095130; 591241, 4095160; 591252, 4095180; 591265, 4095180; 591291, 4095170; 591321, 4095140; 591353, 4095050; 591393, 4094970; 591301, 4094960; 591293, 4094950; 591299, 4094910; 591300, 4094850; 591293, 4094810; 591275, 4094750; 591252, 4094660; 591224, 4094650; 591185, 4094630; 591097, 4094630; 590971, 4094630.

(11) *Unit G: Soquel Unit.* Santa Cruz County, California.

(i) Unit G (Soquel north subunit). From USGS 1:24,000 quadrangle maps Soquel and Laurel. Lands bounded by the following UTM zone 10, NAD83 coordinates (E, N): 592050, 4095340; 592094, 4095290; 592102, 4095240; 592112, 4095200; 592119, 4095200; 592130, 4095200; 592158, 4095210; 592173, 4095220; 592180, 4095230; 592193, 4095270; 592211, 4095320; 592218, 4095330; 592227, 4095330; 592257, 4095330; 592275, 4095330; 592299, 4095330; 592393, 4095340; 592404, 4095330; 592411, 4095220; 592423, 4095180; 592425, 4095140; 592414, 4095130; 592381, 4095120; 592290, 4095120; 592177, 4095120; 592165, 4095120; 592159, 4095120; 592149, 4095110; 592138, 4095100; 592129, 4095090; 592116, 4095090; 592109, 4095100; 592041, 4095190; 592009, 4095220; 591986, 4095240; 591980, 4095270; 591970, 4095360; 591971, 4095360; 591973, 4095370; 591995, 4095390; 592012, 4095400; 592021, 4095410; 592031, 4095400; 592046, 4095390; 592050, 4095340.

(ii) Unit G (Soquel north area). From USGS 1:24,000 quadrangle maps Soquel and Laurel. Lands bounded by the following UTM zone 10 NAD83 coordinates (E, N). 592050, 4095340; 592094, 4095290; 592102, 4095240; 592112, 4095200; 592119, 4095200; 592130, 4095200; 592158, 4095210; 592173, 4095220; 592180, 4095230; 592193, 4095270; 592211, 4095320; 592218, 4095330; 592227, 4095330; 592257, 4095330; 592275, 4095330; 592299, 4095330; 592393, 4095340; 592404, 4095330; 592411, 4095220; 592423, 4095180; 592425, 4095140; 592414, 4095130; 592381, 4095120; 592290, 4095120; 592177, 4095120; 592165, 4095120; 592159, 4095120; 592149, 4095110; 592138, 4095100; 592129, 4095090; 592116, 4095090; 592109, 4095100; 592041, 4095190; 592009, 4095220; 591986, 4095240; 591980, 4095270; 591970, 4095360; 591971, 4095360; 591973, 4095370; 591995, 4095390; 592012, 4095400; 592021, 4095410; 592031, 4095400; 592046, 4095390; 592050, 4095340.

(iii) Unit G (Soquel south subunit). From USGS 1:24,000 quadrangle maps Soquel and Laurel. Lands bounded by the following UTM zone 10, NAD83 coordinates (E, N): 592076, 4095040; 592097, 4094850; 592304, 4094860; 592315, 4094660; 592322, 4094620; 592334, 4094580; 592341, 4094510; 592347, 4094490; 592354, 4094480; 592375, 4094440; 592378, 4094430; 592380, 4094400; 592385, 4094380; 592406, 4094360; 592430, 4094320; 592442, 4094310; 592460, 4094300; 592478, 4094290; 592491, 4094280; 592494, 4094210; 592495, 4094190; 592491, 4094180; 592478, 4094180; 592458, 4094180; 592452, 4094200; 592442, 4094200; 592326, 4094210; 592311, 4094210; 592224, 4094110; 592216, 4094110; 592204, 4094110; 592165, 4094130; 592161, 4094140; 592126, 4094560; 592123, 4094590; 592117, 4094610; 592105, 4094630; 592087, 4094670; 592074, 4094690; 592057, 4094720; 592047, 4094730; 592036, 4094730; 592032, 4094720; 592036, 4094700; 592043, 4094680; 592047, 4094650; 592043, 4094610; 592036, 4094550; 592000, 4094420; 591994, 4094390; 591987, 4094380; 591973, 4094380; 591957, 4094380; 591944, 4094380; 591904, 4094420; 591855, 4094440; 591853, 4094500; 591833, 4094500; 591696, 4094500; 591696, 4094440; 591606, 4094490; 591597, 4094510; 591596, 4094520; 591613, 4094650; 591617, 4094650; 591676, 4094660; 591718, 4094660; 591751, 4094660; 591759, 4094670; 591757, 4094680; 591749, 4094680; 591738, 4094690; 591704, 4094690; 591656, 4094710; 591651, 4094720; 591651, 4094730; 591657, 4094740; 591711, 4094750; 591720, 4094740; 591726, 4094730; 591736, 4094730; 591777, 4094730; 591790, 4094740; 591797, 4094740; 591806, 4094750; 591819, 4094750; 591831, 4094750; 591845, 4094740; 591856, 4094740; 591935, 4094740; 591946, 4094880; 591956, 4094930; 591995, 4095060; 591998, 4095100; 592017, 4095090; 592059, 4095060; 592076, 4095040.

(iv) Map 6 of Units F and G follows:

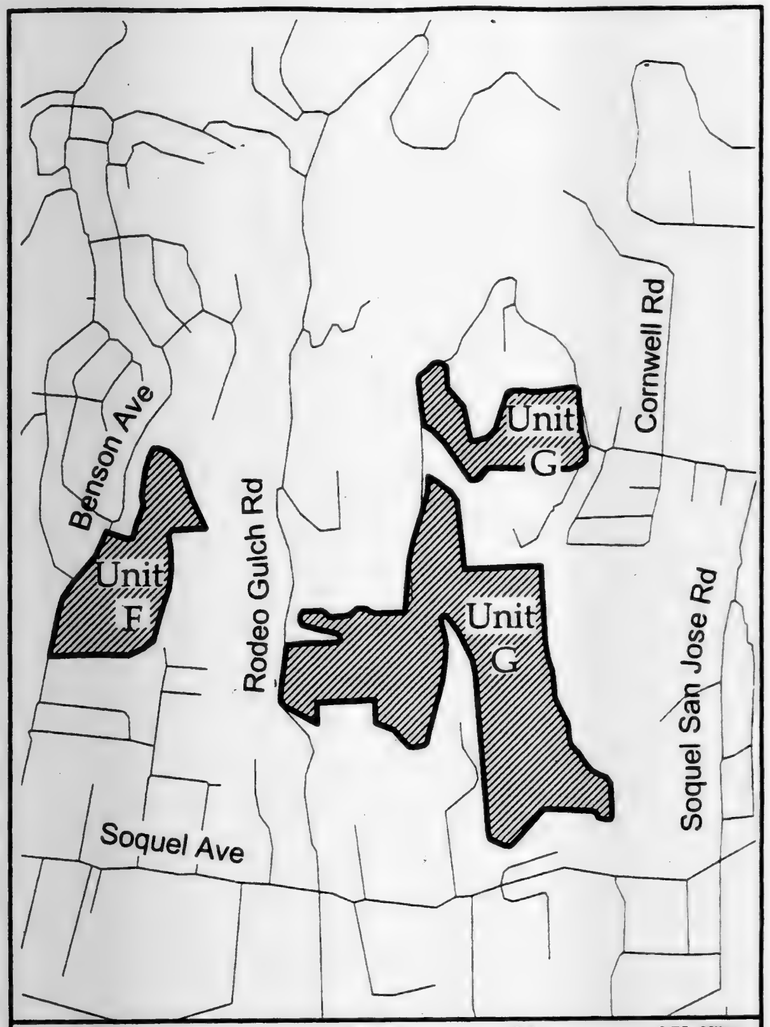

Map 6 - Units F & G: Critical Habitat for the Santa Cruz Tarplant

(12) *Unit H: Porter Gulch.* Santa Cruz County, California.

(i) From USGS 1:24,000 quadrangle maps Soquel and Laurel. Lands bounded by the following UTM zone 10, NAD83 coordinates (E, N): 594615, 4095600; 594643, 4095630; 594684, 4095640; 594774, 4095680; 594850, 4095720; 594898, 4095750; 594929, 4095780; 594958, 4095820; 595017, 4095780; 595008, 4095760; 594990, 4095720; 594993, 4095700; 595020, 4095680; 595057, 4095630; 595081, 4095610; 595068, 4095600; 595061, 4095590; 595045, 4095580; 595013, 4095550; 594989, 4095540; 594967, 4095530; 594929, 4095520; 594917, 4095520; 594907, 4095500; 594893, 4095470; 594857, 4095380; 594846, 4095340; 594843, 4095320; 594842, 4095290; 594839, 4095250; 594838, 4095180; 594835, 4095150; 594828, 4095130; 594816, 4095120; 594800, 4095120; 594785, 4095120; 594772, 4095130; 594765, 4095130; 594760, 4095140; 594758, 4095150; 594760, 4095170; 594766, 4095230; 594779, 4095310; 594819, 4095420; 594856, 4095500; 594867, 4095520; 594869, 4095540; 594863, 4095550; 594848, 4095560; 594837, 4095550; 594833, 4095540; 594828, 4095540; 594810, 4095500; 594776, 4095470; 594747, 4095440; 594718, 4095410; 594689, 4095370; 594669, 4095370; 594652, 4095370; 594639, 4095380; 594627, 4095380; 594622, 4095400; 594624, 4095470; 594606, 4095470; 594587, 4095460; 594571, 4095470; 594565, 4095480; 594557, 4095480; 594549, 4095480; 594530, 4095480; 594518, 4095470; 594514, 4095460; 594517, 4095440; 594509, 4095430; 594498, 4095430; 594473, 4095430; 594462, 4095430; 594453, 4095430; 594444, 4095420; 594442, 4095410; 594441, 4095390; 594436, 4095380; 594427, 4095380; 594415, 4095380; 594411, 4095390; 594394, 4095420; 594390, 4095440; 594390, 4095450; 594391, 4095470; 594410, 4095490; 594457, 4095530; 594502, 4095550; 594542, 4095560; 594597, 4095560; 594597, 4095600; 594615, 4095600.

(ii) Map 7 of Unit H follows:

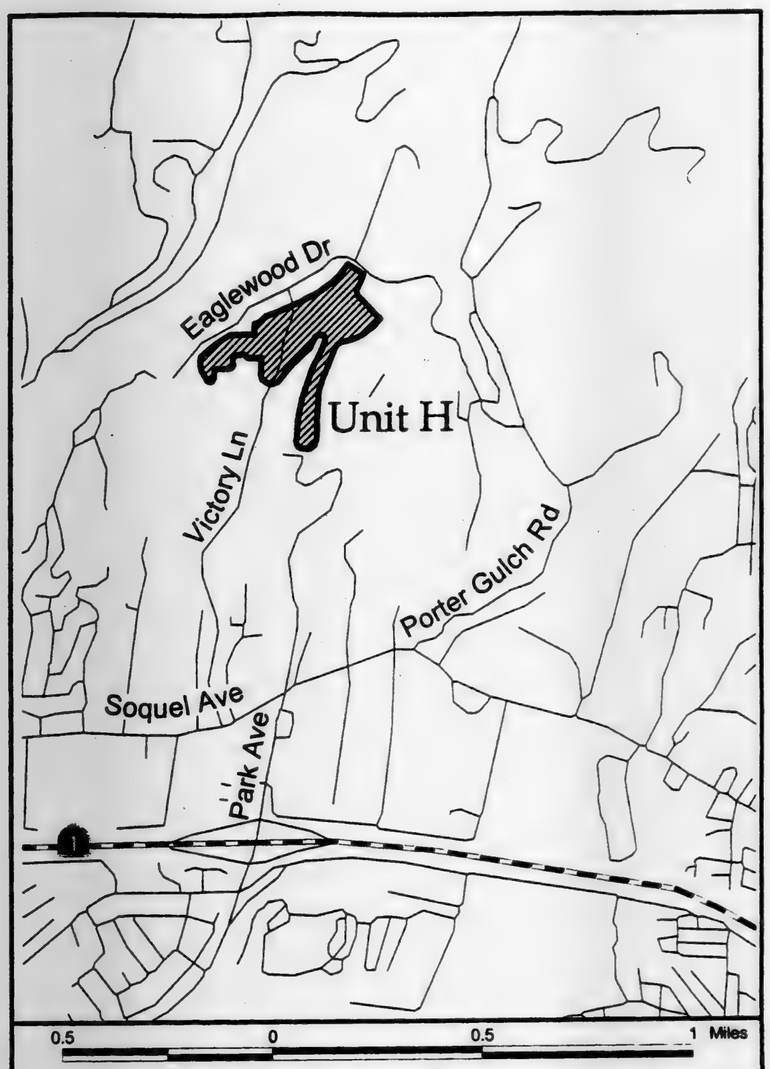

Map 7 - Unit H: Critical Habitat for the Santa Cruz Tarplant

(13) *Unit I: Watsonville Unit.* Santa Cruz County, California.

(i) Unit I (Watsonville north subunit). From USGS 1:24,000 quadrangle map Watsonville West. Lands bounded by the following UTM zone 10, NAD83 coordinates (E, N): 606195, 4088630; 606299, 4088730; 606331, 4088750; 606365, 4088760; 606454, 4088750; 606492, 4088750; 606515, 4088750; 606535, 4088760; 606555, 4088800; 606560, 4088840; 606580, 4088880; 606607, 4088890; 606660, 4088900; 606927, 4088910; 606938, 4088530; 606930, 4088220; 606810, 4088090; 606689, 4087970; 606652, 4088040; 606596, 4088110; 606522, 4088170; 606490, 4088210; 606437, 4088250; 606362, 4088300; 606303, 4088340; 606274, 4088370; 606263, 4088390; 606252, 4088430; 606234, 4088450; 606219, 4088480; 606215, 4088520; 606199, 4088590; 606195, 4088630.

(ii) Unit I (Airport subunit). From USGS 1:24,000 quadrangle map Watsonville West. Lands bounded by the following UTM zone 10, NAD83 coordinates (E, N): 607026, 4087500; 606967, 4087520; 607005, 4087620; 607031, 4087670; 607046, 4087710; 607073, 4087750; 607095, 4087820; 607136, 4087830; 607137, 4087860; 607146, 4087980; 607140, 4088020; 607145, 4088050; 607158, 4088060; 607202, 4088060; 607247, 4088050; 607252, 4088090; 607292, 4088090; 607378, 4088100; 607383, 4088250; 607306, 4088240; 607226, 4088240; 607201, 4088250; 607184, 4088270; 607159, 4088300; 607147, 4088310; 607147, 4088340; 607158, 4088380; 607195, 4088470; 607203, 4088510; 607212, 4088560; 607222, 4088620; 607226, 4088650; 607227, 4088710; 607240, 4088750; 607241, 4088780; 607236, 4088820; 607246, 4088840; 607340, 4088840; 607846, 4088860; 607947, 4089000; 608079, 4089030; 608191, 4088860; 608477, 4088700; 608460, 4088620; 608641, 4088590; 608652, 4088610; 608746, 4088570; 608602, 4088450; 607932, 4088550; 607689, 4088150; 607267, 4087440; 607312, 4087430; 607297, 4087340; 607239, 4087340; 607201, 4087350; 607181, 4087320; 607148, 4087320; 607031, 4087350; 606969, 4087370; 607026, 4087500.

(iii) Unit I (Watsonville south subunit). From USGS 1:24,000 quadrangle map Watsonville West. Lands bounded by the following UTM zone 10, NAD83 coordinates (E, N): 609032, 4085780; 609074, 4085770; 609198, 4085730; 609153, 4085610; 609208, 4085430; 609333, 4085390; 609504, 4085250; 609242, 4085080; 609191, 4085230; 609164, 4085310; 609006, 4085250; 609123, 4085020; 608761, 4084800; 608590, 4085160; 608651, 4085380; 608760, 4085450; 608869, 4085480; 608941, 4085530; 608976, 4085570; 609032, 4085580; 609040, 4085630; 608979, 4085640; 608931, 4085660; 608920, 4085700; 608928, 4085730; 608957, 4085760; 608995, 4085780; 609032, 4085780.

(iv) Unit I (Highway 1 north subunit). From USGS 1:24,000 quadrangle map Watsonville West. Lands bounded by the following UTM zone 10, NAD83 coordinates (E, N): 607333, 4087090; 607348, 4087150; 607389, 4087150; 607449, 4087090; 607498, 4087060; 607570, 4087060; 607570, 4086940; 607558, 4086930; 607333, 4087090.

(v) Unit I (Highway 1 south subunit). From USGS 1:24,000 quadrangle map Watsonville West. Lands bounded by the following UTM zone 10, NAD83 coordinates (E, N): 607819, 4086590; 607892, 4086560; 607893, 4086520; 607900, 4086500; 607920, 4086470; 607931, 4086440; 607946, 4086410; 607978, 4086370; 608003, 4086320; 608031, 4086280; 608057, 4086260; 608029, 4086240; 608063, 4086190; 608101, 4086160; 608138, 4086130; 608069, 4086100; 607819, 4086590.

(vi) Unit I (Harkins Slough subunit). From USGS 1:24,000 quadrangle map Watsonville West. Lands bounded by the following UTM zone 10, NAD83 coordinates (E, N): 606736, 4084900; 606721, 4084900; 606703, 4084900; 606698, 4084920; 606703, 4084940; 606709, 4084960; 606710, 4085000; 606715, 4085030; 606715, 4085050; 606715, 4085080; 606707, 4085090; 606698, 4085100; 606678, 4085110; 606661, 4085140; 606634, 4085230; 606632, 4085260; 606635, 4085290; 606651, 4085310; 606667, 4085370; 606677, 4085390; 606695, 4085410; 606713, 4085420; 606695, 4085510; 606701, 4085540; 606721, 4085550; 606733, 4085580; 606742, 4085610; 606745, 4085650; 606756, 4085690; 606773, 4085710; 606759, 4085800; 606744, 4085830; 606736, 4085870; 606725, 4085930; 606729, 4085960; 606741, 4085990; 606761, 4086020; 606756, 4086050; 606735, 4086090; 606715, 4086130; 606704, 4086180; 606689, 4086350; 606690, 4086390; 606696, 4086440; 606715, 4086490; 606746, 4086540; 606762, 4086620; 606767, 4086650; 606766, 4086700; 606762, 4086780; 606786, 4086810; 606896, 4086850; 606923, 4086940; 607053, 4086940; 607125, 4087120; 607085, 4087130; 607002, 4087200; 606976, 4087250; 606968, 4087280; 607157, 4087140; 607286, 4087040; 607497, 4086890; 607591, 4086820; 607719, 4086630; 607746, 4086620; 608027, 4086080; 607960, 4086030; 607945, 4086070; 607914, 4086180; 607889, 4086200; 607861, 4086220; 607830, 4086260; 607799, 4086310; 607782, 4086380; 607764, 4086400; 607738, 4086400; 607715, 4086390; 607705, 4086370; 607705, 4086350; 607713, 4086320; 607741, 4086240; 607771, 4086180; 607825, 4086100; 607863, 4086050; 607891, 4085970; 607999, 4085770; 608023, 4085720; 608026, 4085670; 608026, 4085630; 608016, 4085590; 607990, 4085560; 607945, 4085560; 607911, 4085550; 607871, 4085500; 607932, 4085480; 607985, 4085460; 608013, 4085440; 608016, 4085410; 608006, 4085380; 607995, 4085350; 608006, 4085310; 608054, 4085240; 608087, 4085210; 608107, 4085160; 608143, 4085110; 608184, 4085090; 608219, 4085060; 608233, 4085030; 608237, 4084990; 608186, 4084950; 608118, 4084660; 607891, 4084590; 607817, 4084540; 607733, 4084490; 607718, 4084490; 607703, 4084510; 607705, 4084540; 607708, 4084590; 607708, 4084640; 607703, 4084680; 607659, 4084750; 607643, 4084810; 607647, 4084850; 607672, 4084900; 607715, 4084960; 607746, 4084980; 607777, 4084990; 607821, 4085040; 607812, 4085100; 607937, 4085270; 607886, 4085330; 607769, 4085220; 607709, 4085150; 607649, 4085150; 607619, 4085130; 607642, 4085070; 607644, 4085050; 607639, 4085020; 607562, 4084870; 607547, 4084850; 607527, 4084850; 607499, 4084850; 607474, 4084850; 607385, 4084990; 607313, 4085120; 607306, 4085190; 607301, 4085230; 607313, 4085260; 607359, 4085370; 607405, 4085500; 607407, 4085550; 607397, 4085580; 607341, 4085640; 607242, 4085780; 607199, 4085760; 607186, 4085730; 607196, 4085690; 607293, 4085520; 607308, 4085490; 607311, 4085460; 607295, 4085370; 607241, 4085250; 607232, 4085220; 607232, 4085190; 607242, 4085100; 607269, 4085010; 607303, 4084920; 607375, 4084780; 607484, 4084640; 607545, 4084530; 607586, 4084420; 607028, 4083920; 607011, 4083950; 607058, 4084120; 607036, 4084150; 606990, 4084230; 606906, 4084180; 606797, 4084220; 606768, 4084240; 606753, 4084300; 606753, 4084330; 606758, 4084360; 606765, 4084380; 606774, 4084410; 606791, 4084480; 606759, 4084610; 606696, 4084670; 606680, 4084680; 606672, 4084700; 606667, 4084720; 606684, 4084760; 606698, 4084770; 606712, 4084780; 606736, 4084810; 606756, 4084840; 606770, 4084860; 606758, 4084890; 606736, 4084900.

(vii) Map 8 of Unit I follows:

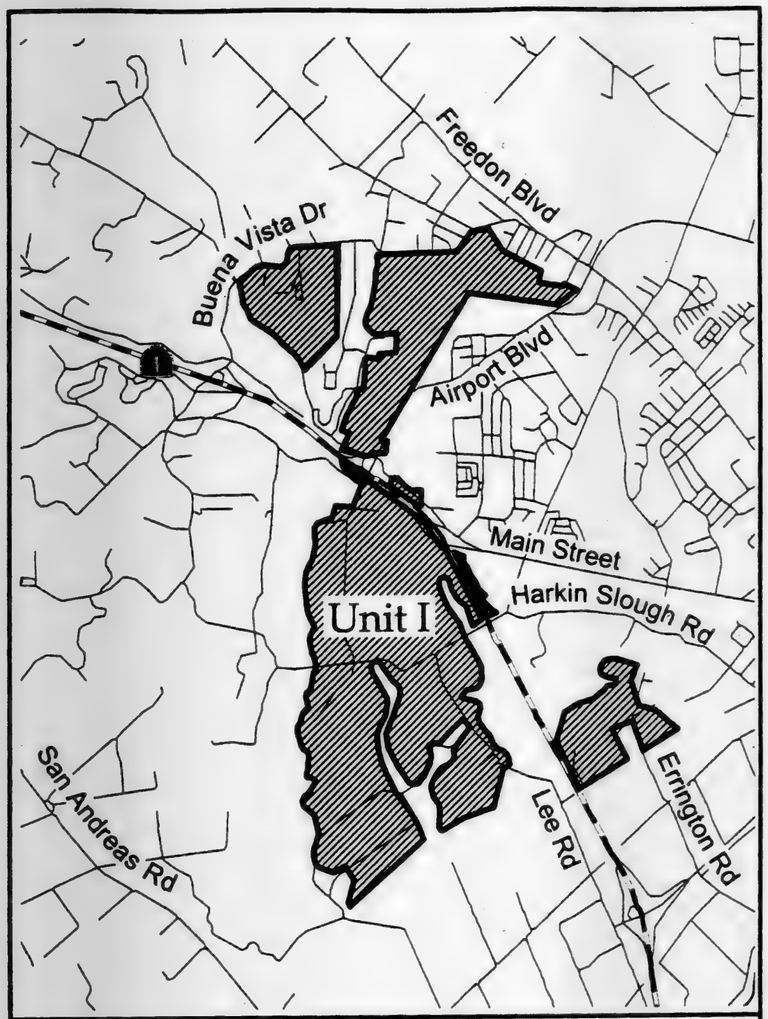

Map 8 - Unit I: Critical Habitat for the Santa Cruz Tarplant

(14) *Unit J: Casserly.* Santa Cruz County, California.

(i) From USGS 1:24,000 quadrangle maps Loma Prieta, Mt. Madona, Watsonville East, and Watsonville West. Lands bounded by the following UTM zone 10, NAD83 coordinates (E, N): 610201, 4094760; 610253, 4094770; 610315, 4094760; 610340, 4094730; 610351, 4094720; 610366, 4094730; 610368, 4094750; 610363, 4094780; 610346, 4094860; 610330, 4094910; 610300, 4094980; 610231, 4095070; 610143, 4095150; 610117, 4095190; 610107, 4095220; 610111, 4095230; 610169, 4095280; 610196, 4095290; 610217, 4095330; 610236, 4095340; 610262, 4095340; 610289, 4095330; 610366, 4095260; 610399, 4095240; 610412, 4095240; 610428, 4095240; 610453, 4095240; 610471, 4095210; 610499, 4095190; 610524, 4095200; 610548, 4095210; 610563, 4095200; 610577, 4095170; 610599, 4095160; 610619, 4095170; 610630, 4095180; 610659, 4095190; 610678, 4095200; 610695, 4095220; 610702, 4095240; 610711, 4095250; 610730, 4095240; 610750, 4095240; 610789, 4095230; 610783, 4095210; 610777, 4095180; 610768, 4095150; 610761, 4095120; 610763, 4095090; 610779, 4095070; 610809, 4095070; 610832, 4095070; 610851, 4095080; 610872, 4095070; 610880, 4095050; 610878, 4095010; 610879, 4094990; 610881, 4094980; 610911, 4094930; 610924, 4094910; 610946, 4094890; 610964, 4094890; 610982, 4094890; 611082, 4094950; 611126, 4094960; 611161, 4094970; 611190, 4094970; 611213, 4094950; 611216, 4094930; 611211, 4094870; 611210, 4094830; 611226, 4094710; 611217, 4094510; 611258, 4094460; 611358, 4094440; 611566, 4094440; 611639, 4094440; 611754, 4094460; 611806, 4094450; 611867, 4094430; 612002, 4094360; 612045, 4094320; 612071, 4094280; 612100, 4094230; 612136, 4094160; 612158, 4094130; 612214, 4094100; 612248, 4094090; 612354, 4094010; 612393, 4094000; 612433, 4093990; 612493, 4094000; 612575, 4094010; 612678, 4094000; 612764, 4093980; 612836, 4093950; 612974, 4093850; 613106, 4093720; 613136, 4093690; 613169, 4093670; 613269, 4093640; 613373, 4093620; 613483, 4093620; 613505, 4093590; 613499, 4093570; 613482, 4093550; 613451, 4093520; 613409, 4093480; 613386, 4093440; 613380, 4093410; 613391, 4093380; 613409, 4093380; 613441, 4093380; 613522, 4093420; 613553, 4093430; 613596, 4093430; 613625, 4093410; 613641, 4093360; 613631, 4093320; 613615, 4093290; 613563, 4093250; 613496, 4093210; 613479, 4093190; 613480, 4093170; 613542, 4093120; 613617, 4093090; 613699, 4093090; 613732, 4093080; 613772, 4093050; 613790, 4093020; 613855, 4092900; 613866, 4092870; 613909, 4092860; 613918, 4092810; 613905, 4092770; 613871, 4092710; 613783, 4092690; 613730, 4092670; 613661, 4092630; 613624, 4092650; 613555, 4092700; 613496, 4092640; 613468, 4092650; 613409, 4092710; 613316, 4092620; 613285, 4092580; 613240, 4092560; 613167, 4092570; 613101, 4092530; 613023, 4092520; 612958, 4092450; 612847, 4092450; 612846, 4092620; 612576, 4092620; 612538, 4092680; 612564, 4092770; 612630, 4092830; 612631, 4092890; 612676, 4092950; 612688, 4093020; 612680, 4093040; 612651, 4093040; 612603, 4093000; 612561, 4092980; 612529, 4092970; 612490, 4092980; 612464, 4093000; 612439, 4093000; 612409, 4092950; 612333, 4092870; 612269, 4092760; 612242, 4092710; 612214, 4092690; 612167, 4092710; 612109, 4092760; 612022, 4092810; 612003, 4092850; 612002, 4092880; 612023, 4092900; 612065, 4092900; 612111, 4092920; 612145, 4092970; 612159, 4092990; 612183, 4092990; 612212, 4092980; 612227, 4092960; 612259, 4092950; 612312, 4092970; 612336, 4093010; 612323, 4093080; 612339, 4093130; 612369, 4093180; 612390, 4093200; 612383, 4093220; 612353, 4093240; 612307, 4093250; 612235, 4093250; 612181, 4093280; 612123, 4093320; 612011, 4093360; 612028, 4093410; 612061, 4093490; 612043, 4093600; 612069, 4093670; 611870, 4093750; 611832, 4093680; 611760, 4093640; 611676, 4093620; 611667, 4093570; 611636, 4093530; 611587, 4093520; 611584, 4093430; 611398, 4093410; 611395, 4093160; 611331, 4093110; 611251, 4093060; 610986, 4093130; 610818, 4093180; 610752, 4093240; 610709, 4093270; 610662, 4093270; 610498, 4093240; 610429, 4093250; 610382, 4093310; 610351, 4093370; 610333, 4093410; 610109, 4093470; 610090, 4093520; 610066, 4093570; 610046, 4093640; 610050, 4093710; 610070, 4093790; 610114, 4093830; 610182, 4093840; 610443, 4093800; 610465, 4093800; 610477, 4093820; 610483, 4093860; 610489, 4093950; 610489, 4093980; 610467, 4094020; 610456, 4094100; 610442, 4094120; 610426, 4094130; 610385, 4094150; 610296, 4094180; 610278, 4094190; 610255, 4094210; 610220, 4094250; 610188, 4094290; 610152, 4094330; 610121, 4094380; 610115, 4094410; 610110, 4094460; 610121, 4094590; 610133, 4094680; 610140, 4094710; 610154, 4094730; 610175, 4094750; 610201, 4094760.

(ii) Map 9 of Unit J follows:

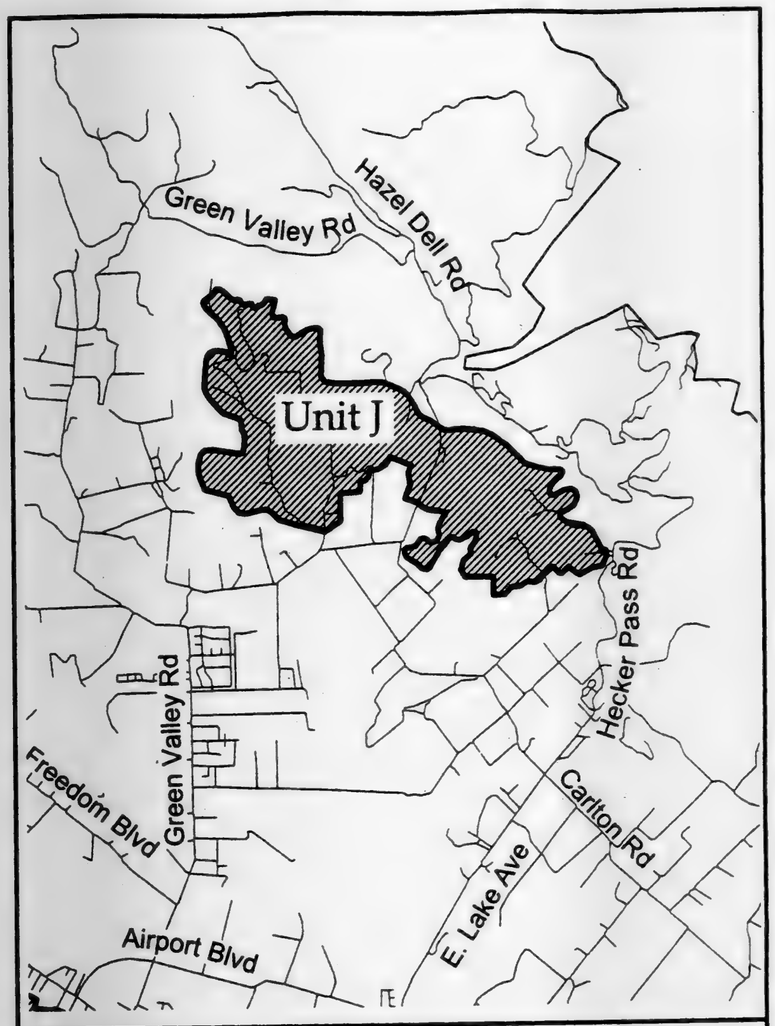

Map 9 - Unit J: Critical Habitat for the Santa Cruz Tarplant

(15) *Unit K: Elkhorn.* Santa Cruz County, California.

(i) From USGS 1:24,000 quadrangle maps Watsonville East, Prunedale. Lands bounded by the following UTM zone 10, NAD83 coordinates (E, N): 611931, 4081300; 611930, 4081420; 611939, 4081530; 611956, 4081610; 611983, 4081680; 611981, 4081740; 611956, 4081790; 611918, 4081860; 611877, 4081940; 611839, 4082020; 611806, 4082090; 611787, 4082150; 611788, 4082180; 611796, 4082190; 611834, 4082200; 611862, 4082190; 611875, 4082170; 611885, 4082140; 611902, 4082110; 611916, 4082100; 611967, 4082090; 612005, 4082090; 612065, 4082080; 612155, 4082060; 612210, 4082080; 612247, 4082100; 612283, 4082110; 612348, 4082090; 612423, 4082080; 612481, 4082050; 612501, 4082000; 612519, 4081910; 612517, 4081840; 612517, 4081750; 612499, 4081720; 612478, 4081690; 612469, 4081640; 612473, 4081600; 612504, 4081490; 612509, 4081400; 612518, 4081210; 612520, 4081080; 612504, 4081040; 612475, 4081010; 612428, 4080960; 612393, 4080940; 612333, 4080880; 612255, 4080790; 612142, 4080860; 612070, 4080930; 612001, 4081020; 611957, 4081120; 611940, 4081200; 611931, 4081300.

(ii) Map 10 of Unit K follows:

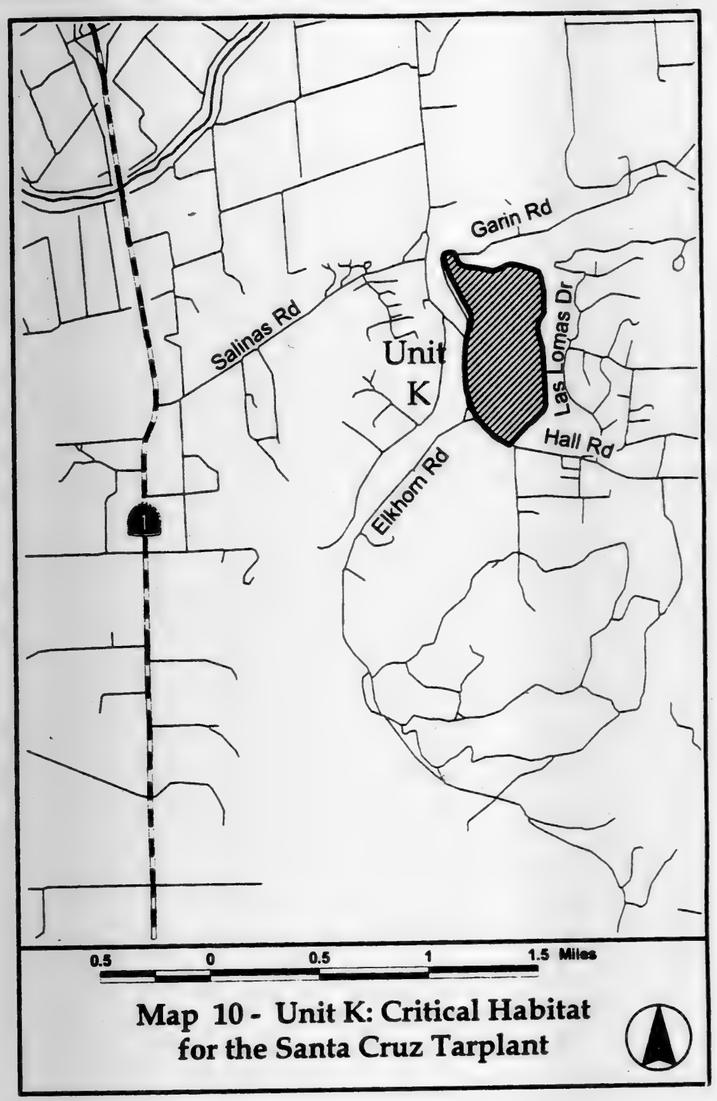

Map 10 - Unit K: Critical Habitat for the Santa Cruz Tarplant

* * * * *

Dated: September 30, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–25370 Filed 10–15–02; 8:45 am]

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Federal Register

Wednesday,
October 16, 2002

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 2, 11, and 23
Federal Acquisition Regulation; Energy-Efficient Standby Power Devices; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 11, and 23

[FAR Case 2001–028]

RIN 9000–AJ47

Federal Acquisition Regulation; Energy-Efficient Standby Power Devices

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13221 of July 31, 2001, Energy Efficient Standby Power Devices, and clarify requirements for the purchase of Environmental Protection Agency (EPA)-designated products.

DATES: Interested parties should submit comments in writing on or before December 16, 2002 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—

General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2001–028@gsa.gov*.

Please submit comments only and cite FAR case 2001–028 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Laura Smith, Procurement Analyst, at (202) 208–7279. Please cite FAR case 2001–028.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the FAR to implement E.O. 13221 and clarify requirements when purchasing EPA-designated products. The rule adds—

1. A definition for "energy-efficient standby power devices" in FAR Subpart 2.1, Definitions; and

2. Guidance on energy-efficient standby power devices at FAR Parts 11, Describing Agency Needs, and 23, Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace; and

3. Guidance on purchasing EPA-designated products in FAR sections 23.405 and 23.406.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule simply provides additional guidance to Government contracting and technical personnel with respect to the Government's preference, set forth in FAR Subparts 11.1, 23.2, and 23.4, for buying energy-efficient products and services and EPA-designated products that meet applicable EPA minimum recovered material content recommendations. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2001–028), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 11, and 23

Government procurement.

Dated: October 9, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 11, and 23 as set forth below:

1. The authority citation for 48 CFR parts 2, 11, and 23 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definition "Energy-efficient standby power devices" to read as follows:

2.101 Definitions.

* * * * *

Energy-efficient standby power devices means products that—

(1) Include an external or internal power supply; and

(2) Use no more than one watt of electricity in their standby power consuming mode or meet recommended low standby levels as designated by the Department of Energy Federal Energy Management Program.

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

3. Amend section 11.002 by revising paragraph (d)(1) and the introductory text of (d)(2) to read as follows:

11.002 Policy.

* * * * *

(d)(1) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*), Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management, and Executive Order 13221 of July 31, 2001, Energy Efficient Standby Power Devices, establish requirements for acquiring—

(i) Products containing recovered materials;

(ii) Environmentally preferable products and services;

(iii) Energy-efficient products and services;

(iv) Products and services that utilize renewable energy technologies; and

(v) Products containing energy-efficient standby power devices.

(2) Executive agencies shall consider use of recovered materials, energy- and water-efficient products and services, products containing energy-efficient standby power devices, environmentally preferable purchasing criteria developed by the EPA, and environmental objectives (see subparts 23.2, 23.4, and 23.703(b)) when—

* * * * *

4. Amend section 11.101 in the introductory text of paragraph (b) by removing "must" and adding "shall" in its place; and by revising paragraph (b)(1) to read as follows:

11.101 Order of precedence for requirements documents.

* * * * *

(b) * * *

(1) Energy efficiency, including using products containing energy-efficient standby power devices and renewable energy technologies; and

* * * * *

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

5. Amend section 23.201 by adding paragraph (e) to read as follows:

23.201 Authorities.

* * * * *

(e) Executive Order 13221 of July 31, 2001, Energy Efficient Standby Power Devices.

6. Revise section 23.203 to read as follows:

23.203 Energy-efficient products.

(a) If life-cycle cost-effective and available—

(1) When acquiring energy-using products—

(i) Agencies shall purchase ENERGY STAR® or other energy-efficient items listed on the Department of Energy's Federal Energy Management Program (FEMP) Product Energy Efficiency Recommendations product list; and

(ii) For products that consume power in a standby mode and are listed on FEMP's Standby Power Devices product listing, agencies shall—

(A) Purchase items which meet FEMP's standby power wattage recommendation or document the reason for not purchasing such items; or

(B) If FEMP has listed a product without a corresponding wattage recommendation, purchase items which use no more than one watt in their standby power consuming mode. When it is impracticable to meet the one watt requirement, agencies shall purchase items with the lowest standby wattage practicable; and

(2) When contracting for services that will include the provision of energy-using products, including contracts for design, construction, renovation, or maintenance of a public building, the specifications shall incorporate the applicable requirements in paragraph (a)(1) of this section.

(b) The requirements in paragraph (a) of this section only apply when the relevant product's utility and performance meet the agency's need.

(c) Information is available via the Internet about—

(1) ENERGY STAR® at *http://www.energystar.gov/*; and

(2) FEMP at *http://www.eren.doe.gov/femp/procurement*.

7. Amend section 23.405 by revising the introductory text of paragraph (c) to read as follows:

23.405 Procedures.

* * * * *

(c) The contracting officer shall place in the contract file a written justification if an acquisition of EPA-designated products above the micro-purchase threshold does not meet applicable minimum recovered material content recommended by EPA guidelines. If the agency has designated an Environmental Executive, the contracting officer shall give a copy of the written justification to that official. The contracting officer shall base the justification on the inability to acquire the product—

* * * * *

8. Amend section 23.406 by revising paragraph (a) to read as follows:

23.406 Solicitation provision and contract clause.

(a) Insert the provision at 52.223–4, Recovered Material Certification, in solicitations that are for, or specify the use of, EPA-designated products containing recovered materials.

* * * * *

[FR Doc. 02–26243 Filed 10–15–02; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Wednesday,
October 16, 2002

Part IV

Environmental Protection Agency

40 CFR Part 60
Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983; and Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–7394–3]

RIN 2060–AJ68

Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983; and Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: The EPA is proposing to amend certain provisions in the new source performance standards (NSPS) for electric arc furnaces (EAF) constructed after October 21, 1974, and on or before August 17, 1983, and the NSPS for EAF constructed after August 17, 1983. The proposed changes add alternative requirements for monitoring emissions from EAF exhausts. In addition, minor editorial corrections are being made.

DATES: *Comments.* Comments must be received on or before December 16, 2002.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by November 5, 2002, a public hearing will be held on November 15, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–79–33, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–79–33, U.S. EPA, Room Number M1500, 401 M Street, SW., Washington, DC 20460. Effective August 27, 2002, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket Number A–79–33, U.S. EPA, 1301 Constitution Avenue, NW., Room Number B108, Washington, DC 20460. We request that a separate copy of each public comment be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, NC.

Docket. Docket No. A–79–33 contains supporting information used in developing the standards. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. Effective August 27, 2002, the docket will be located at: U.S. EPA, 1301 Constitution Avenue, NW., Room Number B108, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavender, Metals Group, Emission Standards Division (C439–02), U.S. EPA, Research Triangle Park, NC 27711, telephone number: (919) 541–2364, electronic mail address: *cavender.kevin@epa.gov*.

To request a public hearing, to request to speak at a public hearing, or to find out if a public hearing will be held, contact Ms. Cassie Posey, Metals Group, Emission Standards Division (C439–02), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–0069, electronic mail address: *posey.cassie@epa.gov*.

For information concerning applicability and rule determinations, contact your State or local permitting authority or the appropriate EPA regional office representatives.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov*. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect format. All comments and data submitted in electronic form must note the docket number: Docket No. A–79–33. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: OAQPS Document Control Office (C404–02), Attention: Mr. Kevin Cavender, Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Cassie Posey, telephone number: (919) 541–0069. Persons interested in attending the public hearing must also contact Cassie Posey to verify the time, date, and location of the hearing. The address, telephone number, and e-mail address for Ms. Posey are listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. A public hearing, if held, will provide interested parties the opportunity to present data, views, or arguments concerning the proposed emission standards.

Docket. The docket is an organized and complete file of all the information considered by the EPA in rule development. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to the rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Entities potentially regulated by this action include steel manufacturing facilities who operate electric arc furnaces. Affected categories and entities include certain sources in the North American Information Classification System code 331111.

This description is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in the rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

I. Background
  A. What is an EAF?
  B. What are the current NSPS requirements for an EAF?
  C. Why are the current NSPS requirements being amended?
  D. What is a bag leak detection system, and how is it used to monitor baghouse performance?
II. Summary of Proposed Amendment
  A. What is the alternative monitoring option being proposed?
  B. What are the editorial corrections being made?
III. Administrative Requirements
  A. Executive Order 12866, Regulatory Planning and Review
  B. Executive Order 13132, Federalism
  C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
  D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
  E. Unfunded Mandates Reform Act of 1995
  F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
  G. Paperwork Reduction Act
  H. National Technology Transfer and Advancement Act of 1995
  I. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use

I. Background

A. What Is an EAF?

An EAF is a metallurgical furnace used to produce carbon and alloy steels. The input material to an EAF is typically 100 percent scrap steel. Cylindrical, refractory lined EAF are equipped with carbon electrodes to be raised or lowered through the furnace roof. With electrodes retracted, the furnace roof can be rotated to permit the charge of scrap steel by overhead crane. Alloying agents and fluxing materials usually are added through doors on the side of the furnace. Electric current is passed between the electrodes and through the scrap, generating arcing and the generation of enough heat to melt the scrap steel charge. After the melting and refining periods, impurities (in the form of a slag) and the refined steel are poured from the furnace.

The production of steel in an EAF is a batch process. Cycles, or heats, range from about 1½ to 5 hours to produce carbon steel and from 5 to 10 hours to produce alloy steel. Scrap steel is charged to begin a cycle, and alloying agents and slag forming materials are added for refining. Stages of each cycle normally are charging, melting, refining (which usually includes oxygen blowing), and tapping.

All of those operations generate particulate matter (PM) emissions. Emission control techniques involve an emission capture system and a gas cleaning system. Emission capture systems used in the industry include direct shell (fourth hole) evacuation, side draft hoods, combination hoods, canopy hoods, scavenger ducts, and furnace enclosures. Direct shell evacuation (DEC) consists of ductwork attached to a separate opening, or "fourth hole", in the furnace roof which draws emissions to a gas cleaner. The direct shell evacuation system works only when the furnace is up-right and the roof is in place. The side draft hoods collect furnace offgases from around the electrode holes and the work doors after the gases leave the furnace. The combination hood incorporates elements from the side draft and direct shell evacuation systems. Canopy hoods and scavenger ducts are used to address charging and tapping emissions. Baghouses are typically used as the gas cleaning system.

B. What Are the Current NSPS Requirements for an EAF?

The NSPS for EAF constructed after October 21, 1974, and on or before August 17, 1983 (40 CFR part 60, subpart AA) were first promulgated in the **Federal Register** on September 23, 1975 (40 FR 43850). The NSPS for EAF constructed after August 17, 1983 (40 CFR part 60, subpart AAa) were first promulgated in the **Federal Register** on October 31, 1984 (49 FR 43845). Both subparts limit the allowable PM concentration in the exhaust of an EAF emission control device to 12 milligrams per dry standard cubic meter (mg/dscm). In addition to the PM emission limit, both subparts limit visible emissions from the EAF control device to less than 3 percent opacity, as determined by EPA Method 9 of 40 CFR part 60, appendix A.

In both subparts, if the control device is equipped with a single stack, the owner or operator is required to install, calibrate, maintain, and operate a continuous opacity monitoring system (COMS). The owner and operator must report each 6-minute average COM reading of 3 percent or greater as an excess emission. A COMS is not required on any modular or multiple-stack fabric filter if opacity readings are taken at least once per day during a melting and refining period, in accordance with EPA Method 9.

The subparts also contain requirements for the EAF capture systems. However, those requirements are not being amended by today's action. As such, we do not discuss the capture system requirements here.

C. Why Are the Current NSPS Requirements Being Amended?

Today's action is being taken in response to a petition to reopen the NSPS that we received from the American Iron and Steel Institute (AISI), the Specialty Steel Industry of North America (SSINA), and the Steel Manufacturers Association (SMA), who jointly will be referred to as "the Petitioner." In their request to reopen the EAF NSPS, the Petitioner argues that COMS are not capable of accurately monitoring opacity emissions from an EAF shop at the 3 percent excess emissions threshold level and that the EAF NSPS should be amended to address the technological shortcomings associated with COMS. In making their argument, the Petitioner points to our recent revision to the performance specification for COMS (PS–1, 65 FR 48914) in which we acknowledge that there is potential for measurement error associated with COM readings. A conservative approach to estimating the upper range of the potential measurement error resulted in an estimate of approximately 4 percent opacity. The Petitioner also points out that the American Society for Testing and Materials (ASTM) Standard for COMS (ASTM D 6216–98), which is incorporated in PS–1, expressly limits the scope of the ASTM Standard to COMS used to monitor opacity subject to an opacity limit of 10 percent or greater due to the potential error associated with opacity measurements.

The Petitioner argues that COMS generate inaccurate data which can trigger Federal and State reporting requirements and expose a facility to potential liability even when the facility is meeting the opacity standard. As pointed out above, owners and operators are required by the NSPS to report all 6-minute average COMS readings above 3 percent as periods of excess emissions. Since the potential COMS measurement error is high in comparison to the 3 percent opacity

standard, the Petitioner believes that the COMS can and do produce readings above the 3 percent excess emissions threshold when the actual opacity is below 3 percent. The Petitioner points out that the credible evidence revisions (62 FR 8313, February 24, 1997) clarify our intent to use COMS data as evidence of a potential emissions violation. Therefore, the Petitioner argues, COMS data falsely indicating emissions above 3 percent opacity could be used as evidence of violations of the opacity standard. Even if the erroneous COMS data are eventually determined not to be credible, the Petitioner argues, companies must bear the burden and cost of defending against such allegations.

The revisions to PS–1 explained that we did not believe it was appropriate to limit the applicability of PS–1 based on the level of the emission limit that would be monitored. Instead of limiting the applicability of PS–1, we determined that PS–1 should acknowledge the measurement uncertainty associated with COMS measurements below 10 percent opacity, and allow for a consideration of the potential error (through statistical procedures or otherwise) when evaluating compliance with opacity standards below 10 percent.

We agree that it is appropriate to provide an alternative monitoring option for EAF owners and operators who are concerned with the accuracy of COMS measurements at levels below 10 percent opacity. In addition, we believe that bag leak detection systems, the alternative monitoring option being proposed, are a viable alternative to COMS for the purpose of monitoring the performance of baghouses.

D. What Is a Bag Leak Detection System, and How Is It Used To Monitor Baghouse Performance?

A bag leak detection system is a device that is used to measure relative particulate loadings in the exhaust of a baghouse on a continuous basis in order to detect bag leaks and other conditions that result in increases in particulate loadings. Bag leak detection systems have been developed based on a number of principles including triboelectric effect, electrodynamic effect, and light scattering. A bag leak detection system does not need to provide an output in terms of particulate concentration, but must provide an output that is proportionate to the particulate concentration such that if particulate concentrations increase the output from the bag leak detection system increases.

A bag leak detection system identifies leaks by the resulting increase in particulate loadings. A properly designed baghouse will control particulate emissions to very low levels when in good operating condition. However, if the baghouse develops a leak, due to a torn bag or seal, there will be a measurable increase in particulate emissions. A bag leak detection system is capable of quickly (within a few seconds) determining that an abnormal increase in particulate concentrations has occurred and can then trigger an alarm to alert the operator so that the leak can be stopped as soon as possible. Bag leak detection systems are capable of detecting small leaks while particulate emissions are well below the levels that would result in observable opacity. For that reason, we believe that bag leak detection systems are well suited for monitoring the performance of a baghouse.

II. Summary of Proposed Amendment

A. What Is the Alternative Monitoring Option Being Proposed?

We are proposing bag leak detection coupled with a once per day opacity observation as an alternative monitoring option to COMS. Under the proposed alternative, a facility could elect to install, calibrate, maintain, and operate a bag leak detection system. Owners or operators would be required to develop a site specific monitoring plan describing how the system would be selected, installed, and operated, including how the alarm levels would be established. Within 30 minutes of an alarm, the owner or operator would be required to initiate procedures to determine the cause of the alarm and alleviate the cause of the alarm within 3 hours. In addition, the owner or operator would be required to maintain and operate their baghouse such that the alarm on the bag leak detector does not alarm for more than 3 percent of the operating hours in any 6-month reporting period.

The owner or operator would also be required to conduct an opacity observation at least once per day when the furnace is in the melting or refining operation day, in accordance with EPA Method 9. All opacity observations greater than 3 percent opacity would be reported as a violation of the opacity standard. In addition, if the alarm on the bag leak detection system was not alarming during the time the opacity was observed to be greater than 3 percent, the alarm on the bag leak detection system would have to be lowered to a point that an alarm would have occurred during the observation.

B. What Are the Editorial Corrections Being Made?

Two typographical errors are being corrected in the amendment. In 40 CFR 60.274(c) and in 40 CFR 60.274a(c), the references to paragraphs (b)(1) and (2) are being corrected to refer to paragraph (b). The paragraphs (b)(1) and (2) of 40 CFR 60.274(c) and 40 CFR 60.274a(c) were incorporated into paragraph (b) during the last revision to the NSPS (64 FR 10105, March 2, 1999). In 40 CFR 60.274a(b), the reference to paragraph (d) is being corrected to refer to paragraph (e).

In addition, 40 CFR 60.274a(d) and 40 CFR 60.274a(e) are being revised to clarify that owners and operators may petition the Administrator to approve alternatives to the monitoring requirements specified in 40 CFR 60.274a(b), as well as alternatives to the monthly operational status inspections specified in 40 CFR 60.274a(d). This revision does not change the rule requirements because owners and operators are currently allowed to petition for alternative monitoring requirements under 40 CFR 60.13(i) of the General Provisions.

III. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the proposed rule amendments are not a "significant regulatory action" because none of the listed criteria apply to the action. Consequently, the action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The proposed rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments, and the requirements of the proposed rule amendments will not supercede State regulations that are more stringent. Thus, Executive Order 13132 does not apply to the proposed rule amendments.

In the spirit of Executive Order 13132 and consistent with our policy to promote communications between us and State and local governments, we specifically solicit comments on the proposed rule amendments from State and local officials.

C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires us to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes."

The proposed rule amendments do not have tribal implications. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments own or operate an affected source. Thus, Executive Order 13175 does not apply to the proposed rule amendments.

D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives that we considered.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the rule. The proposed rule amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks. No children's risk analysis was performed because the action only provides affected EAF owners and operators with alternative monitoring options. Furthermore, the proposed rule amendments have been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed rule amendments do not contain a Federal mandate that may result in estimated costs of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the proposed rule amendments for any year has been estimated to be less than $62,000. Thus, today's proposed rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, we have determined that the proposed rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule amendments are not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses,

small organizations, and small governmental jurisdictions. The proposed amendments will not have a significant impact on a substantial number of small entities because the amendments only provide alternative compliance options designed to provide facilities with increased flexibility. Therefore, I certify that the action will not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

The information collection requirements in the proposed rule amendments have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* We have prepared an Information Collection Request (ICR) document (ICR No. 1060.11), and you may obtain a copy from Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division, U.S. EPA (2822), 1200 Pennsylvania Avenue NW., Washington, DC 20460; by e-mail at *auby.susan@epa.gov*; or by calling (202) 566–1672. You may also download a copy off the Internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NSPS General Provisions (40 CFR part 60, subpart A), which are mandatory for all operators subject to NSPS. The recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to us pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to our policies set forth in 40 CFR part 2, subpart B.

The annual increase to monitoring, recordkeeping, and reporting burden for the proposed rule amendments are estimated at 1750 labor hours at a total cost of $61,267 nationwide, and the annual average increase in burden is 175 labor hours and $6,127 per source. We estimate that there will be no increase in the annualized capital costs due to the proposed rule amendments. We estimate that the annualized costs associated with purchasing and installing a bag leak detection system are equal to the offsetting annualized cost savings associated with the discontinued use and periodic replacement of a COMS. In making the estimates, it was assumed that ten existing facilities currently required to install and operate COMS would elect to use the proposed alternative monitoring option. The cost estimates reflect increased costs associated with the installation and operation of a bag leak detection system and with daily opacity observations partially offset by the cost savings from no longer having to operate and maintain a COMS.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: Review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for our regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on our need for the information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822), 1200 Pennsylvania Avenue NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503; marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 16, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by November 15, 2002. The final action will respond to any OMB or public comments on the information collection requirements contained in this proposal.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) Public Law 104–113 (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs us to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards. The proposed rulemaking does not involve a technical standard.

I. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

The proposed rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 9, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Section 60.271 is amended by adding new paragraphs (o) and (p) to read as follows:

§ 60.271 Definitions.

* * * * *

(o) *Bag Leak detection system* means a system that is capable of continuously monitoring relative particulate matter (dust) loadings in the exhaust of a baghouse to detect bag leaks and other conditions that result in increases in particulate loadings. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, electrodynamic, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

(p) *Operating time* means the period of time in hours that an affected source is in operation beginning at a startup and ending at the next shutdown.

3. Section 60.273 is amended by revising paragraph (c) and adding new paragraphs (e), (f), (g), and (h) to read as follows:

§ 60.273 Emission monitoring.

* * * * *

(c) A continuous monitoring system for the measurement of the opacity of emissions discharged into the atmosphere from the control device(s) is not required on any modular, multi-stack, negative-pressure or positive-pressure fabric filter if observations of the opacity of the visible emissions from the control device are performed by a certified visible emission observer; or on any single-stack fabric filter if visible emissions from the control device are performed by a certified visible emission observer and the owner installs and continuously operates a bag leak detection system according to paragraph (e) of this section. Visible emission observations shall be conducted at least once per day for at least three 6-minute periods when the furnace is operating in the melting and refining period. All visible emissions observations shall be conducted in accordance with Method 9 of appendix A to this part. If visible emissions occur from more than one point, the opacity shall be recorded for any points where visible emissions are observed. Where it is possible to determine that a number of visible emission sites relate to only one incident of the visible emission, only one set of three 6-minute observations will be required. In that case, the Method 9 observations must be made for the site of highest opacity that directly relates to the cause (or location) of visible emissions observed during a single incident. Records shall be maintained of any 6-minute average that is in excess of the emission limit' specified in § 60.272(a).

* * * * *

(e) A bag leak detection system must be installed and continuously operated on all single-stack fabric filters if the owner or operator elects not to install and operate a continuous opacity monitoring system as provided for under paragraph (c) of this section. In addition, the owner or operator shall meet the visible emissions observation requirements in paragraph (c) of this section. The bag leak detection system must meet the specifications and requirements of paragraphs (e)(1) through (8) of this section.

(1) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(2) The bag leak detection system sensor must provide output of relative particulate matter loadings and the owner or operator shall continuously record the output from the bag leak detection system using electronic or other means (*e.g.*, using a strip chart recorder or a data logger.)

(3) The bag leak detection system must be equipped with an alarm system that will sound when an increase in relative particulate loading is detected over the alarm set point established according to paragraph (e)(4) of this section, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(4) For each bag leak detection system required by paragraph (e) of this section, the owner or operator shall develop and submit, to the Administrator or delegated authority, for approval, a site-specific monitoring plan that addresses the items identified in paragraphs (e)(4)(i) through (v) of this section. For each bag leak detection system that operates based on the triboelectric effect, the monitoring plan shall be consistent with the recommendations contained in the U.S. Environmental Protection Agency guidance document "Fabric Filter Bag Leak Detection Guidance" (EPA–454/R–98–015). The owner or operator shall operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. The plan shall describe:

(i) Installation of the bag leak detector system;

(ii) Initial and periodic adjustment of the bag leak detector system including how the alarm set-point will be established;

(iii) Operation of the bag leak detection system including quality assurance procedures;

(iv) How the bag leak detection system will be maintained including a routine maintenance schedule and spare parts inventory list; and

(v) How the bag leak detection system output shall be recorded and stored.

(5) The initial adjustment of the system shall, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time (if applicable).

(6) Following initial adjustment, the owner or operator shall not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or delegated authority except as provided for in paragraphs (e)(6)(i) and (ii) of this section.

(i) Once per quarter, the owner or operator may adjust the sensitivity of the bag leak detection system to account for seasonal effects including temperature and humidity according to the procedures identified in the site-specific monitoring plan required under paragraph (e)(4) of this section.

(ii) If opacities greater than zero percent are observed over four consecutive 15-second observations during the daily opacity observations required under paragraph (c) of this section and the alarm on the bag leak detection system does not sound, the owner or operator shall lower the alarm set point on the bag leak detection system to a point where the alarm would have sounded during the period when the opacity observations were made.

(7) For negative pressure, induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the bag leak detector sensor must be installed downstream of the baghouse and upstream of any wet scrubber.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(f) For each bag leak detection system installed according to paragraph (e) of this section, the owner or operator shall initiate procedures to determine the cause of all alarms within 30 minutes of an alarm. The cause of the alarm must be alleviated within 3 hours of the time the alarm occurred by taking whatever corrective action(s) are necessary. If additional time is required to alleviate the cause of the alarm, the owner or operator shall notify the Administrator or delegated authority. Corrective actions may include, but are not limited to the following:

(1) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in particulate emissions;

(2) Sealing off defective bags or filter media;

(3) Replacing defective bags or filter media, or otherwise repairing the control device;

(4) Sealing off a defective baghouse compartment;

(5) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system; or

(6) Shutting down the process producing the particulate emissions.

(g) The owner or operator shall maintain each baghouse monitored by a bag leak detection system such that the alarm on the bag leak detection system does not sound for more than 3 percent

of the total operating time in a 6-month reporting period.

(h) The percentage of time the alarm on a bag leak detection system sounds shall be determined according to paragraphs (h)(1) through (5) of this section.

(1) An alarm that occurs due solely to a malfunction of the bag leak detection system shall not be included in the calculation.

(2) An alarm that occurs during startup, shutdown, or malfunction shall not be included in the calculation if the owner or operator follows all requirements contained in § 60.11(d).

(3) For each alarm where the owner or operator initiates procedures to determine the cause of an alarm within 1 hour of the alarm, 1 hour of alarm time shall be counted.

(4) For each alarm where the owner or operator does not initiate procedures to determine the cause of the alarm within 1 hour of the alarm, alarm time will be counted as the actual amount of time taken by the owner or operator to initiate procedures to determine the cause of the alarm.

(5) The percentage of time the alarm on the bag leak detection system sounds shall be calculated as the ratio of the sum of alarm times to the total operating time multiplied by 100.

4. Section 60.274 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 60.274 Monitoring of operations.

* * * * *

(c) When the owner or operator of an affected facility is required to demonstrate compliance with the standards under § 60.272(a)(3) and at any other time the Administrator may require that (under section 114 of the CAA, as amended) either: the control system fan motor amperes and all damper positions; the volumetric flow rate through each separately ducted hood; or the volumetric flow rate at the control device inlet and all damper positions shall be determined during all periods in which a hood is operated for the purpose of capturing emissions from the affected facility subject to paragraph (b) of this section. * * *

* * * * *

5. Section 60.275 is amended by revising paragraph (i) to read as follows:

§ 60.275 Test methods and procedures.

* * * * *

(i) If visible emissions observations are made in lieu of using a continuous opacity monitoring system, as allowed for by § 60.273(c), visible emission observations shall be conducted at least once per day for at least three 6-minute periods when the furnace is operating in the melting and refining period. All visible emissions observations shall be conducted in accordance with Method 9. If visible emissions occur from more than one point, the opacity shall be recorded for any points where visible emissions are observed. Where it is possible to determine that a number of visible emission sites relate to only one incident of the visible emission, only one set of three 6-minute observations will be required. In that case, the Method 9 observations must be made for the site of highest opacity that directly relates to the cause (or location) of visible emissions observed during a single incident. Records shall be maintained of any 6-minute average that is in excess of the emission limit specified in § 60.272(a).

* * * * *

6. Section 60.276 is amended by adding new paragraphs (e) and (f) to read as follows:

§ 60.276 Recordkeeping and reporting requirements.

* * * * *

(e) The owner or operator shall maintain the following records for each bag leak detection system required under § 60.273(e):

(1) Records of the bag leak detection system output;

(2) Records of bag leak detection system adjustments, including the date and time of the adjustment, the initial bag leak detector settings, and the final bag leak detector settings;

(3) An identification of the date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, if procedures were initiated within 30 minutes of the alarm, the cause of the alarm, an explanation of the actions taken, the date and time the cause of the alarm was alleviated, and if the alarm was alleviated within 3 hours of the alarm; and

(4) The calculation of the percent of time the alarm on the bag leak detection system sounded during each 6-month reporting period.

(f) In addition to the information required by § 60.7(c), the percent of time the alarm on the bag leak detection system sounded during each 6-month reporting period shall be reported to the Administrator semi-annually.

7. Section 60.271(a) is amended by adding, in alphabetical order, definitions for "Bag leak detection system" and "Operating time" as follows:

§ 60.271a Definitions.

Bag leak detection system means a system that is capable of continuously monitoring relative particulate matter (dust) loadings in the exhaust of a baghouse to detect bag leaks and other conditions that result in increases in particulate loadings. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, electrodynamic, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

* * * * *

Operating time means the period of time in hours that an affected source is in operation beginning at a startup and ending at the next shutdown.

* * * * *

8. Section 60.273a is amended by revising paragraph (c) and adding new paragraphs (e), (f), (g), and (h) to read as follows:

§ 60.273a Emission monitoring.

* * * * *

(c) A continuous monitoring system for the measurement of the opacity of emissions discharged into the atmosphere from the control device(s) is not required on any modular, multi-stack, negative-pressure or positive-pressure fabric filter if observations of the opacity of the visible emissions from the control device are performed by a certified visible emission observer; or on any single-stack fabric filter if visible emissions from the control device are performed by a certified visible emission observer and the owner installs and continuously operates a bag leak detection system according to paragraph (e) of this section. Visible emission observations shall be conducted at least once per day for at least three 6-minute periods when the furnace is operating in the melting and refining period. All visible emissions observations shall be conducted in accordance with Method 9. If visible emissions occur from more than one point, the opacity shall be recorded for any points where visible emissions are observed. Where it is possible to determine that a number of visible emission sites relate to only one incident of the visible emission, only one set of three 6-minute observations will be required. In that case, the Method 9 observations must be made for the site of highest opacity that directly relates to the cause (or location) of visible emissions observed during a single incident. Records shall be maintained of any 6-minute average that is in excess of the emission limit specified in § 60.272a(a).

* * * * *

(e) A bag leak detection system must be installed and continuously operated on all single-stack fabric filters if the owner or operator elects not to install and operate a continuous opacity monitoring system as provided for under paragraph (c) of this section. In addition, the owner or operator shall meet the visible emissions observation requirements in paragraph (c) of this section. The bag leak detection system must meet the specifications and requirements of paragraphs (e)(1) through (8) of this section.

(1) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(2) The bag leak detection system sensor must provide output of relative particulate matter loadings and the owner or operator shall continuously record the output from the bag leak detection system using electronic or other means (*e.g.*, using a strip chart recorder or a data logger.)

(3) The bag leak detection system must be equipped with an alarm system that will sound when an increase in relative particulate loading is detected over the alarm set point established according to paragraph (e)(4) of this section, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(4) For each bag leak detection system required by paragraph (e) of this section, the owner or operator shall develop and submit, to the Administrator or delegated authority, for approval, a site-specific monitoring plan that addresses the items identified in paragraphs (e)(4)(i) through (v) of this section. For each bag leak detection system that operates based on the triboelectric effect, the monitoring plan shall be consistent with the recommendations contained in the U.S. Environmental Protection Agency guidance document "Fabric Filter Bag Leak Detection Guidance" (EPA–454/R–98–015). The owner or operator shall operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. The plan shall describe the following:

(i) Installation of the bag leak detector system;

(ii) Initial and periodic adjustment of the bag leak detector system including how the alarm set-point will be established;

(iii) Operation of the bag leak detection system including quality assurance procedures;

(iv) How the bag leak detection system will be maintained including a routine maintenance schedule and spare parts inventory list; and

(v) How the bag leak detection system output shall be recorded and stored.

(5) The initial adjustment of the system shall, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time (if applicable).

(6) Following initial adjustment, the owner or operator shall not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or delegated authority except as provided for in paragraphs (e)(6)(i) and (ii) of this section.

(i) Once per quarter, the owner or operator may adjust the sensitivity of the bag leak detection system to account for seasonal effects including temperature and humidity according to the procedures identified in the site-specific monitoring plan required under paragraph (e)(4) of this section.

(ii) If opacities greater than zero percent are observed over four consecutive 15-second observations during the daily opacity observations required under paragraph (c) of this section and the alarm on the bag leak detection system does not sound, the owner or operator shall lower the alarm set point on the bag leak detection system to a point where the alarm would have sounded during the period when the opacity observations were made.

(7) For negative pressure, induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the bag leak detector sensor must be installed downstream of the baghouse and upstream of any wet scrubber.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(f) For each bag leak detection system installed according to paragraph (e) of this section, the owner or operator shall initiate procedures to determine the cause of all alarms within 30 minutes of an alarm. The cause of the alarm must be alleviated within 3 hours of the time the alarm occurred by taking whatever corrective action(s) are necessary. If additional time is required to alleviate the cause of the alarm, the owner or operator shall notify the Administrator or delegated authority. Corrective actions may include, but are not limited to, the following:

(1) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in particulate emissions;

(2) Sealing off defective bags or filter media.

(3) Replacing defective bags or filter media, or otherwise repairing the control device;

(4) Sealing off a defective baghouse compartment.

(5) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system; and

(6) Shutting down the process producing the particulate emissions.

(g) The owner or operator shall maintain each baghouse monitored by a bag leak detection system such that the alarm on the bag leak detection system does not sound for more than 3 percent of the total operating time in a 6-month reporting period.

(h) The percentage of time the alarm on a bag leak detection system sounds shall be determined according to paragraphs (h)(1) through (5) of this section.

(1) An alarm that occurs due solely to a malfunction of the bag leak detection system shall not be included in the calculation.

(2) An alarm that occurs during startup, shutdown, or malfunction shall not be included in the calculation if the owner or operator follows all requirements contained in § 60.11(d).

(3) For each alarm where the owner or operator initiates procedures to determine the cause of an alarm within 1 hour of the alarm, 1 hour of alarm time shall be counted.

(4) For each alarm where the owner or operator does not initiate procedures to determine the cause of the alarm within 1 hour of the alarm, alarm time will be counted as the actual amount of time taken by the owner or operator to initiate procedures to determine the cause of the alarm.

(5) The percentage of time the alarm on the bag leak detection system sounds shall be calculated as the ratio of the sum of alarm times to the total operating time multiplied by 100.

9. Section 60.274a is amended by revising the first sentence of paragraph (b), revising the first sentence of paragraph (c), revising the first sentence of paragraph (d), and revising paragraph (e) to read as follows:

§ 60.274a Monitoring of operations.

* * * * *

(b) Except as provided under paragraph (e) of this section, the owner

or operator subject to the provisions of this subpart shall check and record on a once-per-shift basis the furnace static pressure (if DEC system is in use, and a furnace static pressure gauge is installed according to paragraph (f) of this section) and either: check and record the control system fan motor amperes and damper position on a once-per-shift basis; install calibrate, and maintain a monitoring device that continuously records the volumetric flow rate through each separately ducted hood; or install, calibrate, and maintain a monitoring device that continuously records the volumetric flow rate at the control device inlet and check and record damper positions on a once-per-shift basis. * * *

(c) When the owner or operator of an affected facility is required to demonstrate compliance with the standards under § 60.272a(a)(3) and at any other time the Administrator may require that (under section 114 of the CAA, as amended) either: the control system fan motor amperes and all damper positions; the volumetric flow rate through each separately ducted hood; or the volumetric flow rate at the control device inlet and all damper positions shall be determined during all periods in which a hood is operated for the purpose of capturing emissions from the affected facility subject to paragraph (b) of this section. * * *

(d) Except as provided under paragraph (e) of this section, the owner or operator shall perform monthly operational status inspections of the equipment that is important to the performance of the total capture system (*i.e.*, pressure sensors, dampers, and damper switches). * * *

(e) The owner or operator may petition the Administrator to approve any alternative to either the monitoring requirements specified in paragraph (b) of this section or the monthly operational status inspections specified in paragraph (d) of this section if the alternative will provide a continuous record of operation of each emission capture system.

* * * * *

10. Section 60.276a is amended by adding new paragraphs (h) and (i) to read as follows:

§ 60.276a Recordkeeping and reporting requirements.

* * * * *

(h) The owner or operator shall maintain the following records for each bag leak detection system required under § 60.273a(e):

(1) Records of the bag leak detection system output;

(2) Records of bag leak detection system adjustments, including the date and time of the adjustment, the initial bag leak detector settings, and the final bag leak detector settings;

(3) An identification of the date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, if procedures were initiated within 30 minutes of the alarm, the cause of the alarm, an explanation of the actions taken, the date and time the cause of the alarm was alleviated, and if the alarm was alleviated within 3 hours of the alarm; and

(4) The calculation of the percent of time the alarm on the bag leak detection system sounded during each 6-month reporting period.

(i) In addition to the information required by § 60.7(c), the percent of time the alarm on the bag leak detection system sounded during each 6-month reporting period shall be reported to the Administrator semi-annually.

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Federal Register

Wednesday,
October 16, 2002

Part V

The President

Proclamation 7607—General Pulaski Memorial Day, 2002

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Presidential Documents

Title 3—

The President

Proclamation 7607 of October 10, 2002

General Pulaski Memorial Day, 2002

By the President of the United States of America

A Proclamation

Americans celebrate our friendship and common commitment to freedom with the people of Poland each year on October 11, when we honor Brigadier General Casimir Pulaski, a hero of the American Revolutionary War. As a brave Polish patriot, General Pulaski made the ultimate sacrifice for our Nation, giving his life in 1779 to help America gain its independence. His devotion to liberty continues to inspire us today as we join with our allies to secure peace and freedom around the globe.

Before joining the American Revolution in 1777, Casimir Pulaski struggled against oppression in his native Poland, fighting alongside his father and brothers to defend their homeland from Prussian and Imperial Russian invaders. Though his cause was ultimately overcome by those powerful forces, Pulaski was widely recognized for his courageous actions as a cavalry officer and leader of Polish forces. Benjamin Franklin lauded Pulaski as "famous throughout Europe for his bravery and conduct in defense of the liberties of his country."

When General Pulaski joined General George Washington's staff, he immediately made important contributions to the war effort. He led a critical counterattack at the Battle of Brandywine that avoided a potential military disaster, earning him a commission as a Brigadier General. American leaders valued Pulaski's experience in battle, his knowledge of military strategy, and his pioneering efforts that led to a recognition that he was the "Father of the American cavalry." While leading cavalry forces in the Siege of Savannah, Pulaski was wounded, and died on October 11, 1779.

Two hundred and twenty-five years ago, Casimir Pulaski joined forces with Americans to establish liberty and overcome despotism. That inspiration and solidarity is mirrored today as we engage in a w against terrorism. As part of a global coalition, which includes the go rnment and people of Poland, we are working to ensure that our two nations remain strong friends and allies in our effort to build a safer, more peaceful world for all.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Friday, October 11, 2002, as General Pulaski Memorial Day. I encourage all Americans to commemorate this occasion with appropriate programs and activities paying tribute to Casimir Pulaski and honoring all those who defend the freedom of our great Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

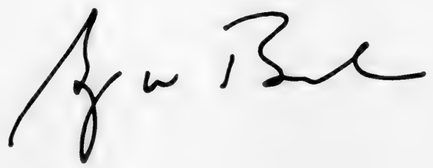

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 16, 2002

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S. 238/P.L. 107–237
To authorize the Secretary of the Interior to conduct feasibility studies on water optimization in the Burnt River basin, Malheur River basin, Owyhee River basin, and Powder River basin, Oregon. (Oct. 11, 2002; 116 Stat. 1485)

S. 1175/P.L. 107–238
Vicksburg National Military Park Boundary Modification Act of 2002 (Oct. 11, 2002; 116 Stat. 1486)

S. 1325/P.L. 107–239
To ratify an agreement between The Aleut Corporation and the United States of America to exchange land rights received under the Alaska Native Claims Settlement Act for certain land interests on Adak Island, and for other purposes. (Oct. 11, 2002; 116 Stat. 1488)

H.J. Res. 122/P.L. 107–240
Making further continuing appropriations for the fiscal year 2003, and for other purposes. (Oct. 11, 2002; 116 Stat. 1492)

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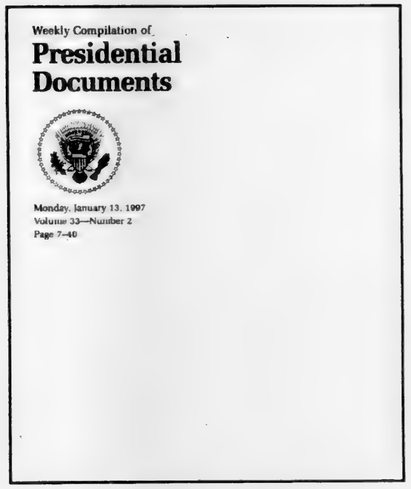

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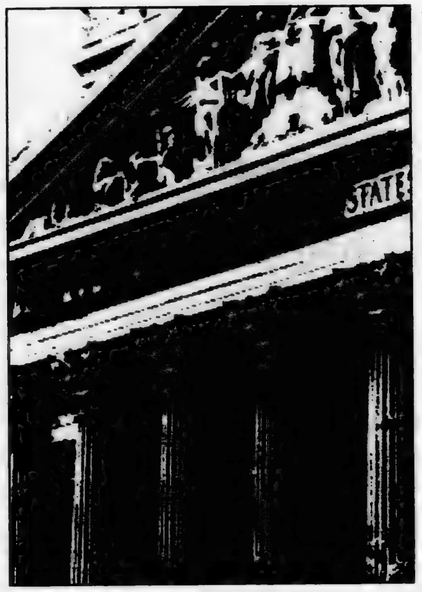

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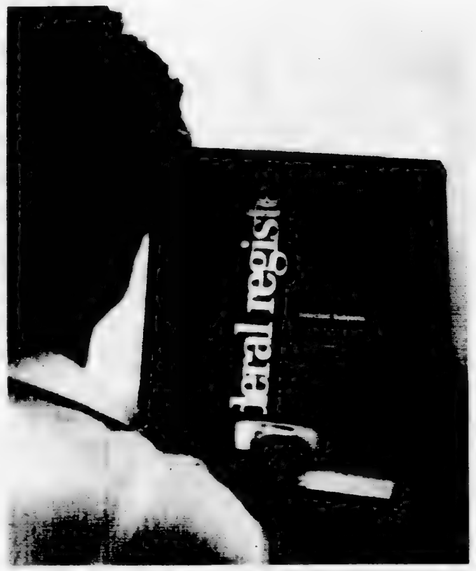

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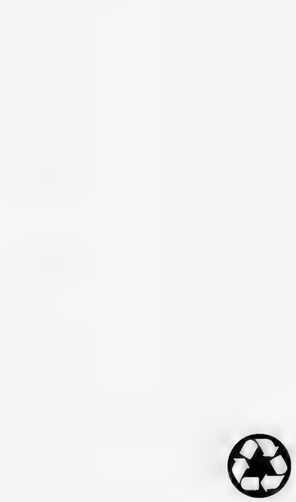

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Presidential Documents

Title 3—

The President

Proclamation 7608 of October 11, 2002

National Cystic Fibrosis Awareness Week, 2002

By the President of the United States of America

A Proclamation

Cystic fibrosis is one of the most common fatal genetic diseases in the United States. During this week, we renew our commitment to fighting this deadly disease that affects an estimated 30,000 American men, women, and children.

Cystic fibrosis is a genetic disorder that can be passed on directly from parents to children. Millions of Americans are unknowing, symptom-free carriers of the defective gene that can cause this disease. When both parents are carriers of the abnormal gene, their children have a 1 in 4 chance of being born with the disorder. Individuals who suffer from cystic fibrosis experience frequent lung infections and digestive problems caused by cell disorders in the lining of the lungs, small intestines, sweat glands, and pancreas.

Though there is as yet no known cure for cystic fibrosis, scientists and researchers have made great progress in understanding and treating this disease. Thanks to these efforts, the average life expectancy for people with cystic fibrosis has increased significantly in recent decades, and it is now approximately 30 years. In addition, advances in antibiotic therapy and the management of lung and digestive problems have improved the quality of life for these individuals.

Recent genetic research may also accelerate the discovery of a cure. To help advance the work to end cystic fibrosis, my Administration is dedicated to increasing Federal funding for medical research at the National Institutes of Health. Until cystic fibrosis is eliminated, we are hopeful that our research efforts will continue to extend and improve the quality of life of those stricken with this grave disease.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 13 through October 19, 2002, as National Cystic Fibrosis Awareness Week. I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

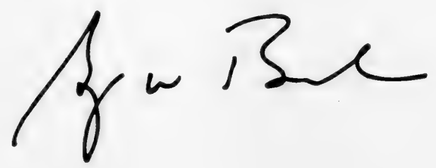

[FR Doc. 02–26628
Filed 10–16–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7609 of October 11, 2002

National School Lunch Week, 2002

By the President of the United States of America

A Proclamation

The future success of our Nation depends on our children's healthy development. Since 1946, the National School Lunch Program (NSLP) has made important contributions to the well-being of our school children. As part of the NSLP, more than 96,000 schools and residential childcare institutions serve more than 27 million children each day. In addition to providing young people with nutritious meals, this program supports the academic mission of our schools and helps to ensure that all our Nation's children reach their full potential.

To avoid the formation of poor eating habits, which are generally established during childhood, we must encourage positive choices that fulfill dietary recommendations. It is critical that our children eat sufficient amounts of fruits and vegetables, reduce fat in their diets, and consume essential nutrients in an overall diet with appropriate calories. By making modest improvements to their diets and increasing physical activities, children can dramatically improve their overall health.

To help meet this goal, the Department of Agriculture launched the School Meals Initiative for Healthy Children. This plan empowers schools to serve "kid-friendly" meals that meet the recommendations defined in the Dietary Guidelines for Americans and the Food Guide Pyramid. Through Team Nutrition, a comprehensive, behavior-based plan, the USDA assists schools by supporting food service personnel with important training. New recipes are now created by teams of dietitians and chefs, and then taste-tested by children. As a result, more children are enjoying lunches that are lower in fat, saturated fat, and sodium.

To motivate children to make sound choices, Team Nutrition also educates them about the benefits of healthy eating. State and local governments are supplementing these programs through innovative partnerships with educators, school administrators, community organizations, the food industry, and others. Through these cooperative efforts we are addressing solutions to health problems, such as the increasing incidence of childhood obesity, and we are enhancing access to nutrition programs for needy children.

During National School Lunch Week, we recognize the hard work and dedication of the thousands of food service professionals who plan and prepare meals, and provide vital nutritional education to our young people.

In recognition of the contributions of the National School Lunch Program to the health, education, and well-being of our Nation's children, the Congress, by joint resolution of October 9, 1962 (Public Law 87–780), as amended, has designated the week beginning on the second Sunday in October of each year as "National School Lunch Week" and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 13 through October 19, 2002, as National School Lunch Week. I call upon all Americans to join the dedicated individuals who administer the National School Lunch Program at the State

and local levels in appropriate activities and celebrations that promote all programs that support the health and well-being of our Nation's children.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

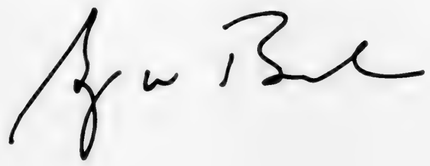

[FR Doc. 02–26629
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Billing code 3195–01–P

Presidential Documents

Proclamation 7610 of October 11, 2002

White Cane Safety Day, 2002

By the President of the United States of America

A Proclamation

The white cane is a powerful symbol of independence and opportunity for visually impaired persons. It is also an essential tool for increasing mobility and productivity for those who are blind as well as those who suffer from severe visual impairment. On White Cane Safety Day, our Nation renews its dedication to eliminating barriers for every disabled American, especially the blind and visually impaired.

My Administration seeks to ensure that all Americans enjoy full access to employment, education, and all the blessings of freedom. Through my "New Freedom Initiative," we are working to provide people with disabilities more employment opportunities and increased access to new technologies for independent living. My 2003 budget for this initiative proposes $145 million for alternative transportation and innovative transportation grants that will improve accessibility to vital aspects of society including schools, jobs, and places of worship. By implementing these and other important reforms, we can make great progress towards an America where individuals are celebrated for their talents and abilities, not judged by their limitations and disabilities.

The Congress, by joint resolution (Public Law 88–628, approved on October 6, 1964, as amended, has designated October 15 of each year as "White Cane Safety Day."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 15, 2002, as White Cane Safety Day. I call upon public officials, educators, librarians, and all the people of the United States to join with me in ensuring that all the benefits and privileges of life in our great Nation are available to blind and visually impaired individuals, and to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

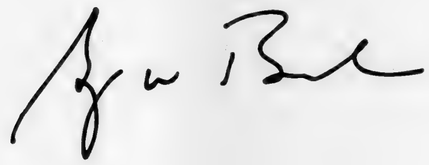

[FR Doc. 02–26630
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG61

Industry Codes and Standards; Amended Requirements: Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: On September 26, 2002 (67 FR 60520), the U.S. Nuclear Regulatory Commission (NRC) published a final rule amending its regulations to incorporate by reference a later edition and addenda of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPV Code) and the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) to provide updated rules for construction, inservice inspection (ISI), and inservice testing (IST) of components in light-water cooled nuclear power plants. This action corrects two erroneous references to the NRC's regulations made in the supplementary information accompanying the final rule.

EFFECTIVE DATE: October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen Tingen, Division of Engineering, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Alternatively, you may contact Mr. Tingen at (301) 415–1280, or via e-mail at: *sgt@nrc.gov*.

SUPPLEMENTARY INFORMATION: In the final rule, published on September 26, 2002 (67 FR 60520), on page 60521, in the third column, in the third full paragraph, the first and second sentences are corrected to read as follows:

In responding to this clarification, several commenters indicated that the 10-year IWE and 5-year IWL examination intervals must coincide with the 120-month interval update in § 50.55a(g)(4)(ii). The NRC does not agree that the 10-year IWE and 5-year IWL examination intervals must coincide with the 120-month interval update in § 50.55a(g)(4)(ii).

Dated at Rockville, Maryland, this 9th day of October, 2002.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Federal Register Liaison Officer.

[FR Doc. 02–26342 Filed 10–16–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

RIN 3150–AH03

Cost Recovery for Contested Hearings Involving U.S. Government National Security Initiatives

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to allow the agency to recover its costs associated with contested hearings on licensing actions involving U.S. Government national security initiatives through licensing fees assessed to the affected applicant or licensee. This final rule is a special exception to the Commission's longstanding policy of not charging this type of fee for contested hearings. In this case, the Commission will charge its contested hearing costs directly to the involved licensee or applicant rather than recovering its costs through the annual fees assessed to all licensees within the affected class.

EFFECTIVE DATE: November 18, 2002.

ADDRESSES: The comments received are available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by email to *pdr@nrc.gov*. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, please contact the PDR.

Comments received may also be viewed via the NRC's interactive rulemaking website (*http://ruleforum.llnl.gov*). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Robert Carlson, telephone 301–415–8165, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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III. Final Action
IV. Voluntary Consensus Standards
V. Environmental Impact: Categorical Exclusion
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Certification
IX. Backfit Analysis
X. Small Business Regulatory Enforcement Fairness Act

I. Background

The NRC has a longstanding policy of charging the affected applicant part 170 licensing fees to recover the agency's costs for any uncontested hearings that the NRC holds on applications to construct a power reactor or enrichment facility. These hearings are mandated by statute. However, the NRC's costs for all contested hearings [1] have been recovered through part 171 annual fees assessed to the members of the particular class of licensee to which the applicant belongs.

The NRC published the final rule establishing the part 170 and part 171 fees for FY 2002 on June 24, 2002, (67 FR 42612) after considering a comment

[1] A contested proceeding is defined in 10 CFR 2.4 as (1) a proceeding in which there is a controversy between the staff of the Commission and the applicant for a license concerning the issuance of the license or any of the terms or conditions thereof or (2) a proceeding in which a petition for leave to intervene in opposition to an application for a license has been granted or is pending before the Commission.

from a nuclear industry group concerning the assessment of annual fees to the fuel facility class of licensees for recovery of the costs involving a contested hearing related to the application for a mixed oxide (MOX) fuel fabrication facility. The industry group commented that assessing the MOX contested hearing costs to the fuel facility fee class was unfair, and that it was a violation of the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, to charge licensees for an agency activity or program from which the licensees receive no benefit. The commenter asserted that fuel facility licensees should not be responsible for bearing the costs of contested hearings associated with MOX fabrication because this process has no relation to the NRC's regulatory services from which fuel facility licensees obtain a benefit.[2] The commenter added that the beneficiaries of the MOX program are the Federal government and the Nation's citizenry because it will aid in the reduction of weapons-grade plutonium. The commenter contended that commercial fuel facility licensees should not have to subsidize the Federal government's efforts to ensure national security, and that such costs should be appropriated through the General Fund and removed from the NRC fee base.

The NRC responded that it must recover its hearing costs through either part 170 fees for services or through part 171 annual fees in order to recover most of its budgeted costs (less the amounts appropriated from the Nuclear Waste Fund) through fees as required by OBRA–90, as amended. The Commission's longstanding policy of recovering contested hearing costs through part 171 annual fees assessed to the affected class of licensee was confirmed repeatedly in the course of many past fee rulemakings, in court pleadings, and in an NRC report to Congress on fees.

However, in this case the Commission stated in the FY 2002 final fee rule that it found merit in the commenter's concern about the assessment of annual fees targeted to the fuel facility class for the MOX contested hearing costs because the NRC licensing action, which is the subject of the hearing, involves a U.S. Government national security initiative to dispose of plutonium stockpiles. Accordingly, the final fee rule provided that FY 2002 budgeted costs for the MOX contested hearing should be recovered through part 171 annual fees assessed to all classes of licensees. The final fee rule also stated it was the Commission's intent to issue a proposed rule for public comment that would recover the costs for contested hearings on licensing actions involving U.S. Government national security initiatives through part 170 fees assessed to the affected applicant or licensee, beginning in FY 2003.

The Commission published its proposed rule for comment on July 31, 2002, in the **Federal Register** (67 FR 49623). The comment period for this rule ended August 30, 2002. After considering all comments received during the public comment period, the Commission has now adopted its proposal as a final rule.

This final rule is a special exception to the Commission's policy of not recovering contested hearing costs through part 170 fees assessed to the affected applicant or licensee. This exception only applies to contested hearings on licensing actions directly associated with U.S. Government national security initiatives, such as Presidentially-directed national security programs. The affected applicant or licensee will be responsible for the payment of the part 170 fees assessed for these types of contested hearings. However, because part 170 fees will only be assessed for contested hearings on licensing actions directly involving U.S. Government national security initiatives, the Commission generally expects that the costs will ultimately be borne by the Federal government, rather than the applicant.

In addition to the contested hearing on the MOX fuel fabrication facility application, any contested hearing on the Tennessee Valley Authority (TVA) license amendments to produce tritium at the Watts Bar and Sequoyah reactors for the Nation's nuclear weapons program would be another example of a contested hearing on a licensing action directly involving a U.S. Government national security initiative for which part 170 fees would be assessed under this final rule.

Examples of contested hearings on licensing actions that do not involve a U.S. Government national security initiative include the contested hearing on the application for a uranium recovery license filed by Hydro Resources Inc., and the contested hearing on the independent spent fuel storage installation application filed by Private Fuel Storage L.L.C. Furthermore, this final rule leaves intact the existing policy of not assessing part 170 fees for contested hearings associated with applications or licenses that are used to provide routine services to U.S. Government agencies.

It should be noted that the Independent Offices Appropriation Act (IOAA) prohibits the NRC from assessing part 170 fees to Federal agencies, except in limited circumstances, such as licensing and inspection of TVA power reactors. Therefore, in most cases, this final rule would not apply to contested hearings on licensing actions involving U.S. Government national security initiatives where a Federal agency is the applicant or licensee.

[2] The MOX program is a Federal government initiative to ensure national security through the disposition of plutonium from dismantled nuclear weapons.

II. Response to Comments

On July 31, 2002 (67 FR 49623), the NRC published for public comment a proposed rule to recover the agency's costs for contested hearings on licensing actions directly involving U.S. Government national security initiatives through part 170 fees assessed to the affected applicant or licensee. The NRC received two comments by the close of the public comment period on August 30, 2002.

The comments and the NRC's responses, grouped according to the issues raised, are as follows:

1. *Comment.* One commenter indicated that the NRC has not provided a specific definition of what a "U.S. Government national security initiative" is, and that the agency's definition should be clarified so as to eliminate confusion or potential misapplication of this exception to policy. Specifically, the commenter further explained that a "national security initiative" should exclude proceedings and licensing actions related to individual plant security modifications.

Response. The proposed rule presented a revised definition of Special Projects in § 170.3 Definitions to include contested hearings on licensing actions directly involving U.S. Government national security initiatives. The statement of considerations for the proposed rule provided examples of contested hearings on licensing actions that would and would not be considered as these types of proceedings. The NRC also proposed to add a part 170 fee exemption provision in § 170.11(a)(2) for contested hearings. This provision will codify the Commission's past policy of not charging applicants or licensees for the costs of contested hearings, with one limited exception. Applicants or licensees involved in contested hearings that the NRC determines involve a U.S. Government national security-related initiative will be charged fees for the cost of such proceedings. The NRC cannot predict the types of future licensing actions that will involve U.S. Government national security initiatives. Consequently, the NRC will evaluate such actions on a case-by-case basis, and no further definition is being provided in this final rule. However, the Commission agrees with the commenter that licensing actions related to individual plant security modifications, including those required by Federal regulation, do not constitute a national security initiative for the purposes of part 170 fees. Accordingly, in this final rule the Special Projects definition under § 170.3 has been modified to specifically exclude contested hearings involving individual plant security modifications, including those required by Federal regulation. Similarly, the proposed language in § 170.11(a)(2) has been revised to specifically grant an exemption from the part 170 fees for contested hearings related to these individual plant security modifications.

2. *Comment.* One commenter asserted that this rulemaking should be implemented as an interim measure, and that the NRC should actively pursue whatever legislative changes are necessary, including amending the IOAA, to ensure licensees are not required to fund actions unrelated to their licensed activities.

Response. The agency is presently bound by existing legislation to recover most of its budgeted costs, including costs related to contested hearings, from NRC applicants and licensees through fees. The NRC's current policy is to recover its contested hearing costs from part 171 annual fees assessed to licensees in the affected fee class. This rulemaking modifies the existing policy such that the NRC's contested hearing costs associated with licensing actions specifically related to U.S. Government national security initiatives will be assessed directly to the affected licensee or applicant as part 170 fees. As noted in the proposed rule, the Commission generally expects that these costs would ultimately be borne by the Federal government rather than the applicant or licensee. This belief is based on the premise that U.S. Government national security-related initiatives will be sponsored by the Federal government; therefore, the sponsoring agency would reimburse the applicant or licensee for any associated costs, including NRC's costs for contested proceedings directly related to these initiatives.

Congress has taken action to remove from the fee base some of the costs for activities that raise fairness and equity concerns. However, unlike the activities that raise fairness and equity concerns related to NRC licensees having to pay the costs of activities for which they derive no benefit—the agency's activities related to contested hearings on licensing actions involving a U.S. Government national security initiative are directly related to regulating the affected applicant or licensee. Therefore, assessing the affected applicant or licensee for the NRC's costs of such contested hearings does not raise fairness and equity concerns, and as such, the Commission does not plan to pursue legislation to remove these costs from the fee base.

3. *Comment.* A commenter stated that the NRC should provide a more specific explanation of additional exceptions it plans to make to permit allocation of fees assessed for costs associated with national security-related programs to individual applicants or licensees (*e.g.*, with respect to petitions filed pursuant to 10 CFR 2.206 or allegations related to national security related programs in an NRC licensing context).

Response. As stated in the proposed rule, the Commission plans to consider recovering its costs for future activities involving U.S. Government national security-related programs, including allegations and 10 CFR 2.206 petitions, through part 170 fees assessed to the applicant or licensee in a manner consistent with this final rule. Any determination in this regard that could result in changes to the NRC's existing fee recovery policies would be published in the **Federal Register** for public comment.

4. *Comment.* Both commenters indicated the need for the NRC to clarify the intent of this rulemaking regarding the cost implications of these types of contested proceedings to petitioners. One of the commenters believed that this rule would require petitioners to pay all of the NRC's costs for contested proceedings involving U.S. Government national security initiatives.

Response. This rulemaking will not require petitioners/interveners to pay the NRC's costs associated with contested hearings on licensing actions involving U.S. Government national security initiatives. The rule will result in the assessment of fees to the affected applicant or licensee to recover the NRC's costs for these types of contested proceedings. Moreover, the NRC has no plans to propose any further revision that would result in charging petitioners for the NRC's contested hearing costs.

5. *Comment.* One commenter inquired about the applicability of this rulemaking to the Yucca Mountain project.

Response. This rulemaking does not apply to the Yucca Mountain project because the agency's costs for this program are recovered by the NRC through appropriations from the Nuclear Waste Fund, and thus are excluded from fee recovery. Therefore, the rule will not result in the NRC assessing fees to recover the agency's costs for the Yucca Mountain proceeding.

6. *Comment.* One commenter asked who was responsible for making the "national security" determination.

Response. The NRC will make the final determination of whether a particular licensing action is directly related to a U.S. Government national security initiative. This decision will be made on a case-by-case basis. In those instances where the NRC decides a licensing action is related to a U.S. Government national security initiative, and the licensing process involves a contested hearing, the licensee or applicant will be assessed part 170 fees to recover the agency's costs associated with the contested proceeding.

7. *Comment.* A commenter questioned whether this rule would affect the licensing process based on a determination of a national security initiative.

Response. This rulemaking will not affect the NRC's licensing process, nor will it change how the agency executes its regulatory oversight mission. This final rule concerns an exception to the NRC's existing fee policy, and narrowly focuses on cost recovery associated with contested hearings involving U.S. Government national security initiatives.

III. Final Action

The NRC is amending 10 CFR part 170 to establish a provision for assessing part 170 fees to the affected applicant or licensee to recover the NRC's full costs of contested hearings on licensing actions directly involving U.S. Government national security initiatives, as determined by the NRC. To implement this special exception to the Commission's longstanding policy of not assessing part 170 fees for contested hearing costs, the NRC is adding a fee exemption to § 170.11 for contested hearings. This provision will codify the Commission's past policy of not charging applicants or licensees for the costs of contested hearings, with one limited exception. Applicants or licensees involved in contested hearings that the NRC determines involve a U.S. Government national security-related initiative will be charged fees for the cost of such proceedings. A conforming revision is being made to § 170.11(a) to add the term special project fees to the existing list of fee types that will not be assessed under the exemption provision. The NRC is also revising the

definition of *Special Projects* in § 170.3 to include contested hearings on licensing actions related to U.S. Government national security initiatives, and is making corresponding changes to the section related to the payment of special project fees, to fee category J. of § 170.21, and to fee category 12. of § 170.31. Only those contested hearings on licensing actions directly associated with a U.S. Government national security initiative, such as those specifically related to Presidentially-directed national security programs, will be subject to cost recovery under part 170. The NRC will continue to recover its costs for those contested hearings that are exempted from part 170 fees through part 171 annual fees assessed to the affected class of licensees.

The final rule will not be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the final rule will become effective 30 days after publication in the **Federal Register**.

As stated in the proposed rule, the NRC does not plan to mail this final rule to all licensees; however, a copy of this final rule will be mailed to any licensee or other person upon specific request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554, or e-mail us at *fees@nrc.gov*. In addition to publication in the **Federal Register**, the final rule will be available on the Internet at *http://ruleforum.llnl.gov* for at least 90 days after the effective date of the final rule.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending part 170 to recover costs from applicants or licensees in contested hearings involving Commission-specified U.S. Government national security-related initiatives. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the final regulation.

VI. Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

This final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided in *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Supreme Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980).

VIII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule will impose a fee on a very limited number of applicants or licensees to recover the costs of contested hearings involving Commission-specified, U.S. Government national security-related initiatives, and it is unlikely that these few organizations would fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, or the size standards established by the NRC (10 CFR 2.810).

IX. Backfit Analysis

The NRC has determined that its backfit rules do not apply to this final rule and therefore, that a backfit analysis is not required for this final rule, because these final amendments do not impose any provisions that would impose backfits as defined in 10 CFR Chapter 1.

X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, of the Office of Management and Budget.

List of Subjects in 10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 170.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: Sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902).

2. Section 170.3 is amended by revising the definition of *Special Projects* to read as follows:

§ 170.3 Definitions.

* * * * *

Special Projects means those requests submitted to the Commission for review

for which fees are not otherwise specified in this chapter and contested hearings on licensing actions directly related to U.S. Government national security initiatives, as determined by the NRC. Examples of special projects include, but are not limited to, contested hearings on licensing actions directly related to Presidentially-directed national security programs, topical report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, services provided to certify licensee, vendor, or other private industry personnel as instructors for part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports. Special Projects does not include those contested hearings for which a fee exemption is granted in § 170.11(a)(2), including those related to individual plant security modifications.

* * * * *

3. In § 170.11, the introductory text of paragraph (a) is revised and paragraph (a)(2) is added to read as follows:

§ 170.11 Exemptions.

(a) No application fees, license fees, renewal fees, inspection fees, or special project fees shall be required for:

* * * * *

(2) A contested hearing conducted by the NRC on a specific application or the authorizations and conditions of a specific NRC license, certificate, or other authorization, including those involving individual plant security modifications. This exemption does not apply to a contested hearing on a licensing action that the NRC determines directly involves a U.S. Government national security-related initiative, including those specifically associated with Presidentially-directed national security programs.

* * * * *

4. In § 170.12, paragraph (d) is revised to read as follows:

§ 170.12 Payment of fees.

* * * * *

(d) *Special Project Fees.* (1) Fees for special projects are based on the full cost of the review or contested hearing. Special projects include activities such as—

(i) Topical reports;

(ii) Financial assurance submittals that do not require a license amendment;

(iii) Responses to Confirmatory Action Letters;

(iv) Uranium recovery licensees' land-use survey reports;

(v) 10 CFR 50.71 final safety analysis reports; and

(vi) Contested hearings on licensing actions directly involving U.S. Government national security initiatives, as determined by the NRC.

(2) The NRC intends to bill each applicant or licensee at quarterly intervals until the review or contested hearing is completed. Each bill will identify the documents submitted for review or the specific contested hearing and the costs related to each. The fees are payable upon notification by the Commission.

* * * * *

5. In § 170.21, the introductory text is presented for the convenience of the user and Category J is revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, re-qualification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
. . . . .	
J. Special projects:	
Approvals and preapplication/licensing activities	Full Cost.
Inspections [3]	Full Cost.
Contested hearings on licensing actions directly related to U.S. Government national security initiatives	Full Cost.
. . . . .	

[1] Fees will not be charged for orders issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.*, 10 CFR 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[3] Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or follow-up of a licensed program. Inspections are performed through the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

6. In § 170.31, the introductory text is presented for the convenience of the user and Category 12. is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services, and holders of materials licenses or import and export licenses shall pay fees for the following categories of services. The following schedule includes fees for health and safety and safeguards inspections where applicable:

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
. . . . .	.
12. Special projects:	
Approvals and preapplication/licensing activities	Full Cost.
Inspections	Full Cost.
Contested hearings on licensing actions directly related to U.S. Government national security initiatives	Full Cost.
. . . . .	.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, generally licensed device registrations, and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for pre-application consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.*, 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

* * * * *

Dated at Rockville, Maryland, this 8th day of October, 2002.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

[FR Doc. 02–26446 Filed 10–16–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–40–AD; Amendment 39–12911; AD 2002–21–05]

RIN 2120–AA64

Airworthiness Directives; REVO, Incorporated Models Lake LA–4, Lake LA–4A, Lake LA–4P, Lake LA–4–200, and Lake Model 250 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain REVO, Incorporated (REVO) Models Lake LA–4, Lake LA–4A, Lake LA–4P, Lake LA–4–200, and Lake Model 250 airplanes. This AD requires you to inspect the upper and lower wing spar doublers and angles for cracks at a certain time after the incorporation of Modification Kit B–79 or FAA-approved equivalent, replace any cracked wing spar doubler or angle, and report the results of the inspection to the Federal Aviation Administration (FAA). The kit modification consists of installing a doubler kit to give the spar an adequate fatigue life. This AD is the result of an incident of a crack found at the most outboard wing attachment fitting hole on one of the affected airplanes with the modification incorporated. The actions specified by this AD are intended to prevent wing spar failure caused by cracks in the wing spar doublers or angles, which could result in the wing separating from the airplane with consequent loss of control.

DATES: This AD becomes effective on October 23, 2002.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before November 1, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–40–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–40–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get information related to this AD from FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–40–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Richard B. Noll, Aerospace Engineer, FAA, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (781) 238–7160; facsimile: (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received a report of a crack at the most outboard wing attachment fitting bolt hole on a REVO Model Lake LA–4–200 airplane. This airplane had incorporated the modification from AD 2000–10–22, Amendment 39–11746 (65 FR 34065, May 26, 2000), which requires the following on REVO Models Lake LA–4, Lake LA–4A, Lake LA–4P, Lake LA–4–200, and Lake Model 250 airplanes:

—Inspection of the left and right wing upper and lower spar doublers for cracks;

—Replacement of any cracked parts; and

—Incorporation of the B–79 Modification Kit or FAA-approved equivalent.

This modification consists of installing a doubler kit to give the spar an adequate fatigue life. The repetitive inspections are no longer required after incorporation of this modification.

AD 2000–10–12 was the result of reports of a fatigue crack found at the second most inboard wing attachment bolt hole on one of the affected airplanes and similar fatigue cracking on seven more of the affected airplanes.

The most recent accident airplane had accumulated about 50 hours time-in-service (TIS) since incorporating the modification required by AD 2000–10–22.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not corrected, could result in wing spar failure and the wing separating from the airplane with consequent loss of control.

The FAA's Determination and an Explanation of the Provisions of This AD

What Has FAA Decided?

The FAA has reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other REVO Models Lake LA–4, Lake LA–4A, Lake LA–4P, Lake LA–4–200, and Lake Model 250 airplanes of the same type design;

—The affected airplanes that incorporate the modification required by AD 2000–10–22 should have the wing spar doublers and angles inspected for cracks and have any cracked parts replaced; and

—AD action should be taken in order to correct this unsafe condition.

What Does This AD Require?

This AD requires you to accomplish the following:

—Inspect the upper and lower wing spar doublers and angles for cracks at a certain time after the incorporation of Modification Kit B–79 or FAA-approved equivalent as required by AD 2000–10–22;

—Replace any cracked wing spar doubler or angle; and

—Report the results of the inspection to FAA.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We have included, in the rulemaking docket, a discussion of information that may have influenced this action.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in the wing separating from the airplane with consequent loss of control, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the AD I Should Pay Attention To?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your written comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–40–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

Does This AD Impact Various Entities?

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2002–21–05 Revo, Incorporated: Amendment 39–12911; Docket No. 2002–CE–40–AD.

(a) *What airplanes are affected by this AD?* This AD applies to the model and serial number airplanes in paragraph (a)(1) of this AD and that incorporate any of the wing spar part numbers (or FAA-approved equivalent part numbers) specified in paragraph (a)(2) of this AD:

(1) *Affected Airplanes:* This following model and serial number airplanes, certificated in any category, are affected by this AD:

Model	Serial Nos.
Lake LA–4	246 through 421, 423 through 429, 445, and 446.
Lake LA–4A	244 and 245.
Lake LA–4P	121.
Lake LA–4–200	422, 430 through 444, and all serial numbers after 446.
Lake Model 250	1 through 232.

(2) *Wing Spar Part Numbers Incorporated:* The following specifies the part numbers of the wing spars that are installed on the affected airplanes:

Wing spar parts	Part Nos.
Upper Spar Cap Angles	2–1610–015 and 2–1610–016.
Lower Spar Cap Angles	2–1610–075 and 2–1610–076.
Upper Spar Doublers	2–1610–061 and 2–1610–081 and 2–1610–065.
Lower Spar Doublers	2–1610–063 and 2–1610–083.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent wing spar failure caused by cracks in the wing spar doublers or angles, which could result in the wing separating from the airplane with consequent loss of control.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance
(1) Inspect the wing spar doublers and spar cap angles for cracks from the root end to the outboard of the wing attachment fittings, as follows: (i) From inside the wheel well, clean the upper and lower wing spar doublers and adjoining structure to the paint. Use a detergent or mineral-based solvent. (ii) Use a strong light source and a 3x magnifying glass to inspect the exposed areas of the upper and lower spar doublers and adjoining structure for cracks. Use a mirror to inspect the exposed edge of the spar cap angle behind the doubler.	Upon accumulating 25 hours time-in-service (TIS) after incorporating Modification B–79 or FAA-approved equivalent (the modification required by AD 2000–10–22) or within the next 10 hours TIS after October 23, 2002 (the effective date of this AD), whichever occurs later, unless already accomplished after accumulating 25 hours TIS after incorporating the modification required by AD 2000–10–22.
(2) Replace any doubler or angle found cracked during the inspection required by paragraphs (d)(1), (d)(1)(i), and (d)(1)(ii) of this AD. Replace with new parts that incorporate the same part numbers or FAA-approved equivalent part numbers.	Prior to further flight after the inspection.
(3) Report the results of the inspection to the FAA at the address specified in paragraph (f) of this AD. Use the inspection report that is included as Figure 1 of this AD. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056.	Within 7 days after the the inspection required by this AD or 7 days after October 23, 2002 (the effective date of this AD), whichever occurs later.

Figure 1 to AD 2002–21–05—Inspection Report

Report the following information to: Manager, Boston Aircraft Certification Office, Engine And Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, Fax: (781) 238–7170.

Operator/Repair Station _____
Aircraft Model _____
Aircraft S/N _____
Date of Inspection _____
Aircraft Time-in Service (TIS):
Total _____
Since installation of AD 2000–10–22 Kit _____

Note: Add additional pages for the following for each part inspected.

Part No. _____
Inspection
Pass _____
Fail _____

If a crack is found, indicate the approximate location on the part and the length of the crack in inches:

_____
_____

Part Time-In Service (TIS) (Hours):
Estimated _____
Actual _____
Unknown _____

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Boston Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. Richard B. Noll, Aerospace Engineer, FAA, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (781) 238–7160; facsimile: (781) 238–7170.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *When does this amendment become effective?* This amendment becomes effective on October 23, 2002.

Issued in Kansas City, Missouri, on October 8, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–26371 Filed 10–16–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP St. Louis–02–005]

RIN 2115–AA97

Security Zones; Captain of the Port St. Louis, MO

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing five security zones throughout the Captain of the Port St. Louis zone. These security zones are necessary to protect the Fort Calhoun Nuclear Power Station in Fort Calhoun, Nebraska, the Cooper Nuclear Station in Brownville, Nebraska, the Quad Cities Generating Station in Cordova, Illinois, the Prairie Island Nuclear Generating Facility in Welch, Minnesota, and the Clinton Power Station in Clinton, Illinois from subversive actions by any group or groups of individuals whose objective it is to cause disruption to the daily operations of these facilities. Entry into any of these security zones is prohibited unless authorized by the Captain of the Port St. Louis or designated representative.

DATES: This rule is effective beginning 8:01 a.m. on October 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP St. Louis–02–005] and are available for inspection or copying at Marine Safety Office St. Louis, Suite 8.104E, 1222 Spruce St. St. Louis, MO

between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) Bill Clark, Marine Safety Office St. Louis at (314) 539–3091, ext. 3500.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 11, 2002, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Security Zones; Captain of the Port St. Louis, MO", in the **Federal Register** (67 FR 39922). We received no comments on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. National security and intelligence officials continue to warn that future terrorist attacks against United States interests are likely. Any delay in making this final rule effective would be contrary to the public interest because action is necessary to protect against the possible loss of life, injury, or damage to property.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets are anticipated. In response to these terrorist acts and warnings the Captain of the Port St. Louis created three temporary security zones and published an NPRM proposing two additional security zones. The three temporary security zones the Captain of the Port, St. Louis established are: the Fort Calhoun Nuclear Power Station zone on the Missouri River in Fort Calhoun, Nebraska, published in the **Federal Register** March 7, 2002 (67 FR 10325) amended by 67 FR 40615; the Cooper Nuclear Station zone on the Missouri River in Brownville, Nebraska, published March 7, 2002 (67 FR 10324) amended by 67 FR 40617; and the Quad Cities Generating Station zone on the Mississippi River in Cordova, Illinois, published February 28, 2002 (67 FR 9207) amended by 67 FR 40613. We received no comments or objections concerning these temporary final rules.

Advisories regarding threats of terrorism continue. The Captain of the Port St. Louis has determined that security zones are needed for the areas covered by the NPRM and is creating five permanent security zones.

(1) *Fort Calhoun Nuclear Power Station, Fort Calhoun, Nebraska.* This zone includes all water extending 75 feet from the shoreline of the right descending bank on the Missouri River, beginning at mile marker 645.6 and ending at mile marker 646.0.

(2) *Cooper Nuclear Station, Brownville, Nebraska.* This zone includes all water extending 250 feet from the shoreline of the right descending bank on the Missouri River, beginning at mile marker 532.5 and ending at mile marker 532.9.

(3) *Quad Cities Generating Station, Cordova, Illinois.* This zone includes all water extending 300 feet from the shoreline of the left descending bank on the Upper Mississippi River, beginning at mile marker 506.3 and ending at mile marker 507.3.

(4) *Prairie Island Nuclear Generating Facility, Welch, Minnesota.* This zone includes all water extending 300 feet from the shoreline of the right descending bank on the Upper Mississippi River, beginning at mile marker 798.0 and ending at mile marker 798.3.

(5) *Clinton Power Station, Clinton, Illinois.* This zone in Dewitt County in East Central Illinois is bounded by a dam constructed near the confluence of Salt Creek River mile 56 and the north fork of Salt Creek. The zone extends out 600 feet from shore. Boundaries of the zone will begin at 40°10′30″ N, 88°50′30″ W; east to 40°10′30″ N, 88°49′55″ W; south to 40°10′15″ N, 88°49′55″ W; west to 40°10′15″ N, 88°5′30″ W; returning north to the origin. These coordinates are based upon [NAD 83].

These security zones are designed to reduce the potential of a waterborne attack and enhance the public health and safety by protecting the public, facilities, and surrounding areas from possible subversive actions or acts of terrorism. All persons and vessels are prohibited from entering the Prairie Island, Quad Cities and Clinton security zones unless expressly authorized by the Captain of the Port St. Louis or his designated representative. Sight surveys indicate that vessels may safely navigate around these zones with minimal interference.

Both the Fort Calhoun and the Cooper security zones contain a portion of the navigable channel of the Missouri River. All vessels that may safely navigate outside of the channel are prohibited from entering the security zone without the express permission of the Captain of the Port St. Louis or designated representative. Vessels requiring use of the channel for safe navigation are authorized entry into the zone but must remain within the channel unless otherwise expressly authorized by the Captain of the Port St. Louis or designated representative.

Discussion of Comments and Changes

We received no comments on the proposed rule or on the temporary final rules or extensions. Therefore, we have made no substantive changes to the provisions of the proposed rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory and Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

With the exception of the Fort Calhoun and Cooper zones the zones do not include navigable channels. Vessel traffic should be able to safely transit around these zones. The zones for Fort Calhoun Nuclear Power Station and the Cooper Nuclear Station allow deeper draft vessels to continue their transit, provided that they remain within the channel. Vessels that must transit through any of these security zones may seek permission from the Captain of the Port St. Louis or his designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard is unaware of any small entities that would be impacted by this rule. The navigable channel remains open to all vessel traffic. We received no comments or objections regarding the previous security zones covering the same areas.

If you are a small business entity and are significantly affected by this regulation please contact LTJG Bill Clark, Marine Safety Office St. Louis at (314) 539–3091, ext. 3500.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking processes.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.825 to read as follows:

§ 165.825 Security Zones; Captain of the Port St. Louis, Missouri.

(a) *Location.* The following areas are security zones:

(1) *Fort Calhoun Nuclear Power Station Security Zone, Fort Calhoun, Nebraska*—all waters of the Missouri River, extending 75 feet from the shoreline of the right descending bank beginning from mile marker 645.6 and ending at mile marker 646.0.

(2) *Cooper Nuclear Station Security Zone, Brownville, Nebraska*—all waters of the Missouri River, extending 250 feet from the shoreline of the right descending bank beginning from mile marker 532.5 and ending at mile marker 532.9.

(3) *Quad Cities Generating Station Security Zone, Cordova, Illinois*—all waters of the Upper Mississippi River, extending 300 feet from the shoreline of the left descending bank beginning from mile marker 506.3 and ending at mile marker 507.3.

(4) *Prairie Island Nuclear Generating Facility Security Zone, Welch, Minnesota*—all waters of the Upper Mississippi River, extending 300 feet from the shoreline of the right descending bank beginning from mile marker 798.0 and ending at 798.3.

(5) *Clinton Power Station Security Zone, Clinton, Illinois*—all waters of Lake Clinton in Dewitt County in East Central Illinois bounded by a dam constructed near the confluence of Salt Creek River mile 56 and the north fork of Salt Creek. The zone extends out 600 feet from shore. Boundaries of the zone begin at 40°10′30″ N, 88°50′30″ W; thence east to 40°10′30″ N, 88°49′55″ W; thence south to 40°10′15″ N, 88°49′55″ W; thence west to 40°10′15″ N, 88°50′30″ W; thence returning north to the origin. These coordinates are based upon [NAD 83].

(b) *Regulations.* (1) Entry into these security zones is prohibited unless authorized by the Coast Guard Captain of the Port, St. Louis or designated representative.

(2) The Ft. Calhoun and Cooper security zones include a portion of the navigable channel of the Missouri River. All vessels that may safely navigate outside of the channel are prohibited from entering the security zone without the express permission of the Captain of the Port St. Louis or designated representative. Vessels that are required to use the channel for safe navigation are authorized entry into the zone but must remain within the channel unless expressly authorized by the Captain of the Port St. Louis or designated representative.

(3) Persons or vessels requiring the Captain of the Port St. Louis' permission to enter the security zones must contact the Coast Guard Group Upper Mississippi River at telephone number 319 524–7511 or on VHF marine channel 16 or Marine Safety Detachment Quad Cities at telephone number 309 782–0627 or the Captain of the Port, St. Louis at telephone number 314 539–3091, ext. 3500 in order to seek permission to enter the security zones. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, St. Louis or designated representative.

(4) Designated representatives are commissioned, warrant, and petty officers of the U.S. Coast Guard.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: October 1, 2002.

D.C. Haynes,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, St. Louis.

[FR Doc. 02–26460 Filed 10–11–02; 5:10 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Corpus Christi–02–003]

RIN 2115–AA97

Security Zones; Port of Port Lavaca-Point Comfort, Point Comfort, TX; Port of Corpus Christi Inner Harbor, Corpus Christi, TX

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing security zones within the Port of Port Lavaca-Point Comfort and Port of Corpus Christi Inner Harbor. These security zones are needed to protect personnel, vessels, waterfront facilities, and national security interests in these ports from possible subversive actions by any group or groups of individuals whose objective it is to destroy or disrupt maritime activities. Entry of recreational vessels, passenger vessels, or commercial fishing vessels into these zones is prohibited unless specifically authorized by the Captain of the Port Corpus Christi or his designated representative.

DATES: This rule is effective beginning 8 a.m. October 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP Corpus Christi–02–003] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Corpus Christi, 555 N. Carancahua Street, Suite 500, Corpus Christi, Texas, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) Thomas Hopkins, Marine Safety Office Corpus Christi at (361) 888–3162 x303.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 10, 2002, the Coast Guard published a notice of proposed rule making (NPRM) entitled "Security Zones; Port of Port Lavaca-Point Comfort, Point Comfort, TX; Port of Corpus Christi Inner Harbor, Corpus Christi, TX; and Port of Brownsville, Brownsville, TX", in the **Federal Register** (67 FR 31750). We received seven letters commenting on the proposed rule, including requests for a public hearing on the proposed Port of Brownsville zone. No public hearing was held as we have decided not to implement the proposed security zone for the Port of Brownsville at this time.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. National security and intelligence officials continue to warn that future terrorist attacks against United States interests are likely. The temporary final rule published in the **Federal Register** on March 18, 2002 (67 FR 11922) as amended on June 7, 2002 (67 FR 39301) expires on October 15, 2002. This rule replaces the original temporary final rule. Any delay in making this rule effective would be contrary to the public interest because action is necessary to protect against the possible loss of life, injury, or damage to property.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets may be anticipated. In response to these terrorist acts and continued warnings, heightened awareness for the security and safety of all vessels, ports and harbors is necessary. The Captain of the Port, Corpus Christi is establishing permanent security zones within the Port of Port Lavaca-Point Comfort, Point Comfort, TX and the Port of Corpus Christi Inner Harbor, Corpus Christi, TX.

These security zones are around highly industrialized areas with concentrated commercial facilities considered critical to national security. Restricting the access of recreational, passenger, and commercial fishing vessels increases the opportunity for detection and reduces potential methods of attack on personnel, vessels and waterfront facilities within these zones.

The security zones are designed to limit the access of vessels that do not have business to conduct with facilities or structures within these industrial areas. Entry of recreational vessels, passenger vessels, or commercial fishing vessels into these zones is prohibited unless specifically authorized by the Captain of the Port Corpus Christi or his designated representative.

Discussion of Comments and Changes

We received seven comments on the proposed rule. Six of these comments opposed the creation of a security zone in the Brownsville Ship Channel because of the impact it might have on the local fishing industry. Five of these comments addressed what they considered to be a lack of sufficient threat in this area to require a security zone. After evaluating the comments received and touring the area in question with local port and recreational fishing representatives, the Coast Guard has determined there is not a need establish the proposed security zone for the Port of Brownsville in the current threat environment.

One comment was received on the proposed security zone for Port Lavaca-Point Comfort. The commenter was under the mistaken impression that the security zone would be for the entirety of Lavaca bay. Once the concerned party was made aware of the limited location of the proposed security zone, there was no objection to the zone for this area.

There were no comments received concerning the proposed security zone for the Port of Corpus Christi Inner Harbor.

We have made no substantive changes to the provisions of the proposed rule for Port of Point Lavaca-Point Comfort and the Corpus Christi Inner Harbor security zones.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This rule does not affect commercial traffic conducting business within the ports. Within these areas there are no marinas or other public businesses or docks that service recreational, passenger and commercial fishing vessels. As a result there would be little or no economic impact on recreational, passenger, and commercial fishing vessels or servicing entities. Vessels affected by this final rule may be permitted by the Captain of Port Corpus Christi to enter the security zones on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because recreational vessels, passenger vessels, and commercial fishing vessels do not normally conduct business within these industrial areas. Should a recreational vessel, passenger vessel, or commercial fishing vessel need to enter one of these security zones to conduct business with a small entity, there is no cost and little burden associated with obtaining permission to enter from the Captain of the Port Corpus Christi via VHF Channel 16 or via telephone at (361) 888–3162.

If you are a small business entity and are significantly affected by this regulation please contact LTJG Hopkins at (361) 888–3162 ext. 303 or at the address listed under **ADDRESSES.**

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.809 to read as follows:

§ 165.809 Security Zones; Port of Port Lavaca-Point Comfort, Point Comfort, TX and Port of Corpus Christi Inner Harbor, Corpus Christi, TX.

(a) *Location.* The following areas are designated as a security zone:

(1) *Port of Port Lavaca-Point Comfort*—all waters between the Dredge Island Bridge at 28°39′30″ N, 96°34′20″ W and a line drawn between points 28°38′10″ N, 96°33′15″ W and 28°38′10″ N, 96°34′45″ W including the Point Comfort turning basin and the adjacent Alcoa Channel. These coordinates are based upon NAD 1983.

(2) *Port of Corpus Christi Inner Harbor*—all waters of the Corpus Christi Inner Harbor from the Inner Harbor Bridge (US HWY 181) to, and including the Viola Turning Basin.

(b) *Regulations.* (1) No recreational vessels, passenger vessels, or commercial fishing vessels may enter these security zones unless specifically authorized by the Captain of the Port Corpus Christi or his designated representative.

(2) Recreational vessels, passenger vessels and commercial fishing vessels requiring entry into these security zones must contact the Captain of the Port Corpus Christi or his designated representative. The Captain of the Port may be contacted via VHF Channel 16 or via telephone at (361) 888–3162 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, Corpus Christi or his designated representative.

(3) Designated representatives include U.S. Coast Guard commissioned, warrant, and petty officers.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: September 25, 2002.

William J. Wagner, III,

Captain, U.S. Coast Guard, Captain of the Port, Corpus Christi.

[FR Doc. 02–26512 Filed 10–15–02 12:57 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Houston–Galveston–02–010]

RIN 2115–AA97

Security Zones; Ports of Houston and Galveston, TX

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent moving security zones around cruise ships that are transiting, anchored or moored in the Ports of Houston and Galveston, Texas. These security zones are needed for the safety and security of these vessels. Entry into these zones is prohibited to all persons and vessels unless authorized by the Captain of the Port, Houston-Galveston or designated representative.

DATES: This rule is effective beginning 8 a.m. October 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of [COTP Houston-Galveston-02–010] and are available for inspection or copying at Marine Safety Office Houston-Galveston, 9640 Clinton Drive, Galena Park, TX, 77547, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) George Tobey, Marine Safety Office Houston-Galveston, Texas, Port Waterways Management, at (713) 671–5100.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 11, 2002, the Coast Guard published a notice of proposed rule making (NPRM) entitled "Security Zones; Ports of Houston and Galveston, TX", in the **Federal Register** (67 FR 39917). We received no comments on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. National security and intelligence officials continue to warn that future terrorist attacks against United States interests are likely. The temporary final rule published in the **Federal Register** on May 1, 2002 (67 FR 21578) as amended on June 11, 2002 (67 FR 39848) expires on October 15, 2002. This rule replaces the original temporary final rule. Any delay in making this rule effective would be contrary to the public interest because action is necessary to protect against the possible loss of life, injury, or damage to property.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets may be anticipated. In response to these terrorist acts and warnings, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. Due to the increased safety and security concerns surrounding the transit of cruise ships, the Captain of the Port, Houston-Galveston established temporary security zones around these vessels [COTP Houston-Galveston-02–006]. A temporary final rule was published May 1, 2002 in the **Federal Register** (67 FR 21578). An extension of this temporary final rule was published June 11, 2002 (67 FR 39848) extending the effective date until 8 a.m. October 15, 2002. We received no comments concerning this temporary final rule.

Advisories regarding threats of terrorism continue. The Captain of the Port Houston-Galveston has determined that there is a need for this security zone to remain in effect indefinitely. The Captain of the Port Houston-Galveston is establishing permanent security zones around these vessels as they transit within the Ports of Houston and Galveston.

A moving security zone will be established when a cruise ship passes the Galveston Bay Approach Lighted Buoy "GB" inbound and continues through its transit, mooring, and return transit until it passes the sea buoy outbound. The establishment of moving security zones described in this rule will be announced to mariners via Marine Safety Information Broadcast. In the Ports of Houston and Galveston, no vessel may operate within 500 yards of a cruise ship unless operating at the minimum safe speed required to maintain a safe course. Except as described in this rule, no person or vessel is permitted to enter within 100 yards of a cruise ship unless expressly authorized by the Captain of the Port Houston-Galveston. Moored vessels or vessels anchored in a designated anchorage area are permitted to remain within 100 yards of a cruise ship while it is in transit.

The Houston Ship Channel narrows to 400 feet or less near Houston Ship Channel Entrance Lighted Bell Buoy "18" and continues at this width through Barbours Cut. Between these points vessels that must transit the navigable channel will have to gain permission from the Captain of the Port Houston-Galveston or designated representative, to pass within 100 yards of a cruise ship. Mariners that anticipate encountering a cruise ship in this section of the channel are encouraged to contact "Houston Traffic" prior to getting underway.

For the purpose of this final rule the term "cruise ship" is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories. This definition covers passenger vessels that must comply with 33 CFR Parts 120 and 128.

Discussion of Comments and Changes

We received no comments on the proposed rule or temporary final rule. Therefore, we have made no changes to the provisions of the proposed rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The impacts on routine navigation are expected to be minimal as the zone will only impact navigation for a short period of time and the size of the zone allows for the transit of most vessels with minimal delay.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a narrow portion of the Houston-Galveston Ship Channel during a transit of a cruise ship in the same narrow location. This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons:

1. Between the Houston-Galveston Sea buoy and Houston Ship Channel Entrance Lighted Bell Buoy "18" the size of the security zone allows for vessels to safely transit around or through the zone with minimal interference.

2. Between Houston Ship Channel Entrance Lighted Bell Bouy "18" and Barbour's Cut the channel narrows to 400 feet. In this section the Captain of the Port Houston-Galveston through Vessel Traffic Service (VTS) Houston-Galveston, "Houston Traffic," and designated on scene personnel may grant vessels permission to pass within 100 yards of a cruise ship.

If you are a small business entity and are significantly affected by this regulation please contact, LTJG George Tobey, Marine Safety Office Houston-Galveston, Texas, Port Waterways Management, at (713) 671–5100.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.813 to read as follows:

§ 165.813 Security Zones; Ports of Houston and Galveston, TX.

(a) *Location.* Within the Ports of Houston and Galveston, Texas, moving security zones are established encompassing all waters within 500 yards of a cruise ship between Galveston Bay Approach Lighted Buoy "GB", at approximate position 29°21′18″ N, 94°37′36″ W [NAD 83] and up to, and including, Barbours Cut. These zones remain in effect during the inbound and outbound entire transit of the cruise ship and continues while the cruise ship is moored or anchored.

(b) *Regulations.* (1) Entry of vessels or persons into these zones is prohibited unless authorized as follows.

(i) Vessels may enter within 500 yards but not closer than 100 yards of a cruise ship provided they operate at the minimum speed necessary to maintain a safe course.

(ii) No person or vessel may enter within 100 yards of a cruise ship unless expressly authorized by the Coast Guard Captain of the Port Houston-Galveston. Where the Houston Ship Channel narrows to 400 feet or less between Houston Ship Channel Entrance Lighted Bell Buoy "18", light list no. 34385 at approximately 29°21′06″ N, 94°47′00″ W [NAD 83] and Barbours Cut, the Captain of the Port Houston-Galveston may permit vessels that must transit the navigable channel between these points to enter within 100 yards of a cruise ship.

(iii) Moored vessels or vessels anchored in a designated anchorage area are permitted to remain within 100 yards of a cruise ship while it is in transit.

(2) Vessels requiring entry within 500 yards of a cruise ship that cannot slow to the minimum speed necessary to maintain a safe course must request express permission to proceed from the Captain of the Port Houston-Galveston, or his designated representative.

(3) For the purpose of this section the term "cruise ship" is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours, any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories.

(4) The Captain of the Port Houston-Galveston will inform the public of the moving security zones around cruise ships via Marine Safety Information Broadcasts.

(5) To request permission as required by these regulations contact "Houston Traffic" via VHF Channels 11/12 or via phone at (713) 671–5103.

(6) All persons and vessels within the moving security zone shall comply with the instructions of the Captain of the Port Houston-Galveston and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: September 20, 2002.

Kevin S. Cook,

Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.

[FR Doc. 02–26511 Filed 10–15–02; 12:57 pm]

BILLING CODE 4915–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2389, MM Docket No. 01–65; RM–10078, RM–10188 & RM–10189]

Radio Broadcasting Services; Brandon, SD; Emmetsburg, Sanborn and Sibley, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 261C3 for Channel 261A at Emmetsburg, Iowa, modifies the license for Station KEMB accordingly, and deletes vacant Channel 262A at Sibley, Iowa, in response to a petition filed by Eisert Enterprises, Inc. *See* 66 FR 15065, March 15, 2001. The coordinates for Channel 261C3 at Emmetsburg are 43–07–24 and 94–51–29. In response to the counterproposal filed by Eisert Enterprises (RM–10189), we shall allot Channel 264A at Sanborn, Iowa, at coordinates 43–10–53 and 95–39–23. The counterproposal filed by Saga Communications of Iowa (RM–10188) requesting the substitution of Channel 261C3 for vacant Channel 261A at Brandon, South Dakota, has been denied. With this action, this proceeding is terminated.

DATES: Effective November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–65, adopted September 25, 2002, and released September 27, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 261A and adding Channel 261C3 at Emmetsburg, by removing Channel 262A at Sibley, and by adding Sanborn, Channel 264A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26361 Filed 10–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2309; MM Docket No. 02–62; RM–10397]

Radio Broadcasting Services; De Funiak Springs and Valparaiso, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a Notice of Proposed Rule Making, 67 FR 16706 (April 18, 2002), this document reallots Channel 276C2 from De Funiak Springs, Florida to Valparaiso, Florida and provides Valparaiso with its first local FM transmission service. The coordinates for Channel 276C2 at Valparaiso are 30–30–53 North Latitude and 86–13–12 West Longitude.

DATES: Effective November 12, 2002.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 02–62, adopted September 11, 2002, and released September 27, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Valparaiso, Channel 276C2, and removing De Funiak Springs, Channel 276C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26359 Filed 10–16–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573 and 577

[Docket No. NHTSA–2001–11107; Notice 2]

RIN 2127–AI28

Motor Vehicle Safety; Reimbursement Prior to Recall

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document adopts a regulation implementing Section 6(b) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Under this rule, motor vehicle and motor vehicle equipment manufacturers will be required to include in their programs to remedy a safety-related defect or a noncompliance with a Federal motor vehicle safety standard, a plan for reimbursing owners for the cost of a remedy incurred within a reasonable time before the manufacturer's notification of the defect or noncompliance.

DATES: *Effective Date:* The effective date of the final rule is January 15, 2003.

Petitions for Reconsideration: Petitions for reconsideration of the final rule must be received not later than December 2, 2002.

ADDRESSES: Petitions for reconsideration of the final rule should refer to the docket and notice number set forth above and be submitted to Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact George Person, Office of Defects Investigation, NHTSA, (202) 366–2850. For legal issues, contact Andrew J. DiMarsico, Office of Chief Counsel, NHTSA, (202) 366–5263.

SUPPLEMENTARY INFORMATION:

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I. Summary of Final Rule

Today's final rule expands manufacturers' programs for remedying safety defects and noncompliances in motor vehicles and equipment to include reimbursement plans that, at a minimum, cover certain expenditures related to the defect or noncompliance incurred before the implementation of the recall. The rule requires manufacturers to submit to the agency reimbursement plans that satisfy specific requirements and to comply with the terms of those plans.

This final rule adopts, in most respects, the proposals in the Notice of Proposed Rulemaking, 66 FR 64078 (December 11, 2001). This rule specifies a minimum period for which a manufacturer must provide reimbursement to a person who

incurred costs to obtain a remedy before the manufacturer provided notification of a safety-related defect or noncompliance with a Federal motor vehicle safety standard (FMVSS) and delineates the conditions that a manufacturer must and may place in its reimbursement plan. The determination of the starting date for the mandatory reimbursement period depends upon what led to the recall. For recalls based upon a noncompliance with an FMVSS, the start of the mandatory reimbursement period is the date of the observation of a test failure by either the manufacturer or NHTSA. For recalls based upon a safety-related defect, the start of the reimbursement period is the date NHTSA opens an engineering analysis (EA) or one year prior to the date the manufacturer submits its notice of a defect to NHTSA pursuant to 49 U.S.C. 30118(b) or (c) and 49 CFR part 573, whichever is earlier.

Unlike the start of the reimbursement period, the end date of the reimbursement period depends on whether the item being recalled is a motor vehicle or replacement equipment. The end date distinguishes between a consumer's eligibility for reimbursement and a consumer's eligibility for the recall remedy. A consumer would not be eligible for reimbursement if he or she paid for the remedy after the end date, and would only be able to obtain a free remedy if the consumer followed the manufacturer's remedy program. For motor vehicles, the end date is ten days after the date the manufacturer mailed the last of its notices to owners pursuant to 49 CFR 577.5. For replacement equipment, the end date is ten days after the date the manufacturer mailed the last of its notices pursuant to 49 CFR 577.5, or 30 days after the conclusion of the manufacturer's initial efforts to provide public notice of the existence of the defect or noncompliance pursuant to 49 CFR 577.7, whichever is later.

The rule also establishes certain required provisions of reimbursement plans. For motor vehicles, reimbursable costs may not be less than the lesser of the owner's cost for the remedy or the owner's costs for parts, labor, taxes and other miscellaneous fees. For replacement equipment, reimbursable costs presumably would be the amount paid by the owner to replace the item (including taxes), but the manufacturer may limit the amount of reimbursement to the ordinary retail price of the defective or noncompliant item that was replaced. Manufacturers must also identify the office(s) to which claims for reimbursement are to be submitted. The manufacturer must process the claim within 60 days. If the manufacturer denies the claim, it must provide a clear statement to the owner or purchaser stating the reasons for the denial.

Manufacturers will be required to take certain actions to assure that owners or purchasers are appropriately aware of the possibility of reimbursement. In recalls where there is a reasonable likelihood that some persons may have made expenditures that are eligible for reimbursement, the manufacturer would have to include language in each owner notification that refers to such possible eligibility and that advises how to obtain the details on eligibility for reimbursement and how to obtain reimbursement. This could either be an enclosure with the owner letter or a reference to a toll-free telephone number. In all cases, the manufacturer must make its reimbursement plan available upon request, and it will also be available to the public at NHTSA.

In addition, the final rule identifies the conditions that manufacturers may, but are not required to, impose upon reimbursement. Apart from the specified conditions, no other conditions or limitations are permitted. The reimbursement plan may, with some limitations, exclude reimbursement for costs incurred within the period during which the manufacturer's warranty would have provided for a free repair of the problem addressed by the recall. In regard to this permitted exclusion, a manufacturer may include an extended warranty offered by the manufacturer. However, a manufacturer may not exclude reimbursement based upon the existence of a third party's warranty, such as a service contract.

Today's final rule also permits manufacturers to exclude reimbursement if the pre-notification remedy was not the same type of remedy as the one used in the recall, did not address the defect or noncompliance that led to the recall or a manifestation of the defect or noncompliance, was not reasonably necessary to correct the defect or noncompliance, or if the owner did not provide adequate documentation to the manufacturer. Under today's final rule, adequate documentation includes the name and address of the person seeking reimbursement; identification of the product; identification of the recall; a receipt for the remedy for which reimbursement is sought; for replaced equipment; proof that the claimant owned the recalled item; and, if the remedy was obtained within the time period of a manufacturer's free warranty, documentation indicating that the warranty was not honored or the warranty repair did not correct the problem addressed by the recall.

Finally, the rule allows manufacturers to submit general reimbursement plans to the agency that may be incorporated into the Part 573 report by reference rather than providing detailed reimbursement plans to the agency for each recall. Under this option, manufacturers would provide basic information concerning the reimbursement plan, such as the entities authorized to administer reimbursement; identify acceptable documentation; and identify the manufacturer's notification procedures. Specific information regarding a particular recall, such as the identity of the remedy and the dates for the reimbursement period, would be submitted in the defect or noncompliance report to the agency pursuant to 49 CFR 573.

II. Background

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act, was enacted on November 1, 2000, Pub. L. 106–414. The statute was, in part, a response to congressional concerns related to manufacturers' inadequate responses to defects and noncompliances in motor vehicles and motor vehicle equipment. The TREAD Act authorizes the Secretary of Transportation ("the Secretary") to issue various rules relating to a manufacturer's notification and remedy program. The authority to carry out Chapter 301 of Title 49 of the United States Code ("Safety Act"), under which rules directed by the TREAD Act are to be issued, has been delegated to NHTSA's Administrator pursuant to 49 CFR 1.50.

Under 49 U.S.C. 30118(b), the agency may make a final decision that a motor vehicle or replacement equipment contains a defect related to motor vehicle safety or does not comply with an applicable Federal motor vehicle safety standard. In addition, under 49 U.S.C. 30118(c), a manufacturer of a motor vehicle or replacement equipment is required to notify the agency if it determines, or in good faith should determine, that its vehicles or equipment contain a defect that is related to motor vehicle safety or do not comply with an applicable Federal motor vehicle safety standard.

49 U.S.C. 30120(a) provides that, except under certain limited circumstances, when notification of a defect or noncompliance is required under section 30118 (b) or (c), the manufacturer is required to remedy the defect or noncompliance without charge when the vehicle or equipment is presented for remedy. That section further specifies that the remedy, at the option of the manufacturer, can be either to repair the vehicle or equipment or replace it with an identical or reasonably equivalent item or, in the case of a vehicle, refund the purchase price less depreciation. The Safety Act contains separate remedy provisions applicable to tires. 49 U.S.C. 30120(b).

49 U.S.C. 30120(d) requires a manufacturer to file with the Secretary a copy of the manufacturer's program for remedying a defect or noncompliance. Pursuant to 49 U.S.C. 30118 and 30119 and 49 CFR Part 577, manufacturers are required to notify owners of defects and noncompliances. In order to obtain the manufacturer's remedy at no cost, an owner has to act in accordance with the provisions in the notice from the manufacturer. Any other way of remedying the defect or noncompliance would not be free of charge.

Before the TREAD Act, section 30120(d) did not require the manufacturer to reimburse owners for any costs incurred in remedying the defect or noncompliance prior to the notification required under sections 30118 and 30119. Manufacturers often reimbursed owners for these costs, but not in a uniform way. To the extent that the costs were not covered under a warranty program, manufacturers addressed these matters under extended warranty programs, "good will" programs, or in resolution of claims, including lawsuits.

Section 6(b) of the TREAD Act amended 49 U.S.C. 30120(d) to require a manufacturer's remedy program to include a plan for reimbursing an owner or purchaser who incurred the cost of the remedy within a reasonable time in advance of the manufacturer's notification under subsection (b) or (c) of section 30118. 114 Stat. 1804. Section 6(b) further authorizes the Secretary to prescribe regulations establishing what constitutes a reasonable time for purposes of the preceding sentence and other reasonable conditions for the reimbursement plan. *Ibid.*

On December 11, 2001, we issued a notice of proposed rulemaking (NPRM) that would implement this section and solicited comments on the ways in which NHTSA may best implement section 6(b) (66 FR 64078).

In response to the NPRM, we received comments from a variety of sources. Motor vehicle manufacturers and associated trade organizations who commented were General Motors Corporation ("GM"), Ford Motor Company ("Ford") and the Alliance of Automobile Manufacturers ("Alliance"). The tire industry was represented by the Rubber Manufacturers Association ("RMA"). Other motor vehicle equipment manufacturers and associated trade organizations who commented were the Juvenile Products Manufacturers Association, Inc. ("JPMA"), Delphi Automotive Systems ("Delphi"), Motor and Equipment Manufacturers Association ("MEMA") and Original Equipment Suppliers Association ("OESA"). The National Automobile Dealers Association ("NADA") also commented. We also received comments from Public Citizen ("PC"), Consumers Union ("CU"), Consumer Federation of America ("CFA"), the Center for Auto Safety ("CFAS") and Advocates for Highway and Auto Safety ("Advocates"). These comments have provided us with several insights in developing this final rule.

III. Discussion

A. Application

In the NPRM, we proposed that the reimbursement rule apply to manufacturers as delineated in 49 CFR 573.3 and 49 CFR 577.3. We did not receive any comments on the proposed application of this rule. We are adopting it as proposed.

B. Period for Reimbursement

1. Definition of "Reasonable Time"

Under section 6(b) of the TREAD Act, manufacturers need only provide reimbursement for costs incurred within a "reasonable time" in advance of notification. Thus, not all pre-notification remedies are covered under this provision. As we pointed out in the NPRM, Congress authorized the agency to delineate what it constituted "reasonable time" for reimbursement purposes. We also noted that the legislative history was not helpful in this determination, only suggesting something more than immediately prior to recall. We noted that Congress intended that the period of reimbursement be limited somewhat by the language of "reasonable time." If Congress had intended reimbursement to cover all pre-notification remedies, it would have either explicitly stated that the period for reimbursement be the same as the statutory free remedy period of ten years (five years for tires) after the product is bought by the first purchaser (49 U.S.C. 30120(g)) or would not have included the limiting term "reasonable time" in section 6(b) of the TREAD Act. By using the term "reasonable time," Congress meant something less than a reimbursement period that would cover "all" pre-notification remedies.

In the NPRM, we proposed that the period for mandatory reimbursement be specified as an objective, bright-line rule to minimize unnecessary complications. We said that bright-line rules would be easy to administer. They would eliminate, or at least minimize, any disputes about whether an expenditure was made in the covered period. They would also allow the agency to remain outside any disputes between owners and manufacturers over reimbursement. In addition, we proposed to relate the bright-line rules for the period of reimbursement to the agency's investigative activities with respect to alleged noncompliances and defects. Based upon our investigative processes, we proposed objectively determinable time periods for reimbursement that differ depending upon whether the recall involves a noncompliance or a defect.

With respect to a noncompliance with a FMVSS, we proposed that the period under which reimbursement would be mandatory would begin on the date of the initial test failure or the initial observation of a possible noncompliance. For noncompliance recalls that are influenced by the agency (a recall following an agency investigation), the date of the initial test failure will be apparent. With respect to noncompliance recalls that are not influenced (*i.e.*, "uninfluenced") by the agency (a recall initiated solely by a manufacturer), former 49 CFR 573.5(c)(7) (2001) (as recodified, 49 CFR 573.6(c)(7) [1]) requires manufacturers to identify "the test results or other data" that led to the manufacturer's determination. We proposed an amendment to this language to require the manufacturer to specify the date when it first identified the possibility that a noncompliance existed.

With respect to a recall based upon a safety-related defect, in the NPRM we discussed at length the Office of Defects Investigation (ODI) investigative process and how ODI attempts to complete the final stage of its investigations—engineering analyses (EA)—within one year after they are opened. On the basis of that process, we proposed two different triggering dates as the beginning of the mandatory reimbursement period depending upon the circumstances. The difference between the triggering dates depends upon whether the recall was an

[1] Section 573.5 was redesignated as Section 573.6 when the Early Warning Reporting Rule was published on July 10, 2002. See 67 FR 45822, 45872.

influenced recall or an uninfluenced recall. For uninfluenced recalls, we proposed that the reimbursement period would begin one year before the date of the manufacturer's submission of a notification of the defect to NHTSA pursuant to 49 U.S.C. 30118 and 49 CFR 573.5 (2001). For influenced recalls, we proposed that the beginning of the period for reimbursement would be the date the agency opens an EA.

In general, commenters presented divergent views on the issue of what is a "reasonable time" for the purposes of mandatory reimbursement. Manufacturers, while suggesting some slight modifications, generally agreed with NHTSA's proposal, while consumer advocacy groups disagreed.

Manufacturers (the Alliance, GM, Ford and JPMA) generally agreed with NHTSA's proposal that for defect-based recalls that were uninfluenced, the minimum period for reimbursement would begin one year before the manufacturer's Part 573 report. They urged NHTSA to adopt the same one-year rule for all recalls, including defect recalls undertaken after ODI has opened an investigation and all noncompliance recalls.

In our view it would not be reasonable to adopt a reimbursement period beginning date of one year before the Part 573 report across the board. For example, in the case of a noncompliance with a FMVSS, if the failing test were two years before the Part 573 report, the manufacturer should not be allowed to avoid reimbursement for the cost of the remedy made by owners during the first year after the test. Similarly, the fact that some of the agency's complex defect investigations require more than a year to complete should not curtail manufacturer's reimbursement responsibilities. The manufacturers' suggestion could reward recalcitrant manufacturers that delay the submission of their Part 573 reports to the agency. Thus, relating the time period under which reimbursement must be provided to the agency's investigative processes limits or precludes manufacturers from manipulating the period of reimbursement. On the other hand, we see no reason why the period for reimbursement should ever be longer for uninfluenced defect recalls (or for those influenced recalls that did not require an EA) than for those in which ODI's defect investigation reached the EA stage. Therefore, the final rule provides that for those recalls that took place after ODI opened an EA, the start of the reimbursement period may be no later than the date of the EA opening or one year before the defect notification to the agency, whichever is earlier.

In individual and joint comments, consumer advocacy groups (CFAS, PC, CU, CPA and Advocates, collectively "advocacy groups") and NADA disagreed with NHTSA's proposed approach for determining reasonable time. The advocacy groups commented that the agency's proposal for reasonable time would be confusing to consumers and would require that consumers have a basic knowledge of the statute and NHTSA's internal procedures. In addition, they asserted that the proposed rule would allow manufacturers to take advantage of the procedure by delaying their submission of a Part 573 report until it is favorable to the manufacturer to report the defect or noncompliance. Moreover, these commenters claimed that the proposed rule would frustrate the intent of Congress by penalizing consumers who act judiciously in remedying their vehicles prior to a recall, and that the rule is complex, difficult and against sound public policy. In general, they asserted that Congress intended to maximize reimbursement rights by extending the time frame for a free remedy. In their view, the ten-year/five-year time frame provided in 49 U.S.C. 30120(g)(1) is the reasonable time period for reimbursement of owners who repair defects or noncompliances prior to recall.

The advocacy groups ascribed to Congress an intent that was not expressed in the law. In the TREAD Act, Congress did not "maximize" the reimbursement rights of owners. What Congress did do was create an obligation to provide reimbursement for some pre-recall expenditures that was not previously in the Safety Act. Congress left it to the Secretary to define the minimum period under which such reimbursement would be required. This is evident from the TREAD Act itself. The TREAD Act states:

> A manufacturer's remedy program shall include a plan for reimbursing an owner or purchaser who incurred the cost of the remedy within a reasonable time in advance of the manufacturer's notification under subsection (b) or (c) of section 30118. The Secretary may prescribe regulations establishing what constitutes a reasonable time for purposes of the preceding sentence and other reasonable conditions for the reimbursement plan.

Pub. L. No. 106–414, sec. 6(b) (2000).

As to the time period, Congress did not specify that the reimbursement period be the entire statutory period remedy period under 49 U.S.C. 30120(g). First, if Congress intended that the reimbursement period be the same as the ten-year/five-year statutory remedy period, it would have explicitly said so. This Congress did not do. Second, as we stated in the NPRM and above, Congress used a limiting term to describe the length of the reimbursement period. It stated that an owner is entitled to reimbursement when he or she remedies the defect within a "reasonable time" prior to recall, which was meant to be longer than initial suggestions during congressional consideration of the TREAD Act that it be limited to the period "immediately" prior to recall. However, by using the term "reasonable time," Congress must have intended that the period for reimbursement be less than ten years (five years for tires) because that would be "any time" prior to recall, since manufacturers are not required to provide a free remedy for vehicles or equipment older than ten years (five years for tires) at the time of a recall.

Moreover, the advocacy groups' statement that to obtain reimbursement under the proposal consumers would need a basic knowledge of the Safety Act and NHTSA's implementing regulations is incorrect. Consumers would not need to know the Safety Act or NHTSA's applicable regulations to obtain reimbursement; manufacturers would. To determine their eligibility for reimbursement, consumers would only need to read or listen to the information provided to them and follow up on it. Under today's rule, manufacturers must provide the specific dates for the period of reimbursement in their reimbursement plans and provide appropriate notice to consumers.

Although we agree with the advocacy groups that there may be some instances of intentional manufacturer delay in filing a Part 573 report, delay would not be determinative in the case of noncompliances with FMVSSs or in the case of most influenced defect-based recalls, because the reimbursement period for these would not be triggered by the date of the Part 573 report. If a manufacturer unreasonably delayed notifying NHTSA of a defect or a noncompliance, NHTSA could seek civil penalties under 49 U.S.C. 30165 for violations of section 30118(c). This should deter such potential manipulation, particularly since, in most cases, the costs of providing reimbursement for expenditures incurred before the opening of an EA or over a year prior to the recall are unlikely to be very great.

Advocates asserted that the agency's "bright-lines" are irrational since one consumer could be reimbursed if he/she remedied the defect on the day of the opening of the EA, while another consumer could be denied

reimbursement if he/she remedied the defect on the day before the opening of the EA. However, "bright-line" rules commonly have the consequence that Advocates complained about. In fact, the ten-year/five-year statutory remedy period that the advocacy groups suggested the agency adopt is a "bright-line" rule. Thus, even under the ten-year/five-year rule, in some cases, there could still theoretically be consumers who would be denied reimbursement while others would receive it.

NADA observed that NHTSA should set minimum periods, allowing manufacturers the flexibility to set longer periods should they choose to do so. We agree. We are setting the requirements listed in this rule as a floor, not a ceiling. Thus, the time periods set forth in this rule are the minimum requirements. In fact, Ford and GM advised that they do not limit, on the basis of time, reimbursement of expenditures by owners for pre-notification remedies. While we encourage this conduct, it is not specifically required by today's final rule.

Therefore, based upon the above, the final rule adopts the "reasonable time" periods for mandatory reimbursement that were proposed in the NPRM.

2. Reimbursement End Date

The NPRM proposed two different dates for the end date for the eligibility period for reimbursement. For motor vehicles, the proposed end date was ten days after the manufacturer mailed the last of its initial Part 577 notices to owners. For replacement equipment, the proposed end date was 30 days after the conclusion of the manufacturer's initial efforts to publicize the existence of the defect or noncompliance. These proposed end dates were based upon the TREAD Act's language that reimbursement is for costs incurred prior to the manufacturer's notification under 49 U.S.C. 30118 and the practical difficulties of identifying the date when an individual owner actually received notice. We asked for comments whether these end dates were appropriate.

The Alliance and NADA agreed with the proposal to exclude reimbursement obligations for costs incurred more than ten days after the manufacturer mailed the last of its initial Part 577 notices. However, in the case where the notices are mailed to consumers in stages, the Alliance recommended that the reimbursement period applicable to a specific owner terminate ten days after the initial Part 577 notice was sent to that owner.

RMA recommended that the reimbursement end date for tires should not be more than five days after the notification of the recall has been sent to tire dealers. RMA asserted that this would minimize the likelihood of recalled tires being resold.

MEMA and OESA recommended that the "ending date" for an equipment owner's entitlement to reimbursement be changed from 30 days after the conclusion of the manufacturer's initial efforts to publicize the existence of the defect or noncompliance to:

> Thirty days after the manufacturer has mailed the last of its notifications to purchasers pursuant to part 577 of this chapter, or, if public notice is required by the Administrator or otherwise given by the manufacturer, within 30 days of such publication of the existence of the defect or noncompliance.

They reasoned that public notices have only been required of replacement equipment manufacturers when their products are marketed through identifiable consumer channels, such as chain or volume retail operations. According to MEMA and OESA, in previous recalls, if NHTSA did not require manufacturers to publicize the existence of a safety defect, the replacement part manufacturers made the requisite statutory notice by means of a letter to the most recent purchaser known to the manufacturer. Furthermore, in some situations, such as involving aftermarket distribution of heavy vehicle equipment and sales of equipment to the commercial markets, the agency has not called for public notice.

The advocacy groups criticized our ten-day end date proposal. They suggested that the reimbursement end date should be based upon the ten-year/five-year requirement already in the statute. They reasoned that the mailing date of a manufacturer's notice and the concluding date of a manufacturer's efforts to publicize a defect or noncompliance are irrelevant to an owner's right to be reimbursed for repairs made prior to a safety recall. They also argued that consumers who had the remedy performed prior to the recall should be entitled to reimbursement no matter when they receive notice of the recall.

The approach recommended by the Alliance for staged recalls presents some practical problems. The adoption of a single end date reduces potential confusion, such as could arise if an owner loses the notification letter, or if there is a dispute about whether a letter was actually received. Thus, in the case of motor vehicles, we believe ten days after the date of the last mailing of the manufacturer's letters notifying consumers that the remedy is available pursuant to 49 CFR 577.5 is the appropriate end to the reimbursement period. Manufacturers can predict this date.

RMA correctly recognized the importance of preventing the resale of recalled tires, but we do not believe that setting the end date for the reimbursement five days after tire dealers receive the notification of the recall will further this objective or would be a reasonable reimbursement condition. A tire manufacturer will normally notify its dealers of a defect or noncompliance before the manufacturer notifies owners of the recall. Thus, tire dealers will be on notice not to sell the recalled tires, be they new or used. Therefore, the end date for reimbursement purposes will have no or at most little effect on whether a recalled tire is sold by a dealer. Further, the RMA's proposal could inappropriately lead to a cut-off date before owners are notified.

We believe that the advocacy groups' comment on the end date missed the point that we were making. Under the statute, reimbursement is only required for expenditures made prior to notification of the recall. If an owner has received notification of a defect or a noncompliance under which a free remedy is offered, it is reasonable to require the owner to utilize the remedy offered by the manufacturer rather than expend funds to independently obtain a different remedy.

In the case of motor vehicle equipment, we agree with MEMA and OESA that in some cases there is no public notice of a defect or noncompliance. In that case, the mailing of the notices to owners by the manufacturer should control, as with motor vehicles. However, to be consistent with our approach with respect to vehicles, we are setting ten days after the equipment manufacturer has mailed the last of its notifications to purchasers pursuant to 49 CFR 577.5 as the appropriate end date. Where public notice is required by the Administrator or otherwise given by the manufacturer, we are retaining the 30-day period proposed in the NPRM. For those recalls with both individual and public notice, the latter of the two dates would end the reimbursement period.

C. Reasonable Conditions Allowed in the Reimbursement Plan

In the NPRM, we noted that section 6(b) of the TREAD Act did not specify in detail what is to be included in a manufacturer's reimbursement plan. Rather, the section stated, "The Secretary may prescribe regulations establishing * * * reasonable

conditions for the reimbursement plan." In the NPRM, we proposed to allow manufacturers to include certain conditions or limitations in their reimbursement plans, but no others. We also noted that manufacturers could impose less stringent restrictions on reimbursement if they chose to.

We proposed several permissible conditions in the NPRM that related to: (1) The availability of free warranty coverage, (2) the nature of the pre-notice repair or replacement and its relationship to the defect or noncompliance; (3) the amount of the reimbursement, and (4) the provision of suitable documentation to obtain reimbursement. A discussion of these conditions and how they will be implemented in the final rule follows.

1. Remedies Performed Outside the Period of Free Warranty Coverage

We proposed that one condition a manufacturer may include in its reimbursement plan is that the pre-notification remedy must have been performed or obtained after the conclusion of a manufacturer's warranty that would have covered the repair at no cost to the consumer. We noted in the NPRM that many repairs to address conditions that are subsequently determined to constitute a safety defect are within the coverage provided by the manufacturer's warranty program. As we stated in the NPRM, we wanted to avoid creating a program that would duplicate the manufacturer's warranty program. We said the purpose of the reimbursement plan is to provide a program that includes reasonable conditions, to reimburse an owner who had to incur costs to obtain a repair or replacement of the product before notification that a defect or noncompliance exists. Therefore, we proposed that manufacturers could provide in their reimbursement plan that consumers would not be eligible for reimbursement if they could have obtained a free remedy from a franchised dealer or other authorized entity through the manufacturer's warranty program, but had repairs performed elsewhere.

However, we noted that the warranty availability exclusion would not be absolute. In particular, if a consumer had presented the vehicle or equipment to a person authorized to perform warranty work and that person had concluded that the problem or repair was not covered under the warranty, or the repair did not remedy the problem, the consumer would have to be reimbursed for the reasonable costs of a remedy that was subsequently obtained at a facility that was not an authorized warranty service provider.

In general, the proposal to allow the warranty exclusion condition in the reimbursement plan was well received. The Alliance agreed with this "common sense approach." Some comments, while not against this approach, recommended that NHTSA consider other approaches to address the particular needs of a specific product.

JPMA advised that the child restraint industry does not have a standard warranty coverage that is comparable to the auto industry's basic warranties. It claimed that manufacturers of child restraints merge their warranty claims and consumer complaints into one database so it is difficult to distinguish between the two. Thus, JPMA recommended that NHTSA create a different exclusion for child restraint manufacturers, wherein a consumer would be eligible for reimbursement for remedies obtained from a source other than the manufacturer only if the consumer first sought assistance from the child restraint manufacturer, and was refused. JPMA claimed this is necessary to ensure that child restraint manufacturers are offered the same opportunity to remedy the problem within the company's own consumer affairs policies as vehicle manufacturers.

We disagree with JPMA that we created an "opportunity" for motor vehicle manufacturers with this warranty exception. The purpose of the warranty exclusion was to avoid duplication by making customers take advantage of whatever warranty the manufacturer offered. If the manufacturer has no express warranty, then it cannot place this condition in its remedy plan. Moreover, in the motor vehicle context, the general parameters of warranties are often understood and owners commonly bring vehicles to franchised dealers, which are often relatively close by, for repair work. The same does not apply to child restraints. Therefore, we decline to incorporate JPMA's recommendation.

NADA advised that most pre-announcement recall-related repairs are covered under original manufacturers' warranties, in which case customers are effectively reimbursed. In addition, NADA stated that other customers and repairs are covered under extended warranties or service contracts. It suggested that regardless of the source of coverage, all pre-announcement repairs that could have been covered by an original warranty, an extended warranty, or a service contract should be excluded from reimbursement under this rule. Lastly, it suggested any direct cash outlays by the customer, such as a deductible, should be eligible for reimbursement.

We disagree with this approach. We are limiting the warranty exclusion to the manufacturer's original warranty and any extended warranty subsequently offered by the manufacturer, including those purchased by the first owner and those provided by the manufacturer at no charge. Service contracts offered by dealers and other entities are not warranties between the manufacturer and the owner of the vehicle. The manufacturer is not a party to those service contracts. Service contracts can complicate the reimbursement process with questions over what is covered, who can perform repairs, qualifications over coverage, and deductibles. These complications can lead to disputes with manufacturers over something the manufacturer did not offer. Indeed, the manufacturers did not suggest extending the exclusion of warranty coverage to service contracts. The manufacturer should not benefit from a service contract, for reimbursement purposes, when it is not a party to it. For extended warranties, we would require the manufacturer to have provided the owner with written notice of the terms of the extended warranty coverage in order for the manufacturer to exclude any repairs that could have been made under the warranty from reimbursement.

Therefore, in regard to remedies performed within the period of free warranty coverage, today's final rule is essentially the same as proposed in the NPRM. The exclusion of repairs that would have been covered by a warranty only applies to the coverage provided by the manufacturer's warranties that the manufacturer provided in writing, either at the time of sale or by a subsequent notice. We note that this is consistent with the Early Warning Reporting Rule (67 FR 45822, July 10, 2002) under which manufacturers are not required to report claims paid on service contracts by dealers as warranty claims. We are also adopting a definition of warranty that is the same as in the Early Warning Reporting Rule. *See* 49 CFR 579.4(c) and 67 FR 45822, 45877 (July 10, 2002). Finally, we note that the warranty exclusion only applies where the manufacturer would pay in full, as opposed to providing an adjustment or credit and requiring some payment by the consumer. To make this clear, we have added the clause "without any payment by the consumer" to section 573.13(d)(1).

2. The Nature of the Pre-Notification Remedy

In the NPRM, we proposed several conditions that a manufacturer may impose in the reimbursement plan regarding the nature of the pre-notification remedies that would be eligible for reimbursement.

First, we proposed that a manufacturer would be permitted to limit reimbursement to remedies that addressed the noncompliance or defect. With all recalls, the defect or noncompliance is described in Part 573 information reports and in notifications to owners. *See* 49 CFR 573.6(c)(5), (c)(8)(i); 49 CFR 577.5(e). We reasoned that manufacturers should not be required to pay for repairs that did not address the problems addressed by the recall.

A second condition we proposed was that a manufacturer could limit the extent of repairs to those that were reasonably necessary to correct the underlying problem. In the NPRM, we provided an example of a failed ignition switch to illustrate that the manufacturer would not have to pay for a replacement of a steering column unit that included the switch, unless that was the only pre-notification repair available to the owner. However, we pointed out that a manufacturer could not provide that a repair would have to be *identical* to the recall remedy. We noted that in many instances the part used in the recall would not have been available before the recall. In those circumstances, the pre-recall repair would necessarily have involved the installation of a part that was different from the remedy part, and the manufacturer could not refuse reimbursement on that basis.

Additionally, the NPRM stated that the reimbursement program could not preclude a vehicle owner from obtaining both the recall remedy free of charge and reimbursement for past expenses, where otherwise allowed. We noted for example an owner who replaced an item of original equipment that had failed with the same part. We said that if the recall remedy is to install a new part made of a material with better properties than the original part, the owner would be entitled to the free recall remedy and to be reimbursed for the cost of the pre-recall repair.

Lastly, we proposed in the NPRM that a manufacturer of a motor vehicle could limit reimbursement to costs incurred for the same type of remedy as selected by the manufacturer. This was due to the Act's scheme that permits the manufacturer to choose the remedy, in the first instance. The general categories of remedies are set forth in 49 U.S.C. 30120(a)(1). Thus, for example, a manufacturer would not have to pay for the replacement of a vehicle when the remedy offered by the manufacturer as part of the recall was to repair the vehicle.

We proposed that replacement equipment be treated differently in this regard than motor vehicles. Due to differences in the costs of vehicles and replacement equipment, and the limited ability to repair most equipment items, replacement equipment is usually replaced in its entirety by the consumer when the item of equipment is broken, while a motor vehicle is almost always repaired. In light of those circumstances, we proposed that replacement equipment manufacturers would have to reimburse an owner for the cost of a replacement following a relevant failure of an equipment item subject to the recall, regardless of the recall remedy subsequently selected by the manufacturer. However, the owner would not also be entitled to the recall remedy with respect to the original item, since the owner would have been made whole by reimbursement for the cost of the new item (unless, of course, the owner had purchased the same defective item as the replacement).

The Alliance commented that manufacturers should not pay for work beyond that which was needed to address the defect or noncompliance. GM commented that when an original equipment part is replaced, and then a subsequent recall remedy uses a different part, the original equipment part must have failed in order for a customer to obtain a remedy that includes reimbursement for the original part and the recall remedy. GM claimed that the proposed rule would not require the original equipment part to be defective in order to obtain both the recall remedy and reimbursement for replacing the original part.

With regard to these points, in general, we agree that manufacturers should pay only for work that was performed to remedy what was later determined to be a noncompliance or defect. However, the original part need not have "failed" in order for the owner to be reimbursed. If it was appropriate to inspect, adjust, repair or replace the original part or system in order to correct a performance problem, the manufacturer must reimburse the owner for that work. In addition, if the consumer replaced an item of equipment while an investigation was open, reimbursement would be warranted. Indeed, this very situation was a basis for the TREAD Act. In that situation, consumers replaced certain Firestone Wilderness AT tires with other tires before Bridgestone/Firestone's August, 2000 recall. The reimbursement provision was intended to assure that manufacturers provided reimbursement in situations such as this. To obtain reimbursement, one need not wait until a tire or other part begins to separate or otherwise fails. The regulatory language in section 573.13(d)(2) requires reimbursement in these circumstances. However, if the original assembly is replaced in light of characteristics that would not be within the scope of the defect, such as normal wear, then the manufacturer does not have to reimburse the owner for the cost of that work. These concerns were adequately addressed in the NPRM; therefore, we are adopting the rule as proposed.

Consistent with the proposal, the final rule permits manufacturers to set conditions in their reimbursement plans that may exclude reimbursement if the pre-notification remedy was not the same type of remedy (repair, replacement or refund of purchase price) as the recall remedy, did not address the defect or noncompliance that led to the recall, or was not reasonably necessary to correct the problem addressed by the recall. However, the final rule precludes a manufacturer's reimbursement plan from requiring that the pre-notification remedy be identical to the remedy elected by the manufacturer.

We discussed the possibility of allowing additional conditions applicable to child restraints due to the unique situations that may arise when children outgrow their child restraints. We suggested that it could be inappropriate for an owner of a recalled child restraint to receive reimbursement for the cost of replacing a restraint when the original restraint did not manifest the problem that was the subject of the recall, but was replaced due to the growth of a child. We suggested that it might be appropriate to allow child restraint manufacturers to identify situations where reimbursement would not be appropriate, as long as we could assure that manufacturers do not deny reimbursement where it is warranted. We identified three possible conditions. The first was to allow reimbursement to be conditioned on whether an owner registered the restraint with the child restraint manufacturer. The second condition was to allow a requirement that the receipt for the purchase of a replacement child restraint indicate that it is a model comparable to the original restraint. The last possible condition was to allow the manufacturer to require the owner of the recalled child restraint

to return it to the manufacturer or otherwise prove it had been destroyed in order to obtain reimbursement. We asked for comments on the practical applications of those approaches.

JPMA asserted that all the conditions on reimbursement identified in the NPRM should be adopted regarding child restraints. According to JPMA, prior registration is vital to reimbursement. JPMA commented that prior registration of the defective or noncompliant restraint would help assure that the claimant was the actual owner, because he or she would have registered the restraint before there was any reason to think that reimbursement would be available in the future. JPMA contended that a receipt is necessary, but insufficient on its own, to show that the replacement child restraint is the same type as the one replaced. According to JPMA, a receipt plus the registration card would be sufficient. Finally, JPMA noted that the return of the defective child restraint is a good alternative for consumers who cannot meet the combination of the first two conditions, and should be available as a fall back provision.

PC, CU, CFAU, and CFA jointly commented that when determining the proper way to handle the replacement of defective child restraints, the principal goal of a recall or of a reimbursement—to give a refund for, or repair or replace a defective product—must be considered. To facilitate the removal of recalled child seats from the marketplace and to encourage the repair or replacement of defective seats, the advocacy groups argued that reimbursement should only be predicated on proof of ownership and replacement of the defective restraint. They argued that the intent of the owner replacing the restraint should not be a determining factor. According to the advocacy groups, the goal should be the replacement or repair of the defective restraint. In their view, the agency's concern with preventing fraud should not supercede that goal.

Notwithstanding JPMA's comments, we have concluded that the first and third conditions on which we requested comments in the NPRM would unduly limit reimbursement. With regard to registration, under 49 CFR Part 588, child restraint manufacturers are required to keep registration forms submitted by owners so they can notify owners of any defect or noncompliance. NHTSA is undertaking an evaluation of child safety seat registration, which has not been completed. As part of that evaluation, we have conducted a survey, which estimates that the registration rate for child restraints is currently about 27 percent. Although we would like the rate to be higher, since registration facilitates notification of child restraint owners, this low rate makes it unreasonable to require an owner to have returned a registration card to the manufacturer of the recalled restraint as a predicate to reimbursement. With respect to the third possible condition, as a practical matter, an owner of a broken child restraint who still needs to use the restraint to transport a child will normally replace it rather than get it repaired. The broken child restraint will most likely be discarded. The chances of the owner keeping a broken child seat in anticipation of a future recall are low. Thus, we will not make this an allowable condition.

We have concluded, however, that reimbursement can be limited to the cost of purchasing a child restraint of the same type (*e.g.*, rear-facing, booster) as the restraint covered by the recall. For example, if a rear-facing infant seat was replaced by a toddler seat, it is reasonable to assume that the purchase was made because the child outgrew the restraint, rather than because the infant seat had broken due to a defect. In this rule, we will utilize the same three "types" of child restraints established in the Early Warning Reporting Rule. Under that rule, in the context of a child restraint system, we defined "type" to mean the category of child restraint system selected from one of the following: rear-facing infant seat, booster seat, or other. *See* 49 CFR 579.4. In today's rule, we are also including definitions of rear-facing infant seat, booster seat, or other child restraint, that are consistent with those in the Early Warning Reporting Rule.

Following issuance of the Early Warning Reporting Rule, we noticed that there was an inconsistency between the definition of "rear-facing infant seat" in the preamble and the definition that appeared in the regulatory text. *See* 67 FR at 45834. The definition in the preamble included the phrase "and is designed to hold children up to 20 pounds," while the regulatory text did not. Based upon our experience in conducting defect investigations and monitoring defect recalls, our objective in the Early Warning Reporting Rule was to differentiate those child restraints that are commonly used as infant carriers outside a vehicle. Several models of this type of child restraint have been recalled based on defective handles. The definition in Section 579.4(c) could have been read to extend beyond those restraints to include convertible child restraints (*i.e.*, those that can be used both in a rear-facing position with relatively small children and in a forward-facing position with children up to about 40 pounds), which are not also used as infant carriers. We added the 20-pound limit to exclude the larger, convertible restraints. However, upon further consideration, we have concluded that the 20-pound weight limit in the preamble version is too restrictive, since some manufacturers of rear-facing, non-convertible child restraints now recommend their use with children up to 22 pounds or more.

To address these two matters, we have decided to take a different approach. The definition of "rear-facing infant seat" that we are adopting in this rule (and that we intend to adopt as part of our pending reconsideration of the Early Warning Reporting Rule) is "a child restraint system that is designed to position a child to face only in the direction opposite to the normal direction of travel of the motor vehicle." Therefore, it will not include convertible child restraints. "Booster seat" means, as defined in S4 of FMVSS No. 213, "either a backless child restraint system or a belt-positioning seat;" and "other" encompasses "all other child restraint systems not included in the first two categories."

We also believe it reasonable to allow equipment manufacturers to require that an individual seeking reimbursement for a replaced item provide proof that he or she, or a relative, owned the recalled item. For example, if the spouse or the original owner purchased the replacement, reimbursement would be required, if other conditions were met. We note that the advocacy groups supported such a condition in their comments. The filing of a registration card with the manufacturer, a copy of a registration card, or an invoice or receipt showing purchase of the recalled equipment item would be sufficient proof that the claimant had owned the item. This is addressed in section 573.13(d)(4)(vi).

D. Amount of Reimbursement

In the NPRM, we proposed requirements related to the amount of reimbursement to be provided. For vehicles, we stated that since most recalls involve repair (which could include the replacement of one or more parts), the most likely scenario would be that reimbursement will be for the costs incurred by the owner to repair or replace the component or system covered by the defect or noncompliance determination. We noted that the Act authorizes two other types of remedy for defects and noncompliances in motor vehicles—replacement and refund. Historically, these types of remedies have been extremely rare.

In the case of repair, we proposed that the amount of reimbursement could not be less than the lesser of (a) the amount actually paid by the owner for an eligible remedy, or (b) the cost of parts for an eligible remedy, labor at local labor rates, miscellaneous fees such as disposal of wastes, and taxes. The proposed rule also limited costs of parts to the manufacturer's list retail price for authorized parts. However, the proposed rule did not allow any limitation on associated costs, such as taxes or disposal of wastes. The proposed rule also stated that not all costs of repairs of vehicles would have to be reimbursed. Custom-designed replacement parts or repairs other than that related to the recall in one service visit would not be covered by the proposed rule.

In instances where a manufacturer offered a vehicle repurchase or replacement remedy, we proposed that the owner would only be eligible for reimbursement of the costs associated with the pre-notification repairs. If the owner continued to own the vehicle, he or she would also be entitled to have the vehicle repurchased or replaced under the recall. We noted that even if an individual had sold the vehicle prior to being notified of the recall, he or she would be eligible to be reimbursed for any repair costs related to the defect or noncompliance that were incurred while he or she owned the vehicle.

With regard to replacement equipment, as noted in the NPRM and above, replacement is the most common recall remedy. The amount of reimbursement ordinarily would be based upon the amount paid by the owner for the replacement item, as indicated on a receipt, up to the total of the retail price of the item, labor, if any, and taxes. The NPRM proposed that in cases in which the owner purchased a brand or model different from the equipment that was the subject of the recall, the manufacturer would be permitted to limit the amount of reimbursement to the ordinary retail price of the defective or noncompliant model that was replaced, plus taxes.

Finally, the NPRM stated that manufacturers would not be responsible to customers for reimbursement for consequential injuries and damages such as personal injuries, property damage, rental vehicles, or missed employment. The NPRM stated that the proposed rule would not affect an aggrieved party's right to bring a civil action for any consequential damages that resulted from the problem that was remedied by the owner.

We received only a few comments on the amount of reimbursement. The Alliance agreed with NHTSA's view on reimbursement for consequential injuries or damages.

NADA suggested that the rule require manufacturers to reimburse actual labor, parts, or "menu" repair costs, plus associated costs (taxes, waste disposal fees, *etc.*) incurred directly by customers to address defects or noncompliances and not allow manufacturers to place a limitation upon reimbursement. NADA further asserted that the rule should state that dealerships are entitled to reimbursement for the cost of any covered pre-announcement repairs made at no cost to the customer as a matter of dealership policy. NADA also observed that dealers should be reimbursed for any extraordinary, unbillable costs they incur directly due to pre-announcement repairs, such as special tool purchases. We agree with some of NADA's comments regarding the costs of reimbursement. We agree that a manufacturer should be required to reimburse actual labor, parts, and other repair costs, plus associated costs incurred directly by customers. We believe the final rule addresses NADA's concerns in this regard.

We disagree with NADA regarding its suggestions that under this rule dealerships should be eligible for reimbursement of pre-announcement repairs made at no cost to the customer as a matter of dealership policy and that dealers should be reimbursed for any extraordinary, unbillable costs they incur directly due to pre-announcement repairs. Section 6(b) of the TREAD Act specifically addressed reimbursing owners and purchasers, not dealers. In any event, the Act already requires that manufacturers provide fair reimbursement to dealers for providing a remedy without charge as part of a recall. 49 U.S.C. 30120(f). Reimbursement for costs made as a result of repairs done as a matter of dealership policy or any extraordinary costs incurred are matters between the dealer and the manufacturer. The final rule does not, and is not intended to, require manufacturers to reimburse dealers for costs that are a result of remedies performed as a matter of dealership policy.

Therefore, this aspect of the final rule remains essentially the same as we proposed in the NPRM. Reimbursement is required only for those costs that were reasonably related to the repairs that addressed the problem that was ultimately determined to constitute a safety-related defect or noncompliance. Manufacturers would not have to provide reimbursement for consequential injuries and damages such as personal injuries, property damages, rental vehicles, or missed employment. Again, similar to the NPRM, the final rule would not affect an aggrieved party's right to bring a civil action for any consequential damages that may arise as a result of the problem that was remedied by the owner.

E. How To Obtain Reimbursement

1. Documentation Necessary To Obtain Reimbursement

In the NPRM, we proposed that manufacturers may require a person seeking reimbursement to present documentation that shows: (1) The name and mailing address of the claimant;[2] (2) product identification information, which means (a) for vehicles, the vehicle make, model year (MY) and model as well as the vehicle identification number (VIN), (b) for replacement equipment other than tires, a description of the equipment, including model and size as appropriate, and (c) for tires, the model, size, and DOT number (TIN) of the replaced tire(s); (3) identification of the recall (either the NHTSA recall number or the manufacturer's recall number); (4) a receipt (an original or a copy) that provides the amount of reimbursement sought (for repairs, this would include a breakdown of the amounts for parts, labor, other costs and taxes; for replacements, this would include the cost of the replacement item and associated taxes; where the receipt covers work other than to address the defect or noncompliance, the manufacturer may require the claimant to separately identify the costs that are eligible for reimbursement); and (5) if the claimant seeks reimbursement for costs incurred within the warranty period, documentation to support either the denial of a repair under warranty or of the failure of a warranty repair followed by a repair at another facility. The manufacturer could provide that, to receive reimbursement, costs must be itemized by parts and labor on a receipt. *See* 66 FR 64082, 64086.

We proposed those documentation provisions in light of the objective of ensuring, reasonably effectively, that the

[2] In the discussion in the preamble of the NPRM we discussed the operation of the reimbursement plan in terms of the "owner," but in the proposed regulatory text of the NPRM we referred to reimbursement of "owners and purchasers" (*e.g.*, proposed § 573.5(c)(8)), to "owners" (*e.g.*, proposed § 573.13(d)(4)), and "claimants" (*e.g.*, proposed § 573.13(g)(2)). In today's rule, we are generally using the term "claimant," which refers to the person submitting a claim for reimbursement. We are defining a claimant as a person who seeks reimbursement for the costs of a pre-notification remedy for which he or she paid.

vehicle or equipment is covered by a recall, that the reimbursement sought is related to the defect or noncompliance and not to other expenses, that multiple claims for the same work are not presented, and that the reimbursable costs are identified. We requested comments on appropriate documentation provisions, including any reasonable provisions related to prevention of fraud. Additionally, we requested comments on whether a receipt will provide sufficient information to a manufacturer to determine if the remedy addressed the defect and whether it was reasonable, and, if not, what other information would be appropriate.

GM commented that under its current procedures it requires owners to provide the repair order, proof of payment, and proof of ownership of the vehicle at the time the repair was made. The Alliance recommended that one condition that NHTSA should consider is that the person claiming reimbursement prove that s/he was the owner of the vehicle at the time the repair cost was incurred, rather than just the owner at the time of the recall. According to the Alliance, this would prevent manufacturers from reimbursing two people for one repair. It claimed the proof required should be the receipt.

NADA added that it is reasonable for NHTSA to require that "proper receipts" support reimbursement. It also commented that there should be no provision requiring itemization of receipts because some receipts will not be itemized. We are unsure what NADA meant by "proper receipts" since it did not define the term, but we believe that it is appropriate to allow manufacturers to require itemization. If not required, the manufacturer might have to reimburse costs that were not directly related to the repair of the defect or noncompliance. If necessary, the claimant could obtain a supplemental statement from the repair or other facility.

We do not agree with comments recommending that we limit reimbursement to owners. Section 6(b) of the TREAD Act refers in part to purchasers who incurred the cost of the remedy. In general, the manufacturer should reimburse the person who paid to have the pre-notification repairs performed or who paid for a replacement. In most situations, the owner of the motor vehicle or replacement equipment will be the person who incurred the pre-notification repair or replacement costs. However, in other situations, other persons will have paid for the repair or replacement (*e.g.*, a lessee or a relative of the owner). In still other cases, the owner of a vehicle at the time of the repair will have sold it prior to the announcement of the recall.

In light of these considerations, we have decided that the approach advocated by GM and the Alliance is too restrictive in the context of vehicle recalls. The rule provides for reimbursement of claimants—those who paid for the pre-notification remedy. The rule further avoids duplicate reimbursements by not providing a separate right to owners who did not incur the cost of the remedy. In addition, we believe that for vehicles duplicate and/or fraudulent claims can be prevented by requiring the claimant to submit an invoice or receipt showing the VIN and an identification of the owner of the recalled vehicle at the time that the pre-notification remedy was obtained. Manufacturers will be able to cross check on this basis. Also, the rule provides that manufacturers are not required to provide reimbursement based on fraudulent claims. For example, if someone presents a duplicate claim or one based on a doctored receipt, the manufacturer would not be required to pay it.

Equipment items present a more difficult issue, since there is no unique VIN, and any purchaser of an equipment item similar to one that had been recalled could allege that he or she had previously owned (and discarded) a recalled item that had failed due to the defect. Therefore, consistent with the approach described in Section II.C of this notice, for equipment items we will allow manufacturers to limit reimbursement to individuals who can demonstrate that they or a relative owned the recalled item. Moreover as we discussed above, child restraints would have to be replaced with the same type of restraint.

In the context of recalled tires, RMA recommended that we require a claimant to produce an invoice or a copy of the tire registration card for the recalled tire. While these are both sufficient methods to demonstrate ownership, we believe that they are not exclusive. For example, a consumer would not have either of these documents if the tire that was replaced had been installed on his or her vehicle at the time the vehicle was purchased. Tire manufacturers could not reject valid documentation demonstrating that a claimant had replaced a recalled tire that was on a vehicle that he or she or a relative owned.

Receipts for repairs of vehicles often summarize the customer's concern or request and provide part-by-part and labor itemization. This level of detail does not appear on all repair receipts. As long as the receipt indicates that the repair addressed the problem that was addressed by the recall and the claimant can satisfy the other conditions in the reimbursement plan, reimbursement must be provided by the manufacturer.

2. Where Documents Are To Be Submitted

In the NPRM, we proposed that the documentation had to be submitted directly to the manufacturer. However, based upon our review of the comments, we have reconsidered our approach.

Manufacturers asserted that they should not be required to handle reimbursement themselves because it would be too costly. The Alliance commented that manufacturers should not be required to provide resources to handle reimbursement functions that are already being handled well at dealerships that are authorized to process the reimbursement. The Alliance recommended that the regulation permit manufacturers to manage the reimbursement program through dealers and not require manufacturers to handle the reimbursement themselves. GM concurred with the Alliance's recommendation and commented that by allowing dealers to handle reimbursement, a customer has face-to-face contact with a manufacturer's representative that can answer questions and provide information. GM stated that this method is preferable to exchanging letters or telephone calls to resolve problems as proposed in the NPRM. GM added that its system of reimbursement through dealers is quick, efficient and satisfactory to its customers. Ford echoed these comments.

On the other hand, NADA contended that the rule should provide that any manufacturer using dealers to assist with reimbursement claims should be required to reimburse those dealers for the fair and reasonable administrative costs they incur. As a general proposition, we agree that dealers should be reimbursed for such costs, but do not believe that this issue needs to be addressed in this rule, since it is already covered by 49 U.S.C. 30120(f).

The statute refers to manufacturers' reimbursement plans. Accordingly, we believe that the obligation to assure adequate reimbursement under this rule rests with manufacturers. Nonetheless, we will permit manufacturers to use franchised dealers or other authorized facilities to reimburse owners under their reimbursement plans in the final rule if the franchised dealers or other authorized facilities have agreed to do so. The costs of processing

reimbursement claims would have to be worked out between manufacturers and dealers and any other authorized entities. If the manufacturer does not have authorized dealers or facilities, it must designate the office(s) that will administer claims for reimbursement. In addition, there must be a mechanism for mailing requests for reimbursement to the manufacturer or its designee. Some people live a substantial distance from a franchised dealer or authorized facility and others cannot conveniently visit such an entity. It would not be reasonable to make them travel to a dealer to obtain reimbursement. Furthermore, manufacturers must make the reimbursement plans available to the public upon request. The final rule will reflect these changes.

3. Cut-Off Date for Reimbursement Claims

In the NPRM, we proposed to allow (but not require) manufacturers to establish a cut-off date for reimbursement claims. We identified two possible approaches. The first was based on the period during which the recall campaign is subject to quarterly reporting pursuant to 49 CFR 573.6 (2001). That section requires each manufacturer that conducts a defect or noncompliance campaign to provide a quarterly report to NHTSA for six consecutive calendar quarters beginning with the quarter in which the campaign was initiated. The second approach was to set a fixed period applicable to all recalls; e.g., 90 days after the end of the reimbursement period. Manufacturers would have to identify the deadline for the submission of claims for reimbursement in their remedy plans. We proposed that the outside end date for the submission of claims for reimbursement be 90 days from the date of the last notification letter sent to owners under Part 577, but asked for comments on whether a different period would be more appropriate.

We did not receive many comments on this particular condition. JPMA asserted that the cut-off date after which a consumer cannot obtain reimbursement should be shortened from 90 days until 45 or 60 days. JPMA claimed that a manufacturer needed to "close the books" on the reimbursement process. NADA suggested that the time for submitting claims should be limited only by the ten-year/five-year limitation set out in 49 U.S.C. 30120(g). The advocacy groups agreed with NADA. However, section 30120(g) has no relevance to this issue; it applies retrospectively from the date of the defect or noncompliance determination, and has no applicability to future events.

Ford and GM did not suggest a specific cut-off date, but implied that they did not restrict reimbursement on the basis of when a claim was submitted.

Based upon these comments, we have reconsidered our position. We believe a claim for reimbursement should be treated the same as a claim for a free remedy under a recall. Under the Safety Act, once a recall is announced, an owner is entitled to a free remedy. He or she is not required to submit his vehicle or replacement equipment to the manufacturer's franchised dealer or authorized facility within 90 days in order to receive the free remedy. Moreover, at least two major vehicle manufacturers do not currently impose any such limits. Therefore, under today's final rule, manufacturers will not be allowed to establish a cut-off date for the submission of reimbursement claims.

4. When and How a Claimant Receives Reimbursement

In the NPRM, we proposed to require manufacturers to act upon reimbursement claims within a reasonable time from the date a complete claim is submitted. We proposed a period of 60 days and said the manufacturer must either grant or deny the claim for reimbursement within that period.

We also suggested reasonable times for notification by manufacturers that claims were incomplete. We proposed that in the event that a manufacturer receives a claim for reimbursement for a pre-notification remedy that contains deficient documentation, the manufacturer would be required to advise the claimant within 30 days that his or her claim is deficient, provide an explanation of the documents that are needed to make the claim complete, and state that such supplemental documents must be submitted within an additional 30 days. We proposed that if the claimant did not provide the required information within that 30-day period, the manufacturer could deny the claim.

We also proposed that if the manufacturer determines that a claim for reimbursement will not be paid in full, it must clearly advise the claimant, in plain language, of the reasons for the denial.

The comments focused on increasing the time period manufacturers have in responding to a deficient reimbursement claim. MEMA and OESA, the Alliance, GM and Delphi suggested that the 30-day deficiency notice and claimant resubmission periods in the proposed rule should both be increased to 60 days to provide both consumers and manufacturers reasonable time to act on such deficient claims for reimbursement. Based upon the comments, we are extending the 30-day periods proposed in the NPRM to 60 days.

RMA suggested that the manufacturer's time to act upon a request for reimbursement should begin after the manufacturer received the claim, rather than from the date the claimant mailed the claim. The NPRM used the term "submitted." We had meant for that term to refer to the date the claim was received by the manufacturer, and we will clarify that in the final rule.

Although the NPRM did not explicitly discuss the form that reimbursement must take, we are adding a clarifying provision to require manufacturers to provide reimbursement in the form of a check or cash from the manufacturer's office, authorized dealer, or facility that is designated by the manufacturer to administer the reimbursement plan.

F. Owner Notification

We stated in the NPRM, and continue to believe, that the inclusion of a reimbursement plan in a manufacturer's remedy program would have little effect unless consumers were aware of their right to obtain such reimbursement. We proposed to require manufacturers to include information about the availability of reimbursement for the costs of pre-notification remedies in the notification to owners required under 49 CFR part 577 and identified several possible approaches. One approach was to require manufacturers to include a copy of the complete plan in each notification sent to owners. A second approach was to require manufacturers to describe their reimbursement plans using their own language, and a third approach would require particular language that manufacturers would have to use in their owner notifications.

Letters from manufacturers to owners of defective or noncompliant vehicles and equipment emphasize the importance of remedying their vehicle or equipment. It is important that owners are not distracted from this central objective. We were concerned that a great deal of detail regarding reimbursement in the main body of the owner notification could obscure the safety-critical information about the defect or noncompliance itself. Moreover, as a practical matter, the reimbursement provision would be irrelevant to most recipients because only a small fraction of consumers would have expended funds for repair

or replacement of the recalled product. Thus, we proposed that the owner notification letter contain a limited amount of information regarding the manufacturer's reimbursement plan. The notification would have to explain that reimbursement was available, specify the reimbursement period, and identify ways that consumers could timely obtain information about the reimbursement program.

To assure that manufacturers' reimbursement plans were available to owners, we proposed that the notification would have to identify an Internet Web site address maintained by the manufacturer where the plan applicable to the recall in question was to be found, and would have to state that the plan could be obtained by calling the manufacturer at a specified (toll-free) telephone number or by writing to the manufacturer at a specified address. (We also proposed to require each manufacturer to specify the date by which the owner would have to request the plan in order to receive it in time to complete the claim for reimbursement in a timely manner, but this issue is now moot, since we have decided to prohibit manufacturers from limiting the period in which reimbursement claims may be filed.)

We requested comments on whether this proposal provided owners with adequate information about the possibility of reimbursement for the cost of pre-recall remedies, and whether the proposal could be improved. We also sought comment on whether this or the other identified approaches were reasonable ways to advise owners of the possible availability of and requirements for reimbursement; *i.e.*, would the reader understand how to obtain reimbursement? We also sought comments concerning alternatives that might be preferable to those approaches identified in the NPRM with the reasons for, and information relating to, any alternatives. Finally, we sought comments on whether a Web site and a toll-free telephone number would provide consumers with sufficient, clear information.

The majority of commenters (the Alliance, GM, Ford, MEMA & OESA, and JPMA) disagreed with the "boilerplate" language we proposed for the Part 577 notifications. They argued that the language we proposed is difficult to read and stylistically inconsistent with many manufacturers' Part 577 notifications. GM also argued that notification regarding possible reimbursement is unnecessary for many recalls, such as label errors, noncompliances that can only be detected with measuring devices or disassembly of the vehicle, and safety defects or noncompliances that have no effect other than on occupant protection in a crash. GM alleged that in these types of recalls, an owner would be confused by a letter that has information regarding reimbursement when, in fact, reimbursement was not available.

In addition, the Alliance and GM observed that, pursuant to 49 CFR 573.5(c)(10) (2001), NHTSA has the opportunity to review every Part 577 owner notification before it is mailed to owners and to require appropriate modifications to the language. They argued that NHTSA can decide if a manufacturer's notification needs to include language regarding reimbursement and whether the language proposed by the manufacturer is adequate. The Alliance commented that "one-size fits all" language would not work because the owner notification should be tailored to the facts of each recall. Thus, they suggested that, as with other aspects of owner notification, language regarding reimbursement should be developed by the manufacturer, subject to NHTSA review.

Ford was the only commenter that provided a specific alternative to the NPRM's proposed Part 577 language. Ford contended that the proposed language would confuse many customers because it had a "readability" index at a 12th grade level. As an alternative, Ford recommended the following:

> If you paid to have this service done *before* the date of this letter, Ford is offering a full refund. For the refund, please give your paid original receipt to your dealer. To avoid delays, do not send receipts to Ford Motor Company.

Ford claimed that its recommendation has a readability index of the 6th or 7th grade and would be easier to understand than NHTSA's proposed language. Ford also asserted that an owner could obtain the manufacturer's complete reimbursement plan from an authorized dealer. Ford also suggested that rather than specifying language that must be included in owner letters, the final rule list the types of information that must be included. It noted that in cases where it is appropriate to include language about reimbursement, ODI can review the manufacturer's draft owner letter pursuant to section 573.5(c)(10).

Based upon our consideration of the comments, and our experience in reviewing manufacturers' owner notifications under section 573.5(c)(10) (recently renumbered as section 573.6(c)(10)), we are making some adjustments to our proposal. *See* 49 CFR 577.11. First, we have decided that manufacturers will not be required to include any reference to reimbursement in owner notifications for recalls where there is no reasonable possibility that anyone would be eligible for reimbursement. As suggested by GM, these include recalls to correct labeling errors. However, we do not agree with GM's suggestion to exclude recalls involving occupant protection in crashes, since owners may well replace defective components that perform that function, such as seat belt retractors and buckles and air bags. In addition, we are not adopting GM's suggestion to exclude all recalls that address noncompliances that can only be detected with a measuring device or disassembly of the vehicle. GM's comment is conclusory and does not explain the range of noncompliances that would be covered by its recommendation. Moreover, while it may not be possible to prove the existence of a noncompliance with a FMVSS without testing using a measuring device, it may be possible to sense an irregular condition that the owner may decide to remedy. The owner should be reimbursed if it turns out that a part or system that was replaced or repaired did not comply with a standard.

Second, we will not require vehicle manufacturers to refer to reimbursement in an owner notification if we conclude that all of the vehicles covered by the recall are clearly covered by a manufacturer's original warranty. For example, if a manufacturer offers a three year/36,000 mile warranty on a particular vehicle model, and that model is the subject of a recall that commences one month after the first covered vehicle was manufactured, one would expect that all of the recalled vehicles would still be covered by the manufacturer's warranty, so the manufacturer would not have to provide any reimbursement under this rule (except under extraordinary circumstances in which a repair under warranty was refused or inadequate). However, if some of the vehicles were two years old at the time a defect is determined to exist, the owner notification would have to include reimbursement language, since it is likely that at least some two-year-old vehicles would have been driven over 36,000 miles. (We have decided that if it is likely that any of the vehicles covered by the recall would be outside the manufacturer's warranty coverage, all owners would have to be advised of the potential for reimbursement, since it would be too difficult to administer a system in which different owners received different letters, and such a scenario could lead to consumer confusion.)

For those recalls where there is a reasonable possibility that some consumers will be entitled to reimbursement, the main body of the owner notification must include a concise reference to the right to reimbursement for the cost of repair or replacement, along with a description of where consumers who believe they may be entitled to such reimbursement can obtain further information about reimbursement. However, if a manufacturer has information leads it to believe that no individual would be eligible to receive reimbursement in connection with a particular recall (for example, if the recall involved a noncompliance or a defect that could not have been remedied prior to the manufacturer's recall campaign because there was no repair or replacement available), it may request us, in writing, to exempt it from notifying the public of the possibility of reimbursement. Such a request would have to be submitted at or before the time the manufacturer provides us with a draft of its owner notification letter pursuant to section 573.6(c)(10), together with supporting information, views, and arguments. If we find that no one would be eligible for reimbursement under this rule, the notification provisions of section 577.11 would not apply. This is addressed in section 577.11(e).

Rather than require all manufacturers to utilize identical language, we will allow each manufacturer to use its own words, subject to our review. This process has worked with respect to other aspects of owner notifications, which we review under section 573.6(c)(10), and we believe it that it will work in the reimbursement context as well. We are amending section 573.6(c)(10) to explicitly require that the manufacturer submit reimbursement provisions, including attachments, for NHTSA's review under that section. However, if a manufacturer submits a notice that does not meet the requirements of today's rule and NHTSA's staff does not note the deficiency in their review, a manufacturer may not subsequently attempt to justify the failure on the basis that it relied on the agency review.

With respect to our proposal regarding how supplemental information would be made available, several manufacturers (the Alliance, GM, Ford, MEMA and OESA) opposed our proposal to require information about reimbursement on a special website and through a toll-free telephone number. They argued that such requirements would increase costs due to the set up, monitoring, and staffing of these services. The Alliance argued that NHTSA should not mandate that a manufacturer host a special website since NHTSA's regulations now allow individual manufacturers to decide how to conduct a recall (except for a limited amount of required language in the Part 577 letter). Furthermore, the Alliance claimed that NHTSA did not provide justification for such a requirement, nor did it provide any estimated costs involved in setting up and maintaining a website and toll-free telephone line. In addition, MEMA and OESA noted that some small manufacturers do not have toll-free numbers or even an Internet presence and suggested that this be optional.

Based on these comments, we are not at this time requiring manufacturers to maintain information about reimbursement on an Internet Web site. Rather, we are allowing two options. First, a manufacturer may utilize a toll-free telephone number (with or without a corresponding Internet Web site) through which consumers could obtain the needed information. There would have to be TTY capability for the use of hearing-impaired consumers. Alternatively, the manufacturer could include a separate enclosure with its owner notification letter that would set forth all of the required information.

For notifications of equipment recalls that are in a form other than a letter to a specific owner or purchaser (*e.g.*, a placard in a retail outlet or an advertisement in a magazine), the manufacturer would not be able to utilize the second option. However, to avoid imposing a significant financial burden on those small manufacturers of motor vehicle equipment that do not otherwise maintain a toll-free telephone number for the use of consumers, we have decided that public (non-letter) notifications by such manufacturers may refer consumers to a regular (non-toll-free) telephone number with TTY capability, as long as they also specify a mailing address at which owners can obtain the relevant supplemental information.

The supplemental information must describe all of the relevant components of the manufacturer's reimbursement plan, as specified in today's final rule. Thus, it must identify the vehicles and equipment covered by the recall, identify the type of remedy eligible for reimbursement, identify any limits on the period in which the repair or replacement must have occurred, identify any restrictions on eligibility that the manufacturer is imposing, specify all necessary documentation that must be submitted, and explain how to and where to submit or mail a claim. This is consistent with some manufacturers' practices. For example, we have placed in the docket for this rulemaking a document that Mazda Motor Corporation utilized in a recent campaign that describes its reimbursement plan.

G. General Plans for Reimbursement

In the NPRM, we proposed to allow manufacturers to submit to the agency one or more general reimbursement plans that could be incorporated by reference into any recalls associated with their products, rather than submitting a separate reimbursement plan for each recall. The reimbursement plan would remain on file with the agency and be available to consumers for their review. We also proposed that the manufacturer would have to update such plans at least every two years to provide the agency consumers with current information.

GM suggested that NHTSA permit manufacturers to submit reimbursement plans in advance and then to include information about approved plans in owner's manuals or warranty documents GM provides to its customers. In GM's view, owner notification would be simpler under this approach because the letter would simply refer the owner to his or her owner's manual or warranty documents.

Based on those comments, we have concluded that manufacturers will have the option of filing a general reimbursement plan with the agency every two years rather than submitting a plan with each Part 573 report. The general reimbursement plan must set forth the general procedures for reimbursement. Information specific to a particular recall (*e.g.*, any cut-off dates established by the manufacturer) would be submitted with the Part 573 report.

We are not requiring manufacturers to incorporate the general reimbursement plan in each vehicle's owner's manual or in warranty papers, but they have the option of doing so.

H. Nonapplication

In the NPRM, we proposed that to be consistent with the statutory limitation found in 49 U.S.C. 30120(g), the requirement that reimbursement for a pre-notification remedy be provided to an owner does not apply if, in the case of a motor vehicle or replacement equipment, it was bought by the first purchaser more than 10 calendar years, or in the case of a tire, including an original equipment tire, it was bought by the first purchaser more than 5 calendar years, before notice is given under 49 U.S.C. 30118(c) or an order is

issued under section 49 U.S.C. 30118(b). We did not receive any comments on this proposal and accordingly adopt it in the final rule.

I. Effective Date

Although the NPRM did not propose a date after the final rule was published, GM contended that, unless "major changes" are made to the rule, it estimates it would require six months to make the necessary preparations. However, GM did not provide an explanation on what constituted "major changes." From GM's other comments, we infer "major changes" to mean that NHTSA permit manufacturers to utilize their franchised dealers for the reimbursement process. We do not believe that six months is necessary. GM already has a reimbursement program. Moreover, GM has recognized in its comments that reimbursement plans would not be required for most recalls because they are within the warranty period.

This rule does not impose significant new administrative burdens. It allows manufacturers flexibility to utilize their dealers to process reimbursement claims. In addition, manufacturers have options in notifying consumers and will not have to set up any Internet Web sites. Nevertheless, we have decided to provide a somewhat longer period than we proposed in the NPRM. The rule will become effective 90 days after its publication in the **Federal Register** and will apply to all recalls for which Part 573 reports are submitted to the agency after that date.

IV. Regulatory Analyses

A. Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993) provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines as "significant action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal government or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this final rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking was not reviewed under E.O. 12866, "Regulatory Planning and Review." This rulemaking is not considered "significant" under the Department of Transportation's regulatory policies and procedures. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation because this provision only involves reimbursement of eligible expenses to owners who paid to remedy a defect or noncompliance prior to the recall notification.

We estimate that the additional economic impact of this rule upon manufacturers will be small. First, although we cannot precisely estimate the number of owners who have made recall-related repairs prior to a manufacturer's defect or noncompliance determination, we believe the number is relatively small. One indicator would be the number of complaints received by the manufacturer. Our review of a sample of Part 573 reports for uninfluenced recalls from the past year indicates that manufacturers generally have not received many complaints from owners about the problem prior to making a defect determination, and rarely, if ever, do they receive complaints prior to a noncompliance determination. Second, most manufacturers already provide voluntary reimbursement for pre-recall repairs, at least under some circumstances.

Generally, vehicle manufacturers offer a warranty program that covers at least 36 months or 36,000 miles. History indicates that most recalls occur within the period of coverage under warranty programs. In 2000, vehicle manufacturers conducted 476 recalls. Of these, only 102 (approximately 20%) occurred more than 36 months after the date the oldest covered vehicle was sold. And in almost all of those recalls, only a small number of the covered vehicles were outside the warranty period (based on the number of months following sale at the time of the determination). For 2001, the relevant numbers were 411 and 104, or approximately 25 percent.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Business entities are defined as small by standard industry classification for the purposes of receiving Small Business Administration (SBA) assistance.

We have considered the impacts of this notice under the Regulatory Flexibility Act. For the reasons discussed above under E.O. 12866 and the DOT Policies and Procedures, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation because this provision only involves motor vehicle and equipment manufacturers that have submitted defect or noncompliance reports. The majority of recalls are not initiated by small entities. The primary impact of this rule will be felt by the major vehicle manufacturers. Even this impact will be minor since it only involves owners of vehicles and motor vehicle equipment who have paid to remedy a defect or noncompliance prior to recall in a manner that warrants reimbursement under the rule. This number is expected to be small for the reasons stated in the prior section of this notice.

C. National Environmental Policy Act

We have analyzed this proposal under the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

D. Paperwork Reduction Act

NHTSA has determined that this proposed rule will impose new collection of information burdens within meaning of the Paperwork Reduction Act of 1995 (PRA). We are preparing a notice for publication in the **Federal Register** requesting public comment on our estimate of those burdens.

E. Executive Order 13132 (Federalism)

Executive Order 13132 on "Federalism" requires us to develop an accountable process to ensure "meaningful and timely input" by State and local officials in the development of "regulatory policies that have federalism implications." The E.O. defines this phrase to include regulations "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule, which would require that manufacturers include a reimbursement plan in their remedy program for owners who have remedied a defect or noncompliance prior to a recall notification under either section 30118(b) or 30118(c) of the Safety Act, will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132. This rulemaking does not have those implications because it applies only to manufacturers who are required to file a remedy plan under sections 30118(b) or 30118(c), and not to the States or local governments.

F. Civil Justice Reform

This final rule would not have a retroactive or preemptive effect. Judicial review of the rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribunal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule would not have a $100 million annual effect, no Unfunded Mandates assessment is necessary and one will not be prepared.

H. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

We believe that this final rule meets the requirements of E.O. 12866 regarding plain language.

List of Subjects in 49 CFR Parts 573 and 577

Motor vehicle safety, defect, noncompliance, tire, reimbursement, reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA amends 49 CFR parts 573 and 577 as set forth below.

PART 573—DEFECT AND NONCOMPLIANCE REPORTS

1. The authority citation for part 573 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

2–3. Section 573.6 is amended by revising paragraphs (c)(7), (c)(8)(i), and (c)(10) to read as follows:

§ 573.6 Defect and noncompliance information report.

* * * * *

(c) * * *

(7) In the case of a noncompliance, the test results and other information that the manufacturer considered in determining the existence of the noncompliance. The manufacturer shall identify the date of each test and observation that indicated that a noncompliance might or did exist.

(8)(i) A description of the manufacturer's program for remedying the defect or noncompliance. This program shall include a plan for reimbursing an owner or purchaser who incurred costs to obtain a remedy for the problem addressed by the recall within a reasonable time in advance of the manufacturer's notification of owners, purchasers and dealers, in accordance with § 573.13 of this part. A manufacturer's plan may incorporate by reference a general reimbursement plan it previously submitted to NHTSA, together with information specific to the individual recall. Information required by § 573.13 that is not in a general reimbursement plan shall be submitted in the manufacturer's report to NHTSA under this section. If a manufacturer submits one or more general reimbursement plans, the manufacturer shall update each plan every two years, in accordance with § 573.13. The manufacturer's remedy program and reimbursement plans will be available for inspection by the public at NHTSA headquarters.

* * * * *

(10) Except as authorized by the Administrator, the manufacturer shall submit a copy of its proposed owner notification letter, including any provisions and attachments related to reimbursement, to the Office of Defects Investigation ("ODI") no fewer than five Federal Government business days before it intends to begin mailing it to owners. Submission shall be made by any means which permits the manufacturer to verify promptly that the copy of the proposed letter was in fact received by ODI and the date it was received by ODI.

* * * * *

4. Section 573.13 is added to read as follows:

§ 573.13 Reimbursement for pre-notification remedies.

(a) Pursuant to 49 U.S.C. 30120(d) and § 573.6(c)(8)(i) of this part, this section specifies requirements for a manufacturer's plan (including general reimbursement plans submitted pursuant to § 573.6(c)(8)(i)) to reimburse owners and purchasers for costs incurred for remedies in advance of the manufacturer's notification of safety-related defects and noncompliance with Federal motor vehicle safety standards under subsection (b) or (c) of 49 U.S.C. 30118.

(b) Definitions. The following definitions apply to this section:

(1) *Booster seat* means either a backless child restraint system or a belt-positioning seat.

(2) *Claimant means* a person who seeks reimbursement for the costs of a pre-notification remedy for which he or she paid.

(3) *Pre-notification remedy* means a remedy that is performed on a motor vehicle or item of replacement equipment for a problem subsequently addressed by a notification under subsection (b) or (c) of 49 U.S.C. 30118 and that is obtained during the period for reimbursement specified in paragraph (c) of this section.

(4) *Other child restraint system* means all child restraint systems as defined in 49 CFR 571.213 S4 not included within the categories of rear-facing infant seat or booster seat.

(5) *Rear-facing infant seat* means a child restraint system that is designed to position a child to face only in the direction opposite to the normal direction of travel of the motor vehicle.

(6) *Warranty* means a warranty as defined in § 57 4(c) of this chapter.

(c) The manufacturer's plan shall specify a period for reimbursement, as follows:

(1) The beginning date shall be no later than a date based on the underlying basis for the recall determined as follows:

(i) For a noncompliance with a Federal motor vehicle safety standard, the date shall be the date of the first test or observation by either NHTSA or the manufacturer indicating that a noncompliance may exist.

(ii) For a safety-related defect that is determined to exist following the opening of an Engineering Analysis (EA) by NHTSA's Office of Defects Investigation (ODI), the date shall be the date the EA was opened, or one year before the date of the manufacturer's notification to NHTSA pursuant to § 573.6 of this part, whichever is earlier.

(iii) For a safety-related defect that is determined to exist in the absence of the opening of an EA, the date shall be one year before the date of the manufacturer's notification to NHTSA pursuant to § 573.6 of this part.

(2) The ending date shall be no earlier than:

(i) For motor vehicles, 10 calendar days after the date on which the manufacturer mailed the last of its notifications to owners pursuant to part 577 of this chapter.

(ii) For replacement equipment, 10 calendar days after the date on which the manufacturer mailed the last of its notifications to owners pursuant to part 577 of this chapter (where applicable) or 30 days after the conclusion of the manufacturer's initial efforts to provide public notice of the existence of the defect or noncompliance pursuant to § 577.7, whichever is later.

(d) The manufacturer's plan shall provide for reimbursement of costs for pre-notification remedies, subject to the conditions established in the plan. The following conditions and no others may be established in the plan.

(1) The plan may exclude reimbursement for costs incurred within the period during which the manufacturer's original or extended warranty would have provided for a free repair of the problem addressed by the recall, without any payment by the consumer unless a franchised dealer or authorized representative of the manufacturer denied warranty coverage or the repair made under warranty did not remedy the problem addressed by the recall. The exclusion based on an extended warranty may be applied only when the manufacturer provided written notice of the terms of the extended warranty to owners.

(2) (i) For a motor vehicle, the plan may exclude reimbursement:

(A) If the pre-notification remedy was not of the same type (repair, replacement, or refund of purchase price) as the recall remedy;

(B) If the pre-notification remedy did not address the defect or noncompliance that led to the recall or a manifestation of the defect or noncompliance; or

(C) If the pre-notification remedy was not reasonably necessary to correct the defect or noncompliance that led to the recall or a manifestation of the defect or noncompliance.

(ii) However, the plan may not require that the pre-notification remedy be identical to the remedy elected by the manufacturer pursuant to 49 U.S.C. 30120(a)(1)(A).

(3)(i) For replacement equipment, the plan may exclude reimbursement:

(A) If the pre-notification remedy did not address the defect or noncompliance that led to the recall or a manifestation of the defect or noncompliance;

(B) If the pre-notification remedy was not reasonably necessary to correct the defect or noncompliance that led to the recall or a manifestation of the defect and noncompliance; or

(C) In the case of a child restraint system that was replaced, if the replacement child restraint is not the same type (*i.e.*, rear-facing infant seat, booster seat, or other child restraint system) as the restraint that was the subject of the recall.

(ii) However, the plan may not require that the pre-notification remedy be identical to the remedy elected by the manufacturer pursuant to 49 U.S.C. 30120(a)(1)(B).

(4) The plan may exclude reimbursement if the claimant did not submit adequate documentation to the manufacturer at an address or location designated pursuant to § 573.13(f). The plan may require, at most, that the following documentation be submitted:

(i) Name and mailing address of the claimant;

(ii) Identification of the product that was recalled:

(A) For motor vehicles, the vehicle make, model, model year, and vehicle identification number of the vehicle;

(B) For replacement equipment other than child restraint systems and tires, a description of the equipment, including model and size as appropriate;

(C) For child restraint systems, a description of the restraint, including the type (rear-facing infant seat, booster seat, or other child restraint system) and the model; or

(D) For tires, the model and size;

(iii) Identification of the recall (either the NHTSA recall number or the manufacturer's recall number);

(iv) Identification of the owner or purchaser of the recalled motor vehicle or replacement equipment at the time that the pre-notification remedy was obtained;

(v) A receipt for the pre-notification remedy, which may be an original or copy:

(A) If the reimbursement sought is for a repair, the manufacturer may require that the receipt indicate that the repair addressed the defect or noncompliance that led to the recall or a manifestation of the defect or noncompliance, and state the total amount paid for the repair of that problem. Itemization of a receipt of the amount for parts, labor, other costs and taxes, may not be required unless it is unclear on the face of the receipt that the repair for which reimbursement is sought addressed only the pre-notification remedy relating to the pertinent defect or noncompliance or manifestation thereof.

(B) If the reimbursement sought is for the replacement of a vehicle part or an item of replacement equipment, the manufacturer may require that the receipt identify the item and state the total amount paid for the item that replaced the defective or noncompliant item;

(vi) In the case of items of replacement equipment that were replaced, documentation that the claimant or a relative thereof (with relationship stated) owned the recalled item. Such documentation could consist of:

(A) An invoice or receipt showing purchase of the recalled item of replacement equipment;

(B) If the claimant sent a registration card for a recalled child restraint system or tire to the manufacturer, a statement to that effect;

(C) A copy of the registration card for the recalled child restraint system or tire; or

(D) Documentation demonstrating that the claimant had replaced a recalled tire that was on a vehicle that he, she, or a relative owned; and

(vii) If the pre-notification remedy was obtained at a time when the vehicle or equipment could have been repaired or replaced at no charge under a manufacturer's original or extended warranty program, documentation indicating that the manufacturer's dealer or authorized facility either refused to remedy the problem addressed by the recall under the warranty or that the warranty repair did not correct the problem addressed by the recall.

(e) The manufacturer's plan shall specify the amount of costs to be reimbursed for a pre-notification remedy.

(1) For motor vehicles:

(i) The amount of reimbursement shall not be less than the lesser of:

(A) The amount paid by the owner for the remedy, or

(B) The cost of parts for the remedy, plus associated labor at local labor rates, miscellaneous fees such as disposal of waste, and taxes. Costs for parts may be limited to the manufacturer's list retail price for authorized parts.

(ii) Any associated costs, including, but not limited to, taxes or disposal of wastes, may not be limited.

(2) For replacement equipment:

(i) The amount of reimbursement ordinarily would be the amount paid by the owner for the replacement item.

(ii) In cases in which the owner purchased a brand or model different from the item of motor vehicle equipment that was the subject of the recall, the manufacturer may limit the amount of reimbursement to the retail list price of the defective or noncompliant item that was replaced, plus taxes.

(iii) If the item of motor vehicle equipment was repaired, the provisions of paragraph (e)(1) of this section apply.

(f) The manufacturer's plan shall identify an address to which claimants may mail reimbursement clams and may identify franchised dealer(s) and authorized facilities to which claims for reimbursement may be submitted directly.

(g) The manufacturer (either directly or through its designated dealer or facility) shall act upon requests for reimbursement as follows:

(1) The manufacturer shall act upon a claim for reimbursement within 60 days of its receipt. If the manufacturer denies the claim, the manufacturer must send a notice to the claimant within 60 days of receipt of the claim that includes a clear, concise statement of the reasons for the denial.

(2) If a claim for reimbursement is incomplete when originally submitted, the manufacturer shall advise the claimant within 60 days of receipt of the claim of the documentation that is needed and offer an opportunity to resubmit the claim with complete documentation.

(h) Reimbursement shall be in the form of a check or cash from the manufacturer or a designated dealer or facility.

(i) The manufacturer shall make its reimbursement plan available to the public upon request.

(j) Any disputes over the denial in whole or in part of a claim for reimbursement shall be resolved between the claimant and the manufacturer. NHTSA will not mediate or resolve any disputes regarding eligibility for, or the amount of, reimbursement.

(k) Each manufacturer shall implement each plan for reimbursement in accordance with this section and the terms of the plan.

(l) Nothing in this section requires that a manufacturer provide reimbursement in connection with a fraudulent claim for reimbursement.

(m) A manufacturer's plan may provide that it will not apply to recalls based solely on noncompliant or defective labels.

(n) The requirement that reimbursement for a pre-notification remedy be provided to an owner does not apply if, in the case of a motor vehicle or replacement equipment other than a tire, it was bought by the first purchaser more than 10 calendar years before notice is given under 49 U.S.C. 30118(c) or an order is issued under section 49 U.S.C. 30118(b). In the case of a tire, this period shall be 5 calendar years.

PART 577—DEFECT AND NONCOMPLIANCE NOTIFICATION

1. The authority citation for Part 577 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

2. Part 577 is amended by adding § 577.11 to read as follows:

§ 577.11 Reimbursement notification.

(a) Except as otherwise provided in paragraph (e) of this section, when a manufacturer of motor vehicles or replacement equipment is required to provide notice in accordance with §§ 577.5 or 577.6, in addition to complying with other sections of this part, the manufacturer shall notify owners that they may be eligible to receive reimbursement for the cost of obtaining a pre-notification remedy of a problem associated with a defect or noncompliance consistent with the manufacturer's reimbursement plan submitted to NHTSA pursuant to §§ 573.6(c)(8)(i) and 573.13 of this chapter.

(b) The manufacturer's notification shall include a statement, following the items required by § 577.5 or § 577.6, that

(1) Refers to the possible eligibility for reimbursement for the cost of repair or replacement; and

(2) Describes how a consumer may obtain information about reimbursement from the manufacturer;

(c) The information referred to in § 577.11(b)(2) of this part shall be provided in one of the following ways:

(1) In an enclosure to the notification under § 577.5 or § 577.6 that provides the information described in § 577.11(d), consistent with the manufacturer's reimbursement plan; or

(2) Through a toll-free telephone number (with TTY capability) identified in the notification that provides the information described in § 577.11(d), consistent with the manufacturer's reimbursement plan.

(3) For notifications of defects or noncompliances in item of motor vehicle equipment that are in a form other than a letter to a specific owner or purchaser, if the manufacturer does not otherwise maintain a toll-free telephone number for the use of consumers, the manufacturer may refer claimants to a non-toll-free telephone number (with TTY capability) if it also specifies a mailing address at which owners can obtain the relevant information regarding the manufacturer's reimbursement plan.

(d) The information to be provided under paragraph (c) of this section must:

(1) Identify the vehicle and/or equipment that is the subject of the recall and the underlying problem;

(2) State that the manufacturer has a program for reimbursing pre-notification remedies and identify the type of remedy eligible for reimbursement;

(3) Identify any limits on the time period in which the repair or replacement of the recalled vehicle or equipment must have occurred;

(4) Identify any restrictions on eligibility for reimbursement that the manufacturer is imposing (as limited by § 573.13 (d) of this chapter);

(5) Specify all necessary documentation that must be submitted to obtain reimbursement;

(6) Explain how to submit a claim for reimbursement of a pre-notification remedy; and

(7) Identify the office and address of the manufacturer where a claim can be submitted by mail and any authorized dealers or facilities where a claimant may submit a claim for reimbursement.

(e) The manufacturer is not required to provide notification regarding reimbursement under this section if NHTSA finds, based upon a written request by a manufacturer accompanied by supporting information, views, and arguments, that all covered vehicles are under warranty or that no person would be eligible for reimbursement under § 573.13 of this chapter.

Issued on: October 8, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–26290 Filed 10–16–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 101102A]

Fisheries of the Economic Exclusive Zone Off Alaska; Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA), except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the 2002 Pacific halibut prohibited species catch (PSC) limit specified for trawl gear in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 13, 2002, until 1200 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, or *mary.furuness@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut PSC limit for vessels using trawl gear was established as 2,000 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002, and 67 FR 34860, May 16, 2002). The Administrator, Alaska Region, has determined, in accordance with § 679.21(d)(7)(i), that vessels engaged in directed fishing for groundfish with trawl gear in the GOA have caught the 2002 Pacific halibut PSC limit. Therefore, NMFS is closing the directed fishery for groundfish by vessels using trawl gear in the GOA, except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2002 halibut bycatch allowance specified for trawl gear in the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 11, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–26423 Filed 10–11–02; 4:26 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 201
Thursday, October 17, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB24

Labor Certification and Petition Process for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Modification of Fee Structure; Withdrawal of Proposed Rule; Correction

AGENCY: Employment and Training Administration.

ACTION: Withdrawal of proposed rule; correction.

SUMMARY: This document corrects the proposed rule withdrawal document which was published Thursday, September 24, 2002, (67 FR 59797), concerning the temporary employment of nonimmigrant farmworkers.

DATE: The proposed rule was withdrawn as of September 24, 2002.

FOR FURTHER INFORMATION CONTACT: Charlene G. Giles, (202) 693–2950 (not a toll-free call).

SUPPLEMENTARY INFORMATION: In FR proposed rule document 02–24190 beginning on page 59797 in the issue of Tuesday, September 24, 2002, make the following corrections: On page 59797 in the first column, the **Federal Register** publication date was listed as July 13, 2001 due to a typographical error. The date should be changed to read July 13, 2000.

Signed at Washington DC, this 9th day of October 2002.

Emily Stover DeRocco,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 02–26382 Filed 10–16–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 31 and 301

[REG–116644–01]

RIN 1545–BA18

Receipt of Multiple Notices With Respect to Incorrect Taxpayer Identification Numbers; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations under sections 3406 and 6724 of the Internal Revenue Code. The proposed regulations clarify the method of determining whether the payor has received two notices that a payee's taxpayer identification number (TIN) is incorrect.

DATES: The public hearing originally scheduled for October 22, 2002, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Treena Garrett of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on July 3, 2002, (67 FR 44579), announced that a public hearing was scheduled for October 22, 2002, at 10 a.m., in room 4718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under sections 3406 and 6724 of the Internal Revenue Code. The public comment period for these proposed regulations expired on October 1, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of October 10, 2002, no one has requested to speak. Therefore, the public hearing scheduled for October 22, 2002, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–26451 Filed 10–16–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA36

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement That Insurance Companies Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains an amendment to the regulations implementing the statute generally referred to as the Bank Secrecy Act. The amendment requires insurance companies to report suspicious transactions to the Department of the Treasury. The amendment constitutes a further step in the creation of a comprehensive system for the reporting of suspicious transactions by the major categories of financial institutions operating in the United States, as a part of the counter-money laundering program of the Department of the Treasury.

DATES: Written comments on all aspects of the proposal are welcome and must be received on or before December 16, 2002. *See* the Proposed Effective Date heading of the **SUPPLEMENTARY INFORMATION** for further dates.

ADDRESSES: Commenters are encouraged to submit comments by electronic mail because paper mail in the Washington, DC area may be delayed. Comments submitted by electronic mail may be sent to *regcomments@fincen.treas.gov* with the caption in the body of the text, "ATTN: Section 352—Insurance Company Regulations." Comments (preferably an original and four copies) also may be submitted by paper mail to FinCEN, P.O. Box 39, Vienna, VA 22183, ATTN: Section 352—Insurance Company Regulations. Comments

should be sent by one method only. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of Compliance and Regulatory Enforcement, FinCEN, (202) 354–6400; and Office of Chief Counsel, FinCEN, at (703) 905–3590 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

The Bank Secrecy Act (BSA), Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311 *et seq.*) appear at 31 CFR part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

With the enactment of 31 U.S.C. 5318(g) in 1992,[2] Congress authorized the Secretary of the Treasury to require financial institutions to report suspicious transactions. As amended by the USA Patriot Act, subsection (g)(1) states generally:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2)(A) provides further that

> [i]f a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency—
>
> (i) the financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and
>
> (ii) no officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

Subsection (g)(3)(A) provides that neither a financial institution, nor any director, officer, employee, or agent of any financial institution

> that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority * * * shall * * * be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, "to the extent practicable and appropriate," to designate "a single officer or agency of the United States to whom such reports shall be made."[3] The designated agency is in turn responsible for referring any report of a suspicious transaction to "any appropriate law enforcement, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism." *Id.* at subsection (g)(4)(B).

The provisions of 31 U.S.C. 5318(h), also added to the BSA in 1992 by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, authorize the Secretary of the Treasury "[i]n order to guard against money laundering through financial institutions * * * [to] require financial institutions to carry out anti-money laundering programs." 31 U.S.C. 5318(h)(1). Those programs may include "the development of internal policies, procedures, and controls"; "the designation of a compliance officer"; "an ongoing employee training program"; and "an independent audit function to test programs." 31 U.S.C. 5318(h)(A–D).

Section 352 of the USA Patriot Act amended section 5318(h) to mandate compliance programs for all financial institutions defined in 31 U.S.C. 5312(a)(2). Section 352 of the USA Patriot Act became effective April 24, 2002. In April 2002, FinCEN deferred the anti-money laundering program requirement contained in 31 U.S.C. 5318(h) that would have applied to the insurance industry. 67 FR 21110 (April 29, 2002). The purpose of the deferral was to provide Treasury time to study the insurance industry and to consider how anti-money laundering controls could best be applied to that industry, taking into account differences in size, location, and services within the industry. In September 2002, FinCEN issued a notice of proposed rulemaking prescribing minimum standards applicable to insurance companies regarding the establishment of anti-money laundering programs. 67 FR 60625 (September 26, 2002). That proposed rule applies to businesses offering life insurance policies, annuity contracts, and other insurance products with similar features, and only requires insurance companies, rather than their agents or brokers, to establish and maintain an anti-money laundering program. This focused approach is reflected in the proposed rule contained in this document regarding the reporting of suspicious transactions.

B. Overview of Insurance Companies

Insurance can generally be described as "a contract by which one party (the insurer), for a consideration that is usually paid in money, either in a lump sum or at different times during the continuance of the risk, promises to make a certain payment, usually of money, upon the destruction or injury of 'something' in which the other party (the insured) has an interest."[4] In other words, the purpose of insurance is to transfer risk from the insured to the insurer. Insurance companies act as financial intermediaries by providing a financial risk transfer service that is funded by the payment of insurance premiums that they receive from policyholders.

The insurance industry in the United States can generally be divided into

[1] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (the USA Patriot Act), Public Law 107–56.

[2] 31 U.S.C. 5318(g) was added to the BSA by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Public Law 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994 (the Money Laundering Suppression Act), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, to require designation of a single government recipient for reports of suspicious transactions.

[3] This designation does not preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency "pursuant to any other applicable provision of law."

[4] Lee R. Rus & Thomas F. Segalla, *Couch on Insurance* § 1:6, at 1–11 (3d ed.).

three major sectors based on a company's line of business: (1) life; (2) property/casualty; and (3) health.[5] Life insurance provides protection against the death of an individual in the form of payment to a beneficiary. Life insurance may also offer "living benefits" in the form of a cash surrender value or income payments. Recently, life insurers have developed products that offer a variety of investment components, such as interest indexed universal life (which has interest credits linked to external factors) and variable life (where the amount and duration of benefits are linked to investment experience), and that offer the insured the ability to overpay the premium for a fixed rate of return. Such products are marketed to investors as part of a diversified portfolio, often with tax benefits. Annuities, which are generally considered part of the life insurance sector, are purchased to provide a stipulated income stream over a period of time, and are frequently used for retirement planning purposes. Property insurance indemnifies an insured whose property is stolen, damaged, or destroyed by a covered peril. Casualty insurance provides coverage primarily for the liability of an individual or organization that results from negligent acts and omissions that cause bodily injury and/or property damage to a third party. Health insurance covers the costs of health care. Many insurance companies, particularly the larger ones, offer more than one kind of insurance product.

An insurance company may offer its products through a number of different distribution channels. Some insurance companies sell their products through direct response marketing in which the insurance company sells a policy directly to the insured. Other companies employ agents, who may either be captive or independent. Captive agents represent only one insurance company; independent agents may represent a variety of insurance carriers. Insurance may also be purchased through other third parties, all of whom must be licensed insurance agents, but may describe themselves to customers as financial planners or investment advisors. A limited number of companies offer certain types of policies via the Internet. A customer also may employ a broker (*i.e.*, a salesperson who searches the marketplace for insurance in the interest of the customer rather than the insurer) to obtain insurance.

The insurance industry in the United States has traditionally been subject to state, rather than federal, regulation.[6] Matters that are subject to state regulation include the overall organization and capitalization of insurance companies, permissible investments, licensing of insurance companies and insurance agents, and the form and content of policies. In some states, insurance companies are already subject to anti-money laundering statutes, currency reporting requirements, and/or suspicious activity reporting requirements. According to an unpublished survey conducted by the National Association of Insurance Commissioners (NAIC) of state statutes or rules applicable to insurance companies, thirty-eight states have money laundering statutes, twenty-one have currency reporting requirements, and one has a suspicious activity reporting requirement.

C. Importance of Suspicious Transaction Reporting in Treasury's Counter-Money Laundering Program

The Congressional authorization for requiring the reporting of suspicious transactions recognizes two basic points that are central to Treasury's counter-money laundering and counter-financial crime programs. First, it is to financial institutions that money launderers must go, either initially, to conceal their illegal funds, or eventually, to recycle those funds back into the economy. Second, the employees and officers of those institutions are often more likely than government officials to have a sense as to which transactions appear to lack commercial justification (or in the case of gaming establishments, transactions that appear to lack a reasonable relationship to legitimate wagering activities) or that otherwise cannot be explained as constituting a legitimate use of the insurance company's financial services.

The importance of extending suspicious transaction reporting to all relevant financial institutions, including non-bank financial institutions, relates to the concentrated scrutiny to which banks have been subject with respect to money laundering. This attention, combined with the cooperation that banks have given to law enforcement agencies and banking regulators to root out money laundering, have made it far more difficult than in the past to pass large amounts of cash directly into the nation's banks unnoticed. As it has become increasingly difficult to launder large amounts of cash through banks, criminals have turned to non-bank financial institutions, including insurance companies, in attempts to launder funds. Indeed, many non-banks have already recognized the increased pressure that money launderers have come to place upon their operations and the need for innovative programs of training and monitoring necessary to counter that pressure.

The reporting of suspicious transactions is also recognized as essential to an effective counter-money laundering program in the international consensus on the prevention and detection of money laundering. One of the central recommendations of the Financial Action Task Force Against Money Laundering (the FATF)[7] is that "[i]f financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities." *Financial Action Task Force Annual Report* (June 28, 1996), Annex 1 (Recommendation 15). The recommendation applies equally to banks and non-banks.[8]

Similarly, the European Community's *Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering* calls for member states to

> ensure that credit and financial institutions and their directors and employees cooperate fully with the authorities responsible for combating money laundering * * * by [in part] informing those authorities, on their own initiative, of any fact which might be an indication of money laundering.

[5] In 2000, the insurance industry in the United States consisted of more than 7000 domestic insurance companies and total gross direct premiums exceeded $956 billion. Net premiums written in both the life and property/casualty sectors grew annually between 1992 and 2000. In 2000, the insurance industry, including insurance companies, agents, brokers, and service personnel, employed approximately 2.3 million people. National Association of Insurance Commissioners, *2000 Insurance Department Resources Report*.

[6] See the McCarran-Ferguson Act, codified at 15 U.S.C. 1011 *et seq.* *See also* the Gramm-Leach-Bliley Act, Public Law 106–102, sections 104(a) and 301.

[7] The FATF is an inter-governmental body whose purpose is the development and promotion of policies to combat money laundering. Originally created by the G–7 nations, its membership now includes Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, as well as the European Commission and the Gulf Cooperation Council.

[8] This recommendation revises the original recommendation, issued in 1990, that required institutions to be either "*permitted or* required" to report. (Emphasis supplied.) The revised recommendation reflects the international consensus that a mandatory suspicious transaction reporting system is essential to an effective national counter-money laundering program and to the success of efforts of financial institutions themselves to prevent and detect the use of their services or facilities by money launderers and others engaged in financial crime.

EC Directive, O.J. Eur. Comm. (No. L 166) 77 (1991), Article 6. *Accord, the Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses of the Organization of American States*, OEA/Ser. P. AG/Doc. 2916/92 rev. 1 (May 23, 1992), Article 13, section 2.[9] All of these documents also recognize the importance of extending the counter-money laundering controls to "non-traditional" financial institutions, not simply to banks, both to ensure fair competition in the marketplace and to recognize that non-bank providers of financial services as well as depository institutions, are an attractive mechanism for, and are threatened by, money launderers. *See, e.g., Financial Action Task Force Annual Report, supra*, Annex 1 (Recommendation 8).

The international consensus is that insurance companies are vulnerable to abuse not only by money launderers but also by those wishing to finance terrorist activity. On October 31, 2001, FATF issued its *Special Recommendations on Terrorist Financing*. Special Recommendation Four provides that:

> [i]f financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations, they should be required to report promptly their suspicions to the competent authorities.

For purposes of FATF's Special Recommendation Four, the term "financial institutions" is intended to refer to both banks and non-bank financial institutions including, among other non-bank financial institutions, insurance companies.[10] Similarly, in January 2002, the International Association of Insurance Supervisors (IAIS)[11] issued anti-money laundering guidance for insurance supervisors and insurance entities stating that:

> [f]inancial institutions including insurance entities, have become major targets of money laundering operations because of the variety of services and investment vehicles offered that can be used to conceal the source of money. Money laundering poses significant reputational and financial risk to insurance entities, as well as the risk of criminal prosecution if insurance entities become involved in laundering of the proceeds of crime.[12]

D. Money Laundering and Terrorist Financing Risks Associated With Insurance Companies

FinCEN believes that the most significant money laundering and terrorist financing risks in the insurance industry are found in life insurance and annuity products because such products allow a customer to place large amounts of funds into the financial system and seamlessly transfer such funds to disguise their true origin. Permanent life insurance policies that have a cash surrender value are particularly inviting money laundering vehicles. Such cash value can be redeemed by a money launderer or can be used as a source of further investment of his tainted funds—for example, by taking out loans against such cash value. Term life insurance policies also pose a significant risk of money laundering because they possess elements of stored value and transferability that make them attractive to money launderers.[13] Similarly, annuity contracts also pose a significant money laundering risk because they allow a money launderer to exchange his illicit funds for an immediate or deferred income stream. The elements described above generally do not exist in insurance products offered by property and casualty insurers, much less by title or health insurers, although, to the extent that these sectors develop products with similar investment features, or features of stored value and transferability, the proposed rule includes a functional definition intended to include them within its scope.[14] FinCEN does not believe that money laundering risk should be predicated solely on the existence of an ability to obtain a refund on a purchased financial product. Rather, the focus should be on the ability of a money launderer to use a particular financial product to store and move illicit funds through the financial system. Therefore, the proposed rule captures only those insurance products with investment features, and insurance products possessing the ability to store value and to transfer that value to another person.

The identified instances of money laundering through insurance companies generally have been confined to life insurance products. Such products appear to have been particularly attractive to narcotics money launderers. For example, as a result of a joint investigation into the narcotics trafficking and money laundering activities of Colombian drug cartels, federal law enforcement authorities have discovered that these cartels have been hiding their illicit proceeds by, among other things, purchasing life insurance policies. The money laundering scheme involves the purchase, through several insurance brokers, of life insurance policies with cash surrender values in an offshore jurisdiction. Cartel associates are named as beneficiaries to such policies. The life insurance policies are funded by narcotics proceeds that are forwarded to the insurance companies by third parties from all over the world. Although the cash surrender value of the life insurance policies is often far less than the amount invested because of liquidation penalties, particularly if the policies only have been in existence for a few years, the beneficiaries soon elect to liquidate the policies for their cash surrender value. Although the beneficiaries thereby suffer a substantial financial loss, the funds received, in the form of insurance proceeds, are effectively laundered.[15] In another case, the U.S. Customs Service obtained the forfeiture of illicit drug money paid to purchase three term life insurance policies in Austin, Texas. The purchase

[9] The Organization of American States (OAS) reporting requirement is linked to the provision of the Model Regulations that institutions "shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic transactions, which have no apparent economic or lawful purpose." OAS Model Regulation, Article 13, section 1.

[10] *See Guidance Notes for the Special Recommendations on Terrorist Financing and the Self-Assessment Questionnaire*, Special Recommendation Four, paragraph 19 (March 27, 2002).

[11] The IAIS is an international association representing insurance regulatory authorities from more than 100 jurisdictions. Established in 1994, the IAIS was formed to promote cooperation among insurance regualtors, set international standards for insurance supervision, provide training to members, and coordinate work with regulators in other financial sectors and international financial institutions.

[12] *IAIS Anti-Money Laundering Guidance Notes for Insurance Supervisors and Insurance Entities*, January 2002, at 4.

[13] For example, a narcotics trafficker based in a foreign jurisdiction can purchase a term policy from a U.S. insurer with one large, up-front premium made up of illicit funds using an elderly or ill front person as the insured, and collect the cleansed proceeds when the insured dies.

[14] Theoretically, a money launderer could purchase property or casualty insurance for a business with tainted funds, and transfer the business to a confederate who could cancel the policy and obtain a refund of the cleansed funds. However, this does not mean that such products possess the elements of stored value and transferability that pose a significant money laundering risk. Underwriting practices generally would prevent the conveyance of a property and casualty insurance policy upon the purchase of a business, except in the case of a change in control of a public company, in which the costs and regulatory disclosures required to change control would appear to far outweigh any potential benefit to a would-be launderer. Moreover, as property and casualty insurers determine premiums by the value of the insured property and the perceived risk, the products they issue are not effective vehicles for laundering predetermined sums.

[15] *United States* v. *The Contents of Account No. 400941058 At JP Morgan Chase Bank, New York, New York*, Mag. Docket No. 02–1163 (S.D.N.Y. 2002) (Warrant of Seizure).

had been made with a number of structured monetary instruments, followed shortly afterward by an attempted redemption of the policies.[16] Law enforcement also has seen similar attempts to launder funds through the purchase of variable annuity contracts.[17] In addition, some financial institutions have reported to FinCEN suspicious transactions involving the structured purchase of life insurance and annuities, followed by the receipt of checks from life insurance companies, and the wiring of the funds to foreign countries.

The international community also has focused on life insurance policies and those insurance products with investment features as the target of anti-money laundering measures. The interpretative note to Recommendation 8 of the FATF Forty Recommendations, relating to the establishment of anti-money laundering programs, states that "[t]he FATF [Forty] Recommendations should be applied in particular to life insurance and other investment products offered by insurance companies." In addition, the IAIS, in its anti-money laundering guidance to insurance businesses, states that such guidance is "primarily aimed at life insurance business[es] which [are] the predominant class being used by money launderers."[18]

FinCEN understands that many insurance products are sold through agents of insurance companies. Because of their direct contact with customers, insurance agents are in a unique position to observe the kind of activity that may be indicative of money laundering. In some cases, suspicious activity detected by agents—such as the lump-sum purchase of a life insurance policy with multiple money orders or the purchase of annuity contracts by customers who express little or no interest in the details of such products, like surrender charges—may not be information that is normally known by the insurance company. This may be especially true when insurance agents sell investment products that do not need to be thoroughly scrutinized by the insurance company for underwriting purposes because they lack a health or death contingency. Thus, the proposed rule requires an insurance company to obtain all the relevant information necessary from its agents and brokers for purposes of filing reports of suspicious transactions. Whether an insurance company sells its products directly or through agents, FinCEN believes that it is appropriate to place on the insurance company (which develops the products and bears their risks) the responsibility for obtaining all relevant information necessary to comply effectively with a suspicious transaction reporting requirement.

31 U.S.C. 5318(g)(1) authorizes Treasury to require suspicious transaction reporting not only by financial institutions, but also by "any director, officer, employee, or agent of any financial institution." This proposed rule addresses reporting by insurance companies, but not by individual employees or agents of an insurance company. FinCEN does not intend to reduce in any way the obligations of an insurance company's employees or agents, within the context of an insurance company's general regulatory or specific BSA compliance programs, but wants simply to avoid at this time creating an obligation on the part of insurance company employees and agents independent of those general obligations.

FinCEN anticipates that the measures currently employed by insurance companies to detect and combat fraud may assist such companies when implementing programs to detect and report suspicious transactions. However, insurance companies should note that the risks associated with fraud and money laundering are not identical, and that combating money laundering will necessarily require the establishment of additional measures. An anti-fraud policy is concerned that premium payments clear, not with whether they are made with structured instruments or from suspicious sources. Moreover, although a person who purchases a life insurance policy with a single, lump-sum payment and subsequently redeems the policy for its cash value may not inflict any economic harm on the insurance company, such a person can use this process to cleanse his illicit funds in exchange for paying the requisite penalty or fee.

II. Section-by-Section Analysis

Section 103.16(a) defines the key terms used in the proposed rule. The definition of an insurance company reflects Treasury's determination that a suspicious transaction reporting requirement should be imposed on those sectors of the insurance industry that pose the most significant risk of money laundering and terrorist financing. The definition of an insurance company therefore includes any person engaged within the United States as a business in: (1) The issuing, underwriting, or reinsuring of a life insurance policy; (2) the issuing, granting, purchasing, or disposing of any annuity contract; or (3) the issuing, underwriting, or reinsuring of any insurance product with investment features similar to those of a life insurance policy or an annuity contract, or which can be used to store value and transfer that value to another person. The sectors of the insurance industry offering life insurance and annuity products are both covered by the definition. The last category incorporates a functional approach, and encompasses any business offering currently, or in the future, any insurance product with an investment feature, and any insurance product possessing both stored value and transferability.[19]

The definition of an insurance company does not include insurance agents or brokers. Agents and brokers would therefore not be required under the rule independently to report suspicious transactions. However, as explained in greater detail below, an insurance company would be required to obtain all the relevant information necessary from its agents and brokers in order to comply with its requirement to report suspicious transactions. Comments are specifically invited on whether the above definition is appropriate in light of money laundering risks in the industry. Comments also are specifically invited on whether the final rule also should require insurance agents and brokers, or any subsets of agents or brokers, to report suspicious transactions.

Section 103.16(b) contains the rules setting forth the obligation of insurance companies to report suspicious transactions that are conducted or attempted by, at, or through an insurance company and involve or aggregate at least $5,000 in funds or other assets. It is important to recognize that transactions are reportable under

[16] *In the Matter of Seizure of the Cash Value and Advance Premium Deposit Funds, Case No. 2002–5506–000007*. (W.D. Tex. 2002).

[17] *See* Steven Brostoff, *Variable Product Companies Cautioned to be Vigilant On Money Laundering*, National Underwriter, July 1, 2002, at 40.

[18] *IAIS Anti-Money Laundering Guidance Notes for Insurance Supervisors and Insurance Entities*, January 2002, at 6.

[19] The definition of an insurance company is not intended to include those entities that offer annuities or similar products as an incidental part of their business—*e.g.*, tax-exempt organizations that offer charitable gift annuities (as defined in section 501(m)(5) of the Internal Revenue Code) as a vehicle for planned charitable giving, and that would not otherwise fall within the definition of an insurance company. FinCEN intends this exclusion to apply to the definition of an insurance company for purposes of its proposed rule requiring insurance companies to establish anti-money laundering programs. *See* 67 FR 60625 (September 26, 2002). Comments are specifically invited on the appropriate scope of the definition of an insurance company.

this rule and 31 U.S.C. 5318(g) whether or not they involve currency.[20]

Section 103.16(b)(1) contains the general statement of the obligation to file reports of suspicious transactions. The obligation extends to transactions conducted or attempted by, at, or through the insurance company. The second sentence of section 103.16(b)(1) is designed to encourage the reporting of transactions that appear relevant to violations of law or regulation, even in cases in which the rule does not explicitly so require, for example in the case of a transaction falling below the $5,000 threshold in the rule.

Section 103.16(b)(2) specifically describes the four categories of transactions that require reporting. An insurance company is required to report a transaction if it knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part): (i) Involves funds derived from illegal activity or is intended or conducted to hide or disguise funds or assets derived from illegal activity; (ii) is designed, whether through structuring or other means, to evade the requirements of the BSA; (iii) has no business or apparent lawful purpose, and the insurance company knows of no reasonable explanation for the transaction after examining the available facts; and (iv) involves the use of the insurance company to facilitate criminal activity. The final category of reportable transactions is intended to ensure that transactions involving legally derived funds that the insurance company suspects are being used for a criminal purpose, such as terrorist financing, are reported under the rule.[21]

A determination as to whether a report is required must be based on all the facts and circumstances relating to the transaction and customer of the insurance company in question. Different fact patterns will requires different judgments. In some cases, the facts of the transaction may indicate the need to report. Some examples of "red flags" associated with existing or potential customers include, but are not limited to, the following:

- The purchase of an insurance product that appears to be beyond a customer's normal pattern of business;
- Any unusual method of payment, particularly by cash or cash equivalents;
- The purchase of an insurance product with monetary instruments in structured amounts;
- The early termination of an insurance product, especially at a loss, or where cash was tendered and/or the refund check is directed to a third party;
- The transfer of the benefit of an insurance product to an apparently unrelated third party;
- Little or no concern by a customer for the performance of an insurance product, but much concern about the early termination of the product;
- The reluctance by a customer to provide identifying information when purchasing an insurance product, or who provides minimal or fictitious information; and
- The borrowing of the maximum cash surrender value of an insurance policy soon after paying for the policy.

The means of commerce and the techniques of money laundering are continually evolving, and there is no way to provide an exhaustive list of suspicious transactions. FinCEN expects to continue its dialogue with the insurance industry about the manner in which a combination of government guidance, training programs, and government-industry information exchange can smooth the way for operation of the new suspicious activity reporting system in as flexible and cost-efficient a way as possible.

Section 103.16(b)(3) provides that the obligation to identify and properly and timely to report a suspicious transaction rests with the insurance company involved in the transaction. Insurance agents and brokers are not independently required to report suspicious transactions. Section 103.16(b)(3) also states that to the extent that a transaction is conducted through an insurance agent or broker, an insurance company shall obtain all the relevant information necessary to ensure its compliance with the requirements of this section. As explained above, an insurance company's assessment of customer-related information, such as methods of payment, is a key component to an effective anti-money laundering program. Thus, an insurance company must obtain and assess all the relevant information necessary to comply effectively with its obligation to report suspicious transactions. Such information includes, but is not limited to, relevant customer information collected and maintained by the insurance company's agents and brokers, including observations and assessments by agents and brokers at the point-of-sale. The specific means to obtain such information is left to the discretion of the insurance company, although Treasury anticipates that the insurance company may need to amend existing agreements with its agents and brokers to ensure that the company receives necessary customer information.

The proposed rule is intended to require that an insurance company evaluate customer activity and relationships for money laundering risks, and design a suspicious transaction monitoring program that is appropriate for the particular insurance company in light of such risks. FinCEN anticipates that the design and implementation of such a program, rather than solely individual instances of non-reporting, will be instrumental when examining an insurance company for compliance with the requirements of the rule.

An insurance company's suspicious transaction monitoring program must ensure that the company is provided with customer information at the point-of-sale. FinCEN understands that obtaining such information will necessarily entail the cooperation of entities that are separate from an insurance company—namely, the company's independent agents and brokers. Comments are specifically invited on this approach, and the extent to which it may be necessary for FinCEN to place a direct obligation upon insurance agents and brokers for the purpose of ensuring an effective suspicious transaction reporting requirement.

Section 103.16(c) sets forth the filing procedures to be followed by insurance companies making reports of suspicious transactions. Within 30 days after an insurance company becomes aware of a suspicious transaction, the business must report the transaction by completing a Suspicious Activity Report by Insurance Companies (SAR–IC) and filing it in a central location, to be determined by FinCEN. The SAR–IC will resemble the SAR used by banks to report suspicious transactions, and a draft form will be made available for comment by publication in the **Federal Register**.

Supporting documentation relating to each SAR–IC is to be collected and maintained separately by the insurance company and made available to law enforcement and regulatory agencies upon request. Special provision is made for situations requiring immediate attention, in which case insurance companies are to telephone the appropriate law enforcement authority in addition to filing a SAR–IC.

Section 103.16(d) provides an exception to the reporting requirement for false information submitted to the insurance company to obtain a policy or support a claim, unless such activity is related to money laundering or terrorist financing. Comments specifically are invited on whether the final rule should contain an express exception from reporting for any other particular activity in order to avoid unnecessary, duplicative reporting, or for any other reason.

Section 103.16(e) provides that filing insurance companies must maintain copies of SAR–ICs and the original related documentation for a period of five years from the date of filing. As indicated above, supporting documentation is to be made available to FinCEN and other appropriate law enforcement and regulatory authorities, on request.

Section 103.16(f) reflects the statutory bar against the disclosure of information filed in, or the fact of filing, a suspicious activity report (whether the report is required by the proposed rule or is filed voluntarily). *See* 31 U.S.C. 5318(g)(2). Thus, the paragraph specifically prohibits persons filing SAR–ICs from making any disclosure, except to appropriate law enforcement and regulatory agencies, about either the reports themselves or supporting documentation. 31 U.S.C. 5318(g), as amended by the USA Patriot Act, provides protection from liability for making reports of suspicious transactions, and for failures to disclose the fact of such reporting. Section 351 of that Act clarifies that the safe harbor applies to the voluntary reporting of suspicious transactions, and the proposed rule reflects this clarification.

Section 103.16(g) notes that compliance with the obligation to report suspicious transactions will be examined, and provides that failure to comply with the rule may constitute a violation of the BSA and the BSA regulations.

Section 103.16(h) provides that the new suspicious activity reporting rule is effective 180 days after the date on which the final regulations to which this notice of proposed rulemaking relates are published in the **Federal Register**.

Finally, section 103.16(i) states that an insurance company that is registered or is required to register with the Securities and Exchange Commission (SEC) shall be deemed to have satisfied the requirements of this section for those activities regulated by the SEC to the extent that the company complies with the suspicious activity reporting requirements applicable to such activities that are imposed under 31 CFR 103.19. Thus, for example, an insurance company that is required to register as a broker-dealer in securities because it sells variable annuities may satisfy the suspicious transaction reporting requirements under the proposed rule for that activity by complying with the suspicious transaction reporting requirements applicable to such activity that are under 31 CFR 103.19. To the extent that the issuance of annuities, or any other activity by an insurance company, is not addressed by 31 CFR 103.19, then such activity would be subject to the suspicious transaction reporting requirements of the proposed rule.

Proposed Effective Date

The suspicious transaction reporting rule would be effective 180 days after the date on which the final regulation to which this notice of proposed rulemaking relates is published in the **Federal Register**.

III. Request for Comments

FinCEN invites comment on all aspects of the proposed regulation, and specifically seeks comment on the following issues:

1. Whether the scope of the definition of an insurance company is appropriate in light of money laundering risks in the industry.

2. Whether the rule also should require insurance agents (captive, independent, or both), or any subset of agents, to report suspicious transactions to FinCEN.

3. Whether the rule also should require insurance brokers, or any subset of insurance brokers, to report suspicious transactions to FinCEN.

4. Whether any reporting dollar threshold, including the $5,000 threshold in the proposed rule, is appropriate.

5. Whether the exception from reporting for routine insurance fraud unrelated to money laundering or terrorist financing is appropriate, and whether any other exceptions should be included in the rule.

IV. Regulatory Flexibility Act

It is hereby certified, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that the proposed rule is not likely to have a significant economic impact on a substantial number of small entities. The BSA authorizes Treasury to require financial institutions to report suspicious activities. The proposed rule requires insurance companies, rather than their agents or brokers, to file reports of suspicious transactions. Most insurance companies are larger businesses. In addition, Treasury has issued a separate proposed rule that requires insurance companies to establish and maintain anti-money laundering programs. 67 FR 60625 (September 26, 2002). Treasury anticipates that compliance with an anti-money laundering program requirement, in particular, the requirement for an insurance company to obtain all the relevant information necessary from its agents and brokers to make its program effective, will assist greatly in the reporting of suspicious transactions. Moreover, all insurance companies, in order to remain viable, have in place policies and procedures to prevent and detect fraud. Such anti-fraud measures should assist insurance companies in reporting suspicious transactions.

In drafting the rule, FinCEN carefully considered the importance of suspicious transaction reporting to the administration of the BSA. Congress considers suspicious transaction reporting a "key ingredient in the anti-money laundering effort."[22] Moreover, the legislative history of the BSA demonstrates that money launderers will shift their activities away from more regulated to less regulated financial institutions.[23] Finally, there is no alternative mechanism for the government to obtain this information other than by requiring insurance companies to detect and report suspicious activity.

V. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to

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[20] Many currency transactions are *not* indicative of money laundering or other violations of law, a fact recognized both by Congress, in authorizing reform of the currency transaction reporting system, and by FinCEN in issuing rules to implement that system (See 31 U.S.C. 5313(d) and 31 CFR 103.22(d), 63 FR 50147 (September 21, 1998)). But many non-currency transactions, (for example, funds transfers) *can* indicate illicit activity, especially in light of the breadth of the statutes that make money laundering a crime. See 18 U.S.C. 1956 and 1957.

[21] The fourth reporting category has been added to the suspicious activity reporting rules promulgated since the passage of the USA Patriot Act to make it clear that the requirement to report suspicious activity encompasses the reporting of transactions in which legally derived funds are used for criminal activity, such as the financing of terrorism.

[22] H.R. Rep. No. 438, 103d Cong., 2d Sess. 15 (1994).

[23] "It is indisputable that as banks have been more active in prevention and detection on money laundering, money launderers have turned in droves to the financial services offered by a variety of [non-bank financial institutions]." *Id.* at 19.

jlackeyj@omb.eop.gov), with a copy to FinCEN by mail or the Internet at the addresses previously specified. Comments on the collection of information should be received by December 16, 2002. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that this proposed rule, if adopted as proposed, would result in the annual filing of a total of 1,200 suspicious activity reports by insurance companies. This result is an estimate based on the estimated number of respondents under the rule.

Description of Respondents: Insurance companies as defined in 31 CFR 103.16(a).

Estimated Number of Respondents: 1,200.

Frequency: As required.

Estimate of Burden: The reporting burden of 31 CFR 103.16 will be reflected in the burden of the form used by insurance companies to report suspicious transactions. The recordkeeping burden of 31 CFR 103.16 is estimated as an average of 3 hours per form, which includes internal review of records to determine whether the activity requires reporting.

Estimated Total Annual Recordkeeping Burden: 3,600 hours.

FinCEN specifically invites comments on: (a) Whether the proposed recordkeeping requirement is necessary for the proper performance of the mission of FinCEN, and whether the information will have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed recordkeeping requirement; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the recordkeeping requirement, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

In addition the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate and requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) Any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

VI. Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Insurance companies, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, secs. 312, 313, 314, 319, 352, Pub. L. 107–56, 115 Stat. 307.

2. Subpart B of part 103 is amended by adding new § 103.16 to read as follows:

§ 103.16 Reports by insurance companies of suspicious transactions.

(a) *Definitions.* For purposes of this section:

(1) *Annuity contract* means any agreement between the insurer and the insured whereby the insurer promises to pay out a stipulated income or a varying income stream for a period of time.

(2) *Insurance company.* (i) Except as provided in paragraph (a)(2)(ii) of this section, the term "insurance company" means any person engaged within the United States as a business in:

(A) The issuing, underwriting, or reinsuring of a life insurance policy;

(B) The issuing, granting, purchasing, or disposing of any annuity contract; or

(C) The issuing, underwriting, or reinsuring of any insurance product with investment features similar to those of a life insurance policy or an annuity contract, or which can be used to store value and transfer that value to another person.

(ii) An insurance company shall not mean an agent or broker of any business described in paragraph (a)(2)(i) of this section.

(3) *Life insurance policy* means an agreement whereby the insurer is obligated to indemnify or to confer a benefit upon the insured or beneficiary to the agreement contingent upon the death of the insured, including any investment component of the policy.

(b) *General.* (1) Every insurance company shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. An insurance company may also file with FinCEN, by using the form specified in paragraph (c)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through an insurance company, and involves or aggregates at least $5,000 in funds or other assets, and the insurance company knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the insurance company knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the insurance company to facilitate criminal activity.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with the insurance company involved in the transaction. To the extent that a transaction involving an insurance company is conducted through an insurance agent or broker, the insurance company shall obtain all the information necessary to ensure its compliance with the requirements of this section.

(c) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by Insurance Companies (SAR–IC), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR–IC shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR–IC.

(3) *When to file.* A SAR–IC shall be filed no later than 30 calendar days after the date of the initial detection by the insurance company of facts that may constitute a basis for filing a SAR–IC under this section. If no suspect is identified on the date of such initial detection, an insurance company may delay filing a SAR–IC for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the insurance company shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR–IC. Insurance companies wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–IC if required by this section.

(d) *Exception.* An insurance company is not required to file a SAR–IC to report the submission to it of false or fraudulent information to obtain a policy or make a claim, other than where such submission relates to money laundering or terrorist financing.

(e) *Retention of records.* An insurance company shall maintain a copy of any SAR–IC filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–IC. Supporting documentation shall be identified as such and maintained by the insurance company, and shall be deemed to have been filed with the SAR–IC. An insurance company shall make all supporting documentation available to FinCEN, any other appropriate law enforcement agencies, or state regulators upon request.

(f) *Confidentiality of reports; limitation of liability.* No insurance company, and no director, officer, employee, or agent of any insurance company, that reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SAR–IC or the information contained in a SAR–IC, except where such disclosure is requested by FinCEN or another appropriate law enforcement or regulatory agency, shall decline to produce the SAR–IC or to provide any information that would disclose that a SAR–IC has been prepared or filed, citing this paragraph (f) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. An insurance company, and any director, officer, employee, or agent of such insurance company, that makes a report pursuant to this section (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance.* Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegees, under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(h) *Effective date.* This section applies to transactions occurring 180 days after publication of the final rule based on this document.

(i) *Suspicious transaction reporting requirements for insurance companies registered or required to register with the Securities and Exchange Commission.* An insurance company that is registered or is required to register with the Securities and Exchange Commission shall be deemed to have satisfied the requirements of this section for those activities regulated by the Securities and Exchange Commission to the extent that the company complies with the suspicious activity reporting requirements applicable to such activities that are imposed under § 103.19.

Dated: October 10, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–26365 Filed 10–16–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA34

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement That Currency Dealers and Exchangers Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN is proposing to amend the Bank Secrecy Act regulations to require currency dealers and exchangers to report suspicious transactions to the Department of the Treasury, and to require all money services businesses to which the suspicious transaction reporting rule applies to report transactions involving suspected use of the money services business to facilitate criminal activity. The proposed amendments constitute a further step in the creation of a comprehensive system for the reporting of suspicious transactions by the major categories of financial institutions operating in the United States, as a part of the counter-money laundering program of the Department of the Treasury.

DATES: Written comments on all aspects of the proposal are welcome and must be received on or before December 16, 2002.

ADDRESSES: Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183–0039, *Attention:* NPRM—Suspicious Transaction Reporting—Currency Dealers and Exchangers. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov*, with the caption in the body of the text, "*Attention:* NPRM—Suspicious Transaction Reporting—Currency Dealers and Exchangers." For additional instructions on the submission of comments, see **SUPPLEMENTARY INFORMATION** under the heading "Submission of Comments."

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: David K. Gilles, Acting Assistant

Director, Office of Compliance and Regulatory Enforcement, FinCEN, (202) 354–6400; and Judith R. Starr, Chief Counsel, and Christine L. Schuetz, Attorney-Advisor, Office of Chief Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Introduction

This document contains a proposed rule that would amend 31 CFR 103.20(a)(1) to require currency dealers and exchangers to report suspicious transactions to FinCEN. FinCEN has determined that such reports have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings, and in the conduct of intelligence and counterintelligence activities, including analysis, to protect against international terrorism. The proposed rule also would amend 31 CFR 103.20(a)(2) by adding a fourth reporting category for transactions that are suspected to involve use of the money services business to facilitate criminal activity. Finally, under the proposed rule, the telephone number for FinCEN's Financial Institutions Hotline (1–866–556–3974) would be added to 31 CFR 103.20(b)(3). The suspicious transaction reporting rule would be effective 180 days after the date on which the final regulation to which this notice of proposed rulemaking relates is published in the **Federal Register**.

II. Background

A. Statutory Provisions

The Bank Secrecy Act ("BSA"), Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and to file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311–5314, 5316–5332) appear at 31 CFR part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

With the enactment of 31 U.S.C. 5318(g) in 1992,[2] Congress authorized the Secretary of the Treasury to require financial institutions to report suspicious transactions. As amended by the USA PATRIOT ACT, subsection (g)(1) states generally:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2)(A) provides further that:

> If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency—
>
> (i) the financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and
>
> (ii) no officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

Subsection (g)(3)(A) provides that neither a financial institution, nor any director, officer, employee, or agent of any financial institution

> that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority * * * shall * * * be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, "to the extent practicable and appropriate," to designate "a single officer or agency of the United States to whom such reports shall be made." [3] The designated agency is in turn responsible for referring any report of a suspicious transaction to "any appropriate law enforcement, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism." *Id.*, at subsection (g)(4)(B).

B. Suspicious Activity Reporting by Money Services Businesses

By final rule published August 20, 1999, FinCEN revised the definitions of certain non-bank financial institutions for purposes of the Bank Secrecy Act and grouped the revised definitions together in a separate category called "money services businesses." [4] A "money services business" includes each agent, agency, branch, or office within the United States of any person (except a bank or person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission) doing business in one or more of the following capacities:

- Currency dealer or exchanger;
- Check casher;
- Issuer of traveler's checks, money orders, or stored value;
- Seller or redeemers of traveler's checks, money orders, or stored value;
- Money transmitter; and
- The United States Postal Service (except with regard to the sale of postage or philatelic products).

Persons who do not exchange currency, cash checks, or issue, sell, or redeem traveler's checks, money orders, or stored value in an amount greater than $1,000 to any person on any day in one or more transactions are not money services businesses for purposes of the Bank Secrecy Act.

On March 14, 2000, FinCEN published a final rule requiring certain money services business to report suspicious transactions to FinCEN beginning January 1, 2002 (the "MSB SAR rule").[5] Under the terms of the MSB SAR rule, found at 31 CFR 103.20, issuers, sellers, and redeemers (for monetary value) of traveler's checks and money orders, money transmitters, and the United States Postal Service, are required to report suspicious transactions to FinCEN.[6] A money services business to which the MSB SAR rule applies must file a report of any transaction conducted or attempted by, at, or through the money services business, involving or aggregating at least $2,000 (or $5,000 to the extent that the identification of transactions required to be reported is derived from a review of clearance records of money orders or traveler's checks that have been sold or processed), when the money services business knows, suspects, or has reason to suspect that the transaction falls into one of three categories.

The first reporting category contained in the MSB SAR rule, described in 31 CFR 103.20(a)(2)(i), includes transactions involving funds derived from illegal activity or intended or conducted in order to hide or disguise funds or assets derived from illegal activity. The second category, described in 31 CFR 103.20(a)(2)(ii), involves transactions designed to evade the requirements of the Bank Secrecy Act. The third category, described in 31 CFR 103.20(a)(2)(iii), involves transactions that appear to have no business purpose or that vary so substantially from normal commercial activities or activities appropriate for the particular customer or type of customer as to have no reasonable explanation. Although the rule does not require the filing of multiple reports of suspicious activity by both a money services businesses and its agent with respect to the same reportable transaction, the obligation to identify and report suspicious transactions rests with each money services business involved in a particular transaction.

In accordance with paragraph 103.20(b) of the MSB SAR rule, money services businesses must report a suspicious transaction within 30 days after the money services business becomes aware of the suspicious transaction, by completing a Suspicious Activity Report-MSB ("SAR–MSB"). FinCEN published for comment on July 25, 2002 a draft SAR–MSB, which is now final and available for use.[7] FinCEN has made special provision for situations requiring immediate attention (*e.g.*, where delay in reporting might hinder law enforcement's ability to fully investigate the activity), in which case money services businesses are immediately to notify, by telephone, the appropriate law enforcement authority in addition to filing a SAR–MSB. Reports filed under the terms of the MSB SAR rule are lodged in a central database. Information contained in the database is made available electronically to federal and state law enforcement and regulatory agencies, to enhance their ability to fight financial crime and terrorism.

Paragraph 103.20(c) of the MSB SAR rule requires money services businesses to maintain copies of each filed SAR–MSB for five years. In addition, money services businesses must collect and maintain for five years supporting documentation relating to each SAR–MSB and make such documentation available to law enforcement and regulatory agencies upon request.

Paragraph 103.20(d) of the MSB SAR rule incorporates the terms of 31 U.S.C. 5318(g)(2) and (g)(3), and specifically prohibits persons filing reports in compliance with the MSB SAR rule (or voluntary reports of suspicious transactions) from disclosing, except to appropriate law enforcement and regulatory agencies, that a report has been prepared or filed. The paragraph also restates the BSA's broad protection from liability for making reports of suspicious transactions (whether such reports are required by the MSB SAR rule or made voluntarily), and for declining to disclose the fact of such reporting. The regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection; however, because FinCEN recognized the importance of these statutory provisions in the overall effort to encourage meaningful reports of suspicious transactions and to protect the legitimate privacy expectations of those who may be named in such reports, they are repeated in the rule to remind compliance officers and others of their existence.

Paragraph 103.20(e) of the MSB SAR rule provides that compliance with the MSB SAR rule will be audited by the Department of the Treasury through FinCEN or its delegee. Failure to comply with the rule may constitute a violation of the Bank Secrecy Act regulations, which may subject non-complying money services businesses to enforcement action under the Bank Secrecy Act.

C. Importance of Suspicious Transaction Reporting in Treasury's Counter Money-Laundering Program

The Congressional authorization of reporting of suspicious transactions recognizes two basic points that are central to Treasury's counter-money laundering and counter-financial crime programs. First, to realize full use of their ill-gotten gains, money launderers at some point must turn to financial institutions, either initially to conceal their illegal funds, or eventually to recycle those funds back into the economy. Second, the employees and officers of those institutions are often more likely than government officials to have a sense as to which transactions appear to lack commercial justification or otherwise cannot be explained as constituting a legitimate use of the financial institution's products and services.

The importance of extending suspicious transaction reporting to all relevant financial institutions, including non-bank financial institutions, derives from the concentrated scrutiny to which banks have been subject with respect to money laundering. This attention, combined with the cooperation that banks have given to law enforcement agencies and banking regulators to root out money laundering, has made it far more difficult than in the past to pass large amounts of cash directly into the nation's banks unnoticed. As it has become increasingly difficult to launder large amounts of cash through banks, criminals have turned to non-bank financial institutions in their attempts to launder funds. Indeed, many non-bank financial institutions increasingly have come to recognize the increased pressure that money launderers have placed upon their operations and the need for innovative programs of training and monitoring necessary to counter that pressure.

The reporting of suspicious transactions is also recognized as essential to an effective counter-money laundering program in the international consensus on the prevention and

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[1] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Public Law 107–56.

[2] 31 U.S.C. 5318(g) was added to the BSA by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Public Law 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, to require designation of a single government recipient for reports of suspicious transactions.

[3] This designation does not preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency "pursuant to any other applicable provision of law."

[4] *See* 64 FR 45438 (August 20, 1999), and 31 CFR 103.11(uu).

[5] *See* 65 FR 13683 (March 14, 2000). Banks, thrift institutions, and credit unions have been subject to the suspicious transaction reporting requirement since April 1, 1996 pursuant to regulations issued concurrently by FinCEN and the federal bank supervisors (the Board of Governors of the Federal Reserve System ("Federal Reserve"), the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA")). *See* 31 CFR 103.18 (FinCEN); 12 CFR 208.62 (Federal Reserve Board); 12 CFR 21.11 (OCC); 12 CFR 353.3 (FDIC); 12 CFR 563.180 (OTS); and 12 CFR 748.1 (NCUA). On July 1, 2002, FinCEN published a final rule, found at 31 CFR 103.19, requiring broker-dealers to file reports of suspicious transactions beginning after December 30, 2002. *See* 67 FR 44048. On September 26, 2002, FinCEN published a final rule, found at 31 CFR 103.21, requiring casinos and card clubs to file reports of suspicious transactions. *See* 67 FR 60722.

[6] The rule requires money services businesses described in 31 CFR 103.11(uu)(3) (the money services business category that includes issuers of traveler's checks, money orders, or stored value), 103.11(uu)(4) (sellers or redeemers of traveler's checks, money orders, or stored value), 103.11(uu)(5) (money transmitters), and 103.11(uu)(6) (the United States Postal Service) to file reports of suspicious activity. However, given the infancy of the use of stored value products in the United States at the time of issuance of the final rule, issuers, sellers, and redeemers of stored value were explicitly carved out of the final MSB SAR rule. *See* 31 CFR 103.20(a)(5).

[7] *See* 67 FR48704 (July 25, 2002). The SAR–MSB and advice on how to complete it can be viewed on FinCEN's website (www.fincen.treas.gov) under the categories of "What's New" and "Regulatory."

detection of money laundering. One of the central recommendations of the Financial Action Task Force Against Money Laundering ("FATF") is that:

> If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.

Financial Action Task Force Annual Report (June 28, 1996),[8] Annex 1 (Recommendation 15). The recommendation applies equally to banks and non-banks.[9]

Similarly, the European Community's *Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering* calls for member states to

> ensure that credit and financial institutions and their directors and employees cooperate fully with the authorities responsible for combating money laundering * * * by [in part] informing those authorities, on their own initiative, of any fact which might be an indication of money laundering.

EC Directive, O.J. Eur. Comm. (No. L 166) 77 (1991), Article 6. *Accord, the Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses of the Organization of American States*, OEA/Ser. P. AG/Doc. 2916/92 rev. 1 (May 23, 1992), Article 13, section 2.[10] All of these documents also recognize the importance of extending the counter-money laundering controls to "non-traditional" financial institutions, not simply to banks, both to ensure fair competition in the marketplace and to recognize that non-bank providers of financial services as well as depository institutions are an attractive mechanism for, and are threatened by, money launderers. *See, e.g., Financial Action Task Force Annual Report, supra*, Annex 1 (Recommendation 8).

D. Suspicious Activity Reporting by Currency Dealers and Exchangers

The MSB SAR rule currently does not apply to either check cashers or to currency dealers/exchangers. As FinCEN explained in the preamble to the final MSB SAR rule, "[b]ecause the operations of check cashers and currency exchangers generally involve disbursement rather than receipt of funds, the appropriate definition of suspicious activity involves issues not present to the same degree in the case of money transmitters and money order and traveler's check services."[11] However, FinCEN noted that it would continue to examine issues relating to the appropriate extension of suspicious transaction reporting to the full range of financial institutions subject to the Bank Secrecy Act.

FinCEN has determined that it is now appropriate to extend to currency dealers and exchangers the requirement to report suspicious transactions.[12] An effective anti-money laundering program must cover a broad range of financial institutions to make it increasingly difficult for criminals to evade detection by re-routing illicit transactions through financial institutions or products that are subject to a narrower scope of anti-money laundering rules than other types of financial institutions. The proposed rule is intended to foster detection and reporting of illegal activity involving the use of currency dealer/exchange services, including, among other things, money laundering and terrorist financing. In addition, the proposed rule is intended to contribute to international efforts to combat the abuse of currency dealers and exchangers by criminals.

Although currency dealers and exchangers offer products and services predominantly used for legitimate purposes, they can be abused by criminals seeking to obscure the source of illegally-derived funds. For example, small denomination bills may be exchanged for large denomination bills in order to aid in the smuggling of cash, or to disguise the origin of the cash.[13] In addition, currency dealers and exchangers have been used to launder narcotics proceeds being transferred between the United States and Latin America.[14]

The international consensus is that currency dealers and exchangers are vulnerable to abuse not only by money launderers but also by those wishing to finance terrorist activity. On October 31, 2001, FATF issued its *Special Recommendations on Terrorist Financing*. Special Recommendation Four provides that:

> [i]f financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations, they should be required to report promptly their suspicions to the competent authorities.

For purposes of FATF's Special Recommendation Four, the term "financial institutions" is intended to refer to both banks and non-bank financial institutions including, among other non-bank financial institutions, bureaux de change.[15] On December 4, 2001, the European Parliament and the Council of the European Union issued *Directive 2001/97/EC amending Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering* for the purpose of, among other things, reinforcing that anti-money laundering provisions should apply to currency exchange offices given expression of concern by the European Parliament regarding the vulnerability of such entities to money laundering. Finally, the experience of foreign governments with the use of currency dealers and exchangers in money laundering schemes emphasizes the importance of mandating suspicious activity reporting by currency dealers and exchangers.[16]

[8] The FATF is an inter-governmental body whose purpose is the development and promotion of policies to combat money laundering. Originally created by the G–7 nations, its membership now includes Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, as well as the European Commission and the Gulf Cooperation Council.

[9] This recommendation revises the original recommendation, issued in 1990, that required institutions to be either "*permitted* or required" to report. (Emphasis supplied.) The revised recommendation reflects the international consensus that a mandatory suspicious transaction reporting system is essential to an effective national counter-money laundering program and to the success of efforts of financial institutions themselves to prevent and detect the use of their services or facilities by money launderers and others engaged in financial crime.

[10] The Organization of American States ("OAS") reporting requirement is linked to the provision of the Model Regulations that institutions "shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic transactions, which have no apparent economic or lawful purpose." OAS Model Regulation, Article 13, section 1.

[11] 65 FR 13683, 13689 n. 26 (March 14, 2000).

[12] The terms currency "dealer" in 31 CFR 103.11(uu)(1) were intended to be interchangeable to ensure that the regulation captured the same type of activity whether denominated as exchanging or dealing—the physical exchange of currency for retail customers.

[13] *See e.g., U.S., v. Farese, 248 F.3d 1056*, 1059 (11th Cir. 2001) (exchanging large-denomination bills for small-denomination bills facilitates money laundering by reducing the volume of the bills.)

[14] *See, e.g., U.S. v. All Monies in Account No. 90–3617–3*, 754 F. Supp. 1467 (D. Hi. 1991) (describing how drug traffickers laundered narcotics proceeds through a currency exchanger located in Peru, which had bank accounts in the United States).

[15] *See Guidance Notes for the Special Recommendations on Terrorist Financing and the Self-Assessment Questionnaire*, Special Recommendation Four, paragraph 19 (March 27, 2002). FATF defines "bureaux de change" as "institutions which carry out retail foreign exchange operations." *See also Financial Action Task Force Annual Report, supra*, Annex 1 (Interpretive Note to Recommendations 8 and 9 (Bureaux de Change).

[16] *See, e.g.*, London Men Found Guilty of Laundering £3 Million Through Bureaux De Change, *HM Customs and Excise* (October 9, 2001); Legislative Summary for Bill C–22: An Act to

III. Specific Provisions

A. Reporting Institutions

FinCEN proposes amending paragraph 103.20(a)(1) to add currency dealers and exchangers to the list of money services businesses to which the MSB SAR rule applies. As explained above, this reflects growing concern on the part of FinCEN and the international community about the vulnerability of currency dealers and exchangers to money laundering and potentially to terrorist financing. It should be noted that, under the terms of the MSB SAR rule and the amendments to the rule proposed in this document, a money services business is subject to suspicious transaction reporting only with respect to transactions that involve or relate to the business activities described in 103.11(uu) (1), (3), (4), (5), or (6). Thus, for example, a currency dealer or exchanger (a money services business described in 103.11(uu)(1)) that is also a check casher (a money services business described in 103.11(uu)(2)) would not be required to report under the MSB SAR rule with respect to its check cashing activities in general, although it would be required to report check cashing activity that was part of a series of transactions that led to, for example, a suspicious currency exchange.[17]

B. Reportable Transactions

FinCEN is proposing to amend the MSB SAR rule by adding a fourth reporting category, described in proposed paragraph (a)(2)(iv), involving the use of a money services business to facilitate criminal activity. The addition of a fourth category of reportable transactions to the rule is intended to ensure that transactions involving legally-derived funds that the money services business suspects are being used for a criminal purpose, such as terrorist financing, are reported under the rule.[18] The addition of this reporting category is not intended to effect a substantive change in the rule. Such transactions should be reported under the broad language contained in the third reporting category, requiring the reporting of transactions with "no business or apparent lawful purpose." FinCEN believes that this broad language should be interpreted to require the reporting of transactions that appear linked to any form of criminal activity. Nevertheless, the fourth category has been added to make explicit that transactions being carried out for the purpose of conducting illegal activities, whether or not funded from illegal activities, must be reported under the rule.

C. Filing Instructions

This document proposes amending paragraph 103.20(b)(3) to include FinCEN's Financial Institution Hotline (1–866–556–3974) for use by financial institutions wishing voluntarily to report to law enforcement suspicious transactions that may relate to terrorist activity. Money services businesses reporting suspicious activity by calling the Financial Institutions Hotline must still file a timely SAR–MSB to the extent required by 31 CFR 103.20.

IV. Submission of Comments

An original and four copies of any written hard copy comment (but not of comments sent via E-Mail), must be submitted. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

V. Regulatory Flexibility Act

FinCEN certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The average currency exchange is approximately $300, an amount which is substantially below the $2000 threshold that triggers reporting under the proposed amendments to 31 CFR 103.20. Thus, FinCEN believes the rule will not have a significant economic burden on small entities.

VI. Executive Order 12866

The Department of the Treasury has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

VII. Paperwork Reduction Act

Recordkeeping Requirements of 31 CFR 103.20. The collection of information contained in this notice of proposed rulemaking is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503, with copies to FinCEN at Department of the Treasury, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, Virginia 22183. Comments on the collection of information should be received by December 16, 2002. In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR part 1320, the following information concerning the collection of information as required by 31 CFR 103.20 is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that this proposed rule, if adopted as proposed, would result in the annual filing of a total of 3,100 SAR–MSB forms by currency dealers and exchangers. This result is an estimate, based on a projection of the size and volume of the industry.

Description of Respondents: Currency dealers and exchangers.

Estimated Number of Respondents: 3,100.

Frequency: As required.

Estimate of Burden: The reporting burden of 31 CFR 103.20 will be reflected in the burden of the form, Suspicious Activity Report-MSB. The recordkeeping burden of 31 CFR 103.20 is estimated as an average of 20 minutes per form.

Estimate of Total Annual Recordkeeping Burden on Respondents: Recordkeeping burden estimate = 1,033 hours.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information

Facilitate Combatting the Laundering of Proceeds of Crime, to Establish the Financial Transactions and Reports Analysis Centre of Canada and to Amend and Repeal Certain Acts in Consequence Thereof, LS–355E (May 5, 2000) ("Foreign currency-exchange houses are the second most common vehicle for money laundering. In addition to being less regulated than chartered banks, they provide services such as converting small denominations of cash into larger, less suspicious, denominations."); *Financial Action Task Force 1997–1998 Report on Money Laundering Typologies*, (February 12, 1998) (In a typologies exercise conducted by FATF for the purpose of providing law enforcement and regulators a forum to discuss trends in money laundering, FATF found an increase in the use of currency exchangers in money laundering operations); *Financial Action Task Force Annual Report, supra*, Annex 1 (Interpretive Note to Recommendations 8 and 9 (Bureaux de Change) (Abuse of currency exchangers by money launderers has lead FATF to conclude that "*bureaux de change should be subject to the same anti-money laundering regulations as any other financial institution*" * * * Of particular importance are those on identification requirements, suspicious transaction reporting, due diligence and record-keeping.").

[17] FinCEN is continuing to review whether it is appropriate to extend the suspicious activity reporting requirement to other categories of money services businesses not currently subject to the rule.

[18] The fourth reporting category has been added to the suspicious activity reporting rules promulgated since the passage of the USA PATRIOT ACT to make this point clear. *See* 31 CFR 103.19, and 103.21.

is necessary for the proper performance of the mission of FinCEN, including whether the information will have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) Any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks, Banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR part 103 is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, secs. 314, 352, Pub. L. 107–56, 115 Stat. 307.

2. In subpart B, amend § 103.20 as follows:

a. Revise the first sentence of paragraph (a)(1),

b. Add new paragraph (a)(2)(iv), and

c. Add a new sentence to the end of paragraph (b)(3).

The additons and revisions read as follows:

§ 103.20 Reports by money services businesses of suspicious transactions.

(a) *General.* (1) Every money services business, described in § 103.11(uu) (1), (3), (4), (5), or (6), shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. * * *

(2) * * *

(iv) Involves use of the money services business to facilitate criminal activity.

* * * * *

(b) * * *

(3) * * * Money services businesses wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–MSB if required by this section.

* * * * *

Dated: October 10, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–26364 Filed 10–16–02; 8:45 am]

BILLING CODE 4810–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2319; MB Docket No. 02–295; RM–10580]

Radio Broadcasting Services; Gonzales, Louisiana; Hattiesburg, Mississippi; Houma and Westwego, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This *Notice of Proposed Rule Making* requests comments on a petition for rule making filed jointly on behalf of Capstar TX Limited Partnership, licensee of Station WUSW(FM), Channel 279C, Hattiesburg, Mississippi, and Clear Channel Radio Licenses, Inc., licensee of Station KFXN(FM), Channel 281C, Houma, Louisiana, ("Joint Petitioners"). The Joint Petitioners propose to downgrade Channel 279C, Station WUSW, to Channel 279C0 and change the community of license of Station WUSW from Hattiesburg, Mississippi, to Westwego, Louisiana. In addition, the Joint Petitioners propose to downgrade Channel 281C, Station KFXN, to Channel 281C0 and move Station KFXN from Houma to Gonzales. The coordinates for requested Channel 279C0 at Westwego, Louisiana, are 29–54–52 NL and 89–54–34 WL with a site restriction of 22.5 kilometers (14 miles) east of Westwego. The coordinates for requested Channel 281C0 at Gonzales are 29–52–55 NL and 90–56–07 WL, with a site restriction of 39.5 kilometers (24.6 miles) south of Gonzales.

Joint Petitioner's reallotment proposals for Stations WUSW and KFXN comply with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 279C0 at Westwego, Louisiana, or the use of Channel 281C0 at Gonzales, Louisiana, or require the Joint Petitions to demonstrate the availability of additional equivalent class channels for use by other parties.

DATES: Comments must be filed on or before November 18, 2002, and reply comments on or before December 3, 2002.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the Joint Petitioners' counsel, as follows: Mark N. Lipp, Esq., J. Thomas Nolan, Esq., and Tamara Y. Brown, Esq., Shook, Hardy & Bacon; 600 14th Street, NW., Suite 800; Washington, DC 20005–2004.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–295, adopted September 11, 2002, and released September 27, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW, CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Gonzales, Channel 281C0, and Westwego, Channel 279C0, and removing Channel 281C at Houma.

3. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 279C at Hattiesburg.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26360 Filed 10–16–02; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 67, No. 201
Thursday, October 17, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–.

Form Number: N/A.

Title: Certification Agreement.

Type of Submission: New.

Purpose: The United States Agency for International Development (USAID) needs to require applicants for assistance to certify that it does not and will not engage in financial transactions with, and does not and will not provide material support and resources to individuals or organizations that engage in terrorism. The purpose of this requirement is to assure that USAID does not directly provide support to such organizations or individuals, and to assure that recipients are aware of these requirements when it considers individuals or organizations are subrecipients.

Annual Reporting Burden

Respondents: 1,100.

Total annual responses: 5,500.

Total annual hours requested: 3,700 hours.

Dated: October 7, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–26404 Filed 10–16–02; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Foreign Agriculture Service

Notice of Termination of the Trade Leads Polling Service and Removal of Trade Leads From the Internet

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice provides details of changes that will affect the distribution of Trade Leads to U.S. exporters of food, agricultural, seafood and forest products.

DATES: Effective date of changes being implemented is December 16, 2002. Comments on this notice must be received by 45 days from date of publication in the **Federal Register** to be assured of consideration.

REQUESTS FOR COMMENTS: Send comments regarding the proposed changes to the AgExport Services Division of the Foreign Agricultural Service (FAS). These changes pertain to the distribution of Trade Leads via e-mail and the Fax Broadcast medium. Comments should be sent to Dan Berman, Director, Ag Export Services Division, Commodity and Marketing Programs, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 1052, Washington, DC 20250–1052. All written comments received will be available for public inspection at the above address Monday thru Friday between 8 a.m. to 5 p.m. Phone (202) 720–6343, Fax: (202) 690–0193.

SUPPLEMENTARY INFORMATION:

Title: Trade Leads Distribution.

The Trade Leads program has served as an effective tool to expand U.S. agricultural exports by helping U.S. companies sell their products outside of the United States. FAS overseas offices collect the Trade Lead notices. Trade Leads provide detailed information on U.S. products that are being sought by foreign buyers. The leads are forwarded to the AgConnections office of the AgExport Services Division. After editing the leads, they are disseminated using the Internet, Fax Polling, by e-mail to qualified exporters, and to U.S. multiplier groups. These leads are offered to both new and experienced exporters.

AgExport Services Division is proposing to change how Trade Leads are to be disseminated in the future. Following the suggestions and comments by many of the FAS overseas offices, FAS will discontinue distribution of Trade Leads by the fax polling method and through the Internet. Written notice will be provided to all individuals and companies that currently access leads through either of these methods. The notice will include instructions on how to obtain the information after the service is discontinued. AgExport Services Division will continue to distribute leads to FAS multiplier groups with no interruption in service. Changing FAS dissemination methods will give qualified U.S. exporters of agricultural, food, seafood and forest products priority and immediate access to export sales opportunities from foreign buyers that are seeking U.S. products.

FAS will collect e-mail addresses from exporters that wish to receive this information. As an alternative for those companies that do not currently have an e-mail address, AgExport Services Division will ascertain a fax number for dissemination purposes. Only U.S. companies will be eligible to receive daily Trade Leads inquiries. All comments to this notice will become a matter of public record.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 02–26400 Filed 10–16–02; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Crupina Vegetation Management, Okanogan and Wenatchee National Forests, Chelan County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) to disclose the environmental effects of treating populations of *Crupina vulgaris*, an aggressive, non-native plant species invading the north shore of Lake Chelan, Washington, using an integrated weed management approach. Approximately 500 acres of Crupina would be treated in the Lake Chelan-Sawtooth Wilderness and areas adjacent to the wilderness, and along the North Shore of Lake Chelan, including private land where landowners are willing. An additional 4,500 acres could potentially be treated in the Rex Creek Fire area. Treatment would include manual, mechanical, cultural and chemical methods.

ADDRESSES: Send written comments to Crupina Project, Chelan Ranger District, 428 West Woodin Avenue, Chelan, Washington 98816.

FOR FURTHER INFORMATION CONTACT: Jim Archambeault, Crupina Project Team Leader, Okanogan-Wenatchee National Forest, Forest Service, (509) 997–9738 or Mallory Lenz, Wildlife Biologist, Chelan Ranger District (509) 682–2576.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this proposal is to contain and, if possible, ultimately eradicate *Crupina vulgaris* (Crupina) from the current area of infestation, thus preventing Crupina from further compromising the wilderness resource, other resource values, and ecosystem integrity and also preventing expansion of the current area of infestation. The need for this action is the result of the 55,000 acre Rex Creek fire of 2001. The fire burned over the entire infested area and created favorable conditions for the continued spread of Crupina by reducing vegetation. Modeling of potential favorable habitat shows that there is approximately 4500 acres available for further weed invasion.

Crupina vulgaris (Crupina) is an aggressive, non-native Class A noxious weed (eradicate were found) that has invaded the north shore of Lake Chelan, including portions of the Lake Chelan Sawtooth Wilderness, developed National Forest recreation sites, and private lands. In addition, the potential exists for Crupina to spread outside of the current infested areas onto the Lake Chelan National Recreation Area, other parts of the National Forest, and further infest additional private agriculture areas. The Rex Creek Fire of 2001 burned the entire infested area, reducing the vegetative cover and generally improving and expanding site conditions or an annual weed species such as Crupina. Since Crupina prefers unshaded sites, reduction of canopy cover, due to fires in 2001, has created thousands of acres of additional potentially suitable habitat for Crupina.

This weed threatens the wilderness resource and other resource values because it displaces native plants, and changes plant community structure and function. Changes in plant community structure may alter fuel characteristics and ecosystems processes including: plant succession, nutrient cycling, hydrologic function and productivity.

Over the last 15 years, 60–100 acres of the approximately 500 infested acres have been treated by repeated hand pulling along the Lakeshore Trail corridor to reduce plant populations and seed production. These control efforts have successfully prevented Crupina from spreading outside the infested area. However, attempts to eradicate the entire infestation have been unsuccessful due to lack of consistent multiyear funding, ineffectiveness of hand pulling as the primary treatment method, and incomplete treatments where herbicide spraying was done on private land. The Wenatchee National Forest has previously entered into a memorandum of understanding with the State of Washington wherein WNF has agreed to comply with state law, which includes eradication of all Class A noxious weeds.

Most treatment would occur within the Congressionally-designated Lake Chelan-Sawtooth Wilderness. Regulations identify the objective of Wilderness administration to preserve and protect wilderness character while allowing for public use, and state that wilderness resources shall be managed to promote, perpetuate and, where necessary, restore the wilderness character (36 CFR 293.2).

According to the Wenatchee National Forest Land and Resource Management Plan (Forest Plan), existing populations of noxious weeds should be contained, controlled or eradicated as budget allows, with priority given to Class A weeds. The first priority for treatment is to be given to projects adjacent to agricultural lands, with second priority given to areas within or threatening Wilderness, both of which are present in the treatment area (Forestwide Standards and Guidelines, pages IV–89 and IV–92). The Forest Plan's goal for Wilderness is in part to preserve and protect the natural character for future generations. The Forest Plan also gives additional Wilderness direction to rehabilitate degraded sites caused by management activities or visitor use (Forest Plan, pages IV–227 and IV–230).

Some additional treatment is proposed in the Dispersed Recreation, Unroaded, Non-motorized (RE–3) Management Area, adjacent to the Lake Chelan-Sawtooth Wilderness along the North Shore of Lake Chelan at Prince Creek and Moore Point. The goal for RE–3 is to provide dispersed recreation opportunities in a non-motorized setting where landscape changes are not generally evident with a natural or natural-appearing environment. All treatment areas along the lakeshore and other riparian areas are subject to riparian reserve standards and guidelines. Herbicides will be applied in a manner consistent with Aquatic Conservation Strategy objectives.

In order to accomplish the goals set forth in the Wenatchee Forest Plan, the desired condition is to contain and ultimately eradicate Crupina from the current area of infestation, and create conditions where native plants will re-colonize the treated areas to support wilderness and recreation management objectives. Treatments would be designed to prevent Crupina from further compromising the wilderness resource, other resource values, and ecosystem integrity and also prevent expansion of the current area of infestation.

Proposed Action

The proposal is to develop and implement a multi-year integrated weed management approach to treat approximately 500 acres of the Class A noxious weed *Crupina vulgaris* (Crupina) located within and adjacent to the Lake Chelan-Sawtooth Wilderness on the north shore of Lake Chelan in Washington State. Up to 4500 acres of new infestation could also be treated within the Rex Creek Fire Area. Within the proposed treatment area, Crupina occurs as scattered patches in predominantly non-forested sites between Prince Creek and Hunt's Bluff. The Crupina patches occur at elevations ranging between the shore of Lake Chelan (11000 feet) up to 3000 feet, and occasionally up to 4000 feet. Patch size varies between 55 acres and approximately 400 square feet. Surrounding the areas of historic infestation are approximately 4500 acres of potentially suitable habitat. This habitat, all of which lies within the Rex Creek fire area, has been modeled using suitable habitat characteristics: aspect (south, southwest, and west), soils (generally rocky outcrops and alluvial fans), slope (0–60%), and elevation (1100′ to 4000′).

The treatment methods for each infested site would include some combination of the following methods:

- Chemical: Spot application (backpack spraying) of herbicides: picloram in upland areas, glyphosate near waterways
- Manual: Hand pulling, grubbing
- Mechanical: Heat treatment (propane heated disk), helicopter staging of personnel and materials
- Cultural: Reseeding treated areas, using native seed, where the other non-native vegetation might re-occupy the treated areas.

The appropriate treatment method for each site will be selected based on the following criteria:

- Proximity of Threatened, Endangered and Sensitive plants (hand pull only) that would be impacted by chemical spray or drift
- Riparian areas (hand pulling and/or glyphosate)
- Sensitive or erodible soils (herbicide treatment to minimize foot traffic)
- Composition of existing native plant community (herbicide/reseed where native plant population is already compromised)
- Accessibility for foot traffic (prioritize treatment in adjacent areas). Treatment priority will be placed on sites with the greatest risk of spread.

Possible Alternatives

Additional alternative to be analyzed is the use of all treatment methods listed in the proposed action except herbicides or mechanical. All action alternatives will consider treatments on adjacent private lands, which would require cooperation from willing landowners.

Scoping Process

Scoping is an ongoing process throughout the planning process. A scoping letter was mailed in early June to individuals and organizations on the Chelan Ranger District's mailing list and adjacent landowners. The Chelan District Ranger has been on the local radio and the local paper has covered the project. The draft EIS will be circulated to those who indicated an interest in this specific project.

Preliminary Issues

Previous environmental analysis and decisions made in previous Environmental Assessments have provided a preliminary list of issues, and these have been reviewed and supplemented by Forest staff. These issues include:

- The potential continued spread of this weed, particularly in light of conditions created by the Red Creek Fire of 2001.
- Concern about the use of, and application methods of, herbicides and the effects on surrounding vegetation and other resources.
- The project area is located mostly in the Lake Chelan-Sawtooth Wilderness and the use of mechanical methods of control and the presence of control personnel could affect wilderness resources.
- Concern that, based on the results of past control measures, the proposed control measures might not be effective.
- Concern that mechanical and manual control efforts could cause soil disturbance.
- Concern about the effects of treatments on recreation use in the project area and adjacent areas.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft EIS will be released for public comment November 2002. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The final EIS is to be released in January 2003.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. (40 CFR 1501.7 and 1508.22).

The Forest Service is the lead agency. The Regional Forester for the Pacific Northwest Region is the Responsible Official. The Responsible Official will decide which, if any, of the proposed projects will be implemented. The Crupina Vegetation Management decision and the reasons for the decision will be documented in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: October 9, 2002.

Richard W. Sowa,

Acting Deputy Regional Forester.

[FR Doc. 02–26381 Filed 10–16–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Modoc Resource Committee, Alturas, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Modoc National Forest's Modoc Resource Advisory Committee will meet Wednesday, November 13, 2002, in Alturas, California for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting November 13th begins at 4 p.m., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include approval of September 11, 2002 minutes, nomination and selection of a new chairperson for the new fiscal year 2003, reports from subcommittees, review and selection through roll call votes of Fiscal Year 2003 projects that will improve the maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, and restore and improve health and water quality that meet the intent of Pub. L. 106–393. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Kathleen Jordan, Acting Forest Supervisor and Designated Federal Officer, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Elizabeth Cavasso,

Acting Forest Supervisor.

[FR Doc. 02–26369 Filed 10–16–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou Resource Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou Resource Advisory Committee (RAC) will meet on Thursday, November 7, 2002. The meeting will begin at 9 a.m. and conclude at approximately 4:30 p.m. This meeting will be held at the Harbor Sanitary Building, at 16408 Lower Harbor Road, in Harbor, Oregon. The tentative agenda includes: (1) The proposed FY 03 RAC administrative budget, (2) FY 02 projects update, (3) review and recommendation of FY 03 projects, and (4) Public Forum. The public forum is scheduled to begin at 11:30 a.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the public forum. The written comments may be submitted prior to the November 7 meeting by sending them to the Designated Federal Official Scott D. Conroy at the address given below.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official Scott D. Conroy; Rogue & Siskiyou national forests; P.O. Box 520, Medford, Oregon 97501; (541) 858–2200.

Dated: October 10, 2002.

Scott D. Conroy,

Forest Supervisor, Rogue River and Siskiyou National Forests.

[FR Doc. 02–26375 Filed 10–16–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following committee meeting:

Name: Grain Inspection Advisory Committee.

Date: October 23–24, 2002.

Place: Iberville Suites, 910 Iberville Street, New Orleans, Louisiana 70112.

Time: 7:30 am—5:00 pm on October 23, and 7:30am—12:00 (Noon) on October 24, 2002.

Purpose: To provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA) with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*).

The agenda will include a review and discussion of GIPSA's financial status and of the future proposal for a new fee structure; and updates on FGIS' program plans; on the Artificial Neural Networking (ANN) pilot program, and process verification proposal. Discussions also will be provided on future inspection equipment alternatives, wheat end-use functionality research, FGIS' Central Monitoring Laboratory, recent and planned inspection procedural changes, and on any other related issues concerning the delivery of grain inspection and weighing services to American agriculture.

Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting, should contact the Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 3601, Washington, DC 20250–3601, telephone (202) 720–0219 or FAX (202) 205–9237.

The meeting will be open to the public. Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Terri Henry, telephone (202) 720–0219 or FAX (202) 205–9237.

Dated: October 10, 2002.

Donna Reifschneider,

Administrator.

[FR Doc. 02–26399 Filed 10–16–02; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

[Docket No. 021007230–2230–01]

Privacy Act of 1974; System of Records

AGENCY: Department of Commerce.

ACTION: Notice of New Privacy Act System of Records: Commerce/National Oceanic and Atmospheric Administration System 14: Dr. Nancy Foster Scholarship Program.

SUMMARY: The Department of Commerce is creating a new system of records listed under the Dr. Nancy Foster Scholarship Program: Scholarship Recipients. We invite public comment on the system announced in this position.

DATES: *Effective Date:* The system will become effective without further notice on November 18, 2002 unless comments dictate otherwise.

Comment Date: To be considered, written comments must be submitted on or before November 18, 2002.

ADDRESSES: Comments should be sent to the Dr. Nancy Foster Scholarship Program, *Attention:* Privacy Act Comments, Office of the Assistant Administrator, National Ocean Service, 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Foster Scholarship Program, Attention: Privacy Act Comments, Office of the Assistant Administrator, National Ocean Service, 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910, or by phone at (301) 713–3074.

SUPPLEMENTARY INFORMATION: The Dr. Nancy Foster Scholarship Program provides support for outstanding scholarship and encourages independent graduate-level research in oceanography, marine biology, or maritime archaeology, particularly by women and members of minority groups. For fall 2002, Dr. Nancy Foster Scholarships will carry a 12-month stipend for each student of $20,000 and an annual tuition allowance of up to $12,000.

COMMERCE/NOAA–14

SYSTEM NAME:

Dr. Nancy Foster Scholarship Program.

SYSTEM LOCATION:

The National Ocean Service, Office of the Assistant Administrator, 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910–3281.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Scholarship applicants and recipients of scholarship awards.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application Packages, including: General Information Sheet, Statement of Intent, Institute Certification, Transcripts, and Letters of Recommendation; Annual Progress Reports; Tuition Statements and Receipts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Marine Sanctuaries Amendments Act of 2000 (Pub. L. 106–513 sec. 318).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records will be used to track scholarship recipients' academic progress and to make annual financial awards.

The following routine uses apply:

1. A record from this system of records may be disclosed to a Federal, state or local agency maintaining civil, criminal or other relevant enforcement information, or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Department decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

2. A record from this system of records may be disclosed to a Federal, state, local, or international agency, in response to its request, in connection with the assignment, hiring, or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

3. A record from this system of records may be disclosed in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

4. A record in this system of records may be disclosed to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

5. A record in this system of records may be disclosed to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

6. A record in this system may be transferred to the Office of Personnel Management for personnel research purposes, as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related manpower studies.

7. A record from this system of records may be disclosed to the Administrator, General Services, or his designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose and any other relevant (*i.e.* GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folder or distributed to individuals and management; microfilm and electronic storage media.

RETRIEVABILITY:

Scholarship recipient files will be alphabetized by recipient's last name. Documents may be retrieved by the individual's name.

SAFEGUARDS:

Buildings employ security systems. Records are maintained in areas accessible only to authorized personnel who are properly screened and cleared.

RETENTION AND DISPOSAL:

Records retention and disposal is in accordance with the agency's records disposition schedule.

SYSTEM MANAGER AND ADDRESS:

Program Administrator, Dr. Nancy Foster Scholarship Program, National Ocean Service, Office of the Assistant Administrator, 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910–3281.

NOTIFICATION PROCEDURE:

Information may be obtained from: Program Administrator, Dr. Nancy Foster Scholarship Program, National Ocean Service, Office of the Assistant Administrator, 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910–3281.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Program Administrator, Dr. Nancy Foster Scholarship Program, National Ocean Service, Office of the Assistant Administrator, 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910–3281.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and for appealing initial determinations by the individual concerned appear in 15 CFR part 4B. Use above address.

RECORD SOURCE CATEGORIES:

Scholarship applicants and recipients.

Dated: October 9, 2002.

Brenda Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. 02–26239 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

[Docket No. 021007231–2231–01]

Privacy Act of 1974: System of Records

AGENCY: Department of Commerce.

ACTION: Notice of a new System of Records: Commerce/NOAA System-15: Alaska Region-North Pacific Groundfish Observer Program: Certified Domestic Observer Final Evaluations.

SUMMARY: This notice announces the Department's proposal for a new system of records under the Privacy Act. The system is entitled "Commerce/NOAA System-15: Alaska Region—North Pacific Groundfish Observer Program: Certified Domestic Observer Final Evaluations." The National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) is creating a new system of records for monitoring the performance of observers in the North Pacific groundfish fisheries. All observers hired by contractors and deployed on board vessels and at shoreside processing facilities that participate in the Alaska groundfish fisheries must satisfactorily execute their duties according to NMFS standards of observer conduct. This record system is designed to: (1) Monitor the performance of these observers; (2) ensure satisfactory compliance with NMFS standards of observer conduct; and (3) continue the collection of data for the management of the North Pacific groundfish fisheries.

DATES: The system will become effective without further notice on November 15, 2002 unless comments dictate otherwise.

Written comments must be submitted on or before November 15, 2002.

ADDRESSES: Comments should be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802, *Attn:* Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, Alaska, 99802.

FOR FURTHER INFORMATION CONTACT: Bridget Mansfield, 907–586–7228.

SUPPLEMENTARY INFORMATION: Pursuant to the implementation of the North Pacific Groundfish Observer Program (50 CFR 679.50), contractors hiring and deploying observers on board vessels and at shoreside processing facilities that participate in the Alaska groundfish fisheries are required to monitor observers' performance to ensure satisfactory execution of duties by observers and observer conformance with NMFS standards of observer conduct. This monitoring is best accomplished through access to the observer performance evaluations conducted by NMFS for each completed deployment by each observer. A new system of records is being created by NMFS, Alaska Region, to maintain this monitoring. This record system will be listed under Commerce/NOAA System 15-Alaska Region—North Pacific Groundfish Observer Program: Certified Domestic Observer Final Evaluations.

NMFS finds no probable or potential adverse effects of the proposal on the privacy of individuals. To minimize the risk of unauthorized access to the system of records, electronic data will be stored securely with access limited to those NMFS employees whose official duties require access. Paper copies of records are made to fax information to the contractors included in this system of records. The paper copies are maintained in personnel folders in locked file cabinets in rooms accessible only to authorized personnel.

COMMERCE/NOAA–15

SYSTEM NAME:

Alaska Region-North Pacific Groundfish Observer Program: Certified Domestic Observer Final Evaluations.

SYSTEM LOCATION:

The National Marine Fisheries Service, Alaska Fisheries Science Center, North Pacific Groundfish Observer Program, 7600 Sand Point Way NE, Building 4, Seattle, Washington 98115–0070.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NMFS-certified groundfish observers and NMFS-certified contractors (observer provider companies).

Categories of Records in the System:

Certified Domestic Observer Final Evaluations are completed by North Pacific Groundfish Observer Program staff for each NMFS-certified observer upon the completion of each deployment. A deployment is a period of time not to exceed 90 days when an observer is assigned to work aboard a fishing vessel or in a shoreside processor. The Certified Domestic Observer Final Evaluations include the following information: Observer name; debriefer name; cruise number; future training recommendation; mid-cruise briefing requirement; deployment history, including vessel or plant names, and dates deployed at each; deployment scores; and narrative evaluations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1853.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. In the event that a system of records maintained by the Department to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute or contract, or rule, regulation or order issued pursuant thereto, or the necessity to protect an interest of the Department, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigation or prosecuting such violation or charged with enforcing or implementing the statute or contract, or rule, regulation or order issued pursuant thereto, or protecting the interest of the Department.

2. A record from this system of records may be disclosed to a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Department decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed to a Federal, state, local, or international agency, in response to its request, in connection with the assignment, hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

5. A record in this system of records may be disclosed to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

6. A record in this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

7. A record in this system of records may be disclosed to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

8. A record in this system of records may be disclosed to a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. 552a(m).

9. A record in this system may be transferred to the Office of Personnel Management for personnel research purposes, as a data source for management information, for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or related to manpower studies.

10. A record in this system may be disclosed to the Administrator, General Services, or his designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations

governing inspection of records for this purpose and any other relevant (*i.e.* GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

11. NMFS will make available to each NMFS-certified contractor a NMFS-generated final evaluation, containing the information described above, for each observer deployment made under contract with that contractor.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage on computers or disk; paper records in file folders individually named and kept in secure file cabinets.

RETRIEVABILITY:

Observers are assigned observer numbers and "cruise" (or deployment) numbers. Documents can be electronically retrieved by observer name or observer number combined with cruise number and year of deployment. Contractors included in this system of records do not have electronic access to this information. Paper printouts of electronic records will be made by NMFS staff to transmit via fax to the contractors included in this system of records.

SAFEGUARDS:

Grounds and buildings employ security systems. Where electronic information is retrievable by terminal, all safeguards appropriate to secure the telecommunications system (hardware and software) are utilized. Paper records are maintained in secured file cabinets in areas that are accessible only to authorized personnel. NMFS-certified contractors, to whom access to this information is granted in accordance with this systems of records routine uses provision, are instructed on the confidential nature of this information.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with the National Archives Records Administration and the Department of Commerce record keeping procedures.

SYSTEM MANAGER(S) AND ADDRESS:

North Pacific Groundfish Observer Program Task Leader, Alaska Fisheries Science Center, North Pacific Groundfish Observer Program, 7600 Sand Point Way NE, BIN C15700, Building 4, Seattle, Washington, 98115–0070.

NOTIFICATION PROCEDURE:

Privacy Act information contained in this system of records may be requested from the system manager at the address above and must be approved by the Office of General Counsel, National Oceanic and Atmospheric Administration, Alaska Region. A requestor, including a NMFS-certified observer seeking information on himself or herself, should provide name, address, date of application, and record sought, pursuant to the inquiry provisions of the Department of Commerce's rules which appear in 15 CFR part 4b—Privacy Act.

RECORD ACCESS PROCEDURES:

Upon completion of each deployment debriefing, NMFS will fax a copy of the observer's final deployment evaluation to the observer's contracting company. The observer provider company must keep the observer evaluation record confidential and cannot release it without prior written release from the observer. Each observer is provided with a copy of his or her final evaluation upon completion of that debriefing. A request from a NMFS-certified observer for past evaluations should be addressed to the same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and for appealing initial determinations by the individual concerned appear in 15 CFR part 4b—Privacy Act.

RECORD SOURCE CATEGORIES:

NMFS-certified observers and North Pacific Groundfish Observer Program staff.

Dated: October 9, 2002.

Brenda S. Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. 02–26240 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 39–2002]

Foreign-Trade Zone 143—Sacramento, CA; Application for Foreign-Trade Subzone Status, Flint Ink North America Corporation (Pigments, Inks, and Varnish Products), West Sacramento, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Sacramento-Yolo Port District, grantee of FTZ 143, requesting special-purpose subzone status for the manufacturing and distribution facilities (pigments, inks, and varnish products) of Flint Ink North America Corporation (Flint Ink) in West Sacramento, California. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 7, 2002.

The Flint Ink facilities are located at 1115 Shore Street, West Sacramento, California (65.824 square feet of enclosed space on 4 acres). The facilities (28 employees) are used to manufacture, test, package, and warehouse pigments, inks, and varnish products primarily for use by the graphic arts industry.

Foreign-sourced materials account for approximately 10 to 50 percent of the finished-product value of Flint Ink's current products, and may include items from the following categories: Petroleum oils and mineral oils, distillates; hydrogen chloride and chlorosulfuric acid; sodium and potassium hydroxides; chlorides, chloride oxides, chloride hydroxides, bromides, bromide oxides, iodides and iodide oxides; nitrites and nitrates; acyclic alcohols and their derivatives; phenols and phenol-alcohols; ketones, quinines, and their derivatives; polycarboxylic acids and their derivatives; carboxylic acids and their derivatives; amine function compounds; carboxyamide-function compounds and amide-function compounds of carbonic acid; heterocyclic compounds, and nucleic acids and their salts; nucleic acids and their salts, and other heterocyclic compounds; synthetic organic coloring matter, preparations based thereon, and synthetic organic products used as fluorescent brightening agents or luminophores; other coloring matter; printing ink, writing or drawing ink, and other inks; artificial waxes and prepared waxes; rosin, resin, and derivatives thereof; reaction initiators, reaction accelerators, and catalytic preparations; polymers of vinyl chloride or other halogenated olefins in primary forms; polymers of vinyl acetate or other vinyl esters, and other vinyl polymers, in primary forms; petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products in primary forms; and cellulose and its chemical derivatives in primary forms.

Zone procedures would allow the company to choose the duty rates that apply to the finished products (the primary initial finished product has a duty rate of 1.8% *ad valorem*; potential finished products have rates ranging from duty-free to 9.2%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9.2%; average of 7%). This savings from inverted tariffs would be the primary benefit derived from subzone status. FTZ procedures would also exempt Flint Ink from Customs duty payments on foreign materials used in production for export. In addition, Flint Ink states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is December 16, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 31, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 917 7th Street, 2nd Floor, Sacramento, CA 95814.

Dated: October 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26410 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 40–2002]

Foreign-Trade Zone 170—Indianapolis, IN; Application for Foreign-Trade Subzone Status, Flint Ink North America Corporation (Pigments, Inks, and Varnish Products), New Albany, IN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indiana Port Commission, grantee of FTZ 170, requesting special-purpose subzone status for the manufacturing and distribution facilities (pigments, inks, and varnish products) of Flint Ink North America Corporation (Flint Ink) in New Albany, Indiana. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 7, 2002.

The Flint Ink facilities are located at 800 Industrial Boulevard, New Albany, Indiana (53,000 square feet of enclosed space on 14.05 acres). The facilities (55 employees) are used to manufacture, test, package, and warehouse pigments, inks, and varnish products primarily for use by the graphic arts industry.

Foreign-sourced materials account for approximately 10 to 50 percent of the finished-product value of Flint Ink's current products, and may include items from the following categories: petroleum oils and mineral oils, distillates; hydrogen chloride and chlorosulfuric acid; sodium and potassium hydroxides; chlorides, chloride oxides, chloride hydroxides, bromides, bromide oxides, iodides and iodide oxides; nitrites and nitrates; acyclic alcohols and their derivatives; phenols and phenol-alcohols; ketones, quinines, and their derivatives; polycarboxylic acids and their derivatives; carboxylic acids and their derivatives; amine function compounds; carboxyamide-function compounds and amide-function compounds of carbonic acid; heterocyclic compounds, and nucleic acids and their salts; nucleic acids and their salts, and other heterocyclic compounds; synthetic organic coloring matter, preparations based thereon, and synthetic organic products used as fluorescent brightening agents or luminophores; other coloring matter; printing ink, writing or drawing ink, and other inks; artificial waxes and prepared waxes; rosin, resin, and derivatives thereof; reaction initiators, reaction accelerators, and catalytic preparations; polymers of vinyl chloride or other halogenated olefins in primary forms; polymers of vinyl acetate or other vinyl esters, and other vinyl polymers, in primary forms; petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products in primary forms; and cellulose and its chemical derivatives in primary forms.

Zone procedures would allow the company to choose the duty rates that apply to the finished products (the primary initial finished product has a duty rate of 1.8% *ad valorem*; potential finished products have rates ranging from duty-free to 9.2%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9.2%; average of 7%). This savings from inverted tariffs would be the primary benefit derived from subzone status. FTZ procedures would also exempt Flint Ink from Customs duty payments on foreign materials used in production for export. In addition, Flint Ink states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is December 16, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 31, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 11405 North Pennsylvania Street, Suite 106, Carmel, IN 46032.

Dated: October 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26411 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 41–2002]

Foreign-Trade Zone 182—Fort Wayne, IN, Application For Foreign-Trade Subzone Status, Flint Ink North America Corporation (Pigments, Inks, and Varnish Products), Warsaw, IN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Fort Wayne, Indiana, grantee of FTZ 182, requesting special-purpose subzone status for the manufacturing and distribution facilities (pigments, inks, and varnish products) of Flint Ink North America Corporation (Flint Ink) in Warsaw, Indiana. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 7, 2002.

The Flint Ink facilities are located at two sites in Warsaw: (1) 3025 Old West Road 30 (33,520 square feet of enclosed space on 9.65 acres); and (2) 1406 West Winona Avenue (26,670 square feet of enclosed space on 16.69 acres). The facilities (28 employees) are used to manufacture, test, package, and warehouse pigments, inks, and varnish products primarily for use by the graphic arts industry.

Foreign-sourced materials account for approximately 10 to 50 percent of the finished-product value of Flint Ink's current products, and may include items from the following categories: Petroleum oils and mineral oils, distillates; hydrogen chloride and chlorosulfuric acid; sodium and potassium hydroxides; chlorides, chloride oxides, chloride hydroxides, bromides, bromide oxides, iodides and iodide oxides; nitrites and nitrates; acyclic alcohols and their derivatives; phenols and phenol-alcohols; ketones, quinines, and their derivatives; polycarboxylic acids and their derivatives; carboxylic acids and their derivatives; amine function compounds; carboxyamide-function compounds and amide-function compounds of carbonic acid; heterocyclic compounds, and nucleic acids and their salts; nucleic acids and their salts, and other heterocyclic compounds; synthetic organic coloring matter, preparations based thereon, and synthetic organic products used as fluorescent brightening agents or luminophores; other coloring matter; printing ink, writing or drawing ink, and other inks; artificial waxes and prepared waxes; rosin, resin, and derivatives thereof; reaction initiators, reaction accelerators, and catalytic preparations; polymers of vinyl chloride or other halogenated olefins in primary forms; polymers of vinyl acetate or other vinyl esters, and other vinyl polymers, in primary forms; petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products in primary forms; and cellulose and its chemical derivatives in primary forms.

Zone procedures would allow the company to choose the duty rates that apply to the finished products (the primary initial finished product has a duty rate of 1.8% *ad valorem*; potential finished products have rates ranging from duty-free to 9.2%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9.2%; average of 7%). This savings from inverted tariffs would be the primary benefit derived from subzone status. FTZ procedures would also exempt Flint Ink from Customs duty payments on foreign materials used in production for export. In addition, Flint Ink states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions Via Express/Package Delivery Services:* Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. *Submissions Via the U.S. Postal Service:* Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is December 16, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 31, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 11405 North Pennsylvania Street, Suite 106, Carmel, IN 46032.

Dated: October 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26412 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 42–2002]

Foreign-Trade Zone 29—Louisville, KY; Application for Foreign-Trade Subzone Status, Flint Ink North America Corporation, (Pigments, Inks, and Varnish Products), Elizabethtown, KY

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Louisville and Jefferson County Riverport Authority, grantee of FTZ 29, requesting special-purpose subzone status for the manufacturing and distribution facilities (pigments, inks, and varnish products) of Flint Ink North America Corporation (Flint Ink) in Elizabethtown, Kentucky. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 7, 2002.

The Flint Ink facilities are located at two sites in Elizabethtown: (1) 305 Ring Road (2 buildings, 147,694 square feet of enclosed space with possible addition of 138,631 square feet, on 102 acres); and (2) 51 Harvest Drive (3 buildings, 156,600 square feet of enclosed space, on 23 acres). The facilities (175 employees) are used to manufacture, test, package, and warehouse pigments, inks, and varnish products primarily for use by the graphic arts industry.

Foreign-sourced materials account for approximately 10 to 50 percent of the finished-product value of Flint Ink's current products, and may include items from the following categories: Petroleum oils and mineral oils, distillates; hydrogen chloride and chlorosulfuric acid; sodium and potassium hydroxides; chlorides, chloride oxides, chloride hydroxides, bromides, bromide oxides, iodides and iodide oxides; nitrites and nitrates; acyclic alcohols and their derivatives; phenols and phenol-alcohols; ketones, quinines, and their derivatives; polycarboxylic acids and their derivatives; carboxylic acids and their derivatives; amine function compounds; carboxyamide-function compounds and amide-function compounds of carbonic acid; heterocyclic compounds, and nucleic acids and their salts; nucleic acids and their salts, and other heterocyclic compounds; synthetic organic coloring matter, preparations based thereon, and synthetic organic products used as fluorescent brightening agents or luminophores; other coloring matter; printing ink, writing or drawing ink, and other inks; artificial waxes and prepared waxes; rosin, resin, and derivatives thereof; reaction initiators, reaction accelerators, and catalytic preparations; polymers of vinyl chloride or other halogenated olefins in primary forms; polymers of vinyl acetate or other vinyl esters, and other vinyl polymers, in primary forms; petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products in primary forms; and cellulose and its chemical derivatives in primary forms.

Zone procedures would allow the company to choose the duty rates that apply to the finished products (the primary initial finished product has a duty rate of 1.8% *ad valorem;* potential finished products have rates ranging from duty-free to 9.2%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9.2%; average of 7%). This savings from inverted tariffs would be the primary benefit derived from subzone status. FTZ procedures would also exempt Flint Ink from Customs duty payments on foreign materials used in production for export. In addition, Flint Ink states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is December 16, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 31, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 601 West Broadway, Room 634B, Louisville, KY 40202.

Dated: October 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26413 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 43–2002]

Foreign-Trade Zone 47—Boone County, KY; Application For Foreign-Trade Subzone Status Flint Ink North America Corporation (Pigments, Inks, and Varnish Products) Erlanger, KY

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Northern Kentucky Foreign Trade Zone, Inc./Greater Cincinnati Foreign Trade Zone, Inc., grantee of FTZ 47, requesting special-purpose subzone status for the manufacturing and distribution facilities (pigments, inks, and varnish products) of Flint Ink North America Corporation (Flint Ink) in Erlanger, Kentucky. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 7, 2002.

The Flint Ink facilities are located at 1835 Airport Exchange Boulevard, Erlanger, Kentucky (97,926 square feet of enclosed space on 2.3 acres). The facilities (52 employees) are used to manufacture, test, package, and warehouse pigments, inks, and varnish products primarily for use by the graphic arts industry.

Foreign-sourced materials account for approximately 10 to 50 percent of the finished-product value of Flint Ink's current products, and may include items from the following categories: petroleum oils and mineral oils, distillates; hydrogen chloride and chlorosulfuric acid; sodium and potassium hydroxides; chlorides, chloride oxides, chloride hydroxides, bromides, bromide oxides, iodides and iodide oxides; nitrites and nitrates; acyclic alcohols and their derivatives; phenols and phenol-alcohols; ketones, quinines, and their derivatives; polycarboxylic acids and their derivatives; carboxylic acids and their derivatives; amine function compounds; carboxyamide-function compounds and amide-function compounds of carbonic acid; heterocyclic compounds, and nucleic acids and their salts; nucleic acids and their salts, and other heterocyclic compounds; synthetic organic coloring matter, preparations based thereon, and synthetic organic products used as fluorescent brightening agents or luminophores; other coloring matter; printing ink, writing or drawing ink, and other inks; artificial waxes and prepared waxes; rosin, resin, and derivatives thereof; reaction initiators, reaction accelerators, and catalytic preparations; polymers of vinyl chloride or other halogenated olefins in primary forms; polymers of vinyl acetate or other vinyl esters, and other vinyl polymers, in primary forms; petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products in primary forms; and cellulose and its chemical derivatives in primary forms.

Zone procedures would allow the company to choose the duty rates that apply to the finished products (the primary initial finished product has a duty rate of 1.8% *ad valorem;* potential finished products have rates ranging from duty-free to 9.2%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9.2%; average of 7%). This savings from inverted tariffs would be the primary benefit derived from subzone status. FTZ procedures would also exempt Flint Ink from Customs duty payments on foreign materials used in production for export. In addition, Flint Ink states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is December 16, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 31, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 36 East 7th Street, Suite 2650, Cincinnati, OH 45202.

Dated: October 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26417 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 44–2002]

Foreign-Trade Zone 189—Kent-Ottawa-Muskegon Counties, MI Application for Foreign-Trade Subzone Status, Flint Ink North America Corporation (Pigments, Inks, and Varnish Products), Holland and Zeeland, MI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Kent-Ottawa-Muskegon Foreign Trade Zone, grantee of FTZ 189, requesting special-purpose subzone status for the manufacturing and distribution facilities (pigments, inks, and varnish products) of the CDR Pigments and Dispersions Division of Flint Ink North America Corporation (Flint Ink) in Holland and Zeeland, Michigan. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 7, 2002.

The Flint Ink facilities are located at two sites: (1) 471 Howard Avenue, Holland, Michigan (3 buildings, 236,239 square feet of enclosed space, on 30 acres); and (2) 9548 Adams, Zeeland, Michigan (1 building, 100,000 square feet, on 18 acres). The facilities (123 employees) are used to manufacture, test, package, and warehouse pigments, inks, and varnish products primarily for use by the graphic arts industry.

Foreign-sourced materials account for approximately 10 to 50 percent of the finished-product value of Flint Ink's current products, and may include items from the following categories: petroleum oils and mineral oils, distillates; hydrogen chloride and chlorosulfuric acid; sodium and potassium hydroxides; chlorides, chloride oxides, chloride hydroxides, bromides, bromide oxides, iodides and iodide oxides; nitrites and nitrates; acyclic alcohols and their derivatives; phenols and phenol-alcohols; ketones, quinines, and their derivatives; polycarboxylic acids and their derivatives; carboxylic acids and their derivatives; amine function compounds; carboxyamide-function compounds and amide-function compounds of carbonic acid; heterocyclic compounds, and nucleic acids and their salts; nucleic acids and their salts, and other heterocyclic compounds; synthetic organic coloring matter, preparations based thereon, and synthetic organic products used as fluorescent brightening agents or luminophores; other coloring matter; printing ink, writing or drawing ink, and other inks; artificial waxes and prepared waxes; rosin, resin, and derivatives thereof; reaction initiators, reaction accelerators, and catalytic preparations; polymers of vinyl chloride or other halogenated olefins in primary forms; polymers of vinyl acetate or other vinyl esters, and other vinyl polymers, in primary forms; petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products in primary forms; and cellulose and its chemical derivatives in primary forms.

Zone procedures would allow the company to choose the duty rates that apply to the finished products (the primary initial finished product has a duty rate of 1.8% *ad valorem;* potential finished products have rates ranging from duty-free to 9.2%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9.2%; average of 7%). This savings from inverted tariffs would be the primary benefit derived from subzone status. FTZ procedures would also exempt Flint Ink from Customs duty payments on foreign materials used in production for export. In addition, Flint Ink states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is December 16, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 31, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 401 West Fulton Street, Suite 309C, Grand Rapids, MI 49504.

Dated: October 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26418 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 45–2002]

Foreign-Trade Zone 46—Cincinnati, OH; Application for Foreign-Trade Subzone Status; Flint Ink North America Corporation (Pigments, Inks, and Varnish Products), Cincinnati and Lebanon, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Cincinnati Foreign Trade Zone, Inc., grantee of FTZ 46, requesting special-purpose subzone status for the manufacturing and distribution facilities (pigments, inks, and varnish products) of Flint Ink North America Corporation and its CDR Pigments and Dispersions Division (Flint Ink) in Cincinnati and Lebanon, Ohio. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 7, 2002.

The Flint Ink facilities are located at three sites: (1) 410 Glendale Milford Road, Cincinnati, Ohio (4 buildings, 111,000 square feet of enclosed space, on 12.55 acres); (2) 2675 Henkle Drive, Lebanon, Ohio (1 building, 52,000 square feet with a possible addition of 5,000 square feet, on 6 acres); and 4670 Dues Drive, Cincinnati, Ohio (1 building, 23,000 square feet, on 2.94 acres). The facilities (197 employees) are used to manufacture, test, package, and warehouse pigments, inks, and varnish products primarily for use by the graphic arts industry.

Foreign-sourced materials account for approximately 10 to 50 percent of the finished-product value of Flint Ink's current products, and may include items from the following categories: petroleum oils and mineral oils, distillates; hydrogen chloride and chlorosulfuric acid; sodium and potassium hydroxides; chlorides, chloride oxides, chloride hydroxides, bromides, bromide oxides, iodides and iodide oxides; nitrites and nitrates; acyclic alcohols and their derivatives; phenols and phenol-alcohols; ketones, quinines, and their derivatives; polycarboxylic acids and their derivatives; carboxylic acids and their derivatives; amine function compounds; carboxyamide-function compounds and amide-function compounds of carbonic acid; heterocyclic compounds, and nucleic acids and their salts; nucleic acids and their salts, and other heterocyclic compounds; synthetic organic coloring matter, preparations based thereon, and synthetic organic products used as fluorescent brightening agents or luminophores; other coloring matter; printing ink, writing or drawing ink, and other inks; artificial waxes and prepared waxes; rosin, resin, and derivatives thereof; reaction initiators, reaction accelerators, and catalytic preparations; polymers of vinyl chloride or other halogenated olefins in primary forms; polymers of vinyl acetate or other vinyl esters, and other vinyl polymers, in primary forms; petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products in primary forms; and cellulose and its chemical derivatives in primary forms.

Zone procedures would allow the company to choose the duty rates that apply to the finished products (the primary initial finished product has a duty rate of 1.8 % *ad valorem*; potential finished products have rates ranging from duty-free to 9.2 %) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9.2 %; average of 7%). This savings from inverted tariffs would be the primary benefit derived from subzone status. FTZ procedures would also exempt Flint Ink from Customs duty payments on foreign materials used in production for export. In addition, Flint Ink states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is December 16, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 31, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 36 East 7th Street, Suite 2650, Cincinnati, OH 45202.

Dated: October 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26419 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 46–2002]

Foreign-Trade Zone 105—Providence, RI; Application for Foreign-Trade Subzone Status, Flint Ink North America Corporation (Pigments, Inks, and Varnish Products), Lincoln, RI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Rhode Island Economic Development Corp., grantee of FTZ 105, requesting special-purpose subzone status for the manufacturing and distribution facilities (pigments, inks, and varnish products) of Flint Ink North America Corporation (Flint Ink) in Lincoln, Rhode Island. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 7, 2002.

The Flint Ink facilities are located at 40 Albion Road, Lincoln, Rhode Island (21,930 square feet of enclosed space on 3.5 acres). The facilities (26 employees) are used to manufacture, test, package, and warehouse pigments, inks, and varnish products primarily for use by the graphic arts industry.

Foreign-sourced materials account for approximately 10 to 50 percent of the finished-product value of Flint Ink's current products, and may include items from the following categories: petroleum oils and mineral oils, distillates; hydrogen chloride and chlorosulfuric acid; sodium and potassium hydroxides; chlorides, chloride oxides, chloride hydroxides, bromides, bromide oxides, iodides and iodide oxides; nitrites and nitrates; acyclic alcohols and their derivatives; phenols and phenol-alcohols; ketones, quinines, and their derivatives; polycarboxylic acids and their

derivatives; carboxylic acids and their derivatives; amine function compounds; carboxyamide-function compounds and amide-function compounds of carbonic acid; heterocyclic compounds, and nucleic acids and their salts; nucleic acids and their salts, and other heterocyclic compounds; synthetic organic coloring matter, preparations based thereon, and synthetic organic products used as fluorescent brightening agents or luminophores; other coloring matter; printing ink, writing or drawing ink, and other inks; artificial waxes and prepared waxes; rosin, resin, and derivatives thereof; reaction initiators, reaction accelerators, and catalytic preparations; polymers of vinyl chloride or other halogenated olefins in primary forms; polymers of vinyl acetate or other vinyl esters, and other vinyl polymers, in primary forms; petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products in primary forms; and cellulose and its chemical derivatives in primary forms.

Zone procedures would allow the company to choose the duty rates that apply to the finished products (the primary initial finished product has a duty rate of 1.8% *ad valorem*; potential finished products have rates ranging from duty-free to 9.2%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9.2%; average of 7%). This savings from inverted tariffs would be the primary benefit derived from subzone status. FTZ procedures would also exempt Flint Ink from Customs duty payments on foreign materials used in production for export. In addition, Flint Ink states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is December 16, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 31, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, One West Exchange Street, Providence, RI 02903.

Dated: October 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26420 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 47–2002]

Foreign-Trade Zone 21—Charleston, SC; Application for Foreign-Trade Subzone Status, Flint Ink North America Corporation, (Pigments, Inks, and Varnish Products), Beaufort, SC

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 21, requesting special-purpose subzone status for the manufacturing and distribution facilities (pigments, inks, and varnish products) of Flint Ink North America Corporation (Flint Ink) in Beaufort, South Carolina. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 7, 2002.

The Flint Ink facilities are located at 224 Parker Drive, Beaufort, South Carolina (69,200 square feet of enclosed space on 27 acres). The facilities (33 employees) are used to manufacture, test, package, and warehouse pigments, inks, and varnish products primarily for use by the graphic arts industry.

Foreign-sourced materials account for approximately 10 to 50 percent of the finished-product value of Flint Ink's current products, and may include items from the following categories: petroleum oils and mineral oils, distillates; hydrogen chloride and chlorosulfuric acid; sodium and potassium hydroxides; chlorides, chloride oxides, chloride hydroxides, bromides, bromide oxides, iodides and iodide oxides; nitrites and nitrates; acyclic alcohols and their derivatives; phenols and phenol-alcohols; ketones, quinines, and their derivatives; polycarboxylic acids and their derivatives; carboxylic acids and their derivatives; amine function compounds; carboxyamide-function compounds and amide-function compounds of carbonic acid; heterocyclic compounds, and nucleic acids and their salts; nucleic acids and their salts, and other heterocyclic compounds; synthetic organic coloring matter, preparations based thereon, and synthetic organic products used as fluorescent brightening agents or luminophores; other coloring matter; printing ink, writing or drawing ink, and other inks; artificial waxes and prepared waxes; rosin, resin, and derivatives thereof; reaction initiators, reaction accelerators, and catalytic preparations; polymers of vinyl chloride or other halogenated olefins in primary forms; polymers of vinyl acetate or other vinyl esters, and other vinyl polymers, in primary forms; petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products in primary forms; and cellulose and its chemical derivatives in primary forms.

Zone procedures would allow the company to choose the duty rates that apply to the finished products (the primary initial finished product has a duty rate of 1.8% *ad valorem;* potential finished products have rates ranging from duty-free to 9.2%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9.2%; average of 7%). This savings from inverted tariffs would be the primary benefit derived from subzone status. FTZ procedures would also exempt Flint Ink from Customs duty payments on foreign materials used in production for export. In addition, Flint Ink states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is December 16, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 31, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 5300 International Boulevard, Suite 201–C, Charleston, SC 29418.

Dated: October 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26415 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1251]

Approval of Processing Activity Within Foreign-Trade Zone 113 Midlothian, TX; Siemens Westinghouse Power Corporation (Inc.), (Industrial Power Generation Equipment)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

WHEREAS, Foreign-Trade Zone Operations, Inc., operator of FTZ 113, has requested authority on behalf of Siemens Westinghouse Power Corporation (Inc.), to process foreign-origin turbines and domestic industrial power generators under zone procedures within FTZ 113 (filed 4–29–2002, FTZ Docket 21–2002), and;

WHEREAS, the application seeks FTZ authority to admit foreign-origin steam turbines and domestically-produced electric generators and to withdraw the equipment for entry as generator sets; and,

WHEREAS, notice inviting public comment has been given in the **Federal Register** (67 FR 31180, 5–9–2002); and,

WHEREAS, the Board adopts the findings and recommendations of the examiner's report and finds that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

NOW, THEREFORE, the Board hereby approves the request, subject to the Act and the Board's regulations, including Section 400.28.

Signed in Washington, DC, this 7th day of October, 2000.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26414 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 48–2002]

Foreign-Trade Zone 185—Culpeper, Virginia; Application For Foreign-Trade Subzone Status, Flint Ink North America Corporation (Pigments, Inks, and Varnish Products) Weyers Cave, VA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Culpeper County Chamber of Commerce, grantee of FTZ 185, requesting special-purpose subzone status for the manufacturing and distribution facilities (pigments, inks, and varnish products) of Flint Ink North America Corporation (Flint Ink) in Weyers Cave, Virginia. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 7, 2002.

The Flint Ink facilities are located at two sites in Weyers Cave: (1) 106 Triangle Drive (57,500 square feet of enclosed space on 7.1 acres); and (2) 447 Weyers Cave, Road (52,000 square feet of enclosed space on 22.455 acres. The facilities (51 employees) are used to manufacture, test, package, and warehouse pigments, inks, and varnish products primarily for use by the graphic arts industry.

Foreign-sourced materials account for approximately 10 to 50 percent of the finished-product value of Flint Ink's current products, and may include items from the following categories: petroleum oils and mineral oils, distillates; hydrogen chloride and chlorosulfuric acid; sodium and potassium hydroxides; chlorides, chloride oxides, chloride hydroxides, bromides, bromide oxides, iodides and iodide oxides; nitrites and nitrates; acyclic alcohols and their derivatives; phenols and phenol-alcohols; ketones, quinines, and their derivatives; polycarboxylic acids and their derivatives; carboxylic acids and their derivatives; amine function compounds; carboxyamide-function compounds and amide-function compounds of carbonic acid; heterocyclic compounds, and nucleic acids and their salts; nucleic acids and their salts, and other heterocyclic compounds; synthetic organic coloring matter, preparations based thereon, and synthetic organic products used as fluorescent brightening agents or luminophores; other coloring matter; printing ink, writing or drawing ink, and other inks; artificial waxes and prepared waxes; rosin, resin, and derivatives thereof; reaction initiators, reaction accelerators, and catalytic preparations; polymers of vinyl chloride or other halogenated olefins in primary forms; polymers of vinyl acetate or other vinyl esters, and other vinyl polymers, in primary forms; petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products in primary forms; and cellulose and its chemical derivatives in primary forms.

Zone procedures would allow the company to choose the duty rates that apply to the finished products (the primary initial finished product has a duty rate of 1.8% *ad valorem;* potential finished products have rates ranging from duty-free to 9.2%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9.2%; average of 7%). This savings from inverted tariffs would be the primary benefit derived from subzone status. FTZ procedures would also exempt Flint Ink from Customs duty payments on foreign materials used in production for export. In addition, Flint Ink states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to

the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is December 16, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 2, 2003.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the Culpeper County Chamber of Commerce, 109 South Commerce Street, Culpeper, VA 22701.

Dated: October 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26416 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid from the People's Republic of China; Notice of Rescission of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On August 27, 2002, in response to requests by two exporters, the Department of Commerce initiated an administrative review of the antidumping duty order on sebacic acid from the People's Republic of China. The period of review is July 1, 2001, through June 30, 2002. The requests for administrative review were made by two exporters of the subject merchandise, Guangdong Chemicals Import and Export Co. and Tianjin Chemicals Import and Export Co. This review has now been rescinded as a result of the timely withdrawal of the requests for administrative review by both exporters, as no other interested party requested the review.

EFFECTIVE DATE: October 17, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Strollo, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–0629.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the regulations of the Department of Commerce (the Department) are to 19 CFR part 351 (2002).

Background

On July 1, 2002, the Department published in the Federal Register a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on sebacic acid from the People's Republic of China (PRC). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 67 FR 44172 (July 1, 2002). On July 10, 2002, two exporters, Guangdong Chemicals Import and Export Co. (Guangdong) and Tianjin Chemicals Import and Export Co. (Tianjin), requested an administrative review of this antidumping duty order on sebacic acid from the PRC.

In accordance with 19 CFR 351.221(b)(1), we initiated this review on August 27, 2002, covering the period of July 1, 2001, through June 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (Aug. 27, 2002). On September 10, 2002, both exporters withdrew their requests for administrative review.

Rescission of Review

Guangdong and Tianjin timely withdrew their requests for administrative review for the above-referenced period on September 10, 2002. Therefore, because no other interested party requested a review of either Guangdong or Tianjin for this period of review, in accordance with 19 CFR 351.213(d)(1) and consistent with our practice, we are rescinding this review of the antidumping order on sebacic acid from the PRC for the period of July 1, 2001, through June 30, 2002. This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: October 9, 2002.

Louis Apple,

Acting Deputy Assistant SecretaryImport Administration, Group I.

[FR Doc. 02–26407 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–041. *Applicant:* The Ohio State University, Materials Science and Engineering, 2041 College Road, Columbus, OH 43210. *Instrument:* Electron Microscope, Model Tecnai F20 S–TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used for morphological and structural studies of ceramics and metals, including high temperature superconductors, high temperature metal alloys, evaporated metal thin films, silicon bicrystals, soils and geological minerals, polymers and possibly some biological samples. Also, the instrument will be used to measure the morphology and orientation of grains and particles, as well as the structure, long and short range ordering, number and type of defects and the elemental composition of various phases in the materials. Application accepted by Commissioner of Customs: September 25, 2002.

Docket Number: 02–042. *Applicant:* The Pennsylvania State University, Microarray Facility, Wartik Laboratory, University Park, PA 16802. *Instrument:* Plate Filler, Model QFill2. *Manufacturer:* Genetix Limited, United Kingdom. *Intended Use:* The instrument is intended to be used to rapidly dispense growth medium into 96 and 384-well microtitre plates to support bacterial growth for molecular biology experiments. The gene and genome sequences of an organism under study will be cloned into small circular DNA molecules ("plasmids") that are grown inside standard E. coli bacteria in any molecular or genomics laboratory for use in performing the experiments. Objectives pursued in the course of the investigations are: (a) Gene discovery, (b) gene sequence characterization, (c) discovery of expressed gene sequences, and (d) genome-wide description of gene expression patterns in different tissues. Application accepted by Commissioner of Customs: September 26, 2002.

Docket Number: 02–043. *Applicant:* The Pennsylvania State University, Microarry Facility, Wartik Laboratory, University Park, PA 16802. *Instrument:* Colony Picking/Arraying Robot, Model Q PixII. *Manufacturer:* Genetix Limited, United Kingdom. *Intended Use:* The instrument is intended to be used to manipulate (pick, transfer, sort or replicate) bacterial colonies that contain either circular plasmids or viral phage particles. The plasmids and phage in turn will contain fragments (clones) of DNA or expressed gene sequences (cDNAs) from an organism of interest. Libraries of DNA or cDNA are used to map and study the sequence of genes in the genome, and to obtain information about which genes are expressed in an organism at a given time. Objectives pursued in the course of the investigations are: (a) Gene discovery, (b) gene sequence characterization, (c) discovery of expressed gene sequences and (d) genome-wide description of gene expression patterns in different tissues. Application accepted by Commissioner of Customs: September 26, 2002.

Docket Number: 02–045. *Applicant:* University of Vermont, College of Medicine, Molecular Physiology & Biophysics, HSRF, Room 120, 149 Beaumont Avenue, Burlington, VT 05405. *Instrument:* Electron Microscope, Model Tecnai 12 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to carry out structural studies of biological samples for the purpose of biomedical research involving metabolic enzymes. The enzymes will be isolated from yeast and plunged into liquid ethane to preserve their structure and samples will be analyzed. An enzyme goes through different steps or stages as it performs its task in the cell. By analyzing all the different states of the enzyme, a better understanding of its function can be achieved. Application accepted by Commissioner of Customs: October 1, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–26409 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Texas Health Science Center at Tyler; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–037. *Applicant:* University of Texas Health Science Center at Tyler, Tyler, TX 75708–3154. *Instrument:* Electron Microscope, Model JEM–1230. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 67 FR 58355, September 16, 2002. *Order Date:* June 26, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–26408 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Tuesday, November 12, 2002, 9 a.m. to 5:30 p.m.; Wednesday, November 13, 2002, 8 a.m. to 5:30 p.m.; Thursday, November 14, 2002, 8 a.m. to 5:30 p.m.; Friday, November 15, 2002, 8 a.m. to 3 p.m. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the site visit process, review the final judging process and meeting procedures, final judging of the 2002 applicants, learnings and improvements for 2003 judging cycle, update on the 2003 program and review 2003 judges calendar. The review process involves examination of records and discussions of applicant data, and will be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code.

DATES: The meeting will convene November 12, 2002 at 8 a.m. and adjourn at 3 p.m. on November 15, 2002. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Building 222, Red Training Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 11, 2002, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public

in accordance with Section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: October 10, 2002.

Arden L. Bement, Jr.,

Director.

[FR Doc. 02–26436 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092702B]

Marine Mammals; File No. 358–1585–02

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce. .

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Alaska Department of Fish and Game, Division of Wildlife Conservation, P.O. Box 25526, Juneau, AK, has been issued an amendment to scientific research Permit No. 358–1585–01.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Protected Resources Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Carrie Hubard (301)713–2289.

SUPPLEMENTARY INFORMATION: On August 5, 2002, notice was published in the **Federal Register** (67 FR 50632) that an amendment of Permit No. 358–1585–01 issued April 12, 2002, had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Permit was amended to allow the Holder to expand the research protocol to include implantation of subcutaneous transmitters in harbor seals. Ten seals will be used in the initial study followed by 50 seals in 2003. Reauthorization to continue research is required based on results of the initial implants and the full field season.

Dated: October 10, 2002.

Trevor Spradlin,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–26427 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100102B]

Stock Assessment of Large Coastal Sharks in the U.S. Atlantic and Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of a stock assessment report on large coastal sharks (LCS) in the Atlantic and Gulf of Mexico, prepared by the NMFS Southeast Fisheries Science Center, and a final meeting report of the shark evaluation workshop held in Panama City, FL, June 24 through June 28, 2002.

ADDRESSES: Written requests for copies of these reports should be sent to Karyl Brewster-Geisz, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service (NMFS), 1315 East-West Highway, Silver Spring, MD 20910, or may be sent via facsimile (fax) to 301–713–1917.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, (301) 713–2347; fax (301) 713–1917.

SUPPLEMENTARY INFORMATION: Numerous species of LCS are caught in directed and incidental fisheries by commercial and recreational fishermen along the U.S. Atlantic and Gulf of Mexico coasts. The species in this management group presently include, but are not limited to, sandbar, blacktip, silky, tiger, spinner, and bull sharks. The previous stock assessment of LCS was conducted in 1998 and classified this group as being overfished. A substantial amount of information has become available since then, including four more years of catch estimates, new biological data, and extended fishery-independent and fishery-dependent catch rate series. The final meeting report summarizes discussions of the available data, how the data should be used, and the types of models and sensitivity tests that should conducted. The stock assessment report uses this information to estimate the status of LCS and to project their future abundance under a variety of future catch levels in waters off the U.S. Atlantic and Gulf of Mexico coasts.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 9, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–26428 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

October 10, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALs) for textile products, produced or manufactured in Costa Rica and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for 2003.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 10, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Costa Rica and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following restraint limits:

Category	Twelve-month limit
340/640	1,728,466 dozen.
342/642	638,074 dozen.
347/348	2,912,850 dozen.
443	234,722 numbers.
447	12,655 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated October 25, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), you are directed to establish guaranteed access levels for properly certified cotton, wool and man-made fiber textile products in the following categories which are assembled in Costa Rica from fabric formed and cut in the United States and re-exported to the United States from Costa Rica during the period beginning on January 1, 2003 and extending through December 31, 2003:

Category	Guaranteed access level
340/640	650,000 dozen.
342/642	250,000 dozen.
347/348	1,500,000 dozen.
443	200,000 numbers.
447	4,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of May 15, 1990 (55 FR 21074), as amended, shall be denied entry unless the Government of Costa Rica authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–26402 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Practice Implementation Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Business Practice Implementation Board (DBB) will meet in open session on Tuesday, October 29, 2002, at the Pentagon, Washington, DC from 0900 until 1000. The mission of the DBB is to advise the Senior Executive Council (SEC) and the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense. At this meeting, the Board's Human Resources Task Group will deliberate on its findings and proposed recommendations related to tasks assigned earlier this year.

DATES: Tuesday, October 29, 2002, 0900 to 1000.

ADDRESSES: Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Defense Business Practice Implementation Board, 1100 Defense Pentagon, Washington, DC 20301–1100, via E-mail at *DBB@osd.pentagon.mil*, or via phone at (703) 695–0505.

SUPPLEMENTARY INFORMATION: Members of the public who wish to attend the meeting must contact the Defense Business Practices Implementation Board no later than Wednesday, October 23 for further information about admission as seating is limited. Additionally, those who wish to make oral comments or deliver written comments should also request to be scheduled, and submit a written text of the comments by Monday, October 21 to allow time for distribution to the Board members prior to the meeting. Individual oral comments will be limited to five minutes, with the total oral comment period not exceeding thirty-minutes.

Dated: October 9, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–26352 Filed 10–16–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 1300, Thursday, October 17, 2002 and 0900, Friday, October 18, 2002.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500 Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square

Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. § 10(d)) it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: October 9, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–26348 Filed 10–16–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, November 26, 2002.

ADDRESSES: The meeting will be held at Palisades Institutes for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App § 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: October 9, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–26349 Filed 10–16–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice of meeting.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, November 20, 2002.

ADDRESSES: The meeting will be held at the Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Carr, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. § 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 553b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: October 9, 2002.

Patricia L. Toppings,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–26350 Filed 10–16–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Meeting

AGENCY: National Defense University.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming Meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended.

DATES: November 14, 2002.

ADDRESSES: The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Director of Programs, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rossyln P.O. Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *colliere@ndu.edu.*

SUPPLEMENTARY INFORMATION: The Board meeting is open to the public.

Dated: October 19, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–26351 Filed 10–16–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Unexploded Ordinance (UXO) will meet in closed session on October 30–31, 2002; November 21–22, 2002; and December 3–5, 2002, at SAIC, Inc., 4001 N. Fairfax Street, Arlington, VA. This Task Force will review modern technology that can be exploited or developed to reduce the extremely high cost of UXO clean up.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review and evaluate the Department's ability to exploit modern technology to reduce the extremely high cost of UXO clean up and improve its effectiveness for both contaminated land and water ranges and help accomplish the job in a reasonable time; and science and technologies that can be developed to support and sustain continued live fire training and testing of munitions at ranges across the United States with an acceptable environmental impact.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that, accordingly, the meeting will be closed to the public.

Dated: October 9, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–26354 Filed 10–16–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Defense Science Board

Office of the Secretary

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Seabasing will meet in closed session on November 5–6, 2002, and November 18–19, 2002, at Strategic Analysis, Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will assess how seabasing of expeditionary forces can best serve the nation's defense needs through at least the first half of the 21st century.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will examine the broadest range of alternatives for seabasing of expeditionary forces and be guided by: the expected naval environment for the next 20–50 years; the role of naval forces in enabling access for joint forces through the world's littorals; assets and technologies needed to establish a robust and capable Enhanced Networked Seabase; the timing of the acquisition of the technologies, platforms and systems which replace the legacy systems; and the function of new hardware and opportunities to reallocate functionality to improve effectiveness, or efficiency, or economy.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: October 9, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–26353 Filed 10–16–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 16, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 11, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New.

Title: FSA Students Portal (JS).

Frequency: On Occasion, Monthly, Annually.

Affected Public: Individuals or household; Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 5,000,000. Burden Hours: 200,000.

Abstract: Federal Student Aid (FSA) of the U.S. Department of Education seeks to establish a registration system within the 'Students Portal', an Internet Portal Website (hereafter 'the Website'). The Website will make the college application process more efficient, faster, and accurate by making it an automated, electronic process that targets financial aid and college applications. The Website uses some personal contact information criteria to automatically fill out the forms and surveys initiated by the user. The Website will also provide a database of demographic information that will help FSA target the distribution of financial aid materials to specific groups of students and/or parents. For example, studies have shown that providing student financial assistance information to middle school (or elementary school) students and/or their parents dramatically increases the likelihood that those students will attend college. The demographic information from the Website will help us to identify potential customers in the middle school age range and is information that was previously unavailable to us.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2172. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the e-mail address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–26448 Filed 10–16–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Intent To Compromise Claim Against the State of Louisiana State Department of Education

AGENCY: Department of Education.

ACTION: Notice of intent to compromise claim with request for comments.

SUMMARY: The United States Department of Education (Department) intends to compromise a claim against the Louisiana State Department of Education (LSDE) now pending before the Office of Administrative Law Judges (OALJ), Docket No. 01–24–R. Before compromising a claim, the Department must publish its intent to do so in the **Federal Register** and provide the public an opportunity to comment on that action (20 U.S.C. 1234a(j)).

DATES: We must receive your comments on the proposed action on or before December 2, 2002.

ADDRESSES: Address all comments concerning the proposed action to Jeffrey C. Morhardt, Esq., Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E312, Washington, DC 20202–2110.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Morhardt, Esq. Telephone: (202) 401–6700. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed action. During and after the comment period, you may inspect all public comments in room 6E312, FB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing Comments

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The claim in question arose when the Chief of the Department's Indirect Cost Group, Office of the Chief Financial Officer (Chief) issued a program determination letter (PDL) on June 28, 2001. The PDL demanded a refund of $3,171,296 of funds provided to the LSDE for fiscal years 1992–98 under various Department programs. Specifically, the Chief found that the LSDE had failed to carry out its administrative responsibilities to ensure that the New Orleans Parish School Board (NOPS) complied with applicable Federal statutes and regulations regarding proper accounting for Federal education funds. More specifically, the Chief found that NOPS charged Federal funds for unemployment compensation insurance premiums disproportionately and therefore overcharged Federal funds in relation to the benefits received. Accordingly, the Chief disallowed the percent of the total premium costs for 1992–98 in excess of the amount that should have been paid using Federal funds based upon the percentage of Federal funds and State and local funds.

During settlement discussions, the LSDE submitted substantial documentation to demonstrate that the actual amount of excess unemployment compensation premiums that NOPS charged to Federal programs during fiscal years 1997 and 1998 was $664,990.67, rather than $906,084, as stated in the PDL. The LSDE also submitted documentation to demonstrate that $2,650,010.13 in disallowed costs for fiscal years 1992–96 and part of fiscal year 1997 were barred from recovery by the statute of limitations of the General Education Provisions Act (GEPA). 20 U.S.C. 1234a(k). After conducting a thorough review of this documentation, the Chief has decided to accept the LSDE's documentation, thereby reducing the claim to $280,192.54 for the remainder of fiscal years 1997 and 1998.

The Department proposes to compromise this remaining claim to $250,192.54. Based on litigation risks and the costs of proceeding through the administrative and, possibly, court process for this appeal, the Department has determined that it would not be practical or in the public interest to continue this proceeding. In addition, in light of NOPS' corrective action performed in 1998, there is little or no likelihood of a recurrence of this problem. As a result, under the authority in 20 U.S.C. 1234a(j), the Department has determined that compromise of this claim for $250,192.54 is appropriate. The public

is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by calling or writing to Jeffrey C. Morhardt, Esq. at the telephone number and address listed at the beginning of this notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 1234a(j).

Dated: October 10, 2002.

Jack Martin,

Chief Financial Officer.

[FR Doc. 02–26398 Filed 10–16–02; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Continuation of Solicitation for the Office of Science Financial Assistance Program—Notice 03–01

AGENCY: U.S. Department of Energy.

ACTION: Annual Notice of Continuation of Availability of Grants and Cooperative Agreements.

SUMMARY: The Office of Science (SC) of the Department of Energy (DOE) hereby announces its continuing interest in receiving grant applications for support of work in the following program areas: Basic Energy Sciences, High Energy Physics, Nuclear Physics, Advanced Scientific Computing, Fusion Energy Sciences, Biological and Environmental Research, and Energy Research Analyses. On September 3, 1992, DOE published in the **Federal Register** the Office of Energy Research Financial Assistance Program (now called the Office of Science Financial Assistance Program), 10 CFR part 605, Final Rule, which contained a solicitation for this program. Information about submission of applications, eligibility, limitations, evaluation and selection processes and other policies and procedures are specified in 10 CFR part 605.

DATES: Applications may be submitted until September 30, 2003, in response to this Notice of Availability.

ADDRESSES: Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS website. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific proposal as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*.

If you are unable to submit an application through IIPS please contact the Office of the Director, Grants and Contracts Division, Office of Science, DOE at 301–903–5212 in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

SUPPLEMENTARY INFORMATION: This Notice is published annually and remains in effect until it is succeeded by another issuance by the Office of Science, usually published after the beginning of the fiscal year. This annual Notice 03–01 succeeds Notice 02–01, which was published December 20, 2001.

It is anticipated that approximately $400 million will be available for grant and cooperative agreement awards in Fiscal Year 2003. The DOE is under no obligation to pay for any costs associated with the preparation or submission of an application. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this Notice.

The following program descriptions are offered to provide more in-depth information on scientific and technical areas of interest to the Office of Science:

1. Basic Energy Sciences

The Basic Energy Sciences (BES) program supports fundamental research in the natural sciences and engineering leading to new and improved energy technologies and to understanding and mitigating the environmental impacts of energy technologies. The science areas and their objectives are as follows:

(a) Materials Sciences and Engineering

The objective of this program is to increase the fundamental understanding of phenomena, properties, and behavior important to materials that will contribute to improving current energy technologies and developing new energy technologies. This program is comprised of the subfields materials physics, condensed matter physics, materials chemistry, engineering physics, and related disciplines where the emphasis is on the science of materials. Program Contact: (301) 903–3427.

(b) Chemical Sciences

The objective of this program is to expand, through support of basic research, knowledge of various areas of chemistry, chemical engineering and atomic molecular and optical physics with a goal of contributing to new or improved processes for developing and using domestic energy resources in an efficient and environmentally sound manner. Disciplinary areas where research is supported include atomic molecular and optical physics; physical, inorganic and organic chemistry; chemical physics; photochemistry; radiation chemistry; analytical chemistry; separations science; actinide chemistry; and chemical engineering sciences. Program Contact: (301) 903–5804.

(c) Geosciences

The goal of this program is to develop a quantitative and predictive understanding of geologic processes related to energy and environmental quality. The program emphasizes cross-cutting basic research that will improve understanding of reactive geochemical transport and other subsurface processes and properties and how to image them using techniques ranging from electrons, x-rays or neutrons to electromagnetic and seismic waves. Applications of this fundamental understanding might include transport of contaminant fluids, hydrocarbons, sequestered CO_2 or performance prediction for repository

sites. The emphasis is on the disciplinary areas of geochemistry, geophysics, geomechanics, and hydrogeology with a focus on the upper levels of the earth's crust. Particular emphasis is on processes taking place at the atomic and molecular scale. Specific topical areas receiving emphasis include: high resolution geophysical imaging; rock physics, physics of fluid transport, and fundamental properties and interactions of rocks, minerals, and fluids.

Program Contact: (301) 903–4061.

(d) Energy Biosciences

The primary objective of this program is to generate an understanding of fundamental biological mechanisms in plants and microorganisms that will support future technological developments related to DOE's mission. The research serves to provide the basic information foundation for environmentally responsible production and conversion of renewable resources for fuels, chemicals, and the conservation of energy. This program has special requirements for the submission of preapplications, when to submit, and the length of the applications. Applicants are encouraged to contact the program regarding these requirements.

Program Contact: (301) 903–2873.

2. High Energy and Nuclear Physics

This program supports about 90% of the U.S. efforts in high energy and nuclear physics. The objectives of these programs are indicated below:

(a) High Energy Physics

The primary objectives of this program are to understand the ultimate structure of matter in terms of the properties and interrelations of its basic constituents, and to understand the nature and relationships among the fundamental forces of nature. The research falls into three broad categories: experimental research, theoretical research, and technology R&D in support of the high energy physics program.

Program Contact: (301) 903–3624.

(b) Nuclear Physics (Including Nuclear Data Program)

The primary objectives of this program are a fundamental understanding of the interactions and structures of atomic nuclei and nuclear matter, and an understanding of the forces of nature as manifested in nuclear matter.

Program Contact: (301) 903–3613.

3. Advanced Scientific Computing Research

This program fosters and supports fundamental research in advanced computing research (applied mathematics, computer science and networking), and operates supercomputer, networking, and related facilities to enable the analysis, modeling, simulation, and prediction of complex phenomena important to the Department of Energy.

(a) Mathematical, Information, and Computational Sciences

This subprogram is responsible for carrying out the primary mission of the ASCR program: discovering, developing, and deploying advanced scientific computing and communications tools and operating the high performance computing and network facilities that researchers need to analyze, model, simulate, and—most importantly—predict the behavior of complex natural and engineered systems of importance to the Office of Science and to the Department of Energy.

The computing and the networking required to meet Office of Science needs exceed the state-of-the-art by a wide margin. Furthermore, the algorithms, software tools, the software libraries and the software environments needed to accelerate scientific discovery through modeling and simulation are beyond the realm of commercial interest. To establish and maintain DOE's modeling and simulation leadership in scientific areas that are important to its mission, the MICS subprogram employs a broad, but integrated research strategy. The basic research portfolio in applied mathematics and computer science provides the foundation for enabling research activities, which includes efforts to advance networking, to develop software tools, software libraries and software environments. Results from enabling research supported by the MICS subprogram are used by computational scientists supported by other Office of Science and other DOE programs. Research areas include:

(b) Applied Mathematics

Research on the underlying mathematical understanding and numerical algorithms to enable effective description and prediction of physical systems such as fluids, magnetized plasmas, or protein molecules. This includes, for example, methods for solving large systems of partial differential equations on parallel computers, techniques for choosing optimal values for parameters in large systems with hundreds to hundreds of thousands of parameters, improving our understanding of fluid turbulence, and developing techniques for reliably estimating the errors in simulations of complex physical phenomena.

(c) Computer Science

Research in computer science to enable large scientific applications through advances in massively parallel computing such as very lightweight operating systems for parallel computers, distributed computing such as development of the Parallel Virtual Machine (PVM) software package which has become an industry standard, and large scale data management and visualization. The development of new computer and computational science techniques will allow scientists to use the most advanced computers without being overwhelmed by the complexity of rewriting their codes every 18 months.

(d) Networking

Research in high performance networks and information surety required to support high performance applications—protocols for high performance networks, methods for measuring the performance of high performance networks, and software to enable high speed connections between high performance computers and networks. The development of high speed communications and collaboration technologies will allow scientists to view, compare, and integrate data from multiple sources remotely.

Program Contact: (301) 903–5800.

4. Fusion Energy Sciences

The mission of the Fusion Energy Sciences program is to advance plasma science, fusion science, and fusion technology—the knowledge base needed for an economically and environmentally attractive fusion energy source. The Office of Fusion Energy Sciences (OFES) supports basic and applied research, encourages technical connectivity with the broader U.S. science community, and uses international collaboration to accomplish this mission.

(a) Research Division

This Division seeks to develop the physics knowledge base needed to advance the Fusion Energy Sciences program. Research is conducted on medium to large-scale confinement devices to study physics issues relevant to basic plasmas and to the production of fusion energy. Experiments on this scale of devices are used to explore the limits of specific confinement concepts, as well as study associated physical phenomena. Specific areas of interest include: (1) Reducing plasma energy and particle transport at high densities and temperatures, (2) understanding the physical laws governing stability of high pressure plasmas, (3) investigating plasma wave interactions, (4) studying and controlling impurity particle transport and exhaust in plasmas, and (5) interaction and coupling among these four issues in a fusion experiment.

Research is also carried out in the following areas: (1) Basic plasma science research directed at furthering the understanding of fundamental processes in plasmas; (2) theoretical research to provide the understanding of fusion plasmas necessary for interpreting results from present experiments, planning future experiments, and designing future confinement devices; (3) critical data on plasma properties, atomic physics and new diagnostic techniques for support of confinement experiments; (4) supporting research on innovative confinement concepts; and (5) research on issues that support the development of Inertial Fusion Energy, for which high energy density physics necessary for target development is carried out by the Office of Defense Programs in the Department of Energy's National Nuclear Security Agency.

Program Contact: (301) 903–4095.

(b) Facilities and Enabling Technologies Division

This Division is responsible for overseeing the facility operations and enabling research and development activity budgets within the OFES. Grant program opportunities are in the enabling research and development activity. (Grants for scientific use of the facilities operated/maintained by this Division should be addressed to the Research Division.) The enabling technologies program supports the advancement of fusion science in the nearer-term by carrying out research on technological topics that: (1) enable domestic experiments to achieve their full performance potential and scientific research goals;,(2) permit scientific exploitation of the performance gains being sought from physics concept improvements; (3) allow the U.S. to enter into international collaborations gaining access to experimental conditions not available domestically; and (4) explore the science underlying these technological advances.

The enabling technologies program supports pursuit of fusion energy science for the longer-term by conducting research aimed at innovative technologies, designs and materials to point toward an attractive fusion energy vision and affordable pathways for optimized fusion development.

Program Contact: (301) 903–3068.

5. Biological and Environmental Research Program

For over 50 years the Biological and Environmental Research (BER) Program has been investing to advance environmental and biomedical knowledge connected to energy. The BER program provides fundamental science to underpin the business thrusts of the Department's strategic plan. Through its support of peer-reviewed research at national laboratories, universities, and private institutions, the program develops the knowledge needed (1) to identify, understand, and anticipate the long-term health and environmental consequences of energy production, development, and use, and (2) to develop biology based solutions that address DOE and National needs.

(a) Life Sciences Research

Research is focused on using DOE's unique resources and facilities to develop fundamental knowledge of biological systems that can be used to address DOE needs in clean energy, carbon sequestration, and environmental cleanup and that will underpin biotechnology based solutions to energy challenges. The objectives are: (1) To develop the experimental and, together with the Advanced Scientific Computing Research program, the computational resources, tools, and technologies needed to understand and predict the complex behavior of complete biological systems, principally microbes and microbial communities; (2) to take advantage of the remarkable high throughput and cost-effective DNA sequencing capacity at the Joint Genome Institute to meet the DNA sequencing needs of the scientific community through competitive, peer-reviewed nominations for DNA sequencing; (3) to develop and support DOE national user facilities for use in fundamental structural biology at synchrotron and neutron sources; (4) to use model organisms to understand human genome organization, human gene function and control, and the functional relationships between human genes and proteins at a genomic scale; (5) to understand and characterize the risks to human health from exposures to low levels of radiation; and (6) to anticipate and address ethical, legal, and social implications arising from genome research.

Program Contact: (301) 903–5468.

(b) Medical Applications and Measurement Sciences

The research is designed to develop the beneficial applications of nuclear and energy-related technologies for biomedical research, medical diagnosis and treatment. The objectives are: (1) To utilize innovative radiochemistry to develop new radiotracers for medical research, clinical diagnosis and treatment, (2) To develop the next generation of non-invasive nuclear medicine technologies, such as positron emission tomography, (3) To develop advanced imaging detection instrumentation capable of high resolution from the sub-cellular to the clinical level, (4) To utilize the unique resources of the DOE in engineering, physics, chemistry and computer sciences to develop the fundamental tools to be used in biology and medicine, particularly in imaging sciences, photo-optics and biosensors.

Program Contact: (301) 903–3213.

(c) Environmental Remediation

This research delivers the scientific knowledge, tools, and enabling discoveries in biological and environmental research to reduce the costs, risks, and schedules associated with the cleanup of the DOE nuclear weapons complex; to extend the frontiers of biological and chemical methods for remediation; to discover the fundamental mechanisms of contaminant transport in the environment; to develop cutting edge molecular tools for investigating environmental processes; and to develop an understanding of the ecological impacts of remediation activities. Research priorities include bioremediation, contaminant fate and transport, nuclear waste chemistry and advanced treatment options, and the operation of the William R. Wiley Environmental Molecular Sciences Laboratory (EMSL) and the Savannah River Ecology Laboratory (SREL). The research performed for this program will provide fundamental knowledge on a broad range of remediation problems.

Program Contact: (301) 903–4902.

(d) Climate Change Research

The program seeks to understand the basic physical, chemical, and biological processes of the Earth's atmosphere, land, and oceans and how these processes may be affected by energy production and use. The research is designed to provide data that will enable an objective assessment of the potential for and the consequences of human-induced climate change at global and regional scales. It also provides data

to enable assessments of mitigation options to prevent such a change. The program is comprehensive with an emphasis on understanding and simulating the radiation balance from the surface of the Earth to the top of the atmosphere (including the effect of clouds, water vapor, trace gases, and aerosols), on enhancing the quantitative models necessary to predict possible climate change at global and regional scales, and on understanding ecological effects of climate change. The carbon sequestration research seeks the understanding necessary to exploit the biosphere's natural carbon cycling processes to enhance the sequestration of carbon dioxide in terrestrial systems and the ocean, and to understand its potential environmental implications. The program includes research that can lead to the development of approaches to reduce or overcome the environmental and biological factors or processes that limit the sequestration of carbon in these systems to enhance the net sequestration of carbon. The research includes studies on terrestrial and ocean carbon sequestration and disposal, including research to modify the carbon sequestration capacity and rate by marine and terrestrial organisms and to understand the potential environmental implications.

Program Contact: (301) 903–3281.

6. Energy Research Analyses

This program supports energy research analyses of the Department's basic and applied research activities. Specific objectives include assessments to identify any duplication or gaps in scientific research activities, and impartial and independent evaluations of scientific and technical research efforts. Consistent with these overall objectives, this program conducts numerous research studies to assess directions in science and to identify and assess new and improved approaches to science management.

Program Contact: (202) 586–9942.

7. Experimental Program To Stimulate Competitive Research (EPSCoR)

The objective of the EPSCoR program is to enhance the capabilities of EPSCoR states to conduct nationally competitive energy-related research and to develop science and engineering manpower to meet current and future needs in energy-related fields. This program addresses basic research needs across all of the Department of Energy research interests. Research supported by the EPSCoR program is concerned with the same broad research areas addressed by the Office of Science programs that are described in this notice. The EPSCoR program is restricted to applications, which originate in twenty-one states (Alabama, Alaska, Arkansas, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming) and the commonwealth of Puerto Rico. It is anticipated that only a limited number of new competitive research grants will be awarded under this program subject to the availability of funds.

Program Contact: (301) 903–3427.

Issued in Washington, DC on October 10, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–26397 Filed 10–16–02; 8:45 am]

BILLING CODE 6450–03–U

DEPARTMENT OF ENERGY

Voluntary Reporting Greenhouse Gas Emissions Reporting Program

AGENCY: Office of Policy and International Affairs, Department of Energy.

ACTION: Notice of public workshops.

SUMMARY: The Department of Energy (We, DOE, or the Department) will hold four public workshops to enable interested persons to discuss and provide comments on possible improvements to the guidelines that now govern the Department of Energy's Voluntary Greenhouse Gas Reporting Program. These workshops are intended to assist DOE and other participating agencies in their efforts to enhance the reporting of greenhouse gas emissions and emission reductions, as directed by the President on February 14, 2002. Each of the four workshops are expected to address the full range of issues related to the Department of Energy's Voluntary Greenhouse Gas Emissions Reporting (1605b) Program.

DATES: The Department will hold four public workshops, as follows:

Washington DC, November 18–19, 2002.
Chicago, December 5–6, 2002.
San Francisco, December 9–10, 2002.
Houston, December 12–13, 2002.

At least three weeks before each workshop, all persons who plan to attend are requested to register with the Department through the following website: *http://www.pi.energy.gov/enhancingGHGregistry/index.html.* After these workshops, the Department will continue to accept comments, data, and information regarding the issues addressed at the workshops, but such information must be received by no later than Friday, December 20, 2002, in order to ensure full consideration during the Department's development of revised program guidelines, which are expected to be formally proposed early in 2003.

ADDRESSES: The workshops will be held at the following locations:

Washington DC, Hilton Crystal City at National Airport, 2399 Jefferson Davis Highway, Arlington, VA 22202.
Chicago, Donald E. Stephens Convention Center, Hotel Sofitel Chicago O'Hare, 5555 and 5550 North River Road, Rosemont, IL 60018.
San Francisco, Best Western Grosvenor Hotel, 380 South Airport Boulevard So., San Francisco, CA 94080.
Houston, Houston Airport Marriott, 18700 John Kennedy Blvd., Houston, TX 77032.

Persons interested in registering for any of these four workshops or in obtaining more information about DOE's efforts to improve the existing Voluntary Greenhouse Gas Reporting Program should visit the following website: *http://www.pi.energy.gov/enhancingGHGregistry/index.html.* Inquiries regarding these workshops may be e-mailed to *1605b.workshops@hq.doe.gov.* Hardcopy inquiries regarding these workshops may also be mailed to Mark Friedrichs, PT–20 Office of Policy and International Affairs, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC, 20585–0121. [**Note:** due to precautionary screening of mail to Federal offices, some delays should be expected.] Any follow-up comments or other relevant information should be e-mailed to *ghgregistry.comments@hq.doe.gov.*

The website will be used to make available draft and final workshop agendas, information on lodging, any background papers that are made available before the workshops, transcripts of each workshop, and comments or other information submitted after the workshops. For persons without ready access to the internet, this website can be viewed at the Freedom of Information Reading Room (Room 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Friedrichs, PI–20, Office of Policy and International Affairs, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121, e-mail: *1605b.workshops@hq.doe.gov* or phone 202–481–8550.

SUPPLEMENTARY INFORMATION: DOE's existing Voluntary Greenhouse Gas Reporting Program was mandated by section 1605(b) of Energy Policy Act of 1992. The current program operates under guidelines issued by the Department on October 19, 1994 (59 FR 52769). These guidelines give program participants considerable flexibility. As a consequence of this flexibility, the reports of greenhouse gas emissions or emissions reductions submitted to DOE are often not consistent, complete or verifiable.

On February 14, 2002, the President:

> Directed the Secretary of Energy, in consultation with the Secretary of Commerce, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency, to propose improvements of the current voluntary emissions reduction registration program under section 1605(b) of the 1992 Energy Policy Act within 120 days. These improvements will enhance measurement accuracy, reliability, and verifiability, working with and taking into account emerging domestic and international approaches.
>
> Directed the Secretary of Energy to recommend reforms to ensure that businesses and individuals that register reductions are not penalized under a future climate policy and to give transferable credits to companies that can show real emissions reductions.

To achieve these objectives it will be necessary to supplement or supplant the existing guidelines with new, more rigorous reporting requirements.

On May 6, 2002, the Department of Energy solicited public comments on various issues relevant to its efforts to implement the President's directives.

After consideration of these public comments, the Secretaries of Energy, Commerce and Agriculture, and the Administrator of the Environmental Protection Agency wrote the President on July 8, 2002, stating that improvements to the existing Voluntary Greenhouse Gas Reporting Program should:

1. Develop fair, objective, and practical methods for reporting baselines, reporting boundaries, calculating real results, and awarding transferable credits for actions that lead to real reductions.
2. Standardize widely accepted, transparent accounting methods.
3. Support independent verification of registry reports.
4. Encourage reporters to report greenhouse gas intensity (emissions per unit of output) as well as emissions or emissions reductions.
5. Encourage corporate or entity-wide reporting.
6. Provide credits for actions to remove carbon dioxide from the atmosphere as well as for actions to reduce emissions.
7. Develop a process for evaluating the extent to which past reductions may qualify for credits.
8. Assure the voluntary reporting program is an effective tool for reaching the 18 percent goal.
9. Factor in international strategies as well as State-level efforts.
10. Minimize transactions costs for reporters and administrative costs for the Government, where possible, without compromising the foregoing recommendations.

These workshops are intended to help us determine the specific improvements that should be made to the Department's guidelines by encouraging open dialogue among all of the utilities, businesses, institutions, environmental groups, individuals and other affected interests. Through these workshops, we hope to receive as much constructive input to this process as possible.

The Presidential directives that began our review of the existing program guidelines, and the objectives identified in the July 8 letter to the President, are the starting point of our current efforts. Most of the issues that need to be addressed and resolved as part of this process fall into two broad categories: Emission Reporting and Emission Reductions. In both areas, we will be endeavoring to develop more rigorous guidelines that will help encourage future reports that are reliable, objective and verifiable. Another key objective is that the guidelines should encourage full reporting by the broadest possible spectrum of utilites, businesses and institutions responsible for greenhouse gas emissions.

A full agenda and various other materials will be made available prior to the workshop at: *http://www.pi.energy.gov/enhancingGHGregistry/index.html.*

Issued in Washington, DC on 10 October, 2002.

Barton W. Marcois,

Principal Deputy Assistant Secretary, Office of Policy and International Affairs.

[FR Doc. 02–26396 Filed 10–16–02; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

American Statistical Association Committee on Energy Statistics

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the American Statistical Association Committee on Energy Statistics, a utilized Federal Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, October 24, 2002, 8:30 a.m.–4:30 p.m. Friday, October 25, 2002, 8:30 a.m.–12 noon.

ADDRESSES: U. S. Department of Energy, Room 8E–089, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mr. William I. Weinig, EI–70, Committee Liaison, Energy Information Administration, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Telephone: (202) 287–1709. Alternately, Mr. Weinig may be contacted by e-mail at *william.weinig@eia.doe.gov* or by FAX at (202) 287–1705.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy-related statistical matters.

Tentative Agenda

Thursday, October 24, 2002

A. Opening Remarks by the ASA Committee Chair, the EIA Administrator and the Director, Statistics and Methods Group, EIA. Room 8E–089
B. Major Topics (Room 8E–089 unless otherwise noted)
1. Update on Commercial Buildings Energy Consumption Survey.
2. Completion of EIA's System for the Analysis of Global Energy Markets.
3. Information Quality Guidelines Completed: What's Next?
4. Natural Gas Data Program Updates.
5. Using Data from Combined Heat and Power Plants to Estimate Natural Gas Industrial Prices.
6. Managing Risk in Energy Markets (Room 5E–069).
7. Public Questions and Comments.
8. State Level Coal Forecasting.
9. Estimating Monthly Data for Non-Utility Generation and Fuel Consumption from Annual and Monthly Time Series (Room 5E–069).
10. Estimating and Presenting Power Sector Fuel Use in EIA Publications and Analyses.
11. Public Questions and Comments.

Friday, October 25, 2002, Room 8E–089

C. Major Topics
1. EIA's Voluntary Reporting of Greenhouse Gases Program.
2. Organization and Delivery of Energy Information in Spatially Referenced Form.

3. The ASA Committee on Energy Statistics Contributions to the EIA.
4. Public Questions and Comments.
D. Closing Remarks by the Chair

Public Participation: The meeting is open to the public. The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Mr. William I. Weinig, EIA Committee Liaison, at the address or telephone number listed above. This **Federal Register** Notice is being published less than 15 days before the meeting due to programmatic issues that needed to be resolved prior to publication.

A Meeting Summary and Transcript will subsequently be available through Mr. Weinig who may be contacted at (202) 287–1709 or by e-mail at *william.weinig@eia.doe.gov*.

Issued at Washington, DC on October 11, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–26443 Filed 10–16–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–9–000]

Alternate Power Source, Inc. Complainant, v. Western Massachusetts Electric Company and Northeast Utilities System Respondent.; Notice of Complaint and Request for Fast Track Processing

October 10, 2002.

Take notice that on October 8, 2002 Alternate Power Source Inc., filed a complaint against Northeast Utilities System and Western Massachusetts Electric Company alleging discriminatory transmission pricing practices and violations of filed rate tariffs.

Copies of said filing have been served upon the utility regulatory agencies for two New England States.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before October 28, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26387 Filed 10–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–3–000]

El Paso Natural Gas Company; Notice of Application

October 10, 2002.

Take notice that on October 3, 2002, El Paso Natural Gas Company (El Paso), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP03–1–000, an application, pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the construction, ownership and operation of certain natural gas compression facilities and appurtenances in Arizona, New Mexico, and Texas, referred to as the Line 2000 Power-up Project, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso proposes to construct, own and operate compression stations at nine new or existing mainline compressor stations on its transmission system to add a total transportation capacity of 320,000 Mcf of natural gas per day. Specifically, El Paso proposes to install compression facilities with a total of 151,600 horsepower on Line 2000 at the existing Casa Grande, Lordsburg, Florida, El Paso, and Cornudas Compressor Stations, and new facilities near milepost (MP) 609 in Cochise County, Arizona (the Cimarron Station), at the former Tom Mix Oil Pump Station located near MP 530 in Pinal County, Arizona, at the former Black River Oil Pump Station located near MP 946 in Culberson County, Texas, and at a new site at approximately MP 1101 in Winkler County, Texas (the Wink Compressor Station). It is explained that the additional capacity would enable El Paso to transport gas from the eastern portion of its system—the Keystone and Waha Pools—to the southern and western portions and would enhance flexibility on the system. El Paso will use the new compression to further integrate its south mainline systems and increase flexibility.

It is explained that the project was proposed in response to issues raised by various parties in four separate proceedings regarding capacity allocation as a result of changed circumstances on El Paso's system.[1] El Paso states that the Commission's order on May 31, 2002, in Docket No. RP00–336–002 established a set of procedures and deadlines to effectuate two principle changes in service on El Paso's system: the conversion of firm FT–1 Full Requirements (FR) service to contract demand (CD) service with specified volumetric entitlements; and the conversion of system-wide receipt point rights to quantified rights and specific receipt points or at supply pools. El Paso states that in a subsequent September 20, 2002 order, the Commission encouraged it to construct the power-up facilities and has directed El Paso to include the capacity from the Line 2000 Power-up Project in its initial allocation of capacity to converting FR shippers. According to El Paso, however, the Commission, in the September 20 order extended the effective date for the reallocation of capacity to May 1, 2003, assuming that the Power-up facilities would be up and running by the summer of 2003.

However, El Paso states that it will take approximately 24 months to bring the Line 2000 Power-up project into service.

El Paso contends that the in-service date for the facilities is dependent upon the timing of certificate approvals, the receipt of air quality permits, and the delivery of the compression equipment.

[1] Docket Nos. RP00–139–000, RP00–336–000, RP01–484–000, and RP01–486–000.

Thus, El Paso states that the project will be constructed on a phased construction and in-service schedule, adding increments of 120,000 Mcf per day by February 2004, 100,000 Mcf per day by April 2004, and 100,000 Mcf per day by April 2005.

El Paso specifically requests a certificate order from the Commission which provides that (1) these facilities are needed and in the public interest in light of the changed circumstances on El Paso's system, (2) the expansion of its capacity by way of the Power-up Project is prudent, and (3) El Paso will be allowed to include the costs associated with such facilities in the rates resulting from the next rate case in which El Paso's costs and revenues are reviewed.

El Paso states that it will not assess the FR shippers the reservation charges attributable directly to the Power-up facilities until the next rate case examining its costs and revenues. El Paso asserts that it will assess usage and fuel charges based on the location of the receipts and deliveries for service provided through these facilities prior to that time, pursuant to the provisions of El Paso's FERC Gas Tariff, Second Revised Volume No. 1–A. It is stated that the project meets the criteria of the Commission's 1999 Policy Statement for construction of new facilities, with benefits outweighing any adverse effects. El Paso estimates the total capital cost for the project at $173,287,900.

Any questions regarding this application should be directed to Robert T. Tomlinson, Director, Regulatory Affairs, at (719) 520–3788, El Paso Gas Transmission Company, Post Office Box 1087, Colorado Springs, Colorado 80944.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before October 31, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm*. The Commission strongly encourages parties to file interventions electronically.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and ion landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important to file comments or to intervene as early in the process as possible.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26386 Filed 10–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–436–000]

Northern Natural Gas Company; Notice of Application

October 10, 2002.

Take notice that on September 30, 2002, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in the above referenced docket, an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations for a certificate of public convenience to construct and operate certain compression, pipeline, and town border station (TBS) facilities, with appurtances, located in various counties in Minnesota in order to expand the capacity of Northern's Market Area facilities (Project MAX), all as more fully described in the application. This application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 502–8659.

Specifically, Northern seeks authority to construct and operate: (1) Modifications at its Farmington Compressor Station located in Dakota County, Minnesota; (2) mainline modifications at the end of its 30-inch C-Line located in Washington County, Minnesota; (3) approximately 4.6 miles of 8-inch loop on its Alexandria branchline located in Morrison County, Minnesota; (4) a new branchline electric compressor station located near Popple Creek, Minnesota; and, (5) modifications at ten existing TBSs located in Douglas, Wright, Stearns, Dakota, Pope, and Sherburne Counties, Minnesota. The incremental capacity created by the subject facilities will be used to serve Northern's high priority residential, commercial, and industrial customers in its Market Area. The proposed

construction and operation will increase the peak day capacity of Northern's Market Area mainline by approximately 16,200 Mcf per day (Mcf/d). Northern states that the total estimated capital cost for the proposed facilities is $5,833,952.

Northern requests that the Commission issue an order granting approval of the subject facilities by no later than May 1, 2003 in order to ensure an in-service date of November 1, 2003.

Any questions regarding the application should be directed to Mary Kay Miller, Vice President, Rates & Certificates, Northern Natural Gas Company, P.O. Box 3330, Omaha, Nebraska 68103–0330, telephone (402) 398–7060 or Michael T. Loeffler, Director Certificates and Community Relations, Northern Natural Gas Company, P.O. Box 3330, Omaha, Nebraska 68103–0330, telephone (402) 398–7103.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before October 31, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project.

This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26385 Filed 10–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–16–000]

Pan-Alberta Gas (U.S.) Inc.; Mirant Americas Energy Marketing, L.P.; Complainants, v. Northern Border Pipeline Company; Respondent; Notice of Complaint

October 10, 2002.

Take notice that on October 8, 2002, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, Pan-Alberta Gas (U.S.) Inc. (PAGUS) (by its agent Mirant Canada Energy Marketing, Ltd.) and Mirant Americas Energy Marketing, L.P. (MAEM) tendered for filing a Complaint against Northern Border Pipeline Company (Northern Border). PAGUS and MAEM request that the complaint be processed by the Commission on a fast track basis.

PAGUS and MAEM allege that Section 26.2(b) of the General Terms and Conditions of Northern Border's tariff conflicts with long-standing Commission policies because it permits the pipeline in some circumstances to contract its capacity on a long term basis at discounted rates without posting the capacity for bid. They further allege that Section 26.2(b) subverts and undermines the Right of First Refusal ("ROFR") process on the Northern Border system. PAGUS and MAEM request that the Commission invalidate Section 26.2(b).

PAGUS and MAEM also request that the Commission clarify the rights of shippers whose capacity goes through the ROFR bidding process, but is not awarded to any party during that process because no bids acceptable to the pipeline were submitted. PAGUS and MAEM request the Commission to confirm that in that situation, the ROFR matching rights of the existing capacity holders will continue in effect for the remainder of their contract terms.

Finally, PAGUS and MAEM request that the Commission grant preliminary relief in the form of an order prohibiting Northern Border from continuing the ROFR process with respect to PAGUS' capacity until after this Complaint is resolved.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before October 18, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26389 Filed 10–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–35–000

Tennessee Gas Pipeline Company; Notice of Technical Conference

October 10, 2002.

In the Commission's order issued on September 13, 2002,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Tuesday, November 5, 2002, at 10:30 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26388 Filed 10–16–02; 8:45 am]

BILLING CODE 6717–01–P

[1] Tennessee Gas Pipeline Company, 100 FERC ¶61,268 (2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–11–001, et al.]

Pacific Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

October 9, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Pacific Gas and Electric Company

[Docket Nos. ER02–11–001 and ER02–208–001]

Take notice that on October 7, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing a refund report, in connection with the Commission's July 17, 2002 Order issued in the above-referenced Dockets.

Copies of PG&E's filing have been served upon the California Independent System Operator Corporation, the California Electricity Oversight Board, and the California Public Utilities Commission.

Comment Date: October 28, 2002.

2. Commonwealth Edison Company

[Docket No. ER03–21–000]

Take notice that on October 7, 2002, Commonwealth Edison Company submitted to the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation effective August 21, 2002, for Service Agreement No. 556, Second Revised Tariff No. 5 with Duke Energy Cook, LLC.

Notice of the proposed cancellation has been served on Duke Energy Cook, LLC and Illinois Commerce Commission.

Comment Date: October 28, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–26362 Filed 10–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–1–000, et al.]

Riverside Energy Center, LLC, et al.; Electric Rate and Corporate Regulation Filings

October 8, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Riverside Energy Center, LLC

[Docket No. EG03–1–000]

Take notice that on October 4, 2002, Riverside Energy Center, LLC (Riverside or Applicant) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Applicant, a Wisconsin limited liability company, proposes to own and operate a 600 megawatt natural gas-fired combined cycle electric generating facility in the Town of Beloit, Rock County, Wisconsin.

Comment Date: October 29, 2002.

2. Duke Energy Hanging Rock, LLC

[Docket No. EG03–2–000]

Take notice that on October 4, 2002, Duke Energy Hanging Rock, LLC (Duke Hanging Rock) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

Duke Hanging Rock states that it is a Delaware limited liability company that will be engaged directly and exclusively in the business of operating all or part

of one or more eligible facilities to be located in Lawrence County, Ohio. The eligible facilities will consist of an approximately 1,240 MW natural gas-fired, combined cycle electric generation plant and related facilities. The output of the eligible facilities will be sold at wholesale.

Comment Date: October 29, 2002.

3. Edison Source

[Docket No. ER02–2564–001]

Take notice that on October 3, 2002, Edison Source tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its filing in the above-referenced docket concerning the termination of the (I) Scheduling Coordinator Agreement, dated November 20, 1997, as amended by Amendment No. 1, dated June 1, 1998, and (ii) Meter Service Agreement for Scheduling Coordinators, dated November 20, 1997, as amended by Amendment No. 1, dated June 1, 1998; (iii) Application Programming Interface to Scheduling Infrastructure System Sublicense Agreement, dated September 15, 1998; and (iv) withdrawing Edison Source's Standing Request Relating to Inter-Scheduling Coordinator Trades, dated June 5, 1998.

Edison Source requests that the above terminations and withdrawal become effective as of December 16, 2002.

Comment Date: October 24, 2002.

4. Consumers Energy Company

[Docket No. ER03–15–000]

Take notice that on October 4, 2002, Consumers Energy Company (Consumers) tendered for filing changes to its First Revised Rate Schedule No. 116. Consumers states that the changes are being made pursuant to Section 5.3 of that rate schedule to reflect the outcome of Docket No. OA96–77–000. The revised pages filed are First Revised Sheet Nos. 2, 11, 12, 22, 23 and 24 and Original Sheet No. 23a.

Copies of the filing were served upon the customer and the Michigan Public Service Commission.

Comment Date: October 25, 2002.

5. Golden Spread Electric Cooperative, Inc.

[Docket No. ER03–16–000]

Take notice that on October 4, 2002, Golden Spread Electric Cooperative, Inc. (Golden Spread) tendered for filing with the Commission a Second Informational Filing to Golden Spread Rate Schedule No. 35. The Second Informational Filing updates the formulary fixed costs associated with replacement energy sales by Golden Spread to Southwestern Public Service Company (Southwestern). A copy of this filing has been served upon Southwestern.

Comment Date: October 25, 2002.

6. Duke Energy Hanging Rock, LLC

[Docket No. ER03–17–000]

Take notice that on October 4, 2002, Duke Energy Hanging Rock, LLC (Duke Hanging Rock) tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke Hanging Rock seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Hanging Rock also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Duke Hanging Rock seeks an effective date 60 days from the date of filing of its proposed rate tariff.

Comment Date: October 25, 2002.

7. Astoria Generating Company, L.P.

[Docket No. ER03–18–000]

Take notice that on October 4, 2002, Astoria Generating Company, L.P. (Astoria) submitted for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d (1994) and Part 35 of the Commission's Regulations, a Tariff for Quick Start Service (Tariff) to compensate Astoria for Quick Start Service provided to Consolidated Edison Company of New York, Inc. or the New York Independent System Operator, Inc. (NYISO). Astoria will provide Quick Start Service to the Buyers to allow Con Edison and/or the NYISO to meet New York State Reliability Council reliability requirements.

Astoria respectfully requests that the Commission waive the notice requirements set forth in Rule 35.3(a) to the extent necessary to allow the Tariff to become effective as of October 4, 2002.

Comment Date: October 25, 2002.

8. The Detroit Edison Company

[Docket No. ER03–19–000]

Take notice that on October 4, 2002, The Detroit Edison Company tendered for filing with the Federal Energy Regulatory Commission (Commission) a filing pursuant to Section 205 of the Federal Power Act in the above-captioned docket. The filing requests that the Commission accept for filing an Agency Agreement for Open Access Wholesale Distribution Interconnection Service between The Detroit Edison Company and the Midwest Independent Transmission System Operator, Inc., dated October 3, 2002.

Comment Date: October 25, 2002.

9. PJM Interconnection, L.L.C.

[Docket No. ER03–20–000]

Take notice that on October 4, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing an executed revised interconnection service agreement between PJM and Conectiv Delmarva Generation Inc. (Conectiv) that supercedes an earlier interconnection service agreement between the parties.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties. Copies of this filing were served upon Conectiv and the state regulatory commissions within the PJM region.

Comment Date: October 25, 2002.

10. Louisville Gas and Electric Company

[Docket No. ES03–1–000]

Take notice that on October 1, 2002, Louisville Gas and Electric Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue no more than $400 million of short-term debt securities, from time to time during a two-year period.

Comment Date: October 29, 2002.

11. Kentucky Utilities Company

[Docket No. ES03–2–000]

Take notice that on October 1, 2002, Kentucky Utilities Company filed an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term debt in an amount not to exceed $400 million, on or before November 30, 2004.

Comment Date: October 29, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–26363 Filed 10–15–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7394–4]

RIN 2040–AD55

Public Meetings on the Effluent Limitations Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production (CAAP) Point Source Category

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Office of Science and Technology within EPA's Office of Water is conducting public meetings during the comment period to discuss the proposed effluent limitations guidelines and standards for the CAAP industry. EPA will sponsor three public meetings throughout the United States to give everyone an opportunity to attend. No registration is required for these meetings. EPA will report on the status of the regulatory development, and the public can ask questions and provide information and ideas to the Agency on key technical, scientific, economic, and other issues.

DATES: The public meeting dates are:

1. October 30, 2002, 9 a.m. to 12 noon, Washington, DC.
2. November 6, 2002, 9 a.m. to 12 noon, Seattle, WA..
3. November 12, 2002, 9 a.m. to 12 noon, Atlanta, GA.

ADDRESSES: The meeting locations are:

1. *Washington*—EPA East (Room 1153), 1201 Constitution Avenue, Washington, DC 20460. The closest Metro stop is Federal Triangle.
2. *Seattle*—EPA Region 10 Building (Nisqually-Pend Orielle—Quinalt—Shoshone Conference Room), 1200 6th Avenue, Seattle, WA 98101. You can find more information on Seattle transportation, directions, etc. on the following Web site: *http://yosemite.epa.gov/R10/EXTAFF.NSF/webpage/visiting+our+offices?OpenDocument.*
3. *Atlanta*—Sam Nunn Atlanta Federal Center (Atlanta-Augusta Room), 61 Forsyth St, SW, Atlanta, GA 30303. You can find more information on Atlanta hotels, transportation, etc. at *http://www.epa.gov/region4/visitors/transpor1.htm.*

FOR FURTHER INFORMATION CONTACT: Marta Jordan, Engineering and Analysis Division (4303), U.S. EPA, 1200 Pennsylvania Ave NW., Washington DC 20460. Telephone (202) 566–1049, fax (202) 566–1053 or e-mail *jordan.marta@epa.gov.*

SUPPLEMENTARY INFORMATION: On September 12, 2002 (67 FR 57871), EPA proposed effluent limitations guidelines and standards for the CAAP Category under authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*). The proposed regulations would apply to discharges from certain facilities in the CAAP Category that grow, contain or produce aquatic animals at amounts above 100,000 pounds for three subcategories: flow-through, recirculating and net pen systems. EPA did not propose to amend the National Pollutant Discharge Elimination System permitting regulations that define the facilities subject to permits. The proposed effluent guidelines and standards would apply to many, but not all CAAP facilities.

The public meetings will include a discussion of the scope of the regulation (including subcategorization), a summary of industry information, technology-based regulatory options, and general CAAP industry issues. Because EPA did not propose pretreatment standards for CAAP facilities, meeting agendas do not include pretreatment. Although EPA will not record and transcribe these meetings, EPA will prepare meeting summaries and add them to the rulemaking record.

If you need special accommodations at these meetings, such as wheelchair access or special audio-visual needs, you should contact the following at least five business days before the meeting so that EPA can make appropriate arrangements:

- Marta Jordan at (202) 566–1049 for the meeting in Washington, DC.
- Cathe Bell at (206) 553–0308 and/or Margaret/Maria (audio-visual needs) at (206) 553–1050 for the meeting in Seattle. You can also use the following Web site to find information on directions, lodging, and transportation: *http://yosemite.epa.gov/R10/EXTAFF.NSF/webpage/visiting+our+offices?OpenDocument.*
- Gary Hosmer at (404) 562–8151 for the meeting in Atlanta. You can also use the following Web site to find information on directions, lodging, and transportation: *http://www.epa.gov/region4/visitors/transpor1.htm.*

Those who are unable to attend the meeting can get a copy of the presentation and meeting materials after the meeting by making an e-mail or telephone request to Mrs. Marta E. Jordan, see the **FOR FURTHER INFORMATION CONTACT** section above.

Dated: October 10, 2002.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 02–26442 Filed 10–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0260; FRL–7278–4]

Caffeine; Receipt of Application for Emergency Exemption, Solicitation of Public Comment; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: On September 27, 2002, EPA published a notice soliciting public comments regarding the receipt of an application for a quarantine exemption from the United States Department of Agriculture Animal and Plant Health Inspection Service (USDA, APHIS) to use the pesticide caffeine (1*H*-purine-2,6-dione, 3,7-dihydro-1,3,7-trimethyl-) (CAS No. 58–08–2) to treat up to 200 acres of floriculture and nursery crops, parks, hotels and resort areas, and forest habitats to control Coqui and Greenhouse frogs. Comments were being requested because the Applicant proposes the use of a new chemical which has not been registered by EPA. EPA is extending the comment period for 8 days, from October 15, 2002, to October 23, 2002.

DATES: Comments, identified by docket ID number OPP–2002–0260 must be received on or before October 23, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the September 27, 2002 **Federal Register** document.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division

(7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; fax number: (703) 308–5433; e-mail address: Sec-18-Mailbox@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a federal or state government agency involved in administration of environmental quality programs. Potentially affected entities may include, but are not limited to:

Federal or state government entity, (NAICS 9241), e.g., Department of Agriculture, Environment.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0260. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the September 27, 2002 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA taking?

This document extends the public comment period established in the **Federal Register** of September 27, 2002 (67 FR 61099) (FRL–7275–2). In that document, EPA sought comment on a quarantine exemption request from USDA, APHIS to use the pesticide caffeine (1*H*-purine-2,6-dione, 3,7-dihydro-1,3,7-trimethyl-) (CAS No. 58–08–2) to treat up to 200 acres of floriculture and nursery crops, parks, hotels and resort areas, and forest habitats to control Coqui and Greenhouse frogs. The Applicant proposes the use of a new chemical which has not been registered by EPA. EPA is hereby extending the comment period, which was set to end on October 15, 2002, to October 25, 2002.

III. What is the Agency's Authority for Taking this Action?

In accordance with 40 CFR 166 the Administrator shall issue a notice of receipt for a quarantine exemption request when the application proposes the use of a new chemical. Further provisions are made to give the public 15 days to comment. However, the Administrator may extend the comment period if additional time for comment is requested.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 10, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–26438 Filed 10–11–02; 4:47 pm]

BILLING CODE 6560–50–S

THE PRESIDENT'S CRITICAL INFRASTRUCTURE PROTECTION BOARD

National Strategy To Secure Cyberspace

October 11, 2002.

AGENCY: President's Critical Infrastructure Protection Board, Executive Office Of the President, The White House.

ACTION: Notice of pending request for public comment regarding the National Strategy to Secure Cyberspace for comment, released on September 18, 2002.

SUMMARY: Pursuant to the President's charge in Executive Order 12321, the President's Critical Infrastructure Protection Board (the "Board") has been engaged in development of the National Strategy to Secure Cyberspace. On September 18, 2002, the Board released to the public a draft of the Strategy "For Comment" (the "Strategy"). The Strategy was made available online at *http://www.securecyberspace.gov* for viewing and downloading. At the time of the release of the Strategy, the Board invited public comments and set a deadline of November 18, 2002 for such comments. The most efficient way to provide public comment is to do so online through the feedback link at *http://www.securecyberspace.gov*. By this Notice, the Board continues to solicit further comments and views from the public on the Strategy.

DATES: Comments may be submitted through November 18, 2002.

ADDRESSES: Comments may be submitted electronically as provided at *http://www.securecyberspace.gov*. In addition, written comments may be sent to: PCIPB/Strategy Public Comment; The White House; Washington, DC 20502. Individual hard copies of the draft Strategy may be obtained by calling 202–456–5420.

FOR FURTHER INFORMATION CONTACT: Tommy J. Cabe, (202) 456–5420.

SUPPLEMENTARY INFORMATION: On October 16, 2001, the President created the Board by Executive Order 12321. The President noted that "[t]he information technology revolution has changed the way business is transacted, government operates, and national defense is conducted. Those three functions now depend on an interdependent network of critical information infrastructures." In the Executive Order, the President directed the Board to "recommend policies and coordinate programs for protecting information systems for critical infrastructure," and called for the Board to "coordinate outreach to and consultation with the private sector, * * * State and local governments, [and] communities and representatives from academia and other relevant elements of society."

Pursuant to the President's charge, the Board has been engaged in development of the National Strategy to Secure Cyberspace. On September 18, 2002, the Board released to the public a draft Strategy "For Comment," identifying 24 strategic goals and listing over 80 recommendations. The Strategy was made available online at *http://www.securecyberspace.gov* for viewing and downloading.

The Strategy was developed based on input from a broad spectrum of individuals and groups that represent the owners and operators of cyberspace, as well as from the key sectors that rely on cyberspace, including Federal departments and agencies, private companies, State and local governments, educational institutions, nongovernmental organizations, and the general public. Town hall meetings to facilitate discussion and stimulate input were held during the Spring in Denver, Chicago, Portland, Oregon, and Atlanta and this month in Philadelphia and Boston. In addition, a list of 53 key questions was compiled, published, and publicized to spark public debate and facilitate informed input. The Board will convene additional town hall meetings around the country in the next few weeks to raise awareness about cybersecurity issues, and to solicit and receive the views and input of concerned citizens regarding the Strategy. Town hall meetings will be held in Pittsburgh, PA (October 24), New York, NY (November 7), Phoenix, AZ (November 14). For further information about specific town hall meetings, see *http://www.securecyberspace.gov*.

At the time of the release of the Strategy, the Board invited public comments and set a deadline of November 18, 2002 for such comments. By this Notice, the Board continues to solicit further comments and views from the public on the draft Strategy. The most efficient way to provide public comment is to do so online through the feedback link at *http://www.securecyberspace.gov*. In order to facilitate review and consideration of public comment, commenters are requested to use this electronic feedback link if at all possible. Comments will also be accepted if mailed to the postal address listed below, but it is requested that such commenters also provide an electronic version of their comments as well as the hard copy (*e.g.*, CD or floppy disc) if possible. In addition, it is requested that all commenters, including those submitting their comments in hard copy form rather than online, make every effort to organize the comments by reference to specific sections of the Strategy and if applicable) the numbered recommendation or discussion topic commented upon.

Those preferring to submit their comments by hard copy (preferably with an accompanying electronic version of the comment) should send them to: PCIPB/Strategy Public Comment; The White House; Washington, DC 20502. The Board will consider all relevant comments in the further development of the Strategy. However, there are no plans to respond individually to each comment.

Dated: October 11, 2002.

Richard A. Clarke,

Chair, President's Critical Infrastructure Protection Board

[FR Doc. 02–26456 Filed 10–16–02; 8:45 am]

BILLING CODE 3165–03–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

October 5, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 16, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0387.

Title: On Site Verification of Field Disturbance Sensors—Section 15.201(d).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 200.

Estimated Time per Response: 18 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 3,600 hours.

Total Annual Cost: $40,000.

Needs and Uses: FCC rules permit the operation of field disturbance sensors in the low VHF region of the spectrum. To monitor non-licensed field disturbance sensors operating in the low VHF television bands, a unique procedure for on-site equipment testing of the systems is required to ensure suitable safeguards for the operation of these devices. Data are retained by the holder of the equipment authorized/issued by the FCC and made available only at the request of the Commission.

OMB Control Number: 3060–0436.

Title: Equipment Authorization—Cordless Telephone Security Coding.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 200.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 200 hours.

Total Annual Cost: None.

Needs and Uses: The FCC requires cordless telephone security features to protect the public switched telephone network from unintentional line seizure and telephone dialing. These features prevent unauthorized access to the telephone line, the dialing of calls in response to signals other than those from the owner's handset, and the unintentional ringing of a cordless telephone handset. Use of the cordless telephone security features reduces the harm caused by some cordless telephones to the "911" Emergency Service Telephone System and the telephone network in general.

OMB Control Number: 3060–1015.

Title: Ultra Wideband Transmission Systems Operating Under Part 15—Section 15.525, (ET Docket No. 98–153).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 500.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 1,000 hours.

Total Annual Cost: None.

Needs and Uses: 47 CFR Section 15.2525 requires operators of Ultra Wideband (UWB) transmission systems to coordinate their operations to avoid interference with sensitive U.S. government radio systems. Initial operation in a particular area may not commence until authorized by the FCC. The UWB operators must provide the name, address, and other pertinent contact information of the user, the desired geographical area of operation, the FCC ID number, time period during which operations will take place, and other nomenclature of the UWB device. The FCC collects this information and forwards it to the National Telecommunications and Information Administration (NTIA under the U.S. Department of Commerce). This information collection is essential to control potential interference to Federal radio communications. (Please note that on June 12, 2002, OMB approved this collection under the "emergency processing" provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3507.)

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–26432 Filed 10–16–02; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

October 7, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by December 16, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0900.

Title: Compatibility of Wireless Services with Enhanced 911; Second Report and Order in CC Docket No. 94–102.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, state, local, or tribal government, not-for-profit institutions.

Number of Respondents: 100.

Estimated Time Per Response: 20 hours.

Frequency of Response: One-time and on occasion reporting requirements.

Total Annual Burden: 2,190 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The information submitted by manufacturers or carriers wishing to incorporate new or modified E911 call processing modes will be used to keep the Commission informed of technological developments and thus to ensure that the Commission's regulations are kept current and reflect the preferences of the industry in complying with E911 regulations. The information to be submitted with applications for equipment authorizations for analog cellular telephones is necessary to ensure industry compliance with E911 call completion regulations. The voluntary education program will enable consumers to use wireless analog sets to make E911 calls in an informative manner, ensuring a fast, reliable response.

OMB Control No.: 3060–0147.

Title: Section 64.804, Extension of Unsecured Credit for Interstate and Foreign Communications Services to Candidates for Federal Office.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 13.

Estimated Time Per Response: 8 hours.

Frequency of Response: Annual and on occasion reporting requirements, recordkeeping requirement.

Total Annual Burden: 104 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: Pursuant to section 64.804 of FCC rules, a carrier must obtain a signed, written application for service which shall identify the applicant and the candidate and state whether or not the candidate assumes responsibility for charges, and which shall state that the applicant or applicants are liable for payment and that the applicant understands that service will be discontinued if payment is not rendered. Section 64.804 also requires records of each account, involving the extension by a carrier of unsecured credit to a candidate or person on behalf of such candidate for common carrier communications services shall be maintained by the carrier as to show separately, interstate and foreign communication services all charges, credits, adjustments, and security, if any, and balance receivable. Section 64.804 requires communications common carriers with operating revenues exceeding $1 million who extend unsecured credit to a political candidate or person on behalf of such candidate for Federal office to report, annually, data including due and outstanding balances.

OMB Control No.: 3060–0876.

Title: USAC Board of Directors Nomination Process (47 CFR 54.703) and Review of Adminstrator's Decision (47 CFR 54.719–54.725).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 22.

Estimated Time Per Response: 20–32 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 560 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: Pursuant to section 54.703 industry and non-industry groups may submit to the Commission for approval nominations for individuals to be appointed to the USAC Board of Directors. Sections 54.719–54.725 contain the procedures for Commission review of USAC decisions, including the general filing requirements pursuant to which parties must file requests for review. The information is used by the Commission to select USAC's Board of Directors and to ensure that requests for review are filed properly with the Commission.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–26433 Filed 10–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 8, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 16, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman or Leslie Smith, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov* or *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0076.

Title: Annual Employment Report for Common Carriers.

Form No.: FCC Form 395.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 4,000.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion and annual reporting requirements, recordkeeping requirement.

Total Annual Burden: 4,000 hours.

Total Annual Cost: N/A.

Needs and Uses: The Annual Employment Report is a data collection device for enforcement and assessment of the Commission's EEO rules. All common carrier licensees or permittees which sixteen (16) or more full-time employees are required to file this report and retain it for a two year period. The report identifies each carrier's staff by gender, race, color and/or national origin in each of nine major job categories. The information, in addition to being useful for our purposes, has also been used by public interest groups, NTIA, the Equal Employment Opportunity Commission, the Congress and the U.S. Commission on Civil Rights to assess progress in accordance with their particular objectives.

OMB Control No.: 3060–0859.

Title: Suggested Guidelines for Petitions for Ruling Under Section 253 of the Communications Act.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 80.

Estimated Time Per Response: 63 to 125 hours (average).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 6,280 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission's consideration of preemption begins with the filing of a petition by an aggrieved party. The petition is placed on public notice and commented on by others. The Commission's decision is based on the public record, generally composed of the petition and comments. The Commission has considered a number of preemption items since the passage of the Telecommunications Act of 1996, and believes it in the public interest to inform the public of the information necessary to support its full consideration of the issues likely to be involved in preemption actions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–26434 Filed 10–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

October 8, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 18, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0395.

Title: The ARMIS USOA Report (ARMIS Report 43–02); the ARMIS Service Quality Report (ARMIS Report 43–05); and the ARMIS Infrastructure Report (ARMIS Report 43–07).

Report Nos.: FCC Reports 43–02, 43–05, and 43–07.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 50.

Estimated Time Per Response: 5.7 to 844 hours.

Frequency of Response: Annual reporting requirement, recordkeeping requirement.

Total Annual Burden: 26,446 hours.

Total Annual Cost: N/A.

Needs and Uses: The USOA Report provides the annual results of the carriers' activities for each account of the Uniform System of Accounts. The Service Quality Report provides service quality information in the areas of interexchange access service, installation and repair intervals, local service installation and repair intervals, trunk blockage, and total switch downtime for price cap carriers. The Infrastructure Report provides switch deployment and capabilities data. The Commission is seeking an extension of the emergency request that was submitted in March 2002.

OMB Control No.: 3060–0511.

Title: ARMIS Access Report.

Report No.: FCC Report 43–04.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 121.

Estimated Time Per Response: 157 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 18,997 hours.

Total Annual Cost: N/A.

Needs and Uses: The Access Report is needed to administer the Commission's accounting, jurisdictional separations and access charge rule; to analyze revenue requirements and rates of return, and to collect financial data from Tier 1 incumbent local exchange carriers. The Commission is seeking an extension of the emergency request that was submitted in March 2002.

OMB Control No.: 3060–0513.

Title: ARMIS Joint Cost Report.

Report No.: FCC Report 43–03.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 121.

Estimated Time Per Response: 83 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 10,043 hours.

Total Annual Cost: N/A.

Needs and Uses: The Joint Cost Report is needed to administer our joint cost rules (Part 64) and to analyze data in order to prevent cross-subsidization of nonregulated operations by the regulated operations of Tier 1 carriers. The Commission is seeking an extension of the emergency request that was submitted in March 2002.

OMB Control No.: 3060–0641.

Title: Notification to File Progress Report.

Form No.: FCC Form 218-I.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 500.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 500 hours.

Total Annual Cost: N/A.

Needs and Uses: FCC Form 218–I is used as a method of verifying that the 218–219 MHz service licensee (previously IVDS) has made service available in accordance with the terms of authorization issued. The information is used to update databases and insures efficient spectrum utilization.

OMB Control No.: 3060–0783.

Title: Section 90.176, Coordination Notification Requirements on Frequencies Below 512 MHz.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 15 respondents; 3,900 responses.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 1,950 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 90.176 requires each Private Land Mobile frequency coordinator to provide, within one business day, a listing of their frequency recommendations to all other frequency coordinators in their respective pool, and, if requested, an engineering analysis. Any method can be used to ensure this compliance with the "one business day requirement" and must provide, at a minimum, the name of the applicant; frequency or frequencies recommended; antenna locations and heights; the effective radiated power; the type(s) of emission; the description of the service area; and the date and time of the recommendation. If a conflict in recommendations arises, the affected coordinators are jointly responsible for taking action to resolve the conflict, up to and including notifying the Commission that an application may have to be returned.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–26431 Filed 10–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–2578]

Commission Releases Agenda for Public Forum on Rights-of-Way Issues

ACTION: Notice.

SUMMARY: This document announces the agenda for the public forum on rights-of-way issues to be held on October 16, 2002.

DATES: The public forum on rights-of-way management will be held on October 16, 2002 from 9:15 a.m. to 3:30 p.m.

ADDRESSES: The public forum on rights-of-way management will be held at the FCC's headquarters, 445 12th Street, SW., Washington, DC, in the Commission Meeting Room.

FOR FURTHER INFORMATION CONTACT: Kris Monteith or Gene Fullano, Consumer & Government Affairs Bureau, (202) 418–1400, *kmonteit@fcc.gov* or *gfullano@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Public Forum is aimed at facilitating discussion among local authorities, state regulators, and the industry to develop consensus positions where possible. The forum will strive to, among other things, identify principles and practices that all parties believe can be a model for access to and management of rights-of-way with respect to the communications industry. The following agenda provides the names and affiliations of the invited panelists.

9:15 a.m.–10 a.m.

Welcome and Introduction
K. Dane Snowden, Chief, Consumer & Governmental Affairs Bureau, FCC Chairman and Commissioners

10 a.m.–11 a.m.

The Jurisdictional Question: Local vs. Federal Authority
Introduction—Background, historical perspective on rights-of-way issues, and status of court challenges. Panel discussion on the scope of Federal authority under Section 253 of the Communications Act.
Moderator: Jane Mago, General Counsel, Office of General Counsel

Panelists

Lisa Gelb, Deputy City Attorney, San Francisco, California
Chris Melcher, Corporate Counsel, Qwest Communications
Pam Beery, Partner, Beery & Elsner
Teresa Marrero, Manager, Federal Rights-of-Way Issues, AT&T

11 a.m.–11:15 a.m.

Break

11:15 a.m.–12:30 p.m.

Fair and Reasonable Compensation for Use of Rights-of-Way
Panel discussion on compensation issues including cost-based, percentage of revenue, and in-kind compensation approaches.
Moderator: Bill Maher, Chief, Wireline Competition Bureau

Panelists

Sandy Sakamoto, Assistant General Counsel and Assistant Attorney SBC/Pacific Telesis
Don Knight, Assistant City Attorney, Dallas, Texas
Kelsi Reeves, Vice President of Federal Government Relations Time Warner Telecom
Larry Doherty, Director, Site Development, West Region, Sprint PCS
Barry Orton, Professor of Telecommunications, University of Wisconsin—Madison

12:30 p.m.–2 p.m.

Lunch Break

2 p.m.–2:30 p.m.

Perspectives from the Administration
Nancy Victory, Assistant Secretary for Communications and Information, U.S. Department of Commerce

2:30 p.m.–3:30 p.m.

Looking Ahead: Policy Approaches to Rights-of-Way Management
Panel discussion on how best to accommodate the interests of multiple stakeholders.
Moderator: Ken Ferree, Chief, Media Bureau

Panelists

Ken Fellman, Mayor, Arvada, Colorado
Dorian Denburg, Chief Rights-of-Way Counsel, BellSouth Corporation
Bob Chernow, Chair, Regional Telecom Commission
Alexandra Wilson, Chief Policy Counsel, Cox Enterprises
Bob Nelson, Commissioner, Michigan Public Utility Commission

3:30 p.m.

Closing
K. Dane Snowden, Chief, Consumer & Governmental Affairs Bureau

The forum will be closed captioned and will be carried live on the Internet through RealAudio from the FCC Web site at: *http://www.fcc.gov/realaudio/*. A transcript of the forum will be available 10 business days after the event on the FCC's Internet site at *http://www.fcc.gov/cgb/row.html*. Transcripts may also be obtained from the FCC's duplicating contractor, Qualex International, 445 12th St., SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. Audio and video tapes of the forum can be purchased from CACI Productions (formerly Infocus Media), 341 Victory Drive, Herndon, VA 20170, by calling CACI at (703) 834–1470 or by faxing CACI at (703) 834–0111. The meeting agenda will be provided in accessible formats. The meeting site is fully accessible to people using wheelchairs or other mobility aids. Copies of the transcript in other alternative formats (computer diskette, large print, and Braille) are available to persons with disabilities by contacting Brian Millin (202) 418–7426 voice, (202) 418–7365 TTY, or *bmillin@fcc.gov*. Send requests for reasonable accommodations to *fcc504@fcc.gov*, or contact Helen Chang, Section 504 Officer, 202–418–0424, 202–418–0432 TTY, or *hchang@fcc.gov*. Also include a way of contacting you if we need more information. Please submit your request at least 5 days in advance so that we can assure provision of the service you require. Participants and attendees are reminded of the Commission's ex parte rules and are responsible for complying with those rules to the extent their comments address the merits of pending proceedings.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–26430 Filed 10–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From October 10th Open Meeting

October 9, 2002.

The following item has been deleted from the list of agenda items scheduled for consideration at the October 10, 2002, Open Meeting and previously listed in the Commission's Notice of October 3, 2002. This item has been adopted by the Commission.

Item No.	Bureau	Subject
3	Enforcement	Title: SBC Communications, Inc., Apparent Liability for Forfeiture. Summary: The Commission will consider a Forfeiture Order concerning compliance with the shared transport condition of the SBC/Ameritech merger order.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–26555 Filed 10–15–02; 10:44 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 01–92, DA 02–2436]

Intercarrier Compensation for Wireless Traffic

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: This document seeks comment on two petitions for declaratory ruling regarding the intercarrier compensation regime applicable to certain types of wireless traffic. Both petitions raise issues under consideration in CC Docket 01–92, *Developing a Unified Intercarrier Compensation Regime.*

DATES: Comments due October 18, 2002 and reply comments due November 1, 2002.

ADDRESSES: Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. See Supplementary Information section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Steve Morris or Victoria Schlesinger, Pricing Policy Division, Wireline Competition Bureau, (202) 418–1530, or Gregory Vadas, Policy Division, Wireless Telecommunications Bureau, (202) 418–1798.

SUPPLEMENTARY INFORMATION: On September 6, 2002, T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications, Inc., and Nextel Partners, Inc. (CMRS Petitioners) filed a petition for declaratory ruling in the above-referenced docket requesting that the Commission "reaffirm that wireless termination tariffs are not a proper mechanism for establishing reciprocal compensation arrangements' between local exchange carriers (LECs) and commercial mobile radio service (CMRS) providers. According to CMRS Petitioners, a CMRS carrier typically will interconnect indirectly with a rural ILEC (*i.e.*, traffic will be exchanged through an intermediate carrier.) CMRS Petitioners state that indirectly interconnecting carriers often exchange traffic pursuant to a bill-and-keep arrangement, rather than an interconnection agreement, at least for mobile-to-land traffic. CMRS Petitioners state that some rural LECs recently have filed state tariffs as a mechanism to collect reciprocal compensation for the termination of intra-MTA traffic originated by CMRS carriers. The CMRS Petitioners assert that compensation for such traffic should be paid only when the LEC and CMRS carrier have entered into an interconnection agreement under section 251 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. In the absence of such an agreement, they state that traffic should be exchanged on a bill-and-keep basis. The CMRS Petitioners request that the Commission direct ILECs to withdraw any wireless termination tariffs in existence today or, alternatively, to declare such tariffs unlawful, void and of no effect. The CMRS Petitioners state that the Commission has authority to issue the requested ruling pursuant to sections 332(c)(1) and 201 of the Communications Act.

On September 18, 2002, U.S. LEC Corp. filed a petition for declaratory ruling asking the Commission to "issue a ruling reaffirming that LECs are entitled to recover access charges from IXCs for the provision of access service on interexchange calls originating from, or terminating on, the networks of CMRS providers." U.S. LEC states that industry practice is for IXCs to pay access charges to LECs for this traffic, but that recently one IXC has declined to pay these charges. U.S. LEC states that a requirement that IXCs pay access charges to LECs for traffic to or from a CMRS carrier is fully supported by Commission precedent. U.S. LEC asserts that grant of the petition is necessary to eliminate controversy and avoid future challenges regarding this issue. The U.S. LEC petition was placed in the record in the above-referenced docket.

Both petitions raise issues under consideration in CC Docket 01–92, *Developing a Unified Intercarrier Compensation Regime*, 66 FR 28410, May 23, 2001.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before October 18, 2002, and reply comments on or before November 1, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the filing to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic copy by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message: "get form <your email address>." A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html*. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7:p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., CY–B402, Washington, DC 20554 (telephone 202–863–2893; facsimile 202–863–2898) or via e-mail at *qualexint@aol.com*. In addition, one copy of each submission must be filed with the Chief, Pricing Policy Division, Wireline Competition Bureau, and Chief, Policy Division, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554. Documents filed in this proceeding will be available for public inspection during regular business hours in the Commission's Reference Information Center, 445 12th Street, SW., Washington, DC 20554, and will be placed on the Commission's Internet site.

This proceeding will be governed by "permit-but-disclose" ex parte procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules. Parties making oral ex parte presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well. In addition, interested parties are to file any written ex parte presentations in this proceeding with the Commission's Secretary, Marlene H. Dortch, 445 12th Street, SW., TW–B204, Washington, DC 20554, and serve with three copies each: Pricing Policy Division, Wireline Competition Bureau, Attn: Victoria Schlesinger, and Policy Division, Wireless Telecommunications Bureau, Attn: Gregory Vadas, 445 12th Street, SW., Washington, DC 20554. Parties shall also serve with one copy: Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893.

Federal Communications Commission.

Tamara Preiss,

Division Chief, Pricing Policy Division.

[FR Doc. 02–26435 Filed 10–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

PREVIOUSLY ANNOUNCED DATE: Tuesday, October 8, 2002. The closed meeting and the open meeting scheduled for that day were canceled.

DATE AND TIME: Tuesday, October 22, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, October 23, 2002 and Thursday, October 24, 2002 at 9:30 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

MATTER BEFORE THE COMMISSION: Coordinated and Independent Expenditures: Notice of Proposed Rulemaking.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, October 24, 2002, 10 a.m., meeting open to the public. This meeting has been canceled.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–26633 Filed 10–15–02; 3:20 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Grants for State and Local Homeland Security Activities

AGENCY: Office of National Preparedness (ONP), Federal Emergency Management Agency (FEMA).

ACTION: Notice of availability of fiscal year 2002 supplemental funds for State and local all-hazards emergency operational planning, Citizen Corps activities, and development or improvement of Emergency Operations Centers.

SUMMARY: FEMA gives notice of the availability of funds for fiscal year (FY) 2002 for State and local all-hazards emergency operations planning; for the development or improvement of State and local Emergency Operations Centers (EOCs); and for further development of Citizen Corps, including funds for Citizen Corps Councils and for Community Emergency Response Team (CERT) training. Funding of $100 million is available for planning, $56 million for EOCs, and $25 million for Citizen Corps.

FOR FURTHER INFORMATION CONTACT: Gil Jamieson, Federal Emergency Management Agency, Office of National Preparedness, 500 C Street, SW., Washington, DC 20472, (202) 646–4090 or e-mail: *gil.jamieson@fema.gov*.

SUPPLEMENTARY INFORMATION:

Authority and Appropriation

The legislative authority for the program activities described in this notice are the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121–5206;. The 2002 Supplemental Appropriations Act For Further Recovery From and Response To Terrorist Attacks on the United States, P.L. 107–206.

Applicant Eligibility

States are eligible to apply for the assistance described in this notice. The term "State" as used in this notice and consistent with the Stafford Act, 42 U.S.C. 5122(4), means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Local governments may receive assistance as subgrantees of the States in which they are located. The term "Local government" as used in this notice shall have the meaning set forth in the Stafford Act, 42 U.S.C. 5122(6).

Activities To Be Funded

State and Local All Hazards Emergency Operational Planning

The FY 2002 supplemental funding will provide comprehensive planning assistance to State and local governments to conduct Emergency Operations Plan (EOP) updating for all hazards with special emphasis on incidents of terrorism including use of weapons of mass destruction (WMD).

The funds for planning grants will be allocated among the States on the basis of population and will require no cost share. Each State grantee of these planning funds will be required to pass through at least 75 percent of the amount received to local governments.

Coordinated planning at the State and local levels is essential to meet urgent needs for improving the planning initiatives of State and local emergency management and first responder organizations to effectively request and use future resources and thereby build and enhance our Nation's capability to respond to and recover from the imminent threat or actual occurrence of a terrorist attack including use of WMD.

States will receive supplemental 2002 funding to modify and enhance their EOPs, as needed, so that they address all hazards, to include terrorism using WMD or conventional means. Funds should also be used for the following emergency planning objectives:

- Incorporate interstate and intrastate mutual aid agreements,
- Facilitate communication and interoperability protocols,
- Establish a common incident command system, * Address critical infrastructure protection,
- Conduct State and local assessments to determine emergency management planning priorities,
- Address State and local continuity of operations and continuity of government, and
- Provide for coordination and effective use of volunteers in response and preparedness activities.

Citizen Corps

Grants under the Citizen Corps initiative will be available to establish Citizen Corps Councils, to support the oversight and outreach responsibilities of the councils, and to expand CERT training. Of the $25 million appropriated for Citizen Corps, $4 million will be used for grants related to Citizen Corps Councils, $17 million will be used for grants related to CERT training, and $4 million will be used by FEMA for activities essential for developing the Citizen Corps initiative.

Citizen Corps funds will be allocated to States using the percentages prescribed in Section 1014 of the USA Patriot Act, Pub. L. 107–56. Each State will be allocated a base amount of not less than 0.75 percent of the total amount available except that the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands each will be allocated a base amount of 0.25 percent. The remaining Citizen Corps grant funds will be allocated on the basis of population and added to the base amounts. Citizen Corps grants and subgrants described in this notice will carry no cost-share requirement.

Grantees will be expected to develop and implement a jurisdiction-wide strategic plan for Citizen Corps, including forming local Citizen Corps Councils, CERT training, public education and outreach, and volunteer opportunities that promote community and family safety. Local governments receiving grants may use the funding for Citizen Corps Council organizing activities; for outreach and public education campaigns to promote Citizen Corps and community and family safety measures, to include printing, marketing, advertising, and special events; for organizing, training, equipping, and maintaining CERTs; and for defraying the added expense of liability coverage for CERT participants.

Each grantee of Citizen Corps funds will be required to subgrant at least 75 percent of those funds to local governments with no cost share. Grantees are expected to give priority to local governments that have demonstrated a commitment to community and family safety or to local governments that have a high-risk profile based on crime, disaster vulnerabilities, and public health issues. A commitment to community and family safety is shown by such activities as having established or planned a Citizen Corps Council, having programs to promote community and family safety, having conducted community-based events that promote safety, having established mutual aid agreements with other jurisdictions, and having demonstrated a commitment to citizen participation in crime prevention and disaster mitigation, preparedness, response, and recovery.

Emergency Operations Centers (EOCs)

The funding for EOCs will be awarded in two phases. Each State will be allocated a $50,000 Phase 1 grant, which is targeted for an initial assessment of the hazards, vulnerabilities, and resultant risk to the existing EOC. If a State has already completed a vulnerability assessment of its existing State EOC, it may apply to use the funds to conduct initial assessments of local EOCs. Phase 1 EOC activity will be 100 percent federally funded, *i.e.*, will require no cost share.

Phase 2 EOC grants will use the remaining funds to address the most immediate EOC deficiencies nationwide. The Phase 2 EOC grants will require a 50–percent non-Federal cost share.

During Phase 2, we invite the States to submit grant applications that reflect deficiencies documented in a completed self-assessment that reflects statewide needs, is consistent with national priorities, and considers characteristics associated with a fully functioning EOC. EOC self-assessment criteria will be provided in the grant guidance package.

Project applications will be evaluated and selections made for funding on the basis of the following order of national priorities:

- Physical modifications to the EOC to support secure communications equipment;
- New EOC construction where the most cost effective action is new construction (Cost-benefit ratio should be greater than 1);
- Corrective construction to address deficiencies determined by the Risk Assessment;
- Architectural and Engineering services for EOC projects in FY 2003 and out years;
- Creation of State Alternate EOC at an existing building for Continuity of Operations;
- Physical modifications to enhance security, but not the hiring of guards;
- Retrofits of existing EOCs with collective protection systems for Chemical, Biological, Radiological, or Nuclear (CBRN) agents;
- Redundant communications; and
- Other projects to increase the survivability of existing State or local EOCs.

FEMA will conduct the final environmental review and approval for all activities in accordance with Title 44, Code of Federal Regulations, Part 10 (44 CFR part 10) prior to awarding any grants. The approval for some activities, including the risk/vulnerability assessments of EOCs, is automatic through the categorical exclusion under the National Environmental Policy Act, per 44 CFR 10.8. However, some EOC projects, including physical modifications to EOCs for secure communications equipment, may require a more extensive environmental review, sometimes resulting in an environmental assessment. To expedite the approval process, States should consult with the FEMA Regional office as they develop their environmental documentation. Until FEMA has completed its environmental review, States may not initiate work on these projects.

EOC construction projects supported by these grants are subject to the provisions of the Davis-Bacon Act. All laborers and mechanics employed by contractors or subcontractors in performance of construction work assisted by these EOC grants must be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with Davis-Bacon and related Acts.

Grant Application Process

The chief elected official of each eligible jurisdiction will receive a letter from FEMA describing the grant activity and requesting that a point of contact (POC) and alternate be appointed. Guidance and grant application packages will be provided to the POCs.

A single grant application may be used to apply for the planning, Citizen Corps and Phase 1 EOC program elements. A separate application should be prepared for the Phase 2 EOC program element. The grant application for the planning, Citizen Corps, and Phase 1 EOC program elements should include:

- Application for Federal Assistance, Standard Form 424;
- Budget Information " Non-Construction Program, FEMA Form 20–20;
- Budget Narrative;
- Summary Sheet for Assurances and Certification, FEMA Form 20–16;
- Assurances " Non-Construction Program, FEMA Form 20–16A;
- Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements, FEMA Form 20–16C;
- Disclosure of Lobbying Activities, Standard Form LLL; and,
- Program Narrative identifying the activities for which funding is requested.

The Program Narrative should include the following:

- Description of how States will work with local governments including Tribal governments and communities and the process that the State will use to solicit, prioritize, and select subgrants;
- Activity title and number;
- Individual activity costs, including Federal and nonfederal shares;
- Activity-specific scopes of work, including a list of properties, if applicable;
- Recommendations and documentation regarding the environmental review required by 44 CFR 10, Environmental Considerations, and other applicable laws and executive orders; and
- Certification that the State has evaluated the included projects and that they will be implemented in accordance with 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

The Phase 2 EOC grant application should include all of the above with the following construction program forms substituted for the non-construction versions:

- Budget Information " Construction Programs, FEMA Form 20–15;
- Assurances " Construction Programs, FEMA Form 20–16B;

FEMA regional personnel will work directly with the States providing technical assistance, as required, as State and local governments carry out work under the grants.

Administrative Costs

Costs to administer each of the programs will be limited to 5 percent of the grant award. The amount that grantees and subgrantees choose to apply toward administrative costs will not be in addition to the grant and subgrant amounts. For grants with the 75-percent pass-through requirement, administrative costs for the grantees will be based on the portion of the grant that the State retains (i.e., States may use no more than 5 percent of the 25 percent of the total grant award they retain for administrative costs). Administrative costs for each subgrantee will be limited to 5 percent of their subgrant award. Administrative costs may be used to support grants management activities such as the review and award of subgrant applications, the preparation of quarterly reports, and monitoring subgrants. Costs related to staffing to implement program activities are eligible costs under each of the grants and do not need to be charged to the administrative costs. For example, hiring a staff person to update the State's Emergency Operations Plan is an eligible activity under the Planning grant. Indirect costs should also be included in administrative costs and must be supported with a current Indirect Cost Rate approved by a Federal Cognizant Agency. In compliance with 44 CFR 13.20, all administrative costs must be supported by source documentation. If the Indirect Cost Rate exceeds the 5-percent administrative costs allowance after all other eligible administrative costs have been identified and budgeted, the grantee must submit a request for a waiver with justification to validate the need for additional administrative costs.

Sensitive Information

FEMA will make every effort as permitted by law to protect sensitive or confidential information submitted in the grant process. If FEMA receives a third-party request for an applicant's information, both the Freedom of Information Act and FEMA's regulations contain provisions that may protect sensitive or confidential information that is determined by FEMA to be exempt from disclosure. These determinations are made on a case-by-case basis. Applicants should advise FEMA of the sensitive or confidential nature of information at the time such information is submitted. To ensure proper handling in the mail distribution process, the sensitive or confidential information should be placed in an envelope plainly marked to indicate the nature of its contents. This envelope should be placed in a second envelope marked "To be opened by addressee only" and mailed "Certified Receipt Requested."

Reporting Requirements

The States are required to submit quarterly financial and performance reports 30 days after the end of each quarter, per 44 CFR 13.40 and 41. Reporting dates are: January 30, April 30, July 30, and October 30. The performance reports will provide a comparison of actual accomplishments to the objectives approved for the period. Where the output of the project can be quantified, that information shall be provided. The States must also report the progress of each subgrantee award in their quarterly reports. When the Department of Health and Human Services (HHS) Payment Management System (SMARTLINK) is used for advanced or reimbursement payments, the grantee is required to submit a copy of Federal Cash Transaction Report (HHS/PMS 272) to FEMA when it is submitted to HHS. In addition, final financial and performance reports are required 90 days after the close of the grant, per 44 CFR 13.50.

ADDRESSES: FEMA Regional Offices:

FEMA Region I—*Serving the States of Maine, New Hampshire, Vermont, Rhode Island, Connecticut, and Massachusetts:* 442 J.W. McCormack POCH, Boston, MA 02109–4595.

FEMA Region II—*Serving the States of New York and New Jersey, the Commonwealth of Puerto Rico and the Territory of the U.S. Virgin Islands:* 26 Federal Plaza, Rm. 1337, New York, NY 10278–0002.

FEMA Region III—*Serving the District of Columbia and the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia:* 1 Independence Mall, 6th Floor, 615 Chestnut Street, Philadelphia, PA 19106–4404.

FEMA Region IV—*Serving the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee:* 3003 Chamblee Tucker Road, Atlanta, GA 30341.

FEMA Region V—*Serving the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin:* 536 S. Clark Street, 6th Floor, Chicago, IL 60605.
FEMA Region VI—*Serving the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas:* FRC 800 North Loop 288, Denton, TX 76201–3698.
FEMA Region VII—*Serving the States of Iowa, Kansas, Missouri, and Nebraska:* 2323 Grand Avenue, Suite 900, Kansas City, MO 64108.
FEMA Region VIII—*Serving the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming:* Denver Federal Center, Building 710, Box 25267, Denver, CO 80225–0267.
FEMA Region IX—*Serving the States of Arizona, California, Hawaii and Nevada; the Territories of American Samoa and Guam, and the Commonwealth of the Northern Mariana Islands:* 1111 Broadway, Suite 1200, Oakland, CA 94607–4052.
FEMA Region X—*Serving the States of Alaska, Idaho, Oregon and Washington:* Federal Regional Center, 130 228th Street, SW., Bothell, WA 98021–9709.

Dated: October 10, 2002.

Joe M. Allbaugh,

Director.

[FR Doc. 02–26405 Filed 10–16–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011626–007.
Title: The Alianca/Columbus/Crowley/P&O Nedlloyd Agreement.
Parties: Alianca Navegacao e Logistica Ltda., Hamburg-Sud, P&O Nedlloyd Limited, P&O Nedlloyd B.V., Oceanica AGW Com. E Rep. Ltda.
Synopsis: The amendment increases the number of vessels to be operated under the agreement from six to seven with each party's space allocation adjusted accordingly.

Agreement No.: 201139.
Title: Port of New Orleans and New Orleans Cold Storage & Warehouse Company, Ltd.
Parties: Board of Commissioners of the Port of New Orleans New Orleans Cold Storage & Warehouse Company, Ltd.
Synopsis: The filed agreement provides for the lease of the facility known as the Jourdan Road Shed and the construction of a new cold storage facility at that location. The lease will run for 30 years with two optional renewal periods of 10 years each.

By Order of the Federal Maritime Commission.

Dated: October 11, 2002.

Theodore A. Zook,

Assistance Secretary.

[FR Doc. 02–26455 Filed 10–16–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 4284N.
Name: Cargo, Inc.
Address: 220 Thorndale Avenue, Bensenville, IL 60106.
Date Revoked: September 19, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4156N.
Name: Gulf Eagle USA, Inc. dba Gulf Eagle Ocean Line.
Address: 500 McCormick Drive, Suite G & H, Glen Burnie, MD 21061.
Date Revoked: July 18, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17413NF.
Name: Venture Transport, Inc.
Address: 314 North Post Oak Lane, Houston, TX 77024.
Date Revoked: September 4, 2002.
Reason: Failed to maintain valid bonds.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–26454 Filed 10–16–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

Lincense No.	Name/Address	Date reissued
3661F	Expressair Cargo, Inc., 11091 NW 27th Street, Miami, FL 33172	September 8, 2002
16194N	Palumbo International Freight Forwarders, Inc., Calle Nebraska S–8, Ext Parkville, Guaynabo, PR 00969.	July 18, 2002

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–26452 Filed 10–16–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Uni-Star Logistics, Inc., 520 E. Carson Plaza Court, Suite 206, Carson, CA 90746; Officer: Jong Jae Lee, President (Qualifying Individual)
People & Logistics America, Inc., 21148 S. Figueroa Street, Carson, CA 90745, Officers: Hyn S. Bang, President (Qualifying Individual), Man Youn, CFO
KSO Container Inc., 3200 Wilshire Blvd., Suite 601, (North Tower), Los Angeles, CA 90010, Officers: Joseph A. Lorenzo, Jr., President/CFO (Qualifying Individual), Hyung Shin, Secretary
Commonwealth Custom Broker, Inc., dba C.C.B. Logistics dba C.C.B. Terminal, 8100 NW 29th Street, Miami, FL 33122, Officer: Rick Betancourt, President (Qualifying Individual)

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Gonbros Group Corporation, 2110 SW 3rd Avenue, Suite 4E, Miami, FL 33129–1477, Officers: Andre J. Gonzales, President (Qualifying Individual), Philippe R. Gonzales, Vice President
Dragon America Forwarding Inc., 3847 NW 142nd Terrace, Portland, OR 97229, Officers: Tamie Keeler-Parr, Vice President (Qualifying Individual), Jianian Gordon Chen, President
Global Worldwide, Inc., 4808 Kroemer Road, Fort Wayne, IN 46818, Officers: Donald J. Krengiel, Asst. Secretary (Qualifying Individual), James W. Rogers, Director

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Echo-Translink Systems (ETS), 13027 7th Avenue, NW., Seattle, WA 98177, Ellen Thompson, Sole Proprietor

Dated: October 11, 2002.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–26453 Filed 10–16–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine Act, Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, October 21, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–26541 Filed 10–15–02; 10:25 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The FTC has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements contained in its regulations under the Fair Packaging Labeling Act (FPLA). The FTC is seeking public comments on the proposal to extend through December 31, 2005 the current PRA clearance for information collection requirements contained in the regulations. That clearance expires on December 31, 2002.

DATES: Comments must be filed by November 18, 2002.

ADDRESSES: Send written comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, ATTN.: Desk Officer for the Federal Trade Commission (comments in electronic form should be sent to *oira_docket@omb.eop.gov*), and to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580 (comments in electronic form should be sent to *FPLApprwk@ftc.gov*). All comments should be captioned "FPLA Regulations: Paperwork Comment" as prescribed below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be sent to Stephen Ecklund, Investigator, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2841.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. On July 31, 2002, the FTC sought comment on the information collection requirements associated with the FPLA regulations, 16 CFR parts 500–503 (OMB Control Number: 3084–0110). Sec 67 FR 49694. No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule.

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *FPLA pprwk@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)96)(ii) of the Commission's rules of practice, 16 CFR section 4.9(b)(6)(ii).

The FPLA was enacted to eliminate consumer deception concerning product size representations and package content information. The regulations that implement the FPLA, 16 CFR parts 500–503, establish requirements for the

manner and form of labeling applicable to manufacturers, packagers, and distributors of "consumer commodities."[1] Section 4 of the FPLA specifically requires packages or labels to be marked with: (1) A statement of identity; (2) a net quantity of contents disclosure; and (3) the name and place of business of a company that is responsible for the product.

Estimated annual hours burden: 8,095,000 total burden hours (solely relating to disclosure[2]).

Based on U.S. Census data, staff conservatively estimates that approximately 809,500 manufacturers, packagers, distributors, and retailers of consumer commodities make disclosures at an average burden of ten hours per entity, for a total disclosure burden of 8,095,000 hours.

Estimated annual cost burden: $135,187,000, rounded (solely relating to labor costs).

The estimated annual labor cost burden associated with the FPLA disclosure requirements consists of an estimated hour of managerial and/or professional time per covered entity (at an estimated average hourly rate of $50) and nine hours of clerical time per covered entity (at an estimated average hourly rate of $13), for a total of $135,186,500 ($167 per covered entity × 809,500 entities).

Total capital and start-up costs are de minimis. For many years, the packaging and labeling activities that require capital and start-up costs have been performed by covered entities in the ordinary course of business independent of the FPLA and implementing regulations. Similarly, firms provide in the ordinary course business the information that the statute and regulations require be placed on packages and labels.

John D. Graubert,

Acting General Counsel.

[FR Doc. 02–26393 Filed 10–16–02; 8:45 am]

BILLING CODE 6750–01–M

[1] "Consumer commodity" means any article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use." 16 CFR 500.2(c). For the precise scope of the term's coverage see 16 CFR 500.2(c); 503.2; 503.5. See also *http://www.ftc.gov/os/statutes/fpla/outline.html*.

[2] To the extent that the FPLA-implementing regulations require sellers of consumer commodities to keep records that substantiate "cents off," "introductory offer," and/or "economy size" claims, staff believes that most, if not all, of the records that sellers maintain would be kept in the ordinary course of business, regardless of the legal mandates. "Burden," for OMB purposes, excludes such items. *See* 5 CFR 1320.3(b)(2).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Guide to Community Preventive Services (GCPS) Task Force: Meeting

Name: Task Force on Community Preventive Services

Times and Dates: 8:45 a.m.–5 p.m., October 23, 2002. 8:30 a.m.–3 p.m., October 24, 2002.

Place: The Sheraton Colony Square, 188 14th Street, NE., Atlanta, Georgia 30361, telephone(404) 892–6000.

Status: Open to the public, limited only by the space available.

Purpose: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services.

Matters To Be Discussed: Agenda items include: briefings on the administrative information, a clinical guide update, dissemination activities, methods overview, and preliminary findings from the Tobacco Control State Workshops; approved recommendations for the following interventions: Cancer Reminders, Skin Cancer Prevention, Tobacco—School-Based Interventions, and Vaccine Preventable Disease—Methods Introduction and High Risk Adult Vaccinations; and updates on the development of the Improving Pregnancy Outcomes, Mental Health, Nutrition and Violence Prevention Chapters.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Stephanie Zaza, M.D., Chief, Community Guide Branch, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 4770 Buford Highway, M/S K–73, Atlanta, Georgia 30341, telephone 770/488–8189.

Persons interested in reserving a space for this meeting should call 770/488–8189 by close of business on October 18, 2002.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 10, 2002.

Burma Burch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–26378 Filed 10–16–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Science and Program Review Subcommittee (SPRS) and the Advisory Committee for Injury Prevention and Control (ACIPC): Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee and committee meetings.

Name: Science and Program Review Subcommittee to ACIPC.

Time and Date: 8:15 a.m.-12:15 p.m., November 6, 2002.

Place: Sheraton Colony Square Hotel Midtown Atlanta, 188 14th Street, NE, Atlanta, Georgia 30361.

Status: Open to the public, limited only by the space available.

Purpose: The Subcommittee provides advice on the needs, structure, progress and performance of the National Center for Injury Prevention and Control (NCIPC) programs. The Subcommittee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Subcommittee also advises on priorities for research to be supported by contracts, grants, and cooperative agreements and provides concept review of program proposals and announcements.

Matters to be Discussed: Agenda items of the Subcommittee oversight meeting include presentations and discussions on the fiscal year 2001 and 2002 NCIPC research budget; enhancing relationships between extramural researchers and NCIPC staff; policies on mid-course reviews of Injury Control Research Centers (ICRCs); and length of ICRC research projects. Following the oversight meeting, the Subcommittee will conduct an acute care workshop in which several researchers will present current projects that have been funded in the acute care area. The discussions that occur in the workshop will have relevance to the agenda for the full ACIPC meeting that follows.

Name: Advisory Committee for Injury Prevention and Control.

Time and Dates: 1:30 p.m.–6 p.m., November 6, 2002. 8 a.m.–3 p.m., November 7, 2002.

Place: Sheraton Colony Square Hotel Midtown Atlanta, 188 14th Street, NE, Atlanta, Georgia 30361.

Status: Open to the public, limited only by the space available.

Purpose: The Committee advises and makes recommendations to the Secretary, Health and Human Services, the Director, CDC, and the Director, NCIPC, regarding feasible goals for the prevention and control of injury. The Committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control. The Committee provides advice on the appropriate balance of intramural and extramural research, and also provides guidance on the needs, structure, progress and performance of intramural programs, and on extramural scientific program matters. The Committee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Committee also recommends areas of research to be supported by contracts and cooperative agreements and provides concept review of program proposals and announcements.

Matters to be Discussed: Agenda items include reports from the Science and Program Review Subcommittee and Family and Intimate Violence Prevention Subcommittee; an update on CDC's preparedness efforts; an update on unintentional poisoning in North Carolina; fatal intimate partner violence, Ft. Bragg, North Carolina, 2002; an introduction to the issue of the public health role in acute care for injury prevention and control; NCIPC activities in acute care; presentations on acute care from representatives of professional medical organizations, including emergency medical services, emergency medicine, and trauma medicine specialists, which will provide ACIPC members with an overview of the state of trauma care in the United States and identify gaps that need to be filled; discussion of possible NCIPC contributions to acute care for injury; and NCIPC's 10th Anniversary celebrations and follow-up plan.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Ms. Louise Galaska, Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K02, Atlanta, Georgia 30341–3724, telephone (770) 488–4694.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 10, 2002.

Burma Burch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–26379 Filed 10–16–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Mine Safety and Health Research Advisory Committee (MSHRAC).

Time and Date: 8 a.m.–4 p.m., November 7, 2002.

Place: Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, NW., Washington DC 20001, telephone (202) 628–2100, fax (202) 879–7938.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 35 people.

Purpose: This committee is charged with providing advice to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NIOSH, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), Section 102(b)(2).

Matters to Be Discussed: Agenda for this meeting will focus on reports from the Director, NIOSH and Associate Director of Mining, training and worker education, emergency response and rescue, National Personal Protective Technology Lab, extramural research, and future activities.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Lewis V. Wade, Ph.D., Executive Secretary, MSHRAC, NIOSH, CDC, 200 Independence Avenue, SW., Room 715–H, Hubert Humphrey Building, P12 Washington, DC 20201–0004, telephone 202/401–2192, fax 202/260–4464.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 10, 2002.

Burma Burch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–26377 Filed 10–16–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The Advisory Committee to the Director of the National Center for Environmental Health of the Centers for Disease Control and Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee to the Director, National Center for Environmental Health.

Time and Date: 8:30 a.m.–4:30 p.m., November 22, 2002.

Place: Centers for Disease Control and Prevention, Chamblee Campus, 4770 Buford Highway NE., Building 102, Room 2201, Atlanta, GA 30341. In the interest of security, CDC has instituted stringent procedures for entrance onto the Chamblee campus by nongovernment employees. Persons without government identification will need to show a photo ID, sign in with Security, and be escorted to Building 102.

Status: Open to the public for observation, limited only by the space available. The meeting room accommodates approximately 80 people.

Purpose: The Secretary, and by delegation, the Director of the Centers for Disease Control and Prevention, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to (1) Conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist states and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and well being; and (3) train state and local personnel in health work.

Matters to be Discussed: The agenda items for the meeting on November 22 will include but are not limited to an overview of the National Center for Environmental Health; personnel issues; and presentations from NCEH regarding current activities.

Agenda items are tentative and subject to change.

Contact Person for More Information: Individuals interested in attending the

meeting, please contact Kent Taylor, designated federal official, CDC, 4770 Buford Highway NE, MS F–29, Atlanta, Georgia 30341–3724; telephone (770) 488–7020, fax (770) 488–7024; e-mail: *ktaylor@cdc.gov*. The deadline for notification of attendance is November 14, 2002.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 8, 2002.

Burma Burch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–26380 Filed 10–16–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 22, 2002, from 10 a.m. to 5:30 p.m., and October 23, 2002, from 8:30 a.m. to 4:30 p.m.

Location: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Geretta Wood, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8320, ext. 143, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 22, 2002, the committee will discuss, make recommendations, and vote on a premarket approval application for a drug-coated coronary artery stent intended to treat coronary artery obstructions and to help prevent in-stent stenosis. On October 23, 2002, the committee will discuss and make recommendations on a premarket notification (510(k)) submission for an arterial cannula intended to prevent an adverse neurological or limb threatening event. Background information for each day's topic, including the agenda and questions for the committee, will be available to the public one business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*. Material for the October 22, 2002, session will be posted on October 21, 2002; material for the October 23, 2002, session will be posted on October 22, 2002.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 18, 2002. On both days, oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of each topic and for approximately 30 minutes near the end of the committee deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 18, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, as soon as possible.

FDA regrets that it was unable to publish this notice 15 days prior to the October 22, 2002, Circulatory System Devices Panel of the Medical Devices Advisory Committee Meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Circulatory System Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 10, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–26471 Filed 10–11–02; 4:26 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science Board to the Food and Drug Administration Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Science Board to the Food and Drug Administration.

General Function of the Committee: The Board shall provide advice primarily to the Commissioner and the Senior Associate Commissioner for Science and Health and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community. Additionally, the Board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science, formulating an appropriate research agenda, and upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency sponsored intramural and extramural scientific research programs.

Date and Time: The meeting will be held on October 25, 2002, 8 a.m. to 4:30 p.m.

Location: 5630 Fishers Lane, rm. 1066, Rockville, MD 20857.

Contact Person: Susan Bond, Office of the Commissioner (HF–33), Food and Drug Administration, rm. 17–35, 5600 Fishers Lane, Rockville, MD 20852, 301–827–6687, or e-mail: *sbond@oc.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12603.

Please call the Information Line for up-to-date information on this meeting.

Agenda: The Board will hear and discuss counter terrorism initiatives at FDA with emphasis on those initiatives from: The Center for Food Safety and Applied Nutrition, the new Office of Cellular and Gene Therapy in the Center for Biologics Evaluation and Research, current research and efforts in the pregnancy labeling initiative, an update of the pharmaceutical manufacturing initiative from The Center for Drug Evaluation and Research, and an update of the management oversight of products.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 18, 2002. Open committee discussion will be held from 8 a.m. to 1 p.m.; an open public hearing will be held from 1 p.m. to 2 p.m.; and an open committee discussion will be held from 2 p.m. to 4:30 p.m. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 18, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Susan Bond at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the October 25, 2002, Science Board to the Food and Drug Administration Advisory Committee Meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Science Board to the Food and Drug Administration Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 10, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–26472 Filed 10–11–02; 4:26 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Children's Hospitals Graduate Medical Education (CHGME) Program Conference

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of public hearing.

SUMMARY: This document announces a public hearing to receive information and views on the notice that proposes methodologies and processes for the Children's Hospitals Graduate Medical Education (CHGME) Payment Program, published in the **Federal Register** (67 FR 60241) on September 25, 2002. The notice proposes methodology for: (1) Determining payments during the CHGME Payment Program's reconciliation process; (2) calculating indirect medical education (IME) payment; (3) disseminating CHGME Payment Program data, and (4) audit. This hearing will brief the public on the above methodologies and processes as well as hear public comments on the above. The public may also participate in the hearing by telephone as described below.

DATES: The public hearing will be held on October 22, 2002, from 2 p.m. to 3:30 p.m. EST.

ADDRESSES: The public hearing will be held in the Division of Medicine and Dentistry Conference Room, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, 5600 Fishers Lane, Room 9A–27, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Ayah E. Johnson, Ph.D., telephone: (301) 443–1058; Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, 5600 Fishers Lane, Room 9A–27, Rockville, Maryland 20857; or by e-mail at: *ajohnson@hrsa.gov*.

SUPPLEMENTARY INFORMATION: The CHGME Payment Program, as authorized by section 340E of the Public Health Service (PHS) Act (the Act) (42 U.S.C. 256e), provides funds to children's hospitals to address disparity in the level of Federal funding for children's hospitals that result from Medicare funding for graduate medical education (GME). Pub. L. 106–310 amended the CHGME statute to extend the program through fiscal year 2005.

The hearing will again provide information on the proposed methodologies and processes contained in the September 25, 2002, CHGME Payment Program notice. The agenda for the hearing will include the following: (1) Methodology for determining payments during the CHGME Payment Program's reconciliation process; (2) calculating IME payment; (3) disseminating CHGME Payment Program data, and (4) audit. This hearing will brief the public on the above methodologies and processes as well as hear comments from the public on the above. Time will also be available for a question and answer period. Information about the Program can be found on the CHGME Payment Program Web site. The Web site address is *http://bhpr.hrsa.gov/childrenshospitalgme*.

For security reasons, individuals wishing to attend the public hearing at the Parklawn Building must contact the CHGME Payment Program no later than October 17, 2002 to receive security clearance. These individuals should plan to arrive no later than 1:15 PM to accommodate security procedures. Individuals who do not contact the CHGME Payment Program by October 17, 2002 to receive security clearance will not be admitted to the Parklawn Building. In order for individuals to participate by telephone, they must dial: (888) 625–1617 and enter the corresponding pass code 52453. The pass code (52453) and Dr. Ayah Johnson's name, as call leader, are required to join the call. Telephone participants should call no later than 1:45 p.m. for logistical reasons.

In order to facilitate the public hearing, participants are asked to submit their questions in writing to Ayah E. Johnson, Ph.D., Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, 5600 Fishers Lane, Room 9A–27, Rockville, Maryland 20857; or by e-mail at *ajohnson@hrsa.gov* no later than October 17, 2002.

During the public hearing, individuals are asked to (1) hold their questions until the allotted question-and-answer period; (2) identify themselves and their hospital/organization before each question; and (3) address questions to

the Health Resources and Services Administration only. Individuals participating by telephone are also asked to keep their speakerphones on mute unless they are asking a question.

Dated: October 10, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–26476 Filed 10–16–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Recovery Plan for the Star Cactus (Astrophytum asterias)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the Draft Recovery Plan for the Star Cactus *(Astrophytum asterias)*. The star cactus is known to occur on one private land site in Starr County, Texas. Additional populations may be found in Tamaulipas, Mexico. The Service solicits review and comment from the public on this draft plan.

DATES: The comment period for this Draft Recovery Plan closes November 18, 2002. Comments on the Draft Recovery Plan must be received by the closing date.

ADDRESSES: Persons wishing to review the Draft Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, Corpus Christi Ecological Services Field Office, c/o TAMUCC, 6300 Ocean Drive, Box 338, Corpus Christi, Texas, 78412. Comments and materials concerning this Draft Recovery Plan may be sent to "Field Supervisor" at the address above.

FOR FURTHER INFORMATION CONTACT: Loretta Pressly, Corpus Christi Ecological Services Field Office, at the above address; telephone (361) 994–9005, facsimile (361) 994–8262.

SUPPLEMENTARY INFORMATION:

Background

The star cactus *(Astrophytum asterias)* was listed as endangered on October 18, 1993, under authority of the Endangered Species Act of 1973, as amended. The threats facing the survival and recovery of this species include: habitat destruction through conversion of native habitat to agricultural land and increased urbanization; competition with exotic invasive species; genetic vulnerability due to low population numbers; and collecting pressures for cactus trade. The Draft Recovery Plan includes information about the species and provides objectives and actions needed to downlist, then delist the species. Recovery activities designed to achieve these objectives include: protecting known populations; searching for additional populations; performing outreach activities to educate the general public on the need for protection; establishing additional populations through reintroduction in the known range of the plant.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing recovery plans.

The Star Cactus Draft Recovery Plan is being submitted for technical and agency review. After consideration of comments received during the review period, the recovery plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 10, 2002.

Bryan Arroyo,

Acting Regional Director, Region 2.

[FR Doc. 02–26376 Filed 10–16–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–02–1610–DT]

Notice of Availability of the Proposed California Desert Conservation Area Plan Amendment for the Coachella Valley, and the Final Environmental Impact Statement

AGENCY: Department of the Interior, Bureau of Land Management, California Desert District.

ACTION: Notice of Availability (NOA) of the Bureau of Land Management (BLM) Proposed California Desert Conservation Area (CDCA) Plan Amendment for the Coachella Valley (Coachella Valley Plan) and associated Final Environmental Impact Statement (FEIS), and initiation of the 30-day protest period.

SUMMARY: The Coachella Valley Plan amends the CDCA Plan for a 1.2 million-acre planning area encompassing the Coachella Valley, California. The BLM administers approximately 28 percent, or 330,516 acres, of the planning area. The Coachella Valley Plan is being developed in coordination with the Coachella Valley Association of Governments in support of their efforts to prepare a Coachella Valley Multiple-Species Habitat Conservation Plan (CVMSHCP).

The Coachella Valley Plan includes goals, objectives, and management prescriptions in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA) for comprehensive management of desert ecosystems, including actions supporting recovery of ten species listed under the federal Endangered Species Act: Peninsular Ranges Bighorn Sheep *(Ovis Canadensis nelsoni)*, Arroyo Toad *(Bufo microscaphus californicus)*, Desert Pupfish *(Cyprinodon macularius macularius)*, Desert Slender Salamander *(Batrachoseps aridus)*, Desert Tortoise *(Xerobates [or Gopherus] agassizii)*, Least Bell's Vireo *(Vireo bellii pusillus)*, Southwestern Willow Flycatcher *(Empidonax traillii extimus)*, Yuma Clapper Rail *(Rallus longirostris yumanesis)*, Coachella Valley Milk Vetch *(Astragalus lentiginousus coachellae)*, and Triple-ribbed Milk Vetch *(Astragalus tricarinatus)*. The FEIS evaluates the Proposed Plan Amendments and three alternatives. The FEIS also includes public comments on the Draft Environmental Impact Statement (DEIS) and BLM's response to those comments.

DATES: The protest shall be in writing and shall be filed with the Director. The protest shall be filed within 30 days of the date the Environmental Protection Agency published the notice of receipt of the final EIS containing the plan or amendment in the **Federal Register**. For an amendment not requiring the preparation of an EIS, the protest shall be filed within 30 days of the publication of the notice of its effective date. The BLM will issue a press release citing the actual date for closure of the protest period when determined, including publication on the BLM California's Internet site. Instructions for filing protests are contained in the Coachella Valley Plan cover sheet just inside the front cover, and are included below under "Supplementary Information."

ADDRESSES: Mailing address for filing a protest:

Regular mail—U.S. Department of the Interior, Director, Bureau of Land Management (210), Attn: Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight mail—U.S. Department of the Interior, Director, Bureau of Land Management (210), Attn: Brenda Williams, Telephone (202) 452–5045, 1620 "L" Street NW, Rm. 1075, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Jim Foote at (760) 251–4836 or *jfoote@ca.blm.gov*. Copies of the Coachella Valley Plan are being mailed to those who received the DEIS or provided comments on the DEIS. The document is available for review via the Internet at *http://www.ca.blm.gov/palmsprings* and is also available in hard copy at the following addresses and telephone numbers:

BLM, 690 West Garnet Ave., P.O. Box 581260, North Palm Springs, CA 92258; (760) 251–4800.

BLM, 6221 Box Springs Blvd., Riverside, CA 92507; (909) 697–5200.

SUPPLEMENTARY INFORMATION: Following are the instructions from *Title 43 Code of Federal Regulations 1610.5–2* for filing protests:

(a) Any person who participates in the planning process and has an interest that is or may be adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment. A protest may raise only those issues that were submitted for the record during the planning process.

(1) The protest shall be in writing and shall be filed with the Director. The protest shall be filed within 30 days of the date the Environmental Protection Agency published the notice of receipt of the final EIS containing the plan or amendment in the **Federal Register**. For an amendment not requiring the preparation of an EIS, the protest shall be filed within 30 days of the publication of the notice of its effective date.

(2) The protest shall contain:

(i) The name, mailing address, telephone number and interest of the person filing the protest;

(ii) A statement of the issue or issues being protested;

(iii) A statement of the part or parts of the plan or amendment being protested;

(iv) A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and

(v) A concise statement explaining why the State Director's decision is believed to be wrong.

(3) The Director shall promptly render a decision on the protest. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the protesting party by certified mail, return receipt requested.

(b) The decision of the Director shall be the final decision for the Department of the Interior.

Dated: September 13, 2002.

James G. Kenna,

Field Manager.

[FR Doc. 02–26390 Filed 10–16–02; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–448]

Textiles and Apparel: Assessment of the Competitiveness of Certain Foreign Suppliers to the U.S. Market

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation, scheduling of public hearing, and request for public comments.

EFFECTIVE DATE: October 10, 2002.

SUMMARY: Following receipt of a request from the United States Trade Representative (USTR) on September 16, 2002, the Commission instituted investigation No. 332–448, Textiles and Apparel: Assessment of the Competitiveness of Certain Foreign Suppliers to the U.S. Market, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of assessing the textile and apparel industries of certain foreign suppliers with respect to their competitiveness and other factors pertinent to their adjustment to the final completion of the phaseout of quotas required by the Uruguay Round Agreement on Textiles and Clothing (ATC) on January 1, 2005.

FOR FURTHER INFORMATION CONTACT: For general information, contact Robert W. Wallace (202–205–3458; *wallace@usitc.gov*) or Kimberlie Freund (202–708–5402; *kfreund@usitc.gov*) of the Office of Industries. For information on legal aspects, contact William Gearhart of the Office of the General Counsel (202–205–3091; *wgearhart@usitc.gov*). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need access to the Commission should contact the Office of the Secretary at 202–205–2000. General information about the Commission can be found on its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public/*.

Background: As requested by the USTR, the Commission will assess the textile and apparel industries of certain countries that are currently suppliers to the U.S. market with respect to their competitiveness and other factors pertinent to their adjustment to ATC completion. These countries include: (a) significant ATC suppliers to the U.S. market, (b) Mexico, and (c) other supplying countries with preferential access to the U.S. market. In the letter, the USTR requested that, to the extent practicable, the Commission's analysis should discuss factors such as textile and apparel consumption, production, employment, and prices in major textile and apparel exporting countries, as well as their textile and apparel trade, particularly with industrial country markets. The USTR requested that the Commission provide the information in a confidential report by June 30, 2003. In consultation with USTR staff, countries identified as significant ATC suppliers to the U.S. market for purposes of this investigation are Bangladesh, China, Egypt, Hong Kong, India, Indonesia, Korea, Malaysia, Macao, Pakistan, the Philippines, Sri Lanka, Taiwan, Thailand, and Turkey.

Countries identified as "other supplying countries with preferential access to the U.S. market" are Israel, Jordan, and certain designated beneficiary countries under the African Growth and Opportunity Act, the Andean Trade Promotion and Drug Eradication Act, and the United States-Caribbean Basin Trade Partnership Act. In the request letter, the USTR referred to the ATC, which entered into force with the WTO agreements in 1995 and created special interim rules to govern trade in textiles and apparel among World Trade Organization Members for 10 years. The ATC called for the gradual and complete elimination of import quotas on textiles and apparel established by the United States and other importing countries under the Multifiber Arrangement and predecessor arrangements by January 1, 2005. Also in the request letter, USTR stated that, in anticipation of the final completion of the quota phaseout required by the ATC, "it may be that significant changes will occur in the global pattern of production, trade and consumption of these products. It would be most helpful for the Administration to be able to anticipate the nature of these changes as much as possible."

Public Hearing: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on January 22, 2003. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., January 6, 2003. Any prehearing briefs (original and 14 copies) should be filed no later than 5:15 p.m., January 8, 2003; the deadline for filing post-hearing briefs or statements is 5:15 p.m., February 4, 2003. In the event that, as of the close of business on January 6, 2003, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202-205-1806) after January 6, 2003, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include such confidential business information in the report it sends to the USTR. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on February 4, 2003.

All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

List of Subjects: Textiles, apparel, quotas, and imports.

By order of the Commission.

Issued: October 10, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02-26356 Filed 10-16-02; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 289-2002]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to modify the following system of records—previously published November 4, 1997 (62 FR 58734):

Computer Linked Application Information Management System (CLAIMS 3 and 4) Justice/INS-013

INS proposes to modify the following sections of the notice: System Location—by providing the web address for locating INS field office addresses; Categories of Individuals—to adequately describe the individuals at issue within the system; Categories of Records in the System—describing three other database systems that are either components or extractions of CLAIMS; Purpose—adding an additional purpose for maintaining this system of records; Retrievability—adding another means for retrieval of the data; Retention and Disposal—updating the schedule to include its current description; System Manager—an internal reorganization switched authority for the system to a new program office; and Records Access Procedures—the text has been updated. Also, three routine uses (B), (F), and (G) are being edited and three routine uses (H), (I), and (J) have been added. Finally, other minor corrections and edits have also been made.

In accordance with 5 U.S.C. 552a (e)(4) and (11), the public is given a 30-day period in which to comment on the proposed routine uses. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comment by November 18, 2002. The public, OMB, and the Congress are invited to submit any comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a the Department has provided a report to OMB and the Congress.

Dated: October 4, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/INS-013

SYSTEM NAME:

Computer Linked Application Information Management System (CLAIMS 3 and 4).

SYSTEM LOCATION:

The Department of Justice (DOJ) Data Processing Center with data access by Immigration and Naturalization Service (INS) users from Headquarters, Regional and District offices, Service Centers, and sub-offices as detailed in JUSTICE/INS-999, last published in the **Federal Register** on April 13, 1999 (64 FR 18052), and on the Internet at the INS Web page, at *http://www.INS.gov.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed applications or petitions for benefits under the Immigration and Nationality Act, as amended, and/or who have submitted fee payments with such applications or petitions; and individuals who have paid fees for access to records under the Freedom of Information/Privacy Acts (FOIA/PA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic information which identifies individuals named above, *e.g.*, name and address, date of birth, country of birth and alien registration number. Records in the system may also include such information as date documents were filed or received in INS, application/petition status, location of record, FOIA/PA or other control number when applicable, and fee receipt data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103; 8 U.S.C. 1363; and 31 U.S.C. 3512.

PURPOSE(S):

CLAIMS 3 and 4 consists of three major components: 1) The Local Area Network (LAN) version is used mainly by the INS Service Centers to support the processing and maintenance of applications and petitions information into computer data format; 2) The centralized mainframe component, retains data uploaded from the Service Center LAN operations and provides real-time on-line nationwide inquiries and update capabilities to authorized INS representatives, and; 3) The re-engineered Client/Server version of CLAIMS automates aspects of applications associated with naturalization/citizenship and benefits processing. Both investigative and administrative records are maintained in this system in order to permit the INS to function efficiently. Reports are also generated from the data within the system.

The CLAIMS 3 and 4 components enable INS to provide automated support to process applications and/or petitions for benefits; determine the status of pending applications and petitions for benefits; account for and control the receipt and disposition of any fees and refunds collected, and FOIA/PA requests; and locate related physical and automated files to support INS responses to inquiries about these records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To any Federal agency, where appropriate, to enable such agency to make determinations regarding the payment of Federal benefits to the record subject in accordance with that agency's statutory responsibilities.

B. In an appropriate proceeding before a court, grand jury, or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding.

C. To an actual or potential party or to his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or informal discovery proceedings.

D. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

E. To a Member of Congress, or staff acting upon the Member's behalf, when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

F. To General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

G. To an obligor who has posted a bond with the INS for the subject. INS may provide only such information, as either (1) may aid the obligor in locating the subject to insure his or her presence when required by INS or (2) assist the obligor in evaluating the propriety of the following actions by INS: breach of bond—*i.e.*, notice to the obligor that the subject of the bond has failed to appear which would render the full amount of the bond due and payable.

H. To the appropriate agency/organization/task force, regardless of whether it is Federal, State, local, foreign, or tribal, charged with the enforcement (*e.g.*, investigation and prosecution) of a law (criminal or civil), regulation, or treaty, of any record contained in this system of records which indicates either on its face, or in conjunction with other information, a violation or potential violation of that law, regulation, or treaty.

I. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

J. Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored on magnetic disks and tape.

RETRIEVABILITY:

Records may be retrieved by: the Alien File Number (A-Number) in some instances; the name of the individuals covered by the system; and by application/petition receipt number.

SAFEGUARDS:

Most INS offices are located in buildings under security guard, and access to premises is by official identification. Offices are locked during non-duty hours. Access to this system is obtained through remote terminals that require the use of restricted passwords and a user ID.

RETENTION AND DISPOSAL:

The following INS proposal for retention and disposal is pending approval by NARA. Information located on the LAN database will be archived in accordance with the archiving criteria for each different INS form downloaded into the system, *i.e.*, one to three years after date of last completed action to a repository where it will remain 15 years before destruction. Archived reports are maintained at INS Service Centers for 15 years and then are destroyed. The re-engineered client/server data will be deleted 15 years after INS has completed the final action on the benefit request.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Executive Associate Commissioner, Office of Field Operations, Immigration Services Division, 435 I Street NW, Room 7246. Washington, DC 20536.

NOTIFICATION PROCEDURES:

Inquiries should be addressed to the system manager.

RECORDS ACCESS PROCEDURE:

Requests for access to records in this system must be in writing. Such requests may be submitted by mail or in person. If a request for access is made by mail, the envelope and letter shall be clearly marked Privacy Access Request. The requester should provide his or her full name, date and place of birth, verification of identity in accordance with 8 CFR 103.21(b), and any other

identifying information that may be of assistance in locating the record. Requests to contest or amend information contained in the system should be made to the system manager or the FOIA/PA officer at any INS office. The requester should also provide a return address for transmitting the records to be released.

CONTESTING RECORDS PROCEDURE:

Requests to contest or amend information contained in the system should be made to the System Manager or the FOIA/PA officer at any INS office. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope, "Privacy Act Amendment Request." The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

Information contained in this system of records is obtained from the individuals covered by the system.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–26260 Filed 10–16–02; 8:45 am]
BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 290–2002]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice (DOJ), proposes to remove an existing system of records, entitled Secondary Verification Automated Log (SVAL), last published October 10, 1995 (60 FR 52699) and replace it with a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) has been published. This new system of records is entitled:

The Verification Information System (VIS), JUSTICE/INS–035.

Therefore, on the effective date of the new system, named above, the SVAL system notice will be removed from the DOJ inventory of Privacy Act systems of records.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on the new routine uses. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by November 18, 2002. The public, OMB, and the Congress are invited to submit any comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: October 4, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/INS–035

SYSTEM NAME:

Verification Information System (VIS).

SYSTEM LOCATION:

Headquarters, Regional, District, and suboffices of the Immigration and Naturalization Service (INS) in the United States—addresses can be located on the INS webpage: *www.INS.gov* and as detailed in JUSTICE/INS–999, last published in the **Federal Register** on April 13, 1999 (64 FR 18052).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Immigrants and naturalized U.S. citizens applying for federal, state, and local public benefits for whom INS receives a Form G–845, Document Verification Request, or an automated verification request submitted by federal, state, and local public benefit issuing agencies; and immigrant employees of employers who participate in one of INS' Employment Verification Pilot Programs.

AUTHORITY FOR MAINTENANCE OF RECORDS:

8 U.S.C. 1255a, 8 U.S.C. 1324a, 8 U.S.C. 1360 and 42 U.S.C. 1320b–7.

PURPOSE(S):

This system of records is used to provide immigration status information to federal, state, and local government agencies for immigrants and naturalized U.S. citizens applying for federal, state, and local public benefits. It is also used to provide employment authorization information to employers participating in an employment verification pilot program. The VIS expands the Systematic Alien Verification for Entitlements (SAVE) Program's current electronic primary verification process which utilizes the Alien Status Verification Index (ASVI) database (JUSTICE/INS–009, last published September 7, 2001, 66 FR 46815) to include two additional systems: (1) The Status Verification System (SVS); and (2) the Management Reporting System (MRS). External users access ASVI to electronically verify immigration status and employment authorization. In the instances when the verification cannot be confirmed by ASVI, an electronic transmission of the verification request is sent by ASVI to SVS to an INS field office for processing record manual agency verification requests (Forms G–845) submitted to INS field offices when the agency does not have access to an automated secondary verification method or electronic access is not feasible. In cases where the employer verification process requires the immigrant employee to contact INS, SVS records these transactions. The SVS also includes a workload traffic management capability that moves and records the location of verification requests transmitted by external users to INS field offices servicewide. The SVS also captures status and employment verification statistics and transmits these statistics electronically to MRS. The MRS is an automated system used by INS management to produce statistical reports and information on immigration status and employment authorization verification requests.

The purpose of the system is to meet both current and future immigration status and employment authorization verification needs. The VIS provides the opportunity to reduce the submission of the paper Forms G–845 and reduces the amount of time necessary to provide immigration status and employment authorization information. The VIS will be used by current participants of the SAVE Program, the Employment Verification Pilots, and future customers. The VIS extends the automation of the verification process from the initial verification through the ASVI database through any verification that may be required with INS field offices and records and captures statistical information associated with the verification process.

CATEGORIES OF RECORDS IN THE SYSTEM:

Some agency users submit requests to INS on Form G–845 for agency manual verification. These records contain the following data: Alien Registration Number (A-Number), alien name, nationality, date of birth, and name, address, telephone number, and contact person of the submitting agency. INS will complete Section B of Form G–845 with immigration status information and return it to the benefit issuing agency. However, identical data, together with a unique verification number and Form G–845 disposition data, will be recorded and maintained

by INS in the VIS database as a record of manual verification made by the benefit issuing agency.

Agency automated users submit their verification requests to INS electronically and these records contain the following data: A-Number, alien name, date of birth, INS document type, INS document expiration date, name of the submitting agency and immigration status information, as well as a unique verification number and disposition data, and will be maintained by INS in the VIS database as a record of verification made by the benefit issuing agency.

Employers also submit their verification requests to INS electronically and these records contain the following data: A-Number, alien name, date of birth, social security number, date of hire, claimed citizenship status, INS document type, INS document expiration date, name of the submitting employer and employment authorization information, as well as a unique verification number and disposition data, and will be maintained by INS in the VIS database as a record of verification made by the employer.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed to the following:

A. To a federal, state, tribal, or local government agency, or to a contractor acting on its behalf, to the extent that such disclosure is necessary to enable these agencies to make decisions concerning: (1) Determination of eligibility for a federal, state, or local public benefit; or (2) issuance of a license or grant. Such access may be via a system in which the recipient performs its own automated verification of the requisite information for deciding any of the above. Records may also be disclosed to these agencies, or contractors operating on their behalf, for use in computer matching programs for the purpose of verifying an applicant's immigration status for the purpose of making benefit eligibility determinations.

B. To employers participating in Employment Verification Pilot Programs for verifying the employment authorization of immigrant employees to work in the United States. Employers are assigned secure access codes, user IDs, and passwords, and have access through personal computers with a modem.

C. To other federal, state, tribal, and local government agencies seeking to verify or determine the citizenship or immigration status of any individual within the jurisdiction of the INS as authorized or required by law. The INS will assign access codes and passwords for remote access through secure methods to agencies to perform their own automated verification.

D. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

E. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

F. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

G. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

H. Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored on magnetic disk and tape.

RETRIEVABILITY:

Agency records are retrieved by verification number, A-Number, or name of the applicant, or by the submitting agency name. Employer records are retrieved by verification number, A-Number, or Social Security Number of the employee, or by the submitting company name.

SAFEGUARDS:

Records are safeguarded in accordance with the Department of Justice Orders governing security of automated records and Privacy Act systems of records. Access is controlled through user identification and discrete password functions to assure that accessibility is limited.

RETENTION AND DISPOSAL:

Completed verifications are archived to a storage disk monthly and destroyed five (5) years after the last month contained on the disk.

SYSTEM MANAGER(S) AND ADDRESS:

The Servicewide system manager is the Assistant Commissioner, Office of Records, Immigration and Naturalization Service, 425 I Street NW., Fourth Floor, Union Labor Life Building, Washington, DC 20536.

NOTIFICATION PROCEDURES:

Address your inquiries about the system in writing to the system manager identified above.

RECORD ACCESS PROCEDURES:

In all cases, requests for access to a record in this system shall be in writing. If a request for access is made by mail, the envelope and letter should be clearly marked "Privacy Act Request." The requester shall include the name, date and place of birth of the person whose record is sought and, if known, the A-Number. The requester shall also provide a return address for transmitting the information.

CONTESTING RECORDS PROCEDURES:

Any individual desiring to contest or amend information maintained in the system should direct his or her request to the System Manager or the INS office that completed the verification request. The request should clearly state what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Form G–845, Request for Document Verification (furnished by benefit issuing agencies) and INS immigration status records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–26261 Filed 10–16–02; 8:45 am]
BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 291–2002]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to modify the system of records—INS Appendix: List of Principal Offices of the INS, JUSTICE/INS–999, last published, April 13, 1999 (64 FR 18052). This system notice is being modified because most of the INS offices are listed on the INS Web site. The Web site address is *http://www.INS.gov*. Those field office addresses not on the INS Web site appear in JUSTICE/INS–999. Requesters seeking records from the following systems of records may review this system notice and the Web site to obtain those addresses for each system location cited in the system notice.

1. INS Index System, JUSTICE/INS–001, 10/5/93 (58 FR 51847)
2. INS Alien File and Central Index System, JUSTICE/INS–001A, 9/7/01 (66 FR 46813)
3. INS Office of Internal Audit Investigations Index and Records, JUSTICE/INS–002, 1/3/02 (67 FR 347)
4. The Asset Management Information System (AMIS), JUSTICE/INS–004, 4/27/98 (63 FR 20651)
5. INS Image Storage and Retrieval System (ISRS), JUSTICE/INS–005, 01/22/01 (66 FR 6672)
6. INS Orphan Petitioner Index and Files, JUSTICE/INS–007, 07/27/01 (66 FR 39199)
7. INS Bond Management Information System, JUSTICE/INS–008, 12/18/98 (63 FR 70159)
8. INS Alien Status Verification Index, JUSTICE/INS–009, 9/7/01 (66 FR 46815)
9. INS Password Issuance and Control System, JUSTICE/INS–011, 3/2/89 (54 FR 8838)
10. INS Deportable Alien Control System, JUSTICE/INS–012, 01/22/01 (66 FR 6672)
11. INS Computer Linked Application Information Management System (CLAIMS), JUSTICE/INS–013, 11/4/97 (62 FR 59734)
12. Security Access Control System, JUSTICE/INS–014, 01/22/01 (66 FR 6670)
13. INS Port of Entry Office Management Support System, JUSTICE/INS–015, 6/14/90 (55 FR 24167)
14. Secondary Verification Automated Log, JUSTICE/INS–016, 10/10/95 (60 FR 52699)
15. INS Global Enrollment System (GES), JUSTICE/INS–017, 3/13/97 (62 FR 11919)
16. INS Employment Assistance Program (EAP) Treatment Referral Records, JUSTICE/INS–019, 1/22/98 (63 FR 3349)
17. Designated Entity Information Management System (DEIMS), JUSTICE/INS–021, 7/22/97 (62 FR 39256)
18. The Immigration and Naturalization Service Attorney/Representative Complaint/Petition Files, JUSTICE/INS–022, 12/16/99 (64 FR 70288)
19. INS Law Enforcement Support Center Database, JUSTICE/INS–023, 05/14/97 (62 FR 26556)
20. FD–258 Fingerprint Tracking System, JUSTICE/INS–024, 07/31/00 (65 FR 46741)
21. Worksite Enforcement Activity Record and Index (LYNX), JUSTICE/INS–025, 9/24/01 (66 FR 48890)
22. Hiring Tracking Systems (HITS), JUSTICE/INS–026, 12/16/99 (64 FR 70291)
23. JobSwap/Job Exchange System (JOBX), JUSTICE/INS–030, 03/8/01 (66 FR 13966)
24. Redesigned Naturalization Application Casework System (RNACS), JUSTICE/INS–031, 4/29/02, (67 FR 20996)
25. National Automated Immigration Lookout System (NAILS), JUSTICE/INS–032, 4/4/01 (66 FR 17928)
26. I–551 Renewal Program Temporary Sticker Issuance I–90 Manifest System (SIIMS), JUSTICE/INS–033, 01/22/01 (66 FR 6673)

Therefore, the INS Appendix, JUSTICE/INS–999 is modified accordingly.

Dated: October 4, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/INS–999

SYSTEM NAME:

INS Appendix: List of principal offices of the Immigration and Naturalization Service.

HEADQUARTERS:

Immigration and Naturalization Service, 425 "I" Street NW., Washington, DC 20536.

REGIONAL OFFICES:

Eastern Regional Office, 70 Kimball Avenue, South Burlington, VT 05403–6813.

Central Regional Office, 7701 North Stemmons Freeway, Dallas, TX 75247–9998.

Western Regional Office, PO Box 30080, Laguna Niguel, CA 92607–0080.

ADMINISTRATIVE CENTERS:

Eastern Administrative Center, 70 Kimball Avenue, South Burlington, VT 05403–6813.

Southern Administrative Center, 1460 Prudential Drive, Dallas, TX 75235.

Northern Administrative Center, Bishop Henry Whipple Federal Building, Room 480, One Federal Drive, Fort Snelling, MN 55111–4007.

Western Administrative Center, 24000 Avila Road, Laguna Niguel, CA 92677–8080.

BORDER PATROL ACADEMY:

DOJ/INS (FLETC) Artesia, 1300 West Richey Avenue, Artesia, NM 88210.

Officer Development and Training Facility, Building 64 FLETC, Glynco, GA 31524.

[FR Doc. 02–26262 Filed 10–16–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 292–2002]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes minor changes to the following systems of records:

1. The Asset Management Information System (AMIS), JUSTICE/INS–004, previously published April 27, 1998 (63 FR 20651)
2. Law Enforcement Support Center Database (LESC), JUSTICE/INS–023, previously published May 14, 1997 (62 FR 26555).

INS proposes to add another authority for the AMIS system of records and make an editorial change in the "Safeguards" section. Changes for the LESC system of records include an editorial change to correct the address in the "System Location" and "System Manager" sections and a change in the "Storage" section to reflect that the program no longer maintains records in hardcopy format.

Comments may be directed to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

Dated: October 4, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/INS–004

SYSTEM NAME:

The Asset Management Information System (AMIS).

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 40 U.S.C. 486; (2) 41 CFR part 101; (3) 41 CFR part 128; and (4) 41 CFR part 102.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

* * * * *

RETRIEVABILITY:

* * * * *

SAFEGUARDS:

INS offices are located in buildings under security guard, and access to the premises is by official identification. All records are stored in space which is locked outside of normal office hours. In addition, paper records with social security numbers are stored in locked cabinets or machines. Access to the automated system is controlled by restricted password for use at remote terminals in secured areas.

* * * * *

JUSTICE/INS–023

SYSTEM NAME:

Law Enforcement Support Center Database.

SYSTEM LOCATION:

Immigration and Naturalization Service (INS), Law Enforcement Support Center (LESC), Eastern Regional Office Building, 188 Harvest Lane, Williston, Vermont 05495.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in electronic format. Electronic records are stored on magnetic or optical media (*i.e.*, computer hard drives, floppy disks, tapes and optical disks).

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Law Enforcement Support Center, Eastern Regional Office, Immigration and Naturalization Service, 188 Harvest Lane, Williston, VT 05495.

* * * * *

[FR Doc. 02–26263 Filed 10–16–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number D–10845]

Amendment to Prohibited Transaction Exemption 86–128 (PTE 86–128) For Securities Transactions Involving Employee Benefit Plans and Broker-Dealers

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Adoption of Amendment to PTE 86–128.

SUMMARY: This document amends PTE 86–128, a class exemption that permits certain persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions on behalf of those plans, provided that specified conditions are met. The exemption also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions for such accounts when certain conditions are met. The amendment affects participants and beneficiaries of employee benefit plans, fiduciaries with respect to such plans, and other persons engaging in the described transactions.

DATES: The amendment is effective October 17, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher Motta, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 693–8544, (this is not a toll-free number); or Charles Jackson, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 693–5600, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On May 10, 2002, notice was published in the **Federal Register** (67 FR 31838) of the pendency before the Department of a proposed amendment to PTE 86–128 (51 FR 41686, Nov. 18, 1986). PTE 86–128 provides an exemption from the restrictions of section 406(b)[1] of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) or (F) of the Code.

The amendment to PTE 86–128 adopted by this notice was requested in an application, dated October 29, 1999, on behalf of the Securities Industry Association (the SIA), a trade association for securities broker-dealers. The Department proposed the amendment to PTE 86–128 pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[2]

The notice of pendency gave interested persons an opportunity to comment on the proposed amendment or request a hearing. The Department received one comment on the proposed amendment which subsequently was withdrawn. The amendment adopted in this document is identical to the proposed amendment.

Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department submitted the proposed revision of the information collection provisions of Prohibited Transaction Exemption 86–128 to the Office of Management and Budget (OMB) at the time of publication of the proposed amendment. OMB approved the revised information collection request on June 20, 2002 under OMB control number 1210–0059. An application for continuing approval will be made before the currently scheduled expiration date of June 30, 2005.

Description of the Exemption

PTE 86–128 provides relief from the restrictions of section 406(b) for a plan fiduciary to use its authority to cause a plan to pay a fee to such fiduciary for effectuating or executing securities transactions as agent for the plan. Section I of PTE 86–128 contains definitions and special rules. Notably, for purposes of the class exemption, a "person" is defined to include "the person and affiliates of the person", and an "affiliate" of a "person" is defined, in part, to include: (1) Any person directly or indirectly controlling, controlled by, or under common control with, the person; (2) any officer, director, partner, employee, relative (as defined in section 3(15) of ERISA), brother, sister, or spouse of a brother or

[1] References to section 406 of ERISA as they appear throughout this amendment should be read to refer as well to the corresponding provisions of section 4975 of the Internal Revenue Code of 1986 (the Code).

[2] Section 102 of the Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 [1996] generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975 of the Code to the Secretary of Labor.

sister, of the person; and (3) any corporation or partnership of which the person is an officer, director or partner.

Section II describes the transactions covered under PTE 86–128 to include: a plan fiduciary using his or her authority to cause a plan to pay a fee for effecting or executing securities transactions to that person as agent for the plan, but only to the extent that such transactions are not excessive, under the circumstances, in either amount or frequency; a plan fiduciary acting as the agent in an agency cross transaction for both the plan and one or more other parties to the transaction; and the receipt by a plan fiduciary of reasonable compensation for effecting or executing an agency cross transaction to which a plan is a party from one or more other parties to the transaction.

Section III contains conditions designed to protect the interests of plan participants and beneficiaries. These conditions require prior authorization to engage in covered transactions and periodic disclosure of the fiduciary's activities to the authorizing plan fiduciary. Section III(a), prior to this amendment, provided that the person engaging in a covered transaction may not be a trustee (other than a nondiscretionary trustee) or an administrator of the plan, or an employer any of whose employees are covered by the plan. The term "person" is defined to include "affiliates" of the person, thus discretionary trustees, plan administrators, sponsoring employers, and their affiliates are generally precluded from relying on the relief provided by the exemption.

Section IV contains exceptions to several of the conditions in section III. Specifically, section IV provides that the conditions of section III do not apply to covered transactions to the extent such transactions are engaged in on behalf of individual retirement accounts which meet the requirements set forth in 29 CFR 2510.3–2(d) or plans, other than training programs, that do not cover any employees within the meaning of 29 CFR 2510.3–3. In addition, section IV provides that the conditions of section III do not apply in the case of agency cross transactions to the extent that the person effecting or executing the transaction: does not render investment advice to any plan for a fee with respect to the transaction; is not otherwise a fiduciary who has investment discretion with respect to any plan assets involved in the transaction; and does not have the authority to engage, retain or discharge any person who is, or is proposed to be, a fiduciary regarding any such plan assets. Section IV also provides that a plan trustee, plan administrator, or sponsoring employer may engage in a covered transaction if he or she returns or credits to the plan all profits earned by that person in connection with the securities transactions associated with the covered transaction. Finally, section IV contains special rules for pooled investment funds.

Description of the Exemption as Amended

The amendment to PTE 86–128 granted pursuant to this notice enables a discretionary trustee of an ERISA covered plan, or an affiliate of such trustee, to use its fiduciary authority to cause the plan to pay a fee to such trustee for effectuating or executing securities transactions as agent for the plan. In so doing, the trustee (other than a nondiscretionary trustee) must furnish to the authorizing fiduciary of each plan, at least annually, the information specified in section III(i) of the exemption, as amended. In general terms, this section requires the trustee to provide to such fiduciary the aggregate and the average brokerage commissions paid by the plan to brokerage firms affiliated and unaffiliated with the trustee.

In addition, as described in section III(h) of the exemption, a trustee (other than a nondiscretionary trustee) may only engage in a covered transaction on behalf of a plan to the extent such plan has at least $50 million in total net assets. This section provides further that, in the case of a pooled fund, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such pooled fund are held by plans having total net assets with a value of at least $50 million.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary, or other party in interest or disqualified person with respect to a plan, from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan. Additionally, the fact that a transaction is the subject of an exemption does not affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption does not extend to transactions prohibited under section 406(a) of the Act;

(3) In accordance with section 408(a) of ERISA and 4975(c)(2) of the Code, the Department makes the following determinations:

(i) the amendment set forth herein is administratively feasible;

(ii) the amendment set forth herein is in the interests of plans and of their participants and beneficiaries; and

(iii) the amendment set forth herein is protective of the rights of participants and beneficiaries of plans;

(4) The amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(5) The amendment is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

Accordingly, PTE 86–128 is amended as follows under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, 32847, August 10, 1990):

(1) Section III(a) is amended to read: "The person engaging in the covered transaction is not an administrator of the plan or an employer any of whose employees are covered by the plan."

(2) A new paragraph (h) is added to section III which reads:

"(h) A trustee [other than a nondiscretionary trustee] may only engage in a covered transaction with a plan that has total net assets with a value of at least $50 million and in the case of a pooled fund, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such pooled fund are held by plans having total net assets with a value of at least $50 million.

For purposes of the net asset tests described above, where a group of plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 million net asset requirement may be met by aggregating the assets of such plans, if the assets are pooled for investment purposes in a single master trust."

(3) A new paragraph (i) is added to section III which reads:

"(i) The trustee (other than a nondiscretionary trustee) engaging in a covered transaction furnishes, at least annually, to the authorizing fiduciary of each plan the following:

(1) the aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms affiliated with the trustee;

(2) the aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms unaffiliated with the trustee;

(3) the average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms affiliated with the trustee; and

(4) the average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms unaffiliated with the trustee.

For purposes of this paragraph (i), the words "paid by the plan" shall be construed to mean "paid by the pooled fund" when the trustee engages in covered transactions on behalf of a pooled fund in which the plan participates."

Signed at Washington, DC, this 11th day of October, 2002.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–26424 Filed 10–16–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Independent Contractor Register

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Independent Contractor Register.

DATES: Submit comments on or before December 16, 2000.

ADDRESSES: Send comments to David Meyer, Director, Administration and Management, 1100 Wilson Boulevard, Room 2125, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via e-mail to *Meyer-David@msha.gov*, along with an original printed copy. Mr. Meyer can be reached at (202) 693–9802 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane E. Tarr, Program Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr_Jane@msha.gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Independent contractors performing services or construction at mines are subject to the Federal Mine Safety and Health Act of 1977. 30 CFR 45.4(b) requires mine operators to maintain a written summary of information concerning each independent contractor present on the mine site. The information includes the trade name, business address, and telephone number; a brief description and the location on the mine of the work to be performed; MSHA location on the mine of the work to be performed; MSHA identification number, if any; and the contractor's business address of record. This information is required to be provided for inspection and enforcement purposes by the mine operator to any MSHA inspector upon request.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **ADDRESSES** section of this notice or viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "Federal Register Documents."

III. Current Actions

The information obtained from the contractors is used by MSHA during inspections to determine proper responsibility for compliance with safety and health standards.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Independent Contractor Register.

OMB Number: 1219–0040.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR part 45.

Total Respondents: 15,292.

Frequency: On occasion.

Total Responses: 99,398.

Average Time Per Response: 0.87 hours.

Estimated Total Burden Hours: 13,250 hours.

Estimated Total Burden Cost: $174,789.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 10th day of October, 2002.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 02–26384 Filed 10–16–02; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Part 46—Training and Retraining of Miners Engaged in Shell Dredging or Employed at Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c) (2) (A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the 30 CFR sections 46.3, 46.5, 46.6, 46.7, 46.8, 46.9, and 46.11; Training Plans, New Miner Training; Newly-Hired Experienced Miner Training; New Task Training; Annual Refresher Training; Records of Training; and Site-Specific Hazard Awareness Training.

DATES: Submit comments on or before December 16, 2002.

ADDRESSES: Send comments to David Meyer, Director, Administration and Management, 1100 Wilson Boulevard, Room 2125, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to *Meyer-David@msha.gov*, along with an original printed copy. Mr. Meyer can be reached at (202) 693–9802 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane E. Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@msha.gov* (Internet e-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Paragraph (a) of § 46.3 requires mine operators to develop and implement a written training plan approved by MSHA that contains effective programs for training new miners and experienced miners, training miners for new tasks, annual refresher training, and hazard training.

Paragraph (b) requires the following information, at a minimum, to be included in a training plan:

(1) The company name, mine name, and MSHA mine identification number;

(2) The name and position of the person designated by the operator who is responsible for the health and safety training at the mine. This person may be the operator;

(3) A general description of the teaching methods and the course materials that are to be used in providing the training, including the subject areas to be covered and the approximate time to be spent on each subject area;

(4) A list of the persons who will provide the training, and the subject areas in which each person is competent to instruct; and

(5) The evaluation procedures used to determine the effectiveness of training.

Paragraph (c) requires a plan that does not include the minimum information specified in paragraph (b) to be approved by MSHA. For each size category, the Agency estimates that 20 percent of mine operators will choose to write a plan and send it to MSHA for approval.

Paragraph (d) requires mine operators to provide miners' representatives with a copy of the training plan. At mines where no miners' representative has been designated, a copy of the plan must be posted at the mine or a copy must be provided to each miner.

Paragraph (e) provides that within 2 weeks following receipt or posting of the training plan, miners or their representatives may submit written comments on the plan to mine operators, or to the Regional Manager, as appropriate. The burden hours and costs of this provision are not borne by mine operators, but by miners and their representatives.

Paragraph (g) requires that the miners' representative with a copy of the approved plan within one week after approval. At mines where no miners' representative has been designated, a copy of the plan must be posted at the mine or a copy must be provided to each miner.

Paragraph (h) allows mine operators, miners, and miners' representatives to appeal a decision of the Regional Manager in writing to the Director for Education Policy and Development. The Director would issue a decision on the appeal within 30 days after receipt of the appeal.

Paragraph (i) requires mine operators to make available at the mine site a copy of the current training plan for inspection by MSHA and for examination by miners and their representatives. If the training plan is not maintained at the mine site, mine operators must have the capability to provide the plan upon request by MSHA, miners, or their representatives.

Paragraph (a) of § 46.5 requires mine operators to provide each new miner with no less than 24 hours of training. Miners who have not received the full 24 hours of new miner training must work where an experienced miner can observe that the new miner is working in a safe manner.

Paragraph (a) of § 46.6 requires mine operators to provide each newly hired experienced miner with certain training before the miner begins work.

Paragraph (a) of § 46.7 requires, before a miner performs a task for which he or she has no experience, that the mine operator training the miner in the safety and health aspects and safe work procedures specific to that task. If changes have occurred in a miner's regularly assigned task, the mine operator must provide the miner with training that addresses the changes.

Paragraph (a) of § 46.8 requires, at least every 12 months, that the mine operator provide each miner with no less than 8 hours of refresher training.

Paragraph (a) of § 46.9 requires the mine operators upon completion of each training program, to record and certify on MSHA Form 5000–23, or on a form that contains the required information, that the miner has completed the training. False certification that training was completed is punishable under § 110(a) and (f) of the Act.

Paragraph (a) of § 46.11 requires the mine operator to provide site-specific hazard training to non-miners, including the following persons: scientific workers; delivery workers and customers; occasional, short-term maintenance or service workers, or manufacturers' representatives; and outside vendors, visitors, office or staff personnel who do not work at the mine site on a continuing basis.

II. Desired Focus on Comments

MSHA is particularly interest in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "Federal Register Documents."

III. Current Actions

USGS data show that domestic production of sand and gravel and crushed stone increased every year between 1991 and 1999, an indication of the continuing strong demand for construction aggregates in the United States. The number of hours worked at sand and gravel and crushed stone operations has been increasing steadily since 1991.

MSHA's objective in these requirements is to ensure that all miners receive the required training, which would result in a decrease in accidents, injuries, and fatalities. Therefore, MSHA is continuing this requirement under 30 CFR 46.3, .5, .6, .7, .8, .9, and .11.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Training Plans, New Miner Training, Newly Hired Experienced Miner Training; New Task Training; Annual Refresher Training; Records of Training; and Site-Specific Hazard Awareness Training (30 CFR 46.3, .5, .6, .7, .8, .9, .11).

OMB Number: 1219–0131.

Recordkeeping: § 46.3 requires mine operators to develop and implement a written training plan approved by MSHA that contains effective programs for training new miners and experienced miners, training miners for new tasks, annual refresher training, and hazard training.

§ 46.5 requires mine operators to provide each new miner with no less than 24 hours of training. Miners who have not received the full 24 hours of new miner training must work where an experienced miner can observe that the new miner is working in a safe manner.

§ 46.6 requires mine operators to provide each newly hired experienced miner with certain training before the miner begins work.

§ 46.7 requires, before a miner performs a task for which he or she has no experience, that the mine operator train the miner in the safety and health aspects and safe work performances specific to that task. If changes have occurred in a miner's regularly assigned task, the mine operator must provide the miner with training that addresses the changes.

§ 46.8 requires, at least every 12 months, that the mine operator provide each miner with no less than 8 hours of refresher training.

§ 46.9 requires the mine operators upon completion of each training program, to record and certify on MSHA Form 5000–23, or on a form that contains the required information, that the miner has completed the training. False certification that training was completed is punishable under § 110(a) and (f) of the Act.

§ 46.11 requires the mine operator to provide site-specific hazard training to non-miners, including the following persons: scientific workers; delivery workers and customers; occasional, short-term maintenance or service workers, or manufacturers' representatives; and outside vendors, visitors, office or staff personnel who do not work at the mine site on a continuing basis.

Affected Public: Business or other for-profit.

Section	Total respondents	Frequency	Total responses	Avg time per response (hours)	Burden hours
46.3(a) exist	10,305	On Occasion	5,477	1.05	5,728
46.3(a) new	10,305	On Occasion	221	2.23	492
46.3(c) exist	10,305	On Occasion	1,040	.1	104
46.3(c) new	10,305	On Occasion	42	.19	8
46.3(d) exist	10,305	On Occasion	5,477	.05	274
46.3(d) new	10,305	On Occasion	221	.1	22
46.3(e) exist	10,305	On Occasion	384	.76	291
46.3(e) new	10,305	On Occasion	15	1.47	22
46.3(g) exist	10,305	On Occasion	1,095	.05	55
46.3(g) new	10,305	On Occasion	44	.09	4
46.3(h) exist	10,305	On Occasion	22	2	44
46.3(h) new	10,305	On Occasion	44	.09	4
46.3(i) exist	10,305	On Occasion	5,477	.05	274
46.3(i) new	10,305	On Occasion	221	.1	22
46.5(a) prepare	10,305	On Occasion	5,477	6	32,862
46.5(a) train	10,305	On Occasion	5,477	7.04	38,573
46.6(a) prepare	10,305	On Occasion	5,477	1	5,477
46.6(a) train	10,305	On Occasion	5,477	1.74	9,543
46.7(a) Reg. Prepare	10,305	On Occasion	5,440	.25	1,360
46.7(a) Reg. Train	10,305	On Occasion	5,440	2.96	16,125
46.7(a) On Occasion New Prepare	10,305	On Occasion	11,042	.08	883
46.7(a) New Train	10,305	On Occasion	11,042	1.56	17,280
46.8(a) Prepare	10,305	On Occasion	5,477	3	16,431
46.8(a) Train	10,305	Annually	5,477	7.8	42,723
46.9 records of 46.5	10,305	On Occasion	4,139	.1	414
46.9 records of 46.6	10,305	On Occasion	4,076	.1	408

Section	Total respondents	Frequency	Total responses	Avg time per response (hours)	Burden hours
46.9 records of 46.7	10,305	On Occasion	31,287	.1	3,128
46.9 records of 46.8	10,305	On Occasion	31,287	.1	3,128
46.11(a) Train	10,305	On Occasion	5,477	10.45	57,218
Total	10,305		161,872		252,897

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): $630,333.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 10th day of October, 2002.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 02–26383 Filed 10–16–02; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Privacy Act of 1974; Systems of Records Notices

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice to add records systems (NARA 35 and NARA 36).

SUMMARY: The National Archives and Records Administration (NARA) proposes to add two system of records notices to its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. In this notice, NARA publishes NARA 35, Case Management and Reporting System (CMRS), and NARA 36, Public Transportation Benefit Program Files for comment.

EFFECTIVE DATES: The establishment of new systems NARA 35 and 36 will be effective without further notice on December 16, 2002, unless comments received on or before that date cause a contrary decision. If changes are made based on NARA's review of comments received, a new final notice will be published.

ADDRESSES: Send comments to the Privacy Act Officer, Office of General Counsel (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD, 20740–6001. You may fax your comments to 301–837–0293. You may also comment via the Internet to *comments@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Ramona Branch Oliver, Privacy Act Officer, (301) 837–2024 (voice) or (301) 837–0293 (fax).

SUPPLEMENTARY INFORMATION: NARA last published a comprehensive set of Privacy Act notices in the **Federal Register** on April 2, 2002 (67 FR 15592). NARA is proposing to add NARA 35, Case Management and Reporting System, and NARA 36, Public Transportation Benefit Program Files, to its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. NARA 35 covers persons who request information from or access to inactive military personnel, medical, and organizational records in the physical custody of the National Personnel Records Center (Military Personnel Records). NARA 36 covers the public transportation benefit program files, which contain information on NARA employees that is used to document the distribution of transportation subsidies. The notice for each of the two systems of records states the following:

- Name and the location of the record system;
- Authority for and manner of its operation;
- Categories of individuals it covers;
- Types of records that it contains;
- Sources of information in these records;
- Proposed "routine uses" of each system of records; and
- Business address of the NARA official who will inform interested persons of the procedures they must follow to gain access to and correct records pertaining to themselves. The Appendix B referenced in the proposed notices is found at 67 FR 15617.

One of the purposes of the Privacy Act, as stated in section 2(b)(4) of the Act, is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information. NARA intends to follow these principles in transferring information to another agency or individual as a "routine use", including assurance that the information is relevant for the purposes for which it is transferred.

Dated: October 4, 2002.

John W. Carlin,

Archivist of the United States.

Accordingly, we are publishing the proposed new systems of records notices as follows:

NARA 35

SYSTEM NAME:

Case Management and Reporting System (CMRS).

SYSTEM LOCATION:

This automated system is located at the National Personnel Records Center (Military Personnel Records) in St. Louis, MO, and the National Archives and Records Administration in College Park, MD. The addresses for these locations are listed in Appendix B following the NARA Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include persons who request information from or access to inactive military personnel, medical, and organizational records in the physical custody of the National Personnel Records Center (Military Personnel Records). Also covered are the subjects of these inactive records.

CATEGORIES OF RECORDS IN THE SYSTEM:

CMRS files may include: Correspondence, including administrative forms used for routine inquiries and replies, between NARA staff and requesters; stored copies of frequently requested documents from individual Official Military Personnel Files (OMPF's); production and response time data used for internal reporting purposes; and databases used to respond to requests. These files may contain some or all of the following information about an individual: Name, address, telephone number, position title, name of employer/institutional affiliation, identification of requested records, social security number/service number, previous military assignments, and other information furnished by the requester.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2108, 2110, and 2907.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains CMRS files to: Maintain control of records being requested for either internal or external use, establish employee and requester accountability for records, prepare replies to requester's reference questions, record the status of requesters' requests and NARA replies to those requests, and to facilitate the preparation of statistical and other aggregate reports on employee performance and requester satisfaction.

The routine use statements A, C, D, E, F, and G, described in Appendix A following the NARA notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records.

RETRIEVABILITY:

Information in CMRS files may be retrieved by the name, social security or military service number of the veteran whose record was the subject of the request. By use of a querying capability, information may also be retrieved by use of a system-assigned request number, by name and date of birth of the veteran, and by requester-supplied information, such as name and address, phone number, or email address.

SAFEGUARDS:

During business hours, electronic records are accessible to authorized NARA personnel via passwords from terminals located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

The disposition of the records in the CMRS system is under consideration. Accordingly, the records generated by the system cannot be destroyed until a records schedule is approved by the Archivist. Once the disposition is determined, retention and disposal of the records will be governed in accordance with the applicable disposition instructions in the NARA records schedule contained in FILES 203, the NARA Files Maintenance and Records Disposition Manual. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager, CMRS, is the Director, National Personnel Records Center. The address for this location is listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address given in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address given in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in the CMRS file is obtained from requesters and from NARA employees who maintain the file.

NARA 36

SYSTEM NAME:

Public Transportation Benefit Program Files.

SYSTEM LOCATION:

The transportation benefit program files are maintained in the following locations in the Washington, DC, area and other geographical regions. The addresses for these locations are listed in Appendix B following the NARA Notices:

(1) The Facilities and Materiel Management Services Division (NAF);

(2) Presidential libraries, projects, and staffs; and

(3) Regional records services facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All NARA employees who have enrolled in the Public Transit Subsidy Program (PTSP) are covered by this system, including: full-time employees; part-time employees; intermittent employees; and temporary employees and students.

CATEGORIES OF RECORDS IN THE SYSTEM:

The public transportation benefit program files contain information on NARA employees that is used to document the distribution of transportation subsidies. These files contain information submitted on NA Form 6041, Application'Public Transit Subsidy Program, by both current and non-current participants and include: name; home address; social security number; NARA unit; and NARA work phone number. In addition, files may contain vouchers and other forms used to document the disbursement of subsidies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104 and Executive Order 13150.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains transportation benefit program files on individuals in order to: provide the Department of Transportation with the names, social security numbers, and addresses of NARA employees who have enrolled in the Public Transit Subsidy Program or are members of qualified vanpools; and to verify employee compliance with the rules of the program. The routine use statements A and F, described in Appendix B following the NARA notices, also applies to this system.

STORAGE:

Paper forms (NA 6041, Application—Public Transit Subsidy Program; NA Form 6042—Authorization for Third Party Pickup—Public Transit Subsidy Program) and electronic records.

RETRIEVABILITY:

Information in the public transportation benefit program files may be retrieved by the name of the individual.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible to authorized NARA personnel. Electronic records are accessible to authorized personnel via passwords from terminals located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Records in the public transportation benefit program files are temporary records and are destroyed in accordance with the disposition instructions in the NARA records schedule contained in FILES 203, NARA Files Maintenance

and Records Disposition Manual. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager for the transportation benefit program files in the Washington, DC, area is the PTSP Manager in NAF. Local PTSP managers are designated for the Presidential libraries and regional records services facilities. The address for this location is listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B following the NARA notices.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in the public transportation benefit program files is obtained from individuals who have furnished information to the NARA PTSP.

[FR Doc. 02–25973 Filed 10–16–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 147th Meeting

Pursuant to section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on November 7, 2002 from 2 p.m.–4:15 p.m. in Room 527 in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Following opening remarks and announcements, the new Council member will be sworn in. This will be followed by Congressional, White House, budget and planning updates. A guest presentation will be made by Jac Venza of PBS Great Performances. Other agenda items will include: Application Review for Creativity, Organizational Capacity Literature Fellowships, and Leadership Initiatives; review of Guidelines for Grants for Arts Projects; and general discussion.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5532, TTY–TDD (202) 682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at (202) 682–5570.

Dated: October 9, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 02–26357 Filed 10–16–02; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Nuclear Management Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–22 issued to the Nuclear Management Company, LLC (the licensee), for operation of the Monticello Nuclear Generating Plant located in Wright County, Minnesota.

The proposed amendment would revise the drywell leakage and sump monitoring section of the Technical Specifications (TSs) to clarify existing requirements, revise the existing limiting condition for operations and surveillance requirements, and add additional TS requirements.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes do not introduce new equipment or new equipment operating modes, nor do the proposed changes alter existing system relationships. The changes simply redefine the parameters for evaluation of leakage in the drywell. Changes in the time required to perform shutdown actions proposed are acceptable because they are reasonable based on operating experience, to reach the required plant conditions from full power conditions in an orderly manner and without challenging plant safety systems. The evaluation criteria for drywell leakage have been refocused into the areas that are most susceptible to IGSCC [intergranular stress corrosion cracking]. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment referenced in the proposed changes is still required to be operable. As a result, the consequences of any accident previously evaluated are not significantly affected.

Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes do not involve physical alterations of the plant; no new or different type of equipment will be installed. Nor, are there significant changes in the methods governing normal plant operation. The changes simply redefine the parameters for evaluation of leakage in the drywell. Changes in the time required to perform shutdown actions proposed are acceptable because they are reasonable based on operating experience, to reach the required plant conditions from full power conditions in an orderly manner and without challenging plant safety systems. The evaluation criteria for drywell leakage have been refocused into the areas that are most susceptible to IGSCC.

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed amendment redefines the parameters for evaluation of leakage in the drywell. Changes in the time required to perform shutdown actions proposed are acceptable because they are reasonable based on operating experience, to reach the required plant conditions from full power conditions in an orderly manner and without challenging plant safety systems. Therefore, these proposed changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 18, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these

[1] The most recent version of Title 10 of the *Code of Federal Regulations*, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002."

requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to J. E. Silberg, Esquire Shaw, Pittman, Potts and Trowbridge 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 8, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 10th day of October 2002.

John G. Lamb,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–26445 Filed 10–16–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Peer Review Committee for Source Term Modeling

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of establishment of the Peer Review Committee for Source Term Modeling.

SUMMARY: Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L., 94–463, Stat. 770–776) the Nuclear Regulatory Commission (NRC) announces the Establishment of the Peer Review Committee for Source Term Modeling. The Nuclear Regulatory Commission has determined that establishment of the Committee is necessary and is in the public interest. The Committee will develop guidance documents on source terms that will assist the NRC in evaluating the impact of specific terrorist activities targeted at a range of spent fuel storage casks and radioactive material (RAM) transport packages, including spent fuel. This action is being taken in accordance with the Federal Advisory Committee Act after consultation with the Committee Management Secretariat, General Services Administration (GSA).

Background:

The committee will serve as an "expert panel" and will be composed of individuals with expertise in structural, nuclear, and thermal engineering, fuel performance and source term evaluations, consequence analyses, weapons and explosives, and transportation of radioactive material. The committee will refine the objectives, define evaluation criteria, develop the methodology, evaluate the scenarios, and write the guidance documents. The work will be based on previous and current studies and experiments, and the expertise of the individuals on the panel. The resulting guidance documents will be based on the qualitative judgments of the panel. A Smaller Expert Task Group will consist of individuals who will have complementary expertise to that of the committee. The Task Group will gather available data needed for the threat evaluations, revise and refine the range of payloads, packages and attack scenarios, provide an initial analysis of the sabotage scenarios and develop preliminary estimates for source terms for the more severe threats. The results of the Task Group will serve as a starting point for the work of the full committee.

The establishment of the Committee was effective on October 10, 2002 with the filing of its charter with the standing committees of Congress having legislative jurisdiction over the NRC, the Library of Congress, and GSA.

FOR FURTHER INFORMATION CONTACT: Andrew L. Bates, Office of the Secretary, Nuclear Regulatory Commission, Washington, DC 20555: Telephone 301–415–1963.

Dated: October 11, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–26444 Filed 10–16–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–03754]

Environmental Assessment and Finding of No Significant Impact Related to the License Amendment Request of ABB Prospects, Inc. Materials License No. 06–00217–06 for the CE Windsor Site, Building Complexes 2, 5, and 17 in Windsor, CT

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Environmental Assessment and Finding of No Significant Impact related to the license amendment request of ABB Prospects, Inc. Materials License No. 06–00217–06 for the CE Windsor Site, Building Complexes 2, 5 and 17 in Windsor, Connecticut.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to ABB Prospects, Inc. Materials License No. 06–00217–06 to authorize dismantlement and deconstruction to grade level of the buildings in Building Complexes 2, 5, and 17 at the CE site in Windsor, CT and has prepared an Environmental Assessment in support of this action. Based upon the Environmental Assessment, the NRC has concluded that a finding of No Significant Impact is appropriate, and, therefore, an Environmental Impact Statement is unnecessary.

FOR FURTHER INFORMATION CONTACT: James Kottan, Decommissioning and Laboratory Branch, Division of Nuclear Materials Safety, NRC Region I, King of Prussia, PA 19406; telephone (610) 337–5214 of e-mail *jjk@nrc.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) is considering amending Byproduct Materials License Number 06–00217–06 issued to ABB Prospects, Inc. (ABB) to authorize the dismantlement and deconstruction of Building Complexes 2, 5, and 17 at the ABB site in Windsor, Connecticut.

1.0 Introduction

In a letter dated December 31, 2001, ABB submitted a request to amend Byproduct Materials License Number 06–00217–06 to obtain authorization to dismantle and deconstruct Building Complexes 2, 5, and 17 and to remove all impacted sub-grade structures and systems. In subsequent letters dated February 22, 2002, March 8, 2002, and August 9, 2002, ABB modified the original license amendment request. The request currently before the NRC is limited to dismantlement and deconstruction of the buildings of Building Complexes 2, 5, and 17 to grade level only. References hereafter to the license amendment request are to the request as amended through the August 9, 2002 letter. This environmental assessment (EA) is being performed to evaluate the environmental impacts of ABB's request for NRC's approval for ABB to conduct decommissioning only at or above the basement slabs and at or above the floors of the three Complexes.

In accordance with the conditions currently described in Byproduct Materials License Number 06–00217–06, the licensee has been performing remediation of residual radioactivity and other industrial contaminants from internal building equipment and components for Building Complexes 2, 5, and 17. The radioactive contamination at ABB's Windsor, Connecticut site consists of soils and building and equipment surfaces contaminated with uranium and by-product material from licensed operations that occurred from the late 1950s until 2001.

The licensee's December 31, 2001 license amendment request was noticed in the **Federal Register** on April 10, 2002 (67 FR 28610). This **Federal Register** notice also provided an opportunity for a hearing on this licensing action.

1.1 Proposed Action

The proposed action is to amend NRC Byproduct Materials License Number 06–00217–06 issued to ABB to allow for the dismantlement and deconstruction of the buildings in Building Complexes 2, 5, and 17. The buildings will be taken down to grade level only and no work will be performed on the building slabs/foundations or sub-grade structures and systems. ABB plans to use dismantlement and deconstruction techniques, such as cutting and shearing in taking the buildings down. Manual jackhammers, equipment mounted jackhammers (hoe ram), skid-steer loader or shears will be used to remove/dismantle and to size reduce concrete or concrete masonry unit (CMU) structures. CMU walls may also be brought down using pushover techniques. Steel reinforcement bars will be torch-cut, sheared, or saw-cut as required for dismantlement, leveling, or size reduction purposes.

1.2 Purpose and Need for the Proposed Action

NRC regulations require licensees to begin timely decommissioning of their sites, or any separate buildings that contain residual radioactivity, upon cessation of licensed operational activities, in accordance with 10 CFR 30.36(d). The purpose of the proposed action is to reduce residual radioactivity at ABB's Windsor, Connecticut site. Additionally, due to the commercial value of the site property, the licensee plans to eventually return the land to beneficial unrestricted use. The proposed licensing action will support such an ultimate goal. NRC is fulfilling its responsibilities under the Atomic Energy Act and the National Environmental Policy Act to make a decision on a proposed license amendment for building dismantlement and deconstruction that ensures protection of the public health and safety and the environment.

2.0 Facility Description/Operating History

2.1 Site Local and Physical Description

The CE Windsor site is located in the Town of Windsor, Connecticut, 13 km (8 miles) north of Hartford, Connecticut. This site is industrially zoned by the Town of Windsor, and is located in a Mixed Land Use area of Hartford County. The site covers approximately 600 acres. Much of the northern and western portions of the property are wooded. Approximately, one third of the property is developed with buildings, infrastructure, and maintained landscaping. ABB anticipates that future uses of the site will be consistent with its current use (commercial, light industrial uses). The current land use in the surrounding area is a mixture of commercial, light industrial, warehousing, office park, residential, municipal landfill, and commercial farming. Surface water bodies on site include the Great Pond, located on the southwestern end of the property, the Small Pond, located East of the Site buildings, and the Goodwin Pond and the Site Brook, both located on the northeastern portion of the property. The regional geology in Windsor is mapped within the Central Valley landscape of the Newark Terrain. A full description of the site and its characteristics is given in the ABB License Amendment Request for demolition of Building Complexes 2, 5, and 17.

2.2 Facility Operating History

From the late1950's until 2001, ABB Prospects, Inc. Combustion Engineering site was involved in the research, development, engineering, production, and servicing of nuclear systems and fuel. Nuclear research was conducted in

the Building 2 Complex and the Building 5 Complex. Nuclear fuel was manufactured in the Building 17 Complex.

The Building 2 Complex was constructed in the mid 1950's and is located in the central area of the CE site. The Building 2 Complex consists of buildings 1, 1A, 2, and 2A. Uses for these buildings included nuclear research and development and commercial nuclear power plant outage support. The Building 5 Complex is located in the southern portion of the CE site and includes buildings 5, 15, 16, and 18. Building 5 was constructed in 1957, building 18 was constructed in 1968 and building 16 was constructed in 1975. Building 15 was a carpentry shop and was not used for nuclear materials work. Building 5 was a research and development laboratory that included a materials development laboratory, a nuclear fuel manufacturing laboratory, and an engineering development laboratory. Building 16 was used to test boronometers, and building 18 contained a scale model reactor test loop to test the fluid mechanics of commercial nuclear reactors. The Building 17 Complex consists of only building 17 which was constructed in 1967 and used for manufacturing commercial nuclear fuel. Commercial nuclear fuel manufacturing ceased in 1993, and the building was renovated and used for commercial nuclear power plant outage support work.

3.0 Alternatives to the Proposed Action

The only alternatives to the proposed action of dismantlement and deconstruction of Building Complexes 2, 5, and 17 are decontamination of the buildings without dismantlement and deconstruction and no action. The no action alternative is not acceptable because it will result in violation of the NRC's Timeliness Rule (10 CFR 30.36d), which requires licensees to decommission their facilities when licensed activities cease, and to request termination of their radioactive materials license. The no action alternative would keep radioactive material on site without disposal. Additionally, the impact of the proposed action encompasses the alternative action of decontaminating and maintaining the buildings on site. Maintaining the buildings on site would provide negligible, if any, environmental benefit, but would greatly reduce options for future use of the site. Therefore, these alternative are not considered to be reasonable and are not analyzed further in the EA.

4.0 Environmental Impacts

The NRC staff has reviewed the license amendment request for the ABB facility in Windsor, Connecticut and examined the impacts of this license amendment request. Potential impacts include water resource impact (*e.g.*, water may be used for dust control), air quality impacts from dust emissions, temporary local traffic impacts resulting from transporting the building debris offsite, beneficial local economic effects due to the creation of jobs to perform dismantlement and deconstruction, human health impacts, noise impacts from equipment operation, scenic quality impacts, and waste management impacts.

Based on its review, the staff has determined that no surface water or ground water impacts are expected from building dismantlement and deconstruction down to the building slabs and foundations at grade. Additionally, the staff has determined that significant air quality, noise, land use, and off-site radiation exposure impacts are also not expected. No significant air quality impacts are anticipated because of the contamination controls and dust suppression techniques that will be implemented by ABB during building dismantlement and deconstruction. Asbestos waste, primarily from building siding, will be generated during building dismantlement and deconstruction. All removal and disposal of asbestos building siding will take place in accordance with applicable Federal and State regulations. In addition, the environmental impacts associated with the dismantlement and deconstruction of the buildings in Building Complexes 2, 5, and 17 are bounded by the impacts evaluated by NUREG–0586, "Final Generic Environmental Impact Statement (GEIS) on Decommissioning of Nuclear Facilities" (NRC, 1988). Generic impacts for this type of dismantlement and deconstruction process were previously evaluated and described in this GEIS, which concludes that the environmental consequences are small. The risk to human health from the transportation of all radioactive material in the U.S. was evaluated in NUREG–0170, "Final Environmental Statement on the Transportation of Radioactive Materials by Air and Other Modes" (NRC, 1977). The principal radiological environmental impact during normal transportation is direct radiation exposure to nearby persons from radioactive material in the package. The average annual individual dose from all radioactive material transportation in the U.S. was calculated to be approximately 0.5 mrem, well below the 10 CFR 20.1301 limit of 100 mrem for a member of the public. Additionally, ABB estimates that 1 to 2 truck loads of demolition waste will leave the site per working day compared to an average daily traffic flow of approximately 10,000 vehicles per day on Day Hill Road. The trucks will then travel on Interstate 91 to their intended destinations. Thus, waste management and transportation impacts from the building dismantlement and deconstruction will not be significant.

Occupational health was also considered in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). The Department of Transportation (DOT) regulations in 49 CFR 177.842(g) require that the radiation dose may not exceed 0.02 mSv (2 mrem) per hour in any position normally occupied by an individual in a motor vehicle. Shipment of these materials would not affect the assessment of environmental impacts or the conclusions in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977).

The Staff also finds that the proposed license amendment will meet the radiological release criteria of Regulatory Guide 1.86, "Termination of Operating Licenses for Nuclear Reactors," for release of material from the ABB site.

ABB will maintain an appropriate level of radiation protection staff, procedures, and capabilities, and, through its on-site Radiation Safety Officer, will implement an acceptable program to keep exposure to radioactive materials as low as reasonably achievable (ALARA). As previously noted, ABB has submitted a license amendment request describing the work to be performed, and work activities are not anticipated to result in radiation exposures to the public in excess of ten percent of the 10 CFR 20.1301 limits. The Connecticut Historical Commission has determined that there will be an historical impact from the proposed action, but that no prudent or feasible alternative exists relative to the proposed action. See Section 7.0 of this EA.

4.1 Cumulative Impacts

The NRC has evaluated whether cumulative environmental impacts could result from an incremental impact of the proposed action when added to other past, present, or reasonably foreseeable future actions in the area. The proposed NRC approval of the License Amendment, when combined with known effects on resource areas at the site, including future further site remediation, are not anticipated to result in any cumulative impacts at the site.

5.0 Mitigation Measures

The dismantlement and deconstruction of Building Complexes 2, 5, and 17 are not expected to have any significant adverse environmental impact. The license amendment request submitted by ABB contains mitigation measures to further ensure that the requested licensing action will not have any adverse environmental impact.

ABB plans to implement procedural controls, such as the use of less aggressive dismantlement and deconstruction techniques, including cutting and shearing, to minimize the generation of fugitive emissions. Other engineering controls, including water sprays, will also be utilized to control fugitive emissions and visible dust, if needed. In addition, ABB has agreed to perform the mitigative measures proposed by the Connecticut Historical Commission regarding the historical impact of the proposed action.

Erosion and sediment control will be provided, if necessary, in accordance with best management practices, regulatory guidance, and good engineering practices. This will include structural features, stabilization, and storm water management. The controls may be temporary or permanent.

6.0 Monitoring

The license amendment request submitted by ABB described the effluent/environmental monitoring that will take place during building dismantlement and deconstruction. This description included not only the routine effluent/environmental monitoring program that ABB presently has in place, but also the additional sampling that will take place during dismantlement and deconstruction. The additional air sampling will include air samples from three locations at or near the boundary of the particular dismantlement and deconstruction activity. The locations for the air samplers will be chosen with considerations of meteorological conditions and the dismantlement and deconstruction activity taking place in order to sample the maximum airborne concentrations. This air sampling data will be used by ABB to demonstrate that any effluent from the proposed building dismantlement and deconstruction will be limited in accordance with NRC requirements in accordance with 10 CFR part 20.

7.0 Agencies and Individuals Consulted

The NRC staff has prepared this EA with input from the Connecticut Historical Commission, by letters dated August 19, 2002 and August 26, 2002, and the U.S. Fish and Wildlife Service, by letter dated August 21, 2002. In its letter dated August 19, 2002, the Connecticut Historical Commission noted that buildings 1 and 2 of Building Complex 2 "demonstrate architectural and engineering uniqueness, retain their essential functional characteristics, and possess historic significance with respect to commercial and military-related nuclear research and development". The Connecticut Historical Commission also stated in this letter that "no feasible and prudent alternative exists which would facilitate retention and adaptive use of the extant structures". Therefore, the Connecticut Historical Commission proposed two mitigative measures: photographic documentation, to the standards of the State Historic Preservation Office, of buildings 1 and 2; and development of a public education component regarding Combustion Engineering's nuclear research at the CE site. ABB has agreed to perform the mitigative measures. In its letter dated August 26, 2002 the Connecticut Historical Commission noted that the first mitigative step had been competed by ABB, to the satisfaction of the State, and offered "no objection to the expeditious furtherance of the proposed remediation and demolition of these historic structures". The U.S. Fish and Wildlife Service indicated, in its letter, that on the basis of current information, no current Federally identified or proposed threatened or endangered species under U.S. Fish and Wildlife Service jurisdiction are known to occur in the site project area. The staff provided a draft of this Environmental Assessment to the State of Connecticut for review. In its letter dated September 23, 2002, which commented on draft EA, the State of Connecticut's only comment was that an additional alternative exists regarding the proposed action. This additional alternative is the decontamination of the existing structures without demolition of the structures. Section 3.0 of this EA was revised to reflect the State's comment.

8.0 Conclusion

NRC believes that the approval of the license amendment will not cause any significant impacts on the human environment that will not be mitigated and is protective of human health. The NRC staff has concluded that exposures to workers will be low and well within the limits specified in 10 CFR 20. Dismantlement and deconstruction of the buildings in Building Complexes 2, 5, and 17, as proposed by the amendment, will result in a reduction of radioactive material at the ABB site in Windsor, CT, which will reduce the long term potential for release of radiological contamination to the environment. No radiologically contaminated effluents are expected during building dismantlement and deconstruction. No radiation exposure to any member of the public is expected, and public exposure will therefore also be less than the applicable public exposure limits of 10 CFR part 20.

9.0 List of Preparers

This Environmental Assessment was prepared entirely by the following NRC staff.

James Kottan, ABB Project Manager, Decommissioning and Laboratory Branch, Division of Nuclear Materials Safety, Region I, Decommissioning Issues.

Anthony Huffert, Senior Health Physicist, Division of Waste Management, Office of Nuclear Materials Safety and Safeguards (NMSS), Dose Assessment.

Amir Kouhestani, Project Manager, Division of Waste Management, NMSS, Decommissioning Issues.

Melanie Wong, Environmental Project Manager, Division of Waste Management, NMSS, Environmental Issues.

10.0 List of References

The licensee's December 31, 2001 license amendment request was noticed in the **Federal Register** on April 10, 2002 (67 FR 28610). This **Federal Register** notice also provided an opportunity for a hearing on this licensing action.

The application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*.

NUREG–0170, 1977. Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes, U.S. Nuclear Regulatory Commission, Washington, DC.

NUREG–0586, 1988. Final Generic Environmental Impact Statement on the Decommissioning of Nuclear Facilities, U.S. Nuclear Regulatory Commission, Washington, DC.

NUREG–1496, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological

Criteria for License Termination of NRC-Licensed Nuclear Facilities" NRC: Washington, DC July 1997.

NUREG–1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs, Draft Report for Interim Use and Comment" NRC: Washington, DC September 2001.

REGULATORY GUIDE—1.86, "Termination of Operating Licenses for Nuclear Reactors", NRC: Washington, DC June 1974.

ABB Building Permit Application (and Approval) for demolition of the buildings of Building Complexes 2, 5, and 17, Town of Windsor, Connecticut November 16, 2001.

Asbestos Abatement Registration Form for ABB filed with the Connecticut Department of Public Health.

Finding of No Significant Impact

Pursuant to 10 CFR part 51, NRC has prepared the above environmental assessment related to a license amendment to Materials License No. 06–00217–06 authorizing dismantlement and deconstruction to grade level of the buildings in Building Complexes 2, 5, and 17. On the basis of the above environmental assessment, the NRC has concluded that this licensing action would not have any significant effect on the quality of the human environment, and therefore, an environmental impact statement is not required.

The licensee's request for the proposed action was previously noticed in the **Federal Register** on April 10, 2002 (67 FR 28610) along with the notice of an opportunity to request a hearing.

ABB Prospects, Inc. request for the proposed action, the NRC's Environmental Assessment, and any other related documents, if any, are available for inspection and copying for a fee in the Region I Public Document Room, 475 Allendale Road, King of Prussia, PA 19406. The documents may also be viewed at NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*.

Dated at King of Prussia, Pennsylvania, this 3rd day of October, 2002.

For the Nuclear Regulatory Commission.

Francis M. Costello,

Deputy Director, Division of Nuclear Materials Safety, RI.

[FR Doc. 02–26447 Filed 10–16–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Public Availability of Year 2002 Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270) ("FAIR Act")

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of public availability of agency inventories of activities that are not inherently governmental and of activities that are inherently governmental.

SUMMARY: Agency inventories of activities that are not inherently governmental are now available to the public from the agencies listed below, in accordance with the "Federal Activities Inventory Reform Act of 1998" (Public Law 105–270) ("FAIR Act"). Agency inventories of activities that are inherently governmental are also now available to the public from the agencies listed below. This is the first release of the 2002 FAIR Act inventories. The Office of Federal Procurement Policy has made available a summary FAIR Act User's Guide through its Internet site: *http://www.whitehouse.gov/OMB/procurement/index.html*. The User's Guide should help interested parties review 2002 FAIR Act inventories, and gain access to agency inventories through agency Web site addresses.

The FAIR Act requires OMB to publish an announcement of public availability of agency inventories of activities that are not inherently governmental upon completion of OMB's review and consultation process concerning the content of the agencies' inventory submissions. After review and consultation with OMB, the agency inventories are made available to the public. Interested parties who disagree with the agency's initial judgment can challenge the inclusion or the omission of an activity on the list and, if not satisfied with this review, may also demand a higher agency review/appeal.

Mitchell E. Daniels, Jr.,

Director.

Agency	Contact
Architectural and Transportation Barriers Compliance Board	Lawrence W. Roffee, (202) 272–0001 Web site: *http://www.access-board.gov*
National Council on Disabilities	Ethel D. Briggs, (202) 272–2004 Web site: *http://www.ncd.gov*
Committee for Purchase for People Who are Blind or Severely Disabled	Leon A. Wilson, Jr., (703) 603–7740 Web site: *http://www.jwod.gov*
National Commission on Libraries and Information Science	Judith C. Russell, (202) 606–9200 Web site: *http://www.nclis.gov/index.cfm*
Institute of Museum and Library Services	Teresa M. LaHaie, (202) 606–8637 Web site: *http://www.imls.gov*
National Endowment for the Humanities	Barry Maynes, (202) 606–8233 Web site: *http://www.neh.fed.us/*
Harry S. Truman Scholarship Foundation	Louis H. Blair, (202) 395–4831 Web site: *http://www.truman.gov*
James Madison Fellowship Foundation	Steve Weiss, (202) 653–6109 Web site: *http://www.jamesmadison.com*
Barry M. Goldwater Scholarship and Excellence in Education	Gerald J. Smith, (703) 756–6012 Web site: *http://www.act.org/goldwater/*
Christopher Columbus Fellowship Foundation	Judith M. Shellenberger, (315) 258-0090 Web site: *http://www.whitehouse.gov/omb*
Office of Navaho and Hopi Relocation	Nancy Thomas, (928) 779–2721 Web site: *http://www.whitehouse.gov/omb*
National Aeronautics and Space Administration	Tom Luedtke, (202) 358–2090 Web site: *http://competitivesourcing.nasa.gov*
Health and Human Services	Michael Colvin, (202) 690–7887 Web site: *http://www.hhs.gov/ogam/oam/fair/*

Agency	Contact
Consumer Product Safety Commission	Edward E. Quist, (301) 504–0029 x2240 Web site: *http://www.cpsc.gov*
Housing and Urban Development	James M. Martin, (202) 708–0638 Web site: *http://www.hud.gov/*
Commission on Fine Arts	Charles Atherton, (202) 504–2200 Web site: *http://www.cfa.gov*
Holocaust Museum	James Gaglione, (202) 314–0336 Web site: *http://www.ushmm.org/financial*
Kennedy Center	Lynne H. Pratt, (202) 416–8000 Web site: *http://www.kennedy-center.org*
Woodrow Wilson Center	Ronnie Dempsey, (202) 691–4216 Web site: *http://wwics.si.edu*
Office of Special Counsel	Jane McFarland, (202) 653–5163 Web site: *http://www.osc.gov*
U.S. Merit Systems Protection Board	Douglas Wade, (202) 653–6772, ext 1118 Web site: *http://www.mspb.gov*
Treasury	Kevin Whitfield, (202) 622–0248 Web site: *http://www.treas.gov/fair*

[FR Doc. 02–26374 Filed 10–16–02; 8:45 am]

BILLING CODE 3110–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroads Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Application and Claim for Benefits.

(2) *Form(s) submitted:* UI–63.

(3) *OMB Number:* 3220–0055.

(4) *Expiration date of current OMB clearance:* February 28, 2003.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or Households.

(7) *Estimated annual number of respondents:* 200.

(8) *Total annual responses:* 200.

(9) *Total annual reporting hours:* 23.

(10) *Collection description:* The collection obtains the information needed by the Railroad Retirement Board to pay, under Section 2(g) of the RUIA, benefits under that Act accrued, but not paid because of the death of the employee.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–26358 Filed 10–16–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46612; File No. SR–NASD–2002–128]

Self-Regulatory Organizations; Notice of Filing and Summary Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Security Futures Risk Disclosure Statement

October 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is filing with the Commission the security futures risk disclosure statement. The text of the proposed rule change appears below. All text is new.

* * * * *

Risk Disclosure Statement for Security Futures Contracts

This disclosure statement discusses the characteristics and risks of standardized security futures contracts traded on regulated U.S. exchanges. At present, regulated exchanges are authorized to list futures contracts on individual equity securities registered under the Securities Exchange Act of 1934 (including common stock and certain exchange-traded funds and American Depositary Receipts), as well as narrow-based security indices. Futures on other types of securities and options on security futures contracts may be authorized in the future. The glossary of terms appears at the end of the document.

Customers should be aware that the examples in this document are exclusive of fees and commissions that may decrease their net gains or increase their net losses. The examples also do not include tax consequences, which may differ for each customer.

Section 1—Risks of Security Futures

1.1. Risks of Security Futures Transactions

Trading security futures contracts may not be suitable for all investors. You may lose a substantial amount of money in a very short period of time. The amount you may lose is potentially unlimited and can exceed the amount you originally deposit with your broker. This is because futures trading is highly leveraged, with a relatively small amount of money used to establish a position in assets having a much greater value. If you are uncomfortable with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b4.

this level of risk, you should not trade security futures contracts.

1.2. General Risks

• *Trading security futures contracts involves risk and may result in potentially unlimited losses that are greater than the amount you deposited with your broker.* As with any high risk financial product, you should not risk any funds that you cannot afford to lose, such as your retirement savings, medical and other emergency funds, funds set aside for purposes such as education or home ownership, proceeds from student loans or mortgages, or funds required to meet your living expenses.

• *Be cautious of claims that you can make large profits from trading security futures contracts.* Although the high degree of leverage in security futures contracts can result in large and immediate gains, it can also result in large and immediate losses. As with any financial product, there is no such thing as a "sure winner."

• *Because of the leverage involved and the nature of security futures contract transactions, you may feel the effects of your losses immediately.* Gains and losses in security futures contracts are credited or debited to your account, at a minimum, on a daily basis. If movements in the markets for security futures contracts or the underlying security decrease the value of your positions in security futures contracts, you may be required to have or make additional funds available to your carrying firm as margin. If your account is under the minimum margin requirements set by the exchange or the brokerage firm, your position may be liquidated at a loss, and you will be liable for the deficit, if any, in your account. Margin requirements are addressed in section 4.

• *Under certain market conditions, it may be difficult or impossible to liquidate a position.* Generally, you must enter into an offsetting transaction in order to liquidate a position in a security futures contract. If you cannot liquidate your position in security futures contracts, you may not be able to realize a gain in the value of your position or prevent losses from mounting. This inability to liquidate could occur, for example, if trading is halted due to unusual trading activity in either the security futures contract or the underlying security; if trading is halted due to recent news events involving the issuer of the underlying security; if systems failures occur on an exchange or at the firm carrying your position; or if the position is on an illiquid market. Even if you can liquidate your position, you may be forced to do so at a price that involves a large loss.

• *Under certain market conditions, it may also be difficult or impossible to manage your risk from open security futures positions by entering into an equivalent but opposite position in another contract month, on another market, or in the underlying security.* This inability to take positions to limit your risk could occur, for example, if trading is halted across markets due to unusual trading activity in the security futures contract or the underlying security or due to recent news events involving the issuer of the underlying security.

• *Under certain market conditions, the prices of security futures contracts may not maintain their customary or anticipated relationships to the prices of the underlying security or index.* These pricing disparities could occur, for example, when the market for the security futures contract is illiquid, when the primary market for the underlying security is closed, or when the reporting of transactions in the underlying security has been delayed. For index products, it could also occur when trading is delayed or halted in some or all of the securities that make up the index.

• *You may be required to settle certain security futures contracts with physical delivery of the underlying security.* If you hold your position in a physically settled security futures contract until the end of the last trading day prior to expiration, you will be obligated to make or take delivery of the underlying securities, which could involve additional costs. The actual settlement terms may vary from contract to contract and exchange to exchange. You should carefully review the settlement and delivery conditions before entering into a security futures contract. Settlement and delivery are discussed in section 5.

• *You may experience losses due to systems failures.* As with any financial transaction, you may experience losses if your orders for security futures contracts cannot be executed normally due to systems failures on a regulated exchange or at the brokerage firm carrying your position. Your losses may be greater if the brokerage firm carrying your position does not have adequate back-up systems or procedures.

• *All security futures contracts involve risk, and there is no trading strategy that can eliminate it.* Strategies using combinations of positions, such as spreads, may be as risky as outright long or short positions. Trading in security futures contracts requires knowledge of both the securities and the futures markets.

• *Day trading strategies involving security futures contracts and other products pose special risks.* As with any financial product, persons who seek to purchase and sell the same security future in the course of a day to profit from intra-day price movements ("day traders") face a number of special risks, including substantial commissions, exposure to leverage, and competition with professional traders. You should thoroughly understand these risks and have appropriate experience before engaging in day trading. The special risks for day traders are discussed more fully in section 7.

• *Placing contingent orders, if permitted, such as "stop-loss" or "stop-limit" orders, will not necessarily limit your losses to the intended amount.* Some regulated exchanges may permit you to enter into stop-loss or stop-limit orders for security futures contracts, which are intended to limit your exposure to losses due to market fluctuations. However, market conditions may make it impossible to execute the order or to get the stop price.

• *You should thoroughly read and understand the customer account agreement with your brokerage firm before entering into any transactions in security futures contracts.*

• *You should thoroughly understand the regulatory protections available to your funds and positions in the event of the failure of your brokerage firm.* The regulatory protections available to your funds and positions in the event of the failure of your brokerage firm may vary depending on, among other factors, the contract you are trading and whether you are trading through a securities account or a futures account. Firms that allow customers to trade security futures in either securities accounts or futures accounts, or both, are required to disclose to customers the differences in regulatory protections between such accounts, and, where appropriate, how customers may elect to trade in either type of account.

Section 2—Description of a Security Futures Contract

2.1. What Is a Security Futures Contract?

A security futures contract is a legally binding agreement between two parties to purchase or sell in the future a specific quantity of shares of a security or of the component securities of a narrow-based security index, at a certain price. A person who buys a security futures contract enters into a contract to purchase an underlying security and is said to be "long" the contract. A person who sells a security futures contract enters into a contract to sell the underlying security and is said to be "short" the contract. The price at which the contract trades (the "contract price") is determined by relative buying and selling interest on a regulated exchange.

In order to enter into a security futures contract, you must deposit funds with your brokerage firm equal to a specified percentage (usually at least 20 percent) of the current market value of the contract as a performance bond. Moreover, all security futures contracts are marked-to-market at least daily, usually after the close of trading, as described in section 3 of this document. At that time, the account of each buyer and seller reflects the amount of any gain or loss on the security futures contract based on the contract price established at the end of the day for settlement purposes (the "daily settlement price").

An open position, either a long or short position, is closed or liquidated by entering into an offsetting transaction (*i.e.*, an equal and opposite transaction to the one that opened the position) prior to the contract expiration. Traditionally, most futures contracts are liquidated prior to expiration through an offsetting transaction and, thus, holders do not incur a settlement obligation.

Examples:

Investor A is long one September XYZ Corp. futures contract. To liquidate the long position in the September XYZ Corp. futures contract, Investor A would sell an identical September XYZ Corp. contract.

Investor B is short one December XYZ Corp. futures contract. To liquidate the short position in the December XYZ Corp. futures contract, Investor B would buy an identical December XYZ Corp. contract.

Security futures contracts that are not liquidated prior to expiration must be settled in accordance with the terms of the contract. Some security futures contracts are settled by physical delivery of the underlying security. At the expiration of a security futures contract that is settled through physical delivery, a person who is long the contract must pay the final settlement price set by the regulated exchange or the clearing organization and take delivery of the underlying shares. Conversely, a person who is short the contract must make delivery of the underlying shares in exchange for the final settlement price.

Other security futures contracts are settled through cash settlement. In this case, the underlying security is not delivered. Instead, any positions in such security futures contracts that are open at the end of the last trading day are settled through a final cash payment based on a final settlement price determined by the exchange or clearing organization. Once this payment is made, neither party has any further obligations on the contract.

Physical delivery and cash settlement are discussed more fully in section 5.

2.2. Purposes of Security Futures

Security futures contracts can be used for speculation, hedging, and risk management. Security futures contracts do not provide capital growth or income.

Speculation

Speculators are individuals or firms who seek to profit from anticipated increases or decreases in futures prices. A speculator who expects the price of the underlying instrument to increase will buy the security futures contract. A speculator who expects the price of the underlying instrument to decrease will sell the security futures contract. Speculation involves substantial risk and can lead to large losses as well as profits.

The most common trading strategies involving security futures contracts are buying with the hope of profiting from an anticipated price increase and selling with the hope of profiting from an anticipated price decrease. For example, a person who expects the price of XYZ stock to increase by March can buy a March XYZ security futures contract, and a person who expects the price of XYZ stock to decrease by March can sell a March XYZ security futures contract. The following illustrates potential profits and losses if Customer A purchases the security futures contract at $50 a share and Customer B sells the same contract at $50 a share (assuming 100 shares per contract).

Price of XYZ at liquidation	Customer A profit/loss	Customer B profit/loss
$55	$500	−$500
$50	0	0
$45	−500	500

Speculators may also enter into spreads with the hope of profiting from an expected change in price relationships. Spreaders may purchase a contract expiring in one contract month and sell another contract on the same underlying security expiring in a different month (*e.g.*, buy June and sell September XYZ single stock futures). This is commonly referred to as a "calendar spread."

Spreaders may also purchase and sell the same contract month in two different but economically correlated security futures contracts. For example, if ABC and XYZ are both pharmaceutical companies and an individual believes that ABC will have stronger growth than XYZ between now and June, he could buy June ABC futures contracts and sell June XYZ futures contracts. Assuming that each contract is 100 shares, the following illustrates how this works.

Opening position	Price at liquidation	Gain or loss	Price at liquidation	Gain or loss
Buy ABC at 50	$53	$300	$53	$300
Sell XYZ at 45	46	−100	50	−500
Net Gain or Loss		200		−200

Speculators can also engage in arbitrage, which is similar to a spread except that the long and short positions occur on two different markets. An arbitrage position can be established by taking an economically opposite position in a security futures contract on another exchange, in an options contract, or in the underlying security.

Hedging

Generally speaking, hedging involves the purchase or sale of a security future to reduce or offset the risk of a position in the underlying security or group of securities (or a close economic equivalent). A hedger gives up the potential to profit from a favorable price change in the position being hedged in order to minimize the risk of loss from an adverse price change.

An investor who wants to lock in a price now for an anticipated sale of the underlying security at a later date can do so by hedging with security futures. For example, assume an investor owns 1,000 shares of ABC that have appreciated since he bought them. The investor would like to sell them at the current price of $50 per share, but there are tax or other reasons for holding them until September. The investor could sell ten 100-share ABC futures contracts and then buy back those contracts in September when he sells the stock.

Assuming the stock price and the futures price change by the same amount, the gain or loss in the stock will be offset by the loss or gain in the futures contracts.

Price in September	Value of 1,000 shares of ABC	Gain or loss on futures	Effective selling price
$40	$40,000	$10,000	$50,000
$50	50,000	0	50,000
$60	60,000	−10,000	50,000

Hedging can also be used to lock in a price now for an anticipated purchase of the stock at a later date. For example, assume that in May a mutual fund expects to buy stocks in a particular industry with the proceeds of bonds that will mature in August. The mutual fund can hedge its risk that the stocks will increase in value between May and August by purchasing security futures contracts on a narrow-based index of stocks from that industry. When the mutual fund buys the stocks in August, it also will liquidate the security futures position in the index. If the relationship between the security futures contract and the stocks in the index is constant, the profit or loss from the futures contract will offset the price change in the stocks, and the mutual fund will have locked in the price that the stocks were selling at in May.

Although hedging mitigates risk, it does not eliminate all risk. For example, the relationship between the price of the security futures contract and the price of the underlying security traditionally tends to remain constant over time, but it can and does vary somewhat. Furthermore, the expiration or liquidation of the security futures contract may not coincide with the exact time the hedger buys or sells the underlying stock. Therefore, hedging may not be a perfect protection against price risk.

Risk Management

Some institutions also use futures contracts to manage portfolio risks without necessarily intending to change the composition of their portfolio by buying or selling the underlying securities. The institution does so by taking a security futures position that is opposite to some or all of its position in the underlying securities. This strategy involves more risk than a traditional hedge because it is not meant to be a substitute for an anticipated purchase or sale.

2.3. Where Security Futures Trade

By law, security futures contracts must trade on a regulated U.S. exchange. Each regulated U.S. exchange that trades security futures contracts is subject to joint regulation by the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC).

A person holding a position in a security futures contract who seeks to liquidate the position must do so either on the regulated exchange where the original trade took place or on another regulated exchange, if any, where a fungible security futures contract trades. (A person may also seek to manage the risk in that position by taking an opposite position in a comparable contract traded on another regulated exchange.)

Security futures contracts traded on one regulated exchange might not be fungible with security futures contracts traded on another regulated exchange for a variety of reasons. Security futures traded on different regulated exchanges may be non-fungible because they have different contract terms (*e.g.*, size, settlement method), or because they are cleared through different clearing organizations. Moreover, a regulated exchange might not permit its security futures contracts to be offset or liquidated by an identical contract traded on another regulated exchange, even though they have the same contract terms and are cleared through the same clearing organization. You should consult your broker about the fungibility of the contract you are considering purchasing or selling, including which exchange(s), if any, on which it may be offset.

Regulated exchanges that trade security futures contracts are required by law to establish certain listing standards. Changes in the underlying security of a security futures contract may, in some cases, cause such contract to no longer meet the regulated exchange's listing standards. Each regulated exchange will have rules governing the continued trading of security futures contracts that no longer meet the exchange's listing standards. These rules may, for example, permit only liquidating trades in security futures contracts that no longer satisfy the listing standards.

2.4. How Security Futures Differ From the Underlying Security

Shares of common stock represent a fractional ownership interest in the issuer of that security. Ownership of securities confers various rights that are not present with positions in security futures contracts. For example, persons owning a share of common stock may be entitled to vote in matters affecting corporate governance. They also may be entitled to receive dividends and corporate disclosure, such as annual and quarterly reports.

The purchaser of a security futures contract, by contrast, has only a contract for future delivery of the underlying security. The purchaser of the security futures contract is not entitled to exercise any voting rights over the underlying security and is not entitled to any dividends that may be paid by the issuer. Moreover, the purchaser of a security futures contract does not receive the corporate disclosures that are received by shareholders of the underlying security, although such corporate disclosures must be made publicly available through the SEC's EDGAR system, which can be accessed at *www.sec.gov*. You should review such disclosures before entering into a security futures contract. See section 9 for further discussion of the impact of corporate events on a security futures contract.

All security futures contracts are marked-to-market at least daily, usually after the close of trading, as described in section 3 of this document. At that time, the account of each buyer and seller is credited with the amount of any gain, or debited by the amount of any loss, on the security futures contract, based on the contract price established at the end

of the day for settlement purposes (the "daily settlement price"). By contrast, the purchaser or seller of the underlying instrument does not have the profit and loss from his or her investment credited or debited until the position in that instrument is closed out.

Naturally, as with any financial product, the value of the security futures contract and of the underlying security may fluctuate. However, owning the underlying security does not require an investor to settle his or her profits and losses daily. By contrast, as a result of the mark-to-market requirements discussed above, a person who is long a security futures contract often will be required to deposit additional funds into his or her account as the price of the security futures contract decreases. Similarly, a person who is short a security futures contract often will be required to deposit additional funds into his or her account as the price of the security futures contract increases.

Another significant difference is that security futures contracts expire on a specific date. Unlike an owner of the underlying security, a person cannot hold a long position in a security futures contract for an extended period of time in the hope that the price will go up. If you do not liquidate your security futures contract, you will be required to settle the contract when it expires, either through physical delivery or cash settlement. For cash-settled contracts in particular, upon expiration, an individual will no longer have an economic interest in the securities underlying the security futures contract.

2.5. Comparison to Options

Although security futures contracts share some characteristics with options on securities (options contracts), these products are also different in a number of ways. Below are some of the important distinctions between equity options contracts and security futures contracts.

If you purchase an options contract, you have the right, but not the obligation, to buy or sell a security prior to the expiration date. If you sell an options contract, you have the obligation to buy or sell a security prior to the expiration date. By contrast, if you have a position in a security futures contract (either long or short), you have both the right and the obligation to buy or sell a security at a future date. The only way that you can avoid the obligation incurred by the security futures contract is to liquidate the position with an offsetting contract.

A person purchasing an options contract runs the risk of losing the purchase price (premium) for the option contract. Because it is a wasting asset, the purchaser of an options contract who neither liquidates the options contract in the secondary market nor exercises it at or prior to expiration will necessarily lose his or her entire investment in the options contract. However, a purchaser of an options contract cannot lose more than the amount of the premium. Conversely, the seller of an options contract receives the premium and assumes the risk that he or she will be required to buy or sell the underlying security on or prior to the expiration date, in which event his or her losses may exceed the amount of the premium received. Although the seller of an options contract is required to deposit margin to reflect the risk of its obligation, he or she may lose many times his or her initial margin deposit.

By contrast, the purchaser and seller of a security futures contract each enter into an agreement to buy or sell a specific quantity of shares in the underlying security. Based upon the movement in prices of the underlying security, a person who holds a position in a security futures contract can gain or lose many times his or her initial margin deposit. In this respect, the benefits of a security futures contract are similar to the benefits of purchasing an option, while the risks of entering into a security futures contract are similar to the risks of selling an option.

Both the purchaser and the seller of a security futures contract have daily margin obligations. At least once each day, security futures contracts are marked-to-market and the increase or decrease in the value of the contract is credited or debited to the buyer and the seller. As a result, any person who has an open position in a security futures contract may be called upon to meet additional margin requirements or may receive a credit of available funds.

Example:
Assume that Customers A and B each anticipate an increase in the market price of XYZ stock, which is currently $50 a share. Customer A purchases an XYZ 50 call (covering 100 shares of XYZ at a premium of $5 per share). The option premium is $500 ($5 per share × 100 shares). Customer B purchases an XYZ security futures contract (covering 100 shares of XYZ). The total value of the contract is $5000 ($50 share value × 100 shares). The required margin is $1000 (or 20% of the contract value).

Price of XYZ at expiration	Customer A profit/loss	Customer B profit/loss
65	$1000	$1500
60	500	1000
55	0	500
50	−500	0
45	−500	−500
40	−500	−1000
35	−500	−1500

The most that Customer A can lose is $500, the option premium. Customer A breaks even at $55 per share, and makes money at higher prices. Customer B may lose more than his initial margin deposit. Unlike the options premium, the margin on a futures contract is not a cost but a performance bond. The losses for Customer B are not limited by this performance bond. Rather, the losses or gains are determined by the settlement price of the contract, as provided in the example above. Note that if the price of XYZ falls to $35 per share, Customer A loses only $500, whereas Customer B loses $1500.

2.6. Components of a Security Futures Contract

Each regulated exchange can choose the terms of the security futures contracts it lists, and those terms may differ from exchange to exchange or contract to contract. Some of those contract terms are discussed below. However, you should ask your broker for a copy of the contract specifications before trading a particular contract.

2.6.1. Each security futures contract has a set size. The size of a security futures contract is determined by the regulated exchange on which the contract trades. For example, a security futures contract for a single stock may be based on 100 shares of that stock. If prices are reported per share, the value of the contract would be the price times 100. For narrow-based security indices, the value of the contract is the price of the component securities times the multiplier set by the exchange as part of the contract terms.

2.6.2. Security futures contracts expire at set times determined by the listing exchange. For example, a particular contract may expire on a particular day, *e.g.*, the third Friday of the expiration month. Up until expiration, you may liquidate an open position by offsetting your contract with a fungible opposite contract that expires in the same month. If you do not liquidate an open position before it expires, you will be required to make or take delivery of the underlying security or to settle the contract in cash after expiration.

2.6.3. Although security futures contracts on a particular security or a narrow-based security index may be

listed and traded on more than one regulated exchange, the contract specifications may not be the same. Also, prices for contracts on the same security or index may vary on different regulated exchanges because of different contract specifications.

2.6.4. Prices of security futures contracts are usually quoted the same way prices are quoted in the underlying instrument. For example, a contract for an individual security would be quoted in dollars and cents per share. Contracts for indices would be quoted by an index number, usually stated to two decimal places.

2.6.5. Each security futures contract has a minimum price fluctuation (called a tick), which may differ from product to product or exchange to exchange. For example, if a particular security futures contract has a tick size of 1¢, you can buy the contract at $23.21 or $23.22 but not at $23.215.

2.7. Trading Halts

The value of your positions in security futures contracts could be affected if trading is halted in either the security futures contract or the underlying security. In certain circumstances, regulated exchanges are required by law to halt trading in security futures contracts. For example, trading on a particular security futures contract must be halted if trading is halted on the listed market for the underlying security as a result of pending news, regulatory concerns, or market volatility. Similarly, trading of a security futures contract on a narrow-based security index must be halted under such circumstances if trading is halted on securities accounting for at least 50 percent of the market capitalization of the index. In addition, regulated exchanges are required to halt trading in all security futures contracts for a specified period of time when the Dow Jones Industrial Average ("DJIA") experiences one-day declines of 10-, 20- and 30-percent. The regulated exchanges may also have discretion under their rules to halt trading in other circumstances—such as when the exchange determines that the halt would be advisable in maintaining a fair and orderly market.

A trading halt, either by a regulated exchange that trades security futures or an exchange trading the underlying security or instrument, could prevent you from liquidating a position in security futures contracts in a timely manner, which could prevent you from liquidating a position in security futures contracts at that time.

2.8. Trading Hours

Each regulated exchange trading a security futures contract may open and close for trading at different times than other regulated exchanges trading security futures contracts or markets trading the underlying security or securities. Trading in security futures contracts prior to the opening or after the close of the primary market for the underlying security may be less liquid than trading during regular market hours.

Section 3—Clearing Organizations and Mark-to-Market Requirements

Every regulated U.S. exchange that trades security futures contracts is required to have a relationship with a clearing organization that serves as the guarantor of each security futures contract traded on that exchange. A clearing organization performs the following functions: matching trades; effecting settlement and payments; guaranteeing performance; and facilitating deliveries.

Throughout each trading day, the clearing organization matches trade data submitted by clearing members on behalf of their customers or for the clearing member's proprietary accounts. If an account is with a brokerage firm that is not a member of the clearing organization, then the brokerage firm will carry the security futures position with another brokerage firm that is a member of the clearing organization. Trade records that do not match, either because of a discrepancy in the details or because one side of the transaction is missing, are returned to the submitting clearing members for resolution. The members are required to resolve such "out trades" before or on the open of trading the next morning.

When the required details of a reported transaction have been verified, the clearing organization assumes the legal and financial obligations of the parties to the transaction. One way to think of the role of the clearing organization is that it is the "buyer to every seller and the seller to every buyer." The insertion or substitution of the clearing organization as the counterparty to every transaction enables a customer to liquidate a security futures position without regard to what the other party to the original security futures contract decides to do.

The clearing organization also effects the settlement of gains and losses from security futures contracts between clearing members. At least once each day, clearing member brokerage firms must either pay to, or receive from, the clearing organization the difference between the current price and the trade price earlier in the day, or for a position carried over from the previous day, the difference between the current price and the previous day's settlement price. Whether a clearing organization effects settlement of gains and losses on a daily basis or more frequently will depend on the conventions of the clearing organization and market conditions. Because the clearing organization assumes the legal and financial obligations for each security futures contract, you should expect it to ensure that payments are made promptly to protect its obligations.

Gains and losses in security futures contracts are also reflected in each customer's account on at least a daily basis. Each day's gains and losses are determined based on a daily settlement price disseminated by the regulated exchange trading the security futures contract or its clearing organization. If the daily settlement price of a particular security futures contract rises, the buyer has a gain and the seller a loss. If the daily settlement price declines, the buyer has a loss and the seller a gain. This process is known as "marking-to-market" or daily settlement. As a result, individual customers normally will be called on to settle daily.

The one-day gain or loss on a security futures contract is determined by calculating the difference between the current day's settlement price and the previous day's settlement price.

For example, assume a security futures contract is purchased at a price of $120. If the daily settlement price is either $125 (higher) or $117 (lower), the effects would be as follows:

(1 contract representing 100 shares)

Daily settlement value	Buyer's account	Seller's account
$125	$500 gain (credit)	$500 loss (debit)
$117	$300 loss (debit)	$300 gain (credit)

The cumulative gain or loss on a customer's open security futures positions is generally referred to as "open trade equity" and is listed as a separate component of account equity on your customer account statement.

A discussion of the role of the clearing organization in effecting delivery is discussed in section 5.

Section 4—Margin and Leverage

When a broker-dealer lends a customer part of the funds needed to purchase a security such as common stock, the term "margin" refers to the amount of cash, or down payment, the customer is required to deposit. By contrast, a security futures contract is an obligation and not an asset. A security futures contract has no value as collateral for a loan. Because of the potential for a loss as a result of the daily market-to-market process, however, a margin deposit is required of each party to a security futures contract. This required margin deposit also is referred to as a "performance bond."

In the first instance, margin requirements for security futures contracts are set by the exchange on which the contract is traded, subject to certain minimums set by law. The basic margin requirement is 20% of the current value of the security futures contract, although some strategies may have lower margin requirements. Requests for additional margin are known as "margin calls." Both buyer and seller must individually deposit the required margin to their respective accounts.

It is important to understand that individual brokerage firms can, and in many cases do, require margin that is higher than the exchange requirements. Additionally, margin requirements may vary from brokerage firm to brokerage firm. Furthermore, a brokerage firm can increase its "house" margin requirements at any time without providing advance notice, and such increases could result in a margin call.

For example, some firms may require margin to be deposited the business day following the day of a deficiency, or some firms may even require deposit on the same day. Some firms may require margin to be on deposit in the account before they will accept an order for a security futures contract. Additionally, brokerage firms may have special requirements as to how margin calls are to be met, such as requiring a wire transfer from a bank, or deposit of a certified or cashier's check. You should thoroughly read and understand the customer agreement with your brokerage firm before entering into any transactions in security futures contracts.

If through the daily cash settlement process, losses in the account of a security futures contract participant reduce the funds on deposit (or equity) below the maintenance margin level (or the firm's higher "house" requirement), the brokerage firm will require that additional funds be deposited.

If additional margin is not deposited in accordance with the firm's policies, the firm can liquidate your position in security futures contracts or sell assets in any of your accounts at the firm to cover the margin deficiency. You remain responsible for any shortfall in the account after such liquidations or sales. Unless provided otherwise in your customer agreement or by applicable law, you are not entitled to choose which futures contracts, other securities or other assets are liquidated or sold to meet a margin call or to obtain an extension of time to meet a margin call.

Brokerage firms generally reserve the right to liquidate a customer's security futures contract positions or sell customer assets to meet a margin call at any time without contacting the customer. Brokerage firms may also enter into equivalent but opposite positions for your account in order to manage the risk created by a margin call. Some customers mistakenly believe that a firm is required to contact them for a margin call to be valid, and that the firm is not allowed to liquidate securities or other assets in their accounts to meet a margin call unless the firm has contacted them first. This is not the case. While most firms notify their customers of margin calls and allow some time for deposit of additional margin, they are not required to do so. Even if a firm has notified a customer of a margin call and set a specific due date for a margin deposit, the firm can still take action as necessary to protect its financial interests, including the immediate liquidation of positions without advance notification to the customer.

Here is an example of the margin requirements for a long security futures position.

A customer buys 3 July EJG security futures at 71.50. Assuming each contract represents 100 shares, the nominal value of the position is $21,450 (71.50 × 3 contracts × 100 shares). If the initial margin rate is 20% of the nominal value, then the customer's initial margin requirement would be $4,290. The customer deposits the initial margin, bringing the equity in the account to $4,290.

First, assume that the next day the settlement price of EJG security futures falls to 69.25. The marked-to-market loss in the customer's equity is $675 (71.50 − 69.25 × 3 contacts × 100 shares). The customer's equity decreases to $3,615 ($4,290 − $675). The new nominal value of the contract is $20,775 (69.25 × 3 contracts × 100 shares). If the maintenance margin rate is 20% of the nominal value, then the customer's maintenance margin requirement would be $4,155. Because the customer's equity had decreased to $3,615 (see above), the customer would be required to have an additional $540 in margin ($4,155—$3,615).

Alternatively, assume that the next day the settlement price of EJG security futures rises to 75.00. The mark-to-market gain in the customer's equity is $1,050 (75.00—71.50 × 3 contacts × 100 shares). The customer's equity increases to $5,340 ($4,290 + $1,050). The new nominal value of the contract is $22,500 (75.00 × 3 contracts × 100 shares). If the maintenance margin rate is 20% of the nominal value, then the customer's maintenance margin requirement would be $4,500. Because the customer's equity had increased to $5,340 (see above), the customer's excess equity would be $840.

The process is exactly the same for a short position, except that margin calls are generated as the settlement price rises rather than as it falls. This is because the customer's equity decreases as the settlement price rises and increases as the settlement price falls.

Because the margin deposit required to open a security futures position is a fraction of the nominal value of the contracts being purchased or sold, security futures contracts are said to be highly leveraged. The smaller the margin requirement in relation to the underlying value of the security futures contract, the greater the leverage. Leverage allows exposure to a given quantity of an underlying asset for a fraction of the investment needed to purchase that quantity outright. In sum, buying (or selling) a security futures contract provides the same dollar and cents profit and loss outcomes as owning (or shorting) the underlying security. However, as a percentage of the margin deposit, the potential immediate exposure to profit or loss is much higher with a security futures contract than with the underlying security.

For example, if a security futures contract is established at a price of $50, the contract has a nominal value of $5,000 (assuming the contract is for 100 shares of stock). The margin requirement may be as low as 20%. In

the example just used, assume the contract price rises from $50 to $52 (a $200 increase in the nominal value). This represents a $200 profit to the buyer of the security futures contract, and a 20% return on the $1,000 deposited as margin. The reverse would be true if the contract price decreased from $50 to $48. This represents a $200 loss to the buyer, or 20% of the $1,000 deposited as margin. Thus, leverage can either benefit or harm an investor.

Note that a 4% decrease in the value of the contract resulted in a loss of 20% of the margin deposited. A 20% decrease would wipe out 100% of the margin deposited on the security futures contract.

Section 5—Settlement

If you do not liquidate your position prior to the end of trading on the last day before the expiration of the security futures contract, you are obligated to either (1) make or accept a cash payment ("cash settlement") or (2) deliver or accept delivery of the underlying securities in exchange for final payment of the final settlement price ("physical delivery"). The terms of the contract dictate whether it is settled through cash settlement or by physical delivery.

The expiration of a security futures contract is established by the exchange on which the contract is listed. On the expiration day, security futures contracts cease to exist. Typically, the last trading day of a security futures contract will be the third Friday of the expiring contract month, and the expiration day will be the following Saturday. This follows the expiration conventions for stock options and broad-based stock indexes. Please keep in mind that the expiration day is set by the listing exchange and may deviate from these norms.

5.1. Cash Settlement

In the case of cash settlement, no actual securities are delivered at the expiration of the security futures contract. Instead, you must settle any open positions in security futures by making or receiving a cash payment based on the difference between the final settlement price and the previous day's settlement price. Under normal circumstances, the final settlement price for a cash-settled contract will reflect the opening price for the underlying security. Once this payment is made, neither the buyer nor the seller of the security futures contract has any further obligations on the contract.

5.2. Settlement by Physical Delivery

Settlement by physical delivery is carried out by clearing brokers or their agents with National Securities Clearing Corporation ("NSCC"), an SEC-regulated securities clearing agency. Such settlements are made in much the same way as they are for purchases and sales of the underlying security. Promptly after the last day of trading, the regulated exchange's clearing organization will report a purchase and sale of the underlying stock at the previous day's settlement price (also referred to as the "invoice price") to NSCC. If NSCC does not reject the transaction by a time specified in its rules, settlement is effected pursuant to the rules of NSCC within the normal clearance and settlement cycle for securities transactions, which currently is three business days.

If you hold a short position in a physically settled security futures contract to expiration, you will be required to make delivery of the underlying securities. If you already own the securities, you may tender them to your brokerage firm. If you do not own the securities, you will be obligated to purchase them. Some brokerage firms may not be able to purchase the securities for you. If your brokerage firm cannot purchase the underlying securities on your behalf to fulfill a settlement obligation, you will have to purchase the securities through a different firm.

Section 6—Customer Account Protections

Positions in security futures contracts may be held either in a securities account or in a futures account. Your brokerage firm may or may not permit you to choose the types of account in which your positions in security futures contracts will be held. The protections for funds deposited or earned by customers in connection with trading in security futures contracts differ depending on whether the positions are carried in a securities account or a futures account. If your positions are carried in a securities account, you will not receive the protections available for futures accounts. Similarly, if your positions are carried in a futures account, you will not receive the protections available for securities accounts. You should ask your broker which of these protections will apply to your funds.

You should be aware that the regulatory protections applicable to your account are not intended to insure you against losses you may incur as a result of a decline or increase in the price of a security futures contract. As with all financial products, you are solely responsible for any market losses in your account.

Your brokerage firm must tell you whether your security futures positions will be held in a securities account or a futures account. If your brokerage firm gives you a choice, it must tell you what you have to do to make the choice and which type of account will be used if you fail to do so. You should understand that certain regulatory protections for your account will depend on whether it is a securities account or a futures account.

6.1. Protections for Securities Accounts

If your positions in security futures contracts are carried in a securities account, they are covered by SEC rules governing the safeguarding of customer funds and securities. These rules prohibit a broker/dealer from using customer funds and securities to finance its business. As a result, the broker/dealer is required to set aside funds equal to the net of all its excess payables to customers over receivables from customers. The rules also require a broker/dealer to segregate all customer fully paid and excess margin securities carried by the broker/dealer for customers.

The Securities Investor Protection Corporation (SIPC) also covers positions held in securities accounts. SIPC was created in 1970 as a non-profit, non-government, membership corporation, funded by member broker/dealers. Its primary role is to return funds and securities to customers if the broker/dealer holding these assets becomes insolvent. SIPC coverage applies to customers of current (and in some cases former) SIPC members. Most broker/dealers registered with the SEC are SIPC members; those few that are not must disclose this fact to their customers. SIPC members must display an official sign showing their membership. To check whether a firm is a SIPC member, go to *www.sipc.org*, call the SIPC Membership Department at (202) 371–8300, or write to SIPC Membership Department, Securities Investor Protection Corporation, 805 Fifteenth Street, NW., Suite 800, Washington, DC 20005–2215.

SIPC coverage is limited to $500,000 per customer, including up to $100,000 for cash. For example, if a customer has 1,000 shares of XYZ stock valued at $200,000 and $10,000 cash in the account, both the security and the cash balance would be protected. However, if the customer has shares of stock valued at $500,000 and $100,000 in cash, only a total of $500,000 of those assets will be protected.

For purposes of SIPC coverage, customers are persons who have securities or cash on deposit with a SIPC member for the purpose of, or as a result of, securities transactions. SIPC does not protect customer funds placed with a broker/dealer just to earn interest. Insiders of the broker/dealer, such as its owners, officers, and partners, are not customers for purposes of SIPC coverage.

6.2. Protections for Futures Accounts

If your security futures positions are carried in a futures account, they must be segregated from the brokerage firm's own funds and cannot be borrowed or otherwise used for the firm's own purposes. If the funds are deposited with another entity (e.g., a bank, clearing broker, or clearing organization), that entity must acknowledge that the funds belong to customers and cannot be used to satisfy the firm's debts. Moreover, although a brokerage firm may carry funds belonging to different customers in the same bank or clearing account, it may not use the funds of one customer to margin or guarantee the transactions of another customer. As a result, the brokerage firm must add its own funds to its customers' segregated funds to cover customer debits and deficits. Brokerage firms must calculate their segregation requirements daily.

You may not be able to recover the full amount of any funds in your account if the brokerage firm becomes insolvent and has insufficient funds to cover its obligations to all of its customers. However, customers with funds in segregation receive priority in bankruptcy proceedings. Furthermore, all customers whose funds are required to be segregated have the same priority in bankrutpcy, and there is no ceiling on the amount of funds that must be segregated for or can be recovered by a particular customer.

Your brokerage firm is also required to separately maintain funds invested in security futures contracts traded on a foreign exchange. However, these funds may not receive the same protections once they are transferred to a foreign entity (*e.g.*, a foreign broker, exchange or clearing organization) to satisfy margin requirements for those products. You should ask your broker about the bankruptcy protections available in the country where the foreign exchange (or other entity holding the funds) is located.

Section 7—Special Risks for Day Traders

Certain traders who pursue a day trading strategy may seek to use security futures contracts as part of their trading activity. Whether day trading in security futures contracts or other securities, investors engaging in a day trading strategy face a number of risks.

- *Day trading in security futures contracts requires in-depth knowledge of the securities and futures markets and of trading techniques and strategies.* In attempting to profit through day trading, you will compete with professional traders who are knowledgeable and sophisticated in these markets. You should have appropriate experience before engaging in day trading.
- *Day trading in security futures contracts can result in substantial commission charges, even if the per trade cost is low.* The more trades you make, the higher your total commissions will be. The total commissions you pay will add to your losses and reduce your profits. For instance, assuming that a round-turn trade costs $16 and you execute an average of 29 round-turn transactions per day each trading day, you would need to generate an annual profit of $111,360 just to cover your commission expenses.
- *Day trading can be extremely risky.* Day trading generally is not appropriate for someone of limited resources and limited investment or trading experience and low risk tolerance. You should be prepared to lose all of the funds that you use for day trading. In particular, you should not fund day trading activities with funds that you cannot afford to lose.

Section 8—Other

8.1. Corporate Events

As noted in section 2.4, an equity security represents a fractional ownership interest in the issuer of that security. By contrast, the purchaser of a security futures contract has only a contract for future delivery of the underlying security. Treatment of dividends and other corporate events affecting the underlying security may be reflected in the security futures contract depending on the applicable clearing organization rules. Consequently, individuals should consider how dividends and other developments affecting security futures in which they transact will be handled by the relevant exchange and clearing organization. The specific adjustments to the terms of a security futures contract are governed by the rules of the applicable clearing organization. Below is a discussion of some of the more common types of adjustments that you may need to consider.

Corporate issuers occasionally announce stock splits. As a result of these splits, owners of the issuer's common stock may own more shares of the stock, or fewer shares in the case of a reverse stock split. The treatment of stock splits for persons owning a security futures contract may vary according to the terms of the security futures contract and the rules of the clearing organization. For example, the terms of the contract may provide for an adjustment in the number of contracts held by each party with a long or short position in a security future, or for an adjustment in the number of shares or units of the instrument underlying each contract, or both.

Corporate issuers also occasionally issue special dividends. A special dividend is an announced cash dividend payment outside the normal and customary practice of a corporation. The terms of a security futures contract may be adjusted for special dividends. The adjustments, if any, will be based upon the rules of the exchange and clearing organization. In general, there will be no adjustments for ordinary dividends as they are recognized as a normal and customary practice of an issuer and are already accounted for in the pricing of security futures.

Corporate issuers occasionally may be involved in mergers and acquisitions. Such events may cause the underlying security of a security futures contact to change over the contract duration. The terms of security futures contracts may also be adjusted to reflect other corporate events affecting the underlying security.

8.2. Position Limits and Large Trader Reporting

All security futures contracts trading on regulated exchanges in the United States are subject to position limits or position accountability limits. Position limits restrict the number of security futures contracts that any one person or group of related persons may hold or control in a particular security futures contract. In contrast, position accountability limits permit the accumulation of positions in excess of the limit without a prior exemption. In general, position limits and position accountability limits are beyond the thresholds of most retail investors. Whether a security futures contract is subject to position limits, and the level for such limits, depends upon the trading activity and market capitalization of the underlying security of the security futures contract.

Position limits apply are required for security futures contracts that overlie a security that has an average daily trading volume of 20 million shares or fewer. In the case of a security futures contract overlying a security index, position limits are required if any one of the securities in the index has an average daily trading volume of 20 million shares or fewer. Position limits also apply only to an expiring security futures contract during its last five trading days. A regulated exchange must establish position limits on security futures that are no greater than 13,500 (100 share) contracts, unless the underlying security meets certain volume and shares outstanding thresholds, in which case the limit may be increased to 22,500 (100 share) contracts.

For security futures contracts overlying a security or securities with an average trading volume of more than 20 million shares, regulated exchanges may adopt position accountability rules. Under position accountability rules, a trader holding a position in a security futures contract that exceeds 22,500 contracts (or such lower limit established by an exchange) must agree to provide information regarding the position and consent to halt increasing that position if requested by the exchange.

Brokerage firms must also report large open positions held by one person (or by several persons acting together) to the CFTC as well as to the exchange on which the positions are held. The CFTC's reporting requirements are 1,000 contracts for security futures positions on individual equity securities and 200 contracts for positions on a narrow-based index. However, individual exchanges may require the reporting of large open positions at levels less than the levels required by the CFTC. In addition, brokerage firms must submit identifying information on the account holding the reportable position (on a form referred to as either an "Identification of Special Accounts Form" or a "Form 102") to the CFTC and to the exchange on which the reportable position exists within three business days of when a reportable position is first established.

8.3. Transactions on Foreign Exchanges

U.S. customers may not trade security futures on foreign exchanges until authorized by U.S. regulatory authorities. U.S. regulatory authorities do not regulate the activities of foreign exchanges and may not, on their own, compel enforcement of the rules of a foreign exchange or the laws of a foreign country. While U.S. law governs transactions in security futures contracts that are effected in the U.S., regardless of the exchange on which the contracts are listed, the laws and rules governing transactions on foreign exchanges vary depending on the country in which the exchange is located.

8.4. Tax Consequences

For most taxpayers, security futures contracts are not treated like other futures contracts. Instead, the tax consequences of a security futures transaction depend on the status of the taxpayer and the type of position (*e.g.*, long or short, covered or uncovered). Because of the importance of tax considerations to transactions in security futures, readers should consult their tax advisors as to the tax consequences of these transactions.

Section 9—Glossary of Terms

This glossary is intended to assist customers in understanding specialized terms used in the futures and securities industries. It is not inclusive and is not intended to state or suggest the legal significance or meaning of any word or term.

Arbitrage—taking an economically opposite position in a security futures contract on another exchange, in an options contract, or in the underlying security.

Broad-based security index—a security index that does not fall within the statutory definition of a narrow-based security index (see Narrow-based security index). A future on a broad-based security index is not a security future. This risk disclosure statement applies solely to security futures and generally does not pertain to futures on a broad-based security index. Futures on a broad-based security index are under exclusive jurisdiction of the CFTC.

Cash settlement—a method of settling certain futures contracts by having the buyer (or long) pay the seller (or short) the cash value of the contract according to a procedure set by the exchange.

Clearing broker—a member of the clearing organization for the contract being traded. All trades, and the daily profits or losses from those trades, must go through a clearing broker.

Clearing organization—a regulated entity that is responsible for settling trades, collecting losses and distributing profits, and handling deliveries.

Contract—(1) the unit of trading for a particular futures contract (*e.g.*, one contract may be 100 shares of the underlying security), (2) the type of future being traded (*e.g.*, futures on ABC stock).

Contract month—the last month in which delivery is made against the futures contract or the contract is cash-settled. Sometimes referred to as the delivery month.

Day trading strategy—an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.

EDGAR—the SEC's Electronic Data Gathering, Analysis, and Retrieval system maintains electronic copies of corporate information filed with the agency. EDGAR submissions may be accessed through the SEC's Web site, *www.sec.gov*.

Futures contract—a futures contract is (1) an agreement to purchase or sell a commodity for delivery in the future; (2) at a price determined at initiation of the contract; (3) that obligates each party to the contract to fulfill it at the specified price; (4) that is used to assume or shift risk; and (5) that may be satisfied by delivery or offset.

Hedging—the purchase or sale of a security future to reduce or offset the risk of a position in the underlying security or group of securities (or a close economic equivalent).

Illiquid market—a market (or contract) with few buyers and/or sellers. Illiquid markets have little trading activity and those trades that do occur may be done at large price increments.

Liquidation—entering into an offsetting transaction. Selling a contract that was previously purchased liquidates a futures position in exactly the same way that selling 100 shares of a particular stock liquidates an earlier purchase of the same stock. Similarly, a futures contract that was initially sold can be liquidated by an offsetting purchase.

Liquid market—a market (or contract) with numerous buyers and sellers trading at small price increments.

Long—(1) the buying side of an open futures contact, (2) a person who has bought futures contracts that are still open.

Margin—the amount of money that must be deposited by both buyers and sellers to ensure performance of the person's obligations under a futures contract. Margin on security futures contracts is a performance bond rather than a down payment for the underlying securities.

Mark-to-market—to debit or credit accounts daily to reflect that day's profits and losses.

Narrow-based security index—in general, and subject to certain exclusions, an index that has any one of the following four characteristics: (1) It has nine or fewer component securities; (2) any one of its component securities comprises more than 30% of its weighting; (3) the five highest weighted component securities together comprise more than 60% of its weighting; or (4) the lowest weighted component securities comprising, in the aggregate, 25% of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50 million (or in the case of an index with 15 or more component securities, $30 million). A security index that is not narrow-based is a "broad-based security index." (See Broad-based security index).

Nominal value—the face value of the futures contract, obtained by multiplying the contract price by the number of shares or units per contract. If XYZ stock index futures are trading at $50.25 and the contract is for 100 shares of XYZ stock, the nominal value of the futures contract would be $5025.00.

Offsetting—liquidating open positions by either selling fungible contracts in the same contract month as an open long position or buying fungible contracts in the same contract month as an open short position.

Open interest—the total number of open long (or short) contracts in a particular contract month.

Open position—a futures contract position that has neither been offset nor closed by cash settlement or physical delivery.

Performance bond—another way to describe margin payments for futures contracts, which are good faith deposits to ensure performance of a person's obligations under a futures contract rather than down payments for the underlying securities.

Physical delivery—the tender and receipt of the actual security underlying the security futures contract in exchange for payment of the final settlement price.

Position—a person's net long or short open contracts.

Regulated exchange—a registered national securities exchange, a national securities association registered under section 15A(a) of the Securities Exchange Act of 1934, a designated contract market, a registered derivatives transaction execution facility, or an alternative trading system registered as a broker or dealer.

Security futures contract—a legally binding agreement between two parties to purchase or sell in the future a specific quantity of shares of a security (such as common stock, an exchange-traded fund, or ADR) or a narrow-based security index, at a specified price.

Settlement price—(1) the daily price that the clearing organization uses to mark open positions to market for determining profit and loss and margin calls, (2) the price at which open cash settlement contracts are settled on the last trading day and open physical delivery contracts are invoiced for delivery.

Short—(1) the selling side of an open futures contract, (2) a person who has sold futures contracts that are still open.

Speculating—buying and selling futures contracts with the hope of profiting from anticipated price movements.

Spread—(1) holding a long position in one futures contract and a short position in a related futures contract or contract month in order to profit from an anticipated change in the price relationship between the two, (2) the price difference between two contracts or contract months.

Stop limit order—an order that becomes a limit order when the market trades at a specified price. The order can only be filled at the stop limit price or better.

Stop loss order—an order that becomes a market order when the market trades at a specified price. The order will be filled at whatever price the market is trading at. Also called a stop order.

Tick—the smallest price change allowed in a particular contract.

Trader—a professional speculator who trades for his or her own account.

Underlying security—the instrument on which the security futures contract is based. This instrument can be an individual equity security (including common stock and certain exchange-traded funds and American Depositary Receipts) or a narrow-based index.

Volume—the number of contracts bought or sold during a specified period of time. This figure includes liquidating transactions.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD has developed sales practice rules governing security futures.[3] Several of these rules—NASD Rule 2856 and IM–2110–7—reference a security futures risk disclosure statement ("Statement"). The proposed rule change contains the text of the Statement to be used by members in complying with these rules, and any other NASD rules that may subsequently reference the Statement. The Statement is a joint effort of NASD, the National Futures Association ("NFA"), the New York Stock Exchange, the Chicago Board Options Exchange, The Options Clearing Corporation, Nasdaq Liffe Markets, OneChicago, and the American Stock Exchange. Comments on this Statement also have been provided by the staffs of the Commission and Commodity Futures Trading Commission ("CFTC").

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[4] which requires, among other things that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change, which will be provided to customers, will help inform customers of the potential risks of security futures.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD requests that the proposed rule change be granted summary effectiveness pursuant to section

[3] *See* Securities Exchange Act Release No. 46186 (July 11, 2002), 67 FR 47412 (July 18, 2002) (SR–NASD–2002–40).

[4] 15 U.S.C. 78o–3(b)(6).

19(b)(3) of the Act[5] because it believes that such approval is necessary for the maintenance of fair and orderly markets. Under NASD's proposed security futures rule (NASD Rule 2865), a member must deliver the Statement to a customer prior to opening or approving a customer's account to trade security futures. In addition, NASD's proposed Guidelines for Communications with the Public Regarding Security Futures (IM–2210–7) require, with certain limited exceptions, that all communications concerning security futures shall be accompanied or preceded by the Statement. A delay in the effectiveness of the proposed rule change hinders the ability of members to open customer accounts for security futures and to communicate with customers concerning these new products.

NASD requests that the Commission coordinate its summary approval of the proposed rule change with an identical filing made by the NFA with the CFTC. NASD's understanding is that under CFTC procedures, NFA's proposed rule change will become effective on October 7, 2002.

On preliminary consideration, it appears to the Commission that summary effectiveness is necessary for the maintenance of fair and orderly markets. Accordingly, the foregoing rule change has been put into effect summarily, pursuant to section 19(b)(3)(B) of the Act.[6] At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

Section 19(b)(3)(B) of the Act[7] requires that any proposed rule change put into effect summarily shall be filed promptly thereafter in accordance with the provisions of section 19(b)(1) of the Act.[8] NASD has filed the proposed rule change[9] under section 19(b)(1) of the Act,[10] and the Commission has issued a notice of the proposed rule change.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–128 and should be submitted by November 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–P

[5] 15 U.S.C. 78s(b)(3).
[6] 15 U.S.C. 78s(b)(3)(B).
[7] *Id.*
[8] 15 U.S.C. 78s(b)(1).
[9] File No. SR–NASD–2002–129.
[10] 15 U.S.C. 78s(b)(1).
[11] *See* Securities Exchange Act Release No. 46614 (October 7, 2002) (SR–NASD–2002–129).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46614; File No. SR–NASD–2002–129]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Security Futures Risk Disclosure Statement

October 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[12] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is filing with the Commission the security futures risk disclosure statement. The text of the proposed rule change appears below. All text is new.

* * * * *

Risk Disclosure Statement for Security Futures Contracts

This disclosure statement discusses the characteristics and risks of standardized security futures contracts traded on regulated U.S. exchanges. At present, regulated exchanges are authorized to list futures contracts on individual equity securities registered under the Securities Exchange Act of 1934 (including common stock and certain exchange-traded funds and American Depositary Receipts), as well as narrow-based security indices. Futures on other types of securities and options on security futures contracts may be authorized in the future. The glossary of terms appears at the end of the document.

Customers should be aware that the examples in this document are exclusive of fees and commissions that may decrease their net gains or increase their net losses. The examples also do not include tax consequences, which may differ for each customer.

Section 1—Risks of Security Futures

1.1. Risks of Security Futures Transactions

Trading security futures contracts may not be suitable for all investors. You may lose a substantial amount of money in a very short period of time. The amount you may lose is potentially unlimited and can exceed the amount you originally deposit with your broker. This is because futures trading is highly leveraged, with a relatively small amount of money used to establish a position in assets having a much greater value. If you are uncomfortable with this level of risk, you should not trade security futures contracts.

1.2. General Risks

• *Trading security futures contracts involves risk and may result in potentially unlimited losses that are greater than the amount you deposited with your broker.* As with any high risk financial product, you should not risk any funds that you cannot afford to lose, such as your retirement savings, medical and other emergency funds, funds set aside for purposes such as education or home ownership, proceeds from student loans or mortgages, or

funds required to meet your living expenses.

• *Be cautious of claims that you can make large profits from trading security futures contracts.* Although the high degree of leverage in security futures contracts can result in large and immediate gains, it can also result in large and immediate losses. As with any financial product, there is no such thing as a "sure winner."

• *Because of the leverage involved and the nature of security futures contract transactions, you may feel the effects of your losses immediately.* Gains and losses in security futures contracts are credited or debited to your account, at a minimum, on a daily basis. If movements in the markets for security futures contracts or the underlying security decrease the value of your positions in security futures contracts, you may be required to have or make additional funds available to your carrying firm as margin. If your account is under the minimum margin requirements set by the exchange or the brokerage firm, your position may be liquidated at a loss, and you will be liable for the deficit, if any, in your account. Margin requirements are addressed in Section 4.

• *Under certain market conditions, it may be difficult or impossible to liquidate a position.* Generally, you must enter into an offsetting transaction in order to liquidate a position in a security futures contract. If you cannot liquidate your position in security futures contracts, you may not be able to realize a gain in the value of your position or prevent losses from mounting. This inability to liquidate could occur, for example, if trading is halted due to unusual trading activity in either the security futures contract or the underlying security; if trading is halted due to recent news events involving the issuer of the underlying security; if systems failures occur on an exchange or at the firm carrying your position; or if the position is on an illiquid market. Even if you can liquidate your position, you may be forced to do so at a price that involves a large loss.

• *Under certain market conditions, it may also be difficult or impossible to manage your risk from open security futures positions by entering into an equivalent but opposite position in another contract month, on another market, or in the underlying security.* This inability to take positions to limit your risk could occur, for example, if trading is halted across markets due to unusual trading activity in the security futures contract or the underlying security or due to recent news events involving the issuer of the underlying security.

• *Under certain market conditions, the prices of security futures contracts may not maintain their customary or anticipated relationships to the prices of the underlying security or index.* These pricing disparities could occur, for example, when the market for the security futures contract is illiquid, when the primary market for the underlying security is closed, or when the reporting of transactions in the underlying security has been delayed. For index products, it could also occur when trading is delayed or halted in some or all of the securities that make up the index.

• *You may be required to settle certain security futures contracts with physical delivery of the underlying security.* If you hold your position in a physically settled security futures contract until the end of the last trading day prior to expiration, you will be obligated to make or take delivery of the underlying securities, which could involve additional costs. The actual settlement terms may vary from contract to contract and exchange to exchange. You should carefully review the settlement and delivery conditions before entering into a security futures contract. Settlement and delivery are discussed in Section 5.

• *You may experience losses due to systems failures.* As with any financial transaction, you may experience losses if your orders for security futures contracts cannot be executed normally due to systems failures on a regulated exchange or at the brokerage firm carrying your position. Your losses may be greater if the brokerage firm carrying your position does not have adequate back-up systems or procedures.

• *All security futures contracts involve risk, and there is no trading strategy that can eliminate it.* Strategies using combinations of positions, such as spreads, may be as risky as outright long or short positions. Trading in security futures contracts requires knowledge of both the securities and the futures markets.

• *Day trading strategies involving security futures contracts and other products pose special risks.* As with any financial product, persons who seek to purchase and sell the same security future in the course of a day to profit from intra-day price movements ("day traders") face a number of special risks, including substantial commissions, exposure to leverage, and competition with professional traders. You should thoroughly understand these risks and have appropriate experience before engaging in day trading. The special risks for day traders are discussed more fully in Section 7.

• *Placing contingent orders, if permitted, such as "stop-loss" or "stop-limit" orders, will not necessarily limit your losses to the intended amount.* Some regulated exchanges may permit you to enter into stop-loss or stop-limit orders for security futures contracts, which are intended to limit your exposure to losses due to market fluctuations. However, market conditions may make it impossible to execute the order or to get the stop price.

• *You should thoroughly read and understand the customer account agreement with your brokerage firm before entering into any transactions in security futures contracts.*

• *You should thoroughly understand the regulatory protections available to your funds and positions in the event of the failure of your brokerage firm.* The regulatory protections available to your funds and positions in the event of the failure of your brokerage firm may vary depending on, among other factors, the contract you are trading and whether you are trading through a securities account or a futures account. Firms that allow customers to trade security futures in either securities accounts or futures accounts, or both, are required to disclose to customers the differences in regulatory protections between such accounts, and, where appropriate, how customers may elect to trade in either type of account.

Section 2—Description of a Security Futures Contract

2.1. What Is a Security Futures Contract?

A security futures contract is a legally binding agreement between two parties to purchase or sell in the future a specific quantity of shares of a security or of the component securities of a narrow-based security index, at a certain price. A person who buys a security futures contract enters into a contract to purchase an underlying security and is said to be "long" the contract. A person who sells a security futures contract enters into a contract to sell the underlying security and is said to be "short" the contract. The price at which the contract trades (the "contract price") is determined by relative buying and selling interest on a regulated exchange.

In order to enter into a security futures contract, you must deposit funds with your brokerage firm equal to a specified percentage (usually at least 20 percent) of the current market value of the contract as a performance bond. Moreover, all security futures contracts

are marked-to-market at least daily, usually after the close of trading, as described in Section 3 of this document. At that time, the account of each buyer and seller reflects the amount of any gain or loss on the security futures contract based on the contract price established at the end of the day for settlement purposes (the "daily settlement price").

An open position, either a long or short position, is closed or liquidated by entering into an offsetting transaction (*i.e.*, an equal and opposite transaction to the one that opened the position) prior to the contract expiration. Traditionally, most futures contracts are liquidated prior to expiration through an offsetting transaction and, thus, holders do not incur a settlement obligation.

Examples: Investor A is long one September XYZ Corp. futures contract. To liquidate the long position in the September XYZ Corp. futures contract, Investor A would sell an identical September XYZ Corp. contract.

Investor B is short one December XYZ Corp. futures contract. To liquidate the short position in the December XYZ Corp. futures contract, Investor B would buy an identical December XYZ Corp. contract.

Security futures contracts that are not liquidated prior to expiration must be settled in accordance with the terms of the contract. Some security futures contracts are settled by physical delivery of the underlying security. At the expiration of a security futures contract that is settled through physical delivery, a person who is long the contract must pay the final settlement price set by the regulated exchange or the clearing organization and take delivery of the underlying shares. Conversely, a person who is short the contract must make delivery of the underlying shares in exchange for the final settlement price.

Other security futures contracts are settled through cash settlement. In this case, the underlying security is not delivered. Instead, any positions in such security futures contracts that are open at the end of the last trading day are settled through a final cash payment based on a final settlement price determined by the exchange or clearing organization. Once this payment is made, neither party has any further obligations on the contract.

Physical delivery and cash settlement are discussed more fully in Section 5.

2.2. Purposes of Security Futures

Security futures contracts can be used for speculation, hedging, and risk management. Security futures contracts do not provide capital growth or income.

Speculation

Speculators are individuals or firms who seek to profit from anticipated increases or decreases in futures prices. A speculator who expects the price of the underlying instrument to increase will buy the security futures contract. A speculator who expects the price of the underlying instrument to decrease will sell the security futures contract. Speculation involves substantial risk and can lead to large losses as well as profits.

The most common trading strategies involving security futures contracts are buying with the hope of profiting from an anticipated price increase and selling with the hope of profiting from an anticipated price decrease. For example, a person who expects the price of XYZ stock to increase by March can buy a March XYZ security futures contract, and a person who expects the price of XYZ stock to decrease by March can sell a March XYZ security futures contract. The following illustrates potential profits and losses if Customer A purchases the security futures contract at $50 a share and Customer B sells the same contract at $50 a share (assuming 100 shares per contract).

Price of XYZ at liquidation	Customer A profit/loss	Customer B profit/loss
$55	$500	−$500
$50	0	0
$45	−500	500

Speculators may also enter into spreads with the hope of profiting from an expected change in price relationships. Spreaders may purchase a contract expiring in one contract month and sell another contract on the same underlying security expiring in a different month (*e.g.*, buy June and sell September XYZ single stock futures). This is commonly referred to as a "calendar spread."

Spreaders may also purchase and sell the same contract month in two different but economically correlated security futures contracts. For example, if ABC and XYZ are both pharmaceutical companies and an individual believes that ABC will have stronger growth than XYZ between now and June, he could buy June ABC futures contracts and sell June XYZ futures contracts. Assuming that each contract is 100 shares, the following illustrates how this works.

Opening position	Price at liquidation	Gain or loss	Price at liquidation	Gain or loss
Buy ABC at 50	$53	$300	$53	$300
Sell XYZ at 45	46	−100	50	−500
Net Gain or Loss		200		−200

Speculators can also engage in arbitrage, which is similar to a spread except that the long and short positions occur on two different markets. An arbitrage position can be established by taking an economically opposite position in a security futures contract on another exchange, in an options contract, or in the underlying security.

Hedging

Generally speaking, hedging involves the purchase or sale of a security future to reduce or offset the risk of a position in the underlying security or group of securities (or a close economic equivalent). A hedger gives up the potential to profit from a favorable price change in the position being hedged in order to minimize the risk of loss from an adverse price change.

An investor who wants to lock in a price now for an anticipated sale of the underlying security at a later date can do so by hedging with security futures. For example, assume an investor owns 1,000 shares of ABC that have appreciated since he bought them. The investor would like to sell them at the current price of $50 per share, but there are tax or other reasons for holding them until September. The investor could sell ten 100-share ABC futures contracts and then buy back those contracts in September when he sells the stock. Assuming the stock price and the futures price change by the same amount, the gain or loss in the stock will be offset by the loss or gain in the futures contracts.

Price in September	Value of 1,000 shares of ABC	Gain or loss on futures	Effective selling price
$40	$40,000	$10,000	$50,000
$50	50,000	0	50,000
$60	60,000	−10,000	50,000

Hedging can also be used to lock in a price now for an anticipated purchase of the stock at a later date. For example, assume that in May a mutual fund expects to buy stocks in a particular industry with the proceeds of bonds that will mature in August. The mutual fund can hedge its risk that the stocks will increase in value between May and August by purchasing security futures contracts on a narrow-based index of stocks from that industry. When the mutual fund buys the stocks in August, it also will liquidate the security futures position in the index. If the relationship between the security futures contract and the stocks in the index is constant, the profit or loss from the futures contract will offset the price change in the stocks, and the mutual fund will have locked in the price that the stocks were selling at in May.

Although hedging mitigates risk, it does not eliminate all risk. For example, the relationship between the price of the security futures contract and the price of the underlying security traditionally tends to remain constant over time, but it can and does vary somewhat. Furthermore, the expiration or liquidation of the security futures contract may not coincide with the exact time the hedger buys or sells the underlying stock. Therefore, hedging may not be a perfect protection against price risk.

Risk Management

Some institutions also use futures contracts to manage portfolio risks without necessarily intending to change the composition of their portfolio by buying or selling the underlying securities. The institution does so by taking a security futures position that is opposite to some or all of its position in the underlying securities. This strategy involves more risk than a traditional hedge because it is not meant to be a substitute for an anticipated purchase or sale.

2.3. Where Security Futures Trade

By law, security futures contracts must trade on a regulated U.S. exchange. Each regulated U.S. exchange that trades security futures contracts is subject to joint regulation by the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC).

A person holding a position in a security futures contract who seeks to liquidate the position must do so either on the regulated exchange where the original trade took place or on another regulated exchange, if any, where a fungible security futures contract trades. (A person may also seek to manage the risk in that position by taking an opposite position in a comparable contract traded on another regulated exchange.)

Security futures contracts traded on one regulated exchange might not be fungible with security futures contracts traded on another regulated exchange for a variety of reasons. Security futures traded on different regulated exchanges may be non-fungible because they have different contract terms (*e.g.*, size, settlement method), or because they are cleared through different clearing organizations. Moreover, a regulated exchange might not permit its security futures contracts to be offset or liquidated by an identical contract traded on another regulated exchange, even though they have the same contract terms and are cleared through the same clearing organization. You should consult your broker about the fungibility of the contract you are considering purchasing or selling, including which exchange(s), if any, on which it may be offset.

Regulated exchanges that trade security futures contracts are required by law to establish certain listing standards. Changes in the underlying security of a security futures contract may, in some cases, cause such contract to no longer meet the regulated exchange's listing standards. Each regulated exchange will have rules governing the continued trading of security futures contracts that no longer meet the exchange's listing standards. These rules may, for example, permit only liquidating trades in security futures contracts that no longer satisfy the listing standards.

2.4. How Security Futures Differ From the Underlying Security

Shares of common stock represent a fractional ownership interest in the issuer of that security. Ownership of securities confers various rights that are not present with positions in security futures contracts. For example, persons owning a share of common stock may be entitled to vote in matters affecting corporate governance. They also may be entitled to receive dividends and corporate disclosure, such as annual and quarterly reports.

The purchaser of a security futures contract, by contrast, has only a contract for future delivery of the underlying security. The purchaser of the security futures contract is not entitled to exercise any voting rights over the underlying security and is not entitled to any dividends that may be paid by the issuer. Moreover, the purchaser of a security futures contract does not receive the corporate disclosures that are received by shareholders of the underlying security, although such corporate disclosures must be made publicly available through the SEC's EDGAR system, which can be accessed at www.sec.gov. You should review such disclosures before entering into a security futures contract. See Section 9 for further discussion of the impact of corporate events on a security futures contract.

All security futures contracts are marked-to-market at least daily, usually after the close of trading, as described in Section 3 of this document. At that time, the account of each buyer and seller is credited with the amount of any gain, or debited by the amount of any loss, on the security futures contract, based on the contract price established at the end of the day for settlement purposes (the "daily settlement price"). By contrast, the purchaser or seller of the underlying instrument does not have the profit and loss from his or her investment credited or debited until the position in that instrument is closed out.

Naturally, as with any financial product, the value of the security futures contract and of the underlying security may fluctuate. However, owning the underlying security does not require an investor to settle his or her profits and losses daily. By contrast, as a result of the mark-to-market requirements discussed above, a person who is long a security futures contract often will be required to deposit additional funds into his or her account

as the price of the security futures contract decreases. Similarly, a person who is short a security futures contract often will be required to deposit additional funds into his or her account as the price of the security futures contract increases.

Another significant difference is that security futures contracts expire on a specific date. Unlike an owner of the underlying security, a person cannot hold a long position in a security futures contract for an extended period of time in the hope that the price will go up. If you do not liquidate your security futures contract, you will be required to settle the contract when it expires, either through physical delivery or cash settlement. For cash-settled contracts in particular, upon expiration, an individual will no longer have an economic interest in the securities underlying the security futures contract.

2.5. Comparison to Options

Although security futures contracts share some characteristics with options on securities (options contracts), these products are also different in a number of ways. Below are some of the important distinctions between equity options contracts and security futures contracts.

If you purchase an options contract, you have the right, but not the obligation, to buy or sell a security prior to the expiration date. If you sell an options contract, you have the obligation to buy or sell a security prior to the expiration date. By contrast, if you have a position in a security futures contract (either long or short), you have both the right and the obligation to buy or sell a security at a future date. The only way that you can avoid the obligation incurred by the security futures contract is to liquidate the position with an offsetting contract.

A person purchasing an options contract runs the risk of losing the purchase price (premium) for the option contract. Because it is a wasting asset, the purchaser of an options contract who neither liquidates the options contract in the secondary market nor exercises it at or prior to expiration will necessarily lose his or her entire investment in the options contract. However, a purchaser of an options contract cannot lose more than the amount of the premium. Conversely, the seller of an options contract receives the premium and assumes the risk that he or she will be required to buy or sell the underlying security on or prior to the expiration date, in which event his or her losses may exceed the amount of the premium received. Although the seller of an options contract is required to deposit margin to reflect the risk of its obligation, he or she may lose many times his or her initial margin deposit.

By contrast, the purchaser and seller of a security futures contract each enter into an agreement to buy or sell a specific quantity of shares in the underlying security. Based upon the movement in prices of the underlying security, a person who holds a position in a security futures contract can gain or lose many times his or her initial margin deposit. In this respect, the benefits of a security futures contract are similar to the benefits of purchasing an option, while the risks of entering into a security futures contract are similar to the risks of selling an option.

Both the purchaser and the seller of a security futures contract have daily margin obligations. At least once each day, security futures contracts are marked-to-market and the increase or decrease in the value of the contract is credited or debited to the buyer and the seller. As a result, any person who has an open position in a security futures contract may be called upon to meet additional margin requirements or may receive a credit of available funds.

Example:

Assume that Customers A and B each anticipate an increase in the market price of XYZ stock, which is currently $50 a share. Customer A purchases an XYZ 50 call (covering 100 shares of XYZ at a premium of $5 per share). The option premium is $500 ($5 per share × 100 shares). Customer B purchases an XYZ security futures contract (covering 100 shares of XYZ). The total value of the contract is $5000 ($50 share value × 100 shares). The required margin is $1000 (or 20% of the contract value).

Price of XYZ at expiration	Customer A profit/loss	Customer B profit/loss
$65	$1,000	$1,500
$60	500	1,000
$55	0	500
$50	−500	0
$45	−500	−500
$40	−500	−1,000
$35	−500	−1,500

The most that Customer A can lose is $500, the option premium. Customer A breaks even at $55 per share, and makes money at higher prices. Customer B may lose more than his initial margin deposit. Unlike the options premium, the margin on a futures contract is not a cost but a performance bond. The losses for Customer B are not limited by this performance bond. Rather, the losses or gains are determined by the settlement price of the contract, as provided in the example above. Note that if the price of XYZ falls to $35 per share, Customer A loses only $500, whereas Customer B loses $1500.

2.6. Components of a Security Futures Contract

Each regulated exchange can choose the terms of the security futures contracts it lists, and those terms may differ from exchange to exchange or contract to contract. Some of those contract terms are discussed below. However, you should ask your broker for a copy of the contract specifications before trading a particular contract.

2.6.1.

Each security futures contract has a set size. The size of a security futures contract is determined by the regulated exchange on which the contract trades. For example, a security futures contract for a single stock may be based on 100 shares of that stock. If prices are reported per share, the value of the contract would be the price times 100. For narrow-based security indices, the value of the contract is the price of the component securities times the multiplier set by the exchange as part of the contract terms.

2.6.2.

Security futures contracts expire at set times determined by the listing exchange. For example, a particular contract may expire on a particular day, *e.g.*, the third Friday of the expiration month. Up until expiration, you may liquidate an open position by offsetting your contract with a fungible opposite contract that expires in the same month. If you do not liquidate an open position before it expires, you will be required to make or take delivery of the underlying security or to settle the contract in cash after expiration.

2.6.3.

Although security futures contracts on a particular security or a narrow-based security index may be listed and traded on more than one regulated exchange, the contract specifications may not be the same. Also, prices for contracts on the same security or index may vary on different regulated exchanges because of different contract specifications.

2.6.4.

Prices of security futures contracts are usually quoted the same way prices are quoted in the underlying instrument. For example, a contract for an individual security would be quoted in dollars and cents per share. Contracts for indices would be quoted by an index number, usually stated to two decimal places.

2.6.5.

Each security futures contract has a minimum price fluctuation (called a tick), which may differ from product to product or exchange to exchange. For example, if a particular security futures contract has a tick size of 1¢, you can buy the contract at $23.21 or $23.22 but not at $23.215.

2.7. Trading Halts

The value of your positions in security futures contracts could be affected if trading is halted in either the security futures contract or the underlying security. In certain circumstances, regulated exchanges are required by law to halt trading in security futures contracts. For example, trading on a particular security futures contract must be halted if trading is halted on the listed market for the underlying security as a result of pending news, regulatory concerns, or market volatility. Similarly, trading of a security futures contract on a narrow-based security index must be halted under such circumstances if trading is halted on securities accounting for at least 50 percent of the market capitalization of the index. In addition, regulated exchanges are required to halt trading in all security futures contracts for a specified period of time when the Dow Jones Industrial Average ("DJIA") experiences one-day declines of 10-, 20- and 30-percent. The regulated exchanges may also have discretion under their rules to halt trading in other circumstances—such as when the exchange determines that the halt would be advisable in maintaining a fair and orderly market.

A trading halt, either by a regulated exchange that trades security futures or an exchange trading the underlying security or instrument, could prevent you from liquidating a position in security futures contracts in a timely manner, which could prevent you from liquidating a position in security futures contracts at that time.

2.8. Trading Hours

Each regulated exchange trading a security futures contract may open and close for trading at different times than other regulated exchanges trading security futures contracts or markets trading the underlying security or securities. Trading in security futures contracts prior to the opening or after the close of the primary market for the underlying security may be less liquid than trading during regular market hours.

Section 3—Clearing Organizations and Mark-to-Market Requirements

Every regulated U.S. exchange that trades security futures contracts is required to have a relationship with a clearing organization that serves as the guarantor of each security futures contract traded on that exchange. A clearing organization performs the following functions: matching trades; effecting settlement and payments; guaranteeing performance; and facilitating deliveries.

Throughout each trading day, the clearing organization matches trade data submitted by clearing members on behalf of their customers or for the clearing member's proprietary accounts. If an account is with a brokerage firm that is not a member of the clearing organization, then the brokerage firm will carry the security futures position with another brokerage firm that is a member of the clearing organization. Trade records that do not match, either because of a discrepancy in the details or because one side of the transaction is missing, are returned to the submitting clearing members for resolution. The members are required to resolve such "out trades" before or on the open of trading the next morning.

When the required details of a reported transaction have been verified, the clearing organization assumes the legal and financial obligations of the parties to the transaction. One way to think of the role of the clearing organization is that it is the "buyer to every seller and the seller to every buyer." The insertion or substitution of the clearing organization as the counterparty to every transaction enables a customer to liquidate a security futures position without regard to what the other party to the original security futures contract decides to do.

The clearing organization also effects the settlement of gains and losses from security futures contracts between clearing members. At least once each day, clearing member brokerage firms must either pay to, or receive from, the clearing organization the difference between the current price and the trade price earlier in the day, or for a position carried over from the previous day, the difference between the current price and the previous day's settlement price. Whether a clearing organization effects settlement of gains and losses on a daily basis or more frequently will depend on the conventions of the clearing organization and market conditions. Because the clearing organization assumes the legal and financial obligations for each security futures contract, you should expect it to ensure that payments are made promptly to protect its obligations.

Gains and losses in security futures contracts are also reflected in each customer's account on at least a daily basis. Each day's gains and losses are determined based on a daily settlement price disseminated by the regulated exchange trading the security futures contract or its clearing organization. If the daily settlement price of a particular security futures contract rises, the buyer has a gain and the seller a loss. If the daily settlement price declines, the buyer has a loss and the seller a gain. This process is known as "marking-to-market" or daily settlement. As a result, individual customers normally will be called on to settle daily.

The one-day gain or loss on a security futures contract is determined by calculating the difference between the current day's settlement price and the previous day's settlement price.

For example, assume a security futures contract is purchased at a price of $120. If the daily settlement price is either $125 (higher) or $117 (lower), the effects would be as follows:

(1 contract representing 100 shares)

Daily settlement value	Buyer's account	Seller's account
$125	$500 gain (credit)	$500 loss (debit).
$117	$300 loss (debit)	$300 gain (credit).

The cumulative gain or loss on a customer's open security futures positions is generally referred to as "open trade equity" and is listed as a separate component of account equity on your customer account statement.

A discussion of the role of the clearing organization in effecting delivery is discussed in Section 5.

Section 4—Margin and Leverage

When a broker-dealer lends a customer part of the funds needed to purchase a security such as common stock, the term "margin" refers to the amount of cash, or down payment, the customer is required to deposit. By contrast, a security futures contract is an obligation and not an asset. A security futures contract has no value as

collateral for a loan. Because of the potential for a loss as a result of the daily marked-to-market process, however, a margin deposit is required of each party to a security futures contract. This required margin deposit also is referred to as a "performance bond."

In the first instance, margin requirements for security futures contracts are set by the exchange on which the contract is traded, subject to certain minimums set by law. The basic margin requirement is 20% of the current value of the security futures contract, although some strategies may have lower margin requirements. Requests for additional margin are known as "margin calls." Both buyer and seller must individually deposit the required margin to their respective accounts.

It is important to understand that individual brokerage firms can, and in many cases do, require margin that is higher than the exchange requirements. Additionally, margin requirements may vary from brokerage firm to brokerage firm. Furthermore, a brokerage firm can increase its "house" margin requirements at any time without providing advance notice, and such increases could result in a margin call.

For example, some firms may require margin to be deposited the business day following the day of a deficiency, or some firms may even require deposit on the same day. Some firms may require margin to be on deposit in the account before they will accept an order for a security futures contract. Additionally, brokerage firms may have special requirements as to how margin calls are to be met, such as requiring a wire transfer from a bank, or deposit of a certified or cashier's check. You should thoroughly read and understand the customer agreement with your brokerage firm before entering into any transactions in security futures contracts.

If through the daily cash settlement process, losses in the account of a security futures contract participant reduce the funds on deposit (or equity) below the maintenance margin level (or the firm's higher "house" requirement), the brokerage firm will require that additional funds be deposited.

If additional margin is not deposited in accordance with the firm's policies, the firm can liquidate your position in security futures contracts or sell assets in any of your accounts at the firm to cover the margin deficiency. You remain responsible for any shortfall in the account after such liquidations or sales. Unless provided otherwise in your customer agreement or by applicable law, you are not entitled to choose which futures contracts, other securities or other assets are liquidated or sold to meet a margin call or to obtain an extension of time to meet a margin call.

Brokerage firms generally reserve the right to liquidate a customer's security futures contract positions or sell customer assets to meet a margin call at any time without contacting the customer. Brokerage firms may also enter into equivalent but opposite positions for your account in order to manage the risk created by a margin call. Some customers mistakenly believe that a firm is required to contact them for a margin call to be valid, and that the firm is not allowed to liquidate securities or other assets in their accounts to meet a margin call unless the firm has contacted them first. This is not the case. While most firms notify their customers of margin calls and allow some time for deposit of additional margin, they are not required to do so. Even if a firm has notified a customer of a margin call and set a specific due date for a margin deposit, the firm can still take action as necessary to protect its financial interests, including the immediate liquidation of positions without advance notification to the customer.

Here is an example of the margin requirements for a long security futures position.

A customer buys 3 July EJG security futures at 71.50. Assuming each contract represents 100 shares, the nominal value of the position is $21,450 (71.50 × 3 contracts × 100 shares). If the initial margin rate is 20% of the nominal value, then the customer's initial margin requirement would be $4,290. The customer deposits the initial margin, bringing the equity in the account to $4,290.

First, assume that the next day the settlement price of EJG security futures falls to 69.25. The marked-to-market loss in the customer's equity is $675 (71.50 − 69.25 × 3 contacts × 100 shares). The customer's equity decreases to $3,615 ($4,290 − $675). The new nominal value of the contract is $20,775 (69.25 × 3 contracts × 100 shares). If the maintenance margin rate is 20% of the nominal value, then the customer's maintenance margin requirement would be $4,155. Because the customer's equity had decreased to $3,615 (see above), the customer would be required to have an additional $540 in margin ($4,155 − $3,615).

Alternatively, assume that the next day the settlement price of EJG security futures rises to 75.00. The mark-to-market gain in the customer's equity is $1,050 (75.00 − 71.50 × 3 contacts × 100 shares). The customer's equity increases to $5,340 ($4,290 + $1,050). The new nominal value of the contract is $22,500 (75.00 × 3 contracts × 100 shares). If the maintenance margin rate is 20% of the nominal value, then the customer's maintenance margin requirement would be $4,500. Because the customer's equity had increased to $5,340 (see above), the customer's excess equity would be $840.

The process is exactly the same for a short position, except that margin calls are generated as the settlement price rises rather than as it falls. This is because the customer's equity decreases as the settlement price rises and increases as the settlement price falls.

Because the margin deposit required to open a security futures position is a fraction of the nominal value of the contracts being purchased or sold, security futures contracts are said to be highly leveraged. The smaller the margin requirement in relation to the underlying value of the security futures contract, the greater the leverage. Leverage allows exposure to a given quantity of an underlying asset for a fraction of the investment needed to purchase that quantity outright. In sum, buying (or selling) a security futures contract provides the same dollar and cents profit and loss outcomes as owning (or shorting) the underlying security. However, as a percentage of the margin deposit, the potential immediate exposure to profit or loss is much higher with a security futures contract than with the underlying security.

For example, if a security futures contract is established at a price of $50, the contract has a nominal value of $5,000 (assuming the contract is for 100 shares of stock). The margin requirement may be as low as 20%. In the example just used, assume the contract price rises from $50 to $52 (a $200 increase in the nominal value). This represents a $200 profit to the buyer of the security futures contract, and a 20% return on the $1,000 deposited as margin. The reverse would be true if the contract price decreased from $50 to $48. This represents a $200 loss to the buyer, or 20% of the $1,000 deposited as margin. Thus, leverage can either benefit or harm an investor.

Note that a 4% decrease in the value of the contract resulted in a loss of 20% of the margin deposited. A 20% decrease would wipe out 100% of the margin deposited on the security futures contract.

Section 5—Settlement

If you do not liquidate your position prior to the end of trading on the last

day before the expiration of the security futures contract, you are obligated to either (1) make or accept a cash payment ("cash settlement") or (2) deliver or accept delivery of the underlying securities in exchange for final payment of the final settlement price ("physical delivery"). The terms of the contract dictate whether it is settled through cash settlement or by physical delivery.

The expiration of a security futures contract is established by the exchange on which the contract is listed. On the expiration day, security futures contracts cease to exist. Typically, the last trading day of a security futures contract will be the third Friday of the expiring contract month, and the expiration day will be the following Saturday. This follows the expiration conventions for stock options and broad-based stock indexes. Please keep in mind that the expiration day is set by the listing exchange and may deviate from these norms.

5.1. Cash Settlement

In the case of cash settlement, no actual securities are delivered at the expiration of the security futures contract. Instead, you must settle any open positions in security futures by making or receiving a cash payment based on the difference between the final settlement price and the previous day's settlement price. Under normal circumstances, the final settlement price for a cash-settled contract will reflect the opening price for the underlying security. Once this payment is made, neither the buyer nor the seller of the security futures contract has any further obligations on the contract.

5.2. Settlement by Physical Delivery

Settlement by physical delivery is carried out by clearing brokers or their agents with National Securities Clearing Corporation ("NSCC"), an SEC-regulated securities clearing agency. Such settlements are made in much the same way as they are for purchases and sales of the underlying security. Promptly after the last day of trading, the regulated exchange's clearing organization will report a purchase and sale of the underlying stock at the previous day's settlement price (also referred to as the "invoice price") to NSCC. If NSCC does not reject the transaction by a time specified in its rules, settlement is effected pursuant to the rules of NSCC within the normal clearance and settlement cycle for securities transactions, which currently is three business days.

If you hold a short position in a physically settled security futures contract to expiration, you will be required to make delivery of the underlying securities. If you already own the securities, you may tender them to your brokerage firm. If you do not own the securities, you will be obligated to purchase them. Some brokerage firms may not be able to purchase the securities for you. If your brokerage firm cannot purchase the underlying securities on your behalf to fulfill a settlement obligation, you will have to purchase the securities through a different firm.

Section 6—Customer Account Protections

Positions in security futures contracts may be held either in a securities account or in a futures account. Your brokerage firm may or may not permit you to choose the types of account in which your positions in security futures contracts will be held. The protections for funds deposited or earned by customers in connection with trading in security futures contracts differ depending on whether the positions are carried in a securities account or a futures account. If your positions are carried in a securities account, you will not receive the protections available for futures accounts. Similarly, if your positions are carried in a futures account, you will not receive the protections available for securities accounts. You should ask your broker which of these protections will apply to your funds.

You should be aware that the regulatory protections applicable to your account are not intended to insure you against losses you may incur as a result of a decline or increase in the price of a security futures contract. As with all financial products, you are solely responsible for any market losses in your account.

Your brokerage firm must tell you whether your security futures positions will be held in a securities account or a futures account. If your brokerage firm gives you a choice, it must tell you what you have to do to make the choice and which type of account will be used if you fail to do so. You should understand that certain regulatory protections for your account will depend on whether it is a securities account or a futures account.

6.1. Protections for Securities Accounts

If your positions in security futures contracts are carried in a securities account, they are covered by SEC rules governing the safeguarding of customer funds and securities. These rules prohibit a broker/dealer from using customer funds and securities to finance its business. As a result, the broker/dealer is required to set aside funds equal to the net of all its excess payables to customers over receivables from customers. The rules also require a broker/dealer to segregate all customer fully paid and excess margin securities carried by the broker/dealer for customers.

The Securities Investor Protection Corporation (SIPC) also covers positions held in securities accounts. SIPC was created in 1970 as a non-profit, non-government, membership corporation, funded by member broker/dealers. Its primary role is to return funds and securities to customers if the broker/dealer holding these assets becomes insolvent. SIPC coverage applies to customers of current (and in some cases former) SIPC members. Most broker/dealers registered with the SEC are SIPC members; those few that are not must disclose this fact to their customers. SIPC members must display an official sign showing their membership. To check whether a firm is a SIPC member, go to *www.sipc.org*, call the SIPC Membership Department at (202) 371–8300, or write to SIPC Membership Department, Securities Investor Protection Corporation, 805 Fifteenth Street, NW, Suite 800, Washington, DC 20005–2215.

SIPC coverage is limited to $500,000 per customer, including up to $100,000 for cash. For example, if a customer has 1,000 shares of XYZ stock valued at $200,000 and $10,000 cash in the account, both the security and the cash balance would be protected. However, if the customer has shares of stock valued at $500,000 and $100,000 in cash, only a total of $500,000 of those assets will be protected.

For purposes of SIPC coverage, customers are persons who have securities or cash on deposit with a SIPC member for the purpose of, or as a result of, securities transactions. SIPC does not protect customer funds placed with a broker/dealer just to earn interest. Insiders of the broker/dealer, such as its owners, officers, and partners, are not customers for purposes of SIPC coverage.

6.2. Protections for Futures Accounts

If your security futures positions are carried in a futures account, they must be segregated from the brokerage firm's own funds and cannot be borrowed or otherwise used for the firm's own purposes. If the funds are deposited with another entity (*e.g.*, a bank, clearing broker, or clearing organization), that entity must acknowledge that the funds belong to customers and cannot be used to satisfy

the firm's debts. Moreover, although a brokerage firm may carry funds belonging to different customers in the same bank or clearing account, it may not use the funds of one customer to margin or guarantee the transactions of another customer. As a result, the brokerage firm must add its own funds to its customers' segregated funds to cover customer debits and deficits. Brokerage firms must calculate their segregation requirements daily.

You may not be able to recover the full amount of any funds in your account if the brokerage firm becomes insolvent and has insufficient funds to cover its obligations to all of its customers. However, customers with funds in segregation receive priority in bankruptcy proceedings. Furthermore, all customers whose funds are required to be segregated have the same priority in bankrutpcy, and there is no ceiling on the amount of funds that must be segregated for or can be recovered by a particular customer.

Your brokerage firm is also required to separately maintain funds invested in security futures contracts traded on a foreign exchange. However, these funds may not receive the same protections once they are transferred to a foreign entity (*e.g.*, a foreign broker, exchange or clearing organization) to satisfy margin requirements for those products. You should ask your broker about the bankruptcy protections available in the country where the foreign exchange (or other entity holding the funds) is located.

Section 7—Special Risks for Day Traders

Certain traders who pursue a day trading strategy may seek to use security futures contracts as part of their trading activity. Whether day trading in security futures contracts or other securities, investors engaging in a day trading strategy face a number of risks.

- *Day trading in security futures contracts requires in-depth knowledge of the securities and futures markets and of trading techniques and strategies.* In attempting to profit through day trading, you will compete with professional traders who are knowledgeable and sophisticated in these markets. You should have appropriate experience before engaging in day trading.
- *Day trading in security futures contracts can result in substantial commission charges, even if the per trade cost is low.* The more trades you make, the higher your total commissions will be. The total commissions you pay will add to your losses and reduce your profits. For instance, assuming that a round-turn trade costs $16 and you execute an average of 29 round-turn transactions per day each trading day, you would need to generate an annual profit of $111,360 just to cover your commission expenses.
- *Day trading can be extremely risky.* Day trading generally is not appropriate for someone of limited resources and limited investment or trading experience and low risk tolerance. You should be prepared to lose all of the funds that you use for day trading. In particular, you should not fund day trading activities with funds that you cannot afford to lose.

Section 8—Other

8.1. Corporate Events

As noted in Section 2.4, an equity security represents a fractional ownership interest in the issuer of that security. By contrast, the purchaser of a security futures contract has only a contract for future delivery of the underlying security. Treatment of dividends and other corporate events affecting the underlying security may be reflected in the security futures contract depending on the applicable clearing organization rules. Consequently, individuals should consider how dividends and other developments affecting security futures in which they transact will be handled by the relevant exchange and clearing organization. The specific adjustments to the terms of a security futures contract are governed by the rules of the applicable clearing organization. Below is a discussion of some of the more common types of adjustments that you may need to consider.

Corporate issuers occasionally announce stock splits. As a result of these splits, owners of the issuer's common stock may own more shares of the stock, or fewer shares in the case of a reverse stock split. The treatment of stock splits for persons owning a security futures contract may vary according to the terms of the security futures contract and the rules of the clearing organization. For example, the terms of the contract may provide for an adjustment in the number of contracts held by each party with a long or short position in a security future, or for an adjustment in the number of shares or units of the instrument underlying each contract, or both.

Corporate issuers also occasionally issue special dividends. A special dividend is an announced cash dividend payment outside the normal and customary practice of a corporation. The terms of a security futures contract may be adjusted for special dividends. The adjustments, if any, will be based upon the rules of the exchange and clearing organization. In general, there will be no adjustments for ordinary dividends as they are recognized as a normal and customary practice of an issuer and are already accounted for in the pricing of security futures.

Corporate issuers occasionally may be involved in mergers and acquisitions. Such events may cause the underlying security of a security futures contact to change over the contract duration. The terms of security futures contracts may also be adjusted to reflect other corporate events affecting the underlying security.

8.2. Position Limits and Large Trader Reporting

All security futures contracts trading on regulated exchanges in the United States are subject to position limits or position accountability limits. Position limits restrict the number of security futures contracts that any one person or group of related persons may hold or control in a particular security futures contract. In contrast, position accountability limits permit the accumulation of positions in excess of the limit without a prior exemption. In general, position limits and position accountability limits are beyond the thresholds of most retail investors. Whether a security futures contract is subject to position limits, and the level for such limits, depends upon the trading activity and market capitalization of the underlying security of the security futures contract.

Position limits apply are required for security futures contracts that overlie a security that has an average daily trading volume of 20 million shares or fewer. In the case of a security futures contract overlying a security index, position limits are required if any one of the securities in the index has an average daily trading volume of 20 million shares or fewer. Position limits also apply only to an expiring security futures contract during its last five trading days. A regulated exchange must establish position limits on security futures that are no greater than 13,500 (100 share) contracts, unless the underlying security meets certain volume and shares outstanding thresholds, in which case the limit may be increased to 22,500 (100 share) contracts.

For security futures contracts overlying a security or securities with an average trading volume of more than 20 million shares, regulated exchanges may adopt position accountability rules. Under position accountability rules, a trader holding a position in a security

futures contract that exceeds 22,500 contracts (or such lower limit established by an exchange) must agree to provide information regarding the position and consent to halt increasing that position if requested by the exchange.

Brokerage firms must also report large open positions held by one person (or by several persons acting together) to the CFTC as well as to the exchange on which the positions are held. The CFTC's reporting requirements are 1,000 contracts for security futures positions on individual equity securities and 200 contracts for positions on a narrow-based index. However, individual exchanges may require the reporting of large open positions at levels less than the levels required by the CFTC. In addition, brokerage firms must submit identifying information on the account holding the reportable position (on a form referred to as either an "Identification of Special Accounts Form" or a "Form 102") to the CFTC and to the exchange on which the reportable position exists within three business days of when a reportable position is first established.

8.3. Transactions on Foreign Exchanges

U.S. customers may not trade security futures on foreign exchanges until authorized by U.S. regulatory authorities. U.S. regulatory authorities do not regulate the activities of foreign exchanges and may not, on their own, compel enforcement of the rules of a foreign exchange or the laws of a foreign country. While U.S. law governs transactions in security futures contracts that are effected in the U.S., regardless of the exchange on which the contracts are listed, the laws and rules governing transactions on foreign exchanges vary depending on the country in which the exchange is located.

8.4. Tax Consequences

For most taxpayers, security futures contracts are not treated like other futures contracts. Instead, the tax consequences of a security futures transaction depend on the status of the taxpayer and the type of position (*e.g.*, long or short, covered or uncovered). Because of the importance of tax considerations to transactions in security futures, readers should consult their tax advisors as to the tax consequences of these transactions.

Section 9—Glossary of Terms

This glossary is intended to assist customers in understanding specialized terms used in the futures and securities industries. It is not inclusive and is not intended to state or suggest the legal significance or meaning of any word or term.

Arbitrage—taking an economically opposite position in a security futures contract on another exchange, in an options contract, or in the underlying security.

Broad-based security index—a security index that does not fall within the statutory definition of a narrow-based security index (see Narrow-based security index). A future on a broad-based security index is not a security future. This risk disclosure statement applies solely to security futures and generally does not pertain to futures on a broad-based security index. Futures on a broad-based security index are under exclusive jurisdiction of the CFTC.

Cash settlement—a method of settling certain futures contracts by having the buyer (or long) pay the seller (or short) the cash value of the contract according to a procedure set by the exchange.

Clearing broker—a member of the clearing organization for the contract being traded. All trades, and the daily profits or losses from those trades, must go through a clearing broker.

Clearing organization—a regulated entity that is responsible for settling trades, collecting losses and distributing profits, and handling deliveries.

Contract—(1) the unit of trading for a particular futures contract (*e.g.*, one contract may be 100 shares of the underlying security), (2) the type of future being traded (*e.g.*, futures on ABC stock).

Contract month—the last month in which delivery is made against the futures contract or the contract is cash-settled. Sometimes referred to as the delivery month.

Day trading strategy—an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.

EDGAR—the SEC's Electronic Data Gathering, Analysis, and Retrieval system maintains electronic copies of corporate information filed with the agency. EDGAR submissions may be accessed through the SEC's Web site, *www.sec.gov*.

Futures contract—a futures contract is (1) an agreement to purchase or sell a commodity for delivery in the future; (2) at a price determined at initiation of the contract; (3) that obligates each party to the contract to fulfill it at the specified price; (4) that is used to assume or shift risk; and (5) that may be satisfied by delivery or offset.

Hedging—the purchase or sale of a security future to reduce or offset the risk of a position in the underlying security or group of securities (or a close economic equivalent).

Illiquid market—a market (or contract) with few buyers and/or sellers. Illiquid markets have little trading activity and those trades that do occur may be done at large price increments.

Liquidation—entering into an offsetting transaction. Selling a contract that was previously purchased liquidates a futures position in exactly the same way that selling 100 shares of a particular stock liquidates an earlier purchase of the same stock. Similarly, a futures contract that was initially sold can be liquidated by an offsetting purchase.

Liquid market—a market (or contract) with numerous buyers and sellers trading at small price increments.

Long—(1) the buying side of an open futures contact, (2) a person who has bought futures contracts that are still open.

Margin—the amount of money that must be deposited by both buyers and sellers to ensure performance of the person's obligations under a futures contract. Margin on security futures contracts is a performance bond rather than a down payment for the underlying securities.

Mark-to-market—to debit or credit accounts daily to reflect that day's profits and losses.

Narrow-based security index—in general, and subject to certain exclusions, an index that has any one of the following four characteristics: (1) It has nine or fewer component securities; (2) any one of its component securities comprises more than 30% of its weighting; (3) the five highest weighted component securities together comprise more than 60% of its weighting; or (4) the lowest weighted component securities comprising, in the aggregate, 25% of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50 million (or in the case of an index with 15 or more component securities, $30 million). A security index that is not narrow-based is a "broad based security index." (See Broad-based security index).

Nominal value—the face value of the futures contract, obtained by multiplying the contract price by the number of shares or units per contract. If XYZ stock index futures are trading at $50.25 and the contract is for 100 shares of XYZ stock, the nominal value of the futures contract would be $5025.00.

Offsetting—liquidating open positions by either selling fungible contracts in the same contract month as an open long position or buying fungible

contracts in the same contract month as an open short position.

Open interest—the total number of open long (or short) contracts in a particular contract month.

Open position—a futures contract position that has neither been offset nor closed by cash settlement or physical delivery.

Performance bond—another way to describe margin payments for futures contracts, which are good faith deposits to ensure performance of a person's obligations under a futures contract rather than down payments for the underlying securities.

Physical delivery—the tender and receipt of the actual security underlying the security futures contract in exchange for payment of the final settlement price.

Position—a person's net long or short open contracts.

Regulated exchange—a registered national securities exchange, a national securities association registered under section 15A(a) of the Securities Exchange Act of 1934, a designated contract market, a registered derivatives transaction execution facility, or an alternative trading system registered as a broker or dealer.

Security futures contract—a legally binding agreement between two parties to purchase or sell in the future a specific quantity of shares of a security (such as common stock, an exchange-traded fund, or ADR) or a narrow-based security index, at a specified price.

Settlement price—(1) the daily price that the clearing organization uses to mark open positions to market for determining profit and loss and margin calls, (2) the price at which open cash settlement contracts are settled on the last trading day and open physical delivery contracts are invoiced for delivery.

Short—(1) the selling side of an open futures contract, (2) a person who has sold futures contracts that are still open.

Speculating—buying and selling futures contracts with the hope of profiting from anticipated price movements.

Spread—(1) holding a long position in one futures contract and a short position in a related futures contract or contract month in order to profit from an anticipated change in the price relationship between the two, (2) the price difference between two contracts or contract months.

Stop limit order—an order that becomes a limit order when the market trades at a specified price. The order can only be filled at the stop limit price or better.

Stop loss order—an order that becomes a market order when the market trades at a specified price. The order will be filled at whatever price the market is trading at. Also called a stop order.

Tick—the smallest price change allowed in a particular contract.

Trader—a professional speculator who trades for his or her own account.

Underlying security—the instrument on which the security futures contract is based. This instrument can be an individual equity security (including common stock and certain exchange-traded funds and American Depositary Receipts) or a narrow-based index.

Volume—the number of contracts bought or sold during a specified period of time. This figure includes liquidating transactions.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD has developed sales practice rules governing security futures.[3] Several of these rules—NASD Rule 2856 and IM–2110–7—reference a security futures risk disclosure statement ("Statement"). The proposed rule change contains the text of the Statement to be used by members in complying with these rules, and any other NASD rules that may subsequently reference the Statement. The Statement is a joint effort of NASD, the National Futures Association ("NFA"), the New York Stock Exchange, the Chicago Board Options Exchange, The Options Clearing Corporation, Nasdaq Liffe Markets, OneChicago, and the American Stock Exchange. Comments on this Statement also have been provided by the staffs of the Commission and Commodity Futures Trading Commission ("CFTC").

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] which requires, among other things that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change, which will be provided to customers, will help inform customers of the potential risks of security futures.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

In addition, the Commission notes that the proposed rule change has previously been noticed pursuant to section 19(b)(3)(B) of the Act.[5]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–NASD–2002–129 and should be submitted by November 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26368 Filed 10–16–02; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 46186 (July 11, 2002), 67 FR 47412 (July 18, 2002) (SR–NASD–2002–40).

[4] 15 U.S.C. 78o–3(b)(6).

[5] 15 U.S.C. 78s(b)(3)(B). *See* Securities Exchange Act Release No. 46612 (October 7, 2002).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46649; File No. SR–NASD–2002–140]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Relating to Shareholder Approval for Stock Option Plans or Other Arrangements

October 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 9, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On October 10, 2002, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 4350(i) ("NASD Rule 4350(i)" or "Rule") to strengthen listing standards relating to shareholder approval for stock option plans or other arrangements, adopt interpretative material pertaining to shareholder approval for stock option plans or other arrangements, and to make related conforming changes to NASD Rules 4310(c)(17)(A) and 4320(15)(A).

The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

Rule 4310. Qualification Requirements for Domestic and Canadian Securities

(a)–(b) No change.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(16) No change.

(17) The issuer shall be required to notify Nasdaq on the appropriate form no later than 15 calendar days prior to:

(A) establishing *or materially amending* a stock option plan, purchase plan or other arrangement pursuant to which stock may be acquired by officers, [or] directors, *employees, or consultants* without shareholder approval; or

(B)–(D) No change.

(18)–(29) No change.

(d) No change.

* * * * *

Rule 4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

(a)–(d) No change.

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(14) No change.

(15) The issuer shall be required to notify Nasdaq on the appropriate form no later than 15 calendar days prior to:

(A) establishing *or materially amending* a stock option plan, purchase plan or other arrangement pursuant to which stock may be acquired by officers, [or] directors, *employees, or consultants* without shareholder approval; or

(B)–(D) No change.

(16)–(25) No change.

(f) No change.

* * * * *

Rule 4350. Quantitative Listing Requirements for Nasdaq National Market and Nasdaq SmallCap Market Issuers Except for Limited Partnerships

(a)–(h) No change.

(i) Shareholder Approval.

(1) Each issuer shall require shareholder approval [of a plan or arrangement under subparagraph (A) below, or] prior to the issuance of designated securities under subparagraph *(A)*, (B), (C), or (D) below:

(A) when a stock option or purchase plan is to be established *or materially amended* or other arrangement made pursuant to which options or stock may be acquired by officers, [or] directors, *employees, or consultants*, except for:

(i) warrants or rights issued generally to *all* security holders of the company; or

(ii) [broadly based plans or arrangements including other employees (*e.g.* ESOPs).] *tax qualified, non-discriminatory employee benefit plans (e.g., plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or parallel nonqualified plans, provided such plans are approved by the issuer's compensation committee or a majority of the issuer's independent directors; or*

(iii) plans relating to an acquisition or merger as permitted under IM–4350–5; or

(iv) [In a case where the shares are] issuances[ed] to a person not previously *an* employee [d by] *or director* of the company, as an inducement [essential] *material* to the individual's entering into [an] employment [contract] with the company, *provided such issuances are approved by the issuer's compensation committee or a majority of the issuer's independent directors.* [shareholder approval will generally not be required. The establishment of a plan or arrangement under which the amount of securities that may be issued does not exceed the lesser of 1% of the number of shares of common stock, 1% of the voting power outstanding, or 25,000 shares will not generally require shareholder approval.]

(B)–(D) No change.

(2)–(6) No change.

(j)–(l) No change.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 10, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq did the following: (1) made technical corrections to its proposed rule language; (2) clarified the exceptions to shareholder approval for tax qualified, non-discriminatory employee benefit plans, parallel nonqualified plans, and plans relating to an acquisition or merger; and (3) clarified in the purpose section of its filing that it was proposing to make conforming changes to NASD Rules 4310(c)(17)(A) and 4320(15)(A).

IM–4350–5. Shareholder Approval for Stock Option Plans or Other Arrangements

Employee ownership of company stock can be an effective tool to align employee interests with those of other shareholders. Stock option plans can also assist in the recruitment and retention of employees, which is especially critical to young, growing companies, or companies with insufficient cash resources to attract and retain highly qualified employees. However, these plans can potentially dilute shareholder interests. As such, Rule 4350(i)(1)(A) ensures that shareholders have a voice in the use of stock option plans, given this potential for dilution.

Rule 4350(i)(1)(A) provides an exception to the requirement for shareholder approval for warrants or rights offered generally to all shareholders. In addition, an exception is provided for tax qualified, non-discriminatory employee benefit plans as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. Along with tax qualified, non-discriminatory employee benefit plans, the Rule also provides an exception for parallel nonqualified plans.[1]

Further, there is an exception for inducement grants to new employees because in these cases a company has an arm's length relationship with the new employees, and its interests are directly aligned with the shareholders. Inducement grants for these purposes include grants of options or stock to new employees in connection with a merger or acquisition.

In addition, plans involving a merger or acquisition do not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that were previously approved by shareholders. These shares may be used for post-transaction grants of options and other equity awards by the listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or another plan, without further shareholder approval, so long as (1) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company at the time the merger or acquisition was consummated. Nasdaq would view a plan adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate potential dilution of the combined enterprise.[2]

Inducement grants, tax qualified non-discriminatory benefit plans, and parallel nonqualified plans are subject to approval by either the issuer's compensation committee, or a majority of the issuer's independent directors. It should also be noted that a company would not be permitted to use repurchased shares to fund option plans or grants without prior shareholder approval.

Footnotes to IM–4350–5

[1] *The term "parallel nonqualified plan" means a plan that is a "pension plan" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may thereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless (1) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may hereafter be enacted) and (2) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence.*

[2] *Note that any such shares reserved for listing in connection with the transaction would be counted by Nasdaq in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock and thus required shareholder approval under Rule 4350(i)(1)(D).*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 4350(i)(1)(A) generally requires shareholder approval for all stock option plans or other arrangements in which officers or directors participate. However, the Rule contains an exception for broadly based plans, that is, plans in which at least a majority of the eligible participants are not officers or directors and at least a majority of the grants go to employees other than officers and directors. Consistent with recent remarks by President Bush and SEC Chairman Pitt, and in order to enhance investor confidence, Nasdaq now proposes to delete the exception for broadly based plans and expand the Rule to generally require that all plans will be subject to shareholder approval.

Nasdaq also proposes to eliminate the *de minimis* exception to the Rule, which allows for the grant of the lesser of 1% of the number of shares of common stock or 25,000 shares, without shareholder approval. Nasdaq believes that this exception is not in accord with the concept of restricting the use of unapproved options.

The remaining exception for warrants or rights offered generally to all shareholders would be retained. In addition, shareholder approval would not be required for tax qualified, non-discriminatory benefit plans as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. Along with tax qualified, non-discriminatory employee benefit plans, the Rule also proposes an exception for parallel nonqualified plans. The Nasdaq represents that the proposed amendments to the Rule would have no effect on any shareholder approval or other requirements under the Internal Revenue Code or other applicable laws or requirements for such plans.

Further, the exception for inducement grants to new employees would be retained because in these cases a company has an arm's length relationship with the new employees, and its interests are directly aligned with the shareholders. Inducement grants for these purposes would include grants of options or stock to new employees in connection with a merger or acquisition.

In addition, the proposed amendments to the Rule would make clear that plans involving a merger or acquisition would not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that were previously approved by shareholders. These shares may be used for post-transaction grants of options and other equity awards by the listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or another plan, without further shareholder approval, so long as (1) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company at the time the merger or acquisition was consummated. Nasdaq would view a plan adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. Nasdaq believes that this exception is appropriate because it believes that it will not result in any increase in the aggregate potential dilution of the combined enterprise.

Under the proposed amendments to the Rule, inducement grants, tax qualified, non-discriminatory benefit plans, and parallel nonqualified plans are subject to approval by either the issuer's compensation committee, or a majority of the issuer's independent directors. It should also be noted that a company would not be permitted to use repurchased shares to fund options without prior shareholder approval.

The proposed amendments to the Rule also clarify that material amendments to plans will require shareholder approval. Nasdaq will continue to provide guidance as to what constitutes a material amendment to a plan. Nasdaq currently determines the existence of a material amendment to a plan consistent with the Commission's position under former Rule 16b–3 of the Act. In particular, Nasdaq looks to whether there is a material change to: (1) The benefits available to potential recipients under the plan; (2) the number of shares available under the plan; or (3) the class of eligible participants under the plan. Nasdaq is considering whether these factors can be refined, and may provide further guidance following this consideration.

With respect to implementation of the proposed amendments to the Rule, Nasdaq proposes that the amended Rule become effective upon SEC approval, and that existing plans be grandfathered. Nasdaq represents that any material modification to plans in place or adopted after the effective date of the Rule would require shareholder approval.

Lastly, Nasdaq proposes to make conforming changes to NASD Rules 4310(c)(17)(A) and 4320(e)(15)(A). These proposed changes will require issuers to notify Nasdaq on the appropriate form no later than 15 calendar days prior to establishing or materially amending a stock option plan, purchase plan or other arrangement pursuant to which stock may be acquired by officers, directors, employees, or consultants without shareholder approval.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[4] in general and with Section 15A(b)(6) of the Act,[5] in particular, in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and a national market system, and in general, to protect investors and the public interest. As previously noted, Nasdaq believes that the proposed rule change will strengthen shareholder approval requirements with respect to stock option plans.

[4] 15 U.S.C. 78o–3.

[5] 15 U.S.C. 78o–3(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, in consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–140 and should be submitted by November 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26457 Filed 10–16–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46613; File No. SR–NFA–2002–05]

Self-Regulatory Organizations; Notice of Filing and Effectiveness of Proposed Rule Change by the National Futures Association Concerning Risk Disclosure for Security Futures Contracts

October 7, 2002.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on September 27, 2002, the National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes described in Items I, II, and III below, which Items have been prepared by the NFA. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"). On September 25, 2002, NFA submitted the proposed rule changes to the CFTC for approval and invoked the "ten-day" provision of Section 17(j) of the Commodity Exchange Act ("CEA").[3]

I. Self-Regulatory Organization's Description of the Proposed Rule Change

Section 15A(k) of the Act[4] makes NFA a national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Act.[5] The interpretive notice regarding the risk disclosure statement for security futures contracts will apply to these Members.

The proposed interpretive notice identifies the risk disclosure statement that Members and Associates who are not members of NASD are required to provide to a customer at or before the time the member approves the account to trade security futures products. The text of that notice and the risk disclosure statement follow.

NFA Compliance Rule 2–30(b): Risk Disclosure Statement for Security Futures Contracts; Interpretive Notice

NFA Compliance Rule 2–30(b) requires Members and Associates who are not members of NASD to provide a disclosure statement for security futures products to a customer at or before the time the Member approves the account to trade security futures products. NFA Compliance Rule 2–30(j)(1) requires these Members and Associates to make a record of when the disclosure statement was provided, and Compliance Rule 2–29(j)(12) prohibits Members who are registered as brokers and dealers in security futures products under Section 15(b)(11) of the Securities Exchange Act from including anything other than basic information in promotional material unless the promotional material is preceded or accompanied by the disclosure statement.[6] The disclosure statement for security futures products referred to in these Rules is a uniform statement that has been jointly developed by NFA, NASD, and a number of securities and futures exchanges.

The uniform disclosure statement, which is titled "Risk Disclosure Statement for Security Futures Contracts," can be downloaded from NFA's website at www.nfa.futures.org. Copies are also available by calling NFA's Information Center at 800–621–3570.[7]

Members must be able to demonstrate to NFA, during an audit, that they provided the disclosure statement as required. Members are not, however, required to obtain a written acknowledgment from the customer regarding the disclosure statement.

* * * * *

Risk Disclosure Statement for Security Futures Contracts

This disclosure statement discusses the characteristics and risks of standardized security futures contracts traded on regulated U.S. exchanges. At present, regulated exchanges are authorized to list futures contracts on individual equity securities registered under the Securities Exchange Act of 1934 (including common stock and certain exchange-traded funds and American Depositary Receipts), as well as narrow-based security indices. Futures on other types of securities and options on security futures contracts may be authorized in the future. The glossary of terms appears at the end of the document.

Customers should be aware that the examples in this document are exclusive of fees and commissions that may decrease their net gains or increase their net losses. The examples also do not include tax consequences, which may differ for each customer.

Section 1—Risks of Security Futures

1.1. Risks of Security Futures Transactions

Trading security futures contracts may not be suitable for all investors. You may lose a substantial amount of money in a very short period of time. The amount you may lose is potentially unlimited and can exceed the amount you originally deposit with your broker. This is because futures trading is highly leveraged, with a relatively small amount of money used to establish a position in assets having a much greater value. If you are uncomfortable with this level of risk, you should not trade security futures contracts.

1.2. General Risks

• *Trading security futures contracts involves risk and may result in potentially unlimited losses that are greater than the amount you deposited with your broker.* As with any high risk financial product, you should not risk any funds that you cannot afford to lose, such as your retirement savings, medical and other emergency funds, funds set aside for purposes such as education or home ownership, proceeds from student loans or mortgages, or funds required to meet your living expenses.

• *Be cautious of claims that you can make large profits from trading security futures contracts.* Although the high degree of leverage in security futures contracts can result in large and immediate gains, it can also result in large and immediate losses. As with any financial product, there is no such thing as a "sure winner."

• *Because of the leverage involved and the nature of security futures contract transactions, you may feel the effects of your losses immediately.* Gains and losses in security futures contracts are credited or debited to your account, at a minimum, on a daily basis. If movements in the markets for security futures contracts or the underlying security decrease the value of your positions in security futures contracts, you may be required to have or make additional funds available to your carrying firm as margin. If your account is under the minimum margin requirements set by the exchange or the brokerage firm, your position may be liquidated at a loss, and you will be liable for the deficit, if any, in your account. Margin requirements are addressed in Section 4.

• *Under certain market conditions, it may be difficult or impossible to liquidate a position.* Generally, you must enter into an offsetting transaction in order to liquidate a position in a security futures contract. If you cannot liquidate your position in security futures contracts, you may not be able to realize a gain in the value of your position or prevent losses from mounting. This inability to liquidate could occur, for example, if trading is halted due to unusual trading activity in either the security futures contract or the underlying security; if trading is halted due to recent news events involving the issuer of the underlying security; if systems failures occur on an exchange or at the firm carrying your position; or if the position is on an illiquid market. Even if you can liquidate your position, you may be forced to do so at a price that involves a large loss.

• *Under certain market conditions, it may also be difficult or impossible to manage your risk from open security futures positions by entering into an equivalent but opposite position in another contract month, on another market, or in the underlying security.* This inability to take positions to limit your risk could occur, for example, if trading is halted across markets due to unusual trading activity in the security futures contract or the underlying security or due to recent news events involving the issuer of the underlying security.

• *Under certain market conditions, the prices of security futures contracts may not maintain their customary or anticipated relationships to the prices of the underlying security or index.* These pricing disparities could occur, for example, when the market for the security futures contract is illiquid, when the primary market for the underlying security is closed, or when the reporting of transactions in the underlying security has been delayed. For index products, it could also occur when trading is delayed or halted in some or all of the securities that make up the index.

• *You may be required to settle certain security futures contracts with physical delivery of the underlying security.* If you hold your position in a physically settled security futures contract until the end of the last trading day prior to expiration, you will be obligated to make or take delivery of the underlying securities, which could involve additional costs. The actual settlement terms may vary from contract to contract and exchange to exchange. You should carefully review the settlement and delivery conditions before entering into a security futures contract. Settlement and delivery are discussed in Section 5.

• *You may experience losses due to systems failures.* As with any financial transaction, you may experience losses if your orders for security futures contracts cannot be executed normally due to systems failures on a regulated exchange or at the brokerage firm carrying your position. Your losses may be greater if the brokerage firm carrying your position does not have adequate back-up systems or procedures.

• *All security futures contracts involve risk, and there is no trading strategy that can eliminate it.* Strategies using combinations of positions, such as spreads, may be as risky as outright long or short positions. Trading in security futures contracts requires knowledge of both the securities and the futures markets.

• *Day trading strategies involving security futures contracts and other products pose special risks.* As with any financial product, persons who seek to purchase and sell the same security future in the course of a day to profit from intra-day price movements ("day traders") face a number of special risks, including substantial commissions, exposure to leverage, and competition with professional traders. You should thoroughly understand these risks and have appropriate experience before engaging in day trading. The special risks for day traders are discussed more fully in Section 7.

• *Placing contingent orders, if permitted, such as "stop-loss" or "stop-limit" orders, will not necessarily limit your losses to the intended amount.* Some regulated exchanges may permit you to enter into stop-loss or stop-limit orders for security futures contracts, which are intended to limit your exposure to losses due to market fluctuations. However, market conditions may make it impossible to execute the order or to get the stop price.

• *You should thoroughly read and understand the customer account agreement with your brokerage firm before entering into any transactions in security futures contracts.*

• *You should thoroughly understand the regulatory protections available to your funds and positions in the event of the failure of your brokerage firm.* The regulatory protections available to your funds and positions in the event of the failure of your brokerage firm may vary depending on, among other factors, the contract you are trading and whether you are trading through a securities account or a futures account. Firms that allow customers to trade security futures in either securities accounts or futures accounts, or both, are required to disclose to customers the differences in regulatory protections between such accounts, and, where appropriate, how customers may elect to trade in either type of account.

Section 2—Description of a Security Futures Contract

2.1. What Is a Security Futures Contract?

A security futures contract is a legally binding agreement between two parties to purchase or sell in the future a specific quantity of shares of a security or of the component securities of a narrow-based security index, at a certain price. A person who buys a security futures contract enters into a contract to purchase an underlying security and is said to be "long" the contract. A person who sells a security futures contract enters into a contract to sell the underlying security and is said to be "short" the contract. The price at which the contract trades (the "contract price") is determined by relative buying and selling interest on a regulated exchange.

In order to enter into a security futures contract, you must deposit funds with your brokerage firm equal to a specified percentage (usually at least 20 percent) of the current market value of the contract as a performance bond. Moreover, all security futures contracts are marked-to-market at least daily, usually after the close of trading, as described in Section 3 of this document. At that time, the account of each buyer and seller reflects the amount of any gain or loss on the security futures contract based on the contract price established at the end of the day for settlement purposes (the "daily settlement price").

An open position, either a long or short position, is closed or liquidated by entering into an offsetting transaction (*i.e.*, an equal and opposite transaction to the one that opened the position) prior to the contract expiration. Traditionally, most futures contracts are liquidated prior to expiration through an offsetting transaction and, thus, holders do not incur a settlement obligation.

Examples:

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 21j.

[4] 15 U.S.C. 78o–3(k).

[5] 15 U.S.C. 78o(b)(11).

[6] NASD members are subject to equivalent NASD requirements.

[7] There is a small charge for bulk orders.

- Investor A is long one September XYZ Corp. futures contract. To liquidate the long position in the September XYZ Corp. futures contract, Investor A would sell an identical September XYZ Corp. contract.
- Investor B is short one December XYZ Corp. futures contract. To liquidate the short position in the December XYZ Corp. futures contract, Investor B would buy an identical December XYZ Corp. contract.

Security futures contracts that are not liquidated prior to expiration must be settled in accordance with the terms of the contract. Some security futures contracts are settled by physical delivery of the underlying security. At the expiration of a security futures contract that is settled through physical delivery, a person who is long the contract must pay the final settlement price set by the regulated exchange or the clearing organization and take delivery of the underlying shares. Conversely, a person who is short the contract must make delivery of the underlying shares in exchange for the final settlement price.

Other security futures contracts are settled through cash settlement. In this case, the underlying security is not delivered. Instead, any positions in such security futures contracts that are open at the end of the last trading day are settled through a final cash payment based on a final settlement price determined by the exchange or clearing organization. Once this payment is made, neither party has any further obligations on the contract.

Physical delivery and cash settlement are discussed more fully in Section 5.

2.2. Purposes of Security Futures

Security futures contracts can be used for speculation, hedging, and risk management. Security futures contracts do not provide capital growth or income.

Speculation

Speculators are individuals or firms who seek to profit from anticipated increases or decreases in futures prices. A speculator who expects the price of the underlying instrument to increase will buy the security futures contract. A speculator who expects the price of the underlying instrument to decrease will sell the security futures contract. Speculation involves substantial risk and can lead to large losses as well as profits.

The most common trading strategies involving security futures contracts are buying with the hope of profiting from an anticipated price increase and selling with the hope of profiting from an anticipated price decrease. For example, a person who expects the price of XYZ stock to increase by March can buy a March XYZ security futures contract, and a person who expects the price of XYZ stock to decrease by March can sell a March XYZ security futures contract.

The following illustrates potential profits and losses if Customer A purchases the security futures contract at $50 a share and Customer B sells the same contract at $50 a share (assuming 100 shares per contract).

Price of XYZ at liquidation	Customer A profit/loss	Customer B profit/loss
$55	$500	−$500
$50	0	0
$45	−500	500

Speculators may also enter into spreads with the hope of profiting from an expected change in price relationships. Spreaders may purchase a contract expiring in one contract month and sell another contract on the same underlying security expiring in a different month (*e.g.*, buy June and sell September XYZ single stock futures). This is commonly referred to as a "calendar spread."

Spreaders may also purchase and sell the same contract month in two different but economically correlated security futures contracts. For example, if ABC and XYZ are both pharmaceutical companies and an individual believes that ABC will have stronger growth than XYZ between now and June, he could buy June ABC futures contracts and sell June XYZ futures contracts. Assuming that each contract is 100 shares, the following illustrates how this works.

Opening position	Price at liquidation	Gain or loss	Price at liquidation	Gain or loss
Buy ABC at 50	$53	$300	$53	$300
Sell XYZ at 45	46	−100	50	−500
Net Gain or Loss		200		−200

Speculators can also engage in arbitrage, which is similar to a spread except that the long and short positions occur on two different markets. An arbitrage position can be established by taking an economically opposite position in a security futures contract on another exchange, in an options contract, or in the underlying security.

Hedging

Generally speaking, hedging involves the purchase or sale of a security future to reduce or offset the risk of a position in the underlying security or group of securities (or a close economic equivalent). A hedger gives up the potential to profit from a favorable price change in the position being hedged in order to minimize the risk of loss from an adverse price change.

An investor who wants to lock in a price now for an anticipated sale of the underlying security at a later date can do so by hedging with security futures. For example, assume an investor owns 1,000 shares of ABC that have appreciated since he bought them. The investor would like to sell them at the current price of $50 per share, but there are tax or other reasons for holding them until September. The investor could sell ten 100-share ABC futures contracts and then buy back those contracts in September when he sells the stock. Assuming the stock price and the futures price change by the same amount, the gain or loss in the stock will be offset by the loss or gain in the futures contracts.

Price in September	Value of 1,000 shares of ABC	Gain or Loss on futures	Effective selling price
$40	$40,000	$10,000	$50,000
$50	50,000	0	50,000

Price in September	Value of 1,000 shares of ABC	Gain or Loss on futures	Effective selling price
$60	60,000	−10,000	50,000

Hedging can also be used to lock in a price now for an anticipated purchase of the stock at a later date. For example, assume that in May a mutual fund expects to buy stocks in a particular industry with the proceeds of bonds that will mature in August. The mutual fund can hedge its risk that the stocks will increase in value between May and August by purchasing security futures contracts on a narrow-based index of stocks from that industry. When the mutual fund buys the stocks in August, it also will liquidate the security futures position in the index. If the relationship between the security futures contract and the stocks in the index is constant, the profit or loss from the futures contract will offset the price change in the stocks, and the mutual fund will have locked in the price that the stocks were selling at in May.

Although hedging mitigates risk, it does not eliminate all risk. For example, the relationship between the price of the security futures contract and the price of the underlying security traditionally tends to remain constant over time, but it can and does vary somewhat. Furthermore, the expiration or liquidation of the security futures contract may not coincide with the exact time the hedger buys or sells the underlying stock. Therefore, hedging may not be a perfect protection against price risk.

Risk Management

Some institutions also use futures contracts to manage portfolio risks without necessarily intending to change the composition of their portfolio by buying or selling the underlying securities. The institution does so by taking a security futures position that is opposite to some or all of its position in the underlying securities. This strategy involves more risk than a traditional hedge because it is not meant to be a substitute for an anticipated purchase or sale.

2.3. Where Security Futures Trade

By law, security futures contracts must trade on a regulated U.S. exchange. Each regulated U.S. exchange that trades security futures contracts is subject to joint regulation by the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC).

A person holding a position in a security futures contract who seeks to liquidate the position must do so either on the regulated exchange where the original trade took place or on another regulated exchange, if any, where a fungible security futures contract trades. (A person may also seek to manage the risk in that position by taking an opposite position in a comparable contract traded on another regulated exchange.)

Security futures contracts traded on one regulated exchange might not be fungible with security futures contracts traded on another regulated exchange for a variety of reasons. Security futures traded on different regulated exchanges may be non-fungible because they have different contract terms (*e.g.*, size, settlement method), or because they are cleared through different clearing organizations. Moreover, a regulated exchange might not permit its security futures contracts to be offset or liquidated by an identical contract traded on another regulated exchange, even though they have the same contract terms and are cleared through the same clearing organization. You should consult your broker about the fungibility of the contract you are considering purchasing or selling, including which exchange(s), if any, on which it may be offset.

Regulated exchanges that trade security futures contracts are required by law to establish certain listing standards. Changes in the underlying security of a security futures contract may, in some cases, cause such contract to no longer meet the regulated exchange's listing standards. Each regulated exchange will have rules governing the continued trading of security futures contracts that no longer meet the exchange's listing standards. These rules may, for example, permit only liquidating trades in security futures contracts that no longer satisfy the listing standards.

2.4. How Security Futures Differ From the Underlying Security

Shares of common stock represent a fractional ownership interest in the issuer of that security. Ownership of securities confers various rights that are not present with positions in security futures contracts. For example, persons owning a share of common stock may be entitled to vote in matters affecting corporate governance. They also may be entitled to receive dividends and corporate disclosure, such as annual and quarterly reports.

The purchaser of a security futures contract, by contrast, has only a contract for future delivery of the underlying security. The purchaser of the security futures contract is not entitled to exercise any voting rights over the underlying security and is not entitled to any dividends that may be paid by the issuer. Moreover, the purchaser of a security futures contract does not receive the corporate disclosures that are received by shareholders of the underlying security, although such corporate disclosures must be made publicly available through the SEC's EDGAR system, which can be accessed at *http://www.sec.gov*. You should review such disclosures before entering into a security futures contract. See Section 9 for further discussion of the impact of corporate events on a security futures contract.

All security futures contracts are marked-to-market at least daily, usually after the close of trading, as described in Section 3 of this document. At that time, the account of each buyer and seller is credited with the amount of any gain, or debited by the amount of any loss, on the security futures contract, based on the contract price established at the end of the day for settlement purposes (the "daily settlement price"). By contrast, the purchaser or seller of the underlying instrument does not have the profit and loss from his or her investment credited or debited until the position in that instrument is closed out.

Naturally, as with any financial product, the value of the security futures contract and of the underlying security may fluctuate. However, owning the underlying security does not require an investor to settle his or her profits and losses daily. By contrast, as a result of the mark-to-market requirements discussed above, a person who is long a security futures contract often will be required to deposit additional funds into his or her account as the price of the security futures contract decreases. Similarly, a person who is short a security futures contract often will be required to deposit additional funds into his or her account

as the price of the security futures contract increases.

Another significant difference is that security futures contracts expire on a specific date. Unlike an owner of the underlying security, a person cannot hold a long position in a security futures contract for an extended period of time in the hope that the price will go up. If you do not liquidate your security futures contract, you will be required to settle the contract when it expires, either through physical delivery or cash settlement. For cash-settled contracts in particular, upon expiration, an individual will no longer have an economic interest in the securities underlying the security futures contract.

2.5. Comparison to Options

Although security futures contracts share some characteristics with options on securities (options contracts), these products are also different in a number of ways. Below are some of the important distinctions between equity options contracts and security futures contracts.

If you purchase an options contract, you have the right, but not the obligation, to buy or sell a security prior to the expiration date. If you sell an options contract, you have the obligation to buy or sell a security prior to the expiration date. By contrast, if you have a position in a security futures contract (either long or short), you have both the right and the obligation to buy or sell a security at a future date. The only way that you can avoid the obligation incurred by the security futures contract is to liquidate the position with an offsetting contract.

A person purchasing an options contract runs the risk of losing the purchase price (premium) for the option contract. Because it is a wasting asset, the purchaser of an options contract who neither liquidates the options contract in the secondary market nor exercises it at or prior to expiration will necessarily lose his or her entire investment in the options contract. However, a purchaser of an options contract cannot lose more than the amount of the premium. Conversely, the seller of an options contract receives the premium and assumes the risk that he or she will be required to buy or sell the underlying security on or prior to the expiration date, in which event his or her losses may exceed the amount of the premium received. Although the seller of an options contract is required to deposit margin to reflect the risk of its obligation, he or she may lose many times his or her initial margin deposit.

By contrast, the purchaser and seller of a security futures contract each enter into an agreement to buy or sell a specific quantity of shares in the underlying security. Based upon the movement in prices of the underlying security, a person who holds a position in a security futures contract can gain or lose many times his or her initial margin deposit. In this respect, the benefits of a security futures contract are similar to the benefits of purchasing an option, while the risks of entering into a security futures contract are similar to the risks of selling an option. Both the purchaser and the seller of a security futures contract have daily margin obligations. At least once each day, security futures contracts are marked-to-market and the increase or decrease in the value of the contract is credited or debited to the buyer and the seller. As a result, any person who has an open position in a security futures contract may be called upon to meet additional margin requirements or may receive a credit of available funds.

Example: Assume that Customers A and B each anticipate an increase in the market price of XYZ stock, which is currently $50 a share. Customer A purchases an XYZ 50 call (covering 100 shares of XYZ at a premium of $5 per share). The option premium is $500 ($5 per share × 100 shares). Customer B purchases an XYZ security futures contract (covering 100 shares of XYZ). The total value of the contract is $5000 ($50 share value × 100 shares). The required margin is $1000 (or 20% of the contract value).

Price of XYZ at expiration	Customer A profit/loss	Customer B profit/loss
65	1000	1500
60	500	1000
55	0	500
50	−500	0
45	−500	−500
40	−500	−1000
35	−500	−1500

The most that Customer A can lose is $500, the option premium. Customer A breaks even at $55 per share, and makes money at higher prices. Customer B may lose more than his initial margin deposit. Unlike the options premium, the margin on a futures contract is not a cost but a performance bond. The losses for Customer B are not limited by this performance bond. Rather, the losses or gains are determined by the settlement price of the contract, as provided in the example above. Note that if the price of XYZ falls to $35 per share, Customer A loses only $500, whereas Customer B loses $1500.

2.6. Components of a Security Futures Contract

Each regulated exchange can choose the terms of the security futures contracts it lists, and those terms may differ from exchange to exchange or contract to contract. Some of those contract terms are discussed below. However, you should ask your broker for a copy of the contract specifications before trading a particular contract.

2.6.1. Each security futures contract has a set size. The size of a security futures contract is determined by the regulated exchange on which the contract trades. For example, a security futures contract for a single stock may be based on 100 shares of that stock. If prices are reported per share, the value of the contract would be the price times 100. For narrow-based security indices, the value of the contract is the price of the component securities times the multiplier set by the exchange as part of the contract terms.

2.6.2. Security futures contracts expire at set times determined by the listing exchange. For example, a particular contract may expire on a particular day, *e.g.*, the third Friday of the expiration month. Up until expiration, you may liquidate an open position by offsetting your contract with a fungible opposite contract that expires in the same month. If you do not liquidate an open position before it expires, you will be required to make or take delivery of the underlying security or to settle the contract in cash after expiration.

2.6.3. Although security futures contracts on a particular security or a narrow-based security index may be listed and traded on more than one regulated exchange, the contract specifications may not be the same. Also, prices for contracts on the same security or index may vary on different regulated exchanges because of different contract specifications.

2.6.4. Prices of security futures contracts are usually quoted the same way prices are quoted in the underlying instrument. For example, a contract for an individual security would be quoted in dollars and cents per share. Contracts for indices would be quoted by an index number, usually stated to two decimal places.

2.6.5. Each security futures contract has a minimum price fluctuation (called a tick), which may differ from product to product or exchange to exchange. For example, if a particular security futures contract has a tick size of 1¢, you can buy the contract at $23.21 or $23.22 but not at $23.215.

2.7. Trading Halts

The value of your positions in security futures contracts could be affected if trading is halted in either the security futures contract or the underlying security. In certain circumstances, regulated exchanges are required by law to halt trading in

security futures contracts. For example, trading on a particular security futures contract must be halted if trading is halted on the listed market for the underlying security as a result of pending news, regulatory concerns, or market volatility. Similarly, trading of a security futures contract on a narrow-based security index must be halted under such circumstances if trading is halted on securities accounting for at least 50 percent of the market capitalization of the index. In addition, regulated exchanges are required to halt trading in all security futures contracts for a specified period of time when the Dow Jones Industrial Average ("DJIA") experiences one-day declines of 10-, 20- and 30-percent. The regulated exchanges may also have discretion under their rules to halt trading in other circumstances—such as when the exchange determines that the halt would be advisable in maintaining a fair and orderly market.

A trading halt, either by a regulated exchange that trades security futures or an exchange trading the underlying security or instrument, could prevent you from liquidating a position in security futures contracts in a timely manner, which could prevent you from liquidating a position in security futures contracts at that time.

2.8. Trading Hours

Each regulated exchange trading a security futures contract may open and close for trading at different times than other regulated exchanges trading security futures contracts or markets trading the underlying security or securities. Trading in security futures contracts prior to the opening or after the close of the primary market for the underlying security may be less liquid than trading during regular market hours.

The cumulative gain or loss on a customer's open security futures positions is generally referred to as "open trade equity" and is listed as a separate component of account equity on your customer account statement.

A discussion of the role of the clearing organization in effecting delivery is discussed in Section 5.

Section 3—Clearing Organizations and Mark-to-Market Requirements

Every regulated U.S. exchange that trades security futures contracts is required to have a relationship with a clearing organization that serves as the guarantor of each security futures contract traded on that exchange. A clearing organization performs the following functions: matching trades; effecting settlement and payments; guaranteeing performance; and facilitating deliveries.

Throughout each trading day, the clearing organization matches trade data submitted by clearing members on behalf of their customers or for the clearing member's proprietary accounts. If an account is with a brokerage firm that is not a member of the clearing organization, then the brokerage firm will carry the security futures position with another brokerage firm that is a member of the clearing organization. Trade records that do not match, either because of a discrepancy in the details or because one side of the transaction is missing, are returned to the submitting clearing members for resolution. The members are required to resolve such "out trades" before or on the open of trading the next morning.

When the required details of a reported transaction have been verified, the clearing organization assumes the legal and financial obligations of the parties to the transaction. One way to think of the role of the clearing organization is that it is the "buyer to every seller and the seller to every buyer." The insertion or substitution of the clearing organization as the counterparty to every transaction enables a customer to liquidate a security futures position without regard to what the other party to the original security futures contract decides to do.

The clearing organization also effects the settlement of gains and losses from security futures contracts between clearing members. At least once each day, clearing member brokerage firms must either pay to, or receive from, the clearing organization the difference between the current price and the trade price earlier in the day, or for a position carried over from the previous day, the difference between the current price and the previous day's settlement price. Whether a clearing organization effects settlement of gains and losses on a daily basis or more frequently will depend on the conventions of the clearing organization and market conditions. Because the clearing organization assumes the legal and financial obligations for each security futures contract, you should expect it to ensure that payments are made promptly to protect its obligations.

Gains and losses in security futures contracts are also reflected in each customer's account on at least a daily basis. Each day's gains and losses are determined based on a daily settlement price disseminated by the regulated exchange trading the security futures contract or its clearing organization. If the daily settlement price of a particular security futures contract rises, the buyer has a gain and the seller a loss. If the daily settlement price declines, the buyer has a loss and the seller a gain. This process is known as "marking-to-market" or daily settlement. As a result, individual customers normally will be called on to settle daily.

The one-day gain or loss on a security futures contract is determined by calculating the difference between the current day's settlement price and the previous day's settlement price.

For example, assume a security futures contract is purchased at a price of $120. If the daily settlement price is either $125 (higher) or $117 (lower), the effects would be as follows:

(1 contract representing 100 shares)

Daily settlement value	Buyer's account	Seller's account
$125	$500 gain (credit) (debit)	$500 loss.
$117	$300 loss (debit)	$300 gain (credit).

Section 4—Margin and Leverage

When a broker-dealer lends a customer part of the funds needed to purchase a security such as common stock, the term "margin" refers to the amount of cash, or down payment, the customer is required to deposit. By contrast, a security futures contract is an obligation and not an asset. A security futures contract has no value as collateral for a loan. Because of the potential for a loss as a result of the daily marked-to-market process, however, a margin deposit is required of each party to a security futures contract. This required margin deposit also is referred to as a "performance bond."

In the first instance, margin requirements for security futures contracts are set by the exchange on which the contract is traded, subject to certain minimums set by law. The basic margin requirement is 20% of the current value of the security futures

contract, although some strategies may have lower margin requirements. Requests for additional margin are known as "margin calls." Both buyer and seller must individually deposit the required margin to their respective accounts.

It is important to understand that individual brokerage firms can, and in many cases do, require margin that is higher than the exchange requirements. Additionally, margin requirements may vary from brokerage firm to brokerage firm. Furthermore, a brokerage firm can increase its "house" margin requirements at any time without providing advance notice, and such increases could result in a margin call.

For example, some firms may require margin to be deposited the business day following the day of a deficiency, or some firms may even require deposit on the same day. Some firms may require margin to be on deposit in the account before they will accept an order for a security futures contract. Additionally, brokerage firms may have special requirements as to how margin calls are to be met, such as requiring a wire transfer from a bank, or deposit of a certified or cashier's check. You should thoroughly read and understand the customer agreement with your brokerage firm before entering into any transactions in security futures contracts.

If through the daily cash settlement process, losses in the account of a security futures contract participant reduce the funds on deposit (or equity) below the maintenance margin level (or the firm's higher "house" requirement), the brokerage firm will require that additional funds be deposited.

If additional margin is not deposited in accordance with the firm's policies, the firm can liquidate your position in security futures contracts or sell assets in any of your accounts at the firm to cover the margin deficiency. You remain responsible for any shortfall in the account after such liquidations or sales. Unless provided otherwise in your customer agreement or by applicable law, you are not entitled to choose which futures contracts, other securities or other assets are liquidated or sold to meet a margin call or to obtain an extension of time to meet a margin call.

Brokerage firms generally reserve the right to liquidate a customer's security futures contract positions or sell customer assets to meet a margin call at any time without contacting the customer. Brokerage firms may also enter into equivalent but opposite positions for your account in order to manage the risk created by a margin call. Some customers mistakenly believe that a firm is required to contact them for a margin call to be valid, and that the firm is not allowed to liquidate securities or other assets in their accounts to meet a margin call unless the firm has contacted them first. This is not the case. While most firms notify their customers of margin calls and allow some time for deposit of additional margin, they are not required to do so. Even if a firm has notified a customer of a margin call and set a specific due date for a margin deposit, the firm can still take action as necessary to protect its financial interests, including the immediate liquidation of positions without advance notification to the customer.

Here is an example of the margin requirements for a long security futures position.

A customer buys 3 July EJG security futures at 71.50. Assuming each contract represents 100 shares, the nominal value of the position is $21,450 (71.50 × 3 contracts × 100 shares). If the initial margin rate is 20% of the nominal value, then the customer's initial margin requirement would be $4,290. The customer deposits the initial margin, bringing the equity in the account to $4,290.

First, assume that the next day the settlement price of EJG security futures falls to 69.25. The marked-to-market loss in the customer's equity is $675 (71.50 − 69.25 × 3 contacts × 100 shares). The customer's equity decreases to $3,615 ($4,290 − $675). The new nominal value of the contract is $20,775 (69.25 × 3 contracts × 100 shares). If the maintenance margin rate is 20% of the nominal value, then the customer's maintenance margin requirement would be $4,155. Because the customer's equity had decreased to $3,615 (see above), the customer would be required to have an additional $540 in margin ($4,155 − $3,615).

Alternatively, assume that the next day the settlement price of EJG security futures rises to 75.00. The mark-to-market gain in the customer's equity is $1,050 (75.00 − 71.50 × 3 contacts × 100 shares). The customer's equity increases to $5,340 ($4,290 + $1,050). The new nominal value of the contract is $22,500 (75.00 × 3 contracts × 100 shares). If the maintenance margin rate is 20% of the nominal value, then the customer's maintenance margin requirement would be $4,500. Because the customer's equity had increased to $5,340 (see above), the customer's excess equity would be $840.

The process is exactly the same for a short position, except that margin calls are generated as the settlement price rises rather than as it falls. This is because the customer's equity decreases as the settlement price rises and increases as the settlement price falls.

Because the margin deposit required to open a security futures position is a fraction of the nominal value of the contracts being purchased or sold, security futures contracts are said to be highly leveraged. The smaller the margin requirement in relation to the underlying value of the security futures contract, the greater the leverage. Leverage allows exposure to a given quantity of an underlying asset for a fraction of the investment needed to purchase that quantity outright. In sum, buying (or selling) a security futures contract provides the same dollar and cents profit and loss outcomes as owning (or shorting) the underlying security. However, as a percentage of the margin deposit, the potential immediate exposure to profit or loss is much higher with a security futures contract than with the underlying security.

For example, if a security futures contract is established at a price of $50, the contract has a nominal value of $5,000 (assuming the contract is for 100 shares of stock). The margin requirement may be as low as 20%. In the example just used, assume the contract price rises from $50 to $52 (a $200 increase in the nominal value). This represents a $200 profit to the buyer of the security futures contract, and a 20% return on the $1,000 deposited as margin. The reverse would be true if the contract price decreased from $50 to $48. This represents a $200 loss to the buyer, or 20% of the $1,000 deposited as margin. Thus, leverage can either benefit or harm an investor.

Note that a 4% decrease in the value of the contract resulted in a loss of 20% of the margin deposited. A 20% decrease would wipe out 100% of the margin deposited on the security futures contract.

Section 5—Settlement

If you do not liquidate your position prior to the end of trading on the last day before the expiration of the security futures contract, you are obligated to either (1) make or accept a cash payment ("cash settlement") or (2) deliver or accept delivery of the underlying securities in exchange for final payment of the final settlement price ("physical delivery"). The terms of the contract dictate whether it is settled through cash settlement or by physical delivery.

The expiration of a security futures contract is established by the exchange on which the contract is listed. On the expiration day, security futures contracts cease to exist. Typically, the last trading day of a security futures contract will be the third Friday of the expiring contract month, and the expiration day will be the following Saturday. This follows the expiration conventions for stock options and broad-based stock indexes. Please keep in mind that the expiration day is set by the listing exchange and may deviate from these norms.

5.1. Cash Settlement

In the case of cash settlement, no actual securities are delivered at the expiration of the security futures contract. Instead, you must settle any open positions in security futures by making or receiving a cash payment based on the difference between the final settlement price and the previous day's settlement price. Under normal circumstances, the final settlement price for a cash-settled contract will reflect the opening price for the underlying security. Once this payment is made, neither the buyer nor the seller of the security futures contract has any further obligations on the contract.

5.2. Settlement by Physical Delivery

Settlement by physical delivery is carried out by clearing brokers or their agents with National Securities Clearing Corporation ("NSCC"), an SEC-regulated securities clearing agency. Such settlements are made in much the same way as they are for purchases and sales of the underlying security. Promptly after the last day of trading, the regulated exchange's clearing organization will report a purchase and sale of the underlying stock at the previous day's settlement price (also referred to as the "invoice price") to NSCC. If NSCC does not reject the transaction by a time specified in its rules, settlement is effected pursuant to the rules of NSCC within the normal clearance and settlement cycle for securities transactions, which currently is three business days.

If you hold a short position in a physically settled security futures contract to expiration, you will be required to make delivery of the underlying securities. If you already own the securities, you may tender them to your brokerage firm. If you do not own the securities, you will be obligated to purchase them. Some brokerage firms may not be able to purchase the securities for you. If your brokerage firm cannot purchase the underlying securities on your behalf to fulfill a settlement obligation, you will have to purchase the securities through a different firm.

Section 6—Customer Account Protections

Positions in security futures contracts may be held either in a securities account or in a futures account. Your brokerage firm may or may not permit you to choose the types of account in which your positions in security futures contracts will be held. The protections for funds deposited or earned by customers in connection with trading in security futures contracts differ depending on whether the positions are carried in a securities account or a futures account. If your positions are carried in a securities account, you will not receive the protections available for futures accounts. Similarly, if your positions are carried in a futures account, you will not receive the protections available for securities accounts. You should ask your broker which of these protections will apply to your funds.

You should be aware that the regulatory protections applicable to your account are not intended to insure you against losses you may incur as a result of a decline or increase in the price of a security futures contract. As with all financial products, you are solely responsible for any market losses in your account.

Your brokerage firm must tell you whether your security futures positions will be held in a securities account or a futures account. If your brokerage firm gives you a choice, it must tell you what you have to do to make the choice and which type of account will be used if you fail to do so. You should understand that certain regulatory protections for your account will depend on whether it is a securities account or a futures account.

6.1. Protections for Securities Accounts

If your positions in security futures contracts are carried in a securities account, they are covered by SEC rules governing the safeguarding of customer funds and securities. These rules prohibit a broker/dealer from using customer funds and securities to finance its business. As a result, the broker/dealer is required to set aside funds equal to the net of all its excess payables to customers over receivables from customers. The rules also require a broker/dealer to segregate all customer fully paid and excess margin securities carried by the broker/dealer for customers.

The Securities Investor Protection Corporation (SIPC) also covers positions held in securities accounts. SIPC was created in 1970 as a non-profit, non-government, membership corporation, funded by member broker/dealers. Its primary role is to return funds and securities to customers if the broker/dealer holding these assets becomes insolvent. SIPC coverage applies to customers of current (and in some cases former) SIPC members. Most broker/dealers registered with the SEC are SIPC members; those few that are not must disclose this fact to their customers. SIPC members must display an official sign showing their membership. To check whether a firm is a SIPC member, go to *www.sipc.org*, call the SIPC Membership Department at (202) 371–8300, or write to SIPC Membership Department, Securities Investor Protection Corporation, 805 Fifteenth Street, NW., Suite 800, Washington, DC 20005–2215.

SIPC coverage is limited to $500,000 per customer, including up to $100,000 for cash. For example, if a customer has 1,000 shares of XYZ stock valued at $200,000 and $10,000 cash in the account, both the security and the cash balance would be protected. However, if the customer has shares of stock valued at $500,000 and $100,000 in cash, only a total of $500,000 of those assets will be protected.

For purposes of SIPC coverage, customers are persons who have securities or cash on deposit with a SIPC member for the purpose of, or as a result of, securities transactions. SIPC does not protect customer funds placed with a broker/dealer just to earn interest. Insiders of the broker/dealer, such as its owners, officers, and partners, are not customers for purposes of SIPC coverage.

6.2. Protections for Futures Accounts

If your security futures positions are carried in a futures account, they must be segregated from the brokerage firm's own funds and cannot be borrowed or otherwise used for the firm's own purposes. If the funds are deposited with another entity (*e.g.*, a bank, clearing broker, or clearing organization), that entity must acknowledge that the funds belong to customers and cannot be used to satisfy the firm's debts. Moreover, although a brokerage firm may carry funds belonging to different customers in the same bank or clearing account, it may not use the funds of one customer to margin or guarantee the transactions of another customer. As a result, the brokerage firm must add its own funds to its customers' segregated funds to cover customer debits and deficits. Brokerage firms must calculate their segregation requirements daily.

You may not be able to recover the full amount of any funds in your

account if the brokerage firm becomes insolvent and has insufficient funds to cover its obligations to all of its customers. However, customers with funds in segregation receive priority in bankruptcy proceedings. Furthermore, all customers whose funds are required to be segregated have the same priority in bankruptcy, and there is no ceiling on the amount of funds that must be segregated for or can be recovered by a particular customer.

Your brokerage firm is also required to separately maintain funds invested in security futures contracts traded on a foreign exchange. However, these funds may not receive the same protections once they are transferred to a foreign entity (*e.g.*, a foreign broker, exchange or clearing organization) to satisfy margin requirements for those products. You should ask your broker about the bankruptcy protections available in the country where the foreign exchange (or other entity holding the funds) is located.

Section 7—Special Risks for Day Traders

Certain traders who pursue a day trading strategy may seek to use security futures contracts as part of their trading activity. Whether day trading in security futures contracts or other securities, investors engaging in a day trading strategy face a number of risks.

- *Day trading in security futures contracts requires in-depth knowledge of the securities and futures markets and of trading techniques and strategies.* In attempting to profit through day trading, you will compete with professional traders who are knowledgeable and sophisticated in these markets. You should have appropriate experience before engaging in day trading.
- *Day trading in security futures contracts can result in substantial commission charges, even if the per trade cost is low.* The more trades you make, the higher your total commissions will be. The total commissions you pay will add to your losses and reduce your profits. For instance, assuming that a round-turn trade costs $16 and you execute an average of 29 round-turn transactions per day each trading day, you would need to generate an annual profit of $111,360 just to cover your commission expenses.
- *Day trading can be extremely risky.* Day trading generally is not appropriate for someone of limited resources and limited investment or trading experience and low risk tolerance. You should be prepared to lose all of the funds that you use for day trading. In particular, you should not fund day trading activities with funds that you cannot afford to lose.

Section 8—Other

8.1. Corporate Events

As noted in Section 2.4, an equity security represents a fractional ownership interest in the issuer of that security. By contrast, the purchaser of a security futures contract has only a contract for future delivery of the underlying security. Treatment of dividends and other corporate events affecting the underlying security may be reflected in the security futures contract depending on the applicable clearing organization rules. Consequently, individuals should consider how dividends and other developments affecting security futures in which they transact will be handled by the relevant exchange and clearing organization. The specific adjustments to the terms of a security futures contract are governed by the rules of the applicable clearing organization. Below is a discussion of some of the more common types of adjustments that you may need to consider.

Corporate issuers occasionally announce stock splits. As a result of these splits, owners of the issuer's common stock may own more shares of the stock, or fewer shares in the case of a reverse stock split. The treatment of stock splits for persons owning a security futures contract may vary according to the terms of the security futures contract and the rules of the clearing organization. For example, the terms of the contract may provide for an adjustment in the number of contracts held by each party with a long or short position in a security future, or for an adjustment in the number of shares or units of the instrument underlying each contract, or both.

Corporate issuers also occasionally issue special dividends. A special dividend is an announced cash dividend payment outside the normal and customary practice of a corporation. The terms of a security futures contract may be adjusted for special dividends. The adjustments, if any, will be based upon the rules of the exchange and clearing organization. In general, there will be no adjustments for ordinary dividends as they are recognized as a normal and customary practice of an issuer and are already accounted for in the pricing of security futures.

Corporate issuers occasionally may be involved in mergers and acquisitions. Such events may cause the underlying security of a security futures contact to change over the contract duration. The terms of security futures contracts may also be adjusted to reflect other corporate events affecting the underlying security.

8.2. Position Limits and Large Trader Reporting

All security futures contracts trading on regulated exchanges in the United States are subject to position limits or position accountability limits. Position limits restrict the number of security futures contracts that any one person or group of related persons may hold or control in a particular security futures contract. In contrast, position accountability limits permit the accumulation of positions in excess of the limit without a prior exemption. In general, position limits and position accountability limits are beyond the thresholds of most retail investors. Whether a security futures contract is subject to position limits, and the level for such limits, depends upon the trading activity and market capitalization of the underlying security of the security futures contract.

Position limits apply are required for security futures contracts that overlie a security that has an average daily trading volume of 20 million shares or fewer. In the case of a security futures contract overlying a security index, position limits are required if any one of the securities in the index has an average daily trading volume of 20 million shares or fewer. Position limits also apply only to an expiring security futures contract during its last five trading days. A regulated exchange must establish position limits on security futures that are no greater than 13,500 (100 share) contracts, unless the underlying security meets certain volume and shares outstanding thresholds, in which case the limit may be increased to 22,500 (100 share) contracts.

For security futures contracts overlying a security or securities with an average trading volume of more than 20 million shares, regulated exchanges may adopt position accountability rules. Under position accountability rules, a trader holding a position in a security futures contract that exceeds 22,500 contracts (or such lower limit established by an exchange) must agree to provide information regarding the position and consent to halt increasing that position if requested by the exchange.

Brokerage firms must also report large open positions held by one person (or by several persons acting together) to the CFTC as well as to the exchange on which the positions are held. The CFTC's reporting requirements are 1,000 contracts for security futures positions

on individual equity securities and 200 contracts for positions on a narrow-based index. However, individual exchanges may require the reporting of large open positions at levels less than the levels required by the CFTC. In addition, brokerage firms must submit identifying information on the account holding the reportable position (on a form referred to as either an "Identification of Special Accounts Form" or a "Form 102") to the CFTC and to the exchange on which the reportable position exists within three business days of when a reportable position is first established.

8.3. Transactions on Foreign Exchanges

U.S. customers may not trade security futures on foreign exchanges until authorized by U.S. regulatory authorities. U.S. regulatory authorities do not regulate the activities of foreign exchanges and may not, on their own, compel enforcement of the rules of a foreign exchange or the laws of a foreign country. While U.S. law governs transactions in security futures contracts that are effected in the U.S., regardless of the exchange on which the contracts are listed, the laws and rules governing transactions on foreign exchanges vary depending on the country in which the exchange is located.

8.4. Tax Consequences

For most taxpayers, security futures contracts are not treated like other futures contracts. Instead, the tax consequences of a security futures transaction depend on the status of the taxpayer and the type of position (*e.g.*, long or short, covered or uncovered). Because of the importance of tax considerations to transactions in security futures, readers should consult their tax advisors as to the tax consequences of these transactions.

Section 9—Glossary of Terms

This glossary is intended to assist customers in understanding specialized terms used in the futures and securities industries. It is not inclusive and is not intended to state or suggest the legal significance or meaning of any word or term.

Arbitrage—Taking an economically opposite position in a security futures contract on another exchange, in an options contract, or in the underlying security.

Broad-based security index—A security index that does not fall within the statutory definition of a narrow-based security index (see Narrow-based security index). A future on a broad-based security index is not a security future. This risk disclosure statement applies solely to security futures and generally does not pertain to futures on a broad-based security index. Futures on a broad-based security index are under exclusive jurisdiction of the CFTC.

Cash settlement—A method of settling certain futures contracts by having the buyer (or long) pay the seller (or short) the cash value of the contract according to a procedure set by the exchange.

Clearing broker—A member of the clearing organization for the contract being traded. All trades, and the daily profits or losses from those trades, must go through a clearing broker.

Clearing organization—A regulated entity that is responsible for settling trades, collecting losses and distributing profits, and handling deliveries.

Contract—(1) The unit of trading for a particular futures contract (*e.g.*, one contract may be 100 shares of the underlying security), (2) the type of future being traded (*e.g.*, futures on ABC stock).

Contract month—The last month in which delivery is made against the futures contract or the contract is cash-settled. Sometimes referred to as the delivery month.

Day trading strategy—An overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.

EDGAR—The SEC's Electronic Data Gathering, Analysis, and Retrieval system maintains electronic copies of corporate information filed with the agency. EDGAR submissions may be accessed through the SEC's Web site, *www.sec.gov*.

Futures contract—A futures contract is (1) an agreement to purchase or sell a commodity for delivery in the future; (2) at a price determined at initiation of the contract; (3) that obligates each party to the contract to fulfill it at the specified price; (4) that is used to assume or shift risk; and (5) that may be satisfied by delivery or offset.

Hedging—The purchase or sale of a security future to reduce or offset the risk of a position in the underlying security or group of securities (or a close economic equivalent).

Illiquid market—A market (or contract) with few buyers and/or sellers. Illiquid markets have little trading activity and those trades that do occur may be done at large price increments.

Liquidation—entering into an offsetting transaction. Selling a contract that was previously purchased liquidates a futures position in exactly the same way that selling 100 shares of a particular stock liquidates an earlier purchase of the same stock. Similarly, a futures contract that was initially sold can be liquidated by an offsetting purchase.

Liquid market—a market (or contract) with numerous buyers and sellers trading at small price increments.

Long—(1) the buying side of an open futures contact, (2) a person who has bought futures contracts that are still open.

Margin—the amount of money that must be deposited by both buyers and sellers to ensure performance of the person's obligations under a futures contract. Margin on security futures contracts is a performance bond rather than a down payment for the underlying securities.

Mark-to-market—to debit or credit accounts daily to reflect that day's profits and losses.

Narrow-based security index—in general, and subject to certain exclusions, an index that has any one of the following four characteristics: (1) It has nine or fewer component securities; (2) any one of its component securities comprises more than 30% of its weighting; (3) the five highest weighted component securities together comprise more than 60% of its weighting; or (4) the lowest weighted component securities comprising, in the aggregate, 25% of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50 million (or in the case of an index with 15 or more component securities, $30 million). A security index that is not narrow-based is a "broad based security index." (See Broad-based security index).

Nominal value—the face value of the futures contract, obtained by multiplying the contract price by the number of shares or units per contract. If XYZ stock index futures are trading at $50.25 and the contract is for 100 shares of XYZ stock, the nominal value of the futures contract would be $5025.00.

Offsetting—liquidating open positions by either selling fungible contracts in the same contract month as an open long position or buying fungible contracts in the same contract month as an open short position.

Open interest—the total number of open long (or short) contracts in a particular contract month.

Open position—a futures contract position that has neither been offset nor closed by cash settlement or physical delivery.

Performance bond—another way to describe margin payments for futures contracts, which are good faith deposits to ensure performance of a person's obligations under a futures contract

rather than down payments for the underlying securities.

Physical delivery—the tender and receipt of the actual security underlying the security futures contract in exchange for payment of the final settlement price.

Position—a person's net long or short open contracts.

Regulated exchange—a registered national securities exchange, a national securities association registered under Section 15A(a) of the Securities Exchange Act of 1934, a designated contract market, a registered derivatives transaction execution facility, or an alternative trading system registered as a broker or dealer.

Security futures contract—a legally binding agreement between two parties to purchase or sell in the future a specific quantity of shares of a security (such as common stock, an exchange-traded fund, or ADR) or a narrow-based security index, at a specified price.

Settlement price—(1) the daily price that the clearing organization uses to mark open positions to market for determining profit and loss and margin calls, (2) the price at which open cash settlement contracts are settled on the last trading day and open physical delivery contracts are invoiced for delivery.

Short—(1) the selling side of an open futures contract, (2) a person who has sold futures contracts that are still open.

Speculating—buying and selling futures contracts with the hope of profiting from anticipated price movements.

Spread—(1) holding a long position in one futures contract and a short position in a related futures contract or contract month in order to profit from an anticipated change in the price relationship between the two, (2) the price difference between two contracts or contract months.

Stop limit order—an order that becomes a limit order when the market trades at a specified price. The order can only be filled at the stop limit price or better.

Stop loss order—an order that becomes a market order when the market trades at a specified price. The order will be filled at whatever price the market is trading at. Also called a stop order.

Tick—the smallest price change allowed in a particular contract.

Trader—a professional speculator who trades for his or her own account.

Underlying security—the instrument on which the security futures contract is based. This instrument can be an individual equity security (including common stock and certain exchange-traded funds and American Depositary Receipts) or a narrow-based index.

Volume—the number of contracts bought or sold during a specified period of time. This figure includes liquidating transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed interpretive notice states that NFA Compliance Rule 2–30(b) requires Members and Associates who are not members of NASD to provide a disclosure statement for security futures products to a customer at or before the time the member approves the account to trade security futures products. The interpretive notice identifies the statement that must be provided and notifies Members that it is available on NFA's web site.

The risk disclosure statement has nine sections. They are (1) Risks of Security Futures, (2) Description of a Security Futures Contract (including its purposes and characteristics), (3) Clearing Organizations and Mark-to-Market Requirements, (4) Margin and Leverage, (5) Settlement, (6) Customer Account Protections, (7) Special Risks for Day Traders, (8) Other (which covers corporate events, position limits and large trader reporting, transactions on foreign exchanges, and tax consequences), and (9) a Glossary of Terms.

NFA, NASD, and a number of securities and futures exchanges jointly developed the risk disclosure statement for security futures contracts using the statement for listed equity options as the template. Futures and securities firms will both be required to provide this document to security futures customers, regardless of where the products are traded. NFA will make the statement available on its Web site.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Act.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act and the Commodity Exchange Act. In fact, the rule change puts all firms on an even playing field because it is consistent with proposed NASD requirements.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA did not publish the rule changes to the membership for comment. NFA did not receive comment letters concerning the rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On October 4, 2002, the CFTC determined that review of the proposed rule change was not necessary. Accordingly, pursuant to Section 17(j) of the CEA, NFA has made the proposed rule change effective as of October 7, 2002.[9]

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[8] 15 U.S.C. 78o–3(k).

[9] A related proposed rule change filed by the NASD, SR–NASD–2002–128, became summarily effective on October 7, 2002. *See* Securities Exchange Act Release No. 46612, (October 7, 2002).

[10] 15 U.S.C. 78s(b)(1).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of NFA. Electronically submitted comments will be posted on the Commission's Web site (*http://www.sec.gov*). All submissions should refer to File No. SR–NFA–2002–05 and should be submitted by November 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26367 Filed 10–16–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46631; File No. SR–NYSE–2002–24]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc. ("NYSE") to Amend NYSE Rule 342 ("Offices—Approval, Supervision and Control")

October 9, 2002.

On July 12, 2002, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 342 ("Offices—Approval, Supervision and Control"). The proposed amendments would recognize the National Association of Securities Dealers' General Securities Principal Examination ("Series 24 Examination") as an acceptable qualification alternative to the General Securities Sales Supervisor Qualification Examination ("Series 9/10 Examination") for supervisory persons whose duties do not include the supervision of options or municipal securities sales activity. In addition, the amendments update and clarify certain provisions of the Rule. The NYSE filed an amendment to the proposed rule change on August 16, 2002.[3] The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on September 5, 2002.[4] The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of Section 6 of the Act[6] and the rules and regulations thereunder. The Commission believes that the NYSE's amendments to NYSE Rule 342 to eliminate, when possible, duplicative examination qualification requirements and to update and clarify certain provisions of the Rule are reasonable.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change, as amended (SR–NYSE–2002–24), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26395 Filed 10–16–02; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(75).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 15, 2002, and attachments ("Amendment No. 1").

[4] Securities Exchange Act Release No. 46425 (August 28, 2002), 67 FR 56863.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, *Attn:* Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, D.C. 20503, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Bldg., 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I

The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer at (410) 965–0454, or by writing to the address listed above.

1. Application for Supplemental Security Income–20 CFR, Subpart C, 416.305–.335–0960–0229

The information collected using Form SSA–8000–BK is needed and used to determine eligibility for Supplemental Security Income (SSI) and the amount of benefits payable. The respondents are applicants for SSI payments.

Type of Request: Revision of an OMB-approved information collection, *Number of Respondents:* 1,249,933, *Frequency of Response:* 1, *Average Burden Per Response:* 40 minutes, *Estimated Annual Burden:* 833,289 hours.

2. Application for Wife's or Husband's Insurance Benefits—20 CFR, Subpart D, 404.330–.333; Subpart G, 404.603–0960–0008

SSA needs and uses the information collected on Form SSA–2–F6 to determine if an applicant (including a divorced applicant) can be entitled to benefits as the spouse of the worker and the amount of the spouse's benefits. The respondents are applicants for wife's or

husband's benefits, including those who are divorced.

Type of Request: Extension of an OMB-approved information collection, *Number of Respondents:* 700,000, *Frequency of Response:* 1, *Average Burden Per Response:* 15 minutes, *Estimated Annual Burden:* 175,000 hours.

3. Supplemental Security Income Claim Information Notice—20 CFR, Subpart B, 416.210–0960–0324

Form SSA–L8050 is used by SSA to ensure that all sources of potential income, which can be used to provide for the support and maintenance of an individual receiving SSI, are utilized. SSI is intended to supplement other income available to an individual. The respondents are applicants/recipients of SSI who may be eligible for benefits from public or private programs.

Type of Request: Extension of an OMB-approved information collection, *Number of Respondents:* 7,500, *Frequency of Response:* 1, *Average Burden Per Response:* 10 minutes, *Estimated Annual Burden:* 1,250 hours.

4. Reporting Changes that Affect Your Social Security Payment —20 CFR 404, Subpart D and Subpart E–0960–0073

SSA uses the information collected on Form SSA–1425 to determine continuing entitlement to title II Social Security benefits and to determine the proper benefit amount. The respondents are Social Security beneficiaries who need to report an event that could affect payments.

Type of Request: Extension of an OMB-approved information collection, *Number of Respondents:* 70,000, *Frequency of Response:* 1, *Average Burden Per Response:* 5 minutes, *Estimated Annual Burden:* 5,833.

5. Medicaid Use Report, 20 CFR 416.268—0960–0267

The information required by this regulation is used by SSA to determine if an individual is entitled to special SSI payments. The respondents are SSI recipients whose payments were stopped based on earnings from work.

Type of Request: Extension of an OMB-approved information collection, *Number of Respondents:* 60,000, *Frequency of Response:* 1, *Average Burden Per Response:* 3 minutes, *Estimated Annual Burden:* 3,000 hours.

6. Quickstart Enrollment—31 CFR 209 and 210—0960–0564

The information collected is needed by SSA to facilitate electronic transmission of data for direct deposit of funds to a payee's account. The respondents are Social Security beneficiaries and SSI recipients requesting direct deposit to their financial institutions.

Type of Request: Extension of an OMB-approved information collection, *Number of Respondents:* 3,950,000, *Frequency of Response:* 1, *Average Burden Per Response:* 3 minutes, *Estimated Annual Burden:* 197,500 hours.

7. Request for Internet Services Representative Payee, 20 CFR 401.45 Report—0960–NEW

Background

SSA is developing an Internet Representative Payee Report form (I623) to electronically report on the use of benefit payments made on behalf of Social Security beneficiaries and SSI recipients. As part of this process, SSA will conduct a proof of concept (POC) test that will be limited to 40 organizational representative payees. During the projected 6-month POC test, participating organizations will use the I623 to complete and file the representative payee report instead of using the paper SSA–623.

The Collection

Organizations participating in the POC will designate up to three employees that will be authenticated using SSA's existing Integrated Registration for Employers and Submitters (IRES) OMB control number 0960–0626. Once authenticated, the employee will be required to enter a Personal Identification Number (PIN) and Password to gain access to the online I623 application. The PIN and Password will serve as the electronic signature. SSA will use the information collected through the I623 to determine whether the payments provided to the representative payee have been used for the beneficiary's current maintenance and personal needs and whether the representative payee continues to be concerned with the beneficiary's welfare. The respondents are organizational representative payees designated to receive funds on behalf of Social Security beneficiaries and/or SSI recipients.

Type of request: New information collection, *Number of Respondents:* 40 organizations, *Frequency of Response:* 117.5 per respondent, *Average Burden Per Response:* 15 minutes, *Estimated Annual Burden:* 1,175 hours.

8. Letter to Employer Requesting Information about Wages Earned by a Beneficiary—20 CFR, Subpart I, 404.801—0960–0034

SSA uses the data collected on form SSA–L725 to establish the exact amount of wages earned by a beneficiary in situations where the information in SSA records is incomplete or has been questioned. The respondents are employers of wage earners whose earnings records are incomplete or have been questioned.

Type of Request: Extension of an OMB-approved information collection, *Number of Respondents:* 150,000, *Frequency of Response:* 1, *Average Burden Per Response:* 40 minutes, *Estimated Annual Burden:* 100,000 hours.

II

The information collection listed below has been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

Application for Parent's Insurance Benefits—20 CFR 404.370–.374 and 404.601–603—0960–0012

The information collected on form SSA–7 is used by SSA to determine entitlement of an individual to parent's Social Security title II benefits. The respondents are parents who were dependent on the worker for at least one-half of their support.

Type of Request: Revision of an OMB-approved information collection, *Number of Respondents:* 1,400, *Frequency of Response:* 1, *Average Burden Per Response:* 15 minutes, *Estimated Annual Burden:* 350 hours.

Dated: October 10, 2002.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 02–26392 Filed 10–16–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4164]

Bureau of Educational and Cultural Affairs

Fulbright American Studies Institutes for Foreign University Faculty

NOTICE: Request for Grant Proposals (RFGP).

SUMMARY: The Study of the U.S. Branch, Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, announces an open competition for two (2) assistance awards. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(C)(3) may apply to develop and implement one of the following two post-graduate level Fulbright American Studies Institute programs designed for multinational groups of 18 experienced foreign university faculty and educators:

A. Managing Diversity: The American Experience

B. American Political Development: Ideas and Institutions.

These programs are intended to provide participants with a deeper understanding of American life and institutions, past and present, in order to strengthen curricula and to improve the quality of teaching about the United States at universities abroad. Programs should therefore be designed to elucidate the topic or theme of the Institute as well as American civilization as a whole.

Programs are six weeks in length and will be conducted during the Summer of 2003.

The Bureau is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in one or more of the following fields: political science, international relations, law, history, sociology, literature, American studies, and/or other disciplines or sub-disciplines related to the program themes.

It is the Bureau's intention to fund one institute in each of the above two thematic areas, subject to the number and quality of proposals received and the availability of funding.

Applicant institutions must demonstrate expertise in conducting post-graduate programs for foreign educators, and *must have a minimum of four years experience in conducting international exchange programs.* Bureau guidelines stipulate that grants to organizations with less than four years experience in conducting international exchanges are limited to $60,000. As it is expected that the budget for these programs will exceed $60,000, organizations that can not demonstrate at least four years experience will not be eligible to apply under this competition.

The project director or one of the key program staff responsible for the academic program must have an advanced degree in one of the fields listed above. Staff escorts traveling under the cooperative agreement must have demonstrated qualifications for this service. Programs must conform with Bureau requirements and guidelines outlined in the Solicitation Package. Bureau programs are subject to the availability of funds.

Program Information

Overview and Objectives: Fulbright American Studies Institutes are intended to offer foreign scholars and teachers whose professional work focuses on the United States the opportunity to deepen their understanding of American society, culture and institutions. Their ultimate goal is to strengthen curricula and to improve the quality of teaching about the U.S. in universities abroad.

Programs should be six weeks in length and must include an academic residency segment of at least four weeks duration at a U.S. college or university campus (or other appropriate location). A study tour segment of not more than two weeks should also be planned and should directly complement the academic residency segment; the study tour should include visits to one or two additional regions of the United States.

All institutes should be designed as intensive, academically rigorous seminars intended for an experienced group of fellow scholars from outside the United States. The institutes should be organized through an integrated series of lectures, readings, seminar discussions, regional travel and site visits, and they should also include some opportunity for limited but well-directed independent research.

Applicants are encouraged to design thematically coherent programs in ways that draw upon the particular strengths, faculty and resources of their institutions as well as upon the nationally recognized expertise of scholars and other experts throughout the United States. All Fulbright American Studies Institute programs, regardless of their particular thematic focus, should seek to:

1. Provide participants with a survey of contemporary scholarship within the institute's governing academic discipline, delineating the current scholarly debates within the field. In this regard, the seminar should indicate how prevailing academic practice in the discipline represents both a continuation of and a departure from past scholarly trends and practices. It is therefore critical that a variety of scholarly viewpoints be represented, including bringing in presenters from other institutions, as appropriate. Please note that the ways these alternative schools of thought will be presented should be clearly described in the proposal;

2. Bring an interdisciplinary or multi-disciplinary focus to bear on the program content if appropriate;

3. Give participants a multi-dimensional view of U.S. society and institutions that reflects a broad and balanced range of perspectives and responsible views. Programs should include the views not only of scholars, cultural critics and public intellectuals, but also those of other professionals outside the university such as government officials, journalists and others who can substantively contribute to the topics at issue; and,

4. Insure access to library and material resources that will enable grantees to continue their research, study and curriculum development upon returning to their home institutions.

Program Descriptions

A. Managing Diversity: The American Experience

The "Fulbright American Studies Institute on Managing Diversity: The American Experience" should provide 18 experienced foreign university faculty and scholars with a deeper understanding of the American experience with immigration and race and ethnic relations. The institute should impart an appreciation for how the U.S. has responded to both the challenges and opportunities presented by the increasing national-origin, ethnic and religious diversity of its population. While program might focus on the experience of selected immigrant/ethnic groups, it should include attention to the development of laws and policies governing immigration and citizenship and the impact of immigration on American society, politics and culture more broadly. Other topics/issues that might be addressed include: identity formation in immigrant/ethnic communities; the politics of bilingualism; social, economic, and cultural adaptation and political incorporation of immigrants; coalitions and conflicts among ethnic/racial groups; the role of ethnic lobbies in

foreign and domestic policies; and contemporary debates surrounding issues of citizenship and membership in the U.S.

B. American Political Development: Ideas and Institutions

The "Fulbright American Studies Institute on American Political Development: Ideas and Institutions" should provide 18 experienced foreign university faculty and scholars with a deeper understanding of how the interplay between ideas and developments in the spheres of polity, society and economy together have shaped the evolution of American political institutions. Political institutions whose evolution might be examined include (but are not necessarily limited to) the presidency, Congress, the two-party system, the civil service system, interest groups, or the welfare/regulatory state. The institute curriculum might include a focus on the role of labor and/or race and/or gender in American political development. It might involve attention to the evolution of a particular idea, value or principle (e.g., representation, equality, democracy) and its interpretation by institutional and other actors over time. Regardless of the particular perspective adopted or approach taken, the program should aim to provide the institute participants with a clearer understanding of how policy is formulated and the character of public policy debates in the contemporary United States.

Program Dates

Ideally, the programs should be 44 days in length (including participant arrival and departure days) and should begin in late June or early July, 2003.

Participants

As specified in the guidelines in the solicitation package, programs should be designed for multinational groups of 18 highly-motivated and experienced foreign university faculty and scholars who are interested in participating in an intensive seminar on aspects of U.S. civilization as a means to develop or improve courses and teaching about the United States at their home institutions. Most participants can be expected to come from educational institutions where the study of the U.S. is relatively well developed. Thus, while they may not have in-depth knowledge of the particular institute program theme, most will have had some experience in teaching about the United States. Many will have had sustained professional contact with American scholars and American scholarship, and some may have had substantial prior experience studying in the United States. Participants will be drawn from all regions of the world and will be fluent in the English language.

Participants will be nominated by Fulbright Commissions and by U.S. Embassies abroad. Nominations will be reviewed by the Study of the U.S. Branch at the Department of State. Final selection of grantees will be made by the Fulbright Foreign Scholarship Board.

Program Guidelines

While the conception and structure of the institute program is the responsibility of the organizers, it is critically important that proposals provide a full, detailed and comprehensive narrative describing the objectives of the institute; the title, scope and content of each session; and, how each session relates to the overall institute theme. The syllabus must therefore indicate the subject matter for each lecture or panel discussion, confirm or provisionally identify proposed lecturers and discussants, and clearly show how assigned readings will support each session. A calendar of all activities for the program must also be included. Overall, proposals will be reviewed on the basis of their fullness, coherence, clarity, and attention to detail.

Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further details on program design and implementation, as well as additional information on all other requirements.

Budget Guidelines

Based on groups of 18 participants, the total Bureau-funded budget (program and administrative) for either program should be approximately $200,000, and Bureau-funded administrative costs as defined in the budget details section of the solicitation package should be approximately $60,000. Justifications for any costs above these amounts must be clearly indicated in the proposal submission. Proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive budget for the entire program. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the "POGI" in the Solicitation Package for complete institute budget guidelines and formatting instructions.

Announcement Name and Number

All communications with the Bureau concerning this announcement should refer to the following titles and reference numbers:

Fulbright American Studies Institute on Managing Diversity: The American Experience—(ECA/A/E/USS–03–01A–Benda).

Fulbright American Studies Institute on American Political Development: Ideas and Institutions —(ECA/A/E/USS–03–01B–Benda).

FOR FURTHER INFORMATION: To request a Solicitation Package containing more detailed program information, award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation, applicants should contact:

U.S. Department of State, Bureau of Educational and Cultural Affairs, Office of Academic Exchange Programs, Study of the U.S. Branch, State Annex 44, ECA/A/E/USS—Room 252, 301 4th Street, SW., Washington, DC 20547, Attention: Peter Benda.
Telephone number: (202) 619–5893.
Fax number: (202) 619–6790.
Internet address: *pbenda@pd.state.gov*.

Please specify Program Officer Peter Benda on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the office listed above or submitting their proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition in any way with applicants until after the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPS/*. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Monday, January 13, 2003. Faxed documents will NOT be accepted, nor will documents postmarked January 13, 2003 but received at a later date. It is the responsibility of each applicant to ensure that proposal submissions arrive by the deadline.

Submissions: Applicants must follow all instructions in the Solicitation Package. The original and 13 copies of the complete application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Reference: (insert appropriate reference number from above, *e.g.* ECA/A/E/USS–03–01x–Benda), Program Management Staff, ECA/EX/PM, Room 534, State Annex 44, 301 4th Street, SW., Washington, DC 20547.

Applicants should also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters.

Diversity, Freedom, and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to all Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process: The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office. Eligible proposals will then be forwarded to panels of senior Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Advisor or by other Bureau elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria: Technically eligible applications will be competitively reviewed according to the criteria stated below. More weight will be given to items one and two, and all remaining criteria will be evaluated equally.

1. *Overall Quality:* Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the debates within the subject discipline of each institute. Program elements should be coherently and thoughtfully integrated. Lectures, panels, field visits and readings, taken as a whole, should offer a balanced presentation of issues, reflecting both the continuity of the American experience as well as the diversity and dynamism inherent in it.

2. *Program Planning and Administration:* Proposals should demonstrate careful planning. The organization and structure of the institute should be clearly delineated and be fully responsive to all program objectives. A program syllabus (noting specific sessions and topical readings supporting each academic unit) should be included, as should a calendar of activities. The travel component should not simply be a tour, but should be an integral and substantive part of the program, reinforcing and complementing the academic segment. Proposals should provide evidence of continuous administrative and managerial capacity as well as the means by which program activities and logistical matters will be implemented.

3. *Institutional Capacity:* Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and meeting facilities, housing, meals, transportation and other logistical arrangements should fully meet the needs of the participants.

4. *Support for Diversity:* Substantive support of the bureau's policy on diversity should be demonstrated. This can be accomplished through documentation, such as a written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. *Experience:* Proposals should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign educators.

6. *Evaluation and Follow-up:* A plan for evaluating activities during the Institute and at its conclusion should be included. Proposals should discuss provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. *Cost Effectiveness:* Proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components, including salaries and honoraria, should be kept as low as possible.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful

relations between the United States and the other countries of the world."

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of this RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification: Final awards cannot be made until funds have been appropriated by Congress, and allocated and committed through internal Bureau procedures.

Dated: October 7, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–26426 Filed 10–16–02; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34253]

TransitAmerica, LLC—Operation Exemption—Line In Buchanan County, MO

TransitAmerica, LLC (TRAM), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately 2.6 miles of rail line, previously owned by the Herzog Contracting Corporation (HCC),[1] between approximately milepost 201.0 and approximately milepost 198.4 east of St. Joseph, MO. TRAM certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier, and that such revenues will not exceed $5 million.

The transaction was scheduled to be consummated on or after September 24, 2002, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] HCC is a limited liability member of TRAM. TRAM recently acquired the right, title and interest in this abandoned railroad right-of-way from HCC.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34253, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Ave., 2nd Floor, NW., Washington, DC 20036.

Board decisions and notices are available on our website at "*www.stb.dot.gov*."

Decided: October 10, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–26422 Filed 10–16–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

Research and Development Office; Government Owned Invention Available for Licensing

AGENCY: Research and Development Office.

ACTION: Notice of Government Owned Invention Available for Licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Mindy Aisen, MD, Department of Veterans Affairs, Director Technology Transfer Program, Research and Development Office, 810 Vermont Avenue NW., Washington, DC 20420; fax: (202) 275–7228; e-mail at *mindy.aisen@mail.va.gov*. Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: 10/199,078 "Firm Contact Apparel Prosthesis for Tremor Suppression and Method of Use Thereof".

Dated: October 10, 2002.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 02–26486 Filed 10–16–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Proposed Information Collection Request Submitted for Public Comment and Recommendations Eligibility Data Form: Uniformed Services Employment and Reemployment Rights Act and Veteran's Preference (USERRA/VP)

AGENCY: Veterans' Employment and Training Service (VETS), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with The Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 C (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Veterans' Employment and Training Service (VETS) is soliciting comments concerning the proposed information collection request for the VETS USERRA/VP Form 1010.

DATE: Comments are to be submitted by December 16, 2002.

ADDRESSES: Comments are to be submitted to the Veterans' Employment and Training Service, U.S. Department of Labor, Room S–1316, 200 Constitution Ave., NW., Washington, DC 20210, telephone (202) 693–4711. Written comments limited to 10 pages or fewer may also be transmitted by facsimile to (202) 693–4755. Receipt of submissions, whether by U.S. mail, e-mail or FAX transmittal, will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning VETS at (202) 693–4728.

FOR FURTHER INFORMATION: Contact Patrick D. Harvey, Division of Investigation and Compliance, Veterans' Employment and Training Service, U.S. Department of Labor, Room S–1316, 200 Constitution Ave., NW., Washington, DC 20210, telephone: (202) 693–4728 (Voice) or (800) 670–7008 (TTY/TDD). Copies of the referenced information collection request are available for inspection and copying through VETS and will be mailed to persons who request copies by telephoning Mr. Patrick D. Harvey at (202) 693–4728.

SUPPLEMENTARY INFORMATION:

I. Background

The VETS/USERRA/VP Form 1010 is used to file complaints with the Department of Labor's Veterans' Employment and Training Service (VETS) under either the Uniformed Services Employment and Reemployment Rights Act (USERRA) or laws/regulations related to veterans' preference (VP) in Federal employment. The purposes of the Uniformed Services Employment and Reemployment Rights Act (USERRA) and this information collection requirement include: To protect and facilitate the prompt reemployment of members of the uniformed services (to include National Guard and Reserves); to minimize disruption to the lives of persons who perform service in the uniformed services and their employers; and to encourage individuals to participate in non-career uniformed service. Also, to prohibit discrimination in employment and acts of reprisal against persons because of their obligations in the uniformed services, prior service, intention to join the uniformed services, filing of a USERRA claim, seeking assistance concerning an alleged violation, testifying in a proceeding, or otherwise assisting in an investigation.

The purposes of Veterans' Preference laws and regulations and this information collection requirement include: To provide preference for certain veterans (preference eligibles) over others in Federal hiring from competitive lists of applicants; and to provide preference eligibles with preference over others in retention during reductions in force in Federal agencies.

II. Desired Focus of Comments

Currently VETS is soliciting comments concerning the proposed information collection request for the VETS/USERRA/VP Form 1010. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

This notice requests an extension of the current Office of Management and Budget approval of the paperwork requirements for VETS/USERRA/VP Form 1010.

Type of Review: Extension.

Agency: Veterans' Employment and Training Service.

Title: VETS/USERRA/VP Form 1010.

OMB Number: 1293–0002.

Affected Public: Individuals or households.

Total Respondents: Approximately 1,500.

Average Time per Response: 15 minutes.

Total Burden Hours: 375 hours.

Total Annualized Capital/Startup costs: $0.

Total Initial Annual Costs: $0.

Comments submitted in response to this notice will be summarized and included in the request for the Office of Management and Budget approval of the information collection request. Comments will become a matter of public record.

Dated: October 9, 2002.

Charles S. Ciccolella,

Deputy Assistant Secretary, Veterans' Employment and Training.

[FR Doc. 02–26345 Filed 10–16–02; 8:45 am]

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Federal Register

Thursday,
October 17, 2002

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 6, 7, 18, et al.
Testing and Evaluation by Independent Laboratories and Non-MSHA Product Safety Standards; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 6, 7, 18, 19, 20, 22, 23, 27, 33, 35, and 36

RIN 1219–AA87

Testing and Evaluation by Independent Laboratories and Non-MSHA Product Safety Standards

AGENCY: Mine Safety and Health Administration (MSHA), Department of Labor.

ACTION: Proposed rule, notice of hearing and close of comment period.

SUMMARY: This revised proposed rule would establish alternate requirements for testing and evaluation of products that MSHA approves for use in gassy underground mines. It is being published in response to comments received as the result of a 1994 proposed rule on the same subject. It would permit manufacturers of certain products, who seek MSHA approval, to use an independent laboratory to perform, in whole or part, the necessary testing and evaluation for approval. Testing and evaluation as used in this proposed rule means testing, evaluation, or both. This revised proposed rule would also permit manufacturers to have their products approved based on non-MSHA product safety standards. This would occur only after MSHA has determined that such standards are equivalent to its applicable product approval requirements or can be modified to provide at least the same degree of protection as those MSHA requirements. The revised rule, as proposed, should increase the availability of a wider variety of mining products having enhanced safety features by reducing costs and broadening the market for mining equipment.

DATES: Comments must be received on or before December 31, 2002. Submit written comments on the information collection requirements by December 16, 2002.

Two public hearings will be held. One in Denver, Colorado on January 7, 2003 and another in Washington, Pennsylvania on January 9, 2003. The first hearing will begin at 9 a.m. and end after the last scheduled speaker appears; no later than 5 p.m. on January 7, 2003.

The second hearing will begin at 9 a.m. and end after the last scheduled speaker appears; no later than 5 p.m. on January 9, 2003. If individuals or organizations wish to make an oral presentation for the record, we ask that you submit your request at least 5 days prior to the hearing dates. However, you do not have to make a written request to speak. Any unallotted time will be made available for persons making same-day requests.

The post-hearing comment period will close 30 days after the second public hearing on February 10, 2003.

ADDRESSES: *Comments.* Send comments on the revised proposed rule—

(1) By mail or hand delivery to MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2352, Arlington, VA 22209–3939;

(2) By facsimile to MSHA, Office of Standards, Regulations and Variances, 202–693–9441; or

(3) By electronic mail to *comments@msha.gov*. If possible, please supplement written comments with computer files on disk. You may contact MSHA with any format questions.

Send written comments on the information collection requirements to both MSHA and the Office of Management and Budget (OMB) as follows:

(1) To OMB by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for MSHA; and

(2) To MSHA by one of the following methods:

(a) By mail or hand delivery to MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2352, Arlington, VA 22209–3939;

(b) By facsimile to MSHA, at 202–693–9441; or

(c) By electronic mail to *comments@msha.gov*.

Hearings. (1) The hearing on January 7, 2003 will be held at the DoubleTree Hotel Denver, 3203 Quebec Street, Denver, Colorado 80207 (phone: (303) 321–3333).

(2) The hearing on January 9, 2003 will be held at the Holiday Inn Meadowlands, 340 Racetrack Road, Washington, Pennsylvania 15301 (phone: (724) 222–6200).

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209–3939. Mr. Nichols can be reached at *nichols-marvin@msha.gov* (Internet E-mail), 202–693–9440 (voice), or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION: You may obtain copies of the revised proposed rule and the Preliminary Regulatory Economic Analysis (PREA) in alternative formats by calling the number in the **FOR FURTHER INFORMATION CONTACT** section above. The alternative formats available are either a large print version of these documents or electronic files that can be sent to you either on a computer disk or an attachment to an e-mail. The documents also are available on the Internet at *http://www.msha.gov/REGSINFO.HTM*. We intend to place the public comments on these documents on our website shortly after we receive them.

I. Background

From its creation by Congress in 1910, MSHA's predecessor, the Bureau of Mines, U.S. Department of Interior (Bureau), was responsible for the testing and evaluation of mining products. Under the Federal Mine Safety and Health Act of 1977 (Mine Act), MSHA is responsible for prescribing the technical design, construction, and the test requirements for certain products used in underground mines, and for testing and evaluating them for approval based on those requirements. These technical requirements are set forth in the Agency's approval regulations in 30 CFR parts 7 through 36.

MSHA's approval regulations govern the process through which manufacturers may obtain MSHA approval, certification, acceptance or evaluation of certain products for use in underground mines. Each of these separate approval actions has specific application procedures and technical requirements for testing and evaluation. MSHA currently conducts the testing and evaluation of products for a fee paid by the applicant. Following MSHA approval, manufacturers must ensure that the product continues to conform to the technical requirements tested, evaluated, and approved by MSHA.

When MSHA receives an application for approval of a product for use in underground mines, every aspect of the documentation package is reviewed to determine whether the technical requirements of the applicable provisions of 30 CFR parts 15 through 36 have been met. Each drawing and specification in the package is cross-checked against these requirements and, for some products, samples of the product or parts of the product are disassembled and examined by MSHA for conformity with the drawings and specifications. After MSHA verifies that an applicant's product complies with the design and construction requirements, MSHA then tests the product to determine whether it performs according to the approval requirements, unless the design obviates the need for testing. If the product passes the tests and meets all MSHA requirements, MSHA issues an approval for the product.

Once MSHA has approved a product, the manufacturer is authorized to place an MSHA approval marking on the product that identifies it as approved for use in underground mines. Use of the MSHA marking obligates the manufacturer to maintain the quality of the product as approved. The MSHA marking indicates to the mining community that the product has been manufactured according to the drawings and specifications upon which the approval was based. Any proposed change to an approved product that causes it to differ from the design or construction described in the original documentation approved by MSHA must be submitted to the Agency for approval prior to implementation of the change. If MSHA approves the change, the Agency issues an extension of approval or a notice of acceptance of the modified product to the manufacturer.

In the mid-1980s, the Agency reviewed its product approval program to determine whether it could be restructured to provide improved safety to miners without increasing cost to the applicant. That review resulted in the promulgation in 1988 of 30 CFR part 7, Testing by Applicant or Third-Party, which represented MSHA's first departure from its role of front-end prototype testing of products for approval, by substituting manufacturer or third-party testing of a limited number of products for the testing that previously had been conducted by MSHA.

The objectives of the program were to permit MSHA to redirect its resources to its post-approval product audit functions, as well as to the review of technological improvements in mining products. The Agency's shift in emphasis was intended to enhance the safety of products in mines by providing the mining community a greater assurance that approved products in mines continue to be manufactured as approved, by detecting any problems in manufactured products more effectively, and by enabling a more expeditious introduction of new technology.

Products selected as suitable for applicant or third-party testing under part 7 were those with characteristics which could be objectively tested in a routine and readily reproducible manner, with no elements of subjective analysis. Products whose testing results depend on the experience, judgement, and knowledge of the personnel executing the tests, such as testing a complex intrinsically safe circuit, were not included in the part 7 program.

Under part 7, all product testing is conducted according to MSHA-specified tests and procedures, using calibrated and accurate instruments. Moreover, the product testing is subject to Agency. Part 7 is not a self-certification program. The part 7 concept shifts only the testing of certain products to the applicant or a third party. The evaluation of the test results and the issuance of the approval remain the responsibility of the Agency. This revised proposed rule would not affect the testing aspects of part 7. Part 7, unlike the other approval parts, would continue to permit testing by the applicant or by third party laboratories that are not necessarily independent from the manufacturer.

II. 1994 Proposed Rule

In 1993, MSHA initiated a further review of its approval and certification activities, including its part 7 applicant or third-party testing program. Based on this review, the Agency reaffirmed the objectives of the part 7 concept to increase post-approval product audits and direct more resources to evaluation of safety and technological improvements in products for use underground. However, MSHA determined that while the part 7 program was a step in the right direction, the limited scope of that program did not free up sufficient resources to allow MSHA to fully redirect its efforts to meet those objectives. After considering how best to accomplish those goals, the Agency decided to initiate rulemaking to modify MSHA's approval program in two ways, which it did in 1994. Under the 1994 proposed rule, applicants seeking MSHA product approval would have been required to use independent laboratories recognized by the Occupational Safety and Health Administration (OSHA) under its Nationally-Recognized Testing Laboratories (NRTL) program for the required testing and evaluation. This would have been in place of MSHA testing and evaluation of products. As with the part 7 program, however, MSHA would have continued to verify that approval requirements were met and would have retained full responsibility for issuing the product approval. Thus, the 1994 proposed rule would not have constituted a self-certification program. Second, MSHA or appropriately recognized independent laboratories would have been permitted, upon an applicant's request, to test and evaluate a product for approval based on approval requirements other than the Agency's, as long as those requirements provided an equal or a greater degree of protection. This would have allowed MSHA to approve a product meeting the International Electrotechnical Commission's (IEC) approval standards, or some other approval requirements different from those specified in MSHA's regulations, provided that MSHA first had determined that those requirements were equivalent or could be modified to provide protection equivalent to that afforded by products tested and evaluated according to MSHA approval requirements. In this way, the Agency could have taken advantage of revisions to product safety standards developed by other countries or standards development organizations to address technological advances or improvements in product safety. Such an approach would have permitted the introduction of a wider variety of improved products into U.S. mines more quickly than if the Agency had to undertake rulemaking to address each technological advance or improvement in product safety, capability, and performance.

A notice of proposed rulemaking (NPRM) for a new part 6 was published on November 30, 1994 (59 FR 61376). The NPRM comment period was extended to February 21, 1995 (60 FR 8209). A Public Hearing Notice was published on October 10, 1995 (60 FR 52640), scheduling a public hearing for November 15, 1995. That hearing was rescheduled to April 30, 1996. (61 FR 15743). The post-hearing comment period ended on May 31, 1996. (61 FR 15743). The rule was not published as a final rule. Instead, MSHA is publishing this revised proposed rule (hereafter referred to as the proposed rule).

III. Discussion of Proposed Rule

A. Introduction

The proposed rule would provide a number of significant improvements to the 1994 proposed rule. There were two major concerns expressed by a large number of commenters, primarily representing product manufacturers and mine operators. They objected to the requirement to employ the services of private sector laboratories, and expressed concern over the loss of expertise that MSHA would experience by ceasing to perform tests and evaluations. There was also an overwhelming concern about the effects the mandatory nature of the 1994 proposed rule would have on their costs and turnaround times. Many commenters stated that they had previous experience in dealing with third party laboratories and, in general,

had experienced higher costs and longer turnaround times in those instances.

MSHA has revised the 1994 proposed rule to address these concerns, because we recognize the industry's need to expedite the transfer of technology into the mining environment. This transfer should improve the health and safety of miners. The alternate program in this proposed rule would permit a manufacturer who has had a product tested and evaluated by an independent laboratory to submit the test reports and technical information to MSHA to obtain MSHA approval for the product.

MSHA is aware of certain instruments that are currently listed (approved) by independent laboratories for use in hazardous gas and dust atmospheres that may also be suitable for use in the mine environment. These instruments include: portable methane detectors, air sampling pumps, oxygen deficiency meters, air velocity meters, carbon monoxide detectors, hydrogen sulfide detectors, powered respirators and accessories, toxic gas detectors, portable two-way radios, laser surveying instruments, mine rescue communications system, photometers, temperature sensing devices, personal audible and visual alarms, heat detection systems, voice amplifiers, position sensing devices, tape recorders, pressure sensing devices, data recording instruments, electrical diagnostic test instruments, sound level meters, sound level calibrators, audio dosimeters, and cable fault detectors.

MSHA has issued approvals for a number of instruments that were already listed (approved) by an independent laboratory at the time of application for MSHA approval. Examples of some of these instruments are: Motorola MT2000 and HT1000 Hand-held Radios; MSA Microgard Portable Alarm for warning of low levels of oxygen and high levels of methane; MSA Escort Elf Portable Pump for sampling of the mine atmosphere for dust; MSA Passport and Mini Series Personal Alarms for warning of high levels of toxic and combustible gases; Industrial Scientific Corporation Model SP402 Sampling Pump for remote monitoring of oxygen, toxic and combustible gases; and Industrial Scientific Corporation Model TMX410 Four-Gas Monitor for monitoring and warning of high levels of toxic and combustible gases and low levels of oxygen.

MSHA is aware that there are many more products, including instruments, motors, explosion-proof enclosures, conveyor belts and hydraulic fluids, that are listed by independent laboratories that have not been submitted for MSHA approval. These products, used in other industries, can offer safety-related benefits to the mining industry and are considered potential candidates for the program that would be created by this rule. By permitting acceptance of independent laboratory test and evaluation results, MSHA believes that some of these product manufacturers would be encouraged to submit their products for MSHA approval.

MSHA is also aware that many instruments and products have been listed (approved) by independent laboratories to Underwriter's Laboratories (UL) and Factory Mutual (FM) intrinsic safety standards for use in Class I (explosive gas-air mixtures) and Class II (explosive dust-air mixtures) atmospheres. Many of the same tests and design requirements that MSHA uses under its intrinsic safety regulations are also used in the UL and FM standards. Under this proposed rule, applicants seeking MSHA approval of instruments or other products for intrinsic safety purposes could submit the results of any independent laboratory's testing and evaluation for intrinsic safety to MSHA as part of their applications. If after review, MSHA determined that the testing already conducted was performed properly, MSHA could accept the test results and would not have to repeat testing in cases where the tests were the same. This would reduce costs and the time spent by manufacturers to obtain MSHA approval. If the review raised questions or concerns about the validity of test and evaluations submitted, MSHA would need to perform repeat testing. MSHA, of course, would conduct additional testing and evaluation where the UL and FM intrinsic safety requirements were not the same as MSHA's.

The most significant change from the 1994 proposed rule is that MSHA would retain its testing and evaluation capabilities, but would offer applicants the alternative of submitting an independent laboratory test and evaluation report for MSHA approval. MSHA would have the authority to accept the test and evaluation results in lieu of conducting its own. MSHA also would have the authority to conduct or to observe any additional or repeat test and evaluation to ensure compliance with the MSHA requirements.

MSHA carefully analyzed the comments received in response to the 1994 proposed rule and responded in many instances by revising it. The resultant proposed rule would offer the alternative approval program as well as the equivalency requirements in essentially the 1994 proposed form.

Some commenters expressed concern that MSHA might lose expertise if independent laboratories performed all testing and evaluation. This proposed rule would retain a major role for MSHA. MSHA would be analyzing non-MSHA product safety standards to determine equivalency. This proposed rule would allow MSHA, at the request of the applicant, to approve products based either on its approval regulations or non-MSHA product safety standards that have been determined to be equivalent. Most importantly, MSHA would remain the approval authority, whether MSHA or an independent laboratory does the testing and evaluation.

In developing this proposed rule, MSHA has made every effort to address the comments received on the 1994 proposed rulemaking. Comments addressing both the costs and the benefits of each provision, as well as revisions and deletions, were carefully evaluated against the statutory requirement that nothing in this proposed rule shall reduce the protection afforded miners by an existing mandatory health or safety standard.

B. Section-by-Section Discussion

The 1994 proposed rule, which would have required applicants to use independent laboratories to perform the product testing and evaluation necessary for issuance of MSHA's product approval, was intended to form the foundation of a modified approval program providing enhanced product user protection and more rapid introduction of new technology into the mining industry. The 1994 proposed rule would also have required applicants for product approval to submit to MSHA the test and evaluation data and results obtained from an independent laboratory recognized by OSHA as an NRTL. The 1994 proposed rule also would have permitted applicants to request MSHA approval based on testing and evaluation requirements other than MSHA's once MSHA determined the other requirements to be equivalent to it own requirements in their original or modified form.

MSHA received many comments on the 1994 proposed rule from interested parties, such as mining equipment manufacturers, mine operators, representatives of miners, professional associations, and laboratories. Many of these commenters also participated in the hearing and sent in post-hearing comments on a number of issues. MSHA has extensively modified the 1994 proposed rule based on these comments.

Under this proposed rule, manufacturers seeking MSHA approval could choose to have their products tested and evaluated either by an independent laboratory or by MSHA. MSHA would be able to accept the independent laboratory's test and evaluation results in lieu of performing its own. Also under this proposed rule, the equivalency concept would remain basically the same as originally proposed.

No approvals would be issued under part 6. Instead, any approval issued based on part 6 provisions would continue to be approved under the applicable product approval parts. The necessary conforming language is being proposed to those other approval parts in this **Federal Register** Notice of Proposed Rulemaking.

The following portion of the preamble discusses each provision of the proposed part 6 rule. The text of the proposed rule is included at the end of the document.

Section 6.1 Purpose and Effective Date

This section explains that the purpose of this proposal would be to establish an alternate program for testing and evaluation of products MSHA approves for use in gassy underground mines. It would permit manufacturers of certain products who seek MSHA approval to use an independent laboratory to perform, in whole or in part, the necessary testing and evaluation for approval. It also would permit manufacturers to request to have their products approved based on non-MSHA product safety standards once MSHA has determined that the non-MSHA product safety standards are equivalent to MSHA's applicable product approval requirements or can be modified to provide at least the same degree of protection as MSHA's requirements.

The provisions of this part would apply to any application for approval or extension of approval filed under 30 CFR parts 18, 19, 20, 22, 23, 27, 33, 35, or 36, and received by MSHA after the effective date of this rule. It would be effective 60 days after publication of the final rule in the **Federal Register**.

Section 6.2 Definitions

This section of the proposed rule would define and clarify the key terms used in part 6. The 1994 proposed rule included definitions for "approval" and "evaluation." Commenters on the 1994 proposed rule did not direct any comments to these definitions. The definition of "approval" remains unchanged. The definition for "evaluation" was removed because MSHA believes the term is self-explanatory.

The additional definitions are provided to clarify certain terms that were not defined in the 1994 proposed rule or to address new terms that were not included in the 1994 proposed rule. These would include "applicant," "approval holder," "equivalent non-MSHA product safety standard," "independent laboratory," "post-approval product audit" and "product safety standard."

Applicant. This term would be used to describe an individual or organization that manufactures or controls the assembly of a product and that applies to MSHA for approval of that product.

Approval. This term would be used to describe a written document issued by MSHA which states that a product has met the applicable requirements of part 18, 19, 20, 22, 23, 27, 33, 35, or 36. The definition would be based on the existing definitions of "approval" in the parts specified above. It is expanded to include "certification" and "acceptance" because these terms also are used to denote MSHA approval.

Approval holder. This term would be used to describe an applicant whose application for approval of a product under part 18, 19, 20, 22, 23, 27, 33, 35, or 36 of this chapter has been approved by MSHA.

Equivalent non-MSHA product safety standard. This term would be used to describe a non-MSHA product safety standard, or group of standards, that is determined by MSHA to provide at least the same degree of protection as the applicable MSHA product approval requirements in parts 18, 19, 20, 22, 23, 27, 33, 35, and 36, or which in modified form, provides at least the same degree of protection.

Independent Laboratory. This term would be used to describe a laboratory that: (1) Has been recognized by a laboratory accrediting organization (*e.g.*, OSHA NRTL Program, American Association for Laboratory Accreditation (A2LA), International Electrotechnical Commission (IEC), etc.) to test and evaluate products to a product safety standard, and (2) is free from commercial, financial, and other pressures that may influence the results of the testing and evaluation process.

Post-approval product audit. This term applies to the examination, testing, or both, by MSHA of approved products selected by MSHA to determine whether those products meet the applicable product approval requirements and have been manufactured as approved.

Product safety standard. This term would be used to describe a document, or group of documents that specify the requirements for the testing and evaluation of a product for use in explosive gas and dust atmospheres, and, when appropriate, include documents addressing the flammability properties of products.

Section 6.10 Use of Independent Laboratories

Under paragraph (a) of the proposed rule, manufacturers who seek approval of certain products would be permitted to use an independent laboratory to perform, in whole or in part, the necessary testing and evaluation for MSHA product approval. Thus, this proposed rule would no longer require manufacturers to use independent laboratories. Instead, it would give manufacturers the option of having either MSHA or an independent laboratory do the testing and evaluation.

Also, under this proposed rule, if independent laboratories were used, applicants would need to submit, as part of the approval application, four items set out in subparagraphs (1), (2), (3), and (4) of section 6.10(a). They would include written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization; a complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements; identification of components or features of the product that are critical to the safety of the product; and all documentation, including drawings and specifications, which are required by the applicable approval part under this chapter.

The language in the 1994 proposed rule, requiring that testing and evaluation of products submitted to MSHA for approval be conducted only by an independent laboratory recognized as a NRTL under OSHA's program, has not been included. There was disagreement with the Agency's 1994 proposal to require that manufacturers use NRTLs to test and evaluate their products prior to requesting MSHA approval. The comments were in two general categories: First, commenters noted that the use of NRTLs would be mandatory; and second, that the 1994 proposal relied exclusively on NRTLs instead of a broader category of independent laboratories.

One commenter stated that it was not opposed to MSHA's acceptance of results produced by a NRTL if MSHA preserved the option for manufacturers to submit their products to MSHA for testing. Various commenters expressed concern that the exclusive use of NRTLs

could create a monopoly. Other commenters expressed concern about the small number of NRTLs and the cost of the equipment necessary to test specialized mining products. These commenters feared that the NRTLs would find it too costly to duplicate MSHA testing equipment, especially when the number of products requiring such testing would be small. Further, they expressed concern that NRTLs would tend to specialize in only one kind of testing, resulting in a monopoly and inhibiting competition. It was also their contention that NRTLs would be unable to respond to numerous requests from competing manufacturers, and would thus reduce the availability of competitive products and limit the mining industry to a few suppliers. Such specialization could also cause bottlenecks in testing and evaluation if multiple manufacturers sought approval concurrently. They also feared that the laboratories would face competing demands for resources and that laboratories might give priority to non-mining industry products. This proposed rule would allow manufacturers to choose whether to have MSHA conduct the testing and evaluation or to have an independent laboratory, recognized by a laboratory accrediting organization, do so. The laboratory would not have to be a NRTL.

Although it is no longer proposing that an independent laboratory used be recognized under OSHA's NRTL program, the Agency determined that it would be essential for the laboratories performing testing and evaluation to be recognized by a laboratory accrediting organization. This is based on comments asserting the need for a system to be in place to determine the qualifications of laboratories. MSHA agrees that competent laboratory accrediting organizations exist and continues to believe that it should not establish its own program and duplicate the work of others. One commenter recommended this by stating, "[r]ecognizing existing programs [third-party certification programs] should be a significant cost reduction to already overburdened government agencies."

While MSHA does not want to establish its own laboratory accreditation program, the Agency believes there are two essential qualifications that laboratories would have to meet in order for MSHA and the mining community to have assurance that any product, tested and evaluated by third party laboratories, would be safe in the mining environment. First, MSHA believes that the laboratory must be independent of commercial, financial, or other pressures that could influence the results of the testing and evaluation process. Independence of the testing laboratory from the manufacturer is essential for MSHA and the mining public to have confidence in the results of testing and evaluation conducted outside the Agency's Approval and Certification Center. Second, MSHA would need some evidence that the laboratory is competent to test and evaluate to a particular product safety standard. This proposed rule would permit MSHA to accept testing and evaluation performed by an independent laboratory provided that MSHA receives written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization. MSHA agrees with commenters that there are a number of capable accrediting organizations already in existence and is proposing to accept testing and evaluation by independent laboratories that are accredited by any one of them.

Some commenters pointed to MSHA's existing regulation at 30 CFR part 7 that allows self-testing in certain circumstances, and advocated expansion of that program. However, that regulation clearly spells out the circumstances under which MSHA allows manufacturer testing. The Agency limited such testing to only products that could be objectively tested in a routine and readily reproducible manner, with no elements of subjective analysis. With part 7, MSHA provides the exact testing procedure and components or products either pass or fail. It is not a self-certification program. MSHA continues to evaluate the test results and issue the approval.

This part 6 proposed rule would not allow manufacturer testing and evaluation because of the broad range of products covered by it and because the testing and evaluation often requires subjective analysis. For this type of testing and evaluation, MSHA prefers the use of third party, rather than manufacturer, testing and evaluation results. The use of a third party to conduct the testing would increase confidence in the objectivity of the test results.

As indicated in the prior discussion on proposed definitions, this proposed rule defines an independent laboratory as a laboratory that has been recognized by a laboratory accrediting organization to test and evaluate products to a product safety standard and is free from commercial, financial, and other pressures that may influence the results of the testing and evaluation process.

Several commenters expressed concern that results from foreign laboratories would be eliminated with the required use of NRTLs. A commenter suggested that test results for products certified in other countries should be accepted by MSHA in lieu of our tests because many manufacturers market products which have already been certified in other countries for use in underground mines. Another commenter suggested that MSHA would have to add enhancements to the Approval and Certification Center test facilities to accommodate different tests. One commenter stated that MSHA should accept testing by U.S. and non-U.S. facilities as an alternative to MSHA testing.

On the other hand, one commenter objected to any foreign laboratories performing testing and evaluation for MSHA product approvals. This commenter did not believe that a sufficient level of protection could be maintained over products tested in foreign countries for use in U.S. mines. The commenter stated that it would be much more difficult for MSHA to maintain oversight of the quality of foreign laboratories' work. This commenter expressed concern that most foreign laboratories would be inclined to serve the interest of their own countries rather than conform to U.S. approval requirements, especially if the rejection of a product would mean a loss in foreign trade for the country where the laboratory was located. This commenter questioned how MSHA would ensure that foreign laboratories would have the facilities, equipment, and qualified persons to conduct the testing or that test parameters would be met.

MSHA recognizes that some foreign laboratories would meet the criteria for independent laboratories. Therefore, a manufacturer could choose to use a foreign laboratory that has been accredited by a recognized accrediting organization such as the IEC to perform testing and evaluation to MSHA's requirements. Guide 17025 of the International Organization for Standardization (ISO)/IEC "General requirements for the competence of testing and calibration laboratories" and ISO/IEC Guide 65 "General requirements for bodies operating product certification systems" are the main documents used both nationally and internationally by organizations which accredit laboratories. Moreover, the United States is a member of the World Trade Organization (WTO). The Technical Barriers to Trade Agreement applies to members of the WTO and requires members to ensure that technical regulations are not prepared, adopted, or applied with a view to or with the effect of creating unnecessary obstacles to international trade. This means that, under the agreement, standards could not be promulgated that would discriminate between foreign and domestic manufacturers and laboratories. Therefore, under this proposed rule, a manufacturer could choose to use independent laboratories recognized under OSHA's NRTL program or laboratories accredited by other national or foreign accrediting organizations.

Additionally, commenters expressed concern that MSHA would lose its expertise if the Agency did not continue to test and evaluate products as part of the approval process. In response to these concerns, MSHA emphasizes that it would continue to test and evaluate products at the manufacturers' request. It would also need to retain testing and evaluation capability for the purposes of post-product approval audits, accident investigations, and for purposes of technical assistance. In addition, as discussed later in § 6.20 of this proposed rule, MSHA would be evaluating other non-MSHA product safety standards to determine equivalency, increasing its testing and evaluation expertise.

Commenters cited many concerns about increased costs. They cited a significant increase in the cost of testing and evaluation done by independent laboratories compared to the fees imposed by MSHA. MSHA's costs are set through a process that determines the direct and indirect hourly costs for the testing, evaluation, and approval of a product. MSHA does not include profit in the fees. MSHA considered the disparity in costs between MSHA and independent laboratories for product testing and evaluation in revising the 1994 proposed rule. Since the revised proposal would no longer require the use of independent laboratories to perform all testing and evaluation for MSHA approval, these increased costs would be eliminated.

MSHA has considered all of these objections to the exclusive mandatory use of NRTLs, and this proposed rule addresses those objections. The proposed rule would allow the optional use of a wide network of independent laboratories, eliminating the concern about monopolies. It also would provide manufacturers the option to have MSHA perform some or all of the testing and evaluation necessary for approval. MSHA believes that assessing other non-MSHA product safety standards' equivalency to MSHA's approval requirements and continuing its responsibility for product audits would have maintained MSHA's expertise. Under this proposed rule, the Agency would continue to be involved in direct product testing and evaluation if manufacturers choose to submit their products to MSHA for testing and evaluation, thus obviating the concern about MSHA expertise. MSHA would also be investigating new technology. By eliminating the requirement for exclusive use of NRTLs, MSHA addresses the concerns raised about audits, cost, and creation of monopolies.

Paragraph (b) of this proposed rule, like the 1994 proposed rule, would require that product testing and evaluation performed by independent laboratories for purposes of MSHA approval comply with MSHA product approval requirements. The proposed rule would not permit an independent laboratory to change a testing standard or any elements incorporated into the standard. This is due to the critical nature of the testing and evaluation of products to be used in a potentially hazardous underground mining environment.

Paragraph (c) of this proposed rule would require product testing to be conducted or witnessed by the independent laboratory's personnel. Revised paragraph (c) would replace the language in the 1994 proposed paragraph (b) that would have required all testing to be conducted at the laboratory site. Generally, commenters were in disagreement with that 1994 proposed requirement. They gave examples of products that could not be transported to a laboratory. That requirement was derived from an OSHA NRTL policy that has since been changed. MSHA considered the comments and has decided to permit off-site testing as long as it is conducted or witnessed by personnel of the independent laboratory.

Under paragraph (d) of this proposed rule, MSHA would notify applicants, after the review of information required under paragraph (a), if additional information and testing would be required. The applicant would be required to provide the information, arrange any additional or repeat tests and notify MSHA of the location, date, and time of the test(s). MSHA could observe additional testing conducted by an independent laboratory. Further, MSHA could decide to conduct the additional or repeated tests at the applicant's expense. The applicant would have to supply any additional components necessary for testing and evaluation. Without a complete application, MSHA would be unable to initiate the technical review of the product.

After determining that an application package is complete, MSHA would initiate a technical review to ensure that the independent laboratory's testing and evaluation results were both reasonable and appropriate for the particular product. If the technical review of the package indicated deficiencies resulting from inadequate data, illogical or unreasonable testing or evaluation results, or the omission of required information, the applicant would be notified of the discrepancy and given a reasonable period of time to provide the needed information and correct the apparent deficiency. If MSHA determined that additional or repeat testing would be required, the applicant would have to arrange for any additional or repeat tests and notify MSHA of the location, date and time of the test(s). MSHA could elect to observe additional testing conducted by an independent laboratory or MSHA could conduct the additional or repeat tests at the applicant's expense. The applicant would need to supply any additional components necessary for testing and evaluation.

Following the administrative and technical reviews of the product approval package, MSHA would issue an approval, or a notice denying approval, to the applicant. A notice denying approval would state the reasons on which the denial was based. If an approval were issued, the approval holder would be authorized and required to place an MSHA marking on the product which signifies to the user of the product that it is approved for use in gassy underground mines. The product drawings and specifications, the independent laboratory's testing and evaluation results and its statement of product compliance with the applicable approval requirements, as well as written evidence of the laboratory's independence and current recognition by an accrediting organization, would be retained in the approval file at MSHA's Approval and Certification Center.

Section 6.10(d) of the 1994 proposed rule would have required that approved products tested and evaluated by NRTLs display both the NRTL and the MSHA marks. Commenters objected to what they considered duplicative and confusing markings and raised issues about changes to products, liability, and proper use of a registered certification mark. Because this proposed rule would eliminate the required use of NRTLs to test and evaluate, the 1994 proposed rule provision for a NRTL marking would no longer be necessary. As a result, the revised proposed rule would not require that manufacturers use the mark of the independent laboratory that tested and evaluated the product or its

components. However, nothing in this proposed rule would prohibit a manufacturer from using the mark of an independent laboratory if it chose to do so, as long as it carries the MSHA mark as well. Since the MSHA marking is the only marking that approval holders would be required to place on approved products, the marking provision of § 6.10(d) of the 1994 proposed rule has been deleted in this proposed rule because each applicable approval part contains its own marking requirement. Further, the requirement that a reference be made on the NRTL marking to the test standard used in testing and evaluation of the product for MSHA approval has also been deleted.

Paragraph (e) in the 1994 proposed rule would have required internal audits, performed by a NRTL as part of the quality control program required by the OSHA accreditation, to be made available for review by MSHA. Additionally, the 1994 proposed paragraph (f) would have required NRTLs recognized by OSHA to perform MSHA testing and evaluation to formulate and implement a "follow-up" program in accordance with the OSHA requirements of 29 CFR 1910.7(b)(2). The 1994 proposed paragraph (g) would also have required that NRTLs make available to MSHA for review information gathered by a NRTL during manufacturing site inspections or field audits of manufactured products approved by MSHA. These three provisions, relating to the mandatory use of NRTLs, have not been included in this proposed rule since MSHA is no longer requiring the exclusive use of NRTLs.

Revised proposed paragraph (e), consistent with the 1994 proposed paragraph (g), would require that approval holders of products approved based on independent laboratory testing and evaluation make such products available for audit upon request by MSHA. This would not occur more than once a year, except for cause. Such an audit would be conducted at a mutually agreeable site at no cost to MSHA. This is to ensure that products bearing the MSHA marking meet the approval requirements and are manufactured in accordance with the approved drawings and specifications. Commenters were concerned that the frequency of audits required by the NRTL would lead to excessive costs and operational delays caused by the diversion of resources and the frequent presence of auditors on site. These commenters maintained that NRTL audits would duplicate audits conducted by MSHA. In response to comments, MSHA has deleted the requirement for the exclusive use of NRTLs in the proposed rule and, by doing so, has eliminated the need for NRTL-mandated audits. Although MSHA would no longer specifically require manufacturers to adhere to audits required by independent laboratories, MSHA recognizes that most manufacturers who elect to have their products listed (approved) by independent laboratories generally accept those laboratories' audit requirements to maintain their listing.

MSHA would continue to conduct audits as part of its post-approval product audit program. MSHA conducts audits to ensure conformity with the technical requirements upon which the approval was based. Approved products to be audited by MSHA would be selected by the Agency as representative of those distributed for use in underground mines. When an approved product is requested by MSHA for audit from the approval holder, the Agency would arrange to examine and evaluate it at a mutually agreed upon time and location and would permit the approval holder to observe audit-related tests conducted. This examination and evaluation could take place at an MSHA facility, at the manufacturer's plant or distribution center, or at any other place agreed upon by MSHA and the approval holder. The approval holder would be able to obtain the report resulting from such audits.

A commenter expressed concern that MSHA's post-approval product audits would serve only to remove foreign approved products after a defective product is found and had possibly caused serious harm. The commenter suggested that the rule should provide "proactive" protection that is designed to root out such problems before they cause injury and destruction, particularly when MSHA-approved foreign products are involved. In response, MSHA believes that safeguards would be in place to detect a problem prior to a product being placed in a mine. The independent laboratory, either foreign or domestic, would have to be recognized by a laboratory accrediting organization, such as OSHA's NRTL Program, A2LA, or IEC, to test and evaluate products to specific product safety standards.

Additionally, product testing and evaluation performed by both foreign and domestic laboratories for purposes of MSHA approval would have to comply with MSHA product approval requirements. In this regard, under this proposed rule, MSHA would carefully review all product testing and evaluation reports submitted in support of product approval applications prior to an approval decision being made. This would ensure that such testing and evaluation had been performed in accordance with MSHA procedures and requirements. Finally, the manufacturer would be ultimately responsible for any product, under any of the approval parts covered, regardless of who performs the testing (*i.e.*, foreign or domestic independent laboratory or MSHA). Once the product is in the mine, the mine operator is required to maintain the product in approved condition.

This proposed rule would allow MSHA to more effectively determine whether products are, in fact, being manufactured as approved. MSHA, not the manufacturer, would select the product. MSHA also would continue to obtain approved products from sources other than the manufacturer. This approach is particularly useful for products that are "one of a kind" or of limited distribution. Because these products are not readily found at mine suppliers or distributors, they would be difficult to locate without the assistance of the approval holder.

In determining which approved products would be subject to audit at any particular time, MSHA would consider a variety of factors such as whether the manufacturer has previously produced the approved product or similar products, whether the approved product is new or part of a new product line, or whether the approved product is intended for a unique application or limited distribution. Other considerations could include product complexity, the manufacturer's previous product audit results, product population in the mining community, and the time since the last audit or since the product was first approved.

Based on MSHA's experience, the Agency anticipates few instances in which more than one approved product would be required to be audited "for cause" from any one manufacturer in any one year. There are circumstances or causes, however, under which additional products for audit may be necessary to ascertain compliance with the technical requirements upon which an approval was based. Examples of such circumstances include verified complaints about the safety of an approved product, evidence of product changes that have not been approved, audit test results that warrant further testing to determine compliance, and evaluation of corrective action taken by an approval holder. Under these circumstances, the approval holder would have to provide, at no cost to MSHA, additional approved products so the Agency could ensure that the approval holder is meeting its obligation to manufacture the product as approved.

When discrepancies are found during MSHA audits of approved products, MSHA would require that the manufacturer take all necessary corrective actions. These actions could include, but are not limited to, the approval holder recalling or retrofitting the approved product involved, and issuing notices of such action to users. Revocation of the approval by MSHA may result when discrepancies in approved products are not corrected.

Revised paragraph (f), is based in part on the 1994 proposed paragraph (f). It would require approval holders to notify MSHA of all product defects they discover, once products are approved. We received very little comment on this section of the 1994 proposed rule. It would be retained as revised proposed paragraph (f).

One commenter suggested that MSHA be more specific about what is considered a "defect." A defect is a nonconformance with the MSHA approved design, including any drawings and specifications. There are varying degrees of significance of defects. It would be MSHA's intent that all defects be reported to the Agency.

Because the use of products with defects could create hazards underground, immediate notification should be made by expedient means, such as by telephone, e-mail, or fax. The telephone notification should be followed-up in writing. The oral and written notification should include a description of the nature and extent of the problem.

In the 1994 proposed rule, paragraph (h) would have required that approval holders submit to MSHA any change to an approved product from the documentation on file at MSHA that affects the technical requirements of the applicable product approval part. MSHA recognizes that changes to approved products are addressed in the individual approval parts. Therefore, the 1994 proposed provision was not included in this revised proposed rule.

In response to comments, it is not the Agency's intent to change its current method of handling requests for modification of approval. MSHA would continue to accept changes through its Revised Approval Modification Program (RAMP), which replaced the Stamped Notification Acceptance Program (SNAP) and the Stamped Revision Acceptance (SRA) program.

The 1994 proposed paragraph (i) would have established the basis and procedures for revocation of NRTL recognition. One commenter asked what would happen if a laboratory's recognition was revoked by OSHA and wanted to know the effect on the approvals (listings) granted by that laboratory. This provision has been deleted in this proposed rule because MSHA would no longer be requiring NRTL recognition. Moreover, revocation of a NRTL recognition or accreditation of an independent laboratory may not necessarily impact the validity of the approval. However, if MSHA believes that the reason for the revocation could affect the safety of products tested, MSHA would take appropriate action on a case-by-case basis. The Agency reserves the right, under every applicable part, to rescind, for cause, any product approval, certification, acceptance, or extension granted under that part.

Section 6.20 MSHA Acceptance of Equivalent Non-MSHA Product Safety Standards.

Section 6.20(a) of this proposed rule is similar to the 1994 proposed § 6.20(a) and states that MSHA would accept non-MSHA product safety standards, or group of standards, as equivalent after determining that they: (1) provide at least the same degree of protection as MSHA's product approval requirements set forth for the product in other parts of this chapter; or (2) can be modified to provide at least the same degree of protection as those MSHA requirements.

Paragraph (b) of this proposed rule provides that MSHA would publish its intent to review any non-MSHA product safety standard for equivalency in the **Federal Register** for the purpose of soliciting public input. This provision has been added in response to comments to the 1994 proposed rule. Many commenters expressed a desire to have input into the equivalency decision-making process. One commenter even proposed that the Agency use the Mine Act's section 101(c) process for petitions for modification of standards. Although MSHA has provided for public input into the equivalency process, it has not accepted the suggestion that the agency use the section 101(c) procedures. Section 101(c) provides that mine operators or miner representatives, not equipment manufacturers, may request that MSHA accept a safety practice that varies from that prescribed by a standard as long as it provides at least the same measure of protection to the miners. MSHA does not interpret this section to allow equipment manufacturers to petition the Agency for the use of non-MSHA product safety standards for products to be used in multiple mines. MSHA encourages public input in the equivalency process. It would solicit such input through a **Federal Register** notice once it decides to evaluate a particular standard or group of standards for equivalency. Because MSHA is solely responsible for the approval of mining products under the Mine Act, MSHA would retain the ultimate decision on equivalency.

Paragraph (c) of this proposed rule would require that MSHA publish a listing of all final equivalency determinations in this part 6 and the applicable approval parts. The listing would state whether MSHA accepts the non-MSHA product safety standards in their original form, or would require modifications to demonstrate equivalency. If modifications were required, they would also be provided in the listing. MSHA would notify the public of each equivalency determination and would publish a summary of the basis for its determination in the Federal Register. MSHA would provide complete equivalency determination reports upon request to the Approval and Certification Center.

Paragraph (d) of this proposed rule would require that after MSHA has determined that non-MSHA product safety standards are equivalent and has notified the public of such determinations in the **Federal Register**, applicants could seek MSHA product approval based on such non-MSHA product safety standards.

Non-MSHA product safety standards would be considered equivalent when MSHA determines that, in their original or modified form, they provide at least the same degree of protection as MSHA's product approval requirements in parts 18, 19, 20, 22, 23, 27, 33, 35 or 36 of this chapter.

The Agency believes that this proposed rule would encourage a more rapid introduction of mining products embodying new technology with enhanced safety features. In addition, testing and evaluation to "equivalent" standards, that provide at least the same degree of protection to miners as those in the various MSHA product approval regulations could achieve multiple objectives. These would include metric conversion, greater compatibility with international standards, and a more competitive posture for U.S. products in the international market.

There was general agreement with the concept of MSHA approving products based on equivalent non-MSHA product safety standards, but many concerns about how it would be implemented. One commenter stated, "We certainly advocate expanding the design and testing standards that MSHA can accept." The commenter went on to

point out practical problems in doing so. Another commenter stated that its organization "advocates MSHA acceptance of standards other than those developed exclusively by the agency as the basis for approval of products," but then stated that MSHA should limit the number of standards for which they would make equivalency determinations. Others echoed this opinion.

Commenters expressed concern about how MSHA would select the standards to receive priority for equivalency determinations. MSHA agrees with commenters that there should be a system for determining the order in which MSHA selects standards for equivalency determinations. Revised proposed § 6.20 provides that MSHA would determine which non-MSHA product safety standards, or groups of standards, were equivalent or could be modified to be equivalent. The decision to perform an equivalency evaluation would be based on MSHA's determination of the overall value of conducting the evaluation. It is MSHA's intention to base its decision on factors such as the number of potential applications for approval using a particular non-MSHA product safety standard, the number of potential products affected, and its knowledge of the standard and the potential for it being equivalent. MSHA began this process some time ago in order to compare its approval requirements to those of other organizations because of the increasing use of those non-MSHA product safety standards in international trade and because of requests from the public. The equivalency analysis would be conducted by the Agency's Approval and Certification Center using personnel with expertise in the approval requirements involved.

Many commenters asked that MSHA adopt international standards without requiring any modifications. They argued that standards such as those of the IEC are widely accepted, even where they differ from MSHA's. It should be noted that most countries that utilize the base IEC standards modify them through national deviations that recognize each country's unique conditions and needs. These national deviations sometime conflict with each other, making adoption of a single global standard impractical. In addition, the base IEC standards may not provide at least the same degree of protection as MSHA's existing product approval requirements. MSHA's equivalency determinations would be based on the objectives of its product approval requirements and the hazards they were designed to address. Section 101(a)(9) of the Mine Act provides that no new standard can reduce the protection afforded miners by an existing standard. For this reason, MSHA must assure that any non-MSHA product safety standard provides at least the same degree of protection for the miners who may use the product approved under that standard. MSHA cannot accept product safety standards, domestic or international, without determining whether they are equivalent or whether some modifications to those product safety standards are needed to achieve the objectives of the existing MSHA product approval requirements. While certain standards, including those accepted by other mining agencies, may be equivalent, MSHA must make that determination on a standard-by-standard basis. It is MSHA's belief that certain product safety standards may well be equivalent without modifications; others may require modification. The Agency would have to do a systematic analysis first to make this determination.

MSHA's equivalency analysis would compare the subject product safety standards, whether domestic or international, and MSHA's applicable product approval requirements. Where they differ, each difference would be examined to assess its effect on overall safety, and the differences as a whole would be assessed. Where the differences do not impact the objectives of the MSHA requirements, MSHA would issue a determination that the standard is equivalent to MSHA's approval requirements. However, if certain design criteria or performance requirements fail to meet MSHA's objectives or could diminish the safety of the product in underground mines, MSHA would specify the modifications necessary to reconcile the differences between the two so that at least the same degree of protection is provided.

Some commenters argued for the use of international standards and suggested that MSHA take a more active role on international standards committees to assure that product safety standards issued by these bodies reflect MSHA requirements, making it unnecessary for MSHA to add modifications. Others were concerned that MSHA would select the most stringent requirements from the MSHA approval requirements and from the non-MSHA product safety standards of other bodies, thus creating a hybrid regulation which would be more stringent, but not necessarily safer. Others stated that MSHA had not demonstrated that its approval requirements were safer than those of other bodies.

Under this proposed rule, when MSHA evaluates a product safety standard to determine equivalency, the Agency would be looking at the standard as a whole and whether it meets the objectives of MSHA's applicable product approval requirements. The Agency recognizes that some non-MSHA product safety standards may have more stringent provisions than MSHA's comparable approval requirements. However, it is not the Agency's intention to require more stringent protections where a non-MSHA product safety standard may afford them. MSHA intends to require modifications only where the non-MSHA standard does not provide equivalent protection. For manufacturers who choose to design products to more stringent standards, for purposes other than MSHA approval, this proposed rule would provide the vehicle for them to obtain MSHA approval even if their products were not designed specifically to MSHA's approval requirements. It is not the Agency's intention to develop a "hybrid" regulation, choosing the most stringent requirements from both the MSHA requirements and non-MSHA standards, as some commenters feared. The wording in the 1994 proposed § 6.20(b) would have required modifications to provide the "same or a greater degree of protection" as the applicable product approval requirements. This proposed rule, on the other hand, would require modifications to provide at least the same degree of protection as MSHA's product approval requirements.

One commenter expressed concern that MSHA would require the use of its procedures for equivalent standards, by way of modifications, thus creating a standard that would be the same as MSHA's. MSHA does not plan to specify test procedures or protocols for non-MSHA product safety standards determined to be equivalent. The equivalency determination would be based on the overall safety provided by the standard and the ability of the standard to address the hazards the MSHA requirements were designed to address. A non-MSHA product safety standard could be considered equivalent even though all or portions of its testing and evaluation requirements and procedures may differ from MSHA's requirements.

Under this proposed rule, after MSHA has determined that equivalent requirements exist or that certain requirements, other than those in MSHA approval regulations, can be modified to provide at least the same degree of protection, the applicant would be given

the option of requesting that MSHA base its approval on the equivalent, non-MSHA product safety standard, instead of on MSHA's applicable product approval requirements. This option would benefit manufacturers by permitting them to design products to a single set of requirements for sale in multiple markets (domestic and international as well as mining and non-mining applications).

Because this proposed rule would permit approval of mining equipment intended to compete in multiple market areas with differing approval requirements, the approved product design would incorporate the highest level of safety required by any of the intended market areas. For example, if the target areas include mining and non-mining markets, and the non-mining market has a product safety standard with more stringent approval requirements than MSHA for a specific product, MSHA could, at the request of the applicant, issue an approval based on the more stringent requirements. The approval documentation would state that the product fulfills both the more stringent requirements in the non-mining standard and MSHA's approval requirements. In this case, the approved product sold in mining markets would provide a greater degree of protection than that specified by MSHA under existing requirements. Should the non-mining market have product safety standards which are, in some aspects, less stringent than those of MSHA, the applicant would be required to fulfill the non-mining standards' requirements and, in addition, all other requirements deemed necessary to ensure that the product provides at least the same degree of protection demanded by the MSHA approval requirements. In this situation, the approved product would exceed the safety requirements of the non-mining standard and meet those of MSHA's. The same analysis would apply if the targeted areas were foreign and domestic markets.

In these situations, MSHA's approval documentation would show that the product had fulfilled the requirements of any non-MSHA product safety standard and those of MSHA. In the first instance, the product marketed in the non-mining application would embody a higher level of safety, while in the second instance it would embody equivalent safety. In no case would the product provide less protection than mandated by MSHA approval requirements.

The following example illustrates how MSHA would evaluate non-MSHA product safety standards to determine if they provide at least the same degree of protection as MSHA's product approval requirements. MSHA's approval regulation under 30 CFR part 18 performs explosion testing of explosion-proof enclosures using a methane-in-air mixture. The IEC explosion-proof enclosure standard (IEC 60079–1) requires the use of more sensitive test gases. That standard specifies the use of methane to determine "reference pressures" and uses a hydrogen/methane fuel mixture to test for flame propagation. The tests used in both MSHA requirements and the IEC standard produce higher pressures/temperatures than would occur during normal operation.

One obvious difference in the two test protocols is MSHA's criterion to observe for the "discharge of flame" (hot glowing gases) during any of the tests. The IEC standard does not have this requirement. The reason for this difference is that MSHA tests enclosures "as manufactured" without any intentional gaps and, unlike the IEC, does not require flamepath gaps to be enlarged to the maximum specified by design. Therefore, during MSHA testing, flamepaths are not forced open to any appreciable amount, unless there are defects or weaknesses in the enclosure. This is important because MSHA's requirements do not contain provisions for regular prototype pressure testing to supplement the explosion tests, as do the IEC requirements. Such pressure testing is specifically designed to identify faulty products over a broader range of pressures than can be achieved by the MSHA explosion testing protocol.

Considering the above discussion, MSHA's explosion testing protocol, with combustible mixtures of methane as the test gas and using the discharge of flame as an additional criterion to flame propagation for test failure, sets a high evaluation standard for explosion-proof enclosures used on mining equipment in the U.S. However, testing is accomplished without introducing intentional flamepath flange gaps. In contrast, the IEC standard requires that tests be conducted with flamepath gaps intentionally enlarged to within 80% to 100% of the maximum specified design. Thus, the IEC test standard allows for luminous flame to pass, but with insufficient energy to ignite the surrounding atmosphere and uses a more easily ignitable test gas than methane. This concession is significant when flamepath gaps are purposely enlarged for testing. Such a practice could produce non-incendive luminous gas discharges during testing, which would be considered unacceptable under MSHA test protocols. MSHA has no evidence that such a non-incendive luminous gas discharge is unsafe. The MSHA requirement and the IEC standard could be considered equivalent because the MSHA requirement to observe no discharge of flame is offset by the IEC's use of a more easily ignitable test gas and intentional gap enlargement.

With all other factors equal, MSHA could consider the explosion test specified by IEC to be equivalent to the explosion test procedure followed by MSHA in fulfillment of 30 CFR 18.62. In this manner a single test could verify conformity to the test requirements of both product standards with no reduction of safety in either case. This example highlights the methods that would be employed by MSHA when determining if a non-MSHA product safety standard provides at least the same degree of protection as MSHA's product approval requirements. In like fashion, other differences between MSHA requirements and the IEC standards would be analyzed to determine if they are equivalent or if modifications to the IEC standards would be required.

This same process would be applied to all non-MSHA product safety standards that would be evaluated for equivalency. For example, MSHA requires that a component in an intrinsically safe circuit be tested to determine that it would not overheat under fault conditions and ignite a layer of coal dust. UL requires the product to be marked with a maximum temperature rating (also called a "T-Code") or tested using a different ignitable dust or gas. MSHA would determine if the temperature rating is below the minimum ignition temperature of a coal dust layer or if the specified dust layer (e.g., grain dust) used in the test has a lower ignition temperature than a coal dust layer currently used in MSHA tests. If equivalency could not be determined, MSHA would require an additional test using a layer of a specified type and size of coal dust to ensure at least the same degree of protection is provided.

MSHA anticipates that savings from use of equivalent non-MSHA product safety standards could reduce the manufacturer's unit cost by permitting more standardized construction and, thus, improve the manufacturer's competitive position. This, together with the need to provide products meeting the highest level of safety demanded by the market areas of interest, could encourage a more rapid introduction of mining products embodying new technology with enhanced safety features. In general, this

proposed rule should provide increased opportunity for direct competition leading to improved safety and performance quality in mining products.

Many commenters agreed that the equivalency provision would permit manufacturers to design a machine or product to a single set of requirements, rather than designing separate machines to comply with the separate requirements of each market place in which business is sought. However, a few commenters were concerned that foreign manufacturers would have an advantage over U.S. manufacturers. One commenter stated that "if a foreign manufacturer's product(s) met different standards, which MSHA considered equal to or more stringent than the proposed U.S. standard and was granted "equivalency" before domestic manufacturers were able to have their revised specifications tested and approved, the foreign manufacturer would enjoy a competitive advantage in the U.S. market." The commenter believed that rather than not discriminating between U.S. and foreign manufacturers, the 1994 proposed rule would actually discriminate against U.S. manufacturers. The commenter concluded that MSHA must not favor foreign manufacturers with the competitive advantage or weaken their own audit responsibility to grant unregulated equivalency. Another commenter stated that if a conveyor belt had been approved under a non-MSHA product safety standard which MSHA considered to be equivalent to its requirements, then the submission of those test results and approval details to MSHA would result in that manufacturer being granted an MSHA approval without requiring any MSHA review.

The Agency believes that these commenters misunderstood the intent of the provision. They interpreted the 1994 proposed language to mean that if a non-MSHA product safety standard was determined to be equivalent by MSHA, foreign manufacturers of that product would receive automatic approval by MSHA without further review of the product. This is not the case. Under both the 1994 proposed rule and this revised proposed rule, manufacturers would still be required to apply for MSHA approval of their products, but then could have MSHA base the approval on either MSHA approval requirements or the equivalent non-MSHA product safety standards. MSHA would retain the responsibility of approving or denying an application based on all information submitted in the application.

As is the case with existing MSHA approval regulations, this proposed rule would not discriminate between U.S. and foreign manufacturers. Any manufacturer, either domestic or foreign, wishing to acquire an MSHA product approval would be able to take advantage of this "equivalency" program.

Further, this proposed rule would be consistent with the North American Free Trade Agreement and the Agreement on Technical Barriers to Trade (TBT).

Equivalency Under Part 7

MSHA has proposed to add the equivalency concept to part 7 which would operate like the provision for equivalency in proposed § 6.20.

Under this new proposed section, § 7.2 would be amended by adding a new definition of "equivalent non-MSHA product safety standard." This term would be used to describe a non-MSHA product safety standard, or group of standards, that is determined by MSHA to provide at least the same degree of protection as the applicable MSHA technical requirements in the subparts of part 7. This definition would be essentially the same as that in § 6.2 of proposed part 6.

Section 7.10 MSHA acceptance of equivalent non-MSHA product safety standards.

New proposed § 7.10(a) is similar to the revised proposed § 6.20(a) and would provide that MSHA would accept non-MSHA product safety standards, or group of standards, as equivalent after determining that they: (1) Provide at least the same degree of protection as MSHA's technical requirements for the products in other subparts of this part; or (2) can be modified to provide at least the same degree of protection as those MSHA requirements.

Paragraph (b) of the new proposed § 7.10 would provide that MSHA publish its intent to review any non-MSHA product safety standard for equivalency in the **Federal Register** for the purpose of soliciting public input.

Paragraph (c) of the proposed § 7.10 would provide that MSHA publish a listing of all equivalency determinations for this part 7. The listing would state whether MSHA accepts the non-MSHA product safety standards in their original form, or would require modifications to demonstrate equivalency. If modifications were required, they would also be included in this listing for this part 7. MSHA would notify the public of each equivalency determination and would publish a summary of the basis for its determination in the **Federal Register**. MSHA would provide complete equivalency determination reports upon request to the Approval and Certification Center.

Paragraph (d) of the new proposed § 7.10 would provide that after MSHA has determined that non-MSHA product safety standards are equivalent and has notified the public of such determinations, applicants could seek MSHA product approval based on such non-MSHA product safety standards.

MSHA is aware of some foreign and domestic non-MSHA product safety standards that could be used to test and evaluate products approved under the various subparts of part 7. These standards are used in other countries and other industries. Some of these non-MSHA product safety standards could provide at least the same degree of protection as MSHA requirements and could provide consistent, repeatable test results.

MSHA intends to operate its proposed equivalency program under part 7, the same as previously described in the discussion of proposed § 6.20 on equivalency.

Derivation Table

The following derivation table lists: (1) Each section number of this proposed rule and (2) The section number of the 1994 proposed rule from which the section is derived.

DERIVATION TABLE

This Proposed Rule	1994 Proposed Rule
6.1	6.1 & 6.10
6.2 (revised)	6.2
6.10(a) (revised)	6.10(a)
6.10(b) (revised)	6.10(b)
6.10(c) (revised)	6.10(b)
6.10(d) (revised)	6.10(c)
Removed	6.10(d)
Removed	6.10(e)
6.10(e) (revised)	6.10(g)
6.10(f) (revised)	6.10(f)
Removed	6.10(h)
Removed	6.10(i)
6.20(a) (revised)	6.20(a) & (b)
6.20(b)	New
6.20(c) (revised)	6.20(c)
6.20(d) (revised)	6.20(a)
7.2	New
7.10	New
18.6(a)(2) (revised)	18.6(a)(2)
18.6(a)(3) (revised)	18.6(a)(3)
18.6(a)(4) (revised)	18.6(a)(4)
18.15(a)(2) revised)	18.15(a)(2)
19.3 (revised)	19.3
19.13(a)(revised)	19.13(a)
20.3 (revised)	20.3
20.14(a) revised)	20.14(a)
Removed	21.4(a), (b), & (c)
Removed	21.10(a)
22.4 (revised)	22.4
22.11(a) (revised)	22.11(a)

DERIVATION TABLE—Continued

This Proposed Rule	1994 Proposed Rule
23.3 (revised)	23.3
23.14(a) (revised)	23.14(a)
Removed	26.8(a)
Removed	26.19(a)
27.4(a) (revised)	27.4(a)
27.11(a)(revised)	27.11(a)
Removed	29.11(a)
Removed	29.35(a)
33.6(a) (revised)	33.6(a)
33.12(a) (revised)	33.12(a)
35.6(a) (revised)	35.6(a)
35.12(a)(revised)	35.12(a)
36.6(a)	New
36.12(a)	New

Distribution Table

The following distribution table lists: (1) each section number of the 1994 proposed rule and (2) the section number of this proposed rule which contains provisions derived from the corresponding 1994 proposed sections.

DISTRIBUTION TABLE

1994 Proposed Rule	This Proposed Rule
6.1 & 6.10	6.1
6.2	6.2 (revised)
6.10(a)	6.10(a) (revised)
6.10(b)	6.10(b), (c) (revised)
6.10(c)	6.10(d) (revised)
6.10(d)	Removed
6.10(e)	Removed
6.10(f)	6.10(f) (revised)
6.10(g)	6.10(e) (revised)
6.10(h)	Removed
6.10(i)	Removed
6.20(a)	6.20(a), (d) (revised)
6.20(b)	6.20(a) (revised)
6.20(c)	6.20(c) (revised)
18.6(a)(2)	18.6(a)(2) (revised)
18.6(a)(3)	18.6(a)(3) (revised)
18.6(a)(4)	18.6(a)(4) (revised)
18.15(a)(2)	18.15(a)(2) revised)
19.3	19.3 (revised)
19,13(a)	19.13(a) (revised)
20.3	20.3 (revised)
20.14(a)	20.14(a) revised)
21.4(a), (b), & (c)	Removed
21.10(a)	Removed
22.4	22.4 (revised)
22.11(a)	22.11(a) (revised)
23.3	23.3 (revised)
23.14(a)	23.14(a) (revised)
26.8(a)	Removed
26.19(a)	Removed
27.4(a)	27.4(a) (revised)
27.11(a)	27.11(a) (revised)
29.11(a)	Removed
29.35(a)	Removed
33.6(a)	33.6(a) (revised)
33.12(a)	33.12(a) (revised)
35.6(a)	35.6(a) (revised)
35.12(a)	35.12(a) (revised)

IV. Paperwork Reduction Act

This proposed rule would result in a total of approximately 29 burden hours and $645 dollars of related costs. A breakdown of the burden hours and related costs by provision and by applicant size can be found in Chapter VII of the Preliminary Regulatory Economic Analysis (PREA) supporting this proposed rule. The paperwork requirements for applications for approval by MSHA of products and equipment under 30 CFR parts 18, 19, 20, 22, 23, 27, 33, 35, and 36 are cleared under OMB Control Number 1219–0066. The PREA is located on our Web site at *http://www.msha.gov/REGSINFO.HTM*. Comments may be sent to the addresses listed in the **ADDRESSES** section of the preamble.

Under § 6.10 applicants would have to provide information stated in paragraphs (a)(1) through (a)(4) for MSHA to accept testing and evaluation performed by an independent laboratory. Currently, applicants must submit only information requested in paragraph (a)(4). If applicants choose to use independent laboratories, information requested in paragraphs (a)(1) through (a)(3) would be needed because MSHA would no longer be performing all the testing and evaluation associated with the approval application. Providing the information under § 6.10(a)(1) through (a)(3) would result in a total of approximately 24 burden hours and $457 of associated costs.

Section 6.10(d) states that after review of the information required under paragraph (a)(1) through (a)(4), MSHA would notify the applicant if additional information and testing were required. If an independent laboratory conducts any additional or repeat testing, then the applicant would have to send the test results to MSHA. Sending any additional or repeat testing results to MSHA under § 6.10(d) would result in a total of 2 burden hours and $39 of associated costs.

Section 6.10(g) states that, once the product is approved, the approval holder would have to notify MSHA of all product defects of which the approval holder is aware. Notification is assumed to be in the form of a letter to MSHA. Notifying MSHA of product defects under § 6.10(g) would result in a total of 3 burden hours and $149 of associated costs.

V. Executive Order 12866

A. Compliance Costs

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of proposed regulations. MSHA has determined that this proposed rule does not meet the criteria of an economically significant regulatory action pursuant to Executive Order 12866 § 3(f)(1) in that it would not have an effect on the economy of $100 million or otherwise have any material adverse effect. Although this proposed rule is not an economically significant action, MSHA has completed a PREA in which the economic impact of the proposed rule is estimated. For a complete breakdown of the compliance costs for this proposed rule see Chapter IV of the PREA. The PREA is available from MSHA and is summarized as follows.

The proposed rule would result in an annual net cost savings of about $1.5 million. Applicants seeking MSHA product approval employing 500 or fewer workers would realize a net cost savings of $0.66 million. Applicants employing more than 500 workers would realize a net cost savings of $0.86 million.

The net cost savings of $0.66 million, for applicants employing 500 or fewer workers, would consist of cost savings of $0.68 million and compliance costs of $0.02 million. The net cost savings of $0.86 million, for applicants employing more than 500 workers, would consist of cost savings of $0.88 million and compliance costs of $0.02 million.

B. Benefits

This proposed rule should encourage non-mining manufacturers with products that could be applicable to mining to apply for approvals. The proposed modification of the approval process would expedite the introduction of technologically-advanced products into the mine, thus improving miner safety. Finally, the rule would reduce applicants' costs by eliminating repeat testing and evaluation and the need for multiple product lines. For a more complete discussion of the Benefits of this proposed rule, see Chapter III of the PREA.

VI. Regulatory Flexibility Act (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA)

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's economic impact on small entities. Under the RFA, MSHA must use the Small Business Administration's (SBA's) criterion for a small entity in determining a rule's economic impact unless, after consultation with the SBA Office of Advocacy, MSHA establishes an alternative definition for a small entity and publishes that definition in the **Federal Register** for notice and comment.

For the mining industry, SBA defines "small" as a mine with 500 or fewer workers. In addition, most applicants

(manufacturers) that file for an MSHA approval for their products operate in industries such as those involved in measurement, analysis, controlling instruments, photographic instruments, commercial and industrial lighting fixtures, and conveyors. SBA considers the small business size standard for such industries to be 500 or fewer employees. To ensure that this proposed rule conforms to the RFA, MSHA has analyzed the economic impact of the proposed rule on small entities that are defined as those employing 500 or fewer workers.

A. Factual Basis for Certification

Based on its analysis, MSHA has preliminarily determined that this proposed rule would not have a significant economic impact on a substantial number of small entities. MSHA has so certified this finding to the SBA. The factual basis for this certification is discussed in Chapter V of the PREA.

B. Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, the revised proposed rule does not include any Federal mandate that would result in increased expenditures by State, local, or tribal governments, or increased expenditures by the private sector of more than $100 million. MSHA is not aware of any State, local, or tribal governments which manufacture products applicable to mining.

C. Executive Order 13132 (Federalism)

MSHA has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it would not have "federalism implications." The proposed rule would not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." MSHA is not aware of any State or local governments which manufacture products applicable to mining.

D. Executive Order 13045 (Health and Safety Effect on Children)

In accordance with Executive Order 13045, MSHA has evaluated the environmental health and safety effect of this proposed rule on children. The Agency has determined that the proposed rule would not have an adverse impact on children.

E. Executive Order 13175 (Indian Tribal Governments)

MSHA certifies that this proposed rule would not impose substantial direct compliance costs on Indian tribal governments. MSHA is not aware of any tribal governments which manufacture products applicable to mining.

F. Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights)

This proposed rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it would not involve implementation of a policy with takings implications.

G. Executive Order 12988 (Civil Justice Reform)

The Agency has reviewed Executive Order 12988, Civil Justice Reform, and determined that this proposed rule would not unduly burden the Federal court system. The proposed rule has been written so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

H. Executive Order 13211 (Energy)

In accordance with Executive Order 13211, MSHA has reviewed this proposed rule for its energy impacts. MSHA has determined that this proposed rule would not have any adverse effects on energy supply, distribution, or use.

I. Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in Chapter V of the PREA, MSHA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

VII. Conduct of Public Hearings

The hearings will be conducted in an informal manner. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions.

The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. The hearing panel may ask questions of speakers. At the discretion of the presiding official, the time allocated to speakers for their presentation may be limited.

The hearings will begin at 9 a.m. and end after the last scheduled speaker appears; and in any event, not later than 5 p.m.

A verbatim transcript of the proceedings will be prepared and made a part of the rulemaking record. Copies of the transcript will be available to the public. The transcript will also be available on MSHA's Web page at *http://www.msha.gov*, under Statutory and Regulatory Information.

MSHA will accept post-hearing written comments and other appropriate data for the record from any interested party, including those not presenting oral statements. Written comments will be included in the rulemaking record.

VIII. Close of Post-hearing Comment Period

The post-hearing comment period will close on February 10, 2003.

List of Subjects in 30 CFR Parts 6, 7, 18, 19, 20, 22, 23, 27, 33, 35, and 36

Mine safety and health, Testing and evaluation by independent laboratories and the use of equivalent Non-MSHA product safety standards, Testing by applicant or third party.

Signed at Arlington, Virginia, this 4th day of October, 2002.

John R. Caylor,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

For the reasons set out in the preamble, chapter I of title 30 of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 6 is added to read as follows:

PART 6—TESTING AND EVALUATION BY INDEPENDENT LABORATORIES AND THE USE OF EQUIVALENT NON-MSHA PRODUCT SAFETY STANDARDS

Sec.
6.1 Purpose and effective date.
6.2 Definitions.
6.10 Use of independent laboratories.
6.20 MSHA acceptance of equivalent non-MSHA product safety standards.

Authority: 30 U.S.C. 957.

§ 6.1 Purpose and effective date.

This part sets out alternate requirements for testing and evaluation of products MSHA approves for use in gassy underground mines. It permits manufacturers of certain products who seek MSHA approval to use an independent laboratory to perform, in whole or part, the necessary testing and evaluation for approval. It also permits manufacturers to have their products approved based on non-MSHA product safety standards once MSHA has determined that the non-MSHA standards are equivalent to MSHA's applicable product approval requirements or can be modified to provide at least the same degree of protection as those MSHA requirements. The provisions of this part may be used by applicants for product approval under parts 18, 19, 20, 22, 23, 27, 33, 35, and 36 of this chapter. This part is effective [60 days after publication of the final rule in the **Federal Register**.]

§ 6.2 Definitions.

The following definitions apply in this part.

Applicant. This term is used to describe an individual or organization that manufactures or controls the assembly of a product and that applies to MSHA for approval of that product.

Approval. This term is used to describe a written document issued by MSHA which states that a product has met the applicable requirements of part 18, 19, 20, 22, 23, 27, 33, 35, or 36 of this chapter. The definition is based on the existing definitions of "approval" in the parts specified above. It also includes "certification" and "acceptance" because these terms also are used to denote MSHA approval.

Approval holder. An applicant whose application for approval of a product under parts 18, 19, 20, 22, 23, 27, 33, 35 or 36 of this chapter has been approved by MSHA.

Equivalent non-MSHA product safety standards. A non-MSHA product safety standard, or group of standards, that is determined by MSHA to provide at least the same degree of protection as the applicable MSHA product approval requirements in parts 18, 19, 20, 22, 23, 27, 33, 35, and 36 of this chapter, or which in modified form provide at least the same degree of protection.

Independent laboratory. A laboratory that:

(1) Has been recognized by a laboratory accrediting organization to test and evaluate products to a product safety standard, and

(2) Is free from commercial, financial, and other pressures that may influence the results of the testing and evaluation process.

Post-approval product audit. This term applies to the examination, testing, or both, by MSHA of approved products selected by MSHA to determine whether those products meet the applicable product approval requirements and have been manufactured as approved.

Product safety standard. A document, or group of documents, that specifies the requirements for the testing and evaluation of a product for use in explosive gas and dust atmospheres, and, when appropriate, includes documents addressing the flammability properties of products.

§ 6.10 Use of independent laboratories.

(a) MSHA will accept testing and evaluation performed by an independent laboratory for purposes of MSHA product approval provided that MSHA receives as part of the application:

(1) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(2) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(3) Identification of components or features of the product that are critical to the safety of the product; and

(4) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by the applicable part under this chapter.

(b) Product testing and evaluation performed by independent laboratories for purposes of MSHA approval must comply with the applicable MSHA product approval requirements.

(c) Product testing and evaluation must be conducted or witnessed by the laboratory's personnel.

(d) After review of the information required under paragraphs (a)(1) through (a)(4) of this section, MSHA will notify the applicant if additional information or testing is required. The applicant must provide this information, arrange any additional or repeat tests and notify MSHA of the location, date, and time of the test(s). MSHA may observe any additional testing conducted by an independent laboratory. Further, MSHA may decide to conduct the additional or repeated tests at the applicant's expense. The applicant must supply any additional components necessary for testing and evaluation.

(e) Upon request by MSHA, but not more than once a year, except for cause, approval holders of products approved based on independent laboratory testing and evaluation must make such products available for post-approval audit at a mutually agreeable site at no cost to MSHA.

(f) Once the product is approved, the approval holder must notify MSHA of all product defects of which they become aware.

§ 6.20 MSHA acceptance of equivalent non-MSHA product safety standards.

(a) MSHA will accept non-MSHA product safety standards, or groups of standards, as equivalent after determining that they:

(1) Provide at least the same degree of protection as MSHA's product approval requirements in parts 18, 19, 20, 22, 23, 27, 33, 35 or 36 of this chapter; or

(2) Can be modified to provide at least the same degree of protection as those MSHA requirements.

(b) MSHA will publish its intent to review any non-MSHA product safety standard for equivalency in the **Federal Register** for the purpose of soliciting public input.

(c) A listing of all equivalency determinations will be published in this part 6 and the applicable approval parts. The listing will state whether MSHA accepts the non-MSHA product safety standards in their original form, or whether MSHA will require modifications to demonstrate equivalency. If modifications are required, they will be provided in the listing. MSHA will notify the public of each equivalency determination and will publish a summary of the basis for its determination. MSHA will provide equivalency determination reports to the public upon request to the Approval and Certification Center.

(d) After MSHA has determined that non-MSHA product safety standards are equivalent and has notified the public of such determinations, applicants may seek MSHA product approval based on such non-MSHA product safety standards.

PART 7—TESTING BY APPLICANT OR THIRD PARTY

2. The authority citation for part 7 continues to read as follows:

Authority: 30 U.S.C. 957.

3. Amend § 7.2 by adding a new definition to read as follows:

§ 7.2 Definitions.

* * * * *

Equivalent non-MSHA product safety standards. A non-MSHA product safety standard, or group of standards, that is determined by MSHA ot provide at least the same degree of protection as the applicable MSHA product technical requirements in the subparts of this part, or can be modified to provide at least the same degree of protection as those MSHA requirements.

* * * * *

4. Amend subpart A by adding a new 7.10 to read as follows:

§ 7.10 MSHA acceptance of equivalent non-MSHA product safety standards.

(a) MSHA will accept non-MSHA product safety standards, or groups of standards, as equivalent after determining that they:

(1) Provide at least the same degree of protection as MSHA's applicable technical requirements for a product in the subparts of this part; or

(2) Can be modified to provide at least the same degree of protection as those MSHA requirements.

(b) MSHA will publish its intent to review any non-MSHA product safety standard for equivalency in the **Federal Register** for the purpose of soliciting public input.

(c) A listing of all equivalency determinations will be published in this part 7. The listing will state whether MSHA accepts the non-MSHA product safety standards in their original form, or whether MSHA will require modifications to demonstrate equivalency. If modifications are required, they will be provided in the listing. MSHA will notify the public of each equivalency determination and will publish a summary of the basis for its determination. MSHA will provide equivalency determination reports to the public upon request to the Approval and Certification Center.

(d) After MSHA has determined that non-MSHA product safety standards are equivalent and has notified the public of such determinations, applicants may seek MSHA product approval based on such non-MSHA product safety standards.

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

5. The authority citation for part 18 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

5–a. Amend § 18.6 by revising paragraph (a) to read as follows:

§ 18.6 Applications.

(a)(1) Investigation leading to approval, certification, extension thereof, or acceptance of hose or conveyor belt, will be undertaken by MSHA only pursuant to a written application accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration to cover the fees. The application shall be accompanied by all necessary drawings, specifications, descriptions, and related materials, as set out in this part.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant shall include the information required in 30 CFR 6.10(a).

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

(4) The application, all related documents, and all correspondence concerning it shall be addressed to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

* * * * *

6. Amend § 18.15 by revising paragraph (a) to read as follows:

§ 18.15 Changes after approval or certification.

* * * * *

(a)(1) Application shall be made as for an original approval or letter of certification requesting that the existing approval or certification be extended to cover the proposed changes and shall be accompanied by drawings, specifications, and related information, showing the changes in detail.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved or certified product under this part, the applicant shall include the information required in 30 CFR 6.10(a).

* * * * *

PART 19—ELECTRIC CAP LAMPS

7. The authority citation for part 19 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

* * * * *

7–a. Revise § 19.3 to read as follows:

§ 19.3 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any lamp, the manufacturer shall make application by letter for an investigation leading to approval of its lamp. This application must be accompanied by a check, bank draft, or money order, payable to U.S. Mine Safety and Health Administration, to cover all the necessary fees, shall be sent to Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, together with the required drawings, one complete lamp, and instructions for its operation.

(b) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant shall include the information required in 30 CFR 6.10(a).

(c) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

8. Amend § 19.13 by revising paragraph (a) to read as follows:

§ 19.13 Instructions for handling future changes in lamp design.

* * * * *

(a)(1) The manufacturer shall write to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. With this letter the manufacturer should submit a revised drawing or drawings showing the changes in detail, and one of each of changed lamp parts.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant shall include the information required in 30 CFR 6.10(a).

* * * * *

PART 20—ELECTRIC MINE LAMPS OTHER THAN STANDARD CAP LAMPS

9. The authority citation for part 20 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

9–a. Revise § 20.3 to read as follows:

§ 20.3 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any lamp, the manufacturer shall make application by letter for an investigation of the lamp. This application must be accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees. It shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, together with the required drawings, one complete lamp, and instructions for its operation.

(b) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation necessary for approval under this part, the applicant shall include the information required § 6.10(a).

(c) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

10. Amend § 20.14 by revising paragraph (a) to read as follows:

§ 20.14 Instructions for handling future changes in lamp design.

* * * * *

(a)(1) The manufacturer shall write to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, requesting an extension of the original approval and describing the change or changes proposed. With this letter the manufacturer should submit a revised drawing or drawings showing the changes in detail, and one of each of the changed lamp parts.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant shall include the information required in 30 CFR 6.10(a).

* * * * *

PART 22—PORTABLE METHANE DETECTORS

11. The authority citation for part 22 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

11–a. Revise § 22.4 to read as follows:

§ 22.4 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any methane detector, the manufacturer shall make application by letter for an investigation leading to approval of the detector. This application must be accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees. It shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, together with the required drawings, one complete detector, and instructions for its operation.

(b) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant shall include the information required in 30 CFR 6.10(a).

(c) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

12. Section 22.11 is amended by revising paragraph (a) to read as follows:

§ 22.11 Instructions on handling future changes in design.

* * * * *

(a)(1) The manufacturer must write to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. With this request, the manufacturer should submit a revised drawing or drawings showing changes in detail, together with one of each of the parts affected.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant shall include the information required in 30 CFR 6.10(a).

* * * * *

PART 23—TELEPHONES AND SIGNALING DEVICES

13. The authority citation for part 23 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

13–a. Revise § 23.3 to read as follows:

§ 23.3 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any telephone or signaling device, the manufacturer shall make application by letter for an investigation leading to approval of the device. This application must be accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees. It shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, together with the required drawings, one complete telephone or signaling device, and instructions for its operation.

(b) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant shall include the information required in 30 CFR 6.10(a).

(c) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

14. Amend § 23.14 by revising paragraph (a) to read as follows:

§ 23.14 Instructions for handling future changes in design.

* * * * *

(a)(1) The manufacturer shall write to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. With this request, the manufacturer should submit a revised drawing or drawings showing the changes in detail, together with one of each of the parts affected.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant shall include the information required in 30 CFR 6.10(a).

* * * * *

PART 27—METHANE-MONITORING SYSTEMS

15. The authority citation for part 27 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

15–a. Amend § 27.4 by revising paragraph (a) to read as follows:

§ 27.4 Applications.

(a)(1) No investigation or testing for certification will be undertaken by MSHA except pursuant to a written application must be accompanied by all drawings, specifications, descriptions, and related materials and also a check, bank draft, or money order payable to the U.S. Mine Safety and Health Administration, to cover the fees. The application and all related matters and correspondence concerning it shall be addressed to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this

part, the applicant shall include the information required in 30 CFR 6.10(a).

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to the product approval requirements under this part.

* * * * *

16. Amend 27.11 by revising paragraph (a) to read as follows:

§ 27.11 Extension of certification.

* * * * *

(a)(1) Application shall be made as for an original certification, requesting that the existing certification be extended to cover the proposed changes. The application shall include complete drawings, specifications, and related data, showing the changes in detail.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant shall include the information required in 30 CFR 6.10(a).

* * * * *

PART 33—DUST COLLECTORS FOR USE IN CONNECTION WITH ROCK DRILLING IN COAL MINES

17. The authority citation for part 33 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

17–a. Amend § 33.6 by revising paragraph (a) to read as follows:

§ 33.6 Applications.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application, which must be (except as otherwise provided in paragraph (e) of this section) accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees, and all prescribed drawings, specifications, and all related materials. The application and all related matters and all correspondence concerning it shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant shall include the information required in 30 CFR 6.10(a).

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

* * * * *

18. Amend § 33.12 by revising paragraph (a) to read as follows:

§ 33.12 Changes after certification.

* * * * *

(a)(1) Application shall be made as for an original certificate, requesting that the existing certification be extended to cover the proposed changes, and shall be accompanied by drawings, specifications, and related data showing the changes in detail.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant shall include the information required in 30 CFR 6.10(a).

* * * * *

PART 35—FIRE-RESISTANT HYDRAULIC FLUIDS

19. The authority citation for part 35 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

19–a. Amend § 35.6 by revising paragraph (a) to read as follows:

§ 35.6 Applications.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application, which must be accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees, and all descriptions, specifications, test samples, and related materials. The application and all related matters and correspondence concerning it shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant shall include the information required in 30 CFR 6.10(a).

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

* * * * *

20. Amend § 35.12 by revising paragraph (a) to read as follows:

§ 35.12 Changes after certification.

* * * * *

(a)(1) Application shall be made, as for an original certificate of approval, requesting that the existing certification be extended to cover the proposed change. The application shall be accompanied by specifications and related material as in the case of an original application.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant shall include the information required in 30 CFR 6.10(a).

* * * * *

PART 36—APPROVAL REQUIREMENTS FOR PERMISSIBLE MOBILE DIESEL-POWERED TRANSPORTATION EQUIPMENT

21. The authority for part 36 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

21–a. Amend § 36.6 by revising paragraph (a) to read as follows:

§ 36.6 Applications.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application, which must be accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees, and all descriptions, specifications, test samples, and related materials. The application and all related matters and correspondence concerning it shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant shall include the information required in 30 CFR 6.10(a).

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

* * * * *

22. Amend § 36.12 by revising paragraph (a) to read as follows:

§ 36.12 Changes after certification.

* * * * *

(a)(1) Application shall be made, as for an original certificate of approval,

requesting that the existing certification be extended to cover the proposed change. The application shall be accompanied by specifications and related material as in the case of an original application.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant shall include the information required in 30 CFR 6.10(a).

* * * * *

[FR Doc. 02–25879 Filed 10–16–02; 8:45 am]

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Federal Register

Thursday,
October 17, 2002

Part III

Environmental Protection Agency

40 CFR Part 420
Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Iron and Steel Manufacturing Point Source Category; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 420

[FRL–7206–7]

RIN 2040–AC90

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Iron and Steel Manufacturing Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule represents the culmination of the Agency's effort to revise Clean Water Act (CWA) effluent limitations guidelines and standards for wastewater discharges from the iron and steel manufacturing industry. The final regulation revises technology-based effluent limitations guidelines and standards for certain wastewater discharges associated with metallurgical cokemaking, sintering, and ironmaking operations; and codifies new effluent limitations guidelines and standards for direct reduced ironmaking, briquetting, and forging. EPA is also revising the regulations for the steelmaking subcategory, to provide an allowance for existing basic oxygen furnaces operating semi-wet air pollution control systems; and to establish technology-based effluent limitations guidelines and standards for electric arc furnaces operating semi-wet pollution control systems. EPA is eliminating rule references to the following obsolete operations: beehive cokemaking in the cokemaking subcategory, ferromanganese blast furnaces in the ironmaking subcategory, and open hearth furnace operations in the steelmaking subcategory. EPA is not revising effluent limitations guidelines and standards for the remaining subcategories within this industrial category: vacuum degassing, continuous casting, hot forming, salt bath descaling, acid pickling, cold forming, alkaline cleaning and hot coating. Nor is EPA codifying a new subcategorization scheme and associated definitions to support the new subcategorization for this industrial category.

EPA expects compliance with this regulation to reduce the discharge of conventional pollutants by at least 351,000 pounds per year and toxic and non-conventional pollutants by at least 1,018,000 pounds per year. EPA estimates the annual cost of the rule will be $12.0 million (pre-tax $2001). EPA estimates that the annual benefits of the rule will range from $1.4 million to $7.3 million ($2001).

DATES: This regulation shall become effective November 18, 2002.

ADDRESSES: The public record for this rulemaking has been established under docket number W–00–25 II and will be located in the Water Docket, East Tower Basement, room #57, 401 M St. SW., Washington, DC 20460 until August 15, 2002. After August 27, 2002 the public record will be located at EPA West, 1301 Constitution Avenue, NW., Room B135, Washington, DC 20460. The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. For access to the docket materials before August 15, call (202) 260–3027 to schedule an appointment. After August 27, call (202) 566–2426. You may have to pay a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: For technical information concerning today's final rule, contact Mr. George Jett at (202) 566–1070, or Ms. Yu-ting Guilaran at (202) 566–1072. For economic information contact Mr. William Anderson at (202) 566–1008.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action include facilities of the following types that discharge pollutants to waters of the U.S.:

Category	Examples of regulated entities	Primary SIC and NAICS codes
Industry	Discharges from facilities engaged in metallurgical cokemaking, sintering, ironmaking, steelmaking, direct reduced ironmaking, briquetting, and forging.	SIC 3312, 3316; NAICS 3311, 3312.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria listed in § 420.01 and the applicability criteria in § 420.10 (metallurgical cokemaking), § 420.40 (steelmaking), and § 420.130 (other operations) of today's rule and applicability criteria in § 420.20 (sintering), § 420.30 (ironmaking), § 420.50 (vacuum degassing), § 420.60 (continuous casting), § 420.70 (hot forming), § 420.80 (salt bath descaling), § 420.90 (acid pickling), § 420.100 (cold forming), § 420.110 (alkaline cleaning), and § 420.120 (hot coating) of Title 40 of the Code of Federal Regulations. The table lists the types of entities that EPA is now aware could potentially be regulated by this action. If you still have questions regarding the applicability of this action to a particular entity (after consulting relevant subsections), consult one of the persons listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review

In accordance with 40 CFR 23.2, today's rule is promulgated for the purposes of judicial review as of 1 pm Eastern Daylight Time on October 31, 2002. Under section 509(b)(1) of the Clean Water Act (CWA), judicial review of today's effluent limitations guidelines and standards is available in the United States Circuit Court of Appeals by filing a petition for review within 120 days from the date of promulgation of these guidelines and standards. Under Section 509(b)(2) of the CWA the requirements of this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Compliance Dates

Existing direct dischargers must comply with limitations based on the best practicable control technology currently available (BPT), the best conventional pollutant control technology (BCT), and the best available technology economically achievable (BAT) as soon as their National Pollutant Discharge Elimination System (NDPES) permits include such limitations. Existing indirect dischargers subject to today's regulations must comply with the pretreatment standards for existing sources no later than October 17, 2005. New direct and indirect discharging sources must comply with applicable guidelines and standards on the date the new sources begin discharging. For purposes of new source performance s*andards (NSPS) and pretreatment standards for new sources (PSNS), a source is a new source if it commenced construction after November 18, 2002.

Supporting Documentation

The final regulations are supported by three major documents:

1. "Development Document for Final Effluent Limitations Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category" (*EPA–821–R–02–004*), referred to in the preamble as the Technical Development Document (TDD). This TDD presents the technical information that formed the basis for EPA's decisions concerning the final rule. In it, EPA describes, among other things, the data collection activities, the wastewater treatment technology options considered, the pollutants found in the iron and steel manufacturing wastewaters, and the estimation of costs to the industry to comply with the final limitations and standards.

2. "Economic Analysis of Final Effluent Limitations Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category" (*EPA–821–R–02–006*) referred to in this preamble as the Economic Analysis (EA). The EA estimates the economic and financial costs of compliance with the final regulation on individual process lines, facilities and companies.

3. "Environmental Assessment of the Final Effluent Limitations Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category" (*EPA–821–R–02–005*) referred to as the Environmental Assessment in this preamble.

How To Obtain Supporting Documents

Supporting documents are available on the internet at www.epa.gov/ost/ironsteel and before August 15, 2002 from the Office of Water Resource Center, MC–4100, U.S. EPA, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–7786 for publication requests. After August 18, 2002, the Office of Water Resources will be located at 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The telephone number will be 202–566–1729.

Protection of Confidential Business Information (CBI)

EPA notes that certain information and data in the record supporting the final rule have been claimed as CBI and, therefore, are not included in the record that is available to the public in the Water Docket. Further, the Agency has withheld from disclosure some data not claimed as CBI because release of this information could indirectly reveal information claimed to be confidential. To support the rulemaking while preserving confidentiality claims, EPA is presenting in the public record certain information in aggregated form or, alternatively, is masking facility identities or employing other strategies. This approach assures that the information in the public record explains the basis for today's final rule without compromising CBI claims.

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I. Legal Authority

The U.S. Environmental Protection Agency is promulgating these regulations under the authority of sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361.

II. Legislative Background

A. Clean Water Act

Congress adopted the Clean Water Act (CWA) to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (Section 101(a), 33 U.S.C. 1251(a)). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The Clean Water Act confronts the problem of water pollution on a number of different fronts. Its primary reliance, however, is on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Congress recognized that regulating only those sources that discharge effluent directly into the nation's waters would not be sufficient to achieve the CWA's goals. Consequently, the CWA requires EPA to promulgate nationally applicable pretreatment standards that restrict pollutant discharges for facilities that discharge wastewater through sewers flowing to publicly-owned treatment works (POTWs) (Section 307(b) and (c), 33 U.S.C. 1317(b) and (c)). National pretreatment standards are established for those pollutants in wastewater from indirect dischargers which pass through, interfere with, or are otherwise incompatible with POTW operations. Generally, pretreatment standards are designed to ensure that wastewater from direct and indirect industrial dischargers are subject to similar levels of treatment. In addition, POTWs are required to develop and enforce local pretreatment limits applicable to their industrial indirect dischargers to satisfy any local requirements (40 CFR 403.5).

Direct dischargers must comply with effluent limitations in National Pollutant Discharge Elimination System (NPDES) permits; indirect dischargers must comply with pretreatment standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology.

1. Best Practicable Control Technology Currently Available (BPT)—Section 304(b)(1) of the CWA

In the regulations, EPA defines BPT effluent limits for conventional, toxic, and non-conventional pollutants. Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501). EPA has identified 126 pollutants as priority toxic pollutants. See Appendix A to Part 403 (reprinted after 40 CFR 423.17). All other pollutants are considered to be non-conventional.

In specifying BPT, EPA looks at a number of factors. EPA first considers the total cost of applying the control technology in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the EPA Administrator deems appropriate (CWA 304(b)(1)(B)). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes or other common characteristics. Where existing performance is uniformly inadequate, BPT may reflect higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practically applied.

2. Best Conventional Pollutant Control Technology (BCT)—Section 304(b)(4) of the CWA

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT for discharges from existing industrial point sources. In addition to the other factors specified in Section 304(b)(4)(B), the CWA requires that EPA establish BCT limitations after consideration of a two part "cost-reasonableness" test. EPA explained its methodology for the development of BCT limitations in July 1986 (51 FR 24974).

3. Best Available Technology Economically Achievable (BAT)—Section 304(b)(2) of the CWA

In general, BAT effluent limitations guidelines represent the best available economically achievable performance of plants in the industrial subcategory or category. The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, and non-water quality environmental impacts, including energy requirements. The Agency retains considerable discretion in assigning the weight to be accorded these factors. BAT limitations may be based on effluent reductions attainable through changes in a facility's processes and operations. Where existing performance is uniformly inadequate, BAT may reflect a higher level of performance than is currently being achieved within a particular subcategory based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

4. New Source Performance Standards (NSPS)—Section 306 of the CWA

NSPS reflect effluent reductions that are achievable based on the best available demonstrated control technology. New sources have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available demonstrated control technology for all pollutants (i.e., conventional, non-conventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES)—Section 307(b) of the CWA

PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly-owned treatment works (POTWs), including sludge disposal methods at POTWs. Pretreatment standards for existing sources are technology-based and are analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of national pretreatment standards, are found at 40 CFR part 403.

6. Pretreatment Standards for New Sources (PSNS)—Section 307(c) of the CWA

Like PSES, PSNS are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. Section 304(m) Requirements

Section 304(m) of the CWA, added by the Water Quality Act of 1987, requires EPA to establish schedules for (1) reviewing and revising existing effluent limitations guidelines and standards ("effluent guidelines"); and (2) promulgating new effluent guidelines. On January 2, 1990, EPA published its first Effluent Guidelines Plan (55 FR 80), which established schedules for developing new and revised effluent guidelines for several industry categories.

The Natural Resources Defense Council (NRDC) and Public Citizen, Inc. filed suit against the Agency, alleging violation of Section 304(m) and other statutory authorities requiring promulgation of effluent guidelines (*NRDC, et al.* v. *Reilly*, Civ. No. 89–2980 (D.D.C.)). Plaintiffs and EPA settled the litigation by means of a consent decree entered on January 31, 1992. The consent decree, which has been modified several times, established a schedule by which EPA is to propose and take final action for eleven point source categories identified by name in the decree and for eight other point source categories to be selected by EPA. After completing a preliminary study (EPA 821–R95–037, September 1995) as required by the decree, EPA selected the iron and steel industry as the subject for a revised rule. Under the decree, as modified, the Administrator was required to sign a proposed rule for the iron and steel industry no later than October 31, 2000, and must take final action no later than April 30, 2002.

III. Iron and Steel Manufacturing Industry Effluent Guideline Rulemaking History

A. 1982 Rule and 1984 Amendments

EPA promulgated effluent limitations guidelines and standards for the Iron and Steel Manufacturing Point Source Category, 40 CFR part 420 in May 1982 (47 FR 23258). This rule established BPT, BCT, and BAT effluent limitations that apply to wastewater discharges to waters of the U.S. from existing iron and steel facilities and NSPS limits that apply to wastewater discharges to waters of the U.S. from new iron and steel facilities. It also established pretreatment standards that apply to wastewater discharges to POTWs from existing and new iron and steel facilities (PSES and PSNS).

The 1982 rule was based on an approach that mirrored the sequential process steps through a typical mill. EPA concluded that it was reasonable to establish a subcategorization structure based on the type of manufacturing operation employed. This resulted in twelve subcategories.

The American Iron and Steel Institute, certain members of the iron and steel industry, and NRDC filed petitions to review the 1982 regulation. On February 4, 1983, the parties in the consolidated lawsuit entered into a comprehensive settlement agreement that resolved all issues raised by the petitioners. In accordance with the settlement agreement, EPA modified and clarified certain parts of the Iron and Steel rule and published additional preamble language regarding the rule. The Iron and Steel rule was amended on May 17, 1984 (49 FR 21024). The major changes included in the amendment are discussed in the preamble to the 2000 proposed rule (65 FR 81964–82083) and in Chapter 2 of the Technical Development Document for today's final rule. The 1982 regulation, as amended in 1984, can be found on line at: www.epa.gov/ost/ironsteel/reg.html.

B. Preliminary Study

The Clean Water Act requires EPA to review effluent limitations guidelines and standards periodically to determine whether it is appropriate to revise them. Furthermore, under the consent decree discussed in Section II.B, EPA is also required to undertake rulemaking with respect to the effluent limitations guidelines and standards on a set schedule and was required to complete a study of the iron and steel industry. Accordingly, EPA developed and published the "Preliminary Study of the Iron and Steel Category" (EPA 821–R–95–037) in September 1995.

In the preliminary study, EPA assessed the status of the iron and steel industry with respect to the regulation promulgated in 1982 and amended in 1984; identified better performing facilities that use conventional and innovative in-process pollution

prevention and end-of-pipe technologies; estimated possible effluent reduction benefits if the industry were upgraded to the level of better performing facilities; discussed regulatory and implementation issues associated with the current regulation; and identified possible solutions to those issues. This study concluded that the industry has changed substantially in production technology and pollution control since the 1982 regulations were promulgated. Pollutant loadings had decreased due to advances in treatment system operations and improved wastewater treatment processes. In addition, the study also found that many pollution prevention opportunities exist in the areas of increased process water recycle and reuse, the cascade of process wastewaters from one operation to another, residuals management, and non-discharge disposal methods. At the time of the study, many better-performing mills were discharging wastewater loadings far below the current standards; however, not all of the industry had improved wastewater treatment or implemented proactive pollution prevention practices. As a result of the study, EPA initiated this rulemaking to reassess the effluent limitations guidelines and standards for the Iron and Steel Manufacturing Point Source Category. The Preliminary Study can be found on line at www.epa.gov/OST/ironsteel/pstudy.html.

C. October 31, 2000 Proposed Regulation

On October 31, 2000, the EPA Administrator signed proposed revisions to technology-based effluent limitations guidelines and standards for wastewater discharges from new and existing iron and steel facilities. The proposed rule was published in the **Federal Register** on December 27, 2000 (65 FR 81964). EPA proposed to alter the applicability and scope of the existing rule by adding electroplating operations and by including direct iron reduction, briquetting, and forging operations. In addition, EPA proposed excluding from the iron and steel guideline in Part 420 some wiring, cold forming, and hot dip coating operations. In a proposed rule for the Metal Products and Machinery (MP&M) industrial category published on January 3, 2001 (66 FR 424), EPA proposed to address these operations under Part 438.

The Agency proposed to revise the subcategorization scheme to create seven subcategories of iron and steel facilities based on co-treatment of compatible waste streams. This would have replaced the present structure of 12 subcategories. The proposed subcategorization approach would have reflected the way treatment systems are run in the iron and steel industry. EPA proposed the following seven subcategories:

Subcategory	Segment
Subpart A Cokemaking Subcategory	By-product.
	Non-recovery.
Subpart B Ironmaking Subcategory	Blast Furnace.
	Sintering.
Subpart C Steelmaking Subcategory	
Subpart D Integrated and Stand Alone Hot Forming Mills Subcategory	Carbon and Alloy.
	Stainless.
Subpart E Non-integrated Steelmaking and Hot Forming Operations Subcategory	Carbon and Alloy.
	Stainless.
Subpart F Steel Finishing Subcategory	Carbon and Alloy.
	Stainless.
Subpart G Other Operations	Direct-Reduced Ironmaking.
	Forging.
	Briquetting.

For most of the subcategories, except for cokemaking, finishing, and the newly added subcategory for other operations, the Agency proposed limits based on improved performance and operation of the same technologies that were the basis for the limits and standards promulgated in 1982 and amended in 1984. Consequently, the proposed limitations were more stringent than the limitations promulgated in 1982. For the cokemaking subcategory, EPA proposed BAT limits based on a technology option that was essentially the same as the 1982 technology basis but included an additional treatment step—alkaline chlorination. For finishing, EPA proposed limits based on the 1982 technology basis with the addition of counter-current rinsing and acid purification.

For many of the proposed subcategories, wastewater flow reduction steps, in concert with better performance of the blowdown treatment systems, provided the primary basis for the proposal limits and standards. The subcategorization scheme and technology bases for the proposed limits and standards are summarized below:

PROPOSED SUBCATEGORIES, OPTIONS, AND TECHNICAL COMPONENTS

Subcategory (segment)	Regulatory level	Option proposed	Summary of technical basis
Subpart A. Cokemaking:			
(By-Product Recovery)	BAT/NSPS	BAT–3	Tar removal, equalization, free and fixed ammonia stripping, temperature control, equalization, single-stage biological treatment with nitrification, alkaline chlorination, and sludge dewatering.
	PSES/PSNS	PSES–3	Tar removal, equalization, free and fixed ammonia stripping, temperature control, equalization, and single-stage biological treatment with nitrification.

PROPOSED SUBCATEGORIES, OPTIONS, AND TECHNICAL COMPONENTS—Continued

Subcategory (segment)	Regulatory level	Option proposed	Summary of technical basis
	Co-proposed PSES	PSES–1	Tar removal, equalization, and free and fixed ammonia stripping.
(Non-Recovery)	BAT/NSPS/PSES/PSNS	Zero discharge	No wastewater generated.
Subpart B. Ironmaking:			
(Blast Furnaces and Sintering)	BAT/NSPS	BAT–1	Solids removal, high-rate recycle, metals precipitation, alkaline chlorination, and mixed-media filtration of blowdown, and sludge dewatering.
	PSES/PSNS	PSES–1	Solids removal, high-rate recycle and metals precipitation of blowdown and sludge dewatering.
Subpart C. Integrated Steelmaking	BAT/NSPS/PSES/PSNS	BAT–1	Solids removal, high-rate recycle, metals precipitation of blowdown, cooling towers for process wastewaters from vacuum degassing or continuous casting operations, and sludge dewatering.
Subpart D. Integrated and Stand Alone Hot Forming:			
(Carbon & Alloy Steel)	BAT/NSPS	BAT–1	Scale pit with oil skimming, roughing clarifier, cooling tower, high rate recycle, mixed-media filtration of blowdown, and sludge dewatering.
	PSES/PSNS	N/A	No proposed modification from existing PSES/PSNS.
(Stainless Steel)	BAT/NSPS	BAT–1	Scale pit with oil skimming, roughing clarifier, cooling tower, high rate recycle, mixed-media filtration of blowdown, and sludge dewatering.
	PSES/PSNS	N/A	No proposed modification from existing PSES/PSNS.
Subpart E. Non-Integrated Steelmaking and Hot Forming:			
(Carbon & Alloy Steel)	BAT	BAT–1	Solids removal, cooling tower, high rate recycle, mixed-media filtration of blowdown or of recycled flow, and sludge dewatering.
	PSES	N/A	No proposed modification from existing PSES.
	NSPS/PSNS	Zero discharge	Water re-use, evaporation, or contract hauling.
(Stainless Steel)	BAT/PSES	BAT–1	Solids removal, cooling tower, high rate recycle, mixed-media filtration of blowdown or of recycled flow, and sludge dewatering.
	NSPS/PSNS	Zero discharge	Water re-use, evaporation, or contract hauling.
Subpart F. Steel Finishing:			
(Carbon & Alloy Steel)	BAT/NSPS/PSNS	BAT–1	Recycle of fume scrubber water, diversion tank, oil removal, hexavalent chrome reduction (where applicable), equalization, metals precipitation, sedimentation, sludge dewatering, and counter-current rinses.
	PSES	N/A	No proposed modification from existing PSES.
(Stainless Steel)	BAT/NSPS/PSNS	BAT–1	Recycle of fume scrubber water, diversion tank, oil removal, hexavalent chrome reduction (where applicable), equalization, metals precipitation, sedimentation, sludge dewatering, counter-current rinses, and acid purification.
	PSES	NA	No proposed modification from existing PSES.
Subpart G. Other Operations:			
(Direct Reduced Ironmaking)	BPT/BCT/NSPS	BPT–1	Solids removal, clarifier, high-rate recycle, filtration of blowdown, and sludge dewatering.
	BAT/PSES/PSNS	Reserved.	No new facilities expected.
(Forging)	BPT/BCT/NSPS	BPT–1	High rate recycle, and oil/water separator for blowdown.
	BAT/PSES/PSNS	Reserved.	No new facilities expected.
(Briquetting)	BPT/BCT/BAT/.		

PROPOSED SUBCATEGORIES, OPTIONS, AND TECHNICAL COMPONENTS—Continued

Subcategory (segment)	Regulatory level	Option proposed	Summary of technical basis
	NSPS/ PSES/PSNS	zero discharge	No wastewater generated.

The proposed regulation is on line at: www.epa.gov/ost/ironsteel/notices.html.

D. February 2001 Notice of Data Availability

On February 14, 2001, EPA published a Notice of Data Availability (NODA) at 66 FR 10253. This notice provided additional discussion and clarification on some of the issues raised in the proposal. For example, the notice discussed EPA's new finding that phenol does not pass through POTWs, and indicated that EPA was rethinking its proposal to establish a nation-wide limit on ammonia from steel finishing operations.

EPA also noticed changes to certain portions of the proposed regulation and accompanying preamble to eliminate inconsistencies. Finally, it corrected potentially confusing typographical errors and extended the proposal's comment period from February 26, 2001 to March 26, 2001. The complete details of the February NODA are located on line at: www.epa.gov/ost/ironsteel/reg.html.

E. April 4, 2001 Notice

On April 4, 2001, EPA published a notice (66 FR 17842) reopening the comment period to April 25, 2001.

IV. Current Economic Condition of the Industry

The financial situation of the domestic iron and steel industry changed dramatically between 1997 and 2001 due to factors including the Asian financial crisis, slow economic growth in Eastern Europe, the continued strength of the dollar versus other currencies, a period of increased prices for natural gas and electricity, and a sharp drop in domestic demand as the U.S. economy slowed. The following analysis of economic conditions occurring after the 1995–1997 time frame is based upon publicly available sources such as trade journal reports, Securities and Exchange Commission filings, and trade case filings with the U.S. Department of Commerce and the U.S. International Trade Commission.

The relatively high value of the dollar compared to the currencies of many steel exporting nations has led to a sharp increase in import penetration in the domestic steel market. The U.S. is, and has been, the world's largest steel importer (and a net importer for at least the last two decades); indeed, the U.S. was nearly the only viable steel market to which other countries such as South Korea, Russia and Ukraine could export during 1998. U.S. imports of steel mill products jumped by 10.4 million tons from 31.1 million tons to 41.5 million ton, a 25 percent increase, from 1997 to 1998. The previous record level of imports had been established in 1997. The high levels of imports persisted in 1999 and 2000, with 35.7 million tons and 38.0 million tons, respectively. The sustained high level of steel imports has been associated with a substantial drop in the market value of steel products. The prevailing prices for commodities such as hot rolled sheet, cold rolled sheet, and many other products have fallen by 20 to 40 percent since 1996.

Substantial increases in energy prices, including natural gas and electricity, during the last few years have also affected domestic producers. Natural gas is used extensively in reheat and annealing furnaces, coke oven underfiring and blast furnace injection, as well as in direct reduced iron production. Electricity is necessary throughout the steel production process, with electric arc furnaces, of course, being particularly dependent on electricity costs and availability. Finally, in the last year, the domestic market for steel has declined as domestic industrial production in the United States has fallen. Industries, such as automotive and major appliances, that use significant amounts of steel have been particularly impacted.

The coke industry is comprised of two types of producers: Integrated and merchant. Integrated producers typically supply furnace coke for their own blast furnace facilities. Merchant producers may produce and sell furnace coke (used in blast furnaces), foundry coke (used in foundries to make iron castings) and other industrial coke. Both integrated and merchant producers of furnace coke have been affected by the trends described regarding iron and steel production. Foundry coke producers have been affected by falling automotive production, the largest consumer sector for iron castings. Foundry coke has also been affected by sharply increasing imports from China.

As a result of the increased imports, declining demand, and falling prices, the financial health of the domestic iron and steel industry experienced a precipitous decline after 1997. Based upon publicly available sources, at least twenty companies, that could be subject to the iron and steel effluent guidelines, have filed for bankruptcy since 1997. The companies are Bethlehem Steel, LTV Steel, National Steel, Republic Technologies, Wheeling Pittsburgh Steel, Geneva Steel, Gulf States Steel, Acme Metals, Laclede Steel, Qualitech Steel, Northwestern Steel and Wire, Erie Forge and Steel, CSC Ltd., Heartland Steel, GS Industries, Trico Steel, Freedom Forge, J&L Structural Steel, Empire Specialty Steel and Riverview Steel. In aggregate, these companies represent more than a third of domestic steelmaking capacity. Of the bankrupt firms, Empire Specialty, Acme Steel, Laclede Steel, Qualitech Steel, Gulf States Steel, Northwestern Steel and Wire, CSC Ltd., and LTV Steel have ceased steelmaking operations, affecting over 15,000 employees.

The industry filed numerous countervailing duty and anti-dumping cases over the 1998-2001 period with the U.S. Department of Commerce and U.S. International Trade Commission (hereafter "ITC"), charging various countries (for example, Japan, Russia, China, and Brazil) with unfair trade practices concerning carbon steel products, stainless steel products, and foundry coke. The ITC ruled in favor of the U.S. industry in many cases (for example, hot rolled carbon sheet and carbon plate), meaning that it determined that the domestic industry was materially injured or threatened with material injury by the unfairly traded imports.

More significantly, on June 22, 2001, the Office of the United States Trade Representative requested the initiation of an investigation by the ITC of certain steel imports under the section 201 of the Trade Act of 1974. A later request from the Senate Finance Committee was consolidated under the same investigation. Investigations under this law may be requested when increased imports of a product from all countries are alleged to be a substantial cause of serious injury, or threat of serious injury, to a U.S. industry. The investigation does not require the finding of an unfair trade practice. The investigation is composed of two phases, the injury phase and, if an affirmative injury determination is made, the remedy phase. In the remedy phase, the ITC recommends a remedy to the President, who decides what relief, if any, will be imposed. The remedy may consist of tariffs, quantitative restrictions, orderly marketing agreements, and trade adjustment assistance. In addition, the ITC may recommend that the President initiate international negotiations to address the underlying cause of the increase in imports or that he implement any other action authorized under the law that is likely to facilitate positive adjustment to import competition.

On October 22, 2001, the ITC affirmatively determined that 12 products (or product categories) are being imported into the U.S. in such increased quantities that they are a substantial cause of serious injury or threat of serious injury to the U.S. industry. On an additional four products (or product categories), the ITC was evenly divided, meaning these products will continue to be included in the investigation. The imported products covered by the investigation accounted in year 2000 for 27 million tons of steel valued at $10.7 billion. The products include carbon steel slabs, plate, hot rolled sheet, cold rolled sheet, coated sheet, tin mill products, hot rolled bar and light structural shapes, cold finished bar, rebar, welded tube, stainless bar, stainless rod, tool steel, and stainless wire.

The next phase of the investigation is the remedy phase. The ITC voted on a remedy recommendation on December 7, 2001, and forwarded its findings and remedy recommendations to the President on December 20, 2001. The ITC recommended a four-year program of tariffs and tariff-rate quotas, with additional ad valorem duties of up to 20 percent in the first year and declining thereafter.

The President announced his decision on March 5, 2002, to impose temporary safeguards on key steel products to provide relief to those parts of the U.S. steel industry that have been most damaged by import surges. The level of relief varies by product with tariffs of 30 percent imposed on imports of plate, hot-rolled sheet, cold-rolled sheet, coated sheet, tin mill products, hot-rolled bar, and cold-finished bar and tariffs of 15 percent imposed on imports of rebar, stainless steel bar, and stainless steel rod. Imports of slab are subject to tariff rate quotas. Tariff rate quotas are two-part tariffs, with imports up to the quota subject to a lower duty and imports above the quota level subject to a higher duty. In the case of slab, the in-quota volume is set at 5.4 million tons and the out-of-quota (i.e., above the quota level) tariff of 30 percent. The level of relief described reflects the initial safeguard measures, with periodic reductions throughout the three year duration of the measures. Canada and Mexico were excluded from the quota and tariff measures on all products. Developing countries that export only small quantities of steel to the U.S. were also excluded from the quota and tariff measures.

V. Summary of Significant Decisions

A. Decisions Regarding the Content of the Regulations

1. New or Revised Effluent Limitations Guidelines and Standards

EPA has decided to revise effluent limitations guidelines and standards only for current Subpart A (cokemaking), Subpart B (sintering), Subpart C (ironmaking), and Subpart D (steelmaking), and to promulgate new effluent limitations guidelines and standards for new Subpart M (other operations). Also, as a result of EPA's technical and economic review, EPA is promulgating revised BAT limitations, NSPS and pretreatment standards for the cokemaking by-product recovery segment based on technologies that are different than those proposed. Specifically, EPA is promulgating effluent limits based primarily on ammonia still and biological treatment with nitrification for direct dischargers and pretreatment standards based primarily on ammonia still treatment for indirect dischargers. At proposal, EPA had designated the technology option as BAT–1, NSPS–1, PSES–1 and PSNS–1. Section VIII.A explains why the Agency is promulgating limitations and standards based on different model technologies than EPA proposed for the cokemaking subcategory.

For the sintering subcategory, EPA is revising the current regulation to add limitations and standards for one additional pollutant, 2,3,7,8-tetrachlorodibenzofuran (TCDF), while keeping the rest of the limits unchanged. The technology basis for new TCDF limitations and standards for the sintering subcategory remains unchanged from the proposal and is the same as the technology basis for the 1982 regulations except for the addition of mixed-media filtration. EPA is also establishing limitations of no discharge of process wastewater pollutants for new and existing direct dischargers and new and existing indirect dischargers for sintering operations with dry air pollution control systems.

As described in Section V.A.8, ammonia-N pretreatment standards do not apply to cokemaking, ironmaking, and sintering facilities discharging to POTWs with nitrification capability.

For the steelmaking subcategory, EPA is revising BPT, BCT, BAT, and PSES limitations for the semi-wet basic oxygen furnace (BOF) operations to allow discharge of process wastewater, when merited by safety considerations. As explained in the 2001 Notice of Data Availability (NODA) at 66 FR 10253, EPA is allowing discharge of process wastewater because certain safety concerns currently preclude some sites from balancing the water applied for BOF gas conditioning with evaporative losses to achieve zero discharge. Also in the steelmaking subcategory, for the semi-wet EAF operations, EPA is establishing limitations of no discharge of process wastewater pollutants for new direct dischargers and existing and new indirect dischargers, making these limitations equivalent to the previously promulgated BPT, BCT, and BAT limitations applicable to semi-wet electric arc furnace (EAF) operations. EPA received no comments on this proposed change, and identified none of the safety or production concerns discussed for semi-wet BOF operations.

The technology bases for the effluent limitations guidelines and standards for direct reduced iron segment and the briquetting segment of the new subpart M (other operations) are unchanged from proposal. In the case of the forging segment of the new subpart M, the technology basis at proposal was incorrectly described as high rate recycle and oil/water separation. The technology basis should have been described as high rate recycle, oil/water separation, and mixed-media filtration. Section VIII discusses the technology bases for each of these subcategories in more detail.

2. Subcategorization Structure

In 2000, EPA proposed a subcategorization structure that was significantly different from the structure in the 1982 iron and steel rule (see 65 FR 81974–81975). Unlike the 1982 rule, EPA proposed to consolidate operations such as salt bath descaling, acid pickling, and other finishing operations into a single "Finishing Subcategory." Similarly, the Agency proposed to consolidate sintering and ironmaking into a single "Ironmaking Subcategory." The following table presents a comparison of the 1982 subcategorization scheme and the one EPA proposed in 2000:

TABLE V.A.1.—SUBCATEGORY COMPARISON OF 1982 AND THE PROPOSED REGULATIONS

Subcategories promulgated in 1982	Subcategories proposed in 2000	
A. Cokemaking	A. Cokemaking.	
B. Sintering	B. Ironmaking.	
C. Ironmaking		
D. Steelmaking	C. Integrated Steelmaking	D. Non-Integrated Steelmaking and Hot Forming.
E. Vacuum Degassing		
F. Continuous Casting		
G. Hot Forming	E. Integrated and Stand Alone Hot Forming	D. Non-Integrated Steelmaking and Hot Forming.
H. Salt Bath Descaling	F. Steel Finishing.	
I. Acid Pickling		
J. Cold Forming		
K. Alkaline Cleaning		
L. Hot Coating		
	G. Other Operations.	

The Agency proposed a new subcategorization scheme to reflect not only the modern state of the industry, in terms of both process and wastewater management, but also the experience that the Agency and other regulatory entities have gained from implementing the 1982 iron and steel effluent limitations guidelines and standards. EPA also expected that the revised subcategorization scheme would simplify the regulatory structure and reflect co-treatment of compatible wastewaters, which is currently practiced by the industry. As a result, many of the proposed subcategories would have included various operations that are regulated under different segments or subcategories in the 1982 rule. EPA also proposed a number of specialized definitions to support the subcategorization scheme.

In addition to the subcategory structure, EPA proposed segmentation changes in the proposed cokemaking, integrated and stand alone hot forming, non-integrated and stand alone hot forming, finishing, and the integrated steelmaking subcategories. First, EPA proposed to combine two 1982 segments in the cokemaking subcategory, "Iron and Steel" and "Merchant," into a single "By-Product Recovery" segment because differences in wastewater flow rates observed in the 1982 rulemaking are no longer apparent within the current population of by-product coke plants. In addition to combining all by-product cokemaking operations into one segment, the Agency also proposed a new "Non-Recovery" segment to accommodate the two non-recovery coke plants. Second, for the proposed integrated steelmaking and hot forming subcategory, the non-integrated steelmaking and hot forming subcategory, and the steel finishing subcategory, EPA proposed segmenting based on whether facilities primarily make stainless or carbon/alloy steels. Finally, EPA also proposed to eliminate from the rule references to the following obsolete operations: beehive cokemaking in the cokemaking subcategory, ferromanganese blast furnaces in the ironmaking subcategory, and open hearth furnace operations in the steelmaking subcategory.

While EPA did not receive any comments specific to the proposed subcategorization scheme, the Agency did receive a number of comments on the change in segmentation for the cokemaking subcategory. The commenters opposed EPA's proposal to drop the segmentation on the basis of "iron and steel" and "merchant" coke plants; however, the commenters agreed with EPA's assessment that production process and wastewaters from merchant coke plants are similar to those from the integrated "iron and steel" facilities. The Agency also evaluated potential economic differences between "merchant" and "iron and steel" facilities, but did not find substantial differences in profitability or other factors which might affect economic acheivability, although some difference in facility size was observed. Some commenters also expressed confusion regarding the segmentation of stainless and carbon/alloy steels. No comments were received on eliminating provisions for beehive cokemaking, ferromanganese blast furnaces, or open hearth furnace operations.

As explained in Section V.B, based on comments, the Agency re-evaluated the economic conditions and technology bases of the proposed rule. The Agency decided to promulgate new or revised limits for only five subcategories: cokemaking, sintering, ironmaking, steelmaking, and other operations. Due to the small number of subcategories affected by today's rule, the Agency has decided to retain the 1982 subcategory structure with the addition of an "other operations" subcategory. As a result, the final rule covers the following 13 subcategories:

Subcategory A: Cokemaking (includes by-product and non-recovery operations)
Subcategory B: Sintering,
Subcategory C: Ironmaking,
Subcategory D: Steelmaking (includes basic oxygen furnace and electric arc furnace operations)
Subcategory E: Vacuum degassing,
Subcategory F: Continuous casting,
Subcategory G: Hot forming,
Subcategory H: Salt bath descaling,
Subcategory I: Acid pickling,
Subcategory J: Cold forming,
Subcategory K: Alkaline cleaning,
Subcategory L: Hot coating, and
Subcategory M: Other operations (includes forging, direct-reduced ironmaking, and briquetting).

For the cokemaking subcategory, today's rule combines the "Iron and Steel" and "Merchant" segments into a newly-created "By-product" cokemaking segment for most regulatory purposes, although EPA is retaining the "Iron and Steel" and "Merchant" segments for purposes of reflecting the existing BPT limitations. EPA concluded that this was appropriate because the production processes, wastewater characteristics, and wastewater flow rates from all by-product recovery cokemaking operations, including merchant facilities, are similar.

EPA is also eliminating the segment in BAT for by-product coke plants with physical chemical treatment systems. EPA has determined that technology basis for BAT limitations promulgated in today's rule are technically and economically achievable for all direct discharging by-product coke plants.

EPA is also creating a new cokemaking segment for non-recovery operations and a new sintering segment for dry air pollution control systems for the reasons stated in the proposal. Because the promulgated rule makes no change to the hot forming, vacuum degassing, casting, or various finishing operations, the segmentation for these operations in the 1982 rule remains applicable. Finally, in today's rule, EPA is eliminating segments for the following obsolete operations: beehive cokemaking, ferromanganese blast furnaces, and open hearth furnaces.

3. Phenol Pass-Through Analysis for Cokemaking

Generally, EPA establishes pretreatment standards for pollutants regulated under BAT that pass through POTWs to waters of the U.S. or interfere with POTW operations or sludge disposal practices. In conducting its pass-through analysis, the Agency generally compares the median percentage of a pollutant removed by well-operated POTWs performing secondary treatment to the median percentage of a pollutant removed by BAT treatment. When the median percentage removed nationwide by well-operated POTWs is less than the median percentage removed by direct dischargers complying with the BAT effluent limits, EPA typically determines that the pollutant passes through.

The February 14, 2001 iron and steel notice explained that EPA planned to use an alternate procedure to determine whether or not the BAT pollutant phenol would pass through for wastewater from cokemaking operations. See 66 FR 10257. This notice explained that EPA planned to determine pass-through for phenol for the cokemaking subcategory using a methodology previously developed for phenol in the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) guideline. Under this methodology, EPA determined in the OCPSF rule that phenol did not pass through because phenol is highly biodegradable and is treated by POTWs to the same non-detect levels (10 parts per billion (ppb) or 10 µg/L) that the OCPSF direct dischargers achieve. Additionally, like the OCPSF direct dischargers, the cokemaking direct dischargers receive significantly higher influent phenol concentrations than the POTWs, with the result that the direct dischargers showed higher removals than the performance at the POTWs. Therefore, EPA reasoned that application of the traditional approach to these facts would reflect the significant differences in influent concentrations rather than a real difference in the POTWs' ability to treat phenols. As a result, EPA selected this alternate methodology because the traditional pass-through methodology failed to account for special circumstances presented by phenol in cokemaking wastewater.

The notice explained that, using this alternate methodology, phenol did not pass through in connection with cokemaking operations. The notice further explained that a supplemental analysis using more recent data from a well-operated POTW performing secondary treatment on process cokemaking wastewater supports this determination.

EPA did not receive any comments on the alternate methodology and continues to believe that this alternate methodology is appropriate for determining pass through for phenolic compounds for cokemaking operations. Consequently, for this final rule, EPA has determined, with respect to by-product cokemaking, that phenolic compounds do not pass through. Accordingly, EPA has not established any pretreatment standards for phenols (4AAP) for that segment.

4. Regulation of Phenols (4AAP)

EPA regulated the non-conventional bulk parameter phenol (measured as 4 amino-antipyrene (4AAP)) in 1982 for cokemaking, sintering, and blast furnace ironmaking. In 2000, EPA proposed regulation of the compound phenol (as measured with a gas chromatograph-mass spectrometer (GC–MS)) instead of the bulk parameter phenols (4AAP), because, in general, it believes that, in effluent limitations guidelines, targeting specific pollutants is often more appropriate than regulating a parameter that measures a variety of pollutants. For reasons presented in comments, EPA has decided to continue to regulate phenol (measured as 4AAP) and is not making the change as proposed.

EPA received one comment supporting the proposed approach on the grounds that it would give a much more reliable measure of the actual amount of phenol in the discharge. However, several other commenters disagreed with EPA's proposal. These comments raised three principal objections. First, they expressed concern that changing the regulated parameter from 4AAP to phenol would increase costs for both sampling and analyses, with no environmental benefit. Based on a survey of three labs and assuming two sample events per week, costs at one location would likely increase by over $25,000 per year. Second, the comments asserted that the proposed changes could present unintended adverse environmental effects. One commenter reported that its facility runs several operational samples for phenols (4AAP) as part of the daily routine, which allows it to identify and respond to potential upset conditions. The time required to run the GC–MS analytical method for phenol and the instrumentation required, the commenter said, would discourage onsite monitoring for wastewater treatment process control purposes. Finally, commenters noted that, because phenol is a priority pollutant, it is not eligible for CWA Section 301(g) waivers. These waivers allow facilities to request a variance from effluent limitations for nonconventional bulk pollutants such as phenols (4AAP) based upon cost and economic impact considerations, provided that the facilities comply with all local water quality-based effluent limitations. See Section XIII.C for more information regarding 301(g) waivers. Commenters stated that by regulating phenol instead of the bulk parameter phenols (4AAP), EPA would eliminate the option of obtaining such a waiver. Commenters further stated that because many iron and steel facilities are currently regulated under a 301(g) waiver for phenols (4AAP), this would substantially increase the costs of the proposed rule, and that EPA did not account for these costs at the time of its proposal.

EPA reviewed its record on this issue. The data show that there are two primary phenolic compounds present in iron and steel wastewater: phenol, and 2,4-dimethylphenol. Furthermore, the data show that by controlling the bulk parameter phenols (4AAP), both of these compounds are effectively controlled. Therefore, while EPA agrees with the comment that regulating phenol would provide a more reliable measure of the actual amount of phenol, EPA does not believe that this degree of precision is necessary in view of the other considerations identified in comments. EPA agrees that compliance monitoring costs are greater for phenol than for the bulk parameter phenols (4AAP), and EPA does not want to discourage routine monitoring that allows a mill to identify and respond quickly to potential upset conditions. Also, in light of the current financial conditions of the industry, EPA wants to ensure that iron and steel facilities continue to have the option of the 301(g) waiver. EPA has been unable to find anything in its database to suggest that regulating the bulk parameter phenols (4AAP) instead of the compound phenol would negatively impact the environment. Consequently, after careful review of comments received and its database,

EPA had concluded that it is appropriate to continue to regulate the bulk parameter phenols (4AAP) rather than phenol.

5. Retention of the Central Treatment Provision

Under the applicability Section of the 1982 iron and steel regulation, 40 CFR 420.01(b), EPA identified 21 plants that were temporarily excluded from the provisions of Part 420 because of economic considerations. This exclusion would not be granted unless the owner or operator of the facility requested the Agency to consider establishing alternative effluent limitations and provided the Agency with certain information consistent with 40 CFR 420.01(b)(2) on or before July 26, 1982. *See* 47 FR 23285 (May 27, 1982). At the time of the 2000 proposal, EPA believed that none of the facilities currently had permits based on the central treatment provision and proposed to remove it from Part 420.

The Agency did not receive any comments supporting the removal of the central treatment provision. Rather, commenters asked EPA to expand the provision. Commenters requested this expansion because they were concerned that the costs of the proposed rule would be too high if the limits and standards were made more stringent. Commenters stated that economic conditions were similar to those in 1982 and that the central treatment provision should remain a viable compliance option in Part 420.

EPA disagrees with commenters that it should expand the central treatment provision. Because of the prevailing economic situation in the iron and steel industry, technological reasons in some subcategories, and performance issues in others, EPA has decided to go forward with new or revised regulations for only five subcategories (cokemaking, sintering, ironmaking, steelmaking, and a subcategory for other operations). The five subcategories affected by the final rule have minimal impact on the 21 eligible mills. With the substantially reduced projected economic burden on the industry, the Agency does not believe that expanding § 420.01(b)(2) is necessary.

EPA also reviewed its database in determining whether it should remove the central treatment provision as proposed. EPA confirmed that very few of the twenty-one facilities applied for the central treatment waiver provision. However, contrary to its belief at the time of the proposal, EPA found that, of those that did apply, at least one mill currently has a permit based on the central treatment provision for one parameter (zinc). Because EPA has decided to leave the ironmaking subcategory unchanged from the 1982 regulation, this facility is likely to continue to need the central waste treatment provision available in § 420.01(b). This particular company is projected to need to spend at least two times the model costs to come into compliance with the current Part 420 requirements for this one parameter, and would likely remain eligible for the central treatment waiver provision. One additional facility may also have a current permit based on the central treatment provision.

Based upon EPA's review, today's final rule leaves the central treatment provision (§ 420.01(b)(2)) unchanged from the 1982 regulation. This allows any mill whose permit is based on this provision to continue to use it, but does not extend the provision to any additional mills.

6. Production Basis for Calculating Permit Limits

The limitations and standards promulgated today are expressed in terms of mass (e.g., lbs/day or kg/day). This means that NPDES permit limitations derived from today's rule similarly must be expressed in terms of mass. See 40 CFR 122.45(f). These requirements are for direct discharging facilities. Similar requirements exist for indirect discharging facilities and are found in 40 CFR 403.6(c)(3). In order to convert effluent limitations guidelines and standards expressed as pounds/thousand pounds to a monthly average or daily maximum permit limit, the permitting authority would use a production rate with units of thousand pounds/day. EPA's regulations at 40 CFR 420.04, 122.45(b)(2), and 403.6(c)(3) require that NPDES permit and pretreatment limits be based on a "reasonable measure of actual production," but do not define the term. In its 2000 proposal, EPA solicited comment on whether to codify a definition of that term in part 420 for the iron and steel category. After considering the comments and reviewing the rulemaking record, EPA has decided not to codify a definition of "reasonable measure of actual production."

a. Background

As explained above, the current iron and steel regulation does not define what constitutes a "reasonable measure of actual production," although it offers the following examples: "production during the high month of the previous year, or the monthly average for the highest of the previous five years." See 40 CFR 420.04.

EPA believes that some NPDES permitting and pretreatment control authorities have identified production rates that do not reflect a "reasonable measure of actual production" specified at 122.45(b)(2)(i), 403.6(c)(3), and 420.04. In some cases, maximum production rates for similar process units discharging to one treatment system were determined from different years or months, which may provide an unrealistically high measure of actual production. In EPA's view, this would occur if the different process units could not reasonably produce at these high rates simultaneously.

In addition, industry stakeholders have also noted that permitting and pretreatment control authorities interpret the reasonable measure of actual production inconsistently. Accordingly, iron and steel industry stakeholders requested that EPA publish a consistent policy on how to implement this requirement. Industry stakeholders have indicated that (1) in order to promote consistency, EPA should codify the method used to determine appropriate production rates for calculating allowable mass loadings, so that the permit writers can all use the same basis; and (2) EPA should use a high production basis, such as maximum monthly production over the previous five year period or maximum design production, in order to ensure that a facility will not be out of compliance during periods of high production.

b. 2000 Proposal

Because the "reasonable measure of actual production" concept is inconsistently applied, EPA proposed in 2000 to include in its final iron and steel rulemaking specific direction on making this determination. EPA solicited comment on four alternative approaches to implement the "reasonable measure of actual production." See 65 FR at 82029–82031. Each alternative excluded, from the calculation of operating rates, production from unit operations that do not generate or discharge process wastewater. EPA proposed the following four alternative definitions of reasonable measure of actual production: (a) include production only from units that can operate simultaneously; (b) apply multi-tiered permit limits with different limits for different rates of production as defined in Chapter 5 of U.S. EPA NPDES Permit Writers Manual, EPA 833–B–96–003; (c) use the average daily production from the highest production year during the previous five years; and

(d) use one of the methods for monthly average limits but use concentration limits for daily maximum limits.

Each alternative had its supporters and detractors in comments. Several commenters preferred alternative A, but incorrectly described the alternative as the high month of production over the past five years. No commenters provided data that showed they would be unable to meet the proposed limits and standards under any of the four alternatives.

c. Final Rule

At this time, EPA has decided not to revise section 420.04 in any respect. EPA has also decided not to codify a definition for the term "reasonable measure of actual production" applicable to part 420. The Agency has thoroughly evaluated all comments supporting other interpretations and is not convinced that departing from past practices is justified here. Consequently, EPA concludes that continuing to allow flexibility to permitting and pretreatment control authorities to apply site-specific factors in determining a reasonable measure of production is appropriate.

7. Applicability of Part 420 to Electroplating and Certain Finishing Operations

At the time of the proposed rulemaking, the Agency determined that certain facilities subject to the 1982 iron and steel rule operated processes that more closely resemble those in facilities to be covered by the Metal Products and Machinery (MP&M) rule than those found in iron and steel facilities. So that these facilities might be addressed under a regulation that best fits them, EPA proposed to move these types of facilities into the MP&M category, which would be regulated under the part 438 effluent limitations guidelines and standards, when finalized. Specifically, EPA proposed to move the following operations from iron and steel to MP&M: surface finishing or cold forming of steel bar, rod, wire, pipe or tube; batch electroplating on steel; continuous electroplating or hot dip coating of long steel products (e.g.wire, rod, bar); batch hot dip coating of steel; and steel wire drawing. These operations produce finished products such as bars, wire, pipe and tubes, nails, chain link fencing, and steel rope.

EPA received several comments regarding the proposed transfer. The commenters did not support such transfer for two main reasons. First, the stand alone wire companies commented that they would be at a competitive disadvantage because they believe certain non-integrated facilities that also produce and sell wire and wire products would continue to be regulated under part 420 alone. EPA disagrees with the commenters on this issue because, like stand alone wire facilities, the wire operations of the non-integrated steelmaking facilities would be subject to the MP&M category, as regulated under the part 438 effluent limitations guidelines and standards. EPA expects that the discharge permits for these non-integrated facilities would be based on a combined waste stream formula approach.

Additionally, the commenters also claimed that the transferred operations are similar to various operations in the proposed iron and steel finishing subcategory. Furthermore, the commenters also felt that EPA has not demonstrated any significant differences in the wastewater characteristics between the proposed to be transferred operations and the proposed iron and steel finishing operations. Since proposal, EPA revisited the record of the iron and steel finishing operations (all operations with available influent data) and compared the associated wastewater characteristics to those from the wire facilities that were sampled under the MP&M rulemaking effort. EPA confirmed that the wastewater characteristics from the operations EPA proposed to transfer indeed resemble more closely those from the MP&M operations than those from the iron and steel finishing operations. For instance, the average lead and zinc concentrations from the wire facilities are one to three orders of magnitude higher than those from the iron and steel finishing facilities. On the other hand, the concentrations for these pollutants are within the range of pollutant concentrations found in similar MP&M operations.

Furthermore, most of the unit operations present in the facilities EPA proposed to transfer are the same as those found in the MP&M facilities, while only around 30% of these operations are found in the iron and steel finishing facilities. Lastly, EPA performed a comparison of flow rates between the facilities EPA proposed to transfer and the proposed finishing subcategory. The average flow rate from the proposed finishing subcategory is approximately half billion gallons per year, while the average flow rate from the facilities EPA proposed to transfer is less than 30 million gallons per year. EPA also notes that the average flow rate from the general metals subcategory of the MP&M rule is of the same order of magnitude as that from the facilities EPA proposed to transfer. As a result of the above evaluations, EPA preliminarily concluded that the operations EPA proposed to transfer are more appropriately regulated in part 438, the MP&M effluent limitations guidelines and standards.

EPA also proposed moving certain electroplating operations currently subject to the Metal Finishing Part 433 effluent limitations guidelines and standards into the revised part 420. Commenters strongly opposed the incorporation of the continuous electroplating of flat steel products (*e.g.*, sheet, strip, plate) into part 420, indicating the preference for electroplating operations of all types to be considered as a whole (*e.g.*, under the part 433 regulations or eventually the MP&M regulations). For the reasons stated in the comments, EPA agrees. Therefore, EPA is not including wastewater discharges from continuous electroplating of flat steel products in part 420.

For the reasons set forth above, EPA believes that the following operations would be most appropriately regulated as MP&M facilities: surface finishing or cold forming of steel bar, rod, wire, pipe or tube; batch electroplating on steel; continuous electroplating or hot dip coating of long steel products (e.g.wire, rod, bar); batch hot dip coating of steel; and steel wire drawing. However, EPA will not decide whether to establish an MP&M category in part 438 until December 2002. Therefore, it would be premature in today's final rule to change the applicability of the existing iron and steel rule to exclude the operations and EPA has not done so. If EPA finalizes limitations and standards for subcategories of the MP&M regulation (which would encompass these operations), EPA will also amend the applicability section of the iron and steel rulemaking to reflect this change. Until then, the operations continue to be regulated under part 420, respectively.

8. Ammonia-N Standard Waiver for Indirect Discharging Cokemaking, Ironmaking, and Sintering Operations

In today's final rule, EPA is setting or retaining pretreatment standards for ammonia for the cokemaking and sintering subcategories because of the high loads of ammonia in wastewaters from those subcategories to POTWs that do not have nitrification capability. However, EPA is aware that some POTWs treating iron and steel wastewaters from these subcategories have nitrification capability. Consequently, in 2000, EPA proposed to waive the ammonia-N pretreatment standard for the ironmaking (including

sintering) subcategory if the receiving POTW's operations included effective operation of a nitrification system.

EPA received several compelling comments supporting this proposal, and encouraging EPA to extend this mechanism to the cokemaking subcategory also. No commenters opposed this mechanism.

Upon a final review of its record, EPA continues to believe this waiver is appropriate and agrees with commenters that it should apply to the cokemaking, sintering, and ironmaking subcategories. EPA concludes this waiver will be equally protective of the environment and lead to potential cost savings for some iron and steel facilities. Thus, ammonia-N pretreatment standards do not apply to cokemaking, ironmaking, and sintering facilities discharging to POTWs with nitrification capability. As a further point of clarification, EPA is defining nitrification capability as described in the following paragraph.

POTWs with nitrification capability oxidize ammonium salts to nitrites (via Nitrosomas bacteria) and then further oxidize nitrites to nitrates via Nitrobacter bacteria to achieve greater removals of ammonia than POTWs without nitrification. Nitrification can be accomplished in either a single or two-stage activated sludge system. In addition, POTWs that have wetlands which are developed and maintained for the express purpose of removing ammonia with a marsh/pond configuration are also examples of having nitrification capability. Indicators of nitrification capability are: (1) biological monitoring for ammonia oxidizing bacteria (AOB) and nitrite oxidizing bacteria (NOB) to determine if the nitrification is occurring, and (2) analysis of the nitrogen balance to determine if nitrifying bacteria reduce the amount of ammonia and increase the amount of nitrite and nitrate.

9. Nitrates in Acid Pickling Wastewater

In today's final rule, EPA is not establishing nitrate limits for acid pickling operations. The model BAT technology for stainless steel finishing operations includes acid purification units for recovery and reuse of spent nitric and nitric/hydrofluoric acid pickling solutions. This technology comprises removal of dissolved metals (e.g., iron, chromium, nickel) from a side stream of the strong acid pickling solution and return of the purified acid to the acid pickling bath. This essentially extends the life of the pickling acids, thereby reducing the consumption of virgin nitric acid. A reject stream containing dilute acid and the dissolved metals is periodically sent to wastewater treatment.

Commenters provided information to the Agency on the efficiency and performance of acid purification technology, which indicated EPA had substantially overestimated the capability of acid purification units in the proposed rule. No information on potential alternative pollution control equipment was provided in response to the solicitation for cost and performance data. The Agency was also unable to acquire sufficient information on alterative pollution control technologies to provide a best available technology basis for the effluent limitations guidelines and standards.

EPA is aware of a potential problem associated with nitrate discharge from one stainless steel finishing operation with combination (hydrofluoric and nitric) acid pickling. It may be that similar problems are associated with discharges coming from similar operations in other parts of the country. Nitrates, when consumed in drinking water, can be associated with health problems in humans, particularly infants. EPA expects this problem to be addressed through BAT limitations established on a site-specific best professional judgment basis or through water quality-based effluent limitations. For further discussion of the possible technological alternatives for nitrate control in site-specific circumstances, please see Chapter 8 of the TDD.

B. Decisions Regarding Methodology

1. Economic Analysis Methodology

This section presents several important adjustments made to the methodology since proposal. A more detailed discussion of EPA's methodology for analyzing the economic achievability of the candidate BAT options is presented in Section X.C of this preamble and in the EA.

In response to the challenges represented by the significant industry downturn described in Section IV, EPA made two revisions to the economic analysis methodology it employed at proposal. In the case of forecasting future industry cash flows, the Agency added two additional forecast methods to the three used in the proposal. Two of the models used at proposal explicitly address the sharp downturn in the industry after 1997 but differ in reflecting the strength and duration of recovery and subsequent downturns. That is, both address the cyclicality seen in the iron and steel industry, but with differing magnitudes and timing. The third forecasting method used at proposal is a three-year average (1995 to 1997) to provide an upper-bound analysis. For this final rule, EPA employed two additional forecast methods to reflect to the maximum extent possible the effect of the industry downturn. The fourth forecasting method is a six-year average covering 1995 to 2000, with the years 1998 through 2000 scaled by industry level performance. The fifth forecasting method uses only the year 2000 as a lower-bound analysis.

The second revision to the economic methodology since proposal is modification of the scoring test to evaluate potential economic impacts. EPA calculates the baseline status of a site as the present value of forecasted earnings. With five forecasting methods, there are five ways to evaluate each site. If, using a particular forecast method, a site's baseline status is negative (negative present value of forecasted earnings), EPA assigned a score of "1" for that forecasting method. A single site, then, may have a score ranging from zero to five (with five indicating negative present value of forecasted earnings under all five forecasts). Similar to the methodology at proposal, EPA considers any sites with negative present value of forecasted earnings in the majority of cases (in this case, a score of "3" or higher) to be a baseline closure.

Then for all sites considered viable in the baseline, EPA calculates the post-regulatory status of a site as the present value of forecasted earnings minus the after-tax present value of regulatory costs. With five forecasting methods, there are five ways to evaluate each site. If, using a particular forecast method, a site's post-regulatory status is negative (after-tax present value of regulatory costs exceeds present value of forecasted earnings), EPA assigned a score of "1" for that forecasting method. A single site, then, may have a score ranging from zero to five (with five indicating that the after-tax present value of regulatory costs exceeds present value of forecasted earnings under all five forecasts). In an effort to reflect the significant industry downturn, the Agency has chosen to reflect any incremental change in the score from the baseline condition to the post-regulatory condition due to regulatory compliance costs as a potential closure.

One additional item of note was incorporated into the economic analysis of the rule since proposal. Two proposed rules being undertaken by the Agency's Office of Air Quality Planning and Standards may impact iron and steel facilities potentially subject to the current rule: Coke Ovens: Pushing, Quenching & Battery Stacks (66 FR 35325) and Integrated Iron and Steel (66 FR 36835). As a result, the final economic analysis incorporates in the economic condition of each potentially affected facility and firm the potential regulatory costs projected for the aforementioned proposed rules. This approach is consistent with existing Agency and OMB guidance on conducting economic analysis. Further, the other potential rulemakings represent expenditures which are projected to occur during the analytical and compliance time horizon and the costs must be reflected to insure the Agency does not underestimate adverse economic impacts.

2. Selection of Facilities With Model Treatment and Evaluation of Available Data Sets in Establishing Long Term Averages

EPA uses long term averages (LTAs), which represent the pollutant concentrations achievable, and production normalized flows (PNFs), which reflect volumes of wastewater generated, by model facilities in order to calculate the effluent limitations guidelines and standards in today's rule. See the TDD for more details. EPA received a number of comments on the ability of existing facilities to achieve both the LTAs and the PNFs. This section explains the procedure EPA used to select the BAT facilities upon which it based its LTAs and its updated data editing procedures for LTA and variability calculations. For a discussion of PNFs, see Section V.B.3 and Chapter 13 of the TDD.

First, EPA evaluated each data set to determine what technology or series of technologies the data represented. In this manner, EPA eliminated many data sets because they did not represent a technology basis considered during development of this rule. In a few instances, EPA included data from facilities that employ technologies in addition to the technology bases being considered. In these cases, EPA had data from intermediate sampling points representing the model technologies; in other words, the data EPA employed reflect only the application of technologies under consideration. Next, EPA reviewed the remaining data sets to ensure that each facility was effectively operating its technologies. For example, EPA eliminated facilities that experienced repeated operating problems with their treatment systems or have discharge points located after addition of significant amounts (i.e., greater than 10 percent by volume) of non-process water.

For the data sets that remained, EPA performed a detailed review of the data and all supporting documentation accompanying the data. This includes both EPA sampling data and industry-supplied data (often referred to as industry self monitoring data (ISMD)). EPA performed this review to ensure that the data were obtained during a treatment system's normal operating conditions and to ensure that the data accurately reflect the performance expected by the BAT treatment systems. Thus, EPA excluded data that were collected while a facility was experiencing exceptional incidents or upsets.

After determining the data sets to be included to calculate LTAs and variability for each technology option under consideration for the final rule, EPA applied further data editing criteria on a pollutant-by-pollutant basis. For facilities where EPA possessed paired influent and effluent data, it performed a long-term average test. The test looks at the influent concentrations to ensure a pollutant is present at sufficient concentration to evaluate treatment effectiveness. If a pollutant failed the test (*i.e.*, was not present at a treatable concentration), EPA excluded the data for that pollutant from its LTA and variability calculations. In this manner, EPA would ensure that its limitations resulted from treatment and not simply the absence of that pollutant in the wastestream. In many cases, however, industry supplied EPA with effluent data, but not the corresponding influent data. In these cases, EPA used the effluent data without performing a long-term average test. EPA decided to use these data for two reasons. First, EPA wanted to include as much data as possible in its calculations. Second, the vast majority of pollutants for which industry supplied self-monitoring data are pollutants regulated in the existing iron and steel regulation; EPA has already established the presence of the regulated pollutants in treatable levels in iron and steel wastestreams. Therefore, EPA is confident that these effluent data represent effective treatment and not the absence of the pollutant in the wastestream.

Lastly, in some cases, EPA also had information that the technology at a particular facility, while effective overall, was ineffective for individual pollutants. In these instances, EPA excluded the data from that facility for that particular pollutant only.

The Agency then used the remaining data from the facilities with the model technology basis to calculate the LTA, the associated daily and monthly variability factors, and the limitations. Chapter 14 of the Technical Development Document provides more detailed information on EPA's data editing criteria and the long-term average test. In addition, the final rulemaking record contains supporting documentation on all data exclusions.

3. Reassessment of Production-Normalized Flows (PNFs)

EPA performed a comprehensive review of the data sets used and analyses performed to determine the model PNFs. EPA's revised analyses are described in Section 13 of the TDD, with additional documentation provided in the rulemaking record. The purpose of the review was to identify and correct any errors in the data sets and to ensure that the resulting model PNFs are technically achievable for all facilities in each subcategory and segment. EPA's revised PNF analyses considered age of equipment and facilities, type of process employed, products produced (incorporates product quality needs), geographic location, non-water quality impacts (including air pollution regulations and energy), compliance costs, storm water considerations, and seasonal variation. EPA also considered combinations of these factors and evaluated the pollutant control upgrades considered for each facility to ensure the model PNFs and LTAs are technically feasible for all facilities in each subcategory and segment. In addition, EPA considered whether any individual facilities achieve the model PNFs and LTAs simultaneously, but did not include this factor as a requirement in determining the model LTAs and PNFs.

For two subcategories, ironmaking and steel finishing, EPA's subsequent analyses concluded that the model PNFs were not technically achievable for all facilities, and this was one factor in EPA's decision to retain the existing effluent limitations guidelines and standards for these subcategories as discussed in Sections VIII.C and VIII.H. EPA also made minor adjustments to the model PNFs for some other subcategories and segments.

4. Changes in Methodology for Determining the Baseline Loadings and Average Baseline Concentrations

An important factor in calculating current or baseline pollutant loadings for a facility is the concentration of each pollutant in a facility's discharge. When possible, EPA determined these pollutant concentrations based on information reported by that facility. However, EPA does not have this information for every pollutant at every iron and steel facility. In these

instances, EPA needed to develop a methodology to estimate these concentrations. Consequently, for each subcategory under consideration, where site-specific data are available EPA calculated the site-specific baseline concentrations for each pollutant before averaging the site-specific values across the subcategory to obtain the subcategory-specific average baseline concentrations. These values were then applied to facilities and/or pollutants for which EPA lacked specific data. For some subcategories, EPA estimated baseline concentrations for different technologies, while for others it developed a single set of concentration estimates. At the time of the proposal, EPA eliminated data from facilities that were used in its LTA calculations (i.e., "BAT facilities"). After a review following the proposal, EPA realized that this procedure assumed that all facilities for which EPA did not have specific pollutant loading calculations were performing at a level less than BAT. EPA's database does not support this conclusion. Consequently, for the final rule, EPA has included all data, including that representing "BAT facilities," in its average pollutant baseline calculations.

In addition, for the proposal, EPA estimated baseline pollutant concentrations for indirect and direct dischargers separately. After a review of its record, EPA recognized that, except for conventional pollutants, effluent pollutant concentrations are largely dependent on the treatment technology used rather than a facility's discharge status. This is not the case for conventional pollutants, however, because most indirect dischargers are not required to control or optimize their treatment systems for the removal of conventional pollutants because they are treated by the receiving POTW. Consequently, for the final rule, except for conventional pollutants, EPA has not distinguished between direct and indirect discharging facilities in estimating baseline pollutant concentrations. Chapter 11 in the TDD contains additional information on EPA's pollutant loadings and average baseline concentration calculations.

5. Determination of POTW Percent Removal Estimates

In its analyses at the time of the proposal, EPA used its traditional approach to determine POTW performance (percent removal). POTW performance is a critical component of the pass-through methodology EPA uses to identify pollutants to be regulated for PSES and PSNS. In addition, the proposal discussed that EPA was considering revising its traditional methodology for determining POTW performance. Specifically, it discussed and requested comment on possible revisions to the methodology EPA uses to calculate POTW percent removals using data from the "Fate of Priority Pollutants in Publically Owned Treatment Works" (EPA 440/1–82/303, September 1982), commonly referred to as the "50–POTW Study." See 65 FR 82012–82013.

EPA received only one comment on the methodology changes. As these changes would affect a wide range of industries, EPA had hoped to engage a much broader audience. Consequently, for this final rule, EPA continues to use its traditional approach. EPA also performed its analyses using the revised methodology. EPA found that its conclusions would be the same using either methodology.

As a further point of clarification, EPA also noticed the possible revisions in its POTW performance methodology in its proposed Metal Products and Machinery (MP&M) effluent guidelines and standards (66 FR 424). EPA is currently re-visiting this issue for that rulemaking.

VI. Scope/Applicability of the Regulation

The universe of facilities that are subject to 40 CFR part 420 includes facilities engaged in iron and steel making operations using blast furnaces, basic oxygen furnaces (BOFs), or electric arc furnaces (EAFs). Part 420 also applies to metallurgical cokemaking facilities and stand-alone facilities engaged in hot forming and/or finishing of steel. In a change from the 1982 regulations, today's rule also applies to facilities engaged in other related operations such as direct iron reduction, forging, and iron briquetting. On the other hand, today's rule no longer applies to obsolete operations such as beehive cokemaking, ferromanganese blast furnaces and open hearth furnaces.

A detailed discussion of iron and steel wastewaters is provided in Chapter 7 of the TDD. In summary, all wastewater discharged to a receiving stream or introduced to a publicly owned treatment works from a facility that is within the scope of one of the subparts is subject to the provisions of part 420. See 40 CFR 420.01(a).

VII. Industry Description

EPA estimates there are 254 facilities owned by 115 companies in the iron and steel industry. The iron and steel facilities are located throughout the U.S. with a high concentration of integrated steelmaking and cokemaking facilities in the midwest and northeast. The smaller stand-alone forming and finishing facilities are generally located near larger steel manufacturing sites.

EPA has identified general processes typically found at iron and steel facilities. The following is a brief description of these key manufacturing processes.

Cokemaking

This process turns carbon in raw coal into metallurgical coke, which is subsequently used in the ironmaking process. There are two types of cokemaking operations: By-product and non-recovery. In by-product coke plants, metallurgical coke is produced by distilling coal in refractory-lined, slot-type ovens at high temperatures in the absence of air. In non-recovery coke plants, coal is made into coke in negative pressure, higher temperature coke ovens.

In by-product coke operations, the moisture and volatile components generated from the coal distillation process are collected and processed to recover by-products, such as crude coal tars, light crude oil, etc. Another type of cokemaking process is performed in non-recovery plants. These facilities use higher temperature ovens which destroy volatile organics, and they do not recover any by-products. Furthermore, their negative pressure coke ovens also ensure no leakage of air and smoke to the atmosphere.

In by-product coke plants, wastewater such as waste ammonia liquor is generated from moisture contained in the coal charge to the coke ovens, and some wastewater is generated from the by-product recovery operations. The non-recovery coke plants, on the other hand, do not generate any process wastewater.

Sintering

Sinter plants upgrade the iron content of ores and recover iron from a mixture of wastewater treatment sludges, mill scale from integrated steel mills, and fine coke particles (also known as coke breeze) from cokemaking operations. In sinter plants, the iron source mixture is combined with limestone and charged to a furnace. Sinter of suitable size and weight is formed for charging to the blast furnace. Wastewaters are generated from wet air pollution control devices on the wind box and discharge ends of the sinter furnace. No process wastewater is generated from dry air pollution control systems.

Ironmaking

In ironmaking, blast furnaces are used to produce molten iron, which makes

up about two-thirds of the charge to basic oxygen steelmaking furnaces. The raw materials charged to the top of the blast furnace include coke, limestone, refined iron ores, and sinter. Preheated air is blown into the bottom of the furnace and exits the furnace top as blast furnace gas in enclosed piping. The off-gas is cleaned and cooled in a combination of dry dust catchers and high-energy venturi scrubbers. Direct contact water used in the gas coolers and high-energy scrubbers comprises nearly all of the wastewater from ironmaking blast furnace operations.

Steelmaking

Steelmaking in the United States is conducted either in basic oxygen furnaces (BOFs) or electric arc furnaces (EAFs). BOFs are typically used for high tonnage production of carbon steels at integrated mills, while EAFs are used to produce carbon steels and low tonnage alloy and specialty steels at non-integrated mills.

Integrated steel mills use BOFs to refine a metallic charge consisting of approximately two-thirds molten iron and one-third steel scrap. Off-gases from the furnace are controlled by one of three wet air pollution control methods: Semi-wet, wet-open, and wet-suppressed. Wastewaters are generated from the wet air pollution control devices. On the other hand, non-integrated mills use EAFs to melt and refine a metallic charge of scrap steel. In addition, most mills operate EAFs with dry air cleaning systems, which produce no process wastewater discharges. There are a small number of wet and semi-wet systems.

Vacuum Degassing/Ladle Metallurgy

Vacuum degassing is a batch process where molten steel is subjected to a vacuum for composition control, temperature control, deoxidation, degassing, decarburization, and the removal of impurities from the steel. Oxygen and hydrogen are the principal gases removed from the steel. In most degassing systems, the vacuum is provided by barometric condensers; thus, direct contact between the gases and the barometric water occurs.

Likewise, ladle metallurgy is also a batch process where molten steel is refined in addition to, or in place of, vacuum degassing. These operations include argon bubbling, argon-oxygen decarburization (AOD), electroslag remelting (ESR), and lance injection. These additional refining operations do not generate any process water.

Casting

This process continuously casts the molten steel into semi-finished shapes after the vacuum degassing and/or ladle metallurgy processes. The continuous casting machine includes a receiving vessel for molten steel, water-cooled molds, secondary cooling water sprays, containment rolls, oxygen-acetylene torches for cutoff, and a runout table. Wastewater is generated by a direct contact water system used for spray cooling and for flume flushing to transport scale from below the caster runout table. The other main casting operation type is ingot casting, in which molten steel is poured into ingot molds.

Hot Forming

In this process, ingots, blooms, billets, slabs, or rounds are heated to rolling temperatures so that the products will form under mechanical pressure into semi-finished shapes for further hot or cold rolling or as finished shapes. Process water is used for scale breaking, flume flushing, and direct contact cooling.

Salt Bath Descaling

Oxidizing and reducing molten salt baths are used to remove heavy scale from specialty and high-alloy steels. Process wastewaters originate from quenching and rinsing operations conducted after processing in the molten salt baths. Electrolytic sodium sulfate descaling is performed on stainless steels for essentially the same purposes as salt bath descaling.

Acid Pickling

Solutions of various acids are used to remove oxide scale from the surfaces of semi-finished products prior to further processing by cold rolling, cold drawing, and subsequent cleaning and coating operations. Process wastewaters include spent pickling acids, rinse waters, and pickling line fume scrubber water.

Cold Forming

Cold forming is conducted on hot rolled and pickled steels at ambient temperatures to impart desired mechanical and surface properties in the steel. Process wastewater characteristics result from using synthetic or animal-fat based rolling solutions, many of which are proprietary.

Hot Coating

This process immerses pre-cleaned steel into baths of molten metal. Hot coating is typically used to improve resistance to corrosion, and for some products, to improve appearance and ability to hold paint. Wastewaters result principally from cleaning operations prior to the molten bath.

Direct-Reduced Ironmaking (DRI)

This process produces relatively pure iron by reducing iron ore in a furnace below the melting point of the iron produced. DRI is used as a substitute for scrap steel in non-integrated steelmaking process to minimize contaminant levels in the melted steel and to allow economic steel production when market prices for scrap are high. Process wastewaters are generated from air pollution control devices.

Briquetting

This process of agglomeration forms materials into discrete shapes of sufficient size, strength, and weight so that the material can serve as feed for subsequent processes. Briquetting does not generate process wastewater.

Forging

This is a hot forming operation in which a metal piece is shaped by hammering or by processing in a hydraulic press. Process wastewaters are generated from direct contact cooling water.

The data collected for this rulemaking indicate that, in the past 25 years, much of the steel manufacturing industry has shifted from generally larger, older integrated facilities to newer, smaller non-integrated facilities. In addition, there is a substantial trend toward the establishment of specialized, stand-alone finishing facilities that process semi-finished sheet, strip, bars, and rods obtained from integrated or non-integrated facilities.

Of the 254 iron and steel manufacturing facilities, approximately 133 discharge directly to surface waters of the U.S., 70 discharge indirectly to POTWs, and 56 facilities achieve zero discharge (either because they do not generate process wastewater or because they dispose of their process wastewater through underground injection or other methods not directly involving waters of the United States). Some facilities may discharge both directly to surface waters of the U.S. and to POTWs. In 1997, process wastewater discharges ranged from less than 200 gallons per day for a stand-alone finisher to more than 50 million gallons per day for a larger integrated facility.

VIII. The Final Regulation

For a detailed discussion of all technology options considered in the development of today's final rule, see the proposal (65 FR at 81982–82096) and Chapter 9 of the TDD.

Based on the record before it, EPA has determined that each model technology EPA has chosen as a basis for today's revised BAT and PSES limitations is technically available. EPA has also determined that each is economically achievable for the segment to which it applies. Further, EPA has determined, for the reasons set forth in this section, that none of the chosen technologies has unacceptable adverse non-water quality environmental impacts. Finally, EPA has determined that each chosen technology achieves greater pollutant removals than any other economically achievable technology considered by EPA and, for that reason, also represents the best technology among those considered for the particular segment. EPA also considered the age, size, processes, and other engineering factors pertinent to facilities in the proposed segments for the purpose of evaluating the technology options. None of these factors provides a basis for selecting different technologies than those EPA has selected as its model BAT and PSES technologies for today's rule.

In selecting its NSPS technologies for the segments and subcategories being revised today, EPA considered all of the factors specified in CWA Section 306, including the cost of achieving effluent reductions. The NSPS technologies for these segments are presently being employed at facilities in each segment of these subcategories. Therefore, EPA has concluded that such costs do not present a barrier to entry. The Agency also considered energy requirements and other non-water quality environmental impacts for the NSPS options and concluded that these impacts are acceptable. EPA therefore concluded that the NSPS technology bases chosen for these segments constitute the best available demonstrated control technology for those segments. (These findings also apply to the PSNS for these segments.)

EPA is making no changes to the BPT and BCT limitations previously promulgated for part 420, except for revisions to BPT and BCT limitations for semi-wet BOF operations and the deletion of limitations for obsolete operations (beehive cokemaking in the cokemaking subcategory, ferromanganese blast furnaces in the ironmaking subcategory, and open hearth furnace operations in the steelmaking subcategory). Similarly, EPA is retaining, by cross reference to title 40 of the Code of Federal Regulations, revised as of July 1, 2001, the NSPS promulgated in 1982 in Subparts A and B for new sources that commenced discharge after November 19, 2012 but before November 18, 2002, provided that the new source was constructed to meet those new standards. EPA is also retaining by cross reference, the pretreatment standards for new sources previously promulgated for Subparts A and B for facilities constructed between November 19, 2012 and November 18, 2002, except that EPA is rescinding the pretreatment standards for phenols for Subpart A because EPA has determined in this rulemaking that phenol (measured as 4AAP) does not pass through with respect to the cokemaking subcategory.

This implements the provisions of CWA Section 306(d), which provides that new sources may not be regulated to achieve more stringent technology-based limitations (*e.g.*, revised BAT) for pollutants regulated by NSPS for approximately ten years following completion of construction. EPA's regulations at 40 CFR 122.29(d)(1) specify the precise duration of this grace period. Thereafter, the discharger is subject to any more stringent applicable BPT/BCT/BAT limitations. This means that facilities currently subject to the 1982 NSPS or PSNS remain subject to those standards during a ten-year period beginning on the date of completion of the new source or during the period of depreciation or amortization of such facility, whichever period ends first. After such time, the BAT and PSES limitations promulgated today apply to those dischargers for toxic and nonconventional pollutants. For direct dischargers, limitations on conventional pollutants will be based on the formerly promulgated BPT/BCT limitations corresponding to the BPT/BCT segment applicable to the discharger or on the 1982 NSPS for conventional pollutants, whichever is more stringent.

A. Cokemaking Subcategory

EPA is promulgating limits and standards for two segments within the cokemaking subcategory: by-products recovery cokemaking, and non-recovery cokemaking. EPA is also removing the beehive cokemaking segment from the cokemaking subcategory because the beehive process of cokemaking is obsolete and has not been used in the United States for over 25 years.

1. Best Practicable Control Technology (BPT)

EPA is not revising any existing BPT limitations for the by-products recovery segment of this subcategory (which in the 1982 regulation was divided between "iron and steel" and "merchant" coke plants). EPA did not propose such revisions, but did solicit comment on the issue in the notice. EPA received no comment on the issue, so EPA is not revising the existing BPT limitations.

EPA is establishing BPT limitations for the non-recovery segment of the cokemaking subcategory. These limitations are: no discharge of process wastewater pollutants. See Chapter 7.1.1 of the TDD for more information about what constitutes process wastewater for this segment. Because non-recovery cokemaking operations do not generate any process wastewater, the Agency concludes that non-recovery cokemaking operation itself represents the best practicable technology currently available and that no discharge of process wastewater pollutants is a reasonable BPT limitation. For the same reason, the Agency concludes that there are no costs associated with achieving this limitation, and expects that no additional pollutant removals attributable to this segment will occur.

2. Best Conventional Pollutant Control Technology (BCT)

In deciding whether to adopt different BCT limits, EPA considered whether there are technologies that achieve greater removals of conventional pollutants than adopted for BPT, and whether those technologies are cost-reasonable under the standards established by the CWA, and implemented through regulation. EPA generally refers to the decision criteria as the "BCT cost test." EPA is not revising any existing BCT limitations for the by-products recovery segment of this subcategory (which in the 1982 regulation was divided between "iron and steel" and "merchant" coke plants) because there are no technologies that achieve greater removals of conventional pollutants than the technology basis for the current BPT and pass the BCT cost test.

For the non-recovery segment of this subcategory, EPA identified no technologies that can achieve greater removals of conventional pollutants than those that are the basis for BPT (*i.e.*, the non-recovery cokemaking operations resulting in no discharge) and, therefore, it cannot perform the BCT cost test. Accordingly, EPA is adopting BCT effluent limitations equal to the BPT effluent limitations for the non-recovery segment of this subcategory.

3. Best Available Technology Economically Achievable (BAT)

EPA is establishing BAT limits for both the by-products recovery and for the non-recovery segments of the cokemaking subcategory.

a. By-products recovery segment.

For this segment, EPA is today establishing BAT limits for five pollutants: ammonia-N, benzo(a)pyrene, cyanide, naphthalene, and phenols (4AAP). EPA is eliminating the 1982 BAT limitations for benzene because control of naphthalene and benzo(a)pyrene should ensure adequate removal of benzene. EPA is promulgating revised BAT limitations for phenols (4AAP), rather than establishing BAT limitations for phenol (GC/MS), as described in Section V.A.4. In addition, in a change from proposal, EPA is not promulgating BAT limitations for this segment for thiocyanate, mercury, or selenium because information in the record shows that the technology basis for this segment would not result in consistent removal of these pollutants, and EPA has identified no other available and economically achievable technology that will do so. Therefore, at this time, these pollutants are not amenable to categorical regulations. Also, EPA is not promulgating BAT limitations for this segment for total recoverable chlorine (TRC). EPA had proposed to regulate this parameter because TRC monitoring can ensure correct operation of alkaline chlorination systems. However, alkaline chlorination is not a component of the technology basis for the limits of this segment; therefore, limitations on TRC are no longer necessary to reflect the application of the model technology.

The technology basis for these BAT limits is cokemaking option BAT1: oil and tar removal, equalization, fixed and free ammonia stripping, heat exchanger, equalization tank, biological treatment with nitrification followed by secondary clarification, and sludge dewatering. (In the proposal, EPA described the heat exchanger component of this treatment train as temperature control. Similarly, EPA had described today's biological treatment component as single-stage biological treatment with nitrification followed by secondary clarification. In each instance, only the names are different; these technologies at proposal and final are substantially identical.)

The BAT technology chosen for this rule is a different technology from the technology for this segment proposed in 2000. In 2000, the proposed technology basis for the BAT limits was BAT3, and consisted of the BAT1 technology plus breakpoint chlorination (EPA erroneously referred to this technology component as alkaline chlorination in the proposal) prior to biological treatment with nitrification. (Prior to proposal, EPA had also considered two other technology options—BAT2 and BAT4—but rejected them for reasons set forth in the proposal preamble at 65 FR at 82016–82017.) EPA has rejected BAT3 because it is not economically achievable. EPA projects that two closures and 500 job losses would result.

The Agency has now concluded that the BAT1 treatment system represents the best available technology economically achievable for this segment of this subcategory. There are several reasons supporting this conclusion. First, the BAT1 technology is readily available to all cokemaking facilities. Approximately 75% of the facilities in this segment currently use it. Second, the BAT1 technology will ensure a high level of removal of all cokemaking pollutants of concern. Well-operated free and fixed ammonia stills will remove gross amounts of ammonia-N, cyanide, and many organic pollutants while biological treatment with nitrification followed by secondary clarification will remove more ammonia-N, phenols (4AAP), and other organic constituents of the wastewater to low levels. Third, adoption of this level of control would represent a significant reduction in conventional, nonconventional, and toxic pollutants discharged into the environment by facilities in this subcategory. Even though 75% of the facilities currently employ this technology, EPA predicts significant removals attributable to this rule because today's limitations reflect substantial improvements in how these technology components are designed and operated. Finally, EPA has evaluated the economic impacts associated with this technology and found it to be economically achievable.

b. Non-recovery cokemaking.

EPA is adopting BAT limitations for the non-recovery segment of the cokemaking subcategory based on the same technologies selected as the basis for BPT for this segment. These limitations are: no discharge of process wastewater pollutants. See Chapter 7.1.1 of the TDD for more information about what constitutes process wastewater for this segment. EPA identified no technologies that can achieve greater removals of toxic and non-conventional pollutants than those that are the basis for BPT (*i.e.*, the non-recovery cokemaking operations resulting in no discharge.) EPA has also determined that this basis is economically achievable, because no facilities currently discharge process wastewater pollutants. Therefore, EPA is promulgating BAT limitations equal to BPT.

4. New Source Performance Standards (NSPS)

a. By-products recovery segment.

For the by-products recovery segment of the cokemaking subcategory, EPA is promulgating NSPS that would control the same conventional, priority, and non-conventional pollutants controlled at the BPT, BCT, and BAT levels. The technology basis for NSPS for this segment is BAT1: oil and tar removal, equalization, fixed and free ammonia stripping, heat exchanger, equalization tank, biological treatment with nitrification followed by secondary clarification, and sludge dewatering. The technologies available to control pollutants at existing facilities are also available to new facilities. EPA rejected BAT3 as a basis for NSPS because it determined that the costs associated with this technology were not reasonable. EPA considers BAT1 as the "best" demonstrated technology for new sources in the by-product segment of the subcategory. EPA concluded that the chosen technology does not present a barrier to entry because 75% of existing facilities currently employ the technology. The Agency considered energy requirements and other non-water quality environmental impacts and found no basis for any different standards than the selected NSPS. Therefore, EPA is promulgating NSPS for the by-products recovery cokemaking segment that are identical to BAT for toxic and non-conventional pollutants, while also promulgating TSS, oil and grease (measured as HEM), and pH limitations, using the same technology basis.

b. Non-recovery segment.

EPA is promulgating NSPS limitations for the non-recovery segment of the cokemaking subcategory based on the same technologies selected as the basis for BPT for this segment. These limitations are: no discharge of process wastewater pollutants. See Chapter 7.1.1 of the TDD for more information about what constitutes process wastewater for this segment. Because non-recovery cokemaking operations do not generate any process wastewater, EPA has determined that the technology basis for today's NSPS does not present a barrier to entry, and that there will be no additional energy requirements or non-water quality environmental impacts.

5. Pretreatment Standards for Existing Sources (PSES)

a. By-products recovery segment.

Based on EPA's evaluation of pass-through potential, EPA is promulgating PSES for three pollutants: ammonia-N, cyanide, and naphthalene. EPA has determined that each of these pollutants would pass through. EPA had proposed to establish PSES for this segment for thiocyanate, selenium, and phenol. The

Agency is not promulgating PSES limits for thiocyanate or selenium for the reasons discussed in connection with BAT. EPA is not establishing PSES for phenol in this segment because, upon re-evaluating the data, EPA concluded that phenolic compounds in cokemaking wastewaters do not pass through. For additional discussion on phenol, see 66 FR 10257 and Section V.A.3.

For naphthalene, EPA has selected 100 µg/L and 83.1 µg/L as the concentration-based values used for today's production-normalized daily maximum standard and monthly average standard, respectively. EPA has determined that well-operated facilities should be capable of operating well below these levels based on the data EPA obtained from mills employing the model technology. When naphthalene was detected, all samples were at or below 33 µg/L. However, naphthalene was not detected in all samples. This is because of analytical difficulties caused by interferences from high levels of phenol in the samples. Although the laboratory overcame the interferences in the five samples for one episode and succeeded in achieving values close to the minimum level of 10 µg/L specified in the analytical method, for the other EPA sampling episode, it could not do so for two samples. Rather, in order to overcome the interferences, the laboratory diluted two of the five samples for analysis; this resulted in a sample-specific minimum level of 100 µg/L for each diluted sample. While there was no evidence of any chromatographic peaks for naphthalene in the chromatograms associated with the two diluted samples, the best that EPA can say with a high degree of confidence is that the naphthalene concentrations were between zero (i.e., not present) and 100 µg/L for these two samples. In order to demonstrate compliance with the naphthalene standard, a sample would have to be analyzed with a sample-specific minimum level of at or below the standard. Because EPA could not overcome the phenol interferences without diluting the two samples, EPA cannot say with confidence that naphthalene samples can be analyzed with a sample-specific minimum level of less than 100 µg/L in every case. For this reason, EPA has determined that 100 µg/L should be the concentration-basis of today's daily maximum standard. EPA also has determined that the concentration-based monthly average standard could be less than 100 µg/L, because EPA assumes that the facilities will monitor for naphthalene more than once a month. (In fact, EPA has assumed that facilities will monitor four times a month and has accounted for those costs in this rule.) EPA expects that laboratories will usually be able to measure at levels lower than 100 µg/L, because most of the data supporting the standards demonstrated that laboratories could overcome interferences in the samples. Thus, it has established a value at 83.1 µg/L as the concentration-basis for the monthly average standard. Section 14 of the TDD describes the derivation of the concentration-based monthly average standard from the daily maximum standard. See Section 4 of the TDD for a discussion of reducing interferences.

EPA recognizes that today's value of 100 µg/L for the daily maximum standard for naphthalene is considerably less than the concentration-basis for the proposed standard of 2030 µg/L. Upon review of the proposed standards, EPA determined that some data should be excluded for various reasons (see DCN IS10816 in section 14.10 of the record) including data that were in excess of the facility's permit and therefore would be inappropriate to use in developing national standards.

EPA is promulgating PSES for by-products recovery cokemaking based on option PSES1: tar/oil removal, equalization, free and fixed ammonia stripping. This is one of two options EPA co-proposed in 2000. The other co-proposed option, PSES3, consisted of PSES1 plus an equalization tank, biological treatment with nitrification followed by secondary clarification, and sludge dewatering. Option PSES3 is identical to option BAT1 that serves as the basis for the BAT limitations adopted today. While PSES3/BAT1 would achieve greater removals than PSES1, EPA has rejected it as the basis for PSES because it is not economically achievable. EPA estimated that costs associated with PSES3 would cause an adverse economic impact on two facilities, resulting in closures and/or job losses. Because there are only eight indirectly discharging by-products recovery cokemaking facilities in the nation, EPA determined that this predicted closure—representing 25% of the related universe—was significant in this case. See Section X for more detail on the economic analysis.

Today, the Agency concludes that PSES1 represents the most appropriate basis for pretreatment standards for the following reasons. First, option PSES1, in combination with treatment occurring at the receiving POTWs, will substantially reduce the levels of all cokemaking pollutants of concern. Well-operated free and fixed ammonia stills will remove gross amounts of ammonia-N, cyanide, and some organic pollutants such as the volatile and semi-volatile organic compounds, while the activated sludge biological treatment at the POTWs will remove additional ammonia-N, cyanide, naphthalene, and the other organic constituents of the wastewater to low levels. Second, EPA has considered the compliance costs associated with this option and determined they are economically achievable.

In today's action, EPA is also establishing a mechanism by which by-product cokemaking facilities discharging to POTWs with nitrification capability would not be subject to the pretreatment standard for ammonia-N. This is because EPA has determined that ammonia-N does not pass through such POTWs. See Section V.A.8 for more details.

b. Non-recovery segment.

Based on EPA's evaluation of pass-through and EPA's recognition that no process wastewater is generated in connection with non-recovery cokemaking, EPA is today promulgating PSES limitations for the non-recovery segment of the cokemaking subcategory based on the same technologies selected as the basis for BPT/BAT for this segment. These standards are: No discharge of process wastewater pollutants. There are no incremental costs associated with compliance, and therefore, no economic impacts. Consequently, EPA has determined the technologies are economically achievable.

6. Pretreatment Standards for New Sources (PSNS)

a. By-products Recovery Segment.

EPA is today establishing pretreatment standards for new sources for four pollutants: Ammonia-N, cyanide, naphthalene, and benzo(a)pyrene. The technology basis for these standards is PSES3. EPA considered the cost of PSES3 technology for new facilities in this segment. EPA concluded that such costs are not so great as to constitute a barrier to entry, as demonstrated by the fact that three of the eight currently operating indirect discharging facilities are using these technologies. The Agency considered energy requirements and other non-water quality environmental impacts and found no basis for any different standards than the selected PSNS.

In today's action, EPA is also establishing a mechanism by which by-product cokemaking facilities discharging to POTWs with nitrification capability would not be subject to the pretreatment standard for ammonia-N. This is because EPA has determined that ammonia-N does not pass through such POTWs. See Section V.A.8 for more details.

b. Non-recovery segment.

Based on EPA's evaluation of pass-through and EPA's recognition that no process wastewater is generated in connection with non-recovery cokemaking, EPA is today promulgating PSNS for the non-recovery segment of the cokemaking subcategory based on the same technologies selected as the basis for PSES for this segment. These standards are: No discharge of process wastewater pollutants. Because non-recovery cokemaking operations do not generate any process wastewater, EPA has determined that the technology basis for today's PSNS does not present a barrier to entry, and that there will be no additional energy requirements or non-water quality environmental impacts.

B. Sintering Subcategory

Today, EPA is promulgating an effluent limitations guideline and standard for one parameter, 2,3,7,8-TCDF, for sintering operations with wet air pollution control systems in this subcategory, establishing a mechanism by which sintering facilities discharging to POTWs with nitrification capability would not be subject to the pretreatment standard for ammonia-N, and otherwise leaving unchanged existing limits and standards for all other parameters. This is a change from what was proposed in October 2000.

In October 2000, EPA proposed combining the sintering and ironmaking subcategories from the 1982 regulation into a single subcategory to be known as ironmaking, with a single treatment technology basis. EPA proposed these changes because survey responses indicated that facilities with both operations on site tended to commingle their wastewaters before treatment. EPA also judged at that time that because wastewater characteristics of the two subcategories were similar, further subcategorization was unnecessary. The subcategory, however, was divided into "blast furnace" and "sinter" segments to take into account differences in the production-normalized flow rates used to develop the proposed effluent limitations guidelines and standards. With the exception of cooling towers, which apply to blast furnace operations only, EPA considered the same technologies for both segments. The basis for the proposed ironmaking limits and standards for the sintering segment with wet air pollution control system was: Solids removal with high-rate recycle and metals precipitation, alkaline chlorination, and mixed-media filtration of blowdown wastewater. This was known as Ironmaking BAT1. At the time, EPA determined that the option was technically and economically achievable.

In addition, EPA had proposed to regulate phenol instead of the group parameter phenol (measured at 4AAP). EPA had also proposed to add 2,3,7,8-TCDF to the list of regulated parameters for sintering operations with wet air pollution control systems and for blast furnace segment where the wastewater is co-treated with sintering wastewater. Finally, EPA had proposed that sintering facilities would need to meet the proposed total residual chlorine (TRC) limitation only if they employ chlorination in their wastewater treatment.

EPA revisited its proposal for several reasons. First, commenters noted that, by regulating the compound phenol instead of the bulk parameter phenols (4AAP), facilities would not be able to qualify for the CWA Section 301(g) variances that are currently an important part of their compliance strategy. See Section V.A.4 for further details about this issue. Second, the increased rate of recycle is the principal difference between the proposed BAT1 technology basis and the 1982 technology basis, and commenters raised achievability concerns with the increased recycle rates. For these reasons, EPA has determined that BAT1 as proposed (with the increased rate of high rate recycle) is not the best achievable technology for sintering operations. Nor is it the best available demonstrated technology for these operations. EPA has also concluded that it is unnecessary to combine the two 1982 subcategories into a single subcategory as proposed, because today's rule is not changing the 1982 limits and standards except as noted below. EPA is therefore leaving unchanged all limitations and standards currently in effect for the sintering subcategory.

EPA is creating two new segments for the sintering subcategory. The segment, sintering operations with wet air pollution control, is a recodification of what were formerly subcategory-wide limitations. The second segment, sintering operations with dry air pollution control, is new. It applies to sinter operations that do not generate process wastewater. However, as proposed, EPA is promulgating a new limitation for 2,3,7,8-TCDF for sintering operations with wet air pollution control systems segment in the sintering subcategory. The technology basis for this segment reflects the 1982 technology basis of the existing limitations with the addition of mixed-media filtration. 2,3,7,8-TCDF is one of a number of extremely toxic congeners of the dioxin/furan family of compounds. During four EPA sampling episodes, several of these congeners were found in both the raw and treated wastewater from sinter plants operating wet air pollution control technologies. EPA chose to use 2,3,7,8-TCDF as an indicator parameter for the whole family of dioxin/furan congeners for several reasons. First, 2,3,7,8-TCDF is the most toxic of the congeners found in treated sintering wastewater. Second, 2,3,7,8-TCDF was the most prevalent of the dioxin/furan congeners in these wastewaters. Finally, 2,3,7,8-TCDF is chemically similar to the other dioxin/furan congeners and its removal will similarly indicate removal of the other congeners.

The TCDF limit is expressed as "<ML," which means less than the minimum level. The "ML" is an abbreviation for the minimum level identified in § 420.21(c) of today's rule for the analytical methods that EPA used to determine the level of pollution reduction achievable through the use of BAT, NSPS, PSES, and PSNS model technologies for 2,3,7,8-TCDF.

EPA intends for facilities subject to the ML limitation to have 2,3,7,8-TCDF discharges with concentration less than the minimum level of the analytical method specified today in 40 CFR 420.21(c). Method 1613 provides precise definitions of the ML for 2,3,7,8-TCDF. EPA expects that future analytical method will be more sensitive than today's methods, and the minimum level will have a value that is less than identified today in § 420.21(c). However, the analytical method (and the minimum level) specified in § 420.21(c) was used to chemically analyze the wastewaters from facilities in subpart B. EPA used the data from the chemical analysis to determine that today's ML limitation was technically and economically achievable. EPA is unable to determine, based on the data from the chemical analysis, whether more stringent limitation (that is, limitation with value or associated with minimum level less than the minimum level published today in § 420.21) would be technically and economically achievable. To determine whether the technologies are capable of achieving more stringent limitations, EPA would need to evaluate data from chemical analysis using these future more sensitive methods. Those data obviously are not available today. Until further revision of today's limitations and

standards for subpart B, the limitation for 2,3,7,8-TCDF will continue to be associated with the minimum level specified today in Section § 420.21(c).

1. Best Practicable Control Technology (BPT)/Best Conventional Pollutant Control Technology (BCT)

a. Sintering operations with wet air pollution control.

EPA is leaving unchanged BPT limitations currently in effect for the sintering subcategory, now codified in the new segment for sintering operations with wet air pollution control systems.

b. Sintering operations with dry air pollution control.

EPA is establishing BPT/BCT limitations for the sintering operations with dry air pollution control segment of the sintering subcategory. These limitations are: no discharge of process wastewater pollutants. See Chapter 7.1.2 of the TDD for more information about what constitutes process wastewater for this segment. Because sintering operations with dry air pollution control do not generate any process wastewater, the Agency concludes that sintering operation with dry air pollution control itself represents the best practicable technology currently available and that no discharge of process wastewater pollutants is a reasonable BPT/BCT limitation. For the same reason, the Agency concludes that there are no costs associated with achieving this limitation, and expects that no additional pollutant removals attributable to this segment will occur.

2. Best Available Technology Economically Achievable (BAT)

a. Sintering operations with wet air pollution control.

The technology basis for the 2,3,7,8-TCDF limitation is mixed-media filtration in addition to the 1982 technology basis. Although none of the sampled facilities has this technology in place (at or prior to the compliance monitoring point), EPA concludes that this technology will result in the removal of this congener, and thus all the dioxin/furan congeners, below the method detection limit, because dioxins and furans are hydrophobic compounds, meaning they tend to adhere to solids present in a solution. Thus removal of the solids, which is accomplished by mixed-media filtration, will result in removal of the dioxins/furans adhering to them as well. Furthermore, EPA has data from two sampling episodes at sinter plants demonstrating that filtration of wastewater samples containing dioxins and furans at treatable levels will reduce their concentrations to non-detectable levels. This is true even for raw wastewater that has undergone no other treatment.

EPA has determined that the costs of implementing mixed-media filtration, including the costs of compliance monitoring, are economically achievable because EPA predicts no adverse economic impacts. See Section X. Therefore, EPA has determined that mixed-media filtration in addition to the 1982 technology basis is the best available technology economically achievable for the removal of 2,3,7,8-TCDF.

Survey responses indicate that it is common practice for facilities to combine their sintering wastewater with other iron and steel wastewaters prior to discharge to the receiving waterbodies. This combination results in dilution of dioxin and furan concentrations to levels below the detection limit specified in the analytical method. Because EPA wants to ensure that dioxin and furan congeners have been removed from the wastewater and not simply diluted (to ensure that the limitations reflect the actual reductions that can be achieved using the BAT technology), EPA is requiring all facilities to monitor for 2,3,7,8-TCDF at a point prior to co-mingling with any non-sintering or non-blast furnace operations. See 40 CFR 420.29. The only exception to this rule is that facilities may co-mingle ancillary non-blast furnace wastewater (comprising 5% of total flow or less) with their sintering wastewater. See Chapter 16.8.3 of the TDD.

EPA analyzed requiring facilities to monitor for 2,3,7,8-TCDF prior to combination with any other waste streams including blast furnace wastewater. Three of the five sintering wastewater treatment systems have blast furnace wastewater recycle systems that are joined with them. EPA determined that facilities would more likely shut down their sintering operations rather than incur the cost of separating the two systems. EPA determined that this economic impact is not reasonable in light of the fact that removal efficiencies are not significantly improved by separating the two wastewater streams, and thus is specifying that facilities with combined blast furnace and sintering wastewater recycling systems may monitor for 2,3,7,8-TCDF after these two waste streams are combined, but before co-mingling with any non-sintering or non blast-furnace operations. See 40 CFR 420.29. The only exception to this rule is that facilities may co-mingle ancillary non-blast furnace wastewater (comprising 5% of total flow or less) with their sintering wastewater. See Chapter 16.8.3 of the TDD.

EPA is also promulgating, as proposed, a provision that sintering facilities need not meet the current total residual chlorine (TRC) limitations if they do not employ chlorination in the wastewater treatment technology.

b. Sintering operations with dry air pollution control.

EPA is adopting BAT limitations for the sintering operations with dry air pollution control segment of the sintering subcategory based on the same technologies selected as the basis for BPT for this segment. These limitations are: no discharge of process wastewater pollutants. See Chapter 7.1.2 of the TDD for more information about what constitutes process wastewater for this segment. EPA identified no technologies that can achieve greater removals of toxic and non-conventional pollutants than those that are the basis for BPT (*i.e.*, the sintering operations with dry air pollution control resulting in no discharge.) EPA has also determined that this basis is economically achievable, because no facilities currently discharge process wastewater pollutants. Therefore, EPA is promulgating BAT limitations equal to BPT.

3. New Source Performance Standards (NSPS)

a. Sintering operations with wet air pollution control.

For sintering operation with wet air pollution control system in the sintering subcategory, EPA is promulgating a new source performance standard for 2,3,7,8-TCDF based on: clarification, high-rate recycle, metals precipitation, alkaline chlorination (if treated with blast furnace wastewaters) and mixed-media filtration. This technology basis is the same that exists for the 1982 regulation, with the addition of mixed-media filtration. EPA is leaving unchanged all other NSPS for the sintering subcategory. The mixed-media filtration technology used to control 2,3,7,8-TCDF at existing facilities is fully applicable to new facilities. Furthermore, EPA did not identify any technically feasible options that provide greater environmental protection. In addition, EPA determines the technology basis does not constitute a barrier to entry because the technology basis was economically achievable for existing sources, and new sources would face lower costs due to absence of retrofit costs. See Chapter 10 for the discussion in the TDD. The Agency considered energy requirements and other non-water quality environmental impacts and found no basis for any different standards than the selected

NSPS. Therefore, EPA is promulgating NSPS for TCDF for the sintering subcategory that is identical to the TCDF limitation being promulgated as BAT. In addition, for the reasons set forth in Section VIII.B.2.a, EPA is requiring facilities to monitor for compliance with the TCDF standard at a point prior to co-mingling with any non-sintering or non-blast furnace operations. See 40 CFR 420.29. The only exception to this rule is that facilities may co-mingle ancillary non-blast furnace wastewater (comprising 5% of total flow or less) with their sintering wastewater. See Chapter 16.8.3 of the TDD.

b. Sintering operations with dry air pollution control.

EPA is promulgating NSPS limitations for the sintering operations with dry air pollution control segment of the sintering subcategory based on the same technologies selected as the basis for BPT for this segment. These limitations are: no discharge of process wastewater pollutants. See Chapter 7.1.2 of the TDD for more information about what constitutes process wastewater for this segment. Because sintering operations with dry air pollution control do not generate any process wastewater, EPA has determined that the technology basis for today's NSPS does not present a barrier to entry, and that there will be no additional energy requirements or non-water quality environmental impacts.

4. Pretreatment Standards for Existing Sources (PSES)

a. Sintering operations with wet air pollution control.

Based on EPA's evaluation of pass-through potential, 2,3,7,8-TCDF will pass through, and thus EPA is a promulgating PSES standard for 2,3,7,8-TCDF equal to the BAT effluent limitation for the sintering operation with wet air pollution control system in the sintering subcategory. Similar to direct dischargers, EPA concludes that indirect discharging sintering operations must monitor at a point prior to co-mingling with any non-sintering or non-blast furnace operations. See 40 CFR 420.29. The only exception to this rule is that facilities may co-mingle ancillary non-blast furnace wastewater (comprising 5% of total flow or less) with their sintering wastewater. See Chapter 16.8.3 of the TDD. To EPA's knowledge, there are no existing indirect dischargers of sintering wastewater.

In today's action, EPA is also establishing a mechanism by which sintering facilities discharging to POTWs with nitrification capability would not be subject to the pretreatment standard for ammonia-N. This is because EPA has determined that ammonia-N does not pass through such POTWs. See Section V.A.8 for more details.

b. Sintering operations with dry air pollution control.

Based on EPA's evaluation of pass-through and EPA's recognition that no process wastewater is generated in connection with sintering operations with dry air pollution control, EPA is today promulgating PSES limitations for the sintering operations with dry air pollution control segment of the sintering subcategory based on the same technologies selected as the basis for BPT for this segment. These standards are: no discharge of process wastewater pollutants. There are no incremental costs associated with compliance, and therefore, no economic impacts. Consequently, EPA has determined the technologies are economically achievable.

5. Pretreatment Standards for New Sources (PSNS)

a. Sintering operations with wet air pollution control.

Based on EPA's evaluation of pass-through potential, 2,3,7,8-TCDF will pass through, and thus EPA is promulgating a PSNS standard for 2,3,7,8-TCDF equal to PSES for the sintering subcategory. EPA considered the cost of the PSES technology for new facilities in this segment. In addition, EPA determines the technology basis does not constitute a barrier to entry because the technology basis was economically achievable for existing sources, and new sources would face lower costs due to absence of retrofit costs. The Agency considered energy requirements and other non-water quality environmental impacts and found no basis for any different standard than the selected PSNS. In addition, for the reasons set forth, EPA is requiring facilities to monitor for compliance with the TCDF standard at a point prior to co-mingling with any non-sintering or non-blast furnace operations. See 40 CFR 420.29. The only exception to this rule is that facilities may co-mingle ancillary non-blast furnace wastewater (comprising 5% of total flow or less) with their sintering wastewater. See Chapter 16.8.3 of the TDD.

In today's action, EPA is also establishing a mechanism by which sintering facilities discharging to POTWs with nitrification capability would not be subject to the pretreatment standard for ammonia-N. This is because EPA has determined that ammonia-N does not pass through such POTWs. See Section V.A.8 for more details.

b. Sintering operations with dry air pollution control.

Based on EPA's evaluation of pass-through and EPA's recognition that no process wastewater is generated in connection with sintering operations with dry air pollution control, EPA is today promulgating PSNS for the sintering operations with dry air pollution control segment of the sintering subcategory based on the same technologies selected as the basis for PSES for this segment. These standards are: no discharge of process wastewater pollutants. Because sintering operations with dry air pollution control do not generate any process wastewater, EPA has determined that the technology basis for today's PSNS does not present a barrier to entry, and that there will be no additional energy requirements or non-water quality environmental impacts.

C. Ironmaking Subcategory

EPA is leaving unchanged all limitations currently in effect for this subcategory, except to delete the limitations for the obsolete ferromanganese blast furnaces and to establish a mechanism by which ironmaking facilities discharging to POTWs with nitrification capability would not be subject to the pretreatment standard for ammonia-N. EPA had proposed revised effluent limitations guidelines and standards for this subcategory, which included both sintering and blast furnace ironmaking operations, under BAT, NSPS, PSES, and PSNS. The proposed technology basis for the BAT and NSPS limits was solids removal, high-rate recycle, metals precipitation, alkaline chlorination, and mixed-media filtration of blowdown wastewater. This was known as Ironmaking option BAT1. The proposed technology basis for the PSES and PSNS standards was the same as BAT1, but without alkaline chlorination and mixed-media filtration. This was known as Ironmaking option PSES1.

EPA revisited these decisions for two reasons. First, commenters noted that, by regulating the compound phenol instead of the bulk parameter phenols (4AAP), facilities would not be able to qualify for the CWA Section 301(g) variances that are currently an important part of their compliance strategy, and that EPA had not taken this into account when performing its cost analysis. Accordingly, EPA has decided to continue to regulate the bulk parameter phenols (4AAP). See Section V.A.4 for further details about this issue.

Second, increased performance of high-rate recycle system is the major difference between the proposed BAT1 technology basis and the 1982 technology basis. Commenters using pulverized coal injection in their blast furnaces pointed out that they had learned through experience that recycle of ironmaking wastewater at the high rate described in the proposal leads to a buildup of chlorides in the recycle system and the wet scrubber, which can cause extensive corrosion damage in the piping, premature equipment failure, and lengthy production interruptions. Other commenters not using pulverized coal injection also provided information on operational problems associated with elevated dissolved solids levels in the recycle system at recycle rates higher than described in the proposal. Therefore, EPA has determined that BAT1 and PSES1 are not the best available technologies for existing blast furnace ironmaking operations or the best available demonstrated technologies for new blast furnace ironmaking operations. EPA has also concluded that, because the proposed limits and standards for the ironmaking subcategory are not being promulgated, it is not necessary to combine the two 1982 subcategories (sintering and ironmaking) into a single subcategory as proposed.

EPA had proposed limits and standards for 2,3,7,8-TCDF for the ironmaking subcategory, but it was to apply only to facilities that combined their blast furnace and sintering wastewater. 2,3,7,8-TCDF was not found in the blast furnace wastewater. By preserving the 1982 subcategorization scheme and promulgating limits and standards for the compound in the sintering subcategory, EPA has addressed this issue, and is therefore not promulgating limits and standards for 2,3,7,8-TCDF for the ironmaking subcategory.

In today's action, EPA is also establishing a mechanism by which ironmaking facilities discharging to POTWs with nitrification capability would not be subject to the pretreatment standard for ammonia-N. This is because EPA has determined that ammonia-N does not pass through such POTWs. See Section V.A.8 for more details.

D. Steelmaking Subcategory

EPA proposed a revised subcategorization scheme (see Section III.C) which recognized the differences between integrated and non-integrated steelmaking facilities. Under the proposed scheme, wastewaters from basic oxygen furnace operations were included with wastewaters from vacuum degassing operations and continuous casting operations to make up the "Integrated Steelmaking" subcategory. Hot forming operations that took place either at integrated mills or were not associated directly with steelmaking operations were to be covered by the "Integrated and Stand Alone Hot Forming" subcategory. Wastewaters from electric arc furnaces were included with wastewaters from vacuum degassing operations, continuous casting operations and hot forming operations to make up the "Non-integrated and Stand Alone Hot Forming" subcategory. The purpose of this revised subcategorization scheme was to recognize typical wastewater combination and treatment practices at existing steel mills.

The proposed revised subcategorization scheme also distinguished between those facilities making primarily carbon and alloy steels from those making primarily stainless steels. This differentiation was proposed for "Non-integrated and Stand Alone Hot Forming," "Integrated and Stand Alone Hot Forming," and "Finishing" subcategories.

For reasons discussed below, however, EPA is not promulgating new effluent limitations guidelines and standards for any of the proposed revised subcategories. Therefore, EPA is not adopting the proposed subcategorization scheme. Changing the subcategorization scheme only made sense when EPA believed it would promulgate new limits and standards for the new subcategories.

The proposed effluent limitations guidelines and standards for the "Integrated Steelmaking" subcategory had as its technology basis: Solids removal, cooling tower, high-rate recycle, and metals precipitation. This technology option applied to all new and existing direct and indirect discharging facilities (BAT/NSPS/PSES/PSNS) and was known as integrated steelmaking Option BAT1. EPA is not promulgating effluent limitations and standards based on this technology because it determined that it was not economically achievable. The proposed option when considered together with options for other subcategories resulted in a significant economic impact that EPA determined is unreasonable. See Section X.E for more details.

The proposed effluent limitations guidelines and standards for the "Non-integrated Steelmaking and Hot Forming" subcategory had as its technology basis: Solids removal, sludge dewatering, cooling tower, high-rate recycle, and mixed-media filtration. This technology option would have applied to all existing direct and indirect discharging facilities (BAT/PSES) and was known as non-integrated steelmaking and hot forming Option BAT1. After considering comments objecting to EPA's methodology at proposal of estimating costs and loadings, EPA performed a new costing and loadings analyses. See TDD Chapters 10 and 11. Judging from the installation costs and the pollutant reductions associated with these treatment technologies, EPA concluded that the technology simply was not the best available to achieve pollutant removals (EPA estimated that the technology could remove approximately 230 pound-equivalents per year at an estimated cost of $2,069 per lb-eq for direct discharging stainless segment, and 3,891 pound-equivalents per year at an estimated cost of $941 per lb-eq in the direct discharging carbon and alloy segment, and 78 pound-equivalents per year at an estimated cost of $1,970 per lb-eq for the indirect discharging stainless segment).

The proposed effluent limitations guidelines and standards for new sources in the "Non-integrated Steelmaking and Hot Forming" subcategory (NSPS/PSNS) were: No discharge of process wastewater pollutants. EPA has not adopted these limits and standards because, after further reviewing the rulemaking record, EPA determined that these guidelines and standards were not appropriate because it is not always possible, or even desirable, for non-integrated steelmaking facilities to design and operate their manufacturing processes to achieve zero discharge. The Agency has identified technical barriers to achieving zero discharge via evaporative uses such as electrode spray cooling and slag quenching, particularly for hot forming wastewater.

EPA is promulgating revised BPT, BAT, BCT, and PSES limitations and standards for one segment of the steelmaking subcategory—basic oxygen furnaces with semi-wet air pollution control, and is establishing NSPS, PSES, and PSNS limitations and standards for another segment of the steelmaking subcategory—electric arc furnaces with semi-wet air pollution control. This is consistent with what was appeared in the proposal (65 FR 81980) and the February 14, 2001 document (66 FR 10253–10254), although rather than establishing a specific limitation, EPA has allowed the permit authority or pretreatment control authority to determine limitations based on best professional judgment, when safety considerations warrant. The Agency believes best professional judgment will allow the permit authority or pretreatment control authority to reflect the site-specific nature of the discharge. EPA is doing this because, although the 1982 regulation requires basic oxygen furnace semi-wet air pollution control to achieve zero discharge of process wastewater pollutants, currently not all of the sites are able to achieve this discharge status because of safety and operational considerations. The Agency recognizes the benefit of using excess water in basic oxygen furnaces with semi-wet air pollution control systems in cases where safety considerations are present. The Agency justifies the increased allowance in this case because of the employee safety and manufacturing considerations (reduced production equipment damage and lost production). EPA estimates that the industry will incur no costs due to this change. EPA could identify no potential adverse environmental impacts associated with the potential discharge.

In the case of electric arc furnaces with semi-wet air pollution control, the Agency is promulgating NSPS, PSES, and PSNS limitations and standards of zero discharge of process wastewater pollutants. The 1982 regulation previously established BPT, BCT, and BAT limitations of zero discharge of process wastewater pollutants for electric arc furnaces with semi-wet air pollution control. (EPA is modifying the BPT, BAT, and BCT portions of this segment only to eliminate references in the title to basic oxygen furnace steelmaking-semiwet). EPA identified no discharges from electric arc furnaces with semi-wet air pollution control and received no comments regarding the establishment of zero discharge of process wastewater pollutants for this segment. EPA estimates that the industry will incur no costs due to this change since all known facilities are currently achieving compliance with zero discharge of process wastewater pollutants.

E. Vacuum Degassing Subcategory

EPA is leaving unchanged all limitations currently in effect for this subcategory. See discussion in Section VII.D.

F. Continuous Casting Subcategory

EPA is leaving unchanged all limitations currently in effect for this subcategory. See discussion in Section VIII.D.

G. Hot Forming Subcategory

EPA is leaving unchanged all limitations currently in effect for this subcategory. The proposed effluent limitations guidelines and standards for the "Integrated and Stand Alone Hot Forming" subcategory had as its technical basis: Scale pit with oil skimming, roughing clarifier, cooling tower with high-rate recycle, and mixed-media filtration of blowdown. This applied to all new and existing direct discharging facilities (BAT/NSPS) and was known as integrated and stand alone hot forming Option BAT1A.

EPA has not adopted limits and standards based on this technology because it determined that it was not economically achievable, based on the results presented in Section X.E. EPA has determined that the impact is unacceptable in view of the precarious financial situation of the proposed subcategory as a whole. Moreover, many facilities are already at or below discharge levels of the proposed effluent limitations guidelines and standards, and EPA has no reason to believe that facilities will reverse this trend and increase pollutant discharges above the 1997 levels in EPA's record database.

EPA had proposed a second BAT option, known as BAT1B, for the Integrated and Stand Alone Hot Forming subcategory in order to attempt to ameliorate the predicted economic impacts of BAT1A. Under this option, the proposed BAT limits would not apply until 2007. EPA explained at the time of proposal that EPA would select this option only if it concluded that five years would be sufficient time to allow the subcategory as a whole to raise the capital necessary to implement the model BAT in a way to ensure its economic achievability. However, EPA cannot reach that conclusion on this record, especially in view of the current financial condition of the industry. Therefore, EPA has not selected option BAT1B.

EPA did not propose standards for indirect discharging facilities because EPA's analysis of the effect of the technology option projected pollutant removals per facility that were too small to justify the projected costs.

H. Salt Bath Descaling Subcategory

EPA is leaving unchanged all limitations currently in effect for this subcategory. EPA proposed a revised subcategorization scheme in which salt bath descaling, acid pickling, cold forming, alkaline cleaning, and hot coating operations would be combined into a new subcategory called "Finishing." The purpose of this proposed subcategorization scheme was to recognize the tendency of facilities to combine and co-treat wastewaters from these operations. As mentioned in Section VIII.D, another feature of the proposed subcategorization scheme was to consider separately finishing facilities making primarily carbon and alloy steels and those making primarily stainless steels. For reasons discussed below, however, EPA is not promulgating new effluent limitations guidelines and standards for any of the proposed revised subcategories. Therefore EPA is not adopting the proposed subcategorization scheme. Changing the subcategorization scheme only made sense when EPA believed it would promulgate new limits and standards for the new subcategories.

The proposed effluent limitations guidelines and standards for the carbon and alloy segment of the finishing subcategory had the following technology basis: Recycle of fume scrubber water, diversion tank, oil removal, equalization, hexavalent chromium reduction (where applicable), metals precipitation, sedimentation, sludge dewatering, and counter-current rinses. This technology option applied to all new and existing direct discharging facilities, as well as new indirect discharging facilities (BAT/NSPS/PSNS) and was known as carbon & alloy finishing Option BAT–1. EPA did not propose standards for existing indirect discharging facilities because the projected pollutant removals per facility associated with the technology option were too small to justify the projected costs.

EPA is not revising effluent limitations guidelines and standards for the finishing subcategory because the flow reductions that were an integral part of the technology interfered with product quality, thus indicating that the technology was not the best technology available for these finishing operations. Moreover, after considering comments objecting to EPA's methodology at proposal of estimating costs, EPA performed a new cost analysis. See TDD Chapter 10. Judging from the retrofit costs and the costs associated with necessary production shutdown during installation of new treatment technologies, EPA concluded that the technology simply was not the best available to achieve pollutant removals.

The proposed effluent limitations guidelines and standards for the stainless segment of the finishing subcategory had the following technology basis: Counter-current rinses, recycle of fume scrubber water, acid purification units, diversion tank, oil removal, equalization, hexavalent chromium reduction (where applicable), multiple-stage pH control for metals precipitation, sedimentation, and sludge dewatering. This technology option would have applied to all new and

existing direct discharging facilities (BAT/NSPS/PSES/PSNS) and was known as integrated steelmaking Option BAT1. EPA is not promulgating effluent limitations and standards based on this technology because it determined that it was not economically achievable. The proposed option when considered together with options for other subcategories resulted in a significant economic impact that EPA determined is unreasonable. See Section X.E for more details.

The proposed effluent limitations guidelines and standards for the "Non-integrated Steelmaking and Hot Forming" subcategory had as its technology basis: Solids removal, sludge dewatering, cooling tower, high-rate recycle, and mixed-media filtration. This technology option would have applied to all existing direct and indirect discharging facilities (BAT/PSES) and was known as non-integrated steelmaking and hot forming Option BAT1. After considering comments objecting to EPA's methodology at proposal of estimating costs and loadings, EPA performed a new costing and loadings analyses. See TDD Chapters 10 and 11. Judging from the installation costs and the pollutant reductions associated with these treatment technologies, EPA concluded that the technology simply was not the best available to achieve pollutant removals (EPA estimated that the technology could remove approximately 230 pound-equivalents per year at an estimated cost of $2,069 per lb-eq for direct discharging stainless segment, and 3,891 pound-equivalents per year at an estimated cost of $941 per lb-eq in the direct discharging carbon and alloy segment, and 78 pound-equivalents per year at an estimated cost of $1,970 per lb-eq for the indirect discharging stainless segment).

The proposed effluent limitations guidelines and standards for new sources in the "Non-integrated Steelmaking and Hot Forming" subcategory (NSPS/PSNS) were: No discharge of process wastewater pollutants. EPA has not adopted these limits and standards because, after further reviewing the rulemaking record, EPA determined that these guidelines and standards were not appropriate because it is not always possible, or even desirable, for non-integrated steelmaking facilities to design and operate their manufacturing processes to achieve zero discharge. The Agency has identified technical barriers to achieving zero discharge via evaporative uses such as electrode spray cooling and slag quenching, particularly for hot forming wastewater.

EPA is promulgating revised BPT, BAT, BCT, and PSES limitations and standards for one segment of the steelmaking subcategory—basic oxygen furnaces with semi-wet air pollution control, and is establishing NSPS, PSES, and PSNS limitations and standards for another segment of the steelmaking subcategory—electric arc furnaces with semi-wet air pollution control. This is consistent with what was appeared in the proposal (65 FR 81980) and the February 14, 2001 document (66 FR 10253–10254), although rather than establishing a specific limitation, EPA has allowed the permit authority or pretreatment control authority to determine limitations based on best professional judgment, when safety considerations warrant. The Agency believes best professional judgment will allow the permit authority or pretreatment control authority to reflect the site-specific nature of the discharge. EPA is doing this because, although the 1982 regulation requires basic oxygen furnace semi-wet air pollution control to achieve zero discharge of process wastewater pollutants, currently not all of the sites are able to achieve this discharge status because of safety and operational considerations. The Agency recognizes the benefit of using excess water in basic oxygen furnaces with semi-wet air pollution control systems in cases where safety considerations are present. The Agency justifies the increased allowance in this case because of the employee safety and manufacturing considerations (reduced production equipment damage and lost production). EPA estimates that the industry will incur no costs due to this change. EPA could identify no potential adverse environmental impacts associated with the potential discharge.

In the case of electric arc furnaces with semi-wet air pollution control, the Agency is promulgating NSPS, PSES, and PSNS limitations and standards of zero discharge of process wastewater pollutants. The 1982 regulation previously established BPT, BCT, and BAT limitations of zero discharge of process wastewater pollutants for electric arc furnaces with semi-wet air pollution control. (EPA is modifying the BPT, BAT, and BCT portions of this segment only to eliminate references in the title to basic oxygen furnace steelmaking-semiwet). EPA identified no discharges from electric arc furnaces with semi-wet air pollution control and received no comments regarding the establishment of zero discharge of process wastewater pollutants for this segment. EPA estimates that the industry will incur no costs due to this change since all known facilities are currently achieving compliance with zero discharge of process wastewater pollutants.

E. Vacuum Degassing Subcategory

EPA is leaving unchanged all limitations currently in effect for this subcategory. See discussion in Section VII.D.

F. Continuous Casting Subcategory

EPA is leaving unchanged all limitations currently in effect for this subcategory. See discussion in Section VIII.D.

G. Hot Forming Subcategory

EPA is leaving unchanged all limitations currently in effect for this subcategory. The proposed effluent limitations guidelines and standards for the "Integrated and Stand Alone Hot Forming" subcategory had as its technical basis: Scale pit with oil skimming, roughing clarifier, cooling tower with high-rate recycle, and mixed-media filtration of blowdown. This applied to all new and existing direct discharging facilities (BAT/NSPS) and was known as integrated and stand alone hot forming Option BAT1A.

EPA has not adopted limits and standards based on this technology because it determined that it was not economically achievable, based on the results presented in Section X.E. EPA has determined that the impact is unacceptable in view of the precarious financial situation of the proposed subcategory as a whole. Moreover, many facilities are already at or below discharge levels of the proposed effluent limitations guidelines and standards, and EPA has no reason to believe that facilities will reverse this trend and increase pollutant discharges above the 1997 levels in EPA's record database.

EPA had proposed a second BAT option, known as BAT1B, for the Integrated and Stand Alone Hot Forming subcategory in order to attempt to ameliorate the predicted economic impacts of BAT1A. Under this option, the proposed BAT limits would not apply until 2007. EPA explained at the time of proposal that EPA would select this option only if it concluded that five years would be sufficient time to allow the subcategory as a whole to raise the capital necessary to implement the model BAT in a way to ensure its economic achievability. However, EPA cannot reach that conclusion on this record, especially in view of the current financial condition of the industry. Therefore, EPA has not selected option BAT1B.

EPA did not propose standards for indirect discharging facilities because EPA's analysis of the effect of the technology option projected pollutant removals per facility that were too small to justify the projected costs.

H. Salt Bath Descaling Subcategory

EPA is leaving unchanged all limitations currently in effect for this subcategory. EPA proposed a revised subcategorization scheme in which salt bath descaling, acid pickling, cold forming, alkaline cleaning, and hot coating operations would be combined into a new subcategory called "Finishing." The purpose of this proposed subcategorization scheme was to recognize the tendency of facilities to combine and co-treat wastewaters from these operations. As mentioned in Section VIII.D, another feature of the proposed subcategorization scheme was to consider separately finishing facilities making primarily carbon and alloy steels and those making primarily stainless steels. For reasons discussed below, however, EPA is not promulgating new effluent limitations guidelines and standards for any of the proposed revised subcategories. Therefore EPA is not adopting the proposed subcategorization scheme. Changing the subcategorization scheme only made sense when EPA believed it would promulgate new limits and standards for the new subcategories.

The proposed effluent limitations guidelines and standards for the carbon and alloy segment of the finishing subcategory had the following technology basis: Recycle of fume scrubber water, diversion tank, oil removal, equalization, hexavalent chromium reduction (where applicable), metals precipitation, sedimentation, sludge dewatering, and counter-current rinses. This technology option applied to all new and existing direct discharging facilities, as well as new indirect discharging facilities (BAT/NSPS/PSNS) and was known as carbon & alloy finishing Option BAT–1. EPA did not propose standards for existing indirect discharging facilities because the projected pollutant removals per facility associated with the technology option were too small to justify the projected costs.

EPA is not revising effluent limitations guidelines and standards for the finishing subcategory because the flow reductions that were an integral part of the technology interfered with product quality, thus indicating that the technology was not the best technology available for these finishing operations. Moreover, after considering comments objecting to EPA's methodology at proposal of estimating costs, EPA performed a new cost analysis. See TDD Chapter 10. Judging from the retrofit costs and the costs associated with necessary production shutdown during installation of new treatment technologies, EPA concluded that the technology simply was not the best available to achieve pollutant removals.

The proposed effluent limitations guidelines and standards for the stainless segment of the finishing subcategory had the following technology basis: Counter-current rinses, recycle of fume scrubber water, acid purification units, diversion tank, oil removal, equalization, hexavalent chromium reduction (where applicable), multiple-stage pH control for metals precipitation, sedimentation, and sludge dewatering. This technology option would have applied to all new and

existing direct discharging facilities, as well as new indirect discharging facilities (BAT/NSPS/PSNS) and was known as stainless finishing Option BAT–1. EPA did not propose standards for existing stainless indirect discharging facilities because projected pollutant removals per facility associated with the technology option were simply too small per facility. See 65 FR 82025. EPA did not promulgate limitations for the stainless finishing subcategory for the same reasons listed for the carbon and alloy finishing segment, with one addition. Commenters with experience operating acid purification units stated that they experienced neither the level of pollutant removal nor the cost savings EPA had envisioned in the analysis supporting the proposal. The recognition of this fact had an adverse impact both on the effluent reduction benefit and the projected cost of this technology option. For further discussion, see Section V.A.9 and Chapter 10 of the TDD.

I. Acid Pickling Subcategory

EPA is leaving unchanged all limitations and standards currently in effect for this subcategory. See discussion under Section VIII.H.

J. Cold Forming Subcategory

EPA is leaving unchanged all limitations and standards currently in effect for this subcategory. See discussion under Section VIII.H.

K. Alkaline Cleaning Subcategory

EPA is leaving unchanged all limitations and standards currently in effect for this subcategory. See discussion under Section VIII.H.

L. Hot Coating Subcategory

EPA is leaving unchanged all limitations and standards currently in effect for this subcategory. See discussion under Section VIII.H.

M. Other Operations Subcategory

The other operations subcategory is comprised of three segments: Direct reduced ironmaking (DRI), forging, and briquetting. The options described in this section for the direct reduced ironmaking and briquetting segments are exactly as they appeared in the October 2000 proposal. In the case of the forging segment, the technology basis at proposal was incorrectly described as high rate recycle and oil/water separation. The technology basis should have been described as high rate recycle, oil/water separation, and mixed-media filtration. EPA received no significant comments on its regulatory approach for this subcategory.

For the briquetting segment, EPA is establishing BPT, BCT, BAT, PSES, PSNS, and NSPS. These limitations and standards are: no discharge of process wastewater pollutants. EPA established these limitations because briquetting operations do not generate any process wastewater. For this reason, the Agency concludes that there are no costs associated with these limitations and standards. Furthermore, EPA projects no additional pollutant removals attributable to this segment.

1. Best Practicable Control Technology (BPT)

a. DRI segment.

EPA is promulgating BPT limitations for TSS and pH for the DRI segment of the Other Operations subcategory. The technology basis for this limitation is: solids removal, clarifier, high-rate recycle, and filtration of blowdown wastewater. This technology option was known as DRI Option BPT1 in the proposal. The Agency has determined that this treatment system represents the best practicable technology currently available and should be the basis for the BPT limitations for the following reasons. First, this technology option is one that is readily applicable to all facilities in this segment. Second, the adoption of this level of control would represent a significant reduction in pollutants discharged into the environment by facilities in this subcategory. (EPA is not able to disclose the estimated amount of pollutant reduction because data aggregation and other masking techniques are insufficient to protect information claimed as confidential business information.) Third, the Agency assessed the total cost of water pollution controls likely to be incurred for this option in relation to the effluent reduction benefits and has determined these costs were reasonable.

b. Forging segment.

EPA is promulgating BPT limitations for oil & grease, TSS, and pH for the forging segment of the other operations subcategory. The technology basis for these limitations are: high-rate recycling, oil/water separation, and mixed-media filtration. The Agency has concluded that this treatment system represents the best practicable technology currently available and should be the basis for the BPT limitation for the following reasons. First, this technology option is one that is readily applicable to all facilities in this segment. Second, the Agency assessed the total cost of water pollution controls likely to be incurred for this option in relation to the effluent reduction benefits (pollutant removals of approximately 400 lbs.) and determined these costs were reasonable.

2. Best Conventional Pollutant Control Technology (BCT)

DRI and Forging segments.

EPA is adopting BCT limitations for TSS for the DRI segment and oil and grease and TSS for forging segment of the other operations subcategory based on the same technologies selected as the basis for BPT for these segments. EPA identified no technologies that can achieve greater removals of conventional pollutants than those that are the basis for BPT that are also cost-reasonable under the BCT Cost Test. Accordingly, EPA is adopting BCT effluent limitations equal to BPT for the DRI and forging segments of the other operations subcategory.

3. Best Available Technology Economically Achievable (BAT)

DRI and Forging segments.

EPA did not identify significant levels of priority or non-conventional pollutants in wastewater from DRI or forging operations. Therefore, EPA is not promulgating BAT for these segments.

4. New Source Performance Standards (NSPS)

DRI and Forging segments.

The technology basis for NSPS for the DRI segment is: solids removal, clarifier, high-rate recycle, and filtration of blowdown wastewater, and the technology basis for NSPS for the forging segment is high-rate recycle, oil/water separation and mixed-media filtration. In both cases, these are the same as the BPT technology basis. EPA did not identify any technically feasible options that provide greater environmental protection. In addition, EPA concluded these technology options do not present a barrier to entry because all facilities currently employ the technologies (although minor adjustment of flow control may be necessary for some DRI operations). The Agency considered energy requirements and other non-water quality environmental impacts and found no basis for any different standards than the selected NSPS. Therefore, EPA is adopting NSPS limitations for the DRI and forging segments of the Other Operations subcategory based on the same technologies selected as the basis for BPT for these segments.

5. Pretreatment Standards for Existing and New Sources (PSES/PSNS)

DRI and Forging segments.

EPA identified only conventional pollutants in DRI and forging wastewaters at treatable levels. These pollutants do not pass through when discharged to POTWs from facilities within this subcategory. Therefore, EPA is not promulgating pretreatment standards for these segments.

IX. Pollutant Reduction and Compliance Cost Estimates

A. Pollutant Reductions

Presented below for the Cokemaking, Sintering, and Other Operations subcategories are the pollutant reductions obtainable through the application of the model technologies that form the basis of the effluent limitations guidelines and standards promulgated today. This section summarizes these estimated reductions. Chapter 11 of the TDD includes the estimated pollutant reductions for options considered but not promulgated, and discusses the methodology in detail.

1. Conventional Pollutant Reductions

The Agency estimates that this regulation will reduce discharges of BOD5, TSS and oil and grease by approximately 351,000 pounds per year.

2. Priority and Non-conventional Pollutant Reductions

a. Direct Discharge Facilities (BPT/BAT).

The estimated reductions in priority and non-conventional pollutants directly discharged in treated final effluent resulting from implementation of the model BPT/BCT/BAT technologies are listed in Table IX.A.1. The Agency estimates that today's BPT/BCT/BAT standards will reduce direct discharges of priority and non-conventional pollutants by approximately 754,000 pounds per year. The Agency only estimated the reduction in 2,3,7,8-TCDF discharge in the Sintering subcategory, thus the removal when measured in pounds per year is negligible.

TABLE IX.A.1.—REDUCTION IN DIRECT DISCHARGE OF PRIORITY AND NON-CONVENTIONAL POLLUTANTS AFTER IMPLEMENTATION OF BPT/BAT REGULATIONS PROMULGATED TODAY

Subcategory	Priority metal and organics compounds lbs/year	Non-priority metal and organic compounds lbs/year	Total metal and organic compounds lbs/year
Cokemaking	30,164	718,136	748,300
Sintering	0	0	0
Other Operations	0	5,684	5,684
Total Removals for all Subcategories	30,164	723,820	753,984

b. PSES Effluent Discharges from POTWs.

Table IX.A.2 lists, by subcategory, the estimated reductions in priority and non-conventional pollutants discharged from POTWs following implementation of the model PSES technologies. The Agency estimates that today's PSES regulations will reduce indirect facility discharge to POTWs by 264,000 pounds per year. These figures are adjusted for pollutant removals expected from POTWs, and thus reflect reductions in discharges to the receiving waters. Estimated reductions in pollutants discharged indirectly to surface waters are provided on a subcategory basis in Chapter 11 of the Technical Development Document. The Agency did not identify any priority or non-conventional pollutants at treatable concentrations is the wastewater of the Other Operations subcategory.

TABLE IX.A.2.—REDUCTION IN DISCHARGES FROM POTWS OF PRIORITY AND NON-CONVENTIONAL POLLUTANTS AFTER IMPLEMENTATION OF PSES REGULATIONS PROMULGATED TODAY

Subcategory	Priority metal and organics compounds lbs/year	Non-priority metal and organic compounds lbs/year	Total metal and organic compounds lbs/year
Cokemaking	4,388	259,776	264,164
Sintering	0	0	0
Other Operations	0	0	0
Total Removals for All Subcategories	4,388	259,776	264,164

B. Regulatory Costs

The Agency estimated the cost for iron and steel facilities to achieve each of the effluent limitations guidelines and standards promulgated today, as well as the costs for facilities to achieve the effluent limitations guidelines and standards considered but not promulgated. Chapter 10 of the Final TDD provides detailed information on the methodologies, including cost curves and basis, used to estimate these costs. In addition, the TDD contains cost estimates for each option, segment and subcategory considered for today's final rule, including those which EPA has decided not to promulgate. All cost estimates in this section are expressed in terms of 1997 dollars, which corresponds with the base year of the engineering analysis. The cost components reported in this section represent estimates of the investment cost of purchasing and installing equipment, the annual operating and maintenance costs associated with that equipment, land costs associated with equipment, and additional costs for discharge monitoring. The capital costs, pre-tax total annualized costs, and post-

tax total annualized costs for these subcategories are presented in Section X in terms of 2001 dollars.

1. Cokemaking Subcategory

a. By-products Recovery Segment.

Table IX.B.1 shows the costs EPA estimated for existing direct and indirect discharging by-products recovery cokemaking facilities to comply with the BAT limitations or PSES standards promulgated today.

TABLE IX.B.1.—ESTIMATED COSTS FOR BY-PRODUCT RECOVERY COKEMAKING FACILITIES

Discharge status	Number of facilities	Total capital and land costs	Annual O&M costs
Direct	12	$26,039,400	$4,593,800
Indirect	8	6,138,600	1,462,600
Total	20	32,178,000	6,056,400

b. Non-recovery Segment.

EPA is promulgating limitations and standards for this segment expressed as no discharge of process wastewater pollutants. The Agency has determined that implementation of BPT, BCT, BAT, or PSES limitations and standards by facilities in this segment will not result in any incremental compliance costs because all facilities are currently achieving them.

2. Sintering Subcategory

Table IX.B.2 shows the costs EPA estimated for direct discharging sintering facilities to comply with the BAT limitation for 2,3,7,8-TCDF promulgated today. Note that even though EPA has promulgated PSES for this subcategory EPA is not aware of any sintering facilities currently discharging to a POTW and has therefore not included any compliance costs.

TABLE IX.B.2.—ESTIMATED COSTS FOR SINTERING FACILITIES

Discharge status	Number of facilities	Total capital and land costs	Annual O&M costs
Direct	5	$11,046,100	$1,304,300

3. Steelmaking Subcategory

EPA has determined that the industry will incur no costs due to the alternate limitations and standards based on best professional judgment applicable to basic oxygen furnaces with semi-wet air pollution control. Likewise, EPA has determined that there will not be any compliance costs incurred by facilities with electric arc furnaces with semi-wet air pollution control to comply with today's rule.

4. Other Operations Subcategory

Table IX.B.3 shows the costs estimated for direct discharging forging facilities to comply with the BPT limitations promulgated today. The estimated costs for direct discharging DRI facilities are not presented because there are only two direct dischargers in this segment and data aggregation or other masking techniques are insufficient to avoid disclosure of information claimed as confidential business information. Also, because EPA is not promulgating PSES or PSNS limits for the DRI and forging segments, indirect dischargers in this subcategory will not incur costs as a result of this regulation. For the briquetting segment, because all facilities in this segment are currently meeting the promulgated limitations and standards for BPT, BCT, BAT, PSES, PSNS, and NSPS of no discharge of process wastewater pollutants, there are no incremental compliance costs associated with this limit.

TABLE IX.B.3.—EPA ESTIMATED COSTS FOR FORGING FACILITIES

Segment	Number of facilities	Total capital and land costs	Annual O&M costs
Forging	8	$120,200	$20,400

X. Economic Analysis

A. Introduction and Overview

This section describes the estimated capital investment and annualized costs of compliance with the final effluent limitations guidelines and standards promulgated today for the iron and steel industry and the potential impacts of these compliance costs on the industry. This section also presents the estimated costs and projected impacts for technology options EPA considered but rejected for all of the subcategories. EPA's economic assessment is presented in detail in the report titled "Economic Analysis of Final Effluent Limitations and Standards for the Iron and Steel Manufacturing Point Source Category" (hereafter, "EA") and in the rulemaking record. The EA estimates the economic effect of compliance costs on subcategory operations at a site where feasible, the combined cost for all subcategory operations at a site for selected cost combinations, aggregate costs for all sites owned by each company, impacts on employment and output, domestic and international markets, and environmental justice issues. EPA conducted a small business analysis, which estimates effects on small entities, and a cost-effectiveness analysis of all evaluated options.

B. Economic Description of the Iron and Steel Industry

The United States is the third largest steel producer in the world with 12 percent of the market, an annual output of between 100 and 115 million tons per year, and around 150,000 employees.

Major markets for steel are service centers and the automotive and construction industries. Together these three markets account for 61 percent of steel shipments. The remaining 40 percent is dispersed over a wide range of products and activities, such as agricultural, industrial and electrical machinery, oil and gas, containers, and appliances.

The iron and steel rulemaking includes sites within the North American Industry Classification System (NAICS) codes 324199 (coke ovens, part of "all other petroleum and coal product manufacturing"), 331111 (iron and steel mills), 331210 (steel pipes and tubes), and 331221 (cold finishing of steel shapes). The iron and steel and proposed metal products and machinery effluent guideline rulemakings both may have sites in the last two NAICS codes.

The iron and steel effluent guideline as proposed would have applied to approximately 254 iron and steel sites. Of these sites, EPA was able to analyze approximately 211 for post-regulatory compliance impacts at the site level. For the remaining 43 sites, thirteen did not report data at the site level, fourteen could not be analyzed because they were jointly owned sites, foreign owned sites, or newly constructed sites, and sixteen were in poor financial condition prior to the regulation and are treated as closures under the prevailing baseline conditions. Of the 254 iron and steel sites, approximately 60 sites are owned by small business entities.

The 254 sites are owned by 115 companies, as estimated by the EPA survey. The global nature of the industry is illustrated by the fact that eighteen companies have foreign ownership. Twelve other companies are joint entities with at least one U.S. company partner. Excluding joint entities and foreign ownership, the database contains 85 U.S. companies, more than half of which are privately owned. Responses to the EPA survey are the only sources of financial information for these privately-held firms.

The EPA survey collected financial data for the 1995–1997 time period (the most recent data available at the time of the survey). This three-year time frame marked a high point in the business cycle. The high point in the business cycle allowed companies to replenish retained earnings, retire debt and take other steps to reflect this prosperity in their financial statements. Even so, an initial analysis of the pre-regulatory condition of the 115 companies in the EPA survey indicated that 27 of them would be considered "financially distressed" either because they are start-up companies and joint ventures or because they are established firms which still showed losses. For discussion of the changes in industry financial conditions in the period between 1997 and 2001, see Section IV.

C. Economic Impact Methodology

1. Introduction

This section (and, in more detail, the EA and the accompanying administrative record) evaluates several measures of economic impacts that result from the estimated compliance costs associated with each technically feasible BAT and PSES option. The analysis in the EA consists of eight major components: (1) An assessment of the number of facilities that could be affected by this rule; (2) an estimate of the annualized aggregate costs for these facilities to comply with the rule using site-level capital, one-time non-capital, and annual operating and maintenance (O&M) costs; (3 and 4) two separate site-level closure analyses to evaluate the impact of compliance costs for operations in individual subcategories (where possible) at the site and for the combined cost of the options for all subcategories at the site; (5) an evaluation of the corporate financial distress that the companies in the industry would be likely to incur as a result of combined compliance costs for all sites owned by the company; (6) an evaluation of secondary impacts such as those on employment and economic output; (7) an analysis of the effects of compliance costs on small entities; and (8) a cost-benefit analysis pursuant to Executive Order 12866.

All costs are reported in this section of the preamble in 2001 dollars, with the exception of cost-effectiveness results, which, by convention, are reported in 1981 dollars. The primary sources of data for the economic analysis are the Collection of 1997 Iron and Steel Industry Data (Section 308 Survey) and data provided by industry during the public comment period. Other sources include government data from the Bureau of Census and industry trade journals.

2. Methodology Overview

The starting point for the economic analysis is the cost annualization model, which uses site-specific cost data and other inputs to determine the annualized capital, one-time non-capital, and O&M costs of improved pollution control. This model uses these costs along with the company-specific real cost of capital (discount rate) and the corporate tax rate over a 16-year analytical time frame to generate the annual cost of compliance for each option EPA considered. EPA based the 16-year time frame for analysis on the depreciable life for equipment of this type—15 years according to Internal Revenue (IRS) rules, with an estimated actual life of 25 years—plus a mid-year convention for putting the new equipment in operation (for example, six months between purchase, installation, and operation). The model generates the present value and annualized post-tax cost for each option for each site in the survey, which are then used in the subcategory, site, and company analyses, described below. The Agency adopts an assumption of zero "cost pass-through" of compliance costs for this industry, which is consistent with the facts of significant import competition and declining product prices.

In the subcategory analysis, EPA models the economic impacts of regulatory costs from individual subcategories on a site. The site analysis evaluates the combined costs on the profitability of the site. In both, the model compares the present value of forecasted cash flow over 16 years with the present value of the regulatory option over the same 16-year period. If the present value of regulatory costs exceeds that of the projected cash flow, it does not make financial sense to upgrade the site. That is, if the present value of projected cash flow is positive before, but negative after, the incurrence of regulatory costs, the site is presumed to close.

EPA developed five forecasting models for the iron and steel industry. None of these methods assumes any growth in real terms and all are calculated in terms of constant 1997 dollars. This conservative assumption precludes sites from growing their way out of financial difficulties imposed by the regulation. Site-specific data are only available for 1995–1997. The period from 1998 to 2001 is the rulemaking period and when the forecasting methods begin. Because promulgation occurs in 2002, this is taken as the first year of implementation and the beginning of the 16-year period over which to consider the regulatory impact on projected earnings. The first two methods explicitly address the sharp downturn in the industry after 1997 but differ in predicting the strength and duration of recovery and subsequent downturns. That is, both address the cyclicality seen in the iron and steel industry, but reflect differing magnitudes and timing. The third forecasting method is a three-year average (1995 to 1997) to provide an

upper-bound analysis. The fourth forecasting method is a six year average covering 1995 to 2000, with the years 1998 through 2000 scaled by industry level performance. The fifth forecasting method uses only the year 2000 as a lower-bound analysis. The fourth and fifth forecasting methods were added after proposal to reflect to the maximum extent possible the effect of the industry downturn.

EPA calculates the post-regulatory status of a site as the present value of forecasted earnings minus the after-tax present value of regulatory costs. With five forecasting methods, there are five ways to evaluate each site. If a site's post-regulatory status is negative (after-tax present value of regulatory costs exceed present value of forecasted earnings), EPA assigned a score of "1" for that forecasting method. EPA then tallied, for each site, the score it received for each forecasting method. A site, then, may have a score ranging from zero to five (with five indicating after-tax present value of regulatory costs exceed present value of forecasted earnings under all five forecasts). In an effort to reflect the significant industry downturn, the Agency has chosen to reflect any incremental change in the score from the baseline condition to the post-regulatory condition due to regulatory compliance costs as a closure.

EPA could not perform an economic analysis of a number of sites at the subcategory and site levels, even though annualized costs were calculated: where the site is a cost center; where it is a captive site that exists primarily to produce products transferred to other sites under the same corporate ownership; where components for the analysis are not recorded on the site's books, only those of the company; or where the site's cash flow is negative and therefore sufficient by itself to project a negative present value for earnings. For these sites, the analysis defaults to the company level. Consistent with OMB guidance, EPA estimated post-compliance closures due solely to the effect of the rule. Direct impacts, such as loss in employment, revenues, production and (possibly) exports are calculated from projected closures.

EPA evaluated many methods to estimate corporate financial distress reported in the economic literature of the last ten years and chose the "Altman's Z'" model. This well-known and well-tested model was developed to analyze the financial health of both private and public manufacturing firms. It is based on empirical data and creates a weighted average of financial ratios, thus avoiding the difficulty of interpreting multiple ratios with differing implications for financial health. The single index, Z', is compared against ranges developed by Altman to indicate "good," "indeterminate," and "distressed" financial conditions. EPA examined 1997 financial data (the most recent collected in the survey) to estimate the pre-regulatory conditions. EPA then aggregated costs for all sites belonging to that company. EPA recalculated Z' after incorporating the effects of the pollution control compliance costs into the income statement and balance sheet for the company. EPA classified as impacted all companies whose "Altman's Z'" score changes such that the company goes from a "good" or "indeterminate" baseline category to a "distressed" post-compliance category. Such companies may have significant difficulties raising the capital needed to comply with the options under consideration, which can indicate the likelihood of bankruptcy, loss of financial independence, or shedding of assets.

EPA uses input-output analyses to determine the effects of the regulation using national-level employment and output multipliers. Input-output multipliers allow EPA to estimate the effect of a loss in output in the iron and steel industry on the U.S. economy as a whole. Every projected closure has direct impacts in lost employment and output. These direct losses also have repercussions throughout the rest of the economy. The input-output multipliers allow EPA to calculate the national losses in output and employment based on the direct impacts.

EPA also determines the impacts on regional-level employment. The increase in metropolitan statistical area (MSA) unemployment level, or county, if non-metropolitan, is calculated for each MSA or county in which there is at least one projected closure.

D. Economic Costs and Impacts of Technology Options by Subcategory

In this section, EPA presents the capital costs and post-tax total annualized costs for each technically achievable option EPA considered in each subcategory. As discussed in Section X.C.2, the cost annualization model derives total post-tax annualized costs from site-specific capital costs, one-time non-capital costs, and operating and maintenance costs; however, only capital costs are reported here to simplify the presentation. For a detailed presentation of all costing information, see Chapter 10 of the TDD. As noted in Section X.B, sixteen facilities are projected to close under baseline conditions and are not included further in the economic analysis. For this reason, the costs and removals presented in Section X will differ from the results reported in the engineering analysis in Chapter 10 of the TDD.

The Agency evaluates the first stage of the impact analysis by projecting the impacts associated with the regulatory costs for a single subcategory (or segment) at a site. For example, a site may have cokemaking, sintering, and other operations, but the post-compliance cash flow analysis only reflects the regulatory costs associated with a single subcategory. This stage of the analysis serves as a screening mechanism for potentially significant impacts for facilities which may be impacted by options in multiple subcategories. Alternatively, for any facility with operations only in a single subcategory such as a stand alone coke plant, this stage represents the complete facility level analysis. Unfortunately, for a number of subcategories related to integrated steelmaking operations, the first stage of the analysis could not be constructed due to interdependent cost estimates. For integrated steel facilities with operations in ironmaking, integrated steelmaking, integrated and standalone hot forming, and steel finishing, particularly those which make extensive use of co-treatment of compatible wastewaters and central treatment, the cost estimates for one subcategory depend upon the selected technology option for related subcategories. As a result, the subcategory impact results for ironmaking, integrated steelmaking, and integrated and standalone hot forming will not be presented below, but rather will be presented on an aggregated basis in the facility analysis in Section X.E. In the case of steel finishing, a large number of facilities, in addition to the integrated steel facilities discussed previously, are in the scope of the subcategory and the subcategory impact results are presented, but the results do understate the potential economic impact to the integrated steel facilities.

1. Cokemaking

a. By-product Cokemaking

i. BAT

The regulatory compliance costs associated with BAT 1 are not projected to result in any postcompliance closures, while the regulatory compliance costs associated with BAT 3 are projected to result in two postcompliance closures, with potential job losses of 500 FTEs. Because there are a total of only twelve directly discharging by-product cokemaking facilities, the projected closures represent seventeen percent of the potentially regulated population. Given the significant additional pollutant removals attainable through application of BAT1 and the general economic state of the industry, EPA does not believe that it is reasonable to impose the economic impacts associated with BAT 3. For this reason, the Agency has determined that option BAT 3 is not economically achievable for existing sources, but that option BAT 1 is economically achievable.

TABLE X.D.1.—BAT COSTS AND IMPACTS FOR BY-PRODUCT COKEMAKING

Option	Capital cost ($2001M)	Post-tax total annualized cost ($2001M)	Impacts Closures/Job Losses
BAT 1	26.3	6.6	0/0
BAT 3	59.2	10.5	2/500

ii. PSES

The regulatory compliance costs associated with PSES option 1 are not projected to result in any postcompliance closures. The regulatory compliance costs associated with PSES option 3 are projected to result in two postcompliance closures, with potential job losses of between 500 and 750 FTEs. Because there are a total of only eight indirectly discharging by-product cokemaking facilities, the projected closures represent 25 percent of the potentially regulated population. In view of the fact that these facilities are presently subject to pretreatment standards in Part 420, the significant additional pollutant removals attainable through application of PSES1, and the general state of the industry, EPA does not believe that it is reasonable to impose the economic impacts associated with PSES3. For these reasons, the Agency has determined that option PSES3 is not economically achievable for existing sources, but that option PSES1 is economically achievable.

TABLE X.D.2.—PSES OPTIONS, COSTS, AND IMPACTS FOR BY-PRODUCT COKEMAKING

Option	Capital cost ($2001M)	Post-tax total annualized cost ($2001M)	Impacts Closures/Job Losses
PSES 1	6.7	2.0	0/0
PSES 3	25.5	6.6	2/ 500–750

iii. NSPS and PSNS

The technology options EPA considered for NSPS are identical to those it considered for existing dischargers. Engineering analysis indicates that the cost of installing pollution control systems during new construction is less than the cost of retrofitting existing facilities. Because EPA projects the compliance costs for new sources are less than existing sources and because limited or no impacts are projected for existing sources, then no impacts are expected for new sources and no barrier to entry is anticipated.

The technology option EPA considered for PSNS is equivalent to PSES 3, which is more stringent rather the promulgated option PSES 1. PSES 3 was rejected for existing sources as not economically achievable due to projected facility closures. However, engineering analysis indicates that the cost of installing pollution control systems during new construction is less than the cost of retrofitting existing facilities, so EPA projects the compliance costs for new sources are less than existing sources and no impacts are projected and no barrier to entry can result.

b. Non-recovery Cokemaking

i. BPT, BAT and PSES

The technology option for BPT, BAT and PSES is no discharge of process wastewater pollutants. No incremental compliance costs are associated with these options as all existing sources are currently meeting the no discharge requirement. Because there are no incremental compliance costs, there are no impacts resulting from the BPT, BAT and PSES options.

ii. NSPS and PSNS

The technology option EPA considered for new sources are identical to those it considered for existing dischargers. No incremental compliance costs are associated with the no discharge option, just as in the case of existing sources, because the non-recovery method of producing coke generates no process wastewater. As no compliance costs are expected, no barrier to entry can result.

2. Sintering

a. Sintering Operations with Wet Air Pollution Control

i. BAT and PSES

The regulatory compliance costs associated with the regulation of 2,3,7,8-TCDF under the BAT option and the PSES option are not projected to result in any postcompliance closures. To the Agency's knowledge, there are no current indirect dischargers of sintering wastewater.

TABLE X.D.3.—BAT COSTS AND IMPACTS FOR SINTERING SUBCATEGORY

	Capital cost ($2001M)	Post-tax total annualized cost ($2001M)	Impacts Closures/Job Losses
BAT	12.0	1.9	0/0

ii. NSPS and PSNS

The technology options EPA considered for new sources are identical to those it considered for existing dischargers. Engineering analysis indicates that the cost of installing pollution control systems during new construction is less than the cost of retrofitting existing facilities. Because EPA projected the costs for new sources are less than existing sources and because limited or no impacts are projected for existing sources, then no impacts are expected for new sources and no barrier to entry can result.

b. Sintering Operations With Dry Air Pollution Control

i. BPT, BAT and PSES

The technology option for BPT, BAT and PSES is no discharge of process wastewater pollutants. No incremental compliance costs are associated with these options as all existing sources are currently meeting the no discharge requirement. Because there are no incremental compliance costs, there are no impacts resulting from the BPT, BAT and PSES options.

ii. NSPS and PSNS

The technology option EPA considered for new sources are identical to those it considered for existing dischargers. No incremental compliance costs are associated with the no discharge option, just as in the case of existing sources, because the non-recovery method of producing coke generates no process wastewater. As no compliance costs are expected, no barrier to entry can result.

3. Ironmaking

a. BAT and PSES

The regulatory compliance costs associated with the proposed BAT option and the PSES option are presented below. The Agency does not present costs for indirect dischargers separately, because there is only one indirect discharger in this subcategory and data aggregation or other masking techniques are insufficient to avoid disclosure of information claimed as confidential business information.

Unfortunately, for a number of subcategories related to integrated steelmaking operations, this stage of the analysis could not be constructed due to interdependent cost estimates. For integrated steel facilities with operations in ironmaking, integrated steelmaking, integrated and stand alone hot forming, and steel finishing, particularly those which make extensive use of co-treatment of compatible wastewaters and central treatment, the cost estimates for one subcategory depend upon the selected technology option for related subcategories. As a result, the subcategory impact results for ironmaking, integrated steelmaking, and integrated and stand alone hot forming will not be presented, but rather will be presented on an aggregated basis in the facility analysis in Section X.E.

TABLE X.D.4.—BAT AND PSES COST FOR IRONMAKING

	Capital cost ($2001M)	Post-tax total annualized cost ($2001M)
BAT AND PSES	54.4	10.5

4. Integrated Steelmaking

a. BAT and PSES

The regulatory compliance costs associated with the BAT option and the PSES option are presented below. The Agency does not present costs for indirect dischargers, because there is only one indirect discharger in this subcategory and data aggregation or other masking techniques are insufficient to avoid disclosure of information claimed as confidential business information.

Unfortunately, for a number of subcategories related to integrated steelmaking operations, this stage of the analysis could not be constructed due to interdependent cost estimates. For integrated steel facilities with operations in ironmaking, integrated steelmaking, integrated and stand alone hot forming, and steel finishing, particularly those which make extensive use of co-treatment of compatible wastewaters and central treatment, the cost estimates for one subcategory depend upon the selected technology option for related subcategories. As a result, the subcategory impact results for ironmaking, integrated steelmaking, and integrated and stand alone hot forming will not be presented, but rather will be presented on an aggregated basis in the facility analysis in Section X.E.

TABLE X.D.5.—BAT AND PSES COST FOR INTEGRATED STEELMAKING

	Capital cost ($2001M)	Post-tax total annualized cost ($2001M)
BAT	46.8	10.4
PSES		

5. Integrated and Stand Alone Hot Forming

a. Carbon and Alloy

i. BAT

The regulatory compliance costs associated with the BAT option are presented below. Unfortunately, for a number of subcategories related to integrated steelmaking operations, this stage of the analysis could not be constructed due to interdependent cost estimates. For integrated steel facilities with operations in ironmaking, integrated steelmaking, integrated and stand alone hot forming, and steel finishing, particularly those which make extensive use of co-treatment of compatible wastewaters and central treatment, the cost estimates for one subcategory depend upon the selected technology option for related subcategories. As a result, the subcategory impact results for ironmaking, integrated steelmaking, and integrated and stand alone hot forming will not be presented, but rather will be presented on an aggregated basis in the facility analysis in Section X.E.

TABLE X.D.6.—BAT COSTS FOR INTEGRATED AND STAND ALONE HOT FORMING, CARBON AND ALLOY

	Capital cost ($2001M)	Post-tax total annualized cost ($2001M)
BAT	149.4	27.5

6. Non-Integrated Steelmaking and Hot Forming

a. Carbon and Alloy

i. BAT

The regulatory compliance costs associated with the BAT option are not projected to result in any postcompliance closures.

TABLE X.D.7.—BAT COSTS AND IMPACTS FOR NON-INTEGRATED STEELMAKING AND HOT FORMING

	Capital cost ($2001M)	Post-tax total annualized cost ($2001M)	Impacts Closures/Job Losses
BAT	30.6	5.1	0/0

ii. NSPS

EPA proposed new source limitations of no discharge of process wastewater pollutants, but has determined that technological barriers prevent promulgation of the proposed limitations. See Section VIII.D.

7. Steel Finishing

a. Carbon and Alloy

i. BAT

The regulatory compliance costs associated with the BAT option are not projected to result in any postcompliance closures.

TABLE X.D.8.—BAT COSTS AND IMPACTS FOR STEEL FINISHING

	Capital Cost ($2001M)	Post-tax total annualized cost ($2001M)	Impacts Closures/Job Losses
BAT	23.1	8.6	0/0

8. Other Operations

a. Direct Reduced Iron

i. BPT

The regulatory compliance costs associated with the BPT option are not projected to result in any postcompliance closures. The Agency does not present costs for direct dischargers, because there are only two direct dischargers in this segment and data aggregation or other masking techniques are insufficient to avoid disclosure of information claimed as confidential business information.

TABLE X.D.9.—BPT COSTS AND IMPACTS DIRECTED REDUCED IRON

	Capital cost ($2001M)	Post-tax total annualized cost ($2001M)	Impacts Closures/Job Losses
BPT			0/0

b. Forging

i. BPT

The regulatory compliance costs associated with the BPT option are not projected to result in any postcompliance closures.

TABLE X.D.10.—BPT COSTS AND IMPACTS FORGING

	Capital cost ($2001M)	Post-tax total annualized cost ($2001M)	Impacts Closures/Job Losses
BPT	0.13	0.04	0/0

c. Briquetting

i. BPT/BCT/BAT/PSES

For the briquetting segment, EPA is establishing BPT of no discharge of process wastewater pollutants. EPA established these limitations because briquetting operations do not generate any process wastewater. For this reason, the Agency concludes that there are no costs associated with these limitations.

E. Facility Level Economic Impacts of the Regulatory Options

In this section, EPA presents the impacts of capital costs and post-tax total annualized costs for combinations of technology options across all subcategories. The Agency evaluates the second stage of the impact analysis by projecting the impacts associated with the regulatory costs for all subcategories affected at a facility or site (the terms are used interchangeably). For example, a fully integrated facility may have cokemaking, ironmaking, integrated steelmaking, hot forming and finishing operations, and the postcompliance cash flow analysis reflects the regulatory costs associated with all affected operations at the site. This stage of the analysis evaluates the aggregate regulatory costs and impacts upon each facility which may be affected in multiple subcategories. The analysis in this section reflects both those integrated facilities for which subcategory cost estimates are interdependent (as discussed in Section X.D) and other facilities which may incur costs in multiple subcategories, but whose cost estimates are not interdependent.

The incorporation of the aggregate regulatory costs based upon the technology options in the proposed rule (except for By-product Cokemaking where BAT 1 is evaluated rather than BAT 3; see Section XIII.A.3) across all subcategories into the postcompliance cash flow analysis generates a total of either 2 or 4 facility closures, depending on whether the By-Product Cokemaking PSES 1 or 3 options are used (see Section X.D.1 and the EA). The facility closures have potential job losses of 3750 to 4000 FTEs. The aggregated effect of those impacts is not economically achievable. Therefore, EPA is not promulgating revised effluent limitations guidelines and standards for each subcategory as proposed. Rather, EPA is revising effluent limitations guidelines and standards where the limits are technically and economically achievable.

For this purpose, the Agency has also analyzed a reduced set of regulatory options consisting of By-Product Cokemaking BAT 1 and PSES 1 and Sintering BAT (see description in Section VIII.B), in addition to BPT for Direct Reduced Iron and Forging. Additional limitations and standards for basic oxygen furnaces with semi-wet air pollution control, electric arc furnaces with semi-wet air pollution control, sintering with dry air pollution control, non-recovery cokemaking, and briquetting are projected to incur no compliance costs. No facilities are projected to close as a result of the compliance costs of the reduced set of regulatory options. The Agency determines that the chosen set of model technologies are economically achievable for the affected subcategories.

F. Firm Level Impacts

In this section, the Agency evaluates the economic impacts of the regulatory options to the firms that own the affected facilities. EPA evaluates the third stage of the impact analysis by incorporating the regulatory costs borne by each facility into the financial status of the firm that owns the facility or multiple facilities. For example, if a company owns an integrated facility, a stand alone coke facility, and a stand alone finishing facility, the aggregate regulatory costs are added to the baseline or precompliance financial conditions of the firm as reflected by the firm income statement and balance sheet. The Agency then calculates the postcompliance Altman Z'-score and checks for changes in financial status from good or indeterminate to distressed, with any such changes considered to be impacts.

The Agency evaluated the set of options identified in Section X.E (By-Product Cokemaking BAT 1 and PSES 1 and Sintering BAT (see description in Section VIII.B), in addition to BPT for Direct Reduced Iron and Forging) and found them to be economically achievable at the facility level. Additional limitations and standards for basic oxygen furnaces with semi-wet air pollution control, electric arc furnaces with semi-wet air pollution control, sintering with dry air pollution control, non-recovery cokemaking, and briquetting are projected to incur no compliance costs. This set of options does not cause any firm level impacts as measured by the postcompliance Altman Z' score. Accordingly, the Agency determines that each selected model technology in itself and when considered collectively with the technologies across the relevant subcategories is economically achievable.

G. Community Impacts

The Agency evaluates community impacts by examining the potential increase in county unemployment. The Agency assumes all employees of the affected facilities reside in the county (if the county is not part of a larger metropolitan area) or metropolitan area in which the facilities are located. As no facility closures are projected as a result of the estimated compliance costs, no measurable impacts on county unemployment are expected.

H. Foreign Trade Impacts

The Agency evaluates the potential for foreign trade impacts by application of the market model. The aggregate regulatory compliance costs are incorporated to estimate the postcompliance impacts on foreign trade. The analysis indicates less than 0.1 percent increase in imports and less than 0.1 percent decrease in exports.

I. Small Business Analysis

Based upon information provided in the Collection of 1997 Iron and Steel Industry Data (Section 308 Survey), the Agency was able to reasonably determine the appropriate NAICS classification for each firm. EPA applied the relevant Small Business Administration (SBA) size standard for each NAICS to determine whether each firm was to be considered a small entity. The NAICS classifications observed were predominantly NAICS 324199 (coke ovens, part of "all other petroleum and coal product manufacturing") and NAICS 331111 (iron and steel mills). The relevant size standards varied from 500 to 1500 employees; they also included a few revenue-based standards. EPA identified an estimated 35 small entities that may be affected by the proposed rule among the estimated 115 total companies potentially affected by the proposed set of options. Given the chosen set of final options, EPA identified an estimated five small entities that may be affected by the final rule among the estimated 22 total companies. EPA has fully evaluated the economic achievability of the final rule to affected small entities. The economic achievability analysis was conducted using a discounted cash flow approach for facility analysis and the Altman Z' test for the firm analysis (for a full discussion, see Section X.C.). EPA projects that no small entities will incur an impact such as facility closure/firm failure. Further, for small entities, EPA examined the cost to revenue ratio to identify any other potential impacts of the rule upon small entities. EPA has determined that none of the five small entities will experience an impact of 1% or greater ratio of costs to revenue.

J. Cost-Benefit Analysis

The Agency estimates the total monetized social costs of the final rule to be $12.0 million ($2001) and the total monetized social benefits to range between $1.4 million and $7.3 million ($2001). The total annualized costs for each subcategory ($2001, pre-tax) are presented in Table X.L.1. The final rule as promulgated includes costs for By-Product Cokemaking BAT 1 and PSES 1 and Sintering BAT 1, in addition to BPT for Direct Reduced Iron and Forging. Additional limitations and standards for basic oxygen furnaces with semi-wet air pollution control, electric arc furnaces with semi-wet air pollution control, sintering with dry air pollution control, non-recovery cokemaking, and briquetting are projected to incur no compliance costs. The total monetized benefits are presented in Table XI.F.1

K. Cost-Reasonableness Analysis

The Agency is promulgating BPT limitations for the Non-recovery Cokemaking segment of the Cokemaking Subcategory and the Direct Reduced Iron, Briquetting, and Forging segments of the Other Operations Subcategory. CWA Section 304(b)(1)(B) requires a cost-reasonableness assessment for BPT limitations. In determining BPT limitations, EPA must consider the total cost of treatment technologies in relation to the effluent reduction benefits achieved by such technology. This inquiry does not limit EPA's broad discretion to adopt BPT limitations that are achievable with available technology unless the required additional reductions are wholly out of proportion to the costs of achieving such marginal reduction.

The cost-reasonableness ratio is average cost per pound of pollutant removed by a BPT regulatory option. The cost component is measured as pre-tax total annualized costs ($2001). In this case, the pollutants removed are conventional pollutants. The Agency evaluated a technology option for the Non-recovery Cokemaking segment which is based on no discharge of process wastewater pollutants and is estimated to have no associated incremental regulatory compliance costs. For the Direct Reduced Iron segment, the evaluated BPT option 1 has a cost-reasonableness ratio of $3. For the Forging segment, the evaluated BPT option 1 removes approximately 3500 pounds of conventional pollutants with a cost-reasonableness ratio of $9. The Agency evaluated a technology option for the Briquetting Segment which is based on no discharge of process wastewater pollutants and is estimated to have no associated incremental regulatory compliance costs. EPA considers the cost-reasonableness ratio to be acceptable and the selected option to be cost-reasonable in all four segments.

L. Cost-Effectiveness Analysis

This section provides the cost-effectiveness analysis of the BAT and PSES regulatory options by subcategory. The cost-effectiveness analysis compares the total annualized cost incurred for a regulatory option to the corresponding effectiveness of that option in reducing the discharge of pollutants.

Cost-effectiveness calculations are used during the development of effluent limitations guidelines and standards to compare the efficiency of one regulatory option in removing pollutants to another regulatory option. Cost-effectiveness is defined as the incremental annual cost of a pollution control option in an industry subcategory per incremental pollutant removal. The increments are considered relative to another option or to a benchmark, such as existing treatment. In cost-effectiveness analysis, pollutant removals are measured in toxicity normalized units called "pound-equivalents." The cost-effectiveness value, therefore, represents the unit cost of removing an additional pound-equivalent (lb.-eq.) of pollutants. In general, the lower the cost-effectiveness value, the more cost-efficient the regulation will be in removing pollutants, taking into account their toxicity. While not required by the Clean Water Act, cost-effectiveness analysis is a useful tool for evaluating regulatory options for the removal of toxic pollutants. Cost-effectiveness analysis does not take into account the removal of conventional pollutants (*e.g.*, oil and grease, biochemical oxygen demand, and total suspended solids).

For the cost-effectiveness analysis, the estimated pound-equivalents of pollutants removed were calculated by multiplying the number of pounds of each pollutant removed by the toxic weighting factor for each pollutant. The more toxic the pollutant, the higher will be the pollutant's toxic weighting factor; accordingly, the use of pound-equivalents gives correspondingly more weight to pollutants with higher toxicity. Thus, for a given expenditure and pounds of pollutants removed, the cost per pound-equivalent removed would be lower when more highly toxic pollutants are removed than if pollutants of lesser toxicity are removed. Annual costs for all cost-effectiveness analyses are reported in 1981 dollars so that comparisons of cost-effectiveness may be made with regulations for other industries that were issued at different times.

1. Cost Effectiveness Analysis

The table below presents the pre-tax total annualized costs, removals (in lb-equivalents), and the incremental cost effectiveness for each technically feasible regulatory option. In cases where the technology has been found not to be feasible, the term "NA" appears in Table X.L.1 for removals and incremental cost-effectiveness.

TABLE X.L.1.—BAT AND PSES REMOVALS AND COST-EFFECTIVENESS

Subcategory and segment	Option	Pretax total annualized cost ($2001M)	Removals (lb-eq)	Incremental cost effectiveness (1981$/lb-eq)
By-Product Cokemaking	BAT 1	7.1	185,441	$21
By-Product Cokemaking	PSES 1	2.1	26,251	45
By-Product Cokemaking	PSES 3	7.7	77,783	61
Ironmaking	BAT1 and PSES1	13.7	NA	NA
Sintering	BAT 1	2.8	14,515	107
Integrated Steelmaking	BAT 1	14.0	94,494	83
Integrated and Stand Alone Hot Forming, Carbon & Alloy	BAT 1	36.7	247,280	83
Nonintegrated Steelmaking and Hot Forming, Carbon & Alloy	BAT 1	6.6	3,891	941
Nonintegrated Steelmaking and Hot Forming, Stainless	BAT 1	0.9	230	2,069
Nonintegrated Steelmaking and Hot Forming, Stainless	PSES 1	0.3	78	1,970
Steel Finishing, Carbon & Alloy	BAT 1	11.1	NA	NA
Steel Finishing, Stainless	BAT 1	5.4	NA	NA

2. Non-recovery Cokemaking

The Agency has selected a technology option for the Non-recovery Cokemaking Segment which is based on no discharge of process wastewater pollutants for BPT, BAT and PSES and is estimated to have no associated regulatory compliance costs. This is because all existing non-recovery cokemaking facilities achieve the no discharge of process wastewater pollutants limitation. As a result, a cost-effectiveness analysis cannot be constructed for this segment.

3. Other Operations

The Agency evaluated technology options for Direct Reduced Ironmaking and Forging segments only for the control of conventional pollutants at BPT (see Section X.K). The Agency evaluated a technology option for the Briquetting Segment which is based on no discharge of process wastewater pollutants and is estimated to have no associated incremental regulatory compliance costs. As a result, a cost-effectiveness analysis cannot be constructed for these segments.

XI. Water Quality Analysis and Environmental Benefits

EPA evaluated the environmental benefits of controlling the discharges of 50 priority and nonconventional pollutants from iron and steel facilities to surface waters and POTWs in national analyses of direct and indirect discharges. EPA identified more than 50 pollutants of concern in iron and steel effluents at treatable levels, but EPA presently has only published recommended ambient water quality criteria (AWQC) or toxicity profiles for 50 of those pollutants. Discharges of these pollutants into freshwater and estuarine ecosystems may alter aquatic habitats, adversely affect aquatic biota, and adversely impact human health through the consumption of contaminated fish and drinking water.

Furthermore, these pollutants may also interfere with POTW operations in terms of inhibition of activated sludge or biological treatment and contamination of sewage sludges, thereby limiting the methods of disposal for sewage sludge and the POTW's costs (though, as noted below, there is no evidence of this for this sector). Most of these pollutants have at least one known toxic effect (human health carcinogen and/or systemic toxicant or aquatic toxicant). In addition, many of these pollutants bioaccumulate in aquatic organisms and persist in the environment.

The Agency did not evaluate the effects of conventional pollutants discharged from iron and steel mills on aquatic life and human health because of a lack of numeric AWQC for those parameters. EPA did not evaluate the effects of conventional pollutants on POTWs because POTWs are designed to treat these pollutants. However, the discharge of a conventional pollutant such as total suspended solids (TSS) or oil & grease can have adverse effects on aquatic life and the environment. For example, habitat degradation can result from increased suspended particulate matter that reduces light penetration, and thus primary productivity, or from accumulation of suspended particles that alter benthic spawning grounds and feeding habitats.

Oil and grease may have toxic effects on aquatic organisms (i.e., fish, crustacea, larvae and eggs, gastropods, bivalves, invertebrates, and flora). The marine larvae and benthic invertebrates appear to be the most intolerant of oil and grease, particularly the water-soluble compounds, at concentrations ranging from 0.1 ppm to 25 ppm and 1 ppm to 6,100 ppm, respectively. However, because oil and grease is not a definitive chemical category, but instead includes many organic compounds with varying physical, chemical, and toxicological properties, it is difficult for EPA to establish a numerical criterion which would be applicable to all types of oil and grease. For this reason, EPA does not model the effects of oil and grease on the environment.

Of a total of 254 iron and steel facilities potentially affected by the rule, EPA presents here the analysis results for 22 of the facilities affected by this final rule. The facilities modelled are the discharging facilities in the cokemaking and sintering subcategories. In the case of the other operations subcategory, no pollutants other than conventional pollutants were identified as pollutants of concern and the Agency did not undertake environmental modelling. Of the 22 facilities, fifteen are direct wastewater dischargers that discharge up to 50 pollutants to thirteen receiving streams and eight are indirect wastewater dischargers discharging up to 26 pollutants through POTWs to seven receiving streams. One facility discharges both directly and indirectly.

To estimate some of the benefits from the improvements in water quality expected to result from this rule, EPA modeled in-stream concentrations for the pollutants and then compared these concentrations to aquatic life and human health AWQC guidance documents published by EPA or to toxic effect levels. States often consult these water quality criteria guidance documents when adopting water quality criteria as part of their water quality standards. However, because those State-adopted criteria may vary, for this analysis, EPA used the nationwide criteria guidance as the representative values for the particular pollutants. EPA also modeled the effects of iron and steel discharges on seven POTWs which receive discharges from the eight iron and steel indirect discharging facilities.

Because the affected iron and steel facilities may discharge in multiple waste subcategories, and some waterbody reaches receive discharges from more than one iron and steel facility, EPA chose to perform the environmental assessment analyses on a reach-by-reach basis. The reach-by-reach basis has the advantage over a subcategory-specific basis in that it more accurately predicts the overall effects of the rule on the environment.

In addition, EPA reviewed the CWA Section 303(d) lists of impaired waterbodies developed by States in 1998 and noted that at least 3 waterbodies, identified with industrial point sources as a potential source of impairment, receive direct discharges from iron and steel facilities as well as other sources. Eight additional waterbodies that receive direct discharges are also identified as impaired. However, the States did not identify the potential sources of impairment. EPA also identified 10 waterbodies with fishing advisories that receive direct discharges from iron and steel facilities as well as other sources.

EPA expects a variety of human health, environmental, and economic benefits to result from reductions in effluent loadings (see the Environmental Assessment). In particular, the benefits assessment addresses the following benefit categories: (a) Human health benefits due to reductions in excess cancer cases; (b) human health benefits due to reductions in noncarcinogenic hazard (systemic); (c) ecological and recreational benefits due to improved water quality with respect to toxic pollutants; and (d) benefits to POTWs from reductions in interference, pass through, and biosolid contamination, and elimination of some of the efforts associated with establishing local pretreatment limits.

A. Reduced Human Health Cancer Risk

EPA expects that reduced loadings to surface waters associated with the final rule would reduce excess cancer cases by approximately 0.50 per year with estimated monetized benefits of $1.3 to $6.9 million ($2001). These estimated benefits are attributable to reducing the cancer risks associated with consuming contaminated fish tissue. EPA developed these benefit estimates by applying an existing estimate of the value of a statistical life to the estimated number of excess cancer cases avoided. The estimated range of the value of a statistical life used in this analysis is $2.6 million to $13.7 million ($2001). EPA's Science Advisory Board recently recommended that the values of a statistical life be adjusted downward using a discount factor to account for latency in cases (such as cancer) where there is a lag between exposure and mortality. This was not done in the current analysis because EPA needs more information to estimate latency periods associated with cancers caused by iron and steel pollutants. For example, EPA based the risk assessments for several pollutants on data from animal bioassays; these data are not sufficiently reliable to estimate a latency period for humans.

B. Reduced Noncarcinogenic Human Health Hazard

Exposure to toxic substances poses risk of systemic and other effects to humans, including effects on the circulatory, respiratory or digestive systems and neurological and developmental effects. This final rule is expected to decrease human exposure (through consumption of contaminated fish tissues) to such pollutants. However, EPA does not claim a reduction in noncarcinogenic human health risk since the instream concentrations at both baseline and treatment option are below the threshold of noncarcinogenic human health risk.

C. Improved Ecological Conditions and Recreational Activity

EPA expects this final rule to generate environmental benefits by improving water quality. There is a wide range of benefits associated with the maintenance and improvement of water quality. These benefits include use values (*e.g.*, recreational fishing), ecological values (*e.g.*, preservation of habitat), and passive use (intrinsic) values. For example, water pollution might affect the quality of the fish and wildlife habitat provided by water resources, thus affecting the species using these resources. This in turn might affect the quality and value of recreational experiences of users, such as anglers fishing in the affected streams. EPA considers the value of the recreational fishing benefits and intrinsic benefits resulting from this final rule, but does not evaluate the other types of ecological and environmental benefits (*e.g.*, increased assimilative capacity of the receiving stream, protection of terrestrial wildlife and birds that consume aquatic organisms, and improvements to other recreational activities, such as swimming, boating, water skiing, and wildlife observation) due to data limitations.

Modeled end-of-pipe pollutant loadings of the 22 facilities are estimated to decline by approximately 22 percent. The analysis comparing modeled instream pollutant concentration to AWQC estimates that current discharge loadings result in excursions at fifteen streams receiving the discharge from iron and steel facilities. The final rule would reduce the number of receiving streams with excursions to fourteen.

EPA estimates that the annual monetized recreational benefits to anglers associated with the expected changes in water quality range from $82,000 to $290,000 ($2001). EPA evaluates these recreational benefits by applying a model that considers the increase in value of a "contaminant-free fishery" to recreational anglers resulting from the elimination of all pollutant concentrations in excess of AWQC at one of the fifteen receiving streams. EPA estimated the monetized value of impaired recreational fishing opportunity by first calculating the baseline value of the receiving stream using a value per person day of recreational fishing, and the number of person-days fished on the receiving stream. EPA then calculated the value of improving water quality in this fishery, based on the increase in value to anglers of achieving contaminant-free fishing.

In addition, EPA estimates that the annual monetized intrinsic benefits to the general public, as a result of the same improvements in water quality, range from at least $41,000 to $145,000 ($2001). These intrinsic benefits are estimated as half of the recreational benefits and may be under or overestimated.

D. Effect on POTW Operations

EPA considers two potential sources of benefits to POTWs from this final regulation: (1) reductions in the likelihood of interference, pass through, and biosolid contamination problems; and (2) reductions in costs potentially incurred by POTWs in analyzing toxic pollutants and determining whether to, and the appropriate level at which to, set local limits.

EPA has concluded from its analysis that under current conditions, POTW operations (interference) and biosolid quality are not significantly affected by discharges from any of the eight modeled iron and steel mills. EPA, therefore, projects no potential economic benefits from reduced biosolid disposal costs. This will also be true once facilities come into compliance with today's regulation.

E. Other Benefits Not Quantified

The benefit analyses focus mainly on identified compounds with quantifiable toxic or carcinogenic effects. This

potentially leads to an underestimation of benefits, because some pollutant characterizations are not considered. Forexample, the analyses do not include the benefits associated with incidental removal of the particulate load (measured as TSS), or the oxygen demand (measured as BOD_5 and COD) of the effluents. TSS loads can degrade ecological habitat by reducing light penetration and primary productivity, and from accumulation of solid particles that alter benthic spawning grounds and feeding habitats. BOD_5 and COD loads can deplete oxygen levels, which can produce mortality or other adverse effects in fish, as well as reduce biological diversity.

F. Summary of Benefits

EPA estimates that the annual monetized benefits, at the national level, resulting from this final rule range from $1.4 million to $7.3 million ($2001). Table XI.F.1 summarizes these benefits, by category. The range reflects the uncertainty in evaluating the effects of this final rule and in placing a dollar value on these effects. As indicated in Table XI.F.1, these monetized benefits ranges do not reflect some benefit categories, including improved ecological conditions from improvements in water quality, improvements to recreational activities (other than fishing), and reduced discharges of conventional pollutants. Therefore, the reported benefit estimate may understate the total benefits of this final rule.

TABLE XI.F.1—POTENTIAL ECONOMIC BENEFITS (NATIONAL LEVEL)

Benefit category	Millions of 2001 dollars per year
Reduced Cancer Risk	1.3–6.9
Reduced Noncarcinogenic Hazard	Unquantified
Improved Ecological Conditions	Unquantified
Improved Recreational Value	0.08–0.29
Improved Intrinsic Value	0.04–0.15
Total Monetized Benefits	1.4–7.3

XII. Non-Water Quality Environmental Impacts

Sections 304(b) and 306 of the Act require EPA to consider non-water quality environmental impacts associated with effluent limitations guidelines and standards. In accordance with these requirements, EPA has considered the potential impact of today's technical options on air emissions, solid waste generation, and energy consumption. While it is difficult to balance environmental impacts across all media and energy use, the Agency has determined that the impacts identified below are acceptable in light of the benefits associated with compliance with the final effluent limitations guidelines and standards.

A. Air Pollution

Various subcategories within the iron and steel industry generate process waters that contain significant concentrations of organic and inorganic compounds, some of which are listed as Hazardous Air Pollutants (HAPs) in Title III of the Clean Air Act (CAA) Amendments of 1990. The Agency has developed National Emission Standards for Hazardous Air Pollutants (NESHAPs) under section 112 of the Clean Air Act (CAA) that address air emissions of HAPs for certain manufacturing operations. Subcategories within the iron and steel industry where NESHAPs are applicable include cokemaking (58 FR 57898, October 1993) and steel finishing with chromium electroplating and chromium anodizing (60 FR 4948, January 1995).

For the cokemaking subcategory, maximum achievable control technology (MACT) standards were proposed by EPA on July 3, 2001 (66 FR 35326) for pushing, quenching, and battery stacks at cokemaking plants. These regulations are currently scheduled for promulgation in December 2002. Like effluent guidelines, MACT standards are technology based. The CAA sets maximum control requirements on which MACT can be based for new and existing sources. By-products recovery operations in the cokemaking subcategory remove the majority of HAPs through processes that collect tar, heavy and light oils, ammonium sulfate and elemental sulfur. Ammonia removal by steam stripping could generate a potential air quality issue if uncontrolled; however, ammonia stripping operations at cokemaking facilities capture vapors and convert ammonia to either an inorganic salt or anhydrous ammonia, or destroy the ammonia.

Biological treatment of cokemaking wastewater can potentially emit hazardous air pollutants if significant concentrations of volatile organic compounds (VOCs) are present. To estimate the maximum annual air emissions from biological treatment, EPA multiplied the individual concentrations of all VOCs in cokemaking wastewater entering the biological treatment system by the maximum design flow and the operational period reported in the U.S. EPA Collection of 1997 Iron and Steel Industry Data. EPA determined the concentrations of the individual VOCs entering the biological treatment systems from the sampling episode data. Assuming all the VOCs entering the biological treatment systems are emitted to the atmosphere (no biological degradation), the maximum VOC emission rate would be approximately 1,800 pounds per year for all facilities. EPA believes that this is an overestimate, because VOCs can be degraded through biological treatment. EPA concludes that, even if this likely overestimate of VOC emission rate were accurate, this would be an acceptable rate of emissions that would not have a significant impact on the environment. See TDD, Chapter 15.

For the subcategories for which EPA is not revising effluent limitations guidelines and standards today, EPA does not project any change in air emissions. For the mills without cokemaking operations that are affected by revisions to part 420 (sintering, steelmaking, forging, direct reduced iron (DRI) manufacturing, and briquetting), EPA anticipates that facilities that employ the model technologies will experience no increase in air emissions. As such, no adverse air impacts are expected to occur as a result of the revised regulations.

B. Solid Waste

Solid waste, including hazardous and nonhazardous sludge and waste oil, will be generated from a number of the model treatment technologies used to develop today's effluent limitations guidelines and standards. These solids will need to be disposed of and may be subject to RCRA Land Disposal Restrictions if they are characteristically hazardous. Solid wastes include sludge from biological treatment systems, clarification systems, gravity separation, mixed-media filtration, and oil/water separation systems. EPA accounted for the associated costs related to on-site recovery and off-site treatment and disposal of the solid wastes generated due to the implementation of the various technology options. These costs were included in the economic evaluation for the part 420 regulation.

Biological nitrification included in the technology basis for cokemaking by-product segment will produce a biological treatment sludge that facilities would need to dispose. EPA estimates that approximately 190 tons (dry wt.) per year of additional biological treatment sludge will be generated by the cokemaking subcategory as a result of today's rule. These non-hazardous biological treatment sludge can be disposed in a Subtitle D landfill, recycled to the coke ovens for incineration, or land applied.

Additional solids captured by roughing clarifiers and sand or mixed-media filters for sintering and forging operations will account for less than an additional 0.08 percent of the solids currently being collected.

Data provided in the industry surveys indicate the total annual sludge and scale production from all iron and steel facilities to be 3,522,500 tons/year (dry weight). Solids removal equipment associated with the promulgated options for this rule is expected to generate less than 277 tons per year of additional dry wastewater treatment sludge. Consequently, EPA has concluded no adverse solid waste impacts are expected to occur as a result of today's regulation.

C. Energy Requirements

EPA estimates that compliance with this regulation will result in a net increase in energy consumption at iron and steel facilities. The maximum estimated increased energy use by listed subcategories is presented in Table XII.1. The costs associated with these energy requirements are included in EPA's estimated operating costs for compliance with today's rule. The projected increase in energy consumption is primarily due to the incorporation of components such as pumps, mixers, blowers, and fans.

TABLE XII.1—ADDITIONAL ENERGY REQUIREMENTS BY SUBCATEGORY

Subcategory	Energy required (million kilowatt hours/year)
Cokemaking [1]	17
Sintering [2]	4
Other Operations [3]	0.01
Total	21.01

[1] BAT–1 and PSES–1
[2] BAT–1 and PSES–1
[3] Other operations include DRI, briquetting, and forging

Approximately 3,100,000 million kilowatt hours of electric power were generated in the United States in 1997 (Energy Information Administration, Electric Power Annual 1998 Volume 1, Table A1). Total additional energy needs for all cokemaking, sintering, DRI, briquetting, and forging facilities to comply with this rule correspond to less than 0.001 percent of the national energy demand. The increase in energy demand due to the implementation of this rule will in turn cause an air emission impact from the electric power generation facilities. The increase in air emissions is expected to be proportional to the increase in energy requirements. Consequently, EPA has concluded no adverse energy impacts are expected to occur as a result of today's regulation.

XIII. Regulatory Implementation

A. Implementation of the Limitations and Standards

1. Introduction

Effluent limitations and pretreatment standards act as a primary mechanism to control the discharges of pollutants to waters of the United States. These limitations and standards are applied to individual facilities through NPDES permits issued by the EPA or authorized States under Section 402 of the Act and through local pretreatment programs under Section 307 of the Act.

In specific cases, the NPDES permitting authority or local POTW may elect to establish technology-based permit limits or local limits for pollutants not covered by this regulation. In addition, if State water quality standards or other provisions of State or Federal law require limits on pollutants not covered by this regulation (or require more stringent limits or standards on covered pollutants to achieve compliance), the permitting authority must apply those limitations or standards. See CWA Section 301(b)(1)(C).

2. Compliance Dates

New and reissued Federal and State NPDES permits to direct dischargers must include the effluent limitations promulgated today. The permits must require immediate compliance with such limitations. If the permitting authority wishes to provide a compliance schedule, it must do so through an enforcement mechanism. Existing indirect dischargers must comply with today's pretreatment standards no later than October 17, 2005. New direct and indirect discharging sources must comply with applicable limitations and standards on the date the new sources begin operations. New direct and indirect sources are those that began construction of iron and steel operations affected by today's rule after November 18, 2002. See 65 FR at 82027.

3. Applicability

In Section VI, EPA provided detailed information on the applicability of this rule to various operations. Permit writers and pretreatment authorities should closely examine all iron and steel operations to determine if they are subject to the provisions of this rule. Also see 40 CFR 420.01.

4. Production Basis for Calculation of Permit Limitations

The NPDES permit regulations at § 122.45(f) require that NPDES permit effluent limitations be specified as mass effluent limitations (e.g., lbs/day or kg/day), except under certain enumerated circumstances that do not apply here. In order to convert the final effluent limitations expressed as pounds/thousand pounds to a monthly average or daily maximum permit limit, the permitting authority would use a production rate with units of thousand pounds/day. The current part 420 and § 122.45(b)(2) NPDES permit regulations require that pretreatment requirements and NPDES permit limits, respectively, be based on a "* * * reasonable measure of actual production."

The 1982 iron and steel regulation at 40 CFR 420.04 sets out the basis for calculating mass-based pretreatment requirements and requires that they be based on a reasonable measure of actual production. That regulation provides the following examples of what may constitute a reasonable measure of actual production: the monthly average for the highest of the previous five years, or the high month of the previous year. Similar provisions exist in the

national pretreatment regulations at 40 CFR 403.6(c)(3) for deriving mass-based pretreatment requirements. Specifically, 40 CFR 403.6(c)(3) states that the same production of flow figure shall be used in calculating limitations based on pretreatment standards. These values are converted to a daily basis (e.g., tons/day) for purposes of calculating mass-based pretreatment requirements. EPA is making no revision to 420.04.

5. Water Bubble

The "water bubble" is a regulatory flexibility mechanism described in the current regulation at 40 CFR 420.03 to allow for trading of identical pollutants at any single steel facility with multiple compliance points. The bubble has been used at some facilities to realize cost savings and/or to facilitate compliance. The restrictions on use of the water bubble are described in the proposal preamble. See 65 FR at 82031–32.

While at present NPDES permits for only nine facilities have alternative effluent limitations derived from the water bubble, there may be increased interest in the water bubble with the promulgation of today's rule. EPA proposed some changes to the water bubble, but invited comment on all aspects of the provision. These changes EPA proposed and EPA's rationale are discussed at 65 FR at 82031–32. EPA received some comments opposing some of the proposed revisions (generally industry commenters were supportive of expansions of the water bubble and environmental group commenters were supportive of restrictions on the water bubble). EPA also received comments urging the elimination of the provision codified in the 1984 amendment to part 420 that required a minimum net reduction of the amount of the pollutant otherwise authorized by the regulation. Under this provision, the amount of the pollutant discharges authorized by the bubble must be 10% to 15% less than the discharges otherwise authorized by the rule without the bubble. These comments argued that the water bubble should be used, first and foremost, as a tool to achieve the pollutant reductions required by the guideline at the least cost.

After considering the public comments, EPA makes the following changes to the water bubble:

—Allow trades for cokemaking operations but only if the cokemaking alternative limitations are more stringent than the limitations in Subpart A. See 40 CFR 420.03(f)(1).
—Allow trades for new Subpart M operations. See 40 CFR 420.03(a) and (e).
—Allow trades involving cold rolling operations. See 40 CFR 420.03(a).
—Allow trades for new, as well as existing, sources. See 40 CFR 420.03(a).
—Eliminate the minimum net reduction provision (formerly codified at 40 CFR 420.03(b)).
—Prohibit trades of oil and grease. See 40 CFR 420.03(c).
—Prohibit trades of 2,3,7,8–TCDF in sintering operations. See 40 CFR 420.03(f)(2).

The first change reflects EPA's concern about co-occurring contaminants in cokemaking wastewater (e.g., benzo(a)anthracene, chrysene, fluoranthene for cokemaking). Allowing a relaxation of the limits for cokemaking wastewater could allow undetected increases in discharges of these co-occurring contaminants that would not necessarily be offset by tighter limits on the regulated pollutants in another waste stream. As was the case in the 1982 regulation, EPA is promulgating effluent limitations for certain "indicator" pollutants, including phenols (4AAP), naphthalene, and benzo(a)pyrene for cokemaking. The data available to EPA generally show that control of the selected "indicator" pollutants will result in comparable control of other toxic pollutants found in cokemaking wastewaters but not specifically limited. A trade of phenols (4AAP) enacted between cokemaking and ironmaking wastewaters would not be environmentally protective if the increased limitation for phenols (4AAP) occurred in the cokemaking wastewater, due to the co-occuring contaminants. EPA also notes that trades involving cokemaking operations were previously precluded, so this change is an expansion in the water bubble.

EPA is allowing trades involving cold rolling operations which were previously precluded. In the 1982 rulemaking, tetrachloroethlylene was a pollutant of concern in cold rolling wastewaters, thus leading to the preclusion of trades. However, this is not the case today, based on information in the Agency's rulemaking record and Chapter 7 of the TDD. EPA likewise is allowing trades involving Subcategory M operations, since no toxic pollutants were identified as pollutants of concern.

EPA is eliminating the requirement that all alternative effluent limitations based on the water bubble must achieve a minimum net reduction (depending on the pollutant) of at least 10–15% of the discharges that would otherwise have been allowable under the regulation. EPA is eliminating the requirement in order to allow the water bubble provision to be used as a tool to achieve the pollutant reductions required by Part 420 at the least cost. This new flexibility is especially important in view of the economic condition of the industry at this time. EPA notes that nothing in the regulation prevents the permitting authority from imposing minimum net reductions on a case-by-case basis when appropriate. EPA also notes that the water bubble still retains the provision that a discharger cannot qualify for alternative effluent limitations if the application of such alternative effluent limitations would cause or contribute to an exceedance of any applicable water quality standards.

EPA is prohibiting trades involving oil and grease because of differences in the types of oil and grease used among the I&S operations. Finishing operations tend to use and discharge synthetic and animal fats and oils used to lubricate metal materials, the hot-end operations tend to discharge petroleum-based oil and grease used to lubricate machinery, and cokemaking operations tend to discharge oil and grease containing polynuclear aromatics generated by the combustion of coal. EPA is similarly prohibiting trades involving 2,3,7,8–TCDF due to the internal monitoring requirements and the associated ML limitation.

EPA concludes that these changes will give added compliance flexibility to facilities that choose to take advantage of the water bubble provision, while still providing for a high level of environmental protection.

6. Compliance With Limitations and Standards

The same basic procedures apply to the calculation of all effluent limitations guidelines and standards for this industry, regardless of whether the technology is BPT, BCT, BAT, PSES, PSNS, or NSPS. For simplicity, the following discussion refers only to effluent limitations guidelines; however, the discussion also applies to pretreatment and new source standards.

a. Definitions

The limitations for pollutants for each option, as presented in today's notice, are provided as maximum daily discharge limitations and maximum monthly average discharge limitations. Definitions provided in 40 CFR 122.2 state that the "maximum daily discharge limitation" is the "highest allowable "daily discharge" " and the " maximum average for monthly discharge limitation" is the "highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month." Daily discharge is defined as the "discharge of a pollutant" measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling."

b. Percentile Basis for Limits, Not Compliance

EPA promulgates limitations that facilities are capable of complying with at all times by properly operating and maintaining their processes and treatment technologies. EPA established these limitations on the basis of percentiles estimated using data from facilities with well-operated and controlled processes and treatment systems. However, because EPA uses a percentile basis, the issue of exceedances (i.e., values that exceed the limitations) or excursions is often raised in public comments on limitations. For example, comments often suggest that EPA include a provision that allows a facility to be considered in compliance with permit limitations if its discharge exceeds the specified monthly average limitations one month out of 20 and the daily average limitations one day out of 100. As explained in Section 14.6 of the TDD, these limitations were never intended to have the rigid probabilistic interpretation implied by such comments. The following discussion provides a brief overview of EPA's position on this issue.

EPA expects that all facilities subject to the limitations will design and operate their treatment systems to achieve the long-term average performance level on a consistent basis because facilities with well-designed and operated model technologies have demonstrated that this can be done. Facilities that are designed and operated to achieve the long-term average effluent levels used in developing the limitations should be capable of compliance with the limitations at all times, because the limitations incorporate an allowance for variability in effluent levels about the long-term average. The allowance for variability is based on control of treatment variability demonstrated in normal operations.

EPA recognizes that, as a result of modifications to 40 CFR part 420, some dischargers may need to improve treatment systems, process controls, and/or treatment system operations in order to consistently meet effluent limitations based on revised effluent limitations guidelines and standards. EPA believes that this consequence is consistent with the Clean Water Act statutory framework, which requires that discharge limitations reflect the best available technology.

c. Requirements of Laboratory Analysis

The permittee is responsible for communicating the requirements of the analysis to the laboratory, including the sensitivity required to meet the regulatory limits associated with each analyte of interest. In turn, the laboratory is responsible for employing the appropriate set of method options and a calibration range in which the concentration of the lowest non-zero standard represents a sample concentration lower than the regulatory limit for each analyte. For example, EPA Methods 420.1 and 420.2 provide several options for sample preparation and analysis, including a preliminary distillation designed to remove interferences and a chloroform extraction procedure (Method 420.1) designed to improve the sensitivity of the method. Both methods also provide information on the concentrations of the calibration standards that may be prepared for a given set of procedural options. Each of these methods contains at least one set of options that will provide sufficient sensitivity to meet the effluent guideline limitations for phenols (4AAP). Thus, it is the responsibility of the permittee to convey to the laboratory the required sensitivity to comply with the limitations. (See Sierra Club v. Union Oil, 813 F.2d 1480, page 1492 (9th Cir. 1987).) For organic compounds, such as 2,3,7,8-TCDF, naphthalene, and benzo(a)pyrene, it may be necessary for laboratories to overcome interferences using procedures such as those suggested in Guidance on the Evaluation, Resolution, and Documentation of Analytical Problems Associated with Compliance Monitoring (EPA 821–B–93–001).

7. Internal Monitoring Requirements and Compliance With ML Limitations for Sintering Subcategory

Working in conjunction with the effluent guidelines and pretreatment standards are the monitoring conditions set out in the NPDES or POTW discharge permit. An integral part of monitoring conditions is the point at which a facility must demonstrate compliance. The point at which a sample is collected can have a dramatic effect on the monitoring results for that facility. In some cases, EPA determines that internal monitoring points are necessary to afford the environmental protection projected from a rule, and to reflect the reductions achievable by application of the best available technology. Authority to address internal waste streams is provided in 40 CFR 122.44(i)(1)(iii), 122.45(h), and 40 CFR 403.6(e)(2) and (4). Permit writers or local pretreatment control authorities may establish additional internal monitoring points to the extent consistent with EPA's regulations.

As explained in Section VIII.B, iron and steel dischargers subject to the sintering subcategory must demonstrate compliance with the effluent limitations and standards for 2,3,7,8-TCDF at the point after treatment of sinter plant wastewater separately or in combination with blast furnace wastewater, but prior to mixing with process wastewaters from processes other than sintering and ironmaking, non-process wastewaters and non-contact cooling water in an amount greater than 5 percent by volume of the sintering process wastewaters. See 40 CFR 420.29.

In today's rulemaking for the sintering subcategory, EPA is establishing limitation and standard for 2,3,7,8-TCDF that is expressed as less than the Minimum Level ("<ML"). See 40 CFR 420.23, 420.24, 420.25, 420.26. Henceforth, this discussion refers to the "ML" limitation. The "ML" is an abbreviation for the Minimum Level identified today in § 420.21(c) for the analytical method that EPA used to determine the level of pollution reduction achievable for 2,3,7,8-TCDF through the use of BAT, NSPS, PSES, and PSNS technologies for subpart B. EPA intends for mills subject to ML limitations to have pollutant discharges with concentrations less than the Minimum Level of the analytical method specified today in § 420.21(c).

Often, laboratories report values less than minimum levels to be "not detected" or "<ML." In some cases, however, the laboratories report these values as if the values were quantified. For example, a laboratory might report a measurement that is 4 parts per quadrillion (ppq). Such reported values might occur in two situations. In the first situation, the laboratory could have used EPA Method 1613B (which is the method specified in § 420.21(c)), but referred to the measurement as "detected" although it was less than the Minimum Level. The second situation could occur in the future as the analytical methods become more sensitive than the method specified in § 420.21(c). Using such future methods could conceivably allow laboratories to reliably measure values less than today's minimum level of 10 ppq. Such measurements resulting from either situation would be considered to demonstrate compliance with the ML limitations, because these

measurements are less than the method ML of 10 ppq specified in § 420.21(c).

When monitoring for compliance with this final rule, a sample-specific Minimum Level greater than the method Minimum Level of 10 ppq will not demonstrate compliance with the ML limitation for 2,3,7,8-TCDF. Such sample-specific Minimum Levels may result from sample volume shortages, breakage or other problems in the laboratory, or from failure to properly remove analytical interferences from the sample. EPA believes that all of these situations can be avoided by careful adherence to sample collection and laboratory analysis procedures.

Table XIII.A.1 provides some examples demonstrating compliance with the ML limitation for 2,3,7,8-TCDF.

TABLE XIII.A.1.—EXAMPLES DEMONSTRATING COMPLIANCE

Is concentration reported as "detected" or "non-detected" in the sample?	2,3,7,8-TCDF value reported by laboratory (ML is 10 ppq)	Does the sample demonstrate compliance?	Explanation for compliance determination:
Detected	4 ppq	Yes	4 ppq is less than the ML of 10 ppq specified in § 420.21(c).
Detected	10 ppq	No	Compliance is demonstrated only with measurements less than the ML of 10 ppq specified in § 420.21(c).
Non-detected	<5 ppq	Yes	<5 ppq is less than the ML of 10 ppq specified in § 420.21(c).
Non-detected	<10 ppq	Yes	Compliance is demonstrated for all values less than the ML specified in § 420.21(c).
Non-detected	<11 ppq	No	The sample-specific ML must be less than the ML of 10 ppq specified in § 420.21(c).

EPA did not establish monthly average limitations and standards for 2,3,7,8-TCDF because the daily maximum limitations and standards for these pollutants are expressed as less than the Minimum Level (<ML). The purpose of a monthly average limitations is to require continuous dischargers to provide better control, on a monthly basis, than required by the daily maximum limitation. However, for these pollutants, today's analytical methods cannot measure below the minimum level of 10 ppq associated with the daily maximum limitation. Thus, even if a permitting or pretreatment authority requires more frequent monitoring for these pollutants than once a month, monthly average limitations would still be expressed as <ML.

8. Implementation for Iron and Steel Facilities Subject to Multiple Effluent Limitations Guidelines or Pretreatment Standards

For determination of permit limits where multiple categories apply, the effluent guidelines are applied using a flow-weighted combination of the appropriate limitation for each category (i.e., "the building block approach"). Where a facility treats an iron and steel wastestream together with process wastewater from other non-iron and steel industrial operations, the effluent guidelines would be applied by using a flow-weighted combination of the BPT/BAT limitations for the iron and steel facility and the other non-iron and steel industrial operation to derive the appropriate limitations. Similarly, for indirect dischargers, under these circumstances, the pretreatment standards would be applied using the "combined wastestream formula" as defined in 40 CFR 403.6(e).

9. Revisions Affecting Certain Steelmaking Operations

Until today's rule, the BPT, BCT, and BAT limitations for the "basic oxygen furnace steelmaking " semi-wet" segment of the steelmaking subcategory (Subpart D) specified no discharge of process wastewater pollutants to navigable waters. For reasons discussed in Section VIII.D, EPA is revising those limitations to provide an alternate limitation to the "no discharge" requirement, based on best professional judgment of the permitting authority or the pretreatment control authority. The new limitations are less stringent than the limitations they replace.

EPA's NPDES permitting regulations at 40 CFR 122.44(l) require that, when an NPDES permit is renewed or reissued, the new limitations must be at least as stringent as the limitations in the previous permit unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under 40 CFR 122.62. The regulations at 40 CFR 122.62 authorize the permitting authority to modify an NPDES permit during its term when (a) the permit condition requested to be modified is based on a promulgated effluent limitation guideline; (b) EPA has revised the effluent limitation guideline upon which the permit condition was based; and (c) the permittee requests the modification in accordance with 40 CFR 124.5 within 90 days after the **Federal Register** notice of the action on which the modification request is based. See 40 CFR 122.62(a)(3).

In today's rule, EPA is revising effluent limitations guidelines that provide the legal basis for certain limitations in permits issued to facilities in the steelmaking subcategory. These revisions would constitute cause for modification of the corresponding permit conditions under 40 CFR 122.62(a)(3). Therefore, direct dischargers to which these revisions apply are not subject to the requirement in 40 CFR 122.44(l) that limitations in reissued permit for those parameters or operations be as stringent as the limitations in the previous permit. This means that when an NPDES permit is reissued for an operation affected by the revisions discussed above, the permitting authority may impose new limitations that reflect the new less stringent requirements of today's rule.

EPA is also eliminating limitations and standards for benzene for the by-product cokemaking segment of the cokemaking subcategory. That change is not subject to the provisions of 40 CFR 122.44(l) because the revision is based on EPA's judgment that limitations on other parameters should ensure removal of benzene at levels specified by the original benzene limitations. See Section VIII.A.3.a.

10. Non-Process Wastewater and Storm Water in the Immediate Process Area

EPA has provided a definition of non-process wastewaters at § 420.02(r). When developing NPDES and pretreatment limitations, permit writers and pretreatment control authorities are

authorized to use their best professional judgment to include increased mass discharge allowances to account for certain non-process wastewaters when they are appropriately cotreated with process wastewaters using best professional judgement. Non-process wastewaters may include utility wastewaters (for example, water treatment residuals, boiler blowdown, and air pollution control wastewaters from heat recovery equipment); treated or untreated wastewaters from groundwater remediation systems; dewatering water for building foundations; and other wastewater streams not associated with a production process. When considering such non-process wastewaters, permit writers and pretreatment control authorities should determine whether they contain process wastewater pollutants, or whether they would simply be dilution flows. For example, wastewater from coke plant groundwater remediation systems would be expected to contain coke plant wastewater pollutants, whereas building foundation dewatering water would be expected to be relatively clean. In the former case, the permit writer or pretreatment control authority may include additional mass discharges based on the average groundwater remediation flow and the concentrations used by EPA to develop the effluent limitations guidelines and standards in developing the mass limits. In the latter case, no increase in mass discharges may be appropriate.

EPA has provided a definition of storm water in the immediate process area at § 420.02(t). EPA has included provisions in the regulation for permit writers and pretreatment control authorities to provide for additional mass discharge allowances for process area storm water, when they deem appropriate. With advances in storm water pollution prevention and spill prevention and control, collecting and treating limited amounts of process area storm water with process wastewaters is the most practicable and effective means of limiting discharges of contaminated storm water. This is particularly the case for by-product recovery coke plants, where contaminated storm water is typically collected from the following operations: tar decanters, ammonia liquor storage, crude tar storage, crude light oil recovery (benzol plant), crude light oil storage, ammonia recovery, ammonium sulfate recovery, and others. Storm water collected from these areas often contains oil & grease and some of the nonconventional and toxic pollutants associated with the by-product recovery processes (e.g., ammonia, cyanide, phenolic compounds, and polynuclear aromatic hydrocarbons). As a result, many coke plants commonly collect storm water from these areas and pump it to the process wastewater equalization tank for treatment with process wastewaters. Because the levels of contaminants and dissolved salts in the collected storm water are relatively low compared to those found in process wastewaters, facilities can also temporarily use storm water in lieu of uncontaminated water to optimize of biological treatment systems. EPA has provided guidance on process area storm water at by-product recovery coke plants in Section 17 of the Final TDD and will provide additional guidance in a separate guidance document.

For other iron and steel processes, EPA believes it is prudent to collect storm water from the area within outdoor wastewater treatment facilities, particularly where wastewater treatment sludges are dewatered and handled at blast furnaces, sinter plants, steelmaking operations, hot forming mills (scale and oil removal as well as wastewater treatment), and steel finishing wastewater treatment plants.

EPA does not advocate unrestricted collection and treatment of process area storm water with process waters, either at by-product recovery coke plants or at facilities in other subcategories. For example, by-product recovery and non-recovery coke plants should use conventional storm water control measures to handle coal and coke pile runoff, storm water from the battery areas, and storm water collected away from the by-products recovery areas. Other examples of storm water that would be either impracticable or uneconomic to treat in process wastewater treatment facilities include building roof storm drainage from hot forming and steel finishing mills and storm drainage from raw material storage areas and plant roadways.

B. Upset and Bypass Provisions

A "bypass" is an intentional diversion of waste streams from any portion of a treatment facility. An "upset" is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets for direct dischargers are set forth at 40 CFR 122.41(m) and (n) and for indirect dischargers at 40 CFR 403.16 and 403.17.

C. Variances and Modifications

Upon the promulgation of these regulations, all new and reissued Federal and State NPDES permits issued to direct dischargers in the iron and steel industry must include the effluent limitations. In addition, the indirect dischargers must comply with pretreatment standards for existing sources codified today by November 18, 2002.

1. Fundamentally Different Factors (FDF) Variances

The CWA requires application of the effluent limitations established pursuant to Section 301 or the pretreatment standards of Section 307 to all direct and indirect dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of national effluent limitations guidelines and pretreatment standards for categories of existing sources for priority, conventional, and non-conventional pollutants.

EPA will develop effluent limitations or standards different from the otherwise applicable requirements if an individual existing discharging facility is fundamentally different with respect to factors considered in establishing the limitations or standards applicable to the individual facility. Such a modification is known as a "fundamentally different factors" (FDF) variance.

Early on, EPA, by regulation, provided for FDF modifications from BPT effluent limitations, BAT limitations for priority and non-conventional pollutants, and BCT limitations for conventional pollutants for direct dischargers. For indirect dischargers, EPA provided for FDF modifications from pretreatment standards for existing facilities. FDF variances for priority pollutants were challenged judicially and ultimately sustained by the Supreme Court (*Chemical Manufacturers Ass'n* v. *NRDC*, 479 U.S. 116 (1985)).

Subsequently, in the Water Quality Act of 1987, Congress added new Section 301(n) of the Act explicitly to authorize modification of the otherwise applicable BAT effluent limitations or national effluent pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in Section 304 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standards.

Section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under Section 301(n), an application for approval of FDF variance must be based solely on (1) information submitted during the rulemaking raising the factors that are fundamentally different, or (2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference, and not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR part 125 subpart D, authorizing the EPA Regional Administrators to establish alternative limitations and standards, further detail the substantive criteria used to evaluate FDF variance requests for existing direct dischargers. Thus, 40 CFR 125.31(d) identifies six factors (for example, volume of process wastewater, age, and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by the EPA in developing the nationally applicable effluent guidelines. The regulation also lists four other factors (for example, infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b)(3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. EPA regulations provide for an FDF variance for existing indirect dischargers at 40 CFR 403.13. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for direct dischargers.

The legislative history of Section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b)(1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by the EPA in establishing the applicable guidelines. The pretreatment regulations incorporate a similar requirement at 40 CFR 403.13(h)(9).

An FDF variance is not available to a new source subject to NSPS or PSNS.

2. Water Quality Variances

Section 301(g) of the CWA authorizes a variance from BAT effluent guidelines for certain non-conventional pollutants due to localized environmental factors so long as the discharge does not violate any water quality-based effluent limitations. These pollutants include ammonia, chlorine, color, iron, and phenols (4AAP). Dischargers subject to new or revised BAT limitations promulgated today for those pollutants may be eligible for a section 301(g) variance. Please note that section 301(g)(4)(c) requires the filing of section 301(g) variance applications pertaining to the new or revised limits not later than July 14, 2003. Existing section 301(g) variances for limitations not being revised today are not affected by today's action.

3. Permit Modifications

Even after EPA (or an authorized State) has issued a final permit to a direct discharger, the permit may still be modified under certain conditions. (When a permit modification is under consideration, however, all other permit conditions remain in effect.) A permit modification may be triggered in several circumstances. These could include a regulatory inspection or information submitted by the permittee that reveals the need for modification. There are two classifications of modifications: major and minor. From a procedural standpoint, they differ primarily with respect to the public notice requirements. Major modifications require public notice while minor modifications do not. Virtually any modification that results in less stringent conditions is treated as a major modification, with provisions for public notice and comment. Conditions that would necessitate a major modification of a permit are described in 40 CFR 122.62. Minor modifications are generally non-substantive changes. The conditions for minor modification are described in 40 CFR 122.63.

XIV. Related Acts of Congress, Executive Orders, and Agency Initiatives

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business based on full time employees (FTEs) or annual revenues established by SBA; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. No small governments are regulated by this action. EPA identified an estimated five small companies (owning five facilities) out of the 22 companies that may be affected by the final rule. For small entities, EPA examined the cost to revenue ratio to identify the impacts of the today's rule on small entities. EPA has determined that none of the five small entities will experience an impact of 1% or greater ratio of costs to revenue. Further, EPA has fully evaluated the economic impact of the final rule to affected small entities. The economic achievability analysis was conducted using a discounted cash flow approach for facility analysis and the Altman Z' test for the firm analysis (for a full discussion, see Section X.C.). EPA projects that no small entities will incur a significant impact such as facility closure or firm failure.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under Section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. EPA has estimated total annualized costs of the final rule as $12.0 million ($2001). Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. No small governments are subject to this rule. The final rule, at most, imposes only minimal administrative requirements on small local governments that are administering approved pretreatment programs. The final rule does not uniquely affect small governments because small and large governments are affected in the same way. Thus, today's rule is not subject to the requirements of Section 203 of the UMRA.

D. Paperwork Reduction Act

This action does not impose any new information collection burden. There are no new information collection reporting requirements for facilities that comply with the limits in any of the subcategories. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements and burden contained in the regulation under "National Pollutant Discharge Elimination System (NPDES)/ Compliance Assessment/Certification Information" ICR (EPA ICR No.1427.05; OMB Control No. 2040–0110) and in the "National Pretreatment Program (40 CFR part 403)" ICR (EPA ICR No. 0002.081; OMB Control No. 2040–0009) under the provisions of the *Paperwork Reduction Act* (PRA), 44 U.S.C. 3501 *et seq.*

Copies of the ICR documents may be obtained from Sandy Farmer, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, or by email at *farmer.sandy@epa.gov*. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. Include the ICR and/or OMB number in any correspondence.

Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a current valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

E. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), (Public Law 104–113, section 12(d) 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's rule does not establish any technical standards. Thus, NTTAA does not apply to this rule. It should be noted, however, that dischargers complying with this rule may need to use previously approved technical standards to analyze for some or all of the following pollutants: benzo(a)pyrene, naphthalene, phenols (4AAP), TSS, Oil and Grease (HEM), total cyanide, ammonia as Nitrogen, 2,3,7,8-TCDF, and pH. Consensus

standards have already been promulgated in tables at 40 CFR 136.3 for measurement of all of the analytes.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The Executive Order "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is neither "economically significant" as defined under Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, as specified in Executive Order 13175. EPA determined no facilities in the scope of the final rule are owned by Indian tribes nor are any facilities located in tribal lands. Thus, Executive Order 13175 does not apply to this rule.

H. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule only directly affects the private sector. It establishes effluent limitations for iron and steel facilities. The rule does not apply directly to States and localities and will only affect State and local governments when they are administering CWA permitting programs. The rule, at most, imposes minimal administrative costs on States that have an authorized NPDES program. (These States must incorporate the new limitations and standards in new and reissued NPDES permits.) Thus, Executive Order 13132 does not apply to this rule.

I. Executive Order 13211: Energy Effects

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The maximum estimated additional energy needs associated with today's rule represents less than 0.001 percent of national energy demand, which is not considered significant.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States.

EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective November 18, 2002.

List of Subjects in 40 CFR Part 420

Environmental protection, Iron, Steel, Waste treatment and disposal, Water pollution control.

Dated: April 30, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 420—IRON AND STEEL MANUFACTURING POINT SOURCE CATEGORY

1. The authority citation for part 420 continues to read as follows:

Authority: Secs. 301; 304(b), (c), (e), and (g); 306(b) and (c); 307; 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972., as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311; 1314(b), (c), (e), and (g); 1316(b) and (c); 1317; 1318, 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567; Pub. L. 95–217.

General Provisions

2. Section 420.02 is amended by adding paragraphs (r), (s), (t) and (u) to read as follows:

§ 420.02 General definitions.

* * * * *

(r) The term *Non-process wastewaters* means utility wastewaters (for example, water treatment residuals, boiler blowdown, and air pollution control wastewaters from heat recovery equipment); treated or untreated wastewaters from groundwater remediation systems; dewatering water for building foundations; and other wastewater streams not associated with a production process.

(s) The term *Nitrification* means oxidation of ammonium salts to nitrites (via Nitrosomas bacteria) and the further oxidation of nitrite to nitrate via Nitrobacter bacteria. Nitrification can be accomplished in either:

(1) A single or two-stage activated sludge wastewater treatment system; or

(2) Wetlands specifically developed with a marsh/pond configuration and maintained for the express purpose of removing ammonia-N.

Indicators of nitrification capability are:

(1) Biological monitoring for ammonia oxidizing bacteria (AOB) and nitrite oxidizing bacteria (NOB) to determine if the nitrification is occurring; and

(2) Analysis of the nitrogen balance to determine if nitrifying bacteria reduce the amount of ammonia and increase the amount of nitrite and nitrate.

(t) The term *storm water from the immediate process area* means storm water that comes into contact with process equipment located outdoors, storm water collected in process area and bulk storage tank secondary containment structures, and storm water from wastewater treatment systems located outdoors, provided that it has the potential to become contaminated with process wastewater pollutants for the particular subcategory. Storm water from building roofs, plant roadways, and other storm waters that do not have the potential to become contaminated with process wastewater pollutants are not storm water from the immediate process area.

(u) The term *2,3,7,8–TCDF* means 2,3,7,8-tetrachlorodibenzofuran.

3. Revise § 420.03 to read as follows:

§ 420.03 Alternative effluent limitations representing the degree of effluent reduction attainable by the application of best practicable control technology currently available, best available technology economically achievable, best available demonstrated control technology, and best conventional pollutant control technology (the "water bubble").

(a) Except as provided in paragraphs (c) through (f) of this section, any existing or new direct discharging point source subject to this part may qualify for alternative effluent limitations to those specified in subparts A through M of this part, representing the degree of effluent reduction attainable by the application of best practicable control technology currently available (BPT), best available technology economically achievable (BAT), best conventional pollutant control technology (BCT), and best available demonstrated control technology (NSPS). The alternative effluent limitations for each pollutant are determined for a combination of outfalls by totaling the mass limitations allowed under subparts A through M of this part for each pollutant.

(b) The water bubble may be used to calculate alternative effluent limitations only for identical pollutants (*e.g.*, lead for lead, not lead for zinc).

(c) Use of the water bubble to develop alternate effluent limitations for oil & grease is prohibited.

(d) A discharger cannot qualify for alternative effluent limitations if the application of such alternative effluent limitations would cause or contribute to an exceedance of any applicable water quality standards.

(e) Each outfall from which process wastewaters are discharged must have specific, fixed effluent limitations for each pollutant limited by the applicable subparts A through M of this part.

(f) Subcategory-Specific Restrictions:

(1) There shall be no alternate effluent limitations for cokemaking process wastewater unless the alternative limitations are more stringent than the limitations in Subpart A of this part; and

(2) There shall be no alternate effluent limitations for 2,3,7,8–TCDF in sintering process wastewater.

4. Add § 420.07 to General Provision to read as follows:

§ 420.07 Effluent limitations guidelines and standards for pH.

(a) The pH level in process wastewaters subject to a subpart within this part shall be within the range of 6.0 to 9.0.

(b) The pH level shall be monitored at the point of discharge to the receiving water or at the point at which the wastewater leaves the wastewater treatment facility operated to treat effluent subject to that subpart.

5. Add § 420.08 to General Provisions to read as follows:

§ 420.08 Non-process wastewater and storm water.

Permit and pretreatment control authorities may provide for increased loadings for non-process wastewaters defined at § 420.02 and for storm water from the immediate process area in NPDES permits and pretreatment control mechanisms using best professional judgment, but only to the extent such non-process wastewaters result in an increased flow.

Subpart A—Cokemaking Subcategory

6. Section 420.10 is revised to read as follows:

§ 420.10 Applicability.

The provisions of this subpart are applicable to discharges and the introduction of pollutants into publicly owned treatment works resulting from by-product and other cokemaking operations.

7. Section 420.11 is revised to read as follows:

§ 420.11 Specialized definitions.

(a) For the cokemaking subcategory, the term *product* means the production of coke plus coke breeze.

(b) The term *by-product cokemaking* means operations in which coal is heated in the absence of air to produce metallurgical coke (furnace coke and foundry coke), and the recovery of by-products derived from the gases and liquids that are driven from the coal during cokemaking.

(c) The term *cokemaking—non-recovery* means cokemaking operations for production of metallurgical coke (furnace coke and foundry coke) without recovery of by-products. Does not include co-generation facilities located at non-recovery coke facilities.

(d) The term *coke* means a processed form of coal that serves as the basic fuel for the smelting of iron ore.

(1) The term *foundry coke* means coke produced for foundry operations.

(2) The term *furnace coke* means coke produced for blast furnace operations

(e) The term *merchant coke plant* means by-product cokemaking operations that provide more than fifty percent of the coke produced to operations, industries, or processes other than ironmaking blast furnaces associated with steel production.

(f) The term *iron and steel coke plant* means by-product cokemaking operations other than those at merchant coke plants.

(g) The term *coke oven gas wet desulfurization system* means those systems that remove sulfur and sulfur compounds from coke oven gas and generate process wastewater.

(h) The term *coke breeze* means fine coke particles.

(i) The term *indirect ammonia recovery system* means those systems that recover ammonium hydroxide as a by-product from coke oven gases and waste ammonia liquors.

(j) The term *iron and steel* means those by-product cokemaking operations other than merchant cokemaking operations.

(k) The term *merchant* means those by-product cokemaking operations that provide more than fifty percent of the coke produced to operations, industries, or processes other than ironmaking blast furnaces associated with steel production.

(l) The term *O&G (as HEM)* means total recoverable oil and grease measured as n-hexane extractable material.

(m) The term *wet desulfurization system* means those systems that remove sulfur compounds from coke oven gases and produce a contaminated process wastewater.

8. Section 420.12 is amended by revising paragraph (c) to read as follows:

§ 420.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available (BPT).

* * * * *

(c) *Cokemaking—non-recovery.* Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this segment must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to waters of the U.S.

9. Section 420.13 is revised to read as follows:

§ 420.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *By-product cokemaking.*

SUBPART A.—EFFLUENT LIMITATIONS (BAT)

Regulated parameter	Maximum daily [1]	Maximum monthly avg.[1]
Ammonia-N	0.00293	0.00202
Benzo(a)pyrene	0.0000110	0.00000612
Cyanide	0.00297	0.00208
Naphthalene	0.0000111	0.00000616
Phenols (4AAP)	0.0000381	0.0000238

[1] Pounds per thousand lb of product.

(1) Increased loadings, not to exceed 13.3 per cent of the above limitations, shall be provided for process wastewaters from coke oven gas wet desulfurization systems, but only to the extent such systems generate process wastewaters.

(2) Increased loadings shall be provided for process wastewaters from other wet air pollution control systems (except those from coal charging and coke pushing emission controls), coal tar processing operations and coke plant groundwater remediation systems, but only to the extent such systems generate process wastewaters and those wastewaters are co-treated with process wastewaters from by-product cokemaking wastewaters.

(3) Increased loadings, not to exceed 44.2 percent of the above limitations, shall be provided for water used for the optimization of coke plant biological treatment systems.

(b) *Cokemaking—non-recovery.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

10. Section 420.14 is revised to read as follows:

§ 420.14 New source performance standards (NSPS).

New sources subject to this subpart must achieve the following new source performance standards (NSPS), as applicable.

(a) *By-product cokemaking.*

SUBPART A.—NEW SOURCE PERFORMANCE STANDARDS (NSPS)

Regulated parameter	Maximum daily [1]	Maximum monthly avg.[1]
Ammonia-N	0.00293	0.00202
Benzo(a)pyrene	0.0000110	0.00000612
Cyanide	0.00297	0.00208
Naphthalene	0.0000111	0.00000616
O&G (as HEM)	0.00676	0.0037
pH [2]	(2)	(2)
Phenols (4AAP)	0.0000381	0.0000238
TSS	0.0343	0.0140

[1] Pounds per thousand lb of product.
[2] Within the range of 6.0 to 9.0.

(A) Increased loadings, not to exceed 13.3 per cent of the above limitations, shall be provided for process wastewaters from coke oven gas wet desulfurization systems, but only to the extent such systems generate process wastewaters.

(B) Increased loadings shall be provided for process wastewaters from other wet air pollution control systems (except those from coal charging and coke pushing emission controls), coal tar processing operations and coke plant groundwater remediation systems, but only to the extent such systems generate process wastewaters and those wastewaters are co-treated with process wastewaters from by-product cokemaking wastewaters.

(C) Increased loadings, not to exceed 44.2 percent of the above limitations, shall be provided for water used for the optimization of coke plant biological treatment systems.

(b) *Cokemaking—non-recovery.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

11. Section 420.15 is revised to read as follows:

§ 420.15 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for existing sources (PSES):

(a) *By-product cokemaking.*

SUBPART A.—PRETREATMENT STANDARDS FOR EXISTING SOURCES (PSES)

Regulated parameter	Maximum daily [1]	Maximum monthly avg.[1]
Ammonia-N [2]	0.0333	0.0200
Cyanide	0.00724	0.00506
Naphthalene	0.0000472	0.0000392

[1] Pounds per thousand lb of product.
[2] The pretreatment standards for ammonia are not applicable to sources that discharge to a POTW with nitrification capability (defined at § 420.02(s)).

(1) Increased loadings, not to exceed 13.3 per cent of the above limitations, shall be provided for process wastewaters from coke oven gas wet desulfurization systems, but only to the extent such systems generate process wastewaters.

(2) Increased loadings shall be provided for process wastewaters from other wet air pollution control systems (except those from coal charging and coke pushing emission controls), coal tar processing operations and coke plant groundwater remediation systems, but only to the extent such systems generate process wastewaters and those wastewaters are co-treated with process wastewaters from by-product cokemaking wastewaters.

(3) Increased loadings, not to exceed 44.2 percent of the above limitations, shall be provided for water used for the optimization of coke plant biological treatment systems.

(b) *Cokemaking—non-recovery.* There shall be no discharge of process wastewater pollutants to POTWs.

12. Section 420.16 is revised to read as follows:

§ 420.16 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for new sources (PSNS), as applicable.

(a) *By-product cokemaking.*

SUBPART A.—PRETREATMENT STANDARDS FOR NEW SOURCES (PSNS)

Regulated parameter	Maximum daily [1]	Maximum monthly avg.[1]
Ammonia-N [2]	0.00293	0.00202
Benzo(a)pyrene	0.0000110	0.00000612
Cyanide	0.00297	0.00208
Naphthalene	0.0000111	0.00000616

[1] Pounds per thousand lb of product.
[2] The pretreatment standards for ammonia are not applicable to sources that discharge to a POTW with nitrification capability (defined at § 420.02(s)).

(A) Increased loadings, not to exceed 13.3 percent of the above limitations, shall be provided for process wastewaters from coke oven gas wet desulfurization systems, but only to the extent such systems generate process wastewaters.

(B) Increased loadings shall be provided for process wastewaters from other wet air pollution control systems (except those from coal charging and coke pushing emission controls), coal tar processing operations and coke plant groundwater remediation systems, but only to the extent such systems generate process wastewaters and those wastewaters are co-treated with process wastewaters from by-product cokemaking wastewaters.

(C) Increased loadings, not to exceed 44.2 percent of the above limitations, shall be provided for water used for the optimization of coke plant biological treatment systems.

(b) *Cokemaking—non-recovery.* Except as provided in 40 CFR 403.7, the following standards apply with respect to each new source that commences construction after November 18, 2002:

(1) Any new source subject to the provisions of this section that commenced discharging after November 19, 2012, and before November 18, 2002, must continue to achieve the standards specified in § 420.14 of title 40 of the Code of Federal Regulations, revised as of July 1, 2001, except as provided below. For toxic and nonconventional pollutants, those standards shall apply until the expiration of the applicable time period specified in 40 CFR 122.29(d)(1); thereafter, the source must achieve the effluent limitations specified in § 420.13(a).

(2) The following standards apply with respect to each new source that commences construction after November 18, 2002:

(1) Any new source subject to the provisions of this section that commenced discharging after November 19, 2012 and before November 18, 2002 must continue to achieve the standards specified in § 420.16 of title 40 of the Code of Federal Regulations, revised as of July 1, 2001, (except for the standards for phenols 4AAP) for ten years beginning on the date the source commenced discharge or during the period of depreciation or amortization of the facility, whichever comes first, after which the source must achieve the standards specified in § 420.15(a).

(2) Except as provided in 40 CFR 403.7, the following standards apply with respect to each new source that commences construction after November 18, 2002:

There shall be no discharge of process wastewater pollutants to POTWs.

13. Section 420.17 is amended by revising paragraph (c) to read as follows:

§ 420.17 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

* * * * *

(c) *Cokemaking—non-recovery.* Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this segment must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): There shall be no discharge of process wastewater pollutants to waters of the U.S.

14. Section 420.18 is added to Subpart A to read as follows:

§ 420.18 Pretreatment standards compliance dates.

Compliance with the pretreatment standards for existing sources set forth in § 420.15 of this subpart is required not later than October 17, 2005 whether or not the pretreatment authority issues or amends a pretreatment permit requiring such compliance. Until that date, the pretreatment standards for existing sources set forth in Subpart A of title 40 of the Code of Federal Regulations, revised as of July 1, 2001, shall continue to apply.

Subpart B—Sintering Subcategory

15. Section 420.21 is added to read as follows:

§ 420.21 Specialized definitions.

As used in this subpart:

(a) For the sintering subcategory, the term *product* means sinter agglomerated from iron-bearing materials.

(b) The term *dry air pollution control system* means an emission control system that utilizes filters to remove iron-bearing particles (fines) from blast furnace or sintering off-gases.

(c) The term *minimum level (ML)* means the level at which the analytical system gives recognizable signals and an acceptable calibration point. For 2,3,7,8-tetrachlorodibenzofuran, the minimum level is 10 pg/L per EPA Method 1613B for water and wastewater samples.

(d) The *term pg/L* means picograms per liter (ppt = 1.0×10–12 gm/L).

(e) The term *sintering* means a process for agglomerating iron-bearing materials into small pellets (sinter) that can be charged to a blast furnace.

(f) The term *wet air pollution control system* means an emission control system that utilizes water to clean process or furnace off-gases.

16. Section 420.22 is revised to read as follows:

§ 420.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) *Sintering operations with wet air pollution control system.* The following table presents BPT limitations for sintering operations with wet air pollution control systems:

SUBPART B.—EFFLUENT LIMITATIONS (BPT)

Pollutants or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (pounds per 1000 lb) of product	
TSS	0.0751	0.0250
O&G	0.0150	0.00501
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

(b) *Sintering operations with dry air pollution control system.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

17. Section 420.23 is revised to read as follows:

§ 420.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available control technology economically achievable (BAT).

(a) *Sintering operations with wet air pollution control system.* The following table presents BAT limitations for sintering operations with wet air pollution control systems:

SUBPART B.—EFFLUENT LIMITATIONS (BAT)

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
Ammonia-N[2]	0.0150	0.00501
Cyanide[2]	0.00300	0.00150
Lead	0.000451	0.000150
Phenols (4AAP)[2]	0.000100	0.0000501
2,3,7,8–TCDF	<ML	
TRC[3]	0.000250	
Zinc	0.000676	0.000225

[1] Pounds per thousand lb of product.
[2] Limits for these parameters apply only when sintering waste water is co-treated with ironmaking wastewater.
[3] Applicable only when sintering process wastewater is chlorinated.

(b) *Sintering operations with dry air pollution control system.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

18. Section 420.24 is revised to read as follows:

§ 420.24 New source performance standards (NSPS).

New sources subject to this subpart must achieve the following new source performance standards (NSPS), as applicable.

(a) Any new source subject to the provisions of this section that commenced discharging after November 19, 2012 and before November 18, 2002 must continue to achieve the applicable standards specified in § 420.24 of title 40 of the Code of Federal Regulations, revised as of July 1, 2001, except that after the expiration of the applicable time period specified in 40 CFR 122.29(d)(1), the source must also achieve the effluent limitations specified in § 420.23 for 2,3,7,8-TCDF.

(b) The following standards apply with respect to each new source that commences construction after November 18, 2002.

(1) *Sintering operations with wet air pollution control system.* The following table presents NSPS for sintering operations with wet air pollution control systems:

SUBPART B.—NEW SOURCE PERFORMANCE STANDARDS (NSPS)

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
TSS	0.0200	0.00751
O&G	0.00501	
Ammonia-N[2]	0.0150	0.00501
Cyanide[2]	0.00100	0.000501
Phenols (4AAP)[2]	0.000100	0.0000501
TRC[3]	0.000250	
Lead	0.000451	0.000150
Zinc	0.000676	0.000225
pH	(4)	(4)
2,3,7,8–TCDF	<ML	

[1] Pounds per thousand lb of product.
[2] Limits for these parameters apply only when sintering wastewater is co-treated with ironmaking wastewater.
[3] Applicable only when sintering process wastewater is chlorinated.
[4] Within the range of 6.0 to 9.0.

(2) *Sintering operations with dry air pollution control system.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

19. Section 420.25 is revised to read as follows:

§ 420.25 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for existing sources (PSES):

(a) Sintering operations with wet air pollution control system. The following table presents PSES for sintering operations with wet air pollution control systems:

SUBPART B.—PRETREATMENT STANDARDS FOR EXISTING SOURCES (PSES)

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
Ammonia-N[2,3]	0.0150	0.00501
Cyanide[2]	0.00300	0.00150
Phenols (4AAP)[2]	0.000100	0.0000501
Lead	0.000451	0.000150
Zinc	0.000676	0.000225
2,3,7,8-TCDF	<ML	

[1] Pounds per thousand lb of product.
[2] The pretreatment standards for these parameters apply only when sintering wastewater is co-treated with ironmaking wastewater.
[3] The pretreatment standards for ammonia are not applicable to sources that discharge to a POTW with nitrification capability (defined at § 420.02(s)).

(b) *Sintering operations with dry air pollution control system.* There shall be no discharge of process wastewater pollutants to POTWs.

20. Section 420.26 is revised to read as follows:

§ 420.26 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for new sources (PSNS), as applicable.

(a) Sintering operations with wet air pollution control system.

(1) Any new source subject to the provisions of this section that commenced discharging after November 19, 2012 and before November 18, 2002 must continue to achieve the standards specified in § 420.26 of title 40 of the Code of Federal Regulations, revised as of July 1, 2001, for ten years beginning on the date the source commenced discharge or during the period of depreciation or amortization of the facility, whichever comes first, after which the source must also achieve the pretreatment standard for 2,3,7,8–TCDF specified in § 420.25.

(2) Except as provided in 40 CFR 403.7, the following standards apply with respect to each new source that commences construction after November 18, 2002: The following table presents PSNS for sintering operations with wet air pollution control systems:

SUBPART B.—PRETREATMENT STANDARDS FOR NEW SOURCES (PSNS)

Regulated parameter	Maximum daily [1]	Maximum monthly avg.[1]
Ammonia-N [2,3]	0.0150	0.00501
Cyanide [2]	0.00100	0.000501
Phenols (4AAP) [2]	0.000100	0.0000501
Lead	0.000451	0.000150
Zinc	0.000676	0.000225
2,3,7,8-TCDF	<ML	

[1] Pounds per thousand pound of product.
[2] The pretreatment standards for these parameters apply only when sintering wastewater is co-treated with ironmaking wastewater.
[3] The pretreatment standards for ammonia are not applicable to sources that discharge to a POTW with nitrification capability (defined at § 420.02(s)).

(b) *Sintering operations with dry air pollution control system.* There shall be no discharge of process wastewater pollutants to POTWs.

21. Section 420.28 is added to Subpart B to read as follows:

§ 420.28 Pretreatment standards compliance dates.

Compliance with the pretreatment standards for 2,3,7,8–TCDF for existing sources set forth in § 420.25(a) is required not later than October 17, 2005 whether or not the pretreatment authority issues or amends a pretreatment permit requiring such compliance.

22. Section 420.29 is added to Subpart B to read as follows:

§ 420.29 Point of compliance monitoring.

(a) *Sintering Direct Dischargers.* Pursuant to 40 CFR 122.44(i) and 122.45(h), a direct discharger must demonstrate compliance with the effluent limitations and standards for 2,3,7,8–TCDF at the point after treatment of sinter plant wastewater separately or in combination with blast furnace wastewater, but prior to mixing with process wastewaters from processes other than sintering and ironmaking, non-process wastewaters or non-contact cooling water, if such water(s) are in an amount greater than 5 percent by volume of the sintering process wastewaters.

(b) *Sintering Indirect Dischargers.* An indirect discharger must demonstrate compliance with the pretreatment standards for 2,3,7,8-TCDF by monitoring at the point after treatment of sinter plant wastewater separately or in combination with blast furnace wastewater, but prior to mixing with process wastewaters from processes other than sintering and ironmaking, non-process wastewaters and non-contact cooling water in an amount greater than 5 percent by volume of the sintering process wastewaters.

Subpart C—Ironmaking Subcategory

23. Section 420.31 is revised to read as follows:

§ 420.31 Specialized definitions.

(a) For ironmaking blast furnaces, the term *product* means the amount of molten iron produced.

(b) The term *molten iron* means iron produced in a blast furnace as measured at the blast furnace, and may include relatively minor amounts of blast furnace slag that may be skimmed from the molten iron at the steelmaking shop or other location remote from the blast furnace.

(c) The term *iron blast furnace* means all blast furnaces except ferromanganese blast furnaces.

(d) The term *existing indirect dischargers* means only those two iron blast furnace operations with discharges to publicly owned treatment works prior to May 27, 1982.

§ 420.32 [Amended]

24. Section 420.32 is amended by removing and reserving paragraph (b).

§ 420.33 [Amended]

25. Section 420.33 is amended by removing and reserving paragraph (b).

§ 420.34 [Amended]

26. Section 420.34 is amended by removing and reserving paragraph (b).

27. Section 420.35 is amended by adding a footnote in the table to paragraph (a) for the entry Ammonia-N and by removing and reserving paragraph (b) to read as follows:

§ 420.35 Pretreatment standards for existing sources (PSES).

* * * * *

(a) *Iron blast furnace.*

SUBPART C.—PRETREATMENT STANDARDS FOR EXISTING SOURCES

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (pounds per 1000 lb) of product	
Ammonia-N[1]	0.00876	0.00292

[1] The pretreatment standards for ammonia are not applicable to sources that discharge to a POTW with nitrification capability (defined at 420.02(s)).

* * * * *

28. Section 420.36 is amended by adding a footnote in the table to paragraph (a) for the entry Ammonia-N and by removing and reserving paragraph (b) to read as follows:

§ 420.36 Pretreatment standards for new sources (PSNS).

* * * * *

(a) *Iron blast furnace.*

SUBPART C.—PRETREATMENT STANDARDS FOR NEW SOURCES

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (pounds per 1000 lb) of product	
Ammonia-N[1]	0.00876	0.00292

[1] The pretreatment standards for ammonia are not applicable to sources that discharge to a POTW with nitrification capability (defined at § 420.02 (s)).

Subpart D—Steelmaking Subcategory

29. Section 420.40 is revised to read as follows.

§ 420.40 Applicability; description of the steelmaking subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into publicly owned treatment works resulting from steelmaking operations conducted in basic oxygen and electric arc furnaces.

§ 420.41 [Amended]

30. Section 420.41 is amended by removing and reserving paragraph (b).

31. Section 420.42 is amended by revising paragraph (a), the heading of paragraph (c) (the table is unchanged), and adding paragraph (d) to read as follows.

§ 420.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(a) *Electric arc furnace steelmaking—semi-wet.* No discharge of process wastewater pollutants to navigable waters.

* * * * *

(c) *Basic oxygen furnace steelmaking—wet open combustion; and electric arc furnace steelmaking—wet.*

* * * * *

(d) *Basic oxygen furnace steelmaking—semi-wet.*

(1) No discharge of process wastewater pollutants to navigable waters.

(2) If the permittee demonstrates to the satisfaction of the permitting authority that safety considerations prevent attainment of these limitations, the permitting authority may establish alternative limitations on a best professional judgment basis.

32. Section 420.43 is amended by revising paragraph (a), the heading of paragraph (c) (the table is unchanged), and adding paragraph (d) to read as follows.

§ 420.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available control technology economically achievable (BAT).

* * * * *

(a) *Electric arc furnace steelmaking—semi-wet.* No discharge of process wastewater pollutants to navigable waters.

* * * * *

(c) *Basic oxygen furnace steelmaking—wet open combustion; and electric arc furnace steelmaking—wet.*

* * * * *

(d) *Basic oxygen furnace steelmaking—semi-wet.*

(1) No discharge of process wastewater pollutants to navigable waters.

(2) If the permittee demonstrates to the satisfaction of the permitting authority that safety considerations prevent attainment of these limitations, the permitting authority may establish alternative limitations on a best professional judgment basis.

33. Section 420.44 is amended by revising paragraph (a) and removing paragraph (d) to read as follows.

§ 420.44 New source performance standards (NSPS).

* * * * *

(a) *Basic oxygen furnace steelmaking—semi-wet; and electric arc furnace steelmaking—semi-wet.* No discharge of process wastewater pollutants to navigable waters.

* * * * *

34. Section 420.45 is amended by revising paragraph (a), the heading to paragraph (c) (the table is unchanged), and adding paragraph (d) to read as follows.

§ 420.45 Pretreatment standards for existing sources (PSES).

* * * * *

(a) *Electric arc furnace steelmaking—semi-wet.* No discharge of process wastewater pollutants to navigable waters.

* * * * *

(c) *Basic oxygen furnace steelmaking—wet open combustion; and electric arc furnace steelmaking—wet.*

* * * * *

(d) *Basic oxygen furnace steelmaking—semi-wet.*

(1) No discharge of process wastewater pollutants to navigable waters.

(2) If the permittee demonstrates to the satisfaction of the pretreatment control authority that safety considerations prevent attainment of these limitations, the pretreatment control authority may establish alternative limitations on a best professional judgment basis.

35. Section 420.46 is amended by revising paragraph (a) and removing paragraph (d) to read as follows.

§ 420.46 Pretreatment standards for new sources (PSNS).

* * * * *

(a) *Basic oxygen furnace steelmaking—semi-wet; and electric arc furnace steelmaking—semi-wet.* No discharge of process wastewater pollutants to navigable waters.

* * * * *

36. Section 420.47 is amended by revising the section heading, paragraph (a), and adding paragraph (d) to read as follows.

§ 420.47 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) *Electric arc furnace steelmaking—semi-wet.* No discharge of process wastewater pollutants to navigable waters.

* * * * *

(d) *Basic oxygen furnace steelmaking—semi-wet.*

(1) No discharge of process wastewater pollutants to navigable waters.

(2) If the permittee demonstrates to the satisfaction of the permitting authority that safety considerations prevent attainment of these limitations, the permitting authority may establish alternative limitations on a best professional judgment basis.

37. Section 420.48 is added to Subpart D to read as follows:

§ 420.48 Pretreatment standards compliance dates.

Compliance with the pretreatment standards for existing sources set forth in § 420.45(d) of this subpart is required not later than October 17, 2005 whether or not the pretreatment authority issues or amends a pretreatment permit requiring such compliance.

38. Subpart M is added to read as follows:

Subpart M—Other Operations Subcategory

Sec.

420.130 Applicability.
420.131 Subcategory definitions.
420.132 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).
420.133 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
420.134 New source performance standards (NSPS).
420.135 Pretreatment standards for existing sources (PSES).
420.136 Pretreatment standards for new sources (PSNS).
420.137 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best control technology for conventional pollutant (BCT).

Subpart M—Other Operations Subcategory

§ 420.130 Applicability.

The provisions of this subpart are applicable to discharges to waters of the U.S. and the introduction of pollutants into publicly owned treatment works resulting from production of direct-reduced iron and from briquetting and forging operations.

§ 420.131 Specialized definitions.

As used in this subpart:

(a) The term *briquetting operations* means a hot or cold process that agglomerates (presses together) iron-bearing materials into small lumps without melting or fusion. Used as a concentrated iron ore substitute for scrap in electric furnaces.

(b) The term *direct-reduced iron (DRI)* means iron produced by reduction of iron ore (pellets or briquettes) using gaseous (carbon monoxide-carbon dioxide, hydrogen) or solid reactants.

(c) The term *forging* means the hot-working of heated steel shapes (e.g., ingots, blooms, billets, slabs) by hammering or hydraulic presses, performed at iron and steel mills.

(d) For briquetting operations, the term product means the amount in tons of briquettes manufactured by hot or cold agglomeration processes.

(e) For direct reduced iron (DRI), the term product means the amount of direct reduced iron and any fines that are produced and sold commercially (as opposed to fines that may be reprocessed on site).

(f) For forging, the term product means the tons of finished steel forgings produced by hot working steel shapes.

(g) The term *O&G (as HEM)* means total recoverable oil & grease measured as n-hexane extractable materials.

§ 420.132 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve, for each applicable segment, the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Direct-reduced iron.*

SUBPART M.—EFFLUENT LIMITATIONS (BPT)

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
TSS	0.00998	0.00465
pH	(2)	(2)

[1] Pounds per thousand pound of product.
[2] Within the range of 6.0 to 9.0.

(b) *Forging operations.*

SUBPART M.—EFFLUENT LIMITATIONS (BPT)

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
O&G (as HEM)	0.00746	0.00446
TSS	0.0123	0.00508
pH	(2)	(2)

[1] Pounds per thousand pound of product.
[2] Within the range of 6.0 to 9.0.

(c) *Briquetting.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

§ 420.133 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available control technology economically achievable (BAT):

(a) *Direct-reduced iron.* [Reserved]

(b) *Forging operations.* [Reserved]

(c) *Briquetting.* There shall be no discharge of process wastewater pollutants.

§ 420.134 New source performance standards (NSPS).

New sources subject to this subpart must achieve the following new source performance standards (NSPS), as applicable.

(a) *Direct-reduced iron.*

SUBPART M.—NEW SOURCE PERFORMANCE STANDARDS (NSPS)

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
TSS	0.00998	0.00465
pH	(2)	(2)

[1] Pounds per thousand pound of product.
[2] Within the range of 6.0 to 9.0.

(b) *Forging operations.*

SUBPART M.—NEW SOURCE PERFORMANCE STANDARDS (NSPS)

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
O&G (as HEM)	0.00746	0.00446
TSS	0.0123	0.00508
pH	(2)	(2)

[1] Pounds per thousand pound of product.
[2] Within the range of 6.0 to 9.0.

(c) *Briquetting.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

§ 420.135 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for existing sources (PSES):

(a) *Direct-reduced iron.* [Reserved]

(b) *Forging operations.* [Reserved]

(c) *Briquetting.* There shall be no discharge of process wastewater pollutants to POTWs.

§ 420.136 Pretreatment Standards for New Sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for new sources (PSNS):

(a) *Direct-reduced iron.* [Reserved]

(b) *Forging operations.* [Reserved]

(c) *Briquetting.* There shall be no discharge of process wastewater pollutants to POTWs.

§ 420.137 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best control technology for conventional pollutants (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best control technology for conventional pollutants (BCT): The limitations shall be the same as those specified for conventional pollutants (which are defined in 40 CFR 401.16) in § 420.132 for the best practicable control technology currently available (BPT).

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Federal Register

Thursday,
October 17, 2002

Part IV

Department of Labor

Office of the Secretary

Delegation of Authority and Assignment of Responsibility to the Administrative Review Board; Notice

DEPARTMENT OF LABOR

Office of the Secretary

[Secretary's Order 1–2002]

Delegation of Authority and Assignment of Responsibility to the Administrative Review Board

1. Purpose

To delegate authority and assign responsibility to the Administrative Review Board, define its composition, and describe its functions.

2. Background

The Secretary of Labor (hereinafter referred to as the "Secretary") has been given by statute and regulation the authority and responsibility to decide certain appeals from administrative decisions. The Secretary created the Administrative Review Board ("Board" or "ARB") in Secretary's Order 02–96, which delegated authority and assigned responsibilities to the Board. Canceling Secretary's Order 02–96, this Secretary's Order delegates authority and assigns responsibility to the ARB with certain modifications to the earlier Order. Specifically, this Order: (1) Increases the total membership of the Board from a maximum of four (three Members and one Alternate Member) to a maximum of five Members; and (2) clarifies ARB procedural authority and further delineates the authority and responsibilities of the Secretary. In addition, the Order codifies the location of the ARB in the Department's organizational structure.

3. Directives Affected

Secretary's Order 02–96, delegating authority and assigning responsibilities to the Board, is hereby canceled.

4. Delegation of Authority and Assignment of Responsibilities

The Board is hereby delegated authority and assigned responsibility to act for the Secretary of Labor in review or on appeal of the matters listed below, including, but not limited to, the issuance of final agency decisions. The Board shall report to the Secretary of Labor through the Deputy Secretary of Labor.

a. Final decisions of the Administrator of the Wage and Hour Division or an authorized representative of the Administrator, and final decisions of Administrative Law Judges ("ALJs"), under the following:

(1) The Davis-Bacon Act, as amended (40 U.S.C. 276a *et seq.*); any laws now existing or which may be subsequently enacted, providing for prevailing wages determined by the Secretary of Labor in accordance with or pursuant to the Davis-Bacon Act; the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) (except matters pertaining to safety); the Copeland Act (40 U.S.C. 276c); Reorganization Plan No. 14 of 1950; and 29 CFR parts 1, 3, 5, 6, subpart C and D.

b. Final decisions of the Administrator of the Wage and Hour Division or an authorized representative of the Administrator, and from decisions of ALJ, arising under the McNamara-O'Hara Service Contract Act, as amended (41 U.S.C. 351); the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) (except matters pertaining to safety) where the contract is also subject to the McNamara-O'Hara Service Contract Act; and 29 CFR parts 4, 5, 6, subparts B, D, E.

c. Decisions and recommended decisions by ALJs as provided for or pursuant to the following laws and implementing regulations:

(1) Age Discrimination Act of 1975, 42 U.S.C. 6103;

(2) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d–l; 29 CFR part 31;

(3) Clean Air Act, 42 U.S.C. 7622; 29 CFR part 24;

(4) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610; 29 CFR part 24;

(5) Title IX of the Education Amendments of 1972, 20 U.S.C. 1682; 29 CFR part 36;

(6) Employee Polygraph Protection Act of 1988, 29 U.S.C. 2005(a); 29 CFR part 801, subpart E;

(7) Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851; 29 CFR part 24;

(8) Equal Access to Justice Act, 5 U.S.C. 504; 29 CFR part 16;

(9) Executive Order No. 11246, as amended, 3 CFR 339 (1964–1965 Comp.); reprinted in 42 U.S.C. 2000e app.; 41 CFR parts 60–1 and 60–30;

(10) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 203(m); 29 CFR part 531, sections 531.4, 531.5;

(11) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 211(d); 29 CFR part 530, subpart E;

(12) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 214(c) 29 CFR part 525, sections 525.22;

(13) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 216(e); 29 CFR part 580;

(14) Federal Unemployment Tax Act, 26 U.S.C. 3303(b)(3), 3304(c);

(15) Federal Unemployment Tax Act (addressing agreements under the Trade Act of 1974, as amended), 26 U.S.C. 3302(c)(3); 20 CFR part 617;

(16) Federal Water Pollution Control Act, 33 U.S.C. 1367; 29 CFR part 24;

(17) Immigration and Nationality Act, as amended, 8 U.S.C. 1188(g)(2); 29 CFR part 501, subpart C;

(18) Immigration and Nationality Act, as amended, 8 U.S.C. 1182(n); 20 CFR part 655, subpart I;

(19) Immigration and Nationality Act as amended, 8 U.S.C. 1182(m) (1989); 20 CFR part 655, subpart E;

(20) Immigration and Nationality Act as amended, 8 U.S.C. 1182(m); 20 CFR part 655, subpart M;

(21) Immigration and Nationality Act, as amended, 8 U.S.C. 1288(c) and (d); 20 CFR part 655, subpart G;

(22) Job Training Partnership Act, 29 U.S.C. 1576; 20 CFR part 627; 20 CFR part 636; 29 CFR part 34;

(23) Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 907(j)(2); 20 CFR part 702;

(24) Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1813, 1853; 29 CFR part 500, subpart F;

(25) National Apprenticeship Act, 29 U.S.C. 50; 29 CFR parts 29 and 30;

(26) Older Americans Senior Community Service Employment Program, 42 U.S.C. 3056, 20 CFR 641.415(c)(5);

(27) Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3803; 29 CFR part 22;

(28) Reports of alleged unlawful discharge or discrimination under Section 428 of the Black Lung Benefits Act, 30 U.S.C. 938;

(29) Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793; 41 CFR part 60–741, subpart B;

(30) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; 29 CFR part 32;

(31) Safe Drinking Water Act, 42 U.S.C. 300j-9(i); 29 CFR part 24;

(32) Single Audit Act of 1984, 31 U.S.C. 7505; OMB Circular Nos. A–128 and A–110; 29 CFR part 96;

(33) Social Security Act, 42 U.S.C. 503; 20 CFR part 601;

(34) Solid Waste Disposal Act, 42 U.S.C. 6971; 29 CFR part 24;

(35) Surface Transportation Assistance Act, 49 U.S.C. 31105; 29 CFR part 1978;

(36) Toxic Substances Control Act, 15 U.S.C. 2622; 29 CFR part 24;

(37) Vietnam Era Veterans Readjustment Assistance Act, as amended, 38 U.S.C. 4211, 4212; 41 CFR part 60–250, subpart B;

(38) Wagner-Peyser Act, as amended, 29 U.S.C. 49; 20 CFR part 658;

(39) Walsh-Healey Public Contracts Act, as amended, 41 U.S.C. 38; 41 CFR part 50–203;

(40) Welfare to Work Act, 20 CFR 645.800(c);

(41) Wendell H. Ford Aviation Investment and Reform Act of the 21st Century, 49 U.S.C. 42121; 29 CFR part 1979;

(42) Workforce Investment Act, 29 U.S.C. 2936(b), 20 CFR 667.830; 29 CFR part 37 (*see* 37.110–112);

(43) Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A; and

(44) Any laws or regulation subsequently enacted or promulgated that provide for final decisions by the Secretary of Labor upon appeal or review of decisions, or recommended decisions, issued by ALJs.

The Board shall not have jurisdiction to pass on the validity of any portion of the Code of Federal Regulations that has been duly promulgated by the Department of Labor and shall observe the provisions thereof, where pertinent, in its decisions. The Board also shall not have jurisdiction to review decisions to deny or grant exemptions, variations, and tolerances and does not have the authority independently to take such actions. In issuing its decisions, the Board shall adhere to the rules of decision and precedent applicable under each of the laws enumerated in Sections 4(a), 4(b), and 4(c) of this Order, until and unless the Board or other authority explicitly reverses such rules of decision or precedent. The Board's authority includes the discretionary authority to review interlocutory rulings in exceptional circumstances, provided such review is not prohibited by statute.

5. Composition and Panel Configuration

a. The Board shall consist of a maximum of five Members, one of whom shall be designated Chair. The Members of the Board shall be appointed by the Secretary of Labor, and shall be selected upon the basis of their qualifications and competence in matters within the authority of the Board.

b. Except as provided in Section 5(c), the Board shall sit, hear cases, render decisions, and perform all other related functions in panels of two or three Members, as may be assigned by the Chair, unless the Chair specifically directs that an appeal or review will be decided by the full Board.

c. Except as otherwise provided by law or duly promulgated regulation (*see, e.g.*, 29 CFR Parts 7 and 8), if the petitioner(s) and the respondent(s) (or the appellant(s) and the appellees(s) consent to disposition by a single Member, the Chair may determine that the decision shall be by a single Member. Upon an affirmative determination, the Chair of the Board shall, in his or her discretion, designate himself, herself, or any other Member of the Board to decide such an appeal under Section 7.

6. Terms of the Members

a. Members of the Board shall be appointed for a term of two years or less.

b. Appointment of a Member of the Board to a term not to exceed a specified time period shall not affect the authority of the Secretary to remove, in his or her sole discretion, any Member at any time.

c. Vacancies in the membership of the Board shall not impair the authority of the remaining Member(s) to exercise all the powers and duties of the Board.

7. Voting

A petition for review may be granted upon the affirmative vote of one Member, except where otherwise provided by law or regulation. A decision in any matter, including the issuance of any procedural rules, shall be by a majority vote, except as provided in Section 5(c).

8. Location of Board Proceedings

The Board shall hold its proceedings in Washington, DC, unless for good cause the Board orders that proceedings in a particular matter be held in another location.

9. Rules of Practice and Procedure

The Board shall prescribe such rules of practice and procedure, as it deems necessary or appropriate, for the conduct of its proceedings. The rules (1) which are prescribed as of the date of this Order in 29 CFR part 7 and part 8 with respect to Sections 4(a) and 4(b), respectively, of this Order and (2) which apply as of the date of this Order to appeals and review described in Section 4(c) of this Order shall, until changed, govern the respective proceedings of the Board when it is deciding appeals described in Section 4 of this Order.

10. Departmental Counsel

The Solicitor of Labor shall have the responsibility for representing the Secretary, the Deputy Secretary, and other officials of the Department and/or the Board in any administrative or judicial proceedings involving agency decisions issued pursuant to this Order, including representing officials of the Department before the Board. In addition, the Solicitor of Labor shall have the responsibility for providing legal advice to the Secretary, the Deputy Secretary, and other officials of the Department with respect to decisions covered by this Order, as well as the implementation and administration of this Order. The Solicitor of Labor may also provide legal advice and assistance to the Chair of the Board, as appropriate.

11. Effective Date

This delegation of authority and assignment of responsibility is effective immediately.

Dated: September 24, 2002.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 02–26346 Filed 10–16–02; 8:45 am]

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Federal Register

Thursday,
October 17, 2002

Part V

Department of the Treasury

Fiscal Service

31 CFR Parts 351 et al.
Regulations Governing Treasury Securities; New Treasury Direct System; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 351, 357, 359, 360, and 363

Regulations Governing Treasury Securities; New Treasury Direct System

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: We are implementing a new book-entry, online system for purchasing, holding and conducting transactions in Treasury securities. The system is known as New Treasury Direct.

The only Treasury security that may be held in New Treasury Direct at its initial implementation is the book-entry Series I savings bond. We plan to make the system available for other Treasury securities in the future as we expand the system.

We are adding a new part to provide the governing regulations specific to the New Treasury Direct system, and the governing regulations for the book-entry Series I savings bond. The new part will, in the future, provide governing regulations for other eligible Treasury securities as we expand the system. Although most of the functionalities for the New Treasury Direct system will be available at the initial public implementation, a few functionalities will be delayed for a period of time. The delayed functionalities are those affecting the accounts of minors, the granting of viewing and transaction rights for secondary owners, and the granting of viewing rights for beneficiaries and others. Therefore, the regulations will have dual effective dates. The sections of part 363 that will be available at initial implementation will be effective upon publication in the **Federal Register**. The sections, or parts of sections, of part 363 that will not be implemented initially will have a delayed effective date. We will announce the effective date of the affected sections by a Final Rule in the **Federal Register**.

We revised the offering of United States savings bond of Series I to provide for the book-entry Series I savings bonds. We also rewrote the regulations in plain language.

We revised the regulations governing United States savings bonds of Series I to make it clear that the regulations only refer to definitive Series I savings bonds.

We revised the regulations governing book-entry Treasury bonds, notes and bills, to make clear the differences between *TreasuryDirect*, an existing book-entry system for purchasing and holding marketable Treasury securities, and the New Treasury Direct.

We revised the offering of United States savings bonds of Series I, and the offering of United States savings bonds of Series EE, to permit the mailing of savings bonds to foreign addresses under certain circumstances.

DATES: Effective October 17, 2002. However, sections 363.24(e), (f), (g), (h), (m), 363.27, 363.28, 363.29, 363.30, 363.31, 363.32, and 363.69(d), (e), (f), (g), are stayed indefinitely; the Fiscal Service will announce the effective date(s) when they will take effect.

ADDRESSES: You can download this final rule at the following Internet address: *http://www.publicdebt.treas.gov*.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

Public Debt has developed a new account-based, online, book-entry system for purchasing, holding, and conducting transactions in Treasury securities via the Internet. The new system is known as New Treasury Direct. We are adding a new part to the Code of Federal Regulations to provide the governing regulations for the new system and for securities held within the new system.

Upon initial implementation of the system, only book-entry Series I savings bonds will be offered through New Treasury Direct. We plan to offer other Treasury securities in future enhancements to the system.

The new system is not replacing the current *TreasuryDirect* system for holding book-entry marketable Treasury securities; at least for some period of time the two systems will coexist even after marketable securities are offered through New Treasury Direct.

We will continue to offer definitive Series I savings bonds at least for some period of time.

The New Treasury Direct system will benefit the investor by enabling the investor to purchase eligible Treasury securities, conduct transactions, and self-manage his or her New Treasury Direct account using the Internet. The system will provide greater flexibility and convenience for the investor by eliminating the paperwork burden inherent in the current *TreasuryDirect* system.

The New Treasury Direct system and the book-entry Series I savings bonds will benefit the government by providing a cost-effective and efficient processing environment, thereby reducing processing costs to Treasury.

New Treasury Direct

This final rule provides the governing regulations for the New Treasury Direct system. The system is substantively different from the current *TreasuryDirect* system.

New Treasury Direct permits only one individual (the purchaser) to hold an account in his or her own right. The New Treasury Direct account will hold securities over which the account owner has control, in various forms of registration. New Treasury Direct is accessed through the Internet.

At the initial implementation, New Treasury Direct will be available to the general public for individual purchasers with a valid social security number, an account at a United States depository financial institution that accepts debits and credits using the Automated Clearing House (ACH) method of payment, and a United States address. We plan to expand the system in future enhancements to include trusts and business entities.

The system will initially offer only book-entry Series I savings bonds. We plan to offer marketable Treasury securities and exchanges of selected definitive savings bonds in future enhancements to the system.

We will authenticate the identity of an applicant for a New Treasury Direct account using an online authentication service. Once the applicant's identity has been authenticated, he or she will create a password to access the account. The account owner may then purchase securities and conduct transactions online through his or her account using the password. At our option, we may require a written application containing the applicant's certified signature. All payments for purchases and redemptions will be made by debits and credits using the ACH method.

The online transactions that an account owner may conduct include: Purchasing eligible Treasury securities; redeeming savings bonds held in the account; changing or removing a beneficiary or secondary owner; transferring securities; granting or revoking secondary owner rights; delivering securities purchased as gifts to the recipient's New Treasury Direct account; making changes to account information; changing ACH information; viewing histories of transactions and pending transactions; changing or deleting pending transactions; changing a password; changing account security information; and viewing or redeeming securities by a secondary owner when he or she has been granted those rights.

When the New Treasury Direct system is expanded to marketable securities, other transactions may be available online as well.

A parent may open an account for a minor through the account of the parent. The parent will create the password for the minor's account and will certify online that he or she is acting on behalf of the minor. The parent may redeem securities through the minor's account but may not purchase securities through the account. The parent may not transfer securities from the minor's account. A person who purchases a security as a gift for the minor may deliver the gift security to the minor's account. The parent may then redeem the security on the minor's behalf using the minor's account. We have set the age of majority for purposes of the regulations at 18 years. When the minor reaches the age of 18 years, the parent is required to give the minor control of the minor's account. If the parent or legal guardian fails to give the minor control of the minor's account, we will provide offline procedures for the minor to gain control of the account.

Book-Entry Series I Savings Bonds

We will be offering a book-entry Series I savings bond. The offering circular for Series I savings bonds is being amended to provide for the offering of the book-entry I bond, and has also been rewritten in plain language.

Both definitive and book-entry Series I savings bonds earn interest according to a formula indexed to inflation. However, the terms and conditions of the two securities, including registration options, differ in many respects.

The forms of registration for book-entry Series I savings bonds are single owner, primary owner with secondary owner, and owner with beneficiary. In addition, several special forms of registration are offered for securities belonging to the estates of deceased owners and legally incompetent persons.

The primary owner with secondary owner form of registration replaces the coowner form used for other savings bonds. In the coowner form of registration, both coowners have an equal right to the bond. In the primary owner with secondary owner form, the purchaser of the bond, the primary owner, has control of the bond. The primary owner may give the secondary owner the right to view or the right to make transactions in the bond, and may at any time revoke any rights given. The primary owner may remove the secondary owner without the consent of the secondary owner.

The single owner and owner with beneficiary forms of registration are similar to the registrations offered currently in definitive Series I savings bonds.

Special forms of registration are offered for bonds belonging to the estates of deceased owners and legally incompetent individuals. At this time, special forms of registration will not be offered for initial purchases. Bonds may be registered in the name of the legal guardian or legal representative, and may be held in the personal New Treasury Direct account of the legal guardian or legal representative. The legal guardian or legal representative is not permitted to make new purchases on behalf of the estate of the decedent or incompetent person.

The book-entry Series I savings bonds may be transferred from one New Treasury Direct account to another in order to give a gift (or in response to a final judgment, court order, divorce decree, or a property settlement agreement). The owner of the bond must certify online that the transfer is for the purpose of a gift or for one of the specified exceptions.

A Series I savings bonds may also be purchased as an irrevocable gift. The purchaser may deliver a gift bond to the account of the intended recipient immediately upon issue, or the purchaser may hold the bond until the purchaser chooses to deliver the bond to the intended recipient.

When the gift bond is transferred or delivered to the recipient, it will be transferred or delivered in the single owner form of registration to the owner named on the gift bond.

The limitation on purchases for a book-entry Series I savings bond is $30,000 per account per year for bonds purchased by the account owner in his or her own right. Bonds purchased as gifts are included in the amount limitation of the recipient when delivered. The book-entry Series I savings bond may be purchased in a minimum amount of $25, with one-cent increments above that amount per transaction. The book-entry bond may be redeemed or transferred as a gift (or transferred pursuant to other permitted transfers) in an amount of $25 or greater redemption value.

The provisions relating to judicial proceedings are consistent with those governing definitive Series I savings bonds. However, the primary owner with secondary owner form of registration for book-entry Series I savings bonds mandates that some issues are treated differently. In the primary owner with secondary owner form of registration, the secondary owner has no right to redeem unless the primary owner gives him or her that right, and the right is revocable at any time. Thus, for purposes of judicial proceedings, a secondary owner is treated the same as a beneficiary.

The regulations that provide for the offering of Series EE and I savings bonds are being amended to remove the prohibition against mailing bonds to foreign addresses.

We are amending the regulations governing book-entry Treasury bonds, notes and bills. This part covers the existing *TreasuryDirect* system, which has been in place since 1986. The amendment will differentiate the two systems and reference the New Treasury Direct regulations.

Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action" as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

This final rule relates to matters of public contract and procedures for United States securities. The notice and public procedures requirements and delayed effective date requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply.

We ask for no new collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

List of Subjects

31 CFR Part 351

Bonds, Federal Reserve system, Government securities.

31 CFR Part 357

Bonds, Electronic funds transfer, Federal Reserve system, Government securities, Securities.

31 CFR Part 359

Bonds, Federal Reserve system, Government securities, Securities.

31 CFR Part 360

Bonds, Federal Reserve system, Government securities, Securities.

31 CFR Part 363

Bonds, Electronic funds transfer, Federal Reserve system, Government securities, Securities.

Accordingly, for the reasons set out in the preamble, 31 CFR Chapter II, Subchapter B, is amended as follows:

PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

2. Revise § 351.6 to read as follows:

§ 351.6 Delivery of bonds.

Issuing agents are authorized to arrange for the delivery of Series EE bonds. Deliveries are made by mail to the address given by the purchaser. If the purchaser's address is within the United States, its territories or possessions, or the Commonwealth of Puerto Rico, bonds will be delivered at the risk of the United States. Bonds delivered elsewhere will be delivered at the risk of the purchaser; however, at the discretion of the United States, delivery to an address within the United States may be required, or delivery may be refused to addresses in countries referred to in part 211 of this chapter.

PART 357—REGULATIONS GOVERNING BOOK–ENTRY TREASURY BONDS, NOTES AND BILLS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 2–86)

3. The authority citation for part 357 continues to read as follows:

Authority: 31 U.S.C. chapter 31; 5 U.S.C. 301; 12 U.S.C. 391.

4. Revise § 357.0 to read as follows:

§ 357.0 Book-entry systems.

(a) *Treasury bills, notes and bonds.* Treasury bills, notes and bonds shall be maintained in either of the following two book-entry systems:

(1) *Treasury/Reserve Automated Debt Entry System (TRADES).* A Treasury security is maintained in TRADES if it is credited by a Federal Reserve Bank to a Participant's Securities Account. See subpart B of this part for rules pertaining to TRADES.

(2) *TREASURY DIRECT Book-entry Securities System (TREASURY DIRECT).* A Treasury security is maintained in TREASURY DIRECT if it is credited to a TREASURY DIRECT account as described in § 357.20. Such accounts may be accessed by investors in accordance with subpart C of this part through a designated Federal Reserve Bank or the Bureau of the Public Debt. See subpart C of this part for rules pertaining to TREASURY DIRECT.

(b) *Transferability between TRADES and TreasuryDirect.* A Treasury security eligible to be maintained in Treasury Direct under the terms of its offering circular or pursuant to notice published by the Secretary may be transferred to or from an account in TRADES from or to an account in TREASURY DIRECT in accordance with § 357.22(a).

(c) *New Treasury Direct System (New Treasury Direct).* New Treasury Direct is an online (Internet-based), book-entry system maintained by Treasury. The *TreasuryDirect* system is a separate book-entry system for marketable Treasury securities only. The regulations governing New Treasury Direct are found at part 363, and are substantially different from the terms and conditions of securities held in *TreasuryDirect*.

5. Revise part 359 to read as follows:

PART 359—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES I

Subpart A—General Information

Sec.
359.0 What does this part cover?
359.1 What regulations govern Series I savings bonds?
359.2 [Reserved]
359.3 What special terms do I need to know to understand this part?
359.4 In what form are Series I savings bonds issued?
359.5 What is the maturity period of a Series I savings bonds?
359.6 When may I redeem my Series I bond?
359.7 If I redeem a Series I savings bonds before five years after the issue date, is there an interest penalty?
359.8 How does interest accrue on Series I savings bonds?
359.9 When are interest rates for Series I savings bonds announced?
359.10 What is the fixed rate of return?
359.11 What is the semiannual inflation rate?
359.12 What happens in deflationary conditions?
359.13 What are composite rates?
359.14 How are composite rates determined?
359.15 When is the composite rate applied to Series I savings bonds?
359.16 When does interest accrue on Series I savings bonds?
359.17 When is interest payable on Series I savings bonds?
359.18 Is the determination of the Secretary on rates and values final?
359.19 How is interest calculated?
359.20–359.24 [Reserved]

Subpart B—Definitive Series I Savings Bonds

359.25 What are the denominations and prices of definitive Series I savings bonds?
359.26 When are definitive Series I savings bonds validly issued?
359.27 What is the issue date of a definitive Series I savings bonds?
359.28 Are taxpayer identification numbers (TINs) required for the registration of definitive Series I savings bonds?
359.29 What amount of definitive Series I savings bonds may I purchase per year?
359.30 Are definitive Series I savings bonds purchased in the name of an individual computed separately from bonds purchased in a fiduciary capacity?
359.31 What definitive Series I savings bonds are included in the computation?
359.32 What definitive Series I savings bonds are excluded from the computation?
359.33 What happens if I purchase definitive Series I savings bonds in excess of the maximum amount?
359.34 May I purchase definitive Series I savings bonds over-the-counter?
359.35 May I purchase definitive Series I savings bonds through a payroll savings plan?
359.36 May I purchase definitive Series I savings bonds through employee thrift, savings, vacation, and similar plans?
359.37 How are definitive Series I savings bonds delivered?
359.38 How is payment made when definitive Series I savings bonds are redeemed?
359.39 How are redemption values calculated for definitive Series I savings bonds?
359.40 How can I find out what my definitive Series I savings bonds are worth?
359.41–359.44 [Reserved]

Subpart C—Book-Entry Series I Savings Bonds

359.45 How are book-entry Series I savings bonds purchased and held?
359.46 What are the denominations and prices of book-entry Series I savings bonds?
359.47 How is payment made for purchases of book-entry Series I savings bonds?
359.48 How are redemption payments made for my redeemed book-entry Series I savings bonds?
359.49 What is the issue date of a book-entry Series I savings bonds?
359.50 What amount of book-entry Series I savings bonds may I purchase per year?
359.51 What book-entry Series I savings bonds are included in the computation of purchases?
359.52 What happens if any person purchases book-entry Series I savings bonds in excess of the maximum amount?
359.53 Are taxpayer identification numbers (TINs) required for the registration of book-entry Series I savings bonds?
359.54 When is a book-entry Series I savings bonds validly issued?
359.55 How are redemption values calculated for book-entry Series I savings bonds?
359.56 How can I find out what my book-entry Series I savings bonds are worth?
359.57–359.64 [Reserved]

Subpart D—Miscellaneous Provisions

359.65 How are Series I savings bonds taxed?
359.66 Is the Education Savings Bonds Program available for Series I savings bonds?
359.67 Does Public Debt prohibit the issuance of Series I savings bonds in a chain letter scheme?
359.68 May Public Debt issue Series I savings bonds only in book-entry form?
359.69 Does Public Debt make any reservations as to issue of Series I savings bonds?
359.70 May Public Debt waive any provision in this part?
359.71 What is the role of Federal Reserve Banks and Branches?
359.72 May the United States supplement or amend the offering of Series I savings bonds?
Appendix A to part 359—Redemption Value Calculations
Appendix B to part 359—Composite Semiannual Rate Period Table
Appendix C to part 359—Investment Considerations
Appendix D to part 359—Tax Considerations

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

Subpart A—General Information

§ 359.0 What does this part cover?

This part is the offering of United States Savings Bonds of Series I (referred to as Series I bonds or bonds) for sale to the people of the United States by the Secretary of the Treasury (Secretary). This offer was effective September 1, 1998, and will continue until terminated by the Secretary.

§ 359.1 What regulations govern Series I savings bonds?

(a) The regulations in part 360 apply to definitive (paper) Series I savings bonds.

(b) The regulations in part 363 apply to book-entry Series I savings bonds.

(c) We expressly disclaim any representations or warranties regarding Series I savings bonds that in any way conflict with these regulations and other applicable law.

§ 359.2 [Reserved]

§ 359.3 What special terms do I need to know to understand this part?

Accrual date is the first day of any month on which earnings on a Series I bond accrue. The redemption value of a bond does not change between these accrual dates.

Automated Clearing House (ACH) means a funds transfer system governed by the Rules of the National Automated Clearing House Association (NACHA). NACHA provides for the interbank clearing of electronic entries for participating financial institutions.

Bank account means your account at a United States depository financial institution (whether a bank or other financial institution) to which you have directed that ACH debits and payments be made.

Beneficiary refers to the second individual named in the registration of a security held in definitive form registered "John Doe SSN 123–45–6789 POD (payable on death to) Joseph Doe." In the New Treasury Direct system, beneficiary refers to the second individual named in the registration of a security registered "John Doe SSN 123–45–6789 POD (payable on death to) Joseph Doe SSN 987–65–4321." In these examples, Joseph Doe is the beneficiary.

Book-entry bond means a Series I savings bonds maintained by Treasury solely as a computer record.

Composite annual rate means an annual interest rate that combines an annual fixed rate of return and a semiannual inflation rate.

Coowner means either the first or the second individual named in the registration of a definitive Series I savings bonds registered "John Doe SSN 123–45–6789 or Joseph Doe." In this example, John Doe and Joseph Doe are coowners.

CPI–U, or U.S. City Average All Items Consumer Price Index for All Urban Consumers (non seasonally adjusted) is a monthly index of the prices paid by consumers for consumer goods and services, maintained by the Bureau of Labor Statistics of the U.S. Department of Labor.

Definitive bond means a Series I savings bonds issued in paper form.

Deflation means a decrease in the CPI–U from one month to another.

Face amount refers to the amount inscribed on the front of a definitive Series I savings bonds.

Fiduciary means the court-appointed or otherwise qualified person, regardless of title, who is legally authorized to act for another.

Fixed rate or *fixed rate of return* is a component of the composite annual rate for a Series I savings bonds that is established by the Secretary of the Treasury for the life of the bond.

Individual means a natural person. Individual does not mean an organization, representative, or fiduciary.

Inflation means an increase in the CPI–U from one month to another.

Interest, as used in this part, is the difference between the principal amount and the redemption value of the bond.

Issue date is the first day of the month in which an authorized issuing agent receives payment of the issue price of the bond.

Issuing agent means an organization that has been qualified under part 317.

New Treasury Direct system (New Treasury Direct) is an online account system in which you may hold and conduct transactions in eligible book-entry Treasury securities.

Owner is either a single owner, the first individual named in the registration of a bond held in the owner with beneficiary form of registration, or the primary owner of a book-entry bond held in the primary owner with secondary owner form of registration.

Par means the principal amount of a Series I savings bond; for definitive bonds, par is the same as the face amount.

Paying agent means a financial institution that has been qualified under part 321.

Person means an entity including an individual, trust, estate, corporation, government entity, association, partnership, and any other similar organization. Person does not mean a Federal Reserve Bank.

Primary owner means the first individual named in the registration of a book-entry bond held in New Treasury Direct registered "John Doe SSN 123–45–6789 with Joseph Doe SSN 987–65–4321." In this example, John Doe is the primary owner.

Principal amount means the amount of the original investment. Principal amount does not include any interest earned.

Redemption of a book-entry Series I savings bonds refers to payment of principal and accrued interest on the bond at final maturity, or, at the option of the owner, prior to final maturity. The owner of a book-entry savings bonds held in New Treasury Direct may redeem all principal and interest or a portion of the principal and the proportionate amount of interest.

Redemption of a definitive Series I savings bonds refers to the payment of principal and accrued interest when the owner presents the bond for payment.

Redemption value means principal plus accrued interest of a Series I savings bonds, as of the date of redemption. In the case of book-entry Series I savings bonds, it also refers to a portion of the principal amount plus a proportionate amount of accrued interest of a bond, as of the date of redemption.

Registration of a book-entry Series I savings bonds means that the name and Taxpayer Identification Number (TIN) of all registrants are maintained on our records for a book-entry bond.

Registration of a definitive Series I savings bonds means that the name and TIN of the owner or first-named co-owner are inscribed on the face of the bond.

Secondary owner means the second individual named in the registration of a book-entry bond held in New Treasury Direct registered "John Doe SSN 123–45–6789 with Joseph Doe SSN 987–65–4321." In this example, Joseph Doe is the secondary owner.

Semiannual inflation rate means a component of the composite annual rate that is based on the six-month percentage change in the CPI–U.

Semiannual rate periods are the six-month periods beginning on the date of issue and on each semiannual anniversary of the date of issue to maturity.

Series I savings bond means a savings bonds, whether definitive or book-entry, that is purchased at par and pays interest based on a formula that incorporates both an annual fixed rate and a semiannual inflation rate.

Single owner means the person named in the registration of a savings bonds without a coowner, beneficiary or secondary owner.

Taxpayer identification number (TIN) means the identifying number required on tax returns and other documents submitted to the Internal Revenue Service; that is, an individual's social security account number (SSN) or an employer identification number (EIN). A SSN is composed of nine digits separated by two hyphens, for example, 123–45–6789. An EIN is composed of nine digits separated by one hyphen, for example, 12–3456789. The hyphens are an essential part of the numbers.

We, us, or *our* refers to the agency, the Bureau of the Public Debt. The term extends to the Secretary of the Treasury and the Secretary's delegates at the Treasury Department and Bureau of the Public Debt. The term also extends to any fiscal or financial agent we designate to act on behalf of the United States.

You or *your* refers to an owner of a Series I savings bonds.

§ 359.4 In what form are Series I savings bonds issued?

Series I savings bonds are issued in either book-entry or definitive form.

§ 359.5 What is the maturity period of a Series I savings bonds?

Series I savings bonds have a total maturity period of 30 years from the issue date, consisting of an original maturity period of 20 years and an extension period of 10 years.

§ 359.6 When may I redeem my Series I bond?

You may redeem your Series I savings bond at any time beginning six months after its issue date.

§ 359.7 If I redeem a Series I savings bonds before five years after the issue date, is there an interest penalty?

If you redeem a bond less than five years after the issue date, we will reduce the overall earning period by three months. For example, if you redeem a bond issued January 1, 2002, nine months later on October 1, 2002, the redemption value will be determined by applying the value calculation procedures and composite rate for that bond as if the redemption date were three months earlier (July 1, 2002). However, we will not reduce the redemption value of a bond subject to the three-month interest penalty below the issue price (par). This penalty does not apply to bonds redeemed five years or more after the issue date.

§ 359.8 How does interest accrue on Series I savings bonds?

A bond accrues interest based on both a fixed rate of return and a semiannual inflation rate. A single, annual rate called the composite rate reflects the combined effects of the fixed rate and the semiannual inflation rate. For more information, see Appendix B of part 359.

§ 359.9 When are interest rates for Series I savings bonds announced?

(a) The Secretary will furnish fixed rates, semiannual inflation rates, and composite rates for Series I savings bonds in announcements published each May 1 and November 1.

(b) If the regularly scheduled date for the announcement is a day when the Treasury is not open for business, then the Secretary will make the announcement on the next business day. However, the effective date of the rates remains the first day of the month of the announcement.

(c) The Secretary may announce rates at any other time.

§ 359.10 What is the fixed rate of return?

The Secretary, or the Secretary's designee determines the fixed rate of return. The fixed rate is established for the life of the bond.[1] The most recently announced fixed rate is only for bonds purchased during the six months following the announcement, or for any other period of time announced by the Secretary.

§ 359.11 What is the semiannual inflation rate?

The index used to determine the semiannual inflation rate is the non-seasonally adjusted CPI–U (the Consumer Price Index for All Urban Consumers for the U.S. City Average for All Items, 1982–84=100) published by the Bureau of Labor Statistics of the U.S. Department of Labor. (For further information on CPI–U considerations, *see* Appendix C to part 359 at section 1.) The semiannual inflation rate reflects the percentage change, if any, in the CPI–U over a six-month period. We announce this rate twice a year, in May and November. The semiannual inflation rate we announced in May 2002 reflects the percentage change between the CPI–U figures from the preceding March 2002 and September 2001. The rate of change over the six-month period, if any, will be expressed as a percentage, rounded to the nearest one-hundredth of one percent. More specifically, the semiannual inflation rate will be determined by the following formula (the resulting rate will be rounded to the nearest one-hundredth of one percent):

$$\text{Semiannual inflation rate} = (\text{CPI–U}_{\text{Current}} - \text{CPI–U}_{\text{Prior}}) \div \text{CPI–U}_{\text{Prior}}$$

§ 359.12 What happens in deflationary conditions?

In certain deflationary situations, the semiannual inflation rate may be negative. Negative semiannual inflation rates will be used in the same way as positive semiannual inflation rates. However, if the semiannual inflation rate is negative to the extent that it completely offsets the fixed rate of return, the redemption value of a Series I bond for any particular month will not be less than the value for the preceding month.

§ 359.13 What are composite rates?

Composite rates are single, annual interest rates that reflect the combined effects of the fixed rate and the semiannual inflation rate.

[1] However, the fixed rate is not a guaranteed minimum rate; the composite rate could possibly be less than the fixed rate in deflationary situations.

§ 359.14 How are composite rates determined?

Composite rates are set according to the following formula (See Appendix A to part 359 for examples of calculations involving composite interest rates.):

Composite rate = {(Fixed rate ÷ 2) + Semiannual inflation rate + [Semiannual inflation rate × (Fixed rate ÷ 2)]} × 2.[2]

§ 359.15 When is the composite rate applied to Series I savings bonds?

The most recently announced composite rate applies to a bond during its next semiannual rate period. A bond's semiannual rate periods are consecutive six-month periods, the first of which begins with the bond's issue date. This means that there can be a delay of several months from the time of a composite rate announcement to the time that rate determines interest earnings for a bond. For example, if you purchased a bond in April, its semiannual rate periods begin every April and October. At the beginning of the semiannual rate period in April, the most recently announced composite rate would have been the rate we announced the previous November. This rate will determine interest earnings for your bond for the next six months, through the end of September. At the beginning of the semiannual rate period in October, the most recently announced composite rate would be the rate announced the previous May. This rate will determine interest earnings for your bond through the end of the following March. However, if you purchased a bond instead in May, its semiannual rate periods begin in May and November. Therefore, the composite rates announced in May and November will apply immediately to this bond. (See Appendix C to part 359 at § 2 for a discussion of rate lag.)

§ 359.16 When does interest accrue on Series I savings bonds?

(a) Interest, if any, accrues on the first day of each month; that is, we add the interest earned on a bond during any given month to its value at the beginning of the following month.

(b) The accrued interest compounds semiannually.

[2] Example for I bonds issued May 2002–October 2002:
Fixed rate = 2.00%
Inflation rate = 0.28%
Composite rate = [0.0200 ÷ 2 + 0.0028 + (0.0028 × 0.0200 ÷ 2)] ×2
Composite rate = [0.0100 + 0.0028 + 0.000028] ×2
Composite rate = 0.012828 × 2
Composite rate = 0.025656
Composite rate = 0.0257 (rounded)
Composite rate = 2.57% (rounded)

§ 359.17 When is interest payable on Series I savings bonds?

Interest earnings are payable upon redemption.

§ 359.18 Is the determination of the Secretary on rates and values final?

The Secretary's determination of fixed rates of return, semiannual inflation rates, composite rates, and savings bonds redemption values is final and conclusive.

§ 359.19 How is interest calculated?

We base all calculations of interest on a $25 unit. We use the value of this unit to determine the value of bonds in higher denominations. The effect of rounding off the value of the $25 unit increases at higher denominations. This can work to your slight advantage or disadvantage, depending on whether we round the value up or down.[3]

§ 359.20–359.24 [Reserved]

Subpart B—Definitive Series I Savings Bonds

§ 359.25 What are the denominations and prices of definitive Series I savings bonds?

Definitive bonds are issued in denominations of $50, $75, $100, $200, $500, $1,000, $5,000, and $10,000. These bonds are sold at par; that is, the purchase price is the same as the denomination (face value).

§ 359.26 When are definitive Series I savings bonds validly issued?

A definitive bond is validly issued when it is registered as provided in part 360, and when it bears an issue date and the validation indicia of an authorized issuing agent.

§ 359.27 What is the issue date of a definitive Series I savings bonds?

The issue date of a definitive bond is the first day of the month in which an authorized issuing agent receives payment of the issue price.

§ 359.28 Are taxpayer identification numbers (TINs) required for the registration of definitive Series I savings bonds?

The inscription of a definitive bond must include the TIN of the owner or first-named co-owner. If the bond is being purchased as a gift or award and the owner's TIN is not known, the TIN of the purchaser must be included in the inscription on the bond.

[3] For example: A composite rate of 2.57% will result in a newly purchased $25 unit increasing in value after six months to $25.32, when rounded to the nearest cent. Thus, a $5,000 bond purchased at the same time as the $25 unit will be worth $5,064 after six months ([$5,000 divided by $25] × $25.32 = $5,064.) In contrast, if it applied directly to a $5,000 bond, the rate would render a value of $5,064.25 after six months, a difference of 25 cents. (This example does not include any discussion of the three-month interest penalty that applies if you redeem a bond less than five years after its issue date.)

§ 359.29 What amount of definitive Series I savings bonds may I purchase per year?

The principal amount of definitive bonds that may be purchased in the name and TIN of any person, in any calendar year, is limited to $30,000.

§ 359.30 Are definitive Series I savings bonds purchased in the name of an individual computed separately from bonds purchased in a fiduciary capacity?

We compute the purchases of bonds in the name of any person in an individual capacity separately from purchases in a fiduciary capacity (for instance, as representative for the estate of an individual).

§ 359.31 What definitive Series I savings bonds are included in the computation?

In computing the purchases for each person, we include the following outstanding definitive bonds purchased in that calendar year:

(a) All bonds registered in the name of and bearing the taxpayer identification number (TIN) of that person alone or as co-owner;

(b) All bonds registered in the name of the representative of the estate of that person and bearing that person's TIN; and

(c) All gift bonds registered in the name of that person but bearing the TIN of the purchaser.

§ 359.32 What definitive Series I savings bonds are excluded from the computation?

In computing the purchases for each person, the following are excluded:

(a) Bonds on which that person is named as beneficiary;

(b) Bonds to which that person has become entitled upon the death of the registered owner;

(c) Bonds to which that person has become entitled by virtue of the termination of a trust or the occurrence of a similar event; and

(d) Bonds that are purchased and redeemed within the same calendar year.

§ 359.33 What happens if I purchase definitive Series I savings bonds in excess of the maximum amount?

If you have bonds issued during any one calendar year in excess of the prescribed maximum amount, we reserve the right to take any action we deem necessary to adjust the excess. You should obtain instructions for adjustment of the excess from the Bureau of the Public Debt, Parkersburg, WV 26106–1328, or e-mail at <savbonds@bpd.treas.gov>.

§ 359.34 May I purchase definitive Series I savings bonds over-the-counter?

You may purchase definitive bonds over-the-counter through any participating issuing agent.[4] To purchase over-the-counter, you must submit a purchase application, along with payment in the amount of the issue price to an issuing agent. You may use any means of payment acceptable to the issuing agent. You may authorize purchases on a recurring basis in your application. The issuing agent bears the burden of collection and the risk of loss for non-collection or return of the payment.

§ 359.35 May I purchase definitive Series I savings bonds through a payroll savings plan?

You may purchase definitive bonds through deductions from your pay if your employer maintains a payroll savings plan. An authorized issuing agent must issue the bonds.

§ 359.36 May I purchase definitive Series I savings bonds through employee thrift, savings, vacation, and similar plans?

You may purchase bonds registered in the names of employee plans in authorized denominations through a designated Federal Reserve Bank, as provided in part 360 of this chapter.

§ 359.37 How are definitive Series I savings bonds delivered?

We deliver definitive bonds by mail to your address. If your address is within the United States, its territories or possessions, or the Commonwealth of Puerto Rico, we will deliver bonds at our risk. Bonds delivered elsewhere will be delivered at your risk; however, at our discretion, we may require delivery to an address within the United States, or refuse delivery to addresses in countries referred to in part 211 of this chapter.

§ 359.38 How is payment made when definitive Series I savings bonds are redeemed?

A financial institution qualified as a paying agent under the provisions of part 321 will pay the current redemption value of a definitive Series I bond presented for payment. The bond must meet the requirements for payment specified in part 360. You must establish your identity and entitlement to redemption to the satisfaction of the agent, in accordance with our instructions and identification guidelines, and must sign and complete the request for payment.

§ 359.39 How are redemption values calculated for definitive Series I savings bonds?

We determine the redemption value of a definitive savings bonds for the accrual date (the first day of each month) by first determining the composite rate as defined in § 359.13. If the result of the composite rate calculation is a negative value, zero will be the assumed composite rate in the redemption value calculation. Redemption values are calculated using the following formula (For examples of the calculation, see Appendix A to part 359):

$$FV = PV \times \{[1 + (CR \div 2)]^{(m \div 6)}\}$$

Where:

FV (future value) = redemption value on the accrual date rounded to the nearest cent without consideration of penalty.

PV (present value) = redemption value at the beginning of the semiannual rate period calculated without consideration of penalty. For bonds that are older than five years, PV will equal the redemption value at the start of the semiannual rate period.

CR = composite rate converted to decimal form by dividing by 100.

m = number of full calendar months elapsed during the semiannual rate period.

§ 359.40 How can I find out what my definitive Series I savings bonds are worth?

(a) *Redemption values.* Redemption values are available for definitive bonds in various formats and media.

(1) You may determine the redemption value for definitive bonds on the Internet at <www.savingsbonds.gov>.

(2) You may download savings bonds calculators from the Internet at <www.savingsbonds.gov>.

(3) You may obtain paper tables from the Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328. We reserve the right to cease making paper tables of redemption values available.

(b) *Redemption penalty.* Redemption values published in the tables reflect the three-month interest penalty applied to bonds redeemed prior to five years from the date of issue.

§ 359.41–359.44 [Reserved]

Subpart C—Book-Entry Series I Savings Bonds

§ 359.45 How are book-entry Series I savings bonds purchased and held?

Book-entry bonds must be purchased and held online through your New Treasury Direct account. We provide instructions for opening an account online at *http://www.publicdebt.treas.gov.*

§ 359.46 What are the denominations and prices of book-entry Series I savings bonds?

Book-entry bonds are issued in a minimum amount of $25, with additional increments of one cent. Book-entry bonds are sold at par value.

§ 359.47 How is payment made for purchases of book-entry Series I savings bonds?

Purchases of book-entry I bonds are made through your New Treasury Direct account. We will debit your designated account at a United States depository financial institution for payment of the bonds.

§ 359.48 How are redemption payments made for my redeemed book-entry Series I savings bonds?

We will make payments electronically by direct deposit, using the ACH method, to your designated account at a United States depository financial institution.

§ 359.49 What is the issue date of a book-entry Series I savings bonds?

The issue date of a book-entry savings bonds is the first day of the month in which we receive ACH settlement for the bond.

§ 359.50 What amount of book-entry Series I savings bonds may I purchase per year?

The principal amount of book-entry bonds that you may purchase in any calendar year is limited to $30,000 per New Treasury Direct account.

§ 359.51 What book-entry Series I savings bonds are included in the computation of purchases?

(a) In computing the purchases for each New Treasury Direct account owner in any calendar year, we include all bonds purchased by the account owner in that calendar year.

(b) Bonds purchased as gifts or in a fiduciary capacity are not included in the computation for the purchaser.

(c) Bonds transferred or delivered from one New Treasury Direct account to another New Treasury Direct account are included in the computation for the recipient.

[4] However, an organization serving as an issuing agent because of its status as an employer or an organization operating an employer's payroll savings plan under § 317.2(c) may sell bonds only through payroll savings plans.

§ 359.52 What happens if any person purchases book-entry Series I savings bonds in excess of the maximum amount?

We reserve the right to take any action we deem necessary to adjust the excess, including the right to remove the excess bonds from your New Treasury Direct account and refund the payment price to your bank account of record using the ACH method of payment.

§ 359.53 Are taxpayer identification numbers (TINs) required for registration of book-entry Series I savings bonds?

The TIN of each person named in the registration is required to purchase a book-entry bond.

§ 359.54 When is a book-entry Series I savings bonds validly issued?

A book-entry bond is validly issued when it is posted to your New Treasury Direct account.

§ 359.55 How are redemption values calculated for book-entry Series I savings bonds?

We base current redemption values (CRV) for book-entry Series I savings bonds on the definitive savings bonds CRV. To calculate the book-entry values, we use the CRV for the $100 denomination Series I savings bonds and calculate a CRV prorated to the book-entry par investment amount for the corresponding issue and redemption dates. Calculated book-entry CRV will be rounded to the nearest one cent.[5] The formula is as follows (Examples of the calculation are given in Appendix A to part 359:):

[Book-entry par investment ÷ 100] × [CRV value for $100 bond].

§ 359.56 How can I find out what my book-entry Series I savings bonds are worth?

(a) *Redemption values.* You may access redemption values for your book-entry bonds through your New Treasury Direct account.

(b) *Redemption penalty.* Redemption values shown in your New Treasury Direct account reflect the three-month interest penalty applied to bonds redeemed prior to five years from the date of issue.

§ 359.57–359.64 [Reserved]

Subpart D—Miscellaneous Provisions

§ 359.65 How are Series I savings bonds taxed?

Interest is subject to all taxes imposed under the Internal Revenue Code of 1986, as amended. The bonds are also subject to Federal and State estate, inheritance, gift, or other excise taxes. The bonds are exempt from all other taxation by any State or local taxing authority. (See Appendix D to part 359 for further information.)

§ 359.66 Is the Education Savings Bonds Program available for Series I savings bonds?

You may be able to exclude from income for Federal income tax purposes all or part of the interest received on the redemption of qualified bonds during the year. To qualify for the program, you or the co-owner (in the case of definitive savings bonds) must have paid qualified higher education expenses during the same year. You also must have satisfied certain other conditions. This exclusion is known as the Education Savings Bonds Program. Information about the program can be found in Internal Revenue Service Publications. (For example, see Publication 17, "Your Federal Income Tax," Publication 550, "Investment Income and Expenses," and Publication 970, "Tax Benefits of Higher Education.")

§ 359.67 Does Public Debt prohibit the issuance of Series I savings bonds in a chain letter scheme?

We do not permit bonds to be issued in a chain letter or pyramid scheme. We authorize an issuing agent to refuse to issue a bond or accept a purchase order if there is reason to believe that a purchase is connected with a chain letter. The agent's decision is final.

§ 359.68 May Public Debt issue Series I savings bonds only in book-entry form?

We reserve the right to issue bonds only in book-entry form.

§ 359.69 Does Public Debt make any reservations as to issue of Series I savings bonds?

We may reject any application for Series I bonds, in whole or in part. We may refuse to issue, or permit to be issued, any bonds in any case or class of cases, if we deem the action to be in the public interest. Our action in any such respect is final.

§ 359.70 May Public Debt waive any provision in this part?

We may waive or modify any provision of this part in any particular case or class of cases for the convenience of the United States or in order to relieve any person or persons of unnecessary hardship:

(a) If such action would not be inconsistent with law or equity;

(b) If it does not impair any material existing rights; and

(c) If we are satisfied that such action would not subject the United States to any substantial expense or liability.

§ 359.71 What is the role of Federal Reserve Banks and Branches?

(a) Federal Reserve Banks and Branches are fiscal agents of the United States. They are authorized to perform such services as we may request of them, in connection with the issue, servicing and redemption of Series I bonds.

(b) We have currently designated the following Federal Reserve Offices to provide savings bonds services:

Servicing site	Reserve district served	Geographic area served
Federal Reserve Bank, Buffalo Branch, 160 Delaware Avenue, Buffalo, NY 14202.	New York, Boston	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey (Northern half), New York, Rhode Island, Vermont, Puerto Rico, Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, 717 Grant Street, Pittsburgh, PA 15219.	Cleveland, Philadelphia	Delaware, Kentucky (eastern half), New Jersey, (southern half), Ohio, Pennsylvania, West Virginia (northern panhandle).
Federal Reserve Bank of Richmond, 701 East Byrd Street, Richmond, VA 23219.	Richmond, Atlanta	Alabama, District of Columbia, Florida, Georgia, Louisiana (southern half), Maryland, Mississippi (southern half), North Carolina, South Carolina, Tennessee (eastern half), Virginia, West Virginia (except northern panhandle).

[5] Example: Calculated value of $25.044 rounds to $25.04; calculated value of $25.045 rounds to $25.05.

Servicing site	Reserve district served	Geographic area served
Federal Reserve Bank of Minneapolis, 90 Hennepin Avenue, Minneapolis, MN 55401.	Minneapolis, Chicago	Illinois (northern half), Indiana (northern half), Iowa, Michigan, Minnesota, Montana, North Dakota, South Dakota, Wisconsin.
Federal Reserve Bank of Kansas City, 925 Grand Boulevard, Kansas City, MO 64106.	Dallas, San Francisco, Kansas City, St. Louis	Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Illinois (southern half), Indiana (southern half), Kansas, Kentucky (western half), Louisiana (northern half), Mississippi (northern half), Missouri, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee (western half), Texas, Utah, Washington, Wyoming, Guam.

§ 359.72 May the United States supplement or amend the offering of Series I savings bonds?

We may supplement or amend the terms of this offering of Series I bonds at any time.

Appendix A to Part 359—Redemption Value Calculations

1. What are some examples of calculations of redemption values for definitive Series I savings bonds?

(a) *A bond five years or older.* Assume a composite rate of 3.97%, effective May 1, 2003, for a $25 unit, with an issue date of September 1, 1998, and a redemption value of $31.90 as of September 1, 2003. The February 1, 2004, redemption value is calculated as follows: bonds issue-dated in September have semiannual rate periods beginning each March 1 and September 1. The first semiannual rate period to begin on or after the date of the May 1, 2003, rate announcement of the composite rate would be the period beginning September 1, 2003. PV, the present value, $31.90, would be the redemption value of the bond at the beginning of the semiannual rate period (September 1, 2003). The composite rate, 3.97% converted to a decimal, would be 0.0397. The number of months, m, is five, since five full calendar months (September through January) have lapsed since the beginning of the semiannual rate period. FV, the redemption value (rounded to the nearest cent), is then the result of the formula:

$FV = PV \times \{[1 + (CR \div 2)]^{(m \div 6)}\}$

Where $FV = 31.90 \times \{[1 + (0.0397 \div 2)]^{(5 \div 6)}\} = \$32.43$

The redemption value for an actual denomination of a Series I bond can be determined by applying the appropriate multiple, for example:

$32.43 \times ($100.00 \div $25.00) for a bond with a $100.00 face amount; or

$32.43 \times ($1000.00 \div $25.00) for a bond with a $1000.00 face amount.

(b) *A bond less than five years old.* Assume a composite rate of 3.97% effective May 1, 2003, for a $25.00 unit, with an issue date of December 1, 2000, a redemption date of February 1, 2004, and a value on June 1, 2003, of $28.45, without consideration of penalty. A three-month penalty is assessed since the redemption date is less than five years after the issue date. The penalty is accounted for by assuming that the redemption date is three months earlier (November 1, 2003). The February 1, 2004, redemption value is then calculated as follows: bonds issue-dated in December have semiannual rate periods that begin each June 1 and December 1. The first semiannual rate period to begin on or after the May 1, 2003, rate announcement of the composite rate would be the period beginning June 1, 2003. PV, the present value, $28.45, is the value of the bond at the beginning of the semiannual rate period (June 1, 2003), without consideration of penalty. The composite rate, 3.97%, converted to a decimal, would be 0.0397. The number of months, m, is five, since five full calendar months (June through October) have elapsed since the beginning of the semiannual rate period and the redemption date (as adjusted for penalty). FV, the redemption value (rounded to the nearest cent), is then the result of the formula:

$FV = PV \times \{[1 + (CR \div 2)]^{(m \div 6)}\}$ where $FV = \$28.45 \times \{[1 + (0.397 \div 2)]^{(5 \div 6)}\} = \$28.92$

2. What is an example of a book-entry Series I savings bonds redemption value calculation?

Assume a New Treasury Direct par investment amount in a book-entry Series I savings bonds of $34.59, with an issue date of May, 2001, and a redemption date of December, 2001. The published CRV for a definitive $100 Series I savings bonds issued May, 2001 and redeemed December, 2001 = $101.96.

Calculation:

[(Book-entry par investment) ÷ (100)] × CRV value for $100 bond

[($34.59 ÷ 100)] × 101.96

[0.3459] × 101.96

35.267964

= $35.27

Appendix B to Part 359—Composite Semiannual Rate Period Table

1. What months make up the composite semiannual rate period?

You may use the following table to find when a bond's semiannual rate period begins and when we'll announce the rate that applies during each period.

If your Bond has an issue date of—	Then its semiannual rate period begins—	We announce the rate that applies during a rate period in—
January	January 1	November 1 (of the previous year).
	July 1	May 1.
February	February 1	November 1 (of the previous year).
	August 1	May 1.
March	March 1	November 1 (of the previous year).
	September 1	May 1.
April	April 1	November 1 (of the previous year).
	October 1	May 1.
May	May 1	May 1.
	November 1	November 1.
June	June 1	May 1.
	December 1	November 1.
July	July 1	May 1.
	January 1	November 1 (of the previous year).
August	August 1	May 1.
	February 1	November 1 (of the previous year).
September	September 1	May 1
	March 1	November 1 (of the previous year).

If your Bond has an issue date of—	Then its semiannual rate period begins—	We announce the rate that applies during a rate period in—
October	October 1	May 1.
	April 1	November 1 (of the previous year).
November	November 1	November 1.
	May 1	May 1.
December	December 1	November 1.
	June 1	May 1.

Appendix C to Part 359—Investment Considerations

1. What are some index contingencies?

(a) If a previously reported CPI–U is revised, we will continue to use the previously reported CPI–U in calculating redemption values.

(b) If the CPI–U is rebased to a different year, we will continue to use the CPI–U based on the base reference period in effect when the security was first issued, as long as that CPI–U continues to be published.

(c) If, while an inflation-indexed savings bonds is outstanding, the applicable CPI–U is discontinued or, in the judgment of the Secretary, fundamentally altered in a manner materially adverse to the interests of an investor in the security, or, in the judgment of the Secretary, altered by legislation or Executive Order in a manner materially adverse to the interests of an investor in the security, Treasury, after consulting with the Bureau of Labor Statistics or any successor agency, will substitute an appropriate alternative index. Treasury will then notify the public of the substitute index and how it will be applied. The Secretary's determinations in this regard will be final.

(d) If the CPI–U for a particular month is not reported by the last day of the following month, we will announce an index number based on the last 12-month change in the CPI–U available. Any calculations of our payment obligations on the inflation-indexed savings bonds that rely on that month's CPI–U will be based on the index number that we have announced.

2. How will inflation lag affect my Series I savings bonds?

The inflation rate component of investor earnings will be determined twice each year. This rate will be the percentage change in the CPI–U for the six months ending each March and September. The rate will be included in the composite rate that is announced each May and November. For Series I bonds offered from September 1, 1998, through October 31, 1998, the inflation rate component of investor earnings will be the percentage change in the CPI–U for the six months ending March 31, 1998. This rate will be included in the composite rate that is announced for Series I bonds offered effective from September 1, 1998, through October 31, 1998. In the event the Secretary, or the Secretary's designee, announces a composite rate at an effective date other than May 1 or November 1, the announcement will specify the period to be used to calculate the semiannual inflation rate. Each composite rate will be effective for the entirety of the applicable rate period that begins while the rate is in effect. Thus, an inflation rate may affect interest accruals from 3 to 13 months from the date that the CPI–U is measured.

Example 1. The inflation rate determined from the CPI-U for the six-month period from October, 2003, through March, 2004, will be included in the composite rate announced in May, 2004. For a bond purchased in May 1999, this rate would go into effect immediately, since a new semiannual rate period for this bond will begin in May, 2004. Series I bonds issued in May begin new semiannual rate periods in the months of May and November. In this example, the inflation rate will have its earliest impact in June 2004, when interest from May accrues, three months after the end of the six-month CPI–U period that ends in March, 2004.

Example 2. The May 1, 2004, rate will apply similarly to a bond purchased in October 1999. Series I bonds issued in October begin new semiannual rate periods in the months of April and October. Thus, for this bond, the May 1, 2004, composite rate (which includes the inflation rate) will not go into effect until a new semiannual rate period begins on October 1, 2004. This rate, therefore, will determine the inflation-indexed portion of each interest accrual from November, 2004, through April, 2005. In this example, the inflation rate will have its latest impact in April 2005, 13 months following the six-month CPI–U period that ended March 31, 2004.

Appendix D to Part 359—Tax Considerations

1. What are some general tax considerations?

General. Interest is subject to all taxes imposed under the Internal Revenue Code of 1986, as amended. The bonds are also subject to Federal and State estate, inheritance, gift, or other excise taxes. The bonds are exempt from all other taxation by any State or local taxing authority.

2. What reporting methods are available for savings bonds?

(a) *Reporting methods.* You may use either of the following two methods for reporting the increase in the redemption value of the bond for Federal income tax purposes:

(1) *Cash basis method.* You may defer reporting the increase to the year of final maturity, redemption, or other disposition, whichever is earliest; or

(2) *Accrual basis method.* You may elect to report the increase each year, in which case the election applies to all Series I bonds that you then own, those subsequently acquired, and to any other obligations purchased on a discount basis, such as savings bonds of Series E or EE.

(b) *Changing methods.* If you use the cash basis method, you may change to the accrual basis method without obtaining permission from the Internal Revenue Service. However, once you elect to use the accrual basis method in paragraph (a)(2), you may change the method of reporting the increase only by following the specific procedures prescribed by the Internal Revenue Service for making an automatic method change. For further information, you may contact the Internal Revenue Service director for your area, or the Internal Revenue Service, Washington, DC 20224.

3. What transactions have potential tax consequences?

The following types of transactions, among others, may have potential tax consequences:

(a) A reissue that affects the rights of any of the persons named on a definitive Series I savings bonds may have tax consequences for the owner.

(b) The transfer of a book-entry Series I savings bonds from one owner to another may have tax consequences for the purchaser.

(c) The redemption of a book-entry Series I savings bonds by the secondary owner may have tax consequences for the primary owner.

(d) The purchase of a Series I savings bonds as a gift may have gift tax consequences for the purchaser.

PART 360—REGULATIONS GOVERNING DEFINITIVE UNITED STATES SAVINGS BONDS, SERIES I

6. The authority citation for part 360 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3105 and 3125.

7. Revise the heading of part 360 to read as set forth above.

8. Revise § 360.0 to read as follows:

§ 360.0 Applicability

The regulations in this part govern transactions in definitive United States Savings Bonds of Series I bearing issue dates of September 1, 1998, or later.

9. Revise paragraph (a) of § 360.2 to read as follows:

§ 360.2 Definitions.

(a) *Bond*, or *Series I savings bonds*, as used in this part, means a definitive United States Savings Bonds of Series I.

* * * * *

10. Add part 363 to read as follows:

PART 363—REGULATIONS GOVERNING SECURITIES HELD IN THE NEW TREASURY DIRECT SYSTEM

Subpart A—General

Sec.
363.0 What is the New Treasury Direct system?
363.1 What Treasury securities are covered by these regulations?
363.2 What agency administers New Treasury Direct?
363.3 What Treasury securities may be held in New Treasury Direct?
363.4 How is New Treasury Direct different from the Treasury Direct system?
363.5 How do I contact Public Debt?
363.6 What special terms do I need to know to understand this part?
363.7–363.14 [Reserved]

Subpart B—New Treasury Direct System

363.15 What is a New Treasury Direct account?
363.16 Who is eligible to open a New Treasury Direct account?
363.17 How can I open a New Treasury Direct account?
363.18 How will you authenticate my identity?
363.19 What is the procedure for offline authentication?
363.20 How do I access my account?
363.21 Who is liable if someone else accesses my New Treasury Direct account using my password?
363.22 Is Public Debt liable if the electronic transmission of my data is intercepted?
363.23 What should I do if I become aware that my password has become compromised?
363.24 What transactions can I perform online through my New Treasury Direct account?
363.25 How do I conduct transactions in my account or in Treasury securities held in my account?
363.26 What is a transfer?
363.27 May a New Treasury Direct account be opened in the name of a minor?
363.28 What is the procedure for opening a New Treasury Direct account for a minor?
363.29 How are transactions conducted in the minor's account?
363.30 What transactions are permitted in securities held in the New Treasury Direct account of a minor?
363.31 How can a minor gain control of his or her account when he or she reaches the age of 18 years?
363.32 Does Public Debt assume any liability for any transactions conducted by a parent or legal guardian in the minor's account?
363.33 Can an attorney-in-fact conduct transactions in my New Treasury Direct account?
363.34 What happens if an owner becomes incompetent after opening a New Treasury Direct account?
363.35 When is a transaction effective?
363.36 What securities can I purchase and hold in my New Treasury Direct account?
363.37 How do I purchase eligible Treasury securities to be held in my New Treasury Direct account?
363.38 What happens if the ACH debit for purchase of a book-entry Series I savings bonds is returned by my financial institution?
363.39 Will I receive a confirmation of my request to purchase a Treasury security?
363.40 How are payments of principal and interest made?
363.41 What happens if an ACH payment of principal or interest to my account at a financial institution is returned to Public Debt?
363.42 How will my interest income be reported for tax purposes?
363.43 What are the procedures for certifying my signature on an offline application for a New Treasury Direct account, or on an offline transaction form?
363.44–363.49 [Reserved]

Subpart C—Book-Entry Series I Savings Bonds

General

363.50 What Treasury securities does this subpart cover?
363.51 Who may purchase and hold a book-entry Series I savings bonds?
363.52 What amount of book-entry Series I savings bonds may I purchase in one year?
363.53 What is the minimum amount of book-entry Series I savings bonds that I may purchase in any transaction?
363.54 What is the minimum amount of a book-entry Series I savings bonds that I must hold in my account?
363.55 May I transfer my book-entry savings bonds to another person?
363.56 What is the minimum amount of book-entry Series I savings bonds that I may transfer in any one transaction?
363.57 What is the minimum amount of book-entry Series I savings bonds that I may redeem in any one transaction?
363.58 May book-entry Series I savings bonds be pledged or used as collateral?
363.59–363.64 [Reserved]

Registration

363.65 What do I need to know about the registration of book-entry Series I savings bonds?
363.66 What forms of registration are available for book-entry Series I savings bonds?
363.67 What do I need to know about the single owner form of registration?
363.68 What do I need to know about the owner with beneficiary form of registration?
363.69 What do I need to know about the primary owner with secondary owner form of registration?
363.70 What are special forms of registration?
363.71 What special forms of registration are permitted?
363.72–363.79 [Reserved]

Minors

363.80 May a minor purchase book-entry Series I savings bonds?
363.81 May book-entry Series I savings bonds be purchased for a minor as a gift?
363.82 May an account owner deliver a book-entry Series I savings bonds purchased as a gift to a minor?
363.83 May an account owner transfer a book-entry Series I savings bonds to a minor?
363.84 [Reserved]

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363.126 Under what circumstances will payment be made?
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363.177 May Public Debt amend or supplement these regulations?

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*, 3105 and 3125; 12 U.S.C. 391

Subpart A—General

§ 363.0 What is the New Treasury Direct system?

The New Treasury Direct system (New Treasury Direct) is an online account system in which you may hold and conduct transactions in eligible book-entry Treasury securities.

§ 363.1 What Treasury securities are covered by these regulations?

The regulations in this part apply to book-entry Treasury securities held in the New Treasury Direct system.

§ 363.2 What agency administers New Treasury Direct?

The Bureau of the Public Debt (Public Debt), Department of the Treasury (Treasury) is responsible for administering New Treasury Direct. Public Debt may delegate authority to process certain transactions in New Treasury Direct to Federal Reserve Banks and Branches as fiscal agents of the United States.

§ 363.3 What Treasury securities may be held in New Treasury Direct?

Initially, only book-entry Series I savings bonds may be held in New Treasury Direct. We intend to offer other Treasury securities to be held in New Treasury Direct in future releases to the system.

§ 363.4 How is New Treasury Direct different from the TreasuryDirect system?

New Treasury Direct is an online (Internet-based) system. The existing *TreasuryDirect* system (*TreasuryDirect*) is a separate book-entry system, available since 1986, for marketable Treasury securities only. The terms and conditions for *TreasuryDirect* are found at part 357, and are substantially different from the terms and conditions of securities held in New Treasury Direct.

§ 363.5 How do I contact Public Debt?

(a) Emails may be sent to: <treasury.direct@bpd.treas.gov>. We will reply by e-mail unless you request otherwise. We are not responsible for the security of e-mail messages you may send to us, or replies we may send to you.

(b) Letters should be addressed to: Bureau of the Public Debt, New Treasury Direct, Parkersburg, WV 26106–1328.

§ 363.6 What special terms do I need to know to understand this part?

Account means a New Treasury Direct account as described in § 363.15.

Authentication service means a public or private service that authenticates the identity of an online applicant for a New Treasury Direct account using information provided by the applicant.

Automated Clearing House (ACH) means a funds transfer system governed by the Rules of the National Automated Clearing House Association (NACHA). NACHA provides for the interbank clearing of electronic entries for participating financial institutions.

Beneficiary refers to the second individual named in the registration of a security held in the New Treasury Direct system registered "John Doe SSN 123–45–6789 POD (payable on death to) Joseph Doe SSN 987–65–4321." In this example, Joseph Doe is the beneficiary.

Book-entry security means a Treasury security maintained by us in electronic or paperless form as a computer record.

Business day means any day that funds may be settled through ACH.

Court means a court of law with jurisdiction over the parties and the subject matter.

Definitive security means a Treasury security held in paper form.

Delivery means moving a minimum amount of $25 (consisting of principal and proportionate interest) of a security held as a gift from the account of the purchaser to the account of the recipient.

Depository financial institution means an entity described in 12 U.S.C. 461 (b)(1)(A)(i)–(vi).

Federal Reserve Bank (Reserve Bank) means a Federal Reserve Bank or Branch.

Final maturity of a savings bonds means the date beyond which an unredeemed savings bonds no longer earns interest.[1]

Gift means a Treasury security purchased for or transferred to an intended recipient, without consideration.

Individual means a natural person. Individual does not mean an organization, representative, or fiduciary.

Interest on a savings bonds means the difference between the principal (par) and the redemption value of the bond.

Legal guardian of a minor or incompetent person refers to the court-appointed or otherwise qualified person, regardless of title, who is legally authorized to act for the minor or incompetent individual.

Legal representative refers to the court-appointed or otherwise qualified person, regardless of title, who is legally authorized to manage and settle the estate of a decedent. The term includes an executor and an administrator.

Legally incompetent means a court has declared an individual to be incapable of handling his or her business affairs.

Minor means an individual who is under the age of 18 years.

Online means use of the Internet.

Owner is either a single owner, the first person named in the registration of a security held in the owner with beneficiary form of registration, or the primary owner of a security held in the primary owner with secondary owner form of registration.

Person means an entity including an individual, trust, estate, corporation, government entity, association, partnership, and any other similar organization. Person does not mean a Federal Reserve Bank.

Primary owner means the first person named in the registration of a security held in New Treasury Direct registered, *e.g.*, "John Doe SSN 123–45–6789 with Joseph Doe SSN 987–65–4321." In this example, John Doe is the primary owner.

Principal amount means the amount of the original investment. Principal

[1] 1 Series I savings bonds have a maturity period of 30 years, consisting of an original maturity period of 20 years and an extension period of 10 years.

amount does not include any interest earned.

Recipient means the person to whom a gift is given.

Redemption of a savings bonds refers to the payment of principal and interest at final maturity, or prior to final maturity at the option of the owner. The owner may redeem all principal and interest or a portion of the principal and the proportionate amount of interest.

Redemption value means principal plus accrued interest of a bond, or a portion of the principal plus a proportionate amount of accrued interest on the bond, as of the date of redemption.

Registration or *Registered* means that the name and taxpayer identification number(s) (TIN) of the person(s) named on the security are maintained on our records.

Secondary owner means the second person named in the registration of a book-entry security held in New Treasury Direct registered, *e.g.* "John Doe SSN 123–45–6789 with Joseph Doe SSN 987–65–4321." In this example, Joseph Doe is the secondary owner.

Security, or *Treasury security*, as used in this part, means an obligation issued by Treasury that may be held in New Treasury Direct.

Series I savings bonds is a savings bonds, either in definitive (paper) form or in book-entry form, that sells at par and pays interest in accordance with a formula that includes a fixed component and a component indexed to the rate of inflation.

Signature guarantee program means a signature guarantee program established under 17 CFR 240.17Ad–15, issued under authority of the Securities Exchange Act of 1934. For the purpose of this part, we recognize the Securities Transfer Agents Medallion Program (STAMP), the Stock Exchanges Medallion Program (SEMP), and the New York Stock Exchange, Inc., Medallion Signature Program (MSP). These certifications are acceptable for transfers of securities, but are not acceptable for offline account establishment.

Single owner means the person named in the registration of a book-entry Treasury security without a beneficiary or secondary owner.

Social security account number or *social security number (SSN)* means the identifying number required on tax returns and other documents submitted to the Internal Revenue Service by an individual. A SSN is composed of nine digits separated by two hyphens, for example, 123–45–6789.

Taxpayer identification number (TIN) means the identifying number required on tax returns and other documents submitted to the Internal Revenue Service; that is, an individual's social security number (SSN) or an employer identification number (EIN). A SSN is composed of nine digits separated by two hyphens, for example, 123–45–6789. An EIN is composed of nine digits separated by one hyphen, for example, 12–3456789. The hyphens are an essential part of the numbers.

Transaction is any action affecting Treasury securities or account information.

Transfer means moving a minimum amount of $25 (consisting of principal and proportionate interest) of a security from one New Treasury Direct account to another New Treasury Direct account in a transaction involving a change in the ownership of the security. The transfer of a specific security may be restricted by the terms of this part that apply to that security.

We, *us*, or *our* refers to the Bureau of the Public Debt. The term includes the Secretary of the Treasury and the Secretary's delegates at the Treasury Department and Bureau of the Public Debt. The term also includes any fiscal or financial agent we designate to act on behalf of the United States.

You or *your* refers to a New Treasury Direct account holder.

§§ 363.7–363.14 [Reserved]

Subpart B—New Treasury Direct System

§ 363.15 What is a New Treasury Direct account?

A New Treasury Direct account is an online account maintained by us solely in your name in which you may hold and conduct transactions in eligible book-entry Treasury securities. Your New Treasury Direct account may contain Treasury securities that are your personal holdings, gifts that have not yet been delivered, and Treasury securities that you hold on behalf of someone else, as permitted by these regulations.

§ 363.16 Who is eligible to open a New Treasury Direct account?

In order to open a New Treasury Direct account, you must:

(a) Have a valid social security number;

(b) Have a United States address of record;

(c) Have an account at a United States depository financial institution that will accept debits and credits using the Automated Clearing House method of payment;

(d) Be 18 years of age or over;

(e) Be legally competent; and

(f) Be an individual.

§ 363.17 How can I open a New Treasury Direct account?

You must establish a New Treasury Direct account online before you purchase a Treasury security to be held in your account. Instructions for online account establishment may be found at the official Public Debt website at *http://www.publicdebt.treas.gov*, or such other Internet address as Public Debt may from time to time announce by publication in the **Federal Register**. When you have completed the application, you will create a password to access your account. We will authenticate your identity and send your account number to you by email when your account application is approved.

§ 363.18 How will you authenticate my identity?

We may use an online authentication service to authenticate your identity using information you provide about yourself on the application. At our option, we may require offline authentication.

§ 363.19 What is the procedure for offline authentication?

In the event we require offline authentication, we will provide a printable authentication form. Your signature on the form must be certified or guaranteed as provided at § 363.43, and the form must be mailed to us at the address provided in § 363.5.

§ 363.20 How do I access my account?

You may access your account online using your account number and password.

§ 363.21 Who is liable if someone else accesses my New Treasury Direct account using my password?

You are solely responsible for the confidentiality and use of your password. We will treat any transactions conducted using your password as having been authorized by you. We are not liable for any loss, liability, cost or expense that you may incur as a result of transactions made using your password.

§ 363.22 Is Public Debt liable if the electronic transmission of my data is intercepted?

We are not liable for any interception of electronic data or communication.

§ 363.23 What should I do if I become aware that my password has become compromised?

You should change your password immediately if you become aware that your password has become compromised. If you become aware of any misuse of your password, you should notify us by email at *treasury.direct@bpd.treas.gov* or call us at 304–480–8783.

§ 363.24 What transactions can I perform online through my New Treasury Direct account?

The following transactions are by way of illustration only, and are not intended to limit transactions that may be added to the system in the future:

(a) You can purchase eligible Treasury securities in your own right or as gifts;

(b) You can redeem savings bonds;

(c) You can make changes to the registration of securities held in your account on which you are the single owner, owner with beneficiary, or primary owner;

(d) You can transfer a Treasury security to another person;

(e) You can grant and revoke the right to view a security held in your account to any other New Treasury Direct account owner, providing the security is:

(1) in the single owner form of registration, and

(2) not being held in your account as a gift;

(f) You can grant and revoke the right to view a security held in your account to the beneficiary named in the registration of the security, if the beneficiary is a New Treasury Direct account owner;

(g) You can grant and revoke the right to view or the rights to view and redeem a security on which you are the primary owner to the secondary owner, if the secondary owner is a New Treasury Direct account owner;

(h) You can view or redeem Treasury securities on which you are the secondary owner, if the primary owner has granted those rights to you, and if you are a New Treasury Direct account owner;

(i) You can deliver gift Treasury securities to the New Treasury Direct account of another person;

(j) You can make changes to your account information;

(k) You can change your ACH information;

(l) You can view a history of purchases, transactions, and pending transactions;

(m) You can change or delete pending transactions;

(n) You can change your password; and

(o) You can change account security information.

§ 363.25 How do I conduct transactions in my account or in Treasury securities held in my account?

We will provide online instructions for conducting transactions through your account. If you are unable to conduct a transaction online, you should contact us at the address provided in § 363.5. Offline transactions will require a certified or guaranteed signature. See § 363.43 for instructions for obtaining a certified or guaranteed signature.

§ 363.26 What is a transfer?

(a) A transfer is a transaction to move a minimum amount of $25 (consisting of principal and proportionate interest) of a Treasury security from one New Treasury Direct account to another New Treasury Direct account, in which the ownership of the security changes.

(b) Transfers of a specific type of security may be limited by the subparts that refer to that security.

§ 363.27 May a New Treasury Direct account be opened in the name of a minor?

A parent or legal guardian may open an account for a minor. The parent or legal guardian must have an existing New Treasury Direct account in order to open the minor's account. The parent or legal guardian will open the minor's account through the New Treasury Direct account of the parent or guardian. The account will be held in the name and SSN of the minor.

§ 363.28 What is the procedure for opening a New Treasury Direct account for a minor?

Online instructions will be provided to the parent or legal guardian of a minor for establishing an account for a minor child. The parent or legal guardian will select the password for the account. The parent or legal guardian must certify that he or she is acting on behalf of the minor, and that all transactions conducted through the account will be on the minor's behalf.

§ 363.29 How are transactions conducted in the minor's account?

The parent or guardian must conduct all transactions in the minor's account on behalf of the minor.

§ 363.30 What transactions are permitted in securities held in the New Treasury Direct account of a minor?

We will not permit purchases or transfers to be conducted from the account of a minor. Treasury securities may be transferred to the minor's account, and gift Treasury securities may be delivered to the minor's account.

§ 363.31 How can a minor gain control of his or her account when he or she reaches the age of 18 years?

The parent or legal guardian who opened the account on the minor's behalf must provide the minor with the password and control of the account when the minor reaches the age of 18 years. If the parent or guardian fails to provide the password and control of the account to the minor when he or she reaches the age of 18 years, the minor may contact us for instructions.

§ 363.32 Does Public Debt assume any liability for any transactions conducted by a parent or legal guardian in the minor's account?

We assume no liability for any transactions conducted by any person in an account opened on behalf of a minor.

§ 363.33 Can an attorney-in-fact conduct transactions in my New Treasury Direct account?

(a) An attorney-in-fact who provides a copy of a durable power of attorney granting him or her the authority to conduct New Treasury Direct transactions on behalf of the owner may conduct transactions online.

(b) An attorney-in-fact who provides a copy of a limited power of attorney may only conduct transactions that he or she is permitted by his or her power. Such transactions will be through an offline process.

(c) A written copy of the power of attorney must be sent to the address provided in § 363.5. We may require any additional evidence that we consider necessary to support the power.

§ 363.34 What happens if an owner becomes incompetent after opening a New Treasury Direct account?

If we receive written notice that the owner of a New Treasury Direct account has become incompetent, we will suspend all transactions in the account until we establish the authority of another person to act in his or her behalf.

§ 363.35 When is a transaction effective?

A transaction is effective when we post it to our records.

§ 363.36 What securities can I purchase and hold in my New Treasury Direct account?

You can purchase and hold eligible Treasury securities in your account. Initially, the only eligible securities will be book-entry Series I savings bonds. We intend to designate additional Treasury securities as eligible securities from time to time.

§ 363.37 How do I purchase eligible Treasury securities to be held in my New Treasury Direct account?

Eligible Treasury securities can only be purchased online through your New Treasury Direct account. Payment for the securities is made by a debit to your designated account at a United States

depository financial institution using the ACH method.

§ 363.38 What happens if the ACH debit for purchase of a book-entry Series I savings bonds is returned by my financial institution?

If your designated financial institution returns the ACH debit for payment of a bond, we reserve the right to reinitiate the debit at our option, and to remove the bond from your New Treasury Direct account. We are not responsible for any fees your financial institution may charge relating to returned ACH debits.

§ 363.39 Will I receive a confirmation of my request to purchase a Treasury security?

At the time that you submit a request to purchase a Treasury security through your New Treasury Direct account, we will make available a printable online confirmation of your request. Final confirmation will occur when the security is issued into your account. You will not receive a mailed confirmation.

§ 363.40 How are payments of principal and interest made?

You must select a specific bank account at a United States depository financial institution for your payment. This selected bank account may be the same one that you designated as your primary bank account in your New Treasury Direct account, or it may be a different bank account. We will make payments using the ACH method.

§ 363.41 What happens if an ACH payment of principal or interest to my account at a financial institution is returned to Public Debt?

We will notify you electronically of the returned payment. We will hold your payment until you provide us with instructions. Returned payments will not earn interest. We reserve the right to redirect returned payments to the bank account at a financial institution that you have designated in your New Treasury Direct account as your primary bank account, if that account is different from the one that returned the payment to us. We are not responsible for any fees your financial institution may charge relating to returned ACH payments.

§ 363.42 How will my interest income be reported for tax purposes?

When you open your New Treasury Direct account, you consent to receive the appropriate tax reporting forms by electronic means. We will notify you when your tax reporting forms are available. The form will be available in printable form through your New Treasury Direct account. If you withdraw your consent to receive tax reporting forms by electronic means, we reserve the right to redeem any Series I savings bonds held in your account and close your account.

§ 363.43 What are the procedures for certifying my signature on an offline application for a New Treasury Direct account, or on an offline transaction form?

(a) *Certification within the United States.* For certifications within the United States, the certifying individual must be authorized to bind his or her institution by his or her acts, to guarantee signatures to assignments of securities, or to certify assignments of securities. The following table provides a list of authorized certifying individuals and the required evidence of authority. Members of Treasury-recognized signature guarantee programs are for security transfers only.

Who can certify signatures in the U.S.	Evidence of certifying individual's authority
(1) Officers and employees of depository institutions	(i) We require the institution's seal or signature guarantee stamp. (ii) If the institution is an authorized paying agent for U.S. Savings Bonds, we require a legible imprint of the paying agent's stamp.
(2) Institutions that are members of Treasury—recognized signature guarantee programs (for security transfers only).	We require the imprint of the signature guarantee stamp, i.e., the STAMP, SEMP, or MSP stamp for members of the Securities Transfer Agents Medallion Program, the Stock Exchanges Medallion Program, or the New York Stock Exchange Inc. Medallion Signature Program.
(3) Officers and employees of corporate central credit unions, Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives, the Central Bank for Cooperatives, and Federal Home Loan Banks.	We require the entity's seal.
(4) Commissioned or warrant officers of the United States Armed Forces, for signatures executed by Armed Forces personnel, civilian field employees, and members of their families.	(i) We require a statement that the person executing he assignment is one whose signature the officer is authorized to certify under our regulations. (ii) The certifying official's rank must be shown.
(5) A judge or clerk of the court	We require the seal of the court.
(6) Other persons as designated by the Commissioner or Deputy Commissioner of Public Debt.	Evidence is determined by our procedures.

(b) *Certification within foreign countries.* The following table lists the authorized certifying individuals for foreign countries and the required evidence of the individual's authority.

Who can certify signatures in foreign countries	Evidence of certifying individual's authority
(1) United States diplomatic or consular officials	(i) We require the seal or stamp of the office. (ii) If there is no seal or stamp, then we require certification by some other authorized individual, under seal or stamp.
(2) Managers and officers of foreign branches of U.S. depository institutions and institutions that are members of Treasury-recognized signature guarantee programs (for security transfers only).	We require the seal of the depository institution, or the imprint of the signature guarantee stamp, i.e., the STAMP, SEMP, or MSP stamp for members of the Securities Transfer Agents Medallion Program, the Stock Exchanges Medallion Program, or the New York Stock Exchange Incorporated Medallion Signature Program.
(3) Notaries Public and other officers authorized to administer oaths, provided their authority is certified by a United States diplomatic or consular official.	(i) We require the official seal or stamp of the office. (ii) If there is no seal or stamp, the position must be certified by some other authorized individual, under seal or stamp, or otherwise proved to our satisfaction.

(c) *Duties and liabilities of certifying individuals.*

(1) The certifying individual must first establish the identity of the signer.

(2) The form must be signed in the presence of the certifying individual.

(3) If the certifying individual is not an officer, the certifying individual must insert the words "Authorized Signature" in the space provided for the title.

(4) If the certifying individual is negligent in making the certification, the certifying individual and his or her organization are jointly and severally liable for any loss the United States may incur as a result of the negligence.

(d) *Guaranteed signatures.* (1) A security or other form requiring certification need not be executed in the presence of a certifying individual if the signature is unconditionally guaranteed by the certifying individual. To guarantee a signature, the certifying individual must add a dated endorsement after the signature. For example:

Signature guaranteed, First National Bank of Smithville, Smithville, NH, by A. B. Doe, President, dated 1/1/2001.

(2) The certifying individual and his or her organization unconditionally guarantee to us that the signature is genuine and the signer had the legal capacity to execute the assignment or related form.

(e) *Guaranteed absence of a signature.* (1) A form requiring a certified signature need not be signed when a certifying individual associated with a depository financial institution places the following endorsement on the security or the form:

Absence of signature by owner and validity of transaction guaranteed, Second State Bank of Jonesville, Jonesville, NC, by B. R. Butler, Vice President, dated 11/1/2001.

(2) The endorsement must be dated and the seal of the institution must be added.

(3) This form of endorsement is an unconditional guarantee to us that the institution is acting for the signer under proper authorization.

(f) *Persons who cannot act as certifying individuals.* Any person having an interest in a security involved in the transaction cannot act as a certifying individual. However, an authorized officer or employee of a depository financial institution that is a member of a Treasury-recognized signature guarantee program can act as a certifying individual for transfer of a security to the institution or on behalf of the institution.

§§ 363.44–363.49 [Reserved]

Subpart C—Book-Entry Series I Savings Bonds

General

§ 363.50 What Treasury securities does this subpart cover?

This subpart covers book-entry Series I savings bonds only. As we designate other securities as eligible to be held in New Treasury Direct, the applicable terms and conditions will be set forth in separate subparts. The offering of Series I savings bonds is contained in part 359.

§ 363.51 Who may purchase and hold a book-entry Series I savings bonds?

(a) A New Treasury Direct account holder may purchase and hold bonds through his or her account.

(b) Bonds may not be purchased through the account of a minor.

(c) We do not permit a legally incompetent person to purchase savings bonds once we have been provided with an acceptable court order determining incompetency.

(d) We do not permit a legal representative or a legal guardian to purchase savings bonds on behalf of the estate of a decedent or an incompetent person.

§ 363.52 What amount of book-entry Series I savings bonds may I purchase in one year?

(a) *Purchase limitation.* The amount of bonds that you may purchase in any calendar year is limited to $30,000 per account.

(b) *Computation of amount for gifts.* Bonds purchased or transferred as gifts will be included in the computation of the purchase limitation for the account of the recipient for the year in which the bonds are delivered to the recipient.

§ 363.53 What is the minimum amount of book-entry Series I savings bonds that I may purchase in any transaction?

Each bond purchase must be in a minimum amount of $25, with additional one-cent increments above that amount, in any one transaction. For example, a purchase may be $25.00, $25.01, $25.02, or $25.03, and so forth.

§ 363.54 What is the minimum amount of a book-entry Series I savings bonds that I must hold in my account?

Each bond held in your account must have a redemption value of at least $25. If you request a transaction that would reduce the remaining redemption value of the bond to an amount less than $25, we will not permit the transaction to occur.

§ 363.55 May I transfer my book-entry savings bonds to another person?

(a) You may transfer a bond or a portion of a bond to the New Treasury Direct account of another individual as a gift, or in response to a final judgment, court order, a divorce decree, or property settlement agreement. You must certify online that the transfer is a gift or a specified exception.

(b) We do not permit the transfer of Series I savings bonds for consideration, unless it is an exception specified in paragraph (a) of this section.

(c) The bond will be transferred in the single owner form of registration.

(d) We reserve the right to limit the transferability of Series I savings bonds at any time by amendment to these regulations.

§ 363.56 What is the minimum amount of book-entry Series I savings bonds that I may transfer in any one transaction?

Each transfer must be in a minimum amount of $25 redemption value, with additional one-cent increments above that amount, in any one transaction. For example, you may transfer $25.00, $25.01, $25.02, or $25.03, and so forth. Transfers will be comprised of principal and proportionate interest.

§ 363.57 What is the minimum amount of book-entry Series I savings bonds that I may redeem in any one transaction?

Each redemption must be in a minimum amount of $25 redemption value, with additional one-cent increments above that amount, in any one transaction. For example, you may redeem $25.00, $25.01, $25.02, or $25.03, and so forth. Redemptions will be comprised of principal and proportionate interest.

§ 363.58 May book-entry Series I savings bonds be pledged or used as collateral?

Bonds may not be pledged or used as collateral for the performance of an obligation.

§§ 363.59–363.64 [Reserved]

Registration

§ 363.65 What do I need to know about the registration of book-entry Series I savings bonds?

(a) Registration must express the actual ownership of, and interest in, the bond. Registration conclusively establishes ownership of a bond.

(b) You must provide a last name and a first name for each individual included in the registration.

(c) You must provide the valid social security number of the owner of the bond.

§ 363.66 What forms of registration are available for book-entry Series I savings bonds?

The forms of registration available are single owner, owner with beneficiary, primary owner with secondary owner, and several special forms of registration.

§ 363.67 What do I need to know about the single owner form of registration?

(a) An individual is the single owner of the bond.

(b) A single owner may add a beneficiary or secondary owner.

(c) A single owner may conduct online transactions on bonds held in his or her account.

(d) Upon the death of the single owner, his or her estate is entitled to the bond. In determining entitlement, the law of the decedent's domicile will be followed.

(e) Registration example: "John Doe, SSN 123–45–6789."

§ 363.68 What do I need I need to know about the owner with beneficiary form of registration?

(a) The purchaser must be named as the owner with another individual as beneficiary.

(b) The owner may remove or change the beneficiary without the consent of the beneficiary.

(c) The owner may conduct online transactions on bonds held in his or her account without the consent of the beneficiary.

(d) The beneficiary has no ownership rights to the bond during the owner's lifetime. Upon the death of the owner, the beneficiary is the absolute owner of the bond, despite any attempted testamentary disposition by the owner or any state law to the contrary.

(e) If the beneficiary does not survive the owner, the bond belongs to the estate of the owner.

(f) If both the owner and the beneficiary die under conditions where it cannot be established, either by presumption of law or otherwise, which one died first, the bond is the property of the estate of the owner.

(g) In order for the beneficiary to obtain the bond or the bond proceeds after the death of the owner, the beneficiary must provide proof of death of the owner. If the beneficiary has a New Treasury Direct account, the bond will be transferred to that account. If the beneficiary does not have an account, he or she may establish an account or request redemption. If the beneficiary requests redemption, he or she must provide ACH instructions for the payment.

(h) Registration example: "John Doe, SSN 123–45–6789 POD (payable on death to) Jane Doe, SSN 987–65–4321."

§ 363.69 What do I need to know about the primary owner with secondary owner form of registration?

(a) The purchaser must be named in the registration as the primary owner.

(b) The primary owner holds the bonds in his or her account and may view or conduct online transactions in the bonds.

(c) The primary owner may remove the secondary owner without the consent of the secondary owner.

(d) The secondary owner has no rights to view or conduct transactions in any bond unless the primary owner gives the secondary owner these rights.

(e) The primary owner may give the secondary owner the right to view any bond or rights to view and redeem any bond, online from the account of the secondary owner.

(f) Once the right to conduct transactions in a bond has been given to the secondary owner, the primary owner may view and conduct transactions in the bond from his or her account, and the secondary owner may view and redeem the bond using his or her own account.

(g) The primary owner may revoke any rights previously given to the secondary owner at any time.

(h) Upon the death of either the primary or secondary owner, the survivor is the absolute owner of the bond, despite any attempted testamentary disposition or any state law to the contrary.

(i) If both the primary and the secondary owner die under conditions where it cannot be established, either by presumption of law or otherwise, which one died first, the bond is the property of the estate of the primary owner.

(j) In order for the secondary owner to obtain the bond or the bond proceeds after the death of the owner, the secondary owner must provide proof of death of the owner. If the secondary owner has a New Treasury Direct account, the bond will be transferred to that account. If the secondary owner does not have an account, he or she may establish an account or request redemption. If the secondary owner requests redemption, he or she must provide ACH instructions.

(k) Registration example: "John Doe, SSN 123–45–6789 with Joseph Doe, SSN 987–65–4321."

§ 363.70 What are special forms of registration?

(a) Special forms of registration are used when a legal guardian or representative is appointed by a court to handle the affairs of a decedent or an incompetent individual.

(b) Special forms of registration are not permitted on original issue.

(c) Bonds registered in this form may be held in the New Treasury Direct account of the legal guardian or representative.

§ 363.71 What special forms of registration are permitted?

(a) *Legal guardian of the estate of an incompetent individual.* A court-appointed legal guardian may hold bonds on behalf of an incompetent individual.

(b) *Legal representative of the estate of a decedent.* A court-appointed legal representative of the estate of a decedent may hold bonds on behalf of the estate.

(c) *General rule.* Bonds registered in the name of a legal guardian of an incompetent person or legal representative of an estate will be held in the New Treasury Direct account of the legal guardian or legal representative.

§§ 363.72–363.79 [Reserved]

Minors

§ 363.80 May a minor purchase book-entry Series I savings bonds?

We do not permit a minor to purchase bonds.

§ 363.81 May book-entry Series I savings bonds be purchased for a minor as a gift?

A New Treasury Direct account owner may purchase bonds as a gift with a minor as the recipient.

§ 363.82 May an account owner deliver a book-entry Series I savings bonds purchased as a gift to a minor?

An account owner may deliver a bond purchased as a gift to the New Treasury Direct account of the recipient who is a minor.

§ 363.83 May an account owner transfer a book-entry Series I savings bonds to a minor?

An account owner may transfer a bond to a minor as a gift or pursuant to one of the specified exceptions in § 363.55(a).

§ 363.84 [Reserved]

Incompetent Person

§ 363.85 May Series I savings bonds be registered in the name of an incompetent person for whom a legal guardian has been appointed?

(a) If a person owning bonds becomes incompetent, and there is a legally qualified guardian, the bonds must be registered in the name of the guardian.

(b) We will require satisfactory evidence of appointment.

(c) Registration will be as follows: "John Doe, SSN 123–45–6789, Legal Guardian of the estate of James Doe, an incompetent, SSN 987–65–4321."

§§ 363.86–363.89 [Reserved]

Deceased Owners

§ 363.90 What happens when a New Treasury Direct account owner dies and his or her estate is entitled to Series I savings bonds held in the account?

(a) *Estate is being administered.* (1) We will require appropriate proof of appointment for the legal representative of the estate. Letters of appointment must be dated within six months of submission, unless the appointment was made within one year before submission.

(2) The bonds will be registered in the following form: "John Doe, SSN 123–45–6789, Legal Representative of the estate of James Doe, deceased, SSN 987–65–4321."

(3) The bonds may be held in the New Treasury Direct account of the legal representative.

(4) The legal representative of the estate may request payment of bonds to the estate or to the person(s) entitled, or may have the bonds transferred to the New Treasury Direct account(s) of the person(s) entitled.

(5) The legal representative of the estate may not purchase bonds on behalf of the estate.

(6) If payment is requested, we will require ACH instructions.

(b) *Estate has been settled previously.* If the estate has been previously settled through judicial proceedings, the person(s) entitled may request payment of bonds or may have the bonds transferred to the New Treasury Direct account of the person(s) entitled. If payment is requested, we will require ACH instructions. We will require a certified copy of the court-approved final accounting for the estate, the court's decree of distribution, or other appropriate evidence.

(c) *Summary administration procedures.* If there is no formal administration and no representative of the estate is to be appointed, the person(s) entitled under state law summary or small estates procedures may request payment of bonds or may have the bonds transferred to the New Treasury Direct account(s) of the person(s) entitled. We will require appropriate evidence. If payment is requested, we will require ACH instructions.

(d) *Survivors' order of precedence for payment or transfer.* If there has been no administration, no administration is contemplated, no summary or small estate procedures have been used, and the redemption value of the bonds is $100,000 or less,[2] then bonds may be paid or transferred to the persons named in the following order of precedence:

(1) There is a surviving spouse and no surviving child or descendant of a deceased child: to the surviving spouse.

(2) There is a surviving spouse and a child or children of the decedent, or descendants of deceased children: one-half to the surviving spouse and one-half to the child or children of the decedent, and the descendants of deceased children, by representation, or by agreement of all persons entitled in this class;

(3) There is no surviving spouse and there is a surviving child or descendant of deceased children: to the child or children of the decedent, and the descendants of deceased children, by representation.

(4) There are no surviving spouse, no surviving child, and no surviving descendants of deceased children: to the parents of the decedent, one-half to each, or in full to the survivor.

(5) There are no surviving spouse, no surviving child or surviving descendants of deceased children, and no surviving parents: to the brothers and sisters and descendants of deceased brothers and sisters by representation.

(6) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, and no brothers or sisters or descendants of deceased brothers and sisters: to other next of kin, as determined by the laws of the decedent's domicile at the time of death.

(7) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, no brothers or sisters or descendants of deceased brothers and sisters, and no next of kin, as determined by the laws of the decedent's domicile at the time of death: to persons related to the decedent by marriage, *i.e.*, heirs of a spouse of the last decedent where the spouse predeceased that registrant.

(8) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, no brothers or sisters or descendants of deceased brothers and sisters, no next of kin, as determined by the laws of the decedent's domicile at the time of death, and no persons related to the decedent by marriage: to the person who paid the burial and funeral expenses, or a creditor of the decedent's estate, but payment may be made only to the extent that the person has not been reimbursed. Transfers are not permitted.

(9) Escheat according to the applicable state law.

(e) When we make payments or transfers according to paragraph (d) of this section, we will make the payments by the ACH method to either a person individually, or individually and on behalf of all other persons entitled. We will require ACH instructions for payment. A person who receives payment of bond proceeds individually and on behalf of others agrees to make distribution of the proceeds to the other persons entitled by the law of the decedent's domicile. The provisions of this section are for our convenience and do not determine ownership of the bonds or their proceeds. We may rely on information provided by the person who requests payment or transfer, and are not liable for any action taken in reliance on the information furnished.

[2] We require estates with bonds over $100,000 redemption value to be administered.

§§ 363.91–363.94 [Reserved]

Gifts

§ 363.95 How may I give a book-entry Series I savings bonds as a gift?

You may give a book-entry Series I savings bonds as a gift in two ways:

(a) You may purchase a bond online as a gift; or

(b) You may transfer a bond that you own to another person as a gift with immediate delivery.

§ 363.96 What do I need to know if I initially purchase a bond as a gift?

(a) The gift bond will be registered in the name of the recipient(s). The registration is irrevocable with regard to the owner named on the gift bond.

(b) You must provide the SSN of the recipient.

(c) You may deliver the bond upon purchase, or you may hold the bond in your New Treasury Direct account until you are ready to deliver the bond to the owner named on the gift bond.

(d) If the purchaser dies before delivering a gift bond to the recipient, the bond belongs to the owner named on the gift bond, notwithstanding any testamentary attempts to the contrary by the purchaser, or any state law to the contrary. We will hold the bond until we receive instructions from the owner named on the gift bond.

(e) When the gift bond is delivered, it will be delivered in the single owner form of registration to the owner named on the gift bond.

§ 363.97 What do I need to know if I transfer a book-entry Series I savings bonds to another person as a gift?

(a) You must certify online that the transfer is a gift.

(b) You must provide the SSN of the recipient.

(c) Once the transfer is made, the gift is irrevocable.

(d) The bond will be transferred in the single owner form of registration to the recipient.

§ 363.98 [Reserved]

§ 363.99 What is the minimum amount of a bond that I may transfer or deliver as a gift in any one transaction?

You may transfer or deliver gift bonds in any one-cent increment value equal to or greater than $25.00 redemption value. For example, you may deliver a gift bond with a redemption value of $25.00, $25.01, $25.02, and so forth. If the bond was held in your account prior to delivery to the recipient for a period of time and has accrued interest, the delivery will include principal and proportionate interest.

§§ 363.100–363.104 [Reserved]

Transactions

§ 363.105 Who has the right to conduct transactions in book-entry Series I savings bonds?

(a) *Single owner form of registration.* A single owner can conduct transactions in bonds held in his or her New Treasury Direct account.

(b) *Owner with beneficiary form of registration.* The owner can conduct transactions in bonds held in his or her New Treasury Direct account. The beneficiary has no rights during the lifetime of the owner and therefore cannot conduct transactions in the bonds.

(c) *Primary Owner with secondary owner form of registration.* The primary owner can conduct transactions in bonds held in his or her New Treasury Direct account. The secondary owner can redeem bonds using his or her New Treasury Direct account providing the primary owner has given the secondary owner that right, and has not revoked that right.

(d) *Legal guardian of an incompetent form of registration.* A legal guardian or other court-appointed representative of an incompetent can conduct transactions in bonds belonging to the incompetent consistent with the authority of the legal guardian.

(e) *Legal representative of an estate.* A legal representative of an estate can conduct transactions in bonds belonging to the estate consistent with the authority of the legal representative.

§ 363.106 How are online transactions conducted in Series I savings bonds?

We will provide online forms, including instructions, for transactions.

§ 363.107 Does Public Debt reserve the right to require that any transaction be conducted offline?

We reserve the right to require any transaction to be conducted offline using an approved form. Signatures on offline transactions must be certified or guaranteed as provided in instructions in § 363.43.

§§ 363.108–363.109 [Reserved]

Judicial and Administrative Proceedings

§ 363.110 Will Public Debt recognize a court order that attempts to defeat the survivorship rights of a beneficiary, secondary owner, or recipient of an undelivered gift bond?

We will not recognize a judicial determination that attempts to defeat or impair the rights of survivorship of a beneficiary, secondary owner, or recipient of an undelivered gift bond, after the death of the owner or primary owner.

§ 363.111 Will Public Debt accept notice of an adverse claim or notice of pending judicial proceedings involving book-entry Series I savings bonds?

We are not subject to and will not accept a notice of an adverse claim or notice of pending judicial proceedings involving book-entry Series I savings bonds.

§ 363.112 Is Public Debt a proper party in a judicial proceeding involving competing claims to a book-entry Series I savings bonds?

Treasury, Public Debt, and the Federal Reserve Banks are not proper defendants in a judicial proceeding involving competing claims to a book-entry Series I savings bonds.

§ 363.113 Will Public Debt pay or transfer book-entry Series I savings bonds pursuant to an order in a divorce proceeding?

We will pay or transfer bonds pursuant to a divorce decree that either disposes of savings bonds or ratifies a property settlement agreement disposing of bonds. The owner (as defined in § 363.6) of the bonds must be a party to the proceedings. If the divorce decree does not set out the terms of the property settlement agreement, we will require a certified copy of the agreement.

§ 363.114 Will Public Debt recognize a court order?

We will recognize a final order entered by a court that affects ownership rights in a Series I book-entry savings bonds only to the extent that the order is consistent with the provisions of this part. The owner (as defined in § 363.6) of the bond must be a party to the proceedings. We will require a certified copy of the court order.

§ 363.115 Will Public Debt pay a savings bonds pursuant to a levy?

We will pay a savings bonds pursuant to a valid levy to satisfy a money judgment against the owner (as defined in § 363.6) of the bond. Payment will be made only to the extent necessary to satisfy the money judgment.

§ 363.116 Will Public Debt pay a bond to the Internal Revenue Service (IRS) pursuant to a levy?

We will honor an IRS administrative levy under § 6331 of the Internal Revenue Code with respect to the owner (as defined in § 363.6).

§ 363.117 Will Public Debt pay a bond to a trustee in bankruptcy or similar court officer?

We will pay a savings bonds to a trustee in bankruptcy, a receiver of an insolvent's estate, a receiver in equity, or a similar court officer, if the original court order is against the owner (as defined in § 363.6).

§ 363.118 What evidence is required to establish the validity of judicial proceedings?

(a) We require certified copies of the final judgment, decree, or court order, and any necessary supplementary proceedings.

(b) A request for payment by a trustee in bankruptcy or a receiver of an insolvent's estate must be supported by evidence of appointment and qualification.

(c) A request for payment by a receiver in equity or a similar court officer (other than a receiver of an insolvent's estate), must be supported by a copy of an order that authorizes the redemption of the bond.

§ 363.119 Will Public Debt pay a bond pursuant to a forfeiture proceeding?

(a) *General.* Bonds will be paid pursuant to a judicial or administrative forfeiture made by a Federal agency. We will rely exclusively upon the information provided by the Federal forfeiting agency and will not make any independent evaluation of the validity of the forfeiture order, the request for payment, or the authority of the individual signing the request for payment. The amount paid is limited to the redemption value of the savings bonds as of the date of forfeiture. All inquiries or claims from the previous owner will be referred to the forfeiting agency.

(b) *Definition of special terms relating to forfeitures.*

Contact point means the individual designated by the Federal investigative agency, United States Attorney's Office, or forfeiting agency, to receive referrals from Public Debt, using Public Debt Form 1522.

Forfeiting agency means the federal law enforcement agency responsible for the forfeiture.

Forfeiture means the process by which property may be forfeited by a federal agency. Administrative forfeiture is forfeiture by a federal agency without judicial proceedings; judicial forfeiture is a forfeiture through either a civil or criminal proceeding in a United States District Court resulting in a final judgment and order of forfeiture.

Public Debt Form 1522 (PD 1522) is the form on which written notification of the forfeiture is provided by the forfeiting agency to Public Debt.

(c) *Procedures for a forfeiting agency to request forfeiture of Treasury securities.* A forfeiting agency must request forfeiture on PD 1522. An individual authorized by the forfeiting agency must sign the form. The completed PD 1522 must be mailed to the Department of the Treasury, Bureau of the Public Debt, Parkersburg, WV 26106–1328.

(d) *Public Debt procedures upon receipt of PD 1522.* (1) Upon receipt and review of the Public Debt Form 1522, we will make payment to the forfeiture fund specified on the form. We will record the forfeiture, the forfeiture fund into which the proceeds were paid, the contact point, and any related information.

(2) We will rely exclusively upon the information provided by the Federal agency and will not make any independent evaluation of the validity of the forfeiture order, the request for payment, or the authority of the individual signing the request for payment.

(e) *Amount paid on a forfeiture.* The amount we will pay on a forfeiture is limited to the redemption value of the savings bonds as of the date of forfeiture.

(f) *Inquiries from previous owners of forfeited Treasury securities.*

(1) We will refer all inquiries from the previous owner, including requests for payment, reissue, or applications for relief, to the contact point.

(2) We will tell the person who inquired that we referred his or her inquiry to the contact point.

(3) We will not investigate the inquiry.

(4) We will defer to the forfeiting agency's determination of the appropriate course of action, including settlement where appropriate.

(5) Any settlement will be paid from the forfeiture fund into which the proceeds were deposited.

§§ 363.120–363.124 [Reserved]

Payment

§ 363.125 How is payment made on a book-entry Series I savings bonds?

We will make payment by the ACH method to the designated account at a United States depository financial institution.

§ 363.126 Under what circumstances will payment be made?

We will make payment:

(a) Upon your request for redemption prior to maturity;

(b) When the bond reaches final maturity; and

(c) If a person who becomes entitled to the bond is unable, unwilling or ineligible to open a New Treasury Direct account.

§§ 363.127–363.129 [Reserved]

Subparts C through E [Reserved]

Subpart F Miscellaneous

§ 363.175 May Public Debt waive these regulations?

We may waive or modify any provision of the regulations in this part. We may do so in any particular case or class of cases for the convenience of the United States or in order to relieve any person or persons of unnecessary hardship:

(a) If the waiver would not be inconsistent with law or equity;

(b) If the waiver does not impair any material existing rights; and

(c) If we are satisfied that the waiver would not subject the United States to any substantial expense or liability.

§ 363.176 Can I be required to provide additional evidence to support a transaction?

We may require additional evidence and/or a bond of indemnity, with or without surety, in any case where we determine it necessary to protect the interests of the United States.

§ 363.177 May Public Debt amend or supplement these regulations?

We may amend, revise, or supplement these regulations at any time.

Dated: October 11, 2002.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 02–26406 Filed 10–11–02; 1:50 pm]

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Federal Register

Thursday,
October 17, 2002

Part VI

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program: Closing Date; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 000410097–2225–06]

[RIN 0660–ZA11]

Public Telecommunications Facilities Program: Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of Closing Date for Solicitation of Television Applications.

SUMMARY: Subject to the availability of fiscal year (FY) 2003 funds, the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for planning and construction grants for public television facilities under the Public Telecommunications Facilities Program (PTFP).

DATES: Pursuant to 15 CFR 2301.8(b), the NTIA Administrator hereby establishes the following closing date for the filing of television applications for PTFP grants. The closing date selected for the submission of all television applications for FY 2003 is Tuesday, November 19, 2002. Applications must be received prior to 6 p.m. Tuesday, November 19, 2002. Applications submitted by facsimile or electronic means are not acceptable.

ADDRESSES: Application materials may be obtained electronically via the Internet (*http://www.ntia.doc.gov/ptfp*). To obtain a printed application package, submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H–4625, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the PTFP can also be obtained electronically via the Internet (*http://www.ntia.doc.gov/ptfp*).

SUPPLEMENTARY INFORMATION:

I. Closing Date

In order to assist as many public television stations as possible in meeting the Federal Communications Commission (FCC) May 2003 deadline to begin digital broadcasting, NTIA announces that all television applicants for matching grants under the PTFP must file their applications on or before 6 p.m., Tuesday, November 19, 2002. Issuance of grants is subject to the availability of FY 2003 funds. At this time, the Congress is considering the President's request to appropriate $43.5 million for the PTFP. NTIA intends to divide any funds appropriated by the Congress into two parts. One portion of the appropriation will be set aside to fund television applications submitted in response to this Notice and radio and nonbroadcast applications submitted in response to a future Notice to be published by NTIA. A second portion of the appropriation will be set aside to fund additional phases of multi-phase projects initially funded in FY 2000, FY 2001 and FY 2002. At the appropriate time, notice will be published in the **Federal Register** about the final status of funding for the PTFP. In awarding grants, NTIA will strive to maintain an appropriate balance between traditional grants and those to stations converting to digital broadcasting. Information regarding digital television Broadcast Other projects is included in Section VII of this document. Section VII also describes revisions of the PTFP Rules which will be applicable for the FY 2003 Grant Round for television applications in the Broadcast Other category. The amount of any grants awarded by NTIA will vary, depending on the approved project. For FY 2002, NTIA awarded $37.4 million in funds to 59 television projects. The television awards ranged from $21,447 to $1,800,000.

Any applications submitted in response to this Notice which are for radio or nonbroadcast projects will be returned to the applicant without review. Applications so returned may be resubmitted at the appropriate time pursuant to a future Notice establishing a closing date for radio and nonbroadcast applications. NTIA intends to publish a Notice announcing the closing date for receipt of radio and nonbroadcast applications at a later time and anticipates that the closing date for these applications will be after February 1, 2003.

All television applications will be reviewed as a group according to the Evaluation Process discussed in Section XI. Because of the FCC digital conversion deadline, NTIA anticipates that awards for television digital conversion applications submitted in response to this Notice will be issued during the second quarter of FY 2003 (January–March 2003). Applications submitted for television replacement or signal extension projects will be awarded in the fourth quarter of FY 2003 (July–September 2003) and will compete with applications submitted in response to the future Notice announcing a closing date for radio and nonbroadcast applications.

II. Application Forms

All applicants must use the official application form for the FY 2003 grant cycle. This form expires on October 31, 2003, and no previous versions of the form may be used. Each page of the application form has the expiration date of 10/31/2003 printed on the bottom line. To apply for a PTFP grant, an applicant must file an original and five copies of a timely and complete application on the application form. Applicants for television projects are requested to supply one additional copy of their application (an original and six copies), if this does not create a hardship on the applicant. The current application form is available on the Internet and will be provided to applicants as part of the application package upon request.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid Office of Management and Budget (OMB) control number. The PTFP application form has been cleared under OMB control no. 0660–0003.

III. Authority

The Public Telecommunications Facilities Program is authorized by the Communications Act of 1934, as amended, 47 U.S.C. 390–393, 397–399(b).

IV. Catalog of Federal Domestic Assistance (CFDA)

CFDA No. 11.550, Public Telecommunications Facilities Program.

V. Regulations

The applicable Rules for the PTFP were published on November 8, 1996 (61 FR 57966). In accordance with provisions provided in 15 CFR part 2301, section 2301.26, certain requirements of the PTFP are modified in this Notice for FY 2003. Copies of the 1996 Rules are posted on the NTIA Internet site and NTIA will make printed copies available to applicants upon request. Parties interested in applying for financial assistance should refer to these rules and to the authorizing legislation (47 U.S.C. 390–393, 397–399b) for additional information on the program's goals and objectives, eligibility criteria, evaluation criteria, and other requirements.

Applicants sending applications must ensure that the carrier will be able to guarantee delivery of the application by the Closing Date and Time. Applicants should be aware that all material sent via the United States Postal Service (including "overnight" or "Express Mail") are subject to delivery delays due to increased mail security procedures at the Department of Commerce. NTIA *will not* accept applications posted on the Closing Date or later and received after the above deadline. However, if an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date, or (2) significant weather delays or natural disasters, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline.

Applicants submitting applications by hand delivery are notified that, due to security procedures in the Department of Commerce, all packages must be cleared by the Department's security office. Entrance to the Department of Commerce Building for security clearance is on the 15th Street side of the building. Applicants whose applications are not received by the deadline are hereby notified that their applications will not be considered in the current Grant Round and will be returned to the applicant. See 15 CFR 2301.8(c); but see also 15 CFR 2301.26. NTIA will also return any application which is substantially incomplete, or when the Agency finds that either the applicant or project is ineligible for funding under 15 CFR 2301.3 or 2301.4. The Agency will inform the applicant of the reason for the return of any application.

All persons and organizations on the PTFP's mailing list will be sent a notification of the FY 2003 Grant Round. Copies of the application forms, Final Rules, Closing Date notification and application guidelines will be available on the NTIA Internet site: *www.ntia.doc.gov/ptfp*. Those not on the mailing list or who desire a printed copy of these materials may obtain copies by contacting the PTFP at the telephone and fax numbers, at the Internet site, or at mailing address listed above. Prospective applicants should read the Final Rules carefully before submitting applications. Television applicants whose applications were deferred in FY 2002 will be mailed information regarding the reactivation of their applications. Applicants whose television projects were deferred from FY 2002 should carefully review Section VII. Television Broadcasting and Digital Conversion, regarding policies which apply to the reactivation of their applications.

Indirect costs for *construction* applications are not supported by this program. The total dollar amount of the indirect costs proposed in a *planning* application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

VI. Radio Broadcasting

NTIA is not accepting applications for radio projects at this time and will publish a Notice in the **Federal Register** announcing a Closing Date for radio applications in the future. NTIA will take great care to ensure that its funding of radio applications reflects its responsibilities under 47 U.S.C. 393(c) that "a substantial amount" of each year's PTFP funds should be awarded to public radio.

VII. Television Broadcasting and Digital Conversion

The FCC's adoption of the Fifth Report and Order in April 1997 requires that all public television stations begin the broadcast of a digital signal by May 1, 2003.

This deadline is only seven months from the publication date of this Notice. In FY 2000, NTIA instituted several new policies regarding applications for projects to convert public television stations to digital transmission capability. NTIA believes that the policies worked well and have permitted PTFP to assist in the digital conversion of over 200 public television stations. These policies are being continued for the FY 2003 Grant Round and are included in full in this document.

NTIA recognizes that meeting the FCC's deadline is one of the greatest challenges facing America's public television stations. Over 350 stations must overcome both technical and financial challenges in order to complete conversion to digital broadcasting within the FCC's timetable.

In February, the Administration proposed an appropriation of $43.5 million to the PTFP for FY 2003. This proposal is currently before the Congress. These funds would primarily be used to assist public television stations in meeting the FCC's deadline. While these sums are significant, NTIA anticipates that the majority of funds required to convert all the nation's public television stations will actually come from non-federal sources.

For FY 2002, NTIA awarded $36.2 million in funds to 52 projects which assisted public television stations in the conversion to digital technologies. The awards ranged from $21,447 to $1,800,000 to assist in the digital conversion of 97 public television stations.

NTIA has considered how best to distribute digital conversion funds to public television stations through the PTFP. One of NTIA's goals during the FY 2003 Grant Round is to ensure that PTFP's administrative procedures as well as its funds can support public television's needs in meeting the FCC's deadline. Another of NTIA's goals is to maintain an acceptable balance between equipment replacement projects and digital television conversion projects.

NTIA is continuing the following policies/procedures instituted during the FY 2000 grant cycle which will assist public television stations in the application for and use of PTFP funds for digital conversion projects.

These policies/procedures are summarized here and then are discussed fully in parts A through G later in this section.

(A) Digital Television Conversion Projects and Digital Equipment Replacement

NTIA has established a "Digital TV List" which includes the equipment eligible for PTFP funding under the Broadcast Other category. NTIA will also use the "Digital TV List" for most television equipment replacement projects and will modify the way it views television replacement applications.

(B) Multi-Year Funding

NTIA will accept applications under the Broadcast Other category for phased projects requesting funding for up to three years and which are intended to enable all of the applicant's public television stations to meet the FCC's digital broadcasting deadline.

(C) Effective Date for Expenditure of Local Matching Funds

Applicants for digital conversion projects in the Broadcast Other category may include eligible equipment from the Digital TV List in their projects when that equipment is purchased with non-federal funds after July 1, 1999.

(D) Subpriorities for Digital Conversion Projects

NTIA is creating three Subpriorities to aid in the processing of digital conversion applications.

(E) Funding Levels for Television Projects

NTIA has revised the presumption of funding from 50% Federal share for

most television projects to 40%. For digital television conversion applications, NTIA has established simplified procedures so stations can qualify for hardship grants up to a 67% Federal share, and will provide incentives for applicants who request only 25% Federal funding.

(F) Use of CPB Funds

Applicants may use CPB funds as part of their local non-federal match in cases of clear and compelling need.

(G) Partnerships; Urgency

NTIA encourages partnerships with commercial as well as noncommercial organizations and clarifies its consideration of urgency for digital conversion applications. NTIA believes that digital conversion applications should be afforded high urgency when they document time-sensitive partnerships, time-sensitive funding opportunities, or which include the replacement of equipment required to maintain existing service.

NTIA intends to remain responsive to the equipment replacement needs of public television stations. NTIA's balancing of equipment replacement and digital conversion applications is discussed in the following sections.

In order to assist public television stations in meeting the FCC's deadline and to facilitate a station's raising non-federal matching funds required for digital conversion projects, NTIA is modifying its application procedures in the following areas.

(A) Digital Television Conversion Projects and Digital Equipment Replacement

For FY 2003, NTIA will support the equipment necessary for a public television station to comply with the FCC's deadline. This includes equipment required for digital broadcast of programs produced locally in analog format as well as the broadcast of digital programming received from national sources. NTIA is posting on its Internet site a listing of transmission and distribution equipment (as contained in the "Digital TV List") which is eligible for PTFP digital television conversion funding. Printed copies of this list are also available from PTFP at the address shown in the **ADDRESSES** section of this document. This list was developed in conjunction with the Public Broadcasting Service and is similar to equipment lists PTFP used during last year's Grant Round. The Digital TV List includes transmission equipment (transmitters, antennas, STLs, towers, etc.) as well as distribution equipment located in a station's master control (routing switchers, video servers, PSIP generators, digital encoders, etc.). Applications seeking funding for the equipment necessary to meet the FCC's deadline will be placed in the Broadcast Other category.

NTIA believes that many stations must replace obsolete equipment in order to complete their digital conversion projects. NTIA is continuing its revised policies to permit the replacement of obsolete equipment as part of digital conversion projects. If the conversion to digital transmission includes the urgent replacement of an existing item of equipment, the application will be considered as a Broadcast Other, rather than as replacement under Priorities 2 or 4. Replacement of existing equipment then is a normal part of a digital conversion application.

If the purpose of an application is just for replacement of urgently needed equipment, even though the equipment is drawn from the Digital TV List, the application will be classified as a Priority 2 or 4, as appropriate.

Any application which includes equipment replacement as a justification for the urgency criterion should submit documentation of downtime or other evidence in support of the urgency evaluation criterion as contained in § 2301.17 of the PTFP Final Rules. The need to replace current equipment in order to maintain existing services will, in many cases, strengthen the urgency criterion of a digital conversion application.

Because of the requirement that all public television stations begin digital broadcasts, all public television applications, whether submitted for Priority 2, Priority 4 or the Broadcast Other category, should include the station's comprehensive plan for digital conversion to meet the FCC's deadline and explain how the requested equipment is consistent with that plan. If the applicant is still developing its plan for digital conversion, the application should address how the requested equipment will be consistent with the overall objective of converting the facility for digital broadcasting. Failure to provide detailed information on the applicant's proposed or existing digital conversion plan will place a television application at a competitive disadvantage during the evaluation of the technical qualification criterion as described in 15 CFR 2301.17 of the PTFP Rules.

NTIA calls applicants' attention to the fact that television production equipment is not included on the Digital TV List but will be found on other equipment lists posted on the NTIA Internet site or available from NTIA by mail. NTIA notes that while a television station must use digital transmission and distribution equipment to begin digital broadcasting, digital production equipment is not required to meet the FCC's deadline. As the FCC deadline approaches, NTIA has reluctantly concluded that, with the funds available to it in FY 2003, it cannot fund television production equipment at the same level as it has prior to the institution of these new digital conversion policies in FY 2000. Television production equipment will continue to be eligible for PTFP funding under Priority 2 and Priority 4, as appropriate. However, for the FY 2003 Grant Round NTIA will fund television production equipment replacement applications only for those projects that present a "clear and compelling" case for the urgency of such replacement. NTIA anticipates funding television production replacement projects in FY 2003, though fewer than before this change in policy.

When making the final selection of awards under the procedures of § 2301.17, NTIA will take care to ensure that there is an acceptable balance between projects awarded for equipment replacement projects and those awarded for digital conversion projects. Further, NTIA will consider as part of this balance those stations in the Broadcast Other category (1) which request digital conversion projects and (2) which also include elements of equipment replacement. NTIA will not fund applications in the Broadcast Other category requesting digital conversion to the exclusion of those Broadcast Other applications which include documentation supporting equipment replacement as part of their urgency justification. Further, in making funding decisions for FY 2003, NTIA will limit its support of television replacement applications for production equipment to those applications which present a "clear and compelling" justification for funding during the current Grant Round.

A complete listing of equipment eligible for funding during the FY 2003 Grant Round is posted on the NTIA Internet site and printed copies are available from PTFP.

(B) Multi-Year Funding

NTIA anticipates that it will take many public television licensees several years to complete their digital conversion projects. The time required to complete a digital conversion project will be determined by several factors. In some instances, it will take a station several years to raise the local funds required to complete the project. Even if a station has accumulated all the funds required for its digital conversion project, the technical complexity of some projects (such as the construction of a 1,000-foot tower) will probably require several years to complete. Finally, many public television licensees operate several stations and are, therefore, responsible for the conversion of multiple broadcast facilities.

NTIA recognizes that the construction period for many of these digital conversion projects must, of necessity, be longer than the typical one to two years of the usual PTFP grant. Further, NTIA acknowledges that, with the funds available for award, the PTFP would be unable to fully fund more than a few of the digital conversion applications it could receive in FY 2003.

Therefore, for FY 2003, the PTFP will accept construction applications within the Broadcast Other category for digital television conversion projects which propose multi-year funding. Because of the FCC's approaching deadline, NTIA encourages applicants for digital conversion projects to file multi-year applications. NTIA anticipates that, in the early years of a multi-year project, applicants will request dissemination equipment necessary to meet the FCC's digital transmission requirement. Applicants including non-dissemination equipment in FY 2003 as part of their multi-year application should justify their need.

Applicants may submit project plans and budgets for up to three years. A multi-year application must contain the applicant's entire digital conversion plan. The plan must be divided into severable phases, with a budget request for each phase of the project. The application must identify the Federal funds requested for each phase. Only one phase of the project will be funded in any grant cycle. Once a project is approved, applicants will not be required to compete each year for funding of subsequent phases. Funding of subsequent phases will be at the sole discretion of the Department of Commerce and will depend on satisfactory performance by the recipient and the availability of funds to support the continuation of the project(s).

Projections based on previous experience indicate availability of between $10 million and $20 million to support multi-year digital television projects in FY 2003. The exact level of funding available for multi-year awards will be determined by NTIA after a review of applications submitted for multi-year awards and those radio, television and distance learning applications requesting a regular award.

NTIA believes that multi-year funding for digital television awards has significant benefits for both public television licensees and NTIA.

- Submission of a multi-year application particularly should help applicants which must convert multiple broadcast transmitters. NTIA understands that many stations have already begun to raise significant non-federal funds with which they can begin to implement their digital conversion plans. Upon submission of a multi-year application, an applicant could begin spending its local match—at its own risk. An applicant, therefore, might be able to complete a portion of its digital conversion project using its local non-federal funds for which Federal matching funds may not be available for several years. (For example, a future phase of a statewide project might be the conversion of two repeater stations; one might be constructed with available non-federal funds, the second constructed if Federal funds are received). Applicants are cautioned, however, that while expenditure of the local match is permitted, PTFP Rules (2301.6(d)) prohibit a grantee from obligating funds from the eventual Federal share of an award before a grant is actually awarded.
- NTIA believes that a multi-year award will reduce the administrative burden on both grantees and the PTFP. Grant recipients will submit only one application to cover the multiple years of their award, saving both the grantee and the PTFP the administrative tasks required to process applications during the annual Grant Round.
- Multi-year applications and awards will also assist both NTIA and public broadcasting licensees in the advance planning required to complete the conversion of almost 350 television facilities.
- By issuing multi-year grants, NTIA would be able to fund the initial phases of more digital conversion projects with the monies available in FY 2003 than if PTFP funded fewer entire digital conversion plans.

NTIA believes that multi-year funding through the Broadcast Other category also is appropriate for projects which include urgent replacement of equipment, since, as noted earlier, most television equipment replacement requests can be viewed as one phase of a station's conversion to digital broadcasting.

Applications which are reactivated for the FY 2003 Grant Round must comply with the guidelines included in this notice, including the funding levels for television projects discussed later in this document.

Applicants submitting projects for consideration under the Broadcast Other category have a choice and may request either multi-year funding or a single-year grant. However, applications submitted for consideration under Priority 2 or Priority 4 may only request a single-year grant for a project, as in the past.

(C) Effective Date for Expenditure of Local Matching Funds for Digital Conversion Projects

NTIA recognizes that many public television stations have begun to raise significant non-federal funds for their digital conversion projects. State or local governments may have appropriated funds to initiate digital conversion projects that, by local law, must be expended during the fiscal year in which they are awarded. Public television licensees that have raised significant non-federal funds may desire to take advantage of unique opportunities (such as partnering with other stations to share broadcast antennas or towers). Some stations may be anxious to begin digital conversion projects with long lead times for completion, or may desire to begin digital broadcasting on the same timetable as commercial stations in their market. Within the limitations of Federal regulations, NTIA supports efforts undertaken by public television stations which bring the benefits of digital television broadcasting to their communities as quickly as possible.

In order to facilitate the raising of non-federal funds for digital television projects and to also permit stations to begin construction of their digital facilities as soon as possible, NTIA is revising section § 2301.6(b)(2) of the PTFP Final Rules. This section states that "Inclusion of equipment purchased prior to the closing date will be considered on a case-by-case basis only when clear and compelling justification is provided to PTFP."

NTIA will publish a final rule shortly to modify § 2301.6(b)(2) to state the following: If eligible equipment for a Broadcast Other project was purchased with non-federal funds after July 1, 1999, NTIA will permit the applicant to include this equipment in a PTFP application. This date was selected to coincide with the beginning of the 2000 fiscal year used by many state and local governments and was announced at the beginning of this digital television conversion initiative in the Notice of Availability of Funds for the FY 2000 PTFP grant cycle (64 FR 72225–72234). NTIA also anticipates that July 1, 1999

will be the effective date in the FY 2004 and FY 2005 Grant Rounds for the expenditure of non-federal funds for projects in the Broadcast Other category. Applicants who desire to use equipment purchased prior to July 1, 1999 as part of their local match must submit a "clear and compelling justification" supporting their request.

(D) Subpriorities for Digital Conversion Projects

As almost 350 public television stations are required to convert to digital broadcasting, NTIA anticipates a significant increase in the number of applications in the Broadcast Other category for digital conversion projects. In order to process these applications in an orderly manner and to provide guidance to potential applicants for the FY 2003 Grant Round, NTIA will divide the Broadcast Other category into three subpriorities; Broadcast Other—A; Broadcast Other—B, and Broadcast Other—C.

These three divisions are intended to reflect the priorities NTIA has used in the evaluation of traditional broadcast applications and to place a premium on projects either to assist stations providing sole service, to encourage cooperative efforts among different stations, or to support licensees facing the requirement to convert multiple transmission facilities in several television markets. NTIA notes that in the past it has been able to fund applications each year in most if not all of the five traditional broadcast Priorities and anticipates that it will be able to fund applications in FY 2003 in most if not all of the subpriorities under the Broadcast Other category.

NTIA will assign the following applications for conversion of public broadcasting facilities to advanced digital technologies at the first subpriority level within the Broadcast Other category. These applications will receive equal consideration as subpriority A.

—A single applicant providing the sole service in an area unserved by a digital public television signal. This reflects PTFP's funding priority for equipment replacement projects for sole service stations (PTFP Priority 2).
—Cooperative applications by two or more licensees for the first digital public television service to an area. This is intended to encourage cooperation and efficiencies among stations in overlap markets (as listed by CPB) in constructing digital facilities. It would provide stations in overlap markets the opportunity, if they work collaboratively, to be eligible for the highest priority in funding within this category.
—A statewide staged plan for the conversion of multiple stations, whether a state network, or other appropriate statewide organization, or a staged plan from a licensee with stations in several markets. This is intended to encourage licensees that must convert multiple stations and also to encourage groups of stations to work collaboratively in developing a digital conversion project.

NTIA will assign the following applications for conversion of public broadcasting facilities to advanced digital technologies at the second subpriority level within the Broadcast Other category. These applications will receive equal consideration as subpriority B.

—An applicant in a multi-PTV station market providing first public television service in an area. An applicant in a multi-PTV station market who chooses to file separately, rather than in conjunction with another licensee in the same area, receives a second priority for funding.
—A cooperative application by two or more licensees in an area already served by a digital public television station. The application is given a priority over Broadcast Other—C to encourage efficiency and cooperation. Since this is not the first service in the area, it is given a second priority.

NTIA will assign the following applications for conversion of public broadcasting facilities to advanced digital technologies at the third subpriority level within the Broadcast Other category. These applications will receive equal consideration as subpriority C.

—Individual applicants proposing a second digital public television service in an area already receiving a digital public television signal. This reflects PTFP's funding priority for equipment replacement applications in served areas (Priority 4).
—All other public television digital conversion applications.

(E) Funding Levels for Television Projects

The policy for PTFP support of equipment replacement applications has long been the presumption of a 50% Federal share, although applicants are permitted to submit justification for a Federal grant of up to 75% of project costs. Those policies are contained in § 2301.6(b) of the PTFP Final Rules.

In reviewing the projected costs to convert all the public television stations in the country, NTIA has concluded that it cannot continue its 50% presumption of Federal funding for television equipment replacement or digital conversion projects. At the same time, NTIA believes that many public television facilities will be unable to raise 50% of the project costs. A significant number of stations may need Federal funding of up to a 67% of a project's cost, or even up to the legal maximum of 75% of a project's cost, in order for them to meet the FCC's deadline.

In order to ensure that sufficient Federal funds are available to support the conversion of the nation's public television stations, NTIA is establishing a new policy regarding the presumed Federal funding level for television equipment. As noted earlier in this section, NTIA recognizes that equipment on the PTFP Digital TV List may be included in either Broadcast Other digital conversion applications or in Priority 2 or Priority 4 equipment replacement applications. In order to treat all applicants equitably, NTIA's new policy will be the presumption of a 40% Federal share of the eligible project costs for television equipment for digital conversion or equipment replacement, improvement or augmentation projects. This 40% presumption will apply whether the application requests consideration under the two equipment replacement priorities (Priority 2 or 4) or under the digital conversion category (Broadcast Other). As noted earlier, NTIA will fund the replacement of production equipment upon a showing of clear and compelling need. However, since the deadline for digital conversion is rapidly approaching and Federal funds are limited, NTIA will fund replacement of production equipment at the same level of Federal support as digital conversion or equipment replacement projects. The presumption of a 40% Federal share will extend to all television projects to replace or upgrade equipment. However, because of the emphasis NTIA places on the extension of broadcast services to unserved areas, NTIA has retained the 75% level of Federal funding applications proposing new television facilities in Priority 1 (§ 2301.4(b)(1)).

As already noted, NTIA recognizes that many small stations, primarily in rural areas, will be unable to raise even a 50% local share of the funds required for their PTFP projects. NTIA has long permitted stations to request more than the standard level of Federal support upon a showing of "extraordinary need" per § 2301.6(b)(ii) of the PTFP Rules. NTIA will permit applicants to qualify for hardship funding and receive up to a 67% Federal share of their project costs. An applicant can qualify for up to a 67% Federal funding by certifying that it is unable to match at least 60% of the eligible project costs, and either (a) by providing documentation that its average annual cash revenue for the previous four years is $2 million or less, or (b) by providing documentation that the eligible project costs are greater than the applicant's average annual cash revenue for the previous four years.

In addition, NTIA will continue to permit any applicant to provide justification that it has an "extraordinary need" for Federal funding up to the legal limit of 75% of eligible project costs.

In order to gather additional funds to award to stations which qualify under the hardship criteria, NTIA encourages financially able applicants to request a smaller share of Federal funds for digital equipment projects than the standard 40%. NTIA will add three additional points to the application evaluations from the independent review panel for applicants who request no more than 25% Federal funding. This provision will give extra credit to applications already highly reviewed, and, based on NTIA's previous experience, this extra credit is often sufficient to move highly rated applications into the range for funding.

However, when making the final selection of awards, NTIA will take care to ensure that there is an acceptable balance between projects awarded to stations requesting a 25% Federal share and those requesting a higher Federal share. NTIA will not fund applications requesting a 25% Federal share to the exclusion of applications meeting the hardship criteria or to the exclusion of those requesting the standard 40% Federal share.

(F) Use of CPB Funds

Under the PTFP Rules, NTIA has limited the use of CPB funds for the non-federal share of PTFP projects to circumstances of "clear and compelling need" (15 CFR 2301.6(c)(2)). NTIA recognizes that it will be difficult for many public television stations to raise the funds required to meet the FCC's digital broadcasting deadline. Therefore, NTIA continues its past policy that applicants may submit justification under this section for the use of CPB funds as part of their local match. Any request for the use of CPB funds must be accompanied by a statement regarding any limitations that CPB has placed on the expenditure of those funds.

(G) Partnerships, Urgency

As discussed earlier in this section, part (D) on New Subpriorities, NTIA encourages efforts which promote efficiency within the public television system in order to save both current conversion costs and future operating costs. NTIA, therefore, also encourages public television stations to partner with commercial entities when this is in the best interests of the public station and the Federal government. In cases of public television partnerships with commercial entities, the PTFP project will be limited to the public television station's ownership share or use rights in the equipment. NTIA believes that such partnerships with commercial organizations comply with current PTFP regulations and PTFP has funded several projects for joint use of towers and broadcast antennas.

The urgency of an application is one of the criteria under which all PTFP applications are evaluated. (The evaluation criteria are listed in § 2301.17 of the PTFP Rules). NTIA suggests that there are at least three situations in which Broadcast Other applications may present high degrees of urgency. As we have just noted, applications containing proposals for joint use/ownership partnerships with other organizations may demonstrate a high urgency due to a time-sensitive opportunity. NTIA encourages these applicants to document the time-sensitive nature of the partnership opportunity in their response to the urgency criterion.

NTIA also recognizes that some applicants may be presented with time-sensitive funding opportunities and, therefore, encourages these applicants to document the time-sensitive nature of these funding opportunities in their response to the urgency criterion. Finally, as already noted, NTIA expects that some applications will request urgent replacement of existing equipment as part of a Broadcast Other application. NTIA encourages such applicants to provide documentation of their need to replace their equipment during the current Grant Round. This documentation might include maintenance logs, letters from manufacturers, reports from independent engineers, photos, etc.

NTIA will instruct the panels evaluating the FY 2003 Broadcast Other applications that they should award the highest score under the urgency criterion to those applications which fully justify and document either (1) the time sensitive nature of partnerships, (2) the time sensitive nature of funding opportunities, or (3) the need for equipment replacements that must be accomplished during this Grant Round in order to maintain existing services.

VIII. Distance Learning and Nonbroadcast Projects

NTIA is not accepting applications for nonbroadcast projects at this time and will publish a Notice in the **Federal Register** announcing a Closing Date for nonbroadcast applications in the future.

As discussed in Section VII of this document, NTIA anticipates that, in FY 2003, it will receive numerous digital conversion applications in the Broadcast/Other category. NTIA recognizes that, due to the multi-channel capability of digital television, distance learning components may well be a part of a digital conversion application. NTIA will, therefore, consider such broadcast distance learning proposals under the subpriorities established in Section VII. If NTIA determines that a broadcast distance learning project is not part of a digital conversion application, NTIA will evaluate the application pursuant to §§ 2301.4(b)(6) and 2301.17 when all television applications are evaluated for possible funding during the fourth quarter of FY 2003.

IX. Eligible and Ineligible Costs

Eligible equipment for the FY 2003 Grant Round includes the apparatus necessary for the production, interconnection, captioning, broadcast, or other distribution of programming, including but not limited to studio equipment; audio and video storage, processing, and switching equipment; terminal equipment; towers; antennas; transmitters; remote control equipment; transmission line; translators; microwave equipment; mobile equipment; satellite communications equipment; instructional television fixed service equipment; subsidiary communications authorization transmitting and receiving equipment; cable television equipment; and optical fiber communications equipment.

A complete listing of equipment eligible for funding during the FY 2003 Grant Round is posted on the NTIA Internet site and printed copies are available from PTFP.

Other Costs

(1) Construction Applications: NTIA generally will not fund salary expenses, including staff installation costs, and pre-application legal and engineering fees. Certain "pre-operational expenses" are eligible for funding. (See 15 CFR 2301.2.) Despite this provision, NTIA regards its primary mandate to be funding the acquisition of equipment

and only secondarily funding of salaries. A discussion of this issue appears in the PTFP Final Rules under the heading *Support for Salary Expenses* in the introductory section of the document.

(2) Planning Applications. (a) Eligible: Salaries are eligible expenses for all planning grant applications, but should be fully described and justified within the application. Planning grant applicants may lease office equipment, furniture and space, and may purchase expendable supplies under the terms of 47 U.S.C. 392 (c). (b) Ineligible: Planning grant applications cannot include the cost of constructing or operating a telecommunications facility.

(3) Audit Costs. Audits shall be performed in accordance with audit requirements contained in Office of Management and Budget Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, revised June 30, 1997. OMB Circular A–133 requires that non-profit organizations, government agencies, Indian tribes and educational institutions expending $300,000 or more in federal funds during a one-year period conduct a single audit in accordance with guidelines outlined in the circular. Applicants are reminded that other audits may be conducted by the Office of Inspector General.

NTIA recognizes that most of its grant recipients are divisions of state and local governments or are public broadcasting facilities, all of which routinely conduct annual audits. In order to make the maximum amount of monies available for equipment purchases and planning activities, NTIA will, therefore, fund audit costs only in exceptional circumstances.

X. Notice of Applications Received

In accordance with 15 CFR 2301.13, NTIA will publish a listing of all applications received by the Agency. The listing will be placed on the NTIA Internet site and NTIA also will make this information available by mail upon request. The address of the NTIA Internet site is: *www.ntia.doc.gov/ptfp*. Listing an application merely acknowledges receipt of an application to compete for funding with other applications. This listing does not preclude subsequent return of the application for the reasons discussed under the Dates section above, or disapproval of the application, nor does it assure that the application will be funded. The listing will also include a request for comments on the applications from any interested party.

XI. Evaluation Process

See 15 CFR 2301.16 for a description of the Technical Evaluation and 15 CFR 2301.17 for the Evaluation Criteria.

XII. Selection Process

Based upon the above cited evaluation criteria, the PTFP program staff prepares summary recommendations for the PTFP Director. These recommendations incorporate outside reviewers rankings and recommendations, engineering assessments, and input from the National Advisory Panel, State Single Point of Contacts and state telecommunications agencies. Staff recommendations also consider project impact, the cost/benefit of a project and whether review panels have consistently applied the evaluation criteria. The PTFP Director will consider the summary recommendations prepared by program staff, will recommend the funding order of the applications, and will present recommendations to the OTIA (Office of Telecommunications and Information Applications) Associate Administrator for review and approval of the recommended slate. The PTFP Director recommends the funding order for applications in three categories: "Recommended for Funding," "Recommended for Funding if Funds Available," and "Not Recommended for Funding." See 15 CFR 2301.18 for a description of the selection factors retained by the Director, OTIA Associate Administrator, and the Assistant Secretary for Communications and Information, the NTIA Administrator.

Upon review and approval by the OTIA Associate Administrator, the Director's recommendations will then be presented to the Selection Official, the NTIA Administrator. The NTIA Administrator selects the applications for possible grant award taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes set forth at 15 CFR 2301.1(a) and (c). Prior to award, applications may be negotiated between PTFP staff and the applicant to resolve whatever differences might exist between the original request and what PTFP proposes to fund. Some applications may be dropped from the proposed slate due to lack of FCC licensing authority, an applicant's inability to make adequate assurances or certifications, or other reasons. Negotiation of an application does not ensure that a final award will be made. The PTFP Director recommends final selections to the NTIA Administrator applying the same factors as listed in 15 CFR 2301.18. The Administrator then makes the final award selections taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes in 15 CFR 2301.1(a) and (c).

XIII. Disposition of Unsuccessful Applications

PTFP will retain unsuccessful applications through the Closing Date of the FY 2004 grant cycle. Applicants may reactivate their unsuccessful applications pursuant to § 2301.9 of the PTFP Rules. Unsuccessful applications not reactivated by the Closing Date of the next grant cycle will be destroyed.

XIV. Project Period

Planning grant award periods customarily do not exceed one year, whereas construction grant award periods for grants in the five broadcast Priorities and nonbroadcast Special Applications category commonly range from one to two years. Phases of multi-year construction projects funded in the Broadcast Other category would commonly be awarded for a one to two year period with the expectation that subsequent phases would be funded dependent on the availability of Federal funds. Although these time frames are generally applied to the award of all PTFP grants, variances in project periods may be based on specific circumstances of an individual proposal.

XV. NTIA Policies on Procedural Matters

Based upon NTIA's experience during the PTFP 2002 Grant Round, NTIA has determined that it is in the best interest of NTIA and applicants to continue recent policies regarding three procedural matters. The following policies are applicable only to the FY 2003 PTFP Grant Round and resulting awards.

Applications Resulting From Catastrophic Damage or Emergency Situations

Section 2301.10 provides for submission of applications resulting from catastrophic damage or emergency situations. NTIA would like to clarify its implementation of this provision. While the intent of this Notice is to address FY 2003 television applications, applicants for radio or television projects may submit applications resulting from catastrophic damage or emergency situations.

For FY 2003 PTFP applicants, when an eligible broadcast applicant suffers catastrophic damage to the basic equipment essential to its continued operation as a result of a natural or manmade disaster, or as the result of significant equipment failure, and is in dire need of assistance in funding replacement of the damaged equipment, it may file an emergency application for PTFP funding at any time. NTIA limits this request to equipment essential to a station's continued operation such as transmitters, towers, antennas, STLs or similar equipment which, if the equipment failed, would result in a complete loss of service to the community.

When submitting an emergency application, the applicant should describe the circumstances that prompt the request and should provide appropriate supporting documentation. NTIA requires that applicants claiming significant failure of equipment will document the circumstances of the equipment failure and demonstrate that the equipment has been maintained in accordance with standard broadcast engineering practices.

NTIA will grant an award only if it determines that (1) the emergency satisfies this policy, and (2) the applicant either carried adequate insurance or had acceptable self-insurance coverage.

Applications filed and accepted for emergency applications must contain all of the information required by the Agency application materials and must be submitted in the number of copies specified by the Agency.

NTIA will evaluate the application according to the evaluation criteria set forth in § 2301.17(b). The PTFP Director takes into account program staff evaluations (including the outside reviewers) the availability of funds, the type of project and broadcast priorities set forth at § 2301.4(b), and whether the applicant has any current NTIA grants. The Director presents recommendations to the Office of Telecommunications and Information Applications (OTIA) Associate Administrator for review and approval. Upon approval by the OTIA Associate Administrator, the Director's recommendation will be presented to the Selecting Official, the NTIA Administrator. The NTIA Administrator makes final award selections taking into consideration the Director's recommendation and the degree to which the application fulfills the requirements for an emergency award and satisfies the program's stated purposes set forth at § 2301.1(a) and (c).

Service of Applications

FY 2003 PTFP applicants are not required to submit copies of their PTFP applications to the FCC, nor are they required to submit copies of the FCC transmittal cover letters as part of their PTFP applications. NTIA routinely notifies the FCC of projects submitted for funding which require FCC authorizations.

FY 2003 PTFP applicants for distance learning projects are not required to notify every state telecommunications agency in a potential service area. Many distance learning applications propose projects which are nationwide in nature. NTIA, therefore, believes that the requirement to provide a summary copy of the application in every state telecommunications agency in a potential service area is unduly burdensome to applicants. NTIA, however, does expect that distance learning applicants will notify the state telecommunications agencies in the states in which they are located.

FCC Authorizations

For the FY 2003 PTFP Grant Round, applicants may submit applications to the FCC after the closing date, but do so at their own risk. Applicants are urged to submit their FCC applications with as much time before the PTFP closing date as possible. No grant will be awarded for a project requiring FCC authorization until confirmation has been received by NTIA from the FCC that the necessary authorization will be issued.

For FY 2003 PTFP applications, since there is no potential for terrestrial interference with Ku-band satellite uplinks, grant applicants for Ku-band satellite uplinks may submit FCC applications after a PTFP award is made. Grant recipients for Ku-band satellite uplinks will be required to document receipt of FCC authorizations to operate the uplink prior to the release of Federal funds.

For FY 2003 PTFP applications, NTIA may accept FCC authorizations that are in the name of an organization other than the PTFP applicant in certain circumstances. Applicants requiring the use of FCC authorizations issued to another organization should discuss in the application Program Narrative why the FCC authorization must be in the other organization's name. NTIA believes that such circumstances will be rare and, in its experience, are usually limited to authorizations such as those for microwave interconnections or satellite uplinks.

As noted above, for FY 2003 PTFP applications, NTIA does not require that the FCC applications be filed by the closing date. While NTIA is permitting submission of FCC applications after the closing date, applicants are reminded that they must continue to provide copies of FCC applications, as they were filed or will be filed, or equivalent engineering data, in the PTFP application so NTIA can properly evaluate the equipment request. These include applications for permits, construction permits and licenses already received for (1) construction of broadcast station, (including a digital broadcasting facility) or translator, (2) microwave facilities, (3) ITFS authorizations, (4) SCA authorizations, and (5) requests for extensions of time.

For those applicants whose projects require authorization by the FCC, information about FCC filing procedures can be found on the Internet at: *www.fcc.gov*.

XVI. Intergovernmental Review

Applicants should note that they must continue to comply with the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to provide a copy of their completed application to the appropriate SPOC on or before the Closing Date. Applicants are encouraged to contact the appropriate SPOC well before their PTFP closing date. A listing of the state SPOC offices may be found with the PTFP application materials at the NTIA Internet site. A list of the SPOC offices is available from NTIA (see the **ADDRESSES** section above).

XVII. Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation, unless stated otherwise in this notice. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. See *Building and Construction Trades Department v. Allbaugh*, 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case is resolved, the Department will provide further

information on implementation of Executive Order 13202.

XVIII. Executive Order 12866

It has been determined that this notice is a "not significant" rule under Executive Order 12866.

XIX. Executive Order 13132

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in EO 13132.

XX. Regulatory Flexibility Analysis

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for this notice related to public property, loans, grants, benefits or contracts, 5 U.S.C. 553(a), Regulatory Flexibility Analysis is not required and has not been prepared for this notice. 5 U.S.C. 601 *et seq.*

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

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To authorize the Secretary of the Interior to conduct feasibility studies on water optimization in the Burnt River basin, Malheur River basin, Owyhee River basin, and Powder River basin, Oregon. (Oct. 11, 2002; 116 Stat. 1485)

S. 1175/P.L. 107–238
Vicksburg National Military Park Boundary Modification Act of 2002 (Oct. 11, 2002; 116 Stat. 1486)

S. 1325/P.L. 107–239
To ratify an agreement between The Aleut Corporation and the United States of America to exchange land rights received under the Alaska Native Claims Settlement Act for certain land interests on Adak Island, and for other purposes. (Oct. 11, 2002; 116 Stat. 1488)

H.J. Res. 122/P.L. 107–240
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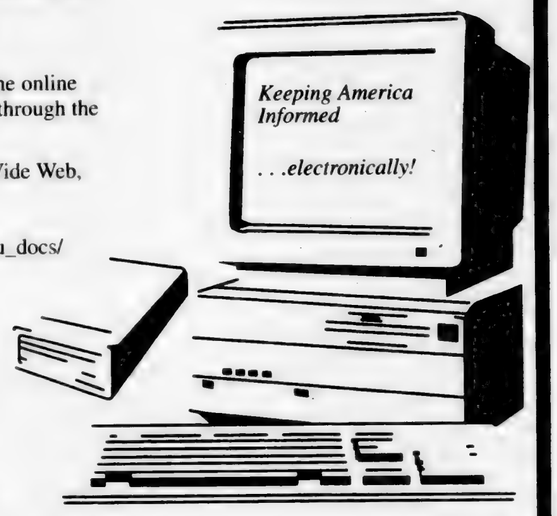

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Presidential Documents

Title 3—

The President

Notice of October 16, 2002

Continuation of the National Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia

On October 21, 1995, by Executive Order 12978, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of significant narcotics traffickers centered in Colombia, and the unparalleled violence, corruption, and harm such actions cause in the United States and abroad.

The order blocks all property and interests in property that are in the United States or within the possession or control of United States persons or foreign persons listed in an annex to the order, as well as of foreign persons determined to play a significant role in international narcotics trafficking centered in Colombia. The order similarly blocks all property and interests in property of foreign persons determined to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the order, or persons determined to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the order. The order also prohibits any transaction or dealing by United States persons or within the United States in such property or interests in property.

Because the actions of significant narcotics traffickers centered in Colombia continue to threaten the national security, foreign policy, and economy of the United States and to cause unparalleled violence, corruption, and harm in the United States and abroad, the national emergency declared on October 21, 1995, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond October 21, 2002. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to significant narcotics traffickers centered in Colombia. This notice shall be published in the **Federal Register** and transmitted to the Congress.

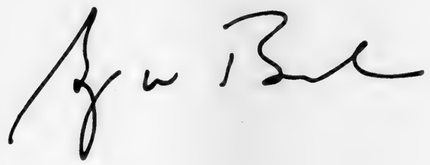

THE WHITE HOUSE,
October 16, 2002.

[FR Doc. 02–26769
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Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 67, No. 202
Friday, October 18, 2002

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM233; Special Conditions No. 25–217–SC]

Special Conditions: Bombardier Aerospace Model CL–600–2D24 (RJ900) Airplane; Sudden Engine Stoppage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Bombardier Aerospace Model CL–600–2D24 (RJ900) airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes, associated with engine size and torque load which affects sudden engine stoppage. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 4, 2002. Comments must be received on or before November 18, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM233, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM233. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: John Piccola, FAA Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1509; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

FAA Determination as to Need for Public Process

The FAA has determined that notice and opportunity for prior public comment are unnecessary in accordance with 14 CFR 11.38, because the FAA has provided previous opportunities to comment on substantially identical special conditions and has fully considered and addressed all the substantive comments received. Based on a review of the comment history and the comment resolution, the FAA is satisfied that new comments are unlikely. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Although this action is in the form of final special conditions and, for the reasons stated above, is not preceded by notice and an opportunity for public comment, comments are invited on these special conditions. We invite interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On November 24, 1999, Bombardier Aerospace applied for an amendment to U.S. Type Certificate A21EA to include the Bombardier CL–600–2D24, Regional Jet Series 900 airplane. This airplane is a lengthened version of the previously certified CL–600–2B19 Regional Jet (CRJ) and CL–600–2C10 Regional Jet 700. The CRJ 900 airplane, CL–600–2D24 will have increased gross weight, fuselage length, and engine thrust to accommodate the additional passengers, as compared to the CRJ 700. The airplane will use the General Electric engine model CF34–8CF5 high-bypass turbofan. This engine model is a derivative of the CF34–8C1 engine used on the CRJ–700 airplane, with a nominal maximum takeoff thrust increase of five percent.

Type Certification Basis

Under the provisions of 14 CFR 21.101 [Amendment 21–69, effective September 16, 1991], Bombardier Aerospace must show that the Model CL–600–2D24 meets the applicable provisions of the regulations incorporated by reference in Type Certificate A21EA, or the applicable regulations in effect on the date of application for the change to the type certificate. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003. Bombardier, however, has agreed to use the guidelines of the "Changed Product Rule" (14 CFR part 21.101, Amendment 21–77) for the Model CL–600–2D24.

The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate A21EA are as follows: 14

CFR part 25, dated February 1, 1965, including Amendments 25–1 through 25–86, with certain exceptions, exemptions, and special conditions that are not relevant to these special conditions.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The FAA has determined that the Model CL–600–2D24 must also be shown to comply with the following sections of part 25, in addition to certain exemptions and special conditions that are not relevant to these special conditions: 14 CFR part 25, including Amendments 25–1 through 25–86, Amendment 25–88, Amendment 25–90, and Amendments 25–92 through 25–98, with the following exceptions:

(a) Section 25.783(f) at Amendment 25–23 shall replace § 25.783(f) at Amendment 25–88 for the aft cargo compartment and main avionics bay doors only (common doors with CL–600–2C10).

(b) Section 25.807(d)(6) at Amendment 25–72 shall replace § 25.807(h) at Amendment 25–94.

(c) Sections 25.365, 25.831(a), and 25.1447(c), at Amendment 25–87.

Note 1: Amendment 25–91 is not included in the type certification basis.

Section 21.101(b)(3) allows a changed product to comply with an earlier amendment of a regulation for each area, system, component, equipment, or appliance that is affected by the change when compliance with a later amendment would not contribute materially to the level of safety or would be impractical. In accordance with § 21.101(b)(3) the FAA concurs with exclusion of Amendments 25–87, 25–89, and 25–91.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model CL–600–2D24 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model CL–600–2D24 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2) [Amendment 21–69, effective September 16, 1991].

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1) [Amendment 21–69, effective September 16, 1991].

Novel or Unusual Design Features

The Bombardier Aerospace Model CL–600–2D24 will incorporate novel or unusual design features involving engine size and torque load that affect sudden engine stoppage conditions.

Discussion

The limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming) has been a specific requirement for transport category airplanes since 1957. In the past, the design torque loads associated with typical failure scenarios have been estimated by the engine manufacturer and provided to the airframe manufacturer as limit loads. These limit loads were considered simple, pure torque static loads. The size, configuration, and failure modes of jet engines have changed considerably from those envisioned when the engine seizure requirement of § 25.361(b) was first adopted. Current engines are much larger and are now designed with large bypass fans capable of producing much larger torque loads if they become jammed. It is evident from service history that the frequency of occurrence of the most severe sudden engine stoppage events is rare.

Relative to the engine configurations that existed when the rule was developed in 1957, the present generation of engines are sufficiently different and novel to justify issuance of special conditions to establish appropriate design standards. The latest generation of jet engines are capable of producing, during failure, transient loads that are significantly higher and more complex than the generation of engines that were present when the existing standard was developed. Therefore, the FAA has determined that special conditions are needed for the Bombardier Aerospace Model CL–600–2D24 airplane.

In order to maintain the level of safety envisioned in 25.361(b), more comprehensive criteria is needed for the new generation of high bypass engines. The special conditions would distinguish between the more common engine failure events and those rare events resulting from structural failures. For these rarer but more severe seizure events, the criteria could allow some deformation in the engine supporting structure (ultimate load design) in order to absorb the higher energy associated with the high bypass engines, while at the same time protecting the adjacent primary structure in the wing and fuselage by providing a higher safety factor. The criteria for the more severe events would no longer be a pure static torque load condition, but would account for the full spectrum of transient dynamic loads developed from the engine failure condition.

Applicability

As discussed above, these special conditions are applicable to the Bombardier Aerospace Model CL–600–2D24 airplane. Should Bombardier Aerospace apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1) [Amendment 21–69, effective September 16, 1991].

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Bombardier Aerospace Model CL–600–2D24 airplanes.

1. *Sudden Engine Stoppage.* In lieu of compliance with § 25.361(b), the following special conditions apply:

a. For turbine engine installations, the engine mounts, pylons and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

(1) Sudden engine deceleration due to a malfunction which could result in a temporary loss of power or thrust.

(2) The maximum acceleration of the engine.

b. For auxiliary power unit installations, the power unit mounts and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

(1) Sudden auxiliary power unit deceleration due to malfunction or structural failure.

(2) The maximum acceleration of the auxiliary power unit.

c. For engine supporting structure, an ultimate loading condition must be considered that combines 1g flight loads with the transient dynamic loads resulting from each of the following:

(1) The loss of any fan, compressor, or turbine blade.

(2) Where applicable to a specific engine design, and separately from the conditions specified in paragraph c(1) above, any other engine structural failure that results in higher loads.

d. The ultimate loads developed from the conditions specified in paragraphs c(1) and c(2) above are to be multiplied by a factor of 1.0 when applied to engine mounts and pylons and multiplied by a factor of 1.25 when applied to adjacent supporting airframe structure.

Issued in Renton, Washington, on October 4, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–26584 Filed 10–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 300 and 600

[Docket No. 020925223–2223–01; I.D. 091002I]

RIN 0648–AP89

Atlantic Highly Migratory Species (HMS); NOAA Information Collection Requirements; Technical Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: ACTION: Final rule; technical amendment.

SUMMARY: This final rule, technical amendment, corrects the cross-references in several parts to regulations that have since been removed, and it updates the Office of Management and Budget (OMB) table to add new OMB approvals and to correct control number references to the appropriate Code of Federal Regulations (CFR) part or section. The intent is to correct and clarify existing regulations and to comply with the requirement of the Paperwork Reduction Act (PRA) that agencies display current OMB control numbers for each agency information collection requirement and to make this information available to the public.

DATES: Effective October 18, 2002.

ADDRESSES: Any comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Christopher Rogers, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Christopher Rogers, 301–713–2347.

SUPPLEMENTARY INFORMATION:

Cross References

On May 28, 1999, NMFS published a final rule (64 FR 29090) that implemented the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and an Amendment to the Atlantic Billfish FMP, which consolidated regulations for Atlantic HMS into one part of the Code of Federal Regulations (CFR). The final consolidated rule inadvertently left in some cross-references to parts that were removed as part of the consolidation. This final rule, technical amendment, corrects references to removed regulations at 50 CFR part 285 and now references the consolidated regulations at 50 CFR part 635 for the sections on reporting requirements at 50 CFR 300.17, definitions at 50 CFR 600.10, and observer requirements at 50 CFR 600.746.

OMB Control Numbers

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 of title 15 CFR displays control numbers that OMB assigned to NMFS information pursuant to the PRA, for the public's information.

This final rule, technical amendment, brings part 902 up to date and corrects omissions and errors by revising the table in section 1, paragraph (b) under 50 CFR to reflect the most current OMB control numbers associated with NMFS information collections contained in regulations appearing in title 50. All of the information collections displayed in section 1(b) have previously been submitted to OMB for approval during implementation of regulations appearing in the individual parts of title 50; this final rule, technical amendment, does not involve any new reporting or recordkeeping requirements.

Classification

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

The Assistant Administrator for Fisheries finds, pursuant to 5 U.S.C. 553(b)(B), that, because this final rule makes only minor, non-substantive changes and does not change operating practices in the fishery, it is unnecessary under 5 U.S.C. 553(b)(B) to provide for prior public comment. Because this final rule, technical amendment, does not constitute a substantive rule, good cause exists to waive the 30–day delay in effective date under 5 U.S.C. 553(d). Under this final rule, the HMS fisheries would continue to operate as they have under existing regulations with no changes or disruptions to fishing practices. This final rule makes no substantive changes to existing regulations, but rather removes potential confusion by eliminating outdated cross-references to regulations that NMFS previously removed. In addition, this final rule updates OMB control numbers associated with NMFS information collections, all of which OMB has previously approved.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 300

Exports, Fish, Fisheries, Fishing, Imports, Labeling, Marine resources, Penalties, Reporting and recordkeeping requirements, Transportation, Treaties, and Wildlife.

50 CFR Part 600

Fisheries, Fishing.

Dated: October 10, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapters III and VI are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by removing the entries for part 635 from § 635.4(d) through § 635.69(a), and, in the right hand column in corresponding positions, the control numbers, and by adding in their place the following entries to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * *	*
50 CFR	
* * * *	*
635.4(b)	–0327
635.4(d)	–0327
635.4(g)	–0202 and –0205
635.5(a)	–0371, –0328, and –0452
635.5(b)	–0013 and –0239
635.5(c)	–0328 and –0446
635.5(d)	–0323
635.5(f)	–0380
635.6(c)	–0373
635.7(c)	–0374
635.21(d)	–0202
635.26	–0247
635.31(b)	–0216
635.32	–0309
635.33	–0338
635.42	–0040
635.43	–0040
635.44	–0040
635.46	–0363

50 CFR Chapter III

PART 300—INTERNATIONAL FISHERIES REGULATIONS

3. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 973–973r; 16 U.S.C. 2431 *et seq.*; 16 U.S.C. 3371–3378; 16 U.S.C. 3636(b); 16 U.S.C. 5501 *et seq.*; and 16 U.S.C. 1801 *et seq.*

4. In § 300.17, paragraph (b)(1)(iv) is revised to read as follows:

§ 300.17 Reporting.

* * * * *

(b) * * *

(1) * * *

(iv) Atlantic Purse Seine—Vessel Logbook (50 CFR 635.5);

* * * * *

50 CFR Chapter VI

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

5. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

6. In § 600.10, the definitions for "Exempted educational activity" and "Exempted or experimental fishing" are revised to read as follows:

§ 600.10 Definitions.

* * * * *

Exempted educational activity means an activity, conducted by an educational institution accredited by a recognized national or international accreditation body, of limited scope and duration, that is otherwise prohibited by part 635 or chapter VI of this title, but that is authorized by the appropriate Director or Regional Administrator for educational purposes.

Exempted or experimental fishing means fishing from a vessel of the United States that involves activities otherwise prohibited by part 635 or chapter VI of this title, but that are authorized under an exempted fishing permit (EFP). These regulations refer exclusively to exempted fishing. References in part 635 of this title and elsewhere in this chapter to experimental fishing mean exempted fishing under this part.

* * * * *

7. In § 600.746, paragraph (c)(1) introductory text is revised to read as follows:

§ 600.746 Observers.

* * * * *

(c) *Inadequate or unsafe vessels.* (1) A vessel is inadequate or unsafe for purposes of carrying an observer and allowing operation of normal observer functions if it does not comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 300, 600, 622, 635, 648, 660, and 679) or if it has not passed a USCG safety examination or inspection. A vessel that has passed a USCG safety examination or inspection must display one of the following:

* * * * *

[FR Doc. 02–26599 Filed 10–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37–132]

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule; correction.

SUMMARY: On Tuesday, August 20, 2002 (67 FR 53879), a final rule was published to add a Department of the Air Force exemption rule for the system of records F051 AF JA I, entitled 'Commander Directed Inquiries.' The (k)(2) exemption increased the value of the system of records for law enforcement purposes. This rule corrects misspellings in paragraph (b)(22)(i)(1).

EFFECTIVE DATE: August 6, 2002.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 806b

Privacy.

1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

Accordingly, 32 CFR part 806b is amended as follows:

2. Paragraph (b)(22)(i)(1) of Appendix C to part 806b is correctly revised to read as follows:

Appendix C to Part 806b—General and specific exemptions

* * * * *

(b) *Specific exemptions.* * * *

(22) System identifier and name: F051 AF JA I, Commander Directed Inquiries.

(i) Exemption: (1) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

Note: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

* * * * *

Dated: October 9, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–26347 Filed 10–17–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 10

[USCG–2002–13213]

RIN 2115–AG43

Great Lakes Maritime Academy—Eligibility of Certain Graduates for Unrestricted Third-Mate Licenses

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: The Coast Guard is amending minimum service or training requirements for ocean or near coastal steam or motor vessel third mate licenses. Graduation from the Great Lakes Maritime Academy (GLMA) deck curriculum ocean option will qualify an applicant for licensing on both ocean and near coastal vessels. GLMA graduates who do not complete the ocean option or one of the other approved service or training routes will continue to be eligible for licensing only on near coastal vessels.

DATES: This rule is effective January 16, 2003, unless an adverse comment or notice of intent to submit an adverse comment reaches the Docket Management Facility on or before December 17, 2002. If an adverse comment or notice of intent to submit an adverse comment is received, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2002–13213), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and related material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington DC, 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Donald Kerlin, National Maritime Center, U.S. Coast Guard, telephone 202–493–1001. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2002–13213), indicate the specific section of this document to which each comment

applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments by only one means. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 81/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

Regulatory Information

We are publishing a direct final rule under 33 CFR 1.05–55 because we do not expect an adverse comment. If no adverse comment or notice of intent to submit an adverse comment is received by December 17, 2002, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if we receive an adverse comment or notice of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule. If an adverse comment applies only to part of this rule (e.g., to an amendment, a paragraph, or a section) and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which no adverse comment was received. We will withdraw the part of this rule that was the subject of an adverse comment. If we decide to proceed with a rulemaking following receipt of an adverse comment, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered "adverse" if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

Background and Purpose

Section 10.407 of Title 46, Code of Federal Regulations provides several routes by which an applicant can demonstrate sufficient "service or training" to qualify for licensing as a third mate of ocean or near coastal steam or motor vessels of any gross tons. The applicant can demonstrate actual sea service (paragraphs (a)(1) and (c)), completion of an apprentice mate training program (paragraph (a)(3)), or graduation from one of several maritime academies (paragraphs (a)(2) and (b)). Each of the maritime academies offers "sea service" training as part of its curriculum. Until recently, sea service training at the Great Lakes Maritime Academy (GLMA) was available exclusively on Great Lakes waters. In recognition of that limitation, 46 CFR 10.407(a)(2) and (b) provide that GLMA graduation qualifies an applicant for "near coastal vessel" licensing but not for "ocean or near coastal vessel" licensing.

Beginning with the Class of 2003, GLMA now offers its deck curriculum cadets an "ocean option program." The Coast Guard considers the "ocean option" to provide the same level of sea service training offered by maritime academies that are not subject to the "near coastal vessel" restriction. Therefore, we will accept graduation from the ocean option in GLMA's deck curriculum as qualifying an applicant for "ocean or near coastal vessel" licensing. GLMA deck class graduates who have not completed the ocean option, and who have not satisfied one of the other "service or training" routes mentioned above, will continue to be eligible only for near coastal vessel licensing.

Discussion of Rule

Minimum service or training requirements for applicants for third mate licenses on "ocean or near coastal" steam or motor vessels of any gross tons are contained in 46 CFR 10.407. Paragraph (a)(2)(iv) of that rule excludes GLMA from a list of maritime academies whose graduates meet the training requirements for "ocean or near coastal" licensing, while paragraph (b) provides that GLMA deck curriculum graduates are eligible only for "near coastal" licensing. We are revising (a)(2)(iv) to include the GLMA ocean option program, and we are revising (b) so that the "near coastal"-only restriction is retained only for GLMA graduates who have no "ocean sea service."

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This rule will have no environmental consequences, impose no collection of information, and impose no other costs while addressing needs expressed by the regulated industry.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule has no small entity impact because it has no cost. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Comments submitted in response to this finding will be evaluated under the criteria in the "Regulatory Information" section of this preamble.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if the rule has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(c) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. The changes in this rule concern the training, qualifying and licensing of maritime personnel. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 10

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 10 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for part 10 continues to read as follows:

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7502, 7505, and 7701; 49 CFR 1.45 and 1.46. Section 10.107 is also issued under the authority of 44 U.S.C. 3507.

§ 10.407 [Amended]

2. In § 10.407, paragraph (a)(2)(iv), remove the word "except" and in its place add the words "including the ocean option program in", and in paragraph (b), after the word "Academy" add the words "with no ocean sea service".

Dated: October 7, 2002.

Paul J. Pluta,

Rear Admiral, Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–26463 Filed 10–17–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 71, 115, 126, 167, 169 and 176

[USCG–2000–6858]

RIN 2115–AF95

Alternate Hull Examination Program for Certain Passenger Vessels, and Underwater Surveys for Nautical School, Offshore Supply, Passenger and Sailing School Vessels; Correction

AGENCY: Coast Guard, DOT.

ACTION: Interim rule; announcement of effective date; correction.

SUMMARY: This document contains a correction to the interim rule; announcement of effective date published in the **Federal Register** on August 28, 2002, which announced the approval of a collection-of-information requirement for vessel owners or operators to send applications, hull exam reports, hull condition assessments, and preventative maintenance plans to the Coast Guard in order to participate in the Alternative Hull Exam and UWILD Programs.

DATES: This correction to the interim rule is effective on October 18, 2002.

FOR FURTHER INFORMATION CONTACT: Don Darcy, Office of Standards Evaluation and Development (G–MSR), Coast Guard, 202–267–1200.

SUPPLEMENTARY INFORMATION:

Need for the Correction

As published, the interim rule; announcement of effective date contains typographical errors and omissions that may prove to be misleading and therefore needs correction.

Correction

In rule FR Doc. 02–21983 published on August 28, 2002, (67 FR 55162) make the following corrections:

On page 55162, in the second column, in the **DATES** section, following "126.140(g)(3);", remove the first "176.615(c)," and, in its place, add, in numerical order, "167.15–33(b) and 167.15–33(c); 169.230(b) and 169.230(c); 176.615(b),".

Dated: October 3, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental, Protection.

[FR Doc. 02–26461 Filed 10–17–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 121701A]

RIN 0648–AQ02

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Steller Sea Lion Protection Measures and Recordkeeping and Reporting Requirements; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This action corrects the Steller sea lion emergency interim rule, as amended, corrected, and extended, which contains regulations relating to Fisheries of the Exclusive Economic Zone off Alaska. This action also corrects the recordkeeping and reporting final rule and its correction. This action is necessary to re-instate appropriate applicability dates and correct other errors and omissions that occurred.

DATES: Section 679.32(a) is suspended from January 1, 2002, through December 31, 2002.

The amendments to §§ 679.2, 679.4, 679.5, 679.7, 679.20, 679.22, 679.23, 679.28, 679.31, and 679.50 are effective October 18, 2002 through December 31, 2002.

The amendment to § 679.43(a) and the revised Table 11 to Part 679 are effective October 18, 2002.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008, or e-mail Patsy.Bearden@noaa.gov.

SUPPLEMENTARY INFORMATION: Since January 2002, several rules were published in the **Federal Register** by NMFS, Alaska Region, that require further correction by this action. These are the emergency interim rule published January 8, 2002 (67 FR 956), which implemented Steller sea lion protection measures (SSL rule), subsequently amended and corrected May 1, 2002 (67 FR 21600 (SSL correction), and extended May 16, 2002 (67 FR 34860) (SSL extension); and the final rule published January 28, 2002 (67 FR 4100), which amended regulations implementing recordkeeping and reporting requirements (R&R rule), corrected May 2, 2002 (67 FR 22008) (R&R correction).

The SSL rule, SSL correction, the R&R rule and R&R correction often address the same regulatory text. Despite NMFS' effort to ascertain errors common or shared by these rules, errors still exist in the regulatory text and are corrected by this action.

Need for Corrections

This rule re-establishes appropriate applicability dates for the regulations associated with the SSL rule and its subsequent amendment, correction, and extension. The SSL rule intended to specify that the provisions contained in it were to be suspended or effective from January 1, 2002, through July 8, 2002, with some exceptions. The SSL extension published May 16, 2002, extended the effective date of the rule, as amended and corrected by the May 1, 2002, SSL correction, through December 31, 2002. However, the SSL extension did not specify that the exception language contained in the **DATES** section of the preamble to the SSL correction was similarly extended and did not revise the codified text to identify SSL protection measures as applicable through December 31, 2002.

A separate rule published April 15, 2002 (67 FR 18129), implemented measures regarding the License Limitation Program (LLP) for the Bering Sea and Aleutian Islands Area and addressed §§ 679.7 and 679.20 for the Community Development Quota Program under Amendment 67 (LLP rule). The LLP-rule revision of paragraph § 679.7(d)(16) supersedes the suspension of this paragraph published in the SSL rule. No changes were made to the language in paragraph (d)(16); the LLP rule merely replaced the suspended paragraph (d)(16) with an effective paragraph (d)(16).

The LLP rule removed paragraph § 679.7(d)(26). This paragraph was added by the SSL rule to replace the suspended paragraph (d)(16). However, with the revision of paragraph § 679.7(d)(16) in the LLP rule, paragraph (d)(26) is no longer necessary.

The LLP rule revised paragraph § 679.20(f)(2), which supersedes the suspension of this paragraph published in the SSL rule. No changes were made to the language in paragraph (f)(2). The LLP rule merely replaced the suspended paragraph (f)(2) with an effective paragraph (f)(2).

The LLP rule revised the language in paragraph § 679.7(f)(8), which supersedes the suspension of this paragraph published in the SSL rule.

The R&R correction redesignated paragraphs § 679.4(b)(5)(v), (vi), and (vii) for consistency between the SSL rule and the R&R rule. The renumbering of these paragraphs affected cross references in several paragraphs, which are corrected by this action.

Table 11 to part 679 was printed incorrectly in the R&R correction. Formatting errors prior to submission to the Office of the Federal Register resulted in the last four columns being omitted. This error is corrected by republishing Table 11.

Paragraph § 679.43(a) in the CFR describes the applicability of the Office of Administrative Appeals. This paragraph was revised in the R&R rule by adding sections regulating the appeals process. However, a separate rule published on December 14, 2000 (65 FR 78110), had revised paragraph § 679.43(a) to include all sections of 50 CFR part 679 in the appeals process and the revision to this paragraph should not have been included in the R&R rule. Thus, the language in this paragraph is returned to its original text.

Classification

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment under the authority set forth at 5 U.S.C. 553(b)(B). Prior notice and comment are unnecessary because the terms this action changes will have no substantive effect on the regulated public. The changes are minor technical amendments correcting typographical errors and requiring no agency discretion. NMFS is not changing the regulations to the extent the corrections would affect participants or participation in the fisheries.

NMFS determines that there is no public interest affected by waiving prior notice and opportunity to comment. NMFS also determines that the public interest would be prejudiced more by prior notice and comment because it would prolong the inaccurate language that currently exists in the regulations. Therefore, the Assistant Administrator for Fisheries, NOAA, waives the 30–day delay in the effective date under 5 U.S.C. 553(d).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: September 18, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs.National Marine Fisheries Service.

Accordingly, 50 CFR part 679 is amended by making correcting amendments to the following publications of January 8, 2002, January 28, 2002, May 1, 2002, May 2, 2002, and May 16, 2002:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*; 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec 3027, Pub. L. 106–31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209, Pub, L, 106–554.

§ 679.2 [Corrected]

2. In § 679.2, make the following amendments:

a. Remove the definitions for "Inshore component in the GOA" and "Offshore component in the GOA" whose applicability date reads: "(applicable through December 31, 2001)";

b. In the definitions for "Harvest limit area for platoon managed Atka mackerel directed fishing", "Inshore component in the GOA", and "Offshore component in the GOA" remove the parenthetical date of applicability "(applicable through July 8, 2002)" and add in its place the parenthetical date of applicability "(applicable through December 31, 2002)";

c. In the definition for "Harvest limit area for platoon managed Atka mackerel directed fishing", the paragraph designation "§ § 679.4(b)(5)(iv)," is revised to read "§ § 679.4(b)(5)(vii),".

§ 679.4 [Corrected]

3. In § 679.4(b)(5)(vi) and (b)(5)(vii), remove the parenthetical date of applicability "(Applicable through July 8, 2002)" and add in its place the parenthetical date of applicability "(Applicable through December 31, 2002)".

§ 679.5 [Corrected]

4. In § 679.5(n)(2)(iii)(B)(*4*), remove the parenthetical date of applicability "(Applicable through July 8, 2002)" and add in its place the parenthetical date of applicability "(Applicable through December 31, 2002)".

§ 679.7 [Corrected]

5. In § 679.7, make the following amendments:

a. In paragraphs (a)(7)(iii), (a)(7)(iv), (a)(7)(v), and (a)(7)(vii), (a)(17), (a)(19), (f)(16), (j), and (k), remove the parenthetical date of applicability "(applicable through July 8, 2002)" and add in its place the parenthetical date of applicability "(applicable through December 31, 2002)";

b. In paragraph (a)(18), remove "(applicable 1200 hours, A.l.t., June 10, 2002, through July 8, 2002)." and add in its place "(applicable 1200 hours, A.l.t., June 10, 2002, through December 31, 2002).";" and

c. In paragraph (a)(18), revise the reference "§ 679.4(b)(5)(v)" to read "§ 679.4(b)(5)(vi)".

§ 679.20 [Corrected]

6. In § 679.20, in paragraphs (a)(5)(i)(B), (a)(5)(i)(F), (a)(5)(ii)(C), (a)(6)(ii), (a)(6)(iii), (a)(7)(i)(C)(*4*), (a)(7)(i)(C)(*5*), (a)(7)(ii)(D) and (a)(7)(ii)(E), (a)(7)(iii)(D), (a)(8)(ii)(C), (a)(8)(iii), (a)(11), (b)(2)(i), (b)(2)(ii), and (d)(4), remove the parenthetical date of applicability "(applicable through July 8, 2002)" and add in its place the parenthetical date of applicability "(applicable through December 31, 2002)".

§ 679.22 [Corrected]

7. In § 679.22, in paragraphs (a)(5)(iv), (a)(11), (a)(12), (b)(3), and (b)(6), remove the parenthetical date of applicability "(applicable through July 8, 2002)" and add in its place the parenthetical date of applicability "(applicable through December 31, 2002)".

§ 679.23 [Corrected]

8. In § 679.23, in paragraphs (d)(3), (d)(*4*), (e)(*4*)(iv), (e)(4)(v), (e)(5), (e)(6), (e)(7), and (i) remove the parenthetical date of applicability "(applicable through July 8, 2002)" and add in its place the parenthetical date of applicability "(applicable through December 31, 2002)".

§ 679.28 [Corrected]

9. In § 679.28(f)(3), make the following amendments:

a. In paragraph (f)(3)(viii), revise the parenthetical date of applicability "(Applicable 1200 hours A.l.t. June 10, 2002, through July 8, 2002)" to read "(Applicable 1200 hours A.l.t. June 10, 2002, through December 31, 2002)",

b. In paragraph (f)(3)(ix), revise the parenthetical date of effectiveness "(Effective May 1, 2002, through July 8, 2002)" to read "(Applicable May 1, 2002, through December 21, 2002)"; and

c. In paragraphs (f)(3)(viii), introductory text, and (f)(3)(viii)(B), revise the reference "§ 679.4(b)(5)(v)" to read "§ 679.4(b)(5)(vi)".

§ 679.31 [Corrected]

10. In § 679.31, in paragraph (g), remove the parenthetical date of applicability "(applicable through July 8, 2002)" and add it its place the parenthetical date of applicability "(applicable through December 31, 2002)".

§ 679.32 [Corrected]

11. In § 679.32, suspend paragraph (a) from January 1, 2002, through December 31, 2002.

§ 679.43 [Corrected]

12. In § 679.43, amend paragraph (a), the last part of the sentence, which reads "under this subpart D as well as portions of subpart C of this part" to read "under this part 679".

§ 679.50 [Corrected]

13. In § 679.50, amend as follows:

a. In paragraph (c)(1)(x), revise the parenthetical date of applicability "(Applicable through July 8, 2002)" to read "(Applicable through December 31, 2002)";

b. In paragraph (c)(4)(vi), introductory text, remove the parenthetical date of applicability "(applicable January 15, 2002, through July 8, 2002).";

c. At the beginning of paragraph (c)(4)(vi)(A), add the text "(Applicable January 15, 2002, through December 31, 2002)";

d. In paragraph (c)(6), revise the parenthetical date of applicability "(applicable January 15, 2002, through July 8, 2002)." to read "(applicable January 15, 2002, through December 31, 2002).";" and

e. In paragraph (c)(4)(vi)(C), revise the parenthetical date of effectiveness "(Effective May 1, 2002, through July 8, 2002)" to read "(Effective May 1, 2002, through December 31, 2002)".

14. Revise Table 11 to part 679 to read as follows:

BILLING CODE 3510–22–S

Table 11 to Part 679 – BSAI Retainable Percentages

BASIS SPECIES		INCIDENTAL CATCH SPECIES[7]															
		Pollock	Pacific cod	Atka mackerel	Alaska plaice	Arrow-tooth	Yellow fin sole	Other flatfish[2]	Rock sole	Flathead sole	Green-land turbot	Sablefish[1]	Short-raker/ rougheye	Aggregated rockfish[6]	Squid	Aggregated forage fish[7]	Other species[4]
110	Pacific cod	20	na[5]	20	20	35	20	20	20	20	1	1	2	5	20	2	20
121	Arrowtooth	0	0	0	0	na[5]	0	0	0	0	0	0	0	0	0	2	0
122	Flathead sole	20	20	20	35	35	35	35	35	na[5]	35	15	7	15	20	2	20
123	Rock sole	20	20	20	35	35	35	35	na[5]	35	1	1	2	15	20	2	20
127	Yellowfin sole	20	20	20	35	35	na[5]	35	35	35	1	1	2	5	20	2	20
133	Alaska Plaice	20	20	20	na[5]	35	35	35	35	35	1	1	2	5	20	2	20
134	Greenland turbot	20	20	20	20	35	20	20	20	20	na[5]	15	7	15	20	2	20
136	Northern	20	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
141	Pacific Ocean perch	20	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
152/ 151	Shortraker/ Rougheye	20	20	20	20	35	20	20	20	20	35	15	na[5]	5	20	2	20
193	Atka mackerel	20	20	na[5]	20	35	20	20	20	20	1	1	2	5	20	2	20
270	Pollock	na[5]	20	20	20	35	20	20	20	20	1	1	2	5	20	2	20
710	Sablefish[1]	20	20	20	20	35	20	20	20	20	35	na[5]	7	15	20	2	20
875	Squid	20	20	20	20	35	20	20	20	20	1	1	2	5	na[5]	2	20
Other flatfish[2]		20	20	20	35	35	35	na[5]	35	35	1	1	2	5	20	2	20
Other rockfish[3]		20	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Other species[4]		20	20	20	20	35	20	20	20	20	1	1	2	5	20	2	na[5]
Aggregated amount non-groundfish species		20	20	20	20	35	20	20	20	20	1	1	2	5	20	2	20

NOTES to Table 11	
1	Sablefish: for fixed gear restrictions, see 50 CFR 679.7(f)(3)(ii) and 679.7(f)(11).
2	Other flatfish includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Alaska plaice, and arrowtooth flounder.
3	Other rockfish includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch; and northern, shortraker, and rougheye rockfish. The CDQ reserves for shortraker, rougheye, and northern rockfish will continue to be managed as the "other red rockfish" complex for the BS.
4	Other species includes sculpins, sharks, skates and octopus. Forage fish, as defined at Table 2 to this part are not included in the "other species" category.
5	na = not applicable
6	Aggregated rockfish includes all of the genera *Sebastes* and *Sebastolobus*, except shortraker and rougheye rockfish.
7	Forage fish are defined at Table 2 to this part.

[FR Doc. 02–26597 Filed 10–17–02; 8:45 am]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 67, No. 202
Friday, October 18, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Part 614

Programs for the Needs of Young, Beginning and Small Farmers and Ranchers

AGENCY: Farm Credit Administration (FCA or agency).

ACTION: Notice of public meeting.

SUMMARY: The Farm Credit Administration (FCA or agency) announces a forthcoming public meeting to consider whether regulatory changes are needed to enhance the Farm Credit System's (System) service to young, beginning, and small farmers, ranchers, and producers or harvesters of aquatic products (YBS farmers and ranchers).

DATES: The public meeting will be held on Wednesday, November 13, 2002, in Kansas City, Missouri. Anyone wishing to present testimony in person may notify us by November 6, 2002, or register to speak on the day of the meeting. Requests to provide testimony in person will be honored in order of receipt. Parties who register to speak on the day of the meeting may be invited to provide their testimony if time permits. If more people wish to testify than time permits, we will accept written statements for the record for 30 calendar days following the date of the public meeting. Requests for sign language interpretation or other auxiliary aids should be received by FCA's Office of Congressional and Public Affairs at (703) 883–4056, (TTY (703) 883–4056) by November 6, 2002.

ADDRESSES: The FCA will hold the public meeting at the Hyatt Regency Crown Center, 2345 McGee Street, Kansas City, Missouri, 64108 (816) 421–1234 on November 13, 2002, at 10 a.m. local time. You may submit requests to appear and present testimony for the public meeting by electronic mail to *reg-comm@fca.gov* or through the Pending Regulations section of our Web site at *www.fca.gov*. You may also submit your request in writing to Thomas G. McKenzie, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, or by facsimile transmission to (703) 734–5784.

FOR FURTHER INFORMATION CONTACT:

Samuel R. Coleman, CFA, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434, or
Wendy R. Laguarda, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

I. Background

This public meeting is another step in the agency's efforts to obtain public input, which will help us ensure that the System accommodates the current and evolving needs of YBS farmers and ranchers for credit and related services. The FCA published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on September 23, 2002 (67 FR 59479). Although anyone in the general public can comment on the ANPRM, generally we expect to hear from System institutions, System related entities or individuals, and the banking community in written comments responding to the questions in our ANPRM. The public meeting will be held to help us ensure that we hear the end-users' perspectives, that is, farmers and ranchers. The public meeting will give these individuals an opportunity to express their views face-to-face with the agency on ways the System can enhance its lending to and programs for YBS farmers and ranchers.

II. Objective

The objective of the FCA's focus on providing greater access to credit and related services to YBS farmers and ranchers is to generate ideas on ways to:

1. Develop clear, meaningful, and results-oriented guidelines for System YBS policies and programs;
2. Effectively measure the System's YBS performance to ensure that the System is fulfilling its YBS statutory mission; and
3. Provide adequate reporting and disclosure to the public on the System's compliance with its statutory YBS mission.

As noted above, the public meeting is an opportunity for the agency to get the perspectives of farmers and ranchers on how to accomplish this objective.

III. Questions

The agency posed numerous questions in its ANPRM on YBS farmers and ranchers credit and related services (67 FR 59479, Sept. 23, 2002). We encourage you to respond to all ANPRM questions in writing as instructed in the ANPRM. However, in the public meeting, we ask commenters to provide their perspectives on whether:

1. FCA should require System YBS programs to include special credit treatment for YBS farmer and rancher loans (including guarantees, concessionary underwriting standards, loan fees, interest rates, and differential loan covenants);
2. The System currently offers appropriate related services, such as farm business consulting, recordkeeping, insurance, and tax planning and preparation services to YBS farmers and ranchers;
3. Certain types of marketing and outreach activities best help promote YBS programs;
4. Certain types of System partnerships, alliances, or other joint efforts best help promote YBS programs; and
5. Non-System lenders offer programs or services to YBS farmers and ranchers that the System could offer as well.

Please limit verbal testimony at the meeting to 10 minutes per person and allow 5 minutes for follow-up questions. At the public meeting, we will also accept for the record written comments on questions and issues raised in the ANPRM or any other comments that attendees may have on the subject of YBS farmers and ranchers.

IV. Request To Present Testimony

Anyone wishing to present testimony in person may notify us by November 6, 2002, or register to speak on the day of the meeting. A request to speak should provide the name, address, and telephone number of the person wishing to testify and the general nature of the testimony. Requests to provide testimony in person will be honored in order of receipt.

Parties who register to speak on the day of the meeting may be invited to provide their testimony if time permits. If more people wish to testify than time permits, we will accept written statements for the record for 30 calendar days following the date of the public meeting.

You may also wish to submit written statements or detailed summaries of the text of your testimony. Written comments that you wish to submit to supplement your testimony should be presented to us by the close of the public meeting.

Written copies of the testimony along with a recorded transcript of the proceedings will be included in our official public record. A transcript of the public meeting and any written statements submitted to the agency will be available for public inspection at the FCA's Office of Policy and Analysis in McLean, Virginia.

V. Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be received by FCA's Office of Congressional and Public Affairs at (703) 883–4056, (TTY (703) 883–4056) by November 6, 2002.

Dated: October 11, 2002.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 02–26470 Filed 10–17–02; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–44–AD]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. Model HC–B3TN–5( ) Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Hartzell Propeller Inc. model HC–B3TN–5( ) propellers, with blades part number (P/N) T10176H(B,K)–5 or T10178H(B)–11(R) that are installed on Mitsubishi Heavy Industries, Ltd, MU–2 series airplanes. This proposal would require replacement of those blades with blades of the latest design. This proposal is prompted by a report of in-flight propeller blade separation that caused a severe out-of-balance condition, damage to the airplane, and resulted in engine shutdown and a safe landing. The actions specified by the proposed AD are intended to prevent propeller blade separation, damage to the airplane, and possible loss of the airplane.

DATES: Comments must be received by December 17, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–44–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line. The service information referenced in the proposed rule may be obtained from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200, fax (937) 778–4391. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT:

Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7031; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NE–44–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–44–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The FAA has received a report of an in-flight blade separation that caused a severe out-of-balance condition, damage to the airplane, and resulted in engine shutdown and a safe landing, on a Mitsubishi MU–2 series airplane. Analysis revealed that the blade, made of (hard alloy) 7076 aluminum alloy, separated due to fatigue failure caused by intergranular corrosion. The service difficulty history to date indicates that this condition is limited to Hartzell propellers installed on Mitsubishi MU–2 series airplanes. This condition, if not corrected, could result in propeller blade separation, damage to the airplane, and possible loss of the airplane.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Hartzell Propeller Inc. Service Bulletin (SB) HC–SB–61–250, Revision 1, dated April 8, 2002, that describes procedures for replacing (hard alloy) 7076 aluminum alloy propeller blades, part number T10176H(B,K)–5 or T10178H(B)–11(R), with (non-hard alloy) 2025 aluminum alloy blades, part number T10176(N)(S)(B,K)–5 or T10178(N)(S)(B)–11(R), respectively. Hard alloy blades are identified by the letter "H" immediately following the blade design number, such as in T10176H.

Differences Between This AD and the Manufacturer's Service Information

Although Hartzell Propeller Inc. SB HC–SB–61–250, Revision 1, dated April 8, 2002, requires propeller blade replacement within 400 flight hours or 2 years from the date of the bulletin, whichever occurs first, this proposal

would require propeller blade replacement within 200 flight hours or 1 year from the effective date of the proposed AD, whichever occurs first. The reduction in blade replacement time from the SB has been made to prevent blade failure during the compliance period of this AD. The times are based on an engineering evaluation of the failure rate of hard alloy blades due to intergranular corrosion induced fatigue.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Hartzell Propeller Inc. model HC–B3TN–5( ) propellers of the same type design, the proposed AD would require replacement of propeller blades, part number T10176H(B,K)–5 or T10178H(B)–11(R), with propeller blades part number T10176(N)(S)(B,K)–5 or T10178(N)(S)(B)–11(R), respectively, within 200 flight hours or 1 year from the effective date of this AD, whichever occurs first. The actions would be required to be done in accordance with the service bulletin described previously.

Economic Analysis

There are approximately 250 Hartzell Propeller Inc. model HC–B3TN–5( ) propellers of the affected design in the worldwide fleet. The FAA estimates that 200 propellers installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 10 work hours per propeller to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $10,000 per propeller. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $2,120,000.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Hartzell Propeller Inc.: Docket No. 2001–NE–44–AD.

Applicability: This airworthiness directive (AD) is applicable to Hartzell Propeller Inc. model HC–B3TN–5( ) propellers, with T10176H(B)–5, T10176H(K)–5, T10176H–5, T10178H–11, T10178H–11R, T10178H(B)–11, and T10178H(B)–11R, blades that are installed on Mitsubishi Heavy Industries, Ltd. MU–2 series airplanes.

Note 1: The parentheses indicate the presence or absence of an additional letter(s) which vary the basic propeller blade model designation. This AD still applies regardless of whether these letters are present or absent on the propeller blade model designation.

Note 2: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required within 200 flight hours or 1 year from the effective date of this AD, whichever occurs first, unless already done.

To prevent propeller blade separation, damage to the airplane, and possible loss of the airplane, do the following:

(a) Remove and replace propeller blades in accordance with paragraphs 3.A. through 3.C.(3) of the Accomplishment Instructions of Hartzell Propeller Inc. Service Bulletin (SB) HC–SB–61–250, Revision 1, dated April 8, 2002.

(b) After the effective date of this AD, do not install any propeller blade removed in accordance with paragraph (a) of this AD, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on October 10, 2002.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–26588 Filed 10–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–60–AD]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. Model HD–E6C–3B/E13890K Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Hartzell Propeller Inc. model HD–E6C–3B/E13890K propellers with certain serial numbers of model D–1199–2 propeller control units (PCU's) installed. This proposal would require initial and repetitive inspections for below-limit propeller flight idle blade angles, and, as a terminating action, removal of the affected PCU's from service and performance of a complete Major Periodic Inspection (overhaul) when the applicable time-since-new or time-since-overhaul limit is reached, or when any flight idle blade angle is below limits. This proposal is prompted by a review by Hartzell Propeller Inc. of the model D–1199–2 PCU overhaul procedures, that revealed several dimensional checks and a nondestructive evaluation were not performed on certain serial number PCU's during a Major Periodic Inspection (overhaul). The overhaul procedures are required to comply with the Airworthiness Limitation PCU Major Periodic Inspection (overhaul) directive. The actions specified by the proposed AD are intended to prevent below-limit flight idle propeller blade angles that, if not corrected, could result in degraded aircraft performance and control.

DATES: Comments must be received by December 17, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–60–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200, fax (937) 778–4391. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7031, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–60–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–60–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The FAA was notified by Hartzell Propeller Inc. that model HD–E6C–3B/E13890K propellers with certain serial numbers of model D–1199–2 PCU's installed, could be potentially out of compliance with the Airworthiness Limitations Chapter of Hartzell Manual 162, by having higher than allowable wear dimensions. This condition is due to improperly performed Major Periodic Inspections (overhauls) by Hartzell Propeller Inc., on 78 PCU's, identified by serial number. This proposal would require initial and repetitive inspections of flight idle blade angles, and performance of a complete Major Periodic Inspection (overhaul) of the affected PCU's or replacement with a serviceable part as terminating action. This proposal is prompted by a review by Hartzell Propeller Inc. of the model D–1199–2 PCU overhaul procedures, that revealed several dimensional checks and a nondestructive evaluation were not performed on certain serial number PCU's. The actions specified in the proposed AD are intended to prevent below-limit flight idle propeller blade angles that, if not corrected, could result in degraded aircraft performance and control.

Manufacturer's Service Information

Hartzell Propeller Inc. has issued Service Bulletins (SB's) No. HD–SB–61–025, dated November 17, 2000, and No. HD–SB–61–025, Revision 1, dated December 20, 2000, that specify initial and repetitive inspections for below-limit propeller flight idle blade angles, and, as terminating action, removal of the affected PCU's from service and performance of a complete Major Periodic Inspection (overhaul) when the applicable time-since-new or time-since-overhaul limit is reached, or when any flight idle blade angle is below limits. The Major Periodic Inspection (overhaul) constitutes completion of paragraphs 2B. and 2C. of the Accomplishment Instructions of Hartzell Service Bulletin (SB) No. HD–SB–61–025, dated November 17, 2000, or SB No. HD–SB–61–025, Revision 1, dated December 20, 2000. Revision 1 was issued to correct the table of affected serial numbers.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of the same type design, the proposed AD would require:

- Initial and repetitive inspections for below-limit propeller flight idle blade angles; and
- As a terminating action of the flight idle blade angle repetitive inspections, removal of the affected PCU's from service and performance of a complete Major Periodic Inspection (overhaul) when the applicable time-since-new or time-since-overhaul limit is reached; or when any flight idle blade angle is below limits.

The proposed actions are required to be done in accordance with the service bulletins described previously.

Economic Analysis

There are approximately 78 Hartzell Propeller Inc. model D–1199–2 PCU's of the affected design in the worldwide fleet. The FAA estimates that 50 PCU's installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 1.5 work hours per propeller to perform the proposed initial inspections, 25 work hours per propeller to perform the proposed PCU

replacements, and that the average labor rate is $60 per work hour. Required parts would cost approximately $7,321 per propeller. Based on these figures, the total cost of initial inspections of the proposed AD to U.S. operators is estimated to be $4,500, and the total cost of replacement of the PCU's of the proposed AD to U.S. operators is estimated to be $441,050.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Hartzell Propeller Inc.: Docket No. 2000–NE–60–AD.

Applicability: This airworthiness directive (AD) is applicable to Hartzell Propeller Inc. model HD–E6C–3B/E13890K propellers with certain serial numbers of model D–1199–2 Propeller Control Units (PCU's) installed, as listed in Table 1 of this AD. These propellers are installed on, but not limited to Fairchild Dornier GmbH 328–100 series airplanes.

Note 1: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent below-limit flight idle propeller blade angles that, if not corrected, could result in degraded aircraft performance and control, do the following:

Initial and Repetitive Inspection Requirements

(a) On PCU's listed by serial number in the following Table 1 of this AD, at the next "2A" maintenance check, but no later than 600 hours time-in-service from the effective date of this AD, perform an initial flight idle blade angle inspection, in accordance with paragraph 2A. of the Accomplishment Instructions of Hartzell Service Bulletin (SB) No. HD–SB–61–025, Revision 1, dated December 20, 2000. Table 1 follows:

TABLE 1.—AFFECTED SERIAL NUMBERS, MODEL D–1199–2 PCU'S

PCU–A–29	PCU–A–EFS140	PCU–A–EFS194	PCU–A–EFS234	PCU–A–EFS284
PCU–A–31	PCU–A–EFS141	PCU–A–EFS204	PCU–A–EFS236	PCU–A–EFS290
PCU–A–44	PCU–A–EFS144	PCU–A–EFS207	PCU–A–EFS239	PCU–A–EFS292
PCU–A–46	PCU–A–EFS152	PCU–A–EFS208	PCU–A–EFS242	PCU–A–EFS293
PCU–A–53	PCU–A–EFS155	PCU–A–EFS210	PCU–A–EFS244	PCU–A–EFS294
PCU–A–54	PCU–A–EFS158	PCU–A–EFS212	PCU–A–EFS245	PCU–A–EFS302
PCU–A–57	PCU–A–EFS160	PCU–A–EFS213	PCU–A–EFS246	PCU–A–EFS307
PCU–A–58	PCU–A–EFS162	PCU–A–EFS214	PCU–A–EFS249	PCU–A–EFS319
PCU–A–59	PCU–A–EFS165	PCU–A–EFS218	PCU–A–EFS250	PCU–A–EFS320
PCU–A–EFS101	PCU–A–EFS182	PCU–A–EFS220	PCU–A–EFS257	PCU–A–EFS326
PCU–A–EFS106	PCU–A–EFS184	PCU–A–EFS223	PCU–A–EFS261	PCU–A–EFS328
PCU–A–EFS109	PCU–A–EFS185	PCU–A–EFS224	PCU–A–EFS266	PCU–A–EFS330
PCU–A–EFS110	PCU–A–EFS187	PCU–A–EFS225	PCU–A–EFS268	PCU–A–EFS340
PCU–A–EFS111	PCU–A–EFS188	PCU–A–EFS226	PCU–A–EFS269	PCU–A–EFS347
PCU–A–EFS120	PCU–A–EFS192	PCU–A–EFS228	PCU–A–EFS271	
PCU–A–EFS122	PCU–A–EFS193	PCU–A–EFS233	PCU–A–EFS279	

(b) Remove PCU's that fail the inspection in paragraph (a) of this AD and perform a Major Periodic Inspection (overhaul), in accordance with paragraphs 2.B. and 2.C. of the Accomplishment Instructions of Hartzell Service Bulletin (SB) No. HD–SB–61–025, Revision 1, dated December 20, 2000, or replace with a serviceable PCU.

(c) Thereafter, at each successive "4A" maintenance check, but not to exceed 1,200 hours time-in-service, perform the flight idle blade angle inspection until the limiting time-since-overhaul or time-since-new is reached, as specified in Hartzell SB HD–SB–61–025, Revision 1, dated December 20, 2000.

(d) Remove PCU's that fail the inspection in paragraph (c) of this AD and perform a Major Periodic Inspection (overhaul), in accordance with paragraphs 2.B. and 2.C. of Hartzell SB No. HD–SB–61–025, Revision 1, dated December 20, 2000, or replace with a serviceable PCU.

(e) Once the limiting time-since-overhaul or time-since-new specified in Hartzell SB HD–SB–61–025, Revision 1, dated December 20, 2000 is reached, remove the PCU from service and perform a Major Periodic Inspection (overhaul), in accordance with paragraphs 2.B. and 2.C. of Hartzell SB HD–SB–61–025, Revision 1, dated December 20, 2000.

Optional Terminating Action

(f) Replacement with a serviceable PCU is terminating action for the repetitive inspections specified in paragraph (c) of this AD. For the purpose of this AD, a serviceable PCU is one that is not listed in Table 1 of this AD, or is one listed in Table 1 of this AD that has undergone a Major Periodic Inspection (overhaul) after November 17, 2000, in accordance with paragraphs 2.B. and 2.C. of Hartzell SB HD–SB–61–025, Revision 1, dated December 20, 2000.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (ACO). An alternative method of compliance to Hartzell SB HD–SB–61–025, Revision 1, dated December 20, 2000, is compliance with Hartzell SB HD–SB–61–025, dated November 17, 2000. Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on October 11, 2002.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–26591 Filed 10–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–19–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited Model 427 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Bell Helicopter Textron Canada Limited (Bell) Model 427 helicopters. This proposal would require replacing the hydraulic solenoid tee fitting (tee fitting) and tubes. This proposal is prompted by the manufacturer's discovery that tee fittings may be installed improperly and restrict hydraulic fluid flow. The actions specified by this proposed AD are intended to prevent restricted flow of hydraulic fluid to the flight control hydraulic actuators resulting in loss of hydraulic control, excessive stiffness in the flight controls, and a subsequent forced landing of the helicopter.

DATES: Comments must be received on or before December 17, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–19–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–19–AD." The postcard will be date stamped and returned to the commenter.

Discussion

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on Bell Model 427 helicopters. Transport Canada advises that there is a possibility of installing the existing tee fitting in such a way that the hydraulic fluid flow will be significantly restricted. To preclude this possibility, Bell has designed a new tee fitting installation.

Bell has issued Bell Helicopter Textron Alert Service Bulletin No. 427–01–02, dated August 20, 2001, which specifies replacing the tee fitting. Transport Canada classified this alert service bulletin as mandatory and issued AD No. CF–2002–11, dated January 31, 2002, to ensure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, the proposed AD would require replacing certain tee fitting and tubes with an improved-designed tee fitting and tubes. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 31 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per helicopter to replace the tee fitting and tubes, and that the average labor rate is $60 per work hour. Required parts would cost approximately $527 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $18,197 to replace the tee fitting and tubes in the entire fleet.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal

would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron Canada Limited: Docket No. 2002–SW–19–AD.

Applicability: Model 427 helicopters, serial numbers 56001 through 56031, with hydraulic solenoid tee fitting, part number (P/N) AS1003W060404, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required at the next hydraulic filter and fluid replacement or within 30 days, whichever occurs first, unless accomplished previously.

To prevent restricted flow of hydraulic fluid to the flight control hydraulic actuators resulting in loss of hydraulic control, excessive stiffness in the flight controls, and a subsequent forced landing of the helicopter, accomplish the following:

(a) Replace the hydraulic solenoid tee fitting (tee fitting), P/N AS1003W060404, and tubes, P/Ns 427–080–058–101 and 427–080–003–101, with union, P/N AS5230W0606, tee fitting, P/N NAS1763W060404, and tubes, P/Ns 427–080–069–101 and 427–080–068–101, in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 427–01–02, dated August 20, 2001.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–2002–11, dated January 31, 2002.

Issued in Fort Worth, Texas, on October 10, 2002.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–26592 Filed 10–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–43–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited Model 427 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD) for Bell Helicopter Textron Canada Limited (Bell) Model 427 helicopters that would have required modifying each auxiliary fin (fin) by relocating the upper tuning weights to a lower position. That proposal was prompted by several incidents of main rotor blades contacting the top of the fin that have resulted in an upper tuning weight (weight) becoming loose. This action revises the proposed rule by requiring a different modification of the auxiliary fin and revising the Limitations section of the Rotorcraft Flight Manual (RFM) to reduce the never-exceed speed (Vne) for a tail rotor pedal stop failure. The actions specified by this proposed AD are intended to prevent a main rotor blade from striking a fin, loss of a tuning weight, impact with a tail or main rotor blade, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before December 17, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–43–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001–SW–43–AD." The postcard will be date stamped and returned to the commenter.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an AD for Bell Model 427 helicopters was published in the **Federal Register** on November 28, 2001 (66 FR 59377). That NPRM would have required modifying the fins, part number (P/N) 427–035–836–101 and 427–035–836–102, to relocate the weights, P/N 407–023–003–145. That NPRM was prompted by several incidents of main rotor blades contacting the top of the fin. The weights are located where a main rotor contact with the fin may result in a weight becoming loose. That condition, if not corrected, could result in loss of a weight, impact with a tail or main rotor blade, and subsequent loss of control of the helicopter.

Since the issuance of that NPRM, Transport Canada, which is the airworthiness authority for Canada, has issued a revised AD CF–2001–05R1, dated February 13, 2002, that requires, within 300 hours time-in-service or no later than May 30, 2002, modifying the auxiliary fins to reduce the height and revising the Limitations section of the RFM to reduce the Vne for a tail rotor pedal stop system failure from 80 knots indicated airspeed (KIAS) to 60 KIAS. The published NPRM recognized that relocating the tuning weights was an interim action and anticipated that contact between the main rotor blades and the top portion of the fins would be addressed in a separate AD. However, reducing the height of the fins as proposed in this document makes the relocation of the tuning weights unnecessary.

Therefore, the FAA agrees with the changes mandated by Transport Canada and is proposing those same actions as well as adding additional serial numbers and part numbers to the applicability. Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that 30 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,685 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $72,150 to perform the modifications and revisions for the entire fleet.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron Canada Textron Canada Limited: Docket No. 2001–SW–43–AD.

Applicability: Model 427 helicopters, serial numbers 56001 through 56030 with auxiliary fin assemblies, part numbers 427–035–836–101, –102, –105, or –106, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of an upper tuning weight (weight), impact with a tail or main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 60 days, modify auxiliary fin assemblies, part numbers (P/N) 427–035–836–101, –102, –105 or –106, in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 427–01–07, dated November 16, 2001.

(b) After accomplishing paragraph (a) of this AD, reduce the never-exceed speed (Vne) limitation for a pedal stop failure from 80 knots indicated airspeed (KIAS) to 60 KIAS.

Note 2: Revision 3 of Bell Helicopter Textron Rotorcraft Flight Manual BHT–427–Fm–2, dated October 31, 2001, incorporates the reduced airspeed limitation for a pedal stop failure.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Transport Canada (Canada) AD CF–2001–05R1 dated February 13, 2002.

Issued in Fort Worth, Texas, on October 4, 2002.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–26593 Filed 10–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–01–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (formerly Allison Engine Company) 501–D Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Rolls-Royce Corporation (formerly Allison Engine Company) 501–D series turboprop engines. This proposal would require removal from service of certain turbine rotor components at reduced life limits. This proposal is prompted by the result of recalculated material properties by the manufacturer. The actions specified by the proposed AD are intended to prevent uncontained turbine rotor failure resulting in in-flight engine shutdown and possible damage to the airplane.

DATES: Comments must be received by December 17, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–01–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Rolls-Royce Corporation, P.O. Box 420, Indianapolis, IN 46206–0420; telephone (317) 230–6400; fax (317) 230–4243. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Michael Downs, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7870, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NE–01–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–01–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

Before the merger of Allison Engine Company and Rolls-Royce Corporation, Allison Engine Company obtained additional material properties data to enhance their materials database. The additional data showed much higher material property scatter compared to the data originally used to calculate the turbine rotor component life limits. Comparison of the data with other similar alloys showed the manufacturer that the new data, with increased scatter, was indeed representative. As a result, the manufacturer has reduced the life limits of certain second-stage, third-stage, and fourth-stage turbine wheel assemblies, and certain 1st-2nd stage, 2nd-3rd stage, and 3rd-4th stage turbine spacer assemblies.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Rolls-Royce Corporation (formerly Allison Engine Company) 501–D series turboprop engines of the same type design, the proposed AD would require removal from service, and replacement with a serviceable part for:

- Second-stage turbine wheel assemblies part numbers (P/N's) 6847142 and 6876892, before or upon accumulating 12,000 cycles-in-service (CIS), or 16,000 CIS if Allison Engine Company Commercial Overhaul Information Letter (COIL) 401, dated May 1978 has been complied with.
- Third-stage turbine wheel assemblies P/N's 6845883 and 6849743, before or upon accumulating 10,000 CIS, or 13,000 CIS if COIL 401, dated May 1978 has been complied with.
- Third-stage turbine wheel assembly P/N 6855083, before or upon accumulating 10,000 CIS.
- Fourth-stage turbine wheel assembly P/N 6876468, before or upon accumulating 18,000, or 24,000 CIS if COIL 401, dated May 1978 has been complied with.
- 1st–2nd stage spacer assemblies P/N's 6844632 and 23033463, before or upon accumulating 4,700 CIS.
- 1st–2nd stage spacer assembly P/N 23056966, before or upon accumulating 8,000 CIS.
- 2nd–3rd stage spacer assembly P/N 23033456, before or upon accumulating 4,000 CIS.
- 3rd–4th stage spacer assembly P/N 6844794 with serial number (SN) less than and including KK22951, except KK21556, KK21910, KK22814, KK22820, KK22868, and all SN's with an MM prefix, before or upon accumulating 5,100 CIS.

Economic Analysis

There are approximately 930 Rolls-Royce 501–D series turboprop engines of the affected design in the worldwide fleet. The FAA estimates that 684 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The proposed action does not impose any additional labor costs if performed at the time of scheduled engine overhaul. Required parts would cost approximately $45,000 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $30,780,000.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Rolls-Royce Corporation: Docket No. 2001–NE–01–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce Corporation (formerly Allison Engine Company) 501–D series turboprop engines. These engines are installed on, but not limited to Lockheed 188 series and 382 series turboprop airplanes, and Convair Models 340 and 440 airplanes which have had Rolls-Royce Corporation 501–D series turboprop engines installed under a Supplemental Type Certificate. These models are commonly referred to as Convair 580/580A or 5800 models.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent uncontained turbine rotor failure, resulting in in-flight engine shutdown and possible damage to the airplane, do the following:

501–D13 Series Engines

(a) For 501–D13 series engines, remove turbine wheels and spacers from service as specified in the following Table 1:

TABLE 1.—501–D13 SERIES LIFE LIMITS

Part name	Part number	Life limit for wheels that have complied with commercial overhaul information letter (COIL) 401, dated May 1978	Life limit for wheels that have not complied with COIL 401, dated May 1978
(1) Second-stage turbine wheel assembly.	6847142 and 6876892	Remove from service before or upon accumulating 16,000 cycles-in-service (CIS).	Remove from service before or upon accumulating 12,000 CIS.
(2) Third-stage turbine wheel assembly.	6845883 and 6849743	Remove from service before or upon accumulating 13,000 CIS.	Remove from service before or upon accumulating 10,000 CIS.
(3) Fourth-stage turbine wheel assembly.	6876468	Remove from service before or upon accumulating 24,000 CIS.	Remove from service before or upon accumulating 18,000 CIS.

(b) Information on 501–D13 series engine turbine life limits can be found in Rolls-Royce Commercial Service Letter (CSL) No. CSL–120, Revision No. 52, dated July 22, 2002.

501–D22 Series Engines

(c) For 501–D22 series engines, remove turbine wheels and spacers from service as specified in the following Table 2:

TABLE 2.—501–D22 SERIES LIFE LIMITS

Part name	Part number	Remove from service
(1) Third-stage turbine wheel assembly	6855083	Before or upon accumulating 10,000 cycles-in-service (CIS).
(2) 1st-2nd-stage spacer assembly	6844632 and 23033463	Before or upon accumulating 4,700 CIS.
(3) 1st-2nd-stage spacer assembly	23056966	Before or upon accumulating 8,000 CIS.
(4) 2nd-3rd-stage spacer assembly	23033456	Before or upon accumulating 4,000 CIS.

TABLE 2.—501–D22 SERIES LIFE LIMITS—Continued

Part name	Part number	Remove from service
(5) 3rd-4th-stage spacer assembly	6844794	Before or upon accumulating 5,100 CIS, with SN less than and including KK22951, except KK21556, KK21910, KK22814, KK22820 and KK22868, and all SN's with an MM prefix.

(d) Information on 501–D22 series engine turbine life limits can be found in Rolls-Royce Commercial Service Letter (CSL) No. CSL–1001, Revision No. 19, dated July 22, 2002.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on October 11, 2002.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–26587 Filed 10–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 119

[Docket No. FAA–2002–13378; Notice No. 02–14]

RIN 2120–AH55

Reports by Carriers on Incidents Involving Animals During Air Transport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This action extends the comment period for an NPRM that was published on September 27, 2002. In that document, the FAA proposed to amend its regulations to implement the requirement established by Congress that air carriers providing scheduled passenger air transportation submit reports to the Secretary of Transportation on any incidents involving the loss, injury or death of an animal during air transport provided by the air carrier. This extension is a result of requests received during the comment period for the NPRM.

DATES: Comments must be received on or before December 27, 2002.

ADDRESSES: Comments on this document should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–2002–13378, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 9 a.m. and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov* at any time. Commenters who wish to file comments electronically should follow the instructions on the DMS Web site.

FOR FURTHER INFORMATION CONTACT: James W. Whitlow, Office of the Chief Counsel, AGC–2, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3222; facsimile (202) 267–3227.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in the NPRM, Notice No. 02–14. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address **ADDRESSES** section.

Before acting on the proposals in the NPRM, Notice No. 02–14, we will consider all comments we receive on or before the closing date. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposals in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

Background

The FAA published a notice (67 FR 61238, September 27, 2002) proposing to amend 14 CFR part 119 to implement the requirement established by Section 710(a) of Public Law 106–181, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) that air carriers must submit reports on the loss, injury or death of an animal during air transport. This information would be submitted to the Secretary of Transportation for each month in which an incident or incidents occur, through the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA). The notice also proposed the type and manner of information that air carriers would be required to submit to APHIS.

Extension of Comment Period

In accordance with § 11.47 of Title 14, Code of Federal Regulations, the FAA has reviewed the petitions submitted to the docket by several commenters requesting an extension of the comment period to Notice No. 02–14 (67 FR 61238). These petitioners requested an extension of time to adequately respond to the notice of proposed rulemaking. To allow additional time for a more thorough review of applicable issues and drafting of responsive comments, the FAA finds that there is good cause and it is in the public interest to extend the comment period for an additional 60 days beyond the 30 days already provided. Accordingly, the comment period for Notice No. 02–14 is extended until December 27, 2002.

Issued in Washington, DC, on October 10, 2002.

James W. Whitlow,

Deputy Chief Counsel.

[FR Doc. 02–26465 Filed 10–17–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–208280–86; REG–136311–01]

RIN 1545–AJ57; 1545–BA07

Exclusions From Gross Income of Foreign Corporations; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of date of public hearing, extension of time for submitting public comments and outlines of oral comments.

SUMMARY: This document changes the date of a public hearing on proposed regulations relating to exclusions from gross income of foreign corporations under section 883 of the Internal Revenue Code, and extends the time for submitting public comments and outlines of oral comments.

DATES: The public hearing originally scheduled for Tuesday, November 12, 2002, at 10 a.m. is rescheduled for Monday, November 25, 2002, at 10 a.m. The due date for written or electronic public comments and outlines of topics to be discussed, is November 5, 2002.

ADDRESSES: The public hearing is being held in room 4718, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. Send submissions to: CC:ITA:RU (REG–208280–86; REG–136311–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–208280–86; REG–136311–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, comments may be transmitted electronically via the Internet by submitting comments directly to the IRS Internet site at: *http://www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Guy Traynor of the Regulations Unit, Associate Chief Counsel (Income Tax & Accounting), at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Friday, August 2, 2002 (67 FR 50510), announced that a public hearing on proposed regulations relating to exclusions from gross income of foreign corporations under section 883 of the Internal Revenue Code would be held on Tuesday, November 12, 2002, beginning at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The deadline for submitting public comments and outlines of topics to be discussed, was October 22, 2002.

The date of the hearing and deadline for submitting public comments has changed. The hearing is scheduled for Monday, November 25, 2002, beginning at 10 a.m. in room 4718, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. We must receive written and electronic public comments and outlines of topics to be discussed, by November 5, 2002. Because of the controlled access restrictions, attendants will not be admitted beyond the lobby area of the Internal Revenue Building until 9:30 a.m. The IRS will prepare an agenda showing the scheduling of the speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax & Accounting).

[FR Doc. 02–26450 Filed 10–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–150313–01]

RIN 1545–BA80

Redemptions Taxable as Dividends

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance regarding the treatment of the basis of redeemed stock when a distribution in redemption of such stock is treated as a dividend, as well as guidance regarding certain acquisitions of stock by related corporations that are treated as distributions in redemption of stock. The proposed regulations affect shareholders whose stock in a corporation is redeemed or is acquired by a corporation related to the issuer of the stock, and are necessary to provide such shareholders with guidance regarding the treatment of the basis of such stock. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received January 16, 2003. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for February 20, 2003, at 10 a.m. must be received by January 30, 2003.

ADDRESSES: Send submissions to CC:ITA:RU (REG–150313–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–150313–01), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs*. The public hearing will be held in Room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations generally, Lisa K. Leong, (202) 622–7530; concerning issues under sections 367, 861 and 864 of the Internal Revenue Code, Aaron A. Farmer, (202) 622–3860; concerning submissions of comments, the hearing, and/or to be

placed on the building access list to attend the hearing, Treena V. Garrett, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by December 17, 2002. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in § 1.302–5(e) and § 1.1502–19(b)(5)(v). This collection of information is required by the IRS to verify compliance with section 302. This information will be used to determine whether the amount of tax has been calculated correctly. The collection of information is required to properly determine the amount permitted to be taken into account as a loss. The respondents are shareholders (including individuals, corporations and pass-through entities) whose stock in a corporation is redeemed or is treated as redeemed.

Estimated total annual reporting burden: 1,500 hours.

Estimated average annual burden per respondent: 30 minutes.

Estimated number of respondents: 3,000.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed revisions and amendments to the Income Tax Regulations (26 CFR part 1) under sections 302, 304, 704, 861, 1371, 1374, and 1502 of the Internal Revenue Code (Code). The proposed regulations would amend the temporary and final regulations under sections 302, 304, 704, 861, 1371, 1374, and 1502 to provide guidance concerning the treatment of the basis of stock redeemed or treated as redeemed where the redemption proceeds are treated as a dividend distribution. These proposed regulations would also amend the final regulations under section 304 to conform them to certain of the amendments made to section 304 by legislation, including section 226 of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248 (96 Stat. 325, 490) (September 3, 1982), section 712(l) of the Deficit Reduction Act of 1984, Public Law 98–369 (98 Stat. 494, 953–55) (July 18, 1984), section 1875(b) of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085, 2894) (October 22, 1986), and section 1013 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788, 918) (August 5, 1997).

A. The Character of Property Received in Redemption of Stock

Section 302 of the Code governs the tax treatment of distributions in redemption of stock. The rules of section 302 attempt to distinguish between distributions that "may have capital-gain characteristics because they are not made pro rata among the various shareholders" and distributions "characterized by what happens solely at the corporate level by reason of the assets distributed." S. Rep. No. 1622, 83d Cong., 2d Sess. 49 (1954). Section 302(a) provides that a corporation's redemption of its stock is treated as a distribution in part or full payment in exchange for the stock if the redemption satisfies any one of the following criteria: (1) The redemption is not essentially equivalent to a dividend (section 302(b)(1)); (2) the redemption is substantially disproportionate (section 302(b)(2)); (3) the redemption completely terminates the redeemed shareholder's interest (section 302(b)(3)); or (4) the redemption is in connection with a qualifying partial liquidation (section 302(b)(4)). If a redemption satisfies none of these criteria, pursuant to section 302(d), the redemption is treated as a distribution of property to which section 301 applies.

Under sections 301(c)(1) and 316(a), a distribution is treated as a dividend to the extent of the redeeming corporation's earnings and profits. Any portion of the distribution that is not treated as a dividend is first applied against the adjusted basis of the redeemed stock to the extent of such basis under section 301(c)(2), and then treated as gain from the sale or exchange of property under section 301(c)(3).

B. The Character of Property Received in Certain Stock Acquisitions

The redemption rules of section 302 are implicated not only when an issuing corporation acquires its own stock, but also in the case of certain stock acquisitions by corporations related to the issuer of the acquired stock. Pursuant to section 304(a)(1), an acquisition of stock by a corporation from one or more persons that are in control of both the acquiring and issuing corporations is treated as if the property received in respect of the acquired stock were a distribution in redemption of the stock of the acquiring corporation. Prior to the amendments made by the Taxpayer Relief Act of 1997, section 304 provided that, to the extent that the deemed distribution was treated as a distribution to which section 301 applies, the stock acquired was treated as having been transferred by the person from whom acquired and as having been received by the corporation acquiring it, as a contribution to the capital of such corporation. The Taxpayer Relief Act of 1997 amended section 304(a)(1) to provide that, to the extent that this deemed distribution is treated as a distribution to which section 301 applies, the shareholder and the acquiring corporation are treated as if the shareholder had transferred the stock of the issuing corporation to the acquiring corporation in exchange for stock of the acquiring corporation in a transaction to which section 351(a) applies, and then the acquiring corporation had redeemed the stock it was treated as issuing in that transaction. Pursuant to section 304(a)(2), an acquisition of stock by a corporation controlled by the issuer of the acquired stock is treated as if the property received in respect of the acquired stock was a distribution in redemption of the stock of the issuing corporation.

For purposes of section 304, control means the ownership of stock possessing at least 50 percent of either the total combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock. The determination of the amount and source of the distribution that is treated as a dividend is made as if the property received in respect of the redeemed stock were distributed by the acquiring corporation to the extent of its earnings and profits and then by the issuing corporation to the extent of its earnings and profits. Because section 304 recharacterizes certain stock acquisition transactions as redemptions of stock, transactions to which section 304 applies implicate the redemption rules of section 302.

C. The Unutilized Basis of Stock Redeemed in Certain Transactions

While sections 301 and 302 clearly set forth the character of property received in a redemption (whether actual or deemed) of stock, they do not prescribe the tax treatment of the unutilized basis of the redeemed stock or the stock treated as redeemed. In 1955, the IRS and Treasury promulgated regulations under section 302 that provide guidance in this regard in the case of an actual redemption of stock. Section 1.302–2(c) of the Income Tax Regulations states that "[i]n any case in which an amount received in redemption of stock is treated as a distribution of a dividend, proper adjustment of the basis of the remaining stock will be made with respect to the stock redeemed." The regulation contains examples illustrating what constitutes a proper adjustment. In *Example 1* and *Example 3*, the redeemed shareholder actually owns stock of the redeeming corporation immediately after a redemption that is treated as a distribution of a dividend. In those cases, the basis of the shares of the redeeming corporation that the shareholder owns after the redemption is increased by the basis of the redeemed shares. *See also United States v. Davis*, 397 U.S. 301 (1970) (interpreting § 1.302–2(c) to shift the basis of redeemed stock to other shares held by the redeemed shareholder, even where those other shares are of a different class of stock than those redeemed); Rev. Rul. 66–37, 1966–1 C.B. 209 (same). In *Example 2*, although the redeemed shareholder actually owns no stock of the redeeming corporation immediately after a redemption that is treated as a distribution of a dividend, he does constructively own stock of the redeeming corporation immediately after the redemption by reason of his wife's continuing ownership of stock of the redeeming corporation. The example concludes that the redeemed shareholder's basis in the redeemed shares shifts to his wife's basis in her shares of stock of the redeeming corporation.

In addition, on December 2, 1955, the IRS and Treasury promulgated §§ 1.304–2(a) and 1.304–3(a). With respect to an acquisition of stock by a related corporation (other than a subsidiary), § 1.304–2(a) provides that the transferor's basis for his stock in the acquiring corporation is increased by the basis of the stock of the issuing corporation surrendered by him. Similarly, with respect to an acquisition of stock by a subsidiary, § 1.304–3(a) provides that the transferor's basis in his remaining stock in the parent corporation is increased by the basis of the stock deemed redeemed by the parent corporation. The treatment of the transferor's unutilized basis in stock of the issuing corporation as a result of transactions subject to section 304(a) is the subject of Revenue Ruling 70–496 (1970–2 C.B. 74), and Revenue Ruling 71–563 (1971–2 C.B. 175).

In Revenue Ruling 70–496, a first-tier subsidiary (Y) of a parent corporation (X) sold all of its stock in a second-tier subsidiary of X (S) to another first-tier subsidiary of X (Z). The ruling concludes that the transaction is governed by sections 304(a)(1) and 302(d). Accordingly, the ruling holds that the sales proceeds constitute dividends to the extent of Z's earnings and profits and, to the extent in excess of such amount, constitute gain under section 301(c)(3). With respect to Y's basis in the sold S stock, the ruling holds that because Y had no direct stock ownership in Z before or after the sale, Y's basis in the S stock surrendered disappears and cannot be used to increase the basis of any asset of Y.

In Revenue Ruling 71–563, A, an individual, owned all the stock of X. C, A's son, owned all of the outstanding stock of Y. A sold 25 percent of its stock in X to Y for cash. The ruling states that, under section 304(a)(1), the sale is treated as a contribution by A of the stock of X to the capital of Y and a distribution to A by Y in redemption of its stock. Because the deemed redemption is governed by section 302(d), the cash received is taxable as a dividend to A under section 301(c)(1).

Furthermore, the ruling reasons that, because A owns no stock in Y directly after the transaction, the basis of the X stock should be added to the basis of the remaining stock of X that A continues to own after the transaction.

The current regulatory regime preserves, and prevents the elimination of, basis in transactions subject to section 302 where a proper adjustment may be made to the basis of the remaining stock of the redeeming corporation and in transactions subject to section 304 where, immediately after the transaction, the seller owns stock of the acquiring corporation. In certain transactions, however, taxpayers have taken the position that certain adjustments are proper, even if they shift basis from a person that is not subject to U.S. tax to a person that is subject to U.S. tax or to stock other than stock of the redeeming corporation. Notice 2001–45 (2001–2 C.B. 129), describes a type of transaction with respect to which taxpayers have taken the position that, under § 1.302–2(c), all or a portion of the basis of stock redeemed from a person that is not subject to U.S. tax or is otherwise indifferent to the Federal income tax consequences of the redemption of the stock is added to the basis of other stock in the redeeming corporation owned by a taxpayer that is subject to U.S. tax to create a loss on the disposition of the other stock. Although the IRS intends to challenge the adjustments claimed in such transactions, the IRS and Treasury believe it is desirable to revise the rules that govern accounting for unutilized basis attributable to redeemed stock to better reflect the purposes of the relevant Code provisions.

Explanation of Provisions

A. Rules Under Section 302

This notice of proposed rulemaking proposes a replacement for the "proper adjustment" regime of current § 1.302–2(c) for taking into account the unutilized basis attributable to redeemed stock in any case in which a redemption of stock is treated as a distribution of property to which section 301 applies. The rules are proposed to apply both where the redeemed shareholder actually owns no stock of the redeeming corporation immediately after the redemption (a complete redemption) and where the redeemed shareholder actually owns stock of the redeeming corporation immediately after the redemption (a partial redemption). While consideration was given to retaining the "proper adjustment" rule of current § 1.302–2(c) where only a portion of the

shareholder's interest in the redeeming corporation is redeemed, the IRS and Treasury believe the two situations are similar enough to warrant the same rules, and that the rules proposed herein best carry out the purposes of section 302 even where the redeemed shareholder continues directly to own stock in the redeeming corporation because, even in that case, dividend treatment under section 302 may have resulted from shares owned by attribution rather than directly. The following paragraphs describe the proposed rules.

1. General Description of the Proposed Rules

Certain transactions that, in form, involve the redemption of shares are economically identical or similar to distributions to shareholders that do not involve any redemption of shares. For example, if a single shareholder owns all of the stock of the redeeming corporation, the redemption of some shares from that shareholder for cash is economically indistinguishable from the mere distribution of corporate cash to the shareholder. In recognition of this, section 302 taxes these transactions as corporate distributions notwithstanding their form as redemptions. The underlying premise of section 302 is that distribution treatment is called for in these cases because, in effect, the redeemed shareholder still owns (or is treated as owning) its stock in the corporation, even if it may have turned in some physical shares.

Although section 302 does not provide any explicit guidance regarding the shareholder's basis of the shares redeemed, in deriving a regulatory regime to address the treatment of the unutilized basis of redeemed stock, it is appropriate to consider what happens when a shareholder receives a distribution and keeps its shares, because that analogy underlies distribution treatment under section 302. Because the Code does not permit basis to offset any portion of the redemption distribution that is treated as a dividend, and because such an offset is not available when a corporation distributes a dividend and the shareholder retains its shares, the redemption date is not the appropriate time to recover the unutilized basis of the redeemed stock. However, if the shareholder receives a distribution and retains its shares, it also retains its basis, which it can recover later in situations other than dividends, such as the sale of the shares. Accordingly, the unutilized basis of the redeemed stock should not disappear and should be taken into account for Federal income tax purposes at some time. In addition, any tax benefit associated with the unutilized basis of redeemed stock should remain with the taxpayer that made, or succeeded to, the investment that gave rise to the unutilized basis. Accordingly, these regulations propose that, in any case where a redemption of stock is treated as a distribution of a dividend, an amount equal to the adjusted basis of the redeemed stock is treated as a loss recognized on the disposition of the redeemed stock on the date of the redemption. That loss is taken into account as described below.

Once the facts and circumstances that caused the redemption distribution to be treated as a distribution subject to section 301 no longer exist (*i.e.*, the redeemed shareholder has sufficiently reduced its actual and constructive ownership interest in the redeeming corporation), these regulations permit the loss attributable to the unutilized basis of redeemed stock that has not previously been taken into account to be taken into account. The first date on which the redeemed shareholder would satisfy the criteria of section 302(b)(1), (2) or (3) if the facts and circumstances that exist on such date had existed immediately after the redemption is referred to as the "final inclusion date." In addition, a date is the final inclusion date if there is no later date on which the redeemed shareholder could take the loss into account. For example, if the redeemed shareholder is an individual, the final inclusion date includes the date of death of such individual. If the redeemed shareholder is a corporation, the final inclusion date includes the date such corporation transfers its assets in a liquidation described in section 331. If the redeemed shareholder is a foreign corporation, the final inclusion date includes the date such corporation transfers its assets to a domestic corporation in either a liquidation described in section 332 or a reorganization described in section 368(a)(1) to which section 381 applies. If the redeemed shareholder is a foreign corporation that is not a controlled foreign corporation, within the meaning of section 957(a), on the date of the redemption, the term final inclusion date includes the date such corporation transfers its assets to a controlled foreign corporation in a liquidation described in section 332 or a reorganization described in section 368(a)(1) to which section 381 applies.

These proposed regulations also provide that the redeemed shareholder is permitted to take into account the loss attributable to the unutilized basis of redeemed stock when the redeemed shareholder recognizes a gain on stock of the redeeming corporation to the extent of the gain recognized. Any date on which the redeemed shareholder must take into account gain recognized pursuant to section 301(c)(3) or gain recognized on a disposition of stock of the redeeming corporation is referred to as an "accelerated loss inclusion date." Although there can be only one final inclusion date, there can be several accelerated loss inclusion dates.

Because the loss attributable to the basis of the redeemed stock is treated as recognized on a disposition of the redeemed stock on the redemption date, the attributes (*e.g.*, character and source) of that loss are fixed on the redemption date, even if such loss is not taken into account until after the redemption date. For example, if a corporation redeems its stock from a shareholder within one year after the shareholder's acquisition of such stock and the proceeds of the redemption are treated as a dividend distribution, the character of any amount of the loss that is taken into account is treated as short-term capital loss (assuming the redeemed shareholder held the redeemed stock as a capital asset), even if such loss is taken into account more than one year after the redeemed shareholder's acquisition of the redeemed stock. Nonetheless, for purposes of the carryforward and carryback provisions of sections 172 and 1212, such loss is treated as a loss for the taxable year in which it is taken into account rather than for the taxable year of the stock redemption that gave rise to such loss.

Because a redemption of stock may give rise to, or increase, an excess loss account in redeemed stock where the redeemed shareholder and the redeeming corporation are members of the same consolidated group, these regulations propose rules similar to those described above where the redeemed shareholder has an excess loss account in the redeemed stock.

These proposed regulations do not apply on the redemption of stock described in section 306(c). Pursuant to section 306(a)(2), a redemption of stock described in section 306(c) is treated as a distribution of property to which section 301 applies. *Example 2* of § 1.306–1 suggests that the unutilized basis of redeemed section 306 stock is added back to the basis of the stock with respect to which the section 306 stock was distributed. The IRS and Treasury request comments on whether such treatment of the unutilized basis of redeemed section 306 stock is appropriate or whether an alternative regime should apply when such a

redemption is treated as a distribution to which section 301 applies.

2. Special Issues Related to Certain Pass-Through Entities

Where stock is redeemed from a partnership and all or a portion of the distribution in redemption of such stock is treated as a dividend, any loss attributable to the basis of redeemed stock is treated as a current loss to the partnership on the date of the redemption. To the extent of the lesser of the amount of such distribution that is treated as a dividend and such loss that is not allocated pursuant to section 704(c) and the regulations thereunder, the dividend and the loss must be allocated in equal amounts. Such amounts must be allocated in accordance with the partners' interests in the partnership. An allocation will be deemed to be in accordance with a partner's interest in the partnership if the allocation is in the same proportion as the allocation of (i) the excess of the dividend income over the loss attributable to the basis of the redeemed stock, if any, (ii) the excess of the loss attributable to the basis of the redeemed stock over the dividend income, if any, or, (iii) if neither, in the same proportion as the partnership's net taxable income or loss for the year is allocated. This rule ensures that the benefit of the loss may be realized by the person to whom the dividend income was allocated. The excess dividend or loss attributable to the basis of redeemed stock must be allocated in a manner that takes into account the requirements of section 704.

The loss attributable to the basis of redeemed stock allocated to a partner under the rules of this section is not taken into account at the partner level until the final inclusion date or an accelerated loss inclusion date, as applicable. For purposes of determining whether a particular date is the final inclusion date with respect to such a loss, if the partner is a partner of the partnership on such date, the partnership is treated as the redeemed shareholder. Otherwise, the former partner is treated as the redeemed shareholder and the determination of whether a particular date is the final inclusion date is made by comparing such former partner's actual and constructive ownership of the redeeming corporation immediately prior to the redemption to such former partner's actual and constructive ownership of the redeeming corporation at the end of such particular date. For purposes of determining whether a particular date is an accelerated loss inclusion date with respect to a loss attributable to the basis of redeemed stock that is allocated to a partner from a partnership, the partner is treated as the redeemed shareholder. Similar rules are proposed to apply where stock is redeemed from an S corporation.

The proposed regulations provide that where stock is redeemed from a C corporation, and the C corporation subsequently elects to be taxed as an S corporation, any loss attributable to the basis of redeemed stock that has not been taken into account at the time of the election is treated as a carryforward arising in a taxable year for which the corporation was a C corporation. Such loss is allowed as a deduction against net recognized built-in gain under section 1374 in the year of the final inclusion date or an accelerated loss inclusion date.

To the extent that a trust from which stock is redeemed is wholly or partially a grantor trust, the proposed rules treat the redeemed stock as having been owned directly by the grantor. When stock is redeemed from an estate or from a trust that is not a wholly grantor trust, and all or a portion of a distribution in redemption of such stock is treated as a dividend, any loss attributable to the basis of redeemed stock that is not attributable to the basis of redeemed stock treated as owned by the grantor is not taken into account by such estate or trust until the final inclusion date or an accelerated loss inclusion date. In that case, whether a particular date is the final inclusion date or an accelerated loss inclusion date is determined by treating such estate or trust, not its beneficiaries, as the redeemed shareholder. In the event that the trust or estate terminates before it has been permitted to take into account all of the loss attributable to the basis of redeemed stock, any remaining loss is treated as a loss under section 172 or section 1212 for purposes of section 642(h) (regarding the availability to beneficiaries of unused loss carryovers and excess deductions of an estate or trust upon termination). Each beneficiary's interest in the loss distributed under section 642(h), however, shall be limited to the proportion of that loss that is equal to the proportion of the total amount of the distribution treated as a dividend that is represented by that beneficiary's beneficial interest in that dividend. Once all or a portion of such a loss is distributed to a beneficiary, whether a particular date is the final inclusion date or an accelerated loss inclusion date with respect to such a loss is determined by treating such beneficiary as the redeemed shareholder.

3. Special Rules Related to Apportionment of Interest and Other Expenses

Under section 864(e), taxpayers apportion interest expense between U.S. and foreign source income on the basis of the relative values of their U.S. and foreign assets. For this purpose, taxpayers may choose to value their assets using either fair market value or tax book value (adjusted basis). If the taxpayer apportions interest expense using tax book value, the adjusted basis of stock in any nonaffiliated 10 percent owned corporation (as defined in section 864(e)(4)(B)) is increased by the amount of earnings and profits (and reduced by any deficits in earnings and profits) attributable to such stock that accumulated during the period the taxpayer held such stock. The proposed regulations provide that for purposes of apportioning expenses on the basis of the tax book value of assets, the adjusted basis in any remaining shares of the redeeming corporation that are owned by the redeemed shareholder or certain affiliated corporations will be increased by the amount of the unutilized basis of redeemed stock. This adjustment is intended to provide consistent interest allocation consequences in the case of dividends and redemptions treated as dividends by nonaffiliated 10 percent owned corporations.

B. Revisions to Regulations Under Section 304

The current regulations under section 304 do not reflect all of the legislative amendments that have been made to section 304. This notice of proposed rulemaking proposes certain revisions to the current regulations under section 304 to incorporate these legislative amendments to the extent that those legislative amendments are relevant to the issues that are subject to the proposed regulations under section 302. In particular, these revisions reflect the amendments to section 304 made by section 1013 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788, 918) (August 5, 1997), that provide that, to the extent that a stock acquisition to which section 304(a)(1) applies is treated as a distribution to which section 301 applies, the transferor and the acquiring corporation are treated as if (1) The transferor transferred the stock of the target corporation to the acquiring corporation in exchange for stock of the acquiring corporation in a transaction to which section 351(a) applies, and (2) the acquiring corporation then redeemed the stock it is treated as having issued. The same rules that govern an actual

redemption govern a deemed redemption.

In transactions under section 304 that involve one or more foreign corporations, further consequences may apply under the international provisions of the Code. For example, where target corporation stock is transferred to a foreign corporation in the deemed section 351 transaction, section 367 and the regulations promulgated thereunder apply to the transfer. See Rev. Rul. 91–5 (1991–1 C.B. 114) (holding that section 367 applied to the deemed contribution to capital of the target corporation stock under prior law because section 367(c)(2) resulted in the stock transfer constituting a section 351 transaction). The IRS intends to issue guidance on the application of the international provisions to section 304 transactions and requests comments on such transactions, including what changes, if any, to existing published guidance may be appropriate in light of the 1997 amendments to section 304.

Proposed Effective Date

These regulations are proposed to apply to transactions occurring after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified that the collection of information in this Notice of Proposed Rule Making will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the IRS and Treasury estimate that at most 3,000 taxpayers will be subject to these requirements and most of those taxpayers will be individuals or large businesses. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 20, 2003, beginning at 10 a.m. in Room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by January 30, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Lisa K. Leong of the Office of the Associate Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.302–2 [Amended]

2. In § 1.302–2, paragraph (c) is removed.

3. Section 1.302–5 is added to read as follows:

§ 1.302–5 Redemptions taxable as dividends.

(a) *In general.* In any case in which an amount received in redemption of stock is treated as a distribution of a dividend, an amount equal to the basis of the redeemed stock, after adjusting such basis to reflect the application of section 301(c)(2), 961(b), 1059, § 1.1502–32, or any other applicable provision of the Internal Revenue Code or regulations thereunder, is treated as a loss recognized on a disposition of the redeemed stock on the date of the redemption. The redeemed shareholder (as defined in paragraph (b)(1) of this section) shall be permitted to take such loss into account pursuant to the provisions of this section. Although such loss may be taken into account on a date later than the date of the redemption, the attributes (*e.g.*, character and source) of such loss are determined on the date of the redemption of the stock that gave rise to such loss. See § 1.1502–19(b)(5) for rules that apply where an amount received in redemption of stock is treated as a dividend and such amount either increases or creates an excess loss account in the redeemed stock.

(b) *Definitions*—(1) *Redeemed shareholder.* Except as provided in paragraphs (d)(6), (7), and (8) of this section, the redeemed shareholder is the person whose stock is redeemed in a transaction in which a portion or all of the redemption proceeds are treated as a dividend. If the assets of the redeemed shareholder are acquired in a transaction described in section 381(a), the acquiring corporation (within the meaning of section 381) thereafter is treated as the redeemed shareholder. For rules concerning the person that is treated as the redeemed shareholder where the redeemed stock is held by a partnership or an S corporation at the time of the redemption, see paragraphs (d)(6) and (7) of this section. For rules concerning the person that is treated as the redeemed shareholder where the redeemed stock is held by an estate or a trust not treated as wholly owned by the grantor or another person at the time of the redemption and a loss attributable to the basis of such redeemed stock is distributed to a beneficiary of such estate or trust, see paragraph (d)(8) of this section.

(2) *Redeeming corporation.* Except as provided in paragraph (d)(5) of this section, the redeeming corporation is the corporation that issued the stock that is redeemed. For rules concerning the entity that is treated as the redeeming corporation where the redeeming corporation ceases to exist in a transaction described in section 381(a) or where the redeeming corporation distributes to its shareholders stock of one or more controlled corporations in a distribution described in section 355(a), see paragraph (d)(5) of this section.

(3) *Final inclusion date.* Except as otherwise provided in paragraphs (d)(5), (6), (7), and (8) of this section, the final inclusion date is the first date on which the redeemed shareholder would satisfy the criteria of section 302(b)(1), (2), or (3) if the facts and circumstances that exist at the end of such day had existed immediately after the redemption. In addition, a date is the final inclusion date if there is no later date on which the redeemed shareholder could take the loss into account. For purposes of the preceding sentence, the existence or creation of a limitation under section 382 is not treated as preventing the loss from being taken into account. For example, if the redeemed shareholder is an individual, the final inclusion date includes the date of death of such individual. If the redeemed shareholder is a corporation, the final inclusion date includes the date such corporation transfers its assets in a liquidation described in section 331. If the redeemed shareholder is a foreign corporation, the final inclusion date includes the date such corporation transfers its assets to a domestic corporation in either a liquidation described in section 332 or a reorganization described in section 368(a)(1) to which section 381 applies. If the redeemed shareholder is a foreign corporation that is not a controlled foreign corporation, within the meaning of section 957(a), on the date of the redemption, the term final inclusion date includes the date such corporation transfers its assets to a controlled foreign corporation in a liquidation described in section 332 or a reorganization described in section 368(a)(1) to which section 381 applies.

(4) *Accelerated loss inclusion date.* An accelerated loss inclusion date is a date other than the final inclusion date on which the redeemed shareholder must take into account gain from an actual or deemed sale or exchange of stock of the redeeming corporation. For example, the redeemed shareholder must take into account gain from an actual or deemed sale or exchange of stock of the redeeming corporation when such shareholder receives a distribution with respect to stock of the redeeming corporation to which section 301(c)(3) applies, recognizes gain on stock of the redeeming corporation as a result of the application of section 475, recognizes gain on a sale or exchange of stock of the redeeming corporation (even if such gain is characterized as a dividend under section 1248), recognizes gain in connection with a constructive sale of stock of the redeeming corporation within the meaning of section 1259, or is a partner of a partnership or a shareholder of an S corporation that is allocated, and must take into account, gain recognized on the partnership's or S corporation's sale or exchange of stock of the redeeming corporation.

(c) *Inclusion of loss attributable to basis of redeemed stock*—(1) *Amount taken into account on final inclusion date.* On the final inclusion date, the redeemed shareholder is permitted to take into account the loss attributable to the basis of redeemed stock, reduced by the amount of such loss that was previously taken into account pursuant to paragraph (c)(2) of this section.

(2) *Amount taken into account on accelerated loss inclusion date.* On an accelerated loss inclusion date, the redeemed shareholder is permitted to take into account the loss attributable to the basis of redeemed stock in the amount of the lesser of—

(i) The amount of such loss reduced by the amount of such loss previously taken into account pursuant to this paragraph (c)(2); and

(ii) The amount of gain recognized with respect to stock of the redeeming corporation that must be taken into account by the redeemed shareholder on such accelerated loss inclusion date.

(d) *Special rules*—(1) *Treatment of loss attributable to basis of redeemed stock.* Except as otherwise provided in this section, for purposes of applying the provisions of the Internal Revenue Code and the regulations thereunder, any loss attributable to the basis of redeemed stock that has not been permitted to be taken into account shall be treated as a net operating loss carryforward or a capital loss carryforward, as applicable. For example, for purposes of determining under sections 382 and 383 whether the redeemed shareholder is a loss corporation that has an ownership change and whether the loss attributable to the basis of redeemed stock is a pre-change loss, any loss attributable to the basis of redeemed stock that the redeemed shareholder is not permitted to take into account before a testing date shall be treated as a net operating loss carryforward or a capital loss carryforward, as applicable, that arose in the taxable year in which the redemption that gave rise to such loss occurred and that can be carried forward to the taxable year that includes the testing date. If such loss is treated as a pre-change loss because of an ownership change on the testing date, it is subject to the section 382 limitation (and the other rules of section 382 or 383) for any post-change year in which it is taken into account under paragraph (c) of this section and any other post-change year to which it is carried pursuant to section 172 or 1212, as applicable, and paragraph (d)(2) of this section. The order in which the loss is absorbed (and in which it absorbs the section 382 limitation (see § 1.383–1(d)(2)), however, is determined in a manner consistent with the principles of section 172 or section 1212, as applicable, and paragraph (d)(2) of this section.

(2) *Net operating loss deduction and capital loss carrybacks and carryovers.* For purposes of sections 172 and 1212, any portion of a loss attributable to the basis of redeemed stock shall be treated as occurring in the taxable year in which the redeemed shareholder is permitted to take such loss into account, not the taxable year of the redemption that gave rise to such loss. If an estate or trust terminates before it is permitted to take into account all of the loss attributable to the basis of redeemed stock, such loss that it has not been permitted to take into account is treated as a loss under section 172 or 1212 for purposes of section 642(h), provided, however, that the identification of carryover years of the beneficiaries will be determined in accordance with the preceding sentence. Notwithstanding the preceding sentence, each beneficiary's interest in the loss distributed under section 642(h) shall be limited to the proportion of that loss that is equal to the proportion of the total amount of the distribution treated as a dividend that is represented by that beneficiary's beneficial interest in that dividend. If a deduction for any portion of such loss is disallowed by section 382 or 383 for the taxable year in which the redeemed shareholder is permitted to take such loss into account, such portion shall be carried forward to subsequent taxable years under rules similar to the rules for the carrying forward of net operating losses or capital losses, as applicable, but shall be subject to the section 382 limitation (and the other rules of sections 382 and 383) for any post-change year to which it is carried.

(3) *Expenses apportioned on the basis of assets.* For special rules regarding adjustments in the case of taxpayers apportioning expenses on the basis of the tax book value of assets, see § 1.861–12(c)(2)(vi).

(4) *Effect of loss attributable to basis of redeemed stock on earnings and profits.* If the redeemed shareholder is a corporation, any loss attributable to the basis of redeemed stock is not reflected in such corporation's earnings and profits before it is taken into account

pursuant to the rules of paragraph (c) of this section. See, for example, §§ 1.312–6(a), 1.312–7, and 1.1502–33(c)(2).

(5) *Successors to the redeeming corporation*—(i) *Acquisitive transactions.* If the assets of the redeeming corporation are acquired by another corporation in a transaction described in section 381(a), the determination of whether a particular date is the final inclusion date or an accelerated loss inclusion date is made by treating the facts and circumstances that exist at the end of such day (including the acquisition of the assets of the redeeming corporation) as existing immediately after the redemption and treating the acquiring corporation (within the meaning of section 381) as the redeeming corporation.

(ii) *Divisive transactions.* In general, if the redeeming corporation distributes to its shareholders the stock of one or more controlled corporations in a distribution to which section 355 (or so much of section 356 as relates to section 355) applies, the loss attributable to the basis of redeemed stock is allocated among the stock of the distributing and any controlled corporations that the redeemed shareholder owns, actually and constructively pursuant to the rules of section 318, immediately after the distribution in proportion to the fair market value of the stock of the distributing corporation that the redeemed shareholder is treated as so owning and the distributed stock of the controlled corporation that the redeemed shareholder is treated as so owning. To the extent that such loss is allocated to the stock of the distributing corporation, the distributing corporation will be treated as the redeeming corporation for purposes of determining whether a particular date is the final inclusion date or an accelerated loss inclusion date with respect to such loss. To the extent that such loss is allocated to the stock of a controlled corporation, such controlled corporation will be treated as the redeeming corporation for purposes of determining whether a particular date is the final inclusion date or an accelerated loss inclusion date with respect to such loss. Where the controlled corporation was wholly owned by the distributing corporation and all of the stock of the controlled corporation was distributed to the shareholders of the distributing corporation in a distribution to which section 355 (or so much of section 356 as relates to section 355) applies, the determination of whether a particular date is the final inclusion date with respect to a loss that is allocated to a controlled corporation is made by treating the redeemed shareholder as owning a percentage of stock of the controlled corporation immediately prior to the redemption equal to the percentage of stock of the distributing corporation the redeemed shareholder actually and constructively owned immediately prior to the redemption. In all other cases, appropriate calculations shall apply to determine whether a particular date is the final inclusion date.

(6) *Redeemed shareholder is a partnership*—(i) *Treatment and allocation of loss attributable to basis of redeemed stock.* Where stock is redeemed from a partnership and all or a portion of the distribution in redemption of such stock is treated as a dividend, any loss attributable to the basis of redeemed stock is treated as a current loss to the partnership on the date of the redemption. To the extent of the lesser of the amount of such distribution that is treated as a dividend and such loss that is not allocated pursuant to section 704(c) and the regulations thereunder, the dividend and the loss must be allocated in equal amounts. Such amounts must be allocated in accordance with the partners' interests in the partnership. An allocation will be deemed to be in accordance with a partner's interest in the partnership if the allocation is in the same proportion as the allocation of the excess of the dividend income over the loss attributable to the basis of the redeemed stock, if any, the excess of the loss attributable to the basis of the redeemed stock over the dividend income, if any, or, if neither, in the same proportion as the partnership's net taxable income or loss for the year is allocated. The excess dividend or loss attributable to the basis of redeemed stock must be allocated to the partners in a manner that takes into account the requirements of section 704. The loss attributable to the basis of redeemed stock allocated to a partner under the rules of this section is not taken into account until the final inclusion date or an accelerated loss inclusion date, as provided in this section.

(ii) *Identification of redeemed shareholder.* For purposes of determining whether a particular date is the final inclusion date with respect to a loss that is allocated to a partner, if the partner is a partner of the partnership at the end of such day, the partnership is treated as the redeemed shareholder. If the partner is not a partner of the partnership at the end of such day, the former partner is treated as the redeemed shareholder and the determination of whether such date is the final inclusion date is made by comparing such former partner's actual and constructive ownership of the redeeming corporation immediately prior to the redemption to such former partner's actual and constructive ownership of the redeeming corporation at the end of such particular day. For purposes of determining whether a particular date is an accelerated loss inclusion date with respect to a loss attributable to the basis of redeemed stock that is allocated to a partner from a partnership, the partner is treated as the redeemed shareholder.

(7) *Redeemed shareholder is an S corporation*—(i) *Treatment and allocation of loss attributable to basis of redeemed stock.* Where stock is redeemed from an S corporation and all or a portion of the distribution in redemption of such stock is treated as a dividend, any loss attributable to the basis of redeemed stock is treated as a current loss to the S corporation on the date of the redemption and is allocated to the S corporation's shareholders under section 1366(a). The portion of such loss that is allocated to an S corporation shareholder from the S corporation is not permitted to be taken into account by such shareholder until the final inclusion date or an accelerated loss inclusion date, as provided in this section.

(ii) *Identification of redeemed shareholder.* For purposes of determining whether a particular date is the final inclusion date with respect to a loss attributable to the basis of redeemed stock that is allocated to a shareholder of an S corporation from an S corporation, if the S corporation shareholder is a shareholder of the S corporation at the end of such day, the S corporation is treated as the redeemed shareholder. If the S corporation shareholder is not a shareholder of the S corporation at the end of such day, the former S corporation shareholder is treated as the redeemed shareholder and the determination of whether such date is the final inclusion date is made by comparing such former S corporation shareholder's actual and constructive ownership of the redeeming corporation immediately prior to the redemption to such former S corporation shareholder's actual and constructive ownership of the redeeming corporation at the end of such particular day; provided, however, that for purposes of computing such former S corporation shareholder's ownership of the redeeming corporation immediately prior to the redemption, section 318(a)(2)(C) shall be applied without regard to the 50 percent limitation contained therein. For purposes of determining whether a particular date is an accelerated loss inclusion date with respect to a loss attributable to the basis of redeemed stock that is allocated to an S corporation shareholder from an S corporation, the S corporation shareholder is treated as the redeemed shareholder.

(8) *Redeemed shareholder is an estate or trust.* To the extent that a trust from which stock is redeemed is treated as owned (in part or in whole) by the grantor or another person under subpart E of part I of subchapter J of the Internal Revenue Code, the rules of this section are applied as though the redeemed stock were owned directly by such grantor or other person. Where stock is redeemed from an estate or from a trust not treated as wholly owned by the grantor or another person under subpart E of part I of subchapter J of the Internal Revenue Code, and all or a portion of the distribution in redemption of such stock is treated as a dividend, any loss attributable to the basis of redeemed stock, except any loss attributable to the basis of redeemed stock treated as owned by the grantor or another person, is not taken into account by such estate or trust until the final inclusion date or an accelerated loss inclusion date, and whether a particular date is the final inclusion date or an accelerated loss inclusion date is determined by treating such estate or trust, not its beneficiaries, as the redeemed shareholder. However, if all or a portion of such loss is distributed to a beneficiary of such estate or trust pursuant to section 642(h) and paragraph (d)(2) of this section, the determination of whether a particular date is the final inclusion date or an accelerated inclusion date shall be made by treating each such beneficiary as the redeemed shareholder with respect to the loss distributed to such beneficiary.

(9) *Redeemed shareholder is a C corporation that converts to an S corporation.* For rules regarding the treatment of a loss attributable to the basis of redeemed stock when the redeemed shareholder is a C corporation on the date of the redemption and elects to be taxed as an S corporation prior to the final inclusion date or an accelerated loss inclusion date, see §§ 1.1371–1(a)(1) and 1.1374–5(b)(2).

(e) *Statement to be filed with returns.* With or as part of the income tax return for the year in which a redeemed shareholder takes into account any loss pursuant to this section, the redeemed shareholder shall provide a statement entitled "Claim of Loss Attributable to Basis of Redeemed Stock." The statement shall specify the amount of the loss that is taken into account on such return pursuant to this section and shall identify the shares to which such amounts relate.

(f) *Examples.* For purposes of the examples in this section, each of corporation X, corporation Y, corporation Z, corporation D, and corporation C is a domestic corporation that files U.S. tax returns on a calendar-year basis. The principles of this section are illustrated by the following examples:

Example 1. (i) *Facts.* A and B, husband and wife, each own 100 shares (50 percent) of the stock of corporation X and hold the corporation X stock as a capital asset. A purchased his corporation X shares on February 1, Year 1, for $200. On December 31, Year 1, corporation X redeems all of A's 100 shares of its stock for $300. At the end of Year 1, corporation X has current and accumulated earnings and profits of $200. In connection with the redemption transaction, A does not file an agreement described in section 302(c)(2) waiving the application of the family attribution rules. The redemption proceeds, therefore, are treated under section 301(c)(1) as a dividend to the extent of corporation X's earnings and profits of $200, and under section 301(c)(2) as a recovery of basis in the amount of $100. On July 1, Year 2, B sells all of her shares of corporation X stock to G, her mother.

(ii) *Analysis.* Under this section, an amount equal to A's basis in the corporation X stock ($100 after application of section 301(c)(2)) is treated as a loss recognized on a disposition of the redeemed stock on December 31, Year 1, the date of the redemption. When B sells her shares to G, A no longer owns, actually or constructively, any shares of corporation X stock. Thus, if the facts that existed at the end of July 1, Year 2, had existed immediately after the redemption, A would have been treated as having received a distribution in part or full payment in exchange for the redeemed stock pursuant to section 302(a). Under this section, therefore, July 1, Year 2, is the final inclusion date and, on that date, A is permitted to take into account the loss of $100 attributable to his basis in the redeemed stock. Because that loss is treated as having been recognized on a disposition of the redeemed stock on the date of the redemption, December 31 of Year 1, such loss is treated as a short-term capital loss.

Example 2. (i) *Facts.* The facts are the same as in *Example 1*, except that, instead of selling all of her 100 shares of corporation X stock to G on July 1, Year 2, B sells only 75 shares of corporation X stock to G on that date.

(ii) *Analysis.* As in *Example 1*, an amount equal to A's basis in the redeemed stock ($100 after application of section 301(c)(2)) is treated as a loss recognized on a disposition of the redeemed stock on December 31, Year 1, the date of the redemption. Immediately after B's sale of 75 shares of corporation X stock to G, A constructively owns 25 percent of the shares of corporation X stock. Thus, if the facts that existed at the end of July 1, Year 2, had existed immediately after the redemption, A would have been treated as receiving a distribution in part or full payment in exchange for the redeemed stock pursuant to section 302(a). Under this section, therefore, July 1, Year 2, is the final inclusion date and, on that date, A is permitted to take into account the loss of $100 attributable to his basis in the redeemed stock. Because that loss is treated as having been recognized on a disposition of the redeemed stock on the date of the redemption, December 31 of Year 1, such loss is treated as a short-term capital loss.

Example 3. (i) *Facts.* Corporation Y has 200 shares of common stock outstanding. L, an individual, owns 150 shares of common stock in corporation Y and has owned these shares for several years. The remaining 50 shares are owned by K, L's father. In Year 1, corporation Y redeems 50 shares of L's corporation Y stock, which have a basis of $75, for $200. At the end of Year 1, corporation Y's current and accumulated earnings and profits exceed $200. The redemption of L's stock is treated as a distribution to which section 301 applies. L recognizes dividend income in the amount of $200. In Year 4, L sells 25 of his remaining shares of corporation Y stock, which have a basis of $50, to K for $100 and recognizes $50 of long-term capital gain.

(ii) *Analysis.* Under this section, an amount equal to L's basis in the corporation Y stock that is redeemed, $75, is treated as a loss recognized on a disposition of the redeemed stock on the date of the redemption. The date on which L sells 25 shares of corporation Y stock to K is not the final inclusion date under paragraph (b)(3) of this section because L does not satisfy the criteria of section 302(b)(1), (2), or (3) at the end of such day. Under paragraph (b)(4) of this section, however, that date is an accelerated loss inclusion date because, on that date, L recognizes gain of $50 on a disposition of stock of corporation Y, the redeeming corporation. Thus, on that date, L is permitted to take into account $50 of the loss attributable to his basis in the redeemed stock. The remaining $25 of such loss is taken into account on the earlier of the final inclusion date or the next accelerated loss inclusion date (to the extent of gain recognized).

Example 4. (i) *Facts.* The facts are the same as in *Example 3*, except that L does not sell any shares of corporation Y to K in Year 4. Instead, in Year 4, corporation Y distributes $75 to L with respect to his remaining 100 shares of corporation Y stock. L's basis in these shares is only $30, and at the end of Year 4, corporation Y's current and accumulated earnings and profits are $20, instead of $200. Under section 301(c)(1), $20 of the distribution is treated as a dividend, under section 301(c)(2), $30 of the distribution is treated as a recovery of basis, and, under section 301(c)(3), $25 of the distribution is treated as gain from the sale or exchange of stock.

(ii) *Analysis.* As in *Example 3*, an amount equal to L's basis in the corporation Y stock redeemed in Year 1, $75, is treated as a loss recognized on a disposition of the redeemed stock on the date of the redemption. Because L recognizes gain under section 301(c)(3) upon the receipt of the Year 4 distribution, the date of that distribution is an accelerated

loss inclusion date. Accordingly, on that date, L is permitted to take into account $25 of the loss attributable to the basis of the redeemed stock. The remaining $50 of such loss is taken into account on the earlier of the final inclusion date or the next accelerated loss inclusion date (to the extent of gain recognized).

Example 5. (i) *Facts.* Corporation Z has 100 shares of stock outstanding, 50 shares of which are owned by each of A and his son, B. A's basis in each of his shares of corporation Z stock is $1. During Year 1, corporation Z redeems from A 25 shares of corporation Z stock for $200. At the end of Year 1, corporation Z has current and accumulated earnings and profits in excess of $200. The redemption is treated as a distribution to which section 301 applies. Accordingly, A recognizes dividend income of $200. In Year 2, corporation Y acquires all of corporation Z's assets in exchange solely for voting stock in a reorganization described in section 368(a)(1)(C). In the reorganization, A and B surrender their shares of corporation Z stock. A receives 2,500 shares of common stock of corporation Y and B receives 5,000 shares of common stock of corporation Y. Immediately after the reorganization, corporation Y has outstanding one million shares of common stock.

(ii) *Analysis.* Under this section, an amount equal to A's basis in the redeemed stock after the Year 1 redemption, $25, is treated as a loss recognized on a disposition of the redeemed stock on the date of the redemption. Under paragraph (d)(5) of this section, for purposes of determining whether a particular date on or after the date of the reorganization is the final inclusion date or an accelerated loss inclusion date, corporation Y, the acquiring corporation, is treated as the redeeming corporation. If the facts and circumstances that exist at the end of the day of the reorganization had existed on the date of the redemption, the redemption would have been treated as a distribution in part or full payment in exchange for the redeemed stock pursuant to section 302(a). Therefore, the date of the reorganization is the final inclusion date and A is permitted to take into account the loss of $25 attributable to his basis in the redeemed stock.

Example 6. (i) *Facts.* Corporation D has 300 shares of stock outstanding. J and her two daughters, M and N, each own 100 shares of corporation D stock. J's basis in her corporation D shares is $400. In Year 1, corporation D redeems all of J's shares for $1,000. At the end of Year 1, corporation D has current earnings and profits exceeding $1,000. The redemption is treated as a distribution to which section 301 applies. Accordingly, J recognizes dividend income in the amount of $1,000. Subsequently, M and N decide to separate corporation D's business. Accordingly, they cause corporation D to contribute one-half of its assets to corporation C, a newly formed corporation, in exchange for all of corporation C's stock and to distribute all of the corporation C stock to N in exchange for all of her corporation D stock. Immediately after the distribution, the value of corporation D is equal to the value of corporation C. In Year 6, M sells her shares in corporation D to an unrelated person.

(ii) *Analysis.* Under this section, an amount equal to J's basis in the corporation D stock redeemed, $400, is treated as a loss recognized on a disposition of the redeemed stock on the date of the redemption. Upon corporation D's distribution of the stock of corporation C in Year 2, J's loss attributable to the basis of the redeemed corporation D stock is allocated among the stock of corporation D and corporation C that J owns, actually and constructively, immediately after the distribution in proportion to the fair market value of the stock of each such corporation. Although J does not actually own any stock of corporation D or corporation C, because J constructively owns all of the stock of both corporation D and corporation C and each of the stock of corporation D and the stock of corporation C have the same value immediately after the distribution, $200 of the loss is allocated to each of the stock of corporation D and the stock of corporation C that J is treated as so owning. Accordingly, each of corporation D and corporation C is treated as the redeeming corporation for purposes of determining whether a particular date after the date of the distribution is an accelerated loss inclusion date or the final inclusion date with respect to $200 of the loss. In this case, the date in Year 6 on which M sells her corporation D stock to an unrelated person is the final inclusion date with respect to J's loss allocated to J's constructively owned corporation D stock, because had corporation D's distribution of corporation C stock occurred immediately after the redemption of J's stock and M's Year 6 sale of corporation D stock occurred immediately thereafter in Year 1, the redemption of J's corporation D stock would have been treated as a distribution in part or full payment in exchange for the redeemed stock pursuant to section 302(a). Accordingly, on that date in Year 6, J is permitted to take into account the $200 loss allocated to the corporation D stock. The $200 loss allocated to the corporation C stock is taken into account on the earlier of the final inclusion date or the next accelerated loss inclusion date (to the extent of gain recognized) with respect to the corporation C stock.

Example 7. (i) *Facts.* In Year 1, A and B, two unrelated individuals, each contribute $100 to form a 50–50 general partnership, PS. A and B share in the income of PS equally. PS buys 100 shares of corporation Z stock for $200. A owns the remaining 400 outstanding shares of corporation Z stock directly. In Year 2, corporation Z redeems all of PS's shares for $300. At that time, the basis of A's interest in PS is $100 and the basis of B's interest in PS is $100. At the end of Year 2, corporation Z has current and accumulated earnings and profits of $150. Because A's ownership of the Z stock is attributed to PS under section 318(a)(3)(A), the redemption is treated as a distribution to which section 301 applies. The redemption proceeds, therefore, are treated as a dividend to the extent of corporation Z's earnings and profits, $150, and as a recovery of basis in the amount of $150. Assume that PS's only items of income, gain, loss, deduction, and credit for Year 2 arise from the redemption of the corporation Z stock. On January 1 of Year 4, A sells his entire interest in PS to C, an unrelated individual.

(ii) *Analysis.* Under this section, an amount equal to PS's basis in the corporation Z stock, ($50 after application of section 301(c)(2)), is treated as a current loss recognized by the partnership on a disposition of the redeemed stock on the date of the redemption. Under this section, $50 of the dividend and $50 of the loss must be allocated in equal amounts in accordance with A's and B's interests in PS. Accordingly, if the remaining $100 of the dividend is allocated $50 to A and $50 to B under section 704 and the regulations thereunder, $25 of each of the dividend and the loss is allocated to each of A and B. A's and B's basis in their PS interests are increased by their shares of the dividend and decreased by their shares of the loss attributable to the basis of the redeemed stock. A and B will not be able to take that loss into account until the final inclusion date or an accelerated loss inclusion date. When A sells his PS interest to C, an unrelated individual, PS and A are no longer related. Therefore, PS no longer owns, actually or constructively, any shares of corporation Z stock. Because B remains a partner in PS after January 1, Year 4, PS is treated as the redeemed shareholder for purposes of determining if January 1, Year 4, is the final inclusion date for B. If the facts that exist at the end of the day of A's sale of his PS interest to C had existed immediately after the redemption, PS would have been treated as receiving a distribution in part or full payment in exchange for the redeemed stock pursuant to section 302(a). Therefore, B is permitted to take into account the $25 loss attributable to the basis of the redeemed stock that was allocated to him. Because A is no longer a partner in PS after January 1, Year 4, A is treated as the redeemed shareholder for purposes of determining if January 1, Year 4, is the final inclusion date for A. Immediately prior to the redemption, A actually and constructively owns 90 percent of the corporation Z stock. After the sale of the PS interest, A actually owns 100 percent of the corporation Z stock. If these facts had existed immediately after the redemption, A would not have been treated as receiving a distribution in part or full payment in exchange for the redeemed stock pursuant to section 302(a). Therefore, January 1, Year 4, is not the final inclusion date for A.

Example 8. (i) *Facts.* H, I, and J are shareholders in corporation S, a corporation that has made a valid election to be taxed as an S corporation. H, I, and J respectively hold 60 percent, 20 percent, and 20 percent of the stock in corporation S. H, I, and J have no relation to each other apart from their ownership interests in corporation S. Corporation S owns 20 percent of the outstanding shares of corporation X with a $100 adjusted basis. H owns the remaining outstanding shares of corporation X. In Year 1, all of corporation S's shares of corporation X stock are redeemed for their fair market value, $200. Corporation X has current and accumulated earnings and profits of $300 at the end of Year 1. Because H's ownership of X stock is attributed to corporation S under section 318(a)(2)(C), the redemption is treated as a distribution to which section 301 applies and is treated as a dividend. H, I, and J will be allocated $120, $40, and $40 of dividend income, respectively. In Year 2, J sells his stock of corporation S to K, an unrelated person. In Year 3, H sells his stock of corporation X to L, an unrelated person.

(ii) *Analysis.* Under this section, an amount equal to corporation S's basis in the redeemed stock ($100) is treated as a loss recognized on a disposition of the redeemed stock on the date of the disposition. H, I, and J will be allocated $60, $20, and $20 of the loss, respectively, in the year of the redemption. Both the allocation of dividend income and the allocation of the loss give rise to adjustments to each shareholder's basis in corporation S. H, I, and J, however, will not be able to take into account this loss until the final inclusion date or an accelerated loss inclusion date. In Year 2, when J sells his stock of corporation S to K, J is no longer a shareholder in corporation S and will be treated as the redeemed shareholder for purposes of determining whether a particular date is the final inclusion date or an accelerated loss inclusion date. In addition, the determination of whether the date of the Year 2 sale is the final inclusion date for J is made by comparing J's actual and constructive ownership of corporation S stock immediately prior to the redemption to J's actual and constructive ownership of corporation S stock at the end of the date of the Year 2 sale. However, for purposes of computing J's ownership of the redeeming corporation immediately prior to the redemption, section 318(a)(2)(C) is applied without regard to the 50 percent limitation contained therein. Immediately prior to the redemption, therefore, J is treated as owning actually and constructively 4 percent of the stock of corporation X and, at the end of the day of J's sale of corporation S stock, J owns, actually and constructively, no corporation X stock. Therefore, if the facts that existed on the date of the Year 2 sale had existed immediately after the redemption, J would have been treated as having received a distribution in part or full payment in exchange for the redeemed stock pursuant to section 302(a). Therefore, the date of J's sale of corporation S stock to K is the final inclusion date. J is permitted to take into account J's share of the loss attributable to the basis of the redeemed stock as of that date. While H and I remain shareholders of corporation S, whether a particular date is the final inclusion date will be determined by treating corporation S as the redeemed shareholder. Thus, in Year 3 when H disposes of his shares of corporation X, corporation S actually and constructively owns no stock of corporation X. As of that date, therefore, H and I will be permitted to take into account their respective shares of the loss attributable to the basis of the redeemed stock.

(g) *Effective date.* This section applies to transactions occurring after the date these regulations are published as final regulations in the **Federal Register**.

4. Section 1.304–1 is revised to read as follows:

§ 1.304–1 In general.

(a) *In general.* Section 304 is applicable where a shareholder sells stock of one corporation to a related corporation as defined in section 304. Sales to which section 304 is applicable shall be treated as redemptions subject to sections 302 and 303.

(b) *Effective date.* This section applies to transactions occurring after the date these regulations are published as final regulations in the **Federal Register**.

5. Section 1.304–2 is amended as follows:

1. Paragraphs (a) and (c) are revised.
2. Paragraph (d) is added.

The revisions and addition read as follows:

§ 1.304–2 Acquisition by related corporation (other than subsidiary).

(a) *In general.* (1) If a corporation (the acquiring corporation), in return for property, acquires stock of another corporation (the issuing corporation) from one or more persons, and the person or persons from whom the stock was acquired were in control of both such corporations, then such property shall be treated as received in redemption of stock of the acquiring corporation. As to each person transferring stock, the amount received shall be treated as a distribution to which section 301 applies if section 302(a) or 303 does not apply. For rules regarding the amount constituting a dividend in such cases, see § 1.304–6.

(2) In applying section 302(b), reference shall be had to the shareholder's ownership of stock in the issuing corporation and not to its ownership of stock in the acquiring corporation (except for purposes of applying section 318(a)), section 318(a) (relating to the constructive ownership of stock) shall be applied without regard to the 50 percent limitation contained in section 318(a)(2)(C) and (3)(C), and a series of redemptions referred to in section 302(b)(2)(D) shall include acquisitions by either of the corporations of stock of the other and stock redemptions by both corporations.

(3) If, pursuant to section 302(d), section 301 applies to the property treated as received in redemption of stock of the acquiring corporation pursuant to paragraph (a)(1) of this section, the transferor and the acquiring corporation shall be treated, for all Federal income tax purposes, in the same manner as if the transferor had transferred the stock of the issuing corporation to the acquiring corporation in exchange for stock of the acquiring corporation in a transaction to which section 351(a) applies, and then the acquiring corporation had redeemed the stock it was treated as issuing in the transaction in exchange for the property. Accordingly, under section 362, the acquiring corporation's basis in the stock of the issuing corporation is equal to the basis the transferor had in that stock and, under section 358, the transferor's basis in the stock of the acquiring corporation deemed issued to the transferor in the deemed transaction to which section 351(a) applies is equal to the transferor's basis in the stock of the issuing corporation it surrendered. Section 1.302–5 applies to the transferor's unutilized basis, if any, in the stock of the acquiring corporation treated as redeemed in connection with an acquisition described in paragraph (a)(1) of this section by treating the acquiring corporation as the redeeming corporation and the transferor as the redeemed shareholder.

(4) If section 301 does not apply to the property treated as received in redemption of stock of the acquiring corporation pursuant to paragraph (a)(1) of this section, the property received by the transferor shall be treated as received in a distribution in full payment in exchange for stock of the acquiring corporation under section 302(a). The basis and holding period of the stock of the acquiring corporation that is treated as having been redeemed shall be the same as the basis and holding period of the stock of the issuing corporation actually surrendered. The acquiring corporation shall take a cost basis in the stock of the issuing corporation that it acquires. See section 1012.

* * * * *

(c) *Examples.* For purposes of the examples in this section, each of corporation X and corporation Y is a domestic corporation that files U.S. tax returns on a calendar-year basis. The principles of this section are illustrated by the following examples:

Example 1. (i) *Facts.* Corporation X and corporation Y each have outstanding 100 shares of common stock. A, an individual, owns one-half of the stock of each corporation, B owns one-half of the stock of corporation X, and C owns one-half of the stock of corporation Y. A, B, and C are unrelated. A sells 30 shares of the stock of corporation X, which have an adjusted basis of $10,000, to corporation Y for $50,000.

(ii) *Analysis.* Because before the sale A owns 50 percent of the stock of corporation X and after the sale A owns only 35 percent of such stock (20 shares directly and 15 constructively because one-half of the 30 shares owned by corporation Y are attributed to A), the redemption is substantially disproportionate as to A pursuant to the provisions of section 302(b)(2). A, therefore, realizes a gain of $40,000 ($50,000 minus $10,000). If the stock surrendered is a capital

asset, such gain is long-term or short-term capital gain depending on the period of time that such stock was held. The basis to A for the stock of corporation Y is not changed as a result of the sale. Under section 1012, the basis that corporation Y takes in the acquired stock of corporation X is its cost of $50,000.

Example 2. (i) *Facts.* Corporation X and corporation Y each have outstanding 200 shares of common stock, all of which are owned by H, an individual. H has a basis in his corporation X stock of $60 and in his corporation Y stock of $30. Corporation X has $80 of current and accumulated earnings and profits and corporation Y has $80 of current and accumulated earnings and profits. H sells his 200 shares of corporation X stock to corporation Y for $150.

(ii) *Analysis.* Because H is in control of both corporation X and corporation Y and receives property from corporation Y in exchange for the corporation X stock, H's sale of 200 shares of corporation X stock to corporation Y is subject to section 304(a)(1). Accordingly, H is treated as receiving $150 as a distribution in redemption of corporation Y stock. Because H actually owns 100 percent of corporation X before the sale and is treated as owning 100 percent of corporation X after the sale, pursuant to section 302(d), section 302(a) does not apply to the deemed redemption distribution and the proceeds of the deemed redemption are treated as a distribution to which section 301 applies. Therefore, H is treated as transferring the corporation X stock to corporation Y in exchange for corporation Y stock in a transaction to which section 351(a) applies. Corporation Y's basis in the corporation X stock acquired is $60, the same basis that H had in the corporation X stock surrendered. H takes a basis of $60 in the corporation Y stock he is treated as receiving in the deemed section 351 exchange. That corporation Y stock is then treated as redeemed by corporation Y for $150. Under section 302, that redemption is treated as a distribution to which section 301 applies because H owns directly 100 percent of corporation Y both before and after the redemption of the corporation Y stock that was deemed issued. Thus, the deemed redemption proceeds are treated as a distribution to which section 301 applies. Pursuant to § 1.304–6(a), H is treated as receiving a dividend of $150 ($80 from the current and accumulated earnings and profits of corporation Y and then $70 from the current and accumulated earnings and profits of corporation X). An amount equal to the basis in the corporation Y stock that H is deemed to receive and that is deemed redeemed, $60 is treated as a loss recognized on a disposition of the stock deemed redeemed on the date of the deemed redemption and is taken into account under rules set forth in § 1.302–5. H's basis in the 200 shares of corporation Y stock that H owned before the sale and continues to own immediately after the sale remains $30.

Example 3. (i) *Facts.* The facts are the same as in Example 2, except that corporation X has $5 of current and accumulated earnings and profits and corporation Y has $25 of current and accumulated earnings and profits.

(ii) *Analysis.* As in *Example 2*, H takes a basis of $60 in the corporation Y stock he is treated as receiving and $150 is treated as a distribution to which section 301 applies. Pursuant to § 1.304–6(a), H is treated as receiving a dividend of $30 ($25 from the current and accumulated earnings and profits of corporation Y and $5 from the current and accumulated earnings and profits of corporation X). In addition, $60 of the distribution is treated as a return of basis and $60 of the distribution is treated as gain from the sale or exchange of corporation Y stock. H's basis in the 200 shares of corporation Y stock that he owned before and continues to own immediately after the sale remains $30. Corporation Y's basis in the corporation X stock acquired is $60, the same basis that H had in the corporation X stock surrendered.

Example 4. (i) *Facts.* A, an individual, owns 100 shares of corporation X stock, which is all of the outstanding stock of corporation X. A has a basis of $1 in each share of his corporation X stock. B, the son of A, owns all the outstanding stock of corporation Y. A sells 25 shares of the stock of corporation X to corporation Y for $50. For that year, the current and accumulated earnings and profits of corporation Y exceed $50.

(ii) *Analysis.* Because A is in control of both corporation X and corporation Y (corporation X directly and corporation Y through attribution from B) and receives property in exchange for the corporation X stock, A's sale of corporation X stock to corporation Y is subject to section 304(a)(1). Consequently, A is treated as transferring the corporation X stock to corporation Y in exchange for corporation Y stock in a transaction to which section 351(a) applies. That corporation Y stock is then treated as redeemed by corporation Y for $50. Before the deemed redemption of the corporation Y stock, A owned 100 percent of corporation Y directly and constructively. After the deemed redemption, A owns 100 percent of corporation Y constructively by attribution from B. Accordingly, the redemption distribution is treated as a distribution to which section 301 applies. Because the earnings and profits of corporation Y exceed the amount of cash paid by corporation Y to A for the corporation X stock, pursuant to § 1.304–6(a), the entire amount is a dividend. An amount equal to the basis in the corporation Y stock that A was deemed to receive and that was then deemed redeemed, $25, is treated as a loss recognized on a disposition of the stock deemed redeemed on the date of the deemed redemption and is taken into account under rules set forth in § 1.302–5. A's basis in the 75 shares that he continues to hold remains $1 per share for an aggregate basis of $75.

(d) *Effective date.* This section, except for paragraph (b) of this section, applies to transactions occurring after the date these regulations are published as final regulations in the **Federal Register**. Paragraph (b) of this section applies on and after December 2, 1955.

6. Section 1.304–3 is amended as follows:

1. Paragraph (a) is revised.
2. Paragraph (c) is added.

The revision and addition read as follows:

§ 1.304–3 Acquisition by a subsidiary.

(a) *In general.* If a subsidiary, in return for property, acquires stock of its parent corporation from a shareholder of the parent corporation, the acquisition of such stock shall be treated as if the parent corporation had redeemed its own stock in exchange for the property. For purposes of this section, a corporation is a parent corporation if it meets the 50 percent ownership requirements of section 304(c). The determination of whether the amount received shall be treated as an amount received in payment in exchange for the stock shall be made by applying section 303, or by applying section 302(b) with reference to the stock of the issuing parent corporation. For rules regarding the amount that constitutes a dividend in a redemption treated as a distribution subject to section 301, see § 1.304–6. For the treatment of the redeemed shareholder's basis in the redeemed stock in such cases, see § 1.302–5. Section 1.302–5 applies to the shareholder's unutilized basis, if any, in the stock of the parent corporation treated as redeemed in connection with an acquisition described in this paragraph (a) by treating the parent corporation as the redeeming corporation and the shareholder as the redeemed shareholder.

* * * * *

(c) *Effective date.* This section applies on and after December 2, 1955, except for paragraph (a) of this section, which applies to transactions occurring after the date these regulations are published as final regulations in the **Federal Register**.

7. Section 1.304–5 is amended as follows:

1. Paragraph (a) is amended by adding a sentence at the end of the paragraph.
2. Paragraph (c) is revised.

The revision and addition read as follows:

§ 1.304–5 Control.

(a) * * * Specifically, section 318(a) shall be applied by using the language "5 percent" instead of "50 percent" in section 318(a)(2)(C) and by using the language "5 percent" instead of "50 percent" in section 318(a)(3)(C), except that if section 318(a)(3)(C) would not have applied but for this substitution, by considering a corporation as owning the stock (other than stock in such corporation) owned by or for any shareholder of such corporation in that proportion which the value of the stock which such shareholder owned in such corporation bears to the value of all stock in such corporation.

* * * * *

(c) *Effective date.* This section applies on and after January 20, 1994, except the last sentence of paragraph (a) of this section applies to transactions occurring after the date these regulations are published as final regulations in the **Federal Register**.

8. Section 1.304–6 is added to read as follows:

§ 1.304–6 Amount constituting a dividend.

(a) *In general.* The determination of the amount of the property that is a dividend is made as if the property were distributed by the acquiring corporation to the extent of its earnings and profits and then by the issuing corporation to the extent of its earnings and profits. Where, however, the acquiring corporation is a foreign corporation, for purposes of the preceding sentence, the earnings and profits of the acquiring corporation are taken into account only to the extent that they—

(1) Are attributable to stock of the acquiring corporation owned (within the meaning of section 958(a)) by a corporation or individual that is—

(i) A United States shareholder (within the meaning of section 951(b)) of the acquiring corporation; and

(ii) The transferor or a person who bears a relationship to the transferor described in section 267(b) or 707(b); and

(2) Were accumulated during the period or periods such stock was owned by such person while the acquiring corporation was a controlled foreign corporation.

(b) *Effective date.* This section applies to transactions occurring after the date these regulations are published as final regulations in the **Federal Register**.

9. Section 1.704–1 is amended by adding paragraph (b)(4)(viii) to read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(4) * * *

(viii) *Loss attributable to basis of redeemed stock under § 1.302–5.* For rules regarding allocations on a redemption of stock all or a portion of which is treated as a dividend, see § 1.302–5(d)(6)(i).

* * * * *

10. Section 1.861–12 is added to read as follows:

§ 1.861–12 Characterization rules and adjustments for certain assets.

(a) through (c)(2)(v) [Reserved]. For further guidance, see § 1.861–12T(a) through (c)(2)(v).

(c)(2)(vi) *Adjustments in respect of redeemed stock for taxpayers using the tax book value method.* Solely for purposes of apportioning expenses on the basis of the tax book value of assets, the adjusted basis of any stock in a 10 percent owned corporation owned directly by a taxpayer that is a redeemed shareholder (as defined in § 1.302–5(b)(1)) with respect to such corporation shall be increased by the amount of any loss that has not been taken into account under § 1.302–5(c) as of the close of the redeemed shareholder's taxable year (unrecovered loss). If the redeemed shareholder does not own directly any shares in the 10 percent owned corporation as of the end of the taxable year, but is treated for purposes of section 302(b) as owning shares actually owned by another member of the redeemed shareholder's affiliated group, as defined in section 1504(a), or by a corporation that is either an affiliate described in § 1.904(i)–1(b)(1) or an affiliated corporation described in § 1.861–11T(d)(6) with respect to the redeemed shareholder, then the adjusted basis of the shares in the 10 percent owned corporation, if any, that are owned by such other corporation or corporations shall be increased by the amount of the redeemed shareholder's unrecovered loss (and allocated among such corporations, if applicable, in proportion to their relative adjusted bases (as adjusted pursuant to this paragraph and § 1.861–12T(c)(2)) in the stock of the redeeming corporation). These adjustments are to be made annually and are noncumulative.

(vii) *Examples.* Certain of the rules of this paragraph (c)(2) may be illustrated by the following examples:

Examples 1 and 2. [Reserved]. For further guidance, see § 1.861–12T(c)(2)((vii), *Examples 1* and *2*.

Example 3. The facts are the same as in § 1.861–12T(c)(2)(vii) *Example 2*, except that the taxable year is 2003, and during the taxable year Y redeems some of the shares of its stock held by X for $100,000. X's adjusted basis in the redeemed shares is $50,000. Because X still owns all of the outstanding stock of Y, the redemption is treated as a distribution with respect to the stock of Y under section 301. Under § 1.302–5, X's $50,000 adjusted basis in the redeemed shares is treated as a loss recognized on the date of the redemption, none of which is taken into account in 2003. X invests the $100,000 of redemption proceeds in assets that generate foreign source general limitation income. Under paragraph (c)(2)(vi) of this section, X's adjusted basis in its remaining Y stock is considered to be $2,000,000 ($1,950,000 adjusted basis in the Y stock plus $50,000 unrecovered loss in the redeemed shares). X's adjusted basis of assets that generate foreign source general limitation income is considered to be $2,500,000 ($2,000,000 adjusted basis in the Y stock plus $500,000 other assets), and the resulting apportionment of interest expense is the same as in § 1.861–12T(c)(2)(vii) *Example 2*.

(c)(3) through (j) [Reserved]. For further guidance, see § 1.861–12T(c)(3) through (j).

11. Section 1.861–12T is amended as follows:

1. Paragraph (c)(2)(vi) is redesignated as paragraph (c)(2)(vii).
2. New paragraph (c)(2)(vi) is added.

The addition reads as follows:

§ 1.861–12T Characterization rules and adjustments for certain assets (temporary regulations.)

* * * * *

(c) * * *

(2) * * *

(vi) [Reserved]. For further guidance, see § 1.861–12(c)(2)(vi).

* * * * *

12. Section 1.1371–1 is added to read as follows:

§ 1.1371–1 Coordination with subchapter C.

(a) *No carryover between C and S years*—(1) *Loss attributable to basis of redeemed stock.* A loss described in § 1.302–5(a) is treated as a carryforward arising in a taxable year for which a corporation is a C corporation. Therefore, it may not be carried to a taxable year for which such corporation is an S corporation.

(2) [*Reserved*].

(b) *Effective date.* This section applies to transactions occurring after the date these regulations are published as final regulations in the **Federal Register**.

13. In § 1.1374–5, paragraph (a) is amended by adding a sentence at the end of the paragraph.

§ 1.1374–5 Loss carryforwards.

(a) *In general.* * * * However, for redemptions of stock occurring after the date these regulations are published as final regulations in the **Federal Register**, a loss attributable to the basis of redeemed stock that is taken into account pursuant to the rules of § 1.302–5 is allowed for purposes of section 1374(b)(2) as a deduction against net recognized built-in gain of the S corporation for the taxable year, provided that the loss arose in a year in which the corporation was a C corporation.

* * * * *

14. In § 1.1374–10, paragraph (a) is revised to read as follows:

§ 1.1374–10 Effective date and additional rules.

(a) *In general.* Except as provided in § 1.1374–5(a), §§ 1.1374–1 through

1.1374–9 apply for taxable years ending on or after December 27, 1994, but only in cases where the S corporation's return for the taxable year is filed pursuant to an S election or a section 1374(d)(8) transaction occurring on or after December 27, 1994.

* * * * *

15. In § 1.1502–13, paragraph (f)(7) *Example 3*(b) is revised to read as follows:

§ 1.1502–13 Intercompany transactions.

* * * * *

(f) * * *

(7) * * *

Example 3. * * *

(b) *Treatment as a section 301 distribution.* The merger of S into B is a transaction to which paragraph (f)(3) of this section applies. P is treated as receiving additional B stock with a fair market value of $500 and, under section 358, a basis of $250. Immediately after the merger, $150 of the stock received is treated as redeemed, and the redemption is treated under section 302(d) as a distribution to which section 301 applies. Because the $150 distribution is treated as not received as part of the merger, section 356 does not apply and no basis adjustments are required under section 358(a)(1)(A) and (B). Because B is treated under section 381(c)(2) as receiving S's earnings and profits and the redemption is treated as occurring after the merger, $100 of the distribution is treated as a dividend under section 301 and P's basis in the B stock is reduced correspondingly under § 1.1502–32. Under paragraph (f)(2)(ii) of this section, P's $100 of dividend income is not included in gross income. Accordingly, P has a $75 excess loss account in the redeemed stock. That excess loss account is treated as income recognized on a disposition of the redeemed stock on the date of the redemption and is taken into account under the rules of § 1.1502–19(b)(5).

* * * * *

16. Section 1.1502–19 is amended as follows:

1. Paragraph (b)(2)(i) is amended by adding a sentence at the end of the paragraph.

2. Paragraph (b)(5) is added.

3. Paragraph (g) *Example 7* is added.

4. The heading for paragraph (h) is revised.

5. The first sentence of paragraph (h)(1) is removed and two new sentences are added in its place.

The revisions and additions read as follows:

§ 1.1502–19 Excess loss accounts.

* * * * *

(b) * * *

(2) * * * (i) * * * As another example, if S redeems (or is treated as redeeming) P's S stock and, as a result, an excess loss account is either increased or created in such redeemed stock, P takes into account such excess loss account under the rules of paragraph (b)(5) of this section.

* * * * *

(5) *Redemptions of member stock; treatment of excess loss account in redeemed stock*—(i) *In general.* In any case in which an amount received in redemption of S stock is treated as a distribution to P to which section 301 applies and such amount either increases or creates an excess loss account in the redeemed S stock, after adjusting such basis or excess loss account to reflect the application of section 301(c)(2), section 1059, § 1.1502–32, or any other applicable provision of the Internal Revenue Code or the regulations thereunder, such excess loss account is treated as income (ordinary income or gain) recognized on a disposition of the redeemed stock on the date of the redemption. Such income shall be taken into account by P under the provisions of this paragraph (b)(5).

(ii) *Inclusion of gain attributable to excess loss account in redeemed stock—(A) Amount taken into account on final inclusion date.* On the final inclusion date (as defined in § 1.302–5(b)(3)), P must include in income as ordinary income or gain the excess loss account in the redeemed stock, reduced by any amounts of such excess loss account that are taken into account pursuant to the provisions of paragraph (b)(5)(ii)(B) of this section.

(B) *Amount taken into account on accelerated income inclusion date.* (*1*) On an accelerated income inclusion date (as defined in paragraph (b)(5)(ii)(B)(*2*) of this section), P must include in income as ordinary income or gain the excess loss account of the redeemed stock to the extent of the lesser of—

(*i*) The amount of such excess loss account reduced by the amount of such excess loss account previously taken into account pursuant to this paragraph (b)(5)(ii); and

(*ii*) The amount of loss recognized on the disposition of stock of S that the group of which P is a member is permitted to take into account on such accelerated income inclusion date without regard to the application of § 1.337(d)–2T.

(*2*) An accelerated income inclusion date is a date on which P is permitted to take into account a loss recognized on a disposition of S stock without regard to the application of § 1.337(d)-2T.

(iii) *Application of other rules.* In addition to the rules set forth in this paragraph (b)(5), the rules of § 1.302–5(d) apply for purposes of determining the appropriate time to take into account any portion of an excess loss account in redeemed stock by treating P as the redeemed shareholder and S as the redeeming corporation. However, the rules of § 1.302–5(d) shall be applied by using the language "accelerated income inclusion date" instead of "accelerated loss inclusion date" each time that term appears.

(iv) *Statement to be filed with returns.* With or as part of the income tax return for the year in which P takes into account any income attributable to an excess loss account in redeemed stock, P shall provide a statement entitled "Inclusion of Income Attributable to Excess Loss Account in Redeemed Stock." The statement shall specify the amount of the income that is taken into account on such return pursuant to this paragraph (b)(5) and shall identify the shares to which such amounts relate.

* * * * *

(g) * * *

Example 7. Redemption of member stock. (a) *Facts.* P directly owns all of the outstanding stock of S1 and S2. S1 and S2 each own 50 shares of S3's outstanding 100 shares of stock. P is the common parent of the consolidated group. S1's adjusted basis in the S3 stock is $50. In Year 1, S3 redeems all of its stock from S1 for $100. In Year 2, P sells all of its shares of S1 stock to an unrelated party.

(b) *Analysis.* In Year 1, because S1 actually and constructively owns 100 percent of stock of S3 immediately before and immediately after the redemption, the redemption is treated as a distribution to which section 301 applies. S3's distribution is an intercompany distribution under § 1.1502–13(f)(2)(ii) and excluded from S1's gross income. Under § 1.1502–32, S1's basis in S3's stock is reduced by the amount of the distribution, creating an excess loss account of $50. Pursuant to paragraph (b)(5)(i) of this section, that excess loss account is treated as income recognized on a disposition of the redeemed stock on the date of the redemption. That income, however, is not taken into account on such date. Instead, it is taken into account on the date on which S1 departs from the consolidated group as that date is the final inclusion date because, if the facts that exist at the end of that day had existed immediately after the redemption, the redemption would have been treated as a distribution in part or full payment in exchange for the redeemed stock pursuant to section 302(b)(3). Accordingly, S1 must include in its income as gain an amount equal to the excess loss account in the redeemed S3 stock.

(h) *Effective dates*—(1) *Application.* This section, except for the last sentence of paragraph (b)(2)(i), and paragraphs (b)(5) and (g) *Example 7* of this section, applies with respect to determinations of the basis of (including an excess loss account in) the stock of a member in consolidated return years beginning on or after January 1, 1995. The last sentence of paragraph (b)(2)(i), and paragraphs (b)(5) and (g) *Example 7* of this section apply to transactions occurring after the date these regulations are published as final regulations in the **Federal Register**.

* * * * * *

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 02–26449 Filed 10–17–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–02–080]

RIN 2115–AA97

Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a security zone in the waters of the Chesapeake Bay near the Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, Maryland. This security zone is necessary to help ensure public safety and security. The security zone will prohibit vessels and persons from entering a well-defined area around Calvert Cliffs Nuclear Power Plant.

DATES: Comments and related material must reach the Coast Guard on or before January 16, 2003.

ADDRESSES: You may mail comments and related material to Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland, 21226–1791. The Port Safety, Security and Waterways Management Branch of Coast Guard Activities Baltimore maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland, 21226–1791 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2513.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD05–02–080, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission has reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, U.S. Coast Guard Activities Baltimore at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Based on the September 11, 2001 terrorist attacks on the World Trade Center buildings in New York and the Pentagon building in Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Calvert Cliffs Nuclear Power Plant. On February 28, 2002, the Coast Guard published a temporary rule entitled "Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, MD," in the **Federal Register** (67 FR 9203). The temporary rule established a security zone around the Calvert Cliffs Nuclear Power Plant. Based on a continuing need for the protection of the plant, the effective date of the rule establishing a temporary security zone surrounding the plant was recently extended until March 31, 2003 (67 FR 61494, October 1, 2002). There is no indication that the present rule has been burdensome on the maritime public; users of the areas surrounding the plant are able to pass safely outside the zone. No letters commenting on the present rule have been received by the public.

Discussion of Proposed Rule

The Coast Guard proposes to establish a permanent security zone on specified waters of the Chesapeake Bay near the Calvert Cliffs Nuclear Power Plant to reduce the potential threat imposed by vessels or persons that approach the power plant. The proposed security zone will be in effect continuously. Its effect would be to prohibit vessels or persons from entering into the security zone, unless specifically authorized by the Captain of the Port, Baltimore, Maryland. Federal, state and local agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This proposed security zone is of limited size, and vessels may transit around the zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Chesapeake Bay near the Calvert Cliffs Nuclear Power Plant.

If you think that your business, organization, or governmental

jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Dulani Woods, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2513.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because this rule establishes a security zone. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.505 to read as follows:

§ 165.505 Security Zone; Calvert Cliffs Nuclear Power Plant, Chesapeake Bay, Calvert County, Maryland.

(a) *Location.* The following area is a security zone: All waters of the Chesapeake Bay, from surface to bottom, encompassed by lines connecting the following points, beginning at 38°26′06″ N, 076°26′18″ W, thence to 38°26′10″ N, 076°26′12″ W, thence to 38°26′21″ N, 076°26′28″ W, thence to 38°26′14″ N, 076°26′33″ W, thence to beginning at 38°26′06″ N, 076°26′18″ W. These coordinates are based upon North American Datum (NAD) 1983.

(b) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 410–576–2693 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: October 7, 2002.

R.B. Peoples,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 02–26462 Filed 10–17–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Chapter I

The Negotiated Rule Making Advisory Committee for Off-Road Driving Regulations at Fire Island National Seashore

ACTION: Notice of changes and additions to the Negotiated Rulemaking Committee Membership.

SUMMARY: As required by section 3 of the Negotiated Rulemaking Act of 1990, 5 U.S.C. 564, the National Park Service (NPS) is giving notice of additions and changes to the members of the Negotiated Rulemaking Advisory Committee. The Committee was established to negotiate and develop a proposed rule revising off-road vehicle use regulations at Fire Island National Seashore (36 CFR 7.20).

FOR FURTHER INFORMATION CONTACT: Barry T. Sullivan, Acting Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York 11772; telephone 631–289–4810, ext. 221; fax 631–289–4898.

SUPPLEMENTARY INFORMATION: The Secretary has determined that establishment of this Committee is in the public interest and supports the National Park Service in performing its duties and responsibilities under the National Park Service Organic Act, 16 U.S.C. 1 *et seq.*, and the Fire Island National Seashore, Act 16 U.S.C. 459e *et seq.*

Because of a transfer to another National Park Service site, Constantine Dillon is no longer the primary representative for the Department of the Interior. Barry Sullivan will become the primary representative and Wayne Valentine the alternate.

The Designated Federal Official is changed from Constantine Dillon to Barry Sullivan.

Because he will be running for public office and will not have the time to serve on the committee, J. Lee Snead resigned from the committee. Laurie Farber will serve as the primary representative for Visitors, and Guy Jacob will serve as alternate.

Due to a change in assigned officers, Suffolk County Police Dept. has requested that their primary representative be changed from Deputy Inspector Robert C. Cassagne to Captain William Read. They have also requested that their alternate representative be changed from Captain Henry A. Mulligan to Police Officer Brian Cassidy.

The Inc. Village of Saltaire has requested that their alternate representative be changed from Scott Rosenblum to John Zaccaro, Jr.

The Inc. Village of Ocean Beach has requested that their primary representative be changed from James Mallott to Andrew Miller.

So that they would have better representation on the committee, the following groups have added alternate representatives.

Utility companies—Michael Harvey
On-island contractors—Walter Boss
Off-island contractors—Douglas R. Teague
Town of Brookhaven—Linda B. Petersen
Village of Ocean Beach—Joseph C. Loeffler, Jr.

Dated: September 23, 2002.

Barry T. Sullivan,

Acting Superintendent, Fire Island National Seashore.

[FR Doc. 02–26602 Filed 10–17–02; 8:45 am]

BILLING CODE 4310–76–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ53–245, FRL–7394–5]

Approval and Promulgation of Air Quality Implementation Plans; New Jersey; Open Market Emissions Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; withdrawal.

SUMMARY: In a January 9, 2001 proposed rule (66 FR 1796), EPA proposed to conditionally approve a revision New Jersey requested to its State Implementation Plan for ozone. The request related to an Open Market Air Emissions Trading (OMET) Program which New Jersey had adopted.

In a June 24, 2002 letter to the New Jersey Department of Environmental Protection (NJDEP), EPA identified a number of problems with the New Jersey OMET program. New Jersey responded in an August 13, 2002 letter to EPA, indicating it agreed with many of the concerns EPA had raised and also identifying additional problems. The Commissioner of NJDEP informed EPA that the Program has failed and New Jersey should terminate the OMET Program, and that New Jersey would begin that process. Therefore, EPA is announcing its decision to cease processing the New Jersey revision request and to withdraw its January 9, 2001 proposed conditional approval. EPA intends to work with New Jersey to address compliance issues concerning sources that currently hold or have been using credits.

DATES: The proposed rulemaking is withdrawn as of October 18, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Ruvo, Air Programs Branch, Environmental Protection Agency Region II, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–4014.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 7, 2002.

William J. Muszynski,

Deputy Regional Administrator, Region 2.

[FR Doc. 02–26440 Filed 10–17–02; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 67, No. 202
Friday, October 18, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection: Comment Request: FNS–583, Employment and Training Program Activity Report

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice invites the general public and other public agencies to comment on a proposed revision in information collection for the FNS–583, Employment and Training Program Activity Report. The proposed revision affects the collection currently approved under OMB No. 0584–0339.

DATES: Written comments must be submitted on or before December 17, 2002.

ADDRESSES: Send comments and requests for copies of this information collection to John Knaus, Chief, Program Design Branch, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed revision is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information, including validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other form of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Micheal Atwell at (703) 305–2449, or send e-mail to *micheal_atwell@fns.usda.gov* via the Internet.

SUPPLEMENTARY INFORMATION:

Title of Information Collection: FNS–583, Employment and Training Program Activity Report.

OMB Number: 0584–0339.

Expiration Date: December 31, 2004.

Type of Request: Revision of a currently approved collection.

Abstract: Title 7 CFR 273.7(c)(6) requires State agencies to submit quarterly Employment and Training (E&T) Program Activity Reports containing monthly figures for participation in the program. The first quarter FNS–583 report includes the number of work-registered persons in a State as of October of the new fiscal year. On the fourth quarter FNS–583 report State agencies list the components of their E&T programs and the number of participants in each.

The currently approved FNS–583 report includes the number of participants newly work registered; work registrants exempted from the E&T Program; participants who volunteered and began an approved E&T component; E&T mandatory participants who began an approved E&T component; number of able-bodied adults without dependents (ABAWDs) exempted from the 3-month food stamp time limit under each State agency's 15 percent ABAWD exemption allowance; the number of filled and offered (unfilled) workfare slots in waived and unwaived geographic areas of the State; the number of filled and offered education and training slots in waived and unwaived geographic areas of the State; the amount of Federal 100 percent E&T funding spent on workfare slots that meet the requirements of Section 6(o)(2)(C) of the Food Stamp Act of 1977, as amended (the Act); and the amount of Federal 100 percent E&T funding spent on education and training slots that meet the requirements of section 6(o)(2)(B) of the Act.

On May 13, 2002, President Bush signed into law the Farm Bill—the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171). Title IV of the Farm Bill includes Section 4121, Employment and Training Program, which was effective upon enactment. Section 4121 includes several major revisions, one of which significantly affects the information collection on the FNS–583 by eliminating the maximum reimbursement rates for offering and filling qualifying education/training and workfare opportunities for ABAWDs (slot rates). Thus, the information reporting the numbers of filled and offered education/training slots and workfare slots in waived and unwaived geographic areas is no longer required. Additionally, we are taking this opportunity to further revise and streamline the FNS–583 report by condensing, combining, or eliminating other information collection requirements.

Reporting Burden:

Frequency: The FNS–583 report must be completed and submitted to FNS on a quarterly basis by the 45th day following the end of the quarter.

Affected Public: State governments.

Number of Respondents: 53.

Number of Responses: 212.

Estimated Time per Response: 138 hours per State agency.

Estimated Total Annual Reporting Burden: 29,216 hours.

Recordkeeping Burden:

Number of Respondents: 53.

Number of Records: 212.

Number of Hours Per Record: 0.137 hours.

Estimated Total Annual Recordkeeping burden: 29 hours.

Total Annual Reporting and Recordkeeping Burden: 29,245 hours.

Dated: October 9, 2002.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 02–26566 Filed 10–17–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on November 5, 2002 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on November 5, 2002 from 6 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Elk Valley Rancheria Community Center, 2298 Norris Avenue, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *1chapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items include a discussion of the Smith River National Recreation Area program of work for fiscal year 2003, voting on a project proposed by the California Conservation Corps., and a discussion of the committee's ground rules. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: October 10, 2002.

Roy E. Bergstrom,

Acting Forest Supervisor.

[FR Doc. 02–26539 Filed 10–17–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA 668_02_1610_DO_083A]

Monument Advisory Committee Meeting Announcement

AGENCY: Bureau of Land Management, Interior; United States Forest Service, Agriculture.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM) and United States Forest Service (USFS) announces a meeting of the Advisory Committee to the Santa Rosa and San Jacinto Mountains National Monument (hereinafter referred to as ANational Monument@). The meeting will be held on Saturday, November 23, 2002. The location for the meeting will be Palm Desert City Hall Council Chambers, located at 73–510 Fred Waring Drive, Palm Desert, California, 92260. The meeting will take place from 9 a.m. until 4 p.m. There will be a half hour dedicated to public input from 1 p.m. until 1:30 p.m. A sign up sheet will be located at the meeting room on the day of the meeting. Speakers wishing to comment publicly should sign the public comment sign-in sheet provided at the location of the meetings. All committee meetings are open to the general public, including representatives of the news media. Any organization, association, or individual may file a statement with or appear before the committee and its working groups regarding topics on a meeting agenda—except that the chairperson or the designated federal official may require written comments to the Advisory Committee. The topics to be discussed at the November 23rd, 2002 meeting include Issue Development and Alternative Development for the Management Plan for the National Monument. Additional information regarding the National Monument can be found on the following Web page : *http://www.ca.blm.gov/palmsprings/.* The subject matter of subsequent meetings will focus on the development and implementation of the Santa Rosa and San Jacinto Mountains National Monument Management Plan. This notice of the November 23rd, 2002 meeting date adds another meeting date to the previously noticed dates for Advisory Committee meetings. All meetings will occur from 9 a.m. until 4 p.m. at the same location listed above. The complete list of upcoming meeting dates follows:

- October 5th, 2002,
- November 23rd, 2002,
- December 5th, 2002,
- February 1, 2003.

The Monument Advisory Committee (MAC) is a committee of citizens appointed to provide advice to the BLM and USFS with respect to preparation and implementation of the management plan for the National Monument as required in the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (16 U.S.C. 431nt). The act authorized establishment of the MAC with representative members from State and local jurisdictions, the Agua Caliente Band of Cahuilla Indians, a natural science expert, local conservation organization, local developer or building organization, the Winter Park Authority and a representative from the Pinyon Community Council.

The meeting will be open to the public with attendance limited to space available. Individuals who plan to attend and need special assistance such as sign language interpretations or other reasonable accommodations should notify the contact person listed below in advance of the meeting. Persons wishing to make statements will need to sign up at the meeting location.

DATES: November 23rd, 2002. The meeting will take place from 9 a.m. to 4 p.m. with an afternoon public comment period from 1 p.m. to 1:30 p.m.

ADDRESSES: The meeting will be held in the Council Chambers of the Palm Desert City Hall, 73–510 Fred Waring Drive, Palm Desert, California, 92260.

FOR FURTHER INFORMATION CONTACT: Written comments should be sent to Miss Danella George, Santa Rosa San Jacinto Mountains National Monument Manager, Bureau of Land Management, PO Box 581260, North Palm Springs, CA 92258; or by fax at (760) 251–4899 or by e-mail at *dgeorge@ca.blm.gov.* Information can be found on our webpage: *http://www.ca.blm.gov/palmsprings/.* Documents pertinent to this notice, including comments with the names and addresses of respondents, will be available for public review at the Palm Springs-South Coast Field Office located at 690 W. Garnet Avenue, North Palm Springs, California, during regular business hours 8 a.m. to 4 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Santa Rosa and San Jacinto Mountains National Monument was established by act of Congress and signed into law on October 24, 2000. The National Monument was established in order to preserve the nationally significant biological, cultural, recreational, geological, educational and scientific values found in the Santa Rosa and San Jacinto Mountains. This legislation established the first monument to be jointly managed by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 affects only Federal lands and Federal interests located within the established boundaries.

The 272,000 acre Monument encompasses 86,400 acres of Bureau of Land Management lands, 64,400 acres of Forest Service lands, 23,000 acres of Agua Caliente Band of Cahuilla Indians lands, 8,500 acres of California Department of Parks and Recreation lands, 35,800 acres of other State of California agencies lands, and 53,900 acres of private land. The BLM and the Forest Service will jointly manage Federal lands in the National Monument in coordination with the Agua Caliente Band of Cahuilla Indians,

other federal agencies, state agencies and local governments.

Dated: October 8, 2002.

Danella George,

Designated Federal Official, National Monument Manager, Bureau of Land Management.

Laurie Rosenthal,

District Ranger, San Jacinto Ranger District, San Bernardino National Forest, Forest Service.

[FR Doc. 02–26477 Filed 10–17–02; 8:45 am]

BILLING CODE 4310–40–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

EFFECTIVE DATE: November 17, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On November 23, 2001, June 21, July 26, August 16, and August 23, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (66 FR 58712, 67 FR 42235, 48870, 53561, and 54629) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.
2. The action will result in authorizing small entities to furnish the products and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Paper, Copy, 50% PCW, 7530–00–NIB–0644, 7530–00–NIB–0645, 7530–00–NIB–0646, 7530–00–NIB–0647.
NPA: Louisiana Association for the Blind, Shreveport, Louisiana.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Rayon Deck Mop, Refill, M.R. 1028, Cotton Deck Mop, Refill, M.R. 1029.
NPA: Arizona Industries for the Blind, Phoenix, Arizona.
NPA: Mississippi Industries for the Blind, Jackson, Mississippi.
NPA: New York City Industries for the Blind, Brooklyn, New York.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.

Services

Service Type/Location: Base Supply Center, U.S. Army Combined Arms Center & Fort Leavenworth, Fort Leavenworth, Kansas.
NPA: Envision, Inc., Wichita, Kansas.
Contract Activity: U.S. Army Combined Arms Center & Fort Leavenworth.
Service Type/Location: Base Supply Center, U.S. Army Maneuver Support Center, Fort Leonard Wood, Missouri.
NPA: Alphapointe Association for the Blind, Kansas City, Missouri.
Contract Activity: U.S. Army Maneuver Support Center, Fort Leonard Wood, Missouri.
Service Type/Location: Grounds Maintenance, Fort Douglas, Cemetery, Salt Lake City, Utah.
NPA: Community Foundation for the Disabled, Inc., Salt Lake City, Utah.
Contract Activity: U.S. Army, 96th Regional Support Command, Salt Lake City, Utah.
Service Type/Location: Office Supply Store, Herbert Hoover Building, Washington, DC.
NPA: Columbia Lighthouse for the Blind, Washington, DC.
Contract Activity: Department of Commerce, Washington, DC.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.
2. The action may result in authorizing small entities to furnish the service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service deleted from the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following service is deleted from the Procurement List:

Service

Service Type/Location: Janitorial/Grounds Maintenance, Nininger U.S. Army Reserve Center, Fort Lauderdale, Florida.
NPA: Goodwill Industries of Broward County, Inc., Ft. Lauderdale, Florida.
Contract Activity: U.S. Army, 81st Regional Support Command.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–26595 Filed 10–17–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must be Received on or Before: November 17, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. If approved, the action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Cleaning Services, Laguana Atascosa NWR, Rio Hondo, Texas.
NPA: Training, Rehabilitation & Development Institute, Inc., San Antonio, Texas.
Contract Activity: Department of Interior, Albuquerque, New Mexico.
Service Type/Location: Facilities Management, John F. Kennedy Presidential Library, Boston, Massachusetts.
NPA: Work, Incorporated, North Quincy, Massachusetts.
Contract Activity: National Archives & Records Service, College Park, Maryland.
Service Type/Location: Janitorial/Custodial, Army Reserve Center, Fort Harrison, Indianapolis, Indiana.
NPA: Child-Adult Resource Services, Inc., Green Castle, Indiana.
Contract Activity: HQ, 88th Regional Support Command, Fort Snelling, Minnesota.
Service Type/Location: Recycling Service, Cape Cod National Seashore, Wellfleet, Massachusetts.
NPA: Nauset, Inc., Hyannis, Massachusetts.
Contract Activity: National Park Service, Wellfleet, Massachusetts.
Service Type/Location: Switchboard Operation, Shaw Air Force Base, South Carolina.
NPA: Goodwill Industries of Lower SC, Inc., North Charleston, South Carolina.
Contract Activity: 20th Contracting Squadron/LGCA, Shaw AFB, South Carolina.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.
2. If approved, the action will result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

The following products are proposed for deletion from the Procurement List:

Products

Product/NSN: Pencil, Mechanical
7520–00–285–5822
7520–00–285–5823
7520–00–285–5826
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Strap Assembly, Litter 1680–00–878–6964
NPA: Huntsville Rehabilitation Foundation, Huntsville, Alabama.
Contract Activity: Defense Supply Center Richmond, Richmond, Virginia.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–26596 Filed 10–17–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology.

Title: National Weights and Measures Benchmarking and Needs Assessment Survey.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 396.

Number of Respondents: 79.

Average Hours Per Response: 6 hours.

Needs and Uses: The purpose of the National Weights and Measures Benchmarking and Needs Assessment Survey is to provide a comprehensive information base that can be used in strategic planning. The information will evaluate the effectiveness of the national weights and measures infrastructure, provide a basis for comparing weights and measures programs to one another, identify how the resources for the U.S. weights and measures system has changed over 10 years, identify the number of businesses, measuring devices, the volume of business done in various business sectors subject to weights and measures inspections, and to identify the most critical needs under the current environment and operation conditions of the programs.

Affected Public: State, local or tribal government, and business or other for-profit organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Office, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 11, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–26459 Filed 10–17–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808]

Stainless Steel Plate in Coils From Belgium; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 7, 2002, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on stainless steel plate in coils from Belgium (67 FR 39354). This review covers imports of subject merchandise from ALZ, N.V. (ALZ) and its affiliated U.S. importer TrefilARBED, Inc. (TrefilARBED). The period of review ("POR") is May 1, 2000 through April 30, 2001.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results of review. The final weighted-average dumping margin is listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: October 18, 2002.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon at (202) 482–0162, Javier Barrientos at (202) 482–2243, or Brett Royce at (202) 482–4106, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute & Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 (the Act), as amended. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Background

Since the issuance of the preliminary results of review, (*see Stainless Steel Plate in Coils From Belgium: Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 39354 (June 7, 2002) ("*Preliminary Results*")), the following events have occurred. On July 8, 2002, we received a timely written case brief from Allegheny Ludlum, Corp., AK Steel Corporation, Butler Armco Independent Union, North American Stainless, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL–CIO/CLC (collectively, petitioners). On July 9, 2002, we received a timely written case brief from the respondent ALZ and its affiliated U.S. importer TrefilARBED.[1] On July 16, 2002, we received a timely rebuttal brief from the respondent. We have now completed the administrative review in accordance with section 751 of the Act.

Scope of the Antidumping Duty Order

The product covered by this order is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this order are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of these orders. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" ("*Decision Memorandum*") from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated October 7, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations. The changes are listed below:

- We added Billing Adjustment 2 to U.S. price;
- For the purpose of deriving CEP profit, we deducted billing adjustments from both home market and U.S. price;
- We did not deduct indirect selling expenses incurred in Belgium for U.S. sales from U.S. price;
- We have reallocated U.S. warranty expenses reported by TrefilARBED at verification on a CONNUM-specific basis.

Final Results of Review

We determine that the following percentage margin exists for the period May 1, 2000 through April 30, 2001:

Manufacturer/exporter	Margin (percent)
ALZ, N.V	3.84

Assessment

The Department will determine, and the U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of these final results of review. We will direct Customs to assess the resulting assessment rates against the entered Customs values for the subject merchandise on each of the importer's entries during the review period.

[1] On July 8, 2002, the Department received the "non-final" business proprietary version of respondent's case brief. The following day, July 9, 2002, respondent submitted the "final" business proprietary version.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of the final results of this administrative review for all shipments of stainless steel plate in coils from Belgium entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 9.86 percent, which is the "all others" rate established in the LTFV investigation (*see Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil From Belgium*, 64 FR 15476 (March 31, 1999)). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) of the Act.

Dated: October 7, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

List of Issues

Comment 1: U.S. Billing Adjustment 2
Comment 2: CEP Profit Calculation
Comment 3: Indirect Selling Expenses
Comment 4: Date of Sale
Comment 5: Warranty Expenses

[FR Doc. 02–26608 Filed 10–17–02; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101002B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Whiting Oversight Committee and Advisory Panel in November, 2002. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Monday, November 4, 2002 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Ferncroft, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 465–0492.

*Council address:*New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee and panel will review information and analyses included in Framework 37 to the Northeast Multispecies Fishery Management Plan (FMP). They will provide recommendations for Council consideration for final selection of management measures to be included in Framework 37; measures in Framework 37 may eliminate the Year 4 default measure in both whiting stock areas, increase opportunities for whiting fishing in the Cultivator Shoal Whiting Fishery and other fisheries in the northern stock area, and adjust other whiting management measures. They will also consider a new control date for small mesh multispecies (whiting, red hake, offshore hake) and development of related recommendations for Council consideration.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: October 11, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–26598 Filed 10–17–02; 8:45 am]
BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Ban of All-Terrain Vehicles Sold for Use by Children Under 16 Years Old

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received a petition (CP–02–4/ HP–02–1) requesting that the Commission ban the sale of adult-size four wheel all-terrain vehicles ("ATVs") sold for the use of children under 16 years of age. The

Commission solicits written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by December 17, 2002.

ADDRESSES: Comments, preferably in five copies, on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to *cpsc-os@cpsc.gov*. Comments should be captioned "Petition CP–02–4/HP–02–1, Petition on ATVs." A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800, ext. 1232.

SUPPLEMENTARY INFORMATION: The Commission has received correspondence from Consumer Federation of America ("CFA") and other groups [1] requesting that the Commission take several actions concerning all-terrain vehicles ("ATVs"). The Commission is docketing their request for a ban of the sale of adult-size four wheel ATVs sold for the use of children under 16 as a petition under the Consumer Product Safety Act, 15 U.S.C. 2057, and the Federal Hazardous Substances Act, 15 U.S.C. 1261(q)(1)(A). The petitioners assert that ATVs pose an unreasonable risk of injury and death to children. They cite Commission data that between 1982 and 2001 there were reports of 4,541 ATV-related deaths, and that 1,714 (or 38%) of those deaths were children under 16 years old. They also note that in the year 2001, there were 111,700 people taken to emergency rooms for ATV-related injuries, of which 34,800 were under 16 years old. They argue that there is no feasible standard that would address the risks ATVs pose to children.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. Copies of the petition are also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

Dated: October 10, 2002.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–26458 Filed 10–17–02; 8:45 am]

BILLING CODE 6355–01–P

[1] The other groups are the American Academy of Pediatrics, the American College of Emergency Physicians, Bluewater Network, the Center for Injury Research and Policy, the Danny Foundation for Crib and Child Product Safety, Kids in Danger, National Association of Orthopaedic Nurses, and U.S. PIRG.

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, October 24, 2002, 10 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the public.

MATTER TO BE CONSIDERED:

Petition HP 99–1 Polyvinyl Chloride (PV)

The staff will brief the Commission on Petition HP 99–1 requesting a ban of polyvinyl chloride (PVC) in all toys and other products intended for children five years of age and under.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 15, 2002.

Todd A. Stevenson,

Secretary.

[FR Doc. 02–26730 Filed 10–16–02; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for Proposed Aircraft Conversion at Martinsburg, WV

Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 United States Code 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of NEPA (40 Code of Federal Regulations (CFR) parts 1500–1508), and Air Force policy and procedures (32 CFR part 989), This announcement provides notice that the Air Force proposes a conversion of C–130 aircraft to C–5 aircraft along with associated actions to meet strategic airlift requirements of the U.S. Air Force and Air National Guard. This action requires a unique mix of facilities and support capabilities associated with the C–5, the largest cargo aircraft in the Department of Defense inventory. The eventual receiving location would maintain and operate an inventory of 10 C–5 aircraft.

The Air National Guard is preparing an EIS to assess potential environmental impacts associated with the proposed conversion from C–130 to C–5 aircraft at the 167th Airlift Wing (167 AW), Martinsburg, WV. The 167th AW action would consist of three primary components: (1) Conversion from C–130 to C–5 aircraft; (2) acquisition of land through lease; from the Eastern West Virginia Airport and (3) construction of both ANG and the Eastern West Virginia Regional Airport facilities on existing and acquired parcels. The EIS will address alternatives to the proposed action, including alternative facilities development scenarios, reduced airfield expansion, and the No Action Alternative.

The ANG will initiate a public scoping process to facilitate identification of the relevant scope of environmental issues to be addressed in the EIS. The public will be invited to participate in scoping meetings and review the Draft EIS. Notification of the meeting locations and time will be made in the local area and will be announced via local news media. Information gathered during the public scoping will be used in the development of the Draft EIS.

For Further Information Contact: ANG/CEVP, Martinsburg EIS, Attention: Lt Col TJ Mitnik, 3500 Fetchet Avenue, Andrews Air Force Base, MD 20762.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–26604 Filed 10–17–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee.

DATES: November 6, 2002, 8:30 a.m.

ADDRESSES: Hilton Crystal City Hotel at National Airport, Crystal Room, 2399 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: John Ferrell, Designated Federal Officer for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–7766.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased industrial products.

Tentative Agenda: Agenda will include discussions on the following:

- Full committee discussion to finalize the Roadmap document for federal biomass research and development programs.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you should contact John Ferrell at (202) 586–7766 or *Bioenergy@ee.doe.gov* (email). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on October 11, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–26556 Filed 10–17–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–22–000]

Arizona Public Service Company; Notice of Filing

October 11, 2002.

Take notice that on October 8, 2002, Arizona Public Service Company (APS) tendered for filing an Interconnection and Operating Agreement with Aitibi Consolidated Sales Corporation (Abitibi) under APS' Open Access transmission Tariff, designated as Service Agreement No. 210.

A copy of this filing has been served on Abitibi and the Arizona Corporation Commission.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: October 29, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26497 Filed 10–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–36–001]

Canyon Creek Compression Company; Notice of Compliance Filing

October 11, 2002.

Take notice that on October 8, 2002, Canyon Creek Compression Company (Canyon) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff), Substitute Original Sheet No. 165A; to be effective September 20, 2002.

Canyon states that the purpose of this filing is to comply with the Commission's "Order Conditionally Accepting Tariff Sheet" issued on September 20, 2002, in Docket No. GT02–36–000.

Canyon states that copies of the filing are being mailed to each person designated on the official service list in Docket No. GT02–36–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26495 Filed 10–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–142–001]

Columbia Gas Transmission Corporation; Notice of Petition To Amend

October 11, 2002.

Take notice that on October 4, 2002, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP02–142–001, a petition to amend the application filed April 5, 2002, in Docket No. CP02–142–000, requesting a certificate pursuant to sections 7(b) and (c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations for abandonment authorization and a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas transmission facilities in Pennsylvania and Maryland to provide firm transportation service (FTS) under Part 284 of the Commission's Regulations for Rock Springs Generation, LLC (Rock Springs) and CED Rock Springs, Inc. (CEDRS) (together, "Customer"), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposes to revise its previously approved and requested proposals in Docket Nos. CP01–260–000, CP01–439–000 and CP02–142–000 because of changing needs and customer circumstances, as discussed in a public meeting at the Commission held September 4, 2002. It is stated that the customer for which facilities were authorized in Docket No. CP01–260–000 exercised its option to terminate its contract. That authorization included a proposal to abandon the existing compressor at the Downingtown compressor station in Pennsylvania and to construct and operate additional compression at the compressor station. It is stated that the proposal in Docket No. CP02–142–001 requires the additional compression; therefore, because those facilities were not installed, Columbia requests authorization in the instant docket to include abandonment of the existing compressor and construction of a new 6,000 horsepower compressor at Downingtown. Columbia has filed a separate application with proposed revisions to its Delaware Valley Energy Expansion Project in Docket No.CP01–439–003.

In Docket No. CP02–142–001, Columbia proposes to abandon 8.8 miles of 10-inch pipeline in Chester County, Pennsylvania, and to construct and operate 8.8 miles of 24-inch pipeline (replacement of Line 1896), and to abandon 0.3 mile of 14-inch pipeline and to construct and operate 0.3 mile of 24-inch pipeline in Chester County (replacement of Line 1556), both as previously authorized in Docket No. CP01–439–000. It is stated that Columbia will use the expanded mainline capacity to transport up to 270,000 Dekatherms (dt) per day of natural gas to the Customer's power plant to be located in Rock Springs, Cecil County, Maryland, in order to serve the fuel requirements of the power plant and to serve future electric demand requirements. Columbia states that it has signed contracts with Rock Springs and CEDRS to transport gas for a term of 20 years, delivering 135,000 dt of gas per day to each. It is asserted that the replacement of the line will enhance reliability and flexibility for Columbia's existing customers through the creation of additional capacity during off-peak periods. Columbia states that it will make deliveries to the Customer using the existing Rock Springs Meter Station which was constructed by Columbia under the automatic provisions of its blanket certificate and paid for by the Customer.

Columbia estimates the cost of the project at $29,214,400 and requests rolled-in rate treatment for the cost, asserting that the project satisfies the requirements of the Commission's Pricing Policy Statement for new construction. Columbia requests that a certificate be issued by December 18, 2002, in order to begin service by April 1, 2003.

Any questions regarding this application should be directed to Fredric J. George, Senior Attorney, at (304) 357–2359, Columbia Gas Transmission Company, PO Box 1273, Charleston, West Virginia 25325–1273.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November 1, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. Comments and protests may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm*. The Commission strongly encourages intervenors to file electronically.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and ion landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important to file comments or to intervene as early in the process as possible.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26490 Filed 10–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–336–007]

El Paso Natural Gas Company; Notice of Compliance Filing

October 11, 2002.

Take notice that on October 7, 2002, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the tariff sheets listed in Appendix A to the filing, with an effective date of November 1, 2002.

El Paso states that the tariff sheets are being filed in compliance with the Commission's September 20, 2002 order in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–26491 Filed 10–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–499–001]

Equitrans, L.P.; Notice of Compliance Filing

October 11, 2002.

Take notice that on October 9, 2002, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to become effective on October 1, 2002:

Sheet No. 225

Original Sheet No. 225A
Second Revised Sheet No. 276
Original Sheet No. 276A
Original Sheet No. 276B
Second Revised Sheet No. 277
Second Revised Sheet No. 278
Substitute Fourth Revised Sheet No. 308
Substitute First Revised Sheet No. 309

Equitrans states that the purpose of this tariff filing is to comply with the Commission's Letter Order, issued in Docket No. RP02–499–000, on September 27, 2002, where the Commission accepted the Equitrans tariff sheets to comply with Commission Order 587–O, subject to its filing certain modifications to include and delete standards in accordance with Version 1.5 of the North American Energy Standards Board.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–26492 Filed 10–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2330–000 and EL00–62–039]

New England Power Pool and ISO—New England, Inc.; Notice

October 11, 2002.

Take notice that at the Commission's public meeting of October 9, 2002, the Agenda Item A–3 panel presentations and discussions on demand response matters may have touched upon matters relating to demand response issues currently being considered by the Commission in the dockets listed above. Consequently, the Commission is hereby providing an opportunity for parties in the dockets listed above to file comments on the presentations and discussions that pertain to issues pending in these dockets. The relevant portions of the transcripts of the October 9, 2002, Commission meeting will also be placed in the record of these dockets.

Any party in these dockets desiring to file comments should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such comments should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. Comments may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: October 31, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–26562 Filed 10–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–10–000]

Northeast Utilities Service Company, Complainant, v. NRG Energy, Inc., Respondent.; Notice of Complaint

October 11, 2002.

Take notice that on October 9, 2002, Northeast Utilities Service Company (NUSCO) tendered for filing a public and non-public Complaint against NRG Energy, Inc. (NRG) asking for the enforcement of an Interconnection Agreement between NUSCO and NRG.

Copies of the Public Complaint were served upon NRG Energy, Inc., and the Connecticut Department of Public Utilities. The respondent and any interested person who has filed a motion to intervene in the complaint proceeding may make a written request to the complainant for a copy of the complete (non-public) complaint. The request must include an executed copy of the protective agreement which Northeast Utilities Service Company provided with its complaint to the Commission, as required by 18 CFR 385.206(e). Any party may file an objection to the proposed form of protective agreement.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before November 12, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26501 Filed 10–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1326–001 and ER02–1326–002]

PJM Interconnection, L.L.C.; Notice

October 11, 2002.

Take notice that at the Commission's public meeting of October 9, 2002, the Agenda Item A–3 panel presentations and discussions on demand response matters may have touched upon matters relating to demand response issues currently being considered by the Commission in the dockets listed above. Consequently, the Commission is hereby providing an opportunity for parties in the dockets listed above to file comments on the presentations and discussions that pertain to issues pending in these dockets. The relevant portions of the transcripts of the October 9, 2002, Commission meeting will also be placed in the record of these dockets.

Any party in these dockets desiring to file comments should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such comments should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. Comments may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: October 31, 2002.

Magalie R. Salas,

Secretary

[FR Doc. 02–26561 Filed 10–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Applications, Hearings, Determinations, etc.; Notice

Regional Transmission Organizations

[Docket Nos. RT01–99–000, RT01–99–001, RT01–99–002 and RT01–99–003]

Bangor Hydro-Electric Company, et al.

[Docket Nos. RT01–86–000, RT01–86–001 and RT01–86–002]

New York Independent System Operator, Inc., et al.

[Docket Nos. RT01–95–000, RT01–95–001 and RT01–95–002]

PJM Interconnection, L.L.C., et al.

[Docket Nos. RT01–2–000, RT01–2–001, RT01–2–002 and RT01–2–003]

PJM Interconnection, L.L.C.

[Docket No. RT01–98–000]

ISO New England, Inc., New York Independent System Operator, Inc.

[Docket No. RT02–3–000]

October 11, 2002.

Take notice that PJM Interconnection, L.L.C., New York Independent System Operator, Inc. and ISO New England, Inc. have posted on their internet Web sites charts updating their progress on the resolution ISO seams.

Any person desiring to file comments on this information should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such comments should be filed on or before the comment date. Comments may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: October 31, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–26563 Filed 10–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–523–001]

Southern LNG Inc.; Notice of Compliance Filing

October 11, 2002.

Take notice that on October 7, 2002, Southern LNG Inc. (Southern) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets with an effective date of October 1, 2002:

Substitute Third Revised Sheet No. 5
Substitute Third Revised Sheet No. 6

Southern states that the purpose of this filing is to implement certain modifications to its tariff sheets in compliance with the Commission's Order issued on September 30, 2002, in the captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26493 Filed 10–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–289–001]

Southern Natural Gas Company; Notice of Compliance Filing

October 11, 2002.

Take notice that on July 11, 2002, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, Substitute Seventh Revised Sheet No. 237, with an effective date of July 1, 2002.

Southern states that the filing implements certain directives in the Commission's order issued on June 26, 2002, in the captioned proceeding.

Southern states that copies of the filing are being served upon its customers and interested state commissions, and upon each party designated on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 21, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26494 Filed 10–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–27–000]

Tampa Electric Company; Notice of Filing

October 11, 2002.

Take notice that on October 9, 2002, Tampa Electric Company (Tampa Electric) tendered for filing a transaction-specific service agreement with Cargill Fertilizer, Inc. (Cargill) for non-firm point-to-point transmission service under Tampa Electric's open access transmission tariff. Tampa Electric proposes that the service agreement be made effective on October 1, 2002.

Copies of the filing have been served on Cargill and the Florida Public Service Commission.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: October 30, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26496 Filed 10–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–28–000]

Walton County Power, LLC; Notice of Filing

October 11, 2002.

Take notice that Walton County Power, LLC on October 9, 2002, tendered for filing a Notice of Succession pursuant to sections 35.16 and 131.51 of the Commission's regulations. Walton County Power, LLC is succeeding to the FERC Electric Tariff, Original Volume No. 1 and Rate Schedule FERC No. 1 of LG&E Power Monroe LLC, effective February 15, 2002 as a result of a name change. Consequently, the tariff sheets filed by LG&E Power Monroe LLC in Docket Nos. ER01–1301–000, *et al.*, and ER02–902–000 have been replaced with appropriate sheets reflecting the name change.

Copies of the filing were served on LG&E Energy Marketing Inc., the only party taking service under the agreements. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: October 30, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26498 Filed 10–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2602–004, et al.]

Dayton Power and Light Company, et al.; Electric Rate and Corporate Regulation Filings

October 3, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Dayton Power and Light Company and DPL Energy LLC

[Docket Nos. ER96–2602–004 and ER96–2601–015]

Take notice that The Dayton Power and Light Company and DPL Energy, LLC on September 27, 2002 tendered for filing an updated market power analysis.

Comment Date: October 18, 2002.

2. Allegheny Energy Supply Company, LLC, AYP Energy, Inc., Allegheny Energy Supply Conemaugh, LLC, Allegheny Energy Supply, Gleason Generating Facility, LLC, Allegheny Energy Supply, Lincoln Generating Facility, LLC, Allegheny Energy Supply, Wheatland Generating Facility, LLCm Allegheny Energy Supply, Hunlock Creek, LLC, Allegheny Power, Green Valley Hydro, LLC, and Buchanan Generation, LLC

[Docket Nos. ER00–814–001, ER99–954–001, ER01–791–001, ER01–2067–002, ER01–2068–002, ER01–2066–001, ER01–332–001, ER98–1466–002, ER00–2924–002, and ER02–1638–001]

Take notice that on September 30, 2002, Allegheny Energy Supply Company, LLC, AYP Energy, Inc., Allegheny Energy Supply Conemaugh, LLC, Allegheny Energy Supply Gleason Generating Facility, LLC, Allegheny Energy Supply Lincoln Generating Facility, LLC, Allegheny Energy Supply Wheatland Generating Facility, LLC, Allegheny Energy Supply Hunlock Creek, LLC, Allegheny Power, Green Valley Hydro, LLC, and Buchanan Generation, LLC ("Applicants") filed their triennial market power report pursuant to the Commission's orders authorizing the Applicants to sell power at market-based rates.

Comment Date: October 21, 2002.

3. Southern Company Services, Inc.

[Docket No. ER02–851–006]

Take notice that on September 27, 2002, on behalf of Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies) submitted an Informational Filing. The purpose of this Informational Filing is to update the FERC Annual Charge component of Southern Companies' bulk transmission charges, as adopted by Southern Companies in this proceeding to amend their Open Access Transmission Tariff (FERC Electric Tariff, Fourth Revised Volume No. 5).

Comment Date: October 18, 2002.

4. ISO New England Inc.

[Docket No. ER02–2153–001]

Take notice that on September 30, 2002, ISO New England Inc., submitted its compliance report in this proceeding.

Copies of the said filing have been served upon all parties to this proceeding and electronically upon the New England Power Pool participants.

Comment Date: October 21, 2002.

5. Bridger Valley Electric Association, Inc.

[Docket No. ER02–2198–001]

Take notice that on September 30, 2002, Bridger Valley Electric Association, Inc. (Bridger Valley) submitted additional information to the Commission's letter dated August 16, 2002, that the June 28, 2002, Open Access Transmission Tariff and accompanying rates are deficient and requested further information.

Comment Date: October 21, 2002.

6. Southern Company Services, Inc.

[Docket No. ER02–2220–002]

Take notice that on September 30, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies), resubmitted First Revised Service Agreement No. 387 for long-term firm point-to-point transmission service under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5) (Tariff) in compliance with the Commission's order in this proceeding dated August 30, 2002.

Comment Date: October 21, 2002.

7. Southwest Power Pool, Inc.

[Docket Nos. ER02–2222–001, (not consolidated), ER02–2223–001, ER02–2224–001, ER02–2225–001, and ER02–2226–001]

Take notice that on September 30, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing the compliance filing required by the Federal Energy Regulatory Commission's August 30, 2002 issued in the proceedings listed above. Southwest Power Pool, Inc., 100 FERC ¶ 61,239.

Comment Date: October 21, 2002.

8. Mt. Carmel Public Utility Company

[Docket No. ER02–2293–001]

Take notice that on September 30, 2002, Mt. Carmel Public Utility Company tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its service agreement filed July 1, 2002. The amendment is cover sheets containing the proper designations and tariff references.

Comment Date: October 21, 2002.

9. Element Re Capital Products Inc.

[Docket No. ER02–2610–000]

Take notice that on September 30, 2002, Element Re Capital Products Inc., (Element Re) petitioned the Commission for acceptance of Element Re's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Element Re intends to engage in wholesale electric power and energy transactions as a marketer and a broker. Element Re is not in the business of generating or transmitting electric power. Element Re is a privately held corporation formed under the laws of Delaware. Element Re's principal place of business is Stamford, Connecticut. In transactions where Element Re sells electric power it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party.

Comment Date: October 21, 2002.

10. Public Service Company of New Mexico

[Docket No. ER02–2611–000]

Take notice that on September 30, 2002, Public Service Company of New Mexico (PNM) submitted for filing an executed revised Network Integration Transmission Service Agreement (NITSA) and an associated revised Network Operating Agreement (NOA) with Tri-State Generation and Transmission Association, Inc. (Tri-State), with an effective date of August 31, 2002, under the terms of PNM's Open Access Transmission Tariff (OATT). The NITSA and NOA have been updated to reflect current business arrangements between PNM and Tri-State, including the recently agreed to arrangements concerning Spinning Reserve Services, under a new Reserve Obligation Agreement between PNM and Tri-State, which is being filed as Exhibit "E" to the NITSA. PNM is requesting an effective date for the NITSA and NOA of August 31, 2002. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

A copy of this filing has been served upon Tri-State and informational copies have been sent to the New Mexico Public Regulation Commission and to the New Mexico Attorney General.

Comment Date: October 21, 2002.

11. Public Service Company of New Mexico

[Docket No. ER02–2612–000]

Take notice that on September 30, 2002, Public Service Company of New Mexico (PNM) submitted for filing, pursuant to the Regulations of the Federal Energy Regulatory Commission (18 CFR 35.15), Notices of Cancellation of rate schedules between PNM and Tri-State Generation and Transmission Association, Inc. (Tri-State). PNM's filing is a follow-up to a previously requested Notice of Cancellation of these same rate schedules that were postponed by request of PNM to await requisite regulatory approvals for certain replacement agreements.

Pursuant to PNM's filing, the agreements to be canceled include: Service Schedule A to the PNM-Tri-State Master Interconnection Agreement, dated February 28, 1977 (Rate Schedule FERC No. 31, Supplement 4); Service Schedule G to the PNM-Tri-State Master Interconnection Agreement, dated February 27, 1987 (Rate Schedule FERC No. 31, Supplements 43, 43.1, 43.2, 43.5, 45, and 45.1); and the Contract for Transmission Service Agreement Between PNM and Tri-State, dated July 11, 1968 (Rate Schedule FERC No. 12, Supplement 12.1). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

A copy of this filing has been served upon Tri-State and informational copies have been sent to the New Mexico Public Regulation Commission and to the New Mexico Attorney General.

Comment Date: October 21, 2002.

12. American Electric Power Service Corporation

[Docket No. ER02–2613–000]

Take notice that on September 30, 2002, the American Electric Power Service Corporation (AEPSC), tendered for filing Specifications for Long-Term Firm PTP Transmission Service for Exelon Generation Company, LLC and Consumers Energy Company. These agreements are pursuant to the AEP Companies' Open Access Transmission Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6.

AEPSC requests waiver of notice to permit the Specifications for Long-Term Firm PTP Transmission Service to be effective on and after September 1, 2002. A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: October 21, 2002.

13. Central Vermont Public Service Corporation

[Docket No. ER02–2614–000]

Take notice that Central Vermont Public Service Corporation (Central Vermont), on September 30, 2002, tendered for filing proposed modifications to its Open Access Transmission Tariff (OATT). The modifications permit Central Vermont to offer transmission service on portions of the Phase I and Phase II HVDC Transmission facilities that currently are under the control of third party holders of transmission rights who have given Central Vermont authority to broker those rights. The purpose of this filing is to improve the ability of transmission customers to obtain service over the Phase I/Phase II transmission lines by aggregating the transmission rights of several rights owners into a single block.

Copies of the filing were served upon the public utility's jurisdictional customers, New Hampshire Public Utilities Commission and Vermont Public Service Board.

Comment Date: October 21, 2002.

14. PPL Electric Utilities Corporation

[Docket No. ER02–2615–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of Rate Schedule FERC No. 114. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Delmarva Power & Light Company.

Comment Date: October 21, 2002.

15. PPL Electric Utilities Corporation

[Docket No. ER02–2616–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 98. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Public Service Company of New Hampshire.

Comment Date: October 21, 2002.

16. PPL Electric Utilities Corporation

[Docket No. ER02–2617–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of Rate Schedule FERC No. 99. Rate Schedule FERC No. 99 terminated by its own terms on May 31, 1992.

Notice of the termination has been served on Atlantic City Electric Company.

Comment Date: October 21, 2002.

17. PPL Electric Utilities Corporation

[Docket No. ER02–2618–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of Rate Schedule FERC No. 103. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Atlantic City Electric Company.

Comment Date: October 21, 2002.

18. PPL Electric Utilities Corporation

[Docket No. ER02–2619–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of Rate Schedule FERC No. 100. Rate Schedule FERC No. 100 terminated by its own terms on May 31, 1995.

Notice of the termination has been served on GPU Service Corporation.

Comment Date: October 21, 2002.

19. PPL Electric Utilities Corporation

[Docket No. ER02–2620–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of Rate Schedule FERC No. 102. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on GPU Service Corporation.

Comment Date: October 21, 2002.

20. PPL Electric Utilities Corporation

[Docket No. ER02–2621–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of Rate Schedule FERC No.104. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Public Service Electric and Gas Company.

Comment Date: October 21, 2002.

21. PPL Electric Utilities Corporation

[Docket No. ER02–2622–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of Rate Schedule FERC No. 105. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Baltimore Gas & Electric Company.

Comment Date: October 21, 2002.

22. PPL Electric Utilities Corporation

[Docket No. ER02–2623–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of Rate Schedule FERC No. 106. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Atlantic City Electric Company.

Comment Date: October 21, 2002.

23. PPL Electric Utilities Corporation

[Docket No. ER02–2624–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of Rate Schedule FERC No. 77. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Orange and Rockland Utilities, Inc.

Comment Date: October 21, 2002.

24. PPL Electric Utilities Corporation

[Docket No. ER02–2625–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination PPL Electric Utilities' Rate Schedule FERC No. 76. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Consolidated Edison Company of New York, Inc..

Comment Date: October 21, 2002.

25. PPL Electric Utilities Corporation

[Docket No. ER02–2626–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 78. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Mohawk Power Corporation.

Comment Date: October 21, 2002.

26. PPL Electric Utilities Corporation

[Docket No. ER02–2627–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 83. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on the Power Authority of the State of New York.

Comment Date: October 21, 2002.

27. PPL Electric Utilities Corporation

[Docket No. ER02–2628–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 82. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Connecticut Municipal Electric Energy Cooperative.

Comment Date: October 21, 2002.

28. PPL Electric Utilities Corporation

[Docket No. ER02–2629–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 81 and effective on October 4, 1983, is to be termination as of November 29, 2002.

Notice of the termination has been served on New England Power Company.

Comment Date: October 21, 2002.

29. PPL Electric Utilities Corporation

[Docket No. ER02–2630–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 80. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on New York State Electric & Gas Corporation.

Comment Date: October 21, 2002.

30. PPL Electric Utilities Corporation

[Docket No. ER02–2631–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 75. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Northeast Utilities Service Company.

Comment Date: October 21, 2002.

31. PPL Electric Utilities Corporation

[Docket No. ER02–2632–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No.145. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Catex Vitol Electric, Inc.

Comment Date: October 21, 2002.

32. PPL Electric Utilities Corporation

[Docket No. ER02–2633–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 144. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on PEPC Energy Company.

Comment Date: October 21, 2002.

33. PPL Electric Utilities Corporation

[Docket No. ER02–2634–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No.137. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Enron Power Marketing, Inc.

Comment Date: October 21, 2002.

34. PPL Electric Utilities Corporation

[Docket No. ER02–2635–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 111. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on New York Power Authority.

Comment Date: October 21, 2002.

35. PPL Electric Utilities Corporation

[Docket No. ER02–2636–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No.138. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Public Service Electric and Gas Company.

Comment Date: October 21, 2002.

36. PPL Electric Utilities Corporation

[Docket No. ER02–2637–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 136. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on North American Energy Conservation, Inc.

Comment Date: October 21, 2002.

37. PPL Electric Utilities Corporation

[Docket No. ER02–2638–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 135. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Louis Dreyfus Electric Power, Inc.

Comment Date: October 21, 2002.

38. PPL Electric Utilities Corporation

[[Docket No. ER02–2639–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 148. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Pennsylvania Electric Company.

Comment Date: October 21, 2002.

39. PPL Electric Utilities Corporation

[Docket No. ER02–2640–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 147. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Jersey Central Power and Light Company.

Comment Date: October 21, 2002.

40. PPL Electric Utilities Corporation

[Docket No. ER02–2641–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 156. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Toledo Edison Company.

Comment Date: October 21, 2002.

41. PPL Electric Utilities Corporation

[Docket No. ER02–2642–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 146. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Northeast Utilities Service Company.

Comment Date: October 21, 2002.

42. PPL Electric Utilities Corporation

[Docket No. ER02–2643–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 153. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Niagara Mohawk Power Corporation.

Comment Date: October 21, 2002.

43. PPL Electric Utilities Corporation

[Docket No. ER02–2644–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 131. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Potomac Electric Power Company.

Comment Date: October 21, 2002.

44. PPL Electric Utilities Corporation

[Docket No. ER02–2645–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 155. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on GPU Energy Services Company.

Comment Date: October 21, 2002.

45. PPL Electric Utilities Corporation

[Docket No. ER02–2646–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 132. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Metropolitan Edison Company.

Comment Date: October 21, 2002.

46. PPL Electric Utilities Corporation

[Docket No. ER02–2647–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 150. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Atlantic City Electric Company.

Comment Date: October 21, 2002.

47. PPL Electric Utilities Corporation

[Docket No. ER02–2648–000]

Take notice that on September 30, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 151. PPL Electric Utilities requests that the termination be effective on November 29, 2002.

Notice of the termination has been served on Public Service Electric and Gas Company.

Comment Date: October 21, 2002.

48. Southwest Power Pool, Inc.

[Docket No. ER02–2649–000]

Take notice that on September 30, 2002, Southwest Power Pool, Inc. (SPP) tendered for filing an executed service agreement for Network Integration Transmission Service and an unexecuted Network Operating Agreement with (Network Customer). SPP seeks an effective date of September 1, 2002 for these service agreements.

A copy of this filing was served on the Network Customer.

Comment Date: October 21, 2002.

49. Bangor Hydro-Electric Company

[Docket No. ER02–2650–000]

Take notice that on September 30, 2002, Bangor Hydro-Electric Company filed an executed service agreement for firm point-to-point transmission service with Central Maine Power Company (CMP).

Comment Date: October 21, 2002.

50. PJM Interconnection, L.L.C.

[Docket No. ER02–2651–000]

Take notice that on September 30, 2002, PJM Interconnection, L.L.C. (PJM), submitted for filing amendments to the PJM Open Access Transmission Tariff to add a new Schedule 6A which sets forth the terms and conditions for Black Start Service.

PJM requests an effective date of December 1, 2002 for the amendments. Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM control area and PJM West region.

Comment Date: October 21, 2002.

51. New York Independent System Operator, Inc.

[Docket No. ER02–2652–000]

Take notice that on September 30, 2002, the New York Independent System Operator, Inc. (NYISO) filed revisions to its Open Access Transmission Tariff (OATT) and its Market Administration and Control Area Services (Services Tariff) to shorten the time period within which the NYISO may adjust or correct Settlement information to twelve-months from the date that the NYISO issues an initial invoice for services provided beginning October 1, 2002, and to shorten the time period to four months for challenges to final billing invoices for services provided beginning with the October 2002 service month. The NYISO has requested an effective date of October 31, 2002.

The NYISO has served a copy of this filing upon all parties that have executed service agreements under the NYISO's OATT and Services Tariff and to the electric utility regulatory agencies in New York, New Jersey, and Pennsylvania.

Comment Date: October 21, 2002.

52. Cleco Power LLC

[Docket No. ER02–2653–000]

Take notice that on September 26, 2002, Cleco Power LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) First Revised Sheet Nos. 77 and 78, an Attachment E, from Cleco Power's open access transmission tariff, titled "Index of Point-to-Point Transmission service Customers", to include TECO EnergySource, Inc. as a short-term firm and non-firm transmission customer. Cleco Power LLC and TECO EnergySource, Inc. have executed agreements under which Cleco Power will provide short-term firm point-to-point transmission service and non-firm point-to-point transmission service to TECO EnergySource, Inc. Under its Open Access Transmission Tariff.

Comment Date: October 17, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–25982 Filed 10–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–37–000]

Williston Basin Interstate Pipeline Company; Notice of Route and Site Review

October 11, 2002.

On October 23, 2002, the staff of the Office of Energy Projects (OEP) will conduct a site review of the proposed Grasslands Project. The Grasslands Project facilities are proposed for construction by Williston Basin Interstate Pipeline Company. The proposed facilities, crossing portions of Campbell County, Wyoming; Carter, Fallon, and Wibaux Counties, Montana; and Golden Valley, Billings, Stark, and Dunn Counties, North Dakota, will be inspected entirely by helicopter.

Anyone interested in obtaining further information may contact the Commission's Office of External Affairs at 1–866–208–FERC.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26499 Filed 10–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD02–21–000, et al.]

Notice of Hydro Licensing Status Workshop 2002

October 11, 2002.

In the matter of 2069–003, 10100–002, 2283–005, 2205–006,11475–000 and 11478–000, 2306–008, 176–018, 2474–004, 2539–003, 2616–004, 2612–005, 1975–014, 2061–004, 2777–007 and 2778–005, 11495–000, 11563–002, 1982–017, 1354–005 and 2687–014, 1927–008 and 2342–005, 2493–006, 11472–000 and 11566–003, 10311–002, 10942–001, 1932–004, 1933–010, 1934–010 and 2017–011, 1864–005, 2019–017 and 2699–001, 10865–001, 10416–003; Hydro Licensing Status Workshop 2002, Arizona Public Service, Company; Cascade River Hydro, Central Maine Power Company, Central Vermont Public Service Corporation, Citizens Utilities Company, City of Escondido, California, Erie Boulevard Hydropower, L.P., FPL Energy Maine, LLC Idaho Power Company, Nooksack River Hydro, Inc. Northern California Power Agency Northern States Power Company Pacific Gas and Electric Company PacifiCorp Puget Sound Energy, Inc. Ridgewood Maine Hydro Partners, L.P. Skagit River Hydro Skykomish River Hydro, Inc. Southern California Edison Company Upper Peninsula Power Company Utica Power Authority Warm Creek Hydro, Inc. Washington Hydro Development Company

A one-day, Commissioner-led workshop will be held on November 8, 2002, beginning at 10:00 a.m., in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC The workshop will focus on the above-listed 37 pending license applications filed at the Commission. The workshop is open to the public and all interested persons are invited to attend and participate.

The goals of the workshop are to: (1) Review and discuss the pending license applications; (2) identify unresolved issues; (3) determine next steps; (4) agree on who will take the next step; and (5) focus on solutions. The workshop will concentrate on identifying the unresolved issues associated with each project, and determining the best course of action to resolve or remove obstacles to final action on each pending license application.

A transcript of the discussions will be placed in the public record for Docket No. AD02–21–000 and in the record for each of the pending license applications.

Filing Requirements for Paper and Electronic Filings

Comments, papers, or other documents related to this proceeding may be filed in paper format or electronically. Those filing electronically do not need to make a paper filing.

For paper filings, the original and 8 copies of the comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Paper filings should, at the top of the first page, refer to Docket No. AD02–21–000 and reference the specific project name(s) and project number(s) that the comments concern. The deadline to file comments is December 9, 2002.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov*, click on "e-Filing" and then follow the instructions on the screen. First-time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filing is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington DC 20426, during regular business hours. Additionally, all comments may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. For assistance, call 202–502–8371, or toll free 1–866–208–3676, or for TTY 202–502–8659, or by e-mail to *FERCONLINESUPPORT@ferc.gov*.

Opportunities for Listening, Participating, and Viewing the Workshop Offsite and Obtaining a Transcript

The workshop will be transcribed. Those interested in transcripts immediately for a fee should contact Ace-Federal Reporters, Inc. at 202–347–3700, or 1–800–336–6646. They will be available for free to the public on the Commission's FERRIS system two weeks after the workshop.

The Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on "FERC".

Anyone wishing to participate via teleconference should call or E-mail Susan Tseng 202–502–6065 or *susan.tseng@ferc.gov*, by November 1, 2002, to receive the toll free telephone number to join the teleconference.

Anyone interested in participating in the workshop via video teleconference from one of the Commission's regional offices should call or E-mail the following staff, by November 1, 2002, to make arrangements. Seating capacity is limited.

Regional office	Staff contact	Telephone No.	E-mail address
Atlanta	Charles Wagner	770–452–3765	charles.wagner@ferc.gov
Chicago	Dave Simon	312–353–6701	david.simon@ferc.gov
New York	Chuck Goggins	212–273–5910	charles.goggins@ferc.gov
Portland	Pat Regan	503–944–6741	patrick.regan@ferc.gov
San Francisco	John Wiegel	415–369–3336	john.wiegel@ferc.gov

By November 1, 2002, an agenda for the workshop and information about the pending license applications will be posted on the Commission's web site under Hydro Licensing Status Workshop 2002. Anyone without access to the Commission's web site, or who have questions should contact Steve Kartalia at 202–502–6131, or e-mail *stephen.kartalia@ferc.gov*; or Susan O'Brien at 202–502–8449, or e-mail *susan.obrien@ferc.gov*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26500 Filed 10–17–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7394–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: *Title:* 2003 Drinking Water Infrastructure Needs Survey; EPA ICR No. 2085.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 18, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 2085.01 to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-Mail at *auby.susan@epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 2085.01. For technical questions about the ICR contact David Travers at (202) 564–4638 or *travers.david@epa.gov*

SUPPLEMENTARY INFORMATION:

Title: Information Collection Request for the 2003 Drinking Water Infrastructure Needs Survey EPA ICR No. 2085.01.

Abstract: The Environmental Protection Agency (EPA) will conduct a voluntary survey to estimate the capital investment needs for drinking water systems. The nationwide survey is authorized by sections 1452(h) and 2452(i)(4) of the Safe Drinking Water Act and will be used to estimate the cost of providing safe drinking water to consumers over a 20-year period. The data also will be used to allocate Drinking Water State Revolving Fund monies among the states and as part of an allotment formula for the American Indian and Alaska Native Village set-aside program. All states have committed to assist EPA in administering the survey. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on July 16, 2002; three comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; collect, validate, and verify information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Community Water Systems.

Estimated Number of Respondents: 3,790.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 14,809.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 2085.01 in any correspondence.

Dated: October 7, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–26574 Filed 10–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7394–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Information Collection Request for RCRA Reporting and Recordkeeping Requirements for Incinerators, Boilers and Industrial Furnaces Burning Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Information Collection Request for RCRA Reporting and Recordkeeping requirements for Incinerators, Boilers and Industrial Furnaces Burning Hazardous Waste, OMB Control No. 2050–0073, expiring October 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 18, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1361.09 and OMB Control No. 2050–0073, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by e-mail at *auby.susan@epamail.epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1361.09. For technical questions about the ICR contact: Margaret R. Bailey, 703/308–4043, fax number 703/308–8433, e-mail *bailey.margaret@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: Information Requirements for Boilers and Industrial Furnaces: General Hazardous Waste Facility Standards, Specific Unit Requirements, and Part B Permit Application and Modification Requirements, OMB Control No. 2050–0073, EPA ICR No.1361.09, expiring October 31, 2002. This is a request for extension of a currently approved collection.

Abstract: EPA regulates the burning of hazardous waste in boilers, incinerators, and industrial furnaces (BIFs) under 40 CFR parts 63, 264, 265, and 266. This ICR describes most of the RCRA paperwork requirements that apply to owners and operators of BIFs. This includes the requirements under the comparable/syngas fuel specification at 40 CFR 261.38; the general facility requirements at 40 CFR parts 264 and 265, subparts B through H; the requirements applicable to BIF units at 40 CFR part 266; and the RCRA part B permit application and modification requirements at 40 CFR part 270. Examples of the paperwork collected under these requirements include one-time notices, certifications, waste analysis data, inspection and monitoring records, plans, reports, RCRA part B permit applications and modifications. EPA needs this information for the proper implementation, compliance tracking, and enforcement of the RCRA regulations. Based on information from the EPA Regions, the ICR estimates that 91 BIF facilities are currently subject to the RCRA hazardous waste program. Of these, 47 are under interim status and 44 are permitted. This renewal reflects new burden to the RCRA incinerator requirements promulgated on September 30, 1999 (64 FR 52828), and subsequent amendments, but also reflects a substantial reduction in the paperwork burden imposed on these facilities. This burden reduction is caused by a decrease in the BIF universe of 25 boilers which are assumed to receive the comparable fuels exclusions, and a rollback of burden added to another ICR (2050–0171). Thus, this renewal accounts for the addition of new requirements as well as the burden reductions to the BIF universe affected by the rulemaking, and its subsequent amendments. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 26, 2002 (67 FR 43106), no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 156 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Business or other for-profit.

Estimated Number of Respondents: 91.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 307,949 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $26,353,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1361.09 and OMB Control No. 2050–0073 in any correspondence.

Dated: October 7, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–26575 Filed 10–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6634–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed October 07, 2002 through October 11, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020419, Final EIS, BLM, CA, Coachella Valley California Desert Conservation Area Plan Amendment, Santa Rosa and San Jacinto Mountains Trails Management Plan, Implementation, Riverside and San Bernardino Counties, CA, Wait Period Ends: November 18, 2002, Contact: Jim Foote (760) 351–4836.

EIS No. 020420, Draft EIS, FHW, MT, US–89 from Fairfield to Dupuyer Corridors Study, Reconstruction, Widening, and Realignment, Route Connects Yellowstone National Park to the South, with Glacier National Park to the North, Teton and Pondera Counties, MT, Comment Period Ends: December 02, 2002, Contact: Dale W. Paulson (406) 449–5302.

EIS No. 020421, Draft EIS, FHW, OR, Newberg-Dundee Transportation Improvement Project (TEA 21 Prog. #37), Proposal to Relieve Congestion on Ore. 99W through the Cities of Newberg and Dundee, Bypass Element Location (Tier 1), Yamhill County, OR, Comment Period Ends: December 02, 2002, Contact: Jim Cox (503) 986–3013.

EIS No. 020422, Draft EIS, BLM, TX, NM, El Camino Real De Tierra Adentro National Historic Trail, Comprehensive Management Plan, Implementation, TX and NM, Comment Period Ends: January 15,

2003, Contact: Terry Humphrey (505) 751–4718. This document is available on the Internet at: *http://www.elcaminoreal.org.*

EIS No. 020423, Final EIS, NPS, CA, Santa Cruz Island Primary Restoration Plan, Implementation, Channel Island National Park, Santa Cruz Island, Santa Barbara County, CA, Wait Period Ends: November 18, 2002, Contact: Alan Schmierer (415) 427–1441.

EIS No. 020424, Final Supplement, FRC, WA, Rocky Creek Hydroelectric Project, (FERC No. 10311–002) Construction and Operation of a 8.3 megawatt (Mw) Project, Application for License, Rocky Creek, Skagit County, WA, Wait Period Ends: November 18, 2002, Contact: Dianne Rodman (202) 502–6077.

EIS No. 020425, Final EIS, FHW, NY, County Road (Mill Hill Road and Glen Road) Improvements, From Howard Drive to State Route 9N including a New Bridge over the East Branch of the Ausable River, Funding and COE Section 404. Permit, Essex County, NY, Wait Period Ends: November 18, 2002, Contact: Robert Arnold (518) 431–4127.

EIS No. 020426, Draft EIS, AFS, MT, Garver Project, Regeneration Harvest and Old Growth, Implementation, Kootenai National Forest, Three Rivers Ranger District, Lincoln County, MT, Comment Period Ends: December 18, 2002, Contact: Kathy Mohar (406) 295–4693.

EIS No. 020427, Final EIS, NPS, WV, National Coal Heritage Area, Strategic Management Action Plan, Implementation, Boone, Cabell, Fayette, Logan, McDowell, Mercer, Mingo, Raliegh, Summers, Wayne and Wyoming Counties, WV, Wait Period Ends: November 18, 2002, Contact: Peter Samuel (215) 597–1848.

Dated: October 15, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–26594 Filed 10–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0292; FRL–7278–5]

Agricultural Worker Risk Assessment Process; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs will hold a public seminar on the agricultural worker risk assessment decision process on October 29–30, 2002. The agenda is being developed and will be posted by October 15, 2002, on EPA's website at *www.epa.gov/pesticides/*. The following topics are being planned for presentation and discussion: Overview of the worker risk assessment process; agricultural handler risk assessment for selected crop/handler scenarios; post application risk assessment for selected crop/post application worker scenarios; and presentations relating to post exposure evaluation.

DATES: The meeting will be held on Tuesday, October 29, 2002, from 8:30 a.m. to 5 p.m., and on Wednesday, October 30, 2002, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Georgetown University Conference Center, 3800 Reservoir Road, Washington, DC, in the Leavey Center (Entrance #1 to the Georgetown University Medical Center), Salon C. The telephone number is 202–687–3200.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach, Office of Pesticide Programs, 7501C, Environmental ProtectionAgency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–4775; fax number: 703–308–4776; e-mail address: *Fehrenbach.Margie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general; however, persons may be interested who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA); (Public Law 104–170) of 1996. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**. Potentially affected entities may include, but are not limited to:

Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer and farmworker groups; pesticide users and growers; pest consultants; State, local and tribal governments; academia; public health organizations; food processors; and the public.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2002–0292. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is 703–305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

Stakeholders from two of EPA's Federal advisory committees, the Pesticide Program Dialogue Committee (PPDC) and the Committee to Advise on Reassessment and Transition (CARAT), have expressed interest in better understanding the process followed by the Office of Pesticide Programs when developing agricultural worker risk assessments. EPA is planning two seminars to address these issues. The first seminar will focus on the inputs, decisions, calculations and end results of the worker risk assessment process for agricultural handlers and post applicators. Presentations will include information about occupational incident data bases and post exposure evaluations. There will also be presentations by the Task Forces for Agricultural Handlers Exposure and Agricultural Reentry. The public is invited to these seminars. Participation from the two advisory committees is also invited and represent the following sectors: Pesticide user, grower and commodity groups; industry and trade associations; environmental/public interest and farmworker groups; Federal, State and tribal governments; public health organizations; animal welfare; and academia.

III. How Can I Request to Participate in this Meeting?

This meeting will be open to the public. Opportunity will be provided for questions and comments by the public. Any person who wishes to file a written statement may do so before or after the meeting. These statements will become part of the permanent record and will be available for public inspection at the address listed under Unit I.B.1.

List of Subjects

Environmental protection, Agriculture, Agricultural workers, Chemicals, Foods, Pesticides, Pests, Risk assessment.

Dated: October 15, 2002.

Kathleen D. Knox,

Acting Director, Office of Pesticide Programs.

[FR Doc. 02–26712 Filed 10–16–02; 3:21 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7395–1]

Clean Water Act Section 303(d): Availability of 37 Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of the administrative record file for 37 TMDLs and the calculations for these TMDLs prepared by EPA Region 6 for waters listed in the state of Arkansas, under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to the lawsuit styled *Sierra Club, et al.* v. *Browner et al.*, No. LR–C–99–114.

DATES: Comments must be submitted in writing to EPA on or before November 18, 2002.

ADDRESSES: Comments on the 37 TMDLs should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. For further information, contact Ellen Caldwell at (214) 665–7513. The administrative record file for these TMDLs are available for public inspection at this address as well. Documents from the administrative record file may be viewed at *www.epa.gov/region6/water/artmdl.htm,* or obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1999, five Arkansas environmental groups, the Sierra Club, Federation of Fly Fishers, Crooked Creek Coalition, Arkansas Fly Fishers, and Save our Streams (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled *Sierra Club, et al.* v. *Browner et al.*, No. LR–C–99–114. Among other claims, plaintiffs alleged that EPA failed to establish Arkansas TMDLs in a timely manner. EPA proposes these TMDLs pursuant to a consent decree entered in this lawsuit.

EPA Seeks Comments on 37 TMDLs

By this notice EPA is seeking comment on the following 37 TMDLs for waters located within the state of Arkansas:

Segment-reach	Waterbody name	Pollutant
11140203–20–11.9	Dorcheat Bayou	Mercury.
11140203–22–8.4	Dorcheat Bayou	Mercury.
11140203–24–7	Dorcheat Bayou	Mercury.
11140203–26–23.3	Dorcheat Bayou	Mercury.
11110206–02–8.7	Fourche LaFave River	Mercury.
11010014–36	South Fork Little Red River	Mercury.
11140203	Columbia Lake	Mercury.
11110206	Cove Creek Lake	Mercury.
11110206	Dry Fork Lake	Mercury.
11110206	Nimrod Lake	Mercury.
11010014	Johnson Hole	Mercury.
11110201	Shepherd Springs Lake	Mercury.
11110207	Lake Sylvia	Mercury.
11110207	Spring Lake	Mercury.
08040201–02–22.5	Ouachita River	Mercury.
08040201–04–2.5	Ouachita River	Mercury.
08040202	Oxbow River—Oxbows below Camden	Mercury.
08040202	Felsenthal Wildlife Refuge	Mercury.
08040202–02–4	Ouachita River	Mercury.
08040202–03–8.4	Ouachita River	Mercury.
08040202–04–28.9	Ouachita River	Mercury.
08040203	Lake Winona	Mercury.
08040203–01–0.2	Saline River	Mercury.
08040204–01–2.8	Saline River	Mercury.
08040204–02–53	Saline River	Mercury.
08040204–04–16.4	Saline River	Mercury.
08040204–06–17.5	Saline River	Mercury.
08040201–01–12	Moro Creek	Mercury.
08040201–03–20	Champagnolle Creek	Mercury.
08040202–03–8.4	Little Champagnolle	Mercury.
08040205–02–17.9	Bayou Bartholomew	Mercury.

Segment-reach	Waterbody name	Pollutant
08040205–12–82.7	Bayou Bartholomew	Mercury.
08040205–07–16.8	Cutoff Creek	Mercury.
08040201–606–8.5	ELCC Tributary	Chloride
08040201–606–8.5	ELCC Tributary	Sulfate
08040201–606–8.5	ELCC Tributary	TDS
08040201–606–8.5	ELCC Tributary	Ammonia

EPA requests that the public provide to EPA any water quality related data and information that may be relevant to the calculations for these 37 TMDLs. EPA will review all data and information submitted during the public comment period and revise the TMDLs and determinations where appropriate. EPA will then forward the TMDLs to the Arkansas Department of Environmental Quality (ADEQ). The ADEQ will incorporate the TMDLs into its current water quality management plan. The EPA also will revise the Arkansas 303(d) list as appropriate.

Dated: October 8, 2002.

Oscar Ramirez,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 02–26573 Filed 10–17–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 10, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 17, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

Addresses: Direct all comments to Judith Boley Herman or Leslie Smith, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov* or *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.:
3060–0835.

Title: Ship Inspections.

Form Nos.: FCC Forms 806, 824, 827, and 829.

Type of Review: Revision of a current collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 1,210.

Estimated Time Per Response: .084 hours (5 minutes) for completion of certificate; 4 hours for inspection; .25 hours (15 minutes) for recordkeeping.

Frequency of Response: Annual, on occasion and every 5 years reporting requirement, recordkeeping requirement, third party disclosure requirement.

Total Annual Burden: 5,245 hours.

Total Annual Cost: N/A.

Needs and Uses: With this submission, the Commission combines two OMB-approved information collections (3060–0362 and 3060–0835). The approval for 3060–0362 contains the burden for the actual ship inspections. The approval for 3060–0835 contains the burden for the issuance of safety certificates after the ship has passed inspections.

The Communications Act requires the Commission to inspect the radio installation of large cargo ships and certain passenger ships at least once a year to ensure that the radio installation is in compliance with the requirements of the Communications Act.

Additionally, the Communications Act requires the inspection of small passenger ships at least once every five years. The Safety Convention (which the United States is a signatory) also requires an annual inspection. However, the Safety Convention permits an Administrator to entrust the inspections to either surveyors nominated for the purpose or to organizations recognized by it. Therefore, the United States can have other parties conduct the radio inspection of vessels for compliance with the Safety Convention. The Commission allows FCC-licensed technicians to conduct these inspections. FCC-licensed technicians certify that the ship passed an inspection and issue a safety certificate. These safety certificates (FCC Forms 806, 824, 827, and 829) indicate that the vessel complies with the Communications Act and the Safety Convention. These technicians are required to provide a summary of the results of the inspection in the ship's log. In addition, the vessel's owner, operator, or ship's master must certify in the ship's log that the inspection was satisfactory. Inspection certificates issued in accordance with the Safety Convention must be posted in a prominent and accessible place on the ship. The purpose of the information is to ensure that the inspection was successful so that passengers and crewmembers of certain United States ships have access to distress communications in an emergency.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–26611 Filed 10–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10 a.m.—October 23, 2002.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. Revisions to the Commission's Passenger Vessel Regulations (46 CFR part 540).

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–26723 Filed 10–16–02; 2:09 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 7, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309–4470:

1. *Thomas D. Caldwell, III,* Rome, Georgia; to acquire additional voting shares of Greater Rome Bancshares, Inc., Rome, Georgia, and thereby indirectly acquire additional voting shares of Great Rome Bank, Rome, Georgia.

2. *Mark Kardonski,* Fort Lauderdale, Florida, as trustee of the GNB Holding Trust, Miami, Florida; to acquire voting shares of Eagle National Holding Company, Miami, Florida, and thereby indirectly acquire voting shares of Eagle National Bank of Miami, Miami, Florida.

B. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Kevin L. Johnson,* North Oaks, Minnesota; to acquire voting shares of Johnson Holdings, Inc., Isanti, Minnesota, and thereby indirectly acquire voting shares of East Central Holding Company, Isanti, Minnesota, and Landmark Community Bank, N.A., Isanti, Minnesota.

Board of Governors of the Federal Reserve System, October 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–26542 Filed 10–17–02; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 18, 2002.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Franklin Financial Services Corporation,* Chambersburg, Pennsylvania; to acquire up to 23.5 percent of the voting shares of American Home Bank, National Association, Lancaster, Pennsylvania.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Mahaska Investment Company, and Mahaska Investment Company ESOP,* both of Oposkaloosa, Iowa; to acquire 100 percent of the voting shares of Belle Plaine Service Corporation, Belle Plaine, Iowa, and thereby indirectly acquire voting shares of Citizens Bank and Trust Company, Hudson, Iowa.

C. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *TCF Financial Corporation,* Wayzata, Minnesota; to acquire an additional 5 percent of the voting shares, thereby increasing its total ownership to 9.99 percent, of the voting share of MainStreet BankShares, Inc., Martinsville, Virginia, and thereby indirectly acquire additional voting shares of Smith River Community Bank, N.A., Martinsville, Virginia, and Franklin Community Bank, N.A., Rocky Mount, Virginia, a *de novo* bank.

D. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. *First Okmulgee Corporation,* Okmulgee, Oklahoma; to acquire 100 percent of the voting shares of First National of Henryetta, Inc., Henryetta, Oklahoma, and thereby indirectly acquire voting shares of First National Bank of Henryetta, Henryetta, Oklahoma.

Board of Governors of the Federal Reserve System, October 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–26544 Filed 10–17–02; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 02–25643) published on page 62976 of the issue for Wednesday, October 9, 2002.

Under the Federal Reserve Bank of Minneapolis heading, the entry for State Bankshares, Inc., Fargo, North Dakota, is revised to read as follows:

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. State Bankshares, Inc., Fargo, North Dakota; to acquire 100 percent of the voting shares of State Bank of Moorhead, Moorhead, Minnesota.

In connection with this application, Applicant also has applied to acquire Northern Capital Holding Company, Fargo, North Dakota, and thereby engage in providing trust services, financial and investment advisory services, transactional services for customer investments, and payroll services and processing, pursuant to §§ 225.28(b)(5), (b)(6)(i), (b)(7)(i), and (b)(14)(i) of Regulation Y.

Comments on this application must be received by November 1, 2002.

Board of Governors of the Federal Reserve System, October 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–26545 Filed 10–17–02; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 18, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309–4470:

1. Citizens Bancshares, Inc., Atlanta, Georgia; to acquire CFS Bancshares, Inc., Birmingham, Alabama, and Citizens Federal Savings Bank, Birmingham, Alabama, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, October 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–26543 Filed 10–17–02; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Office at (202) 619–2118 or e-mail *Gerrie.Jones@HHS.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: 1. HHS Small Business Vendor Outreach Program Registration—New—The Office of Small and Disadvantaged Business Utilization (OSDBU) proposes to establish an on-line registration form. The form will be used by OSDBU vendors to register for outreach sessions and training conferences. The on-line registration form will simplify the registration process for attendees. The system will accept the registration and automatically confirm and verify the date, time and location of each session. When the training and outreach sessions are full the system is designed to notify attendees of the next available date to attend or place them on a waiting list.

Respondents: Individuals, business or other for-profit.

Number of Respondents: 2,030.

Average Burden per Response: 5 minutes.

Total Burden: 170 hours.

Send comments via e-mail to *Geerie.Jones@HHS.gov* or mail to OS Reports Clearance Office, Room 503H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, 20201. Comments should be received within 60 days of this notice.

Dated: October 10, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 02–26579 Filed 10–17–02; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Privacy and Confidentiality.

Time and Date: 9 a.m. to 5 p.m. October 29, 2002, 9 a.m. to 5 p.m. October 30, 2002.

Place: Marriott Baltimore Waterfront Hotel, 700 Aliceanna Street, Baltimore, MD 21202, Phone: 410–385–3000.

Status: Open.

Purpose: The purpose of this meeting of the Subcommittee on Privacy and Confidentiality is to gather information on implementation plans for the final regulation "Standards for Privacy of Indivually Health Information" (45 CFR parts 160 and 164), promulgated under the Health Insurance Portability and Accountability Act of 1996. The regulation and further information about it can be found in the Web site of the Office for Civil Rights at *http://www.hhs.gov/ocr/hippa/*.

The meeting will seek information from invited panels of experts from the industry about implementation plans and practical issues identified so far in implementation of the regulation, and as well as their suggestions about possible solutions for such issues. The Subcommittee particularly seeks detailed information about the following: (1) Technical assistance plans and needs, (2) outreach, education and training efforts, (3) compliance resources, (4) best practices, (5) public-private partnerships, (6) State preemption analyses, and (7) the quality of vendors and consulting organizations. The panels will include representatives from various sectors of the healthcare industry, including small providers, health plans, and State agencies. In addition to the panels that will be invited to address these issues, members of the public who would like to make a brief (3 minutes or less) oral comment on one or more of the specified issues during the meeting will be placed on the agenda as time permits.

For Further Information Contact: Substantive program information may be obtained from Stephanie Kaminsky, J.D., Lead Staff Person for the NCVHS Subcommittee on Privacy and Confidentiality, Office of Civil Rights, Department of Health & Human Services, JFK Bldg., Government Center Rm. 1825, Boston, MA 02203, telephone (617) 565–1352; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, telephone (301) 458–4245. Information about the committee, including summaries of past meetings and a roster of committee members, is available on the Committee's Web site at *http://www.ncvhs.hhs.gov* where an agenda will be posted when available

Dated: October 10, 2002.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–26580 Filed 10–17–02; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Populations.

Time and Date: 8:30 a.m. to 5 p.m., November 8, 2002.

Place: The Public Ledger Building, 150 S. Independence Mall West, Conference Room 415, Philadelphia, PA 19106, Phone: 215–861–4667.

Status: Open.

Purpose: The Subcommittee on Populations, NCVHS, is holding a hearing to discuss issues relating to statistics for the determination of health disparities in racial and ethnic populations. The focus will be on State related issues in the collection and use of data on race and ethnicity. Invited panelists will address State and local collection of data on race and ethnicity, use of mixed race data, measurement of ethnic identity and perspecitves on variables beyond race and ethnicity needed to determined health disparities in racial and ethnic groups.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Public Ledger Building by non-government employees. Thus, persons without a government identification card will need to present a photo identification card to the guard for admittance to the meeting.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Audrey L. Burwell, Senior Policy Analyst, Office of Minority Health, Department of Health and Human Services, Suite 1000, 5515 Security Lane, Rockville, MD, 20852, telephone: (301) 443–9923, e-mail: *alburwell@osophs.dhhs.gov;* or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidetial Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Dated: October 7, 2002.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–26581 Filed 10–17–02; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Cholera and Other Vibrio Illness Surveillance Report (OMB 0920–0322)—Extension—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). Vibrio species are naturally occurring marine bacteria and an important cause of seafoodborne and wound associated illnesses. Certain Vibrio species (*e.g.*, V. cholera, V. parahemolyticus) cause dehydrating diarrheal illnesses. In addition to endemic cholera in the United States, illnesses caused by epidemic strains of cholera are reported among travelers returning from southern Asia and Latin America.

The data collected in this surveillance provides important information on the public health impact of vibriosis in the Gulf Coast States. FDA, which has regulatory responsibility for the safety of seafood, has requested these data to identify interventions that may reduce the burden of seafoodborne vibriosis. The data are also of interest to public and industry groups such as the Interstate Shellfish Sanitation Conference and the National Fisheries Institute. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/ response (in hours)	Total burden (in hours)
Local Health Dept Staff	90	1	20/60	30
Health Care Facility Staff	45	1	20/60	15

Respondents	Number of respondents	Number of responses/ respondent	Average burden/ response (in hours)	Total burden (in hours)
Physicians	15	1	20/60	5
Total				50

Dated: October 10, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, , Centers for Disease Control and Prevention.

[FR Doc. 02–26478 Filed 10–17–02; 8:45 am]

BILLING CODE 4163–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–04–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

National Surveillance of Dialysis-Associated Diseases (0920–0033)—Revision—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). The Division of Healthcare Quality Promotion (DHQP, formerly CDC Hospital Infections Program), is proposing an extension of a yearly survey of dialysis practices and dialysis-associated diseases at U.S. outpatient hemodialysis centers.

The rehabilitation of individuals in the United States who suffer from chronic renal failure has been identified as an important national priority, the Federal Government made a provision in 1973 to provide financial support for chronic hemodialysis patients. CDC, DHQP and Division of Viral Hepatitis have the responsibility of formulating strategies for the control of hepatitis, bacteremia, and other hemodialysis-associated diseases. In order to devise such control measures, it is necessary to determine the extent to which the incidence of these dialysis-associated diseases changes over time. This request is to continue surveillance activities among chronic hemodialysis centers nationwide.

In addition, once control measures are recommended it is essential that such measures be monitored to determine their effectiveness. The survey is conducted once a year by a mailing to all chronic hemodialysis centers licensed by the Health Care Financing Administration. The types of dialysis practices surveyed include the use of hepatitis B vaccine in patients and staff members, the types of vascular access and dialyzers used, whether certain dialysis items are disinfected for reuse, and whether the dialysis center has any policy for insuring judicious use of antimicrobial agents. Among dialysis-associated diseases, the survey includes hepatitis B virus infection, antibody to hepatitis C virus, antibody to human immunodeficiency virus, and vancomycin-resistant enterococci. The estimated annualized burden is 3800 hours.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hours)
Chronic Hemodialysis Centers	3,800	1	1

Dated: October 10, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–26479 Filed 10–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement Number 02164]

Laboratory Strengthening for Infectious Disease, Surveillance Control and Response in East Africa; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement for Laboratory Strengthening for Infectious Disease Surveillance Control and Response in East Africa.

The purpose of the program is to strengthen the delivery of field support and programming to the CDC and the United States Agency for International Development (USAID) Missions in East Africa. This will be accomplished through the development of new approaches and technologies in response to near and long-term field needs. These needs were established in accordance with the Infectious Disease Interagency Agreement (IAA) between USAID and CDC. This cooperative agreement will support activities in laboratory confirmation of suspected outbreaks, control and prevention of infectious diseases, and system strengthening activities represented by quality assurance and quality control of laboratory confirmation of priority diseases. Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the Epidemiology Program Office:

1. Encourage state health departments and ministries of health to develop efficient and comprehensive public health information and surveillance systems by promoting the use of the internet and by focusing on development of standards for communications and data elements.
2. Efficiently respond to the needs of our public health partners through the provision of epidemiologic assistance.
3. Implement accessible training programs to provide an effective work force for staffing state and local health departments, laboratories, and ministries of health in developing countries.

B. Eligible Applicants

Assistance will be provided only to the African Medical and Research Foundation (AMREF) in Kenya. No other applications are solicited.

AMREF has extensive and documented experience in providing laboratory reference services, laboratory quality assurance, and training programs for laboratory confirmation, disease control and prevention in East Africa. This includes participation in the External Quality Assessment Scheme in Microbiology conducted by the World Health Organization(WHO) Collaborating Center for Antimicrobiology Resistance at CDC. They have the distinction of being the onlyorganization in East Africa with the knowledge andexperience of the logistics and technical issues related to transporting laboratory specimens from rural areas in East Africa. AMREF has extensive experience working in East African countries with ministries of health (MOH) and local non-governmental organizations (NGO), as well as withvarious international health organizations.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $80,000 is available in FY 2002 to fund this award. It is expected that the award will begin on or about September 1, 2002 and will be made for a 12-month budget period within a project period of up to 4 years depending on the availability of funds. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

1. Direct Assistance

No direct assistance will be provided.

2. Use of Funds

All requests for funds contained in the budget, shall be stated in U.S. dollars. Once an award is made, CDCwill not compensate foreign grantees for currency exchange fluctuations through issuance of supplemental awards. By making this statement all requests, not only the initial budget but any subsequent request such as re-directions, requests for supplemental funds, carry-overs, etc. are included. This is Health andHuman Services (HHS) policy.

a. Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives, however, prior approval by CDC officials must be requested in writing. All purchased equipment is for the sole use of the project, and will become the property of USAID at the completion of the project.

b. The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: Indirect costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

c. The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services)for which funds are required.

d. Limitations and/or prohibitions on the use of funds are as follows: Alterations and renovations are not allowable.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Angelia D. Hill, Grants Management Specialist, International & Territories Acquisition & Assistance Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, E–09, Atlanta, GA 30341–4146. Telephone number (770)488–2785. email address: *ahill@cdc.gov*.

For program technical assistance, contact: Dr. Peter Nsubuga, Medical Epidemiologist, Division of International Health, Epidemiology Program Office, Centers for Disease Control and Prevention, 4770 Buford Highway, K–72, Atlanta, GA 30341. Telephone number (770) 488–8334. email address: *pcn0@cdc.gov*.

Or

Kathleen F. Cavallaro, MT (ASCP), MS, Public Health Advisor, Division of Bacterial and Mycotic Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 4770 Buford Highway, K–72. Atlanta, GA 30341. Telephone number (770) 488–8333. email address: *kfc1@cdc.gov*.

Dated: October 9, 2002.

Edward J. Schultz,

Deputy Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–26533 Filed 10–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02093]

Division of International Health/Global Surveillance Project Strengthening Outbreak Investigations and Response in Ghana; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a cooperative agreement program for the Division of International Health/Global Surveillance Project Strengthening Outbreak Investigations and Response in Ghana. This program addresses the "Healthy People 2010" focus area of Public Health Infrastructure.

The purpose of the program is to strengthen the ability of the Ministry(s) of Health (MOH) to identify, investigate, analyze, respond to and report on disease outbreaks and other unusual health events. By doing so, the agreement will result in strengthening the applied public health programs at the University.

B. Eligible Applicants

Assistance will be provided only to the University of Ghana. No other applications are solicited.

The University of Ghana Public Health School Without Walls (PHSWOW) is uniquely qualified as a partner since it has the only Masters of Public Health (MPH) program in the country. PHSWOW offers a one year MPH program to produce public health practitioners who will be leaders and change agents for health development in Ghana, in particular with the district as the focus, and Africa in general. This MPH is recognized throughout the region as proof of quality training in epidemiology, surveillance and other public health skills.

Note: Title two of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Funds

Approximately $40,000 is being awarded FY 2002 to fund one award. It is expected that the award will begin on or about June 1, 2002, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Cynthia Collins, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number (770) 488–2757, e-mail address *coc9@cdc.gov.*

For program technical assistance, contact:

Dr. Peter Nsubuga, Medical Epidemiologist, Division of International Health, Epidemiology Program Office, Centers for Disease Control and Prevention, 4770 Buford Highway, MS–K72, Atlanta, GA 30341, Telephone number (770) 488–8334, e-mail address *pcn0@cdc.gov.*

or

Mr. B.J. (Bassam) Jarrar, Public Health Advisor, Division of International Health, Epidemiology Program Office, Centers for Disease Control and Prevention, 4770 Buford Highway, MS–K72, Atlanta, GA 30341, Telephone number (770) 488–8330, e-mail address *bmj0@cdc.gov.*

Dated: October 9, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–26529 Filed 10–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02099]

Expansion of HIV/AIDS/Tuberculosis Control and HIV/AIDS Care Activities in the Republic of Côte d'Ivoire; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement with the Ministry of Health (MOH) of Côte d'Ivoire for the expansion of HIV/AIDS and Tuberculosis Control activities and HIV/AIDS Care activities.

The U.S. government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia, and the Americas through its Leadership and Investment in Fighting an Epidemic (LIFE) initiative. Through this LIFE program, CDC has initiated its Global AIDS Program (GAP) to strengthen capacity and expand activities in the areas of

(1) HIV primary prevention;

(2) HIV care, support, and treatment; and

(3) Capacity and infrastructure development, especially for surveillance.

Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. government agencies are already active. Côte d'Ivoire is one of these targeted countries. As a key partner in the U.S. government's LIFE Initiative, CDC is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic in LIFE initiative countries. In particular, CDC's mission in Côte d'Ivoire is to work with Ivorian and international partners in discovering and applying effective interventions to prevent HIV infection and associated illness and death from AIDS.

Côte d'Ivoire is the West African country most heavily affected by the HIV/AIDS epidemic. UNAIDS has estimated that about one million persons in Côte d'Ivoire were living with HIV/AIDS in 2000 with an overall ten percent (10 percent) HIV prevalence in the adult population, although, HIV prevalence differs in sub-populations. In 2000, from antenatal sentinel serosurveillance, HIV prevalence was nine point five percent (9.5 percent) in pregnant women. The prevalence of HIV infection remains high in TB patients at about forty-five percent (45 percent). These statistics suggest the need for the expansion and improvement of a range of surveillance, care, prevention, and control activities and services. This agreement will assist the Tuberculosis Control Program of the Ministry of Health in screening more patients in order to better control the spread of tuberculosis in the general population, and in particular in HIV infected persons. At the same time, improving the national surveillance system will provide essential information for focusing prevention activities, allocating resources, and monitoring effectiveness of programs.

B. Eligible Applicants

Assistance will be provided only to the MOH of Côte d'Ivoire. No other applications are solicited. The MOH is the only appropriate and qualified organization to conduct a specific set of activities supportive of the CDC Global AIDS Program's technical assistance to Côte d'Ivoire for the following reasons:

1. The MOH is uniquely positioned, in terms of legal authority, ability, and credibility among Ivorian citizens, to collect crucial data on HIV/AIDS as well as to provide care to HIV infected patients.

2. The MOH in Côte d'Ivoire is mandated by the Ivorian government to coordinate activities necessary for the control of epidemics, including HIV/AIDS and Tuberculosis.

3. The MOH already has an established network of health care facilities throughout Côte d'Ivoire. They include tuberculosis treatment centers, maternal-child health clinics, and HIV/AIDS care sites. These facilities are accessible and provide health information and care for patients with HIV/AIDS and Tuberculosis, enabling the Ministry to become immediately engaged in the activities listed in this announcement.

4. The MOH has trained physicians, nurses, and social workers already working in their network of health care facilities around the country who can carry out the activities listed in this announcement.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501 (c)(4) of the International Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

C. Availability of Funds

Approximately $700,000 is available FY 2002 to fund this award.

It is expected that the award will begin on or about September 30, 2002, and will be made for a 12-month budget period within a project period of three (3) years. Annual funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception of nevirapine in the Prevention of Mother-To-Child Transmission (PMTCT) cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services for which funds are requested).

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

D. Where To Obtain Additional Information

To obtain business management technical assistance, contact: Cynthia Collins, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 1600 Clifton Road, Mailstop E–15, Atlanta, GA 30333. Telephone number: (770) 488–2757. E-Mail: *coc9@cdc.gov.*

For program technical assistance, contact: Karen Ryder, MPH, CDC/HIV, 2010 Abidjan Place, Dulles, VA 20189–2010. Telephone: (404) 639–0911. E-Mail: *kkr1@cdc.gov.*

Dated: October 9, 2002.

Edward J. Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–26525 Filed 10–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02200]

Response to the HIV/AIDS Epidemic in the Caribbean Region; Pan American Health Organization (PAHO) and the Caribbean Regional Epidemiology Center (CAREC), Port of Spain, Trinidad; Notice of the Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC), National Center for Human Immunodeficiency Virus/Sexually Transmitted Disease/Tuberculosis (HIV/STD/TB) Prevention (NCHSTP), announces the availability Fiscal Year (FY) 2002 funds for a Cooperative Agreement to the Caribbean Regional Epidemiology Center (CAREC) through Pan American Health Organization (PAHO). The purpose of this program is to help support implementation of CDC Global AIDS Program (GAP), a United States government program that seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, the Caribbean Region, Asia and the Americas. CDC, through GAP, focuses on strengthening the capacity of national AIDS control programs in the areas of (1) HIV primary prevention, (2) HIV care, support, and treatment, and (3) capacity and infrastructure development, especially for surveillance. Countries targeted represent those with the most severe epidemic and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. government agencies are already active. An updated list of partner countries for the CDC–GAP Initiative is available at: *http://www.cdc.gov/nchstp/od/gap/default.htm*

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for HIV, STD and TB Prevention, Global AIDS Program: Working with other countries, United States Agency for International Development (USAID), international and U.S. government agencies, reduce the number of new HIV infections among 15 to 24 year olds in sub-Saharan Africa, the Caribbean Region, Asia and the Americas from an estimated two million by 2005.

B. Eligible Applicants

Assistance will be provided only to CAREC through the PAHO, in support of LIFE Initiative activities in the Caribbean Region. No other applications will be solicited. CAREC is the most appropriate and qualified agency to conduct a specific set of activities supportive of CDC's LIFE Initiative-related assistance to countries in the Caribbean Region because:

1. CAREC is the lead agency in the Caribbean Region to provide support to this region of the world, second only to Africa, most affected by the HIV/AIDS epidemic. It is both chartered and uniquely positioned to assist national AIDS control programs in 21 member countries and its other partners to strengthen national health sector responses to HIV/AIDS.

2. World Health Organization (WHO), through its regional office, PAHO, is a leading partner within the International Partnership Against HIV/AIDS (IPAA), an international umbrella effort to increase support and visibility for a multi-lateral emergency response to the AIDS epidemic in the Caribbean Region. CAREC is supported by PAHO/WHO. Assistance will be provided to (CAREC) through the PAHO, in support of LIFE Initiative activities in the Caribbean Region. The LIFE Initiative is a key supporter of the IPAA.

3. CAREC has the capacity to provide a regional response to the specific laboratory needs for the provision of care and treatment of HIV/AIDS, information sharing and regional-level aggregation and interpretation of health data related to surveillance, prevention and care for HIV/AIDS within the region. In this sense, CAREC is unique in that it is the lead agency providing health sector policy-setting and

technical assistance to 21 member countries and non-member countries on request. CAREC is supported by PAHO/WHO which maintains a network of country offices and PAHO Coordinating Centres to serve as critical links for ensuring country access to available technical resources, information and coordination. CAREC's capacity compliments CDC's focus of action and requested support from CAREC which is to build and enhance existing capacity and infrastructure to support the region in support of the Regional Strategic Plan endorsed by 21 member countries. This includes strengthening of laboratory quality and standardization within CAREC and throughout the region.

PAHO is the only international/intergovernmental agency qualified to conduct the activities under this cooperative agreement because:

Headquartered in Washington, DC, PAHO serves as the specialized organization for health of the Inter-American System and as the Regional Office for the Americas of the World Health Association (WHO). As such, PAHO has a unique position among the world's health agencies as the technical agency for health within the Americas. PAHO has access to all national health promotion and disease prevention programs and potential research sites in the Americas through its 36 member governments and its scientific and technical expert employees stationed in Washington, DC, 27 country offices, and nine scientific centers. PAHO has more than 90 years of experience in working to improve health and living standards of the countries of the Americas. PAHO's basic responsibility is to collaborate with Ministries of Health, social security agencies, other government institutions, nongovernmental organization, universities, community groups, and others to strengthen national and local health systems and to improve the health of the peoples of the Americas. PAHO offers special opportunities for furthering research programs in the Americas through the use of unusual talent resources, populations, or environmental conditions in other countries that are not readily available in the United States or that provide augmentation of existing U.S. resources. PAHO is uniquely qualified to conduct activities in the Americas that have specific relevance to the mission and objectives of CDC and which have the potential to advance knowledge that benefits the United States.

C. Availability of Funds

Approximately $250,000 dollars are available in FY 2002 to fund this award. It is anticipated that the award will begin month budget period within a project period of up to five years. Annual funding estimates may vary and are subject to change. Continuation award within the project period will be made on the basis of satisfactory progress and availability of funds.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

1. Use of Funds

General Use

Funds may be used for:

(a) Establishing strategies, policies and guidelines for health sector responses to the HIV/AIDS epidemic in the Caribbean Region in areas such as surveillance, laboratory, clinical management, and prevention.

(b) Conducting meetings and other relevant activities that contribute to the development, dissemination and evaluation of strategies, policies and guidelines.

(c) Aggregating and disseminating information, strategies, policies, guidelines and training materials pertinent to HIV/AIDS and HIV-related conditions, including internet-based and other tools for efficient cataloguing and disseminating such information, and support for increasing national capacities to retrieve such information from such systems.

(d) Building capacity of CAREC to provide technical assistance and services to member countries and within Ministries of Health (MOH), National AIDS Councils, and similar key national institutions.

(e) Supporting key networks and partnerships within the region to lead evidence-based, improved health sector practices relevant to HIV/AIDS in the CAREC community (such as regional training network within the Caribbean Region to provide training in HIV clinical management on a national or sub-regional basis).

General Non-Use

(a) Funds received from this announcement will not be used for capital expenditures such as the purchase of off-road and multi-passenger vehicles and large volume (greater than fifty) purchase of computers.

(b) The purchase of antiretrovirals, reagents, and laboratory equipment for antiretroviral treatment projects requires pre-approval from GAP headquarters.

(c) No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

(d) Applicant may contract with other organizations under these cooperative agreements, however, the applicant must perform a substantial portion of the activities (including program management and operations and delivery of prevention services for which funds are requested).

(e) The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exception: Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the U.S. or to international organizations regardless of their location. Matching funds is not a requirement for this program announcement.

D. Where To Obtain Additional Information

CDC announcement information can be found on the CDC home page Internet address—*http://www.cdc.gov*. Scroll down the page, then click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Cynthia R. Collins, Grants Management Specialist, Centers for Disease Control and Prevention (CDC), Procurement and Grants Office, Room 3000, 2920 Brandywine Road, Mailstop E–15, Atlanta, GA 30341–4146. Telephone: (770) 488–2757. Email: *ccollins@cdc.gov*.

For program technical assistance, contact: Ethleen Lloyd, Global AIDS Program (GAP), Caribbean Region, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC). Telephone: (404) 639–8016. Email address: *esl1@cdc.gov*.

Dated: october 9, 2002.

Edward J. Schultz,

Deputy Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–26528 Filed 10–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02106]

Expansion of HIV/Prevention Activities in Malawi; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a cooperative agreement program for Global AIDS Program (GAP).

The purpose of the program is to provide assistance in planning, developing, implementing, and managing an HIV/AIDS Surveillance program for the control of HIV/AIDS in the country of Malawi, to support national level Voluntary Counseling and Testing (VCT) activities, and to implement the first step in support of a computerized information management system for HIV/AIDS at the National AIDS Commission (NAC).

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the GAP. Working with other countries, USAID, international, and U.S. government agencies, reduce the number of new HIV infections among 15 to 24 year olds in sub-Saharan Africa from an estimated 2 million by 2005.

B. Eligible Applicants

Assistance will be provided only to the NAC of the Country of Malawi. No other applications are solicited.

This announcement is restricted to the NAC because it is a unique agency designated by the Government of Malawi to develop, coordinate, and fund Human Immunodeficiency Virus (HIV/AIDS) prevention and care activities for the nation.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Funds

Approximately $725,000 is being awarded in FY 2002 to fund one award. The award began July 15, 2002 and will be made for a 12 month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Cynthia Collins, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone Number: (770) 488–2782, e-mail Address: *dpr7@cdc.gov*.

For program technical assistance, contact: Margarett Davis, MD, MPH, Kang'ombe Building 8 West, Lilongwe, Malawi, Telephone number: 265–775–188, Fax number: 265–775–848, Mobile: 265–960–152, e-mail Address: *mdavis@cdc.gov*. Mailing address: c/o U.S. Embassy, PO Box 30016.

Dated: October 9, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Center for Disease Control and Prevention.

[FR Doc. 02–26531 Filed 10–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02102]

Prevention of Human Immunodeficiency Virus (HIV/AIDS) Through Interpersonal Communication and Community Mobilization To Promote Voluntary Counseling and Testing (VCT), Prevention of Mother to Child Transmission (PMTCT), Tuberculosis (TB) Preventive Therapy and Access to Care and Support Programs in the Republic of Botswana; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement with the National AIDS Coordinating Agency (NACA) to implement Total Community Mobilization (TCM) Project in the Republic of Botswana.

The purpose of this announcement is to mobilize community members in the Republic of Botswana and empower them to prevent HIV/AIDS transmission and improve access to support programs.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the Global AIDS Program (GAP) Working with other countries, United States Agency for International Development (USAID), international, and U.S. government agencies, reduce the number of new HIV infections among 15 to 24 year olds in sub-Saharan Africa from an estimated two million by 2005. This program will enhance and expand the use of interpersonal communication and community mobilization to promote voluntary testing and counseling (VCT), prevention of mother to child transmission program (PMTCT), the national rollout of the Isoniazid Preventive Therapy (IPT) program, and improve access to care and treatment programs in Botswana. The program will also play an integral role in the implementation of the CDC MARCH (Modeling and Reinforcement to Combat HIV/AIDS) strategy for behavior change.

These collaborative activities if mobilized at the community level could profoundly impact the scope and intensity of the implementation of the National AIDS Policy. Cooperative efforts could lead to greater use of counseling and testing services in all areas of the country, increase in enrollment in the IPT and PMTCT programs, and greater use of existing programs for care and support throughout the nation.

Interpersonal communications can reinforce the messages and modeling which is taking place through behavior change communications such as the radio serial drama, "Magabeneg". The U.S. Government seeks to reduce the impact of HIV/AIDS and related conditions in specific countries within sub-Saharan Africa, Asia, and the Americas through its Leadership and Investment in Fighting an Epidemic (LIFE) initiative. Through this program, CDC has initiated its Global AIDS Program (GAP)to strengthen capacity and expand activities in the areas of (1) HIV primary prevention; (2) HIV care, support, and treatment; and (3) capacity and infrastructure development, especially for surveillance. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. government agencies are already active. Botswana is one of these targeted countries. To carry out its activities in these countries, CDC is working in a collaborative manner with national

governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic. CDC's program of technical assistance to Botswana focuses on several areas including scaling up promising prevention and care strategies, such as VCT, PMTCT, and IPT, supporting behavior change communication projects (MARCH strategy), such as the radio serial drama, and other capacity building efforts. Botswana is experiencing one of the world's most severe AIDS crises that looms as a disaster of unprecedented proportions. The global burden of HIV/AIDS in Botswana is the highest in sub-Saharan Africa, where 83 percent of the world's AIDS deaths have occurred, and where four-fifths of all HIV-positive women live. Despite a relative stabilization of infection rates in some countries in West Africa, the HIV/AIDS epidemic continues to grow at an alarming rate in Southern Africa. Like many countries in this region, Botswana has been disproportionately affected by the AIDS pandemic. Over 20 percent of the population are believed to be HIV positive and the Botswana National Aids Co-ordinating Agency's 2000 Sentinel Surveillance reports 38.5 percent HIV infection in participating pregnant women. Botswana estimates that as many as 25 babies a day are born with HIV. AIDS-related conditions are responsible for 10 percent of annual deaths, with women and adolescents particularly at risk. TB is by far the single leading cause of death among adults with AIDS in Botswana.

Based on Sentinel surveys in 1999, an estimated 19 percent of the total population and 29 percent of the economically productive age group (15–49 years old) are living with HIV infection. The rate of TB infection in Botswana (537/100,000 in 1999) is one of the highest in the world. Botswana has taken many positive steps to address the AIDS epidemic. The President has recognized HIV/AIDS as "the greatest challenge Botswana has faced" and has warned Botswana that HIV/AIDS "threatens the country with annihilation." The Botswana government pays for up to 80 percent of all HIV/AIDS activities in the country. This full-scale national response has generated many examples of creative programming and international collaborations. The government of Botswana will be among the first African countries to launch a TB prevention program using Isoniazid Preventive Therapy (IPT) for HIV infected individuals. A Pilot program of IPT was implemented in October 2000 and planning for nation-wide implementation is underway. In 1999 the MOH launched a pilot project for PMTCT in Gaborone and Francistown is now undertaking full scale implementation. In 2000 The BOTUSA Project in collaboration with the MOH launched the nationwide network of VCT centers, "Tebelopele" which means to look into the future. The government is also in the process of introducing ARV treatment and fully supports the MARCH strategy through Information Broadcasting. These programs are all new to the communities and providing information to the population using interpersonal communication can enhance uptake and empower the population to utilize these services.

The Botswana MOH and CDC collaboration was established in 1995 and is known as the "The BOTUSA Project" and is a successful example of MOH and international collaboration. BOTUSA is a strong supporter of the IPT program and is providing technical assistance, training for health care workers, supplying educational materials, and supporting program monitoring and evaluation. BOTUSA's collaboration includes support for the national PMTCT program through the provision of technical assistance, counseling space, equipment, and materials for prenatal clinics throughout the country. BOTUSA also supports in collaboration with the MOH, voluntary counseling and testing and a radio serial drama for behavior change.

However, despite the support of the government to fight the epidemic and the collaboration with international partners, the prevalence of HIV infection appears to have increased substantially in Botswana from 1997 to 2002 and the epidemic cannot yet be characterized as having stabilized. The capacity of the government to expand their pilot projects for prevention and extend the reach of their activities to the entire nation will have a substantial impact on the epidemic.

B. Eligible Applicants

Assistance will be provided only to the NACA for support of the TCM Project, as implemented by the NACA and the Humana People to People Foundation currently funded by the NACA of Botswana. No other applications are solicited.

The NACA is the only appropriate and qualified organization to fulfill the requirements set forth in this announcement because:

1. Through NACA, the Government of Botswana (GOB) has a cooperative agreement with Humana People to People for the implementation of door-to-door community mobilization. In Botswana this program will be implemented under the name TCM. Humana People to People has been requested to find a partner to pay for twenty percent of the cost.

2. The TCM Project is uniquely positioned, in terms of support from the GOB. The NACA has the ability to financially and technically oversee the TCM project, and to provide implementation of a large scale interpersonal communication project as well as a mandate from GOB. The NACA has mandated Humana People to People to implement nationwide coverage of community mobilization and interpersonal communication through the TCM project. They have the ability to collect information, train staff and advocate for the programs implemented in the National AIDS Strategic Plan and disseminate personalized "one on one" communication to support the fight against HIV/AIDS in Botswana.

3. The GOB assisted by The Botswana/U.S. of America (BOTUSA) Project evaluated the TCM project in 2001. The results led the GOB to fund Humana People to People to undertake national community mobilization against HIV/AIDS. Therefore, Humana People to People is the only available organization approved by the GOB to implement door-to-door community mobilization, the TCM program, and specific services.

4. The specific services which the TCM project will deliver are directly associated with the CDC prevention strategies implemented under the Global AIDS Program in Botswana and integrated into the TCM project.

C. Availability of Funds

Approximately $700,000 is available in FY 2002, to fund twenty percent of the TCM project by the NACA. The GOB will fund the remaining 80 percent of the agreement. It is expected that the award will begin on or about September 1, 2002 and will be made for a 12-month budget period within a project period of two years.

Continuation award within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funding to be administered by the NACA for TCM include:

Provision of salaries and short-term contracts for technical and support staff needed to scale up current pilot programs in the community to a nation wide level. Funding for training, materials, and supervision in the field for the TCM community mobilization staff.

Funds received will not be used for the direct purchase of drugs to treat active TB disease. The purchase of antiretrovirals, reagents, and laboratory equipment for antiretroviral treatment projects requires preapproval from the GAP headquarters.

The applicant may contract with other organizations under these cooperative agreements, however, the applicant must perform a substantial portion of the activities (including program management and operations and delivery of prevention services for which funds are requested).

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

1. Alterations and Renovations: Unallowable.

2. Customs and Import Duties: Unallowable. This includes consular fees, customs surtax, value added taxes, and other related charges.

3. Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the U.S. or to international organizations regardless of their location.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug. Matching funds is not a requirement for this program announcement.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Cynthia Collins, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2757, Email address: *ccollins@cdc.gov*.

For program technical assistance, contact: Ethleen S. Lloyd, Global AIDS Program (GAP), c/o U.S. Embassy Gaborone, 2170 Gaborone Place, Washington DC 20521, Telephone number: (868)633–2065, Email address: *ellyod@cdc.gov*.

Dated: October 9, 2002.

Edward J. Schultz,

Deputy Director, Procurement and Grants Office, Center for Disease Control and Prevention.

[FR Doc. 02–26534 Filed 10–17–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02181]

Support for the National Laboratory for HIV/AIDS Reference & Quality Assurance in the Republic of Uganda; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program to develop and support the National HIV/AIDS Reference Laboratory (HRL) in Uganda.

The overall aim of this program is to strengthen laboratory capacity across the country by assuring the accuracy of HIV testing at blood banks and at laboratories carrying out national sentinel surveillance, HIV-related research and those supporting Voluntary Counseling and Testing (VCT) and Prevention of Mother-To-Child Transmission (PMTCT) services.

The United States Government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia and the Americas. CDC has initiated its Global AIDS Program (GAP) to strengthen capacity and expand activities in the areas of (1) HIV primary prevention, (2) HIV care, support and treatment and (3) capacity and infrastructure development, including surveillance. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential impact is greatest and where United States government agencies are already active. Uganda is one of these countries.

CDC is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic in many countries and it currently has an existing GAP Program in Uganda. CDC's mission in Uganda is to work with Ugandan and international partners in discovering and applying effective interventions to prevent HIV infection and associated illness and death from AIDS.

One of the functions of an HRL is to provide quality assurance of HIV testing nationwide. In Uganda, HIV testing is carried out to ensure the safety of the blood supply, to support national sentinel surveillance and specific research projects and in support of voluntary counseling and testing (VCT) and prevention of mother-to-child transmission (PMTCT) services.

The purpose of this program is to provide assistance to the National HRL in establishing a quality assurance (QA) program for all laboratories providing HIV testing services in both the governmental and non-governmental sectors.

VCT services are available at a large number of private and government clinics across the country and PMTCT services are expected to increase dramatically in the next few years as drugs to prevent mother-to-child transmission become more widely available. Serum-based HIV rapid testing is likely to be replaced by finger-stick rapid HIV testing at many of the sites providing VCT and PMTCT services presenting a new challenge for QA. There is no laboratory accreditation scheme in Uganda and the proficiency of many of the laboratories providing HIV testing services has not been established. As a consequence, users of these services, including policy makers and the general public are often not confident of the quality of laboratory test results. Currently there is no national QA scheme for rapid HIV testing and this program is intended to address this situation. It is expected that the scheme will become a model for other African countries as they develop their own HIV testing services in support of safe blood, surveillance and VCT and PMTCT programs.

This program will support both the development of the HRL and the implementation of a QA scheme for HIV testing. The development of the HRL will likely require; improvements in the physical infrastructure of the laboratory including power backup, computers, furnishings and fittings; additional equipment to ensure safe-practice and to

support an expanded range of laboratory assays; recruitment and training of staff; development of a laboratory management plan; design and implementation of HIV testing algorithms; design of a specimen repository policy and the development of a financial management plan. The implementation of the QA scheme will require; a census to be carried out to identify the potential scope of the scheme; evaluation of the performance characteristics of HIV assays and testing algorithms; development of QA activities in consultation with participating laboratories including training needs assessments and implementation of appropriate training programs, tools to evaluate laboratory performance, proficiency testing panels, schedule of QA site visits and reporting mechanisms.

B. Eligible Applicants

Assistance will be provided only to the National HRL of the Ministry of Health (MOH) of Uganda. No other applications are solicited.

The National HIV Reference Laboratory, being the mandated MOH laboratory for HIV reference activities, is the only appropriate and qualified laboratory to conduct the specific activities which will support the CDC Global AIDS Program's technical assistance to Uganda for the following reasons:

The HRL is uniquely positioned in terms of legal authority, ability and credibility with the Ugandan public to provide such services in support of communicable disease control and the maintenance of public health.

The HRL has provided limited HIV reference services for many years to most of the laboratories carrying out HIV testing in the country. As a result, HRL has established excellent working relations with the National Blood Bank, the AIDS Information Centre who are the main provider of VCT services in the country, the MOH–AIDS Control Program which has worked with the HRL in support of sentinel surveillance since it's inception in 1987 and with numerous governmental and non-governmental laboratories in the country.

This proposal will help strengthen capacity within the existing framework of laboratories which are supported by the HRL to perform existing and newly-defined functions more effectively.

C. Availability of Funds

Approximately U.S. $280,000 is available in FY 2002 to fund two specific activities within this award as follows:

1. U.S. $160,000—non-recurrent expenditure for infrastructure development including furniture and fittings, equipment and vehicles.

2. U.S. $120,000—recurrent expenditure for QA activities.

It is expected that the award will begin on or about August 30, 2002 and will be made for a 12-month budget period within a project period of three (3) years. Annual funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

Use of Funds

Funds may only be utilized at the National HIV Reference Laboratory for QA of HIV testing as described in the goals, objectives, and activities of the submitted and funded plan.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services for which funds are requested).

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

The purchase of antiretrovirals, reagents, and laboratory equipment for antiretroviral treatment projects requires pre-approval from the Global AIDS Program headquarters.

No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Cynthia Collins, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone: (770) 488–2757. E-mail: *coc9@cdc.gov*.

For program technical assistance, contact: Jonathan Mermin, MD, MPH, Global Aids Program [GAP], Uganda Country Team, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention [CDC], PO Box 49, Entebbe, Uganda. Telephone: +256–410320776. E-mail: *jhm@cdc.gov*.

Dated: October 9, 2002.

Edward J. Schultz,

Deputy Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

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BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02076]

Expansion of HIV/AIDS/STD Surveillance, Care, and Prevention Activities in the Republic of Tanzania; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for the expansion of HIV/AIDS/STD surveillance, care, and prevention activities in the Republic of Tanzania.

The purpose of this cooperative agreement is to improve HIV/AIDS surveillance, care, and prevention capacity and activities in Tanzania. This will be accomplished by cooperation between CDC and the Ministry of Health National AIDS Control Program (MOH/NACP) of Tanzania. These collaborative activities could profoundly change the focus and activities of the Tanzania National AIDS Policy. Most importantly, having a better understanding of the association between specific behaviors, STDs, and HIV prevalence will likely improve AIDS control programs and prevention efforts in Tanzania and eventually throughout sub-Saharan Africa. The U.S. Government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia, and the Americas through its Global AIDS Program (GAP). CDC has initiated its Global AIDS Program to strengthen capacity and expand activities in the areas of (1) HIV primary prevention; (2) HIV care, support, and treatment; and (3) capacity and infrastructure development, especially for surveillance. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. government agencies are already active. Tanzania is one of these targeted countries.

CDC is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic in GAP countries. In particular, CDC's mission in Tanzania is to work with Tanzanian and international partners in discovering and applying effective interventions to prevent HIV infection and associated illness and death from AIDS.

Tanzania has approximately 31 million people. In 1997, NACP estimated that 2.4 million (8 percent) would be HIV-infected by the year 2000. In 1998, the MOH reported that the HIV seroprevalence of pregnant women in four sentinel districts ranged from 12 to 24 percent. Also for 1998, the MOH reported that HIV seroprevalence among male blood donors was 9 percent, while the rate was 12 percent among female donors. The Adult Morbidity and Mortality Project recently reported that HIV/AIDS and TB were the leading causes of death in 15 to 59 year-old men and women in three study areas. These statistics suggest the need for the expansion and improvement of a range of surveillance, care, and prevention activities and services.

Accurate surveillance is the mainstay of public health programs, providing essential information for focusing prevention activities, allocating resources, and monitoring effectiveness of programs. Additionally, gaps in care and prevention activities are factors that must be addressed to reduce the epidemic's burdensome impact in Tanzania. The prevention and control of HIV/AIDS in Tanzania will continue to depend on the availability of accurate surveillance data and the continuation and expansion of basic care and prevention activities.

B. Eligible Applicants

Assistance will be provided only to the National AIDS Control Program (NACP) of the Tanzania Ministry of Health (MOH). No other applications are solicited.

The NACP is currently the only appropriate and qualified organization to conduct a specific set of activities supportive of the CDC Global AIDS Program's (GAP) technical assistance to Tanzania for the following reasons:

1. The NACP is uniquely positioned, in terms of legal authority, ability, and credibility among Tanzanian citizens, to collect crucial data on HIV/AIDS prevalence and incidence, as well as other health information.

2. The NACP has established mechanisms to access health information, enabling it to immediately become engaged in the activities listed in this announcement.

3. The purpose of the announcement is to build upon the existing framework of health information and activities that the MOH itself has collected or initiated.

4. The Ministry of Health in Tanzania has been mandated by the Tanzanian constitution to coordinate and implement activities necessary for the control of epidemics, including HIV/AIDS and STDs.

C. Availability of Funds

Approximately $1,000,000 is available in FY 2002 to fund this award. It is expected that the award will begin on or about June 1, 2002, and will be made for a 12-month budget period within a project period of 5 years. Approximately $500,000 will be available for years 2–5 of the project. Annual funding estimates may change.

Continuation awards within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

Use of Funds

Funds received under this announcement may not be used for the direct purchase of anti-retroviral drugs to treat established HIV infection, occupational exposures, and non-occupational exposures and will not be used for the purchase of instruments and reagents to conduct the necessary laboratory monitoring for patient care.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities including program management and operations, and delivery of prevention services for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations, located outside the territorial limits of the United States or to international organizations regardless of their location.

No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Cynthia Collins, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone number: 770–488–2757. e-mail: *coc9@cdc.gov*.

For program technical assistance, contact: Eddas M. Bennett, Deputy Director, CDC Tanzania AIDS Program, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 140 Msese Road, Dar es Salaam, Tanzania. Telephone: 2 666 010 x4164. e-mail: *ebennett@tancdc.co.tz*.

Dated: October 9, 2002.

Edward J. Schultz,

Deputy Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02212]

Support for Civil Society Organizations Responding to HIV/AIDS in Mali; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a Cooperative Agreement program to Support Civil Society Organizations Responding to HIV/AIDS in high risk groups in Mali.

The purpose of this cooperative agreement is to provide support to civil society organizations responding to the HIV/AIDS epidemic in Mali. Specifically, CDC intends to focus its support on (1) Non-governmental organizations (NGOs) with national or regional missions and activities or cross-cutting activities that focus on HIV/AIDS prevention in high risk groups and are under the auspices of the Groupe Pivot umbrella NGO organization; (2) NGO infrastructure or administrative support that is needed to complement already existing administrative and program management capacities, including assistance with program planning, accountability and monitoring and evaluation; and (3) providing support of NGO implementation of Sexually Transmitted Infection (STI) referral or direct treatment services based on the National STI syndromic treatment algorithms and utilizing outreach, education, counseling and partner referral mechanisms. See Attachment I for additional background information.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for HIV, STD and TB Prevention, Global AIDS Program: Working with other countries, USAID, international, and U.S. government agencies, reduce the number of new HIV infections among 15 to 24 year olds in sub-Saharan Africa from an estimated 2 million by 2005.

B. Eligible Applicants

Assistance will be provided only to the Groupe Pivot organization based in Bamako, Mali. No other applications are solicited.

This announcement is restricted to Groupe Pivot because it is the only organization in Mali that serves as an umbrella organization for hundreds of non-governmental organizations located through the country. Groupe Pivot is the only organization in Mali that provides training, technical assistance and financial support to non-governmental organizations/community-based organizations (NGOs/CBOs) for the planning, implementation and management of health and population projects. CDC's support to NGOs/CBOs for STI/HIV prevention at the community level will be greatly enhanced by collaboration with Groupe Pivot.

C. Availability of Funds

Approximately $100,000 is available in FY 2002 for Groupe Pivot to fund multiple awards to NGOs averaging from $6,500 to $19,500 per award. It is expected that the umbrella award will begin on or about September 1, 2002, and will be made for a 12-month budget period within a project period of up to three (3) years. Funding estimates may change and will be dependent on extension of CDC agreement with USAID in Mali.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds. Matching funds are not required for this program.

Funds are available under this announcement to support specific HIV/AIDS prevention activities. These activities are:

- Development of STI referral services for high risk groups and their partners.
- Development of on-site STI services for high risk groups and their partners, when appropriate.
- STI/HIV outreach services and STI/HIV education programs for high risk groups and partners.
- Monitoring and evaluation of program indicators, such as number of persons referred and treated, number of condoms distributed and number of education sessions held by the sub-grantee.
- Development of condom promotion and distribution programs among high risk groups, including condom skills training.

Use of Funds

STI/HIV Prevention

Funds may be utilized by grantee or sub-grantees only in activities associated with HIV/AIDS and STI prevention in particular. They are also targeted to high risk groups.

Antiretroviral Drugs

The purchase of antiretrovirals, reagents, and laboratory equipment for antiretroviral treatment projects requires pre-approval from the Division of STD Prevention—International Activities.

Contracts

Applicant may contract or sign memoranda of understanding with other organizations under these cooperative agreements (*i.e.* local NGOs), however, applicant must perform a substantial portion of the activities, including program management and operations and ultimate responsibility for delivery of prevention services for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. All proposals must be written in English. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

Needle Exchange

No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

D. Where To Obtain Additional Information

CDC announcement information can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

For business management technical assistance, contact: Cynthia Collins, Grants Management Specialist, Grants Management Branch, Procurement & Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, *Telephone:* (770) 488–2757, *email address:* ccollins@cdc.gov.

For program technical assistance, contact: Famory Fofana, MD, Centers for Disease Control, Bamako-Coura Rue 371, Porte 397, PNLS, Cour PMI Centrale (SSS Commune III), BAMAKO—Republique du Mali, *email address:* ffofana@cdcmali.org.

Dated: October 9, 2002.

Edward J. Schultz,

Deputy Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–26538 Filed 10–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02140]

Global Health Promotion and Health Education Initiatives Related to Chronic Disease Prevention; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of funds for fiscal year (FY) 2002 for a cooperative agreement for Global Health Promotion and Health Education Initiatives Related to Chronic Disease Prevention.

The purpose of this program announcement is to promote research, health promotion, and dissemination of expertise and information related to non-communicable disease, chronic diseases; mental health problems; and leading causes of death, disease and disability that can be significantly reduced through effective public health policies and community and school health programs.

The International Union for Health Promotion and Education (IUHPE) will accomplish the purpose of this program announcement by functioning as a coordinating agency for a comprehensive global health promotion and health education effort, related to non-communicable disease prevention through the development of public health policies, dissemination of evidence-based knowledge and practical experience, capacity building in non-communicable disease surveillance systems and prevention program development.

B. Eligible Applicant

Assistance will be provided only to the IUHPE. No other applications are solicited.

The IUHPE is the only international health promotion organization that can conduct the activities in this program announcement. IUHPE is the only international organization with independent professional association with more than 2,000 members in over 90 countries. IUHPE has seven Global Regional Offices located in Australia, Japan, India, Kenya, Puerto Rico, USA, and Spain.

The IUHPE will accomplish the purpose of this program announcement by functioning as a coordinating agency for a comprehensive global health promotion and health education effort related to non-communicable disease prevention through the development of public health policies, dissemination of evidence-based knowledge and practical experience, capacity building in non-communicable disease surveillance systems and prevention program development.

IUHPE is the only qualified international health promotion organization dedicated to improving the health of the people of the world through education, community action and the development of public policies. IUHPE is uniquely qualified to conduct and coordinate research and programmatic activities under this program announcement because:

1. IUHPE has 50 years experience improving the health of the people of the world through education, community action and the development of public policies.

2. IUHPE is an independent professional association with more than 2,000 members in over 90 countries. IUHPE has seven Global Regional Offices located in Australia, Japan, India, Kenya, Puerto Rico, USA, and Spain. IUHPE truly understands international health and is aware of the public health issues impacting every corner of the world.

3. IUHPE is uniquely qualified to conduct and coordinate policy and programmatic initiatives that have specific relevance to the objectives of this program announcement.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $ 165,000 is available in FY 2002 to fund one award. It is expected that the award will begin on or about June 30, 2002, and will be made for a 12-month budget period within a project period of up to five years. Funding estimate for specific program components listed below may vary and are subject to change.

1. *Global Health Promotion, Health Education:* Approximately $60,000 is available in FY 2002 to expand IUHPE's Global Program on Health Promotion Effectiveness to areas of the world where English publication bias has failed to demonstrate the impact of effective health promotion evaluation such as Latin American Regional Office and other appropriate organizations.

2. *Nutrition and Physical Activity:* Approximately $70,000 is available in FY 2002 to support activities to strengthen global and regional physical activity health promotion programs within the context of public health. A demonstration project in a region such as the Western Pacific (including but not limited to Fiji, Samoa, the Marshal Islands and the Federated States of Micronesia) may be supported.

3. *School Health:* Approximately $10,000 is available in FY 2002 to support activities to strengthen international, national and local support of effective school health programs.

4. *Community Health:* Approximately $25,000 is available in FY 2002 to support activities to strengthen international, national, and local support of effective community health programs.

5. *Tobacco Control and Prevention:* Based on availability of funding, money will be made available in FY 2003 for tobacco control and prevention activities.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

1. All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

2. Funds may be used to support personnel, supplies, and services directly related to project activities that are consistent with the scope of the cooperative agreement. Equipment may be purchased if deemed necessary to accomplish program objectives, however, CDC officials must be notified in advance of such purchases.

3. The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exception: *Indirect Costs:* Indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

4. Funds provided under this program announcement can not be used to supplant existing program funds, to

provide personal health services, medications, patient rehabilitation or to support facilities construction or renovation.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

Business management technical assistance may be obtained from: Cynthia Collins, Grants Management Specialist, International/Territories Acquisition and Assistance Branch, Procurement and Grants Office, Program Announcement 02140, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Rd., Room 3000, Atlanta, GA 30341–5539, Telephone: (770) 488–2757, E-mail address: *coc9@cd.gov*.

Program technical assistance may be obtained from:

Project 1: Global Health Promotion, Health Education may be obtained from: Mary Hall, Program Analyst, Global Health Promotion, Office of the Director, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), Mail Stop K–40, 4770 Buford Highway, NE., Atlanta, GA 30341, Telephone: 770–488–5644, Email: *moh4@cdc.gov*.

Project 2: Nutrition and Physical Activity may be obtained from: Michael Pratt, Medical Officer, Division of Nutrition and Physical Activity, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), Mail Stop K–46, 4770 Buford Highway, NE., Atlanta, GA 30066, Telephone: 770–488–5692, Email: *mxp4@cdc.gov*.

Project 3: School Health may be obtained from: Paula Morgan, Program Analyst, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), Mail Stop K–29, 4770 Buford Highway, NE., Atlanta, GA 30066 Telephone: 770–488–6107, Email: *pnm3@cdc.gov*.

Project 4: Community Health may be obtained from: Mike Waller, Deputy Director, Division of Adult and Community Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), Mail Stop K–45, 4770 Buford Highway, NE., Atlanta, GA 30066, Telephone: 770–488–5264, Email: *mnw1@cdc.gov*.

Project 5: Tobacco Control and Prevention may be obtained from: Michelle Roland, Office of Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), Mail Stop K–50, 4770 Buford Highway, NE., Atlanta, GA 30066, Telephone: 770–488–5582, Email: *izr0@cdc.gov*.

Dated: October 9, 2002.

Edward J. Schultz,

Deputy Director, Procurement and Grants Office, Center for Disease Control and Prevention.

[FR Doc. 02–26532 Filed 10–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02105]

Enhancement of Surveillance for Trimethoprim-Sulfamethoxazole Resistant Invasive Respiratory and Diarrheal Disease in South Africa; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a cooperative agreement program for Enhancement of Surveillance for Trimethoprim-Sulfamethoxazole Resistant Invasive Respiratory and Diarrheal Disease in South Africa. This program addresses the "Healthy People 2010" focus area Immunization and Infectious Diseases.

The purpose of the program is to strengthen surveillance for key respiratory and diarrheal disease episodes in order to facilitate program monitoring of the increased use of trimethoprim-sulfamethoxazole (cotrimoxazole) as part of care and support of persons with Human Immunodeficiency Virus (HIV/AIDS). Enhanced sentinel hospital surveillance for bloodstream and cerebrospinal fluid infections caused by key Pathogens-Streptococcus Pneumoniae, Haemophilus Influenzae, and non-typhoidal Salmonella species will permit evaluation of trends in the occurrence of antimicrobial resistance in pediatric vs. adult infections, and estimation of temporal changes in the contribution of HIV/AIDS to the total burden of these respiratory and diarrheal diseases. Surveillance will also detect cases which occur despite adherence to cotrimoxazole prophylaxis and estimate the role of antimicrobial resistance in these episodes.

B. Eligible Applicants

Assistance will be provided only to the Respiratory and Meningeal Pathogens Laboratory (The Unit) of the National Health Laboratory Service, Department of Health, South Africa. No other applications are solicited.

The Respiratory and Meningeal Pathogens Laboratory of the National Health Laboratory Service is a Government organization and the only appropriate and qualified organization to conduct the specific surveillance activities due to the following:

1. The unit is uniquely positioned to conduct enhanced surveillance and has established contacts as well as laboratory and epidemiologic experiences that enable it to immediately become engaged in the activities listed in this announcement.
2. The Laboratory has been the National Reference Laboratory for pneumococci and Haemophilus Influenzae and has provided training to reference laboratories throughout Africa. The Unit was designated by the Government to coordinate national surveillance through sentinel laboratories for the major pathogens causing meningitis (pneumococcus, Haemophilus Influenzae, and Meningococcus). The infrastructure can be expanded with minimal difficulty to include non-typhoidal salmonella isolated from blood and cerebrospinal fluid and be enhanced to assure additional epidemiologic data are collected as part of sentinel surveillance.
3. The Unit has coordinated surveillance for trimethoprim-sulfamethoxazole resistance in respiratory and meningeal infections in sentinel hospitals located throughout South Africa.
4. The Unit has provided training of laboratory identification and characterization, including antimicrobial susceptibility testing, for meningitis agents including pneumococcus and Haemophilus Influenzae. Laboratory staff have provided national training as well as training of personnel from multiple other countries in Africa. The Enteric Pathogens Laboratory is expert at identification and susceptibility testing of nontyphoidal Salmonella, and has been designated part of the National Health Laboratory Service by the Government to serve in a reference capacity for these organisms.
5. The Unit and the National Health Laboratory Service already have established collaborations in place. The Unit operates under a memorandum of understanding between the Medical Research Council and CDC.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $250,000 is being awarded in FY 2002 to fund one award. It is expected that the award will begin on or about September 1, 2002, and will be made for a 12-month budget period within a project period of up to five years. The funding estimate may change.

Continuation award within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Where To Obtain Additional Information

This and other CDC and the Agency for Toxic Substance and Disease Registry (ATSDR) announcements can be found on the CDC home page Internet address *http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Cynthia Collins, Grants Management Specialist, International & Territories Acquisition and Assistance Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2757, e-mail: *coc9@cdc.gov*.

For program technical assistance, contact: Anne Schuchat, MD, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Atlanta, GA 30333, Telephone: (404) 639–2215, e-mail: *acs1@cdc.gov*.

Dated: October 9, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–26527 Filed 10–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02095]

Division of International Health/Global Surveillance Project Strengthening Outbreak Investigations and Response in Uganda; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a cooperative agreement program for the Division of International Health/Global Surveillance Project Strengthening Outbreak Investigations and Response in Uganda. This program addresses the "Healthy People 2010" focus area of Public Health Infrastructure.

The purpose of the program is to strengthen the ability of the Ministry(s) of Health (MOH) to identify, investigate, analyze, respond to and report on disease outbreaks and other unusual health events. By doing so, the agreement will result in strengthening the applied public health programs at the University.

B. Eligible Applicants

Assistance will be provided only to the University of Uganda. No other applications are solicited.

The University of Uganda Public Health School Without Walls (PHSWOW) is uniquely qualified as a partner since it has the only Masters in Public Health (MPH) program in the country. PHSWOW offers a one year MPH program to produce public health practitioners who will be leaders and change agents for health development in Uganda, in particular with the district as the focus, and Africa in general. This MPH is recognized throughout the region as proof of quality training in epidemiology, surveillance and other public health skills.

Note: Title two of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Funds

One award of $40,000 is being made FY 2002. It is expected that the awards will begin on or about June 1, 2002, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Cynthia Collins, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number (770) 488–2757, e-mail address *coc9@cdc.gov*.

For program technical assistance, contact:

Dr. Peter Nsubuga, Medical Epidemiologist, Division of International Health, Epidemiology Program Office, Centers for Disease Control and Prevention, 4770 Buford Highway, MS –K72, Atlanta, GA 30341, Telephone number (770) 488–8334, e-mail address *pcn0@cdc.gov*.

or

Mr. B.J. (Bassam) Jarrar, Public Health Advisor, Division of International Health, Epidemiology Program Office, Centers for Disease Control and Prevention, 4770 Buford Highway, MS –K72, Atlanta, GA 30341, Telephone number (770) 488–8330, e-mail address *bmj0@cdc.gov*.

Dated: October 9, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–26537 Filed 10–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02094]

Division of International Health/Global Surveillance Project Strengthening Outbreak Investigations and Response in Tanzania; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a cooperative agreement program for the Division of International Health/Global Surveillance Project Strengthening

Outbreak Investigations and Response in Tanzania. This program addresses the "Healthy People 2010" focus area of Public Health Infrastructure.

The purpose of the program is to strengthen the ability of the Ministry(s) of Health (MOH) to identify, investigate, analyze, respond to and report on disease outbreaks and other unusual health events. By doing so, the agreement will result in strengthening the applied public health programs through the World Health Organization (WHO) Country Office in Dar es Salaam, Tanzania.

B. Eligible Applicants

Assistance will be provided only to the WHO Country Office in Dar es Salaam, Tanzania. No other applications are solicited.

The WHO Country Office in Dar es Salaam is uniquely qualified as a partner since it serves as consultant to the MOH in implementing and administering Public Health programs in Tanzania. This office maintains the only polio surveillance and outbreak response systems for the MOH in the country.

Note: Title two of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Funds

$40,000 is being awarded in FY 2002 for one award. The award began on or about June 1, 2002, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Cynthia Collins, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number (770) 488–2757, e-mail address *coc9@cdc.gov*.

For program technical assistance, contact:

Dr. Peter Nsubuga, Medical Epidemiologist, Division of International Health, Epidemiology Program Office, Centers for Disease Control and Prevention, 4770 Buford Highway, MS–K72, Atlanta, GA 30341, Telephone number (770) 488–8334, e-mail address *pcn0@cdc.gov*.

Or

Mr. B.J. (Bassam) Jarrar, Public Health Advisor, Division of International Health, Epidemiology Program Office, Centers for Disease Control and Prevention, 4770 Buford Highway, MS–K72, Atlanta, GA 30341, Telephone number (770) 488–8330, e-mail address *bmj0@cdc.gov*.

Dated: October 9, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–26540 Filed 10–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02098]

Expansion of HIV/AIDS Care Services in Côte d'Ivoire; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for the expansion of HIV/AIDS care services in the Republic of Côte d'Ivoire.

The purpose of this cooperative agreement is to strengthen and expand the community response to Human Immunodeficiency Virus (HIV/AIDS) care services in the ten communities of Abidjan, the capital of Côte d'Ivoire, and selected secondary cities throughout the country.

B. Eligible Applicants

Applications may only be submitted by public and private non-profit and for profit-organizations, state and local governments or their bona fide agents, that currently conduct HIV/AIDS work in Côte d'Ivoire.

Applicants must have at least five years experience in HIV/AIDS work in Côte d'Ivoire including: Community mobilization for prevention of HIV/AIDS and promotion of voluntary counseling and testing; successful working relationships with both local and national government offices such as the mayors' office and the Ministries of Health and AIDS; establishment of support groups for people living with AIDS (PLWA); knowledge and understanding of resources available to create referral networks for clinical and psycho-social support for PLWA and families.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

C. Availability of Funds

Approximately $200,000 is available in FY 2002 to fund this award. It is expected that the average award will begin on or about September 30, 2002, and will be made for a 12-month budget period within a project period of up to three years. Annual funding estimates may change.

Continuation awards within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception nevirapine in Prevention of Mother to Child Transmission (PMTCT) cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management, operations and delivery of prevention services) for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization (WHO), indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address *http://www.cdc.gov/*. Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Cynthia Collins, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 1600 Clifton Road, Mailstop E–15, Atlanta, GA 30333. Telephone number: (770) 488–2757. E-Mail: *coc9@cdc.gov*.

For program technical assistance, contact: Karen Ryder, MPH, CDC/HIV, 2010 Abidjan Place, Dulles, VA 20189–2010. Telephone: (404) 639–0911. E-Mail address: *kkr1@cdc.gov*.

Dated: October 9, 2002.

Edward J. Schultz,

Deputy Director, Procurement and Grants Office, Center for Disease Control and Prevention.

[FR Doc. 02–26526 Filed 10–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interagency Committee on Smoking and Health Meeting: Correction

ACTION: Notice; Correction.

Name: Interagency Committee on Smoking and Health.

Date and Time: October 24, 2002, 8:30 a.m. to 2:15 p.m.

Correction

In the **Federal Register** of October 8, 2002, Volume 67, Number 195, Notices, Page 62727, under "PLACE" Should read: Hotel Monaco, 700 F Street, Athens Room, Washington, DC, (202) 628–7177.

Contact Person for More Information: Ms. Monica L. Swann, Committee Management Specialist, Interagency Committee on Smoking and Health, Office on Smoking and Health, NCCDPHP, CDC, 200 Independence Avenue, SW., Room 317B, Washington, DC, 20201, telephone (202) 205–8500.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 11, 2002.

Cynthia P. Johnson.

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 02–26530 Filed 10–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0590]

Agency Information Collection Activities; Announcement of OMB Approval; Salmonella Discovery System Pilot Study

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Salmonella Discovery System Pilot Study" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 28, 2002 (67 FR 3902), the agency announced that the proposed information had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB Control Number 0910–0493. The approval expires on September 30, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: October 11, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–26619 Filed 10–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0070]

Agency Information Collection Activities; Announcement of OMB Approval; Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring—Extension" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 16, 2002 (67 FR 46679), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0409. The approval expires on September 30, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: October 11, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–26620 Filed 10–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0302]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Guidance for Industry on Formal Meetings With Sponsors and Applicants for Prescription Drug User Fee Act Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 18, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW. rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Formal Meetings With Sponsors and Applicants for Prescription Drug User Fee Act (PDUFA) Products—(OMB Control Number 0910–0429)—Extension

This information collection approval request is for a FDA guidance on the procedures for formal meetings between FDA and sponsors or applicants regarding the development and review of Prescription Drug User Fee Act (PDUFA) products. The guidance describes procedures for requesting, scheduling, conducting, and documenting such formal meetings. The guidance provides information on how the agency will interpret and apply section 119(a) of the Food and Drug Administration Modernization Act (the Modernization Act), specific PDUFA goals for the management of meetings associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82 (21 CFR 312.47 and 312.82)).

The guidance describes two collections of information: The submission of a meeting request containing certain information and the submission of an information package in advance of the formal meeting. Agency regulations at § 312.47(b)(1)(ii), (b)(1)(iv), and (b)(2) describe information that should be submitted in support of a request for an end-of-phase 2 meeting and a pre-NDA (new drug application) meeting. The information collection provisions of § 312.47 have been approved by OMB (OMB control number 0910–0014). However, the guidance provides additional recommendations for submitting information to FDA in support of a meeting request. As a result, FDA is submitting additional estimates for OMB approval.

A. Request for a Meeting

Under the guidance, a sponsor or applicant interested in meeting with the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER) should submit a meeting request to the appropriate FDA component as an amendment to the underlying application. FDA regulations (§§ 312.23, 314.50, and 601.2 (21 CFR 312.23, 314.50, and 601.2)) state that information provided to the agency as part of an investigational new drug application (IND), NDA, or biological license application (BLA) must be submitted in triplicate and with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs and Form FDA 356h must accompany submissions under NDAs and BLAs. Both forms have valid OMB control numbers as follows: FDA Form 1571, OMB control number 0910–0014, expires September 30, 2002; and FDA Form 356h, OMB control number 0910–0001, expires March 31, 2005, OMB control number 0910–338, which expires March 31, 2003.

In the guidance document, CDER and CBER ask that a request for a formal meeting be submitted as an amendment to the application for the underlying product under the requirements of §§ 312.23, 314.50, and 601.2; therefore, requests should be submitted to the agency in triplicate with the appropriate form attached, either Form FDA 1571 or Form FDA 356h. The agency recommends that a request be submitted in this manner for two reasons: (1) To ensure that each request is kept in the administrative file with the entire underlying application, and (2) to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in the agency's tracking databases enables the agency to monitor progress on the activities attendant to scheduling and holding a formal meeting and to ensure that appropriate steps will be taken in a timely manner.

Under the guidance, the agency requests that sponsors and applicants include in meeting requests certain information about the proposed meeting. Such information includes:

- Information identifying and describing the product;
- The type of meeting being requested;
- A brief statement of the purpose of the meeting;
- A list of objectives and expected outcomes from the meeting;
- A preliminary proposed agenda;
- A draft list of questions to be raised at the meeting;
- A list of individuals who will represent the sponsor or applicant at the meeting;
- A list of agency staff requested to be in attendance;
- The approximate date that the information package will be sent to the agency; and
- Suggested dates and times for the meeting.

This information will be used by the agency to determine the utility of the meeting, to identify agency staff necessary to discuss proposed agenda items, and to schedule the meeting.

B. Information Package

A sponsor or applicant submitting an information package to the agency in advance of a formal meeting should provide summary information relevant to the product and supplementary information pertaining to any issue raised by the sponsor, applicant, or agency. The agency recommends that information packages generally include:

- Identifying information about the underlying product;
- A brief statement of the purpose of the meeting;
- A list of objectives and expected outcomes of the meeting;
- A proposed agenda for the meeting;
- A list of specific questions to be addressed at the meeting;
- A summary of clinical data that will be discussed (as appropriate);
- A summary of preclinical data that will be discussed (as appropriate); and
- Chemistry, manufacturing, and controls information that may be discussed (as appropriate).

The purpose of the information package is to provide agency staff the opportunity to adequately prepare for the meeting, including the review of relevant data concerning the product. Although FDA reviews similar information in the meeting request, the information package should provide updated data that reflect the most current and accurate information available to the sponsor or applicant. The agency finds that reviewing such information is critical to achieving a productive meeting.

The collection of information described in the guidance reflects the current and past practice of sponsors and applicants to submit meeting requests as amendments to INDs, NDAs, and BLAs and to submit background information prior to a scheduled meeting. Agency regulations currently permit such requests and recommend the submission of an information package before an end-of-phase 2 meeting (§ 312.47(b)(1)(ii) and (b)(1)(iv)) and a pre-NDA meeting (§ 312.47(b)(2)).

Description of respondents: A sponsor or applicant for a drug or biological product who requests a formal meeting with the agency regarding the development and review of a PDUFA product.

Burden estimate: Provided in table 1 of this document is an estimate of the annual reporting burden for the submission of meeting requests and information packages under the guidance.

C. Request for a Formal Meeting

Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that approximately 500 sponsors and applicants (respondents) request approximately 1,253 formal meetings with CDER annually and approximately 176 respondents request approximately 388 formal meetings with CBER annually regarding the development and review of a PDUFA product. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information to be submitted with a meeting request in accordance with the guidance, is estimated to be approximately 10 hours. Based on FDA's experience, the agency expects it will take respondents this amount of time to gather and copy brief statements about the product and a description of the purpose and details of the meeting.

D. Information Package

Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that approximately 450 respondents submitted approximately 1,118 information packages to CDER annually and approximately 155 respondents submitted approximately 341 information packages to CBER annually prior to a formal meeting regarding the development and review of a PDUFA product. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information package in accordance with the guidance, is estimated to be approximately 18 hours. Based on FDA's experience, the agency expects it will take respondents this amount of time to gather and copy brief statements about the product, a description of the details for the anticipated meeting, and data and information that generally would already have been compiled for submission to the agency.

As stated earlier, the guidance provides information on how the agency will interpret and apply section 119(a) of the Modernization Act, specific PDUFA goals for the management of meetings associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82). The information collection provisions in § 312.47 concerning end-of-phase 2 meetings and pre-NDA meetings have been approved by OMB (OMB control number 0910–0014). However, the guidance provides additional recommendations for submitting information to FDA in support of a meeting request. As a result, FDA is submitting for OMB approval these additional estimates.

In the **Federal Register** of July 18, 2002 (67 FR 47383), the agency requested comments on the proposed collections of information. The agency received no comments to the notice.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Meeting Requests and Information Packages	Number of Respondents	Number of Responses Per Respondent	Total Annual Responses	Hours per Response	Total Hours
Meeting requests					
CDER	500	2.5	1,250	10	12,500
CBER	176	2.2	387.2	10	3,872
Total					16,372
Information packages					
CDER	450	2.5	1,125	18	20,250
CBER	155	2.2	341	18	6,138
Total					26,388
Meeting requests					16,372
Information packages					26,388
Total					42,760

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 9, 2002.
Margaret M. Dotzel,
Associate Commissioner for Policy.
[FR Doc. 02–26474 Filed 10–17–02; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0315]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Medical Devices: Humanitarian Use Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 18, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices: Humanitarian Use Devices—21 CFR Part 814–Subpart H (OMB Control Number 0910–0332)—Extension

This collection implements the humanitarian use device (HUD) provision under section 520(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(m)) and 21 CFR part 814, subpart H. Under section 520(m) of the act, FDA is authorized to exempt an HUD from the effectiveness requirements of sections 514 and 515 of the act (21 U.S.C. 360d and 360e) provided that the device: (1) Is used to treat or diagnose a disease or condition that affects fewer than 4,000 individuals in the United States; (2) would not be available to a person with such a disease or condition unless the exemption is granted, and there is no comparable device, other than another HUD approved under this exemption, available to treat or diagnose the disease or condition; and (3) the device will not expose patients to an unreasonable or significant risk of illness or injury, and the probable benefit to health from using the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

The information collection will allow FDA to determine whether to: (1) Grant HUD designation of a medical device, (2) exempt a HUD from the effectiveness requirements in sections 514 and 515 of the act provided that the device meets requirements set forth in section 520(m) of the act, and (3) grants marketing approval(s) for the HUD. Failure to collect this information would prevent FDA from making those determinations. Also, this information enables FDA to determine whether the holder of a humanitarian device exemption (HDE) is in compliance with the HDE requirements.

Description of respondents: Businesses or others for-profit.

FDA estimates the burden of this collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per response	Total Hours
814.102	20	1	20	40	800
814.104	15	1	15	320	4,800
814.106	15	4	60	50	3,000
814.108	12	1	12	80	960
814.116(e)(3)	1	1	1	1	1
814.124(a)	5	1	5	1	5
814.124(b)	1	1	1	2	2
814.126(b)(1)	15	1	15	120	1,800
Total					11,368

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
814.126(b)(2)	15	1	15	2	30

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Generally, the information requested from the respondents represents an accounting of information already in the possession of the applicant.

In the **Federal Register** of June 26, 1996 (61 FR 33232), FDA published the final rule for HUDs and based its estimates on comments received to the proposed rule (57 FR 60491, December 21, 1992); industry contact; and internal FDA benchmark factors (such as the number of premarket approval applications processed). The numbers generated in the current estimate as shown in tables 1 and 2 of this document are based upon those prior estimates. This is still a relatively new program, and the data acquired from the past several years has remained fairly stable and consistent.

Dated: October 11, 2002.
Margaret M. Dotzel,
Associate Commissioner for Policy.
[FR Doc. 02–26614 Filed 10–17–02; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0296]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Investigational New Drug Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 18, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Investigational New Drug (IND) Regulations—Part 312 (21 CFR Part 312)—(OMB Control Number 0910–0014)—Extension

FDA is requesting OMB approval for the reporting and recordkeeping requirements contained in the FDA regulation "Investigational New Drug Application" part 312 (21 CFR part 312). This regulation implements provisions of section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) to issue regulations under which the clinical investigation of the safety and effectiveness of unapproved new drugs and biological products can be conducted.

FDA is charged with implementing statutory requirements that drug products marketed in the United States be shown to be safe and effective, properly manufactured, and properly labeled for their intended uses. Section 505(a) of the act provides that a new drug may not be introduced or delivered for introduction into interstate commerce in the United States unless FDA has previously approved a new drug application (NDA). FDA approves an NDA only if the sponsor of the application first demonstrates that the drug is safe and effective for the conditions prescribed, recommended, or suggested in the product's labeling. Proof must consist, in part, of adequate and well controlled studies, including studies in humans, that are conducted by qualified experts. The IND regulations establish reporting requirements that include an initial application as well as amendments to that application, reports on significant revisions of clinical investigation plans, and information on a drug's safety or effectiveness. In addition, the sponsor is required to give FDA an annual summary of the previous year's clinical experience. Submissions are reviewed by medical officers and other agency scientific reviewers assigned responsibility for overseeing the specific study. The IND regulations also contain recordkeeping requirements that pertain to the responsibilities of sponsors and investigators. The detail and complexity of these requirements are dictated by the scientific procedures and human subject safeguards that must be followed in the clinical tests of investigational new drugs.

The IND information collection requirements provide the means by which FDA can: (1) Monitor the safety of ongoing clinical investigations; (2) determine whether the clinical testing of a drug should be authorized; (3) ensure production of reliable data on the metabolism and pharmacological action of the drug in humans; (4) obtain timely information on adverse reactions to the drug; (5) obtain information on side effects associated with increasing doses; (6) obtain information on the drug's effectiveness; (7) ensure the design of well-controlled, scientifically valid studies; (8) obtain other information pertinent to determining whether clinical testing should be continued and information related to the protection of human subjects. Without the information provided by industry in response to the IND regulations, FDA cannot authorize or monitor the clinical investigations which must be conducted before authorizing the sale and general use of new drugs. These reports enable FDA to monitor a study's progress, to assure subject safety, to assure that a study will be conducted ethically, and to increase the likelihood that the sponsor will conduct studies that will be useful in determining whether the drug should be marketed and available for use in medical practice.

There are two forms that are required under part 312:

Form FDA–1571—"Investigational New Drug Application." A person who intends to conduct a clinical investigation submits this form to FDA. It includes: (1) A cover sheet containing background information on the sponsor and investigator; (2) a table of contents; (3) an introductory statement and general investigational plan; (4) an investigator's brochure describing the drug substance; (5) a protocol for each planned study; (6) chemistry, manufacturing, and control information for each investigation; (7) pharmacology and toxicology information for each investigation; and (8) previous human experience with the investigational drug.

Form FDA–1572—"Investigator Statement." Before permitting an investigator to begin participation in an investigation, the sponsor must obtain and record this form. It includes background information on the investigator and the investigation, and a general outline of the planned investigation and the study protocol.

FDA is requesting OMB approval for the following reporting and recordkeeping requirements in part 312:

TABLE 1.—REPORTING REQUIREMENTS

21 CFR Section	Explanations
312.7(d)	Applications for permission to sell an investigational new drug.
312.10(a)	Applications for waiver of requirements under part 312. Estimates for this requirement are included under §§ 312.23 and 312.31.

TABLE 1.—REPORTING REQUIREMENTS—Continued

21 CFR Section	Explanations
312.20(c)	Applications for investigations involving an exception from informed consent under § 50.24 (21 CFR 50.24). Estimates for this requirement are included under § 312.23.
312.23	INDs (content and format).
312.23(a)(1)	Cover sheet FDA–1571.
312.23(a)(2)	Table of contents.
312.23(a)(3)	Investigational plan for each planned study.
312.23(a)(5)	Investigator's brochure.
312.23(a)(6)	Protocols—Phase 1, 2, and 3.
312.23(a)(7)	Chemistry, manufacturing, and control information.
312.23(a)(7)(iv)(*a*),(*b*),(*c*)	A description of the drug substance, a list of all components, and any placebo used.
312.23(a)(7)(iv)(*d*)	Labeling: Copies of labels and labeling to be provided each investigator.
312.23(a)(7)(iv)(*e*)	Environmental impact analysis regarding drug manufacturing and use.
312.23(a)(8)	Pharmacological and toxicology information.
312.23(a)(9)	Previous human experience with the investigational drug.
312.23(a)(10)	Additional information.
312.23(a)(11)	Relevant information.
312.23(f)	Identification of exception from informed consent.
312.30	Protocol amendments.
312.30(a)	New protocol.
312.30(b)	Change in protocol.
312.30(c)	New investigator.
312.30(d)	Content and format.
312.30(e)	Frequency.
312.31	Information amendments.
312.31(b)	Content and format.
	Chemistry, toxicology, or technical information.
312.32	Safety reports.
312.32(c)(1)	Written reports to FDA and to investigators.
312.32(c)(2)	Telephone reports to FDA for fatal or life-threatening experience.
312.32(c)(3)	Format or frequency.
312.32(d)	Follow up submissions.
312.33	Annual reports.
312.33(a)	Individual study information.
312.33(b)	Summary information.
312.33(b)(1)	Adverse experiences.
312.33(b)(2)	Safety report summary.
312.33(b)(3)	List of fatalities and causes of death.
312.33(b)(4)	List of discontinuing subjects.
312.33(b)(5)	Drug action.
312.33(b)(6)	Preclinical studies and findings.
312.33(b)(7)	Significant changes.
312.33(c)	Next year general investigational plan.
312.33(d)	Brochure revision.
312.33(e)	Phase I protocol modifications.
312.33(f)	Foreign marketing developments.
312.35	Treatment use of investigational new drugs.
312.35(a)	Treatment protocol submitted by IND sponsor.
312.35(b)	Treatment IND submitted by licensed practitioner.
312.36	Requests for emergency use of an investigational new drug.
312.38(b) and (c)	Notification of withdrawal of an IND.
312.42(e)	Sponsor requests that a clinical hold be removed and submits a complete response to the issues identified in the clinical hold order.
312.44(c) and (d)	Opportunity for sponsor response to FDA when IND is terminated.
312.45(a) and (b)	Sponsor request for or response to inactive status determination of an IND.
312.47(b)	"End-of-Phase 2" meetings and "Pre-NDA" meetings.
312.53(c)	Investigator information.
	Investigator report (Form FDA–1572) and narrative; Investigator's background information; phase 1 outline of planned investigation; and phase 2 outline of study protocol; financial disclosure information.
312.54(a) and (b)	Sponsor submissions concerning investigations involving an exception from informed consent under § 50.24.
312.55(b)	Sponsor reports to investigators on new observations, especially adverse reactions and safe use. Only "new observations" are estimated under this section; investigator brochures are included under § 312.23.
312.56(b), (c), and (d)	Sponsor monitoring of all clinical investigations, investigators, and drug safety; notification to FDA.
312.58(a)	Sponsor's submission of records to FDA on request.
312.64	Investigator reports to the sponsor.

TABLE 1.—REPORTING REQUIREMENTS—Continued

21 CFR Section	Explanations
312.64(a)	Progress reports.
312.64(b)	Safety reports
312.64(c)	Final reports.
312.64(d)	Financial disclosure reports.
312.66	Investigator reports to Institutional Review Board. Estimates for this requirement are included under § 312.53.
312.70(a)	Investigator disqualification; opportunity to respond to FDA.
312.83	Sponsor submission of treatment protocol. Estimates for this requirement are included under §§ 312.34 and 312.35.
312.85	Sponsors conducting phase 4 studies. Estimates for this requirement are included under § 312.23, and under 21 CFR 314.50, 314.70, and 314.81 in 0910–0001.
312.110(b)	Request to export an investigational drug.
312.120(b) and (c)(2)	Sponsor's submission to FDA for use of foreign clinical study to support an IND.
812.120(c)(3)	Sponsor's report to FDA on findings of independent review committee on foreign clinical study.
312.130(d)	Request for disclosable information for investigations involving an exception from informed consent under § 50.24.

TABLE 2.—RECORDKEEPING REQUIREMENTS

21 CFR Section	Explanations
312.52(a)	Transfer of obligations to a contract research organization.
312.57(a) and (b)	Sponsor recordkeeping.
312.59	Sponsor recordkeeping of disposition of unused supply of drugs. Estimates for this requirement are included under § 312.57.
312.62(a)	Investigator recordkeeping of disposition of drugs.
312.62(b)	Investigator recordkeeping of case histories of individuals.
312.160(a)(3)	Records maintenance: Shipment of drugs for investigational use in laboratory research animals or in vitro tests.
312.160(c)	Shipper records of alternative disposition of unused drugs.

In tables 3 through 5 of this document, the estimates for "number of respondents," "number of responses per respondent," and "total annual responses" were obtained from the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) reports and data management systems for submissions received in 2001 and from other sources familiar with the number of submissions received under part 312. The estimates for "hours per response" were made by CDER and CBER individuals familiar with the burden associated with these reports and from estimates received from the pharmaceutical industry. Although the number of submissions may fluctuate, e.g., due to the addition of respondents not previously required to comply with part 312 or due to the normal variation in annual submissions, this variable is not reflected in the burden totals because the overall rate of submissions are not expected to change significantly over the next few years. In the **Federal Register** of July 22, 2002 (67 FR 47811), the agency requested comments on the proposed collection of information. No comments were received on that request.

TABLE 3.—ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN FOR HUMAN DRUGS[1]

21 CFR Section	Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
312.7(d)	5	1.4	7	24	168
312.23(a) through (f)	1,506	1.2	1,872	1,600	2,995,200
312.30(a) through (e)	1,050	15	15,705	284	4,460,220
312.31(b)	1,037	8	8,375	100	837,500
312.32(c) and (d)	546	22.6	12,366	32	395,712
312.33(a) through (f)	1,608	2.6	4,202	360	1,512,720
312.35(a) and (b)	1	1	1	300	300
312.36	281	1	302	16	4,832
312.38(b) and (c)	466	1.3	608	28	17,024
312.42(e)	63	1.2	78	284	22,152
312.44(c) and (d)	40	1	42	16	672
312.45(a) and (b)	244	1.4	355	12	4,260
312.47(b)	130	1.8	233	160	37,280
312.53(c)	20,428	1	20,428	80	1,634,240
312.54(a) and (b)	1	1	1	48	48
312.55(b)	388	435	168,775	48	8,101,200

TABLE 3.—ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN FOR HUMAN DRUGS[1]—Continued

21 CFR Section	Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
312.56(b), (c), and (d)	2	1	2	80	160
312.58(a)	75	4.2	322	8	2,576
312.64(a) through (d)	11,574	3	34,722	24	833,328
312.70(a)	2	1	2	40	80
312.110(b)	32	8.1	261	75	19,575
312.120(b) and (c)(2)	180	2	361	168	60,548
312.120(c)(3)	2	2	4	40	160
312.130(d)	4	1	4	8	32
312.52(a)	1,104	3.1	3,495	2	6,990
312.57(a) and (b)	1,104	34.5	38,088	100	3,808,800
312.62(a)	9,522	2	19,044	40	761,760
312.62(b)	9,522	10	95,220	40	3,808,800
312.160(a)(3)	301	1.4	425	.5	213
312.160(c)		1.4	425	.5.	213
Total					29,326,763

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 4.—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICS[1]

21 CFR Section	No. of Respondents	No. of Responses per Response	Total Annual Responses	Hours per Responses	Total Hours
312.7(d)	22	1.4	31	24	744
312.10(a)	9	7.9	71	40	2,840
312.23(a) and (f) and 312.120(b), (c)(2), and (c)(3)	376	1.4	535	1,600	856,000
312.30(a) through (e)	724	5.6	4,038	284	1,146,792
312.31(b)	268	9.0	2,399	100	239,900
312.32(c) and (d) and 312.56(c)	334	12.8	4,261	32	136,352
312.33(a) and (f) and 312.56(c)	614	2.6	1,615	350	565,250
312.35(a) and (b)	1	1	1	300	300
312.36	19	4	76	16	1,216
312.38(b)	172	2.1	358	28	10,024
312.38(c)	172	2.1	358	160	57,280
312.44(c) and (d)	0	0	0	0	0
312.45(a) and (b)	70	1.7	120	12	1,440
312.47(b)	60	1.1	68	160	10,880
312.53(c)	322	5.9	1,904	80	152,320
312.54(a) and (b)	0	0	0	0	0
312.55(b)	139	2.4	331	48	15,888
312.56(b) and (d)	12	1.7	20	80	1,600
312.58(a)	19	1	19	8	152
312.64(a) and (d)	5,713	1	5,713	24	137,112
312.110(b)	9	2.4	22	75	1,650
312.130(d)	1	1	1	0.5	0.5
Total					3,337,740.5

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 5.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
312.52(a) recordkeeping	113	1	113	5	565
312.57(a) and (b) recordkeeping	1,432	2	2,859	100	285,900
312.62(a) recordkeeping	5,713	1	5,713	40	228,520
312.62(b) recordkeeping	5,713	12.5	71,355	40	2,854,200
312.160(a) recordkeeping	1,432	7.5	10,708	0.5	5,354
312.160(c) recordkeeping	1,432	2.5	3,573	0.5	1,786.5
Total biologics recordkeeping hours					3,376,325.5
Total biologics burden hours					3,337,740.5
Subtotal					6,714,066
Human Drugs					29,326,763

TABLE 5.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS[1]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
Biologics					6,714,066
Total					36,040,829

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 11, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–26617 Filed 10–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0259]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Telephone Questionnaire Administration to Control Subjects Recruited into FDA Lyme Vaccine Safety Study; A Case-Control Study of HLA Type and T-Cell Reactivity to Recombinant Outer Surface Protein A and Human Leukocyte Function-Associated Antigen-1

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 18, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Telephone Questionnaire Administration to Control Subjects Recruited Into FDA Lyme Vaccine Safety Study entitled "A Case-Control Study of HLA Type and T-Cell Reactivity to Recombinant Outer Surface Protein A and Human Leukocyte Function-Associated Antigen-1"

Section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355), requires that important safety information relating to all human prescription drug products be made available to FDA so that it can take appropriate action to protect the public health when necessary. Section 702 of the act (21 U.S.C. 372) authorizes investigational powers to FDA for enforcement of the act. Under section 519 of the act (U.S.C. 360i), FDA is authorized to require manufacturers to report medical device-related deaths, serious injuries, and malfunctions to FDA and to require user facilities to report device-related deaths directly to FDA and to manufacturers, and to report serious injuries to the manufacturer. Section 522 of the act (21 U.S.C. 360l) authorizes FDA to require manufacturers to conduct post-market surveillance of medical devices. Section 705(b) of the act (21 U.S.C. 375(b)) authorizes FDA to collect and disseminate information regarding medical products or cosmetics in situations involving imminent danger to health or gross deception of the consumer. Section 903(d)(2) of the act (21 U.S.C. 393(d)(2)) authorizes the Commissioner of Food and Drugs (the Commissioner) to implement general powers (including conducting research) to carry out effectively the mission of FDA. These sections of the act enable FDA to enhance consumer protection from risks associated with medical products usage that are not foreseen or apparent during the premarket notification and review process. FDA's regulations governing application for agency approval to market a new drug (21 CFR part 314) and regulations governing biological products (21 CFR part 600) implement these statutory provisions. Currently FDA monitors medical product related postmarket adverse events via both the mandatory and voluntary MedWatch reporting systems using FDA forms 3500 and 3500A (OMB control number 0910–0291) and the vaccine adverse event reporting system (VAERS) using form VAERS–1. Health care providers and manufacturers are required by law (42 U.S.C. 300aa–25) to report adverse events following vaccination listed in the vaccine injury table. Reports for reactions to other vaccines are voluntary and are received from vaccine recipients, their health care providers, and other reporters. FDA is seeking OMB clearance to collect vital information through the use of the proposed survey questionnaire for control subjects participating in this vaccine safety study. The intended respondents are control subjects previously recruited to participate in this study, and they are matched with case subjects reported to VAERS who developed arthritis following Lyme vaccine administration. Informed consent for administration of this questionnaire will have been received before the interview, and the interview is to be conducted at a time specified by the control subject at the time of initial recruitment into this study. Case and control subjects should have similar age, gender, and ethnic backgrounds. Specific genetic and immune factors will be compared between case and control subjects. This is a common, accepted type of epidemiological study called a case-control study. Information collected includes medical and vaccination history, family history, and possible exposures, such as in the workplace, that may play a part in the development of arthritis in some patients. FDA will use the information gathered from the use of this survey questionnaire to ensure appropriate matching of cases and controls in the study and to assess possible factors which may factor in the development of this adverse event. This study was approved by the FDA Research Involving Human Subjects Committee on February 15, 2002 (RIHSC 01–028B). This survey questionnaire is an abbreviated version of one used during enhanced surveillance followup of adverse events following Lyme vaccine administration reported to VAERS. The use of the vital information gathered

using this survey questionnaire will aid FDA in assessing risks that may be associated with vaccine product usage that are not foreseen or apparent during the premarket notification and review process, so the agency may take appropriate public health or regulatory action including dissemination of this information as necessary and appropriate.

In the **Federal Register** of June 27, 2002 (67 FR 43323) FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Survey	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
"A Case-Control Study of HLA Type and T-Cell Reactivity to Recombinant Outer Surface Protein A and Human Leukocyte Function-Associated Antigen-1."	225	1	225	0.5	112.5

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA projects that there will be up to 75 case subjects recruited into this study with 3 control subjects recruited for each case subject, with a total maximum of 225 survey questionnaire respondents. FDA also projects a response time no greater than 0.5 hours per response. This estimate is based on previous results experienced with the instrument during enhanced surveillance followup of adverse events reported to VAERS. Respondents will only be contacted once during conduct of this study for the purposes of collection of vital information using this survey questionnaire.

Dated: October 11, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–26621 Filed 10–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01P–0252]

Determination That Dextroamphetamine Sulfate Tablets, 15 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that dextroamphetamine sulfate 15-milligram (mg) tablets (formerly marketed by Lannett Co., Inc.) were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for dextroamphetamine sulfate 15-mg tablets.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (the 1984 amendments) (Public Law 98–417), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug which was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA's regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under 21 CFR 314.161(a)(1), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

Dextroamphetamine sulfate tablets, 15 mg, are the subject of approved ANDA 85–652 held by Lannett Co., Inc. Dextroamphetamine sulfate tablets are indicated for narcolepsy and for attention deficit disorder with hyperactivity. Lannett Co., Inc.'s, dextroamphetamine sulfate 15-mg tablets are currently listed in the "Discontinued Drug Product List" section of the Orange Book.

On May 17, 2001, Mallinckrodt, Inc., submitted a citizen petition (Docket No. 01P–0252/CP1) to FDA under 21 CFR 10.20 and 10.30. The petition, as amended July 26, 2001, requested that the agency determine that dextroamphetamine sulfate tablets, 15 mg, were not withdrawn from the market for reasons of safety or effectiveness.

The agency has determined that dextroamphetamine sulfate tablets, 15 mg, were not withdrawn from sale for reasons of safety or effectiveness. There are several grounds for FDA's finding. First, there are drug products containing 15-mg dextroamphetamine sulfate being marketed today. Although these drug products are extended release products rather than immediate release products, FDA has concluded that this difference does not affect the product's safety. Second, the petitioner identified no data or other information suggesting that dextroamphetamine sulfate tablets, 15 mg, were withdrawn from sale as a result of safety or effectiveness concerns. Third, Lannett Company, Inc., informed FDA in June 1993 that its entire product line had been recalled following a change in management, and the agency has found no information that would lead it to conclude otherwise. Finally, FDA has also independently evaluated relevant literature and data for possible postmarketing adverse event reports, but has found no information that would indicate this product was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing its records, FDA determines that, for the reasons outlined above, Lannett Co.'s dextroamphetamine sulfate tablets, 15 mg, were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list dextroamphetamine sulfate tablets, 15 mg, in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to dextroamphetamine sulfate tablets, 15 mg, may be approved by the agency.

Dated: October 10, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–26473 Filed 10–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 14, 2002, from 8:30 a.m. to 4 p.m.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: TurnerT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss biologics license application 125061/0, peginterferon alfa–2a copackaged with ribavirin, new drug application 21–511, Hoffmann-La Roche, Inc., proposed as combination therapy for the treatment of chronic hepatitis C.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 6, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 6, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Tara Turner (see *Contact Person*) at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 10, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–26615 Filed 10–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Security and Recalls; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) in cooperation with the Ohio State University, Department of Food Science and Technology is announcing a workshop for the food industry on food security and recalls. Topics for discussion include: Impact of U.S. bioterrorism legislation on the food industry, FDA and U.S. Department of Agriculture food safety and security guidance and procedures, product tampering investigations, tamper evident packaging in the food industry, preparing for and conducting a food recall, and opportunities to improve food security. This 1-day workshop is intended to target food manufacturers, repackers, and importers; and will include both industry and FDA perspectives on the prevention and handling of food security problems.

Date and Time: The public workshop will be held on Tuesday, November 19, 2002, from 8 a.m. to 4:15 p.m.

Location: The public workshop will be held at the University Plaza Hotel, 3110 Olentangy River Rd., Columbus, OH.

Contact: Marie Falcone, Industry and Small Business Representative, Food and Drug Administration, rm. 900, U.S. Customhouse, 200 Chestnut St., Philadelphia, PA 19106, 215–597–2120, ext. 4003, FAX 215–597–5798, e-mail: mfalcone@ora.fda.gov.

For registration information contact: Julie Townsend, 110 Parker Food Science and Technology Building, Ohio State University, 2015 Fyffe Rd., Columbus, OH 43210, e-mail: townsend.57@osu.edu, telephone 614–292–6281, FAX 614–292–2859. Send registration information (including name, title, firm name, address, telephone, and fax number) and the $90.00 registration fee made payable to Ohio State University to the Registrar Julie Townsend (address above). Electronic registration for this workshop is available at http://fst.osu.edu/recall.htm. The Registrar will also accept payment by Visa or Mastercard. Attendees are responsible for their own accommodations.

To make reservations at the University Plaza Hotel at the FDA Food

Security and Recalls Workshop rate of $75.00 (single) or $90.00 (double), contact the hotel at 877–677–5292 or 614–267–7461 before October 28, 2002. The workshop registration fee will be used to offset the expenses of hosting the conference, including meals, refreshments, meeting rooms, and materials. Space is limited, therefore interested parties are encouraged to register early. Limited onsite registration may be available. Please arrive early to ensure prompt registration.

If you need special accommodations due to a disability, please contact Marie Falcone at least 7 days in advance of the workshop.

SUPPLEMENTARY INFORMATION: The Food Security and Recalls Workshop helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health by preventing and countering terrorism related to the nation's food supply. FDA has made providing security guidance and information to the food industry a high priority.

The workshop will help to implement the objectives of section 406 of the FDA Modernization Act (21 U.S.C. 393(b) and (f)) and the FDA Plan for Statutory Compliance, which includes working more closely with stakeholders and ensuring access to needed scientific and technical expertise. The workshop will also further the goals of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) by providing outreach activities directed to small businesses.

Dated: October 10, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–26618 Filed 10–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Peripheral and Central Nervous System Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 18 and 19, 2002, from 8 a.m. to 5 p.m.

Location: Holiday Inn, The Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Sandra Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or e-mail Tituss@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code 12543. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 18, 2002, the committee will discuss the role of brain imaging as an outcome measure in phase 3 trials of putative therapeutic drugs for Alzheimer's disease; the discussions will not focus on specific drugs or on specific applications to the agency. The agency is considering whether brain imaging modalities can be utilized as surrogate markers; that is, as primary outcomes in definitive clinical trials to measure drug effect in lieu of clinical outcomes. The committee will specifically discuss the following issues in reference to each imaging modality:

1. How is the surrogate imaging modality best validated?
2. If one uses an imaging modality to support a disease-modifying effect claim, how does one establish that such an effect occurs?
3. Has any surrogate imaging modality been validated at the present time?
4. Even if no surrogate imaging modality has currently been validated, is it appropriate to use one or more such modalities as primary or ancillary outcome measures of efficacy in phase 3 clinical trials?

On November 19, 2002, the committee will consider a supplemental new drug application (NDA) 20–306 for F–18 fluorodeoxyglucose (FDG) positron emission tomography (PET) imaging proposed to diagnose and/or identify progression of Alzheimer's disease and other forms of dementia. This application is based on published multi-center controlled clinical trials, additional information provided by some of the literature authors, and other supportive literature. Considerations will include the relevance of current practice, knowledge of Alzheimer's disease process, and clinical trial design to establish clinical usefulness of F–18 FDG PET in Alzheimer's disease. (Downstate Medical Center, Peoria, IL, is the sponsor of the new drug application. The Academy of Molecular Imaging provided the literature references and the literature summary that formed the basis of the supplemental NDA.)

The background material will become available no later than the day before the meeting and will be posted under the Peripheral and Central Nervous Systems Drugs Advisory Committee docket site at: http://www.fda.gov/ohrms/dockets/ac/acmenu.htm. (Click on the year 2002 and scroll down to the Peripheral and Central Nervous Systems Drugs Advisory Committee meetings.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 6, 2002. Oral presentations from the public will be scheduled between approximately 11 a.m. and noon each day. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 6, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Sandra Titus at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 10, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–26613 Filed 10–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration FDA). The meeting will be open to the public.

Name of Committee: Psychopharmacologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 4, 2002, from 8 a.m. to 4:30 p.m.

Location: Holiday Inn, the Ballroom, Two Montgomery Village Ave., Gaithersburg, MD, 301–948–8900.

Contact Person: Sandra Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail Tituss@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12544. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will consider supplemental new drug application S–047, Clozaril, (clozapine, Novartis Pharmaceuticals Corp.) proposed for the treatment of suicidality in patients with schizophrenia or schizoaffective disorder. The purpose of this meeting is to discuss the findings and regulatory implications for the InterSePT Study, a study that compared clozapine and olanzapine on the outcome of emergent suicidal behavior and thinking in schizophrenic and schizoaffective patients who were judged to be at risk of suicide. Background material for this meeting will be posted no later than 24 hours before the meeting at the Psychopharmacologic Drugs Advisory Committee Docket site: http://www.fda.gov/ohrms/dockets/ac/acmenu.htm. (Click on the year 2002 and scroll down to Psychopharmacologic Drugs Advisory Committee.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 24, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. each day. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 24, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Sandra Titus at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 10, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–26616 Filed 10–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0350]

Draft Guidance for Industry on Handling and Retention of Bioavailability and Bioequivalence Testing Samples; Availability; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until December 17, 2002, the comment period for the draft guidance for industry entitled "Handling and Retention of Bioavailability and Bioequivalence Testing Samples." This draft guidance is intended to clarify how to distribute test articles and reference standards to testing facilities, how to randomly select reserve samples, and how to retain reserve samples. FDA published a notice of availability of the draft guidance in the **Federal Register** of August 21, 2002 (67 FR 54219). The agency is taking this action in response to a request for an extension of the comment period and to allow interested parties additional time to submit comments.

DATES: Submit written or electronic comments on the draft guidance by December 17, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed, adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Martin Yau, Center for Drug Evaluation and Research (HFD–45), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5458.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 21, 2002 (67 FR 54219), FDA announced the availability of a draft guidance for industry entitled "Handling and Retention of Bioavailability and Bioequivalence Testing Samples." The draft guidance had a 30-day comment period. The draft guidance clarifies the responsibilities of the involved parties for retention of samples used in bioavailability and bioequivalence studies. It includes recommendations for sampling techniques and responsibilities in various study settings.

In a letter dated September 20, 2002, FDA received a request from an interested party to extend the comment period. The party indicated that issues of importance to the pharmaceutical industry had been raised that warrant further discussion before filing comments. In response to this request, and to provide all interested persons additional time to comment on this draft guidance, FDA is reopening the comment period for 60 days.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/ohrms/dockets/default.htm or http://www.fda.gov/cder/guidance/index.htm.

Dated: October 10, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–26475 Filed 10–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0428]

Draft "Guidance for Industry: An Acceptable Circular of Information for the Use of Human Blood and Blood Components;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Guidance for Industry: An Acceptable Circular of Information for the Use of Human Blood and Blood Components" dated October 2002. The draft guidance document recognizes the "Circular of Information for the Use of Human Blood and Blood Components" (the circular) dated July 2002 as acceptable for use by manufacturers of blood and blood components intended for transfusion. The circular will assist those manufacturers in complying with the labeling requirements under FDA regulations.

DATES: Submit written or electronic comments on the draft guidance to ensure their adequate consideration in preparation of the final document by December 17, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance and the Circular to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The documents may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled "Guidance for Industry: An Acceptable Circular of Information for the Use of Human Blood and Blood Components" dated October 2002. The draft guidance document recognizes that the circular dated July 2002 meets the labeling requirements in § 606.122 (21 CFR 606.122), and therefore is acceptable for use by manufacturers of blood and blood components intended for transfusion that are subject to U.S. statutes and regulations.

The requirements under § 606.122 specify that an instruction circular must be available for distribution with blood and blood components intended for transfusion, and that the information in the instruction circular must include adequate instructions for use. The circular will assist manufacturers of blood and blood components intended for transfusion in complying with the labeling requirements under § 606.122. The circular was prepared jointly by the American Association of Blood Banks, America's Blood Centers and the American National Red Cross. A copy of the circular is in the draft guidance document.

This draft guidance document is being issued in accordance with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance document represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

This draft document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this draft guidance document. Submit written or electronic comments to ensure adequate consideration in preparation of the final document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance document and the circular at either http://www.fda.gov/cber/guidelines.htm or http://www.fda.gov/ohrms/dockets/default.htm. The circular may also be obtained at www.aabb.org.

Dated: October 10, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–26612 Filed 10–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0005]

Guidance for Industry on Labeling Over-the-Counter Human Drug Products—Updating Labeling in Reference Listed Drugs and Abbreviated New Drug Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Labeling OTC Human Drug Products—Updating Labeling in RLDs and ANDAs." The guidance is intended to assist manufacturers of over-the-counter (OTC) reference listed drugs (RLDs) and manufacturers, packers, and distributors of OTC drug products marketed under abbreviated new drug applications (ANDAs) to implement the agency's regulation on standardized content and format requirements for the labeling of these products.

DATES: The guidance for industry is effective October 18, 2002. Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the guidance to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow or Cazemiro R. Martin, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Labeling OTC Human Drug Products—Updating Labeling in RLDs and ANDAs." This is one of several guidances the agency is developing to help manufacturers, packers, and distributors implement the final regulation establishing standardized content and format requirements for the labeling of all OTC drug products. When finalized, these guidances will supersede all other statements, feedback, and correspondence provided by the agency on these matters since the issuance of the final regulation.

In the **Federal Register** of March 17, 1999 (64 FR 13254), FDA published a final regulation establishing standardized content and format requirements for the labeling of OTC drug products. The regulation is codified at § 201.66 (21 CFR 201.66). It is intended to standardize labeling for all OTC drug products so consumers can easily read and understand OTC drug product labeling and use these products safely and effectively. The regulation requires manufacturers to present OTC drug product labeling information in a prescribed order and format. This new format will require revision of all existing labeling.

Following issuance of the final regulation, the agency received several inquiries from manufacturers of generic OTC drug products seeking guidance on whether they should convert products to the new labeling format before the manufacturers of the applicable innovator (or RLD) products revise their labeling. To address those inquiries, in the **Federal Register** of February 22, 2001 (66 FR 11174), FDA published a notice announcing the availability of a draft guidance entitled "Labeling Over-the-Counter Human Drug Products; Updating Labeling in ANDAs," which included draft recommendations about how manufacturers of OTC drug products marketed under ANDAs and manufacturers of the RLD products could implement the agency's new regulations for the labeling of OTC drug products. The draft guidance contained a series of labeling examples that manufacturers could use when revising their product labeling to the new format. The notice invited interested persons to submit comments on the draft guidance by April 23, 2001.

FDA received several comments regarding the February 22, 2001, draft guidance and, in response, the agency has made some clarifying changes in the final version of the guidance. Specifically, the agency is providing guidance on its general implementation expectations, the use of agency recommended labeling examples (manufacturers of RLDs who use these do not need agency preapproval), submission of new labeling in an annual report or preapproval supplement, and deferral requests. The agency is also announcing that it intends to exercise its enforcement discretion by giving manufacturers of generic OTC drug products a grace period to comply with the new format requirements of § 201.66. This grace period commenced on May 16, 2002, for most OTC ANDAs and shall continue until the agency posts on the Internet the approved, updated labeling for an ANDA holder's applicable RLD. At that time, the ANDA holder should revise its labeling. (See the agency's May 2000 guidance for industry entitled "Revising ANDA Labeling Following Revision of the RLD Labeling.")

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on updating labeling in ANDAs consistent with the new standardized labeling content and format required for OTC drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such an approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments on the guidance to the Dockets Management Branch (see **ADDRESSES**). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cder/guidance/index.htm and http://www.fda.gov/ohrms/dockets/default.htm.

Dated: October 10, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–26622 Filed 10–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Health Professions and Nurse Education Special Emphasis Panel; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Health Professions and Nurse Education Special Emphasis Panel meetings. Part of the meeting will be open to the public. The rest of the meeting will be closed to the public. The closing is in accordance with the provision set forth in section 552(b)(c)(6), Title 5 U.S.C., and the Determination by the Associate Administrator for Management and Program Support, Health Resources and Services Administration, pursuant to Public Law 92–463.

Name: Dental Public Health.

Date and Time: November 18–21, 2002.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: November 18, 2002, 8 a.m. to 10 a.m.
Closed on: November 18, 2002, 10 a.m. to 6 p.m., November 19–21, 2002, 8 a.m. to 6 p.m.

Name: Residency Training in Primary Care.
Date and Time: December 2–5, 2002.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: December 2, 2002, 8 a.m. to 10 a.m.
Closed on: December 2, 2002, 10 a.m. to 6 p.m., December 3–5, 2002, 8 a.m. to 6 p.m.

Name: Residency Training in Primary Care.
Date and Time: December 9–12, 2002.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: December 9, 2002, 8 a.m. to 10 a.m.
Closed on: December 9, 2002, 10 a.m. to 6 p.m., December 10–12, 2002, 8 a.m. to 6 p.m.

Name: Residency Training in General and Pediatric Dentistry.
Date and Time: December 16–19, 2002.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: December 16, 2002, 8 a.m. to 10 a.m.
Closed on: December 16, 2002, 10 a.m. to 6 p.m., December 17–19, 2002, 8 a.m. to 6 p.m.

Name: Predoctoral Training in Primary Care.
Date and Time: January 13–16, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: January 13, 2003, 8 a.m. to 10 a.m.
Closed on: January 13, 2003, 10 a.m. to 6 p.m., January 14–16, 2003, 8 a.m. to 6 p.m.

Name: Faculty Development Training in Primary Care.
Date and Time: January 21–24, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: January 21, 2003, 8 a.m. to 10 a.m.
Closed on: January 21, 2003, 10 a.m. to 6 p.m., January 22–24, 2003, 8 a.m. to 6 p.m.

Name: Physician Assistant Training in Primary Care.
Date and Time: January 27–30, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: January 27, 2003, 8 a.m. to 10 a.m.
Closed on: January 27, 2003, 10 a.m. to 6 p.m., January 28–30, 2003, 8 a.m. to 6 p.m.

Name: Nursing Workforce Diversity.
Date and Time: February 3–6, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: February 3, 2003, 8 a.m. to 10 a.m.
Closed on: February 3, 2003, 10 a.m. to 6 p.m., February 4–6, 2003, 8 a.m. to 6 p.m.

Name: Model State-Supported Area Health Education Centers.
Date and Time: February 10–13, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: February 10, 2003, 8 a.m. to 10 a.m.
Closed on: February 10, 2003, 10 a.m. to 6 p.m., February 11–13, 2003, 8 a.m. to 6 p.m.

Name: Basic/Core Area Health Education Centers.
Date and Time: February 10–13, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: February 10, 2003, 8 a.m. to 10 a.m.
Closed on: February 10, 2003, 10 a.m. to 6 p.m., February 11–13, 2003, 8 a.m. to 6 p.m.

Name: Geriatric Faculty Fellowships.
Date and Time: February 10–13, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: February 10, 2003, 8 a.m. to 10 a.m.
Closed on: February 10, 2003, 10 a.m. to 6 p.m., February 11–13, 2003, 8 a.m. to 6 p.m.

Name: Academic Administrative Units in Primary Care.
Date and Time: February 24–27, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: February 24, 2003, 8 a.m. to 10 a.m.
Closed on: February 24, 2003, 10 a.m. to 6 p.m., February 25–27, 2003, 8 a.m. to 6 p.m.

Name: Quentin N. Burdick Program for Rural Interdisciplinary Training.
Date and Time: February 24–28, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: February 24, 2003, 8 a.m. to 10 a.m.
Closed on: February 24, 2003, 10 a.m. to 6 p.m., February 25–28, 2003, 8 a.m. to 6 p.m.

Name: Advanced Education Nursing.
Date and Time: March 3–6, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: March 3, 2003, 8 a.m. to 10 a.m.
Closed on: March 3, 2003, 10 a.m. to 6 p.m., March 4–6, 2003, 8 a.m. to 6 p.m.

Name: Regional Workforce Centers.
Date and Time: March 3–6, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: March 3, 2003, 8 a.m. to 10 a.m.
Closed on: March 3, 2003, 10 a.m. to 6 p.m., March 4–6, 2003, 8 a.m. to 6 p.m.

Name: Advanced Education Nursing.
Date and Time: March 10–13, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: March 10, 2003, 8 a.m. to 10 a.m.
Closed on: March 10, 2003, 10 a.m. to 6 p.m., March 11–13, 2003, 8 a.m. to 6 p.m.

Name: Basic Nurse Education and Practice Grants Program, Peer Review Group I.
Date and Time: March 17–20, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: March 17, 2003, 8 a.m. to 10 a.m.
Closed on: March 17, 2003, 10 a.m. to 6 p.m., March 18–20, 2003, 8 a.m. to 6 p.m.

Name: Geriatric Education Centers.
Date and Time: March 24–27, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: March 24, 2003, 8 a.m. to 10 a.m.
Closed on: March 24, 2003, 10 a.m. to 6 p.m., March 25–27, 2003, 8 a.m. to 6 p.m.

Name: Basic Nurse Education and Practice Grants Program, Peer Review Group II.
Date and Time: March 31–April 3, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: March 31, 2003, 8 a.m. to 10 a.m.
Closed on: March 31, 2003, 10 a.m. to 6 p.m., April 1–3, 2003, 8 a.m. to 6 p.m.

Name: Allied Health Projects.
Date and Time: April 7–11, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road Avenue, Silver Spring, MD 20910.
Open on: April 7, 2003, 8 a.m. to 10 a.m.
Closed on: April 7, 2003, 10 a.m. to 6 p.m., April 8–11, 2002, 8 a.m. to 6 p.m.

Name: Centers of Excellence.
Date and Time: April 7–11, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road Avenue, Silver Spring, MD 20910.
Open on: April 7, 2003, 8 a.m. to 10 a.m.
Closed on: April 7, 2003, 10 a.m. to 6 p.m., April 8–11, 2002, 8 a.m. to 6 p.m.

Name: Health Careers Opportunity Program Peer Review Group.
Date and Time: May 5–9, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: May 5, 2003, 8 a.m. to 10 a.m.
Closed on: May 5, 2003, 10 a.m. to 6 p.m., May 6–9, 2003, 8 a.m. to 6 p.m.

Name: Geriatric Academic Career Awards.
Date and Time: May 12–15, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: May 12, 2003, 8 a.m. to 10 a.m.
Closed on: May 12, 2003, 10 a.m. to 6 p.m., May 13–15, 2003, 8 a.m. to 6 p.m.

Name: Public Health Training Centers.
Date and Time: May 19–22, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: May 19, 2003, 8 a.m. to 10 a.m.
Closed on: May 19, 2003, 10 a.m. to 6 p.m., May 20–22, 2003, 8 a.m. to 6 p.m.

Name: Chiropractic Demonstration Project.
Date and Time: June 9–12, 2003.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: June 9, 2003, 8 a.m. to 10 a.m.
Closed on: June 9, 2003, 10 a.m. to 6 p.m., June 10–12, 2003, 8 a.m. to 6 p.m.

Purpose: The Health Professions and Nurse Education Special Emphasis Panel shall advise the Associate Administrator for Health Professions on the technical merit of grants to improve the training, distribution, utilization, and quality of personnel required to staff the Nation's health care delivery system.

Agenda: The open portion of each meeting from 8 a.m. to approximately 10 a.m. will cover introductions, opening remarks, housekeeping details, and an orientation to the review process. The meetings will be closed at approximately 10:00 a.m. on the first day of each meeting until adjournment for the review of grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

For Further Information Contact: Anyone wishing to obtain a roster of members or other relevant information should write or contact Ms. Wilma Johnson, Acting Deputy Director, Office of Peer Review, Bureau of Health Professions, Parklawn Building, Room 8C–23, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301–443–6339.

Dated: October 11, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–26623 Filed 10–17–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–60]

Notice of Submission of Proposed Information Collection to OMB: Survey of Neighborhood Networks Centers Directors

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 18, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Survey of Neighborhood Networks Centers Directors.

OMB Approval Number: 2502–XXXX.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: A Survey of Neighborhood Networks Centers will identify successful program areas, and target specific areas for improvement.

Respondents: Business or other for-profit, not-for profit institutions.

Frequency of Submission: Annually.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	800		1		0.9		733

Total Estimated Burden Hours: 733.

Status: New collection.

Authority; Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 10, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–26485 Filed 10–17–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Property Suitable as Facilities To Assist the Homeless

[Docket No. FR–4730–N–42]

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW. Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line a 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days

from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable /unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed a unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: October 10, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Suitable/Available Properties

Buildings (by State)

Arkansas

Jamestown Antenna Tower Site.
Jamestown Co: Independence AR 7250–
Landholding Agency: GSA.
Property Number: 54200240001.
Status: Surplus.
Comment: Radio repeater tower on 1.05 acres, subject to existing easements.
GSA Number: 7–D–AR–0562.

Ash Flat Comm. Site.
Gillette Co: AR 72055–
Landholding Agency: GSA.
Property Number: 54200240002.
Status: Surplus.
Comment: Radio repeater tower on 2.06 acres, subject to existing easements.
GSA Number: 7–D–AR–0565.

Maryland

9 Housing Units.
U.S. Naval Station.
Annapolis Co: Anne Arundel MD 21402–
Landholding Agency: Navy.
Property Number: 77200240005.
Status: Excess.
Comment: Size varies, brick veneer wood frame on slab, off-site use only.

New York

Army Reserve Center.
205 Oak Street.
Batavia Co: NY 14020–
Landholding Agency: GSA.
Property Number: 54200240004.
Status: Excess.
Comment: 9595 sq. ft., presence of asbestos/lead paint, most recent use—admin/storage, proximity of wetlands.
GSA Number: 1–D–NY–890.

Fed. Bldg. #2.
850 Third Ave.
Brooklyn Co: NY 11232–
Landholding Agency: GSA.
Property Number: 54200240005.
Status: Surplus.
Comment: 140,000 sq. ft., needs major rehab, presence of asbestos, historic property, heavy industrial area, presence of hazardous materials and toxic releases, abutting Federal prison.
GSA Number: 1–G–NY–0872.

Suitable/Unavailable Properties

Buildings (by State)

Tennessee

Courthouse/Fed. Bldg.
101 W. Summer Street.
Greeneville Co: Greene TN 37743–
Landholding Agency: GSA.
Property Number: 54200210027.
Status: Excess.
Comment: 17,241 sq. ft. office bldg. w/25 parking spaces, presence of asbestos, subject to Historic Preservation Covenants, published in error on 9/13/02 as available.
GSA Number: 4–G–TN–0652.

Virginia

Federal Building.
1426 N. Augusta St.
Staunton Co: Augusta VA 24401–2401.
Landholding Agency: GSA.
Property Number: 54200210022.
Status: Surplus.
Comment: 4084 sq. ft. office building, published in error on 9/13/02 as available.
GSA Number: 4–G–VA–0728.

Land (by State)

North Carolina

4.939 acres.
Staton Road.
Greenville Co: Pitt NC.
Landholding Agency: GSA.
Property Number: 54200210002.
Status: Surplus.
Comment: Undeveloped land, published in error on 9/13/02 as available.
GSA Number: 4–D–NC–738.

Unsuitable Properties

Buildings (by State)

California

Bldg. 02606.
Naval Air Weapons Station.
China Lake Co: CA 93555–6100.
Landholding Agency: Navy.
Property Number: 77200240001.
Status: Excess.
Reasons: Secured Area, Extensive deterioration.

Florida

Bldg. 148.
Naval Air Station.
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy.
Property Number: 77200240002.
Status: Unutilized.
Reasons: Secured Area, Extensive deterioration.

Bldg. 161.
Naval Air Station.
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy.
Property Number: 77200240003.
Status: Unutilized.
Reasons: Secured Area, Extensive deterioration.

Bldg. 944.
Naval Air Station.
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy.
Property Number: 77200240004.
Status: Unutilized.
Reasons: Secured Area, Extensive deterioration.

Virginia

30 Housing Units.
Marine Corps Base.
Quantico Co: VA 22134–
Landholding Agency: Navy.
Property Number: 77200240006.
Status: Excess.
Reason: Extensive deterioration.

Bldgs. 3028, 3037.
Marine Corps Base.
Quantico Co: VA 22134–
Landholding Agency: Navy.
Property Number: 77200240007.
Status: Excess.
Reason: Extensive deterioration.

Bldgs. 3035, 3040, 3205.
Marine Corps Base.
Quantico Co: VA 22134–
Landholding Agency: Navy.
Property Number: 77200240008.
Status: Excess.
Reason: Extensive deterioration.

Bldg. 60.
Naval Surface Warfare Center.
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy.
Property Number: 77200240009.
Status: Unutilized.
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 1216.
Naval Surface Warfare Center.
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy.
Property Number: 77200240010.
Status: Unutilized.
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 1354.
Naval Surface Warfare Center.
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy.
Property Number: 77200240011.
Status: Unutilized.
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Land (by State)

Arkansas

Recreation Area.
Sandy Beach.
Camden Co: Ouachita AR 71701–
Landholding Agency: GSA.
Property Number: 54200240003.
Status: Surplus.
Reason: Floodway.
GSA Number: 7–D–AR–0566.

[FR Doc. 02–26344 Filed 10–16–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Quality Guidelines Pursuant to Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: A notice published by the Office of Management and Budget (OMB) in the **Federal Register** directed Federal agencies to issue and implement guidelines to ensure and maximize the quality, objectivity, utility, and integrity of Government information disseminated to the public. We, the U.S. Fish and Wildlife Service (FWS), are issuing these final Information Quality Guidelines to comply with the OMB requirement.

DATES: These guidelines are effective October 1, 2002.

ADDRESSES: To obtain a copy of the Fish and Wildlife Service Quality Guidelines please contact the Science Advisor, U.S. Fish and Wildlife Service, Office of the Assistant Director—External Affairs, 1849 C Streets, NW., Mail Stop 301, Washington, DC 20240–0001, or by calling (202) 208–6541, or via e-mail to *scienceadvisor@fws.gov*. In addition, these guidelines are available on the Service website (*www.fws.gov*).

FOR FURTHER INFORMATION CONTACT: Science Advisor, (202) 208–6541.

SUPPLEMENTARY INFORMATION: A notice published by the Office of Management and Budget (OMB) in the **Federal Register**, dated January 3, 2002 (67 FR 369), and re-issued February 22, 2002 (67 FR 8451), directed Federal agencies to issue and implement guidelines to ensure and maximize the quality, objectivity, utility, and integrity of Government information disseminated to the public. On May 24, 2002, the Department of the Interior published a **Federal Register** notice providing the web site where the proposed Departmental Information Quality Guidelines may be reviewed. On August 5, 2002, the Department of the Interior published a Notice of Availability in the **Federal Register** of the proposed bureau specific information quality guidelines for public comment. Comments were received from a variety of sources and were considered in the preparation of this guidance. We are issuing these final Information Quality Guidelines in order to comply with Section 515 and the OMB direction.

FWS, which includes Headquarters and 7 Regional Offices, disseminates a wide variety of information to the public regarding the nation's fish and wildlife resources, habitat conservation and endangered species programs. The disseminated information includes organizational and management information, programs and services products, research and statistical reports, policy and regulatory information, and general reference material.

Dated: October 4, 2002.

Marshall P. Jones, Jr.,

Deputy Director.

[FR Doc. 02–26484 Filed 10–17–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–02–1320–EL–P; NDM 91647]

Notice of Competative Coal Lease Offering by Sealed Bid—NDM 91647—The Falkirk Mining Company

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Competitive Coal Lease Offering by Sealed Bid—NDM 91647.

SUMMARY: Notice is hereby given that the coal resources in the lands described below in McLean County, North Dakota, will be offered for competitive lease by sealed bid. This offering is being made as a result of an application filed by The Falkirk Mining Company, in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437; 30 U.S.C. 181 *et seq.*)

The lease sale will be held at 1 p.m., Tuesday, December 10, 2002, in the Montana State Office Side B Main Conference Room, at the Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101. Bids for the tract will be in the form of sealed bids. Sealed bids *clearly marked* "Sealed Bid for NDM 91647 Coal Sale—Not to be opened before 1 p.m., Tuesday, December 10, 2002" must be submitted on or before 12 noon, December 10, 2002, to the cashier, Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Post Office Box 36800, Billings, Montana 59107–6800.

An Environmental Assessment of the proposed coal development and related requirements for consultation, public involvement, and hearings have been completed in accordance with 43 CFR 3425. The results of these activities were a finding of no significant environmental impact. The coal resource to be offered consists of all recoverable reserves in the following-described lands:

T. 146 N., R. 82 W., 5th P. M.
Sec. 34: NW¼SW¼.

Containing 40.00 acres, McLean County, North Dakota.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value of the coal resource. The minimum bid

for the tract is $100 per acre, or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand-delivered. The cashier will issue a receipt for each hand-delivered bid. Bids received after 12 noon, Tuesday, December 10, 2002, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

If identical high bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed-bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof; and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8.0 percent of the value of coal mined by underground methods. The value of the coal shall be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Casefile NDM 91647 is also available for public inspection at the Montana State Office.

FOR FURTHER INFORMATION CONTACT: Connie Schaff, Land Law Examiner, or Rebecca Good, Coal Coordinator, at (406) 896–5060 or (406) 896–5080, respectively.

Dated: September 16, 2002.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 02–26552 Filed 10–17–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–02–1610–JP–064B]

Notice of Availability of a Draft Amendment and Associated Environmental Assessment to the California Desert Conservation Area Plan for Off-Road Vehicle Trail (Route of Travel) Designations in the Western Colorado Desert (WECO) Portion of Imperial County, CA

AGENCY: Department of Interior, Bureau of Land Management, California Desert District.

ACTION: Notice of availability of a draft amendment and associated environmental assessment to the California Desert Conservation Area Plan for off-road vehicle trail (route of travel) designations in the Western Colorado Desert (WECO) portion of Imperial County, California.

DATES: Written comments on the Draft Amendment and the Environmental Assessment will be accepted if postmarked within 45 calendar days from the date this Notice of Availability is published in the **Federal Register** by the Bureau of Land Management. Instructions for submitting comments are included below under Supplemental Information.

SUMMARY: The draft plan amendment will establish or revise designations of trails (routes of travel) for off-road vehicles in accordance with Part 43 Code of Federal Regulations Subpart 8342. Trails (routes of travel) for inclusion in the State of California's Discovery Trail System and the route to be used as a segment of the Juan Bautista de Anza National Historic Trail within the Western Colorado Desert (WECO) project area will be identified. The proposals will pertain to public lands addressed by the California Desert Conservation Area Plan in the WECO portion of Imperial County that lie west of the Union Pacific Railroad and the Chocolate Mountain Gunnery Range (excluding the Imperial Sand Dunes and the western portion of the California Desert Conservation Area in San Diego County, California).

ADDRESSES: Copies of the document are being mailed to those who requested it. The document is available for review on line at *http://www.ca.blm.gov/elcentro* and is also available in a hard copy or a CD rom format at the following addresses and telephone numbers: Bureau of Land Management, El Centro Field Office, 1661 South 4th Street, El Centro, CA 92243, (760) 337–4400.

FOR FURTHER INFORMATION: Arnold Schoeck, Bureau of Land Management, 1661 South 4th Street, El Centro, CA 92243; (760) 337–4441.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management published in the **Federal Register** on March 25, 2002, the Notice of Intent to prepare an Environmental Assessment and to make a Plan Amendment to the California Desert Conservation Area Plan by making off-road vehicle trail (route of travel) designations in the Western Colorado Desert portion of Imperial County. The public scoping period for the project began March 25, 2002 and the comment period until has been expanded until October 7, 2002.

The publication of the Environmental Assessment will start a 45-day public comment period for the proposed designations and alternative plan amendments described in the environmental assessment. Public meetings and their locations for the public to make comments at will be announced in the local media and on the El Centro Field Office's Web site (*http://www.ca.blm.gov/elcentro*).

The public is invited to submit comments on the alternatives to the plan amendment and the Environmental Assessment. Written comments should be sent to the above address and must be post marked by December 2, 2002. E-mail comments may be sent to *caecweco@ca.blm.gov* but must be received by the close of business on December 2, 2002. Delays caused by the Internet, servers, and other related computer problems will not be cause for a time extension.

Comments, including names and addresses of respondents, will be available for public review at the El Centro Field Office during normal working hours (7:45 a.m. to 4:30 p.m., except holidays), and may be published as part of the Decision Record or other related documents. Individuals may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this promptly at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

After the public comment period ends, (1) a Notice of the Proposed Decision, (2) the effective date for the proposed decision, and (3) the beginning of a 30 day protest period will be published. The procedures for protesting a decision will be described at that time.

Greg Thomsen,

Field Manager, El Centro Field Office.

[FR Doc. 02–25949 Filed 10–17–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Extend Concession Contract for Services at Olympic, Big Bend, Mammoth Cave, and Isle Royale National Parks and Blue Ridge Parkway

SUMMARY: Pursuant to the National Park Service Concessions Management Improvement Act of 1998, notice is hereby given that the National Park Service intends to extend the concession contract authorizing continued food and beverage, general merchandise, automobile service, transportation, marina, gift shop, and overnight accommodations at Olympic, Big Bend, Mammoth Cave, and Isle Royale National Parks and Blue Ridge parkway. The extension will be for a term of not more than 3 years. This extension is necessary to avoid interruption of public services while the National Park Service evaluates the long-term needs of each park. This extension will be for a 3-year period beginning September 21, 2002. This notice is pursuant to 36 CFR Part 51, § 51.24(a).

SUPPLEMENTARY INFORMATION: The current concession contract for these parks expired on September 20, 2002. This contract is unique in that when it was executed in 1982, all parks were covered under one authorization. The extension will allow for individual park contracts to be developed, a prospectus to be released and a new, long-term contract awarded.

Information about this notice can be sought from: National Park Service, Concession Program Manager, 1849 C Street, NW., (2410), Washington, DC 20240 or call 202/513–7156.

Dated: September 23, 2002.

Richard G. Ring,

Associate Director for Park Operations and Education.

[FR Doc. 02–26603 Filed 10–17–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Bureau of Land Management

[NM–02–930–1610–DS–005G]

Notice of Availability of Draft Environmental Impact Statement

AGENCY: National Park Service, Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of Draft Environmental Impact Statement (EIS) for El Camino Real de Tierra Adentro National Historic Trail, and proposed amendments to the Taos, Mimbres and White Sands Resource Management Plans, New Mexico.

SUMMARY: The National Park Service and the Bureau of Land Management announce the availability of the *Draft El Camino Real de Tierra Adentro National Historic Trail Comprehensive Management Plan (CMP) and Environmental Impact Statement (EIS).* The plan provides alternative visions for managing the trail between El Paso, Texas, and San Juan Pueblo, New Mexico. This plan also addresses Resource Management Plan (RMP) Amendments to the BLM's Taos, White Sands, and Mimbres RMP's related to protection of scenic values.

Added to the National Trails System in October 2000, El Camino Real de Tierra Adentro (Royal Road of the Interior) National Historic Trail (NHT) recognizes the primary route between the colonial Spanish capital of Mexico City and the Spanish provincial capitals at San Juan de Los Caballeros (1598–1600), San Gabriel (1600–1609) and then Santa Fe (1610–1821). The NHT, as designated, extends 404 miles from El Paso, Texas, to San Juan Pueblo, New Mexico.

This draft CMP/EIS focuses on the NHT's purpose and significance, issues and concerns related to current conditions along the NHT, resource protection, visitor experience and use, and long-term administrative and management objectives. Elements of the proposed plan have been developed in cooperation with federal, state, and local agencies as well as nonprofit and non-governmental organizations—the entities that will form the core of partnerships with the NHT. Community meetings were held in Alcalde, Española, Santa Fe, Albuquerque, Socorro, Truth or Consequences, Sunland Park and Las Cruces, New Mexico, as well as in El Paso, Texas. Meetings were held with several North American Indian Pueblos.

The plan provides a range of alternatives for management direction for the NHT, addressing management of BLM-administered lands within the Las Cruces, Socorro, Albuquerque and Taos Field Offices as well as opportunities on other federal, tribal, state, local or private lands. Issues addressed in the draft plan include three statutory requirements (recreation, interpretation and protection of historic values), as well as integration with tribal and community plans, visitor services, education, scenic values and international interests. The following alternatives are discussed in the draft plan:

Alternative A—This is the no-action alternative, which serves as the baseline for evaluating the changes and impacts of the other action alternatives. Under Alternative A, federal agencies would continue to manage their lands (through which the trail passes) based upon their existing management plans. There would be no overall administration or coordination of the NHT. There would be no effective coordination of the activities of an NHT association, private landowners, and federal, state, and local agencies. There would be no directed cooperation that would result in resource protection. Current visitor and recreational activities commemorating or interpreting the trail would continue.

Alternative B—Collaborative efforts by NHT administration and partners would be directed toward the protection of trail resources (historical, cultural, and natural) on both private and public land. Active stewardship and certification priorities would protect threatened trail resources. A coordinated visitor experience along El Camino Real de Tierra Adentro NHT would be provided and structured to promote public understanding and appreciation of NHT-related resources. An auto tour route would be established. Existing recreational opportunities that are not trail-related, but provided by private landowners and various agencies and organizations would continue.

Alternative C (preferred alternative)—An ambitious program of resource preservation and visitor use would be implemented under this alternative. Trail administration and partners would work cooperatively to provide coordinated programming and activities that integrate themes, resources, and landscapes at certified sites on private land or protected sites on public land. Resources that best illustrate the trail's significance would be identified and protected on both public and private land (high-potential sites and segments). Certification priorities would be placed

upon sites and segments supporting interpretive and educational programming and protecting significant resources. An auto tour route would be established. A bi-national approach with Mexico would promote activities such as interpretation, events, and signage. The BLM's Taos, White Sands and Mimbres Resource Management Plans would be amended to protect important scenic values.

DATES: Comments must be received within 90 days from the date that the Environmental Protection Agency publishes a Notice of Availability and Filing of the Draft EIS in the **Federal Register**.

ADDRESSES: National Park Service, Long Distance Trails Office, 2968 Rodeo Park Drive West, Santa Fe, New Mexico; Bureau of Land Management New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico. Correspondence should be addressed to: Team Leaders, El Camino Real de Tierra Adentro National Historic Trail, P.O. Box 728, Santa Fe, New Mexico 87504–0728.

FOR FURTHER INFORMATION CONTACT: Team Leaders, Harry Myers and Terry Humphrey at the address listed above.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the draft CMP/EIS may be obtained from the address/contacts above. Copies are available for inspection at the Long Distance Trails Office, 2968 Rodeo Park Drive West, Santa Fe, New Mexico. The document is also readily available on CD–ROM in Adobe Acrobat format that can be read by computer regardless of operating system. Copies can be requested from the team leaders at the address or phone numbers listed in the paragraph above. This same document is available at *www.elcaminoreal.org*. A series of public open houses will be held to discuss the draft plan and answer your questions. Meetings will be announced through press releases and the news media at least 15 days in advance.

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Team Leaders, Harry Myers and Terry Humphrey at: El Camino Real de Tierra Adentro National Historic Trail, P.O. Box 728, Santa Fe, New Mexico 87504–0728. You may also comment via the Internet to *www.elcaminoreal.org*. Please include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (505) 988–6717 or (505) 751–4718. Finally, you may hand-deliver comments to the Long Distance Trails Office, 2968 Rodeo Park Drive West, Santa Fe, New Mexico. Our practice is to make comments, including names and home addresses of respondent's, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: July 12, 2002.

Richard A. Whitley,

Acting State Director, BLM—New Mexico, Oklahoma, Texas.

Karen P. Wade,

Director, NPS, Intermountain Region.

[FR Doc. 02–26055 Filed 10–17–02; 8:45 am]

BILLING CODE 4310–84–P; 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Jean Lafitte National Historical Park and Preserve; Notice of Task Force Meeting

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. App.1, section 10(a)(2), that a meeting of the Chalmette Battlefield Task Force Committee will be held at 6 p.m. at the following location and date:

DATES: Wednesday, November 20, 2002.

ADDRESSES: The Council Chambers Meeting Room at the St. Bernard Parish Government Complex, 8245 W. Judge Perez Drive in Chalmette, LA 70042.

FOR FURTHER INFORMATION CONTACT: Ms. Geraldine Smith, Superintendent, Jean Lafitte National Historical Park and Preserve, 419 Decatur Street, New Orleans, LA 70130, (504) 589–3882, extension 137 or 108.

SUPPLEMENTARY INFORMATION: The purpose of the Chalmette Battlefield Task Force Committee is to advise the Secretary of the Interior on suggested improvements at the Chalmette Battlefield site within Jean Lafitte National Historical Park and Preserve. The members of the Task Force are as follows: Ms. Elizabeth McDougall, Ms. Faith Moran, Mr. Anthony A. Fernandez, Jr., Mr. Drew Heaphy, Mr. Alvin W. Guillot, Mrs. George W. Davis, Mr. Eric Cager, Mr. Paul V. Perez, Captain Bonnie Pepper Cook, Mr. Michael L. Fraering, Colonel John F. Pugh, Jr., and Geraldine Smith.

The matters to be discussed at this meeting include the purpose of the committee, background and history of the area, appointment of a chairperson and scheduling future meetings. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the committee a written statement concerning the matters to be discussed. Written statements may also be submitted to the superintendent at the address above. Minutes of the meeting will be available at park headquarters for public inspection at 419 Decatur Street, New Orleans, Louisiana for public inspection approximately 4 weeks after the meeting and on the park Web site at *http://www.nps.gov/jela.htm*.

Dated: September 26, 2002.

Jerre Brumbelow,

Acting Regional Director, Southeast Region.

[FR Doc. 02–26600 Filed 10–17–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice.

This notice corrects the notice regarding the Native American Graves Protection and Repatriation Review Committee meeting in Seattle, WA, November 8-10, 2002.

In the Federal Register of Thursday, July 18, 2002, FR Doc. 02-18050, page 47397, paragraph number 1 is corrected by substituting the following paragraph: The agenda for the meeting will include Federal agency compliance; regulations on Section 10.11, Disposition of Culturally Unidentifiable Human Remains; and a dispute between the Ho-Chunk Nation and The Field Museum.

Dated: September 17, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–26601 Filed 10–17–02; 8:45 am]

BILLING CODE 4310–70–S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–481]

Certain Display Controllers With Upscaling Functionality and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 17, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Genesis Microchip (Delaware), Inc. of Alviso, California. A letter supplementing the complaint was filed on October 4, 2002. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain display controllers with upscaling functionality and products containing same by reason of infringement of claims 1–3, 5, 6, 9–13, 16–23, 25, 26, 30–36, 38, 39, 41, 42, 44, 45, and 47–55 of U.S. Letters Patent 5,739,867. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's ADD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

FOR FURTHER INFORMATION CONTACT: James B. Coughlan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2221.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2002).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on October 10, 2002, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain display controllers with upscaling functionality or products containing same by reason of infringement of one or more of claims 1–3, 5, 6, 9–13, 16–23, 25, 26, 30–36, 38, 39, 41, 42, 44, 45, and 47–55 of U.S. Letters Patent 5,739,867, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Genesis Microchip (Delaware), Inc., 2150 Gold Street, Alviso, California 94002.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Media Reality Technologies, Inc., 767 North Mary Avenue, Sunnyvale, California 94086.

SmartASIC, Inc., 525 Race Street, San Jose, California 95126.

Trumpion Microelectronics, Inc., 11F, No. 17 Chien-Teh, Rd., Sec. 1, Taipei, Taiwan.

(c) James B. Coughlan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–L, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation.

Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

Issued: October 11, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–26481 Filed 10–17–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

Agency Information Collection Activities: Proposed Extension of Currently Approved Collection; Comments Requested

ACTION: 60-day notice of information collection under review; extension of currently approved collection; immigration practitioner appeal form from decision of adjudicating official, Board of Immigration Appeals.

The United States Department of Justice, Executive Office for Immigration Review, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until December 17, 2002. This

process is in accordance with 5 CFR 1320.10.

If you have any comments, especially on the estimated public burden or associated response time, or suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Charles Adkins-Blanch, General Counsel, Office of the General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of Currently Approved Collection.

(2) *Title of the Form/Collection:* Immigration Practitioner Appeal Form from Decision of Adjudicating Official, Board of Immigration Appeals.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–45. Executive Office for Immigration Review.

(4) *Affected public who will be asked to respond, as well as a brief abstract: Primary:* Individuals. Other: None. The information on this form will be sued by immigration practitioners to appeal an adverse decision of an Adjudicating Official in a disciplinary proceeding to the Board of Immigration Appeals, Executive Office for Immigration Review.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 50 respondents who will each require an average of 1 hour to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection is estimated to be 50 hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Washington, DC 20004.

Dated: October 15, 2002.

Robert B. Briggs,

Clearance Officer, Department of Justice.

[FR Doc. 02–26557 Filed 10–17–02; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

Agency Information Collective Activities: Proposed Extension of Currently Approved Collection; Comments Requested

ACTION: 60-day notice of information collection under review; extension of currently approved collection; notice of entry of appearance as attorney or representative before the immigration court.

The United States Department of Justice, Executive Office for Immigration Review, has submitted the following information collection to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60-days until December 17, 2002. This process is in accordance with 5 CFR 1320.10.

If you have any comments, especially on the estimated public burden or associated response time, or suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Charles Adkins-Blanch, General Counsel, Office of the General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court.

(3) *The agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–28. Executive Office for Immigration Review.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. Other: Business or other for-profit; not-for-profit institutions. The information collected on EOIR–28 will be used (i) to determine whether or not a responding attorney or representative meets the regulatory criteria necessary to be authorized to represent aliens before the Immigration Court, (ii) to provide the responding represented party an opportunity to expressly consent to such representation and to release of Executive Office for Immigration Review records to the representative, and (iii) to notify the Immigration and Naturalization Service and the Executive Office for Immigration Review of such representation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 77,000 respondents who will each require 6 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden for this information collection is estimated to be 7,700 hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Washington, DC 20004.

Dated: October 15, 2002.

Robert B. Briggs,

Clearance Officer, Department of Justice.

[FR Doc. 02–26558 Filed 10–17–02; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

Agency Information Collection Activities: Proposed Extension of Currently Approved Collection; Comments Requested

ACTION: 60-day notice of information collection under review; extension of a currently approved collection; notice of entry of appearance as attorney or representative before the Board of Immigration Appeals.

The United States Department of Justice, Executive Office for Immigration Review, has submitted the following information collection to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until December 17, 2002. This process is in accordance with 5 CFR 1320.10.

If you have any comments, especially on the estimated public burden or associated response time, or suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Charles Adkins-Blanch, General Counsel, Office of the General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041.

Written comments and suggestions from the public and affected agencies concerning the proposed extension of a currently approved information collection instrument are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of Currently Approved Collection.

(2) *Title of the Form/Collection:* Immigration Practitioner Complaint Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–44. Executive Office for Immigration Review.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. Other: Not-for-profit institutions, federal government. The information on this form will be used to determine whether or not, assuming the truth of the factual allegations raised therein, the Office of the General Counsel, Executive Office for Immigration Review, should conduct a preliminary disciplinary inquiry, request additional information from the responding complainant, refer the matter to a state bar disciplinary authority or other law enforcement agency, or take no further action.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average responded to respond:* There are approximately 500 respondents who will each require 2 hours to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden for this information collection is estimated to be 1,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Washington, DC 20004.

Dated: October 15, 2002.

Robert B. Briggs,

Clearance Officer, Department of Justice.

[FR Doc. 02–26559 Filed 10–17–02; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

Agency Information Collection Activities: Proposed Extension of Currently Approved Collection; Comments Requested

ACTION: 60-day notice of information collection under review; extension of a currently approved collection; notice of entry of appearance as attorney or representative before the Board of Immigration Appeals.

The United States Department of Justice, Executive Office for Immigration Review, has submitted the following information collection to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until December 17, 2002. This process is in accordance with 5 CFR 1320.10.

If you have any comments, especially on the estimated public burden or associated response time, or suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Charles Adkins-Blanch, General Counsel, Office of the General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041.

Written comments and suggestions from the public and affected agencies concerning the proposed extension of a currently approved information collection instrument are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals.

(3) *Agency from number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–27. Executive Office for Immigration Review.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: Individuals. Other: Business or other for-profit; not-for-profit institutions. The information collected on EOIR–27 will be used (i) to determine whether or not a responding attorney or representative meets the regulatory criteria necessary to be authorized to represent aliens before the Board of Immigration Appeals, (ii) to provide the represented party an opportunity to expressly consent to such representation and to release of Executive Office for Immigration Review records to the representative, and (iii) to notify the Immigration and Naturalization Service and the Executive Office for Immigration Review of such representation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 26,000 respondents who will each Require 6 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual burden for this information collection is estimated to be 2,600 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Washington, DC 20004.

Dated: October 15, 2002.

Robert B. Briggs,

Clearance Officer, Department of Justice.

[FR Doc. 02–26560 Filed 10–17–02; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree; Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

In accordance with 28 CFR 50.7, notice is hereby given that on September 27, 2002, a consent decree was lodged with the United States District Court for the District of New Hampshire in two cases, *United States* v. *AVX Corporation, et al.*, Civ. No. 02–436–M, and *State of New Hampshire* v. *AVX Corporation, et al.*, Civ. No. 02–437–JD. In its complaint, the United States, on behalf of U.S. Environmental Protection Agency, asserted claims against two *de minimis* generator defendants under sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9606 and 9607(a), seeking recovery of response costs incurred and to be incurred in connection with the Fletcher Paint Works and Storage Facility Superfund Site, in Milford, New Hampshire ("Site"). In its complaint, the State of New Hampshire asserted claims against the same defendants under Sections 106 and 107(a) of CERCLA and under New Hampshire RSA 147–B:10 seeking recovery of response costs incurred and to be incurred in connection with the Site. The proposed consent decree will resolve the United States' and the State's claims against two defendants. The *de minimis* consent decree requires the two defendants to pay $2,198,052 to the United States, which will be deposited into a special account to pay for response activities at the Site, and to pay $4,191 to the State.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed *de minimis* consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *AVX Corporation, et al.*, DOJ Ref. No. 90–11–3–684/2.

The proposed *de minimis* consent decree may be examined at the office of the United States Attorney for the District of New Hampshire, 55 Pleasant Street, Rm. 352, Concord, NH 03301; and the Region I office of the U.S. Environmental Protection Agency, One Congress Street, Suite 1100, Boston, MA 02114. A copy of the proposed *de minimis* consent decree may be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy please enclose a check in the amount of $4.75 payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 02–26503 Filed 10–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree; Under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq.

Notice is hereby given that on October 4, 2002, a proposed partial consent decree ("consent decree") in *United States* vs. *Brighton Township*, Civil Action No. 94–CV–75289–DT, was lodged with the United States District Curt for the Eastern District of Michigan.

In this action the United States sought recovery, under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), of response costs incurred in connection with a property formerly operated as a dump or disposal area on Corlett Road in Brighton Township, Livingston County, Michigan ("Site"). The consent decree resolves the United States' claims against Brighton Township, which is alleged to be liable as a result of having operated the Site. The consent decree recovers $595,000 in response costs relating to the site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, PO Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Brighton Township*, D.J. Ref. No. 905–1–1–5073.

The proposed consent decree may be examined at the Office of the United States Attorney, 211 West Fort Street, Suite 2300, Detroit, Michigan. A copy of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097. In requesting a copy, please enclose a check payable to the "U.S. Treasury", in the amount of $4.00 (25 cents per page reproduction cost). The check should refer to *United States* v. *Brighton Township*, D.J. Ref. No. 90–5–1–1–5073.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–26505 Filed 10–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on September 24, 2002, a proposed consent decree in *United States and City of Philadelphia* v. *Brotech Corporation*, Civ. Action No. 00–2428, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States alleged the Brotech Corporation had violated the Clean Air Act, 42 U.S.C. 7401 *et seq.* by discharging pollutants into the air at its chemical processing facility at 3620 "G" Street, Philadelphia, PA. The proposed decree will require defendants to pay a civil penalty of $400,000.00, plus interest, divided equally between the United States and the City of Philadelphia. The consent decree will also require the defendant to comply with all federal, state, and local air pollution control regulations.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Chief, Civil Division, United States Attorney's Office, Eastern District of Pennsylvania, and transmitted by one of the following methods: (1) Via U.S. Mail or overnight mail to United States Attorney's Office, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106 and/or (2) by facsimile to (215) 861–8647. Each communication should reference *United States and City of Philadelphia* v. *Brotech Corporation*, CA No. 00–2428, DOJ #90–5–2–1–06899.

The proposed consent decree may be examined at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106 and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. When requesting a copy, please enclose a check in the amount of $22.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Department of Justice.

[FR Doc. 02–26506 Filed 10–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that two Consent Decrees in *United States* v. *CryoChem, Inc., C.S. Garber & Sons, Inc., Elizabeth H. Garber, Executrix of the Estate of Claude W. Garber, Russell E. Garber, Jr. and Randall J. Garber, Co-Executors of the Estate of Russell E. Garber, Sr., and Joan E. Miller, Executrix for the Estate of Kathryn Reigner* ("Settling Defendants"), Civil Action No. 02–CV–746, were lodged with the United States District Court for the Eastern District of Pennsylvania on September 26, 2002. These Consent Decrees resolve claims of the United States' against the Settling Defendants under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607(a). The Consent Decrees require the Settling Defendants to make payments in reimbursement of response costs for the CryoChem Superfund Site located in Berks County, Pennsylvania. One of the Consent Decrees is between the United States and C.S. Garber & Sons, Inc. and the Estates and requires C.S. Garber and Sons, Inc. to pay a total of $240,000, plus interest, over a period of four years. This Consent Decree also requires each of the Estates to pay $167,000 in reimbursement of response costs, for a total of $501,000. The second Consent Decree requires CryoChem, Inc. to pay $200,000 in reimbursement of response costs. The total amount to be paid by all parties under both Consent Decrees is $941,000.

The Department of Justice will accept written comments on the proposed Consent Decrees for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and refer to *United States* v. *CryoChem, Inc., C.S. Garber & Sons, Inc., Elizabeth H. Garber, Executrix of the Estate of Claude W. Garber, Russell E. Garber, Jr. and Randall J. Garber, Co-Executors of the Estate of Russell E. Garber, Sr., and Joan E. Miller, Executrix for the Estate of Kathryn Reigner*, DOJ #90–11–3–06815.

Copies of the proposed Consent Decrees may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Philadelphia, PA 19106 and at EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. Copies of the proposed Consent Decrees may be obtained by mail from the U.S. Department of Justice, Consent Decree Library, P.O. Box 7611, Washington, DC. 20044–7611. When requesting a copy of the proposed Consent Decrees, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the "U.S. Treasury" in the amount of $7.00 for the Consent Decree between the United States and CryoChem, Inc. and in the amount of $8.25 for the Consent Decree between the United States and C.S. Garber & Sons, Inc., Elizabeth H. Garber, Executrix of the Estate of Claude W. Garber, Russell E. Garber, Jr. and Randall J. Garber, Co-Executors of the Estate of Russell E. Garber, Sr., and Joan E. Miller, Executrix for the Estate of Kathryn Reigner. Please specify which Consent Decree you are seeking and reference *United States* v. *CryoChem, Inc., C.S. Garber & Sons, Inc., Elizabeth H. Garber, Executrix of the Estate of Claude W. Garber, Russell E. Garber, Jr., and Randall J. Garber, Co-Executors of the Estate of Russell E. Garber, Sr., and Joan E. Miller, Executrix for the Estate of Kathryn Reigner*, DOJ #901–11–3–06815.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 02–26508 Filed 10–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree; Under the Clean Water Act, the Oil Pollution Act of 1990 and State of California Law

Notice is hereby given that on September 23, 2002, a proposed consent

decree in *United States and State of California* v. *ExxonMobil Oil Corp.*, Civil Action No. 2:02cv07408 MMM (MANx), was lodged with the United States District Court for the Central District of California.

The consent decree resolves claims against defendant ExxonMobil Oil Corporation arising from a spill from an oil pipeline in Southern California, operated by Mobil Oil Corporation, the predecessor of defendant ExxonMobil Oil Corporation, the predecessor of defendant ExxonMobil Oil Corporation ("ExxonMobil"). The proposed complaint seeks recovery by the United States of natural resource damages and civil penalties under Section 311 of the CWA, 33 U.S.C. 1321, and Sections 1002 and 1006 of OPA, 33 U.S.C. 2702, 2706, and recovery by the State of California of natural resource damages, civil penalties, and other damages under State of California law. The proposed consent decree resolves those claims in consideration of a total payment by ExxonMobil of $4.7 million, consisting of $3.45 million in natural resource damages, damage assessment costs, and planning and oversight costs; $600,000 in federal civil penalties, and $650,000 in state civil penalties and damages.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States and State of California* v. *ExxonMobil Oil Corp.*, D.J. Ref. No. 90–5–1–1–06971.

The consent decree may be examined at the offices of U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $7.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–26504 Filed 10–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Modification of Consent Decree Under the Clean Water Act

Pursuant to 28 CFR 50.7, notice is hereby given that, on September 26, 2002, a proposed Stipulation modifying the Amended Consent Decree in *United States* v. *Government of the Virgin Islands*, Civil Action No. 84–104, was lodged with the United States District Court for the District of the Virgin Islands.

On May 10, 1985 and July 14, 1987, the Government of the Virgin Islands ("Virgin Islands") applied to the Environmental Protection Agency ("EPA"), pursuant to section 301(h) of the Clean Water Act, 33 U.S.C. 1311(h), for a waiver of secondary treatment requirements at the St. Croix Wastewater Treatment Plant ("St. Croix WWTP") and the Charlotte Amalie Wastewater Treatment Plant ("Charlotte Amalie WWTP"), respectively. On January 19, 1996, the United States District court for the District of the Virgin Islands approved an Amended Consent Decree in an action that had been filed by the United States against the Virgin Islands, on March 21, 1984, alleging violations of certain provisions of the Clean Water Act at eight of its wastewater treatment plants. The Amended Decree provided, *inter alia*, that if EPA denied either of the 301(h) waiver applications, the Virgin Islands would be required to achieve secondary treatment at the facility within three years of the effective date of EPA's final denial of the application.

On June 7, 2001, before EPA had taken action with respect to the 301(h) applications, the Virgin Islands withdrew the applications.

The United States, pursuant to this Stipulation, agrees to give the Virgin Islands additional time to complete the construction of new or upgraded facilities that will meet the secondary treatment requirements of the Clean Water Act or any more stringent requirements that may be set forth in the Territorial Pollutant Discharge Elimination System permits for the St. Croix WWTP and the Charlotte Amalie WWTP. Pursuant to the Stipulation, the Virgin Islands has until November 30, 2005 to complete construction and place into operation new or upgraded treatment facilities with respect to the St. Croix WWTP and until November 30, 2006 to complete construction and place into operation new or upgraded treatment facilities with respect to the Charlotte Amalie WWTP. Pursuant to the Stipulation, the Virgin Islands agrees to use the services of a private contractor to design, construct, and operate (for at least 20 years) the new or upgraded facilities. The Virgin Islands has also agreed to deposit into a separate account, on an annual basis, the funds needed to design, construct, and operate (for two years) the facilities during the succeeding twelve-month period.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Stipulation. Comments should be addressed to Donald G. Frankel, Trial attorney, Department of Justice, One Gateway Center, Suite 616, Newton Massachusetts 02458 and should refer to *United States* v. *Government of the Virgin Islands*, D.J. Ref. 90–5–1–1–1911A.

The Stipulation may be examined at the Office of the United States Attorney, District of the Virgin Islands, Federal Building and United States Courthouse, 550 Veterans Drive, Suite 260, Charlotte Amalie, St. Thomas Virgin Islands 00802 (contact Joycelyn Hewlett at (340) 774–5757). A copy of the Stipulation may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $5 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–26502 Filed 10–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Notice is hereby given that a proposed consent decree in *United States and State of New Jersey* v. *Dominick Manzo, et al.*, C.A. Nos. 97–289 and 99–3937 (MLC) (Consolidated Actions), was lodged with the United States District Court for the District of New Jersey on September 25, 2002 (the "Consent Decree"). The Consent Decree will resolve the liability of 10 third-party generator defendants to the United States, on behalf of the United States Environmental Protection Agency, under sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9606 and 9607(a), for the recovery of costs incurred by the United States in connection with the Imperial Oil Co., Inc./Champion Chemical Site ("Imperial Site"), located at Orchard Place in Marlboro Township, Monmouth County, New Jersey, and at the Burnt Fly Bog Superfund Site ("Burnt Fly Bog Site"), located on Tyler Lane in Marlboro Township, Monmouth County, New Jersey. The Consent Decree requires 10 generators of hazardous substance to pay $222,953, which will be deposited in equal shares of $111,476.50 into two special accounts to pay for response activities at the Sites.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States and State of New Jersey* v. *Dominick Manzo, et al.*, DOJ Ref. #90–11–2–488A.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of New Jersey, 402 East State Street, Room 430, Trenton, New Jersey, and the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866 (contact Assistant Regional Counsel Kedari Reddy). A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC. 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $8.50 (25 cents per page reproduction costs) for the Consent Decree, payable to the U.S. Treasury.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–26507 Filed 10–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Department Policy, 28 CFR 50.7, and with section 122(d) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622(d), notice is hereby given that a proposed amendment to a partial consent decree in *United States* v. *Niagara Frontier Transportation Auth.*, Case No. 96–CV–0219C(Sc) (W.D.N.Y.) was lodged with the United States District Court for the Western District of New York on October 2, 2002. This proposed amendment to a consent decree will resolve contribution claims against the United States pursuant to section 113 of CERCLA for payment of response costs incurred at or in connection with the release or threatened release of hazardous substances at the Bern Metal Superfund Site and the Universal Iron and Metal Superfund Site in Buffalo, New York.

The proposed amendment to the consent decree requires the United States to pay $75,000 towards the total response costs.

The Department of Justice will accept written comments relating to this proposed amendment to a consent decree for thirty (30) days from the date of publication of this notice. Please address comments to Eileen T. McDonough, Environmental Defense Section, U.S. Department of Justice, Post Office Box 23986, L'Enfant Plaza Station, Washington, DC 20026–3986, and refer to this case name and civil action number.

The proposed amendment to the consent decree may be examined at the Clerk's Office, United States District Court for the Western District of New York. In addition, the proposed amendment to the consent decree may be viewed on the World Wide Web at *http://www.usdoj.gov/enrd/enrd-home.html.*

Scott Schachter,

Environmental Defense Section.

[FR Doc. 02–26510 Filed 10–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Remi Bourdeau*, Civil Action No. 1:02:CV:250 (D. Vt.), was lodged with the United States District Court for the District of Vermont on October 1, 2002. This proposed Consent Decree concerns a complaint filed by the United States of America against Remi Bourdeau, pursuant to section 301 of the Clean Water Act, 33 U.S.C. 1311(a), to obtain injunctive relief from and impose civil penalties against the Defendant for causing fill and/or dredged material to be discharged into waters of the United States at a site located in Sheldon, Vermont in Franklin County.

The proposed Consent Decree requires Remi Bourdeau to pay a $15,000 civil penalty, complete restoration work in the wetland, and implement a monitoring plan to periodically assess the success of the restoration work. In addition, the consent decree prohibits the defendant from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the Clean Water Act and its implementing regulations.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Joseph Perella, Assistant U.S. Attorney, P.O. Box 570, Burlington, VT 05402–0570 and refer to this case name and civil action number.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Vermont at 11 Elmwood Ave., Burlington, Vermont. In addition, the proposed Consent Decree may be viewed on the World Wide Web at *http://www.usdoj.gov/enrd/enrd-home.html.*

Joseph Perella,

Assistant United States Attorney, United States Attorney's Office, Burlington, Vermont.

[FR Doc. 02–26509 Filed 10–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 26, 2002, AccuStandard, Inc., 125 Market Street, New Haven, Connecticut 06513, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Fenethylline (1503)	I
Mecloqualone (2572)	I
Alpha-Ethyltryptamine (7249)	I

Drug	Schedule
3,4,5-Trimethoxyamphetamine (7390).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401).	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl)pyrrolidine (PCPY) (7458).	I
1-[1-(2-Thieynyl) cyclohexyl]pyrrolidine TCPY (7473).	I
N-Ethyl-3-piperidyl benzilate (7482).	I
N-Methyl-3-piperidyl benzilate (7484).	I
Acetyldihydrocodeine (9051)	I
Benzylmorphine (9052)	I
Desomorphine (9055)	I
Codeine methylbromide (9070)	I
Difenoxin (9168)	I
Hydromorphinol (9301)	I
Methyldihydromorphine (9304)	I
Morphine methylbromide (9305)	I
Morphine methylsulfonate (9306)	I
Nicomorphine (9312)	I
Drotebanol (9335)	I
Allylprodine (9602)	I
Alphamethadol (9605)	I
Betaprodine (9611)	I
Clonitazene (9612)	I
Dextromoramide (9613)	I
Diampromide (9615)	I
Diethylthiambutene (9616)	I
Dimenoxadol (9617)	I
Dimepheptadol (9618)	I
Dimethylthiambutene (9619)	I
Dioxaphetyl butyrate (9621)	I
Dipipanone (9622)	I
Ethylmethylthiambutene (9623)	I
Furethidine (9626)	I
Hydromorphinol (9627)	I
Ketobemidone (9628)	I
Morpheridine (9632)	I
Noracymethadol (9633)	I
Normethadone (9635)	I
Norpipanone (9636)	I
Phenadoxnone (9637)	I
Phenampromide (9638)	I
Phenoperidine (9641)	I
Pintramide (9642)	I
Proheptazine (9643)	I
Properidine (9644)	I
Propiram (9649)	I
1-Methyl-4-phenyl-4-propionoxypiperidine (9661).	I
1-(Phenylethyl)-4-phenyl-4-acetoxypiperidine (9663).	I
Tilidine (9750)	I
Para-Fluorofentanyl (9812)	I
3-Methylfentanyl (9813)	I
Alpha-methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815).	I
Beta-hydroxyfentanyl (9830)	I
Beta-hydroxy-3-methylfentanyl (9831).	I
Alpha-Methylthiofentanyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thiofentanyl (9835)	I
Nabilone (7379)	II
1-Phenylcylohexylamine (7460)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Isomethadone (9226)	II
Metopon (9260)	II
Piminodine (9730)	II
Racemorphan (9733)	II
Bezitramide (9800)	II

The firm plans to manufacture small quantities of the listed controlled substances to make reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537. Attention: DEA Federal Register Representative (CCR), and must be filed no later than (60 days from publication).

Dated: August 28, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–26607 Filed 10–17–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Douglas L. Geiger, M.D.; Denial of Application

On September 24, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Douglas L. Geiger, M.D. (Dr. Geiger), proposing to deny his pending application for DEA Certificate of Registration as a practitioner, and deny any pending modifications of such application pursuant to 21 U.S.C. 823(f). As a basis for the denial of his pending application, the Order to Show Cause alleged that Dr. Geiger is not currently authorized to handled controlled substances in the State of Georgia. 21 U.S.C. 824(a)(3). The order also notified Dr. Geiger that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Geiger at a location in Riverdale, Georgia. A second copy of the Order to Show Cause was sent by certified mail to Dr. Geiger at a location in College Park, Georgia. DEA received a signed receipt indicating that the Order to Show Cause was received on behalf of Dr. Geiger at that location. Subsequently, and at Dr. Geiger's request, a copy of the Order to Show Cause was sent to him by facsimile on October 9, 2001. DEA received a printed report indicating that the show cause order had been successfully transmitted to the number provided by Dr. Geiger. DEA has not received a request for hearing or any other reply from Dr. Geiger or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Geiger is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Geiger was issued a temporary medical license #0142 on October 6, 1994. That license was extended until December 8, 1994, and subsequently extended on separate occasions until its expiration on October 5, 1995. A second temporary medical license was issued to Dr. Geiger on December 21, 1998, and on February 4, 1999, that license also expired. According to a August 6, 2001 letter contained within the investigative file from the Executive Director of the Composite State Board of Medical Examiners, Dr. Geiger has never been issued a permanent license to practice medicine in the State of Georgia.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Carla Johnson, M.D., 66 FR 52939 (2001); Graham Travers Schuler, M.D., 65 FR 50570 (2000); Demetris A. Green, M.D., 61 FR 60,728 (1996).

DEA has also consistently held that a DEA registration may not be maintained if the applicant or registrant lacks state authority to dispense controlled substances, even if such lack of state authorization was the result of the expiration of his/her state registration without further action by the state. See e.g., Mark L. Beck, D.D.S., 64 FR 40899 (1999); Gary D. Benke, M.D. 58 FR 65734 (1993); Carlyle Balgobin, D.D.S., 58 FR 46992 (1993); Charles H. Ryan, M.D., 58 FR 14430 (1993); James H. Nickens, M.D., 57 FR 59847 (1992).

In the instant case, the Deputy Administrator finds that there is evidence demonstrating that Dr. Geiger is not authorized to handle controlled substances in Georgia, the state in which he seeks a DEA registration. Since Dr. Geiger lacks such authority, he is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for DEA Certificate of Registration submitted by Douglas L. Geiger, M.D. be, and it hereby is, denied. This order is effective November 18, 2002.

Dated: September 30, 2002.

John B. Brown III,

Deputy Administrator.

[FR Doc. 02–26605 Filed 10–17–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 27, 2002, and published in the **Federal Register** on April 10, 2002, (67 FR 17468), Guilford Pharmaceuticals, Inc., 6611 Tributary Street, Baltimore, Maryland 21224, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of cocaine (9041), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture a Schedule II cocaine derivative as a final intermediate for the production of dopascan injection.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Guilford Pharmaceuticals to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: August 28, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–26627 Filed 10–17–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 13, 2002, Research Triangle Institute, Kenneth H. Davis, Jr., Herman Building, P.O. Box 12194, East Institute Drive, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The institute will manufacture small quantities of cocaine derivatives and marihuana derivatives for use by their customers primarily in analytical kits, reagents and standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (60 days from publication).

Dated: August 20, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–26606 Filed 10–17–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 4, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 or e-Mail: *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Office of the Secretary.

Type of Review: Revision of a currently approved collection.

Title: Information Collection Plan for GovBenefits Online.

OMB Number: 1290–0003.

Frequency: On occasion.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 2,333,736.

Number of Annual Responses: 3,719,308.

Estimated Time Per Response: 2 minutes.

Total Burden Hours: 111,579.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The President's Management Agenda for E-Government (February 27, 2002) sets forth a strategy for simplifying the delivery of services to citizens. The President's agenda outlines a Federal E-Government Enterprise Architecture that will transition the management and delivery of government services from a bureaucracy-centered to a citizen-centered paradigm. To this end, the Department of Labor serves as the managing partner of the Administration's "GovBenefits" (formerly "Eligibility Assistance Online") strategy for assisting citizens in identifying and locating information on benefits sponsored by the Federal government. This tool will greatly reduce the burden on citizens attempting to locate services available from many different government agencies by providing one-stop access to information on obtaining those services.

From time to time, the precise questions or content may require modification to accommodate additions to the GovBenefits portal as well as new or revised services.

Respondents answer a series of questions to the extent necessary for locating relevant information on Federal benefits.

Responses are used by the respondent to expedite the identification and retrieval of sought after information and resources pertaining to behefits sponsored by the Federal government.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–26564 Filed 10–17–02; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA) for H–1B Technical Skills Training Grants

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice; cancellation.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** of April 13, 2001, concerning the availability of grant funds for H–1B Technical Skills Training Grants unemployed and employed American workers. This document is being cancelled. A new SGA for the H–1B Technical Skills Training Grants will be announced within 30 days from the cancellation date.

EFFECTIVE DATES: This cancellation is effective November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Ella Freeman, Grants Management Specialist, Division of Federal Assistance, Telephone (202) 693–3301. (This is not a toll-free number). You must specifically ask for Ella Freeman.

SUPPLEMENTARY INFORMATION: The Department is canceling the Solicitation for Grant Applications (SGA) for H–1B Technical Skills Training Grants. These grants are financed by a user fee paid by employers to bring foreign workers into the U.S. on a temporary basis to work in high skill or speciality occupations.

Dated: October 11, 2002.

Signed in Washington, DC, this 15th day of October, 2002.

James W. Stockton,

Grant Officer.

[FR Doc. 02–26565 Filed 10–17–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 49 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purposes of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

District of Columbia
DC020001 (MAR. 01, 2002)
DC020003 (MAR. 01, 2002)
Maryland
MD020001 (MAR. 01, 2002)
MD020011 (MAR. 01, 2002)
MD020045 (MAR. 01, 2002)
MD020048 (MAR. 01, 2002)
MD020056 (MAR. 01, 2002)
MD020058 (MAR. 01, 2002)

Volume III

None

Volume IV

Minnesota
MN020007 (Mar. 01, 2002)
MN020062 (Mar. 01, 2002)

Volume V

None

Volume VI

Oregon
OR020017 (Mar. 01, 2002)

Volume VII

California
CA020027 (Mar. 01, 2002)
CA020031 (Mar. 01, 2002)
Nevada
NV020002 (Mar. 01, 2002)
NV020005 (Mar. 01, 2002)
NV020006 (Mar. 01, 2002)
NV020009 (Mar. 01, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 10th day of October, 2002.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–26391 Filed 10–17–02; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the National Museum Services Board

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the function of the board. Notice of this meeting is required under the Sunshine in Government Act and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

Date/Time: 2 p.m.–5 p.m. on Monday, October 28, 2002.

Status: Open.

ADDRESSES: The Hyatt Regency Washington on Capitol Hill, Ticonderoga Room, 400 New Jersey Avenue, NW., Washington, DC (202) 737–1234.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Room 510, Washington, DC 20506, (202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, authorities vested in the Institute under the Museum Services Act.

The meeting on Monday, October 28, 2002 will be open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506—(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

Agenda—85th Meeting of the National Museum Services Board at the Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW, Washington, DC; Ticonderoga Room on Monday, October 28, 2002

2 p.m.–5 p.m.

I. Chairman's Welcome
II. Approval of Minutes from the 84th MMSB Meeting
III. Director's Report
IV. Staff Reports
(a) Office of Administration and Budget
(b) Office of Public and Legislative Affairs
(c) Office of Technology and Research
(d) Office of Museum Services
(e) Office of Library Services
V. Learning Opportunity Grants Program
VI. Old/New Business

Dated: October 15, 2002.

Teresa LaHaie,

National Foundation on the Arts and Humanities, Institute of Museum and Library Services.

[FR Doc. 02–26657 Filed 10–15–02; 4:33 pm]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483]

Union Electric Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–30 issued to Union Electric Company (the licensee) for operation of the Callaway Plant located in Callaway County, Missouri.

The proposed amendment would revise the definition of steam generator (SG) tube inspection in Technical Specification 5.5.9, "Steam Generator (SDG) Tube Surveillance Program." The amendment would add a requirement for using the rotating pancake coil (RPC) to the H* depth in the tubesheet. The proposed amendment is based on the Westinghouse Topical Report WCAP–15932–P, "Improved Justification of Partial-Length RPC Inspection of Tube Joints of Model F Steam Generators of Ameren-UE Callaway Plant," Revision 0, dated September 2002.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), § 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the Callaway TS is to incorporate a SG tube inspection program based on WCAP–15932–P. The H*/P* analysis takes into account the reinforcing effect the tubesheet has on the external surface of an expanded tube.

Tube-bundle integrity will not be adversely affected by the implementation of the H*/P* tube inspection scope. SG tube burst or collapse cannot occur within the confines of the tubesheet; therefore, the tube burst and collapse criteria of Regulatory Guide (RG) 1.121 are inherently met. Any degradation below the H*/P* distance is shown by the analysis results to be acceptable, thereby precluding an event with consequences similar to a postulated tube rupture event.

Tube burst is precluded for cracks within the tubesheet by the constraint provided by the tubesheet, therefore structural criterion is satisfied by the tubesheet constraint. However, severe degradation of the tube within the tubesheet could possibly permit severing of the tube and tube pullout from the tubesheet under the axial forces on the tube. Sections 5.0 and 7.0 of WCAP–15932–P describe the testing and structural analysis that was performed to define the H* length of non-degraded tubing that is sufficient to compensate for the axial forces on the tube to prevent pullout.

Therefore, the proposed change to incorporate the H* inspection scope into the TS maintains existing design limits and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This amendment will not affect the normal method of plant operation or change any operating limits. Tube-bundle integrity will be maintained during all plant conditions upon implementation of the proposed changes to the tube inspection scope. The proposed change does not induce a new mechanism that would result in a different kind of accident from those previously analyzed. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. The proposed change does not impact the margin of safety as defined by RG 1.83 and RG 1.121 and the requirements of General Design Criteria 14, 15, 19, 31, and 32. The radiological dose consequences acceptance criteria listed in the Standard Review Plan will continue to be met.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 18, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 3, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 11th day of October, 2002.

For the Nuclear Regulatory Commission.

Jack Donohew,

Senior Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–26554 Filed 10–17–02; 8:45 am]

BILLING CODE 7590–01–P

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46635; File No. SR–Amex–2002–74]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Extending the Pilot Program Relating to Crossing Transactions in Nasdaq Securities Until March 31, 2003

October 10, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 19, 2002 the American Stock Exchange LLC ("Amex" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend until March 31, 2003 the existing pilot program under Commentary .06 to Amex Rule 126(g) relating to crossing procedures on the Amex in Nasdaq National Market securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The Exchange has requested, and the Commission agrees, to waive the pre-filing notice required by Rule 19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has implemented crossing procedures under Rule 126(g), Commentary .06 on a pilot basis extending until September 30, 2002.[5] The Exchange proposes that the pilot program be extended for a six-month period until March 31, 2003. Proposed Rule 126(g), Commentary .06 provides that a floor broker is permitted to effect cross transactions in Nasdaq National Market securities involving 5,000 shares or more without interference by the specialist or market makers if, prior to presenting the cross transaction, the floor broker first requests a quote for the subject security. These requests place the specialist and market makers on notice that the floor broker intends to cross within the bid-offer spread. This arrangement ensures that a specialist or market maker retains the opportunity to better the cross price by updating their quote, but precludes the specialist or market maker from breaking up a cross transaction after the cross transaction is presented. The floor broker retains the ability to present both sides of the order at the post if the customers so desire.

The Exchange is making no change to Rule 126(g), Commentary .06 as filed with the Commission in SR–Amex–2002–58 other than to extend the pilot program until March 31, 2003.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)[6] of the Act in general and furthers the objectives of section 6(b)(5)[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[8]

[5] Securities Exchange Act Release No. 46309 (August 5, 2002), 67 FR 51902 (August 9, 2002) (SR–Amex–2002–58).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which the proposed rule change was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act,[11] the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 30-day operative date. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will permit the Exchange to continue the existing pilot program without delay. In addition, no changes to Rule 126(g), Commentary .06 are being proposed at this time. Thus, the foregoing rule change has become effective pursuant to section 19(b)(3)(A)[12] of the Act and subparagraph (f)(6) of Rule 19b–4.[13] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4.

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–Amex–2002–74 and should be submitted by November 8, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26517 Filed 10–17–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46630; File No. SR–Amex–2002–82]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC to Extend for an Additional 90 Days Its Pilot Program Relating to Facilitation Cross Transactions

October 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 7, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend for an additional 90 days its pilot program relating to facilitation cross transactions, described in Item II.A. below. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend for an additional 90 days its pilot program relating to member firm facilitation cross transactions, which was originally approved by the Commission in June 2000, was most recently extended on July 9, 2002, and expired on October 4, 2002.[3]

Revised Commentary .02(d) to Amex Rule 950(d) establishes a pilot program to allow facilitation cross transactions in equity options.[4] The pilot program entitles a floor broker, under certain conditions, to cross a specified percentage of a customer order with a member firm's proprietary account before market makers in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class by class basis, provided that the eligible order size is not for fewer than 50 contracts.

Under the current program, when a trade takes place at the market provided by the crowd, all public customer orders on the specialist's book or represented in the trading crowd at the time the market was established must be satisfied first. Following satisfaction of any public customer orders, the floor broker is entitled to facilitate up to 20% of the contracts remaining in the customer order. When a floor broker proposes to execute a facilitation cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market—and the crowd then wants to take part or all of the order at the improved price—the floor broker is entitled to priority over the crowd to facilitate up to 40% of the contracts. If the floor broker has proposed the cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market, and the trading crowd subsequently improves the floor broker's price, and the facilitation cross is executed at that improved price, the floor broker would only be entitled to priority to facilitate up to 20% of the contracts.

The program also provides that if the facilitation transaction takes place at the specialist's quoted bid or offer, any participation allocated to the specialist pursuant to Amex trading floor practices would apply only to the number of contracts remaining after all public customer orders have been filled and the member firm's crossing rights have been exercised.[5] However, in no case could the total number of contracts guaranteed to the member firm and the

[3] The pilot program, originally approved on June 2, 2000, was subsequently extended on two occasions, reinstated after a brief lapse in July 2001, and extended again in October 2001, January, April, and July 2002. *See* Securities Exchange Act Release Nos. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000), 43229 (August 30, 2000), 65 FR 54572 (September 8, 2000); 44019 (February 28, 2001), 66 FR 13819 (March 7, 2001); 44538 (July 11, 2001), 66 FR 37507 (July 18, 2001); 44924 (October 11, 2001), 66 FR 53456 (October 22, 2001); 45241 (January 7, 2002), 67 FR 1524 (January 11, 2002); 45703 (April 8, 2002), 67 FR 18272 (April 15, 2002); and 46176 (July 9, 2002), 67 FR 47007 (July 17, 2002).

[4] Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

[5] Amex trading floor practices provide specialists with a greater than equal participation in trades that take place at a price at which the specialist is on parity with registered options traders in the crowd. These practices are subject to a separate filing that seeks to codify specialist allocation practices. *See* Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000).

specialist exceed 40% of the facilitation transaction.

In the more than two years since the pilot program was first implemented, the Exchange has found it to be generally successful. The Exchange seeks to extend the pilot program for an additional 90 days, pending consideration of a related proposed rule change it has filed with the Commission [6] concerning revisions to the program that the Amex believes will provide further incentive for price improvement by using different procedures to determine specialist and registered option trader participation. The related proposal would also make the program permanent.

In order to allow the pilot program to be extended without significant interruption, the Amex has requested that the Commission expedite review of, and grant accelerated approval to, the proposal to extend it, pursuant to section 19(b)(2) of the Act.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [8] in general, and furthers the objectives of section 6(b)(5) of the Act [9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–82 and should be submitted by November 8, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In its original approval of the pilot program,[11] the Commission detailed its reasons for finding its substantive features consistent with the Act, and, in particular, the requirements of sections 6(b)(5) and 6(b)(8) of the Act.[12] The Commission has previously approved rules on other exchanges that establish substantially similar programs on a permanent basis,[13] and the extension of the pilot program on the Amex—pending review of its related proposal to revise the program and make it permanent—raises no new regulatory issues for consideration by the Commission.

The Commission finds good cause, consistent with sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal will extend the pilot program without significant interruption while revisions are considered, and does not raise any new regulatory issues.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–Amex–2002–82) be, and hereby is, approved on an accelerated basis as a pilot program through January 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26518 Filed 10–17–02; 8:45 am]

BILLING CODE 8010–01–P

[6] *See* File No. SR–Amex–2000–49, available for inspection at the Commission's Public Reference Room.

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See supra*, note 3.

[12] 15 U.S.C. 78f(b)(5) and (b)(8).

[13] *See, e.g.*, Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46647; File No. SR–ISE–2002–21]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by International Securities Exchange, Inc. Relating to Listing and Maintenance Standards

October 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2002, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its maintenance listing criteria for underlying securities contained in ISE Rule 503 to allow the Exchange to add series on underlying securities that fail to meet the $3 minimum trading price requirement so long as they are trading on another options exchange and met the $3 requirement at the time they were listed. The text of the rule amendment is below; proposed new language is italicized.

Rule 503. Withdrawal of Approval of Underlying Securities

* * * * *

(c) In connection with paragraph (b)(4) of this Rule, the Exchange shall not open for trading any additional series of options contracts of the class covering an underlying security at any time (including on a next-day, expiration or intra-day basis) when the market price per share of such underlying security closed less than $3 on the last trading day preceding the day on which such series are added, as measured by the closing price reported by the primary market in which the underlying security trades. In addition to closing at or above $3 on the last trading day preceding the day series are added, the Exchange shall not open for trading any additional series of options contracts on an intra-day basis unless the last reported trade in the primary market in which the underlying security trades is at least $3 at the time the Exchange determines to add the series. *Notwithstanding the above, the Exchange may add a series if the additional series is traded on at least one other registered national securities exchange and, at the time the additional series was listed by such other registered national securities exchange, it met the $3 market price requirement.*

* * * * *

[1] 15 U.S.C 78s(b)(1)

[2] 17 CFR 240.19b–4

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The ISE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE Rule 503 contains the guidelines used to determine whether an underlying individual equity security previously approved for options trading meets the requirements for continued approval. ISE Rule 503 currently provides that the Exchange may not list additional series for an options class unless the market price per share of the underlying security is at least $3 on the last trading day preceding the day on which such series are added, as measured by the closing price reported by the primary market in which the underlying security trades. In addition to closing at or above $3 on the last preceding trading day, the Exchange may not open any additional series on an intra-day basis unless the last reported trade in the primary market in which the underlying security trades is at least $3 at the time the Exchange determines to add the series.

The Exchange proposes to amend ISE Rule 503 to permit the Exchange to add additional series of options regardless of the market price per share for underlying securities that satisfy all of the maintenance listing requirements other than the $3 per share price requirement, so long as such series are traded on at least one other registered national securities exchange, and at the time the additional series were listed by such other registered national securities exchange, the underlying security met the $3 market price requirement. Three of the five options exchanges have already adopted this change,[3] and the ISE states that it seeks to keep its rules consistent with these other options exchanges to avoid any competitive disadvantage that might arise if the Exchange were unable to list series that are permitted to be listed on another exchange. The Exchange states that when an underlying security otherwise meets the maintenance listing standards and at least one other exchange trades the options series, the options already are available to the investing public. The Exchange believes that increased competition for order flow in these additional series of approved options classes will benefit investors and the marketplace for options and the respective underlying securities.[4] Moreover, the Exchange believes that the maintenance listing standards other than price assure that options will be listed and traded on the securities of companies that are financially sound.[5]

2. Statutory Basis

The Exchange believes the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [6] that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2002–21 and should be submitted by November 8, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6(b)(5) of the

[3] *See* Securities Exchange Act Release Nos. 46375 (August 16, 2002), 67 FR 54628 (August 26, 2002) (SR–AMEX–2002–68); 46406 (August 23, 2002), 67 FR 55446 (SR–PCX–2002–51); and 46501 (September 16, 2002), 67 FR 59585 (SR–CBOE–2002–52).

[4] The Exchange represents that this proposed rule change would not serve to introduce additional options series.

[5] The Exchange represents that it will continue to apply the other maintenance listing guidelines in Rule 503, which assure that (1) the underlying security consists of a large number of outstanding shares held by non-affiliates of the issuer; (2) the underlying security is actively-traded; (3) there is a large number of holders of the underlying security; and (4) the underlying security continues to be listed on a national securities exchange or traded through the facilities of a national securities association.

[6] 15 U.S.C. 78f(b)(5).

Act.[7] The Commission believes investors benefit from the competition among options exchanges that results when options are listed on more than one options exchange; and that investors are sufficiently protected, even though ISE will be permitted to list a series of option contracts when the market price of the underlying security is below $3, because the Exchange must comply with all of the other maintenance listing requirements, and the market price of the underlying security was at or above $3 when the options series was listed on the first options exchange.[8] Therefore, the Commission finds that proposed rule change will promote just and equitable principles of trade, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[9]

The ISE has requested that the proposed rule change be given accelerated approval pursuant to Section 19(b)(2) of the Act.[10] The Commission believes accelerated approval of the proposal would enhance competition among the options exchanges. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[11] to approve the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–ISE–2002–21) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26624 Filed 10–17–02; 8:45 am]

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[7] *Id.*

[8] The Commission notes that such series must have been properly listed by the original options exchange.

[9] 15 U.S.C. 78f(b)(5). In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(2).

[11] *Id.*

[12] *Id.*

[13] 17 CFR 240.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46646; File No. SR–ISE–2002–20]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by International Securities Exchange, Inc., Relating to Its Complex Order Rule

October 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2002, the International Securities Exchange, Inc. (the "Exchange" or the "ISE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons described below, the Commission is granting accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing permanent approval of its complex order rule, Rule 722 (the "Rule"). The ISE also proposes to amend the Rule to delete the provisions allowing a Member to execute 40 percent of certain complex orders such Member entered without the need for the order to be exposed for 30 seconds.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission supplied additional text to the description of the proposed rule change, with the consent of the ISE, to reflect ISE's deletion of rules that otherwise permitted "crossing" of orders. Telephone conversation between Michael Simon, Senior Vice President and General Counsel, ISE, and Andrew Shipe, Special Counsel, Division of Market Regulation, Commission (October 10, 2002).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 18, 2001, the Commission approved the ISE's Complex Order Rule.[4] The Rule established priority and order handling principles for complex orders such as spreads and straddles. By its terms, the Rule was effective for one year, or until October 18, 2002. The purpose of this proposed rule change is to adopt the Rule on a permanent basis. The ISE's complex order rule is similar to those of the other exchanges with respect to order handling and priority afforded complex orders.[5] The one provision that is unique to the ISE permits a Member to execute 40 percent of certain complex orders as principal, or as agent against an order solicited from a Member or non-Member broker-dealer, without the need for the order to be exposed for 30 seconds. The Exchange now proposes to delete that provision.

The ISE notes the complex order rule has been effective in providing a framework for the trading of complex orders. While the ISE continues to consider ways to improve upon the handling of complex orders, over the last year the basic trading mechanism and complex order priority structure have proven sound. The ISE therefore seeks approval of this rule on a permanent basis.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] File No. SR–ISE–2002–18; Release No. 34–44955 (October 18, 2001); 66 FR 53819 (October 24, 2001).

[5] Chicago Board Options Exchange ("CBOE") Rule 6.45; American Stock Exchange ("Amex") Rule 950(d), Commentary .01; Philadelphia Stock Exchange ("Phlx") Rule 1033; Pacific Exchange Rule 6.75.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2002–20 and should be submitted by November 8, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5).[6] The Commission did not receive comments on the proposed rule change when the pilot was first proposed.[7] Pursuant to Section 19(b)(2) of the Act,[8] the Commission further finds good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The proposed rule change would eliminate the provisions of the Rule that permit members to execute 40% of certain complex orders without prior exposure to the market. The Commission believes that limiting such facilitation or crossing rights helps to adequately protect competitive pricing for all orders. Furthermore, this change makes the rule consistent with the rules of CBOE, Amex and Phlx. The Commission also believes that it is appropriate to permanently approve this heretofore-pilot program on an accelerated basis in order to ensure continuous operation of the ISE's framework for trading complex orders.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–ISE–2002–20) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

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[6] 15 U.S.C. 78f(b)(5).

[7] *See* fn. 4, *supra.*

[8] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46638; File No. SR–MSRB–2002–13]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Municipal Fund Securities Limited Principal Qualification Examination (Series 51) and Rule G–3 on Professional Qualifications

October 10, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2002 the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–2002–13). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the SEC a proposed rule change consisting of the test specifications and the study outline for the MSRB's new Municipal Fund Securities Limited Principal Qualification Examination (Test Series 51), as well as an amendment to Rule G–3, on professional qualifications (hereafter referred to as "the proposed rule change"). The amendment to Rule G–3 will extend to March 31, 2003 the period during which certain categories of principals may continue to act as municipal fund securities limited principals without taking and passing the new Series 51 examination. The proposed rule change will become operative on November 1, 2002.

A description of the new Series 51 examination is included in the study outline. Confidential information on the examination is included in the test specifications and has been filed with the Secretary of the SEC pursuant to Rule 24b–2 under the Exchange Act for confidential treatment. Below is the text of the amendment to Rule G–3. New language is italicized; deletions are in brackets.

Rule G–3. Classification of Principals and Representatives; Numerical Requirements; Testing; Continuing Education Requirements

(a) No change.

(b) Municipal Securities Principal; Municipal Fund Securities Limited Principal.

(i)–(iii) No change.

(iv) Municipal Fund Securities Limited Principal.

(A)–(D) No change.

(E) Temporary Provisions for Municipal Fund Securities Limited Principal. Notwithstanding any other provision of this rule, until *March 31, 2003*, [December 31, 2002,] the following provisions shall apply to any broker, dealer or municipal securities dealer whose municipal securities activities are limited exclusively to municipal fund securities:

(1)–(3) No change.

(4) On and after *April 1, 2003*, [January 1, 2003,] all municipal fund securities limited principals (including any municipal fund securities limited principals designated as provided in clause (b)(iv)(E)(1)) must be qualified as provided in subparagraph (b)(iv)(B).

(c)–(h) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Under section (b)(iv) of Rule G–3, on professional qualifications, an associated person of a broker, dealer or municipal securities dealer ("dealer") may undertake supervisory activities with respect to the dealer's municipal fund securities activities by qualifying as a municipal fund securities limited principal. Current rule G–3(b)(iv)(E)(4) provides that, on and after January 1, 2003, all municipal fund securities limited principals must be qualified by taking and passing the new Series 51 examination.[3]

The Series 51 examination will qualify an associated person of a dealer to manage, direct or supervise certain specified activities, but solely as such activities relate to transactions in municipal fund securities.[4] The examination will be a 90-minute, 60 multiple choice question examination with 70% as the passing score. It will measure a candidate's knowledge of municipal fund securities and the securities industry rules and regulations pertinent to such products. The examination will require that the individual taking it have previously or concurrently taken and passed the general securities principal qualification examination (Series 24) or investment company and annuity principal qualification examination (Series 26).

A subcommittee of the MSRB's Professional Qualifications Advisory Committee consisting of industry representatives, working with MSRB staff in consultation with NASD staff, developed the Series 51 study outline and test specifications. The examination will be divided into seven topical sections. The topical sections and the percent of questions designated for each such section are as follows: Regulatory Structure (5%); Product Knowledge (20%); General Supervision (20%); Fair Practice and Conflicts of Interest (15%); Sales Supervision (20%); Underwriting and Disclosure Obligations (10%); and Operations (10%). The specifications for the Series 51 examination specify how the questions asked on each examination are to be allocated among the various subtopics within these topical sections.

Rule G–3 currently allows general securities principals (Series 24) and investment company limited principals (Series 26) to supervise municipal fund securities activities during a transition period that ends on December 31, 2002. On and after January 1, 2003, all municipal fund securities limited principals must be qualified by taking and passing the new Series 51 examination. However, administration of this examination will not begin until on or about January 1, 2003. Thus, the MSRB is extending the period during which Series 24 and 26 principals may continue to supervise municipal fund securities activities without further qualification. The amendment to Rule G–3 will accomplish this by extending the transition period to March 31, 2003. This extension will provide a three-month period during which candidates can take and pass the examination. Under the amendment, all municipal fund securities limited principals will be required to have taken and passed the Series 51 examination by April 1, 2003.

(b) The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(A) of the Exchange Act, which provides that it is the MSRB's responsibility to propose and adopt rules which:

provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security unless * * * such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meets such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors.

Section 15B(b)(2)(A) of the Exchange Act also provides that the MSRB may appropriately classify municipal securities brokers and municipal securities dealers and their associated personnel and require persons in any such class to pass tests prescribed by the MSRB.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the SEC for its review at least five business days prior to the filing date; and (iv) does not become operative until November 1, 2002, which is more than thirty (30) days after the date of its filing, the MSRB has submitted this proposed rule change to become effective pursuant to section 19(b)(3)(A) of the Exchange Act and Rule 19b–4(f)(6) thereunder. In particular, the MSRB believes the proposed rule change qualifies as a "non-controversial filing" in that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. The Commission has determined that acceleration of the proposed filings is consistent with the protection of investors and the public interest.[5] At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[3] Prior to this date, a general securities principal (Series 24) or investment company/variable contracts limited principal (Series 26) may act as a municipal fund securities limited principal without further qualification.

[4] These activities consist of (A) underwriting, trading or sales of municipal fund securities; (B) financial advisory or consultant services for issuers in connection with the issuance of municipal fund securities; (C) processing, clearance, and (in the case of non-bank dealers) safekeeping of municipal fund securities; (D) research or investment advice with respect to municipal fund securities (but only to the extent related to the activities described in (A) or (B)); (E) any other activities which involve communication, directly or indirectly, with public investors in municipal fund securities (but only to the extent related to the activities described in (A) or (B)); (F) maintenance of records with respect to the activities described in (A) through (E); and (G) training of municipal securities principals, municipal fund securities limited principals or municipal securities representatives with respect to municipal fund securities. Municipal securities principals (Series 53) will continue to be qualified to manage, direct or supervise such activities, as they relate to municipal fund securities or to any other type of municipal securities. Municipal securities sales principal (Series 9/10) will continue to be qualified to supervise sales to and purchases from customers of municipal securities, including municipal fund securities.

[5] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 17 CFR 200.30–3(a)(12).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's offices. All submissions should refer to File No. SR–MSRB–2002–13 and should be submitted by November 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26513 Filed 10–17–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46639; File No. SR–MSRB–2002–11]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Application of Rule G–19, on Suitability of Recommendations, to Online Communications

October 10, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2002, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") an interpretive notice regarding the application of Rule G–19, on suitability of recommendations, to online communications (the "Online Suitability Notice") as described in Items I, II, and III below, which Items have been prepared by the Board. The Online Suitability Notice is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(1) of Rule 19b–4 thereunder, in that the Online Suitability Notice is a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. For the reasons discussed below, the Commission is granting accelerated approval of the Online Suitability Notice.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is issuing this Online Suitability Notice to remind brokers, dealers, and municipal securities dealers ("dealers") that they have suitability obligations when they make recommendations to customers online. The text of the Online Suitability Notice is provided below.

Notice Regarding Application of Rule G–19, on Suitability of Recommendations and Transactions, to Online Communications

Background

In the municipal securities markets, dealers [3] typically communicate with investors one-on-one, in person, or by telephone. These dealer/customer communications are made to provide the investor with information concerning the municipal securities the dealer wants to sell and to allow the dealer to find out about the customer's investment objectives. Over the last few years there has been a dramatic increase in the use of the Internet for communication between dealers and their customers. Dealers are looking to the Internet as a mechanism for offering customers new and improved services and for enhancing the efficiency of delivering traditional services to customers. For example, dealers have developed online search tools that computerize the process by which customers can obtain and compare information on the availability of municipal securities of a specific type that are offered for sale by a particular dealer.[4] Technological advancements have provided many benefits to investors and the brokerage industry. These technological innovations, however, also have presented new regulatory challenges, including those arising from the application of the suitability rule to online activities. In consideration of this, the MSRB is issuing this notice to provide dealers with guidance concerning their obligations under MSRB Rule G–19, relating to suitability of recommendations,[5] in the electronic environment.[6]

Rule G–19 prohibits a dealer from recommending transactions in municipal securities to a customer

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term "dealer" is used in this notice as shorthand for "broker," "dealer" or "municipal securities dealer," as those terms are defined in the Act. The use of the term in this notice does not imply that the entity is necessarily taking a principal position in a municipal security.

[4] The Bond Market Association's ("TBMA") 2001 Review of Electronic Transaction Systems found that at the end of 2001 there were at least 23 systems based in the United States that allow dealers or institutional investors to buy or sell municipal securities electronically compared to just 3 such systems in 1997. While dealers are also developing electronic trading platforms that allow retail customers to buy or sell municipal securities online, the development of online retail trading systems for municipal securities lags far behind that for equities.

[5] Rule G–19 provides in pertinent part:

(c) *Suitability of Recommendations.* In recommending to a customer any municipal security transaction, a [dealer] shall have reasonable grounds:

(i) Based upon information available from the issuer of the security or otherwise, and

(ii) Based upon the facts disclosed by such customer or otherwise known about such customer,

For believing that the recommendation is suitable.

[6] Although the focus of this notice is on the application of the suitability rule to electronic communications, much of the discussion is also relevant to more traditional communications, such as discussions made in person, over the telephone, or through postal mail.

unless the dealer makes certain determinations with respect to the suitability of the transactions.[7] Specifically, the dealer must have reasonable grounds for believing that the recommendation is suitable based upon information available from the issuer of the security or otherwise and the facts disclosed by the customer or otherwise known about such customer.

As the rule states, a dealer's suitability obligation only applies to securities that the dealer recommends to a customer.[8] A dealer or associated person who simply effects a trade initiated by a customer without a related recommendation from the dealer or associated person is not required to perform a suitability analysis. However, under MSRB Rules, even when a dealer does not recommend a municipal security transaction to a customer but simply effects or executes the transaction, the dealer is obligated to fulfill certain other important fair practice obligations. For example, under Rule G–17, when effecting a municipal security transaction for a customer, a dealer is required to disclose all material facts about a municipal security that are known by the dealer and those that are reasonably accessible.[9] In addition, Rule G–18 requires that each dealer, when executing a municipal securities transaction for or on behalf of a customer as agent, make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions. Similarly, under Rule G–30, if a dealer engages in principal transactions with a customer, the dealer is responsible for ensuring that it is charging a fair and reasonable price. The MSRB wishes to emphasize the importance of these fair practice obligations even when a dealer effects a non-recommended transaction online.[10]

Applicability of the Suitability Rule to Electronic Communications—General Principles

There has been much debate about the application of the suitability rule to online activities.[11] Industry commentators and regulators have debated two questions: first, whether the current suitability rule should even apply to online activities, and second, if so, what types of online communications constitute recommendations for purposes of the rule. The NASD published *NASD Notice to Members 01–23, Online Suitability-Suitability Rule and Online Communication* (the "NASD Online Suitability Notice") (April 2001) to provide guidance to its members in April 2001.[12] In answer to the first question, the MSRB, like the NASD, believes that the suitability rule applies to all recommendations made by dealers to customers—including those made via electronic means—to purchase, sell, or exchange a security. Electronic communications from dealers to their customers clearly can constitute recommendations. The suitability rule, therefore, remains fully applicable to online activities in those cases where the dealer recommends securities to its customers.

With regard to the second question, the MSRB does not seek to identify in this notice all of the types of electronic communications that may constitute recommendations. As the MSRB has often emphasized, "[w]hether a particular transaction is in fact recommended depends on an analysis of all the relevant facts and circumstances."[13] That is, the test for determining whether any communication (electronic or traditional) constitutes a recommendation remains a "facts and circumstances" inquiry to be conducted on a case-by-case basis.

The MSRB also recognizes that many forms of electronic communications defy easy characterization. The MSRB believes this is especially true in the online municipal securities market, which is in a relatively early stage of development. Nevertheless, the MSRB offers as guidance the following general principles for dealers to use in determining whether a particular communication could be deemed a recommendation.[14] The "facts and circumstances" determination of whether a communication is a recommendation requires an analysis of the content, context, and presentation of the particular communication or set of communications. The determination of whether a recommendation has been made, moreover, is an objective rather than a subjective inquiry. An important factor in this regard is whether—given its content, context, and manner of presentation—a particular communication from a dealer to a customer reasonably would be viewed as a "call to action," or suggestion that the customer engage in a securities transaction. Dealers should bear in mind that an analysis of the content, context, and manner of presentation of a communication requires examination of the underlying substantive information transmitted to the customer and consideration of any other facts and circumstances, such as any accompanying explanatory message from the dealer.[15] Another principle that dealers should keep in mind is that, in general, the more individually tailored the communication is to a specific customer or a targeted group of customers about a security or group of securities, the greater the likelihood is that the communication may be viewed as a recommendation.

Scope of the Term Recommendation

As noted earlier, the MSRB agrees with and has in this guidance adopted the general principles enunciated in the NASD Online Suitability Notice as well as the NASD guidelines for evaluating suitability obligations discussed below. While the MSRB believes that the additional examples of communications that do not constitute recommendations provided by the NASD in its Online Suitability Notice are useful instruction for dealers who develop equity trading web sites, as the examples are based upon communications that exist with great regularity in the Nasdaq market, the MSRB believes that the examples have limited application to the types of information and electronic trading systems that are present in the municipal securities market.

For example, the NASD's third example of a communication that is not a recommendation describes a system that permits customer-directed searches of a "wide-universe" of securities and references all exchange-listed or Nasdaq securities, or externally recognized indexes.[16] The NASD example therefore applies to dealer web sites that effectively allow customers to request lists of securities that meet broad objective criteria from a list of all the securities available on an exchange or Nasdaq. These are examples of groups of securities in which the dealer does not exercise any discretion as to which securities are contained within the group of securities shown to customers. This example makes sense in the equity market where there are centralized exchanges and where electronic trading platforms routinely utilize databases that provide customer access to all of the approximately 7,300 listed securities on Nasdaq, the NYSE and Amex. However, no dealer in the municipal securities market has the ability to offer all of the approximately 1.3 million outstanding municipal securities for sale or purchase. The municipal securities market is a fragmented dealer market. Municipal securities do not trade through a centralized exchange and only a small number of securities (approximately 10,000) trade at all on any given day. Therefore, there is no comparable central exchange that could serve as a reference point for a database that is used in connection with municipal securities research engines. The databases used by dealer systems typically are limited to the municipal securities that a dealer, or a consortium of dealers, holds in inventory. In these types of systems the customer's ability to search for desirable securities that meet the broad, objective criteria chosen by the customer (*e.g.*, all insured investment grade general obligation bonds offered by a particular state) is limited. The concept of a wide universe of securities, which is central to all of the NASD's examples, is thus difficult to define and has extremely limited, or no, application in the municipal securities market.

Given the distinct features of the municipal securities market and the existing online trading systems, the MSRB believes it would be impractical to attempt to define the features of an electronic trading system that would have to be present for the system transactions to not be considered the result of a dealer recommendation. The online trading systems for municipal securities that are in place today limit customer choices to the inventory that the dealer or dealer consortium hold, and therefore, the dealer will always have a significant degree of discretion over the securities offered to the customer. A system that allows this degree of dealer discretion is a dramatic departure from the types of no recommendation examples provided by the NASD guidance, and thus, these communications must be carefully analyzed to determine whether or not a recommendation has been made.

The MSRB, however, does believe that the examples of communications that are recommendations provided in the NASD Online Suitability Notice are communications that take place in the municipal securities market. Therefore, the MSRB has adopted these examples and generally would view the following communications as falling within the definition of recommendation:

- A dealer sends a customer-specific electronic communication (*e.g.*, an e-mail or pop-up screen) to a targeted customer or targeted group of customers encouraging the particular customer(s) to purchase a municipal security.[17]
- A dealer sends its customers an e-mail stating that customers should be invested in municipal securities from a particular state or municipal securities backed by a particular sector (such as higher education) and urges customers to purchase one or more stocks from a list with "buy" recommendations.
- A dealer provides a portfolio analysis tool that allows a customer to indicate an investment goal and input personalized information such as age, financial condition, and risk tolerance. The dealer in this instance then sends (or displays to) the customer a list of specific municipal securities the customer could buy or sell to meet the investment goal the customer has indicated.[18]
- A dealer uses data-mining technology (the electronic collection of information on Web Site users) to analyze a customer's financial or online activity—whether or not known by the customer—and then, based on those observations, sends (or "pushes") specific investment suggestions that the customer purchase or sell a municipal security.

Dealers should keep in mind that these examples are meant only to provide guidance and are not an exhaustive list of communications that the MSRB does consider to be recommendations. As

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[7] This notice focuses on customer-specific suitability under Rule G–19. Under Rule G–19, a dealer must also have a reasonable basis to believe that the recommendation could be suitable for at least some customers. *See e.g.*, Rule G–19 Interpretation—Notice Concerning the Application of Suitability Requirements to Investment Seminars and Customer Inquiries Made in Response to a Dealer's Advertisement, May 7, 1985, *MSRB Rule Book* (July 1, 2002) at 143; *In re F.J. Kaufman and Company of Virginia*, 50 S.E.C. 164, 168, 1989 SEC LEXIS 2376, *10 (1989) (the "reasonable basis" obligation relates only to the particular recommendation, rather than to any particular customer). The SEC, in its discussion of municipal underwriters' responsibilities in a 1988 Release, noted that "a broker-dealer recommending securities to investors implies by its recommendation that it has an adequate basis for the recommendation." *Municipal Securities Disclosure*, Release No. 34–26100 (September 22, 1988) (the "1988 SEC Release") at text accompanying note 72.

[8] Similarly, the suitability rule does not apply where a dealer merely gathers information on a particular customer, but does not make any recommendations. This is true even if the information is the type of information generally gathered to satisfy a suitability obligation. Dealers should nonetheless remember that regardless of any determination of whether the dealer is making a recommendation and subject to the suitability requirement, the dealer is required to make reasonable efforts to obtain certain customer specific information pursuant to rule G–8(a)(xi) so that dealers can protect themselves and the integrity of the securities markets from customers who do not have the financial means to pay for transactions.

[9] *See* Rule G–17 Interpretation—Notice Regarding Rule G–17, on Disclosure of Material Facts, March 20, 2002, *MSRB Rule Book* (July 1, 2002) at 135.

[10] On April 30, 2002, the Commission approved a proposed rule change relating to the manner in which dealers fulfill their fair practice obligations to certain institutional customers. Release No. 34–45849 (April 30, 2002), 67 FR 30743. *See* Rule G–17 Interpretation—Notice Regarding the Application of MSRB Rules to Transactions With Sophisticated Municipal Market Professionals ("SMMPs") (the "SMMP Notice"), *MSRB Rule Book* (July 1, 2002) at 136. The SMMP Notice recognizes the different capabilities of SMMPs and retail or non-sophisticated institutional customers and provides that dealers may consider the nature of the institutional customer when determining what specific actions are necessary to meet the dealer's fair practice obligations to such customers. The SMMP Notice provides that, while it is difficult to define in advance the scope of a dealer's fair practice obligations with respect to a particular transaction, by making a reasonable determination that an institutional customer is an SMMP, then certain of the dealer's fair practice obligations remain applicable but are deemed fulfilled.

[11] *See generally* Report of Commissioner Laura S. Unger to the SEC, *On-Line Brokerage: Keeping Apace of Cyberspace*, at n. 64 (Nov. 1999) ("Unger Report") (discussing various views espoused by online brokerage firms, regulators and academics on the topic of online suitability); *Developments in the Law—The Law of Cyberspace*, 112 Harv. L. Rev. 1574, 1582–83 (1999) (The article highlights the broader debate by academics and judges over whether "to apply conventional models of regulation to the Internet.").

[12] The guidance contained in this notice is intended to be consistent with the general statements and guidelines contained in the NASD Online Suitability Notice.

[13] *See e.g.*, Rule G–19 Interpretive Letter dated February 17, 1998, *MSRB Rule Book* (July 1, 2002) at 144.

[14] These general principles were first enunciated in the NASD Online Suitability Notice.

[15] For example, if a dealer transmitted a rating agency research report to a customer at the customer's request, that communication may not be subject to the suitability rule; whereas, if the same dealer transmitted the very same research report with an accompanying message, either oral or written, that the customer should act on the report, the suitability analysis would be different.

[16] NASD Online Suitability Notice at 3.

[17] Note that there are instances where sending a customer an electronic communication that highlights a particular municipal security (or securities) will not be viewed as a recommendation. For instance, while each case requires an analysis of the particular facts and circumstances, a dealer generally would not be viewed as making a recommendation when, pursuant to a customer's request, it sends the customer (1) electronic "alerts" (such as account activity alerts, market alerts, or rating agency changes) or (2) research announcements (*e.g.*, sector reports) that are not tailored to the individual customer, as long as neither given their content, context, and manner of presentation would lead a customer reasonably to believe that the dealer is suggesting that the customer take action in response to the communication.

[18] Note, however, that a portfolio analysis tool that merely generates a suggested mix of general classes of financial assets (*e.g.*, 60 percent equities, 20 percent bonds, and 20 percent cash equivalents), without an accompanying list of securities that the customer could purchase to achieve that allocation, would not trigger a suitability obligation. On the other hand, a series of actions which may not constitute recommendations when considered individually, may amount to a recommendation when considered in the aggregate. For example, a portfolio allocator's suggestion that a customer could alter his or her current mix of investments followed by provision of a list of municipal securities that could be purchased or sold to accomplish the alteration could be a recommendation. Again, however, the determination of whether a portfolio analysis tool's communication constitutes a recommendation will depend on the content, context, and presentation of the communication or series of communications.

stated earlier, many other types of electronic communications are not easily characterized. In addition, changes to the factual predicates upon which these examples are based (or the existence of additional factors) could alter the determination of whether similar communications may or may not be viewed as recommendations. Dealers, therefore, should analyze all relevant facts and circumstances, bearing in mind the general principles noted earlier and discussed below, to determine whether a communication is a recommendation, and they should take the necessary steps to fulfill their suitability obligations. Furthermore, these examples are based on technological services that are currently used in the marketplace. They are not intended to direct or limit the future development of delivery methods or products and services provided online.

Guidelines for Evaluating Suitability Obligations

Dealers should consider, at a minimum, the following guidelines when evaluating their suitability obligations with respect to municipal securities transactions.[19] None of these guidelines is determinative of whether a recommendation exists. However, each should be considered in evaluating all of the facts and circumstances surrounding the communication and transaction.

- A dealer cannot avoid or discharge its suitability obligation through a disclaimer where the particular communication reasonably would be viewed as a recommendation given its content, context, and presentation.[20]

The MSRB, however, encourages dealers to include on their web sites (and in other means of communication with their customers) clear explanations of the use and limitations of tools offered on those sites.[21]

- Dealers should analyze any communication about a security that reasonably could be viewed as a "call to action" and that they direct, or appear to direct, to a particular individual or targeted group of individuals as opposed to statements that are generally made available to all customers or the public at large to determine whether a recommendation is being made.[22]
- Dealers should scrutinize any communication to a customer that suggests the purchase, sale, or exchange of a municipal security as opposed to simply providing objective data about a security to determine whether a recommendation is being made.[23]
- A dealer's transmission of unrequested information will not necessarily constitute a recommendation. However, when a dealer decides to send a particular customer unrequested information about a security that is not of a generalized or administrative nature (*e.g.*, notification of an official communication), the dealer should carefully review the circumstances under which the information is being provided, the manner in which the information is delivered to the customer, the content of the communication, and the original source of the information. The dealer should perform this review regardless of whether the decision to send the information is made by a representative employed by the dealer or by a computer software program used by the dealer.
- Dealers should be aware that the degree to which the communication reasonably would influence an investor to trade a particular municipal security or group of municipal securities either through the context or manner of presentation or the language used in the communication may be considered in determining whether a recommendation is being made to the customer.

The MSRB emphasizes that the factors listed above are guidelines that may assist dealers in complying with the suitability rule. Again, the presence or absence of any of these factors does not by itself control whether a recommendation has been made or whether the dealer has complied with the suitability rule. Such determinations can be made only on a case-by-case basis taking into account all of the relevant facts and circumstances.

Conclusion

The foregoing discussion highlights some suggested principles and guidelines to assist in determining when electronic communications constitute recommendations, thereby triggering application of the MSRB's suitability rule. The MSRB acknowledges the numerous benefits that may be realized by dealers and their customers as a result of the Internet and online brokerage services. The MSRB emphasizes that it neither takes a position on, nor seeks to influence, any dealer's or customer's choice of a particular business model in this electronic environment. At the same time, however, the MSRB urges dealers both to consider carefully whether suitability requirements are adequately being addressed when implementing new services and to remember that customers' best interests must continue to be of paramount importance in any setting, traditional or online.

As new technologies and/or services evolve, the MSRB will continue to work with regulators, members of the industry and the public on these and other important issues that arise in the online trading environment.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the Online Suitability Notice. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

[19] These guidelines were originally set forth in the NASD Online Suitability Notice.

[20] Although a dealer cannot disclaim away its suitability obligation, informing customers that generalized information provided is not based on the customer's particular financial situation or needs may help clarify that the information provided is not meant to be a recommendation to the customer. Whether the communication is in fact a recommendation would still depend on the content, context, and presentation of the communication. Accordingly, a dealer that sends a customer or group of customers information about a security might include a statement that the dealer is not providing the information based on the customers' particular financial situation or needs. Dealers may properly disclose to customers that the opinions or recommendations expressed in research do not take into account individual investors' circumstances and are not intended to represent recommendations by the dealer of particular municipal securities to particular customers.

Dealers, however, should refer to previous guidelines issued by the SEC that may be relevant to these and/or related topics. For instance, the SEC has issued guidelines regarding whether and under what circumstances third-party information is attributable to an issuer, and the SEC noted that the guidance also may be relevant regarding the responsibilities of dealers. *See* SEC Guidance on the Use of Electronic Media, Release Nos. 34–7856, 34–42728, IC–24426, 65 FR 25843 at 25848–25849 (April 28, 2000).

[21] The MSRB believes that a dealer should, at a minimum, clearly explain the limitations of its search engine and the decentralized nature of the municipal securities market. The dealer should also clearly explain that securities that meet the customer's search criteria might be available from other sources.

[22] The MSRB notes that there are circumstances where the act of sending a communication to a specific group of customers will not necessarily implicate the suitability rule. For instance, a dealer's business decision to provide only certain types of investment information (*e.g.*, research reports) to a category of "premium" customers would not, without more, trigger application of the suitability rule. Conversely, dealers may incur suitability obligations when they send a communication to a large group of customers urging those customers to invest in a municipal security.

[23] As with the other general guidelines discussed in this notice, the presence of this factor alone does not automatically mean that a recommendation has been made.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Dealers are increasingly offering online brokerage services to their retail customers. The Internet gives retail customers the tools to manage their own accounts and the ability to obtain access to investment information. Online trading offers many benefits to dealers and retail customers, but dealers must continue to fulfill their suitability obligations in the online environment whenever they recommend to a customer the purchase, sale or exchange of a municipal security.

The Online Suitability Notice states that the suitability rule (MSRB Rule G–19) remains fully applicable to online activities where a dealer recommends a municipal securities transaction to its customers. The Online Suitability Notice does not expand or create new obligations under the suitability rule, nor does it establish a "bright line" test for determining whether a particular communication constitutes a recommendation for purposes of the suitability rule. The MSRB instead articulates several broad principles that dealers can use in evaluating whether a particular online communication could fall within the definition of recommendation for purposes of the suitability rule. The Online Suitability Notice also provides guidance to members through the use of examples of communications that the MSRB believes fall within the definition of recommendation.

(2) Statutory Basis

The Board believes the proposed rule change is consistent with section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that dealers that make recommendations to customers in the online environment have an obligation to determine whether recommendations are suitable for such customers. The MSRB believes that this Online Suitability Notice is necessary to protect investors and the public interest with respect to online trading.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all brokers, dealers and municipal securities dealers.

(C) Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Online Suitability Notice is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) thereunder, in that it is a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–2002–11 and should be submitted by November 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26514 Filed 10–17–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46636; File No. SR–MSRB–2002–10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Rule G–14, on Reports of Sales or Purchases

October 10, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2002 the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–2002–10) as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change with regard to Rule G–14, on reports of sales or purchases, to increase transparency in the municipal securities market. The proposed rule change would not change the wording of Rule G–14.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(a) The Board has a long-standing policy to increase price transparency in the municipal securities market, with the ultimate goal of disseminating comprehensive and contemporaneous pricing data. One product of the Board's Transaction Reporting Program is its Daily Transaction Report, which has been provided to subscribers each day since January 2000. The report is made available each morning by 7 a.m. and includes details of transactions in municipal securities which were "frequently traded" the previous business day. From the beginning of the Transaction Reporting Program in 1994 through the spring of 2002, "frequently traded" securities were defined as those that were traded four or more times on a given business day. In May 2002, the Board defined "frequently traded" securities as those that were traded three or more times on a given day.[4]

When transparency was initially being introduced into the municipal securities market, the Board was concerned that an observer unfamiliar with the market might mistake an isolated reported transaction or pair of transactions as providing a reliable indicator of "market price." Because of this concern, the Board adopted the "frequently traded" threshold of four trades. At the same time, the Board has made a commitment to review the use of these reports as experience is obtained and eventually to move to transparency reporting on a more contemporaneous and comprehensive basis.[4]

Since 1994, the Board has made ongoing efforts to increase price transparency in the municipal securities market in measured steps, culminating in comprehensive, real-time price transparency. The first price transparency report, begun in 1995, was a report, published the day after trading ("T+1"), that summarized inter-dealer trades in frequently traded municipal securities. In 1998, the Board added customer trades to the T+1 summary reports, and in January 2000 began, as well, to publish individual transaction data on frequently traded securities. The Board has also introduced "comprehensive" transaction reports for this market, which list all municipal securities transactions (regardless of frequency of trading), but which are available no less than one week after trade date.[5]

At this time, the Board believes that the next appropriate step in this process is to change the threshold for determining that information about a municipal security is to be disseminated in the T+1 Daily Transaction Report. The proposed rule change would lower the threshold from three to two trades per day.

Impact of Proposed Report on Transparency

The proposed threshold would increase substantially the proportion of municipal securities market activity that is reported on the day after trading. On a typical day, there are approximately 26,000 transactions in about 10,000 issues, with a total par value traded of about $9.5 billion. The present Daily Transaction Report, with a threshold of three or more trades per day, includes an average of 14,400 trades in 2,600 different issues, with a total par value of about $5.2 billion. Under the proposed threshold, the report is expected to include an average of 19,760 trades in 5,600 issues, with a total par value of about $7.7 billion. This represents a 37 percent increase in the number of trades reported, a more-than-twofold increase in the number of issues reported, and a 48 percent increase in par value reported.[6]

Description of Service

The enhanced Daily Transaction Report with the two-trade threshold will replace the current report and will be made available each day to subscribers via the Internet. Subscribers to the current Service receive the report free of charge, and their subscriptions will continue should the proposed Service be implemented. New subscriptions will be available free to parties who sign a subscription agreement. In addition, recent reports will continue to be available for examination, also free of charge, at the Board's Public Access Facility in Alexandria, VA.

Implementation Schedule

The enhanced report will be available to subscribers as soon as practical after Commission approval of the proposed rule change. It is estimated that the period between approval and implementation will not exceed two weeks.

2. Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(I) of the Act, which authorizes the MSRB to adopt rules that provide for the operation and administration of the Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition in that it applies equally to all dealers in municipal securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were not solicited, but the Board had earlier received a comment letter from The Bond Market Association ("TBMA") in reference to the August 2002 change to the comprehensive daily report, in which TBMA also commented on the Board's announced plan to lower the threshold to two trades.[7] In its letter, TBMA expressed its continued support for the Board's steps to expand transparency in the municipal securities market. TBMA also stated its belief that T+1 dissemination of information on bonds that have traded at least twice a day "would provide useful information to investors and other market participants and is not likely to have a deleterious impact on the market for such bonds or mislead investors."[8]

TBMA did state a reservation regarding the method of counting trades toward the reporting threshold. TBMA believes that when a dealer "matches or crosses purchase and sale transactions," this constitutes a single trade because this is the economic reality of such transactions, regardless of whether dealers report two transactions to the MSRB.[9]

Consistent with the Board's previous decisions,[10] the transaction reporting system will continue to treat two transactions that constitute "matched" or "crossed" transactions like other trades. In the general case, only the dealer that effects a purchase and subsequent sale could identify the two trades as crossed agency trades or matched riskless principal transactions. The transaction reporting system does not require dealers to match the two sides of agency trades nor specifically to match or identify riskless principal transactions. Therefore, it is not possible to count those trades differently in the current system for purposes of the T+1 reporting threshold.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–2002–10 and should be submitted by November 8, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26515 Filed 10–17–02; 8:45 am]

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[4] See Release No. 34–45861 (May 1, 2002) 67 FR 30989–30990.

[4] *See, e.g.*, "Board to Proceed with Pilot Program to Disseminate Inter-Dealer Transaction Information," *MSRB Reports*, Vol. 14, No. 1 (January 1994). In its approval order for the Inter-Dealer Daily Report, the Securities and Exchange Commission noted that the Board, in proceeding to subsequent levels of transparency, "should continue to work toward publicly disseminating the maximum level of useful information to the public while ensuring that the information and manner in which it is presented is not misleading." *See* Release No.34–34955 (November 9, 1994) 59 FR 59810.

[5] The first comprehensive report was introduced in October 2000 and listed all trades after a one-month delay. The latest comprehensive report began operation in August 2002 and has a one-week delay. *See* Release No. 34–46380 (August 19, 2002) 67 FR 54831–54832.

[6] Data is based upon market activity from April 1, 2001 through July 31, 2001.

[7] See letter from Frank Chin, Chair, Municipal Executive Committee, The Bond Market Association, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, dated August 8, 2002.

[8] *Id.*, at 2.

[9] *Id.*

[10] In 1994, a commentator made a similar suggestion with reference to the Board's filing that initiated the transaction reporting program. The commentator a brokers' broker, suggested that the Board should count as one transaction the situation in which a brokers' broker purchases securities from a dealer and sells them to another dealer. The Board noted in its reply that these are "riskless principal" transactions and that other dealers may also riskless principal transactions. The Board noted that its transaction reporting system would treat the sale to the intermediate dealer (*e.g.*, the brokers' broker) and the intermediate dealer's subsequent sale as two transactions, and that it would treat these trades like any other trades.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46632; File No. SR–NASD–2002–96]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Computer-to-Computer Interface Fees

October 9, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On September 27, 2002, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] Amendment No. 1 requested that the proposed rule change be considered filed pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders a proposed rule change effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend Rule 7010 to implement a retroactive reduction in the fees assessed on NASD members and non-members that used x.25 Computer-to-Computer Interface ("CTCI") lines after January 31, 2002. Nasdaq will implement the proposed rule change 30 days after the date of filing.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 7010. System Services

* * * * *

(f) Nasdaq Workstation™ Service

* * * * *

(3) The following charges shall apply for each CTCI subscriber*:

Options	Price
Option 1: Dual 56kb lines (one for redundancy) and single hub and router.	$1275/month.
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy).	$1600/month.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 27, 2002 ("Amendment No. 1"). The proposal was originally filed for notice and comment under Section 19(b)(2) of the Act. In Amendment No. 1, NASD revised its proposal to stipulate that all subscribers would receive a credit of $625 per month per .25 computer-to-computer circuit between February 1, 2002 and the date that circuits were terminated. Amendment No. 1 also clarified how the credits would be provided to subscribers.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] For purposes of calculating the 30-day delayed operative date and the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on September 27, 2002, when Amendment No. 1 was filed.

Options	Price
Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	$8000/month.
Option 1, 2, or 3 with Message Queue software enhancement	Fee for Option 1, 2, or 3 (including any Bandwidth Enhancement Fee) plus 20%.
Disaster Recovery Option: Single 56kb line with single hub and router. (For remote disaster recovery sites only).	$975/month.
Bandwidth Enhancement Fee (for T1 subscribers only)	$4000/month per 64kb increase above 128kb T1 base.
Installation Fee	$2000 per site for dual hubs and routers. $1000 per site for single hub and router.
Relocation Fee (for the movement of TCP/IP—capable lines within a single location).	$1700 per relocation.

* As reflected in SR–NASD–00–80 and SR–NASD–00–81, *Nasdaq began replacing* x.25 CTCI circuits [are being replaced] with TCP/IP CTCI circuits *in January 2001*. Pursuant to SR–NASD–2001–87 and SR–NASD–2001–88, the fee for x.25 CTCI circuits—which [has] *had* remained $200 per month per circuit—[is] *was* increased to $1,275 per month per circuit *from February 1, 2002* until the date of the termination of such circuits. *Pursuant to SR–NASD–2002–96, users of x.25 CTCI circuits will receive a credit of $625 per month per circuit from February 1, 2002 until the date of circuit termination.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers to Nasdaq's Trumbull, Connecticut processing facilities. Through CTCI, firms are able to enter trade reports into Nasdaq's Automated Confirmation Transaction Service and orders into Nasdaq's transaction execution systems.

In response to numerous requests from market participants that Nasdaq upgrade the speed and reliability of its CTCI data transmission environment, Nasdaq began the process in January 2001 of "sunsetting" its CTCI x.25/bisynch network in favor of a new network that provides greater capacity and a more efficient transmission protocol. The new CTCI network operates over the Enterprise Wide Network II ("EWN II") and provides connectivity over more powerful 56kb and T1 data lines. In addition, the new CTCI network uses the industry-standard Transmission Control Protocol/Internet Protocol ("TCP/IP"), a transmission protocol that is robust, efficient, and well known among the technical community.

In December 2001, Nasdaq filed proposed rule changes to increase the monthly charge for x.25 CTCI circuits that remained in use from $200 to $1,275 per circuit per month, from February 1, 2002 until the date of circuit termination.[7] The fee increase was designed to provide users that had failed to convert from x.25 CTCI circuits to TCP/IP circuits with a financial incentive to complete conversions in a timely fashion and to pass through the increasing per circuit costs of the obsolete x.25 CTCI network to firms that had failed to transition. In May 2002, Nasdaq completed the process of "sunsetting" all x.25 CTCI circuits: All members and non-members that access Nasdaq through CTCI have now been transitioned to TCP/IP lines.

During the process of transitioning from x.25 CTCI to TCP/IP, several member firms approached Nasdaq to request that it support the use of Message Queue Series ("MQ Series") software over the TCP/IP lines. MQ Series is a commercially available messaging product that provides firms with the ability to integrate disparate systems over a common application programming interface ("API") messaging infrastructure. There are over twenty operating systems that are supported by MQ Series, including Windows, Solaris, Mac OS, and Linux. Firms that use MQ Series are able to establish networks with less effort, skill, and resources, thereby achieving a seamless interconnection of disparate communications systems, and can make use of a comprehensive family of APIs designed to make coding for any messaging task straightforward. Because it believed that offering MQ Series would be a significant benefit to firms that use TCP/IP lines, Nasdaq agreed to work with a pilot group of five member firms to test lines that use the software before making it available to all members and non-members.

Unfortunately, Nasdaq experienced numerous delays in scheduling time to establish and test the lines using MQ Series, largely as a result of the need to devote resources to restoring primary CTCI service to firms following the September 11 terrorist attacks. As a result, Nasdaq could not make the TCP/IP lines that it had promised to the pilot firms available in a timely fashion, and these firms continued to use x.25 CTCI lines after the higher prices established by SR–NASD–2001–87 went into effect. TCP/IP lines using MQ Series began to go into production for the pilot firms during the period from April to May 2002. As of June 2002, Nasdaq began making lines using MQ Series available to all users of TCP/IP CTCI lines.[8]

[7] Securities Exchange Act Release No. 45264 (January 10, 2002), 67 FR 2942 (January 22, 2002) (SR–NASD–2001–87) (notice of filing and immediate effectiveness of proposal related to CTCI fees assessed on members); Securities Exchange Act Release No. 45411 (February 6, 2002), 67 FR 6776 (February 13, 2002) (SR–NASD–2001–88) (order approving proposal to increase CTCI fees assessed on non-members). As indicated, the fee increase for members was effective immediately upon filing, and the increase for non-members was approved by the Commission.

[8] See Securities Exchange Act Release No. 46111 (June 25, 2002), 67 FR 44490 (July 2, 2002) (SR–NASD–2002–82) (notice of filing and immediate effectiveness of proposal to establish fees assessed on members for TCP/IP lines using MQ Series software); Securities Exchange Act Release No. 46112 (June 25, 2002), 67 FR 44488 (July 2, 2002) (SR–NASD–2002–83) (notice of filing of proposal to establish fees assessed on non-members for TCP/IP lines using MQ Series software); Securities Exchange Act Release No. 46356 (Aug. 15, 2002), 67 FR 54249 (Aug. 21, 2002) (SR–NASD–2002–83) (order approving proposal to establish fees assessed on non-members for TCIP/IP lines using MQ Series software).

Nasdaq believes that the pilot firms' agreement to provide valuable support to Nasdaq's effort in establishing infrastructure, testing, and support processes for TCP/IP lines using MQ Series will benefit all other firms that choose to make use of this software enhancement. Moreover, the fact that these firms continued to use x.25 CTCI lines after January 31, 2002 was attributable to delays on Nasdaq's part. Accordingly, Nasdaq believes that the pilot firms should receive a reduction in the charges assessed for x.25 CTCI after January 31, 2002. In accordance with guidance received from Commission staff, however, Nasdaq will provide a fee reduction not only to the MQ pilot firms, but also to all other members and non-members that used x.25 CTCI after January 31, 2002. The fee reduction will be provided by means of a credit that will appear on the bills mailed to subscribers in November 2002 (and/or a direct payment, to the extent that the amount of the credit exceeds the amount of charges).[9]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[10] including Section 15A(b)(5) of the Act,[11] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls, and Section 15A(b)(6) of the Act,[12] which requires rules that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[9] Telephone conversation between John Yetter, Assistant General Counsel, Nasdaq, and Jennifer Colihan, Special Counsel, Division, Commission, October 9, 2002.

[10] 15 U.S.C. 78*o*–3.

[11] 15 U.S.C. 78*o*–3(b)(5).

[12] 15 U.S.C. 78*o*–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)[13] of the Act and Rule 19b–4(f)(6) thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the amended proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–96 and should be submitted by November 8, 2002.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes of calculating the 30-day delayed operative date and the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on September 27, 2002, when Amendment No. 1 was filed.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26516 Filed 10–17–02; 8:45 am]

BILLING CODE 8010–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46648; File No. SR–NASD–2002–135]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish Maximum Execution Fees and Liquidity Provider Rebates for SuperMontage Transactions in Low-Priced Securities

October 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on October 2, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish caps on the SuperMontage order execution charges and liquidity provider credits applicable to Non-Directed and Preferenced Orders for securities that are priced at $1.00 or less per share. Nasdaq will begin implementation of the rule change in conjunction with the initiation of trading on SuperMontage (currently scheduled for October 14, 2002). Because the transition from the current SuperSOES, SOES, and SelectNet environment to SuperMontage will occur over the course of several weeks, with stocks moving from one system to the other in stages, Nasdaq will continue to charge its filed prices for SuperSOES, SOES, SelectNet, and quotation updates for stocks that have

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

not transitioned, while charging the SuperMontage prices established through SR–NASD–2002–44,[3] SR–NASD–2002–91,[4] and SR–NASD–2002–135 for stocks that have transitioned. Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act,[5] which renders the rule effective upon the Commission's receipt of this filing.

The text of the proposed rule change appears below. New text is in italics.

Rule 7010. System Services

(a)–(h) No change.

(i) Nasdaq National Market Execution System (SuperMontage)

The following charges shall apply to the use of the Nasdaq National Market Execution System (commonly known as SuperMontage) by members:

Order Entry

Non-Directed Orders (excluding Preferenced Orders)—No charge.
Preferenced Orders:
Preferenced Orders that access a Quote/Order of the member that entered the Preferenced Order)—No charge.
Other Preferenced Orders—$0.02 per order entry.
Directed Orders—$0.10 per order entry.

Order Execution

Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the NNMS:
Charge to member entering order—$0.002 per share executed *(but no more than $75 per trade for trades in securities executed at $1.00 or less per share).*
Credit to member providing liquidity—$0.001 per share executed *(but no more than $37.50 per trade for trades in securities executed at $1.00 or less per share).*
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the NNMS—$0.001 per share executed *(but no more than $37.50 per trade for trades in securities executed at $1.00 or less per share).*
Directed Order—$0.0025 per share executed.
Non-Directed or Preferenced Order entered by a member that accesses a Quote/Order of such member—No charge.

Order Cancellation

Non-Directed Orders (excluding Preferenced Orders)—$0.01 per order cancelled.
Preferenced Orders—$0.01 per order cancelled.
Directed Orders—$0.10 per order cancelled.

Entry and Maintenance of Quotes/Orders by Nasdaq Quoting Market Participants

Initial entry of Quote/Order—No charge.
Change of Quote/Order due to order execution through SuperMontage—No charge.
Cancel/replace of Quote/Order to increase size—No charge.
Cancel/replace of Quote/Order to change price—$0.01.
Cancel/replace of Quote/Order to decrease size manually—$0.01.
Cancellation of Quote/Order—$0.01.
Cancellation of Quote/Order due to order purge or timeout—$0.0075.
(j)–(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Earlier this year, Nasdaq filed a proposed rule change to control trading costs for low-priced securities traded through its SuperSOES transaction execution system.[6] Specifically, SR–NASD–2002–106 established a maximum SuperSOES execution fee of $75 per trade and a liquidity provider rebate cap of $37.50 per trade for securities trading at $1.00 or less per share. Nasdaq is now proposing to establish substantively identical limits for Non-Directed and Preferenced Orders executed through SuperMontage.

Under the fee schedule established for SuperMontage by SR–NASD–2002–44, a member that enters a Non-Directed or Preferenced Order will pay $0.002 per share executed if the order is executed against the Quote/Order of a market participant that does not charge an access fee, and the liquidity provider will receive a $0.001 credit. By contrast, the member will pay $0.001 per share if the order is executed against the Quote/Order of a market participant that charges an access fee, and the liquidity provider will not receive a credit.[7]

Nasdaq represents that recent market activity has caused the prices of many Nasdaq securities to fluctuate, and in some cases lose significant value. As the prices of these securities decline, market participants generally need to purchase or sell an increasing number of total shares to participate actively in the market for these issues. This increase in the size of individual transactions, when combined with an unlimited per share fee and credit structure, will raise execution costs to market participants and result in disproportionate credits to liquidity providers.

In response, Nasdaq will establish caps on the order execution fees and liquidity provider credits for Non-Directed and Preferenced Orders that execute at prices of $1.00 or less. The maximum fee for such an order will be $75 if the order is executed against the Quote/Order of a market participant that does not charge an access fee, and $37.50 if the order is executed against the Quote/Order of a market participant that charges an access fee. Similarly, the maximum credit to a liquidity provider for a transaction in a low-priced security would be $37.50.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[9] in general, and with Section 15A(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers, and other persons using any facility or system which the association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and Rule 19b–4(f)(2)[12] thereunder because it establishes or changes a due, fee, or charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR–NASD–2002–135 and should be submitted by November 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26626 Filed 10–17–02; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 45906 (May 10, 2002), 67 FR 34965 (May 16, 2002) (SR–NASD–2002–44). SR–NASD–2002–44 established a fee scheduled for members' use of SuperMontage.

[4] *See* Securities Exchange Act Release No. 46343 (August 13, 2002), 67 FR 53822 (August 19, 2002) (SR–NASD–2002–91). SR–NASD–2002–91 provided that the fees for the use of SuperMontage by a national securities exchange trading Nasdaq securities on an unlisted trading privileges basis ("UTP Exchange") may be established by means of an agreement between Nasdaq and the UTP Exchange.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] *See* Securities Exchange Act Release No. 46456 (September 3, 2002), 67 FR 57470 (September 10, 2002) (SR–NASD–2002–106). SR–NASD–2002–106 was effective upon filing. Nasdaq also filed with the Commission a proposed rule change to apply the fee and rebate limits established by SR–NASD–2002–106 retroactively, as of July 1, 2002. *See* SR–NASD–2002–107 (August 5, 2002).

[7] Nasdaq represents that the fee structure is economically identical to the current SuperSOES fee structure, under which a member pays $0.002 per share executed but receives a $0.001 rebate if its order executes against the quotation of a market participant that charges an access fee, and liquidity providers that do not charge an access fee receive a $0.001 rebate.

[8] Nasdaq represents that the caps are economically identical to the caps currently applicable to SuperSOES, under which a member could pay up to $75 per trade but could receive a rebate of up to $37.50 if its order executes against the quotation of a market participant that charges an access fee, while a liquidity provider that does not charge an access fee could receive a rebate of up to $37.50.

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(5).

[11] 15 U.S.C. 78s(b)(1).

[12] 17 CFR 240.19b–4.

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3453]

State of California

Santa Clara County and the contiguous counties of Alameda, San Mateo, San Joaquin, Stanislaus, San Benito, Santa Cruz and Merced in the State of California constitute a disaster area as a result of a wildfire that began on September 23, 2002 in the Santa Cruz Mountains. The wildfire consumed over 3,100 acres and damaged residences and businesses in the Croy Ridge and surrounding area. The wildfire was fully contained by October 5, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 9, 2002 and for economic injury until the close of business on July 10, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P. O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.625
Homeowners without credit available elsewhere	3.312
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 345305 and for economic damage is 9R9700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 10, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–26548 Filed 10–17–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3449; Amendment #1]

State of Louisiana

In accordance with a notice received from the Federal Emergency Management Agency, dated October 1, 2002, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on September 21, 2002, and continuing through October 1, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 26, 2002, and for economic injury the deadline is June 27, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 10, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–26547 Filed 10–17–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3366; Amendment #2]

Commonwealth of Virginia

The above-numbered declaration is hereby amended to extend the deadline

for filing applications for economic injury as a result of this disaster to January 31, 2003. All other information remains the same.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 9, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–26549 Filed 10–17–02; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Initiation of a Review To Consider the Designation of Afghanistan as a Least-Developed Beneficiary Developing Country Under the GSP; Solicitation of Public Comments Relating to the Designation Criteria

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation of public comment with respect to the eligibility of Afghanistan for the GSP program.

SUMMARY: This notice announces the initiation of a review to consider the designation of Afghanistan as a least-developed beneficiary developing country under the GSP program and solicits public comment relating to the designation criteria. Comments are due by November 22, 2002, in accordance with the requirements for submission explained below.

FOR FURTHER INFORMATION: Contact the GSP Subcommittee, Office of the United States Trade Representative (USTR), 1724 F Street, NW., Room F–220, Washington, DC 20508. The telephone number is (202) 395–6791 and the facsimile number is (202) 395–9481.

SUPPLEMENTARY INFORMATION: The GSP Subcommittee of the Trade Policy Staff Committee (TPSC) has initiated a review to determine if Afghanistan meets the designation criteria of the GSP law and should be designated as a least-developed beneficiary developing country for purposes of the GSP, which is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461, *et seq.*) (the Act). Interested parties are invited to submit comments regarding the eligibility of Afghanistan for designation as a GSP least-developed beneficiary developing country. Submissions should comply with 15 CFR Part 2007 and the specific instructions that follow.

Eligibility Criteria

The trade benefits under the GSP are available to any country that the President designates as a GSP "beneficiary developing country." Additional trade benefits under the GSP are available to any country that the President designates as a GSP "least-developed beneficiary developing country." The criteria that the President must consider in designating countries as GSP beneficiary developing countries include the criteria in sections 502(b)(2) (19 U.S.C. 2462(b)(2)) and 502(c) (19 U.S.C. 2462(c)) of the Act, as amended by the Trade Act of 2002 (Pub. L. 107–210). To designate a country as a least-developed beneficiary developing country, the President must consider the criteria in section 502(c), as well as the criteria in section 501 of the Act.

Section 501 provides that, in extending preferences under the GSP, the President shall have due regard for:

1. The effect such action will have on furthering the economic development of developing countries through the expansion of their exports.

2. The extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries.

3. The anticipated impact of such action on United States producers of like or directly competitive products.

4. The extent of the beneficiary developing country's competitiveness with respect to eligible articles.

Section 502(b)(2) provides that a country is ineligible for designation if:

1. Such country is a Communist country, unless—

a. The products of such country receive nondiscriminatory treatment,

b. Such country is a WTO Member (as such term is defined in section 2(10) of the Uruguay Round Agreements Act) (19 U.S.C. 3501(10)) and a member of the International Monetary Fund, and

c. Such country is not dominated or controlled by international communism.

2. Such country is a party to an arrangement of countries and participates in any action pursuant to such arrangement, the effect of which is—

a. To withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level, and

b. To cause serious disruption of the world economy.

3. Such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce.

4. Such country—

a. Has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

b. Has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or

c. Has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copy rights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—

i. Prompt, adequate, and effective compensation has been or is being made to the citizen, corporation, partnership, or association referred to above,

ii. Good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or the country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

iii. A dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in other mutually agreed upon forum, and the President promptly furnishes a copy of such determination to the Senate and House of Representatives.

5. Such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

6. Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism or the Secretary of State makes a determination with respect to such country under section 6(j)(1)(A) of the Export Administration Act of 1979 [50 U.S.C.S. Appx. 2405(j)(1)(A)] or such country has not taken steps to support the efforts of the United States to combat terrorism.

7. Such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

8. Such country has not implemented its commitments to eliminate the worst forms of child labor.

Section 502(c) provides that, in determining whether to designate any country as a GSP beneficiary developing country, the President shall take into account:

1. An expression by such country of its desire to be so designated;

2. The level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the President deems appropriate;

3. Whether or not other major developed countries are extending generalized preferential tariff treatment to such country;

4. The extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

5. The extent to which such country is providing adequate and effective protection of intellectual property rights;

6. The extent to which such country has taken action to—

a. Reduce trade distorting investment practices and policies (including export performance requirements); and

b. Reduce or eliminate barriers to trade in services; and

7. Whether or not such country has taken or it taking steps is afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

Note that the Trade Act of 2002 amended paragraph (D) of the definition of the term "internationally recognized worker rights," which now includes: (A) The right of association; (B) the right to organize and bargain collectively; (C) a prohibition on the use of any form of forced or compulsory labor; (D) a minimum age for the employment of children and a prohibition on the worst forms of child labor as defined in paragraph (6) of section 507(4) of the Act; and (E) acceptable conditions of work with respect to minimum wages, hours or work, and occupational safety and health.

Requirements for Submissions

Comments must be submitted, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee. Comments must be received no later than 5 p.m. on Monday, November 22, 2202. Information and comments submitted regarding Afghanistan will be subject to public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" staff pursuant to 15 CFR 2003.6. If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicated where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of each and every page of the document. The public version which does not contain business confidential information must also be clearly marked at the top and bottom of each and every page (either "PUBLIC VERSION" of "NON-CONFIDENTIAL").

In order to facilitate prompt consideration of submissions, USTR strongly urges and prefers electronic e-mail submissions in response to this notice. In the event that an e-mail submission is impossible, submission should be made by facsimile. These submissions should be single copy transmission in English with the total submission not to exceed 50 single-spaced pages and 3 megabytes as a digital file attached to an e-mail transmission. Persons making submissions by e-mail should use the following subject line: "Afghanistan GSP Eligibility Review". Documents must be submitted, in English, as either WordPerfect (".WPD"), MSWord (".DOC"), or text (".TDXT") files. Documents should not be submitted as electronic image files or contain imbedded images (for example, ".JPG", "PDG", ".BMP", or ".GIF") as these types files are generally excessive large. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel, pre- formatted for printing on 8½ x 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files. Facsimile submissions should include, among other identifying information specified in the regulations, the following information at the top of the first page: "Afghanistan GSP Eligibility Review".

For any document containing business confidential information submitted as an electronic attached file to an e-mail transmission, the file name of the business confidential version should begin with the character in "BC–", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the attached file containing the submission itself. The e-mail address for these submission is *FR0045@USTR.GOV*. Documents not submitted in accordance with these instructions might not be considered in this review.

Public versions of all documents relating to this review will be available for review shortly after the due date by appointment in the USTR public reading room, 1724 F Street NW., Washington, DC. Appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday by calling (202) 395–6186.

Steven Falken,

Executive Director for GSP, Chairman, GSP Subcommittee.

[FR Doc. 02–26520 Filed 10–17–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13486]

Towing Safety Advisory Committee; Vacancy

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Towing Safety Advisory Committee (TSAC). TSAC provides advice and makes recommendations to the Department of Transportation on matters relating to shallow-draft inland and coastal waterway navigation and towing safety.

DATES: Application forms should reach us on or before December 23, 2002.

ADDRESSES: You may request an application form by writing to TSAC Application; Commandant (G-MSO-1), Room 1210; U.S. Coast Guard; 2100 Second Street SW.; Washington, DC 20593-0001; by calling 202-267-0214; or by faxing 202-267-4570. Send your original completed and signed application in written form to the above street address. This notice is available on the Internet at *http://dms.dot.gov* and the application form is available at *http://www.uscg.mil/hq/g-m/advisory/index.htm* (Click on "ACM Application".)

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Miante; Assistant Executive Director of TSAC, telephone 202-267-0214, fax 202-267-4570, or e-mail *gmiante@comdt.uscg.mil*.

SUPPLEMENTARY INFORMATION: The Towing Safety Advisory Committee (TSAC) is a Federal advisory committee mandated by Congress and operates under 5 U.S.C. App. 2. It advises the Secretary of Transportation on matters relating to shallow-draft inland and coastal waterway navigation and towing safety. This advice also assists the Coast Guard in formulating the position of the United States in advance of meetings of the International Maritime Organization.

TSAC meets at least once a year at Coast Guard Headquarters, Washington, DC, or another location selected by the Coast Guard. It may also meet for extraordinary purposes. Its working groups may meet to consider specific issues as required. The 16 person membership includes 7 representatives of the barge and towing industry reflecting a regional geographical balance; 1 member from the offshore mineral and oil supply vessel industry; and 2 members from each of the following areas: Maritime labor; shippers (of whom at least one shall be engaged in the shipment of oil or hazardous materials by barge); port districts, authorities, or terminal operators; and the general public.

We are currently considering applications for only one position that became vacant in September 2002: A member from the general public to provide a perspective that is not representative of the towing or maritime industry. Examples of perspectives we are looking for would include those with an occupational safety and health, environmental protection, general business operations, public advocacy, or education background. Each member serves for a term of 3 years. A few members may serve consecutive terms. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the policy of the Department of Transportation on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

If you are selected for appointment, we will require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: October 4, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 02-26550 Filed 10-17-02; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08-02-032]

Lower Mississippi River Waterway Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC) will meet to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. The meeting will be open to the public.

DATES: The next meeting of LMRWSAC will be held on Tuesday, November 12, 2002, from 9 a.m. to 12 noon. This meeting may adjourn early if all business is finished.

ADDRESSES: The meeting will be held on the 18th floor of the World Trade Center Building, 2 Canal Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: LT Ricardo Alonso, Committee Administrator, telephone (504) 589-4222, Fax (504) 589-4241. This notice is available on the Internet at *http://dms.dot.gov*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC)

The agenda includes the following:

(1) Introduction of committee members.

(2) Remarks by CAPT R. Branch, Executive Director.

(3) Approval of the May 7, 2002 minutes.

(4) Old Business:

(a) Captain of the Port status report.

(b) Vessel Traffic Service (VTS) update report.

(c) Physical Oceanographic Real Time System (PORTS) update report.

(5) New Business.

(6) Next meeting.

(7) Adjournment.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the Committee Administrator at the location indicated under **ADDRESSES** as soon as possible.

Dated: October 9, 2002.

Roy J. Casto,

Rear Admiral, Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 02-26519 Filed 10-17-02; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Palm Beach International Airport, West Palm Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Palm Beach International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before November 18, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Bruce V. Pelly, Director of Airports of the Palm Beach County Department of Airports at the following address: Palm Beach County Department of Airports, 846 Palm Beach International Airport, West Palm Beach, FL 33406-1470.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Palm Beach County Department of Airports under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Matthew J. Thys, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822, (407) 812-6331. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Palm Beach International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 10, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Palm Beach County was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 22, 2003.

The following is a brief overview of the application.

PFC Application No.: 03-07-C-00-PBI.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 2004.

Proposed charge expiration date: January 1, 2007.

Total estimated net PFC revenue: $22,400,000.

Brief description of proposed project(s): Terminal Signage, Rehabilitate Cabin Air System (Terminal), Acquire Noise Land within 65-69 DNL, Expand Terminal Concourse "C", Security Facilities (Terminal Expansion), Demolish Delta Terminal Building, Apron "A" Expansion, Replace Concourses "B" Loading Bridges, Replace Concourse "C" Loading Bridges.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800-31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Palm Beach County Department of Airports.

Issued in Orlando, FL, on October 10, 2002.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 02-26585 Filed 10-17-02; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Reno/Tahoe International Airport, Reno, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: This correction revises information from previously published notice.

In notice document 97-6326 beginning on page 55911 in the issue Friday, August 30, 2002, under Supplementary Information, the proposed charge effective date should be October 1, 2003.

DATES: Comments must be received on or before October 17, 2002.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010-1303, Telephone: (650) 876-2806. The application may be reviewed in person at this same location.

Issued in Lawndale, California, on October 8, 2002.

Mia Paredes Ratcliff,

Manager, Planning and Programming Branch, Airports Division, Western-Pacific Region.

[FR Doc. 02-26466 Filed 10-17-02; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below including, the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Arizona Eastern Railway

Rail America, Inc

[Docket Number FRA-2002-13251]

The Arizona Eastern Railway (AE) seeks a permanent waiver of compliance from certain provisions of the Power Brakes and Drawbars regulations, 49 CFR part 232, regarding initial terminal road train air brake tests. Specifically, AE requests permission to perform the required initial terminal air brake test at a location two miles east of the Claypool, Arizona yard, where the test is currently being performed. This would require trains to travel a distance of two miles on the main line that includes public road crossings, with only a train-line continuity check prior to performing the initial terminal air brake test.

AE is making this request because its carloads have increased from 330 to over 600 carloads a month. AE claims that this increase of carloads is creating a safety and operational problem at the Claypool yard. The yard and the mainline are located between Highway 60 and a residential area. The residential area is accessed from the highway by six grade crossings. In the past, when the brake tests were performed on the shorter trains, only 2 to 3 crossings were blocked. Now that train lengths have increased, 4 to 5 crossings are blocked for an hour or longer for each brake test. AE has experienced incidents where members of the general public try to cross over or crawl under standing trains during the air brake tests. Additionally, AE is concerned about blocking emergency vehicles that may need to respond to incidents in the area.

Therefore, AE would like to perform a train line continuity test at the current location where the trains are made up and move the trains approximately two miles east to a non-congested area where the initial terminal brake test would be performed. The trains would

operate over two additional road crossings, Ragus Road and Highway 60, at less than ten (10) mph prior to performing the initial terminal brake test.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2002–13251) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC. on October 10, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–26468 Filed 10–17–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below including, the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Burlington Northern Sante Fe Railway

[Docket Number FRA–2002–13399]

Burlington Northern Sante Fe Railway (BNSF) seeks a waiver of compliance from certain provisions of the *Power Brakes and Drawbars* regulations, 49 CFR part 232, regarding initial terminal road train air brake tests. Specifically, BNSF requests permission to perform the required initial terminal air brake test at a location approximately three miles east of where the train is presently tested, which would require the train to move the three miles without the required air brake test.

BNSF is working with Southeast Nebraska Cooperative (SE Coop) at Beatrice, Nebraska to establish a 110-car grain shuttle facility. The site of this facility is the present SE Coop elevator. The elevator tracks will have to be upgraded to function as a shuttle load-out. The shuttles will be loaded on the elevator's private track and then shoved on additional trackage leased by BNSF to SE Coop. This additional trackage consists of the former BNSF main track, which is now operated as "other than main track" (GCOR Rule 6.28). The trackage to be leased extends from former MP30.5, south of Highway 136, to just short of a road crossing at former MP 31.9. This leased trackage will be protected from the BNSF environment by derails fitted with private industry locks. As the cars are loaded and shoved out onto the leased trackage, SE Coop will be responsible by contract to ensure that air hoses are coupled and angle cocks are properly positioned. When BNSF train crews come on duty after a train is loaded, they will couple the outbound locomotives for the eastbound movement to Lincoln, Nebraska. The conductor will be transported by vehicle to the rear of the train to install and arm the end-of-train device and check for air continuity by an application and release of air brakes.

At the above location between MP 31 and 31.9, an extreme slope of the shoulder exists with water draining into a deep ditch from the adjacent slopes. Within this mile of track there are a bridge over the Blue River and a relief bridge without adequate walking surfaces. Two overpasses and heavy ballast also present walking problems. BNSF does not believe this site is suitable for a train inspection and initial terminal air brake test. BNSF is requesting an exemption to move these trains to a more desirable location to perform the required inspections and tests. Due to crossings, the best location is approximately three miles east on the former main track between MP 28.7 and MP 27.5 on "other than main track" with a maximum speed limit of 10 mph. All trains moving to this location from the elevator will have been continuity tested by an application and release of the air brakes as previously stated. The testing site will be graded to ensure that walking conditions will allow for quality train inspections and tests to be performed in a safe and efficient manner. BNSF will have all requirements written into the general orders.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2002–13399) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, DC. on October 10, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–26467 Filed 10–17–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Paducah & Louisville Railway, Inc.

[Docket Number FRA–2002–13309]

The Paducah & Louisville Railway, Inc (P&L), located in Paducah, KY, seeks a waiver of compliance from the requirements of the Locomotive Safety Standards, 49 CFR part 229. Section 229.27(a) of the standards requires the filtering devices located in the main reservoir supply line to the airbrake system to be cleaned, repaired, or replaced at intervals that do not exceed 368 calendar days. The P&L states that they are operating eleven (11) sets of newly refurbished GP40–3 and GP35 locomotives converted as power mates. During the most recent annual test, the main reservoir filters being replaced were identical to the new filters being applied. If the waiver is granted, P&L would change the main reservoir filters at the Biennial Test (49 CFR 229.29) required to be performed every 1,104 days on these locomotives.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2002–13309) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, (Plaza Level), 400 Seventh Street SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on September 10, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–26469 Filed 10–17–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Pipeline Safety: Definition of Onshore Gas Gathering Lines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: RSPA is issuing this advisory bulletin to owners and operators of natural gas pipeline facilities to confirm the standards the Research and Special Programs Administration Office of Pipeline Safety (OPS) uses to classify natural gas gathering lines.

ADDRESSES: This document can be viewed at the OPS home page at: *http://ops.dot.gov.*

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, (202) 366–5523, or by e-mail at: *le.herrick@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 11, 1999, OPS announced an electronic public discussion forum and subsequent written comment period to provide OPS public input in deciding whether and how to modify the definition in 49 CFR 192 of a natural gas gathering line. (Docket No. RSPA–98–4868, Notice 1: 64 FR 12147.) A coalition lead by the American Petroleum Institute (API) submitted a proposed definition, which was supplemented by API Recommended Practices 80; Guidelines for the Definition of Onshore Gas Gathering Lines (RP–80).

OPS has reviewed the document but has not yet determined whether it will adopt the recommended practices into regulation. Until OPS re-defines a gas gathering line, it will continue to classify those lines according to the standards it has used in the past.

II. Advisory Bulletin (ADB–02–06)

To: Owners and Operators of Natural Gas Pipeline Facilities.

Subject: Standards for classifying natural gas gathering lines.

Purpose: To inform operators of the standards OPS currently uses to classify natural gas gathering lines.

Advisory: Standards for classification of natural gas gathering lines.

Until OPS completes its rulemaking to better define natural gas gathering lines (Docket No. RSPA–98–4868), OPS will continue to classify lines according to the four-point standard established through court precedent and historical interpretation. OPS will also continue to classify lines that pose unique difficulties of classification on a case-by-case basis. In brief, in the most common situation, gathering begins at or near the well head. In most cases, the gathering process terminates at the outlet of a processing plant. A processing plant is defined by the extraction of heavy ends from the natural gas. If there is no upstream processing plant, the gathering process terminates at the outlet of a pipeline compressor. For the purposes of determining the termination point of the gas gathering process, OPS does not consider a well head compressor (field compressor) to be a pipeline compressor. If there is no processing plant or pipeline compressor, the point at which the gathering process ends is where two or more well pipelines converge. If none of these points applies, the gas gathering termination point is where there is a change in ownership of the pipeline. These points are determined on a case-by-case basis considering the location of the pipeline in relation to population density, major traffic areas, and environmentally sensitive areas.

To summarize, OPS considers the termination of gas gathering to be:

(1) The outlet of a processing plant that extracts heavy ends from the natural gas;

(2) The outlet of a pipeline compressor (not including a well head compressor);

(3) The point where two or more well pipelines converge; or

(4) The point where there is a change in ownership of the pipeline.

Issued in Washington, D.C. on October 10, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–26464 Filed 10–17–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2002–69

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2002–69, Interest Rates and Appropriate Foreign Loss Payment Patterns For Determining the Qualified Insurance Income of Certain Controlled Corporations under Section 954(j).

DATES: Written comments should be received on or before December 17, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Interest Rates and Appropriate Foreign Loss Payment Patterns For Determining the Qualified Insurance Income of Certain Controlled Corporations under Section 954(j).

OMB Number: 1545–1799.

Notice Number: Notice 2002–69.

Abstract: Notice 2002–69 allows U.S. shareholders of a foreign insurance company to use the foreign insurance company's historical loss payment patterns in computing the company's insurance reserves provided the company has a certain number of years of data and makes an election to use that data. A domestic insurance company can elect to use its own historical data in computing its reserves provided certain requirements are satisfied and an election is made. This notice allows a foreign insurance company to elect to calculate its insurance reserves in a manner similar to a domestic insurance company. Also, this notice provides guidance on how to determine a foreign insurance company's foreign loss payment patterns.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–26609 Filed 10–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–147–87]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–147–87 (TD 8376), Qualified Separate Lines of Business (§§ 1.414(r)–3, 1.414(r)–4, and 1.414(r)–6).

DATES: Written comments should be received on or before December 17, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Qualified Separate Lines of Business.

OMB Number: 1545–1221.

Regulation Project Number: EE–147–87.

Abstract: Section 414(r) of the Internal Revenue Code requires that employers who wish to test their qualified retirement plans on a separate line of business basis, rather than on a controlled group basis, provide notice to the IRS that the employer treats itself as operating qualified separate lines of business. Additionally, an employer may request an IRS determination that such lines satisfy administrative scrutiny. This regulation elaborates on the notice requirement and the determination process.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 253.

Estimated Time Per Respondent: 3 hours, 27 minutes.

Estimated Total Annual Burden Hours: 899.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–26610 Filed 10–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of establishment of new system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e) (4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled "Education Debt Reduction Program-VA" (115VA10).

DATES: Comments on the establishment of this system of records must be received no later than November 18, 2002. If no public comment is received, the new system will become effective November 18, 2002.

ADDRESSES: You may mail or hand-deliver written comments concerning the proposed new system of records to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9289; or email comments to "*OGCRegulations@mail.va.gov*". All relevant material received before November 18, 2002 will be considered. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (727) 320–1839.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed System of Records

The Education Debt Reduction Program (EDRP) allows VA to provide education debt reduction payments to employees with qualifying loans who occupy certain health care positions for which recruitment and retention of qualified personnel is difficult. The specific health care professions that are covered by the EDRP include: physician, dentist, podiatrist, licensed pharmacist, licensed practical/vocational nurse, expanded-function dental auxiliary, registered nurse, certified registered nurse anesthetist, physician assistant, optometrist, physical therapist, occupational therapist, certified respiratory therapy technician, and registered respiratory therapist. The purpose of the program is to help VA meet its needs for qualified health care staff.

The Education Debt Reduction Program—VA (115VA10) system of records contains personal identification information related to the application material, to education loan verification documentation, to award processes, to employment status, and to service periods covered by an award such as name, address, social security number, employing facility name, job title, grade, education level, education debt reduction payment amounts, service periods covered by education debt reduction payments, name and address of the lending institution, original loan amount, current loan amount, and loan payment amount. It also contains individual information about applicants who have been denied awards and award recipients who have been terminated from program participation. Additionally, it may contain information about why an applicant declined to accept an award. Since applicants typically are denied awards because they do not meet the eligibility requirements to participate in the program, the specific nature of an applicant's ineligibility would be another element of information contained in the system of records. The information in this system of records is maintained in electronic and hard copy format and is periodically updated through recurring reports provided by local VA facilities about the progress of their program participants. This information is necessary to effectively administer the educational assistance program. It is used to determine and document an individual applicant's initial eligibility for education debt reduction awards: calculate the payment amounts and related service periods for award recipients; ensure that award amounts are consistent with applicable law, regulations and policy; monitor the amount of principal and interest that a participant paid to reduce the balance on a qualifying loan during each service period covered by the award; monitor the employment status of award recipients during their service periods; and evaluate and report program results and effectiveness. Any information in this system may be used by local VA supervisory officials and program coordinators to ensure that it is accurate and that award recipients are in compliance with the terms for participating in the program. Data about individual program participants may change (*e.g.*, changes in employment status), and that could impact certain terms of their awards such as the amounts of the education debt reduction payments and/or the beginning and ending dates of their service periods. Data changes may also impact assessments of the effectiveness of the educational assistance program. Accordingly, local supervisory officials and program coordinators must periodically review individual data in the system of records to ensure its accuracy. There are no debts to recover since each award payment is made at the conclusion of a service period. An individual who leaves before completing a service period is eligible to receive a pro-rata share of the payment for an entire service period based on the amount of time actually served in paid status during the service period.

II. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following routine use disclosures of

information, which will be maintained in the system:

• Any information in this system that is necessary to verify accuracy and completeness of the application information may be disclosed to lending institutions and other relevant organizations or individuals.

VA may need to disclose applicant information in order to verify that candidates for EDRP awards meet applicable program requirements. Employees must meet certain requirements to be eligible to participate in the Education Debt Reduction Program. For example, the applicants must be recently appointed employees serving in one of the authorized positions for which recruitment and retention is difficult. Further, they must owe any amount of principal or interest under a loan, the proceeds of which were used by or on behalf of that individual to pay costs relating to a course of education or training which led to a degree that qualified the individual for a position listed above.

• Any information in the system may be disclosed to a Federal agency in order to determine if an applicant has any obligation under another Federal Program that would render the applicant ineligible to participate in the EDRP.

Since participation in the EDRP is limited to recently appointed VA employees, it is necessary to ensure that applicants for EDRP awards who have transferred to VA from other Federal agencies do not have obligations that would conflict with the terms and conditions of the program.

• Any information in the system may be used to evaluate and report program results and effectiveness to appropriate officials including members of Congress on a routine and ad hoc basis.

The purpose of the debt reduction program is to assist in meeting the staffing needs of VHA for health professionals in occupations for which recruitment or retention of qualified personnel is difficult. Congress must have access to information from the system to assess how effectively the program accomplishes its purpose and to support decisions to continue, modify or curtail its use.

• The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the request of that individual.

Individuals sometimes request the help of a member of Congress in resolving some issues relating to a matter before VA. The member of Congress then writes VA, and VA must be able to give sufficient information to be responsive to the inquiry.

• To the National Archives and Record Administration (NARA) in records management inspections conducted under authority of Title 44 United States Code.

NARA is responsible for archiving old records no longer actively used but which may be appropriate for preservation; they are responsible in general for the physical maintenance of the Federal government's records. VA must be able to turn records over to this agency in order to determine the proper disposition of such records.

• Disclosure of information to the Federal Labor Relations Authority (FLRA), including its General Counsel, when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

The release of information to FLRA from this Privacy Act system of records is necessary to comply with the statutory mandate under which FLRA operates.

• Disclosure may be made to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

• Disclosure may be made to the VA-appointed representative of an employee, including all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

• Disclosure may be made to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

• Disclosure may be made to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which VA collected the information. In all of the routine use disclosures described above, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: October 3, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

115VA10

SYSTEM NAME:

Education Debt Reduction Program-VA.

SYSTEM LOCATION:

Records will be maintained at the Health Care Staff Development and Retention Office (HCSDRO/10A2D), Veterans Health Administration, Department of Veterans Affairs (VA), 1555 Poydras Street, Suite 1971, New Orleans, Louisiana 70112; the Austin Automation Center, Department of Veterans Affairs, 1615 East Woodward Street, Austin, Texas 78772; and the VA health care facilities and VISN offices where scholarship recipients are employed. Address locations for VA health care facilities are listed in VA Appendix 1 of the Biennial Publication of Privacy Act Issuances. Complete records will be maintained only at the HCSDRO address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

VA employees who apply for and are granted or denied educational assistance awards under the provisions of the VA Education Debt Reduction Program (EDRP) serving under an appointment under Title 38 U.S.C., Section 7402(b) in a position for which retention of qualified healthcare personnel is difficult.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records (or information contained in records) in this system may include: Personal identification information related to the application material, award processes, employment, and EDRP service periods such as (1) name, (2) employing facility number, (3) telephone number(s), (4) social security number, (5) debt reduction payment amounts, (6) dates of service periods, (7) name and address of the lending institution, (8) academic degree obtained for which EDRP funding is requested, (9) name and address of academic institution, (10) original amount of loan, and (11) current loan balance. Most of this information is contained on the application for an EDRP award including the applicant's full name, employing facility number, home and work telephone numbers, social security number, job title, degree obtained for which funding is requested, name and address of the academic institution, and the amount and number of debt reduction payments requested. The EDRP Loan Verification Form contains the candidate's name and social security number, name and address of the lending institution, original loan amount, current loan amount, and the purpose of the loan as stated on the loan application. The EDRP Acceptance of Conditions contains the name of a candidate approved for an award and the authorized number of debt reduction payments and their related amounts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, U.S.C., Sections 501, 503, 7451, 7452, and 7431–7440.

PURPOSE(S):

The records and information may be used for determining and documenting individual applicant eligibility for debt reduction awards; determining the debt reduction payment amounts and the related service periods for award recipients; ensuring that award amounts are consistent with applicable law, regulations and policy; monitoring the employment status of scholarship recipients during their service periods; terminating an employee's participation in the program; and evaluating and reporting program results and effectiveness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure of any information in this system that is necessary to verify authenticity of the application may be made to lending institutions and other relevant organizations or individuals.

2. Disclosure of any information in this system may be made to a Federal agency in order to determine if an applicant has any obligation under another Federal program that would render the applicant ineligible to participate in the Education Debt Reduction Program.

3. Any information in the system may be used to evaluate and report program results and effectiveness to appropriate officials including members of Congress on a routine and ad hoc basis.

4. Disclosure of information in this system may be made to a member of Congress or staff person acting for the member when the member or staff person requests the records on behalf of and at the request of that individual.

5. Disclosure may be made to the National Archives and Record Administration (NARA) in records management inspections conducted under authority of Title 44 United States Code.

6. Disclosure of information to the Federal Labor Relations Authority (FLRA), including its General Counsel, when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

7. Disclosure may be made to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

8. Disclosure may be made to the VA-appointed representative of an employee, including all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

9. Disclosure may be made to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

10. Disclosure may be made to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, electronic media and computer printouts.

RETRIEVABILITY:

Records are retrieved by use of the award number or an equivalent participant account number assigned by HCSDRO, Social Security Number and the name of the individual.

SAFEGUARDS:

Access to the basic file in HCSDRO is restricted to authorized VA employees and vendors. Access to the office spaces where electronic media is maintained within HCSDRO is further restricted to specifically authorized employees and is protected by contracted building security services. Records (typically computer printouts) at HCSDRO will be kept in locked files and made available only to authorized personnel on a need-to-know basis. During non-working hours the file is locked and the building is protected by contracted building security services. Records stored on electronic media are maintained on a VA-approved and managed, password-protected, secure local area network (LAN) located within HCSDRO office spaces and safeguarded as described above. Records stored on electronic media at Veterans Integrated Service Network (VISN) Offices, VA health care facilities and the Austin Automation Center (AAC) in Austin, Texas, are provided equivalent safeguards subject to local policies mandating protection of information subject to federal safeguards.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with records

disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Health Care Staff Development and Retention Office (10A2D), Veterans Health Administration, Department of Veterans Affairs, 1555 Poydras Street, Suite 1971, New Orleans, Louisiana 70112.

NOTIFICATION PROCEDURE:

Any individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such records, should submit a written request or apply in person to the Director, Health Care Staff Development and Retention Office, Veterans Health Administration, Department of Veterans Affairs, 1555 Poydras Street, Suite 1971, New Orleans, Louisiana 70112. The telephone number is (504) 589–5267.

CONTESTING RECORD PROCEDURES:

(See Records access procedures above.)

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of VA records in this system may write, call or visit the Director, Health Care Staff Development and Retention Office (10A2D), Veterans Health Administration, Department of Veterans Affairs, 1555 Poydras Street, Suite 1971, New Orleans, Louisiana 70112.

RECORD SOURCE CATEGORIES:

Information contained in the records is obtained from the individual, references given in application material, educational institutions, VA medical facilities, the VA AAC, other Federal agencies, State agencies and consumer reporting agencies.

[FR Doc. 02–26487 Filed 10–17–02; 8:45 am]
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Federal Register

Friday,
October 18, 2002

Part II

Department of Agriculture

Commodity Credit Corporation

7 CFR Parts 1425, 1427, 1430, and 1434
2002 Farm Bill Regulations—Cooperative Marketing Associations; Cotton; Dairy; Honey; Final Rule

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1425, 1427, 1430 and 1434

RIN 0560–AG72

2002 Farm Bill Regulations—Cooperative Marketing Associations; Cotton; Dairy; Honey

AGENCIES: Farm Service Agency, Commodity Credit Corporation.

ACTION: Final rule.

SUMMARY: This final rule implements several requirements of Title I of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) relating to the commodity programs of the Commodity Credit Corporation (CCC). This rule expands the loans that may be available to producers through agricultural marketing cooperatives, makes a number of changes to the cotton regulations, provides for marketing assistance loans or loan deficiency payments to honey producers, and added new marketing assistance loan and loan deficiency payment programs for mohair and wool. The 2002 Act also continues the dairy price support program and authorizes a new Milk Income Loss Contract (MILC) Program to provide income support for dairy farmers. Several other rules have been or will be published for related provisions of the 2002 Act.

EFFECTIVE DATE: October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Grady Bilberry, Director, Price Support Division, FSA/USDA, STOP 0512, 1400 Independence Ave. SW., Washington, DC, 20250–0512; telephone (202) 720–7901; facsimile (202) 690–3307; e-mail: *Grady_Bilberry@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement Title I of the 2002 Act are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Executive Order 12866

This final rule is economically significant according to Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment of the actions this rule will take was completed and is summarized after the background section.

Federal Assistance Programs

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance to which this final rule applies is 10.051—Commodity Loans and Loan Deficiency Payments.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Office of the Secretary, the Farm Service Agency (FSA) and the Commodity Credit Corporation (CCC) are not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Review

An environmental assessment is being completed to consider the potential impacts of this proposed action on the human environment in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. Section 1601 of the 2002 Act mandated that these regulations be promulgated no later than 90 days after enactment. Further, this rule affects a large number of agricultural producers who are dependent upon its provisions for income support and need to know of its details as soon as possible because it has an effect on their planting and marketing decisions. Thus, CCC is attempting to satisfy both the Congressional mandate and its public missions by publishing this rule now, while continuing a good faith effort to comply with NEPA in as timely a fashion as possible, given the above-mentioned statutory and mission requirements. A copy of the draft environmental assessment will be made available for public review and comment upon request.

Executive Order 12778

The final rule has been reviewed under Executive Order 12778. This rule preempts State laws that are inconsistent with its provisions. This rule is not retroactive. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking about the subject matter of this rule. Further, this rule imposes no unfunded mandates, as defined in UMRA, on any local, state, or tribal government or the private sector.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement Title I of the 2002 Act must be issued within 90 days of enactment and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 553. Section 1601(c) also requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (SBREFA), which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. These regulations affect the planting and marketing decisions of an extraordinarily large number of agricultural producers. Accordingly, this rule is effective upon the date of filing for public inspection by the Office of the Federal Register.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be made without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by OMB under the Paperwork Reduction Act.

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E–File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are not yet fully implemented for the public to conduct business with FSA electronically. However, loan application forms are available electronically through the USDA eForms Web site at *www.sc.egov.usda.gov* for downloading. The regulation is available at FSA's Price Support Division Internet site at *www.fsa.usda.gov/dafp/psd*. Applications may be submitted at the FSA county offices, by mail or by FAX. At this time, electronic submission is not available. Full development of electronic submission is underway.

Background

The 2002 Act made major revisions to the commodity programs. This rule expands the loans that may be available to producers through agricultural marketing cooperatives, known as Cooperative Marketing Associations (CMA). This rule also revises CCC's cotton regulations, and implements a new regime for producers of wool, mohair, and honey. Finally, it provides regulations that govern the milk price support program and the new Milk Income Loss Contract (MILC) Program, designed to provide price protection to U.S. dairy producers. The programs implemented in this rule are effective for up to 6 years, and will contribute to a farm income support program, or "safety net", that is more stable and certain than that provided by yearly programs. The major provisions of this rule are specified as follows:

Cooperative Marketing Associations

CCC has been making loans available to producers through agricultural marketing cooperatives for over 60 years, and loan deficiency payments since 1986, beginning with commodity loans to cotton cooperatives in 1934. This program is expanded under the 2002 Act to include marketing assistance loans and Loan deficiency payments for peanuts, dry peas, lentils, small chickpeas, mohair and wool. Consequently, these commodities are added to those previously eligible, and loans and loan deficiency payments are now available through approved agricultural marketing cooperatives for barley, corn, grain sorghum, honey, oats, oilseeds, peanuts, wheat, dry peas, lentils, small chickpeas, mohair, wool, upland cotton, and rice. This rule amends the regulations governing cooperatives to authorize the new commodities.

Cotton

This rule makes a number of changes to the cotton non-recourse loan and loan deficiency payment programs the recourse seed cotton loan program, the upland cotton user marketing certificate program, and the extra long staple (ELS) cotton competitiveness payment program. The regulations at 7 CFR part 1427 are revised accordingly. The changes are required to administer provisions of the 2002 Act, and to remove provisions that are not applicable or authorized. It also improves readability and removes provisions that are not consistent with current statutory authority or otherwise are extraneous.

The 2002 Act provides that eligible 2001-crop marketing assistance loan commodities that were produced on a farm not covered by a production flexibility contract (PFC) are eligible for loan deficiency payments, as well as producers who lost beneficial interest in an eligible 2001-crop loan commodity before applying for a loan or loan deficiency payment. The loan deficiency payment rate will be based on the date the producer lost beneficial interest in the commodity. Additionally, producers who acted in good faith and who lost beneficial interest in the collateral of a 2001-crop marketing assistance loan before repaying the loan shall be permitted to repay such loan at the rate effective on the date beneficial interest was lost. Accordingly, the regulation is amended to delete the requirement that cotton must be produced on a farm covered by a PFC.

This rule also makes changes resulting from termination of old program authority. For instance, subpart B of 7 CFR 1427, Regulations for the Upland Cotton First Handler Marketing Certificate Program, are removed because the regulations no longer apply to the cotton program. This program was discontinued under the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) because it permitted cotton marketing assistance loans to be repaid at the world market price level while, before then, they could be repaid only at 70 percent of the world market price. The value difference was then provided by commodity certificates under the First Handler Marketing Certificate Program. Those regulations have not applied to the cotton program for years. This rule also removes 7 CFR part 1427, subpart F, Cottonseed Payment Program, because there is no longer statutory authority for a cottonseed payment program.

Several changes in the cotton regulation's administrative provisions are made as well. Under previous calculations, some loan repayment rates were calculated as negative values, resulting in additional disbursements by CCC, and some loan deficiency payment rates exceeded the loan value of the cotton. This rule clarifies that the adjusted world price shall not be adjusted to a value less than zero, and that the loan deficiency payment rate shall not exceed the loan value for the cotton. These changes are the result of a determination that some adjustments to the adjusted world market price, and the resultant marketing loan gains and loan deficiency payment rates, were not consistent with the statutory authority for the payments. Under previous calculations, some loan repayment rates were calculated as negative values, resulting in additional disbursements by CCC. Establishing the minimum loan repayment rate as zero is consistent with provisions of the 2002 Act that provide that loan deficiency payment rates shall be equal to the marketing loan gain that would otherwise result.

Dairy

The regulations at 7 CFR part 1430 are revised to implement a new program for dairy producers authorized by section 1502 of the 2002 Act, the Milk Income Loss Contract (MILC) Program. The program is in effect from December 1, 2002 through September 30, 2005. This program comes after several ad hoc programs provided through appropriations acts over the past few years. The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 authorized the Dairy Market Loss Assistance Payment (DMLA–I) program to provide direct payments to producers of dairy operations for milk produced and commercially marketed during the 1997 or 1998 calendar year. Then, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 provided a second Dairy Market Loss Assistance Program (DMLA–II) which continued DMLA–I for 1999 production. And finally, section 805 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001

authorized the last Dairy Market Loss Assistance Payment Program (DMLA–III). DMLA–III provided a supplemental payment to producers who received payments under DMLA–II and to new dairy operations in 2000.

Payments disbursed from the previous Dairy Market Loss Assistance Programs (DMLA) were subject to a maximum eligible production quantity per each eligible dairy operation, as is the case for the new MILC Program. For purposes of determining an operation under the MILC Program, the 2002 Act provided that the same standards as were applied in implementing DMLA were to be used. Payments issued under the previous dairy market loss payment programs were one-time payments authorized through appropriation acts. Payments issued under the MILC Program will be made as applicable on a monthly basis until the program ends on September 30, 2005.

Milk is produced in all 50 states. According to the National Agricultural Statistics Service, the estimated 98,000 dairy operations in the United States in 2001 were expected to produce about 167 billion pounds of milk in 2002. The maintenance and expansion of existing markets for dairy are vital to the welfare of milk producers in the United States. In the past few decades, the U.S. dairy industry has experienced dramatic structural changes at all levels of the marketing channel.

Payments under this program will be limited to dairy operations that produced milk in the United States and commercially marketed milk during the period of December 1, 2001, through September 30, 2005. Each fiscal year, eligible dairy operations can receive a monthly payment based on monthly milk marketings, up to a maximum of 2.4 million pounds per dairy operation for the fiscal year. Dairy operations who make changes to their producer status or who reconstitute their farm operations on or after December 1, 2001, for the sole purpose of receiving additional payments will not be eligible for the benefits under the program implemented by this rule.

A dairy operation's eligible monthly payment will be the quantity of milk sold in that month, up to a maximum of 2.4 million pounds, multiplied by 45 percent of the difference between $16.94/cwt. and the Federal milk marketing order Class I milk price per hundredweight in Boston for that month. To facilitate a transition to this new program, a similar payment calculation will be applied from December 1, 2001, through the month preceding the month the producer enters into a contract with CCC.

To be eligible, dairy producers must: (1) Produce in the United States and market milk commercially during the period of December 1, 2001, through September 30, 2005; (2) enter into a contract with CCC to provide monthly marketing data to receive payments; and (3) be engaged in the business of producing and marketing agricultural products at the time of signing the MILC Program contract. Dairy operations may apply at FSA county offices during regular business hours.

The rule provides for payments during the transition period beginning December 1, 2001, and ending when producers enter into the Milk Income Loss Contract. Consistent with the 2002 Act, the rule has a cap on production of 2.4 million pounds which are eligible for payments in a given fiscal year. Producers are only eligible for transition payments under section 1502(h) of the 2002 Act once they enter into the Milk Income Loss Contract pursuant to section 1502(b). There is no legislative history to support the proposition that Congress intended to establish a totally different standard for payments during the transition period than the one that applies to regular program payments. If there were no cap on transition payments, this could lead to the result of producers signing up for September 2005, and none of their production during the transition period from December 2001 through August of 2005, being subject to a cap. There would effectively be no limitation on payments. There is nothing in the Conference Report to indicate that this was the intent of Congress. Rather, section 1502(b) of the 2002 Act allows dairies to enter into the program by contract and provides explicitly in section 1502(d) for the 2.4 million pound cap. This program limit follows upon three previous Dairy Market Loss Assistance (DMLA) programs in which there were similar production eligibility caps.

Although there was not an operational program under section 1502 in advance of this rule, complaint has been made that there should be no limit on the "transition" payments allowed under section 1502(h). Offered to support this contention is that since section 1502(d) refers to section 1502(b), the limit does not cover the "transition" payments because they, the argument goes, are made under subsection (h). But, no payments can be made for the transition period (the period after December 1, 2001 and before the signing of the contract) except by signing the contract under subsection (b). Accordingly, all payments, including those referred to under subsection (h) are payments generated by and controlled by and made under subsection (b). Nothing in subsection (d) indicates that the only fiscal years covered by the cap are those after the signing of the contract. Without reservation, subsection (d) covers all fiscal years under the program, including fiscal year 2002, in which the transition payments can begin. Accordingly, the rule specifies that the cap covers all fiscal years including the fiscal year in which the transition period falls. All payments are covered and made available pursuant to one contract, which is the contract entered into under subsection (b).

The Conference Report states: "Producers, on an operation-by-operation basis, may receive payments on no more than 2.4 million pounds of milk marketed per year." The statement does not exclude any year. If there is no cap for the transition period and if the transition period can be delayed at the will of the producer, then any producer willing to forego payments until September, 2005, could avoid the cap entirely for the entire length of the program, thereby rending the cap a nullity. There is no support in the statute or the legislative history to support this position.

The rule, with some limitations, allows dairies to choose the month of the year in which they will be begin to use their eligibility since there is nothing as such in the statute to specify when that eligibility must commence. Those determinations, however, under the rule, must be made in advance. This position is consistent with the manner in which CCC implements other, similar programs, primarily the loan deficiency payment programs where farmers must, in advance, select the date on which their loan deficiency payment rate will be determined rather than being allowed to select a date retroactively in order to obtain the highest possible payment. The determination made by CCC on this point allows the dairy, nonetheless, to pick in advance the month which it believes will be the optimum month for the dairy. This is consistent with the timing requirements in the 2002 Act, which presume contemporaneous reporting of monthly marketings followed by monthly payments rather than an end-of-the-year determination by a dairy followed by an annual payment when, in hindsight, using the eligibility cap would produce the greatest payment.

As noted, dairies upon signing the contract will also be able to earn a transition payment under the contract for marketings in the period during and after December of 2001, and through the effective date of the contract, subject to the fiscal year limitation of 2.4 million pounds of milk eligibility. To provide additional flexibility, however, consistent with the rules set out above, dairies have been allowed to choose to use their 2.4 million pound eligibility for fiscal year 2002 (which began in October of 2001) beginning with the month after they signed the contract and to waive the transition amount if doing so would, because of the cap, increase their payment. Other policy determinations necessary to implement the statute are reflected in the text of the rule.

The rule requires, consistent with the 2002 Act's mandate, that the same standards will be used for defining what is and what is not an "operation" for purposes of eligibility for payments. Those determinations can have particular significance because of the cap in the statute. The rule in that manner requires that those who were treated by local decisions of their Farm Service committees and offices as operations for purposes of eligibility under the preceding DMLA programs will be treated the same way. The 2002 Act specifies that for purposes of determining whether producers are producers on separate dairy operations or a single dairy operation that the Secretary shall apply the same standards as were applied under DMLA. CCC will issue a notice to clarify how these standards will be applied to new or reconstituted operations and how it will be determined whether new operations were affiliated with operations under DMLA.

Section 1501 of the 2002 Act extends the Milk Price Support Program effective June 1, 2002, and continues the $9.90 per hundredweight support rate for milk that was previously in effect.

Honey

The regulations at 7 CFR part 1434 are revised in this rule to provide marketing assistance loans and loan deficiency payments for honey. CCC operated a honey recourse loan program in the 1998, 1999 and 2000 crop years. In 2000 the program was converted from a recourse loan program to a nonrecourse marketing assistance loan program which also allowed eligible producers to obtain loan deficiency payments. Section 1201 of the 2002 Act authorizes a continued program for marketing assistance loans and loan deficiency payments for honey. This new program will operate in a similar manner to the previous programs. The loan rate for a honey marketing assistance loan is set by the 2002 Act at 60 cents per pound. Producers may repay a marketing assistance nonrecourse loan at an amount equal to the principal amount of the loan plus interest or the prevailing market price for honey, as determined by CCC The marketing loan repayment rate will be announced monthly by CCC. The 2002 Act also provides, for the 2002 crop only, eligibility for honey producers for loan deficiency payments even if the producer has lost beneficial interest in their honey before applying for the payment.

Summary of the Cost/Benefit Assessment

The 2002 Act added new marketing assistance loan and loan deficiency payment provisions for peanuts, dry peas, lentils, small chickpeas, mohair and wool. This rule also provides for agricultural marketing cooperatives to process marketing assistance loan and loan deficiency payment requests. This is a positive change in that government outlays will not be affected, and the agricultural marketing cooperatives will help FSA service anticipated increased loan-making activities. The 2002 Act changes in this rule, when compared with the 1996 Act provisions, will increase governmental outlays as shown in Table 1.

TABLE 1.—AVERAGE ANNUAL CHANGE IN GOVERNMENT OUTLAYS BY PROGRAM, FISCAL YEARS 2002–2007

Program	Estimated average annual outlay change (million dollars)
Cotton (7 CFR Part 1427):	
Marketing Assistance Loans	8.0
Loan Deficiency Payments	95.0
Extra Long Staple Cotton Competitiveness Program	(1.5)
Dairy (7 CFR 1430):	
Milk Price Support	333.3
Milk Income Loss Contract Program Payments 1/	666.0
Honey (7 CFR part 1434): Marketing Assistance Loans and Loan Deficiency Payments	
Total 1,103.0	2.2

[1] Annual average over 4 fiscal years.

Cotton Marketing Assistance Loans and Loan Deficiency Payments

The 2002 Act increased the loan rates very slightly for both upland and extra long staple (ELS) cotton varieties. Aside from that, only a few cotton program changes, and none with a significant economic impact, were made by the 2002 Act. Outlays for marketing loans are projected at $1.2 billion for upland cotton in FY 2003, but they decline to $0.4 million by FY 2007. This decline is attributed to the effect of rising cotton prices and planting flexibility which allows producers to adjust their cotton acreage to conform with expected demand. Loan outlays for ELS cotton are projected to be minimal and not affected by enactment of the 2002 Act.

Upland Cotton User Marketing Certificate Program (Step 2)

The 2002 Act increased the payment rate 1.25-cents per pound for the Upland Cotton User Marketing Certificate Program, commonly known as the "Step 2 Program." This payment rate is expected to increase program outlays by about $95 million per year through fiscal year 2006.

ELS Cotton Competitiveness Payment Program

The 2002 Act extended and fully funded the ELS Cotton Competitiveness Payment Program, which is similar to the Step 2 program. The program is designed to trigger payments in response to a reduction in other world cotton prices, including Egyptian Giza cotton. This program had been dormant for several months because U.S. Pima cotton was competitive. However, payments began to trigger in January 2002 and have now reached over 10 cents per pound in response to price reductions in Egypt.

Since the ELS Cotton Competitiveness Payment Program began in October 1999, payments have totaled about $3.2 million on 50,500 bales for domestic use and 338,000 bales of exports. The program has operated for approximately one-half the time since it began. The rate has averaged $7 per bale, or about 1.4 cents per pound. Payments have depended on reductions in foreign prices. There is no maximum payment rate. However, given current prices, the ELS competitiveness payment program could generate payments in the range of 1 to 3 cents per pound on weekly export and mill activity and would likely incur outlays of around $50,000 to $150,000 per week when triggered. Annual outlays for ELS payments are estimated to be in the range of $1.3 million to $3.9 million per year.

ELS Cotton Competitiveness Program payments could increase domestic use of American Pima cotton by about 5,000 bales (about 3 percent) per year and exports by 25,000 bales (about 5 percent) per year. This increase in disappearance could add about 2 cents per pound to the average price of American Pima and reduce CCC net lending costs about $25 million. Farm receipts will rise about $4 million annually.

Dairy

Section 1501 of the 2002 Act extends the Milk Price Support Program starting June 1, 2002. The $9.90 per hundredweight (cwt.) milk support rate is the same as during calendar year 1999 through May 31, 2002. The support rate applies to manufacturing milk, which is milk used in the production of cheese, butter, and nonfat dry milk (NDM).

Under the Milk Price Support Program, CCC has standing offers to purchase cheese, butter, and NDM at established prices. Processors with an average efficiency should be able pay dairy farmers $9.90 per cwt. when receiving CCC-announced prices.

CCC has purchased substantial quantities of NDM in recent years, including about 418 million pounds in fiscal year (FY) 2001, 456 million pounds in FY 2000, 177 million pounds in FY 1999, and 119 million pounds in FY 1998. This is because the market NDM price has been near or below the CCC purchase price since January 1999. Also, cheese prices dipped below the CCC support level in mid June of 2002, and thus, cheese has been acquired by CCC under this program. Cheese purchases were 13.1 million pounds in FY 2001 and 6.8 million pounds in FY 2000. The price for butter has stayed consistently above the CCC purchase price since the mid-1990's so there have been no recent purchases of butter by CCC.

CCC expects to purchase 650 million pounds of NDM in FY 2002. We expect that some of the NDM that CCC purchases will be utilized in international and domestic feeding programs, and another $15 million worth will be sold for other purposes. CCC expenditures with the extended program will be approximately $2.0 billion for FY 2002 through 2007, of which $1.6 billion is for product purchases. No expenditures are projected for purchases after FY 2007 because of milk price increases.

The MILC Program is expected to result in payments to dairy operations over the four FY's in the range of $3.5 to $4.5 billion annually. Dairy farm income and CCC expenditures will increase accordingly.

Honey

The honey loan rate, 60 cents per pound, is not expected to exceed the market price until 2007 due to the countervailing and anti-dumping duties placed on honey imports from Argentina and China. Because the program has no immediate effect on price, domestic honey production should not be affected. There are also no significant expected effects on market prices or demand. The major producer benefit is reduced borrowing costs compared with commercial loans. Interest savings are estimated at $5.3 million. Even if price falls below the loan rate no expected effect on market prices or demand is expected because the farmers' benefits will be obtained through loan deficiency payments or marketing loan gains, not market price improvement through honey removals from forfeitures. CCC has limited ability to affect market prices. Domestic honey prices are closely related to import prices because of sizeable quantities imported. For the 1996–1999 period, honey imports represented about 45 percent of total domestic honey consumption. Sizable CCC inventory in the 1980's was partially a result of higher loan rates and the lack of a marketing loan repayment mechanism which produced higher imports instead of higher domestic market prices. Because the 2002 Act does not affect foreign honey prices, it is also unlikely to affect domestic honey prices. Thus, prices are expected to be unaffected by the loan program and domestic consumers will not be affected.

CCC estimates that there will be no loan losses from FY 2002 to FY 2007. Conversely, the producer income increase from marketing loan gains, loan deficiency payments, and gains from loan forfeitures is about 14 cents per pound. CCC loan losses and producer loan gains are estimated to be $9.8 million. CCC cost and producer gains from loan deficiency payments are estimated to be $16.3 million. Total program cost and producer income increase is estimated at $26.1 million. It is expected that 2.9 million pounds of honey, or 1.5 percent of production, will be forfeited to CCC.

List of Subjects

Part 1425

Agricultural commodities, Cooperatives, Marketing agreements, Loan programs-agriculture, Reporting and record keeping requirements.

Part 1427

Cotton, Loan programs-agriculture, Price support programs, Reporting and record keeping requirements

Part 1430

Dairy products, Loan programs-agriculture, Price support programs, Reporting and record keeping requirements.

Part 1434

Honey, Loan programs-agriculture, Reporting and record keeping requirements.

For the reasons set out in the preamble, 7 CFR parts 1425, 1427, 1430 and 1434 are revised as set forth below.

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

1. The authority citation for part 1425 is revised to read as follows:

Authority: 7 U.S.C. 1441 and 1421, 7 U.S.C. 7931–7939; and 15 U.S.C. 714b, 714c, and 714j.

2. Amend § 1425.3 by revising the definition of "authorized commodity" to read as follows:

§ 1425.3 Definitions.

* * * * *

Authorized commodity is a commodity for which a CMA is approved by CCC to obtain marketing assistance loans or Loan deficiency payments.

* * * * *

3. Amend § 1425.4 by revising the first sentence in paragraph (a) to read as follows:

§ 1425.4 Approval.

(a) For a cooperative to gain CMA status to participate in a marketing assistance loan or Loan deficiency payment program for the 2002 through 2007 crop years, a cooperative must submit an application for approval to CCC. * * *

* * * * *

4. Amend § 1425.6 by revising the introductory text in paragraph (b) to read as follows:

§ 1425.6 Approved CMA's.

* * * * *

(b) CCC may approve a CMA to participate in a marketing assistance loan and Loan deficiency payment program for the 2002 through 2007 crops as:

* * * * *

5. Revise § 1425.25 to read as follows:

§ 1425.25 Appeals.

Parts 11 and 780 of this title apply to this part.

PART 1427—COTTON

6. Amend part 1427 by revising the authority citation and Subparts A, C, D, and G, and removing and reserving Subpart B, consisting of §§ 1427.50 through 1427.58, and Subpart F, consisting of §§ 1427.1100 through 1111, to read as follows:

Subpart A—Nonrecourse Cotton Loans and Loan Deficiency Payments

Sec.
1427.1 Applicability.
1427.2 Administration.
1427.3 Definitions.
1427.4 Eligible producer.
1427.5 General eligibility requirements.
1427.6 Disbursement of loans.
1427.7 Maturity of loans.
1427.8 Amount of loan.
1427.9 Classification of cotton.
1427.10 Approved storage.
1427.11 Warehouse receipts.
1427.12 Liens.
1427.13 Fees, charges and interest.
1427.14 [Reserved].
1427.15 Special procedure where funds are advanced.
1427.16 Reconcentration of cotton.
1427.17 Custodial offices.
1427.18 Liability of the producer.
1427.19 Repayment of loans.
1427.20 Handling payments and collections not exceeding $9.99.
1427.21 Settlement.
1427.22 Commodity certificate exchanges.
1427.23 Cotton loan deficiency payments.
1427.24 [Reserved].
1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

Subpart B—[Reserved]

Subpart C—Upland Cotton User Marketing Certificates

1427.100 Applicability.
1427.101 [Reserved].
1427.102 [Reserved].
1427.103 Eligible upland cotton.
1427.104 Eligible domestic users and exporters.
1427.105 Upland Cotton Domestic User/Exporter Agreement.
1427.106 Form of payment.
1427.107 Payment rate.
1427.108 Payment.

Subpart D—Recourse Seed Cotton Loans

1427.160 Applicability.
1427.161 Administration.
1427.162 [Reserved].
1427.163 Disbursement of loans.
1427.164 Eligible producer.
1427.165 Eligible seed cotton.
1427.166 Insurance.
1427.167 Liens.
1427.168 [Reserved].
1427.169 Fees, charges, and interest.
1427.170 Quantity for loan.
1427.171 Approved storage.
1427.172 Settlement.
1427.173 Foreclosure.
1427.174 Maturity of seed cotton loans.
1427.175 Liability of the producer.

* * * * *

Subpart F—[Reserved]

Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program

1427.1200 Applicability.
1427.1201 [Reserved].
1427.1202 Definitions.
1427.1203 Eligible ELS cotton.
1427.1204 Eligible domestic users and exporters.
1427.1205 ELS Cotton Domestic User/Exporter Agreement.
1427.1206 Form of payment.
1427.1207 Payment rate.
1427.1208 Payment.

Authority: 7 U.S.C. 7213–7237; 15 U.S.C. 714b, 714c.

Subpart A—Nonrecourse Cotton Loan and Loan Deficiency Payments

§ 1427.1 Applicability.

(a) The regulations of this subpart are applicable to the 2002 through 2007 crops of upland cotton and extra long staple cotton. These regulations set forth the general provisions under which marketing assistance loans and loan deficiency payment programs shall be administered by the Commodity Credit Corporation (CCC). Additional terms and conditions are in the note and security agreement and the loan deficiency payment application that must be executed by a producer to receive marketing assistance loans and loan deficiency payments.

(b) The basic loan rates, the schedule of premiums and discounts, and forms applicable to the cotton marketing assistance loan and loan deficiency payment programs are available from FSA offices. The forms for use in connection with the programs in this subpart shall be prescribed by CCC.

(c) Marketing assistance loans and loan deficiency payments will not be available for any cotton produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

(d) Notwithstanding the other provisions of this part, a producer may only receive the maximum assistance allowed by part 1400 of this chapter.

(e) Eligible producers, under 7 CFR 1421.4, who produce upland cotton during the 2002 through 2007 crop years on a farm that is not covered under a direct and counter-cyclical program contract, as defined in part 1412 of this chapter, are eligible for marketing assistance loans or loan deficiency payments as are eligible producers who produced commodities on farms covered by such a contract.

§ 1427.2 Administration.

(a) The marketing assistance loan and loan deficiency payment programs shall be administered under the general supervision of the Executive Vice President, CCC, or a designee and shall be carried out by FSA employees, and state and county committees.

(b) No FSA employee or committee may modify or waive any requirement in this subpart, except as provided in paragraph (e) of this section.

(c) The State committee shall take any required action not taken by the county committee. The State committee shall also:

(1) For the 2001 crop year only, allow producers who, in good faith, violated the terms and conditions of the note and security agreement resulting in the producer losing beneficial interest in the commodity before repaying the loan, to repay the loan at a rate that is the lesser of the loan plus interest, or the adjusted world price, as determined under § 1427.19, in effect on the date the beneficial interest was lost.

(2) Correct, or require a correction of an action that is not in compliance with this part; or

(3) Stop an employee from taking an action or decision that is not in accordance with the regulations of this part.

(d) The Executive Vice President, CCC, or a designee may determine any question arising under these programs, and reverse or modify a determination made by an FSA employee or State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State or county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other program requirements does not adversely affect the operation of the marketing assistance and loan deficiency payment programs.

(f) A representative of CCC may execute marketing assistance loan and Loan deficiency payment applications and related documents only under the terms and conditions determined and announced by CCC. Any document not executed under such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void.

§ 1427.3 Definitions.

The definitions in this section shall apply for all purposes of program administration regarding the cotton loan and loan deficiency payment programs. The terms defined in part 718 of this title and parts 1412, 1421, 1425 and 1434 of this chapter shall also apply, except where they conflict with definitions in this section.

Adjusted spot price means the spot price adjusted to reflect any lack of data for base quality to make the adjusted spot price comparable to a spot price assuming the base quality. If base quality spot price data are not available, spot prices for other qualities will be used and adjusted by the average difference between base quality spot prices and those for other qualities over the available observations during the previous 12 months.

Approved cooperative marketing association (CMA) means a cooperative marketing association approved under part 1425 of this chapter which has executed a Cotton Cooperative Loan Agreement on a form prescribed by CCC.

Bale opening means the removal of the bagging and ties from a bale of eligible upland cotton in the normal opening area, immediately before use, by a manufacturer in a building or collection of buildings where the cotton in the bale will be used in the continuous process of manufacturing raw cotton into cotton products in the United States.

Charges means all fees, costs, and expenses incurred by CCC in insuring, carrying, handling, storing, conditioning, and marketing the cotton tendered to CCC for loan. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such cotton.

Commodity certificate exchange means the exchange, as provided in part 1404 of this chapter, of commodities pledged as collateral for a marketing assistance loan at a rate determined by CCC in the form of a commodity certificate bearing a dollar denomination. Such certificate may not be transferred or exchanged for the inventory of CCC.

Consumption means the use of eligible cotton by a domestic user in the manufacture in the United States of cotton products.

Cotton means upland cotton and extra loan staple cotton meeting the definition in the definitions of "upland cotton" and "extra long staple (ELS) cotton" in this section, respectively, and excludes cotton not meeting such definitions.

Cotton clerk means a person approved by CCC to assist producers in preparing loan and loan deficiency documents.

Cotton commercial bank means the bank designated as the financial institution for a CMA or loan servicing agent.

Cotton product means any product containing cotton fibers that result from the use of a bale of cotton in manufacturing.

Current shipment price means, during the period in which two daily price quotations are available for the growth quoted for M 1$^{3}/_{32}$-inch cotton, C.I.F. northern Europe, the price quotation for cotton for shipment no later than August/September of the current calendar year.

Electronic Agent Designation is an electronic record that:

(1) Designates the entity authorized by a producer to redeem all of the cotton pledged as collateral for a specific loan;

(2) Is maintained by providers of electronic warehouse receipts; and

(3) A producer may authorize CCC to use as the basis for the redemption and release of loan collateral.

Extra long staple (ELS) cotton means any of the following varieties of cotton which is produced in the United States and is ginned on a roller gin:

(1) American-Pima;

(2) All other varieties of the Barbadense species of cotton, and any hybrid thereof; and

(3) Any other variety of cotton in which one or more of these varieties predominate.

False packed cotton means cotton in a bale containing substances entirely foreign to cotton; containing damaged cotton in the interior with or without any indiction of the damage on the exterior; composed of good cotton on the exterior and decidedly inferior cotton in the interior, but not detectable by customary examination; or, containing pickings or linters worked into the bale.

Financial institution means:

(1) A bank in the United States which accepts demand deposits; and

(2) An association organized pursuant to Federal or State law and supervised by Federal or State banking authorities.

Form A loan means a nonrecourse loan entered into between a producer and CCC.

Form G loan means a CCC nonrecourse loan entered into between a CMA and CCC.

Forward shipment price means, during the period in which two daily price quotations are available for the growths quoted for M 1$^{3}/_{32}$-inch cotton, C.I.F. northern Europe, the price quotation for cotton for shipment no earlier than October/November of the current calendar year.

Lint Cotton means cotton that has passed through the ginning process.

Loan deficiency payment means a payment received in lieu of a loan when the CCC-determined value is below the applicable county loan rate.

Loan servicing agent means a legal entity that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing Form A cotton loans. The loan servicing agent may perform, on behalf of CCC, only those services which are specifically prescribed by CCC including, but not limited to, the following:

(1) Preparing and executing loan and loan deficiency payment documents;

(2) Disbursing loan and loan deficiency payment proceeds;

(3) Handling reconcentration of cotton under § 1427.16;

(4) Accepting loan repayments;

(5) Handling documents involved with forfeiture of loan collateral to CCC; and

(6) Providing loan, loan deficiency payment, and accounting data to CCC for statistical purposes.

Northern Europe current price means the average for the preceding Friday through Thursday of the current shipment prices for the five lowest-priced growths of the growths quoted for M 1$^{3}/_{32}$-inch cotton, C.I.F. northern Europe.

Northern Europe forward price means the average for the preceding Friday through Thursday of the forward shipment prices for the five lowest-priced growths of the growths quoted for M 1$^{3}/_{32}$-inch cotton, C.I.F. northern Europe.

Northern Europe price means, during the period in which only one daily price quotation is available for the growth quoted for M 1$^{3}/_{32}$-inch cotton, C.I.F. northern Europe, the average of the price quotations for the preceding Friday through Thursday of the five lowest-priced growths of the growths quoted for M 1$^{3}/_{32}$-inch cotton, C.I.F. northern Europe.

Reconcentration means the process for moving a warehouse stored loan commodity to another warehouse location.

Seed cotton means cotton which has not passed through the ginning process.

U.S. Northern Europe current price means the average for the preceding Friday through Thursday of the current shipment prices for the lowest-priced United States growth as quoted for M 1$^{3}/_{32}$-inch cotton, C.I.F. northern Europe.

U.S. Northern Europe forward price means the average for the preceding Friday through Thursday of the forward shipment prices for the lowest-priced United States growth as quoted for M 1$^{3}/_{32}$-inch cotton, C.I.F. northern Europe.

U.S. Northern Europe price means, during the period in which only one daily price quotation is available for the United States growths quoted for M 1$^{3}/_{32}$-inch cotton, C.I.F. northern Europe, the average of the price quotations for the preceding Friday through Thursday of the lowest-priced United States growth as quoted for M 1$^{3}/_{32}$-inch cotton, C.I.F. northern Europe.

Upland cotton means planted and stub cotton which is produced in the United States from other than pure strain varieties of the Barbadense species, any hybrid thereof, or any other variety of cotton which one or more of these varieties predominate.

Warehouse receipt means a receipt containing the required information prescribed in this part and is:

(1) A pre-numbered, pre-punched negotiable warehouse receipt issued under the authority of the U.S. Warehouse Act, a state licensing authority, or by an approved CCC warehouse in such format authorized and approved, in advance, by CCC;

(2) An electronic warehouse receipt record issued by such warehouse recorded in a central filing system or systems maintained in one or more locations that are approved by FSA to operate such system; or

(3) Other such acceptable evidence of title, as determined by CCC.

§ 1427.4 Eligible producer.

(a) To be an eligible producer, the producer must:

(1) Be an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity that produces cotton as a landowner, landlord, tenant, or sharecropper;

(2) Comply with all provisions of this part; and

(i) 7 CFR part 12—Highly Erodible Land and Wetland Conservation:

(ii) 7 CFR part 718—Provisions Applicable to Multiple Programs;

(iii) 7 CFR part 1400—Payment Limitation and Payment Eligibility;

(iv) 7 CFR part 1403—Debt Settlement Policies and Procedures; and

(v) 7 CFR part 1405—Loans, Purchases and Other Operations; and

(3) Have made an acreage certification with respect to all the cropland on the farm.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively. The production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trust. Loan and loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer shall be eligible to receive loans and loan deficiency payments only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable loan or loan deficiency payment documents are signed by the guardian;

(3) Any note and security agreement or loan deficiency payment application signed by the minor is co-signed by a person determined by CCC to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d)(1) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations in this part. Each such producer shall also remain liable for repayment of the entire marketing assistance loan amount until the loan is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or loan proceeds, after execution of the note and security agreement by CCC.

(2) The cotton in a bale may have been produced by two or more eligible producers on one or more farms if the bale is not a repacked bale.

(e) A CMA may obtain a marketing assistance loan and loan deficiency payments on eligible cotton on behalf of its members who are eligible to receive loans or loan deficiency payments for a crop of cotton. For purposes of this subpart, the term "producer" includes a CMA.

(f) In case of death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a marketing assistance loan or loan deficiency payment, payment shall, upon application to CCC, be made to the persons who would be entitled to the producer's payment under the regulations contained in part 707 of this title.

§ 1427.5 General eligibility requirements.

(a) To receive loans or loan deficiency payments for a crop of cotton, a producer must execute a note and security agreement or loan deficiency payment application on or before May 31 of the year following the year in which such crop is normally harvested.

(1) Form A loan documents or loan deficiency payment applications must be signed by the applicant and submitted to CCC or a loan servicing agent. Submissions by cotton clerks must occur within 15 calendar days after the producer signs the forms and within the period of loan availability. A producer, except for a CMA, must request loans and loan deficiency payments:

(i) At the county office that is responsible under part 718 of this title for administering programs for the farm on which the cotton was produced; or

(ii) From a loan servicing agent.

(2) Form G loan documents and requests for loan deficiency payments by a CMA must be signed by the CMA and delivered to CCC or the cotton commercial bank within the period of loan availability.

(b) For a bale of cotton to be eligible to be pledged as collateral for a marketing assistance loan or a subject of a loan deficiency payment application, the bale must:

(1) Be tendered to CCC by an eligible producer;

(2) Be in existence and good condition, be covered by fire insurance, be stored in a warehouse with an existing cotton storage agreement under §§ 1427.1081 through 1427.1089 at the time of disbursement of the loan or loan deficiency payment proceeds, except as provided in § 1427.23(f), and be stored

in approved storage as determined under § 1427.10;

(3) Be represented by a warehouse receipt meeting the requirements of § 1427.11, except as provided in § 1427.23(a)(4);

(4) Not be false-packed, water-packed, mixed-packed, re-ginned, or repacked;

(5) Not be compressed to universal density at a warehouse where side pressure has been applied;

(6) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a loan or to obtain a loan deficiency payment;

(7) Not have been previously sold and repurchased or pledged as collateral for a CCC loan and redeemed except as provided in § 1427.172(b)(4);

(8) Not be cotton for which a loan deficiency payment has been previously made;

(9) Weigh at least 325 pounds net weight; bales of more than 600 pounds may be pledged for loan at 600 pounds.

(10) Be packaged in materials which meet the specifications adopted by the Joint Cotton Industry Bale Packaging Committee sponsored by the National Cotton Council of America for the applicable crop year or which are identified and approved by the Joint Cotton Industry Bale Packaging Committee as experimental packaging materials for the applicable crop year.

(i) Copies of the applicable crop year specifications for cotton bale packaging materials published by the Joint Cotton Industry Bale Packaging Committee are available from CCC upon request.

(ii) Information for experimental packaging material may be obtained from the Joint Cotton Industry Bale Packaging Committee.

(11) Be ginned by a ginner which:

(i) Has entered the tare weight of the bale (bagging and ties used to wrap the bale) on the gin bale tag or otherwise furnish warehouse operator the tare weight; and

(ii) Has entered into a Cooperating Ginners' Bagging and Bale Ties Certification and Agreement on a form prescribed by CCC, or certified that the bale is wrapped with bagging and bale ties meeting the requirements of paragraph (b)(10) of this section and;

(12) Be production from acreage that has been reported timely under part 718 of this title.

(c) In addition to the requirements of paragraph (b) of this section, for ELS cotton the bale must:

(1) Be a grade and staple length specified in the schedule of loan rates and premiums and discounts for ELS cotton

(2) Have a micronaire specified in the schedule of micronaire premiums and discounts for ELS cotton; and

(3) Have an extraneous matter specified in the schedules of premiums and discounts for extraneous matter for ELS cotton.

(d) In addition to the requirements of paragraph (b) of this section, for upland cotton the bale must:

(1) Have been graded by using a High Volume Instrument;

(2) Be a grade, staple length, and leaf specified in the schedule of premiums and discounts for grade, staple, and leaf for upland cotton;

(3) Have a strength reading specified in the schedule of strength premiums and discounts for upland cotton;

(4) Have a micronaire specified in the schedule of micronaire premiums and discounts for upland cotton;

(5) Have an extraneous matter within the limits specified in the schedule of discounts for extraneous matter for upland cotton; and

(6) Have a uniformity specified in the schedule of uniformity premiums and discounts for upland cotton.

(e)(1) To be eligible to receive marketing assistance loans or loan deficiency payments, a producer must have the beneficial interest in the cotton which is tendered to CCC for a marketing assistance loan or loan deficiency payment. The producer must always have had the beneficial interest in the cotton unless, before the cotton was harvested, the producer, and a former producer whom the producer tendering the cotton to CCC has succeeded, had such an interest in the cotton. Cotton obtained by gift, barter or purchase shall not be eligible to be tendered to CCC for marketing assistance loans or loan deficiency payments. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing marketing assistance loan shall be eligible to receive marketing assistance loans and loan deficiency payments whether succession to the cotton occurs before or after harvest so long as the heir otherwise complies with this part.

(2) A producer shall not be considered to have divested the beneficial interest in the cotton if the producer retains control, title, and risk of loss in the cotton, including the right to make all decisions regarding the tender of the cotton to CCC for marketing assistance loans or loan deficiency payments including those cases where the producer:

(i) Executes an option to purchase, whether or not a payment is made by the potential buyer for such option to purchase, for such cotton if all other eligibility requirements are met and the option to purchase contains the following:

Notwithstanding any other provision of this option to purchase, title; risk of loss; and beneficial interest in the commodity, as specified in 7 CFR 1427.5, shall remain with the producer until the buyer exercises this option to purchase the commodity. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of: (1) The maturity of any Commodity Credit Corporation (CCC) loan which is secured by such commodity; (2) the date CCC claims title to such commodity; or (3) such other date as provided in this option.

(ii) Enters into a contract to sell the cotton if the producer retains title, risk of loss, and beneficial interest in the commodity and the purchaser pays no advance payment amount or any incentive payment amount to enter into such contract, except as provided in part 1425 of this chapter; or

(iii) Executes a designation of agent on a form prescribed by CCC. Such designation:

(A) Allows the producer to authorize an agent or subsequent agent to redeem all or a portion of the cotton pledged as collateral for a marketing assistance loan;

(B) Identifies the warehouse receipts for which the authorization is given;

(C) Expires upon maturity of the marketing assistance loan;

(D) Allows agents so designated by the producer to designate a subsequent agent by endorsement of the form by the agent;

(E) Must be presented at the time the marketing assistance loan is repaid at the county office or loan servicing agent where such loan originated if the agent or subsequent agent exercises any authority granted by the producer, unless the producer provides authorization to CCC to use an electronic agent designation as the basis for accepting redemption of some or all bales of the specified loan; and

(F) May be canceled by the producer by providing the custodial office a written request signed and dated by the producer showing the name of the agent, the loan number, and the bales applicable to the Cooperating Ginners' Bagging and Bale Ties Certification and Agreement that was provided by the Agency. The effective date of the cancellation shall be the date the request is received by the custodial office.

(3) If marketing assistance loans or loan deficiency payments are made available to producers through a CMA under part 1425 of this chapter, the beneficial interest in the cotton must always have been in the producer-member who delivered the cotton to the CMA or its member, except as otherwise provided in this section. Cotton delivered to such a CMA shall not be eligible to receive a marketing assistance loan or a loan deficiency payment if the producer-member who delivered the cotton does not retain the right to share in the proceeds from the marketing of the cotton as provided in part 1425 of this chapter.

(f) If the person tendering cotton for a loan or a loan deficiency payment is a landowner, landlord, tenant, or sharecropper, such cotton must represent such person's separate share of the crop and must not have been acquired by such person directly or indirectly from a landowner, landlord, tenant, or sharecropper.

(g) Each bale of upland cotton sampled by the warehouse operator upon initial receipt which has not been sampled by the ginner must not show more than one sample hole on each side of the bale. If more than one sample is desired when the bale is received by the warehouse operator, the sample shall be cut across the width of the bale, broken in half or split lengthwise, and otherwise drawn under Agricultural Marketing Service (AMS) dimension and weight requirements. This requirement will not prohibit sampling of the cotton at a later date if authorized by the producer.

(h) Marketing assistance loans may be disbursed to eligible producers who store upland cotton in unlicenced storage facilities only if the producer agrees to redeem the marketing assistance loan on the date on which the loan is disbursed with a commodity certificate exchange.

§ 1427.6 Disbursement of loans.

(a) Disbursement of loans to individual producers may be made by:

(1) County in CCC and FSA offices;

(2) Loan servicing agents; or

(3) An approved cotton clerk who has entered into a written agreement with CCC on a form prescribed by CCC.

(b) Loan proceeds may be disbursed by CCC or a cotton commercial bank.

(c) The loan documents shall not be presented for disbursement unless the cotton covered by the mortgage or pledged as security is eligible under § 1427.5. If the cotton was not eligible cotton at the time of disbursement, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

§ 1427.7 Maturity of loans.

(a)(1) Form A loans and Form G loans mature on demand by CCC and no later than the last day of the 9th calendar month following the month in which the note and security agreement is filed under § 1427.5(a).

(2) CCC may at any time accelerate the loan maturity date by providing the producer notice of such acceleration at least 30 days in advance of the accelerated maturity date.

(b) If the loan is not repaid by the loan maturity date, title to the cotton shall vest in CCC the day after such maturity date and CCC shall have no obligation to pay for any market value which such cotton may have in excess of the amount of the loan, plus interest and charges.

§ 1427.8 Amount of loan.

(a) The loan rates for crops of upland cotton and ELS cotton will be determined and announced by CCC and made available at State and county offices.

(b) The quantity of cotton which may be pledged as collateral for a loan shall be the net weight of the eligible cotton as shown on the warehouse receipt issued by an approved warehouse, except that in the case of a bale which has a net weight of more than 600 pounds, the weight to be used in determining the amount of the loan on the bale shall be 600 pounds. Cotton pledged as collateral for loans on the basis of reweights will not be accepted by CCC.

(c) The amount of the loan for each bale will be determined by multiplying the net weight of the bale, as determined under paragraph (b) of this section by the applicable loan rate.

(d) CCC will not increase the amount of the loan made for any bale of cotton as a result of a redetermination of the quantity or quality of the bale after it is tendered to CCC, except that if it is established to the satisfaction of CCC that a bona fide error was made for the weight of the bale or the classification for the bale, such error may be corrected.

§ 1427.9 Classification of cotton.

(a) References made to "classification" in this subpart shall include color grade, leaf, staple length, extraneous matter and micronaire, and for upland cotton, strength readings. All cotton tendered for loan must be classed by an AMS Cotton Classing Office or other entity approved by CCC and tendered on the basis of such classification.

(b) An AMS cotton classification or other entity's classification acceptable by CCC showing the classification of a bale must be based upon a representative sample drawn from the bale under instructions to samplers drawing samples under AMS procedures.

(c) If the producer's cotton has not been classed or sampled in a manner acceptable by CCC, the warehouse shall sample such cotton and forward the samples to the AMS Cotton Classing Office or other entity approved by CCC serving the district in which the cotton is located. Such warehouse must be licensed by AMS or be approved by CCC to draw samples for submission to the AMS Cotton Classing Office or other entity approved by CCC.

(d) If a sample has been submitted for classification, another sample shall not be drawn, except for a review classification.

(e) Where review classification is not involved, if through error or otherwise two or more samples from the same bale are submitted for classification, the loan rate shall be based on the classification having the lower loan value.

(f) If a review classification is obtained, the loan value of the cotton represented thereby will be based on such review classification.

§ 1427.10 Approved storage.

(a) Eligible cotton may be pledged as collateral for loans only if stored at warehouses approved by CCC.

(1) Persons desiring approval of their facilities should contact the Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205.

(2) The names of approved warehouses may be obtained from the Kansas City Commodity Office or from State or county offices.

(b) When the operator of a warehouse receives notice from CCC that a loan has been made by CCC on a bale of cotton, the operator shall, if such cotton is not stored within the warehouse, promptly place such cotton within such warehouse.

(c) Warehouse charges paid by a producer will not be refunded by CCC.

(d) The approved storage requirements provided in this section may be waived by CCC if the producer requests a loan deficiency payment pursuant to the loan deficiency payment provisions contained in § 1427.23.

§ 1427.11 Warehouse receipts.

(a) Producers may obtain loans on eligible cotton represented by warehouse receipts only if the warehouse receipts meet the definition of a warehouse receipt and provide for delivery of the cotton to bearer or are properly assigned by endorsement in blank, so as to vest title in the holder of

the receipt or are otherwise acceptable to CCC. The warehouse receipt must:

(1) Contain the gin bale number;

(2) Contain the warehouse receipt number;

(3) Be dated on or before the date the producer signs the note and security agreement.

(b) Warehouse receipts, under § 1427.3, when issued as block warehouse receipts will be accepted when authorized by CCC only if the owner of the warehouse issuing the block warehouse receipt owns the cotton represented by the block warehouse receipt and the warehouse is not licensed under the U.S. Warehouse Act.

(c)(1) Each receipt must set out in its written or printed terms the tare and the net weight of the bale represented thereby. The net weight shown on the warehouse receipt shall be the difference between the gross weight as determined by the warehouse at the warehouse site and the tare weight. The warehouse receipt may show the net weight established at a gin if:

(i) The gin is in the immediate vicinity of the warehouse and is operated under common ownership with such warehouse or in any other case in which the showing of gin weights on the warehouse receipts is approved by CCC; and

(ii) Gin weights are permitted by the licensing authority for the warehouse.

(2) The tare shown on the receipt shall be the tare furnished to the warehouse by the ginner or entered by the ginner on the gin bale tag. A machine card type warehouse receipt reflecting an alteration in gross, tare, or net weight will not be accepted by CCC unless it bears, on the face of the receipt, the following legend or similar wording approved by CCC, duly executed by the warehouse or an authorized representative of the warehouse:

Corrected (gross, tare, or net) weight,
(Name of warehouse),
By (Signature or initials),
Date.

(3) Alterations in other inserted data on a machine card type warehouse receipt must be initialed by an authorized representative of the warehouse.

(d) If warehouse storage charges have been paid, the receipt must show that date through which the storage charges have been paid.

(e) If warehouse receiving charges have been paid or waived, the warehouse receipt must show such fact. Except for bales stored in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, if receiving charges due on the bale include a charge, if any, for a new set of ties for compressing flat bales tied with ties which cannot be reused, the warehouse receipt must indicate the receiving charges and include a charge for new set of ties. If the bale is stored at a warehouse not having compress facilities and bales shipped from the warehouse are normally compressed in transit, the warehouse receipt must show the bale ties are not suitable for reuse when the bale is compressed and charges will be assessed by the nearest compress in line of transit for furnishing new bale ties.

(f) In any case where loan collateral is forfeited, any unpaid storage or receiving charges, not to exceed the amount that accrued from the date that all necessary documents were received by CCC to the maturity date, will be paid to the warehouse by CCC after loan maturity or as soon as practicable after the cotton is ordered shipped by CCC.

(g) The warehouse receipt must show the compression status of the bale; *i.e.*, flat, modified flat, standard, gin standard, standard density (short), gin universal, universal density (short), or warehouse universal density. The receipt must show if the compression charge has been paid, or if the warehouse claims no lien for such compression.

§ 1427.12 Liens.

If there are any liens or encumbrances on the cotton tendered as collateral for a loan, waivers that fully protect the interest of CCC must be obtained before disbursement even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the cotton after the loan is approved.

§ 1427.13 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC or, if applicable, to a loan servicing agent, at a rate determined by CCC. Such fee shall be in addition to a cotton clerk fee paid under paragraph (b) of this section. The fee amounts are available in State and county offices and are shown on the note and security agreement. Fees shall be deducted from the loan proceeds.

(b) Cotton clerks may only charge fees for the preparation of loan or loan deficiency payment documents at the rate determined by CCC.

(1) Such fees may be deducted from the loan or loan deficiency payment proceeds instead of the fees being paid in cash.

(2) The amount of such fees is available from CCC and is shown on the note and security agreement.

(c) Interest which accrues for a loan shall be determined under part 1405 of this chapter. All or a portion of such interest may be waived for a quantity of upland cotton which has been redeemed under § 1427.19 at a level which is less than the principal amount of the loan plus charges and interest.

(d) For each crop of upland cotton, the producer, as defined in the Cotton Research and Promotion Act (7 U.S.C. 2101), shall remit to CCC an assessment which shall be transmitted by CCC to the Cotton Board and shall be deducted from the:

(1) Loan proceeds for a crop of cotton and shall be at a rate equal to one dollar per bale plus up to one percent of the loan amount; and

(2) Loan deficiency payment proceeds for a crop of cotton and shall be at a rate equal to up to one percent of the loan deficiency payment amount.

(e) If the producers elects to forfeit the loan collateral to CCC, the producer shall pay to CCC, at the rates that are specified in the storage agreement between the warehouse and CCC, the following accrued warehouse charges:

(1) All warehouse storage charges associated with the forfeited cotton that accrued before the date that all required documents were provided to CCC; and

(2) Any accrued warehouse receiving charges associated with the forfeited cotton, including, if applicable, charges for new ties as specified in § 1427.11.

§ 1427.14 [Reserved].

§ 1427.15 Special procedure where funds are advanced.

(a) This special procedure is provided to assist persons or firms which, in the course of their regular business of handling cotton for producers, have made advances to eligible producers on cotton eligible to be pledged as collateral for a marketing assistance loan or to receive a loan deficiency payment. A person, firm, or financial institution which has made advances to eligible producers on eligible cotton may also obtain reimbursement for the amounts advanced under this procedure.

(b) This special procedure shall apply only:

(1) If such person or firm is entitled to reimbursement from the proceeds of the marketing assistance loans or loan deficiency payments for the amounts advanced and has been authorized by the producer to deliver the loan or loan deficiency payment documents to a county office for disbursement of the loans or loan deficiency payments; and

(2) To marketing assistance loan or loan deficiency payment documents covering cotton on which a person or firm has advanced to the producers, including payments to prior lienholders and other creditors, the note amounts shown on the Form A loan documents, except for:

(i) Authorized cotton clerk fees;

(ii) The research and promotion fee to be collected for transmission to the Cotton Board by CCC; and

(iii) CCC loan service charges.

(c)(1) All marketing assistance loan or loan deficiency payment documents shall be mailed or delivered to the appropriate county office and shall show the entire proceeds of the marketing assistance loans or loan deficiency payments, except for CCC loan service charges and research and promotion fees, for disbursement to:

(i) The financial institution which is to allow credit to the person or firm which made the loan or loan deficiency payment advances or to such financial institution and such person or firm as joint payees; or

(ii) The person, firm, or financial institution which made the marketing assistance loan or loan deficiency payment advances to the producers.

(2) The documents shall be accompanied by a Transmittal Schedule of Loan and Loan Deficiency Payment Documents (Transmittal) on a form prescribed by CCC, in original and two copies, numbered serially for each county office by the person, firm, or financial institution which made the marketing assistance loan or loan deficiency payment advance. The Transmittal shall show the amounts invested by the person, firm, or financial institution in the marketing assistance loans or loan deficiency payments.

(3) Upon receipt of the marketing assistance loan or loan deficiency payment documents and Transmittal, the county office will stamp one copy of the Transmittal to indicate receipt of the documents and return this copy to the person, firm, or financial institution.

(d) The person, firm, or financial institution shall be deemed to have invested funds in the loans or loan deficiency payment as of the date marketing assistance loan or loan deficiency payment documents acceptable to CCC were delivered to a county office or, if received by mail, the date of mailing as indicated by postmark or the date of receipt in a county office if no postmark date is shown. Patron postage meter date stamp will not be recognized as a postmark date.

(e) Interest will be computed on the total amount invested by the person, firm, or financial institution in the marketing assistance loan or loan deficiency payment represented by accepted documents from and including the date of investment of funds by the person, firm, or financial institution to, but not including, the date of disbursement by CCC.

(1) Interest will be paid at the rate in effect for CCC loans as provided in part 1405 of this chapter.

(2) Interest earned by the person, firm, or financial institution on the investment in loans disbursed during a month will be paid by CCC after the end of the month.

§ 1427.16 Reconcentration of cotton.

(a) CCC may under certain conditions, before loan maturity, compress, store, insure, or reinsure the cotton against any risk, or otherwise handle or deal with the cotton as it may deem necessary or appropriate for the purpose of protecting the interest therein of the producer or CCC.

(b) CCC may reconcentrate the cotton pledged for the marketing assistance loan from one CCC-approved warehouse to another with the written consent of the producer and upon the request of the local warehouse and certification that there is congestion and lack of storage facilities in the area. However, if CCC determines such cotton is improperly warehoused and subject to damage, or if any of the terms of the loan agreement are violated, or if carrying charges are substantially in excess of the average of carrying charges available elsewhere and the local warehouse, after notice, declines to reduce such charges, such written consent need not be obtained.

(1) An FSA official, the loan servicing agent, or CMA shall arrange for reconcentration of the cotton under the direction of CCC and CCC shall obtain new warehouse receipts.

(2) Any reconcentration charges, fees, costs, or expenses incident to such actions shall be charged against the cotton, and must be repaid for bales redeemed from loan.

§ 1427.17 Custodial offices.

Collateral warehouse receipts, using forms prescribed by CCC, and related documents will be maintained in the custody of CCC, its designee, the loan servicing agent, or the cotton commercial bank, whichever disbursed the loan evidenced by such documents.

§ 1427.18 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a marketing assistance loan or loan deficiency payment or in maintaining or settling a loan, or disposes of or moves the loan collateral without the prior written approval of CCC, such loan or loan deficiency payment shall be payable upon demand by CCC. The producer shall be liable for:

(i) The amount of the marketing assistance loan or loan deficiency payment;

(ii) Any additional amounts paid by CCC for the loan or loan deficiency payment;

(iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral;

(iv) Applicable interest on such amounts;

(v) Liquidated damages under paragraph (e) of this section; and

(vi) About amounts due for a loan, the payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of cotton with a settlement value that is less than the total of such amounts or by repayment of such loan at the lower loan repayment rate as prescribed in § 1427.19.

(2) If a producer makes a fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC, the value of such collateral delivered to or acquired by CCC shall be equal to the sales price of the cotton less any costs incurred by CCC in completing the sale.

(b) If the amount disbursed under a marketing assistance loan, or in settlement thereof, or loan deficiency payment exceeds the amount authorized by this subpart, the producer shall be liable for repayment of such excess, plus interest. In addition, the commodity pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the marketing assistance loan or loan deficiency payment is less than the amount required under this subpart, the producer shall be personally liable for repayment of the amount of such deficiency plus applicable interest.

(d) If more than one producer executes a note and security agreement or loan deficiency payment application with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement or loan deficiency payment application and this subpart. Each producer shall also remain liable for repayment of the entire loan or loan deficiency payment amount until the loan is fully repaid without

regard to their share in the cotton pledged as collateral for the loan or for which the loan deficiency payment was made. In addition, such producer may not amend the note and security agreement or loan deficiency payment application for the producer's claimed share in such cotton after execution of the note and security agreement or loan deficiency payment application by CCC.

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or loan deficiency payment or in maintaining or settling a loan or disposing of or moving the loan collateral without the prior written approval of CCC. Accordingly, if CCC determines that the producer has violated the terms or conditions of their requests for a loan or any applicable form required by CCC, liquidated damages shall be assessed on the quantity of the cotton which is involved in the violation. If CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the first offense; or

(ii) 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the second offense; or

(2) Did not act in good faith about the violation, or for cases other than first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate.

(f) For first and second offenses, if CCC determines that a producer acted in good faith when the violation occurred, CCC shall:

(1) Require repayment of the loan principal and charges, plus interest applicable to the loan quantity affected by the violation or for loan deficiency payment, the loan deficiency payment amount applicable to the loan deficiency quantity involved with the violation, and charges plus interest from the date the loan deficiency payment was made; and

(2) Assess liquidated damages under paragraph (e) of this section;

(3) If the producer fails to pay such amounts within 30 calendar days from the date of notification, CCC shall call the applicable marketing assistance loan involved in the violation and require repayment of any market gain previously realized for the applicable loan, plus any interest previously waived and any storage paid by CCC, or fora loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest from the date the loan deficiency payment was made.

(g) For cases other than first or second offenses, or any offense for which CCC cannot determine good faith when the violation occurred, CCC shall:

(1) Assess liquidated damages under paragraph (e) of this section; and

(2) Call the applicable marketing assistance loan involved in the violation and require repayment of any market gain previously realized for the applicable loan, plus any interest previously waived and any storage paid by CCC, and for a loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest from the date the loan deficiency payment was made.

(h) If the county committee acting on behalf of CCC determines that the producer has committed a violation under paragraph (e) of this section, CCC shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances which caused the violation, to the county committee; and

(2) Administrative actions will be taken under paragraph (f) or (g) of this section.

(i) If the marketing assistance loan is called under this section, the producer must repay the loan at principal and charges, plus interest and may not repay the loan at the lower of the loan repayment rate under § 1427.19 or utilize the provisions of part 1401 of this chapter for such loan.

(j) Any or all of the liquidated damages assessed under paragraph (e) of this section may be waived as determined by CCC.

§ 1427.19 Repayment of loans.

(a) Warehouse receipts will not be released except as provided in this section.

(b) A producer, an authorized agent or anyone subsequently designated by the producer in the manner prescribed by CCC may redeem one or more bales of cotton pledged as collateral for a loan by payment to CCC of an amount applicable to the bales of cotton being redeemed determined under this section. CCC, upon proper payment for the amount due, shall release the warehouse receipts applicable to such cotton.

(c) A producer or agent or subsequent agent authorized in writing in a manner prescribed by CCC may repay the loan amount for one or more bales of cotton pledged as collateral for a marketing assistance loan:

(1) For upland cotton, at a level that is the lesser of:

(i) The loan level and charges, plus interest determined for such bales; or

(ii) The adjusted world price, as determined by CCC under § 1427.25, in effect on the day the repayment is received by the county office, loan servicing agent, or cotton commercial bank that disbursed the loan.

(2) For ELS cotton, by repaying the loan amount and charges, plus interest determined for such bales.

(d) CCC shall determine and publicly announce the adjusted world price for each crop of upland cotton on a weekly basis.

(e) The difference between the loan level, excluding charges and interest, and the loan repayment level is the market gain. The total amount of any market gain realized by a person is subject to part 1400 of this chapter.

(f) Repayment of loans will not be accepted after CCC acquires title to the cotton under § 1427.7.

(g) In the event that Thursday is a non-workday, such loan repayments will not be accepted beginning at 7 a.m. Eastern Standard time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made under § 1427.25(e).

(h) If the upland cotton pledged as collateral is eligible to be redeemed at a rate less than the loan level and charges, plus interest, and the adjusted world price determined under § 1427.25:

(1) Below the national average loan rate for upland cotton, CCC will pay at the time of loan repayment to the producer or agent or subsequent agent authorized by the producer in the manner prescribed by CCC, the warehouse storage charges which have accrued, for the cotton pledged as collateral for such loan, during the period the cotton was pledged for loan;

(2) Above the national average loan rate by less than the sum of the accrued interest and warehouse storage charges, that accrued during the period the cotton was pledged for loan, CCC will pay at the time of loan repayment to the producer or agent or subsequent agent authorized by the producer in the manner prescribed by CCC, that portion of the warehouse storage charges, that accrued during the period the cotton was pledged for loan, that are determined to be necessary to permit

the loan to be repaid at the adjusted world price without regard to any warehouse charges that accrued before the cotton was pledged for loan; or

(3) Above the national average loan rate by as much as or more than the sum of the accrued interest and warehouse storage charges that accrued during the period the cotton was pledged for loan, CCC shall not pay any of the accrued warehouse storage charges.

(i) Repayment of loans will not be accepted after CCC acquires title to the cotton in accordance with § 1427.7.

§ 1427.20 Handling payments and collections not exceeding $9.99.

Amounts of $9.99 or less will be paid to the producer only at their request. Deficiencies of $9.99 or less, including interest, may be disregarded unless CCC demands in writing that they be paid.

§ 1427.21 Settlement.

(a) The settlement of loans shall be made by CCC on the basis of the quality and quantity of the cotton delivered to CCC by the producer or acquired by CCC.

(b) Settlements made by CCC for eligible cotton which are acquired by CCC which are stored in an approved warehouse shall be made on the basis of the entries set forth on the applicable warehouse receipt and other accompanying documents.

(c) If a producer does not pay CCC the amount due under a loan, CCC shall take title to the cotton as provided in § 1427.7(b).

§ 1427.22 Commodity certificate exchanges.

(a) For any outstanding marketing assistance loan, a producer may purchase a commodity certificate and exchange that commodity certificate for the marketing assistance loan collateral.

(b) The exchange rate is the lesser of:

(1) The loan rate and charges, plus interest applicable to the loan, or

(2) The adjusted world price for cotton as determined by CCC.

(c) Producers must request a commodity certificate exchange in person at the FSA county service center that disbursed the marketing assistance loan by:

(1) Completing a written request as CCC determines,

(2) Purchasing a commodity certificate for the exact amount required to exchange the marketing assistance loan collateral, and

(3) Immediately exchanging the purchased commodity certificate for the outstanding loan collateral.

§ 1427.23 Cotton loan deficiency payments.

(a) In order to be eligible to receive such loan deficiency payments, the producer of the upland cotton must:

(1) Comply with all of the upland cotton marketing assistance loan eligibility requirements under this subpart;

(2) Agree to forgo obtaining such loans unless denied a loan deficiency payment due to payment limitation;

(3) File a request for payment for a quantity of eligible cotton under § 1427.5(a) on a form approved by CCC;

(4) Provide warehouse receipts or, as determined by CCC, a list of gin bale numbers for such cotton showing, for each bale, the net weight established at the gin;

(5) For loan deficiency payments requested before ginning of the cotton based on a locked-in adjusted world price, provide identifying numbers for modules or other storage units that will correspond to the gin-assigned numbers of the bales produced from the unginned cotton; and

(6) Otherwise comply with all program requirements.

(b) The loan deficiency payment applicable to a crop of cotton shall be computed by multiplying the applicable loan deficiency payment rate, as determined under paragraph (c) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a loan, excluding any quantity for which the producer obtains a marketing assistance loan.

(c) The loan deficiency payment rate for a crop of upland cotton shall be the amount by which the loan rate determined for a bale of such crop exceeds the adjusted world price, as determined by CCC under § 1427.25, in effect on the day the request is received by, the county office, loan servicing agent, or cotton commercial bank. In no case shall the loan deficiency payment rate for a bale exceed the value of the bale had it been pledged as collateral for a marketing assistance loan.

(d) The total amount of any loan deficiency payments that a person may receive is subject to part 1400 of this chapter.

(e) If the producer enters into an agreement with CCC on or before the date of ginning a quantity of eligible upland cotton, and the producer has the beneficial interest in such quantity as specified under § 1427.5(c) on the date the cotton was ginned, and the producer meets all the other requirements in paragraph (a) of this section on or before the final date to apply for a loan deficiency payment under § 1427.5, the loan deficiency payment rate applicable to such cotton will be:

(1) Based on the date the cotton was ginned if payment application is made in the manner prescribed by CCC for obtaining such rate; or

(2) Based on the date of request for lock-in of the adjusted world price if payment application is made in the manner prescribed by CCC for obtaining such rate; or

(3) Based on the date a completed request including production evidence is submitted in the manner prescribed by CCC for obtaining such rate.

(f) In the event that Thursday is a non-workday, such applications for loan deficiency payments will not be accepted beginning at 7 a.m. Eastern Standard time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made under § 1427.25(e).

(g) With respect only to loan deficiency payments for upland cotton produced in the 2001 crop year, whether or not produced on a farm covered by a production flexibility contract, the applicable final availability for such payment is November 18, 2002.

§ 1427.24 [Reserved].

§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

(a) CCC shall determine the world market price for upland cotton as follows:

(1) During the period when only one daily price quotation is available for each growth quoted for Middling one and three-thirty-second inch (M 1 3/32 inch) cotton, C.I.F. (cost, insurance, and freight) northern Europe, the prevailing world market price for upland cotton shall be based upon the average of the quotations for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1 3/32 inch cotton, C.I.F. northern Europe.

(2) During the period when both a price quotation for cotton for shipment no later than August/September of the current calendar year (current shipment price) and a price quotation for cotton for shipment no earlier than October/November of the current calendar year (forward shipment price) are available for growths quoted for M 1 3/32 inch cotton, C.I.F. northern Europe, the prevailing world market price for upland cotton shall be based upon the following: Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through

Thursday for the 5 lowest-priced growths of the growths quoted for M 1 3/32 inch cotton, C.I.F. northern Europe (Northern Europe current price (NEc)), and the average of the forward shipment prices for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1 3/32 inch cotton, C.I.F. northern Europe (Northern Europe forward price (NEf)), are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the NEc and NEf price are available, the prevailing world market price for upland cotton shall be based upon the result calculated by the following procedure:

(i) Weeks 1 and 2: ((2 × NEc) + NEf)/3.

(ii) Weeks 3 and 4: (NEc + NEf)/2.

(iii) Weeks 5 and 6: (NEc + (2 × NEf))/3.

(iv) Week 7 through July 31: NEf.

(3) The upland cotton prevailing world market price as determined under paragraphs (a)(1) or (a)(2) of this section shall hereinafter be referred to as the "Northern Europe price (NE)."

(4) If quotes are not available for 1 or more days in the 5-day period, the available quotes during the period will be used. If no quotes are available during the Friday through Thursday period, the prevailing world market price shall be based upon the best available world price information, as CCC determines.

(b) The upland cotton prevailing world market price, adjusted under paragraph (c) of this section (adjusted world price (AWP)), shall be applicable to the 2002 through 2007 crops of upland cotton.

(c) The upland cotton AWP shall equal the NE price as determined under paragraph (a) of this section, adjusted as follows:

(1) The NE shall be adjusted to average designated U.S. spot market location by deducting the average difference in the immediately preceding 52-week period between:

(i)(A) The average of price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton, C.I.F. northern Europe, during the period when only one daily price quotation for such growths is available, or

(B) The average of the current shipment prices for U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton, C.I.F. northern Europe, during the period when both current shipment prices and forward shipment prices for such growths are available; and

(ii) The average price of M 1 3/32 inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 80 through 82 percent) cotton, as quoted each Thursday in the designated U.S. spot markets.

(2) The price determined under paragraph (c)(1) of this section shall be adjusted to reflect the price of Strict Low Middling (SLM) 1 1/16 inch, leaf 4, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 80 through 82 percent) cotton (U.S. base quality) by deducting the difference, as CCC announces, between the applicable loan rate for an upland cotton crop for M 1 3/32 inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 80 through 82 percent) cotton and the loan rate for an upland cotton crop of the U.S. base quality.

(3) The price determined under paragraph (c)(2) of this section shall be adjusted to average U.S. location by deducting the difference between the average loan rate for an upland cotton crop of the U.S. base quality in the designated U.S. spot markets and the corresponding crop year national average loan rate for an upland cotton crop of the U.S. base quality, as CCC announces.

(4)(i) The prevailing world market price, adjusted under paragraphs (c)(1) through (c)(3) of this section, may be further adjusted if it is determined that:

(A) Such price is less than 115 percent of the current crop-year loan level for U.S. base quality cotton, and

(B) The Friday through Thursday average price quotation for the lowest-priced U.S. growth as quoted for M 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price (USNE)), is greater than the average of the quotations for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1 3/32 inch cotton, C.I.F. northern Europe.

(ii) During the period when both current shipment prices and forward shipment prices are available for growths quoted for M 1 3/32 inch cotton, C.I.F. northern Europe, the USNE provided in paragraph (c)(4)(i)(B) of this section shall be determined as follows: Beginning with the week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday of the lowest-priced U.S. growth, as quoted for M 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe current price (USNEc)), and the average of the forward shipment prices for the preceding Friday through Thursday of the lowest-priced United States growth quoted for M 1 3/32 inch cotton C.I.F. northern Europe (U.S. Northern Europe forward price (USNEf)), are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which including April 15 in which both the average of the USNEc and the average of the USNEf are available, the result calculated by the following procedure:

(A) Weeks 1 and 2: ((2 × USNEc) + (USNEf))/3.

(B) Weeks 3 and 4: ((USNEc) + (USNEf))/2.

(C) Weeks 5 and 6: ((USNEc) + (2 × USNEf))/3.

(D) Week 7 through July 31: USNEf.

(iii) In determining the USNE as provided in paragraphs (c)(4)(i)(B) and (c)(4)(ii):

(A) If quotes for either the U.S. Memphis territory or the California/Arizona territory are not available for any week, the available quotations will be used.

(B) If quotes are not available for one or more days in the 5-day period, the available quotes during the period will be used.

(C) If no quotes are available for either the U.S. Memphis territory or the California/Arizona territory during the Friday through Thursday period, no adjustment will be made.

(iv)(A) The adjustment shall be based on some or all of the following data, as available:

(*1*) The U.S. share of world exports;

(*2*) The current level of cotton export sales and shipments; and

(*3*) Other data CCC determines relevant in establishing an accurate prevailing world market price, adjusted to U.S. quality and location.

(B) The adjustment may not exceed the difference between the USNE, as determined in paragraphs (c)(4)(i) through (c)(4)(iii) of this section, and the NE, as determined in paragraph (a) of this section.

(d) In determining the average difference in the 52-week period as provided in paragraph (c)(1) of this section:

(1) If the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory, as quoted for M 1 3/32 inch cotton, C.I.F. northern Europe, and the average price of M 1 3/32 inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 80 through 82 percent) cotton, as quoted each Thursday in the designated U.S. spot markets for that week, or

(ii) May not take that week into consideration.

(3) If Thursday price quotations for any week are not available for either,

(i) Both the Memphis territory and the California/Arizona territory as quoted for M 1 3/32 inch cotton, C.I.F. northern Europe, or

(ii) The average price of M 1 3/32 inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 80 through 82 percent) cotton, as quoted in the designated U.S. spot markets, that week will not be considered.

(e) The upland cotton AWP, determined under paragraph (c) of this section, and the amount of the additional adjustment determined under paragraph (f) of this section, shall be announced, to the extent practicable, at 5 p.m. Eastern Standard time each Thursday continuing through the last Thursday of July, 2008. In the event that Thursday is a non-workday, the determination will be announced, to the extent practicable, at 8 a.m. Eastern Standard time the next work day.

(f)(1)(i) The AWP, as determined under paragraph (c) of this section, shall be subject to further adjustments as provided in this section regarding all qualities of upland cotton eligible for loan except the following upland cotton grades with a staple length of 1 1/16 inch or longer:

(A) White Grades—Strict Middling and better, leaf 1 through leaf 6; Middling, leaf 1 through leaf 6; Strict Low Middling, leaf 1 through leaf 6; and Low Middling, leaf 1 through leaf 5;

(B) Light Spotted Grades—Strict Middling and better, leaf 1 through leaf 5; Middling, leaf 1 through leaf 5; and Strict Low Middling, leaf 1 through leaf 4; and

(C) Spotted Grades—Strict Middling and better, leaf 1 through leaf 2; and

(ii) Grade and staple length must be determined under § 1427.9. If no such official classification is presented, the coarse count adjustment shall not be made.

(2) The adjustment for upland cotton provided under paragraph (f)(1) of this section shall be determined by deducting from the AWP:

(i) The difference between the NE, and

(A) During the period when only one daily price quotation for each growth quoted for "coarse count" cotton, C.I.F. northern Europe, is available the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton, C.I.F. northern Europe; or

(B) During the period when both current shipment prices and forward shipment prices are available for the growths quoted for "coarse count" cotton, C.I.F. northern Europe, the result calculated by the following procedure: Beginning with the first week covering the period Friday through Thursday including April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton, C.I.F. northern Europe (Northern Europe coarse count current price (NECCc)), and the average of the forward shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton, C.I.F. northern Europe (Northern Europe coarse count forward price (NECCf)), are not available during that period, beginning with the first week covering the period Friday through Thursday after the week including April 15 in which both the Northern Europe coarse count current price and the Northern Europe coarse count forward price are available:

(*1*) Weeks 1 and 2: (2 × NECCc) + NECCf)/3;

(*2*) Weeks 3 and 4: (NECCc + NECCf)/2;

(*3*) Weeks 5 and 6: (NECCc + (2 × NECCf))/3; and

(*4*) Week 7 through July 31: The NECCf, minus:

(ii) The difference between the applicable loan rate for an upland cotton crop for M 1 3/32 inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 80 through 82 percent) cotton and the loan rate for an upland cotton crop for SLM 1 1/16 inch, leaf 4, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 80 through 82 percent) cotton.

(iii) The result of the calculation as determined under this paragraph shall hereinafter be referred to as the "Northern Europe coarse count price."

(3) Regarding the determination of the Northern Europe coarse count price under paragraph (f)(2)(i) of this section:

(i) If no quotes are available for one or more days of the 5-day period, the available quotes will be used;

(ii) If quotes for three growths are not available for any day in the 5-day period, that day will not be considered; and

(iii) If quotes for three growths are not available for at least 3 days in the 5-day period, that week will not be considered, in which case the adjustment determined under paragraph (f)(2) of this section for the latest available week will continue to be applicable.

(g) If the 6-week transition period from using current shipment prices to using forward shipment prices in the determination of the NE under paragraph (a)(2) of this section, and the Northern Europe coarse count price under paragraph (f)(2)(i)(B) of this section do not begin at the same time, CCC shall use either current shipment prices, forward shipment prices, or any combination thereof to determine the NE and/or the Northern Europe coarse count price used in the determination of the adjustment for upland cotton under paragraph (f)(1) of this section and determined under paragraph (f)(2) of this section to prevent distortions in such adjustment.

(h) The AWP determined under paragraph (c) of this section, shall be subject to further adjustments to a value no less than zero, as CCC determines, based upon the Schedule of Premiums and Discounts and the location differentials applicable to each warehouse location as announced under the loan program for an upland cotton crop.

Subpart B—[Reserved]

Subpart C—Upland Cotton User Marketing Certificates

§ 1427.100 Applicability.

(a) Regulations in this subpart are applicable during the period beginning August 1, 1991, and ending July 31, 2008. These regulations set forth the terms and conditions under which CCC shall make payments, in the form of commodity certificates or cash, to eligible domestic users and exporters of upland cotton who entered into an Upland Cotton Domestic User/Exporter Agreement with CCC to participate in the upland cotton user marketing certificate program under section 1207 of the Farm Security and Rural Investment Act of 2002.

(b) During the period beginning August 1, 1991, and ending July 31, 2008, CCC shall issue marketing certificates or cash payments to domestic users and exporters under this subpart in a week following a consecutive 4-week period in which:

(1) The Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling one and three thirty-seconds inch (M 1 3/32 inch) cotton, delivered C.I.F. (cost, insurance and freight) northern Europe, (U.S. Northern Europe (USNE) price) exceeds the Friday through Thursday average price quotation for the five lowest-priced growths, as quoted for M 1 3/32 inch cotton, delivered C.I.F. northern Europe, (Northern Europe (NE) price) by:

(i) During the period beginning May 15, 2002, and ending July 31, 2006, more than zero; and

(ii) During the period beginning August 1, 2006, and ending July 31, 2008, more than 1.25 cents per pound;

(2) The adjusted world price (AWP) for upland cotton, determined under § 1427.25, does not exceed 134 percent of the crop loan level for upland cotton.

(c) Additional terms and conditions are in the Upland Cotton Domestic User/Exporter Agreement which the domestic user or exporter must execute in order to receive such payments.

(d) CCC shall prescribe forms used in administering the upland cotton user marketing certificate program.

§ 1427.101 [Reserved].

§ 1427.102 [Reserved].

§ 1427.103 Eligible upland cotton.

(a) For purposes of this subpart, eligible upland cotton is domestically produced baled upland cotton which bale is opened by an eligible domestic user on or after August 1, 1991, and on or before July 31, 2008, or exported by an eligible exporter on or after July 18, 1996, and on or before July 31, 2008, during a Friday through Thursday period in which a payment rate, determined under § 1427.107, is in effect and which meets the requirements of paragraphs (b) and (c) of this section.

(b) Eligible upland cotton must be either:

(1) Baled lint, including baled lint classified by USDA's Agricultural Marketing Service as Below Grade;

(2) Loose;

(3) Semi-processed motes which are of a quality suitable, without further processing, for spinning, papermaking or bleaching;

(4) Re-ginned (processed) motes.

(c) Eligible upland cotton must not be:

(1) Cotton for which a payment, under the provisions of this subpart, has been made available;

(2) Imported cotton;

(3) Raw (unprocessed) motes; or

(4) Textile mill wastes.

§ 1427.104 Eligible domestic users and exporters.

(a) For purposes of this subpart, the following persons shall be considered eligible domestic users and exporters of upland cotton:

(1) A person regularly engaged in the business of opening bales of eligible upland cotton for the purpose of manufacturing such cotton into cotton products in the United States (domestic user), who has entered into an agreement with CCC to participate in the upland cotton user marketing certificate program; or

(2) A person, including a producer or a cooperative marketing association approved under part 1425 of this chapter, regularly engaged in selling eligible upland cotton for exportation from the United States (exporter), who has entered into an agreement with CCC to participate in the upland cotton user marketing certificate program.

(b) Applications for payment under this subpart must contain documentation required by the provisions of the Upland Cotton Domestic User/Exporter Agreement and instructions CCC issues.

§ 1427.105 Upland Cotton Domestic User/Exporter Agreement.

(a) Payments under this subpart shall be made available to eligible domestic users and exporters who have entered into an Upland Cotton Domestic User/Exporter Agreement with CCC and who have complied with the terms and conditions in this subpart, the Upland Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

(b) Upland Cotton Domestic User/Exporter Agreements may be obtained from Contract Reconciliation Division, Kansas City Commodity Office, P.O. Box 419205, Stop 8758, Kansas City, Missouri 64141–6205. In order to participate in the program authorized by this subpart, domestic users and exporters must execute the Upland Cotton Domestic User/Exporter Agreement and forward the original and one copy to KCCO.

§ 1427.106 Form of payment.

Payments under this subpart shall be made available in the form of commodity certificates issued under part 1401 of this chapter, or in cash, at the option of the program participant.

§ 1427.107 Payment rate.

(a) Beginning July 18, 1996, and ending July 31, 2008, the payment rate for purposes of calculating payments made under this subpart shall be determined as follows for exporters for cotton shipped on or after July 18, 1996, and for domestic users:

(1) Beginning the Friday following August 1 and ending the week in which the Northern Europe current (NEc) price, the Northern Europe forward (NEf) price, the U.S. Northern Europe current (USNEc) price, and the U.S. Northern Europe forward (USNEf) price first become available, the payment rate shall be:

(i) Beginning August 1, 1991, and ending May 14, 2002, the difference between the U.S. Northern Europe (USNE) price, minus 1.25 cents per pound, and the Northern Europe (NE) price;

(ii) Beginning May 15, 2002, and ending July 31, 2006, the difference between the USNE price and the NE price; and

(iii) Beginning August 1, 2006, and ending July 31, 2008, the difference between the USNE price, minus 1.25 cent per pound, and the NE price in the fourth week of a consecutive 4-week period in which the USNE price exceeded the NE price each week by:

(iv) During the period beginning August 1, 1991, and ending May 14, 2002, more than 1.25 cents per pound;

(v) During the period beginning May 15, 2002, and ending July 31, 2006, more than zero; and

(vi) During the period beginning August 1, 2006 and ending July 31, 2008, more than 1.25 cents per pound; and the adjusted work price (AWP) did not exceed the loan level for upland cotton by more than 134 percent in any week of the 4-week period; and

(2) Beginning the Friday through Thursday week after the week in which the NEc, the NEf, the USNEc, and the USNEf prices first become available and ending the Thursday following July 31, the payment rate shall be:

(i) Beginning August 1, 1991, and ending May 14, 2002, the difference between the USNEc price, minus 1.25 cents per pound, and the NEc price;

(ii) Beginning May 15, 2002, and ending July 31, 2006, the difference between the USNEc price and the NEc price; and

(iii) Beginning August 1, 2006, and ending July 31, 2008, the difference between the USNEc price, minus 1.25 cents per pound, and the NEc price in the fourth week of a consecutive 4-week period in which the USNEc price exceeded the NEc price each week by:

(iv) During the period beginning August 1, 1991, and ending May 14, 2002, more than 1.25 cents per pound;

(v) During the period beginning May 15, 2002, and ending July 31, 2006, more than zero; and

(vi) During the period beginning August 1, 2006 and ending July 31, 2008, more than 1.25 cents per pound; and the adjusted world price (AWP) did not exceed the loan level for upland cotton by more than 134 percent in any week of the 4-week period.

(3) If either or both the USNEc price and the NEc price are not available, the payment rate may be:

(i) Beginning August 1, 1991, and ending May 14, 2002, the difference between the USNEf price, minus 1.25 cents per pound, and the NEf price;

(ii) Beginning May 15, 2002, and ending July 31, 2006, the difference between the USNEf price and the NEf price; and

(iii) Beginning August 1, 2006, and ending July 31, 2008, the difference between the USNEf price, minus 1.25 cents per pound, and the NEf price.

(b) Whenever a 4-week period under paragraph (a) of this section contains a combination of NE, NEc, and NEf prices only for one to three weeks, such as occurs in the spring when the NE price is succeeded by the NEc and the NEf prices (Spring transition), and at the start of a new marketing year when the NEc and the NEf prices are succeeded by the NE price (marketing year transition), under paragraphs (a)(1) and (a)(2) of this section, during both the spring transition and the marketing year transition periods, to the extent practicable, the NEc and USNEc prices in combination with the NE and the USNE prices shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued. During both the spring transition and the marketing year transition periods, if either or both the USNEc price and the NEc price are not available, the USNEf and NEf prices in combination with the USNE and NE prices shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued.

(c) For purposes of this subpart:

(1) For the determination of the USNE, USNEc, USNEf, NE, NEc, and the NEf prices:

(i) If daily quotations are not available for one or more days of the 5-day period, the available quotations during the period will be used;

(ii) CCC will not consider a week in which no daily quotes are available for the entire 5-day period for either or both the USNE and the NE during the period when only one daily price quotation is available for each growth quoted for M 1 3/32-inch cotton, delivered cost insurance, and freight (C.I.F.) northern Europe, or the USNEc and the NEc, or the USNEf and the NEf. In that case, CCC may establish a payment rate at a level it determines to be appropriate, taking into consideration the payment rate determined under paragraph (a) of this section for the most recent available week; and

(iii) Beginning July 18, 1996, if no daily quotes are available for the entire 5-day period for either or both the USNEc and the NEc, the marketing year transition shall be implemented immediately.

(2) Regarding the determination of the USNE, the USNEc, and the USNEf, if a quotation for either the U.S. Memphis territory or the California/Arizona territory, as quoted for M 1 3/32-inch cotton, delivered C.I.F. northern Europe, is not available for each day or any day of the 5-day period, available quotation(s) will be used.

(d) Payment rates for semi-processed motes that are of a quality suitable, without further processing, for spinning, papermaking or bleaching shall be based on a percentage of the basic rate for baled lint, as specified in the Upland Cotton Domestic User/Exporter Agreement.

§ 1427.108 Payment.

(a) Payments under this subpart shall be determined by multiplying:

(1) The payment rate, determined under § 1427.107, by

(2) The net weight (gross weight minus the weight of bagging and ties), determined under paragraph (b) of this section, of eligible upland cotton bales an eligible domestic user opens or an eligible exporter sold for export during the Friday through Thursday period following a week in which a payment rate is established.

(b) For the purposes of this subpart, the net weight shall be determined based upon:

(1) For domestic users, the weight on which settlement for payment of the cotton was based (landed mill weight);

(2) For reginned motes processed by an end user who converted such motes, without rebaling, to an end use in a continuous manufacturing process, the net weight of the reginned motes after final cleaning;

(3) For exporters, the shipping warehouse weight or the gin weight if the cotton was not placed in a warehouse, of the eligible cotton unless the exporter obtains and pays the cost of having all the bales in the shipment reweighed by a licensed weigher and furnishes a copy of the certified reweights.

(c) For the purposes of this subpart, eligible upland cotton will be considered—

(1) Consumed by the domestic user on the date the bale is opened for consumption; and

(2) Exported by the exporter on the date CCC determines is the date on which the cotton is shipped through July 31, 2008.

(d) Payments under this subpart shall be made available upon application for payment and submission of supporting documentation, including proof of purchase and consumption of eligible cotton by the domestic user or proof of export of eligible cotton by the exporter, as required by the CCC-issued provisions of the Upland Cotton Domestic User/Exporter Agreement.

Subpart D—Recourse Seed Cotton Loans

§ 1427.160 Applicability.

(a) This subpart is applicable to the 2002 through 2007 crops of upland and extra long staple seed cotton. These regulations set forth the terms and conditions under which recourse seed cotton loans shall be made available by CCC. Such loans will be available through March 31 of the year following the calendar year in which such crop is normally harvested. CCC may change the loan availability period to conform to State or locally imposed quarantines. Additional terms and conditions are in the note and security agreement which must be executed by a producer in order to receive such loans.

(b) Loan rates and the forms which are used in administering the recourse seed cotton loan program for a crop of cotton are available in FSA State and county offices. Loan rates shall be based upon the location at which the loan collateral is stored.

(c) A producer must, unless otherwise authorized by CCC, request the loan at the county office which, under part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced. A CMA must, unless otherwise authorized by CCC, request the loan at a central county office designated by the State committee. All note and security agreements and related documents necessary for the administration of the recourse seed cotton loan program shall be prescribed by CCC and shall be available at State and county offices.

(d) Loans shall not be available for seed cotton produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

§ 1427.161 Administration.

(a) The recourse seed cotton loan program which is applicable to a crop of cotton shall be administered under the general supervision of the Executive Vice President, CCC, or a designee and shall be carried out in the field by State and county FSA committees (State and county committees, respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not under the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not under the regulations of this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC (Administrator, FSA), or a designee from determining any question arising under the recourse seed cotton program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, FSA, may authorize waiver or modification of deadlines and other program requirements where lateness or failure to meet such other requirements does not adversely affect the operation of the recourse seed cotton loan program.

(f) A representative of CCC may execute loan applications and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed under such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void.

§ 1427.162 [Reserved].

§ 1427.163 Disbursement of loans.

(a) A producer or the producer's agent shall request a loan at the county office for the county which, under part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced and which will assist the producer in completing the loan documents, except that CMA's designated by producers to obtain loans in their behalf may, unless otherwise authorized by CCC, obtain loans through a central county office designated by the State committee.

(b) Disbursement of each loan will be made by the county office of the county which is responsible for administering programs for the farm on which the cotton was produced, except that CMA's designated by producers to obtain loans in their behalf may, unless otherwise authorized by CCC, obtain disbursement of loans at a central county office designated by the State committee. Service charges shall be deducted from the loan proceeds. The producer or the producer's agent shall not present the loan documents for disbursement unless the cotton is in existence and in good condition. If the cotton is not in existence and in good condition at the time of disbursement, the producer or the agent shall immediately return the check issued in payment of the loan or, if the check has been negotiated, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

§ 1427.164 Eligible producer.

An eligible producer must meet the requirements of § 1427.4.

§ 1427.165 Eligible seed cotton.

(a) Seed cotton pledged as collateral for a loan must be tendered to CCC by an eligible producer and must:

(1) Be in existence and in good condition at the time of disbursement of loan proceeds;

(2) Be stored in identity-preserved lots in approved storage meeting requirements of § 1427.171;

(3) Be insured at the full loan value against loss or damage by fire;

(4) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the seed cotton to CCC as collateral for a loan;

(5) Not have been previously sold and repurchased; or pledged as collateral for a CCC loan and redeemed;

(6) Be production from acreage that has been reported timely under part 718 of this title; and

(b) The quality of cotton which may be pledged as collateral for a loan shall be the estimated quality of lint cotton in each lot of seed cotton as determined by the county office, except that if a control sample of the lot of cotton is classed by an Agricultural Marketing Service (AMS) Cotton Classing Office or other entity approved by CCC, the quality for the lot shall be the quality shown on the applicable documentation issued for the control sample.

(c) To be eligible for loan, the beneficial interest in the seed cotton must be in the producer who is pledging the seed cotton as collateral for a loan as provided in § 1427.5(c).

§ 1427.166 Insurance.

The seed cotton must be insured at the full loan value against loss or damage by fire.

§ 1427.167 Liens.

If there are any liens or encumbrances on the seed cotton tendered as collateral for a loan, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the cotton after the loan is approved.

§ 1427.168 [Reserved].

§ 1427.169 Fees, charges, and interest.

(a) A producer shall pay a non-refundable loan service fee to CCC at a rate determined by CCC.

(b) Interest which accrues for a loan shall be determined under part 1405 of this chapter.

§ 1427.170 Quantity for loan.

(a) The quantity of lint cotton in each lot of seed cotton tendered for loan shall be determined by the county office by multiplying the weight or estimated weight of seed cotton by the lint turnout factor determined under paragraph (b) of this section.

(b) The lint turnout factor for any lot of seed cotton shall be the percentage determined by the county committee representative during the initial inspection of the lot. If a control portion of the lot is weighed and ginned, the turnout factor determined for the portion of cotton ginned will be used for the lot. If a control portion is not weighed and ginned, the lint turnout factor shall not exceed 32 percent for machine-picked cotton and 22 percent for machine-stripped cotton unless acceptable proof is furnished showing that the lint turnout factor is greater.

(c) Loans shall not be made on more than a percentage established by the county committee of the quantity of lint cotton determined as provided in this section. If the seed cotton is weighed, the percentage to be used shall not be more than 95 percent. If the quantity is determined by measurement, the percentage to be used shall not be more than 90 percent. The percentage to be used in determining the maximum quantity for any loan may be reduced below such percentages by the county committee when determined necessary to protect the interests of CCC on the basis of one or more of the following risk factors:

(1) Condition or suitability of the storage site or structure;

(2) Condition of the cotton;

(3) Location of the storage site or structure; and

(4) Other factors peculiar to individual farms or producers which related to the preservation or safety of the loan collateral. Loans may be made on a lower percentage basis at the producer's request.

§ 1427.171 Approved storage.

Approved storage shall consist of storage located on or off the producer's farm (excluding public warehouses) which is determined by a county committee representative to afford adequate protection against loss or damage and which is located within a reasonable distance, as determined by CCC, from an approved gin. If the cotton is not stored on the producer's farm, the producer must furnish satisfactory evidence that the producer has the authority to store the cotton on such property and that the owner of such property has no lien for such storage against the cotton. The producer must provide satisfactory evidence that the producer and any person having an interest in the cotton including CCC, have the right to enter the premises to inspect and examine the cotton and shall permit a reasonable time to such persons to remove the cotton from the premises.

§ 1427.172 Settlement.

(a) A producer may, at any time before maturity of the loan, obtain release of all or any part of the loan seed cotton by paying to CCC the amount of the loan, plus interest and charges.

(b)(1) A producer or the producer's agent shall not remove from storage any cotton which is pledged as collateral for a loan until prior written approval has been received from CCC for removal of such cotton. If a producer or the producer's agent obtains such approval, they may remove such cotton from storage, sell the seed cotton, have it ginned, and sell the lint cotton and cottonseed obtained therefrom. The ginner shall inform the county office in writing immediately after the seed cotton removed from storage has been ginned and furnish the county office the loan number, producer's name, and applicable gin bale numbers. If the seed cotton is removed from storage, the loan principal plus interest and charges thereon must be satisfied not later than the earlier of:

(i) The date established by the county committee;

(ii) 5 days after the date of the producer received the AMS classification under § 1427.9 (and the warehouse receipt, if the cotton is delivered to a warehouse), representing such cotton; or

(iii) The loan maturity date.

(2) If the seed cotton or lint cotton is sold, the loan principal, interest, and charges must be satisfied immediately.

(3) A producer, except a CMA, may obtain a nonrecourse loan or loan deficiency payment under subpart A of this part, on the lint cotton, but:

(i) The loan principal, interest, and charges on the seed cotton must be satisfied from the proceeds of the nonrecourse loan under subpart A of this part; or

(ii) The loan deficiency payment must be applied to the loan principal, interest, and charges on the outstanding seed cotton loan.

(4) A CMA must repay the seed cotton loan principal, interest, and charges before pledging the cotton for a nonrecourse loan or before a loan deficiency payment can be approved under subpart A of this part, on the lint cotton. If CMA's authorized by producers to obtain loans in their behalf remove seed cotton from storage before obtaining approval to move such cotton, such removal shall constitute conversion of such cotton unless the CMA:

(i) Notifies the county office in writing the following morning by mail or otherwise that such cotton has been moved and is on the gin yard;

(ii) Furnishes CCC an irrevocable letter of credit if requested; and

(iii) Repays the loan principal, plus interest and charges, within the time specified by the county committee.

(5) Any removal from storage shall not be deemed to constitute a release of CCC's security interest in the seed cotton or to release the producer or CMA from liability for the loan principal, interest, and charges if full payment of such amount is not received by the county office.

(c) If, either before or after maturity, the producer discovers that the cotton is going out of condition or is in danger of going out of condition, the producer shall immediately notify the county office and confirm such notice in writing. If the county committee determines that the cotton is going out of condition or is in danger of going out of condition, the county committee will call for repayment of the loan principal, plus interest and charges on or before a specified date. If the producer does not repay the loan or have the cotton ginned and obtain a nonrecourse loan under subpart A of this part on the lint cotton produced therefrom within the period as specified by the county committee, the cotton shall be considered abandoned.

(d) If the producer has control of the storage site and if the producer subsequently loses control of the storage site or there is danger of flood or damage to the seed cotton or storage structure making continued storage of the cotton unsafe, the producer shall immediately either repay the loan or move the seed cotton to the nearest approved gin for ginning and shall, at the same time, inform the county office. If the producer does not do so, the seed cotton shall be considered abandoned.

§ 1427.173 Foreclosure.

Any seed cotton pledged as collateral for a loan which is abandoned or which has not been ginned and pledged as collateral for a nonrecourse loan under subpart A of this part by the seed cotton loan maturity date may be removed from storage by CCC and ginned and the resulting lint cotton warehoused for the account of CCC. The lint cotton and cottonseed may be sold, at such time, in such manner, and upon such terms as CCC may determine, at public or private sale. CCC may become the purchaser of the whole or any part of such cotton and cottonseed. If the proceeds received from the sales of the cotton are less than the amount due on the loan (including principal, interest, ginning charges, and any other charges incurred by CCC), the producer shall be liable for such difference. If the proceeds received from sale of the cotton are greater than the sum of the amount due plus any cost incurred by CCC in conducting the sale of the cotton, the amount of such excess shall be paid to the producer or, if applicable, to any secured creditor of the producer.

§ 1427.174 Maturity of seed cotton loans.

Seed cotton loans mature on demand by CCC but no later than May 31

following the calendar year in which such crop is normally harvested.

§ 1427.175 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a loan, maintaining a loan, or settling a loan or if the producer disposes of or moves the loan collateral without the prior approval of CCC, such loan amount shall be refunded upon demand by CCC. The producer shall be liable for:

(i) The amount of the loan;

(ii) Any additional amounts paid by CCC for the loan;

(iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral;

(iv) Applicable interest on such amounts; and

(v) Liquidated damages under paragraph (e) of this section.

(2) Notwithstanding any provision of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC, the value of such collateral acquired by CCC shall be equal to the sales price of the cotton less any costs incurred by CCC in completing the sale.

(b) If the amount disbursed under a loan, or in settlement thereof, exceeds the amount authorized by this subpart, the producer shall be liable for repayment of such excess, plus interest. In addition, seed cotton pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the loan is less than the amount required under this subpart, the producer shall be personally liable for repayment of the amount of such deficiency plus applicable interest.

(d) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement and the regulations in this subpart. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the seed cotton pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement for the producer's claimed share in such seed cotton, after execution of the note and security agreement by CCC.

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or in maintaining or settling a loan or disposing of or moving the collateral without the prior approval of CCC. Accordingly, if CCC or the county committee determines that the producer has violated the terms or conditions of the note and security agreement, liquidated damages shall be assessed on the quantity of the seed cotton which is involved in the violation. If CCC or the county committee determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note for the first offense;

(ii) 25 percent of the loan rate applicable to the loan note for the second offense; or

(2) Did not act in good faith about the violation, or for cases other than first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note.

(f) For first and second offenses, if CCC or the county committee determines that a producer acted in good faith when the violation occurred, the county committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity affected by the violation, and charges plus interest applicable to the amount repaid;

(2) Assess liquidated damages under paragraph (e) of this section; and

(3) If the producer fails to pay such amount within 30 calendar days from the date of notification, call the applicable loan involved in the violation.

(g) For cases other than first or second offenses, or any offense for which CCC or the county committee cannot determine good faith when the violation occurred, the county committee shall:

(1) Assess liquidated damages under paragraph (e) of this section;

(2) Call the applicable loan involved in the violation.

(h) If CCC or the county committee determines that the producer has committed a violation under paragraph (e) of this section, the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information to the county committee regarding the circumstances which caused the violation, and

(2) Administrative actions will be taken under paragraphs (f) or (g) of this section.

(i) Any or all of the liquidated damages assessed under the provision of paragraph (e) of this section may be waived as determined by CCC.

Subpart E—Standards for Approval of Warehouses for Cotton and Cotton Linters

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Subpart F—[Reserved].

Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program

§ 1427.1200 Applicability.

(a) These regulations set forth the terms and conditions under which CCC shall make payments, in the form of commodity certificates or cash, to eligible domestic users and exporters of extra long staple (ELS) cotton who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC to participate in the ELS cotton competitiveness payment program under section 136A(c) of the Federal Agriculture Improvement and Reform Act of 1996 and section 1208 of the Farm Security and Rural Investment Act of 2002.

(b) During the effective period of these regulations, CCC may issue marketing certificates or cash payments to domestic users and exporters, at the option of the recipient under this subpart, in any week following a consecutive 4-week period in which:

(1) The lowest adjusted Friday through Thursday average price quotation for foreign growths (LFQ), as quoted for ELS cotton, delivered C.I.F. (cost, insurance and freight) Northern Europe, is less than the Friday through Thursday adjusted average domestic spot price quotation for base quality U.S. Pima cotton, as determined by the Secretary for purposes of administering the ELS Cotton Competitiveness Payment Program, uncompressed, F.O.B. warehouse; and

(2) The LFQ, determined under § 1427.1207, is less than 134 percent of the current crop year loan level for the base quality U.S. Pima cotton as determined by the Secretary.

(c) Additional terms and conditions may be in the ELS Cotton Domestic User/Exporter Agreement, which the domestic user or exporter must execute in order to receive such payments.

(d) CCC shall prescribe the forms to be used in administering the ELS cotton competitiveness payment program.

§ 1427.1201 [Reserved].

§ 1427.1202 Definitions.

Consumption means, the use of eligible ELS cotton by a domestic user in the manufacture in the United States of ELS cotton products.

Cotton product means any product containing cotton fibers that result from the use of an eligible bale of ELS cotton in manufacturing.

Current shipment price means, during the period in which two daily price quotations are available for the LFQ for the foreign growth, quoted C.I.F. northern Europe, the price quotation for cotton for shipment no later than August/September of the current calendar year.

Forward shipment price means, during the period in which two daily price quotations are available for the LFQ for foreign growths, quoted C.I.F. northern Europe, the price quotation for cotton for shipment no earlier than October/November of the current calendar year.

LFQ means, during the period in which only one daily price quotation is available for the growth, the lowest average for the preceding Friday-through-Thursday week of the price quotations for foreign growths of ELS cotton, quoted cost, insurance, and freight C.I.F. northern Europe, after each respective average is adjusted for quality differences between the respective foreign growth and U.S. Pima, of the base quality, provided that the lowest adjusted quotation becomes the LFQ after it is further adjusted to reflect the estimated cost of transportation between an average U.S. location and northern Europe.

(1) *Current LFQ* means the preceding Friday through Thursday average of the current shipment prices for the lowest adjusted foreign growth, C.I.F. northern Europe.

(2) *Forward LFQ* means the preceding Friday through Thursday average of the forward shipment prices for the lowest adjusted foreign growth, quoted C.I.F. northern Europe.

Spot price means the Friday-through-Thursday weekly average of the domestic spot prices reported by the Agricultural Marketing Service, USDA, for base quality U.S. Pima, uncompressed, F.O.B. warehouse, for the San Joaquin and Desert Southwest markets. When both San Joaquin Valley and Desert Southwest spot quotations are available, the U.S. quotation will be a weighted average of the two quotations, as determined by the Secretary. If only one quotation is available, that quotation will be used.

§ 1427.1203 Eligible ELS cotton.

(a) For the purposes of this subpart, eligible ELS cotton is domestically produced baled ELS cotton that is:

(1) Opened by an eligible domestic user on or after October 1, 1999, or

(2) Exported by an eligible exporter on or after October 1, 1999, during a Friday-through-Thursday period in which a payment rate, determined under § 1427.1207, is in effect, and that meets the requirements of paragraphs (b) and (c) of this section;

(b) Eligible ELS cotton must be either:

(1) Baled lint, including baled lint classified by USDA's Agricultural Marketing Service as Below Grade; or

(2) Loose.

(c) Eligible ELS cotton must not be:

(1) ELS for which a payment, under the provisions of this subpart, has been made available;

(2) Imported ELS cotton;

(3) Raw (unprocessed) motes;

(4) Textile mill wastes; or

(5) Semi-processed or reginned (processed) motes.

§ 1427.1204 Eligible domestic users and exporters.

(a) For the purposes of this subpart, the following persons shall be considered eligible domestic users and exporters of ELS cotton:

(1) A person regularly engaged in the business of opening bales of eligible ELS cotton to manufacturing such cotton into cotton products in the United States (domestic user), and who has entered into an agreement with CCC to participate in the ELS cotton competitiveness payment program; or

(2) A person, including a producer or a cooperative marketing association approved under part 1425 of this chapter, regularly engaged in selling eligible ELS cotton for exportation from the United States (exporter), and who has entered into an agreement with CCC to participate in the ELS Cotton Competitiveness Payment Program.

(b) Payment applications under this subpart must contain documentation required by the CCC-issued provisions of the ELS Cotton Domestic User/Exporter Agreement and instructions.

§ 1427.1205 ELS Cotton Domestic User/Exporter Agreement.

(a) Payments under this subpart shall be made available to eligible domestic users and exporters who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC and who have complied with the terms and conditions in this subpart, the ELS Cotton Domestic User/Exporter Agreement and CCC-issued instructions.

(b) ELS Cotton Domestic User/Exporter Agreements may be obtained from CCC. To participate in the program authorized by this subpart, domestic users and exporters must execute the ELS Cotton Domestic User/Exporter Agreement and forward the original and one copy to CCC.

§ 1427.1206 Form of payment.

Payments under this subpart shall be made available in the form of commodity certificates issued under part 1401 of this chapter, or in cash, at the option of the participant, as CCC determines and announces.

§ 1427.1207 Payment rate.

(a) The payment rate for payments made under this subpart shall be determined as follows:

(1) Beginning the Thursday following August 1 and ending the week in which the current LFQ and the forward LFQ may first become available, the payment rate shall be the difference between the U.S. Pima spot price and the LFQ in the fourth week of a consecutive 4-week period in which the U.S. Pima spot price exceeded the LFQ each week, and the LFQ was less than 134 percent of the current crop year loan level for U.S. base quality Pima cotton in all weeks of the 4-week period; and

(2) Beginning the Friday-through-Thursday week after the week in which the current LFQ and the forward LFQ may first become available and ending the Thursday following July 31, the payment rate shall be the difference between the U.S. Pima spot price and the current LFQ in the fourth week of a consecutive 4-week period in which the U.S. Pima spot price exceeded the current LFQ each week, and the current LFQ was less than 134 percent of the current crop year loan level for base quality U.S. Pima in all weeks of the 4-week period. If the current LFQ is not available, the payment rate may be the difference between the U.S. Pima spot price and the forward LFQ.

(b) Whenever a 4-week period under paragraph (a) of this section contains a combination of LFQ, current LFQ and forward LFQ for only one to three weeks, such as may occur in the spring when the LFQ price is succeeded by the current LFQ and the forward LFQ (Spring transition) and at the start of a new marketing year when the current LFQ and the forward LFQ are succeeded by the LFQ (marketing year transition), under paragraphs (a)(1) and (a)(2) of this section, during both the spring transition and the marketing year

transition periods, to the extent practicable, the current LFQ in combination with the LFQ shall be considered during such 4-week periods to determine whether a payment is to be issued. During both the spring transition and the marketing year transition periods, if the current LFQ is not available, the forward LFQ in combination with the LFQ shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued.

(c) For purposes of this subpart, regarding the determination of the U.S. Pima spot price, the LFQ, the current LFQ and the forward LFQ:

(1) If daily quotations are not available for one or more days of the 5-day period, the available quotations during the period will be used;

(2) If the U.S. Pima spot price is not available or if none of the LFQ, current LFQ or forward LFQ is available, the payment rate shall be zero and shall remain zero unless and until sufficient U.S. Pima spot prices and/or LFQ again become available, the U.S. Pima spot price exceeds the LFQ, the current LFQ or the forward LFQ, as the case may be, and the LFQ, the current LFQ, or the forward LFQ, as the case may be, is less than 134 percent of the current crop year loan rate for base quality U.S. Pima for 4 consecutive weeks.

(d) Payment rates for loose, reginned motes and semi-processed motes that are of a quality suitable, without further processing, for spinning, papermaking or bleaching shall be based on a percentage of the basic rate for baled lint, as specified in the ELS Cotton Domestic User/Exporter Agreement.

§ 1427.1208 Payment.

(a) Payments under this subpart shall be determined by multiplying:

(1) The payment rate, determined under § 1427.127, by

(2) The net weight (gross weight minus the weight of bagging and ties) determined under paragraph (b) of this section, of eligible ELS cotton bales that an eligible domestic user opens or an eligible exporter exports during the Friday-through-Thursday period following a week in which a payment rate is established.

(b) For the purposes of this subpart, the net weight shall be based upon:

(1) For domestic users, the weight on which settlement for payment of the ELS cotton was based (landed mill weight);

(2) For reginned motes processed by an end user who converted such motes, without rebaling, to an end use in a continuous manufacturing process, the net weight of the reginned motes after final cleaning;

(3) For exporters, the shipping warehouse weight or the gin weight if the ELS cotton was not placed in a warehouse, of the eligible cotton unless the exporter obtains and pays the cost of having all the bales in the shipment reweighed by a licensed weigher and furnishes a copy of the certified reweights.

(c) For the purposes of this subpart, eligible ELS cotton will be considered:

(1) Consumed by the domestic user on the date the bale is opened for consumption; and

(2) Exported by the exporter on the date that CCC determines is the date on which the cotton is shipped for export.

(d) Payments under this subpart shall be made available upon application for payment and submission of supporting documentation, as required by the CCC-issued provisions of the ELS Cotton Domestic User/Exporter Agreement.

PART 1430—DAIRY PRODUCTS

9. The authority citation is revised to read as follows:

Authority: 7 U.S.C. 7981 and 7982; 15 U.S.C. 714b and 714c.

10. Amend Subpart A by revising it to read as follows:

Subpart A—Price Support Program for Milk

Sec.

1430.1 Definitions.

1430.2 Price support levels and purchase conditions.

§ 1430.1 Definitions.

For purposes of this subpart, unless the context indicates otherwise, the following definitions shall apply:

AMS means the Agricultural Marketing Service, USDA.

CCC means the Commodity Credit Corporation, USDA.

FSA means the Farm Service Agency, USDA.

USDA means the United States Department of Agriculture.

§ 1430.2 Price support levels and purchase conditions.

(a)(1) The level of price support provided to farmers marketing milk containing 3.67 percent milkfat from dairy cows is $9.90 per hundredweight for calendar year 2002 through 2007.

(2) Subject to paragraph (b) of this section, price support for milk will be made available through CCC purchases of butter, nonfat dry milk, and Cheddar cheese, offered subject to the terms and conditions of FSA's purchase announcements.

(3) CCC purchase prices for dairy products will be announced by a USDA news release.

(4) CCC may, by special announcement, offer to purchase other dairy products to support the price of milk.

(5) Purchase announcements setting forth terms and conditions of purchase may be obtained upon request from CCC.

(b)(1) The block cheese purchased shall be U.S. Grade A or higher, except that the moisture content shall not exceed 38.5 percent; the barrel cheese shall be U.S. Extra Grade, except that the moisture content shall not exceed 36.5 percent.

(2) The nonfat dry milk purchased shall be U.S. Extra Grade, except that the moisture content shall not exceed 3.5 percent.

(3) The butter purchased shall be U.S. Grade A or higher.

(c) The products purchased shall be manufactured in the United States from milk produced in the United States and shall not have been previously owned by CCC.

(d) Purchases will be made in carlot weights specified in the announcements. Grade and weights shall be evidenced by USDA-issued inspection certificates.

11. Amend Subpart B by revising it to read as follows:

Subpart B—Milk Income Loss Contract Program

Sec.

1430.200 Applicability.

1430.201 Administration.

1430.202 Definitions.

1430.203 Eligibility.

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§ 1430.200 Applicability.

(a) This subpart governs the Milk Income Loss Contract Program. This program provides financial assistance to dairy operations in connection with milk production that is sold in the commercial market.

§ 1430.201 Administration.

(a) This program is administered under the general supervision of the Executive Vice President, CCC, or a designee, and shall be carried out by Farm Service Agency (FSA) State and county committees and employees.

(b) State and county committees, and their employees may not waive or modify any requirement of this subpart, except as provided in paragraph (e) of this section.

(c) The State committee shall take any action required when not taken by the county committee, require correction of actions not in compliance, or require the withholding of any action that is not in compliance with this subpart.

(d) The Executive Vice President, CCC, or a designee, may determine any question arising under the program or reverse or modify any decision of the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may waive or modify program requirements where failure to meet such requirements does not adversely affect the operation of the Milk Income Loss Contract Program.

(f) A representative of CCC may execute Milk Income Loss Contracts and related documents under the terms and conditions determined and announced by CCC. Any document not under such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void.

§ 1430.202 Definitions.

The definitions in this section shall be applicable for all purposes of administering the Milk Income Loss Contract (MILC) program established by this subpart.

CCC means the Commodity Credit Corporation of the Department.

Class I Milk means milk, including milk components, classified as Class I milk under a Federal milk marketing order.

Contract application means a Milk Income Loss Contract as executed on a form prescribed by CCC.

Contract application period means the date established by the Deputy Administrator for producers to apply for program benefits.

County committee means the FSA county committee.

County office means the FSA office responsible for administering FSA programs to farms located in a specific area in a state.

Dairy operation means any person or group of persons who as a single unit as determined by CCC, produce and market milk commercially produced from cows and whose production facilities are located in the United States.

Department or USDA means the United States Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs (DAFP), FSA or a designee.

Eligible production means milk that was produced by cows in the United States and marketed commercially anytime during the period of December 1, 2001, through September 30, 2005, up to a maximum of 2.4 million pounds per dairy operation per fiscal year.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Federal Milk Marketing Order means an order issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937.

Fiscal Year means the year beginning October 1 (except December 1 for fiscal year 2002) and ending the following September 30 and such that, for example, fiscal year 2003 will run from October 1, 2002 through September 30, 2003.

Hundredweight or cwt. means 100 pounds.

Marketed commercially means sold to the market to which the dairy operation normally delivers whole milk and receives a monetary amount.

MILC means the Milk Income Loss Contract program or the form upon which CCC and the producer agree to the terms of the payment to be made under the MILC program.

Milk handler means the marketing agency to or through which the producer commercially markets whole milk.

Milk marketing means a marketing of milk for which there is a verifiable sales or delivery record of milk marketed for commercial use.

Participating State means each of the 50 States in the United States of America, including the District of Columbia, and the Commonwealth of Puerto Rico, or any other State, territory, or possession of the United States.

Payment pounds means the pounds of milk production for which an operation is eligible to be paid under this subpart.

Producer means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen of, or legal resident alien in the United States, and who directly or indirectly, as determined by the Secretary, shares in the risk of producing milk, and makes contributions (including land, labor, management, equipment, or capital) to the dairy farming operation of the individual or entity that are at least commensurate with the share of the individual or entity of the proceeds of this operation.

Transition period means the period from December 1, 2001, until the time the dairy operation enters into MILC contract with CCC, provided that CCC may set such a deadline for the signing of the transition contract as it deems appropriate in order to accomplish the purposes of the contract.

United States means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico, or any other State, territory, or possession of the United States.

Verifiable production records means evidence that is used to substantiate the amount of production marketed and that can be verified by CCC through an independent source.

§ 1430.203 Eligibility.

To be eligible to receive payments under this subpart, a dairy operation must:

(a) Have produced milk in the United States and commercially marketed the milk produced anytime during the period of December 1, 2001, through September 30, 2005;

(b) Enter into a MILC during the contract application period;

(c) Agree to all terms and conditions in the MILC and those that are otherwise contained in this subpart and comply with instructions issued by CCC;

(d) Provide proof of monthly milk production commercially marketed by all persons in the dairy operation during the contract period, to determine the total pounds of milk that will be converted to hundredweight (cwt.) used for payment;

(e) Submit timely production evidence according to § 1430.209;

(f) Be actively engaged in the business of producing and marketing agricultural products at the time of signing the Milk Income Loss Contract.

(g) In administering this program, the eligibility determination of "dairy operation" shall be made in the same manner as Dairy Market Loss Assistance (DMLA) contracts in that State. New MILC operations must be unaffiliated with prior DMLA operations.

§ 1430.204 Requesting benefits.

(a) A request for benefits or contract application, under this subpart must be submitted on a form as prescribed by the Agency. Contract applications shall be submitted to the FSA office serving the county where the dairy operation is located. Contract applications must be received by FSA by the close of business on the date established by the Deputy Administrator. Contract applications received after such date shall be disapproved.

(b) The dairy operation requesting MILC benefits must certify the accuracy and truthfulness of the information in their contract application. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of the Department to verify any information provided will result in disapproval.

(c) Contract applications will be approved by execution by FSA and producer of a MILC. All persons who share in the risk of a dairy operation's total production must sign and certify the contract application.

§ 1430.205 Selection of starting month.

(a) Except as provided in § 1430.206 and beginning with the 2003 Fiscal Year, a dairy operation that enters into a MILC, and does not want its payments to begin with the first month of the fiscal year, must designate the starting month that it desires CCC to begin making payments to them. The starting month must be selected on or before the 15th of the month before the month for which payment is sought. A dairy operation cannot select a month for payment which:

(1) Has already begun;

(2) Has already passed; or

(3) During which no milk was produced by the dairy operation.

(b) Dairy operations may change the starting month on or before the first day of 15th of the month before the month previously selected. Otherwise, the starting month cannot be changed until the next Fiscal Year. If the selected starting month is never modified, it will remain the same throughout the duration of the contract.

(c) MILC payments will be made consecutively to the dairy operation on a monthly basis after the starting month has been designated until the earlier of the following:

(1) The maximum payment quantity is reached as determined in accordance with § 1430.207; or

(2) The end of the applicable Fiscal Year.

(d)(1) Dairy operations that do not designate the month to begin receiving payments from CCC will be issued consecutive payments on a monthly basis, on marketed milk production beginning in the first month of the fiscal year, unless FSA is otherwise notified that selection will be made at a later date.

(2) Dairy operations that desire payments to begin with the first month of the fiscal year will receive payments made by CCC consecutively on a monthly basis until the earlier of the following:

(i) The maximum payment quantity is reached as determined in accordance with § 1430.207; or

(ii) The end of the applicable fiscal year.

(e) All producers involved in the dairy operation must agree to the month designated. The dairy operation assumes the risk of not reaching the maximum payment quantity based on the month selected by the dairy operation. Payments will not be issued for past months for the sole purpose of reaching the maximum payment quantity.

§ 1430.206 Transition payments.

(a) MILC program participants shall receive a payment calculated under § 1430.208 on the quantity of eligible production marketed by the dairy operation during the period beginning December 1, 2001, and ending on the last day of the month preceding the month the operation's MILC is executed.

(b) Transition payments are subject to the following:

(1) The maximum payment quantity on eligible production, as described in § 1430.207;

(2) Consecutive monthly payments beginning on December 1, 2001, and if applicable the beginning of the fiscal year thereafter, until the earlier of the following is reached for a particular fiscal year:

(i) The maximum applicable payment quantity is reached as determined in accordance with § 1430.207; or

(ii) The end of the applicable fiscal year.

(c) With respect to the 2002 Fiscal Year, the dairy operation may elect to forgo their transition payment and choose to begin receiving payments in September, 2002 in accordance with § 1430.205.

(d) Notwithstanding any other provisions in this subpart, dairy operations that go out of business after December 1, 2001, may enter into a MILC with CCC for a transition payment on the quantity of eligible production marketed by the dairy operation during the transition period while the dairy operation was in business.

§ 1430.207 Dairy operation payment quantity.

(a) The applicant's payment quantity of milk will be determined by CCC, based on the quantity of milk that was produced and commercially marketed by each dairy operation per fiscal year.

(b) The maximum quantity of eligible production for which dairy operations are eligible for payment per any fiscal year, including any in the transition year, under this subpart shall be 2.4 million pounds (24,000 cwt.) per separate and distinct operation. In accordance with these regulations, the Deputy Administrator shall determine what is a separate and distinct operation and that decision shall be final.

§ 1430.208 Payment rate and dairy operation payment.

(a) Payments under this subpart may be made to dairy operations when the Boston Class I milk price under the applicable Federal milk marketing order is below $16.94 per cwt. No payments will be made to dairy operations for marketings during the months that the Boston Class I milk price under the applicable milk marketing order exceeds $16.94.

(b) A per-hundredweight payment rate will be determined for the applicable month by:

(1) Subtracting from $16.94 the Class I milk price per cwt in Boston; and

(2) Multiplying the difference, if positive, by 45 percent.

(c) Each eligible dairy operation payment will be calculated, as determined by the Secretary, by:

(1) Converting whole pounds of milk to hundredweight; and

(2) Multiplying the payment rate determined in paragraph (b) of this section by the quantity of eligible production marketed by the operation during the applicable month as determined according to § 1430.205 and other provisions of these regulations.

(d) Payments under this subpart may be made to a dairy operation only up to the first 2.4 million pounds of eligible milk production per applicable fiscal year, including any year in the transition period.

(e) Dairy operations receiving benefits under this subpart, will receive payments on a monthly basis according to the MILC, to the extent practicable, not later than 60 days after the production evidence and all supporting documents for the applicable month are received by CCC. Payments issued by CCC later than 60 days after all production evidence and supporting documentation are received by CCC will be subject to prompt payment interest as allowed by law.

§ 1430.209 Proof of marketings.

(a) A dairy operation entering into an MILC must, based on instructions issued by the Deputy Administrator, provide adequate proof of the dairy operation's eligible production during the months of each fiscal year designated in the MILC. The dairy operation must also provide proof that the eligible production was commercially marketed during the months beginning December 1, 2001, and ending September 30, 2005. Evidence of milk production claimed for payment shall be provided to CCC with supporting documentation under paragraph (b) of this section. All information provided is subject to verification, spot check, and audit by FSA. Further verification information may be obtained from the dairy operation's milk handler or marketing cooperative if deemed necessary by CCC to verify provided information. Refusal to allow FSA or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility for benefits under this subpart.

(b) Eligible dairy operations marketing milk during the period specified in the MILC shall provide any available supporting documents from all producers in the dairy operation to assist CCC in verifying that the dairy operation produced and marketed milk commercially from the designated starting month and thereafter. Examples of supporting documentation include, but are not limited to: milk marketing payment stubs, tank records, milk handler records, daily milk marketings, copies of any payments received as compensation from other sources, or any other documents available to confirm the production and production history of the dairy operation. Producers may also be required to allow CCC to examine the herd of cattle as production evidence. If supporting documentation requested is not presented to CCC or FSA, the request for MILC benefits will be disapproved.

§ 1430.210 MILC agents.

(a) MILC benefits may be disbursed by a dairy marketing cooperative that serves special groups or communities, such as an Amish or Mennonite community. Producers in such groups in a dairy operation may authorize an agent of a dairy cooperative or milk handler affiliated with such cooperative to obtain and disburse MILC benefits to the dairy operation.

(b) The authorized MILC agent must on behalf of the dairy operation do the following:

(1) Obtain an acceptable power of attorney or acceptable equivalent for the producers of the dairy operation that authorizes the agent to enter into an MILC contract;

(2) Enter into a written agreement with CCC for approval to act as a MILC agent on a form prescribed by CCC;

(3) Provide the dairy operation's monthly production evidence to the appropriate FSA office;

(4) Disburse payment to the dairy operation in the producer's monthly milk check or in an otherwise approved manner.

§ 1430.211 Duration of contracts.

(a) Except as provided in §§ 1430.205 and 1430.206, or elsewhere in this subpart, contracts under this subpart entered into by producers in a dairy operation shall cover eligible production marketed by the producers in the dairy operation during the period beginning with the first day of the month the producers in the dairy operation enter into contract and ending on September 30, 2005.

(b) If a dairy goes out of business during the contract period, the MILC will be terminated immediately, except as applicable to earned payments.

§ 1430.212 Contract modifications.

(a) Producers in a dairy operation must notify FSA immediately of any changes that may affect their MILC. Changes include, but are not limited to changes to the starting month to receive payment for the next fiscal year, death of producer on the contract, new member joining the operation, member exiting the operation, transfer of shares by sale or other transfer action, or farm reconstitutions undertaken in accordance with § 1430.213.

(b) CCC may modify an MILC if such modifications are desirable to carry out purposes of the program or to facilitate the program's administration.

§ 1430.213 Reconstitutions.

(a) A dairy operation receiving MILC benefits may reorganize or restructure such that the constitution or makeup of their operation is reconstituted in another organizational framework. However, any operation that changes after December 1, 2001, is subject to a review by FSA to determine if the operation was reorganized for the sole purpose of receiving multiple payments.

(b) A dairy operation that FSA determines has reorganized solely to receive additional MILC payments will be in violation of its contract and dealt in accordance with § 1430.214.

(c) If during the contract period a change in the dairy operation occurs, the modification to the MILC will not take effect until the first day of the fiscal year following the month FSA received notification of the changes. Changes include but are not limited to any producer affiliated with a dairy operation that has an approved MILC with CCC forming a new dairy operation that is not formed solely to receive additional MILC payments.

(d) Changes resulting in the following will take effect immediately upon notification to CCC, in accordance with § 1430.212:

(1) Increases or reductions of shareholders or producers and their corresponding share amounts in the dairy operation; or

(2) Purchases of a new dairy operation by a producer or producers not affiliated with an existing dairy operation that has an approved MILC with CCC.

§ 1430.214 Violations.

(a) If producers in a dairy operation violates the MILC or the requirements of this subpart, CCC may:

(1) Terminate the MILC for the remainder of the fiscal year in which the violation occurs, and allow the producer to retain any payments received under the contract; or

(2) Allow the MILC to remain in effect and require the producer to repay a portion of the payments received commensurate with the violation's severity, as CCC determines.

(3) If the MILC is terminated under this section, the participant shall forfeit all rights to further MILC benefits and shall refund all or part of the payments received as CCC determines appropriate.

(4) A producer or operation with a violation, as determined by CCC, shall refund all MILC funds disbursed under of this part. The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.

(b) A MILC is violated by the following actions:

(1) Failure to comply with the terms and conditions of the MILC and addendum;

(2) Reconstitutions of the dairy operation for the sole purpose of receiving multiple program benefits;

(3) Failure to comply with highly erodible land conservation and wetland provisions of this 7 CFR part 12 or their successor regulations;

(4) Failure to meet the definition of a dairy operation according to § 1430.202;

(5) Any action that tends to defeat the purpose of the program, as CCC determines.

(c) The Deputy Administrator for Farm Programs (DAFP) of the Farm Service Agency may terminate any MILC by mutual agreement upon request of the participant if DAFP determines that termination is in the best interest of the public.

(d) The DAFP may determine that failure of the dairy operation to perform the MILC does not warrant termination and may require the participant to refund part of the payments received or accept adjustments in the payment as the DAFP determines to be appropriate.

§ 1430.215 [Reserved].

§ 1430.216 Contracts not in conformity with regulations.

If it is discovered that an MILC contract does not comply with this subpart as the result of a misunderstanding by someone who has signed the contract, the contract may be modified by mutual agreement. If the parties to the MILC cannot reach agreement for such modification, it shall be terminated and all payments paid or payable under the contract shall be forfeited or refunded to CCC, except as may otherwise be allowed under § 1430.214.

§ 1430.217 Offsets and withholdings.

CCC may offset or withhold any amount due CCC under this subpart under the provisions of part 1403 of this chapter or any successor regulations.

§ 1430.218 Assignments.

Any producer may assign a payment to be made under this part in accordance with part 1404 of this chapter or successor regulations as designated by the Department.

§ 1430.219 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this subpart may request reconsideration or appeal of such determination under part 11 or 780 of this title.

§ 1430.220 Misrepresentation and scheme or device.

(a) A dairy operation shall be ineligible for the MILC program if FSA determines that it knowingly:

(1) Adopted a scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a determination under this program. CCC will take steps deemed necessary to protect the interests of the government.

(b) Any funds disbursed to a producer or operation engaged in a misrepresentation, scheme, or device, shall be refunded to CCC. The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.

§ 1430.221 Estates, trusts, and minors.

(a) Program documents executed by producers legally authorized to represent estates or trusts will be accepted only if such producers furnish evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible for assistance under this part must also:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) Show that a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1430.222 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance or dissolution of a producer that is eligible to receive benefits under this part, such persons as are specified in part 707 of this title may receive such benefits, as determined appropriate by FSA.

§ 1430.223 Maintenance and inspection of records.

(a) Producers approved for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein, as may be requested by CCC or FSA. Such records and accounts must be retained for 3 years after the date of payment to the dairy operation under this program. Destruction of the records 3 years after the date of payment shall be the risk of the party undertaking the destruction.

(b) At all times during regular business hours, authorized representatives of CCC, the Department, or the Comptroller General of the United States shall have access to the premises of the dairy operation in order to inspect the herd of cattle, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Any funds disbursed pursuant to this part to any producers or operation who does not comply with the provisions of paragraphs (a) or (b) of this section, or who otherwise receives a payment for which they are not eligible, shall be refunded with interest.

§ 1430.224 Refunds; joint and several liability.

(a) In the event of an error on a MILC application, a failure to comply with any term, requirement, or condition for payment arising under the MILC application, or this subpart, all improper payments shall be refunded to CCC together with interest from the date payment was received through the date the refund is received by CCC.

(b) All producers signing a dairy operation's application for payment as having an interest in the operation shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the contract application and addendum or this part for such operation.

§ 1430.225 Violations of highly erodible land and wetland conservation provisions.

The provisions of part 12 of this title apply to this part.

§ 1430.226 Violations regarding controlled substances.

The provisions of § 718.11 of this title apply to this part.

PART 1434—NONRECOURSE MARKETING ASSISTANCE LOAN AND LOAN DEFICIENCY PAYMENTS FOR HONEY

18.–19. The authority citation is revised to read as follows:

Authority: 7 U.S.C. 7931.

20. Revise § 1434.1 to read as follows:

§ 1434.1 Applicability.

This part provides the terms and conditions of Commodity Credit Corporation (CCC) nonrecourse marketing assistance loans or loan deficiency payments for honey. Marketing loan gains and loan deficiency payments shall be limited per person in the amounts set out in part 1400 of this chapter.

21. Amend § 1434.6 by redesignating paragraphs (b), (c) and (d) as paragraphs (c), (d) and (e), respectively, and adding a new paragraph (b) to read as follows:

§ 1434.6 Beneficial interest.

* * * * *

(b) For the 2002 crop of honey, in the case of producers that would be eligible for a loan deficiency payment under this section except for the fact that the producers lost beneficial interest in the crop before October 18, 2002, the producers shall be eligible for a loan deficiency payment as of the date producers marketed or otherwise lost beneficial interest in the honey, as determined by the Secretary.

* * * * *

22. Amend § 1434.10 by revising paragraph (a) to read as follows:

§ 1434.10 Application, availability, disbursement, and maturity.

(a) A producer must, unless otherwise authorized by CCC, request loans and loan deficiency payments at the appropriate FSA county office responsible for administering the program as provided under part 718 of this title. To receive loans and loan deficiency payments for honey, a producer shall execute a note and security agreement or loan deficiency payment application on or before March 31 of the year following the year in which the honey was extracted.

* * * * *

23. Amend § 1434.18 by revising the introductory text of paragraph (a) to read as follows:

§ 1434.18 Loan Repayments.

(a) A honey producer may repay a nonrecourse marketing assistance loan at a rate that is the lesser of:

* * * * *

24. Amend § 1434.21 by revising paragraphs (a), (b)(3) and (f)(1) to read as follows:

§ 1434.21 Loan deficiency payments.

(a) Loan deficiency payments shall be available for 2002–2007 crop honey.

(b) * * *

(3) Submitted a request for a honey Loan deficiency payment on the form as CCC prescribes.

* * * * *

(f) * * *

(1) The producer will provide correct, accurate, and truthful certifications and representations of the loan quantity and all other matters of fact and interest when submitting a request for a honey loan deficiency payment; and

* * * * *

§ 1434.23 [Amended]

25. Amend § 1434.23 by removing paragraph (c).

Signed in Washington, DC, on October 11, 2002.

Teresa C. Lasseter,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–26524 Filed 10–15–02; 12:32 pm]

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Part III

Department of Housing and Urban Development

24 CFR Part 982
Section 8 Homeownership Program: Downpayment Assistance Grants and Streamlining Amendments; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–4670–F–02]

RIN 2577–AC28

Section 8 Homeownership Program: Downpayment Assistance Grants and Streamlining Amendments

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements section 301 of the American Homeownership and Economic Opportunity Act of 2000, which amends the "homeownership option" under the Housing Choice Voucher Program. Under section 301, a Public Housing Agency (PHA) may, in lieu of paying a monthly homeownership assistance payment on behalf of a family, provide homeownership assistance for the family in the form of a single grant to be used toward the downpayment required in connection with the purchase of the home. Implementation of these downpayment assistance grants is anticipated for Federal Fiscal Year 2003. In addition to implementation of section 301, this final rule also clarifies and streamlines several regulatory requirements applicable to both downpayment grants and monthly homeownership assistance payments provided under the homeownership option. This final rule follows publication of a June 13, 2001, proposed rule, and takes into consideration the public comments received on the proposed rule.

DATES: Effective Date: November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477. (This is not a toll-free number.) Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—HUD's June 13, 2001, Proposed Rule

On June 13, 2001 (66 FR 32198), HUD published a proposed rule for public comment to implement section 301 of the American Homeownership and Economic Opportunity Act of 2000 (Pub.L. 106–569, 114 Stat. 2944, 2952, approved December 27, 2000) (AHEOA). Section 301 amends the "homeownership option" authorized under section 8(y) of the United States Housing Act of 1937 (42 U.S.C. 1437f(y)) (1937 Act). Under the section 8(y) homeownership option, a public housing agency (PHA) may choose to provide monthly tenant-based assistance to an eligible family that purchases a dwelling unit that will be occupied by the family. Section 301 amends section 8(y) to authorize an alternative form of assistance under the homeownership option—assistance in the form of a single downpayment assistance grant. Under section 301, a PHA may, in lieu of paying a monthly homeownership assistance payment on behalf of a family, provide homeownership assistance for the family in the form of a single grant to be used toward the downpayment required in connection with the purchase of the home. Implementation of these downpayment assistance grants is anticipated for Federal Fiscal Year 2003.

In addition to implementation of downpayment assistance grants, HUD also proposed to clarify and streamline several regulatory requirements applicable to both downpayment grants and monthly homeownership assistance payments provided under the homeownership option. Specifically, HUD proposed to:

(1) Provide PHAs with the flexibility to establish a higher minimum income standard than the uniform national requirement described in the current regulations;

(2) Explicitly reference the eligibility of manufactured homes for purchase under the homeownership option; and

(3) Remove the requirements providing for the recapture of homeownership assistance upon the sale or refinancing of the home.

In addition to these three changes, HUD also announced that it was considering the feasibility of permitting the purchase of new homes not yet under construction under the homeownership option. The preamble to the June 13, 2001, proposed rule provides additional details regarding the proposed changes to HUD's homeownership option regulations.

II. Significant Changes to June 13, 2001, Proposed Rule

This final rule follows publication of the June 13, 2001, proposed rule, and takes into consideration the public comments received on the proposed rule. The most significant differences between this final rule and the June 13, 2001, proposed rule are as follows:

A. Changes to Implementation of Downpayment Assistance Grants

1. *Payment of reasonable and customary closing costs with downpayment grant.* This final rule authorizes the use of a downpayment grant for the payment of reasonable and customary closing costs. If the PHA permits the downpayment grant to be applied to closing costs, the PHA must define what fees and charges constitute reasonable and customary closing costs by providing such a definition in its administrative plan. However, if the purchase of a home is financed with FHA mortgage insurance, such financing is subject to FHA mortgage insurance requirements, including any requirements concerning closing costs (see § 982.632(b) of the homeownership option regulations regarding the applicability of FHA requirements to voucher homeownership assistance and 24 CFR 203.27 regarding allowable fees, charges and discounts for FHA-insured mortgages).

2. *Limitation on eligibility to current voucher families.* This final rule continues to limit eligibility for downpayment assistance grants to current voucher families. The final rule, however, no longer requires that a family must have been receiving tenant-based voucher rental assistance for a specific time period in order to qualify for a downpayment grant. The proposed rule would have mandated a one-year period of prior voucher rental assistance.

3. *Administrative fee.* This final rule announces that the single, one-time administrative fee for a downpayment assistance grant will initially be set at an amount equal to six months of the PHA's on-going regular administrative fee under the voucher program.

4. *Return to tenant-based assistance.* The final rule permits a family to apply for and receive tenant-based rental assistance after receiving a downpayment grant, in accordance with program requirements and PHA policies. However, the PHA may not commence tenant-based rental assistance for occupancy of the new unit so long as any family member owns any title or other interest in the home purchased with homeownership assistance. Further, 18 months must have passed since the family's receipt of the downpayment assistance grant.

5. *Implementation of downpayment assistance grants.* This final rule clarifies that a PHA may not offer downpayment assistance grants until HUD publishes a notice in the **Federal Register** announcing that appropriated funds are available for this use.

B. Other Changes to Homeownership Option

1. *Family choice of housing.* This final rule makes a non-substantive clarification to § 982.601(d) of the Housing Choice Voucher Program regulations concerning a family's ability to choose among the special housing types permitted under the program (including the homeownership option). The current wording of the provision refers to a family's choice to "rent" housing, which may lead to the incorrect conclusion that the provisions concerning family choice do not apply to home purchases under the homeownership option. Accordingly, the final rule replaces the word "rent" in this section with the more inclusive word "use." This change does not alter any existing regulatory requirements, but merely clarifies that a family's ability to choose among the various forms of assistance offered under the voucher program also includes voucher homeownership assistance.

2. *Future receipt of homeownership assistance.* This final rule provides that only adult family members are subject to the restrictions on the future receipt of homeownership assistance. Specifically, a family that includes an individual who was an adult member of a family that previously received either of the two forms of homeownership assistance may not receive the other form of homeownership assistance from any PHA. Further, a PHA may not provide homeownership assistance for a family if any member was an adult member of a family at the time such family received assistance under the homeownership option and defaulted on the mortgage securing purchase of the home.

3. *Clarification of reasonable accommodation requirement.* Consistent with previous HUD guidance, this final rule clarifies that it is the sole responsibility of the PHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. The PHA will determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. The PHA may determine that it is not reasonable to provide homeownership assistance as a reasonable accommodation in cases where the PHA has otherwise opted not to implement a homeownership program.

4. *Removal of recapture provisions.* This final rule adopts the proposal to remove the recapture provisions contained in the June 13, 2001, proposed rule. In addition, this final rule provides that a PHA shall not impose or enforce any requirement for the recapture of voucher homeownership assistance on the sale or refinancing of a home purchased with assistance under the homeownership option. This change will ensure that families who purchased their homes prior to issuance of this final rule also receive the benefit provided by removal of the onerous recapture requirements.

5. *Inclusion of welfare assistance in determining whether elderly and disabled families meet the minimum income requirement.* This final rule clarifies that, in determining whether an elderly or disabled family meets the minimum income requirement, welfare assistance shall be included only for those adult elderly or disabled family members who will own the home.

6. *Revised minimum income standard for disabled families.* This final rule adopts the revisions to the minimum income requirements contained in the June 13, 2001, proposed rule. Specifically, the final rule permits a PHA to establish a higher minimum income standard than the uniform national standard described in the homeownership option regulations. However, the final rule establishes a separate national standard for disabled families. This minimum income standard for such families will be equal to the monthly Federal Supplemental Security Income (SSI) benefit for an individual living alone (or paying his or her share of food and housing costs) multiplied by twelve.

PHAs will have the flexibility to establish a higher income standard for either or both types of families (disabled and non-disabled). However, as described in the proposed rule, a family that meets the applicable HUD minimum income requirement, but not the higher standard established by the PHA, shall be considered to satisfy the minimum income requirement if the family is able to demonstrate that it has been pre-qualified or pre-approved for financing. The pre-qualified or pre-approved financing must meet any PHA established requirements for financing the purchase of the home (including qualifications of lenders and terms of financing). The pre-qualified or pre-approved financing amount must be sufficient to purchase housing that meets housing quality standards in the PHA's jurisdiction.

7. *Timing of new construction.* After careful consideration of all the issues regarding the eligibility of units not yet under construction, HUD, at this time, is not prepared to authorize the purchase of such units with voucher homeownership assistance. However, in order to expand a family's homeownership choices, the final rule provides that a unit need only be under construction at the time the family enters into the contract of sale—and not at the time the PHA determines the family is eligible for homeownership assistance to purchase the unit, as is currently required by the regulations.

8. *Eligibility of housing where the family will not also own fee title to the real property on which the home is located.* The final rule expands the types of housing eligible for purchase under the homeownership option to include any housing where the family will not also own fee title to the real property on which the home is located. Further, in order to effectuate this change, the final rule revises the list of homeownership expenses to include land lease payments. However, the family must have the right to occupy the site for a period of at least forty years and the home must have a permanent foundation. The right of occupancy period has been increased to forty years (from the proposed thirty year period) to conform to FHA mortgage insurance requirements and manufactured home lending industry practice.

9. *PHA disapproval of seller.* This final rule clarifies that a PHA, in its administrative discretion, may deny approval of a seller for any reason provided for disapproval of an owner under the voucher rental program regulations (see § 982.306(c)). These reasons include: violations of the housing assistance payments (HAP) contract; committing fraud; bribery; or any other corrupt or criminal acts in connection with any Federal housing program; engaging in drug-related or violent criminal activity; non-compliance with HUD's housing quality standards (HQS); failing to meet State or local housing codes; and failure to pay State or local real estate taxes, fines, or assessments. The current regulatory language is unclear as to whether PHAs have the authority to prohibit sellers who engage in these disreputable activities from participating in the homeownership option. This final rule closes this "loophole" by specifying that the PHA disapproval provisions of § 982.306(c) apply to both the rental and homeownership components of the voucher program.

III. Discussion of Public Comments Received on the June 13, 2001, Proposed Rule

The public comment period on the proposed rule closed on August 13, 2001. HUD received twenty-seven comments on the proposed rule. Comments were received from: PHAs;

advocates of low-income housing; legal services providers; national associations representing realtors, home builders, and mortgage bankers; state and local housing services and community development agencies; a housing subsidy recipient; Fannie Mae; the United States Department of Agriculture-Rural Housing Service; and other commenters.

The following section of the preamble presents a summary of the significant issues raised by the public commenters on the proposed rule, and HUD's responses to these issues.

The summary of public comments is organized as follows:

Section IV of the preamble discusses the public comments regarding the implementation of downpayment assistance grants.

Section V of the preamble discusses the public comments regarding the proposed streamlining and clarifying amendments to the homeownership option.

Section VI of the preamble discusses other public comments received on the proposed rule.

IV. Discussion of Public Comments Regarding the Implementation of Downpayment Assistance Grants

A. Comments Regarding Types of Homeownership Assistance Offered by PHA

Comment: A PHA that offers downpayment assistance grants should be required to clarify to the potential homebuyer the benefits of each option. Several commenters wrote that it is important that any potential participants have full knowledge of the advantages and disadvantages of each type of homeownership assistance. The commenters wrote that those families who are considering giving up their tenant-based rental assistance to receive a downpayment grant particularly should be made aware of all anticipated costs and requirements that go along with homeownership and the financial risks that may result from termination of their voucher rental assistance.

HUD Response. HUD agrees that families should be made fully aware of the benefits and disadvantages associated with each type of homeownership assistance. Before the commencement of either form of homeownership assistance, families are already required to satisfactorily complete the pre-assistance homeownership counseling offered by the PHA (see § 982.630). The regulation at § 982.630 identifies several suggested topics for inclusion in the pre-assistance counseling, and provides PHAs with the flexibility to adapt the subjects covered in the counseling to local circumstances and the needs of individual families. HUD encourages all PHAs who offer both forms of homeownership assistance to explain to applicants in the pre-assistance counseling how both forms of assistance work, and the benefits of each type of homeownership assistance. However, HUD continues to believe that the topics to be covered in counseling should be selected by the individual PHAs, who are in the best position to determine the counseling needs of families within their respective jurisdictions. Accordingly, HUD has not revised the proposed rule to adopt the suggestions made by the commenters.

Comment: A PHA that offers downpayment assistance grants should be required to also offer monthly homeownership assistance payments. Several commenters wrote that downpayment assistance carries substantial economic risks for families, since they will be forfeiting monthly homeownership assistance payments in exchange for a single downpayment grant. The commenters wrote that for many potential participants, the major obstacle to homeownership might be the ability to make monthly payments and not insufficient funds for a downpayment. However, PHAs may prefer to offer downpayment grants because they present less administrative burden than monthly homeownership assistance payments. The commenters suggested that PHAs who offer downpayment assistance should be required (or at a minimum encouraged) to also offer monthly homeownership assistance payments.

HUD Response. HUD does not believe it has the statutory authority to impose the requirement suggested by the commenter. Section 8(y) of the 1937 Act clearly gives individual PHAs the discretion to decide whether they will offer homeownership assistance and, if so, whether one or both forms of assistance will be made available by the PHA. Additionally, mandating that PHAs offer both types of assistance might have the negative consequence of discouraging some PHAs from offering any form of voucher homeownership assistance.

Comment: Support for PHA discretion to offer homeownership assistance. One commenter supported granting PHAs the flexibility to offer either or both types of homeownership assistance.

HUD Response. HUD agrees with the commenter. As noted above, section 8(y) of the 1937 Act makes the determination of whether to offer voucher homeownership assistance a local PHA decision.

B. Comments Regarding Eligibility for Downpayment Assistance

Comment: Support for restricting eligibility to current program participants. Several commenters supported limiting eligibility for downpayment assistance grants to current participants in the tenant-based voucher program. The commenters wrote that the proposal is consistent with the legislative history of section 301, and prevents transforming the voucher program into a short-term downpayment assistance program.

HUD Response. HUD agrees with the commenters, and the final rule continues to limit eligibility for downpayment assistance to current voucher families. Upon re-consideration, however, HUD believes that mandating at least one year of prior voucher rental assistance may be unduly prescriptive and unnecessarily delay the ability of families to move "up and out" and become homeowners. Further, eliminating the one-year requirement will facilitate lease-purchase transactions where the family is entitled to purchase a home it is leasing. Accordingly, the final rule no longer requires that a family must have been receiving tenant-based voucher rental assistance for a specific amount of time in order to qualify for a downpayment assistance grant.

In most PHA jurisdictions, the initial lease term for a family participating in the voucher rental program is one year (see § 982.309). The change regarding the amount a time a family must be receiving voucher rental assistance in order to qualify for a downpayment grant does not override the initial lease term requirements of § 982.309, or the family obligation to comply with the terms of the lease (§ 982.551(e)). Neither does it override any PHA administrative policy restricting moves by the family during the initial lease term. Rather, one of the goals of the change is to facilitate use of a downpayment grant where there is mutual agreement between the family and the owner to terminate the lease prior to the end of the initial term.

Comment: Proposed eligibility restriction should not apply to disabled families requesting a reasonable accommodation. One commenter wrote that eligibility for downpayment assistance should include individuals with disabilities requesting a reasonable accommodation, regardless of the length of time they have been receiving tenant-based voucher rental assistance.

HUD Response. As noted above, this final rule no longer requires that a family have been receiving tenant-based voucher rental assistance for a specific amount of time in order to qualify for downpayment assistance. Further, the homeownership option contains several special provisions for families with a member who is a person with disabilities. For example, there is no maximum term of homeownership assistance for disabled families (assistance to other families is limited to a fifteen or ten-year term) (see § 982.634). As described elsewhere in this preamble, the final rule establishes a separate, lower national minimum income standard for disabled families (see § 982.627(c)(1)). The PHA is also required to count welfare assistance provided to the disabled family for purposes of determining whether the family satisfies the minimum income requirements (generally, such assistance is not counted for other families) (see § 982.627(c)(2)). In addition, if a PHA determines that a disabled family requires homeownership assistance as a reasonable accommodation, the first-time homeowner requirement does not apply (§ 982.627(b)). Further, on June 22, 2001 (66 FR 33610), HUD published an interim rule implementing the pilot program authorized by section 302 of AHEOA. This pilot program provides disabled families with certain additional benefits under the homeownership option (see § 982.642).

C. Comments Regarding Maximum Amount of Downpayment Grant

Comment: Maximum amount of downpayment grant is insufficient. Three commenters wrote that basing the maximum amount of the downpayment grant on a single year's worth of homeownership assistance payments will benefit only a small number of families, particularly in expensive markets such as New York City. One of the commenters recommended that the final rule either establish a minimum downpayment grant amount (the commenter suggested $3,000) or base the maximum grant amount on a longer time period of subsidy assistance (the commenter suggested 5 years). A second commenter agreed that the time period for determining the maximum grant amount should be extended, and suggested a 5–10 year period.

HUD Response. HUD does not have the statutory authority to make the change suggested by the commenter. The maximum amount of the downpayment grant is established by section 301 of AHEOA. Specifically, the statute provides that "[t]he amount of the downpayment grant * * * may not exceed the amount that is equal to the sum of the assistance payments that would be made during the first year of assistance on behalf of the family * * "

Comment: The payment standard of the initial PHA should always be used to calculate the maximum downpayment grant. One commenter made this suggestion. The commenter wrote that this requirement appears to impose an unnecessary burden upon the family and the receiving PHA, and may deny homeownership assistance to a deserving family if the receiving PHA does not offer downpayment assistance grants. The commenter urged HUD to require that the policies and procedures of the initial PHA must be used for determining the maximum downpayment grant, regardless of where the property being purchased is located.

HUD Response. HUD does not agree with the commenter. HUD believes the portability requirements should be the same for both monthly homeownership assistance payments and downpayment assistance grants. A family determined eligible for either form of homeownership assistance may purchase a unit outside of the initial PHA's jurisdiction if the receiving PHA is administering a homeownership program and is accepting new homeownership families (see § 982.636).

D. Comments Regarding Use of Downpayment Grant

Comment: HUD should permit the use of downpayment assistance to cover closing costs. Several commenters wrote that closing costs can be substantial, typically amounting to two or three percent of the purchase of the home. Accordingly, the commenters suggested that the final rule authorize the use of downpayment grant funds to cover such costs.

HUD Response. Upon re-consideration of this issue, HUD has revised the rule to allow the use of a downpayment grant for the payment of reasonable and customary closing costs. HUD has determined that permitting families the option of using a downpayment assistance grant to cover such costs will facilitate homeownership. If the PHA permits the downpayment grant to be applied to closing costs, the PHA must define what fees and charges constitute reasonable and customary closing costs by providing such a definition in its administrative plan. However, if the purchase of a home is financed with FHA mortgage insurance, such financing is subject to FHA mortgage insurance requirements, including any requirements concerning closing costs (see § 982.632(b) of the homeownership option regulations regarding the applicability of FHA requirements to voucher homeownership assistance and 24 CFR 203.27 regarding allowable fees, charges, and discounts for FHA-insured mortgages).

E. Comments Regarding Administrative Fee

Comment: HUD should either provide a one-time administrative fee for both types of homeownership assistance or no fee at all. Several commenters wrote that the effect of the one-time administrative fee would be to provide an unfair "bonus" to PHAs offering downpayment assistance grants. The commenters wrote that a PHA that provides a downpayment grant would receive the one-time administrative fee, as well as "freeing-up" a voucher for use by another family. The PHA will collect an ongoing administrative fee for this "freed-up" voucher. The commenters wrote that HUD does not provide a similar one-time administrative fee to PHAs offering the existing homeownership option. Accordingly, PHAs will prefer to offer downpayment assistance grants rather than monthly homeownership assistance payments. Since downpayment grants will primarily benefit higher-income Section 8 families, the commenters wrote that the proposed administrative fee may unfairly penalize lower-income families who might benefit from monthly homeownership assistance payments. The commenters recommended that HUD either provide a one-time administrative fee for the administration of both types of homeownership assistance—or provide no one-time fee at all.

HUD Response. HUD has not revised the proposed rule in response to these comments. The administrative fee is a one-time fee paid to compensate PHAs for the administration of downpayment assistance grants. This administrative fee is paid in lieu of the monthly fee a PHA would receive for the administration of other forms of voucher assistance. The single, one-time fee should not be construed as a "bonus" to PHAs for providing downpayment assistance. Further, HUD disagrees with the commenters that no fee should be paid for the administration of downpayment assistance grants. PHAs providing downpayment assistance grants require compensation for the staff work associated with counseling and other administrative actions in connection with such grants.

Comment: Administrative fee is inadequate. Several commenters objected that the proposed one-time administrative fee of $250 is too low to adequately compensate PHAs for the administration of downpayment grants. The commenters wrote that the low

administrative fee will make downpayment assistance an unattractive option for PHAs, who will prefer to use their voucher funding to provide monthly tenant-based assistance and earn the higher administrative fee. Two commenters wrote that given the widely varying costs experienced by PHAs in different geographical locations, a flexible administrative fee would be more appropriate than the flat nationwide fee proposed by HUD. The commenter recommended an administrative fee equal to six months of a PHA's regular administrative fee. The commenters wrote that such a fee would be simple to administer and reflect the varying cost structures of PHAs.

HUD Response. Upon reconsideration, HUD agrees that the proposed $250 administrative fee did not reflect geographic cost differences between PHAs. Through publication of this final rule, HUD announces that the administrative fee is initially set at an amount equal to six months of a PHA's on-going regular administrative fee (see § 982.152(b) of the Housing Choice Voucher program regulations). HUD will monitor the adequacy of this fee amount and will make adjustments as necessary. As is standard practice, any updates to the administrative fee amount will be announced through HUD notice.

F. Comments Regarding Return to Tenant-Based Assistance

Comment: Final rule should permit a family to return to tenant-based assistance after receiving a downpayment assistance grant. Two commenters wrote that a family that receives monthly homeownership assistance payments may elect to move with continued voucher tenant-based assistance (see § 982.637). However, the June 13, 2001, proposed rule does not provide a similar safety net to a family selecting a one-time downpayment assistance grant. The commenters wrote that households receiving Section 8 assistance, even at the higher end of the income spectrum, are financially vulnerable and subject to personal and economic hardship. Thus, a household that is well qualified for downpayment assistance initially may find itself in a difficult financial situation one or more years down the road due to a loss of employment, illness, or death. The commenters wrote that it would be unduly harsh to prohibit such a family from returning to voucher rental assistance simply because it elected to receive a one-time downpayment grant. One of the commenters wrote that if disqualification is sought, a more equitable approach would be to disqualify participating households from receiving tenant-based assistance for a period equivalent to the number of months used to calculate the amount of the downpayment assistance grant. The other commenter suggested that, at a minimum, a family should be allowed to return to voucher rental assistance within 18 months following the downpayment assistance grant.

HUD Response. HUD agrees with the commenters that families receiving a downpayment grant should be permitted to return to tenant-based rental assistance under certain circumstances. This final rule permits a family that has received a one-time downpayment assistance grant to apply for, and receive, tenant-based rental assistance in accordance with program requirements and PHA policies. However, the PHA may not commence tenant-based rental assistance for occupancy of the new unit so long as any family member owns any title or other interest in the home purchased with homeownership assistance. Further, 18 months must have passed since the family's receipt of the downpayment assistance grant.

G. Comments Regarding Voucher Renewals

Comment: Voucher renewal policy for downpayment grants is unclear and may be inequitable. Two commenters expressed uncertainty regarding the voucher renewal policy for downpayment grants announced in the June 13, 2001, proposed rule. The commenters requested clarification on whether downpayment grants are required to be funded from PHA reserves. The commenters noted that if a PHA uses reserves to assist additional families, it is not entitled to HUD reimbursement. The commenters wrote that such a voucher renewal policy would be inequitable and discourage PHAs from offering downpayment assistance grants.

HUD Response. HUD intends to issue further non-regulatory guidance on renewal funding in the near future.

H. Miscellaneous Comments Regarding Downpayment Grants

Comment: HUD should require PHAs to take an active role in ensuring the long-term success of participating families. One commenter wrote that, although the PHA's involvement with the family ceases once the downpayment grant is made, the PHA remains in the important position of being the family's sole safety net if mortgage and maintenance expenses prove to be unaffordable. According to the commenter, the PHA is also the last line of defense in preventing a predatory lender from encouraging the family to move into homeownership. For these reasons, the commenter suggested that HUD require PHAs to review the participant's financing, sales contract, appraisal, and any other documents deemed necessary by the PHA. In this manner, the PHA can ensure that the sales price of the home and the monthly mortgage payments are affordable and the borrower is not subject to abusive loan terms or predatory lending. The commenter also requested that HUD clarify that new homeowners receiving a downpayment grant are required to complete all required pre-purchase homeownership counseling and must obtain the required home inspections (with approval by the PHA) prior to obtaining the grant. The commenter wrote that HUD should consider reporting requirements, perhaps through the Section 8 Management Assessment Program (SEMAP), that would enable HUD to ensure that the PHA has adopted all necessary safeguards under the homeownership option.

HUD Response. HUD has not adopted the suggestions made by the commenter. HUD agrees that families receiving downpayment grants should be protected from entering into unaffordable financing arrangements and from abusive lending practices. However, HUD does not believe that additional regulatory requirements are necessary to accomplish these goals. Many of the regulatory protections afforded to families receiving monthly homeownership assistance payments also apply to downpayment grants. For example, families receiving a downpayment grant must participate in pre-assistance counseling, and a PHA may establish requirements for financing purchase of the home. Although PHA involvement with the family ends once the downpayment grant is provided, HUD expects that PHAs will undertake the same efforts to ensure that financing requirements are appropriate for a downpayment grant as they would for monthly homeownership assistance payments. PHAs are encouraged to review lender qualifications and the loan terms before authorizing a downpayment grant. PHAs should disapprove proposed financing if the PHA determines that the debt is unaffordable or the lender or the loan terms do not meet PHA qualifications.

Comment: Downpayment assistance option needs to be included in the PHA Plan template. One commenter wrote that the homeownership component of the PHA Annual and Five-Year Plan template needs to be revised to include downpayment grants along with monthly homeownership assistance payments. The commenter suggested that PHAs should be required to identify whether they offer downpayment grants in addition to monthly homeownership assistance payments, and their reasons for offering downpayment assistance. The commenter wrote that including downpayment assistance grants in the template will better ensure that PHAs, potential participants, lenders, and others better understand the program and all of its ramifications in advance.

HUD Response. HUD intends to address downpayment grants through future amendments to the PHA Plan instructions.

Comment: Downpayment grants will unnecessarily divert scarce voucher subsidy to higher-income families. One commenter wrote that downpayment assistance grants will principally benefit higher-income families who can afford monthly mortgage payments. The commenter wrote that the proposed rule would, therefore, "have very minimal impact on [lower-income] voucher recipients who may wish to become homeowners." The commenter also wrote that there are already several available downpayment assistance resources available to voucher families, such as HOME program funds, the Federal Home Loan Bank, state housing finance authority funds, and other state housing funds. The commenter suggested that PHAs work with their respective state housing and finance agencies, lending institutions, and local nonprofits to identify and develop downpayment assistance resources rather than using valuable voucher assistance for this purpose.

HUD Response. HUD does not agree with the commenter. Downpayment assistance grants are statutorily authorized by section 8(y). The statutory language makes clear that the provision of such assistance is solely at the discretion of individual PHAs. The PHA is in the best position to assess the availability and amount of other housing resources in its community and determine whether it is appropriate to offer downpayment assistance grants. Further, since a family provided a downpayment grant will no longer receive monthly rental assistance, implementation of this program will "free up" resources to assist additional families on the PHA waiting list.

V. Discussion of Public Comments Regarding Streamlining and Clarifying Amendments to Homeownership Option

A. Comments Regarding Minimum Income Requirements

Comment: Support for proposed minimum income revisions. Several commenters expressed support for the proposed revisions to the minimum income requirements. The commenter wrote that the flexibility provided by the proposed rule is both welcome and necessary. According to the commenters, the current minimum income requirement is well below the amount necessary to purchase in many areas, and raises false hopes in voucher families desiring homeownership. The commenters also wrote that allowing PHAs to establish minimum income requirements that more accurately reflect local housing costs will encourage lender participation.

HUD Response. HUD appreciates the support expressed by the commenters. HUD agrees that increased flexibility is necessary to allow successful PHA implementation of the homeownership option. This final rule adopts the proposed changes granting PHAs the flexibility to establish a higher minimum income standard that more accurately reflects local housing costs.

Comment: PHAs should have increased flexibility in establishing minimum income standards, especially for elderly and disabled families. Several commenters made this suggestion. The commenters wrote that, in at least some areas of the country, the current minimum income standard is already too high, especially for the elderly, persons with disabilities, and others living on fixed incomes or government benefits. The commenters wrote that lower income families are good candidates to purchase homes due to favorable underwriting standards employed by lenders and the secondary market, are also often able to take advantage of existing local affordable housing programs. The commenters wrote that although HUD may provide guidance for the determination of the minimum income requirement, ultimately the PHA should define the minimum income amount that will be required under the PHA's program.

HUD Response. HUD agrees that the current uniform national minimum income standard is too high for disabled families in some areas of the country. Accordingly, this final rule establishes a separate national standard for such families equal to the monthly Federal SSI benefit for an individual living alone (or paying his or her share of food and housing costs) multiplied by twelve.[1] HUD agrees that there are a number of loan products and grant programs tailored for disabled families that, when combined with voucher homeownership assistance, would allow families below the current minimum income standard to successfully purchase a home. The new national standard for disabled families is based on the SSI benefit, since most families who will benefit from this change will be receiving such assistance.

HUD also continues to believe that the current income standard may be too low for certain high-cost areas of the country. The minimum income requirement is included in section 8(y), and is intended to ensure that families participating in the program have sufficient resources to meet their monthly mortgage payments and other ongoing homeownership obligations (such as real estate taxes, repairs, and other maintenance costs). HUD agrees with the commenters that PHAs are in the best position to establish a standard that accurately reflects local housing conditions, while ensuring compliance with the statutory goal of ensuring that families participating in the homeownership option have a satisfactory minimum amount of income. Accordingly, consistent with the June 13, 2001, proposed rule, this final rule permits a PHA to establish a higher minimum income standard than the uniform national standard for either or both types of families (disabled and non-disabled).Although HUD believes that PHAs should have the flexibility to tailor the minimum income standard to local housing conditions, it also wants to make sure that PHA-established income limits do not hinder use of the homeownership option by families who can qualify for a mortgage from a reputable lending institution. Accordingly, as described in the proposed rule, a family that meets the applicable HUD minimum income requirement, but not the higher PHA-specific income standard shall be considered to satisfy the minimum income requirement if the family is able to demonstrate that it has been pre-qualified or pre-approved for financing. The pre-qualified or pre-approved financing must meet any PHA established requirements for financing the purchase of the home (including qualifications of lenders and terms of financing). The pre-qualified or pre-

[1] The monthly SSI benefit for an individual living alone (or paying his or her share of food and housing costs) currently equals $545. Multiplied by twelve, this equals a $6540 minimum income threshold for a disabled family under this final rule.

approved financing amount must be sufficient to purchase housing that meets the housing quality standards in the PHA's jurisdiction.

B. Comments Regarding the Eligibility of Units Not Yet Under Construction

Comment: Support for eligibility of new construction. The commenters writing on this proposal unanimously endorsed the eligibility of units not yet under construction for purchase under the homeownership option. Four of the commenters specifically addressed the environmental concerns raised in the preamble to the proposed rule. These commenters wrote that it is the Federal funding obtained by the developer to construct the units—not the homeownership assistance provided to the family—that typically triggers any environmental requirements under the National Environmental Policy Act of 1969 (NEPA) or environmental authorities. The commenters wrote that individual units are not deeded to the family until the developer is ready to begin construction on the units or, in some instances, after construction of the units is completed. Accordingly, the required environmental reviews will be performed in connection with the provision of HOME, Community Development Block Grant (CDBG), Rural Housing Service, or other Federal construction funding. The commenters suggested that the final rule simply defer to the environmental requirements posed by the applicable programs and funding sources for the underlying development.

HUD Response. After careful review of all the issues regarding the eligibility of units not yet under construction (including environmental issues), HUD at this time is not prepared to authorize the purchase of such units with voucher homeownership assistance. The environmental requirements for the Housing Choice Voucher Program are located in 24 CFR part 58. Although, as several of the commenters noted, part 58 categorically excludes individual actions on one to four family properties from review under NEPA, it also requires compliance with other applicable environmental laws (such as those regarding historic preservation, floodplains and wetlands) (see § 58.35(a)(4)). The broader categorical exclusion for homeownership assistance at § 58.35(b)(5) explicitly applies only to "existing dwelling units and dwelling units under construction." Even if other Federal agencies provide some funding for the units and perform the required environmental reviews, HUD cannot ensure that the reviews will be conducted in compliance with HUD's regulations.

Although HUD at this time is not prepared to authorize the use of the homeownership option for the purchase of units not yet under construction, it believes that another way to address the concerns raised by the restriction is to revise the existing requirement regarding the timing of new construction. The current regulation at § 982.628 requires that a unit must be under construction at the time the PHA determines the family is eligible for homeownership assistance to purchase the unit. Requiring that construction commence at such an early stage in the homeownership process diminishes the housing choices available to the family, and is unnecessary to ensure compliance with applicable environmental requirements since the voucher family has not yet entered into a binding commitment to purchase the home with Federal funds. Accordingly, this final rule amends § 982.628 to require that a unit need only be under construction at the time the family enters into the contract of sale. HUD will consider a unit to be "under construction" if the footers have been poured.

C. Comments Regarding Eligibility of Manufactured Homes

Comment: Support for proposed changes. Several commenters expressed support for the proposed changes regarding the eligibility of manufactured homes.

HUD Response. HUD appreciates these favorable comments. As noted below, HUD has further expanded the types of housing eligible for purchase under the homeownership option.

Comment: HUD should further expand eligibility to include other types of housing where the homeowner does not also own the underlying real property. Three commenters wrote that HUD should expand the types of eligible housing to include other similar housing types—such as manufactured homes in resident-owned, or nonprofit owned, manufactured home parks and units in land trust networks. The commenters wrote that such a change would expand the housing options for low-income families and conform to the existing secondary market.

HUD Response. HUD has adopted the change suggested by the commenters. This final rule expands the types of eligible housing to include any housing where the family will not also own fee title to the real property on which the home is located. However, the family must have the right to occupy the site for a period of at least forty years. Further, the home must have a permanent foundation. These requirements are necessary to satisfy the homeownership goals of section 8(y). The statute contemplates the purchase of real property, which necessitates long-term site control.

For all practical purposes, the requirement for a permanent foundation will usually only come into consideration when the purchase involves a manufactured home. HUD notes that the purchase of a manufactured home without a permanent foundation and a short-term pad lease is not eligible for voucher homeownership assistance. Manufactured home owners with short-term lease arrangements are eligible for rental assistance for the pad under section 8(o)(12), but not homeownership assistance under section 8(y).

Comment: HUD must revise list of homeownership expenses to fully implement manufactured home eligibility. Two commenters wrote that in order to fully implement these changes, HUD must revise the list of homeownership expenses for a homeowner other than a cooperative member at § 982.635(c) to include the cost of pad rental and land lease or land trust payments. A corresponding change for cooperative members at § 982.635(c)(3) is unnecessary because these expenses are already included in the cooperative charges.

HUD Response. HUD has adopted the suggestion made by the commenter. This final rule revises § 982.635(c) to include land lease payments. These payments include the cost of leasing the land for both manufactured homes and other housing types where the family does not also own the real property on which the home is located.

Comment: HUD should extend right of occupancy requirement to forty years. One commenter wrote that this change would conform to the policies of certain lenders regarding the purchase of a manufactured home where the borrower does not also own the property on which the home is located. Specifically, these lenders require that the borrower have a leasehold on the property of at least ten years beyond the term of the first mortgage loan.

HUD Response. HUD agrees and has revised the proposed rule in response to this public comment. The revised requirement is consistent with standard FHA mortgage underwriting practices.

D. Comments Regarding Removal of Recapture Provisions

Comment: Support for removal of recapture provisions. Most commenters submitting comments on this issue applauded HUD's proposal to remove the recapture provisions. The commenters agreed with HUD that recaptures might discourage participation in the homeownership option and pose an undue administrative burden on PHAs.

HUD Response. HUD appreciates the support expressed by these commenters. This final rule adopts the proposal to remove the recapture provisions contained in the June 13, 2001, proposed rule. In addition, this final rule provides that a PHA shall not impose or enforce any requirement for the recapture of voucher homeownership assistance on the sale or refinancing of a home purchased with assistance under the homeownership option. This change will ensure that families who purchased their homes prior to issuance of this final rule also receive the benefit provided by removal of the onerous recapture requirements.

Comment: HUD should allow recaptures of downpayment assistance as a local program option. One commenter wrote that, while the recapture of long-term mortgage assistance may be complex and serve as a disincentive for home maintenance, deferred second mortgages for the principal amount of downpayment assistance are common tools in homebuyer assistance programs and are important to local political support for this type of assistance.

HUD Response. HUD has not adopted the suggestion made by the commenter. As noted, this final rule removes the recapture requirements for the homeownership option. HUD does not believe it would be appropriate to establish separate recapture policies for monthly homeownership assistance payments and downpayment grants. In order to have a consistent policy concerning recaptures of homeownership assistance, recaptures of downpayment grants are not authorized.

VI. Discussion of Other Public Comments

Comment: Restrictions on future receipt of homeownership assistance should only apply to family members listed on the title to the home. Two commenters wrote that the prohibition of future receipt of homeownership assistance is unduly harsh for family members who may not be able to take title to, or own, the previous home (including minor children who are not legally able to contract for the purchase of a home). The commenters wrote that any prohibition against receipt of future homeownership assistance should be directed only to those family members who are taking title to the property.

HUD Response. HUD agrees with the commenters that the current prohibitions may be too severe, especially for minor children who are not able to contract for purchase of the home. However, HUD does not agree that the restriction on future receipt of homeownership assistance should be limited to those members of the family who hold title to the property. The change suggested by the commenters would permit a family to circumvent the restriction by simply having another adult family member take title to the home. Accordingly, the final rule modifies the prohibitions on future receipt of assistance to those family members who were adults at the time the family received prior homeownership assistance. Specifically, a family that includes an individual who was an adult member of a family that previously received either of the two forms of homeownership assistance may not receive the other form of homeownership assistance from any PHA. Further, a PHA may not provide homeownership assistance for a family if any member was an adult member of a family at the time when such family received assistance under the homeownership option, and defaulted on the mortgage securing purchase of the home.

Comment: Reasonable accommodation requirements are onerous. Two commenters objected to the language of § 982.625(e)(2), which requires PHAs to offer either form of homeownership assistance as a reasonable accommodation for a person with disabilities. The commenters wrote that this provision would require a PHA that has elected not to offer homeownership assistance to create an entire homeownership program in order to address a single family's request. The commenters wrote that this requirement imposes an undue administrative burden on PHAs and should be removed at the final rule stage.

HUD Response. HUD is cognizant of the financial difficulty of administering a single unit homeownership program on behalf of a disabled family. The preamble to HUD's September 17, 2000 (65 FR 55134), final rule implementing the homeownership option provides useful guidance in this regard. As the preamble noted:

> The provision of homeownership assistance as a reasonable accommodation is determined on a case-by-case basis by the PHA. The PHA will determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. It is the sole responsibility of the PHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. For example, depending on the individual circumstances, the PHA may determine that it is a reasonable accommodation to provide homeownership assistance when the PHA has implemented a limited homeownership program and is currently assisting the maximum number of homeowners in the PHA program. On the other hand, the PHA may determine that it is not reasonable to provide homeownership assistance as a reasonable accommodation in cases where the PHA has otherwise opted not to implement a homeownership program. (*See* 65 FR 55145, first column.)

For purposes of clarity, the final rule amends HUD's homeownership option regulations to codify the preamble guidance quoted above. Codification will make this language easier to find, since PHAs and voucher families are more likely to refer to the regulations than to the preamble of the final rule for policy guidance. Further, HUD believes that codification of this guidance will clarify the regulations for voucher families, and better assist PHAs in determining whether homeownership assistance should be provided as a reasonable accommodation. HUD emphasizes that inclusion of this language in the regulations does not establish new procedures or modify existing policies concerning the reasonable accommodation requirements. Rather, the final rule simply repeats current HUD guidance on these requirements.

Comment: Support for reasonable accommodation requirements. One commenter wrote in support of the reasonable accommodation requirements. The commenter urged HUD to require PHAs to offer the homeownership option as a reasonable accommodation, even if the PHA does not otherwise offer Section 8 homeownership assistance. The commenter wrote that accessible and affordable rental units are often difficult to locate. Accordingly, purchase of an accessible unit may be the only viable option for a person with disabilities.

HUD Response. As noted above, it is the sole responsibility of the PHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. The PHA will determine what is reasonable based on the specific circumstances and individual needs of the person with a disability.

Comment: Final rule should provide that voucher homeownership assistance may be used to purchase PHA-owned properties. Two commenters wrote that HUD should allow the purchase of PHA-owned units under the homeownership

option. The commenters also suggested that HUD establish appropriate procedures for inspection of these units to remove the potential of any conflict of interest.

HUD Response. HUD has not incorporated the changes suggested by the commenters in this final rule. Rather, HUD is promulgating the necessary regulatory procedures regarding the sale of PHA-owned properties under the homeownership option in a separate rule.

Comment: HUD should establish guidance regarding PHA coordination in offering the homeownership option. Two commenters wrote that HUD should encourage smaller PHAs to collaborate with neighboring PHAs that are offering the homeownership option. The commenters wrote that such efforts to pool resources will provide families with more housing choices (including more geographic flexibility on where they can live), attract more lenders to the program due to increased volume, and create more efficient homeownership programs.

HUD Response. HUD encourages PHAs to develop strategies to facilitate efficient use of administrative and other resources in implementing voucher homeownership assistance. Nothing in the homeownership option regulations prohibits one or more PHAs from collaborating to administer a combined homeownership program or to administer complementary homeownership programs.

Comment: HUD should establish homebuyer education requirement. One commenter wrote that HUD should require potential homebuyers to partake in homeownership education before the provision of voucher homeownership assistance.

HUD Response. The existing homeownership regulations already address the concerns expressed by the commenter. As noted above in this preamble, families participating in the homeownership option are required to attend and satisfactorily complete the pre-assistance homeownership and housing counseling program offered by the PHA. Accordingly, no regulatory change is required.

VII. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That finding remains applicable to this final rule and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (RFA), has reviewed and approved this final rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows:

(1) *A Substantial Number of Small Entities will not be Affected.* The final rule is exclusively concerned with public housing agencies that administer tenant-based housing assistance under section 8 of the United States Housing Act of 1937. Specifically, the final rule implements an alternative to the basic homeownership option under which a PHA may elect to provide a one-time downpayment assistance grant to eligible families. The final rule also makes several clarifying and streamlining amendments to the regulations governing basic homeownership voucher assistance, which is also administered by PHAs. Under the definition of "small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

(2) *No Significant Economic Impact.* The final rule does not change the amount of funding available under the Housing Choice Voucher Program. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule is exclusively concerned with homeownership voucher assistance. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Catalog of Domestic Assistance Number

The Catalog of Domestic Assistance Number for the Housing Choice Voucher Program is 14.871.

List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 982 as follows:

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

1. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

2. In § 982.4(b), add the definition of "*Downpayment assistance grant*" in alphabetical order, and revise the definition of "*Homeownership assistance*" to read as follows:

§ 982.4 Definitions.

* * * * *

(b) * * *

Downpayment assistance grant. A form of homeownership assistance in the homeownership option: A single downpayment assistance grant for the family. If a family receives a downpayment assistance grant, a PHA may not make monthly homeownership assistance payments for the family. A downpayment assistance grant is applied to the downpayment for purchase of the home or reasonable and customary closing costs required in connection with purchase of the home.

* * * * *

Homeownership assistance. Assistance for a family under the homeownership option. There are two alternative and mutually exclusive forms of homeownership assistance by a PHA for a family: monthly homeownership assistance payments, or a single downpayment assistance grant. Either form of homeownership assistance may be paid to the family, or to a mortgage lender on behalf of the family.

* * * * *

3. Section 982.601(d) is revised to read as follows:

§ 982.601 Overview.

* * * * *

(d) *Family choice of housing and housing type.* The family chooses whether to use housing that qualifies as a special housing type under this subpart, or as any specific special housing type, or to use other eligible housing in accordance with requirements of the program. The PHA may not restrict the family's freedom to choose among available units in accordance with § 982.353.

* * * * *

4. Section 982.625 is amended by:

a. Redesignating paragraphs (c) and (d) as paragraphs (f) and (g), respectively;

b. Adding new paragraphs (c), (d), (e), (h) and (i); and

c. In the introductory paragraph of newly redesignated paragraph (g), remove the reference to "(d)(1), (d)(2), or (d)(3)" and add "(g)(1), (g)(2), or (g)(3)" in its place. The additions and revisions read as follows:

§ 982.625 Homeownership option: General.

* * * * *

(c) *Forms of homeownership assistance.* (1) A PHA may provide one of two forms of homeownership assistance for a family:

(i) Monthly homeownership assistance payments; or

(ii) A single downpayment assistance grant.

(2) *Prohibition against combining forms of homeownership assistance.* A family may only receive one form of homeownership assistance. Accordingly, a family that includes a person who was an adult member of a family that previously received either of the two forms of homeownership assistance may not receive the other form of homeownership assistance from any PHA.

(d) *PHA choice to offer homeownership options.* (1) The PHA may choose to offer either or both forms of homeownership assistance under this subpart, or choose not to offer either form of assistance. However, the PHA must offer either form of homeownership assistance if necessary as a reasonable accommodation for a person with disabilities in accordance with § 982.601(b)(3).

(2) It is the sole responsibility of the PHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. The PHA will determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. The PHA may determine that it is not reasonable to offer homeownership assistance as a reasonable accommodation in cases where the PHA has otherwise opted not to implement a homeownership program.

(e) *Family choice.* (1) The family chooses whether to participate in the homeownership option if offered by the PHA.

(2) If the PHA offers both forms of homeownership assistance, the family chooses which form of homeownership assistance to receive.

* * * * *

(h) *Recapture of homeownership assistance.* A PHA shall not impose or enforce any requirement for the recapture of voucher homeownership assistance on the sale or refinancing of a home purchased with assistance under the homeownership option.

(i) *Applicable requirements.* The following specify what regulatory provisions (under the heading "homeownership option") are applicable to either or both forms of homeownership assistance (except as otherwise specifically provided):

(1) *Common provisions.* The following provisions apply to both forms of homeownership assistance:

(i) Section 982.625 (General);

(ii) Section 982.626 (Initial requirements);

(iii) Section 982.627 (Eligibility requirements for families);

(iv) Section 982.628 (Eligible units);

(v) Section 982.629 (Additional PHA requirements for family search and purchase);

(vi) Section 982.630 (Homeownership counseling);

(vii) Section 982.631 (Home inspections, contract of sale, and PHA disapproval of seller);

(viii) Section 982.632 (Financing purchase of home; affordability of purchase);

(ix) Section 982.636 (Portability);

(x) Section 982.638 (Denial or termination of assistance for family); and

(xi) Section 982.641 (Applicability of other requirements).

(2) *Monthly homeownership assistance payments.* The following provisions only apply to homeownership assistance in the form of monthly homeownership assistance payments:

(i) Section 982.633 (Continued assistance requirements; family obligations);

(ii) Section 982.634 (Maximum term of homeownership assistance);

(iii) Section 982.635 (Amount and distribution of monthly homeownership assistance payment);

(iv) Section 982.637 (Move with continued tenant-based assistance); and

(v) Section 982.639 (Administrative fees).

(3) *Downpayment assistance grant.* The following provision only applies to homeownership assistance in the form of a downpayment assistance grant: Section 982.643 (Downpayment assistance grants).

5. Revise § 982.627(c)(1), (c)(2)(iii), (c)(3), and (e) to read as follows:

§ 982.627 Homeownership option: Eligibility requirements for families.

* * * * *

(c) *Minimum income requirements.* (1) At commencement of monthly homeownership assistance payments for the family, or at the time of a downpayment assistance grant for the family, the family must demonstrate that the annual income, as determined by the PHA in accordance with § 5.609 of this title, of the adult family members who will own the home at commencement of homeownership assistance is not less than:

(i) In the case of a disabled family (as defined in § 5.403(b) of this title), the monthly Federal Supplemental Security Income (SSI) benefit for an individual living alone (or paying his or her share of food and housing costs) multiplied by twelve; or

(ii) In the case of other families, the Federal minimum wage multiplied by 2,000 hours.

(2) * * *

(iii) In the case of an elderly or disabled family, the PHA shall include welfare assistance for the adult family members who will own the home in determining if the family meets the minimum income requirement.

(3) A PHA may establish a minimum income standard that is higher than those described in paragraph (c)(1) of this section for either or both types of families. However, a family that meets the applicable HUD minimum income requirement described in paragraph (c)(1) of this section, but not the higher standard established by the PHA shall be considered to satisfy the minimum income requirement if:

(i) The family demonstrates that it has been pre-qualified or pre-approved for financing;

(ii) The pre-qualified or pre-approved financing meets any PHA established requirements under § 982.632 for financing the purchase of the home (including qualifications of lenders and terms of financing); and

(iii) The pre-qualified or pre-approved financing amount is sufficient to purchase housing that meets HQS in the PHA's jurisdiction.

* * * * *

(e) *Prohibition against assistance to family that has defaulted.* The PHA shall not commence homeownership assistance for a family that includes an individual who was an adult member of a family at the time when such family received homeownership assistance and defaulted on a mortgage securing debt incurred to purchase the home.

6. Amend § 982.628 as follows:

a. Revise paragraphs (a)(2) and (a)(3);

b. Redesignate paragraph (b) as paragraph (c); and

c. Add new paragraph (b). The revisions and additions read as follows:

§ 982.628 Homeownership option: Eligible units.

(a) * * *

(2) The unit is either under construction or already existing at the time the family enters into the contract of sale.

(3) The unit is either a one-unit property (including a manufactured home) or a single dwelling unit in a cooperative or condominium.

* * * * *

(b) *Purchase of home where family will not own fee title to the real property.* Homeownership assistance may be provided for the purchase of a home where the family will not own fee title to the real property on which the home is located, but only if:

(1) The home is located on a permanent foundation; and

(2) The family has the right to occupy the home site for at least forty years.

* * * * *

7. Amend § 982.631 as follows:

a. Revise the section heading;

b. Revise paragraph (a);

c. Revise the second sentence of paragraph (b)(4);

d. Revise the first sentence of paragraph (c)(1); and

e. Add paragraph (d). The revisions and addition read as follows:

§ 982.631 Homeownership option: Home inspections, contract of sale, and PHA disapproval of seller.

(a) HQS inspection by PHA. The PHA may not commence monthly homeownership assistance payments or provide a downpayment assistance grant for the family until the PHA has inspected the unit and has determined that the unit passes HQS.

(b) * * *

(4) * * * The PHA may not commence monthly homeownership assistance payments, or provide a downpayment assistance grant for the family, until the PHA has reviewed the inspection report of the independent inspector.

* * * * *

(c) *Contract of sale.* (1) Before commencement of monthly homeownership assistance payments or receipt of a downpayment assistance grant, a member or members of the family must enter into a contract of sale with the seller of the unit to be acquired by the family. * * *

* * * * *

(d) *PHA disapproval of seller.* In its administrative discretion, the PHA may deny approval of a seller for any reason provided for disapproval of an owner in § 982.306(c).

8. Amend § 982.635 as follows:

a. In paragraph (c)(2)(vi), remove the word "and";

b. In paragraph (c)(2)(vii), replace the period at the end of the paragraph with "; and";

c. Add paragraph (c)(2)(viii); and

d. In paragraph (e), revise the first sentence. The revisions and additions read as follows:

§ 982.635 Homeownership option: Amount and distribution of monthly homeownership assistance payment.

* * * * *

(c) * * *

(2) * * *

(viii) Land lease payments (where a family does not own fee title to the real property on which the home is located; see § 982.628(b)).

* * * * *

(e) *Automatic termination of homeownership assistance.* Homeownership assistance for a family terminates automatically 180 calendar days after the last homeownership assistance payment on behalf of the family. * * *

§ 982.640 [Removed]

9. Remove § 982.640.

10. Revise § 982.641(b)(4) to read as follows:

§ 982.641 Homeownership option: Applicability of other requirements.

* * * * *

(b) * * *

(4) Section 982.306 (PHA disapproval of owner) (except that a PHA may disapprove a seller for any reason described in paragraph (c), see § 982.631(d)).

* * * * *

11. Add § 982.643 to read as follows:

§ 982.643 Homeownership option: Downpayment assistance grants.

(a) *General.* (1) A PHA may provide a single downpayment assistance grant for a participant that has received tenant-based or project-based rental assistance in the Housing Choice Voucher Program.

(2) The downpayment assistance grant must be applied toward the downpayment required in connection with the purchase of the home and/or reasonable and customary closing costs in connection with the purchase of the home.

(3) If the PHA permits the downpayment grant to be applied to closing costs, the PHA must define what fees and charges constitute reasonable and customary closing costs. However, if the purchase of a home is financed with FHA mortgage insurance, such financing is subject to FHA mortgage insurance requirements, including any requirements concerning closing costs (see § 982.632(b) of this part regarding the applicability of FHA requirements to voucher homeownership assistance and § 203.27 of this title regarding allowable fees, charges and discounts for FHA-insured mortgages).

(b) *Maximum downpayment grant.* A downpayment assistance grant may not exceed twelve times the difference between the payment standard and the total tenant payment.

(c) *Payment of downpayment grant.* The downpayment assistance grant shall be paid at the closing of the family's purchase of the home.

(d) *Administrative fee.* For each downpayment assistance grant made by the PHA, HUD will pay the PHA a one-time administrative fee in accordance with § 982.152(a)(1)(iii).

(e) *Return to tenant-based assistance.* A family that has received a downpayment assistance grant may apply for and receive tenant-based rental assistance, in accordance with program requirements and PHA policies. However, the PHA may not commence tenant-based rental assistance for occupancy of the new unit so long as any member of the family owns any title or other interest in the home purchased with homeownership assistance. Further, eighteen months must have passed since the family's receipt of the downpayment assistance grant.

(f) *Implementation of downpayment assistance grants.* A PHA may not offer downpayment assistance under this paragraph until HUD publishes a notice in the **Federal Register**.

Dated: October 8, 2002.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 02–26343 Filed 10–17–02; 8:45 am]

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Federal Register

Friday,
October 18, 2002

Part IV

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7385–9]

RIN 2060–AG87

National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing friction materials manufacturing facilities. Some of these facilities, specifically those that perform solvent mixing, have been identified as major sources of hazardous air pollutants (HAP) including n-hexane, toluene, and trichloroethylene. Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lungs, skin, mucous membranes, and effects on the central nervous system, liver, and kidney.

Today's final rule will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). Implementation of today's final rule will reduce HAP emissions by approximately 290 tons per year (tpy).

EFFECTIVE DATE: October 18, 2002.

ADDRESSES: Docket No. A–97–57 contains supporting information used in developing the final rule. The docket is located at the Air and Radiation Docket and Information Center in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC, and may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For further information concerning applicability and rule determinations, contact the appropriate State or local agency representative. If no State or local representative is available, contact the EPA Regional Office staff listed in § 63.13. For information concerning the analyses performed in developing this rule, contact Kevin Cavender, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emission Standards Division, Metals Group, (Mail Code 439–02), Research Triangle Park, NC 27711, telephone number (919) 541–2364, electronic mail address *cavender.kevin@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include those listed in the following table:

Category	NAICS code	Examples of regulated entities
Industry	33634, 327999, 333613	Friction materials manufacturing facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.9485 of today's final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. The NESHAP for friction materials manufacturing was proposed on October 4, 2001 (66 FR 50768). Today's action announces EPA's final decisions on the rule. Under section 307(b)(1) of the CAA, judicial review of today's final rule is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by December 17, 2002. Only those objections to this rule which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's final rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Outline. The information presented in this preamble is organized as follows:

I. Background and Public Participation
A. What is the statutory authority for NESHAP?
B. What criteria are used in the development of NESHAP?
C. How was the rule developed?
D. How can I get copies of this document and other related information?
II. Summary of the Final Rule
A. Who must comply with this rule?
B. What sources are affected?
C. What are the compliance dates?
D. What are the emission limitations?
E. What are the initial and continuous compliance requirements?
F. What are the notification, recordkeeping, and reporting requirements?
III. Summary of Major Changes Since Proposal
IV. Summary of Responses to Major Comments
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A. What are the health impacts?
B. What are the air emission reduction impacts?
C. What are the cost impacts?
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VI. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act of 1995
J. Congressional Review Act

I. Background and Public Participation

A. What Is the Statutory Authority for NESHAP?

Section 112 of the CAA requires us to list all categories and subcategories of major sources of HAP emissions and to establish NESHAP for their control. Major sources are those that emit or have the potential to emit at least 10 tpy of any single HAP or 25 tpy of any combination of HAP. An initial list of source categories and accompanying schedules for regulation were published on December 3, 1993 (58 FR 63941). Friction materials manufacturing was not among the initially listed source categories. A subsequent notice published on June 4, 1996 (61 FR 28197) added friction products manufacturing to the list of major source categories scheduled for regulation by November 15, 2000. The listing was based on information obtained in a 1992 survey of the industry from which we concluded that some facilities that manufacture friction products have the potential to be major sources of HAP emissions. Friction products manufacturing includes facilities that manufacture, assemble, or rebuild friction products such as brakes or clutches. Based on information obtained during the development of this final rule, we have determined that only facilities that manufacture friction materials have the potential to emit HAP at major source levels. As such, this final rule will affect only friction materials manufacturers and will not affect facilities that only assemble or rebuild friction products. Friction materials manufacturing was added to the source category list on February 12, 2002 (67 FR 6521), replacing friction products manufacturing.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction of HAP emissions that is achievable. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than the standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources for categories or subcategories with 30 or more sources (or the best-performing five sources for categories or subcategories with fewer than 30 sources) (CAA section 112(d)(3)).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor taking into consideration the cost of achieving the emission reductions, any non-air quality health and environmental impacts, and energy requirements (CAA section 112(d)(2).

C. How Was the Rule Developed?

We proposed the NESHAP for friction materials manufacturing on October 4, 2001 (66 FR 50768). The preamble for the proposed standards described the rationale for the proposed standards. Public comments were solicited at the time of proposal. The public comment period lasted from October 4, 2001 to December 3, 2001. Industry representatives, regulatory agencies, environmental groups, and the general public were given the opportunity to comment on the proposed rule and to provide additional information during the public comment period. Although we offered at proposal the opportunity for oral presentation of data, views, or arguments concerning the proposed rule, no one requested a hearing, and a hearing was not held.

We received a total of four letters containing comments on the proposed rule during and after the public comment period. Commenters included a Federal government agency, a law firm representing a friction materials manufacturing company, and an industry trade association. Today's final rule reflects our full consideration of all of the comments received. Major public comments on the proposed rule, along with our responses to those comments, are summarized in this preamble.

D. How Can I Get Copies of This Document and Other Related Information?

EPA has established an official public docket for this action under Docket ID No. A–97–57. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Air and Radiation Docket and Information Center. Once in the system, select "search," then key in the appropriate docket identification number.

II. Summary of the Final Rule

This section presents a summary of the requirements of today's final rule.

A. Who Must Comply With This Rule?

The final rule applies to any owner or operator of a friction materials manufacturing facility that is, or is part of, a major source of HAP emissions. Friction materials manufacturing includes any facility engaged in the manufacture of friction materials such as brake and clutch linings.

B. What Sources Are Affected?

The final rule affects each existing or new solvent mixer at a friction materials manufacturing facility which uses a solvent in their mixer that contains one or more HAP as an ingredient to the friction material composition.

C. What Are the Compliance Dates?

All existing affected sources must be in compliance no later than October 18, 2005. An affected source is an existing source if its construction began before October 4, 2001. A new or reconstructed affected source with an initial start up date on or after October 4, 2001, but before October 18, 2002 must be in compliance by October 18, 2002. A new or reconstructed source with an initial start up date after October 18, 2002 must be in compliance upon initial start up. An affected source is considered reconstructed if it meets definition of "reconstruction" in 40 CFR 63.2.

D. What Are the Emission Limitations?

Today's final rule will require owners or operators of new and existing large solvent mixers to limit emissions of total organic HAP discharged to the atmosphere to 30 percent or less of that

which would otherwise be emitted in the absence of solvent recovery and/or solvent substitution, based on a 7-day block average. Owners or operators of new and existing small solvent mixers will be required to limit emissions of total organic HAP discharged to the atmosphere to 15 percent or less of that which would otherwise be emitted in the absence of solvent recovery and/or solvent substitution, based on a 7-day block average.

E. What Are the Initial and Continuous Compliance Requirements?

For owners or operators of solvent mixers using a solvent recovery system, initial compliance will be determined by measuring and recording the weight of solvent added to each affected mixer and the weight of solvent recovered for each mix batch over the first 7 consecutive days after the compliance date. For owners or operators of solvent mixers using solvent substitution, initial compliance will be determined by recording the use of a non-HAP material as a substitute for a HAP solvent for each mix batch. For owners or operators of new and existing large solvent mixers, initial compliance is demonstrated if the average amount of solvent discharged to the atmosphere recorded for each mix batch over the 7-day period does not exceed 30 percent of that which would otherwise be emitted in the absence of solvent recovery and/or solvent substitution. For owners or operators of new and existing small solvent mixers, initial compliance is demonstrated if the average amount of solvent discharged to the atmosphere recorded for each mix batch over the 7-day period does not exceed 15 percent of that which would otherwise be emitted in the absence of solvent recovery and/or solvent substitution. Today's final rule also includes performance specifications for the weight measurement device as well as procedures for conducting the measurements and computing the results.

For owners or operators of solvent mixers using a solvent recovery system, continuous compliance will be determined by continuing to measure and record the weight of solvent added to each affected mixer and the weight of solvent recovered for each mix batch. For owners or operators of solvent mixers using solvent substitution, continuous compliance will be determined by continuing to record the use of a non-HAP material as a substitute for HAP solvent for each mix batch. For owners or operators of new and existing large solvent mixers, continuous compliance is demonstrated by maintaining each 7-day block average at or below 30 percent of that which would otherwise be emitted in the absence of solvent recovery and/or solvent substitution. For owners or operators of new and existing small solvent mixers, continuous compliance is demonstrated by maintaining each 7-day block average at or below 15 percent of that which would otherwise be emitted in the absence of solvent recovery and/or solvent substitution.

F. What Are the Notification, Recordkeeping, and Reporting Requirements?

The notification, recordkeeping, and reporting requirements in today's final rule rely on the NESHAP General Provisions in 40 CFR part 63, subpart A. Table 1 in the final rule shows each of the requirements in the General Provisions (§§ 63.2 through 63.15) and whether they apply.

Under the final rule, owners or operators subject to these standards must submit each of the notifications contained in the General Provisions that applies to them. These include an initial notification of applicability, which for existing sources is required within 120 days of the promulgation date; and a notification of compliance status, which must be submitted before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

In addition, owners or operators subject to these standards will need to prepare and maintain all records required by the General Provisions to document compliance with each enforceable provision of the proposed rule. Records needed to show continuous compliance with the emission limitation in the final rule are to be kept for 5 years.

We are also requiring owners or operators of all affected sources to submit semiannual compliance reports which highlight any deviations from the emission limitation and other provisions of the final rule. Each report will be due no later than 30 days after the end of the reporting period. If no deviations occurred, owners or operators are only required to submit a statement that there were no deviations from the emission limitation during the reporting period. More detailed information will be required, as specified in the final rule, if a deviation occurred or there was a startup, shutdown, or malfunction event. Owners or operators must submit an immediate report if they undertake actions during a startup, shutdown, or malfunction that are inconsistent with the procedures in their approved startup, shutdown, and malfunction plan, required by § 63.6(e)(3) of the General Provisions. Deviations that occur during a period of startup, shutdown, or malfunction are not violations if the owner or operator demonstrates to our satisfaction that the affected source was operating in accordance with the startup, shutdown, and malfunction plan.

III. Summary of Major Changes Since Proposal

This section describes the major changes made to the proposed rule based on public comments. We extended the compliance period for existing sources from 2 years to 3 years. We subcategorized the friction materials manufacturing source category into small and large solvent mixer subcategories and established new MACT floor and beyond-the-floor control options for those subcategories. We chose the MACT floor option of 70 percent emission reduction as the standard for new and existing large solvent mixers and the beyond-the-floor option of 85 percent emission reduction as the standard for new and existing small solvent mixers. We now allow owners and operators the option of complying with the standards by using solvent recovery, as proposed, or substitution to a non-HAP containing solvent. We revised the initial and continuous compliance requirements to reflect the change in standards. We also added definitions for small solvent mixer, large solvent mixer, and solvent substitution.

IV. Summary of Responses to Major Comments

This section summarizes the major comments we received on the proposed rule and our responses to those comments. A more comprehensive summary of comments and responses can be found in Docket No. A–97–57.

A. De Minimis Use Exemption

Comment: One commenter recommended that the final rule clarify the intended applicability of the rule by including a *de minimis* use (production) exemption that would exempt from the standard facilities that produce very small amounts of friction material.

Response: A follow-up contact with the commenter revealed that the commenter's concerns are based on research and development (R&D) activities. Because § 63.9485(b) of the rule includes an exemption for R&D facilities, as they are defined in section 112(c)(7) of the CAA, any R&D activities related to friction materials would not be covered under the friction materials manufacturing NESHAP. As such, no change has been made in the final rule to address this comment.

B. MACT Standard

1. Additional Emission Reductions

Comment: One commenter noted that the proposed rule affects only a few sources and will reduce baseline HAP emissions from the industry by only 50 percent, allowing 330 tpy of emissions to not be recovered through implementation of the proposed rule. The commenter stated that it was troubling that the proposal did not include a mechanism for addressing these remaining emissions.

Response: Emissions due to the use of HAP solvents in solvent mixing operations account for 99 percent of the baseline HAP emissions. The emission standards contained in both the proposed rule and the final rule are based on what we believe to be the maximum technically and economically feasible level of emissions control achievable for solvent mixers. As such, the rule effectively addresses the solvent mixing component of HAP emissions from friction materials manufacturing. However, fugitive emissions resulting from the residual solvent in the mixed material, which accounts for approximately 70 percent of the estimated HAP emissions that will remain once the final rule is implemented, are not addressed. These emissions occur in later process equipment (extruders, granulators, dryers, hot presses, and curing ovens.) None of these pieces of equipment are currently equipped with HAP emission controls. Therefore, the MACT floor is no additional emission reduction for these sources. The commenter did not provide any data that would indicate that control of these fugitive sources would be economically feasible, and we do not believe that it would be cost-effective to capture and control the fugitive emissions from these sources. For these reasons, we have decided, as proposed, not to regulate these sources. No change has been made in the final rule to address this comment.

2. Consideration of Mixer Type/Configuration and Cost of Compliance

Comment: According to one commenter, the proposed rule is factually flawed because it fails to account for the type and configuration of three of the mixers currently operated by the commenter's facility, which constitute 50 percent of the facility's operations. The commenter noted that these three small solvent mixers do not perform the mixing and drying in an enclosed space amenable to complete capture of VOC emissions, in contrast to the Plant A mixer used by EPA to establish MACT. The commenter stated that the proposed rule incorrectly assumes that all mixers in the industry can be retrofitted relatively easily with VOC capture and recovery systems.

The commenter stated that it would be impossible, due to design and process parameters, to control the emissions from these three small uncontrolled mixers to achieve the proposed 85 percent overall standard. According to the commenter, the two major components of the three small uncontrolled mixers (mixing bowl and mixing assembly) are separate from each other, unlike the fourth mixer at the facility (and more typical of the industry) in which the mixing assembly is integral to the mixing bowl. In the case of the three small uncontrolled mixers, materials are dumped into the mixing bowl, the bowl is rolled under the mixing assembly, and the assembly is lowered and raised pneumatically in and out of the mixing bowl as needed. According to the commenter, the presence of the mixing assembly makes it impossible to get an acceptable vacuum seal to extract solvent vapors during the mixing process. The commenter stated that it would be very difficult if not impossible to install capture devices on the mixer, extrusion, and conveying processes to achieve the required minimum 90 percent capture efficiency. The commenter argued that the engineering obstacles to retrofitting the three small uncontrolled mixers with emission controls are so severe that the three mixers would need to be replaced under any scenario, at very substantial cost.

Response: We agree with the commenter that the proposed rule did not account for the cost to replace the existing small solvent mixers in order for the facility to meet the required 85 percent standard for small solvent mixers. In addition, we agree that because of their configuration, the small solvent mixers cannot be retrofitted with a system to capture and recover the hexane solvent, and, therefore, must be replaced. Based on information we have received from the commenter, we have revised our cost estimates for the final rule to include the cost for a new large solvent mixer to replace the existing small solvent mixers, as well as a solvent recovery system. We now estimate a capital cost of approximately $900,000, an annual cost of approximately $115,000 (without recovery credits, *i.e.*, the value of the recovered solvent), and an annual cost credit of approximately $15,600 (with recovery credits) for the commenter's facility to achieve the required 70 percent emission reduction for the new large solvent mixer. For monitoring, recordkeeping, and reporting, we estimate a capital cost of approximately $2,300 and an annual cost of approximately $12,000. Overall, we estimate a total annual cost of approximately $126,000 (without recovery credits) and an annual cost credit of approximately $3,600 (with recovery credits).

Based on 70 percent reduction of uncontrolled emissions for the new large solvent mixer, we estimate an emission reduction of approximately 250 tpy. Using these cost and emission reduction values, we estimate a cost per ton of approximately $500/ton (without recovery credits) and a cost per ton credit of approximately $14/ton (with recovery credits). Based on these low cost per ton values, we conclude that replacing the existing small solvent mixers and with a large solvent mixer and installing a solvent recovery system (condenser) capable of meeting the required 70 percent standard for large mixers is cost-effective. The associated secondary air impacts and energy impacts are also estimated to be low; secondary emissions are less than 3 tpy, and energy impacts are only approximately 1,100 million Btu/yr. No change has been made in the final rule to address this comment.

3. Assumed Mixer Size

Comment: One commenter disagreed with EPA's premise (described below) for using Plant A's vacuum system efficiency in determining MACT for the proposed rule. As noted by the commenter, the proposed rule states that vacuum systems remove solvents from the mixed material by evaporation at low pressure, so the higher the volatility of the solvent, the more easily it can be removed by a vacuum system. The proposal preamble states that, of the solvents used, hexane is the most volatile, while toluene is the least volatile. The preamble also indicates that, based on the available data, Plant A's vacuum system efficiency of 95 percent is the best of the existing systems. Because Plant A also uses the least volatile solvent, the proposed rule assumes that a vacuum system efficiency of 95 percent can be achieved for all three of the solvents used at the existing facilities. The commenter argued that this premise neglects other parameters, such as mixer size, mixer cycle, mixer type, or differences in product chemistry.

The commenter stated that EPA incorrectly assumed that typical mixer

batch sizes range from 300 to 1,000 pounds of material. Based on information the commenter obtained from the docket, the commenter estimated that the weight of a typical batch at Plant A is 331 pounds (including solvent). The commenter contrasted this amount with the 3,300 pounds (not including solvent) commonly mixed in one of the mixers at the commenter's facility, concluding that the subject mixer at the commenter's facility is about 10 times larger than the mixer at Plant A.

The commenter argued that, when large batches are mixed, less solvent is volatilized in the mixer, and VOC capture is reduced. According to the commenter, operational experience at the commenter's facility indicates that larger batches generate more internal heat than smaller batches. The commenter pointed out that excess heat, if not properly controlled, would begin to cure the mix and make it unusable. As a result, the potential for heat generation limits the ability to remove solvent in the facility's large mixer.

In addition, the commenter noted that it is significantly harder to remove VOC solvent in a larger solvent mixer than a smaller solvent mixer per unit time. The commenter pointed out that drying rates decrease linearly with time, and a larger volume of identical materials would take a longer period of time to achieve the same level of dryness. According to the commenter, drying theories suggest that internal diffusion and/or internal capillary effects limit the drying process. The commenter pointed out that in drying, it is necessary to remove free moisture from both the surface and the interior of the material. As free moisture is removed from the surface of the material, the rate of drying is constant, but when the surface can no longer supply sufficient free moisture, the rate of drying falls. The drying rate is then limited by the time it takes for the moisture to migrate from the interior of the material to the surface. The commenter believes that the further the solvent has to travel to the surface, the longer it will take or the harder it will be to remove. The commenter argued that the larger the mixer, the larger the mass of material, and the larger the mass of material, the farther the interior solvent content will have to travel, and the harder it will be to remove that solvent.

The commenter argued that the distinction in mixer size is fundamental and that finalizing this MACT standard for existing sources without considering the differences in mixer size may effectively make it impossible for the commenter's facility to perform solvent mixing operations using any of its current mixers or other mixers of similar size.

Response: We agree with the commenter's argument regarding the impact of mixer size on solvent recovery. Accordingly, we have decided to subcategorize the friction materials manufacturing source category into small and large solvent mixer subcategories and have established new control options for these subcategories. For the final rule, we have chosen the beyond-the-floor option (85 percent emission reduction) as the standard for new and existing small solvent mixers and the MACT floor option (70 percent emission reduction) as the standard for new and existing large solvent mixers. For large solvent mixers, beyond-the-floor control similar to that achieved by small solvent mixers was determined to be technically infeasible. As noted in our response in section IV.C, we also have extended the compliance date for existing sources from 2 years to 3 years after the effective date.

4. Assumed Solvent Recovery Efficiency

Comment: One commenter disagreed with EPA's conclusion that the same level of solvent recovery can be achieved at the same cost for different solvent mixers using different solvents at different facilities. More specifically, the commenter expressed concern regarding the statement in the preamble to the proposed rule that the hexane removal efficiency at the commenter's facility would increase from 80 percent to 90 percent if the outlet gas temperature from the condenser was reduced from 60°F to 32°F. The commenter contends that it is impractical and erroneous to predict a condenser efficiency of 90 percent for hexane at the facility solely by lowering the outlet temperature from 60°F to 32°F. The commenter acknowledged that reducing the temperature would improve efficiency, but the commenter believes the following variables must also be taken into account: (1) Volumetric flow rate of the gas stream; (2) inlet temperature of the gas stream; (3) concentration and composition of the VOC in the gas stream; (4) moisture content of the gas stream; (5) properties of the VOC, such as heat of condensation, heat capacity, and vapor pressure; and (6) degree of subcooling (difference between the condensing temperature and the outlet temperature of the condenser exhaust).

The commenter explained that many of the materials used in brake mixes at the commenter's facility are hygroscopic or contain moisture as delivered. Because of the potential that this moisture could cause icing problems in the condenser, the facility maintains the coolant temperature at or slightly above 35°F. The commenter believes that it would be impractical or impossible to operate the existing condenser with an outlet gas temperature of 32°F because the coolant temperature would have to be below the freezing point of water.

In addition, the commenter disagrees with our position stated in the preamble to the proposed rule that establishing separate standards for individual solvents would be unwise. The commenter noted that the efficiency of a comparable condenser would be better for toluene than for hexane for the following reasons. First, a lower temperature would be needed to condense hexane than to condense toluene because hexane has a much higher vapor pressure. Second, at the facility's operating vacuum level, the boiling point of hexane is much lower than the boiling point of toluene, which means a condenser for hexane would have to operate at about −43°F to match the same amount of subcooling as a condenser for toluene operating at 32°F.

Response: We disagree with the commenter's position regarding the need for separate standards for each type of solvent. We understand that the HAP vapor pressures and specific control conditions differ for different solvents, and that, for a given condenser design and set of operating conditions, the removal efficiency would be better for toluene than for hexane. However, a properly designed and operated condenser can achieve a 90 percent removal efficiency on mixer exhausts at a reasonable cost for any of the three solvents currently being used at friction materials manufacturing facilities. Refrigerated condensers are commercially available which can reduce the exhaust temperature to well below −50°F. In addition, multi-stage condensers are available and can be used when water vapor poses a problem with water freezing on the cold condenser surfaces. No change has been made in the final rule to address this comment.

C. Compliance Deadline

Comment: One commenter noted that EPA has proposed a compliance deadline for existing sources of 2 years from the publication date of the final rule. The commenter pointed out that EPA is authorized by the CAA to set a 3-year compliance deadline (42 U.S.C. 7412(i)(3)(A)). The commenter argued that EPA's proposed 2-year compliance deadline is not based on any finding supported by the administrative record that mixers of the type and size used by the commenter's facility can achieve MACT compliance within this time frame. The commenter's facility is in the process of developing alternative manufacturing techniques which, when fully developed and implemented, would eliminate VOC emissions from the mixing operations at the facility. The commenter stated that, upon achieving this goal, the rule should no longer apply to the facility's operations.

While some of the facility's mixing operations will be converted to non-VOC emitting techniques, the commenter could not ensure that all of the unique formulations can be converted, tested, and approved for implementation by the various transportation agencies and/or boards within 2 years after publication of the final rule. According to the commenter, the proposed rule would force the facility to spend several million dollars unnecessarily if it is compelled to meet the 2-year compliance deadline and would delay the implementation of the long-term program. Based on these arguments, the commenter recommended that EPA specify a 3-year compliance deadline in the final rule.

Response: Based on information from the commenter, the uncontrolled small solvent mixers at the commenter's facility are not amenable to control and will need to be replaced. (See section IV.B.3.) The facility will need time to replace the mixers, install the necessary control equipment, and bring the system into compliance. Therefore, to provide the commenter with sufficient time to achieve compliance, we have decided to extend the compliance deadline for existing sources to 3 years, which is consistent with section 112(i)(3)(A) of the CAA. If the commenter's facility wanted to comply by using non-VOC techniqúes with the new solvent mixer, the 3-year compliance time should also provide the facility with sufficient time to conduct the tests and obtain the approvals necessary to implement the techniques. The existing large mixer at the commenter's facility is already in compliance with the 70 percent standard for large solvent mixers.

V. Summary of Impacts

A. What Are the Health Impacts?

The primary HAP that would be addressed by this proposed rule include n-hexane, toluene, and trichloroethylene. Each are associated with a variety of adverse health effects, including chronic health disorders (e.g., reproductive and developmental effects, and effects on the central nervous system (CNS)), and acute health disorders (e.g., irritation of the lung, skin, and mucus membranes and effects on the CNS, liver, and kidneys). Acute inhalation exposure of humans to high levels of hexane causes mild CNS effects, including dizziness, giddiness, slight nausea, and headache. Chronic exposure to hexane in air causes numbness in the extremities, muscular weakness, blurred vision, headache, and fatigue. One study reported testicular damage in rats exposed to hexane through inhalation. No information is available on the carcinogenic effects of hexane in humans or animals. We have classified hexane in Group D, not classifiable as to human carcinogenicity.

Acute and chronic inhalation exposure to trichloroethylene can affect the human CNS, producing symptoms such as dizziness, headache, confusion, euphoria, facial numbness, and weakness. High, short-term exposures to humans by inhalation have also been associated with effects on the liver, kidneys, gastrointestinal system, and skin. Human evidence is not adequate to establish a causal link between trichloroethylene exposure and cancer, but animal inhalation studies have reported increases in lung, liver, and testicular tumors. We have classified trichloroethylene as intermediate between probable and possible human carcinogen (Group B/C). We are currently reassessing its potential carcinogenicity.

Acute inhalation of toluene by humans may cause effects to the CNS, such as fatigue, sleepiness, headache, and nausea, as well as irregular heartbeat. Adverse CNS effects have been reported in chronic abusers exposed to high levels of toluene. Symptoms include tremors, decreased brain size, involuntary eye movements, and impaired speech, hearing, and vision. Chronic (long-term) inhalation exposure of humans to lower levels of toluene also causes irritation of the upper respiratory tract, eye irritation, sore throat, nausea, dizziness, headaches, and difficulty with sleep. Studies of children whose mothers were exposed to toluene by inhalation or mixed solvents during pregnancy have reported CNS problems, facial and limb abnormalities, and delayed development. However, these effects may not be attributable to toluene alone. We have classified toluene in Group D, not classifiable as to human carcinogenicity.

B. What Are the Air Emission Reduction Impacts?

Estimates of organic HAP emissions from the use of solvents are based on a mass balance using solvent usage data collected during the industry survey, estimates of solvent recovery efficiencies for existing controls, and the promulgated solvent emission limitations of 30 percent emissions (or 70 percent emission reduction) for new and existing large solvent mixers and 15 percent emissions (or 85 percent emission reduction) for new and existing small solvent mixers. We assumed that one currently uncontrolled small mixer will be fitted with a solvent recovery system, and three currently uncontrolled small mixers (which are not amenable to control) will be replaced with a new mixer, and the new mixer will be equipped with a solvent recovery system. The remaining three existing mixers (one large, two small) currently meet the promulgated standards and as such should require no additional upgrades. We estimate that today's final rule will reduce organic HAP emissions by approximately 290 tpy from a baseline level of approximately 660 tpy. Emissions of volatile organic compounds (VOC) will also be reduced by approximately 290 tpy because these HAP are also VOC.

C. What Are the Cost Impacts?

We obtained process and emissions data from the facilities with the best-controlled solvent mixers and incorporated these data into the control cost algorithms for condensers in the OAQPS Control Cost Manual. We also obtained cost data from one facility to replace existing solvent mixers not amenable to control. We then applied these costs to those facilities that we project will be impacted by today's final rule.

As stated above, we project that four mixers located at two facilities will be impacted by the final rule. To meet the promulgated standard, we assumed that one existing small mixer will be equipped with a solvent recovery system, and three existing small mixers (which are not amenable to control) will be replaced with a new mixer, and the new mixer will be equipped with a solvent recovery system. One impacted facility is assumed to incur capital costs to install one or more new mixers to meet the promulgated standard, as well as annual costs to operate and maintain the new equipment. Both impacted facilities are assumed to incur capital costs to install condensers to meet the promulgated standard, as well as annual costs to operate and maintain the condensers.

Monitoring is also an important component of MACT and the cost estimate. We expect that all four facilities affected by the final rule will incur some additional annual costs due

to the monitoring, recordkeeping, and reporting requirements of the final rule.

Implementation of the final rule is expected to result in a nationwide capital cost of approximately $947,000, with total annualized costs of approximately $213,000 per year (without recovery credits) and $60,000 per year (with recovery credits).

D. What Are the Economic Impacts?

Based on the cost estimates provided above, we believe the economic impacts associated with today's final rule will be negligible. In 1992, there were 53 facilities manufacturing friction materials. Of these 53 facilities, four are affected by the final rule and will incur control and monitoring costs. When we consider the solvent recovery credits along with control technology costs, the total economic impact of this final rule is a cost to the industry of $60,000 per year, which is less than 1 percent of industry revenues. We consider impacts of less than 1 percent of industry revenues to be minor. In addition, we do not believe these impacts to be significant enough to alter the market price for friction materials.

E. What Are the Non-air Environmental and Energy Impacts?

Indirect air impacts of today's final rule will result from increased electricity usage associated with operation of control devices (i.e., condensers) installed to meet the promulgated standard. Assuming that facilities will purchase electricity from a power plant, we estimate that the final rule will increase secondary emissions of criteria pollutants from power plants by less than 3.0 tpy. These criteria pollutants include particulate matter, sulfur dioxide, nitrogen oxides, and carbon monoxide. The overall energy demand is expected to increase by approximately 40 kilowatts nationwide under the final rule. This energy demand is based on the electricity required to operate the vacuum and condenser systems needed to comply with the promulgated standard. Both the indirect air impact and energy impact are considered minor.

Because impacted facilities are expected to reuse or sell the solvent recovered by the condensers, we do not anticipate any significant wastewater or solid waste impacts as a result of the final rule.

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, it must include a certification from EPA's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Today's final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments, and the rule requirements will not supercede State regulations that are more stringent. Thus, the requirements of Executive Order 13132 do not apply to this final rule.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments own or operate friction materials manufacturing facilities. Thus, Executive Order 13175 does not apply to this final rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives that EPA considered.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the rule. Today's final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, this final rule has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Today's final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's final rule does not contain a Federal mandate that may result in estimated costs of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of this proposed rule for any year has been estimated to be approximately $213,000 without solvent recovery credits and $60,000 with solvent recovery credits. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's final rule is not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business that has no more than 500 employees for NAICS codes 327999 and 333613 or no more than 750 employees for NAICS code 33634; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that only one company meets one of the definitions of small entity—a small business that has no more than 500 employees for NAICS code 333613. This company owns only one of the four facilities subject to this final rule. The mixer at this facility is equipped with a solvent recovery system capable of meeting the requirements of this final rule. As such, the additional burden to this facility as a result of this final rule will only be approximately $16,400 per year for recordkeeping and reporting costs associated with demonstrating continued compliance with the final rule. There are several firms subject to this final rule whose costs will be a greater percentage of sales than this small business.

H. Paperwork Reduction Act

The information collection requirements in today's final rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has prepared an Information Collection Request (ICR) document (ICR No. 2025.02), and you may obtain a copy from Sandy Farmer by mail at the Office of Environmental Information, Collection Strategies Division (2822), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; by electronic mail at *farmer.sandy@epa.gov;* or by calling (202) 260–2740. You may also download a copy off the Internet at *http://www.epa.gov/icr.* The information

requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA's policies set forth in 40 CFR part 2, subpart B.

The final rule will require maintenance inspections of the control devices but will not require any notifications or reports beyond those required by the NESHAP General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the final rule) is estimated to be approximately 1,390 labor hours per year, at a total annual cost of approximately $65,300. This burden estimate includes the cost to install and operate the weight measurement device; one-time submission of a startup, shutdown, and malfunction plan, with semiannual reports for any event when the procedures in the plan were not followed; semiannual compliance reports; maintenance inspections; notifications; and recordkeeping. Total capital/startup costs associated with the recordkeeping requirements over the 3-year period of the ICR are estimated at approximately $940, with operation and maintenance costs of approximately $250/yr.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: (1) Review instructions; (2) develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; (3) adjust the existing ways to comply with any previously applicable instructions and requirements; (4) train personnel to be able to respond to a collection of information; (5) search existing data sources; (6) complete and review the collection of information; and (7) transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) Public Law 104–113 (15 U.S.C. 272 note) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory and procurement activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), American Society of Mechanical Engineers (ASME), National Fire Protection Association (NFPA), and Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This rulemaking involves a technical standard. The EPA is promulgating test methods based on the weighing portion of EPA Method 28 (section 10.1) for weighing of recovered solvent. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards that could be used in addition to this EPA method. The search for emissions measurement procedures identified two voluntary consensus standards potentially applicable to this final rule. However, after reviewing the available standards, EPA determined that these two standards, identified for measuring recovered solvent on a scale, were impractical alternatives to the EPA test methods for the purposes of today's final rule. Therefore, EPA does not intend to adopt these standards for this purpose.

The voluntary consensus standard ASTM E319–85 (Reapproved 1997), "Standard Practice for the Evaluation of Single-Pan Mechanical Balances," is impractical for the purposes of this rulemaking primarily because this standard is not a complete weighing procedure because it does not include a pretest procedure.

The voluntary consensus standard ASME Power Test Codes, "Supplement on Instruments and Apparatus, part 5, Measurement of Quantity of Materials, Chapter 1, Weighing Scales," is impractical for the purposes of this rulemaking because it does not specify the number of initial calibration weights to be used nor a specific pretest weight procedure.

Section 63.9525 to subpart QQQQQ lists the testing procedures included in today's final rule. Under § 63.8 of the NESHAP General Provisions, a source may apply to EPA for permission to use an alternative method in place of any of the EPA testing methods.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until December 17, 2002. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 9, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart QQQQQ to read as follows:

Subpart QQQQQ—National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities

What This Subpart Covers

Sec.
63.9480 What is the purpose of this subpart?
63.9485 Am I subject to this subpart?
63.9490 What parts of my plant does this subpart cover?
63.9495 When do I have to comply with this subpart?

Emission Limitations

63.9500 What emission limitations must I meet?

General Compliance Requirements

63.9505 What are my general requirements for complying with this subpart?

Initial Compliance Demonstration Requirements

63.9510 By what date must I conduct my initial compliance demonstration?
63.9515 How do I demonstrate initial compliance with the emission limitation that applies to me?
63.9520 What procedures must I use to demonstrate initial compliance?
63.9525 What are the installation, operation, and maintenance requirements for my weight measurement device?

Continuous Compliance Requirements

63.9530 How do I demonstrate continuous compliance with the emission limitation that applies to me?

Notifications, Reports, and Records

63.9535 What notifications must I submit and when?
63.9540 What reports must I submit and when?
63.9545 What records must I keep?
63.9550 In what form and how long must I keep my records?

Other Requirements and Information

63.9555 What parts of the General Provisions apply to me?
63.9560 Who implements and enforces this subpart?
63.9565 What definitions apply to this subpart?
63.9570 How do I apply for alternative compliance requirements?
63.9571–63.9579 [Reserved]

Table

Table 1 to Subpart QQQQQ—Applicability of General Provisions to Subpart QQQQQ

Subpart QQQQQ—National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities

What This Subpart Covers

§ 63.9480 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for friction materials manufacturing facilities that use a solvent-based process. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations in this subpart.

§ 63.9485 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a friction materials manufacturing facility (as defined in § 63.9565) that is (or is part of) a major source of hazardous air pollutants (HAP) emissions on the first compliance date that applies to you, as specified in § 63.9495. Your friction materials manufacturing facility is a major source of HAP if it emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

(b) The requirements in this subpart do not apply to research and development facilities, as defined in section 112(c)(7) of the Clean Air Act.

§ 63.9490 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source at your friction materials manufacturing facility.

(b) The affected source covered by this subpart is each new, reconstructed, or existing solvent mixer (as defined in § 63.9565) at your friction materials manufacturing facility.

(c) A solvent mixer at your friction materials manufacturing facility is new if you commence construction of the solvent mixer after October 18, 2002. An affected source is reconstructed if it meets the definition of "reconstruction" in § 63.2, and reconstruction is commenced after October 18, 2002.

(d) A solvent mixer at your friction materials manufacturing facility is existing if it is not new or reconstructed.

§ 63.9495 When do I have to comply with this subpart?

(a) If you have an existing solvent mixer, you must comply with each of the requirements for existing sources no later than October 18, 2005.

(b) If you have a new or reconstructed solvent mixer and its initial startup date is after October 18, 2002, you must comply with the requirements for new and reconstructed sources upon initial startup.

(c) If your friction materials manufacturing facility is an area source that increases its emissions or its potential to emit such that it becomes a (or part of a) major source of HAP emissions, then paragraphs (c)(1) and (2) of this section apply.

(1) For any portion of the area source that becomes a new or reconstructed affected source, you must comply with the requirements for new and reconstructed sources upon startup or no later than October 18, 2002, whichever is later.

(2) For any portion of the area source that becomes an existing affected source, you must comply with the requirements for existing sources no later than 1 year after the area source becomes a major source or no later than October 18, 2005, whichever is later.

(d) You must meet the notification and schedule requirements in § 63.9535. Several of the notifications must be submitted before the compliance date for your affected source.

Emission Limitations

§ 63.9500 What emission limitations must I meet?

(a) For each new, reconstructed, or existing large solvent mixer at your friction materials manufacturing facility, you must limit HAP solvent emissions to the atmosphere to no more than 30 percent of that which would otherwise be emitted in the absence of solvent recovery and/or solvent substitution, based on a 7-day block average.

(b) For each new, reconstructed, or existing small solvent mixer at your friction materials manufacturing facility, you must limit HAP solvent emissions to the atmosphere to no more than 15 percent of that which would otherwise be emitted in the absence of solvent recovery and/or solvent substitution, based on a 7-day block average.

General Compliance Requirements

§ 63.9505 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitation in this subpart at all times, except during periods of startup, shutdown, or malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

Initial Compliance Demonstration Requirements

§ 63.9510 By what date must I conduct my initial compliance demonstration?

(a) If you use a solvent recovery system and/or solvent substitution, you

must conduct your initial compliance demonstration within 7 calendar days after the compliance date that is specified for your source in § 63.9495.

(b) If you use a control technique other than a solvent recovery system and/or solvent substitution, you must comply with the provisions in § 63.9570.

§ 63.9515 How do I demonstrate initial compliance with the emission limitation that applies to me?

(a) You have demonstrated initial compliance for each new, reconstructed, or existing large solvent mixer subject to the emission limitation in § 63.9500(a) if the HAP solvent discharged to the atmosphere during the first 7 days after the compliance date, determined according to the provisions in § 63.9520, does not exceed a 7-day block average of 30 percent of that which would otherwise be emitted in the absence of solvent recovery and/or solvent substitution.

(b) You have demonstrated initial compliance for each new, reconstructed, or existing small solvent mixer subject to the emission limitation in § 63.9500(b) if the HAP solvent discharged to the atmosphere during the first 7 days after the compliance date, determined according to the provisions in § 63.9520, does not exceed a 7-day block average of 15 percent of that which would otherwise be emitted in the absence of solvent recovery and/or solvent substitution.

(c) You must submit a notification of compliance status containing the results of the initial compliance demonstration according to § 63.9535(e).

§ 63.9520 What procedures must I use to demonstrate initial compliance?

(a) If you use a solvent recovery system, you must use the procedures in paragraphs (a)(1) through (8) of this section to demonstrate initial compliance with the emission limitations in § 63.9500(a) and (b).

(1) Record the date and time of each mix batch.

(2) Record the identity of each mix batch using a unique batch ID, as defined in § 63.9565.

(3) Measure and record the weight of HAP solvent loaded into the solvent mixer for each mix batch.

(4) Measure and record the weight of HAP solvent recovered for each mix batch.

(5) If you use a solvent recovery system, you must determine the percent of HAP solvent discharged to the atmosphere for each mix batch according to Equation 1 of this section as follows: (Eq. 1)

$$P_b = \left(1 - \frac{S_{rec}}{S_{mix}}\right)(100) \qquad \text{(Eq. 1)}$$

Where:

P_b = Percent of HAP solvent discharged to the atmosphere for each mix batch, percent;

S_{rec} = Weight of HAP solvent recovered for each mix batch, lb;

S_{mix} = Weight of HAP solvent loaded into the solvent mixer for each mix batch, lb.

(6) If you use solvent substitution for a mix batch, you must record the use of a non-HAP material as a substitute for a HAP solvent for that mix batch and assign a value of 0 percent to the percent of HAP solvent discharged to the atmosphere for that mix batch (Pb).

(7) Determine the 7-day block average percent of HAP solvent discharged to the atmosphere according to Equation 2 of this section as follows:

$$P_7 = \frac{1}{n}\sum_{i=1}^{n} P_b \qquad \text{(Eq. 2)}$$

Where:

$\%P_7$ = 7-day block average percent of HAP solvent discharged to the atmosphere, percent;

i = mix batch;

n = number of mix batches in 7-day block average.

(8) Have valid data for at least 90 percent of the mix batches over the 7-day averaging period.

(b) If you use a control technique other than a solvent recovery system and/or solvent substitution, you may apply to EPA for approval to use an alternative method of demonstrating compliance with the emission limitations for solvent mixers in § 63.9500(a) and (b), as provided in § 63.9570.

§ 63.9525 What are the installation, operation, and maintenance requirements for my weight measurement device?

(a) If you use a solvent recovery system, you must install, operate, and maintain a weight measurement device to measure the weight of HAP solvent loaded into the solvent mixer and the weight of HAP solvent recovered for each mix batch.

(b) For each weight measurement device required by this section, you must develop and submit for approval a site-specific monitoring plan that addresses the requirements of paragraphs (b)(1) through (6) of this section:

(1) Procedures for installing the weight measurement device;

(2) The minimum accuracy of the weight measurement device in pounds and as a percent of the average weight of solvent to be loaded into the solvent mixer;

(3) Site-specific procedures for how the measurements will be made;

(4) How the measurement data will be recorded, reduced, and stored;

(5) Procedures and acceptance criteria for calibration of the weight measurement device; and

(6) How the measurement device will be maintained, including a routine maintenance schedule and spare parts inventory list.

(c) The site-specific monitoring plan required in paragraph (b) of this section must include, at a minimum, the requirements of paragraphs (c)(1) through (3) of this section:

(1) The weight measurement device must have a minimum accuracy of ±0.05 kilograms (±0.1 pounds) or ±1 percent of the average weight of solvent to be loaded into the solvent mixer, whichever is greater.

(2) An initial multi-point calibration of the weight measurement device must be made using 5 points spanning the expected range of weight measurements before the weight measurement device can be used. The manufacturer's calibration results can be used to meet this requirement.

(3) Once per day, an accuracy audit must be made using a single Class F calibration weight that corresponds to 20 to 80 percent of the average weight of solvent to be loaded into the solvent mixer. If the weight measurement device cannot reproduce the value of the calibration weight within ±0.05 kilograms (0.1 pounds) or ±1 percent of the average weight of solvent to be loaded into the solvent mixer, whichever is greater, the scale must be recalibrated before being used again. The recalibration must be performed with at least five Class F calibration weights spanning the expected range of weight measurements.

(d) You must operate and maintain the weight measurement device according to the site-specific monitoring plan.

(e) You must maintain records of all maintenance activities, calibrations, and calibration audits.

Continuous Compliance Requirements

§ 63.9530 How do I demonstrate continuous compliance with the emission limitation that applies to me?

(a) If you use a solvent recovery system and/or solvent substitution, you must demonstrate continuous compliance with the emission limitations for solvent mixers in § 63.9500(a) and (b) according to the provisions in paragraphs (a)(1) through (3) of this section.

(1) Except for during malfunctions of your weight measurement device and associated repairs, you must collect and record the information required in § 63.9520(a)(1) through (8) at all times that the affected source is operating and record all information needed to document conformance with these requirements.

(2) For new, reconstructed, or existing large solvent mixers, maintain the 7-day block average percent of HAP solvent discharged to the atmosphere at or below 30 percent of that which would otherwise be emitted in the absence of solvent recovery and/or solvent substitution.

(3) For new, reconstructed, or existing small solvent mixers, maintain the 7-day block average percent of HAP solvent discharged to the atmosphere at or below 15 percent of that which would otherwise be emitted in the absence of solvent recovery and/or solvent substitution.

(b) If you use a control technique other than a solvent recovery system and/or solvent substitution, you must demonstrate continuous compliance with the emission limitations for solvent mixers in § 63.9500(a) and (b) according to the provisions in § 63.9570.

(c) You must report each instance in which you did not meet the emission limitations for solvent mixers in § 63.9500(a) and (b). This includes periods of startup, shutdown, or malfunction. These instances are deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.9540.

(d) During periods of startup, shutdown, or malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan.

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Notifications, Reports, and Records

§ 63.9535 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.8(f)(4) and 63.9(b), (c), (d), and (h) that apply to you by the specified dates.

(b) If you use a control technique other than a solvent recovery system and/or solvent substitution, you must comply with the provisions in § 63.9570.

(c) As specified in § 63.9(b)(2), if you start up your affected source before October 18, 2002, you must submit your initial notification no later than 120 calendar days after October 18, 2002.

(d) As specified in § 63.9(b)(3), if you start up your new affected source on or after October 18, 2002, you must submit your initial notification no later than 120 calendar days after you become subject to this subpart.

(e) You must submit a notification of compliance status according to § 63.9(h)(2)(ii). You must submit the notification of compliance status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

§ 63.9540 What reports must I submit and when?

(a) Unless the Administrator has approved a different schedule, you must submit each semiannual compliance report according to the requirements in paragraphs (a)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.9495 and ending on June 30 or December 31, whichever date comes first after the compliance date that is specified for your source in § 63.9495.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your first compliance report is due.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 71 of this chapter, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A) of this chapter, you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (a)(1) through (4) of this section.

(b) Each compliance report must include the information in paragraphs (b)(1) through (3) of this section, and if applicable, paragraphs (b)(4) through (6) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with the official's name, title, and signature, certifying that, based on information and belief formed after reasonable inquiry, the statements and information in the report are true, accurate, and complete.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from the emission limitations for solvent mixers in § 63.9500(a) and (b), a statement that there were no deviations from the emission limitations during the reporting period.

(6) If there were no periods during which a monitoring system was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which a monitoring system was out-of-control during the reporting period.

(c) For each deviation from an emission limitation occurring at an affected source, you must include the information in paragraphs (b)(1) through (4) and (c)(1) and (2) of this section. This includes periods of startup, shutdown, or malfunction.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(d) If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

(e) If you have obtained a title V operating permit for an affected source pursuant to 40 CFR part 70 or 71 of this chapter, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A) of this chapter. If you submit a compliance report for an

affected source along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A) of this chapter, and the compliance report includes all the required information concerning deviations from any emission limitation in this subpart, then submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements to your permitting authority.

§ 63.9545 What records must I keep?

(a) You must keep the records in paragraphs (a)(1) and (2) of this section that apply to you.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or notification of compliance status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, or malfunction.

(b) You must keep the records required in § 63.9525 to show proper operation and maintenance of the weight measurement device.

(c) You must keep the records required in § 63.9530 to show continuous compliance with the emission limitations for solvent mixers in § 63.9500(a) and (b).

§ 63.9550 In what form and how long must I keep my records?

(a) You must keep your records in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.9555 What parts of the General Provisions apply to me?

Table 1 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.9560 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraphs (c)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local or tribal agencies are as follows:

(1) Approval of alternatives to the emission limitations in § 63.9500(a) and (b) under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.9565 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Batch ID means a unique identifier used to differentiate each individual mix batch.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including, but not limited to, any emission limitation (including any operating limit);

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Friction ingredients means any of the components used in the manufacture of friction materials, excluding the HAP solvent. Friction ingredients include, but are not limited to, reinforcement materials, property modifiers, resins, and other additives.

Friction materials manufacturing facility means a facility that manufactures friction materials using a solvent-based process. Friction materials are used in the manufacture of products used to accelerate or decelerate objects. Products that use friction materials include, but are not limited to, disc brake pucks, disc brake pads, brake linings, brake shoes, brake segments, brake blocks, brake discs, clutch facings, and clutches.

HAP solvent means a solvent that contains 10 percent or more of any one HAP, as listed in section 112(b) of the Clean Air Act, or any combination of HAP that is added to a solvent mixer. Examples include hexane, toluene, and trichloroethylene.

Initial startup means the first time that equipment is put into operation. Initial startup does not include operation solely for testing equipment. Initial startup does not include subsequent startups (as defined in this section) following malfunction or shutdowns or following changes in product or between batch operations.

Large solvent mixer means a solvent mixer with a design capacity greater than or equal to 2,000 pounds, including friction ingredients and HAP solvent.

Mix batch means each batch of friction materials manufactured in a solvent mixer.

Responsible official means responsible official as defined in § 63.2.

7-day block average means an averaging technique for a weekly compliance determination where the calculated values for percent HAP solvent discharged to the atmosphere are averaged together for all mix batches (for which there are valid data) in a 7-day block period according to the equation provided in § 63.9520(a)(6).

Small solvent mixer means a solvent mixer with a design capacity less than 2,000 pounds, including friction ingredients and HAP solvent.

Solvent mixer means a mixer used in the friction materials manufacturing process in which HAP solvent is used as one of the ingredients in at least one batch during a semiannual reporting period. Trace amounts of HAP solvents in resins or other friction ingredients do not qualify mixers as solvent mixers.

Solvent recovery system means equipment used for the purpose of recovering the HAP solvent from the exhaust stream. An example of a solvent recovery system is a condenser.

Solvent substitution means substitution of a non-HAP material for a HAP solvent.

Startup means bringing equipment online and starting the production process.

Startup, shutdown, and malfunction plan means a plan developed according to the provisions of § 63.6(e)(3).

§ 63.9570 How do I apply for alternative compliance requirements?

(a) If you use a control technique other than a solvent recovery system and/or solvent substitution, you may request approval to use an alternative method of demonstrating compliance with the emission limitations in § 63.9500(a) and (b) according to the procedures in this section.

(b) You can request approval to use an alternative method of demonstrating compliance in the initial notification for existing sources, the notification of construction or reconstruction for new sources, or at any time.

(c) You must submit a description of the proposed testing, monitoring, recordkeeping, and reporting that will be used and the proposed basis for demonstrating compliance.

(1) If you have not previously performed testing, you must submit a proposed test plan. If you are seeking permission to use an alternative method of compliance based on previously performed testing, you must submit the results of testing, a description of the procedures followed in testing, and a description of pertinent conditions during testing.

(2) You must submit a monitoring plan that includes a description of the control technique, test results verifying the performance of the control technique, the appropriate operating parameters that will be monitored, and the frequency of measuring and recording to establish continuous compliance with the emission limitations in § 63.9500(a) and (b). You must also include the proposed performance specifications and quality assurance procedures for the monitors. The monitoring plan is subject to the Administrator's approval. You must install, calibrate, operate, and maintain the monitors in accordance with the monitoring plan approved by the Administrator.

(d) Use of the alternative method of demonstrating compliance must not begin until approval is granted by the Administrator.

§§ 63.9571–63.9579 [Reserved]

TABLE 1 TO SUBPART QQQQQ—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQQ

[As required in § 63.9505, you must comply with each applicable General Provisions requirement according to the following table]

Citation	Subject	Applies to subpart QQQQQ?	Explanation
§ 63.1	Applicability	Yes.	
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4	Prohibited Activities	Yes.	
§ 63.5	Construction/Reconstruction	Yes.	
§ 63.6(a)–(c), (e)–(f), (i)–(j)	Compliance with Standards and Maintenance Requirements.	Yes.	
§ 63.6(d)	[Reserved].		
§ 63.6(g)	Use of an Alternative Nonopacity Emission Standard.	No	Subpart QQQQQ contains no work practice standards.
§ 63.6(h)	Compliance with Opacity and Visible Emission Standards.	No	Subpart QQQQQ contains no opacity or VE limits.
§ 63.7(a)(1)–(2)	Applicability and Performance Test Dates	No	Subpart QQQQQ includes dates for initial compliance demonstrations.
§ 63.7(a)(3), (b)–(h)	Performance Testing Requirements	No	Subpart QQQQQ does not require performance tests.
§ 63.8(a)(1)–(2), (b), (c)(1)–(3), (f)(1)–(5).	Monitoring Requirements	Yes.	
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Additional Monitoring Requirements for Control Devices in § 63.11.	No	Subpart QQQQQ does not require flares.
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.	No	Subpart QQQQQ does not require CMS.
§ 63.8(c)(5)	Continuous Opacity Monitoring System (COMS) Minimum Procedures.	No	Subpart QQQQQ does not require COMS.
§ 63.8(c)(6)	Zero and High Level Calibration Check Requirements.	No	Subpart QQQQQ specifies calibration requirements.
§ 63.8(c)(7)–(8)	Out-of-Control Periods	No	Subpart QQQQQ specifies out-of-control periods and reporting requirements.
§ 63.8(d)	CMS Quality Control	No	Subpart QQQQQ requires a monitoring plan that specifies CMS quality control procedures.
§ 63.8(e)	CMS Performance Evaluation	No	Subpart QQQQQ does not require CMS performance evaluations.
§ 63.8(f)(6)	Relative Accuracy Test Audit (RATA) Alternative.	No	Subpart QQQQQ does not require continuous emissions monitoring systems (CEMS).
§ 63.8(g)(1)–(5)	Data Reduction	No	Subpart QQQQQ specifies data reduction requirements.
§ 63.9(a)–(d), (h)–(j)	Notification Requirements	Yes	Except that subpart QQQQQ does not require performance tests or CMS performance evaluations.
§ 63.9(e)	Notification of Performance Test	No	Subpart QQQQQ does not require performance tests.

TABLE 1 TO SUBPART QQQQQ—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQQ—Continued

[As required in § 63.9505, you must comply with each applicable General Provisions requirement according to the following table]

Citation	Subject	Applies to subpart QQQQQ?	Explanation
§ 63.9(f)	Notification of VE/Opacity Test	No	Subpart QQQQQ contains no opacity or VE limits.
§ 63.9(g)	Additional Notifications When Using CMS	No	Subpart QQQQQ does not require CMS performance evaluations.
§ 63.10(a), (b), (d)(1), (d)(4)–(5), (e)(3), (f).	Recordkeeping and Reporting Requirements	Yes.	
§ 63.10(c)(1)–(6), (9)–(15)	Additional Records for CMS	No	Subpart QQQQQ specifies record requirements.
§ 63.10(c)(7)–(8)	Records of Excess Emissions and Parameter Monitoring Exceedances for CMS.	No	Subpart QQQQQ specifies record requirements.
§ 63.10(d)(2)	Reporting Results of Performance Tests	No	Subpart QQQQQ does not require performance tests.
§ 63.10(d)(3)	Reporting Opacity or VE Observations	No	Subpart QQQQQ contains no opacity or VE limits.
§ 63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart QQQQQ does not require CMS.
§ 63.10(e)(4)	Reporting COMS Data	No	Subpart QQQQQ does not require COMS.
§ 63.11	Control Device Requirements	No	Subpart QQQQQ does not require flares.
§§ 63.12–63.15	Delegation, Addresses, Incorporation by Reference Availability of Information.	Yes.	

[FR Doc. 02–26309 Filed 10–17–02; 8:45 am]

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Federal Register

Friday,
October 18, 2002

Part V

The President

Memorandum of October 16, 2002—Notification to the Congress of Trade Negotiation

Federal Register
Vol. 67, No. 202
Friday, October 18, 2002

Presidential Documents

Title 3—

The President

Memorandum of October 16, 2002

Notification to the Congress of Trade Negotiation

Memorandum for the United States Trade Representative

You are authorized and directed to notify the Congress, pursuant to section 2104(a)(1) of the Trade Act of 2002 (19 U.S.C. 3804(a)(1)), of my intention to enter into negotiations on a Free Trade Agreement with the five member countries of the Southern African Customs Union (Botswana, Lesotho, Namibia, South Africa, and Swaziland).

You are authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, October 16, 2002.

[FR Doc. 02–26812
Filed 10–17–02; 11:01 am]
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Rules and Regulations

Federal Register
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Monday, October 21, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

RIN 3245–AE97

Disaster Loan Program—Disaster Mitigation Act of 2000

AGENCY: Small Business Administration (SBA).

ACTION: Interim final rule with request for comments.

SUMMARY: Under the Disaster Mitigation Act of 2000, enacted on October 30, 2000, ("Act") the Individual and Family Grant Assistance Program is replaced by the Assistance to Individuals and Household Program ("IHP"). Under this interim final rule, SBA will implement its disaster loan program when the President declares a major disaster, or declares an emergency, and activates the IHP in an emergency disaster declaration. Under the Act, if the President declares a major disaster that includes, or is limited to, public assistance, a private nonprofit facility which provides non-critical services must first apply for disaster loan assistance from SBA before it could seek grant assistance for permanent repairs and/or replacements from the Federal Emergency Management Agency ("FEMA"). SBA is also implementing this legislative change, and is making certain technical changes.

DATES: *Effective Date:* This rule is effective on October 15, 2002.

Applicability Date: This rule is applicable for major disasters declared on or after October 15, 2002.

Comment Date: Comments must be received on or before December 20, 2002.

ADDRESSES: Address all comments concerning the interim rule to Herbert L. Mitchell, Associate Administrator, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416

FOR FURTHER INFORMATION CONTACT: Becky Brantley, Loan Specialist, Office of Disaster Assistance, 202–205–6734.

SUPPLEMENTARY INFORMATION: Section 206 of the Disaster Mitigation Act of 2000 (Public Law 106–390) ("Act") replaces the Individual and Family Grant Assistance Program ("IFG") with the Assistance to Individuals and Household Program ("IHP"). Under this interim final rule, SBA will implement its disaster loan program when the President declares a major disaster, or declares an emergency, and activates the IHP. SBA is revising § 123.3(a)(1) of its regulations to reflect the statutory changes.

Section 205 of the Act amends section 5172 of Title 42, United States Code. Under the Act, if the President declares a major disaster that includes, or is limited to public assistance, a private nonprofit facility ("PNP") which provides non-critical services (of a governmental nature) must first apply to SBA for a disaster loan for permanent repairs and/or replacement work, before it can seek grant assistance from the Federal Emergency Management Agency ("FEMA") with respect to such non-critical services. If SBA determines that the PNP non-critical facility is ineligible for a disaster loan or the PNP has obtained the maximum amount for which the SBA determines the facility is eligible, the PNP may then apply to FEMA for grant assistance for permanent repairs for its unmet disaster-related needs. Such PNPs may apply directly to FEMA for emergency repairs.

Owners of facilities that provide critical services (of a governmental nature) may apply directly to FEMA for grant assistance for both emergency and permanent repairs. Section 205 of the Act defines "critical services" to include power, water, sewer, wastewater treatment, communications, and emergency medical care. It is the responsibility of FEMA to provide guidelines with respect to these services.

PNPs which operate both critical and non-critical facilities (that provide essential services of a governmental nature) will have to make separate applications to FEMA and SBA. Currently, SBA rules allow only for the activation of its disaster loan program in the event of a major disaster declaration by the President that includes individual assistance (the Individuals and Family Grant Program). In such case, all PNP facilities are eligible to apply for SBA disaster loan assistance.

Under this interim final rule, SBA is amending § 123.3 of its regulations to provide that SBA would activate its disaster loan program for PNPs that provide essential services of a governmental nature when the President declares a major disaster that does not include individual assistance but is limited to, or includes, public assistance. SBA would use FEMA's guidelines to ascertain if a PNP was seeking assistance for its delivery of such services.

In this interim final rule, SBA is amending § 123.4 of its regulations to preclude businesses in contiguous counties from being eligible for SBA economic injury disaster loans in circumstances described above. Thus, if the President makes a major disaster declaration that does not include individual assistance but includes, or is limited to, public assistance, and PNPs are eligible for disaster loan assistance from SBA, the interim final rule would not allow small businesses in counties contiguous to the declared disaster area to be eligible for SBA economic injury loans. This is because the authorized public assistance is limited to the counties identified in the declaration.

SBA is amending § 123.101(c) of its regulations by inserting the new "Individuals and Household Program" in lieu of the old "Individual and Family Grant Program."

SBA is making technical corrections in § 123.501 of its regulations, relating to the eligibility of a business for a military reservist economic injury disaster loan (EIDL). The purpose of the regulatory change is to clarify that the business must be small at the time the essential employee is called to active duty. A business that was not small at that time would fall outside the parameters of SBA regulations, and this regulatory change would make that clear. SBA is adding the same criteria to military reservist EIDL as now applies to regular EIDL: the business, its affiliates and 20% or more owners have used all reasonably available funds and that it is unable to obtain credit elsewhere. These are the same requirements prescribed in § 123.300(b) with respect to regular EIDL assistance.

Justification for Publication as an Interim Final Rule

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act (APA) and SBA regulations, 5 U.S.C. 553 and 13 CFR 101.108. The APA provides for an exception to this standard rule-making process, however, where an Agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 555(b)(3)(B). The good cause requirement is satisfied when prior public participation is impractical, unnecessary, or contrary to the public interest. Under such circumstances, an Agency may publish an interim final rule without soliciting public comment.

In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations might arise where an Agency must issue a rule without written public participation. On January 23, 2002, FEMA published proposed rules to implement the Act for Federal disaster assistance to individuals and households (67 FR 3411). FEMA anticipates issuing an interim final rule about the same time that SBA publishes its interim final rule. Under FEMA's regulation, three important changes will occur:

(1) The "Individual and Family Grant Program" ("IFG") will not be in existence for disasters declared on or after October 15, 2002.

(2) FEMA has renamed their program as "Assistance to Individuals and Households Program" ("IHP").

(3) FEMA's rule would include the flexibility for the President to activate IHP when the President issues an emergency declaration.

These changes have a direct effect on SBA since § 123.3(a)(1) of SBA's regulations presently states that SBA disaster operations are activated when "the President declares a Major Disaster and authorizes Federal assistance, including individual assistance (temporary housing and Individual and Family Grant Assistance)." Therefore, under current rules, SBA's disaster assistance can only be activated when IFG is being offered. Since, under FEMA's rule, IFG will no longer exist, SBA's IFG reference is no longer applicable.

If a Presidential major disaster declaration activates FEMA's IHP, SBA's programs must be amended to reflect the existence of IHP in its regulations. SBA's concern is that disasters can be declared at any time, and its regulations must be amended to incorporate the Act's changes so that SBA's disaster programs can be appropriately activated when a major disaster occurs. Any delay in the adoption of these changes to SBA's regulations could cause serious harm to victims of disasters declared by the President since IFG assistance no longer exists.

Accordingly, SBA finds that good cause exists to publish this rule as an interim final rule in light of the urgent need to make disaster loans available to individuals and homeowners when the President declares a major emergency, disaster declaration that authorizes Federal assistance to Individuals and Households. SBA needs to coordinate its disaster rules with the revised FEMA program which should be effective at the same time that this rule is effective.

Justification for Immediate Effective Date of Interim Final Rule

The APA requires that "publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). SBA finds that good cause exists to make this interim final rule effective for major disasters declared on or after October 15, 2002.

The purpose of the APA provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. For the reasons set forth above in Justification for Publication as an Interim Final Rule, SBA finds that good cause exists for making this interim final rule effective immediately, instead of observing the 30-day period between publication and effective date.

SBA has an obligation, under section 4(d) of the Small Business Act, to act in the public interest in offering disaster loan assistance to victims of declared disasters. Pursuant to that statutory authority, SBA has determined that it is in the public interest to give immediate effect to the changes in the activation of SBA's disaster loan program and that it would be impractical to delay such implementation. SBA also notes that the failure to adopt this rule immediately would work to the detriment of many disaster victims.

Although this rule is being published as an interim final rule, comments are hereby solicited from the public. These comments must be received by December 20, 2002. SBA will consider these comments in making any necessary revisions to these regulations.

Compliance With Executive Orders 12866, 12988, 13132, the Regulatory Flexibility Act (15 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

OMB has determined that this rule does not constitute a significant rule within the meaning of Executive Order 12866. The rule conforms SBA rules to the requirements of the Act and FEMA's implementing regulations. The rule is not likely to have an annual effect on the economy of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

SBA has determined that this rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

For the purposes of Executive Order 13132, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

SBA has determined that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in paragraph 3 of that Order.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs—business, Small businesses.

For the reasons stated in the preamble, SBA amends 13 CFR part 123 as follows:

PART 123—DISASTER LOAN PROGRAM

1. The authority citation for part 123 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c); Pub. L. 102–395, 106 Stat. 1828, 1864; Pub. L. 103–75, 107 Stat. 739; Pub. L. 106–50, 113 Stat. 245.

2. Amend § 123.3 by revising paragraph (a)(1), redesignating paragraphs (a)(2), (a)(3), and (a)(4) as paragraphs (a)(3), (a)(4), and (a)(5), respectively, and adding a new paragraph (a)(2) to read as follows:

§ 123.3 How are disaster declarations made?

(a) * * *

(1) The President declares a Major Disaster, or declares an emergency, and authorizes Federal Assistance, including individual assistance (Assistance to Individuals and Households Program).

(2) If the President declares a Major Disaster limited to public assistance only, a private nonprofit facility which provides non-critical services under guidelines of the Federal Emergency Management Agency (FEMA) must first apply to SBA for disaster loan assistance for such non-critical services before it could seek grant assistance from FEMA.

* * * * *

3. Amend § 123.4 by revising the fourth sentence to read as follows:

§ 123.4 What is a disaster area and why is it important?

* * * In major disasters, economic injury disaster loans may be made for victims in contiguous counties or other political subdivisions, provided, however, that with respect to major disasters which authorize public assistance only, SBA shall not make economic injury disaster loans in counties contiguous to the disaster area.

* * *

4. Amend § 123.101 by revising paragraph (c) to read as follows:

§ 123.101 When am I not eligible for a home disaster loan?

* * * * *

(c) Your damaged property can be repaired or replaced with the proceeds of insurance, gifts or other compensation, including condemnation awards (with one exception), these amounts must either be deducted from the amount of the claimed losses or, if received after SBA has approved and disbursed a loan, must be paid to SBA as principal payments on your loan. You must notify SBA of any such recoveries collected after receiving an SBA disaster loan. The one exception applies to amounts received under the Individuals and Household Program of the Federal Emergency Management Agency solely to meet an emergency need pending processing of an SBA loan. In such an event, you must repay the financial assistance with SBA loan proceeds if it was used for purposes also eligible for an SBA loan;

* * * * *

5. Amend § 123.501 by revising paragraph (a), removing "and" at the end of paragraph (c), removing the period at the end of paragraph (d) and adding ", and" in its place, and adding a new paragraph (e) to read as follows:

§ 123.501 When is your business eligible to apply for a Military Reservist Economic Injury Disaster Loan?

* * * * *

(a) It is a small business as defined in 13 CFR part 121 when the essential employee was called to active duty,

* * * * *

(e) You and your affiliates and principal owners (20% or more ownership interest) have used all reasonably available funds, and you are unable to obtain credit elsewhere (see § 123.104).

Hector V. Barreto,

Administrator.

[FR Doc. 02–26403 Filed 10–18–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–59–AD; Amendment 39–12913; AD 2002–21–07]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–76A, S–76B and S–76C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Sikorsky Aircraft Corporation (Sikorsky) model helicopters that requires removing and inspecting each main rotor spindle attachment bolt (bolt) to ensure that the correct bolts are installed. This amendment is prompted by the discovery of improper bolts installed on a helicopter during its production. The actions specified by this AD are intended to detect installation of incorrect bolts, which could result in reduced hub or bolt fatigue life, separation of the main rotor blade at the spindle attachment, and subsequent loss of control of the helicopter.

DATES: Effective November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Kirk Gustafson, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7190, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for Sikorsky Model S–76A, S–76B and S–76C helicopters was published in the **Federal Register** on June 20, 2002 (67 FR 41875). That action proposed to require removing and inspecting each bolt to ensure that the correct bolts are installed.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule with one change. A "note" has been added following paragraph (b)(3) referencing the alert service bulletin that pertains to the subject of the AD. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 165 helicopters of U.S. registry will be affected by this proposed AD, that it will take approximately 6 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $240 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $99,000, assuming all 40 bolts (per helicopter) are replaced.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–21–07 Sikorsky Aircraft Corporation: Amendment 39–12913. Docket No. 2001–SW–59–AD.

Applicability: Model S–76A, S–76B and S–76C helicopters, except those having a serial number of 760501, or 760506 through 760515, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 1,250-hours time-in-service or 2 years, whichever comes first, unless accomplished previously.

To detect installation of an incorrect main rotor spindle attachment bolt (bolt), which could result in reduced hub or bolt fatigue life, separation of the main rotor blade at the spindle attachment, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove and measure each bolt to ensure that the length is 1.181 ±.015 inches. There are 10 bolts per rotor spindle and 40 bolts per helicopter that require inspection.

(1) If 1 or 2 bolts are found on any spindle that are longer than 1.196 inches (1.181 inches + .015-inch permissible tolerance), visually inspect the main rotor hub internal threads for distortion and the hole-bottoms for scoring.

(i) If thread distortion or hole-bottom scoring is found, remove the rotor hub from service.

(ii) If no thread distortion or hole-bottom scoring is found, replace all 10 bolts with new airworthy bolts.

(2) If 3 or more bolts that exceed 1.196 inches are found on any spindle, remove and replace the main rotor hub with an airworthy main rotor hub.

(3) If any bolt is found that is shorter than 1.166 inches (1.181 inches − .015 permissible tolerance), replace it with a new airworthy bolt.

(b) Report the results of the inspections of the main rotor hubs whenever the bolts exceed 1.196 inches in length, within 5 calendar days of the inspection, to the Manager, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7150; fax: (781) 238–7170. Include the following information in the report:

(1) Serial number of the helicopter.

(2) Quantity of incorrect bolts.

(3) Description of thread distortion or hole-bottom scoring caused by each bolt.

Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note 2: Sikorsky Aircraft Corporation Alert Service Bulletin No. 76–65–52 (321), dated July 24, 2001, pertains to the subject of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on November 25, 2002.

Issued in Fort Worth, Texas, on October 4, 2002.

Eric D. Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–26590 Filed 10–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–08–AD; Amendment 39–12914; AD 2002–21–08]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–6 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Model PC–6 airplanes. This AD requires you to inspect the aileron assembly for correct configuration and modify as necessary. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to correct improper aileron assembly configuration, which could result in failure of the aileron mass balance weight. Such failure could lead to loss of control of the airplane.

DATES: This AD becomes effective on December 6, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 6, 2002.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–08–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Model PC–6 airplanes. The FOCA reported an instance where unapproved mass balance weights and an improper aileron configuration were found on a Model PC–6 airplane. The FOCA determined the cause as improper configuration control and tracking.

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could result in failure of the aileron mass balance weights. Such failure could lead to loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Model PC–6 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 19, 2002 (67 FR 53761). The NPRM proposed to inspect the aileron assembly for correct configuration and modify as necessary.

Was the Public Invited to Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 35 airplanes in the U.S. registry.

What is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 per hour = $60	No parts required	$60	$60 × 35 = $2,100.

We estimate the following costs to accomplish any necessary modifications that would be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such modification:

Labor cost	Parts cost	Total cost per airplane
16 workhours × $60 = $960	$419	$419 + $960 = $1,379.

Compliance Time of This AD

What Will Be the Compliance Time of This AD?

The compliance time of this AD is "within the next 30 days after the effective date of this AD."

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-service (TIS)?

This unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 10 hours time-in-service (TIS) as it would be for an airplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–21–08 Pilatus Aircraft Ltd.: Amendment 39–12914; Docket No.2002–CE–08–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model PC–6 airplanes, all manufacturer serial numbers (MSN) up to and including 939, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct improper aileron assembly configuration, which could result in failure of the aileron mass balance weight. Such failure could lead to loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the aileron assembly for proper configuration.	Within the next 30 days after December 6, 2002 (the effective date of this AD), unless already accomplished.	In accordance with Pilatus Service Bulletin No. 62B, dated May 1967, as in Pilatus PC–6 Service Bulletin No. 57–001, dated December 20, 2001.
(2) If the aileron assembly configuration incorporates aileron part number (P/N) 6106.10.xxx or P/N 6106.0010.xxx modifying the assembly in accordance with Pilatus Service Bulletin No. 62B, dated May 1967, and install a placard.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD, unless already accomplished.	Modify in accordance with Pilatus Service Bulletin No. 62B, dated May 1967. Install the placard in accordance with Pilatus PC–6 Service Bulletin No. 57–001, dated December 20, 2001.
(3) If the aileron assembly configuration differs from that specified in Pilatus Service Bulletin No. 62B, dated May 1967, or if the part numbers are missing and cannot be verified: (i) obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD; and (ii) incorporate this repair scheme.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD, unless already accomplished.	In accordance with Pilatus PC–6 Service Bulletin No. 57–001, dated December 20, 2001.
(4) Do not install any aileron assembly unless the inspection, modification, placard, and repair requirements (as applicable) of paragraphs (d)(1), (d)(2), (d)(3), (d)(3)(i), and (d)(3)(ii) of this AD are accomplished.	As of December 6, 2002 (the effective date of this AD).	In accordance with Pilatus PC–6 Service Bulletin No. 57–001, dated December 20, 2001.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Pilatus Service Bulletin No. 62B, dated May 1967, and Pilatus PC–6 Service Bulletin No. 57–001, dated December 20, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6319; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Swiss AD HB 2002–001, dated February 8, 2002.

(i) *When does this amendment become effective?* This amendment becomes effective on December 6, 2002.

Issued in Kansas City, Missouri, on October 9, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–26589 Filed 10–18–02; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 15

RIN 3038–AB91

Reporting Levels for Large Trader Reports; TRAKRS

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is amending its rules to establish a reporting level for TRAKRS futures contracts traded on the Chicago Mercantile Exchange (CME). The reporting level is 25,000 contracts. This rule will help ensure that the Commission receives adequate information to carry out its market surveillance program.

EFFECTIVE DATE: November 20, 2002.

FOR FURTHER INFORMATION CONTACT: Gary J. Martinaitis, Deputy Associate Director, Market Surveillance Section, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5260. E-mail: [*GMartinaitis@cftc.gov.*]

SUPPLEMENTARY INFORMATION: On December 21, 2000, the President signed into law the Commodity Futures Modernization Act of 2000 (CFMA), Public Law 106–554, which extensively revises the Commodity Exchange Act (Act). Among other things, the CFMA

facilitated the introduction of new futures products by the exchanges. In August 2002, the CME introduced a series of new products, called TRAKRS, which are low notional value futures contracts based on broad based indices of stocks, bonds, currencies, or other financial instruments. The first TRAKRS futures contract (the long-short technology TRAKRS), which began trading in August 2002, has traded between $26 and $22.[1]

TRAKRS, like all other commodities traded on Commission-designated markets, are subject to the Commission's large trader reporting rules. Those rules require futures commission merchants, members of contract markets and foreign brokers to report to the Commission position information of the largest futures and options traders and, upon special call by the Commission, require the traders themselves to file reports with the Commission. Reporting levels are set in the designated futures and option markets under the authority of sections 4i and 4c of the Act to ensure that the Commission receives adequate information to carry out its market surveillance programs. These market surveillance programs are designed to detect and to prevent market congestion and price manipulation and to enforce speculative position limits. They also provide information regarding the overall hedging and speculative use of, and foreign participation in, the futures markets and other matters of public interest.

On August 5, 2002, the Commission proposed establishing a reporting level for TRAKRS futures contracts of 25,000.[2] The proposed reporting level was based on the Commission's experience in administering a large trader reporting system that is designed to provide adequate market coverage in light of positions traded or expected to be traded. The Commission did not receive any comments on its proposal.

The Commission is adopting a reporting level of 25,000 contracts for TRAKRS futures contracts as proposed. The Commission intends to review this level over time to determine whether it provides adequate coverage. Furthermore, since the reporting level is significantly influenced by the relatively low value of the initial TRAKRS contract (in the mid-$20 range), the Commission intends to reconsider this reporting level if new TRAKRS contracts are introduced at a substantially higher price or any TRAKRS contract begins to trade at a substantially higher price.

As noted in the proposed rule,[3] the low value of TRAKRS contracts could result in very large positions being reported. Due to current limitations in the Commission's large trader record format,[4] and similar limitations in the CME's own large trader reporting system, the final rule provides for TRAKRS positions to be reported under 17 CFR part 17 only after they have been rounded down to the nearest 1000 and then divided by 1000. For example, a position of 27,955 contracts would be rounded down to 27,000, divided by 1000 and reported as 27.[5]

The Commission has granted no-action relief to futures commission merchants, members of contracts markets and foreign brokers that comply with the requirements of the proposed rule prior to its final adoption.[6] No-action relief was granted because, in its absence, the Commission's default reporting level of 25 contracts would apply to TRAKRS contracts. The Commission is continuing the no-action relief for futures commission merchants, members of contracts markets and foreign brokers that comply with the requirements of the proposed rule prior to the time this final rule becomes effective. Accordingly, the Commission will not bring any enforcement action against any futures commission merchant, member of a contract market or foreign broker who complies with the proposed rule (which is identical to the final rule being adopted today).

Cost Benefit Analysis

Section 15 of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15 does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15 simply requires the Commission to "consider the costs and benefits" of the subject rule.

Section 15(a) further specifies that the costs and benefits of the proposed rule shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission's proposed rule contained an analysis of its consideration of these costs and benefits and solicited public comment thereon.[7] The Commission specifically invited commenters to submit any data that they may have quantifying the costs and benefits of the proposed rules. The Commission did not receive any comments on its proposal.

After considering the costs and benefits of these revisions to part 15, the Commission has decided to adopt them as discussed above.

Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that federal agencies, in proposing rules, consider the impact of those rules on small entities. The Commission has previously determined that large traders and FCMs are not "small entities" for purposes of the RFA.[8] These amendments to the Commission's reporting requirements primarily impact FCMs. Similarly, members of contract markets and foreign brokers report only if carrying or holding reportable, *i.e.*, large positions. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA), which imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to this rule. As noted in the proposed rule, the Commission believes that the rule amendment does not contain information requirements which require the approval of the Office of

[1] Securities broker-dealers and their registered representatives may offer and sell TRAKRS futures contracts pursuant to a no-action letter issued by Commission staff on July 11, 2001. *See* CFTC Letter 02–22, Division of Trading and Markets, CFTC (July 11, 2001), available on the Commission's Web site at *http://www.cftc.gov.*

[2] 67 FR 50608.

[3] 67 FR at 50609.

[4] *See* 17 CFR 17.00(g)(1).

[5] Contract markets should continue to report under 17 CFR part 16, the actual TRAKRS position without regard to the reporting convention applied for reports under part 17.

[6] 67 FR at 50609.

[7] 67 FR at 50609.

[8] 47 FR 18618—20 (Apr. 30, 1982).

Management and Budget. The purpose of this rule is to establish a specific reporting level for TRAKRS.

List of Subjects in 17 CFR Part 15

Brokers, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and in particular sections 4g, 4i, 5, 5a and 8a of the Act, 7 U.S.C. 6g, 6i, 7, 7a and 12a, as amended, the Commission hereby amends part 15 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

1. The authority section for part 15 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 9, 12a, 19, and 21, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000); 5 U.S.C. 552 and 552(b).

2. Section 15.03 is amended by revising paragraph (b) to read as follows:

§ 15.03 Reporting levels.

* * * * *

(b) The quantities for the purpose of reports filed under parts 17 and 18 of this chapter are as follows:

Commodity	Number of contracts
Agricultural:	
Wheat	100
Corn	150
Oats	60
Soybeans	100
Soybean Oil	200
Soybean Meal	200
Cotton	50
Frozen Concentrated Orange Juice	50
Rough Rice	50
Live Cattle	100
Feeder Cattle	50
Lean Hogs	100
Sugar No. 11	400
Sugar No. 14	100
Cocoa	100
Coffee	50
Natural Resources:	
Copper	100
Gold	200
Silver Bullion	150
Platinum	50
No. 2 Heating Oil	250
Crude Oil, Sweet	350
Unleaded Gasoline	150
Natural Gas	175
Financial:	
Municipal Bond Index	300
3-month (13-Week) U.S. Treasury Bills	150
30-Year U.S. Treasury Bonds	1,000
10-Year U.S. Treasury Notes	1,000
5-Year U.S. Treasury Notes	800
2-Year U.S. Treasury Notes	500
3-Month Eurodollar Time Deposit Rates	1,000
30-Day Fed Funds	300
1-month LIBOR Rates	300
3-month Euroyen	100
Major-Foreign Currencies	400
Other Foreign Currencies	100
U.S. Dollar Index	50
S&P 500 Stock Price Index	1,000
E-Mini S&P Stock Price Index	300
S&P 400 Midcap Stock Index	100
Dow Jones Industrial Average Index	100
New York Stock Exchange Composite Index	50
Amex Major Market Index, Maxi	100
NASDAQ 100 Stock Index	100
Russell 2000 Stock Index	100
Value Line Average Index	50
NIKKEI Stock Index	100
Goldman Sachs Commodity Index	100
Security Futures Products:	
Individual Equity Security	1,000
Narrow-Based Index of Equity Securities	200
TRAKRS	[1] 25,000
All Other Commodities	25

[1] For purposes of part 17, positions in TRAKRS should be reported by rounding down to the nearest 1000 and dividing by 1000.

Issued in Washington, DC, this 15th day of October, 2002, by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 02–26714 Filed 10–18–02; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 47

[T.D. ATF–484]

RIN 1512–AC86

Delegation of Authority

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule places all ATF authorities contained in its Importation of Arms, Ammunition and Implements of War regulations with the "appropriate ATF officer." Consequently, this final rule removes the definitions of, and references to, specific officers subordinate to the Director. This final rule also requires that persons file documents required by these regulations with the "appropriate ATF officer" or in accordance with the instructions on the ATF form. Concurrently with this Treasury Decision, ATF is issuing ATF Order 1130.34, which will be made available as specified in this rule. Through this order, the Director delegates all of the authorities to the appropriate ATF officers and specifies the ATF officers with whom applications, notices, and other reports, which are not ATF forms, are filed.

EFFECTIVE DATE: This rule is effective October 21, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (telephone 202–927–8210 or e-mail *alctob@atfhq.atf.treas.gov).*

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Treasury Order 120–01 (formerly 221), dated June 6, 1972, the Secretary of the Treasury delegated to the Director of the Bureau of Alcohol, Tobacco and Firearms (ATF), the authority to enforce, among other laws, the provisions of chapter 52 of the Internal Revenue Code of 1986 (IRC). The Director has subsequently redelegated certain of these authorities to appropriate subordinate officers by way of various means, including by regulation, ATF delegation orders, regional directives, or similar delegation documents. As a result, to ascertain what particular officer is authorized to perform a particular function under such provisions, each of these various delegation instruments must be consulted. Similarly, each time a delegation of authority is revoked or redelegated, each of the delegation documents must be reviewed and amended as necessary.

ATF has determined that this multiplicity of delegation instruments complicates and hinders the task of determining which ATF officer is authorized to perform a particular function. ATF also believes these multiple delegation instruments exacerbate the administrative burden associated with maintaining up-to-date delegations, resulting in an undue delay in reflecting current authorities.

Accordingly, this final rule rescinds all authorities of the Director in Title 27, Code of Federal Regulations, Part 47, Importation of Arms, Ammunition and Implements of War, that were previously delegated and places those authorities with the "appropriate ATF officer." Also, all of the authorities of the Director that were not previously delegated are placed with the "appropriate ATF officer." Along with this final rule, ATF is publishing ATF Order 1130.34, Delegation of the Director's Authorities in 27 CFR Part 47, Importation of Arms, Ammunition and Implements of War, which delegates certain of these authorities to the appropriate organizational level. The effect of these changes is to consolidate the Director's delegations of authority for part 47 into one delegation instrument. This action both simplifies the process for determining what ATF officer is authorized to perform a particular function and facilitates the updating of delegations in the future. As a result, delegations of authority will be reflected in a more timely and user-friendly manner.

This final rule also eliminates all references in the regulations that identify the ATF officer with whom an ATF form is filed. This is because ATF forms will indicate the officer with whom they must be filed. Similarly, this final rule also amends part 47 to provide that the submission of documents other than ATF forms (such as letterhead applications, notices and reports) must be filed with the "appropriate ATF officer" identified in ATF Order 1130.34. These changes will facilitate the identification of the officer with whom forms and other required submissions are filed.

In addition, this final rule makes the following conforming changes in 27 CFR part 47:

- In Subpart D—Administrative Provisions, section 47.41 is amended to provide that the instructions for an ATF form identify the ATF officer with whom it must be filed.
- In Subpart F—Miscellaneous Provisions, section 45.58 is added to recognize the authority of the Director to delegate regulatory authorities in part 47 and to identify ATF Order 1130.34 as the instrument making such delegations.

ATF has made or will make similar changes in delegations of authority to all other parts of Title 27 of the Code of Federal Regulations through separate rulemakings.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. A copy of this final rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action because it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Administrative Procedure Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 47

Administrative practice and procedure, Arms and munitions, Imports, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures.

Authority and Issuance

Title 27, Code of Federal Regulations is amended as follows:

PART 47—IMPORTATION OF ARMS, AMMUNITION AND IMPLEMENTS OF WAR

Paragraph 1. The authority citation for part 47 continues to read as follows:

Authority: 22 U.S.C. 2778.

Par. 2. Amend § 47.11 by removing the definitions of "ATF officer" and "Regional director (compliance)" and adding the definition of "Appropriate ATF officer" to read as follows:

§ 47.11 Meaning of Terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) specified by ATF Order 1130.34, Delegation of the Director's Authorities in 27 CFR Part 47, Importation of Arms, Ammunition and Implements of War.

* * * * *

Par. 3. Section 47.31 is revised to read as follows:

§ 47.31 Registration requirement.

Persons engaged in the business, in the United States, of importing articles enumerated on the U.S. Munitions Import List must register by making an application on ATF Form 4587.

Par. 4. Revise paragraph (a) and the second sentence of paragraph (c) of § 47.32 to read as follows:

§ 47.32 Application for registration and refund of fee.

(a) Application for registration must be filed on ATF Form 4587 and must be accompanied by the registration fee at the rate prescribed in this section. The appropriate ATF officer will approve the application and return the original to the applicant.

* * * * *

(c) * * * A request for a refund must be submitted to the appropriate ATF officer at the Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, prior to the beginning of any year for which a refund is claimed.

* * * * *

§§ 47.33; 47.42; 47.43, 47.44; 47.45; 47.51; and 47.52 [Amended]

Par. 5. Remove the words "Director" or "Director's" each place they appear and adding, in substitution, the words "appropriate ATF officer" or "appropriate ATF officer's", respectively, in the following places:

a. Section 47.33;

b. Section 47.42(a)(2)(i);

c. Section 47.43(c);

d. Section 47.44;

e. The second sentence of § 47.51; and

f. The introductory text of paragraph (b) and the last two sentences of paragraph (f) of § 47.52.

Par. 6. Revise the first and second sentences of § 47.34(b) to read as follows:

§ 47.34 Maintenance of records by persons required to register as importers of Import List articles.

* * * * *

(b) Registrants under this part engaged in importing articles on the U.S. Munitions Import List subject to the permit procedures of subpart E of this part must maintain for a period of 6 years records bearing on such articles imported, including records concerning their acquisition and disposition, including Forms 6 and 6A. The appropriate ATF officer may prescribe a longer or shorter period in individual cases as such officer deems necessary. * * *

* * * * *

Par. 7. Amend § 47.35 by removing the word "Director" and adding, in substitution, the words "appropriate ATF officer" from the first sentence of paragraph (a), and adding a sentence at the end of paragraph (a) and revising paragraph (b) to read as follows:

§ 47.35 Forms prescribed.

(a) * * * The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF Web site *http://www.atf.treas.gov/*.

§ 47.41 [Amended]

Par. 8. Amend § 47.41(a) and (b) by removing the phrase "issued by the Director".

§ 47.42 [Amended]

Par. 9. Amend the first sentence of the introductory text of § 47.42(a)(1) by removing the commas and phrase ", in triplicate, with the Director".

Par. 10. Amend the first sentence of the introductory text of § 47.45(a) by removing the phrase "from the Director" and revise § 47.45(a)(1) to read as follows:

§ 47.45 Importation.

(a) * * *

(1) In obtaining the release from Customs custody of an article imported pursuant to a permit, the permit holder will prepare and file Form 6A according to its instructions.

* * * * *

§ 47.51 [Amended]

Par . 11. Amend the third sentence of § 47.51 by removing the phrase "to the Director".

Par. 12. Revise the second sentence of § 47.52(f) to read as follows:

§ 47.52 Import restrictions applicable to certain countries.

* * * * *

(f) * * * The certification statement will be prepared in letter form, executed under the penalties of perjury, and should be submitted with the application for an import permit. * * *

Par. 12. Add a new section to Subpart F—Miscellaneous Provisions to read as follows:

§ 45.58 Delegations of the Director.

The regulatory authorities of the Director contained in this part are delegated to appropriate ATF officers. These ATF officers are specified in ATF O 1130.34, Delegation of the Director's Authorities in 27 CFR Part 47. ATF delegation orders, such as ATF O 1130.34, are available to any interested party by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, VA 22150–5950, or by accessing the ATF Web site *http://www.atf.treas.gov/*.

Signed: August 26, 2002.

Bradley A. Buckles,

Director.

Approved: September 17, 2002.

Timothy E. Skud,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 02–26680 Filed 10–18–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–028]

Drawbridge Operation Regulation; Three Mile Creek, Mobile, AL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Alabama State Docks Terminal Railway railroad swing span drawbridge across Three Mile Creek, mile 0.7, at Mobile, Alabama. This deviation allows the draw of the railroad swing span bridge to remain closed to navigation from 7 a.m. until 5 p.m. from October 19, 2002 until October 28, 2002; except that, the bridge will open on signal between noon and 12:30 p.m. daily if at least two hours advanced notification is given. This temporary deviation is necessary to allow for the replacement of all rail, railway timbers and bridge joints.

DATES: This deviation is effective from 7 a.m. on Saturday, October 19, 2002 until 5 p.m. on Monday, October 28, 2002.

ADDRESSES: Materials referred to in this notice are available for inspection or copying at the office of the Commander (obc), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396 between the hours of 7 a.m. and 3 p.m. Monday through Friday except Federal holidays. The Bridge Administration Branch, Eighth District (obc), maintains the public docket for this notice.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Alabama State Docks Terminal Railway railroad swing span drawbridge across Three Mile Creek, Baldwin County, Alabama has a vertical clearance in the closed-to-navigation position of 4 feet above mean high water. The bridge provides unlimited vertical clearance in the open-to-navigation position. Navigation on the waterway consists of tugs with tows. Presently, the draw opens on signal for the passage of vessels as required by 33 CFR 117.5.

Alabama State Docks Terminal Railway requested a temporary deviation for the operation of the drawbridge to accommodate maintenance work. The work involves replacement of all rails, railway timbers and bridge joints on the bridge. This work is essential for continued safe operation of the draw span of the bridge.

This deviation allows the draw of the railroad swing span bridge to remain closed to navigation from 7 a.m. until 5 p.m. from October 19, 2002 until October 28, 2002; except that, the bridge will open on signal between noon and 12:30 p.m. daily if at least two hours advanced notification is given. The draw will open on signal between 5 p.m. and 7 a.m. The draw will be opened for emergencies but delays of up to one hour may occur during repair operations. The telephone number to call to request an opening during this repair work is 251–441–7300.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 9th, 2002.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 02–26551 Filed 10–18–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

43 CFR Part 2

RIN 1090–AA61

Revision of the Freedom of Information Act Regulations and Implementation of the Electronic Freedom of Information Act Amendments of 1996

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This document amends the Department of the Interior's (DOI or Agency) regulations implementing the Freedom of Information Act (FOIA). The FOIA regulations have been completely rewritten in plain language, question and answer format. The regulations also contain new provisions implementing the Electronic Freedom of Information Act Amendments of 1996 (E-FOIA). Additionally, the regulations have been updated to reflect changes in the Department's policies and procedures, developments in case law, cost figures for calculating and charging fees, and organizational changes within DOI. As a result, the public will have a clearer understanding of DOI's policies and procedures implementing the FOIA.

EFFECTIVE DATE: November 20, 2002.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Department of the Interior, 1849 C Street, NW, Room 5323, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Alexandra Mallus by telephone at (202) 208–5342, by fax at (202) 501–2360, or by e-mail at *alexandra_mallus@ios.doi.gov*.

SUPPLEMENTARY INFORMATION:

Background

On July 16, 2001, the Department of the Interior published a proposed rule that revised its existing regulations under the FOIA and added new provisions implementing the Electronic FOIA Amendments. See 66 FR 36966, July 16, 2001. Interested persons were afforded an opportunity to participate in the rulemaking through submission of written comments on the proposed rule. The Department received three responses to its proposed rule. The Department has adopted several of the modifications suggested by the commenters and has made other revisions to its proposed rule for clarity as well.

The revision of Part 2, Subparts A and B, incorporates changes to the language and structure of the regulations and adds new provisions to implement the E-FOIA (Public Law 104–231). New provisions implementing the amendments are found at § 2.4(c) (electronic reading rooms), § 2.9 (format of disclosure), § 2.12 (timing of responses), § 2.14 (expedited processing), § 2.21(a) (electronic searches), § 2.21(c) (marking deletions), § 2.21(d)(3) (volume estimation), and § 2.26 (multitrack processing).

Subpart B now describes information that is routinely available to the public through the agency reading rooms and the Internet. Requesters are encouraged to use these resources first before filing a FOIA request. Subpart E is added to include information on DOI's FOIA annual report.

Section 2.3(t) has been revised to clarify that the term "review" includes the time spent by bureau staff and attorneys considering any formal objection to disclosure made by a submitter under § 2.23(f).

In light of the decision in Public Citizen v. Department of State, 276 F.3d 634 (D.C. Cir. 2001), DOI has revised §§ 2.7(d) and 2.21(a) of the final rule. These sections now provide that in determining which records are responsive to a FOIA request, the bureau will consider any records in its

possession and control as of the date it begins its search.

Requesters now have 30 workdays, instead of 20 workdays, to file an appeal after the date of DOI's response or receipt of any records provided (§ 2.29(a)).

New sections have been added, such as: (1) § 2.24 concerning submitter designations; (2) § 2.25 regarding requests for Federally-funded research data; (3) § 2.27 on handling a request for information contained in a Privacy Act system of records; and (4) § 2.33 on providing notice to requesters and submitters concerning appeal decisions dealing with commercial or financial information.

Revisions to the Department's fee schedule may be found in Appendix C. The duplication charge will remain the same, at thirteen cents per page. Document search and review charges will increase to reflect the average hourly labor costs, plus 16 percent for benefits, of employees in the following three categories: Clerical, professional, and managerial. (The managerial category is new and designed to cover employees at the GS–13 level and above.) The average grade for the clerical and professional categories has been adjusted in the final rule to more accurately reflect the hourly labor costs for those categories and to clarify the employee grade levels that are covered by each category.

Also, the criteria for determining fee waivers have been clarified to make it clear that DOI decides fee waiver requests on a case-by-case basis and to ensure that requesters know that they must provide sufficient justification to support their fee waiver requests (§ 2.19 and Appendix D).

The new rule increases the dollar amount below which we will not bill a requester. Under the old regulations, we charged a fee only if it cost us more than $15 to process a FOIA request. Under the new regulations, we will charge a fee only if the cost is more than $30. The new fee provisions are located in § 2.16(b)(2).

Paragraphs (c)(3) and (c)(4) of Appendix F, Mineral Leasing Act and Mineral Leasing Act for Acquired Lands—Special Rules, have been revised to make them more consistent with the statutory provisions from which they are derived.

Because we have rewritten the FOIA regulations extensively, Subparts C through E of the old regulations will be redesignated as Subparts F through H in the final rule. While the final rule redesignates these three subparts, it does not revise Subparts G or H. Subpart F is revised to clarify that this Subpart applies to information pertaining to Federal coal resources on acquired lands, as well as to Federal coal leases on lands that are governed by the Mineral Leasing Act. The Mineral Leasing Act for Acquired Lands applies to acquired Federal lands; the Mineral Leasing Act applies to other Federal lands. Both have similar provisions. In Appendix F, paragraph (a)(3), the clause "which fit within an exemption to the FOIA" has been removed. The Mineral Leasing Act, 30 U.S.C. 201(b)(3), applies to information collected pursuant to that provision, regardless of whether the information is subject to an exemption under the FOIA. Therefore, the clause "which fit within an exemption to the FOIA" is not necessary.

The Department received three responses from commenters: the first, from a national trade association; the second, from a nonprofit consumer advocacy organization; and the third, from a statewide nonprofit public interest organization. Due consideration has been given to each of the comments received. A discussion of the comments follows.

Issue 1: One commenter suggested adding an amendment to the Department's final rule incorporating the requirements of Public Law 105–277 which directed OMB to amend Section __.36 of OMB Circular A–110. OMB's revised Circular A–110 articulates the procedures by which Federally-funded research data that were used by the Federal Government in developing an agency action may be made available to the public under the FOIA.

Our Response: This comment has been adopted by the Department. A new section has been added to DOI's final rule (§ 2.25) which provides procedures for handling FOIA requests for Federally-funded research data in the possession of a private entity.

Issue 2: One commenter indicated that the Department's regulations should retain the existing requirement to articulate a "sound ground" for a denial or partial denial of an information request. This commenter suggested that the bureau must not only cite legal authority for the denial but also must provide a brief explanation why, given the record(s) and exemption(s) at issue, it is appropriate for the bureau to invoke the exemption rather than exercise its discretion (except where prohibited by law) to waive the exemption and disclose the record(s) in accordance with guidance issued by the Attorney General in May 1997 and September 1999.

Our Response: Although the Department declines to adopt this commenter's suggestion, it has modified the proposed rule. The 1997 and 1999 guidance which this commenter references has been superseded by guidance issued by the Attorney General in October 2001. It is subject to further revision by this or subsequent administrations. There is nothing in the FOIA which requires the inclusion of the "sound grounds" language in the Department's FOIA regulations. In light of these considerations, the Department has changed the language to avoid conflicts with current and future Department of Justice (DOJ) guidance on this subject. DOI also has modified the language in § 2.21(d)(2) to make clear that the bureau's response should include an explanation of the reasons for the denial of the request. Finally, § 2.21(b)(2) of this rule has been revised to provide that a bureau may, consistent with Departmental policy, determine that a discretionary release is appropriate under the particular circumstances.

Issue 3: One commenter indicated that the availability of immediate judicial relief, without filing an appeal, was not clearly stated in the proposed rule, and suggested that the requester's right to sue be stated more explicitly throughout the regulations.

Our Response: DOI believes that it has given sufficient notice concerning a requester's right to file a lawsuit (see § 2.12(a), § 2.13(c), and § 2.31(b)) and, accordingly, has declined to adopt this commenter's suggestion.

Issue 4: DOI received several comments from one individual concerning the fee waiver criteria that are included in Appendix D of the proposed regulations. This commenter objected to the requirement that a requester submit detailed information to support a fee waiver request, claiming that the requester may not be able to provide "detailed information" without having seen the information in the requested records. According to this commenter, the criteria in Appendix D could unreasonably restrict the availability of fee waivers by making it unreasonably difficult to show that disclosure of the information "is likely to contribute significantly to public understanding of the operations or activities of the government." This commenter also discussed the potential value of previously released information, and the definition of "public at large" as it relates to fee waivers. Finally, this commenter pointed out an error in paragraph numbering in Appendix D.

Our Response: The intent of the Department's regulations is not to demand "detailed information" about the records being sought, but rather to clarify for the public the determinative factors that the Department considers when deciding whether to grant a fee waiver. Requesters then can adequately address these factors in their fee waiver requests. DOI has added the following language to the first paragraph of Appendix D in response to this commenter's concerns: "You should explain the significance of the release of the information to the public's understanding of the Government's operations and activities based on your understanding of the type of information that your are requesting."

DOI agrees with the comment on the potential value of previously released information. Confirmation or clarification of previously released information can be as important to public understanding of Government activities as the initial disclosure of information when it was new information. The Department has amended the regulations at paragraph (b)(3)(ii) of Appendix D to clarify this.

In response to another comment, DOI has added "a reasonably broad audience of persons interested in the subject" at the end of the initial question in paragraph (b)(2) (iv) of Appendix D. Finally, DOI has corrected the paragraph designation in Appendix D, Fee Waiver Criteria.

Issue 5: Two comments concerned expedited processing of requests. One commenter asked the Department to adopt an additional provision expediting the processing of records that are subject to multiple pending requests. This commenter also urged DOI to expand the criteria covering who may make a request for expedited processing to include organizations whose business includes disseminating information, even if disseminating information is not their primary business, *i.e.*, non-news media requesters when those entities have an urgent need to report on a Government activity.

Our Response: DOI has declined to adopt these comments. With regard to the first comment, while Congress did give agencies latitude to expand expedited processing to other categories, it also admonished agencies that being "unduly generous" in creating other categories for expedited processing "would unfairly disadvantage other requesters." H.R. Rep. No. 104–795, at 26 (1996). Accordingly, the Department declines to create a fourth expedited processing category for records subject to multiple requests. In response to the second issue, the language in § 2.14(a)(2) has been modified to allow entities other than representatives of the news media to be considered for expedited processing. However, consistent with the language in the statute, their main professional activity or occupation must be information dissemination.

Issue 6: One commenter stated that while the bureaus should be allowed to develop their own standards for multitrack processing, these standards, once formulated, should be made available for public comment prior to implementation.

Our response: Prior to implementing a multitrack processing system, the Department will provide guidance in the **Federal Register** and/or on its FOIA website so that requesters will know how to draft their requests to qualify for a faster processing track (see amended language at § 2.26(b)).

Issue 7: One commenter pointed out that § 2.4(c)(iv) of the proposed rule contains an incomplete description of the records that should be in DOI's electronic reading rooms and thus does not comply fully with E–FOIA.

Our Response: The Department has adopted this comment and has revised the language in § 2.4(c)(1)(iv) of the final rule to read as follows: "Copies of records that have been or are likely to become the subject of frequent requests under the FOIA and an index of those documents." DOI also has added a definition of "frequently requested records" under § 2.3(l) for clarification purposes.

Issue 8: One commenter recommended that the Department provide the same notice to requesters whose requests have been referred to other Federal agencies as those whose requests have been referred to other DOI bureaus.

Our Response: DOI has amended the language in § 2.22(b)(2) to provide for such notification in the event a bureau refers documents to another agency (the originating agency) for a release determination. However, if a bureau receives a request for records not in its possession, but which it believes may be in the possession of another Federal agency, it will return the request to the requester and advise him/her to submit it to the other agency directly.

Issue 9: One commenter indicated that if DOI receives a FOIA request for a record in its possession that originated with another agency (or with which another agency is substantially concerned), it should make the release determination after consulting with the originating agency. This commenter suggested that DOI should not refer the record to the originating agency if that agency has a backlog or the agency's policy on processing referrals will delay the response to the requester.

Our Response: The Department declines to adopt this comment. DOI must consider which agency is in a better position to make the proper release determination. Consideration of workload issues should not drive the determination of which agency is best suited to make the release determination. Use of workload considerations for this determination could result in improper releases.

Issue 10: Another commenter suggested that DOI should have a central location where all FOIA requests can be sent if the requester is not certain which bureau has the records he/she is seeking.

Our Response: DOI has not adopted this comment. The Department's FOIA regulations provide the public with sufficient notice on how requests will be processed. In response to another issue this commenter raised involving intra-bureau requests, § 2.10(b)(3) has been revised. Under § 2.10(b)(3), as revised, if the request states that it seeks records from unspecified offices within the same bureau, the FOIA Contact will send the request to the Bureau FOIA Officer, who will refer it to those offices which, to the best of his/her knowledge, have or are likely to have responsive records.

Issue 11: One commenter stated that the standard for starting the statutory time limits should be the same for "regular mail and e-mailed" requests/appeals, *i.e.*, the time period for an electronic request/appeal should begin when the request is received, not when it is opened.

Our Response: The Department has adopted this comment. Sections 2.12(b), 2.30(b), and 2.32(a) of this rule have been changed to provide that the time limit for an electronic request/appeal begins when the request is received, not when it is opened.

Regulatory Planning and Review (E.O. 12866)

DOI has determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and therefore is not subject to OMB review because it is not likely to:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments, or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs or the rights or obligations of their recipients; or

(4) Raise novel legal or policy issues.

Regulatory Flexibility Act

DOI certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 606(b)). Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by DOI are nominal.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not result in an annual effect on the economy of more than $100 million per year; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based enterprises. It deals strictly with implementation of the FOIA within DOI.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule does not have any takings implications. It deals strictly with implementation of the FOIA within DOI. Therefore, a takings assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have Federalism implications as it deals strictly with implementation of the FOIA within DOI. Therefore, a Federalism assessment is not required.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and the requirements of §§ 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501–3520) is required.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act (42 U.S.C. 4321–4347) of 1969 is not required.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Classified information, Courts, Freedom of information, Government employees, Privacy.

Dated: October 2, 2002.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget.

Regulation Promulgation

For the reasons stated in the preamble, we amend Part 2 of Title 43 of the Code of Federal Regulations, as follows:

PART 2—RECORDS AND TESTIMONY: FREEDOM OF INFORMATION ACT

1. The authority citation for Part 2 is revised to read as follows:

Authority: 5 U.S.C. 301, 552 and 552a; 31 U.S.C. 9701 and 43 U.S.C. 1460–1461. Appendix F to Part 2 also is issued under 30 U.S.C. 201–209; 30 U.S.C. 351–360.

Subparts C Through E [Redesignated as Subparts F Through H]

2. Subparts C through E are redesignated as Subparts F through H.

3. Subparts A and B are revised in their entirety and redesignated as Subparts A through E to read as follows:

Subpart A—General Information

Sec.

2.1 What do the regulations cover?
2.2 What is DOI's policy regarding release of records under the FOIA?
2.3 What terms do I need to know?

Subpart B—Information Routinely Available to the Public Without Filing a FOIA Request

2.4 How do I obtain information routinely available to the public?
2.5 Does DOI maintain an index of its reading room materials?
2.6 Will the Department accept written requests, including fax, e-mail, or telephone requests, for routinely available information?

Subpart C—Requests for Records Under the FOIA

2.7 What do I need to know before filing a FOIA request?
2.8 What information do I include in my request?
2.9 May I specify the form or format of disclosure?
2.10 Where do I send my request?
2.11 Why is it important to send my request to the right office?
2.12 When can I expect the response?
2.13 When may the bureau take a time extension to respond to my request?
2.14 When can I get expedited processing?
2.15 Will I be charged fees?
2.16 How are fees determined?
2.17 How will my requester category affect the fees that I am charged?
2.18 How are fees assessed and collected?
2.19 When will bureaus waive fees?
2.20 When will bureaus grant discretionary fee waivers?
2.21 How will the bureau respond to my request?
2.22 What happens if a bureau receives a request for records it does not have or did not create?
2.23 How will a bureau handle a request for commercial or financial information that it has obtained from a person or entity outside the Federal Government?
2.24 Is a submitter required to designate information that is commercially or financially sensitive?
2.25 How will a bureau handle a request for Federally-funded research data in the possession of a private entity?
2.26 Does the bureau provide multitrack processing of FOIA requests?
2.27 How will a bureau handle a request for information that is contained in a Privacy Act system of records? (See DOI's Privacy Act regulations (Subpart G of this part) for additional information)

Subpart D—FOIA Appeals

2.28 When may I file an appeal?
2.29 How long do I have to file an appeal?
2.30 How do I file an appeal?
2.31 How will DOI respond to my appeal?
2.32 How long does DOI have to respond to my appeal?
2.33 How will the Department notify you and the submitter of commercial or financial information when it makes an appeal decision concerning such information?

Subpart E—FOIA Annual Report

2.34 Where can I get a copy of DOI's FOIA annual report?

* * * * *

Subpart A—General Information

§ 2.1 What do the regulations cover?

(a) The regulations implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, and contain the procedures by which the public may inspect and obtain copies of Department of the Interior (DOI or Department) records through the FOIA or by other means.

(b) They apply to all agency records as defined in § 2.3(c).

(c) The policy and procedures set forth in these regulations apply to all bureaus and offices of the Department.

(d) Nothing in the regulations will entitle you to any service or any record that is not required to be provided under the FOIA.

(e) These regulations do not apply to records that fall under the law enforcement exclusions contained in 5 U.S.C. 552(c).

§ 2.2 What is DOI's policy regarding release of records under the FOIA?

It is our policy to make records of the Department available to the public consistent with the spirit of the FOIA and the Privacy Act.

§ 2.3 What terms do I need to know?

For the purposes of this part, the following definitions apply:

(a) *Act* and *FOIA* mean the Freedom of Information Act, 5 U.S.C. 552, as amended.

(b) *Agency* means any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency.

(c) *Agency record* means any documentary material which is either created or obtained by an agency in the transaction of agency business and under agency control. See §§ 2.21 and 2.25.

(1) Agency records include:

(i) Books, papers, maps, charts, plats, plans, architectural drawings, photographs, and microfilm;

(ii) Machine-readable materials such as magnetic tape and disks;

(iii) Electronic records (including e-mail messages);

(iv) Audiovisual material such as still pictures, sound and video recordings; and

(v) All other documentary materials, regardless of physical form, format or characteristics.

(2) This definition generally does not cover records of an individual which are:

(i) Created and maintained primarily for an individual's convenience;

(ii) Not subject to agency creation or retention requirements; and

(iii) Not distributed to other agency employees for their official use.

(d) *Bureau* means any major component of the Department administering its own FOIA program. A list of these components is contained in Appendix A to this part.

(e) *Commercial-use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester falls into this category, the bureau will consider the identity of the requester and intended use of the records in addition to any other available information about the requester.

(f) *Direct costs* means those expenses that a bureau actually incurs in searching for and duplicating (and in the case of commercial-use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary and benefits of the employee performing the work and the cost of operating duplicating equipment. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(g) *Duplication* means making a copy of a record, or the information contained in it, to respond to a FOIA request. Copies can take the form of paper, microform, photographs, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others.

(h) *Educational institution* means a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, which operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(i) *Expedited processing* means giving a FOIA request priority, and processing it ahead of other requests pending in the bureau because a requester has shown an exceptional need or urgency for the records (see § 2.14).

(j) *FOIA request* means a written request (this includes facsimile (fax) and electronic mail (e-mail)) made by any member of the public for Federal agency records.

(k) *Free-lance journalist* means a representative of the news media who is able to demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. A publication contract or past record of publication, or evidence of a specific free-lance assignment from a news organization may indicate a solid basis for expecting publication.

(l) *Frequently requested documents* means documents that have been requested at least three times under the FOIA. It also includes documents the agency anticipates would likely be the subject of three or more requests.

(m) *Multitrack processing* means placing simple requests, requiring relatively minimal review, in one processing track and more voluminous and complex requests in one or more other tracks. Requests in each track are processed on a first-in/first-out basis.

(n) *Noncommercial scientific institution* means an institution that is not operated for commerce, trade or profit, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

(o) *Privacy Act* request means a written request (paper copy with an original signature) made by an individual for information about himself or herself that is contained in a Privacy Act system of records. The Privacy Act applies only to U.S. citizens and aliens lawfully admitted for permanent residence. Therefore, only those individuals may make Privacy Act requests.

(p) *Published research findings* means research findings that are either:

(1) Published in a peer-reviewed scientific or technical journal; or

(2) Publicly and officially cited by a Federal agency in support of an agency action that has the force and effect of law.

(q) *Reading room materials* means records (paper or electronic) that are required to be made available to the public under 5 U.S.C. 552(a)(2), as well as other records that a bureau, at its discretion, makes available to the public

for inspection and copying without requiring the filing of a FOIA request.

(r) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that is (or would be) of current interest to the public. Examples of news media entities include, but are not limited to, newspapers, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. To be in this category, a requester must not be seeking the requested records for a commercial use. Further, a bureau normally will not consider requests for records involving news dissemination to be commercial-use requests.

(s) *Research data* means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not such things as trade secrets, commercial information, personnel and medical information and any similar information which is protected under law.

(t) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes the deletion of exempt material or other processing necessary to prepare the record(s) for disclosure, including routine consultation among bureau staff and attorneys regarding the applicability of exemptions; and time spent considering any formal objection to disclosure made by a submitter under § 2.23(f).

(u) *Search* means the process of looking for and retrieving agency records and information responsive to a request (manually or by automated means).

(v) *Submitter* means any person or entity outside the Federal Government from whom the Department directly or indirectly obtains commercial or financial information. The term includes, but is not limited to individuals, corporations, and state, local, tribal, and foreign governments.

(w) *Workday* means a regular Federal workday. It does not include Saturdays, Sundays, or Federal legal public holidays.

Subpart B—Information Routinely Available to the Public without Filing a FOIA Request

§ 2.4 How do I obtain information routinely available to the public?

A great deal of information is available to the public without filing a FOIA request. Examples are Departmental policies, procedures, and organizational descriptions. The following guidance will help you obtain this information. [**Note:** For copies of records that are not routinely available, you must submit a FOIA request to the DOI office where the records are located. Procedures for requesting records under the FOIA are provided in Subpart C of this part.]

(a) *General.*

(1) General information about DOI or one of its bureaus may be obtained by visiting DOI's home page (see Appendix B to this part for a list of Internet addresses) or by contacting the Office of Public Affairs/Communications for the appropriate bureau (see Appendix A to this part for a list of DOI contacts). Many documents are made available to the public through DOI's reading rooms. Some documents also may be available in DOI's electronic reading rooms on the Internet.

(2) Information on DOI's FOIA Program and a Reference Guide to assist you in obtaining various types of information are available in DOI's reading rooms, through the FOIA home page, or by contacting the Departmental FOIA Officer.

(3) To obtain information about specific records in DOI, you also may refer to:

(i) The index of documents frequently requested under the FOIA, which is available in DOI's reading rooms, through the FOIA home page, or by contacting one of the bureau FOIA Officers; and

(ii) The index and description of DOI's major information and record locator systems, which are available in DOI's reading rooms, through the FOIA home page, or by contacting one of the bureau FOIA Officers.

(4) Another source of information is DOI's Library, which contains over one million holdings dealing with a broad range of matters pertaining to the Department's mission. You may wish to visit the Library, which is located at the C Street entrance of the Main Interior Building, 1849 C Street, NW., Washington, DC 20240 (see Appendix A to this part). The Library is open to the public for on-site reference use from 7:45 a.m.–5:00 p.m., Monday–Friday (excluding Federal legal public holidays). Additional information regarding the Library's holdings and services may be obtained by visiting its home page (see Appendix B to this part).

(b) *Published information and rules.* Under 5 U.S.C. 552(a)(1), bureaus are required to publish certain information in the **Federal Register** for the guidance of the public, such as descriptions of their central and field organizations, functions, procedures, substantive rules, and statements of general policy.

(c) *Reading room materials.*

(1) Under 5 U.S.C. 552(a)(2), each bureau is responsible for making the information listed in paragraphs (c)(1)(i) through (v) of this section available for public inspection and copying unless the materials are promptly published and copies offered for sale. Bureaus must make any such records created on or after November 1, 1996, available by the Internet or by other computer telecommunication methods or electronic means as quickly as practicable.

(i) Final opinions rendered in the adjudication of cases.

(ii) Policy statements and interpretations which have been adopted by DOI and are not published in the **Federal Register**.

(iii) Administrative staff manuals and instructions affecting the public.

(iv) Copies of records that have been or are likely to become the subject of frequent FOIA requests and an index of those documents.

(v) A subject-matter index of its reading room records (see § 2.5).

(2) Bureaus may, at their discretion, make other records available for inspection and copying in reading rooms or via their home pages.

(d) *Inspection and copying of reading room materials.*

(1) Reading room materials are available for inspection and copying at the locations listed in Appendix A to this part and, in some cases, through the Internet; however, not all records may be available in all locations.

(i) If you need assistance in determining the location and availability of the records you are seeking, contact the appropriate reading room or FOIA Contact listed in Appendix A to this part.

(ii) If you file a FOIA request for reading room materials and the information you request is available on the Internet, the FOIA Contact should refer you to the appropriate Web site. If the reading room materials are not available electronically, the FOIA Contact may either send you the materials, or forward your request to the appropriate reading room and provide the name and telephone number of a staff member you may contact. You may, nevertheless, ask the bureau to process your request as any other FOIA request.

(2) A bureau may delete exempt information from some records before making them available for inspection and copying in a reading room. (See § 2.21(c)). You may not appeal a bureau's decision to delete exempt information from a document it places in a public reading room. If you would like access to the entire record, you must submit a FOIA request under the procedures in Subpart C of this part. However, this does not guarantee that the entire record will be released. If you submit such a FOIA request and are not satisfied with the response, you may file an appeal as described in § 2.28.

(3) There is no charge to inspect reading room materials. Copying services will be provided at the fees specified in Appendix C to this part. However, other fees may apply where a bureau has a statute that specifically requires the bureau to set fees for particular types of records.

(4) If you submit a fee waiver request for information in a reading room, it will be processed under the procedures in § 2.19.

§ 2.5 Does DOI maintain an index of its reading room materials?

Each bureau will maintain and make available for public inspection and copying a current subject-matter index of its reading room materials (5 U.S.C. 552(a)(2)). The index will be available in the bureau's reading room(s) and in their electronic reading rooms on the Internet. Each index will be updated regularly.

§ 2.6 Will the Department accept written requests, including fax, e-mail, or telephone requests, for routinely available information?

Yes. Although a request for this type of information is not a FOIA request, the bureau will send you the requested information and charge you for the copies, according to the fee schedule in Appendix C to this part. While the bureau will attempt to respond to oral requests (those made by telephone or otherwise) for routinely available information, you should submit complex requests in writing to avoid any risk of misunderstanding.

Subpart C—Requests for Records under the FOIA

§ 2.7 What do I need to know before filing a FOIA request?

(a) If the records you are seeking are not routinely available as described in Subpart B of this part, you must submit a FOIA request to the FOIA Contact at the bureau office where you believe the records are maintained (see Appendix A to this part). FOIA requests must be submitted in writing (this includes fax and e-mail)—DOI does not accept oral FOIA requests. Before submitting a request, you may find it useful to contact the appropriate bureau FOIA Contact or the Departmental FOIA Officer for additional information concerning DOI's FOIA Program. You may find the Department's Reference Guide, which is available electronically through the FOIA home page and in paper form as well, helpful in making your request.

(b) The FOIA requires that we release records unless they are protected by one of nine exemptions (see Appendix E to this part).

(c) The Act does not require a bureau to answer questions that may be asked in a FOIA request.

(d)(1) In order for a record to be considered subject to your FOIA request, it must be in the bureau's possession and control at the time the bureau begins its search for responsive records. There is no obligation for the bureau to create or compile a record to satisfy a FOIA request (for example, by combining or compiling selected items from manual files, preparing a new computer program, calculating proportions, percentages, frequency distributions, trends and comparisons, or creating maps). Normally if a bureau is extracting information from an existing computer database, this would not constitute the creation of a new record. However, a bureau has the option of creating a new record if—

(i) Doing so will provide a more useful response to the requester,

(ii) It is less burdensome than providing the existing records, and

(iii) The newly created record is fully responsive to the request.

(2) The fee in this case will not be more than the fee for the individual records. Fees will be charged consistent with the schedule in Appendix C to this part.

§ 2.8 What information do I include in my request?

(a) Description of records.

(1) You must describe the requested records in enough detail to enable an employee familiar with the subject area of the request to locate the record(s) with a reasonable amount of effort. Be as specific as possible in describing the records you are seeking. For example, whenever possible:

(i) Identify the date, title or name, author, recipient, and the subject of the record; the office that created it, the present custodian of the record and the geographical location (*e.g.*, headquarters or a regional/field office); the timeframe for which you are seeking records; and any other information that will assist the bureau in locating the material.

(ii) If the request involves a matter in litigation, state the case name and docket number as well as the court in which the case was filed.

(2) The bureau will not begin processing your request until any issues regarding the scope or nature of your request are resolved. When a request is overly broad, unclear, involves an extremely voluminous amount of records, or a burdensome search, the bureau will contact you to identify and clarify the records you are seeking. It will work with you to define the subject matter, clarify terms that are used, or narrow the scope of your request.

(3) The time limit for responding to your request will not start until the bureau receives a request reasonably describing the records or clarifying the initial request. If the bureau asks you for additional clarification and does not hear from you within 20 workdays, it will assume that you are no longer interested in pursuing your request and will close the file on your request.

(b) Fee information.

(1) Unless you request a fee waiver (see paragraph (b)(2) of this section), you should state that you are willing to pay all fees associated with processing your request or that you are willing to pay up to a specified amount. The bureau will not begin processing your request until this written assurance has been received. If the bureau anticipates that the fees for processing your request exceed the amount you have indicated you are willing to pay, the bureau will notify you that it needs your assurance of payment of fees as high as are anticipated, or an advance payment (see § 2.18(b) and (c)). If the bureau does not hear from you within 20 workdays, it will assume that you are no longer interested in this matter and will close the file on your request.

(2) You may request a fee waiver. If you are seeking a fee waiver, you must provide sufficient justification to support your fee waiver request (see the criteria in § 2.19 and in Appendix D to this part). Failure to provide adequate justification will result in a denial of your fee waiver request. Remember that if you are requesting a fee waiver, the burden is on you to demonstrate in your request that you are entitled to it. The bureau will not begin processing your request until the fee issues are resolved. As an option, at the same time you request a fee waiver you may state your willingness to pay regardless of whether

a fee waiver is granted. This will permit the bureau to process your request for records at the same time it is considering the fee waiver request. If you are required to pay a fee, and it is later determined on appeal that you are entitled to a full or partial fee waiver, an appropriate refund will be made.

(3) You should indicate what fee category you are in, *i.e.*, if you are a commercial-use requester, news media, educational institution/noncommercial scientific institution, or other requester (see §§ 2.3 and 2.17(a)). If you submit a FOIA request on behalf of another person or organization (for example, if you are an attorney submitting a request on behalf of a client), it is the underlying requester's identity and intended use that determines the fee category. If your fee category is unclear to the bureau, the 20-workday statutory time limit for processing your request will not begin to run (see § 2.12(b)) until this matter has been resolved. If the bureau requests additional clarification and does not hear from you within 20 workdays, it will assume that you are no longer interested in this matter and will close the file on your request.

(c) Mailing address information: Your postal address is required for the bureau to mail any responsive documents to you.

(d) The following information will assist the bureau in processing your request:

(1) The words "FOIA REQUEST" (prominently displayed) on the request letter and the envelope, or subject line of a request sent via e-mail or fax, or "PRIVACY ACT REQUEST" when requesting records pertaining to yourself that you believe are covered by the Privacy Act, as well as citing the appropriate act in your letter;

(2) Your telephone number (where you can be reached during normal business hours), e-mail address and fax number, if available, in case the bureau, or the Department needs to communicate with you about your request. This information is very important.

(3) A list of all the bureau FOIA Contacts to which you are sending your request. For the quickest possible handling, you should address a separate copy of your request to each bureau FOIA Contact where you believe the records are maintained.

(4) When making a request for personal records about another individual, a written authorization from that individual and any other information required by the Privacy Act system of records notice; or proof that the individual is deceased (for example, a copy of a death certificate or an obituary) as the Privacy Act does not apply to a deceased individual. (**Note:** Information about a deceased individual may be subject to protection under exemption (6) of the FOIA if the release of the information could result in an invasion of the privacy of a living individual.)

§ 2.9 May I specify the form or format of disclosure?

Generally, you may choose the form or format of disclosure for records that you request under the FOIA (5 U.S.C. 552(a)(3)(B)). Bureaus must provide the record in the requested form/format if the office responding to the request can readily reproduce the record in that form/format with reasonable efforts. However, if the process of providing the information in the requested format would damage or destroy an original document, it may not be possible to honor your format request. Bureaus must make reasonable efforts to maintain their records in forms or formats that are reproducible. You may be charged the direct costs involved in converting information to the requested format if the bureau normally does not maintain the information in that format.

§ 2.10 Where do I send my request?

(a) DOI does not have a central location where you may submit your FOIA request nor does it maintain a central index or database of documents in its possession. DOI's files are decentralized and are maintained by various bureau offices throughout the country.

(b) Submit your request in writing to the FOIA Contact at the bureau office where you believe the records are maintained. If it is unclear where to send your request, seek assistance from the FOIA Contact of the bureau that manages the programs whose records you are requesting or the Departmental FOIA Officer. You may have to do a little research to find the proper office to handle your inquiry, but you will save time in the long run if you send your request directly to the FOIA Contact at the appropriate bureau office. The bureau will process your request as follows:

(1) A request to a bureau headquarters office may be presumed to seek only records from the headquarters office, unless the request specifies otherwise.

(2) A request to a regional/field office of a bureau may be presumed to seek only records at that office, unless the request specifies otherwise.

(3) If a request to a bureau states that it seeks records located at another specific office of the same bureau, the appropriate FOIA Contact will refer the request to the other office. If the request states that it seeks records from other unspecified offices within the same bureau, the FOIA Contact will send the request to the Bureau FOIA Officer who will refer it to those offices that, to the best of his/her knowledge, have or are likely to have responsive records.

(4) If a request to a bureau states that it seeks records of another specified bureau, the bureau will refer the request to the appropriate bureau for response. If the request states that it seeks records from other unspecified bureaus, the FOIA Contact will send the request to the Bureau FOIA Officer who will ensure that the request is referred to those bureaus which, to the best of his/her knowledge, have or are likely to have responsive records. In either case, the Bureau FOIA Officer will notify you of the referral in writing and provide the name of a contact in the other bureau(s) to which the referral was made.

§ 2.11 Why is it important to send my request to the right office?

The bureau and office FOIA Contacts listed in Appendix A to this part have primary responsibility for responding to FOIA requests. Failure to send your request to the FOIA Contact at the appropriate bureau office may delay processing, because the time limit for the bureau to respond will not begin to run until a request complying with §§ 2.8 and 2.10 is received by the bureau office where the records are maintained. The processing of your request may be delayed if you send it to the Secretary of the Interior (or other high-level officials), the Office of Public Affairs/Communications, the DOI FOIA Officer, or the Department/bureau's webmaster.

§ 2.12 When can I expect the response?

(a) *Basic time limit.* Ordinarily, a bureau has 20 workdays from the date of receipt to determine whether to grant or deny your FOIA request (see paragraph (b) of this section). The bureau will notify you immediately upon reaching its decision. If you have not received a response within 20 workdays, or 30 workdays if an extension has been taken (see § 2.13) (be sure to allow for mailing time), you may contact the bureau to ask about the delay (see Appendix A to this part). You also have the right to consider any nonresponse within these time limits as a denial of records and file a formal appeal (see § 2.28(a)(3)) or lawsuit. These time limits do not apply to requests for expedited processing (see § 2.14).

(b) *Running of basic time limit.* The 20 workday time limit begins to run when a request complying with the procedures in §§ 2.8 and 2.10 is received by the FOIA contact at the bureau office that has the records you are seeking. This means that all issues regarding fees and the scope of your request must be resolved before the bureau will begin processing your request.

§ 2.13 When may the bureau take a time extension to respond to my request?

(a) The bureau may extend the 20-workday time limit for 10 more workdays when it needs to:

(1) Search for and collect the requested records from multiple offices; or

(2) Search for, collect, and examine a voluminous amount of separate and distinct records sought in a single request; or

(3) Consult with another agency having a substantial interest in the determination of the request or with one or more bureaus of the Department having substantial subject-matter interest in the request.

(b) If the bureau intends to take an extension under this subsection, it will notify you in writing and provide the reason for the extension and the date it expects to make a determination on your request.

(c) If an extension is necessary and the bureau is unable to respond to your request within 30 workdays, it will notify you in writing when you may expect a final response and advise you of your appeal rights. If an extension is taken and you have not received a response in 30 workdays, you may consider the request denied and file an appeal under § 2.28(a)(3) or file a lawsuit.

(d) A bureau may not take an extension of time to decide whether to grant a request for a fee waiver.

§ 2.14 When can I get expedited processing?

(a) When requested, a bureau will provide expedited processing if you demonstrate to the satisfaction of the bureau that the request involves:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) An urgency to inform the public about an actual or alleged Federal Government activity if the request is made by a person primarily engaged in disseminating information. In most situations, a person primarily engaged in disseminating information will be a representative of the news media. The requested information must be the type of information which has particular value that will be lost if not disseminated quickly, and ordinarily refers to a breaking news story of general public interest. However, information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media deadline unrelated to breaking news; or

(3) The loss of substantial due process rights.

(b) A request for expedited processing should be submitted with your FOIA request. For a prompt determination, you must submit a request complying with the requirements of §§ 2.8 and 2.10 to the FOIA Contact at the bureau office that maintains the records you are seeking.

(c) If you are seeking expedited processing, you must submit a statement explaining in detail the basis for your request. You must certify in your letter that your need for expedited processing is true and correct to the best of your knowledge and belief. For example, a requester within the category of paragraph (a)(2) of this section, if not a full time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his/her sole occupation.

(d) Within 10 calendar days of receipt of your request, the bureau will notify you whether it will grant expedited processing. If expedited processing is granted, the bureau will give priority to that FOIA request and process the request as soon as practicable. If expedited processing is denied, the bureau will notify you of your right to appeal the decision on expedited processing. Appeals of denials of requests for expedited processing will be processed ahead of other appeals (see § 2.32(b)). If the bureau has not responded to your request for expedited processing within 10 calendar days, you have a right to file an appeal for nonresponse (see § 2.28(a)(7)).

§ 2.15 Will I be charged fees?

Bureaus will charge fees consistent with the provisions in §§ 2.16 and 2.17. The fee schedule in Appendix C to this part applies to all bureaus of the Department.

§ 2.16 How are fees determined?

(a) *Authority.* Bureaus are authorized to charge fees to recover the direct costs of searching for, reviewing (commercial-use requesters only) and duplicating documents to respond to a FOIA request. However, nothing in this subsection will supersede any statutory authority which requires the bureau to charge specific fees for certain types of records.

(b) *Policy.* (1) Unless waived under the criteria in §§ 2.19 or 2.20, bureaus will charge fees for responding to FOIA requests consistent with the provisions of this section and the fee schedule in Appendix C.

(2) A bureau normally will not charge a fee where the fee would be $30 or less. However, if the bureau has a reasonable basis to conclude that a requester or group of requesters has divided a request into a series of requests on a single subject or related subjects to avoid fees, the requests may be aggregated and fees charged accordingly. Bureaus may presume that multiple requests of this type that are made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, bureaus will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(3) Where a bureau responds to a request on behalf of more than one bureau, the fees that would be chargeable by all bureaus involved will be considered in determining whether the total FOIA processing fee is $30 or less. If a bureau is responding on behalf of more than one bureau, and you fall under one of the fee categories in § 2.17(a)(2) or (a)(3), you will be entitled to receive up to a total of 100 pages of duplication without charge (there is no charge for searching for responsive records). If a bureau is responding on behalf of more than one bureau, and you fall under the fee category in § 2.17(a)(4), you will be entitled to receive up to a total of 100 pages of duplication and two hours of search time without charge.

(4) If a bureau obtains research data solely in response to your FOIA request, it may charge you a reasonable fee equaling the full cost of obtaining the research data from the recipient.

(c) *Searches.* Searches will be conducted in the most efficient and least expensive manner, so as to minimize costs for both you and the bureau. Except where provided in §§ 2.17(a)(2) and (a)(3), bureaus will charge for time spent in the following search activities:

(1) Time spent in trying to locate records which come within the scope of the request, whether or not documents responsive to the request are located or the records located are exempt from disclosure; and

(2) Direct costs involving the use of computer time to locate requested records.

(d) *Reviews (Commercial-use requests only).* (1) Bureaus will charge commercial-use requesters (see § 2.17(a)(1)) for time spent by bureau staff and attorneys in reviewing requested records for releasability. (See § 2.3(e).)

(2) Review costs will be assessed even if a record ultimately is not disclosed.

(e) *Duplication.* Bureaus will charge duplication fees according to the fee schedule in Appendix C to this part.

(f) *Categories of requesters.* There are four categories of requesters for the purposes of determining fees—commercial-use, educational and noncommercial scientific institutions, news media, and all others. (See §§ 2.3 and 2.17.)

§ 2.17 How will my requester category affect the fees that I am charged?

(a) When you submit a FOIA request, you must specify your fee category. Based on the information you provide, the bureau office processing your request will decide your fee category and charge as follows:

(1) Commercial-use requesters are charged fees for costs incurred in document search, review, and duplication.

(2) Educational/noncommercial scientific institutions are charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) will be provided without charge. The bureau will not charge such requesters for document search and review.

(3) News media requesters are charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) will be provided without charge. The bureau will not charge such requesters for document search and review.

(4) Requesters not covered by paragraphs (a)(1) through (a)(3) of this section—"other requesters" are charged fees for document search and duplication, except that they are entitled to the first two hours of search time and the first 100 pages of paper copies without charge (or the equivalent cost thereof if the records are in some other form). The bureau will not charge such requesters for document review.

(b) If you do not submit sufficient information in your FOIA request for the bureau to determine your fee category (see paragraphs (a)(1) through (a)(4) of this section), the bureau may ask you to provide additional clarification. This applies to all requesters. The bureau will notify you promptly when additional information is needed. In these circumstances, the 20-workday statutory time limit for responding to your request will not begin to run until you provide sufficient information. If the bureau requests additional clarification and does not hear from you within 20 workdays, it will assume that you are no longer interested in this matter and will close the file on your request.

(c) The following table summarizes the chargeable fees for each category of requester.

Category	Search fees	Review fees	Duplication fees
Commercial Use	Yes	Yes	Yes
Educational Institution. Non-Commercial Scientific Institution	No	No	Yes (100 pages free)
News Media. All Other	Yes (2 hours free)	No	Yes (100 pages free)

§ 2.18 How are fees assessed and collected?

(a) *Threshold for charging fees.* Except in those situations covered by § 2.16(b)(2), the bureau will not charge you if the fee is $30 or less.

(b) *Notice of anticipated fees.* (1) Unless you have been granted a fee waiver or have previously agreed to pay all the fees associated with your request, or the anticipated fee is $30 or less, the bureau will:

(i) Promptly notify you of the estimated costs and ask you to provide written assurance of payment of all fees or fees up to a designated amount; and

(ii) Give you an opportunity to modify your request at that time to reduce the fee.

(2) After the bureau begins processing your request, if it finds that the actual cost will exceed the amount you previously agreed to pay, the bureau will:

(i) Stop processing your request;

(ii) Promptly notify you of the higher amount and ask you to provide written assurance of payment; and

(iii) Give you an opportunity to modify your request to reduce the fee.

(c) *Advance payment.* (1) The bureau will require advance payment when the estimated fee is over $250 and—

(i) You have never made a FOIA request to DOI requiring you to pay fees; or

(ii) You did not pay a previous FOIA fee promptly.

(2) If you have previously failed to pay a fee within 30 calendar days of the date of billing, the bureau will require you to:

(i) Pay the full amount owed plus any applicable interest penalties (see paragraph (g) of this section) and to make an advance payment of the full amount of the estimated fee of the new request; or

(ii) Demonstrate that you have, in fact, paid the prior fee.

(3) At the same time the bureau notifies you that an advance payment is due, it will give you an opportunity to modify your request to reduce the fee.

(d) *Resolving the fee issue.* The bureau will not start processing your request until the fee issue has been resolved (see §§ 2.8(b) and 2.12(b)). If the bureau seeks clarification from you about a fee issue and does not hear from you within 20 workdays, it will assume that you are no longer interested in this matter and will close the file on your request.

(e) *Billing procedures.* If you are required to pay a fee associated with your request, the bureau that processes your request will send you a bill for collection.

(f) *Form of payment.* You should submit a check or money order made payable to the "Department of the Interior" or the bureau furnishing the information. The term United States or the initials "U.S." should not be included on the check or money order. Where appropriate, the official responsible for handling a request may require that payment by check be made in the form of a certified check. Some bureaus accept payment by credit card. Contact the bureau to determine what forms of payment it accepts.

(g) *Failure to pay fees.* The bill for collection or the response letter will include a statement that interest will be charged in accordance with the Debt Collection Act of 1982, as amended (31 U.S.C. 3717) and implementing regulations, if the fees are not paid within 30 calendar days of the date of the bill. This requirement does not apply if the requester is a state, local, or tribal government.

§ 2.19 When will bureaus waive fees?

(a) Fees for processing your request may be waived if you meet the criteria listed in paragraph (b) of this section and Appendix D to this part. The burden is on you to justify entitlement to a fee waiver. Requests for fee waivers are decided on a case-by-case basis. The fact that you have received a fee waiver in the past does not mean you are automatically entitled to a fee waiver for every request you may submit, because the essential element of any fee waiver determination is whether the release of the particular documents sought in the request will likely contribute significantly to public understanding of the operations or activities of the Government. The bureau will rely on the fee waiver justification you have submitted in your request letter. If you do not submit sufficient justification, your fee waiver request will be denied. The bureau may, at its discretion, communicate with you to request additional information if necessary. However the bureau must make a determination on the fee waiver request within the statutory time limit, even if the agency has not received such additional information. In certain circumstances, a partial fee waiver may be appropriate, if some, but not all, of the requested records are likely to contribute significantly to public understanding of the operations and activities of the Government.

(b) Bureaus will waive fees (in whole or part) if disclosure of all or part of the information is in the public interest because its release—

(1) Is likely to contribute significantly to public understanding of the operations or activities of the Government; and

(2) Is not primarily in the commercial interest of the requester.

(c) If a bureau denies your request for a fee waiver, it will notify you, in writing, of the following:

(1) The basis for the denial, including a full explanation of why your fee waiver request did not meet DOI's fee waiver criteria (see paragraph (b) of this section and Appendix D to this part);

(2) The name(s) and title(s) or position(s) of each person responsible for the denial;

(3) The name and title of the Office of the Solicitor attorney consulted; and

(4) A statement that the denial may be appealed within 30 workdays after the date of the denial letter to the FOIA Appeals Officer (see Appendix A to this part) under the procedures in § 2.30.

§ 2.20 When will bureaus grant discretionary fee waivers?

(a) A bureau may waive fees at its discretion if a request involves:

(1) Furnishing a copy of a document that the bureau has reproduced for free distribution;

(2) Furnishing one copy of a personal document (*e.g.*, a birth certificate) to a person who has been required to furnish it for retention by the Department;

(3) Furnishing one copy of the transcript of a hearing before a hearing officer in a grievance or similar proceeding to the employee for whom the hearing was held;

(4) Furnishing records to donors with respect to their gifts;

(5) Furnishing records to individuals or private nonprofit organizations having an official, voluntary or cooperative relationship with the Department to assist the individual or organization in working with the Department;

(6) Furnishing a reasonable number records to members of the U.S. Congress, state, local, and foreign governments, public international organizations, and Indian tribes, when to do so without charge is an appropriate courtesy, or when the recipient is carrying on a function related to that of the Department and to do so will help to accomplish the work of the Department;

(7) Furnishing records when to do so is in conformance with generally established business custom (*e.g.*, furnishing personal reference data to prospective employers of former Department employees); or

(8) Furnishing one copy of a single record in order to assist the requester in obtaining financial benefits to which he or she may be entitled (*e.g.*, veterans or their dependents, employees with Government employee compensation claims).

(b) You cannot appeal the denial of a discretionary fee waiver.

§ 2.21 How will the bureau respond to my request?

(a) After all the criteria in §§ 2.8 and 2.10 have been met, the bureau will make a reasonable effort to search for records responsive to your request. In determining which records are responsive to your request, the bureau will include any records in its possession and control as of the date it begins its search. This will include searching for records in an electronic form/format, except where it would interfere significantly with the bureau's automated information systems.

(b) In response to your request, the bureau will do one of two things:

(1) Include the requested records with the response letter or notify you of how, when, and where the records will be made available; or

(2) Deny part or all of your request, except that the bureau may, consistent with Departmental policy, determine that a discretionary release is appropriate under the particular circumstances. Your request will be denied or partially denied only if one of the nine statutory exemptions listed in Appendix E to this part applies to all or part of the records you have requested.

(c) Where a document contains both exempt and nonexempt material, the bureau will generally separate and release the nonexempt information. When disclosing a record in part, the bureau will indicate on the released portion of the record how much information was deleted, unless doing so would harm an interest protected by the exemption used to withhold the information. Further, if technically feasible, the amount of information deleted and the exemption used to withhold the information will be indicated where the deletion is made. If the nonexempt material is so intertwined with the exempt material that disclosure of it would leave only meaningless words and phrases, the entire portion may be withheld.

(d) If a bureau denies your request for records in whole or in part, the bureau's response will include:

(1) A reference to the specific exemption or exemptions authorizing the withholding;

(2) An explanation of the reason(s) for the denial;

(3) An estimate of the volume of information being withheld. The bureau will make a reasonable effort to estimate the volume of any records denied, or portions of records (*e.g.*, 100 pages, 4 Federal Record Center boxes, 1,000 kilobytes, etc.), unless such an estimate would harm an interest protected by the exemption used to withhold the information.

(4) The name(s) and title(s) of the person(s) responsible for the denial;

(5) The name and title of the Office of the Solicitor attorney consulted; and

(6) A statement that the denial may be appealed to the FOIA Appeals Officer (see Appendix A to this part), within 30 workdays of the date of the denial letter or 30 workdays after the records have been released under the procedures in § 2.30.

(e) If records do not exist within DOI, cannot be located, are not reasonably described, or if a procedural issue remains unresolved (e.g., a fee issue), the bureau will respond to you in writing, including the following information, as applicable:

(1) An explanation of the basis of the decision;

(2) The name(s) and title(s) of the person(s) responsible for the decision; and

(3) A statement that the matter may be appealed within 30 workdays of the date of the response, to the FOIA Appeals Officer under the procedures in § 2.30.

(f) The bureau must consult with the Office of the Solicitor if it is considering withholding a requested record or denying a fee waiver.

(g) If any fees are due, the bureau will notify you in writing of the amount.

(h) All bureau responses will include the name and telephone number of a contact person in case you have questions concerning the response.

(i) Requests for information concerning coal under the Mineral Leasing Act or the Mineral Leasing Act for Acquired Lands are subject to special rules (see Appendix F to this part).

§ 2.22 What happens if a bureau receives a request for records it does not have or did not create?

(a) *Consultations/referrals within DOI.* (1) If a bureau receives a request for records not in its possession, but which it knows another bureau has or is likely to have, it will refer the request to that bureau(s) for response. It also will notify you of the referral in writing and provide the name of a contact in the other bureau(s) to which the referral was made. The time limit for responding to your request starts when the request reaches the bureau office that has the records.

(2) If a bureau (other than the Office of Inspector General) receives a request for records in its possession that another bureau created or is substantially concerned with, it will consult with the other bureau before deciding whether to release or withhold the records. As an alternative, the bureau may refer the request along with the records to that bureau for direct response. It will notify you of the referral in writing and provide the name of a contact in the other bureau(s) to which the referral was made. Such a referral does not restart the statutory time limit for responding to your request.

(b) *Consultations/referrals with agencies outside DOI.* (1) If a bureau receives a request for records not in its possession, but which the bureau believes may be in the possession of another Federal agency, the bureau will return your request and advise you to submit it directly to the other agency. If you still believe that the records exist within DOI, you should notify the bureau FOIA contact of any additional information which leads you to believe the records exist and where they might be found. Alternatively, you may treat such a response as a denial of records and file an appeal.

(2) If, in response to a request, a bureau locates documents that originated with another Federal agency, it will refer the request, along with any responsive document(s), to that agency for a release determination and direct response. If the bureau refers the documents to another agency, it will notify you of the referral in writing and provide the name of a contact at the other agency. However, in the following situations, the bureau will make the release determination, after consulting with the originating agency:

(i) When the record is of primary interest to DOI (a record is of primary interest to DOI if it was developed or prepared according to DOI regulations or directives, or in response to a DOI request);

(ii) If DOI is in a better position than the originating agency to assess whether the record is exempt from disclosure;

(iii) If the originating agency is not subject to the FOIA; or

(iv) When it is more efficient or practical depending on the circumstances.

(3) If a bureau receives a request for records which have been classified by another agency under Executive Order 12958, Classified National Security Information, or superseding Executive order, it must refer the request to that agency for response.

§ 2.23 How will a bureau handle a request for commercial or financial information that it has obtained from a person or entity outside the Federal Government?

(a) If a bureau receives a FOIA request for records containing commercial or financial information submitted by a person or entity outside the Federal Government, under Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, or superseding Executive order, the bureau must provide the submitter with prompt written notice of the request, except as provided in paragraph (h) of this section, whenever:

(1) The submitter has designated the information as confidential commercial or financial information, or

(2) The bureau has reason to believe that the information may be protected under exemption (4).

(b) The notice to the submitter will—

(1) Include a copy of the FOIA request.

(2) Describe the information requested or include copies of the pertinent records.

(3) Advise the submitter of the procedures for objecting to the release of the requested material and specify the time limit for responding.

(4) Give the submitter no less than 10 workdays, from receipt (or publication as set forth in paragraph (c) of this section) of the bureau's notice, to object to the release and to explain the basis for the objection, if any.

(5) Advise the submitter that:

(i) Information contained in his/her objections may be subject to disclosure under the FOIA if the bureau receives a FOIA request for it; and

(ii) If the submitter's objections contain commercial or financial information and a requester asks for the objections under the FOIA, the notification procedures of this subsection will apply.

(6) Advise the submitter that it is the bureau, rather than the submitter, that is responsible for deciding whether the information will be released or withheld.

(7) If the submitter designated the material as confidential commercial or financial information 10 or more years before the request, request the submitter's views on whether he/she still considers the information to be confidential.

(c) Where a large number of submitters is involved, the bureau may, rather than providing written notice to each submitter, publish a notice in a manner reasonably calculated to reach the attention of the submitters (*e.g.*, in newspapers/newsletters, the bureau's Web site, or the **Federal Register**).

(d) Whenever a bureau notifies a submitter that he/she may be required to disclose information in response to a FOIA request, it also will notify you that it is giving the submitter an opportunity to review and comment on the material.

(e) If the submitter has any objection to disclosure he/she must submit a detailed written statement including the following:

(1) The justification for withholding any portion of the information under any exemption of the FOIA. In the case of exemption (4), there must be a specific and detailed discussion of:

(i) Whether the Government required the information in question to be submitted, and if so, how substantial competitive or other business harm would likely result from release; or

(ii) Whether the submitter provided the information voluntarily and, if so, how the information in question fits into a category of information that the submitter customarily does not release to the public.

(2) A certification that the information is confidential, has not been disclosed to the public by the submitter, and is essentially non-public because it is not routinely available to the public from other sources.

(3) If not already provided, a telephone number (where the submitter can be reached during normal business hours, an e-mail address and a fax number (if available). This information is very important to help the bureau or Department communicate with the submitter.

(f) The bureau will review and consider all objections to release that are received within the time specified in the notice to the submitter. However, it is the bureau, rather than the submitter, that is responsible for deciding whether the information should be released or withheld. If a submitter fails to respond to the bureau within the time limits specified in the notice, the bureau will presume that the submitter has no objection to disclosure of the information.

(g) If the bureau decides to release records over the submitter's objections, it will inform the submitter and you in writing. The notice to the submitter will be sent by certified mail, return receipt requested, to the submitter's last known address and will include copies of the records the bureau intends to release and the bureau's reasons for deciding to release them. The notice also will inform the submitter that it intends to release the records 10 workdays after receipt of the notice by the submitter.

(h) The bureau will not consult with the submitter if:

(1) The bureau responsible for the decision determines that the information is exempt from disclosure;

(2) The information has been lawfully published or otherwise made available to the public, such as in response to an earlier FOIA request or if the submitter has made the information public;

(3) Disclosure of the information is required by statute (other than the FOIA) or regulation (other than this subpart);

(4) Disclosure of the information is prohibited by statute; or

(5) The designation of confidentiality made by the submitter appears obviously frivolous. However, the bureau will notify the submitter of any final decision to disclose the information 15 workdays prior to releasing it.

(i) The bureau will inform the submitter within 10 workdays of the Department's receipt of a court complaint if you file a lawsuit for access to any of the withheld records. Similarly, the bureau will notify you within 10 workdays of the Department's receipt of a court complaint if the submitter files a lawsuit to prohibit the bureau from disclosing the records.

(j) If the bureau determines that the requested information is protected from release by exemption (4) of the FOIA, the bureau has no discretion to release the information as doing so would violate the Trade Secrets Act, a criminal provision found at 18 U.S.C. 1905.

§ 2.24 Is a submitter required to designate information that is commercially or financially sensitive?

No. If in the course of responding to a FOIA request, a bureau cannot readily determine whether the information obtained from a person is commercially or financially sensitive information, the bureau will obtain and consider the views of the submitter of the information and provide the submitter an opportunity to object to any decision to disclose the information.

§ 2.25 How will a bureau handle a request for Federally-funded research data in the possession of a private entity?

When published research findings are produced under a grant or other Federal assistance, and the findings are used by a bureau in developing an agency action, *e.g.*, a policy or regulation, research data related to such findings are considered agency records even if they are in the possession of the recipient of the Federal financial assistance (recipient).

(a) If you submit a FOIA request for such research data, the bureau will require the recipient to provide the information to it within a reasonable amount of time, so the bureau can consider the data for release to the public under the FOIA.

(b) The bureau will notify you that it may charge you for any additional fees incurred as a result of obtaining the research data from the recipient. This fee is in addition to any fees the bureau may charge to process your request under the FOIA.

(c) The bureau will forward a copy of the request to the recipient, who is responsible for searching for and reviewing the requested information in accordance with DOI's FOIA regulations (43 CFR part 2). The recipient will forward a copy of any responsive records that are located, along with his/her recommendations concerning the releasability of the data, and the total cost incurred in searching for, reviewing, and providing the data to the appropriate bureau FOIA contact.

(d) The bureau will review and consider the recommendations of the recipient regarding the releasability of the requested data. However, it is the bureau, rather than the recipient, that is responsible for deciding whether the information will be released or withheld.

§ 2.26 Does the bureau provide multitrack processing of FOIA requests?

(a) A bureau may use two or more processing tracks to distinguish between simple and complex requests based on the amount of work and/or time needed to process the request, including the number of pages involved.

(b) If a bureau uses multitrack processing, it will advise requesters in its slower track(s) of the criteria of its faster track(s). For example, a bureau using multitrack processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the bureau's faster track(s). A bureau doing so will contact the requester by telephone or in writing, whichever is more efficient in each case.

§ 2.27 How will a bureau handle a request for information that is contained in a Privacy Act system of records? (See DOI's Privacy Act regulations (Subpart G of this part) for additional information.)

(a) When you request information pertaining to yourself that is contained in a Privacy Act system of records applicable to you (*i.e.*, the information contained in the system of records is retrieved by the bureau using your name or other personal identifier), the request will be processed under both the FOIA and the Privacy Act. If you request information about yourself, you must submit certain identifying information, usually an original signature (see the appropriate Privacy Act system notice and, Subpart G of this part) before the bureau will process your request. (Note: If you request information about yourself that is not covered by the Privacy Act, *e.g.*, the information may be filed under another subject, such as an organization, activity, event, or an investigation not retrievable by a name or personal identifier, the request will be treated only as a FOIA request.)

(b) The Privacy Act never prohibits disclosure of material that the FOIA requires to be released. Both a Privacy Act and a FOIA exemption must apply to withhold information from you if the information you seek is contained in a

Privacy Act system of records applicable to you.

(c) Sometimes a request for Privacy Act information is submitted by a "third party" (an individual other than the person who is the subject of the Privacy Act record). If you request Privacy Act information about another individual, the material will not be disclosed without prior written approval by that individual unless—

(1) The release is provided for under one of the Privacy Act conditions of disclosure (5 U.S.C. 552a(b)), one of which is that Privacy Act information is releasable if it is required to be released under the FOIA, or

(2) In most circumstances, if the individual is deceased. See § 2.8(d)(4).

(d) In handling a request covered by paragraph (a) of this section, the fee provisions and time limits under the FOIA will apply, except that with regard to information that is subject to the Privacy Act, the bureau will charge only for duplication and not for search and review time (see Appendix C to this part). There will be no charge if the fee for processing the request is $30 or less.

Subpart D—FOIA Appeals

§ 2.28 When may I file an appeal?

(a) You may file an appeal when:

(1) Records or parts of records have been withheld;

(2) The bureau informs you that you have not adequately described the records you are seeking, or that it does not possess responsive records and you have reason to believe it does or you question the adequacy of the bureau's search for responsive records;

(3) A decision has not been made on your request within the time limits provided in § 2.12;

(4) The bureau did not address all aspects of your request for records;

(5) You believe there is a procedural deficiency (*e.g.*, fees are improperly calculated);

(6) A fee waiver has been denied; or

(7) A request for expedited processing has been denied or not responded to on time. (Special procedures apply to this type of appeal (see §§ 2.14, 2.29(c), and 2.32(b)). An appeal of this type relates only to the request for expedited processing and does not constitute an appeal of your underlying request for records.

(b) Before filing an appeal, you may wish to communicate with the contact person listed in the FOIA response or the bureau's FOIA Officer to see if the issue can be resolved informally. Informal resolution of your concerns may be appropriate where the bureau has not responded to your request or where you believe the search conducted was not adequate. In this latter instance, you may be able to provide additional information that may assist the bureau in locating records. However, if you wish to file an appeal, it must be received by the FOIA Appeals Officer within the time limits in § 2.29.

§ 2.29 How long do I have to file an appeal?

(a) Appeals covered by §§ 2.28(a)(1), (2), and (4) thru (6). Your appeal must be received by the FOIA Appeals Officer no later than 30 workdays after the date of the final response or 30 workdays after receipt of any records that are provided to you.

(b) Appeals covered by § 2.28(a)(3). You may file an appeal any time after the time limit for responding to your request has passed.

(c) Appeals covered by § 2.28(a)(7). You should file an appeal as soon as possible.

§ 2.30 How do I file an appeal?

(a) You must submit your appeal in writing, *i.e.*, by mail, fax or e-mail, to the FOIA Appeals Officer, U.S. Department of the Interior (see Appendix A for the address). Your appeal must include the information specified in paragraph (b) of this section. Failure to send your appeal directly to the FOIA Appeals Officer may result in a delay in processing.

(b) Your appeal must contain copies of all correspondence between you and the bureau, including your request and the bureau's response (if there is one). DOI will not begin processing your appeal and the time limits for responding to your appeal will not begin to run until these documents are received.

(c) You also should include in as much detail as possible any reason(s) why you believe the bureau's response was in error.

(d) Include your name and daytime telephone number (or the name and telephone number of an appropriate contact), e-mail address and fax number (if available), in case DOI needs additional information or clarification of your appeal.

(e) If you file an appeal concerning a fee waiver denial or a denial of expedited processing, you should, in addition to complying with paragraph (b) of this section, demonstrate fully how the criteria in § 2.19(b) (see Appendix D) or § 2.14(a) are met. You also should state in as much detail as possible why you believe the initial decision was incorrect.

(f) All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL."

§ 2.31 How will DOI respond to my appeal?

(a) Appeals will be decided by the FOIA Appeals Officer. When necessary, the FOIA Appeals Officer will consult other appropriate offices, including the Office of the Solicitor (in the case of all denials of information and fee waivers, and other technical issues as necessary).

(b) The final decision on an appeal will be in writing and will state the basis for DOI's decision as follows:

(1) *Decision to release or withhold records.*

(i) If the FOIA Appeals Officer decides to release the withheld records or portions thereof, he/she will make the records available or instruct the appropriate bureau to make them available as soon as possible.

(ii) If the FOIA Appeals Officer decides to uphold in whole or part the denial of a request for records, he/she will advise you of your right to obtain judicial review.

(2) *Non-possession of records.* If the FOIA Appeals Officer decides that the requested records exist, the bureau that has the records will issue a response to you promptly and the FOIA Appeals Officer will close the file on your appeal. If the FOIA Appeals Officer decides that the requested records cannot be located or do not exist, he/she will advise you of your right to treat the decision as a denial and seek judicial review.

(3) *Non-response to a FOIA request.* If a bureau has not issued an appropriate response to your FOIA request within the 20-workday statutory time limit, the FOIA Appeals Officer will direct the bureau to issue a response directly to you as soon as possible. If the bureau responds to your request within 20-workdays after receipt of the appeal, the FOIA Appeals Officer will close the file on your appeal. Otherwise, the FOIA Appeals Officer will advise you that you may treat the lack of a response by the bureau as a denial of your appeal and seek judicial review.

(4) *Incomplete response to a FOIA request.* If a bureau has not issued a complete response to your FOIA request, the FOIA Appeals Officer will direct the bureau to issue a complete response directly to you as soon as possible, and provide you with the name and telephone number of a contact person. The FOIA Appeals Officer will close your FOIA appeal and advise you that you may treat the incomplete response by the bureau as a denial of your appeal and seek judicial review.

(5) *Procedural deficiencies.* If the FOIA Appeals Officer decides that the bureau was in error, he/she will instruct the bureau to correct the error and advise you accordingly. If the FOIA Appeals Officer decides that the bureau acted properly, he/she will deny your appeal and advise you of your right to seek judicial review.

(6) *Fee waiver denials.* If the decision is to grant your request for a fee waiver, the FOIA Appeals Officer will advise the appropriate bureau of the Department's decision and instruct the bureau to proceed with processing the request or to refund any monies you have paid. If the decision is to deny the fee waiver request, the Department will advise you of your right to seek judicial review. You also should contact the bureau office to make further arrangements to process your request if you still wish to obtain the records.

(7) *Denial of expedited processing.* If the FOIA Appeals Officer decides to grant expedited processing, he/she will direct the bureau to process your request as soon as practicable. If your request for expedited processing is denied on appeal, the FOIA Appeals Officer will advise you of your right to seek judicial review of the denial of expedited processing.

§ 2.32 How long does DOI have to respond to my appeal?

(a) The statutory time limit for responding to an appeal is 20 workdays after receipt of an appeal meeting the requirements of § 2.30.

(b) If you request expedited processing of your appeal, you must demonstrate to the Department's satisfaction that the appeal meets one of the criteria under § 2.14(a). The FOIA Appeals Officer will advise you whether the Department will grant expedited processing within 10 calendar days of its receipt of your appeal. If the FOIA Appeals Officer decides to grant expedited processing, he/she will give your appeal priority and process it ahead of other pending appeals.

(c) If you have not received a decision on your appeal within 20 workdays, you have the right to seek review in a District Court of the United States (see 5 U.S.C. 552(a)(4) and (6)). In the event that the Department is unable to reach a decision within the given time limits, the FOIA Appeals Officer will notify you of the reason for the delay and the right to seek judicial review.

§ 2.33 How will the Department notify you and the submitter of commercial or financial information when it makes an appeal decision concerning such information?

(a) *Notice of appeal decision.* If the Department decides on appeal to release records over the objections of a submitter who has advised DOI that the information is protected from release by exemption (4), the Department will advise you and the submitter that it intends to release the records 10 workdays after the notice to the submitter regarding the appeal decision.

(b) *Notice of litigation.*

(1) The Department will notify the submitter within 10 workdays of receipt of the court complaint if you file a lawsuit seeking access to any records found on appeal to be protected from release by exemption (4).

(2) The Department will notify you within 10 workdays of receipt of the court complaint if the submitter files a lawsuit requesting the court to prohibit the Department from releasing information it alleges qualifies for protection under exemption (4).

Subpart E—FOIA Annual Report

§ 2.34 Where can I get a copy of DOI's FOIA annual report?

Under 5 U.S.C. 552(e), DOI is required to prepare an annual report regarding its FOIA activities. The report includes information about FOIA requests, appeals, and litigation against the Department. Copies of DOI's annual FOIA report may be obtained from the Departmental FOIA Officer or by contacting DOI's Library which is located at the C Street entrance of the Main Interior Building (MIB), 1849 C Street, NW., Washington, DC 20240 (see Appendix A to this part). You may access the annual reports electronically by visiting DOI's FOIA home page (see Appendix B to this part for the Internet address).

4. Appendices A and B to part 2 are revised and Appendices C through F to part 2 are aldded [illegible] read as follows:

BILLING CODE 4310–R

Appendix A To Part 2—Department of the Interior FOIA/Public Affairs Contacts and Reading Rooms

DEPARTMENTAL

Departmental FOIA Officer MS-5312-MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5342 Fax No. (202) 208-6867	Departmental FOIA Appeals Officer MS-5312-MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5339 Fax No. (202) 208-6677	Departmental Privacy Act Officer MS-5312-MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 219-0868 Fax No. (202) 501-2360
Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3171 Fax No. (202) 208-3231	Reading Room - DOI's Library MIB © Street Entrance) 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5815 Fax No. (202) 208-6773	

OFFICE OF THE SECRETARY

FOIA Officer MS-1413, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-6045 Fax No. (202) 208-5048	Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3171 Fax No. (202) 208-3231	Office of Trust Records 6301 Indian School Road NE Suite 300 Albuquerque, NM 87110 Telephone No. (505) 816-1600 Fax No. (505) 816-1612
	Reading Room - DOI's Library MIB © Street Entrance) 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5815 Fax No. (202) 208-6773	

OFFICE OF AIRCRAFT SERVICES

FOIA Officer PO Box 15428 Boise, ID 83715-5428 Telephone No. (208) 387-5752 Fax No. (208) 387-5830	Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3171 Fax No. (202) 208-3231	Reading Room National Interagency Fire Center 2350 W. Robinson Rd. Boise, ID 83705 Telephone No. (208) 387-5750 Fax No. (208) 387-5830

OFFICE OF HEARINGS AND APPEALS (OHA)
HEADQUARTERS

FOIA Officer MS-QC-300 800 North Quincy St. Arlington, VA 22203 Telephone No. (703) 235-3800 Fax No. (703) 235-9014	Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No (202) 208-3171 Fax No. (202) 208-3231	Reading Room Office of the Director Room 1103, BT #3 4015 Wilson Blvd. Arlington, VA 22203 Telephone No. (703) 235-3800 Fax No. (703) 235-9014

OHA REGIONAL/FIELD OFFICES

Oklahoma State Office 215 Dean McGee Ave., Rm 820 Oklahoma City, OK 73102 Telephone No. (405) 231-4896 Fax No. (405) 231-5568	Minnesota State Office The Court International Bldg. 2550 University Ave., Suite 416N St. Paul, MN 55114 Telephone No. (612) 725-3920 Fax No. (612) 727-2780	Utah State Office Elks Bldg. 139 East South Temple, Suite 600 Salt Lake City, UT 84111 Telephone No. (801) 524-5344 Fax No. (801) 524-5539
California State Office 801 I St., Rm 406 Sacramento, CA 95814 Telephone No. (916) 978-4326 Fax No. (916) 568-7422	New Mexico State Office 1700 Louisiana, NE., Ste 220 Albuquerque, NM 87110 Telephone No. (505) 262-6265 Fax No. (505) 262-6267	

OFFICE OF THE INSPECTOR GENERAL

FOIA Officer MS-5341, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-4356 Fax No. (202) 219-1944	Public Affairs Office MS-5060, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-4599 Fax No. (202) 219-1944	Reading Room Room 5060, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-4599 Fax No. (202) 219-1944

OFFICE OF THE SOLICITOR (SOL)
HEADQUARTERS

FOIA Officer MS-7456, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-2961 Fax No. (202) 208-5206	Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3171 Fax No. (202) 208-3231	Reading Room Room 7069, MIB 1849 C St., NW. Washington DC 20240 Telephone No. (202) 208-5763 Fax No. (202) 208-5206

SOL REGIONAL/FIELD OFFICES

Alaska Region Office of the Regional Solicitor 4230 University Dr., Suite 300 Anchorage, AK 99508-4626 Telephone No. (907) 271-4131 Fax No. (907) 271-4143	Northeast Region Office of the Regional Solicitor 1 Gateway Center, Suite 612 Newton Corner, MA 02458-2802 Telephone No. (617) 527-3400 Fax No. (617) 527-6848	Pittsburgh Field Office Office of the Field Solicitor 3 Parkway Center, Suite 385 Pittsburgh, PA 15220 Telephone No. (412) 937-4000 Fax No. (412) 937-4003
Twin Cities Field Office Office of the Field Solicitor Bishop Whipple Federal Building 1 Federal Dr., Rm. 686 Fort Snelling, MN 55111 Telephone No. (612) 713-7100 Fax No. (612) 713-7121	Pacific Northwest Region Office of the Regional Solicitor 500 NE Multnomah St., Suite 607 Portland, OR 97232 Telephone No. (503) 231-2126 Fax No. (503) 231-2166	Billings Field Office Office of the Field Solicitor 316 North 26th St., Rm. 3004 Billings, MT 59101 Telephone No. (406) 247-7583 Fax No. (406) 247-7587
Boise Field Office Office of the Field Solicitor Federal Building, U.S. Courthouse 550 West Fort St., Rm. 365 Boise, ID 83724 Telephone No. (208) 334-1911 Fax No. (208) 334-1378	Pacific Southwest Region Office of the Regional Solicitor 2800 Cottage Way, Rm. E-1712 Sacramento, CA 95825-1890 Telephone No. (916) 978-5670 Fax No. (916) 978-5694	Palm Springs Field Office Office of the Field Solicitor 901 E. Tahquitz Canyon Way Suite C-101 Palm Springs, CA 92262 Telephone No. (760) 416-8619 Fax No. (760) 416-8719
Phoenix Field Office Office of the Field Solicitor Sandra Day O'Connor U.S. Courthouse, Suite 404 401 West Washington Street, SPC 44 Phoenix, AZ 85003-2151 Telephone No. (602) 364-7880 Fax No. (602) 364-7885	Salt Lake City Field Office Office of the Field Solicitor 6201 Federal Bldg. 125 S. State St. Salt Lake City, UT 84138 Telephone No. (801) 524-5677 Fax No. (801) 524-4506	San Francisco Field Office Office of the Field Solicitor 1111 Jackson Street, Suite 735 Oakland, CA 94607 Telephone No. (510) 817-1460 Fax No. (510) 419-0143
Southeast Region Office of the Regional Solicitor 75 Spring St., SW., Suite 304 Atlanta, GA 30303 Telephone No. (404) 331-3441 Fax No. (404) 730-2682	Knoxville Field Office Office of the Field Solicitor 530 Gay St., Rm 308 Knoxville, TN 37902 Telephone No. (865) 545-4294 Fax No. (865) 545-5314	Southwest Region Office Office of the Regional Solicitor 2400 Louisiana Blvd., NE Bldg. 1, Suite 200 Albuquerque, NM 87110-4316 Telephone No. (505) 346-2700 Fax No. (505) 346-2711
Santa Fe Field Office Office of the Field Solicitor Paisano Building 2968 Rodeo Park Drive West Room 2070 Santa Fe, NM 87505 Telephone No. (505) 988-6200 Fax No. (505) 988-6217	Tulsa Field Office Office of the Field Solicitor 7906 E. 33rd Street, Suite 100 Tulsa, OK 74145 Telephone No. (918) 669-7730 Fax No. (918) 669-7736	Rocky Mountain Region Office of the Regional Solicitor 755 Parfet St., Suite 151 Lakewood, CO 80215 Telephone No. (303) 231-5353 Fax No. (303) 231-5363

FISH & WILDLIFE SERVICE (FWS) HEADQUARTERS

FOIA Officer Arlington Square, Room 222 4401 North Fairfax Dr. Arlington, VA 22203 Telephone No. (703) 358-2504 Fax No. (703) 358-2269	Public Affairs Office MS-3447, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5634 Fax No. (202) 208-5850	Reading Room Arlington Square, Room 224 4401 North Fairfax Dr. Arlington, VA 22203 Telephone No. (703) 358-1730 Fax No. (703) 358-2269

FWS REGIONAL/FIELD OFFICES

Region 1 (CA, HI, ID, NV, OR, WA) Eastside Federal Complex 911 Northeast 11th Ave. Portland, OR 97232-4181 Telephone No. (503) 231-6188 Fax No. (503) 231- 6259	Region 2 (AZ, NM, OK, TX) P.O. Box 1306 500 Gold Ave., SW Albuquerque, NM 87103 Telephone No. (505) 248-6925 Fax No. (505) 248-6459	Region 3 (IA, IL, IN, MN, MO, MI, OH, WI) BHW Federal Building 1 Federal Dr. Fort Snelling, MN 55111-4056 Telephone No. (612) 713-5269 Fax No. (612) 713-5280
Region 4 (AZ, FL, GA, KY, LA, MS, NC, SC, TN, VI, PR) 1875 Century Blvd. Atlanta, GA 30345 Telephone No. (404) 679-4096 Fax No. (404) 679-4093	Region 5 (CT, DC, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VA, VT, WV) 300 West Gate Center Dr. Hadley, MA 01035 Telephone No. (413) 253-8313 Fax No. (413) 253-8461	Region 6 (CO, KS, MT, ND, NE, SD, UT, WY) Asst. Regional Director P.O. Box 25486 Denver Federal Center Denver, CO 80225 Telephone No. (303) 236-8116 Fax No. (303) 236-6958
	Region 7 Alaska State Office 1011 East Tudor Rd. Anchorage, AK 99503 Telephone No. (907) 786-3455 Fax No. (907) 786-3847	

NATIONAL PARK SERVICE (NPS) HEADQUARTERS

FOIA Officer Administrative Program Center Org Code 2605 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 354-1925 Fax No. (202) 371-6741	Public Affairs Office P.O. Box 37127 Washington, DC 20013-7127 Telephone No. (202) 208-6843 Fax No. (202) 219-0910	Reading Room Administrative Program Center 1201 Eye St., NW. 12th Floor Washington, DC 20005 Telephone No. (202) 354-1925 Fax No. (202) 371-6741

NPS REGIONAL/FIELD OFFICES

Alaska Region 2525 Gambell St. Anchorage, AK 99503-2892 Telephone No. (907) 257-2548 Fax No. (907) 257-2533	National Capital Region 1100 Ohio Dr., SW. Washington, DC 20242 Telephone No. (202) 619-7177 Fax No. (202) 619-7062	Pacific West Region 1111 Jackson St., Suite 700 Oakland, CA 94607 Telephone No. (510) 817-1320 Fax No. (510) 817-1325
Intermountain Region P.O. Box 25287 Denver, CO 80225 Telephone No. (303) 969-2062 Fax No. (303) 969-2002	Midwest Region 1709 Jackson St. Omaha, NE 68102 Telephone No. (402) 221-3448 Fax No. (402) 341-2039	Northeast Region U.S. Customs House, 3rd Floor 200 Chestnut St. Philadelphia, PA 19106 Telephone No. (215) 597-7384 Fax No. (215) 597-0065
Southeast Region 100 Alabama St., SW 1924 Building Atlanta, GA 30303 Telephone No. (404) 562-3182 Fax No. (404) 562-3263	Denver Service Center 12795 West Alameda Pkwy. Denver, CO 80225-0187 Telephone No. (303) 969-2131 Fax No. (303) 987-6658	Harpers Ferry Center P.O. Box 50 Harpers Ferry, WV 25425 Telephone No. (304) 535-6276 Fax No. (304) 535-2929

BUREAU OF LAND MANAGEMENT (BLM)
HEADQUARTERS

FOIA Officer MS-WO-560 1620 L St., NW., Room 725 Washington, DC 20240 Telephone No. (202) 452-5086 Fax No. (202) 452-5002	Public Affairs Office MS-WO-610 1620 L St., NW., Room 406 Washington, DC 20240 Telephone No. (202) 452-5125 Fax No. (202) 452-5124	Reading Room 1620 L St., NW. - Room 750 Washington, DC 20240 Telephone No. (202) 452-5193 Fax No. (202) 452-0395

BLM REGIONAL/FIELD OFFICES

Alaska State Office 222 West 7th Ave., # 13 Anchorage, AK 99513-5076 Telephone No. (907) 271-5054 Fax No. (907) 271-3624	Arizona State Office 222 North Central Ave. Phoenix, AZ 85004-2203 Telephone No. (602) 417-9364 Fax No. (602) 417-9556	California State Office Federal Building 2800 Cottage Way Sacramento, CA 95825-0451 Telephone No. (916) 978-4409 Fax No. (916) 978-4416
Colorado State Office 2850 Youngfield St. Lakewood, CO 80215-7076 Telephone No. (303) 239-3600 Fax No. (303) 239-3933	Eastern States Office 7450 Boston Blvd. Springfield, VA 22153 Telephone No. (703) 440-1634 Fax No. (703) 440-1687	Idaho State Office 1387 South Vinnell Way Boise, ID 83709-1657 Telephone No. (208) 373-3947 Fax No. (208) 373-3904
Montana State Office P.O. Box 36800 Billings, MT 59107-6800 Telephone No. (406) 896-5069 Fax No. (406) 896-5298	Nevada State Office 1340 Financial Blvd. P.O. Box 1200 Reno, NV 89520 Telephone No. (775) 861-6632 Fax No. (775) 861-6411	New Mexico State Office 1474 Rodeo Rd. P.O. Box 27115 Santa Fe, NM 87502-0115 Telephone No. (505) 438-7636 Fax No. (505) 438-7435
Oregon State Office P.O. Box 2965 Portland, OR 97208 Telephone No. (503) 952-6276 Fax No. (503) 952-6308	Utah State Office Box 45155 Salt Lake City, UT 84145-0155 Telephone No. (801) 539-4161 Fax No. (801) 539-4183	Wyoming State Office 5353 Yellowstone Rd. Cheyenne, WY 82009 Telephone No. (307) 775-6066 Fax No. (307) 775-6082
National Interagency Fire Center 3833 South Development Ave. Boise, ID 83705-5354 Telephone No. (208) 387-5360 Fax No. (208) 387-5359	Denver Area Service Center Denver Federal Center Building 50, HR-250 Denver, CO 80225-0047 Telephone No. (303) 236-6362 Fax No. (303) 236-0711	National Training Center 9828 N. 31st Ave. Phoenix, AZ 85051 Telephone No. (602) 906-5572 Fax No. (602) 906-5619

BLM READING ROOMS

Information Access Center 222 West 7th Ave. #13 Anchorage, AK 99513 Telephone No. (907) 271-5960 Fax No. (907) 271-3624	Information Access Center 222 North Central Ave. Phoenix, AZ 85004-2203 Telephone No. (602) 417-9200 Fax No. (602) 417-9556	Information Access Center 2800 Cottage Way Sacramento, CA 95825-0451 Telephone No. (916) 978-4401 Fax No. (916) 978-4416
Information Access Center 2850 Youngfield St. Lakewood, CO 80215 Telephone No. (303) 239-3600 Fax No. (303) 239-3933	Information Access Center 7450 Boston Blvd. Springfield, VA 22153 Telephone No. (703) 440-1600 Fax No. (703) 440-1609	Information Access Center 1387 S. Vinnell Way Boise, ID 83709-1657 Telephone No. (208) 373-3889 Fax No. (208) 373-3899
Information Access Center P.O. Box 36800 Billings, MT 59107-6800 Telephone No. (406) 896-5069 Fax No. (406) 896-5298	Information Access Center P.O. Box 12000 1340 Financial Blvd. Reno, NV 89520 Telephone No. (702) 861-6500 Fax No. (702) 861-6606	Information Access Center 1474 Rodeo Rd. Santa Fe, NM 87505 Telephone No. (505) 438-7400 Fax No. (505) 438-7435
Information Access Center P.O. Box 2965 1515 SW Fifth Ave. Portland, OR 97208 Telephone No. (503) 952-6001 Fax No. (503) 952-6422	Information Access Center 324 South State St. Fourth Floor Salt Lake City, UT 84145 Telephone No. (801) 539-4001 Fax No. (801) 539-4230	Information Access Center 5353 Yellowstone Road Cheyenne, WY 82009 Telephone No. (307) 775-6256 Fax No. (307) 775-6129

MINERALS MANAGEMENT SERVICE (MMS)
HEADQUARTERS

FOIA Officer 381 Elden St. MS-2200 Herndon, VA 20170-4817 Telephone No. (703) 787-1132 Fax No. (703) 787-1207	Public Affairs Office Office of Communications 1849 C St., NW MS-0200 Washington, DC 20240 Telephone No. (202) 208-3985 Fax No. (202) 208-3968

MMS REGIONAL/FIELD OFFICES

Minerals Revenue Management P.O. Box 25165, MS-320B2 Denver, CO 80225-0165 Telephone No. (303) 231-3316 Fax No. (303) 231-3781	Offshore Minerals Management 381 Elden St. MS-4063 Herndon, VA 20170-4817 Telephone No. (703) 787-1689 Fax No. (703) 787-1922	Gulf Of Mexico 1201 Elmwood Park Blvd., MS-5030 New Orleans, LA 70123-2394 Telephone No. (504) 736-2513 Fax No. (504) 736-2977
Alaska 949 East 36th Ave., Rm 300, MS-800 Anchorage, AK 99508-4302 Telephone No. (907) 271-6621 Fax No. (907) 271-6805	Pacific 770 Paseo Camarillo, MS-7001 Camarillo, CA 93010-6064 Telephone No. (805) 389-7621 Fax No. (805) 389-7689	Southern Administrative Service Center 1201 Elmwood Park Blvd., MS-2620 New Orleans, LA 70123-2394 Telephone No. (504) 736-2878 Fax No. (504) 736-2478
Western Administrative Service Center P.O. Box 25165, MS-2700 Denver, CO 80225-0165 Telephone No. (303) 275-7305 Fax No. (303) 275-7347	Reading Room Public Information Office 1201 Elmwood Park Blvd. New Orleans, LA 70123-2394 Telephone No. (800) 200-GULF Fax No. (504) 736-2602	

OFFICE OF SURFACE MINING (OSM)
HEADQUARTERS

FOIA Officer MS-326, SIB 1951 Constitution Ave., NW. Washington, DC 20240 Telephone No. (202) 208-2961 Fax No. (202) 219-3100	Public Affairs Office MS-262, SIB 1951 Constitution Ave., , NW. Washington, DC 20240 Telephone No. (202) 208-2534 Fax No. (202) 501-0549	Reading Room Contact: OSM FOIA Officer Room 263, SIB 1951 Constitution Ave., NW. Washington, DC 20240 Telephone No. (202) 208-2961 Fax No. (202) 501-4734

OSM REGIONAL/FIELD OFFICES

Appalachian Region

FOIA Coordinator 3 Parkway Center Pittsburgh, PA 15220 Telephone No. (412) 937-2146 Fax No. (412) 937-2177	Virginia State Office Big Stone Gap Field Office 1941 Neeley Rd., Suite 201 Compartment 116 Big Stone Gap, VA 24219 Telephone No. (540) 523-0000 Fax No. (540) 523-5053	West Virginia State Office Charleston Field Office 1027 Virginia St., East Charleston, WV 25301 Telephone No. (304) 347-7162 Fax No. (304) 347-7170
Ohio, Maryland, Michigan State Office 4480 Refugee Rd., Suite 201 Columbus, OH 43232 Telephone No. (614) 866-0578 Fax No. (614) 469-2506	Massachusetts, Pennsylvania, Rhode Island State Office 415 Market St., Suite 3C Harrisburg, PA 17101 Telephone No. (717) 782-4036 Fax No. (717) 782-3771	Georgia, North Carolina, Tennessee State Office Knoxville Field Office 530 Gay St., Suite 500 Knoxville, TN 37902 Telephone No. (423) 545-4103 Fax No. (423) 545-4111
	Kentucky State Office Lexington Field Office 2675 Regency Rd. Lexington, KY 40503 Telephone No. (606) 233-2896 Fax No (606) 233-2895	

Mid-Continent Region

Iowa, Kansas, Missouri State Office Alton Federal Building 501 Belle St. Alton, IL 62002 Telephone No. (618) 463-6463 Fax No. (618) 463-6470	Alabama, Mississippi State Office Birmingham Field Office 135 Gemini Circle, Suite 215 Homewood, AL 35209 Telephone No. (205) 290-7286 Fax No. (205) 290-7280	Indiana, Illinois State Office Indianapolis Field Office 575 North Pennsylvania St., Room 301 Indianapolis, IN 46204 Telephone No. (317) 226-6700 Fax No. (317) 226-6182
	Arizona, Louisiana, Oklahoma, Texas State Office Tulsa Field Office 5100 East Skelly Dr., Suite 470 Tulsa, OK 74135 Telephone No. (918) 581-6430 Fax No. (918) 581-6419	

Western Region

Western Regional Office 1999 Broadway, Suite 3320 Denver, CO 80202 Telephone No (303) 844-1435 Fax No. (303) 844-1522	Arizona, California, New Mexico State Office Albuquerque Field Office 505 Marquette NW., Suite 1200 Albuquerque, NM 87102 Telephone No. (505) 248-5070 Fax No. (505) 248-5081	Idaho, Montana, North Dakota, South Dakota, Wyoming State Office Casper Field Office 100 East B St., Room 2128 Casper, WY 82601-1918 Telephone No. (307) 261-6542 Fax No. (307) 261-6552
FIELD READING ROOMS Contact: OSM FOIA Coordinators at the region/field locations		

U.S. GEOLOGICAL SURVEY (USGS)
HEADQUARTERS

FOIA Officer 12201 Sunrise Valley, Dr., MS-807 Reston, VA 20192 Telephone No. (703) 648-7313 Fax No. (703) 648-7198	Public Affairs Office Office of Communications 12201 Sunrise Valley Dr., MS-119 Reston, VA 20192 Telephone No. (703) 648-4460 Fax No. (703) 648-4466	Reading Room USGS Library 12201 Sunrise Valley Dr. Reston, VA 20192 Telephone No. (703) 648-4302 Fax No. (703) 648-6373

USGS REGIONAL/FIELD OFFICES

Eastern Regional Office 12201 Sunrise Valley Dr., MS-151 Reston, VA 20192 Telephone No. (703) 648-7209 Fax No. (703) 648-4588	Central Regional Office Denver Federal Center Building 53, MS- 201 Room H1927 P.O. Box 25046 Denver, CO 80225 Telephone No. (303) 236-9201 Fax No. (303) 236-5882	Western Regional Office 345 Middlefield Rd., MS-211 Menlo Park, CA 94025-3591 Telephone No. (650) 329-4458 Fax No. (650) 329-5095

BUREAU OF RECLAMATION (BOR)
HEADQUARTERS

FOIA Officer P.O. Box 25007, D-7924 Denver, CO 80225-0007 Telephone No. (303) 445-2048 Fax No. (303) 445-6575	Public Affairs Office P.O. Box 25007, D-1540 Denver, CO 80225-0007 Telephone No. (303) 236-7000 Fax No. (303) 236-9235	Reading Room Reclamation Library P.O. Box 25007, D-7925 Denver, CO 80225-0007 Telephone No. (303) 445-2072 Fax No. (303) 445-6303

BOR REGIONAL/FIELD OFFICES

Great Plains Region P.O. Box 36900, GP-3100 Billings, MT 59107-6900 Telephone No. (406) 247-7620 Fax No. (406) 247-7622	Lower Colorado Region P.O. Box 61470, LC-5301 Boulder City, NV 89006-1470 Telephone No. (702) 293-8071 Fax No. (702) 293-8615	Mid-Pacific Region 2800 Cottage Way, MP-3000 Sacramento, CA 95825-1898 Telephone No. (916) 978-5552 Fax No. (916) 978-5176
Pacific Northwest Region 1150 North Curtis Rd., PN-7600 Boise, ID 83706-1234 Telephone No. (208) 378-5120 Fax No. (208) 378-5129	Upper Colorado Region 125 South State St., Room 6107, UC482 Salt Lake City, UT 84138-1102 Telephone No. (801) 524-3655 Fax No. (801) 524-5499	

BUREAU OF INDIAN AFFAIRS (BIA)
HEADQUARTERS

FOIA Officer MS-4140, MIB, Code 100F 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-2977 Fax No. (202) 208-4807	Public Affairs Office MS-4542, MIB, Code 105 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 219-3710 Fax No. (202) 501-1516	Reading Room Room 2618, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-2977 Fax No. (202) 208-4807

BIA REGIONAL/FIELD OFFICES

Pacific Region (California) 2800 Cottage Way Sacramento, CA 95825 Telephone No. (916) 978-6067 Fax No. (916) 978-6099	Great Plains Region (Nebraska, North Dakota, South Dakota) 115 4th Ave., SE. Aberdeen, SD 57401 Telephone No. (605) 226-7343 Fax No. (605) 226-7446	Southwest Region (Colorado, New Mexico) 615 First St., NW. Albuquerque, NM 87125 Telephone No. (505) 346-7592 Fax No. (505) 346-7151
Southern Plains Region (Kansas, Western Oklahoma, Texas) WCD Office Complex P.O. Box 368 Anadarko, OK 73005 Telephone No. (405) 247-5059, ext. 221 Fax No. (405) 247-6989	Rocky Mountain Region (Montana, Wyoming) 316 North 26th St. Billings, MT 59101 Telephone No. (406) 247-7988 Fax No. (406) 247-7566	Eastern Region (Florida, Louisiana, Alabama, Maine, Connecticut, Massachusetts, Rhode Island, Tennessee, Mississippi, New York, North Carolina, South Carolina) 711 Stewarts Ferry Pike Nashville, TN 37214 Telephone No. (615) 467-2931 Fax No. (615) 467-2964
Alaska Region (Alaska) P.O. Box 25520 Juneau, AK 99802-5520 Telephone No. (907) 586-7454 Fax No. (907) 586-7064	Midwest Region (Iowa, Michigan, Minnesota, Wisconsin) One Federal Dr., Room 550 Ft. Snelling, MN 55111 Telephone No. (612) 713-4400, ext. 1182 Fax No. (612) 713-4453	Eastern Oklahoma Region (Oklahoma State Office) 101 North 5th St. Muskogee, OK 74401 Telephone No. (918) 687-2414 Fax No. (918) 687-2285
Navajo Region (Navajo Reservation only: Arizona, New Mexico, Utah) P.O. Box 1060 Gallup, NM 87305 Telephone No. (505) 863-8240 Fax No. (505) 863-8324	Western Region (Arizona, California, Nevada, Utah) Two Arizona Center 400 N. 5th St. Phoenix, AZ 85001 Telephone No. (602) 379-6761 Fax No. (602) 379-4057	Northwest Region (Idaho, Oregon, Washington, Metlakatla Alaska) 911 NE 11th Ave. Portland, OR 97232 Telephone No. (503) 231-2229 Fax No. (503) 231-6731

BILLING CODE 4310-RK-C

Note: For more information on FOIA, including the most current listing of FOIA Contacts, visit DOI's FOIA home page at *http://www.doi.gov/foia/*.

Appendix B to Part 2—Internet Addresses

1. Department of the Interior (DOI) Home Page: *http://www.doi.gov*
2. DOI FOIA Home Page: *http://www.doi.gov/foia/*
3. DOI Reference Guide for Obtaining Information: *http://www.doi.gov/foia/foitabl.htm*
4. List of DOI Public Affairs Offices: *http://www.doi.gov/foia/list.html*
5. DOI FOIA Contacts: *http://www.doi.gov/foia/contacts.html*
6. DOI FOIA Regulations (43 CFR, Part 2, Subparts A and B): *http://www.doi.gov/foia/foiaregs.html*
7. DOI FOIA Policy and Guidance: *http://www.doi.gov/foia/policy.html*
8. Electronic Reading Room: *http://www.doi.gov/foia/readroom.html*
9. Index of Frequently Requested Documents: *http://www.doi.gov/foia/freq.html*
10. DOI's Frequently Requested Documents: *http://www.doi.gov/foia/frrindex.html*
11. FOIA Annual Reports to Congress: *http://www.doi.gov/foia/report.html*
12. DOI's Library: *http://library.doi.gov*
13. General Records Schedule 14, Information Services Records: *http://ardor.nara.gov/grs/grs14.html*
14. DOI Records Management Program: *http://www.doi.gov/ocio/records/*

15. DOI Privacy Act Program: *http://www.doi.gov/ocio/privacy/*
16. DOI Privacy Act Officers: *http://www.doi.gov/ocio/privacy/doi_privacy_act_officers.htm*
17. DOI Privacy Act Regulations: *http://www.doi.gov/foia/43cfrsub.html*
18. DOI Privacy Act Systems of Records Notices: *http://www.access.gpo.gov/su_docs/aces/1999_pa.html*
19. FirstGov Portal: *http://www.firstgov.gov*

Note: See DOI's FOIA home page at *http://www.doi.gov/foia/* for the most current listing of FOIA-related website addresses.

Appendix C to Part 2—Fee Schedule

If you submit a FOIA request, the bureau will charge you to search for, review, and duplicate the requested records according to your fee category (see §§ 2.16 and 2.17) and the following fee schedule. In addition, the bureau will charge you for any special handling or services performed in connection with processing your request and/or appeal under Subparts C and D of this part. The following fees will be used by all bureaus of the Department; these fees apply to services performed in making documents available for public inspection and copying under Subpart B of this part as well. The duplicating fees also are applicable to records provided in response to requests made under the Privacy Act. Fees will not be charged under either the FOIA or the Privacy Act where the total amount of fees for processing the request is $30 or less (see § 2.16(b)(2)), where the requester has met the requirements for a statutory fee waiver, or where the bureau has granted a discretionary fee waiver (see §§ 2.19 and 2.20).

(1) *Search and review (review applies to commercial-use requesters only).* Fees are based on: the average hourly salary (base salary plus DC locality payment), plus 16 percent for benefits, of employees in the following three categories. The average grade was established by surveying the bureaus to obtain the average grade of employees conducting FOIA searches and reviews. Fees will be increased annually consistent with Congressionally approved pay increases. Fees are charged in quarter hour increments.

(a) Clerical—Based on GS–6, Step 5, pay (all employees at GS–7 and below)

(b) Professional—Based on GS–11, Step 7, pay (all employees at GS–8 through GS–12)

(c) Managerial—Based on GS–14, Step 2, pay (all employees at GS–13 and above)

Note: Fees for the current fiscal year are posted on DOI's FOIA home page (see Appendix B). If you do not have access to the Internet, please call the Departmental FOIA Officer (see Appendix A) for a copy of the fee schedule.

	Fee
(2) Duplication:	
Pages no larger than 8.5 × 14 inches, when reproduced by standard office copying machines.	$.13 per page ($.26 for double-sided copying)
Color copies of pages no larger than 8.5 × 11 inches	$.90 per page
Pages larger than 8.5 × 14 inches	Direct cost to DOI
Color copies of pages no larger than 11 × 17 inches	$1.50 per page
Photographs and records requiring special handling (e.g., because of age, size, or format).	Direct cost to DOI
(3) Electronic records:	
Charges for services related to processing requests for electronic records	Direct cost to DOI
(4) Certification	Fee
Each certificate of verification attached to authenticate copies of records	$.25
(5) Postage/Mailing:	
Charges that exceed the cost of first class postage. Examples of such charges are express mail or overnight delivery.	Postage or Delivery charge
(6) Other Services:	
Cost of special services or materials, other than those provided for by this fee schedule, when requester is notified of such costs in advance and agrees to pay them.	Direct cost to DOI

Appendix D to Part 2—Fee Waiver Criteria

If you are seeking a fee waiver, it is your responsibility to provide detailed information to support your request. You must submit this information with your FOIA request. You should explain the significance of the release of the information to the public's understanding of the Government's operations and activities based on your understanding of the type of information that you are requesting. Each fee waiver request is judged on its own merit—we do not grant "blanket" fee waivers, *i.e.*, obtaining a fee waiver once does not mean you will obtain a subsequent fee waiver. Please note that inability to pay is not sufficient to justify a fee waiver.

(a) The statutory requirement for granting a fee waiver is that release of the information must be in the public interest because it—

(1) Is likely to contribute significantly to public understanding of the operations and activities of the Government; and

(2) Is not primarily in your commercial interest.

(b) In deciding whether you are entitled to a fee waiver, the bureau will consider the criteria in paragraphs (1) through (4), below. Your request for a fee waiver must address each of these criteria.

(1) How do the records concern the operations or activities of the Government?

(2) If the records concern the operations or activities of the Government, how will disclosure likely contribute to public understanding of these operations and activities?

(i) How are the contents of the records you are seeking meaningfully informative on the Department's or a bureau's operations and activities? Is there a logical connection between the content of the records and the operations or activities you are interested in?

(ii) Other than enhancing your knowledge, how will disclosure of the requested records contribute to the understanding of the public at large or a reasonably broad audience of persons interested in the subject?

(iii) Your identity, vocation, qualifications, and expertise regarding the requested information (whether you are affiliated with a newspaper, college or university, have previously published articles, books, etc.) may be relevant factors. However, merely stating that you are going to write a book, research a particular subject, or perform doctoral dissertation work, is insufficient, without demonstrating how you plan to disclose the information in a manner which will be informative to a reasonably broad audience of persons interested in the subject.

(iv) Do you have the ability and intention to disseminate the information to the general public or a reasonably broad audience of persons interested in the subject?

(A) How and to whom do you intend to disseminate the information?

(B) How do you plan to use the information to contribute to public understanding of the Government's operations or activities?

(3) If there is likely to be a contribution to public understanding, will release of the requested records contribute significantly to public understanding?

(i) Is the information being disclosed new?

(ii) Does the information being disclosed confirm or clarify data which has been released previously?

(iii) How will disclosure increase the level of public understanding of the operations or activities of the Department or a bureau that existed prior to disclosure?

(iv) Is the information already publicly available? If the Government previously has published the information you are seeking or it is routinely available to the public in a library, reading room, through the Internet, or as part of the administrative record for a

particular issue (*e.g.*, the listing of the spotted owl as an endangered species), it is less likely that there will be a significant contribution from release.

(4) Would disclosure be primarily in your commercial interest?

(i) Do you have a commercial interest that would be furthered by disclosure? A commercial interest is a commercial, trade, or profit interest as these terms are commonly understood. Your status as "profitmaking" or "non-profitmaking" is not the deciding factor. Not only profitmaking entities, but other organizations or individuals may have a commercial interest to be served by disclosure, depending on the circumstances involved.

(ii) If you do have a commercial interest that would be furthered by disclosure, would disclosure be primarily in that interest? Would the public interest in disclosure be greater than any commercial interest you or your organization may have in the documents? If so, how would it be greater?

(iii) Your identity, vocation, and the circumstances surrounding your request are all factors to be considered in determining whether disclosure would be primarily in your commercial interest. For example:

(A) If you are a representative of a news media organization seeking information as part of the news gathering process, we will presume that the public interest outweighs your commercial interest.

(B) If you represent a business/corporation/association or you are an attorney representing such an organization, we will presume that your commercial interest outweighs the public interest unless you demonstrate otherwise.

(c) If the bureau cannot make a determination based on the information you have provided, it may ask you for additional justification regarding your request.

Appendix E to Part 2—FOIA Exemptions

Under the FOIA (5 U.S.C. 552(b)), there are *nine exemptions* which may be used to protect information from disclosure. The Department has paraphrased the exemptions, below, for your information. The paraphrases are not intended to be interpretations of the exemptions.

(1) National security information concerning national defense or foreign policy, provided that such information has been properly classified, in accordance with an Executive Order;

(2) Information related solely to the internal personnel rules and practices of an agency;

(3) Information specifically exempted from disclosure by statute (other than the Privacy Act or the Trade Secrets Act), provided that such statute:

(A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information which is obtained from a person and is privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters, which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, the release of which:

(A) Could reasonably be expected to interfere with enforcement proceedings;

(B) Would deprive a person of a right to a fair trial or an impartial adjudication;

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(D) Could reasonably be expected to disclose the identity of a confidential source;

(E) Would disclose techniques, procedures, or guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(F) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Information contained in or related to examination, operating, or condition reports, prepared by, or on behalf of, or for the use of an agency responsible for regulating or supervising financial institutions; and

(9) Geological and geophysical information and data, including maps, concerning wells.

Appendix F to Part 2—Mineral Leasing Act and Mineral Leasing Act for Acquired Lands—Special Rules

(a) *Definitions.* As used in the section:

(1) *Exploration license* means a license issued by the Secretary of the Interior to conduct coal exploration operations on land subject to the Mineral Leasing Act, under 30 U.S.C. 201(b), or subject to the Mineral Leasing Act for Acquired Lands, under 30 U.S.C. 351–360.

(2) *Fair-market value of coal to be leased* means the minimum amount of a bid the Secretary is willing to accept in leasing coal within leasing tracts offered in general lease sales or reserved and offered for lease to public bodies, including Federal agencies, rural electric cooperatives, or non-profit corporations controlled by any of such entities, under 30 U.S.C. 201(a)(1) or 30 U.S.C. 351–360.

(3) *Information* means data, statistics, samples and other facts, whether analyzed or processed or not, pertaining to Federal coal resources.

(b) *Applicability.* This Appendix applies to the following categories of information:

(1) *Category A.* Information provided to or obtained by a bureau under 30 U.S.C. 201(b)(3) (and corresponding information under 30 U.S.C. 351–360) from the holder of an exploration license;

(2) *Category B.* Information acquired from commercial or other sources under service contract with United States Geological Survey (USGS) under 30 U.S.C. 208–1(b) (and corresponding information under 30 U.S.C. 351–360), and information developed by USGS under an exploratory program authorized by 30 U.S.C. 208–1 (and corresponding information under 30 U.S.C. 351–360);

(3) *Category C.* Information obtained from commercial sources which the commercial source acquired while not under contract with the United States Government;

(4) *Category D.* Information provided to the Secretary by a Federal department or agency under 30 U.S.C. 208–1(e) (and corresponding information under 30 U.S.C. 351–360); and

(5) *Category E.* The fair-market value of coal to be leased and comments received by the Secretary with respect to such value.

(c) *Availability of information.* Information obtained by the Department from various sources will be made available to the public as follows:

(1) *Category A—Information.* Category A information must not be disclosed to the public until after the areas to which the information pertains have been leased by the Department, or until the Secretary determines that release of the information to the public would not damage the competitive position of the holder of the exploration license, whichever comes first.

(2) *Category B—Information.* Category B information must not be withheld from the public; it will be made available by means of and at the time of open filing or publication by USGS.

(3) *Category C—Information.* To the extent Category C information is proprietary, such information must not be made available to the public until after the areas to which the information pertains have been leased by the Department.

(4) *Category D—Information.* To the extent Category D information is proprietary, the Department will withhold the information from the public for the length of time the department or agency providing the information agreed to when it obtained the information.

(5) *Category E—Information.* Category E information must not be made public until the lands to which the information pertains have been leased, or until the Secretary has determined that its release prior to the issuance of a lease is in the public interest.

[FR Doc. 02–25970 Filed 10–18–02; 8:45 am]
BILLING CODE 4310–RK–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2228]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications*, 8 FCC Rcd 4735 (1993).

DATES: Effective October 21, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted September 4, 2002, and released September 20, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 296B and adding Channel 296C1 at Needles.

3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 239C1 and adding Channel 239C2 at Valdosta.

4. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 240A and adding Channel 240C3 at Weston.

5. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by removing Channel 222C and adding Channel 222C1 at Rapid City.

6. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 254C3 and adding Channel 254C2 at Mabton.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26232 Filed 10–18–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2257; MB Docket No. 02–110; RM–10406]

Radio Broadcasting Services; Rose Hill and La Grange, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 284C3 for Channel 284A at Rose Hill, North Carolina, reallots Channel 284C3 to La Grange, North Carolina, and modifies the license for Station WZUP to specify operation at La Grange in response to a petition filed by Conner Media, Inc. See 67 FR 38244, June 3, 2002. The coordinates for Channel 284C3 at La Grange are 35–16–00 and 77–58–00. With this action, this proceeding is terminated.

DATES: Effective November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 02–110, adopted September 4, 2002, and released September 20, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding La Grange, Channel 284C3 and by removing Rose Hill, Channel 284A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26230 Filed 10–18–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2227; MB Docket No. 02–118; RM–10394]

Radio Broadcasting Services; Ridgway and Rangely, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission substitution of Channel 279C1 for Channel 279C2 at Ridgway, Colorado, and the modification of Station KBNG's authorization accordingly, and the substitution of Channel 257C1 for vacant Channel 279C1 at Rangely, Colorado, to accommodate the modification. *See* 67 FR 40907 (06/14/2002). Channel 279C2 is allotted at Ridgway with a site restriction of 11.9 kilometers (7.4 miles) north of the community at coordinates 38–15–26 NL and 107–46–54 WL. Channel 257C1 can be allotted at Rangely at petitioner's suggested site 5.0 kilometers (3.1 miles) northwest of the community at coordinates 40–7–12 NL and 108–50–29 WL.

DATES: Effective November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–118, adopted September 4, 2002, and released September 20, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–

863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Channel 257C1 and removing Channel 279C1 at Rangley and by adding Channel 279C1 and removing Channel 279C2 at Ridgway.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26227 Filed 10–18–02; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 67, No. 203
Monday, October 21, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 104, 105, 108 and 109

[Notice 2002–19]

Bipartisan Campaign Reform Act of 2002; Reporting

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission seeks comments on the proposed regulations relating to new requirements for the reporting of electioneering communications and independent expenditures, monthly reporting by national political party committees and quarterly reporting by the principal campaign committees of candidates for the House of Representatives and Senate, as well as reporting related to building funds. These regulations would implement several requirements in the Bipartisan Campaign Reform Act of 2002 ("BCRA") that significantly amend the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"). Please note that the Commission has not made a final decision on any of these proposals. Further information is contained in the **SUPPLEMENTARY INFORMATION** that follows.

DATES: Comments must be received on or before November 8, 2002.

ADDRESSES: All comments should be addressed to Mr. John Vergelli, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *BCRAreport@fec.gov* and must include the full name, electronic mail address, and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address, and postal service address of the commenter will not be considered. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its web site within ten business days of the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. John Vergelli, Acting Assistant General Counsel, or Ms. Cheryl Fowle, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 ("BCRA"), Public Law 107–155, 116 Stat. 81 (March 27, 2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* This is one in a series of Notices of Proposed Rulemakings ("NPRM") the Commission has recently published to meet the rulemaking deadlines set out in BCRA. The deadline for the promulgation of these rules is 270 days after the date of enactment, which is December 22, 2002.

Introduction

This NPRM addresses: (1) Reporting of electioneering communications; (2) reporting of independent expenditures; (3) quarterly reporting by the principal campaign committees of candidates for the House of Representatives and the Senate; (4) monthly reporting by political party committees; and (5) the reporting of funds for political party committee office buildings.

The Commission sought comments on two of these topics previously in Notices of Proposed Rulemakings on "Electioneering Communications," 67 FR 51,131 (August 7, 2002); and "Coordinated and Independent Expenditures," 67 FR 60,042 (September 25, 2002). Another topic, addressing the reporting of funds for the purchase or construction of party office buildings, is based on a recently published final rule ("Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule," 67 FR 49,123 and 49,127 (July 29, 2002)). The last two topics addressing the schedule of reporting for national political party committees and the principal campaign committees of House and Senate candidates have not previously been addressed in a BCRA-related NPRM.

In BCRA, Congress required the Commission to promulgate standards for reporting software, and also imposed certain other requirements on the Commission, and on various persons who file reports with the Commission, that will take effect when that computer software becomes available. 2 U.S.C. 434(a)(12). Although these Congressional mandates are related to reporting, which is the subject of this NPRM, the Commission does not propose to address the mandates here. The computer software standards will depend largely upon the results of this reporting rulemaking, and on the development of reporting forms following the completion of this rulemaking. Therefore, the Commission proposes to address the mandates in 2 U.S.C. 434(a)(12) as soon as feasible, and will solicit public comments on the mandates at that time.

Independent Expenditures and Electioneering Communications

Proposed 11 CFR 100.19 File, Filed, or Filing (2 U.S.C. 434(a))

The Commission's regulations at 11 CFR 100.19 define *file, filed,* and *filing.* Paragraph (a) of section 100.19 would be unaffected by this rulemaking, except for a new heading. Proposed paragraph (b) of section 100.19 would retain the pre-BCRA general rule that a document is considered timely filed if it is: (1) Delivered to the appropriate filing office (either the Commission or the Secretary of the Senate), or (2) sent by registered or certified mail and postmarked by 11:59 p.m. Eastern Standard/Daylight Time of the prescribed filing date—except for pre-election reports. The proposed revisions to paragraph (b) of section 100.19 would clarify that paragraph (b) is the general rule, but does not apply to reports addressed by paragraph (c) through proposed new paragraph (f).

Those exceptions would be as follows: Paragraph (c) for electronic filing—"filed" means received by the Commission at or before 11:59 p.m. Eastern Standard/Daylight Time on the filing date; paragraph (d) for 24-hour and 48-hour reports of independent expenditures—"filed" means received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of

the day following (24-hour reports) or the second day following (48-hour reports) the date on which the spending threshold is reached in accordance with 11 CFR 104.4(f); paragraph (e) for "48-hour notices of last-minute contributions" (48-hour notices filed by authorized committees of candidates of contributions of $1,000 or more received after the 20th day but more than 48 hours before 12:01 a.m. of the day of an election)—"filed" means received by the Commission or the Secretary of the Senate within 48 hours of the receipt of a "last-minute" contribution of $1,000 or more; proposed paragraph (f) for 24-hour statements of electioneering communications—"filed" means received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time of the day following the disclosure date (see 11 CFR 104.20).

Paragraphs (c) and (e) of §100.19 would remain unchanged, except for new headings.

Proposed revisions to paragraph (d) of section 100.19 would also require that the new 48-hour reports of independent expenditures, like the 24-hour reports, must be *received* rather than *filed* by the filing deadline. The proposed 48-hour reporting provision would allow filers to submit their reports using facsimile machines or electronic mail, as long as they are not required under 11 CFR 104.18 to file electronically. Under pre-BCRA paragraph (d) of §100.19, 24-hour reports of independent expenditures are only considered timely filed if they are *received* by the Commission or Secretary of the Senate within 24 hours of the time the expenditure is made.[1] Sending 24-hour reports by mail is not a viable option because it is unlikely these reports will be received by the Commission within 24 hours of the making of the expenditure. *See* "Final Rules and Explanation and Justification for 11 CFR 100.19," 67 FR 12,834 (March 20, 2002). Pre-BCRA paragraph (d) also states that 24-hour reports may be filed by facsimile machine or electronic mail, in addition to other permissible means of filing (*e.g.*, hand-delivery or overnight courier). Because the reasons behind the handling of 24-hour reports apply equally to the essentially similar 48-hour reports, the Commission is proposing this parallel rule.

Under 2 U.S.C. 434(f)(1), electioneering communications must be reported within 24 hours of the "disclosure date." *See* proposed 11 CFR 104.20. The Commission proposes to add new paragraph (f) to 11 CFR 100.19 to require these 24-hour statements to be *received* by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the disclosure date, rather than *filed* by that time. In addition, to assist filers with meeting this deadline, the proposed rule would allow them to file their 24-hour statements by facsimile machine or electronic mail. For the same reasons that are discussed with regard to proposed paragraph (d) of 11 CFR 100.19, this proposed paragraph would follow the timing and filing methods of 24-hour reports for independent expenditures.

11 CFR 104.5(g) and (j) Filing Dates (2 U.S.C. 434(a)(2))

Proposed paragraph (g) of 11 CFR 104.5 would move the pre-BCRA contents of paragraph (g) to proposed paragraph (g)(2) with revisions, and would add a new paragraph (g)(1), which would require that 48-hour reports of independent expenditures must be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Note that the term "publicly distributed" refers to communications distributed by radio or television (*see* 11 CFR 100.29(a)(5)) and the term "publicly disseminated" refers to communications that are made public via other media, *e.g.*, newspaper, magazines, handbills. Pre-BCRA paragraph (g) of 11 CFR 104.5 states that 24-hour reports of independent expenditures must be received by the appropriate officers no later than 24 hours after such independent expenditure is made.

Proposed paragraph (j) of §104.5 would address the filing dates for electioneering communications. Specifically, it would provide that the 24-hour statements must be received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date of disclosure.

11 CFR 105.2 Place of Filing; Senate Candidates, Their Principal Campaign Committees, and Committees Supporting Only Senate Candidates (2 U.S.C. 434(g)(3))

The Commission's pre-BCRA regulations require that 24-hour reports of independent expenditures supporting or opposing Senate candidates be filed with the Secretary of the Senate. *See* pre-BCRA 11 CFR 104.4(c), 109.2(b). In BCRA, Congress establishes the Commission as the place of filing for both 24- and 48-hour reports of independent expenditures, regardless of the office being sought by the clearly identified candidate. 2 U.S.C. 434(g)(3)(A). The proposed revisions to §105.2 would place the text of pre-BCRA 11 CFR 105.2 in proposed paragraph (a), adding the heading, "General Rule." New proposed paragraph (b) of 11 CFR 105.2 would be headed, "Exception," and would state that 24- and 48-hour reports of independent expenditures, must be filed with the Commission even if the communication refers to a candidate for the Senate. 2 U.S.C. 434(f).

11 CFR 104.4 Independent Expenditures by Political Committees (2 U.S.C. 434(b), (g))

The Commission has established reporting requirements for political committees making independent expenditures in accordance with 2 U.S.C. 434(b) and (g). *See* pre-BCRA 11 CFR 104.4. Paragraph (a) of §104.4 would be unaffected, other than the addition of a new heading, a grammatical correction, and an updated cross-reference.

Proposed new paragraph (b) would address reports of independent expenditures made by a political committee at any point in the campaign up to and including the 20th day before an election. Proposed paragraph (b)(1) would address independent expenditures aggregating *less than $10,000* with respect to a given election during the calendar year, up to and including the 20th day before an election. This calendar year aggregation would be based on 2 U.S.C. 434(b)(4), which requires calendar year aggregation for reports of independent expenditures by political committees. Under this calendar year approach, political committees would report the independent expenditures on Schedule E of FEC Form 3X, filed no later than the regular reporting date under 11 CFR 104.5. The Commission would interpret 2 U.S.C. 434(g), added to the Act by BCRA, to require aggregation toward the various thresholds for independent expenditure reporting to be done on a per election basis within the calendar year. For example, if a political committee made $5,000 in independent expenditures with respect to a Senate race, and $5,000 in independent expenditures with respect to a House race, and both of these events occurred before the 20th day before the election, that political committee would not be required to file 48-hour reports, but would be required to disclose the independent expenditures in its regularly scheduled reports. If the political committee makes $5,000 in independent expenditures with respect to a clearly identified candidate in the primary, and an additional $5,000 in independent expenditures with respect to the same candidate in the general election, no 48-hour reports would be required; but again the committee would be required to disclose the independent expenditures in its regularly scheduled reports. The Commission requests comments on whether a different time period, such as an election cycle, should be employed instead of the calendar year period.

Paragraph (b)(2) would address independent expenditures aggregating *$10,000 or more* during the calendar year up to and including the 20th day before an election. These reports would also be filed on Schedule E of FEC Form 3X. However, these reports would be required to be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Further, political committees would have to file an additional 48-hour report each time subsequent independent expenditures reach the $10,000 threshold with respect to the same election to which the first report related.

The Commission proposes revisions to renumbered paragraph (c) (*i.e.*, pre-BCRA 11 CFR 104.4(b)) stating that 24-hour reports must be *received* by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which the $1,000 threshold is reached during the final 20 days before the election. Further, proposed revisions to this paragraph would specifically state that additional 24-hour reports must be filed each time during the 24-hour reporting period in which subsequent independent expenditures reach or exceed the $1,000 threshold with respect to the same election to which the previous report related.

Proposed paragraph (d) would contain the report verification information currently found in pre-BCRA paragraph (b) of §104.4. There would be non-substantive grammatical changes to conform this paragraph to other changes in the overall section.

Proposed paragraph (e) would largely restate pre-BCRA paragraph (c) of §104.4. The most significant proposed change to this paragraph would be to make the Commission and not the Secretary of the Senate the place of filing for 24- and 48-hour reports of independent expenditures relating to Senate candidates. 2 U.S.C. 434(g)(3). *See* the discussion of 11 CFR 105.2, above.

Proposed paragraph (f) of 11 CFR 104.4 would address aggregation of independent expenditures for reporting purposes. The provisions of pre-BCRA 11 CFR 109.1(f) would be redesignated and revised to explain when and how political committees and other persons making independent expenditures must aggregate independent expenditures for purposes of determining whether 48-hour and 24-hour reports must be filed. Note that this proposed aggregation rule would apply to independent expenditures by political committees, as well as other persons; proposed 11 CFR 109.10(c) and (d) would cross-refer to this paragraph. Proposed paragraph (f) would establish that every date on which a communication that constitutes an independent expenditure is "publicly distributed" or otherwise publicly disseminated serves as the date that every person must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amounts ($1,000 for 24-hour reports or $10,000 for 48-hour reports). The term "publicly distributed" would have the same meaning as in new 11 CFR 100.29(b)(6), which the Commission is promulgating as part of a separate rulemaking. Thus, proposed paragraph (f) would set the same date as the starting date from which a person would have one or two days, where applicable, to file a 24-hour or 48-hour report on independent expenditures.

In addition, Congress changed the reporting requirements by adding the phrase "or contracts to make" to the statute. 2 U.S.C. 434(g)(1), (2). BCRA ties 24-hour and 48-hour reporting of independent expenditures to the time when a person "makes or contracts to make independent expenditures * * *" aggregating at or above the $1,000 and $10,000 thresholds, respectively. 2 U.S.C. 434(g)(4). Therefore, under proposed 11 CFR 104.4(f), each person would be required to include as of the proposed trigger date, in the calculation of the aggregate amount of independent expenditures, both disbursements for independent expenditures *and* all contracts obligating funds for disbursement for independent expenditures. Under this approach and the proposed timing requirements described above, once a communication that constitutes an independent expenditure is publicly distributed or disseminated as explained above, the person who paid for, or who contracted to pay for, the communication would be able to determine whether the communication satisfied the "express advocacy" requirement of the definition of an independent expenditure (*see* 11 CFR 100.16) and would therefore be able to determine whether the disbursement for that communication constituted an independent expenditure. A person reaching or exceeding the applicable reporting threshold would be responsible for submitting a report by 11:59 p.m. Eastern Standard/Daylight Time of the day after, for 24-hour reporting, or two days after, for 48-hour reporting, the date of the public distribution or dissemination of that communication. Please note that under the proposed rules, independent expenditures would be reported by political committees after a disbursement is made, or a debt reportable under 11 CFR 104.11(b) is incurred, for an independent expenditure, but no later than 11:59 p.m. of the day following the day on which the independent expenditure is first publicly distributed or otherwise publicly disseminated.

In some situations, a political committee will not make payment or incur a reportable debt before the communication underlying the independent expenditure is publicly distributed or otherwise publicly disseminated. If the communication is both publicly distributed or otherwise publicly disseminated and paid for in the same reporting period, then the committee would report the independent expenditure on Schedule E for that reporting period. If the communication is aired in one reporting period (*e.g.*, during the 24-hour reporting period) and payment is made in a later reporting period (*e.g.*, during the post-general election period), then the committee would report the independent expenditure as a memo entry on Schedule E in the reporting period in which payment is made.

In other situations, however, a political committee may pay the production and distribution costs associated with an independent

[1] Note that BCRA, as passed on February 14, 2002, in the House of Representatives and on March 20, 2002, in the Senate, would have required 24-hour reports to be *filed* rather than *received* within 24 hours of the time the independent expenditure was made. In technical corrections to BCRA, Congress amended section 212 of BCRA by reinstating the *received* requirement. H.R. Con. Res. 361, March 22, 2002.

expenditure in one reporting period, but not publicly distribute or otherwise publicly disseminate it until a later reporting period. In this case, the committee would report the payment as a disbursement on Schedule B for operating expenditures. When, in a subsequent reporting period, the communication is publicly distributed or otherwise publicly disseminated, the committee would file a Schedule E for the independent expenditure referencing the earlier Schedule B transaction. The committee would also report the disbursement for the independent expenditure as a negative entry on Schedule B so the total disbursements are not inflated. Alternatively, if the committee wishes to disclose the independent expenditure before the communication is publicly disseminated, it could report the independent expenditure on Schedule E for the reporting period in which the disbursement is made, with no further reporting obligation except for the 48-hour report if the total disbursements for independent expenditures equal or exceed $10,000 at the time the communication is publicly distributed or otherwise publicly disseminated.

Obligations incurred but not yet paid (that are reportable debts), must be reported on Schedule D. When, in a subsequent reporting period, the communication is publicly distributed or otherwise publicly disseminated, the committee must file a Schedule E referencing the debt on Schedule D. The committee must continue to report the debt on Schedule D (and any payment on it on Schedule E), until the debt is extinguished.

The Commission seeks comment on its proposed interpretation of BCRA's "makes or contracts to make" language and the triggering mechanism for 24-hour and 48-hour reports. Specifically, the Commission seeks comment on an alternative interpretation that would make the actual disbursement or the execution of the contract to make the disbursement for an independent expenditure, rather than the public distribution or dissemination of the resulting communication, the triggering mechanism for the reporting requirements once the disbursements and obligations equal or exceed the respective thresholds. This change would require earlier reporting than is currently required or proposed (*i.e.*, when the communication is publicly disseminated). The policy reasons for adopting this alternative interpretation would be similar to those described in the NPRM on the reporting of electioneering communications. *See* "Electioneering Communications" NPRM, 67 FR 51,131 (Aug. 7, 2002).

Proposed 11 CFR 109.10 Independent Expenditure by Persons Other Than Political Committees

Proposed new § 109.10 would set forth the revised reporting requirements of pre-BCRA § 109.2. Under proposed new § 109.10, persons other than political committees would have to report their independent expenditures on either FEC Form 5 or in a signed statement containing certain information regarding the person who made the independent expenditure and the nature of the expenditure itself.

Proposed paragraph (a) of 11 CFR 109.10 would provide a cross-reference to 11 CFR 104.4 for political committees, under which they must report independent expenditures. Paragraph (a) of pre-BCRA 11 CFR 109.2 would be moved to proposed paragraphs (b) and (c) of § 109.10.

Proposed paragraph (c) would address reports of independent expenditures aggregating $10,000 or more with respect to a given election from the beginning of the calendar year up to and including the 20th day before an election. This proposed paragraph would require that 48-hour reports of independent expenditures be *received* rather than *filed* by 11:59 pm of the second day after the date on which the $10,000 threshold is reached. *See* discussion of *received* versus *filed* in § 100.19, above. Pre-BCRA paragraph (b) of § 109.2 indicates that 24-hour reports must be received after a disbursement is made for an independent expenditure, but no later than 24 hours after an independent expenditure is "made" under pre-BCRA paragraph 109.1(f). *See* the discussion of proposed 11 CFR 104.4(f), above. Under the proposed rules, paragraph (b) of pre-BCRA § 109.2 would be moved to new paragraph (d) of 11 CFR 109.10 and revised to reflect the modification to the aggregation and filing requirements in proposed 11 CFR 100.19(d) and 104.4 that are discussed above.

Proposed revisions to paragraph (d) of 11 CFR 109.10 (pre-BCRA 11 CFR 109.2(b)) would also mirror the changes in 11 CFR 104.4(c) as to when 24-hour reports of independent expenditures aggregating $1,000 or more after the 20th day before the election.

Proposed paragraph (e) of 11 CFR 109.10 (*i.e.*, pre-BCRA 11 CFR 109.2(a)(1) and (c)) would address the contents and verification of statements filed in lieu of FEC Form 5. Proposed paragraph (e) would include one significant change from pre-BCRA 109.2(a)(1) and (c): A person making an independent expenditure would now be required to certify that the expenditure was made independently from a political party committee and its agents, in addition to the pre-BCRA requirement of certification that the expenditure was not coordinated with a candidate, the candidate's authorized committee, or an agent of either of the foregoing. This change reflects the addition of political party committees to the definition of "independent expenditure" in 2 U.S.C. 431(17) and the description of coordination in 2 U.S.C. 441a(a)(7)(B)(ii) under BCRA. For the same reasons explained with reference to the definition of "independent expenditure" in proposed 11 CFR 100.16, the Commission would continue to include "consultation" in the description of activity that would cause an expenditure to lose its independence (*i.e.*, "in cooperation, *consultation*, or concert with" a candidate or political party committee) even though the statutory definition in 2 U.S.C. 431(17) does not retain the term.

Proposed 11 CFR 104.20—Reporting Electioneering Communications

1. Introduction

In the Electioneering Communications Final Rules, the Commission stated it would revise the proposed rules on reporting electioneering communications and re-propose the rules as part of this rulemaking.[2] Consequently, these proposed rules include the reporting requirements for electioneering communications. Although, the Electioneering Communications NPRM originally would have designated the reporting of electioneering communications as § 104.19, the proposed rules would designate reporting of electioneering communications as section proposed § 104.20. Please note that in the narrative that follows, citations to § 104.19 refer to the original proposed rules in the Electioneering Communications NPRM, and citations to § 104.20 refer to the proposed rules in this BCRA reporting NPRM.

2. Disclosure Date

BCRA requires persons who make electioneering communications costing more than $10,000 to file disclosure statements with the FEC within 24 hours of the disclosure date. 2 U.S.C. 434(f)(1). In the Electioneering Communications NPRM, proposed § 104.19(b) would have defined "disclosure date" as "the first date by which a person has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000; * * *" 67 FR at 51,145 (August 7, 2002). The Electioneering Communications NPRM, however, sought comment on whether the disclosure date should be the date on which the electioneering communication aired. Thus, under this proposal, an organization could make disbursements or enter into a contract to make disbursements that exceed $10,000, but would not be required to disclose the disbursements or contract until the electioneering communication is aired. Although BCRA uses the term "airing," the Commission has determined that "publicly distributed" more accurately encompasses how electioneering communications are disseminated to the public, including the airing of these communications. In the Electioneering Communications Final Rules, the Commission defines "publicly distributed" to mean "aired, broadcast, cablecast, or otherwise disseminated through the facilities of a television station, radio station, cable television system, or satellite system." 11 CFR 100.29(b)(6). Therefore, the proposed § 104.20(a)(5) would adopt the definition of "publicly distributed" in 11 CFR 100.29(b)(6) and the term "publicly distributed" would be used throughout the proposed rules instead of "airing."

All of the commenters who addressed this issue disagreed with the proposed rule and advocated adopting a final rule that would define "disclosure date" as the date of the public distribution of the electioneering communication.[3] They argued that there is no electioneering communication, and therefore no reporting requirement, until the communication is actually publicly distributed. One witness at the August 28, 2002 public hearing on electioneering communications did acknowledge that in some cases it may be difficult to ascertain when an electioneering communication is publicly distributed for purposes of triggering the 24-hour reporting period because the contract may not specify a precise time that the communication will be publicly distributed or because in some instances the broadcaster does not air the communication during the block of time specified in the contract. In addition, the Commission believes that there could be legal and practical concerns with compelling disclosure of potential electioneering communications before they are finalized and publicly distributed, particularly when such disclosure could force reporting entities to divulge confidential strategic and political information about their possible future activities.

Taking into consideration the comments described above, the Commission proposes to make the date that an electioneering communication is publicly distributed as the disclosure date under proposed §104.20(a)(1). The Commission's proposal reflects its concerns that there are legal and practical issues associated with compelling disclosure of potential electioneering communications before they are finalized and publicly distributed. To address the concern that a person may not know the exact time an electioneering communication will be publicly distributed during the day that it is scheduled to air, the Commission is proposing to interpret the 24-hour period in which to report the electioneering communication as starting at the end of the day in which the communication is publicly distributed. Therefore, proposed §104.20(b) would require reporting of an electioneering communication by the end of the following day. The Commission seeks comment on this interpretation.

3. Aggregation of Direct Costs of Producing or Airing Electioneering Communications

In the Electioneering Communications NPRM, proposed §104.19(a) would have required every person who makes a disbursement, or executes a contract, for the direct costs of producing or airing electioneering communications that aggregate in excess of $10,000 during a calendar year to file a statement with the Commission. Furthermore, proposed §104.19(a)(2) would have included a non-exhaustive list of what constitutes direct costs of electioneering communications. The Commission sought comment on two issues relating to this proposed requirement. The first was whether the list in proposed §104.19(a)(2) was adequate and whether the list should be exhaustive. The second issue was whether the direct costs of producing an electioneering communication and the direct costs of airing it should be aggregated separately or together to determine whether the $10,000 threshold has been reached.

The commenters to the Electioneering Communications NPRM were split on the issue of whether the list of direct costs in proposed §104.19(a)(2) should be exhaustive or non-exhaustive. One commenter who supported an exhaustive list argued that it is clear what is involved in producing a communication, and the proposed rule adequately addresses that. Another commenter recommended a non-exhaustive list so that the Commission could retain flexibility to identify other costs associated with producing and airing communications not listed in the proposed rules.

In order to provide clear guidance on this issue, proposed 11 CFR 104.20(a)(2) would include an exhaustive list of direct costs associated with producing or airing electioneering communications within the proposed definition of "direct costs of producing or airing electioneering communications." The Commission seeks comments on whether there are other direct costs associated with producing or airing electioneering communications that should be included in the proposed definition. In particular, the Commission seeks comment on what, if any, other in-house production costs should be considered direct costs. The Commission also welcomes additional comments on whether the list in proposed §104.20(a)(2) should be exhaustive.

The commenters also disagreed on the question of the aggregation of direct costs of producing or airing electioneering communications. Some commenters argued that BCRA should be read to require that these costs should be aggregated separately. Under this interpretation, if it costs a person $7,000 to produce the electioneering communication and $7,000 to air it, the threshold has not been met because neither the direct costs of producing or airing the electioneering communication reached $10,000. In contrast, other commenters argued that BCRA mandates that the direct costs of producing and airing the electioneering communication be aggregated. Under this approach, the example above would result in the $10,000 threshold being met because the direct costs of producing and airing would be $14,000.

The language in proposed §104.20(b) would be identical to the language originally proposed in §104.19(a). Thus, when the direct costs of producing or airing an electioneering communication exceed $10,000 when aggregated together, the person who is making the electioneering communication would be

[2] The original proposed rules were part of the Electioneering Communications NPRM. *See* 67 *FR* 51,131, 51,145 (Aug. 7, 2002).

[3] Two commenters, submitting joint written comments, originally supported a two-step reporting process—a general report when there is a disbursement or a contract followed later by a specific report when the electioneering communication is aired. While testifying at the Commission's public hearing, these commenters agreed that defining "disclosure date" as the date of airing is an acceptable alternative.

required to file a statement with the Commission when the electioneering communication is publicly distributed.

4. Direction or Control

The Electioneering Communication NPRM included two proposed alternatives, identified as Alternative 4–A and Alternative 4–B, to implement the BCRA requirement to disclose "any person sharing or exercising direction or control over the activities" of the person making the disbursement for electioneering communications. *See* 2 U.S.C. 434(f)(2)(A). Many of the commenters expressed concern that both alternatives are vague and could encompass a large number of people, especially for electioneering communications made by membership organizations. Some of the commenters were also concerned that disclosing this information may reveal sensitive or confidential information and the decision-making processes of organizations, especially non-profit organizations, thereby placing them at a competitive disadvantage. For these reasons, these commenters argued that the Commission should require limited, if any, disclosure of persons who share or exercise direction or control over the person who makes disbursements for electioneering communications or the activities involved in making electioneering communications.

In contrast, several commenters, including the Congressional sponsors of BCRA, disagreed with both alternatives because in their view neither would disclose sufficiently the information required by BCRA. *See id.* They argued that the purpose of this disclosure requirement is to reveal not only those who have direction or control over the electioneering communications, but also those who have direction or control over the organization that makes the electioneering communications.

While the Commission appreciates the concerns of those who objected to disclosure of the decision-making process of their organizations, BCRA requires persons who make electioneering communications to disclose those who share or exercise direction or control over the person making the disbursement for electioneering communications. 2 U.S.C. 434(f)(2)(A). Because neither Alternative 4–A nor Alternative 4-B in the Electioneering Communications NPRM appear to encompass the disclosure required by BCRA, proposed §104.20(c)(2) would not incorporate either of the two alternatives. Instead, proposed paragraph (c)(2) would adopt the language of 2 U.S.C. 434(f)(2)(A).

The Electioneering Communications NPRM sought comment on whether the proposed rules should define "direction or control over the activities" and whether such definition should draw upon the existing earmarking regulations at 11 CFR 110.6(d) or the definition of "to direct" at 11 CFR 300.2(n). A commenter suggested that the definition should be broadly defined and should include those persons with the ability to influence the decision-making process concerning electioneering communications. While this same commenter agreed that the definition of "to direct" could be modified for inclusion into the definition of "direction or control over the activities," another commenter stated that it is unsuitable to use the definition of "to direct" or the earmarking regulations in this context.

To provide further guidance on proposed §104.20(c)(2), the proposed rules would include a definition of "sharing or exercising direction or control." Because it appears that "direction or control" in the context of 2 U.S.C. 434(f)(2)(A) refers to the management or decision-making process of an organization or a qualified nonprofit corporation ("QNC"), proposed §104.20(a)(3) would define "sharing or exercising direction or control" to mean exercising authority or responsibility for policy formulation, day-to-day management, obligation of funds, or hiring or firing employees. The Commission believes that these functions would provide sufficient scope to capture responsible persons and entities without sweeping too broadly.

In the alternative, the Commission could define "sharing or exercising direction or control" to mean the officers, directors, partners, or any other individuals who have the authority to bind the organization, entity, or person making the disbursement for electioneering communication. This alternative, which is not reflected in the proposed rules, seeks a more objective, bright-line definition of "direction or control" and would focus the definition on those persons who have the authority to act on behalf of the organization. The Commission seeks comments on these approaches to implementing 2 U.S.C. 434(f)(2)(A). The Commission also seeks comments on how these proposals would apply to individuals making electioneering communications.

5. Identification of Candidates and Elections

Under 2 U.S.C. 434(f)(2)(D), the elections to which the electioneering communications pertain, as well as the names of all clearly identified candidates referred to in the communications, must be disclosed. The Electioneering Communications NPRM provided two alternatives to proposed 11 CFR 104.19(b)(5), identified as Alternative 5–A and Alternative 5–B, which would implement this statutory provision. 67 FR 51,146. Both alternatives would require disclosure of the election and all clearly identified candidates who are referred to in the electioneering communication, but contain different language. Commenters preferred the language of Alternative 5–B because it would be easier to read and would be more consistent with 2 U.S.C. 434(f)(2)(D). Alternative 5–B arguably also is more consistent with what the Commission is proposing as the disclosure date, *see* above, as there is no doubt as to the names of clearly identified candidates appearing in a communication once a communication is publicly distributed. Accordingly, proposed §104.20(c)(5) would incorporate the language of Alternative 5–B of the Electioneering Communications NPRM.

6. Disclosure of Donors

BCRA requires persons who make electioneering communications and create segregated bank accounts for electioneering communications to disclose the names and addresses of contributors who contribute an aggregate of $1,000 or more to that segregated account. 2 U.S.C. 434(f)(2)(E). If the organization that makes electioneering communications does not use a segregated bank account, then it would be required to disclose the names and addresses of contributors who contribute an aggregate of $1,000 or more to that organization from the beginning of the preceding year through the disclosure date. 2 U.S.C. 434(f)(2)(F).

A. Contributions/Contributors v. Donations/Donors

In the Electioneering Communications NPRM, the Commission sought comment on whether amounts given to persons who make disbursements for electioneering communications are contributions subject to the limitations, prohibitions, and reporting requirements of the Act. The Commission proposed to treat amounts given to political committees as contributions because BCRA refers to "funds contributed" and "contributors." *See* 2 U.S.C. 434(f)(2)(E) and (F). Conversely, amounts given to persons who are not political committees would not be considered contributions. Comments on this issue were generally favorable to the Commission's approach.[4]

Upon further analysis of this issue, the Commission proposes a different approach as to the question of whether amounts given for electioneering communications are contributions or donations. As stated in the Electioneering Communications Final Rules, the definition of "electioneering communications" does not include expenditures or independent expenditures that are subject to the limitations, prohibitions, and reporting requirements of the Act and the Commission's regulations. 11 CFR 100.29(c)(3). Communications made by political committees that would otherwise qualify as electioneering communications would be reported as expenditures or independent expenditures because they are made in connection with Federal elections. By operation of the exemption of expenditures and independent expenditures from the definition of "electioneering communications," these communications would not be considered electioneering communications. Therefore, political committees, by definition, do not make electioneering communications. Consequently, only persons who are not political committees would make disbursements for electioneering communications.

As stated above and in the Electioneering Communications NPRM, the Commission proposed to designate amounts given for electioneering communications purposes to persons who are not political committees as "donations." The Commission believes that amounts given to entities that are not political committees for electioneering communications should not be treated as contributions and should not count towards political committee status, unless these amounts would otherwise constitute a contribution under subparts B and C of part 100. Although the statutory language of BCRA uses the terms "contributor" and "contributed," it does not use the term "contribution" nor does it amend the definition of "contribution" in 2 U.S.C. 431(8). Thus, it appears that Congress did not intend these amounts to be contributions automatically to persons who are not political committees, especially in light of the statutory exemption for expenditures and independent expenditures from the definition of "electioneering communications." Accordingly, proposed §104.20(c) refers to amounts given for electioneering communications as "donations" and the givers of the amounts as "donors." Additionally, all comments on the Electioneering Communications NPRM on this issue favored this approach. The Commission again seeks comment on this approach.

[4] Further, one commenter, in response to the Commission's question concerning treatment of amounts given to non-Federal accounts of a separate segregated fund or to non-connected committees, argued that amounts given to non-Federal accounts should not be treated as contributions subject to the prohibitions against corporations and labor organization funding electioneering communications.

B. Disclosure Requirements

In reading 2 U.S.C. 434(f)(2)(E) and (F) together with 2 U.S.C. 441b(c)(3)(B), the Commission stated in the Electioneering Communications NPRM that these disclosure requirements for segregated bank accounts appear to apply only to qualified nonprofit corporations organized under 26 U.S.C. 501(c)(4). See 67 FR 51,143. Therefore, proposed 11 CFR 104.19(b)(6) would have required only QNCs to disclose their contributors for purposes of electioneering communications. See 11 CFR 114.10 for QNC status.

The Electioneering Communications NPRM narrative that explained proposed section 104.19(b)(7) clearly states that all persons who make electioneering communications, including QNCs that do not use segregated bank accounts, would be required to disclose their contributors who contribute an aggregate of over $1,000 during the prescribed time period. 67 FR 51,143. Nevertheless, some commenters interpreted proposed §104.19(b)(7) to apply only to QNCs and objected to limiting the disclosure requirements to only QNCs. They argued that BCRA does not limit the requirements of 2 U.S.C. 434(f)(2)(E) and (F) to just QNCs. Consequently, they recommended that all persons who make electioneering communications should be required to disclose their contributors under proposed §104.19(b)(7) and the option for segregated bank accounts in proposed §104.19(b)(6) should be extended to all persons who make electioneering communications. Additionally, some commenters expressed concern as to the requirement that organizations would be required to disclose their donors because donors may become inhibited from making donations aggregating over $1,000.

Because the Commission sees merit in these arguments, the revised proposed rules reflect the commenters' suggestions and would make clear that the application of proposed §§104.20(c)(7) and (8) would include all persons who make electioneering communications, not just QNCs. Proposed paragraphs (c)(7) and (8) would incorporate the language in proposed §§104.19(b)(6) and (7) with modifications as discussed below.

(1) *Disclosure of donors when exclusively using segregated bank accounts to make disbursements for electioneering communications*

Under proposed §104.19(b)(6) in the Electioneering Communications NPRM, QNCs that use segregated bank accounts to make disbursements for electioneering communications would be required to disclose only contributors who contributed an aggregate in excess of $1,000 to that segregated bank account. As stated above, the Commission agrees with the suggestion that this option should be made available to all persons who may make electioneering communications. Accordingly, proposed § 104.20(c)(7) would allow all such persons to establish a separate bank account to limit their reporting of the identities of their donors of $1,000 or more to those who have donated directly to that bank account, as long as only funds from the separate bank account are used to pay for electioneering communications. Additionally, the Commission notes that the final rules at 11 CFR 114.14(d) provide such persons that are not QNCs with the option of establishing a segregated bank account similar to that allowed to QNCs.

(2) *Disclosure of donors when not exclusively using segregated bank accounts to make disbursements for electioneering communications*

Because there was some confusion as to the scope of the reporting requirement in proposed 11 CFR 104.19(b)(7), proposed 11 CFR 104.20(c)(8) would differ from proposed § 104.19(b)(7) in that it would remove the reference to QNCs. Thus, proposed § 104.20(c)(8) would make clear that all persons who make electioneering communications would be required to disclose their donors who donate over $1,000 in the aggregate, if they do not use segregated bank accounts.

One commenter to the Electioneering Communications NPRM argued that the members of the organizations it represented could be subject to negative consequences if their names are disclosed in connection with an electioneering communication. The FECA provides for an advisory opinion process concerning the application of any of the statutes within the Commission's jurisdiction or any regulations promulgated by the Commission, and such a group could also seek an advisory opinion from the

Commission to determine if the group would be entitled to an exemption from disclosure that would be analogous to the exemption provided to the Socialist Workers Party in Advisory Opinions 1990–13 and 1996–46 (both of which allowed the Socialist Workers Party to withhold the identities of its contributors and persons to whom it had disbursed funds because of a reasonable probability that the compelled disclosure of the party's contributors' names would subject them to threats, harassment, or reprisals from either Government officials or private parties.). BCRA's legislative history recognizes the need for limited exceptions in these circumstances. *See* 148 Cong. Rec. S2136 (daily ed. Mar. 20, 2002) (remarks of Sen. Snowe).

7. Other Content Requirements

Proposed § 104.20(c) would require disclosure of additional information, not described above, in connection with the reporting of electioneering communications as mandated by BCRA. *See* 2 U.S.C. 434(f)(2)(A) and (C). Proposed paragraph (c)(1) would require identification of the person making the disbursement or the person's principal place of business. Proposed paragraph (c)(3) would require identification of the custodian of the books and accounts. Proposed paragraph (c)(4) would require disclosure of information about disbursements that exceed $200. Proposed paragraph (c)(6) would require identifying the disclosure date.

8. Recordkeeping Requirement

Proposed 11 CFR 104.20(d) would require all persons who make electioneering communications or accept donations for the purpose of making electioneering communications to maintain records in accordance with 11 CFR 104.14. In the Electioneering Communications NPRM, proposed § 104.19(c) would have exempted QNCs from the recordkeeping requirements. The commenters who addressed this issue were split on whether QNCs should be exempted from the recordkeeping requirements. A commenter who did not support the exemption argued that because these entities are required to report their electioneering communications, they should also be required to maintain records that relate to the electioneering communications in order to support their reports.

In determining that all of the reporting and recordkeeping requirements for political committees were too burdensome for QNCs making independent expenditures, the Supreme Court in *FEC* v. *Massachusetts Citizens For Life, Inc.* ("MCFL") noted that MCFL, Inc. was subject to more "extensive requirements and more stringent restrictions" than unincorporated nonprofit organizations. 479 U.S. 238, 254–255 (1986). In contrast, proposed § 104.20(d) would require QNCs to maintain only those records that pertain to their electioneering communications which should not be burdensome for them. Additionally, this recordkeeping requirement is no different than what is required of any other person, including unincorporated nonprofit organizations, that make disbursements for electioneering communications. Furthermore, the availability of these records would be necessary to assess the accuracy of the electioneering communications reports filed by QNCs. Therefore, proposed paragraph (d) would not include an exemption for QNCs. The Commission welcomes further comments on this issue.

9. Proposed Amendment to 11 CFR 105.2

The Electioneering Communications NPRM proposed amending current 11 CFR 105.2 to require principal campaign committees of Senatorial candidates and other political committees that support only Senatorial candidates to file their statements of electioneering with the Commission. The Commission, however, has determined that political committees do not make electioneering communications by operation of the definition of "electioneering communications" in 11 CFR 100.29. Therefore, proposed § 105.2(b) would not incorporate the language from the electioneering communications NPRM or include mention of statements of electioneering communications.

10. Filing with the Secretary of State

Unlike the proposed provisions for independent expenditures, the proposed rules for electioneering communications do not include provisions that remove the requirement to file reports of electioneering communications with the Secretary of State if that state has obtained a waiver under 11 CFR 108.1(b). *See* proposed 11 CFR 104.4(e), below. The Commission seeks comments on whether proposed 11 CFR 104.20 should include such a provision. (At the current time, only 1 state, Montana, and two territories, Guam and Puerto Rico, have not obtained waivers.)

Principal Campaign Committee and National Political Party Committee Reporting Schedules

Proposed 11 CFR 104.5(a)—Principal Campaign Committees of House and Senate Candidates

Proposed 11 CFR 104.5(a) would set forth the new reporting schedule for the principal campaign committees of House of Representatives and Senate candidates. Prior to BCRA, the principal campaign committees of House and Senate candidates were allowed, in the non-election years, to file semi-annually. After November 6, 2002, excluding reports for runoff elections, principal campaign committees of House and Senate candidates must file quarterly in non-election years, as well as in the election year. 2 U.S.C. 434(a)(2)(B). Proposed revised § 104.5(a)(1) would state that these committees must file quarterly. Like other quarterly reports, these must be complete as of March 31, June 30, September 30, and December 31, and must be filed by April 15, July 15, October 15, and January 31 of the following year, respectively. Proposed paragraph (a)(2) of 11 CFR 104.5 would set forth the requirements for pre-election and post-general election reports in the election year, which would be identical to paragraphs (a)(1)(i) and (ii) of the pre-BCRA section. The rules regarding semi-annual reporting (in pre-BCRA § 104.5(a)) would be deleted. Please note that these new reporting dates do not affect the principal campaign committees or other authorized committees of Presidential candidates.

Proposed 11 CFR 104.5(c)—Committees Other Than Authorized Committees of Candidates

Proposed revisions to the introductory language for paragraph (c) would clarify that while non-authorized political committees may choose to file quarterly or monthly, a national committee of a political party must report monthly under proposed 11 CFR 104.5(c)(4).

Proposed 11 CFR 104.5(c)(4) would be a new provision implementing the BCRA requirement that national political party committees must report on a monthly basis. 2 U.S.C. 434(a)(4)(B). Previously, national party committees were allowed to file quarterly in the election year and semi-annually in the non-election years. The changes to the Act by BCRA specifically state that national political party committees must file monthly, including pre-general election and post-general election reports. These changes may have been intended to remove any doubt as to whether national political party committees that filed quarterly had to file these reports if they did not make any contributions or expenditures on behalf of candidates in these elections during pre-BCRA election reporting periods. These rules would implement BCRA's amendment.

The proposed rules would apply to the Congressional campaign committees of the political parties as national political party committees. The Commission seeks comments on whether Congressional campaign committees should so specifically be included in the regulations.

11 CFR 104.3(g)—Funds for Party Office Buildings

Before BCRA, the Act and Commission regulations provide an exception to the definition of contribution and expenditure for donations to a national or State party committee that are specifically designated to defray any cost incurred for the construction or purchase of its office facility. Pre-BCRA 2 U.S.C 431(8)(B)(vii); pre-BCRA 11 CFR 100.7(b)(12). This exception is reflected in current 11 CFR 104.3(g), which provides that funds or anything of value that were designated for party office building funds and received by a party committee must be reported as memo entries.

To implement BCRA, the Commission adopted new regulations at 11 CFR 300.12 and 300.35, which eliminate this exception for national party committees and provide that the source and reporting of donations used for the costs incurred by a State, district, or local party committee for the purchase or construction of its office building are subject to State law if donated to a non-Federal account of the committee. "Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule," 67 FR 49,123 and 49,127. However, if funds or things of value are contributed to (or for use by) the Federal account of a State, district, or local party committee for the purchase or construction of its office building, then the amounts donated are contributions under the Act. Consequently, proposed paragraph (g) of 11 CFR 104.3 would make it clear that any funds or things of value received by a Federal account and used for the purchase or construction of an office building, regardless of a specific contributor designation, are contributions and are not treated differently from other funds or things of value donated to a Federal account.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The bases of this certification are several. There are four areas in which new rules are being proposed. The economic impact on small entities of each subject of new proposed rules is addressed below.

Independent expenditure reporting First, with regard to the proposed new rules addressing independent expenditures that the national, State, and local party committees of the two major political parties, and other political committees are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. Further, individual citizens operating under these rules are not small entities.

The small entities to which the rules would apply would not be unduly burdened by the proposed rules because there is no significant extra cost involved, as independent expenditures must already be reported. Collectively, the differential costs will not exceed 100 million dollars per year. In addition, new reporting requirements would not significantly increase costs, as they only apply to those spending $10,000 or more on independent expenditures, and the actual reporting requirements are the minimum necessary to comply with the new statute enacted by Congress.

Electioneering communications Second, with regard to the proposed rules addressing electioneering communications, the only burden the proposed rules impose is on persons who make electioneering communications, and that burden is a minimal one, requiring persons who make such communications to provide the names and addresses of those who made donations to that person when the costs of the electioneering communication exceed $10,000. If that person is a corporation that qualifies as a QNC, then it must also certify that it meets that status. The number of small entities affected by the proposed rules is not substantial.

The Commission would adopt several rules that seek to reduce any burden that might accrue to persons who must file reports. First, the Commission would interpret the reporting requirement such that no reporting is required until after an electioneering communication is publicly distributed. More than likely, this would only require that person to file one report with the Commission. Also, the Commission would allow all persons paying for electioneering communications to establish segregated accounts, and to report the names and addresses of only those persons who contributed to those accounts. Further, the Commission would interpret the statute to not require that a certification of QNC status be filed until the person is also required to file a disclosure report. These are significant steps the Commission would take to reduce the burden on those who would make electioneering communications. The overall burden on the small entities affected by these proposed rules for reporting electioneering communications would not amount to $100 million on an annual basis. Moreover, these proposed rules would be no more than what is strictly necessary to comply with the new statute enacted by Congress.

Reporting schedules for house and senate candidates Third, regarding the new rules requiring a different non-election year reporting schedule for the authorized committees of House and Senate candidates, the reporting frequencies have increased, however, the burden would not amount to $100 million on an annual basis. Moreover, these proposed rules would be no more than what is strictly necessary to comply with the new statute enacted by Congress.

Reporting schedules for national committees of political parties Fourth, regarding the new rules requiring a different reporting schedule for national committees of political parties, as noted above, the two major national party committees are not small entities under 5 U.S.C. 601.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 105

Campaign funds, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 108

Elections, Reporting and recordkeeping requirements.

11 CFR Part 109

Elections, Reporting and Recordkeeping requirements.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend subchapter A of chapter I of title 11 of the Code of Federal Regulations as follows:

PART 100—SCOPE AND DEFINITIONS

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

2. Section 100.19 is amended as follows:

a. Revising the introductory text and paragraphs (b) through (e).

b. Adding a heading to paragraph (a) and adding paragraph (f).

The revisions and additions read as follows:

§ 100.19 File, filed, or filing (2 U.S.C. 434(a)).

With respect to documents required to be filed under 11 CFR parts 101, 102, 104, 105, 107, 108, and 109, and any modifications or amendments thereto, the terms *file, filed,* and *filing* mean one of the actions set forth in paragraphs (a) through (f) of this section. For purposes of this section, document means any report, statement, notice, or designation required by the Act to be filed with the Commission or the Secretary of the Senate.

(a) *Where to deliver reports.* * * *

(b) *Timely filed. General rule.* A document other than those addressed in paragraphs (c) through (f) of this section, is timely filed upon deposit as registered or certified mail in an established U.S. Post Office and postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time of the day of the filing date, except that pre-election reports so mailed must be postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time of the fifteenth day before the date of the election. Documents sent by first class mail must be received by the close of business on the prescribed filing date to be timely filed.

(c) *Electronically filed reports.* For electronic filing purposes, a document is timely filed when it is received and validated by the Federal Election Commission at or before 11:59 p.m. Eastern Standard/Daylight Time on the filing date.

(d) *48-hour and 24-hour reports of independent expenditures.*

(1) *48-hour reports of independent expenditures.* A 48-hour report of independent expenditures under 11 CFR 104.4(b) or 109.10(c) is timely filed when it is received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which independent expenditures aggregate $10,000 or more in accordance with 11 CFR 104.4(f), any time during the calendar year up to and including the 20th day before an election.

(2) *24-hour reports of independent expenditures.* A 24-hour report of independent expenditures under 11 CFR 104.4(c) or 109.10(d) is timely filed when it is received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which independent expenditures aggregate at least $1,000, in accordance with 11 CFR 104.4(f), during the period less than 20 days but more than 24 hours before an election.

(3) *Permissible means of filing.* In addition to other permissible means of filing, a 24-hour report or 48-hour report of independent expenditures may be filed using a facsimile machine or by electronic mail if the filer is not required to file electronically in accordance with 11 CFR 104.18.

(e) *48-hour statements of last-minute contributions.* In addition to other permissible means of filing, authorized committees that are not required to file electronically may file 48-hour notifications of contributions using facsimile machines. All authorized committees that file with the Commission, including electronic filers, may use the Commission's web site's on-line program to file 48-hour notifications of contributions. *See* 11 CFR 104.5(f).

(f) *24-hour statements of electioneering communications.* A 24-hour statement of electioneering communications under 11 CFR 104.20 is timely filed when it is received by the Commission within 24 hours of the disclosure date (see 11 CFR 104.20(a)(1)). In addition to other permissible means of filing, a 24-hour statement of electioneering communications may be filed using a facsimile machine or by electronic mail if the filer is not required to file electronically in accordance with 11 CFR 104.18.

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

3. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), and 439a.

4. In § 104.3, paragraph (g) is revised to read as follows:

§ 104.3 Contents of reports (2 U.S.C. 434(b), 439a).

* * * * *

(g) Building funds.

(1) A political party committee must report gifts, subscriptions, loans, advances, deposits of money, or anything of value that are used by the political party committee's Federal accounts to defray the costs of construction or purchase of the committee's office building. See 11 CFR 300.35. Such a receipt is a contribution subject to the limitations and prohibitions of the Act and reportable as a contribution, regardless of whether the contributor has designated the funds or things of value for such purpose and regardless of whether such funds are deposited in a separate Federal account dedicated to that purpose.

(2) Gifts, subscriptions, loans, advances, deposits of money, or anything of value that are donated to a non-Federal account of a State, district, or local party committee and are used by that account for the purchase or construction of its office building are not contributions subject to the reporting requirements of the Act. The reporting of such funds or things of value is subject to State law.

(3) Gifts, subscriptions, loans, advances, deposits of money, or anything of value that are used by a national committee of a political party to defray the costs of construction or purchase of the national committee's office building are contributions subject to the requirements of paragraph (g)(1) of this section.

* * * * *

5. Section 104.4 is revised to read as follows:

§ 104.4 Independent expenditures by political committees (2 U.S.C. 434(b), (d), and (g)).

(a) *Regularly scheduled reporting.* Every political committee that makes independent expenditures must report all such independent expenditures on Schedule E in accordance with 11 CFR 104.3(b)(3)(vii). Every person other than a political committee must report independent expenditures in accordance with 11 CFR 109.10.

(b) *Reports of independent expenditures made at any time up to and including the 20th day before an election.*

(1) Independent expenditures aggregating less than $10,000 in a calendar year. Political committees must report on Schedule E of FEC Form 3X at the time of their regular reports in accordance with 11 CFR 104.3, 104.5 and 104.9, all independent expenditures aggregating less than $10,000 with respect to a given election any time during the calendar year up to and including the 20th day before an election.

(2) Independent expenditures aggregating $10,000 or more in a calendar year. Political committees must report on Schedule E of FEC Form 3X all independent expenditures aggregating $10,000 or more with respect to a given election any time during the calendar year up to and including the 20th day before an election. Political committees must ensure that the Commission receives these reports no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional $10,000 or more, the political committee must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures. See 11 CFR 104.4(f) for aggregation. Each 48-hour report must contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved. In addition to other permissible means of filing, a political committee may file the 48-hour reports under this section by any of the means permissible under 11 CFR 100.19(d)(3).

(c) *Reports of independent expenditures made less than 20 days, but more than 24 hours before the day of an election.* Political committees must ensure that the Commission receives reports of independent expenditures aggregating $1,000 or more with respect to a given election, after the 20th day, but more than 24 hours, before 12:01 a.m. of the day of the election, no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate $1,000 or more, the political committee must ensure that the Commission receives a new 24-hour report of the subsequent independent expenditures. Each 24-hour report shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved. Political committees may file reports under this section by any of the means permissible under 11 CFR 100.19(d)(3).

(d) *Verification.* Political committees must verify reports of independent expenditures filed under paragraph (b) or (c) of this section by one of the methods stated in paragraph (d)(1) or (2) of this section. Any report verified under either of these methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(1) For reports filed on paper (*e.g.*, by hand-delivery, U.S. Mail or facsimile machine), the treasurer of the political committee that made the independent expenditure must certify, under penalty of perjury, the independence of the expenditure by handwritten signature immediately following the certification required by 11 CFR 104.3(b)(3)(vii).

(2) For reports filed by electronic mail, the treasurer of the political committee that made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by typing the treasurer's name immediately following the certification required by 11 CFR 104.3(b)(3)(vii).

(e) *Where to file.* Reports of independent expenditures under this section and part 109 shall be filed as follows.

(1) For independent expenditures in support of or in opposition to, a candidate for President or Vice President: with the Commission and the Secretary of State for the State in which the expenditure is made.

(2) For independent expenditures in support of, or in opposition to, a candidate for the Senate *or the House of Representatives*: with the Commission and the Secretary of State for the State in which the candidate is seeking election.

(3) Notwithstanding the requirements of paragraphs (e)(1) and (2) of this section, political committees and other persons shall not be required to file reports of independent expenditures with the Secretary of State if that State has obtained a waiver under 11 CFR 108.1(b).

(f) *Aggregating independent expenditures for reporting purposes.* For purposes of determining whether 24-hour and 48-hour reports must be filed in accordance with paragraphs (b) and (c) of this section and 11 CFR 109.10(c) and (d), aggregations of independent expenditures must be calculated as of the first date during the calendar year on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated, and as of the date that any such communication with respect to the same election is subsequently publicly distributed or otherwise publicly disseminated. Every person must include in the aggregate total all disbursements for independent expenditures, and all enforceable contracts, either oral or written, obligating funds for disbursements for independent expenditures, made with respect to any communication that has been publicly distributed or otherwise publicly disseminated, during the calendar year, with respect to a given election for Federal office.

6. In § 104.5, paragraphs (a) and (g) are revised and introductory text to paragraph (c), and paragraphs (c)(4) and (j) are added to read as follows:

§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).

(a) *Principal campaign committee of House or Senate candidate.* Each treasurer of a principal campaign committee supporting a candidate for the House of Representatives or for the Senate must file reports on the dates specified at paragraph (a)(1) of this section in election years and non-election years, and paragraph (a)(2) of this section in election years.

(1) *Quarterly reports.*

(i) Quarterly reports must be filed no later than the 15th day following the close of the immediately preceding calendar quarter (on April 15, July 15, and October 15), except that the report for the final calendar quarter of the year must be filed no later than January 31 of the following calendar year.

(ii) The report must be complete as of the last day of each calendar quarter.

(iii) The requirement for a quarterly report shall be waived if, under paragraph (a)(2) of this section, a pre-election report is required to be filed during the period beginning on the 5th day after the close of the calendar quarter and ending on the 15th day after the close of the calendar quarter.

(2) *Additional reports in the election year.*

(i) *Pre-election reports.*

(A) Pre-election reports for the primary and general election must be filed no later than 12 days before any primary or general election in which the candidate seeks election. If sent by registered or certified mail, the report must be mailed no later than the 15th day before any election.

(B) The pre-election report must disclose all receipts and disbursements as of the 20th day before a primary or general election.

(ii) *Post-general election report.*

(A) The post-general election report must be filed no later than 30 days after any general election in which the candidate seeks election.

(B) The post-general election report must be complete as of the 20th day after the general election.

* * * * *

(c) *Committees other than authorized committees of candidates.* Each political committee that is not the authorized committee of a candidate, except for a national committee of a political party (including the national Congressional campaign committees of a political party), which must comply with paragraph (c)(4) of this section, must file either: Election year and non-election year reports as prescribed at paragraphs (c)(1) and (2) of this section; or monthly reports as prescribed at paragraph (c)(3) of this section. A political committee reporting under 11 CFR 104.5(c), except for a national committee of a political party (including the national Congressional campaign committees of a political party), may elect to change the frequency of its reporting from monthly to quarterly and semi-annually or vice versa. A committee, except for national committee of a political party (including the national Congressional campaign committees of a political party), may change its filing frequency only after notifying the Commission in writing of its intention at the time it files a required report under its current filing frequency. Such committee will then be required to file the next required report under its new filing frequency. A committee may change its filing frequency no more than once per calendar year.

* * * * *

(4) A national committee of a political party, including a national Congressional campaign committee, must report monthly in accordance with paragraph (c)(3) of this section.

* * * * *

(g) *Reports of independent expenditures.*

(1) *48-hour reports of independent expenditures.* Every person who or which must file a 48-hour report under 11 CFR 104.4(b) must ensure the Commission receives the report no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures by that person relating to the same election as that to which the previous report relates aggregate $10,000 or more, that person must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which the $10,000 threshold is reached or exceeded. See 11 CFR 104.4(f) for aggregation.

(2) *24-hour report of independent expenditures.* Every person who or which must file a 24-hour report under 11 CFR 104.4(c) must ensure that the Commission receives the report no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures by that person relating to the same election as that to which the previous report relates aggregate $1,000 or more, that person must ensure that the Commission receives a 24-hour report of the subsequent independent expenditures no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which the $1,000 threshold is reached or exceeded. See 11 CFR 104.4(f) for aggregation.

(3) Each 24-hour or 48-hour report of independent expenditures filed under this section shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved.

(4) For purposes of this part, a communication that is mailed to its intended audience is publicly disseminated when it is relinquished to the U.S. Postal Service.

* * * * *

(j) 24-hour statements of electioneering communications. Every person who has made a disbursement or who has executed a contract to make a disbursement for the direct costs of producing or airing electioneering communications as defined in 11 CFR 100.29 aggregating in excess of $10,000 during any calendar year shall file a statement with the Commission by 11:59 p.m. Eastern Standard/Daylight Time of the day following the disclosure date. The statement shall be filed under penalty of perjury and in accordance with 11 CFR 104.20.

§ 104.19 [Reserved]

7. Section 104.19 is added and reserved.

8. Section 104.20 is added to read as follows:

§ 104.20 Reporting electioneering communications (2 U.S.C. 434(f)).

(a) *Definitions.*

(1) Disclosure date means:

(i) The first date during the calendar year on which an electioneering communication is publicly distributed provided that the person making the electioneering communication has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000; or

(ii) Any other date during the same calendar year on which an electioneering communication is publicly distributed provided that the person making the electioneering communication has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000 since the most recent disclosure date during such calendar year.

(2) Direct costs of producing or airing electioneering communications means the following:

(i) Costs charged by a production company, such as studio rental time, staff salaries, costs of video or audio recording media, and talent; or

(ii) The cost of airtime on broadcast, cable or satellite radio and television stations, and the charges for a broker to purchase the airtime.

(3) Sharing or exercising direction or control means exercising authority or responsibility for:

(i) Development, establishment, or change of policy for the organization or corporation;

(ii) Day-to-day management of the organization or corporation;

(iii) Obligation of funds or signing contracts; or

(iv) Hiring or firing employees.

(4) Identification has the same meaning as in 11 CFR 100.12.

(5) Publicly distributed has the same meaning as in 11 CFR 100.29(a)(5).

(b) *Who must report.* Every person who has made a disbursement or who has executed a contract to make a disbursement for the direct costs of producing or airing electioneering communications, as defined in 11 CFR 100.29, aggregating in excess of $10,000 during any calendar year shall file a statement with the Commission by 11:59 p.m. Eastern Standard/Daylight Time of the day following the disclosure date. The statement shall be filed under penalty of perjury and contain the information set forth in paragraph (c) of this section. Persons other than political committees must file these 24-hour statements on FEC Form 9.

(c) *Contents of statement.* Every person described in paragraph (b) of this section shall disclose the following information:

(1) The identification of the person who made the disbursement, or who executed a contract to make a disbursement, and, if the person is not an individual, the person's principal place of business;

(2) The identification of any person sharing or exercising direction or control over the activities of the person who made the disbursement, or who executed a contract to make a disbursement, for electioneering communications;

(3) The identification of the custodian of the books and accounts from which the disbursements for electioneering communications were made;

(4) The amount of each disbursement, or amount obligated, of more than $200 during the period covered by the statement, the date the disbursement was made, or the contract was executed, and the identification of the person to whom that disbursement was made;

(5) All clearly identified candidates referred to in the communication and the elections in which they are candidates;

(6) The disclosure date as defined in this section.

(7) If the disbursements were paid exclusively out of a segregated bank account consisting of funds provided solely by individuals who are United States citizens, United States nationals, or who are lawfully admitted for permanent residence under 8 U.S.C. 1101(a)(20), the name and address of each donor who donated an amount aggregating $1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year; and

(8) If the disbursements were not paid exclusively from the segregated bank account, the name and address of each donor who donated an amount aggregating $1,000 or more to the person making the disbursement, aggregating since the first day of the preceding calendar year.

(d) *Recordkeeping.* All persons who make electioneering communications or who accept donations for the purpose of making electioneering communications, must maintain records in accordance with 11 CFR 104.14.

PART 105—DOCUMENT FILING (2 U.S.C. 432(g))

9. The authority citation for part 105 is revised to read as follows:

Authority: 2 U.S.C. 432(g), 434, 438(a)(8).

10. Section 105.2 is revised to read as follows:

§ 105.2 Place of filing; Senate candidates, their principal campaign committees, and committees supporting only Senate candidates (2 U.S.C. 432(g)(2), 434(g)(3)).

(a) *General Rule.* Except as provided in paragraph (b) of this section, all designations, statements, reports, and notices as well as any modification(s) or amendment(s) thereto, required to be filed under 11 CFR parts 101, 102, and 104 by a candidate for nomination or election to the office of United States Senator, by his or her principal campaign committee or by any other political committee(s) that supports only candidates for nomination for election or election to the Senate of the United States shall be filed in original form with, and received by, the Secretary of the Senate, as custodian for the Federal Election Commission.

(b) *Exception.* 24-hour and 48-hour reports of independent expenditures must be filed with the Commission and not with the Secretary of the Senate, even if the communication refers to a Senate candidate:

PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (2 U.S.C. 439)

11. The authority citation for part 108 continues to read as follows:

Authority: 2 U.S.C. 434(a)(2), 438(a)(8), 439, 453.

12. Paragraph (b) of § 108.1 is revised to read as follows:

§ 108.1 Filing requirements (2 U.S.C. 439(a)(1)).

* * * * *

(b) The filing requirements and duties of State officers under this part 108 shall not apply to a State if the Commission has determined that the State maintains a system that can electronically receive and duplicate reports and statements filed with the Commission. Once a State has obtained a waiver pursuant to this paragraph, the waiver shall apply to all reports that can be electronically accessed and duplicated from the Commission, regardless of whether the report or statement was originally filed with the Commission. The list of states that have obtained waivers under this section is available on the Commission's web site.

PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 441a, Pub. L. 107–155 Sec. 214(c) (March 27, 2002))

13. The authority citation for part 109 continues to read as follows:

Authority: 2 U.S.C. 431(17), 434(c), 441a; Pub. L. 155–107 sec. 214(c).

§ 109.2 [Removed and reserved]

14. Section 109.2 is removed and reserved.

15. Section 109.10 is added to read as follows:

§ 109.10 How do political committees and other persons report independent expenditures?

(a) Political committees, including political party committees, must report independent expenditures under 11 CFR 104.4.

(b) Every person, other than a political committee, who makes independent expenditures aggregating in excess of $250 with respect to a given election in a calendar year shall file a verified statement, or report on FEC Form 5 in accordance with 11 CFR 104.4(e) containing the information required by paragraph (e) of this section. Every person filing a report or statement under this section shall do so at the end of the reporting period during which any such independent expenditures that aggregate in excess of $250 are made and in any reporting period thereafter in which additional independent expenditures are made.

(c) Every person, other than a political committee, who makes independent expenditures aggregating $10,000 or more with respect to a given election any time during the calendar year up to and including the 20th day before an election, must report the independent expenditures on FEC Form 5, or by signed statement if the person is not otherwise required to file electronically under 11 CFR 104.18. (See 11 CFR 104.4(f) for aggregation). The person making the independent expenditures aggregating $10,000 or more must ensure that the Commission receives the report or statement no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional $10,000 or more, the person making the independent expenditures must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures. Each 48-hour report must contain the information required by paragraph (e)(1) of this section.

(d) Every person making, after the 20th day, but more than 24 hours before 12:01 a.m. of the day of an election, independent expenditures aggregating $1,000 or more with respect to a given election must report those independent expenditures and ensure that the Commission receives the report or

signed statement no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate $1,000 or more, the person making the independent expenditures must ensure that the Commission receives a new 24-hour report of the subsequent independent expenditures. See 11 CFR 104.4(f) for aggregation. Such report or statement shall contain the information required by paragraph (e) of this section.

(e) Content of verified statements and verification of reports and statements.

(1) Contents of verified statement. If a signed statement is submitted, the statement shall include:

(i) The reporting person's name, mailing address, occupation, and the name of his or her employer, if any;

(ii) The identification (name and mailing address) of the person to whom the expenditure was made;

(iii) The amount, date, and purpose of each expenditure;

(iv) A statement that indicates whether such expenditure was in support of, or in opposition to a candidate, together with the candidate's name and office sought;

(v) A verified certification under penalty of perjury as to whether such expenditure was made in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents; and

(vi) The identification of each person who made a contribution in excess of $200 to the person filing such report, which contribution was made for the purpose of furthering the reported independent expenditure.

(2) Verification of independent expenditure statements and reports. Every person shall verify reports and statements of independent expenditures filed pursuant to the requirements of this section by one of the methods stated in paragraph (e)(2)(i) or (ii) of this section. Any report or statement verified under either of these methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(i) For reports or statements filed on paper (*e.g.*, by hand-delivery, U.S. Mail, or facsimile machine), the person who made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by handwritten signature immediately following the certification required by paragraph (e)(1)(v) of this section.

(ii) For reports or statements filed by electronic mail, the person who made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by typing the treasurer's name immediately following the certification required by paragraph (e)(1)(v) of this section.

Dated: October 11, 2002.

David. M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–26394 Filed 10–18–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–18–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 441 and F406 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 2002–09–13, which currently requires a one-time inspection of the fuel boost pump wiring inside and outside the boost pump reservoir and repair or replacement of the wiring as necessary on certain Cessna Aircraft Company (Cessna) Model 441 airplanes. AD 2002–09–13 resulted from several reports of chafing and/or arcing of the fuel boost pump wiring inside and outside the fuel pump reservoir. This proposed AD would retain the actions required in AD 2002–09–13, make the one-time inspection repetitive, require the inspection and possible replacement of the wire harness, lead wires and fuel boost pump on Model F406 airplanes, and require eventual installation of an improved design wire harness and fuel boost pump as terminating action for the repetitive inspections. The actions specified by this proposed AD are intended to detect, correct, and prevent chafing and/or arcing fuel boost pump wiring, which could result in arcing within the wing fuel storage system. Such a condition could lead to ignition of explosive vapor within the fuel storage system.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before December 30, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–18–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–18–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Robert Adamson, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4145; facsimile: 316–946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–18–AD." We will date stamp and mail the postcard back to you.

Discussion

Has FAA Taken Any Action to This Point?

Reports of chafing and/or arcing of the fuel boost pump wiring inside the fuel pump reservoir that supplies fuel to each engine on Cessna Model 441 airplanes caused us to issue AD 2002–09–13, Amendment 39–12746 (67 FR 31117, May 9, 2002). AD 2002–09–13 requires you to: (1) Do a one-time inspection of the electrical wiring going to the fuel boost pump reservoir and the boost pump wiring inside the reservoir for chafing or damage, and (2) repair or replace the wiring as necessary.

These actions are required in accordance with Cessna Conquest Service Bulletin No.: CQB02–1R1, Revision 1, dated April 22, 2002.

What Has Happened Since AD 2002–09–13 To Initiate This Action?

Further analysis of this situation reveals that:

—The actions required by AD 2002–09–13 should also apply to Model F406 airplanes;

—The inspection should be repetitive; and

—Improved design wire harnesses and fuel boost pumps should eventually be installed as terminating action for the repetitive inspections.

Has the Manufacturer Issued Service Information That Pertains to the Model F406 Airplanes?

Cessna has issued Caravan Service Bulletin No.: CAB02–8, dated June 3, 2002, Fuel Boost Pump Wiring Harness Inspection/Modification. This service bulletin affects the Model F406 airplane, a model of similar type design as the Model 441 airplane.

Cessna has also replaced Conquest Service Bulletin No.: CQB02–1, Revision 1, with Conquest Service Bulletin No.: CQB02–1, Revision 2, dated October 7, 2002.

Service Bulletins Numbers: CAB02–8 and CQB02–1, Revision 2, also specify and include procedures for installing improved design wire harnesses and fuel boost pumps (as a terminating action for the repetitive inspections).

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Cessna Models 441 and F406 airplanes of the same type design;

—The actions of AD 2002–09–13 should be repetitive and the improved design parts eventually incorporated; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would supersede AD 2002–09–13 with a new AD that would require repetitive inspections of the Models 441 and F406 airplanes fuel boost pump wiring inside and outside the boost pump reservoir for chafing or damage and replacement of the wiring and (for the Model F406) fuel boost pump, as necessary, and require eventual installation of an improved design wire harness and fuel boost pump as terminating action for the repetitive inspections.

How Would This Action Relate to the FAA's Aging Commuter-Class Aircraft Policy?

The FAA's aging commuter aircraft policy briefly states that when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on the FAA's determination that reliance on critical repetitive inspections on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

The alternative to replacing the fuel boost pump wiring and fuel boost pump would be to repetitively inspect this area for the life of the airplane. Therefore, FAA has determined that the improved design wire harness and fuel boost pump should be incorporated in all affected airplanes.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 370 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 workhours x $60 per hour = $480	None	$480	$480 x 370 = $177,600

For Model 441 airplanes, we estimate the following costs to accomplish the proposed replacements:

Labor cost	Parts cost	Total cost per airplane
8 workhours x $60 per hour = $480	$13,101	$480 + $13,101 = $13,581

For Model F406 airplanes, we estimate the following costs to accomplish the proposed replacements:

Labor cost	Parts cost	Total cost per airplane
8 workhours x $60 per hour = $480	$7,558	$480 + $7,558 = $8,038

Compliance Time of This Proposed AD

Why Is the Compliance Time of This Proposed AD Presented in Both Hours Time-In-Service (TIS) and Calendar Time?

The initial compliance time of this proposed AD is presented in both hours TIS (25 hours) and calendar time (60 days). Because the affected airplanes are used in general aviation operations, some operators may accumulate 25 hours TIS on the airplane in a week while others may not accumulate 25 hours TIS in a year. Although the condition specified by this proposed AD is only unsafe during airplane operation, the condition could exist on an airplane with 500 hours TIS or 2,000 hours TIS. We have determined that the dual compliance time:

—Gives all owners/operators of the affected airplanes adequate time to schedule and do the actions in this proposed AD; and

—ensures that the unsafe condition referenced in this proposed AD will be corrected within a reasonable time period without inadvertently grounding any of the affected airplanes.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Actions	Compliance	Procedures
(1) For Model 441 airplanes: Inspect the part number (P/N) 5718106–1 wire harness and fuel boost pump lead wires for chafing or damage.	Initially at whichever occurs first, unless already accomplished: Within the next 25 hours time-in-service (TIS) or 60 days after May 31, 2002 (the effective date of AD 2002–09–13): and repetitively thereafter at intervals not to exceed 200 hours TIS.	In accordance with Cessna Conquest Service Bulletin No.: CQB02–1, Revision 2, dated October 7, 2002.
(2) For Model F406 airplanes: Inspect the P/N 5718106–4 wire harness and fuel boost pump lead wires for chafing or damage.	Initially at whichever occurs first, unless already accomplished: Within the next 25 hours TIS after the effective date of this AD or 60 days after the effective date of this AD; and repetitively thereafter at intervals not to exceed 200 hours TIS.	In accordance with Cessna Caravan Service Bulletin No.: CAB02–8, dated June 3, 2002.

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–09–13, Amendment 39–12746 (67 FR 31117, May 9, 2002), and by adding a new AD to read as follows:

Cessna Aircraft Company: Docket No. 2002–CE–18–AD; Supersedes AD 2002–09–13, Amendment 39–12746.

(a) *What airplanes are affected by this AD?* This AD applies to the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
441	0001 through 0362 and 698
F406	0001 through 0089

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect, correct, and prevent chafing and/or arcing fuel boost pump wiring, which could result in arcing within the wing fuel system. Such a condition could lead to ignition of explosive vapor within the fuel storage system.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(3) If chafing or damage is found during any inspection required in paragraph (d)(1) or (d)(2) of this AD:. (i) For the Model 441 airplanes, replace the wire harnesses, repair fuel boost pump lead wires, or replace the fuel boost pump, as applicable.. (ii) For the Model F406 airplanes, repair or replace the wire harnesses or lead wires, or fuel boost pump, as applicable.	Before further flight after any inspection required in paragraphs (d)(1) and (d)(2) of this AD in which damage is found. If improved design wire harnesses and fuel boost pumps are not installed, continue to inspect as specified in paragraph (d)(1) or (d)(2) of this AD until these improved design parts are installed.	For the Model 441 airplanes: In accordance with Cessna Conquest Service Bulletin No.: CQB02–1, Revision 2, dated October 7, 2002. For the Model F406 airplanes: In accordance with Cessna Caravan Service Bulletin No.: CAB02–8, dated June 3, 2002.
(4) Perform the following installations: ..... (i) For the Model 441 airplanes: Install improved design fuel boost pump (P/N 1C12–17 or FAA-approved equivalent P/N) and improved design wire harness (P/N 5718106–6 or FAA-approved equivalent P/N). Installing both improved part numbers in each wing tank terminates the repetitive inspection requirements of paragraph (d)(1) of this AD.. (ii) For the Model F406 airplanes: Install improved design fuel boost pump (P/N 1C12–17 or FAA-approved equivalent P/N) and improved design wire harness (P/N 406 28 01 or FAA-approved equivalent P/N). Installing both improved part numbers in each wing tank terminates the repetitive inspection requirements of paragraph (d)(2) of this AD.	Within the next 400 hours TIS after the effective date of this AD, unless already accomplished.	For the Model 441 airplanes: In accordance with Cessna Conquest Service Bulletin No.: CQB02–1, Revision 2, dated October 7, 2002. For the Model F406 airplanes: In accordance with Cessna Caravan Service Bulletin No.: CAB02–8, dated June 3, 2002.
(5) Only install improved design wire harnesses and fuel boost pumps as specified in paragraphs (d)(4)(i) and (d)(4)(ii) of this AD.	As of the effective date of this AD	Not applicable.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) Alternative methods of compliance approved in accordance with AD 2002–09–13, which is superseded by this AD, are approved as alternative methods of compliance for all inspection requirements of this AD. Regardless, you still must comply with the replacement requirements of this AD.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Robert Adamson, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4145; facsimile: 316–946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2002–09–13, Amendment 39–12746.

Issued in Kansas City, Missouri, on October 15, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–26662 Filed 10–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–01–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, A Division of Textron Canada Model 206A, 206A–1, 206B, 206B–1, 206L, 206L–1, 206L–3, and 206L–4 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Bell Helicopter Textron, A Division of Textron Canada (BHT) Model 206A, 206A–1, 206B, 206B–1, 206L, 206L–1, 206L–3, and 206L–4 helicopters. This proposal would require performing a continuity test, and repairing temporarily any unairworthy chip detector, and replacing any repaired chip detectors. This proposal is prompted by report of poor or no continuity between the insert and the chip detector housing on certain chip detectors. The actions specified by this proposed AD are intended to prevent

failure of a chip detector indication, loss of a critical component, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before December 20, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–01–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jorge Castillo, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5127, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–01–AD." The postcard will be date stamped and returned to the commenter.

Discussion

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHT Model 206A, 206A–1, 206B, 206B–1, 206L, 206L–1, 206L–3, and 206L–4 helicopters. Transport Canada advises that Tedeco B3188B and B4093 chip detectors could possibly have poor or no continuity between the insert and the chip detector housing. This could result in no chip indication when the chip detector has been bridged by metal particles.

Bell Helicopter Textron has issued Alert Service Bulletin No. 206–01–96, Revision A, and No. 206L–01–119, Revision A, both dated May 7, 2001, which specify accomplishing the Eaton Tedeco Product Bulletins attached to their Alert Service Bulletin. The Eaton Tedeco Product Bulletins contain procedures for performing a continuity test and repair of chip detectors and replacing repaired chip detectors. Transport Canada classified these alert service bulletins as mandatory and issued AD No. CF–2001–33, dated August 24, 2001, to ensure the continued airworthiness of these helicopters in Canada.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs registered in the United States. Therefore, the proposed AD would require performing a continuity test, repairing the chip detectors, and replacing repaired chip detectors. The actions would be required to be accomplished in accordance with the alert service bulletins and attached technical bulletin described previously. Repairing the chip detectors is intended to serve as an interim action until the repaired chip detectors are replaced.

The FAA estimates that 2,262 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hours per helicopter to initially inspect the chip detectors, and 0.5 work hours per helicopter to repair and ultimately replace any chip detectors that were previously temporarily repaired, and that the average labor rate is $60 per work hour. Cost of the chip detector is estimated to be $75. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $186,615, assuming half of the fleet will require repairing and replacing the chip detectors. The chip detector manufacturer has stated that it may provide reworked or replacement parts at no charge at its discretion.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron, A Division of Textron Canada: Docket No. 2002–SW–01–AD.

Applicability: Model 206A, 206A–1, 206B, 206B–1, 206L, 206L–1, 206L–3, and 206L–4 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a chip detector indication, loss of a critical component, and subsequent loss of control of the helicopter, accomplish the following:

(a) For Model 206A, 206A–1, 206B, and 206B–1 helicopters, within 60 days, perform a continuity test and repair the Eaton Tedeco chip detector (chip detector), part number (P/N) B3188B, installed in the transmission bottom case, in accordance with the "Test Procedure", Procedure B, and the "Repair Instructions" portions of the Tedeco Products Alert Service attached to Bell Helicopter Textron (BHT) Alert Service Bulletin (ASB) No. 206–01–96, Revision A, dated May 7, 2001.

(b) For 206L, 206L–1, 206L–3, and 206L–4 helicopters:

(1) Within 60 days, perform a continuity test on, and also repair, the chip detector, P/N B3188B, installed in the transmission bottom case found on transmission assemblies, P/N 206–040–004–003, 206–040–004–005, 206–040–004–101, 206–040–004–107, 206–040–004–111, or 206–040–004–115, in accordance with the "Test Procedure", Procedure B, and the "Repair Instructions" portions of the Tedeco Products Alert Service Bulletin for affected P/N B3188B chip detectors, attached to BHT ASB No. 206L–01–119, Revision A, dated May 7, 2001.

(2) Within 60 days, perform a continuity test and repair the chip detector, P/N B4093, installed in the transmission top case found on transmission assemblies, P/N 206–040–004–003, 206–040–004–005, 206–040–004–101, or 206–040–004–111, in accordance with the "Test Procedure", Procedure B, and the "Repair Instructions" portion of the Tedeco Products Alert Service Bulletin for the affected P/N B4093 chip detectors, attached to BHT ASB No. 206L–01–119, Revision A, dated May 7, 2001.

(c) Within 300 hours time-in-service (TIS) after any chip detector is repaired, replace the chip detector with a reworked or new production airworthy chip detector.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Office.

(e) Special flight permits will not be issued.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2001–33, dated August 24, 2001.

Issued in Fort Worth, Texas, on October 10, 2002.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–26666 Filed 10–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 958]

RIN 1512–AC77

Temecula Viticultural Area Name Change (2001R–280P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing to rename the "Temecula" viticultural area as the "Temecula Valley" viticultural area. The size and boundaries of the Temecula viticultural area would remain unchanged.

DATES: Comments must be received by December 20, 2002.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, PO Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 958). Copies of the petition, the proposed regulations, and any written comments received will be available for public inspection by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226. See the Public Participation section of this notice for alternative means of commenting.

FOR FURTHER INFORMATION CONTACT: Nancy Sutton, Specialist, Regulations Division (San Francisco, California), Bureau of Alcohol, Tobacco and Firearms, 221 Main Street, 11th Floor, San Francisco, CA (415) 947–5192.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity while prohibiting the use of deceptive information on such labels. The FAA Act also authorizes the Bureau of Alcohol, Tobacco and Firearms (ATF) to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR Part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. A list of approved viticultural areas is contained in 27 CFR part 9, American Viticultural Areas.

Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2) outlines the procedure for proposing or amending an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area or modify an existing area. A petition for a new area should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

A petition requesting the modification of an established viticultural area should include information, evidence, and maps appropriate to support the requested change(s).

Temecula Viticultural Area

ATF established the Temecula viticultural area (27 CFR 9.50) in Treasury Decision ATF–188, which was published in the **Federal Register** on October 23, 1984 (See 49 FR 42563). Located in southern California, the 33,000-acre Temecula viticultural area is in southwestern Riverside County in the Temecula Basin. The viticultural

area covers the southern portion of the former Vail Ranch, and its outer boundaries generally follow those of the historical Santa Rosa, Temecula, Little Temecula, and Pauba land grants.

Treasury Decision ATF–188 stated that the name "Temecula" was derived from the Luiseno Indian word "Temeku," which means "a place where the sun breaks through the white mist." The original Temecula petition stated that this description applied to the entire viticultural area, which is in a valley characterized by bright sun and misty marine air that flows inland from the Pacific Ocean. The 1984 decision noted that it is this marine air, which enters the Temecula Valley through gaps in the Santa Ana Mountains, that allows grape growing in this area.

Temecula Valley Petition

The Temecula Valley Winegrowers Association has submitted a petition to ATF requesting that the Temecula viticultural area's name be changed to "Temecula Valley." The petitioners believe this name change will provide a more accurate description of the Temecula area's geography and provide greater clarity as to the area's location for wine consumers and the public. This proposed name change does not affect the boundaries of the established Temecula viticultural area.

When the Temecula viticultural area was originally petitioned twenty years ago, the Association's petition states, the area was largely rural and agricultural. The small, unincorporated village of Temecula was located near the middle of the area's southern boundary. This village is now an incorporated city, larger in size, with a growing population. According to the petitioners, the city of Temecula's growth has accentuated the differences between the city and the surrounding agricultural region known as the Temecula Valley.

The current petition states that when the Temecula viticultural area was petitioned 20 years ago, the terms "Temecula" and "Temecula Valley" were used interchangeably. The petition cites evidence from Tom Hudson's book "A Thousand Years in the Temecula Valley" (Temecula Valley Chamber of Commerce, 1981), including its many uses of the term "Temecula Valley," in support of this position. The original Temecula petition and the 1984 Treasury Decision also cited this work. The current petition also cites the local telephone directory, which shows that numerous businesses and agencies use the name "Temecula Valley" in conjunction with their operating name. The 1984 Treasury Decision additionally noted the planned establishment of the new Temecula Valley High School within the viticultural area's boundaries.

The Temecula Valley Winegrowers Association petition also comments on the importance of the word "valley" in relation to the Temecula area by noting that the Association itself is a merger of the Temecula Valley Vintners Association and the Temecula Winegrape Growers Association. In addition, the petition cites the use of "Napa" and "Napa Valley" as an example of how the differences between a city (Napa) and the surrounding agricultural area (Napa Valley) are recognized in a viticultural area name. The petition states, "To continue to mandate the term "Temecula" is to honor a loose and ill-defined use of the term."

The current petition also cited a letter from Mr. Gary McMillan, one of the original Temecula viticultural area petitioners, supporting the name change. Mr. McMillan sent his letter directly to ATF, and a copy of was included with the Association's petition. According to his letter, Mr. McMillan recalls that the original Temecula petitioners desired to use a true, historical name for their proposed viticultural area and not the more recent commercial name of "Rancho California," which was originally favored by some growers in the area. In his letter, Mr. McMillan agrees with the Association's contention that the names Temecula and Temecula Valley were often used interchangeably at the time of the original petition.

Public Participation

Comments Sought

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Submitting Comments

By U.S. Mail: Written comments may be mailed to ATF at the address listed in the **ADDRESSES** section above.

By Fax: Comments may be submitted by facsimile transmission to (202) 927–8525, provided the comments: (1) Are legible; (2) are 8½" x 11" in size; (3) contain a written signature; and (4) are five pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by fax in excess of five pages will not be accepted. Receipt of fax transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

By E-mail: Comments may be submitted by e-mail to *nprm@atfhq/treas.gov*. E-mail comments must: (1) Contain your name, mailing address, and e-mail address; (2) reference this notice number; and (3) be legible when printed on 8½ x 11 inch size paper. We will not acknowledge the receipt of e-mail. We will treat comments submitted by e-mail as originals.

Comments may also be submitted using the comment form provided with the online copy of this proposed rule on the ATF Internet Web site at *http://www.atf.treas.gov/alcohol/rules/index.htm*.

Public Hearing: Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Reviewing Comments

You may view copies of the full comments in response to this notice of proposed rulemaking by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone 202–927–7890. You may request paper copies of the full comments (at 20 cents per page) by writing to the ATF Reference Librarian at the address shown above.

For the convenience of the public, ATF will post copies of the comments received in response to this notice on the ATF web site. All comments posted on our web site will show the name of the commenter, but will have street addresses, telephone numbers, and e-mail addresses removed. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the ATF library as noted above. To access online copies of the comments on this rulemaking, visit *http://www.atf.treas.gov/*, and select "Regulations," then "Notices of Proposed Rulemaking (Alcohol)," and then this notice. Then click on the "view comments" link.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

ATF has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Drafting Information

The principal author of this document is N. A. Sutton, Regulations Division (San Francisco), Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Section 9.50 is amended by revising paragraph (a) and the introductory text of paragraphs (b) and (c) to read as follows:

§ 9.50 Temecula Valley.

(a) *Name.* The name of the viticultural area described in this section is "Temecula Valley."

(b) *Approved map.* The approved maps for determining the boundary of the Temecula Valley viticultural area are seven U.S.G.S. quadrangle maps in the 7.5 minute series, as follows:

* * * * *

(c) *Boundary.* The Temecula Valley viticultural area is located in Riverside County, California. The boundary is as follows:

* * * * *

Signed: September 26, 2002.

Bradley A. Buckles,

Director.

[FR Doc. 02–26677 Filed 10–18–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 957]

RIN 1512–AC70

Proposal to Establish the Seneca Lake Viticultural Area (99R–260P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms is requesting comments from any interested party concerning the proposed establishment of the "Seneca Lake" viticultural area. The proposed Seneca Lake viticultural area encompasses about 204,600 acres of land surrounding Seneca Lake in upstate New York. The proposed area is located within the approved Finger Lakes viticultural area. The Bureau is taking this action under its Labeling and Advertising of Wine regulations.

DATES: Written comments must be received by December 20, 2002.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221; (ATTN: Notice No. 957). To submit comments by e-mail or fax, see the "Public Participation" section below.

A copy of the petition, the proposed regulations, the appropriate maps, and any written comments received in response to this notice of proposed rulemaking will be available for public inspection by appointment during normal business hours at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone (202) 927–7890.

FOR FURTHER INFORMATION CONTACT: Kristy Colón, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

What Is ATF's Authority To Establish a Viticultural Area?

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of deceptive information on such labels. The FAA Act also authorizes the Bureau of Alcohol, Tobacco and Firearms (ATF) to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. A list of approved viticultural areas is contained in 27 CFR, part 9, American Viticultural Areas.

What Is the Definition of an American Viticultural Area?

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

What Is Required To Establish a Viticultural Area?

Section 4.25a(e)(2), Title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition must include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical features (climate, soil, elevation physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;
- A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and
- A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Seneca Lake Petition

ATF has received a petition from Ms. Beverly Stamp of Lakewood Vineyards in Watkins Glen, New York proposing to establish the "Seneca Lake" viticultural area. The proposed area includes portions of Schuyler, Yates, Ontario, and Seneca counties in upstate New York and covers approximately 204,600 acres of primarily rural agricultural and forestland. Of that total, 3,756 acres are planted to grapes. There are currently 33 wineries on or near Seneca Lake, one of New York's eleven Finger Lakes. The Cayuga Lake viticultural area lies to the east of proposed area, and both are entirely within the established Finger Lakes viticultural area.

What Evidence Was Provided To Show the Name "Seneca Lake" Is Locally or Nationally Known?

According to the petitioner, Seneca Lake was named after the Seneca people of the Iroquois Nation who lived along its shores hundreds of years ago. Many local places and geographic features are named after the Seneca people. These include, for example, Seneca Lake, Seneca County, the Seneca River, Seneca Castle, Seneca Army Depot, and Seneca Lake State Park. An organization known as the Seneca Lake Winery Association includes many of the proposed area's wineries.

To demonstrate that the proposed area is locally and nationally known as "Seneca Lake," the petition included several newspaper and magazine articles as evidence of the name's use. In an article from the Rochester, New York Democrat and Chronicle newspaper of November 15, 1999, entitled "Your Land, Our Land: Finger Lakes in the Fast Lane," Ray Spencer, vice president of operations of Glenora Wine Cellers, stated that many "already refer to Seneca Lake as 'the Napa Valley of the East.'" In the February 1997 issue of Wines & Vines, a California based magazine, author Philip Hiaring described his visit to the Seneca Lake region and his interviews with winery owners and winemakers.

In addition, Seneca Lake is mentioned in "The Oxford Companion to the Wines of North America." The book states that Seneca Lake is encircled by more than two dozen wineries, is one of the two largest Finger Lakes, and is the deepest with the greatest heat storing capacity, offering the surrounding hillsides the strongest mesoclimatic benefit. While the lake's first winery was built in 1866, the book notes that the 1980s saw a wave of winery openings when the appearance of vinifera varieties brought new momentum to the region's grape-growing industry.

What Boundary Evidence Was Provided?

The boundaries of the proposed Seneca Lake viticultural area encompass about 204,600 acres of largely rural land surrounding Seneca Lake, the largest of upstate New York's eleven Finger Lakes. While some of the road names used in the boundary description do not appear on the submitted U.S.G.S. maps, the petitioner provided the locally known names of these roads, as well as a more detailed map of the town of Watkins Glen indicating minor roads.

Using roads and streams, the petitioner drew the proposed Seneca Lake viticultural area's boundaries to contain the vineyards influenced by the lake's climatic effect. In addition, the petition notes, distinct ridges divide Seneca Lake from its closest neighbor, Cayuga Lake, and the nearly 800-foot elevation change within the 7.5 miles between them gives the two lakes their own microclimates.

What Evidence Relating to Geographical Features Was Provided?

The "lake effect" weather phenomenon makes the proposed Seneca Lake viticultural area a "unique and superb" wine-growing region, according to the petitioner. The "Oxford Companion to Wine", published by the Oxford University Press, Inc., New York, describes the lake effect as "the year-round influence on vineyards from nearby large lakes which permits vine-growing in the northeast United States and Ontario in Canada despite their high latitude."

The "Oxford Companion" also notes that the lake effect's influence on grape vines changes with the seasons. While the lakes provide moisture to the prevailing westerly winds in winter and prevent vines from freezing even in very low temperatures, in spring:

* * * the westerly winds blow across the frozen lake and become cooler. These cooler breezes blowing on the vines retard bud-break until the danger of frost has passed. In summer the lake warms up. By autumn/fall, the westerly winds are warmed as they blow across the lake. The warm breezes on the vines lengthen the growing season (balancing the late start to the growing season) by delaying the first frost.

The petitioner also provided an extract from Richard Figiel's book "Culture in a Glass," that describes how the lake effect phenomenon affects the Finger Lakes region. Noting that both Seneca and Cayuga Lakes drop well below sea level, Figiel states that since the lakes are "(n)arrow slices of water with relatively little surface area, they tend to maintain a stable temperature throughout the year." This causes the lakes to act as a large radiator for the surrounding area during the winter months. "Not only do the lakes take the edge off frigid upstate winters, often keeping vineyards 10–15° warmer than locations just a half mile away," the book adds, "but they also cushion the transitions of spring and fall." Figiel also points out that the "(d)istinct microclimates along the hillsides rising from the lakeshores make it possible to reliably ripen grapes in a region that is generally too cold for viticulture * * *."

The petitioner states that it is the size and depth of Seneca Lake that gives the lake its ability to influence the local climate. Seneca Lake is the largest of the Finger Lakes, covering 67.7 square miles, is 35.1 miles long, and is an average of 1.9 miles wide with a shoreline of 75.4 miles. It has a volume of 4.2 trillion gallons with a maximum depth of 635 feet. Below 150 feet, the lake's water temperature remains 39 °F (4 °C) year around. Above that depth, the water temperature varies seasonally. While Seneca Lake chills down, the petition adds, it rarely freezes during the winter months. The petition also notes that the Seneca region has the longest frost-free period in the Finger Lakes, with a growing season of about 190 days. In contrast, neighboring Cayuga Lake's growing season is only 165 to 170 days long.

Seneca Lake's latent heat storage capacity alters the local climate to such an extent, the petition states, that grapes can be grown in an area where they otherwise would not survive the cold temperatures of early spring, or the late autumn frosts. Together with the good air drainage offered by the slopes leading to its shore, the lake's water temperature provides cool breezes in the spring, preventing early bud break in the fruit. In the fall, the lake's warmth delays early frosts, and in the winter it raises temperatures so that bud damage is lessened.

It is this ability to protect a crop from extreme temperatures, during both the growing and dormant seasons that makes the proposed Seneca Lake viticultural area distinct from surrounding areas, according to the petitioner. This lake effect is strongest within about one-half mile of Seneca Lake. For this reason, the more tender vinifera varieties are planted within this zone, while hardier American varieties and hybrids can be planted higher on the slopes. The petitioner adds that smaller lakes, even those the size of Cayuga Lake, do not have the same level of latent heat capacity and, therefore, do not modify the local climate to the same extent as Seneca Lake.

Regulatory Analyses and Notices

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

ATF has determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

ATF certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of a grape-growing area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because no new or revised record keeping or reporting requirements is proposed.

Public Participation and Request for Comments

Who May Comment on This Notice?

ATF requests comments from all interested parties. In addition, ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Can I Review Comments Received?

Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection by appointment at the ATF Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226. To make an appointment, telephone 202–927–7890. You may request copies (at 20 cents per page) of the comments received in response to this notice by writing to the ATF Reference Librarian at the address shown above.

For the convenience of the public, ATF will post comments received in response to this notice on the ATF web site. All comments posted on our web site will show the name of the commenter, but will have street addresses, telephone numbers and e-mail addresses removed. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the ATF Library as noted above. To access online copies of the comments on this rulemaking, visit *http://www.atf.treas.gov/*, and select "Regulations," then "Proposed rules (alcohol)" and this notice. Click on the "view comments" link.

Will ATF Keep My Comments Confidential?

ATF will not recognize any comment as confidential. All comments and materials may be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in your comments. We may also disclose the name of any person who submits a comment.

How Do I Send Facsimile Comments?

You may submit comments by facsimile transmission to (202) 927–8525. Facsimile comments must:

- Be legible.
- Reference this notice number.
- Contain a legible written signature.
- Be on not more than five 8½ by 11" pages.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-Mail) Comments?

You may submit comments by e-mail by sending the comments to *nprm@atfhq.atf.treas.gov*. You must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address.
- Reference this notice number.
- Be legible when printed.

We will not acknowledge receipt of e-mail. We will treat comments submitted by e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF Internet web site at *http://www.atf.treas.gov*.

Drafting Information

The principal author of this document is Kristy Colón, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Alcohol and alcoholic beverages, Consumer protection, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9–AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.xxx to read as follows:

§ 9.xxx Seneca Lake.

(a) *Name.* The name of the viticultural area described in this section is "Seneca Lake".

(b) *Approved Maps.* The appropriate maps for determining the boundary of the Seneca Lake viticultural area are 13 United States Geological Survey (U.S.G.S.) topographic maps (Scale: 1:24,000). The maps are titled:

(1) Burdett Quadrangle (New York-Schuyler Co. 1950 (photoinspected 1976);

(2) Montour Falls Quadrangle (New York 1978 (photorevised));

(3) Bever Dams Quadrangle (New York 1953);

(4) Reading Center Quadrangle (New York 1950 (photorevised 1978));

(5) Dundee Quadrangle (New York 1942 (photoinspected 1976));

(6) Dresden Quadrangle (New York 1943 (photorevised 1978));

(7) Penn Yan Quadrangle (New York'Yates Co. 1942 (photoinspected 1976));

(8) Stanley Quadrangle (New York 1952);

(9) Phelps Quadrangle (New York-Ontario Co. 1953);

(10) Geneva North Quadrangle (New York 1953 (photorevised 1976));

(11) Geneva South Quadrangle (New York 1953 (photorevised 1978));

(12) Ovid Quadrangle (New York-Seneca Co. 1970); and

(13) Lodi Quadrangle (New York 1942).

(c) *Boundaries.* The Seneca Lake viticultural area is located in portions of Schuyler, Yates, Ontario, and Seneca counties in New York. The boundaries are as follows: Beginning in the town of Watkins Glen at the State Route 414 bridge over the New York State Barge Canal:

(1) Follow the New York State Barge Canal south approximately 0.2 miles to the mouth of Glen Creek, on the Burdette, N.Y. map;

(2) Follow Glen Creek upstream (west), crossing the Montour Falls, N.Y. map and continuing to the Van Zandt Hollow Road bridge on the Beaver Dams, N.Y. map;

(3) Proceed north on Van Zandt Hollow Road to Cross Road;

(4) Continue north on Cross Road, which changes to Cretsley Road, to its intersection with Mud Lake Road (County Road 23) on the Reading Center, N.Y. map;

(5) Proceed west approximately 0.7 miles on County Road 23 to the intersection with Pre-emption Road;

(6) Then continue north on Pre-emption Road along the Dundee, N.Y., Penn Yan, N.Y. and Dresden, N.Y. maps, for approximately 18 miles to its junction with an unnamed light duty road just east of Keuka Lake Outlet on the Penn Yan, N.Y. map;

(7) Follow the unnamed light duty road across the Keuka Outlet, traveling approximately 0.3 miles to its junction with an unnamed light duty road, known locally as Outlet Road, in Seneca Mills;

(8) Follow Outlet Road west along the north bank of the Keuka Outlet approximately 0.6 miles, until the road forks;

(9) At the fork, continue north approximately 1 mile, on an unnamed light duty road know locally as Stiles Road, to its junction with Pre-emption Road.

(10) Then proceed north 14.6 miles on Pre-emption Road across the Stanley, N.Y. map, to an unnamed medium duty road (known locally as County Road 4), on the Phelps, N.Y. map;

(11) Then proceed west approximately 4.5 miles on County Road 4 to its intersection with Orleans Road in Seneca Castle;

(12) Then proceed north on Orleans Road, which becomes Seneca Castle Road, for 2.1 miles, to Warner Corners where the name of the road changes to Wheat Road;

(13) Continue north from Warner Corners on Wheat Road approximately 1.9 miles to its intersection with State Route 88;

(14) Continue north on State Route 88 approximately 1.4 miles, to its intersection with State Route 96 at Knickerbocker Corner;

(15) Continue east on State Route 96 approximately 10.4 miles, to the intersection with Brewer Road on the Geneva North, N.Y. map;

(16) Follow Brewer Road south approximately 1.8 miles to the intersection with U.S. Route 20/State Route 5;

(17) At the intersection of Brewer Road and U.S. Route 20/State Route 5, continue south approximately 0.1 miles, following an imaginary line to the south bank of the Seneca River;

(18) Follow the south bank of the Seneca River east approximately 0.1 miles to the mouth of the Kendig Creek;

(19) Continue south following the Kending Creek approximately 3.3 miles to the Creek's intersection with Yellow Tavern Road on the Geneva South, N.Y. map;

(20) Follow Yellow Tavern Road west approximately 0.1 miles, to its intersection with Post Road;

(21) Follow Post Road south approximately 1.4 miles to the junction with State Route 96A;

(22) Then follow State Route 96A south 17.5 miles across the Dresden, N.Y., Ovid, N.Y., and Lodi, N.Y. maps to the village of Lodi;

(23) In Lodi, continue south where State Route 96A changes to S. Main Street and then changes to an unnamed medium duty road (known locally as Center Road-Country Road 137);

(24) Continue south on Center Road-Country Road 137 for approximately 4.9 miles to the Seneca/Schuyler County Line;

(25) Then proceed west 0.5 miles on the county line to Logan Road;

(26) Then proceed 8.6 miles south on Logan Road to State Route 227 (identified by the petitioner as State Route 79) on the Burdette, N.Y. map;

(27) Then proceed approximately 800 feet east on Route 227 to Skyline Drive;

(28) Then proceed south on Skyline Drive for 2.5 miles to an unnamed stream;

(29) Follow the unnamed stream west approximately 0.6 miles to its intersection with State Route 414;

(30) Continue west on State Route 414 approximately 0.5 miles to the beginning point on the bridge over the New York State Barge Canal.

Signed: September 24, 2002.

Bradley A. Buckles,

Director.

[FR Doc. 02–26678 Filed 10–18–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–023]

RIN 2115–AE47

Drawbridge Operation Regulation; Houma Navigation Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the existing drawbridge operation regulation for the draw of the SR661 bridge across the Houma Navigation Canal, mile 36.0, at Houma, Terrebonne Parish, Louisiana. The modification will allow for the morning closure period to be increased by 30 minutes to facilitate the movement of high volumes of vehicular traffic across the bridge during peak traffic hours.

DATES: Comments and related material must reach the Coast Guard on or before December 20, 2002.

ADDRESSES: You may mail comments to Commander (obc), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or deliver them to room 1313 at the same address above between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying by appointment at the Bridge Administration Branch, Eighth Coast Guard District between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at the address given above or telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08–02–023), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a public meeting by writing to the Commander, Eighth Coast Guard District, Bridge Administration Branch at the address under **ADDRESSES** explaining why a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place to be announced by notice in the **Federal Register**.

Background and Purpose

The existing drawbridge operating regulations at 33 CFR 117.455 require the draw of the bridge across the Houma Navigation Canal at S661, mile 36.0 at Houma, to open on signal, except that the draw need not be opened for the passage of vessels Monday through Friday except holidays from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m.

The bridge owner requested a modification to the morning closure periods to allow the bridge to remain closed to navigation from 6:30 a.m. until 8:30 a.m. vice 7 a.m. to 8:30 a.m. Approximately 13,000 vehicles cross the bridge daily, 10% of which cross the bridge during the requested closure times. The adjustment to the morning closure time reflects a change to expand the closure period to align with the heaviest commuter traffic. The bridge averages 953 openings a month. It is estimated that 3 tows a month will be delayed by the additional 30-minute morning closure request. In a 17-day review period in July 2002, two tows requiring bridge openings were delayed during the requested additional time period. The average length of the bridge opening is less than ten minutes, delaying an average of 60 vehicles for each opening. Based upon our review of the documentation provided by the bridge owner, the closure of an additional 30 minutes in the morning will have a minimal effect on vessels wishing to transit the waterway.

In its current form, § 117.455 refers to the affected highway as "S661." This proposed rule will change the name of the affected highway to its correct name, "SR661."

Discussion of Proposed Rule

The proposed rule would modify the existing regulation in 33 CFR 117.455 to facilitate the movement of high volumes of vehicular traffic across the bridge during peak traffic hours. The change will now allow the State Route 661 bridge to remain closed to navigation from 6:30 a.m. to 8:30 a.m. vice the presently published times of 7 a.m. to 8:30 a.m. The regulation will also identify the roadway across the bridge as SR661.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This proposed rule allows vessels ample opportunity to transit this waterway with proper notification before and after the peak vehicular traffic periods. According to the vehicle traffic surveys, the public at large is better served by closure times between 6:30 a.m. and 8:30 a.m.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would affect the following entities, some of which might be small entities: the owners and operators of vessels needing to transit the bridge from 6:30 a.m. to 7 a.m. on weekdays. From traffic and vessel counts it is estimated that only an additional 3 tows per month will be delayed by the thirty-minute extension to the morning closure. This is not considered to have a significant impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or

governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Bridge Administration Branch, Eighth Coast Guard District at the address above.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct cost of compliance on them. We have analyzed this proposed rule under Executive Order 13132 and have determined that this proposed rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not economically significant and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(e), of Commandant Instruction M16475.lD, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. § 117.455 is revised to read as follows:

§ 117.455 Houma Navigation Canal.

The draw of the SR661 bridge across the Houma Navigation Canal, mile 36.0, at Houma, shall open on signal; except that, the draw need not open for the passage of vessels Monday through Friday except holidays from 6:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m.

Dated: October 9, 2002.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 02–26718 Filed 10–18–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–022]

RIN 2115–AE47

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the existing drawbridge operation regulation for the draw of the Bayou Dularge bridge across the Gulf Intracoastal Waterway, mile 59.9 at Houma, Terrebonne Parish, Louisiana. The modification will allow for the morning closure period to be increased by 15 minutes to facilitate the movement of high volumes of vehicular traffic across the bridge during peak traffic hours.

DATES: Comments and related material must reach the Coast Guard on or before December 20, 2002.

ADDRESSES: You may mail comments to Commander (obc), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or deliver them to room 1313 at the same address above between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying by appointment at the Bridge Administration Branch, Eighth Coast Guard District between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at the address given above or telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08–02–022), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 81/2 by 11 inches, suitable for copying. If you would like to know that they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a public meeting by writing to the Commander, Eighth Coast Guard District, Bridge Administration Branch at the address under **ADDRESSES** explaining why a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place to be announced by notice in the **Federal Register**.

Background and Purpose

The existing drawbridge operating regulations at 33 CFR 117.451(c) requires the draw of the Bayou Dularge bridge, mile 59.9, at Houma, to open on signal; except that, the draw need not be opened for the passage of vessels Monday through Friday except holidays from 6:45 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m.

The bridge owner requested a modification to the morning closure period to allow the bridge to remain closed to navigation from 6:30 a.m. until 8:30 a.m. vice 6:45 a.m. to 8:30 a.m. Approximately 21,000 vehicles cross the bridge daily, 10% of which cross the bridge during the requested closure times. The adjustment to the morning closure time reflects a change to align the closure periods with the times of the heaviest commuter traffic. The bridge averages 325 openings a month. The requested 15-minute closure increase in the morning will delay approximately 7 additional tows a month. In a 17-day review period in July 2002, four tows requiring bridge openings were delayed during the requested additional time period. The average length of a bridge opening is less than five minutes, delaying an average of 90 vehicles per opening. Based upon our review of the documentation provided by the bridge owner, the closure of an additional 15 minutes in the morning will have a minimal affect on vessels wishing to transit the waterway.

Additionally, by this rulemaking, the Coast Guard plans to reinsert the word "Monday" into the rule. The word was omitted in previous editions of the Code of Federal Regulations. This proposed rulemaking will clarify the days when the special operation regulation is in effect.

Discussion of Proposed Rule

The proposed rule would modify the existing regulation in 33 CFR 117.451(c) to facilitate the movement of high volumes of vehicular traffic across the bridge during peak traffic hours. The change would allow the Bayou Dularge bridge to remain closed to navigation from 6:30 a.m. to 8:30 a.m. vice the presently published times of 6:45 a.m. to 8:30 a.m. The regulation will also state that it is in effect Monday through Friday except holidays.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This proposed rule allows vessels ample opportunity to transit this waterway with proper notification before and after the peak vehicular traffic periods. According to the vehicle traffic surveys, the public at large is better served by closure times between 6:30 a.m. and 8:30 a.m.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would affect the following entities, some of which might be small entities: the owners and operators of vessels needing to transit the bridge from 6:30 a.m. to 6:45 a.m. on weekdays. From traffic and vessel counts it is estimated that only an additional 7 tows per month will be delayed by the fifteen-minute extension to the morning closure. This is not considered to have a significant impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Bridge Administration Branch, Eighth Coast Guard District at the address above.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct cost of compliance on them. We have analyzed this proposed rule under Executive Order 13132 and have determined that this proposed rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not economically significant and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(e), of Commandant Instruction M16475.lD, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.451(c) is revised to read as follows:

§ 117.451 Gulf Intracoastal Waterway.

* * * * *

(c) The draw of the Bayou Dularge bridge, mile 59.9, at Houma, shall open on signal; except that, the draw need not open for the passage of vessels Monday through Friday except holidays from 6:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m.

* * * * *

Dated: October 9, 2002.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 02–26717 Filed 10–18–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–049–7174b;FRL–7396–6]

Approval and Promulgation of Implementation Plans; New Hampshire; One-hour Ozone Attainment Demonstration for the New Hampshire Portion of the Boston-Lawrence-Worcester, MA-NH Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to fully approve the one-hour ozone attainment demonstration State Implementation Plan (SIP) for the New Hampshire portion of the Boston-Lawrence-Worcester, MA-NH serious ozone nonattainment area submitted by the New Hampshire Department of Environmental Services on June 30, 1998. This action is based on the requirements of the Clean Air Act (CAA) as amended in 1990, related to one-hour ozone attainment demonstrations.

DATES: Comments must be received on or before November 20, 2002.

ADDRESSES: Written comments (two copies if possible) should be sent to: David B. Conroy at the EPA Region I (New England) Office, One Congress Street, Suite 1100-CAQ, Boston, Massachusetts 02114–2023.

Copies of the state submittal and EPA's technical support document are available for public inspection during normal business hours (9 a.m. to 4 p.m.) at the following addresses: U.S. Environmental Protection Agency, Region 1 (New England), One Congress St., 11th Floor, Boston, Massachusetts, telephone (617) 918–1664, and at the Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095 Please telephone in advance before visiting.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, (617) 918–1664.

SUPPLEMENTARY INFORMATION: This notice provides an analysis of the one-hour ozone attainment demonstration SIP submitted by the New Hampshire Department of Environmental Services (New Hampshire DES) for the New Hampshire portion of the Boston-Lawrence-Worcester MA-NH serious nonattainment area. Table of Contents:

I. Clean Air Act Requirements for Serious Ozone Nonattainment Areas
II. Background and Current Air Quality Status of the Boston-Lawrence-Worcester, MA-NH Ozone Nonattainment Area
III. History and Time Frame for the State's Attainment Demonstration SIP
IV. What Are the Components of a Modeled Attainment Demonstration?
V. What Is the Framework for Proposing Action on the Attainment Demonstration SIPs?
VI. What Are the Relevant Policy and Guidance Documents?
VII. How Does the New Hampshire Submittal Satisfy the Framework?
VIII. Proposed Action
IX. Administrative Requirements

I. Clean Air Act Requirements for Serious Ozone Nonattainment Areas

The Clean Air Act requires EPA to establish national ambient air quality standards (NAAQS or standards) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. CAA sections 108 and 109. In 1979, EPA promulgated the one-hour 0.12 parts per million (ppm) ground-level ozone standard. 44 FR 8202 (February 8, 1979). Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone.

An area exceeds the one-hour ozone standard each time an ambient air quality monitor records a one-hour average ozone concentration of 0.125 ppm or higher.[1] An area is violating the standard if, over a consecutive three-year period, more than three exceedances are expected to occur at any one monitor. The area's 4th highest ozone reading at a single monitor is its design value. The CAA, as amended in 1990, required EPA to designate as nonattainment any area that was violating the one-hour ozone standard, generally based on air quality monitoring data from the three-year period from 1987–1989. CAA section 107(d)(4); 56 FR 56694 (November 6, 1991). The CAA further classified these areas, based on the area's design value, as marginal, moderate, serious, severe or extreme. CAA section 181(a). Marginal areas were suffering the least significant air pollution problems while the areas classified as severe and extreme had the most significant air pollution problems.

The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas were required to attain the one-hour ozone standard by November 15, 1999 and severe areas are required to attain by November 15, 2005 or November 15, 2007. The Boston-Lawrence-Worcester, MA-NH ozone nonattainment area is classified as serious and its attainment date is November 15, 1999.

Under section 182(c)(2) of the CAA, serious areas were required to submit by November 15, 1994 demonstrations of how they would attain the one-hour ozone standard and how they would achieve reductions in VOC emissions of 9 percent for each three-year period until the attainment year. In some cases, NO_X emission reductions can be substituted for the required VOC emission reductions.

In general, an attainment demonstration SIP includes a modeling analysis component showing how the area will achieve the standard by its attainment date and the control measures necessary to achieve those reductions. Another component of the attainment demonstration SIP is a motor vehicle emissions budget for transportation conformity purposes. Transportation conformity is a process for ensuring that states consider the effects of emissions associated with new or improved federally-funded roadways and transit on attainment of the standard. As described in section 176(c)(2)(A) of the CAA, attainment demonstrations necessarily include the estimates of motor vehicle emissions that are consistent with attainment, which then act as a budget or ceiling for the purposes of determining whether federally-supported transportation plans and projects conform to the attainment demonstration SIP.

II. Background and Current Air Quality Status of the Boston-Lawrence-Worcester, MA–NH Ozone Nonattainment Area

The Boston-Lawrence-Worcester, MA–NH ozone nonattainment area is a multi-state nonattainment area consisting of a small portion of southern New Hampshire and the entire eastern half of Massachusetts. In New Hampshire, the nonattainment area consists of 28 individual cities and towns in portions of Hillsborough and Rockingham counties. In Hillsborough County, the individual cities and towns included in the nonattainment area are: Amherst Town, Brookline Town, Hollis Town, Hudson Town, Litchfield Town, Merrimack Town, Milford Town, Mont Vernon Town, Nashua City, Pelham Town, and Wilton Town. In Rockingham, the individual towns included in the nonattainment area are: Atkinson Town, Brentwood Town, Danville Town, Derry Town, E. Kingston Town, Hampstead Town, Hampton Falls Town, Kensington Town, Kingston Town, Londonderry Town, Newton Town, Plaistow Town, Salem Town, Sandown Town, Seabrook Town, South Hampton Town, and Windham Town. In Massachusetts, the nonattainment area includes a much larger area, consisting of 10 counties in their entirety (*i.e.*, Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk, and Worcester counties). Based on 1999 emission estimates by the New Hampshire DES and the Massachusetts Department of Environmental Protection (DEP), the New Hampshire portion of the nonattainment area accounted for only 6 percent of the total VOC emissions in the nonattainment area, and only 4 percent of the total NO_X emissions.

Historically and throughout most of the 1990's, ozone monitors throughout the Boston-Lawrence-Worcester, MA–NH nonattainment area violated the one-hour ozone standard. Directly downwind of the Boston-Lawrence-Worcester, MA–NH nonattainment area, there were also a number of other nonattainment areas violating the one-hour ozone standard during the 1990's in other parts of New Hampshire and in portions of southern Maine. On June 9, 1999, however, EPA determined that the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area had attained the 1-hour ozone standard (64 FR 30911).[2] This determination was based on data collected from 1996–1998. On June 9, 1999, EPA also determined that the Portsmouth-Dover-Rochester, New Hampshire ozone nonattainment area and the Portland, Maine ozone nonattainment area had also attained the 1-hour ozone standard based on data collected from 1996–1998. See 64 FR 30911. At the time of these determinations of attainment,

[1] The one-hour ozone standard is 0.12 ppm. EPA's long-standing practice is that monitored values of 0.125 ppm or higher are rounded up, and thus considered an exceedance of the NAAQS and values less than 0.125 ppm are rounded down and are not an exceedance.

[2] In that notice, EPA also determined the one-hour ozone standard no longer applied to the Boston-Lawrence-Worcester, MA–NH area. Subsequently, due to continued litigation regarding the 8-hour ozone standard, EPA reinstated the applicability of the one-hour ozone standard in all areas. See 65 FR 45182 (July 20, 2000). EPA, however, did not modify its determination that the Boston-Lawrence-Worcester, MA–NH area had attained the one-hour ozone standard prior to its attainment date.

there were no areas in any portion of New Hampshire or Maine that violated the one-hour ozone standard.

The Boston-Lawrence-Worcester, MA–NH nonattainment area continued to have air quality meeting the one-hour ozone standard in 1999 (based on data from 1997–1999) and in 2000 (based on data from 1998–2000). Based on data collected in 1999–2001, however, the Boston-Lawrence-Worcester, MA–NH area now has air quality violating the one-hour ozone standard. The violating monitors are in the southern portion of the multi-state nonattainment area in Fairhaven and Truro, Massachusetts, which are at least 75 miles from the Massachusetts-New Hampshire state border. The other nine ozone air quality monitors in the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area (*i.e.* in the Massachusetts cities and towns of Easton, Stow, Boston (two sites), Lynn, Lawrence, Worcester, and Newbury, and in Nashua, New Hampshire) continue to show attainment of the one-hour ozone NAAQS, based on 1999–2001 data. Preliminary (not quality assured) ozone data readings from the monitors for the area from the summer of 2002 show only the Truro monitor registering a violation of the one-hour ozone NAAQS for the three-year period 2000–2002.

III. History and Time Frame for the State's Attainment Demonstration SIP

A. Ozone Transport Assessment Group and the NO_X SIP Call

Notwithstanding significant efforts by the states, in 1995 EPA recognized that many states in the eastern half of the United States could not meet the November 1994 time frame for submitting an attainment demonstration SIP under the Act because emissions of NO_X and VOCs in upwind states (and the ozone formed by these emissions) affected these nonattainment areas and the full impact of this effect had not yet been determined. This phenomenon is called ozone transport.

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by states but noting the remaining difficulties in making attainment demonstration SIP submittals.[3] Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the states in the eastern half of the country to evaluate and address transport of ozone and its precursors. This memorandum led to the formation of the Ozone Transport Assessment Group (OTAG)[4] and provided for the states to submit the attainment demonstration SIPs based on the expected time frames for OTAG to complete its evaluation of ozone transport.

In June 1997, OTAG concluded and provided EPA with recommendations regarding ozone transport. The OTAG generally concluded that transport of ozone and the precursor NO_X is significant and should be reduced regionally to enable states in the eastern half of the country to attain the ozone NAAQS.

In recognition of the length of the OTAG process, in a December 29, 1997 memorandum, Richard Wilson, EPA's then Acting Assistant Administrator for Air and Radiation, provided until April 1998 for states to submit the following elements of their attainment demonstration SIPs for serious and severe nonattainment areas: (1) Evidence that the applicable control measures in subpart 2 of part D of title I of the CAA were adopted and implemented or were on an expeditious course to being adopted and implemented; (2) a list of measures needed to meet the remaining rate-of-progress (ROP) emissions reduction requirement and to reach attainment; (3) for severe areas only, a commitment to adopt and submit target calculations for post-1999 ROP and the control measures necessary for attainment and ROP plans through the attainment year by the end of 2000; (4) a commitment to implement the SIP control programs in a timely manner and to meet ROP emissions reductions and attainment; and (5) evidence of a public hearing on the state submittal.[5] This submission is sometimes referred to as the Phase 2 submission. Motor vehicle emissions budgets can be established based on a commitment to adopt the measures needed for attainment and identification of the measures needed. Thus, state submissions due in April 1998 under the Wilson policy should have included motor vehicle emissions budgets.

Building upon the OTAG recommendations and technical analyses, in November 1997, EPA proposed action addressing the ozone transport problem. In its proposal, EPA found that current SIPs in 22 states and the District of Columbia (23 jurisdictions) were insufficient to provide for attainment and maintenance of the one-hour ozone standard because they did not regulate NO_X emissions that significantly contribute to ozone transport. 62 FR 60318 (November 7, 1997). The EPA finalized that rule in September 1998, calling on the 23 jurisdictions to revise their SIPs to require NO_X emissions reductions within the state to a level consistent with a NO_X emissions budget identified in the final rule. 63 FR 57356 (October 27, 1998). This final rule is commonly referred to as the NO_X SIP Call.

B. New Hampshire Ozone Attainment Demonstration Submittal

On June 30, 1998, New Hampshire DES submitted an ozone attainment demonstration for the New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area as a revision to its SIP. On June 9, 1999, however, EPA determined that the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area had attained the 1-hour ozone standard (64 FR 30911). This determination was based on data collected from 1996–1998. Consistent with then current EPA policy,[6] since the Boston-Lawrence-Worcester, MA–NH area had attained the standard by November 15, 1999, its statutory attainment date, EPA took no action on the New Hampshire attainment demonstration SIP submittal for the Boston-Lawrence-Worcester, MA–NH area. The Boston-Lawrence-Worcester, MA–NH nonattainment area continued to have air quality meeting the one-hour ozone standard through the summer of 2000.

As mentioned above, based on data collected in 1999–2001, the Boston-Lawrence-Worcester, MA–NH area now has air quality violating the one-hour ozone standard. Thus, this nonattainment area is once again required to have an approved attainment demonstration and 9% ROP plan with respect to section 182(c)(2) of the CAA. Today, in this proposed rule, EPA is proposing action on the attainment demonstration SIP submitted by the New Hampshire DES on June 30, 1998 for the New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH area. EPA approved the state's 9% ROP plan for the area via a direct final rulemaking on April 16, 2002 (67 FR 18547). In an earlier action, EPA proposed approval of the attainment demonstration for the Massachusetts portion of this same nonattainment area. In that proposed action, EPA proposed approval of an attainment date of November 15, 2007 for the Boston-Lawrence-Worcester, MA–NH nonattainment area. EPA plans to take action separately on contingency measures for both the New Hampshire and Massachusetts portions of the Boston-Lawrence-Worcester, MA–NH nonattainment area.

The statutory attainment date for the Boston-Lawrence-Worcester, MA–NH nonattainment area is November 15, 1999. The area attained the standard as of its attainment date, but then subsequently experienced a violation. The CAA does not expressly address the appropriate attainment date for an area that attains the standard by its attainment date but then subsequently violates the standard nor does it address the planning requirements that apply to such an area. (CAA sections 179(c) and (d) and 181(b)(2) establish requirements only for those areas that EPA determines do not attain the standard by their attainment date.) With respect to the attainment date, both subparts 1 and 2 of Part D of the Act specify outside dates for attainment and provide that attainment must be "as expeditiously as practicable" within those outside dates. CAA sections 172(a)(2) and 181(a)(1). With respect to control obligations, EPA generally attempts first to work with the State to submit a revised SIP and, where necessary, would issue a SIP Call pursuant to section 110(k)(5) if additional controls were needed. *See e.g.*, 65 FR 64352 (Oct. 27, 2000). Here, Massachusetts has already submitted an attainment demonstration and has indicated that the demonstration provides for attainment, by November 15, 2007, which is as expeditiously as practicable, within the multi-state area. We review New Hampshire's 1998 attainment demonstration SIP submission in conjunction with the more recent attainment demonstration SIP submitted by Massachusetts in the following sections.

IV. What are the Components of a Modeled Attainment Demonstration?

The EPA provides that states may rely on a modeled attainment demonstration supplemented with additional evidence to demonstrate attainment.[7] In order to have a complete modeling demonstration submission, states should have submitted the required modeling analysis and identified any additional evidence that EPA should consider in evaluating whether the area will attain the standard.

A. Modeling Requirements

For purposes of demonstrating attainment, section 182(c) of the CAA requires serious areas to use photochemical grid modeling or an analytical method EPA determines to be as effective.[8] The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone. Emissions for a base year are used to evaluate the model's ability to reproduce actual monitored air quality values and to predict air quality changes in the attainment year due to the emission changes which include growth up to and controls implemented by the attainment year. A modeling domain is chosen that encompasses the nonattainment area. Attainment is demonstrated when all predicted concentrations inside the modeling domain are at or below the NAAQS or at an acceptable upper limit above the NAAQS consistent with conditions specified by EPA's guidance. When the predicted concentrations are above the NAAQS, an optional Weight of Evidence (WOE) determination which incorporates, but is not limited to, other analyses, such as air quality and emissions trends, may be used to address uncertainty inherent in the application of photochemical grid models.

The EPA guidance identifies the features of a modeling analysis that are essential to obtain credible results. First, the state must develop and implement a modeling protocol. The modeling protocol describes the methods and procedures to be used in conducting the modeling analyses and provides for policy oversight and technical review by individuals responsible for developing or assessing the attainment demonstration (state and local agencies, EPA Regional offices, the regulated community, and public interest groups). Second, for purposes of developing the information to put into the model, the state must select air pollution days, i.e., days in the past with poor air quality, that are representative of the ozone pollution problem for the nonattainment area. Third, the state needs to identify the appropriate dimensions of the area to be modeled, i.e., the domain size. The domain should be larger than the designated nonattainment area to reduce uncertainty in the boundary conditions and should include large upwind sources just outside the nonattainment area. In general, the domain is considered the local area where control measures are most beneficial to bring the area into attainment. Fourth, the state needs to determine the grid resolution. The horizontal and vertical resolutions in the model affect the dispersion and transport of emission plumes. Artificially large grid cells (too few vertical layers and horizontal grids) may dilute concentrations and may not properly consider impacts of complex terrain, complex meteorology, and land/water interfaces. Fifth, the state needs to generate meteorological data that describe atmospheric conditions and emissions inputs. Finally, the state needs to verify that the model is properly simulating the chemistry and atmospheric conditions through diagnostic analyses and model performance tests. Once these steps are satisfactorily completed, the model is ready to be used to generate air quality estimates to support an attainment demonstration.

The modeled attainment test compares model-predicted one-hour daily maximum concentrations in all grid cells for the attainment year to the level of the NAAQS. A predicted concentration above 0.124 ppm ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to attain the standard. This type of test is often referred to as an exceedance test. The EPA's guidance recommends that states use either of two modeled attainment or exceedance tests for the one-hour ozone NAAQS: a deterministic test or a statistical test.

The deterministic test requires the state to compare predicted one-hour daily maximum ozone concentrations

[3] Memorandum, "Ozone Attainment Demonstrations," issued March 2, 1995. A copy of the memorandum may be found on EPA's Web site at *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

[4] Letter from Mary A. Gade, Director, State of Illinois Environmental Protection Agency to Environmental Council of States (ECOS) Members, dated April 13, 1995.

[5] Memorandum, "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM 10 NAAQS," issued December 29, 1997. A copy of this memorandum may be found on EPA's Web site at *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

[6] Policy guidance contained in a May 10, 1995 memorandum from John Seitz, Director of EPA's Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard" recommends that ROP and attainment demonstration requirements, along with certain other related requirements, of Part D of Title 1 of the Clean Air Act are no longer applicable to an area once it has air quality data indicating that the one-hour ozone standard has been attained.

[7] The EPA issued guidance on the air quality modeling that is used to demonstrate attainment with the one-hour ozone NAAQS. See U.S. EPA, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013, (July 1991). A copy may be found on EPA's Web site at *http://www.epa.gov/ttn/scram/* (file name: "UAMREG"). See also U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996). A copy may be found on EPA's Web site at *http://www.epa.gov/ttn/scram/* (file name: "O3TEST").

[8] Ibid.

for each modeled day [9] to the attainment level of 0.124 ppm. If none of the predictions exceed 0.124 ppm, the test is passed.

The statistical test takes into account the fact that the form of the one-hour ozone standard allows exceedances. If, over a three-year period, the area has an average of one or fewer exceedances per year, the area is not violating the standard. Thus, if the state models a very extreme day, the statistical test provides that a prediction above 0.124 ppm up to a certain upper limit may be consistent with attainment of the standard. (The form of the one-hour ozone standard allows for up to three readings above the standard over a three-year period before an area is considered to be in violation.)

The acceptable upper limit above 0.124 ppm is determined by examining the size of exceedances at monitoring sites which meet the one-hour NAAQS. For example, a monitoring site for which the four highest one-hour average concentrations over a three-year period are 0.136 ppm, 0.130 ppm, 0.128 ppm and 0.122 ppm is attaining the standard. To identify an acceptable upper limit, the statistical likelihood of observing ozone air quality exceedances of the standard of various concentrations is equated to the severity of the modeled day. The upper limit generally represents the maximum ozone concentration observed at a location on a single day and it would be the only reading above the standard that would be expected to occur no more than an average of once a year over a three-year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 0.136 ppm, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 0.124 ppm are very unusual at monitoring sites meeting the NAAQS. Thus, these upper limits are rarely substantially higher than the attainment level of 0.124 ppm.

B. Additional Analyses Where Modeling Fails To Show Attainment

When the modeling does not conclusively demonstrate attainment, additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with modeling and its results. For example, there are uncertainties in some of the modeling inputs, such as the meteorological and emissions data bases for individual days and in the methodology used to assess the severity of an exceedance at individual sites. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely. The process by which this is done is called a weight of evidence (WOE) determination.

Under a WOE determination, the state can rely on and EPA will consider factors such as: other modeled attainment tests, *e.g.*, a rollback analysis; other modeled outputs, *e.g.*, changes in the predicted frequency and pervasiveness of exceedances and predicted changes in the design value; actual observed air quality trends; estimated emissions trends; analyses of air quality monitored data; the responsiveness of the model predictions to further controls; and, whether there are additional control measures that are or will be approved into the SIP but were not included in the modeling analysis. This list is not an exclusive list of factors that may be considered and these factors could vary from case to case. The EPA's guidance contains no limit on how close a modeled attainment test must be to passing to conclude that other evidence besides an attainment test is sufficiently compelling to suggest attainment. However, the further a modeled attainment test is from being passed, the more compelling the WOE needs to be.

The EPA's 1996 modeling guidance also recognizes a need to perform a mid-course review as a means for addressing uncertainty in the modeling results. Because of the uncertainty in long term projections, EPA believes a viable attainment demonstration that relies on WOE needs to contain provisions for periodic review of monitoring, emissions, and modeling data to assess the extent to which refinements to emission control measures are needed. The mid-course review is discussed below.

V. What Is the Framework for Proposing Action on the Attainment Demonstration SIPs?

In addition to the modeling analysis and WOE support demonstrating attainment, the EPA has identified the following key elements which generally must be present in order for EPA to approve the one-hour attainment demonstration SIPs. These elements are: control measures required by the CAA that provide reductions towards attainment and measures relied on in the modeled attainment demonstration SIP; NO_X reductions affecting boundary conditions; motor vehicle emissions budgets; any additional measures needed for attainment;[10] and a Mid-Course Review (MCR).

A. CAA Measures and Measures Relied on in the Modeled Attainment Demonstration SIP

The states should have adopted the control measures already required under the CAA for the area classification. In addition, a state may have included control measures in its attainment strategy that are in addition to measures required in the CAA. For purposes of fully approving the state's SIP, the state needs to adopt and submit all VOC and NO_X controls within the local modeling domain that were relied on for purposes of the modeled attainment demonstration.

The information in Table 1 is a summary of the CAA requirements that should be met for a serious area for the one-hour ozone NAAQS. These requirements are specified in section 182 of the CAA. EPA must have taken final action approving all measures relied on for attainment, including the required ROP control measures and target calculations, before EPA can issue a final full approval of the attainment demonstration as meeting CAA section 182(c)(2). This was done for all measures relied on in the attainment demonstration for New Hampshire.

Table 1—CAA Requirements for Serious Areas

— NSR for VOC and NO_X [11], including an offset ratio of 1.2:1 and a major VOC and NO_X source cutoff of 50 tons per year
— Reasonably Available Control Technology (RACT) for VOC and NO_X
— Enhanced Inspection and Maintenance (I/M) program for large population centers
— 15% volatile organic compound plans
— Emissions inventory
— Emission statements
— Periodic inventories
— Attainment demonstration
— 9 percent ROP plan through 1999
— Clean fuels program or substitute
— Enhanced monitoring Photochemical Assessment Monitoring Stations
— Stage II vapor recovery
— Contingency measures

[9] The initial, "ramp-up" days for each episode are excluded from this determination.

[10] As discussed in detail below, the New Hampshire attainment demonstration shows attainment without the need for additional measures beyond what has already been adopted into the SIP or will be required by federal regulations. Therefore additional measures are not required for New Hampshire.

[11] Unless the area has in effect a NO_X waiver under section 182(f). The New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area is not such an area.

— Reasonably Available Control Measures Analysis

1. Control Measures Adopted by New Hampshire

Adopted and submitted rules for all previously required CAA mandated measures for the specific area classification that are being relied on in the attainment demonstration are required. This also includes measures that may not be required for the area classification but that the state relied on in the SIP submission for attainment. As explained in Table 2, New Hampshire has submitted SIPs for all of the measures they are relying on for attainment.

TABLE 2.—CONTROL MEASURES IN THE ONE-HOUR OZONE ATTAINMENT PLAN FOR THE NEW HAMPSHIRE PORTION OF THE BOSTON-LAWRENCE-WORCESTER, MA–NH SERIOUS OZONE NONATTAINMENT AREA

Name of control measure	Type of measure	Approval status
On-board Refueling Vapor Recovery	Federal rule	Promulgated at 40 CFR part 86.
Federal Motor Vehicle Control program	Federal rule	Promulgated at 40 CFR part 86.
Heavy Duty Diesel Engines (On-road)	Federal rule	Promulgated at 40 CFR part 86.
Federal Non-road Heavy Duty diesel engines	Federal rule	Promulgated at engines 40 CFR part 89.
Federal Non-road Gasoline Engines	Federal rule	Promulgated at 40 CFR part 90.
Federal Marine Engines	Federal rule	Promulgated at 40 CFR part 91.
AIM Surface Coatings	Federal rule	Promulgated at 40 CFR part 59.
Automotive Refinishing	Federal rule	Promulgated at 40 CFR part 59.
Consumer & commercial products	Federal rule	Promulgated at 40 CFR part 59.
Inspection & Maintenance	CAA SIP Requirement and OTR Restructuring.	SIP approved (66 FR 1868; 1/10/01).
NO_X RACT	CAA SIP Requirement	SIP approved (62 FR 17087; 4/9/97)
VOC RACT pursuant to sections 182(a)(2)(A) and 182(b)(2)(B) of CAA.	CAA SIP Requirement	SIPs approved (63 FR 67405; 12/17/98) (63 FR 11600; 3/10/98) (58 FR 4902; 1/19/93) (58 FR 29973; 5/25/93).
VOC RACT pursuant to section 182(b)(2)(A) and (C) of CAA.	CAA SIP Requirement	SIPs approved (67 FR 48034; 7/23/02) (65 FR 42290; 7/10/2000) (63 FR 11600; 3/10/98).
Stage II Vapor Recovery	CAA SIP Requirement	SIP approved (63 FR 67405; 12/7/98).
Reformulated Gasoline	State opt-in	SIP approved (63 FR 67405; 12/7/98).
National Low Emission Vehicle	State option	SIP approved (65 FR 12476; 3/9/00).
Clean Fuel Fleets	CAA SIP Requirement	SIP approved (64 FR 52434; 9/29/99).
New Source Review	CAA SIP Requirement	SIP approved (66 FR 39100; 7/27/01).
Base Year Emissions Inventory	CAA SIP Requirement	SIP approved (62 FR 55521; 10/27/97).
15% VOC Reduction Plan	CAA SIP Requirement	SIP approved (63 FR 67405; 12/7/98).
9% rate of progress plan	CAA SIP Requirement	SIP approved (67 FR 18547; 4/16/02).
Emissions Statements	CAA SIP Requirement	SIP approved (63 FR 11600; 3/10/98).
Enhanced Monitoring (PAMS)	CAA Requirement	SIP approved (62 FR 55521; 10/27/97).
OTC NO_X MOU Phase II and III	State initiative	SIP approved (64 FR 29567; 6/2/99).
Stage II Vapor Recovery or comparable measures section OTR requirement.	CAA SIP requirement	SIP approved (64 FR 52434; 9/29/1999).

B. NO_X Reductions Consistent With the Modeling Demonstration

On October 27, 1998 , EPA completed rulemaking on the NO_X SIP call, which required states to address transport of NO_X and ozone to other states. To address transport, the NO_X SIP call established emissions budgets for NO_X that 23 jurisdictions were required to show they would meet by 2007 through enforceable SIP measures adopted and submitted by September 30, 1999. The NO_X SIP call is intended to reduce emissions in upwind states that significantly contribute to nonattainment problems. The EPA did not identify specific sources that the states must regulate nor did EPA limit the states' choices regarding where to achieve the emission reductions. The courts have largely upheld EPA's NO_X SIP Call, *Michigan* v. *United States Env. Prot. Agency*, 213 F.3d 663 (D.C. Cir. 2000), cert. denied, U.S., 121 S.Ct. 1225, 149 L.Ed. 135 (2001); *Appalachian Power* v. *EPA*, 251 F.3d 1026 (D.C. Cir. 2001). Although a few issues were vacated or remanded to EPA for further consideration, states subject to the NO_X SIP call have largely adopted the controls necessary to meet the budgets set for them under the NO_X SIP call rule. The controls to achieve these reductions should be in place by May 2004.

New Hampshire used the best available NO_X SIP Call information in its modeling analysis. The modeling analysis is discussed in more detail below. New Hampshire itself, however, was not one of the states required to adopt enforceable SIP measures to meet EPA's NO_X SIP call. New Hampshire has adopted regulations consistent with the NO_X Memorandum of Understanding (NO_X MOU) adopted by the Ozone Transport Commission on September 27, 1994. When the NO_X MOU was developed, New Hampshire voluntarily assigned their largest utility NO_X source, the Merrimack Station, to the zone where reductions of 65 percent in 1999 and 75 percent in 2003 are required. This measure is significant because otherwise there would be no requirements for this plant under the NO_X MOU until 2003, at which time a 55 percent reduction is required. EPA approved the regulation New Hampshire adopted pursuant to the NO_X MOU on June 2, 1999 (64 FR 29567).

C. Motor Vehicle Emissions Budgets (MVEBs)

The EPA believes that attainment demonstration SIPs must necessarily estimate the level of motor vehicle emissions, which when considered with emissions from all other sources (stationary, area and other mobile source), is consistent with attainment. The estimate of motor vehicle emissions is used to determine the conformity of transportation plans and programs to the SIP, as described by CAA section 176(c)(2)(A). For transportation conformity purposes, the estimate of

motor vehicle emissions is known as the motor vehicle emissions budget. The EPA believes that appropriately identified motor vehicle emissions budgets are a necessary part of an attainment demonstration SIP. A SIP cannot effectively demonstrate attainment unless it identifies the level of motor vehicle emissions that can be produced while still demonstrating attainment.

D. Mid-Course Review

A mid-course review (MCR), which generally is performed midway between approval of the attainment demonstration and the attainment date, is a reassessment of modeling analyses and more recent monitored data to determine if a prescribed control strategy is resulting in emission reductions and air quality improvements needed to attain the ambient air quality standard for ozone as expeditiously as practicable.

E. Reasonably Available Control Measures (RACM) Analysis

Section 172(c)(1) of the CAA requires SIPs to contain all RACM and provide for attainment as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM. Finally, EPA indicated that states could reject measures as not being RACM because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, would be economically or technologically infeasible, or would otherwise be inappropriate for local reasons, including costs. The EPA also issued a memorandum re-confirming the principles in the earlier guidance, entitled, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

When EPA presented its statutory argument in support of its RACM policy to the U.S. Court of Appeals for the DC Circuit in defense of its approval of the Washington, DC, ozone SIP, the DC Circuit found reasonable EPA's interpretation that measures must advance attainment to be RACM. *Sierra Club* v. *EPA*, 294 F.3d 155, 162 (D.C.Cir. 2002). Specifically, the Court found that:

> EPA reasonably concluded that because the Act "use[s] the same terminology in conjunction with the RACM requirement" as it does in requiring timely attainment, *compare* 42 U.S.C. § 7502(c)(1) (requiring implementation of RACM "as expeditiously as practicable but no later than" the applicable attainment deadline), *with id.* § 7511(a)(1) (requiring attainment under same constraints), the RACM requirement is to be understood as a means of meeting the deadline for attainment.

Id. Morever, the D.C. Circuit rejected, as a "misreading of both text and context," Sierra Club's arguments that EPA's interpretation of RACM conflicts with the Act's text and purpose and lacks any rational basis. The D.C. Circuit also found reasonable EPA's interpretation that it could consider costs in a RACM analysis and that measures may be rejected if they would require an intensive and costly effort for regulation of many small sources. *Sierra Club* v. *EPA*, 294 F.3d at 162.163.

VI. What Are the Relevant Policy and Guidance Documents?

This proposal has cited several policy and guidance memoranda. The documents and their location on EPA's web site are listed below; these documents will also be placed in the docket for this proposal action.

Relevant Documents

1. "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: *http://www.epa.gov/ttn/scram* (file name: "ADDWOE1H").

2. "Serious and Severe Ozone Nonattainment Areas: Information on Emissions, Control Measures Adopted or Planned and Other Available Control Measures." November 24, 1999. OAQPS. U.S. EPA, RTP, NC.

3. Memorandum, "Guidance on Motor Vehicle Emissions Budgets in One-Hour Attainment Demonstrations," from Merrylin Zaw-Mon, Office of Mobile Sources, to the Air Division Directors, Regions I–VI. November 3, 1999. Web site: *http://www.epa.gov/oms/transp/trafconf.html*.

4. Memorandum from Lydia Wegman and Merrylin Zaw-Mon to the Air Division Directors, Regions I–VI, "1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking." November 8, 1999. Web site: *http://www.epa.gov/oms/transp/trafconf.html*.

5. Memorandum from John Seitz, Director, Office of Air Quality Planning and Standards, "Mid-Course Review Guidance for the 1-Hour Ozone Nonattainment Areas that Rely on Weight-of-Evidence for Attainment Demonstration." Web site: *http://www.epa.gov/scram001/tt25.htm* (file name: "MCRGUIDE").

6. Memorandum, "Guidance to Clarify EPA's Policy on What Constitutes "As Expeditiously as Practicable" for Purposes of Attaining the One-Hour Ozone Standard for Serious and Severe Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 1999. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

7. U.S. EPA, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013, (July 1991). Web site: *http://www.epa.gov/ttn/scram/* (file name: "UAMREG").

8. U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996). Web site: *http://www.epa.gov/ttn/scram/* (file name: "O3TEST").

9. Memorandum, "Ozone Attainment Demonstrations," from Mary D. Nichols, issued March 2, 1995. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

10. December 29, 1997 Memorandum from Richard Wilson, Acting Assistant Administrator for Air and Radiation "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS." Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

VII. How Does the New Hampshire Submittal Satisfy the Framework?

This section provides a review of New Hampshire" submittal and an analysis of how this submittal satisfies the framework discussed in Section V. of this notice:

A. What Did the State Submit?

The attainment demonstration SIP submitted by the New Hampshire DES for the Boston-Lawrence-Worcester, MA–NH area includes a modeling analysis using the CALGRID model which demonstrates attainment using the weight-of-evidence approach. This was submitted on June 30, 1998. The SIP was subject to public notice and comment and a hearing was held on June 1, 1998. Information on how the photochemical grid modeling meets EPA guidance is summarized below.

B. How Was the Photochemical Grid Modeling Conducted?

The one-hour attainment demonstration submitted by New Hampshire is for both the New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area as well as the New Hampshire Portsmouth-Dover-Rochester serious area.[12] EPA is only acting on the attainment demonstration as it applies to the New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH nonattainment area.

The key element of the attainment demonstration is the photochemical grid point modeling required by the CAA. The New Hampshire attainment demonstration submittal used the CALGRID model which was approved for use by EPA since it was found to be at least as effective as the guideline model which is UAM–IV. The modeling domain for CALGRID extends from southwest Connecticut, northward 340 km to northern Vermont, and eastward to east of Nantucket, Massachusetts. For the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area, the domain meets EPA guidance since it contains adequate areas both upwind and downwind of the nonattainment area. The domain also includes the monitors with the highest measured peak ozone concentrations in Massachusetts and coastal Maine and New Hampshire. Since the original modeling was done for a much larger domain that includes not only all of the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area but also includes all of Rhode Island, most of Connecticut, all of Massachusetts, southern Vermont, and most of southern Maine, the CALGRID model has several "source" areas and several receptor areas. The receptor area of importance for the New Hampshire SIP submittal is the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area. For the purposes of this notice, only model results in this geographic area will be used, unless otherwise noted. As shown below, EPA believes the modeling portion of the attainment demonstration meets EPA guidance.

The model was run for 10 days during four distinct episodes (August 14–17, 1987, June 21–22, 1988, July 7–8, 1988 and July 10–11, 1988). These episodes represent a variety of ozone conducive weather conditions, and also include the three worst ranked ozone episodes (1987 to 1998) for the domain. The episodes selected reflect days with high measured ozone in a variety of areas within the entire domain. This is because, as stated above, the domain covers several nonattainment areas, and in order to model the meteorology that causes high ozone, several different episodes were needed. The model results for the first day of each episode are not used for attainment demonstration purposes, because they are considered "ramp-up days." Ramp-up days help reduce impacts of initial conditions; after ramp-up days, model results are more reflective of actual emissions being emitted into the atmosphere. Since the first day of each episode was not considered, this leaves six days for strategy assessment. August 16, 1987 was also not used for strategy assessment. This leaves five strategy days: August 15, 1987; August 17, 1987; June 22, 1988; July 8, 1988 and July 11, 1988.

The CALGRID model was run using the CALMET meteorological processor. This processor took actual meteorological data collected by the National Weather Service and the State Air Pollution Agencies and using extrapolation and other analysis techniques provided winds, temperatures and other meteorological parameters at approximately 400 specific grid points for each hour of the episode at up to 14 levels (*i.e.*, from the surface to top of the model which is about 5000 feet). CALMET is described in detail in the New Hampshire attainment demonstration, and was approved by EPA for use in the CALGRID modeling system.

The CALGRID model was run with emissions data prepared by EPA Region I and/or a contractor working with EPA Region I. The data were taken from the EPA Aerometric Informational Retrieval System (AIRS) data base in late 1993 and reflect the emission data supplied from the six New England States. The emission data for the small portion of New York state that forms the western edge of the domain was supplied by New York. EPA Region I quality assured all the New England AIRS data, the New York supplied data and all necessary modifications to the data. The data was further processed through the Emissions Preprocessor System (EPS Version 2.0). To more accurately model ozone in New England, day specific emissions were simulated for on-road mobile sources (cars, trucks, buses, etc.), and for large fossil-fueled fired power plants in New England. The base case CALGRID model is consistent with EPA guidance on model performance.

Future emissions were projected to 1999 and 2007 accounting for both emission increases due to industrial growth, population growth and growth in the number of miles traveled by cars, as well as emission reductions due to cleaner gasoline, cleaner cars and controls on industrial pollution. Growth factors were derived using the EPA-approved Bureau of Economic Analysis (BEA) factors and all the emissions were processed using the EPS 2.0 system.

Model runs were also performed for the year 2007. The runs employed 2007 emission estimates inside the New England Domain, along with boundary conditions files reflecting EPA's NO_x SIP Call emission estimates in upwind areas. Year 2007 emissions estimates for the states inside the modeling domain reflected EPA's NO_x SIP call as well as other federal and state control strategies being implemented by the beginning of the 2007 ozone season. This was accomplished using a two-step process. The first step was to project emissions using growth factors to account for increases or decreases in economic activity by industrial sector. In general, the states projected their emissions using the same growth factors that were used in the OTAG modeling effort. The second step involved applying control factors to source categories that would be regulated by the year 2007. States used a combination of information for control levels: those used for the OTAG modeling effort, and state-specific information relating to the effectiveness of control programs planned or in place. These 2007 emission estimates did not, however, include the Tier 2/Gasoline Sulfur program that was subsequently adopted by EPA on February 10, 2000 (65 FR 6698).

C. What Are the Conclusions From the Modeling?

EPA guidance for approval of the modeling aspect of a one-hour ozone attainment demonstration is to use the one-hour ozone grid modeling to apply one of two modeled attainment tests (deterministic or statistical) with optional weight of evidence analyses to

[12] The Portsmouth-Dover-Rochester serious area attained the one-hour ozone standard by its statutory attainment date. In June 1999, EPA issued a final rule determining that the one-hour ozone standard no longer applied (64 FR 30911). EPA has since reinstated the standard. However, Portsmouth-Dover-Rochester continues to qualify, based on recent air quality data, as a clean data area under the EPA policy related to ozone nonattainment areas meeting the one-hour ozone NAAQS (May 10, 1995) and the attainment demonstration requirement is deferred pending redesignation.

supplement the modeled attainment test results when the modeled attainment test is failed. Neither the 1999 or 2007 modeling performed for the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area shows attainment of the one-hour ozone standard (0.124 parts per million) at every grid cell for every hour of every strategy day modeled (August 15, 1987; August 17, 1987; June 22, 1988; July 8, 1988 and July 11, 1988). The maximum predicted base case concentration in the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area for the modeled episodes is 0.230 ppm, for the August 15, 1987 episode. The strategy run for this episode shows a future value in 1999 of 0.186 ppm. For the July 1988 episodes, which are modeled for both 1999 and 2007, New Hampshire looked at the predicted peaks for 1999 and 2007 in the portion of the modeling domain directly influenced by New Hampshire emissions (*i.e.*, southern New Hampshire and northeastern Massachusetts). Those peaks remain above the one-hour ozone standard, with a peak concentration of 0.188 ppm in 1999, and 0.177 ppm in 2007. None of the future case strategy modeling runs pass the strict deterministic test. Since the CALGRID model, as run for the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area, does not pass the strict deterministic attainment test, additional weight of evidence analyses are performed. When these additional weight of evidence analyses are considered, attainment is demonstrated for the Boston-Lawrence-Worcester, MA–NH area.

The paramount element in the New Hampshire weight of evidence analysis is the actual air quality monitoring data. The air quality monitoring data show that the area attained the one-hour NAAQS in 1998, based on 1996–1998 ozone data. The area remained in attainment until the summer of 2001. In the summer of 2001, the violations of the standard occurred to the south of New Hampshire. Both trajectory analyses and zero-out model runs show that the source regions for these violations is not New Hampshire, and there is nothing New Hampshire can do to eliminate or reduce these violations. This information is, in itself, enough to pass a weight-of-evidence test. However, for thoroughness, EPA analyzed more information.

Another element in a weight of evidence analysis is use of the model predicted change in ozone to estimate a future air quality design value. This uses the air quality modeling in a relative sense. An analysis of the modeled ozone data, from the CALGRID model used in the New Hampshire attainment demonstration, in conjunction with monitored air quality data shows that, with the planned emission reductions in the two precursor emissions (VOC and NO_X), ground-level ozone concentrations will be below the ambient standard by the 2007 attainment date.

More specifically, EPA used the New Hampshire attainment demonstration in a relative sense to estimate a future design value. EPA compared base case CALGRID runs to future case CALGRID runs to estimate the improvement in ozone air quality levels between the base and future cases. Four strategy days (August 15 and 17 1987; July 8, 1988 and July 11, 1988)[13] are used in this analysis, which compared the improvement in modeled air quality between the base and future modeling cases. The following procedure is applied. First, base case CALGRID runs are examined to discern the maximum one-hour ozone concentration modeled in the area of concern, in this case a large area to the north of Boston. This is the only area which New Hampshire has any chance of affecting during meteorological conditions that result in one-hour ozone exceedances in New England. The four strategy days are all examined. Next, the same area is used to determine future modeled ozone values. The modeled maximum results of the four strategy days are averaged and a reduction factor calculated from the base case to the future case. This reduction factor represent the amount of ozone reduced in this area, as the result of the emission reductions modeled. This reduction factor is used to adjust the average ozone design value for this part of the model domain, as monitored between 1985 and 1990. This monitored design value represent both the base case model years of 1987 and 1988 and also the design values used in 1991 to classify one-hour nonattainment areas.

This analysis shows that air quality design values can reasonably be expected to be reduced below 0.124 ppm based on continued additional reductions within the domain (*e.g.*, areas in CT, RI and MA) and reductions upwind, reflected in the future year boundary conditions. Furthermore, the emissions sensitivity modeling performed by the State of New Hampshire indicates that ozone reductions from emission reductions within the New England domain will be greater when boundary conditions become cleaner. So emission reductions from future programs like the Tier 2/sulfur gasoline program and the NO_X SIP call will further aid in achieving attainment of the one-hour ozone standard within the nonattainment area.

In addition to this analysis performed by EPA, the New Hampshire DES ozone attainment demonstration also contains a future design value analysis which shows similar results. The New Hampshire DES used a different set of design values than the EPA analysis. The New Hampshire DES analysis used 1995–1997 design values for all of the ozone monitors in New Hampshire. For each monitor, New Hampshire DES calculated the percent improvement in air quality necessary to bring these monitors into attainment of the NAAQS. Then, using the 1999 and 2007 CALGRID modeling runs for the July 8 and July 11 episode,[14] the New Hampshire DES calculated the percent improvement between 1999 and 2007. If this percent model improvement is greater than the improvement needed to achieve the one-hour ozone NAAQS, then the New Hampshire DES contends that attainment is shown. The results of the analysis show that New Hampshire can achieve attainment of the one-hour standard by 2007. This analysis by the New Hampshire DES adds to the weight of evidence.

In summary, the CALGRID modeling submitted by the New Hampshire DES for the New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area, when analyzed using the future design value approach, shows attainment of the one-hour NAAQS will be achieved by 2007. This modeling is consistent with EPA guidance. Other information, which provides additional favorable evidence that the Boston-Lawrence-Worcester, MA–NH area, will attain in 2007, are the ambient ozone data trends, a trajectory analysis of exceedance days in the area, and zero-out modeling for New Hampshire.

D. Do the Ambient Ozone Data Show Any Trends?

In total, there are 11 ozone air quality monitors in the Boston-Lawrence-Worcester, MA–NH nonattainment area that have data from 1999–2001, ten in Massachusetts and only one in New Hampshire. They are in the Massachusetts cities and towns of Boston (two sites), Easton, Fairhaven, Lawrence, Lynn, Newbury, Stow, Truro, and Worcester, and Nashua, New Hampshire. All of the monitors show attainment with the one-hour ozone NAAQS for the period 1999–2001, except for the Fairhaven and Truro, MA sites.

The original serious classification of the nonattainment area was based on data from the 1987 through 1989 time period. Since then and including 2001 ozone data, the latest available quality assured ozone data for the area, all 11 sites show a decrease in ozone due to emission reductions, both within Massachusetts and New Hampshire and also upwind. The monitoring sites north of the city of Boston are showing the greatest decline. For example, the one-hour ozone design value for the site in Newbury has dropped from 0.139 ppm in 1989 to 0.112 ppm in 2001, a drop of 19 percent. At the Nashua, NH site, the only site in the nonattainment area in New Hampshire, the design value has dropped from 0.121 ppm in 1989 to 0.103 ppm in 2001, a drop of 15 percent.

If we look at three additional monitors downwind of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area, we see similar downward trends. The three monitors are Rye, NH, Kennebunkport, ME and Cape Elizabeth, ME. At the Rye, NH site, the design value has dropped from 0.156 ppm in 1989 to 0.123 ppm in 2001, a drop of 21 percent. At the Kennebunkport, ME site, the design value has dropped from 0.152 ppm in 1989 to 0.120 ppm in 2001, also, a drop of 21 percent. At the Cape Elizabeth, ME site the design value has dropped from 0.156 ppm in 1989 to 0.111 ppm in 2001, a drop of 29 percent. These substantial decreases in ozone are the result of emission reductions both within the tri-state area of Massachusetts, New Hampshire and Maine, as well as reduction in longer-range transport emissions from upwind areas.

At the two eastern Massachusetts monitors recording violations of the ozone standard in 2001 (*i.e.*, Fairhaven and Truro, Massachusetts), the ozone trend is also downward. These two sites are in the extreme southern portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area, and were monitoring attainment until the summer of 2001. At the Fairhaven, MA site, the one-hour ozone design value has dropped from 0.150 ppm in 1989 to 0.125 ppm in 2001, a drop of 17 percent. This site is not in attainment, based on 1999–2001 ozone data. At the Truro, MA site, the one-hour design value has dropped from 0.146 ppm in 1989 to 0.138 ppm in 2001, for a drop of 5 percent. This site, too, is not in attainment, based on 1999–2001 ozone data. Furthermore, preliminary ozone data for the Boston-Lawrence-Worcester, MA–NH area collected during the summer of 2002, a hot summer, show that of the 11 monitors that have recorded ozone data for the past three years, only the Truro, MA monitor has an ozone design value of 0.125 ppm or above. Truro's preliminary design value for 2000–2002 is 0.130 ppm, a drop of 0.008 ppm from 2001. During 2000–2002, the fifth highest value at the Truro site is below the level of the one-hour ozone standard.

Based on the overall downward trend in one-hour ozone concentrations in this area, and because precursor emissions are projected to keep falling, both within the nonattainment area and upwind from it, there is no reason to believe that the downward trend in ozone concentrations will not continue over the near term, based on the projected emission reductions. The future emission reductions will be a result of the following: continued benefits from tighter standards on vehicles due to fleet turnover (California Low Emission Vehicles (CA LEV) in Massachusetts and New York and National Low Emission Vehicles in New Hampshire and other upwind areas); the reductions from large point sources due to the OTC NO_X Budget Program and EPA's NO_X SIP call; other federal control measures such controls on non-road engines; and the Tier 2 vehicle and low sulfur gasoline program.

E. What Do the Zero-Out Model Runs Show?

The State of New Hampshire performed many emission sensitivity model runs for the four ozone episodes (August 15–17, June 22, July 8 and July 11). A sensitivity run is a model run to determine how the model reacts to certain controlled changes to one of its inputs. An emission sensitivity run shows how the model reacts to changes in anthropogenic ozone precursor emissions (VOC, NO_X and carbon monoxide (CO)). For example, how does the CALGRID model respond to a drop in ozone precursor emissions of 50 percent. Some of the most useful, although not achievable in actuality, of these emission sensitivity runs are the so-called zero-out runs, where instead of lowering emissions by 50 or 75 percent, the emissions are completely eliminated from within a certain portion of the domain (*i.e.*, the anthropogenic emissions are set to zero). The CALGRID zero-out runs (model runs that assume no anthropogenic emissions in a given area) show that when the anthropogenic ozone precursor emissions (VOC, NO_X and Carbon monoxide (CO)) are set to zero in the State of New Hampshire for each of the four episodes modeled, there is no change in predicted ozone in the Cape Cod and southeastern Massachusetts region. The model does show decreases in ozone concentrations along the New Hampshire coast and over inland sections of New Hampshire and Maine, and in northeastern Massachusetts, but no change over Cape Cod and southeastern Massachusetts, the portion of the nonattainment area still recording ozone violations. This is to be expected on these days since the surface winds were primarily blowing from the southwest toward the northeast. But to have this shown definitively by the CALGRID model is important, because it adds to the argument that there is nothing more New Hampshire can do to lower ozone concentrations over southeastern Massachusetts, and nothing New Hampshire can presently do to advance the attainment date of the nonattainment area. To achieve attainment throughout the entire Boston-Lawrence-Worcester, MA–NH ozone nonattainment area, New Hampshire is beholden to emissions reductions from other states.

F. What Do the Trajectory Analyses Show?

One question that the zero-out modeling runs discussed above, do not answer is "Does New Hampshire contribute to ozone exceedances on Cape Cod on other days not modeled?" In order to answer this question, EPA looked at all days on which there were exceedances of the one-hour ozone standard on Cape Cod, in southeastern Massachusetts, and/or in Rhode Island, over the last three years when we have quality assured and quality controlled ozone data (1999–2001). This area encompasses the ozone monitoring sites in Truro, MA; Fairhaven, MA; Narragansett, RI; East Providence, RI; and West Greenwich, RI. The exceedance days at these sites during 1999–2001 are as follows: June 7, 1999, July 6, 1999, July 16, 1999, June 10, 2000, June 30, 2001, July 25, 2001, August 7, 2001, and August 9, 2001. In order to determine the most probable source region of emissions for the exceedances measured on these days, EPA performed a trajectory analysis for each day.

A trajectory is the path a parcel of air follows from point A to point B (*e.g.* from New York to Cape Cod). A backward trajectory is the reverse, where did a parcel of air come from (*e.g.*, where did the ozone on Cape Cod most likely originate?)? The path and/or trajectory depends mostly on the wind

[13] The June 22, 1988 strategy day is not used because of problems re-analyzing the base case model run for this episode.

[14] Only the July 8 and 11 episode are included in this analysis because of the limited availability of appropriate 2007 boundary condition for the other episodes.

speed and direction, but other weather parameters do come into play, such as how sunny it is, and whether the air is rising or sinking as it moves. One way of determining trajectories is with trajectory models. The model EPA used to compute backward trajectories is the HYSPLIT–4 (Hybrid Single-Particle Lagrangian Integrated Trajectory) model, developed by NOAA Air Resources Lab. Input meteorological data fields were from the National Centers for Environmental Prediction Eta Data Assimilation System. Details of this analysis are found in the technical support document for this action. EPA's trajectory analysis of the days with ozone exceedances at these sites (Truro, MA, Fairhaven, MA, Narragansett, RI, East Providence, RI and West Greenwich, RI) support the CALGRID modeling which shows that the most probable source region of the exceedances at these sites is southern New England and areas to the south and west of New England. In none of the cases modeled, do the HYSPLIT trajectories show New Hampshire as a probable source region for this ozone. This confirms the zero-out runs discussed above, and adds to the weight-of-evidence analysis.

G. Are the Causes of the Recent Violation Being Addressed?

The Boston-Lawrence-Worcester, MA–NH ozone nonattainment area was in attainment for three consecutive, three-years periods from 1998–2000 (*i.e.* 1996–1998, 1997–1999, and 1998–2000). As discussed above, the violation based on the three-year period from 1999–2001 occurred at two monitors in extreme southeastern Massachusetts. Based on zero-out modeling performed by the New Hampshire DES, the emissions that are causing these violations are not emanating from New Hampshire, but rather from sources near and upwind of these monitors.

Massachusetts, the other state in this multi-state nonattainment area, has performed additional analyses with regard to the remaining violations in the Boston-Lawrence-Worcester, MA–NH nonattainment area. Those additional analyses were submitted to EPA by the Massachusetts DEP on September 6, 2002. Those additional analyses concluded that the emission reductions that upwind states will achieve under the NO_X SIP Call, beginning in 2003, should help bring the area back into attainment. Massachusetts also analyzed how reductions from the EPA's Tier 2 vehicle and low sulfur gasoline program promulgated on February 10, 2000 (65 FR 6697) will benefit the area. In a separate action, EPA has proposed approval of the Massachusetts attainment demonstration for this nonattainment area based on the conclusion that attainment will be achieved in the future once scheduled federal and local control measures are implemented.

Even though the upwind reductions are most critical in ensuring that this area is brought back into attainment, EPA notes that there are additional control strategies and emission reductions within New Hampshire that will not fully be implemented until 2003 and beyond. These measures include: the State of New Hampshire NO_X budget and allowance trading program, additional reductions from fleet turn-over and non-road equipment turnover. These reductions will continue to help ensure that air quality improves in the area, and that maintenance of the ozone standard in southern New Hampshire is continued.

H. What Attainment Date Is Being Established for the Nonattainment Area?

The Boston-Lawrence-Worcester, MA–NH area attained the one-hour ozone standard as of 1999, its statutory deadline under the CAA. Moreover, the Boston-Lawrence-Worcester, MA–NH nonattainment area continued to have air quality meeting the one-hour ozone standard until the 1999 through 2001 time period. In the Massachusetts DEP attainment demonstration supplement that was submitted to EPA on September 6, 2002, Massachusetts provides evidence that the entire nonattainment area will once again attain by an attainment date of November 15, 2007, once a variety of scheduled control strategies are more fully implemented. In a separate action, EPA has proposed approval of the Massachusetts attainment demonstration for this nonattainment area and has proposed an attainment date of November 15, 2007. This attainment date will be for the entire nonattainment area including the New Hampshire portion.

I. What About the Mid-course Review?

As discussed above, the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area attained the ozone standard based on ozone data collected in 1997–1999 and 1998–2000, and is now violating the standard only in the southern portion of the multi-state nonattainment area, in Massachusetts. As described in EPA's proposed approval of the Massachusetts attainment demonstration for this area, the Massachusetts Department of Environmental Protection has committed to perform a mid-course review for this area by December 31, 2004. As discussed above, EPA has concluded that based on ozone modeling and trajectory analyses performed by New Hampshire DES and EPA, that New Hampshire emissions are not contributing to the continued violations in the nonattainment area. Nevertheless, New Hampshire in its attainment demonstration SIP submittal has committed to "work with neighboring states and EPA Region I to determine the magnitude and geographic location of emission reductions required in order to most effectively attain and maintain ozone attainment for the 1-hour and then the 8-hour ozone standards." EPA interprets this to mean that New Hampshire will work with Massachusetts in performing a mid-course review for this area by December 31, 2004. EPA believes this mid-course review will be sufficient to determine if the nonattainment area's control strategy is resulting in emission reductions and air quality improvements needed to attain the ozone standard in the nonattainment area as expeditiously as practicable.

J. What About the Requirement for RACM?

The EPA has reviewed the SIP submittal for the New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area to determine if it includes sufficient documentation concerning available RACM measures. In its June 30, 1998 attainment demonstration, New Hampshire DES describes the control measures that it is implementing to assure attainment. New Hampshire DES also analyzes how effective additional VOC and NO_X reductions in various parts of the modeling domain would be at reducing predicted elevated concentrations of ozone.

As explained above, the analyses done by the New Hampshire DES included "zero-out" modeling runs for five separate episode days. In these model runs, all New Hampshire anthropogenic emissions of NO_X and VOC are removed from the analysis. Those "zero-out" modeling runs shows the contribution that New Hampshire anthropogenic emissions have to various parts of the modeling domain. As explained above, ozone monitoring data from 1999 through 2001 for the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area shows that only ozone monitors in extreme southeastern Massachusetts currently violate the one-hour ozone NAAQS. A look at those "zero-out" modeling runs with this in mind shows that even if the State of New Hampshire eliminated all anthropogenic sources of ozone precursors (NO_X and VOC), there would be no impact to the area in southeastern Massachusetts still recording NAAQs violations.

Furthermore, EPA performed a trajectory analysis of each of the days during 1999 through 2001 when exceedances of the one-hour ozone NAAQS were monitored in the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area. That analysis shows that the source region for these exceedances is southern New England and areas to the south and west of New England. None of the trajectories implicate the State of New Hampshire.

Therefore, EPA concludes based on the available information, that there are no additional emission control measures in New Hampshire that will advance the attainment date for the New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH ozone nonattainment area. Thus no potential measure can be considered RACM for purposes of section 172(c)(1) for southern New Hampshire for its one-hour ozone attainment demonstration. The EPA therefore proposes that the New Hampshire SIP meets the requirements for RACM.

Although EPA does not believe that section 172(c)(1) requires implementation of additional measures for this area, this conclusion is not necessarily valid for other areas.

K. What About Motor Vehicle Emissions Budgets?

New Hampshire's 15 percent plan submitted on February 3, 1994 included a year 1996 VOC motor vehicle emissions budget of 17.96 tons per summer day. On September 27, 1996 New Hampshire submitted its post-1996 plan which included a more stringent 1999 VOC motor vehicle emissions budgets of 16.56 tons per summer day VOC, as well as identified a new NO_X budget of 22.96 tons per summer day of NO_X. These 1999 motor vehicle emissions budgets were formally determined adequate by EPA New England for use in transportation conformity on April 29, 1999. Subsequent to the rate-of-progress SIPs, on June 30, 1998, New Hampshire submitted its ozone attainment demonstration to EPA which establishes motor vehicle emissions budgets for both VOC and NO_X for 2003. The 2003 VOC and NO_X budgets (10.72 tons per summer day and 21.37 tons per summer day respectively) established by the New Hampshire ozone attainment demonstration were formally determined adequate by EPA on August 19, 1998. These budgets are currently the controlling budgets for conformity determinations for 2003 and later years because the 2003 MVEBs are more stringent than the 1999 budget.

New Hampshire's current level of VOC and NO_X emissions are consistent with a level required to attain and maintain the one-hour ozone NAAQS in New Hampshire and downwind areas. No ozone monitor in the New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area has experienced a violation of the one-hour ozone NAAQS since the three year period from 1996–1998. Additional VOC and NO_X emission reductions within the New Hampshire portion of the nonattainment area would not likely speed up attainment in the nonattainment area nor reduce elevated ozone levels measured in southeastern Massachusetts, the portion of the nonattainment area that still violates the one-hour ozone standard. This conclusion is justified by the zero-out modeling and trajectory analysis discussed above.

The 2003 MVEBs adopted by the State of New Hampshire are lower than the current level of motor vehicle emissions estimated in the New Hampshire portion of the Boston-Lawrence-Worcester, MA-NH nonattainment area.[15] While the 2003 MVEBs are not as stringent as the currently projected 2007 motor vehicle emissions for the area,[16] the motor vehicle emission budgets must only demonstrate that its emission level is sufficient to attain and maintain the one-hour NAAQS for ozone. For example, the projected 2007 motor vehicle emission levels can have an additional quantity of "safety margin" emissions to accommodate future growth added to them to create the attainment-level motor vehicle emission budgets, provided that the area continues to demonstrate attainment. The important criteria is that the motor vehicle emission level established in the attainment demonstration, when added to the stationary, area and other mobile sources are consistent with attainment of the one-hour NAAQS for ozone.

Since New Hampshire's current level of VOC and NO_X emissions are consistent with a level required to attain the one-hour ozone NAAQS, the lower 2003 MVEBs adopted by the State of New Hampshire represent acceptable attainment-level MVEBs with a safety margin included. Since the State of New Hampshire has such discretion when setting motor vehicle emissions budgets provided its budgets are consistent with the measures in the SIP, EPA is proposing to approve the budgets submitted by New Hampshire. The attainment-level MVEBs are shown in Table 3 below.

TABLE 3.—ATTAINMENT-LEVEL EMISSIONS BUDGETS FOR ON-ROAD MOBILE SOURCES IN TONS PER SUMMER DAY (TPSD)

Area	Attainment VOC budget	Attainment NO_X budget
New Hampshire portion of the Boston-Lawrence-Worcester, MA-NH area	10.72	21.37

By letter dated August 19, 1998, we informed New Hampshire that the motor vehicle emissions budgets contained within the state's ozone attainment demonstration were adequate for conformity purposes. Since that time, New Hampshire has been required to use these budgets in conformity. This notice proposes to approve the attainment-level motor vehicle emissions budgets into the SIP. Once New Hampshire's attainment demonstration is finally approved by EPA and an attainment date of November 15, 2007 is established for the entire nonattainment area, New Hampshire will be required to use 2007 as a milestone year in future transportation conformity determinations.

[15] New Hampshire estimated motor vehicle source emissions in the area for 2002 to be 11.99 tons per summer day of VOC and 26.02 tons per summer day of NO_X. The estimates were done using MOBILE6 and estimated vehicle miles traveled (VMT) data for 2002.

[16] New Hampshire estimated motor vehicle source emissions in the area for 2007 to be 8.84 tons per summer day of VOC and 19.31 tons per summer day of NO_X The estimates were also done using MOBILE6 and used estimated 2007 VMT data as well control strategies expected to be in place in 2007 including EPA's Tier 2/Sulfur gasoline program.

L. What Are the Contingency Measures for This Area?

The EPA believes the contingency measure requirements of sections 172(c)(9) and 182(c)(9) of the CAA are independent requirements from the attainment demonstration requirements under sections 172(c)(1) and 182(c)(2)(A) and the rate-of-progress (ROP) requirements under sections 172(c)(2) and 182(c)(2)(B). The contingency measure requirements are to address the event that an area fails to meet a ROP milestone or fails to attain the ozone NAAQS by the attainment date established in the SIP. The contingency measure requirements have no bearing on whether a state has submitted a SIP that projects attainment of the ozone NAAQS or the required ROP reductions toward attainment. The attainment or ROP SIP provides a demonstration that attainment or ROP requirements ought to be fulfilled, but the contingency measure SIP requirements concern what is to happen only if attainment or ROP is not actually achieved. The EPA acknowledges that contingency measures are an independently required SIP revision, but does not believe that submission of contingency measures is necessary before EPA may approve an attainment or ROP SIP.[17] New Hampshire remains obligated to submit the contingency measures required by 172(c)(9) and 182(c)(2)(A), but EPA may approve this attainment demonstration at this time even though they have not yet done so.

VIII. Proposed Action

EPA is proposing to fully approve as meeting CAA section 182(c)(2) the ground-level one-hour ozone attainment demonstration State Implementation Plan for the New Hampshire portion of the Boston-Lawrence-Worcester, MA-NH ozone nonattainment area submitted by New Hampshire on June 30, 1998, as demonstrating that the area will attain the one-hour ozone standard. We are also proposing that no potential measures can be considered RACM for New Hampshire for purposes of section 172(c)(1). This notice also proposes to approve the attainment-level motor vehicle emissions budgets submitted by New Hampshire into the SIP.

EPA is soliciting public comments on the issues discussed in this proposal. These issues will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section of this document.

IX. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 11, 2002.

Carl F. Dierker,

Acting, Regional Administrator, New England Region.

[FR Doc. 02–26709 Filed 10–18–02; 8:45 am]

BILLING CODE 6560–50–P

[17] The U.S. Court of Appeals for the D.C. Circuit recently addressed this issue in the context of a challenge to the Washington D.C. ozone attainment demonstration SIP, and concluded that contingency measures were required as part of an attainment demonstration SIP. *See Sierra Club* v. *EPA*, 294 F.3d 155, 164 (D.C.Cir. 2002). However, EPA believes that the court misconstrued the statute, and declines to follow the court's reasoning outside of the D.C. Circuit. EPA believes that the statute does not compel contingency measures as part of attainment demonstration SIPs because they are required as a separate submission under a separate statutory provision. See CAA sections 172(c)(9) and 182(c)(2).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7393–7]

Ohio: Proposed Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Ohio has applied to EPA for final authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Ohio's application and has determined that these changes satisfy all requirements needed to qualify for final authorization, and is proposing to authorize the State's changes.

DATES: If you have comments on Ohio's application for authorization for changes to its hazardous waste management program, you must submit them in writing by December 5, 2002.

ADDRESSES: Send written comments to Ms. Judy Feigler, Ohio Regulatory Specialist, U.S. Environmental Protection Agency, Waste, Pesticides and Toxics Division (DM–7J), 77 W. Jackson Blvd., Chicago, Illinois 60604. You can view and copy Ohio's application during normal business hours at the following addresses: EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois, contact: Ms. Judy Feigler, phone number: (312) 886–4179; or Ohio Environmental Protection Agency, 122 S. Front St., Columbus, Ohio, contact: Ms. Kit Arthur, phone number (614) 644–2932.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Feigler, Ohio Regulatory Specialist, U.S. Environmental Protection Agency, Waste, Pesticides and Toxics Division (DM–7J), 77 W. Jackson Blvd., Chicago, Illinois 60604, phone number: (312) 886–4179.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

EPA has determined that Ohio's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are proposing to grant Ohio final authorization to operate its hazardous waste program with the changes described in the authorization application. Ohio will have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before the states are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Ohio, including issuing permits, until the State is granted authorization to do so.

C. What Will Be the Effect if Ohio Is Authorized for These Changes?

If Ohio is authorized for these changes, a facility in Ohio subject to RCRA will have to comply with the authorized State requirements in lieu of the corresponding federal requirements in order to comply with RCRA. Additionally, such persons will have to comply with any applicable federally-issued requirements, such as, for example, HSWA regulations issued by EPA for which the State has not received authorization, and RCRA requirements that are not supplanted by authorized State-issued requirements. Ohio continues to have enforcement responsibilities under its state hazardous waste management program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to:

- Do inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

The action to approve these revisions would not impose additional requirements on the regulated community because the regulations for which Ohio will be authorized are already effective under State law and are not changed by the act of authorization.

D. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will address those comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What Has Ohio Previously Been Authorized For?

Ohio initially received final authorization effective June 30, 1989 (54 FR 27170–27174, June 28, 1989) to implement the RCRA hazardous waste management program. We granted authorization for changes to Ohio's program effective June 7, 1991 (56 FR 14203, April 8, 1991), as corrected effective August 19, 1991 (56 FR 28808, June 19, 1991)); effective September 25, 1995 (60 FR 51244, July 27, 1995); and effective December 23, 1996 (61 FR 54950, October 23, 1996).

F. What Changes Are We Proposing?

On June 25, 2002, Ohio submitted complete program revision applications, seeking authorization of its changes in accordance with 40 CFR 271.21. We have determined that Ohio's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization.

Ohio's program revisions are based on changes to the federal program and modifications initiated by the State. The federal and analogous State provisions involved in this proposed decision and the relevant corresponding checklists (if applicable) are listed in the following tables:

PROGRAM REVISIONS BASED ON FEDERAL RCRA CHANGES

Checklist No.	Description of federal requirement	Federal Register, beginning page, and publication date	Analogous state authority being authorized
58	Renewal of uniform manifest form	54 FR 45089, November 8, 1988	3745–52–20, effective December 30, 1989.
59	Miscellaneous units standards for owners/operators; correction.	54 FR 615, January 9, 1989	3745–50–44, effective December 7, 2000.
76	Criteria for listing toxic wastes; technical amendments.	55 FR 18726, May 4, 1990	3745–51–11, effective December 7, 2000.

PROGRAM REVISIONS BASED ON FEDERAL RCRA CHANGES—Continued

Checklist No.	Description of federal requirement	**Federal Register**, beginning page, and publication date	Analogous state authority being authorized
77	Double liners; correction	55 FR 19262, May 9, 1990	3745–56–21 and 3745–57–03, effective April 15, 1993.
81	Petroleum refiners primary and secondary oil/water/solids separation sludge listings, as amended.	55 FR 46354, November 2, 1990; as amended at 55 FR 51707, December 17, 1990.	3745–51–30 and 3745–51–31, effective December 7, 2000.
84	TCLP-chlorofluorocarbons	56 FR 5910, February 13, 1991	3745–51–04, effective July 27, 2001.
86	Removal of strontium sulfide from listings.	56 FR 7657, February 25, 1991	3745–51–11 and 3745–51–33, effective December 7, 2000.
88	Administrative stay for K069 listing	56 FR 19951, May 1, 1991	3745–51–32, effective December 7, 2000.
89	Petroleum refiners primary and secondary oil/water/solids separation sludge listings; correction.	56 FR 21955, May 13, 1991	3745–51–31, effective December 7, 2000.
90	Mining waste exclusion-final determination for several wastes.	56 FR 27300, June 13, 1991	3745–51–04, effective July 27, 2001; and 3745–51–11, effective December 7, 2000.
97	Exports of hazardous waste; technical corrections.	56 FR 43704, September 4, 1991	3745–52–53 and 3745–52–56, effective April 15, 1993.
99	Amendment to interim status standards for down-gradient ground water monitoring well locations at hazardous waste facilities.	56 FR 66365, December 23,1991	3745–50–10, effective December 7, 2000.
104	Oil filter exemption	57 FR 21524, May 20, 1992	3745–51–04, effective July 27, 2001.
107	Oil filter exemption-technical correction	57 FR 29220, July 1, 1992	3745–51–04, effective July 27, 2001.
110	Reportable quantity adjustment, listing of coke by-products wastes.	57 FR 37284, August 18, 1992	3745–51–04, effective July 27, 2001; and 3745–51–30 and 3745–51–32, effective September 2, 1997.
113	Liability requirements and financial responsibility.	53 FR 33938, September 1, 1988, as amended at 56 FR 30200, July 1, 1991; and 57 FR 42832, September 16, 1992.	3745–55–41 and 3745–55–47, effective September 2, 1997; and 3745–55–43, 3745–55–45, 3745–55–51, 3745–66–41, 3745–66–43, 3745–66–45, and 3745–66–47, effective December 7, 2000.
115	Reportable quantity adjustment, chlorinated toluene production wastes.	57 FR 47376, October 15, 1992	3745–51–32 and 3745–51–30, effective December 7, 2000.
117B	TCLP revision	57 FR 23062, June 1, 1992	3745–51–03, effective December 7, 2000.
118	Liquids in landfills II	57 FR 54452, November 18, 1992	3745–68–14, effective September 2, 1997; and 3745–50–10, 3745–54–13, 3745–57–14, 3745–57–16, 3745–65–13, and 3745–68–16, effective December 7, 2000.
119	TCLP revision, as amended	57 FR 55114, November 24, 1992; as amended at 58 FR 6854, February 2, 1993.	3745–51–24, effective September 2, 1997.
128	Wastes from wood surface protection	59 FR 458, January 4, 1994	3745–50–11 and 3745–51–11, effective December 7, 2000.
129	Treatability study sample exclusion	59 FR 8362, February 18, 1994	3745–51–04, effective July 27, 2001.
131	Recordkeeping instructions, technical amendment.	59 FR 13891, March 24, 1994	3745–54–73 and 3745–65–73, effective December 7, 2000.
132	Wastes from wood surface protection, correction.	59 FR 28484, June 2, 1994	3745–50–11, effective December 7, 2000.
133	Corrective action; treatment, storage, disposal facility, UST, and UIC systems; financial assurance; letter of credit.	59 FR 29958, June 10, 1994	3745–55–51, effective December 7, 2000.
135	Recovered oil exclusion, petroleum refining industry.	59 FR 38536, July 28, 1994	3745–51–03 and 3745–51–06, effective December 7, 2000; and 3745–51–04, effective July 27, 2001.
139	Testing and monitoring activities	60 FR 3089, January 13, 1995	3745–50–11, effective December 7, 2000.
140	Carbamate production and reportable quantities, as amended.	60 FR 7824, February 9, 1995; as amended at 60 FR 19165, April 17, 1995; and 60 FR 25619, May 12, 1995.	3745–51–03, 3745–51–11, 3745–51–30, 3745–51–32, and 3745–51–33, effective December 7, 2000.
141	Testing and monitoring activities; SW–846 amendments.	60 FR 17001, April 4, 1995	3745–50–11, effective December 7, 2000.
145	Liquids in landfills, test method added	60 FR 35703, July 11, 1995	3745–68–14, effective September 2, 1997; and 3745–57–14, effective December 7, 2000.

PROGRAM REVISIONS BASED ON FEDERAL RCRA CHANGES—Continued

Checklist No.	Description of federal requirement	**Federal Register**, beginning page, and publication date	Analogous state authority being authorized
150	Identification and listing, petroleum refining industry, correction.	61 FR 13103, March 26, 1996	3745–51–04, effective July 27, 2001.
168	Comparable fuel exclusion	63 FR 33782, June 19, 1998	3745–50–51, 3745–51–04, and 3745–51–38, effective July 27, 2001.

STATE-INITIATED PROGRAM CHANGES

State requirement		Analogous federal requirement—Federal rule
State rule	Effective date	
3745–50–21	March 9, 2001	40 CFR 124.6
3745–50–22	March 9, 2001	40 CFR 124.8.
3745–50–30	March 9, 2001	40 CFR 270.12
3745–50–41	November 11, 1999	40 CFR 270.10
3745–50–42	March 9, 2001	40 CFR 270.11
3745–50–45	December 7, 2000	40 CFR 270.1(c)
3745–50–47	March 9, 2001	40 CFR 264.115, 40 CFR 265.115
3745–50–54	March 9, 2001	40 CFR 270.50
3745–50–57	December 7, 2000	40 CFR 270.61
3745–50–58	November 11, 1999	40 CFR 270.30
3745–51–01	February 11, 1992	40 CFR 261.1
3745–51–02	October 20, 1998	40 CFR 261.2
3745–51–08	December 7, 2000	40 CFR 261.8
3745–52–10	February 11, 1992	40 CFR 262.10
3745–52–12	February 11, 1992	40 CFR 262.12
3745–52–40	March 9, 2001	40 CFR 262.40
3745–53–11	September 2, 1997	40 CFR 263.11
3745–53–30	March 9, 2001	40 CFR 263.30
3745–55–15	November 11, 1999	40 CFR 264.115
3745–55–18	November 11, 1999	40 CFR 264.118
3745–55–44	November 11, 1999	40 CFR 264.144
3745–55–77	February 14, 1995	40 CFR 264.177
3745–56–20	November 11, 1999	40 CFR 264.220
3745–56–57	February 14, 1995	40 CFR 264.257
3745–56–70	November 11, 1999	40 CFR 264.270
3745–57–91	February 14, 1995	40 CFR 264.601
3745–65–11	December 7, 2000	40 CFR 265.11
3745–65–15	December 7, 2000	40 CFR 265.15
3745–65–90	March 9, 2001	40 CFR 265.90
3745–65–92	November 11, 1999	40 CFR 265.92
3745–66–15	November 11, 1999	40 CFR 265.115
3745–66–44	November 11, 1999	40 CFR 265.144
3745–67–73	February 14, 1995	40 CFR 265.273
3745–68–10	November 11, 1999	40 CFR 265.310
3745–69–30	February 14, 1995	40 CFR 265.430

G. Who Handles Permits After the Authorization Takes Effect?

Ohio will issue permits for all the provisions for which it is authorized and will administer the permits it issues. All permits issued by EPA prior to EPA authorizing Ohio for these revisions will continue in force until the effective date of the State's issuance or denial of a State RCRA permit, or the permit otherwise expires or is revoked. EPA will administer any RCRA hazardous waste permits or portions of permits which EPA issued prior to the effective date of this authorization until such time as Ohio has issued a corresponding State permit. EPA will not issue any more new permits or new portions of permits for provisions for which Ohio is authorized after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Ohio is not yet authorized.

H. What Is Codification and Is EPA Codifying Ohio's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart P for this authorization of Ohio's program changes until a later date.

I. How Would Authorizing Ohio for These Revisions Affect Indian Country (18 U.S.C. 1151) in Ohio?

Ohio is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. Indian country includes:

1. All lands within the exterior boundaries of Indian reservations within or abutting the State of Ohio;

2. Any land held in trust by the U.S. for an Indian tribe; and

3. Any other land, whether on or off an Indian reservation that qualifies as Indian country.

Therefore, this action has no effect on Indian country. EPA retains the authority to implement and administer the RCRA program in Indian country. However, at this time, there is no Indian country within the State of Ohio.

J. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This action does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. This action does not include environmental justice-related issues that require consideration under Executive Order 12898 (59 FR 7929, February 16, 1994).

Under RCRA 3006(b), EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This proposed action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 26, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 02–26439 Filed 10–18–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2321; MB Docket Nos. 02–296; 02–297; 02–298; 02–299; 02–300; 02–301; 02–302; RM–10571, RM–10572; RM–10574; RM–10575; RM–10576; RM–10578; RM–10579]

Radio Broadcasting Services; Broken Bow, Oklahoma, Colorado City, O'Brien, Panhandle, Shamrock, Stamford, Texas; and Taloga, Oklahoma

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes seven separate allotments in Broken Bow, Oklahoma, Colorado City, O'Brien, Panhandle, Shamrock, Stamford, Texas; and Taloga, Oklahoma proceedings in a multiple docket *Notice of Proposed Rule Making*. Katherine Pyeatt requests the allotment of Channel 261A at O'Brien, Texas as the first local aural transmission service at a site 3.7 kilometers (2.3 miles) north of the community at coordinates 33–24–47 NL and 99–51–02 WL. Katherine Pyeatt requests the allotment of Channel 295C2 at Stamford, Texas, as the third local aural transmission service at a site 7.8 kilometers (4.9 miles) north of the community at coordinates 33–00–57 NL and 99–47–46 WL. Linda Crawford requests the allotment of Channel 291C3 at Panhandle, Texas, as the community's first local aural transmission service at a site 18.0 kilometers (11.2 miles) east of the community at coordinates 35–20–38 NL and 101–10–54 WL. Maurice Salsa requests the allotment of Channel 271A at Shamrock, Texas as the second local aural transmission service at a site 2.4 kilometers (1.5 miles) west of the community at coordinates 35–12–22 NL and 100–16–23 WL. Linda Crawford requests the allotment of Channel 257A at Colorado City, Texas, as the community's third local aural transmission service at a site 10.1 kilometers (6.3 miles) northwest of the community at coordinates 32–26–23 NL and 100–57–29 WL. Jeraldine Anderson requests the allotment of Channel 232A at Broken Bow, Oklahoma, as the community's third FM channel at a site 10.2 kilometers (6.3 miles) northeast of the community at coordinates 34–04–37 NL and 94–38–58 WL. Robert Fabian requests the allotment of Channel 226A at Taloga, Oklahoma, as the community's first local aural transmission service at a site 7.8 kilometers (4.8 miles) south of the community at coordinates 35–57–57 NL and 98–59–11 WL.

DATES: Comments must be filed on or before: November 18, 2002 and reply comments must be filed on or before December 3, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners as follows: Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214 (MB Docket Nos. 02–296, 02–297); Linda Crawford, 3500 Maple Avenue #1320, Dallas, Texas 75219 (MB Docket Nos. 02–298, 02–300); Maurice Salsa, 5615 Evergreen Valley Drive, Kingwood, Texas 77345 (MB Docket No. 02–299); Jeraldine Anderson, 1702 Cypress Drive, Irving, Texas 75061 (MB Docket No. 301); Robert Fabian, 4 Hickory Crossing Lane, Argyle, Texas 76226 (MB Docket No. 02–302).

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 02–296,02–297, 02–298, 02–299, 02–300, 02–301, 02–302, adopted September 11, 2002, and released, September 27, 2002. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel 232A at Broken Bow, and Taloga, Channel 226A.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 257A at Colorado City, O'Brien, Channel 261A, Panhandle, Channel 291C3, Channel 271A at Shamrock, and Channel 233A at Stamford.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26226 Filed 10–18–02; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 67, No. 203
Monday, October 21, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App 2, the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: The National Agricultural Research, Extension, Education, and Economics Advisory Board will meet on October 28–30, 2002.

The public may file written comments before or up to two weeks after the meeting with the contact person.

ADDRESSES: On October 28 and 29, 2002, the meeting will take place at the Capital Hilton Hotel, 16th and K Streets, NW., Washington, DC 20036. On October 30, 2002, the meeting will occur at the Economic Research Service, 1800 M Street, NW., Washington, DC 20036.

Written comments from the public may be sent to the Contact Person identified in this notice at: The National Agricultural Research, Extension, Education, and Economics Advisory Board; Research, Education, and Economics Advisory Board Office, Room 344–A, Jamie L. Whitten Building, United States Department of Agriculture, STOP 2255, 1400 Independence Avenue, SW., Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board; telephone: (202) 720–3684; fax: (202) 720–6199; or e-mail: *dhanfman@reeusda.gov*.

SUPPLEMENTARY INFORMATION: On Monday, October 28, 2002, the National Agricultural Research, Extension, Education, and Economics Advisory Board will hold a general meeting at The Capital Hilton Hotel (South American Room A&B). In the morning, from 9:00 until 11:00 a.m., there will be an Orientation Session for newly appointed Board Members. The full Advisory Board Meeting begins at 1:00 p.m., which includes: general business; a special session on public comments to an Interagency Task Force Report on the National Agricultural Library; an update on the Agricultural Research Service's Peer Review Process for National Programs; and food and agricultural research related to the 2002 Farm Bill by the USDA Interagency Task Force, to be presented by Rodney Brown, Deputy Under Secretary for Research, Education, and Economics. A buffet reception with a guest speaker will follow from 7–9 p.m. in the Senate Room of The Capital Hilton Hotel.

On Tuesday, October 29, 2002, the Advisory Board will hold a Focus Session called "Workforce Development for the Food, Agriculture, and Natural Resources System." The Secretary of Agriculture as well as other officials within and outside of USDA have been invited to speak on issues related to workforce development throughout the pipeline (*i.e.*, youth, RH, FFA, baccalaureate/undergraduate, graduate, and post-doctoral), with the goal of fostering a broad, strong and vital agricultural workforce for the future. By the end of the day, the Advisory Board will have voted nine members into the Board's Executive Committee, including the Chair and Vice Chair.

On Wednesday, October 30, 2002, the Advisory Board meeting will be held at USDA's Economic Research Service (ERS) facility, which is located at 1800 M Street NW., Washington, DC 20036 (Waugh Auditorium on the 3rd floor). ERS will conduct the program and highlight their key activities. At the end of the morning, the Advisory Board will discuss and wrap up any issues related to the 2½-day Board Meeting. The Board will also identify the main topic and date for the next Advisory Board Meeting (to be held in late winter or early spring of 2003).

The Advisory Board Meeting will adjourn by Wednesday, October 30, 2002, at 12 noon. At the end of each day there will be time available for public comments. Also, written comments for the public record will be welcomed before and up to two weeks following the Board meeting (by close of business November 14, 2002). All statements will become a part of the official records of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Research, Extension, Education, and Economics Advisory Board Office.

The findings of this Advisory Board Meeting and Focus Session will be based on input from speakers, other stakeholders, the general public, and Board discussions. They will be consolidated into recommendations to the Secretary of Agriculture, and disseminated to the land-grant colleges and universities as well as House and Senate agriculture-related committees/subcommittees of the U.S. Congress.

The consolidated meeting agenda is as follows:

October 28—9 a.m. to 11 a.m.—Orientation for New Board Members (Location: The Capital Hilton Hotel, South American Room A&B.)
October 28—1 p.m. to 5 p.m.—General Meeting, Reports & Updates (Location: The Capital Hilton Hotel, South American Room A&B.)
October 28—7 p.m. to 9 p.m.—Working Reception w/Guest Speaker (Location: The Capital Hilton Hotel, Senate Room.)
October 29—8 a.m. to 5 p.m.—Focus Session on Workforce Development; Election of Executive Committee Members (Location: The Capital Hilton Hotel, South American Room A&B.)
October 29—12 noon to 1 p.m.—Working Lunch w/Speaker (Location: The Capital Hilton Hotel, Foyer 2 and South American Room A&B.) 1 p.m. to 5 p.m.—Resume Focus Session
October 30—8 a.m. to 12 noon—Economic Research Service Program; Board Meeting Wrap Up and Plans for Next Meeting
(Location: Economic Research Service, Waugh Auditorium, 3rd Floor)

Done at Washington, DC this 16 day of October 2002.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 02–26810 Filed 10–18–02; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

National Forests and Bureau of Land Management Districts Within the Range of the Northern Spotted Owl; Western Oregon and Washington, and Northwestern California; Removal of Survey and Manage Mitigation Measure Standards and Guidelines

AGENCIES: Forest Service, USDA; Bureau of Land Management, USDI. OR935 6334 PG NWFP GP3–0002.

ACTION: Notice of intent to prepare a supplement to a final environmental impact statement.

SUMMARY: The Forest Service and the Bureau of Land Management (BLM) (Collectively the Agencies) will prepare a supplemental environmental impact statement (SEIS) to meet the requirements of a Settlement Agreement pursuant to a lawsuit by Douglas Timber Operators against Forest Service and BLM. The proposed action, generally, is to change the Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (Northwest Forest Plan), currently included in planning documents of the Forest Service and BLM. Specifically, the Agencies propose to remove the Survey and Manage mitigation measure standards and guidelines. Habitat needs of the affected rare or little-known species would rely on other elements of the Northwest Forest Plan and the existing Forest Service Sensitive Species and the BLM Special Status Species programs, as needed and appropriate. The proposed action would amend land and resource management plans for National Forests and BLM Districts within the range of the northern spotted owl (generally western Oregon and Washington, and northwestern California). This action will be addressed in a supplement to a final environmental impact statement because the affected species and their management were specifically addressed in the Agency's SEIS for Amendments to the Survey and Manage, Protection Buffer and other Mitigation Measures Standards and Guidelines, issued in November, 2000, and because the species and their habitat were also addressed in the SEIS for the Northwest Forest Plan, issued in February, 1994.

DATES: Comments concerning the scope of the analysis should be received in writing by November 20, 2002. No public scoping meetings are planned.

ADDRESSES: Send written comments concerning this proposal to: Comments, SEIS for Survey and Manage, PO Box 2965, Portland, Oregon 97203.

FOR FURTHER INFORMATION CONTACT: Richard C. Prather, SEIS Team Leader, PO Box 2965, Portland, Oregon 97203.

SUPPLEMENTARY INFORMATION: This SEIS will evaluate removing the Survey and Manage mitigation measure standards and guidelines. The SEIS may also consider the affected species for inclusion in the existing Forest Service Sensitive Species program and the BLM Special Status Species program as appropriate. This action would eliminate an overlapping program, increase efficiency and reduce costs.

Adoption of the proposed action would affect National Forest System (NFS) lands and public lands administered by the BLM within the range fo the northern spotted owl, generally in western Oregon and Washington, and in northwestern California. The Record of Decision for this SEIS will amend:

For the Forest Service, the National Forest Land and Resource Management Plans for Gifford Pinchot, Mt. Baker-Snoqualmie, Olympic, Wenatchee, and Okanogan National Forests in Washington; Deschutes, Mt. Hood, Rogue River, Siuslaw, Siskiyou, Umpqua, Willamette, and Winema National Forests in Oregon; and Six Rivers, Klamath, Lassen, Mendocino, Modoc, and Shasta-Trinity National Forests in California.

For the Bureau of Land Management, Resource Management Plans for Salem, Eugene, Roseburg, Medford, and Coos Bay Districts in Oregon; the Klamath Falls Resource Area of the Lakeview District, also in Oregon; and the Arcata, Redding, and Ukiah field offices in California. Also the King Range National Conservation Area Management Plan in the Arcata Resource Area in California. This decision would not apply to the Headwaters area also in California for which a separate management plan is being written.

Preliminary issues expected to be addressed in the SEIS include: the cost of implementing the Survey and Manage program, its effect on other Agency programs and priorities, and whether the proposed action meets all applicable laws and regulations including the Oregon and California Lands Act, the Federal Land Policy and Management Act, the National Forest Management Act, and the Endangered Species Act, and those statute's implementing regulations.

Although scoping is not required for supplements to environmental impact statements (40 CFR 1502.9(c)(4)), the Agencies are inviting scoping comments at this time. Comments are sought that will help the Agencies identify issues to be addressed in the SEIS, identify significant issues related to the proposed action, refine the proposed action, identify alternatives to the proposed action, and identify interested and affected persons. For comments to be most useful in this analysis, they should be submitted in writing by the date identified above. The Agencies have no plans to conduct public scoping meetings.

A scoping notice will be prepared and circulated to affected Federal, State, and local agencies, affected tribes, and individuals and organizations previously expressing an interest in the Survey and Manage standards and guidelines. The scoping notice, along with background information, will also be posted on the Internet: *http://or.blm.gov/surveyandmanagee*.

The Forest Service and BLM will be joint lead agencies for this analysis. Because of potential indirect effects to threatened or endangered species, the two agencies will consult with the U.S. Fish and Wildlife Service and National Marine Fisheries Service pursuant to the Endangered Species Act (ESA). However, none of the species covered by the Survey and Manage standards and guidelines is listed under ESA as threatened or endangered. Other Federal agencies including the Forest Service's Pacific Southwest Research Stations, Bureau of Indian Affairs, National Park Service, Environmental Protection Agency (EPA), U.S. Army Corps of Engineers, Natural Resources Conservation Service, the U.S. Geological Survey Biological Resources Division, EPA Research Laboratory, and Tribal, local, and state governments will also be involved.

The responsible officials for National Forest System lands will be the Regional Forester, Pacific Northwest Region, PO Box 3623, Portland, OR 97208 and the Regional Forester, Pacific Southwest Region, 1323 Club Drive, Vallejo, CA 94592. The responsible official for public lands administered by the BLM will be the State Director for Oregon and Washington, PO Box 2965, Portland, OR 97208 and the State Director for California, 2800 Cottage Way, Room W–1834, Sacramento, CA 95825.

The draft SEIS is expected to be filed with the EPA in January 2003 and will be available for public review. The comment period on the draft SEIS will be 90 days from the date the EPA

publishes the notice of availability in the **Federal Register**.

The Forest Service and BLM believe, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service and BLM at a time when the agencies can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service and BLM in identifying and considering issues and concerns on the proposed action, comments on the draft SEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft document. Comments may also address the adequacy of the draft SEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

It is expected that the final SEIS will be filed with the EPA approximately June 2003. The Agencies anticipate there will be a Record of Decision signed in July 2003 by the four responsible officials listed above.

Richard Sowa,

Acting Regional Forester, USFS R6.

Elaine Marquis-Brong,

State Director, BLM Oregon & Washington.

Dated: October 4, 2002.

Mike Pool,

State Director, California, USDI Bureau of Land Management.

Kent P. Connaughton,

Deputy Regional Forester, USFS Region 5.

[FR Doc. 02–26779 Filed 10–17–02; 11:07am]

BILLING CODE 4310–33–M

DEPARTMENT OF AGRICULTURE

Forest Service

White Pass Ski Area Expansion, Okanogan-Wenatchee and Gifford Pinchot National Forests, Yakima and Lewis Counties

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: On February 14, 2002, the Forest Service, USDA, published a Notice of Intent (NOI) in the **Federal Register** (67 FR 6906). The notice stated that the proposed action was to modify the present special use permit of the White Pass Company to authorize expansion into approximately 300 acres in Pigtail Basin for the purpose of providing additional ski opportunities. This revised NOI changes the size of the proposed expansion to approximately 770 acres and includes the larger Hogback Basin area. The revised date of filing the draft EIS is June 2003 and the revised filing of the final EIS is planned in December 2003.

DATES: Comments concerning the scope of the revised analysis should be received in writing by November 25, 2002.

ADDRESSES: Submit written comments and suggestions concerning the project to Randall Shepard, District Ranger, Naches Ranger District, 10061 Highway 12, Naches, WA 98937; phone 509–653–2205, Attn: White Pass Ski Area Expansion.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Susan Ranger, Project Planner, at Naches Ranger District, 10061 Highway 12, Naches, WA 98937; Phone 509–653–2205.

Dated: October 8, 2002.

Alan Quan,

Acting Forest Supervisor.

[FR Doc. 02–26663 Filed 10–18–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Faulkes Telescope Corporation; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC

Docket Number: 02–030. *Applicant:* Faulkes Telescope Corporation, Honolulu, HI 96813. *Instrument:* Robotically Controlled 2 meter Astronomical Telescope. *Manufacturer:* Telescope Technologies Limited, United Kingdom. *Intended Use: See* notice at 67 FR 58354, September 16, 2002.

Comments: Comments dated September 26, 2002, were received from the University of Hawaii at Manoa in support of granting duty-free entry of the instrument. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides a research quality (2-meter primary mirror with better than arcsecond imaging performance) telescope that is robotically controlled and accessible via the Internet for observation and research use by students from the secondary school to university level having commonality with two identical telescopes for exchanged observations. The National Aeronautics and Space Administration advised October 10, 2002, that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–26715 Filed 10–18–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815]

Notice of Correction to Stainless Steel Sheet and Strip in Coils from France: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of correction to final results of countervailing duty administrative review.

SUMMARY: The Department is correcting Usinor's subsidy rate as listed in the notice of final results for the first administrative review of stainless steel sheet and strip in coils from France.

EFFECTIVE DATE: October 21, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam at (202) 482–0176; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the "Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the "Department") regulations are references to the provisions codified at 19 CFR part 351 (April 2001).

Correction

On October 3, 2002, the Department published in the **Federal Register** a notice of final results for the first administrative review of stainless steel sheet and strip in coils from France (*see Stainless Steel Sheet and Strip in Coils from France: Final Results of Countervailing Duty Administrative Review*, 67 FR 62098 (October 3, 2002)). In the published version of that notice, the subsidy rate for Usinor was inadvertently listed as 1.90 percent *ad valorem*. *Id.* The correct subsidy rate for Usinor is 1.27 percent *ad valorem*. Therefore, we are correcting Usinor's subsidy rate to be 1.27 percent *ad valorem*.

This notice is issued and published pursuant to section 777(i)(1) of the Act.

Dated: October 10, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–26716 Filed 10–18–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

[I.D. 101602B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Revisions to the American Lobster Requirements for Historical Participation in Areas 3, 4, and 5.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency.

Burden Hours: 308.

Number of Respondents: 934.

Average Hours Per Response: 15 minutes for a cover letter; 60 minutes per affidavit; and 15 minutes to provide corroborating documentation in support of the loss of eligibility documentation.

Needs and Uses: NOAA is seeking approval for revisions to requirements that have been approved under OMB Control No. 0648–0450. The revisions would be for a cover letter, for documentation purposes, showing proof of meeting eligibility criteria for this limited entry program, and for an appeals process for documentary hardship (where eligibility documentation is unavailable due to fire, flood, or other factors beyond the applicant's control). This information is needed to more effectively manage the program and to provide fairness.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent by November 1, 2002, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 11, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–26696 Filed 10–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100802C]

Endangered Species; File No. 1346

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for modification.

SUMMARY: Notice is hereby given that Thomas B. McCormick, Channel Islands Marine Resource Institute (CIMRI), P.O. Box 1627, Port Hueneme, California 93044, has requested a modification to scientific research and enhancement Permit No. 1346.

DATES: Written or telefaxed comments must be received on or before November 20, 2002.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Trevor Spradlin, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 1346, issued on May 17, 2002 (67 FR 36158), is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered

and threatened species (50 CFR 222–226).

Permit No. 1346 authorizes the permit holder to captively maintain bred white abalone for scientific research and enhancement at the CIMRI hatchery. Research activities include feeding studies, propagation studies and studies identified as goals for the long-term recovery of the white abalone. The permit holder requests authorization to collect 20 white abalone per year off of the southern California coast. These animals will then be propagated, treated for wounds, tagged and inoculated against withering syndrome. The progeny of these animals will have the same treatments and be subjects of the studies mentioned above as well as behavioral studies. In accordance with recommendations from the recovery team, the permit holder will also place these animals back into their natural habitat. The permit holder is expecting mortalities of 9.3 million per year for early juveniles, 15,000 per year for juveniles and adults and 134,000 in 2002 to reduce stock due to space limitations.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: October 15, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–26695 Filed 10–18–02; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Corporation for National and Community Service.

ACTION: Policy guidance document.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") adopts final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (the Corporation's Recipient LEP Guidance). The Corporation's Recipient LEP Guidance is issued pursuant to Executive Order 13166, and supplants existing guidance on the same subject originally published at 66 FR 3548 (January 16, 2001).

DATES: This "Guidance" is effective October 21, 2002.

FOR FURTHER INFORMATION CONTACT: The Corporation for National and Community Service, Nancy B. Voss, Director, Equal Opportunity Office, 1201 New York Avenue, NW., Washington, DC 20525. Telephone 202–606–5000, extension 309; TDD: 202–565–2799.

SUPPLEMENTARY INFORMATION: Under Department of Justice regulations implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* (Title VI), recipients of federal financial assistance have a responsibility to ensure meaningful access to their programs and activities by persons with limited English proficiency (LEP). See 28 CFR 42.104(b)(2). Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), directs each federal agency that extends assistance subject to the requirements of Title VI to publish guidance for its respective recipients clarifying that obligation. Executive Order 13166 further directs that all such guidance documents be consistent with the compliance standards and framework detailed in Department of Justice Policy Guidance entitled "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency." See 65 FR 50123 (August 16, 2000).

Initial guidance on obligations of recipients of the Corporation to take reasonable steps to ensure access by LEP persons was published on January 16, 2001. See 66 FR 3548. That guidance document was republished for additional public comment on February 5, 2002. See 67 FR 5258.

The Corporation received two comments in response to its February 5, 2002 publication of revised draft guidance on obligations of the Corporation's recipients to take reasonable steps to ensure access to programs and activities by LEP persons. The comments reflected the views of organizations serving LEP populations. While the comments identified areas for improvement and/or revision, the overall response to the draft of the Corporation's Recipient LEP Guidance was favorable.

Specific comments suggested strengthening the guidance to ensure that "grantee" includes every entity receiving direct or indirect federal financial assistance from the Corporation and that all of the recipient's activities are covered, as well as providing more guidance to recipients in promoting sub-recipients' compliance and recipients' liability for failure to do so. Additional comments requested that grantees be required to document language assistance efforts; that the balancing test not be used to deny LEP individuals access to important services; that recipients be provided assistance in determining the population within which to assess the number of LEP persons without relying on census data alone; that staff be required to receive periodic refresher training; that maintaining a written policy for language access be mandatory rather than advisory and that greater detail be included regarding policies, such as directing recipients to post notices and provide a telephone voicemail menu and addressing goals and accountability; that a "safe harbor" for translation of documents be included; and that translators in addition to community organizations check translated documents.

Subsequent to the Corporation's publication and republication of its Guidance, the Corporation received notification from the Department of Justice that the Corporation should conform its Guidance to guidance issued by the Department of Justice. By memorandum to federal agencies received July 8, 2002, Ralph F. Boyd, Jr., Assistant Attorney General, Civil Rights Division, Department of Justice, stated that it is critical that agency LEP recipient guidance documents be consistent with one another. He noted that in its March 14, 2002 Report to Congress on the Assessment of the Total Benefits and Costs of Implementing Executive Order Number 13166 (*http://www.lep.gov*), the Office of Management and Budget has made it clear that the benefits of Executive Order 13166 can be substantial, both to the recipients and to the ultimate beneficiaries. However, OMB also stressed that in order to reduce costs of compliance, consistency in agency guidance documents is critical, particularly since many recipients receive assistance from more than one federal agency. Therefore, Assistant Attorney General Boyd directed federal agencies to use the Department of Justice's final guidance to Department of Justice recipients published at 67 FR 41455 on June 18, 2002 as their model for publication or republication of recipient LEP guidance, modifying examples to make them relevant to the particular agency's recipients.

Accordingly, the Corporation adopted the Department of Justice's model in issuing this final version of the Corporation's Guidance. Therefore, we are not responding directly to the comments received by the Corporation. We believe that the Department of Justice fully considered the issues identified by those commenting on the Corporation's Guidance when the Department of Justice issued its final guidance.

The text of the Corporation's final guidance document appears below.

It has been determined that this Guidance, which supplants existing Guidance on the same subject previously published at 66 FR 3548 (January 16, 2001), does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.

Dated: October 15, 2002.

Wendy Zenker,

Chief Operating Officer.

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or "LEP." While detailed data from the 2000 census has not yet been released, 26% of all Spanish-speakers, 29.9% of all Chinese-speakers, and 28.2% of all Vietnamese-speakers reported that they spoke English "not well" or "not at all" in response to the 1990 census.

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. The Federal Government funds an array of services that can be made accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.[1]

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[2] These are the same criteria the Corporation will use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

Many commentators have noted that some have interpreted the case of *Alexander* v. *Sandoval*, 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. The Department of Justice has taken the position that this is not the case, and has reaffirmed its LEP Guidance to federal grant-making agencies. Accordingly, we will strive to ensure that federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

[1] The Corporation recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

[2] The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall "on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Section 602 authorizes and directs federal agencies that are empowered to extend federal financial assistance to any program or activity "to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability." 42 U.S.C. 2000d–1.

Department of Justice regulations promulgated pursuant to section 602 forbid recipients from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin." 28 CFR 42.104(b)(2). The Corporation's regulations impose the same prohibitions on recipients. 45 CFR 1203.4.

The Supreme Court, in *Lau* v. *Nichols*, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of Department of Justice, 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination. In Lau, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

On August 11, 2000, Executive Order 13166 was issued. "Improving Access to Services for Persons with Limited English Proficiency," 65 FR 50121 (August 16, 2000). Under that order, every federal agency that provides financial assistance to non-federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from "restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program" or from "utiliz[ing] criteria or methods

of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."

On that same day, Department of Justice issued a general guidance document addressed to "Executive Agency Civil Rights Officers" setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. "Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency," 65 FR 50123 (August 16, 2000) (Department of Justice "LEP Guidance").

Pursuant to Executive Order 13166, the Corporation developed its own guidance document for recipients and initially issued it on January 16, 2001. "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," 66 FR 3548 (January 16, 2001). Subsequent to the Corporation's publication and republication of its Guidance for further comment on February 5, 2002, the Corporation received notification from the Department of Justice that the Corporation should conform its Guidance to guidance issued by the Department of Justice. By memorandum to federal agencies received July 8, 2002, Ralph F. Boyd, Jr., Assistant Attorney General, Civil Rights Division, Department of Justice, stated that it is critical that agency LEP recipient guidance documents be consistent with one another. Assistant Attorney General Boyd directed federal agencies to use the Department of Justice's final guidance to Department of Justice recipients published at 67 FR 41455 on June 18, 2002 as their model for publication or republication of recipient LEP guidance, modifying examples to make them relevant to the particular agency's recipients.

This guidance document is thus published pursuant to Executive Order 13166 and supplants the January 16, 2001 publication in light of Assistant Attorney General Boyd's July 8, 2002 clarifying memorandum.

III. Who Is Covered?

All recipients of federal financial assistance from the Corporation are required to provide meaningful access to LEP persons.[3] Federal financial assistance includes grants, cooperative agreements, training, technical assistance, use of equipment, donations of surplus property, and other assistance. A grantee is any entity receiving federal financial assistance from the Corporation to operate a federally assisted program. Recipients of the Corporation's assistance include, for example:

- State Commissions.
- AmeriCorps*VISTA and Senior Corps sponsors.
- State educational agencies and schools from elementary through graduate level.
- AmeriCorps*NCCC projects.
- Community based organizations, both secular and faith-based.
- Non-profits, from national organizations such as Boys and Girls Clubs of America to neighborhood entities such as senior centers.

Subrecipients likewise are covered when federal funds are passed through from one recipient to a subrecipient.

Coverage extends to a recipient's entire program or activity, *i.e.*, to all parts of a recipient's operations. This is true even if only one part of the recipient receives the federal assistance.[4]

Example: The Corporation provides assistance to a school to facilitate an after school program. The entire school system'not just the particular school'is covered.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to federal non-discrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or "LEP," entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are encountered and/or served by the Corporation's recipients and should be considered when planning language services include, but are not limited to:

- Applicants for or participants enrolled in national service programs (AmeriCorps, National Senior Service Corps or Learn and Serve America).
- Persons receiving services, or eligible to receive, services performed by participants in national service programs or by other portions of the recipient's program or activity.

V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. Recipients of the Corporation should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

[3] Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the DOJ LEP Guidance are to additionally apply to the programs and activities of federal agencies, including the Corporation.

[4] However, if a federal agency were to decide to terminate federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d–1.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons "eligible to be served, or likely to be directly affected, by" a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a federal grant agency as the recipient's service area. However, where, for instance, a State Commission serves a large LEP population, the appropriate service area is most likely the geographic service areas or operating sites defined in the Corporation's grant applications, and not the entire state. Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments.[5] Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

(2) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially-available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

(3) The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. The obligations to communicate information in situations involving health and safety (such as home visits to the frail elderly, vaccinations and immunizations, maternal health screening); disaster response; homeland security; legal rights (such as assisting persons preparing to apply for citizenship or enrolling for government or social services) differ, for example, from those to provide recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language service as larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.[6] Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

This four-factor analysis necessarily implicates the "mix" of LEP services required. Recipients have two main ways to provide language services: Oral

[5] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

[6] Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

interpretation either in person or via telephone interpretation service (hereinafter "interpretation") and written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, programs focusing on providing critical services to immigrants and refugees, such as providing assistance with enrollment in public services or access to emergency or medical care, may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many recipients focusing on serving LEP populations have already made such arrangements.) In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high—such as in the case of a voluntary general public tour of a public facility—in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.*, consecutive, simultaneous, summarization, or sight translation); Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person; [7] and understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires.

Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles (particularly in contacts with health care providers, social services, schools, and public services).

Some recipients, such as those dealing with assisting indigents dependent on the recipient for interpretation with health care providers, law enforcement or administrative boards, may have additional self-imposed requirements for interpreters. Where such proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in a hospital emergency room, for example, must be extraordinarily high, while the quality and accuracy of language services in a bicycle safety class need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for "timely" applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as with certain activities of recipients providing health and safety services or disaster response, and when important rights are at issue, a recipient would likely not be providing meaningful access if it had one bilingual staffer available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such teachers, service providers, or program directors, with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter. Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone.

Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

Use of Family Members or Friends as Interpreters. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member or friend) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own interest in accurate interpretation. In many circumstances, family members (especially children) or friends are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (*e.g.*, sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to protect themselves or another perpetrator in a domestic violence or other criminal matter. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For the Corporation's recipient programs and activities, this is particularly true in situations in which health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services.

While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children) or friends often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary educational tour of a public facility offered to the public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical for medical or legal reasons, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that

[7] Many languages have "regionalisms," or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages which do not have an appropriate direct interpretation of some legal terms and the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should be Translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

Such written materials could include, for example:

- Applications for benefits or services;
- Consent forms;
- Documents containing important information regarding participation in a program (such as descriptions of eligibility for tutoring, assignment of a Senior Companion, instructions for filing for reimbursement of expenses, application for health care or child care benefits);
- Notices pertaining to the reduction, denial or termination of services or benefits, or to the right to appeal such actions or that require a response from beneficiaries;
- The member contract, job description, and an explanation of the Grievance Procedure;
- Notices advising LEP persons of the availability of free language assistance; and
- Other outreach materials.

Whether or not a document (or the information it solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for bicycle safety courses should not generally be considered vital, whereas applications for benefits regarding disaster relief, medical services or housing could be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of "meaningful access." Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, religious, and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents be Translated? The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources.

Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a "safe harbor" for recipients regarding the requirements for translation of written materials. A "safe harbor" means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Safe Harbor. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The Corporation recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. For example, programs that address the needs of immigrants and refugees who may not be literate should, where appropriate, ensure that crucial information regarding medical, financial or legal rights have been explained.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where medical, legal or other vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary.[8] Competence can often be ensured by having a second, independent translator "check" the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called "back translation."

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.[9] Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no legal or other consequence for LEP persons who rely on them may use translators that are less skilled than important documents with legal or other information upon which reliance has important consequences (including, *e.g.*, information or documents of recipients regarding certain health and safety services and certain legal rights). The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons ("LEP plan") for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance.

Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain recipients of the Corporation, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or "I speak cards"), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both English and Vietnamese, etc. To reduce costs of compliance, the federal government has made a set of these cards available on the Internet. The Census Bureau "I speak card" can be found and downloaded at *http://www.usdoj.gov/crt/cor/13166.htm*. When records are

[8] For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

[9] For instance, there may be languages which do not have an appropriate direct translation of some legal terms and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or federal agencies may be helpful.

normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available.
- How staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

- Staff know about LEP policies and procedures.
- Staff having contact with the public are trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

Once an agency has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

- Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to certain services or activities run by recipients of the Corporation dealing with assisting individuals in accessing health, safety or social services. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help.[10]
- Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be "tagged" onto the front of common documents.
- Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.
- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.
- Including notices in local newspapers in languages other than English.
- Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.
- Presentations and/or notices at schools and religious organizations.

(5) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in service area or population affected or encountered.
- Frequency of encounters with LEP language groups.
- Nature and importance of activities to LEP persons.
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed.
- Whether existing assistance is meeting the needs of LEP persons.
- Whether staff knows and understands the LEP plan and how to implement it.
- Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

[10] The Social Security Administration has made such signs available at *http://www.ssa.gov/multilanguage/langlist1.htm*. These signs could, for example, be modified for recipient use.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by the Corporation through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that the Corporation will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, the Corporation will inform the recipient in writing of this determination, including the basis for the determination. The Corporation uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, the Corporation must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, the Corporation must secure compliance through the termination of federal assistance after the Corporation recipient has been given an opportunity for an administrative hearing and/or by referring the matter to the Department of Justice to seek injunctive relief or pursue other enforcement proceedings.

The Corporation engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, the Corporation proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, the Corporation's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, the Corporation acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, the Corporation will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons.

This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, recipients of the Corporation should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

IX. Promising Practices

This section provides examples of promising practices that recipients engage in using the federal financial assistance (the national service volunteers) provided by the Corporation. Recipient programs are responsible for ensuring meaningful access to all portions of their program or activity, not just the portions in which national service participants serve. So long as the language services are accurate, timely, and appropriate in the manner outlined in this guidance, the types of promising practices summarized below can assist recipients in meeting the meaningful access requirements of Title VI and the Title VI regulations.

Examples of Promising Practices That Provide Access to LEP Persons

The Association of Farmworker Opportunity Programs AmeriCorps program recruits former farmworkers to serve as AmeriCorps members. Most members are bilingual, and many are LEP. Members are encouraged to take English as a Second Language classes as a part of their member development plan. The program provides pesticide safety training to farmworkers and their families. Members conduct the training in Spanish.

The program uses the following techniques to ensure that members understand their terms of service and benefits:

- Recruiting posters, flyers and the Member Service Contract are provided in Spanish.
- AmeriCorps project staff are bilingual (Spanish/English).
- Orientation training is provided in Spanish and English.
- Conference calls are held in Spanish when all members speak Spanish.
- Two bilingual second-year members led a team of members that communicated about their service projects exclusively in Spanish.
- Members had to be bilingual, but did not require English as the first language.
- Recruitment took place at the local field office level, and candidates were often from the farmworker community.

The Parents Making a Difference AmeriCorps program recruits a diverse corps including many bilingual members to provide outreach to parents in low-income school communities. Members translate at parent-teacher conferences, call parents about absent children, and organize a wide variety of parent-oriented outreach and educational activities.

"Classroom in the Kitchen" gives parents tips on how to support the educational growth of their children in their homes. Diverse language abilities and cultural knowledge are extremely important in this regard. The range of English proficiency is varied, allowing members to help each other, and communication about program activities is largely bilingual.

The program provides English-Second-Language classes for LEP AmeriCorps members as part of their Member Development Plan. (This language support is required by the Rhode Island Commission for all AmeriCorps programs, in the same vein as the GED training requirement.)

The Temple University Center for Intergenerational Learning, Students Helping in the Naturalization of Elders (SHINE) program. SHINE is a national, multicultural, intergenerational service-learning initiative in five cities. College students provide language, literacy, and citizenship tutoring to elderly immigrants and refugees. Currently, students serve as coaches in ESL/citizenship classes or as tutors in community centers, temples, churches, housing developments, and ethnic organizations.

Northeastern University, San Francisco State University, Loyola University, Florida International University and Temple University are involved with SHINE. Students participate through courses, work study, and campus volunteer organizations. SHINE program coordinators partner with local community organizations; recruit, train, place, and monitor students at community sites; and provide support and technical assistance.

Since 1997, more than 60 faculty from education, social work, anthropology, political science, modern languages, sociology, English, Latino, and Asian studies have offered SHINE as a service-learning option in their courses. Over 1,000 students provided over 25,000 hours of instruction to 3,500 older learners at 37 sites in Boston, San Francisco, Chicago, Miami, and Philadelphia.

The Albuquerque Senior Companion Program (SCP), sponsored by the City of Albuquerque, Department of Senior Affairs, serves a diverse senior population with Native American, Hispanic, and Anglo volunteers. Senior Companions assist the frail elderly with household tasks and companionship.

Ten of its volunteer stations are located on Pueblos. Each Pueblo has its own language. The program works closely with its site managers/supervisors who are bilingual

employees of the individual Pueblo governments and generally are residents of the Pueblos. Senior Companions serve on their own Pueblos and walk to the homes of their clients.

Due to language and cultural barriers these supervisors assist with all areas of the program. They are familiar with the population in their individual Pueblos and use this knowledge to assist with recruitment, placement, and training.

ACCION International, an AmeriCorps*VISTA project sponsor, is a nonprofit that fights poverty through microlending. ACCION Chicago did outreach to home-based businesses that rarely have access to capital. An AmeriCorps*VISTA member found that many of the women make ends meet through programs such as Mary Kay cosmetics. The AmeriCorps*VISTA member worked with the ACCION loan officer to develop a loan product specifically for these women and has organized bilingual information sessions throughout Chicago neighborhoods.

"Bring New Jersey Together" is an AmeriCorps program in Jersey City, New Jersey that seeks to bridge the cultural and linguistic barriers separating new Americans from the rest of the community. AmeriCorps members serve LEP community members by translating documents and escorting them to places such as medical appointments, the grocery store, or anywhere else where a translator may be necessary. The primary languages of the program are Spanish, Russian, and Vietnamese, but also Albanian, Creole, Indian languages, and others depending on the influx of refugees.

The New Jersey Commission built a partnership with the International Institute of New Jersey, which had provided services to the immigrant community for fifty years, to establish an AmeriCorps program that served the needs of the community.

The Honolulu Chinese Citizenship Tutorial Program is a service-learning project site in the Campus Compact National Center for Community Colleges, "2+4=Service on Common Ground". The University of Hawaii at Monoa's College of Social Sciences collaborated with the Kapl'olani Community College, Chaminade University, the Chinese Community Action Coalition and Child and Family Service. Local bilingual college students serve as tutors (during a 10-week session) for Chinese immigrants to help them pass their citizenship exams. The immigrants are recruited by visiting adult education classes, through Chinese radio programs, flyers, and Chinese language newspapers. The Chinese Community Action Coalition provides the curriculum and resources such as Scrabble, books, word-picture matching games, and card games for constructing simple English sentences.

The tutorial sessions focus on passing the INS exam and conversational English. Many of the immigrants are senior citizens. The classes are held in Chinatown. Since the project began, about 1,000 immigrants and refugees have enrolled. Over 300 students have participated as tutors and approximately one-third of the Chinese immigrants became citizens.

Transition House, Santa Barbara, CA., is a facility that primarily serves homeless Hispanic women. The services are tailored to meet the needs of each family to help women and their children move from homelessness and unemployment to employment and permanent housing. The AmeriCorps*VISTA members assigned to the project are bilingual. The clientele is 60% monolingual Spanish speakers.

The AmeriCorps*VISTA members are creating a Career Development Curriculum that is fully translated into Spanish and members host seminars about immigration and consumer credit counseling services. There was a need to improve communication with clients. One of the AmeriCorps*VISTA members developed "halfsheets", one side in Spanish, the other in English, that explain the services offered by Transition House.

The AmeriCorps*VISTA members are responsible for placement of children in daycare to enable parents to work. They accompany families to childcare providers to assist with translation and to help make the families feel at ease with placing their children in childcare.

[FR Doc. 02–26632 Filed 10–18–02; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by November 20, 2002.

Title, form, and OMB number: Validation of Public or Community Service Employment Performed by Retired Personnel Retired Under the Temporary Early Retirement Authority (TERA) for Increased Retirement Compensation; DD Form 2676; OMB Number 0704–0357.

Type of request: Revision.

Number of respondents: 756.

Responses pre respondent: 1.

Annual responses: 756.

Average burden per responses: 10 minutes.

Annual burden hours: 126.

Needs and Uses: This information collection requirement is necessary to validate the public service or community service of military members who retired under the Temporary Early Retirement Authority. The Military Services and the Coast Guard had the authority until December 31, 2001, to permit early retirement for selected Service personnel with more than 15, but less than 20 years of service. All of these members who retired under Section 4403(a) before the completion of at least 20 years of active duty service may take employment in public or community service, making them eligible for increased early retirement compensation. A retiree may receive service credit for all qualifying periods of employment by a registered public or community service organization during the "enhanced requirement qualification period." This qualification period begins on the date of retirement and ends on the date the retired member would have attained 20 years of creditable service for retirement purposes. This information collection is needed to provide certification of a member's full-time public and/or community service employment by a registered public or community service organization and to recomputed the member's retired pay for all qualifying periods of employment.

Affected public: Business or Other For-Profit; Not-For-Profit Institutions; State, Local or Tribal Government.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain benefits.

OMB Desk Officer: Ms. Jackie Zieher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: October 11, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–26634 Filed 10–18–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–01]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–01 with attached transmittal, policy jurisdiction, and Sensitivity of Technology.

Dated: October 15, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

11 OCT 2002

In reply refer to:
I-02/014147

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-01 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office in the United States for defense articles and service estimated to cost $18 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachment
As stated

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-01

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office in the United States

(ii) Total Estimated Value:

Major Defense Equipment*	$17 million
Other	$ 1 million
TOTAL	$18 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 290 TOW-2B missiles, spare and repair parts, technical support, support equipment, personnel training and training equipment, technical data and publications, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support.

(iv) Military Department: Army (YWW)

(v) Prior Related Cases, if any:
FMS case JBD - $80 million – 25Jun97
FMS case XXF - $12 million – 10Jul80

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 11 OCT 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States – TOW-2B Anti-Armor Guided Missiles

Taipei Economic and Cultural Representative Office in the United States has requested a possible sale of 290 TOW-2B missiles, spare and repair parts, technical support, support equipment, personnel training and training equipment, technical data and publications, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost is $18 million.

This sale is consistent with United States law and policy as expressed in Public Law 96-8.

The recipient will use these missiles to increase its military defensive posture and will have no difficulty absorbing these additional missiles into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Company in Tucson, Arizona. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the recipient.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-01

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The TOW-2 Weapon System hardware and documentation provides with this proposed sale are Unclassified. However, sensitive technology is contained with the system itself. This sensitivity is primarily in the software programs, which instruct the system how to operate in the presence of countermeasures. Programs are contained in the system in the form of microprocessors with only Read out Memory maps being available, which do not provide the software program itself. The overall hardware is also considered sensitive in that the modulation frequency and infrared wavelengths could be useful in attempted countermeasure development. The benefits to be derived from this proposed sale outweigh the potential damage that could result if sensitive technology were revealed to unauthorized persons.

2. A determination has been made that the recipient can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–26636 Filed 10–18–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–02]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–02 with attached transmittal and policy justification.

Dated: October 15, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

11 OCT 2002

In reply refer to:
I-02/014148

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-02 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Kuwait for defense articles and service estimated to cost $131 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachment
As stated

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-02

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Kuwait

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$131 million
TOTAL	$131 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Aerostat balloon/radar system comprised of 71M Low Altitude Surveillance System (LASS) Balloon with a non-MDE version of the AN/TPS-63 radar. Also included in the proposed sale are: Interim AN/TPS-63 radar components, spare LASS balloon, AN/TPS-63 radar component (Tether Up), miscellaneous commercial vehicles, spare and repair parts, supply support, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) Military Department: Navy (LBF)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(viii) Date Report Delivered to Congress: 11 OCT 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait – Aerostat Radar System

The Government of Kuwait has requested a possible sale to replace its Aerostat radar system with the Aerostat balloon/radar system comprised of the 71M Low Altitude Surveillance System (LASS) Balloon with a non-MDE version of the AN/TPS-63 radar. Also included in the proposed sale are: Interim AN/TPS-63 radar components, spare LASS balloon, AN/TPS-63 radar component (Tether Up), miscellaneous commercial vehicles, spare and repair parts, supply support, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $131 million.

The Aerostat system is defensive in nature and will be used as part of Kuwait's early warning system to monitor ground traffic and low-flying aircraft along its borders. The Aerostat is a relatively low technology, fixed site system that Kuwait can easily absorb and utilize within its existing structure. Regional foreign policy and military developments affecting this proposed sale have been carefully considered and the positive features of having a friendly coalition force in the region are a driving force.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractors will be: TCOM in Columbia, Maryland and Northop Grumman in Baltimore, Maryland. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require the assignment of 13 contractor representatives to perform Operation and Maintenance in Kuwait for up to 3 years after delivery.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 02–26637 Filed 10–18–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–04]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–04 with attached transmittal, policy justification, and sensitivity of Technology.

Dated: October 15, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

11 OCT 2002

In reply refer to:
I-02/013325

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-04, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Australia for defense articles and services estimated to cost $90 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-04

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Australia

(ii) Total Estimated Value:

Major Defense Equipment*	$85 million
Other	$ 5 million
TOTAL	$90 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: up to 64 RGM-84L Harpoon Block II missiles, maintenance training and equipment, spare and repair parts, training, shipboard equipment, support and test equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) Military Department: Navy (AWK)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 11 OCT 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia – RGM-84L Harpoon Missiles

The Government of Australia has requested a possible sale of up to 64 RGM-84L Harpoon Block II missiles, maintenance training and equipment, spare and repair parts, training, shipboard equipment, support and test equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $90 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of an ally which has been and continues to be an important force for political stability and economic progress in the Western Pacific region.

Australia currently deploys Harpoon missiles on surface ships, submarines and aircraft and will use these additional missiles to augment its present Harpoon missile inventory and enhance its overall military capability. Australia will have no difficulty absorbing these additional Harpoon missiles into its inventory.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Boeing Company of St. Louis, Missouri. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of five contractor engineering technical representatives for one-week intervals to participate in program review and technical reviews to Australia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-04

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The RGM-84L Harpoon Block II missile contains sensitive technology and has the following classified components, including applicable technical, equipment, documentation and manuals:

a. Radar seeker
b. Missile characteristics and performance data
c. Global Positioning System (GPS) standard positioning service improves mid-course guidance to the target area

2. The RGM-84L Harpoon missile is a ship-launched, anti-ship, 75nm range, sea skimming, "fire and forget" missile with auto-pilot navigation and multiple waypoint capability. Harpoon Block I terminal guidance is provided by a radar seeker with a selectable attack profile. The Harpoon Block II upgrade incorporates software and hardware changes that will add an improved Anti-Surface Warfare (ASUW) capability against ships in the open ocean and in the littoral. Harpoon Block II hardware improvements includes a new Guidance Control Unit (GCU) that uses GPS aided inertial navigation. This will improve the missile's overall navigation accuracy. GPS accuracy will also give Harpoon Block II an inherent secondary role against land-based targets, making Block II useful in coastal target suppression roles. Harpoon Block II software improvements include changes to the launching system that will provide the operator with the ability to superimpose a geographic coastline on the mission-planning screen. This will allow the user to shape the search pattern of the Harpoon seeker in ASUW mode, enhancing its performance in littoral areas. The information on the Harpoon is classified Confidential.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Australia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02-26638 Filed 10-18-02; 8:45 am]
BILLING CODE 5001-08-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03-05]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03-05 with attached transmittal and policy justification.

Dated: October 15, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-08-M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

11 OCT 2002
In reply refer to:
I-02/013661

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-05, concerning the Defense Information Systems Agency's proposed Letter(s) of Offer and Acceptance (LOA) to North Atlantic Treaty Organization Consultation, Command, and Control Agency for defense articles and services estimated to cost $550 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-05

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: NATO Consultation, Command, and Control Agency

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$550 million
TOTAL	$550 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Satellite communication services and support for Extremely High Frequency (EHF) service on the United States Advanced EHF (AEHF) systems, AEHF follow-on support for meeting future satellite communication requirements, control of service-provisioned resources on AEHF and applicable follow-on systems, communications infrastructure upgrade and maintenance support, operation and logistics support including training, publications and documentation, U.S. Government and contractor technical assistance and other related requirements.

(iv) Military Department: DISA (GEH)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(viii) Date Report Delivered to Congress: 11 OCT 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

North Atlantic Treaty Organization Consultation, Command, and Control Agency – Satellite Communication Services and Support

North Atlantic Treaty Organization Consultation, Command, and Control Agency (NATO NC3A) has requested a possible sale of satellite communication services and support for Extremely High Frequency (EHF) service on the United States Advanced EHF (AEHF) systems, AEHF follow-on support for meeting future satellite communication requirements, control of service-provisioned resources on AEHF and applicable follow-on systems, communications infrastructure upgrade and maintenance support, operation and logistics support including training, publications and documentation, U.S. Government and contractor technical assistance and other related requirements. The estimated cost is $550 million.

This proposed sale is in support of a competition which is limited to bids from member nations that participate in NATO. NATO remains the fundamental component of U.S. national security in the North Atlantic and European regions. By providing satellite communication services, the U.S. ensures interoperability with our own capabilities and those of our NATO allies and maintains a direct influence on NATO's communications architecture.

NATO currently has a satellite communications system that is used in support of NATO military operations and to provide communications for political consultations. This proposed sale would obtain a protected satellite communications capability and augment their satellite communications system. NATO has been operating a satellite communications system since the early 1970's.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

There is no prime contractor involved in this program. The NATO bid is opened only to NATO member nations. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of 10 U.S. Government and 15 contractor representatives, throughout NATO's area of operations, for 11 years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 02–26639 Filed 10–18–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–06]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–06 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 15, 2002.

Patricia L. Toppings,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

11 OCT 2002

In reply refer to:
I-02/013831

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-06, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to the United Kingdom for defense articles and services estimated to cost $535 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-06

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: United Kingdom

(ii) Total Estimated Value:

Major Defense Equipment*	$514 million
Other	$ 21 million
TOTAL	$535 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: eight MH-47G Special Operations Chinook helicopters, spare and repair parts, support equipment, publications and technical data, communications equipment, maintenance, personnel training and training equipment, contractor engineering and technical support services, preparation of aircraft for shipment, and other related elements of logistics support.

(iv) Military Department: Army (WNF)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 11 OCT 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Kingdom – MH-47G Special Operations Chinook Helicopters

The Government of the United Kingdom has requested a possible sale of eight MH-47G Special Operations Chinook helicopters, spare and repair parts, support equipment, publications and technical data, communications equipment, maintenance, personnel training and training equipment, contractor engineering and technical support services, preparation of aircraft for shipment, and other related elements of logistics support. The estimated cost is $535 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by helping to improve the military capabilities of the United Kingdom and furthering standardization and interoperability.

The United Kingdom needs these helicopters to fulfill its strategic commitments for self-defense/coalition activities and to enhance its military capability. The United Kingdom will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Boeing Company of Philadelphia, Pennsylvania. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the United Kingdom.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-06

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The MH-47G Chinook helicopter includes the following classified or sensitive components:

a. MH-47G Advanced Aircraft Survivability Equipment (AASE) Suite, with the following two major subsystems:

(1) The MH-47G Suite of Integrated Radio Frequency Countermeasures (SIRFC) is a fully integrated aircraft survivability system that provides radar warning and electronic countermeasures for the MH-47G helicopter. This system detects, identifies, prioritizes, and counters pulse, pulse doppler, continuous wave and pulse compression signals. The MH-47G critical system information is stored in the SIRFC in the form of mission source codes, User Data Files (UDF), classification algorithms, and coded threat parametrics, all classified Secret. The data, including operational software, proposed for release will not, in itself, facilitate reverse engineering.

(2) The MH-47G Suite of Integrated Infrared Countermeasures (SIIRCM) is a fully integrated aircraft survivability system that detects advanced infrared threats in all environments. This system uses a directional laser/lamp technology to defeat the infrared threat. The MH-47G critical system information is stored in the SIIRCM in the form of mission source codes, User Data Files (UDF), classification algorithms, and coded threat parametrics, all classified Secret. The data, including operational software, proposed for release will not in itself facilitate reverse engineering.

b. The Controlled Cryptographic Items (CCI) include the KY-58, KIT-1C, and KY-100 secure communications equipment. These systems are portable hardware units, which must be accounted for but are Unclassified when un-keyed (no code loaded in system). When the system is mounted in the aircraft and keyed, the equipment is considered classified (level of classification based on code keyed in system). The aircraft has provisions that allow both pilot and co-pilot to zeroize (erase) all codes upon imminent capture by threat forces. Internal mechanisms and design of cryptographic equipment is classified. Releasable technical manuals for operational and organic level maintenance are Unclassified. The data, including operational software, proposed for release will not facilitate reverse engineering.

c. The AP-174 Multi-Mode Radar (MMR) and Advanced Forward Looking Infrared Radar (FLIR) provides the MH-47G enhanced capabilities for weather penetration as well as night navigation capabilities. These two separate systems may be used singularly or in combination. Hardware is Unclassified, technical manuals for authorized maintenance levels are Unclassified. Reverse engineering is not a major concern.

2. Loss of this hardware and/or data could permit development of information leading to the exploitation of this aircraft and its capabilities/vulnerabilities. Therefore, if a technologically capable adversary were to obtain these devices, the aircraft could be compromised through reverse engineering techniques that could defeat the aircraft's effectiveness.

3. A determination has been made that the United Kingdom can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02-26640 Filed 10-18-02; 8:45 am]
BILLING CODE 5001-08-C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Joint Defense Science Board/Air Force Scientific Advisory Board Task Force on the Acquisition of National Security Space Programs will meet in closed sessions on November 7–8, 2002; and November 18–20, 2002, in Chantilly, VA. This Task Force will review the acquisition of National Security Space Programs and make recommendations to improve the acquisition of space programs from their initiation to deployment.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force3 will focus on what matters to providing national security advantage to the United States and look at the problem in as holistic a fashion as possible, considering the entire space acquisition process, including industry suppliers as well as government acquirers. The assessment will consider what is happening in the four inter-connected sectors of the space business—commercial, civil, intelligence and military. Personnel issues, including numbers, skills, experience and demographics of space professionals (including CAAS and FFRDC personnel) as well as effects of corporate mergers in all these areas may be included. The assessment will also consider all aspects of the government's role in managing and funding space system acquisition—SPO, PEO, Science and Technology, Major Command, Service Headquarters, OSD, NRO, NASA and Congress—to derive insights.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. App. II), it has been determined that these Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly these meetings will be closed to the public.

Dated: October 11, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02-26635 Filed 10-18-02; 8:45 am]
BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DOD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) the Paperwork Reduction Act of 1995, the Office of the Secretary of Defense announces the proposed reinstatement of a public collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical unity; (b) the accuracy of the agency's estimate of the burden proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments by December 20, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the DOD Air Carrier and Analysis Office (HQ AMC/DOB), 402 Scott Drive, Unit 3A1, Scott AFB, IL 62225-5302, ATTN: Ms. Pat Stout.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address or call HQ AMC/DOB at 618-229-3092.

Title, Associated Form, and OMB Number: DOD Statement of Intent, AMC Form 207, OMB Number 0701-0137.

Needs and Uses: The information collection requirement is necessary to assist the overall evaluation of commercial airlines to provide quality, safe, and reliable airlift service when procured by the Department of Defense (DOD). Information is needed to comply with 32CFR861.

Affected Public: Businesses or other for profit.

Annual Burden Hours: 300.

Number of Respondents: 15.

Responses per Respondent: 1.

Average Burden for Respondent: 20 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are commercial air carriers desiring to supply airlift services to DoD. AMC 207 provides vital information from the carriers needed to determine their eligibility to participate in the DoD Air Transportation Program.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02-26651 Filed 10-18-02; 8:45 am]
BILLING CODE 5001-05-P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Lake Charles Harbor and Terminal District Resolution 2002–089A Proposed Channel Users' Fee for Calcasieu River Waterway, Louisiana Project

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The Board of Commissioners of the Lake Charles Harbor and Terminal District (District) in regular session on May 13, 2002, adopted Resolution No. 2002–089A approving a proposed channel users' fee, cited herein, and authorizing the District staff to proceed with all required procedures to implement a users' fee to fund the local (non-Federal) share of the Federal Calcasieu River, Louisiana project. This is in accordance with, and as authorized by the Water Resources Development Act (WRDA) of 1986 (Pub. L. 99–662) and Louisiana Revised Statute (La. RS) 34:203(2)(a). Publication in the **Federal Register** is pursuant to Section 208 of the WRDA 1986 (33 U.S.C. 2236(a)(5)(B)).

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed users' fee may be directed to James L. Robinson, Director of Navigation, Lake Charles Harbor and Terminal District (337) 493–3620. Interested persons may review related studies and reports during normal work hours (8 a.m. to 12 Noon and 1 p.m. until 5 p.m., Monday through Friday except for appropriate holidays) at the offices of the Port of Lake Charles, 150 Marine Street, Lake Charles, LA 70601.

SUPPLEMENTARY INFORMATION: Having complied with State of Louisiana notice-publishing requirements of La. RS 34:203(2)(b), the proposed users' fee was developed as a method to ensure that the District could look to specified channel users to help finance its non-Federal expenditures, shares of operation and maintenance costs of the Calcasieu River Federal navigation project within the District's jurisdiction, emergency response services, contingency planning and procurement of equipment and facilities, as may be specifically authorized or controlled by the federal and state statutes. Administration, collection and enforcement will be by the District (Port of Lake Charles) through liaison with shipping agents and U. S. Customs officials. La. RS 34:203A(2)(a) authorizes that pursuant to Public Law 99–662, the Water Resources Development Act of 1986, or regulation, or if because of contractual obligations of the District with the United States of America or any agency thereof the District is required to fund the non-Federal share of dredging expenses or expenses related to the dredging of the authorized Federal navigation channel within the District, the District may regulate and impose reasonable users' fee. The users' fee shall reflect, to a reasonable degree and to the extent required by federal law, the benefits provided by the project to a particular class or type of vessel pursuant to Public Law 99–662.

The District, in compliance with state law, published a local Notice of Intent to establish commercial navigable channel users' fee for certain vessels of maximum design draught (draft) greater than 6.095 meters (20 feet) transiting any portion of the Calcasieu River Waterway ship channel. This notice announcing a public hearing to consider the users' fee was published in official journals of the Parishes comprising the District. The Board of Commissioners of the Lake Charles Harbor and Terminal District convened a public hearing on Monday, May 13, 2002 at 5 p.m. in the Board Room, 150 Marine Street, Lake Charles, Louisiana to officially consider the appropriateness of implementing the proposed Calcasieu River Waterway navigable channel users' fee.

The fee is authorized based upon expenditures of the District's past and continuing contribution to ensuring navigable channel configuration including, but not limited to, acquiring lands for dredged material disposal facilities, funding the non-Federal cost to construct dikes for dredged material disposal facilities, emergency response, related contingency planning, procurement of equipment and facilities, necessary personnel training, operation of the navigation project to include navigation-related improvements (*e.g.* procurement of an internet-based Harbor Management System capable of supporting/utilizing NOAA's Physical Oceanographic Real-Time data system and the U.S. Coast Guard's intended procurement of a Vessel Traffic Monitoring system, and a navigation security Automatic Identification System base station and other navigation security, safety and efficiency initiatives). Channel users' fees generated will offset the District's incurred expenses associated with completed navigation projects not to exceed actual accrued District expenditures. The fee would not be duplicitous with federal Harbor Maintenance Tax assessments incurred under Public Law 99–662 (26 U.S.C 4461), as amended.

Exempted vessels include:

Vessels owned and operated by the United States Government, a foreign country, a state, or a political subdivision of a country or state, unless engaged in commercial services; towing vessels; vessels engaged in dredging activities; vessels engaged in intraport movements; and vessels with design draught (draft) of 20 feet (6.095 meters) or less.

The following is a proposed fee schedule, for vessels calling on non-public Calcasieu River ship terminals under the jurisdiction of the District:

Length Overall (LOA) in meters × Design Draught (DRAFT) in Meters × ($0.1)= $Users" Fee

Example: 280 meters(LOA) × 11 meters draft × $0.1= $308.00

The design draught (draft) as indicated in "Lloyds Register of Shipping," if exceeding forty feet (40') or 12.189 meters, will be limited to 12.189 meters for this fee computation for vessels other than heavylift vessels conducting loading or offloading evolutions in the Cameron Hole.

Users' fee at the aforementioned rates, charged to applicable vessels calling on public Calcasieu River terminals under the jurisdiction of the District, will be specifically accounted for within the dockage tariff.

Under 33 U.S.C. 2236(a)(5), a public hearing on the proposed harbor users' fee is scheduled for December 9, 2002 commencing at 5 p.m. in the Board Room, 150 Marine Street, Lake Charles, Louisiana. Upon completion of the public hearing and public comment period, the Board is directed to transmit the final fee schedule concurrently to the Army Corps of Engineers New Orleans District Engineer, Director of Civil Works Corps Headquarters, the Assistant Secretary of the Army for Civil Works, and to the Federal Maritime Commission in the form of the adopted Resolution.

Under 33 U.S.C. 2236(a)(6) public comments concerning the proposed harbor users' fee should be directed in writing to James L. Robinson, Director of Navigation, Lake Charles Harbor and Terminal District, PO Box 3753, Lake Charles, Louisiana 70602. Tel. (337) 493–3620. The public comment period will close upon the close of business at 5 p.m., December 20, 2002. Written comments must be received by the District on or before that date in order to be considered by the Board prior to taking final action on the proposed harbor usage fee.

* * * * *

Dated: September 27, 2002.

Michael J. Walsh,

Colonel, U.S. Army, Executive Director of Civil Works.

[FR Doc. 02–26644 Filed 10–18–02; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.359B]

Early Reading First Program

AGENCY: Department of Education.

ACTION: Notice reopening the Early Reading First Program grant competition for fiscal year (FY) 2002 to extend the Full Application deadline date.

SUMMARY: The Secretary reopens the Early Reading First Program grant competition for FY 2002 to extend the deadline date for the submission of Full Applications. The Secretary takes this action because of delivery problems due to unexpected traffic stoppages in the Washington, DC area on the original receipt deadline of Friday, October 11.

Eligibility: This extension applies to all eligible applicants for the Full Application phase of the Early Reading First grant competition for FY 2002.

DATES: The original receipt deadline for Full Applications under the Early Reading First Program for FY 2002 was Friday, October 11, 2002. However, the Washington, DC area experienced significant traffic disruptions on that date, including the closure of major highways into the area.

Therefore, the Department extends the receipt deadline for Full Applications and reopens the competition for a very short time to address this situation.

The new deadline for receipt of Full Applications under the Early Reading First Program for FY 2002 is Tuesday, October 22, 2002 (including for certain applicants from Louisiana, as discussed later under this heading). If you or a courier or delivery service deliver an application by hand, the deadline is at 4:30 p.m. on October 22. The October 22 deadline replaces the original October 11, 2002 receipt deadline for Full Applications.

All other instructions for transmitting applications in the Early Reading First application package (pp. E–3 and E–4) remain in effect. The deadline date for the transmittal of State process recommendations by State Single Points of Contact (SPOCs) and comments by other interested parties remains as originally posted.

An extension notice for certain applicants from Louisiana submitting Full Applications was published in the **Federal Register** on October 11, 2002 (67 FR 63390), under which the receipt deadline was extended to Friday, October 18, 2002, due to Tropical Storm Lili. The extension in this notice to Tuesday, October 22, 2002, also applies to those Louisiana applicants.

The original notice inviting applications (for both Pre-Applications and Full Applications) was published in the **Federal Register** on June 7, 2002 (67 FR 39369–39374).

FOR FURTHER INFORMATION CONTACT: Tracy Bethel or Mary Ann Lesiak, Office of Elementary and Secondary Education, 400 Maryland Avenue SW., Washington, DC 20202–6132. Telephone: (202) 260–4555, or via Internet: *erf@ed.gov*. Applications for, and information about, the Early Reading First program competition are available here: *http://www.ed.gov/offices/OESE/earlyreading/index.html*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

If you want to transmit a recommendation or comment under Executive Order 12372, you can find the latest list and addresses of individual SPOCs on the Web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants*.

If you are an individual with a disability, you may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to either of the contact persons listed in this notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Dated: October 17, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–26868 Filed 10–18–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

AGENCY: Department of Energy.

ACTION: SES Performance Review Board Standing Register.

SUMMARY: This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

EFFECTIVE DATE: These appointments are effective as of September 30, 2002.

Ackerly, Lawrence R.
Allison, Jeffrey M.
Anderson, Charles E.
Anderson, James L.
Anderson, Margot H.
Angulo, Veronica A.
Aoki, Steven
Arkin, Richard W.
Arthur III, William John
Ascanio, Xavier
Baca, Frank A.
Baca, Mark C.
Bailey Jr, Lawrence O.
Bajura, Rita A.
Baker, Kenneth E.
Ballard, William W.
Barker Jr, William L.
Bashista, John R.
Bauer, Carl O.
Baur, Daniel J.
Beckett, Thomas H.
Beecy, David J.
Bergholz Jr, Warren E.
Berube, Raymond P.
Bielan, Douglas J.
Bilson, Helen E.
Black, Richard L.
Black, Steven K.
Blackwood, Edward B.
Bladow, Joel K.
Boardman, Karen L.
Borchardt, Charles A.
Borgstrom, Carol M.
Borgstrom, Howard G.
Bowman, Gerald C.
Boyd, Gerald G.
Braden Jr, Robert C.
Bradley, Samuel M.
Brendlinger, Terry L.
Brewer, Robert H.
Breznay, George B.
Brocoum, Stephan J.
Brodman, John R.
Bromberg, Kenneth M.
Bronstein, Eli B.
Brown III, Robert J.
Brumley, William J.
Bubar, Patrice M.
Burns, Allen L.

Burrows, Charles W.
Butler, Jerome M.
Butler, Roger A.
Campbell, Elizabeth E.
Campbell, James Thomas
Carabetta, Ralph A.
Caravelli, John M.
Cardinali, Henry A.
Carey Jr, Robert H.
Carlson, John T.
Carlson, Kathleen Ann
Cary, Steven V.
Cavanagh, James J.
Chacey, Kenneth A.
Chaney, Kimberly A. Hayes
Christensen, William J.
Chun, Sun W.
Clark III, Willie
Clark, John R.
Clausen, Max Jon
Coburn, Leonard L.
Combs, Marshall O.
Conti, John J.
Cook, John S.
Corey, Ray J.
Costlow, Brian D.
Cowan, Gwendolyn S.
Craig Jr, Jack R.
Crandall, David H.
Crawford, David W.
Cross, Claudia A.
Crowe, Richard C.
Cumesty, Edward G.
Curtis, James H.
Cygelman, Andre I.
D'Agostino, Thomas
Darugh, David G.
Davies, Nelia A.
De Lorenzo, Ralph H.
Decker, James F.
Dedik, Patricia
Degrasse Jr, Robert W.
Dehmer, Patricia M.
Dehoratiis Jr, Guido
Deihl, Michael A.
Delwiche, Gregory K.
Demko, Joseph C.
Dennison, William J.
Der, Victor K.
Dever, Gertrude L.
Difiglio, Carmen NMN.
Dixon, Robert K.
Dobriansky, Larisa E.
Doggett, Frederick D.
Doherty, Donald P.
Dooley III, George J.
Durnan, Denis D.
Dyer, J. Russell
Eberwein, Catherine D.
Edmondson, John J.
Egger, Mary H.
Elwood, Jerry W.
Erickson, Leif
Erickson, Ralph E.
Esvelt, Terence G.
Evans, Karen S.
Faulkner, Douglas L.
Fiore, James J.
Fitzgerald, Cheryl P.
Foley, Kathleen Y.
Folker, Robert D.
Fowler, Jennifer Johnson
Franklin, Charles Anson
Frazier, Marvin E.
Frei, Mark W.
Fryberger, Teresa
Furiga, Richard D.
Fygi, Eric J.
Gale, Barry G.
Garcia, Marvin L.
Garland, Robert W.
Garson, Henry K.
Gebus, George R.
Geidl, John C.
Gibson Jr, William C.
Gibson, Judith D.
Gilbertson, Mark A.
Ginsberg, Mark B.
Glenn, Daniel E.
Glotfelty, James W.
Golan, Paul M.
Goldsmith, Robert NMN.
Gollomp, Lawrence A.
Goodrum, William S.
Gordon-Hagerty, Lisa E.
Gottlieb, Paul A.
Greenberg, Raymond F.
Greenwood, Johnnie D.
Gross, Thomas J.
Gunn Jr, Marvin E.
Gurule, David A.
Haberman, Norton NMN.
Hacskaylo, Michael S.
Hafner, Steven C.
Hansen, Charles A.
Hardin, Michael G.
Hardwick Jr, Raymond J.
Hartman, James K.
Hartman, John R.
Harvey, John R.
Harvey, Tobin K.
Hass, Rickey R.
Hawthorne, Joan Gates
Headley, Larry C.
Heenan, Thomas F.
Hensley Jr, Willie F.
Hibbitts Jr, Howard D.
Hickok, Steven G.
Hill, David R.
Hirahara, James S.
Hodson, Patricia J.
Hollander, Marc S.
Holland, Michael D.
Hollowell, Betty L. N.
Hooper, Michael K.
Hopf, Richard H.
Horton, Donald G.
Hudome, Randa F.
Huizenga, David G.
Hunemuller, Maureen A.
Hutzler, Mary Jean
Izell, Kathy D.
Jaffe, Harold
Jenkins, Robert G.
Johnson, Frederick M.
Johnson, Milton D.
Johnson, Owen B.
Johnson, Robert Shane
Johnson, Sandra L.
Johnston, Marc
Jones, C. Rick
Jordan, Rosalie M.
Joseph, Antionette Grayso
Juarez, Liova D.
Juckett, Donald A.
Judge, Geoffrey J.
Kane, Michael C.
Kelliher, Joseph T.
Kennedy, John P.
Kersten, John H.
Keselburg, James D.
Kessler, Elizabeth A.
Kight, Gene H.
Kilgore, Webster C.
Kilpatrick, Michael A.
Kirkendall, Nancy J.
Kirkman, Larry D.
Kirk, Robert S.
Klein, Keith A.
Klein, Susan Elaine
Knipp, Robert M.
Knox, Eric K.
Konopnicki, Thad T.
Kovar, Dennis G.
Kruger, Paul W.
Lambert, James B.
Landers, James C.
Lane, Anthony R.
Lange, Robert G.
Lawrence, Andrew C.
Lee, Steven NMN.
Lehman, Daniel R.
Levin Jr, William B.
Lewis Jr, William A.
Lewis, Roger A.
Lightner, Ralph G.
Longsworth, Paul M.
Lopatto, Jeanne T.
Lowe, Owen W.
Maddox, Mark R.
Maguire, Joseph J.
Magwood IV, William D.
Mahaley, Joseph S.
Maharay, William S.
Maher, Mark W.
Male, Barbara D.
Malosh, George J.
Mangeno, James J.
Mann, Thomas O.
Marcois, Barton W.
Marcus, Gail H.
Markel Jr, Kenneth E.
Marks Jr, David L.
Marlay, Robert C.
Marmolejos, Poli A.
Masterson, Mary A.
Mazurowski, Barbara A.
McCloud, Floyd R.
McCracken, Stephen H.
McDonnell III, James F.
McKee, Barbara N.
McMonigle, Joseph P.
McRae, James Bennett
McSlarrow, Kyle E.
Meeks, Timothy J.
Mellington, Suzanne P.
Meyer, Charles E.
Michelsen, Stephen J.
Miller, Clarence L.
Miller, Deborah C.
Millhone, John P.
Milner, Ronald A.
Miotla, Dennis M.
Monette, Deborah D.
Monhart, Jane L.
Moorer, Richard F.
Morrow, Margaret K.
Mosquera, James P.
Mournighan, Stephen D.
Mueller, Troy J.
Murphie, William E.
Murphy, Alice Q.
Nealy, Carson L.
Nichols, Clayton R.
Nolan, Elizabeth A.
Norman, Paul E.
Nulton, John D.
O'Brien, Betsy K.

O'Donovan, Kevin M.
O'Fallon, John R.
Olinger, Shirley J.
Oliver, Lawrence R.
Oliver, Stephen R.
Oosterman, Carl H.
Ott, Merrie Christine
Owendoff, James M.
Owen, Michael W.
Owens, Karen A.
Paduchik, Robert A.
Parks Jr, William P.
Parnes, Sanford J.
Patrinos, Aristides A.
Pearson, Orin F.
Pease, Harrison G.
Penry, Judith M.
Perin, Stephen G.
Peterson, Bradley A.
Pettengill, Harry J.
Piper II, Lloyd L.
Podonsky, Glenn S.
Poe, Robert W.
Powers, James G.
Powers, Kenneth W.
Price Jr, Robert S.
Provencher, Richard B.
Przybylek, Charles S.
Przysucha, John L.
Pumphrey, David L.
Rapuano, Kenneth P.
Reed, Craig R.
Rhoderick, Jay E.
Richardson, Herbert
Rispoli, James A.
Roberts, Michael NMN.
Robison, Sally A.
Rodeheaver, Thomas N.
Rodekohr, Mark E.
Rodgers, Stephen J.
Rollow, Thomas A.
Rosen, Simon Peter
Rudins, George NMN.
Rudy, Gregory P.
Ryder, Thomas S.
Salmon, Jeffrey T.
Salm, Philip E.
Sato, Walter N.
Schepens, Roy J.
Schmitt, Eugene C.
Schmitt, William A.
Schnapp, Robert M.
Schneider, Sandra L.
Schoenbauer, Martin J.
Schweitzer, Eric A.
Schwier, Jean F.
Scott, Bruce B.
Scott, Randal S.
Sellers, Elizabeth D.
Shages, John D.
Sharpley, Christopher R.
Shaw, John S.
Shearer, Elizabeth L.
Sherman, Helen O.
Silbergleid, Steven A.
Simpson, Christopher
Simpson, Edward R.
Singer, Marvin I.
Siskin, Edward J.
Sitzer, Scott B.
Skubel, Stephen C.
Slutz, James A.
Smith, Alan C.
Smith, Alexandra B.
Smith, Barry Alan
Smith, Stephen M.
Snider, Linda J.
Sohinki, Stephen M.
Solich, Donald J.
Stadler, Silas D.
Staffin, Robin NMN.
Stallman, Robert M.
Stark, Richard M.
Stevens, Walter J.
Stewart Jr, Jake W.
Stone, Barbara R.
Strakey Jr, Joseph P.
Strauss, Neal J.
Sullivan, Daniel J.
Sullivan, John R.
Swailes, John H.
Sweeney II, James R.
Swift, Justin R.
Swink, Denise F.
Sylvester, William G.
Taboas, Anibal L.
Tavares, Antonio F.
Taylor, William J.
Tedrow, Richard T.
Thomas, Iran L.
Todd, John C.
Torkos, Thomas M.
Trautman, Stephen J.
Triay, Ines R.
Tryon, Arthur E.
Turi, James A.
Turner, James M.
Underwood, William R.
Vagts, Kenneth A.
Valdez, William J.
Van Fleet, James L.
Vanzandt, Vickie A.
Vieth, Jill Schroeder
Wagner, Patrice M.
Wahlquist, Earl J.
Waisley, Sandra L.
Walsh, Robert J.
Warnick, Walter L.
Weedall, Michael J.
Weis, Michael J.
Whatley, Michael D.
Whitaker Jr, Mark B.
Wieker, Thomas L.
Wilcher, Larry D.
Wilken, Daniel H.
Williams, Alice C.
Williams, Mark H.
Williams, Richard N.
Willingham Jr,Frank M.
Willis, John W.
Wilmot, Edwin L.
Worthington, Patricia R.
Wright, Stephen J.
Wunderlich, Robert C.
Yuan-Soo Hoo, Camille C.
Zamorski, Michael J.
Ziesing, Rolf F.

Issued in Washington, DC.

Bruce M. Carnes,

Director, Office of Management, Budget and Evaluation/Chief Financial Officer.

[FR Doc. 02–26671 Filed 10–18–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7396–4]

Environmental Appeals Board (EAB); Oral Argument Before the EAB

AGENCY: Environmental Protection Agency.

ACTION: Notice of oral argument.

SUMMARY: The Environmental Appeals Board (EAB) of the U.S. Environmental Protection Agency (EPA) will hold oral argument in *In re Carlota Copper Co.*, NPDES Appeal Nos. 00–23 and 02–26, on Thursday, October 24, 2002, at 10 a.m. in the EPA Administrative Courtroom, 1201 Constitution Avenue, NW., Washington, DC. The argument is open to the public.

DATES: The oral argument will be held on Thursday, October 24, 2002, at 10 a.m.

ADDRESSES: The oral argument will be held in the EPA Administrative Courtroom, 1201 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eurika Durr, Clerk of the Board, telephone: 202–501–7060; e-mail: *durr.eurika@epa.gov.*

Dated: October 9, 2002.

Ronald L. McCallum,

Environmental Appeals Judge.

[FR Doc. 02–26708 Filed 10–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7396–8]

Announcement of a Public Stakeholder Meeting on Drinking Water Distribution System Impacts on Water Quality

AGENCY: Environmental Protection Agency.

ACTION: Notice of a public stakeholder meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has scheduled a public meeting to discuss the finished water quality in distribution systems. The purpose of this meeting is to provide information to stakeholders and the public.

DATES: The stakeholder Meeting will be held from 9 a.m. to 4 p.m. Pacific Time on November 14, 2002.

ADDRESSES: The meeting will be at the Westcoast Grand Hotel at 1415 Fifth Avenue, Seattle, WA, phone (206) 971–8000.

FOR FURTHER INFORMATION CONTACT: For technical inquiries contact: Mr. Kenneth

Rotert, (202) 564–5280, e-mail: *rotert.kenneth@epa.gov*. For registration and general information about this meeting, please contact Ms. Stephanie Danner at The Cadmus Group, Inc; 1901 North Fort Myer Dr., Suite 900, Arlington, VA 22209, by phone: (703) 247–6129; by fax: (703) 247–6001, or by e-mail at *Sdanner@cadmusgroup.com*.

SUPPLEMENTARY INFORMATION: The meeting will provide stakeholders information on nine white papers which present available data, information, and research on the potential public health impacts of drinking water distribution systems.

Those registered by November 8 will receive background materials prior to the meeting. Additional information on these and other EPA activities under SDWA is available at the Safe Drinking Water Hotline at (800) 426–4791.

Meeting materials, including the previously mentioned white papers, are available at *http://www.epa.gov/safewater/tcr/tcr.html*. Proceedings of the meeting will also be posted on this website.

Any person needing special accommodations at this meeting, including wheelchair access, should contact the same previously-noted point of contact at The Cadmus Group, Inc., at least five business days before the meeting so that the Agency can make appropriate arrangements.

Same day registration for this meeting will be from 8:45 a.m. to 9 a.m. Pacific Time.

Dated: October 16, 2002.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 02–26713 Filed 10–18–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7396–5]

Public Water Supervision Program Revision for the State of Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Tennessee is revising its approved Public Water System Supervision Program. Tennessee has adopted drinking water regulations which incorporate the requirements of the Public Notification Rule. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve this State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted by November 20, 2002, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by November 20, 2002, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on November 20, 2002. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on the behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Tennessee Department of Environment and Conservation, Division of Water Supply, 401 Church Street, L&C Tower, Sixth Floor, Nashville, Tennessee, 37243–1549, or at the Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street Southwest, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Vivian Doyle, EPA Region 4, Drinking Water Section at the Atlanta address given above, or by telephone at (404) 562–9942.

Authority: Sections 1401 and 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR parts 141 and 142.

Dated: September 24, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–26711 Filed 10–18–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifiers: CMS–10074, CMS–R–0290, CMS–R–0285, & CMS–2744]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* New collection; *Title of Information Collection:* Program for the All-Inclusive Elderly Health Survey (PHS); *Form No.:* CMS–10074 (OMB# 0938–NEW); *Use:* The Centers for Medicare & Medicaid Services has developed a survey, the PHS, that is similar to the Health Outcomes Survey (HOS). The main purpose of the PHS is to collect health status information that may be used to adjust Medicare payments to PACE organizations. It has been successfully pilot-tested to assess response rates and accuracy of responses under different distribution approaches. The pilot test enabled CMS to select an approach whereby PACE enrollees will be sent surveys to fill out and can request assistance from family or professionals.; *Frequency:* Annually; *Affected Public:* Individuals or Households, Not-for-profit institutions; *Number of Respondents:* 15,800; *Total Annual Responses:* 5,814; *Total Annual Hours:* 1082.

(2) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Procedures for Making National Coverage Decisions; *Form No.:* CMS–R–0290 (OMB# 0938–0776); *Use:* These information collection requirements provide the process CMS will use to make a national coverage decision for a specific item or service under sections 1862 and 1871 of the Social Security Act. This will streamline our decision making process and will increase the opportunities for public participation in making national coverage decisions; *Frequency:* Other (as needed); *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 200; *Total Annual Responses:* 200; *Total Annual Hours:* 8,000.

(3) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Retirement Benefit Information; *Form No.:* CMS–R–0285 (OMB# 0938–0769); *Use:* This information is needed to determine whether a beneficiary meets the requirements for reduction of the Part A premium to zero.; *Frequency:* On occasion.; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 1,500; *Total Annual Responses:* 1,500; *Total Annual Hours:* 208.

(4) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease Medical Information System ESRD Facility Survey; *Form No.:* CMS–2744 (OMB# 0938–0447); *Use:* The ESRD Facility Survey form is completed annually by Medicare approved providers of dialysis and transplant services. The CMS–2744 is designed to collect information concerning treatment trends, utilization of services and patterns of practice in treating ESRD patients.; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 4,225; *Total Annual Responses:* 4,225; *Total Annual Hours:* 33,800.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 10, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–26652 Filed 10–18–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–21]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Withholding Medicare Payments to Recover Medicaid Overpayments and Supporting Regulations in 42 CFR 447.31; *Form No.:* CMS–R–21 (OMB# 0938–0287); *Use:* Overpayments may occur in either the Medicare and Medicaid program, at times resulting in a situation where an institution or person that provides services owes a repayment to one program while still receiving reimbursement from the other. Certain Medicaid providers that are subject to offsets for the collection of Medicaid overpayments may terminate or substantially reduce their participation in Medicaid, leaving the State Medicaid Agency unable to recover the amounts due. These information collection requirements give CMS the authority to recover Medicaid overpayments by offsetting payments due to a provider under the program; *Frequency:* On occasion; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 54; *Total Annual Responses:* 27; *Total Annual Hours:* 81.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 10, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–26653 Filed 10–18–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8013–N]

RIN 0938–AL56

Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and the hospital and extended care services

coinsurance amounts for services furnished in calendar year 2003 under Medicare's Hospital Insurance program (Medicare Part A). The Medicare statute specifies the formulae used to determine these amounts.

The inpatient hospital deductible will be $840. The daily coinsurance amounts will be: (a) $210 for the 61st through 90th day of hospitalization in a benefit period; (b) $420 for lifetime reserve days; and (c) $105.00 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

EFFECTIVE DATE: This notice is effective on January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Clare McFarland, (410) 786–6390.

For case-mix analysis only: Gregory J. Savord, (410) 786–1521.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813 of the Social Security Act (the Act) provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. It also provides for certain coinsurance amounts to be subtracted from the amounts payable by Medicare for inpatient hospital and extended care services. Section 1813(b)(2) of the Act requires us to determine and publish, between September 1 and September 15 of each year, the amount of the inpatient hospital deductible and the hospital and extended care services coinsurance amounts applicable for services furnished in the following calendar year.

II. Computing the Inpatient Hospital Deductible for 2003

Section 1813(b) of the Act prescribes the method for computing the amount of the inpatient hospital deductible. The inpatient hospital deductible is an amount equal to the inpatient hospital deductible for the preceding calendar year, changed by our best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1886(b)(3)(B) of the Act) used for updating the payment rates to hospitals for discharges in the fiscal year that begins on October 1 of such preceding calendar year, and adjusted to reflect changes in real case mix. The adjustment to reflect changes in real case mix is determined on the basis of the most recent case mix data available. The amount determined under this formula is rounded to the nearest multiple of $4 (or, if midway between two multiples of $4, to the next higher multiple of $4).

Under section 1886(b)(3)(B)(i) of the Act, as amended by section 4401(a) of the Balanced Budget Act of 1997 (BBA '97) (Pub. L. 105–33) and section 301(a) of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554, enacted on December 21, 2000), the percentage increase used to update the payment rates for fiscal year 2003 for hospitals paid under the prospective payment system is the market basket percentage increase minus 0.55 percentage points.

Under section 1886(b)(3)(B)(ii) of the Act, the percentage increase used to update the payment rates for fiscal year 2003 for hospitals excluded from the prospective payment system is the market basket percentage increase, defined according to section 1886(b)(3)(B)(iii) of the Act.

The market basket percentage increase for fiscal year 2003 is 3.5 percent, as announced in the final rule titled "Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2003 Rates; Final Rule" published in the **Federal Register** on August 1, 2002 (67 FR 49982). Therefore, the percentage increase for hospitals paid under the prospective payment system is 2.95 percent. The average payment percentage increase for hospitals excluded from the prospective payment system is 3.5 percent. Weighting these percentages in accordance with payment volume, our best estimate of the payment-weighted average of the increases in the payment rates for fiscal year 2003 is 3.0 percent.

To develop the adjustment for real case mix, we first calculated for each hospital an average case mix that reflects the relative costliness of that hospital's mix of cases compared to those of other hospitals. We then computed the change in average case mix for hospitals paid under the Medicare prospective payment system in fiscal year 2002 compared to fiscal year 2001. (We excluded from this calculation hospitals excluded from the prospective payment system because their payments are based on reasonable costs and are affected only by real changes in case mix.) We used bills from prospective payment hospitals received in CMS as of July 2002. These bills represent a total of about 8.8 million discharges for fiscal year 2002 and provide the most recent case mix data available at this time. Based on these bills, the change in average case mix in fiscal year 2002 is 0.17 percent. Based on past experience, we expect the overall case mix change to be 0.5 percent as the year progresses and more fiscal year 2002 data become available.

Section 1813 of the Act requires that the inpatient hospital deductible be adjusted only by that portion of the case mix change that is determined to be real. We estimate that the change in real case mix for fiscal year 2002 is 0.5 percent.

Thus, the estimate of the payment-weighted average of the applicable percentage increases used for updating the payment rates is 3.0 percent, and the real case mix adjustment factor for the deductible is 0.5 percent. Therefore, under the statutory formula, the inpatient hospital deductible for services furnished in calendar year 2003 is $840. This deductible amount is determined by multiplying $812 (the inpatient hospital deductible for 2002) by the payment-weighted average increase in the payment rates of 1.03 multiplied by the increase in real case mix of 1.005, which equals $840.54 and is rounded to $840.

III. Computing the Inpatient Hospital and Extended Care Services Coinsurance Amounts for 2003

The coinsurance amounts provided for in section 1813 of the Act are defined as fixed percentages of the inpatient hospital deductible for services furnished in the same calendar year. Thus, the increase in the deductible generates increases in the coinsurance amounts. For inpatient hospital and extended care services furnished in 2003, in accordance with the fixed percentages defined in the law, the daily coinsurance for the 61st through 90th day of hospitalization in a benefit period will be $210 (one-fourth of the inpatient hospital deductible); the daily coinsurance for lifetime reserve days will be $420 (one-half of the inpatient hospital deductible); and the daily coinsurance for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period will be $105.00 (one-eighth of the inpatient hospital deductible).

IV. Cost to Beneficiaries

We estimate that in 2003 there will be about 8.95 million deductibles paid at $840 each, about 2.31 million days subject to coinsurance at $210 per day (for hospital days 61 through 90), about 1.03 million lifetime reserve days subject to coinsurance at $420 per day, and about 26.50 million extended care days subject to coinsurance at $105.00 per day. Similarly, we estimate that in 2002 there will be about 8.78 million deductibles paid at $812 each, about 2.27 million days subject to coinsurance at $203 per day (for hospital days 61 through 90), about 1.01 million lifetime reserve days subject to coinsurance at $406 per day, and about 25.99 million extended care days subject to coinsurance at $101.50 per day. Therefore, the estimated total increase in cost to beneficiaries is about $580 million (rounded to the nearest $10 million), due to (1) the increase in the deductible and coinsurance amounts and (2) the change in the number of deductibles and daily coinsurance amounts paid.

V. Waiver of Proposed Notice and Comment Period

The Medicare statute, as discussed previously, requires publication of the Medicare Part A inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services for each calendar year. The amounts are determined according to the statute. As has been our custom, we use general notices, rather than notice and comment rulemaking procedures, to make the announcements. In doing so, we acknowledge that, under the Administrative Procedure Act, interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary because the formulae used to calculate the inpatient hospital deductible and hospital and extended care services coinsurance amounts are statutorily directed, and we can exercise no discretion in following those formulae. Moreover, the statute establishes the time period for which the deductible and coinsurance amounts will apply and delaying publication would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

VI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). As stated in section IV of this notice, we estimate that the total increase in costs to beneficiaries associated with this notice is about $580 million due to (1) the increase in the deductible and coinsurance amounts and (2) the change in the number of deductibles and daily coinsurance amounts paid. Therefore, this notice is a major rule as defined in Title 5, United States Code, section 804(2) and is an economically significant rule under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not considered small entities. We have determined that this notice will not have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing an analysis for the RFA.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice has no consequential effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Secs. 1813(b)(2) of the Social Security Act (42 U.S.C. 1395e–2(b)(2)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 4, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 20, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–26674 Filed 10–18–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8014–N]

RIN 0938–AL63

Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: In accordance with section 1839 of the Social Security Act (the Act), this notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under age 65) enrollees in the Medicare Supplementary Medical Insurance (SMI) program for 2003. It also announces the monthly SMI premium to be paid by all enrollees during 2003. The monthly actuarial rates for 2003 are $118.70 for aged enrollees and $141.00 for disabled enrollees. The monthly SMI premium rate for 2003 is $58.70. (The 2002 premium rate was $54.00). This compares to projections of the 2003 SMI premium of $57.00 in the 2002 Trustees Report and $63.30 in the 2001 Trustees Report. The 2003 Part B premium is not equal to 50 percent of the monthly actuarial rate because of the differential between the amount of home health that is transferred into Part B in 2003 (the

full cost) and the amount in Part B that is included in the premium calculation (six-sevenths). Included in the monthly premium rate is $3.68 for home health services being transferred into Part B.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Carter S. Warfield, (410) 786–6396.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare Supplementary Medical Insurance (SMI) program is the voluntary Medicare Part B program that pays all or part of the costs for physicians' services, outpatient hospital services, home health services, services furnished by rural health clinics, ambulatory surgical centers, comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by hospital insurance (HI) (Medicare Part A). The SMI program is available to individuals who are entitled to HI and to U.S. residents who have attained age 65 and are citizens, or aliens who were lawfully admitted for permanent residence and have resided in the United States for 5 consecutive years. This program requires enrollment and payment of monthly premiums, as provided in 42 CFR part 407, subpart B, and part 408, respectively. The difference between the premiums paid by all enrollees and total incurred costs is met from the general revenues of the Federal Government.

The Secretary of the Department of Health and Human Services (the Secretary) is required by section 1839 of the Social Security Act (the Act) to issue two annual notices relating to the SMI program.

One notice announces two amounts that, according to actuarial estimates, will equal respectively, one-half the expected average monthly cost of SMI for each aged enrollee (age 65 or over) and one-half the expected average monthly cost of SMI for each disabled enrollee (under age 65) during the year beginning the following January. These amounts are called "monthly actuarial rates."

The second notice announces the monthly SMI premium rate to be paid by aged and disabled enrollees for the year beginning the following January. (Although the costs to the program per disabled enrollee are different than for the aged, the law provides that they pay the same premium amount.) Beginning with the passage of section 203 of the Social Security Amendments of 1972 (Pub. L. 92–603), the premium rate, which was determined on a fiscal year basis, was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly Title II social security benefits.

However, the passage of section 124 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) suspended this premium determination process. Section 124 of TEFRA changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). Section 606 of the Social Security Amendments of 1983 (Pub. L. 98–21), section 2302 of the Deficit Reduction Act of 1984 (DEFRA '84) (Pub. L. 98–369), section 9313 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA '85) (Pub. L. 99–272), section 4080 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (Pub. L. 100–203), and section 6301 of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Pub. L. 101–239) extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). This extension expired at the end of 1990.

The premium rate for 1991 through 1995 was legislated by section 1839(e)(1)(B) of the Act, as added by section 4301 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Pub.L. 101–508). In January 1996, the premium determination basis would have reverted to the method established by the 1972 Social Security Act Amendments. However, section 13571 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) (Pub. L. 103–66) changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees) for 1996 through 1998.

Section 4571 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) permanently extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees).

The BBA included a further provision affecting the calculation of the SMI actuarial rates and premiums for 1998 through 2003. Section 4611 of the BBA modified the home health benefit payable under the HI program for individuals enrolled in the SMI program. Under this section, expenditures for home health services not considered "post-institutional" are payable under the SMI program rather than the HI program, beginning in 1998. However, section 4611(e)(1) of the BBA required that there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from the HI program to the SMI program. Section 4611(e)(2) of the BBA also provided a specific yearly proportion for the transferred funds. The proportions were 1/6 for 1998, 1/3 for 1999, 1/2 for 2000, 2/3 for 2001, and 5/6 for 2002. For purposes of determining the correct amount of financing from general revenues of the Federal Government, it was necessary to include only these transitional amounts in the monthly actuarial rates for both aged and disabled enrollees, rather than the total cost of the home health services being transferred. Accordingly, the actuarial rates shown in this announcement reflect the net transitional cost only.

Section 4611(e)(3) of the BBA also specified, for the purposes of determining the premium, that the monthly actuarial rate for enrollees age 65 and over shall be computed as though the transition would occur for 1998 through 2003 and that 1/7 of the cost would be transferred in 1998, 2/7 in 1999, 3/7 in 2000, 4/7 in 2001, 5/7 in 2002, and in 2003. Therefore, the transition period for incorporating this home health transfer into the premium is 7 years while the transition period for including these services in the actuarial rate is 6 years. As a result, the premium rate for this year will be less than 50 percent of the actuarial rate for aged enrollees announced by the Secretary.

New section 1933(c) of the Act, as added by section 4732(c) of the BBA, required the Secretary to allocate money from the SMI trust fund to the State Medicaid programs for the purpose of providing Medicare Part B premium assistance from 1998 through 2002 for the section 1933 qualifying low-income Medicaid beneficiaries. This allocation, while not being a benefit expenditure, was an expenditure of the trust fund and was included in calculating the SMI actuarial rates through 2002.

As determined according to section 1839(a)(3) of the Act and section 4611(e)(3) of the BBA, the premium rate for 2003 is $58.70. Included in the premium rate is $3.68 for home health services transferred into Part B.

A further provision affecting the calculation of the SMI premium is section 1839(f) of the Act, as amended by section 211 of the Medicare Catastrophic Coverage Act of 1988 (MCCA '88) (Pub. L. 100–360). (The Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101–234) did not repeal the revisions to section 1839(f) made by MCCA '88.) Section 1839(f), referred to as the hold-harmless provision, provides that if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the SMI premiums deducted from these benefit payments, the premium increase will be reduced to avoid causing a decrease in the individual's net monthly payment. This decrease in payment occurs if the increase in the individual's social security benefit due to the cost-of-living adjustment under section 215(i) of the Act is less than the increase in the premium. Specifically, the reduction in the premium amount applies if the individual is entitled to benefits under section 202 or 223 of the Act for November and December of a particular year and the individual's SMI premiums for December and the following January are deducted from the respective month's section 202 or 223 benefits.

A check for benefits under section 202 or 223 of the Act is received in the month following the month for which the benefits are due. The SMI premium that is deducted from a particular check is the SMI payment for the month in which the check is received. Therefore, a benefit check for November is not received until December, but has the December's SMI premium deducted from it.

Generally, if a beneficiary qualifies for hold-harmless protection—that is, if the beneficiary was in current payment status for November and December of the previous year—the reduced premium for the individual for that January and each of the succeeding 11 months for which he or she is entitled to benefits, under section 202 or 203 of the Act, is the greater of the following:

(1) The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the SMI premium for January, at least equal to the preceding November's monthly benefits, after the deduction of the SMI premium for December; or

(2) The monthly premium for that individual for that December.

In determining the premium limitations under section 1839(f) of the Act, the monthly benefits to which an individual is entitled under section 202 or 223 of the Act do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount has been established under section 1839(f) of the Act, it will not be changed during the year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

Individuals who have enrolled in the SMI program late or have reenrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. The increase is a percentage of the premium and is based on the new premium rate before any reductions under section 1839(f) are made.

II. Notice of Monthly Actuarial Rates and Monthly Premium Rate

The monthly actuarial rates applicable for 2003 are $118.70 for enrollees age 65 and over, and $141.00 for disabled enrollees under age 65. Section III of this notice gives the actuarial assumptions and bases from which these rates are derived. The monthly premium rate will be $58.70 during 2003. Included in the monthly premium rate is $3.68 for home health services transferred into Part B.

III. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Monthly Premium Rate for the Supplementary Medical Insurance Program Beginning January 2003

A. Actuarial Status of the Supplementary Medical Insurance Trust Fund

Under the law, the starting point for determining the monthly premium is the amount that would be necessary to finance the SMI program on an incurred basis. This is the amount of income that would be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the year is added to the trust fund and used when needed.

The rates are established prospectively and are, therefore, subject to projection error. Additionally, legislation enacted after the financing has been established, but effective for the period in which the financing has been set, may affect program costs. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets should be maintained at a level that is adequate to cover a moderate degree of variation between actual and projected costs, and the amount of incurred, but unpaid expenses. An appropriate level for assets to cover a moderate degree of variation between actual and projected costs depends on numerous factors. The most important of these factors are: (1) The difference from prior years between the actual performance of the program and estimates made at the time financing was established, and (2) the expected relationship between incurred and cash expenditures. Ongoing analysis is made of both factors as the trends vary over time.

Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for 2001 and 2002.

TABLE 1.—ESTIMATED ACTUARIAL STATUS OF THE SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND AS OF THE END OF THE FINANCING PERIOD

[In millions of dollars]

Financing period ending	Assets	Liabilities	Assets less liabilities
Dec. 31, 2001	$41,889	$7,799	$34,091
Dec. 31, 2002	36,187	7,557	28,630

B. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate for enrollees age 65 and older is one-half of the monthly projected cost of benefits, the Medicaid transfer (for 1998 through 2002), and administrative expenses for each enrollee age 65 and older, adjusted to allow for interest earnings on assets in the trust fund and a contingency margin. The contingency margin is an amount appropriate to provide for a moderate degree of variation between actual and projected costs and to

amortize any surplus or unfunded liabilities. As noted in section I of this announcement, section 4611(e)(2) of the BBA required that the full cost of the home health services transferred be included in the actuarial rate for 2003.

The monthly actuarial rate for enrollees age 65 and older for 2003 is determined by first establishing per-enrollee cost by type of service from program data through 2001 and then projecting these costs for subsequent years. The projection factors used are shown in Table 2. The projected values for financing periods from January 1, 2000 through December 31, 2003, are shown in Table 3.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for 2003 is $122.11. The monthly actuarial rate of $118.70 also provides an adjustment of -$3.38 for interest earnings and -$0.03 for a contingency margin. Based on current estimates, it appears that the assets are more than sufficient to cover the amount of incurred but unpaid expenses and to provide for a moderate degree of variation between actual and projected costs. Thus, a negative contingency margin reduces assets to a more appropriate level.

C. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons enrolled in SMI because of entitlement (before age 65) to disability benefits for more than 24 months or because of entitlement to Medicare under the end-stage renal disease (ESRD) program. Projected monthly costs for disabled enrollees (other than those with ESRD) are prepared in a fashion parallel to the projection for the aged using appropriate actuarial assumptions (see Table 2). Costs for the ESRD program are projected differently because of the different nature of services offered by the program. The combined results for all disabled enrollees are shown in Table 4.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for 2003 is $137.86. The monthly actuarial rate of $141.00 also provides an adjustment of -$2.10 for interest earnings and $5.24 for a contingency margin. Based on current estimates, it appears that the assets are not sufficient to cover the amount of incurred, but unpaid expenses and to provide for a moderate degree of variation between actual and projected costs. Thus, a positive contingency margin is needed to increase assets to a more appropriate level.

D. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. It is appropriate to test the adequacy of the rates using alternative assumptions. The results of those assumptions are shown in Table 5. One set represents increases that are lower and, therefore, more optimistic than the current estimate. The other set represents increases that are higher and, therefore, more pessimistic than the current estimate. The values for the alternative assumptions were determined from a statistical analysis of the historical variation in the respective increase factors.

Table 5 indicates that, under the assumptions used in preparing this report, the monthly actuarial rates would result in an excess of assets over liabilities of $29,268 million by the end of December 2003. This amounts to 24.5 percent of the estimated total incurred expenditures for the following year. Assumptions that are somewhat more pessimistic (and therefore, test the adequacy of the assets to accommodate projection errors) produce a surplus of $24,976 million by the end of December 2003, which amounts to 19.2 percent of the estimated total incurred expenditures for the following year. Under fairly optimistic assumptions, the monthly actuarial rates would result in a surplus of $33,751 million by the end of December 2003, which amounts to 30.9 percent of the estimated total incurred expenditures for the following year.

E. Premium Rate

As determined by section 1839(a)(3) of the Act and section 4611(e)(3) of the BBA, the monthly premium rate for 2003, for both aged and disabled enrollees, is $58.70.

TABLE 2.—PROJECTION FACTORS[1], 12-MONTH PERIODS ENDING DECEMBER 31 OF 2000–2003

[In percent]

Calendar year	Physicians' services		Durable medical equipment	Carrier lab[4]	Other carrier services[5]	Outpatient hospital	Home health agency	Hospital lab[6]	Other intermediary services[7]	Managed care
	Fees[2]	Residual[3]								
Aged:										
2000	5.8	3.5	10.1	7.3	14.1	−1.1	−10.7	5.3	21.4	5.8
2001	5.7	3.4	12.5	7.4	16.4	−1.3	24.3	−8.7	5.1	5.2
2002	−4.1	3.6	7.4	3.8	11.5	3.7	12.0	8.7	10.9	7.5
2003	−4.3	4.2	7.2	5.3	11.1	2.9	6.5	5.2	−16.3	2.1
Disabled:										
2000	5.8	3.5	11.1	4.0	12.0	45.2	−9.8	8.3	−1.2	1.3
2001	5.7	5.3	15.0	9.5	20.5	37.6	21.9	1.3	−8.2	0.9
2002	−4.1	3.4	6.6	3.6	11.4	−18.6	9.4	7.1	9.8	4.5
2003	−4.3	4.1	7.2	5.2	10.9	−29.1	5.7	5.1	−28.1	2.0

[1] All values for services other than managed care are per fee-for-service enrollee. Managed care values are per managed care enrollee.
[2] As recognized for payment under the program.
[3] Increase in the number of services received per enrollee and greater relative use of more expensive services.
[4] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[5] Includes physician administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[6] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[7] Includes services furnished in dialysis facilities, rural health clinics, federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

TABLE 3.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FINANCING PERIODS ENDING DECEMBER 31, 2000 THROUGH DECEMBER 31, 2003

	Financing periods			
	CY 2000	CY 2001	CY 2002	CY 2003
Covered services (at level recognized):				
Physician fee schedule	55.37	62.11	63.20	63.39
Durable medical equipment	6.33	7.31	8.02	8.66
Carrier lab[1]	2.46	2.71	2.88	3.05
Other carrier services[2]	10.53	12.58	14.35	16.05
Outpatient hospital	19.31	19.55	20.74	21.49
Home health	[5]5.68	[5]7.24	[5]8.30	8.90
Hospital lab[3]	1.93	1.81	2.01	2.13
Other intermediary services[4]	6.36	6.86	7.78	6.56
Managed care	[6]22.26	[6]20.89	[6]20.07	19.74
Total services	[7]130.22	[7]141.06	[7]147.35	149.96
Cost-sharing:				
Deductible	−3.78	−3.94	−3.73	−3.85
Coinsurance	−24.41	−25.17	−26.12	−26.38
Total benefits	102.02	111.95	117.51	119.74
Administrative expenses	1.95	2.19	2.23	2.37
Incurred expenditures	103.97	114.14	119.73	122.11
Value of interest	−4.18	−3.57	−3.21	−3.38
Adjustment for home health agency services transferred from HI	[8]−3.43	[8]−2.81	[8]−1.59	.....
Contingency margin for projection error and to amortize the surplus or deficit	−4.46	−6.75	−5.63	−0.03
Monthly actuarial rate	$91.90	$101.00	$109.30	$118.70

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes physician administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[4] Includes services furnished in dialysis facilities, rural health clinics, federally qualified health centers, rehabilitation and psychiatric hospitals, etc.
[5] This amount includes the full cost of the fee-for-service home health services being transferred from the HI program as a result of the BBA as if the transition did not apply, as well as the cost of furnishing all home health services to those individuals enrolled in SMI only.
[6] This amount includes the full cost of the managed care home health services being transferred from the HI program as a result of the BBA as if the transition did not apply, as well as the cost of furnishing all other SMI services to individuals enrolled in managed care.
[7] Includes transfers to Medicaid. Section 1933(c)(2) of the Act, as added by section 4732(c) of the BBA, allocates an amount to be transferred from the SMI trust fund to the state Medicaid programs. This transfer is for the purpose of paying the SMI premiums for certain low-income beneficiaries. It is not a benefit expenditure but is used in determining the SMI actuarial rates since it is an expenditure of the trust fund.
[8] Section 4611 of the BBA specifies that expenditures for home health services not considered "post-institutional" will be payable under the SMI program rather than the HI program beginning in 1998. However, section 4611(e)(1) requires there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from the HI program to the SMI program. For 1998, the amount transferred is 1/6 of the full cost for such services, for 1999, 1/3, for 2000, 1/2, for 2001, 2/3, and for 2002, 5/6. Therefore, the adjustment for 2000 represents 1/6 of the full cost, for 2001, 1/2, and for 2002, 1/3. This amount adjusts the actuarial rate to reflect the correct amount attributable to home health services.

TABLE 4.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FINANCING PERIODS ENDING DECEMBER 31, 2000 THROUGH DECEMBER 31, 2003

	Financing periods			
	CY 2000	CY 2001	CY 2002	CY 2003
Covered services (at level recognized):				
Physician fee schedule	57.10	63.98	64.03	63.90
Durable medical equipment	10.20	11.86	12.74	13.68
Carrier lab[1]	2.87	3.10	3.23	3.41
Other carrier services[2]	11.42	13.74	15.38	17.11
Outpatient hospital	34.26	47.46	38.96	27.66
Home health	[5]4.40	[5]5.42	[5]5.97	6.32
Hospital lab[3]	2.83	2.82	3.02	3.18
Other intermediary services[4]	28.78	28.53	29.88	28.61
Managed care	[6]10.73	[6]9.82	[6]9.43	9.43
Total services	[7]162.59	[7]186.73	[7]182.64	173.29
Cost-sharing:				
Deductible	−3.67	−3.88	−3.57	−3.74
Coinsurance	−44.70	−57.11	−47.08	−34.37
Total benefits	114.22	125.74	131.99	135.19
Administrative expenses	2.18	2.46	2.50	2.68

TABLE 4.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FINANCING PERIODS ENDING DECEMBER 31, 2000 THROUGH DECEMBER 31, 2003—Continued

	Financing periods			
	CY 2000	CY 2001	CY 2002	CY 2003
Incurred expenditures	116.40	128.19	134.49	137.86
Value of interest	−1.60	−2.26	−1.99	−2.10
Adjustment for home health agency services transferred from HI	[8] −2.59	[8] −2.08	[8] −1.13	.....
Contingency margin for projection error and to amortize the surplus or deficit	8.89	8.34	−8.27	5.24
Monthly actuarial rate	$121.10	$132.20	$123.10	$141.00

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes physician administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[4] Includes services furnished in dialysis facilities, rural health clinics, federally qualified health centers, rehabilitation and psychiatric hospitals, etc.
[5] This amount includes the full cost of the fee-for-service home health services being transferred from the HI program as a result of the BBA as if the transition did not apply, as well as the cost of furnishing all home health services to those individuals enrolled in SMI only.
[6] This amount includes the full cost of the managed care home health services being transferred from the HI program as a result of the BBA as if the transition did not apply, as well as the cost of furnishing all other SMI services to individuals enrolled in managed care.
[7] Includes transfers to Medicaid. Section 1933(c)(2) of the Act, as added by section 4732(c) of the BBA, allocates an amount to be transferred from the SMI trust fund to the state Medicaid programs. This transfer is for the purpose of paying the SMI premiums for certain low-income beneficianes. It is not a benefit expenditure but is used in determining the SMI actuarial rates since it is an expenditure of the trust fund.
[8] Section 4611 of the BBA specifies that expenditures for home health services not considered "post-institutional" will be payable under the SMI program rather than the HI program beginning in 1998. However, section 4611(e)(1) requires there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from the HI program to the SMI program. For 1998, the amount transferred is ⅙ of the full cost for such services, for 1999, ⅓, for 2000, ½, for 2001, ⅔, and for 2002, ⅚. Therefore, the adjustment for 2000 represents ½ of the full cost, for 2001, ⅓, and for 2002, ⅙. This amount adjusts the actuarial rate to reflect the correct amount attributable to home health services.

TABLE 5.—ACTUARIAL STATUS OF THE SMI TRUST FUND UNDER THREE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 2003

As of December 31	2001	2002	2003
This projection:			
Actuarial status (in millions):			
Assets	41,889	36,187	37,830
Liabilities	7,799	7,557	8,561
Assets less liabilities	34,091	28,630	29,268
Ratio (in percent) [1]	31.1	25.0	24.5
Low cost projection:			
Actuarial status (in millions):			
Assets	41,889	36,187	41,988
Liabilities	7,799	7,097	8,237
Assets less liabilities	34,091	29,090	33,751
Ratio (in percent) [1]	32.5	27.3	30.9
High cost projection:			
Actuarial status (in millions):			
Assets	41,889	36,187	33,901
Liabilities	7,799	8,027	8,925
Assets less liabilities	34,091	28,160	24,976
Ratio (in percent) [1]	29.8	23.0	19.2

[1] Ratio of assets less liabilities at the end of the year to the total incurred expenditures during the following year, expressed as a percent.

IV. Regulatory Impact Analysis

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) September 19, 1980 (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 to $29 million in any 1 year (65 FR 69432). For purposes of the RFA, States and individuals are not considered to be small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant effect on a substantial number of small entities nor on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in an 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this notice fall below this threshold as well.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not significantly affect the rights, roles, and responsibilities of States.

This notice announces that the monthly actuarial rates applicable for 2003 are $118.70 for enrollees age 65 and over, and $141.00 for disabled enrollees under age 65. It also announces that the monthly SMI premium rate for calendar year 2003 is $58.70. The SMI premium rate of $58.70 is 8.7 percent higher than the $54.00 premium rate for 2002. We estimate that the cost of this increase, from the current premium to the approximately 38 million SMI enrollees will be about $2.161 billion for 2003. Therefore, this notice is a major rule as defined in Title 5, United States Code, section 804(2) and is an economically significant rule under Executive Order 12866.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

V. Waiver of Proposed Notice

The Medicare statute requires the publication of the monthly actuarial rates and the Part B premium amounts in September. We ordinarily use general notices, rather than notice and comment rulemaking procedures, to make such announcements. In doing so, we note that under the Administrative Procedure Act interpretive rules; general statements of policy; and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find, for good cause, that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary because the formula used to calculate the SMI premium is statutorily directed, and we can exercise no discretion in applying that formula. Moreover, the statute establishes the time period for which the premium rates will apply, and delaying publication of the SMI premium rate such that it would not be published before that time would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

(Section 1839 of the Social Security Act; 42 U.S.C. 1395r)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: September 4, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 23, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–26675 Filed 10–18–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8015–N]

RIN 0938–AL69

Medicare Program; Part A Premium for 2003 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the Hospital Insurance premium for calendar year 2003 under Medicare's Hospital Insurance program (Part A) for the uninsured, not otherwise eligible aged (hereafter known as the "uninsured aged") and for certain disabled individuals who have exhausted other entitlement. The monthly Medicare Part A premium for the 12 months beginning January 1, 2003 for these individuals is $316. The reduced premium for certain other individuals as described in this notice is $174. Section 1818(d) of the Social Security Act specifies the method to be used to determine these amounts.

EFFECTIVE DATE: This notice is effective January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Clare McFarland, (410) 786–6390.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1818 of the Social Security Act (the Act) provides for voluntary enrollment in the Medicare Hospital Insurance program (Medicare Part A), subject to payment of a monthly premium, of certain persons aged 65 and older who are uninsured under the Old-Age, Survivors and Disability Insurance Program (OASDI) or the Railroad Retirement Act and do not otherwise meet the requirements for entitlement to Medicare Part A. (Persons insured under the OASDI program or the Railroad Retirement Act and certain others do not have to pay premiums for hospital insurance.)

Section 1818(d) of the Act requires us to estimate, on an average per capita basis, the amount to be paid from the Federal Hospital Insurance Trust Fund for services performed and related administrative costs incurred in the following calendar year with respect to individuals aged 65 and over who will be entitled to benefits under Medicare Part A. We must then determine, during September of each year, the monthly actuarial rate for the following year (the per capita amount estimated above divided by 12) and publish the dollar amount for the monthly premium in the succeeding calendar year. If the premium is not a multiple of $1, the premium is rounded to the nearest multiple of $1 (or, if it is a multiple of 50 cents but not of $1, it is rounded to the next highest $1). The 2002 premium under this method was $319 and was effective January 1, 2002. (See 66 FR 54264, October 26, 2001.)

Section 1818A of the Act provides for voluntary enrollment in Medicare Part A, subject to payment of a monthly premium, of certain disabled individuals who have exhausted other entitlement. These are individuals who are not currently entitled to Part A coverage, but who were entitled to coverage due to a disabling impairment under section 226(b) of the Act, and who would still be entitled to Part A coverage if their earnings had not exceeded the statutorily defined substantial gainful activity amount (section 223(d)(4) of the Act).

Section 1818A(d)(2) of the Act specifies that the provisions relating to premiums under section 1818(d) through (f) of the Act for the aged will

also apply to certain disabled individuals as described above.

Section 13508 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) amended section 1818(d) of the Act to provide for a reduction in the premium amount for certain voluntary (section 1818 and 1818A) enrollees. The reduction applies to an individual who is eligible to buy into the Medicare Part A program and who, as of the last day of the previous month—

- Had at least 30 quarters of coverage under title II of the Act;
- Was married, and had been married for the previous 1-year period, to a person who had at least 30 quarters of coverage;
- Had been married to a person for at least 1 year at the time of the person's death if, at the time of death, the person had at least 30 quarters of coverage; or
- Is divorced from a person and had been married to the person for at least 10 years at the time of the divorce if, at the time of the divorce, the person had at least 30 quarters of coverage.

Section 1818(d)(4)(A) of the Act specifies that the premium that these individuals will pay for calendar year 2003 will be equal to the premium for uninsured aged enrollees reduced by 45-percent.

II. Monthly Premium Amount for 2003

- The monthly premium for the uninsured aged and certain disabled individuals who have exhausted other entitlement, for the 12 months beginning January 1, 2003, is $316.
- The monthly premium for those individuals subject to the 45-percent reduction in the monthly premium is $174.

III. Monthly Premium Rate Calculation

As discussed in section I of this notice, the monthly Medicare Part A premium is equal to the estimated monthly actuarial rate for 2003 rounded to the nearest multiple of $1 and equals one-twelfth of the average per capita amount, which is determined by projecting the number of individuals aged 65 and over entitled to Hospital Insurance and the benefits and administrative costs that will be incurred on their behalf.

The steps involved in projecting these future costs to the Federal Hospital Insurance Trust Fund are:

- Establishing the present cost of services furnished to beneficiaries, by type of service, to serve as a projection base;
- Projecting increases in payment amounts for each of the service types; and
- Projecting increases in administrative costs.

We base our projections for 2003 on (a) current historical data, and (b) projection assumptions derived from current law and the Mid-Session Review of the President's Fiscal Year 2003 Budget.

We estimate that in calendar year 2003, 34.021 million people aged 65 and over will be entitled to benefits (without premium payment) and that they will incur $128.931 billion of benefits and related administrative costs. Thus, the estimated monthly average per capita amount is $315.81 and the monthly premium is $316. The full monthly premium reduced by 45-percent is $174.

IV. Costs to Beneficiaries

The 2003 premium of $316 is about 1 percent lower than the 2002 premium of $319.

We estimate that approximately 406,000 enrollees will voluntarily enroll in Medicare Part A by paying the full premium. We estimate an additional 1,000 enrollees will pay the reduced premium. We estimate that the aggregate savings to enrollees paying these premiums will be about $15 million in 2003 over 2002.

V. Waiver of Notice of Proposed Rulemaking

We are not using notice and comment rulemaking in this notification of Part A premiums for 2003, as that procedure is unnecessary because of the lack of discretion in the statutory formula that is used to calculate the premium and the solely ministerial function that this notice serves. The Administrative Procedure Act permits agencies to waive notice and comment rulemaking when this notice and public procedure thereon are unnecessary. Furthermore, given that we are statutorily bound to make these estimates and promulgate these rates all in the month of September, the Congress clearly did not envision the use of notice and comment rulemaking, as it is not feasible to conduct such a process in a 30-day period. On this basis, we waive publication of a proposed notice and a solicitation of public comments.

Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). The estimated overall effect of these changes in the premium will be a savings to voluntary (section 1818 and 1818A) enrollees of about $15 million. Therefore this notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not considered to be small entities. We have determined that this notice will not have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing an analysis for the RFA.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice will not have a substantial effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Sections 1818(d)(2) and 1818A(d)(2) of the Social Security Act (42 U.S.C. 1395i–2(d)(2) and 1395i–2a(d)(2)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 4, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 23, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–26676 Filed 10–18–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Women's Health Initiative Subcommittee of the Advisory Committee for Reproductive Health Drugs; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Women's Health Initiative Subcommittee of the Advisory Committee for Reproductive Health Drugs.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 12, 2002, from 8 a.m. to 6 p.m. and on November 13, 2002, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Jayne E. Peterson, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: PETERSONJ@CDER.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12537. Please call the Information Line for up-to-date information on this meeting. Current information may also be accessed on the Internet at the FDA Docket Web site at http://www.fda.gov/ohrms/dockets/ac/acmenu.htm.

Agenda: On both days, presentations and subcommittee discussions will address the following issues related to the study results from the estrogen plus progestin component of the Women's Health Initiative (WHI): (1) Assessment of the known benefits for the approved indications and risk management considerations, (2) the extent to which these new data might be extrapolated to other combination estrogen/progestin products and doses, and (3) the WHI's implications for future clinical trials of hormonal therapy.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by November 1, 2002. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. on November 12, 2002, and between approximately 1 p.m. and 2 p.m. on November 13, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 1, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jayne Peterson (see *Contact Person*) at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 11, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–26728 Filed 10–18–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, U.S.C. as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Proposed Project: National Health Service Corps (NHSC) Travel Request Worksheet, Non-Federal Personnel—In Use Without Approval

The National Health Service Corps (NHSC) of the HRSA's Bureau of Health Professions (BHPr), is committed to improving the health of the Nation's underserved by uniting communities in need with caring health professionals and by supporting communities' efforts to build better systems of care.

The Travel Request Worksheet is used by Scholarship Program recipients to receive travel support to perform pre-employment interviews at sites on the Approved Practice List at the Federal Government's expense. The travel approval process is initiated when the scholar notifies the NHSC's In-Service Support Branch or the respective Bureau of Prisons, Indian Health Service, and Immigration and Naturalization Service recruitment office of an impending interview at one or more NHSC approved practice sites.

The Travel Request Worksheet is also used to initiate the relocation process. Upon receipt of the Travel Request Worksheet, the NHSC will review and approve the request and promptly notify the NHSC contractor authorizing the funding for the relocation.

Estimates of annualized reporting burden are as follows:

Type of Respondent	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Health Care Professionals	311	1	.066	21

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11A–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. written comments should be received within 60 days of this notice.

Dated: October 15, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–26669 Filed 10–18–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Training Tomorrow's Scientists: Linking Minorities and Mentors Through the Web

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of Behavioral and Social Sciences Research (OBSSR), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Training Tomorrow's Scientists: Linking Minorities and Mentors Through the Web. *Type of Information Collection Request:* REVISION. OMB control number 0925–0475. Expiration Date 1/31/2003. *Need and Use of Information Collection:* This website allows federally-funded researchers supported by any of the 27 Institutes and Centers of the NIH to submit an electronic form describing his or her research areas, as well as interests in mentoring minority students or junior faculty. The researcher's description is posted on the website for searching by interested minority applicants. Minority students or junior faculty search the website to identify researchers with whom they would like to work. The research projects in the database are located all over the country and involve cutting edge research activities by scientists funded through the Institutes and Centers of the NIH. These research projects range from studies of children to research on older adults, from laboratory research to field research, from social research to a combination of biological and behavioral research. Applicants conduct an electronic search using categories such as research areas of interest, desired geographic location of the researcher, and their level of education. The primary objective of the program is to ensure that, in the coming decades, a concentration of minority researchers will be available to address behavioral and social factors important in improving the public health and eliminating racial disparities. Increasing the number of minority scientists in the U.S. will expand our currently limited knowledge about the epidemiology and treatment of diseases in minority population. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households. *Type of Respondents:* Students, Post-doctorals, Junior Faculty, and Principal Investigators. The annual reporting burden is as follows: *Estimated Number of Respondents:* 50; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 10 minutes; and *Estimated Total Amount Burden Hours Requested:* 8. There is no annualized cost to respondents. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information Contact: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Dana Sampson, Program Analyst, OBSSR, OD NIH, Building 1, Room 256, 1 Center Drive, Bethesda, MD 20892, or call non-toll-free number (301) 402–1146 or E-mail your request, including your address to: *SampsonD@od.nih.gov*≤.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

John Jarman,

Executive Officer, Office of the Director, National Institutes of Health.

[FR Doc. 02–26698 Filed 10–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Behavioral and Environmental Risk Factors for Childhood

Summary: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 29, 2002, page 4275 and allowed 60 days for public comment. Public comments in support of the data collection were received from the American Academy of Pediatrics. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Behavioral and Environmental Risk Factors for Childhood Drowning. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The proposed study seeks to determine the relationship between swimming lessons, swimming ability, and other risk or protective factors on the one hand, and the risk of drowning on the other. Drowning is the second leading cause of unintentional injury death among children in the United States. Children under the age of five years are at particularly increased risk with drowning rates peaking among 1–2 year olds. Adolescent males are also at increased risk. While some preventive strategies, such as pool fencing, are known to be effective, the impact of other preventive strategies is unclear. For example, it is estimated that at least 20% of children between the ages of 1–4 years participate in formal swimming instructions, yet the effect of these instructions on the risk of drowning is unknown. Some argue that early exposure to swimming lessons might increase the risk of drowning by increasing exposure and decreasing children's fear of the water. Among adolescents, there is some indirect evidence that more skilled swimmers may be at increased risk of drowning. Better swimmers are likely to participate in more water-related activities and may feel confident enough to swim in higher risk settings, such as remote natural bodies of water with no lifeguards present. The findings from this study will provide valuable information concerning risk and protective factors for childhood drownings, information that is crucial in directing future preventive efforts. The proposed study will utilize a case-control methodology to identify associations between behavioral and environmental factors and the risk of drowning.

Interviews will be conducted with parents/guardians of 1272 children (424 cases and 848 controls.) The case interview and the control interview are estimated to take 40 minutes to complete. Additionally, a short, 10 minute questionnaire will be administered to 200 adolescents ages 14–19 years to assess risk behaviors related to water activities. Controls will be identified through random-digit dialing. It is estimated that 32,358 households will need to be screened (at 5 minutes per screener) to identify the 848 controls. Screening and study interviews will be conducted over a 27-month study period. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Type of respondent	Number of respondents	Frequency of response	Average hours per response	Total hours burden	Annual hour burden
Respondents to Parent/Guardian Case Interview	424	1	0.667	282.8	126
Respondents to RDD Screener	32,358	1	0.0835	2701.8	1201
Respondents to Control Interview	848	1	0.667	565.6	251
Respondents to Adolescent Interview	200	1	0.167	33.4	15
Total				3,583.6	1,593

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, *Attention:* Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Charles Grewe, Contracting Officer, NICHD, NIH. Address: 6100 Executive Blvd., Suite 7A07, Bethesda, MD 20892–7510; e-mail address *cg59b@nih.gov;* Phone: (303) 496–4611 (collect calls cannot be accepted).

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: October 9, 2002.

Kathleen Wilburn,

Project Clearance Liaison, NICHD, National Institutes of Health.

[FR Doc. 02–26699 Filed 10–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, K06 Meeting.

Date: October 17, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: William A. Kachadorian, PhD, MTS, Scientific Review Administrator, Office of Scientific Review, National Center for Complementary Alternative Medicine, 6707 Democracy Blvd, Ste 106, Bethesda, MD 20892–5475, (301) 594–2014, *kachadow@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: October 10, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–26701 Filed 10–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, CB04 Meeting.

Date: November 4, 2002.

Time: 1 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: 6707 Democracy Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carol Pontzer, PhD, Scientific Review Administrator, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd., Bethesda, MD 20892.

Dated: October 10, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–26702 Filed 10–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Acquired Immunodeficiency Syndrome Research Review Committee, AIDS Research Review Committee.

Date: November 7–8, 2002.

Time: 8:30 am to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Roberta Binder, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, HIH, Room 2209, 6700B Rockledge Drive, Bethesda, MD 20892–7616, 301–496–2550, *rb169n@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 10, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–26700 Filed 10–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, The International Centers for Excellence in Research Clinical Research and Management Training Program.

Date: November 8, 2002.

Time: 2 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Roberta Binder, PhD, Scientific Review Administrator, Division of Extramural Activities, NIAID, 6700B Rockledge Drive, Rm 2155, Bethesda, MD 20892, 301–496–7966, *rb169n@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 10, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–26703 Filed 10–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel,

Services Research Review Committee—Phone Session.

Date: November 5, 2002.

Time: 11 am to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 10, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–26704 Filed 10–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, M–RISP.

Date: December 5, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216, *hhaigler@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 10, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–26705 Filed 10–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Cancellation of Meeting

Notice is hereby given of the cancellation of the PubMed Central National Advisory Committee, November 4, 2002, 9:30 am to November 4, 2002, 4 pm, Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD, 20892 which was published in the **Federal Register** on August 21,2002, 67 FR 54227.

The meeting is cancelled due to concern regarding quorum and availability of Committee members.

Dated: October 10, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–26706 Filed 10–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Special Emphasis Panels I; Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the following meetings of SAMHSA Speciál Emphasis Panels I in November and December 2002.

A summary of the meetings and a roster of the members may be obtained from: Ms. Coral Sweeney, Review Specialist, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b© (6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel 1 (SEP1).

Meeting Date: November 18th–22nd, 2002.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: 11 a.m. November 20th to Adjournment.

Panel: Recovery Community Services Program (RCSP II), 4 Committees.

Contact: Diane McMenamin, Director, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Room 1789, Rockville, Maryland 20857.

Committee Name: SAMHSA Special Emphasis Panel 1 (SEP1).

Meeting Date: November 18th–22nd, 2002.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: 11 a.m. November 20th to Adjournment.

Panel: Strengthening Communities—Youth, 2 Committees.

Contact: Diane McMenamin, Director, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Room 1789, Rockville, Maryland 20857.

Committee Name: SAMHSA Special Emphasis Panel 1 (SEP1).

Meeting Date: December 9th–13th, 2002.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: 11 a.m. December 11th to Adjournment.

Panel: American Indian/Alaskan Native and Rural, Community Planning Program.

Contact: Diane McMenamin, Director, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Room 1789, Rockville, Maryland 20857.

Committee Name: SAMHSA Special Emphasis Panel 1 (SEP1).

Meeting Date: December 2nd–6th, 2002.

Place: Gaithersburg Marriott Rio, Gaithersburg, Maryland.

Closed: 11 a.m. December 4th to Adjournment.

Panel: CMHS Jail Diversion.

Contact: Diane McMenamin, Director, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Room 1789, Rockville, Maryland 20857.

Committee Name: SAMHSA Special Emphasis Panel 1 (SEP1).

Meeting Date: December, 2002.

Place: SAMHS, 5600 Fishers Lane, Rockville, Maryland.

Closed: Phone Review—Closed Entirely.

Panel: Conference Grants.

Contact: Diane McMenamin, Director, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Room 1789, Rockville, Maryland 20857.

Dated: October 15, 2002.

Coral Sweeney,

Review Specialist, , Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–26670 Filed 10–18–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1420–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet certain administrative needs of the Bureau of Land Management. The lands we surveyed are:

The plat representing the dependent resurvey of portions of the south and west boundaries, and portions of the subdivisional lines, and the subdivision of sections 31 and 32, in T. 13 S., R. 26 E., Boise Meridian, Idaho, was accepted July 11, 2002.

The plat representing the entire survey record of the dependent resurvey of a portion of the west boundary and the subdivisional lines, and the subdivision of section 18, in T. 13 N., R. 20 E., Boise Meridian, Idaho, was accepted July 31, 2002.

The plats representing the dependent resurvey of portions of the west boundary and subdivisional lines, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 10, 15, 16, 19, 20, and 21, in T. 8 S., R. 28 E., Boise Meridian, Idaho, were accepted August 21, 2002.

The plats representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 2, the survey of a portion of the 2000 meanders of the right bank of the Henrys Fork of the Snake River in section 2, and a metes-and-bounds survey in section 2, in T. 5 N., R. 38 E., and the corrective dependent resurvey of a portion of the First Standard Parallel North, the dependent resurvey of a portion of the First Standard Parallel North, the dependent resurvey of a portion of the east boundary, the corrective dependent resurvey of a portion of the subdivisional lines, the dependent resurvey of a portion of the subdivisional lines and a portion of the 1879 meanders of Henrys Fork of the Snake River, and the subdivision of certain sections, certain metes-and-bounds surveys within sections 27 and 35, and the survey of the 2000 meanders of Henrys Fork of the Snake River in section 36, in T. 6 N., R. 38 E., Boise Meridian, Idaho, were accepted August 28, 2002.

The plat representing the dependent resurvey of portions of the west and north boundaries, and portions of the subdivisional lines, and the subdivision of sections 5, 6, and 7, in T. 14 ., R. 26 E., Boise Meridian, Idaho, was accepted August 30, 2002.

The plat representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, and the subdivision of section 31, in T. 3 N., R. 25 E., Boise Meridian, Idaho, was accepted September 4, 2002.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 23, 26, and 34, in T. 6 S., R. 24 E., Boise Meridian, Idaho, was accepted September 6, 2002.

This survey was executed at the request of the Bureau of Indian Affairs for administrative management purposes. The land surveyed is:

The plat representing the dependent resurvey of a portion of the east boundary and subdivisional lines, the subdivision of section 24, and the survey of the 2001 meanders of the Blackfoot River, the north boundary of the Fort Hall Indian Reservation, and portions of the 2001 median line of the Blackfoot River in section 24, in T. 3 S., R. 34 E., Boise Meridian, Idaho, was accepted August 15, 2002.

Dated: October 11, 2002.

Harry K. Smith,

Acting, Chief Cadastral Surveyor for Idaho.

[FR Doc. 02–26659 Filed 10–18–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–952–03–1420–BJ]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Robert M. Scruggs, Chief, Branch of Geographic Sciences, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., PO Box 12000, Reno, Nevada 89520, 775–861–6541.

SUPPLEMENTARY INFORMATION: 1. The Plats of Survey of the following described lands were officially filed at the Nevada State Office, Reno, Nevada, on September 12, 2002:

The plat representing the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, the subdivision of section 26 and further subdivision of section 27, and metes-and-bounds surveys of portions of the right-of-way lines of Interstate Highway No. 15 and the Union Pacific Railroad, Township 25 South, Range 59 East, Mount Diablo Meridian, Nevada, under Group No. 797, was accepted September 10, 2002.

The plat, in four (4) sheets, representing the dependent resurvey of the east boundary, a portion of the south boundary and a portion of the subdivisional lines, the subdivision of sections 33 and 34, and metes-and-bounds surveys of the right-of-way lines of Interstate Highway No. 15 and a portion of the westerly right-of-way line of the Union Pacific Railroad, Township 26 South, Range 59 East, Mount Diablo Meridian, Nevada, under Group No. 797, was accepted September 10, 2002.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management and Clark County.

2. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on September 26, 2002:

The plat representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, and the subdivision of sections 6, 8 and 18, Township 26 North, Range 31 East, Mount Diablo Meridian, Nevada, under Group No. 783, was accepted September 24, 2002.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

3. The Plats of Survey of the following described lands were officially filed at the Nevada State Office, Reno, Nevada, on September 30, 2002:

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 33, and a metes-and-bounds survey of portions of the centerline of U.S. Highway 95, in section 33, Township 7 South, Range 44 East, Mount Diablo Meridian, Nevada, under Group No. 800, was accepted September 27, 2002.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 3, and a metes-and-bounds survey of the centerline of U.S. Highway 95, in section 3, Township 8 South, Range 44 East, Mount Diablo Meridian, Nevada, under Group No. 800, was accepted September 27, 2002.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management and the Bureau of Indian Affairs.

4. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: October 11, 2002.

Robert V. Abbey,

State Director, Nevada.

[FR Doc. 02–26654 Filed 10–18–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Action No. 02–888–A]

United States v. The Mathworks, Inc. and Wind River Systems, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed final Judgment, and Stipulation and Order pertaining to each Defendant individually, and a Competitive Impact Statement related thereto have been filed with the United States District Court for the Eastern District of Virginia in *United States of America* v. *The MathWorks, Inc. and Wind River Systems, Inc.*, Civil Action No. 02–888–A. The proposed final Judgments represent a full settlement of this matter, as they resolve all issues between the United States and each Defendant. On June 21, 2002, the United States filed a Complaint against The MathWorks, Inc. and Wind River Systems, Inc. alleging that the Defendants entered into a series of agreements that had the purpose and effect of eliminating the MATRIXx product suite from the market in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. Through these agreements, The MathWorks and WindRiver agreed to shift dynamic control system design software customers from Wind River to The MathWorks. The proposed Final Judgments require both The MathWorks and Wind River to facilitate the sale of the MATRIXx products and intellectual property to a buyer acceptable to the United States and the appointment of a trustee to effect the sale. Copies of the Complaint, proposed Final Judgments and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC, in Room 200, 325 Seventh Street, NW., at the Office of the Clerk of the United States District Court for the Eastern District of Virginia, Alexandria, Virginia, and on the Antitrust Division's Web site at *http://www.usdoj.gov/atr/cases/indx346.htm*.

Public comment is invited within 60 days of the days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Renata B. Hesse, Chief, Networks and Technology Section, Antitrust Division, U.S. Department of Justice, 600 E Street, NW., Suite 9500, Washington, DC 20530.

Constance K. Robinson,

Director of Operations.

Stipulation and Order

It is hereby stipulated by and between the undersigned parties, through their respective counsel, as follows:

1. The Court has jurisdiction over the subject matter of Plaintiff's Complaint alleging Defendants Wind River Systems, Inc. ("Wind River") and The MathWorks, Inc. ("The MathWorks") entered into an agreement that violates Section 1 of the Sherman Act (15 U.S.C. 1), and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Eastern District of Virginia.

2. The United States and The MathWorks stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of either party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedure and Penalties Act (15 U.S.C. 16), and without further notice to either party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on The MathWorks and by filing that notice with the Court.

3. The MathWorks shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by both parties and submitted to the Court.

5. In the event that the United States withdraws its consent, as provided in paragraph 2 above, or in the event that the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this

Stipulation shall be without prejudice to either party in this or any other proceeding.

Respectfully submitted,
Dated: August 15, 2002.

For Plaintiff United States of America.

James J. Tierney,
U.S. Department of Justice, Antitrust Division, Networks and Technology Section, 600 E Street, NW., Suite 9500, Washington, DC 20530. Tel: (202) 307–0797. Fax: (202) 616–8544.

Richard Parker (VSB No. 44751),
Assistant United States Attorney, 2100 Jamieson Avenue, Alexandria, VA 22314. Tel: (703) 299–3700.

For Defendant The MathWorks, Inc.

Thane D. Scott,
Ruth T. Dowling,
Mitchell C. Bailin,
Palmer & Dodge LLP., 111 Huntington Avenue, Boston, MA 02199–7613. Tel: (617) 239–0100. Fax: (617) 227–4420.

Mark Gidley,
David A. Balto,
Jamie M. Crowe (VSB No. 37186),
601 Thirteenth Street, NW., Washington, DC 20005–3807. Tel.: (202) 626–3600. Fax: (202) 639–9355.

Order

It is so ordered by this Court, this _____ day of _____ 2002.

Chief United States District Judge.

Certificate of Service

The undersigned certifies that the Stipulation And Order was served by fax and U.S. Mail on the following counsel this 15th day of August, 2002:

Counsel for Wind River, Inc. Richard L. Rosen, Arnold & Porter, 555 Twelfth Street, NW., Washington, DC 20004–1206. Tel: (202) 942–5000. Fax: (202) 942–5999.

James J. Tierney.

In the matter of: United States District Court, for the Eastern District of Virginia, Alexandria Division; Civil Action No. 02–888–A, Chief Judge Hilton. United States of America, Plaintiff, v. The MathWorks, Inc. and Wind River Systems, Inc., Defendants.

Final Judgment

Whereas, Plaintiff United States of America filed its Complaint on June 21, 2002, alleging that The MathWorks, Inc. ("The MathWorks") and Wind River Systems, Inc. ("Wind River") entered into a series of agreements related to Wind River's MATRIXx product line that violate Section 1 of the Sherman Act;

And Whereas the United States and Wind River on June 21, 2002, consented to entry of a Final Judgment that would require Wind River to use its reasonable best efforts to divest its interest in the MATRIXx assets in the event a Final Judgment is entered against The MathWorks;

And whereas the United States and The MathWorks, by their respective attorneys, have consented to the entry of this Final Judgment constituting any evidence against, or any admission by, any party regarding any issue of fact or law;

And whereas The MathWorks agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the United States believes that entry of this Final judgment is in the public interest;

Now, Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, *it is Ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against The MathWorks under Section 1 of the Sherman Act (15 U.S.C. 1).

II. Definitions

As used in this Final Judgment:

(A) "MATRIXx Agreements" means the February 16, 2001, Distribution Agreement and other elated and contemporaneous agreements between Wind River and The MathWorks.

(B) "MATRIXx assets" means all rights and tangible and intangible assets, including but not limited to, all contracts, software code, copyrights, patents, licenses, sublicenses, trademarks and other intellectual property, within the scope of the MATRIXx Agreements (excluding Retained Rights and U.S. Patents Nos. 4,796,179, 5,133,045, and 5,612,866 assigned to The MathWorks in the February 16, 2001, Patent Assignment between ISI and The MathWorks).

(C) "The MathWorks" means The MathWorks, Inc., a Delaware corporation with its headquarters in Natick, Massachusetts, its parents, successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees, and any other person acting for, on behalf of, or under the control of them.

(D) "Wind River" means Wind River Systems, Inc., a Delaware corporation with its headquarters in Alameda, California, its parents, successors and assigns, and its subsidiaries (including Integrated Systems, Inc. ("ISI")), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees, and any other person acting for, on behalf of, or under the control of them.

(E) "Retained Contracts" mean all Wind River and ISI contracts regarding the MATRIXx products that remain in effect as of the date this Final Judgment becomes effective and were identified and retained by Wind River in the MATRIXx Agreements.

(F) "Retained Rights" mean (a) a worldwide, royalty-free, non-exclusive right under the MATRIXx assets to use, modify, improve, copy, display, perform, create derivative work of and enhance the MATRIXx products and distribute the same solely in connection with Wind River's provision of support services (including, without limitation, the right to provide source code to the extent contractually obligated) related to Retained Contracts; (b) a worldwide, royalty-free, non-exclusive license under the patents included within the MATRIXx assets to make, have made, use, sell, offer for sale, or import (I) articles that may be covered by one or more claims of such patents provided such acts are in connection with the provision of support services related to Retained Contracts or (ii) any Wind River products available for purchase as of February 16, 2001 (except the MATRIXx products), including all modifications, derivatives, new versions and new releases of the same.

III. Applicability

This Final Judgment applies to The MathWorks and all other persons in active concert or participation with the MathWorks who receive actual notice of this Final judgment by personal service or otherwise.

IV. Asset Sale

The United States and the MathWorks agree as follows:

(A) As soon as possible, but no later than 30 days from the date of filing of this proposed Final Judgment with the Court, the United States shall nominate an independent agent to serve as Trustee to accomplish the sale of the MATRIXx assets to a purchaser approved by the United States pursuant to the terms of this Final Judgment and any subsequent order of the Court.

(B) The Trustee shall serve at the cost and expense of defendants, on such customary and commercially reasonable terms and conditions as the United States, in its sole discretion, proposes, subject to approval by the Court. The Trustee shall receive compensation that is customary and commercially reasonable for asset sales of the size and complexity as those included herein, including a substantial success incentive and any reasonable and necessary legal expenses relating to its role as Trustee. The Trustee shall account to the Court and defendants for all monies derived from the sale of the MATRIXx assets and all costs and expenses so incurred.

(C) Upon application of the United States, the Court shall appoint the Trustee nominated by the United States and approve the engagement letter, provided that the engagement letter's terms and conditions are customary and commercially reasonable and consistent with this Final Judgment.

(D) The Trustee shall have the duty to attempt to sell the MATRIXx assets and negotiate a definitive sales and licensing agreement with a purchase pursuant to the terms of this Final Judgment, the terms of the engagement letter and any subsequent order of the Court. The Trustee shall promptly make known, by usual and customary means, the availability of the MATRIXx assets, and shall attempt to sell the assets in a manner consistent with its typical commercial practices, including protection of the defendants' confidential information. Defendants shall have no authority or responsibility with respect to the attempt to sell the MATRIXx assets or negotiate the definitive sales and licensing agreement, except to promptly provide any information relating to the MATRIXx assets requested by the Trustee in writing or as otherwise provided herein.

(E) Defendants shall promptly provide to the Trustee all information and documents requested in order to prepare offering materials and provide customary due diligence information to prospective purchasers with respect to the MATRIXx assets. Defendants shall comply fully with all such requests within three business days, unless the Trustee, in its sole discretion, waives or extends the time period, or excuses defendants from providing certain specified information.

(F) The Trustee shall commence offering the MATRIXx assets for sale immediately after certification to the Court that it has received adequate information from the defendants to offer the MATRIXx assets for sale. The certification shall be made within five business days of receipt of the adequate information. After the sales offering has commenced, the Trustee may make such additional written requests for information as may be reasonably necessary to perform its duties, and the defendants shall comply fully with such requests within 3 business days, unless the Trustee, in its sole discretion, waives or extends the time period, or excuses defendants from providing certain specified information.

(G) The Trustee shall have 90 days from the date of such certification in which to offer the MATRIXx assets for sale and consummate a definitive sales and licensing agreement with a purchaser. There shall be no extensions of this 90-day period, except, however, the running of the 90-day period shall toll for any undue delay the Court finds is caused by defendants.

(H) The Trustee shall negotiate a definitive sales and licensing agreement on customary and commercially reasonable terms, substantially equivalent, except for the payment terms, to the terms and conditions in the MATRIXx Agreements to the extent possible, and that provides to the purchaser representations, warranties and covenants equivalent to those in the MATRIXx Agreements. The defendants may allocate primary responsibility for and indemnification under such warranties among themselves as customary and appropriate to their respective rights and obligations concerning the MATRIXx assets on the date of such sale. The definitive sales and licensing agreement will provide for transitional support to the purchaser, equivalent to that offered under the MATRIXx Agreements.

(I) The Trustee shall make written reports of its activities to the Court, the United States and defendants 30 days, 45 days, 60 days, 75 days, and 90 days after initiation of its attempts to sell the MATRIXx assets. Such reports shall include the name, address, and telephone number of each person who made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, an interest in the MATRIXx assets, and shall describe in detail each contact with such person, including the terms of any offers made or received. To the extent such reports contain information that the Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Trustee shall maintain full records of all efforts made to divest the MATRIXx assets. The Trustee may discuss its progress with the United States and defendants as it deems reasonable under the circumstances.

(J) The MATRIXx assets to be conveyed shall include substantially all assets, rights and property interests of both The MathWorks and Wind River as currently exist pursuant to the MATRIXx Agreements, except, however, that The MathWorks may retain ownership of the three patents referenced in paragraph II(B), in which case the definitive sales and license agreement shall include a patent license to the purchaser. Any such patent license must:

(1) Cover as many of the three patents as the purchaser wishes to license;

(2) Be perpetual, fully paid-up, and without continuing royalties to either defendant;

(3) Not contain any field-of-use restrictions whatsoever;

(4) Permit the purchaser to sublicense the intellectual property so licensed (the "IP") in order to:

(a) Adequately convey rights to exploit the technology to end user customers of any product or service that includes the IP;

(b) Enter into development or support outsourcing or co-development agreements with third parties in conjunction with the purchaser's products or services, or joint venture agreements with third parties in which the purchaser and the third party both retain an interest in the resulting product, service, research or IP;

(c) Effectuate transfer of the license either upon change of control of the purchaser, or upon sale of all or a substantial portion of the MATRIXx assets; and

(d) Permit use of the IP in third-party products or services designed and intended for use with the purchaser's product, e.g., complementary softward tools;

(5) Permit, without any restriction, grantback, or royalties, the ability to innovate based on the IP and to use such innovations in the purchaser's products or under any circumstances set forth above without restriction;

(6) Permit enforcement of infringement that damages the purchaser, except that The MathWorks may have a first right to enforce the patients, provided that if it does so the purchaser has appropriate intervention rights to protect its license or IP rights, and may have the right to join the purchaser as a party to any such infringement suit as may be necessary to protect fully the rights of The MathWorks; and

(7) Contain an appropriate covenant not to sue the purchaser with respect to the patents covered by the license.

(K) Wind River shall be entitled to Retained Rights as provided in the proposed Final Judgment by the United States and Wind River and filed June 21, 2002.

(L) The minimum price for the MATRIXx Assets shall be $2 million cash, plus the cost and expenses of the Trustee. The defendants may, with the approval of the United States, waive this

minimum reserve price requirement. The MathWorks shall not finance the purchase or retain a contingent monetary or other interest in the MATRIXx assets being sold, other than ownership of certain patents to the extent described herein. All other costs (including the compensation of the Trustee in the event a sale of the MATRIXx assets is not consummated) will be borne by the defendants, allocated between themselves as they may agree.

(M) The United States shall have, in its sole discretion, the right to approve any prospective purchaser and the terms of any sales and license agreement negotiated with a prospective purchaser as follows:

(1) The United States shall have sole discretion to determine whether the MATRIXx assets could be competitively viable if owned by a prospective purchaser identified by the Trustee. If the United States determines that a prospective purchaser is competitively viable, the Trustee shall negotiate a definitive sales and license agreement with such purchaser. In the event of multiple bids, the United States, in its sole discretion, shall decide which prospective purchaser(s) the Trustee should pursue for purposes of negotiating a definitive sales and license agreement and shall so direct the Trustee. The MathWorks shall not challenge any such determinations by the United States.

(2) The United States and defendants shall have the right to request modifications, consistent with the terms of this Final Judgment, to any of the terms of any sales and license agreement with a prospective purchaser. The Trustee shall have discretion to approve or disapprove any such modifications, subject to the right of final approval of the definitive sales and license agreement by the United States. When considering any such request for modifications, the Trustee will take into account whether the terms and conditions in the proposed sales and license agreement are customary and reasonable for such sales and license of assets.

(3) Should the United States disapprove any purchaser or any term of the definitive sales and license agreement, the United States shall direct the Trustee to attempt to identify an alternative purchaser, or negotiate an acceptable agreement, consistent with this Final Judgment.

(N) The Trustee may seek to enforce the obligations of The MathWorks pursuant to this Final Judgment or the engagement agreement by filing a contempt motion with the Court.

(O) If the Trustee is unable to negotiate a definitive agreement within the period set forth in paragraph IV(G) at or above the price set forth in paragraph IV(L), the case shall be dismissed upon motion by any party.

V. United States' Access and Inspection

(A) For the purpose of determining or securing compliance with this Final Judgment or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privileged, duly authorized representatives of the United States Department of Justice, including consultant and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to The MathWorks be permitted:

(1) Access during The MathWorks' office hours to inspect and copy or, at the United States' option, to require The MathWorks to provide copies of all books, ledgers, accounts, records, and documents in its possession custody or control relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record at the United States' discretion, The MathWorks's directors, officers, employees, or agents, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by The MathWorks.

(B) Upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division. The MathWorks shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If, at the time information or documents are furnished by The MathWorks to the United States, The MathWorks represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and The MathWorks marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give ten (10 calendar days' notice prior to divulging such materials in any legal proceeding (other than a grand jury proceeding) to which the MathWorks is not a party.

VI. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions.

VII. Expiration of Final Judgment

This Final Judgment shall expire upon the earlier of (1) the date on which The MathWorks no longer has any right, title or interest in any of the MATRIXx assets except with regard to ownership of patent rights as specified herein, or (2) the date of dismissal of this action as a result of the failure of the Trustee to accomplish the sale of the MATRIXx assets pursuant to the terms of this order. If the MATRIXx assets are sold pursuant to the terms of this Final Judgment, The MathWorks shall not purchase, license or otherwise acquire substantially all of the MATRIXx assets before September 1, 2007, without the prior written consent of the United States.

VIII. Costs

Each party shall bear its own costs of this action.

IX. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

Chief United States District Judge.

In the matter of: United States District Court for the Eastern District of Virginia, Alexandria Division; Civil Action No. 02–888–A, Chief Judge Hilton. United States of America, Plaintiff, v. The MathWorks, Inc. and Wind River Systems, Inc., Defendants.

Competitive Impact Statement

Pursuant to Section 5(b) of the Clayton Act, as amended by Section 2 of the Antitrust Procedures and Penalties Act (codified at 15 U.S.C. 16(b)–(h) ("Tunney Act")), the United States files this Competitive Impact Statement relating to the proposed Final Judgments against Wind River Systems, Inc. and The MathWorks, Inc., submitted on June 21, 2002 and August 15, 2002, respectively, for entry in this antitrust proceeding.

I. Nature and Purpose of the Proceeding

On June 21, 2002, the United States filed a civil antitrust Complaint alleging that The MathWorks, Inc. ("The MathWorks") and Wind River Systems, Inc. ("Wind River"), head-to-head competitors in the sale of dynamic control system design software products, restrained competition in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

The complaint alleges that, on February 16, 2001, the MathWorks and Wind River entered into a number of agreements that eliminated competition between Wind River's MATRIXx products and The MathWorks' Simulink products. These agreements (hereinafter, collectively, the "MATRIXx Agreement") give The MathWorks the exclusive worldwide right to price and sell Wind River's MATRIXx for two years, transfer the customer support of MATRIXx to The MathWorks, require Wind River to stop developing and selling MATRIXx, and give The MathWorks an option to acquire MATRIXx in 2003. The MathWorks announced at the time it entered into the MATRIXx Agreement that there would be no further development of the MATRIXx products. As result of the MATRIXx Agreement, competition has been eliminated between The MathWorks and Wind River in the sale of dynamic control system design software. The Complaint seeks divestiture of the MATRIXx products to an independent and viable third party to restore the competition eliminated by the MATRIXx Agreement.

Defendants in this action have now agreed to cooperate fully to offer the MATRIXx products for sale. On June 21, 2002, the United States filed a proposed Final Judgment in this matter containing injunctive relief against Wind River, the nominal owner of the MATRIXx assets, that will require Wind River to fully cooperate with any court order requiring the divestiture of MATRIXx to a competitively viable third party. Because the MathWorks had previously acquired significant rights in the MATRIXx assets under the MATRIXx Agreement, Wind River's consent alone was insufficient to effectuate fully the relief sought by the United States in the Complaint. The lawsuit therefore continued against The MathWorks. On August 15, 2002, the United States and The MathWorks filed a proposed Final Judgment that will lead to either the prompt and certain divestiture of the MATRIXx assets to a competitively viable third part or the dismissal of the Complaint in this action. By the proposed Final Judgment against The MathWorks, in combination with the proposed Final Judgment previously filed against Wind River, the United States has now received consent from all necessary parties sufficient to effectuate a judicially-supervised sale of the MATRIXx products. The proposed Final Judgments filed with the Court will terminate this action against the Defendents.

II. Actions Giving Rise to the Alleged Violations

A. Dynamic Control System Design Software

An integral part of the control system of many complex devices is the "controller"—the on-board computer and software programs that govern a device's operation. In aircraft, for example, the controller works by receiving pilot input plus input from various sensors (such as speed and altitude), processing the input, and providing outputs that optimize the aircraft's handling and operation through the use of various components (such as engines, flaps and the rudder).

Control system design tools were introduced approximately fifteen years ago and they provide significant benefits to control system design engineers. Before such tools were developed, engineers had to manually create equations that mathematically represented the behavior of the control system, write the appropriate software code to be installed in the on-board computers, and then build prototypes to test the system. Modern control system design tools have automated the analysis and modeling, as well as the code generation and simulation. With a mathematical engine at their core, and enhanced by graphical user interfaces, control system design tools are used by engineers to create "virtual" models of the control system. For very complex systems, the analytical process (model, analyze, design, test, produce) can only be accomplished efficiently with the help of computers and specialized software.

The initial modeling step is extremely important. The better the model is at simulating reality, the better and more robust the control system will be. Yet, a model is still an abstraction. So, after the analyzing and designing steps, the engineer still needs to test the controls in real or near-real situations. If the controls fail the testing, then the initial steps of the analytical process are repeated with small design tweaks and the process repeats until the control pass final testing. The final product is computer code that can be embedded in a computer or on a chip.

MATRIXx and The MathWorks' Simulink are dynamic control system design toolsets providing functionality that addresses each of the engineer's tasks and aids in rapid control systems development. For example, both toolsets have:

(1) Graphical interfaces and high level scripting languages for modeling and simulation, and mathematical engines with advanced control design modules, or libraries, for design and analysis;

(2) Automatic efficient code generation suitable for testing and production; and

(3) Tools for real-time simulation and testing.

The tools in the Simulink toolset, numbered by functionality, are called: (1) Simulink and MATLAB; (2) Real Time Workshop; and (3) xPC. The tools in the MATRIXx toolset are called: (1) Systembuild and xMath; (2) Autocode; and (3) RealSim.

MATRIXx and Simulink are considered "suites" or "toolsets" of control design software. Suite products from a single vendor offer not only full functionality, but also seamless integration between tools used throughout the analytical process. As a result, no time is lost by a need to convert designs or data from one tool to another. Utilizing a suite or toolset of control design software facilitates the ability to make changes anywhere in the modeling and design process. Seamless integration is one of the keys to the rapid development of complex control systems.

MATRIXx and Simulink were developed from common source code in the early 1980s. Because of their common origin, the products are similar. However, the products have been independently developed by different companies for more than fifteen years. The competing development efforts represent one critical way that the Defendants compete. For the last ten to fifteen years, MATRIXx and Simulink have competed head-to-head for sales, not only by competing on price, but also by adding features to lure customers away from one another.

B. Illegal Agreement To Allocate Markets, Fix Prices, and Unreasonably Reduce Competition

In April 2000, Wind River acquired Integrated Systems, Inc. ("ISI"). At the

time, ISI was a well regarded vendor of software, tools, and engineering services for the embedded systems market. Its embedded real-time operating system, deployed in more than 38 million devices worldwide as of 2000, addressed the telecom/datacom, consumer electronics, automotive, aerospace, and emerging Internet appliance marketplaces. Among its software portfolio it also produced the MATRIXx family of software products. Although ISI had spent considerable resources developing MATRIXx since the mid-1980s, its primary business continued to revolve around the embedded systems market.

Wind River, itself a significant vendor of software for embedded systems, pursued the acquisition of ISI, in large part, to obtain a skilled pool of embedded system software developers that it hoped would shorten the time to market for critical new embedded system products. Wind River soon came to view MATRIXx as a struggling product line within ISI with small revenue and no growth potential. More importantly, the MATRIXx market was neither within Wind River's core competency nor central strategic focus for the future. Thus, Wind River decided not to devote any of its resources to the continued development and sale of MATRIXx.

Shortly after Wind River's acquisition of ISI, The MathWorks approached Wind River and began vigorously negotiating to acquire the MATRIXx assets. On February 16, 2001, The MathWorks and Wind River entered into the MATRIXx Agreement under which Wind River granted The MathWorks exclusive distribution and license rights to the MATRIXx toolset and the MATRIXx intellectual property (including the right to incorporate MATRIXx source code into The MathWorks products) during a thirty-month license period beginning on February 16, 2001. Following the expiration of the thirty-month license period, The MathWorks would have the option to acquire MATRIXx.

Under the MATRIXx Agreement, The MathWorks is required to provide two years of customer support (ending in February 2003) for existing MATRIXx users.[1] While Wind River agreed to continue fulfilling its existing customer support obligations, as well as provide "critical" bug fixes during the license period, the MATRIXx Agreement provides that Wind River will not produce new versions of MATRIXx with feature enhancements. The MathWorks and Wind River also agreed on the pricing of Simulink when purchased by MATRIXx customers. The companies agreed that The MathWorks would give customers with current MATRIXx licenses, who switched to The MathWorks suite of products, a discount amounting to 50% off the list price of The MathWorks products for those who switched in the first year of the MATRIXx Agreement and 25% off for those who switched in the second year of the MATRIXx Agreement.

The MathWorks agreed to make payments to Wind River totaling $11,500,000 over a three-year period. These payments are to be made on a set schedule and are not contingent on the volume of MATRIXx products MathWorks sells. Further, Wind River granted The MathWorks an option to purchase MATRIXx and certain MATRIXx intellectual property (*e.g.*, the source code, customer lists, trademarks and copyrights) twenty months after closing for an additional sum of $2,000,000. Wind River has retained exclusive ownership of the optioned assets during the interim and until The MathWorks exercises its right to acquire them. Finally, the MATRIXx Agreement assigned certain patent rights to The MathWorks for $500,000.

C. Effect of the Illegal Agreement

The MATRIXx Agreement eliminated competition between The MathWorks and Wind River in the simulation software, automatic code generation, and testing software markets. The MathWorks now has complete control over the development and pricing of the products of its closest competitor in these dynamic control systems design software markets, thus depriving customers of the benefits of competition between Defendants' products, including competition based on price, service, and product innovation.

Further, many customers value tight integration of the products in each of the dynamic control system design software markets. Both The MathWorks and Wind River cooperated with a small number of companies to facilitate interfaces between the Defendants' products and those companies' products that compete with the Defendants' products in individual software markets. The competition between the MATRIXx toolset and the Simulink toolset provided Defendants an incentive to facilitate interoperation with third-party products, as an unwillingness by one to do so would likely advantage the other. As a consequence of the elimination of competition resulting from the MATRIXx Agreement, The MathWorks will have less incentive to provide such technical cooperation to competitors selling individual products, thus further reducing competition for consumers who value integrated products.

The MATRIXx Agreement allocates MATRIXx customers between Wind River and The MathWorks, fixes price terms for those customers ceded to The MathWorks who subsequently switch to Simulink, and permits The MathWorks to control the future of, and enables the elimination of, the MATRIXx products. As the MATRIXx products are the principal competitive products to The MathWorks' own dynamic control system design software, the overall effect of the MATRIXx Agreement is to eliminate competition between Defendants in the three separate dynamic control system design software markets: (1) Simulation software market, where products in the MATRIXx and Simulink suite are used by engineers to design, analyze, and simulate dynamic control system behavior; (2) automatic code generation software market, where products in both suites are used to automatically generate code from models developed with simulation software; and (3) testing software market, where products in both suites are used by engineers to test their models and then automatically generate code by simulating the function of the control system in a real time environment. Consumers are harmed both by the elimination of the MATRIXx products as a competitive alternative, as well as the resulting reduction of competitive pressure on The MathWorks to lower prices, improve service, continue product innovation and development of its own dynamic control system design software products, and cooperate with companies selling individual products.

III. Explanation of the Proposed Final Judgments

During the course of an investigation, customers complained to the Antitrust Division that the MATRIXx Agreement had eliminated Wind River's MATRIXx—the only significant products that competed directly with The MathWorks' Simulink products—as a competitive alternative in the market. Because customers indicated that, due to the present lack of development of MATRIXx and its uncertain future, they would soon have to begin a costly migration to The MathWorks' Simulink products, the United States ultimately concluded that a quick and effective remedy was necessary to reestablish MATRIXx as a viable alternative. The United States further concluded, however, that simply rescinding the MATRIXx Agreement would not restore the competition it had eliminated in light of Wind River's genuine desire to exit the markets for the MATRIXx family of software products. At the same time, the principal defense offered by Defendants for their conduct was a contention that no competitive buyer would be interested in purchasing the MATRIXx assets. Taking into account customer concerns and the The MathWorks' arguments, the United States pursued an enforcement approach that would both test Defendants' assertions as to MATRIXx market value and maximize the possibility of restoring effective competition in a timely manner.

The United States and Defendants entered into an April 26, 2002, letter agreement that required an attempted sale of the MATRIXx product line in an effort to restore the competition eliminated by the MATRIXx Agreement. Under the April 26 letter agreement, Defendants were given the opportunity to test their assertion that no other viable purchaser existed by agreeing to "shop" the MATRIXx assets through an independent agent. The United States believed that one or more viable purchasers existed and that an independent agent would succeed in finding a buyer. The United States acknowledged, however, that, if no alternative viable purchaser emerged from the "shop," remedying the competitive harm caused by the MATRIXx Agreement would be difficult. The United States thus agreed that, should the "shop" fail following a good faith effort, and given Wind River's decision to discontinue the sale and development of the MATRIXx products, it would close its investigation without taking any enforcement action. However, the Defendants did not comply with the terms of the April 26 letter agreement and the United States, on June 21, 2002, filed its Complaint seeking a judicially-enforced sale of the MATRIXx assets.

Contemporaneously with the filing of the Complaint, the United States and Wind River filed a proposed Final Judgment that would settle the case against Wind River on the condition that it fully cooperate with any court order requiring the divestiture of the MATRIXx assets. As noted above, because both Wind River and The MathWorks retain rights in the MATRIXx products, Wind River's consent alone was insufficient to effectuate fully the relief sought by the United States in the Complaint. The lawsuit, therefore, continued against The MathWorks. On August 15, 2002, the United States and The MathWorks filed a proposed Final Judgment that would resolve the case against The MathWorks. The proposed Final Judgment between the United States and The MathWorks contains injunctive relief that is intended to promptly offer the MATRIXx assets for sale to a competitively viable third party approved by the United States. It further establishes a structure and time line for the sale that will be supervised by the court. Thus, the proposed Final Judgments against Wind River and The MathWorks will lead to either the prompt and certain divestiture of the MATRIXx assets or the dismissal of the Complaint in this action.

A. Proposed Final Judgment Against Wind River

On June 21, 2002, the United States filed a Stipulation and Order and a proposed Final Judgment that resolved the allegations in the Complaint against Wind River. Pursuant to the proposed Final Judgment, Wind River agreed to facilitate the United States' efforts to divest the MATRIXx assets. Wind River's agreement to assist the United States in a divestiture of the MATRIXx assets, however, was expressly conditioned on the Court entering a Final Judgment against The MathWorks ordering the divestiture of the MATRIXx assets.

1. Wind River Covenants

Section IV of the proposed Final Judgment against Wind River sets forth the substantive injunctive provisions and is designed to assist the United States in its efforts to promote continued competition in the markets for dynamic control system design software. Thus, Section IV(C) of the proposed Final Judgment states that the United States is seeking a judgment that would require, among other things, the prompt and certain divestiture of all MATRIXx assets to a buyer acceptable to the United States and the appointment of a trustee to effect the divestiture. Wind River is expressly prohibited from contesting the entry of such a judgment. In addition, Section IV(C) requires Wind River to use its reasonable best efforts to assist in effectuating such an order by divesting all of its rights, title, and interests in the MATRIXx assets. Section IV(D) further requires Wind River to take steps to ensure the prompt and certain divestiture of any rights in the MATRIXx assets currently held by The MathWorks that revert to Wind River. Wind River shall retain certain rights to use and distribute the MATRIXx products and intellectual property related to specific contracts it retained in the MATRIXx Agreement and any Wind River products available for purchase as of February 16, 2001 (except for the MATRIXx products). These Retained Rights, as outlined in the proposed Final Judgments, are all current rights held by Wind River.

2. Termination of Action, Compliance, and Expiration of Final Judgment

Insofar as Wind River's consent alone was insufficient to achieve a full divestiture of the MATRIXx assets, and because the United States had neither an order from the Court requiring The MathWorks to divest the MATRIXx assets nor had reached an agreement with The MathWorks on a proposed Final Judgment requiring the divestiture of the MATRIXx assets, Wind River remained a party to this action under Section IV(A) for the sole purpose of effectuating any relief ordered by the Court or agreed to by the United States and The MathWorks. Wind River also agreed to permit the United States to monitor its compliance with the Final Judgment under Section V of the proposed Final Judgment under substantially the same terms as agreed to by The MathWorks and discussed in subsection III(B)(2) below.

Under Section VII of the proposed Final Judgment against Wind River, the Final Judgment does not have a fixed term or date of expiration. Because Wind River's obligations were dependent upon the United States gaining a Final Judgment against The MathWorks requiring divestiture of the MATRIXx assets, the Final Judgment against Wind River was made contingent upon a Final Judgment against The MathWorks and will expire upon the earlier of: (1) Wind River's completion of all obligations imposed upon it pursuant to Section IV of this Final Judgment in light of the proposed Final Judgment against The MathWorks; or (2) the date on which Wind River no longer has any right, title, or interest in any of the MATRIXx assets (except for the Retained Rights).

B. Proposed Final Judgment Against the MathWorks

Subsequent to the proposed Final Judgment filed in this case against Wind River, the United States reached agreement with The MathWorks on a proposed final Judgment that will facilitate the offer for sale of the MATRIXx assets to a competitively viable third party. Defendants' compliance with the terms of the proposed Final Judgments, filed on June

[1] Wind River retained rights to the MATRIXx intellectual property during the license period in order to provide support service to two International Space Station customers.

21, 2002 and August 15, 2002, will terminate this action.

1. Divestiture Provisions

Section IV of the proposed Final Judgment agreed to by The MathWorks contains substantive provisions setting forth the terms on which the MATRIXx assets will be offered for sale. It is designed to lead expeditiously to the identification of competitively viable third parties who are interested in acquiring the MATRIXx assets, negotiation of a definitive sales and licensing agreement, and restoration of competition in the markets for dynamic control system design software. Thus, Sections IV(A)–(C) provide that the United States will, as soon as possible, but in no event later than 30 days from the date the proposed Final Judgment was filed with the Court, select an independent agent to serve as Trustee for the purpose of accomplishing the sale of the MATRIXx assets to a purchaser approved by the United States. The United States will have the sole discretion, subject to approval by the Court, to negotiate the terms and conditions on which the Trustee shall serve and the Trustee shall serve at the cost and expense of the Defendants.

Sections IV(D) and (E) direct the Trustee to attempt to sell the MATRIXx assets and negotiate a definitive sales and licensing agreement with a prospective purchaser. To this end, the Trustee is required to promptly make it known that the MATRIXx assets are available for purchase. In order to assist the Trustee in preparing offering materials and to provide prospective purchasers with customary due diligence information with respect to the MATRIXx assets, the Defendants must provide the Trustee with all requested information and documents within three business days. Section IV(D) expressly provides that Defendants shall have no authority or responsibility with respect to the sale of the MATRIXx assets, except promptly to provide any information relating to the MATRIXx assets requested by the Trustee.

Sections IV(F)–(H) provide that the Trustee shall have 90 days from the date on which it certifies to the Court that the Defendants have provided adequate information to offer the MATRIXx assets for sale and to consummate a definitive sales and licensing agreement with a purchaser approved by the United States. During this 90-day period, the Trustee may request additional information and documents from the Defendants who shall comply with any such request within three business days. If a divestiture of the MATRIXx assets is to occur under the proposed Final Judgment, it must be consummated within the 90-day period prescribed by Section IV(G), as the 90-day period may only be extended for undue delays fond by the Court to be caused by Defendants. A definitive sales and licensing agreement, negotiated by the Trustee, shall be on customary and commercially reasonable terms and substantially equivalent, except for the payment terms, to the terms and conditions in the MATRIXx Agreement, to the extent possible. For example, the definitive sales and licensing agreement should include representations, warranties, covenants, and transitional support to the purchaser equivalent to those in the MATRIXx Agreement.

Pursuant to Section IV(M), the United States shall have the sole discretion to approve both prospective purchasers and the terms of any sales and licensing agreement negotiated with an approved prospective purchaser. If the United States determines that a prospective purchaser is competitively viable, it will direct the Trustee to negotiate a definitive sales and licensing agreement with that prospective purchaser. In the event of multiple prospective purchasers, the United States, in its sole discretion, will direct the Trustee as to with which prospective purchaser(s) the Trustee should negotiate. The MathWorks is expressly prohibited from challenging any decisions made by the United States regarding the selection of prospective purchasers or approval of specific terms. While each Defendant has the right to request modifications to the terms of any sales and licensing agreement with a prospective purchaser, the Trustee is permitted to approve or deny such modifications. The United States, however, retains the right of final approval over all terms and conditions of the definitive sales and licensing agreement. Should the United States reject any purchaser or any term of the definitive sales and licensing agreement, the United States will direct the Trustee to attempt to identify an alternative purchaser, or negotiate an acceptable agreement, consistent with the proposed Final Judgment.

Section IV(J) expressly provides that The MathWorks may retain ownership of three patents subject to the MATRIXx Agreement, so long as the purchaser is offered a comprehensive license to the patents that permits unimpeded use. Any patent license issued under the Final Judgment:

- Must be perpetual, fully paid-up, and without continuing royalties to either Defendant;
- Must not limit the purchaser's ability to use the patents in any of purchaser's current or future products or service;
- Must permit the purchaser to sublicense the intellectual property contained in the patents so as to:
- Convey rights necessary to exploit the technology to end user customers of any product or service that includes the intellectual property;
- Enter into joint development, joint marketing, and other joint ventures with third parties in which the purchaser and the third party retain an interest in the resulting product, service, research or intellectual property;
- Permit transfer of the license either upon change of control of the purchaser, or upon sale of all or a substantial portion of the MATRIXx assets; and
- Permit the use of the intellectual property in products or services designed and intended for use with purchaser's products or as a complement to purchaser's products:
- Must permit the purchaser the ability to innovate based on the intellectual property and to use such innovations in the purchaser's products or under any circumstance set forth above without restriction, grantback, or royalty;
- Must permit the purchaser to enforce infringement claims that damage the purchaser in circumstances where The MathWorks fails to enforce intellectual property rights under the patents; and
- Must contain an appropriate covenant not to sue the purchaser with respect to the patents covered by the license.

Under Section IV(I), the Trustee is required to file written reports with the Court, the United States, and the Defendants after thirty days, and each 15 days thereafter, describing the Trustee's activities to date. Section IV(K) provides that Wind River is entitled to retain certain rights to defined in Section II of the proposed Final Judgment. Section IV(L) establishes a minimum price of $2,000,000, plus the cost and expenses of the Trustee, for which the MATRIXx assets may be sold unless the Defendants, with the approval of the United States, waive this minimum revenue price requirement. Section IV(N) expressly gives the Trustee the ability to enforce the obligations of the MathWorks under the proposed Final Judgment or the Trustee's engagement letter by way of filing a contempt motion with the Court. Finally, Section IV(O) provides that if the Trustee is unable to negotiate a definitive sales and licensing agreement with the period set forth in Section IV(G), the United States' Complaint in this action may be dismissed upon motion by any party.

2. Compliance

Section V of the proposed Final Judgment requires The MathWorks to provide documents and information within its control necessary for the purposes of determining and securing compliance with the Final Judgment. Upon written request and on reasonable notice, The MathWorks shall provide the United States with access to all records and documents in its possession or control, make available its employees, and submit written reports related to matters contained in the Final Judgment.

3. Jurisdiction, Termination, and Acquisition of MATRIXx

Pursuant to Section VI of the proposed Final Judgment, the Court retains jurisdiction over this matter in order to enable any party to the Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out the Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions.

Because the outcome of the sale is uncertain, the Final Judgment does not have a fixed term or date of expiration. The Final Judgment sets out a procedure and time line under which a trustee will offer the MATRIXx assets for sale, but recognizes that such sale may not be accomplished, in which case the lawsuit will be dismissed. Because divestiture of the MATRIXx assets is dependent upon the Turstee's success in identifying a suitable prospective purchaser and negotiating a definitive sales and licensing agreement acceptable to the United States within a prescribed period of time, Section VII provides that the Final Judgment shall expire upon the earlier of: (1) the date on which The MathWorks no longer has any right, title or interest in any of the MATRIXx assets except with regard to the ownership of patent rights specified in Section IV(J); or (2) the date of dismissal of this action as a result of the failure of the Trustee to accomplish the sale of the MATRIXx assets pursuant to the terms of the Final Judgment.

Finally, Section VII further expressly provides that if the MATRIXx assets are sold pursuant to the terms of the Final Judgment, The MathWorks is prohibiting from purchasing, licensing, or otherwise acquiring all or substantially all of the MATRIXx assets before September 1, 2007, without the prior written consent of the United States.

IV. Alternatives to the Proposed Final Judgments

The United States considered, as an alternative to the proposed Final Judgments, a full trial on the merits against the Defendants. The United States is satisfied, however, that a trial would not result in injunctive relief against Defendants beyond what is contained in the proposed Final Judgments against Wind River and The MathWorks, filed on June 21, 2002, and August 15, 2002, respectively. Moreover, the proposed injunctive relief is designed to more quickly achieve the primary objective of the litigation—preserving MATRIXx as a viable competitive alternative in the relevant markets for dynamic control system design software to the extent it is possible to do so.

V. Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorneys' fees.

Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no effect as *prima facie* evidence in any subsequent private lawsuit that may be brought against defendants.

VI. Procedures Available for Modification of the Proposed Final Judgments

The parties have stipulated that the proposed Final Judgments may be entered by this Court after compliance with the provisions of the Tunney Act, provided that the United States has not withdrawn its consent. The Tunney Act conditions entry of the decree upon this Court's determination that the proposed Final Judgments are in the public interest.

As provided by Sections 5(b) and (d) of the Clayton Act, 15 U.S.C. 16(b) and (d), any person may submit to the Department written comments regarding the proposed Final Judgments. Any person who wishes to comment must do so within sixty days of publication of this Competitive Impact Statement and the proposed Final Judgments in the **Federal Register**.

The Department will evaluate and respond to the comments. All comments will be given due consideration by the Department, which remains free to withdraw its consent to the proposed Final Judgments at any time prior to entry. The comments and the responses of the Department will be filled with the Court and published in the **Federal Register**.

Written comments should be submitted to: Renata B. Hesse, Chief, Networks and Technology Section, United States Department of Justice, Antitrust Division, 600 E Street, NW., Suite 9500, Washington, DC 20530.

The proposed Final Judgments provide that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for modification, interpretation, or enforcement of the Final Judgments.

VII. Standard of Review Under the Tunney Act, for the Proposed Final Judgments

The Tunney Act requires that injunctions of anticompetitive conduct contained in proposed consent judgments in antitrust cases brought by the United States be subject to a 60 day comment period, after which the court shall determine whether entry of the proposed Final Judgments are "in the public interest." In making that determination, the court *may* consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment.

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the compliant including consideration of the public benefit, if any, to be derived from a determination of the issues at trial. 15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia has held, the Tunney Act permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the Government's Complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly

settlement through the consent decree process."[2] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanation of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[3]

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462–63 (9th Cir. 1988), quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.) *cert. denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d at 1458. Precedent requires that

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be let, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[4]

The proposed Final Judgments, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitve effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standards more flexible and less strict than the standard required for a finding of liability. A "proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'"[5]

Moreover, the Court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States alleges in its Complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Since the "court's authority to review the decree depends entirely on the Government's exercising its procsecutorial discretion by bringing a case in the first place," it follows that the Court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not purse. *Id.*

VIII. Determinative Material/ Documents

No materials and documents of the type described in the Section 5(b) of the Clayton Act, 15 U.S.C. 16(b), were considered in formulating the proposed Final Judgments. Consequently, none are being filed with this Competitive Impact Statement.

Dated: September 19, 2002.

Respectfully submitted,

James J. Tierney,
Patricia A. Brink,
Kenneth W. Gaul,
Jeremy West,
J. Robert O. Hizon,
David E. Blake-Thomas,
Patrick O'Shaughnessy,
Trial Attorneys.

Paul J. McNulty,
United States Attorney, U.S. Department of Justice, Antitrust Division, Networks & Technology Section, 600 E. Street, NW., Suite 9500, Washington, DC 20530. Tel: 202/307–6200. Fax: 202/616–8544.

Richard Parker,
Assistant United States Attorney, VSB No. 44751, 2100 Jamieson Avenue, Alexandria, VA 22314. Tel: 703/299–3700.

Certificate of Service

I certify that on September 19, 2002, a true and correct copy of the United States' Competitive Impact Statement, related to the proposed Final Judgments in this matter against Defendants and agreed to by Defendants pursuant to the Stipulations And Orders filed with the Court, was served on the following counsel:

Counsel for Wind River Systems, Inc.:
Richard L. Rosen, Arnold & Porter, 555 Twelfth Street, NW., Washington, DC 20004–1206. Fax: 202/942–5999.
By: hand delivery.

Counsel for The MathWorks, Inc.:
Thane D. Scott, Palmer & Dodge, LLP, 111 Huntington Avenue, Boston, Massachusetts 02199–7163. Fax: 617/227–4420.
By: fax and Federal Express.

J. Mark Gidley, White & Case, LLP, 601 Thirteenth Street, NW., Washington, DC 20005–3807. Fax: 202/639–9355.
By: hand delivery.

David E. Blake-Thomas.

[FR Doc. 02–26631 Filed 10–18–02; 8:45 am]
BILLING CODE 4410–11–M

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[2] 119 Congressional Record 24,598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 173, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the Tunney Act. Although the Tunney Act authorizes the use of additional procedures, those procedures are discretionary (15 U.S.C. 16(f)). A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), 1974 U.S.C.C.A.N. 6535, 6538.

[3] *United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508 at 71,980 (W.D. Mo. 1977); *see also United States* v. *Loew's Inc.*, 783 F. Supp. 211, 214 (S.D.N.Y. 1992); *United States* v. *Columbia Artists Mgmt, Inc.*, 662 F. Supp. 865, 870 (S.D.N.Y. 1987).

[4] *United States* v. *Bechtel Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert denied*, 465 U.S. 1101 (1984).

[5] *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 151, (D.D.C. 1982) (quoting *Gillette*, 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985); *United States* v. *Carrols Dev. Corp.* 454 F. Supp. 1215, 1222, (N.D.N.Y. 1978).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration, Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 11, 2002, and published in the **Federal Register** on April 26, 2002, (67 FR 20827), Irix Pharmaceuticals, Inc., 101 Technology Place, Florence, South Carolina 29501, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methylphenidate for sale to their customers.

No comments or objections have been received. DEA has considered the factors in Title 21, U.S.C., Section 823(a) and determined that the registration of Irix Pharmaceuticals, Inc. to manufacture methylphenidate is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: August 28, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–26681 Filed 10–18–02; 8:45 am]
BILLING CODE 4410–09–M

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Sunshine Act; Meeting

TIME AND DATE: 9 a.m. to 12 p.m., Monday, November 18, 2002.

PLACE: The offices of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, 110 South Church Avenue, Suite 3350, Tucson AZ 85701.

STATUS: This meeting will be open to the public, unless it is necessary for the Board to consider items in executive session.

MATTERS TO BE CONSIDERED: (1) A report on the U.S. Institute for Environmental Conflict Resolution; (2) a report from the Udall Center for Studies in Public Policy; (3) a report on the Native Nations Institute; (4) program reports; (5) a report on the Udall Archives; and (6) a report from the Management Committee.

PORTIONS OPEN TO THE PUBLIC: All sessions with the exception of the session listed below.

PORTIONS CLOSED TO THE PUBLIC: Executive session.

CONTACT PERSON FOR MORE INFORMATION: Christopher L. Helms, Executive Director, 110 South Church Avenue, Suite 3350, Tucson, AZ 85701, (520) 670–5529.

Dated: October 16, 2002.

Christopher L. Helms,

Executive Director, Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and Federal Register Liaison Officer.

[FR Doc. 02–26788 Filed 10–17–02; 10:05 am]
BILLING CODE 6820–FN–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346, License No. NPF–3]

FirstEnergy Nuclear Operating Company; Davis-Besse Nuclear Power Station, Unit 1; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a Petition dated April 24, 2002, filed by David Lochbaum on behalf of multiple organizations, hereinafter referred to as the "Petitioners." The Petition was supplemented on May 9, 2002. The Petition concerns the operation of the Davis-Besse Nuclear Power Station, Unit 1, operated by FirstEnergy Nuclear Operating Company.

The Petition requested that the U.S. Nuclear Regulatory Commission (NRC) issue an Order to FirstEnergy Nuclear Operating Company (the licensee), requiring a verification by an independent party (VIP) for issues related to the reactor pressure vessel (RPV) head problem at Davis-Besse, Unit 1, and that the VIP be tasked with the following:

1. Verifying the adequacy of the problem identification and resolution (PIR) process.
2. Verifying the root cause evaluation prepared by the licensee for the damage to the RPV head.
3. Verifying that the long-term accumulation of boric acid within the reactor containment did not impair the function of safety-related systems, structures, and components (SSCs).
4. Verifying that the licensee has taken appropriate actions in response to NRC generic communications.
5. Verifying that the licensee has not deferred other plant modifications without appropriate justification.
6. Verifying that all entities responsible for safety reviews (e.g., Quality Assurance, INPO, the nuclear insurer, the plant operating review committee, the offsite safety review committee, etc.) are properly in the loop and functioning adequately.
7. Documenting its work in a publicly available report.
8. Presenting its conclusions to the NRC in a public meeting conducted near the plant site.

In support of their request, the Petitioners cite the Order issued by the NRC on August 14, 1996, to Northeast Nuclear Energy Company, the owner of the Millstone Nuclear Power Station in Connecticut, as a recent and relevant precedent for the action they requested. The Petitioners consider that restarting the Davis-Besse plant before an independent team of experts has examined the safety issues related to the RPV head problem would be potentially unsafe and in violation of Federal regulations.

The Petition of April 24, 2002, raises concerns originating in the licensee's identification of extensive degradation to the pressure boundary material of the RPV head on March 6, 2002. The VIP requested by the Petitioners would provide an independent program to verify the adequacy of plant owner performance and to reassure the public that all reasonable safety measures have been taken prior to plant restart.

On May 9, 2002, the Petitioners and the licensee met with the staff's Petition Review Board. The meeting gave the Petitioners and the licensee an opportunity to provide additional information and to clarify issues raised in the Petition.

The NRC sent a copy of the proposed Director's Decision to the Petitioners and to the licensee for comment on August 16, 2002. The Petitioners responded with comments on August 29, 2002, and the licensee responded on August 30, 2002. The comments and the NRC staff's response to them are included in the Director's Decision.

The Director of the Office of Nuclear Reactor Regulation has denied the request to issue an Order. The reasons for this decision are explained in Director's Decision DD–02–01 pursuant to 10 CFR 2.206, the complete text of which is available for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville, Maryland, and on the NRC's Web site *http://www.nrc.gov/reading-rm/adams.html* (the Electronic Reading Room), via the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML022620366.

The NRC staff finds that its ongoing actions are sufficient to verify the adequacy of the licensee's performance related to RPV head degradation issues and to reassure the public that all reasonable safety measures have been taken prior to plant restart. The establishment of the Augmented Inspection Team and the Inspection Manual Chapter (IMC) 0350 Oversight Panel, as well as the comprehensive technical reviews being performed by the staff and investigations being performed by the NRC's Office of Investigations, are responsive to the degradation problem at Davis-Besse. The staff has adequate expertise and resources to monitor the licensee's corrective and preventative actions.

Thus, the enforcement-related action requested by the Petitioners for a VIP is not warranted. Additionally, the licensee is already taking action to provide an adequate level of independent verification for restart activities. Therefore, the Petitioners' request that the NRC issue an Order to the licensee requiring the establishment of a VIP is denied. If further assessment by the IMC 0350 Oversight Panel identifies new and/or different issues that would warrant consideration of an enforcement-related action similar to that used at Millstone, a change to the current staff regulatory approach would be considered.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 15th day of October, 2002.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 02–26707 Filed 10–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7001]

Paducah Gaseous Diffusion Plant, United States Enrichment Corp.; Notice of Approval of Request for Temporary Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of approval of request for temporary exemption.

SUMMARY: The Nuclear Regulatory Commission (Commission) is approving, upon publication of this notice, a request for a temporary exemption from the requirement to perform an emergency preparedness (EP) exercise every 2 years for the Paducah Gaseous Diffusion Plant operated by the United States Enrichment Corporation (USEC). The temporary exemption is needed because USEC needs to concentrate available resources on prompt implementation of requirements in the Commission's Security Order issued June 17, 2002, and postponement of the EP exercise until after implementation of the Security Order requirements will provide a better indication of preparedness under the new requirements. USEC requested authorization to conduct the EP exercise on September 10, 2003, a delay of approximately 10 months from the currently scheduled exercise date of November 13, 2002. However, the Commission is requiring USEC to conduct the exercise no earlier than July 15, 2003, and no later than August 15, 2003. USEC will then return to the normal biennial schedule with the next exercise being conducted in September 2004. The NRC has prepared an environmental assessment with a Finding Of No Significant Impact (FONSI) on the request.

FOR FURTHER INFORMATION CONTACT: Dan E. Martin, Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–7254, e-mail dem1@nrc.gov.

SUPPLEMENTARY INFORMATION: The Commission is approving a temporary exemption from the requirement to perform an emergency preparedness exercise every 2 years, pursuant to 10 CFR part 76, for the Paducah Gaseous Diffusion Plant (PGDP), operated by USEC. The facility is authorized to use Special Nuclear Material (SNM) in the enrichment of natural uranium to prepare low-enriched uranium to be used by others in the fabrication of nuclear fuel pellets and fuel assemblies and operates near Paducah, Kentucky.

The PGDP facility was scheduled to conduct an EP exercise on November 13, 2002. USEC has requested an exemption to allow postponement of the exercise until September 10, 2003, a delay of about 10 months. The delay is requested in order to allow USEC to concentrate available resources on implementation of requirements in the Security Order issued by the Commission on June 17, 2002. The Security Order compels a variety of actions to increase security in light of the terrorist attacks on the United States that occurred on September 11, 2001, and is not subject to public disclosure. USEC also wishes to postpone the exercise until after the Security Order requirements are implemented because the exercise will then provide a better indication of preparedness under the new requirements. The Commission is requiring USEC to conduct the exercise no earlier than July 15, 2003, and no later than August 15, 2003.

The last biennial EP exercise conducted at the PGDP facility was conducted on September 21, 2000. USEC's Emergency Plan, in accordance with 10 CFR 76.91(l), requires that plant personnel plan and conduct biennial EP exercises. Because USEC needs to schedule the next exercise beyond the end of calendar year 2002, USEC has requested a temporary exemption from the requirement to conduct biennial EP exercises. USEC requested authorization to conduct the EP exercise on September 10, 2003. However, the Commission is requiring USEC to conduct the exercise no earlier than July 15, 2003, and no later than August 15, 2003. The Commission is also requiring USEC to offer and conduct training for off-site responders, before the exercise is conducted, to familiarize them with the new security requirements. USEC will then return to the normal biennial schedule with the next exercise being conducted in September 2004. The NRC staff has prepared an environmental assessment of the proposed action and reached a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant temporary schedular relief from the requirement of 10 CFR 76.91(l) to perform a biennial EP exercise during calendar year 2002. The proposed action would require USEC to conduct the PGDP 2002 biennial exercise no earlier than July 15, 2003, and no later than August 15, 2003, and would require USEC to offer and conduct training for off-site responders to familiarize them with the new security requirements before the exercise is conducted. The proposed action is otherwise in accordance with USEC's request dated August 28, 2002.

Need for the Proposed Action

The proposed action is necessary to support a request by USEC that the EP exercise scheduled for November 13, 2002, be postponed beyond calendar year 2002, to the summer of 2003. The delay is needed to allow USEC to concentrate available resources on implementation of requirements in the Security Order issued by the Commission on June 17, 2002, until completion. The Security Order compels a variety of actions to increase security in light of the terrorist attacks on the United States that occurred on September 11, 2001, and is not subject to public disclosure. Among the actions that USEC is required to take are substantial plant modifications, training programs, and development and implementation of new procedures. USEC also wishes to postpone the exercise until after the Security Order requirements are implemented because the exercise will then provide a better indication of preparedness under the new requirements.

Environmental Impacts of the Proposed Action

The proposed action would not materially affect the emergency response capabilities of the PGDP facility. The last EP exercise was conducted on September 21, 2000, and there were no issues identified which required immediate corrective action. One weakness identified concerned the failure of staff critiques to identify all areas of exercise weaknesses. This weakness has been addressed by USEC by communicating this finding to exercise participants and monitoring subsequent critiques for adequacy. NRC reviews and inspections since the 2000 exercise have not identified a decline in the effectiveness of USEC's emergency response capability. The postponement should have no impact on the effectiveness of USEC's emergency response capability. To assure Commission staff receive practice needed to assure Commission readiness to cope with an emergency at the GDPs or other fuel cycle facilities, the Commission is requiring USEC to conduct the exercise no earlier than July 15, 2003, and no later than August 15, 2003. To assure that off-site responders are prepared, the Commission is requiring USEC to offer and conduct training for off-site responders to familiarize them with the new security requirements before the exercise is conducted.

Because temperatures in July and August can be very high, and the temperatures in the cascade buildings and in other plant facilities can be extraordinarily high in those months, there is risk of significant heat stress to exercise participants required to wear substantial protective gear for anti-contamination, fire protection, or security purposes. To avoid significant risk of heat stress during the exercise, the Commission will allow USEC to not require that response personnel involved in the exercise wear the full complement of protective gear where heat stress would be a likely result.

The proposed action will not increase the probability or consequences of plant accidents, no changes are being made in the amounts or types of any effluents that could be released off-site, and there is no increase in individual or cumulative radiation exposure. Accordingly, the Commission concludes that there are no significant radiological impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the proposed action would result in no change in environmental impacts and would result in hardship to USEC and others by potentially delaying the implementation of the requirements in the Commission's Security Order issued June 17, 2002. The environmental impacts of the proposed action and the alternative action are otherwise similar.

Alternative Use of Resources

The proposed action does not involve the use of any resources beyond those already necessary to conduct the EP exercise during 2002, and would merely delay the exercise.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with: (1) State of Illinois official Thomas Ortciger, Director, Illinois Department of Nuclear Safety; (2) State of Kentucky official Janice H. Jasper, Radiation Health and Toxic Agents Branch, Cabinet for Health Services; and (3) U.S. Department of Energy official Randall M. DeVault, Group Leader, Transition and Technology Group, Office of Nuclear Fuel Security and Uranium Technology, regarding the environmental impact of the proposed action. No objections were received.

Consultations with the U.S. Fish and Wildlife Service and the State Historic Preservation Officer were not performed because of the lack of any conceivable impact to fish and wildlife or historic assets.

Finding of No Significant Impact

Based on the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

List of Preparers

This document was prepared by Dan E. Martin, Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards. Mr. Martin is the Project Manager for the Paducah Gaseous Diffusion Plant.

For further details with respect to the proposed action, see the USEC letter request dated August 28, 2002, available for public inspection at the Commission's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.*

Dated at Rockville, Maryland this 10th day of October, 2002.

For the Nuclear Regulatory Commission

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–26553 Filed 10–18–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46651; File No. SR–BSE–2002–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange Relating to an Extension of a Temporary Exemption Concerning an Interpretation of its Execution Guarantee Rule

October 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2002, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend a temporary exemption related to an interpretation of its Execution Guarantee Rule in response to Commission action regarding *de minimis* trades through of certain Exchange Traded Funds ("ETFs") in the Intermarket Trading System ("ITS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to add Paragraph .07 to the Interpretations and Policies section of Chapter II, *Dealings on the Exchange*, Section 33, *Execution Guarantee*, of the BSE Rules. This rule proposal is in response to a Commission order issued August 28, 2002, granting a *de minimis* exemption for transactions in certain Exchange Traded Funds from the Trade-Through Provisions of the ITS Plan ("Order").[3] As of the implementation date of the Order, September 4, 2002, certain executions that take place according to the Rules of the Exchange may be deemed violative of the provisions thereof.

On September 4, 2002, the Exchange submitted a proposed rule change on a pilot basis, which was effective upon filing, that would allow the Exchange to not enforce a specific provision of its rules relating to trade-through protection for certain securities.[4] The pilot expired on October 4, 2002. The Exchange is seeking to extend the pilot for an additional thirty days, until November 3, 2002.

In Chapter II, *Dealings on the Exchange*, Section 33, *Execution Guarantee*, of the BSE Rules, paragraph (c)(2) states that "All agency limit orders will be filled if one of the following conditions occur * * * (2) there has been price penetration of the limit in the primary market. * * *" Moreover, in various sections of Chapter XV, *Dealer Specialists*, there are similar provisions.[5] These provisions, in particular those set forth in Chapter II, guarantee that a limit order in a BSE specialist's book will be filled if the primary market trades through the limit price. The BSE specialist provides this protection to its customer limit orders in part due to the fact that the specialist can seek relief through ITS in the event of a trade-through.

As a result of the Commission's Order, certain primary market trades-through in ETFs will constitute exempt trades-through, but will still, under BSE Rules, trigger an obligation on the part of a BSE specialist to provide trade-through protection. However, the specialist will no longer be able to seek recourse to seek satisfaction through ITS from the primary market. Accordingly, the BSE specialist will be competitively disadvantaged if this section of its rules is strictly enforced, while the *de minimis* exemption exists for other ITS participants. Therefore, the BSE is seeking to implement an Interpretation of Chapter II, Section 33(c)(2) of its rules permitting the Exchange to not enforce the provision following a *de minimis* trade through of certain ETFs outlined in the Order.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act[6] and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, that it is designed to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and therefore, has become effective pursuant to section 19(b)(3)(A)(i) of the Act[8] and subparagraph (f)(1) of Rule 19b–4 thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–BSE–2002–18 and should be submitted by November 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26684 Filed 10–18–02; 8:45 am]

BILLING CODE 8010–01–P

[1] *See* Securities Exchange Act Release No. 46428, 67 FR 56607 (September 4, 2002) (the "Order"). Participants of the ITS Plan are exempt from Section 8(d) of the Plan, for the period of September 4, 2002 until June 4, 2003, with respect to transactions in Nasdaq-100 Index ("QQQs"), the Dow Jones Industrial Average Index ("DIAMONDs"), and the Standard & Poor's 500 Index ("SPDRs"), that are executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS.

[4] *See* Securities Exchange Act Release No. 46482 (September 10, 2002), 67 FR 58662 (September 17, 2002).

[5] *See, e.g.*, the Commentary to Section 1, *Specialists*, which sets forth a specialist's obligations in relation to buying and selling on a principal basis while holding unexecuted orders in his book; Section 2, *Responsibilities*, which sets forth, in part, a specialist's primary duties as agent; Section 4, *Precedence to Orders in the Book*, which sets forth the precedence parameters a specialist must adhere to; and Section 18, *Procedures for Competing Specialists*, which sets forth, in various paragraphs, obligations which may conflict with the *de minimis* exemption in the Order.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(f)(1).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46644; File No. SR–CBOE–2002–60]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Extending for a Two-Month Period the Pilot Program for the Exchange's 100 Spoke RAES Wheel

October 10, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by CBOE as a "non-controversial" rule change under Rule 19b–4(f)(6) of the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to extend, for an additional two-month period, the pilot program that permits the appropriate Floor Procedure Committee ("FPC") to allocate orders on the Exchange's Retail Automatic Execution System ("RAES") under the allocation system known as the 100 Spoke RAES Wheel.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 25, 2000, the Commission approved on a nine-month pilot basis the Exchange's proposal to amend Rule 6.8, which governs the operation of RAES,[4] to provide the appropriate FPC with a third choice for apportioning RAES trades among participating market makers, the 100 Spoke RAES Wheel.[5] In those classes where the 100 Spoke RAES Wheel is employed, the distribution of RAES trades to participating market-makers is essentially identical to the distribution of in-person agency market-maker trades for non-RAES trades in that class. The 100 Spoke RAES Wheel pilot program is used as anticipated.

The pilot program was extended four times and currently ends on September 28, 2002.[6] The Exchange now proposes to extend the pilot program for an additional two-month period ending November 28, 2002 pending permanent approval of the pilot program.

2. Statutory Basis

The Exchange believes that the proposed rule change will continue to be consistent with the requirements of Section 6(b)(5) of the Act.[7] Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

CBOE believes that the pilot program will continue to provide the appropriate FPC with flexibility in determining the appropriate allocation system for a given class of options on RAES. CBOE believes that the continuation of the pilot program will continue to reward those market makers who are most active in providing liquidity to agency business in the assigned option class.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] RAES is the Exchange's automatic execution system for public customer market or marketable limit orders of less than a certain size.

[5] Securities Exchange Act Release No. 42824 (May 25, 2000), 65 FR 37442 (June 14, 2000) (SR–CBOE–99–40).

[6] Securities Exchange Act Release No. 44020 (February 28, 2001), 66 FR 13985 (March 8, 2001) (six-month extension, SR–CBOE–2001–07); Securities Exchange Act Release No. 44749 (August 28, 2001), 66 FR 46487 (September 5, 2001) (four-month extension, SR–CBOE–2001–47); Securities Exchange Act Release No. 45230 (January 3, 2002), 67 FR 1380 (January 10, 2002) (six-month extension, SR–CBOE–2001–68); and Securities Exchange Act Release No. 46149 (June 28, 2002), 67 FR 45161 (July 8, 2002) (three-month extension, SR–CBOE–2002–34).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6)[11] thereunder.

The Exchange has requested that the Commission waive the five-day pre-notice requirement and the 30-day operative delay, to permit the Exchange to implement the proposal on September 30, 2002, the date of filing. September 30, 2002 is the first trading day after expiration of the pilot program on Saturday, September 28, 2002. Under Rule 19b–4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow for the continued operation of the pilot without interruption.[12] According to CBOE, with the continuation of the pilot program, market makers will continue to have greater incentive to compete effectively for orders in the crowd, which benefits investors and promotes the public interest. In addition, CBOE maintains that given the widespread use of the 100 Spoke RAES Wheel in equity options trading stations, requiring the Exchange to discontinue the use of the 100 Spoke RAES Wheel as of September 30, 2002 would cause disruption to those trading stations and thus, be disruptive to investors and the public interest. For these reasons, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission. The Commission also waives the five-business-day pre-filing requirement. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to the File No. SR–CBOE–2002–60 and should be submitted by November 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46637; File No. SR–CME–2002–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Mercantile Exchange, Inc. Relating to Customer Margin Requirements for Security Futures

October 10, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2002, Chicago Mercantile Exchange, Inc. ("CME" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CME. On October 7, 2002, the CME submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CME proposes to amend its Rules as they pertain to customer performance bonds (or "margins") for Security Futures as detailed below. Below is the text of the proposed rule change. Proposed new language is italicized; deletions are bracketed.

* * * * *

833. Customer Performance Bonds for Security Futures Held in Futures Accounts

Performance bond (or "margin") requirements associated with Security Futures, as defined by Section 1a(31) of the Commodity Exchange Act (CEA), on behalf of Customers, as defined in Rule 930.B.2.b., whether effected on the Exchange or on a Marketplace apart from Exchange but cleared by the Clearing House per Chapter 8B, and held in a futures account (with any exceptions noted in the Rules), shall be determined and administered per the Rules of the Exchange; and, in compliance with CFTC Regulation Sections 41.42 through 41.49; and, SEC Regulation 242.400 through 242.406, including any successor Regulations. If Exchange Rules should be found to be inconsistent with CFTC Regulation Sections 41.42 through 41.49; and, SEC Regulation 242.400 through 242.406, including any successor Regulations, the CFTC and SEC Regulations shall prevail.

930. Performance Bond Requirements: Account Holder Level

930.A. Performance Bond System

The Standard Portfolio Analysis of Risk (SPAN®) Performance Bond System is the performance bond system adopted by the Exchange. SPAN generated performance bond requirements shall constitute Exchange performance bond requirements. All references to performance bond within the rules of the Exchange shall relate to those computed by the SPAN system.

Performance bond systems other than the SPAN system may be used to meet Exchange performance bond requirements if the clearing member can demonstrate that its system will always produce a performance bond requirement equal to or greater than the SPAN performance bond requirements.

[3] *See* letter from Phupinder S. Gill, Managing Director and President, Clearing House Division, CME, to Office of Market Supervision, Division of Market Regulation, Commission, dated October 4, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange replaced in its entirety the Form 19b–4 filed on September 27, 2002.

930.B. Performance Bond Rates

1. Non-Security Futures

Exchange staff shall determine initial and maintenance performance bond rates used in determining Exchange performance bond requirements. The Board reserves the right to change or modify any performance bond levels determined by Exchange staff.

2. Security Futures

a. Initial and maintenance performance bond (or "margin") rates used in determining Exchange performance bond requirements applied to Security Futures on behalf of Customers, whether effected on the Exchange or on a Marketplace apart from Exchange but cleared by the Clearing House per Chapter 8B, and held in a futures account, shall be established at levels no lower than those prescribed by CFTC Regulation Section 41.45; and, SEC Regulation 242.403, including any successor Regulations.

b. As used in this Rule, the term "Customer" does not include (a) an "exempted person" as defined in CFTC Regulation 41.43(a)(9) and SEC Regulation 242.401(a)(9); or (b) Market Makers as defined below.

A Person shall be a "Market Maker" for purposes of this Rule, and shall be excluded from the requirements set forth in CFTC Regulations 41.42 through 41.49; and, SEC Regulations 242.400 through 242.406 in accordance with CFTC Regulation 41.42(c)(2)(v) and SEC Regulation 242.400(c)(2)(v), with respect to all trading in Security Futures for its own account, if such Person is an Exchange Member that is registered with the Exchange as a "Security Futures Dealer."

Each Market Maker shall (a) be registered as a floor trader or a floor broker with the CFTC under Section 4f(a)(1) of the CEA or as a dealer with the SEC under Section 15(b) of the Exchange Act; (b) maintain records sufficient to prove compliance with the requirements set forth in this Rule and CFTC Regulation 41.42(c)(2)(v) and SEC Regulation 242.400(c)(2)(v), including without limitation, trading account statements and other financial records sufficient to detail activity and verify conformance with the standards set forth herein; and (c) hold itself out as being willing to buy and sell Security Futures for its own account on a regular or continuous basis.

Market Makers satisfy condition (c) above if (a) at least 75% of their gross revenues, on an annual basis, is derived from business activities or occupations from trading listed financial derivatives, and the instruments underlying those derivatives, including security futures; stock index futures and options; stock and index options; stocks; foreign currency futures and options; foreign currencies; interest rate futures and options; fixed income instruments; and, commodity futures and options; or (b) except for unusual circumstances, at least 50% of their security futures trading activity on the Exchange in any calendar quarter, measured in terms of contract volume, is in security futures contracts to which the Market Maker is assigned as a Security Futures Dealer by the Exchange.

Any Market Maker that fails to comply with the applicable Rules of the Exchange, CFTC Regulations 41.41 through 41.49 and SEC Regulations 242.400 through 242.406 shall be subject to disciplinary action in accordance with Chapter 4. Appropriate sanctions in the case of any such failure shall include, without limitation, a revocation of such Market Maker's registration as a Security Futures Dealer.

This Rule 930.B.2.b shall apply regardless whether the position(s) in Exchange security futures are held in a futures account, or held in a securities account.

c. The Exchange shall establish initial and maintenance performance bond requirements applicable to Security Futures and held in a futures account, provided that the performance bond requirement for any long or short position held by a clearing member on behalf of a Customer shall not be less than 20% of the current market value of the relevant Contract; or, such other requirement as may be established by the CFTC and SEC for purposes of CFTC Regulation 41.45(b)(1) and SEC Regulation 242.403(b)(1) except as provided below.

d. Initial and maintenance performance bond requirements for offsetting positions involving Security Futures and related positions are provided in the schedule below, for purposes of CFTC Regulation 41.45(b)(2) and SEC Regulation 242.403(b)(2).

Performance Bond (or "Margin") Requirements for Offsetting Positions

Description of offset	*Security underlying the security future*	*Initial margin requirement*	*Maintenance margin requirement*
1. Long security future (or basket of security futures representing each component of a narrow-based securities index[1]) and long put option[2] on the same underlying security (or index).	*Individual stock or narrow-based security index.*	*20% of the current market value of the long security future, plus pay for the long put in full.*	*The lower of: (1) 10% of the aggregate exercise price[3] of the put plus the aggregate put out-of-the-money[4] amount, if any; or (2) 20% of the current market value of the long security future.*
2. Short security future (or basket of security futures representing each component of a narrow-based securities index) and short put option on the same underlying security (or index).	*Individual stock or narrow-based security index.*	*20% of the current market value of the short security future, plus the aggregate put in-the-money amount, if any. Proceeds from the put sale may be applied.*	*20% of the current market value of the short security future, plus the aggregate put in-the-money amount, if any.[5]*
3. Long security future and short position in the same security (or securities basket) underlying the security future.	*Individual stock or narrow-based security index.*	*The initial margin required under Regulation T for the short stock or stocks.*	*5% of the current market value as defined in Regulation T of the stock or stocks underlying the security future.*

Performance Bond (or "Margin") Requirements for Offsetting Positions—Continued

Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
4. Long security future (or basket of security futures representing each component of a narrow-based securities index) and short call option on the same underlying security (or index).	*Individual stock or narrow-based security index.*	*20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any. Proceeds from the call sale may be applied.*	*20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any.*
5. Long a basket of narrow-based security futures that together tracks a broad-based index and short a broad-based security index call option contract on the same index.	*Narrow-based security index*	*20% of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any. Proceeds from the call sale may be applied.*	*20% of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any.*
6. Short a basket of narrow-based security futures that together tracks a broad-based security index and short a broad-based security index put option contract on the same index.	*Narrow-based security index*	*20% of the current market value of the short basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any. Proceeds from the put sale may be applied.*	*20% of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any.*
7. Long a basket of narrow-based security futures that together tracks a broad-based security index and long a broad-based security index put option contract on the same index.	*Narrow-based security index*	*20% of the current market value of the long basket of narrow-based security futures, plus pay for the long put in full.*	*The lower of: (1) 10% of the aggregate exercise price of the put, plus the aggregate put out-of-the-money amount, if any; or (2) 20% of the current market value of the long basket of security futures.*
8. Short a basket of narrow-based security futures that together tracks a broad-based security index and long a broad-based security index call option contract on the same index.	*Narrow-based security index*	*20% of the current market value of the short basket of narrow-based security futures, plus pay for the long call in full.*	*The lower of: (1) 10% of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20% of the current market value of the short basket of security futures.*
9. Long security future and short security future on the same underlying security (or index).	*Individual stock or narrow-based security index.*	*The greater of: 5% of the current market value of the long security future; or (2) 5% of the current market value of the short security future.*	*The greater of: 5% of the current market value of the long security future; or (2) 5% of the current market value of the short security future.*
10. Long security future, long put option and short call option. The long security future, long put and short call must be on the same underlying security and the put and call must have the same exercise price. (Conversion).	*Individual stock or narrow-based security index.*	*20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from the call sale may be applied.*	*10% of the aggregate exercise price, plus the aggregate call in-the-money amount, if any.*
11. Long security future, long put option and short call option. The long security future, long put and short call must be on the same underlying security and the put exercise price must be below the call exercise price (Collar).	*Individual stock or narrow-based security index.*	*20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from call sale may be applied.*	*The lower of: (1) 10% of the aggregate exercise price of the put plus the aggregate put out-of-the money amount, if any; or (2) 20% of the aggregate exercise price of the call, plus the aggregate call in-the-money amount, if any.*
12. Short security future and long position in the same security (or securities basket) underlying the security future.	*Individual stock or narrow-based security index.*	*The initial margin required under Regulation T for the long stock or stocks.*	*5% of the current market value, as defined in Regulation T, of the long stock or stocks.*
13. Short security future and long position in a security immediately convertible into the same security underlying the security future, without restriction, including the payment of money.	*Individual stock or narrow-based security index.*	*The initial margin required under Regulation T for the long security.*	*10% of the current market value, as defined in Regulation T, of the long security.*
14. Short security future (or basket of security futures representing each component of a narrow-based securities index) and long call option or warrant on the same underlying security (or index).	*Individual stock or narrow-based security.*	*20% of the current market value of the short security future, plus pay for the call in full.*	*The lower of: (1) 10% of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20% of the current market value of the short security future.*

Performance Bond (or "Margin") Requirements for Offsetting Positions—Continued

Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
15. Short security future, Short put option and long call option. The short security future, short put and long call must be on the same underlying security and the put and call must have the same exercise price. (Reverse Conversion).	*Individual stock or narrow-based security index.*	*20% of the current market value of the short security future, plus the aggregate put in-the-money amount, if any, plus pay for the call in full. Proceeds from put sale may be applied.*	*10% of the aggregate exercise price, plus the aggregate put in-the-money amount, if any.*
16. Long (short) a basket of security futures, each based on a narrow-based security index that together tracks the broad-based index and short (long) a broad-based index future.	*Narrow-based security index*	*5% of the current market value for the long (short) basket of security futures.*	*5% of the current market value of the long (short) basket of security futures.*
17. Long (short) a basket of security futures that together tracks a narrow-based index and short (long) a narrow-based index future.	*Individual stock or narrow-based security index.*	*The greater of: (1) 5% of the current market value of the long security future(s); or (2) 5% of the current market value of the short security future(s).*	*The greater of: (1) 5% of the current market value of the long security future(s); or (2) 5% of the current market value of the short security future(s).*
18. Long (short) a security future and short (long) an identical security future traded on a different market.[6]	*Individual stock or narrow-based security index.*	*The greater of: (1) 3% of the current market value of the long security future(s); or (2) 3% of the current market value of the short security future(s).*	*The greater of: (1) 3% of the current market value of the long security future(s); or (2) 3% of the current market value of the short security future(s).*

[1] *Baskets of securities or security futures contracts must replicate the securities that comprise the index, and in the same proportion.*

[2] *Generally, for the purposes of these rules, unless otherwise specified, stock index warrants shall be treated as if they were index options.*

[3] *"Aggregate exercise price," with respect to an option or warrant based on an underlying security, means the exercise price of an option or warrant contract multiplied by the numbers of units of the underlying security covered by the option contract or warrant. "Aggregate exercise price" with respect to an index option, means the exercise price multiplied by the index multiplier.*

[4] *"Out-of-the-money" amounts shall be determined as follows:*

(1) for stock call options and warrants, any excess of the aggregate exercise price of the option or warrant over its current market value (as determined in accordance with Regulation T of the Board of Governors of the Federal Reserve System);

(2) for stock put options or warrants, any excess of the current market value (as determined in accordance with Regulation T of the Board of Governors of the Federal Reserve System) of the option or warrant over its aggregate exercise price;

(3) for stock index call options and warrants, any excess of the aggregate exercise price of the option or warrant over the product of the current index value and the applicable index multiplier; and

(4) for stock index put options and warrants, any excess of the product of the current index value and the applicable index multiplier over the aggregate exercise price of the option or warrant. See, *e.g.*, NYSE Rule 431 (Exchange Act Release No. 42011 (October 14, 1999), 64 FR 57172 (October 22, 1999) (order approving SR–NYSE–99–03)); Amex Rule 462 (Exchange Act Release No. 43582 (November 17, 2000), 65 FR 71151 (November 29, 2000) (order approving SR–Amex–99–27)); CBOE Rule 12.3 (Exchange Act Release No. 41658 (July 27, 1999), 64 FR 42736 (August 5, 1999) (order approving SR–CBOE–97–67)); or NASD Rule 2520 (Exchange Act Release No. 43581 (November 17, 2000), 65 FR 70854 (November 28, 2000) (order approving SR–NASD–00–15)).

[5] *"In-the-money" amounts must be determined as follows:*

(1) for stock call options and warrants, any excess of the current market value (as determined in accordance with Regulation T of the Board of Governors of the Federal Reserve System) of the option or warrant over its aggregate exercise price;

(2) for stock put options or warrants, any excess of the aggregate exercise price of the option or warrant over its current market value (as determined in accordance with Regulation T of the Board of Governors of the Federal Reserve System);

(3) for stock index call options and warrants, any excess of the product of the current index value and the applicable index multiplier over the aggregate exercise price of the option or warrant; and

(4) for stock index put options and warrants, any excess of the aggregate exercise price of the option or warrant over the product of the current index value and the applicable index multiplier.

[6] *Two security futures will be considered "identical" for this purpose if they are issued by the same clearing agency or cleared and guaranteed by the same derivatives clearing organization, have identical contract specifications, and would offset each other at the clearing level.*

930.C. Acceptable Performance Bond Deposits

1. Non-Security Futures

Clearing members may accept from their account holders as performance bond cash currencies of any denomination, readily marketable securities (as defined by SEC Rule 15c3–1(c)(11) and applicable SEC interpretations), money market mutual funds allowable under CFTC Regulation 1.25, and bank-issued letters of credit.

Clearing members shall not accept as performance bond from an account holder securities that have been issued by the account holder or an affiliate of the account holder unless the clearing member files a petition with and receives permission from Exchange staff.

Bank-issued letters of credit must be in a form acceptable to the Exchange. Such letters of credit must be drawable in the United States. Clearing members shall not accept as performance bond from an account holder letters of credit issued by the account holder, an affiliate of the account holder, the clearing member, or an affiliate of the clearing member.

All assets deposited by account holders to meet performance bond requirements must be and remain unencumbered by third party claims against the depositing account holder.

Except to the extent that Exchange staff shall prescribe otherwise, cash currency performance bond deposits shall be valued at market value. All other performance bond deposits other than letters of credit shall be valued at an amount not to exceed market value less applicable haircuts as set forth in SEC Rule 240.15c3–1.

2. Security Futures

a. Clearing Members may accept from their Customers as performance bond (or "margin") for Security Futures held in a futures account, deposits of cash, margin securities (subject to the limitations set forth in the following sentence), exempted securities, any other assets permitted under Regulation T of the Board of Governors of the Federal Reserve System (as in effect from time to time) to satisfy a performance bond deficiency in a securities margin account, and any combination of the foregoing, each as valued in accordance with CFTC Regulations 41.46(c) and 41.46(e); and, SEC Regulations 242.404(c) and 242.404(e). Shares of a money market mutual fund that meet the requirements of CFTC Regulation 1.25 may be accepted as a performance bond deposit from a Customer for purposes of this Rule.

b. A Clearing Member shall not accept as performance bond from any Customer securities that have been issued by such Customer or an Affiliate of such Customer unless such Clearing Member files a petition with and receives permission from the Exchange for such purpose.

c. All assets deposited by a Customer to meet performance bond requirements must be and remain unencumbered by third party claims against the depositing Customer.

930.D. Acceptance of Orders

Clearing members may accept orders for an account provided sufficient performance bond is on deposit in the account or is forthcoming within a reasonable time. For an account which has been subject to calls for performance bond for an unreasonable time, clearing members may only accept orders that reduce the performance bond requirements of existing positions in the account. Clearing members may not accept orders for an account that has been in debit an unreasonable time.

930.E. Calls for Performance Bond

1. Clearing members must issue calls for performance bond that would bring an account up to the initial performance bond requirement: a. when performance bond equity in an account initially falls below the maintenance performance bond requirement; and b. subsequently, when performance bond equity plus existing performance bond calls in an account is less than the maintenance performance bond requirement.

Such calls must be made within one business day after the occurrence of the event giving rise to the call. Clearing members may call for additional performance bond at their discretion. Notwithstanding the foregoing, a clearing member is not required to call for or collect performance bond for day trades.

2. Clearing members shall only reduce a call for performance bond through the receipt of performance bond deposits permitted under subsection C. of this rule. Clearing members may delete a call for performance bond through: a. the receipt of performance bond deposits permitted under subsection C. of this rule only if such deposits equal or exceed the amount of the total performance bond call; or b. inter-day favorable market movements and/or the liquidation of positions only if performance bond equity in the account is equal to or greater than the initial performance bond requirement. Clearing members shall reduce an account holder's oldest outstanding performance bond call first.

3. Clearing members must maintain written records of all performance bond calls issued, reduced, and deleted.

930.F. Disbursements of Excess Performance Bond

Clearing members may only release performance bond deposits from an account if such deposits are in excess of initial performance bond requirements.

930.G. Loans to Account Holders

Clearing members may not extend loans to account holders for performance bond purposes unless such loans are secured as defined in CFTC Regulation 1.17(c)(3). The proceeds of such loans must be treated in accordance with CFTC Regulation 1.30.

930.H. Aggregation of Accounts and Positions

Clearing members may aggregate accounts under identical ownership within the same classifications of customer segregated, customer secured, special reserve account for the exclusive benefit of customers, and nonsegregated for performance bond purposes. Clearing members may compute performance bond requirements on identically owned concurrent long and short positions on a net basis.

930.I. Hedge Positions

Clearing members shall have reasonable support for bona-fide hedge and risk management positions, as defined by Rule 543, that are afforded hedge performance bond rates.

930.J. Omnibus Accounts

1. Clearing members shall collect performance bond on a gross basis for positions held in domestic and foreign omnibus accounts.

2. For omnibus accounts, initial performance bond requirements shall equal maintenance performance bond requirements.

3. Clearing members shall obtain and maintain written instructions from domestic and foreign omnibus accounts for positions which are entitled to spread or hedge performance bond rates.

930.K. Liquidation of Accounts

1. Non-Security Futures

If an account holder fails to comply with a performance bond call within a reasonable time (the clearing member may deem one hour to be a reasonable time), the clearing member may close out the account holder's trades or sufficient contracts thereof to restore the account holder's account to required performance bond status. Clearing members shall maintain full discretion to determine when and under what circumstances positions in any account shall be liquidated. .

2. Security Futures

If a Customer fails to comply with a performance bond (or "margin") call within a reasonable period of time (the clearing member may deem one hour to be a reasonable period of time), the relevant clearing member shall take the deduction required with respect to an undermargined account in computing its net capital under applicable CFTC Regulations and SEC Regulations.

If at any time there is a liquidating deficit in an account in which security futures are held, the clearing member shall take steps to liquidate positions in the account promptly and in an orderly manner.

930.L. Failure To Maintain Performance Bond Requirements

If a clearing member fails to maintain performance bond requirements for an account in accordance with this rule, the Exchange may direct such clearing member to immediately liquidate all or part of the account's positions to eliminate the deficiency.

930.M. Violation

Violation of this rule may constitute a major offense.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule amendments are intended to establish procedures relating to the determination and administration of customer performance bonds (or "margins"). Further, these amendments define the applicability of these requirements, specifically excluding qualifying security futures dealers from customer security futures performance bond requirements and related regulatory requirements. Proposed Rule 833 generally establishes that the determination and administration of customer performance bonds shall be consistent with prevailing practices on the Exchange, except to the extent that Exchange practices may be inconsistent with Commodity Futures Trading Commission ("CFTC") Regulations 41.42 through 41.49 and SEC Regulations 242.400 through 242.406.

General Applicability—Proposed Rule 833 delineates the scope of application of the proposed rule amendments in two important respects: (1) It provides that the proposed rule amendments apply only with respect to security futures transactions executed on CME; or, to those executed on a marketplace apart from CME but cleared through CME facilities. To the extent that security futures intermediaries engage in security futures transactions on or through other exchanges as well, they will need to comply with the respective performance bond requirements established by such other venues; (2) proposed Rule 833 establishes that the proposed rule amendments apply only to customers as defined in proposed Rule 930.B.2.b.; and (3) the proposed rule amendments are applicable only to security futures held in futures accounts. While security futures may be held in a securities account as well, the administration of securities accounts shall be governed, in addition to all applicable Regulations, by Rules adopted by other relevant self-regulatory organizations.

Proposed Rule 930.B.2.b. identifies "exempted persons" and "market makers" as non-customers for purposes of the proposed rule amendments and, therefore, exempt from the application of such provisions. Exempted persons are specifically identified by reference to applicable CFTC and SEC Regulations.

Market Maker Exclusion—CFTC Regulation 41.42(c)(2)(v) and SEC Regulation 242.400(c)(2)(v) permit exchanges to adopt rules containing specified requirements for security futures dealers, on the basis of which the financial relations between security futures intermediaries, on the one hand, and qualifying security futures dealers, are excluded from the customer performance bond requirements for security futures. Any rules so adopted by an exchange must meet the criteria set forth in Section 7(c)(2)(B) of the Act.[4]

CME proposes a market maker exclusion in its proposed Rule 930.B.2.b. that relies on CFTC Regulation 41.42(c)(2)(v) and SEC Regulation 242.400(c)(2)(v). In particular, Exchange members who meet certain qualifications will be permitted to register with the Exchange as security futures dealers. As such, their accounts would not be subject to customer security futures performance bond (or "margin") requirements.

These members will be floor traders or floor brokers registered with the CFTC under Section 4f(a)(1) of the Commodity Exchange Act, as amended, or dealers registered with the SEC under Section 15(b) of the Act.[5] As such, they may not qualify as exempted persons within the meaning of Regulation 242.401(a)(9) under the Act. Absent the provisions of proposed Rule 930.B.2.b., they arguably would have to be treated as customers for purposes of determining performance bond requirements, even with respect to their proprietary market making activities. This would be different from the treatment of security futures dealers on securities exchanges under Section 7(c)(3) of the Act,[6] and therefore would be contrary to the statutory objectives reflected in Section 7(c)(2)(B) of the Act.[7]

The market maker exclusion as proposed contains all of the criteria and limitations set forth in CFTC Regulation 41.42(c)(2)(v) and SEC Regulation 242.400(c)(2)(v). In particular, the Exchange intends to test a security futures dealer's willingness to hold itself out to buy and sell on a regular or continuous basis by application of a revenue test. Note that the Commissions' release regarding security futures customer margins identified three alternate means by which to demonstrate such willingness:

1. An exchange may require members to effect a certain percentage of its security futures trades with persons other than those registered as market makers;

2. Exchange members could be subject to rules that impose an affirmative obligation to quote on a regular or continuous basis;

3. An exchange may require that a "large majority" of an exchange member's revenue is derived from trading listed financial based derivatives including futures and options on stocks, stock indexes, foreign currencies, interest rate instruments.

CME proposes the application of the 3rd standard listed above. Specifically, CME proposes that market makers must derive at least 75% of their gross revenues, on an annual basis, from business activities or occupations from trading listed financial-based derivatives or the instruments underlying those derivatives, including security futures; stock index futures; stock and index options; stocks; foreign currency futures and options; foreign currencies; interest rate futures and options; fixed income instruments; and, commodity futures and options. We believe that it is appropriate to extend the enumeration of derivatives to include the underlying instruments as closely related to the business activities or occupations specifically referenced in the Commissions' release.

Alternatively, a market maker may satisfy this standard if, except for unusual circumstances, at least 50% of its security futures trading activity in any calendar quarter is in security futures to which it is assigned by the Exchange to act as a "Security Futures Dealer."

Market makers are required to maintain books and records including trading statements and other financial records that would evidence compliance with these standards. This recordkeeping requirement includes, without limitation, such trading statements and other financial records as may be necessary specifically to verify compliance. Failure on the part of a market maker to comply with these standards may result in revocation of security futures dealer status or other sanctions provided under CME Rules.

The parameters of this market maker exclusion shall apply to position(s) in Exchange security futures contracts regardless of whether such position(s)

[4] 15 U.S.C. 78g(c)(2)(B).
[5] 15 U.S.C. 78o(b).
[6] 15 U.S.C. 78g(c)(3).
[7] 15 U.S.C. 78g(c)(2)(B).

are held in a futures account, or held in a securities account.

CME believes proposed Rule 930.B.2.b. to be consistent with the requirements of the Act and with the explanations accompanying the publication of those requirements.

Performance Bond Rates—Proposed Rule 930.B.2.a. addresses the issue of customer performance bond rates by requiring that such rates shall be established at levels no lower than those prescribed by CFTC Regulation 41.45 and SEC Regulation 242.403. Proposed Rule 930.B.2.c. elaborates by establishing the requisite performance bond level for each long or short position in a security future at 20% of the current market value of such security future, as required by SEC Regulation 242.403(b) and CFTC Regulation 41.45(b).

Exceptions to that 20% requirement are established per proposed Rule 930.B.2.d. These exceptions rely upon SEC Regulation 242.403(b)(2) and CFTC Regulation 41.45(b)(2), which establish that a self-regulatory authority may set the required initial or maintenance performance bond level for offsetting positions involving security futures and related positions at a level lower than the level that would apply if performance bond requirements for such positions were calculated separately based on the aforementioned 20% requirement, provided the rules establishing such lower performance bond levels meet the criteria set forth in Section 7(c)(2)(B) of the Act.[8] That Section requires that:

(I) The margin requirements for a security futures product be consistent with the margin requirements for comparable option contracts traded on any exchange registered pursuant to Section 6(a) of [the Act]; [9] and

(II) Initial and maintenance margin levels for a security futures product not be lower than the lowest level of margin, exclusive of premium, required for any comparable option contract traded on any exchange registered pursuant to Section 6(a) of [the Act],[10] other than an option on a security future.

Absent the performance bond relief afforded by the proposed Rule 930.B.2.d., security futures intermediaries would be required to collect performance bond from their customers equal to 20% of the current market value of the security futures held on behalf of such customers, irrespective of whether such security futures positions are hedged or unhedged. With respect to option contracts traded on securities exchanges, the Commission has recognized that it is "appropriate for the SROs to recognize the hedged nature of certain combined options strategies and prescribe margin requirements that better reflect the risk of those strategies."[11]

CME believes that the same considerations apply in connection with the determination of performance bond levels for offsetting positions involving security futures and related positions. If performance bond offsets were not available with respect to security futures, the customer performance bond requirements applicable to such instruments would effectively be inconsistent with, and more onerous than, the performance bond requirements for comparable option contracts traded on securities exchanges. This would be contrary to the statutory objectives reflected in Section 7(c)(2)(B) of the Act.[12]

Proposed Rule 930.B.2.d. is accompanied by a schedule which describes in detail the performance bond offsets available with respect to particular combinations of security futures and related positions. Such schedule is substantively identical to the table of offsets included in the Commission's release on Customer Margin Rules Relating to Security Futures (the "Customer Margin Release").[14] While the table differs in certain respects from similar tables in effect for exchange-traded options, the Commission acknowledged in its Customer Margin Release that these limited differences are warranted by different characteristics of the instruments to which they relate. Accordingly, CME believes that the Proposed Margin Offset Rule is consistent with the requirements of the Act and the rules and regulations thereunder.

Performance Bond Administration—Proposed Rule 930.C.2.a identifies the types of performance bonds that a security futures intermediary may accept from a Customer. Consistent with SEC Regulation 242.404(b) and CFTC Regulation 41.46(b), acceptable types of performance bond are limited to: deposits of cash, margin securities (subject to specified restrictions), exempted securities, any other assets permitted under Regulation T of the Board of Governors of the Federal Reserve System to satisfy a performance bond deficiency in a securities margin account, and any combination of the foregoing. Proposed Rule 930.C.2.b. further provides that the different types of eligible performance bond are to be valued in accordance with the applicable principles set forth in SEC Regulations 242.404(c) and 242.404(e) and CFTC Regulations 41.46(c) and 41.46(e).

Proposed Rule 930.K.2 requires a security futures intermediary to take the deduction required with respect to an underfunded account in computing its net capital under applicable CFTC and SEC Regulations if the customer has failed to comply with a required performance bond call within a reasonable period of time. This requirement is consistent with SEC Regulation 242.406(a) and CFTC Regulation 41.48(a). Further, Proposed Rule 930.K.2 requires the liquidation of an account where there is a liquidating deficit, in accordance with SEC Regulation 242.406(b) and CFTC Regulation 41.48(a).

2. Statutory Basis

The Act Regulations and related provisions of the Act are premised on each self-regulatory organization adopting performance bond requirements that are functionally equivalent to the proposed amendments to CME Rule 930. Accordingly, CME Rule 930, as amended per this proposal, represents a corollary of, and is designed to give effect to, the Act Regulations and related provisions of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule amendments will have an impact on competition because, as described above, (1) the Exchange's general approach to the question of customer performance bonds for security futures is based on its long standing practices, consistent with standards adopted by the U.S. futures exchanges' Joint Audit Committee and similar rules in effect for other contract markets, (2) customer performance bond for security futures will be consistent with rules in effect for options traded on exchanges registered pursuant to Section 6(a) of the Act; [14] and (3) CME's proposed Market Maker Exception ensures that qualifying security futures dealers on CME are subject to performance bond requirements that are comparable to those traditionally applicable to security futures dealers on securities exchanges. In addition, it is expected that other self-regulatory organizations listing Security Futures will adopt rules that are substantially similar to the proposed rule amendments.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule amendments have not been solicited by the Exchange nor have any such comments been received to date.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–CME–2002–01 and should be submitted by November 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26721 Filed 10–18–02; 8:45 am]

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[8] 15 U.S.C. 78g(c)(2)(B).

[9] 15 U.S.C. 78f(a).

[10] *Id.*

[11] *See* Securities Exchange Act Release Nos. 41658 (July 27, 1999), 64 FR 42736 (August 5, 1999) [order approving SR–CBOE–97–67 amending CBOE Rule 12.3]; 42011 (October 14, 1999), 64 FR 57172 (October 22, 1999) [order approving SR–NYSE–99–03 amending NYSE Rule 431]; 43582 (November 17, 2000), 65 FR 71151 (November 29, 2000) [order approving SR–Amex-99–27 amending Amex Rule 462]; and 43581 (November 17, 2000), 65 FR 70854 (November 28, 2000) [order approving SR–NASD–00–15 amending NASD Rule 2520].

[12] 15 U.S.C. 78g(c)(2)(B).

[14] 15 U.S.C. 78f(a).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46657; File No. SR–CHX–2002–16]

Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Execution Price for Odd-Lot Orders Executed on the Chicago Stock Exchange

October 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 20, 2002, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CHX.[3] CHX filed Amendment No. 1 to the proposed rule change on September 23, 2002.[4] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons, and order accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XXXI, Rule 9 of the CHX Rules, which governs, among other things, execution prices for odd-lot orders. The text of the proposed rule follows:

Additions are *italicized*; deletions are [bracketed].

Chicago Stock Exchange Rules

Article XXXI

Odd-Lots and Odd-Lot Dealers, Dual System

* * * * *

Execution of Odd-Lot Orders During the Primary Trading Session

Rule 9.

* * * * *

(b) Nasdaq/NM Securities and Dually Traded Issues. As to Nasdaq/NM Securities [and to certain stocks dually traded on this Exchange and on another national securities exchange and which stocks have been designated as being in the dual trading system], market orders will be accepted for execution as an odd-lot based on the best bid disseminated pursuant to SEC Rule 11 Ac1–1 on a sell order or the best offer disseminated pursuant to SEC Rule 11 Ac 1–1 on a buy order in effect at the time the order is presented at the specialist post, provided the order is for a number of shares less than the full lot in said stock. *Any market order to purchase or sell a Dual Trading System issue in an odd-lot amount, which is transmitted for execution to an odd-lot dealer or its agent shall be executed, unless otherwise provided herein, at the price of the adjusted ITS bid (in the case of an order to sell) or adjusted ITS offer (in the case of an order to purchase) in the security at the time the order is received by the Exchange system designated to process odd-lot orders (the "odd-lot system").*

* * * * *

(b) General. [An odd-lot market order shall be executed at the proper full lot bid or ask price.]

* * * * *

(vi) In instances in which quotation information is not available, e.g., the quotation collection or dissemination facilities are inoperable, or the primary market in the security has been determined to be in non-firm mode (as referenced in Interpretation and Policy .01), standard, regular way odd-lot market orders shall be executed based on the next primary market round lot sale or shall be executed by the member organization designated by the Exchange as the odd-lot dealer for the issue, at a price deemed appropriate under prevailing market conditions.

* * * * *

Interpretations and Policies:

.01 Adjusted Best Bid or Offer. For purposes of paragraph (b) of this Rule, the terms "adjusted ITS best bid" and "adjusted ITS best offer" for a security shall mean the highest bid and lowest

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This submission is virtually identical to SR–CHX–2001–29, which was filed with the Commission on November 23, 2001, but was erroneously given a pre-existing file number by the CHX.

[4] *See* letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission (September 20, 2002) ("Amendment No. 1"). In Amendment No. 1, CHX made clarifying and technical changes to the rule text of the proposed rule change.

offer, respectively, disseminated by (i) the Exchange or (ii) a market center participating in the Intermarket Trading System; provided, however, that the bid and offer in another ITS market center will be considered in determining the adjusted ITS best bid or adjusted ITS best offer in a security only if (a) the security is included in ITS in that market center; (b) the size of the quotation is greater than 100 shares; (c) the bid or offer is no more than $.25 away from the bid or offer disseminated by the primary market; (d) the quotation conforms to Exchange requirements regarding minimum trading variations; (e) the quotation does not result in a locked market; (f) the market center is not experiencing operational or system problems with respect to the dissemination of quotation information; and (g) the bid or offer is "firm," that is, members of the market center disseminating the bid or offer are not relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1–1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1–1.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CHX has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Article XXXI, Rule 9 of the CHX Rules, which governs, among other things, execution prices for odd-lot orders. According to the Exchange, the proposed rule change is substantially similar to a proposed rule change approved by the Commission with respect to Rule 124(A) of the New York Stock Exchange ("NYSE"), which governs execution prices for odd-lot orders on the floor of the NYSE.[5]

Under the proposed rule change, odd-lot orders for Dual Trading System issues will be executed at the adjusted Intermarket Trading System ("ITS") Best Bid or Offer ("BBO"). The ITS BBO is defined in proposed Interpretation and Policy .01 for Article XXXI, Rule 9 as the highest bid or lowest offer disseminated by the Exchange or a market center participating in ITS. Under the proposed Interpretation, the bid or offer of another market center would be used in determining the ITS BBO if: (1) The security is included in ITS in that market center, (2) the size of the quotation is greater than 100 shares, (3) the bid or offer is no more than $0.25 away from the bid or offer disseminated by the primary market, (4) the quotation conforms to Exchange requirements regarding minimum trading variations, and (5) the quotation does not result in a locked market. The Exchange believes that these provisions should help ensure that the odd-lot execution price for ITS securities is not established utilizing erroneous quotation information from other market centers. Similarly, proposed Article XXXI, Rule 9(c)(vi) would govern odd-lot executions for ITS securities in instances where quotation information is unavailable due to unusual market conditions. In particular, if unusual market conditions existed (*i.e.*, inoperable quotation collection or dissemination facilities, or the primary market in the security has been determined to be in non-firm mode (as referenced in proposed Interpretation and Policy .01)), standard, regular way odd-lot market orders would be executed based on the next primary market round lot sale or shall be executed by the member organization designated by the Exchange as the odd-lot dealer for the issue, at a price deemed appropriate under prevailing market conditions.

The Exchange believes that the proposed rule change is appropriate because the rule amendments are virtually identical to the analogous NYSE rule. Moreover, the Exchange believes that the proposed rule change is to the ultimate benefit of investors, to the extent that calculation of the adjusted ITS BBO excludes erroneous quotation information.

2. Statutory Basis

The proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[6] In particular, the proposed rule is consistent with Section 6(b)(5) of the Act[7] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–2002–18 and should be submitted by November 12, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).[8] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to remove impediments to and perfect the mechanism of a free and open market, to facilitate transactions in securities and, in general, to protect investors and the public interest.[10]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the instant proposed rule change, as amended, is substantively similar to NYSE Rule 124, which has been reviewed and approved by the Commission.[11] Thus, this proposal does not raise any new regulatory issues or concerns. For instance, like NYSE Rule 124, the proposed rule change would amend Article XXXI, Rule 9 to base odd-lots prices on the adjusted ITS BBO if: (1) The security is included in ITS in the relevant market center, (2) the size of the quotation is greater than 100 shares, (3) the bid or offer is no more than $0.25 away from the bid or offer disseminated by the primary market, (4) the quotation conforms to Exchange requirements regarding minimum trading variations, and (5) the quotation does not result in a locked market. Article XXXI, Rule 9 is also similar to NYSE Rule 124 in that when the adjusted ITS BBO is unavailable due to unusual market conditions the odd-lot market for an ITS security would be determined by the next round-lot sale on the Exchange.

The Commission believes that generally pricing odd-lots for listed securities based on the ITS BBO should improve the execution quality for odd-lot orders. Further, the Commission believes that the proposal should help to ensure that odd-lot executions are based on market activity that is relevant and reliable. The Commission believes that the proposed rule change, as amended, should provide small investors, who may find it difficult to trade orders in round-lot increments, with better executions and should enhance the integrity of the market.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR-CHX–2002–18), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26690 Filed 10–18–02; 8:45 am]

BILLING CODE 8010–01–P

[5] See Securities Exchange Act Release No. 38874 (July 25, 1997), 62 FR 41456 (August 1, 1997).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this rule, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with section 3 of the Act. 15 U.S.C. 78c(f).

[11] *See supra* note 5.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46652; File No. SR–NASD–2002–133]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. To Establish an Execution Price Governor in SuperMontage

October 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change, as described in Items I and II below, which Items have been prepared by the NASD. The NASD amended its proposal on October 9, 2002 [3] and October 10, 2002.[4] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment Nos. 1 and 2 from interested persons and to approve the proposal, as amended, on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 27, 2002 ("Amendment No. 1"). In Amendment No. 1, the NASD submitted the proposal on a pilot basis under Section 19(b)(2) of the Act, requested accelerated approval, and replaced in its entirety the original rule filing submitted to the Commission dated on September 27, 2002.

[4] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 10, 2002 ("Amendment No. 2). In Amendment No. 2, the NASD made minor technical corrections to the rule text.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to establish, for a 60-day pilot period, a SuperMontage execution price governor to prevent inadvertent executions significantly away from the inside market. The text of the proposed rule change is below. Proposed new language is *italicized*.

* * * * *

4710. Participant Obligations in NNMS

(a) No Change.

(b) Non-Directed Orders

(1) General Provisions—A Quoting Market Participant in an NNMS Security shall be subject to the following requirements for Non-Directed Orders:

(A) No Change.

(i) No Change.

(ii) No Change.

(iii) No Change.

(B) Processing of Non-Directed Orders—No Change.

(i) through (iii) No Change.

(iv) Exceptions—The following exceptions shall apply to the above execution parameters:

(a) If a Nasdaq Quoting Market Participant enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's own Quote/Order if the participant is at the best bid/best offer in Nasdaq.

(b) If an NNMS Market Participant enters a Preferenced Order, the order shall be executed against (or delivered in an amount equal to) both the Displayed Quote/Order and Reserve Size of the Quoting Market Participant to which the order is being directed, if that Quoting Market Participant is at the best bid/best offer when the Preferenced Order is next in line to be delivered (or executed). Any unexecuted portion of a Preferenced Order shall be returned to the entering NNMS Market Participant. If the Quoting Market Participant is not at the best bid/best offer when the Preferenced Order is next in line to be delivered (or executed), the Preferenced Order shall be returned to the entering NNMS Market Participant.

(c) If an NNMS Market Participant enters a Quote or Non-Directed Order that would result in NNMS either: 1) delivering an execution to a Quoting Market Participant(s) that participates in the automatic-execution functionality of the system at a price substantially away from the current inside bid/offer in that security; or 2) delivering a Liability

Order to a Quoting Market Participant(s) that participates in the order-delivery functionality of the system at a price substantially away from the current inside bid/offer in that security, the system shall instead process only those portions of the order that will not result in either an execution or delivery at a price substantially away from the current inside best bid/offer in the security and return the remainder to the entering party. For purposes of this subsection only, an execution or delivery based on a sell order shall be deemed to be substantially away from the current inside bid if it is to be done at a price lower than a break-price established by taking the inside bid, reducing it by 10% of the bid's value, and then subtracting $0.01. For example, in a stock with a current inside bid of $10.00, the maximum price at which a single sell order could be executed would be $8.99 calculated as follows: ($10.00—($10.00 x .10 e.g. $1)—$.01 = $8.99). For offers, an execution or delivery based on a buy order shall be deemed to be substantially away from the current inside offer if it is done a price higher than a break-price established by taking the inside offer, adding 10% of the offer's value to it, and then adding $0.01. For example, in a stock with a current inside offer of $10.00, the highest price at which a single sell order could be executed would be $11.01 calculated as follows: ($10.00 + ($10.00 x .10 e.g. $1) + $.01 = $11.01.

(C) Decrementation Procedures—No Change.

(i) through (iv) No Change.

(D) through (E) No Change.

(2) Refresh Functionality

(A) Reserve Size Refresh—No Change.

(B) Auto Quote Refresh ("AQR")—No change.

(i) through (iv) No Change.

(3) through (8) No Change.

(c) through (f) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's SuperMontage system allows the entry of individual orders of up to 999,999 shares in size and quotes of 99,900 shares. Once entered, SuperMontage immediately processes those quotes/orders against the quotes and orders of other market participants then residing in the system. If warranted by the price of the quote/order, and the trading interest on the other side of the market, the system automatically and continuously moves to inferior price levels until the entered quote/order is executed in full or until there is no longer any quotes or orders that would satisfy the terms of the quote/order.

While this processing dramatically increases the speed and efficiency of the Nasdaq market, in certain limited circumstances it may also have a material negative impact on market quality. This could occur when a very large market quote/order, or a marketable limit order priced significantly away from the inside, is entered into the system and quickly executes through numerous price levels and establishes a new inside wholly unrelated to previous trading activity in the security.[5] In turn, the resulting abnormal execution prices and quotes can create new historic high and/or low prices for the particular security at issue, as well as potentially trigger the automatic execution of other customer orders in electronic systems that monitor the last sale and inside prices disseminated by Nasdaq.

In response, Nasdaq has determined to incorporate into SuperMontage, for a 60-day pilot period commencing on October 14, 2002, an execution price governor to reduce the impact of grossly mis-priced or mis-sized quotes/orders.[6] In short, SuperMontage will, using the formula outlined below, establish a maximum execution or break-point price a little over 10% away from a security's current inside price (for both the bid and offer side) and will execute a single quote/order only up to that price level, and reject the remaining unexecuted portion of the quote/order (if any) back to entering party for re-submission if desired. The following specific threshold formula is proposed:

- For incoming sell quotes/orders, the break price will be the current Inside Bid less 10% less $.01.[7]
- For incoming buy quotes/orders, the break price will be the current Inside Offer plus 10% plus $.01.[8]

For example, in a stock with a current Inside Bid of $10.00, the maximum or break price at which a single sell order could be executed would be $8.99 calculated as follows: ($10.00—($10.00 x .10 *e.g.* $1)—$.01 = $8.99). In turn, this price determines how many shares of a particular quote/order can be executed based on the trading interest on the other side of the market residing in SuperMontage. For example, if the sell order discussed here was for 10,000 shares and there was only a total of 6,000 shares available between the current inside bid price of $10.00 and the threshold price of $8.99, SuperMontage would execute a total of 6,000 shares and reject the remaining 4,000 back to the entering party. Market participants receiving such a reject would be able to re-enter the rejected portion of their original order, if desired, with a new maximum break-point for that quote/order being calculated using the current inside price at the time of re-entry.

Nasdaq believes that the above approach best balances the goals of rapid execution and price discovery while protecting market participants, and the public investors they represent, from excessive volatility and market confusion that can result from the entry and execution of a grossly mis-priced or mis-sized quotes/orders in an automated and linked trading environment.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with Section 15A of the Act[9] in general, and furthers the objectives of Section 15A(b)(6)[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change and Amendment Nos. 1 and 2 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–133 and should be submitted by November 12, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Nasdaq has asked the Commission to approve the proposal and Amendment Nos. 1 and 2 on an accelerated basis for a 60-day pilot period to reduce the impact of grossly mis-priced or mis-sized quotes/orders.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, with the requirements of section 15A(b)(6) of the Act,[11] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[12] The Commission believes that the establishment of a SuperMontage execution price governor pilot may prevent inadvertent executions significantly away from the inside market. The Commission also agrees with Nasdaq that this approach may act to balance the goals of rapid execution and price discovery while protecting market participants and the public investors they represent from excessive volatility and market confusion that can result from grossly mispriced/sized quotes/orders in an automated and linked trading environment.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the pilot will enable the Commission and Nasdaq to gain experience with the execution price governor before the Commission considers permanent approval of the pilot.[13] Furthermore, the Commission believes that granting accelerated approval to the proposed rule change and Amendment Nos. 1 and 2 would ensure that the execution price governor is in place for the start of the SuperMontage system roll-out scheduled for October 14, 2002.

Accordingly, the Commission believes that there is good cause, consistent with sections 15A(b)(6) and 19(b)(2) of the Act[14] to approve the proposal and Amendment Nos. 1 and 2 on an accelerated basis.

V. Conclusion

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act[15], that the proposed rule change, as amended, (File No. SR–NASD–2002–133) be, and it hereby is, approved until December 13, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26685 Filed 10–18–02; 8:45 am]

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[5] Nasdaq's experience with similar orders in the SuperSoes environment indicates that the overwhelming majority of such quote/orders are not entered intentionally, but are generally simple mistakes in price or size terms made by entering party.

[6] Nasdaq has separately filed with the Commission a proposal, pursuant to Section 19(b)(2) of the Act, to make the execution price governor permanent. *See* SR–NASD–2002–142.

[7] Values resulting from the application of the formula will not be taken into consideration beyond two decimal places. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Terri Evans, Assistant Director, Division, Commission, October 10, 2002.

[8] When approving this formula, the Nasdaq Board of Directors also authorized the Chief Executive Officer of Nasdaq and/or the President of Nasdaq to alter the base percentages used in the threshold formula by 10% in either direction for a particular security or securities if its trading activity or share price warrants it. If Nasdaq Senior Management determines to alter this standard, Nasdaq will submit a proposed rule change to the Commission and alert market participants by posting the new percentages on NasdaqTrader.com. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Terri Evans, Assistant Director, Division, Commission, October 10, 2002.

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] Approval of the 60-day pilot should not be interpreted as suggesting that the Commission is predisposed to approving the proposal on a permanent basis.

[14] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46650; File No. SR–NASD–2002–142]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. To Establish an Execution Price Governor in SuperMontage

October 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 9, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD amended its proposal on October 10, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change, as amended, to establish in SuperMontage a permanent execution price governor to prevent inadvertent executions significantly away from the inside market.

The text of the proposed rule change is below. Proposed new language is *italicized*.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 10, 2002 ("Amendment No. 1"). In Amendment No. 1, the NASD made minor technical corrections to the rule text.

4710. Participant Obligations in NNMS

(a) No Change.

(b) Non-Directed Orders

(1) General Provisions—A Quoting Market Participant in an NNMS Security shall be subject to the following requirements for Non-Directed Orders:

(A) No Change.

(i) No Change.

(ii) No Change.

(iii) No Change.

(B) Processing of Non-Directed Orders—No Change.

(i) through (iii) No Change.

(iv) Exceptions—The following exceptions shall apply to the above execution parameters:

(a) If a Nasdaq Quoting Market Participant enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's own Quote/Order if the participant is at the best bid/best offer in Nasdaq.

(b) If an NNMS Market Participant enters a Preferenced Order, the order shall be executed against (or delivered in an amount equal to) both the Displayed Quote/Order and Reserve Size of the Quoting Market Participant to which the order is being directed, if that Quoting Market Participant is at the best bid/best offer when the Preferenced Order is next in line to be delivered (or executed). Any unexecuted portion of a Preferenced Order shall be returned to the entering NNMS Market Participant. If the Quoting Market Participant is not at the best bid/best offer when the Preferenced Order is next in line to be delivered (or executed), the Preferenced Order shall be returned to the entering NNMS Market Participant.

(c) If an NNMS Market Participant enters a Quote or Non-Directed Order that would result in NNMS either: 1) delivering an execution to a Quoting Market Participant(s) that participates in the automatic-execution functionality of the system at a price substantially away from the current inside bid/offer in that security; or 2) delivering a Liability Order to a Quoting Market Participant(s) that participates in the order-delivery functionality of the system at a price substantially away from the current inside bid/offer in that security, the system shall instead process only those portions of the order that will not result in either an execution or delivery at a price substantially away from the current inside best bid/offer in the security and return the remainder to the entering party. For purposes of this subsection only, an execution or delivery based on a sell order shall be deemed to be substantially away from the current inside bid if it is to be done at a price lower than a break-price established by taking the inside bid, reducing it by 10% of the bid's value, and then subtracting $0.01. For example, in a stock with a current inside bid of $10.00, the maximum price at which a single sell order could be executed would be $8.99 calculated as follows: ($10.00 − ($10.00 × .10 e.g. $1) − $.01 = $8.99). For offers, an execution or delivery based on a buy order shall be deemed to be substantially away from the current inside offer if it is done a price higher than a break-price established by taking the inside offer, adding 10% of the offer's value to it, and then adding $0.01. For example, in a stock with a current inside offer of $10.00, the highest price at which a single sell order could be executed would be $11.01 calculated as follows: ($10.00 + ($10.00 × .10 e.g. $1) + $.01 = $11.01.

(C) Decrementation Procedures—No Change.

(i) through (iv) No Change.

(D) through (E) No Change.

(2) Refresh Functionality

(A) Reserve Size Refresh—No Change.

(B) Auto Quote Refresh ("AQR")—No change.

(i) through (iv) No Change.

(3) through (8) No Change.

(c) through (f) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's SuperMontage system allows the entry of individual orders of up to 999,999 shares in size and quotes of 99,900 shares. Once entered, SuperMontage immediately processes those quotes/orders against the quotes and orders of other market participants then residing in the system. If warranted by the price of the quote/order, and the trading interest on the other side of the market, the system automatically and continuously moves to inferior price levels until the entered quote/order is executed in full or until there is no longer any quotes or orders that would satisfy the terms of the quote/order.

While this processing dramatically increases the speed and efficiency of the Nasdaq market, in certain limited circumstances it may also have a material negative impact on market quality. This could occur when a very large market quote/order, or a marketable limit order priced significantly away from the inside, is entered into the system and quickly executes through numerous price levels and establishes a new inside wholly unrelated to previous trading activity in the security.[4] In turn, the resulting abnormal execution prices and quotes can create new historic high and/or low prices for the particular security at issue as well as potentially trigger the automatic execution of other customer orders in electronic systems that monitor the last sale and inside prices disseminated by Nasdaq.

In response, Nasdaq has determined to incorporate into SuperMontage a permanent execution price governor to reduce the impact of grossly mis-priced or mis-sized quotes/orders.[5] In short, SuperMontage will, using the formula outlined below, establish a maximum execution or break-point price a little over 10% away from a security's current inside price (for both the bid and offer side) and will execute a single quote/order only up to that price level, and reject the remaining unexecuted portion of the quote/order (if any) back to entering party for re-submission if desired. The following specific threshold formula is proposed:

- For incoming sell quotes/orders, the break price will be the current Inside Bid less 10% less $.01.[6]
- For incoming buy quotes/orders, the break price will be the current Inside Offer plus 10% plus $.01.[7]

For example, in a stock with a current Inside Bid of $10.00, the maximum or break price at which a single sell order could be executed would be $8.99 calculated as follows: ($10.00 − ($10.00 × .10 *e.g.* $1) − $.01 = $8.99). In turn, this price determines how many shares of a particular quote/order can be executed based on the trading interest on the other side of the market residing in SuperMontage. For example, if the sell order discussed here was for 10,000 shares and there was only a total of 6,000 shares available between the current inside bid price of $10.00 and the threshold price of $8.99, SuperMontage would execute a total of 6,000 shares and reject the remaining 4,000 back to the entering party. Market participants receiving such a reject would be able to re-enter the rejected portion of their original order, if desired, with a new maximum break-point for that quote/order being calculated using the current inside price at the time of re-entry.

Nasdaq believes that the above approach best balances the goals of rapid execution and price discovery while protecting market participants, and the public investors they represent, from excessive volatility and market confusion that can result from the entry and execution of a grossly mis-priced or mis-sized quotes/orders in an automated and linked trading environment.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[8] in general and with Section 15A(b)(6) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–142 should be submitted by November 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26686 Filed 10–18–02; 8:45 am]

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[4] Nasdaq's experience with similar orders in the SuperSoes environment indicates that the overwhelming majority of such quote/orders are not entered intentionally, but are generally simple mistakes in price or size terms made by entering party.

[5] Nasdaq separately filed a proposal, pursuant to Section 19(b)(2) of the Act, to establish the execution price governor on a 60-day pilot basis. *See* SR–NASD–2002–133.

[6] Values resulting from the application of the formula will not be taken into consideration beyond two decimal places. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Terri Evans, Assistant Director, Division, Commission, October 10, 2002.

[7] When approving this formula, the Nasdaq Board of Directors also authorized the Chief Executive Officer of Nasdaq and/or the President of Nasdaq to alter the base percentages used in the threshold formula by 10% in either direction for a particular security or securities if its trading activity or share price warrants it. If Nasdaq Senior Management determines to alter this standard, Nasdaq will submit a proposed rule change to the Commission and alert market participants by posting the new percentages on NasdaqTrader.com. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Terri Evans, Assistant Director, Division, Commission, October 10, 2002.

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46645; File No. SR–NASD–2002–144]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Directed Orders in the Nasdaq Order Collection and Display Facility ("NNMS" or "SuperMontage")

October 10, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 9, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to modify the Directed Order process in Nasdaq's future Order Display and Collector Facility ("SuperMontage"). The text of the proposed rule changes follows.

Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

4706. Order Entry Parameters

(a) No Change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Nasdaq asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. See Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

(b) Directed Orders: A participant may enter a Directed Order into the NNMS to access a specific Attributable Quote/Order displayed in the Nasdaq Quotation Montage, subject to the following conditions and requirements:

(1) Unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders, a Directed Order must be a Non-Liability Order, and as such, at the time of entry must be designated as:

(A) An "All-or-None" order ("AON") that is at least one normal unit of trading (e.g. 100 shares) in excess of the Attributable Quote/Order of the Quoting Market Participant to which the order is directed; or

(B) A "Minimum Acceptable Quantity" order ("MAQ"), with a MAQ value of at least one normal unit of trading in excess of Attributable Quote/Order of the Quoting Market Participant to which the order is directed. [Nasdaq will append an indicator to the quote of a Quoting Market Participant that has indicated to Nasdaq that it wishes to receive Directed Orders that are Liability Orders.]

(C) A Directed Order that is entered at a price that is inferior to the Attributable Quote/Order of the Quoting Market Participant to which the order is directed.

Nasdaq will append an indicator to the quote of a Quoting Market Participant that has indicated to Nasdaq that it wishes to receive Directed Orders that are Liability Orders.

(2) No Change.

(3) No Change.

(c) through (f) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq has long intended the SuperMontage Directed Order process to perform essentially the same function that SelectNet performs today. Accordingly, Nasdaq designed the SuperMontage Directed Order process to be a negotiation process primarily for non-liability orders, with the exception of Nasdaq market makers that affirmatively opt to accept Directed Orders on a liability basis. For example, SuperMontage participants will be required to designate Directed Orders as "All-or-None" or Minimum Acceptable Quantity" and to enter such orders for 100 shares greater than the receiving Quoting Market Participant's displayed quote, just as they must do in SelectNet today. Nasdaq has repeatedly stated its intention that SuperMontage Directed Orders mirror SelectNet preferenced orders, as evidenced by how closely it modeled future NASD Rule 4706(b) governing SuperMontage on current NASD Rule 4720(c) governing SelectNet.

In July of 2001, Nasdaq filed, on an immediately effective basis, a proposal that allows for the entry of preferenced SelectNet orders to NNMS market makers if such orders are entered containing prices that are inferior to the quoted bid and/or offers to which they are directed.[6] For example, in the situation where an NNMS market maker is quoting 20.00 bid and 20.03 offer, a market participant would be allowed to preference that market maker with either an order to sell at 20.01 or more, or an order to buy at 20.02 or less. These orders are priced at levels that would not obligate the receiving market maker to execute them under current firm quote standards. Therefore, NNMS market makers may choose to either ignore such orders or negotiate with the sending party to reach an agreement that would allow a trade to take place.[7]

The concept of entering preferenced orders at prices inferior to the recipient's quoted price was not controversial when filed for implementation with SuperSOES in July of 2001. Market participants are accustomed to this functionality and have used it in compliance with current NASD Rule 4720. Nasdaq proposes to incorporate the same functionality into the SuperMontage Directed Order process, which will essentially mirror the current functionality of SelectNet.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] in general and with section 15A(b)(6) of the Act,[9] in particular, in that in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[6] See Exchange Act Release No. 44506 (July 3, 2001), 66 FR 36020 (July 10, 2001).

[7] Market participants executing transactions as the result of such messages remain obligated to protect customer limit orders they hold in conformity with NASD IM–2110–2 (Trading Ahead of Customer Limit Orders).

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the 5-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. In particular, the proposed rule change provides functionality for the SuperMontage Directed Order process that is equivalent to functionality currently available in SelectNet. In addition, acceleration of the operative date will allow the proposed rule change to become operative with Nasdaq's implementation of the SuperMontage on October 14, 2002. For these reasons, the Commission waives both the 5-day pre-filing requirement and the 30-day operative waiting period.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–144 should be submitted by November 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26687 Filed 10–18–02; 8:45 am]

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[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46654; File No. SR–NYSE–2002–01]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Removal of Separate Exchange Requirements Regarding the Use of Consent Solicitations

October 11, 2002.

On January 3, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to remove separate NYSE requirements regarding the use of consent solicitations. The NYSE submitted Amendment No. 1 to the proposed rule change on May 23, 2002.[3] The proposed rule change was published for comment on June 26, 2002.[4] The Commission received no comments on the amended proposal. This order approves the proposed rule change, as amended.

The proposed rule change would amend Section 306 of the NYSE Listed Company Manual ("NYSE Manual") to remove separate NYSE requirements regarding the use of consent solicitations. Currently, Section 306 of the NYSE Manual requires NYSE listed companies to obtain NYSE's permission to use consents in lieu of special meetings as proper authorization for shareholder approval of corporate action. In addition, Section 306 of the NYSE Manual currently sets forth the following guidelines that NYSE listed companies must follow in order to receive NYSE's permission: (1) A record date must be used; (2) consent material must be sent to all shareholders; (3) corporate action can not be taken until the solicitation period has expired—even if the required vote is received earlier; (4) a 30-day solicitation period is recommended and a minimum of 20 days is required; and (5) consent material must conform to normal proxy statement disclosure standards. In effect, these guidelines require corporations to solicit the consent of all shareholders.

Under the federal securities laws, when a corporation is permitted under state law to take corporate action without a shareholder meeting upon the written consent of a specified percentage of shareholders, such corporation is not required to solicit the consent of all shareholders. Instead, under certain circumstances, under Section 14(c) of the Exchange Act and Regulation 14C thereunder, the corporation is required to furnish to all shareholders an information statement that contains the same disclosure as a proxy or consent solicitation at least 20 days prior to the earliest date the corporate action can be taken.[5] The NYSE believes that under certain circumstances, the current requirements of Section 306 of the NYSE Manual are more onerous than those of the federal securities laws. Accordingly, the Exchange proposes to modify Section 306 of the NYSE Manual to eliminate the separate Exchange requirements with respect to use of consents in lieu of special meetings. Under the proposal, NYSE listed companies will no longer be required to obtain Exchange approval before using consents in lieu of special meetings as proper authorization for shareholder approval of corporate action. NYSE listed companies will be permitted to either: (1) Hold a special meeting of shareholders, or (2) use consents in lieu of special meetings when and as permitted by applicable law.[6]

The Exchange represents that it would, however, retain its traditional policy that listed companies may not use written consents in lieu of the annual meeting of shareholders at which directors are to be elected.[7]

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[8] and, in particular, the requirements of section 6 of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 22, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange: (1) Added the following language to the proposed rule text: "(including interpretations thereof), including, without limitation," and (2) added language to the purpose section clarifying the two options available to listed companies for obtaining shareholder approval.

[4] See Securities Exchange Act Release No. 46092 (June 19, 2002), 67 FR 43199.

[5] See 15 U.S.C. 78n(c) and 17 CFR 240.14C.

[6] As amended, Section 306 of the NYSE Manual specifically states that listed companies must comply with "applicable state and federal law and rules (including interpretations thereof), including, without limitation, SEC Regulations 14A and 14C."

[7] See Section 306 of the NYSE Manual.

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Act.[9] The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act [10] because the proposed rule change requires NYSE listed companies to obtain shareholder consent in a manner that is consistent with federal securities laws.

As noted above, listed companies would be permitted to hold a special meeting of shareholders to take corporate action and nothing in NYSE rules require companies to use one method over the other to obtain shareholder approval of corporate action. Rather, the changes being approved to the NYSE rules simply permit listed companies to utilize consent as an alternative to shareholder approval only when and as permitted by applicable federal securities laws and state laws. Shareholder approval at a special meeting and consent under the conditions noted above would be the only two ways for listed companies to take corporate action under NYSE rules when shareholder approval is required. In approving the proposal, we note that the federal security law requirements help to ensure, among other things, that all shareholders receive adequate disclosure prior to such corporate action being taken.

Based on the above, the Commission believes the changes should remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSE–2002–01), as amended by Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26683 Filed 10–18–02; 8:45 am]

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[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46633; File No. SR–OC–2002–02]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by OneChicago, LLC Relating to Block Trades

October 10, 2002.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on September 6, 2002, OneChicago LLC ("OneChicago" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by OneChicago. On September 30, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. OneChicago also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"). OneChicago filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act [4] on September 5, 2002.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago is proposing to amend its Rule 417, relating to block trades, in the following two respects: First, paragraph (c) of OneChicago Rule 417 is amended to provide that the parties to a block trade must report specified information regarding such trade to OneChicago promptly, rather than within a time period prescribed by OneChicago on a contract-by-contract basis. In addition, the Exchange proposes to add new paragraphs (e) and (f) into OneChicago Rule 417 to restrict the ability of market participants to engage in certain transactions related to a block trade until such trade has been reported. Finally, OneChicago proposes to redesignate existing paragraph (e) of OneChicago Rule 417 as paragraph (g). The text of the proposed rule change follows; additions are italicized; deletions are [bracketed].

Rule 417 Block Trading

* * * * *

(c) Each Block Trade shall be designated as such, and cleared through the Clearing Corporation as if it were a transaction executed through the OneChicago System. Information identifying the relevant Contract, contract month, price, quantity, time of execution, counterparty Clearing Member for each Block Trade and, if applicable, the underlying commodity must be reported to the Exchange [within the time period set forth in the rules governing the relevant Contract] *promptly*. The Exchange will publicize information identifying the trade as a Block Trade and identifying the relevant Contract, contract month, price, quantity for each Block Trade and, if applicable, the underlying commodity immediately after such information has been reported to the Exchange.

(d) No Change.

(e) *No Clearing Member or Exchange Member that is a party to a Block Trade or has knowledge of a pending Block Trade, may enter an Order or execute a transaction, whether for its own account or for the account of a Customer, for or in the Contract to which such Block Trade relates until after (i) such Block Trade has been reported to and published by the Exchange and (ii) any additional time period from time to time prescribed by the Exchange in its block trading procedures or contract specifications has expired.*

(f) *No Clearing Member or Exchange Member that is a party to a block trade, or has knowledge of a pending block trade, on any other exchange or trading system, may enter an Order or execute a transaction on the Exchange for any Contract which has the same underlying security as the contract to which such block trade relates until after (i) such block trade is reported and published in accordance with the rules, procedures or contract specifications of such exchange or trading system and (ii) any additional time period prescribed by the Exchange in its block trading procedures or contract specifications has expired.*

(g) Any Block Trade in violation of these requirements shall constitute conduct which is inconsistent with just and equitable principles of trade.

* * * * *

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] *See* letter dated September 30, 2002, from C. Robert Paul, General Counsel, OneChicago, to Division of Market Regulation, Commission. In Amendment No. 1, the Exchange added language setting forth the statutory basis for the proposed rule change.

[4] 7 U.S.C. 7a–2(c).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OneChicago has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OneChicago proposes to amend its block trade rule as set forth in Item I above in order to (i) ensure prompt reporting of information related to block trades and (ii) restrict the ability of market participants to engage in certain transactions related to a block trade until such trade has been reported.

The proposed change to paragraph (c) of OneChicago Rule 417 is designed to tighten the existing requirement relating to the reporting of block trades by market participants and to provide that the requirement applies uniformly to all block trades, regardless of contract type and transaction size. OneChicago believes that obligating market participants to report all block trades promptly is warranted by the important price discovery function that it expects its markets for security futures products will serve. Given that all trading on OneChicago will be conducted electronically, OneChicago does not foresee that market participants will encounter practical difficulties in complying with the tightened reporting requirement.

New paragraphs (e) and (f) to OneChicago Rule 417 are intended to prevent market participants from taking advantage of any non-public information with respect to a block trade, by prohibiting market participants with access to such information from entering orders for execution through OneChicago if such orders relate to the same underlying securities as the block trade in question. This prohibition will generally apply until the block trade in question has been reported to and published by OneChicago. OneChicago expects that a positive side effect of the new paragraphs will be that they create an additional incentive for market participants to report block trades as soon as possible.

2. Statutory Basis

OneChicago is proposing the Proposed Rule Change on the basis of its general rulemaking authority. OneChicago filed the Proposed Rule Change pursuant to Section 19(b)(7) of the Act [5] because such section requires a self-regulatory organization that is an exchange registered with the Commission pursuant to Section 6(g) of the Act [6] to file with the Commission, among other things, copies of any proposed rule change that relates to reporting. The Exchange believes that the proposed rule change is authorized by, and consistent with, Section 6(b)(5) of the Act,[7] because it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago believes that the proposed rule change is inherently pro-competitive as it is designed to ensure that (i) relevant market information becomes available to the public as expeditiously as possible and (ii) participants are prevented from taking advantage of any non-public information with respect to block trades.

C .Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(7)(B) of the Act,[8] the proposed rule change became effective on September 5, 2002. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of OneChicago. Electronically submitted comments will be posted on the Commission's Internet website (*http://www.sec.gov*). All submissions should refer to File No. SR–OC–2002–2 and should be submitted by November 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26688 Filed 10–18–02; 8:45 am]

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[5] 15 U.S.C. 78s(b)(7).

[6] 15 U.S.C. 78f(g).

[7] 15 U.S.C. 78(f)(b)(5).

[8] 15 U.S.C. 78s(b)(7)(B).

[9] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46653; File No. SR–OCC–2002–07]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Clearing Security Futures Transactions and Arrangements With Associated Clearinghouses

October 11, 2002.

I. Introduction

On May 9, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change File No. SR–OCC–2002–07 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and on August 9, 2002, amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on August 16,

[10] 17 CFR 200.30–3(a)(75).

[1] 15 U.S.C. 78s(b)(1).

2002.[2] On October 10, 2002, OCC again amended the proposed rule change. The October 10, 2002, amendment was for clarification and as such did not require publication of notice. No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

Currently, under OCC's Rule 1303, OCC may open one or more omnibus accounts with an associate clearinghouse ("ACH") [3] for the purposes of enabling the ACH's clearing members that are not OCC clearing members to clear transactions in futures and futures options through the ACH rather than directly through OCC.[4] Affiliates of OCC clearing members are permitted to clear transactions in futures through the ACH through January 1, 2003. The principal purpose of the proposed rule change is to extend this same accommodation to OCC clearing members and to provide that the initial period during which either OCC clearing members or their affiliates may clear through an ACH will end one year from the date when general trading in security futures commences rather than on a specified date. The proposed rule change also seeks Commission approval of the Agreement for Clearing and Settlement Services between OCC and OneChicago ("OCX") ("OCX Clearing Agreement") and the ACH Agreement between OCC and the Chicago Mercantile Exchange ("CME").

1. Background

OCC is preparing to clear security futures for a number of markets, including certain national securities exchanges that presently clear options through OCC and certain futures exchanges that are notice-registered as national securities exchanges under section 6(g) of the Act. In SR–OCC–2001–07, OCC filed detailed rules for the clearance of security futures, including Rule 1303, which provides that OCC may agree with an ACH to carry omnibus accounts for the ACH in which the ACH may clear security futures transactions for certain of its clearing members.[5] In SR–OCC–2001–07, the Commission also approved the Agreement for Clearing and Settlement Services between OCC and Nasdaq Liffe Markets, LLC [6] ("NqLX Clearing Agreement").

2. Amendments to Rule 1303

Under current Rule 1303(a), an OCC clearing member that is also an ACH clearing member may not have its futures transactions cleared through the ACH's omnibus account at OCC. Additionally, Rule 1303(b) currently provides that affiliates of OCC clearing members that are eligible to become OCC clearing members may not have their futures transactions cleared through an ACH's omnibus account at OCC past January 1, 2003.[7]

OCC has learned that some OCC clearing members may initially have difficulty clearing futures, including security futures, through OCC because the systems these clearing members use to clear futures contracts are configured to interface with the clearing systems of commodity clearing organizations and not with OCC's systems. To accommodate these clearing members while they make the necessary system changes, OCC is amending Rule 1303(a) to allow OCC clearing members that are members of an ACH to clear their futures transactions through the ACH's omnibus account at OCC for a period of time.

As with affiliates of OCC clearing members, an OCC clearing member's futures transactions can be cleared through an ACH's omnibus account at OCC only for the period specified in Rule 1303(b). That period was initially set to end on June 1, 2002, and was later extended to January 1, 2003.[8] Because the commencement of trading in security futures has repeatedly been postponed, OCC is now setting the grace period at "one year after the commencement of general trading in security futures." OCC believes that this is a reasonable period of time for OCC clearing members and their affiliates to make the necessary arrangements to clear futures directly through OCC. OCC nevertheless retains the ability under Rule 1303(b) to consent to a longer grace period if the circumstances of individual firms so require.

3. OCX Clearing Agreement

OCX is a joint venture among CME, the Chicago Board Options Exchange, and the Chicago Board of Trade. OCX and OCC have entered into the OCX Clearing Agreement so that OCC may clear and settle security futures transactions that take place on OCX.[9] OCC seeks Commission approval of the OCX Clearing Agreement because, as discussed below, it varies in several material respects from the NqLX Clearing Agreement approved by the Commission.[10]

New Section 6(b), "Clearing Members and Associate Clearinghouses," of the OCX Clearing Agreement requires OCC to designate CME as an ACH for OCX, subject to the terms of the ACH Agreement between OCC and CME (which terms are summarized below). The NqLX Clearing Agreement contains no similar provision. Section 6(b) of the OCX Clearing Agreement also provides that all present OCC clearing members and their successors may clear trades executed on OCX. However, future OCC clearing members will not be allowed to clear OCX trades without prior approval from OCX. OCX may require that future OCC clearing members become members of OCX as a condition to being allowed to clear trades executed on OCX. The NqLX Clearing Agreement contains no similar provision.

Section 10(b), "Risk Margin Offsets," of the OCX Clearing Agreement states that OCC will not make OCX products fungible with products traded on other markets, exchanges, or electronic trading platforms unless OCC is required to do so by law or has received prior written approval from OCX. The NqLX Clearing Agreement contains no similar provision.

[2] Securities Exchange Act Release No. 46335 (August 9, 2002), 67 FR 53634.

[3] "Associate Clearinghouse" is defined in Section 1 of OCC's By-Laws as "a derivatives clearing organization regulated as such under the Commodity Exchange Act or a clearinghouse not located in the United States, which, in either case, has agreed with the Corporation to act in clearing transactions in certain cleared securities on behalf of its members. An associate clearinghouse shall be a Clearing Member for purposes of the By-Laws and Rules except to the extent otherwise provided in an agreement between the Corporation and the associate clearinghouse."

[4] When filed, Chapter XIII of OCC's Rules governed security futures. Subsequently, OCC filed and the Commission approved SR–OCC–2001–16, which amended Chapter XIII so that it now governs futures and futures options, which includes security futures. Securities Exchange Act Release No. 45946 (May 16, 2002), 67 FR 36056 (May 22, 2002).

[5] Securities Exchange Act Release No. 44727 (August 20, 2001), 66 FR 45351 (order approving rules for clearance of security futures.) SR–OCC–2001–07 also amended Article I of OCC's By-Laws to include within the definition of "associate clearinghouse" a "derivatives clearing organization regulated as such under the Commodity Exchange Act."

[6] Previously Nasdaq LIFFE, LLC.

[7] For purposes of Rule 1303, an entity is deemed to be an affiliated entity of a clearing member if the clearing member owns, directly or indirectly, at least 50% of the equity in such entity or if at least 50% of the equity of the clearing member and in such entity is, directly or indirectly, under common ownership. OCC rule 1303(b).

[8] Securities Exchange Act Release No. 45946 (May 22, 2002), 67 FR 36056 [File No. SR–OCC–2001–16].

[9] The OCX Clearing Agreement is attached as Exhibit A to OCC's filing.

[10] A blackline version showing the differences between the NqLX Clearing Agreement and the OCX Clearing Agreement is attached as Exhibit A–1 to OCC's filing. OCC has filed with the Commission an amended and restated version of the NqLX Clearing Agreement, which has been amended to provide that OCC will clear and settle commodity futures (specifically, broad-based index options) traded on NqLX.

Section 13, "Financial Arrangements," of the OCX Clearing Agreement states that OCC will charge clearing fees for trades executed on OCX to OCX rather than to clearing members. However, OCX will be required to pass OCC's fees through to OCC clearing member(s) on sides of OCX trades that are cleared directly through OCC.[11] OCX negotiated a discount to the fees OCC normally charges for clearing services in exchange for giving up the right to participate in any year-end fee reductions or rebates. OCX may, however, opt into OCC's regular rebate-eligible fee structure on a prospective basis at any time. The discount is greater for trade sides cleared through CME as an ACH reflecting the fact that CME is sharing the clearing function and the associated risk. OCC will charge no clearing fees when both sides are cleared through CME.

Paragraph (b) of Section 14, "CME as Associate Clearinghouse," of the OCX Clearing Agreement prohibits OCX from soliciting or providing incentives for CME members to clear OCX trades through CME rather than OCC. The reason for this restriction is discussed below in connection with related provisions of the ACH Agreement.

4. ACH Agreement

OCC and CME have entered into the ACH Agreement [12] so that CME may act as an ACH for purposes of clearing and settling transactions of certain CME clearing members executed on OCX. The ACH Agreement provides that CME generally will be treated as an OCC clearing member but with important exceptions. First, Section 2, "CME an Associate Clearinghouse," states that CME may clear through its accounts at OCC only security futures traded on OCX. Second, Section 3, "Applicability of the Rules," makes clear that CME is bound only by certain OCC rules, which generally speaking are those that apply to OCC's clearance and settlement of security futures contracts and to OCC's right to suspend clearing members including an ACH with certain modifications set forth in the ACH Agreement. CME is not subject to OCC's by-laws and rules requiring deposits to OCC's clearing fund and requiring risk margin deposits. Likewise, under Section 6, "Risk Margin; Clearing Fund Contributions; Security Deposits," OCC is not required to contribute to CME's clearing fund or to post margin with CME.

Given that each clearing organization has credit exposure to the other, OCC and CME have determined that the cost of mutual posting collateral by each with the other would outweigh any benefits to be obtained. Although OCC is exposed to some uncollateralized credit risk with respect to CME (and vice versa), that risk is considered minimal because CME's clearinghouse division is a registered derivatives clearing organization subject to regulation and oversight by the Commodity Futures Trading Commission ("CFTC") and is believed by OCC to be well run and highly creditworthy. Sections 3(c), "Applicability of the Rules," and 10, "Application of Chapter XI of the Rules," of the ACH Agreement provide that if CME fails to deliver securities or funds to OCC, breaches certain of its obligations under the Commodity Exchange Act ("CEA") or the ACH Agreement, or is in such financial or operational difficulty that OCC believes suspension of CME as an ACH is required, OCC may without notice liquidate all positions in the CME ACH omnibus accounts regardless of whether any CME clearing member is in default to CME. OCC may then apply the proceeds from the CME Proprietary Account (described below) against all obligations of CME under the ACH Agreement and the proceeds from the CME Customer Account (described below) against all obligations in that account.

Where both sides of a matched trade are submitted to OCC for the accounts of regular OCC clearing members, CME will have no role in the transaction. Where one side of a matched trade is submitted for the account of a regular OCC clearing member and the other is submitted for the account of a CME clearing member, the CME member's transaction will clear in the ACH account and CME as ACH will be the OCC clearing member on the trade. If both sides of a matched trade are cleared through CME, there will be no effect on the open interest on OCC's books, and OCC will have no obligation on the trade except to the limited extent described below in the case of delivery obligations on physically-settled stock futures. The rights and obligations of CME members with respect to security futures cleared through CME will be determined under the rules of CME, but Section 4(a) of the ACH Agreement requires that CME's rules provide that the terms of security futures cleared by CME will be identical to the terms of security futures cleared by OCC and that any adjustments to the terms of outstanding contracts must be identical and take effect at the same time to ensure fungibility and maintain a balanced open interest at both clearing organizations.

Section 8, "Allocation of Clearing Responsibilities," of the ACH Agreement is consistent with the terms of OCC Rule 1303 as amended in this filing. It is intended to permit the use of the ACH arrangements by CME members only to the extent that clearing through OCC directly might reasonably impose a hardship. An OCC clearing member that is or that has an affiliate that is a CME clearing member may clear through CME until one year after the commencement of security futures trading, at which point all trades of such entity must be cleared through OCC unless OCC consents to an extension of time. However, where a futures affiliate of an OCC clearing member is substantially larger than the clearing member, OCC has agreed to permit the affiliate to clear through CME indefinitely on the ground that where the principal business of the consolidated entities is a futures business it is inappropriate to compel all security futures clearing to be directed through the securities affiliate.[13] A CME clearing member that is not an OCC clearing member and is not an affiliate of an OCC clearing member may clear its security futures trades through CME indefinitely. By generally requiring firms that are OCC clearing members or that have affiliates that are OCC clearing members to take the necessary steps to clear their security futures activity directly through the OCC clearing member, the ACH Agreement limits the mutual uncollateralized exposure between OCC and CME and minimizes the number of transactions that require coordinated clearance and settlement by two clearing organizations.[14] For the same purpose of minimizing unnecessary use of the ACH arrangement, the OCX Clearing Agreement as noted above prohibits the ACH from soliciting its members to clear transactions through the ACH rather than through OCC.

In order to comply with the customer segregation rules under the CEA, Section 9(a), "Maintenance of CME

[11] This requirement enables OCC to police "the equitable allocation of reasonable dues, fees, and other charges among its participants' required under section 17A(b)(3)(D) of the Act.

[12] Attached as Exhibit B to OCC's filing.

[13] Interpretations and Policies .01 to Rule 1303.

[14] In approving OCC's previous ACH arrangement with the Associate Clearing House Amsterdam, the Commission stated, "As a general matter, the Commission believes that OCC-issued options should be cleared through full OCC clearing members and not through intermediaries created only for clearing purposes." Securities Exchange Act Release No. 24832 (August 21, 1987), 52 FR 32377, n.16 [File No. SR–OCC–87–9].

Accounts," of the ACH Agreement requires CME to have two accounts at OCC, one for proprietary positions and one for customer positions. Each will function as an omnibus account containing the positions and margin carried by CME members for whom CME acts as an ACH. The "CME Proprietary Account" will carry only transactions of persons whose accounts on the books of the carrying CME clearing member are "proprietary accounts" as defined in CFTC Regulation 1.3(y). The "CME Customer Account" will carry only transactions of customers of CME clearing members and will be subject to the customer protection provisions of the CFTC. In accordance with those provisions, Section 9(b) of the ACH Agreement provides that OCC will have a lien on the positions in the CME Customer Account as security for CME's obligations to OCC only with respect to positions and transactions in that account. In contrast, OCC will have a lien on and security interest in the positions in the CME Proprietary Account as security for all obligations of CME to OCC under the ACH Agreement.

As noted above, OCC has agreed in Section 4 of the ACH Agreement to perform a limited role in connection with delivery obligations of CME clearing members arising from physically-settled security futures in CME member accounts. CME will require each of its clearing members that trades physically-settled security futures to enter into arrangements satisfactory to OCC through which an OCC stock clearing member will agree to act on the CME clearing member's behalf for the purpose of settling through the facilities of National Securities Clearing Corporation ("NSCC") or otherwise delivery obligations arising from maturing security futures contracts in its accounts at CME. Promptly following the close of trading on the last trading day prior to maturity of any series of physically-settled security futures, CME will notify OCC of the identity of each OCC clearing member that will be obligated to receive or to deliver stock on behalf of CME members and the quantity of each underlying stock to be received or delivered. OCC will include these receive and deliver obligations with the other receive and deliver obligations of its clearing members in its reports to NSCC in accordance with OCC Rule 913. In the event that settlement is rejected by NSCC for any reason, settlement will be completed between the delivering and receiving OCC clearing members in accordance with OCC's rules, but CME will be responsible to OCC for any loss reasonably determined by OCC to have been incurred by it as a result of an OCC clearing member default in connection with settlements arising from security futures contracts in CME clearing member accounts. OCC will not require the delivering OCC clearing member or receiving OCC clearing member to deposit margin with OCC with respect to settlements attributable to security futures in CME clearing member accounts but will instead look to the credit of CME.

III. Discussion

Section 19(b)(2) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. For the reasons set forth below, the Commission believes that OCC's proposed rule change is consistent with OCC's obligations under Section 17A(b)(3)(F) which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[15]

By providing a transition period for those OCC members that are also ACH members to adopt their systems to clear securities futures through OCC and by adopting the OCX Agreement and the ACH Agreement, OCC is further establishing itself as a facility capable of providing for the prompt and accurate clearance and settlement of security futures transactions. Accordingly, the Commission finds that the proposed rule change is consistent with OCC's obligations under section 17A of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2002–07) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26682 Filed 10–18–02; 8:45 am]

BILLING CODE 8010–01–P

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4152]

Notice of Meetings: United States International Telecommunication Advisory Committee Preparations for Various Telecommunication Standardization Meetings

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on policy, technical and operational issues with respect to international telecommunications standardization bodies such as the International Telecommunication Union.

The ITAC will meet to prepare for the February 2003 meeting of the Telecommunication Sector Advisory Group (TSAG) on October 30, November 19, and December 19, 2002 from 9:30 to noon at locations in the Washington, DC area to be determined.

Members of the public will be admitted to the extent that seating is available, and may join in the discussions, subject to the instructions of the Chair. Directions to the meeting location and on which entrance to use may be determined by calling the ITAC Secretariat at 202–647–0965, 202–647–2592 or e-mail to *minardje@state.gov*.

Dated: October 17, 2002.

Cecily Holiday,

Director, Radiocommunication Standardization, Department of State.

[FR Doc. 02–26852 Filed 10–18–02; 8:45 am]

BILLING CODE 4710–45–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comment on Review of Employment Impact of United States-Chile Free Trade Agreement

AGENCY: Office of the United States Trade Representative, Department of Labor.

ACTION: Request for comments.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) gives notice that the Office of the United States Trade Representative (USTR) and the Department of Labor are initiating a review of the impact of the proposed U.S.-Chile Free Trade Agreement (FTA) on United States employment, including labor markets. This notice seeks written public comment on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA.

DATES: USTR and the Department of Labor will accept any comments received during the course of the negotiations of the FTA. However, comments should be received by noon, November 15, 2002, to be assured of timely consideration in the preparation of the report.

ADDRESSES: *Submissions by electronic mail: FR0043@ustr.gov* (written comments). *Submissions by facsimile:* Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at 202/395–6143.

The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Substantive questions concerning the employment impact review should be addressed to Jorge Perez-Lopez, Director, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–4883, or William Clatanoff, Assistant U.S. Trade Representative for Labor, telephone (202) 395–6120.

SUPPLEMENTARY INFORMATION: On November 29, 2000, Presidents Clinton and Lagos announced their intention to negotiate a U.S.-Chile Free Trade Agreement (FTA). Negotiations were launched on December 6, 2000, in Washington, DC On December 14, 2000, USTR issued a public notice of intent to conduct negotiations, initiation of an environmental review under Executive Order 13141, and request for comments (65 FR 78077, Dec. 14, 2000). The negotiations have made substantial progress and are expected to conclude in the coming months.

On November 7, 2001, the Office of the U.S. Trade Representative, through the Trade Policy Staff Committee, published and sought comments on the draft environmental review of the proposed U.S.-Chile Free Trade Agreement (66 FR 56366, Nov. 7, 2001). The draft environmental review was conducted pursuant to Executive Order 13141 and its accompanying guidelines (65 FR 79442, Dec. 19, 2000). Persons seeking to submit comments concerning the review of the FTA's employment impact are referred to the draft environmental review, which contains information on the potential trade and economic effects and a summary of each chapter of the proposed FTA. The draft report may be found on the USTR Web site at *http://www.ustr.gov/environment/draftchileer.pdf*.

Section 2102(c)(5) of the Bipartisan Trade Promotion Act of 2002, 19 U.S.C. 3802(c)(5), directs the President to "review the impact of future trade agreements on United States employment, including labor markets, modeled after Executive Order 13141 to the extent appropriate in establishing procedures and criteria, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report available to the public." USTR and the Department of Labor will be conducting the employment review through the interagency Trade Policy Staff Committee (TPSC).

The employment impact review initiated by this **Federal Register** notice will be based on the following elements, which are modeled, to the extent appropriate, after those in Executive Order 13141. The review will be: (1) Written; (2) made available to the public in draft form for public comment, to the extent practicable; and (3) made available to the public in final form.

Comments may be submitted on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely U.S. labor market impacts of the FTA. Persons submitting comments should provide as much detail as possible in support of their submissions.

Submitting Comments: To ensure prompt and full consideration of responses, the TPSC strongly recommends that interested persons submit comments by electronic mail to the following e-mail address: *FR0043@ustr.gov*. Persons making submissions by e-mail should use the following subject line: "Chile Employment Review." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets is acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the character "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "Business Confidential" at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room in Room 3 of the annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10–12 a.m. and 1–4 p.m. Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet server (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 02–26731 Filed 10–16–02; 3:45 pm]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comment on Review of Employment Impact of United States-Singapore Free Trade Agreement

AGENCY: Office of the United States Trade Representative, Department of Labor.

ACTION: Request for comments.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) gives notice that the Office of the United States Trade Representative (USTR) and the Department of Labor (Labor) are initiating a review of the impact of the proposed U.S.–Singapore Free Trade Agreement (FTA) on United States employment, including labor markets. This notice seeks written public comment on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA.

DATES: USTR and Labor will accept any comments received during the course of the negotiations of the FTA. However, comments should be received by 5 p.m., November 8, 2002 to be assured of timely consideration in the preparation of the report.

ADDRESSES:

Submissions by electronic mail: FR0044@ustr.gov (written comments).

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW, Washington, DC 20508, telephone (202) 395–3475. Substantive questions concerning the employment impact review should be addressed to Jorge Perez-Lopez, Director, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, telephone (202) 693–4883, or William Clatanoff, Assistant U.S. Trade Representative for Labor, telephone (202) 395–6120.

SUPPLEMENTARY INFORMATION: On November 29, 2000, USTR issued a public notice of intent to conduct negotiations, initiation of an environmental review under Executive Order 13141, "Environmental Review of Trade Agreements" (64 FR 63169, Nov. 16, 1999) and request for comments on a proposed U.S.–Singapore FTA (65 FR 71197, Nov. 29, 2000). Negotiations on the U.S.–Singapore Free Trade Agreement were launched in December 2000. The negotiations have made substantial progress and are expected to conclude in the coming months.

On August 8, 2002, USTR, on behalf of the Trade Policy Staff Committee (TPSC), published and sought comments on a draft environmental review of the proposed FTA (67 FR 53035, Aug. 14, 2002). The draft environmental review was conducted pursuant to Executive Order 13141 and its accompanying guidelines (65 FR 79442, Dec. 19, 2000). Persons seeking to submit comments concerning the review of the FTA's employment impact are referred to the draft environmental review, which contains information on the potential trade and economic effects and a summary of each chapter of the proposed FTA. The draft report is available on the USTR Web site at *http://www.ustr.gov/environment/2002signapore.pdf*.

Section 2102(c)(5) of the Bipartisan Trade Promotion Act of 2002, 19 U.S.C. 3802(c)(5), directs the President to "review the impact of future trade agreements on United States employment, including labor markets, modeled after Executive Order 13141 to the extent appropriate in establishing procedures and criteria, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report available to the public." USTR and the Department of Labor will be conducting the employment review through the interagency Trade Policy Staff Committee (TPSC).

The employment impact review initiated by this **Federal Register** notice will be based on the following elements, which are modeled, to the extent appropriate, after those in Executive Order 13141. The review will be: (1) Written; (2) made available to the public in draft form for public comment, to the extent practicable; and (3) made available to the public in final form.

Comments may be submitted on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely U.S. labor market impacts of the FTA. Persons submitting comments should provide as much detail as possible in support of their submissions.

Submitting Comments: To ensure prompt and full consideration of responses, the TPSC strongly recommends that interested persons submit comments by electronic mail to the following e-mail address: *FR0044@ustr.gov*. Persons making submissions by e-mail should use the following subject line: "Singapore Employment Review." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets is acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the character "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "Business Confidential" at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room in Room 3 of the annex of the Office of the USTR, 1724 F Street, NW, Washington, DC 20508. An appointment to review the file may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 p.m–12 p.m. and 1 p.m–4 p.m. Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet server (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 02–26732 Filed 10–16–02; 3:46 pm]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13487]

Environmental Assessment of Implementation of the Coast Guard Training Center Cape May's Integrated Natural Resource Management Plan

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: The Coast Guard announces the availability of an Environmental Assessment (EA) of Implementation of the Coast Guard Training Center Cape May's Integrated Natural Resources Management Plan (INRMP) Cape May, New Jersey. The Coast Guard concluded that the implementation of the INRMP would not have a significant, adverse impact on the environment and therefore has issued a draft Finding of No Significant Impact (FONSI). We request your comments on the EA, INRMP and draft FONSI.

DATES: Comments must reach the Coast Guard on or before November 20, 2002.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2002–13487), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to Mr. Chris Hajduk, Chief—Environmental Protection and Safety Section, U.S. Coast Guard Training Center Cape May, 1 Munro Avenue, Cape May, New Jersey, 08204 or by e-mail at *chajduk@tracencapemay.uscg.mil*

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as the INRMP, EA, and draft FONSI, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The INRMP, EA, and draft FONSI also will be available for inspection or copying at the Cape May County Library, 30 West Mechanic St., Cape May Court House, NJ 08210, telephone: 609–463–6350. You may also find this docket, including the EA, on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, the proposed project, or the associated INRMP, contact Mr. Chris Hajduk, Chief—Environmental Protection and Safety Section, U.S. Coast Guard Training Center Cape May, telephone 609–898–6889, or via e-mail at *chajduk@tracencapemay.uscg.mil*. If you have questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, and telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to review and submit comments on the Environmental Assessment (EA) of our Integrated Natural Resource Management Plan (INRMP) for the Coast Guard Training Center in Cape May, New Jersey, and our draft Finding Of No Significant Impact (FONSI). If you do so, please include your name and address, identify the docket number (USCG–2002–13478), indicate the specific document and section of that document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Proposed Action

We have prepared an EA. The EA identifies and examines the reasonable alternatives and assesses their potential environmental impact. Our preferred alternative is to implement the Integrated Natural Resources Management Plan (INRMP).

We are requesting your comments on environmental concerns you may have related to the EA and the draft FONSI. This includes suggesting analyses and methodologies for use in the EA or possible sources of data or information not included in the EA. Your comments will be considered in preparing the complete EA.

Environmental Assessment and Draft Finding of No Significant Impact

The EA examines potential effects of the proposed action of implementing the INRMP on 20 resource areas: environmental setting, climate, air quality, noise, topography, geology, soils, water resources, wetlands, floodplain and coastal zones, aquatic habitat, riparian habitat, terrestrial ecosystems, fauna, endangered, threatened, and rare species, land use, facilities, hazardous and toxic materials, socioeconomic resources, and environmental justice. The INRMP integrates all aspects of natural resource management at TRACEN Cape May, and identifies management approaches that would benefit local ecosystems. The INRMP was developed using an interdisciplinary approach that solicited information from a variety of Federal, state, and local agencies and groups. An INRMP Focus Group was formed, which included key Installation personnel and individuals from various agencies and groups that have an interest in TRACEN Cape May and the management of its resources. Agencies involved in the process include U.S. Fish and Wildlife Service and New Jersey Division of Fish and Wildlife Management. Proper utilization of this Plan for the conservation of natural resources should not impair the ability of the Installation to perform its mission(s).

The EA concluded that the implementation of the INRMP would not have a significant, adverse impact on the environment—resulting in the issuance of a draft Finding Of No Significant Impact (FONSI). An Environmental Impact Statement is not required prior to implementation of the proposed action.

Dated: October 10, 2002.

D.S. Klipp,

Commander, U.S. Coast Guard, Facilities Engineer, Coast Guard Training Center Cape May.

[FR Doc. 02–26720 Filed 10–18–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Tarrant County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that we are rescinding the Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for proposed improvements to State Highway 199 (S.H. 199) in Tarrant County, Texas.

FOR FURTHER INFORMATION CONTACT: Patrick A. Bauer, P.E., District Engineer, Federal Highway Administration, 300 East 8th Street, Room 826, Austin, Texas 78701; Telephone: (512) 536–5950.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation, is rescinding the NOI published in the **Federal Register** (4910–22) on February 19, 1998, to prepare an EIS for proposed S.H. 199 in Tarrant County, Texas. The NOI is being rescinded because proposed S.H. 121 described as the eastern termini in the NOI has not been

constructed and the North Central Texas Council of Governments has removed the proposed S.H. 199 from the current regional mobility plan. Therefore, the scope of S.H. 199 has been revised and separate environmental documents for future improvements to S.H. 199 will be prepared as needed.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on October 10, 2002.

Patrick A. Bauer,

District Engineer, Austin, Texas.

[FR Doc. 02–26655 Filed 10–18–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 11, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 20, 2002 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0092.
Form Number: ATF F 5100.31.
Type of Review: Revision.
Title: Application for Certification/Exemption of Label/Bottle Approval Under the Federal Alcohol Administration Act.
Description: The Federal Alcohol Administration Act regulates the labeling of alcoholic beverages and designates the Treasury Department to oversee compliance with regulations. This form is completed by the regulated industry and submitted to Treasury as an application to label their products. Treasury oversees label applications to prevent consumer deception and to deter falsification of unfair advertising practices on alcoholic beverages.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 10,982.
Estimated Burden Hours Per Recordkeeper: 30 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping Burden: 41,238 hours.
Clearance Officer: Jacqueline White (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–26648 Filed 10–18–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 8, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 20, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1519.
Form Number: IRS Form 1099–LTC.
Type of Review: Extension.
Title: Long-Term Care and Accelerated Death Benefits.
Description: Under the terms of the Internal Revenue Code sections 7702B and 101g, qualified long-term care and accelerated death benefits paid to chronically ill individuals are treated as amounts received for expenses incurred for medical care. Amounts received on a per diem basis in excess of $175 per day are taxable. Section 6050Q requires all such amounts to be reported.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, State, Local or Tribal Government.
Estimated Number of Respondents: 3,000.
Estimated Burden Hours Per Respondent: 13 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 18,181 hours.
Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–26649 Filed 10–18–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 10, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 20, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: New.
Form Number: IRS Form 8874.
Type of Review: New collection.
Title: New Markets Credit.
Description: Investors use Form 8874 to request a credit for equity investments in Community development entities.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 10,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—8 hr., 7 min.
Learning about the law or the form—53 min.
Preparing and sending the form to the IRS—1 hr., 4 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 100,900 hours.
OMB Number: 1545–1537.
Regulation Project Number: REG–253578–96 (NPRM).
Type of Review: Extension.
Title: Health Insurance Portability for Group Health Plan; (Temporary) Interim Rules for Health Insurance Portability for Group Health Plans.
Description: The regulations provide guidance for group health plans and the employers maintaining them regarding requirements imposed on plans relating to preexisting condition exclusions, discrimination based on health status, and access to coverage.
Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.
Estimated Number of Respondents: 1,300,000.
Estimated Burden Hours Per Respondent: Varies.
Estimated Total Reporting Burden: 591,561 hours.
Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–26650 Filed 10–18–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Treasury Order 180–01; Financial Crimes Enforcement Network

September 26, 2002.

1. By virtue of the USA Patriot Act of 2001 (Pub. L. No. 107–56, Title III, Subtitle B, Section 361(a)(2), 115 Stat. 272, 329–332), and by the authority vested in me as Secretary of the Treasury, it is hereby ordered that the Financial Crimes Enforcement Network ("FinCEN" or the Bureau") is re-established as a bureau within the Department. The head of the Bureau is the Director, Financial Crimes Enforcement Network, who shall perform duties under the general supervision of the Secretary and under the direct supervision of the Under Secretary (Enforcement) or the designee of the Under Secretary.

2. *Mission.* The mission of FinCEN shall be to fulfill the duties and powers assigned to the Director, Financial Crimes Enforcement Network, in the USA Patriot Act of 2001, codified in relevant part at 31 U.S.C. 310(b), to support law enforcement efforts and foster interagency and global cooperation against domestic and international financial crimes, and to provide U.S. policy makers with strategic analyses of domestic and worldwide trends and patterns. FinCEN works toward those ends through information collection, analysis, and sharing, as well as technological assistance and innovative, cost-effective implementation of the Bank Secrecy Act and other Treasury authorities assigned to FinCEN.

3. *Duties and Powers.* In addition to the duties and powers established by the USA Patriot Act of 2001, codified in relevant part at 31 U.S.C. 310(b), the Director of FinCEN is authorized to issue regulations and perform other actions for the purposes of carrying out the functions, powers, and duties delegated to the Director. The Director is hereby delegated authority to:

a. Take all necessary and appropriate actions to implement and administer the provisions of Titles I and II of Public Law 91–508, as amended, (the "Bank Secrecy Act"), which is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–59, and 31 U.S.C. 5311 *et seq.*, including, but not limited to, the promulgation and amendment of regulations and the assessment of penalties;

b. Exercise authority for enforcement of and compliance with the regulations at 31 CFR part 103 with respect to the activities of agencies exercising authority thereunder that has been redelegated to such agencies by FinCEN under paragraph 9 infra; and

c. Design and implement programs of public outreach and communication to the financial community and the general public relating to the functions of the Bureau and the Department's efforts to prevent and detect money laundering and other financial crime.

4. *Authorities.* The Director of FinCEN shall possess full authority, powers, and duties to administer the affairs of and to perform the functions of FinCEN, including, without limitation, all management and administrative authorities similarly granted to Bureau Heads or Heads of Bureaus in Treasury Orders and Treasury Directives. The Director shall also possess authority to request one or more other government agencies to provide administrative support to the Bureau, in the name of the Bureau and under policies adopted by the Director.

5. *Transfer of Records and Property.* There shall be transferred to the Bureau such records and property to be determined by the Assistant Secretary (Management)/CFO, in consultation with the Under Secretary (Enforcement) and the Director, as are necessary or appropriate to carry out the purposes of this Order.

6. *Personnel.* FinCEN's staff shall be comprised of Treasury Department employees as well as other personnel detailed to FinCEN.

7. *Chief Counsel.* The Office of Chief Counsel of FinCEN shall be a part of the Legal Division, under the supervision of the General Counsel.

8. *Regulations.*

a. All regulations prescribed, all rules and instructions issued, and all forms adopted for the administration and enforcement of the Bank Secrecy Act, that were in effect or in use on the date of enactment of the USA Patriot Act of 2001, shall continue in effect as regulations, rules, instructions, and forms of the Bureau until superseded or revised.

b. All regulations prescribed, all rules and instructions issued, and all forms adopted for the administration of FinCEN prior to it becoming a bureau, that were in effect or in use on the date of enactment of the USA Patriot Act of 2001, shall continue in effect as regulations, rules, instructions, and forms of the Bureau until superseded or revised.

c. The terms "Director, Financial Crimes Enforcement Network," "Director, Office of Financial Enforcement," and "Assistant Secretary (Enforcement)" wherever used in regulations, rules, instructions, and forms issued or adopted for the administration and enforcement of the Bank Secrecy Act that were in effect or in use on the date of enactment of the USA Patriot Act of 2001, shall be held to mean the Director of FinCEN.

d. All regulations issued or amended by the Director of FinCEN shall be subject to approval by the Under Secretary (Enforcement) or a designee of the Under Secretary. The issuance or amendment of regulations by the Director shall be subject to Treasury Directive 28–01, Preparation and Review of Regulations."

9. *Redelegation.*

a. The Director of FinCEN may redelegate any authority vested under this Order to an officer or employee of the Treasury Department, including its bureaus.

b. The Director of FinCEN may redelegate any authority vested in the Director to an officer or employee of an agency other than the Treasury Department, when authorized by law.

10. *Ratification.* Any action heretofore taken that is consistent with this Order is hereby affirmed and ratified.

11. *Other Bureaus' Authorities.* This Order does not affect the authorities of the Commissioner of Customs and the Commissioner of Internal Revenue under Treasury Directive 15–23, "Bank Secrecy Act—U.S. Customs Service" and Treasury Directive 15–41, "Bank Secrecy Act—Internal Revenue Service," or under successor issuances to those Directives.

12. *Cancellations.*

a. Treasury Order 105–08, "Establishment of the Financial Crimes Enforcement Network", dated April 25, 1990, is superseded.

b. Treasury Directive 15–01, "Bank Secrecy Act Regulations," dated December 1, 1992, is canceled;

c. The "Delegation of Authority to the Director of the Financial Crimes Enforcement Network," signed by the Assistant Secretary (Enforcement), dated May 13, 1994, is canceled;

d. All existing Treasury Orders and Directives shall be read in a manner that is consistent with FinCEN's status as a bureau and the authorities vested in the Director of FinCEN as described in this Order.

13. *Authorities.*

a. Public Law 107–56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, October 26, 2001, Pub. L. 107–56, Title III, Subtitle B, Section 361(a)(2), 115 Stat. 272, 329–332, codified in relevant part at 31 U.S.C. 310(b).

b. 31 U.S.C. 321(b).

14. *Office of Primary Interest.* Director, Financial Crimes Enforcement Network.

Paul H. O'Neill,

Secretary of the Treasury.

[FR Doc. 02–26656 Filed 10–18–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Docket No. 959; ATF O 1130.34]

Delegation of the Director's Authorities in 27 CFR Part 47, Importation of Arms, Ammunition and Implements of War

To: All Bureau Supervisors:

1. *Purpose.* This order delegates the Director's authorities to subordinate ATF officials and prescribes the subordinate ATF officials with whom persons file documents which are not ATF forms.

2. *Background.* Under current regulations, the Director has authority to take final action on matters relating to procedure and administration. The Bureau has determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

3. *Cancellation.* This ATF order cancels the portion referring to part 47 of ATF O 1130.4, Delegation Order—Delegation of Certain Authorities of the Director in 27 CFR parts 47, 178, and 179, dated 1/15/97.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120–01 (formerly 221), dated June 6, 1972, and by 26 CFR 301.7701–9, this ATF order delegates certain authorities to take final action prescribed in 27 CFR part 47 to subordinate officials. Also, this ATF order prescribes the subordinate officials with whom applications, notices, and reports required by 27 CFR part 47, which are not ATF forms, are filed. The attached table identifies the regulatory sections, authorities and documents to be filed, and the subordinate ATF officials. The authorities in the table may not be redelegated.

5. *Questions.* If you have questions about this order, contact the Regulations Division at (202) 927–8210.

Bradley A. Buckles,

Director.

Regulatory section	Officer(s) authorized to act or receive document
§ 47.32(a) and (c)	Legal Instruments Examiner, Firearms and Explosives Imports Branch (FEIB).
§ 47.33	Legal Instruments Examiner, FEIB.
§ 47.34(b)	Chief, FEIB, to prescribe retention period of less than 6 years. Director of Industry Operations to prescribe retention period of more than 6 years.
§ 47.35(a)	Chief, FEIB.
§ 47.42(a)(2)	Legal Instruments Examiner, FEIB.
§ 47.43(c)	Legal Instruments Examiner, FEIB.
§ 47.44(a) and (b)	Legal Instruments Examiner, FEIB, to deny; Chief, FEIB, to revoke, suspend or revise.
§ 47.44(c)	Chief, Firearms and Explosives Services Division.
§ 47.44(d)	Supervisory Legal Instruments Examiner, FEIB, to receive permits.
§ 47.51	Legal Instruments Examiner, FEIB.
§ 47.52(b)	Legal Instruments Examiner, FEIB.
§ 47.52(f)	Legal Instruments Examiner, FEIB, to determine if documents are acceptable. Supervisory Legal Instruments Examiner, FEIB, with whom certification is filed, and to require additional documents.

BILLING CODE 4810–31–P

ATF Organization

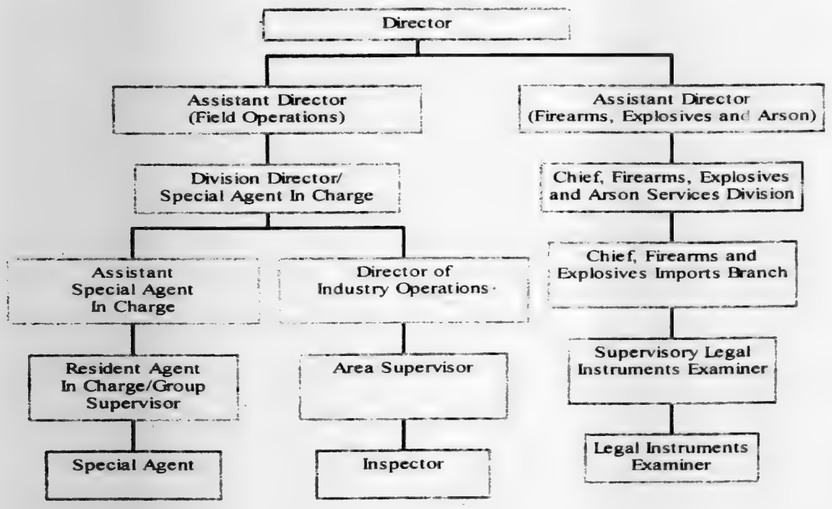

This is not a complete organizational chart of ATF.

[FR Doc. 02–26679 Filed 10–18–02; 8:45 am]

BILLING CODE 4810–31–C

DEPARTMENT OF THE TREASURY

Customs Service

Customs Trade Symposium 2002

AGENCY: Customs Service, Treasury.

ACTION: Notice of symposium.

SUMMARY: This document announces that the Customs Service will convene a major trade symposium that will feature joint discussions by Customs personnel, members of the trade community, and other public and private sector representatives on international trade security initiatives and the agency's transition to the proposed Department of Homeland Security. Customs Commissioner Robert C. Bonner will be the keynote speaker. Members of the international trade and transportation communities and other interested parties are encouraged to attend, and those attending are requested to register early.

DATES: A reception and pre-registration will be held on Wednesday, November 20, 2002, from 6 p.m. until 8 p.m. The symposium will be held on Thursday, November 21, 2002, from 8:30 a.m. until 6 p.m. and will include a special session on Friday, November 22, 2002, from 8 a.m. until 12 p.m. All registrations must be made on-line and confirmed with payment by November 14th.

ADDRESSES: The meeting will be held in Washington, DC at the Ronald Reagan Building and International Trade Center, at 1300 Pennsylvania Avenue, NW.

FOR FURTHER INFORMATION CONTACT: ACS Client Representatives; Customs Account Managers; Regulatory Audit Trade Liaisons; or the Office of Trade Relations at (202) 927–1440 or at *traderelations@customs.treas.gov*. To obtain the latest information on the program or to register on-line, visit the Customs Web site at *http://www.customs.gov/trade2002*.

SUPPLEMENTARY INFORMATION: Customs will be convening a major trade symposium (Customs Trade Symposium 2002) on Thursday, November 21, 2002, from 8:30 a.m. until 6 p.m. and on Friday, November 22, 2002, from 8 a.m. until 12 p.m. at the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The symposium will feature joint discussions by Customs personnel, members of the trade community, and other public and private sector representatives on international trade security initiatives and the agency's transition to the proposed Department of Homeland Security. Customs Commissioner Robert C. Bonner will be the keynote speaker. Members of the international trade and transportation communities and other interested parties are encouraged to attend.

The cost is $150 per individual and includes all symposium activities. Interested parties are requested to register early. All registrations must be made on-line at the Customs Web site

(*http://www.customs.gov/trade2002*). Registrations will be accepted on a space available basis and must be confirmed with payment by November 14, 2002. The Renaissance Washington DC Hotel, 999 9th Street, NW., has reserved a block of rooms for Wednesday, November 20th through Friday, November 22nd at a rate of US$ 179 per night. Reservations must be confirmed with the hotel by November 5th. Call 202–898–9000 or 1–800–228–9290 and reference the "U.S. Customs Trade Symposium."

Dated: October 16, 2002.

Robyn Day,

Acting Director, Office of Trade Relations.

[FR Doc. 02–26672 Filed 10–18–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form A, Qualifications & Availability Form.

DATES: Written comments should be received on or before December 20, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Qualifications & Availability.

OMB Number: 1545–1681.

Form Number: Form A.

Abstract: Form A is used by external applicants applying for clerical and technical positions with the Internal Revenue Service. Applicants will complete information relating to their address, job preference, veteran's preference and a series of occupational questions, knowledge and skills along with background information.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Responses: 90,000.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 45,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 15, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–26729 Filed 10–18–02; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
October 21, 2002

Part II

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Part 319

Importation of Clementines From Spain; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–023–4]

RIN 0579–AB40

Importation of Clementines From Spain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation of clementines from Spain to resume if the clementines are cold treated en route to the United States, and provided that other pre-treatment and post-treatment requirements are met. These requirements include provisions that the clementines be grown in accordance with a Mediterranean fruit fly management program established by the Government of Spain, that the clementines be subject to an inspection regimen that includes fruit cutting prior to, and after, cold treatment, and that the clementines meet other conditions designed to protect against the introduction of the Mediterranean fruit fly into the United States. This final rule also includes restrictions on the distribution of imported Spanish clementines for the 2002–2003 shipping season. We are taking this action based on our finding that the restrictions described in this final rule will reduce the risk of introduction of Mediterranean fruit fly associated with the importation of clementines from Spain.

EFFECTIVE DATE: October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. I. Paul Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–8) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction or dissemination of plant pests, including fruit flies, that are new to or not widely distributed within the United States.

Until recently, the Animal and Plant Health Inspection Service (APHIS) authorized the importation of clementines from Spain under the regulations in § 319.56–2(e)(2). As such, clementines from Spain were imported under permit, provided that they were cold treated for the Mediterranean fruit fly (*Ceratitis capitata*) (Medfly). Clementines imported from Spain were not required to meet any additional regulatory requirements in order to be imported into the United States, but were subject to inspection at the port of entry.

Between November 20 and December 11, 2001, several live Medfly larvae were intercepted in clementines from Spain. On December 5, 2001, APHIS notified the Government of Spain that it was suspending the importation of clementines. Beginning December 5, 2001, all shipments of clementines from Spain were refused entry into the United States. APHIS also announced restrictions on the marketing of Spanish clementines that had already been released into domestic commerce.

APHIS believes, based on the available evidence, that there are several possible explanations for the survival of Medfly larvae in imported Spanish clementines during the 2001–2002 shipping season.

In order to address this problem, since December 5, 2001, APHIS has prohibited the importation of clementines from Spain while it considered alternate approaches to mitigating the Medfly risk posed by clementines from Spain.

Revised Risk Mitigation for Spanish Clementines

On April 16, 2002, we published in the **Federal Register** (67 FR 18578–18579, Docket No. 02–023–1) a notice of availability and request for comments on a risk management analysis, "Risk mitigation for Mediterranean fruit flies with special emphasis on risk reduction for commercial imports of clementines (several varieties of *Citrus reticulata*) from Spain" (referred to elsewhere in this document as "risk management analysis" or "RMA"). The RMA describes and evaluates the use of certain risk-mitigating measures associated with the importation of clementines from Spain. We solicited comments on the RMA for 30 days ending May 16, 2002.

On May 24, 2002, we published in the **Federal Register** (67 FR 36560–36561, Docket No. 02–023–2) a notice in which we reopened and extended the comment period for our risk management analysis until June 14, 2002. We received a total of 17 comments on the RMA by that date. We considered the comments and described changes made to the RMA in a revision dated July 5, 2002.

On July 11, 2002, we published in the **Federal Register** (67 FR 45922–45933, Docket No. 02–023–3) a proposal to amend fruits and vegetables regulations to allow the importation of clementines from Spain to resume if the clementines are cold treated en route to the United States, and provided that other pre-treatment and post-treatment requirements are met. These requirements included provisions that the clementines be grown in accordance with a Medfly management program established by the Government of Spain, that the clementines be subject to an inspection regimen that includes fruit cutting prior to, and after, cold treatment, and that the clementines meet other conditions designed to protect against the introduction of the Medfly into the United States. We proposed this action based on our finding that the requirements described in the proposed rule would reduce the risk of introduction of Medfly and other plant pests associated with the importation of clementines from Spain. The proposed rule also provided notice of two public hearings related to our proposal and detailed the dates, times, and locations of those hearings.

We solicited comments concerning our proposal for 60 days ending September 9, 2002. We received 33 comments by that date, in addition to testimony provided by 30 persons at the two public hearings. The comments were from officials of State departments of agriculture, officials of foreign Governments, Members of Congress, scientists, representatives of associations such as farm bureaus, marketing associations, consumer groups, and trade associations, and growers, packers, and shippers of fruits and vegetables. Twelve of the commenters supported the rule, and 40 opposed some aspect of it. Fifteen commenters noted that APHIS should ensure that its decision to proceed with a final rule is based on science, and at least 10 commenters stated that APHIS should delay action until additional information is available to eliminate uncertainty in its approach. The issues raised in the comments are discussed below, by topic.

Determination by the Secretary

In this document, APHIS is adopting its proposal to allow the importation of clementines from Spain to resume as a final rule, with the changes discussed in this document.

Under § 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the importation and entry of any plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed.

The Secretary has determined that it is not necessary to prohibit the importation of clementines from Spain in order to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. This determination is based on the finding that the application of the remedial measures contained in this final rule will prevent the introduction or dissemination of plant pests into the United States. The factors considered in arriving at this determination include: (1) A risk management analysis (revised October 4, 2002), (2) a review of the existing cold treatment for clementines from Spain, "Evaluation of cold storage treatment against Mediterranean Fruit Fly, *Ceratitis capitata* (Wiedemann) (Diptera: Tephritidae)" (May 2, 2002) (referred to elsewhere in this document as "cold treatment evaluation"), (3) a quantitative analysis of available data related to cold treatment for Medfly that was produced by USDA's Office of Risk Assessment and Cost Benefit Analysis (ORACBA), "Revised Quantitative Analysis of Available Data on the Efficacy of Cold Treatment Against Mediterranean Fruit Fly Larvae" (September 20, 2002), referred to elsewhere in this document as "ORACBA analysis," and (4) the determinations of USDA technical experts.

Discussion of Public Comments

Clarification of Terms

Several commenters expressed confusion over our use of the terms "shipment" and "lot." We discuss this issue in more detail later in this document. In response to those commenters' requests for clarification, we have defined those terms.

In our final rule, a *lot* of clementines is considered to include a number of units of clementines that are from a common origin (*i.e.*, a single producer or a homogenous production unit).[1] The definition of the term *shipment* depends on the context in which it is used. Specifically, the definition depends on whether or not fruit has been treated. The term can refer to one or more lots of clementines that are presented to an APHIS inspector for pre-treatment inspection. Such a shipment may not include more than 200,000 boxes of clementines (555 pallets). The term can also refer to one or more lots of clementines that are imported into the United States on the same conveyance. Our use of these terms in the remainder of this document is consistent with these definitions.

General Comments

Several commenters questioned whether Spain, in just 9 months, has taken the proper steps to ensure their product is free from Medfly, and asked what changes have taken place in Spain's production areas since the shutdown of their exports in December 2001.

The system we have designed for the resumption of imports of Spanish clementines is designed to ensure that APHIS will be able to detect infestation levels of 1.5 percent or greater with a high (95 percent) level of confidence through the pre-treatment cutting of randomly selected fruit.[2] If a single live Medfly in any stage of development is detected during pre-treatment fruit cutting, the shipment of clementines in which the Medfly is found will not be approved for export to the United States.

Conversely, if no infested fruit are detected via fruit cutting, APHIS's analysis shows that the revised cold treatment will eliminate any undetected low-level Medfly infestations. Furthermore, fruit cutting at the port of entry is designed to provide additional assurance that the revised cold treatment was successful.

For these reasons, APHIS believes the new Spanish clementine import program will prevent the introduction or dissemination of Medflies into the United States. Nonetheless, to further ensure that the program does not result in the introduction of Medflies into the United States, we have required Spanish growers, in order to be approved to export to the United States, to enter into the Government of Spain's Medfly management program, which APHIS must approve, and which must ensure low levels of infestation in clementine production areas. We believe the activities required under Spain's program, which include phytosanitary measures that must be followed in the field and at packinghouses, represent a significant improvement over Spain's efforts in 2001.

Several commenters noted that APHIS still does not know "what went wrong" in 2001, when there were multiple live larvae finds on Spanish clementines in several different regions of the United States. The commenters suggested that designing a solution when the problem is not fully understood is risky. Specifically, one of those commenters proposed that despite APHIS's determination that there are two possible scenarios that could explain the discovery of live larvae in clementines imported from Spain, a third scenario, that both those things occurred, is also possible.

APHIS acknowledges that the cause of last year's infestations of imported Spanish clementines has not been definitively established; however, we have responded as if the problem resulted from one or both of the following: (1) Despite the assumed mortality rate of the cold treatment (99.9968 percent), any small or partial failure in the application of the cold treatment could have allowed Medflies to survive in clementines imported from Spain due to the above-average levels of Medflies in the growing areas in Spain, or (2) the level of Medfly infestation in imported clementines simply overwhelmed the capabilities of the cold treatment process, even though the treatment was properly applied. These two scenarios have received support from State agricultural officials and domestic stakeholders. We believe the system we have designed addresses all possible explanations for the problem.

In order to address the first explanation for last year's problem, APHIS has extended cold treatment as described in this document, and is confident that the prescribed cold treatment will provide a high level of mortality of target pests (equivalent to probit 9 mortality). The extension of cold treatment also addresses concerns that the cold treatment under the previous schedule may not have provided probit 9 mortality.[3] We have conducted a thorough review of the documentation of cold treatment application and have found no evidence that cold treatment was improperly applied during the 2001 shipping season, although a long-term thermal-mapping study on the application of cold treatment is underway. That study, which was initiated before the Medfly infestations of Spanish clementines occurred in 2001, is described in more

[1] A homogeneous production unit is a group of adjacent orchards in Spain that are owned by one or more growers who follow a homogenous production system under the same technical guidance. The fruit produced by these units is pooled and packed together, and all the orchards in the group are regulated as one unit in the event that traceback of infested fruit is necessary.

[2] We will also be able to detect lower levels of infestation in clementines with varying levels of confidence as described in detail under the heading, "Infestation Levels, Inspection, and Fruit Cutting."

[3] A level or percentage of mortality of target pests (*i.e.*, 99.9968 percent mortality or 32 survivors out of a million) caused by a control measure.

detail later in this document under the heading "Cold Treatment."

Regarding the second explanation for the problem, we have required that levels of infestation of Spanish clementines presented for export be kept at low levels (levels that cannot be detected via fruit cutting) in order to ensure that high levels of infestation do not cause the treatment to be overwhelmed. Inspection and cutting of clementines prior to cold treatment will ensure that this requirement is met.

One commenter noted that shortly after the interceptions of Medfly larvae in Spanish clementines, APHIS advised that the situation would be handled with transparency, stakeholder involvement, and most critically, that science would be the only determinant relative to developing a protocol a plan for the potential resumption of Spanish clementine shipments into the United States. The commenter stated that APHIS has failed to honor its commitment as a result of a predetermined decision to allow clementines back into the U.S. market for this upcoming season.

APHIS has upheld its commitment to handle the issue of the importation of Spanish clementines with transparency and stakeholder involvement, and the Secretary has based her determination to allow the importation of clementines from Spain to resume on science, and in accordance with the requirements of the Administrative Procedure Act. We have made the documents that support this rule available for public comment, some for as long as 120 days. We have listened to stakeholder concerns in meetings and at public hearings. We have made changes to our supporting documents based on stakeholder review and comments. We have considered all comments received on our proposed rule and its supporting documents and have documented our responses in this final rule. For the reasons outlined in this document, our decision to allow the resumption of clementines from Spain is based on science.

Two commenters claimed that APHIS's characterization of the events leading to the December 5, 2001, suspension of clementine imports from Spain is questionable. They stated that at no time has APHIS produced credible and verifiable evidence of live and viable Medfly larvae in shipments of Spanish clementines.

APHIS takes quarantine action on imported commodities if a given commodity is found to be infested with a live quarantine pest, and APHIS's actions in December 2001 were based on repeated findings of live Medfly larvae in imported Spanish clementines. APHIS believes that it is often impossible and always impractical to determine the true viability of a live pest intercepted in an imported commodity, especially one that has undergone cold treatment. Therefore, APHIS has no other alternative but to take action to protect American agriculture based on the finding of a live pest in any stage of development. This course of action is consistent with our authority under the Plant Protection Act.

Determining the true viability of Medflies would require APHIS to rear them to adults, allow them to mate, lay eggs, etc., all under high security conditions to protect against the escape of the pest to the natural environment. APHIS has no doubt, based on visual inspections by field and headquarters personnel, including expert identifiers, that the larvae were indeed alive upon interception in the United States.

One commenter claimed that there has never been such a catastrophic failure of an APHIS program as there was with Spanish clementines in 2001, and APHIS has no idea what the results of that failure will be. The commenter questioned whether Medfly could be established somewhere in the United States as a result of 2001 imports of Medfly-infested Spanish clementines.

APHIS believes that if clementines imported from Spain caused the establishment of Medfly in the mainland United States, that would indeed represent a catastrophic failure of the APHIS import program. However, APHIS has no evidence to indicate that infested Spanish clementines have resulted in a Medfly establishment in the United States. Despite the events of 2001, APHIS's actions to address the situation appear to have been successful. Since October 2001, the only wild Medfly detected in the mainland United States has been a single female trapped in San Bernardino County, CA, in August 2002. The results of DNA tests to determine the origin of the Medfly were inconclusive, though they did show a banding pattern that may be consistent with Medfly from Central America, South America (except Venezuela and most of Brazil), Mediterranean countries, or Sub-Saharan Africa.[4]

One commenter questioned whether APHIS has the resources available to effectively carry out and enforce the new import program, especially given congressional proposals to transfer the 3,200 APHIS employees at ports of entry to a proposed Department of Homeland Security. The commenter stated that, given the uncertainty surrounding the move of port personnel to the Department of Homeland Security, the reentry of Spanish clementines should be delayed.

APHIS has reviewed its resources and believes it has adequate coverage in Spain and across the United States to ensure compliance with this final rule. We have no reason to believe that inspectors and preclearance personnel will be unable to continue to carry out their current responsibilities in the event that they are moved to the proposed Department of Homeland Security.

One commenter noted that APHIS states that it is imposing a combination of measures aimed at achieving probit 9 protection from entry on Medfly into the United States. These measures comprise (1) pre-export controls in orchards and inspection at point of export, (2) cold treatment, extended by 2 days compared with previous conditions, and (3) post-import inspection. This commenter asked that we explain what contribution each step makes to achieving probit 9 protection.

Probit 9 was established by A.C. Baker in 1939 as a useful concept when trying to assess mortality of commodity treatments against fruit flies.[5]

APHIS considers "probit 9 protection" to be relevant only to cold treatment in this case. As stated earlier in this document and in the proposed rule, the term "probit 9" refers to a level or percentage of mortality of target pests (i.e., 99.9968 percent mortality or 32 survivors out of a million) caused by a control measure. APHIS has historically used the term "probit 9" in association with the mortality rate caused by commodity treatments (including vapor heat, high temperature forced air, methyl bromide, and cold treatments) for fruit flies. We do not believe the term can be assigned generally as a measure of success of a pest-excluding regulatory approach if the term is used as a representation of the risk reduction potential of (1) a systems approach to pest management or (2) any combination of treatment and other types of safeguards other than treatment. This is to say that APHIS uses the term only as a representation of the level of mortality of pests caused by a specific treatment, in this case cold treatment.

[4] DNA tests are actually better at clarifying where Medflies did not originate, as opposed to where they did originate. In this case, DNA tests revealed that banding patterns are not consistent with Medflies in Hawaii, Venezuela, and most of Brazil.

[5] Baker, A.C., 1939. "The Basis for Treatment of Products Where Fruitflies are Involved as a Condition for Entry into the United States." Circular No. 551. US Department of Agriculture, Washington, DC.

The level of mortality called "probit 9" is a historical, well-recognized benchmark in the area of phytosanitary security. It has been useful as a benchmark, but recent findings[6] suggest that requiring a probit 9 treatment may or may not be sufficient in a given case (i.e., in situations where there are significant pest populations). Conversely, the use of probit 9 under other circumstances (i.e., in situations with very low or nonexistent pest populations) may be more restrictive than is necessary to protect against pest infestation of imported fruits or vegetables. In such cases, risk analysis is necessary to determine the effect and role of treatment in a given pest-management approach.

In our RMA, APHIS considered that cold treatment approximated the "probit 9" level. We also stated that the risk management analysis for our proposal "considers other risk-mitigating measures as necessary to ensure that cold treatment has the potential to provide approximately a probit 9 level of quarantine security." Upon further consideration, this statement, and other similar statements made in our proposed rule and supporting documents require clarification. The RMA assesses the extent to which other risk-mitigating measures, in combination with cold treatment, reduce the risk that a mated pair of Medflies could enter the United States via imported Spanish clementines. Population levels have significance in the context of the RMA's calculations regarding the probability that a mated pair of Medflies could enter into the United States via Spanish clementines imported under the provisions of the proposed rule. However, the probit 9 efficacy of cold treatment is not dependent on population levels of Medflies in Spanish production areas in the sense that the same proportion of mortality is expected regardless of the Medfly population density. We have revised our RMA to clarify that fact.

To elaborate, if 32 Medflies survive out of each 1 million that are subject to a probit 9 treatment, one should expect that reducing the number of Medflies present to 500,000 would reduce the number of survivors to 16; if 100,000 are treated, then 3 will survive; and so on. We believe this clearly illustrates the relevance and effect of low pest population density, not to cold treatment itself, but to the overall success of a pest-exclusion program.

As a general rule, APHIS has required treatments for fruit flies to provide probit 9 mortality in cases where treatment is the only mitigation measure applied against the pest of concern. This is because the level of mortality represented by this benchmark is considered extremely high and stringent, especially when the field infestation rates are low.[7] In this rule, we are requiring a treatment that we are confident will provide a level of quarantine security that is equivalent to probit 9, but we are also requiring that fruit be consistently at low rates of infestation by Medflies in order to ensure that there is a very low probability that Medflies could survive cold treatment and become established in the United States.

Appropriate Level of Protection and Level of Risk

Several commenters claimed that, according to the court decision on APHIS's rule authorizing the importation of citrus from Argentina (*Harlan Land Company, et al.* vs. *United States Department of Agriculture, et al.*, Case #CV–F–00–6106–REC/LJO (D. Ariz. Sept. 27, 2001)) (referred to elsewhere in this document as *Harlan Land Co.*), as a matter of law, APHIS must define what it considers to be a "negligible level of risk" in the context of a rule authorizing the importation of fruit from a disease and pest infested area. The commenters elaborated that APHIS must define what it considers to be a negligible or acceptable level of risk (referred to by one commenter as a "quarantine security standard"), and it must also adequately explain that determination, and claimed that the proposed rule does not do so, nor has APHIS made any attempt to articulate why the issue is not addressed. The commenters stated that without a discussion of the issue, there is no way to judge whether APHIS is meeting the congressional expectation that its regulations will prevent the movement into and through the United States of commodities that "could present an unacceptable risk of introducing or spreading plant pests."

The RMA does not conclude that there is negligible risk associated with such importations. Rather, it concludes that there is a very low likelihood that mated pairs of Medflies could enter the United States via clementines imported from Spain. Furthermore, APHIS does not agree that the *Harlan Land Co.* court decision requires APHIS to define what it considers to be a "negligible level of risk" in the context of this rule, or any other rule apart from the rule at issue in *Harlan Land Co.*

The term "negligible" is one that was used by APHIS in prior rulemaking and risk analysis documents unrelated to this action to describe risk in a qualitative, descriptive sense. APHIS has never intended that "negligible level of risk" should be interpreted as a term of art, but instead has used the term in its plain meaning. APHIS believes that its decisionmaking is tied directly to the authority given to the Secretary of Agriculture by the Plant Protection Act.

Under the Plant Protection Act, the Secretary may prohibit or restrict the importation and entry of any plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. In the case of clementines from Spain, the Secretary has determined that it is not necessary to prohibit the importation of clementines from Spain in order to prevent the introduction into the United States or the dissemination within the United States of a plant pest. This determination is based on the finding that the application of the remedial measures contained in this rule will provide the protection necessary to prevent the introduction or dissemination of plant pests into the United States.

One commenter stated that, under the provisions of the World Trade Organization's (WTO) sanitary and phytosanitary (SPS) Agreement, as well as the standards that have been developed to implement the SPS Agreement by the International Plant Protection Convention (IPPC), a definition of the "appropriate level of protection" is the first step that must be taken when a country is considering allowing the importation of a commodity from another country. The commenter claimed that only after the "appropriate level of protection" or the "acceptable level of risk" is established, will the destination country be in a position to consider what phytosanitary measures, if any, need to be implemented in order to assure that its phytosanitary requirements will be met.

APHIS believes the commenter has misinterpreted provisions of the SPS Agreement and IPPC standards. The commenter appears to suggest that, under the SPS agreement and IPPC standards, the identification of an appropriate level of protection is a kind of procedural requirement that must be

[6] A detailed consideration of the shortcomings associated with any measure that uses a fixed expression of proportion of mortality (such as probit 9) may be found in: Landolt, P., D. Chambers, and V. Chew. 1984. "Alternative to the use of probit 9 mortality as a criterion for quarantine treatments of fruit fly infested fruit." *J. Econ. Entomol.* 77(2): 285–287.

[7] See footnote 6.

fulfilled prior to each individual instance when the United States considers allowing the importation of a commodity from another country. Under the SPS Agreement and IPPC standards, there is no obligation to complete such a task. Furthermore, guidelines on how to implement SPS Agreement Article 5.5 reveal that an indication of a country's appropriate level of protection:

"* * * may be contained in a published statement or other text generally available to interested parties. The statement of the appropriate level of protection may be qualitative or quantitative, and should serve to guide its consistent implementation over time, and also to increase the transparency of the sanitary or phytosanitary regime. Examples might include government policy statements with regard to appropriate levels of protection in response to certain risks, or documents on animal health protection objectives or with respect to plant protection."[8]

For plant health in the United States, Congress has expressed the United States' "appropriate level of protection" in the Plant Protection Act (a text generally available to interested parties) in the specific discretion provided to the Secretary of Agriculture. The Plant Protection Act authorizes the Secretary to "prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination of a plant pest or noxious weed within the United States." The Plant Protection Act further elaborates on the Secretary's discretion in carrying out that determination by stating that the Secretary may promulgate regulations requiring permits, or certificates for importation, and may require remedial measures that "the Secretary determines to be necessary to prevent the spread of plant pest or noxious weeds."

The Plant Protection Act ensures that our phytosanitary measures are transparent and implemented consistently over time, and thus is consistent with the guidelines cited above.

There is no obligation to express the "appropriate level of protection" quantitatively under either the SPS Agreement or IPPC standards, and Congress, in the Plant Protection Act, did not establish a quantitative expression of the "appropriate level of protection" or require APHIS to set such a quantitative expression. The SPS Agreement obligates members to be consistent in the level of protection they consider appropriate in similar cases. Allowing imports of clementines from Spain reflects consistency with our determinations to allow citrus imports from other countries and regions where Medfly is found. Therefore, this final rule is consistent with our obligations under Article 5.5 of the SPS Agreement.

One commenter noted that, in its Regulatory Impact Analysis (RIA) for the proposed rule, APHIS says that it "attempts to maintain the risk of Medfly introduction at an acceptable level in order to protect U.S. agricultural resources and maintain the marketability of agricultural products," but the Agency does not say what an "acceptable level" of risk is in that document or in the RMA. The commenter also noted that the Appendix 1 to the RMA defines the term "acceptable level," but it does so tautologically, stating: "Acceptable level means the presence of a hazard that does not pose the likelihood of causing an unacceptable phytosanitary risk." In other words, "acceptable" means "not unacceptable."

For the reasons stated above, we do not identify an "acceptable level of risk" in either the RIA or the RMA because those documents are, respectively, analyses of (1) the economic effects that could occur under this final rule, and (2) the probability that a mated pair of Medflies could enter the United States via a shipment of clementines from Spain. Neither document is intended to provide a decision or judgment as to whether this final rule provides a defined acceptable or appropriate level of protection, i.e., in a qualitative or quantitative sense. The documents are intended simply to inform the decisionmaker in her consideration of whether to allow the importation of Spanish clementines.

Furthermore, Congress stated in § 402(3) of the Plant Protection Act that, "* * * it is the responsibility of the Secretary to facilitate exports, imports, and interstate commerce in agricultural products and other commodities that pose a risk of harboring plant pests or noxious weeds in ways that will reduce, to the extent practicable, as determined by the Secretary, the risk of dissemination of plant pests or noxious weeds."

APHIS believes the process it follows in evaluating risks prior to rulemaking on a given subject is consistent with the clearly stated intent of Congress.

Regarding the commenter's statement that RMA defines the term "acceptable level" tautologically, the SPS Agreement employs a similar approach. The SPS Agreement defines "appropriate level of * * * phytosanitary protection" as "The level of protection deemed appropriate by the Member [country] establishing a * * * phytosanitary measure to protect human, animal or plant life or health within its territory." We believe this is further testament to the fact that APHIS has no obligation under any of its authorities or international agreements to set a quantitative level of protection that it believes is acceptable. Again, we believe the United States expresses its appropriate level of protection in the Plant Protection Act, which authorizes the Secretary to prohibit or restrict the importation and entry of any plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed.

One commenter stated that the RMA does not purport to assess the likelihood of Medfly introduction at all; it simply estimates the probability that a mated pair of Medflies will arrive at a suitable location in the United States, and while this is said to be "directly related" to the likelihood of introduction, it is not, according to APHIS, the same thing. The commenters further noted that the RMA does not reach any judgment as to whether the risk of Medfly introduction under the proposed rule is "acceptable." Instead, it merely asserts that the mitigation activities associated with a 1.5 percent maximum infestation rate decrease the risks of introduction as compared to the baseline of cold treatment alone. The proposed rule addresses the issue by saying the Secretary has determined "that the application of the remedial measures contained in the proposed rule will provide the protection necessary to prevent the introduction or dissemination of plant pests into the United States," but APHIS does not say what this necessary level of protection is, or how much risk is compatible with "preventing the introduction" of Medflies. The commenter stated that none of the supporting documents conclude that the mitigation measures will "prevent the introduction" of Medflies.

While the RMA does not directly assess the likelihood of Medfly introduction quantitatively, it does (1) provide a discussion of the relationship between the likelihood of Medfly introduction and the probability that a mated pair of Medflies could enter the United States in a shipment of Spanish clementines, and (2) provide a baseline figure to which the likelihood of introduction can be compared. In order to quantitatively assess the likelihood of introduction, additional analysis would be required to evaluate the possibility that a mated pair of Medflies that has entered the United States in Spanish clementines and arrived in a suitable area can then (1) find a host, (2) find fruit that is sufficiently mature in which to oviposit, (3) oviposit viable eggs, and (4) avoid death by dessication, heat or cold, or other factors. The effect of these other variables on the ability of a mated pair to survive, reproduce, and spread would, in all cases, further reduce the likelihood that Medfly could be introduced into the United States below the already very low probability that a mated pair of Medflies could enter the United States via Spanish clementines.

One commenter stated that the *Harlan Land Co.* court decision made it clear that "unless an agency describes the standard under which it has arrived at its conclusion, the court has no basis for exercising its responsibility to determine whether the agency's decision is arbitrary, capricious, an abuse of discretion, or otherwise in avoidance with the law." The commenter stated that according to the court's statement, an agency must cite information to support its position; without data the court owes no deference to an agency's line-drawing.

APHIS believes that the standard under which it has arrived at its conclusion is tied directly to the authority given to the Secretary of Agriculture by the Plant Protection Act. Under the Plant Protection Act, the Secretary may prohibit or restrict the importation and entry of any article if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. In the case of clementines from Spain, the Secretary has determined that it is not necessary to prohibit the importation of clementines from Spain in order to prevent the introduction into the United States or the dissemination within the United States of a plant pest. Several analyses (the RMA the cold treatment evaluation, the ORACBA analysis, and the judgment of USDA technical experts), provide the basis for the Secretary's finding that the application of the remedial measures contained in this rule will provide the protection necessary to prevent the introduction or dissemination of plant pests into the United States. Furthermore, the Secretary's determination is consistent with the congressional charge that she "facilitate exports, imports, and interstate commerce in agricultural products and other commodities that pose a risk of harboring plant pests or noxious weeds in ways that will reduce, to the extent practicable, as determined by the Secretary, the risk of dissemination of plant pests or noxious weeds."

Trade Issues, International Agreements, and Equivalence

One commenter claimed that any delay that prevents the re-entry of clementines into the United States beyond the beginning of the next shipping season would constitute unreasonable delay in violation of the Administrative Procedure Act and in contravention of the U.S. Government's WTO obligations.

Under the Administrative Procedure Act, USDA's rulemaking review policy, and the requirements of several Executive Orders, APHIS must follow certain procedures in the drafting and review of rulemaking documents. This process takes time. APHIS must consider issues raised in comments submitted before the close of the comment period, and then determine what action to take on its proposal given the issues raised by commenters. It must then draft a rule that documents its response to comments, and must circulate the rule through a significant review and approval process. APHIS is committed to rulemaking based on science and according to the requirements of the Administrative Procedure Act, and will not produce a final rule until we have carefully considered the issues raised by commenters and have followed our formal review process. This is consistent with member obligations under the WTO SPS Agreement.

Three commenters stated that the proposed rule violates WTO prohibitions against discriminatory trade practices by requiring an extra 2 days of cold treatment for Spanish exports that are not required of clementine exports from other countries susceptible to Medfly infestation.

In the October 15, 2002 issue of the **Federal Register**, APHIS published an interim rule (APHIS Docket No. 02–071–1) under which all commodities, including clementines from other countries, that are subject to cold treatment for Medfly must be treated under the same treatment schedule that we are requiring for Spanish clementines.

Two commenters stated that the proposed rule violates WTO prohibitions against discriminatory trade practices by imposing a field treatment regimen for control of Medfly in Spanish clementine orchards, as well as pre- and post-treatment fruit cutting, but does not require an equivalent field treatment regimen for other countries exporting clementines to the United States from areas susceptible to Medfly infestation.

It is true that APHIS has not placed additional pre-treatment, population-limiting requirements on clementines and other Medfly-host fruits and vegetables from other areas where Medflies are present. In the event that emergency measures are required to address a pest risk, APHIS applies them to the extent they are necessary, and APHIS has no evidence to support the conclusion that clementines or other fruits and vegetables from other Medfly-infested areas pose the same risk as clementines from Spain. We have conducted extensive fruit cutting and inspection activities associated with imports of clementines and other fruits and vegetables from other areas, and have not found a single live Medfly larvae. As stated previously in this document and in the proposed rule, given that high Medfly populations in production areas in Spain in 2001 could have caused the infestations discovered that year, APHIS believes it has sufficient reason to adopt specific measures that it believes will ensure against a similar occurence in future years. If we had evidence that suggested an equivalent problem in other regions, we would require equivalent safeguards. The available evidence does not, however, support that course of action.

The interim rule for other cold treated commodities, nonetheless, provides that those commodities, like Spanish clementines, will be subject to post-treatment fruit cutting, though fewer of certain commodities will have to be inspected and cut due to their non-preferred Medfly host status.

Several commenters stated that the technical trapping protocol, type of trap, baits, frequency of inspection, *etc.*, used by the Spanish growers should mirror the same protocol that is used by APHIS within the United States. The commenters claim that should a temporary Medfly infestation occur in a U.S. production area, the citrus within the established quarantine area cannot, under any circumstances, move to market, and they note that, in contrast, APHIS has proposed to allow foreign origin fruit from permanently infested production areas to be brought into the United States with only the provisos that the pest detections in the export groves are relatively low and the fruit is cold treated. Some commenters also questioned whether cold treatment is actually available to domestic producers

[8] See *http://docsonline.wto.org/DDFDocuments/t/G/SPS/15.DOC.*

in the event of a Medfly outbreak in the United States.

We do not agree that the technical trapping protocol, type of trap, baits, and frequency of inspection and other requirements regarding the Spanish clementine import program should mirror the same protocol that is used by APHIS within the United States for a reason the commenter has pointed out: Different requirements are warranted for fruit moving from Medfly-free areas in which there is an outbreak than for fruit moving from generally infested areas. The Spanish are not attempting to eradicate Medfly, nor does APHIS believe they have to do so in order to export fruit to the United States, provided they can mitigate the pest risk posed to the United States by their exports.

U.S. producers and agricultural officials have a longstanding policy to eradicate Medfly infestations if they are detected in the mainland United States.[9] Spanish producers use trapping as an indicator of the presence of Medflies in production areas, and use that indicator to trigger bait spray applications that are intended to lower Medfly population densities. U.S. producers and agricultural officials employ trapping programs to monitor for the presence of Medflies in free areas. For these reasons, APHIS does not believe there is a demonstrated need for trapping and bait treatment measures to be the same in Spain as they are in the United States. APHIS would, however, require equivalent measures if the intent of the Spanish program was maintaining Medfly freedom.

Furthermore, APHIS disagrees with the commenters' statements that citrus may not move from a U.S. area that is under quarantine for Medfly. In fact, under § 301.78–10(b)(3), APHIS allows the movement of regulated articles, which include citrus fruit, from quarantined areas provided they are treated with the same cold treatment schedule that we use for the importation of Spanish clementines. There are also other treatments available, as specified in § 301.78–10.

Several commenters noted that other countries will not accept U.S. fruit if it is 1.5 percent infested with Medfly.

Some countries will not accept fruit known to be infested with Medfly, and the United States is one of those countries. To clarify, we are not allowing imported Spanish clementines to be 1.5 percent infested or less upon arrival in the United States. Rather, we are requiring inspection and fruit cutting of 200 randomly selected fruit per shipment of clementines prior to cold treatment. If a single live Medfly is found during inspection in Spain, the entire shipment of clementines will not be eligible for export. If no infested fruit is found upon inspection, that provides a very high level of confidence (95 percent) that the shipment sampled has a low level of infestation (a level that cannot be detected via fruit cutting). Furthermore, according to our RMA, fruit that is 1.5 percent infested or less and that is cold treated has a low probability of carrying a mated pair of Medflies into a suitable location in the United States. If we find one live Medfly larva in a shipment of clementines at the port of entry in the United States, we will reject that shipment.

We suspect that the commenters doubt whether other countries would adopt a similar protocol in general for U.S. exports. Such a program would not seem to be necessary, since there currently is no Medfly infestation in the mainland United States. However, we do believe that the Spanish clementine import program could serve as an effective model for exports from Medfly infested areas in the United States to other countries. In the event that such a program is necessary, we would negotiate with foreign Governments to secure export opportunities for citrus and other Medfly hosts from Medfly-infested areas under this same protocol, and we would continue to allow interstate movements of such articles under the requirements of 7 CFR 301.78 through 301.78–10.

Cold Treatment

Several commenters noted that the time-temperature response surface model contained in the ORACBA analysis can be read to suggest that for treatment periods less than 16 days, a probit 9 level of phytosanitary security may not be achieved even at temperatures of 32 °F, 33 °F, or 34 °F, yet APHIS's revised protocol would allow treatment for only 12, 13, and 14 days, respectively, at those temperatures. One commenter recommended that, until the uncertainty is resolved regarding the lower temperatures and durations of cold treatment, the cold treatment protocol be kept at a minimum duration of 14 days. Other commenters urged APHIS to review data relevant to this subject that were recently developed in Australia and South Africa.

APHIS has obtained and evaluated data collected in Australia by its Department of Agriculture and Horticulture Australia regarding time/temperature combinations that provide apparent complete mortality of Medfly.[10] Copies of that data are available from the person listed under **FOR FURTHER INFORMATION CONTACT.** These data have also been factored into an updated version of the ORACBA analysis. In short, the data provide evidence that the longer durations of cold treatment (16 days/35 °F, and 18 days/36 °F) are likely to provide a very high level of quarantine security (probit 9 or above).

The specific South African data cited by commenters were not submitted to APHIS by commenters. We were able to communicate with the persons conducting the study, and the information they provided supports the cold treatment we are requiring under this final rule.

Regarding the question of whether cold treatment provides probit 9 mortality at all the proposed time/temperature combinations, APHIS agrees with the commenters that additional statistical or experimental evidence is necessary to continue to support the conclusion that the 12 days/32 °F and 13 days/33 °F combinations provide probit 9 mortality. However, as evidenced clearly by Figure 3 of the ORACBA analysis, there are sufficient data available to conclude that 14 days/34 °F, 16 days/35 °F, and 18 days/36 °F treatments do provide probit 9 level quarantine security.

Given that the calculations of risk in our RMA depend on the assumption that cold treatment provides probit 9 mortality, we have removed the 12 days/32 °F and 13 days/33 °F cold treatment combinations from this final rule, due to the unavailability of sufficient data to continue to support those time/temperature combinations as providing probit 9 mortality. Thus, the revised T107-a cold treatment schedule for clementines from Spain will require fruits to be treated according to the following schedule:

Temperature	Exposure period (in days)
34 °F or below	14
35 °F or below	16
36 °F or below	18

The revised ORACBA analysis provides statistical justification for our selection of the above schedule, and is based on all available data.

Some commenters noted that Spanish exporters claimed that their fruit was

[9] Hawaii is generally infested with Medfly and uses treatments to certify movements.

[10] De Lima, C.P.F., A. Jessup, and R. McLauchlan. 2002. "Cold disinfestations of citrus using different temperatures X time combinations." Horticulture Australia Ltd. Project Number: CT96020.

cooled to 32 °F for 12 to 14 days in 2001, which is as long or longer than the revised protocol would require, and yet a substantial number of Medfly larvae survived that treatment. If the previous statement is true, asked the commenters, how is APHIS's proposed approach different from 2001?

We have conducted a review of available cold treatment records for shipments of Spanish clementines into the ports of Philadelphia, PA, and Elizabeth, NJ. The results of our review are as follows: (1) There was no clear pattern for the use of specific time/temperature combinations of cold treatment; and (2) though some shipments of clementines were treated for more days than were required at various approved temperatures, there is no evidence to suggest that the treatment time/temperature combinations cited by the commenter were used on more than a few occasions. In fact, the records show that in 2001, the 10 day/32 °F treatment schedule was the least used of the five options available, perhaps because shippers were hesitant to subject the fruit to the damage that can be caused by freezing temperatures.

While our review did reveal that, in some cases, treatments were applied for longer durations (several hours to several days) than was required under the previous treatment schedule, we have no direct evidence that fruit found to be infested with Medfly were treated for more time than was required under the previous treatment schedule.

Upon the detection of Medfly in Spanish clementines in 2001, APHIS was able to trace the initial interceptions to particular sea vessels, including the M/V Japan Senator and the M/V Green Maloy. The records for the M/V Japan Senator, which arrived in Elizabeth, NJ, on November 7, 2001, show that each of the eight sea containers imported on that vessel met only the minimum time/temperature combinations provided under the previous treatment schedule. The records for the M/V Green Maloy, which arrived in Philadelphia on November 11, 2001, show that some time/temperature combinations in the 12 compartments on the vessel met only the minimum standards of the previous treatment schedule, while other compartments were cold treated for as many as 3 extra days. Since APHIS cannot trace back the fruit that was found to be infested to a specific hold on either vessel, we cannot know whether the fruit was exposed to more cold treatment than was required. We do know, however, that the infested fruit was held for at least as long as the previous treatment schedule required, which suggests a failure of the previous schedule to provide near 100 percent mortality, but not necessarily a failure of the revised schedule.

Furthermore, the approach we use in this final rule also addresses the risk posed by high levels of infestation of imported clementines. There were no such restrictions on infestation levels in 2001.

One commenter claimed that APHIS's proposal to extend cold treatment is based exclusively on the recommendation made by a panel put together by APHIS, using studies and scientific literature that are not recent and not credible enough. The commenter stated that cold treatment should not be extended, as any extension should be based upon more detailed scientific studies with internationally accepted credibility.

Upon further analysis of all the available data, as stated above, APHIS is amending the cold treatment schedule to allow cold treatment for Medfly only at the longer time/temperature combinations (14, 16, or 18 days, at the temperatures listed above). This change is based on the results of the ORACBA analysis, which essentially combines the results of available cold treatment research and uses a model to assess and show the ability of certain time/temperature combinations to provide probit 9 mortality of Medfly. The ORACBA analysis does not contradict the recommendations of the cold treatment review panel that drew up the cold treatment recommendation document that was cited in our proposed rule. Rather, the ORACBA analysis shows that data are only available to support cold treatment at the longer time/temperature combinations suggested by the panel. Given the clarity of the available data, including data recently made available by the Australian Government, we are confident that our revised cold treatment is science-based.

Two commenters questioned whether APHIS allows the use of a single fruit temperature probe in a cold treatment container or ship hold, and stated that a single data point does not allow an estimate of the variation in temperature that normally occurs, and the protocol does not incorporate the necessary treatment time adjustment associated with this temperature variation. The commenters stated that there are very little published data on temperature variation in marine shipments, so the actual level of temperature variation in some shipments may be high.

APHIS's cold treatment protocols do not authorize the use of only a single data point in the load. Multiple temperature sensors are required (in the fruit pulp, as well as in the air), and readings from these sensors must print out once an hour during the entire voyage. The larger the cargo space, the more sensors that are required, and sensors must be checked and calibrated before each treatment begins. Furthermore, all cold treatment containers and compartments must be checked and certified by APHIS, and APHIS verifies the treatment records upon arrival of the imported commodity. Given that APHIS requires the use of multiple sensors, given that we require all temperature sensor readings to meet the appropriate treatment schedule, and given the certification requirements for treatment equipment, we are confident that our existing procedure accounts for any temperature variation that may occur during cold treatment.

One commenter expressed concern that fruit subject to break bulk shipment and that is not pre-cooled will take 100 hours to reach desired temperatures. Other commenters asked exactly when cold treatment is considered to begin. Others questioned whether the cold chain is broken when fruit is brought to the port for loading onto the ship. Another commenter noted that, under break bulk shipping, cooling fans are not normally operated until 75 percent of the cargo hold is loaded, and stated that this condition further exacerbates the problem of breaking the cold chain.

Cold treatment is not considered to have begun until all temperature sensors within a particular compartment in a sea vessel or a container reach treatment temperature or below. If the cold chain is broken at any time during treatment, the treatment must start over, and must be completed in its entirety. As stated above, multiple temperature sensors are used (in the fruit pulp, as well as in the air), and readings from each sensor must be printed out once an hour during the entire voyage.

APHIS recommends that the fruit be pre-chilled before loading. However, many foreign seaports have not built cold-storage facilities, and precooling is not essential given that treatment according to the schedules described in this document provide probit 9 mortality. Loading warm fruit mandates a later starting time for the treatment, often several days after the ship has left the port. In some cases, the required number of days may not have elapsed by the time the ship reaches its destination in the United States. This delay may be minimized at the port of embarkation by loading only one compartment at a time, and running the

cooling fans during loading. In cases where the treatment is not complete upon arrival, the ship must either remain in port until the cold treatment is completed in the last compartment, or the fruit is consigned to a cold-treatment warehouse on shore, where treatment can be completed or re-initiated.

Several commenters stated that APHIS should delay the final rule until additional research on the application of cold treatment is completed, as it has not established why the previous program failed. The commenters cited an ongoing APHIS study to investigate temperature distribution in cold treatment holds in ships to see whether it is necessary to increase the number of temperature sensors in the holds.

APHIS's review of the application of cold treatment to shipments of clementines that produced live Medfly larvae yielded no evidence that treatment was improperly applied. Given our analysis of available data on cold treatment, which is documented in the ORACBA analysis, we are confident that the revised cold treatment schedule for Spanish clementines will provide probit 9 mortality. Though there is a temperature mapping study underway regarding the application of cold treatment (which was underway before the 2001 Spanish clementine shipping season), we do not expect the results of the study to suggest dramatic changes to existing guidance on the deployment and placement of sensors in cold treatment compartments and containers. Given the clarity of the available cold treatment data, as discussed in the ORACBA analysis, the probit 9 mortality of cold treatment, and the other mitigating measures contained in this rule, we see no need to delay this final rule.

Two commenters stated that APHIS's cold treatment protocol should require that more temperature data be collected in each container to determine the variation in temperature of a load, as this is the only way to ensure that fruit is subject to disinfestation temperatures for the required time period. They claimed that the current protocol potentially allows significant portions of a load to be delivered without adequate treatment, and that a minimum of three temperature probes per unit of fruit are needed. One of the commenters stated that USDA research reports published in the 1980's indicate that the fruit temperature range in a refrigerated container is typically about 3 °F, and based on that figure, single temperature monitors measuring average temperatures could fail to reveal temperatures above the level permitted by the treatment schedule.

APHIS requires the use of multiple sensors, given that we require all temperature sensor readings to meet the appropriate treatment schedule, and given the certification requirements for treatment equipment, we are confident that our existing procedure accounts for temperature variation that may occur during cold treatment.

For shipping containers, we require a minimum of three temperature sensors to be placed in fruit pulp. For sea vessel compartments, we require a minimum of four temperature sensors, but the number required may be larger, depending on the size of the treatment compartment. See Chapter 6 of the Plant Protection and Quarantine (PPQ) Treatment Manual [11] for additional information.

Several commenters noted that in December 2001, when the Government of Spain proposed that APHIS extend the cold treatment on two of the vessels then docked in U.S. ports with a view to permitting the fruit to enter the United States if the treatment were successful, APHIS rejected the approach, saying it had "no data to support the efficacy of extending the time or temperature of the approved cold treatment." These commenters claimed that APHIS still has no such data.

At the time of the Government of Spain's proposal, APHIS had not conducted its review of the available data on cold treatment, and would not suggest a remedial measure without a basis in science. Furthermore, for the reasons stated previously in this document, we must disagree with the commenters' conclusion. We believe there are adequate data available to support our revised cold treatment protocol.

One commenter stated that the effects of precooling on the ability of Medflies to survive cold treatment are not known and pointed out that the draft workplan for the clementine import program states that "Additional long-term research will be needed to determine if the rate of precooling has an effect on insect tolerance of the cold treatment."

Studies on other fruit fly species have shown that pre-cooling does not have a significant effect on fruit fly mortality. Whether pre-cooling would have a beneficial effect with respect to Medfly mortality remains to be determined. If so, it is possible that adjustment (*i.e.*, shortening) of the treatment schedule would be possible, as available evidence shows that the extended cold treatment required under this final rule already provides quarantine security equivalent to the probit 9 level.

Two commenters stated that it is possible that Medflies in Spain may be able to withstand colder temperatures than can more tropical populations of Medflies since most, if not all, cold treatment work has been done on strains of Medfly other than that found in Spain.

While it is possible that Medflies in Spain may be able to withstand colder temperatures than some other Medflies, there is no evidence available to support or verify that supposition. There is, however, evidence, which is cited in our risk mitigation analysis, that Medflies have not established in the colder inland areas of Spain where they would be expected to occur if they had become adapted to colder conditions. Indeed, the distribution of Medflies in Spain is consistent with a Mediterranean climate, not a temperate or cold environment.

One commenter stated that Medfly larvae have the capability to overwinter in freezing conditions.

Larvae may survive brief periods (*e.g.* 2 to 3 days) of exposure to freezing conditions, especially if protected from actual freezing by host fruit. Available evidence (cited in the RMA) indicates that larvae cannot survive long-term exposure (*i.e.*, 3 to 4 days) to freezing temperatures.

One commenter stated that the statement in the proposed rule that APHIS inspectors will examine the cold treatment data prior to clearing an incoming shipment is very troubling, as it infers that this might not have been occurring previously even though the PPQ Treatment Manual cold treatment protocol requires a review of the treatment logs or charts for any irregularities that might have occurred during treatment (and, time permitting, examination of the load and compartments) prior to clearance of any cold treated shipment.

APHIS always reviews the cold treatment records of each compartment or container that contains imported cold treated fruits and vegetables. For each imported shipment, an inspector reviews the treatment charts to ensure that the treatment cold chain was uninterrupted and that the time/temperature combinations meet the required treatment schedule. Our statement in the proposed rule was intended to reinforce this requirement, not to imply it had not been applied.

One commenter stated that methyl bromide fumigation is a proven treatment meeting a probit 9 standard of quarantine security with regard to Medfly infestation, and that based on

[11] See *http://www.aphis.usda.gov/ppq/manuals/pdf_files/TM.pdf.*

applications of methyl bromide to mandarin crops (a citrus fruit similar to clementines), methyl bromide treatment would have minimal aging effects on the fruit and little to no cosmetic effects provided that the fumigation was properly applied. The commenter pointed out that the established PPQ treatment schedules for citrus for methyl bromide use is listed as T101–w–1–2 in the PPQ Treatment Manual.

The treatment referred to by the commenter is listed in the PPQ Treatment Manual as an approved Medfly treatment for citrus moving interstate within the United States. However, APHIS only employs that treatment for use as a precautionary treatment for fruit moving from areas near areas where Medfly has been trapped. Treatment T101–1–2 does not provide probit 9 mortality, and there is no approved methyl bromide treatment for citrus that provides probit 9 mortality of Medfly.

Confidence Building and Limited Distribution

Many commenters had concerns about the potential limited distribution of Spanish clementines. The proposed rule explained that APHIS was considering restricting the distribution of imported Spanish clementines to non-citrus producing States for the first year of the program as a confidence-building measure. With limited distribution, clementines would not be eligible for distribution in California, Arizona, Texas, Florida, Louisiana, Puerto Rico, the U.S. Virgin Islands, the Northern Mariana Islands, Guam or American Samoa. Four commenters stated that such a requirement is unwarranted and unjustified given the findings of the RMA, and especially given the new stringent controls included in the proposed rule. One commenter stated that the requirement would be contrary to the provisions of the SPS Agreement, which requires measures to be based on scientific principles. Twelve other commenters stated that limited distribution was warranted, and each had different ideas as to what APHIS's limited distribution protocol should actually entail. Some commenters claimed that distribution should be allowed only in States without Medfly host material and conditions for Medfly survival. Others stated that distribution should not be allowed in citrus-producing States or States that border citrus-producing States. Other commenters agreed with APHIS's original suggestion. One commenter suggested that APHIS limit distribution for 2 years rather than 1 year to build added stakeholder confidence in the new program.

APHIS has determined that, in order to ensure the success of our new approach, it is necessary to limit the distribution of Spanish clementines to non-citrus producing States during the upcoming (2002–2003) Spanish clementine shipping season. This means that, under § 319.56–2jj(i) of this final rule, the importation and distribution of Spanish clementines will not be allowed in Arizona, California, Florida, Louisiana, Texas, Puerto Rico, the U.S. Virgin Islands, the Northern Mariana Islands, Guam and American Samoa [12] during the 2002–2003 shipping season, and all boxes of Spanish clementines will be required to bear the following statement: "Not for distribution in AZ, CA, FL, LA, TX, Puerto Rico, and any other U.S. Territories." All labeling must be large enough to clearly display the required information and must be located on the side of the cartons to facilitate inspection. APHIS has determined that this measure is necessary to provide added protection to areas in the United States that are most vulnerable to Medfly establishment.

Our strategy is limited to fewer States than some commenters would have preferred because we do not believe it is necessary, especially given the RMA's characterization of the likelihood that a mated pair could enter the United States via imported Spanish clementines, for us to temporarily prohibit the distribution of Spanish clementines in any States except those where Medfly could become established for the long term. We acknowledge that Medfly attacks many crops other than citrus, and that those crops are produced in some non-citrus producing States, but those States do not have favorable climatic conditions and sufficient host material present throughout the year to support Medfly establishment. APHIS is adopting this requirement on a temporary basis to protect the most sensitive agricultural production areas of the United States from infestation with Medfly. Therefore, we are confident that we are well within our rights as a WTO member country.

Several commenters stated that limited distribution is not good regulatory policy and does not work, as shipments of commodities entering California from other States have been found to contain live Medfly larvae. The commenters noted that the California Department of Food and Agriculture routinely finds exotic pests in parcels handled by the U.S. Postal Service and commercial delivery firms at various locations in California and stated that USDA cannot implement a 100-percent effective program to stop transshipment of clementine fruit from other States into California.

APHIS has had success with compliance systems for limited distribution of fruits and vegetables. The keys to this success have been communication, labeling, trade verification, and enforcement. Communication of regulations for limited distribution has been made via public notice, APHIS Industry Reports, internet websites, direct mailings to members of the Produce Marketing Association and American Trucking Association, and issuance of compliance agreements and permits.

Distribution statements are required on the shipping boxes for all limited distribution commodities, as will be the case for Spanish clementines. These statements inform the importer, shipper, or market owner of the areas in which the products are prohibited from being distributed. Verification of commodity and required labeling takes place at the initial port of entry and at internal markets within the United States. Commodities found to have been moved in violation of limited distribution requirements are recalled and/or destroyed. Reports of illegal movement are investigated and civil penalties are issued to violators as appropriate.

For example, APHIS has monitored importation and compliance with the limited distribution of Mexican avocados since 1997. Compliance has been 98 to 99 percent by volume during the past 5 shipping seasons. In spite of an increased volume of imports, the 2001–2002 season saw a notable decline in violations over past years. In the 2001–2002 shipping season, APHIS had three violations under investigation for illegal transshipment to Tennessee and Georgia. Approximately 85 boxes were found in several unapproved markets, of which 80 (1 shipment) were reported to agricultural officials by the receiver in Georgia and returned.

We are confident that limited distribution of Spanish clementines can be enforced and can work, as shown by past experience.

Two commenters stated that APHIS should consider a trial period during which limited volumes of clementines would be allowed to be imported to northern-tier States for a minimum of one shipping season, so as to ensure that the system works.

[12] Hawaii produces citrus, but is generally infested with Medfly, and therefore is not included in the list of citrus-producing States where distribution of Spanish clementines will be prohibited for the 2002–2003 shipping season.

As stated in previous responses, APHIS is confident that limiting distribution to non-citrus producing States should be adequate to provide confidence that the new approach works, especially given the very low probability of a Medfly infestation identified in the RMA, which does not even consider limited distribution as a mitigation measure.

Operational Workplan

Several commenters stated that, in order to truly understand whether or not the risk mitigation measures chosen will provide an appropriate level of protection, APHIS's analysis must contain the workplan that will be used to implement the mitigation strategy chosen. The commenters said that, without the workplan, there is no way for any cooperator or other stakeholder to ascertain if the measures chosen will be effective.

The workplan referred to by commenters is, in essence, an operational agreement between APHIS and other parties (the Spanish Government and a group representing clementine exporters) as to the responsibilities of each for the operation of the preclearance program. The provisions of the workplan intertwine with the regulations and are more detail-oriented.

When APHIS designs a regulatory approach for a particular issue, it places or proposes to place all measures deemed to be necessary according to risk analysis in the Code of Federal Regulations. If a specific measure is not relevant to our calculations of risk, that measure may be included in the regulations, and it may not. There is no bright line between what is included in a workplan and what is included in the regulations, save that the regulations must include all provisions necessary to properly enforce the approach evaluated by risk analysis.

As a longstanding matter of policy, APHIS does not make preclearance workplans available for public comment, nor does it have the intention of doing so in this case, though APHIS has, on some occasions, consulted stakeholders (who are not signatories of the workplan) on the contents of such workplans. In fact, at the request of stakeholders, APHIS has met with several State plant health officials as to the content of the preclearance workplan for this rulemaking. Nonetheless, APHIS does not believe that the contents of the workplan should be included in the rulemaking at hand.

To elaborate, APHIS has received a number of comments urging specific handling of trapping and monitoring activities in Spain—*i.e.*, commenters have suggested the use of a certain fruit fly traps, and certain spacing of trap locations. APHIS believes that such points do not have to be included in the rulemaking at hand, given that the rule is designed to provide for a measure of performance that will be demonstrated primarily via inspection and fruit cutting. Moreover, regardless of what trap is used and how the traps are spaced, under this rule, growers of Spanish clementines must ensure that products submitted for export to the United States have a low Medfly infestation level (a level that cannot be detected via fruit cutting). If they do not meet this standard, clementines intended for treatment will be rejected. APHIS will reject a shipment of fruit presented for export if it is found to contain live larvae upon fruit cutting. In short, if the fruit is found to be infested, it will be rejected. If fruit is not found to be infested, the extended cold treatment will provide that the fruit can be safely imported.

One commenter stated that without the workplan, there is no way for any cooperator or other stakeholder to ascertain if there is sufficient APHIS oversight planned in Spain. The commenter stated that the workplan should allow APHIS unfettered access to production areas and packing and shipping facilities, regular auditing of Spanish records, and other procedures to ensure that APHIS personnel verify compliance with the terms and conditions of the operational workplan.

The requirements described in the proposed rule and this rule clearly state that the Spanish Medfly management program must provide that clementine producers allow APHIS inspectors access to clementine production areas in order to monitor compliance with the Medfly management program, and that all trapping and control records kept by the Government of Spain or its designated representative must be made available to APHIS upon request. APHIS will have inspectors working full time in Spain on the verification of the Spanish clementine import protocol-including inspections at the port of export and production area monitoring. The inspectors will be present to conduct and monitor fruit cutting at the exporting port, and will be able to review records kept by the Government of Spain regarding its management program. Only APHIS personnel and personnel of Spain's Plant Protection Service will be allowed to conduct fruit cutting, and any fruit cutting performed by the Government of Spain will be supervised by APHIS.

Infestation Levels, Inspection, and Fruit Cutting

Several commenters expressed concern or confusion over our reference to a 1.5 percent level of infestation. One commenter stated that allowing 1.5 percent of imported Spanish clementines to be infested is unacceptable, and that 1.5 percent is a high level of infestation of any pest, even in the field, while several other commenters claimed that our selection of that level of infestation is not supported by science.

We recognize that our reference to a 1.5 percent level of infestation of Spanish clementines may have caused confusion among commenters. To clarify, under this rule, the detection of a single live Medfly during any sampling of clementines will result in the rejection of the shipment sampled. Hence our actual target infestation level of fruit is zero, not 1.5 percent. However, as a practical matter, it is impossible to sample a sufficient number of fruit to arrive at a statistically valid conclusion that the fruit sampled is Medfly-free. Therefore, we have selected a sampling rate (200 fruit per shipment) that provides a high level of confidence that we will be able to detect low levels of Medfly infestation in clementines from Spain. This particular level of inspection was selected because inspection and fruit cutting at lower rates would provide decreased confidence in our ability to detect low-level infestations of fruit, and because inspection and fruit cutting at higher rates would either not be practical from an operational standpoint or would not measurably improve confidence in our ability to detect such infestations. While this sampling rate was represented in the proposed rule as a measure that provided 95 percent confidence that we could detect Medfly in fruit that were no less than 1.5 percent infested, the same sampling rate will also provide a relatively high degree of confidence that even lower levels of Medfly infestation could be detected. For example, based on established hypergeometric sampling rates shown in the table below, we would still have a relatively high level of confidence (75 percent) that we could find an infested fruit if the unit sampled is only 0.70 percent infested with Medflies.

Percentage of fruit infested with Medflies	Confidence in detection, assuming 200 fruit sample [1] (in percent)
0.05	9.52
0.10	18.13
0.11	19.76
0.12	21.36
0.20	32.99
0.30	45.17
0.40	55.15
0.50	63.32
0.60	70.00
0.70	75.47
0.80	79.95
0.90	83.61
1.00	86.61
1.10	89.06
1.20	91.06
1.30	92.70
1.40	94.04
1.50	95.14
1.60	96.03
1.70	96.76
1.80	97.36
1.90	97.85
2.00	98.24

[1] Assuming shipments of clementines are within the maximum and minimum sizes described in this final rule (166,000 to 4.5 million fruit).

While this sampling rate (200 fruit per shipment) provides a high level of confidence that we can detect low levels of infestation, we acknowledge that some small percentage of infested fruit may be missed during sampling. However, as discussed elsewhere in this document, the calculations of our RMA suggest that the application of cold treatment to such fruit would result in a very low probability that such fruit could serve as a pathway for Medfly to enter the United States into a suitable area.

If exporters of Spanish clementines are to avoid having shipments of clementines routinely rejected by inspectors, they must ensure that the infestation level of fruit is below detectable levels. Furthermore, given that APHIS may shut down the export program if shipment rejection rates rose above 20 percent in a given month, we believe that an appropriate target maximum infestation level for fruit presented for export would have to be well below 1.5 percent.

Again, we did not intend to identify a 1.5 percent level of infestation as a target infestation level for the fruits in the field. Given this fact, and the confusion expressed by commenters, we believe it is necessary to clarify and revise part of our proposal. Specifically, § 319.56–2jj(c)(1) of our proposed rule required that "* * * bait treatments * * * be applied in the production areas at a rate appropriate to maintain the level of infestation of clementines by Mediterranean fruit flies at 1.5 percent or less." This proposed language was inappropriate, because maintaining levels of infestation at 1.5 percent would result in the majority of shipments of clementines being rejected. In addition, the responsibility for operating the Medfly management program in Spain resides with the Spanish Government, and this rule contains no provisions for APHIS or any other party to verify levels of infestation of clementines in the field. Rather, this rule provides for such verification through examination of clementines at the port of export. Therefore, we are amending § 319.56–2jj(c)(1) in this final rule to require that "* * * bait treatments * * * be applied in the production areas at the rate specified in Spain's Medfly management program." We are making this revision because, while we do believe bait treatments need to be applied in order to ensure low levels of infestation of fruit that are presented for export to the United States, we do not believe it is necessary or appropriate for APHIS to specify the level of infestation that must be maintained in production areas via those bait treatments. We are confident, however, that we can appropriately monitor the infestation level of fruit presented for export via inspection and fruit cutting of 200 randomly selected fruit.

One commenter stated that APHIS last surveyed the Spanish clementine growing regions in December 2001 and has no more recent data. The commenter stated that, given the age and unreliability of Spanish Government data on trapping and pest populations, APHIS cannot determine with any confidence the type of spraying required and the duration and frequency of the treatments necessary to reach the 1.5 percent desired level.

APHIS believes that a well-maintained trapping program can be used as an accurate indicator of the localized prevalence of Medflies. We do not believe that trapping is precise enough to accurately determine infestation levels of fruit, though it is useful as an indicator for when bait treatment applications are necessary. APHIS believes that inspection and fruit cutting provide a more effective means to determine the level of infestation in fruit submitted for cold treatment than can trapping. For this rule, we use inspection and fruit cutting as a means of determining the level of infestation of Spanish clementines.

Two commenters claimed that APHIS has presented no data showing that an infestation rate of 1.5 percent or less, combined with cold treatment, will successfully prevent mated pairs of live Medfly larvae from entering the United States. The commenters noted that direct sampling data compiled by APHIS inspectors from vessels unloaded at ports of entry in 2001 showed an overall average infestation rate (0.16 to 0.18 percent) that is an order of magnitude lower than the maximum infestation rate (1.5 percent) contemplated under the proposed rule, yet there were multiple finds of live Medfly larvae in Spanish clementines last year. The commenters questioned the particular significance of a 1.5 percent infestation level, asked why it is a critical control point, and stated its selection appears to be arbitrary.

As stated in this document, we believe it is highly likely that infestations of imported Spanish clementines were due to the inability of the cold treatment schedule to provide probit 9 mortality. We are confident that the revised treatment schedule, in combination with the reduction in Medfly infestation levels ensured via fruit cutting, provide that needed quarantine security.

Regarding the infestation levels in 2001, APHIS acknowledges that all samples taken after the initial infestations of 2001 were detected revealed low level infestations. It was not possible to randomly (that is, in an unbiased manner) sample fruit from shipments that had already been distributed and/or sold through retail outlets; given that those early-season shipments are the origin of first interceptions of live Medfly larvae in 2001, APHIS is unconvinced that the level of infestation observed in samples taken later in the shipping season are representative of the level of infestations of early season shipments. The unprecedented, numerous reports of live larvae from retail outlets and ports suggest that high densities of live larvae were indeed associated with early season shipments.

As stated earlier in this document, the sampling rate used for inspecting clementines presented for export was selected primarily because it provides a high level of confidence of detecting low level infestations of clementines. For this reason, we do not agree that its selection was arbitrary. We believe that the RMA provides ample evidence that the level of Medfly mortality caused by cold treatment (probit 9 or above), in conjunction with the low levels of pest infestation ensured via fruit cutting reveal that there is an extremely low likelihood that a viable mated pair of Medflies would enter the United States with imported Spanish clementines.

Furthermore, as discussed earlier in this document, APHIS is unconvinced

that the level of infestation observed in samples taken later in the shipping season (presumably, the samples referred to by the commenter) are representative of the level of infestation of early season shipments. APHIS has assumed that the infestations associated with early season shipments were higher than average. This is a reasonable assumption based on the available evidence, which includes the unprecedented and numerous reports of live larvae, the higher than average trap captures in Spain during the growing season, and the higher than average temperatures in Spain during the growing season.

One commenter stated that the 1.5 percent value was chosen not because it was shown to provide any particular level of phytosanitary security, but because 200 fruit per shipment was the maximum amount APHIS felt it was capable of inspecting in a reasonable amount of time and at reasonable expense.

As stated in response to the previous comment and others, the 200 fruit per shipment sample size was selected primarily because it provides a practical means to verify with a high level of confidence that fruit is infested at low levels. We stated in our proposed rule that we consider fruit cutting (200 randomly selected fruit per shipment) to provide a statistical basis on which we can infer whether the shipment inspected is 1.5 percent infested or greater. The use of this measure in combination with cold treatment will result in a very low probability that a viable mated pair of Medflies would enter the United States with imported Spanish clementines.

Several commenters noted that after the first shipping season, the pre-treatment sampling rate would not ensure with 95 percent confidence that sampled fruit is 1.5 percent infested or less, but rather that is 3.0 percent infested or less. The commenters also noted that in future years, the sampling rate could be reduced to 76 fruit per shipment, and the sampling would provide only a 90 percent confidence level that the infestation rate is no greater than 3 percent. The commenters questioned how the findings of the risk management analysis are affected by changing the sample size from 200 to 100 to 76 fruit. Some of the commenters noted that the lower sampling amounts are inconsistent with USDA's Pre-Clearance Program Guidelines, which define "quarantine security" as "a level of control which assures a 95 percent confidence level that a pest population will not become established based on the inspection/treatment certification procedure(s) used when considering the biology and ecology of the pest species." Commenters stated that there is no biological justification for reducing the sampling rate in one year based on rejection rates of shipments in the previous year since infestation rates in one year may differ substantially from rates a year earlier, and stated that APHIS has provided no evidence that there is any correlation between infestation rates in different years.

APHIS does not necessarily agree with the commenters' assertion that there is no biological justification for reducing the sampling rate in one year based on rejection rates of shipments in the previous year, though we do acknowledge that we did not provide a clear justification for such a measure in the proposed rule. To elaborate, if orchards in Spanish clementine productions areas are well managed for Medfly on an ongoing basis according to specific measures contained in a pest management program, then there would be a clear connection between the Medfly populations in those areas from one year and the next. Nonetheless, given that the RMA does not consider the effect of decreasing the pre-treatment fruit cutting sample size from one year to the next, in the final rule we are simply requiring that fruit be cut at a rate of 200 fruit per shipment, as that level of inspection is the only one evaluated in the RMA.

Two commenters stated that the maximum size of a shipment or lot should be set according to the number of boxes, not the number of pallets, and noted that the maximum lot size specified in the rule appears to be smaller than that specified in discussions regarding the program workplan. Several commenters expressed concerns over our explanation for what constitutes a "shipment" of clementines under the proposed rule. Those commenters suggested that the rule needs a clear definition of the term "shipment" as it relates to cutting requirements, and argued that the proposed rule does not specify how it will be made clear, in advance of an inspection, what constitutes the particular "shipment" when fruit is presented for inspection.

As pointed out by one commenter, the maximum size of shipment described in the proposed rule was 120 pallets (approximately 43,243 boxes). This figure was incorrect, as we allow a maximum size shipment of 200,000 boxes (555 pallets) under the operational workplan. We have corrected this error in this final rule.[13] Further, due to the confusion caused by our use of the terms "shipment" and "lot," we are making changes in the final rule based on these comments. In our final rule, a *lot* of clementines is considered to include a number of units of clementines that are from a common origin (*i.e.*, a single producer or a homogenous production unit[14]). The definition of the term *shipment* depends on the context in which it is used. Specifically, the definition depends on whether or not fruit has been treated. The term can refer to one or more lots of clementines that are presented to an APHIS inspector for pre-treatment inspection. Such a shipment may not include more than 200,000 boxes of clementines (555 pallets). The term can also refer to one or more lots of clementines that are imported into the United States on the same conveyance. These definitions are included in a revised § 319.56–2jj(k). Furthermore, inspectors must be able to easily distinguish one shipment from the next, and exporters are required to present their shipments for inspection in an orderly manner to facilitate inspection.

One commenter stated that the proposed rule does not say what is meant by the term "orchard," and requested that APHIS clarify the term's meaning. The commenter noted that it is unclear how APHIS will determine whether two shipments with infested fruit are from the same "orchard" or how APHIS will determine the bounds of the "orchard" that is to be removed from the export program.

We have added a definition for the term "orchard" to § 319.56–2jj(k). For the purposes of this rule, the term "orchard" refers to each plot on which clementines are grown that is separately registered in the Spanish Medfly management program. Some orchards could be owned by one person, and some could be owned by several persons (in Spain, such cooperatives are called "homogenous production units"). Some orchards could be less than an acre in size, while others could include hundreds of acres. APHIS will be able to determine the origin of infested fruit via box markings that are required under this final rule. The box markings will provide a means to identify the particular orchard owner or homogeneous production unit from which infested fruit originated. In order to confirm that fruit are eligible under the export program, APHIS checks the box markings on cartons submitted for cold treatment to verify the orchard's status in the export program.

[13] This change has no effect on calculations of risk, as the same level of confidence (95 percent) is provided by inspection and cutting 200 fruit out of either 120 pallets or 555 pallets, according to hypergeometric sampling rates.

[14] A homogeneous production unit is a group of adjacent orchards in Spain that are owned by one or more growers who follow a homogeneous production system under the same technical guidance. The fruit produced by these units is pooled and packed together, and all orchards in the group are regulated as one unit in the event that traceback of infested fruit is necessary.

One commenter noted that the pretreatment fruit cutting sample size represents too small a percentage of the actual sample itself. The commenter noted that the samples represent .0012 percent of the smallest shipment of fruit, and .0002 percent of the largest shipment respectively. The commenter stated that inspecting and cutting a small random sample of fruit does not ensure the shipment is clean prior to cold treatment.

These sampling techniques are not designed to ensure that fruit is pest-free. Rather, sampling is intended to provide confidence that the infestations levels in fruit are low enough to ensure a low probability that a viable mated pair of Medflies would enter the United States via imported Spanish clementines. As stated in response to the previous comment, the maximum size of a shipment would be 200,000 boxes, containing approximately 4.5 million fruit. Even so, according to established hypergeometric sampling rates, whether cutting 200 fruit out of (1) a 166,050 fruit sample or (2) a 4.5 million fruit sample, if samples are randomly selected, the negative results would provide 95 percent confidence that the unit sampled is less than 1.5 percent infested.

One commenter stated that if Medflies at any stage of development are discovered in two or more shipments in one season from the same orchard, the orchard should be removed from the export program until it can certify compliance with Medfly management and commodity export programs, rather than only being removed for the remainder of the shipping season.

APHIS believes that fruit cutting is the most effective means to determine the infestation level of fruit presented for cold treatment, and thus does not agree that such a review is needed to qualify an orchard for re-entry into the export program. If the orchard is not managing Medfly populations effectively, that fact will be evident in fruit cutting required under this rule.

One commenter stated that APHIS should specify the cutting rates and procedures that will be used once the fruit reaches the United States or the basis on which the rates will be determined.

Post-treatment fruit cutting is not considered as a mitigation measure in the calculations of risk of the RMA. Since the RMA estimates a very low probability that a viable mated pair of Medflies would enter the United States with imported Spanish clementines under the other provisions of this rule, we see no need to specify the level of post-treatment fruit cutting in the rule itself. We will continue to require post-treatment fruit cutting of clementines, and will cut 1,500 fruit per bulk shipment and 150 fruit per shipping container for the first shipping season. Sample sizes may decrease in future years based on the success of the program.

Two commenters claimed that the reliability of fruit cutting as a sampling technique is questionable, at best. One of those commenters cited studies indicating that, on average, inspectors will identify only 35 percent of infested fruit, noted that the infestation rate of Spanish clementines could actually be as high as 4.3 percent during the first shipping year when the 1.5 percent limit applies (1.5 percent ÷ 0.35 = 4.3 percent), and argued that cutting a statistically determined sample will not ensure that the infestation rate on fruit accepted for shipment does not exceed 1.5 percent. The other commenter stated that the effectiveness of inspection is dependent on both the skill and qualifications of the personnel carrying out the exercise and the standardization of the activity. The commenter stated that without assurances that the fruit cutting will be undertaken in a uniform, standardized manner and by fully qualified inspectors, there can be no confidence that these procedures, whether applied pre-or post-cold treatment, can accurately measure whether the infestation level in the groves is 1.5 percent or less, or that the Medfly control program, including cold treatment, has been effectively applied.

Inspection is a measure used worldwide to mitigate the risk posed by pests that may be present in imported agricultural commodities. APHIS inspectors are trained to find pests in agricultural commodities, and our pest interception records for the past 17 years support this. Since 1985, we have intercepted 485 fruit flies in *Citrus reticulata*, with 38 of those being Medflies.

The RMA discusses the reliability of fruit cutting, and discusses the effect of that variability on its calculations. Given the characteristics of clementines-they are small, easy to peel and cut, and their pulp is translucent-we believe our inspectors will be able to detect Medfly infestations in imported clementines with a high level of confidence. Further, we wish to clarify again that we are not attempting to determine the level of infestation of fruit in the groves where they grow. We are simply attempting to ensure that fruit presented for treatment is infested with Medflies at low levels (*i.e.*, levels that cannot be detected via fruit cutting), as discussed earlier in this document.

Remedial Measures

Two commenters stated that if live larvae are detected in imported Spanish clementines, the investigation should be performed jointly by APHIS and Spain. The commenters requested that APHIS ensure that access to all relevant data and samples is provided to the importer and the Spanish authorities to permit independent verification of the findings of the U.S. inspectors.

APHIS is not opposed to Spain participating as appropriate in an investigation that may be necessary if Medflies are found in imported Spanish clementines, and we will share data relevant to such findings with the Spanish. However, APHIS will not delay any part of such an investigation based on the availability, or lack thereof, of Spanish Government personnel.

Several commenters stated that fruit should not be destroyed if it arrives at a U.S. port and (1) treatment has not been properly applied or (2) fruit are found to be infested. The commenters expressed concern that the proposed rule allows for the destruction of improperly treated or infested fruit, and suggested that APHIS apply the least drastic measures necessary at the port of entry in the event that Medfly is detected in Spanish clementines.

APHIS gives fruit importers the choice of what to do with shipments of fruit that are found to be infested with pests, unless the exporter's choice poses a risk that pests could be introduced into the United States. For instance, APHIS would not require the destruction of fruit that is found, upon inspection, to be infested with Medflies if the fruit can safely be reexported.

One commenter asked if APHIS has ever considered requiring exporting countries to put up a performance bond to ensure against the devastation of American agriculture in the event that legally imported fruit introduce serious agricultural pests into this country.

The idea of a protective bond to be paid by a foreign region to U.S. producers in the event that imported fruit causes a catastrophic pest emergency in the United States is not a new idea, nor is it a practical one. Such "insurance" against pest infestation and loss of agricultural production has been

determined to be contrary not only to the will of foreign exporters, but to the will of domestic exporters, who would be expected by other countries to put up similar bonds for their exports. The matter is further complicated by the fact that it is very difficult to tie an outbreak to a specific source, as per past experience. For these reasons, the use of such bonds is considered impractical.

One commenter stated that the handling of potentially infested cargo at ports of entry is subjective and criteria for suspension of the program is ambiguous.

The regulations do not cite specific courses of action to be followed in the event that infested fruit are intercepted at the port of entry, as each such situation could require a unique reaction. APHIS believes that decisionmaking related to such events is best handled on a case by case basis, and we believe our position is well within the authority given to the Secretary by Congress.

One commenter questioned whether APHIS, upon finding live Medflies in imported Spanish clementines, would allow consignments which are en route to be inspected, possibly at a higher rate, with appropriate action taken on a case by case basis.

As stated in the proposed rule and in this final rule, if a single live Medfly in any stage of development is found in a shipment of clementines being imported into the United States, the shipment will be held until an investigation is completed and appropriate remedial actions have been implemented. If APHIS determines at any time that the safeguards contained in the regulations are not protecting against the introduction of Medflies into the United States, APHIS may suspend the importation of clementines and conduct an investigation into the cause of the deficiency.

Risk Analysis

One commenter stated that the RMA is not (and does not purport to be) a risk assessment, and noted that, according to the IPPC standard, a pest risk assessment—which evaluates the probability of the introduction and spread of a pest—should be performed as a predicate to conducting a risk mitigation analysis to select the most appropriate pest risk management options. The commenter claimed that APHIS has not performed a pest risk assessment as a predicate to conducting the RMA, and thus commenters do not know what APHIS believes to be the probability of the introduction of Medfly under the baseline or mitigated scenario, and it is not possible to determine whether APHIS has selected the most appropriate management options to mitigate the identified pest risk.

The events of the 2001 Spanish clementine shipping season suggested that a review of risk mitigation for Medflies was justified, and the risk mitigation document is such a review. Based on the updated decision sheet [15] contained in Appendix 4 of the RMA, and based on more than 20 years of previous imports of Spanish clementines, we have no reason to believe that there are other pests of quarantine significance that require additional risk mitigation, and therefore disagree with the commenter's claim that we have not conducted a pest risk assessment. Indeed, we evaluated the risk posed by all known pests of clementines, and our analysis is documented in the decision sheet, which was made available to the public when the original draft of the RMA was released for public comment on April 16, 2002.

The decision sheet notes that the following insect pests are known to occur in Spain and are also associated with clementine fruit, and may be imported with the commodity:

Ceratitis capitata (Medfly) (Wiedemann) (Diptera: Tephritidae)
Ceroplastes rusci (L.) (Homoptera: Coccidae)
Ceroplastes sinensis Del Guercio (Homoptera: Coccidae)
Cryptoblabes gnidiella (Milliere) (Lepidoptera: Pyralidae)
Parlatoria cinerea Hadden (Homoptera: Diaspididae)
Parlatoria ziziphi (Lucas) (Homoptera: Diaspididae)
Prays citri Milliere (Lepidoptera: Plutellidae)

The decision sheet concludes that, even though the seven quarantine pests listed above have the potential of being imported with clementines, all pests listed except Medfly would be easily detected by visual inspection during preclearance procedures.

The scale insects, *Ceroplastes rusci*, *Ceroplastes sinensis*, *Parlatoria cinerea* and *Parlatoria ziziphi*, are relatively large and are located on the surface of the fruit. The larval stages of both Lepidopteran pests, *Cryptoblabes gnidiella* and *Prays citiri*, reside in or adjacent to the rind of the fruit. However, these two pests create large entrance holes in the fruit that are easily detected during even a cursory inspection. This is not the case with the larvae of Medfly, which require a careful analysis of the fruit pulp because they feed inside the fruit and the oviposition entrance holes are usually not readily visible. The decision sheet also noted that, of the 20 plant pathogens or the 4 parasitic nematode pests identified, none are of quarantine significance.

Furthermore, we also disagree with the commenter's claim that it is not possible to determine whether APHIS has selected the most appropriate management options to mitigate the identified pest risk, since our RMA is intended to evaluate the risk reduction potential of our approach.

One commenter noted that the ORACBA analysis is not referenced in the RMA, and its conclusions and the conclusions used in the RMA are not the same.

We agree that we did not cite the ORACBA document in the RMA, though we have done so in the October 4, 2002 revision. For the reasons discussed earlier in this document, we are confident that the ORACBA document supports the extension of cold treatment described in this rule, and that its findings provide support the conclusion that the revised treatment will provide the requisite probit 9 mortality assumed in the RMA.

One commenter stated that the RMA should include a qualitative analysis that describes and characterizes the risk elements that are analyzed quantitatively. The commenter noted that, whereas the quantitative analysis allows for any variability, it does not capture the analyst's view of what the variability he/she believes might exist.

We believe that the quantitative analysis captures the variability associated with the clementine pathway. Several of the steps that make up the pathway were evaluated using maximum, and therefore, most conservative, estimates. These conservative estimates isolate the conclusions of the RMA from the effects of variability.

For example, the RMA assumed that the distribution of imported clementines in the United States would, over time, follow population demographic trends that suggest human population levels will increase in southern States where the risk of Medfly establishment is greater. This to say that the RMA assumes exaggerated current and near-term distribution of clementines to southern States, as it evaluates risk based on projected population levels in southern States that will not be realized until approximately 25 years from now. The RMA assumes that an additional 30 percent of clementines are shipped to those areas than is currently the case, to account for population trends assumed to occur in the future.

The RMA also assumed that every shipment of clementines that arrives in a suitable location is equally likely to arrive in an area where suitable hosts for Medfly are present; however, during the fall and winter (when most clementines are shipped) this is a conservative assumption. By assuming conservative values, we were able to account for additional variability beyond that expressed explicitly in the RMA's simulation model (quantitative analysis).

We would, however, like to note that a qualitative analysis of the risk of Medfly introduction into the United States is provided in the RMA under the heading "Likelihood of Introduction."

One commenter stated that using the likelihood of the movement of a single container of fruit to a susceptible grove as a means to assess the likelihood of successful invasion is uncharacteristic of Medfly invasion patterns. The commenter noted that clementines are imported for consumption, and historically, infestations have been detected in urban settings where a variety of residential plantings provide fruit year round. Thus, the commenter concluded that infestation of commercial production areas is most likely to occur via natural spread or artificial movement of infested fruit from a residential area to a commercial production area.

We agree with the commenter and have revised our analysis such that it no longer assumes that an entire container is likely to be released into suitable conditions. Rather, we used evidence provided by Wearing *et al.* 2001 and Roberts *et al.* 1998 [16] which suggests that a maximum of 5 percent of fruit that ends up in a given region is discarded. Since fruit that is not discarded is assumed to be consumed, we used the value suggested by Wearing *et al.* 2001 and Roberts *et al.* 1998 (the range provided was 0.5 percent to 5 percent) to estimate the actual amount of fruit that is not consumed and therefore, presents risks. Although we used the most conservative estimates (the maximum value for discards), our estimate of the overall probability of a mated pair in shipments was reduced. This is because, prior to consideration of this comment, the RMA's estimates treated all fruit as if it was not going to be consumed, and that all fruit, therefore, was likely to constitute hazards. This was clearly an overestimate, and the available evidence, as suggested by public comments, provided good reason for us to refine our estimates.

One commenter stated that the RMA's statistical calculations are incomplete, and fail to take into account more than one container of clementines. Consideration has not been given to additional shipments.

The RMA estimated the risk associated with (1) a single shipment moving to suitable areas and (2) multiple shipments moving to suitable areas. The probability of a mated pair in a shipment of Spanish clementines arriving in a suitable area was estimated to be low. According to published evidence,[17] a shipment that includes a single container is already a conservative estimate of risk. Landolt *et al.* states:

"The most practical point to assess the risk of an introduction occurring is the probability of a potential mating pair or gravid female * * * getting through quarantine. A potential mated pair might be defined as a nonsterile male and a nonsterile female occurring in the same area during the same period such that mating is possible. For our purposes, a pair of fruit flies emerging from the same shipment would be considered a potential mated pair. The additional problems of survival, feeding, dispersal, mate finding and host finding are unknown but add a large degree of safety beyond the probability of a mated pair occurring. The risk of an introduction should then be calculated as the probability of one or more mated pairs per shipment surviving quarantine measures."

These statements clearly support our approach to using single shipments as the unit of risk. Nonetheless, the effects of multiple shipments (cited above) were still estimated using methods obtained from peer reviewed methodologies cited in the RMA.[18]

One commenter stated that the calculation of the overall probability for a "mated pair" relies on a formula that combines the effects of many U.S. domestic shipments, but that formula uses as an input the probability for a mated pair in just a single shipment, whereas APHIS has already indicated that the probabilities differ for different shipments. The commenter claimed that the calculation cannot be correct if it just uses a single value, because that value does not represent all shipments, and therefore does not account for variability.

Our calculations regarding the risk posed by a single shipment use the maximum risk posed by a single shipment, thus causing the figure to represent a worst-case scenario. For instance, we made assumptions regarding the Medfly populations in shipments that would be consistent with relatively high levels of infested fruit. Available evidence (*e.g.*, Agusti, M. 2000. Citricultura. Ediciones Mundi-Prensa. Madrid, Spain. 416 pp. and Ministerio de Agricultura, Pesca y Alimentacion de Spain Trapping records) indicates that as fall arrives, the population levels of Medfly drop precipitously in Spain, thus making late season shipments much less likely to harbor Medfly than assumed by our baseline (maximum) value. Our approach has addressed some of the elements of variability as such via the use of maximum values, as discussed previously in this document.

One commenter stated that, according to the RMA, the chances of live mated pairs of Medfly being introduced into the United States via every imported shipment going at the same time to the same suitable location is an unrealistic scenario. However, the commenter noted, it appears that the RMA calculates the probability for mated pairs of Medfly from any shipment going to any suitable location at any point in time, which is actually a fairly realistic scenario. Why did APHIS choose the scenarios it evaluated, and why did it not use real world scenarios?

As stated earlier in this document, based on scientific research and published evidence, a single shipment is already a conservative unit for which to estimate risk. We estimated the likelihood that a mated pair of fruit flies would be present in a shipment (of 166,050 fruit) in the RMA. However,

[15] Before we began routinely preparing pest risk assessments to inform our decisionmaking relative to commodity import requests, APHIS based its decisionmaking on documents called "decision sheets." Such documents contained relatively the same information that is contained in modern pest risk assessments, but without the standardized format. We have updated the decision sheet for Spanish clementines to reflect all available pest information and modern pest risk assessment structure, and are confident it considers the risks posed by all pests of Spanish clementines.

[16] Wearing, C.H., J. Hansen, C. Whyte, C.E. Miller, J. Brown. 2001. "The potential for spread of codling moth (Lepidoptera: Tortricidae) via commercial sweet cherry fruit: a critical review and risk assessment." *Crop Protection* 20: 465–488 and Roberts, R.C. Hale, T. van der Zwet, C. Miller, S. Redlin. 1998. "The potential for spread of Erwinia amylovora and fire blight via commercial apple fruit; a critical review and risk assessment." *Crop. Prot.* 19–28.

[17] Landolt, P., D. Chambers, and V. Chew. 1984. "Alternative to the use of probit 9 mortality as a criterion for quarantine treatments of fruit fly (Diptera: Tephritidae)-infested fruit." *J. Econ. Entomol* 77: 285–287.

[18] Wearing, C.H., J. Hansen, C. Whyte, C.E. Miller, J. Brown. 2001. "The potential for spread of codling moth (Lepidoptera: Tortricidae) via commercial sweet cherry fruit: a critical review and risk assessment." *Crop Protecton* 20: 465–488 and Whyte, C.F., R. Baker, J. Cowley, and D. Harte. 1996. "Pest establishment, a quantitative method for calculating the probability of pest establishment from imported plants and plant products, as a part of pest risk assessment." NZ Plant Protection Centre Publications, No. 4, ISSN 1173–6704. Lynfield, NZ.

comments received from stakeholders on the draft RMA requested that we estimate alternative scenarios (for example, millions of fruit being deposited in close proximity such that flies from different shipments and shipped during different times would be assumed to find each other). These scenarios are clearly unrealistic, as the chance that the entirety of one shipping season's Spanish clementines going unconsumed, and ending up in close proximity to each other in a location that has available host material and the right environmental conditions is not likely. The figure calculated, does, however, provide an upper theoretical threshold. Analysts estimated these upper thresholds and noted that if there is a low probability of Medfly entry into a suitable area associated with extreme scenarios (such as those just described), then the probability of Medfly entry under more realistic, constrained scenarios is clearly lower.

Nonetheless, again in response to comments, in our final RMA, we have estimated risk associated with a single container arriving in a suitable location and multiple containers moving to suitable locations.

One commenter stated that it is very difficult to follow where some of the input values used in the RMA originated and why they were chosen, particularly since, in a number of cases, the values selected seem to be inconsistent with the referenced data. The commenter noted that:

- The most likely values for the number of fruit shipped are not shown in Tables 4a and 4b of the RMA, and the volumes that are shown are inconsistent with the volumes assumed in the Regulatory Impact Analysis.
- The evidentiary basis and rationale for selecting the shape of the probability distributions are not transparent.
- In many cases, "personal communications" are referenced as the source of information without the precise contents of those communications being disclosed.

To summarize some of the key values of concern to the commenter, we briefly review them here. The values chosen for the different components assume that:

- Approximately 166,050 clementines may be associated with a single shipment,
- A maximum 1.5 percent of fruit will be infested with flies prior to cold treatment,
- No more than 8 flies emerge as viable adults from infested fruit,
- Cold treatment approximates the probit 9 level,
- 44 percent of fruit imported go to States where suitable hosts and conditions are found,
- 5 percent of all fruit imported is discarded and not consumed, and
- More than 6,400 total shipments will arrive in the United States each year.

Our rationale for selecting the above values is detailed in the RMA is also summarized as follows:

The maximum number of clementines was based on the number of fruit that fit in a box (from 20 to 25), the number of boxes contained in a pallet (360), and the number of pallets (20–21) that can fit into a forty-foot ground transport container. This information was obtained through a review of shipping and packing documents and was confirmed via personal communications with experienced port inspectors.

In addition to the total number of fruit in a container, we also estimated the total number of containers that could be exported to the United States. We used historical data and shipping records through 2001 to determine the maximum number of containers shipped to the United States (6,408 shipments). The RIA for this rule, however, considers a maximum number of shipments based on the historical evidence cited above, but also considers future trends. For consistency, we have updated the final RMA to reflect the same maximum number identified in the RIA.

As stated earlier in this document, the 1.5 percent level of infestation was derived from our ability to determine maximum infestation levels of fruit via sampling. Based on a sampling rate of 200 randomly selected fruit per shipment of clementines, APHIS can verify with a high level of confidence (95 percent) that the fruit sampled is 1.5 percent infested or less, based on negative results of sampling. Support for this approach can be found in standard statistical texts.[19]

The maximum level is further supported by evidence from shipping during a presumably "high density" year such as 2001. As stated elsewhere in this document, sampling data for 2001 did not provide evidence that infestation levels were above 1.5 percent; however, sampling was not unbiased, and therefore was not representative of the level of infestation of fruit imported during the early part of the shipping season.

In addition to purely statistical evidence, we also consulted with port inspectors and Spanish scientists. There was agreement that, as a practical matter, it was possible to limit the the proportion of infested fruit using the measures required by this rule.

We also used evidence to support our minimum estimated values. The minimum expected pest infestation proportion is 0 percent infested fruit. Prior to 2001, port inspections had never found multiple live Medfly larvae in commercial shipments of citrus from Spain. This level was the minimum value for infestation most commonly cited by inspectors, and was used a minimum value for the purposes of the RMA.

The maximum number of larvae per fruit that are viable (i.e., that grow to fully functional, potentially reproductive adults) was estimated as eight and the minimum was estimated as zero. The values noted were supported by evidence from direct laboratory experiments[20] on clementine fruit. We also used additional evidence from other studies on other related fruit flies[21] because tephritid flies share many common traits, because some family generalizations are appropriate, and because USDA scientists agreed that the commonalities between other tephritid fruit flies and the Medfly would allow us to make some comparisons. We concluded from a review of the evidence that a maximum eight larvae and a most likely three larvae would successfully develop and lead to viable adults from each clementine fruit under typical field conditions such as those studied.

We based our cold treatment parameters on the assumption that the revised treatment schedules, as proposed, would provide a "probit 9" level of quarantine security or better. This assumption is supported qualitatively by the cold treatment recommendation and quantitatively by the ORACBA analysis. However, as discussed in detail elsewhere in this document, and as evidenced by the quantitative analysis of available data in the ORACBA analysis, not all of the cold treatment time/temperature combinations suggested in the cold treatment recommendation document will provide probit 9 mortality. As a result, in this final rule, based on the findings of the ORACBA analysis, we are only allowing cold treatment of clementines at the 14 day/34 °F, 16 day/35 °F, and 18 day/36 °F combinations, as these are the only time/temperature combinations for which there is sufficient evidence available to support a finding that they provide probit 9 mortality.

We only estimated the risk posed by fruit that would arrive at a suitable location where Medflies could become established. We assumed that there are two factors that affect the amount of fruit imported that will arrive at suitable locations; One is tied to the distribution of people who consume clementines, and the other is tied to the rate at which they discard fruit.

For the purposes of our analysis, we assumed that there is small number of States where Medfly could become established. This includes South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, New Mexico, Arizona, and California. According to U.S. Census data, some 34 percent of the population currently lives in those States. Furthermore, according to the U.S. Census Bureau, in 25 years, some 44 percent of the population will live in those same States. We used this higher value (44 percent) to estimate how much of the population lives in suitable areas, and assumed that clementines would follow market patterns that are driven by population (i.e., that clementines are distributed evenly with population). For reasons explained in detail elsewhere in this document, we believe the value we used (44 percent) is a conservative estimate.

Further, fruit is intended for consumption, and a large portion can be assumed to be eaten. We therefore assume that fruit that is consumed does not pose risks of Medfly introduction. We investigated the number of fruit that goes unconsumed and provide evidence in the RMA for the fact that, at most, 5 percent of fruit is discarded by consumers in a way such that it might lead to pest introduction.[22] It is this discarded fruit in a suitable area that was the focus of our analysis.

One commenter stated that the understandability and transparency of the RMA's outputs leave much to be desired, and that despite extensive comments provided during the comment period on the draft RMA, there have been no changes to the methodology of risk mitigation, and no justification given for why comments were used or not used. The commenter claimed that despite recommendations made during the comment period for the draft RMA, Table 4D, which intended to reflect the risks of introduction of Medfly under three different scenarios, is still completely incomprehensible.

APHIS believes that, given the detailed technical comments we have received on the proposed rule and its supporting documents, persons who are knowledgeable in the field of risk analysis were certainly able to understand what the RMA's inputs were derived from, and how we calculated its outputs. All calculations contained in the RMA were presented to the public in the actual spreadsheet used by APHIS, and the spreadsheet includes all the input values we used. We have, however attempted to make the outputs in Table 4D easier to understand in response to commenters' concerns, and have made some changes to our methodology where appropriate as described elsewhere in this document and in the RMA. We have also provided evidence and documentation for the scientific basis of our findings and for the use of specific methods that we used throughout the analysis. The changes made in response to comments do not change our conclusion that the combination of cold treatment and the limitation of Medfly infestation in Spanish clementines will result in a minimal likelihood that mated pairs of Medflies will arrive in shipments of Spanish clementines.

One commenter stated that a key holding of the court in *Harlan Land Co.* was that the risk assessment should be transparent, with "complete and transparent documentation of data used in the assessment," and claimed that the risk mitigation analysis that has been prepared for the Spanish clementine import proposal does not meet that test. The commenter claimed that even informed experts are not able to comprehend the analysis contained in that document.

Based on the lengthy and substantive comments we received on the proposed rule and supporting documentation, we believe the documents were sufficiently comprehensible. These comments were considered and helped to strengthen the RMA as described in detail in this document and in the RMA itself.

Several commenters stated that limiting the RMA to citrus is a gross underestimation of the potential economic and social impact that could occur if Medfly is introduced into both agricultural communities and residential communities. The commenter noted that Medfly is not just a citrus pest, but a pest of many agricultural commodities.

The RMA does not assume that the Medfly poses a threat to only citrus. To the contrary, throughout the RMA, APHIS fully acknowledges the multiple hosts and seriousness of this pest. The RMA does, however, focus on the likelihood that this serious and multiple-host pest would occur in association with clementines after they were treated in the field and after harvest, and it does evaluate risk based on the likelihood that the mated pairs of fruit flies enter the United States and arrive in a suitable area. For the purposes of our analysis, we consider citrus-producing States to be the most suitable areas for Medfly establishment because those are the only States that have the climatic conditions and year-round host availability to support an established Medfly population.

One commenter stated that, despite the fact that phytosanitary security in Spanish clementine production areas has been nonexistent, USDA has not required that Spain follow a systems approach to risk mitigation.

We did not refer to our approach regarding the importation of clementines from Spain as a formal "systems approach," though our approach, by definition, could constitute a systems approach by virtue of its two critical control points (Medfly population control and cold treatment). Given that clementines were imported for upwards of 20 years with no significant problems despite only being subject to cold treatment, in this rulemaking, we attempted to simply resolve some of the uncertainty associated with the events of 2001 by tightening existing restrictions, and did not see the value in referring to the revised protocol as a systems approach.

One commenter stated that the Hazard Analysis and Critical Control Point (HACCP) approach to calculating the potential for a Medfly to be exported to the United States from Spain is a risk mitigation tool that is invaluable perhaps in a food safety program, but must be fully considered for its appropriateness when dealing with invasive pests. The commenter claimed that until our trading partners concede or provide reciprocity to such a HACCP-like approach, it seems inappropriate to use this as a tool, and certainly in this instance.

We did not incorporate new risk management paradigms as part of this rulemaking. Rather, in the RMA, we noted that our procedures are consistent with other procedures such as HACCP. HACCP was cited to establish parallels, not as an effort to integrate new procedures into our approach. The mitigations considered by APHIS are supported by scientific evidence, decades of successful experiences, and expert panel recommendations, and, in this case, the mitigations and system

[19] See Steel, R. and J. Torrie. 1980 "Principles and Procedures of Statistics." McGraw Hill, Inc. New York, NY. 633 pp.

[20] Santaballa, E., R. Laborda, M. Cerda. 1999. "Informe sobre tratamiento frigorifico de cuarentena contra *Ceratitis capitata* (Wied.) para exportar mandarinas clementines a Japon." Univ. Polytecnica de Velencia. 25 pp.

[21] Leyva, J.L., H. Browning, and F. Gilstrap. 1991. "Development of *A. ludens* in several hosts." Environ.Entomol 20(4): 1160–1165.

[22] Wearing *et al.*, 2001; Roberts *et al.* 1998.

used by APHIS happen to be consistent with other well-known monitoring programs such as HACCP. As stated in our proposed rule, our analysis does not represent a departure from existing guidelines for the phytosanitary risk analysis, but rather, is a refinement that reflects more emphasis on certain risk mitigating elements of a set of phytosanitary measures (*e.g.*, the critical control points).

One commenter suggested the RMA include a third critical control point. The commenter stated that the additional critical control point could be (1) the review of cold treatment records prior to release of any shipment on arrival, or (2) a program review every 3 to 5 years.

We agree with the commenter that there is a need for stringent oversight of the program, and we intend to conduct program reviews on similar timeline to the one suggested by the commenter. Review of cold treatment records prior to release of any shipment is considered as part of our analysis, and making it a critical control point would have no meaningful effect on our calculations of risk or the actual enforcement of the requirement.

One commenter stated that the RMA fails to define what it means by "variability." The commenter stated that, while certain variabilities are described, such as variations among different populations and carton-to-carton variability in the number of clementines, the key variability—the variation expected in the number of surviving Medflies in each shipment to the United States—is missing. The commenter stated that the modeling has to correctly account for the different pest populations for which the variabilities are defined, and claimed that the RMA currently does not do that.

We have generally discussed the topics of variability and uncertainty in detail in Appendix 3 of the RMA, and elsewhere in this document. Regarding variation expected in the number of surviving Medflies in each shipment to the United States, we believe that is addressed by the parameters of the cold treatment. This is to say that we assumed that cold treatment assures levels of mortality that are equivalent to, or greater than, the probit 9 level. This assumption is supported by recent large scale tests, as evaluated in the ORACBA analysis, and as discussed elsewhere in this document. The recent tests of cold treatment show that, at certain time/temperature combinations, the observed mortality of cold treatment was 100 percent, and additional data support the other approved time/temperature combinations. Again, the ORACBA analysis considers available data, and provides an assessment of where the proposed cold treatment schedule provides probit 9 level quarantine security, and where it does not. We do consider variation in survivors of cold treatment, and this variation is documented in Appendix 3 of the RMA, which cites the minimum, maximum, mean, and 95th percentile values of the distribution used for variation in a shipment. As for the proportion of infested fruit and number of larvae in a shipment, this is explored by multiplying single fruit estimations (*i.e.*, number of Medfly larvae per fruit, which varies from zero to eight) by the proportion of fruit that is infested (varies from zero to 1.5 percent).

One commenter stated that the RMA does not take into account how certain we can be that the calculated results correspond to reality, particularly the calculation concerning the probability that mated pairs of Medflies reach susceptible areas of the United States.

We address the question of how our results correspond to reality by questioning the validity of our assumptions. APHIS believes that the maximum number of shipments of clementines is well described by the values used (6,408 per year), that the number of infested fruit can be realistically kept below 1.5 percent, that the number of viable larvae associated with clementines is low (zero to eight per fruit), that the cold treatment is effective (approximating probit 9), that not all fruit is discarded (most fruit will be consumed), and that the majority of fruit will not be shipped to areas suitable for Medfly development. APHIS strongly believes that these fundamental assumptions are correct.

We also further believe that, by using a system that assures low population densities in fruit prior to cold treatment, and then applying a cold treatment schedule that kills more than 99.9 percent of the Medflies that are present, there is a very low likelihood that a mated pair will be associated with any given shipment of fruit.

We address uncertainty by considering the effects of maximum values of inputs for the system. In essence, the investigation of maximum values helps us establish if our assumptions are realistic and whether the model used is realistic. As such, multiplication of maximum values results in conservative estimates of risk. Though such estimates may not always be realistic, they provide a point of comparison for mean values, and allow us to identify areas of uncertainty in the system.

One commenter stated that the RMA incorrectly compares the effects of two systems—one with field controls in place, and the "baseline" without such field controls. The commenter stated that the difference evaluated in the RMA should not be between two inventions of the analysts. Instead, the RMA should start with the baseline scenario, and then add the effect of the controls. The commenter stated that this would modify the baseline distribution for infestation rates by the likelihood of non-detection due to the controls added, and that with such an approach, the effect of the controls can actually be evaluated, not just the inventiveness of the analysts.

The key difference between the two scenarios (the baseline-cold treatment only—and the mitigated scenario employed by this rule) considered in the RMA was the addition of field population limits in the mitigated scenario. These scenarios do not reflect a contrived system but represent USDA's understanding of the key elements that are being refined and that will increase its ability to safeguard against Medfly risks. The parameters used were, therefore, not contrived but linked to the evidence presented. Whereas the values of specific parameters may be subject to refinement, the final conclusions are robust. They are robust because changes in the assumptions and exploration of the effect of changing values (*e.g.*, decreasing the effectiveness of cold treatment, increasing the proportion of infested fruit) did not change our findings that the probability that a mated pair of Medflies could enter into the United States via Spanish clementines is very low. Whereas a comparison to a baseline is useful, the estimation of the likelihood of introduction even without reference to a baseline is valid. That is, if we were to consider a single scenario (cold treatment plus limitation of field populations) we would not find otherwise. Indeed, we would conclude that, the probability that a mated pair of Medflies arrives in a suitable location in the United States as part of multiple shipments is low.

One commenter stated that the RMA fails to track the effect of new controls when everything else is equal. The commenter noted that the RMA compares the difference between averages with and without controls; when what is really required is calculation of a distribution of the differences with and without controls. This requires a single Monte Carlo analysis that evaluates the baseline and new scenario simultaneously, and with such analysis, it is clearer when the new controls have an effect and the extent of the effect.

We tested two scenarios independently; one scenario included a simulation that used what we termed "baseline" input values. Those values were associated with no field controls, which are the only difference between the baseline and the second "mitigated" scenario. Both scenarios included cold treatments. The baseline scenario assumed that there could be higher populations (up to a maximum 15 percent infested fruit) than what is allowable in the mitigated scenario. A comparison of the output from these two simulations allowed us to obtain a relative estimate of the impact of the proposed mitigation measures (namely, the addition of field controls as the single key additional mitigation measure).

One commenter noted that the RMA does not consider the possibility of mated Medfly pairs coming from a source other than Spanish clementines. The commenter stated that, if the probability for a Medfly from another source is higher than the probability from a given clementine shipment, it is the single Medfly per shipment, not the probability of a male/female pair within a shipment that will matter most.

Given that Medfly is not established in the mainland United States, we see no need to assess the scenario posed by the commenter.[23] Indeed, the RMA is based on the assumption that Medfly is not established in the mainland United States. The probability that a Medfly from another source would mate with a Medfly from Spanish clementines is even lower than the probability that a mated pair could enter the United States via a shipment of clementines from Spain.

One commenter stated that the RMA evaluates the probability for a mated pair at all locations, and for all suitable locations, using a formula that corresponds to Medflies from different shipments being unable to get together and mate. The commenter claimed that the calculations actually performed do not correspond to the "worst case" as APHIS implies; they are not upper bounds on the probabilities, but instead assume the best possible case. Therefore, they are lower bounds.

The possibility that 9 tons of produce (a single container) are distributed within a small area such that output from many containers could in effect coalesce and allow for Medflies from many different containers to emerge, fly to suitable hosts, find their mates, mate, oviposit, etc. is not realistic given the evidence considered in the RMA. The RMA uses a formula that evaluates the probability of a mated pair in any of multiple, independent containers. That probability does not represent a lower bound, but rather a conservative estimate of the likelihood of Medfly entry to a suitable location. Assumptions such as (1) All containers to all suitable locations will find suitable conditions, (2) emerging flies will find suitable hosts at any given time, and (3) that the maximum amount (5 percent) of fruit is discarded by consumers are all conservative assumptions. Our estimates and the formula we used are based on peer reviewed evidence (*i.e.*, Wearing *et al.*).

[23] Hawaii is generally infested with Medfly, but all Medfly host commodities moving interstate from Hawaii to the mainland must be treated for Medfly prior to movement into a State on the mainland.

Trapping, Bait Treatments, Monitoring

A number of commenters raised concerns about the content of the Spanish Medfly management program. One commenter noted that the first of the "minimum criteria" for a measure that is a required component of a systems approach is that the measure be "clearly defined." The mitigation requirements of the proposed rule do not meet this standard. The proposed rule does not say what kinds of traps are to be used, or how many, or by whom, or how the traps should be baited and rotated, or what kind of records must be kept. Another commenter claimed that without assurance that trapping activities are adequate to determine the current pest population in Spain, the effectiveness of a spraying program cannot be evaluated.

The Plant Protection Act defines a systems approach as defined set of phytosanitary procedures, at least two of which have an independent effect in mitigating pest risk associated with the movement of commodities. While the regulatory approach employed by this rule could constitute a systems approach by virtue of its two critical control points (Medfly population control and cold treatment), in a simple sense, the measures referred to by the commenter have no real bearing on the calculations of risk contained in the RMA. For this simple reason, we do not agree that these measures should be more clearly defined than they already have been in the proposed rule. To elaborate, we do not believe that a continuing debate about an issue such as what fruit fly trap the Spanish use would result in any significant improvement to the approach we have chosen. As stated previously in this document, details of the Spanish Medfly program, such as the type of trap and bait used, the type of bait sprays required, the spacing of Medfly traps, and the triggers for bait sprays have no connection to our calculations of risk. We also believe that fruit cutting is the best available indicator of the level of Medfly infestation of Spanish clementines, and the success of this measure is not dependent on any of the other measures cited by commenters.

Three commenters stated that APHIS should delay resumption of shipments of Spanish clementines until an aggressive, comprehensive, and consistent trapping program fully operated, monitored, and documented by Spanish Government officials has been in place through a full shipping season.

The operation of such a program for a full year would have little or no bearing on the ability of the safeguards we have chosen to provide the risk reduction identified by our analysis. This is to say that, regardless of pest populations, trap types, and bait spray applications, if Medfly infestations of Spanish clementines are not kept at low levels, APHIS will confirm as much via inspection and fruit cutting and will refuse to allow those clementines to be exported to the United States. If Medfly populations are maintained at low levels (levels that cannot be detected via fruit cutting), we are confident that cold treatment will ensure a low probability that a viable mated pair of Medflies could enter the United States via imported Spanish clementines.

Several commenters expressed concern over servicing and monitoring of Medfly traps, application of bait treatments, and recordkeeping activities associated with these activities. Some of those commenters stated that APHIS should not allow the Spanish citrus industry to service and monitor the traps in the production areas or apply bait treatments, and argued that the Government of Spain should be given those tasks to better ensure compliance with the regulations. Others noted that according to the report of the APHIS Technical Review from the trip made in December of 2001, Spain has not kept the type of records on trapping and bait spraying programs that the work plan required them to keep. The commenters questioned why U.S. stakeholders should now have confidence that there will be a new commitment by the Spanish industry to actually follow an updated protocol when there was a failure to follow the previous protocol, and urged APHIS to insist on scrupulous adherence to the work plan and regulations, and issue steep penalties for not doing so.

Under this rule, the Government of Spain or its designated representative must keep records that document fruit fly trapping and control activities conducted under the Government of Spain's Medfly management program. These records must be kept for all areas that produce clementines for export to the United States. All trapping and control records kept by the Government of Spain or its designated representative must be made available to APHIS upon request. APHIS inspectors may review those records at any time, and therefore, will be able to determine whether the conditions of the regulations and Spain's Medfly management program are being complied within areas that produce clementines for export to the United States. We agree with the commenter that APHIS should be able to insist on compliance with these requirements, and we are clarifying in this final rule that APHIS may suspend the importation of clementines in any case if we determine there is a failure to follow the program requirements. This requirement is reflected in the revised § 319.56–2jj(j).

APHIS has received full cooperation from its Spanish counterparts in this matter, and is confident that they will ensure compliance with all aspects of this new regulatory approach. To clarify, during its site visit in December 2001, APHIS was not able to obtain documentation on trapping and bait sprays in clementine production areas not because the documentation did not exist, but because there was no central repository for the documentation, and because it took some time for the Spanish to assemble the appropriate records and forward them to APHIS. In January/February 2002, during a second site visit, APHIS received all documents requested and these were incorporated into the risk management analysis.

Furthermore, given that we believe trapping is not precise enough to accurately determine infestation levels of fruit, while fruit cutting is, we do not agree that there is a need for the Government of Spain to service and monitor all traps and apply bait treatments. The Government of Spain is, however, responsible for maintaining trapping records for the program.

One commenter stated that the rule does not say how that bait treatment application rate gets determined, or by whom, or when the treatments will be applied. The commenter noted that, according to the RMA, the practice in Spain has been to spray when trapping results reach a rate of 0.5 flies/trap/day, yet APHIS has provided no justification for the 0.5 flies/trap/day trigger for spraying and the rule itself does not require it.

This final rule does not include a trigger for bait sprays in Spain because APHIS believes it is the responsibility of Spanish producers to provide a product that is minimally infested with Medflies. They may accomplish this through whatever bait spraying regimen that they deem appropriate, as we have designed a regulatory approach that simply requires fruit to be infested at low levels upon inspection prior to treatment. The RMA identified the 0.5 fly per trap per day trigger as a "key phytosanitary measure," however, this designation is not appropriate, as the measure has no bearing on the calculations of risk contained in the RMA. We have revised the RMA to clarify this fact.

One commenter noted that the proposed rule specifies that traps must be placed in preferred Medfly hosts at least 6 weeks prior to the harvest of clementines. The commenter suggested that APHIS remove the word "preferred."

We agree with the commenter, as preferred hosts may not be available in all areas where trapping may occur, and we have removed the word "preferred" from § 319.56–2jj(c)(1) in this final rule.

Several commenters urged APHIS to maintain strict oversight of the Spanish clementine import program at all points in the system, and requested that industry representatives, university researchers, and State Government officials be included in the on-site review process.

As stated earlier in this document, the Spanish Medfly management program must provide that clementine producers allow APHIS inspectors access to clementine production areas in order to monitor compliance with the Medfly management program, and that all trapping and control records kept by the Government of Spain or its designated representative must be made available to APHIS upon request. APHIS will have inspectors working full time on the verification of the Spanish clementine import protocol—including inspections and production area monitoring. The inspectors will be present to conduct and monitor fruit cutting at the exporting port, and will be able to review records kept by the Government of Spain regarding its management program. Only APHIS personnel and personnel of Spain's plant protection service will be allowed to conduct fruit cutting. The salaries of APHIS inspectors are paid by APHIS, but the Government of Spain reimburses APHIS for those costs under the requirements of § 319.56–2jj(a).

APHIS does not see the necessity of including representatives of industry, university researchers, and State Government officials in site visits. We will, however, make it known to stakeholders when we are conducting a site visit, and will invite questions and suggestions that we will follow up on in Spain. Upon our return, we will make a report of our visit available to interested persons.

One commenter stated that APHIS should review documentation of the execution of Medfly trapping and population reduction sprays before fruit is moved into export channels.

APHIS is confident that review of documentation prior to the movement of fruit into export channels is not necessary because our risk management measures are designed to protect against the arrival of a mated pair of Medflies in the United States regardless of the actual infestation level in Spanish production areas. For this reason, we will monitor for compliance with Spain's Medfly management generally, but will not review the control activities of a given production area as a condition of export. As stated previously, we believe that fruit cutting is more accurate indicator of the population of Medflies in production areas than trapping.

Two commenters stated that the rule should require the establishment of buffer zones in Spain.

There is no scientific justification for requiring the establishment of buffer zones in Spain under this rule, as the clementine production areas in Spain are not Medfly-free areas. The approach that APHIS has designed accounts for the presence of Medflies in the production areas in Spain, and is intended to ensure that the prevalence levels remain low, so that fruit presented for export is minimally infested. Buffer zones would only be useful if Spain were trying to establish and maintain pest-free areas.

One commenter noted that the APHIS review team found that no fines or penalties were issued for noncompliance with the "mandatory" fruit fly detection and control program in place in 2001, yet the proposed rule does not specify any penalties for non-compliance with the proposed Medfly management program and does not require that the Spanish authorities impose them. The commenter questioned that, given their past record, why should the Spanish regulatory officials be relied on to enforce compliance with the Medfly management program?

APHIS agrees that it should have the authority to suspend growers from participating in the Spanish export program if the grower is not in compliance with our regulations, which, by extension, also require compliance with Spain's Medfly management program. To provide for this, we have added the following statement to paragraph (c) of the regulations: "If APHIS determines that an orchard is not operating in compliance with the regulations in this section, it may suspend exports of clementines from that orchard."

One commenter stated that the proposed rule does not require all orchards in a defined area to participate in the Medfly management program, yet individual clementine orchards in Spain are very small (0.5–2.0 hectares in size), and "physical barriers to segregate [them] are limited to a ledge about 4 inches wide and 6 inches tall." The commenters noted that adult Medflies may be carried by the wind for 2.4 km or more, are reported to have migratory movements up to 72 km, and are known to fly up to 40 miles, and thus, can easily move from one grove to the next; these commenters stated that APHIS has not considered what happens when one grower plans to sell fruit to the United States and participates in the Medfly management program, while a neighboring grower does not.

As stated previously in this document, our regulatory approach is designed to ensure that clementines subjected to cold treatment are minimally infested with Medflies. Since all fruit submitted for export is sampled, and since fruit cutting will provide a means to reject fruit that is found to be infested, we do not believe that the proximity of approved orchards to nonapproved orchards is relevant to our calculations of risk.

One commenter stated that there should be an incentive to encourage Spanish growers to keep Medfly populations in check, such as requiring a previous season average of 1.5 percent infestation, or less, to ship to the United States.

The incentive for the Spanish to keep populations in check is simple: If they do not do so, APHIS will determine as much via fruit cutting, and will reject shipments intended for export to the United States.

One commenter requested that APHIS approve a pesticide for use in the Spanish export program.

We are considering the commenter's request, and will advise the commenter of our findings when our review is complete.

One commenter stated that APHIS should not specify the pesticides to be utilized in Spain's Medfly management program without consulting Spain's Ministry of Agriculture, especially considering that the use of this type of pesticide changes over time. The commenter stated that the regulations should simply state that acceptable pesticides are those approved by both APHIS and Spain's Ministry of Agriculture.

We agree with the commenter that any pesticide used in the Spanish Medfly management program should be approved by both APHIS and the Government of Spain, and have amended § 319.56.2jj(c)(1) in this final rule to reflect this change.

Traceback

Several commenters stated that APHIS's proposal to traceback to the orchard in the event of Medfly detection during fruit cutting is likely to be ineffective because (1) Spanish clementine production is comprised of thousands of small growers who often commingle their fruit with fruit of other small growers at the packinghouse which prevents any reliable traceback to the individual grower; and (2) the season for Spanish clementines is only a few months, so remedial action that would remove a grower from the export program for the remainder of that year would have few consequences for the grower, since the grower would have already shipped all or most of his fruit for the season by the time remedial action was taken. The commenters suggested that remedial action should be taken against the packinghouse, not the grower, and should affect the packinghouse's ability to export for the present and next shipping season, unless the packinghouse provides evidence that controls are in place to prevent further failure of the quarantine measures.

We disagree with the commenter. Under the new Spanish export program, packinghouses are required to ensure that fruit from one orchard is not commingled with fruit from others. In the odd event that traceback of an infested fruit does not lead to a single orchard (a single producer or a homogenous production unit), APHIS will continue traceback to next largest traceable unit. If this means that traceback can only go so far as a group of producers who have shipped fruit to the same packinghouse, then that entire group of producers will be subject to suspension from the program for the shipping season in the event that another infested fruit is traced to their orchard or their group of producers. It is therefore in the interest of Spanish producers to facilitate the accurate traceback of infested fruit to the orchard where it was produced. We believe it is appropriate to suspend only orchards from the program, and not packinghouses, as suggested by the commenter, because packinghouses have no significant role in mitigating any Medfly risk posed by exports. Orchard managers, however, are responsible for maintaining low levels of Medfly infestation in their orchards.

One commenter stated that if fruit is sampled before it is packed in cartons, carton labeling will not help in tracing back infested fruit.

Sampling typically occurs at the port of export, and in some cases, at the packinghouse after fruit have been boxed.

One commenter questioned whether, upon detecting live Medflies in clementines submitted for treatment, it is sufficient to remove just the single orchard (perhaps just a few acres in size) from the export program for the balance of the shipping season since adjacent orchards likely have the same Medfly problems.

As stated in response to previous comments, given our ability to determine infestation levels of fruit via fruit cutting, there is no need to penalize orchards that happen to be adjacent to orchards with higher pest populations. Adjacent orchards may employ very different Medfly treatment regimens, and we believe that inspection and fruit cutting provides sufficient evidence to determine that fruit is minimally infested, even if it is from an orchard adjacent to a highly infested orchard.

Eradication

One commenter stated that the Spanish clementine industry should be required to eradicate Medfly, not simply control it.

As stated earlier in this document, APHIS does not believe the Spanish have to be required to eradicate Medfly from their clementine production areas in order to export fruit to the United States, provided they can adequately mitigate the pest risk posed to the United States by their exports. The RMA supports the Secretary's determination that it is not necessary to prohibit the importation of clementines from Spain, provided that the clementines are subject to the requirements contained in this final rule.

Two commenters stated that, in the event of a Medfly outbreak, eradication strategies used in previous years will not be possible. The commenters suggested that APHIS has to take that into consideration in its analysis, as "the next Medfly infestation in the

United States may end agriculture as we know it in the infested location."

APHIS believes that it has sufficient tools to eradicate any new Medfly outbreaks. New technologies, including the use of sterile insects, make it possible to eradicate Medfly infestations in areas where chemical treatments are not acceptable.

Regulatory Impact Analysis

Several commenters noted that, in the Regulatory Impact Analysis (RIA), APHIS states that the "probability of a Medfly introduction per forty-foot container equivalent is * * * 1.3E–12," and it references the RMA as the basis for this estimate. The commenters stated that the RMA shows the mean probability per shipment (or forty-foot container equivalent) to be 2.5E–5, and thus, in the RIA, APHIS incorrectly used a probability value that appears to be off by almost seven orders of magnitude—*i.e.*, the probability estimate used in the RIA is low by a factor of almost 10 million. The commenter claimed that as a result of this discrepancy, the RIA cannot support a finding that the rule would not have a significant economic impact on a substantial number of small entities. The commenters further stated that the RIA also incorrectly interprets the RMA as showing that the most likely infestation rate (based on the 5-percentile infestation rate from the Monte Carlo simulations) is 3.3E–3 percent (0.003 percent).

APHIS believes these comments highlight the fact that the discussion in the economic analysis regarding the infestation rate needs clarification. The first number mentioned by the commenter is the expected number of introductions [24] under the default model (see Table 4 of the RIA). It is not appropriate to compare the mean mated pair probability per shipment reported in the RMA, 2.50E–5, with the expected number of introductions. The RIA does not report a mean mated pair probability. However, the assumptions made in the RIA having to do with risks associated with potential Medfly introductions under the proposed rule are in scientific agreement with the information, data, and parameters reported in the RMA.

The objective of the RMA was to examine how the offshore risk mitigation measures in the proposed rule coupled with cold treatment might reduce mated pair probabilities per shipment in comparison to cold treatment alone. As such, the RMA employed wide ranges for several key parameters, including the infestation rate (the proportion of fruit infested with Medflies). The RMA estimated annual introductions under a worst case scenario, one in which fruit cutting and rejection of shipments did not occur and one in which parameters of the infestation rate distributions were specified conservatively. However, the regulations impose powerful economic incentives that will more than likely lead Spanish growers and exporters to manage Medfly populations and select fruit for export to the United States more effectively than was assumed in the risk analyses.

The other major difference between the RMA and the RIA was that the RMA simulated levels for the biological model's parameters, including the infestation rate, number of larvae per infested fruit, cold treatment survival rate, proportion of larvae reaching a suitable area, and larval viability, by drawing random numbers from probability distributions parameterized using available data (See Tables 4a through 4c in the RMA.) The RIA used expected values for all of the biological model's parameters and therefore employed a certainty-equivalence framework. The certainty-equivalence framework (values for biological and economic parameters were based on expected values) was used to estimate regulatory benefits and costs, based on the RMA and economic incentives facing Spanish parties from the proposed regulations.

The main difference between the RIA and the RMA was that the former estimated regulatory costs and benefits for a typical year and the latter estimated mated pair probabilities under a worst case scenario. In addition, the RIA incorporated the fruit cutting and inspection program in the estimation of mated pair probabilities and relevant information for use in specifying the infestation rate. If Medflies are detected in clementine shipments under the proposed preclearance program, shipments will be diverted to other cheaper markets and growers may lose the ability to take advantage of the much more lucrative U.S. market, which typically offers prices 20 percent higher than prices offered in the rest of the world. In addition, if too many shipments are rejected, the entire clementine import program may be suspended. As a result, exporters will more than likely choose shipments designated for the United States from regions in which growers experience below average infestation rates and in which growers manage Medflies very well.

Although the RIA uses a lower infestation rate, the two mated pair probabilities are not directly comparable, and the divergence is completely consistent with the assumptions of the RMA, the economic incentives facing clementine growers and exporters in Spain and the regulations.

Two commenters stated that the economic and social impacts associated with the proposed rule are not to growers alone, and that APHIS must consider the social and economic impacts to farm workers and their families, packinghouses and their employees, canneries and their employees, the trucking industry and their employees, ports of entry and their workers, and local rural economies.

The economic analysis for the proposed rule did not incorporate Medfly introduction costs on other industries that derive income from Medfly host crops because (1) there were no data to estimate these costs as most Medfly introductions occur in urban areas far removed from commercial agricultural production, and (2) the probability that a mated pair of Medflies could enter the United States via imported Spanish clementines is so low. The analysis for the final rule incorporates costs on these related industries.

One commenter stated that it is critical that USDA evaluate the numerous economic impacts of a Medfly infestation in addition to those impacts on the citrus industry. The commenter claimed that the economic impact analysis should address the fact that other crops are negatively affected by the Medfly, and estimate State eradication costs, quarantine costs, loss of domestic and foreign markets, and producer cultural impacts if Medfly is discovered on U.S. crops.

The economic analysis for the proposed rule incorporates these costs (See section 3.1 Costs Associated with the Proposed Rule, pp. 11–12). Mean costs of eradicating six recent Medfly introductions in 1997 and 1998, $10.93 million in 2000 dollars, which includes Federal and State expenditures, were used to estimate the impact of a potential Medfly introduction on U.S. Federal and State taxpayers. In addition, the analysis incorporates the expected impact of potential Medfly introductions on producers of Medfly hosts crops in the United States. In particular, the $3 million dollar economic impact on producers, during an introduction, includes individual monetary estimates associated with additional field sprays, post-harvest treatments, fruit losses due to yield loss and post-harvest treatments, and loss of export markets. The economic analysis did not take into account cultural impacts on producers, because such costs are difficult to quantify.

One commenter stated that the RIA does not specifically consider the effects of a Medfly outbreak on growers who employ IPM practices, and noted that the analysis focuses solely on the cost to the Federal Government should a mistake occur and the benefit to the consumer without any consideration to the impact on farmers, farms, farm workers, families, communities, and the industry.

The analysis incorporated eradication expenditures of Federal and State Governments, which are borne by U.S. Federal and State taxpayers, as well as costs borne by producers of Medfly host crops associated with additional field sprays, post-harvest treatments, fruit losses, post-harvest fruit losses, and loss of export markets during an introduction (See section 3.1 Costs Associated with the Proposed Rule, pp. 11–12). The economic analysis did not take into account potential disruptions of integrated pest management (IPM) programs, because the likelihood of such disruptions is small on average, though it may be large to individual growers. Most Medfly outbreaks in the United States occur in urban areas with little if any commercial crops present. In addition, APHIS uses environmentally friendly eradication techniques, including use of beneficial-insect friendly cover sprays and mass release of sterile adult male Medflies, practices which are completely compatible with IPM practices, and in emergency situations, malathion bait sprays, which are much friendlier to the environment than malathion cover sprays. As a result, current eradication programs, which are extremely successful in eradicating the Medfly, would more than likely not greatly impact the IPM programs of producers of Medfly host crops. The economic analysis for the proposed rule did not incorporate Medfly introduction costs on other industries that derive income from Medfly host crops. The economic analysis for the final rule discusses these costs and points out that, even if every dollar of farmer sales of Medfly host crops generated an additional 10 dollars in associated industries, inclusion of these additional costs does not affect the conclusions of the economic analysis, because the probability that a mated pair of Medflies could enter the United States via imported Spanish clementines is so low.

One commenter noted that the economic analysis for the rule states that the clementine export season runs from mid-September to late February, and stated that the season could actually extend beyond February.

Economic impacts associated with the proposed rule were based on annual data, which are independent of the length of actual shipping seasons. As a result, the fact that the shipping season could extend beyond February will not affect the analysis as written.

One commenter stated that the RIA cites sources and data indicating that imported clementines do substitute for domestic tangerines and that the price for tangerines is sensitive to clementine import volumes—*i.e.*, the price for tangerines goes up when clementine imports are stopped. That being the case, the commenter noted, it seems reasonable to expect that the converse would hold true as well—*i.e.*, the price for tangerines will go down when clementine imports resume, and this should be reflected in the RIA's analysis of competitive impact.

The analysis of the rate of substitution between Spanish clementine (clementine) imports and domestically produced tangerines (tangerines) conducted in the RIA indicates that clementines do not substitute for tangerines in a statistically significant sense (See 3.3.1 Domestic Tangerine Market, p. 17–19). Data examined from the Citrus Advisory Committee indicated that tangerine prices were higher in 2001 relative to 2000, during a period in which clementines were imported in 2000 but were not imported in 2001 due to the ban, but that price differences were not statistically significant. In addition, the coefficient estimate on clementine imports in the inverse demand curve for tangerines was negative, indicating clementines and tangerines may be substitutes; however, the coefficient estimate again was not statistically different from zero. That is, substitutability between clementines and tangerines was only apparent and potentially due to chance variation in the data. As a result, the substitutability between clementines and tangerines could not be confirmed scientifically. Because the substitutability could not be confirmed, more tangerines are consumed than clementines in the United States, and clementines have been imported historically, the RIA did not estimate economic impacts on domestic tangerine producers associated with lifting the ban on clementines under the new import program.

One commenter stated that the RIA's assumption that the total cost of a Medfly introduction to taxpayers and growers would be only $14 million ($11 million for taxpayers and $3 million for growers) is questionable. The commenter noted that an independent analysis by a University of California, Berkeley, economist estimated that a Medfly introduction in California would impose increased production and post-harvest treatment costs ranging from $316 million to $500 million, and that if Japan, Korea, Hong Kong, and Taiwan imposed an embargo on shipments of fresh produce from the affected areas, it would cost the California agricultural industry an additional $564.2 million in lost revenues.[25] The commenter noted that, due to multiplier effects, the independent analysis estimates the impact on the California economy would "amount to a $1.2 billion loss in income and a loss of 14,190 jobs," and stated that this estimate is consistent with historical experience: Twenty years ago, the 1980–1982 Santa Clara Medfly infestation cost $100 million to eradicate and an additional $100 million in lost sales due to embargoes on commodities grown within the quarantined zone.

Mean costs of eradicating six recent Medfly introductions in 1997 and 1998 ($10.93 million in 2000 dollars, which includes Federal and State expenditures) were used to estimate the impact of a potential Medfly introduction on U.S. Federal and State taxpayers. In addition, the RIA incorporates economic impact associated with a large Medfly introduction on producers of Medfly host crops in the United States. The $3 million economic impact on producers during a large introduction includes individual monetary estimates associated with additional field sprays, post-harvest treatments, fruit losses due to yield losses and post-harvest treatments, and loss of export markets (See 3.1 Costs Associated with the Proposed Rule, p. 11–12). The RIA did not incorporate potential impacts in other industries that derive income from Medfly host crops, including processors, canners, shippers, and export operations, because per introduction estimates of these costs were not available; however, the overall conclusions of the analysis are not affected when introduction costs are increased ten-fold from the $14 million specified in the RIA.

The independent analysis referred to by commenters estimates costs associated with Medfly becoming established in California, including those associated with additional

[24] Refer to the RIA (Sec. 2.1.4) for a discussion of the difference between mated pair probabilities per shipment and Medfly introductions.

[25] Siebert, J. 1999. Update on the economic impact of Mediterranean Fruit Fly on California agriculture. Subtropical Fruit News. 7(1):16–18.

pesticide use, post-harvest treatments, loss of export markets, and losses in industries that derive income from Medfly host crops. As such, the analysis points out the devastating impacts Medflies can have on producers of Medfly host crops and related industries in California, as well as other regions that can sustain Medfly populations, in the event Medflies become established. APHIS also recognizes the fact that the Medfly is an extremely damaging pest of fruit and vegetable crops and that, if left unchecked, could potentially wreak enormous damages on agricultural producers and related industries. This is why APHIS has developed and instituted the Fruit Fly Cooperative Eradication Program.

However, we do not believe the costs identified in the independent analysis should be used to calculate expected losses to producers of Medfly host crops and associated industries resulting from a single introduction under the new clementine import program. This is because most Medfly introductions occur in urban areas and typically do not lead to long-run establishments that affect large agricultural production regions. Six recent Medfly introductions in Florida and California in 1997 and 1998, the same six introductions that were used to estimate Federal and State taxpayer eradication expenses in the RIA, were eradicated in an average 9.33 months, measured from the initial detection of Medflies to the release of affected areas from quarantine, and affected on average only 2.67 counties [26] Long-run establishments adversely affecting large production regions did not result from these recent introductions.

In addition, the eradication program has been improved considerably since the 1980–1982 Santa Clara Medfly infestation. The primary reason why the Santa Clara infestation was so expensive to eradicate, and expensive for agricultural producers, was because sterile males and sterile females were released and a required 100:1 sterile-to-fertile Medflies "overflooding" ratio was not met. Using the current Sterile Insect Eradication Technique (SIT), which has been greatly improved since 1982, careful population monitoring and use of cover sprays are used to reduce populations in quarantined areas to the required 100:1 sterile-to-fertile ratio before the release of sterile males only. APHIS is modifying its rearing facilities to only produce sterile males to allow for a more efficient and effective SIT system to reach the required 100:1 "overflooding" ratio. Sterile females are no longer released with sterile males in order to increase the likelihood that only sterile males mate with fertile females. Aerial cover sprays with spinosad, an environmentally- and beneficial-insect friendly compound, are used over affected agricultural production regions to reduce Medfly populations; ground applications of spinosad with backpack sprayers are used in urban areas. In emergency situations, APHIS may use malathion bait sprays, both aerially and using backpack sprayers and may release sterile males in amounts appropriate to achieve an expected 100:1 sterile-to-fertile individual "overflooding" ratio. As a result, Medfly introductions, should they occur in the future, will more than likely not lead to the devastating economic losses experienced in 1980–1982.

One commenter stated that the RIA has taken no account of the impacts that pesticide application would have in a variety of areas, including destroying beneficial insects used as part of IPM programs, creating farm worker safety issues, and raising concerns about pesticide residues on the treated produce. For example, the commenter noted, because many export markets have not set residue tolerance limits for newer (less toxic) pesticides like spinosad, growers interested in exporting their product would have to use older, more toxic pesticides (such as organophosphates). The RIA also fails to consider the impacts that would result from an erosion of consumer confidence in the quality and security of the U.S. food supply.

The RIA did not take into account potential disruptions of IPM programs because these costs will more than likely be small, on average. Most Medfly outbreaks in the United States occur in urban areas with little if any commercial crops present. In addition, APHIS coordinates the Medfly eradication program, uses environmentally friendly eradication techniques, including use of beneficial-insect friendly cover sprays (spinosad) and mass release of sterile adult male Medflies, practices which are completely compatible with IPM practices, and in emergency situations, malathion bait sprays, which are much friendlier to the environment than malathion cover sprays. As a result, current eradication programs, which are extremely successful in eradicating the Medfly, would more than likely not adversely affect the IPM programs of producers of Medfly host crops and create farm worker and environmental safety issues.

However, only the parent compound spinosad has been registered for use by organic farmers. The compounds needed to dilute the parent compound into a foliar mixture have not been registered for use by organic farmers. As a result, organic farmers would not be able to market their crops as organic in the event of a Medfly outbreak that required the use of a spinosad cover spray, even though the IPM program would not be adversely affected. The pesticide industry is currently working to get the compounds needed to dilute spinosad into a foliar mixture registered for use by organic growers.

The RIA incorporates costs associated with fruit losses due to yield loss, fruit losses due to post-harvest treatments, and losses of export markets in the calculation of losses potentially borne by agricultural producers in the event of a Medfly introduction. Because spinosad is registered for use by organic growers, spinosad residues will more than likely not affect market access for Medfly host crops in foreign markets, however, such crops might not be marketed as "organic." The RIA does not incorporate "impacts that would result from an erosion of consumer confidence in the quality and security of the U.S. food supply." Instead, the RIA incorporates costs associated with the value of affected commodities lost due to yield and post-harvest treatment losses. As for quality effects, we are aware of only two studies that estimate levels of pesticide residues on fruits and vegetables consumed in the United States, both of which report extremely low pesticide residues on produce (See "The future role of pesticides in U.S. agriculture." (2000) National Research Council. National Academy Press. Washington, D.C., and a reference therein). Unfortunately, we are not aware of any studies that have examined quality impacts on food associated with Medfly introductions and, as a result, cannot incorporate quality impacts quantitatively. The economic analysis for the final rule discusses these costs.

One commenter stated that because of concerns by the U.S. Environmental Protection Agency (EPA) and opposition from the public, it is far from clear that growers and State officials would be permitted to undertake the aerial spraying of pesticides necessary to wipe out a Medfly infestation. If that proved to be the case, Medflies could become established in growing areas on a long-term basis, with enormous cost implications that the RIA does not even begin to consider.

[26] See APHIS. 1999. Exotic fruit fly infestations and eradications in the continental United States. Revised November 9, 1999. Riverdale, MD. P. 15–21.

Aerial spraying of spinosad is approved by EPA for use in production agriculture. In addition, ground application of spinosad using backpack sprayers is approved for urban areas. Further, the EPA has approved malathion bait sprays for emergency situations. Use of these technologies, in concert with the mass release of sterile adult males, has proven extremely effective in eradicating recent Medfly introductions, and APHIS is continuously striving to develop better more environmentally friendly eradication techniques. Because current technologies have proven so effective in eradicating recent Medfly introductions, it is likely that future introductions will not lead to long-run establishments of the Medfly. As such, the RIA incorporates costs potentially borne by Federal and State taxpayers and agricultural producers during an introduction under the assumption that the introduction is eradicated successfully.

Moreover, the RIA assumes that, should an introduction occur, it would occur in an agricultural production area, even though most introductions occur in urban areas. As a result, the RIA estimates Medfly introduction costs conservatively.

Environmental Documentation

One commenter noted that APHIS did not prepare an environmental impact statement (EIS) or an environmental assessment (EA) for the proposed rule, nor did it make a specific finding of no significant impact (FONSI). The commenter stated that since the RIA vastly underestimates the probability of a Medfly introduction, a finding of no significant impact based on the RIA would not be supportable. The commenter further stated that, because of the significant flaws in the RIA, there are serious questions as to the adequacy of APHIS's compliance with the requirements of the Regulatory Flexibility Act and the National Environmental Policy Act (NEPA).

We disagree with the commenter that our RIA is flawed, for reasons stated earlier in this document. APHIS did not prepare and EIS, EA, or FONSI for this rule because we have determined that this action fits within the class of actions identified in 7 CFR 372.5(c) as categorically excluded from further environmental analysis.

As noted in § 372.5(c), categorically excluded actions share many of the same characteristics as the class of actions that normally require EA's but not necessarily EIS's. The major difference between categorically excluded actions and actions that require EA's is that the means through which adverse environmental impacts may be avoided or minimized have actually been built right into the actions themselves.

We believe that this standard is applicable to the importation of Spanish clementines. In this case, we have designed a regulatory approach that results in a very low probability that a mated pair of Medflies could enter the United States via imported Spanish clementines. The only adverse environmental impacts that could be associated with the importation of Spanish clementines relate to the potential introduction of a pest via that commodity. As stated elsewhere in this document, we have determined that risks posed by all pests associated with Spanish clementines are mitigated via the measures employed in this rule. Hence, the means through which adverse environmental impacts are avoided has been built into the rule itself.

Nonetheless, APHIS has considered the environmental impacts associated with eradicating Medflies and other fruit flies from the United States in the event that they are introduced. This analysis can be found in: "Fruit Fly Cooperative Control Program, Final Environmental Impact Statement" (2001). (Available on the Internet at: *http://www.aphis.usda.gov/ppd/es/ppq/fffeis.pdf.*)

One commenter stated that APHIS has not discussed the expected economic and environmental impact of its proposal on Spain. The commenter claimed that there is no indication whether Spain would have the necessary resources to carry out an effective eradication and control program and no discussion of the environmental impacts that would occur in Spain in association with the requirements of the rule.

APHIS is not requiring Spain to eradicate Medfly, and therefore, there is no need to assess Spain's ability to carry out an eradication program. The RIA discusses expected economic impacts on Spain in sections 2 (Background) and 3.1 (Costs Associated with the Proposed Rule). The Spanish already have an extensive Medfly management program in place, and according to the RIA, the additional costs associated with following the new risk mitigations called for under the proposed rule were small when compared to the value of clementine exports. This indicates that Spain will have the necessary resources to carry out an effective control program.

We have also considered this rulemaking under the provisions of Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions," which "represents the United States Government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions." Inasmuch as virtually all impact-generating activities associated with this rulemaking will occur outside the United States, the provisions of this executive order may be said to apply. We believe, however, that this rulemaking is exempt from the procedural requirements of the executive order by virtue of the fact that Spain is participating with the United States and is otherwise involved in the action (see § 2–3(b) of the executive order) and because the action will not have a significant effect on the environment outside the United States (§ 2–5(a)(i)).

Additional Specific Comments on the RMA and ORACBA Analysis

One commenter provided a detailed critique of the RMA and the ORACBA analysis. The commenter's submission included analysis of some of the same data used in the ORACBA analysis to evaluate cold treatment and other elements of the model it uses. Several other commenters paraphrased or otherwise cited these comments in their own comments, so some of the points raised by the commenter have already been discussed in detail earlier in this document. We have made changes to the RMA in response to some of the commenter's points, as noted in detail below and elsewhere in this document. The net effect of these changes was an approximate 10-fold decrease in our original estimates of risk, suggesting that our original analysis overestimated the risk. The main reasons for the reduction in the revised risk estimates were due to initial overestimates of the effect of variability and due to overestimates in the proportion of a shipment that constitutes a hazard. Specific comments are addressed below.

Failure To Correctly Account for Variability

The commenter stated that the RMA fails to properly account for variability and uncertainty.

Conceptually, the difference between variability and uncertainty is clear. Variability refers to random variation that cannot be reduced through acquisition of additional information. Uncertainty refers to our state of

knowledge and may be reduced through additional information. A number of leaders in the field of risk analysis have drawn attention to cases where maintaining a rigorous distinction between uncertainty and variability, if possible, may be helpful in risk management decisonmaking. For example, if the statutory decisional criteria is "reasonable certainty of no harm," and this is administratively interpreted to mean protecting a hypothetical individual at the 99th percentile of the distribution of exposure to an environmental contaminant, then it may be useful to consider the uncertainty associated with estimating this percentile in the exposure variability distribution. In this context, performing so-called 2-dimensional uncertainty analysis in which variable and uncertain model inputs are separated can lead to statements such as, "We are 95 percent confident that the individual at the 99th percentile in the exposure distribution does/not confront serious risk of illness." For evaluating the expected risk reduction potential of different risk management strategies, however, it is not clear that such a distinction between variability and uncertainty would be useful.

Furthermore, while the conceptual distinction between uncertainty and variability is clear, the separation can be somewhat artificial or vague in practice. Morgan [27] cautions that while variability and uncertainty are different and sometimes require different treatments, the distinction can be overdrawn. In many contexts, variability is simply one of several sources of uncertainty.[28] The National Research Council Committee that produced *Science and Judgment in Risk Assessment* [29] acknowledged complications that arise because uncertainty and variability work in tandem: Variability in one quantity can contribute to uncertainty in another, and the amount of variability is generally itself an uncertain parameter. Furthermore, this committee recognized that the lack of "identifiability" can frustrate efforts to partition variability and uncertainty. In the statistical sense, unidentifiability means that the parameters of a model cannot be estimated from the available information. For example, a single observation consists of a variability component (how this individual varies from the population mean) and an uncertainty component (*e.g.*, measurement error). If there are no matching replicates, a common problem in spatial or time series data, then it is impossible to empirically estimate the separate variability and uncertainty components. This problem has long been recognized, for example, in the field of geostatistics where it is referred to as the "nugget effect," where geological variation at a scale finer than the separation between measurement sites cannot be distinguished from uncertainty due to the survey protocol. Although various procedures have been developed in an effort to partition the "nugget" into variability and uncertainty, these procedures are themselves subject to uncertainty. Attempts to model "uncertainty about uncertainty" can lead to infinite regress. More recently, the National Research Council [30] observed, "[a]lthough the distinction between natural variability and knowledge uncertainty is both convenient and important, it is at the same time hypothetical. The division of uncertainty into a component related to natural variability and a component related to knowledge uncertainty is attributable to the model developed by the analyst * * * Modeling assumptions may cause "natural randomness" to become knowledge uncertainties, and vice versa."

Nevertheless, an effort was made to determine whether there was substantial informational value of a two-dimensional uncertainty analysis in the case of the risk management analysis for Spanish clementines. The two-dimensional uncertainty is represented by a figure that is contained in Appendix 3 to the RMA, which includes more detailed discussion of this matter.

As indicated in the figure (and in the Summary Statistics table of Appendix 3 of the RMA report), the 95th percentile of the 1-dimensional analysis is approximately 2×10^{-5} (1.99E–05). Given modeling results of the same order of magnitude (10^{-5}) and the presence of additional, unquantified uncertainties (*e.g.*, the probability of establishment of a Medfly colony, given one or more mated pairs arriving in a suitable location), the difference between the results is probably insubstantial and suggests that, at least in this case, the 2-dimensional analysis provides little more than additional complexity.

Inadequacy of the Chosen Model and Appropriateness of Assumptions

The commenter claimed that the model used to represent the movement of clementines to market appears to be oversimplified to the extent that it is likely to give misleading results. The commenter pointed out that many assumptions used in RMA may not be appropriate.

We agree that some assumptions used in the RMA are a simplification of the real system; however, we did not try to replicate the real system but rather to model it. We aimed to capture key elements that represent the system such that our analysis can be informative for decisionmaking. For example, the commenter notes that we assume, among other things, that all clementines are exactly the same. We acknowledge that not all clementines are the same, that not all larvae are the same, and that biological systems in general rarely come in identical sets. However, our intent was to describe the system in terms of its key elements (listed as C1 to C5 in the RMA model), and characteristics of these elements, while a simplification, were sufficiently descriptive to allow for rational, science-based decisionmaking.

Again, not all clementines are exactly the same, not all shipments are exactly the same, and there are no two boxes of fruit that are identical. However, we believe we have captured the key elements of variability in our simulation. That is, just because fruit are different, it does not follow that such will result in more or less fruit in a container, and thus, APHIS believes it has correctly described the variation associated with fruit in a container. Further, despite the fact that fruit are not the same and may be less or more suitable for a larva to complete development, APHIS believes that it correctly captures this interaction in its stated variation of survival of larvae in fruit to vary from zero to eight.

We agree with the commenter that the system itself and the marketing of fruit has been simplified in our model. We do not agree, however, that the system we used is an oversimplification, because we believe we have captured those elements that are essential to understanding risks posed by imported Spanish clementines. We further believe that additional specification and description of the system will result in lowered estimates of risk.

For example, the commenter stated that the division of the United States into areas that are strictly suitable and unsuitable was an oversimplification. We disagree. It is indeed a simplification, but it allows us to correctly and conservatively capture the essence of the risk. For example, the State of Texas as a whole is considered suitable (as are the entire States of Arizona, Alabama, Georgia, South Carolina, Florida, California). However, the northern part of Texas (*e.g.*, the "Panhandle") does not have conditions suitable for Medfly development. That area is arid, winters are cold, there are very few hosts available, and conditions are not suitable for Medfly to establish. Indeed, it is likely that only the areas of Texas that will support Medfly populations are areas where citrus [31] occurs.

The RMA's inclusion of the entire state of Texas (and other States with similarly diverse climatic conditions) as a "suitable area" is indeed a simplification. It is not, however, a simplification that would result in USDA's underestimation of risk. This and other similar simplifications employed by the RMA result in conservative estimates, not otherwise. For these reasons, we disagree that we have oversimplified the system.

The commenter stated that the RMA assumes that all areas can be exactly divided into exactly two classes: One hospitable to Medfly, the other completely inhospitable.

We believe the commenter's assessment is correct, but it fails to note that our assumption results in conservative expressions of risk. For example, most of the State of Texas is considered suitable for Medfly development. Yet this is likely an overestimate because suitable hosts do not commonly occur in northern Texas where fruit production is secondary and because the conditions in northern Texas are not climatically suitable for the development of Medflies. Texas is illustrative because large populations of another fruit fly, the Mexican Fruit Fly (*Anastrepha ludens*)(Mexfly) are common and have been trapped in large numbers in southern Texas for the past decade. The Mexfly is also considered more tolerant of cold than the Medfly. Despite its occurrence in south Texas, there never have been establishments (or damages of any kind) recorded outside of the southernmost tip of Texas where citrus is produced. This is empirical evidence, but there is the additional evidence that Medflies have never become permanently established in areas where citrus does not occur. Thus, the partitioning of the United States into areas suitable and unsuitable is an approach that results in conservative estimates because we have identified entire States as suitable areas, when, in reality, only small portions of those States have all the conditions that would provide for the establishment of Medfly.

The commenter also suggested that Medflies might emerge during shipment or transportation. We did not consider this a likely scenario because clementines are stored under refrigeration. Typical refrigeration dramatically slows or stops the development of these insects and thus the emergence during refrigerated storage and transport is not considered a significant system component.

Shapes of Distributions/Construction of Distributions

The commenter suggested that the shapes or constructions of certain distributions require refinement.

We agree with the commenter that one distribution and several parameters could be refined. However, our refinements reduced our estimates of risk. As such, we reviewed the distribution for component 1 (number of fruit in shipments). We had previously assumed that the fruit in a container would vary uniformly. The assumption of a normal distribution is better supported by the evidence. We thus changed the distribution used from a Uniform to a Normal, and that change is reflected in our final RMA.

We also chose to simplify our treatment of component 5 of the RMA (amount of fruit that ends up in suitable areas) in response to suggestions by the commenter. We had previously used a Pert distribution. In the final version, we used constants. We selected maximum values based on evidence. Constant values were used instead of distributions for component 5 because demographic trends represented by a maximum will make our analysis valid (in terms of demographic expectations) for at least a quarter of a century. Other distributions chosen for other components were considered appropriately described by the Pert distribution, as specified previously and were not changed. Changes were made to some of the values used.

For example, we previously had estimated that up to 15 larvae could occur in each fruit. We revised this value to eight maximum larvae based on the evidence provided by Santaballa 1999 and others. We also included the evidence from the proportion of fruit that is not consumed and is discarded from Wearing *et al.* and Roberts *et al.* This evidence was suggested by commenters and APHIS agreed that indeed most fruit is not discarded but is consumed and that it is important to analyze the fruit that constitutes a hazard. By virtue of being eaten, most fruit does not pose a risk of Medfly introduction. For that reason, we used the maximum value of discarded fruit (5 percent) reported in the evidence to determine what proportion of fruit that is shipped to suitable areas actually gets discarded.

We also agreed that our text noted that in estimating the probability of a mated pair in multiple containers, these had to "coalesce" in a given area. Whereas, we still believe that all containers of interest (because they may lead to fruit fly introductions) are limited to areas suitable to the Medfly, we clarified in our text that containers do not have to coalesce within a specific or relatively limited area. The estimated probability of a mated pair simply estimates the probability of a mated pair in multiple, independent containers. The commenter provided alternative ways to estimate the probability of a mated pair in multiple containers. In our final draft we continue to use the formula cited in the July 20, 2002, RMA because it is supported by several peer-reviewed scientific articles (*e.g.* Wearing *et al.*).

Finally, several commenters were reportedly confused by our presentation of multiple results. In the final version of our analysis, we present two endpoints: probability of a pair of flies in a single shipment and probability of a mated pair in multiple shipments to suitable areas. A third estimate (probability of a mated pair in all shipments to all areas) presented in the previous draft was eliminated because it did not contribute to our explanation.

The Effects of Mitigation Efforts

The commenter stated that separate Monte Carlo simulations are not representative of the modeled systems. He also noted that the separate simulations "might be adequate, if the outputs computed are related to quarantine security."

This comment implies that our approach is only appropriate if we pre-specify a given level of quarantine security or appropriate level of protection and compare our results to that level. As stated elsewhere in this document, that was not the intent of the RMA. The simulations modeled two independent situations; one represents a baseline and employs cold treatment but not field controls, and the other employs cold treatment and field controls.

[27] Morgan, G. 1998. Uncertainty Analysis in Risk Assessment. Human and Ecological Risk Assessment 4:25–39.

[28] Morgan, M.G., M. Henrion, and M. Small. 1990. Uncertainty: A Guide to Dealing with Uncertainty in Quantitative Risk and Policy Analysis. Cambridge University Press, Cambridge.

[29] National Research Council. 1994. Science and Judgment in Risk Assessment. National Academy Press, Washington, DC.

[30] National Research Council. 2000. Risk Analysis and Uncertainty in Flood Damage Reduction Studies. National Academy Press, Wash., DC.

[31] Citrus is used here as an indicator species, and we acknowledge that it is not the only Medfly host.

We did not attempt to relate our output to pre-set levels of quarantine security in the risk mitigation document. That is, in examining the probability that a mated pair of flies could be associated with single or multiple shipments, we did not have in mind a pre-set level that would be considered appropriate. We simply conducted the analysis, used the simulation process to express our understanding of the variability, and reported our results in terms of the probability of a mated pair in containers of clementines (single and multiple).

Cold Treatment—Extrapolations From Available Evidence

The commenter states that Baker (1939) and Phillips *et al.* (1997) show that under different conditions (*e.g.*, in different fruit) different treatments are required to achieve the same mortality. This is speculative, however. Baker (1939, Fig. 3) indicates different probit slopes for the response of larvae in all fruits tested vs. the response of larvae in all fruits except kamani nut, but the statistical discussion is insufficient to determine whether the differences are statistically significant. The reported differences also may be due to the failure to control for the differential cooling rates among fruits. This factor is controlled for by the T107-a treatment schedule, which requires that treatment time begins once the internal temperature of the fruit has reached the designated temperature. Phillips *et al.* (1997) raises the possibility that "host fruit may influence mortality of fruit flies exposed to cold treatments," but provides no test of this hypothesis. The hypothesized host effect ignores the possibility that variation in larval response to cold treatment within fruit species is comparable to the variation between fruit species. It is equally plausible that reported differences among studies are due to variation among Medfly populations used in different studies or due to different rearing or inoculation methods used prior to cold treatment. The situation is also clouded by the inability—at treatment efficacy levels in the neighborhood of probit 9—of empirically separating variability in response due to different experimental methods and materials (which are unique for each trial) from the uncertainty in the true but unknown proportion of survival. The RMA plausibly assumes that uncertainty dominates variability under the treatment conditions and commodities relevant to T107-a.

The commenter also indicated that the ORACBA analysis has "probably included" a 2-day cooldown time. The analysis assumes compliance with the T107-a treatment schedule, which specifies that the duration of treatment begins once the internal fruit temperature has reached the specified treatment temperature.

Outputs and Metrics Used for Comparison

The commenter noted that our analysis evaluates the wrong outputs. Specifically, the commenter argues that a realistic estimate would evaluate the risk that all containers are shipped to all areas.

We disagree that risk is posed by containers sent anywhere in the United States. Most fruit that is directed away from suitable areas will encounter conditions that will not support Medfly development and establishment. We have however, reassessed our presentation of outputs in the final version of the risk mitigation analysis. We have clearly indicated that our output is expressed in terms of the mean and 95th percentile of the distributions. We have also noted that our output emphasizes an endpoint describing the probability of a mated pair in a container or in multiple containers to suitable areas.

Unjustified Extrapolation

The commenter noted that the RMA states that the risk posed by other Spanish citrus may be similar to that of clementines. The commenter claimed that the findings of the RMA might not be applicable to other commodities.

APHIS believes that although the RMA addresses clementines specifically, the risk from other Medfly host citrus from Spain may be comparable, though there are some specific differences. Other citrus are similar, but larger, and thus fewer fruit would be contained in shipments, though the number of pests per shipment may be similar.

Regardless, as a matter of policy, before allowing the importation of another type of citrus from Spain, APHIS would conduct additional risk analyses in support of such a proposal. A new commodity import request would be subject to the rulemaking process.

Analysis of Cold Treatment Data

The commenter questioned the kind and nature of data used in the ORACBA analysis.

The time-temperature response surface model presented in the ORACBA analysis was based on data reported by Back and Pemberton [32] (Table 1). The cold treatment temperatures directly relevant to the T107-a cold treatment schedule are in the 32–36 °F range. The ORACBA analysis correctly listed the cold-storage temperature levels that were included in the analysis, with the temperature data coded as indicated in parentheses: 32 °F (0 °C), 32–33 °F (0.28 °C), 33–34 °F (0.83 °C), 34–36 °F (1.67 °C), 36 °F (2.22 °C), and 36–40 °F (3.33 °C). The ORACBA analysis also indicates that the final storage temperature level (36–40 °F) was included to inform the high temperature and long duration regions of the response surface.

The commenter points out, however, that the ORACBA analysis was unclear about the data that were used in this portion of the analysis. Six—not five, as indicated by the ORACBA analysis—cold storage temperature levels were included in the analysis.

The ORACBA analysis indicated that data from the 40–45 °F treatment level were excluded from the analysis but failed to indicate that data from the 38–40 °F treatment level were also excluded. The ORACBA analysis indicates that the rationale for excluding these data from the analysis was to limit the effect of independent variable measurement error (*i.e.*, treatment temperature) on the multiple regression analysis. Therefore the data used in the response surface analysis remain unchanged and are limited to the temperate range most relevant to the T107-a treatment schedule.

Analysis Methods

The commenter stated that the ORACBA analysis did not describe the procedure used to empirically estimate the extra-binomial dispersion about the cold treatment response surface model.

The extra-binomial dispersion was estimated to relax the default logit regression assumption that the errors about the model are binomially distributed. This estimate was obtained by dividing the deviance goodness of fit statistic by its degrees of freedom. Incorporating the extra-binomial dispersion does not affect the maximum likelihood estimates obtained for the regression model parameters; therefore, the model predictions are unaffected. Failing to correct for over-dispersion, however, causes underestimation of the standard error of the parameter estimates and would have resulted in overstating the statistical significance of

[32] Back, E.A. and C.E. Pemberton. 1916. Effect of cold-storage temperatures upon the Mediterranean fruit fly. Journal of Agricultural Research 5:657–666.

the model inputs. The ORACBA analysis (Table 2) indicates that the response surface model inputs of time and temperature remain statistically significant after allowing for extra-binomial dispersion.

Observed Trends in Data

The commenter, after re-examining cold treatment data, stated that "binomial uncertainties are insufficient to explain the variations from the proposed model."

Using the same logit model used in the ORACBA analysis, the commenter indicates a slightly longer predicted time to achieve the probit 9 level of security than presented is presented in Figure 1 of the ORACBA analysis. This difference appears to be due to the inclusion by the commenter of the data reported by Back and Pemberton for 38–40 °F treatment level that was excluded by the ORACBA analysis for the reasons indicated above. (Note that the commenter's analysis represents the logit of probability of survival evaluated using base 10 logarithms so that the probit 9 level of security (a 3.2×10^{-5} probability of survival) takes a value of -4.5 logits.)

Based on Figure 3.1 of his comment, the commenter judges that the binomial confidence bounds are insufficient to explain the variations from the proposed logit model. As indicated above, however, the ORACBA analysis estimated the extra-binomial dispersion about the logit model. Figure A below presents the Back and Pemberton data with the model fit according to the ORACBA analysis and extra-binomial confidence bounds. Therefore, not only was the model statistically significant, but based on Figure A, the fit also appears reasonably good. Note that the confidence bounds in Figure A represent uncertainty about the true mean response only (*i.e.*, logit model parameter uncertainty). The confidence interval for the mean response is a range of plausible values for the average of all responses at a given treatment level. The bounds in Figure A do not represent a prediction interval for an individual response, *i.e.* a range of plausible values for any single observation at a given treatment level. The latter is typically much broader than the former because it must account not only for uncertainty about the mean but also for individual random variation about the mean response for the population. Therefore a prediction interval for Figure A would envelope more of the raw data. Only approximate methods are available to estimate prediction intervals for non-linear models, however. The y-axis in Figure A represents the logit of the probability of survival evaluated using the natural logarithm so that the probit 9 level of security takes a value of -10.3 logits. As indicated by Figure 3.1 provided by the commenter, one way of graphically presenting zero and 100 percent observed responses is to represent them by error bars that run off the bottom and top of the graph, respectively. Zero and 100 percent responses reported by Back and Pemberton have been omitted from Figure A below to ease visualization. The curves presented in Figure A have also been truncated to avoid extrapolation beyond the range of experimental observation.

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Figure A. Back and Pemberton(5) data, with model fit and confidence bounds.

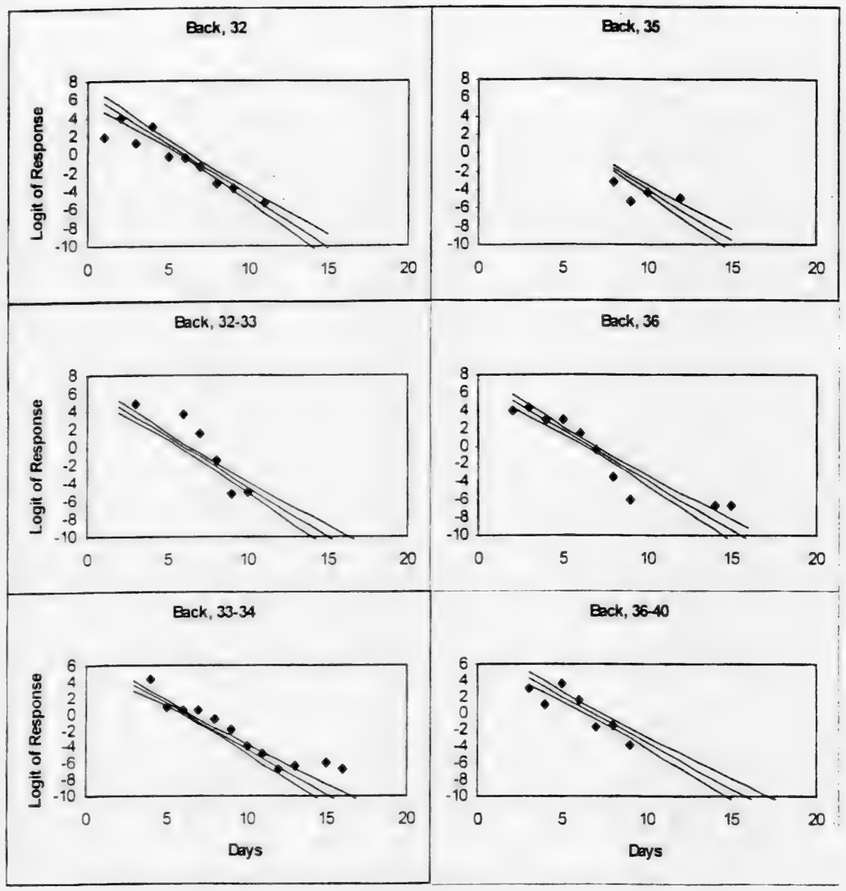

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Models for Time and Temperature Response

The commenter seems to suggest that only one model form was considered in the ORACBA analysis (in equation 1), and that other link functions and data transformations were not entertained. The ORACBA analysis states, however, that in developing the response surface model, it considered three generalized linear model link functions: The logit, normit, and complementary log-log. Each was fit with and without a logarithmic transformation of time and temperature. Among the models considered, the model based on the untransformed data and the logit link function in equation 1 was selected on the basis of statistical goodness-of-fit criteria.

The commenter suggests that the response surface model developed for the ORACBA analysis is flawed because it fails to take account of both variability and uncertainty. The response surface model, however, represents only a portion of the quantitative analysis of the efficacy of cold treatment. As indicated, the response surface model based on the Back and Pemberton data is not intended to elaborate the definitive model of Medfly larval response to cold treatment. Instead, the primary aim of the analysis was to corroborate whether the existing cold treatment schedule fails to achieve the intended level of protection. To that end, the robustness of the model was assessed. To do this, response surface model predictions (point estimates omitting the unexplained variance consisting of variability and uncertainty) were compared with confidence intervals constructed about the independent results of more recent Medfly larvae cold treatment trials conducted under similar time-temperature combinations, as well as recent surveillance of shipping operations. In this manner, the complete quantitative analysis did take into account both variability and uncertainty regarding the response of Medfly larvae to cold treatment.

As indicated above, the inclusion of the Back and Pemberton data for the 38–40 °F treatment level explains the lack of correspondence between the parameter estimates obtained by the commenter and those reported in the ORACBA analysis.

The commenter stated that it is unclear why a linear effect of temperature was chosen in the response surface model used in the ORACBA analysis. The logit regression analysis assumes a linear relationship between the independent variables and the logit of the observed response. A separate (unreported) analysis testing this assumption rejected the hypothesis of no linear relationship between the logit of survival and temperature. This is consistent with the finding of the commenter that a linear variation between temperature and the logit of response may not be ruled out.

The commenter presents analysis of "the published data of Baker" on Medfly; however, Baker [33] only presents figures summarizing data analysis, not raw data. Therefore, it is unclear how the commenter acquired and analyzed the data. Furthermore, Baker seems to have excluded data from treatments where no larvae survived on the basis that the lack of survival was regarded as "not valid experimental information." Without full disclosure of all data, it difficult to judge the analysis.

Based on a regression analysis of data reported by Santaballa *et al.*,[34] the commenter estimates that more than 18 days of cold treatment at 2 °C (35.6 °F) would be required to achieve the probit 9 level of security. This result, however, derives from the assumed statistical model form. Both Figure 3.5 provided by the commenter and Figure 3 of the ORACBA analysis indicate a high level of confidence that a 16-day cold treatment at 2 °C (35.6 °F) provides a high level of confidence of achieving the probit 9 level of security. This observation illustrates that for the purposes of revising the regulatory cold treatment schedule, elaborating a regression model relating time and temperature to survival needs to be interpreted cautiously. The ORACBA analysis notes that uncertainty remains regarding what statistical model form best describes the observed cold treatment data. The biological mechanism of larval mortality due to low temperature is not well understood, but if a critical physiological point exists (*e.g.*, beyond which cell walls rapidly lose integrity), this might suggest using a discontinuous (*e.g.*, splined) model form. Many discontinuous surface modeling approaches suffer, however, from a distinctly ad hoc flavor.

The regression modeling approach employed by the commenter, however, is not the only valid approach to evaluating the efficacy of phytosanitary risk reduction measures. Instead of relying exclusively on a regression results that are contingent on the assumed model form being correct, the ORACBA analysis provides an approach whereby the efficacy of discrete time-temperature combinations (more recent experimental trial and surveillance results) are characterized by constructing confidence intervals obtained assuming only that the probability of larval survival is beta distributed (*i.e.*, arises from a binomial process, as assumed by the commenter's analysis). This approach makes no assumption about the underlying form of the relationship between cold treatment response and time or temperature (*e.g.*, it does not assume that a logit, normit, or complementary log-log data transformation will be linearizing). Thus, limiting the analysis to discrete treatments within the range of time-temperature combinations relevant to regulatory decisionmaking has the advantage of relaxing or simply avoiding the far more numerous statistical assumptions inherent to regression analysis methods. This is of particular concern because predictions at the extremely low survival levels relevant to phytosanitary programs may be dominated not by the observed data but by the assumed statistical model form. For example, a heavy-tailed distribution may fit the data as well as a light-tailed distribution, but the predictions at very low survival levels will differ substantially due to differences in the assumed model form. In this case, therefore, simple data analysis making modest, justifiable assumptions may be preferable to elaborate regression modeling which inherently invokes numerous, often untestable, statistical assumptions.

Miscellaneous Points

The data presented in the ORACBA analysis (Table 4) correctly identify the data for more mature or cold-tolerant larvae used in the analysis. Note the discussion in that analysis regarding the indeterminate evidence regarding the most cold-tolerant larval stage.

Regarding the methods used in the ORACBA analysis for obtaining the beta distribution parameter estimates, both the method of matching moments and the parameterization suggested by the commenter are commonly used in the peer-reviewed literature. Some analysts prefer the method of moments because it obtains a beta distribution with an expected value equal to the sample mean and does not require specifying a subjective prior distribution, which is implicit in the parameterization

[33] Baker, A.C. 1939. "The Basis for Treatment of Products Where Fruit flies are Involved as a Condition for Entry into the United States." Circular No. 551 US Department of Agriculture, Washington, DC.

[34] Santabella, E., R. Laborda, and M. Cerda. 1999. "Informe sobre tratamiento frigorifico de cuarentena contra Ceratitis capitata (Wied) para exportar mandarinas clementinas a Japon." Valencia, Spain, Universidad Politecnica de Valencia.

recommended by the commenter. The method of moments is limited, however, in that it cannot handle zero values for r, the number of survivors observed after treatment. Therefore, the ORACBA analysis employed the method of moments except in the case where r=0.

The commenter criticized the treatment of zero proportion observations as "bizarre" and "misleading," but they follow directly from the beta distribution parameterization that he recommends. Zero value observations in the ORACBA analysis (Figure 4), for example, are presented as the median of a beta distribution parameterized as $\alpha=r+1$, $\beta=n-r+1$. It is well recognized that estimated proportions of 0 and 1 pose special difficulties for variance estimation and calculation of confidence intervals. The commenter takes a bounding estimation approach to the problem that handles the "special case" of r=0 or 1 by logical reasoning. This reasoning becomes more compelling, however, as the sample size (n) grows larger.

For the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Incorporation by Reference

This final rule requires clementines from Spain to be cold treated in accordance with treatment T107-a of the PPQ Treatment Manual, which is incorporated by reference at 7 CFR 300.1. On October 15, 2002, we published in the **Federal Register** an interim rule (APHIS Docket No. 02–071–1) that revises treatment T107-a and other cold treatment schedules and updates the incorporation by reference for those treatments.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

We are taking this action in response to a request from the Government of Spain and after determining that the restrictions described in this final rule will reduce the risk of introduction of Mediterranean fruit fly and other plant pests associated with the importation of clementines from Spain.

Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for Spanish clementines begins approximately in mid-September. Making this rule effective immediately will allow interested persons to begin shipping Spanish clementines to the United States as soon as possible after that time. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon signature.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

For this final rule, we have prepared an economic analysis. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866, as well as an analysis of the potential economic effects of this rule on small entities, as required under 5 U.S.C. 603. The economic analysis is summarized below. See the full analysis for the complete list of references used in this document. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, or on the Internet at *http://www.aphis.usda.gov/oa/clementine/index.html*.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of injurious plant pests.

Summary of Economic Analysis

In our analysis, we report estimates of regulatory benefits and costs for importers, wholesalers, retail consumers, federal and state taxpayers, and Medfly host crop producers in the United States. Regulatory benefits associated with U.S. imports of Spanish clementines and regulatory costs associated with potential Medfly introductions are estimated using an economic model, which incorporates salient features of Medfly biology, Medfly field control in Spanish groves, and fruit cutting and inspection procedures in the regulations. We estimate regulatory benefits and costs with and without limited distribution imposed, while focusing on the latter under the assumption that limited distribution will not be imposed after the first shipping season during a typical year. Regulatory benefits and costs for a typical year in the near future are estimated relative to the ban (baseline one), because the ban is currently in effect, and relative to the previous import program (baseline two), because this provides a useful benchmark for measuring relative benefits and costs.

The economic analysis for the proposed rule (APHIS 2002a) used a certainty-equivalence framework (values for biological and economic parameters were based on expected values) to estimate regulatory benefits and costs, which was based on the risk analysis for the proposed rule (APHIS 2002b), the proposed regulations, and economic incentives facing Spanish parties. Because key biological and economic parameters will likely vary from expected values on an intra- and inter-seasonal basis and, more importantly, because the model is nonlinear in these parameters, we use Monte Carlo simulation to examine benefits and costs in the current analysis, following the approach taken in the risk analyses. Other than this change, as well as some changes in additional default biological parameters, the current analysis is very similar to the economic analysis for the proposed rule. As such, the model used in the current analysis draws heavily from the economic analysis for the proposed rule and the risk analysis for the final rule (APHIS 2002c). In addition, public comments received on the economic analysis for the proposed rule indicated that the methods used to estimate annual Medfly introductions were not adequately explained. Therefore, we provide a detailed discussion of the biological model in the analysis accompanying the regulations, where, in the interest of transparency, we also provide the computer program used to estimate regulatory benefits and costs under the default model.

The results of our analysis indicate that regulatory benefits will outweigh regulatory costs relative to both baselines. Expected regulatory gains per year are roughly $207 million relative to the current ban (baseline one), including $118, $59, and $30 million in expected gains for importers, wholesalers, and consumers, respectively, with practically no increase in expected costs for federal and state taxpayers and agricultural producers in the United States associated with Medfly introductions. In addition, the regulations save an estimated $47,000 in annual Medfly introduction costs potentially incurred under the previous import program. Because import levels under the regulations will more than likely exceed import levels under the previous import program, net welfare associated with international trade in Spanish clementines under the regulations is expected to exceed net welfare under the previous import program by an average $23 million per year. That is, net regulatory welfare relative to the second baseline is $23 million per year.

Regulatory Costs in Spain

Regulatory costs in Spain include purchases of additional Medfly traps for producers, purchases of baits for the traps, monitoring and record keeping costs, additional bait spray costs, additional cold treatment costs, and trust fund expenses. Total annual trap and bait expenses for all Spanish growers under the regulations are only $660, or 8.39E–04% of average export market value during 1999 and 2000 ($78.69 million, FAS 2002). Total annual trust fund expenses for the Spanish government, or its agent, are estimated to be at least $90,000, including 16.15% administrative overhead (West 2002), or 1.14E–01% of average export market value during 1999 and 2000. Total annual cold treatment expenses for all exporters average $1.12 million (± $13 thousand) per year, which is 1.42% of average export value during 1999 and 2000, representing a significantly larger cost on exporters. Because the U.S. market is lucrative relative to markets in the rest of the world and because dramatic price declines in Europe associated with the Spanish clementine ban in the United States indicate that European markets are saturated at recent export levels, we assume that additional cold treatment expenses will not affect supply in the short run.

We were unable to estimate additional costs associated with monitoring and record keeping in Spanish groves, which producers will be required to pay; however, these costs will likely be low. It is not clear if or by how much annual bait sprays and spray costs may increase; however, these costs may be borne entirely by federal and local governments in Spain and therefore not affect production decisions. Because the preceding regulatory costs are low relative to the gross value of the U.S. market and because alternative foreign markets for Spanish clementine growers appear to be saturated at recent export levels, we assume that export supply is perfectly inelastic with respect to U.S. import prices. As a result, marginal production and export costs borne by Spanish parties are not passed on to U.S. importers, wholesalers, and retail consumers. The assumption of perfectly inelastic supply is appropriate for a short-run analysis such as this and does not substantially affect the results of the analysis. Furthermore, assuming inelastic supply allows us to estimate clementine import levels and therefore Medfly introduction costs conservatively, the latter of which increase with import levels.

Fruit Cutting and Rejection Costs

Fruit cutting and rejections of inspectional units in Spain and fruit cutting in the United States reduces U.S. clementine imports by an average 4.91% under the default model (0.99% of average export value for 1999 and 2000), leading to reductions in revenues for importers and wholesalers, consumer benefits, and expected Medfly introduction costs. Fruit will be cut and inspected in Spain at a rate of 200 clementines per inspectional unit, which can include as many as 555 pallets, with exporters choosing the size of the inspectional unit. Losses may also include rejections of inspectional units, where the rejection rate will depend on the proportion of fruit that is infested with Medflies in inspectional units (the infestation rate). A fruit cutting and rejection program occurs at the U.S. port. The economic model incorporates the effects of the fruit cutting and inspection programs in Spain and in the United States, including the rejection of inspectional units, on U.S. import levels and therefore on regulatory costs and benefits.

Medfly Introduction Costs

Because current techniques and technologies used by APHIS have proven safe and effective in eradicating recent Medfly introductions and because most introductions occur in urban areas, we assume that introductions associated with Spanish clementine imports will not lead to long-run Medfly establishments in the United States. Annual Medfly introduction costs are given by the product of the expected number of introductions and an estimate of the cost of one introduction. We use the mean cost of eradicating six recent Medfly introductions in California and Florida during 1997 and 1998 in 2000 dollars, rounded up to $11 million, as our measure of federal and state taxpayer costs per introduction (APHIS 1999). Additional costs borne by producers of Medfly host crops during an introduction (additional field sprays, post-harvest treatments, fruit losses, post-harvest fruit losses, and loss of export markets) are based on producer cost estimates for a large introduction ($2.56 million) rounded up to $3 million (Vo and Miller 1993). Total taxpayer and industry costs associated with a potential Medfly introduction are therefore $14 million in the default model.

Because eradication technologies are safe and effective and because most introductions occur in urban areas, Medfly introductions resulting from the importation of clementines from Spain will more than likely not lead to long-run establishments adversely affecting agricultural production regions in the United States. As a result, we do not incorporate all of the potential costs associated with a potential Medfly introduction for four reasons. First, we do not have data to estimate all of the potential costs. Second, in the aggregate these additional costs will likely not, on average, increase total regulatory costs significantly. At the same time, however, we recognize that some of these costs may be substantial for individual growers. Third, although most Medfly introductions occur in urban areas, we assume, for the purpose of estimating Medfly introduction costs, that any introduction occurs in a Medfly host production region in the United States. As a result, we may be overestimating Medfly introduction costs in the current analysis. Finally, even if we were to increase Medfly introduction costs by a factor of ten, regulatory costs would not increase significantly and the conclusions of the economic analysis would not be affected. (Please see subsection 2.1.3 Medfly Introduction Costs in the economic analysis accompanying the regulations for more detail on the specification of Medfly introduction costs.)

Medfly Introductions

The number of Medfly introductions per year is given by the product of the number of forty-foot containers imported into areas in the United States suitable for the development of Medfly offspring and the probability that at least one adult male and one adult female (mated pair) survive the export process, in discarded fruit, per forty-foot container. We recognize the fact that, for a Medfly introduction to occur, it will be necessary for mated pairs to survive in their new environments long enough to find suitable hosts, for females to oviposit eggs in fruits that are sufficiently mature, for eggs to survive heat, cold, parasitism and disease, and for the eggs to develop into larvae that survive to adulthood and reproduce successfully. The effect of these other variables on the ability of a mated pair to survive, reproduce, and spread would, in all cases, further reduce the likelihood that Medflies could be introduced into the United States. Because data were not available to estimate the effects of these variables on Medfly introductions, our estimates may overstate the number of Medfly introductions that may actually occur,

leading to conservative estimates of Medfly introduction costs under the regulations and under the previous import program.

We estimate the probability that at least one mated pair survives the export process, in discarded fruit, for each forty-foot container that passes fruit cutting and inspection in Spain and in the United States, using the biological model reported in the risk analyses (APHIS 2002b, c). Importantly, the simulations incorporate likely variability in Spanish clementine export levels to the United States, which will contribute to variability in mated pair probabilities per shipment and therefore regulatory costs associated with Medfly introductions. Specifically, designated export quantities are drawn from a probability distribution with a minimum value of 83,631 metric tons, a most likely value of 90,032 metric tons, and a maximum value of 116,406 metric tons. The minimum value is based on the import quantity for marketing season 2000, the most likely value is based on the rate of growth in imports between marketing seasons 1999 and 2000, and the maximum value is based on the average annual rate of import growth during 1989–2000.

The risk analyses (APHIS 2002b, c) examined how the difference in maximum infestation rates under the regulations and under the previous import program reduces the probability of a mated pair entering the United States, specifying a very wide range for the infestation rate under the regulations and a relatively wider range under the previous import program. The risk analyses estimated annual introductions under a worst case scenario, one in which fruit cutting and rejection of inspectional units did not occur and one in which parameters of the infestation rate distributions were specified conservatively. However, the regulations impose powerful economic incentives that will more than likely lead Spanish growers and exporters to manage Medfly populations and select fruit for export to the United States more effectively than was assumed in the risk analyses.

If Medflies are detected in clementine shipments under the new preclearance program, shipments will be diverted to other cheaper markets and growers may lose the right to take advantage of the much more lucrative U.S. market, which typically offers prices 20% higher than prices offered in the rest of the world. In addition, if too many shipments are rejected, the import program will likely be suspended, leading to significant reductions in clementine prices received worldwide. As a result, exporters will more than likely choose shipments designated for the United States from regions in which growers experience below average infestation rates and in which growers manage Medflies very well. Further, although the risk analyses set the maximum infestation rate in Spanish groves at 1.50E–02 under the regulations in order to estimate mated pair probabilities conservatively, the infestation rate that suspends the import program is 1.60E–03 (0.16% fruit infested with Medflies) when the effectiveness of inspectors in identifying infested fruit is fixed at 75%. Because we estimate regulatory costs and benefits in the current analysis during a typical year, as opposed to regulatory costs and benefits under a worst case scenario, we set the maximum infestation rate at 1.60E–03, under the assumption that APHIS inspectors correctly identify an infested fruit 75% of the time. We believe that this specification of the maximum infestation rate is consistent with Spanish grower and exporter profit maximization under the regulations and therefore more appropriate for use in the current analysis. An implicit assumption made in the risk analyses is that APHIS inspectors never correctly identify an infested fruit in order to provide a conservative estimate of the number of potential Medfly introductions under the regulations. We base the 75% inspection efficacy on data reported in the risk analyses. (See subsection 2.1.2 Fruit Cutting and Rejection Costs in the economic analysis accompanying the regulations for information on the specification of inspection efficacy.)

In addition, according to sources cited in the risk analyses, the infestation rate in fruit received by Spanish packinghouses ranged between zero and 1.50E–03, with the latter being associated with poorly managed fields. The most likely infestation rate in the risk analysis was set at 1.00E–03, which is only 33 and 38% lower than the infestation rate associated with poorly managed fields (1.50E–03) and the infestation rate that suspends the import program (1.60E–03), respectively. In addition, the risk analyses state that the most likely infestation rate could have been set at zero, because live Medflies were never observed in Spanish clementine shipments during 1985–2000. Because the regulations provide strong profit incentives for Spanish growers to manage Medfly populations effectively and for exporters to choose clementines from Spanish groves that are not poorly managed, the most likely infestation rate will more than likely be lower than the specification in the risk analyses, which was chosen conservatively. We therefore set the most likely infestation rate equal to the most likely infestation rate specified in the risk analyses, 1.00E–03, multiplied by (1.60E–03/1.50E–02), the proportional difference between the infestation rate that leads to suspension of the import program and the maximum infestation rate specified in the risk analyses. (See subsection 2.1.4 Medfly introductions in the economic analysis accompanying the regulations for a more detail.) Again, we believe that this specification of the most likely infestation rate is consistent with Spanish grower and exporter profit maximization under the regulations and therefore an appropriate specification for the current analysis. However, we also estimate regulatory benefits and costs using the infestation rate distribution specified in the risk analyses in order to ensure the reader that the same biological models are used in the current analysis and the risk analyses and in order to examine regulatory welfare under the more conservative distributional specification.

Under the default model, that is, under typical Medfly pressure and effective field control in Spain, annual Medfly introduction costs in the United States average less than $10 per year, because the expected number of introductions is very low. Even when the infestation rate distribution is taken from the risk analyses (which do not consider economic incentives facing Spanish growers and exporters under the regulations and which set fruit cutting and inspection efficacy at 0%), introduction costs average less than $300 per year, with expected introductions per year remaining very low. Under the previous import program, Medfly introduction costs average roughly $47 thousand per year, which is 5.93E–02% of average export value during 1999 and 2000. These results indicate that expected Medfly introduction costs increase with the average infestation rate. However, the percent change in Medfly introduction costs for every percent change in the infestation rate (the infestation rate elasticity of introduction costs) declines as the infestation rate increases, because the rate inspectional units are rejected in Spain increases with the infestation rate. In addition, introduction costs stop increasing with infestation rates at or above the rate that leads to rejection of 100% of the inspectional units in Spain. Because the rate inspectional units are rejected increases rapidly with the infestation rate and because the import program will likely be suspended if too many units are rejected, the regulations will likely be effective in terms of preventing Medfly introductions into the United States, regardless of how high the average annual infestation rate may be.

The Clementine Market

Clementines are not grown domestically in significant quantities; therefore, U.S. consumption during the last 15 years (Snell 2002) has depended on imports from Spain, which contributed 90% of total U.S. imports during 1996–2000 (FAS 2002). Between 1991 and 2000, Spain's annual production of clementines averaged slightly over 1.1 million metric tons. During 1991–2000, Spain exported most of its clementines to Germany, France, the United Kingdom, and the Netherlands; however, exports to the United States grew 45% per year during this period, even though clementine production in Spain grew only 2% per year (FAS 1996–2001, MAPA 1999). The phenomenal growth in exports to the United States has been due to increased demand, leading to higher import prices in the United States relative to import prices in the rest of the world. During 1989–2000, prices offered by U.S. importers averaged 20% higher than prices offered by all other importing countries, providing incentives sufficient for exporters to ship an average annual 6% of total exports to the United States in 1999 and 2000.

Spain typically exports clementines to the United States during mid-September to mid-March. Morocco, Italy, and Israel also export clementines to the United States during this period; however, during 1996–2000, only 2 and 0.1% of U.S. clementine imports were from Morocco and Italy, respectively, and during 1998–2000, only 0.4% of U.S. clementine imports were from Israel. This suggests that exporters in these countries have not established export market infrastructures sufficient to enable significant increases in shipments to the United States in the short run. In addition, clementines from these countries are typically of lower quality as reflected in lower average prices paid by U.S. importers. As a result, it is assumed that exports from Morocco, Italy, and Israel will not be able to fill the void left by the ban on Spanish clementines in the short run.

It is not clear whether clementine imports and domestically produced tangerines (*Citrus reticulata*) may be substitutes for U.S. consumers. Pollack and Perez (2001) have suggested that the two types of citrus may be substitutes; however, they did not estimate a substitution rate. We estimate the rate of substitution using a linear relationship between tangerine prices received by U.S. producers, a constant, wholesale tangerine consumption, and U.S. clementine imports. Substitutability between clementines and tangerines could not be confirmed statistically; that is, the analysis showed little substitution between domestic tangerines and clementines. In addition, there are differences between Spanish clementines and tangerines, which may be important for U.S. consumers. In particular, clementines are seedless and packaged in decorative wooden boxes; whereas domestically produced tangerines are generally not seedless and are marketed in bulk quantities. Moreover, U.S. consumption of domestically produced tangerines (233,147 metric tons) was almost three times higher than consumption of clementines (83,631 metric tons) in 2000. Finally, until the ban in the fall of 2001, clementines had been imported into the United States for 15 years. As a result, we do not estimate regulatory impacts on U.S. tangerine producers.

Results of the Economic Analysis

The results of the analysis indicate that regulatory benefits will likely outweigh regulatory costs relative to both baselines. Expected regulatory gains are roughly $207 million relative to the current ban (baseline one), including $118, $59, and $30 million in expected gains for importers, wholesalers, and consumers, respectively, with practically no increase in expected costs for federal and state taxpayers and agricultural producers in the United States. As a result, expected regulatory gains are much higher than expected regulatory costs relative to the current ban, because imports are positive and introduction costs are minimal under the regulations. In addition, due to the trend exhibited in the import data during 1989–2000, import levels under the regulations will more than likely exceed import levels under the previous import program. Furthermore, expected Medfly introduction costs under the previous import program are much higher than expected Medfly introduction costs under the regulations. As a result, net gains under the regulations are expected to exceed net gains under the previous import program by an average $23 million (baseline two), which is due almost entirely to higher imports under the former. (See chapter 3 in the economic analysis accompanying the regulations for a more complete discussion of regulatory welfare impacts.)

Regulatory Effects on Small Entities

The U.S. Small Business Administration defines a small agricultural producer as one with annual sales receipts less than or equal to $750,000. We do not know whether the majority of producers of Medfly host crops (NAICS 111310 Orange Groves, NAICS 111320 Citrus (except Orange) Groves, NAICS 111331 Apple Orchards, NAICS 111332 Grape Vineyards, NAICS 111333 Strawberry Farming, NAICS 111334 Berry (except Strawberry) Farming, NAICS 111335 Tree Nut Farming, NAICS 111336 Fruit and Tree Nut Combination Farming, and NAICS Other Noncitrus Fruit Farming) in the United States are designated as small entities. However, regulatory costs on producers of Medfly host crops will more than likely not be significant, because Medfly introduction costs are low under the regulations, regardless of Medfly pest pressure and field control in Spain. As a result, the regulations will likely not have a significant economic impact on a substantial number of small Medfly host crop producers in the United States.

There are approximately 15 Spanish clementine importers in the United States, three of which import the majority of clementines. In addition, individuals in foreign countries own at least two of the import companies in this list. It is not clear if the majority of U.S. clementine importers are designated as small entities by the SBA. These entities include fresh fruit and vegetable wholesalers (NAICS 422480) with 100 employees or less. In addition, the number of small wholesalers potentially affected by the regulations is not known. Small wholesalers include wholesalers and other grocery stores (NAICS 445110) with annual sales receipts of $23 million or less, warehouse clubs and superstores (NAICS 452910) with annual sales receipts of $23 million or less, and fruit and vegetable markets (NAICS 445230) with annual sales receipts of $6 million or less. Because the percentage of income derived from the sale of clementines by wholesalers is likely to be low, the regulations will likely not have a significant negative impact on any small wholesalers relative to either baseline. In addition, small importers and wholesalers will likely be better off under the regulations relative to the current ban and, during growing seasons characterized by typical Medfly pressure in Spanish groves and effective field control, better off under the

regulations relative to the previous import program.

As a result, the regulations will likely not have a significant negative impact on small importers relative to either baseline. Further, because import levels will more than likely increase under the regulations, the effect of the average 2.5 days of additional cold treatment expenditures borne by Spanish exporters, which recall amount to 1.42% of average export value during 1999 and 2000, will likely not lead to a significant price increase, even under the unlikely situation in which all of the additional cost is borne by U.S. importers. Because historical markets for Spanish clementines in Europe appear to be saturated at recent import levels, export supply to the United States may not be extremely elastic, at least in the short run, because U.S. prices will remain higher than prices in European markets under the regulations, and Spanish exporters will not be able to divert supplies to other markets in response to the extra cold treatment costs without experiencing concomitant price declines in those markets. As a result, Spanish exporters will likely export similar and increasing quantities of clementines to the United States, until such time that Spanish clementine production has a chance to respond to changes in the world market associated with the regulations. Finally, during growing seasons in which Medfly pressure is atypically high and field control is ineffective, a higher percentage of shipments designated for export to the United States may be diverted to other markets, reducing import levels, raising import prices, and reducing regulatory gains for small importers relative to the previous import program. In addition, because clementine imports will more than likely be lower during the first shipping season, small importers and wholesalers will likely not realize regulatory gains equal to the previous import program, as imports will more than likely be lower than earlier levels.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows clementines to be imported into the United States from Spain. State and local laws and regulations regarding clementines imported under this rule will be preempted while the fruit is in foreign commerce. Fresh clementines are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0203.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. A new § 319.56–2jj is added to read as follows:

§ 319.56–2jj Administrative instructions; conditions governing the importation of clementines from Spain.

Clementines (*Citrus reticulata*) from Spain may only be imported into the United States in accordance with the regulations in this section.

(a) *Trust fund agreement.* Clementines from Spain may be imported only if the Government of Spain or its designated representative enters into a trust fund agreement with the Animal and Plant Health Inspection Service (APHIS) before each shipping season. The Government of Spain or its designated representative is required to pay in advance all estimated costs that APHIS expects to incur through its involvement in overseeing the execution of paragraphs (b) through (g) of this section. These costs will include administrative expenses incurred in conducting the services enumerated in paragraphs (b) through (g) of this section and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these services. The Government of Spain or its designated representative is required to deposit a certified or cashier's check with APHIS for the amount of the costs estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the Government of Spain or its designated representative to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the services will be completed. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the Government of Spain or its designated representative or held on account until needed.

(b) *Grower registration and agreement.* Persons who produce clementines in Spain for export to the United States must:

(1) Be registered with the Government of Spain; and

(2) Enter into an agreement with the Government of Spain whereby the producer agrees to participate in and follow the Mediterranean fruit fly management program established by the Government of Spain.

(c) *Management program for Mediterranean fruit fly; monitoring.* The Government of Spain's Mediterranean fruit fly management program must be approved by APHIS, and must contain the fruit fly trapping and recordkeeping requirements specified in this paragraph. The program must also provide that clementine producers must allow APHIS inspectors access to clementine production areas in order to monitor compliance with the Mediterranean fruit fly management program.

(1) *Trapping and control.* In areas where clementines are produced for export to the United States, traps must be placed in Mediterranean fruit fly host plants at least 6 weeks prior to harvest. Bait treatments using malathion, spinosad, or another pesticide that is approved by APHIS and the Government of Spain must be applied in the production areas at the rate specified by Spain's Medfly management program.

(2) *Records.* The Government of Spain or its designated representative must keep records that document the fruit fly trapping and control activities in areas that produce clementines for export to the United States. All trapping and control records kept by the Government of Spain or its designated representative must be made available to APHIS upon request.

(3) *Compliance.* If APHIS determines that an orchard is not operating in compliance with the regulations in this section, it may suspend exports of clementines from that orchard.

(d) *Phytosanitary certificate.* Clementines from Spain must be accompanied by a phytosanitary certificate stating that the fruit meets the conditions of the Government of Spain's Mediterranean fruit fly management program and applicable APHIS regulations.

(e) *Labeling.* Boxes in which clementines are packed must be labeled with a lot number that provides information to identify the orchard where the fruit was grown and the packinghouse where the fruit was packed. The lot number must end with the letters "US." For the 2002–2003 shipping season, boxes must also be labeled with the following statement "Not for distribution in AZ, CA, FL, LA, TX, Puerto Rico, and any other U.S. Territories." All labeling must be large enough to clearly display the required information and must be located on the outside of the boxes to facilitate inspection.

(f) *Pre-treatment sampling; rates of inspection.* For each shipment of clementines intended for export to the United States, prior to cold treatment, APHIS inspectors will cut and inspect 200 fruit that are randomly selected from throughout the shipment. If inspectors find a single live Mediterranean fruit fly in any stage of development during an inspection, the entire shipment of clementines will be rejected. If a live Mediterranean fruit fly in any stage of development is found in any two lots of fruit from the same orchard during the same shipping season, that orchard will be removed from the export program for the remainder of that shipping season.

(g) *Cold treatment.* Clementines must be cold treated in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1 of this chapter. Upon arrival of clementines at a port of entry into the United States, APHIS inspectors will examine the cold treatment data for each shipment to ensure that the cold treatment was successfully completed. If the cold treatment has not been successfully completed, the shipment will be held until appropriate remedial actions have been implemented.

(h) *Port of entry sampling.* Clementines imported from Spain are subject to inspection by an inspector at the port of entry into the United States. At the port of first arrival, an inspector will sample and cut clementines from each shipment to detect pest infestation according to sampling rates determined by the Administrator. If a single live Mediterranean fruit fly in any stage of development is found, the shipment will be held until an investigation is completed and appropriate remedial actions have been implemented.

(i) *Limited distribution.* For the 2002–2003 shipping season, clementines from Spain may not be imported into, or distributed within, the following U.S. States and Territories: Arizona, California, Florida, Louisiana, Texas, Puerto Rico, the U.S. Virgin Islands, the Northern Mariana Islands, Guam, or American Samoa.

(j) *Suspension of program.* If APHIS determines at any time that the safeguards contained in this section are not protecting against the introduction of Medflies into the United States, APHIS may suspend the importation of clementines and conduct an investigation into the cause of the deficiency.

(k) *Definitions.*

Lot. A number of units of clementines that are from a common origin (*i.e.*, a single producer or a homogenous production unit [1]).

Orchard. A plot on which clementines are grown that is separately registered in the Spanish Medfly management program.

Shipment. (1) *Untreated fruit.* For untreated fruit, the term means one or more lots (containing no more than a combined total of 200,000 boxes of clementines) that are presented to an APHIS inspector for pre-treatment inspection.

(2) *Treated fruit.* For treated fruit, the term means one or more lots of clementines that are imported into the United States on the same conveyance.

Shipping season. For the purposes of this section, a shipping season is considered to include the period beginning approximately in mid-September and ending approximately in late February of the next calendar year.

(Approved by the Office of Management and Budget under control number 0579–0203.)

Done in Washington, DC, this 15th day of October 2002 .

James G. Butler,

Acting Under Secretary for Marketing and Regulatory Programs, USDA.

[FR Doc. 02–26668 Filed 10–16–02; 11:03 am]

BILLING CODE 3410–34–P

[1] A homogeneous production unit is a group of adjacent orchards in Spain that are owned by one or more growers who follow a homogenous production system under the same technical guidance.

Federal Register

Monday,
October 21, 2002

Part III

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7394–7]

RIN 2060–AJ66

National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule, amendments.

SUMMARY: On October 26, 1999, we promulgated the national emission standards for hazardous air pollutants (NESHAP) for publicly owned treatment works (POTW). In this action, we are promulgating amendments which were proposed pursuant to a settlement agreement with the Pharmaceutical Research and Manufacturers of America (PhRMA) regarding their petition for judicial review of the POTW NESHAP. The amendments will rescind an applicability provision; adopt, for all industrial POTW treatment plants that are area sources of hazardous air pollutants (HAP), the same NESHAP requirements that apply to industrial POTW treatment plants that are major sources of HAP; and exempt industrial POTW treatment plants that are area sources of HAP from the permit requirements in section 502(a) of the Clean Air Act (CAA).

EFFECTIVE DATE: October 21, 2002.

ADDRESSES: *Docket.* The administrative record compiled by EPA for this final rule, including public comments on the proposed rule, is located in public docket No. A–96–46 at the following address: Air and Radiation Docket and Information Center, Mail Code 6102T, U.S. EPA, 1301 Constitution Avenue, NW., Room B108, Washington DC 20460. The docket may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. Materials related to the final amendments are available upon request from the Air and Radiation Docket and Information Center by calling (202) 566–1742. The FAX number for the Center is (202) 566–1741. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact your State or local regulatory agency representative or the appropriate EPA Regional Office representative. For information concerning analyses performed in developing the final amendments, contact Mr. Robert Lucas, Waste and Chemical Processes Group, Emission Standards Division (C439–03), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–0884, facsimile number (919) 541–0246, electronic mail address: *lucas.bob@epa.gov*.

SUPPLEMENTARY INFORMATION:

Public Comments. The amendments for the POTW NESHAP were proposed on March 22, 2002 (67 FR 13496), and two comment letters were received on the proposed amendments. The comment letters are available in Docket No. A–96–46. The regulatory text and other materials related to the final amendments are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of today's amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: http://www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under CAA section 307(b), judicial review of the final amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before December 20, 2002. Only those objections to the final amendments which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2)of the CAA, the requirements established by the final amendments may not be challenged separately in any civil or criminal proceeding we bring to enforce such requirements.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC[a]	NAICS[b]	Regulated entities
Federal Government	4952	22132	Sewage treatment facilities, and federally owned treatment works.
State/local/tribal Governments	4952	22132	Sewage treatment facilities, municipal wastewater treatment facilities, and publicly-owned treatment works.

[a] Standard Industrial Classification.
[b] North American Information Classification System

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that could potentially be regulated by the final amendments. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.1580 of the POTW NESHAP and in 40 CFR 63.1. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline

The final amendments are organized as follows:

I. What is the background for this action?
II. What changes to the existing rule are we adopting?
III. What were the comments received on the proposed amendments?
IV. What are the administrative requirements?
A. Executive Order 12866, Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
D. Unfunded Mandates Reform Act of 1995
E. Executive Order 13132, Federalism
F. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act of 1995
J. Congressional Review Act

I. What Is the Background for This Action?

On October 26, 1999 (64 FR 57572), we promulgated the NESHAP for new and existing POTW using our authority under the CAA. In the POTW NESHAP, we required air pollution controls on new or reconstructed treatment plants at POTW that are major sources of HAP. Section 112(a)(1) of the CAA defines a major source as:

> * * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

The standards also define the requirements for industrial POTW. Industrial POTW treat regulated waste streams from an industry (*e.g.*, pharmaceutical manufacturi g) that may be subject to other NESHAP, and this treatment allows the industry to comply with the NESHAP. The standards include a provision in 40 CFR 63.1580(c) stating that if an industrial major source complies with the other NESHAP by using the treatment and controls at a POTW, then the POTW is considered to be a major source.

On March 23, 2001 (66 FR 16140), we published final rule amendments that clarified and corrected errors in the promulgated rule. The PhRMA filed a timely petition for judicial review of the POTW NESHAP. The PhRMA expressed concern regarding the practical effect of the provision classifying an industrial POTW as a major source if the POTW receives wastewater for treatment from a major source. In particular, PhRMA was concerned that industrial POTW might be subject to permitting requirements that would otherwise not apply, and that such POTW might elect not to accept wastewater for treatment in these circumstances. We entered into settlement discussions with PhRMA and executed a settlement agreement with PhRMA on November 14, 2001.

On March 22, 2002 (67 FR 13496), we proposed amendments to the POTW NESHAP pursuant to the agreement with PhRMA. We received two public comment letters on the proposed amendments. The commenters were the Association of Metropolitan Sewerage Agencies (AMSA) and PhRMA. Copies of these letters are found in docket A–96–46. All of the comments have been carefully considered. Because none of the comments submitted requested any substantive changes to the proposed amendments, the final amendments remain unchanged from those which we proposed.

II. What Changes to the Existing Rule Are We Adopting?

In the settlement agreement we reached with PhRMA, we agreed to propose the following three changes: (1) Rescind the applicability provision set forth in 40 CFR 63.1580(c); (2) adopt, for all industrial POTW treatment plants that are area sources of HAP, the same NESHAP requirements that apply to industrial POTW treatment plants that are major sources of HAP; and (3) exempt industrial POTW treatment plants that are area sources of HAP from the permit requirements in section 502(a) of the CAA. Area sources of HAP are those stationary sources that emit, or have the potential to emit, less than 10 tons per year of any one HAP or less than 25 tons per year of a combination of HAP.

The CAA gives us the authority to adopt an alternative definition of major source in appropriate circumstances. Our original intent in adopting the alternate definition in 40 CFR 63.1580(c) of the POTW NESHAP was to make all industrial POTW subject to direct enforcement under the CAA, thereby providing additional assurance that they would adhere to the treatment and control limits of the applicable industrial NESHAP. The final amendments will still accomplish this goal because all POTW that meet our definition of industrial POTW will remain subject to direct enforcement and will be required to meet the control limits of the applicable industrial NESHAP.

III. What Were the Comments Received on the Proposed Amendments?

Two comment letters were received on the proposed amendments. This section summarizes the comments and provides our response.

The comments on the proposed amendments to the POTW NESHAP supported the following amendments to the POTW NESHAP for area source POTW: the proposal to set generally available control technology under the CAA section 112(k) urban air toxics program at no control for area source new or existing non-industrial POTW and to exempt these area source POTW from the POTW NESHAP notifications requirements at 40 CFR 63.1590; the proposal to require area source industrial POTW to comply with the same maximum achievable control technology (MACT) requirements as are required for major source industrial POTW, accompanied by an exemption from the CAA's title V permitting requirements.

One of the commenters did raise some additional issues. The AMSA questioned whether we have the statutory authority to apply regulations under the urban air toxics section of the CAA (section 112(k)) to rural area source POTW. The AMSA did not oppose our use of a national standard in this particular instance, but stated that it might oppose such a construction of the CAA in the context of a future rulemaking.

We find nothing in the statute to prevent the application of rules promulgated pursuant to CAA section 112(k) to the entire nation. We believe that we have the authority, in appropriate circumstances, to limit such a rule to particular geographic regions, but we do not believe that such an approach would have been appropriate for this situation. As for the effect our construction of the CAA might have in a future rulemaking, that is a hypothetical question beyond the scope of this proceeding.

The AMSA also suggested that we consider adding a provision to the POTW NESHAP amendments to encourage the discharging industry and the receiving POTW to enter into a written agreement in which the parties clearly state that the POTW will fulfill the discharging industry's NESHAP wastewater treatment obligations. We believe that the POTW NESHAP clearly defines an industrial POTW treatment plant. We think that a detailed written agreement between the discharging party and the POTW will generally be beneficial, and we encourage the routine use of such agreements. While we believe that the parties will elect to make a specific contractual agreement in most instances, the final rule does not require such an agreement for a POTW to be considered an industrial POTW.

IV. What Are the Administrative Requirements?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to review of the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy,

productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the final amendments are not a "significant regulatory action" under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

B. Paperwork Reduction Act

An Information Collection Request (ICR) document was prepared for the October 26, 1999 POTW NESHAP by the EPA and was submitted to and approved by OMB. A copy of this ICR (OMB control number 2060–0428) may be obtained from Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*.

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The final amendments will not require additional burden on the affected entities.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) size standards by NAICS code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The EPA determined that it is not necessary to prepare a regulatory flexibility analysis in connection with these final amendments. The EPA also determined that the amendments will not impose a significant economic impact on a substantial number of small entities. The amendments impose no new requirements on new or existing POTW treatment plants. In addition, by eliminating title V permit requirements, these amendments decrease the compliance costs for a few smaller facilities. Therefore, pursuant to the provisions of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative with other than the least costly, most cost-effective, or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the final amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The regulatory revisions in the final amendments have no associated costs and do not contain requirements that apply to small governments or impose obligations upon them. Therefore, the final amendments are not a "significant" regulatory action within the meaning of Executive Order 12866 and do not impose any additional Federal mandate on State, local and tribal governments or the private sector within the meaning of the UMRA. Thus, today's final amendments are not subject to the requirements of sections 202, 203, and 205 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government."

The final amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government, as specified in Executive Order 13132. The amendments apply only to POTW and do not pre-exempt States from adopting more stringent standards or otherwise regulate State or local governments. Thus, the requirements of section 6 of the Executive Order do not apply to the final amendments.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The final rule amendments do not have tribal implications, as specified in Executive Order 13175. The amendments impose no new requirements on new or existing POTW. Thus, Executive Order 13175 does not apply to the final amendments.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives that we considered.

The final rule amendments are not subject to Executive Order 13045 because they are not an economically significant regulatory action as defined by Executive Order 12866. In addition, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health and safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. The final rule amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

The final amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable VCS.

The final amendments do not involve any additional technical standards. Therefore, the requirements of the NTTAA do not apply to this action.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final amendments in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final amendments will be effective on October 21, 2002.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 11, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Section 63.1580 is revised to read as follows:

§ 63.1580 Am I subject to this subpart?

(a) You are subject to this subpart if the following are all true:

(1) You own or operate a publicly owned treatment works (POTW) that includes an affected source (§ 63.1595);

(2) The affected source is located at a POTW which is a major source of HAP emissions, or at any industrial POTW regardless of whether or not it is a major source of HAP; and

(3) Your POTW is required to develop and implement a pretreatment program as defined by 40 CFR 403.8 (for a POTW owned or operated by a municipality, State, or intermunicipal or interstate agency), or your POTW would meet the general criteria for development and implementation of a pretreatment program (for a POTW owned or operated by a department, agency, or instrumentality of the Federal government).

(b) If your existing POTW treatment plant is not located at a major source as of October 26, 1999, but thereafter becomes a major source for any reason other than reconstruction, then, for the purpose of this subpart, your POTW treatment plant would be considered an existing source. Note to Paragraph (b): See § 63.2 of the national emission standards for hazardous air pollutants (NESHAP) General Provisions in subpart A of this part for the definitions of major source and area source.

(c) If you reconstruct your POTW treatment plant, then the requirements for a new or reconstructed POTW treatment plant, as defined in § 63.1595, apply.

3. Section 63.1586 introductory text is revised to read as follows:

§ 63.1586 What are the emission points and control requirements for a non-industrial POTW treatment plant?

There are no control requirements for an existing non-industrial POTW treatment plant. There are no control requirements for any new or reconstructed area source non-industrial POTW treatment plant which is not a major source of HAP. The control requirements for a new or reconstructed major source non-industrial POTW treatment plant which is a major source of HAP are as follows:

* * * * *

4. Section 63.1590 is amended by revising paragraph (a)(1) introductory text to read as follows:

§ 63.1590 What reports must I submit?

(a)(1) If you have an existing non-industrial POTW treatment plant, or a new or reconstructed area source non-industrial POTW treatment plant, you are not required to submit a notification of compliance status. If you have a new or reconstructed non-industrial POTW treatment plant which is a major source of HAP, you must submit to the Administrator a notification of compliance status, signed by the responsible official who must certify its accuracy, attesting to whether your POTW treatment plant has complied with this subpart. This notification must be submitted initially, and each time a notification of compliance status is required under this subpart. At a minimum, the notification must list—

* * * * *

5. Section 63.1591 is amended by revising paragraph (a) to read as follows:

§ 63.1591 What are my notification requirements?

(a) If you have an industrial POTW treatment plant or a new or reconstructed non-industrial POTW which is a major source of HAP, and your State has not been delegated authority, you must submit notifications to the appropriate EPA Regional Office. If your State has been delegated authority you must submit notifications to your State and a copy of each notification to the appropriate EPA Regional Office. The Regional Office may waive this requirement for any notifications at its discretion.

* * * * *

6. Section 63.1592 is revised to read as follows:

§ 63.1592 Which General Provisions apply to my POTW treatment plant?

(a) Table 1 to this subpart lists the General Provisions (40 CFR part 63, subpart A) which do and do not apply to POTW treatment plants.

(b) Unless a permit is otherwise required by law, the owner or operator of an industrial POTW which is not a major source is exempt from the permitting requirements established by 40 CFR part 70.

7. Table 1 to subpart VVV is amended by revising the entries "§ 63.1(c)(2)(i)" and "§ 63.9(b)" to read as follows:

TABLE 1 TO SUBPART VVV OF PART 63.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV

General provisions reference	Applicable to subpart VVV	Explanation
. . . . .		
§63.1(c)(2)(i)	No	State options regarding title V permit. Unless required by the State, area sources subject to subpart VVV are exempted from permitting requirements.
. . . . .		
§63.9(b)	Yes	Applicability of notification requirements. Existing major non-industrial POTW treatment plants, and existing and new or reconstructed area non-industrial POTW treatment plants are not subject to the notification requirements.
. . . . .		

[FR Doc. 02–26576 Filed 10–18–02; 8:45 am]
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Federal Register

Monday,
October 21, 2002

Part IV

Department of Agriculture

Commodity Credit Corporation

7 CFR Parts 1405 and 1412
Direct and Counter-Cyclical Program; Final Rule

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1405, 1412

RIN 0560–AG71

Direct and Counter-Cyclical Program

AGENCY: Commodity Credit Corporation, Agriculture.

ACTION: Final rule.

SUMMARY: This rule implements the provisions of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) regarding direct and counter-cyclical payments for the crop years 2002 through 2007. These payments provide income support to producers of eligible commodities and are based on historically-based acreage and yields and do not depend on the current production choices of the farmer. They replace the Production Flexibility Contract (PFC) payments made under the Federal Agriculture Improvement and Reform Act of 1996 for the crop years 1996 through 2002. In addition to the commodities that were eligible for PFC payments, the 2002 Act also provides for direct and counter-cyclical payments for peanuts, soybeans, sunflower seed and other oilseeds.

EFFECTIVE DATE: October 16, 2002.

FOR FURTHER INFORMATION CONTACT: Lynn Tjeerdsma, Production, Emergencies and Compliance Division, United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Ave, SW, Washington, DC 20250–0517. Phone: (202) 720–6602. E-mail: *lynn_tjeerdsma@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the 2002 Act requires that the regulations needed to implement Title I of the 2002 Act are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Executive Order 12866

This final rule has been determined to be economically significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment was completed and is summarized after the background section explaining the rule.

Federal Assistance Programs

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Direct and Counter-Cyclical Program, 10.055.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Review

An environmental assessment is being completed to consider the potential impacts of this proposed action on the human environment in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. Section 1601 of the 2002 Act mandated that these regulations be promulgated no later than 90 days after enactment. Further, this rule affects a large number of agricultural producers who are dependent upon its provisions for income support and need to know of its details as soon as possible because it has an effect on their planting and marketing decisions. Thus, CCC is attempting to satisfy both the Congressional mandate and its public missions by publishing this rule now, while continuing a good faith effort to comply with NEPA in as timely a fashion as possible, given the above-mentioned statutory and mission requirements. A copy of the draft environmental assessment will be made available for public review and comment upon request.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement Title I of the 2002 Act must be issued within 90 days of enactment and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 553. Section 1601(c) also requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121 (SBREFA), which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. These regulations affect the incomes of an extraordinarily large number of agricultural producers. Accordingly, this rule is effective upon the date of filing for public inspection by the Office of the Federal Register.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act requires that these regulations be promulgated and the programs administered without regard to the Paperwork Reduction Act. This means that the information to be collected from the public to implement these programs and the burden, in time and money, the collection of the information would have on the public does not have to be approved by the Office of Management and Budget or be subject to the normal requirement for a 60-day public comment period.

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required by participation in the 2002 Direct and Counter-Cyclical Program for historic peanut producers, and Direct and Counter-Cyclical Program for covered commodities are not yet fully implemented for the public to conduct business with FSA electronically.

Applications for all programs may be submitted at the FSA county offices by mail or FAX. At this time, electronic submission is not available. Full implementation of electronic submission is underway.

Background

In addition to implementing the Direct and Counter-Cyclical Program (DCP), this rule also codifies a provision of the 2002 Act related to benefit reductions due to Uruguay Round Agreements.

7 CFR Part 1405—Benefit Reductions Due to Uruguay Round Agreements

Section 1601(e) of the 2002 Act provides that if the Secretary of Agriculture determines that outlays under subtitles A through E of Title I of the 2002 Act will, in any required reporting period, result in expenditures of the United States exceeding the levels for domestic measures of support that were agreed to in the Uruguay Round Agreements, as defined in section 2 of the Uruguay Round Agreements Act, then the Secretary shall, to the maximum extent practicable, make adjustments in the amount of such expenditures to ensure compliance with these commitments. Accordingly, 7 CFR part 1405 is revised to set forth this obligation under the aforementioned circumstances for CCC to reduce, or to collect refunds of, payments and benefits made under these subtitles of the 2002 Act.

7 CFR Part 1412—Direct and Counter-Cyclical Program

The Federal Agriculture Improvement and Reform Act of 1996 (FAIR), which was authorized for the crop years 1996 through 2002, contained several important changes to U.S. farm policy. The most important change was the replacement of deficiency payments under previous programs, which made up the difference between the market price and a target price, with fixed annual Production Flexibility Contract (PFC) payments for producers of grains and upland cotton. PFC payments were based on historical yields and acreage. They were received whether or not a crop was planted, and did not depend on what crop was planted, (except for fruit and vegetable restrictions). This decoupling of payments from production controls was a departure from the earlier Acreage Reduction Program (ARP), which mandated strict acreage limitations and mandatory acreage idling or set-aside requirements.

The 2002 Act authorized for crop years 2002 through 2007 not only fixed, direct payments for wheat, corn, barley, grain sorghum, oats, upland cotton and rice, (the same crops eligible for PFC payments and same type of payment as the PFC payment), but also included oilseed crops, including soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, as additional crops eligible for fixed direct payment. Additionally, the 2002 Act authorized counter-cyclical payments (counter-cyclical payments are similar to the deficiency payments authorized under ARP) for the crop years 2002 through 2007 for these same crops. Because authorization expired September 30, 2002, for PFC payments issued under AMTA, the direct and counter-cyclical payments authorized under the 2002 Act replace the PFC payments that were made to producers on farms with 1996 wheat, corn, barley, grain sorghum, oats, upland cotton and rice crop acreage bases who entered into Production Flexibility contracts with the Commodity Credit Corporation (CCC) for the crop years 1996 through 2002.

The 2002 Act set a precedent, in that soybeans and other oilseeds are eligible for the same program as wheat, feedgrains, cotton, and rice. Peanuts are also eligible for direct and counter-cyclical payments, but have slightly different requirements. The acreage bases used to calculate the 2002 through 2007 direct DCP payments for wheat, feedgrains, cotton, and rice are those that were considered the contract acreage (as defined in section 102 of FAIR) used by the Secretary to calculate the fiscal year 2002 payment authorized under section 114 of FAIR. The yields used to calculate the 2002 through 2007 direct DCP payments for wheat, feedgrains, cotton and rice shall be the farm program payment yield established for the 1995 crop of the crops. If a 1995 yield is unavailable for one of these crops on a farm, the FSA county Committee will establish a direct payment yield for that crop by using three similar farms. Additionally, a farm owner has the opportunity to update the yields for counter-cyclical payments for all applicable crops, provided acceptable production evidence is provided to the county committee for the years 1998 through 2001 for a crop on the farm; and, the owner has selected the base option allowed under the 2002 Act which determines the applicable bases for a farm by using the four-year average of 1998 through 2001 planted or approved prevented-planted acreage of a covered commodity.

The 2002 Act also set forth provisions that allow farm owners multiple options for establishing bases and yields for covered commodities that will be used to calculate 2002 through 2007 direct and counter-cyclical payments. Because of the numerous options available for establishing bases and yields, FSA utilized existing records to determine each applicable covered commodity's 1998 through 2001 acreage history for every farm on record at the FSA county office. This information was provided to farm owners and operators so they could verify the information on record at FSA, and update, or correct, if the county committee determined that sufficient proof of the correct acreage was provided.

The 2002 Act set forth certain requirements to which the producer shall agree to be eligible for direct and counter-cyclical payments. Included in these requirements is the requirement to effectively control noxious weeds and otherwise maintain the land in accordance with sound agricultural practices.

The following table provides information regarding the notification processes FSA has undergone to ensure that farm owners are aware of the provisions of the 2002 Act and that farm owners have all applicable information available on record at FSA to assist them in making base and yield selections for 2002 through 2007 direct and counter-cyclical payments.

Date	FSA action
April 25, 2002	Issued Notices to State and County Offices to prepare for implementation of the 2002 Farm Bill. These notices: • Provided instructions to produce an acreage history report for every producer to ensure 1998 through 2001 acreage history for each farm is correct. • Instructed County Offices to send each farm owner and operator a letter asking them to review the acreage history report for accuracy and completeness and providing instructions on making necessary corrections and additions. • Provided authorization and instructions for producers to correct previously filed acreage reports or to late-file acreage reports.
May 24, 2002	Began mailing of a letter to all farm owners, operators, and producers which contained provisions of the 2002 Act.
July 3, 2002	Issued a DCP Notice which notified County Offices that software was available to print notification letters to historic peanut producers. The letters were printed and mailed to all historic peanut producers on record in FSA County Offices. This letter notified each historic peanut producer of acreage and actual yields for each farm in the county, as recorded with the County Office of origin. Producers were instructed in the letter to notify the county office of any errors or omissions in, or corrections to, the data in the letter.
July 16, 2002	Issued a DCP Notice which notified County Offices that software was available that allowed them to print and mail to each farm owner and operator a Summary Acreage History Report, along with a notification letter, which contained the following information: • 2002 PFC crops and contract acreage. • Acreage history by crop for each of the years 1998 through 2001 for commodities covered under the 2002 Act.
August 9, 2002	Authorization provided to County Offices to process 2002 farm divisions and tract divisions to accommodate need of all owners on a farm to agree to base and yield selections for the Direct and Counter-cyclical Program (DCP).
September 2002	Began accepting production evidence for DCP payment yields.
October 2002	Begin mailing notification letter giving owners and producers base options and minimum yield for their farms.

As provided in the rule, an annual signup deadline of June 1 has been established. Under the AMTA program, producers who did not sign the contract by the established deadline often requested relief to allow the acceptance of the late-filed signature. The processing of those requests involved a great expenditure of time at the county, state, and national levels. Using an average personnel cost of $26.65 per hour at the county level, $28.99 at the State level, and $39.77 at the National level, each case would involve a minimum of $94.91 in associated processing costs if only one hour was expended in processing the case at each level. Most such cases involved more than one hour at each level. Some may have consumed as much as several days in case preparation and review time. In lieu of incurring these costs a $100 fee will be assessed if a producer has not signed a DCP contract by June 1. This fee will cover costs of any necessary site visits to establish that the farm has been in compliance for the months retroactive to the signing of the contract, additional work on the part of the COC and county office, and possibly the State office to ensure that the contract should in fact be approved and to process the approval.

Another important change in Federal farm programs, as a result of the 2002 Act, is that section 1309 of the 2002 Act repealed the marketing quota program for peanuts authorized by Title III of the Agricultural Adjustment Act of 1938 (the 1938 Act). Other provisions of the 2002 Act set forth payment and marketing assistance loan programs for the 2002 through 2007 crops of peanuts that are similar to other major CCC commodity programs. Section 1309 also provides for CCC to pay eligible peanut quota holders as part of the transition from the repealed market quota program to the new programs. The rules for the Peanut Quota Buyout Program were published October 1, 2002, for codification at 7 CFR part 1412. Sections 1301 through 1308 of the 2002 Act set forth direct and counter-cyclical payment provisions for peanuts, beginning with the 2002 crop. For only the 2002 crop of peanuts, direct and counter-cyclical payments will be issued to historic peanut producers. A historic peanut producer is defined in section 1301 of the 2002 Act, and in this rule, as "a producer on a farm in the United States that produced or was prevented from planting peanuts during any or all of the 1998 through 2001 crop years." The 2002 Act set forth provisions for establishing a peanut base and yield for each historic peanut producer that were to be used to calculate the 2002 peanut direct and counter-cyclical payments to 2002 historic peanut producers. Because the previous Peanut Program regulations at 7 CFR part 729, as it was codified on January 1, 2002, required extensive record keeping by peanut producers concerning their prior production of peanuts and related information necessary for the establishment of previous years' quotas, FSA has highly accurate records of 1998 through 2001 peanut planting history and production for each peanut producer. To further ensure that these records are correct, all historic peanut producers on record at FSA were sent a letter with peanut acreage and yield data on file at the FSA office. If more than one historic peanut producer shared in the risk of producing the crop on the farm, the historic peanut producers shall receive their proportional share of the number of acres planted (or prevented from being planted) to peanuts for harvest on the farm based on the sharing arrangement that was in effect among the producers for the crop.

Before March 1, 2003, each historic peanut producer must assign the average peanut yield and average peanut acreage determined for that producer to the cropland on a farm. Beginning with the 2003 crop, after applicable peanut bases and yields are assigned to a farm, peanuts will be included on the Direct and Counter-Cyclical Program (DCP) contract for that farm along with the applicable covered commodities.

In summary, FSA has, in administering the provisions of the 2002 Act, utilized every available means to ensure that farm owners and operators have all necessary information from FSA that FSA is capable of providing to them, and in such a manner that owners can make educated decisions when determining appropriate DCP base and yield selections for a farm. Because the 2002 Act very explicitly set forth many of the terms and provisions of the DCP, administration of the program is subject to very little variation or flexibility from the statutory authority.

Cost/Benefit Assessment Summary

The underlying policy structure under the 2002 Act is largely unchanged from the policy structure under the 1996 Act. The 2002 Act continues planting flexibility, continues marketing assistance loan provisions at higher levels (except for soybeans, oil-type sunseed, flaxseed, and rice) compared with 2001 levels, replaces production flexibility contract (PFC) payments with direct payments, adds counter-cyclical payments, and includes oilseeds and peanuts as a covered commodity eligible for direct and counter-cyclical payments. The net fiscal impact of the changes made by the 2002 Act and promulgated by this rule compared with continuing PFC payments under the 1996 Act will be to increase governmental outlays as shown in the following table.

AVERAGE ANNUAL CHANGE IN GOVERNMENT OUTLAYS BY PROGRAM, FISCAL YEARS 2002–2007

Program	Average Annual Outlay Change [1] (billion dollars)
Direct Payments [2]	0.8
Counter-cyclical Payments [2]	4.3
Total	5.1

[1] For direct payments represents the difference between direct payments under 2002 Act provisions compared with PFC payments assuming 1996 Act provisions are extended.
[2] Includes payments for wheat, corn, grain sorghum, barley, oats, upland cotton, rice, soybeans, other oilseeds, and peanuts.

Direct and counter-cyclical payments will increase farm income, but will have little impact on planting decisions because these payments are decoupled from the production decisions of individual farmers. These benefits are paid on historically-based acreage and yields and do not depend on the current production choices of the farmer. Nonetheless, there could be some production effects due to increased wealth resulting from these payments as well as reduced revenue risk associated with counter-cyclical payments. However, direct payments and counter-cyclical payments were assumed in this analysis to have no impact on production.

Direct payments are projected to total $3.8 billion in FY 2003 and rise to $5.2 billion in FY 2004 and each of the subsequent fiscal years until the legislation expires with the 2007 crops. These payments represent an increase of about $1.2 billion each crop year compared with PFC payments if the provisions of the 1996 Act were extended during the same period.

Counter-cyclical payments are projected to total $5.8 billion in FY 2003 and increase to $6.6 billion in FY 2004, but then to decline in the remaining years of the 2002 Act, reflecting expected price strengthening in crop year 2004 and until the end of the program in 2007.

FOR FURTHER INFORMATION CONTACT: Phil Sronce, 202–720–2711, *Phil sronce@usda.gov.*

List of Subjects

7 CFR Part 1405

Loan programs-agricultural; Price support programs.

7 CFR 1412

Direct and counter-cyclical payments, Grains, Oilseeds, Peanuts.

Accordingly, 7 CFR parts 1405 and 1412 are amended as set forth below.

PART 1405—LOANS, PURCHASES, AND OTHER OPERATIONS

1. The authority citation for part 1405 is revised to read as follows:

Authority: 7 U.S.C. 7991(e); 15 U.S.C. 714b and 714c.

2. Add § 1405.7 to read as follows:

§ 1405.7 Uruguay Round Agreements Act

In the event the outlays by the United States for domestic support measures will exceed, in any required reporting period, the allowable levels under the Uruguay Round Agreements (as defined in section 2 of the Uruguay Round Agreements Act), CCC will, as determined by the Secretary of Agriculture, reduce the amount of payments and benefits to be made in any such reporting period, and/or collect a refund of payments or benefits previously made with respect to such reporting period, under parts 1412, 1413, 1421, 1427, 1430, 1434 and 1435 of this chapter in order to ensure that the level of domestic support provided by the United States complies with the commitments of the United States in the Uruguay Round Agreements.

PART 1412—DIRECT AND COUNTER-CYCLICAL PROGRAM AND PEANUT QUOTA BUYOUT PROGRAM

3. The authority citation for Part 1412 is revised to read as set forth below.

3a. Redesignate subpart A (§§ 1412.1 through 1412.11) as subpart H (§§ 1412.801 through 1412.811, respectively).

4. Amend part 1412 by revising the part heading and by adding new subparts A and G and by revising subparts B through F to read as follows:

PART 1412—DIRECT AND COUNTER-CYCLICAL PROGRAM AND PEANUT QUOTA BUYOUT PROGRAM

Subpart A—General Provisions

Sec.
1412.101 Applicability.
1412.102 Administration.
1412.103 Definitions.
1412.104 Appeals.

Subpart B—Establishment of Base Acres for a Farm for Covered Commodities

1412.201 Election of base acres.
1412.202 Failure to make election.
1412.203 Base acres and Conservation Reserve Program.
1412.204 Limitation of total base acreage on a farm.

Subpart C—Establishment of Yields for Direct and Counter-Cyclical Payments

1412.301 Direct payment yields for covered commodities, except soybeans and other oilseeds.
1412.302 Direct payment yield for soybeans and other oilseeds.
1412.303 Payment yield for counter-cyclical payments for covered commodities.
1412.304 Submitting production evidence.
1412.305 Incorrect or false production evidence.

Subpart D—Direct and Counter-Cyclical Program Contract Terms and Enrollment Provisions for Covered Commodities 2002 through 2007 and for Peanuts 2003 through 2007.

1412.401 Direct and counter-cyclical program contract.
1412.402 Eligible producers.
1412.403 Reconstitutions.
1412.404 Notification of base acres.
1412.405 Reducing base acreage.
1412.406 Succession-in-interest to a direct and counter-cyclical program contract.
1412.407 Planting flexibility.

Subpart E—Financial Considerations Including Sharing Direct and Counter-Cyclical Payments.

1412.501 Limitation of direct and counter-cyclical payments.
1412.502 Direct payment provisions.
1412.503 Counter-cyclical payment provisions.
1412.504 Sharing of contract payments.
1412.505 Provisions relating to tenants and sharecroppers.

Subpart F—Contract Violations and Diminution in Payments

1412.601 Contract Violations.
1412.602 Fruit, vegetable and wild rice acreage reporting violations.
1412.603 Contract Liability.
1412.604 Misrepresentation and scheme or device.
1412.605 Offsets and assignments.
1412.606 Acreage reports.
1412.607 Compliance with highly erodible land and wetland conservation provisions.
1412.608 Controlled substance violations.

Subpart G—Establishment and Assignment of Peanut Base Acres and Yields for a Farm

1412.701 Determination of 4-year peanut acreage average.
1412.702 Determination of average peanut yield
1412.703 Assignment of average peanut yields and average peanut acreages to farms.

* * * * *

Authority: 7 U.S.C. 7911–7918, 7951–7956; 15 U.S.C. 714b and 714c.

Subpart A—General Provisions

§ 1412.101 Applicability.

This part governs: how crop acreage bases and farm program payment yields are established or updated by owners of a farm for the purpose of calculating direct and counter-cyclical payments for wheat, corn, grain sorghum, barley, oats, upland cotton, rice, peanuts, soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, and other oilseeds as determined and announced by the Commodity Credit Corporation (CCC), for the years 2002 through 2007; the month in which producers on a farm may enter into annual Direct and Counter-cyclical Program (DCP) contracts with CCC for each of the years 2002 through 2007; the month in which peanut producers may establish such bases and yields in order to receive 2002 direct and counter-cyclical payments; and the month in which peanut producers may assign such bases and yields to a farm for each of the years 2003 through 2007.

§ 1412.102 Administration.

(a) The program is administered under the general supervision of the Executive Vice-President, CCC, and shall be carried out by Farm Service Agency (FSA) State and county committees (State and county committees).

(b) State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by the regulations of this part that the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct any action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee shall preclude the Executive Vice President, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines, except statutory deadlines, and other non-statutory requirements in cases where lateness or failure to meet such other requirements does not adversely affect operation of the program.

(f) A representative of CCC may execute the FSA forms entitled "Direct and Counter-Cyclical Program Contract"; and "2002 Peanut Direct and Counter-Cyclical Program Contract" only under the terms and conditions determined and announced by the Executive Vice President, CCC. Any contract that is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by the Executive Vice President, CCC, is null and void and shall not be considered to be a contract between CCC and the operator or any other producer on the farm.

§ 1412.103 Definitions

The definitions set forth in this section shall be applicable for all purposes of administering the DCP. The terms defined in part 718 of this title and part 1400 of this chapter shall also be applicable, except where those definitions conflict with the definitions set forth in this section.

Base acres means the number of acres established with respect to a covered commodity on a farm by the election made by the owner of the farm in accordance with subpart B of this part.

Base acres for peanuts means the number of acres assigned to a farm by historic peanut producers in accordance with subpart G of this part.

Contract means the CCC-approved standard, uniform forms and appendixes specified by CCC which constitute the agreement for participation in the Direct and Counter-Cyclical Program, and the 2002 Peanut Direct and Counter-Cyclical Program.

Counter-cyclical payment means a payment made to eligible producers on a farm in accordance with subpart E of this part for covered commodities and peanuts and subpart G of this part for 2002 historic peanut producers.

Covered commodity means wheat, corn, grain sorghum, barley, oats, upland cotton, rice, soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, and other oilseeds as determined by the Secretary.

DCP cropland means DCP cropland as defined in part 718 of this title.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, or a designee.

Direct payment means a payment made to eligible producers on a farm for peanuts and covered commodities in accordance with subpart E and for 2002 historic peanut producers under subpart G.

Dry peas means Austrian, wrinkled seed, yellow, Umatilla, and green, excluding peas grown for the fresh, canning, or frozen market.

Effective price means the price calculated by the Secretary in accordance with § 1412.503 for covered commodities and peanuts to determine whether counter-cyclical payments are required to be made under that section for a crop year.

Excess base acres means the number of base acres established on the farm that exceeds the total 2002 Production Flexibility Contract acres on the farm established under the Federal Agriculture Improvement and Reform Act of 1996.

Historic peanut producer means a producer on a farm in the United States that planted or was prevented from planting peanuts during any or all of the 1998 through 2001 crop years.

Marketing year means the 12-month period beginning in the calender year the crop is normally harvested as follows:

(1) Barley, oats, wheat, canola, flax, and rapeseed: June 1–May 31;

(2) Upland cotton, peanuts, and rice: August 1–July 31; and

(3) Corn, grain sorghum, soybeans, sunflowers, safflower, and mustard: September 1–August 31.

Other oilseeds means a crop of sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, or, if determined and announced by CCC, another oilseed.

Payment acres means:

(1) For the 2002 crop year, 85 percent of the average acres determined in accordance with § 1412.701 for a historic peanut producer.

(2) For the 2003 through 2007 crop years, 85 percent of the base acres for peanuts assigned to a farm in accordance with § 1412.703.

(3) For the 2002 through 2007 crop years, 85 percent of the base acres of a covered commodity on a farm, as established in accordance with subpart B.

Payment yield means:

(1) For peanuts, the yield determined in accordance with § 1412.702.

(2) For covered commodities, the yield established in accordance with subpart C for a farm for a covered commodity.

Prevented planted means, for the purpose of establishing base acres under § 1412.201, the inability to plant a crop with proper equipment during the established planting period for the crop or commodity. A producer must prove that the producer intended to plant the crop and that such crop could not be planted due to a natural disaster rather than managerial decisions. The natural disaster that caused the prevented planting must have occurred during the established planting period for the crop.

Target price means, for peanuts, the price per ton; and for covered commodities, the price per bushel (or other appropriate unit in the case of upland cotton, rice, and other oilseeds) used to determine the payment rate for counter-cyclical payments.

Updated payment yield means the payment yield of covered commodities, elected by the owner of a farm under § 1412.303, to be used in calculating the counter-cyclical payments for the farm.

§ 1412.104 Appeals.

A producer may obtain reconsideration and review of any adverse determination made under this part in accordance with the appeal regulations found at parts 11 and 780 of this title.

Subpart B—Establishment of Base Acres for a Farm for Covered Commodities

§ 1412.201 Election of base acres.

(a) No later than April 1, 2003, owners on a farm may select one of the following methods to establish base acres for all covered commodities on the farm:

(1) Subject to the limitations in accordance with paragraph (d) of this section and § 1412.204, the base acres for each covered commodity shall be equal to the sum of the following:

(i) For each covered commodity, the 4-year average of the acreage planted to the covered commodity during each of the 1998 through 2001 crop years for harvest, grazing, haying, silage, or other similar purposes, as determined by the Secretary, plus

(ii) For each covered commodity, the 4-year average of the acreage prevented from being planted to covered commodities during each of the 1998 through 2001 crop years, for reasons beyond the control of the producer, as determined by the Deputy Administrator.

(2) The sum of the following:

(i) For each covered commodity, the contract acreage used to calculate the fiscal year 2002 Production Flexibility Contract payment for the covered commodity on the farm in accordance with the regulations of this part in effect on January 1, 2002 (see 7 CFR part 1412 revised as of January 1, 2002), plus

(ii) Subject to paragraphs (b) and (c) of this section, the 4-year average of eligible oilseed acreage on the farm for the 1998 through 2001 crop years, as determined in a manner provided in paragraph (a)(1) of this section, except that the limitation in paragraph (d) of this section shall not apply.

(b) Subject to paragraph (c) of this section, the total acreage of soybeans and other oilseeds on the farm calculated in accordance with paragraph (a)(2)(ii) of this section shall not exceed:

(1) The total acreage determined in accordance with paragraph (a)(1) of this section for the crop year, minus

(2) The total contract acreage for all covered commodities determined in accordance with paragraph (a)(2)(i) of this section.

(c) If the calculation in paragraph (b) of this section results in a negative number, the soybean and other oilseed acreage on the farm for that crop year shall be zero for the purposes of determining the 4-year average, in accordance with paragraph (a)(2)(ii) of this section.

(d) If the acreage planted or prevented from being planted was devoted to a different covered commodity in the same crop year (other than a covered commodity produced under an established practice of double-cropping), the owner may select the commodity to be used for base purposes for that crop year in determining the 4-year average, but shall not select both the initial commodity and subsequent commodity.

(e)(1) An owner may increase the eligible acres of soybeans and other oilseeds on a farm by reducing the contract acreage determined in accordance with paragraph (a)(2)(i) of this section for one or more covered commodities on an acre-for-acre basis, except that the total base acreage for soybeans and each other oilseed on the farm may not exceed the four-year average of each oilseed determined under paragraph (a)(2)(ii) of this section.

(2) For the purpose of determining a 4-year average acreage for a farm under this section, any crop year in which a covered commodity was not planted shall not be excluded.

§ 1412.202 Failure to make election.

If an owner fails to make an election for establishing base acres on a farm by April 1, 2003 in accordance with § 1412.201, that owner shall be deemed to have made the election to determine all base acres for all covered commodities on the farm as set forth in § 1412.201(a)(2).

§ 1412.203 Base acres and Conservation Reserve Program.

(a) Subject to paragraphs (d) and (e) of this section, eligible producers may, at the beginning of each fiscal year, adjust the base acres for covered commodities and peanuts with respect to the farm by the number of crop acreage base acres protected by a Conservation Reserve Program contract entered into under section 1231 of the Food Security Act of 1985 (1985 Act) that expired or was voluntarily terminated on or after May 13, 2002.

(b) Subject to paragraphs (d) and (e) of this section, eligible producers may, at the beginning of each fiscal year, adjust the base acres for covered commodities and peanuts with respect to the farm by the number of cropland acres reduced by a producer on a CCC-approved standard, uniform form designated by CCC in order to enroll such acres in a conservation reserve program contract entered into under section 1231 of the 1985 Act. Eligible producers may adjust base acres only

when the Conservation Reserve Program contract entered into under section 1231 of the 1985 Act expires or is voluntarily terminated on or after May 13, 2002.

(c) Subject to paragraphs (d) and (e) of this section, if neither paragraphs (a) nor (b) of this section apply, the Deputy Administrator may allow eligible producers to adjust base acres for covered commodities and peanuts with respect to the farm in a manner determined acceptable by the Deputy Administrator when a Conservation Reserve Program contract entered into under section 1231 of the 1985 Act expires or is voluntarily terminated on or after May 13, 2002.

(d) The total base acreage on a farm shall not exceed the limitation in accordance with § 1412.204.

(e) Adjustments to base acreage on a farm in accordance with this section must be completed by no later than April 1 of the fiscal year following the fiscal year the conservation reserve program contract expired or was voluntarily terminated.

(f) For the fiscal year in which an adjustment to base acres under this section is made, the owner of the farm shall elect to receive either direct payments and counter-cyclical payments with respect to the base acres added to the farm under this section or a prorated payment under the conservation reserve contract, but not both.

§ 1412.204 Limitation of total base acreage on a farm.

(a) The sum of the following shall not exceed the total DCP cropland acreage on the farm, plus approved double-cropped acreage for the farm:

(1) The sum of all base acres established for the farm in accordance with this subpart, plus

(2) Any base acres established for the farm for peanuts in accordance with subpart G of this part, plus

(3) Any cropland acreage on the farm enrolled in a conservation reserve program contract in accordance with part 1410 of this chapter, plus

(4) Any cropland acreage on the farm enrolled in a wetland reserve program contract in accordance with part 1467 of this chapter, plus

(5) Any other acreage on the farm enrolled in a conservation program for which payments are made in exchange for not producing an agricultural commodity on the acreage.

(b) The Deputy Administrator shall give the owner of the farm the opportunity to select the covered commodity base acres or peanut base acres, against which the reduction required in this section will be made.

(c) In applying paragraph (a) of this section, CCC will take into account the practice of double cropping on a farm, as determined by CCC.

Subpart C—Establishment of Yields for Direct and Counter-Cyclical Payments

§ 1412.301 Direct payment yields for covered commodities, except soybeans and other oilseeds.

(a)(1) The direct payment yield for each covered commodity, except soybeans and other oilseeds, shall be the payment yield established for the commodity for the farm in accordance with the regulations for feed grain, rice, upland cotton and extra long staple cotton, wheat and related programs at part 1413 of this chapter in effect on January 1, 1996 (see 7 CFR part 1413, revised as of January 1, 1996). CCC shall adjust the payment yield to reflect the additional payments made in accordance with 7 CFR 1413.15.

(2) In the case of a farm for which a payment yield in accordance with paragraph (a)(1) of this section is unavailable for a covered commodity, except soybeans and other oilseeds, the county committee shall assign a payment yield for such covered commodity on the farm based upon the direct payment yield for such covered commodity on at least three similar farms physically located in the county with similar yield capability, including similar land and cultural practices.

(i) If fewer than three similar farms are physically located in the county, the State committee shall assign a payment yield for such covered commodity based upon the direct payment yield for such covered commodity on at least three similar farms in the surrounding area with similar yield capability, including similar land and cultural practices, or as determined by the Deputy Administrator.

(ii) Payment yields of similar farms shall be based on the farms' payment yields before such yields are updated in accordance with this section.

(b) [Reserved]

§ 1412.302 Direct payment yield for soybeans and other oilseeds.

(a) The direct payment yield for soybeans and each other oilseed for the farm shall be determined by multiplying the weighted average yield per planted acre for the crop on the farm, as determined in accordance with paragraph (b) of this section, times the ratio resulting from:

(1) The national average yield for the crop for the 1981 through 1985 crop years, as determined by CCC, divided by

(2) The national average yield for the crop for the 1998 through 2001 crop years, as determined by CCC.

(b)(1) The yield per planted acre for soybeans and each other oilseed on the farm, to be used for direct payment purposes, is calculated as follows:

(i) The sum of the production of the crop for the 1998 through 2001 crop years, as determined in accordance with paragraph (b)(2) of this section; divided by

(ii) The sum of the total planted acres of the crop for the 1998 through 2001 crop years.

(2) The production of the crop for each of the 1998 through 2001 crop years shall be the higher of the following, except in a year in which the acreage planted to the crop was zero, in which case the production for the crop for such year shall be zero:

(i) The total production for the applicable year based on the production evidence submitted in accordance with § 1412.304; or

(ii) The amount equal to the product of:

(A) The total planted acres for the crop, times

(B) 75 percent of the harvested average county yield for that crop determined, where practicable, by calculating the weighted 4-year average of the National Agricultural Statistics Service (NASS) harvested acreage yields for the crop using the 1998 through 2001 crop years.

(3) The NASS harvested acreage yield to be used in paragraph (b)(2) of this section shall be based on:

(i) NASS harvested irrigated yield for the crop, if available, for producers who irrigated the crop in the applicable years;

(ii) NASS harvested non-irrigated yield for the crop, if available, for producers who did not irrigate the crop in the applicable years; or

(iii) NASS harvested blended yield for all acreage, regardless of whether or not the acres were irrigated or non-irrigated, for all crops in all counties for which the yields in paragraphs (b)(3)(i) and (ii) of this section are unavailable.

(4) If NASS harvested acreage yield data is not available, the Deputy Administrator shall assign a yield to be used in paragraph (b)(2)(ii)(B) of this section.

§ 1412.303 Payment yield for counter-cyclical payments for covered commodities.

(a)(1) The counter-cyclical payment yield for covered commodities on the farm shall be equal to the direct payment yield for the covered commodity on the farm unless the owner elects to partially update the yield for all covered commodities on the farm in accordance with paragraph (b) of this section.

(2) Only owners who establish base acres for the farm in accordance with § 1412.201(a)(1) shall have the opportunity to partially update the counter-cyclical payment yield for the covered commodities on the farm.

(3) The partially updated yield shall be used for the calculation of the counter-cyclical payments only. The partially updated counter-cyclical yield shall not be used for the calculation of any direct payments for any covered commodity.

(4) Owners who elect to partially update counter-cyclical payment yields in accordance with this section must:

(i) Make such election at the same time such owner makes the base election in accordance with § 1412.201; and

(ii) Update counter-cyclical payment yields for all covered commodities on the farm using the same method. Updating counter-cyclical payment yields for fewer than all covered commodities on the farm is not allowed. Updating counter-cyclical payment yields for covered commodities on a farm using different methods for different covered commodities is not allowed.

(b) Owners on a farm who established base acres for the farm in accordance with § 1412.201(a)(1) may select one of the following methods to partially update counter-cyclical payment yields for all covered commodities on the farm. The same method must be used to partially update the counter-cyclical payment yield for all covered commodities on the farm.

(1) The sum of the following:

(i) The payment yield calculated for the covered commodity in accordance with §§ 1412.301 or 1412.302, as applicable, plus

(ii) 70 percent of the result of:

(A) The average yield per planted acre for the crop on the farm, as determined in accordance with paragraph (c) of this section, minus

(B) The payment yield calculated for the covered commodity in accordance with §§ 1412.301 or 1412.302, as applicable.

(2) 93.5 percent of the average yield per planted acre for the crop on the farm, as determined in accordance with paragraph (c) of this section.

(c)(1) The yield per planted acre for covered commodities on the farm is calculated as follows:

(i) The sum of the production of the crop for 1998 through 2001 crop years, as determined in accordance with paragraph (c)(2) of this section, divided by

(ii) The sum of the total planted acres of the crop for the 1998 through 2001 crop years.

(2) The production of the crop for each of the 1998 through 2001 crop years shall be the higher of the following, except in a year in which the acreage planted to the crop was zero, in which case, the production for the crop for such year shall be zero:

(i) The total production for the applicable year based on the production evidence submitted in accordance with § 1412.304; or

(ii) The amount equal to the product of:

(A) The total planted acres for the crop, times

(B) 75 percent of the harvested average county yield for that crop determined, where practicable, by calculating the weighted 4-year average of the National Agricultural Statistics Service (NASS) harvested acreage yields for the crop using the 1998 through 2001 crop years.

(3) The NASS harvested acreage yield to be used in paragraph (c)(2) of this section shall be based on:

(i) NASS harvested irrigated yield for the crop, if available, for producers who irrigated the crop in the applicable years;

(ii) NASS harvested non-irrigated yield for the crop, if available, for producers who did not irrigate the crop in the applicable years; or

(iii) NASS harvested blended yield for all acreage, regardless of whether or not the acres were irrigated or non-irrigated, for all crops in all counties where the yields in paragraphs (c)(3)(i) and (ii) of this section are unavailable.

(4) If NASS harvested acreage yield data is not available, the Deputy Administrator shall assign a yield to be used in paragraph (c)(2)(ii)(B) of this section.

§ 1412.304 Submitting production evidence.

(a)(1) Reports of production evidence must be submitted by producers when the owner elects to:

(i) Partially update the yield for all covered commodities on the farm in accordance with § 1412.303; or

(ii) Establish a direct payment yield for soybeans or other oilseeds for the farm in accordance with § 1412.302.

(2) Producer or third-party certification shall not be accepted as proof of production evidence.

(3) Reports of production evidence for all covered commodities shall be provided to the county committee of the county where the farm is administratively located, by farm and crop in such manner as required by CCC on a CCC-approved standard, uniform form designated by CCC.

(b)(1) When disposition of production has been through commercial channels, CCC may require the producer to furnish documentary evidence in order to verify the information provided on the report of production. Acceptable evidence may include, but is not limited to, such items as:

(i) Production approved by the county committee for Loan Deficiency Payments;

(ii) Commercial receipts;

(iii) Gin records;

(iv) Settlement sheets;

(v) Warehouse ledger sheets;

(vi) Elevator receipts or load summaries, supported by other evidence showing disposition, such as sales documents;

(vii) Evidence from harvested or appraised acreage, approved for FCIC or multi-peril crop insurance loss adjustment settlement; or

(viii) Other production evidence determined acceptable by the Deputy Administrator.

(2) Such production evidence must show:

(i) The producer's name,

(ii) The commodity,

(iii) The buyer or name of storage facility,

(iv) The Date of transaction or delivery, and

(v) The quantity.

(c) When production of a covered commodity has been disposed of through non-commercial channels, such as used for feed, grazing, or silage, if Loan Deficiency Payments are not available, but crop insurance records or other FSA records indicate that the use of the crop was for silage, hay, or grazing, then county committee will assign production for that year based on the actual grain yield of three similar farms for the applicable year. If producers cannot meet any of these requirements or their crop suffered a low yield, then 75 percent of the county average yield as determined in accordance with § 1412.302(b)(4) will be used.

(d) CCC may verify the production evidence submitted with records on file at the warehouse, gin, or other entity which received or may have received the reported production.

§ 1412.305 Incorrect or false production evidence.

(a) If production evidence is false or incorrect, as determined by the county committee, the county committee shall determine whether the owner or

producer submitting the production evidence for a farm acted in good faith or took action to defeat the purpose of the program.

(b)(1) If the county committee determines the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence did not act in good faith or took action to defeat the purpose of the program, the county committee shall:

(i) Require a refund of all direct and counter-cyclical payments earned for the farm for the first year such payments were made;

(ii) Reduce the counter-cyclical payment yields for all crops on the farm to equal the direct payment yield for all crops except oilseeds. For all oilseeds on the farm, both the direct and counter-cyclical payment yields shall be reduced to 75 percent of the county average yield as determined in accordance with § 1412.302(b)(4). That yield shall then be reduced by the applicable direct payment yield factor in accordance with § 1412.302(a)(1); and

(iii) Subject to paragraph (a)(2)(i) of this section, require a refund of an amount equal to the following for each covered commodity and peanuts for each year the false, incorrect or unacceptable yield was used to make payments under the contract:

(A) The sum of the direct and counter-cyclical payments made using the false, incorrect or unacceptable evidence, minus

(B) The sum of the direct and counter-cyclical payments that would have been made based on the yields established in paragraph (b)(1)(ii) of this section.

(2) Notwithstanding paragraph (b)(1) of this section, if the county committee determines that the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence did not act in good faith or took action to defeat the purpose of the program, the Deputy Administrator may take further action, including but not limited to any or all of the following:

(i) Make a further yield reduction for part or all of the covered commodities and peanuts on the farm;

(ii) Make further payment reductions or refunds;

(iii) Determine that the owner or producer who submitted the evidence is ineligible for participation in future contracts; or

(iv) Take other legal action.

(c) If the county committee determines the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence acted in good faith and did not take action to defeat the purpose of the program, the county committee shall:

(1) Correct the counter-cyclical yield for the applicable crop to equal the yield that would have been calculated in accordance with § 1412.303 based on accurate production evidence; and

(2) Require a refund of an amount equal to the following for each covered commodity and peanuts for each year the false, incorrect or unacceptable yield was used to make payments under the contract:

(i) The sum of the direct and counter-cyclical payments made using the false, incorrect or unacceptable evidence, minus

(ii) The sum of the direct and counter-cyclical payments that would have been made based on the yields established in paragraph (c)(1) of this section.

Subpart D—Direct and Counter-Cyclical Program Contract Terms and Enrollment Provisions for Covered Commodities 2002 through 2007 and for Peanuts 2003 through 2007

§ 1412.401 Direct and counter-cyclical program contract.

(a)(1) With respect to Fiscal Year 2002 payments, CCC will offer to enter into a contract with eligible producers of covered commodities and historical peanut producers on October 1, 2002 through the date announced by CCC. With respect to Fiscal Years 2003 through 2007, CCC shall offer to annually enter into a contract with an eligible producer on a farm having base acreage with respect to a covered commodity; and for a farm with peanut base acreage and yield assigned in accordance with subpart G of this part, at the beginning of each such fiscal year 2003 through 2007 through the date announced by CCC for each such year.

(2)(i) Eligible producers may execute and submit a contract to the county FSA office where the records for the farm are administratively maintained not later than June 1 of the fiscal year in which the direct and counter-cyclical payments are requested.

(ii) Because CCC will incur additional expenses which may not be possible to quantify with certainty, including the additional cost to ensure payments are issued timely to all producers, a late signup fee in the amount of $100 per farm will be assessed by CCC for any farm enrolled after June 1 of the fiscal year in which the direct and counter-cyclical payments are requested unless the Deputy Administrator determines a waiver of the late signup fee is appropriate. Enrollment is not allowed after September 30 of the fiscal year in which the direct and counter-cyclical payments are requested.

(3) Eligible producers who elect to enter into a contract with CCC must enroll all base acres on the farm. Enrollment of fewer than all base acres on the farm is not allowed.

(b) Eligible producers may withdraw from a contract at any time on or before September 30 of the year of the contract provided all signatories to the contract, including CCC, agree to the withdraw.

(c) All contracts shall expire on September 30 of the fiscal year of the contract unless:

(1) Withdrawn in accordance with paragraph (b) of this section;

(2) Terminated in accordance with paragraphs (d) or (e) of this section; or

(3) Terminated at an earlier date by mutual consent of all parties, including CCC.

(d) A transfer or change in the interest of an owner or producer in the farm or in acreage on the farm subject to a contract shall result in the termination of the contract, and a refund of all direct and counter-cyclical payments issued for the farm. The contract termination shall be effective on the date of the transfer or change. Successors to the interest in the farm or crops on the farm subject to the contract may enroll the farm in a new contract and assume all obligations under the contract, only after all direct and counter-cyclical payments previously issued for the farm have been refunded to CCC.

(e) In the event a farm reconstitution is completed in accordance with part 718 of this title, all producers with an interest in the base acres on the farm must sign a new contract and provide supporting documentation as specified in part 12 of this title, and parts 1400, and 1412 of this chapter not later than September 30 of the fiscal year direct and counter-cyclical payments are requested, after receiving written notification by the county committee indicating the reconstitution is completed. If all producers have not signed the new contract by September 30, no producers on the contract will be eligible for a direct or counter-cyclical payment for that farm for the year the contract was terminated.

§ 1412.402 Eligible producers.

Producers eligible to enter into a contract are:

(a)(1) An owner of a farm who assumes all or a part of the risk of producing a crop;

(2) A producer, other than an owner, on a farm with a share-rent lease for such farm, regardless of the length of the lease, if the owner of the farm enters into the same contract;

(3) A producer, other than an owner, on a farm who cash rents such farm under a lease expiring on or after September 30 of the year of the contract in which case the owner is not required to enter into the contract;

(4) A producer, other than an owner, on an eligible farm who cash rents such farm under a lease expiring before September 30 of the year of the contract. The owner of such farm must also enter into the same contract; or

(5) An owner of an eligible farm who cash rents such farm and the lease term expires before September 30 of the year of the contract, if the tenant declines to enter into a contract for the applicable year. In the case of an owner covered by this paragraph, direct and counter-cyclical payments shall not begin under the contract until the lease held by the tenant ends.

(b) A minor child shall be eligible to enter into a contract only if one of the following conditions exist:

(1) The right of majority has been conferred upon the minor by court proceedings or statute;

(2) A guardian has been appointed to manage the minor's property, and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which a surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1412.403 Reconstitutions.

Farms shall be reconstituted in accordance with part 718 of this title.

§ 1412.404 Notification of base acres.

The owner and all producers on a farm shall be notified in writing of the number of base acres eligible for enrollment in a contract, unless such owner or producer requests in writing that such owner or producer not be furnished with the notice.

§ 1412.405 Reducing base acreage.

(a)(1) Subject to the limitation in paragraph (a)(ii) of this section, a permanent reduction of all or a portion of a farm's base acreage shall be allowed when all owners of the farm execute and submit a written request for such reduction on a CCC-approved standard, uniform form designated by CCC to the FSA county office where the records for the farm are administratively maintained.

(2) A permanent reduction of all or a portion of a farm's base acreage to negate or reduce a program violation is not allowed.

(b) When base acres on a farm are converted to a non-agricultural commercial or industrial use, the total base acreage on the farm shall be reduced accordingly regardless of the submission of a request for such reduction.

§ 1412.406 Succession-in-interest to a direct and counter-cyclical program contract.

(a) A succession in interest to a contract may be permitted if there has been a change in the operation of a farm, such as:

(1) A sale of land;

(2) A change of operator or producer, including a change in a partnership that increases or decreases the number of partners;

(3) A foreclosure, bankruptcy, or involuntary loss of the farm;

(4) A change in producer shares to reflect changes in the producer's share of the crop(s) that were originally approved on the contract; or

(5) As otherwise determined by the Deputy Administrator, if the succession will not adversely affect nor defeat the purpose of the program.

(b) A succession in interest to the contract is not permitted if CCC determines that the change:

(1) Results in a violation of the landlord-tenant provisions set forth in § 1412.505; or

(2) Adversely affects or otherwise defeats the purpose of the program.

(c) If a producer who is entitled to receive direct and counter-cyclical payments dies, becomes incompetent, or is otherwise unable to receive the payment, CCC will make the payment in accordance with part 707 of this title.

(d) A producer or owner must inform the county committee of changes in interest in base acres on the farm not later than:

(1) August 1 of the fiscal year in which the change occurs if the change requires a reconstitution be completed in accordance with part 718 of this title; or

(2) September 30 of the fiscal year in which the change occurs if the change does not require a reconstitution be completed in accordance with part 718 of this title.

(e)(1) In any case in which either a direct or counter-cyclical payment has previously been made to a predecessor, such payment shall not be paid to the successor, unless such payment has been refunded in full by the predecessor, in accordance with § 1412.401(d). If the predecessor refunds such payments, such producer shall not be assessed interest in accordance with part 1403 of this chapter.

(2) A succession in interest shall not increase the liability of CCC.

§ 1412.407 Planting flexibility.

(a) Any crop may be planted and harvested on base acreage on a farm, except as limited elsewhere in this section. Any crop may be planted on DCP cropland in excess of the base acreage on a farm.

(b) Base acreage may be hayed or grazed at any time.

(c) Harvesting non-perennial fruits, vegetables (except lentils, mung beans, and dry peas) or wild rice, as determined by the Deputy Administrator, or designee, is prohibited on base acreage of a farm enrolled in a contract. Planting perennial fruits, vegetables (except lentils, mung beans, and dry peas) or wild rice, as determined by the Deputy Administrator, is prohibited on base acreage of a farm enrolled in a contract.

(d) Notwithstanding the provisions of paragraph (c) of this section, perennial fruits, vegetables and wild rice may be planted on base acreage of a farm enrolled in a contract, and non-perennial fruits, vegetables and wild rice may be harvested on base acreage of a farm enrolled in a contract if:

(1) A producer double-crops fruits, vegetables or wild rice with a covered commodity or peanuts in any region described in paragraph (e) of this section, in which case direct and counter-cyclical payments will not be reduced for the planting or harvesting of the fruit, vegetable or wild rice;

(2) The farm has a history of planting fruits, vegetables or wild rice, as determined by CCC, in which case the payment acres for the farm shall be reduced on an acre-for-acre basis ; or

(3) The producer has a history of planting a specific fruit, specific vegetable or wild rice, as determined by CCC, the producer may plant and harvest the specific fruit, specific vegetable or wild rice for which the producer has a planting history, subject to the following:

(i) The acreage harvested shall not exceed the simple average of the sum of acreage of the specific fruit, specific vegetable or wild rice planted for harvest by the producer during the crop years 1991 through 1995 or 1998 through 2001, but not both, as determined by the producer, excluding any year in which the specific fruit, specific vegetable or wild rice was not planted; and

(ii) The payment acres for the farm shall be reduced on an acre-for-acre basis;

(e) Double-cropping for purposes of this section means planting for harvest fruits, vegetables or wild rice on the same acres in cycle with a covered commodity or peanuts planted and

harvested for grain or lint in a 12-month period under normal growing conditions for the region and being able to repeat the same cycle in the following 12-month period. For purposes of this part, the following counties have been determined to be regions having a history of double-cropping covered commodities or peanuts with fruits, vegetables or wild rice. State committees have established the following counties as regions within their respective States:

Alabama

Baldwin, Barbour, Butler, Chambers, Chilton, Clarke, Covington, Cullman, Geneva, Greene, Jackson, Jefferson, Lee, Madison, Mobile, Montgomery, Randolph, Sumter, Talladega, Walker, and Washington.

Alaska

None.

Arkansas

Ashley, Benton, Clay, Crawford, Cross, Faulkner, Franklin, Independence, Jackson, Jefferson, Lee, Lincoln, Logan, Lonoke, Phillips, Pulaski, St. Francis, Sebastian, Woodruff, and Yell.

Arizona

Cochise, Graham, Greenlee, LaPaz, Maricopa, Pima, Pinal, and Yuma..

California

Alameda, Amador, Butte, Colusa, Contra Costa, Fresno, Glenn, Imperial, Kern, Kings, Madera, Merced, Riverside, Sacramento, San Benito, San Joaquin, Santa Clara, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Yolo, and Yuba.

Caribbean Office

None.

Connecticut

None.

Colorado

None.

Delaware

Kent, New Castle, and Sussex.

Florida

All counties except Monroe.

Georgia

All counties.

Hawaii

None.

Idaho

None.

Illinois

Bureau, Calhoun, Cass, Clark, Crawford, DeKalb, Edgar, Effingham, Gallatin, Iroquois, Jersey, Kankakee, Lawrence, LaSalle, Lee, Madison, Marion, Mason, Monroe, Randolf, St. Clair, Union, Vermilion, White, and Whiteside.

Indiana

Allen, Bartholemew, Gibson, Hamilton, Jackson, Knox, LaGrange, Lake, LaPorte, Madison, Miami, Posey, Sullivan, Vandenberg, and Warrick.

Iowa

Kossuth, Mitchell, Palo Alto, and Winnebago.

Kansas

None.

Kentucky

Daviess.

Louisiana

Avoyelles, Franklin, Grant, Morehouse, Rapides, and West Carroll.

Maine

None.

Maryland

Baltimore, Calvert, Caroline, Carroll, Dorchester, Harford, Kent, Queen Annes, St. Mary's, Somerset, Talbot, Wicomico, and Worcester.

Massachusetts

None.

Michigan

None.

Minnesota

Blue Earth, Brown, Carver, Cottonwood, Dakota, Dodge, Faribault, Fillmore, Freeborn, Goodhue, Houston, Kandiyohi, Le Sueur, Martin, McLeod, Meeker, Mower, Nicollet, Olmsted, Redwood, Renville, Rice, Scott, Sibley, Steele, Waseca, Wabasha, Watonwan, and Winona.

Mississippi

Calhoun, Carroll, Coahoma, Covington, DeSota, Georgia, Humphreys, Jefferson Davis, Lowndes, Marshall, Monroe, Montgomery, Prentiss and Rankin.

Missouri

Barton, Butler, Cape Girardeau, Dade, Dunklin, Jasper, Lawrence, Mississippi, New Madrid, Newton, Ripley, Scott, and Stoddard.

Montana

None.

Nebraska

None.

Nevada

None.

New Jersey

Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Salem, Somerset, Sussex, and Warren.

New Hampshire

None.

New Mexico

Chaves, Curry, Dona Ana, Eddy, Hidalgo, Lea, Luna, Quay, Roosevelt, San Juan, and Sierra.

New York

Orange and Suffolk.

North Carolina

Beaufort, Bertie, Bladen, Brunswick, Cabarrus, Camden, Carteret, Caswell, Catawba, Chatham, Chowan, Cleveland, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gaston, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Lincoln, Martin, Mecklenburg, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Tyrell, Union, Wake, Warren, Washington, Wayne, Wilkes, Wilson, and Yadkin.

North Dakota

None.

Ohio

Champaign, Clermont, Fulton, Lucas, Miami, Morgan, Muskingham, Scioto, and Stark.

Oklahoma

Adair, Alfalfa, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Cleveland, Cotton, Custer, Delaware, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Haskell, Hughes, Jackson, Jefferson, Kay, Kingfisher, Kiowa, LeFlore, Logan, Love, McClain, McIntosh, Major, Marshall, Mayes, Muskogee, Noble, Nowata, Okmulgee, Osage, Pawnee, Payne, Pittsburg, Pottawatomie, Roger Mills, Rogers, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, Washita, Woods, and Woodward.

Oregon

Benton, Clackamas, Columbia, Jackson, Josephine, Lane, Linn, Marion, Morrow, Multnomah, Polk, Umatilla, Washington, and Yamhill.

Pennsylvania

Adams, Bucks, Centre, Chester, Cumberland, Delaware, Franklin, Indiana, Lancaster, Montgomery, Northumberland, Schuylkill, and York.

Puerto Rico

None.

Rhode Island

None.

South Carolina

All counties.

South Dakota

None.

Tennessee

Bledsoe, Cannon, Cocke, Coffee, Crockett, Dickson, Dyer, Fayette, Gibson, Giles, Greene, Grundy, Hardeman, Haywood, Jefferson, Knox, Lake, Lauderdale, Lawrence, Lincoln, Madison, Maury, Obion, Overton, Pickett, Rhea, Robertson, Rutherford, Sumner, Unicoi, VanBuren, Warren, Washington, Wayne, White, Williamson, and Wilson.

Texas

Atascosa, Bailey, Baylor, Brooks, Cameron, Castro, Cochran, Cottle, Dallam, Dawson, Deaf Smith, Dimmit, Duval, Floyd, Foard, Frio, Gaines, Hale, Hartley, Haskell, Hidalgo, Hockley, Jim Wells, Kleberg, Knox, Lamb, LaSalle, Lubbock, Lynn, Maverick, Medina, Moore, Parmer, Presidio, San Patricio, Sherman, Starr, Swisher, Terry, Uvalde, Webb, Willacy, Wilson, Yoakum, and Zavala.

Utah

None.

Vermont

None.

Virginia

Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Brunswick, Buchanan, Buckingham, Campbell, Caroline, Carroll, Charles City, Charlotte, Chesapeake, Chesterfield, Clarke, Craig, Culpeper, Cumberland, Dickenson, Dinwiddie, Essex, Fairfax, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Giles, Gloucester, Goochland, Grayson, Greene, Greensville, Halifax, Hanover, Henrico, Henry, Highland, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Lee, Loudoun, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Pulaski, Rappahannock, Richmond, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Southampton, Spotsylvania, Stafford, Suffolk, Surry, Sussex, Tazewell, Virginia Beach, Warren, Washington, Westmoreland, Wise, Wythe, and York.

Washington

Yakima.

West Virginia

None.

Wisconsin

Adams, Calumet, Columbia, Dane, Dodge, Dunn, Fond du Lac, Green, Green Lake, Iowa, Kenosha, Milwaukee, Portage, Racine, Richland, Rock, St. Croix, Sauk, Walworth, Waukesha, Waushara, and Winnebago.

Wyoming

None.

(f) Any acreage reduction required by paragraph (d) of this section will be applied beginning with the covered commodity with lowest direct payment amount per acre until the acreage reduction amount is satisfied. Producers may agree to adjust the acre reduction between covered commodities on the farm, only to the extent the total acre reduction amount does not change for the farm, and all producers affected by the adjustment agree to the adjustment in writing.

(g) For the purposes of this part, fruits, vegetables and wild rice planted on base acreage of a farm under contract:

(1) Shall be considered harvested at the time of planting, unless the producer pays a fee to cover the cost of a farm visit, in accordance with part 718 of this title, to verify that the fruit, vegetable or wild rice has been destroyed before harvest, as determined by the Deputy Administrator.

(2) Shall not be considered as planted to a fruit, vegetable or wild rice when reported by a producer on the farm with an intended use of green manure or forage, as determined by the Deputy Administrator, and a fee to cover the cost of a farm visit is paid by the producer, in accordance with part 718 of this title, to verify that the crop has not been harvested.

(h) Fruits and vegetables include but are not limited to all nuts except peanuts, certain fruit-bearing trees and: acerola (barbados cherry), antidesma, apples, apricots, aragula, artichokes, asparagus, atemoya (custard apple), avocados, babaco papayas, bananas, beans (except soybeans, mung, adzuki, faba, and lupin), beets—other than sugar, blackberries, blackeye peas, blueberries, bok spare choy, boysenberries, breadfruit, broccoflower, broccolo-cavalo, broccoli, brussel sprouts, cabbage, cailang, caimito, calabaza, carambola (star fruit), calaboose, carob, carrots, cascadeberries, cauliflower, celeriac, celery, chayote, cherimoyas (sugar apples), canary melon, cantaloupes, cardoon, casaba melon, cassava, cherries, chickpeas/garbanzo beans, chinese bitter melon, chicory, chinese cabbage, chinese mustard, chinese water chestnuts, chufes, citron, citron melon, coffee, collards, cowpeas, crabapples, cranberries, cressie greens, crenshaw melons, cucumbers, currants, cushaw, daikon, dasheen, dates, dry edible beans, dunga, eggplant, elderberries elut, endive, escarole, etou, feijoas, figs, gai lien, gailon, galanga, genip, gooseberries, grapefruit, grapes, guambana, guavas, guy choy, honeydew melon, huckleberries, jackfruit, jerusalem artichokes, jicama, jojoba, kale, kenya, kiwifruit, kohlrabi, kumquats, leeks, lemons, lettuce, limequats, limes, lobok, loganberries, longon, loquats, lotus root, lychee (litchi), mandarins, mangos, marionberries, mar bub, melongene, mesple, mizuna, mongosteen, moqua, mulberries, murcotts, mushrooms, mustard greens, nectarines, ny Yu, okra, olallieberries, olives, onions, opo, oranges, papaya, paprika, parsnip, passion fruits, peaches, pears, peas, all peppers, persimmon, persian melon, pimentos, pineapple, pistachios, plantain, plumcots, plums, pomegranates, potatoes, prunes, pummelo, pumpkins, quinces, radiochio, radishes, raisins, raisins (distilling), rambutan, rape greens, rapini, raspberries, recao, rhubarb, rutabaga, santa claus melon, salsify, saodilla, sapote, savory, scallions, shallots, shiso, spinach, squash, strawberries, suk gat, swiss chard, sweet corn, sweet potatoes, tangelos, tangerines, tangos, tangors, taniers, taro root, tau chai, teff, tindora, tomatillos, tomatoes, turnips, turnip greens, watercress, watermelons, white sapote, yam, and yam yu choy.

(i) For 2002 contracts only, fruits, vegetables, and wild rice may be planted on excess base acres. Such plantings shall:

(1) Not be a violation of the contract

(2) Result in a reduction of direct and counter-cyclical payments in accordance with paragraph (f) of this section.

Subpart E—Financial Considerations Including Sharing Direct and Counter-Cyclical Payments

§ 1412.501 Limitation of direct and counter-cyclical payments.

(a) The sum total of all annual direct payment amounts shall not exceed the amounts specified in part 1400 of this chapter.

(b) The sum total of all annual counter-cyclical payment amounts shall not exceed the amounts specified in part 1400 of this chapter.

(c) The amount of 2002 direct and counter-cyclical payments for a farm shall not exceed the maximum amount that would have been paid based on the number of persons as determined in accordance with part 1400 of this chapter on the farm as of May 13, 2002.

(d) The provisions of part 1400 of this chapter apply to this part.

§ 1412.502 Direct payment provisions.

(a) For 2003 through 2007 contracts, a final direct payment shall be made to eligible producers on a farm enrolled in a contract with respect to covered commodities and peanuts for which payment yields and base acres are established on or after October 1 of the fiscal year following the fiscal year of the contract in which the direct payment was earned.

(b) For 2003 through 2007 contracts, at the option of the producer, 50 percent of the direct payment for the farm with respect to covered commodities and peanuts for which payment yields and base acres are established, shall be paid in any month from December through September of the fiscal year of the

contract, as requested by the producer, as an advance direct payment. For any producer to receive an advance direct payment, all producers sharing in the direct payments for the farm must:

(1) Be in compliance with all requirements of the contract and the requirements in this part at the time of the advance payment; and

(2) Sign the contract designating payment shares and provide supporting documentation as specified in part 12 of this title and parts 1400 and 1405 of this chapter, if applicable. If all producers on the farm have not signed the contract designating payment shares in accordance with this paragraph, then no producer shall be eligible for any payment for that farm for that contract.

(c) If a producer declines to accept, or is determined to be ineligible for all or any part of the producer's share of the direct payment computed for the farm in accordance with the provisions of this section:

(1) The payment or portions thereof shall not become available for any other producer; and

(2) The producer shall refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. Part 1403 of this chapter shall be applicable to all unearned payments.

(d) The payment rates used to calculate direct payments with respect to covered commodities and peanuts on a farm enrolled in a contract shall be as follows:

(1) Wheat—$0.52/bu.
(2) Corn—$0.28/bu.
(3) Grain sorghum—$0.35/bu.
(4) Barley—$0.24/bu.
(5) Oats—$0.024/bu.
(6) Upland cotton—$0.0667/lb.
(7) Rice—$2.35/cwt.
(8) Soybeans—$0.44/bu.
(9) Other oilseeds—$0.0080/lb.
(10) Peanuts—$36.00/ton.

(e) For 2003 through 2007 contracts, subject to the limitation in accordance with § 1412.501 and part 1400 of this chapter, the final direct payment amount to be paid to the producers on a farm enrolled in a contract with respect to the covered commodities and peanuts for which payment yields and base acres are established shall be equal to the product of:

(1) The payment rate specified in paragraph (d) of this section, multiplied by

(2) The payment acres of the covered commodity and peanuts on the farm enrolled in a contract, minus any acre reduction in accordance with § 1412.407(g), multiplied by

(3) The payment yield for the covered commodity and peanuts on the farm enrolled in a contract as determined in accordance with § 1412.301, § 1412.302 and subpart G of this part, minus

(4) Any reduction calculated in accordance with subpart F of this part, minus

(5) Any advance payment received in accordance with paragraph (b) of this section.

(f) For 2002 contracts, the direct payment amount to be paid to the producers on a farm enrolled in a contract with respect to the covered commodities for which payment yields and base acres are established shall be equal to the result of the amount calculated in accordance with paragraphs (e)(1) through (3) of this section minus all of the following:

(1) Any amount of payment received under a production flexibility contract for fiscal year 2002 in accordance with the Federal Agriculture Improvement and Reform Act of 1996;

(2) Any reduction calculated in accordance with subpart F of this part, with credit for any amount reduced under the production flexibility contract for the farm for fiscal year 2002 for the same contract violation; and

(3) Any reduction calculated in accordance with § 1412.407(j).

(g)(1) The payment of any amount due any producer on a farm enrolled in a contract shall be made only after all the producers subject to the contract are determined to be in full compliance with the contract and the requirements in this part.

(2) A producer on a farm enrolled in a contract may receive a payment amount due without respect to the eligibility of other producers on the farm if:

(i) The producer is in full compliance with the contract and the requirements in this part;

(ii) The payment of such amount does not affect adversely nor defeat the purpose of the program, as determined by the Deputy Administrator; and

(iii) The payment is approved by the Deputy Administrator.

(h) For 2002 contracts, the direct payment amount to be paid to the historical peanut producer shall be made to the historical peanut producer on the base and yield established for the historical peanut producer, in accordance with subpart G of this part.

§ 1412.503 Counter-cyclical payment provisions.

(a) For the 2002 through 2007 contracts, a counter-cyclical payment shall be made to eligible producers on a farm enrolled in a contract with respect to covered commodities for which payment yield and base acres are established, and with respect to peanuts on a farm enrolled in a contract for 2003 through 2007:

(1) Only if the effective price for the covered commodity or peanuts, as determined in accordance with paragraph (b) of this section, is less than the target price of the covered commodity or peanuts, respectively, as determined in accordance with paragraph (c) of this section.

(2) As soon as practical, as determined by the Deputy Administrator, after the end of the 12-month marketing year for the covered commodity or peanuts, as applicable.

(b) For the purposes of paragraphs (a) and (g) of this section, the effective price for a covered commodity and peanuts, respectively, is equal to the sum of the following:

(1) The higher of:

(i) The national average market price received by producers during the 12-month marketing year for the covered commodity or peanuts, as applicable, as determined by the Secretary; or

(ii) For 2002 and 2003 crop years the following rates:

(A) Wheat—$2.80/bu.
(B) Corn—$1.98/bu.
(C) Grain sorghum—$1.98/bu.
(D) Barley—$1.88/bu.
(E) Oats—$1.35/bu.
(F) Upland cotton—$0.52/lb.
(G) Rice—$6.50/cwt.
(H) Soybeans—$5.00/bu.
(I) Other oilseeds—$0.0960/lb.
(J) Peanuts—$355.00/ton.

(iii) For 2004 through 2007 crop years the following rates:

(A) Wheat—$2.75/bu.
(B) Corn—$1.95/bu.
(C) Grain sorghum—$1.95/bu.
(D) Barley—$1.85/bu.
(E) Oats—$1.33/bu.
(F) Upland cotton—$0.52/lb.
(G) Rice—$6.50/cwt.
(H) Soybeans—$5.00/bu.
(I) Other oilseeds—$0.0930/lb.
(J) Peanuts—$355.00/ton.

(2) The direct payment rate for the covered commodity as provided in § 1412.502(d).

(c) For the purposes of paragraphs (a) and (g) of this section, the target prices are as follows:

(1) For 2002 and 2003 crop years:

(i) Wheat—$3.86/bu.
(ii) Corn—$2.60/bu.
(iii) Grain sorghum—$2.54/bu.
(iv) Barley—$2.21/bu.
(v) Oats—$1.40/bu.
(vi) Upland cotton—$0.7240/lb.
(vii) Rice—$10.50/cwt.
(viii) Soybeans—$5.80/bu.
(ix) Other oilseeds—$0.0980/lb.
(x) Peanuts—$495.00/ton.

(2) For 2004 through 2007 crop years:

(i) Wheat—$3.92/bu.
(ii) Corn—$2.63/bu.
(iii) Grain sorghum—$2.57/bu.
(iv) Barley—$2.24/bu.
(v) Oats—$1.44/bu.
(vi) Upland cotton—$0.7240/lb.
(vii) Rice—$10.50/cwt.
(viii) Soybeans—$5.80/bu.
(ix) Other oilseeds—$0.1010/lb.
(x) Peanuts—$495.00/ton.

(d) The payment rate used to calculate counter-cyclical payments with respect to covered commodities and peanuts for which payment yields and base acres are established on a farm enrolled in a contract is equal to the result of:

(1) The target price of the covered commodity as determined in accordance with paragraph (c) of this section, minus

(2) The effective price of the covered commodity as determined in accordance with paragraph (b) of this section.

(e) For 2002 through 2007 contracts, when counter-cyclical payments are required in accordance with paragraph (a) of this section, subject to the limitation in accordance with § 1412.501 and part 1400 of this chapter, the final counter-cyclical payment amount to be paid to producers on a farm enrolled in a contract with respect to the covered commodities and peanuts for which payment yields and base acres are established shall be equal to the product of:

(1) The payment rate determined in accordance with paragraph (d) of this section, multiplied by

(2) The payment acres of the covered commodity and peanuts, as applicable, minus any acre reduction in accordance with § 1412.407(g), multiplied by

(3)(i) The payment yield for the covered commodity or peanuts on the farm enrolled in a contract as determined in accordance with § 1412.303 and subpart G of this part if the owner of the farm elected base acreage for the farm in accordance with § 1412.201(a)(2), or the owner elected to not update the payment yields for the covered commodities on the farm, or

(ii) The updated payment yield for the covered commodity on the farm enrolled in a contract as determined in accordance with § 1412.303 if the owner of the farm elected base acreage for the farm in accordance with § 1412.201(a)(1) and elected to update the yields for the covered commodities on the farm in accordance with § 1412.303, minus

(4) Any reduction calculated in accordance with subpart F of this part that was not satisfied by a reduction in the direct payments for the farm calculated in accordance with § 1412.502(e), minus

(5) Any partial advance payment received in accordance with paragraphs (f) or (g) of this section.

(f) For 2002 through 2006 contracts, advance counter-cyclical payments shall be paid, at the request of the producer, if the Secretary determines that a counter-cyclical payment for the covered commodity or peanuts, respectively, will be required in accordance with paragraph (a)(1) of this section.

(1) The first advance counter-cyclical payment shall:

(i) Be calculated in accordance with paragraphs (e)(1) through (4) of this section;

(ii) Be an amount determined by the Secretary not to exceed 35 percent of the projected counter-cyclical payment for the covered commodity or peanuts, respectively;

(iii) Not be made earlier than October 1 after the end of the contract year in which the counter-cyclical payment was earned; and

(iv) To the maximum extent practical, be made no later than October 31 after the end of the contract year in which the counter-cyclical payment was earned.

(2) The second partial advance counter-cyclical payment shall:

(i) Be calculated in accordance with paragraphs (e)(1) through (4) of this section.

(ii) Be an amount determined by the Secretary not to exceed the result of:

(A) 70 percent of the projected counter-cyclical payment, including any revision thereof, for the covered commodity or peanuts, respectively, minus

(B) The amount of payment made under paragraph (f)(1) of this section; and

(iii) Not be made earlier than February 1 after the end of the contract year in which the counter-cyclical payment was earned.

(g) For 2002 contract, the counter-cyclical payment amount to be paid to the historic peanut producer shall be made using the base and yield established for the historic peanut producer, in accordance with subpart G of this part.

(h) For 2007 contracts, an advance counter-cyclical payment shall be paid, at the request of the producer, if the Secretary determines that a counter-cyclical payment for the covered commodity or peanuts will be required in accordance with paragraph (a)(1) of this section. The advance payment shall:

(1) Be calculated in accordance with paragraphs (e)(1) through (e)(4) of this section;

(2) Not exceed 40 percent of the projected counter-cyclical payment for the covered commodity or peanuts, respectively, as determined by the Secretary; and

(3) Be made after the first 6 months of the marketing year of the covered commodity or peanuts, as applicable.

(i) If a producer declines to accept, or is determined to be ineligible for all or any part of the producer's share of the counter-cyclical payment computed for the farm in accordance with the provisions of this section:

(1) The payment or portions thereof shall not become available for any other producer; and

(2) The producer shall refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. Part 1403 of this chapter shall be applicable to all unearned payments.

(i)(A) The payment of any amount due any producer on a farm enrolled in a contract shall be made only after all the producers subject to the contract are determined to be in full compliance with the contract and the requirements in this part.

(B) A producer on a farm enrolled in a contract may receive a payment amount due without regard to the eligibility of other producers on the farm if:

(*1*) The producer is in full compliance with the contract and the requirements in this part;

(*2*) The payment of such amount does not adversely affect nor defeat the purpose of the program, as determined by the Deputy Administrator, or designee; and

(*3*) The payment is approved by the Deputy Administrator, or designee.

(j) The producers on a farm who receive any advance counter-cyclical payment shall refund the portion of such advance payments that exceeds the actual counter-cyclical payment to be made for the covered commodity or peanuts, as applicable.

§ 1412.504 Sharing of contract payments.

(a) Each eligible producer on a farm shall be given the opportunity to annually enroll in a contract and receive direct and counter-cyclical payments determined to be fair and equitable as agreed to by all the producers on the farm and approved by the county committee.

(1) Each producer must provide a copy of their written lease to the county committee and, in the absence of a

written lease, must provide to the county committee a complete written description of the terms and conditions of any oral agreement or lease.

(2) A lease will be considered to be a cash lease if the lease provides for only a guaranteed sum certain cash payment, or a fixed quantity of the crop (for example, cash, pounds, or bushels per acre).

(3) If a lease contains provisions that require the payment of rent on the basis of the amount of crop produced or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, or combination thereof, such agreement shall be considered to be a share lease. The leasing of grazing or haying privileges is not considered cash leasing.

(4) If a lease provides for the greater of a guaranteed amount or share of the crop or crop proceeds, such agreement shall be considered a share lease if the lease provides for both:

(i) A guaranteed amount such as a fixed dollar amount or quantity; and

(ii) A share of the crop proceeds.

(5) If the lease is a cash lease, the landlord is not eligible for direct or counter-cyclical payments.

(b) When contract acreage is leased on a share basis, neither the landlord nor the tenant shall receive 100 percent of the contract payment for the farm.

(c) CCC will approve a contract for enrollment and approve the division of payment when all of the following apply:

(1) The landlords, tenants and sharecroppers sign the contract and agree to the payment shares shown on the contract;

(2) CCC determines that the interests of tenants and sharecroppers are being protected; and

(3) CCC determines that the payment shares shown on the contract do not circumvent the provisions of part 1400 of this chapter.

§ 1412.505 Provisions relating to tenants and sharecroppers.

Neither direct nor counter-cyclical payments shall be made by CCC if:

(a) The landlord or operator has adopted a scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program. If any of such conditions occur or are discovered after payments have been made, all or any such part of the payments as the State committee may determine shall be refunded to CCC; or

(b) The landlord terminated a lease in violation of state law as determined by a state court.

Subpart F—Contract Violations and Diminution in Payments

§ 1412.601 Contract violations.

(a) Except as provided in paragraph (b) of this section, violations of contract requirements shall result in the termination of the contract. Upon such termination, all producers subject to the contract shall forfeit all rights to receive direct and counter-cyclical payments on the farm for the contract year and shall refund all direct and counter-cyclical payments received, plus interest, as determined in accordance with part 1403 of this chapter.

(b)(1) If there is a violation of § 1412.407 and CCC determines that a violation is not serious enough to warrant termination of the contract under paragraph (a) of this section, direct and counter-cyclical payments may be made to the producers specified on the contract, but in an amount that is reduced by an amount equal to the sum of:

(i) The per-acre market value of the fruits, vegetables, and wild rice, as determined by the State Committee, times the number of acres in violation, plus

(ii) The direct and counter-cyclical payments for each such acre.

(2) Producers must protect land enrolled in DCP from weeds, including noxious weeds, and erosion, including providing sufficient cover if determined necessary by the county committee. The first violation of this provision will result in a reduction in the direct payments for the farm by an amount equal to three times the cost of maintenance of the acreage, but not to exceed 50 percent of the total direct payments for the farm. The second violation of this provision will result in a reduction in the direct payments for the farm by an amount equal to three times the cost of maintenance of the acreage, not to exceed the total direct payments for the farm.

§ 1412.602 Fruit, vegetable and wild rice acreage reporting violations.

(a)(1) If an acreage report of fruits, vegetables or wild rice planted on base acreage of a farm enrolled in DCP is inaccurate but within tolerance as provided in paragraph (b) of this section and CCC determines the producer made a good faith effort to comply with the provisions of this section, the producers shall accept a reduction in the direct and counter-cyclical payments for each such acre.

(2) If an acreage report of fruits, vegetables or wild rice planted on base acreage of a farm enrolled in DCP is inaccurate and exceeds the tolerance as provided in paragraph (b) of this section, but CCC determines the producer made a good faith effort to comply with the provisions of this section, the producers shall accept a reduction in the direct and counter-cyclical payments for the farm in an amount equal to the sum of:

(i) The direct and counter-cyclical payments for each such acre, plus

(ii) Twice the average dollar value of the direct payment for the covered commodity and peanut base acreage reduced because of the fruit, vegetable, and wild rice plantings on such acreage, multiplied by the total number of acres in violation.

(3) The contract shall be terminated if an acreage report of fruits, vegetables or wild rice planted on base acreage of a farm enrolled in DCP is inaccurate, and the county committee determines the producer did not make a good faith effort to comply with the provisions of this section. Upon such termination, producers subject to such contract shall:

(i) Forfeit all rights to receive direct and counter-cyclical payments for the farm;

(ii) Refund all direct and counter-cyclical payments received for the farm, plus interest as determined in accordance with part 1403 of this chapter; and

(iii) Be ineligible for all program benefits according to part 718 of this title.

(b) For the purposes of this section, tolerance is the amount by which the determined acreage may differ from the reported acreage and still be considered in compliance with program requirements. Tolerance for fruits, vegetables and wild rice plantings is 5 percent of the reported fruit, vegetable and wild rice acreage, not to exceed 50 acres.

§ 1412.603 Contract liability.

All signatories to a contract are jointly and severally liable for contract violations and resulting repayments and penalties.

§ 1412.604 Misrepresentation and scheme or device.

(a) A producer who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to either direct or counter-cyclical payments and must refund all such payments received, plus interest as determined in accordance with part 1403 of this chapter.

(b) A producer shall refund to CCC all direct and counter-cyclical payments, plus interest as determined in accordance with part 1403 of this chapter, received by such producer with respect to all contracts if the producer is determined to have knowingly done any of the following. In addition, the producer's interest in all such contracts shall be terminated.

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

§ 1412.605 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing the assignment of payments found at part 1404 of this chapter.

§ 1412.606 Acreage reports.

As a condition of eligibility for direct and counter-cyclical payments, the operator or owner must submit a report of all cropland acreage on the farm in accordance with part 718 of this title. If such operator or owner does not report all cropland acreage on the farm in accordance with part 718 of this title, the contract shall be terminated with respect to such farm unless the provisions part 718 of this title are applicable.

§ 1412.607 Compliance with highly erodible land and wetland conservation provisions.

The provisions of part 12 of this title apply to this part.

§ 1412.608 Controlled substance violations.

The provisions of part 718 of this title apply to this part.

Subpart G—Establishment and Assignment of Peanut Base Acres and Yields for a Farm

§ 1412.701 Determination of 4-year peanut acreage average.

(a) The Deputy Administrator shall determine, for each historic peanut producer under this part, the 4-year average of the following:

(1) The acreage planted to peanuts on each farm on which the historic peanut producer planted peanuts for harvest for the 1998 through 2001 crop years; and

(2) Any acreage on each farm that the historic peanut producer was prevented from planting to peanuts during the 1998 through 2001 crop years because of natural disaster, or any other condition beyond the control of the historic peanut producers, as determined by the Deputy Administrator.

(b) For the purposes of determining the 4-year acreage average for a historic peanut producer under this part, the Deputy Administrator shall not exclude any crop year in which the producer did not plant peanuts.

(c) If more than one historic peanut producer shared in the risk of producing the crop on a farm, the historic peanut producers shall receive the proportional share of the number of acres planted or prevented from being planted to peanuts for harvest on the farm, based on the sharing arrangement that was in effect among the producers for the crop.

(d) When a historic peanut producer is no longer living or when an entity composed of historic peanut producers has been dissolved, and in other similar situations, the Deputy Administrator shall make the base determinations under this subpart in the manner determined to be fair and reasonable.

§ 1412.702 Determination of average peanut yield.

(a) The Deputy Administrator shall determine, for each historic peanut producer, the average yield for peanuts on each farm the historic peanut producer planted peanuts for harvest for the 1998 through 2001 crop years, excluding any crop year in which the producer did not plant or was prevented from planting peanuts. Production information reported according to part 729 of this chapter will be used by the Deputy Administrator for determining yields under this section.

(b)(1) For the purposes of determining the 4-year average yield for a historic peanut producer under paragraph (a) of this section, the historic peanut producer may elect to substitute for a farm for not more than 3 of the 1998 through 2001 crop years in which the historic peanut producer planted peanuts on the farm, the average harvested yield for peanuts produced in the county in which the farm is located for the 1990 through 1997 crop years.

(2) The average harvested yield for peanuts produced in a county which will be used in paragraph (b)(1) of this section shall be the NASS irrigated and non-irrigated yields or, in States and counties where the irrigated and non-irrigated NASS data is unavailable, the NASS blended yield for the county.

(3) If NASS harvested peanut yield data is unavailable, for the purposes set forth in paragraph (b)(1) of this section, the harvested county average peanut yield, determined according to peanut production information reported according to part 729 of this chapter, shall be used.

(c) The average harvested yield, to be used at the producer's option in paragraph (b)(1) of this section, shall be determined by calculating the weighted 7-year average for each type of yield for the years 1990 through 1997 of:

(1) The NASS harvested peanut irrigated yield for the county for each year;

(2) The NASS harvested peanut non-irrigated yield for the county for each year;

(3) The NASS harvested peanut blended yield for all counties where the yields in paragraphs (c)(1) and (c)(2) of this section are unavailable for each year for all acreage regardless of whether or not the acres were irrigated or nonirrigated;

(4) The average yield for the county, determined in accordance with paragraph (b)(3) of this section for each year.

§ 1412.703 Assignment of average peanut yields and average peanut acreages to farms.

(a) The Deputy Administrator shall give each historical peanut producer an opportunity to assign the average peanut yield determined in accordance with § 1412.702 and average acreage determined in accordance with § 1412.701 for each farm of the historic peanut producer to cropland on that farm or another farm in the same State or a contiguous State.

(b) Notwithstanding paragraph (a) of this section, the average acreage determined under § 1412.701 for a farm may be assigned to a farm in a contiguous county only if either of the following apply:

(1) The historic peanut producer making the assignment produced peanuts in that State during at least one of the 1998 through 2001 crop years; or

(2) As of March 31, 2003, the historic peanut producer is a producer on a farm in that State.

(c) The Deputy Administrator shall provide notice to historic peanut producers regarding the opportunity to assign average peanut yields and average acreages to farms under paragraph (a) of this section. The notice shall provide the following information:

(1) Notice that the opportunity to make the assignments is being provided only once;

(2) A description of the limitations in paragraph (b) of this section on their ability to make their assignments; and

(3) Information regarding the manner in which the assignments must be made and the time periods and manner in which notice of the assignments must be submitted to the Deputy Administrator.

(d) Not later than March 31, 2003, an historic peanut producer shall submit to the Deputy Administrator notice of the assignments made by the producer under this section. If a historic peanut producer fails to submit such notice by that date, that base and yield shall be assigned to the most recent farm associated with such base and yield, as determined by FSA records.

(e) The average of all yields assigned by a historic peanut producer under paragraph (a) of this section to a farm shall be considered to be the payment yield for that farm for the purpose of making direct and payments and counter-cyclical payments under this part, beginning with crop year 2003.

(f) Subject to paragraph (g) of this section, the total number acres assigned by historic peanut producers under paragraph (b) of this section to a farm shall be considered to be the farm's base acres for peanuts for the purpose of making direct payments and counter-cyclical payments under this part, beginning with crop year 2003.

Subpart H—Peanut Quota Buyout Program

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Signed in Washington, DC, October 15, 2002.

Verle E. Lanier,

Executive Vice President, Commodity Credit Corporation.

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Federal Register

Monday,
October 21, 2002

Part V

Department of Labor

Pension and Welfare Benefits Adminstration

29 CFR Parts 2520, 2560, and 2570
Interim Final Rule Relating to Notice of Blackout Periods to Participants and Beneficiaries and Civil Penalties Under ERISA Section 502(c)(7) and Conforming Technical Changes On Civil Penalties Under ERISA Sections 502(c)(2), 502(c)(5) and 502(c)(6); Interim Final Rules

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2520

RIN 1210–AA90

Interim Final Rule Relating to Notice of Blackout Periods to Participants and Beneficiaries

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Interim final rule with request for comments.

SUMMARY: This document contains interim final rules under new section 101(i) of the Employee Retirement Income Security Act of 1974 (the Act or ERISA). Section 101(i) of ERISA, which was enacted into law on July 30, 2002 as part of the Sarbanes-Oxley Act of 2002 (the SOA), provides that written notice is to be provided to participants and beneficiaries of individual account plans of any "blackout period" during which their right to direct or diversify investments, obtain a loan or obtain a distribution under the plan may be temporarily suspended. This interim final rule is published pursuant to section 306(b)(2) of the SOA in order to carry out the provisions of section 101(i) of ERISA, and to invite the public to submit comments on the interim regulation so as to obtain information as to what further guidance in this area would be helpful to plan administrators and their advisors in fulfilling their duties to provide notice of blackout periods.

DATES: *Effective date:* This interim final rule is effective January 26, 2003 and shall apply to blackout periods commencing on or after that date. *Comment date:* Written comments on this interim final rule must be received by November 20, 2002.

ADDRESSES: Written comments on the interim final rule (preferably three copies) should be submitted to: Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Blackout Notice Regulation. Written comments may also be sent by Internet to the following address: e-*ORI@pwba.dol.gov*. All written comments will be available for public inspection at the Public Disclosure Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC, from 8 a.m. to 4:30 p.m. (Monday–Friday).

FOR FURTHER INFORMATION CONTACT: Janet A. Walters, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, (202) 693–8510 (not a toll free number).

SUPPLEMENTARY INFORMATION:

A. Background

The Sarbanes-Oxley Act of 2002 (the SOA), Pub. L. 107–204, enacted on July 30, 2002, provides that the Secretary of Labor shall promulgate within 75 days of enactment interim final rules necessary to carry out the provisions of section 306(b) of the SOA and, accordingly, these interim final rules will become effective without advance notice and comment.

Section 306(b)(1) of the SOA amended section 101 of ERISA to add a new subsection (i), requiring that administrators of individual account plans provide notice to affected participants and beneficiaries in advance of the commencement of any blackout period. For purposes of this notice requirement, a blackout period generally includes any period during which the ability of participants or beneficiaries to direct or diversify assets credited to their accounts, to obtain loans from the plan or to obtain distributions from the plan will be temporarily suspended, limited or restricted. The most common reasons for imposition of a blackout period include changes in investment alternatives or recordkeepers, and corporate mergers, acquisitions, and spin-offs that impact the pension coverage of groups of participants.

ERISA section 101(i)(6) provides that the Secretary shall issue model notices that meet the requirements of subsection (i). A model notice is included as part of this interim final rule.

Section 306(b)(3) of the SOA amends ERISA section 502 to establish a new civil penalty applicable to a plan administrator's failure or refusal to provide the blackout notice required by section 101(i) of ERISA. Interim final rules implementing this civil penalty also appear elsewhere in today's issue of the **Federal Register**.

The issuance of these interim final rules will help serve to preserve and protect the retirement benefits of American workers and their families.

B. Overview of Interim Final Rules

In general, the rules being adopted in this interim final rule track the provisions of ERISA section 101(i), as added by section 306(b)(1) of the SOA. The following is a general overview of the interim final rule, to be codified at 29 CFR 2520.101–3.

Paragraph (a) of § 2520.101–3 describes the general requirement of section 101(i) of ERISA that administrators of certain individual account plans provide notice of blackout periods to participants and beneficiaries whose rights under the plan will be temporarily suspended, limited or restricted by a blackout period (the "affected participants and beneficiaries"), as well as to issuers of employer securities held by the plan.

Paragraph (b) of § 2520.101–3 sets forth the requirements for notices to be furnished to affected participants and beneficiaries. Paragraph (b)(1) provides that the notices shall be written in a manner calculated to be understood by the average plan participant and sets forth the specific content requirements applicable to the notices. The content requirements of the regulation essentially track the requirements of section 101(i)(2)(A) of the Act. Paragraph (b)(1)(ii) makes clear that the notice must include a description of the rights otherwise available under the plan to affected participants and beneficiaries that will be temporarily suspended during the blackout period, in addition to the identification of the investments subject to the blackout period. Paragraph (b)(1)(iii) makes clear that the notice must contain the expected beginning and ending date of the blackout period. In the Department's view, an indication of the expected length of the blackout period is intended both to enable participants and beneficiaries to factor the duration of the blackout into their pre-blackout period investment and other decisions and to apprise participants and beneficiaries as to when they will be able to recommence exercising their rights under the plan. Accordingly, it is the view of the Department that the description of the length of the blackout period must include the expected ending date of the blackout period.

Paragraph (b)(1)(iv) requires the inclusion of a statement advising participants and beneficiaries to review their current investments in light of their inability to direct or diversity their assets during the blackout period and provides that use of the advisory statement contained in paragraph 4. of the model notice (at paragraph (e)(2) will satisfy this content requirement for the notice.

Section 101(i)(2)(A)(v) of the Act provides that notice shall contain "such other matters as the Secretary may require by regulation." In this regard, the Department has added, for purposes of this interim final rule, two informational items.

First, given the importance of adequate advance notice of blackout periods to plan participants and beneficiaries, the Department believes that, in those situations where 30 days advance notice is not furnished, participants and beneficiaries should be furnished an explanation as to why the plan was unable to furnish at least 30 days advance notice. Paragraph (b)(1)(v) of the interim final rule, therefore, provides that, where notices are furnished less than 30 days in advance of the last date on which affected participants and beneficiaries could exercise affected rights immediately before the commencement of the blackout period, the notice must contain a general statement concerning the Federal law requirement of 30 days advance notice and an explanation as to why such notice could not be furnished. The requirement for a general statement in paragraph (b)(1)(v)(A) will be satisfied if the notice contains the general statement appearing in paragraph 5.(A) of the model notice at paragraph (e)(2). Paragraph (b)(1)(v) does not apply to the exceptions in paragraph (b)(2)(ii)(C) involving blackout periods in connection with mergers, acquisitions, divestitures, or similar transactions inasmuch as notices of such blackout periods are required to be furnished as soon as reasonably possible. (See ERISA section 101(i)(3).)

Second, given the potential impact of a blackout period on a participant's or beneficiary's financial planning, it is likely that participants and beneficiaries will have questions about a blackout period. For this reason, the Department has determined that the notice should contain the name, address and telephone number of a person who can answer questions concerning the blackout period. Specifically, paragraph (b)(1)(vi) provides that the notice must contain the name, address and telephone number of the plan administrator or other person responsible for answering questions regarding the blackout period.

The Department specifically invites comments on what, if any, additional information should be required to be contained in the blackout notice furnished to participants, beneficiaries and issuers under this section.

Paragraph (b)(2) describes the timing requirements applicable to furnishing the notice to affected participants and beneficiaries. Paragraph (b)(2)(i) provides that notice shall be furnished at least 30 days, but not more than 60 days, in advance of the last date on which affected participants and beneficiaries could exercise their affected rights immediately before the commencement of any blackout period. It is the view of the Department that Congress, in providing a 30-day advance notice requirement, intended to ensure that each participant and beneficiary affected by a blackout period had an adequate opportunity both to consider the effects of the blackout period on their investments and financial plans and to take action, if appropriate, in anticipation of the blackout period. In order to ensure that each affected participant and beneficiary is afforded an opportunity to assess the potential effects of a blackout, as contemplated by Congress, the interim rule requires that, except to the extent otherwise provided, the 30-day period must be counted back from the last date on which the participant or beneficiary had the right to take action under the terms of the plan in anticipation of the blackout period.

For example, in the case of an individual account plan that provides for daily trading, the 30-day period would be counted back from the date immediately preceding the commencement of a blackout period affecting the right to trade. In the case of a plan that provides participants and beneficiaries the right to direct their investments on a monthly basis, notice would have to be provided at least 30 days prior to the month preceding the month in which a blackout period affecting such rights occurs. For example, under a plan permitting participants to direct their investments during the first fifteen days of each month, it is determined that in order to change recordkeepers, participant direction of their investments will have to be suspended from the 1st to the 15th of May. If the 30-day notice period were counted from the date immediately preceding the commencement of the blackout period, notice could be provided on April 1st, thereby affording participants only 15 days (April 1st–15th) to consider and take action in anticipation of the blackout period. Under the regulation, notice is required to be furnished at least 30 days in advance of the last date on which participants could exercise the affected rights immediately before the commencement of the blackout period. In the immediate example, the last date on which participants could take action in anticipation of the blackout period would be April 15th, accordingly notice would have to be provided to participants not later than March 16th.

The Department notes that all references in the regulation to "days" are references to calendar days, not business days, unless specifically noted otherwise. For purposes of the interim final rule, the Department also established an outside maximum period of 60 days preceding the last day on which participants and beneficiaries could exercise the affected rights immediately before the commencement of a blackout period in order to ensure that notice is not furnished so far in advance of the commencement date so as to undermine the importance of the notice to affected participants and beneficiaries. The Department notes that if a plan administrator wishes to provide a longer period for affected participants and beneficiaries to consider the effects of a blackout period on their individual accounts, there is nothing in the interim final rule that precludes an administrator from supplementing the requirements of the regulation, by furnishing earlier or more frequent notices than that required by the interim final rule, provided that at least one notice is provided to participants and beneficiaries that complies with the timing and content of the interim final rule. The Department specifically invites comments on the need for, and length of, such a limitation on advance notice of blackout periods.

Paragraph (b)(2)(ii)(A) and (B) sets forth two circumstances under which the 30-day advance notice requirement does not apply. The first circumstance is where a deferral of the blackout period would result in a violation of the exclusive purpose and prudence requirements of section 404(1)(A) and (B) of the Act. For example, the ABC company has announced that it is filing for bankruptcy. The ABC company's 401(k) plan has ABC common stock as one of its investment options. F, the 401(k) plan administrator, determines that, given this event, it would not be prudent to continue to permit participants to direct investments into ABC company stock, effective immediately. In such a situation, F would not, pursuant to § 2520.101–3(b)(2)(ii)(A), be required to give 30 days notice to the affected participants and beneficiaries, but would be required to notify them in writing as soon as possible of the blackout period.

The second circumstance under which the 30-day advance notice requirement does not apply is where commencement of the blackout period is due to events that were unforeseeable or circumstances that were beyond the control of the plan administrator. For example, the DEF company's profit-sharing plan's recordkeeper has informed plan administrator G that due

to a major computer failure, the computer program for recording and processing loans and distributions from the plan has been incapacitated and that it will take approximately ten days to fix the system. In such a situation, G would not, pursuant to § 2520.101–3(b)(2)(ii)(B), be required to give 30 days' notice to the affected participants and beneficiaries of their temporary inability to receive loans and distributions from the plan, but would be required to notify them as soon as reasonably possible, unless G determines that such notice in advance of the termination of the blackout is impracticable. The Department anticipates that plan administrators will rely on this exception only in rare circumstances.

In both of the foregoing circumstances, the plan administrator must make a written determination with respect to the circumstances precluding compliance with the 30-day advance notice requirement. The interim final rule, at paragraph (b)(2)(iv), requires that such determinations must be dated and signed by the plan administrator.

Section 101(i)(3) generally provides that in any case in which a blackout period applies only to one or more participants or beneficiaries in connection with a merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor and occurs solely in connection with becoming or ceasing to be a participant or beneficiary under the plan by reason of such merger, acquisition, divestiture, or similar transaction, the 30-day advance notice requirement shall be treated as met if the notice is furnished to such participants and beneficiaries to whom the blackout period applies as soon as reasonably practicable. Paragraph (b)(2)(ii)(C) makes clear that notice to such participants and beneficiaries is an exception to the general rule that the 30-day notice be furnished to all affected participants and beneficiaries.

Paragraph (b)(2)(iii) provides that, in any case in which the 30-day advance notice rule is not required to be applied, the administrator is required to provide notice as soon as reasonably possible under the circumstances, unless such notice in advance of the termination of the blackout period is impracticable. If, therefore, a plan administrator concludes under such circumstances that notice could not be furnished in sufficient time in advance of the termination of the blackout period to alert participants and beneficiaries of the termination date and resumption of plan rights, no notice would be required to be provided under this section. Such might be the case where the need for a blackout period is determined only a few days before the beginning of the blackout period and the blackout period is only a few days in duration. The Department invites comments on, and examples of, circumstances under which the furnishing of notice in accordance with the regulation would be impracticable.

Paragraph (b)(3) provides that the blackout notice must be in writing and may be furnished in any manner permitted under 29 CFR 2520.104b–1, including through electronic media. For purposes of this interim final rule, a blackout notice will be considered furnished as of the date of mailing, if mailed by first class mail, or as of the date of electronic transmission, if transmitted electronically. The Department specifically invites comments on the appropriateness of such furnishing rule.

Paragraph (b)(4) describes the notice requirements applicable to changes in the beginning or ending date of the blackout period. The interim final rule provides that, under such circumstances, the administrator is required to provide all affected participants and beneficiaries with an updated notice explaining the reasons for the change in the date(s) and identifying all material changes in the information contained in the prior notice. The updated notice must be provided as soon as reasonably possible, unless such notice in advance of termination of the blackout period is impracticable.

Paragraph (c) of § 2520.101–3 describes the plan administrator's obligation to provide notice of a blackout period to the issuer of employer securities held by the plan and subject to the blackout period. Paragraph (c)(1) generally provides that the content and timing requirements applicable to the furnishing of notices to participants and beneficiaries also apply to the furnishing of notices to the issuer of employer securities. While the interim final rule does not require that all the information required to be included in the notice to participants and beneficiaries be included in the notice to the issuer, it is the view of the Department that a plan administrator may satisfy its obligation to notify the issuer by providing the same notice furnished to participants and beneficiaries under this rule.

Paragraph (c)(2) provides that the notice of the blackout period shall be furnished to the agent for service of legal process for the issuer, unless the issuer has provided the plan administrator the name of another person for service of such notice. Paragraph (c)(2) is intended to ensure that there is no ambiguity as to whom the administrator must serve notice of the blackout period. Pursuant to section 306(a)(6) of the SOA, issuers are required to notify directors, executive officers, and the Securities and Exchange Commission of the blackout period.

Paragraph (d) of § 2520.101–3 sets forth, for purposes of the interim final rule, definitions of: (1) "blackout period"; (2) "individual account plan"; and (3) "one-participant retirement plan", each of which is identical to the definitions in section 101(i)(7), (8)(A) and 8(B) of the Act, respectively. Paragraph (d)(4) defines the term "issuer" for purposes of the notice provisions. Consistent with the provisions of section 2(a)(7) of the SOA, issuer means an issuer as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c),[1] the securities of which are registered under section 12 of the Securities Exchange Act of 1934, or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934, or files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and that it has not withdrawn.

Paragraph (e) of § 2520.101–3 provides a model notice to facilitate compliance with the blackout notice requirements by plan administrators. Use of the model is not mandatory. However, the interim final rule provides that use of the advisory statement set forth at paragraph 4. of the model notice will be deemed to satisfy the notice content requirements of paragraph (b)(1)(iv) of the rule pertaining to advising participants and beneficiaries about the importance of reviewing their plan investments in anticipation of their inability to direct or diversify their investments during the blackout period. The interim final rule also provides that use of the general statement set forth in paragraph 5. of the model notice will be deemed to satisfy the requirement of

[1] Section 3 of the Securities Exchange Act of 1934 defines the term "issuer" to mean any person who issues or proposes to issue any security; except that with respect to certificates of deposit for securities, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is, or is to be, used.

paragraph (b)(1)(v)(A) that the notice contain a general statement that Federal law requires furnishing of blackout notices in advance of the blackout period.

This model is intended to deal solely with the content requirements prescribed in paragraph (b)(1) and not other matters with respect to which disclosure may be required, such as changes in investment options.

Paragraph (f) of § 2520.101–3 sets forth the effective date of the interim final rule. Pursuant to paragraph (f), the rule is effective January 26, 2003—the effective date of the SOA section 306 amendments to ERISA. Paragraph (f) provides that the notice requirements shall apply to blackout periods commencing on or after January 26, 2003, and that, for blackout periods beginning between January 26, 2003 and February 25, 2003, plan administrators shall furnish notice as soon as reasonably possible. This provision is intended to ensure that a statutorily required notice be provided with respect to blackout periods which commence before February 26, 2003.

This interim final rule does not deal with the application of the fiduciary provisions as they relate to the timing and administration of a blackout period.

C. Request for Comments

In addition to the specific requests for comments identified above, the Department encourages all interested persons to submit their comments, suggestions and views concerning the provisions of this interim final rule, including the model notice. In particular, the Department is interested in any area in which additional guidance would facilitate compliance with these important rules.

Written comments on the this rule should be submitted to: Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Blackout Notice Regulation. Written comments may also be sent by Internet to the following address: e-*ORI@pwba.dol.gov*. Written comments on this rule must be received no later than November 20, 2002. The comment period is being limited to 30 days to enable the Department to adopt changes to the interim final rule prior to the effective date of the SOA amendments.

D. Regulatory Impact Analysis

Summary

The costs associated with this interim final rule arise primarily from the statutory requirement to prepare and distribute advance notices of the imposition of blackout periods. The aggregate costs for plans required to provide this notice are estimated to be $13.9 million per year. The benefits afforded participants and beneficiaries by the statute and interim final rule cannot be quantified, but are expected to be substantial. This requirement will ensure that notices are always provided, are timely, and have appropriate content. Economic benefits will accrue to participants or beneficiaries as a result of their enhanced ability to exercise control over their retirement plan assets with adequate information to inform their decisions. The assurance of receiving advance notice of events that may be critical to participant decisionmaking will increase confidence in the security of retirement assets and promote new and continued plan participation. This guidance will also assist plan administrators in their efforts to fulfill their obligations to participants and beneficiaries. Finally, the requirement for notice to issuers of employer securities affected by blackout periods will serve to some extent to equalize the rights of plan participants and beneficiaries and the officers and directors of the issuer with respect to those securities.

Benefits and Costs

The SOA amendments to ERISA and this implementing guidance will have several important benefits. First, acknowledging that plan administrators impose blackout periods from time to time in the ordinary course of business, the SOA ensures the communication of critical information to affected participants and beneficiaries. The timing and content of the required notice will ensure that participants and beneficiaries are aware of significant events affecting their ability to make meaningful decisions concerning their retirement savings. While many plan administrators may currently provide disclosures similar to those required by the statute and interim final rule, this new requirement will ensure that appropriate information is provided in a consistent and timely manner.

This advance knowledge will have economic value and increase confidence in the security of retirement savings. Timely notice and an understanding of the reasons for and expected duration of a blackout period will benefit participants and beneficiaries economically by offering them ample opportunity to assess their current investments decisions, and to adjust their exposure to loss if they wish to do so, to the extent possible within the existing options available under the plan. Advance notice of blackout periods cannot eliminate fluctuations of market value during a period when existing investment instructions cannot be modified. However, notice will allow affected participants and beneficiaries to maximize their exercise of control as they deem appropriate under their current circumstances.

Assurance of the opportunity to exercise control with adequate knowledge, in advance of events that will affect their ability to exercise control, will increase participant and beneficiary confidence that the plan is being operated prudently. Participants frequently express concern when significant changes are made to plan options, or when rights previously available are temporarily limited. Assuring knowledge of the timing and reasons for such changes should serve to promote confidence in the security of retirement savings and promote continued growth in participation in the retirement plans offered by plan sponsors.

Guidance on the statutory notice requirement will benefit plan sponsors and administrators by clarifying the manner in which they may discharge their obligation to ensure that participants and beneficiaries have access to information necessary to make informed and meaningful investment decisions. Blackout periods occur for a variety of reasons. Their occurrence and timing are often, but not always, within the control of the plan administrator. The most common reasons for imposition of a blackout period include changes in investment alternatives or recordkeepers, and corporate mergers, acquisitions, and spin-offs that impact the pension coverage of groups of participants. Plan administrators will wish to ensure that proper accounting and record transfer is accomplished as timely and accurately as possible, while at the same time fulfilling their obligation to advise participants about important matters affecting their rights under the plan.

The value of these many benefits cannot be specifically quantified. However, the conclusion that advance notice of blackout periods produces economic benefits is consistent with mainstream economic theory and corroborated by evidence. For example, theory posits that financial market prices respond quickly to new information. Delays in executing trades have been shown to be costly. Advance notice of a blackout in trading enables affected participants to adjust their positions to manage their exposure to such costs. The benefits are expected to

outweigh the costs of the statute and the interim final rule.

Administrators of about 85,150 affected plans are estimated to incur costs of approximately $13.9 million each year to prepare and distribute blackout notices to 12 million covered participants. This total consists of about $8 million per year for 295,000 small plans (an average of about $110 per plan), and $5.8 million per year for 45,000 large plans (an average of about $510 per plan). These costs are primarily attributable to the effect of the statutory provisions, and would in fact be estimated to be greater in the absence of a model notice due to higher notice preparation time. Because plans commonly provide advance notice of blackout periods voluntarily, much of this cost is inherent in normal business practice, and the incremental cost of the advance notice requirement will be less than total estimated here. Because the costs of the statute arise from notice provisions, the data and methodology used in developing these estimates are fully described in the Paperwork Reduction Act section of this statement of regulatory impact.

Request for Comments

The Department is interested in receiving comments from the public concerning the assumptions used in developing these estimates. Additional information as to the likely frequency of blackout periods, and other circumstances that might give rise to blackout periods would be particularly useful for informing any future decisions about the timing or content of the blackout notices. Identification of sources of variability in the costs and benefits of providing notices and of potential differential impacts on small plans would also be useful.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this interim final rule is significant within the meaning of section 3(f)(4) of the Executive Order. OMB has, therefore, reviewed the interim final rule pursuant to the Executive Order.

Paperwork Reduction Act

The Department of Labor has submitted the information collection request (ICR) included in this interim final rule (the Notice of Blackout Period under ERISA) to OMB for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995 (PRA 95). Emergency clearance is likely to be necessary in order to allow time to consider public comments and obtain OMB approval for the ICR by the effective date of the notice requirement of the SOA (180 days after the date of enactment, or January 26, 2003). OMB approval has been requested by November 20, 2002. A copy of the ICR with applicable supporting statement may be obtained by calling the Department of Labor, Ms. Marlene Howze, at (202) 693–4158, or by e-mail to *Howze-Marlene@dol.gov*.

Comments and questions about the ICR should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Desk Officer for the Pension and Welfare Benefits Administration, Room 10235, 725 17th Street, NW, Washington, DC, 20503 ((202) 395–7316). Comments should be submitted to OMB by November 20, 2002 to ensure their consideration.

The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The information collection provisions of this interim final rule are found in paragraphs (a), (b)(2)(ii)(A) and (B), (b)(2)(iv), (b)(4), and (c)(1). A model notice is provided in paragraph (e) to facilitate compliance and moderate the burden associated with supplying notices to participants and beneficiaries as described in the interim final rule. Use of the model notice is not mandatory, and the addition of other relevant information to the advance notice should not be viewed as restricted by the model. This interim final rule provides implementing guidance on the SOA, which, as it pertains to individual account plans under ERISA, generally requires that plan administrators provide affected participants and beneficiaries of individual account plans with advance notice of the commencement of a blackout period. A blackout period is a period of at least 3 business days during which participants' and beneficiaries' otherwise available ability to direct the disposition of assets in their accounts is suspended or restricted. The SOA also requires that the plan administrator provide notice to issuers of employer securities that are subject to a blackout period applicable to a plan. This is a general description for purposes of PRA 95; the provisions of the interim final rule should be relied upon for compliance with the SOA and this implementing guidance.

In order to estimate the potential costs of the notice provisions of section 101(i) of ERISA and this interim final rule, the Department tabulated the number of participant-directed individual account plans and the number of participants, inactive participants and beneficiaries who have not taken distributions, in those plans using the plans' Form 5500 filings for 1998, the most recent year currently available. The Department then projected these counts forward to produce estimates of participant-directed individual account plans and participants for 2002. The projections were based on historical growth of all individual account plans because reliable counts of participant-directed plans are not available for years prior to 1997.

The Department assumed linear growth in the number of plans equal to the rate observed for all small and large individual account plans between 1992 and 1998, producing estimates of 295,000 small and 45,000 large participant-directed individual account plans in 2002 (totaling 341,000). To project the number of participants in these plans, the Department assumed linear growth in the ratio of participants to total private employment equal to the rate observed in that ratio between 1992 and 1998. The projected ratios for small and large plans in 2002 were applied to total private employment in July 2002 as estimated by the U.S. Bureau of Labor Statistics, producing estimates of 7.4 million small and 40.4 million large plan participants (totaling 47.8 million) in 2002 that would potentially be affected by a blackout period notice requirement.

An assumption was then needed to account for the fact that not all potentially affected plans will impose blackout periods that would trigger the notice requirement, and not all of those imposing blackout periods would do so in any given year. The Department reviewed available literature in an effort to establish a reasonable estimate of the frequency of the imposition of blackout periods that would trigger notice requirements. One small survey of administrators of very large plans indicated that their largest plans had undergone a blackout period at a rate of once each 3 to 4 years. A different survey indicated a lower frequency of blackout periods, at a rate in the area of about 7% of plans per year. No comprehensive statistics on this frequency are available. However, the Department is aware that the imposition of blackout periods is not rare. For this purpose, the Department has assumed that potentially affected plans will impose blackout periods on average once each 4 years. Among these, some will not impose blackout periods, some will impose blackout periods that do not trigger the notice requirement (*e.g.*, a temporary suspension for a period of 3 or less consecutive days), and some may have blackout periods more frequently.

The Department believes that the assumption that 25% percent of potentially affected plans will impose a blackout period in any given year results in a reasonable estimate of the number of plans that will actually be affected. However, the Department requests comments and any additional information that would validate or otherwise inform this assumption. The resulting numbers of plans and participants assumed to be affected by the notice provisions annually are 85,150 and about 12 million, respectively.

It is assumed that the availability of a model notice as provided in paragraph (e) will lessen the time otherwise required to draft a required notice. In developing burden estimates, the Department has allowed one-half hour for drafting of the elements of the form by the plan administrator, and one hour for legal review of the drafted notice, the latter expense to be incurred as a payment of fees for outside services. This accounts for the burden of preparing the notice, which is estimated at 42,600 hours, and $6.4 million. No additional preparation time is accounted for to draft the notice required to be provided to an issuer of employer securities under paragraph (c), because this interim final rule requires the content and timing of that notice to be the same as the notice prepared for the purpose of paragraph (b)(1). The burden of this notice would be driven by the number of plans rather than participants, and the notice would be required in far more limited circumstances than the notice to participants under paragraph (b)(1), as it pertains only to the issuer's securities affected by the blackout period in the plan. Only a small segment of participant directed individual account plans hold employer securities that would be subject to the requirements of paragraph (c), on the order of a maximum of about 500 plans per year. The direct cost of delivering such notices would be negligible.

The estimated burden for distribution of the notices takes several factors into account, including an assumed number of participants affected annually, the number of the notices that will be distributed electronically, and on paper, and the differential costs of electronic and paper distribution methods. Estimates of the rate of use of electronic distribution methods are consistent with those used in determining the savings associated with the Department's Final Rules Relating to Use of Electronic Communication and Recordkeeping Technologies by Employee Pension and Welfare Benefit Plans (67 FR 17264, April 9, 2002). Those participants not calculated to receive notice electronically are assumed to receive the notice on paper. Paper distribution is estimated to require one minute per notice for copying and mailing, plus $0.40 for paper and postage. No time or direct cost is attributed to electronic distribution methods other than the time required to prepare the notice, because it is assumed that notices are drafted in electronic form, plan administrators use existing infrastructure to communicate electronically, and the cost of electronic transmission is negligible. Paper notice distribution is estimated to require 123,500 hours, and cost about $3 million annually.

The Department considers that this distribution burden estimate is conservatively high due to the fact that many plans already provide advance notices in the event of the imposition of a blackout period, that most blackout periods arise from changes in investment providers or recordkeepers, and that this advance notice either is or will be included with other informational materials that would ordinarily be supplied to participants or beneficiaries to implement that change.

No additional burden is included for the requirements for written documentation that is to be dated and signed under paragraphs (b)(2)(ii)(A) and (B) and (b)(2)(iv). It is assumed that written documentation is normally maintained in the circumstances described, and that the burden of adding a signature or providing a limited number of copies upon request would be negligible.

Further, no additional burden is estimated for subsequent notices required due to changes described in paragraph (b)(4). The Department has no basis for an estimate of the frequency of changes in the length of blackout periods. Further, the Department believes that plan administrators would typically inform participants of changes in the duration of a blackout period as part of their reasonable and customary business practices, although content and timing might be modified based on the provisions of the SOA and this interim final rule.

The resulting estimates of annual respondents, responses, and hour and cost burden are shown below.

Type of Review: New.

Agency: Department of Labor, Pension and Welfare Benefits Administration.

Title: Notice of Blackout Period under ERISA.

OMB Number: 1210–NEW.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 85,150.

Frequency of Response: On occasion.

Responses: 11,956,000.

Estimated Total Burden Hours: 166,129.

Total Annual Cost (Operating and Maintenance): $9,351,400.

OMB will consider comments submitted in response to this request in its review of the request for approval of the ICR; these comments will also become a matter of public record.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), imposes

certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. For purposes of its analyses under the RFA, PWBA continues to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reporting for pension plans that cover fewer than 100 participants. Because this guidance is issued as an interim final rule pursuant to the authority and deadlines prescribed in section 306(b)(2) of the SOA, RFA does not apply, and regulatory flexibility analysis is not required.

The terms of the statute pertaining to the required notices to plan participants and beneficiaries in the event of a blackout do not vary relative to plan size. This interim final rule addresses the statutory provisions, which are self-executing and do not afford the Department with substantial discretion to exercise regulatory flexibility with respect to small plans. While a cost is expected to be associated primarily with the statutory provisions, the Department believes that the interim final rule imposes no additional cost on small plans. The Department nevertheless wishes to address in its final rulemaking any special issues facing small plans with respect to blackout notices, and any alternatives consistent with the objectives of the statute that may serve to facilitate compliance.

The Department is issuing and requesting comments on a model notice in connection with this interim final rule that is intended to assist with compliance and moderate the administrative burden associated with these required notices. Available data suggest that about 341,000 plans, or 47% of all plans are potentially impacted by the enactment of a blackout notice requirement, in that they are individual account plans that permit any form of individual investment direction.

The statutory blackout notice requirement will potentially affect a significant number of small plans. About 87% of the potentially affected plans are small. However, although most affected plans are small, the participants in those plans represent only about 16% of the 47.8 million potentially affected participants. Based on the assumption that plans will impose a blackout period once every four years on average, about 73,800 small plans and 11,400 large plans will prepare and distribute notices annually. These affected plans represent about 10% and 2% of all plans, respectively. Affected participants (1.9 million in small plans, and 10.1 million in large plans) represent approximately 2% and 9% of all plan participants, respectively.

A required notice is likely to be prepared once for each applicable blackout period and distributed to the multiple affected participants. The fixed cost of preparing the notice is estimated at approximately $100 for both large and small plans. The total cost to affected small plans for both preparation and distribution is expected to be about $110 per year. The comparable annual cost to large plans of about $510 is substantially greater due to the greater numbers of participants in these plans, and the costs attendant to distribution of the notices.

The Department invites interested persons to submit comments on the impact of this interim final rule on small entities, and on any alternative approaches that may serve to minimize impact on small plans while accomplishing the objectives of the statute.

Congressional Review Act

The rules being issued here are subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and have been transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this interim final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and does not impose an annual burden exceeding $100 million on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This interim final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in this interim final rule do not alter the fundamental reporting and disclosure requirements of the statute with respect to employee benefit plans, and as such have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2520

Employee benefit plans, Employee Retirement Income Security Act, Pensions, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, amend part 2520 of Title 29 of the Code of Federal Regulations as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for part 2520 is revised to read as follows:

Authority: 29 U.S.C. 1021–1025, 1027, 1029–31, 1059, 1134 and 1135; Secretary of Labor's Order No. 1–87.

Sections 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003, 1171–73, 1185 and 1191–94; and under sec. 101(g)(4), Pub. L. 104–191, 110 Stat. 1936.

Sections 2520.104b–1 and 2520.107 also issued under sec. 1510, Pub. L. 105–34, 111 Stat. 788.

Section 2520.101–3 also issued under sec. 306(b)(2), Pub. L. 107–204, 116 Stat. 745.

2. Add § 2520.101–3 to subpart A to read as follows:

§ 2520.101–3 Notice of blackout periods under individual account plans.

(a) *In general.* In accordance with section 101(i) of the Act, the administrator of an individual account plan, within the meaning of paragraph (d)(2) of this section, shall provide notice of any blackout period, within the meaning of paragraph (d)(1) of this section, to all participants and beneficiaries whose rights under the plan will be temporarily suspended, limited, or restricted by the blackout period (the "affected participants and beneficiaries") and to issuers of employer securities subject to such blackout period in accordance with this section.

(b) *Notice to participants and beneficiaries*—(1) *Content.* The notice required by paragraph (a) of this section shall be written in a manner calculated to be understood by the average plan participant and shall include—

(i) The reasons for the blackout period;

(ii) A description of the rights otherwise available to participants and beneficiaries under the plan that will be temporarily suspended, limited or restricted by the blackout period (*e.g.*, right to direct or diversify assets in individual accounts, right to obtain loans from the plan, right to obtain distributions from the plan), including identification of any investments subject to the blackout period;

(iii) The expected beginning date and ending date of the blackout period;

(iv) In the case of investments affected, a statement that the participant or beneficiary should evaluate the appropriateness of their current investment decisions in light of their inability to direct or diversify assets in their accounts during the blackout period (a notice that includes the advisory statement contained in paragraph 4. of the model notice in paragraph (e)(2) of this section will satisfy this requirement);

(v) In any case in which the notice required by paragraph (a) of this section is not furnished at least 30 days in advance of the last date on which affected participants and beneficiaries could exercise affected rights immediately before the commencement of the blackout period, except for a notice furnished pursuant to paragraph (b)(2)(ii)(C) of this section:

(A) A statement that Federal law generally requires that notice be furnished to affected participants and beneficiaries at least 30 days in advance of the last date on which participants and beneficiaries could exercise the affected rights immediately before the commencement of a blackout period (a notice that includes the statement contained in paragraph 5. of the model notice in paragraph (e)(2) of this section will satisfy this requirement), and

(B) An explanation of the reasons why at least 30 days advance notice could not be furnished; and

(vi) The name, address and telephone number of the plan administrator or other person responsible for answering questions about the blackout period.

(2) *Timing.* (i) The notice described in paragraph (a) of this section shall be furnished to all affected participants and beneficiaries at least 30 days, but not more than 60 days, in advance of the last date on which such participants and beneficiaries could exercise the affected rights immediately before the commencement of any blackout period.

(ii) The requirement to give at least 30 days advance notice contained in paragraph (b)(2)(i) of this section shall not apply in any case in which—

(A) A deferral of the blackout period in order to comply with paragraph (b)(2)(i) of this section would result in a violation of the requirements of section 404(a)(1)(A) or (B) of the Act, and a fiduciary of the plan reasonably so determines in writing;

(B) The inability to provide the advance notice of a blackout period is due to events that were unforeseeable or circumstances beyond the reasonable control of the plan administrator, and a fiduciary of the plan reasonably so determines in writing; or

(C) The blackout period applies only to one or more participants or beneficiaries solely in connection with their becoming, or ceasing to be, participants or beneficiaries of the plan as a result of a merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor.

(iii) In any case in which paragraph (b)(2)(ii) of this section applies, the administrator shall furnish the notice described in paragraph (a) of this section to all affected participants and beneficiaries as soon as reasonably possible under the circumstances, unless such notice in advance of the termination of the blackout period is impracticable.

(iv) Determinations under paragraph (b)(2)(ii)(A) and (B) of this section must be dated and signed by the fiduciary.

(3) *Form and manner of furnishing notice.* The notice required by paragraph (a) of this section shall be in writing and furnished to affected participants and beneficiaries in any manner consistent with the requirements of § 2520.104b–1 of this chapter, including paragraph (c) of that section relating to the use of electronic media.

(4) *Changes in length of blackout period.* If, following the furnishing of a notice pursuant to this section, there is a change in the beginning or ending date of the blackout period (specified in such notice pursuant to paragraph (b)(1) of this section), the administrator shall furnish all affected participants and beneficiaries an updated notice explaining the reasons for the change in the date(s) and identifying all material changes in the information contained in the prior notice. Such notice shall be furnished to all affected participants and beneficiaries as soon as reasonably possible, unless such notice in advance of the termination of the blackout period is impracticable.

(c) *Notice to issuer of employer securities.* (1) The notice required by paragraph (a) of this section shall be furnished to the issuer of any employer securities held by the plan and subject to the blackout period. Such notice shall contain the information described in paragraph (b)(1)(i), (ii), (iii) and (vi) of this section and shall be furnished in accordance with the time frames prescribed in paragraph (b)(2) of this section. In the event of a change in the beginning or ending date of the blackout period specified in such notice, the plan administrator shall furnish an updated notice to the issuer in accordance with the requirements of paragraph (b)(4) of this section.

(2) For purposes of this section, notice to the agent for service of legal process for the issuer shall constitute notice to the issuer, unless the issuer has provided the plan administrator with the name of another person for service of notice, in which case the administrator shall furnish notice to such person. Such notice shall be in writing, except that the notice may be in electronic or other form to the extent the person to whom notice must be furnished consents to receive the notice in such form.

(d) *Definitions.* For purposes of this section—

(1) *Blackout period*—

(i) *General.* The term "blackout period" means, in connection with an individual account plan, any period for which any ability of participants or beneficiaries under the plan, which is otherwise available under the terms of such plan, to direct or diversify assets credited to their accounts, to obtain loans from the plan, or to obtain distributions from the plan is temporarily suspended, limited, or restricted, if such suspension, limitation, or restriction is for any

period of more than three consecutive business days.

(ii) *Exclusions.* The term "blackout period" does not include a suspension, limitation, or restriction—

(A) Which occurs by reason of the application of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934);

(B) Which is a change to the plan which provides for a regularly scheduled suspension, limitation, or restriction which is disclosed to all affected plan participants or beneficiaries through any summary of material modifications, any materials describing specific investment alternatives under the plan, or any changes thereto; or

(C) Which applies only to one or more individuals, each of whom is the participant, an alternate payee (as defined in section 206(d)(3)(K) of the Act), or any other beneficiary pursuant to a qualified domestic relations order (as defined in section 206(d)(3)(B)(i) of the Act).

(2) *Individual account plan.* The term "individual account plan" shall have the meaning provided such term in section 3(34) of the Act, except that such term shall not include a "one-participant retirement plan" within the meaning of paragraph (d)(3) of this section.

(3) *One-participant retirement plan.* The term "one-participant retirement plan" means a one-participant retirement plan as defined in section 306(b)(1) of the Sarbanes-Oxley Act of 2002.

(4) *Issuer.* The term "issuer" means an issuer as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), the securities of which are registered under section 12 of the Securities Exchange Act of 1934, or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934, or files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and that it has not withdrawn.

(e) Model notice—*(1) General.* The model notice set forth in paragraph (e)(2) of this section is intended to assist plan administrators in discharging their notice obligations under this section. Use of the model notice is not mandatory. However, a notice that uses the statements provided in paragraphs 4. and 5.(A) of the model notice will be deemed to satisfy the notice content requirements of paragraph (b)(1)(iv) and (b)(1)(v)(A), respectively, of this section. With regard to all other information required by paragraph (b)(1) of this section, compliance with the notice content requirements will depend on the facts and circumstances pertaining to the particular blackout period and plan.

(2) *Form and content of model notice.*

Important Notice Concerning Your Rights Under the [Enter Name of Individual Account Plan]

[Enter date of notice]

1. This notice is to inform you that the [enter name of plan] will be [enter reasons for blackout period, as appropriate: changing investment options, changing recordkeepers, etc.].

2. As a result of these changes, you temporarily will be unable to [enter as appropriate: direct or diversify investments in your individual accounts (if only specific investments are subject to the blackout, those investments should be specifically identified), obtain a loan from the plan, or obtain a distribution from the plan]. This period, during which you will be unable to exercise these rights otherwise available under the plan, is called a "blackout period." Whether or not you are planning retirement in the near future, we encourage you to carefully consider how this blackout period may affect your retirement planning, as well as your overall financial plan.

3. The blackout period for the plan will begin on [enter date] and end [enter date].

4. [*In the case of investments affected by the blackout period, enter the following:* During the blackout period you will be unable to direct or diversify the assets held in your plan account. For this reason, it is very important that you review and consider the appropriateness of your current investments in light of your inability to direct or diversify those investments during the blackout period. For your long-term retirement security, you should give careful consideration to the importance of a well-balanced and diversified investment portfolio, taking into account all your assets, income and investments. You should be aware that there is a risk to holding substantial portions of your assets in the securities of any one company, as individual securities tend to have wider price swings, up and down, in short periods of time, than investments in diversified funds. Stocks that have wide price swings might have a large loss during the blackout period, and you would not be able to direct the sale of such stocks from your account during the blackout period.]

5. [*If timely notice cannot be provided (see paragraph (b)(1)(v) of this section) enter:* (A) Federal law generally requires that you be furnished notice of a blackout period at least 30 days in advance of the last date on which you could exercise your affected rights immediately before the commencement of any blackout period in order to provide you with sufficient time to consider the effect of the blackout period on your retirement and financial plans. (B) [Enter explanation of reasons for inability to furnish 30 days advance notice.]]

6. If you have any questions concerning this notice, you should contact [enter name, address and telephone number of the plan administrator or other person responsible for answering questions about the blackout period].

(f) *Effective date.* This section shall be effective and shall apply to any blackout period commencing on or after January 26, 2003. For the period January 26, 2003 to February 25, 2003, plan administrators shall furnish notice as soon as reasonably possible.

Dated: October 11, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–26522 Filed 10–18–02; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Parts 2560 and 2570

RIN 1210–AA91, RIN 1210–AA93

Civil Penalties Under ERISA Section 502(c)(7) and Conforming Technical Changes on Civil Penalties Under ERISA Sections 502(c)(2), 502(c)(5) and 502(c)(6)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Interim final rules and request for comments.

SUMMARY: This document contains interim final rules under the Employee Retirement Income Security Act of 1974 (ERISA) that implement certain amendments to ERISA added as part of the Sarbanes-Oxley Act of 2002 (SOA). The interim final rules establish procedures relating to the assessment of civil penalties by the Department of Labor (Department) under section 502(c)(7) of ERISA for failures or refusals by plan administrators to provide notices of a blackout period as required by section 101(i) of ERISA. These rules are being published as interim final rules pursuant to the authority granted the Department by section 306(b)(2) of SOA. This document also contains interim final rules making conforming technical changes to the agency's rules of practice and procedure for other civil penalties under section 502(c) of ERISA. The interim final rules affect employee benefit plans, plan sponsors, administrators and fiduciaries, and plan participants and beneficiaries.

DATES: This regulation is effective January 26, 2003. Written comments are invited and must be received by the Department on or before November 20, 2002.

ADDRESSES: Interested persons are invited to submit written comments (preferably three copies) to: Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Blackout Civil Penalty Regulation. Written comments may also be sent by Internet to the following address: *e-ORI@pwba.dol.gov.* All submissions will be open to public inspection and copying from 8:00 a.m. to 4:30 p.m. in the Public Disclosure Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Susan Elizabeth Rees, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 693–8505 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Background

The Sarbanes-Oxley Act of 2002 (SOA), Public Law 107–204, enacted on July 30, 2002, provides that the Secretary of Labor (the Secretary) shall promulgate, within 75 days of enactment, interim final rules necessary to carry out the provisions of section 306(b) of the SOA and, accordingly, these interim final rules will become effective without advance notice and comment.

Section 306(b)(1) of SOA amended section 101 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), to add a new subsection (i) requiring that administrators of individual account plans provide notice to affected participants and beneficiaries in advance of the commencement of any blackout period. Elsewhere in the **Federal Register** today, the Department has published an interim final rule, to be codified at 29 CFR 2520.101–3, implementing the notice requirements in ERISA section 101(i).

Section 306(b)(3) of SOA amended section 502(c) of ERISA to add a new paragraph (7) establishing a civil penalty for an administrator's failure or refusal to provide timely notice of a blackout period to participants and beneficiaries. Specifically, section 502(c)(7) provides that the Secretary may assess a civil penalty of up to $100 a day from the date of the plan administrator's failure or refusal to provide notice to a participant or beneficiary in accordance with ERISA section 101(i).

This document contains interim final rules to be published at 29 CFR parts 2560 and 2570, that implement the civil penalty provision in ERISA section 502(c)(7). The interim final rules establish procedures relating to the assessment and administrative review of civil penalties by the Department of Labor (Department) under section 502(c)(7) of ERISA for failures or refusals by plan administrators to provide notice of a blackout period as required by section 101(i) of ERISA and § 2520.101–3. This document also contains interim final rules that make changes to the existing civil penalty rules under ERISA sections 502(c)(2), 502(c)(5), and 502(c)(6) to incorporate certain technical improvements being adopted as part of the section 502(c)(7) implementing regulations. Set forth below is a general description of the interim final rules.

B. Description of Regulations

Authority to Assess Civil Penalties for Violations of Section 101(i) of ERISA—§ 2560.502c–7

Section 2560.502c–7(a) addresses the general application of section 502(c)(7) of ERISA. Paragraph (a)(1) provides that the administrator, as defined in ERISA section 3(16)(A), of an individual account plan shall be liable for civil penalties assessed by the Secretary under section 502(c)(7) in each case in which there is a failure or refusal to provide to an affected participant or beneficiary notice of a blackout period as required under section 101(i) of ERISA and § 2520.101–3. Paragraph (a)(2) defines such a failure or refusal as a failure or refusal, in whole or in part, to furnish the blackout notice at the time and in the manner as required under section 101(i) of ERISA and the Department's regulation at § 2520.101–3.

Section 2560.502c–7(b) sets forth the amount of penalties that may be assessed under section 502(c)(7) of ERISA. Paragraph (b)(1) provides that the Department may assess a penalty of up to $100 per day per each affected participant or beneficiary. The amount assessed for each violation under the regulation is computed from the date of the administrator's failure or refusal to provide a notice of blackout period up to and including the date that is the final day of the blackout period for which the notice was required. Section 2560.502c–7(b)(2) provides that for purposes of calculating the amount, each violation with respect to each participant or beneficiary shall be treated as a separate violation of section 101(i) of ERISA.

Section 2560.502c–7(c) provides that, prior to assessing a penalty under ERISA section 502(c)(7), the Department shall provide the plan administrator with written notice indicating the Department's intent to assess a penalty under section 502(c)(7), the amount of such penalty, the number of participants and beneficiaries on which the penalty is based, the period to which the penalty applies, and the reason(s) for the penalty. The notice is to be served in accordance with § 2560.502c–7(i) (service of notice provision).

Section 2560.502c–7(d) provides that the Department may determine not to assess a penalty, or to waive all or part of the penalty to be assessed, under ERISA section 502(c)(7), upon a showing by the administrator, under paragraph (e), of compliance with ERISA section 101(i) or that there were mitigating circumstances for noncompliance. Under paragraph (e), the administrator has 30 days from the date of service of the notice issued under § 2560.502c–7(c) within which to file a statement making such a showing. When the Department serves the notice under paragraph (c) by certified mail, service is complete upon mailing but five (5) days are added to the time allowed for the filing of the statement (*see* § 2560.502c–7(i)(2)).

Section 2560.502c–7(f) provides that a failure to file a timely statement under paragraph (e) shall be deemed to be a waiver of the right to appear and contest the facts alleged in the Department's notice of intent to assess a penalty for purposes of any adjudicatory proceeding involving the assessment of the penalty under section 502(c)(7) of ERISA, and to be an admission of the facts alleged in the notice of intent to assess. Such notice then becomes a final order of the Secretary 45 days from the date of service of the notice.

Section 2560.502c–7(g)(1) provides that, following a review of the facts alleged in the plan administrator's statement under paragraph (e), the Department shall notify the administrator of its determination whether to assess the penalty, or to waive the penalty, in whole or in part. Under paragraph (g)(2), such notice then becomes a final order 45 days from the date of service of the notice, except as provided in paragraph (h).

Section 2560.502c–7(h) provides that the notice described in paragraph (g) will not become a final order of the Department if, within 30 days of the date of service of the notice, the administrator or representative files a request for a hearing under " 2570.130 *et seq.* (also published as part of this interim final rulemaking) and files an

answer, in writing, supported by reference to specific circumstances or facts surrounding the notice. When the Department serves the notice under paragraph (g) by mail, service is complete upon mailing but five (5) days are added to the time allowed for the filing of a request for hearing and answer (*see* § 2560.502c–7(i)(2)).

Section 2560.502c–7(i)(1) describes the rules relating to service of the Department's notice of penalty assessment (§ 2560.502c–7(c)) and the Department's notice of determination on a statement of reasonable cause (§ 2560.502c–7(g)). Paragraph (i)(1) provides that service by the Department shall be made by delivering a copy to the administrator or representative thereof; by leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or by mailing a copy to the last known address of the administrator or representative thereof. As noted above, paragraph (i)(2) of this section provides that when service of a notice under paragraph (c) or (g) is by certified mail, service is complete upon mailing, but five (5) days are added to the time allowed for the filing of a statement or a request for hearing and answer, as applicable. Service by regular mail is complete upon receipt by the addressee.

Section 2560.502c–7(i)(3), which relates to the filing of statements of reasonable cause, provides that a statement of reasonable cause shall be considered filed (i) upon mailing if accomplished using United States Postal Service certified mail or Express Mail, (ii) upon receipt by the delivery service if accomplished using a "designated private delivery service" within the meaning of 26 U.S.C. 7502(f), (iii) upon transmittal if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment, or (iv) in the case of any other method of filing, upon receipt by the Department at the address provided in the notice. This provision does not apply to the filing of requests for hearing and answers with the Office of the Administrative Law Judge (OALJ) which are governed by the Department's OALJ rules in 29 CFR 18.4.

Section 2560.502c–7(j) clarifies the liability of the parties for penalties assessed under section 502(c)(7) of ERISA. Paragraph (j)(1) provides that, if more than one person is responsible as administrator for the failure to provide the required blackout notice, all such persons shall be jointly and severally liable for such failure. Paragraph (j)(2) provides that any person against whom a penalty is assessed under section 502(c)(7) of ERISA, pursuant to a final order, is personally liable for the payment of such penalty. Paragraph (j)(2) provides that liability for the payment of penalties assessed under section 502(c)(7) of ERISA is a personal liability of the person against whom the penalty is assessed and not a liability of the plan. It is the Department's view that payment of penalties assessed under ERISA section 502(c) from plan assets would not constitute a reasonable expense of administering a plan for purposes of ERISA § 403 and § 404.

Procedures for Assessment of Civil Penalties Under ERISA Section 502(c)(7)—§ 2570.130 et seq.

Section 2570.130 *et seq.*, establishes procedures for hearings before an Administrative Law Judge (ALJ) with respect to assessment by the Department of a civil penalty under ERISA section 502(c)(7), and for appealing an ALJ decision to the Secretary or her delegate. With regard to such procedures, the Secretary has established the Pension and Welfare Benefits Administration (PWBA) within the Department for purposes of carrying out most of the Secretary's responsibilities under ERISA. *See* Secretary's Order 1–87, 52 FR 13139 (April 27, 1987).

The Department has already published rules of practice and procedure for administrative hearings before the OALJ at 29 CFR part 18 (48 FR 32538 (1983)). As explained in 29 CFR 18.1, those provisions generally govern administrative hearings before ALJs assigned to the Department and are intended to provide uniformity in the conduct of administrative hearings. However, in the event of an inconsistency or conflict between the provisions of 29 CFR part 18 and a rule or procedure required by statute, executive order or regulation, the latter controls.

The Department has reviewed the applicability of the provisions of 29 CFR part 18 to the assessment of civil penalties under ERISA section 502(c)(7) and has decided to adopt many, though not all, of the provisions thereunder for ERISA 502(c)(7) proceedings. The interim final rule relates specifically to procedures for assessing civil penalties under section 502(c)(7) of ERISA and is controlling to the extent it is inconsistent with any portion of 29 CFR part 18. The final rule is designed to maintain the rules set forth at 29 CFR part 18 consistent with the need for an expedited procedure, while recognizing the special characteristics of proceedings under ERISA section 502(c)(7). For purposes of clarity, where a particular section of part 18 would be affected by the final rule, the entire section (with appropriate modifications) has been set out in this document. Thus, only a portion of the provisions of the procedural regulations set forth below involves changes from, or additions to, the rules in 29 CFR part 18. The specific modifications to the rules in 29 CFR part 18, and their relationship to the conduct of these proceedings generally, are outlined below.

The general applicability of the procedural rules under section 502(c)(7) of ERISA is set forth in § 2570.130. The definition section (§ 2570.131) incorporates the basic adjudicatory principles set forth at 29 CFR part 18, but includes terms and concepts of specific relevance to proceedings under ERISA section 502(c)(7). For instance, § 2570.131(c) defines the term "Answer," as "a written statement that is supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to § 2560.502c–7(g) of this chapter." Also, § 2570.131(p) states that the term "Secretary" means the Secretary of Labor and includes various individuals to whom the Secretary may delegate authority. The Department contemplates that the duties assigned to the Secretary under the procedural regulation will in fact be discharged by the Assistant Secretary for Pension and Welfare Benefits or his or her delegate.

In general, the burden to initiate adjudicatory proceedings before an ALJ will be on the party (respondent) against whom the Department is seeking to assess a civil penalty under ERISA section 502(c)(7). However, a respondent must comply with the procedures relating to agency review set forth in § 2560.502c–7 before initiating adjudicatory proceedings. Section 2570.131(c) and (d), together with § 2560.502c–7(h), provide that a notice issued pursuant to § 2560.502c–7(g) will not become the final order of the Department, if, within 30 days from the date of the service of the notice, the administrator or representative thereof files a request for a hearing under § 2570.130 *et seq.*, and files an answer to the notice.

The service of documents by the parties to an adjudicatory proceeding, as well as by the ALJ, are governed by § 2570.132. Section 2570.133 describes how the parties are designated and provides a procedure for interested parties other than the complainant (the Department) and the respondent (the party against whom the civil penalty is sought) to participate. Section 2570.134 provides that if the respondent fails to request a hearing and file an answer to

the Department's notice of determination (§ 2560.502c–7(g)) within the 30 day period provided by "2560.502c–7(h), such failure shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice and shall be deemed to constitute an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(7) of ERISA. Section 2570.134 also, in conjunction with § 2570.131(g), makes clear that, in the event of such failure, the assessment of penalty becomes final 45 days from the service of the notice of determination.

Section 2570.135 provides that the ALJ's decision shall include the terms and conditions of any consent order or settlement which has been agreed to by the parties. This section also prescribes the content of any such agreement, and provides for settlements without the consent of all parties. This section provides that the decision of the ALJ which incorporates such consent order shall become a final agency action within the meaning of 5 U.S.C. 704.

The rules in 29 CFR part 18 concerning the computation of time, pleadings, prehearing conferences and statements, and settlements are adopted in these procedures for adjudications under ERISA section 502(c)(7). However, § 2570.136 states that discovery may be ordered by the ALJ only upon a showing of good cause by the party seeking discovery. This differs from the more liberal standard for discovery contained in 29 CFR 18.14. In cases in which discovery is ordered by the ALJ, the order shall expressly limit the scope and terms of discovery to that for which good cause has been shown. To the extent that the order of the ALJ does not specify rules for the conduct of the discovery permitted by such order, the rules governing the conduct of discovery from 29 CFR part 18 are to be applied in any proceeding under section 502(c)(7) of ERISA. For example, if the order of the ALJ states only that interrogatories on certain subjects may be permitted, the rules under 29 CFR part 18 concerning the service and answering of such interrogatories shall apply. The procedures under 29 CFR part 18 for the submission of facts to the ALJ during the hearing are also to be applied in proceedings under ERISA section 502(c)(7).

The section on summary decisions (§ 2570.137) provides authorization for an ALJ to issue a summary decision which may become final when there are no genuine issues of material fact in a case arising under ERISA section 502(c)(7). The section concerning the decision of the ALJ (§ 2570.138) differs from its counterpart at § 18.57 of this title in that § 2570.138 states that the decision of the ALJ in an ERISA section 502(c)(7) case shall become the final agency action unless a timely appeal is filed.

The procedures for appeals of ALJ decisions under ERISA section 502(c)(7) of ERISA would be governed solely by §§ 2570.139 through 2570.141, as acknowledged in 29 CFR 18.58. Section 2570.134 also, in conjunction with § 2570.131(g), makes clear that, in the event of such failure, the assessment of penalty becomes final 45 days from the service of the notice of determination.

Section 2570.135 provides that the ALJ's decision shall include the terms and conditions of any consent order or settlement which has been agreed to by the parties. This section also prescribes the content of any such agreement, and provides for settlements without the consent of all parties. This section provides that the decision of the ALJ which incorporates such consent order shall become a final agency action within the meaning of 5 U.S.C. 704.

The rules in 29 CFR part 18 concerning the computation of time, pleadings, prehearing conferences and statements, and settlements are adopted in these procedures for adjudications under ERISA section 502(c)(7). However, § 2570.136 states that discovery may be ordered by the ALJ only upon a showing of good cause by the party seeking discovery. This differs from the more liberal standard for discovery contained in 29 CFR 18.14. In cases in which discovery is ordered by the ALJ, the order shall expressly limit the scope and terms of discovery to that for which good cause has been shown. To the extent that the order of the ALJ does not specify rules for the conduct of the discovery permitted by such order, the rules governing the conduct of discovery from 29 CFR part 18 are to be applied in any proceeding under section 502(c)(7) of ERISA. For example, if the order of the ALJ states only that interrogatories on certain subjects may be permitted, the rules under 29 CFR part 18 concerning the service and answering of such interrogatories shall apply. The procedures under 29 CFR part 18 for the submission of facts to the ALJ during the hearing are also to be applied in proceedings under ERISA section 502(c)(7).

The section on summary decisions (§ 2570.137) provides authorization for an ALJ to issue a summary decision which may become final when there are no genuine issues of material fact in a case arising under ERISA section 502(c)(7). The section concerning the decision of the ALJ (§ 2570.138) differs from its counterpart at § 18.57 of this title in that § 2570.138 states that the decision of the ALJ in an ERISA section 502(c)(7) case shall become the final agency action unless a timely appeal is filed.

The procedures for appeals of ALJ decisions under ERISA section 502(c)(7) of ERISA would be governed solely by §§ 2570.139 through 2570.141, as acknowledged in 29 CFR 18.58. Section 2570.139 establishes the time limit within which such appeals must be filed, the manner in which the issues for appeal are determined and the procedure for making the entire record before the ALJ available to the Secretary. Section 2570.140 provides that review of the Secretary shall not be on a *de novo* basis, but rather on the basis of the record before the ALJ and without an opportunity for oral argument. Section 2570.141 sets forth the procedure for establishing a briefing schedule for such appeals and states that the decision of the Secretary on such an appeal shall be a final agency action within the meaning of 5 U.S.C. 704. As required by the Administrative Procedure Act (5 U.S.C. 552(a)(2)(A)) all final decisions of the Department under section 502(c)(7) of ERISA shall be compiled in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Conforming Changes to Existing Civil Penalties Rules

This document also contains interim final rules amending the existing civil penalty assessment regulations under ERISA section 502(c)(2), 502(c)(5) and 502(c)(7) in part 2560 and part 2570 of subchapter G, to conform them to the rules of practice and procedure being adopted for penalty proceedings under ERISA section 502(c)(7) in 29 CFR 2560.502c–7 and part 2570 subpart G. The amendments, described below, affect certain rules for penalty assessment and administrative review in § 2560.502c–2, § 2560.502c–5, § 2560.502c–6, and subparts C, E, and F of part 2570.

The primary amendments are intended to conform the filing and service rules under § 2560.502c–2, § 2560.502c–5 and § 2560.502c–6 to those being adopted for proceedings under § 2560.502c–7. Specifically, § 2560.502c–2(i)(2), § 2560.502c–5(i)(2) and § 2560.502c–6(i)(2) are being amended to provide an additional five days in which to file a statement of reasonable cause or a request for hearing and answer, as applicable, when the Department serves a notice of intent to assess a penalty or a notice of penalty determination by certified mail, and to provide that service of a notice by the Department by regular mail is complete upon receipt. Sections 2560.502c–2(i)(3), 2560.502c–5(i)(3), and 2560.502c–6(i)(3) are also amended to conform to the provisions in § 2560.502c–7 under which statements of reasonable cause are treated as filed on mailing or on transmittal under certain circumstances.

The remaining amendments were necessary to accommodate those changes in the filing and service rules, or were technical clarifications. Specifically, § 2560.502c–2(f), § 2560.502c–5(f), and § 2560.502c–6(f) are being amended to provide that if an administrator failed to timely file a statement of reasonable cause, notices of intent to assess became final orders 45 days from the date of service of the notice. Sections 2560.502c–2(g) and (h), 2560.502c–5(g) and (h) and 2560.502c–6(g) and (h) are being amended to provide that notices of determination would become final orders 45 days from the date of service except that the determinations do not become final orders if the administrator files a timely request for a hearing and an answer. Corresponding amendments are being made to § 2570.64, § 2570.94, and § 2570.114, which describe the "consequences of default" for ERISA section 502(c)(2), section 502(c)(5), and section 502(c)(6) civil penalty proceedings, respectively.

Sections 2560.502c–2(d) and (e), 2560.502c–5(d) and (e), and 2560.502c–6(d) and (e) are being amended to use the clarifying language adopted in §§ 2560.502c–7(d) and (e) that better describes the statement of reasonable cause and penalty waiver procedures.

Finally, section 2570.61(c) is being amended to clarify that for purposes of a civil penalty proceeding under ERISA section 502 (c)(2), "*Answer*" is defined as a written statement that is supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to § 2560.502c–2(g) of this chapter.

These amendments are made under section 505 of ERISA which authorizes the Department to prescribe such regulations as the Secretary finds necessary or appropriate to carry out the provisions of Title I of ERISA. These technical changes affect rules of agency practice and procedure which the Secretary has determined are appropriate to issue in interim final form in order to conform the penalty assessment and administrative hearing procedures under section 502(c) of

ERISA and ensure the Secretary's ability to continue to effectively enforce the requirements of section 502(c) of ERISA.

C. Request for Comments

The Department invites all interested persons to submit their comments, suggestions and views concerning any of the provisions of any of these interim final rules. Written comments (preferably three copies) should be submitted to: Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Blackout Civil Penalty Regulation. Written comments may also be sent by Internet to the following address: *e-ORI@pwba.dol.gov*. Comments must be received by the Department on or before November 20, 2002. The comment period is being limited to 30 days to enable the Department to adopt changes to the interim final rule prior to the effective date of the SOA amendments.

All submissions will be open to public inspection and copying from 8:00 a.m. to 4:30 p.m. in the Public Disclosure Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

D. Regulatory Impact Analysis

Executive Order 12866

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The Department has determined that these interim final rules relating to the assessment of civil monetary penalties under section 502(c)(7) of ERISA are significant in that they provide guidance on the administration and enforcement of the notice provisions of section 101(i) of ERISA. Separate guidance on the notice requirements of section 101(i) (Interim Final Rule Relating to Notice of Blackout Periods to Participants and Beneficiaries), also published in today's issue of the **Federal Register**, is also considered significant within the meaning of section 3(f)(4) of the Executive Order. Accordingly, OMB has reviewed the interim final rules pertaining to both the blackout notice and the related civil penalty pursuant to the terms of the Executive Order.

The principal benefit of the statutory penalty provisions and these interim final rules will be greater adherence to the requirement of ERISA section 101(i) that plan administrators provide advance written notice to participants and beneficiaries in individual account retirement plans whose existing rights to direct investments in their accounts or to obtain loans or distributions will be suspended or limited. The implementation of orderly and consistent processes for the assessment of penalties and the review of such assessments will also be beneficial for plan administrators. The procedures established in these interim final rules will also allow facts and circumstances related to a failure or refusal to provide appropriate notice to be presented by a plan administrator and to be taken into consideration by the Department in assessing penalties under ERISA section 502(c)(7).

The rate of failure or refusal to provide blackout notices where required, and the dollar value of penalties to be assessed in those cases cannot be predicted. The civil penalty provisions of the statute and these interim final rules impose no mandatory requirements or costs, except where a plan administrator has failed to provide the notice required in ERISA section 101(i).

The technical amendments conforming the existing regulatory provisions relating to the assessment of civil penalties under sections 502(c)(2), (c)(5), and (c)(6) of ERISA are procedural in nature, and similarly impose no additional requirements or costs.

Paperwork Reduction Act

This interim final rule on assessment of civil penalties under ERISA section 502(c)(7) is not subject to the requirements of the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3501 *et seq.*) because it does not contain a collection of information as defined in 44 U.S.C. 3502(3). Information otherwise provided to the Secretary in connection with the administrative and procedural requirements of these interim final rules is excepted from coverage by PRA 95 pursuant to 44 U.S.C. 3518(c)(1)(B), and related regulations at 5 CFR 1320.4(a)(2) and (c). These provisions generally except information provided as a result of an agency's civil or administrative action, investigation, or audit. This exception also applies to the conforming amendments to administrative and procedural rules pertaining to the civil penalty provisions of ERISA sections 502(c)(2), 502(c)(5), and 502(c)(6).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. For purposes of its analyses under the RFA, PWBA continues to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary to prescribe simplified annual reporting for pension plans that cover fewer than 100 participants. Because this guidance is issued as an interim final rule pursuant to the authority and deadlines prescribed in sections 306(b)(2) of SOA, RFA does not apply, and regulatory flexibility analysis is not required. However, the Department wishes to address in its final rulemaking any special issues facing small plans with respect to the assessment of civil penalties under ERISA section 502(c)(7) and the conforming amendments to existing administrative and procedural regulations relating to the assessment of civil penalties under ERISA sections 502(c)(2), (c)(5), and (c)(6).

The terms of the statute pertaining to the assessment of civil penalties for failure to provide notices to plan participants and beneficiaries in the event of a blackout do not vary relative to plan or plan administrator size. The operation of the statute will normally result in the assessment of lower penalties where small plans are involved because a violation with respect to a single participant or beneficiary is treated as a separate violation for purposes of calculating the penalty. The opportunity for a plan administrator to present facts and circumstances related to a failure or refusal to provide appropriate notice that may be taken into consideration by the Department in assessing penalties under ERISA section 502(c)(7) may offer some degree of flexibility to small entities subject to penalty assessments. Penalty assessments will have no direct impact on small plans because the plan administrator assessed a civil penalty is personally liable for the payment of that penalty pursuant to section 2560.502c–7(j).

The Department invites interested persons to submit comments on the impact of this interim final rule on small entities, and on any alternative approaches that may serve to minimize the impact on small plans or other entities while accomplishing the objectives of the statutory provisions.

Congressional Review Act

The rules being issued here are subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and have been transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and does not impose an annual burden exceeding $100 million on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in this final rule do not alter the fundamental reporting and disclosure, or administration and enforcement provisions of the statute with respect to employee benefit plans, and as such have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects

29 CFR Part 2560

Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions.

29 CFR Part 2570

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions.

In view of the foregoing, Parts 2560 and 2570 of Chapter XXV of title 29 of the Code of Federal Regulations are amended as follows:

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

1. The authority citation for Part 2560 is revised to read as follows:

Authority: 29 U.S.C. 1132, 1135, and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

Section 2560.503–1 also issued under 29 U.S.C. 1133.

Section 2560.502(c)(7) also issued under sec. 306 (b)(2) of Pub. L. 107–204, 116 Stat. 745.

2–3. Revise § 2560.502c–2, paragraphs (d), (e), (f), (g), (h), and (i) to read as follows:

§ 2560.502c–2 Civil penalties under section 502(c)(2).

* * * * *

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the administrator complied with the requirements of section 101(b)(1) of the Act or on a showing by the administrator of mitigating circumstances regarding the degree or willfulness of the noncompliance.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have thirty (30) days from the date of service of the notice, as described in paragraph (i) of this section, to file a statement of reasonable cause explaining why the penalty, as calculated, should be reduced, or not be assessed, for the reasons set forth in paragraph (d) of this section. Such statement must be made in writing and set forth all the facts alleged as reasonable cause for the reduction or nonassessment of the penalty. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure of an administrator to file a statement of reasonable cause within the thirty (30) day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice of intent, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(2) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.61(g) of this chapter, forty-five (45) days from the date of service of the notice.

(g) *Notice of the determination on statement of reasonable cause.* (1) The Department, following a review of all the facts alleged in support of no assessment or a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its determination to waive the penalty, in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (c) of this section. This notice is a "pleading" for purposes of § 2570.61(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department's intention to assess a penalty, shall become a final order, within the meaning of § 2570.61(g) of this chapter, forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this

section will not become a final order, within the meaning of § 2570.61(g) of this chapter, if, within thirty (30) days from the date of the service of the notice, the administrator or a representative thereof files a request for a hearing under §§ 2570.60 through 2570.71 of this chapter, and files an answer to the notice. The request for hearing and answer must be filed in accordance with § 2570.62 of this chapter and § 18.4 of this title. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements.* (1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five (5) days shall be added to the time allowed by these rules for the filing of a statement, or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or Express Mail;

(ii) Upon receipt by the delivery service, if accomplished using a "designated private delivery service" within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

* * * * *

4. Revise § 2560.502c-5, paragraphs (d), (e), (f), (g), (h), and (i) to read as follows:

§ 2560.502c-5 Civil penalties under section 502(c)(5).

* * * * *

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the administrator complied with the requirements of section 101(g) of the Act or on a showing by the administrator of mitigating circumstances regarding the degree or willfulness of the noncompliance.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have thirty (30) days from the date of service of the notice, as described in paragraph (i) of this section, to file a statement of reasonable cause explaining why the penalty, as calculated, should be reduced, or not be assessed, for the reasons set forth in paragraph (d) of this section. Such statement must be made in writing and set forth all the facts alleged as reasonable cause for the reduction or nonassessment of the penalty. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure of an administrator to file a statement of reasonable cause within the thirty (30) day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice of intent, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(5) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.91(g) of this chapter, forty-five (45) days from the date of service of the notice.

(g) *Notice of the determination on statement of reasonable cause* (1) The Department, following a review of all the facts alleged in support of no assessment or a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its determination to waive the penalty, in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (c) of this section, and a brief statement of the reasons for assessing the penalty. This notice is a "pleading" for purposes of § 2570.91(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department's intention to assess a penalty, shall become a final order, within the meaning of § 2570.91(g) of this chapter, forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of § 2570.91(g) of this chapter, if, within thirty (30) days from the date of the service of the notice, the administrator or a representative thereof files a request for a hearing under §§ 2570.90 through 2570.101 of this chapter, and files an answer to the notice. The request for hearing and answer must be filed in accordance with § 2570.92 of this chapter and § 18.4 of this title. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements.* (1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five (5) days shall be added to the time allowed by these rules for the filing of a statement, or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or Express Mail;

(ii) Upon receipt by the delivery service, if accomplished using a "designated private delivery service" within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the

Department at the address provided in the notice of intent to assess a penalty.

* * * * *

5. Revise § 2560.502c–6, paragraphs (d), (e), (f), (g), (h), and (i) to read as follows:

§ 2560.502c–6 Civil penalties under section 502(c)(6).

* * * * * *

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the administrator complied with the requirements of section 104(a)(6) of the Act or on a showing by the administrator of mitigating circumstances regarding the degree or willfulness of the noncompliance.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have thirty (30) days from the date of service of the notice, as described in paragraph (i) of this section, to file a statement of reasonable cause explaining why the penalty, as calculated, should be reduced or not be assessed, for the reasons set forth in paragraph (d) of this section. Such statement must be made in writing and set forth all the facts alleged as reasonable cause for the reduction or nonassessment of the penalty. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure to file a statement of reasonable cause within the 30-day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice of intent, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(6) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.111(g) of this chapter, forty-five (45) days from the date of service of the notice.

(g) *Notice of determination on statement of reasonable cause.* (1) The Department, following a review of all of the facts alleged in support of no assessment or a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its determination not to assess or to waive the penalty, in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (c) of this section. This notice is a "pleading" for purposes of § 2570.111(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department's intention to assess a penalty, shall become a final order, within the meaning of § 2570.111(g) of this chapter, forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of § 2570.91(g) of this chapter, if, within thirty (30) days from the date of the service of the notice, the administrator or a representative thereof files a request for a hearing under §§ 2570.110 through 2570.121 of this chapter, and files an answer to the notice. The request for hearing and answer must be filed in accordance with § 2570.112 of this chapter and § 18.4 of this title. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements.* (1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five (5) days shall be added to the time allowed by these rules for the filing of a statement, or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or Express Mail;

(ii) Upon receipt by the delivery service, if accomplished using a "designated private delivery service" within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

* * * * *

6. Add a new § 2560.502c–7 to read as follows:

§ 2560.502c–7 Civil penalties under section 502(c)(7).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(7) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator (within the meaning of section 3(16)(A) of the Act) of an individual account plan (within the meaning of section 101(i)(8) of the Act and § 2520.101–3(d)(2) of this chapter), shall be liable for civil penalties assessed by the Secretary under section 502(c)(7) of the Act for failure or refusal to provide notice of a blackout period to affected participants and beneficiaries in accordance with section 101(i) of the Act and § 2520.101–3 of this chapter.

(2) For purposes of this section, a failure or refusal to provide a notice of blackout period shall mean a failure or refusal, in whole or in part, to provide notice of a blackout period to an affected plan participant or beneficiary at the time and in the manner prescribed by section 101(i) of the Act and § 2520.101–3 of this chapter.

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(7) of the Act for each separate violation shall be determined by the Department of Labor, taking into consideration the degree and/or willfulness of the failure or refusal to provide a notice of blackout period. However, the amount assessed for each violation under section 502(c)(7) of the Act shall not exceed $100 a day, computed from the date of the administrator's failure or refusal to provide a notice of blackout period up to and including the date that is the final day of the blackout period for which the notice was required.

(2) For purposes of calculating the amount to be assessed under this section, a failure or refusal to provide a notice of blackout period with respect to any single participant or beneficiary shall be treated as a separate violation under section 101(i) of the Act and § 2520.101–3 of this chapter.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(7) of the Act, the Department shall provide to the

administrator of the plan a written notice indicating the Department's intent to assess a penalty under section 502(c)(7) of the Act, the amount of such penalty, the number of participants and beneficiaries on which the penalty is based, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the administrator complied with the requirements of section 101(i) of the Act or on a showing by the administrator of mitigating circumstances regarding the degree or willfulness of the noncompliance.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have thirty (30) days from the date of service of the notice, as described in paragraph (i) of this section, to file a statement of reasonable cause explaining why the penalty, as calculated, should be reduced, or not be assessed, for the reasons set forth in paragraph (d) of this section. Such statement must be made in writing and set forth all the facts alleged as reasonable cause for the reduction or nonassessment of the penalty. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure to file a statement of reasonable cause within the 30 day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice of intent, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(7) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.131(g) of this chapter, forty-five (45) days from the date of service of the notice.

(g) *Notice of determination on statement of reasonable cause.* (1) The Department, following a review of all of the facts in a statement of reasonable cause alleged in support of no assessment or a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its determination on the statement of reasonable cause and its determination whether to waive the penalty in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty assessment, not to exceed the amount described in paragraph (c) of this section. This notice is a "pleading" for purposes of § 2570.131(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department's determination to assess a penalty, shall become a final order, within the meaning of § 2570.131(g) of this chapter, forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of § 2570.131(g) of this chapter, if, within thirty (30) days from the date of the service of the notice, the administrator or a representative thereof files a request for a hearing under §§ 2570.130 through 2570.141 of this chapter, and files an answer to the notice. The request for hearing and answer must be filed in accordance with § 2570.132 of this chapter and § 18.4 of this title. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements.* (1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five (5) days shall be added to the time allowed by these rules for the filing of a statement or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or Express Mail;

(ii) Upon receipt by the delivery service, if accomplished using a "designated private delivery service" within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to provide a notice of blackout period under section 101(i) of the Act and its implementing regulations (§ 2520.101–3 of this chapter), all such persons shall be jointly and severally liable for such failure.

(2) Any person, or persons under paragraph (j)(1) of this section, against whom a civil penalty has been assessed under section 502(c)(7) of the Act, pursuant to a final order, within the meaning of § 2570.131(g) of this chapter, shall be personally liable for the payment of such penalty.

(k) *Cross-reference.* See §§ 2570.130 through 2570.141 of this chapter for procedural rules relating to administrative hearings under section 502(c)(7) of the Act.

PART 2570—PROCEDURAL REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

7. Revise the authority citation for Part 2570 to read as set forth below:

Authority: 29 U.S.C. 1021, 1108, 1132, 1135, 5 U.S.C. 8477; Reorganization Plan No. 4 of 1978; Secretary of Labor's Order 1–87.

Subpart G is also issued under sec. 306(b)(2) of Pub. L. 107–204, 116 Stat. 745.

8. Revise § 2570.61(c) to read as follows:

§ 2570.61 Definitions.

* * * * *

(c) *Answer* means a written statement that is supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to § 2560.502c–2(g) of this chapter.

* * * * *

9. Revise § 2570.64 to read as follows:

§ 2570.64 Consequences of default.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of § 18.5(a) and (b) of this title. Failure of the respondent to file an answer to the notice of determination described in § 2560.502c–2(g) of this chapter within the 30-day period provided by § 2560.502c–2(h) of this chapter shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the notice of determination, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(2) of the Act. Such notice shall then become the final order of the Secretary, within the meaning of § 2570.61(g) of this subpart, forty-five (45) days from the date of service of the notice.

10. Revise § 2570.94 to read as follows:

§ 2570.94 Consequences of default.

For 502(c)(5) civil penalty proceedings, this section shall apply in lieu of § 18.5(a) and (b) of this title. Failure of the respondent to file an answer to the notice of determination described in § 2560.502c–5(g) of this chapter within the 30 day period provided by § 2560.502c–5(h) of this chapter shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the notice of determination, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(5) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.91(g) of this subpart, forty-five (45) days from the date of service of the notice.

11. Revise § 2570.114 to read as follows:

§ 2570.114 Consequences of default.

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.5(a) and (b) of this title. Failure of the respondent to file an answer to the notice of determination described in § 2560.502c–6(g) of this chapter within the 30 day period provided by § 2560.502c–6(h) of this chapter shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the notice of determination, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(6) of the Act. Such notice shall then become the final order of the Secretary, within the meaning of § 2570.111(g) of this subpart, forty-five (45) days from the date of service of the notice.

12. Add a new Subpart G to Part 2570 to read as follows:

Subpart G—Procedures for the Assessment of Civil Penalties under ERISA Section 502(c)(7)

Sec.
2570.130 Scope of rules.
2570.131 Definitions.
2570.132 Service: Copies of documents and pleadings.
2570.133 Parties, how designated.
2570.134 Consequences of default.
2570.135 Consent order or settlement.
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Subpart G—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(7)

§ 2570.130 Scope of rules.

The rules of practice set forth in this subpart are applicable to "502(c)(7) civil penalty proceedings" (as defined in § 2570.131(n) of this subpart) under section 502(c)(7) of the Employee Retirement Income Security Act of 1974, as amended (the Act). The rules of procedure for administrative hearings published by the Department's Office of Administrative Law Judges at Part 18 of this title will apply to matters arising under ERISA section 502(c)(7) except as modified by this subpart. These proceedings shall be conducted as expeditiously as possible, and the parties shall make every effort to avoid delay at each stage of the proceedings.

§ 2570.131 Definitions.

For 502(c)(7) civil penalty proceedings, this section shall apply in lieu of the definitions in § 18.2 of this title:

(a) *Adjudicatory proceeding* means a judicial-type proceeding before an administrative law judge leading to the formulation of a final order;

(b) *Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) *Answer* means a written statement that is supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to § 2560.502c–7(g) of this chapter;

(d) *Commencement of proceeding* is the filing of an answer by the respondent;

(e) *Consent agreement* means any written document containing a specified proposed remedy or other relief acceptable to the Department and consenting parties;

(f) *ERISA* means the Employee Retirement Income Security Act of 1974, as amended;

(g) *Final order* means the final decision or action of the Department of Labor concerning the assessment of a civil penalty under ERISA section 502(c)(7) against a particular party. Such final order may result from a decision of an administrative law judge or the Secretary, the failure of a party to file a statement of reasonable cause described in § 2560.502c–7(e) of this chapter within the prescribed time limits, or the failure of a party to invoke the procedures for hearings or appeals under this title within the prescribed time limits. Such a final order shall constitute final agency action within the meaning of 5 U.S.C. 704;

(h) *Hearing* means that part of a proceeding which involves the submission of evidence, by either oral presentation or written submission, to the administrative law judge;

(i) *Order* means the whole or any part of a final procedural or substantive disposition of a matter under ERISA section 502(c)(7);

(j) *Party* includes a person or agency named or admitted as a party to a proceeding;

(k) *Person* includes an individual, partnership, corporation, employee benefit plan, association, exchange or other entity or organization;

(l) *Petition* means a written request, made by a person or party, for some affirmative action;

(m) *Pleading* means the notice as defined in § 2560.502c–7(g) of this chapter, the answer to the notice, any supplement or amendment thereto, and any reply that may be permitted to any answer, supplement or amendment;

(n) *502(c)(7) civil penalty proceeding* means an adjudicatory proceeding relating to the assessment of a civil penalty provided for in section 502(c)(7) of ERISA;

(o) *Respondent* means the party against whom the Department is seeking to assess a civil sanction under ERISA section 502(c)(7);

(p) *Secretary* means the Secretary of Labor and includes, pursuant to any delegation of authority by the Secretary, any assistant secretary (including the Assistant Secretary for Pension and Welfare Benefits), administrator, commissioner, appellate body, board, or other official; and

(q) *Solicitor* means the Solicitor of Labor or his or her delegate.

§ 2570.132 Service: Copies of documents and pleadings.

For 502(c)(7) penalty proceedings, this section shall apply in lieu of § 18.3 of this title.

(a) *General.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, 800 K Street, NW, Suite 400, Washington, DC 20001–8002, or to the OALJ Regional Office to which the proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties.* All motions, petitions, pleadings, briefs, or other documents shall be filed with the Office of Administrative Law Judges with a copy, including any attachments, to all other parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The Department shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA section 502(c)(7) Proceeding, P.O. Box 1914, Washington, DC 20013. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* Service of orders, decisions and all other documents shall be made by regular mail to the last known address.

(d) *Form of pleadings.* (1) Every pleading shall contain information indicating the name of the Pension and Welfare Benefits Administration (PWBA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Office of Administrative Law Judges and a designation of the type of pleading or paper (*e.g.*, notice, motion to dismiss, etc.). The pleading or paper shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size 8½ x 11 inch paper.

(2) Illegible documents, whether handwritten, typewritten, photocopied, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

§ 2570.133 Parties, how designated.

For 502(c)(7) civil penalty proceedings, this section shall apply in lieu of § 18.10 of this title.

(a) The term "party" wherever used in this subpart shall include any natural person, corporation, employee benefit plan, association, firm, partnership, trustee, receiver, agency, public or private organization, or government agency. A party against whom a civil penalty is sought shall be designated as "respondent." The Department shall be designated as the "complainant."

(b) Other persons or organizations shall be permitted to participate as parties only if the administrative law judge finds that the final decision could directly and adversely affect them or the class they represent, that they may contribute materially to the disposition of the proceedings and their interest is not adequately represented by existing parties, and that in the discretion of the administrative law judge the participation of such persons or organizations would be appropriate.

(c) A person or organization not named as a respondent wishing to participate as a party under this section shall submit a petition to the administrative law judge within fifteen (15) days after the person or organization has knowledge of or should have known about the proceeding. The petition shall be filed with the administrative law judge and served on each person who or organization that has been made a party at the time of filing. Such petition shall concisely state:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner intends to present witnesses.

(d) Objections to the petition may be filed by a party within fifteen (15) days of the filing of the petition. If objections to the petition are filed, the administrative law judge shall then determine whether petitioner has the requisite interest to be a party in the proceedings, as defined in paragraph (b) of this section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the administrative law judge may request all such petitioners to designate a single representative, or he or she may recognize one or more of such petitioners. The administrative law judge shall give each such petitioner, as well as the parties, written notice of the decision on his or her petition. For each petition granted, the administrative law judge shall provide a brief statement of the basis of the decision. If the petition is denied, he or she shall briefly state the grounds for denial and shall then treat the petition as a request for participation as *amicus curiae.*

§ 2570.134 Consequences of default.

For 502(c)(7) civil penalty proceedings, this section shall apply in lieu of § 18.5 (a) and (b) of this title. Failure of the respondent to file an answer to the notice of determination described in § 2560.502c–7(g) of this chapter within the 30 day period provided by § 2560.502c–7(h) of this chapter shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the notice of determination, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(7) of the Act. Such notice shall then become the final order of the Secretary, within the meaning of § 2570.131(g) of this subpart, forty-five (45) days from the date of service of the notice.

§ 2570.135 Consent order or settlement.

For 502(c)(7) civil penalty proceedings, the following shall apply in lieu of § 18.9 of this title.

(a) *General.* At any time after the commencement of a proceeding, but at least five (5) days prior to the date set for hearing, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. The allowance of such a deferral and the duration thereof shall be in the discretion of the administrative law judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of reaching an agreement which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice and the agreement;

(3) A waiver of any further procedural steps before the administrative law judge;

(4) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(5) That the order and decision of the administrative law judge shall be final agency action.

(c) *Submission.* On or before the expiration of the time granted for negotiations, but, in any case, at least five (5) days prior to the date set for hearing, the parties or their authorized representative or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order to the administrative law judge; or

(2) Notify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action subject to compliance with the terms of the settlement; or

(3) Inform the administrative law judge that agreement cannot be reached.

(d) *Disposition.* In the event a settlement agreement containing consent findings and an order is submitted within the time allowed therefor, the administrative law judge shall issue a decision incorporating such findings and agreement within 30 days of his receipt of such document. The decision of the administrative law judge shall incorporate all of the findings, terms, and conditions of the settlement agreement and consent order of the parties. Such decision shall become final agency action within the meaning of 5 U.S.C. 704.

(e) *Settlement without consent of all parties.* In cases in which some, but not all, of the parties to a proceeding submit a consent agreement to the administrative law judge, the following procedure shall apply:

(1) If all of the parties have not consented to the proposed settlement submitted to the administrative law judge, then such non-consenting parties must receive notice, and a copy, of the proposed settlement at the time it is submitted to the administrative law judge;

(2) Any non-consenting party shall have fifteen (15) days to file any objections to the proposed settlement with the administrative law judge and all other parties;

(3) If any party submits an objection to the proposed settlement, the administrative law judge shall decide within 30 days after receipt of such objections whether he shall sign or reject the proposed settlement. Where the record lacks substantial evidence upon which to base a decision or there is a genuine issue of material fact, then the administrative law judge may establish procedures for the purpose of receiving additional evidence upon which a decision on the contested issues may reasonably be based;

(4) If there are no objections to the proposed settlement, or if the administrative law judge decides to sign the proposed settlement after reviewing any such objections, the administrative law judge shall incorporate the consent agreement into a decision meeting the requirements of paragraph (d) of this section.

§ 2570.136 Scope of discovery.

For 502(c)(7) civil penalty proceedings, this section shall apply in lieu of § 18.14 of this title.

(a) A party may file a motion to conduct discovery with the administrative law judge. The motion for discovery shall be granted by the administrative law judge only upon a showing of good cause. In order to establish "good cause" for the purposes of this section, a party must show that the discovery requested relates to a genuine issue as to a material fact that is relevant to the proceeding. The order of the administrative law judge shall expressly limit the scope and terms of discovery to that for which "good cause" has been shown, as provided in this paragraph.

(b) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon showing that the party seeking discovery has substantial need of the materials or information in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials or information by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representatives of a party concerning the proceeding.

§ 2570.137 Summary decision.

For 502(c)(7) civil penalty proceedings, this section shall apply in lieu of § 18.41 of this title.

(a) *No genuine issue of material fact.* (1) Where no issue of a material fact is found to have been raised, the administrative law judge may issue a decision which, in the absence of an appeal pursuant to §§ 2570.139 through 2570.141 of this subpart, shall become a final order.

(2) A decision made under paragraph (a) of this section shall include a statement of:

(i) Findings of fact and conclusions of law, and the reasons therefor, on all issues presented; and

(ii) Any terms and conditions of the rule or order.

(3) A copy of any decision under this paragraph shall be served on each party.

(b) *Hearings on issues of fact.* Where a genuine question of a material fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing.

§ 2570.138 Decision of the administrative law judge.

For 502(c)(7) civil penalty proceedings, this section shall apply in lieu of § 18.57 of this title.

(a) *Proposed findings of fact, conclusions, and order.* Within twenty (20) days of the filing of the transcript of the testimony, or such additional time as the administrative law judge may allow, each party may file with the administrative law judge, subject to the judge's discretion, proposed findings of fact, conclusions of law, and order together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the administrative law judge.* Within a reasonable time after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within thirty (30) days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the administrative law judge shall make his or her decision. The decision of the administrative law judge shall include findings of fact and conclusions of law with reasons therefor upon each material issue of fact or law presented on the record. The decision of the administrative law judge shall be based upon the whole record. In a contested case in which the Department and the Respondent have presented their positions to the administrative law judge pursuant to the procedures for 502(c)(7) civil penalty proceedings as set forth in this subpart, the penalty (if any) which may be included in the decision of the administrative law judge shall be limited to the penalty expressly provided for in section 502(c)(7) of ERISA. It shall be supported by reliable and probative evidence. The decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704 unless an appeal is made pursuant to the procedures set forth in §§ 2570.139 through 2570.141 of this subpart.

§ 2570.139 Review by the Secretary.

(a) The Secretary may review a decision of an administrative law judge. Such a review may occur only when a party files a notice of appeal from a decision of an administrative law judge within twenty (20) days of the issuance of such decision. In all other cases, the decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704.

(b) A notice of appeal to the Secretary shall state with specificity the issue(s) in the decision of the administrative law judge on which the party is seeking review. Such notice of appeal must be served on all parties of record.

(c) Upon receipt of a notice of appeal, the Secretary shall request the Chief Administrative Law Judge to submit to him or her a copy of the entire record before the administrative law judge.

§ 2570.140 Scope of review.

The review of the Secretary shall not be a *de novo* proceeding but rather a review of the record established before the administrative law judge. There shall be no opportunity for oral argument.

§ 2570.141 Procedures for review by the Secretary.

(a) Upon receipt of the notice of appeal, the Secretary shall establish a briefing schedule which shall be served on all parties of record. Upon motion of one or more of the parties, the Secretary may, in his or her discretion, permit the submission of reply briefs.

(b) The Secretary shall issue a decision as promptly as possible after receipt of the briefs of the parties. The Secretary may affirm, modify, or set aside, in whole or in part, the decision on appeal and shall issue a statement of reasons and bases for the action(s) taken. Such decision by the Secretary shall be final agency action within the meaning of 5 U.S.C. 704.

Signed at Washington, D.C., this 11th day of October, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.J. Res. 123/P.L. 107–244

Making further continuing appropriations for the fiscal year 2003, and for other purposes. (Oct. 18, 2002; 116 Stat. 1503)

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[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

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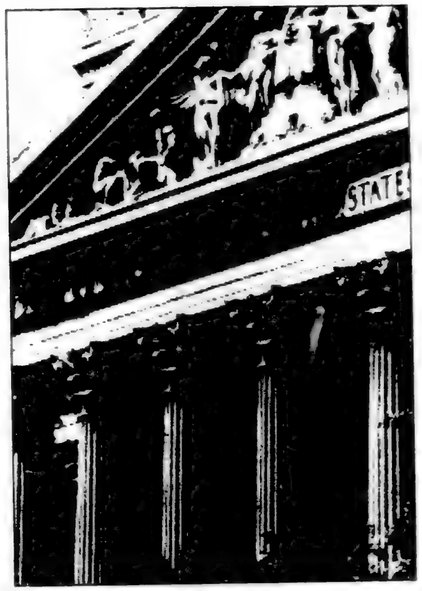

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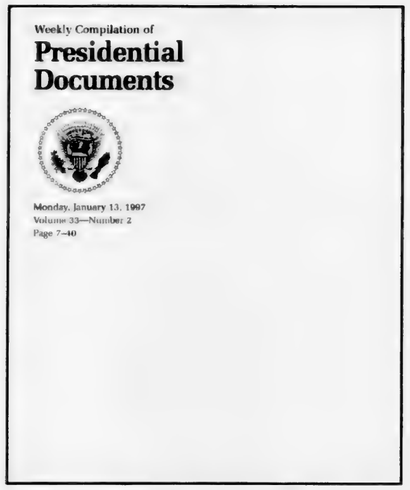

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Title 3—

The President

Proclamation 7611 of October 17, 2002

Year of Clean Water, 2002–2003

By the President of the United States of America

A Proclamation

On October 18, 2002, our Nation marks the 30th anniversary of the Clean Water Act and begins the Observance of the Year of Clean Water. This landmark environmental legislation has been central to the important progress we have made as a Nation in improving the quality of our drinking water and the health of our waters, wetlands, and watersheds. During this time, we renew our commitment to building on these successes and to developing new approaches and partnerships to meet our environmental challenges.

The Clean Water Act of 1972 and the Safe Drinking Water Act of 1974 have helped our citizens enjoy one of the safest and cleanest water supplies in the world. Under the Clean Water Act, the Federal Government has provided more than $80 billion in wastewater assistance to the States and localities. This fundamentally important investment has ensured that 165 million citizens now benefit from modern sewage treatment, up from 86 million in 1968. The important advances in waste water treatment since the Clean Water Act's passage constitute one of the major achievements in modern American public health.

In the last 30 years, the overall health of our marine waters, lakes, rivers, streams, and wetlands has also dramatically improved. The Federal Government has cooperated with States, tribes, local communities, businesses, and concerned individuals to reduce significantly all forms of water pollution, making our waters better suited for recreation and other pursuits and more hospitable to aquatic life. Recent studies show that we are close to achieving our goal of halting overall wetlands loss, and we are hopeful that in the near future we will begin increasing the overall function and value of our wetlands. As we look to the challenges ahead, the Clean Water Act will be an important mainstay and tool for further progress.

As part of our Nation's long-term commitment to protecting our environment and natural resources, we must continue to focus on cleaner air, water, and land; healthier citizens, and vibrant ecosystems. We will continue to collaborate with private organizations, landowners, and all levels of government to encourage the development of new technologies and innovative approaches to protecting our environment. Through policies and programs that recognize regional differences, employ market forces, and empower individuals to be good stewards of the earth, we can and will meet the environmental challenges of the future.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the year beginning October 18, 2002, as the Year of Clean Water in commemoration of the 30th anniversary of the Clean Water Act. I call upon all Americans to observe this year with appropriate programs, ceremonies, and activities, and to join in setting good examples of environmental stewardship in our daily lives.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

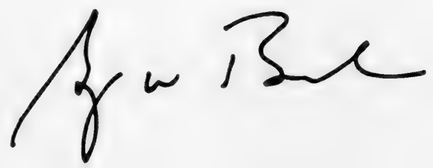

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245–AE88

Small Business Investment Companies

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: This final rule allows a Small Business Investment Company (SBIC) to assume control over a small business concern, without notice to the SBA, and to retain such control for a period of up to seven years, or longer with SBA approval. The final rule also allows an SBIC to sell equity securities in a portfolio concern to a competitor of that portfolio concern.

DATES: This rule is effective on November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, Director, Office of Licensing and Program Standards, Investment Division, Office of Capital Access, (202) 205–7559 or *carol.fendler@sba.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Small Business Investment Corrections Act of 2000, Public Law 106–554, Title IV, section 402, amended section 103(5)(A)(i) of the Small Business Investment Act (Act) to clarify that a small business concern controlled by venture capital firms, including licensed small business investment companies (SBICs), does not for that reason cease to qualify as independently owned and operated. Under the statute, a business would be considered a small business concern "regardless of the allocation of control during the investment period under any investment agreement between the business concern and the entity making the investment." (15 U.S.C. 662(5)(A)(i)).

On May 17, 2002, SBA published in the **Federal Register** a proposed rule (67 FR 35055) to simplify its regulation governing control of a small business and bring it into conformity with the Act, as amended in 2000. The proposed rule also removed a regulatory restriction on the right of an SBIC to sell securities of a small business to a competitor of that business.

SBA received six comments on the proposed rule. These are discussed in the following section-by-section analysis.

II. Section-by-Section Analysis

SBA amends § 107.865 by revising the heading. This change recognizes that SBICs are now allowed to exercise control over a Small Business.

SBA amends paragraph (a) of § 107.865 to allow an SBIC to exercise control over a Small Business. The period of control is limited to the seventh anniversary of the date on which control was initially acquired. This is a change from the proposed rule, which would have permitted control for up to five years.

SBA received six comments on the proposed rule. Four of those submitted comments supported the proposed rule as drafted. The other two that commented supported the concept that SBICs should be permitted to take control of portfolio companies but indicated that the proposed five year period of control was insufficient. One proposed that a seven year time frame would be more appropriate, particularly where investments are in seed stage companies. This commenter indicated that such investments typically have a 4–7 year investment horizon. SBA recognizes that some investments, particularly earlier stage investments, may require additional time for the investment to mature. Recent historical experience indicates that the percentage of SBIC investments in start-up businesses has ranged from approximately 30 percent to 45 percent. By including add-on investments in companies that were originally financed as start-ups by SBICs, the percentage increases to over 50 percent. In view of this investing pattern and the potential need to grow and support start-up businesses, SBA has modified the rule to allow for control to be exercised for a period of seven years.

The final commenter stated that a ten year period would be more appropriate than the proposed five year term, for a number of reasons. First, the commenter pointed out that market conditions may require SBICs to seek extensions of the control period beyond five years. The commenter expected that SBA would likely grant these extension requests, but suggested that SBA would be spared the expenditure of scarce resources needed to address such requests by adopting the ten year period at the outset. SBA believes that extension requests will be considerably less frequent with the change to a seven-year control period, and believes that it has the resources to respond to those requests that will be received.

The commenter also noted that a ten-year term would be consistent with the regulations promulgated by the Board of Governors of the Federal Reserve System and the Department of Treasury in implementing the Gramm-Leach-Bliley Act (GLB), Public Law 106–102. The commenter suggested that a differing time period for the exercise of control between SBA's regulations and those implementing GLB may result in the SBIC program being less attractive to banks and may limit their participation in the program.

SBA believes that the SBIC program will continue to be an attractive option for banks interested in making equity investments. Although the regulations promulgated under GLB do permit control for a period of up to ten years, the restrictions on the exercise and scope of that control are greater than in the SBIC program. For example, banks taking controlling positions in a portfolio company under GLB are prohibited from managing or operating that portfolio company. SBICs, however, are not subject to that same type of restriction.

SBA also believes that banks will remain interested in the SBIC program for reasons other than the ability to take controlling positions in their investments. Many banks find the SBIC program to be an attractive option since investment in an SBIC by a bank is presumed to meet the standards for a qualified investment for purposes of investment performance under the Community Reinvestment Act regulations. Furthermore, many banks continue to invest in SBICs that obtain

financial assistance from SBA at favorable rates.

In adopting seven years as the allowable control period, SBA also considered the structure of the SBIC program and SBICs. For most SBICs, the projected investment cycle is a 3–5 year investing program with exits anticipated after a 3–5 year holding period. Since SBICs typically do not expect to hold investments for ten years, a control period of that length should not generally be necessary. Although SBA recognizes that company and market conditions may impact the ability to exit an investment, SBA believes that a seven year control period should be sufficient.

SBA amends § 107.865(b) to clarify that this paragraph, which sets forth conditions that create a presumption of control over a small business concern, relates only to control based on ownership of voting securities. Control may still exist by other means as outlined in § 107.865 (a). No comments were received on this change.

SBA amends § 107.865(d) to allow for extension of the control period in certain circumstances, with SBA's approval. One commenter indicated that the reasons for granting an extension should be expanded to allow for consideration of the financial stability of the SBIC in addition to the financial stability of the portfolio concern. SBA recognizes that relinquishment of control may be difficult to accomplish; however, SBA also recognizes that the financial stability of the SBIC may have no relationship to its control position in a particular portfolio concern and that allowing control to continue may be viewed as being adverse to the interests of the portfolio concern. SBA will consider the reasons why divestiture cannot be completed within seven years when reviewing the request for an extension, and will consider the best interests of both the SBIC and the small business concern. SBA believes the regulations as promulgated have sufficient breadth to allow for a number of considerations. Therefore, SBA does not believe that the financial stability of the SBIC should be a specifically enunciated consideration.

SBA amends § 107.865 by deleting paragraphs (e) and (f) and redesignating paragraph (g) as (e). The deleted paragraphs are no longer necessary.

SBA amends § 107.885 by removing paragraph (b) and removing the designation "(a)". This change allows a SBIC to sell its interests in a portfolio concern to a competitor of that portfolio concern. This change recognizes that in the venture capital industry a likely exit for an investment is the sale of an interest in a portfolio concern to a competitor of the portfolio concern. Three commenters addressed this provision directly, all favorably.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Compliance With Executive Order 12866

The Office of Management and Budget (OMB) did not review this rule as a "significant" regulatory action under Executive Order 12866. The rule implements technical corrections to the SBIC program. The rule will not have an annual effect on the economy of $100 million or more, adversely affect the economy in a material way, create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of loan programs or other governmental programs, or raise novel legal or policy issues arising out of legal mandates or the President's priorities.

Compliance With Executive Order 12988

For purposes of Executive Order 12988, the SBA has determined that this rule was drafted, to the extent practicable, in accordance with the standards set forth in section 3 of that order.

Compliance With Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that the rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, SBA has determined that the rule does not have sufficient federalism implications warranting the preparation of a Federalism Assessment.

Compliance with Paperwork Reduction Act, 44 U.S.C. Ch. 35

The rule does not impose any new information collection requirements from SBA which require approval by OMB under the Paperwork Reduction Act, 44 U.S.C. Ch. 35.

Compliance with the Regulatory Flexibility Act, 5 U.S.C. 601–612

SBA determined that the rule will not have a significant impact on a substantial number of small entities. SBA invited comments on this determination but received none.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small Businesses.

For the reasons stated in the preamble, amend part 107 of title 13 of the Code of Federal Regulations as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

Authority: 15 U.S.C. 681 *et seq.*, 683, 687(c), 687b, 687d, 687g, and 687m.

2. In § 107.865, revise the section heading and paragraphs (a), (b), and (d), remove paragraphs (e) and (f), and redesignate paragraph (g) as paragraph (e) to read as follows:

§ 107.865 Control of a small business by a licensee.

(a) *In general.* You, or you and your Associates (in the latter case, the "Investor Group"), may exercise Control over a Small Business for purposes connected to your investment, through ownership of voting securities, management agreements, voting trusts, majority representation on the board of directors, or otherwise. The period of such Control will be limited to the seventh anniversary of the date on which such Control was initially acquired, or any earlier date specified by the terms of any investment agreement.

(b) *Presumption of control.* Control over a Small Business based on ownership of voting securities will be presumed to exist whenever you or the Investor Group own or control, directly or indirectly:

(1) At least 50 percent of the outstanding voting securities, if there are fewer than 50 shareholders; or

(2) More than 25 percent of the outstanding voting securities, if there are 50 or more shareholders; or

(3) At least 20 percent of the outstanding voting securities, if there are 50 or more shareholders and no other party holds a larger block.

* * * * *

(d) *Extension of Control.* With SBA's prior written approval you, or the Investor Group, may retain Control for such additional period as may be reasonably necessary to complete divestiture of Control or to ensure the financial stability of the portfolio company.

* * * * *

§ 107.885 [Amended]

3. Amend § 107.885 by removing paragraph (b) and removing the paragraph designation "(a)".

Dated: October 10, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–26546 Filed 10–21–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–06–AD; Amendment 39–12918; AD 2002–21–12]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Agusta S.p.A. (Agusta) helicopters that requires establishing or reducing the life limits of various parts listed in the airworthiness limitations section (ALS) of the maintenance manual. This amendment is prompted by the results of fatigue tests and analysis to determine life limits for various parts. The actions specified by this AD are intended to establish or reduce the life limits to prevent failure of specified parts and subsequent loss of control of the helicopter.

DATES: Effective November 26, 2002.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the Agusta Model A109E helicopters was published in the **Federal Register** on July 15, 2002 (67 FR 46425). That action proposed to require establishing or reducing the life limits of specified parts of the main transmission assembly and supports, the tail rotor assemblies, the main rotor control bolt, and the fuselage left-hand elevator, and revising the ALS of the maintenance manual accordingly.

This helicopter model is manufactured in Italy and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. The FAA has reviewed all available information and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that this AD will affect 31 helicopters of U.S. registry. The total cost of the 11 parts listed in Table 1 of this AD is approximately $41,294. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,280,114, assuming that all 11 parts are replaced on each helicopter in the entire fleet. There will be no additional labor costs because the parts will be replaced during the normal maintenance process.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–21–12 Agusta S.p.A.: Amendment 39–12918. Docket No. 2002–SW–06–AD.

Applicability: Model A109E helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 100 hours time-in-service (TIS), unless accomplished previously.

To prevent failure of specified parts of the main transmission assembly and supports, the tail rotor assemblies, the main rotor control bolt, or the fuselage left-hand elevator, and subsequent loss of control of the helicopter, accomplish the following:

(a) Replace each part listed in Table 1 with an airworthy part on or before reaching the specified hours TIS as shown in Table 1 of this AD as follows:

TABLE 1

Part Name	Part Number	Hours TIS
(1) Main transmission gear pinion	109–0403–05–111	6,100
(2) Main transmission gear driver	109–0403–04–3	8,300
(3) Main transmission shaft assembly	109–0405–76–107	25,000
(4) Tail rotor retention strap assembly	109–8131–07–1	1,800
(5) Tail rotor hub assembly	109–0131–06–7	3,000
(6) Tail rotor 90-degree gearbox pinion gear	109–0433–01–107	6,100

Part Name	Part Number	Hours TIS
(7) Tail rotor 90-degree gearbox crown gear	109–0443–01–103	11,700
(8) Main rotor control bolt	109–0110–90–103	5,000
(9) Fuselage left-hand elevator	109–0200–02–93	4,400
(10) Main transmission support aft rod	109–0325–03–113	35,000
(11) Main transmission support lower fitting	109–0325–08–1	30,000

(b) This AD revises the airworthiness limitations section of the maintenance manual by establishing or reducing the life limit as specified in Table 1 of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits will not be issued.

(e) This amendment becomes effective on November 26, 2002.

Issued in Fort Worth, Texas, on October 10, 2002.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–26665 Filed 10–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–25–AD; Amendment 39–12905; AD 2002–20–08]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes AD 2000–09–13, which currently requires you to inspect the fuel quantity indication system for damage to the insulation of the wiring within the fuel tanks on British Aerospace Jetstream Model 3201 airplanes and requires you to repair or replace damaged wiring. This AD retains the actions of AD 2000–09–13 and requires you to replace the fuel quantity indication system wiring harness with improved design parts, inspect the fuel boost pump area for damage, and replace any damaged component. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to detect, correct, and prevent damage to the insulation of the wiring within the fuel tanks of the fuel quantity indication system. If not detected, corrected, and prevented, such damaged wiring could result in damage to the fuel boost pump and a malfunction in the cockpit indicators and/or electrical sparking inside the fuel tank with consequent fire or explosion.

DATES: This AD becomes effective on December 18, 2002.

The Director of the Federal Register previously approved the incorporation by reference of British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999; and British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999, Revision No. 1: November 12, 1999, as of June 23, 2000 (65 FR 30863, May 15, 2000).

The Director of the Federal Register approved the incorporation by reference of British Aerospace Jetstream Service Bulletin 28–JM8226, Original Issue: March 11, 2002, as of December 18, 2002.

ADDRESSES: You may get the service information referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–25–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

Reports of damage to the insulation of the wiring within the wing fuel tanks of the fuel quantity indication system on two British Aerospace Jetstream Model 3201 airplanes caused us to issue AD 2000–09–13, Amendment 39–11722 (65 FR 30863, May 15, 2000). This AD requires you to accomplish the following on all British Aerospace Jetstream Model 3201 airplanes:

—Inspect the fuel quantity indication system for damage to the insulation of the wiring within the fuel tanks; and

—Repair or replace damaged wiring.

These actions must be accomplished in accordance with British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999; or British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999; Revision No. 1: November 12, 1999.

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may continue to exist in the fuel quantity insulation wiring area on all British Aerospace Jetstream Model 3201 airplanes. The CAA reports that the existing fuel quantity indication system wiring harness is composed of "equipment grade" wiring instead of "aircraft grade" wiring. This "equipment grade" wiring has a thinner insulation wall and will eventually deteriorate regardless of whether repaired as required by AD 2000–09–13.

In addition, the current wiring configuration can rub on the components in the fuel boost pump area and cause consequent damage.

What Is the Potential Impact if FAA Took No Action?

If not detected, corrected, and prevented, damage to the insulation of the wiring within the fuel tanks of the fuel quantity indication system could result in the following:

—Damage to the fuel boost pump;

—A malfunction in the cockpit indicators and/or electrical sparking inside the fuel tank; and

—A consequent fire or explosion.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all British Aerospace Jetstream Model 3201 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 9, 2002 (67 FR 51797). The NPRM proposed to supersede Airworthiness Directive (AD) 2000–09–13, which currently requires you to inspect the fuel quantity indication system for damage to the insulation of the wiring within the fuel tanks on British Aerospace Jetstream Model 3201 airplanes and requires you to repair or replace damaged wiring.

This proposed AD would retain the actions of AD 2000–09–13 and require you to replace the fuel quantity indication system wiring harness with improved design parts, inspect the fuel boost pump area for damage, and replace any damaged component.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 200 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection and replacement:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
130 workhours × $60 = $7,800	$1,200 per airplane	$9,000	$9,000 × 200 = $1,800,000

The FAA has no method of determining the number of repairs each owner/operator would incur based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage would vary on each airplane.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2000–09–13, Amendment 39–11722 (65 FR 30863, May 15, 2000) and adding a new AD to read as follows:

2002–20–08 British Aerospace: Amendment 39–12905; Docket No. 2002–CE–25–AD; Supersedes AD 2000–9–13, Amendment 39–11722.

(a) *What airplanes are affected by this AD?* This AD affects Jetstream Model 3201 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect, correct, and prevent damage to the insulation of the wiring within the fuel tanks of the fuel quantity indication system. If not detected, corrected, and prevented, such damaged wiring could result in damage to the fuel boost pump and a malfunction in the cockpit indicators and/or electrical sparking inside the fuel tank with consequent fire or explosion.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the fuel quantity indication system for damage to the insulation of the wiring within the fuel tanks. Damage is defined as corrosion (indicated by a dark stain), cuts, or nicks.	At whichever of the following occurs first, unless already accomplished: within the next 200 hours time-in-service (TIS) after June 23, 2002 (the effective date AD 200–09–13); or on or before August 21, 2000 (60 days after the effective date of AD 2000–09–13).	In accordance with either British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999; or British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999, Revision No. 1: November 12, 1999.
(2) Replace or repair any damaged wiring	Prior to further flight after the inspection required by paragraph (d)(1) of this AD.	In accordance with either British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999; or British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999, Revision No. 1: November 12, 1999.
(3) Inspect the fuel boost pump area for damage and replace any damaged component.	Inspect within the next 12 months after December 18, 2002 (the effective date of this AD), unless already accomplished. Replace any damaged component prior to further flight after the inspection.	In accordance with British Aerospace Jetstream Service Bulletin 28–JM8226, Original Issue: March 11, 2002.
(4) Replace the fuel quantity indication system wiring harness with improved design parts and reroute the wiring harness installation. This replacement incorporates Jetstream Modification JM8226.	Within the next 12 months after December 18, 2002 (the effective date of this AD), unless already accomplished.	In accordance with British Aerospace Jetstream Service Bulletin 28–JM8226, Original Issue: March 11, 2002.
(5) Only install a fuel quantity indication system wiring harness that incorporates Jetstream Modification JM8226 (or FAA–approved equivalent parts).	As of December 18, 2002 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* (1) Actions required by this AD must be done in accordance with British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999; British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999, Revision No. 1: November 12, 1999; and British Aerospace Jetstream Service Bulletin 28–JM8226, Original Issue: March 11, 2002.

(i) The Director of the Federal Register approved the incorporation by reference of British Aerospace Jetstream Service Bulletin 28–JM8226, Original Issue: March 11, 2002, under 5 U.S.C. 552(a) and 1 CFR part 51.

(ii) The Director of the Federal Register previously approved the incorporation by reference of British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999; and British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999, Revision No. 1: November 12, 1999, as of June 23, 2000 (66 FR 30863, May 15, 2000).

(2) You may get copies from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on December 18, 2002.

Note 2: The subject of this AD is addressed in CAA AD 001–03–2002, as specified in British Aerospace Jetstream Service Bulletin 28–JM8226, Original Issue: March 11, 2002.

Issued in Kansas City, Missouri, on October 8, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–26370 Filed 10–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–37–AD; Amendment 39–12919; AD 94–20–04 R1]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A and V35B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 94–20–04, which currently requires ruddervator inspections, modifications, and operating limitations on certain Raytheon Aircraft Company (Raytheon) Beech Models 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B airplanes. This AD is the result of information received from the field on the ability to accomplish and understand the existing AD. This AD will condense and clarify information presented in AD 94–20–04 and will remove Beech Models 35, 35R, A35, and B35 airplanes from the applicability of AD 94–20–04. We are incorporating the actions that apply to Beech Models 35, 35R, A35, and B35 aifplanes into another AD action. The actions specified by this AD are intended to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

DATES: This AD becomes effective on December 10, 2002.

The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulations as of November 28, 1994 (59 FR 49785, September 30, 1994).

ADDRESSES: You may get the service information referenced in this AD from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 93–CE–37–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA Taken Any Action on the Raytheon Airplane Ruddervator System to This Point?

The following paragraphs describe ADs that FAA issued to address the V-tail structure on Raytheon Beech 35 series airplanes.

AD 94–20–04, Amendment 39–9032 (59 FR 49785, September 30, 1994), currently requires the following on certain Beech Models 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B airplanes:

—Checking the ruddervator static balance and rebalancing the ruddervators when the balance is not in accordance with manufacturer's specifications or anytime the ruddervators are repaired or repainted;

—Repetitively inspecting the fuselage bulkheads for damage and replacing any damaged parts;

—Installing stabilizer reinforcements for some airplane models, as applicable;

—Fabricating and installing airspeed limitation placards;

—Incorporating certain airspeed limitations into the airplane flight manual/pilot's operating handbook (AFM/POH);

—inspecting the empennage, aft fuselage, and ruddervator control system for damage and replacing or repairing any damaged parts; and

—Ensuring the accuracy of the airplane basic weight and balance information and immediately correcting any discrepancies.

Accomplishment of these actions is required in accordance with the instructions to either Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, as applicable and as specified in Beech Service Bulletin (SB) No. 2188, dated May, 1987, and the applicable maintenance and shop manuals.

AD 98–13–02, Amendment 39–10590 (63 FR 31916, June 11, 1998), currently requires operating limitations in order to address ruddervator problems on Beech Models 35, A35, B35, and 35R airplanes.

What Has Happened Since AD 94–20–04 and AD 98–13–02 To Initiate This Action?

AD 94–20–04 contains minor errors and FAA receives periodic calls from the public for clarification.

In addition, Raytheon has issued Recommended Service Bulletin No. SB 27–3358, Issued: February, 2000, which includes procedures for inspecting the aft fuselage, ruddervator, and related systems for acceptable condition and rebalancing the ruddervators to new specifications (upper limit reduced from 19.8 to 18 inch-pounds (tail heavy)). Accomplishing these inspections will eliminate the need for the operating limitations of AD 98–13–02.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 26, 2001 (66 FR 16422). The NPRM proposed to revise AD 94–20–04, Amendment 39–9032, to condense and clarify the information presented in that AD, and to remove Beech Models 35, 35R, A35, and B35 airplanes from the Applicability of AD 94–20–04. The NPRM also proposed to incorporate the actions applicable to Beech Models 35, 35R, A35, and B35 airplanes into another AD action.

The operating limitations from AD 94–20–04 for the Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B airplanes are not included in this AD because the other actions retained from AD 94–20–04 make them unnecessary.

The repetitive inspections currently required by AD 94–20–04 for Beech Models 35, 35R, A35, and B35 airplanes will be incorporated into another AD action.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Correct Typographical Error in NPRM

What Is the Commenter's Concern?

One commenter points out that the phrase "airplane basic weight" is referred to as "airplane basis weight" in the **Federal Register**.

What Is FAA's Response to the Concern?

The FAA concurs. The original documents that FAA submitted to the Office of the Federal Register were correct. The Government Printing Office (GPO) made a typographical error. We will ensure that this is corrected in the final rule.

Comment Issue No. 2: Clarify When To Set Elevator Controls, Rudder and Tab System Controls, Cable Tensions, and Rigging

What Is the Commenter's Concern?

One commenter states that it is unclear when to set the elevator controls, rudder and tab system controls, cable tensions, and rigging. The commenter specifically asks whether this is necessary at every required 100-hour TIS inspection or

only when repair or replacement is necessary.

What Is FAA's Response to the Concern?

The FAA concurs that the way it is currently written could be confusing. You should accomplish these actions at every 100-hour TIS inspection. We will rewrite this section of the AD to clarify this.

Comment Issue No. 3: Should This AD or Similar Action Affect Models 35, 35R, A35, and B35 Airplanes

What Is the Commenter's Concern?

The commenter asks whether the actions of Raytheon Service Bulletin 27–3358 should be incorporated on Models 35, 35R, A35, and B35 airplanes.

What Is FAA's Response to the Concern?

The actions of Raytheon Service Bulletin 27–3358 should be incorporated on Models 35, 35R, A35, and B35 airplanes. This is required in another AD action. The following is taken from Note 1 of the NPRM:

Beech Models 35, 35R, A35, B35 airplanes were included in the Applicability of AD 94–20–04 . We have removed Beech Models 35, 35R, A35, and B35 airplanes from the Applicability section of this AD and incorporated the actions applicable to these airplanes into another AD action.

We will add a statement about Raytheon Service Bulletin 27–3358 to this note in the final rule AD action.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above and minor editorial corrections. We determined that these changes and minor corrections:

—Will not change the meaning of the AD; and

—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 10,200 airplanes in the U.S. registry.

What is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the initial inspections. These cost figures are exactly the same as what is currently required by AD 94–20–04. This AD presents no new costs upon the public:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
40 workhours × $60 per hour = $2,400	Not Applicable	$2,400	$24,480,000.

The above figures are based only on the initial inspections and do not take into account the cost of repetitive inspections or adjustments, repairs, or replacements that will be necessary based on the results of the inspections. We have no way of determining the number of repetitive inspections each owner/operator of the affected airplanes will incur or what adjustments, repairs, or replacements will be necessary based on the results of the inspections.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 94–20–04, Amendment 39–9032 (59 FR 49785, September 30, 1994), and by adding a new AD to read as follows:

94–20–04 R1 Raytheon Aircraft Company (Beech Aircraft Corporation formerly held Type Certificate (TC) No. A–777 and TC No. 3A15): Amendment 39–12919; Docket No. 93–CE–37–AD; Revises AD 94–20–04, Amendment 39–9032.

(a) *What airplanes are affected by this AD?* This AD affects the following airplanes that are certificated in any category:

(1) Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, and P35 airplanes, all serial numbers; and

(2) Beech Models S35, V35, V35A, and V35B airplanes, all serial numbers, that do not have the straight tail conversion modification incorporated in accordance with Supplemental Type Certificate (STC) SA2149CE.

Note 1: Beech Models 35, 35R, A35, B35 airplanes were included in the Applicability of AD 94–20–04 . We have removed Beech Models 35, 35R, A35, and B35 airplanes from the Applicability section of this AD and incorporated the actions applicable to these airplanes into another AD action. Part of this other AD action is the incorporation of Raytheon Service Raytheon Service Bulletin 27–3358.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraphs (a), (a)(1), and (a)(2) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Verify that the ruddervator balance is within the manufacturer's specified limits as defined in the applicable shop or maintenance manual and balance the ruddervator control surfaces, as necessary	Within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04) and thereafter prior to further flight after the ruddervators are repaired or repainted (even if stripes are added or paint is touched up)	Verify in accordance with the applicable shop or maintenance manual. Balance the ruddervator control surfaces in accordance with Section 3 of Beech Shop Manual 35–590096B19, or subsequent revisions.
(2) Visually inspect the empennage, aft fuselage, and ruddervator control system for damage (i) Repair or replace any damaged parts; and (ii) Set the elevator controls, rudder and tab system controls, cable tensions, and rigging	Inspect and set the controls, tension, and rigging within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04) and thereafter at intervals not to exceed 100 hours TIS. Accomplish any repairs and replacements prior to further flight after the applicable inspection	In accordance with the procedures and as specified in the instructions to Beech Kit 35–4017–1 "Kit Information Empennage and Aft Fuselage Inspection", as specified in Beech Service Bulletin No. 2188, dated May, 1987.
(3) Remove all external stabilizer reinforcements installed during incorporation of either Supplemental Type Certificate (STC) SA845GL, STC SA846GL, STC SA1650CE, STC SA2286NM, or STC SA2287NM, as applicable (i) Seal or fill any residual holes with appropriate size rivets (ii) The internal stub spar incorporated through STC SA1649CE and STC SA1650CE may be retained (iii) The external angles incorporated through STC SA1649CE may also be retained by properly trimming the leading edges section to permit installation of the stabilizer reinforcement referenced in paragraph (d)(4)(i) of this AD (iv) For the Beech Models S35, V35, V35A, and V35B airplanes, you may retain and use the tail-safe external angles that were installed in accordance with STC SA1649CE instead of the stabilizer reinforcement specified in paragraph (d)(4)(i) of this AD.	Within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04), unless already accomplished	In accordance with the applicable maintenance information.
(4) Accomplish the following: (i) Install stabilizer reinforcements; (ii) Set the elevator nose-down trim; and (iii) Replace the ruddervator tab control cables with larger diameter cables	Within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04), unless already accomplished	In accordance with the instructions to RAC Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, as applicable and as specified in Beech SB No. 2188, dated May, 1987.
(5) Verify the accuracy of the airplane basic weight and balance information and correct any discrepancies	Accomplish the airplane basic weight and balance accuracy verification within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04), unless already accomplished. Correct any discrepancies prior to further flight after the verification	Use the procedures contained in the Appendix to this AD.

(e) *Can I comply with this AD in any other way?* (1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) Alternative methods of compliance approved in accordance with AD 94–20–04, which is revised by this AD, are approved as alternative methods of compliance with this AD.

Note 2: This AD applies to each airplane identified in paragraphs (a), (a)(1), and (a)(2) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, and the instructions to Beech Kit 35–4017–1 "Kit Information Empennage & Aft Fuselage Inspection", as applicable and specified in Beech Service Bulletin No. 2188, dated May 1987. The Director of the Federal Register previously approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51 as of November 28, 1994 (59 FR 49785, September 30, 1994). You may get copies from the Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085. You may view copies at FAA, Central Region, Office of

the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *Does this AD action affect any existing AD actions?* This amendment revises AD 94–20–04, Amendment 39–9032.

(j) *When does this amendment become effective?* This amendment becomes effective on December 10, 2002.

Appendix to AD 94–20–04 R1

Weight and Balance Accuracy Method No. 1

1. Review existing weight and balance documentation to assure completeness and accuracy of the documentation from the most recent FAA-approved weighing or from factory delivery to date of compliance with this AD.

2. Compare the actual configuration of the airplane to the configuration described in the weight and balance documentation.

3. If equipment additions or deletions are not reflected in the documentation or if modifications affecting the location of the center of gravity (e.g., paint or structural repairs) are not documented, determine the accuracy of the airplane weight and balance data in accordance with Method No. 2.

Weight and Balance Information Accuracy Method No. 2

1. Determine the basic empty weight and center of gravity (CG) of the empty airplane using the Weighing Instructions in the Weight and Balance section of the airplane flight manual/pilot's operating handbook (AFM/POH).

2. Record the results in the airplane records, and use these new values as the basis for computing the weight and CG information as specified in the Weight and Balances section of the AFM/POH.

Issued in Kansas City, Missouri, on October 15, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–26667 Filed 10–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–53–AD; Amendment 39–12922; AD 2002–21–15]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. TPE331 Series Turboprop and TSE331–3U Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Honeywell International Inc. (formerly AlliedSignal Inc., Garrett Engine Division, Garrett Turbine Engine Company, and AiResearch Manufacturing Company of Arizona) TPE331 series turboprop and TSE331–3U series turboshaft engines. This amendment requires replacing second stage turbine stator assemblies, part numbers (P/N's) 894528–1, –2, –3, –5, –6, –10, and –11, with serviceable turbine stator assemblies. This amendment is prompted by reports of six uncontained separations of the second stage turbine wheels associated with obstructed internal cooling holes or passage in the vanes of the second stage turbine stator which may result in contact and rub into the turbine rotor. The actions specified by this AD are intended to prevent uncontained turbine rotor separation and damage to the aircraft.

DATES: Effective November 26, 2002.

ADDRESSES: Information regarding this action may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Federal Aviation Administration, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, CA 90712–4137; Telephone (562) 627–5246, Fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Honeywell International Inc. (formerly AlliedSignal Inc., Garrett Engine Division, Garrett Turbine Engine Company, and AiResearch Manufacturing Company of Arizona) TPE331 series turboprop and TSE331–3U series turboshaft engines was published in the **Federal Register** on February 19, 2002 (67 FR 7318). That action proposed to require replacing second stage turbine stator assemblies, P/N's 894528–1, –2, –3, –5, –6, –10, and –11, with serviceable turbine stator assemblies.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter states that the proposal incorrectly identifies some of the areas of fatigue damage as the second and third stage turbine wheels, and instead should have identified the first and second stage turbine wheels. The FAA agrees and has corrected the final rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 4,700 engines of the affected design in the worldwide fleet. The FAA estimates that 2,350 engines installed on aircraft of U.S. registry would be affected by this AD, that it would take approximately 4.0 work hours per engine to do the actions, and that the average labor rate is $60 per work hour. Required replacement parts will cost approximately $8,000 per engine. Based on these figures, the total cost of the AD on U.S. operators is estimated to be $14,958,000.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–21–15 Honeywell International Inc.: Amendment 39–12922. Docket No. 99–NE–53–AD.

Applicability: This airworthiness directive (AD) is applicable to Honeywell International Inc. (formerly AlliedSignal Inc., Garrett Engine Division, Garrett Turbine Engine Company, and AiResearch Manufacturing Company of Arizona) TPE331–1, –2, –2UA, –3U, –3UW, –5, –5A, –5AB, –5B, –6, and –6A series turboprop and TSE331–3U series turboshaft engines with second stage turbine stator assemblies, part numbers (P/N's) 894528–1, –2, –3, –5, –6, –10, and –11. These engines are installed on, but not limited to Ayres S–2R series; Beech 18 and 45 series and model JRB–6, 3N, 3NM, 3TM, and B100 airplanes; Construcciones Aeronauticas, S.A. (CASA) C–212; De Havilland DH104 series 7AXC (Dove); Dornier 228 series; Fairchild SA226 series (Swearingen Merlin and Metro series); Grumman American G–164 series; Mitsubishi MU–2 and MU–2B series; Pilatus PC–6 series (Fairchild Porter and Peacemaker); Prop-Jets, Inc. Model 400; Rockwell Commander S2–R; Schweizer G–164 series; Shorts Brothers and Harland, Ltd. SC7 (Skyvan); and Twin Commander 680 and 690 series (Jetprop Commander) airplanes; and Sikorsky S–55 series (Helitec Corp. S55T) helicopters.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To reduce fatigue damage of the second stage turbine stator inner seal support, rotating knife seal, and the first and second stage turbine wheels which may result in an uncontained rotor failure and damage to the aircraft, do the following:

(a) Replace second stage turbine stator assemblies, P/N's 894528–1, –2, –3, –5, –6, –10, and –11, with a new or reworked second stage turbine stator assembly at the next removal of the second stage turbine stator assembly from the engine or at the next turbine section inspection, but do not exceed 3,100 engine operating hours since last turbine section inspection. Information for replacing second stage turbine stator assemblies is available in Honeywell International Inc. Alert Service Bulletin (ASB) TPE331–A72–2082 dated May 16, 2001. Information for reworking second stage turbine stator assemblies is available in Honeywell International Inc. SB TPE331–72–2085RWK dated May 16, 2001.

(b) After the effective date of this AD, do not install any second stage turbine stator assembly P/N's 894528–1, –2, –3, –5, –6, –10, and –11.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angles Aircraft Certification Office (LAACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the LAACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Effective Date

(e) This amendment becomes effective on November 26, 2002.

Issued in Burlington, Massachusetts, on October 15, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–26790 Filed 10–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 25, 31, 53, 54, 56, and 301

[TD 9017]

RIN 1545–BB32

Tax Shelter Disclosure Statements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: These temporary regulations modify the rules relating to the filing by certain taxpayers of a disclosure statement with their Federal tax returns under section 6011(a) and include conforming changes to the rules relating to the registration of confidential corporate tax shelters under section 6111(d). These regulations affect taxpayers participating in reportable transactions and persons responsible for registering confidential corporate tax shelters. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These temporary regulations are effective January 1, 2003.

Applicability Date: For dates of applicability, see § 1.6011–4T(h), § 20.6011–4T(b), § 25.6011–4T(b), § 31.6011–4T(b), § 53.6011–4T(b), § 54.6011–4T(b), § 56.6011–4T(b), and § 301.6111–2T(h).

FOR FURTHER INFORMATION CONTACT: Tara P. Volungis, Danielle M. Grimm, or Charlotte Chyr, 202–622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control numbers 1545–1685 and 1545–1687. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning these collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document amends 26 CFR parts 1 and 301 to provide modified rules relating to the disclosure of reportable transactions by certain taxpayers on their Federal income tax returns under section 6011 and includes conforming changes to the rules regarding the registration of confidential corporate tax shelters under section 6111. This document also amends 26 CFR parts 20, 25, 31, 53, 54, and 56 to provide rules for purposes of estate, gift, employment, and pension and exempt organizations excise taxes requiring the disclosure of listed transactions by certain taxpayers on their Federal tax returns under section 6011.

On February 28, 2000, the IRS issued temporary and proposed regulations regarding sections 6011 and 6111 (TD 8877, REG–103735–00; TD 8876, REG–110311–98)) (the February 2000 regulations). The February 2000 regulations were published in the **Federal Register** (65 FR 11205, 65 FR 11269; 65 FR 11215, 65 FR 11272) on March 2, 2000. On August 11, 2000, the IRS issued temporary and proposed regulations modifying the rules under sections 6011 and 6111 (TD 8896, REG–103735–00, REG–110311–98) (the August 2000 regulations). The August 2000 regulations were published in the **Federal Register** (65 FR 49909, 65 FR 49955) on August 16, 2000. On August 2, 2001, the IRS issued temporary and proposed regulations modifying the rules under sections 6011 and 6111 (TD 8961, REG–103735–00, REG–110311–98) (the August 2001 regulations). The August 2001 regulations were published in the **Federal Register** (66 FR 41133, 66 FR 41169) on August 7, 2001. On June 14, 2002, the IRS issued temporary and proposed regulations modifying the rules under sections 6011 and 6111 (TD 9000, REG–103735–00, REG–110311–98) (the June 2002 regulations). The June 2002 regulations were published in the **Federal Register** (67 FR 41324, 67 FR 41362) on June 18, 2002.

The rules under sections 6011, 6111, and 6112 for disclosure, registration, and list maintenance are intended to provide the IRS and Treasury with information needed to evaluate potentially abusive transactions. The IRS and Treasury have considered and evaluated compliance with those rules, and have determined that certain additional changes to the current temporary and proposed regulations are necessary to improve compliance and to carry out the purposes of sections 6011, 6111, and 6112. On March 20, 2002, Treasury released its Plan to Combat Abusive Tax Avoidance Transactions (PO–2018), which describes changes to the rules under sections 6011, 6111, and 6112 that will establish a more effective disclosure regime and improve compliance. *See http://www.treas.gov/press/releases/po2018.htm.*

The amended temporary regulations under section 6011 revise the categories of transactions that must be disclosed on returns. Certain conforming changes are being made to the temporary regulations under section 6111. Concurrent with these amended temporary regulations under sections 6011 and 6111, the IRS and Treasury are publishing elsewhere in this issue of the **Federal Register** amended temporary regulations under section 6112. The amendments to the temporary regulations under section 6112 generally require organizers and sellers ("material advisors") to maintain lists of persons for transactions required to be registered under section 6111 and for reportable transactions subject to disclosure under § 1.6011–4T, § 20.6011–4T, § 25.6011–4T, § 31.6011–4T, § 53.6011–4T, § 54.6011–4T, or § 56.6011–4T.

Pending legislation would modify section 6111 to require registration of transactions that are required to be disclosed under section 6011. The IRS and Treasury intend to revise the regulations under section 6111 when such legislation is enacted.

Explanation of Provisions

1. In General

Section 1.6011–4T generally provides that certain taxpayers must disclose their direct or indirect participation in reportable transactions when they file their Federal income tax returns. Under the current temporary regulations, in the case of a partnership or an S corporation that participates in a listed transaction, that partnership or S corporation must disclose its participation and the partners and shareholders also must disclose their participation in the listed transaction. A reportable transaction is either: (1) A listed transaction, or (2) a transaction that meets two of five characteristics, satisfies a projected tax effect test, and does not satisfy any of the exceptions provided in the regulations. The IRS and Treasury have found that taxpayers are interpreting the five characteristics in an overly narrow manner and are interpreting the exceptions in an overly broad manner.

These new temporary regulations provide more objective rules. The regulations redefine a reportable transaction as a transaction that satisfies any one of six categories of transactions. The regulations also eliminate the projected tax effect test and the general exceptions. The six categories of reportable transactions are: listed transactions, confidential transactions, transactions with contractual protection, loss transactions, transactions with a significant book-tax difference, and transactions involving a brief asset holding period. Further, the new temporary regulations require disclosure of participation in reportable transactions by all direct and indirect participants. Disclosure must be made on Form 8886, "Reportable Transaction Disclosure Statement", which will be available when these regulations become effective.

A provision has been added to § 1.6011–4T allowing taxpayers to request a ruling as to whether a transaction must be disclosed under § 1.6011–4T. A transaction will not be considered a reportable transaction, or will be excluded from any individual category of reportable transaction, if the Commissioner makes a determination, by published guidance, individual ruling under § 1.6011–4T, or otherwise, that the transaction is not subject to the disclosure requirements of § 1.6011–4T. While some exceptions to the disclosure requirements are included in these regulations, the IRS and Treasury specifically request comments on particular types of transactions that should be either treated as not subject to the disclosure requirements of § 1.6011–4T or excluded from an individual category of reportable transaction.

The major changes to the categories of reportable transactions are discussed below.

2. Confidential Transactions

A confidential transaction is a transaction that is offered under conditions of confidentiality, unless the presumption in the regulations regarding written authorization to disclose the structure and tax aspects of the transaction is satisfied. These regulations clarify, however, that the presumption is available only in cases in which the written authorization to disclose is effective without limitation of any kind from the commencement of discussions.

3. Loss Transactions

A loss transaction is any transaction resulting in, or that is reasonably expected to result in, a loss under section 165 of at least: $10 million in any single taxable year or $20 million in any combination of taxable years for corporations; $5 million in any single taxable year or $10 million in any combination of taxable years for partnerships or S corporations, whether or not any losses flow through to one or more partners or shareholders; $2 million in any single taxable year or $4 million in any combination of taxable years for individuals or trusts, whether or not any losses flow through to one or more beneficiaries; and $50,000 in any single taxable year for individuals or trusts, whether or not the loss flows through from an S corporation or partnership, if the loss arises with respect to a section 988 transaction (as defined in section 988(c)(1) relating to foreign currency transactions). In determining the monetary thresholds, the amount of a section 165 loss is adjusted for any salvage value and for any insurance or other compensation received. However, a section 165 loss does not take into account offsetting gains or other income or limitations.

A section 165 loss includes an amount deductible by virtue of a provision that treats a transaction as a sale or other disposition, or otherwise results in a deduction under section 165. A section 165 loss includes, for example, a loss resulting from a sale or exchange of a partnership interest under section 741 and a loss resulting from a section 988 transaction. Under these regulations, casualty losses and losses resulting from involuntary conversions are not subject to the disclosure requirements under § 1.6011–4T.

The IRS and Treasury also are considering adding two other exceptions. One exception would be for losses resulting from a sale of securities on an established securities market within the meaning of § 1.7701–1(b), but only if the amount of basis used in computing the amount of the loss is equal to the amount of cash paid by the taxpayer for the securities. The other potential exception would be for losses claimed under section 475(a) or section 1296(a). The IRS and Treasury specifically request comments on whether these or other exceptions should be added to the regulations.

4. Transactions With a Significant Book-Tax Difference

A transaction with a significant book-tax difference is a transaction where the treatment for Federal income tax purposes of any item or items from the transaction differs, or is reasonably expected to differ, by more than $10 million on a gross basis from the treatment of the item or items for book purposes in any taxable year. When making this determination, offsetting items are not netted for either tax or book purposes. Book income is determined by applying U.S. generally accepted accounting principles (GAAP) for worldwide income.

This category of transaction generally applies to taxpayers that are reporting companies under the Securities Exchange Act of 1934 (15 USCS 78a) (and related business entities) and to business entities that have $100 million or more in gross assets. Specific rules are provided for taxpayers that file consolidated returns, foreign persons, disregarded entities, partnerships, and shareholders of certain foreign corporations. For example, where a taxpayer is considered to participate in a transaction indirectly through a partnership or foreign corporation, items from the transaction that otherwise may be considered items of the partnership or foreign corporation (for tax or book purposes) are treated as items of the taxpayer (to the extent of the taxpayer's allocable share). The mere fact that an item may be reported by different persons for tax and book purposes (*e.g.*, on the taxpayer's U.S. tax return and on the entity's books and records), without more, is not considered a significant book-tax difference in such cases. Instead, the taxpayer must test such items for a book-tax difference in the same manner as items from a transaction in which the taxpayer participated directly.

The regulations provide various exceptions for this category of transaction. The IRS and Treasury specifically request comments on the exceptions and whether other exceptions should be provided.

5. Transactions Involving a Brief Asset Holding Period

A transaction involving a brief asset holding period is a transaction resulting in, or that is reasonably expected to result in, a tax credit exceeding $250,000 (including a foreign tax credit) if the underlying asset giving rise to the credit is held by the taxpayer for less than 45 days. For purposes of determining the holding period, the principles in section 246(c)(3) and (c)(4) apply.

6. Application of Section 6011 to Estate, Gift, Employment, and Pension and Exempt Organizations Excise Taxes

A listed transaction that involves Federal estate, gift, employment, or pension or exempt organizations excise taxes must be disclosed in accordance with published guidance identifying such transaction as a listed transaction.

Effective Date

These regulations apply to transactions entered into on or after January 1, 2003.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Tara P. Volungis, Danielle M. Grimm, and Charlotte Chyr, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate tax, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 56

Excise taxes, Lobbying, Nonprofit organizations, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedure, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income

taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20, 25, 31, 53, 54, 56, and 301 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6011–4T is revised to read as follows:

§ 1.6011–4T Requirement of statement disclosing participation in certain transactions by taxpayers (temporary).

(a) *In general.* Every taxpayer that has participated, directly or indirectly, in a reportable transaction within the meaning of paragraph (b) of this section must attach to its return for the taxable year described in paragraph (e) of this section a disclosure statement in the form prescribed by paragraph (d) of this section. The fact that a transaction is a reportable transaction shall not affect the legal determination of whether the taxpayer's treatment of the transaction is proper.

(b) *Reportable transactions*—(1) *In general.* A reportable transaction is a transaction described in any of the paragraphs (b)(2) through (7) of this section. The term *transaction* includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement, and includes any series of steps carried out as part of a plan, and any series of substantially similar transactions entered into in the same taxable year. There are six categories of reportable transactions: listed transactions, confidential transactions, transactions with contractual protection, loss transactions, transactions with a significant book-tax difference, and transactions involving a brief asset holding period.

(2) *Listed transactions.* A listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.

(3) *Confidential transactions*—(i) *In general.* A confidential transaction is a transaction that is offered under conditions of confidentiality. All the facts and circumstances relating to the transaction will be considered when determining whether a transaction is offered under conditions of confidentiality, including the prior conduct of the parties. If a taxpayer's disclosure of the structure or tax aspects of the transaction is limited in any way by an express or implied understanding or agreement with or for the benefit of any person who makes or provides a statement, oral or written, (or for whose benefit a statement is made or provided) as to the potential tax consequences that may result from the transaction, a transaction is considered offered under conditions of confidentiality, whether or not such understanding or agreement is legally binding. A transaction also will be considered offered under conditions of confidentiality if the taxpayer knows or has reason to know that the taxpayer's use or disclosure of information relating to the structure or tax aspects of the transaction is limited in any other manner (such as where the transaction is claimed to be proprietary or exclusive) for the benefit of any person, other than the taxpayer, who makes or provides a statement, oral or written, (or for whose benefit a statement is made or provided) as to the potential tax consequences that may result from the transaction.

(ii) *Privilege.* A taxpayer's privilege to maintain the confidentiality of a communication relating to a reportable transaction in which the taxpayer might participate or has agreed to participate, including a taxpayer's confidential communication with the taxpayer's attorney, is not itself a condition of confidentiality.

(iii) *Securities law exception.* A transaction is not considered offered under conditions of confidentiality if disclosure of the structure or tax aspects of the transaction is subject to restrictions reasonably necessary to comply with federal or state securities laws and such disclosure is not otherwise limited.

(iv) *Presumption.* Unless the facts and circumstances indicate otherwise, a transaction is not considered offered under conditions of confidentiality if every person who makes or provides a statement, oral or written, (or for whose benefit a statement is made or provided) as to the potential tax consequences that may result from the transaction, provides express written authorization to the taxpayer permitting the taxpayer (and each employee, representative, or other agent of such taxpayer) to disclose to any and all persons, without limitation of any kind, the structure and tax aspects of the transaction, and all materials of any kind (including opinions or other tax analyses) that are provided to the taxpayer related to such structure and tax aspects. This presumption is available only in cases in which the written authorization to disclose is effective without limitation of any kind from the commencement of discussions.

(4) *Transactions with contractual protection.* A transaction with contractual protection is a transaction for which the taxpayer has obtained or been provided with contractual protection against the possibility that part or all of the intended tax consequences from the transaction will not be sustained, including, but not limited to, recission rights, the right to a full or partial refund of fees paid to any person, fees that are contingent on the taxpayer's realization of tax benefits from the transaction, insurance protection with respect to the tax treatment of the transaction, or a tax indemnity or similar agreement (other than a customary indemnity provided by a principal to the transaction that did not participate in the promotion or offering of the transaction to the taxpayer). Notwithstanding the foregoing, a transaction will not be considered to have contractual protection solely because the issuer of a debt instrument agrees to pay additional interest to compensate the holder of such debt instrument for withholding tax imposed on interest paid on the debt instrument, or because the requirement to pay such additional interest entitles the issuer to redeem the debt instrument.

(5) *Loss transactions*—(i) *In general.* A loss transaction is any transaction resulting in, or that is reasonably expected to result in, a taxpayer claiming a loss under section 165 of at least—

(A) $10 million in any single taxable year or $20 million in any combination of taxable years for corporations;

(B) $5 million in any single taxable year or $10 million in any combination of taxable years for partnerships or S corporations, whether or not any losses flow through to one or more partners or shareholders;

(C) $2 million in any single taxable year or $4 million in any combination of taxable years for individuals or trusts, whether or not any losses flow through to one or more beneficiaries; or

(D) $50,000 in any single taxable year for individuals or trusts, whether or not the loss flows through from an S corporation or partnership, if the loss arises with respect to a section 988 transaction (as defined in section 988(c)(1) relating to foreign currency transactions).

(ii) *Section 165 loss.* (A) For purposes of this section, in determining the thresholds in paragraph (b)(5)(i) of this section, the amount of a section 165 loss is adjusted for any salvage value and for any insurance or other compensation received. See § 1.165–1(c)(4). However, a section 165 loss does not take into account offsetting gains or other income or limitations. For example, a section 165 loss does not take into account the limitation in section 165(d) (relating to wagering losses) or the limitations in sections 165(f), 1211, and 1212 (relating to capital losses).

(B) For purposes of this section, a section 165 loss includes an amount deductible by virtue of a provision that treats a transaction as a sale or other disposition, or otherwise results in a deduction under section 165. A section 165 loss includes, for example, a loss resulting from a sale or exchange of a partnership interest under section 741 and a loss resulting from a section 988 transaction.

(iii) *Exceptions.* Transactions that result in the following losses under section 165 are not loss transactions under this paragraph (b)(5)—

(A) A loss from fire, storm, shipwreck, or other casualty, or from theft, as defined in section 165(c)(3); or

(B) A loss from a compulsory or involuntary conversion as described in section 1231(a)(3)(A)(ii) and section 1231(a)(4)(B).

(6) *Transactions with a significant book-tax difference*—(i) *In general.* A transaction with a significant book-tax difference is a transaction where the treatment for Federal income tax purposes of any item or items from the transaction differs, or is reasonably expected to differ, by more than $10 million on a gross basis from the treatment of the item or items for book purposes in any taxable year. For purposes of this determination, offsetting items shall not be netted for either tax or book purposes. For purposes of this paragraph (b)(6), book income is determined by applying U.S. generally accepted accounting principles (GAAP) for worldwide income. Adjustments to any reserve for taxes are disregarded for purposes of determining the book-tax difference.

(ii) *Applicability*—(A) *In general.* This paragraph (b)(6) applies only to—

(*1*) Taxpayers that are reporting companies under the Securities Exchange Act of 1934 (15 USCS 78a) and related business entities (as described in section 267(b) or 707(b)); or

(*2*) Business entities that have $100 million or more in gross assets (the assets of all related business entities (as defined in section 267(b) or 707(b)) must be aggregated).

(B) *Consolidated returns.* For purposes of this paragraph (b)(6), in the case of taxpayers that are members of a group of affiliated corporations filing a consolidated return, transactions solely between or among members of the group will be disregarded. Moreover, where two or more members of the group participate in a transaction that is not solely between or among members of the group, items shall be aggregated (as if such members were a single taxpayer), but any offsetting items shall not be netted.

(C) *Foreign persons.* In the case of a taxpayer that is a foreign person (other than a foreign corporation that is treated as a domestic corporation for Federal tax purposes under section 269B, 953(d), 1504(d) or any other provision of the Internal Revenue Code), only assets that are U.S. assets under § 1.884–1(d) shall be taken into account for purposes of paragraph (b)(6)(ii)(A)(*2*) of this section, and only transactions that give rise to income that is effectively connected with the conduct of a trade or business within the United States (or to losses, expenses, or deductions allocated or apportioned to such income) shall be taken into account for purposes of this paragraph (b)(6).

(D) *Owners of disregarded entities.* In the case of an eligible entity that is disregarded as an entity separate from its owner for Federal tax purposes, items of income, loss, expense, or deduction that otherwise are considered items of the entity for book purposes shall be treated as items of its owner, and items arising from transactions between the entity and its owner shall be disregarded, for purposes of this paragraph (b)(6).

(E) *Partners of partnerships.* In the case of a taxpayer that is a member or a partner of an entity that is treated as a partnership for Federal tax purposes, items of income, loss, expense, or deduction that are allocable to the taxpayer for Federal tax purposes but otherwise are considered items of the entity for book purposes shall be treated as items of the taxpayer, for purposes of this paragraph (b)(6).

(F) *Shareholders of certain foreign corporations.* To the extent that a taxpayer is considered under paragraph (c)(3)(ii) of this section to have indirectly participated in a transaction to which a foreign corporation is a direct party, all items from the transaction that otherwise are considered items of the foreign corporation for Federal tax purposes or book purposes shall be considered items of the taxpayer for purposes of this paragraph (b)(6).

(iii) *Exceptions.* Items listed in paragraphs (b)(6)(iii)(A) through (M) of this section are not items for which reporting is required under this paragraph (b)(6).

(A) Items to the extent a book loss or expense is reported before or without a loss or deduction for Federal income tax purposes.

(B) Items to the extent income or gain for Federal income tax purposes is reported before or without book income or gain.

(C) Depreciation, depletion, and amortization relating solely to differences in methods, lives (for example, useful lives, recovery periods), or conventions.

(D) Bad debts or cancellation of indebtedness income.

(E) Federal, state, local, and foreign taxes.

(F) Compensation of employees and independent contractors, including stock options and pensions.

(G) Items that for Federal tax purposes cannot be deducted or capitalized, such as certain payments for meals and entertainment, and certain fines and penalties.

(H) Charitable contributions of cash or tangible property.

(I) Tax exempt interest, including municipal bond interest.

(J) Dividends, including amounts treated as dividends under section 78, distributions of previously taxed income under sections 959 and 1293, and income inclusions under sections 551, 951, and 1293.

(K) Items resulting from transactions under section 1033.

(L) Gains and losses arising under section 475 or section 1296.

(M) Section 481 adjustments.

(7) *Transactions involving a brief asset holding period.* A transaction involving a brief asset holding period is a transaction resulting in, or that is reasonably expected to result in, a tax credit exceeding $250,000 (including a foreign tax credit) if the underlying asset giving rise to the credit is held by the taxpayer for less than 45 days. For purposes of determining the holding period, the principles in section 246(c)(3) and (c)(4) apply.

(8) *Exceptions*—(i) *In general.* A transaction will not be considered a reportable transaction, or will be excluded from any individual category of reportable transaction under paragraphs (b)(2) through (7) of this section, if the Commissioner makes a determination, by published guidance, individual ruling under paragraph (f) of this section, or otherwise, that the transaction is not subject to the reporting requirements of this section.

(ii) *Special rules for RICs.* For purposes of this section, a regulated investment company as defined in section 851 is not required to disclose transactions described in paragraph (b)(5) or (6) of this section.

(c) *Definitions.* For purposes of this section, the following terms are defined as follows:

(1) *Taxpayer.* The term *taxpayer* means any person described in section 7701(a)(1), including S corporations. The term *taxpayer* also includes, unless specifically provided elsewhere in this section, an affiliated group of corporations that joins in the filing of a consolidated return under section 1501.

(2) *Corporation.* When used specifically in this section, the term *corporation* means an entity that is required to file a return for a taxable year on any 1120 series form, or successor form, excluding S corporations.

(3) *Indirect participation*—(i) *In general.* A taxpayer will have indirectly participated in a reportable transaction if the taxpayer's Federal tax liability is affected (or in the case of a partnership or an S corporation, if a partner's or shareholder's Federal tax liability is reasonably expected to be affected) by the transaction even if the taxpayer is not a direct party to the transaction (*e.g.*, the taxpayer participates as a partner in a partnership, as a shareholder in an S corporation, or through a trust or a controlled entity). Moreover, a taxpayer will have indirectly participated in a reportable transaction if the taxpayer knows or has reason to know that the tax benefits claimed from the taxpayer's transaction are derived from a reportable transaction.

(ii) *Shareholders of foreign corporations*—(A) *In general.* A taxpayer that is a shareholder in a foreign corporation will not be considered to have participated indirectly in a transaction to which the foreign corporation is a direct party merely because the taxpayer is a shareholder in the foreign corporation unless the taxpayer is a *reporting shareholder* (as defined in paragraph (c)(3)(ii)(B) of this section) and the transaction either is described in any of the paragraphs (b)(2) through (5) or in paragraph (b)(7) of this section, or reduces or eliminates an income inclusion that otherwise would be required under section 551, 951, or 1293.

(B) *Reporting shareholder.* For purposes of paragraph (c)(3)(ii)(A) of this section, the term *reporting shareholder* means a United States shareholder (as defined in section 551(a)) in a foreign personal holding company (as defined in section 552), a United States shareholder (as defined in section 951(b)) in a controlled foreign corporation (as defined in section 957), or a 10 percent shareholder (by vote or value) of a qualified electing fund (as defined in section 1295).

(iii) *Example.* The following example illustrates the provisions of paragraph (c)(3)(i) of this section:

Example. Notice 95–53 (1995–2 C.B. 334) (see § 601.601(d)(2) of this chapter), describes a lease stripping transaction in which one party (the transferor) assigns the right to receive future payments under a lease of tangible property and receives consideration which the transferor treats as current income. The transferor later transfers the property subject to the lease in a transaction intended to qualify as a substituted basis transaction, for example, a transaction described in section 351. In return, the transferor receives stock (with low value and high basis) from the transferee corporation. The transferee corporation claims the deductions associated with the high basis property subject to the lease. The transferor and transferee corporation have directly participated in the listed transaction. If the transferor subsequently transfers the high basis/low value stock to a taxpayer in another transaction intended to qualify as a substituted basis transaction and the taxpayer uses the stock to generate a loss, and if the taxpayer knows or has reason to know that the tax loss claimed was derived from the lease stripping transaction, then the taxpayer is indirectly participating in a reportable transaction. Accordingly, the taxpayer must disclose the reportable transaction and the manner of the taxpayer's indirect participation in the reportable transaction under the rules of this section.

(4) *Substantially similar.* The term *substantially similar* includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term *substantially similar* must be broadly construed in favor of disclosure. The following examples illustrate situations where a transaction is the same as or substantially similar to a listed transaction under paragraph (b)(2) of this section. (Such transactions may also be reportable transactions under paragraphs (b)(3) through (7) of this section.) The following examples illustrate the provisions of this paragraph (c)(4):

Example 1. Notice 2000–44 (2000–2 C.B. 255) (see § 601.601(d)(2) of this chapter), sets forth a listed transaction involving offsetting options transferred to a partnership where the taxpayer claims basis in the partnership for the cost of the purchased options but does not adjust basis under section 752 as a result of the partnership's assumption of the taxpayer's obligation with respect to the options. Transactions using short sales, futures, derivatives or any other type of offsetting obligations to inflate basis in a partnership interest would be the same as or substantially similar to the transaction described in Notice 2000–44. Moreover, use of the inflated basis in the partnership interest to diminish gain that would otherwise be recognized on the transfer of a partnership asset would also be the same as or substantially similar to the transaction described in Notice 2000–44.

Example 2. Notice 2001–16 (2001–1 C.B. 730) (see § 601.601(d)(2) of this chapter), sets forth a listed transaction involving a seller (X) who desires to sell stock of a corporation (T), an intermediary corporation (M), and a buyer (Y) who desires to purchase the assets (and not the stock) of T. M agrees to facilitate the sale to prevent the recognition of the gain that T would otherwise report. Notice 2001–16 describes M as a member of a consolidated group that has a loss within the group or as a party not subject to tax. Transactions utilizing different intermediaries to prevent the recognition of gain would be the same as or substantially similar to the transaction described in Notice 2001–16. An example is a transaction in which M is a corporation that does not file a consolidated return but which buys T stock, liquidates T, sells assets of T to Y, and offsets the gain recognized on the sale of those assets with currently generated losses.

(d) *Form and content of disclosure statement.* The IRS will release Form 8886, "Reportable Transaction Disclosure Statement" (or a successor form), for use by taxpayers in accordance with this paragraph (d). A taxpayer required to file a disclosure statement under this section must file a completed Form 8886 in accordance with the instructions to the form. The form must be attached to the appropriate tax returns as provided in paragraph (e) of this section. If a copy of a disclosure statement is required to be sent to the Office of Tax Shelter Analysis (OTSA) under paragraph (e) of this section, it must be sent to: Internal Revenue Service LM:PFTG:OTSA, Large & Mid-Size Business Division, 1111 Constitution Ave., NW., Washington, DC 20224, or to such other address as provided by the Commissioner.

(e) *Time of providing disclosure*—(1) *In general.* The disclosure statement for a reportable transaction must be attached to the taxpayer's Federal income tax return for each taxable year for which the taxpayer's Federal income tax liability is affected by the taxpayer's participation in the transaction. In addition, a copy of the disclosure statement must be sent to OTSA at the same time that any disclosure statement is first filed with the taxpayer's Federal income tax return. If a reportable transaction results in a loss which is carried back to a prior year, the disclosure statement for the reportable transaction must be attached to the taxpayer's application for tentative refund or amended Federal income tax return for that prior year. In the case of a taxpayer that is a partnership or S corporation, the disclosure statement for a reportable transaction must be attached to the partnership's or S corporation's Federal income tax return for each taxable year ending with or within the taxable year of any partner or shareholder whose income tax liability is affected or is reasonably expected to be affected by the partnership's or S corporation's participation in the transaction. If a transaction becomes a reportable transaction (*e.g.*, the transaction subsequently becomes one identified in published guidance as a listed transaction described in paragraph (b)(2) of this section, or there is a change in facts affecting the expected Federal income tax effect of the transaction such that the transaction is reportable under any of the paragraphs (b)(5) through (7)) on or after the date the taxpayer has filed the return for the first taxable year for which the transaction affected the taxpayer's or a partner's or a shareholder's Federal income tax liability, the disclosure statement must be filed as an attachment to the taxpayer's Federal income tax return next filed after the date the transaction becomes a reportable transaction (whether or not the transaction affects the taxpayer's or any partner's or shareholder's Federal income tax liability for that year). The taxpayer must disclose the transaction in the time and manner provided for under the provisions of this section regardless of whether the taxpayer also plans to disclose the transaction under other published guidance, for example, Rev. Proc. 94–69 (1994–2 C.B. 804) (see § 601.601(d)(2) of this chapter).

(2) *Example.* The following example illustrates the application of this paragraph (e):

Example. In January of 2003, F, a domestic calendar year corporation, enters into a transaction that F reasonably expects will result in an $8 million section 165 loss in a single year and a $15 million section 165 loss over a combination of years. Assume that the transaction is not a transaction described in any of the paragraphs (b)(2) through (7) of this section, and, therefore, is not a reportable transaction under paragraph (b) of this section. On March 1, 2005, the IRS publishes a notice identifying the transaction as a listed transaction described in paragraph (b)(2) of this section. Thus, upon issuance of the notice, the transaction becomes a reportable transaction described in paragraph (b) of this section. F is required to file Form 8886 for the transaction as an attachment to F's next filed Federal income tax return. If F's 2004 Federal income tax return has not been filed on or before the date the Service identifies the transaction as a listed transaction, the disclosure statement must be attached to F's 2004 return and at that time a copy of the form must be sent to OTSA.

(f) *Rulings and protective disclosures*—(1) *Requests for ruling.* If a taxpayer is uncertain whether a transaction must be disclosed under this section, that taxpayer may, on or before the date that disclosure would otherwise be required under this section, submit a request to the IRS for a ruling as to whether the transaction is subject to the disclosure requirements of this section. If the request fully discloses all relevant facts relating to the transaction, the potential obligation of that taxpayer to disclose the transaction will be suspended during the period that the ruling request is pending and, if the IRS subsequently concludes that the transaction is a reportable transaction subject to disclosure under this section, until the 60th day after the issuance of the ruling (or, if the request is withdrawn, 60 days after the date that the request is withdrawn).

(2) *Protective disclosures.* If a taxpayer is uncertain whether a transaction must be disclosed under this section, the taxpayer may disclose the transaction in accordance with the requirements of this section, and indicate on the disclosure statement that the taxpayer is uncertain whether the transaction is required to be disclosed under this section and that the disclosure statement is being filed on a protective basis.

(g) *Retention of documents.* The taxpayer must retain a copy of all documents and other records related to a transaction subject to disclosure under this section that are material to an understanding of the facts of the transaction, the expected tax treatment of the transaction, or the taxpayer's decision to participate in the transaction. Such documents must be retained until the expiration of the statute of limitations applicable to the final taxable year for which disclosure of the transaction was made in accordance with the requirements of this section. (This document retention requirement is in addition to any document retention requirements that section 6001 generally imposes on the taxpayer.) Such documents generally include, but are not limited to, the following: marketing materials related to the transaction; written analyses used in decision-making related to the transaction; correspondence and agreements between the taxpayer and any advisor, lender, or other party to the reportable transaction that relate to the transaction; documents discussing, referring to, or demonstrating the tax benefits arising from the reportable transaction; and documents, if any, referring to the business purposes for the reportable transaction.

(h) *Effective dates.* This section applies to Federal income tax returns filed after February 28, 2000. However, paragraphs (a) through (g) of this section apply to transactions entered into on or after January 1, 2003. The rules that apply with respect to transactions entered into on or before December 31, 2002, are contained in § 1.6011–4T in effect prior to January 1, 2003 (see 26 CFR part 1 revised as of April 1, 2002 and 2002–28 IRB 90 (see § 601.601(d)(2) of this chapter)).

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 3. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 4. Section 20.6011–4T is added to read as follows:

§ 20.6011–4T Requirement of statement disclosing participation in certain transactions by taxpayers (temporary).

(a) *In general.* If a transaction is identified as a "listed transaction" as defined in § 1.6011–4T of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an estate tax under chapter 11 of subtitle B of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 6. Section 25.6011–4T is added to read as follows:

§ 25.6011–4T Requirement of statement disclosing participation in certain transactions by taxpayers (temporary).

(a) *In general.* If a transaction is identified as a "listed transaction" as defined in § 1.6011–4T of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this

chapter), and the listed transaction involves a gift tax under chapter 12 of subtitle B of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 7. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 8. Section 31.6011–4T is added to read as follows:

§ 31.6011–4T Requirement of statement disclosing participation in certain transactions by taxpayers (temporary).

(a) *In general.* If a transaction is identified as a "listed transaction" as defined in § 1.6011–4T of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 9. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. Section 53.6011–4T is added to read as follows:

§ 53.6011–4T Requirement of statement disclosing participation in certain transactions by taxpayers (temporary).

(a) *In general.* If a transaction is identified as a "listed transaction" as defined in § 1.6011–4T of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an excise tax under chapter 42 of subtitle D of the Internal Revenue Code (relating to private foundations and certain other tax-exempt organizations), the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

PART 54—PENSION EXCISE TAXES

Par. 11. The authority citation for part 54 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 12. Section 54.6011–4T is added to read as follows:

§ 54.6011–4T Requirement of statement disclosing participation in certain transactions by taxpayers (temporary).

(a) *In general.* If a transaction is identified as a "listed transaction" as defined in § 1.6011–4T of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an excise tax under chapter 43 of subtitle D of the Internal Revenue Code (relating to qualified pension, etc., plans), the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

PART 56—PUBLIC CHARITY EXCISE TAXES

Par. 13. The authority citation for part 56 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 14. Section 56.6011–4T is added to read as follows:

§ 56.6011–4T Requirement of statement disclosing participation in certain transactions by taxpayers (temporary).

(a) *In general.* If a transaction is identified as a "listed transaction" as defined in § 1.6011–4T of this chapter by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), and the listed transaction involves an excise tax under chapter 41 of subtitle D of the Internal Revenue Code (relating to public charities), the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective date.* This section applies to transactions entered into on or after January 1, 2003.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 15. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 16. Section 301.6111–2T is amended as follows:

1. Paragraphs (a)(3) and (b)(3)(i) are revised.

2. Paragraph (c)(3) is amended by adding a sentence at the end of the paragraph.

3. Paragraph (h) is amended by revising the paragraph heading and removing the third sentence through the last sentence and adding two new sentences in their place.

The revisions and additions read as follows:

§ 301.6111–2T Confidential corporate tax shelters (temporary).

(a) * * *

(3) For purposes of this section, references to the term "transaction" include all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or arrangement, and include any series of steps carried out as part of a plan. For purposes of this section, the term "substantially similar" includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term "substantially similar" must be broadly construed in favor of registration. For examples, see § 1.6011–4T(c)(4) of this chapter.

* * * * *

(b) * * *

(3) * * *

(i) The potential participant is expected to participate in the transaction in the ordinary course of its business in a form consistent with customary commercial practice (a transaction involving the acquisition, disposition, or restructuring of a business, including the acquisition, disposition, or other change in the ownership or control of an entity that is engaged in a business, or a transaction involving a recapitalization or an acquisition of capital for use in the taxpayer's business, shall be considered a transaction carried out in the ordinary course of a taxpayer's business); and

* * * * *

(c)

(3) * * * This presumption is available only in cases in which the written authorization to disclose is effective without limitation of any kind from the commencement of discussions.

* * * * *

(h) *Effective dates.* * * * However, paragraphs (a)(3), (b)(3)(i), and (c)(3) of this section apply to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000, and on or before December 31, 2002, are contained in § 301.6111–2T in effect prior to January 1, 2003 (see 26 CFR part 301 revised as of April 1, 2002 and 2002–28 IRB 91 (see § 601.601(d)(2) of this chapter)).

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: October 15, 2002.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 02–26724 Filed 10–17–02; 3:10 pm]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9018]

RIN 1545–BB33

Requirement To Maintain a List of Investors in Potentially Abusive Tax Shelters

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: These temporary regulations relate to the preparation, maintenance, and furnishing of lists of persons in potentially abusive tax shelters under section 6112. These regulations apply to organizers and sellers of potentially abusive tax shelters. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These temporary regulations are effective January 1, 2003.

Applicability Date: For dates of applicability, see § 301.6112–1T(j).

FOR FURTHER INFORMATION CONTACT: Charlotte Chyr, Tara P. Volungis, or Danielle M. Grimm, 202–622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1686. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning these collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document amends 26 CFR part 301 regarding the requirement to maintain lists of persons for potentially abusive tax shelters under section 6112. Section 6708 provides penalties for failing to maintain a list under section 6112.

On February 28, 2000, the IRS issued temporary and proposed regulations regarding section 6112 (TD 8875, REG–103736–00). The February regulations were published in the **Federal Register** (65 FR 11211; 65 FR 11271) on March 2, 2000. On August 11, 2000, the IRS issued temporary and proposed regulations regarding section 6112 (TD 8896, REG–103736–00). The August 2000 regulations were published in the **Federal Register** (65 FR 49909; 65 FR 49955) on August 16, 2000, modifying the previous regulations.

The list maintenance rules under section 6112, along with the rules relating to disclosure of reportable transactions under section 6011 and the rules for registration of tax shelters under section 6111, are intended to provide the IRS and Treasury with information needed to evaluate potentially abusive transactions. The IRS and Treasury have considered and evaluated compliance with these rules and have determined that certain additional changes to the current temporary and proposed regulations are necessary to improve compliance and to carry out the purposes of sections 6011, 6111, and 6112. On March 20, 2002, Treasury released its Plan to Combat Abusive Tax Avoidance Transactions (PO–2018), which describes changes to the rules under sections 6011, 6111, and 6112 that will establish a more effective disclosure regime and improve compliance. *See http://www.treas.gov/press/releases/po2018.htm.*

These amendments to the temporary regulations under section 6112 generally require organizers and sellers (material advisors) to maintain lists of persons for transactions required to be registered under section 6111 and for reportable transactions defined in § 1.6011–4T(b) of the Income Tax Regulations.

Concurrent with these amended temporary regulations under section 6112, the IRS and Treasury are publishing elsewhere in this issue of the **Federal Register** amended temporary regulations under section 6011. The amended temporary regulations under section 6011 revise the categories of transactions that must be disclosed on returns.

Pending legislation would modify section 6111 to require registration of transactions that are required to be disclosed under section 6011. The IRS and Treasury intend to revise the regulations under section 6111 when such legislation is enacted.

Explanation of Provisions

A. Potentially Abusive Tax Shelter

Section 6112 provides that any person who organizes or sells any interest in a potentially abusive tax shelter must maintain a list identifying each person who was sold an interest in such shelter and containing any other information required by regulations. A potentially abusive tax shelter under section 6112 includes any tax shelter that is required to be registered with the IRS as a tax shelter under section 6111, and any transaction that has a potential for tax avoidance or evasion.

Under these regulations, a transaction has the potential for tax avoidance or evasion if it is a listed transaction or if a potential material advisor, at the time the transaction is entered into, knows or has reason to know that the transaction is otherwise a reportable transaction as defined in § 1.6011–4T. For purposes of section 6112, listed transactions that involve Federal estate, gift, employment, and pension and exempt organizations excise taxes are also potentially abusive tax shelters that require list maintenance. If a transaction that involves Federal income taxes becomes a listed transaction on or after January 1, 2003, it is a potentially abusive tax shelter for purposes of section 6112 and, whether or not the material advisor is already required to maintain a list, the material advisor must begin, at the time of listing, to

include on the list those persons who acquired an interest in the transaction after February 28, 2000.

B. Organizer and Seller (Material Advisor)

The regulations provide that a person is an organizer of, or a seller of any interest in, a transaction that is a potentially abusive tax shelter if that person is a material advisor with respect to that transaction. In general, a material advisor is any person who (i) receives, or expects to receive, at least a minimum fee in connection with a transaction that is a potentially abusive tax shelter, and (ii) who makes or provides any statement, oral or written, to any person as to the potential tax consequences of that transaction. The Internal Revenue Service and Treasury are considering whether the minimum fee requirement should be eliminated with respect to listed transactions.

The minimum fee is $250,000 for a transaction that is a potentially abusive tax shelter if all persons who acquire an interest, directly or indirectly, in the transaction are corporations (other than S corporations). The minimum fee for any other transaction that is a potentially abusive tax shelter is $50,000. In calculating the minimum fee, each transaction that is a potentially abusive tax shelter is evaluated separately to determine whether the minimum fee threshold is satisfied with respect to that particular transaction. If the minimum fee threshold is satisfied with respect to one transaction that is a potentially abusive tax shelter, but not with respect to another separate transaction (whether or not it is substantially similar), a person is a material advisor with respect to only the transaction for which the minimum fee threshold is satisfied. Accordingly, the list required to be maintained includes only those persons who are participants in the transaction for which the minimum fee threshold is satisfied.

C. Preparing, Maintaining and Furnishing Lists

In general, a material advisor must prepare and maintain a separate list of persons for each transaction that is a potentially abusive tax shelter. However, to ensure that the IRS is able to identify all of the persons who are participants in potentially abusive tax shelters that are substantially similar, the regulations further provide that the material advisor must keep one list for all transactions that are substantially similar and are potentially abusive tax shelters.

Any person to whom a material advisor makes or provides a statement, oral or written, as to the potential tax consequences of a transaction that is a potentially abusive tax shelter must be included on a list if the material advisor knows or has reason to know that the person, or any related party, participated or will participate in the transaction. A person (including any related party) is treated as having participated in a transaction that is a potentially abusive tax shelter if the material advisor knows or has reason to know that the person sold or transferred, or will sell or transfer to another person (subsequent participant) an interest in that type of transaction that, if entered into, would be a potentially abusive tax shelter. The material advisor also must list any subsequent participant if the material advisor knows or has reason to know the identity of that subsequent participant and the material advisor knows or reasonably expects that the subsequent participant will participate in, or sell or transfer to another subsequent participant an interest in that type of transaction that, if entered into, would be a potentially abusive tax shelter.

The required list must be maintained for ten years following the date on which the material advisor last made a statement, oral or written, as to the potential tax consequences that may result from the transaction that is a potentially abusive tax shelter. If a material advisor that is an entity dissolves or liquidates before the expiration of the ten-year period, the person responsible under state law for winding up the affairs of the material advisor is (or if state law does not specify any person, then each of the directors of the corporation, the general partners of the partnership, or the trustees, owners, or members of the entity are) responsible for preparing, maintaining, and furnishing the list, unless the dissolved or liquidated entity submits the list to the Office of Tax Shelter Analysis (OTSA) within 60 days after the dissolution or liquidation. The responsible person must also provide notice to OTSA of such dissolution or liquidation within 60 days after the dissolution or liquidation.

Each material advisor must, upon written request by the IRS, furnish the list of persons to the IRS within 20 business days after the date of the request. The list may be furnished to the IRS in any form that enables the IRS to determine without undue delay or difficulty the information required to be contained in the list.

As a general rule, the name of a participant in a transaction that is a potentially abusive tax shelter is not protected by either the attorney-client privilege or by the tax practitioner privilege under section 7525. No participant in a transaction that is a potentially abusive tax shelter should have a reasonable expectation of confidentiality with respect to that person's identity. Moreover, a claim of privilege that is not based on a reasonable belief that the privilege applies may subject the material advisor to penalties under section 6708.

D. Substantially Similar Transactions

For purposes of section 6112, a substantially similar transaction includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of a transaction is not relevant to the determination of whether that transaction is the same as or substantially similar to another transaction. Further, the term *substantially similar* must be broadly construed in favor of list maintenance.

E. Effective Date

These amended temporary regulations apply to transactions that are potentially abusive tax shelters entered into, or interests acquired therein, on or after January 1, 2003. However, these regulations shall apply to any transaction that was entered into, or in which an interest was acquired, after February 28, 2000, if the transaction becomes a listed transaction as defined in § 1.6011–4T on or after January 1, 2003, and is subject to disclosure under § 1.6011–4T.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Charlotte Chyr, Tara P. Volungis, and Danielle M. Grimm, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6112–1T is revised to read as follows:

§ 301.6112–1T Requirement to prepare, maintain, and furnish lists with respect to potentially abusive tax shelters (temporary).

(a) *In general.* Each organizer and seller, as described in paragraph (c) of this section, of a transaction that is a potentially abusive tax shelter, as described in paragraph (b) of this section, shall prepare and maintain a list of persons in accordance with paragraph (e) of this section and upon request shall furnish such list to the Internal Revenue Service in accordance with paragraph (g) of this section.

(b) *Potentially abusive tax shelters.* For purposes of this section, a potentially abusive tax shelter is any transaction that is a section 6111 tax shelter, as described in paragraph (b)(1) of this section, or that has a potential for tax avoidance or evasion, as described in paragraph (b)(2) of this section. The term "transaction" includes all of the factual elements relevant to support the expected tax treatment of any investment, entity, plan, or arrangement, and includes any series of steps carried out as part of a plan.

(1) *Transaction that is a section 6111 tax shelter.* A section 6111 tax shelter is any transaction that is required to be registered with the Internal Revenue Service under section 6111, regardless of whether that tax shelter is properly registered pursuant to section 6111.

(2) *Transaction that has a potential for tax avoidance or evasion.* A transaction that has a potential for tax avoidance or evasion is any transaction that is a listed transaction as defined in § 1.6011–4T of this chapter and is subject to disclosure under § 1.6011–4T, 20.6011–4T, 25.6011–4T, 31.6011–4T, 53.6011–4T, 54.6011–4T, or 56.6011–4T of this chapter, or any transaction that a potential material advisor knows or has reason to know, at the time the transaction is entered into or an interest is acquired, meets one of the categories of a reportable transaction under § 1.6011–4T(b)(3) through (7) of this chapter.

(i) The determination of whether a transaction has the potential for tax avoidance or evasion does not depend upon whether the transaction is properly disclosed pursuant to § 1.6011–4T, 20.6011–4T, 25.6011–4T, 31.6011–4T, 53.6011–4T, 54.6011–4T, or 56.6011–4T of this chapter.

(ii) If a transaction becomes a listed transaction as defined in § 1.6011–4T of this chapter and is subject to disclosure under § 1.6011–4T of this chapter, after the transaction is entered into or an interest in the transaction is acquired, this section shall apply with respect to any interests acquired after February 28, 2000. If a transaction becomes a listed transaction as defined in § 1.6011–4T of this chapter and is subject to disclosure under § 20.6011–4T, 25.6011–4T, 31.6011–4T, 53.6011–4T, 54.6011–4T, or 56.6011–4T of this chapter, after the transaction is entered into or an interest in the transaction is acquired, this section shall apply with respect to any interests acquired on or after January 1, 2003.

(c) *Organizer and seller*—(1) *In general.* A person is an organizer of, or a seller of an interest in, a transaction that is a potentially abusive tax shelter if that person is a material advisor, as described in paragraph (c)(2) of this section, with respect to that transaction.

(2) *Material advisor.* A material advisor is any person who (or through its employees, shareholders, partners, or agents) receives, or expects to receive, at least a minimum fee, as defined in paragraph (c)(3) of this section, in connection with a transaction that is a potentially abusive tax shelter and who makes or provides any statement, oral or written, to any person as to the potential tax consequences of that transaction. A person shall be treated as a material advisor if that person forms or avails of an entity with the purpose of avoiding the rules of section 6111 or 6112 or the penalties under section 6707 or 6708.

(3) *Minimum fee*—(i) *In general.* For purposes of this paragraph (c), the minimum fee is $250,000 for a transaction that is a potentially abusive tax shelter if all persons who acquire an interest, directly or indirectly, are corporations (other than S corporations), and $50,000 for any other transaction that is a potentially abusive tax shelter.

(ii) *Determination of fees.* In determining whether the minimum fee threshold is satisfied, all fees for advice (whether or not tax advice) regarding, or for implementation of, a transaction that is a potentially abusive tax shelter are taken into account. For purposes of this section, fees include consideration in whatever form paid, whether in cash or in kind, and whether paid or denominated as fees for tax advice or for some other function such as the preparation of documentation or tax return preparation. The Internal Revenue Service will scrutinize carefully all of the facts and circumstances in determining whether consideration received in connection with a transaction that is a potentially abusive tax shelter constitutes fees for purposes of this section.

(d) *Definitions.* For purposes of this section, the following terms are defined as follows:

(1) *Interest.* The term *interest* includes, but is not limited to, any right to participate in a transaction by reason of a partnership interest, a shareholder interest, or a beneficial interest in a trust; any interest in property (including a leasehold interest); the entry into a leasing arrangement or a consulting, management or other agreement for the performance of services; or any interest in any other investment, entity, plan, or arrangement. The term *interest* includes any interest that purportedly entitles the direct or indirect holder of the interest to any tax consequence (including, but not limited to, a deduction, loss, or adjustment to tax basis in an asset) arising from the transaction. An *interest* also includes the receipt of information or services regarding the organization or structure of the transaction if the information or services are relevant to the potential tax consequences of the transaction.

(2) *Substantially similar.* The term *substantially similar* includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term *substantially similar* must be broadly construed in favor of list maintenance.

(3) *Person.* The term *person* means any person described in section 7701(a)(1), including an affiliated group of corporations that join in the filing of

a consolidated return under section 1501.

(4) *Related party.* A person is a related party with respect to another person if such person bears a relationship to such other person described in section 267 or 707.

(e) *Preparation and maintenance of lists*—(1) *In general.* A separate list of persons must be prepared and maintained for each transaction that is a potentially abusive tax shelter. However, one list must be maintained for substantially similar transactions that are potentially abusive tax shelters.

(2) *Persons required to be included on lists.* (i) A material advisor is required to list each person to whom the material advisor makes or provides a statement, oral or written, as to the potential tax consequences of a transaction that is a potentially abusive tax shelter, if the material advisor knows or has reason to know that the person or any related party participated in or will participate in the transaction (or a substantially similar transaction that is a potentially abusive tax shelter).

(ii) A material advisor shall treat a person (including any related party) as having participated in a transaction that is a potentially abusive tax shelter if the material advisor knows or has reason to know that the person sold or transferred, or will sell or transfer, to another person (subsequent participant) an interest in that type of transaction that, if entered into, would be a potentially abusive tax shelter. The material advisor also must list any subsequent participant if the material advisor knows or has reason to know the identity of that subsequent participant, and the material advisor knows or reasonably expects that the subsequent participant will participate in, or sell or transfer to another subsequent participant an interest in that type of transaction that, if entered into, would be a potentially abusive tax shelter.

(iii) The following examples illustrate the provisions of this section:

Example 1. An investment firm provides a statement describing the potential tax consequences of a type of transaction to three taxpayers: Corporation X, Corporation Y, and Corporation Z. Each taxpayer agrees to pay the investment firm $300,000 in connection with the transaction, and each taxpayer engages in a separate transaction (transaction X, transaction Y, and transaction Z, respectively). At the time the transactions are entered into, the investment firm knows, or has reason to know, that the transactions will result in a single taxable year loss of $9 million for Corporation X, $15 million for Corporation Y, and $12 million for Corporation Z. The transactions do not satisfy the definitions of a reportable transaction under § 1.6011–4T(b)(2), (3), (4), (6) or (7) of this chapter. All the persons who acquired an interest directly or indirectly in the transactions are C corporations.

(i) *Transaction X.* At the time transaction X is entered into, the investment firm does not know, or have reason to know, that the transaction is a reportable transaction, because the $9 million loss does not satisfy the $10 million threshold under § 1.6011–4T(b)(5) of this chapter (relating to loss transactions). Accordingly, transaction X is not a potentially abusive tax shelter. The investment firm is not required to maintain a list with respect to transaction X.

(ii) *Transactions Y and Z.* The investment firm satisfies the three requirements for being a material advisor with respect to transaction Y and with respect to transaction Z. First, both of the transactions are potentially abusive tax shelters with respect to the investment firm because the investment firm knows, or has reason to know, at the time the transactions are entered into, that the losses for each of Corporation Y and Z are expected to exceed the $10 million threshold and, thus, the transactions are reportable transactions under § 1.6011–4T(b)(5) of this chapter (relating to loss transactions). Second, the investment firm provides a statement as to the potential tax consequences of the transactions. Third, the investment firm receives $300,000 in connection with each transaction, which exceeds the minimum fee with respect to each transaction ($250,000). Accordingly, the investment firm must maintain a list with respect to transactions Y and Z. Because transactions Y and Z are based on the same or similar tax strategy, transactions Y and Z are substantially similar transactions, and the investment firm must keep one list with respect to both transactions. The list must contain information about Corporation Y and Corporation Z (see paragraph (e)(2)(i) of this section).

Example 2. (i) Corporation M provides a statement to Corporation N describing the potential tax consequences of a type of transaction. Corporation N pays Corporation M $90,000 for the information about that type of transaction. Corporation M knows that Corporation N will sell the information to Taxpayer O (a corporation) and Taxpayer P (an individual), and reasonably expects Taxpayer O and Taxpayer P to participate in transactions of the type that Corporation M described to Corporation N. Corporation N, in turn, provides a statement as to the potential tax consequences of that type of transaction to Taxpayer O and Taxpayer P. Each taxpayer agrees to pay Corporation N $80,000 in connection with their respective transactions, and each taxpayer engages in a separate transaction (transaction O and transaction P, respectively). At the time the transactions are entered into, both Corporation M and Corporation N know, or have reason to know, that the transactions are reportable transactions under § 1.6011–4T(b) of this chapter. All the persons who acquire an interest directly or indirectly in transaction O are C corporations.

(ii) Corporation N is not a material advisor with respect to transaction O because Corporation N receives only $80,000 in connection with transaction O, which is less than the minimum fee for that transaction ($250,000). Corporation N is a material advisor with respect to transaction P. First, at the time transaction P is entered into, Corporation N knows, or has reason to know, that transaction P is a reportable transaction and, thus, is a potentially abusive tax shelter. Second, Corporation N provides a statement as to the potential tax consequences of transaction P. Third, Corporation N receives $80,000 in connection with transaction P, which exceeds the minimum fee for that transaction ($50,000). Accordingly, Corporation N must keep a list with respect to transaction P. The list must contain information about Taxpayer P (see paragraph (e)(2)(ii) of this section).

(iii) Corporation M is not a material advisor with respect to transaction O because Corporation M receives only $90,000 in connection with transaction O, which is less than the minimum fee for that transaction ($250,000). Corporation M is a material advisor with respect to transaction P. First, at the time transaction P is entered into, Corporation M knows, or has reason to know, that transaction P is a reportable transaction and, thus, is a potentially abusive tax shelter. Second, Corporation M provides a statement as to the potential tax consequences of transaction P, and Corporation M receives $90,000 in connection with transaction P, which exceeds the minimum fee for that transaction ($50,000). Accordingly, Corporation M must keep a list with respect to transaction P. The list must contain information about Corporation N (see paragraph (e)(2)(ii) of this section) and Taxpayer P (see paragraph (e)(2)(ii) of this section).

(3) *Contents*—(i) *In general.* Each list must contain the following information—

(A) The name of each transaction that is a potentially abusive tax shelter and the registration number, if any, obtained under section 6111;

(B) The TIN (as defined in section 7701(a)(41)), if any, of each transaction;

(C) The name, address, and TIN of each person required to be on the list;

(D) If applicable, the number of units (i.e., percentage of profits, number of shares, etc.) acquired by each person required to be included on the list;

(E) The date on which each interest was acquired;

(F) The amount invested in each transaction by each person required to be included on the list;

(G) A detailed description of each transaction that describes both the structure and its expected tax consequences;

(H) A summary or schedule of the tax consequences that each person is intended or expected to derive from participation in each transaction, if known by the material advisor;

(I) Copies of any additional written materials, including tax analyses or opinions, relating to each transaction that have been shown or provided to any person who acquired or may acquire an interest in the transactions, or to their representatives, tax advisors, or agents, by the material advisor or any related party or agent of the material advisor; and

(J) For each person, if the interest in the transaction was not acquired from the material advisor maintaining the list, the name of the person from whom the interest was acquired.

(ii) *Claims of privilege.* In any case in which an attorney or federally authorized tax practitioner within the meaning of section 7525 is required to maintain a list with respect to a transaction that is a potentially abusive tax shelter, and that person has a reasonable belief that information required to be disclosed under this paragraph (e)(3) is protected by the attorney-client privilege or by the confidentiality privilege of section 7525(a), the attorney or federally authorized tax practitioner must still maintain the list of persons pursuant to the requirements of this section. When the list is requested by the Internal Revenue Service, as provided in paragraph (g) of this section, the material advisor may assert a privilege claim subject to the requirements of this paragraph (e)(3)(ii).

(A) The claimed privilege must be supported by a statement that is signed by the attorney or federally authorized tax practitioner under penalties of perjury, must identify and describe (as set forth in paragraph (e)(3)(ii)(B) of this section) the nature of each document or category of information that is not produced which will allow the Service to determine the applicability of the privilege or protection claimed, without revealing the privileged information itself, and must include the following representations with respect to each document or category of information for which the privilege is claimed—

(*1*) Specifically represent that the information was a confidential practitioner-client communication and, in the case of information which a federally authorized tax practitioner claims is privileged under section 7525, that the omitted information was not part of tax advice that constituted the promotion of the direct or indirect participation of a corporation in any tax shelter (as defined in section 6662(d)(2)(C)(iii)); and

(*2*) Specifically represent that to the best of such person's knowledge and belief, all others in possession of the omitted information did not disclose the omitted information to any person whose receipt of such information would result in a waiver of the privilege.

(B) Identification and description of a document or category of information includes, but is not limited to—

(*1*) The date appearing on such document or, if it has no date, the date or approximate date that such document was created;

(*2*) The general nature, description and purpose of such document and the identity of the person who signed such document, and, if it was not signed, the identity of each person who prepared it; and

(*3*) The identity of each person to whom such document was addressed and the identity of each person, other than such addressee, to whom such document, or a copy thereof, was given or sent.

(f) *Retention of lists.* Each material advisor must maintain the list described in paragraph (e) of this section for ten years following the date on which the material advisor last made a statement, oral or written, as to the potential tax consequences of the transaction. If the material advisor required to prepare, maintain, and furnish the list is a corporation, partnership, or other entity (entity) that has dissolved or liquidated before completion of the ten-year period, the person responsible under state law for winding up the affairs of the entity must prepare, maintain and furnish the list on behalf of the entity, unless the entity submits the list to the Office of Tax Shelter Analysis (OTSA) within 60 days after the dissolution or liquidation. If state law does not specify any person as responsible for winding up the affairs, then each of the directors of the corporation, the general partners of the partnership, or the trustees, owners, or members of the entity are responsible for preparing, maintaining and furnishing the list on behalf of the entity, unless the entity submits the list to the Office of Tax Shelter Analysis (OTSA) within 60 days after the dissolution or liquidation. The responsible person must also provide notice to OTSA of such dissolution or liquidation within 60 days after the dissolution or liquidation. The list and the notice provided to OTSA may be sent to: Internal Revenue Service LM:PFTG:OTSA, Large & Mid-Size Business Division, 1111 Constitution Ave., NW., Washington, DC 20224, or to such other address as provided by the Commissioner.

(g) *Furnishing of lists.* Each material advisor and person responsible for maintaining a list of persons must, upon written request by the Internal Revenue Service, furnish the list to the Internal Revenue Service within 20 business days after the date of the request. The request is not required to be in the form of an administrative summons. The list may be furnished to the Internal Revenue Service on paper, card file, magnetic media, or in any other form, provided the method of furnishing the list enables the Internal Revenue Service to determine without undue delay or difficulty the information required in paragraph (e)(3) of this section.

(h) *Designation agreements.* If more than one material advisor is required to maintain a list of persons, in accordance with paragraph (e) of this section, for a potentially abusive tax shelter, the material advisors may designate by written agreement a single material advisor to maintain the list or a portion of the list. The designation of one material advisor to maintain the list does not relieve the other material advisors from their obligation to furnish the list to the Internal Revenue Service in accordance with paragraph (g) of this section. The fact that a material advisor is unable to obtain the list from any designated material advisor, the fact that any designated material advisor did not maintain a list, or the fact that the list maintained by any designated material advisor is not complete, will not relieve any material advisor from the requirements of this section.

(i) *Procedure for obtaining rulings.* A person may submit a request to the Internal Revenue Service for a ruling as to whether a transaction is a potentially abusive tax shelter for purposes of this section and whether that person is a material advisor with respect to that transaction. If the request fully discloses all relevant facts relating to the transaction (including all facts relevant to the person's relationship to such transaction), then the requirement to maintain a list shall be suspended for that person during the period that such ruling request is pending and for 60 days thereafter; however, if it is ultimately determined that the transaction is a potentially abusive tax shelter, the pendency of such a ruling request shall not affect the requirement to maintain the list, nor shall it affect the persons required to be included on the list (including persons who acquired interests in the potentially abusive tax shelter prior to and during the pendency of the ruling request), or the other information required to be included as part of the list.

(j) *Effective date.* This section applies to any transaction that is a potentially abusive tax shelter entered into, or any interest acquired therein, on or after January 1, 2003. However, this section shall apply to any transaction that was entered into, or in which an interest was

acquired, after February 28, 2000, if the transaction becomes a listed transaction as defined in § 1.6011–4T of this chapter on or after January 1, 2003, and is subject to disclosure under § 1.6011–4T of this chapter. Otherwise, the rules that apply with respect to any other transaction that is a potentially abusive tax shelter entered into, or any interest acquired therein, on or before December 31, 2002, are contained in § 301.6112–1T in effect prior to December 31, 2002 (see 26 CFR part 301 revised as of April 1, 2002).

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: October 15, 2002.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 02–26726 Filed 10–17–02; 3:10 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–116]

RIN 2115–AE47

Drawbridge Operation Regulations; Passaic River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the drawbridge operation regulations that govern the Routes 1 & 9 (Lincoln Highway) Bridge, at mile 1.8, across the Passaic River at Newark, New Jersey. This temporary change to the drawbridge operation regulations will allow the bridge to remain in the closed position from 9 p.m. on Friday through 5 a.m. on Monday, for twelve weeks, beginning Friday, October 25, 2002 through Monday, January 13, 2003. This action is necessary to facilitate maintenance at the bridge.

DATES: This rule is effective from October 25, 2002 through January 13, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD01–02–116) and are available for inspection or copying at the First Coast Guard District, Bridge Administration Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Arca, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

The bridge deck is severely deteriorated and must be replaced with all due speed. The deck repairs must be performed on weekends because heavy vehicular traffic during the weekdays prohibits the necessary lane closures required to perform the deck repairs. The Coast Guard believes the weekend closures are reasonable because the bridge normally does not open during the months from October through January.

Due to the critical need to perform these emergency deck repairs, any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest since immediate action is needed to perform these repairs.

Background and Purpose

The Route 1 & 9 (Lincoln Highway) Bridge has a vertical clearance of 40 feet at mean high water and 45 feet at mean low water. The existing regulations at 33 CFR 117.739(b) require the draw to open on signal after at least a four-hour advance notice is given.

The bridge owner, the New Jersey Department of Transportation, asked the Coast Guard to temporarily change the drawbridge operation regulations to allow the bridge to remain in the closed position on weekends from 9 p.m. on Friday through 5 a.m. on Monday, beginning Friday October 25, 2002 through January 13, 2003, to facilitate the replacement of the open grid deck at the bridge. The deck is severely deteriorated and must be replaced with all due speed. The work will be performed on weekends because vehicular traffic is extremely heavy during the weekdays, prohibiting the necessary lane closures required to perform the repair work. The bridge normally has no requests to open October through January. The Coast Guard believes the bridge closures are reasonable due to the critical need to repair the bridge decking and the lack of vessel traffic.

Discussion of Rule

In § 117.739 paragraph (b) will be suspended and a new paragraph (q) will be added to allow the Route 1 & 9 (Lincoln Highway) Bridge to remain in the closed position from 9 p.m. on Friday through 5 a.m. on Monday, from October 25, 2002 through January 13, 2003.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

This conclusion is based on the fact that the bridge has historically had no requests to open during the effective period of this temporary final rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the bridge has historically had no requests to open during the effective period of this temporary final rule.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1d, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.739 [Amended]

2. From October 25, 2002 through January 13, 2003, in § 117.739, paragraph (b) is suspended and a new paragraph (q) is added, to read as follows:

§ 117.739 Passaic River.

* * * * *

(q) The draw of the Routes 1 & 9 (Lincoln Highway) Bridge, mile 1.8, at Newark, shall open on signal if at least a four-hour advance notice is given; except that, from 9 p.m. on Friday through 5 a.m. on Monday, from October 25, 2002 through January 13, 2003, the draw need not open for the passage of vessel traffic.

Dated: October 4, 2002.

J.L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 02–26719 Filed 10–21–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–092]

RIN 2115–AA97

Security Zone; Seabrook Nuclear Power Plant, Seabrook, New Hampshire

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent security zone around the Seabrook Nuclear Power Plant in Seabrook, New Hampshire. This security zone will close off public access to all land and waters within 250-yards of the waterside property boundary of the plant. This action is necessary to ensure public safety and prevent sabotage or terrorist acts. Entry into this security zone is prohibited unless authorized by the Captain of the Port, Portland, Maine.

DATES: This rule is effective November 15, 2002.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–02–092 and will be available for inspection or copying at Marine Safety Office Portland between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) R. F. Pigeon, Port Operations Department, Marine Safety Office Portland at (207) 780–3092.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 31, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Security Zone; Seabrook Nuclear Power Plant, Seabrook, NH" in the **Federal Register** (67 FR 49643). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

This final rule will make permanent a temporary security zone entitled "Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire" published on December 31, 2001 in the **Federal Register** (66 FR 67487). That temporary rule established a security zone with identical boundaries to this rule. That temporary rule originally was effective until June 15, 2002. The effective period was extended until August 15, 2002 by a

rulemaking with the same title published on May 8, 2002 in the **Federal Register** (67 FR 30807). The effective date was further extended until November 15, 2002 by a rulemaking with the same title published on August 13, 2002 in the **Federal Register** (67 FR 52607).

Under 5 U.S.C. 553(d)(3), we find that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures contemplated by the temporary final rule and this rule are intended to prevent possible terrorist attacks against the Seabrook Nuclear Power Plant and are needed to protect the facility, persons at the facility, the public and the surrounding communities from subversive activity, sabotage or possible terrorist attacks, either from the water or by access to the facility by utilizing public trust lands between the low and high water tide lines. Without an effective date for this rule of November 15, 2002, no measure would be in place to provide such protection for Seabrook Nuclear Power Plant, and another extension of the temporary rule would be required. Accordingly, in order to ensure continued protection of Seabrook Nuclear Power Plant, this rule must take effect upon expiration of the temporary rule.

Background and Purpose

On September 11, 2001, terrorists launched attacks on commercial and public structures (airplanes, the World Trade Center in New York and the Pentagon in Arlington, Virginia) killing large numbers of people and damaging properties of national significance. Based on warnings given by national security and intelligence officials that there is an increased risk that further subversive or terrorist activity may be launched against the United States, a permanent security zone is being established to safeguard the Seabrook Nuclear Power Plant, persons at the facility, the public and surrounding communities from sabotage or other subversive acts, accidents, or other events of a similar nature. The Seabrook Nuclear Power Plant presents a possible target of terrorist attack due to the potential catastrophic impact nuclear radiation would have on the surrounding area, its large destructive potential if struck, and its proximity to a population center. This security zone prohibits entry into or movement within the specified area.

This final rule establishes a security zone in all land and waters within 250 yards of the waterside property boundary of Seabrook Nuclear Power Plant identified as follows: beginning at position 42°53′58″ N, 070°51′06″ W then running along the property boundaries of Seabrook Nuclear Power Plant to its position 42°53′46″ N, 070°51′06″ W. This final rule is necessary to provide permanent protection of the waterfront areas of the Seabrook Nuclear Power Plant.

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Portland, Maine. Each person or vessel in a security zone shall obey any direction or order of the Captain of the Port or designated Coast Guard representative on-scene. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port.

Any violation of this security zone herein is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions.

Discussion of Comments and Changes

No changes have been made to the rule as published in the notice of proposed rulemaking.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this final rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary for the following reasons: there is ample room for vessels to navigate around the zone, notifications will be made to the local maritime community, and signs will be posted informing the public of the boundaries of the zone. No comments or letters have been received from the public or any governmental agencies concerning the temporary security zones currently in effect.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this final rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities. For the reasons enumerated in the Regulatory Evaluation section above, we feel that this security zone will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Public Law 104–121], we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add § 165.106 to read as follows:

§ 165.106 Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire.

(a) *Location.* The following area is a security zone: All land and waters within 250 yards of the waterside property boundary of Seabrook Nuclear Power Plant identified as follows: beginning at position 42°53′58″ N, 070°51′06″ W then running along the property boundaries of Seabrook Nuclear Power Plant to position 42°53′46″ N, 070°51′06″ W. All coordinates reference 1983 North American Datum (NAD 83).

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, Portland, Maine (COTP).

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Portland, Maine or designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state and federal law enforcement vessels.

(3) No person may swim upon or below the surface of the water within the boundaries of this security zone.

Dated: October 9, 2002.

M.P. O'Malley,

Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.

[FR Doc. 02–26818 Filed 10–21–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket WA–02–001; FRL–7397–1]

Finding of Attainment for PM_{10}; Wallula PM_{10} Nonattainment Area, Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA has determined that the Wallula nonattainment area in Washington has attained the National Ambient Air Quality Standards for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers as of December 31, 2001, as required by the Clean Air Act.

DATES: This rule will become effective on November 21, 2002.

ADDRESSES: Copies of all information supporting this action are available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Pacific Standard Time at EPA Region 10, Office of Air Quality, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle Washington, 98101, (206) 553–6706.

SUPPLEMENTARY INFORMATION:

I. Background

On September 3, 2002, EPA solicited public comment on a proposal to find that the Wallula nonattainment area had attained the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to 10 microns (PM_{10}) by the attainment date of December 31, 2001, as required by the Clean Air Act. *See* 67 FR 56249.

The Wallula area was designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act upon enactment of the Clean Air Act Amendments of 1990 (Act or CAA) with an attainment date of December 31, 2001. *See* 40 CFR 81.348 (PM_{10} Initial

Nonattainment Areas); *see also* 56 FR 56694 (November 6, 1991). EPA later granted the area a temporary waiver of the moderate area attainment date, which extended the attainment date to December 31, 1997. *See* 62 FR 3800 (January 27, 1997).

On February 9, 2001, EPA made a final determination that the Wallula area had not attained the PM_{10} standard by the moderate area attainment date of December 31, 1997. *See* 66 FR 9663 (February 9, 2001) (final action); (65 FR 69275 (November 16, 2000) (proposed action). EPA made this determination based on air quality data for calendar years 1995, 1996, and 1997. As a result of that finding, the Wallula PM_{10} nonattainment area was reclassified by operation of law as a serious PM_{10} nonattainment area effective March 12, 2001, with an attainment date of December 31, 2001. *See* sections 188(b)(2)(A) and 188(c)(2).

Pursuant to sections 179(c) of the CAA, we have the responsibility of determining within six months of the applicable attainment date whether, based on air quality data, PM_{10} nonattainment areas attained the PM_{10} NAAQS by the attainment date. Determinations under section 179(c)(1) of the Act are to be based upon the area's "air quality as of the attainment date." Three consecutive years of air quality data are generally required to show attainment of the annual and 24-hour standards for PM_{10}. *See* 40 CFR part 50 and appendix K.

As discussed in the proposal, the Wallula monitor recorded no violations of the annual PM_{10} standard for the three-year period from 1999 though 2001. EPA therefore proposed to determine that the Wallula area attained the annual PM_{10} standard as of the serious area attainment date of December 31, 2001. *See* 67 FR 56250.

With respect to the 24-hour PM_{10} standard, there were two exceedences of the 24-hour PM_{10} standard recorded at the Wallula monitor during the period of 1999 through 2001: A concentration of 297 $\mu g/m^3$ on June 23, 1999, and a concentration of 215 $\mu g/m^3$ on August 10, 2000.[1] Washington flagged both of these exceedances as attributable to high wind "natural events." Under section 107(d)(4)(B)(ii) of the CAA and 40 CFR part 50, appendix K, section 2.4, specific exceedances due to uncontrollable natural events, such as unusually high winds, may be discounted or excluded entirely from decisions regarding an area's air quality status in appropriate circumstances. *See* Memorandum from EPA's Assistant Administrator for Air and Radiation to EPA Regional Air Directors entitled "Areas Affected by Natural Events," dated May 30, 1996 (EPA's Natural Events Policy). EPA has stated that it will treat ambient PM_{10} exceedances caused by dust raised by unusually high winds as due to uncontrollable natural events (and thus excludable from attainment determinations) if either (1) the dust originated from nonanthropogenic sources or (2) the dust originated from anthropogenic sources controlled with best available control measures (BACM). *See* Natural Events Policy, pp. 4–5.

As discussed in detail in the proposal, based on information submitted by Washington and other information available to EPA, EPA proposed to find that the exceedances that occurred on June 23, 1999 and August 10, 2000, as well as two previous exceedances on June 21, 1997 and July 10, 1998 (which had also been flagged by Washington as high wind events), qualify as high wind natural events under EPA's Natural Events Policy. Therefore, EPA proposed to exclude the 1999 and 2000 exceedences from consideration in determining whether the Wallula PM_{10} nonattainment area attained the 24-hour as of December 31, 2001 and to find that the area had attained the 24-hour PM_{10} standard as of that date. *See* 67 FR 56250–56252. EPA noted, however, that identification and application of BACM for agricultural lands is evolving and that EPA expects Washington to continue efforts in identifying and implementing BACM on sources of agricultural windblown dust in the Wallula area in order for future exceedances caused by high winds to be characterized as "natural events" and excluded in attainment determinations. *See* 67 FR 56252. EPA received no comments in response to its September 3, 2002 proposal.

[1] Because the Wallula monitor is scheduled to sample only once every six days, each measured exceedance is generally counted as six expected exceedances and would generally represent a violation of the 24-hour PM_{10} standard.

II. Final Action

EPA has determined that the Wallula PM_{10} nonattainment area attained the PM_{10} NAAQS as of the serious area attainment date of December 31, 2001 and that the exceedances that occurred on June 21, 1997, July 10, 1998, June 23, 1999, and August 10, 2000 qualify as high wind natural events under EPA's Natural Events Policy.

Consistent with CAA section 188, the Wallula nonattainment area will remain a serious PM_{10} nonattainment area, but will avoid the additional planning requirements that apply to serious PM_{10} nonattainment areas that fail to meet the attainment date under section 189(d) of the CAA. This finding of attainment should not be confused with a redesignation to attainment under CAA section 107(d). Washington has not submitted a serious area plan for the Wallula area that meets the requirements of section 189(b) of the CAA. In addition, Washington has not submitted a maintenance plan as required under section 175(A) of the CAA or met the other CAA requirements for redesignations to attainment. The designation status in 40 CFR part 81 will remain serious nonattainment for the Wallula PM_{10} nonattainment area until such time as Washington meets the CAA requirements for redesignations to attainment.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely makes a determination based on air quality data and does not impose any requirements. Accordingly, the Administrator certifies that this finding will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this finding does not impose any enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This finding also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely makes a determination based on air quality data and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This finding also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because this action does not involve technical standards. This finding does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 23, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: October 10, 2002.

Ronald A. Kreizenbech,

Acting Regional Administrator, Region 10.

[FR Doc. 02–26847 Filed 10–21–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2508; MB Docket No. 02–105; RM–10396]

Radio Broadcasting Services; Boonville, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 67 FR 39935 (June 11, 2002), this document substitutes Channel 300A for the vacant Channel 241A allotment at Boonville, California, thus allowing Station KRSH(FM) to increase its power to maximum Class A (equivalent) FM facilities on Channel 240A at Healdsburg, California. The coordinates for Channel 300A at Boonville are 39–01–33 North Latitude and 123–29–33 West Longitude, with a site restriction of 11.2 kilometers (7 miles) west of Boonville.

DATES: Effective November 19, 2002.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–105, adopted September 25, 2002, and released October 4, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202 863–2893, facsimile 202 863–2898, or via e-mail: *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 300A at Boonville, and removing Channel 241A at Boonville.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26775 Filed 10–21–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2507; MB Docket No.02–185; RM–10463]

Radio Broadcasting Services; Balmorhea, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 283C to Balmorhea, Texas, in response to a petition filed by Linda Crawford. *See* 67 FR 50850, August 6, 2002. The coordinates for Channel 283C at Balmorhea are 31–08–42 and 103–36–54. There is a site restriction 21.7 kilometers (13.5 miles) northeast of the community. Concurrence of the Mexican Government has been received for the allotment of Channel 283C at Balmorhea. With this action, this proceeding is terminated. A filing window for Channel 283C at Balmorhea will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 02–185, adopted September 25, 2002, and released October 4, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail: *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Balmorhea, Channel 283C.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26776 Filed 10–21–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2224; MM Docket No. 00–18, RM–9790]

Radio Broadcasting Services; Barnwell, SC, and Douglas, East Dublin, Pembroke, Pulaski, Statesboro, Swainsboro, Twin City, and Willacooche, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule; grant of petition for reconsideration.

SUMMARY: This document grants a Petition for Reconsideration filed by Multi-Service Corporation Small directed to the *Report and Order* in this proceeding which substituted Channel 257C1 for Channel 256C3 at Barnwell, South Carolina, reallotted Channel 257C1 to Pembroke, Georgia, and modified the license of Station WBAW to specify operation on Channel 257C1 at Pembroke. The *Report and Order* also allotted Channel 256C3 to Barnwell as a replacement service. *See* 66 FR 55596, November 2, 2001. Specifically, this document modified the Report and Order to the extent of withholding program test authority for the Channel 257C1 allotment in Pembroke until the ultimate permittee of the Channel 256C3 allotment at Barnwell commences operation. With this action, the proceeding is terminated.

DATES: Effective October 22, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 00–18, adopted September 4, 2002, and released October 4, 2002. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualixint@aol.com*.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26778 Filed 10–21–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2002–12065]

RIN 2127–AI88

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This document amends our child restraint standard to facilitate the safe transportation of preschool and special needs children through the manufacture and use of vests that hold the children in place during a crash. Vests and other types of child restraints are currently prohibited by the standard from having any means designed for attaching the system to a vehicle seat back. Effective immediately, all vests that are manufactured for use on school bus seats are excluded from the prohibition. Effective February 1, 2003, the exclusion is limited to the vests that bear a warning label informing users that the vest must be used only on school bus seats, and that the entire seat directly behind the child wearing the seat-mounted vest must be either unoccupied or occupied by restrained passengers. The agency also requests comments on this amendment.

This document responds to a petition for rulemaking from a vest manufacturer. NHTSA has determined that the requested amendment would facilitate the safe transportation of preschool and special needs children.

NHTSA is making the amendment final by this document on an interim basis because of the pressing need to permit, early in the school year, the manufacture and sale of restraints that can be used to transport these children. The exclusion terminates on December 1, 2003. After reviewing the comments received on this document, NHTSA will decide whether to exclude these vests from the prohibition on a permanent basis.

DATES: This rule is effective October 22, 2002 and expires on December 1, 2003. Comments must be received by December 23, 2002.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document. You may call Docket Management at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Mr. Tewabe Asebe, Office of Rulemaking, NVS–113, telephone (202) 366–2365. For legal issues: Ms. Deirdre Fujita, Office of Chief Counsel, NCC–112, telephone (202) 366–2992. Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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V. Submission of Comments

I. Introduction

This document amends Standard No. 213, "Child Restraint Systems" (49 CFR § 571.213), to modify S5.3.1 of the standard on an interim basis. This document also solicits comments on this amendment.

This rulemaking involves a type of child restraint system that is commonly known as a "vest." A vest restraint system consists primarily of flexible material, such as straps, webbing or similar material, and that does not include a rigid seating structure for the child. Vest restraints are also called "harnesses." Standard No. 213 uses the term "harness" in specifying requirements for this type of child restraint system. We consider the terms "vest" and "harness" to be interchangeable. We use the term "vest" in this notice to the extent that a manufacturer uses the term in naming its product, or when a member of the public uses the term to describe a restraint. In the regulatory text for this interim final rule, we have a definition of "harness," since "harness" is already used in the standard rather than "vest." Again, however, the terms are synonymous.

II. Background

On August 31, 2001, NHTSA issued a letter to Ms. Kathy Durkin (Hold Me Tight Products), interpreting Standard No. 213 with respect to a passenger support vest for use on school buses. Ms. Durkin had asked whether her product was a child restraint. The product was a vest that had straps that "wrap the seat back and are independent of the seat belt." In the course of explaining that the product was a "child restraint system" subject to the standard, NHTSA discussed S5.3.1, which states: "Except for components designed to attach to a child restraint anchorage system, each add-on child restraint system shall not have any means designed for attaching the system to a vehicle seat cushion or vehicle seat back * * *." Child restraints are prohibited from attaching to the vehicle seat back because they will load the seat back in a crash. The seat back might not be able to withstand the additional load applied to it by an attached, occupied child restraint. NHTSA concluded the letter by stating that child restraints that are designed to attach to a vehicle seat back do not meet S5.3.1.

After it issued the interpretation letter, NHTSA was informed by many school districts and school bus operators that they were already using products that wrap around the vehicle seat back ("seat-mounted vests"). They told NHTSA that the vests were widely used to transport many different populations of children, including preschoolers,[1] children who need help sitting upright, and children who need to be physically restrained because of physical or behavioral needs. The vests were popular with the pupil transportation administrators and operators because the restraints do not use a seat belt to attach to the vehicle. Thus, they can be used on large, compartmentalized school buses notwithstanding the absence of seat belts. (Compartmentalization provides passenger crash protection without the need for seat belts by surrounding passengers with sturdy, high-backed and well-padded seats.) The administrators and operators said that if seat-mounted vests were unavailable, they would have great difficulty in transporting their children. They might have to replace some of the bus seats in their fleet with seats that have belts, purchase additional school buses, or purchase conventional child safety seats (and train personnel on installing them and find storage space for storing them), all at considerable cost. Some indicated that if seat-mounted vests were unavailable, they might not restrain their children with any kind of child restraint system at all.

On March 4, 2002, Ms. Constance S. Murray, president of E–Z–ON, submitted a petition for rulemaking requesting NHTSA to amend S5.3.1 of Standard No. 213 to allow the manufacture and sale of seat-mounted vests for school buses. Petitioner informed NHTSA that E–Z–ON has been selling its seat-mounted vest, the Camwrap, since 1982. E–Z–ON estimated that between January 1, 1988 and June 25, 2002, it sold more than 230,000 Camwraps.

Petitioner stated that school districts and pupil transporters that have purchased seat-mounted vests are in danger of losing funds and incurring additional costs because of the vests' inability to meet S5.3.1, even though the industry "has used Seat-Mounted Safety Vests and Harnesses to safely transport children of all sizes and physical and behavioral needs. * * * Seat-Mounted CRS [child restraint systems] offer a safe, easy and affordable way to add upper body support and safe restraint to children on school buses." Petitioner also submitted a document that summarized the results of an on-line survey that E–Z–ON apparently conducted to assess respondents' use of seat-mounted vests or harnesses in school buses, respondents' knowledge of a school bus crash in which a seat-mounted vest or harness was being used and whether a child properly secured in a seat-mounted vest or harness was seriously injured, and whether seat-mounted vests or harnesses should be "removed from school buses." (Petitioner did not explain the methodology of the survey, *e.g.*, who was contacted to respond, selection of respondents, etc., and did not provide the actual results.) According to the petitioner, there were 61 respondents, 54 of whom currently use seat-mounted vests or harnesses in school buses. Petitioner stated that four had personal knowledge of a school bus crash in which a seat-mounted vest or harness was used and that there were no injuries reported or described.

Subsequent to NHTSA's receipt of the petition, a number of pupil transporters wrote identical "petitions" to NHTSA in support of that of E–Z–ON. These were Joy E. Winnie, Marlon Carter, Richard Rodriquez, Marcia Hahn, and Kathy Potts. Copies of all of these petitions have been placed in the docket.

[1] NHTSA recommends that preschool age children transported in school buses be transported in child restraint systems. "Guideline for the Safe Transportation of Pre-School Age Children in School Buses," NHTSA, February 1999.

III. Issues

a. Safety

NHTSA believes that sanctioning the manufacture and sale of seat-mounted vests for use on school buses will enhance the safe transportation of preschool and special needs children, provided that certain conditions are met to ensure that the seat back would not be overloaded and subject to failure. These conditions are that the entire school bus seat directly rearward of a child restrained in a seat-mounted vest is vacant or occupied by restrained children. This interim final rule is premised on those conditions being met by way of a warning label on the vests, informing school administrators and school bus drivers about those conditions.

Between 1996 and 1998, the agency conducted a series of sled tests on safety vests at the agency's Vehicle Research and Test Center (VRTC). The tests were conducted as part of the research program that developed the agency's guideline for safely transporting preschool age children in school buses (footnote 1, supra). The testing program evaluated the performance of E–Z–ON's Camwrap (a seat-mounted vest) and other restraints. A summary report of the tests titled: "School Bus Compartmentalization and Preschool

Age Transportation—Vest and Harness Test Results" is available in Docket NHTSA–1998–4573–51.

The tests were conducted using the FMVSS No. 213 crash pulse (30 mile per hour (mph) velocity change with a peak acceleration of 24 g). This pulse represented a 30 mph small school bus crash with a vehicle of comparable mass traveling at the same speed. Hybrid II 3-year-old child dummies were restrained in the vests in a front school bus bench seat (front row), with Hybrid III 50th percentile male dummies seated in a bench seat immediately behind the front row ("second row"). The male dummies weighed approximately 172 pounds. The male dummies in the second row were belted in some tests, and unbelted in others. The Camwrap was wrapped around the school bus seat back (per E–Z–ON's installation instructions). The vests performed adequately when the male dummies in the second row were belted. Head injury criterion (HIC) values for the 3-year-old dummies restrained in the vests were below 800. However, in the tests with the unbelted male dummies, the HIC values for three out of four child dummies were above 1000. The seats were standard non-reinforced school bus seats. The test results are summarized in the table below:

VRTC TEST RESULTS FOR HIC VALUES FOR HYBRID II 3-YEAR-OLD DUMMIES RESTRAINED BY HARNESSES WITH CAMWRAP

Rear seat 50th percentile male dummies	Standard school bus seat spacing (inches)	Dummy seating position (HIC values)	
		Aisle	Sidewall
Unbelted	20	1460	2137
	24	1381	483
Belted	20	722	794
	24	219	185

b. Amendments

The VRTC test data indicate that seat-mounted vests can be a suitable means of restraining children on school buses, provided that the seats behind a child restrained in the vest are empty or are occupied by restrained passengers.[2] NHTSA believes that school bus operators and bus transportation administrators can exercise sufficient oversight over the seating of children on school buses to ensure that these seats are empty or that their occupants are restrained.

This rule therefore excludes vests (harnesses) manufactured and sold for use on school bus seats from the requirement of S5.3.1, thereby sanctioning the manufacture and sale of seat-mounted vests for pupil and Head Start transportation. Effective February 1, 2003, the devices must bear a permanent warning label to be excluded. See Figure 12, infra. The label must be placed on the part of the restraint that attaches the vest to the vehicle seat back, and must be visible when the harness is installed. It must contain a pictogram and the following statements: "WARNING! This restraint must only be used on school bus seats. Entire seat directly behind must be unoccupied or have restrained occupants." Comments are requested on the requirements for the label.

The label must state that the restraint is manufactured for use only on "school bus seats" rather than on "school buses." A final rule issued by the Department of Health and Human Services on January 18, 2001 (66 FR 5296) requires Head Start agencies to transport Head Start children in vehicles built to Federal school bus structural standards beginning in 2006. These vehicles must be school buses, or alternate vehicles that have all the structural features of a school bus except for certain school bus crash avoidance features (*e.g.*, the flashing lights and stop arms of a school bus). The reference in today's rule to "school bus seats" accommodates the possible use of seat-mounted vests on these alternate vehicles, which are not school buses, but which have school bus seats. A school bus seat is a seat in a vehicle that meets FMVSS No. 222, "School Bus Seating and Crash Protection" (49 CFR 571.222).

To implement the exclusion, we are adding a definition of "harness" to the standard. The definition of a harness is "a combination pelvic and upper torso child restraint system that consists primarily of flexible material, such as straps, webbing or similar material, and that does not include a rigid seating structure for the child." In developing the definition, we considered the definition of a Type 3 seat belt assembly that Standard No. 209 once had.[3] The definition was as follows: "a combination pelvic and upper torso restraint for persons weighing not more than 50 pounds or 23 kilograms and capable of sitting upright by themselves, that is children in the approximate range of 8 months to 6 years." As noted previously, we consider the term "harness," to be interchangeable with the term "vest," which is commonly used to describe seat-mounted restraints.

This rule also makes several other amendments to Standard No. 213 relating to the exclusion. It amends S5.3.2 and an accompanying table in Standard No. 213, which specify the means by which child restraint systems must be capable of being attached to a vehicle seat. The table in S5.3.2 is modified to provide that harnesses designed for use on school bus seats be capable of attaching to the bus seat by a seat mount. This interim final rule also amends the table to S5.1.3.1(a) of the standard, which specifies the head and knee excursion requirements that add-on child restraints must meet. The table showed that harnesses must meet the requirements when attached to the test seat assembly using a lap belt and tether. The table is amended for harnesses for use on school bus seats, to show that these restraints are attached to the seat assembly using the harness's seat back mount.

In addition, the dynamic test procedures of the standard are amended to specify procedures for testing seat-mounted harnesses. The procedures had reflected attachment of add-on child restraints by a lap belt, lap belt and tether, lap and shoulder belt, and child restraint anchorage system. Seat-mounted harnesses are not attached by those means. Accordingly, S6.1.2(a)(1)(i)(A) and S6.1.2(d)(1)(ii) are revised to include specifications appropriate for the manner in which seat-mounted harnesses are attached. Comments are requested on these revisions.

This rule also amends Standard No. 213 by adding a requirement (S5.6.1.11) that beginning February 1, 2003, the printed instructions accompanying these harnesses must include the warning statements described above. (These statements are: "WARNING! This restraint must only be used on school bus seats. Entire seat directly behind must be unoccupied or have restrained occupants.") The purpose of this requirement is to increase the likelihood that the seat back will not be overloaded during a frontal crash by unrestrained passengers sitting in the seat immediately behind the child restrained in a harness.

c. Interim Final Justification

This amendment will relieve a restriction currently imposed by Standard No. 213 and will facilitate the transportation of preschool and special needs children. With the start of the new school year, many pupil transportation administrators need to transport preschool, Head Start and special needs children on school buses. For many administrators, there is no reasonable alternative to restraining these children other than by means of seat-mounted vests. Various pupil transportation administrators have stated that they will not use the seat-mounted vests that they have already purchased unless and until the standard is amended. Others want to purchase new seat-mounted vests to restrain these children, but will not do so unless the standard is amended. Accordingly, NHTSA has determined that it is in the public interest to make the changes effective immediately on an interim basis (until December 1, 2003). After reviewing the comments received on this document, NHTSA will decide whether to amend the standard permanently.

IV. Rulemaking Analyses and Notices

a. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "nonsignificant" under the Department of Transportation's regulatory policies and procedures. The agency concludes that the impacts of the amendments are so minimal that preparation of a full regulatory evaluation is not required. The rule will not impose any new requirements or costs on manufacturers, but instead will permit manufacturers to produce a type of harness if the harness bears a label regarding how the restraint should be used.

b. Regulatory Flexibility Act

NHTSA has also considered the impacts of this document under the Regulatory Flexibility Act. I hereby certify that this rule does not have a significant economic impact on a substantial number of small entities. The rule will not impose any new requirements or costs on manufacturers, but instead will permit manufacturers to produce a type of harness if the harness bears a label regarding how the restraint should be used. NHTSA has learned of two harness restraint manufacturers, both of which are small businesses. The agency believes that this rule will not have a significant impact on these businesses. Adding a warning label to the harness strap would cost approximately eight cents per device. This rule enables the sale of seat-mounted harnesses to school districts and to other pupil transportation providers. Since the cost of the label is minimal, purchasers will not be substantially affected by the rule.

c. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not contain any collection of information requirements requiring review under the Paperwork Reduction Act.

d. National Environmental Policy Act

NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

e. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

We have analyzed this interim rule in accordance with the principles and criteria set forth in Executive Order 13132 and have determined that this rule does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The rule will not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

f. Civil Justice Reform

This rule will not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule will not preempt the states from adopting laws or regulations on the same subject, except that it will preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

g. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling

[2] This amendment affects seat-mounted vests that are recommended for children weighing up to 50 pounds (maximum weight limit covered by Standard No. 213). E–Z–On states that its vest is designed for children and adults who weigh between 20 and 164 pounds. Our test data do not address the performance of seat-mounted vests when restraining children above 40 pounds.

[3] The definition was removed in 1981, when the requirements for child harnesses were moved to Standard No. 213.

procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The agency searched for, but did not find any voluntary consensus standards relevant to this final rule.

h. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $ 100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. This interim final rule will not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This rule will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

V. Submission of Comments

How Can I Influence NHTSA's Thinking on This Rule?

In developing this interim final rule, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rulemaking action. We invite you to provide different views on the approaches we adopted, new approaches we haven't considered, new data, how this interim rule may affect you, or other relevant information. We welcome your views on all aspects of this interim final rule, but request comments on specific issues throughout this document. Your comments will be most effective if you follow the suggestions below:

—Explain your views and reasoning as clearly as possible.
—Provide solid technical and cost data to support your views.
—If you estimate potential costs, explain how you arrived at the estimate.
—Tell us which parts of the interim final rule you support, as well as those with which you disagree.
—Provide specific examples to illustrate your concerns.
—Offer specific alternatives.
—Refer your comments to specific sections of the document, such as the units or page numbers of the preamble, or the regulatory sections.
—Be sure to include the name, date, and docket number with your comments.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR § 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web Site at Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on "search."

(3) On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–2002–1234," you would type "1234." After typing the docket number, click on "search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

§ 571.213 [Amended]

2. Section 571.213 is amended by:

(a) Amending S4 by adding, in alphabetical order, a definition of "harness";

(b) Revising the "Table to S5.1.3.1(a)-Add-On Forward-Facing Child Restraints," and revising S5.3.1 and S5.3.2 (including the table in S5.3.2);

(c) Adding S5.6.1.11;

(d) Revising S6.1.2(a)(1)(i)(A) and S6.1.2(d)(1)(ii); and

(e) Adding Figure 12 at the end of § 571.213.

The revised and added sections read as follows:

§ 571.213 Standard No. 213

* * * * *

S4. *Definitions.*

* * * * *

Harness means a combination pelvic and upper torso child restraint system that consists primarily of flexible material, such as straps, webbing or similar material, and that does not include a rigid seating structure for the child.

* * * * *

S5.1.3.1 * * *

TABLE TO S5.1.3.1(A)—ADD-ON FORWARD-FACING CHILD RESTRAINTS

When this type of child restraint	Is tested in accordance with—	These excursion limits apply	**Explanatory note:** In the test specified in 2nd column, the child restraint is attached to the test seat assembly in the manner described below, subject to certain conditions
Harnesses, backless booster seats and restraints designed for use by physically handicapped children.	S6.1.2(a)(1)(i)(A)	Head 813 mm; Knee 915 mm	Attached with lap belt; in addition, it a tether is provided, it is attached.
Harnesses labeled per S5.3.1(b)(1) through S5.3.1(b)(3) and Figure 12.	S6.1.2(a)(1)(i)(A)	Head 813 mm; Knee 915 mm	Attached with seat back mount.
Belt-positioning seats	S6.1.2(a)(1)(ii)	Head 813 mm; Knee 915 mm	Attached with lap and shoulder belt; no tether is attached.
All other child restraints, manufactured before September 1, 1999.	S6.1.2(a)(1)(i)(B)	Head 813 mm; Knee 915 mm	Attached with lap belt; no tether is attached.
All other child restraints, manufactured on or after September 1, 1999.	S6.1.2(a)(1)(i)(B)	Head 813 mm; Knee 915 mm	Attached with lap belt; no tether is attached.
	S6.1.2(a)(1)(i)(D) (beginning September 1, 2002).		Attached to lower anchorages of child restraint anchorage system; no tether is attached.
	S6.1.2(a)(1)(i)(A)	Head 720 mm; Knee 915 mm	Attached with lap belt; in addition, if a tether is provided it is attached.
	S6.1.2(a)(1)(i)(C) (beginning September 1, 2002).		Attached to lower anchorages of child restraint anchorage system; in addition, if a tether is provided, it is attached.

* * * * *

S5.3.1 Add-on child restraints shall meet either (a) or (b), as appropriate.

(a) Except for components designed to attach to a child restraint anchorage system, each add-on child restraint system must not have any means designed for attaching the system to a vehicle seat cushion or vehicle seat back and any component (except belts) that is designed to be inserted between the vehicle seat cushion and vehicle seat back. Harnesses manufactured before February 1, 2003 that are manufactured for use on school bus seats are excluded from S5.3.1(a).

(b) Harnesses manufactured on or after February 1, 2003, but before December 1, 2003, for use on school bus seats must meet S5.3.1(a) of this standard, unless a label that conforms in content to Figure 12 and to the requirements of S5.3.1(b)(1) through S5.3.1(b)(3) of this standard is permanently affixed to the part of the harness that attaches the system to a vehicle seat back. Harnesses that are not labeled as required by this paragraph must meet S5.3.1(a).

(1) The label must be plainly visible when installed and easily readable.

(2) The message area must be white with black text. The message area must be no less than 20 square centimeters.

(3) The pictogram shall be gray and black with a red circle and slash on a white background. The pictogram shall be no less than 20 mm in diameter.

S5.3.2 Each add-on child restraint system shall be capable of meeting the requirements of this standard when installed solely by each of the means indicated in the following table for the particular type of child restraint system:

Type of add-on child restraint system	Means of Installation				
	Type 1 seat belt assembly	Type 1 seat belt assembly plus a tether anchorage, if needed	Child restraint anchorage system (effective September 1, 2002)	Type II seat belt assembly	Seat back mount
Harness labeled per S5.3.1(b)(1) through S5.3.1(b)(3) and Figure 12					X
Other harnesses		X			
Car beds	X				
Rear-facing restraints	X		X		
Belt-positioning seats				X	
All other child restraints	X	X	X		

* * * * *

S5.6.1.11 For harnesses that are manufactured on or after February 1, 2003, but before December 1, 2003, for use on school bus seats, the instructions must include the following statements:

WARNING! This restraint must only be used on school bus seats. Entire seat directly behind must be unoccupied or have restrained occupants.

* * * * *

S6.1.2 Dynamic test procedure.

(a) * * *

(1) * * *

(i) * * *

(A) Install the child restraint system at the center seating position of the standard seat assembly, in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1, except that the standard lap belt is used and, if provided, a tether strap may be used. For harnesses that bear the label shown in Figure 12 and that meet S5.3.1(b)(1) through S5.3.1(b)(3), attach the harness in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1, *i.e.*, the seat back mount is used.

* * * * *

(d) * * *

(1) * * *

(ii) All Type 1 belt systems used to attach an add-on child restraint system to the standard seat assembly, and any provided additional anchorage belt (tether), are tightened to a tension of not less than 53.5 N and not more than 67 N, as measured by a load cell used on the webbing portion of the belt. All belt systems used to attach a harness that bears the label shown in Figure 12 and that meets S5.3.1(b)(1) through S5.3.1(b)(3) are also tightened to a tension of not less than 53.5 N and not more than 67 N, by measurement means specified in this paragraph.

* * * * *

BILLING CODE 4910–59–P

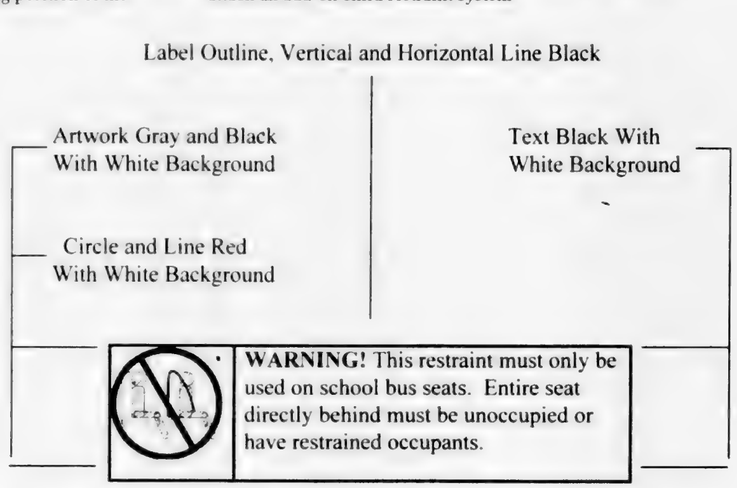

Figure 12. Label on Harness Component That Attaches to School Bus Seat Back.

Issued on October 16, 2002.

Annette M. Sandberg,

Deputy Administrator.

[FR Doc. 02–26824 Filed 10–17–02; 4:00 pm]

BILLING CODE 4910–59–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011004242–2005–02; I.D. 101102E]

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Quota Harvested for Maine Mahogany Quahog Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvested for Maine mahogany quahog.

SUMMARY: NMFS announces that the annual quota for the Maine mahogany quahog fishery has been harvested. Commercial vessels operating under a Maine mahogany quahog permit may not harvest Maine mahogany quahogs from the Maine mahogany quahog zone for the remainder of the fishing year (through December 31, 2002). Regulations governing the Maine mahogany quahog fishery require publication of this notification to advise the public of this closure.

DATES: Effective 0001 hrs local time, October 24, 2002, through 2400 hrs local time, December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, 978–281–9141; fax 978–281–9135; e-mail *Douglas.Christel@noaa.gov*.

SUPPLEMENTARY INFORMATION: The regulations governing the Maine mahogany quahog fishery appear at 50 CFR part 648. The regulations establish the annual quota for the harvest of mahogany quahogs within the Maine mahogany quahog zone at 100,000 Maine bushels (35,150 hL). The quota may be revised annually by the Mid-Atlantic Fishery Management Council (Council) within the range of 17,000 and 100,000 Maine bu (5,975 and 35,150 hL, respectively). The Maine mahogany quahog zone is defined as the area bounded on the east by the U.S.-Canada maritime boundary, on the south by a straight line at 43 50' N. lat., and on the north and west by the shoreline of Maine.

The Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial Maine mahogany quahog quota for each fishing year using dealer and other available information to determine when the quota is projected to have been harvested. NMFS is required to publish a notification in the **Federal Register** notifying commercial vessel permit holders that, effective upon a specific date, the Maine mahogany quahog quota has been harvested and no commercial quota is available for harvesting mahogany quahogs by vessels possessing a Maine mahogany quahog permit for the remainder of the year, from within the Maine mahogany quahog area.

The Regional Administrator has determined, based upon dealer reports and other available information, that the 2002 Maine mahogany quahog quota has been harvested. Therefore, effective 0001 hrs local time, October 24, 2002, further landings of Maine mahogany quahogs harvested from within the Maine mahogany quahog area by vessels possessing a Maine mahogany quahog Federal fisheries permit are prohibited through December 31, 2002. The 2003 fishing year for Maine mahogany quahog harvest will open on January 1, 2003.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 15, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–26694 Filed 10–16–02; 3:59 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 101002A]

Fisheries of the Northeastern United States; Tilefish Fishery; Continuation of Specifications for the 2003 Fishing Year

AGENCY: National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of continuation of specifications.

SUMMARY: NOAA Fisheries announces that it will continue the 2002 quota specifications for the golden tilefish fishery for the 2003 fishing year. Accordingly, the total allowable landings (TAL) for the 2003 fishing year will remain at 1.995 million lb (905,172 kg). The intent of this action is to notify the public that there will be no change in the fishery specifications for tilefish for the fishing year beginning November 1, 2002.

DATES: Effective from November 1, 2002, through October 31, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NOAA Fisheries, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Continuation of Specifications for the Golden Tilefish Fishery." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Doug Christel, 978–281–9141; fax 978–281–9135; e-mail *Douglas.Christel@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The final rule implementing the Tilefish Fishery Management Plan (FMP) became effective on November 1, 2001 (66 FR 49136, September 26, 2001). Pursuant to the tilefish regulations at 50 CFR 648.290, the Tilefish FMP Monitoring Committee (Monitoring Committee) will meet after the completion of each stock assessment, or at the request of the Mid-Atlantic Fishery Management Council (Council) Chairman, to review tilefish landings information and any other relevant available data to determine if the annual quota requires modification to respond to changes to the stock's biological reference points or to ensure that the rebuilding schedule is maintained. Additional management measures or revisions to existing measures could also be considered at this time to ensure that the TAL would not be exceeded. Furthermore, up to 3 percent of the TAL could be set aside for a given fishing year for the purpose of funding research. In the event that a new stock assessment was not completed or the Council Chairman does not request that the Monitoring Committee meet, the regulations further specify that the previous year's specifications will remain effective and that NOAA Fisheries will issue notification in the **Federal Register** informing the public of such.

A new tilefish stock assessment is not scheduled to occur until 2004, and the

Council Chairman did not request that the Monitoring Committee meet to determine if the annual quota requires modification to respond to stock conditions. Furthermore, the Council voted on October 3, 2002, not to establish a research set-aside allocation for the upcoming fishing year. Therefore, NOAA Fisheries informs the public that the 2002 quota specifications of 1.995 million lb (905,172 kg) for the golden tilefish fishery will remain in effect for the 2003 fishing year (November 1, 2002, through October 31, 2003). Thus, 2002 TAL allocations for each Federal tilefish permit category will remain in effect for the 2003 fishing year.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 et. seq.

Dated: October 16, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–26871 Filed 10–21–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020402077–01; I.D. 101502B]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Whiting Closure for the Catcher/Processor Sector

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces closure of the 2002 catcher/processor fishery for Pacific whiting (whiting) at 0000 local time (l.t.) October 16, 2002, because the allocation for the catcher/processor sector will be reached by that time. This action is intended to keep the harvest of whiting within the 2002 allocation levels.

DATES: Effective from 0000 l.t. October 16, 2002, until the start of the 2003 primary season for the catcher/processor sector, unless modified, superseded or rescinded in which case it will be announced in the **Federal Register**. Comments will be accepted through November 6, 2002.

ADDRESSES: Submit comments to D. Robert Lohn, Administrator,

Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Becky Renko at 206–526–6110

SUPPLEMENTARY INFORMATION: This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. On April 15, 2002 (67 FR 18117), the levels of allowable biological catch (ABC), the optimum yield (OY) and the commercial OY (the OY minus the tribal allocation) for U.S. harvests of whiting were announced in the **Federal Register**. For 2002, the whiting ABC is 166,000 metric tons (mt), the OY is 129,600 mt, and the commercial OY is 106,920 mt.

Regulations at 50 CFR 660.323(a)(4) divide the commercial OY into separate allocations for the non-tribal catcher/processor, mothership, and shore-based sectors of the whiting fishery. The catcher/processor sector is composed of vessels that harvest and process whiting. The mothership sector is composed of motherships, and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest. The shoreside sector is composed of vessels that harvest whiting for delivery to shoreside processors. Each of these sectors receives a portion of the commercial OY. In 2001, the catcher/processors received 34 percent, motherships received 24 percent, and the shore-based sector received 42 percent. When applied to the commercial OY for 2002, this resulted in the following allocations: 36,353 mt for the catcher/processors, 25,661 mt for the motherships, and 44,906 mt for the shore-based sector.

Regulations at 50 CFR 660.323(a)(3)(i) describe the primary season for catcher/processors as the period(s) when at-sea processing is allowed and the fishery is open for the catcher/processor sector. When each sector's allocation is reached, the primary season for that sector is ended.

NMFS Action

This action announces achievement of the allocation for the catcher/processor sector only. The best available information on October 15, 2002, indicated that the 36,353 mt catcher/processor allocation would be reached by 0000 l.t. October 16, 2002, at which time the primary season for the catcher/processor sector ends.

For the reasons stated here and in accordance with the regulations at 50 CFR 660.323(a)(4)(iii)(A), NMFS herein announces: Effective 0000 l.t. October 16, 2002, further taking and retaining, receiving or at-sea processing of whiting by a catcher/processor is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process whiting that was on board before at-sea processing was prohibited.

Classification

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. NMFS finds good cause to waive the requirement to provide prior notice and comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impracticable. It would be impracticable because if this closure were delayed in order to provide notice and comment, the fishery could be expected to exceed the sector allocation. The aggregate data upon which the determination is based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours. NMFS also find good cause under 5 U.S.C. 553 (d)(3) to waive the 30 day delay in the effective date of this rule. Such a delay would allow the catcher/processor sector of the whiting fishery to continue harvesting whiting and thus exceed its 2002 allocation of whiting. This action is taken under the authority of 50 CFR 660.323(a)(4)(iii)(A) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 16, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–26693 Filed 10–16–02; 4:00 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 67, No. 204

Tuesday, October 22, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 02–036–1]

Add Yucatan Peninsula to the List of Regions Considered Free of Exotic Newcastle Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations by adding the Mexican States of Campeche, Quintana Roo, and Yucatan to the list of regions considered free of exotic Newcastle disease. We have conducted a risk evaluation and have determined that these three Yucatan Peninsula States have met our requirements for being recognized as free of this disease. This proposed action would allow importation into the United States of poultry and poultry products from these regions and would eliminate restrictions that no longer appear necessary.

DATES: We will consider all comments that we receive on or before December 23, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–036–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–036–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–036–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Hatim Gubara, Staff Veterinarian, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; phone (301) 734–4356, fax (301) 734–3222.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations pertaining to the importation of animals and animal products are set forth in the Code of Federal Regulations (CFR), title 9, chapter I, subchapter D (9 CFR parts 91 through 99).

Until several years ago, the regulations in parts 91 through 99 (referred to below as the regulations) governed the importation of animals and animal products according to the recognized disease status of the exporting country. In general, if a disease occurred anywhere within a country's borders, the entire country was considered to be affected with the disease, and importations of animals and animal products from anywhere in the country were regulated accordingly. However, international trade agreements entered into by the United States—specifically, the North American Free Trade Agreement and the World Trade Organization Agreement on Sanitary and Phytosanitary Measures—require APHIS to recognize regions, rather than only countries, for the purpose of regulating the importation of animals and animal products into the United States.

Consequently, on October 28, 1997, we published in the **Federal Register** a final rule (62 FR 56000–56026, Docket No. 94–106–9, effective November 28, 1997) and a policy statement (62 FR 56027–56033, Docket No. 94–106–8) that established procedures for recognizing regions (referred to below as regionalization) for the purpose of regulating the importation of animals and animal products. With the establishment of those procedures, APHIS may consider requests to allow the importation of a particular type of animal or animal product from a foreign region, as well as requests to recognize all or part of a country or countries as a *region*. The regulations define the term region, in part, as "any defined geographic land area identifiable by geological, political, or surveyed boundaries."

In accordance with these regionalization procedures, we are proposing to amend the regulations in § 94.6 by adding the Mexican States of Campeche, Quintana Roo, and Yucatan to the lists of regions considered free of exotic Newcastle disease (END). This proposed rule would allow importation into the United States of poultry and poultry products from these regions and would eliminate restrictions that no longer appear necessary.

We are also proposing to amend § 94.15, which, among other things, sets out requirements for transit through the United States of poultry carcasses, parts, or products that are otherwise ineligible for entry into the United States under part 94. Because these requirements would no longer apply to poultry carcasses, parts, or products from Campeche, Quintana Roo, and Yucatan, references to these States in § 94.15(c) would be removed.

Risk Evaluation

Using information submitted to us by the Federal Government of Mexico through the Secretariat for Agriculture, Livestock, Rural Development, Fisheries, and Food Safety (SAGARPA), as well as information gathered during a site visit by APHIS staff to the Yucatan Peninsula in March 2001, we have reviewed and analyzed the animal health status of these States relative to END. This review and analysis was

conducted in light of the factors identified in § 92.2, "Application for recognition of the animal health status of a region," which are used to evaluate the risk associated with importing animals or animal products into the United States from a given region. Based on the information submitted to us, we have concluded the following:

Veterinary Infrastructure

SAGARPA conducts sanitary and phytosanitary programs in conjunction with State and industry groups under a commission structure. Examples of programs under the authority of SAGARPA and of the Directorate for Animal Health (DGSA), which operates under SAGARPA, are animal disease control or eradication activities, including quarantine and movement restrictions; accreditation of professionals to perform program activities; disease reporting; emergency response; disease diagnosis; and animal depopulation. International seaport and airport border control for animal and plant and products is under the authority of SAGARPA and the Directorate for Phyto- and Zoosanitary Inspection (DGIF).

Each State has a Federal Delegate and other Federal personnel assigned to conduct the Federal animal health activities in that State. Other personnel include an Assistant Delegate, as well as DGSA and DGIF personnel assigned to work in the State.

Each Federal delegate works with the State animal health officials to administer the joint Federal/State animal health programs. A peninsular animal health council, which is made up of the Federal regional coordinator, State animal health officials, and SAGARPA delegates, meets every few months to evaluate and determine the funding needs for the animal health activities of the region. For these programs, a significant joint budget is managed by the Federal, regional, and State officials.

Results of our evaluation indicate that animal health officials in Campeche, Quintana Roo, and Yucatan have the legal authority to enforce Federal and State regulations pertaining to END and the necessary veterinary infrastructure to carry out END surveillance and control activities. No specific factors were identified in the evaluation that might present a risk to the United States if poultry or poultry products were to be imported from these three Yucatan Peninsula States.

Disease History and Surveillance

The Government of Mexico recognized the State of Yucatan as free of END in July 1996. The last reported focus of infection was detected and eradicated in May 1984. Similarly, Quintana Roo was declared free in December of 1997, the last focus having been detected and eradicated in September 1990. Campeche, which has had no history of END, was officially recognized by the Mexican Government as free of the disease in December 1997.

Because the three Yucatan Peninsula States are considered to be free of END by Mexico, surveillance for animal disease must comply with the dictates of program manuals for END. In general terms, within free States, active and passive surveillance are performed every year.

Active Surveillance. Each year, a census is submitted to the DGSA's risk analysis and international reporting unit in Mexico City. That unit responds with instructions for the active surveillance to be performed in each State. Active surveillance data collected in 1999 and 2000 are shown below in tables 1 and 2.

TABLE 1.—SURVEILLANCE TESTING IN YUCATAN PENINSULA FOR NEWCASTLE DISEASE, 1999

State	Commercial flocks sampled	Samples per commercial flock	Backyard flocks sampled	Samples per backyard flock
Campeche	32	59	299	5
Quintana Roo	11	59	299	5
Yucatan	212	29	299	5

TABLE 2.—SURVEILLANCE TESTING IN YUCATAN PENINSULA FOR NEWCASTLE DISEASE, 2000

State	Commercial flocks sampled	Samples per commercial flock	Backyard flocks sampled	Samples per backyard flock
Campeche	*58	59	350	5
Quintana Roo	*20	36–69	348	5
Yucatan	*225	29	356	5

*The discrepancy in the number of flocks compared to 1999 may be due to collections from separate houses on same farm.

Selection of flocks for testing is done in each State by program officials. All commercial flocks (*i.e.*, flocks set up for commerce, with appropriate fencing and biosecurity to isolate the unit) are sampled once a year. Birds are selected at random from within the selected flocks.

There is a special high-risk zone in Campeche, adjacent to the State of Tabasco, which is in the control phase for END; this zone consists of the area within 50 km of the Tabasco border and is delineated by peninsular officials, not by the national program. Additional backyard poultry premises are tested annually from the high-risk zone, above the number of samples outlined by the national program. To test for END and salmonella in poultry, samples are collected from approximately 60 extra premises.

Passive Surveillance. Cases of concern are reported by and to various personnel. Once a problem is reported to an official, the mandated response time is 24 hours. Quarantine of a premises is based on presumptive clinical signs, and appropriate samples must be collected. Officials may take more definitive action when they have certain presumptive results from the local laboratory. For END and other poultry diseases that occur in portions of Mexico, samples generally go to a regional laboratory. Positive samples are sent to the national laboratories in Mexico City for confirmation. Table 3 below shows the numbers of passive surveillance samples submitted to the Yucatan Peninsula's regional laboratory in Merida, Yucatan, for Newcastle disease diagnosis during 2000. All samples were negative for END.

TABLE 3.—TOTAL NUMBERS OF SAMPLES RUN FOR NEWCASTLE DISEASE DIAGNOSIS (PROGRAM AND OTHER), 2000

State	Number of flocks represented	Number of samples
Campeche	470	3,003
Quintana Roo	387	4,457
Yucatan	598	15,053

Results of our evaluation indicate that authorities in the Yucatan Peninsula are conducting an adequate level of END surveillance to detect the disease if it were to be reintroduced into the peninsula.

Diagnostic Capabilities

There are two laboratories that provide veterinary diagnostic services to the poultry industry in the Yucatan Peninsula. One is a small regional laboratory located in Chetumal in the State of Quintana Roo, which provides general microbiological services to local producers but does not conduct diagnostic tests for program diseases. The second is a full-service regional laboratory located in Merida, Yucatan. The Merida laboratory also provides support for hazard analysis and critical control point (HACCP) programs for Federally inspected (TIF) processing plants in the region.

Tests for END are conducted using chick embryos from commercial sources. The plate hemagglutination test (HA) is used to test for the presence of the virus. Any samples that test positive at the Yucatan lab are sent to the central laboratories in Mexico City (CENASA) for confirmation, and tissues of any suspect animals are sent to the Exotic Animal Disease Commission (EADC) Laboratory in Mexico City for virus isolation.

The Yucatan Regional Laboratory in Merida meets the Office of International Epizootics' recommendations for equipment and training. An APHIS team visited the laboratory in 2001 and deemed the facilities and personnel adequate for the END surveillance program. The laboratory does not have an official quality assurance program in place; however, some monitoring of equipment is being performed.

APHIS concluded that the laboratory capabilities and infrastructure on the Yucatan Peninsula are sufficient to support the END surveillance activities.

Vaccination Status

Vaccination against Newcastle disease is currently being practiced on commercial farms on the Yucatan Peninsula, as it is in all other Mexican States, in accordance with Mexican Federal regulations. APHIS concluded that vaccinated birds do not constitute a significant risk factor for introducing END into the United States.

Disease Status of Adjacent Regions

Yucatan is bordered to the west by Campeche, and by Quintana Roo to the east and south. Tabasco is the only Mexican State bordering the Yucatan Peninsula and shares the western border of the peninsula. The State of Campeche shares its southern border with Guatemala, and the State of Quintana Roo shares its southern border with both Guatemala and Belize.

The State of Tabasco is in the control phase for END. There were 3 foci of END infection in Tabasco in 2000, out of 50 in all of Mexico.

The United States considers the countries of Belize and Guatemala to be affected with END. Officials of the Regional International Organization for Agricultural Health informed APHIS that Belize has gone without reporting a case of END for several years, and that there are very few poultry in the Petén region of Guatemala bordering the Yucatan Peninsula. Cases are more likely to be reported in southern Guatemala. Guatemala apparently is entering into an eradication program for several poultry diseases, including END.

Although there are continuing END outbreaks in the adjacent Mexican State of Tabasco and the adjacent country of Guatamala, APHIS considers that the control point activities (described in the section "Movement Across Borders") in place between the Yucatan Peninsula States and their neighbors are sufficient to reduce substantially the risk from END. In addition, surveillance and eradication activity for diseases considered exotic is diligent and sufficient for rapid control of outbreaks of the type observed in the past.

Degree of Separation from Adjacent Regions

The State of Yucatan is northwest of Quintana Roo, and Campeche sits to the west, with Guatemala and Belize located south and southwest. The Gulf of Mexico lies to the north, the Caribbean to the east, and the Hondo River to the south, bordering Belize. Quintana Roo is separated from Guatemala by the Calakmul Biosphere Reserve, a natural rain forest protected by the Mexican government, and from Belize by the Hondo River. The border between Campeche and the State of Tabasco follows a river for a significant distance. In Campeche's southern part, bordering Guatemala, sits the Calakmul Biosphere Reserve.

The area of higher risk closest to the Yucatan Peninsula is the State of Tabasco, which, as indicated above, had three outbreaks of END in 2000. APHIS concluded that the peninsula had sufficient separation from areas with higher risk.

Movement Across Borders

There is a system of interstate and zonal agricultural and animal health checkpoints operating throughout Mexico. SAGARPA generally has overall authority for these activities. The Mexican National Agricultural Quarantine System represents the strategic base for the implementation of foreign and domestic quarantine services. These services focus on preventing the entry of exotic diseases and pests; assisting in the prevention and the control and eradication of such diseases, if they should occur; and supporting the phyto/zoosanitary campaigns at the national levels to maintain zones that are free of diseases and pests.

The primary means for preventing reintroduction of END into the Yucatan Peninsula is through regulations controlling the movement of land and air traffic. Movement of birds and bird products that enter the peninsula are subject to zoosanitary certificates issued by local organizations under SAGARPA's control.

The border checkpoints between Campeche and Tabasco provide 24-hour inspection and control. All roads that traverse the border between these two States are tightly monitored and controlled by officials from SAGARPA, peninsular governments, and law enforcement and military personnel from Campeche, Quintana Roo, and Yucatan, as well as from the State of Tabasco. Animal and plant products detected during vehicle searches are confiscated and incinerated. Movement of livestock and poultry between States is prohibited without proper movement authorization/documentation, and the unauthorized transport of live animals from Tabasco is strictly prohibited.

There are two international airports on the peninsula, one in Merida and one in Cancun. There are national airports in Campeche and Quintana Roo. The site visit team visited the international airport at Merida, Yucatan. Program officials inspect all incoming flights, both passenger and cargo flights, for unpermitted agricultural products, including food wastes and stores.

The maritime port of Progreso primarily handles shipments of grain. Animals and animal products are allowed entry if the proper health certificate and permit requirements are met. There are four full-time inspectors at the port, including two veterinarians.

Officials on the Yucatan Peninsula have the authority, procedures, and infrastructure to enforce effectively the system of permits, inspection, quarantines, and treatments that the peninsula has in place to control animals and animal products. APHIS did not identify any specific limitations in the system that might pose a risk to the United States.

Livestock Demographics and Marketing Practices

In recent years, the Yucatan Peninsula has seen a significant growth in production of poultry, swine, and cattle. In 2000, the State of Yucatan produced 82,099 metric tons of broilers, 76,530 metric tons of eggs, and 1,512 metric tons of turkey meat. The peninsula has evolved into an agriculture exporting region, supplying poultry products to other parts of Mexico, as well as to foreign markets. Disease control and surveillance programs are in place for poultry, swine, and cattle, as well as for bee pests. For poultry, control programs target END, avian influenza, and salmonella.

Site visit team members reviewed census information for poultry in the States on the Yucatan Peninsula. The population of chickens and proportion on commercial and backyard premises, based on the 2000 census, are shown in table 4.

TABLE 4.—POULTRY POPULATION AND PROPORTION ON COMMERCIAL FARMS, 2000 CENSUS

State	Commercial farms			Backyard farms		
	Number of farms	Number of poultry	Percentage of total birds	Number of farms	Number of poultry	Percentage of total birds
Campeche	30	1,243,181	82.1	21,595	271,500	17.9
Quintana Roo	2	2,139,706	92	25,639	185,212	8
Yucatan	226	*13,000,000	92	58,501	1,132;828	8

* = 1999 figures.

About 60 percent of the peninsula's poultry production is for regions outside the peninsula. Most of the birds and poultry products that come into Quintana Roo and Campeche originate in the State of Yucatan. A site visit was made to the third largest broiler-producing company in the Yucatan, located near Merida. This was a first-class operation that would rival the best production facilities in the United States. However, it appeared that many other operations consisted of two to six house units with passive air systems and chicken houses often located close to heavily traveled roads. Most houses appeared to be 15 or more years of age.

For both economic and health reasons, the poultry industry on the Yucatan Peninsula is committed to the production of quality products and the maintenance of END-free status. Industry leaders demonstrated an awareness of animal disease control measures needed to maintain a healthy and productive animal industry. Industry groups contribute funds to develop and improve sanitary operations to maintain the END-free status of their respective States.

APHIS did not identify any factors in this category that might pose a risk to the United States if poultry or poultry products were to be imported from the Yucatan Peninsula.

Detection and Eradication of Disease

END has been effectively controlled and eradicated from Quintana Roo and Yucatan, and has no known history in Campeche. Accordingly, END is now considered an exotic disease on the Yucatan Peninsula. Therefore, while there are no active disease control programs, the States do maintain both active and passive disease surveillance, ongoing animal movement controls, and an emergency response system in case END is again detected in the Yucatan Peninsula States. According to Mexican regulations, in the event of any cases of END in a free zone, a sanitary slaughter policy would be implemented, along with cleaning and disinfection of affected premises. APHIS did not identify specific limitations in this system that would pose a risk to the United States.

Results of our evaluation indicate that the Federal Government of Mexico and the State Governments of Campeche, Quintana Roo, and Yucatan have the laws, policies, and infrastructure to detect, respond to, and eliminate any reoccurrence of END.

These findings are described in further detail in a qualitative evaluation that may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** and may be viewed on the Internet at *http://www.aphis.usda.gov/vs/reg-request.html* by following the link for current requests and supporting documentation. The evaluation documents the factors that have led us to conclude that Campeche, Quintana Roo, and Yucatan are free of END. Therefore, we are proposing to recognize the Mexican States of Campeche, Quintana Roo, and Yucatan as free of END; add them to the list in § 94.6 of regions where END is not known to exist; and amend § 94.15 to remove restrictions on the movement of poultry carcasses, parts, or products from these States that would no longer apply.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would amend the regulations by adding the Mexican States of Campeche, Quintana Roo, and Yucatan to the list of regions considered free of END and removing END-related restrictions on the movement of poultry carcasses, parts, or products from these States into the United States that would no longer apply.

A number of factors could influence how much of the poultry produced in the Yucatan Peninsula might be exported to the United States as a result of this proposed rule. These factors include domestic and international supply of, and demand for, poultry and poultry substitutes, U.S. grain prices, exchange rates, freight rates, the structure (number of large integrated operations versus the number of traditional and semi-traditional operations) of the poultry industry in the Yucatan Peninsula, and the ability of Yucatan producers/packers consistently to ship cuts that meet U.S. market specifications.

As shown in table 5, Yucatan Peninsula poultry production peaked at roughly 100,000 metric tons (MTs) in 1997 and consistently accounted for about 8 percent of Mexico's total poultry production from 1992 until 1999, the last year for which data were available.

TABLE 5.—YUCATAN POULTRY PRODUCTION BY STATE 1992–1999 (MTs)

Year	1992	1993	1994	1995	1996	1997	1998	1999
Campeche	4,152	5,821	6,322	6,438	6,679	7,440	6,604	6,784
Quintana Roo	5,124	5,940	5,810	7,043	5,490	5,865	4,685	5,374
Yucatan	63,027	74,311	77,841	83,311	86,485	89,698	79,900	81,470
Total	72,303	86,072	89,884	96,792	98,654	103,003	91,189	93,628
Percentage of Mexico's production	8.05	8.28	7.98	7.54	7.80			

Source: Centro de Estadistica Agropecuaria/SAGARPA.

Our analysis of poultry production in the Yucatan Peninsula suggests 100,000 MTs as the upper limit for poultry and poultry products that could be made available for export to the United States at this time. The Yucatan Peninsula is a grain and oilseed deficit area. Most of the grains and oilseeds used in poultry production (the single largest and most expensive input in poultry production) are imported from the United States. This dependence on imported grains and oilseeds will tend to limit the growth of the Yucatan Peninsula's poultry production and, consequently, the amount of poultry and poultry products available for export to the United States.

It is far more likely that the actual amount of poultry and poultry products that would be exported to the United States from the Yucatan Peninsula States in the near term as a result of this rulemaking would be significantly less than 100,000 MTs. A general analysis of Mexican poultry production systems suggests that a maximum of 60 to 70 percent of Yucatan Peninsula poultry production might meet U.S. import standards.[1] According to Foreign Agricultural Service attaché reports and Economic Research Service (ERS) analysts, most Yucatan Peninsula production would probably be consumed locally or diverted to the local tourist industry. Because of shipping costs, it is likely that Mexican producers would only find it profitable to ship breast cuts to the United States. Table 6 shows high and low estimates for possible exports of poultry and poultry products from the Yucatan Peninsula to the United States. As shown in the table, between 18,000 and 52,500 MTs of Yucatan Peninsula poultry could be available for export to the United States, depending on domestic consumption, a factor that is very difficult to gauge or predict. Based on these figures, the amount of breast meat cuts available for export to the United States could range from roughly 5,786 to 16,875 MTs.[2]

TABLE 6.—ESTIMATED YUCATAN PENINSULA POULTRY AND POULTRY PRODUCTS AVAILABLE FOR EXPORT TO THE UNITED STATES (IN MTs)

Potential exports	High estimate	Low estimate
Total	100,000	100,000
Acceptable for U.S. import	70,000	60,000
Acceptable for U.S. import and available for export (not consumed domestically)	52,500	18,000
Estimated breast meat available for export to U.S.	16,875	5,786

Source: Centro de Estadistica Agropecuaria/SAGARPA statistics provided by Leland Southard of USDA/ERS.

These amounts would make up a minuscule share of the U.S. market. The United States is the world's largest producer and exporter of poultry meat. In 1999, U.S. poultry meat production totaled 35.3 billion pounds (159,090,909 MTs), of which 83 percent was broiler meat, 15 percent was turkey meat, and 2 percent was other chicken meat. The total farm value of U.S. poultry production in 1999 was $22.4 billion. Broiler production accounted for the majority of the value at $15.1 billion, followed by eggs at $4.3 billion, turkey at $2.8 billion, and other chicken at $68 million. The high estimate of 52,500 MTs of Yucatan Peninsula poultry and poultry parts available for export to the United States would translate to 0.033 percent of U.S. poultry production based on the 1999 figures. The low

[1] "Outlook for Mexican Poultry Industry and U.S.-Mexican Poultry Trade," by Milton Madison and David Harvey. USDA/ERS Livestock, Dairy, and Poultry Report, July 17, 1998, LDP–52.

[2] A 42-ounce processed broiler carcass is comprised of 12.5 to 14 ounces of breast meat, or roughly 32 percent breast meat.

estimate of 18,000 MTs available for export would equal 0.0113 percent of 1999 U.S. production. The percentages for estimated breast meat exports would, of course, be even smaller.

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact of their rules on small entities. Among the small entities that could be affected by this proposed rule are U.S. producers of poultry and poultry products, U.S. freight forwarders, and U.S. trucking and shipping firms. All of these categories are comprised primarily of small entities. Table 7 provides a breakdown.

TABLE 7.—NUMBER AND TYPE OF SMALL BUSINESSES POTENTIALLY AFFECTED BY PROPOSED RULE

Type of business	Total U.S. entities	Small entities
Local and long distance U.S. trucking firms (refrigerated)	13,815	13,529
U.S. freight forwarders	5,771	5,674
Deep sea freight transport	431	273
Poultry farms	63,246	53,530

The U.S. poultry industry is dominated by contract growing arrangements. A small number of very large, vertically integrated poultry companies own most poultry in the United States. The poultry are raised to a marketable size by farmers under contract arrangements. The vertically integrated companies do not qualify as small entities under the Small Business Administration's standard for small poultry enterprises-no more than $750,000 in annual revenues. Most contract poultry growers do qualify as small entities, however.[3] The 1997 Census of Agriculture (the most recent data on the composition of poultry industry by size) reported a total of 63,246 farms in the United States that raised poultry or poultry products, producing poultry and poultry products valued at over $22 billion. According to Census of Agriculture data, approximately 53,530 or 85 percent of the farms raising poultry were "small" farms in 1997.[4]

In theory, imported Yucatan poultry would increase the available supply of poultry in the United States, increase competition, and reduce prices. Such a development, while benefitting U.S. consumers, could negatively affect net revenues of U.S. producers. Due to the relatively small tonnage of poultry and poultry products expected to be exported from the Yucatan Peninsula to the United States, however, this proposed rule would be unlikely to have a measurable effect on U.S. poultry and poultry-product supplies, poultry prices, or poultry producer revenues.

The other affected small entities—U.S. freight forwarding, trucking, or transport firms that could transport Mexican poultry from U.S. land border ports or U.S. maritime ports—could benefit from increased economic activity as a result of this proposed rule. As is the case with poultry producers, however, these effects are likely to be very small due to the limited amount of poultry and poultry products that would be exported to the United States from the Yucatan Peninsula States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

[3] *http://www.sba.gov*, NAICS Code 112320, poultry production.

[4] 1997 Census of Agriculture-United States data, table 50, summary by market value of agricultural products sold.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7711–7714, 7751, 7754, 8303, 8306, 8308, 8310, 8311, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.6 [Amended]

2. In § 94.6, paragraph (a)(2) would be amended by adding the words "Mexico (States of Campeche, Quintana Roo, and Yucatan)," after the word "Luxembourg,".

3. In § 94.15, the introductory text of paragraph (c) and paragraph (c)(2) would be revised to read as follows:

§ 94.15 Animal products and materials; movement and handling.

* * * * *

(c) Poultry carcasses, parts, or products (except eggs and egg products) from Baja California, Baja California Sur, Chihuahua, Nuevo Leon, Sinaloa, Sonora, or Tamaulipas, Mexico, that are not eligible for entry into the United States in accordance with the regulations in this part may transit the United States via land ports for immediate export if the following conditions are met:

* * * * *

(2) The poultry carcasses, parts, or products are packaged at a Tipo Inspección Federal plant in Baja California, Baja California Sur, Chihuahua, Nuevo Leon, Sinaloa, Sonora, or Tamaulipas, Mexico, in leakproof containers with serially numbered seals of the Government of Mexico, and the containers remain sealed during the entire time they are in transit across Mexico and the United States.

* * * * *

Done in Washington, DC, this 16th day of October 2002 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–26811 Filed 10–21–02; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AC05

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Capital Adequacy

AGENCY: Farm Credit Administration (FCA).

ACTION: Proposed rule.

SUMMARY: The FCA proposes to amend its capital adequacy regulations to add a definition of total liabilities for the net collateral ratio calculation; limit the amount of term preferred stock that may count as total surplus; clarify the circumstances in which we may waive disclosure requirements for an issuance of equities by a Farm Credit System (FCS, Farm Credit or System) institution; and make several nonsubstantive technical changes. These amendments will update, modify, and clarify certain capital requirements.

DATES: Please send your comments to us by November 21, 2002.

ADDRESSES: You may send comments by electronic mail to *reg-comm@fca.gov* or through the Pending Regulations section of FCA's Web site, *http://www.fca.gov*. You may also send comments to Thomas G. McKenzie, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.or by fax to (703) 734–5784. You may review copies of all comments we receive in the Office of Policy and Analysis, FCA.

FOR FURTHER INFORMATION CONTACT: Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4479; TTY (703) 883–4434; or Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of our proposal are to:

- Limit the effect of Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities* (SFAS 133), on the net collateral ratio;
- Ensure that Farm Credit institutions do not overly rely on term preferred stock to meet regulatory capital requirements;
- Explain how the FCA may include other debt or equity in the definition of permanent capital;
- Clarify the requirements for the FCA to consider waiving disclosure requirements for issuances of stock to more than a single sophisticated investor; and
- Make several nonsubstantive technical changes to our capital regulations.

II. Introduction

The FCA is proposing changes to the capital adequacy regulations in order to update, modify, and clarify certain requirements. We propose revising the net collateral ratio calculation to limit the effect of new accounting rules for derivatives. This is in response to a petition we received last year from two System banks. We also propose limiting the amount of term preferred stock that can be counted in total surplus.

Additionally, we propose excluding term preferred stock from liabilities in the calculation of the net collateral ratio for System banks to the extent that the stock is counted as total surplus. This latter proposed amendment reflects the capital treatment of term preferred stock issuances we recently reviewed for two System banks. As a result of our review of those recent stock issuances, we also identified a need to clarify certain requirements and make additional technical corrections. The proposed amendments are more fully described in the section-by-section analysis below.

III. Section-by-Section Analysis

Section 615.5201(e)—Definition of Direct Lender Institution

We propose amending § 615.5201(e) by removing the phrase "loan of lease" and adding, in its place, the phrase "loan or lease" to correct a typographical error.

Section 615.5201(l)—Definition of Permanent Capital

We propose adding a new paragraph (8) to the definition of permanent capital in § 615.5201(l). This proposed amendment reflects a statutory change to section 4.3A of the Farm Credit Act of 1971, as amended, by the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Act). The 1992 Act added section 4.3A(a)(1)(E), which includes in permanent capital any debt or equity instrument or other account that the FCA determines appropriate to be considered as permanent capital. The proposed amendment states that we may include a debt or equity instrument in permanent capital in whole or in part, and on a permanent or temporary basis. The language of this proposal is similar to language in existing § 615.5301(b)(1)(iv) and (i)(5), which states that we may include additional items in core or total surplus when we deem their inclusion to be appropriate. The inclusion of additional items would give institutions more flexibility in meeting their capital requirements.

We considered proposing that term subordinated debt could be counted as permanent capital in much the same way that we currently allow term preferred stock to be counted. However, since no System institution has issued subordinated debt, we have decided to consider the inclusion of subordinated debt in permanent capital on a case-by-case basis, should we receive a specific proposal by a System institution.

Section 615.5250(c)(5)—Waiver of Disclosure Requirements

We propose amending § 615.5250(c)(5) to clarify the circumstances in which we may waive any or all of the disclosures we require institutions to make to potential investors in stock issuances. The existing waiver language has been interpreted by some institutions to apply only when a single investor acquires all the equities of an entire class issued by an institution. Our revision clarifies that we may waive disclosure requirements when the following conditions are met: (1) Equities are sold only to sophisticated investors; (2) equities are sold in blocks of $100,000 or more; and (3) purchasers of equities agree that any subsequent sale or transfer must be in blocks of $100,000 or more. Any subsequent sale or transfer of equities that is less than $100,000 must receive our prior written approval.

We also propose to correct the reference to paragraph (b) in existing paragraph (c)(5). The reference should be to the disclosure requirements in paragraph (c)(1).

Section 615.5301(i)—Definition of Total Surplus

We propose to add a new paragraph (4) to the definition of total surplus in § 615.5301(i) to limit the amount of term preferred stock that may be included in total surplus to 25 percent of permanent

capital. Conforming changes are proposed to paragraph (3).

Our existing regulations include term preferred stock in total surplus without limit. We are proposing a limitation equal to 25 percent of permanent capital, to ensure that System institutions do not overly rely on this type of capital in their operations. This limitation is generally comparable to the treatment of intermediate-term preferred stock in the regulatory capital requirements for commercial banks. Commercial banks' Federal financial regulators exclude term preferred stock from Tier 1 capital and limit the amount of intermediate-term preferred stock that can count as Tier 2 capital to an amount equal to 50 percent of Tier 1 capital.[1] In addition, the amount a commercial bank may count as Tier 2 capital can be no greater than its Tier 1 capital. This means, in effect, that no more than 25 percent of a commercial bank's minimum total regulatory (Tier 1 + Tier 2) capital may consist of term preferred stock.[2] We believe a similar limit to that imposed on commercial banks is also appropriate for System institutions and, therefore, are proposing a limitation on the total surplus ratio.

We note that the proposal would not prohibit System institutions from issuing preferred stock in excess of what may be counted as total surplus, but such excess amounts would not qualify as total surplus. The preferred stock would, however, be treated as permanent capital to the extent permitted in the permanent capital calculation.

New Section 615.5301(j)—Definition of Total Liabilities

In May 2001, two System banks petitioned us to revise the net collateral ratio calculation requirements in § 615.5301 in response to the new accounting requirements for derivatives in SFAS 133, as promulgated by the Financial Accounting Standards Board (FASB). The banks asserted that the accounting changes imposed by SFAS 133 reduced their net collateral ratios in a way they believe was unintended.

In response to the banks' petition, we are proposing a new § 615.5301(j) to define "total liabilities" for the purpose of calculating the net collateral ratio. The net collateral ratio is a bank's net collateral, as defined in § 615.5301(c), divided by the bank's total liabilities. Proposed § 615.5301(j)(1) specifies that total liabilities are valued in accordance with generally accepted accounting principles (GAAP), with the following exclusions for the effects of SFAS 133: (1) Adjustments to the carrying amount[3] of any liability that is designated as being hedged; and (2) any derivative recognized as a liability that is designated as a hedging instrument.

Prior to SFAS 133, GAAP allowed many derivative instruments to be treated by System banks as off-balance sheet items. However, with the adoption of SFAS 133, System banks must now recognize all derivative instruments at their fair value as either an asset or a liability on the balance sheet. If a derivative instrument qualifies as a designated hedge,[4] System banks may be required to adjust the carrying value of certain assets or liabilities.

As a result of SFAS 133, System banks that use derivatives may have to recognize an increase in the amount of total liabilities when calculating their net collateral ratios. These increases in total liabilities have resulted in lower net collateral ratios than what the banks would have had under the previous accounting requirements for derivative instruments.

Under SFAS 133, a System bank's total liabilities will often increase for a derivative instrument designated as hedged. This resulting increase in the bank's liabilities from a derivative instrument designated as a hedge has no offsetting equivalent increase in the collateral amount used in the computation of its net collateral ratio because of the way net collateral is defined in § 615.5301(c). Thus, a derivative instrument used by a bank to hedge against interest rate risk can often result in an unintended decline in the bank's net collateral ratio.

We believe a bank's net collateral ratio should not be negatively affected by derivative instruments appropriately used to hedge against interest rate risk or other types of market risks. Appropriate use of derivatives as hedges protects System banks against a true economic decline in their net collateral. Accordingly, our proposed amendments would exclude the effect of SFAS 133 on the calculation of the net collateral ratio for derivative instruments that qualify as hedges under SFAS 133.

Conversely, we believe derivative instruments that are not designated to hedge specific assets or liabilities do not provide adequate protections for interest rate or other market risks. Therefore, our definition of total liabilities *includes* derivative instruments that do not qualify as designated hedges.

Proposed § 615.5301(j)(2) would also exclude from total liabilities the amount of term preferred stock that is eligible to be counted as total surplus in the numerator of a bank's calculation of its total surplus ratio. In the absence of such exclusion, our existing rule could require certain forms of term preferred stock to be considered liabilities. The proposed exclusion would eliminate the potential inconsistency of treating a particular balance sheet item as a liability for net collateral purposes but as capital for the total surplus ratio.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, we propose to amend part 615 of chapter VI, title 12 of the Code of Federal Regulations as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart H—Capital Adequacy

2. Amend § 615.5201 as follows:

a. Remove the words "loan of lease" in paragraph (e) and add in their place, the words "loan or lease"; and

b. Add a new paragraph (l)(8).

§ 615.5201 Definitions.

(l) * * *

(8) Any other debt or equity instruments or other accounts the FCA has determined are appropriate to be considered permanent capital. The FCA may permit one or more institutions to include all or a portion of such instrument, entry, or account as permanent capital, permanently or on a temporary basis, for purposes of this part.

* * * * *

Subpart I—Issuance of Equities

3. Amend § 615.5250 by revising paragraph (c)(5) to read as follows:

§ 615.5250 Disclosure requirements.

(c) * * *

(5) For a class of stock, the FCA may waive any or all of the disclosure requirements of paragraph (c)(1) of this section when each investor acquires at least $100,000 of the stock if the sophistication of the purchaser warrants, provided that subsequent transfers of the stock in amounts of less than $100,000 must receive the prior written approval of the FCA.

* * * * *

Subpart K—Surplus and Collateral Requirements

4. Amend § 615.5301 as follows:

a. Redesignate paragraphs (i)(4) through (i)(7) as paragraphs (i)(5) through (i)(8);

b. Remove the reference "§ 615.5201(j)(4)(iv)" in paragraph (i)(2) and add in its place, the reference "§ 615.5201(l)(4)(iv)";

c. Revise paragraph (i)(3);

d. Add a new paragraph (i)(4); and

e. Add a new paragraph (j).

§ 615.5301 Definitions.

(i) * * *

(3) Common and perpetual preferred stock (other than allocated stock) that is not purchased or held as a condition of obtaining a loan, provided that the institution has no established plan or practice of retiring such stock;

(4) Term preferred stock that is not purchased or held as a condition of obtaining a loan, up to a maximum of 25 percent of the institution's permanent capital (as calculated after deductions required in the permanent capital ratio computation). The amount of includible term stock must be reduced by 20 percent (net of redemptions) at the beginning of each of the last 5 years of the term of the instrument;

* * * * *

(j) *Total liabilities* means liabilities valued in accordance with generally accepted accounting principles (GAAP), except that total liabilities shall exclude the following:

(1) As set forth in Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities*, as promulgated by the Financial Accounting Standards Board—

(i) Adjustments to the carrying amount of any liability designated as being hedged; and

(ii) Any derivative recognized as a liability that is designated as a hedging instrument.

(2) Term preferred stock to the extent such stock is included as total surplus in the computation of the bank's total surplus ratio pursuant to § 615.5301(i).

Dated: October 16, 2002.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 02–26697 Filed 10–21–02; 8:45 am]

BILLING CODE 6705–01–P

[1] See 12 CFR part 325, app. A (I.A.2(d)) (Federal Deposit Insurance Corporation); 12 CFR part 3, app. A (2(b)(4)) (Comptroller of the Currency); and 12 CFR part 208, app. A (II.A.2(iv)) (Board of Governors of the Federal Reserve System).

[2] This example assumes that a commercial bank has Tier 2 capital equal in amount to its Tier 1 capital.

[3] GAAP define the carrying amount of a liability as the face amount of a liability increased or decreased by any applicable accrued interest payable and any applicable unamortized premium, discount, finance charges, or issue costs.

[4] Under SFAS 133, derivative instruments designated as hedges routinely reduce an entity's exposure to changes in the fair value of an asset or liability (*i.e.*, fair value hedge) or changes in expected future cash flows (*i.e.*, cash flow hedge) attributable to a particular risk. For Farm Credit banks, derivative instruments are routinely used to reduce their exposure to (hedge against) changes in market interest rates.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375 and 388

[Docket No. RM02–4, PL02–1–000]

Critical Energy Infrastructure Information

October 9, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; extension of time.

SUMMARY: On September 5, 2002, the Commission issued a notice of proposed rulemaking to revise its regulations to restrict public availability of critical energy (67 FR 57994, September 13, 2002) date for filing comments is being extended at the request of American Rivers and members of the Hydropower Reform Coalition.

DATES: Comments are due on or before November 14, 2002.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Carol C. Johnson, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8521.

SUPPLEMENTARY INFORMATION:

Policy Statement on the Treatment of Previously Public Documents; Notice of Extension of Time

On October 8, 2002, American Rivers and members of the Hydropower Reform Coalition (HRC) filed a request for a 30-day extension of time to file comments in response to the Commission's Notice of Proposed Rulemaking issued September 5, 2002 and published in the **Federal Register** on September 13, 2002 in Docket Nos. RM02–4–000 and PL02–1–000. The request states that the issues addressed in the NOPR are of significant importance to the HRC, and notes that the HRC is the largest cooperative public interest entity in the hydropower licensing field, and its members are working on approximately 75% of the Commission's open licensing cases. According to the request, additional time is needed to consult with other concerned organizations and to permit the HRC to prepare meaningful comments on the NOPR.

Upon consideration, notice is hereby given that an extension of time for filing responses to the Commission's September 5, 2002, NOPR is granted to and including November 14, 2002, as requested by the HRC.

Magalie R. Salas,

Secretary.

[FR Doc. 02–26489 Filed 10–21–02; 8:45 am]

BILLING CODE 6718–01–M

DEPARTMENT OF HEALTH SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. 02N–0370]

Neurological Devices; Classification of Human Dura Mater

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to classify human dura mater intended to repair defects in human dura mater into class II (special controls). The agency is publishing the recommendations of

FDA's Neurological Devices Panel (the Panel) regarding the classification of this device. After considering public comments on the proposed classification, FDA will publish a final regulation classifying this device. This action is being taken to establish sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a guidance document that FDA intends to serve as the special control for this device.

DATES: Submit written or electronic comments by January 21, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Charles N. Durfor, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et. seq.*), as amended by the Medical Device Admendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval). Under the 1976 amendments, class II devices were defined as those devices for which there is insufficient information to show that general controls themselves will ensure safety and effectiveness, but for which there is sufficient information to establish performance standards to provide such assurance.

The SMDA broadened the definition of class II devices to mean those devices for which there is insufficient information to show that general controls themselves will ensure safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance. Special controls may include performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other appropriate actions the agency considers necessary (section 513(a)(1)(B) of the act).

Under section 513 of the act, devices that were in commercial distribution prior to May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution before May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by the FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Consistent with the act and the regulations, FDA consulted with the Panel, an FDA advisory committee, regarding the classification of this device.

B. Regulatory History

Human dura mater derived and processed from human cadavers and intended for use in neurosurgical procedures to repair defects in the cranial and spinal cord dura mater caused by trauma and tumor resection was in commercial distribution before the enactment of the 1976 amendments. Human dura mater is currently regulated as an unclassified medical device via premarket notification.

In February 1987, the first of three United States cases of iatrogenic Creutzfeldt-Jacob Disease (CJD), a rare, degenerative, fatal disease of the central nervous system was reported (Ref. 1). It was associated with the implantation of Lyodura, an imported processed human dura mater manufactured in Germany that was never cleared for use in the United States. In April 1987, FDA issued a safety alert that warned of the potential risk of transmitting CJD through this imported dura mater product, and in June 1987, FDA issued an import alert banning its use in the United States.

On July 14, 1989, and on February 2, 1990, the Panel heard testimony on the processing and use of human dura mater in the United States (Refs. 2 and 3). At the 1990 meeting, in accordance with FDA's device classification regulations, the Panel recommended that human dura mater be classified into class II.

On June 26, 1990, FDA made available the "Guide for 510(k) Review of Processed Human Dura Mater." The guide was based on testimony heard at the 1989 and 1990 Panel meetings. It recommended donor selection and rejection criteria, manufacturing controls, and other safeguards to minimize the risk of iatrogenic transmission of CJD. On November 14, 1990, FDA also notified distributors of human dura mater of the requirement to register and list their products with the agency and of the requirement for premarket notification clearance to market new human dura products.

On March 27, 1997, the World Health Organization (WHO) recommended that human dura mater no longer be used, especially for neurosurgery, unless no other alternative was available. WHO issued this recommendation because of over 50 cases of CJD associated with use of human dura mater (Ref. 4) . Most of these cases were associated with the dura mater product that was never cleared in the United States and that was under import alert in the United States. WHO also recommended that if human dura mater is used, it should be from nonpooled sources from carefully screened donors and it should be inactivated by a validated method.

On March 31, 1997, FDA announced that it would not restrict the distribution of FDA-cleared human dura mater because of the previously established safeguards and guidelines that were in effect to minimize the possibility of CJD transmission by human dura mater implantation. This decision also reflected the absence of any confirmed cases of CJD transmission in the United States that were related to human dura mater implants that were cleared for commercial distribution. In addition, FDA decided to hold public meetings of the agency's Transmissible Spongiform Encephalopathies Advisory Committee (TSEAC) to re-evaluate the safety of human dura mater with respect to CJD transmission.

On October 6, 1997, the TSEAC made recommendations on the use of human dura mater in the context of the risks to health associated both with the use of human dura mater and with the use of the available dura mater substitute products (animal, synthetic, and patient's own tissue) (Ref. 5). The TSEAC also made recommendations for additional safeguards to minimize iatrogenic CJD transmission. On March 6, 1998, FDA transmitted the 1997 TSEAC recommendations in a letter to manufacturers of human dura mater. On April 16, 1998, the TSEAC again deliberated on iatrogenic CJD transmission associated with the use of human dura mater and made additional recommendations to minimize CJD transmission.

On December 14, 1998, FDA issued a tracking order (21 CFR part 821 and section 519(e) of the act (21 U.S.C. 360i(e)) for human dura mater. This tracking order requires each manufacture of human dura mater to develop and implement a program that enables the manufacturer to locate patients implanted with human dura mater until device explantation or death.

In parallel with the Center for Devices and Radiological Health's (CDRH's) efforts to ensure the safety and effectiveness of human dura mater, FDA has considered the appropriate way to regulate all human cellular and tissue-based products (HCT/Ps). In the **Federal Register** of March 4, 1997 (62 FR 9721), FDA proposed a comprehensive approach to regulate all HCT/Ps, including human dura mater, under the authority of section 361 of the Public Health Act. To implement this approach, FDA published the following three proposed rules: (1) "Establishment Registration and Listing for Manufacturers of Human Cellular and Tissue-Based Products" (63 FR 26744, May 14, 1998); (2) "Suitability Determination for Donors of Human Cellular and Tissue-Based Products" (64 FR 52696, September 30, 1999); and (3) "Current Good Tissue Practice for Manufacturers of Human Cellular and Tissue-Based Products; Inspection and Enforcement" (65 FR 1508, January 8, 2001).

In the **Federal Register** of January 19, 2001 (66 FR 5447), FDA issued a final rule for establishment registration and listing of human cellular and tissue-based products (HCT/Ps). This regulation became effective on April 4, 2001, except for 21 CFR 207.20(f) (registration of drug products), 21 CFR 807.20(d) (registration of medical devices), and § 1271.3(d)(2) (21 CFR 127.3(d)(2)) (definitions), which will become effective on January 21, 2003. Section 1271.3(d)(2) also states that human dura mater is an HCT/P. In the final rule, the agency recognized that unanticipated delays in completing the rulemaking for the remainder of 21 CFR part 1271 could occur and that it could become necessary to delay the effective dates for some or all HCT/Ps.

On August 15, 2001, Public Citizen's Health Research Group submitted a petition (docket number 01P–0354) requesting that the agency ban the sale of human cadaveric dura mater and recall all unimplanted human cadaveric dura mater. On February 11, 2002, FDA denied the petitioner's requests in a letter because the agency determined that information in the petition did not meet the statutory requirements to ban or recall a medical device under sections 516(a)(1) and (a)(2) and 518(e)(1) of the act (21 U.S.C. 360f(a)(1) and (a)(2) and 360h(e)(1)).

FDA is now proposing to classify human dura mater into class II. The agency is also proposing that the guidance document entitled "Class II Special Controls Guidance Document: Human Dura Mater; Guidance for Industry and FDA" be the special control to reasonably ensure the safety and effectiveness of the device until such time as the regulatory authority for this product is transferred from CDRH to the Center for Biologics Evaluation and Research. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of this draft guidance document.

II. Recommendations of the Panel

A. Device Identification

The Panel adopted the following device identification based on the agency's recommendation: Human dura mater is human pachymeninx tissue intended to repair defects in human dura mater.

B. Recommended Classification of the Panel

During a public meeting on February 2, 1990, the Panel recommended that human dura mater be classified into class II (Ref. 3). The Panel also identified the following risks to health associated with the device: Prion infection, infection in general, leakage of cerebral spinal fluid (CSF), and adverse tissue reaction. New information about the safety and effectiveness of the device became available after 1990, however, and a second Panel meeting was held on September 16 and 17, 1999. At this meeting the Panel again recommended that the device be classified into class II (Ref. 6). The Panel recommended the following as potential special controls to provide reasonable assurance of safety and effectiveness: (1) FDA guidances, (2) postmarket surveillance, (3) patient registries, (4) device tracking, and (5) restrictions on donor selection.

C. Summary of the Reasons for the Recommendation

After reviewing the information provided by FDA, and after consideration of the open discussions during the Panel meeting(s) and the Panel members' personal knowledge of and clinical experience with the device system, the Panel gave the following reasons in support of its recommendation to classify the generic type human dura mater for use in repairing defects in human dura mater into class II .

The Panel believes that human dura mater should be classified into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

D. Summary of the Data Upon Which the Recommendation Is Based

In addition to the potential risks associated with the use of the human dura mater described in section V of this document, there is reasonable knowledge of the benefits of the device. Specifically, this long-term implanted device provides mechanical support and protection of the brain, as well as less leakage of CSF after neurosurgery. The use of human dura mater rather than the use of a dura substitute device or a graft prepared from the patient is also

preferred by some neurosurgeons (Refs. 5 and 6).

E. Risks to Health

After considering the Panel's deliberations, as well as the published literature and medical device reports (MDRs), FDA has evaluated the risks to health associated with the use of human dura mater intended to repair defects in human dura mater. FDA now believes the following are risks to health associated with the use of the device: Infection related to patient condition and treatment, transmission of spongiform encephalopathies, leakage of CSF, and adverse tissue reaction:

1. Infection Related to Patient Condition and Treatment

Bacterial, fungal, and viral infection is a risk to health associated with all surgical procedures and implanted devices. Regarding human dura mater implantation, infection may occur because the device was improperly sterilized or because of a pre-existing patient condition (i.e., whether the wound is clean, contaminated, or infected). After the implantation of human dura mater, the probability of infection that may occur has been reported to vary from 1.9 percent to 19 percent (Refs. 7 to 9).

2. Transmission of Spongiform Encephalopathies

Transmission of CJD and related diseases can occur from either inadequate donor selection or inappropriate human dura mater processing (Refs. 10 to 12). As of July 2000, the worldwide incidence of iatrogenic CJD associated with the use of implanted human dura mater was reported to be 114 cases, including three United States cases (Ref. 13). Most of these cases were related to the use of implanted Lyodura, a product that is not cleared for use in the United States.

3. Leakage of CSF

Leakage of CSF after neurosurgery may occur due to device failure or the incomplete repair of suture holes in the patient's dura mater created during implantation of human dura mater. Leakage of CSF can cause secondary complications, such as meningitis or encephalitis, pneumocephalus, and chronic subdural hematoma. Persistent accumulation of CSF may require additional surgical intervention and can be a significant cause of morbidity and mortality (Ref. 14).

4. Adverse Tissue Reaction

Human dura mater implantation may elicit an undesirable immunological reaction (Ref. 15) and an inflammatory or cytotoxic tissue reaction (Ref. 16). These reactions may result in adverse clinical outcomes, such as adhesion formation, hydrocephalus, foreign body reactions, and seizure (Ref. 17).

F. Special Controls

Based on the available information, FDA believes that the FDA guidance document entitled "Class II Special Controls Guidance Document: Human Dura Mater; Guidance for Industry and FDA" in addition to general controls, can provide reasonable assurance of the safety and effectiveness of the device. FDA agrees with the Panel that careful donor selection and testing guidelines are appropriate special controls to address the risks to health described in section II.E of this document. In addition, as noted below, device tracking, prescription labeling, and a form of postmarket surveillance that are already in effect provide additional controls to reasonably ensure the safety and effectiveness of human dura mater.

FDA notes that this proposed special control guidance document updates and will supersede the "Guidance for the Preparation of a Premarket Notification Application for Processed Human Dura Mater" issued on July 31, 1999, and reissued in October 1999.

1. Guidance Document

FDA believes that the guidance document addresses the Panel's concerns on donor selection and testing guidelines.

a. *Infection related to patient condition and treatment.* Adherence to the sections in the guidance document on: (1) Donor qualification; (2) qualification of other components; (3) manufacturing processing methods; (4) manufacturing controls; and (5) final sterilization may control the risk of bacterial, fungal, and viral infection by helping to ensure that the device is sterile and safe for long-term implantation.

b. *Transmission of spongiform encephalopathies.* Adherence to the sections in the guidance document on: (1) Donor qualification, (2) qualification of other components, (3) manufacturing processing methods, (4) manufacturing controls, and (5) labeling may control the risk of spongiform encephalopathy transmission by helping ensure the preparation of devices that have a lower risk of CJD transmission and can remind users of potential risks and alternative products.

c. *Leakage of CSF.* Adherence to the sections in the guidance document on: (1) Manufacturing processing methods, and (2) manufacturing controls can control the risk of CSF leakage by having the manufacturer demonstrate that the device is safe for long-term implantation.

d. *Adverse tissue reactions.* Adherence to the sections in the guidance document on: (1) Manufacturing processing methods, (2) manufacturing controls, and (3) final sterilization can control the risk of adverse tissue reactions by having the manufacturer demonstrate that the device is safe for long-term implantation.

2. Device Tracking

The Panel also identified device tracking as a potential special control for human dura mater. Tracking is a compliance mechanism to facilitate notification and recall actions in the event of a serious risk to health presented by a device. FDA notes that the agency has already issued a tracking order for human dura mater on December 14, 1998. Because device tracking is a regulatory control already in effect for human dura mater, it is not necessary that tracking also be considered a special control necessary to provide reasonable assurance of the safety and effectiveness of the device.

3. Postmarket Surveillance and Patient Registries

The Panel stated that it was important to track adverse device outcomes through postmarket surveillance. FDA agrees with the Panel that adverse device outcomes should be reported to FDA. However, FDA believes that the existing mandatory MDR system is an appropriate mechanism to report such adverse events. Therefore, it is not necessary that postmarket surveillance be designated a special control.

The Panel also recommended patient registries as a special control for the device. Because the tracking regulation already requires manufacturers to develop and implement programs to locate patients implanted with human dura mater until device explantation or death, it is not necessary that patient registries be designated as a special control.

4. Prescription Labeling

The Panel also recommended that the prescription statement be a special control for the device. Prescription labeling is already required for human dura mater under 21 CFR 801.109. Therefore, it is not necessary that the prescription statement be designated a special control.

III. Proposed Classification

FDA concurs with the Panel's recommendation that human dura mater should be classified into class II. FDA believes that the special control described in section II.F of this document, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

The agency proposes to amend § 882.1 by adding paragraph (e) to provide availability information for guidance documents.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

FDA has also examined the impact of the proposed rule under the Regulatory Flexibility Act. The purpose of this proposed rule is to change the classification of human dura mater from an unclassified medical device into a class II medical device subject to special controls. As an unclassified device, this device is already subject to premarket notification and the general labeling provisions of the act. There are currently five to seven manufacturers of human dura mater medical devices. All of the firms meet the Small Business Administration's definition of a small entity (fewer than 500 employees). FDA believes that manufacturers presently marketing this device generally conform to the proposed special controls guidance document. New manufacturers of human dura mater will only need to submit 510(k)s, as the statute now requires them to do, and demonstrate that they meet the recommendations of the guidance or in some way provide equivalent assurances of safety and effectiveness. In addition, biocompatibility and structural testing recommendations are eliminated from the proposed guidance, which will decrease the premarket notification costs for manufacturers introducing new human dura mater devices into commercial distribution. The agency therefore certifies that this proposed rule, if finalized, will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VI. Paperwork Reduction Act of 1995

The premarket notification information collections addressed in the guidance document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) under OMB control number 0910–0120. The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB control number 0910–0485.

VII. Submission of Comments and Proposed Dates

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this proposal. You must submit two copies of any mailed comments except that individuals may submit one copy. You must identify comments with the docket number found in brackets in the heading of this document. You may see any comments received in the Dockets Management Branch between 9 a.m and 4 p.m., Monday through Friday. FDA proposes that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

VIII. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Centers for Disease Control, "Rapidly Progressive Dementia in a Patient Who Received a Cadaveric Dura Mater Graft," *Morbidity and Mortality Weekly Report*, 36:49–50, 1987.

2. Neurological Devices Panel meeting, transcript, July 14, 1989, pp. 1–141.

3. Neurological Devices Panel meeting, transcript, February 2, 1990, pp. 5–111.

4. Centers for Disease Control, "Creutzfeldt-Jakob Disease Associated With Cadaveric Dura Mater Grafts–Japan, January 1979–May 1996," *Morbidity and Mortality Weekly Report*, 46: 1066–1069, 1997.

5. Transmissible Spongiform Encephalopathies Advisory Committee meeting, transcript, October 6 and 7, 1997, pp. 210–269.

6. Neurological Devices Panel meeting, transcript, September 16, 1999, pp. 1–3 and 77–99, and September 17, 1999, pp. 9–11 and 17–101.

7. Abbott, W. M. and E. L. Dupree, "Clinical Results of Lyophilized Human Cadaver Dura Transplantation," *Journal of Neurosurgery*, 34: 770–773, 1971.

8. Cantore, G., G. B. Guidetti, and R. Delfini, "Neurosurgical Use of Human Dura Mater Sterilized by Gamma Rays and Stored in Alcohol: Long-Term Results," *Journal of Neurosurgery*, 66: 93–95, 1987.

9. Laun, A., J. C. Tonn, and C. Jerusalem, "Comparative Study of Lyophilized Human Dura Mater and Lyophilized Bovine Pericardium as Dural Substitutes in Neurosurgery," *Acta Neurochirurgica* (Wien), 107: 1621, 1990.

10. Thadani, V., P. L. Penar, J. Partington, R. Kalb, R. Janssen, L. B. Schonberger, C. S. Rabkin, and J. W. Prichard, "Creutzfeldt-Jakob Disease Probably Acquired From a Cadaveric Dura Mater Graft, Case Report," *Journal of Neurosurgery*, 69: 766–769, 1988.

11. Lang, C. J., J. Heckman, and B. Neundorfer, "Creutzfeldt-Jakob Disease Via Dural and Cornea Transplants," *Journal of Neurological Science*, 160: 128–139, 1998.

12. Dobbins, J. G., E. D. Belay, J. Malecki, B. E. Buck, M. Bell, J. Cobb, and L. B. Schonberger, "Creutzfeldt-Jakob Disease in a Recipient of a Dura Mater Graft Processed in the U.S.: Cause or Coincidence?" *Neuroepidemiology*, 19: 62–66, 2000.

13. Brown, P., M. Preece, J. P. Brandel, T. Sato, L. McShane, I. Zerr, A. Fletcher, R. G. Will, M. Pocchiari, N. R. Cashman, J. H. d'Aignaux, L. Cervenakova, J. Fradkin, L. B. Schonberger, and S. J. Collins, "Iatrogenic Creutzfeldt-Jacob Disease at the Millenium," *Neurology*, 55: 1075–1081, 2000.

14. Sawamura, Y., K. Asaoka, S. Terasaka, M. Tada, and T. Uchida, "Evaluation of Application Techniques of Fibrin Sealant to Prevent Cerebrospinal Fluid Leakage: A New Device for the Application of Aerosolized Fibrin Glue," *Neurosurgery*, 44: 332–337, 1999.

15. Alleyne, C. H. and D. L. Barrow, "Immune Response in Hosts With Cadaveric Dural Grafts," *Journal of Neurosurgery*, 81: 610–613, 1994.

16. Rosomoff, H. L. and T. I. Malinin, "Freeze-Dried Allografts of Dura Mater—20 Years Experience," *Transplantation*

Proceedings. VIII: No. 2 Supplement 1. 133–138. 1976.

17. Sharkey, P. C., F. C. Usher, R. C. L. Robertson, and C. Pollard. "Lyophilized Human Dura Mater as a Dural Substitute." *Journal of Neurosurgery*. 15: 192–198. 1958.

List of Subjects in 21 CFR Part 882

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 882 be amended as follows:

PART 882—NEUROLOGICAL DEVICES

1. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c 360e, 360j, 371.

2. Section 882.1 is amended by adding paragraph (e) to read as follows:

§ 882.1 Scope.

* * * * *

(e) Guidance documents in this part may be obtained on the Internet at http://www.fda.gov/cdrh/guidance.html.

3. Section 882.5975 is added to subpart F to read as follows:

§ 882.5975 Human dura mater.

(a) *Identification.* Human dura mater is human pachymeninx tissue intended to repair defects in human dura mater.

(b) *Classification.* Class II (special controls). The special control for this device is FDA's "Class II Special Controls Guidance Document: Human Dura Mater; Guidance for Industry and FDA." (See § 882.1 for availability information for guidances.)

Dated: September 30, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–26816 Filed 10–21–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 25, 31, 53, 54, 56, and 301

[REG–103735–00; REG–154117–02; REG–154116–02; REG–154115–02; REG–154429–02; REG–154423–02; REG–154426–02; REG–110311–98]

RIN 1545–AX81; RIN 1545–BB49; RIN 1545–BB50; RIN 1545–BB48; RIN 1545–BB53; RIN 1545–BB51; RIN 1545–BB52; RIN 1545–AW26

Tax Shelter Disclosure Statements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations; notice of public hearing.

SUMMARY: These proposed rules provide the public with additional guidance needed to comply with the disclosure rules under section 6011(a). The rules also make conforming changes to the registration requirements under section 6111(d). The proposed rules affect taxpayers participating in certain reportable transactions. In the rules and regulations portion of this issue of the **Federal Register**, the IRS is issuing temporary regulations that modify the rules relating to the requirement that certain taxpayers file a statement with their Federal tax returns under section 6011(a) for certain transactions, including transactions involving Federal income, estate, gift, employment, and pension or exempt organizations excise taxes. The temporary regulations also make conforming changes to the rules relating to the registration of tax shelters under section 6111(d). The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests to speak and outlines of topics to be discussed at the public hearing scheduled for December 11, 2002, at 10 a.m., must be received by December 2, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–103735–00; REG–154117–02; REG–154116–02; REG–154115–02; REG–154429–02; REG–154423–02; REG–154426–02; REG–110311–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–103735–00; REG–154117–02; REG–154116–02; REG–154115–02; REG–154429–02; REG–154423–02; REG–154426–02; REG–110311–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *http://www.irs.gov/regs*. The public hearing will be held in room 6718, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tara P. Volungis, Danielle M. Grimm, or Charlotte Chyr, 202–622–3080 (not a toll-free number); concerning submissions, Sonya Cruse, 202–622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by December 23, 2002. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in § 1.6011–4T(a), (d), (e), (f), and (g), and in § 301.6111–2T(b), (e), and (f). This information is required to provide the IRS with notice of transactions that are potentially abusive. This information will be used to ensure compliance with the Federal tax laws. The collections of information are mandatory. The likely respondents and recordkeepers are individuals, business or other for-profit institutions, and small businesses or organizations.

The burden for the collection of information in § 1.6011–4T will be reflected on Form 8886, "Reportable Transaction Disclosure Statement". The burden for the collection of information in § 301.6111–2T is reflected on Form 8264, "Application for Registration of a Tax Shelter'.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The temporary regulations amend the rules in 26 CFR parts 1, 20, 25, 31, 53, 54, and 56 regarding the filing and records requirements of certain taxpayers under section 6011. The temporary regulations also amend the rules in 26 CFR part 301 regarding the registration of confidential corporate tax shelters under section 6111. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that these notices of proposed rulemaking are not significant regulatory actions as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the time required to prepare or retain the disclosure or registration is not lengthy and will not have a significant impact on those small entities that are required to provide disclosure or to register. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these notices of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 11, 2002, beginning at 10 a.m. in room 6718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 606.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by December 2, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Tara P. Volungis, Danielle M. Grimm, and Charlotte Chyr, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate tax, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 56

Excise taxes, Lobbying, Nonprofit organizations, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedure, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301, which were proposed to be amended at 67 FR 41362 (June 18, 2002), are proposed to be further amended and 26 CFR parts 20, 25, 31, 53, 54, and 56 are proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. Section 1.6011–4, as proposed to be added at 66 FR 41169 (August 7, 2001) and amended at 67 FR 41362 (June 18, 2002), is revised to read as follows:

§ 1.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

[The text of the revision of this proposed section is the same as the text of the revision of § 1.6011–4T published elsewhere in this issue of the **Federal Register**.]

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

3. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

4. Section 20.6011–4 is added to read as follows:

§ 20.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

[The text of this proposed section is the same as the text of § 20.6011–4T published elsewhere in this issue of the **Federal Register**.]

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

5. The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

6. Section 25.6011–4 is added to read as follows:

§ 25.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

[The text of this proposed section is the same as the text of § 25.6011–4T published elsewhere in this issue of the **Federal Register**.]

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

7. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

8. Section 31.6011–4 is added to read as follows:

§ 31.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

[The text of this proposed section is the same as the text of § 31.6011–4T published elsewhere in this issue of the **Federal Register**.]

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

9. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805

10. Section 53.6011–4 is added to read as follows:

§ 53.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

[The text of this proposed section is the same as the text of § 53.6011–4T published elsewhere in this issue of the **Federal Register**.]

PART 54—PENSION EXCISE TAXES

11. The authority citation for part 54 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

12. Section 54.6011–4 is added to read as follows:

§ 54.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

[The text of this proposed section is the same as the text of § 54.6011–4T published elsewhere in this issue of the **Federal Register**.]

PART 56—PUBLIC CHARITY EXCISE TAXES

13. The authority citation for part 56 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

14. Section 56.6011–4 is added to read as follows:

§ 56.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

[The text of this proposed section is the same as the text of § 56.6011–4T published elsewhere in this issue of the **Federal Register**.]

PART 301—PROCEDURE AND ADMINISTRATION

15. The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6111–2 also issued under 26 U.S.C. 6111. * * *

16. Section 301.6111–2, as proposed to be added at 66 FR 41169 (August 7, 2001) and amended at 67 FR 41363 (June 18, 2002), is amended as follows:

1. Paragraphs (a)(3) and (b)(3)(i) are revised.

2. Paragraph (c)(3) is amended by adding a sentence at the end of the paragraph.

3. Paragraph (h) is amended by revising the paragraph heading and removing the third sentence through the last sentence and adding two new sentences in their place.

The revisions and additions read as follows:

§ 301.6111–2 Confidential corporate tax shelters.

[The text of the amendments to this proposed section is the same as the text of the amendments to § 301.6111–2T published elsewhere in this issue of the **Federal Register**.]

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–26725 Filed 10–17–02; 3:10 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–103736–00]

RIN 1545–AX79

Requirement To Maintain a List of Investors in Potentially Abusive Tax Shelters

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations; notice of public hearing.

SUMMARY: These proposed rules relate to the preparation, maintenance, and furnishing of lists of persons in potentially abusive tax shelters under section 6112. These regulations apply to sellers and organizers, collectively known as material advisors, of potentially abusive tax shelters. In the rules and regulations portion of this issue of the **Federal Register**, the IRS is issuing temporary regulations modifying the rules relating to the list maintenance requirements under section 6112. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests to speak and outlines of topics to be discussed at the public hearing scheduled for December 11, 2002, at 10 a.m., must be received by December 2, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–103736–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–103736–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs*. The public hearing will be held in room 6718, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charlotte Chyr, Tara P. Volungis, or Danielle M. Grimm, 202–622–3080 (not a toll-free number); concerning submissions, Sonya Cruse, 202–622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by December 23, 2002. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in § 301.6112–1T(a), (e), (f) and (i). This information is required to comply with the list maintenance requirement of section 6112. Section 6708 provides penalties for failing to maintain a list under section 6112. This information will be used to ensure compliance with the Federal tax laws. The collections of information are mandatory. The likely respondents and recordkeepers are individuals, business or other for-profit and not for-profit institutions, and small businesses or organizations.

Estimated total annual reporting and/or recordkeeping burden: 15,000 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 100 hours.

Estimated number of respondents and/or recordkeepers: 150.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The temporary regulations amend 26 CFR part 301 regarding rules relating to the list maintenance requirements under section 6112. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the number of respondents is small, those persons responsible for maintaining the list described in the regulations are principally sophisticated businesses, including accounting firms and law firms and very few respondents, if any, are likely to be small businesses. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 11, 2002, beginning at 10 a.m., in room 6718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 606.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by December 2, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Charlotte Chyr, Tara P. Volungis, and Danielle M. Grimm, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301, which was proposed to be amended at 65 FR 49955 (August 16, 2000), is proposed to be further amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6112–1 also issued under 26 U.S.C. 6112. * * *

2. Section 301.6112–1, as proposed to be amended at 65 FR 49957 (August 16, 2000), is revised to read as follows:

§ 301.6112–1 Requirement to prepare, maintain, and furnish lists with respect to potentially abusive tax shelters.

[The text of the revision of this proposed section is the same as the text of the revision of § 301.6112–1T published elsewhere in this issue of the **Federal Register**.]

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–26727 Filed 10–17–02; 3:10 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 15

[CIV 102P; AG Order No. 2621–2002]

RIN 1105–AA62

Certification and Decertification in Connection With Certain Suits Based Upon Acts or Omissions of Federal Employees and Other Persons

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: In cases where employees of the Federal Government are sued for money damages based on alleged torts, if the Attorney General certifies that the employees (and certain non-employees) were acting within the scope of their office or employment at the time of the incident out of which the suit arose, the suit would be deemed an action against the United States under the Federal Tort Claims Act. This proposed rule conforms Department regulations on this subject to the provisions of the Federal Employees Liability Reform and Tort Compensation Act that expanded the tort protections for Federal employees (and certain non-employees).

DATES: Submit comments on or before December 23, 2002.

ADDRESSES: Address all comments concerning this proposed rule to Jeffrey Axelrad, Director, Torts Branch, Civil Division, U.S. Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Jeffrey Axelrad, Director, Torts Branch, Civil Division, U.S. Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, DC 20044.

SUPPLEMENTARY INFORMATION: In 1961 Congress passed the Federal Drivers Act, Public Law 87–258, 75 Stat. 539, which immunized Federal employees from liability for money damages based on torts involving the operation of motor vehicles within the scope of their employment. In the event that a Federal employee was sued in such a case, the statute authorized the Attorney General to issue a certification that the employee was acting within the scope of his or her employment at the time of the incident out of which the suit arose, and the suit thereafter would be deemed a tort action against the United States pursuant to the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671–2680.

In ensuing years, Congress enacted a number of similar certification statutes to protect medical and legal personnel employed by certain Federal agencies from tort liability for professional malpractice arising within the scope of their employment. *E.g.*, 10 U.S.C. 1054 (Department of Defense legal personnel); 10 U.S.C. 1089 (Department of Defense medical personnel); 22 U.S.C. 2509(j) (Peace Corps medical personnel); 22 U.S.C. 2702 (Department of State medical personnel); 38 U.S.C. 7316 (Department of Veterans Affairs medical personnel); 42 U.S.C. 233 (Public Health Service medical personnel); 42 U.S.C. 2458a (National Aeronautics and Space Administration medical personnel).

Most recently, the Federal Employees Liability Reform and Tort Compensation Act, 28 U.S.C. 2679(b)–(e), became law. This certification statute, which replaced the less comprehensive Federal Drivers Act, extended immunity from liability for money damages to Federal employees for all common law torts committed within the scope of their employment.

A number of certification statutes also have been enacted to protect certain non-employees from tort liability arising out of certain Federal programs. As part of the National Swine Flu Immunization Program of 1976, Public Law 94–380, 90 Stat. 1113, Congress authorized the Attorney General to issue certifications in suits brought against certain agencies, organizations, and individuals that participated in the manufacture, distribution, and administration of the swine flu vaccine. Similar authority has been conferred on the Attorney General with respect to certain suits against fiduciaries of the Federal Retirement Thrift Savings Fund (5 U.S.C. 8477(e)(4)); atomic weapons testing contractors (42 U.S.C. 2212); and certain individuals enrolled as volunteers in National Volunteer Programs (42 U.S.C. 5055(f)).

Finally, several statutes, without expressly providing for certification, confer Federal employee status on certain persons who would not otherwise be encompassed within the Federal Tort Claims Act's definition of an "employee of the government" as that term is defined by 28 U.S.C. 2671. *E.g.*, 5 U.S.C. 3102 (persons employed to assist handicapped federal employees in performing duties); 5 U.S.C. 3111 (unpaid student volunteers); 7 U.S.C. 2272 (volunteers to Department of Agriculture); 10 U.S.C. 1588 (volunteers to Armed Services); 16 U.S.C. 18i (volunteers to National Park Service); 16 U.S.C. 558c (volunteers to Forest Service); 22 U.S.C. 2504 (Peace Corps volunteers); 29 U.S.C. 2897 (Job Corps enrollees); 33 U.S.C. 569c (volunteers to Army Corps of Engineers); 42 U.S.C. 3788 (volunteers to Office of Justice Programs, Bureau of Justice Assistance, National Institute of Justice Assistance, and Bureau of Justice Statistics).

Part 15 has not been revised since the enactment of the Federal Employees Liability Reform and Tort Compensation Act. The regulations were initially promulgated after passage of the Federal Drivers Act, 26 FR 11420 (1961), and revised as additional certification statutes were enacted. See 40 FR 4910 (1975); 42 FR 15409 (1977); 44 FR 9379 (1979); 49 FR 44995 (1984). As last revised, Part 15 comprises three sections (15.1, 15.2, and 15.3) and an appendix. Each section in turn is subdivided into three subsections that govern suits subject to: (1) The Federal Drivers Act and the malpractice certification statutes; (2) the swine flu statute; and (3) the atomic weapons testing statute.

This proposed rule revises Part 15 to conform it to the provisions of the Federal Employees Liability Reform and Tort Compensation Act, and to delete references to specific certification statutes. Section 15.1 is new and sets forth definitions of the terms "appropriate Federal agency," "Federal employee," and "covered person." Sections 15.2, 15.3, and 15.4 cover the same subjects that were covered by the prior versions of sections 15.1, 15.2, and 15.3, respectively, except that rather than the former tripartite subdivision, each section is subdivided into two paragraphs, one of which governs suits against Federal employees, and the other which governs suits against covered persons. Under the proposed rule, the procedures governing actions against Federal employees continue to apply in actions against estates of Federal employees. The appendix is removed.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review." The Department of Justice has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget.

Clarity of the Regulations

The Attorney General invites comments on how to make these proposed regulations easier to understand. Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to Federal employees and certain non-employees against whom civil actions are filed under circumstances in which the remedy against the United States under the Federal Tort Claims Act has been made exclusive of the remedy against such Federal employees and non-employees. The regulation requires Federal employees in those circumstances promptly to deliver the process and pleadings in such actions to their employing Federal agency, and the agency to send a report concerning the matter to the appropriate United States Attorney and the responsible Branch Director of the Torts Branch, Civil Division, Department of Justice. The regulation further requires covered non-employees in those circumstances promptly to deliver the process and pleadings in such actions to the appropriate Federal agency, and the agency to send a report concerning the matter to the appropriate United States Attorney and the responsible Branch Director of the Torts Branch, Civil Division, Department of Justice. The rule's economic impact is minimal.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 15

Authority delegations (Government agencies), Tort claims.

For the reasons stated in the preamble, the Department of Justice proposes to amend 28 CFR part 15 as follows:

1. Part 15 is revised to read as follows:

PART 15—CERTIFICATION AND DECERTIFICATION IN CONNECTION WITH CERTAIN SUITS BASED UPON ACTS OR OMISSIONS OF FEDERAL EMPLOYEES AND OTHER PERSONS

Sec.

15.1 General provisions.
15.2 Expeditious delivery of process and pleadings.
15.3 Agency report.
15.4 Removal and defense of suits.

Authority: 5 U.S.C. 301, 8477(e)(4); 10 U.S.C. 1054, 1089; 22 U.S.C. 2702; 28 U.S.C. 509, 510, and 2679; 38 U.S.C. 7316; 42 U.S.C. 233, 2212, 2458a, and 5055(f); and the National Swine Flu Immunization Program of 1976, Pub. L. 84–380, 90 Stat. 1113 (1976).

§ 15.1 General provisions.

(a) This part contains the regulations of the Department of Justice governing the application for and the issuance of statutory certifications and decertifications in connection with certain suits based upon the acts or omissions of Federal employees and certain other persons as to whom the remedy provided by the Federal Tort Claims Act, 28 U.S.C. 1346(b) and 2672, is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against such Federal employees and other persons.

(b) As used in this part:

(1) *Appropriate Federal agency* means the Federal agency most closely associated with the program out of which the claim or suit arose. When it cannot be ascertained which Federal agency is the most closely associated with the program out of which the claim or suit arose, the responsible Director of the Torts Branch, Civil Division, Department of Justice, shall be consulted and will thereafter designate the appropriate Federal agency.

(2) *Federal employee* means "employee of the government" as that term is defined by 28 U.S.C. 2671.

(3) *Covered person* means any person other than a Federal employee or the estate of a Federal employee as to whom Congress has provided by statute that the remedy provided by 28 U.S.C. 1346(b) and 2672 is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against such person.

§ 15.2 Expeditious delivery of process and pleadings.

(a) Any Federal employee against whom a civil action or proceeding is brought for money damages for loss or damage to property, or personal injury or death, on account of any act or omission in the scope of the employee's office or employment with the Federal Government, shall promptly deliver all process and pleadings served on the employee, or an attested true copy thereof, to the employee's immediate superior or to whomever is designated by the head of the employee's department or agency to receive such papers. In addition, if prior to the employee's receipt of such process or pleadings, the employee receives information regarding the commencement of such a civil action or proceeding, he shall immediately so advise his superior or the designee. If the action is brought against the employee's estate this procedure shall apply to the employee's personal representative. The superior or designee shall provide the United States Attorney for the district embracing the place where the action or proceeding is brought and the responsible Branch Director of the Torts Branch, Civil Division, Department of Justice, information concerning the commencement of such action or proceeding, and copies of all process and pleadings.

(b) Any covered person against whom a civil action or proceeding is brought

for money damages for loss or damage to property, or personal injury or death, on account of any act or omission, under circumstances in which Congress has provided by statute that the remedy provided by the Federal Tort Claims Act is the exclusive remedy, shall promptly deliver to the appropriate Federal agency all process and pleadings served on the covered person, or an attested true copy thereof. In addition, if prior to the covered person's receipt of such process or pleadings, the covered person receives information regarding the commencement of such a civil action or proceeding, he shall immediately so advise the appropriate Federal agency. The appropriate Federal agency shall provide to the United States Attorney for the district embracing the place where the action or proceeding is brought, and to the responsible Branch Director of the Torts Branch, Civil Division, Department of Justice, information concerning the commencement of such action or proceeding, and copies of all process and pleadings.

§ 15.3 Agency report.

(a) The Federal employee's employing Federal agency shall submit to the United States Attorney for the district embracing the place where the civil action or proceeding is brought a report that fully addresses whether the employee was acting within the scope of his office or employment with the Federal Government at the time of the incident out of which the suit arose. The employing Federal agency shall send a copy of the report to the responsible Branch Director of the Torts Branch, Civil Division, Department of Justice.

(b) The appropriate Federal agency shall submit to the United States Attorney for the district embracing the place where the civil action or proceeding is brought a report that fully addresses whether the person was acting as a covered person at the time of the incident out of which the suit arose. The appropriate Federal agency shall send a copy of the report to the responsible Branch Director of the Torts Branch, Civil Division, Department of Justice.

(c) A report under this section shall be submitted at the earliest possible date, or within such time as shall be determined upon request by the United States Attorney or the responsible Branch Director of the Torts Branch.

§ 15.4 Removal and defense of suits.

(a) The United States Attorney for the district where the civil action or proceeding is brought, or any Director of the Torts Branch, Civil Division, Department of Justice, is authorized to make the statutory certification that the Federal employee was acting within the scope of his office or employment with the Federal Government at the time of the incident out of which the suit arose.

(b) The United States Attorney for the district where the civil action or proceeding is brought, or any Director of the Torts Branch, Civil Division, Department of Justice, is authorized to make the statutory certification that the person was acting as a covered person at the time of the incident out of which the suit arose under circumstances in which Congress has provided by statute that the remedy provided by the Federal Tort Claims Act is the exclusive remedy.

(c) A certification under this section may be withdrawn if a further evaluation of the relevant facts or the consideration of new or additional evidence calls for such action. The making, withholding, or withdrawing of certifications, and the removal and defense of, or refusal to remove or defend, such civil actions or proceedings shall be subject to the instructions and supervision of the Assistant Attorney General in charge of the Civil Division or his designee.

Dated: October 16, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–26832 Filed 10–21–02; 8:45 am]

BILLING CODE 4410–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7396–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of the West Virginia Ordnance Works Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces its intent to delete six areas of the West Virginia Ordnance Works (WVOW) National Priorities List (NPL) site from the NPL and requests public comment on this action. The areas are the Operable Unit 11 (OU–11) Sellite Plant, the OU–12 North and South Powerhouses and Vicinity, the Environmental Mitigation Area 6 (ENV–6), the Expanded Site Investigation 3 (ESI–3) Tract 21, the ESI–5 Refueling Depot, and the ESI–9 Main and Outgoing Classification Yards. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

This proposal for partial deletion pertains only to OU–11, OU–12, ENV–6, ESI–3, ESI–5, and ESI–9. The U.S. Army Corps of Engineers (USACE), together with EPA, issued no further action Records of Decision (RODs) for OU–11 and OU–12. Wetlands were restored at ENV–6 in accordance with mitigation agreements, which were approved and signed by USACE and the West Virginia Division of Natural Resources (WVDNR). USACE and EPA issued no further action Decision Documents for ESIs–3, –5, and –9, which were concurred upon by the West Virginia Department of Environmental Protection (WVDEP). EPA bases its proposal to delete these six areas at WVOW on the determination by EPA, USACE, and WVDEP that all appropriate actions under CERCLA have been implemented to protect human health and the environment at OUs–11 and –12, ENV–6, and ESIs–3, –5, and –9.

This partial deletion pertains only to these areas of the WVOW site and does not include any other ESI or any OU. All other ESIs and OUs will remain on the NPL, and investigation and response activities will continue at those ESIs and OUs.

DATES: EPA will accept comments concerning its proposal for partial deletion for thirty (30) days after publication of this document in the **Federal Register** and publication of a notice of availability of this document in a newspaper of record.

ADDRESSES: Comments may be submitted to Mr. Jack Potosnak, PE, Remedial Project Manager, U.S. EPA, Region III (3HS13), 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, Telephone: (215) 814–3362.

Information Repositories: Comprehensive information on the WVOW site, information specific to this proposed partial deletion, the Administrative Record and the Deletion Docket for this partial deletion are available for review at the following WVOW site document/information repositories:

Mason County Public Library, 508 Viand Street, Point Pleasant, WV 25550, (304) 675–0894, Hours of Operation: Monday through Saturday 10 a.m.-5 p.m.

U.S. EPA Region III Library, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–5254, Hours of Operation: Monday through Friday 8 a.m.–5p.m.

U.S. Army Corps of Engineers, Huntington District, 502 8th Street, Huntington, WV 25701, (800) 822–8413 or (304) 529–5388, Hours of Operation: Monday through Friday 8 a.m.–4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Potosnak, PE, Remedial Project Manager, U.S. EPA Region III (3HS13), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3362.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Partial Site Deletion

I. Introduction

The United States Environmental Protection Agency (EPA) Region III announces its intent to delete a portion of the West Virginia Ordnance Works site (WVOW site) located in Mason County, West Virginia, from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this proposal. This proposal for partial deletion pertains to OU–11, OU–12, ENV–6, ESI–3, ESI–5, and ESI–9.

The WVOW site is located on the east bank of the Ohio River, approximately six miles north of Point Pleasant, Mason County, West Virginia. Contamination of the WVOW site originated from the operation of a trinitrotoluene (TNT) manufacturing facility during World War II. Nitroaromatic (explosive) compounds are the primary contaminants of concern at the WVOW site.

The WVOW site, as added to the NPL in 1983 encompassed an entire area of approximately 8,323 acres. In 1994, after 11 years of investigation and other activities at the WVOW site that helped to determine where contamination at the site existed, EPA, USACE and WVDEP worked together to clarify the boundary of the WVOW site by developing a site boundary map delineating areas of known or suspected contamination. This clarification of the site boundary was undertaken in accordance with EPA's interpretation of "facility," which was defined by Congress in section 101(9)(B) of CERCLA, 42 U.S.C. 9601(9)(B), as "any site or area where a hazardous substance has been deposited, stored, disposed of, or placed or otherwise come to be located * * *" EPA has routinely explained how site boundaries are determined when notifying the public regarding additions to the NPL. See, *e.g.*, National Priorities List for Uncontrolled Hazardous Waste Sites, 67 FR 56757, 56759, September 5, 2002. The current WVOW site boundary, as delineated in the 1994 mapping, encompasses approximately 2,700 acres.

All six areas proposed for deletion from the NPL are located within the current boundary for the WVOW site. The Clifton F. McClintic Wildlife Management Area (MWMA) occupies 2,788 acres of the 1983 site, and most of the MWMA is also within the current NPL boundary.

OU–11: Sellite Plant

In April 1990, a surface and subsurface investigation was undertaken at the Sellite Manufacturing Area. The results of this investigation indicated that neither nitroaromatic compounds nor organic compounds were detected. However, during a July 1990 sampling event, 2,4-dinitrotoluene was detected in a well but at a level below risk-based concentrations. A focused remedial investigation (RI) was conducted at OU–11 from January to March 1994 to verify and expand upon the April 1990 investigation.

One groundwater contaminant (bis(2-ethylhexyl)phthalate [DEHP]) found at OU–11 was present at a concentration exceeding the maximum contaminant level (MCL); however, according to the risk assessment, the risk to human health associated with DEHP was within an acceptable limit. In addition, lead was found in groundwater at OU–11 at a concentration exceeding EPA's action level; however, contamination was detected in only three out of seven monitoring wells and the lead level was above the action level for only one unfiltered sample. Filtration of this same sample resulted in a lead level below the action level. According to the risk assessment, the mean lead level was less than the mean background level of lead at the WVOW site and the mean lead level was found to correspond to an acceptably low probability that blood lead levels of any receptor would exceed a level of concern. For these reasons, neither DEHP nor lead were found to be contaminants of concern at OU–11.

After the RI, a risk assessment was performed. For groundwater, the site-related risk and hazards were found to be within the acceptable limits. For surface soil, aluminum, arsenic, beryllium and manganese were determined to be present due to background rather than site-related activities.

In 1999, as a removal action, EPA disposed of 10 drums of hazardous and non-hazardous waste and excavated and disposed of 25 tons of non-hazardous waste soil. The drums of waste material disposed of as hazardous waste contained material contaminated with caustics or corrosives or with lead, likely from waste paints or coatings.

In May 2000, USACE and EPA issued a ROD for OU–11, which was concurred upon by WVDEP, finding that no remedial action was required at OU–11; however, the ROD stipulated that annual groundwater monitoring would be conducted over a period of 5 years to evaluate the trend of the concentrations of DEHP and lead to ensure that they remain within an acceptable range. The results of the monitoring thus far indicate that MCLs are no longer being exceeded.

OU–12: North and South Powerhouses and Vicinity

In 1994 and 1995, USACE undertook a removal to demolish both powerhouse buildings. An RI was conducted in 1995 at OU–12 to identify and evaluate the source, nature, and extent of environmental contamination in subsurface soil, groundwater, surface water, and sediment. Additional sampling of surface soil was conducted in December 1997 and November 2000.

Based on analyses of the samples and a risk assessment, it was determined that cancer and non-cancer risks were within acceptable levels for all receptors. Iron found in subsurface soil was found unlikely to induce adverse effects in receptors exposed to subsurface soil. The highest iron ingestion rate for any OU–12 receptor was projected to be approximately 10 times less than the dose that is known to cause signs of mild toxicity in children who have ingested large quantities of supplemental iron tablets and 100 times less than a lethal dose. Moreover, the risk assessment deduced that the forms of iron in subsurface soil would likely be less toxic than iron found in nutritional supplements.

USACE and EPA issued a ROD in June 2002, which was concurred upon by the WVDEP, documenting the conclusion that no contaminants present in the soil, sediment, surface water or groundwater at OU–12 pose a threat to human health. The ROD also concluded that no remedial action was required at OU–12.

ENV–6: Wetlands Mitigation Area

Investigation in this area did not reveal any contamination in connection

with activities undertaken at WVOW. ENV–6 designates an area where wetlands were restored to mitigate for the loss of wetlands elsewhere within the WVOW site during remedial activities. In 2000, the wetlands restoration was completed, and no further work is required at ENV–6.

ESI–3: Tract 21

Extensive sampling and risk assessments were undertaken at ESI–3 and, except for an outdoor asbestos removal, no CERCLA response action was necessary. Based on these investigations, on September 28, 2000, USACE, EPA and WVDEP executed a Decision Document for ESI–3 stating that no further action is necessary to protect human health and the environment except for removal of asbestos-containing materials. The removal was completed in April 2001.

ESI–5: Refueling Depot

Based on the results of a geophysical survey, trenching, and soil and groundwater investigation, it was determined that ESI–5 does not pose an unacceptable risk to human health or the environment. This determination is based upon the following findings: (a) Chemicals in site soils were detected at background concentrations and/or at concentrations which do not present a risk to human health or ecological receptors; (b) ecological receptors are unlikely to contact subsurface soil; (c) site-related contaminants in the groundwater samples were detected at concentrations which do not present a risk to human health.

EPA, WVDEP and USACE executed a Decision Document on September 28, 2000 finding that no remedial action is required at ESI–5 because contaminant concentrations detected in the soil and groundwater do not present a significant risk to human health or ecological receptors.

ESI–9: Main and Outgoing Classification Yards

Environmental studies were conducted at ESI–9 in 1996, which included collection and analysis of surface and subsurface soil samples and groundwater samples from the main classification yard (MCY), surface water and sediment samples from water near the MCY, and subsurface soil samples from the outgoing classification yard (OCY). A human health risk evaluation was also conducted in 1996 based on analytical results of the sampling.

No unacceptable human health or environmental risks were identified for environmental media at the MCY or the OCY based on the risk evaluation and a repeat analysis of the risk evaluation. It was determined that the only contaminant detected in groundwater underlying the OCY is likely attributable to the Red Water Reservoir, which is located to the south of ESI–9 and is being addressed as OU–4.

On July 12, 2001, USACE, EPA and WVDEP issued a Decision Document for ESI–9, which found that no further action was necessary. Unacceptable human health risks identified for the MCY groundwater were shown to be attributed to WVOW background conditions and not to WVOW activities. Contaminants at ESI–9, present due to WVOW activities, do not present a significant risk to human health and the environment.

II. NPL Deletion Criteria

This partial deletion of the WVOW site is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List, 60 FR 55446 (Nov. 1, 1995).

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health or the environment. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or

Section 300.425(e)(1)(ii). All appropriate responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a portion of a site from the NPL does not preclude eligibility for subsequent CERCLA actions at the area deleted if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that CERCLA actions may be taken at sites that have been deleted from the NPL. A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities at areas not deleted and remaining on the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts.

III. Deletion Procedures

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke a person's rights or obligations. The NPL is designed primarily for informational purposes and to assist agency management. The following procedures were used for the proposed deletion of OUs–11 and –12, ENV–6, and ESIs–3, –5, and –9 at the WVOW site:

1. EPA has recommended the partial deletion and USACE has prepared the relevant documents.

2. The State of West Virginia through the West Virginia Department of Environmental Protection concur with this partial deletion.

3. Concurrent with this national Notice of Intent for Partial Deletion, a notice has been published in a newspaper of record and has been distributed to appropriate federal, state, and local officials, and other interested parties. These notices announce a thirty (30) day public comment period on the deletion package, which commences on the date of publication of this notice in the **Federal Register** and publication of a notice of availability of this notice in a newspaper of record.

4. EPA and USACE have made all relevant documents available at the information repositories listed previously.

This **Federal Register** document, and a concurrent notice in a newspaper of record, announce the initiation of a thirty (30) day public comment period and the availability of the Notice of Intent for Partial Deletion. The public is asked to comment on EPA's proposal to delete OUs–11 and –12, ENV–6, and ESIs–3, –5, and –9 of the WVOW site from the NPL. All critical documents needed to evaluate EPA's decision are included in the Deletion Docket and are available for review at the information repositories.

Upon completion of the thirty (30) day comment period, EPA will evaluate all comments received before issuing the final decision on the partial deletion. EPA will prepare a Responsiveness Summary for comments received during the public comment period and will address concerns presented in the comments. The Responsiveness Summary will be made available to the public at the information repositories listed previously. Members of the public are encouraged to contact EPA Region III to obtain a copy of the Responsiveness Summary. If, after review of all public comments, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of the areas does not actually occur until the final Notice of Partial Deletion is published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

The following provides EPA's rationale for deletion of OU–11, OU–12, ENV–6, ESI–3, ESI–5, and ESI–9 from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied.

Background

The WVOW site is located on the east bank of the Ohio River, approximately six miles north of Point Pleasant, Mason County, West Virginia. The WVOW site, as added to the NPL in 1983, encompassed a land mass of approximately 8,323 acres. As explained in section I, earlier in this Notice, the NPL boundary was clarified in 1994, and the WVOW site now encompasses approximately 2,700 acres. The Clinton F. McClintic Wildlife Management Area (MWMA) occupies 2,788 acres of the original site, and is mostly included in the current site boundary.

Contamination of the WVOW site originated from the operation of a trinitrotoluene (TNT) manufacturing facility during World War II. Nitroaromatic (explosive) compounds are the primary contaminants of concern at the WVOW site. To expedite CERCLA response actions at this large site, the WVOW site is divided into 13 Operable Units (OUs) and 10 Expanded Site Investigations (ESIs):

OU–1: TNT Manufacturing Area, Burning Grounds, and Waste Water Process Lines
OU–2: Red Water Reservoir
OU–3: Yellow Water Reservoir
OU–4: Groundwater Extraction and Treatment for OUs 2 and 3
OU–5: Pond 13/Wet Well Area
ENV–6: Wetlands Mitigation Area
OU–7: Point Pleasant Landfill
OU–8: TNT Manufacturing Area Soils
OU–9: TNT Manufacturing Area Groundwater
OU–10: South Acids Area and Toluene Storage Areas
OU–11: Sellite Plant
OU–12: North and South Powerhouses
OU–13: Pantasote Plant
ESI–1: Magazine Area
ESI–2: Acid Dock
ESI–3: Tract 21
ESI–4: Red Water Sewer Outfall
ESI–5: Refueling Depot
ESI–6: Motorpool and Maintenance Area
ESI–7: Sewage Treatment Plant Outfall
ESI–8: Dump Site Adjacent to the TNT Manufacturing Area
ESI–9: Classification Yards
ESI–10: Various Areas of Concern

USACE has been investigating and conducting human health risk evaluations and assessments for each OU and ESI separately. Once investigations and assessments are complete, USACE and EPA together have made CERCLA response action decisions, with the concurrence of WVDEP.

The WVOW was established in 1942 as a government-owned, contractor-operated plant for the manufacture of TNT from toluene, nitric acid, and sulfuric acid. The WVOW plant was operated by the General Defense Corporation of New York from October 1942 through August 1945. The plant had the capacity to produce 720,000 pounds of TNT each day, utilizing 12 manufacturing lines; however, it has been reported that only lines 1 through 10 were operated, and the plant never reached full capacity.

The facility was constructed on approximately 5,800 acres, of which more than 2,000 acres were used as a safety zone between the plant and other properties. The plant includes the 12 TNT manufacturing lines; two acid manufacturing areas; two coal-fired power plants; a Sellite manufacturing plant; pumping stations; a sewage treatment plant; 100 concrete TNT storage magazines; and various administrative, shop, and housing facilities.

In 1945, the production of TNT ceased, and shutdown of the WVOW plant was initiated. The production of TNT had resulted in soil contamination from nitroaromatic compounds in the manufacturing areas, process facilities, and wastewater disposal facilities. Partial decontamination actions were performed, such as flashing the TNT lines and draining and capping the Red and Yellow Water Reservoirs, and the property was transferred from the U.S. War Department to the U.S. War Assets Administration in late 1946.

Numerous site visits and investigations beginning in 1947 and continuing through the 1950s determined that additional contamination not previously identified was present at the site. In addition, several tracts of land that had received decontamination certificates were determined to be contaminated. Because the site could not be completely decontaminated, a portion of the site was not released for private ownership and was transferred to the State of West Virginia as a wildlife management area in 1949.

In 1981, a red water seepage was discovered at Pond 13, later designated as OU–5. Subsequent investigations led the State of West Virginia to nominate the WVOW site for inclusion on the NPL; ultimately the WVOW site was ranked as 84th. A memorandum of understanding was signed in 1983 between EPA Headquarters and the Department of Defense to establish responsibilities for remediating the site. For the Department, the U.S. Army Toxic and Hazardous Materials Agency began the first remedial investigation and feasibility study in 1984. Initially, only two operable units were established, and Records of Decision (RODs) and Interagency Agreements (IAGs) were signed to address these areas. Later, more operable units were created until the current total of thirteen was reached.

Construction of the OU–1 remedy was completed in 1988 before the site was transferred from the U.S. Army Toxic and Hazardous Materials Agency to USACE, Baltimore District, in 1991. OU–1 remediation included capping of the burning grounds and the 10 TNT manufacturing lines that had been operated in the 1940s and excavation and flaming of process waste water lines. Construction on OU–2, which included draining and capping of the Red and Yellow Water Reservoirs, was completed in 1992 before the site administration was transferred to USACE, Huntington District, where it remains. Portions of OU–2 were later divided into OU–3, OU–4, and OU–5 to simplify management. The construction of the OU–4 remedy was completed in 1997, and the two groundwater treatment plants are currently operational. OU–6 was re-designated as ENV–6, and construction of wetlands has been completed. OU–7 and OU–13, the Point Pleasant landfill and the Pantasote plant, respectively, have been designated by EPA as potentially responsible party sites, and EPA is the lead agency for addressing these areas. Buildings were demolished and debris removed at OU–11 and OU–12. Asbestos-containing material has been removed from ESI–3, which was the only hazard posed on that area. An underground storage tank (UST) was removed from ESI–6. Asbestos materials and other debris were removed and capped at ESI–8.

OU–11: Sellite Plant

The former Sellite manufacturing area is centrally located in the WVOW site and lies northwest of the former TNT manufacturing area. OU–11 is situated

on the south side of County Road 12 (Wadsworth Road), approximately 1.5 miles southeast of State Route 62. Sellite (sodium sulfite) was manufactured at the Sellite Manufacturing Plant from 1942 to 1945 by the U.S. Army. Supporting facilities consisted of the soda ash storage building and a sulfur storage facility. In addition, a box factory and storage facility were located at OU–11.

During the manufacture of TNT at WVOW, Sellite was used for the washing and purification of tri-oil as one of the final steps in producing TNT. Sellite was manufactured by combining soda ash and sulfur, which involved the use of a sulfur melting pit and a sulfur furnace. The materials were combined in two batch tanks within the Sellite plant, and the liquor produced was pumped to two Sellite storage tanks located southeast of the plant.

During the initial operation of WVOW, Sellite solution was transported from the storage tanks to the TNT Manufacturing Area by truck. However, because of the inefficiencies of this operation, a 4-inch-diameter steel line was installed in 1944 to supply Sellite to the washer/flaker houses in the TNT Manufacturing Area, and the trucks were taken out of service.

Since the suspension of TNT manufacturing at WVOW in August of 1945, and the declaration of the WVOW site as surplus in December of 1945, the former Sellite Manufacturing Area has had several uses. OU–11 was initially used by the Mason Furniture Company for the manufacture of furniture from 1948 through the mid-1970s. The property was most recently leased from the landowner by the West Virginia Mulch Company for the manufacture of mulch. Site activities included the receipt of raw materials, manufacture and storage of mulch, packaging of mulch, and the loading of tractor trailers for transport of packaged mulch. These operations ceased in 1996, and the property is currently vacant. In 1999, EPA discovered drums of unknown materials on the property. EPA removed 10 drums of hazardous and non-hazardous materials and 25 tons of contaminated soil.

A focused remedial investigation (RI) was conducted at OU–11 from January to March 1994 to verify and expand the database established in the April 1990.

After the RI, a risk assessment was performed. For groundwater, the site-related risk and hazard are within the acceptable limits of the background risk and hazard. For surface soil, aluminum, arsenic, beryllium and manganese were determined to be present due to background rather than site-related activities. Total residential cancer risk and noncancer hazard from exposure to groundwater and soil were found to be within acceptable limits. On May 9, 2000, USACE and EPA issued a ROD, concurred upon by WVDEP, finding that actual or threatened releases of hazardous substances from OU–11 were not found to be an imminent and substantial or future endangerment to public health and welfare or the environment and that no remedial action was required at OU–11. In addition, the ROD stipulated that annual groundwater monitoring would be conducted over a period of 5 years to evaluate the trend of the concentrations of bis(2-ethylhexyl)phthalate and lead to assure that they remain within an acceptable range. The monitoring program is nearly complete and all results indicate that maximum contaminant levels are no longer being exceeded.

OU–12: North and South Powerhouses and Vicinity

OU–12 encompasses the former North and South Powerhouses. The North Powerhouse (NPH) site is located northeast of and adjacent to the Mason County Fairgrounds in the northeast part of the administrative/maintenance area of the WVOW in the upland area above the Ohio River floodplain. The South Powerhouse (SPH) site is located in the southwest part of the former administrative/maintenance area of the WVOW. It is southwest of and adjacent to the Mason County Fairgrounds. Both the NPH and SPH sites are on property currently owned by Mason County, West Virginia.

The two powerhouses were operational from 1942 through 1945 in support of the manufacture of TNT. They were primarily used for the production of low-pressure and high-pressure steam for industrial purposes and heating at the WVOW but were also reportedly used as standby sources of electrical power. Power-generating equipment was removed after WVOW shut down in 1945, and the two areas have had no known use since that time. Both powerhouse buildings were removed during a removal action carried out by the USACE in 1994 and 1995. Each powerhouse had an associated coal storage area and ash disposal area. The ash disposal pits were used to dispose of ash from the coal-fired boilers and were situated on the east side of each powerhouse. Part of the ash pit for the SPH is currently a pond. It is the only pond located at OU–12 and is designated as Pond 2.

An RI was conducted in 1995 at OU–12 to identify and evaluate the source, nature, and extent of environmental contamination in subsurface soil, groundwater, surface water, and sediment. At the request of EPA Region III, additional subsurface soil and sediment samples were collected from the former ash pit in December 1997. Samples of the various media were collected and analyzed in the vicinity of both the NPH and SPH. Initially, surface soil samples were not collected because the original surface soil was replaced with clean fill during removal of the powerhouse buildings. However, surface soil samples were collected in November 2000 in response to concerns raised by WVDEP.

During the RI, soil samples, groundwater and surface water samples, and sediment samples were analyzed for likely contaminants and a risk assessment was performed using the outcome of the sampling analysis. Cancer risks were found to be within acceptable limits for all receptors at OU–12. Exposure to groundwater, surface water, or sediment does not pose any site-related risks. Elevated levels of iron were found in OU–12 subsurface soils; however, the conclusion of the risk assessment was that iron is not expected to induce adverse effects in receptors exposed to subsurface soil. On June 14, 2002, USACE and EPA issued a ROD for OU–12, which was concurred upon by WVDEP, making the finding that no remedial action was necessary at OU–12.

ENV–6: Wetlands Mitigation Area

ENV–6 is located near the eastern boundary of the McClintic Wildlife Management Area along Oldtown Creek, just south of County Route 12. The area includes Ponds 21 through 23 and other areas (Pond 6 and a portion of Pond 17A) that are not areas of environmental concern.

During remedial activity for OU–1, Pond 16 was drained and could not be refilled because the pond dam had been damaged, which resulted in loss of wetlands in and around Pond 16. As a separate event, during remedial activity for OU–2, Ponds 1 and 2 (which were the Red Water Reservoir) were drained and capped, also resulting in loss of wetlands. To compensate for these two separate losses of wetlands, USACE and the State together decided that it would be more efficient, due to other remedial activity ongoing at the WVOW site, to construct a dam at Ponds 21 through 23 rather than re-construct the Pond 16 dam. USACE performed pre-construction testing of the areas proposed to be made into aquatic habitat or wetlands to ensure that, when flooded, contaminants in the soil (if any) would not leach into the wetlands and contaminate the ponds. The pre-construction sampling and analysis indicated that the soil was not contaminated and could be flooded. USACE provided partial funding to the State for a replacement dam and fish lost at Pond 16. Investigation in this area did not reveal any concerns about contamination related to WVOW activity.

ESI–3: Tract 21

ESI–3 is bounded on the north by Camp Conley Road, on the south by Oldtown Creek, and on the east and west by privately-owned properties. Historic records from the operation of WVOW indicate no activities conducted at the Tract 21 area, which covers approximately 36 acres. However, after the closure of WVOW, disposal of WVOW waste and possibly civilian waste may have occurred on approximately 15 acres of Tract 21. This area of probable disposal was designated as AOC–16. ESI–3 is now privately-owned and includes an agricultural field, a wooded area, and a small family cemetery.

Pre-remedial investigation activities were conducted at ESI–3 in 1995. Because the current use of the site is agricultural, activities such as tilling have disrupted the surface soil. Thus, field investigations consisted of sampling and analysis of soil beneath the zone of agricultural disruption; the investigations also included sampling of groundwater and seep water at Tract 21 and surface water and sediment from Oldtown Creek, which borders Tract 21 to the south. The samples were analyzed for the presence of possible contaminants. The data from these field investigations and analyses were screened to evaluate whether the site presented unacceptable risk to human health and/or the environment. Subsequent human health risk evaluations were performed to assess contaminant levels and pathways for potential risk to human receptors, and an ecological risk assessment was performed to evaluate contaminant levels and pathways for potential risk to ecological receptors.

Based on the outcome of the evaluations and assessment, EPA, WVDEP, and USACE issued a Decision Document on September 28, 2000, finding that ESI–3 required an asbestos removal action where the disposal activities likely occurred, but otherwise no further CERCLA response action. The removal action for potentially friable asbestos-containing material on the ground surface at ESI–3 was completed in April 2001.

ESI–5: Refueling Depot

ESI–5 is a 6.3-acre parcel located northeast of the Sellite Manufacturing Area (OU–11) on the north side of County Road 12 (Wadsworth Road); most of ESI–5 is located within the MWMA. During the operation of WVOW, the ESI–5 was used as a gasoline refueling station and probably contained an underground storage tank for storing gasoline.

In 1994, an initial investigation was conducted which included a geophysical survey and subsurface soil sample collection. Surficial soil samples were not collected at ESI–5 because petroleum products evaporate over time and, thus, would not remain in surface soils more than 50 years after any potential release. The purpose of the geophysical survey was to locate and map underground storage tanks, if any. In 1997, groundwater samples were collected and analyzed for petroleum-related hazardous substances and other contaminants. In 1999, a supplemental investigation was undertaken to further investigate magnetic anomalies detected in the 1994 geophysical survey and to otherwise confirm whether any underground storage tanks existed at ESI–5. Certain locations within ESI–5 were trenched to physically search for underground storage tanks, but none were found.

On September 28, 2000, USACE, EPA and WVDEP issued a Decision Document which concluded that ESI–5 does not pose an unacceptable risk to human health or the environment. This conclusion was based on the following investigation findings: (a) Chemicals found in ESI–5 soils were detected at background concentrations and/or at concentrations which do not present a risk to human health or ecological receptors; (b) ecological receptors are unlikely to contact subsurface soil; (c) site-related contaminants found in groundwater were detected at concentrations which do not present a risk to human health.

ESI–9: Main and Outgoing Classification Yards

From 1942 to 1945, when WVOW was in operation, the Main Classification Yard (MCY) and the Outgoing Classification Yard (OCY) consisted primarily of railroad sidings where incoming and outgoing freight were inventoried. In the mid-1960s, the railroad tracks were removed and construction of the Mason County Airport began. The airport became operational in 1967.

The MCY is located at the current Mason County Airport, southwest of the location of the former South Powerhouse (OU–12) and outside of the MWMA. The Mason County Airport runway and terminal area are located on the former MCY railbed.

Prior to the ESI–9 investigation, the following chemicals were of potential concern, based on historic use of the MCY: inorganics, volatile and semivolatile organic compounds, pesticides, polychlorinated biphenyls, and asbestos. Petroleum products and other associated chemicals used by Mason County Airport and chemicals associated with agricultural activities conducted at ESI–9 after WVOW operations ceased and construction of the airport also may have contaminated the MCY.

The OCY is situated within the MWMA along Potters Creek Road (County Road 11), north of the former Red Water Reservoir and adjacent to the MWMA boundary. The OCY tracks ran parallel to Potters Creek Road. During WVOW operations, the OCY was used to facilitate loading of the finished product, TNT, to outgoing freight and had a capacity of 30 railcars per day. The only structure located in this area during WVOW operations was the track scale. The track scale pit has been filled in, and the tracks have been removed from the site. The Red Water Reservoir groundwater extraction wells, a component of the OU–4 groundwater extraction system, are currently located where the OCY used to be. Prior to site investigation, the following chemicals were of potential concern, based on historic use of the OCY: nitroaromatic compounds, inorganics, volatile and semi-volatile organic compounds, pesticides, PCBs, and asbestos.

In 1996, an investigation included collection of surface and subsurface soil samples from the MCY, collocated surface water and sediment samples from the MCY, groundwater samples from monitoring wells in conjunction with the study of the MCY, and subsurface soil samples from the OCY. After analysis of the sampling, a human health risk evaluation was conducted.

On July 12, 2001, USACE, EPA and WVDEP issued a Decision Document finding that: (a) no unacceptable risks were identified for MCY or OCY environmental media based on the human health risk evaluation or repeat evaluation; and (b) the only contaminant detected in groundwater underlying the OCY is likely attributable to the Red Water Reservoir, which is being addressed as OU–4.

Response Actions

At OU–11 and OU–12, building demolition and debris removal were

performed to eliminate hazards. Also, at OU–11, a removal action was taken to remove unsecured drums and some contaminated soil. At ESI–3, an asbestos removal was performed to remove asbestos-containing debris.

Community Involvement

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and Section 117, 42 U.S.C. 9617.

OU–11: Sellite Plant

A copy of the RI report and the Proposed Plan were placed in the public repository at the Mason County Public Library in Point Pleasant, West Virginia. Notice of the availability of the documents, the public comment period, and the public meeting were published in The Point Pleasant Register on April 8, 1999. USACE established a 30-day public comment period beginning April 15, 1999 and ending May 15, 1999. A public meeting was held on April 15, 1999 at the Army National Guard Armory in Point Pleasant, West Virginia to answer any questions concerning OU–11 and the selected remedy. Representatives of EPA, WVDEP, and USACE were present at the public meeting. No members of the public attended the meeting, nor were any comments received during the public comment period.

OU–12: North and South Powerhouses and Vicinity

A copy of the RI report and the Proposed Plan were placed in the public repository at the Mason County Public Library in Point Pleasant, West Virginia. Notice of the availability of the documents, the public comment period, and the public meeting were published in The Point Pleasant Register on October 31, 2001. USACE established a public comment period beginning November 6, 2001 and ending December 11, 2001. A public meeting was held on November 7, 2001 at the Mason County Public Library to answer any questions concerning OU–12 and the selected remedy. Representatives of EPA, WVDEP, and USACE were present at the public meeting. No comments were received during the public comment period.

ENV–6: Wetlands Mitigation Area

Periodic updates on wetland construction at ENV–6 were given during the WVOW site Restoration Advisory Board meetings. Because there was no environmental investigation, no other public involvement was required. The Restoration Advisory Board is a group consisting of USACE, State and EPA remedial project managers and interested local participants who meet as needed to discuss the ongoing environmental work and plans for future work at the WVOW site.

ESI–3: Tract 21

The ESI–3 Decision Document was released to the public on November 8, 2000. This document, as well as other documents and information EPA relied on or considered in concurring with USACE that no further action was necessary at ESI–3, were made available to the public on or before November 8, 2000 by placing the documents in the public repository at the Mason County Public Library, Point Pleasant, West Virginia. Notice of the availability of the Decision Document and supporting documents was published in The Point Pleasant Register on November 8, 2000. A public comment period was held from November 8, 2000 through December 19, 2000. A public meeting was held on November 8, 2000, to announce the release of the Decision Document and to summarize its conclusions. Representatives from EPA, WVDEP, and USACE were present to address any questions. No questions or comments on the Decision Document were received from the public.

ESI–5: Refueling Depot

The ESI–5 Decision Document was released to the public on November 8, 2000. This document as well as other documents and information EPA relied on or considered in concurring that no further action was necessary at ESI–5 were made available to the public on or before November 8, 2000 by placing the documents in the public repository at the Mason County Public Library, Point Pleasant, West Virginia. Notice of the availability of the Decision Document and supporting documents was published in The Point Pleasant Register on November 8, 2000. The public comment period was held from November 8, 2000 through December 19, 2000. A public meeting was held on November 8, 2000, to announce the release of the Decision Document and to summarize its conclusions. Representatives from EPA, WVDEP, and USACE were present to address any questions. No questions or comments on the Decision Document were received from the public.

ESI–9: Main and Outgoing Classification Yards

A copy of the Decision Document was placed in the public repository at the Mason County Public Library in Point Pleasant, West Virginia on or before November 6, 2001. Notice of the availability of the documents, the public comment period, and the public meeting were published in The Point Pleasant Register on October 31, 2001. USACE established a public comment period beginning November 6, 2001 and ending December 11, 2001. A public meeting was held on November 7, 2001 to answer any questions concerning the Main and Outgoing Classification Yards. Representatives of EPA, WVDEP, and USACE were available to the public at that meeting held at the Mason County Public Library. No comments were received during the public comment period.

Current Status

Removals at OU–11, OU–12 and ESI–3 and wetlands mitigation at ENV–6 have been successfully completed. No further response action is planned or scheduled for OU–12, ENV–6, ESI–3, ESI–5, or ESI–9. Pursuant to the NCP, a five-year review will not need to be performed at any of these five areas. Five annual groundwater sampling events at OU–11 have been completed; upon completion of the analysis of the last set of samples, no further response action is planned or scheduled for OU–11.

While EPA does not believe that any future response actions will be needed at these six areas, if future conditions warrant such action, the proposed deletion areas of the WVOW site remain eligible for future response actions. Furthermore, this partial deletion does not alter the status of any other OUs or ESIs at the WVOW site that are not proposed for deletion and remain on the NPL.

EPA, together with USACE and with concurrence from the State of West Virginia, has determined that all appropriate CERCLA response actions have been completed at OU–11, OU–12, ENV–6, ESI–3, ESI–5, and ESI–9 and protection of human health and the environment has been achieved in these areas. Therefore, EPA makes this proposal to delete OU–11, OU–12, ENV–6, ESI–3, ESI–5, and ESI–9 of the WVOW site from the NPL.

Dated: September 30, 2002.

Thomas Voltaggio,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 02–26710 Filed 10–21–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2506; MB Docket No. 02–316, RM–10542]

Radio Broadcasting Services; Cedar Bluff, VA and Gary, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Monterey Licenses, LLC, proposing the reallotment of Channel 299C3 from Cedar Bluff, Virginia to Gary, West Virginia, and the modification of Station WHQX(FM)'s license accordingly. Channel 299C3 can be reallotted to Gary in compliance with the Commission's minimum distance separation requirements at the petitioner's presently licensed site. The coordinates for Channel 299C3 at Gary are 37–08–00 North Latitude and 81–35–43 West Longitude. In accordance with section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 299C3 at Gary, West Virginia.

DATES: Comments must be filed on or before November 25, 2002, reply comments on or before December 10, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Paul A. Cicelski, Esq., Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–316, adopted September 25, 2002, and released October 4, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex, International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Cedar Bluff, Channel 299C3.

3. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Gary, Channel 299C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26777 Filed 10–21–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 021016236–2236–01; I.D. 082002A]

RIN 0648–AP74

Antarctic Marine Living Resources; CCAMLR Ecosystem Monitoring Permits; Vessel Monitoring System; Catch Documentation Scheme; Fishing Season; Registered Agent; and Disposition of Seized AMLR

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would lengthen the duration of the permit required to enter a Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) Ecosystem Monitoring Program (CEMP) site from 1 year to up to 5 years. The proposed rule would define the CCAMLR fishing season and require the use of an automated satellite-linked vessel monitoring system (VMS) for U.S. vessels harvesting Antarctic marine living resources (AMLR) in the area of the Convention on the Conservation of Antarctic Marine Living Resources (Convention). The proposed rule would also require foreign entities to designate and maintain a registered agent within the United States; prohibit the import of *Dissostichus species* (toothfish) identified as originating from certain high seas areas outside the Convention Area; incorporate into the Code of Federal Regulations the prohibition on the import of toothfish issued a Specially Validated Dissostichus Catch Document (SVDCD); and institute a pre-approval system for U.S. receivers and importers of *Dissostichus eleginoides* (Patagonian toothfish) and *Dissostichus mawsoni* (Antarctic toothfish). This proposed rule is intended to implement U.S. obligations as a Member of CCAMLR and to conserve Antarctic and Patagonian toothfish by preventing and discouraging unlawful harvest and trade in these species and streamlining the administration of the *Dissostichus* catch documentation scheme.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m., eastern standard time, on November 18, 2002.

ADDRESSES: Comments on the proposed rule should be submitted to Dean Swanson, International Fisheries Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to Dean Swanson at 301–713–2313. Comments will not be accepted if submitted via e-mail or Internet. For copies of the Initial Regulatory Flexibility Analysis and the Environmental Assessment/Regulatory Impact Review (EA/RIR), call 301–713–2276, or write to Dean Swanson. Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to Dean Swanson and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Dean Swanson at 301–713–2276, fax 301–713–2313.

SUPPLEMENTARY INFORMATION: Antarctic fisheries are managed under the authority of the Antarctic Marine Living Resources Convention Act of 1984 (Act) codified at 16 U.S.C. 2431 *et seq.* NMFS implements conservation measures developed by CCAMLR and adopted by the United States, through regulations at 50 CFR part 300, subpart G. Changes to the existing regulations are necessary to incorporate new conservation measures and to revise procedures to facilitate enforcement.

CEMP Permits

CCAMLR regulations require that persons proposing to enter a CEMP site or conduct research programs there submit a letter of request (application) for an entry permit. If issued a permit, the holder must abide by all the conditions in the permit, including submission of a report describing the activities conducted and any actions not in compliance with the site's Management Plan. In the event that a CEMP site is also listed as a specially protected site under the Antarctic Conservation Act of 1978 (ACA), current regulations redirect the applicant to the National Science Foundation and require application for a joint CEMP/ACA permit. Persons operating under a joint CEMP/ACA permit must report to each agency individually on areas within the agency's expertise. Under current regulations, these permits are valid for 1 year. This proposed rule would extend the period for valid permits to up to 5 years. Annual reporting requirements would continue in force.

CCAMLR Fishing Season

Consistent with a conservation measure adopted by CCAMLR at its 2001 meeting, this proposed rule would set the fishing season for all Convention Area species opened to harvesting by CCAMLR as December 1 through November 30, unless otherwise specified.

Vessel Monitoring System (VMS)

VMS is a system that allows a Flag State, through the installation of satellite-tracking devices on board its fishing vessels, to receive automatic transmission of certain information. This information generally includes the fishing vessel identification, location, date and time, and is collected by the Flag State to monitor its vessels effectively.

CCAMLR adopted a conservation measure in 1998 requiring Contracting Parties to the Convention to establish no later than March 1, 1999, an automated satellite-linked VMS to monitor, at least every 4 hours, the positions of their fishing vessels licensed to harvest marine living resources in the Convention Area for which catch limits, fishing seasons or area restrictions have been set by CCAMLR. To accommodate the objections of a few Members of CCAMLR, the conservation measure exempts vessels fishing exclusively for krill from the VMS requirement. All other vessels are covered by the measure. The United States supported the application of the measure to krill vessels, but CCAMLR decided to continue to exempt these vessels.

The CCAMLR VMS conservation measure was amended in 2001 to require that each Contracting Party, within 2 working days of receiving VMS information from its vessels, provide to the CCAMLR Secretariat the date and statistical area, subarea or division for each of the following movements of those vessels: (a) entering and leaving the Convention area; and (b) crossing boundaries between CCAMLR statistical areas, subareas and divisions.

CCAMLR adopted these measures as a means of managing fishing within the Convention Area with greater certainty and making it more difficult, in particular, for illegal, unregulated and unreported (IUU) fishing in the Convention Area to be misreported as catch from outside the Convention Area. CCAMLR agreed that its CCAMLR System of Inspection could be improved by obtaining positional information including movements by vessels in and out of the Convention Area and CCAMLR statistical areas, in as close to real time as possible, and noted that positional information on movements would enable Members to deploy CCAMLR inspectors in the Convention Area and to use available inspection potential in the most effective way. CCAMLR also noted that the VMS conservation measure would facilitate the work of the CCAMLR Secretariat on fisheries management by allowing it to monitor start/end dates of fishing by individual vessels and the catch reports submitted by statistical areas and fisheries.

The United States has not previously implemented CCAMLR's VMS measures, in part because the only active U.S. harvesting permits have been for the exempted krill fishery. However, there is other potential fishing effort in the United States including one permitted vessel in the crab fishery. A combination crab/toothfish permit was issued several years ago. In order to ensure that future U.S. permittees comply with CCAMLR's conservation measures, the U.S. is now proposing to require VMS in all non-krill fisheries.

In addition, the United States is also proposing to require VMS in the krill fishery. The United States believes that requiring VMS in the krill fishery is necessary to provide the data required to achieve the management objectives of CCAMLR. These include: (1) establishment of small-scale management units as a mechanism to preclude the concentration of catch near land-breeding krill predator colonies; (2) development of models describing the interactions of krill, their predators, key aspects of the environment and the fishery so as to incorporate the best science into management options; (3) validation of catch-per-unit-effort indices as a stock assessment tool; and (4) monitoring the development of the fishery including technological improvements and corresponding changes in fishing tactics. Fishing data on the finest scale possible, like that provided by VMS, is required for these purposes. CCAMLR Members reluctant to require VMS on their fishing vessels may be persuaded by the leadership of the United States and other countries (e.g., Poland, South Africa, Australia) in requiring their vessels to do so as a condition of their fishing permit.

NMFS does not anticipate this additional requirement to be overly burdensome financially or operationally on existing participants. Thus, this proposed rule would require the owner or operator of any vessel permitted by NMFS to fish for or tranship any AMLR to install a NMFS-approved VMS unit on board the vessel and operate the VMS unit whenever the vessel enters CCAMLR waters.

Registered Agent

This proposed rule would require all foreign entities, as a condition of possessing a dealer permit allowing them to import into the United States, to designate and maintain a registered agent in the United States authorized to accept service of process on behalf of that entity. Based on information available to NMFS, several major AMLR importers are foreign entities with no presence in the United States. Requiring a registered agent will facilitate enforcement by ensuring jurisdiction over a foreign importer should an enforcement action become necessary.

Ban on Imports of Toothfish from Certain High Seas Fishing Areas

In accordance with 16 U.S.C. 2431 *et seq.*,(AMLRCA), NMFS implements the conservation and management decisions of CCAMLR agreed to pursuant to the Convention. The Convention requires contracting parties to "exert appropriate efforts... to the end that no one engages in any activity contrary to the objective of this Convention," which is "the conservation of Antarctic Living marine resources." (AMLR) (Article XXII; Article II.1).

The Convention applies to the AMLR of the area south of 60 S. lat. and to the AMLR between 60 S. lat. and the Antarctic convergence which form part of the Antarctic marine ecosystem. (Article I.1). The Convention establishes CCAMLR, which is charged with compiling data on populations of AMLR and adopting conservation measures to achieve the objectives of the Convention. (Article IX).

Due to the scale of illegal, unregulated, or unreported fishing for Patagonian toothfish and Antarctic toothfish in and beyond the Convention Area, CCAMLR has adopted a number of conservation measures in the last several years. These measures have included flag state licensing of fishing vessels, catch quotas, vessel monitoring systems, port inspections of landings and transshipments, and identification of vessels and fishing gear, and ultimately the adoption of a catch documentation scheme for toothfish in November 1999. (64 FR 71165, December 20, 1999).

The purposes of the catch documentation scheme are to: monitor international trade; identify the origins of imports; determine if imports caught in the Convention Area were caught consistent with CCAMLR conservation measures; and gather catch data for stock assessment. The documentation scheme requires that CCAMLR Contracting Parties provide a uniquely numbered *Dissostichus* Catch Document (DCD) to each vessel under its jurisdiction that is authorized to harvest toothfish and a Re-export Document to all shipments of toothfish that are subsequently being re-exported from its territory. Upon completion of the document, each DCD, and Re-export Catch Document (RCD) if applicable, accompanies the toothfish as it enters into commerce and/or international trade and documents the chain of custody. In accordance with CCAMLR's decisions at its 18th Regular Meeting, NMFS implemented a catch documentation scheme that first became effective for the 2000/01 toothfish fishing year. (65 FR 30016, May 10, 2000.)

CCAMLR uses the statistical areas created by the Food and Agriculture Organization of the United Nations (FAO) to designate and manage divisions within its Convention Area. The FAO Statistical Areas include Exclusive Economic Zones (EEZs)claimed by States, unregulated high seas areas, and high seas areas regulated pursuant to conventions for regional fishery management.

Based on recent trade data, U.S. experience with questionable DCDs, the increasing seizure of vessels illegally fishing in the Convention area, and the conservation and management decisions of CCAMLR made on the advice of its Scientific Committee, this proposed rule would prohibit the issuance of a permit allowing import of *Dissostichus* species identified as being harvested from high seas areas designated by the FAO as Areas 51 and 57 until stock assessments confirm the presence of toothfish at significant population levels in those areas. These areas are outside the areas managed by CCAMLR (Convention Areas).

The CCAMLR Scientific Committee (SC) and its Working Group on Fish Stock Assessment (WG-FSA) annually review catches reported as harvested within and outside the Convention Area, including from FAO Areas 41, 47, 51, 57, 81 and 87. These areas are outside the Convention Area and include some Exclusive Economic Zones (EEZ) of national jurisdiction and some high seas areas. The amounts of toothfish most recently reported as high seas catches are vastly more than previously reported.

Surveys of the high seas areas by member countries have never found fishing concentrations and commercial-scale aggregations of Patagonian toothfish at levels that would support recent catch reports. The areas do not have sizeable fishable seabeds or recruitment areas. In addition, oceanographic conditions (sub-Antarctic and tropical hydrological fronts) present a barrier to a northern distribution of coldwater toothfish into the areas.

Thus, NMFS believes that while some of the catch taken outside the Convention Area is legal catch from regulated fisheries in the EEZ sectors of Areas 41 and 87 off South America, the remainder is, in all likelihood, fish illegally harvested from the CCAMLR Convention Areas 58 and 88 by vessels not licensed to fish there and deliberately misreporting catch as taken from the unregulated high seas fisheries outside the Convention Area in Areas 51 and 57.

The implausibility of any significant level of high seas catches of toothfish is illustrated by findings of the WG-FSA and Scientific Committee with respect to high seas catches attributed to FAO Statistical Area 51 (the western Indian Ocean). Specifically, in October 2001, the Chair of the SC advised CCAMLR that the catches reported in Area 51 were not credible. In particular, the Scientific Committee received information that: (1) there were no reports of landings of Patagonian toothfish from Area 51 in recent FAO landing reports; (2) geographical distribution of Patagonian toothfish in Area 51 is not identified in recent publications of the FAO Identification Sheets or in *Fishes of the Southern Ocean*; and (3) fisheries surveys in the southwest Indian Ocean by Australia, France, South Africa and Ukraine, both trawling and longlining, have never found fishing concentrations and commercial-scale aggregations of Patagonian toothfish in Area 51. Conversely, other subtropical species such as alfonsino (*Beryx splendens*), orange roughy (*Hoplostethus atlanticus*), blue-eye (*Hyperglyphe antarctica*), amourheads (*Pentaceros capensis*) and grouper (*Polyprion oxygeneois*) are currently found in this area; (4) oceanographic barriers (sub-Antarctic and subtropical hydrological fronts) stop the northern distribution of Patagonian toothfish north of about 44°S. lat.; and (5) more recent surveys of Patagonian toothfish from open ocean areas closest to Area 51, such as the area north of the Marion Islands, show negligible biomass of the species. Based upon this information, the SC concluded, and CCAMLR agreed, that practically all the toothfish catches attributed to fishing on the high seas in Area 51 likely represented catches taken as a result of IUU fishing inside the Convention Area.

Areas 51 and 57 share a border in the Indian Ocean directly north of Convention Area 58. The WG-FSA has noted the estimated live weight in tons of toothfish reported in the CDS data for 2000 and 2001 calendar years. This includes a considerably lesser amount of catch attributed to Area 57 as compared to Area 51. If a ban on imports of toothfish were limited to Area 51, there is a strong likelihood that illegal catch from Convention Area 58 would be then be misattributed to Area 57.

It is unlikely that there is much potential for fishing for toothfish in Area 57. Bathymetric charts of Area 57 indicate very limited seamount features, fewer even than the small fishable seabed in Area 51 estimated at 30,007 square kilometers. In April 1999 CCAMLR estimated the seafloor area for the southern section of Area 57 (50–55° S. lat. between 80–150° E. long., at depths between 600–1800 meters) as 2,421 square kilometers. This fishable area is considerably less than the

corresponding fishable area estimated for Area 51. This makes Area 57 an even less likely area from which toothfish could be harvested at commercial levels.

NMFS believes that intentional misreporting of the area of harvest is an attractive means of moving illegally harvested fish into major markets. Prior to implementation of the CDS, Durban (South Africa), Walvis Bay (Namibia), Port Louis (Mauritius), Montevideo (Uruguay) and Vigo (Spain) were reportedly serving as ports of convenience for vessels observed illegally fishing in the Convention Area. Member countries and NGOs in port reported landings and over the side sales of toothfish in these ports from the IUU vessels. Some port of convenience landings continue but since major importers now require a DCD identifying catch areas, illegal fishing would now be facilitated by the use of fraudulent DCDs rather than by landings in ports unconcerned about illegal fishing.

NMFS is aware of substantial evidence that such illegal fishing continues to occur. Australia has observed and pursued several unauthorized vessels fishing in the Convention Area. Australian patrol vessels recently pursued and seized two vessels found poaching in Convention Area 88. On February 7 and 8, 2002, the Lena and the Volga were apprehended and found to have onboard 127 tons of illegal toothfish. Both vessels purported to have been fishing in high seas Area 51 on all DCDs previously completed by their captains and during contact by Australia with the vessels before they were sighted by Australia poaching in the Convention Area. Member patrol vessels, legally operating harvesting vessels and NGO observer vessels have sighted nearly 30 pirate ships in, and proximate to, the Convention Area.

Thus, NMFS believes that while some of the catch taken outside the Convention Area is legal catch from regulated fisheries in the EEZs off South America, the remainder is, in all likelihood, fish poached from the CCAMLR Convention Area by vessels not licensed to fish there and deliberately misreporting commercial scale harvests of toothfish from the unregulated fisheries in Areas 51 and 57, high seas areas in the western and eastern Indian Ocean outside of the Convention Area.

Vessels that misreport their areas of harvest are in clear violation of the Catch Documentation scheme. In addition, NMFS believes it likely that such vessels are also in violation of various other CCAMLR conservation measures, such as CM 29/XIX (Minimization of the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research in the Convention Area) that requires longline vessels fishing in the Convention area to take specific steps to minimize interactions with seabirds. Many of the seabirds that populate the Convention area are endangered species.

In 2001, CCAMLR, in recognition of the severe problem of poaching from the Convention Area adopted a resolution calling for the use of VMS and other measures to verify CDS "catch" data outside the Convention Area.

In the preambular paragraphs of the resolution, the Members recognize the need to continue to take action to ensure the long term sustainability of toothfish stocks in the Convention Area. They express concern that the CDS could be used to disguise illegal, unregulated and unreported catches of toothfish to gain access to markets and note that any misreporting and misuse of the CDS seriously undermines the effectiveness of CCAMLR conservation measures. The resolution also urges States participating in the CDS to ensure that DCDs relating to landings or imports of toothfish are checked by contact with Flag States to verify that DCD information is consistent with data reports derived from an automated satellite-linked VMS.

NMFS routinely contacts Flag States for this information. However, there are problems which undermine NMFS's ability to obtain reliable VMS data. First, NMFS has no authority to require vessels flagged to other countries to carry VMS. Second, CCAMLR measures do not apply to Member or non-Member vessels fishing beyond the Convention Area (e.g., in Areas 51 or 57). Vessels fishing for toothfish outside the Convention Area may or may not carry VMS. Third, should a Flag State require VMS outside the Convention Area, NMFS cannot know how often the State inspects VMS equipment; cannot presently require a particular type of VMS (i.e., tamper proof) as a condition of import; and is aware of confidentiality objections from Flag States about releasing VMS data. Finally, CCAMLR has not adopted a protocol for disputing or questioning VMS data. The lack of a protocol was a complicating factor in a recent seizure by NMFS of 32 tons of toothfish. In that case, physical evidence of poaching was countered with VMS "data" that the Flagging State could not verify to NMFS' satisfaction or to the satisfaction of the State in whose waters the vessel was sighted poaching.

VMS might become a viable alternative to a ban on the import of toothfish from high seas areas 51 and 57 if CCAMLR amended its VMS and CDS measures to improve the reliability and integrity of VMS use inside the Convention Area and in adjoining areas. This would require Member consensus that CCAMLR: (1) direct its Secretariat to monitor the type, installation and operation of VMS and require all Member vessels in the Convention Area to use VMS and report data directly to the Secretariat; and (2) expand the use of VMS verification by allowing non-Contracting cooperating Parties participating in the CDS scheme to submit VMS data directly to the CCAMLR Secretariat. It is not likely that CCAMLR can fully debate and agree to this approach at its next annual meeting or the annual meeting thereafter.

The CCAMLR VMS resolution also urges States participating in the CDS to consider reviewing their domestic laws and regulations, with a view to prohibiting landings/transhipments/imports of toothfish declared on a DCD as having been caught in Area 51 if the Flag State fails to demonstrate that it has verified the DCD using automated satellite-linked VMS derived data reports.

Given its experience with the failure of Flag States to provide reliable, or any, VMS verification, in any timely way, NMFS has reviewed its domestic laws and regulations and proposes in this rule to ban imports of toothfish reported as harvested in Areas 51 and 57.

In order to give effect to the agreement by CCAMLR that its Members do all they can to prevent activity that undermines the objectives of the Convention, and in light of the advice and findings of the CCAMLR Scientific Committee with respect to the very small fishable areas of Areas 51 and 57, the proposed rule would deny issuance of a dealer permit to import any toothfish identified as originating from high seas areas outside of the Convention Area in Areas 51 and 57 until: (1) fishery independent stock assessments indicate commercial aggregations in these areas; and/or (2) until CCAMLR is able to agree to measures which materially improve the reliability and integrity of VMS use inside the Convention Area and in the adjoining areas.

There is a possibility that pirate vessels are also poaching toothfish from Convention Areas 88 and 48 and attributing the catch to the high seas Areas 87, the southeast Pacific Ocean and 41, the southwest Atlantic Ocean, beyond the Exclusive Economic Zones (EEZ) of the countries of Latin America. If the CCAMLR DCD can be amended to differentiate high seas catches from EEZ catches in these areas, pirate fishing may be more easily identified. If the DCD is modified in this way and/or if the Scientific Committee raises concerns about poaching and misattribution of catch, NMFS may propose extending the ban to other high seas areas.

Specially Validated DCD (SVDCD)

CCAMLR adopted a conservation measure at its regular 2001 meeting intended to permit a Contracting Party which has cause to sell or dispose of seized or confiscated Dissostichus spp. to issue a specially validated DCD (SVDCD). The SVDCD must specify the reasons for the validation. The conservation measure does not require other Contracting Parties to provide a market for SVDCD toothfish.

On September 7, 2001, NMFS issued a rule clarifying its interpretation of the Act as prohibiting the import of toothfish harvested in violation of a CCAMLR conservation measure even if the fish were accompanied by a validated DCD (66 FR 46740, September 7, 2001). CCAMLR's adoption of this new conservation measure authorizing countries to issue a SVDCD has not led NMFS to change that interpretation. The effect of this legal interpretation is to prohibit imports accompanied by an SVDCD. For clarity, this proposed rule would codify such prohibition in the Code of Federal Regulations.

This proposed rule would add a definition of the term SVDCD to NMFS's CCAMLR regulations.

Disposition of Seized AMLR

AMLRs that are unlawfully harvested, transshipped, imported or otherwise possessed are subject to seizure and forfeiture. NMFS is currently engaged in internal discussions regarding a procedure for disposing of AMLRs seized by U.S. law enforcement personnel for violations of the Act and NMFS' CDS regulations and will address this issue in a subsequent rulemaking.

Dealer Permits and Preapproval

Although NMFS has fully implemented the CCAMLR catch documentation scheme in the United States, it recognizes that improvements can be made both to streamline administration of the program and to enhance efforts to prevent the import of illegally harvested toothfish. Such streamlining will enhance the ability of toothfish importers and dealers to quickly move a perishable product into and out of the country. NMFS therefore proposes the modification of the current regulations to implement a pre-approval system applicable to shipments of frozen toothfish and shipments of fresh toothfish over 2,000 kg. The pre-approval system would be operated on a fee-for-service basis which would allow NMFS to review catch documentation sufficiently in advance of import, thus enhancing economic certainty for U.S. businesses associated with the *Dissostichus* trade as well as facilitating enforcement efforts. The pre-approval system would effectively shift burdens associated with time costs and advance planning from the affected industry to NMFS. Since a pre-approval program would require NMFS to review documentation and notify the U.S. Customs Service under severe time constraints, NMFS would need to administer this program on a fee-for-service basis to cover costs associated with the personnel who would provide this service.

Under this proposed modification to the current regulations, any person who imports and/or re-exports *Dissostichus* species would be required to first obtain an AMLR dealer permit with a validity of 1 year, authorizing the import and/or re-export of Antarctic Living Marine Resources. The 1–year validity of the permit would be a change from current regulations which do not specify duration. The revised application form for a dealer permit required under the proposed rule would be simplified. The revised dealer permit application form would require the applicant to provide the following information: company name, company address, species, estimate of tonnage to be imported, signature, title, date, and registered agent, if the applicant is a foreign entity.

After receiving an AMLR dealer permit but at least 15 business days prior to an expected import, the permit holder seeking to import frozen *Dissostichus* or fresh *Dissostichus* in quantities greater than 2,000 kilograms, would be required to submit to NMFS the DCD that will accompany each anticipated shipment as well as an application to NMFS requesting pre-approval to allow import of that shipment. A new approval application form would be required under the proposed rule. Information currently required on the application form for a dealer permit regarding a specific toothfish shipment (estimated date of arrival, port of arrival, consignee(s) of product, DCD document number, flag state confirmation number, and amount to be imported) would now be required on the new approval application form. A separate DCD with a unique export reference number would be required for each approval application (i.e., one DCD could not be used to request pre-approval for several shipments) and the quantity of toothfish listed on the DCD would be required to match the quantity listed on the preapproval application within a variance of 10 percent. The dealer would be required to fax or express mail the documentation described above so that NMFS would receive it at least 15 business days prior to the anticipated date of import. NMFS would review the documentation submitted, notify the dealer whether the import would be allowed or denied, notify the U.S. Customs Service to allow or deny import of the shipment of *Dissostichus*, and bill the client for the review of catch documentation and pre-approval application. The current requirement for submission of import tickets, now required within 24 hours of import of such *Dissostichus* would be eliminated under this proposed rule. Due to the extremely quick turnaround time required for shipments of fresh *Dissostichus* in quantities of less than 2,000 kilograms, the application for approval of catch documents of toothfish would be required to be submitted to NMFS within 24 hours of import. Shipments of frozen *Dissostichus* in quantities of less than 2,000 kilograms must go through the pre-approval process. Review of documentation for such fresh product would not be conducted on a fee-for-service basis. NMFS regulations published at 65 FR 30016, May 10, 2000, regarding the re-export of *Dissostichus* would not be revised. The revised CCAMLR *Dissostichus* Catch Document, revised NMFS application for annual AMLR dealer permit, and new NMFS application for approval referenced under this section are available from NMFS (see **ADDRESSES**).

Classification

This proposed rule is published under the authority of the Antarctic Marine Living Resources Convention Act of 1984, codified at 16 U.S.C. 2431 *et seq.* This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis which incorporates the preamble of this proposed rule and the document entitled, "Initial Regulatory Flexibility Analysis for the Proposed Rule to Institute Various Measures Pertaining to United States Obligations regarding Antarctica and Antarctic Living Marine Resources, Including Implementation of Preapproval Procedure for *Dissostichus* spp. Catch Documentation Scheme." That analysis describes the effects of the various measures in this proposed rule, as well as alternatives where appropriate, as follows:

1. The proposal to *lengthen the duration of the permit* required to enter a CEMP site from 1 year to up to 5 years would apply to parties currently holding, or who obtain in the future, a CEMP permit. To date, the only entity to hold a CEMP permit has been the NMFS Antarctic Research Group, which is not a small entity. The effect of this action would be to ease a restriction by allowing permits to last for a longer period of time. As such, there is no significant economic impact that NMFS must consider minimizing.

2. The proposal to *define the CCAMLR fishing season as December 1 - November 30* would apply to U.S. vessels that fish for AMLR. There are currently three U.S. vessels permitted to fish for AMLR (1 for crab and 2 for krill) all of which NMFS believes to be small entities. The establishment of the fishing season is intended to improve administration of CCAMLR's annual conservation measures. It would not affect the amount of quota available for fishermen, nor would it affect when fishing could occur. Therefore, the proposal would not result in any significant economic impacts that NMFS must consider minimizing. It is an administrative change that would not be expected to affect the practices of the fishermen.

3. The proposal to *require the use of an automated satellite-linked VMS* for all U.S. vessels harvesting AMLR in the area of the Convention on the Conservation of Antarctic Marine Living Resources (Convention) would apply to the three vessels permitted to participate in such fisheries (the 1 crab vessel and the 2 krill vessels), all of which NMFS believes to be small entities. Currently, the vessel permitted for crab does not participate in the fisheries. NMFS estimates the cost of purchasing and installing the VMS units at about $3,250 per unit. The cost of operating the unit while in Convention waters is estimated to be no more than $1,000 per year.

NMFS considered the alternative of excluding vessels fishing exclusively for krill from the requirement. CCAMLR did not explicitly require Parties to implement a VMS program in the krill fishery. However, for reasons articulated in the preamble to the proposed rule, NMFS believes that applying the VMS requirement to the krill fishery will further its compliance with its obligations with respect to Antarctic and AMLR. Therefore, this alternative is not the preferred alternative.

4. The proposal to *require foreign entities to designate and maintain a registered agent within the United States* would not apply to any "small entities" as defined pursuant to the RFA. This measure would not apply to any small government jurisdictions or small organizations. While it would apply to businesses, some of which may be considered small, the SBA has defined "small business concern" to apply only to businesses operating primarily within the United States (13 CFR 121.105). NMFS is not aware of an alternative approach that would accomplish its objectives with regard to this provision.

5. The proposal to *define SVDCD* currently has no regulatory requirements attached to it. It is informational only and as such has no effect on any small entities. No alternatives have been identified.

6. The proposal to *institute a pre-approval system for U.S. receivers and importers of Patagonian toothfish and Antarctic toothfish* would apply to dealers and importers. It is estimated that about 60 dealers/importers are involved in the permitted trade, and about 50 re-exporters. The estimated costs to importers of toothfish are approximately $4,134 per firm per year, and $330,750 industry-wide per year. These costs include the burden-hour costs of submitting an annual permit, per-shipment pre-approval permits, catch documentation, and NMFS's fees. The estimated costs to re-exporters of toothfish are about $11 per firm per year and $550 industry-wide per year. These costs include the burden hours associated with annual permit applications and catch documentation requirements, and NMFS's fees.

U.S. imports of toothfish in 2001 had an estimated value of $97 million. Compliance costs (industry and agency) would likely not exceed $600,000 per year during the next 3 years. Currently, no U.S. fishing entity participates in the harvesting of toothfish. It is not possible to determine the number of firms that would qualify as small entities. The proposed rule would impose annual burden costs of $330,750 and $550 on importing and re-exporting firms, respectively.

NMFS considered two alternatives to the proposed pre-approval system: maintaining the status quo, and implementing a total ban on imports of toothfish. Maintaining the current system may not have a short-term economic or social impact on importers or other dealers of toothfish in trade networks, but could have harmful long-term economic implications if further steps are not taken to discourage and prevent IUU fishing of toothfish.

Sooner or later, overfishing and the associated price increases will, in all likelihood, dampen this trade. Supplies would decline, and price increases would likely result in some substitution by consumers. Toothfish products may also be diverted to alternate markets in East Asia that are willing to pay higher prices for species deemed to be luxury items. As a consequence, toothfish could become increasingly rare in the U.S. marketplace.

Similarly, the "status quo" alternative would have little short-term economic or social impacts on the U.S. consumer, but, in the long-term, would jeopardize the availability of toothfish to consumers at prices they are willing to pay or, in the extreme, at any price.

Alternatively, the total ban proposal would address concerns over the overharvesting of toothfish by denying the U.S. market (estimated at 15–20 percent of the world market) to illegal, unregulated, or unreported (IUU) harvested toothfish. (Note: in this document, non-IUU harvested toothfish means toothfish harvested in the CCAMLR Convention Area in conformity with CCAMLR rules, toothfish harvested in high seas areas outside of the CCAMLR Convention Area, or toothfish harvested in areas of national jurisdiction in conformity with the rules applicable in those national jurisdictions. Although it is not technically correct to speak of the "legality" of harvesting in high seas areas where no regional fishery management organization's rules apply, such fishing is often unreported and unregulated, and thus may pose an obstacle to achieving a sustainable fishery. In the case of such toothfish fisheries, this assumption is almost certainly correct.) However, it would also prohibit importation of toothfish legally harvested within the CCAMLR Convention Area or in EEZs and impose an unreasonable and unfair burden on U.S. importers and consumers. Given the U.S. portion of the global market, there is a very real possibility that the market would simply shift to other locations, thereby contributing nothing toward bringing IUU fishing for toothfish under control. This alternative also could be incompatible with U.S. obligations under international trade law and pending obligations under the CCAMLR Convention. As a result, this alternative is not preferred.

7. The proposal to *prohibit imports of toothfish identified as being harvested in FAO areas 51 or 57* would apply to the U.S. dealers and importers described above (approximately 60 of unknown sizes). The economic impacts of this prohibition are difficult to quantify. Because the rule is intended to address fraudulent trade in toothfish, the availability of toothfish on the world market could be reduced. This could result in the price of toothfish rising. However, to the extent that the permitted entities experience an increase in the cost of purchasing toothfish, they would most likely pass that cost on to consumers. On the other hand, it is likely that illegally harvested toothfish can be harvested and marketed more cheaply than toothfish harvested pursuant to the applicable CCAMLR conservation rules. To the extent that this rule would remove the market for illegally harvested toothfish, the rule might make it easier for dealers in legitimately harvested toothfish to make a profit (in that they would no longer have to compete with unregulated fishermen).

As an alternative to the ban on imports identified as having been harvested in areas 51 or 57, NMFS considered allowing importers to provide independent VMS data to support claims of catches from these two areas. For the reasons explained in the preamble to the proposed rule, current problems with reliability and lack of international protocol, NMFS believes that this alternative may currently be impracticable.

The reporting, recordkeeping, and compliance requirements associated with this proposed rule are described above and in the Paperwork Reduction Act discussion in this preamble. In summary, this proposed rule would modify existing reporting requirements pertaining to the import of toothfish. The new burdens associated with these requirements would apply to the approximate 60 dealers who import and are estimated as described above in section 3(f). In addition, the requirement to install and operate VMS units would apply to the 3 U.S. vessels permitted to participate in the AMLR fisheries for crab/krill. The associated burden is estimated as no more than $1,000 per year per vessel.

NMFS is not aware of any other Federal rules that would duplicate, overlap with, or conflict with the proposed rule.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). Requirements for submission of a Dissostichus Catch Document, a Specially Validated Dissostichus Catch Document, a CCAMLR Ecosystem Monitoring Program permit, and a CCAMLR Ecosystem Monitoring Program report have been approved under OMB Control Number 0648–0194, with the respective response times of 3 minutes, 10 minutes, 60 minutes, and 30 minutes.

This rule also contains new or revised collection-of-information requirements that have been submitted to OMB for approval. The requirements and their estimated response times are: 15 minutes for a dealer permit application, 4 hours to install a VMS unit, 0.033 seconds every 4 hours for an automated position report from a VMS, 2 hours for annual maintenance of a VMS unit, and 15 minutes for a pre-approval application.

The response estimates above include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS, Office of Sustainable Fisheries, and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Fishing vessels, Foreign relations, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: October 17, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300, subpart G is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

SUBPART G—ANTARCTIC MARINE LIVING RESOURCES

1. The authority citation for 50 CFR part 300, subpart G continues to read as follows:

Authority: 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

2. In § 300.101, new definitions for "Specially Validated Dissostichus Catch Document" and "Vessel Monitoring System" are added in alphabetical order to read as follows:

§ 300.101 Definitions.

* * * * *

Specially Validated Dissostichus Catch Document (SVDCD) means a Dissostichus catch document that has been specially issued by a State to accompany seized or confiscated catch of Dissostichus spp. offered for sale or otherwise disposed of by the State.

* * * * *

Vessel Monitoring System means a system that allows a Flag State, through the installation of satellite-tracking devices on board its fishing vessels to receive automatic transmission of certain information.

* * * * *

3. In § 300.103, paragraph (h) is revised to read as follows:

§ 300.103 Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites.

* * * * *

(h) *Duration.* Permits issued under this section are valid for a period of up to five years. Applicants requesting a permit to reenter a Protected Site must include the most recent report required by the general condition in the previously issued CEMP permit describing the activities conducted under authority of that permit.

* * * * *

4. In § 300.107, paragraphs (a), (c)(1), and (c)(5) are revised to read as follows:

§ 300.107 Reporting and recordkeeping requirements.

(a) *Vessels.* The operator of any vessel required to have a harvesting permit under this subpart must:

(1) Accurately maintain on board the vessel all CCAMLR reports and records required by its permit.

(2) Make such reports and records available for inspection upon the request of an authorized officer or CCAMLR inspector.

(3) Within the time specified in the permit, submit a copy of such reports and records to NMFS at an address designated by NMFS.

(4) Install a NMFS-approved VMS unit on board the vessel and operate the VMS unit whenever the vessel enters Convention waters.

* * * * *

(c) * * *

(1) *General.* (i) The CCAMLR DCD must accompany all shipments of *Dissostichus* species as required in this subsection.

(ii) No shipment of *Dissostichus* species shall be released for entry into the United States unless accompanied by a complete and validated CCAMLR DCD, except as provided in paragraph (c) (7) of this section.

(iii) No shipment of *Dissostichus* species identified as originating from high seas areas designated by the Food and Agriculture Organization of the United Nations as Statistical Areas 51 and 57 in the eastern and western Indian Ocean outside and north of the Convention Area shall be issued a dealer permit for import.

* * * * *

(5) *Import.* (i) Any dealer who imports *Dissostichus* species must:

(A) Obtain the DCD (and Dissostichus re-export document if applicable) with a unique export reference number that accompanies the import shipment.

(B) Ensure that the quantity of toothfish listed on the DCD (or *Dissostichus* re-export document if product is to be re-exported) matches the quantity listed on the preapproval application within a variance of 10 percent.

(C) Express mail or fax the catch documentation described in (A) and (B) to an address designated by NMFS so that NMFS receives the documentation at least 15 working days prior to import.

(D) Retain a copy for his/her records and provide copies to exporters as needed.

(ii) Dealers must retain at their place of business a copy of the DCD for a period of 2 years from the date on the DCD.

(iii) Exception. For shipments of Dissostichus species which are fresh and less than 2,000 kilograms in quantity, the application for approval of catch documents of toothfish must be submitted to NMFS within 24 hours of import.

* * * * *

5. In § 300.111, a new paragraph (e) is added to read as follows:

§ 300.111 Framework for annual management measures.

* * * * *

(e) The fishing season for all Convention Area species is December 1 through November 30 of the following year, unless otherwise set in specific CCAMLR conservation measures.

6. Section 300.113 is revised to read as follows:

§ 300.113 Dealer permits and pre-approval.

(a) *General.* (1) A dealer must obtain an AMLRs dealer permit valid for one year, and pre-approval from NMFS for each shipment of AMLRs. Only those specific activities stipulated by the permit are authorized for the permit holder.

(2) An AMLR may be imported into the United States if its harvest has been authorized by a U.S.-issued individual permit issued under § 300.112 (a)(1) or its importation has been authorized by a NMFS-issued dealer permit and pre-approval issued under paragraph (a) of this section. AMLRs may not be released for entry into the United States unless accompanied by the harvesting permit or the individual permit and the DCD for that shipment which has been stamped by NMFS certifying that pre-approval has been granted to allow import.

(3) In no event may a marine mammal be imported into the United States unless authorized and accompanied by an import permit issued under the Marine Mammal Protection Act and/or the Endangered Species Act.

(4) A dealer permit or preapproval issued under this section does not authorize the harvest or transshipment of any AMLR by or to a vessel of the United States.

(b) *Application.* Application forms for AMLR dealer permits and pre-approval are available from NMFS. A complete and accurate application must be received by NMFS for each pre-approval at least 15 working days before the anticipated date of the first receipt, importation, or re-export.

(c) *Issuance.* NMFS may issue a dealer permit or pre-approval if it determines that the activity proposed by the dealer meets the requirements of the Act and that the resources were not or will not be harvested in violation of any conservation measure in force with respect to the United States or in violation of any regulation in this subpart.

(d) *Duration.* A permit issued under this section is valid from its date of issuance to its date of expiration unless it is revoked or suspended. A pre-approval is valid until the product is imported.

(e) *Transfer.* A permit issued under this section is not transferable or assignable.

(f) *Changes in information.* (1) Pending applications. Applicants for permits and pre-approval under this section must report in writing to NMFS any change in the information submitted in their permit and pre-approval applications. The processing period for the application will be extended as necessary to review and consider the change.

(2) Issued permits and pre-approvals. Any entity issued a permit or pre-approval under this section must report in writing to NMFS any changes in previously submitted information. Any changes that would result in a change in the receipt or importation authorized by the pre-approval, such as harvesting vessel or country of origin, type and quantity of the resource to be received or imported, and Convention statistical subarea from which the resource was harvested, must be proposed in writing to NMFS and may not be undertaken unless authorized by NMFS through issuance of a revised or new pre-approval.

(g) *Revision, suspension, or revocation.* A permit or pre-approval issued under this section may be revised, suspended, or revoked, based upon a violation of the permit, the Act, or this subpart. Failure to report a change in the information contained in a permit or pre-approval application voids the application, permit, or pre-approval as applicable. Title 15 CFR part 904 governs permit sanctions under this subpart.

(h) *Exception.* For shipments of *Dissostichus* species which are fresh and less than 2,000 kilograms in quantity, the application for approval of catch documents of toothfish must be submitted to NMFS within 24 hours of import.

(1) Dealer permits will not be issued for *Dissostichus* spp. offered for sale or other disposition under a Specially Validated DCD.

(2) Foreign entities shall, as a condition of possessing a dealer permit, designate and maintain a registered agent within the United States that is authorized to accept service of process on behalf of that entity.

7. In § 300.115, new paragraphs (s) and (t) are added to read as follows:

§ 300.115 Prohibitions.

* * * * *

(s) Import *Dissostichus* spp. with a Specially Validated DCD.

(t) Import shipments of fresh *Dissostichus* spp. in quantities of 2,000 kilograms or more, or frozen *Dissostichus* spp., without a preapproval issued under § 300.113.

8. New § 300.118 is added to read as follows:

§ 300.118 Fees.

(a) *Payment fees and charges.* Fees and charges for review of documentation in accordance with the applicable provisions of the regulations in this part shall be paid by the interested party making the application for such service. All fees and charges for any review of documentation, performed pursuant to the regulations in this part shall be paid by check, draft, or money order, payable to the U.S. Treasury. Such check, draft, or money order, shall be remitted to the NMFS National Seafood Inspection Laboratory, within ten (10) days from the date of billing, unless otherwise specified in a contract between the applicant and the Secretary, in which latter event the contract provisions shall apply.

(b) *Schedule of fees.* (1) Unless otherwise provided in a written agreement between the applicant and the Secretary, the fees to be charged and collected for review of documentation performed under the regulations in this part will be published as a notice in the **Federal Register** and will be in accordance with § 300.120.

(2) Fees are reviewed annually to ascertain that the hourly fees charged are adequate to recover the costs of the services rendered. The hourly fee is determined by dividing the estimated annual costs by the estimated annual billable hours.

(c) *Readjustment and increase in hourly rates of fees.* (1) When Federal Pay Act increases occur, the hourly rates for documentation review fees will automatically be increased on the effective date of the pay act by an amount equal to the increase received by the average GS grade level of fishery product inspectors receiving such pay increases.

(2) The hourly rates of fees to be charged for review of documentation will be subject to review and reevaluation for possible readjustment not less than every three years: Provided, that, the hourly rates of fees to be charges for documentation review services will be immediately reevaluated as to need for readjustment with each Federal Pay Act increase.

[FR Doc. 02–26872 Filed 10–18–02; 12:48 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020508114–2114–01; I.D. 030702C]

RIN 0648–AM97

Fisheries Off West Coast States and in the Western Pacific; Coral Reef Ecosystems Fishery Management Plan for the Western Pacific; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Corrections to a proposed rule.

SUMMARY: This document corrects the phone number for the U.S. Fish and Wildlife Service (USFWS) that was listed in the proposed rule that was published on September 24, 2002. It also removes Secretary of Commerce and replaces it with Secretary of the Interior.

DATES: Effective October 22, 2002.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 2002 (67 FR 59813), NMFS published a proposed rule in the **Federal Register** that would implement those parts of the Fishery Management Plan for Coral Reef Ecosystems of the Western Pacific Region that were approved by the Secretary of Commerce. The deadline for comments on the proposed rule is October 24, 2002. The interested public was directed to call the USFWS for more information concerning fishing within national wildlife refuges and their boundaries, but the phone number published for the USFWS was incorrect.

In that same issue, the phrase Secretary of Commerce was used instead of Secretary of the Interior and that is also incorrect.

Corrections

In the proposed rule FR Doc. 02–24013, in the issue of September 24, 2002, (67 FR 59813), make the following corrections:

1. On page 59814, in the second paragraph, in the second column, under Relation to Other Laws, remove the phone number for the USFWS and replace it with the following phone number:

"808–541–1201."

§ 660.601 [Corrected]

2. On page 58919, in the first paragraph, in the second column, under § 660.601, remove "Secretary of Commerce" and replace it with "Secretary of the Interior."

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: October 17, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–26870 Filed 10–21–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 204
Tuesday, October 22, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–093–1]

Rangeland Grasshopper and Mormon Cricket Suppression Program; Record of Decision Based on Final Environment Impact Statement—2002

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice advises the public of the Animal and Plant Health Inspection Service's record of decision for the Rangeland Grasshopper and Mormon Cricket Suppression Program final environmental impact statement.

ADDRESSES: Copies of the record of decision and the final environmental impact statement on which the record of decision is based are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming. The documents may also be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/gh.html*.

Copies of the record of decision and the final environmental impact statement may be obtained from:

Environmental Services, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737–1238, phone (301) 734–8963;

Western Regional Office, PPQ, APHIS, 1629 Blue Spruce Drive, Suite 204, Ft. Collins, CO 80524–5417, phone (970) 494–2531; or

Eastern Regional Office, PPQ, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606–5213, phone (919) 716–5576.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Brown, National Grasshopper Program Manager, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, phone (301) 734–8247.

SUPPLEMENTARY INFORMATION: This notice advises the public that the Animal and Plant Health Inspection Service (APHIS) has prepared a record of decision based on the Rangeland Grasshopper and Mormon Cricket Suppression Program final environmental impact statement and is making it available to the public. This record of decision has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 15th day of October 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–26814 Filed 10–21–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–081–1]

Availability of Draft Pest Risk Assessment for the Importation of Clementines, Mandarins, and Tangerines From Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public of the availability of a draft pesk risk assessment concerning the importation of clementines, mandarins, and tangerines from Chile. This draft pest risk assessment is accompanied by a risk management document entitled, "Measures Suggested for Quarantine Pest Risk Management in Clementines, Mandarin Oranges and Tangerines Exported from Chile to the Market of the United States of America." These documents have been prepared in relation to a proposed rule currently under consideration that would allow the importation of clementines, mandarins, and tangerines from Chile into the United States. We are making the draft pest risk assessment and the risk management document available to the public for review and comment.

DATES: We will consider all comments that we receive on or before December 23, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–081–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–081–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–081–1" on the subject line.

You may read any comments that we receive on the draft pest risk assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Sequeira, National Science Program Leader, Risk & Pathway Analysis, Center for Plant Health Science and Technology, PPQ, APHIS, 1017 Main Campus Drive, Suite 2500, Raleigh, NC 27606–5202; (919) 513–2128.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart-Fruits and Vegetables" (7 CFR 319.56 through 319.56–8, referred to below as the regulations), prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies, that are new to or not widely distributed within the United States.

At the request of the Government of the Republic of Chile, the Animal and Plant Health Inspection Service (APHIS) is considering amending the regulations to allow the importation of clementines, mandarins, and tangerines from Chile into the United States. To evaluate the risks associated with the importation of clementines, mandarins, and tangerines from Chile, a draft pesk risk assessment entitled, "Importation of Fresh Commercial Citrus Fruit: Clementine (*Citrus reticulata* Blanco var. "Clementine"), Mandarin (*Citrus reticulata* Blanco), and Tangerine (*Citrus reticulata* Blanco) from Chile into the United States: A Pathway Initiated Plant Pest Risk Assessment" (Revised July 2002), has been prepared. We are making the draft pest risk assessment available to the public for review and comment.

In addition to the draft pest risk assessment, we are also making a risk management document entitled, "Measures Suggested for Quarantine Pest Risk Management in Clementines, Mandarin Oranges and Tangerines Exported from Chile to the Market of the United States of America" (March 2002), available for comment. This risk management document was prepared in Chile by the Fundacion para el Desarrollo Fruiticola. We expect that we would consider the risk management measures examined in that document during the development of any proposed rule concerning the importation of clementines, mandarins, and tangerines from Chile.

You may view the draft pest risk assessment and the risk management document on the Internet at *http://www.aphis.usda.gov/ppq/pra/*, or in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this notice). You may also request a copy of either document from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 16th day of October 2002.

Peter Fernández,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–26813 Filed 10–21–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–094–1]

Fiscal Year 2003 Reimbursable Overtime Charges and Veterinary Services User Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to reimbursable overtime charged for Sunday, holiday, or other overtime work performed by employees of the Animal and Plant Health Inspection Service in connection with the inspection, laboratory testing, certification, or quarantine of certain articles and to user fees for import- and export-related services that we provide for animals, animal products, birds, germ plasm, organisms, and vectors. The purpose of this notice is to remind the public of the reimbursable overtime charges and user fees for fiscal year 2003 (October 1, 2002, through September 30, 2003).

FOR FURTHER INFORMATION CONTACT: For information concerning Agricultural Quarantine and Inspection program operations, contact Mr. Colonel Locklear, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8372.

For information concerning Veterinary Services program operations, contact Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–8364.

For information concerning reimbursable overtime rate and user fee development, contact Ms. Kris Caraher, Accountant, User Fees Section, FSSB, FMD, MRP–BS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Reimbursable Overtime Charges

The regulations in 7 CFR chapter III and 9 CFR chapter I, subchapters D and G, require inspection, laboratory testing, certification, or quarantine of certain animals, poultry, animal byproducts, germ plasm, organisms, vectors, plants, plant products, or other regulated commodities or articles intended for importation into, or exportation from, the United States. With some exceptions, when these services must be provided by an Animal and Plant Health Inspection Service (APHIS) employee on a Sunday or on a holiday, or at any other time outside the APHIS employee's regular duty hours, the Government charges an hourly overtime fee for the services in accordance with 7 CFR part 354 and 9 CFR part 97.

In a final rule published in the **Federal Register** on July 25, 2002 (67 FR 48519–48525, Docket No. 00–087–2), and effective August 11, 2002, we established, for fiscal years 2002 through 2006 and beyond, reimbursable overtime rates for Sunday, holiday, or other overtime work performed by APHIS employees for any person, firm, or corporation having ownership, custody, or control of animals, poultry, animal byproducts, germ plasm, organisms, vectors, plants, plant products, or other regulated commodities or articles subject to inspection, laboratory testing, certification, or quarantine. In this document we are providing notice to the public of the reimbursable overtime fees for fiscal year 2003 (October 1, 2002, through September 30, 2003).

Under the regulations in 7 CFR 354.1(a) and 9 CFR 97.1(a), any person, firm, or corporation having ownership, custody, or control of plants, plant products, animals, animal byproducts, or other commodities or articles subject to inspection, laboratory testing, certification, or quarantine who requires the services of an APHIS employee on a Sunday or holiday, or at any other time outside the regular tour of duty of that employee, shall sufficiently in advance of the period of Sunday, holiday, or overtime service request the APHIS inspector in charge to furnish the service during the overtime or Sunday or holiday period, and shall, for fiscal year 2003, pay the Government at the rate listed in the following table:

Overtime for inspection, laboratory testing, certification, or quarantine of plants, plant products, animals, animal products or other regulated commodities

Outside the employee's normal tour of duty	Overtime rates (per hour) Oct. 1, 2002-Sept. 30, 2003
Monday through Saturday and holidays	$46.00
Sundays	61.00

As specified in 7 CFR 354.1(a)(1)(iii) and 9 CFR 97.1(a)(3), the overtime rates

to be charged in fiscal year 2003 to owners or operators of aircraft at airports of entry or other places of inspection as a consequence of the operation of the aircraft, for work performed outside of the regularly established hours of service will be as follows:

Overtime for commercial airline inspection services [1]

Outside the employee's normal tour of duty	Overtime rates (per hour) Oct. 1, 2002-Sept. 30, 2003
Monday through Saturday and holidays	$37.00
Sundays	49.00

[1] These charges exclude administrative overhead costs.

A minimum charge of 2 hours shall be made for any Sunday or holiday or unscheduled overtime duty performed by an employee on a day when no work was scheduled for him or her, or which is performed by an employee on his or her regular workday beginning either at least 1 hour before his or her scheduled tour of duty or which is not in direct continuation of the employee's regular tour of duty. In addition, each such period of Sunday or holiday or unscheduled overtime work to which the 2-hour minimum charge provision applies may include a commuted traveltime period (see 7 CFR 354.1(a)(2) and 9 CFR 97.1(b)).

User Fees for Import- and Export-Related Veterinary Services

APHIS charges user fees for import- and export-related veterinary services. The regulations in 9 CFR part 130 list user fees for import- and export-related services provided by APHIS for animals, animal products, birds, germ plasm, organisms, and vectors.

These user fees are authorized by section 2509(c)(1) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (21 U.S.C. 136a). APHIS is authorized to establish and collect fees that will cover the cost of providing import- and export-related services for animals, animal products, birds, germ plasm, organisms, and vectors.

On August 28, 2000, we published in the **Federal Register** (65 FR 51997–52010, Docket No. 97–058–2) a final rule that amended the regulations in 9 CFR part 130 by adjusting our user fees for import- and export-related services that we provide for animals, animal products, birds, germ plasm, organisms, and vectors and by setting user fees for these services for fiscal years 2001 through 2004 and beyond. Additionally, on August 1, 2001, we published in the **Federal Register** (66 FR 39628–39632, Docket No. 99–060–2) another final rule that amended the regulations by updating some of the user fees in 9 CFR part 130. When we proposed to establish the user fees for fiscal years 2001 through 2004 and beyond, we stated that, prior to the beginning of each fiscal year, we would publish a notice to remind the public of the user fees for that fiscal year. This document provides notice to the public of the user fees for fiscal year 2003 (October 1, 2002, through September 30, 2003). The specific services and user fees are described below.

We provide standard and nonstandard housing, care, feed, and handling for individual animals and certain birds [1] quarantined in APHIS-owned or -operated animal quarantine facilities, including APHIS Animal Import Centers. As specified in § 130.2(a), the daily user fee for each animal or bird quarantined in APHIS-owned or -operated animal quarantine facilities receiving standard housing, care, feed, and handling for fiscal year 2003 will be as follows:

Animal or bird	User fee—Oct. 1, 2002–Sept. 30, 2003
Birds (excluding ratites and pet birds imported in accordance with 9 CFR part 93):	
0–250 grams	$1.50
251–1,000 grams	5.50
Over 1,000 grams	13.00
Domestic or zoo animals (except equines, birds, and poultry):	
Bison, bulls, camels, cattle, or zoo animals	100.00
All others, including, but not limited to, alpacas, llamas, goats, sheep, and swine	26.00
Equines (including zoo equines, but excluding miniature horses):	
1st through 3rd day (fee per day)	264.00
4th through 7th day (fee per day)	191.00
8th and subsequent days (fee per day)	162.00
Miniature horses	60.00
Poultry (including zoo poultry):	
Doves, pigeons, quail	3.25
Chickens, ducks, grouse, guinea fowl, partridge, pea fowl, pheasants	6.25
Large poultry and large waterfowl, including, but not limited to game cocks, geese, swans, and turkeys	14.00
Ratites:	
Chicks (less than 3 months old)	9.00
Juveniles (3 months through 10 months old)	14.00
Adults (11 months old and older)	26.00

Certain conditions or traits, such as aggression, may necessitate special requirements for certain birds or poultry. Birds and poultry receiving nonstandard housing, care, feed, or handling to meet special requirements may receive those services while quarantined in an APHIS-owned or-operated quarantine facility at the request of an importer or as required by an APHIS representative. As specified in § 130.2(b), the daily user fee for each bird or poultry receiving nonstandard housing, care, or handling while quarantined in an APHIS-owned or-operated animal quarantine facility for fiscal year 2003 is $5.50 for birds weighing 250 grams or less, and doves, pigeons, and quail; $13 for birds weighing 251 to 1,000 grams and poultry such as chickens, ducks, grouse, guinea fowl, partridge, pea fowl, and pheasants; and $25 for birds over 1,000 grams and large poultry and large waterfowl, including, but not limited to game cocks, geese, swans, and turkeys. As specified in § 130.2(c), importers of animals or birds that require a diet other than standard feed must either provide feed or pay APHIS for feed on an actual cost basis, including the cost of delivery to the APHIS-owned or -operated animal import center or quarantine facility.

[1] Those animals and birds subject to quarantine are specified in 9 CFR, chapter I, subchapter D of the regulations.

We accept requests from importers to exclusively occupy a space at an APHIS animal import center. As specified in § 130.3(a)(1), the monthly user fee for exclusive use of space at the APHIS animal import center in Newburgh, NY, for fiscal year 2003 is $57,630 to occupy a space 5,396 square feet in size, $95,085 for a space 8,903 square feet in size, and $9,666 for a space 905 square feet in size. The fees listed in § 130.3(a)(1) cover all costs of quarantine [2] except feed. The importer either provides the feed or pays for it on an actual cost basis, including the cost of delivery.

We process applications for permits to import and transport certain animals, animal products, organisms, vectors, and germ plasm.[3] As specified in § 130.4, the user fees for processing import permit applications for certain animals, animal products, organisms, vectors, and germ plasm during fiscal year 2003 will be as follows:

Service	Unit	User fee—October 1, 2002–Sept. 30, 2003
Import compliance assistance:		
Simple (2 hours or less)	Per release	$68.00
Complicated (more than 2 hours)	Per release	174.00
Processing an application for a permit to import live animals, animal products or byproducts, organisms, vectors, or germ plasm (embryos or semen) or to transport organisms or vectors[1]:		
Initial permit	Per application	94.00
Amended permit	Per amended application	47.00
Renewed permit [2]	Per application	61.00
Processing an application for a permit to import fetal bovine serum when facility inspection is required.	Per application	322.00

[1] Using Veterinary Services Form 16–3 "Application for Permit to Import or Transport Controlled Material or Organisms or Vectors," or Form 17–129, "Application for Import or In Transit Permit (Animals, Animal Semen, Animal Embryos, Birds, Poultry, or Hatching Eggs)."
[2] Permits to import germ plasm and live animals are not renewable.

We inspect live animals presented for importation or entry into the United States through a land border port along the United States-Mexico border. As specified in § 130.6(a), the user fees for inspection of live animals at land border ports along the United States-Mexico border for fiscal year 2003 will be as listed in the following table:

Type of live animal	Per head user fee—Oct. 1, 2002–Sept. 30, 2003
Any ruminants (including breeder ruminants) not covered below	$8.75
Feeder	2.50
Horses, other than slaughter	43.00
In-bond or in-transit	5.50
Slaughter	3.75

We also inspect live animals presented for importation into or entry into the United States through a land border port along the United States-Canada border. As specified in § 130.7(a), user fees for import or entry services for live animals at land border ports along the United States-Canada border for fiscal year 2003 will be as follows:

Type of live animal	Unit	User fee—Oct. 1, 2002–Sept. 30, 2003
Animals being imported into the United States:		
Breeding animals (grade animals, except horses):		
Sheep and goats	Per head	$0.50
Swine	Per head	0.75
All others	Per head	3.25
Feeder animals:		
Cattle (not including calves)	Per head	1.50
Sheep and calves	Per head	0.50
Swine	Per head	0.25
Horses (including registered horses), other than slaughter and in-transit	Per head	28.00
Poultry (including eggs), imported for any purpose	Per load	48.00
Registered animals (except horses)	Per head	5.75
Slaughter animals (except poultry)	Per load	24.00
Animals transiting [1] the United States:		
Cattle	Per head	1.50
Sheep and goats	Per head	0.25
Swine	Per head	0.25

[2] Section 130.3(a)(2) and 130.3(c) specifies that additional user fees will be charged to importers for occupancy of space for more than 30 days or nonstandard handling or care of animals or birds.

[3] Those animal products, organisms, vectors, and germ plasm that require permits for importation into the United States are specified in 9 CFR, chapter I, subchapter D of the regulations.

Type of live animal	Unit	User fee—Oct. 1, 2002–Sept. 30, 2003
Horses and all other animals	Per head	6.75

[1] The user fee in this section will be charged for in-transit authorizations at the port where the authorization services are performed. For additional services provided by APHIS, at any port, the hourly user fee rate in § 130.30 will apply.

We provide a variety of other services related to the importation into or exportation from the United States of animals, animal products, birds, germ plasm, organisms, and vectors. As specified in § 130.8(a), user fees for those import-or export-related services during fiscal year 2003 are as follows:

Service	Unit	User Fee—Oct. 1, 2002–Sept. 30, 2003
Germ plasm being exported: [1]		
Embryo:		
Up to 5 donor pairs	Per certificate	$81.00
Each additional group of donor pairs, up to 5 pairs group, on the same certificate.	Per group of donor pairs	36.00
Semen	Per certificate	49.00
Release from export agricultural hold:		
Simple (2 hours or less)	Per release	68.00
Complicated (more than 2 hours)	Per release	174.00

[1] This user fee includes a single inspection and resealing of the container at the APHIS employee's regular tour of duty station or at a limited port. For each subsequent inspection and resealing required, the hourly user fee in § 130.30 will apply.

We inspect lots of pet birds [4] of U.S. origin returning to the United States. As specified in § 130.10(a), user fees for the inspection of pet birds of U.S. origin returning to the United States, except pet birds of U.S. origin returning from Canada, during fiscal year 2003 are $105 per lot of birds which have been out of the United States for 60 days or less, and $250 per lot of pet birds which have been out of the United States for more than 60 days.

We also provide housing, care, feed, and handling for pet birds quarantined in APHIS-owned or -supervised quarantine facilities. The daily user fee to quarantine pet birds applies per isolette and varies based on the number of pet birds determined by an APHIS representative to be appropriate per isolette. All the birds quarantined in one isolette are covered by one fee, which is assessed daily for the duration of the quarantine. As specified in § 130.10(b), the daily user fee for each pet bird quarantined in an APHIS-owned or supervised quarantine facility for fiscal year 2003 is $9 for one pet bird quarantined in one isolette, $11 for two pet birds quarantined in one isolette, $13 for three pet birds quarantined in one isolette, $15 for four pet birds quarantined in one isolette, and $17 for five pet birds quarantined in one isolette.

We inspect and approve various import and export facilities and establishments.[5] As specified in § 130.11, the user fees for inspecting and approving import and export facilities and establishments during fiscal year 2003 will be as listed in the following table:

Service	Unit	User Fee—Oct. 1, 2002–Sept. 30, 2003
Embryo collection center inspection and approval (all inspections required during the year for facility approval).	Per year	$369.00
Inspection for approval of biosecurity level three laboratories (all inspections related to approving the laboratory for handling one defined set of organisms or vectors).	Per inspection	977.00
Inspection for approval of pet food manufacturing, rendering, blending, or digest facilities:		
Initial approval	For all inspections required during the year.	404.75
Renewal	For all inspections required during the year.	289.00
Inspection for approval of pet food spraying and drying facilities:		
Initial approval	For all inspections required during the year.	275.00
Renewal	For all inspections required during the year.	162.00
Inspection for approval of slaughter establishment:		
Initial approval (all inspections)	Per year	362.00
Renewal (all inspections)	Per year	314.00

[4] Provisions for the importation of pet birds into the United States are specified in 9 CFR, chapter I, subchapter D of the regulations.

[5] Requirements for the inspection and approval of various quarantine facilities are specified in 9 CFR, chapter I, subchapter D of the regulations.

Service	Unit	User Fee—Oct. 1, 2002–Sept. 30, 2003
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96:		
Approval (compliance agreement) (all inspections for first year of 3-year approval).	Per year	386.00
Renewed approval (all inspections for second and third years of 3-year approval).	Per year	223.00

We endorse export health certificates for animals, birds, or animal products.[6] As specified in § 130.20(a), the user fees for each export health certificate endorsed for animals, birds, or animal products that do not require the verification of tests or vaccinations, regardless of the number of animals, birds, or animal products covered by the certificate, will be $31 for animal and nonanimal products, $29 for hatching eggs, $29 for poultry, including slaughter poultry, $34 for slaughter animals (except poultry) moving to Canada or Mexico, and $23 for other endorsements or certifications during fiscal year 2003.

We also endorse export health certificates for animals, birds, or animal products that require verification of tests or vaccinations. The user fees for these certificates apply to each export health certificate endorsed for animals and birds, depending on the number of animals or birds covered by the certificate and the number of tests or vaccinations required. As specified in § 130.20(b), the user fees for each export health certificate endorsed for animals and birds for fiscal year 2003 is as follows:

Number of tests or vaccinations and Number of animals or birds on the certificate	User fee—Oct. 1, 2002–Sept. 30, 2003
1–2 tests or vaccinations	
Nonslaughter horses to Canada:	
First animal	$37.00
Each additional animal	4.25
Other animals or birds:	
First animal	74.00
Each additional animal	4.25
3–6 tests or vaccinations	
First animal	91.00
Each additional animal	7.00
7 or more tests or vaccinations	
First animal	106.00
Each additional animal	8.25

We provide certain import-or export-related veterinary services at hourly rates [7] that may be performed during and outside of regularly established hours of service. As specified in § 130.30(a), the user fees in fiscal year 2003 for import-or export-related hourly veterinary services performed during regularly established hours of service, except those services covered by flat rate user fees, will be $84 per hour or $21 per quarter hour for each APHIS employee; the per service minimum fee is $24. When the import-or export-related veterinary services listed in § 130.30(a)(1) through (a)(13) are performed on a Sunday, holiday, or at any time outside of an APHIS employee's normal tour of duty, a premium rate user fee is charged. As specified in § 130.30(b), the user fees in fiscal year 2003 for hourly veterinary services provided at any time outside an employee's normal tour of duty Monday through Saturday and on holidays will be $96 per hour or $24 per quarter hour for each APHIS employee, and the user fees for hourly veterinary services provided on a Sunday will be $108 per hour or $27 per quarter hour for each APHIS employee.

Users who request import- or export-related services that are covered by flat rate user fees on a Sunday, holiday, or any time outside of an APHIS employee's normal tour of duty, and who are subject to the overtime rates set forth in 7 CFR 354.1 or 9 CFR 97.1, are charged the hourly overtime rates set out in § 130.50(b)(3)(i) in addition to the flat rate user fees. For fiscal year 2003, the overtime rates charged to users who request flat rate user fee services are as follows:

OVERTIME FOR FLAT RATE USER FEES [1, 2]

	Outside of the employee's normal tour of duty	Overtime rates (per hour) Oct. 1, 2002–Sept. 30, 2003
Rate for inspection, testing, certification or quarantine of animals, and animal products or other commodities (See 7 CFR 354.3 or 9 CFR 97.1(a) for details.).	Monday-Saturday holidays	$46.00

[6] Those animals, birds, or animal products that require export health certificates are specified in 9 CFR, chapter I, subchapter D of the regulations.

[7] Section 130.30 (a)(1) through (a)(13) lists import-or export-related veterinary services that are calculated at hourly rates for each APHIS employee required to perform the service.

OVERTIME FOR FLAT RATE USER FEES [1, 2]—Continued

	Outside of the employee's normal tour of duty	Overtime rates (per hour) Oct. 1, 2002–Sept. 30, 2003
Rate for commercial airline inspection services (See 9 CFR 97.1(a)(3) for details.)	Sundays	61.00
	Monday-Saturday and holidays	37.00
	Sundays	49.00

[1] Minimum charge of 2 hours, unless performed on the employee's regular workday and performed in direct continuation of the regular workday or begun within an hour of the regular workday.
[2] When the 2-hour minimum applies, you may need to pay commuted travel time. (See 9 CFR 97.1(b) for specific information about commuted travel time.)

Done in Washington, DC, this 16th day of October 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–26815 Filed 10–21–02; 8:45 am]

BILLING CODE 3410–34–P

APALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Annual Meeting

Time and Date: 10 a.m.–12 p.m., November 8, 2002.

Place: Harrisburg Hilton and Towers, One North Second Street, Harrisburg, PA 17101.

Status: Most of the meeting will be open to the public. If there is a need for an executive session (closed to the public), it will be held at about 9:30 a.m.

Matters To Be Considered:

Portions Open to the Public: The primary purpose of this meeting is to (1) Review the independent auditors' report of Commission's financial statements for fiscal year 2001–2002; (2) Review the Low-Level Radioactive Waste (LLRW) generation information for 2001; (3) Consider a proposal budget for fiscal year 2003–2004; (4) Review the status of LLRW disposal facilities and new developments in other states and compacts; and (5) Elect the Commission's Officers.

Portions Closed to the Public: Executive Session, if deemed necessary, will be held at about 9:30 a.m.

Contact Person for More Information: Richard R. Janati, Pennsylvania Staff Member on the Commission, at (717) 787–2163.

Richard R. Janati,

Staff Member on the Commission.

[FR Doc. 02–26865 Filed 10–21–02; 8:45 am]

BILLING CODE 0000–00–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security Information Systems

Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on November 13 & 14, 2002, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

November 13

Public Session

1. Comments or presentations by the public.
2. Presentation on China's high-performance computing market.
3. Presentation on semiconductor manufacturing trends.

November 13 & 14

Closed Session

4. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, U.S. Department of Commerce, 15th St. & Pennsylvania Ave, NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 7, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of these Committees and of any subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. For more information, contact Lee Ann Carpenter on (202) 482–2583.

Dated: October 17, 2002.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 02–26849 Filed 10–21–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808]

Stainless Steel Plate in Coils from Belgium

ACTION: Notice of Rescission of Antidumping Duty Administrative Review for the Period May 1, 2001, through April 30, 2002.

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to a timely request from respondent, ALZ N.V. (ALZ) and its affiliated U.S. importer, TrefilARBED, Inc., the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on stainless steel plate in coils from Belgium, covering the period May 1, 2001, to April 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 42753 (June 25, 2002). Because ALZ has submitted a timely withdrawal of its request for an administrative review, and there was no request for review from any other interested party, the Department is rescinding this review in accordance with section 351.213(d)(1) of the Department's regulations.

EFFECTIVE DATE: October 22, 2002.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–0197 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR Part 351 (2002).

Background

On May 6, 2002, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel plate in coils from Belgium. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review* (67 FR 30356). On May 31, 2002, the Department received a timely request from one respondent, ALZ, for an administrative review covering the period from May 1, 2001 through April 30, 2002, in accordance with 19 CFR 351.213(b)(1).

The Department published a notice of initiation of this antidumping duty administrative review on June 25, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 67 FR 42753 (June 25, 2002). This review covers one manufacturer/exporter of the subject merchandise, ALZ, for the period of June 1, 2000 through May 31, 2001. On September 23, 2002, ALZ withdrew its request for review, in accordance with section 351.213(d)(1) of the Department's regulations.

Rescission, in Whole, of Antidumping Duty Administrative Review

Pursuant to our regulations, the Department will rescind an administrative review, "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." *See* 19 CFR 351.213(d)(1). Since ALZ, the only respondent in this proceeding, submitted a timely withdrawal of its request for review, the Department is rescinding its antidumping administrative review on stainless steel plate in coils from Belgium for the period May 1, 2001 through April 30, 2002. The Department will issue appropriate assessment instructions to the Customs Service.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with 19 CFR 351.213(d)(4) and sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 10, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–26857 Filed 10–21–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 22, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Martin at (202) 482–3936 or Thomas Futtner at (202) 482–3814, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On March 27, 2002, the Department published a notice of initiation of administrative review of the antidumping duty order on heavy forged hand tools from the People's Republic of China, covering the period February 1, 2001 through January 31, 2002 (*67 FR 14696*). The preliminary results are currently due no later than October 31, 2002.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore the Department is extending the time limit for completion of the preliminary results until no later than February 28, 2003. *See* Decision Memorandum from Holly Kuga to Bernard T. Carreau, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: October 15, 2002.

Holly A. Kuga,

Acting Deputy Assistant Secretary Import Administration, Group I

[FR Doc. 02–26858 Filed 10–21–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India; Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on stainless steel bar from India. The period of review is February 1, 2001, through January 31, 2002. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: October 22, 2002.

FOR FURTHER INFORMATION CONTACT: Cole Kyle or Shawn McMahon, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; at telephone (202) 482–1503 and 482–1698, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act and all citations to the regulations are to 19 CFR Part 351 (2001).

Statutory Time Limits

Section 751(a)(3)(A) of the Act requires the Department of Commerce ("the Department") to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On March 27, 2002, the Department published a notice of initiation of administrative review of the antidumping duty order on stainless steel bar from India covering the period February 1, 2001, through January 31, 2002 (67 FR 14696). The preliminary results for the antidumping duty administrative review of stainless steel bar from India are currently due no later than October 31, 2002.

Extension of Time Limits for Preliminary Results

Several of the respondents in this proceeding have outstanding supplemental questionnaire responses. Because the Department requires time to review and analyze these responses once they are received, it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, October 31, 2002). Therefore, the Department is extending the time limit for completion of the preliminary results to no later than February 28, 2003, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 16, 2002.

Louis Apple,

Acting Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 02–26860 Filed 10–21–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–857]

Certain Welded Large Diameter Line Pipe From Japan: Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Final results of changed circumstances review.

EFFECTIVE DATE: October 22, 2002.

SUMMARY: On June 10, 2002, the Department of Commerce ("the Department") published a notice of initiation of a changed circumstances review with the intent to revoke, in part, the antidumping duty order on welded large diameter line pipe from Japan with respect to certain welded large diameter line pipe as described below. *See Certain Welded Large Diameter Line Pipe From Japan: Notice of Initiation of Changed Circumstances Review of the Antidumping Order*, 67 FR 39682 (June 10, 2002) ("*Initiation Notice*"). On August 16, 2002, the Department published the preliminary results of the changed circumstances review and preliminarily revoked this order, in part, with respect to future entries of certain welded large diameter line pipe as described below, based on the fact that domestic parties have expressed no interest in continuation of the order with respect to these large diameter line pipes. *See Certain Welded Large Diameter Line Pipe from Japan: Preliminary Results of Changed Circumstances Review*, 67 FR 53565 (August 16, 2002) ("*Preliminary Results*"). In our *Preliminary Results*, we gave interested parties an opportunity to comment; however, we did not receive any comments from domestic parties opposing the partial revocation of the order. Therefore, the Department hereby revokes this order with respect to all future entries for consumption of certain welded large diameter line pipe, as described below, effective on the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Shireen Pasha, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0193.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended ("the Act"), by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR Part 351 (2002).

SUPPLEMENTARY INFORMATION:

Background

On December 6, 2001, the Department published in the **Federal Register** the antidumping duty order on certain welded large diameter line pipe from Japan. *See Notice of Antidumping Duty Order: Certain Welded Large Diamter Line Pipe from Japan*, 66 FR 63368 (December 6, 2001) ("*LDLP Order*"). On April 17, 2002, BP America, Inc. ("BP America"), a U.S. importer requested that the Department revoke in part the antidumping duty order on certain welded large diameter line pipe from Japan. Specifically, the U.S. importer requested that the Department revoke the order with respect to imports

meeting the following specifications: in API grades X80 or above, having an outside diameter of 48 inches to and including 52 inches, and with a wall thickness of 0.90 inch or more; and, in API grades X100 or above, having an outside diameter of 48 inches to and including 52 inches, and with a wall thickness of 0.54 inch or more. BP America indicated that, based on its consultations with domestic producers, the domestic producers lack interest in producing these sizes.

American Cast Iron Pipe Co., American Steel Pipe Division; Berg Steel Pipe Corp.; and Stupp Corp., the petitioners in the underlying sales at less-than-fair-value investigation ("the petitioners") (*See LDLP Order*), filed a letter on May 7, 2002, partially consenting to BP America's request. However, on May 21, 2002, the petitioners filed another letter rescinding their initial response and fully consenting to the exclusion of these sizes from the order, *i.e.* in API grades X80 or above, having an outside diameter of 48 inches to and including 52 inches, and with a wall thickness of 0.90 inch or more; and, in API grades X100 or above, having an outside diameter of 48 inches to and including 52 inches, and with a wall thickness of 0.54 inch or more. On June 10, 2002, the Department published a notice of initiation of a changed circumstances review of the antidumping duty order on certain welded large diameter line pipe from Japan, meeting the specifications mentioned above. *See Initiation Notice.*

On August 16, 2002, the Department published the preliminary results of the changed circumstances review. *See Preliminary Results.* In the *Preliminary Results*, we indicated that interested parties could submit comments for consideration in the Department's final results. We did not receive any comments.

Scope of Review

The product covered by this antidumping order is certain welded carbon and alloy line pipe, of circular cross section and with an outside diameter greater than 16 inches, but less than 64 inches, in diameter, whether or not stencilled. This product is normally produced according to American Petroleum Institute (API) specifications, including Grades A25, A, B, and X grades ranging from X42 to X80, but can also be produced to other specifications. The product currently is classified under U.S. Harmonized Tariff Schedule (HTSUS) item numbers 7305.11.10.30, 7305.11.10.60, 7305.11.50.00, 7305.12.10.30, 7305.12.10.60, 7305.12.50.00, 7305.19.10.30, 7305.19.10.60, and 7305.19.50.00. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope is dispositive. Specifically not included within the scope of this investigation is American Water Works Association (AWWA) specification water and sewage pipe and the following size/grade combinations; of line pipe:

—Having an outside diameter greater than or equal to 18 inches and less than or equal to 22 inches, with a wall thickness measuring 0.750 inch or greater, regardless of grade.
—Having an outside diameter greater than or equal to 24 inches and less than 30 inches, with wall thickness measuring greater than 0.875 inches in grades A, B, and X42, with wall thickness measuring greater than 0.750 inches in grades X52 through X56, and with wall thickness measuring greater than 0.688 inches in grades X60 or greater.
—Having an outside diameter greater than or equal to 30 inches and less than 36 inches, with wall thickness measuring greater than 1.250 inches in grades A, B, and X42, with wall thickness measuring greater than 1.000 inches in grades X52 through X56, and with wall thickness measuring greater than 0.875 inches in grades X60 or greater.
—Having an outside diameter greater than or equal to 36 inches and less than 42 inches, with wall thickness measuring greater than 1.375 inches in grades A, B, and X42, with wall thickness measuring greater than 1.250 inches in grades X52 through X56, and with wall thickness measuring greater than 1.125 inches in grades X60 or greater.
—Having an outside diameter greater than or equal to 42 inches and less than 64 inches, with a wall thickness measuring greater than 1.500 inches in grades A, B, and X42, with wall thickness measuring greater than 1.375 inches in grades X52 through X56, and with wall thickness measuring greater than 1.250 inches in grades X60 or greater.
—Having an outside diameter equal to 48 inches, with a wall thickness measuring 1.0 inch or greater, in grades X–80 or greater.

Final Results of Changed Circumstances Review

Pursuant to sections 751(d)(1) of the Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request, which shows changed circumstances sufficient to warrant a review. Section 351.222(g)(1) of the Department's regulations provides that the Department may revoke an order (in whole or in part) based on changed circumstances, if it determines that: (i) Producers accounting for substantially all of the production of the domestic like product to which the order (or part of the order to be revoked) pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) if other changed circumstances sufficient to warrant revocation exist.

Taking into consideration that (1) the petitioners have uniformly expressed that they do not want relief with respect to this particular sub-product, and that (2) there have been no contrary expressions from the remainder of the known LDLP producers, the Department is revoking the order on certain welded large diameter line pipe from Japan, effective on the date of publication of this notice in the **Federal Register**, with respect to all future entries for consumption of welded large diameter line pipe which meet the specifications detailed above, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.216. We will instruct the U.S. Customs Service ("Customs") to terminate suspension of liquidation for all future entries of welded large diameter line pipe (*i.e.*, certain large diameter line pipe) meeting the specifications indicated above.

This determination is issued and published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216, and 351.222.

Dated: October 11, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–26861 Filed 10–21–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–833 and C–122–841]

Notice of Countervailing Duty Orders: Carbon and Certain Alloy Steel Wire Rod From Brazil and Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Countervailing Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil and Canada.

EFFECTIVE DATE: October 22, 2002.

FOR FURTHER INFORMATION CONTACT: Melani Miller (Brazil) at (202) 482–0116; and Craig Matney (Canada) at (202) 482–1778; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 ("the Act"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department") regulations are to 19 CFR Part 351 (April 2002).

Scope of Orders

The merchandise covered by these orders is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter ("subject merchandise" or "wire rod").

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the *Harmonized Tariff Schedule of the United States* ("HTSUS") definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. Grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

Grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as "tire cord quality" or "tire bead quality" indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products covered by these orders are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

Countervailing Duty Orders

On August 30, 2002, the Department published in the **Federal Register** its final determinations in the countervailing duty investigations of wire rod from Brazil (67 FR 55805) and Canada (67 FR 55813). Subsequently, on September 27, 2002, the Department published in the **Federal Register** its amended final determination in the countervailing duty investigation of wire rod from Brazil (67 FR 61071). On October 15, 2002, in accordance with section 705(d) of the Act, the U.S. International Trade Commission notified the Department that a U.S. industry is "materially injured," within the meaning of section 705(b)(1)(A)(i) of the Act, by reason of imports of wire rod from Brazil and Canada.

Therefore, in accordance with section 706(a)(3) of the Act, on or after the date of publication of this notice in the **Federal Register**, Customs Service officers must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the countervailing duty rates as noted below. The "All Others" rates apply to all exporters of wire rod from Brazil and Canada not specifically listed below. The cash deposit rates are as follows:

Brazil

Producer/exporter	Net subsidy rate
Companhia Siderurgica Belgo-Mineira.	6.74 percent.
Gerdau S.A.	2.76 percent.
All Others	5.64 percent.

Canada:

Producer/exporter	Net subsidy rate
Ispat Sidbec, Inc.	6.61 percent.
Stelco, Inc.	Excluded.
Ivaco, Inc.	Excluded.
All Others.	6.61 percent.

Moreover, in accordance with section 706(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the Department following the completion of a review requested under 19 CFR 351.213(b) or 19 CFR 351.214(b) (or if a review is not requested, in accordance with 19 CFR 351.212(c)), countervailing duties equal to the amount of the net countervailable subsidies determined to exist for entries of wire rod from Brazil and Canada (except for subject merchandise from Canada both produced and exported by Ivaco, Inc. ("Ivaco") and Stelco, Inc. ("Stelco"), which both received a zero final rate).

Pursuant to section 706(a)(1) of the Act, if appropriate, based on the above-noted further advice from the Department, for all producers and exporters of wire rod from Brazil, countervailing duties will be assessed on all unliquidated entries of wire rod entered, or withdrawn from warehouse, for consumption on or after August 30, 2002, the date of publication of the Department's final determination with respect to wire rod from Brazil in the **Federal Register**, and on all subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this countervailing duty order for Brazil in the **Federal Register**.

For all producers and exporters of wire rod from Canada (except for Ivaco and Stelco), countervailing duties will be assessed on all unliquidated entries of wire rod entered, or withdrawn from warehouse, for consumption on or after February 8, 2002, the date of publication of the Department's preliminary determination in this investigation in the **Federal Register**, and before June 8, 2002, the date the Department instructed Customs to discontinue the suspension of liquidation in accordance with section 703(d) of the Act (*see also*, The Statement of Administrative Action, H. Doc. No. 103–316, Vol. 1 at 874 (1994), reprinted in 1994 U.S.C.C.A.N. 3773, 4163), and on all subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this countervailing duty order for Canada in the **Federal Register**.

This notice constitutes the countervailing duty orders with respect to wire rod from Brazil and Canada, pursuant to section 706(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

These countervailing duty orders are published in accordance with sections 706(a) and 777(i) of the Act and 19 CFR 351.211.

Dated: October 16, 2002.

Joe Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–26859 Filed 10–21–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101702A]

Proposed Information Collection; Comment Request; Large Pelagic Fishing Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 23, 2002.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christopher Rogers, Chief, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; (301) 713–2347.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Large Pelagic Fishing Survey consists of dockside and telephone surveys of recreational anglers for large pelagic fish (tunas, sharks, and billfish) in the Atlantic Ocean. The survey provides NMFS with information to monitor catch of bluefin tuna and marlin. Catch monitoring in these fisheries and collection of catch and effort statistics for all pelagic fish is required under the Atlantic Tunas Convention Act and the Magnuson-Stevens Fishery Conservation and Management Act. The information collected is essential for the U.S. to meet its reporting obligations to the International Commission for the Conservation of Atlantic Tuna.

II. Method of Collection

Dockside and telephone interviews are used.

III. Data

OMB Number: 0648–0380.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households, business or other for-profit organizations.

Estimated Number of Respondents: 21,500.

Estimated Time Per Response: 2 minutes to respond to a pre-survey screening phone call; 8 minutes for a telephone interview; 5 minutes for a dockside interview; 1.5 minutes to respond to a follow-up validation call for dockside interviews; 3 minutes for a response to socio-economic add-on interview questions; 5 minutes for a charter/headboat vessel captain background interview; 5 minutes for a biological sampling of catch; and 8 minutes for a headboat effort and catch survey.

Estimated Total Annual Burden Hours: 4,752.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 11, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–26869 Filed 10–21–02; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Millennium Pipeline Company From an Objection by the New York Department of State

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Supplemental notice of public hearing.

SUMMARY: This notice provides additional scheduling information concerning a public hearing to be held by the National Oceanic and Atmospheric Administration in Tarrytown, New York. The hearing involves an administrative appeal filed with the Department of Commerce by the Millenium Pipeline Company (Consistency Appeal of Millennium Pipeline Company, L.P.).

DATES: The hearing is scheduled to begin at 10 a.m. on November 13, 2002. Speaker registration begins at 9 a.m. on the day of the hearing. Public comments on the appeal must be received by December 2, 2002.

ADDRESSES: The public hearing and speaker registration will be held at the Hilton Tarrytown Hotel, 455 South Broadway, Tarrytown, New York. Written comments may be submitted at the hearing. All e-mail comments on issues relevant to the Secretary's decision of this appeal may be submitted to *Millennium.comments@noaa.gov*. Apart from the hearing, comments may also be sent by mail to the Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910. Materials from the appeal record will be available at the Internet site *http://www.ogc.doc.gov/czma.htm* and at the Office of the Assistant General Counsel for Ocean Services.

FOR FURTHER INFORMATION CONTACT: Karl Gleaves, Assistant General Counsel for Ocean Services, via email at *gcos.inquiries@noaa.gov*, or at 301–713–2967, extension 186.

SUPPLEMENTARY INFORMATION: The Millennium Pipeline Company filed an administrative appeal with the Department of Commerce, pursuant to the Coastal Zone Management Act of 1972, as amended, asking that the Secretary of Commerce override the State of New York's objection to Millennium's proposed natural gas pipeline. The pipeline would extend from the Canadian border in Lake Erie and cross the Hudson River, affecting the natural resources or land and water uses of New York's coastal zone.

On September 9, 2002, NOAA published a notice in the **Federal Register** announcing that it would hold a public hearing concerning the appeal. See 67 FR 57220. The notice provided information about the date and location of the hearing and indicated additional details would be forthcoming. This notice provides additional scheduling information for the hearing.

The hearing will begin at 10 a.m. at the Hilton Tarrytown Hotel, and continue throughout the day with afternoon and evening sessions. Intermissions are expected near noon and in the late afternoon (approximately 4:30 p.m.). In addition, a temporary recess may be scheduled for periods when all registered speakers have had an opportunity to testify. Speakers must register on the day of the hearing, on site, at the hotel. Registration of speakers will begin at 9 a.m. Each organization that registers should expect to receive a total of five minutes for its representatives to present oral comments. Individuals from the general public who register will receive approximately three minutes to speak. Speakers will be recognized in the order in which they register (a first-come-first-serve basis), alternating between individuals from the general public and those representing organizations. A specific period is also expected to be designated during the morning and afternoon sessions for remarks by elected officials.

Written comments may be submitted to NOAA at the hearing by any person in attendance. For submissions at the hearing, we request, but do not require, that you provide three copies for inclusion into the administrative record. Apart from the hearing, written comments may be submitted by e-mail to *millennium.comments@noaa.gov* or forwarded via mail to the Office of the Assistant General Counsel for Ocean Services. Comments must be received by December 2, 2002. Comments will be made available to the parties; they are also expected to be posted on the Department of Commerce website at *http://www.ogc.doc.gov/czma.htm*.

This hearing is being held to obtain information on issues the Secretary will likely consider in deciding Millennium's appeal. A summary of relevant issues as well as additional background on the appeal appears in the September 9, 2002, **Federal Register** announcement referenced above, a copy of which can be found on the Internet at *http://www.ogc.doc.gov/czma.htm*.

Questions concerning the hearing may be sent via email to *gcos.inquiries@noaa.gov* or made by telephone to 301 713–2967, extension 186.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

Dated: October 16, 2002.

James R. Walpole,

General Counsel.

[FR Doc. 02–26787 Filed 10–21–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Draft Guidance for the Coastal and Estuarine Land Conservation

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice of availability of draft guidance for the Coastal and Estuarine Land Conservation Program.

SUMMARY: Notice is hereby given of the availability of Draft Guidance for the Coastal and Estuarine Land Conservation Program (CELCP), created by the FY 2002 appropriations for the Departments of Commerce, Justice, and State. The Appropriations Act directed the Secretary of Commerce to establish a Coastal and Estuarine Land Conservation Program "for the purpose of protecting important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion from their natural or recreational state to other uses," giving priority to lands which can be effectively managed and protected and which have significant ecological value. The law further directed the Secretary to issue guidelines for this program delineating the criteria for grant awards and to distribute funds in consultation with the States' Coastal Zone Managers' or Governors' designated representatives based on demonstrated need and ability to successfully leverage funds. Draft Guidance for the CELCP can be found on NOAA's website at: *www.ocrm.nos.noaa.gov/landconversation.html* or may be obtained upon request via the contact information listed below. Comments may be directed to NOAA via letter, e-mail, or fax at (301) 713–4012.

DATES: Comments are requested by November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Elaine Vaudreuil, Office of Ocean and Coastal Resource Management (N/ORM), NOAA's National Ocean Service, 1305 East-West Highway, Silver Spring, MD 20910; telephone (301) 713–3155, extension 103; or via e-mail at *Elaine.Vaudreuil@noaa.gov*.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: October 7, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–26996 Filed 10–21–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF EDUCATION

President's Advisory Board on Tribal Colleges and Universities Meeting

AGENCY: President's Advisory Board on Tribal Colleges and Universities.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the first meeting of the President's Advisory Board on Tribal Colleges and Universities and is intended to notify the general public of their opportunity to attend. This notice also describes the functions of the Board. Notice of the Board's meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

Correction: Notice document appeared in the **Federal Register** on Wednesday, October 16, 2002, at page 63905 the date to be corrected:

Date and Time: October 28, 2002—9 a.m. to 5:30 p.m.

Location: Institute of American Indian Arts (IAIA), 83 Avan Nu Po Road, Santa Fe, New Mexico 87508.

Date and Time: October 29, 2002—8:30 a.m. to 12.

Location: Institute of American Indian Arts Museum, 108 Cathedral Place, Santa Fe, New Mexico 87501.

FOR FURTHER INFORMATION CONTACT: Victoria Vasques, Acting Executive Director, President's Advisory Board on Tribal Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: 202–260–7485. Fax: 202–260–4149.

SUPPLEMENTARY INFORMATION: The Board is established by Executive Order 13270 dated July 3, 2002 to provide advice regarding the progress made by federal agencies toward fulfilling the purposes and objective of the order. The Board shall also provide recommendations to the President and the Secretary of Education at least annually on ways Tribal Colleges can: (1) Use long-term development, endowment building, and master planning to strengthen institutional viability; (2) improve financial management and security, obtain private sector funding support, and expand and complement federal education initiatives; (3) develop institutional capacity through the use of new and emerging technologies offered by the federal and private sectors; (4) enhance physical infrastructure to facilitate more efficient operation and effective recruitment and retention of students and faculty; and (5) help implement the No Child Left Behind Act of 2001 and meet other high standards of educational achievement.

The general public is welcome to attend. However, space is limited and is available on a first-come, first-served basis. Individuals who need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Betty Thompson at (202) 260–0223 no later than October 21, 2002. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

A summary of the activities of the meeting and other related materials, which are informative to the public and consistent with the policy of section 5 U.S.C. 552, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the White House Initiative on Tribal Colleges & Universities, United States Department of Education, 400 Maryland Avenue, SW., Washington, DC from 9 a.m. to 5:30 p.m.

Dated: October 18, 2002.

Betty Thompson,

White House Initiative on Tribal Colleges and Universities.

[FR Doc. 02–26969 Filed 10–21–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC02–600–001, FERC–600]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review 2002

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of the current expiration date. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of July 1, 2002 (67 FR 44186–87) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by November 18, 2002.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer, 725 17th Street, NW, Washington, DC 20503. The Desk Officer may be reached by telephone at (202) 395–7856. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Chief Information Officer, CI–1, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426 and should refer to Docket No. IC02–510–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each

screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at (202) 208–0258 or by e-mail to *efiling@ferc.fed.us*. Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's Home page using the FERRIS link. User assistance for FERRIS is available at (202) 502–8222, or by e-mail to *contentmaster@ferc.fed.us*.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)502–8415, by fax at (202)208–2425, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collected submitted for OMB review contains:*1. Collection of Information:* FERC–600 "Rules of Practice and Procedure: Complaint Procedures".*2. Sponsor:* Federal Energy Regulatory Commission.*3. Control No.:* 1902–0180.

The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is an adjustment only to the reporting burden. The information filed with the Commission is voluntary but submitted with prescribed information. Requests for confidential treatment of the information are provided for under Section 388.112 of the Commission's regulations.*4. Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of the Federal Power Act (FPA.), 16 U.S.C. 791a–825r; the Natural Gas Act (NGA), 15 U.S.C. 717–717w; the Natural Gas Policy Act(NGPA); 15 U.S.C. 3301–3432; the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 2601–2645; the Interstate Commerce Act, 49 U.S.C. App. § 1 *et seq.* and the Outer Continental Shelf Lands Act, 43 U.S.C. 1301–1356.9.

In Order No. 602, 64 FR 17087 (April 8, 1999), the Commission revised its regulations governing complaints filed with the Commission under the above statutes. Order No. 602 was designed to encourage and support consensual resolution of complaints, and to organize the complaint procedures so that all complaints are handled in a timely and fair manner. In order to achieve the latter, the Commission revised Rule 206 of its Rules of Practice and Procedure (18 CFR 385.206) to require that a complaint satisfy certain informational requirements, that answers be filed in a shorter, 20-day time frame, and that parties may employ various types of alternative dispute resolution procedures to resolve complaints.

With respect to public utilities, Section 205(e) of the FPA provides: Whenever any such new schedule is filed, the Commission shall have the authority, either upon complaint or upon its own initiative without complaint at once, and, if it so orders, without answer or formal pleading by the public utility, but upon reasonable notice to enter upon hearing concerning the lawfulness of such rate, charge, classification, or service; and pending such hearing and the decision of the Commission * * *

For the natural gas industry, Section 14(a) of the NGA provides: The Commission may permit any person to file with it a statement in writing, under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of an investigation.

Concerning hydroelectric projects, Section 19 of the FPA provides: * * * it is agreed as a condition of such license that jurisdiction is hereby conferred upon the Commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control * * *

For qualifying facilities, Section 210(h)(2)(B) of PURPA provides: Any electric utility, qualifying cogenerator, or qualifying small power producer may petition the Commission to enforce the requirements of subsection (f) as provided in subparagraph (A) of this paragraph.

Likewise for oil pipelines, Part 1 of the Interstate Commerce Act (ICA), Sections 1, 6 and 15 (recodified by P.L. 95–473 and found as an appendix to Title 49 U.S.C.) authorize the Commission to investigate the rates charged by oil pipeline companies subject to its jurisdiction. If a proposed oil rate has been filed and allowed by the Commission to go into effect without suspension and hearing, the Commission can investigate the effective rate on its own motion or by complaint filed with the Commission. Section 13 of the ICA provides that: Any person, firm, corporation, company or association, or any mercantile, agricultural, or manufacturing society or other organization, or any common carrier complaining of anything done or omitted to be done by any common carrier subject to the provisions of this chapter in contravention of the provisions thereof, may apply to the Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission * * *

The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Sections 385.206 and 385.213.*5. Respondent Description:* The respondent universe currently comprises 8 companies (on average) subject to the Commission's jurisdiction.*6. Estimated Burden:* 1,064 total hours, 76 respondents(average), 1 response per respondent, 14 hours per response (average).*7. Estimated Cost Burden to respondents:* 1,064 hours / 2080 hours per years x $117,041 per year = $59,870. The cost per respondent is equal to $787.00.

Statutory Authority: Sections 19 and 205(e) of the Federal Power Act, 16 U.S.C. 797(e), 799; Section 14(a) of the Natural Gas Act; Section 210(h)(2)(B) of the Public Utility Regulatory Policies Act; Part 1 of the Interstate Commerce Act (recodified by Pub. L. 95–473 and found as an appendix to Title 49 U.S.C. and 43 U.S.C. 1301–1356.9.

Magalie R. Salas,

Secretary.

[FR Doc. 02–26805 Filed 10–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–250–000, ER02–527–000 and ER02–479–000]

California Independent System Operator Corporation and Pacific Gas and Electric Company; Notice of Filings

October 15, 2002.

Take notice that on October 11, 2002, the California Independent System Operator Corporation (ISO) tendered for filing a Joint Motion to Adjust Interim Settlement Rates and a Request to Shorten the Time Period for Answers to the motion.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: October 25, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–26804 Filed 10–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–439–003]

Columbia Gas Transmission Corporation; Notice of Petition To Amend

October 15, 2002.

Take notice that on October 4, 2002, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP01–439–003, a petition to amend the order issued May 17, 2002, in Docket No. CP01–439–000. In Docket No. CP01–439–003 Columbia requests a certificate of public convenience and necessity pursuant to section (c) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations authorizing the construction and operation of certain pipeline, compression and appurtenant facilities in New Jersey and Pennsylvania. Details of this request are more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202)502–8659.

In Docket No. CP01–439–003, the Delaware Valley Energy Expansion Project (DVEEP), Columbia proposes to serve Mantua Creek Generating Company, L.P. (Mantua Creek), which is constructing an electric generating facility in Gloucester County, New Jersey.[1] Columbia proposes to construct and operate 7.5 miles of 20-inch pipeline looping in Gloucester County, New Jersey, and 2.1 miles of 20-inch lateral pipeline in Gloucester County (to be designated Line 10359), two 6,000 horsepower compressor units at the existing Eagle Compressor Station in Delaware County, Pennsylvania, and a new measuring and regulating station and associated appurtenances at the Mantua Creek Power Plant in Gloucester County.

Columbia proposes to provide firm mainline transportation service to Mantua Creek under its Rate Schedule FTS for a contract term of 20 years and 2 months, commencing April 1, 2005, delivering 135,000 Dth per day (phased in with a contract demand of 55,000 Dth per day beginning April 1, 2005, increasing to 110,000 Dth per day on May 1, 2005, and 135,000 Dth per day on June 1, 2005) and transportation on the lateral line under Columbia's FTS-LAT rate schedule for a contract term of 20 years and 8 months, commencing October 1, 2004. Columbia notes that the FTS-LAT rate schedule was approved by the Commission in Docket No. CP01–260–000 and reaffirmed in Docket No. CP01–439–000.

Columbia estimates the total cost of facilities proposed herein at $32,359,700.

Columbia requests that an order be issued by January 31, 2003, so that work may commence in the early spring of 2003.

Any questions regarding this application should be directed to Fredric J. George, Senior Attorney, at (304) 357–2359, Columbia Gas Transmission Company, PO Box 1273, Charleston, West Virginia 25325–1273.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November 5, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. Comments and protests may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the

[1] In Docket No. CP01–439–000, Columbia proposed to construct facilities for the same service for Mantua Creek and was authorized to do so, but has since made changes, because of changing needs and customer circumstances, as discussed in a public meeting at the Commission held September 4, 2002.

applicant, on other pipelines in the area, and ion landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important to file comments or to intervene as early in the process as possible.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–26801 Filed 10–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–4–001]

Florida Gas Transmission Company; Notice of Compliance Filing

October 15, 2002.

Take notice that on September 23, 2002, Florida Gas Transmission Company (FGT), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff) Original Sheet No. 8B.02 to become effective October 23, 2002.

FGT states that on October 12, 1999, in Docket No. CP00–4–000, FGT filed for permission and approval for facilities to provide service to the Alabama Electric Cooperative (AEC) for a planned electric generation plant in Escambia Count, Alabama. As discussed in the October 12, 1999 filing, transportation service for AEC was to be provided pursuant to a negotiated rate agreement under FGT's Rate Schedule FTS–WD. FGT included a pro forma tariff sheet in the October 12, 1999 filing identifying the AEC agreement as a negotiated rate and FGT stated that upon approval of the requested authorizations, FGT would file a paginated numbered tariff sheet. On March 27, 2000, the Commission issued an order granting the requested authorizations, subject to conditions, to construct facilities to provide service to AEC. Construction of these facilities was completed, and service commenced to AEC on December 1, 2001. FGT states it inadvertently failed to file the paginated numbered tariff sheet as it stated it would in the October 12, 1999 filing. FGT states in the instant filing, it is filing Original Sheet No. 8B.02 to correct this oversight.

FGT states that copies of this instant filing were mailed to all customers served under the rate schedules affected by this filing and the interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with the Commission's rules and regulations and Order No. 587 *et seq.* All such motions or protests should be filed in on or before October 18, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–26800 Filed 10–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–504–001]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

October 15, 2002.

Take notice that on October 7, 2002, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets in compliance with the Commission's September 20, 2002 letter order:

Substitute Original Sheet No. 10B
Original Sheet No. 10B.01
Substitute Second Revised Sheet No. 66A
Substitute Fourth Revised Sheet No. 67

Iroquois states that these tariff sheets are being filed to replace sheets accepted to become effective on September 20, 2002, therefore the proposed tariff sheets also reflect an effective date of September 20, 2002.

In its initial August 20, 2002 filing in Docket No. RP02–504, Iroquois proposed modifications to its tariff to permit it to reserve existing firm transportation capacity for future projects and to clarify and modify the provisions of its tariff concerning its customers' ability to make changes to their receipt and delivery points. The Commission's Order accepted Iroquois' tariff sheets, but required Iroquois to modify certain aspects of its proposal to conform to recent Commission policy regarding capacity reservation and delivery point changes. The substitute tariff sheets submitted with Iroquois' filing make those required changes.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–26807 Filed 10–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–5–000]

National Fuel Gas Supply Corporation; Notice of Application

October 15, 2002.

On October 7, 2002, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed an application in Docket No. CP03–5–000, pursuant to section 7(b) of the Natural Gas Act (NGA), and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon, by sale to Seneca Resources Corporation (Seneca), a portion of Line C along with appurtenances. Seneca is a production affiliate of National Fuel. National Fuel also requests a declaration that these facilities will be exempt gathering facilities following their abandonment, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659.

National Fuel states that it proposes to abandon by sale to its affiliate, Seneca, approximately 17.4 miles of its Line C and applicable rights-of-way, easements, permits, and other property interests related thereto, located in Elk and McKean Counties, Pennsylvania. National Fuel has indicated that following the conveyance, Seneca plans to use these sections of Line C as low pressure, high-BTU backbone lines for locally produced gas. National Fuel further states that the abandonment of Line C will have no effect on existing services. National Fuel states that the line will perform a gathering function for Seneca and requests that the Commission determine that the line will be exempt from the Commission's jurisdiction following the sale and transfer to Seneca.

Any questions regarding this application may be directed to David W. Reitz, Assistant General Counsel for National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, New York 14203 at (716) 857–7949 or fax (716) 857–7688.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November 5, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and instructions on Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–26802 Filed 10–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–11–000]

Wisvest-Connecticut, LLC, Complainant, v. ISO New England, Inc., Respondent; Notice of Complaint and Request for Fast Track Processing

October 15, 2002.

Take notice that on October 11, 2002, Wisvest-Connecticut, LLC (Wisvest) filed a Complaint and Request For Fast Track Processing against ISO New England, Inc. (ISO–NE) requesting that the Federal Energy Regulatory Commission (1) Clarify its orders concerning notification to ISO–NE of internal contracts to supply installed capacity (ICAP), (2) direct ISO–NE to credit ICAP to Bridgeport Energy, LLC (Bridgeport Energy) consistent with the terms of Wisvest's pre-existing contract with Bridgeport Energy, and (3) order the payment of refunds, as appropriate.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before October 21, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 02–26803 Filed 10–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

October 15, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection: *a. Type of Application:* Preliminary Permit. *b. Project No.:* 12318–000. *c. Date filed:* August 2, 2002. *d. Applicant:* Edgewater, LLC. *e. Name of Project:* Ball Band Hydro Works Project. *f. Location:* At an existing dam owned by Edgewater, LLC on the St. Joseph River in St. Joseph County, Indiana. The proposed project does not utilize federal or tribal lands. *g. Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r). *h. Applicant Contact:* Charles S. Hayes, Edgewater, LLC., 814 Marietta Street, South Bend, Indiana 46601, (574) 233–1296. *i. FERC Contact:* Regina Saizan, (202) 502–8765. *j. Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12318–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: *The proposed project would consist of:* (1) An existing dam, 12-foot-high, 320-foot-long, (2) a proposed powerhouse containing four turbine generators having a total installed capacity of 1 MW, (3) a proposed 50-foot-long, 5 kV transmission line, and (4) appurtenant facilities. The project would have an annual generation of 6.57 GWh.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–26806 Filed 10–21–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0263; FRL–7275–7]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0263, must be received on or before November 21, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Robyn Rose, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9581; e-mail address: rose.robyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

Industry (NACIS 111, 112, 311, 32532), e.g., crop production, animal production, food manufacturing, pesticide manufacturing.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2002–0263. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk

or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

2. *EPA Dockets—i.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0263. The system is an, "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0263. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0263.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0263. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated:October 7, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

PP 2F06453

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Taensa, Inc. and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

EPA has received a pesticide petition 2F06453 from Taensa, Inc., 26 Sherman Ct, P.O. Box 764, Fairfield, CT 06430, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the microbial pesticide *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24. Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Taensa, Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Taensa, Inc. EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

TAEGRO™ is currently registered with EPA for use on ornamentals in greenhouses and indoors (EPA Registration Number 72098–5). TAEGRO™ Technical (EPA Registration Number 72098–6) is also registered with EPA. Registration of TAEGRO™ is being proposed for the following sites (including those previously registered): Herbs and spices; ornamentals; shrubs, shade and forest trees; tree, vine, bush and other crops; turf; and vegetables.

Methods of application of TAEGRO™ will include seed treatment, incorporation into growth substrate as a dry powder or as an aqueous suspension, drenching, spraying, dipping (roots or cuttings), spraying, chemigation, and hydroponic use. As a plant strengthening agent, TAEGRO™ increases yield of many crops, improves flowering and plant quality, stimulates resistance of plants to disease, plant disease suppressant and can be used with fungicides. Directions for use of TAEGRO™ are as follows:

Apply TAEGRO™ as early as possible in the life cycle of the plant to enhance growth and disease resistance. TAEGRO™ should be applied to plants every few weeks for up to three to four applications as needed. For best results, apply TAEGRO™ to seedlings or to newly rooted cuttings.

1. *Transplants, including plugs.* TAEGRO™ may be applied to transplants by dipping or by drenching, making sure the root system is thoroughly soaked. For dipping, follow the instructions for "Cutting and Root Dips" before planting transplants into soil medium. For drenching, first plant the transplants into soil medium and then follow instructions for "Drenching."

2. *Drenching.* Apply TAEGRO™ to seedlings or to newly rooted cuttings. Drench plants with the TAEGRO™ suspension making sure the root system is thoroughly soaked. Allowing TAEGRO™ to work into the root zone.

Apply TAEGRO™ as follows:

- Per 100 gallons of water - by weight use 75 grams or 2.6 ounces; by volume use 3.5 fluid ounces of TAEGRO™.
- Per 1 gallon of water 5 grams - by weight use 0.75 gram; by volume use 0.2 teaspoon of TAEGRO™.

3. *Cutting and root dips.* Stir suspension for several minutes to ensure complete mixture and to eliminate clumps. Place rootstock in the suspension for 5 to 10 minutes allowing time for TAEGRO™ to penetrate the root zone. Ornamentals should receive at least one follow-up drench treatment 2 to 3 weeks following initial treatment.

Apply TAEGRO™ as follows:

- Per 10 gallons of water - by weight, use 40 grams; by volume, 1.8 fluid ounces of TAEGRO™.
- Per 1 gallon of water - by weight, use 4 grams; by volume, use 1 teaspoon of TAEGRO™.
- Per 1 Liter of water - by weight, use 1 gram of TAEGRO™.

4. *Turf.* As an overhead spray, mix 75 grams of TAEGRO™ in 100 gallons of water. Before applying, stir product for several minutes to ensure complete suspension. Apply solution with a conventional sprayer using at least 50 gallons of water per acre. Water-in TAEGRO™ immediately after application with a minimum of 1/10 inch of water. For best results, make two or three applications spaced 1 week apart.

5. *Row crops.* Mix 75 grams of TAEGRO™ in 100 gallons of water. Before applying, stir product for several minutes to ensure complete suspension. At time of (or just following) planting, apply as a spray over furrow. Water-in TAEGRO™ immediately after application with a minimum of 1/10 inch of water. For best results, make two or three applications spaced 1 week apart.

6. *Hydroponics.* Prepare a stock solution by adding 1 gram of TAEGRO™, for every 50 feet of irrigation tubing, in 1 gallon of water. Stir product for several minutes to ensure complete suspension. Add solution to circulating water system and allow to go through three to five watering cycles before clearing the system. For best results, make two or three applications spaced 1 week apart.

7. *Seed treatments.* Prior to planting, mix 4 grams of TAEGRO™ in 1 liter of water (or 3 teaspoons per gallon of water). Stir solution for several minutes to ensure complete suspension. Pour seeds into solution and allow to soak for 10 to 30 minutes. For very small seeds, soaking seedlings in plug trays after germination might be easier.

8. *Tubers, bulbs and corms.* Mix 4 grams of TAEGRO™ in 1 liter of water (or 3 teaspoons per gallon of water). Stir solution for several minutes to ensure complete suspension. Dip tubers (or bulbs, etc.) for 10 to 30 minutes before planting. For best results, make two or three applications spaced 1 week apart.

9. *Soil incorporation.* Mix TAEGRO™ into soil or soilless growing media at a rate of 250 grams per cubic yard. Thoroughly mix media, using mechanical mixing equipment, to ensure a uniform distribution of product. Incorporated into soil, TAEGRO™ can be raked into growing beds prior to planting.

10. *Mushrooms.* Mix TAEGRO™ into spawn medium at a rate of 10 grams per cubic foot. Thoroughly mix, using mechanical mixing equipment, to ensure a uniform distribution of product.

11. *Interiorscapes.* Before application, thoroughly moisten root zone with water. Mix 1 gram of TAEGRO™ per 1 liter of water (or 3/4 teaspoon per gallon of water). Stir solution for several minutes to ensure complete suspension. Drench solution onto root zone to ensure coverage to all roots. TAEGRO™ performs best when applied to seedlings or young plants. For best results, make two or three applications spaced 1 week apart.

12. *Orchids and ferns.* For potted orchids and ferns, follow directions for drenching. For orchids and ferns with exposed roots, prepare 4 grams of TAEGRO™ in 1 liter of water (or 3 teaspoons per gallon of water). Pour solution into spray container (or squirt bottle) and spray roots to point of drip. TAEGRO™ performs best when applied to seedlings or young plants. For best results, make two or three applications spaced 1 week apart.

B. Product Identity/Chemistry

1. *Identity of pesticide and corresponding residues.* The active ingredient in TAEGRO™ is *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24. The mechanism by which *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 acts as a plant strengthening agent, increases yield of many crops, improves flowering and plant quality, stimulates resistance of plants to disease, plant disease suppressant appears to be primarily via secondary exudates. Suppression of plant disease by *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 may also be competitive. *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 is not known to produce toxins or antibiotics. Further, *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 is a naturally occurring microorganism. *Bacillus subtilis* var. *amyloliquefaciens* is widespread in the environment and occurs in most arable soils of the world.

2. *Magnitude of residue anticipated at the time of harvest and method used to determine the residue.* No residues of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 are anticipated in treated crops at harvest. Subdivision M - Series 153A-3(a) indicates that "if Tier I toxicology tests indicate no toxic or other harmful properties, then no residue data would be indicated." Studies with *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 demonstrated low mammalian toxicity. No pathogenicity or infectivity was observed in any of the tests conducted with *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24. Further, *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 is a naturally occurring microorganism. *Bacillus subtilis* var. *amyloliquefaciens* is widespread in the environment.

3. *Statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* Subdivision M - Series 153A-3(a) indicates that " if Tier I toxicology tests indicate no toxic or other harmful properties, then no residue data would be indicated and thus a recommendation for an exemption from the requirement of a tolerance can be made." Studies with *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 demonstrated low mammalian toxicity. No pathogenicity or infectivity was observed in any of the tests conducted with *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24. Further, *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 is a naturally occurring microorganism. *Bacillus subtilis* var. *amyloliquefaciens* is widespread in the environment.

C. Mammalian Toxicological Profile

Taensa, Inc. conducted the required toxicology studies to support its petition for an exemption from the requirement of tolerance and associated registrations of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24. The studies conducted indicate a low mammalian toxicity for *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24. No pathogenicity or infectivity was observed in any of the tests conducted with *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24. With the exception of an inhalation study for the end-use product (TAEGRO™), which is being submitted in support of this application, all toxicology data generated by Taensa have been reviewed by EPA's Biopesticides and Pollution Prevention Division (BPPD).

Toxicology data in support of the exemption from the requirement of a tolerance for *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 included studies with spores (technical) and with the formulated product (water dispersible powder) as follows:

1. Acute toxicity and/or pathogenicity—a. *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 Spores (Technical):

- Acute oral toxicity/pathogenicity in rats - "does not appear to be toxic and/or pathogenic when dosed at 1.3 x 10^8 cfu." BPPD Review December 20, 1999.
- Acute dermal toxicity/pathogenicity in rabbits - "The severity of irritation persisted 72 h, and slight irritation persisted for 10 d, and all resolved by day 11. No deaths observed. The acute lethal dose (LD_{50}) is greater than 2,000 mg/kg. . .Dermal irritation = Toxicity II; Dermal Toxicity = Toxicity III." BPPD Review December 20, 1999.
- Acute pulmonary toxicity/pathogenicity in rats - "does not appear to be toxic and/or pathogenic in rats, when dosed at 1.3 x 10^8 cfu/animal. No total clearance is seen form the lungs of treated test animals showed a distinct pattern of clearance from kidney, liver, and spleen." BPPD Review December 20, 1999.
- Acute intravenous toxicity/pathogenicity in rats - "does not appear to be toxic and/or pathogenic in rats, when dosed at 1.7 x 10^8 cfu/animal." BPPD Review December 20, 1999.
- Primary eye irritation - "showed no signs of persistent irritation into day 21, when dosed at 4.7 x 10^{10} cfu/right eye/animal." BPPD Review December 20, 1999 - The initial review indicated Toxicity Category I, but was amended to Toxicity Category II (BPPD Review March 7, 2000).
- Hypersensitivity testing - "Based on the submitted data does not appear to be a sensitizer when dosed at 3.6 x 10^{10} cfu." BPPD Review December 20, 1999.
- Hypersensitivity incident reporting - "No recorded or reported hypersensitivity reaction based on handling MCPA in lab control setting, equating to 55 person years." BPPD Review December 20, 1999.
- Potential health effects - "Based on information given, there are no apparent negative effects - cited literature on *B. Subtilis* indicate and/or support the development as a biological control." BPPD Review December 20, 1999.
- Growth parameters - "is shown to grow at all tested temperatures (e.g., 30, 34, 37, and 50 °C). The enumeration shows a low 4.2 x 10^{11} cfu/g at 37 °C to a high 6.0 x 10^{11} cfu/g at 34 °C." BPPD Review December 20, 1999.

b. *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 WDG (formulation):

- Acute oral LD_{50} toxicity in rats - "Toxic/limit dose greater than 2.8 g/kg body weight (6.7 x 10^{10} cfu/kg) Toxicity Category III." BPPD Review December 20, 1999.
- Acute dermal LD_{50} toxicity in rats - "The severity of irritation persisted >72 h, but resolved by day 11. No deaths observed. The acute dose (LD_{50}) is greater than 2,000 mg/kg Dermal irritation = Toxicity Category II; Dermal Toxicity = Toxicity Category III." BPPD Review December 20, 1999.
- Acute inhalation LC_{50} toxicity in rats (formulation) - "an acute inhalation medium lethal concentration (LC_{50}) in male and female rats is greater than 0.93 mg/L Toxicity Category II." IIT Research Institute (Document 2 of this submission)
- Primary eye irritation "no corneal opacity, and no signs of irritation by day 7, when dosed at 3.6 x 10^{10} cfu/right eye/animal Toxicity Category III." BPPD Review December 20, 1999.

c. The inert ingredients contained in the *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 formulation, TAEGRO™ are all minimal risk (List 4).

2. *Genotoxicity.* Subdivision M Guidelines do not require the conduct of genotoxicity studies to support the registration of a microbial pest control agent, such as *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24.

3. *Reproductive and developmental toxicity.* Subdivision M Guidelines do not require the conduct of reproductive and developmental toxicity studies to support the registration of a microbial pest control agent, such as *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24.

4. *Subchronic toxicity.* Subdivision M Guidelines do not require the conduct of subchronic toxicity studies to support the registration of a microbial pest control agent, such as *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24.

5. *Chronic toxicity.* Subdivision M Guidelines do not require the conduct of chronic toxicity studies to support the registration of a microbial pest control agent, such as *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24.

According to Taensa, Inc., sufficient data exist to assess the hazards of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 and to make a determination on aggregate exposure, consistent with section 408(c)(2), for the exemptions from the requirement of a tolerance. The exposures, including dietary exposure, and risks associated with establishing the requested exemption from the requirement of a tolerance follows.

D. Aggregate Exposure

Bacillus subtilis var. *amyloliquefaciens* is naturally occurring and widespread in the environment. The low toxicity and non-pathogenicity/infectivity of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 is demonstrated by the data summarized herein. The product will be applied as a seed treatment and via incorporation, drenching, spraying, dipping, chemigation and hydroponics.

1. *Dietary exposure—a. Food.* It is not anticipated that residues of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 will occur in treated raw agricultural commodities.

b. *Drinking water.* It is not anticipated that residues of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 will occur in drinking water.

2. *Non-dietary exposure.* The potential for non-occupational, non-dietary exposure to the general population is not expected to be significant.

E. Cumulative Exposure

There is no anticipated potential for cumulative effects of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 and other substances that have a common mode of action.

F. Safety Determination

1. *U.S. population. Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 is a naturally occurring microorganism. *Bacillus subtilis* var. *amyloliquefaciens* is widespread in the environment. The low toxicity of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 is demonstrated by the data summarized above. Based on this information, the aggregate exposure to *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 over a lifetime should not pose appreciable risks to human health. There is a reasonable certainty that no harm will result from aggregate exposure to *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 residues. Exempting *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 from the requirement of a tolerance should be considered safe and pose insignificant risk.

2. *Infants and children.* The toxicity and exposure data are sufficiently complete to adequately address the potential for additional sensitivity of infants and children to residues of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24. There is a reasonable certainty that no harm will result to infants and children from aggregate exposure to *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 residues.

G. Effects on the Immune and Endocrine Systems

No specific tests have been conducted with *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 to determine whether it may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. However, it is not likely that *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 would have estrogen or endocrine effects because:

- It is a naturally occurring microorganism. *Bacillus subtilis* is widespread in the environment
- It has demonstrated low mammalian toxicity. No pathogenicity or infectivity was observed in any of the tests conducted with *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24

The mechanism by which *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 controls diseases appears to be via exudates *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 does not produce toxins or antibiotics.

H. Existing Tolerances

No tolerances or exemptions from the requirement of tolerance have been established or applied for domestically or internationally other that subject petition.

I. International Tolerances

No maximum residue levels have been established for *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 by codex Alimentarius Commission.

[FR Doc. 02–26844 Filed 10–21–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7396–9]

Proposed Modification of and Request for Additional Public Comment on the General National Pollutant Discharge Elimination System Permits for Log Transfer Facilities in Alaska: AK–G70–0000 and AK–G70–1000

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed modification of and request for additional public comments on general NPDES permits for log transfer facilities in Alaska.

SUMMARY: The Director, Office of Water, EPA Region 10, provides notice of and requests public comment on proposed modifications of the two general National Pollutant Discharge Elimination System (NPDES) permits for Alaskan log transfer facilities (LTFs), which include log storage areas (LSAs), that were issued on March 7, 2000 (65 FR 11999): NPDES permit no. AK–G70–0000, which modifies Clean Water Act (CWA) section 404 dredge-and-fill permits issued to LTFs by the U.S. Army Corps of Engineers (ACoE) prior to October 22, 1985, by adding CWA section 402 effluent limitations and conditions to those permits, and NPDES permit no. AK–G70–1000, which may cover all other log transfer facilities in Alaska.

The EPA issued two general permits for Alaskan log transfer facilities on March 7, 2000. In response to petitions to review the permits brought by the Natural Resources Defense Council and nine other petitioners, the United States Court of Appeals for the Ninth Circuit, on February 13, 2002, ruled that the EPA did not provide adequate notice of and opportunity to comment on the general NPDES permits AK–G70–0000 and AK–G70–1000 and remanded the permits to the EPA to take further comment on the project area Zone of Deposit (ZOD) authorized by the Alaska Department of Environmental Conservation (ADEC), and subsequently included in the final permits by the EPA. To comply with the Ninth Circuit's order, the EPA is seeking public comment on the authorization of a "project area" zone of deposit for trace, discontinuous, and continuous coverage in the general permits.

The EPA also is proposing to modify these permits. The most significant proposal would add a limit on continuous coverage within the project area zone of deposit, but would retain the project area zone of deposit limit for bark and woody debris for trace, discontinuous, and continuous coverage if less than one acre and less than 10 centimeters in depth. This notice seeks comment on the proposed major modifications. Finally, the notice describes various minor modifications the EPA is making to correct typographical errors.

DATES: Interested persons may submit written comments on the proposed modifications to general NPDES permits AK–G70–0000 and AK–G70–1000 and on the project area zone of deposit on or before December 23, 2002.

ADDRESSES: Comments must be sent to the attention of Alaskan LTF Public Comments, EPA Region 10 (OW–130), 1200 Sixth Avenue, Seattle, WA 98101. All comments should include the name of the commenter, a concise statement

of the comment, and the relevant facts upon which the comment is based.

FOR FURTHER INFORMATION CONTACT: The NPDES Permits Unit, EPA Region 10 Office of Water, Seattle, Washington, at (206) 553–0775.

SUPPLEMENTARY INFORMATION: General NPDES permits AK–G70–0000 and AK–G70–1000 regulate the discharge of woody debris (e.g., bark and branches) at log transfer facilities (LTFs), which include log storage areas (LSAs), along the Southeast Alaskan coast. Woody debris is generated in the transfer of the de-limbed trunks of felled trees from upland storage lots to floating holding areas. The agency developed numerous technical documents in support of the control of pollution associated with the transfer and storage of logs (*e.g.*, USEPA 1973, The Influence of Log Handling on Water Quality; USEPA 1976, Effects of Log Handling and Storage on Water Quality; USEPA 1996, Ocean Discharge Criteria Evaluation of the NPDES General Permit for Log Transfer Facilities). The EPA has relied further upon supporting research from other sources (*e.g.*, Pease 1974, Effects of Log Dumping and Rafting on the Marine Environmental of Southeast Alaska; NMFS 1976, Some Effects of Log Dumping on Estuaries; Conlan and Ellis 1979, Effects of Wood Waste on Sand-bed Benthos; Freese and O'Clair 1984, Response of the Littleneck Clam and the Edible Mussel Exposed to Decomposing Wood Waste from a Log Transfer Facility; USFS 1986, Relationship between Bark Loss and Log Transfer Method; Jackson 1986, Effects of Bark Accumulation on Benthic Infauna at a Log Transfer Facility in Southeast Alaska).

The EPA, together with the State of Alaska, the U.S. Army Corps of Engineers, the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, the U.S. Forest Service, the Alaskan timber industry and representatives of the public, participated in the Governor of Alaska's Alaska Timber Task Force (ATTF) to develop guidelines to control detrimental impacts of LTFs to water quality, aquatic life, and habitat. The ATTF issued the "Log Transfer Facility Siting, Construction, Operations and Monitoring/Reporting Guidelines' (1985 hereafter, "Guidelines"). The ATTF recognized that LTFs impose a much greater physical stress upon the environment than chemical stress and accordingly emphasized protective siting and operational practices, supported by monitoring, to control pollution and impacts to the environment.

The Project Area Zone of Deposit for Bark and Woody Debris

The EPA has tentatively determined that a project area zone of deposit for trace, discontinuous, and continuous coverage of bark and woody debris on the seafloor is appropriate because the Alaska Water Quality Standard (AWQS) for residues is zero. The inclusion of areas of trace and discontinuous bark accumulations in the zone of deposit authorized under the AWQS is consistent with prior zones of deposit issued for LTFs and to the factual reality of how bark is distributed when discharged from LTFs. Depositional patterns of bark from LTFs, coupled with existing information that indicates that environmental harm results from complete coverage, but not trace and discontinuous coverage, supports the State of Alaska Department of Environmental Conservation's Certificates of Reasonable Assurance on the general permits which authorized a project area zone of deposit to limit all potential accumulations of bark and woody debris.

Previous individual LTF permits contained zones of deposit limited to 100% coverage exceeding both one acre in size and a thickness greater than 10 centimeters at any point as a fixed limit. However, trace and discontinuous coverage, although known to occur, was not specifically limited. According to the ADEC, those previous LTF zones of deposit did not recognize and address the reality that the deposits of bark and other woody debris include a continuum from trace amounts to piles. *See* July 29, 1999 ADEC letter, page 2. The ADEC further explained that under the AWQS no accumulation is allowed, thus, "to authorize an acre of continuous coverage while ignoring the thinner deposits that surround it simply does not acknowledge what really occurs." Page 2, ADEC July 29, 1999 letter. Based on existing information, a zone of deposit for trace, discontinuous, and continuous bark and woody debris covering the area of the LTF project is protective of the environment as long as continuous coverage is separately addressed. The ADEC has determined, in the present permit as in past permits, to address the accumulation of continuous bark of 10 cm thickness to one acre, though it has determined that this area is a threshold for remediation in lieu of a limit on the extent of the zone of deposit.

In accordance with the Ninth Circuit's Order, the EPA is seeking comment on this issue.

Proposed Major Modifications to General NPDES Permits AK–G70–0000 and AK–G70–1000

Major modifications are proposed for the general NPDES permits. Table 1 below summarizes the major modifications. The basis for the proposed major modifications are contained in this Notice. Two draft permits containing the proposed modifications are available for public review.

The EPA proposes to make substantive changes in both permits to: (1) Revise the authorization process; (2) set a limit on the area of continuous bark deposit; (3) revise the threshold for revising the Pollution Prevention Plan for controlling bark deposition; and (4) revise the monitoring requirements pertaining to the deposition of bark.

The proposed major modifications to the general NPDES permits for Alaskan LTFs addresses new information received in implementing the general NPDES permits, and contained in the Memorandum, Final Order and Final Decision issued on May 10, 2002, by the Alaska Department of Environmental Conservation in an administrative appeal of the State's Section 401 Certificates of Reasonable Assurance for the general NPDES permits. The Memorandum, Final Order and Final Decision of the ADEC upheld the State Certificates, except as to its application to discharges in impaired waterbodies.

TABLE 1.—PROPOSED MAJOR MODIFICATIONS OF GENERAL NPDES PERMITS FOR ALASKAN LOG TRANSFER FACILITIES

[Pursuant to 40 CFR 122.62(a)]

Issue	Section and page of final NPDES permit No. AK–G70–0000 (3/21/00)	Section and page of final NPDES permit No. AK–G70–1000 (3/21/00)	Substance of modification
Under ADEC Order, permit coverage and authorization to discharge cannot occur without the submittal and acceptance of a Notice of Intent to be Covered (NOI) or Notification and an authorization of a zone of deposit by the ADEC.	I.A (p. 1) and IV.E (p. 8).	I.B (p. 1) and III.E (p. 5) and V.A (p. 9).	Delete language allowing the Director of EPA Region 10 Office of Water to cover a facility without an NOI or Notification and add language that an LTF is not authorized to be covered without both (1) submittal of a complete and accurate NOI; and (2) State approval for coverage and authorization of a zone of deposit in a written decision document; delete language giving the ADEC option to rescind the zone of deposit for a permitted facility.
Under ADEC Order, LTFs located in waterbodies impaired for bark residues cannot be authorized under a general NPDES permit.	I.A (p. 1)	III.C.1 (p. 4)	Delete the qualification "new" for dischargers in waterbodies impaired by bark residues.
In view of the new bark surveys and information, the threshold of 1.0 acre of 100% coverage at a thickness greater than 10 cm at any point must be a limit in order to protect the AWQS.	III.A.3 (p. 3)	IV.A.3 (p. 6)	Include an explicit limit that the continuous coverage of bark at a thickness greater than 10 cm at any point shall not exceed 1.0 acre.
In view of the new bark surveys and information, a reduction in discharges should be addressed in the Pollution Prevention Plan before an LTF reaches or exceeds the ADEC's threshold of 1.0 acre of continuous coverage of bark and woody debris in excess of 10 cm thickness at any point in order to prevent an exceedance of this limit.	III.B.13 (p. 4), VI.F (p. 18) and VII.I (p. 18).	IV.B.1.h (p. 7), VII.F.6 (p. 23), and VII.I (p. 23).	Reduce the threshold for the development and implementation of pollution prevention practices to control bark deposits from 1.0 A to 0.75 A and apply it to both shore-based and off-shore LTFs in AK–70–1000; add this condition to AK–G70–0000.
Monitoring of continuous bark deposition should be conducted to a depth of −100 ft, the maximum depth of 'SCUBA diving without an on-site decompression chamber' under OSHA, to support the protection of the AWQS and to be consistent with statewide SCUBA monitoring.	III.E (p. 5), V.C.1 (p. 11), V.C.3 (p. 11), and V.C.5 (p. 12).	IV.E (p. 9), V.D.7 (p. 13), VI.C.1 (p. 16) VI.C.3 (p. 16) and VI.C.5 (p. 17).	Modify the maximum depth for the monitoring of continuous bark deposits from −60 ft mean lower low water to −100 ft, without reference to mean lower low water.

Since the general NPDES permits were issued in 2000, the EPA has compiled the information obtained from LTFs applying for coverage under the general NPDES permits to obtain a better understanding of the industry. The EPA has learned that 56% of the facilities seeking coverage under the general permits have less than 0.25 acre of continuous bark coverage (*i.e.*, 100% bark coverage greater than 10 cm at any point), 33% have 0.25 to 1.0 acre of continuous coverage, and 11% have more than one acre of continuous coverage. Thus, nine out of ten LTFs applying for coverage under the two general NPDES permits have less than 1.0 acre of continuous bark accumulation. In addition, 71% of the applicant LTFs have less than one acre of discontinuous bark coverage (*i.e.*, 10% to 99% bark coverage), 16% have 1.0 to 2.0 acres of discontinuous coverage, and 12% have more than two acres of discontinuous bark coverage of the seafloor. Again, then roughly nine out of ten LTFs applying for coverage have less than 2.0 acres of discontinuous coverage. The EPA also has obtained information on the patterns, variations, and causes of bark deposition in time and space. Based on analysis of this information, indications are that eight LTFs have continuous coverage of more than one acre, thus, likely will require individual permits with site-specific assessments in order to receive an NPDES authorization to discharge.

The first proposed change in the general NPDES permits relates to the State's Final Decision. The ADEC has established a process for analyzing applicability of the antidegradation and zone of deposit provisions for LTFs that seek authorization under the general permits. That process was upheld in the Final Decision. EPA is proposing to modify the general permits to delete the provision that the Director of the EPA may cover an LTF even if the discharger has not submitted an NOI or Notification. These deletions occur at permit sections I.A (p. 1) and IV.E (p. 8) of AK–G70–0000 and sections I.B (p. 1), III.E (p. 5) and V.A (p. 9) of AK–G70–1000, as indicated in Table 1 (above).

The second proposed change is also necessary to implement the ruling in the State Final Decision. The Final Decision held that a general permit cannot be used to authorize discharges in a waterbody listed as impaired under CWA section 303(d), 33 U.S.C. 1313(d). Under AK–G70–1000, "new" dischargers could not be authorized to discharge into waterbodies listed as impaired under either section 303(d) or section 305(b). Under today's proposal, no dischargers, whether new or existing, could be authorized to discharge into waterbodies listed as impaired for residues under either section 303(d) or section 305(b). The deletion of the term "new" occurs at permit section III.C.1 (p. 4) of AK–G70–1000, as indicated in Table 1 (above). General permit AK–G70–0000 does not include any restriction concerning discharges into impaired waterbodies, but would be modified to specify that no discharge of

pollutants from the facility is authorized under the permit until the ADEC completes its analysis and authorizes the project area zone of deposit. That modification to general permit AK–G70–0000 will occur in section I.A (p. 1).

The third proposed change is based on dive surveys of bark deposition at applicant LTFs. According to these surveys, eight facilities have continuous bark deposits that exceed one acre and four of these LTFs have continuous bark deposits that exceed 2.0 acres. The recent dive surveys indicate that the area of discontinuous bark coverage at these eight LTFs ranges from 0.4 to 10.4 acres and that bark deposits at some LTFs have increased by more than two acres in one year. Under section 301(b)(1)(C) of the Clean Water Act, NPDES permits must include any limitations, standards, or other permit conditions necessary to comply with or implement water quality standards. 33 U.S.C. 1311(b)(1)(C) and 40 CFR 122.44(d). The EPA has tentatively determined that a limit on continuous coverage of bark and woody debris on the seafloor within the project area of a LTF is needed to meet water quality standards and prevent unreasonable degradation of the marine environment. The modified general permits, as proposed, include an explicit limit on continuous coverage of the seafloor at section III.A.3 (p. 3) of AK–G70–0000 and section IV.A.3 (p. 6) of AK–G70–1000, as indicated in Table 1: "a permittee *shall not exceed* 1.0 acre of continuous coverage of the seafloor by 100% bark and woody debris with a thickness of 10 cm or greater at any point." A permit limit in the general NPDES permits for continuous coverage will ensure that levels of bark and woody debris accumulating on the seafloor which present the most potential for environmental harm will not occur during the term of the permit. The Guidelines provide that at one acre of continuous coverage regulatory discretion to require cleanup is appropriate. The general NPDES permits include siting criteria and operational practices for log transfer facilities that reduce the discharge of bark and wood debris from LTFs. The EPA's information indicates that, for a majority of the operating LTFs, these conditions and practices successfully limit accumulations of bark and woody debris to under one acre of continuous coverage and less than 10 centimeters in depth. Moreover, previous individual LTF permits limited continuous coverage to one acre and 10 centimeters in depth, thus, it may be backsliding to eliminate that limit as to those facilities.

Under the current permits, the permittee is required to develop and implement additional practices through revisions to its Pollution Prevention Plan if its continuous coverage reaches one acre in size. The fourth change the EPA is proposing would lower the threshold for the need of a permittee to revise its Pollution Prevention Plan from one acre to .075 of an acre, thus, before a permittee reaches the permit limit of one acre of continuous coverage. This proposed modification has the same basis as the third proposed modification discussed above. The reduction of the threshold from 1.0 acre to 0.75 acre occurs at permit sections III.B.13 (p. 4), VI.F (p. 18) and VI.I (p. 18) of AK–G70–0000 and sections IV.B.1.h (p. 7), VII.F.6 (p. 23) and VII.I (p. 23) of AK–G70–1000, as indicated in Table 1 (above).

The fifth change in the permits would modify the monitoring requirements based on the bark surveys indicating that continuous bark deposition has been observed at depths of −60 ft MLLW at a number of facilities and undoubtedly extends into deeper water. The EPA has tentatively determined that a more accurate assessment of bark deposition at LTFs, specifically the continuous coverage, requires that the monitoring of bark deposits extend out to −100 feet in depth. The 100 foot depth is the limit for commercial scuba diving without an on-site compressor that has been set by the U.S. Occupational Safety and Health Administration. The AWQS criteria of "no residues on the bottom" applies to any depth of water in the State of Alaska. Given the standard and given the proposed limit of one acre of continuous coverage, the EPA is proposing to require that the maximum depth for bark monitoring for continuous coverage of bark be −100 feet, rather than −60 feet. The permit modifications occur at sections III.E (p. 5), V.C.1 (p. 11), V.C.3 (p. 11) and V.C.5 (p. 12) of AK–G70–0000 and sections IV.E (p. 9), V.D.7 (p. 13), VI.C.1 (p. 16), VI.C.3 (p. 16) and VI.C.5 (p. 17) of AK–G70–1000, as indicated in Table 1 (above).

In accordance with 40 CFR 122.62, EPA is seeking comment on the proposed modifications discussed above. Only the conditions to be modified are being reopened by the draft permits, and public comment is only being sought on the proposed modifications. *See* 40 CFR 124.5.

Proposed Minor Modifications to General NPDES Permits AK–G70–0000 and AK–G70–1000

The following minor modifications will be made to the general permits. In accordance with 40 CFR 122.63(a), no comment is being requested on these modifications.

TABLE 2.—MINOR MODIFICATIONS OF GENERAL NPDES PERMITS FOR ALASKAN LOG TRANSFER FACILITIES

(Pursuant to 40 CFR 122.63(a)—Typographical Errors)

Issue	Section and page of final NPDES permit No. AK–G70–0000 (3/21/00)	Section and page of final NPDES permit No. AK–G70–1000 (3/21/00)	Substance of Modification
No provision is made for written federal permission to operate and discharge in national wilderness areas and monuments.	Not applicable	III.A.5 (p. 3)	Provide for the "written permission from the appropriate official of the management agency" to discharge in a national wilderness area and monument.
The spelling of "affect" is incorrect	Not applicable	III.A.8 (p. 3)	Correct typographical error such that "affect" is spelled correctly.
Request for a waiver to discharge in an excluded area is limited to the areas not meeting the Alaska Timber Task Force Guidelines and does not apply to either "Protected Water Resources and Special Habitats" or "Impaired Waterbodies".	Not applicable	III.D (p. 5)	Clarify that the opportunity to request a waiver of the exclusion from discharge is limited to the category "Areas not Meeting the Alaska Timber Task Force Guidelines" by changing the caption of the section appropriately.

TABLE 2.—MINOR MODIFICATIONS OF GENERAL NPDES PERMITS FOR ALASKAN LOG TRANSFER FACILITIES—Continued

(Pursuarit to 40 CFR 122.63(a)—Typographical Errors)

Issue	Section and page of final NPDES permit No. AK–G70–0000 (3/21/00)	Section and page of final NPDES permit No. AK–G70–1000 (3/21/00)	Substance of Modification
The acronym "ZOD" is without reference to ADEC's Zone of Deposit.	Not applicable	III.E (p. 5)	Make an editorial addition of the "Zone of Deposit" in conjunction with the use of the acronym "ZOD".
Enumeration of the section addressing the contents of Bark Monitoring and Reporting is incorrect.	V.C.6 (p. 14)	Not applicable	Correct typographical error such that "(ii" becomes "h").
The 50 and 100 ft transect increments are not consistent with the ADEC certification.	V.C.5 (p. 12)	VI.C.5 (p. 18)	Modify the distance between bark monitoring stations along a transect from 50 and 100 ft intervals to 15 ft intervals.
Necessity of providing information on ACoE's Section 404 permit within a Notice of Intent to be Covered under a general NPDES permit (NOI) is unclear.	Not applicable	V.D.4 (p.11)	Make the provision of information pertaining to the ACoE permit name, number and date of issuance mandatory for the NOI by deleting the term "if applicable".
Enumeration of the section addressing the contents of the Pollution Prevention Plan is incorrect.	VI.F (p. 17)	VII.F (p. 23)	Correct typographical error such that number 1 of 1 is removed and letters "a" though [a=f] become "1 through 6".
Enumeration of the section addressing the Effectiveness of the Pollution Prevention Plan is incorrect.	VII.I (2nd occurrence) (p. 19).	Not applicable	Correct typographical error such that "VII.I" becomes "VII.J".
"Continuous" and "discontinuous" throughout both permits are misspelled.	Throughout permit	Throughout permit	Correct typographical error such that "...tinous" becomes "...tinuous.

Administrative Record: The two draft general NPDES permit nos. AK–G70–0000 and AK–G70–1000, and this **Federal Register** Notice are available for inspection and copying at six locations: (a) EPA–Juneau, 709 West 9th Street, Room 223A; (b) ADEC–Juneau, 410 Willoughby Avenue, Suite 200; (c) EPA–Anchorage, 222 West 7th Avenue, Room 19; (d) ADEC–Anchorage, 555 Cordova Street; (e) ADEC–Ketchikan, 540 Water Street; and (f) EPA–Seattle, 1200 Sixth Avenue, 10th floor library. These documents are also available on EPA Region 10's Internet site at *http://www.epa.gov/r10earth/*. The administrative record for the proposed modifications reflected in the draft general NPDES permits AK–G70–0000 and AK–G70–1000 and the project area zone of deposit can be reviewed in EPA's Seattle Office, 1200 Sixth Avenue, 13th Floor.

Dated: October 11, 2002.

Randall F. Smith,

Director, Office of Water, Region 10.

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OFFICE OF NATIONAL DRUG CONTROL POLICY

Final Information Quality Guidelines and Discussion of Comments

AGENCY: Office of National Drug Control Policy.

ACTION: Publication of final Information Quality Guidelines and discussion of comments.

SUMMARY: The Office of National Drug Control Policy (ONDCP) is publishing its final Information Quality Guidelines. These Information Quality Guidelines describe ONDCP's predissemination information quality control and an administrative mechanism for requests for correction of information publicly disseminated by ONDCP. The Information Quality Guidelines are also posted on ONDCP's Web site: *http://www.whitehousedrugpolicy.gov.*

DATES: ONDCP's predissemination review applies to information first disseminated by ONDCP on or after October 1, 2002. ONDCP's administrative mechanism for correcting information that ONDCP disseminates applies to information that ONDCP disseminates on or after October 1, 2002, regardless of when ONDCP first disseminated the information.

FOR FURTHER INFORMATION CONTACT: Dr. Terry S. Zobeck of the Office of Planning and Budget, Office of National Drug Control Policy (ONDCP), Washington, DC 20503. Telephone (202) 395–6700 or e-mail to: *ondcp.info.guide@ncjrs.org.*

SUPPLEMENTARY INFORMATION: The Office of National Drug Control Policy publishes these final guidelines in accordance with the Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies ("Government-wide Guidelines") published in interim final form by OMB in the **Federal Register** in Volume 66, No. 189 at 49718 on Friday, September 28, 2001, and in final form in Volume 2, No. 67 at 8452 on February 22, 2002. These published guidelines were issued pursuant to section 515 of the Treasury and General Government Appropriations Act for FY2001 (Pub. L. 106–554; HR 5658).

ONDCP published a notice of availability for proposed information quality guidelines in the **Federal Register** on June 6, 2002 (67 FR 38959). ONDCP amended its proposed guidelines to reflect guidance provided to all the agencies in a Memorandum from John D. Graham for the President's Management Council, "Agency Draft Information Quality Guidelines" (June 10, 2002) ("June 10 Memorandum") and a Memorandum from John D. Graham to the President's Management Council, "Agency Final Information Quality Guidelines" (September 5, 2002) ("September 5 Memorandum"). These memoranda are available on OMB's Web site: *http://www.whitehouse.gov/omb/inforeg/infopoltech.html.* ONDCP also received public comments from two non-governmental organizations, Citizens for Sensible Safeguards and the Center for Regulatory Effectiveness which were helpful in clarifying ONDCP's guidelines. A summary of significant amendments to the proposed guidelines follow, in order of the text, followed by ONDCP's discussion of

specific comments received and ONDCP's final Information Quality Guidelines.

Summary of Significant Amendments

In the introductory paragraph to these guidelines, ONDCP establishes these guidelines as its performance standard, as called for at page 7 of the June 10 Memorandum.

In a new paragraph I.A.6, ONDCP adds more specific language involving the dissemination of influential scientific, financial, or statistical information. (*See* June 10 Memorandum, page 9; Government-wide Guidelines, paragraph V.b.ii.B).

ONDCP clarified its predissemination review procedures in renumbered paragraph I.A.7.

In a new paragraph I.A.9, ONDCP links its clearance of proposed collections of information under the Paperwork Reduction Act with ongoing implementation of these information quality guidelines (*See* June 10 Memorandum, p. 10).

In paragraph II.1, ONDCP stresses that the person seeking correction of information has the burden of proof with respect to the necessity for correction as well as with respect to the type of correction requested. (*See* June 10 Memorandum, page 11). In addition, ONDCP adds a description of the kinds of information that a person seeking correction of information needs to provide to help meet that burden of proof.

In paragraph II.9, ONDCP points out that if it needs to extend the time it will take to notify the person seeking correction, it will provide a reasoned basis for the extension and an estimated decision date. (*See* September 5 Memorandum, Appendix, topic (3)).

In a new paragraph II.10, ONDCP adds a provision stating that requests for correction of information will be considered, in cases where ONDCP disseminates information for public comment, prior to disseminating the final ONDCP product if (1) an earlier response would not unduly delay dissemination of the ONDCP product; and (2) the requestor had shown a reasonable likelihood of suffering actual harm from the dissemination if the correction were not made until dissemination of the final ONDCP product. (*See* September 5 Memorandum, Appendix, topic (2)).

In paragraph III.3, ONDCP points out that if it needs to extend the time it will take to notify the person seeking reconsideration of an ONDCP response to a request for correction, it will provide a reasoned basis for the extension and an estimated decision date. (*See* September 5 Memorandum, Appendix, topic (3)).

In paragraph IV.2, ONDCP modifies the exemption for a press release to provide that the information in the press release has been previously disseminated by ONDCP or another Federal agency in compliance with the Government-wide Guidelines or the these ONDCP guidelines. (*See* June 10 Memorandum, page 4).

In paragraph IV.4, ONDCP deletes from the exclusion from the definition of "information" the provision referring to statements that may reasonably be expected to become the subject of litigation. (*See* June 10 Memorandum, page 5).

Otherwise, the ONDCP amendments were technical and conforming textual edits, designed to clarify the ONDCP guidelines and conform them to the Government-wide Guidelines.

Discussion of Comments

ONDCP received lengthy comments from two organizations: Citizens for Sensible Safeguards (CSS) and the Center for Regulatory Effectiveness (CRE). The comments are summarized below followed by ONDCP's discussion of each comment.

General Comments

CSS commented that ONDCP's Information Quality Guidelines should not inhibit public access to government information nor interfere with existing rulemaking processes. ONDCP Agrees.

CSS commented that the Data Quality Act does not alter the substantive mandates and primary missions of ONDCP. ONDCP Agrees.

Regarding interpretation and implementation of the Data Quality Act, both CSS and CRE submitted comment. CSS commented that OMB's guidance goes beyond what is statutorily required and that ONDCP should look beyond OMB guidelines to the Data Quality Act itself in determining the scope and components of its guidelines. CRE advocated that OMB does not have discretion to exempt categories of information from implementation of the Data Quality Act. ONDCP's response to both comments is the same: Legislative interpretation is within the discretion of the agency Congress has charged with implementation, in this case, OMB. ONDCP defers to OMB's interpretation and implementation of the Data Quality Act.

CSS commented that ONDCP should consider the benefits of timely dissemination in carrying out its core mission. While this comment exceeds the scope of ONDCP's proposed Information Quality Guidelines, ONDCP does value timely dissemination of information in carrying out its core mission.

CSS commented that ONDCP should retain maximum flexibility in implementing guidelines and err on side of the public's right to know. ONDCP agrees and feels that its final guidelines strike the proper balance between the public's right to know and flexibility in implementation that ONDCP has retained.

CRE commented that ONDCP should adopt data quality as a Performance Goal in its Performance Plan under the Government Performance and Results Act. ONDCP has adopted data quality as a Performance Goal as reflected in the introduction to its final Information Quality Guidelines.

CRE commented that ONDCP's guidelines must comply with OMB's interagency Data Quality guidelines. ONDCP has adopted OMB's guidelines.

Both CSS and CRE commented that ONDCP should be required to correct information disseminations covered by its guidelines. ONDCP agrees as provided in section II paragraphs 6 though 10 of its final guidelines.

CSS commented that ONDCP should include a statement to the effect that its guidelines are not judicially reviewable and do not provide any new adjudicatory authority. ONDCP has included a statement in section IV paragraph 2 of its final guidelines, which states: These guidelines do not impose any additional requirements on agencies during adjudicative proceedings and do not provide parties to such adjudicative proceedings any additional rights of challenge or appeal.

Comments Regarding Information Reliability

CSS commented that ONDCP should further build mechanisms into the data collection process that flag errors before data is submitted to ONDCP. ONDCP's final guidelines do include processes to verify data it receives from other sources in section I part A. Paragraph A.1. states "ONDCP is committed to disseminating reliable and useful information. Before disseminating information, ONDCP staff and officials should subject such draft information to an extensive review process. It is the primary responsibility of the particular ONDCP Office (hereafter collectively referred to as "Lead Component") drafting information intended for dissemination to pursue the most knowledgeable and reliable sources reasonably available to confirm the objectivity and utility of such information." Paragraph A.2. continues "Much of the information ONDCP disseminates consists of or is based on information submitted to ONDCP by other Federal Government Agencies. ONDCP expects that agencies will subject information submitted to ONDCP for purposes of public dissemination to adequate quality control measures. In drafting the material to be disseminated, the Lead Component should review and verify the data submitted by the agencies, as necessary and appropriate. ONDCP also originates information based on research, assessments, and other efforts supporting drug policy development. The Lead Component should review and verify the data, as necessary and appropriate. * * * Each Component that disseminates information should maintain verification files of materials that it originates." Section I.A. concludes, stating: "ONDCP will maximize the quality of information it disseminates, in terms of objectivity and utility, first by looking for input from a range of sources and perspectives, to the extent practicable under the circumstances, and second by subjecting draft materials to a review process involving as many Components and offices as may be in a position to offer constructive input, as well as other offices within the Executive Office of the President and other government agencies."

CRE commented that ONDCP's guidelines should exclude bias from risk assessment. ONDCP does not perform risk assessment. ONDCP has therefore adopted OMB's guidelines defining "objectivity" to mean that information be "unbiased" without reference to elimination of bias in risk assessment.

Both CSS and CRE submitted comments regarding adoption of the science quality and risk assessment standards contained in the Safe Drinking Water Act. CRE advocated that ONDCP's guidelines should adopt the science quality and risk assessment standards contained in the 1996 amendments to the Safe Drinking Water Act, while CSS expressed three cautions regarding the use of peer review in relation to risk assessment consistent with the Safe Drinking Water Act. ONDCP's final guidelines do not address the Safe Drinking Water Act or risk assessment because ONDCP does not perform risk assessment.

CRE commented that ONDCP's guidelines should adopt the requirement contained in OMB's guidelines of robustness checks for data, models, or other information that ONDCP cannot disclose, but which are material to information ONDCP does disclose. ONDCP has adopted OMB's guidelines as reflected in section I, paragraph A. 6 of its final guidelines.

CRE commented that ONDCP's guidelines should generally prohibit the use of third-party proprietary models, unless no other option is available and OMB concurs. When no other option is available, CRE advocates that ONDCP's guidelines should explain in detail what "especially rigorous robustness checks" will be applied to third-party proprietary models and explain how the public will be notified of, and permitted to comment upon, these "robustness checks". Section I paragraph 5 of ONDCP's final guidelines adopt OMB's requirement that influential scientific information be reproducible. Section I paragraph 5 also provides that "In situations where public access to the data will not occur, the Lead Component should apply especially rigorous robustness checks and document what checks were undertaken".

Comments Regarding Coverage of Guidelines

CRE commented that ONDCP's guidelines must apply to information being disseminated on or after October 1, regardless of when the information was first disseminated as explicitly enumerated in OMB's guidelines. ONDCP has adopted OMB's guideline.

CSS commented that ONDCP should detail and expand on the types of information and methods of dissemination that are not covered by its guidelines. ONDCP agrees as reflected in its final guidelines in section IV paragraph 2 defining "Dissemination" and paragraph 4 defining "Information".

CRE commented that ONDCP's guidelines should not exclude rulemaking records. ONDCP's guidelines do not exclude rulemaking records.

Both CSS and CRE commented regarding third party information submitted to ONDCP. CSS commented that ONDCP should clearly state that its guidelines apply only to information disseminated by ONDCP and not when ONDCP is merely acting as a conduit of information. CRE advocated that when ONDCP uses, relies on, or endorses third party information, the agency itself should have the burden of ensuring that the information meets the quality, objectivity, utility, and integrity standards required by its data quality guidelines. ONDCP agrees as reflected in section IV paragraph 2 of its final guidelines: "Dissemination does not include the pass-through of public filings or other information received from third-parties by ONDCP and made available for public review through website posting or other means, without ONDCP's official endorsement of its content. However, these guidelines may apply to third-party information adopted or endorsed by ONDCP, or used to formulate guidance or other ONDCP decision or position".

CRE commented that ONDCP's guidelines should use OMB's definition of "affected persons". ONDCP has adopted OMB's definition in section IV.

Both CSS and CRE commented regarding the definition of "influential". CSS advocated that ONDCP narrowly define "influential information", employing a high threshold for coverage.

CRE advocated that ONDCP should adopt the definition of "influential" contained in OMB's guidelines. ONDCP's final guidelines adopt OMB's definition of "influential" in section IV paragraph 3.

Comments Regarding Requests for Correction

CRE commented that ONDCP's guidelines should set an appropriate, specific timeframe for agency decisions on information correction petitions. ONDCP's final guidelines provide a 60 day timeframe in section II paragraphs 5, 8, and 9.

CRE commented that ONDCP's guidelines should specify a party responsible for acting on information correction petitions. ONDCP's agrees and specifies the Chief of Staff or their designee in section II of its final guidelines.

CSS commented that ONDCP should clearly state that the burden of proof lies squarely with the requester. ONDCP agrees and has explicitly stated that in section II paragraph 1 of its final guidelines.

CRE commented that ONDCP should adopt OMB's guidelines providing that the presumption of objectivity is rebuttable "based on a persuasive showing by a petitioner in a particular instance." ONDCP agrees and has adopted OMB's guidelines as reflected in section II paragraph 1 of its final guidelines providing that the petitioner bears the burden of proof and 1(d) providing that the requester submit all supporting evidence which the petitioner believes provides a persuasive case.

CSS commented that ONDCP should explicitly state that the administrative mechanism will not consider interpretations of data and information, or requests for de-publishing. ONDCP agrees that its guidelines should not allow requests for correction that challenge the interpretation of data and information, or seek de-publishing. However such requests are not within the definitions contained in ONDCP's

final guidelines and therefore do not require an explicit statement excluding them. See section IV paragraph 4 of the final guidelines excluding from the definition of "information": opinions or policy; statements of Administration policy; and testimony or comments of ONDCP officials.

CSS commented that ONDCP should limit complaints under its administrative mechanisms to information that is not already subject to existing data quality programs and measures. ONDCP agrees and has reflected that in section IV paragraph 2.e. of its final guidelines.

CSS commented that ONDCP should state that frivolous or duplicative requests may be rejected. ONDCP agrees and has reflected that in section III paragraph 1 of its final guidelines.

CSS commented that ONDCP should establish a timeliness requirement for requests after which it has the option to reject a request. ONDCP's final guidelines retain ONDCP's discretion to consider the timeliness of requests as part of its review of (a.) the significance of the information involved and (b.) the nature and extent of the request and public benefit of making the requested correction as set out in section II paragraph 7.

CSS commented that ONDCP should limit complaints for any data quality standard that presents a potential moving target (*i.e.* "best available evidence") to information available at the time of dissemination. ONDCP has adopted OMB's guidelines.

Comments Regarding ONDCP Response To Requests for Correction

CSS commented that ONDCP's guidelines should specifically state that responses to correction requests will be proportional to the significance and importance of the information in question. ONDCP agrees as reflected in section II. Paragraph 7 states "When considering covered requests to determine whether a corrective action is appropriate, the reviewing Component may consider the following factors: (a.) The significance of the information involved, and (b.) the nature and extent of the request and the public benefit of making the requested correction. Paragraph 9 states "Subject to applicable law, rules and regulations, corrective measures may be taken through a number of forms, including (but not limited to) personal contacts via letter or telephone, form letters, press releases or postings on the ONDCP website * * * to correct a widely disseminated error or address a frequently raised request. Corrective measures, where appropriate, should be designed to provide reasonable notice to affected persons of such correction."

CSS commented that ONDCP should specify that it will establish a running docket of requests and changes. Consistent with OMB's guidance ONDCP has created a place on its website, *www.whitehousedrugpolicy.gov* where significant corrections made as a result of ONDCP's correction process will be described.

Comments Regarding ONDCP Reconsideration of Requests for Correction

CRE commented that consistent with OMB's intent, ONDCP's guidelines should include a meaningful appeals process. ONDCP agrees and has adopted OMB's guidelines in section III.

CSS commented that ONDCP's reconsideration process should be fairly informal and limited in scope. ONDCP agrees as reflected in section III of its final guidelines.

CSS commented that ONDCP's reconsideration should be limited to showing due diligence in the initial consideration of a request. ONDCP disagrees. Consistent with OMB's guidance, section III paragraph 3 of ONDCP's final guidelines provide that "ONDCP's Chief of Staff * * * will consider the request for reconsideration, applying the standards and procedures set out in section II above * * *."

CSS commented that ONDCP should establish a 30-day time limit for requests for reconsideration. ONDCP agrees as reflected in section III paragraph 2 of its final guidelines.

Office of National Drug Control Policy Information Quality Guidelines

The Office of National Drug Control Policy publishes these guidelines in accordance with the Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies ("Government-wide Guidelines") published in interim final form by OMB in the **Federal Register** in Volume 66, No. 189 at 49718 on Friday, September 28, 2001, and in final form in Volume 2, No. 67 at 8452 on February 22, 2002. These published guidelines were issued pursuant to section 515 of the Treasury and General Government Appropriations Act for FY2001 (Pub. L. 106–554; HR 5658). In response to the legislation and the published guidelines, ONDCP identifies the following policies and procedures for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by ONDCP; and it hereby establishes additional procedures for affected persons to seek and obtain correction of information maintained and disseminated by ONDCP that does not comply with standards set out in the Government-wide Guidelines. These ONDCP guidelines are intended to ensure and maximize the quality of information disseminated by ONDCP. Through these ONDCP guidelines, ONDCP establishes as its performance standard a goal of disseminating reliable and useful information consistent with the Government-wide Guidelines and these ONDCP guidelines.

Section I. Procedures for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Prior to Dissemination

In Government-wide Guidelines, "quality" is defined as an encompassing term comprising utility, objectivity, and integrity.

A. Objectivity and Utility of Information

1. As defined in section IV, below, "objectivity" is a measure of whether disseminated information is "accurate, reliable, and unbiased and that information is presented in an accurate, clear, complete, and unbiased manner;" "utility" refers to the usefulness of the information to its intended audience for the intended audience's anticipated purposes. ONDCP is committed to disseminating reliable and useful information. Before disseminating information, ONDCP staff and officials should subject such draft information to an extensive review process. It is the primary responsibility of the particular ONDCP Office (hereafter collectively referred to as "Lead Component") drafting information intended for dissemination to pursue the most knowledgeable and reliable sources reasonably available to confirm the objectivity and utility of such information.

2. Much of the information ONDCP disseminates consists of or is based on information submitted to ONDCP by other Federal Government Agencies. ONDCP expects that agencies will subject information submitted to ONDCP for purposes of public dissemination to adequate quality control measures. In drafting the material to be disseminated, the Lead Component should review and verify the data submitted by the agencies, as necessary and appropriate. ONDCP also originates information based on research, assessments, and other efforts supporting drug policy development. The Lead Component should review and verify the data, as necessary and appropriate. Underlying information upon which the disseminated material is based may be subject to these guidelines only if that information is published by ONDCP. Being subject to these guidelines does not necessarily mean that the material published by ONDCP is a policy statement of the U.S. government. ONDCP contracts with organizations to conduct research in support of drug policy, but their results are not influenced by ONDCP policy. Each Component that disseminates information should maintain verification files of materials that it originates.

3. In seeking to assure the "objectivity" and "utility" of the information it disseminates, ONDCP should generally follow a basic clearance process coordinated by the Lead Component drafting information intended for dissemination. The quality control process places responsibility for action upon the Lead Component. The Lead Component is encouraged to consult with all Components throughout ONDCP having substantial interest or expertise in the material proposed to be disseminated. Where appropriate, substantive input also should be sought from other offices within the Executive Office of the President (EOP), other government agencies, non-government organizations, and the public..

4. The Lead Component should consider the uses of the information from both the perspective of ONDCP and the public. When it is determined that the transparency of information is relevant for assessing the information's usefulness from the public's perspective, the Lead Component should ensure that transparency is appropriately addressed.

5. When the Lead Component determines that the information it will disseminate is influential scientific, financial, or statistical information, extra care should be taken to include a high degree of transparency about data and methods to meet the Government-wide Guidelines' requirement for the reproducibility of such information. In this context, a high degree of transparency for published information means that the methodology used to derive the results is readily understandable to persons experienced in the appropriate field of study. In determining the appropriate level of transparency, the Lead Component should consider the types of data that can practicably be subjected to a reproducibility requirement given ethical, feasibility, and confidentiality constraints. In making this determination, the Lead Component should hold analytical results to an even higher standard than original data.

6. When the Lead Component determines that the information it will disseminate is influential scientific, financial, or statistical information, it should assure reproducibility according to commonly accepted scientific, financial, or statistical standards. In situations where public access to the data will not occur, the Lead Component should apply especially rigorous robustness checks to analytic results and document what checks were undertaken. Also, in such cases, the Lead Component should disclose the specific data sources that have been used and the specific quantitative methods and assumptions that have been employed.

7. The Component responsible for the dissemination of information should generally take the following basic steps to assure the "objectivity" and "utility" of the information to be disseminated:

a. Preparing a draft of the document after consulting the necessary parties, including government and non-government sources, as appropriate;

b. Determining/assuring accuracy and completeness of source data;

c. Determining the expected uses by the government and public;

d. Determining necessary clearance points;

e. Determining where the final decision shall be made;

f. Determining whether peer review would be appropriate and, if necessary, coordinating such review;

g. Obtaining clearances; and

h. Overcoming delays and, if necessary, presenting the matter to higher authority.

8. Hard-copy public dissemination of information and all information published on ONDCP's website *www.whitehousedrugpolicy.gov* shall occur only after clearances are obtained from all appropriate Components and, as appropriate, the Office of the Chief-of-Staff.

9. The quality control procedures followed by ONDCP should be determined by the nature of the information and the manner of its distribution. Any information collected by ONDCP and subject to the Paperwork Reduction Act should be collected, maintained, and used in a manner consistent with ONDCP information quality standards. The ONDCP clearance package will demonstrate that the proposed collection of information will result in information that will be collected, maintained, and used in a way consistent with the Government-wide Guidelines and ONDCP guidelines.

10. These guidelines focus on procedures for the "dissemination" of "information," as those terms are defined herein. Accordingly, procedures specifically applicable to forms of communication outside the scope of these guidelines, such as those for correspondence or press releases, among others, are not included.

Conclusion: ONDCP will maximize the quality of the information it disseminates, in terms of objectivity and utility, first by looking for input from a range of sources and perspectives, to the extent practicable under the circumstances, and second by subjecting draft materials to a review process involving as many Components and offices as may be in a position to offer constructive input, as well as other offices within the Executive Office of the President and other government agencies.

B. Integrity of Information

1. "Integrity" refers to the security of information—protection of the information from unauthorized, unanticipated, or unintentional modification—to prevent information from being compromised through corruption or falsification.

2. Within the Executive Office of the President (EOP), the Office of Administration has substantial responsibility for ensuring the "integrity" of information as defined in these guidelines. ONDCP also has a Management and Administration Office that coordinates and works with the EOP Office of Administration to ensure the integrity of information. These offices implement and maintain new computer software and hardware systems and provide operational support for systems and system users.

3. Computer security is the responsibility of the EOP Office of Administration's Chief Information Officer, Information Assurance Directorate. This Office oversees all matters relating to information integrity, including the design and implementation of the security architecture for the EOP, periodic audits of security architecture components, and review and approval of changes to the technical baseline. Per law and ONDCP policy, EOP's IT security policy, procedures, and controls are risk-based, cost-effective, and incorporated into the lifecycle planning of every IT investment. Additionally, the Office: Assesses risks to its systems and implements appropriate security controls; reviews annually the security of its systems; and develops plans to remediate all security weaknesses found in independent evaluations and other security audits and reviews.

4. As an agency under the EOP, ONDCP is an integral part of the overall EOP network, and is an active participant in all aspects of information integrity at EOP. ONDCP adheres to both law and ONDCP IT security policies, along with EOP security policies and operational processes for the protection of ONDCP's data and information. This includes ensuring that controls to protect the security of information (and the integrity of information) are risk-based, cost-effective, and incorporated into the life-cycle planning of every IT investment. ONDCP's systems are reviewed annually in accordance with existing law and policy and corrective action plans are developed to address all security weaknesses, such as integrity issues.

Section II. Requests for Correction of Information Publicly Disseminated by the Office of National Drug Control Policy

ONDCP works continuously to be responsive to users of its information and to ensure quality. In furtherance of these objectives, when ONDCP receives any information from the public that raises questions about the quality of the information it has disseminated, ONDCP duly considers corrective action.

1. Persons seeking to correct information affecting them that was publicly disseminated by ONDCP may submit such requests to the ONDCP Chief of Staff, addressed to the Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503. A member of the public who seeks correction of information under these ONDCP guidelines as the burden of proof with respect to the necessity for correction as well as with respect to the type of correction requested. Requests for correction must include:

a. A statement that the communication is a Petition for Correction under the ONDCP Information Quality Guidelines;

b. Identification of the ONDCP information or ONDCP information dissemination product, and the specific aspect(s) thereof, that is the subject of the petition;

c. A description of how the information does not comply with the ONDCP guidelines or the Government-wide Guidelines and how they are affected by the information;

d. All supporting evidence upon which the petitioner believes provides a persuasive case and all supporting documentation necessary to resolve the complaint; and the specific corrective action sought, including (if applicable) temporary corrective action pending full resolution of the complaint.

2. If the information disseminated by ONDCP and contested by an affected person was previously disseminated by another Federal agency in virtually identical form, then the complaint should be directed to the originating agency.

3. Requests will be received by the ONDCP Chief of Staff. Typically, requests raising substantive issues will be forwarded to the Component within ONDCP responsible for the subject area.

4. These guidelines apply only to requests submitted as outlined above. These guidelines will not be applied to any other form of request and also may not be applied to a request submitted consistent with the procedures outlined above, if ONDCP determines it is not submitted by an affected person for the correction of publicly disseminated information of the Office of National Drug Control Policy.

5. If ONDCP determines that a request is not covered by these guidelines, it will so advise the requester within 60 days, unless there is a reasoned basis for an extension. If a request is deemed frivolous, no response will be made.

6. For covered requests, the Component reviewing the request will give the request due consideration, including a review of the disseminated information at issue and other materials, as appropriate. Where the reviewing Component or office determines that the information publicly disseminated by ONDCP warrants correction, it should consider appropriate corrective measures recognizing the potential implications for ONDCP and the United States.

7. When considering covered requests to determine whether a corrective action is appropriate, the reviewing Component may consider the following factors:

a. The significance of the information involved, and

b. The nature and extent of the request and the public benefit of making the requested correction.

8. If ONDCP determines that a request is covered by these guidelines, but that corrective action is unnecessary or is otherwise inappropriate, ONDCP will notify the requestor of its determination within 60 days, unless there is a reasoned basis for an extension.

9. If ONDCP determines that a request is covered by these guidelines and that corrective action is appropriate, it will notify the requestor of its determination and what action has been or will be taken within 60 days, unless there is a reasoned basis for an extension. In which case, ONDCP will inform the requestor of the extension, providing its reasons for the extension and an estimated decision date. Subject to applicable law, rules and regulations, corrective measures may be taken through a number of forms, including (but not limited to): Personal contacts via letter or telephone, form letters, press releases or postings on the ONDCP website, *www.whitehousedrugpolicy.gov*, to correct a widely disseminated error or address a frequently raised request. Corrective measures, where appropriate, should be designed to provide reasonable notice to affected persons of such correction.

10. In cases where ONDCP disseminates information for public comment prior to disseminating the final product, requests for correction of information will be considered prior to disseminating the final product in those cases where ONDCP has determined that an earlier response would not unduly delay dissemination of the product and the requestor has shown a reasonable likelihood of suffering actual harm without the earlier response.

Section III. Procedures for Requesting Reconsideration

1. The following procedures are available to an affected person who has filed a covered request for correction of public information in accordance with section II, above; who received notice from the ONDCP Chief of Staff of ONDCP's determination; and who believes that the ONDCP did not take appropriate corrective action. Requests determined by ONDCP to be not covered by the guidelines and requests determined to be frivolous will not be reconsidered under these provisions. These procedures apply to information disseminated by ONDCP on or after October 1, 2002, regardless of when the information was first disseminated.

2. To request reconsideration, persons should clearly indicate that the communication is a "Request for Reconsideration;" should reference the ONDCP Information Quality Guidelines; and should include a copy of the request for correction previously submitted to ONDCP and ONDCP's response. Resubmission should be made to the ONDCP Chief-of-Staff by mail using the contact information in section II, paragraph 1, above. Requests for Reconsideration must be submitted within thirty (30) days of the date of ONDCP's notification to the requester of the disposition of the underlying request for correction.

3. ONDCP's Chief of Staff or a delegee thereof will consider the request for reconsideration, applying the standards and procedures set out in section II, above and will make a determination regarding the request. In most cases, the requestor will be notified of the determination and, if appropriate, the corrective action to be taken, within 60 days. If the request for reconsideration requires more than 60 days, ONDCP will inform the requestor of the extension, providing its reasons for the extension and an estimated decision date. ONDCP will give reasonable notice to affected persons of any corrections made.

Section IV. Definitions

1. "Affected" persons are those who may benefit or be harmed by the disseminated information. This includes both: a. Persons seeking to address information about themselves or about other persons to whom they are related or associated; and b. persons who use the information.

2. "Dissemination" means agency initiated or sponsored distribution of information to the public (see 5 CFR 1320.3(d) "Conduct or Sponsor"). Dissemination does not include the pass-through of public filings or other information received from third-parties by ONDCP and made available for public review through website posting or other means, without ONDCP's official endorsement of its content. However, these guidelines may apply to third-party information adopted or endorsed by ONDCP, or used to formulate guidance or other ONDCP decision or position.

In addition, dissemination does not include distributions of information or other materials that are:

a. Intended for government employees or agency contractors or grantees;

b. Intended for U.S. Government agencies;

c. Produced in responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or similar law;

d. Correspondence or other communication limited to individuals or to other persons, within the meaning of paragraph 7, below; or

e. Communications such as press releases, interviews, speeches, and similar statements containing information that ONDCP or another Federal agency has previously disseminated in compliance with the Government-wide Guidelines or the ONDCP guidelines; or

f. Documents (*e.g.*, guidance, bulletins, policy directives) intended only for inter-agency And intra-agency communications.

Also excluded from the definition are archival records; public filings; responses to subpoenae or compulsory document productions; or documents prepared and released in the context of adjudicative processes. These guidelines do not impose any additional requirements on agencies during adjudicative proceedings and do not provide parties to such adjudicative proceedings any additional rights of challenge or appeal.

3. "Influential," when used in the phrase "influential scientific, financial, or statistical information," refers to disseminated information that ONDCP determines will have a clear and substantial impact on important public policies or important private sector decisions.

4. "Information," for purposes of these guidelines, including the administrative mechanism described in sections II and III, above, means any communication or representation of facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition does not include:

a. Opinions or policy, where the presentation makes clear that the statements are subjective opinions, rather than facts. Underlying information upon which the opinion or policy is based may be subject to these guidelines only if that information is published by ONDCP;

b. Information originated by, and attributed to, non-ONDCP sources, provided ONDCP does not expressly rely upon it. Examples include: non-U.S. Government information reported and duly attributed in materials prepared and disseminated by ONDCP; hyperlinks on ONDCP's website to information that others disseminate; and reports of advisory committees published on ONDCP's website;

c. Statements related solely to the internal personnel rules and practices of ONDCP and other materials produced for ONDCP employees, contractors, or agents;

d. Descriptions of the agency, its responsibilities and its organizational components;

e. Statements, the modification of which might cause harm to the national security, including harm to the national defense or foreign relations of the United States;

f. Statements of Administration policy; however, any underlying information published by ONDCP upon which a statement is based may be subject to these guidelines;

g. Testimony or comments of ONDCP officials before courts, administrative bodies, Congress, or the media;

h. Investigatory material compiled pursuant to U.S. law or for law enforcement purposes in the United States.

5. "Integrity" refers to the security of information—protection of the information from unauthorized access or revision, to prevent the information from being compromised through corruption or falsification.

6. "Objectivity" is a measure of whether disseminated information is accurate, reliable, and unbiased and whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner.

7. "Person" means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a regional, national, State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision, or an international organization;

8. "Quality" is an encompassing term comprising utility, objectivity, and integrity. Therefore, the guidelines sometimes refer these four statutory terms, collectively, as "quality"

9. "Utility" refers to the usefulness of the information to its intended users, including the public.

Dated: October 1, 2002.

Daniel Schecter,

Chief of Staff.

[FR Doc. 02–26867 Filed 10–21–02; 8:45 am]

BILLING CODE 3180–02–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–2664]

Consumer/Disability Telecommunications Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the date, time, and agenda for the next meeting of the Consumer/Disability Telecommunications Advisory Committee (hereinafter "the Committee"), whose purpose is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations such as Native Americans and individuals living in rural areas) in proceedings before the Commission.

DATES: The meeting of the Committee will take place on Friday, November 8, 2002, from 9 a.m. to 4:30 p.m.

ADDRESSES: The Committee will meet at the Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, Room TW–C305.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Designated Federal Officer, Consumer/Disability Telecommunications Advisory Committee, Consumer & Governmental Affairs Bureau, Federal Communications Commission, Room 5A824, 445 12th Street SW., Washington, DC 20554. Telephone (202) 418–2809 (voice) or (202) 418–0179 (TTY); Email: *cdtac@fcc.gov*.

SUPPLEMENTARY INFORMATION: By Public Notice dated and released October 15, 2002, the Federal Communications Commission announced the next meeting of its Consumer/Disability Telecommunications Advisory Committee. The establishment of the Committee had been announced by Public Notice dated November 30, 2000., 15 FCC Rcd 23798, as published in the **Federal Register** (65 FR 76265, December 6, 2000). At the November 8, 2002 meeting, The Committee will consider the Commission's proposed rules concerning the Telephone Consumer Protection Act; will receive an update regarding its recommendations concerning the Commission's consumer complaint process and outreach activities, and will receive and consider a report of an ad hoc working group on Sec. 255 of the Telecommunications Act of 1996. The Committee will also receive a report from its chairperson regarding activities since the June meeting and an update on the Committee rechartering process. The Committee will also be updated on the Commission's Biennial Regulatory Review Process. Other working group reports will be received and considered if available. The Committee will make recommendations to the Federal Communications Commission as appropriate, and may also consider other matters within the mandate of its Charter.

Availability of Copies and Electronic Accessibility

A copy of the October 15, 2002 Public Notice is available in alternate formats (Braille, cassette tape, large print or diskette) upon request. It is also posted on the Commission's website at *www.fcc.gov/cgb/cdtac*. The Committee meeting will be broadcast on the Internet in Real Audio/Real Video format with captioning at *www.fcc.gov/cgb/cdtac*. The meeting will be sign language interpreted, and realtime transcription and assistive listening devices will also be available. The meeting site is fully accessible to people with disabilities. Copies of meeting agendas and handout materials will also be provided in accessible formats. Meeting minutes will be available for public inspection at the FCC headquarters building and will be posted on the Commission's Web site at *www.fcc.gov/cgb/cdtac*.

The Committee meeting will be open to the public and interested persons may attend the meeting and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee. Written comments for the Committee may also be sent to the Committee's Designated Federal Officer, Scott Marshall. Notices of future meetings of the Committee will be published in the **Federal Register**.

Federal Communications Commission.

Margaret Egler,

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 02–26873 Filed 10–21–02; 8:45 am]

BILLING CODE 5712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed, revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the use of a Census form to collect data for the development of a national fire department database.

SUPPLEMENTARY INFORMATION: The U.S. Fire Administration (USFA) receives many requests from fire service organizations and the general public for information related to fire departments, including total number of departments, number of stations per department, population protected, and number of firefighters. The USFA also has a need for this information to guide programmatic decisions, and produce mailing lists for USFA publications. Recommendations for the creation of the fire department database came out of a Blue Ribbon Panel's review of the USFA—initiated by FEMA Director James Lee Witt in the spring of 1998. The report included a review of the structure, mission and funding of the USFA, future policies, programmatic needs, course development and delivery, and the role of the USFA to reflect changes in the fire service. The panel included 13 members of the U.S. fire community. As a result of those recommendations, the USFA is working to identify all fire departments in the United States to develop and populate a national database that will include information related to demographics, capabilities and activities of fire departments Nationwide. In the first year of this effort, information was collected from 16,000 fire departments leaving an estimated 17,000 fire departments still to respond.

Collection of Information.

Title: National Fire Department Census.

Type of Information Collection: Revision of a currently approved collection.

Abstract: Many data products and reports exist that contain fragmented or estimated information about fire department demographics, and capabilities, but there is no single reference source today that aggregates this data to provide a complete and accurate profile of fire departments in the United States. The U.S. Fire Administration (USFA) receives many requests for information related to fire departments, including total number of departments, number of stations per department, population protected, apparatus and equipment status. The USFA is working to identify all fire departments in the United States to develop and populate a national database that will include information related to demographics, capabilities and activities. The database will be used by USFA to guide programmatic decisions, provide the Fire Service and the public with information about fire departments, and produce mailing lists for USFA publications and other materials.

Affected Public: Federal, State, local or Tribal government; not-for-profit institutions; volunteer; and, industrial fire departments.

FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A x B x C)
	17,000	1	25 Minutes (.42)	7,083
Total	17,000	1	25 Minutes (.42)	7,083

Estimated Cost: The estimated costs to the government will be contracted direct labor and associated overhead costs of $50,000. There would be no costs to the respondent other than the minimal direct labor cost of a single firefighter or emergency service worker taking a small amount of time to complete the census form and this would be applicable only to those fire departments and emergency service agencies with career employees. The majority of the respondents will be from volunteer fire departments for which no direct labor costs will be incurred. The estimate of respondent costs for those career departments is computed as follows: Estimated number of census forms multiplied by the national average hourly rate of a firefighter of $18.65 multiplied by .42 (representing the estimated 25 minutes it takes to complete the census form) and multiply that by .25 which represents the percentage of respondents who are career (paid) personnel. Using this equation, total estimated costs to respondents of $33,290 is derived (17,000 estimated census forms × $18.65 = $317,050 × .42 = $133,161 × .25 = $33,290). The average cost per census form is a minimal $1.96. The respondents are under no obligation to complete the census form and may refuse to do so or stop at any time so the average cost to the respondent of $1.96 could easily not be incurred by refusing to fill out the census form.

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472, or email *InformationCollections@fema.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Gayle Kelch, Statistician, United States Fire Administration, National Fire Data Center (301) 447–1154 for additional information. Contact Ms. Anderson at, email *InformationCollections@fema.gov*. for copies of the proposed collection of information.

Dated: October 15, 2002.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 02–26796 Filed 10–21–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a reinstatement without change of a previously approved information collection for which approval has expired. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the Individual and Family Grant (IFG) Program.

The request is submitted under the emergency processing procedures in Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting that this information collection be approved by November 4, 2002. The approval will authorize FEMA to use the collection through May 31, 2003. FEMA plans to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the proposed collection of information.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended, and 44 CFR 206.131 are the statutory and regulatory provisions that govern the program and the purpose of the data collection. The collection of information will assist FEMA in monitoring program delivery to disaster applicants and compliance with other Federal requirements—flood insurance, environmental assessments, and floodplain management.

Collection of Information

Title: Individual and Family Grant (IFG) Program Administration Information.

Type of Information Collection: Reinstatement of a previously approved collection, which has expired.

OMB Number: 3067–0163.

Form Numbers:

FEMA Form 76–27, DARIS Entry Document, Initial Report, is initiated by the Region based on the data provided by the State. The State provides FEMA preliminary information on the IFG Program for staffing and management purposes. This report is completed once for each disaster, and establishes an account for each new IFG program.

FEMA Form 76–28, DARIS Entry Document, Status Report, is completed by the State IFG staff and provided to the FEMA Regional Director. It serves as the framework for reviewing, analyzing and monitoring the progress of the program. The report tracks the number and dollar amount of applications approved by the State, the number and dollar amount of grants disbursed and the number of grants appealed. The data carried on this report is used to make determinations on the need for

additional allocation and obligation of funds for program activity.

FEMA Form 76–29, DARIS Entry Document, Final Statistical Report, captures information that constitutes a funding history by category of each IFG program. This data is critical for reports to OMB and the Congress. The information reveals the total IFG program cost. The form can also be used as a management tool to check on the States' record of accuracy in estimating IFG Program costs and in requesting advances. The State is responsible for completing the form, and the FEMA Region is responsible for entering the information into DARIS.

FEMA Form 76–32, Worksheet for Case File Reviews, is utilized by State IFG personnel in reviewing five percent of all cases. FEMA requires the State to keep the information and on occasion make requests to the States for information derived from the reviews.

FEMA Form 76–34, Checklist for IFG Program Review, is used during the interview process of the IFG Mid-Program Review of the States' administration program. The form is completed by FEMA Recovery Division staff and is designed as a guide for the reviewer. It covers all items that must be monitored by FEMA to ensure effective management of the IFG program.

FEMA Form 76–38, Floodplain Management Analysis, Executive Orders 11988, Floodplain Management Analysis, and 11990, Protection of Wetlands, place a responsibility on FEMA and the State to perform reviews before certain IFG assistance in the housing category can be approved. The review involves an eight-step decision-making process if the action, such as providing funds for purchase of a mobile home and the location (prior to the disaster) of the unit could affect a floodplain or wetland. The State is responsible for completing steps 3 and 4 of the process, while the Region retains responsibility for steps 2, 6 and 7, with the State providing the background information for these three steps. Steps 1, 5 and 8 are jointly shared by the State and Region.

Abstract: This collection of information is essential to the effective monitoring and management of the State administered IFG Program by FEMA Regional Office. FEMA Regional staff and Headquarters staff will utilize the information to effectively monitor and evaluate the States' administration of the IFG Program, thus enabling FEMA to assess compliance, consistency, and uniformity with Federal requirements. It is FEMA's responsibility of ensuring that the States perform and adhere to FEMA regulations and policy guidance.

Affected Public: Federal, State, Local or Tribal Governments.

Estimated Total Annual Burden Hours: 814 hours.

FEMA form No.	No. of responses (A)	Minutes per response (B)	Annual burden hours [(A x B)/60]
76–27	40	15	10.00
76–28	7200	5	600.00
76–29	40	30	20.00
76–32	40	30	20.00
76–34	40	240	160.00
76–38	2	120	4.00
	7362	.....	814.00

Estimated Cost: The total estimated annual cost to the respondent States is $15,229.94. The cost is determined by the average hourly rate of a GS9/5 ($18.71) times the 814 estimated annual burden hours. The total estimated annual cost to the Federal Government is $ 9,213.25. The cost is determined from calculating the amount of time (5%) that a Senior Federal employee spends reviewing the accuracy the forms and multiplying it by their annual salary of roughly $80,000 (GS14/5). Then, we add it to the amount of time (25%) that a data entry clerk spends inputting these figures into our database (25 %) and multiplying it by their annual salary of $20,853. (4,000 + 5, 213.25 = 9,213.25) This cost covers all responses submitted by all respondents.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Submit comments to the OMB within 30 days of the date of this notice. To ensure that FEMA is fully aware of any comments or concerns that you share with OMB, please provide us with a copy of your comments. FEMA will continue to accept comments for 60 days from the date of this notice.

OMB Addressee: Interested persons should submit written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Emergency Management Agency, 725 17th Street, NW., Washington, DC 20503.

FEMA Addressee: Submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology and Services Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Kenyatta Osman, Recovery Division, Response and Recovery Directorate, at (202) 646–4528. Contact Ms. Anderson at (202) 646–2625, facsimile number (202) 646–3347, or e-mail address *InformationCollections@fema.gov* for copies of the proposed collection of information.

Dated: October 4, 2002.

Brenda Erickson,

Acting Director, Information Resource Management Division, Information Technology and Services Directorate.

[FR Doc. 02–26797 Filed 10–21–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1438–DR]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1438–DR), dated October 9, 2002, and related determinations.

EFFECTIVE DATE: October 9, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 9, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Alabama, resulting from Tropical Storm Isidore beginning on September 23, 2002, and continuing through October 1, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and the Hazard Mitigation program will be limited to 75 percent of the total eligible costs. If Individual Assistance is later requested and warranted any Federal funds provided under the Stafford Act for the Individual and Family Grant program will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Charles M. Butler of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared major disaster: Baldwin and Mobile Counties for Public Assistance.

All counties within the State of Alabama are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–26794 Filed 10–21–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1436–DR]

Mississippi; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi, (FEMA–1436–DR), dated October 1, 2002, and related determinations.

EFFECTIVE DATE: October 10, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi, declared a major disaster by the President in his declaration of October 1, 2002,is hereby amended as follows:

All counties in the State of Mississippi are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–26792 Filed 10–21–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1436–DR]

Mississippi; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–1436–DR), dated October 1, 2002, and related determinations.

EFFECTIVE DATE: October 6, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 6, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–26795 Filed 10–21–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Maximum Amount of Assistance Under the Individuals and Households Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA gives notice of the maximum amount for assistance under the Individuals and Households Program for emergencies and major disasters declared on or after October 15, 2002.

EFFECTIVE DATE: October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Hirsch, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–4099, or *Michael.Hirsch@fema.gov*.

SUPPLEMENTARY INFORMATION: Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5174, prescribes that we (FEMA) must annually announce the maximum amount for assistance provided under the Individuals and Households (IHP) Program. We give notice that the maximum amount of any IHP financial assistance provided to an individual or household under section 408 of the Act with respect to any single emergency or major disaster is $25,000 for any emergencies or major disasters declared on or after October 15, 2002.

(Catalog of Federal Domestic Assistance No. 83.558, Individual and Household—Housing; 83.559, Individual and Household—Disaster Housing Operations; 83.560, Individual and Household—Other Needs)

Joe M. Allbaugh,

Director.

[FR Doc. 02–26793 Filed 10–21–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Proposed Policy Guidance for Maximizing the Quality, Objectivity, Utility, and Integrity of Public Information Disseminated or Used by the Federal Emergency Management Agency

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of availability of final policy guidelines.

SUMMARY: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub. L. 106–544 ("Section 515") requires all agencies to issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of the information that they disseminate or use to promulgate regulations, standards, or program requirements. The Office of Management and Budget (OMB) requires agencies to post their final guidelines on their web sites by October 1, 2002. Agencies are also required to publish notices of the availability of their final guidelines in the **Federal Register**. Accordingly, the Federal Emergency Management Agency (FEMA) is publishing notice of the availability of the final policy guidelines for Section 515 on the FEMA web site: *http://www.FEMA.gov/library/*.

DATES: This notice is effective October 1, 2002.

ADDRESSES: Please send written comments to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (e-mail) *rules@fema.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Erickson, Federal Emergency Management Agency, Information Technology Services Directorate, 500 C Street SW., Washington, DC 20472, 202–646–2842 or e-mail *Brenda.Erickson@fema.gov*.

Dated: October 15, 2002.

Rose Parkes,

Chief Information Officer.

[FR Doc. 02–26798 Filed 10–21–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 18, 2002.

A. Federal Reserve Bank of Dallas (W. Arthur Trible, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. MSB Financial Corp., Dallas, Texas, and MSB Delaware Financial Corp., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Millennium State Bank of Texas, Dallas, Texas, a de novo bank.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Liberty Financial Group, Inc., Eugene, Oregon; to become a bank holding company by acquiring 99.97 percent of the voting shares of Liberty Bank, Eugene, Oregon.

Board of Governors of the Federal Reserve System, October 16, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–26791 Filed 10–21–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

TIME AND DATE: 11:00 a.m., Monday, October 28, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 18, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–26976 Filed 10–18–02; 12:16 pm]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Advisory Council on Government Auditing Standards; Notice of Meeting

The Advisory Council on Government Auditing Standards will meet Monday, November 18, 2002 and Tuesday, November 19, 2002 from 8:30 a.m. to 5 p.m., in room 7C13 of the General Accounting Office building, 441 G Street, NW., Washington, DC.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues that may impact government auditing standards. The meeting is open to the public. Council discussions and reviews are open to the public. Members of the public will be provided an opportunity to address the Council with a brief (five minute) presentation on Tuesday afternoon.

Any interested person who plans to attend the meeting as an observer must contact Jennifer Allison, Council Assistant, 202–512–3423. A form of picture identification must be presented to the GAO Security Desk on the day of the meeting to obtain access to the GAO Building. For further information, please contact Ms. Allison. Please check the Government Auditing Standards web page (*www.gao.gov/govaud/ybk01.htm*) one week prior to the meeting for a final agenda.

Marcia B. Buchanan,

Assistant Director.

[FR Doc. 02–26808 Filed 10–21–02; 8:45 am]

BILLING CODE 1610–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Adoption and Foster Care Analysis Reporting System for title IV–B and title IV–E.

OMB No.: 0980–0267.

Description: Section 479 of title IV–E of the Social Security Act directs States to establish and implement an adoption and foster care reporting system. The purpose of the data collected is to inform State/Federal policy decisions, program management, respond to Congressional and Departmental inquiries. Specifically, the data is used for short/long-term budget projects, trend analysis, and to target areas for improved technical assistance. The data will provide information about foster care placements, adoptive parents, length of time in care, delays in termination of parental rights and placement for adoption.

Respondents: 52.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
AFCARS Electronic Submission	52	2	3,251	338,104
Estimated Total Annual Burden Hours				338,104

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 15, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–26774 Filed 10–21–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0371]

Draft Guidance for Industry on Class II Special Controls Guidance Document: Human Dura Mater; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Class II Special Controls Guidance Document: Human Dura Mater; Draft Guidance for Industry and FDA." Elsewhere in this issue of the **Federal Register**, FDA is issuing a proposed rule to classify human dura mater into class II (special controls). This draft guidance document was developed as the special controls guidance. It also updates the

information in the "Guidance for the Preparation of a Premarket Notification Application for Processed Human Dura Mater" issued on October 14, 1999. This guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments on this draft guidance by January 21, 2003.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the draft guidance document entitled "Class II Special Controls Guidance Document: Human Dura Mater; Draft Guidance for Industry and FDA" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Charles N. Durfor, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Background

At a public meeting held on September 16 and 17, 1999, the Neurological Devices Panel (the Panel) recommended that human dura mater be classified into class II. The Panel also commented on the information in the "Guidance for the Preparation of a Premarket Notification Application for Processed Human Dura Mater" that was issued on July 31, 1999, and was subsequently reformatted and reissued with the same title on October 14, 1999. The draft guidance entitled "Class II Special Controls Guidance Document: Human Dura Mater; Draft Guidance for Industry and FDA" was developed as a special controls guidance to support the classification of human dura mater into class II and to update and supersede the information in the October 14, 1999, guidance document. Following the effective date of a final rule classifying the device, any firm submitting a 510(k) premarket notification for human dura mater will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices (GGP) regulation (21 CFR 10.115). This draft guidance document represents the agency's current thinking on special controls for human dura mater. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statutes and regulations. This draft guidance document is issued as a level 1 guidance consistent with the GGP regulations.

III. Electronic Access

In order to receive a copy of the "Class II Special Controls Guidance Document: Human Dura Mater; Draft Guidance for Industry and FDA" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (054) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information, including the text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the human dura mater guidance document, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in sections 3 and 7 through 12 of this guidance were approved under OMB control number 0910–0120.

V. Comments

You may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on "Class II Special Controls Guidance Document: Human Dura Mater; Draft Guidance for Industry and FDA." You must submit three copies of any comments. Individuals may submit one copy. You must identify comments with the docket number found in brackets in the heading of this document. Comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 30, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–26817 Filed 10–21–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP)

National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health (NIH) Notice of Availability of an Expert Panel Report on the Current Validation Status of *In Vitro* Endocrine Disruptor Screening Methods and a Proposed List of Substances for Validation of *In Vitro* Endocrine Disruptor Screening Methods; Request for Comments.

SUMMARY: The NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) announces the availability of a report entitled, "The Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) Expert Panel Report on the Current Status of *In Vitro* Test Methods for Detecting Endocrine Disruptors" and a list of substances proposed by the ICCVAM Endocrine Disruptor Working Group (EDWG) for the validation of in vitro endocrine disruptor screening methods. Final versions of the Background Review Documents (BRDs) reviewed at the May 21–22, 2002 expert panel meeting and the summary minutes of this meeting are also available. The NICEATM invites public comment on the expert panel report and the proposed list of substances for validation.

Availability of Expert Panel Report, Proposed List of Substances for Future Validation, and Final Background Review Documents

Copies of the expert panel report, the EDWG proposed list of substances for validation, and each BRD may be obtained on the ICCVAM/NICEATM Web site at *http://iccvam.niehs.nih.gov*, or by contacting NICEATM, NIEHS, PO Box 12233, MD EC–17, Research Triangle Park, NC, 27709, (phone) (919) 541–3398, (fax) (919) 541–0947, (email) *niceatm@niehs.nih.gov*.

Request for Comments

NICEATM invites the submission of written comments on the expert panel report and the proposed list of substances for validation of *in vitro* endocrine disruptor methods. When submitting written comments please include appropriate contact information (name, affiliation, mailing address, phone, fax, email and sponsoring organization, if applicable). Written comments and additional information should be sent by mail, fax, or email to Dr. William S. Stokes, Director of NICEATM, at the address listed above by noon, December 6, 2002. All written comments received before this deadline will be posted on the ICCVAM/NICEATM Web site and made available to ICCVAM agency representatives for their consideration prior to the development by ICCVAM of final recommendations on these test methods and the proposed list of substances for validation.

The expert panel report, the final list of proposed substances for validation, and the ICCVAM recommendations will be compiled into a report and forwarded to the Director of the NIEHS and the heads of appropriate Federal agencies and posted on the ICCVAM/NICEATM Web site. The NIEHS and the Federal agencies will consider these recommendations and comments to determine if and how (chemicals and laboratories) additional validation studies will be conducted. If a decision is made to conduct validation studies on *in vitro* ER and AR assays, an independent peer review panel will be convened to review the results of these studies and to propose minimum performance criteria.

Background on the Evaluation of *In Vitro* Endocrine Disruptor Screening Methods and Development of the Proposed List of Substances for Future Validation

A request for data supporting the performance and reliability of endocrine disruptor screening methods and for the nomination of expert scientists for an independent scientific review panel was previously published (**Federal Register**, Vol. 66, No. 57, pp. 16278–16279, March 23, 2001, available at *http://iccvam.niehs.nih.gov/methods/endocrine.htm*). This notice also announced that NICEATM in collaboration with the ICCVAM would hold an independent peer review panel meeting to assess the current validation status of *in vitro* estrogen receptor (ER) and androgen receptor (AR) binding and transcriptional activation assays, and to review proposed minimum performance criteria for defining an acceptable screening assay. During development of Background Review Documents (BRDs) for *in vitro* ER and AR assays, ICCVAM and NICEATM determined that no validation studies using standardized protocols had been completed. As a result, NICEATM in collaboration with the ICCVAM held an expert panel meeting on May 21–22, 2002, to evaluate the current status of ER and AR binding and transcriptional activation assays and to develop recommendations for their future validation (**Federal Register**, Vol. 67, No. 66, pp. 16415–16416, April 5, 2002, available at *http://iccvam.niehs.nih.gov/methods/endocrine.htm*). At this meeting, the panel reviewed each of four BRDs (Estrogen and Androgen Receptor Binding and Transcriptional Activation Assays) and developed conclusions and recommendations on the following:

- The relative priority that should be given to specific assays recommended for further evaluation in validation studies.
- The adequacy of the specific protocols recommended for validation studies.
- The adequacy of the minimum procedural standards recommended for each type of assay.
- The adequacy and appropriateness of substances recommended for validation studies.

The expert panel's conclusions and recommendations are included in the report described above.

Based on the recommendations of the expert panel and in consultation with the EDWG, a combined list of proposed substances for future validation was developed. This list is proposed by the EDWG to facilitate future validation of *in vitro* endocrine disruptor screening methods and is available as described in this notice.

Background Information on ICCVAM and NICEATM

ICCVAM was authorized as a permanent interagency committee of the NIEHS, under the NICEATM, on December 19, 2000, by the ICCVAM Authorization Act of 2000 (P.L. 106–545, available at *http://iccvam.niehs.nih.gov/about/PL106545.htm*). ICCVAM is composed of representatives from fifteen Federal regulatory and research agencies that use or generate toxicological information. P.L. 106–545 directs the ICCVAM to coordinate the technical review of new, revised, and alternative test methods of interagency interest. The committee also coordinates cross-agency issues relating to the validation, acceptance, and national/international harmonization of toxicological testing methods. ICCVAM promotes the scientific validation and regulatory acceptance of toxicological test methods that enhance agencies' ability to make decisions on health risks, while refining, reducing, and replacing animal use wherever possible. NICEATM provides operational and scientific support for ICCVAM and collaborates with ICCVAM to evaluate new and alternative test methods applicable to the needs of Federal agencies. Additional information about ICCVAM and NICEATM can be found at the following Web site: *http://iccvam.niehs.nih.gov*.

Dated: October 9, 2002.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 02–26733 Filed 10–21–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–62]

Notice of Submission of Proposed Information Collection to OMB: Capital Advance Program Submission Requirements for Section 202 Housing for the Elderly and Section 811 Housing for Persons With Disabilities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 21, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to

the proposal by name and/or OMB approval number (2502–0470) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Capital Advance Program Submission Requirements for Section 202 Housing for the Elderly and Section 811 Housing for Persons with Disabilities.

OMB Approval Number: 2502–0470.

Form Numbers: HUD–90163–CA, 90164–CA, 90165–CA, 90166–CA, 90167–CA, 90170–CA, 90171–CA, 90176–CA, 90177–CA, 91732A–CA, & 92476–A–CA, 92004–F.

Description of the Need for the Information and Its Proposed Use: This information collection facilitates processing of all Sections 202 and 811 capital advance projects that have not yet been finally closed. The requirements include the processing of the applications for firm commitments to final closing of the capital advance. It is needed for HUD to determine the Owner's eligibility and capacity to finalize the development of a housing project under the Section 202 and Section 811 Capital Advance Programs. A thorough evaluation of an Owner's capabilities is critical to protect the Government's financial interest and to mitigate any possibility of fraud, waste, and mismanagement of public funds.

Respondents: Business or other for-profit, not-for-profit institutions.

Frequency of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	260		9		1.5		3,485

Total Estimated Burden Hours: 3,485

Status: Reinstatement, with change, of previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 11, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–26772 Filed 10–21–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–61]

Notice of Submission of Proposed Information Collection to OMB: Grant Applications for Healthy Homes and Lead Hazard Programs (Lead-Based Paint Hazard Control Grant Programs, Healthy Homes Demonstration Grant Program, the Operation Lead Elimination Action Program, and the Healthy Homes and Lead Technical Studies Grant Program)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) of review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 21, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer the proposal by name and/or OMB approval number (2539–0015) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Grant Applications for Healthy Homes and Lead Hazard Programs (Lead-Based Paint Hazard Control Program, Healthy Homes Demonstration Grant Program, the Operation Lead Elimination Action Program, and the Healthy Homes and Lead Technical Studies Grant Program).

OMB Approval Number: 2539–0015.

Form Numbers: HUD–424, HU–424B, HUD–424C, HUD–2990, HUD–50070, HUD–50071, SF LLL.

Description of the Need for the Information and Its Proposed Use: This information collection is required in conjunction with the issuance of NOFAs announcing the availability of approximately $95,500,000 for Healthy Homes and Lead Hazard Programs (Lead-Based Paint Hazard Control Grant Program, Healthy Homes Demonstration Grant Program, the Operation Lead Elimination Action Program, and the Healthy Homes and Lead Technical Studies Grant Program). Grants are authorized under Title X of the Housing and Community Development Act of 1992, Public Law 102–550, Section 111(g) and other legislation.

Respondents: Potential applicants include a State, tribal, or unit of local governments. IN addition, potential applicants of the Healthy Homes Demonstration Grant Program, the Operation Lead Elimination Action Program, and the Healthy Homes and Lead Technical Studies Grant Program may include not-for-profit institutions and for-profit firms located in the U.S..

Frequency of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	225		1		85		19,040

Total Estimated Burden Hours: 19,040.

Status: This is a revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 11, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–26773 Filed 10–21–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4630–FA–11]

Announcement of Funding Award—FY 2001; Healthy Homes Grant Program

AGENCY: Office of the Secretary—Office of Healthy Homes Initiative and Lead Hazard Control, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of additional funding decisions made by the Department in a competition for funding under the Healthy Homes Demonstration and Education Notice of Funding Availability (NOFA). This announcement contains the name and address of the award recipient and the amount of award.

FOR FURTHER INFORMATION CONTACT: Ellen R. Taylor, Department of Housing and Urban Development, Office of Healthy Homes Initiative and Lead Hazard Control, Room P3206, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–1785, ext. 116. Hearing-and speech-impaired persons may access the number above via TTY by calling the toll free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On February 26, 2001 (66 FR 11893), HUD published a NOFA announcing the availability of approximately $5,500,000 for grants and cooperative agreements for the Healthy Homes Demonstration and Education Grant Program. Applications were scored and selected on the basis of selection criteria contained in that NOFA.

A total of $5,823,389 was awarded to eight grantees. However, HUD was not able to successfully conclude negotiations with the Research Foundation of the State University of New York for an award of $700,000. This amount will be awarded to the next highest scoring application. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of this award as follows:

The University of Tulsa, 600 South College Avenue, Tulsa, OK 74104–3189.

Total Amount of Grant: $700,000.

Dated: September 16, 2002.

David E. Jacobs,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 02–26765 Filed 10–21–02; 8:45 am]

BILLING CODE 4210–70–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–16]

Announcement of Funding Award—FY 2001; Lead-Based Paint Hazard Control; United Parents Against Lead of Michigan

AGENCY: Office of the Secretary—Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decision made by the Department of the United Parents Against Lead of Michigan. This announcement contains the name and address of the awardee and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Staci Gilliam, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–1785, ext. 110. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Lead-Based Paint Hazard Control grant for the United Parents Against Lead of Michigan was issued pursuant to Pub. L. 102–550, Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992.

This notice announces the award of $240,763.00 to the United Parents Against Lead of Michigan, which will be used to provide financial support and technical assistance to support

education and outreach efforts by parent groups and other community-based organizations to protect children from being lead poisoned.

The Catalog of Federal Domestic Assistance number for this program is 14.900.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the name, address, and amount of the award as follows:

United Parents Against Lead of Michigan, 2061 116th Avenue, Allegan, MI 49010.
Total Amount of Grant: $240,763.

Dated: September 16, 2002.

David E. Jacobs,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 02–26767 Filed 10–21–02; 8:45 am]

BILLING CODE 4210–70–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–17]

Announcement of Funding Award—FY 2001; Lead-Based Paint Hazard Control; Tides Foundation

AGENCY: Office of the Secretary—Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of a funding decision made by the Department to the Tides Foundation. This announcement contains the name and address of the awardee and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Staci Gilliam, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–1785, ext. 110. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Lead-Based Paint Hazard Control grant for the Tides Foundation was issued pursuant to Public Law 102–550, Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992.

This notice announces the award of $500,000.00 to the Tides Foundation, which will be used to provide financial support and technical assistance to support education and outreach efforts by parent groups and other community-based organizations to protect children from being lead poisoned.

The Catalog of Federal Domestic Assistance number for this program is 14.900.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the name, address, and amount of the award as follows:

Tides Foundation, P.O. Box 29907, San Francisco, CA 94129–0907.
Total Amount of Grant: $500,000.00.

Dated: September 16, 2002.

David E. Jacobs,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 02–26770 Filed 10–21–02; 8:45 am]

BILLING CODE 4210–70–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–18]

Announcement of Funding Award—FY 2001; Lead-Based Paint Hazard Control; City of Cincinnati

AGENCY: Office of the Secretary—Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of a funding decision made by the Department to the City of Cincinnati. This announcement contains the name and address of the awardee and the amount of the award.

FOR FURTHER INFORMATION CONTACT: David Levitt, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–1785, ext. 156. Hearing—or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Lead-Based Paint Hazard Control grant for the City of Cincinnati was issued pursuant to Public Law 102–550, Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992.

This notice announces the award of $399,676.00 to the City of Cincinnati, which will be used to conduct research and education to protect children from being lead poisoned.

The Catalog of Federal Domestic Assistance number for this program is 14.900.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the name, address, and amount of the award as follows:

City of Cincinnati, Office of Environmental Management, 805 Central Avenue—Suite 605, Cincinnati, OH 45202–1994.
Total Amount of Grant: $399,676.

Dated: September 16, 2002.

David E. Jacobs,

Director, Office of Health Homes and Lead Hazard Control.

[FR Doc. 02–26771 Filed 10–21–02; 8:45 am]

BILLING CODE 4210–70–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4630–FA–09]

Announcement of Funding Award—FY 2001; Lead Hazard Control 2001

AGENCY: Office of the Secretary—Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department as a result of the Lead Hazard Control Notice of Funding Availability (NOFA). This announcement contains the names and addresses of the awardees and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Staci Gilliam, Department of Housing and Urban Development, 451, Seventh Street, SW, Washington, DC, 20410, telephone (202) 755–1785, ext. 110. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Lead Hazard Control NOFA was issued pursuant to section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992).

On February 26, 2001 (66 FR 11855), HUD published a NOFA announcing the availability of $60,000,000.00 for Lead Hazard Control Control grantees, that would be used to assist States, Indian Tribes and local governments in undertaking comprehensive programs to identify and control lead-based paint hazards in eligible privately-owned housing for rental or owner-occupants in partnership with community-based organizations.

The Catalog of Federal Domestic Assistance number for this program is 14.900.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the awards as follows:

Awardee	Address	Amount of grant
City of Birmingham	Community Development Department, 710 North 20th Street—Room 1000, Birmingham, AL 35203.	$1,155,840.00
City of Los Angeles	Housing Department, 111 North Hope Street—Room 709, Los Angeles, CA 90012	3,000,000.00
City of Hartford	Department of Housing, 550 Main Street, Hartford, CT 06103	2,944,932.00
City of New Britain	27 West Main Street, New Britain, CT 06051	2,392,783.00
City of New Haven	Department of Health, 54 Meadow Street, New Haven, CT 06519	2,750,000.00
City of Stamford	Community Development Office, 888 Washington Boulevard, Stamford, CT 06904	2,160,089.00
City of Kankakee	385 East Oak, Kankakee, IL 60901	2,999,981.00
City of Boston	Department of Neighborhood Development, Lead Safe Boston, 38 Winthrop Street, Hyde Park, MA 02136.	3,000,000.00
City of Lawrence	Office of Planning & Development, 225 Essex Street—3rd Floor, Lawrence, MA 01840	3,000,000.00
City of Somerville	Office of Housing & Community Development, 50 Evergreen Avenue, Somerville, MA 02145.	1,488,638.00
State of Michigan	Department of Community Health, Division of Community Services, Lead Hazard Remediation Program, 3423 North Martin Luther King Blvd., Lansing, MI 48909.	3,000,000.00
City of Minneapolis	Environmental Health Services, 250 South 4th Street—Room 401, Minneapolis, MN 55415.	3,000,000.00
Saint Paul-Ramsey County	Department of Public Health, 555 Cedar Street, Saint Paul, MN 55101	1,600,000.00
City of Kansas City	Health Department, 2400 Troost Avenue—Suite 4000, Kansas City, MO 64108	1,000,000.00
St. Louis County	Office of Community Development, 121 South Meramec—Suite 444, Clayton, MO 63105	1,000,000.00
Butte-Silver Bow	Health Department, Environmental Health Division, 25 West Front Street, Butte, MT 59701.	545,483.00
City of Newark	Department of Health & Human Services, 110 William Street, Newark, NJ 07102	3,000,000.00
City of New York	Department of Housing, Preservation & Development, 100 Gold Street—Room 9–08, New York, NY 10038.	3,000,000.00
City of Utica	Department of Urban & Economic Development, 1 Kennedy Plaza, Utica, NY 13502	1,155,841.00
City of Akron	Health Department, 177 South Broadway Street, Akron, OH 44308	3,000,000.00
City of Cleveland	Department of Public Health, 1925 St. Clair Avenue, Cleveland, OH 44114	2,999,562.00
City of Pawtucket	137 Roosevelt Avenue, Pawtucket, RI 02860	2,861,968.00
City of Charleston	Department of Housing & Community Development, 75 Calhoun Street, Charleston, SC 29401.	2,999,998.00
City of Memphis	Division of Housing & Community Development, 701 North Main Street—Suite 150, Memphis, TN 38107.	2,998,885.00
City of Milwaukee	Health Department, Childhood Lead Poisoning Prevention Program, Johnston Community Health Center, 1230 West Grant Street, Milwaukee, WI 53215–2798.	3,000,000.00

Dated: September 16, 2002.

David E. Jacobs,

Director, Office of Healthy Homes & Lead Hazard Control.

[FR Doc. 02–26764 Filed 10–21–02; 8:45 am]

BILLING CODE 4210–70–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–15]

Announcement of Funding Award—FY 2001; Lead-Based Paint Hazard Control; Alliances To End Childhood Lead Poisoning

AGENCY: Office of the Secretary—Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of a funding decision made by the Department to the Alliance To End Childhood Lead Poisoning. This announcement contains the name and address of the awardee and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Staci Gilliam, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–1785, ext. 110. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Lead-Based Paint Hazard Control grant for the Alliance To End Childhood Lead Poisoning was issued pursuant to Public Law 102–550, Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992.

This notice announces the award of $2,300,000 to the Alliance To End Childhood Lead Poisoning, which will be used to help community- and faith-based organizations ensure that families have access to housing that is decent, safe, affordable, and free from recognized health hazards that can harm young children.

The Catalog of Federal Domestic Assistance number for this program is 14.900.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the name, address, and amount of the award as follows:

Alliance To End Childhood Lead Poisoning, P.O. Box 29907, San Francisco, CA 94129–0907.
Total Amount of Grant: $2,300,000.

Dated: September 16, 2002.

David E. Jacobs,

Director, Office of Healthy Homes & Lead Hazard Control.

[FR Doc. 02–26766 Filed 10–21–02; 8:45 am]

BILLING CODE 4210–70–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4741–C–03]

Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2003; Correction

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice of final Fiscal Year (FY) 2003 fair market rents (FMRs); correction.

SUMMARY: This notice corrects final FY 2003 Fair Market Rents for nine areas: San Francisco, CA, PMSA; Binghamton, NY, MSA; Elmira, NY, MSA; Jamestown, NY, MSA; Utica-Rome, NY, MSA; Oklahoma City, OK, MSA; Altoona, PA, MSA; Henderson County, TX, and Culpeper County, VA, as published in the **Federal Register** on September 30, 2002 (67 FR 61382).

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, telephone (202) 708–0477, responsible for decisions on how fair market rents are used. For technical information on the methodology used to develop fair market rents or a listing of all fair market rents, please call HUD User at 1–800–245–2691 or access the information on the HUD Web site, *http://www.huduser.org/datasets/fmr.html*. Further questions on the methodology may be addressed to Marie L. Lihn, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708–0590, Extension 5866 (*e-mail: marie_1._lihn@hud.gov*). Hearing-or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) at 1–800–927–7589. (Other than the "800" HUD User and TDD numbers, telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: On September 30, 2002 (67 FR 61382), HUD published its Notice of Fiscal Year 2003 Fair Market Rents (FMRs) for the Housing Choice Voucher Program and Moderate Rehabilitation Single-Room Occupancy Program. This notice makes technical corrections to the market rents in nine areas. These corrections are made because incorrect application of state minimum rents resulted in some minor decreases for certain bedroom rents in Binghamton, NY, Elmira, NY, Jamestown, NY, Utica-Rome, NY, and Altoona, PA. In addition, a calculation error resulted in lower FMRs for two metropolitan counties, Henderson County, TX and Culpeper County, VA. Finally, the San Francisco, CA and Oklahoma City, OK FMR areas have been recalculated and corrected.

Accordingly, FR Doc 02–24619, the Notice of Fiscal Year 2003 Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single-Room Occupancy Program, published on September 30, 2002 (67 FR 61382) is corrected as follows:

1. On page 61388, in the table under California, Metropolitan FMR Areas, the entries for San Francisco are corrected to read as follows:

2003 Fair market rent	Number of bedrooms				
	0 BR	1 BR	2 BR	3 BR	4 BR
San Francisco, CA PMSA	$1,185	$1,535	$1,940	$2,661	$2,816

2. On page 61418, in the table under New York, Metropolitan FMR Areas, the entries for Binghamton, Elmira, Jamestown, and Utica-Rome are corrected to read as follows:

2003 Fair market rent	Number of bedrooms				
	0 BR	1 BR	2 BR	3 BR	4 BR
Binghamton, NY MSA	$375	$421	$526	$667	$749
Elmira, NY MSA	375	421	517	655	780
Jamestown, NY MSA	375	421	507	655	749
Utica-Rome, NY MSA	375	421	507	655	749

3. On page 61422, in the table under Oklahoma, Metropolitan FMR Areas, the entries for Oklahoma City are corrected to read as follows:

2003 Fair market rent	Number of bedrooms				
	0 BR	1 BR	2 BR	3 BR	4 BR
Oklahoma City, OK MSA	$412	$448	$581	$807	$903

4. On page 61424, in the table under Pennsylvania, Metropolitan FMR Areas, the entries for Altoona are corrected to read as follows:

2003 Fair market rent	Number of bedrooms				
	0 BR	1 BR	2 BR	3 BR	4 BR
Altoona, PA MSA	$304	$387	$463	$604	$676

5. On page 61429, in the table under Texas, Metropolitan FMR Areas, the entries for Henderson County are corrected to read as follows:

2003 Fair market rent	Number of bedrooms				
	0 BR	1 BR	2 BR	3 BR	4 BR
Henderson County, TX	$343	$408	$498	$679	$815

6. On page 61433, in the table under Virginia, Metropolitan FMR Areas, the entries for Culpeper County are corrected to read as follows:

2003 Fair market rent	Number of bedrooms				
	0 BR	1 BR	2 BR	3 BR	4 BR
Culpeper County, VA	$435	$634	$737	$974	$1,167

Dated: October 16, 2002.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 02–26763 Filed 10–21–02; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–03–1020–PG]

Notice of Public Meeting; Western Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Western Montana Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held December 19, 2002, at the BLM Butte Field Office, 106 N. Parkmont, Butte, Montana beginning at 9 a.m. The public comment period will begin at 11:30 a.m. and the meeting will adjourn at approximately 3 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in western Montana. At this meeting, topics we plan to discuss include: updates on the Dillon and Butte Resource Management Plans, compliance with Standards for Rangeland Health and Guidelines for Livestock Grazing, and a report on fuels management. If time allows, the RAC may discuss the commercial use subgroup and hear a report from the Bureau-wide meeting of RAC chairpersons scheduled for November 19 and 20 in Phoenix.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Resource Advisory Council Coordinator, at the Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617 or Richard Hotaling, Field Manager, Butte Field Office, telephone 406–533–7600.

Dated: October 16, 2002.

Richard Hotaling,

Field Manager.

[FR Doc. 02–26789 Filed 10–21–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO 640 1020 PF 24 1A]

Notice of Resource Advisory Councils Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Resource Advisory Councils (RACs), will meet as indicated in the table under dates specified below:

DATES: We will hold the meetings as shown in the table below:

RAC name	Date(s) and times	Location and contact	Agenda topics	Public comment period
Arizona RAC	Nov. 20, 10 a.m.–4 p.m.	BLM National Training Center, 9828 North 31st Ave., Phoenix, AZ. Contact: Deborah Stevens, (602) 417–9215.	RAC discussion of National RAC Conference Outcome and Recommendations, and Working Group Reports for Recreation/Tourism, Planning, Wild Horse and Burro, Public Relations and Standards for Rangeland Health and Guidelines for Grazing Administration.	2:30–3 p.m., November 20, 2002.
Front Range RAC	Nov. 20, 2002, 9:30 a.m.–4 p.m.	Holy Cross Abbey Community Center, 2951 E Highway 50, Canon City, CO. Contact: Ken Smith, (719) 269–8500.	Update on Gold Belt Travel Management Plan and current land management issues.	1:30 p.m., Nov. 20, 2002.
Upper Snake RAC	Nov. 19, 2002, 10 a.m.–4:30 p.m. Nov. 20, 2002, 8:30 a.m.–4:30 p.m.	BLM Pocatello Field Office, 1111 N. 8th Ave, Pocatello, Idaho. Contact: David Howell, (208) 524–7559.	Orientation of new RAC members, Blackfoot Wild & Scenic River Study, Craters of the Moon National Monument Planning.	8:30 a.m., Nov. 20, 2002.
Lower Snake RAC	Nov. 20, 2002, 8:30 a.m.–4:30 p.m.	Lower Snake River District Field Office, 3948 Development Ave., Boise, Idaho. Contact: MJ Byrne, (208) 384–3393.	Resource Management Plans, Sage Grouse management, Off Highway Vehicle, River Recreation Management, Fire and Fuels Management.	8:30 a.m.–9:30 a.m., Nov. 20, 2002.
Upper Columbia-Salmon Clearwater RAC.	Nov. 20, 2002, 8:30 a.m.–4:30 p.m.	BLM Missoula Field Office, 3255 Fort Missoula, MT. Contact: Stephanie Snook, (208) 769–5004.	Discuss and prioritize emergency/future issues.	8:30–9:30 a.m., Nov. 20, 2002.
Eastern Montana RAC.	Nov. 20, 2002, 8 a.m.–2 p.m.	BLM–MT State Office 5001 Southgate Drive, Billings, MT. Contact: Linda Reder, (406) 233–2824.	National RAC Video Conference, Oil and Gas EIS (coal bed methane) Update, Weatherman Draw Subcommittee Update, Yellowstone River Floaters Guide, Sage Grouse.	9 a.m. Nov. 20, 2002.
Central Montana RAC.	Nov. 19, 2002, 1–5:15 p.m. Nov. 20, 2002, 8 a.m.–5 p.m. Nov. 21, 2002, 8–11:30 a.m.	BLM Lewiston Field Office, Airport Road, Lewistown, MT. Contact: Bruce Reed, (406) 654–1240.	Nov. 19: Election of officers, review/decision re: sage grouse management plan, presentation concerning easements, field managers updates. Nov. 20: National RAC satellite broadcast, results from scoping open houses for Monument Resource management Plan, 2002 floating season on the Upper Missouri River, fee system proposal review, recommendations from the Missouri River visitor use subgroup. Nov. 21: Vehicle trespass in the Sweet Grass Hills, roads and oil and gas activity in North Blain Co., discuss weed and oil/gas field tours, update on Montana Air National Guard target range, administrative duties.	1–1:30 p.m., Nov. 19, 2002. 8–8:30 a.m., Nov. 20, 2002.
Utah RAC	Nov. 20, 8:30 a.m.–4:30 p.m.	BLM Utah State Office, 324 S. State St., Third Floor Conference Room. Contact: Sherry Foot, (801) 539–4195.	Election of Officers, Video Conference, Orientation to BLM, What's Happening on Utah's BLM Lands, Subgroup Updates (San Rafael Swell and Raptor).	3:45–4:15 p.m.

FOR FURTHER INFORMATION CONTACT: We list the contact for each individual RAC in the table above. If you have general questions about the RACs or the video teleconference you may contact Karen Slater at (202) 452–0358.

SUPPLEMENTARY INFORMATION: The RACs advise the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management. Every RAC will participate in a video teleconference on November 20 at 10 a.m., Mountain Standard Time.

All meetings are open to the public. The public may present written comments to the Councils. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided above.

Dated: October 17, 2002.

Karen Slater,

Intergovernmental Affairs Group Manager.

[FR Doc. 02–26877 Filed 10–21–02; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–482]

In the Matter of Certain Compact Disc and DVD Holders; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 18, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of DuBois Limited of the United Kingdom. Supplements to the complaint were filed on October 7 and 9, 2002. The complaint as supplemented alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain compact disc and DVD holders by reason of infringement of U.S. Design Patent No. D441,212. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue permanent exclusion orders and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

FOR FURTHER INFORMATION CONTACT: Benjamin D.M. Wood, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2582.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2002).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 15, 2002, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain compact disc and DVD holders by reason of infringement of U.S. Design Patent No. D441,212, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—DuBois Limited, Amaray House, Arkwright Road, Corby, Northamptonshire, NN7 5AE U.K.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Viva Magnetics Limited, 16F, E On Factory Bldg., 14 Wong Chuk Hang Road, Aberdeen, Hong Kong.
Matrix Associates, Inc., 1425 Monte Grande Pl., Pacific Palisades, CA 90272.
Finest Industrial Co., Ltd., Flat A, 13/F, Sze Hing Loong Ind. Bldg., 44 Lee Chung Street, Chaiwan, Hong Kong.
Ponica Industries Corp., Corporate Headquarters, 125 Klug Circle, Corona, CA 92880.
Carthuplas, Inc., 7 Shape Drive, Kennebunk, ME 04043.
Scanavo A/S, Roskildevej 328, DK–2630 Taastrup, Denmark, Wah-de Electron, Co. Ltd.
No. 1, Alley 22, Lane 205, Nanshan Road, Sec. 2, Luchu Hsiang, Taoyuan Hsien, Taiwan,
Dragon Star Magnetics, Ltd., Room 406, 4/F Cheung Tat Centre, 18 Cheung Lee Street, Chai Wan, Hong Kong.

(c) Benjamin D.M. Wood, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street,.SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge. Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown. Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

By order of the Commission.
Issued: October 16, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–26734 Filed 10–21–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Request Emergency Approval; Application for Asylum and for Withholding of Removal, From I–589.

The Department of Justice (the Department), Immigration and Naturalization Service has submitted an information collection request (ICR) utilizing emergency review procedures to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. The INS is requesting emergency review from OMB of this information collection to ensure compliance with the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act) (Pub. L. 107–173 (May 14, 2002)).

The INS seeks permission to use the Form I–589 to serve as an alternate application for evidence of employment authorization for individuals granted asylum, eliminating their need to file a separate Form I–765, Application for Employment Authorization (OMB No. 1115–0163) with the INS if, after being granted asylum, they wish to receive an Employment Authorization Document (EAD) containing both evidence of employment authorization and identity. The Form I–589 collects the same

biographic information as that collected by the Form I–765. In those cases where asylum is granted, the biographic information contained on the I–589 could also be used to generate the employment authorization document. While dual-use has advantages for both the government and the public with respect to streamlining information collections, passage of the Border Security Act has increased the necessity of developing such a process. Section 309 of the Border Security Act requires the Attorney General to begin issuing an employment authorization document (EAD) with a photo and fingerprint to asylees "immediately" upon the grant of asylum. Such procedures must be in place as November 10, 2002. Due to the passage of the Border Security Act the question of how to process asylee employment authorization documents became even more critical. The INS and the Department now seek emergency OMB approval for the dual use of the Form I–589 to enable the INS to comply with the Border Security Act implementation date of November 10, 2002, as discussed above.

For the aforementioned reasons, the INS is requesting emergency OMB review and approval of this information collection request by October 24, 2002. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725–17th Street, NW., Suite 10102, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to (202) 395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments an suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until December 23, 2002. During the 60-day regular review, ALL comments and suggestions or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, (202) 514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Asylum and Withholding of Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–589. Office of International Affairs, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as will as a brief abstract:* Primary: Individuals or Households. This information collection will be used to determine whether an alien applying for asylum and/or withholding of deportation in the United States is classifiable as a refugee, and is eligible to remain in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 78,000 responses at 12 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 936,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan (202) 514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: October 17, 2002.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–26866 Filed 10–21–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 9, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or e-mail *Howze-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: ERISA Technical Release 91–1.

OMB Number: 1210–0084.

Affected Public: Business or other for-profit, Individuals or households, and Not-for-profit institutions.

Frequency: On Occasion.

Estimated Time Per Response: 20 minutes preparation and 1.5 minutes distribution.

Number of Respondents: 52.

Number of Annual Responses: 66.

Total Burden Hours: 4,567.

Total Annualized Capital/Starup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $33,670.

Description: Section 101(e) of the Employee Retirement Income Security Act of 1974 (ERISA) sets forth certain notice requirements which must be satisfied before an employer may transfer excess assets from a defined benefit plan to a retiree health benefit account after satisfying the conditions set forth in section 420 of the Internal Revenue Code of 1986, as amended. The reporting requirements are intended to protect the rights of participants and beneficiaries by giving the Secretaries of Labor and the Treasury and each participant and beneficiary under the plan advanced notice of a transfer of plan assets from a defined benefit plan to a retiree health benefit account.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Disclosures by Insurers to General Account Policy-holders.

OMB Number: 1210–0114.

Affected Public: Business or other for-profit, Individuals or households, and Not-for-profit institutions.

Frequency: Annually.

Number of Respondents: 104.

Number of Annual Response: 123,500.

Total Burden Hours: 466,667.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $45,700.

Description: Section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104–188) amended ERISA by adding a new section 401(c), which clarifies the application of ERISA to insurance company general accounts. New section 401(c) requires that certain steps are taken by insurance companies which offer and maintain policies for private sector employee benefit plans where the assets are held in the insurer's general account. The Department must meet a statutory mandate to ensure that the regulations issued are administratively feasible and protective of the interests and rights of the plan and its participants and beneficiaries. This information collection implements statutory prescribed disclosure obligations of the insurer in it annual reports and policies.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 02–26759 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 10, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or E-Mail: *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used:
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Revision of a currently approved collection.

Title: Program Monitoring Report and Job Service Complaint Form.

OMB Number: 1205–0039.

Affected Public: State, Local, or Tribal Government.

Type of Response: Recordkeeping and reporting.

Frequency: On occasion and quarterly.

Requirement	Annual responses	Average response time (hours)	Annual burden hours
Complaint Log Maintenance:			
Recordkeeping	168	6.30	1,058
Processing ETA Form-8429	2,520	0.13	336
Outreach Log:			
Recordkeeping	150	26.00	3,900
Data Collection/Reporting ETA Form-5148	208	1.17	243
Total	3,046		5,537

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $2,982.

Description: The Job Service forms (ETA–8429 and ETA–5148) are necessary to ensure compliance with Federal Regulations at 20 CFR Parts 651, 653, and 658. The forms allow the U.S. Employment Service to track regulatory compliance of services provided to Migrant and Seasonal Farm Workers by State Employment Service Agencies.

Marlene J. Howze,

Acting Departmental Clearance Officer.

[FR Doc. 02–26837 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 10, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on (202) 693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Employment and Training Administration (ETA) Disaster Unemployment Assistance (DUA) Handbook and Operating Forms, Including ETA–90–2, Disaster Payment Activities Under the "Stafford Disaster Relief Act".

OMB Number: 1205–0051.

Affected Public: Individuals or households; Federal Government; and State, Local, or Tribal Government.

Type of Response: Recordkeeping and Reporting.

Frequency: On occasion; Monthly; Weekly; and Bi-weekly.

Requirement	Number of respondents	Annual reports	Annual responses	Average response time (hours)	Annual burden hours
ETA From 90–2	50	6	300	0.17	50
Initial Application (includes processing, determining eligibility, issuing notices, recordkeeping, etc.)	11,000	1	11,000	0.17	1,833
Supplemental to Initial Application	3,800	1	3,800	0.17	633
Weekly Claim (includes processing, determining eligibility, issuing adjustment notices, recordkeeping, etc.	11,000	6	66,000	0.08	5,500
Notice of Overpayment	235	1	235	0.25	59
Final Report	50	1	50	1.00	50
Cost/Expense Reports (50 initial & 25 supplemental)	50		75	0.25	19
Miscellaneous Recordkeeping	50	N/A	81,335	0.03	2,033
Total	26,235		162,795		10,177

*This figure represents the *average* number of weeks of unemployment experienced (weeks paid) by individuals for disasters declared each year.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The information collection requirements contained in Employment and Training Handbook No. 356, 2nd Edition, "Disaster Unemployment Assistance," are necessary for the administration of sections 410 and 423 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Act). Workload items are also used with fiscal reports to estimate the cost of administering the Act.

Marlene J. Howze,

Acting Departmental Clearance Officer.

[FR Doc. 02–26838 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 14, 2002

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or e-mail *Howze-Marlene@dol.gov.*

Comments should be sent to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics (BLS).

Title: Point of Purchase Survey.

OMB Number: 1220–0044.

Affected Public: Individuals or households.

Frequency: Quarterly.

Number of Respondents: 25,060.

Number of Annual Responses: 57,280.

Estimated Time Per Response: 11 minutes.

Total Burden Hours: 10,475.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 2 of Title 29, Chapter 1, Subchapter 1, United States Code Annotated directs the Bureau of Labor Statistics (BLS), under the direction of the Secretary of Labor, to collect, collate, and report full and complete statistics of the conditions of labor and the products and distribution of the products of the same. The Census Bureau conducts the Telephone Point-of-Purchase Survey (TPOPS) for the BLS as part of the Consumer Price Index program. This survey is used to develop and maintain a timely list of retail, wholesale, and service establishments at which urban consumers shop for specified items. The survey results also provide the BLS with basic expenditure estimates that are used to weight unique items that are priced. Without this information, the BLS would not have a statistically accurate list of current establishments visited by consumers, and therefore, could neither collect prices as needed for the CPI nor weight specific items properly.

Marlene J. Howze,

Acting DOL Clearance Officer.

[FR Doc. 02–26839 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 4, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 or e-mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Office of Disability Employment Policy (ODEP).

Type of Review: Extension of a currently approved collection.

Title: Solicitation of Nominations for the Department of Labor's New Freedom Initiative Award.

OMB Number: 1230–0002.

Frequency: Annually.

Affected Public: Individuals or households; Businesses or other for-profit, Not-for-profit institutions; Federal Government; and State, and Local, or Tribal Government.

Number of Respondents: 100.

Number of Annual Responses: 100.

Estimated Time Per Respondent: 10 hours.

Total Burden Hours: 1,000 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Description: This collection of information (solicitation of nominations to receive an award) honors individuals, corporations and non-profit organizations that have been exemplary in furthering the employment-related objectives of President George W. Bush's New Freedom Initiative. The New Freedom Initiative reflects the Administration's commitment to increasing development and access to assistive and universally designed technologies, expanding educational opportunities, further integrating Americans with disabilities into the workforce, and helping to remove barriers to their full participation in community life.

Marlene J. Howze,

Acting Departmental Clearance Officer.

[FR Doc. 02–26840 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–CX–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–06282]

Glen Oaks Industries, Inc., Dallas, Texas, Formerly Employed at Marietta Sportswear Manufacturing Co., Inc., Marietta, Oklahoma; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), subchapter D, chapter 2, title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on August 21, 2002, applicable to workers of Glen Oaks Industries, Inc., Marietta Sportswear Manufacturing Co., Inc., Dallas, Texas. The notice published in the **Federal Register** on September 10, 2002 (67 FR 57454).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred involving employees of Glen Oaks Industries, Inc., Dallas, Texas, formerly employed at Marietta Sportswear Manufacturing Co., Inc., Marietta, Oklahoma. The employees were engaged in employment related to the production of men's dress slacks until the plant closed in February, 2002.

The intent of the Department's certification is to include all workers of Glen Oaks Industries, Inc., Dallas, Texas, formerly employed at Marietta Sportswear Manufacturing Company, Inc., Marietta, Oklahoma adversely affected by the transfer of production to Canada.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to NAFTA–06282 is hereby issued as follows:

All workers of Glen Oaks Industries, Inc., Dallas, Texas, formerly employed at Marietta Sportswear Manufacturing Co., Inc., Marietta, Oklahoma, who became totally or partially separated from employment on or after June 13, 2001, through August 21, 2004, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC this 25th day of September, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–26758 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filled in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 1, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 1, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 16th day of September, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 09/16/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
42,109	Ansell Healthcare, Inc (Comp)	Troy, AL	09/06/2002	Nitrile gloves.
42,110	DanAm, Inc. (Comp)	El Paso, TX	08/27/2002	Plastic dispensing units, packaging unit.
42,111	GIII Leather (Wrks)	New York, NY	08/30/2002	Leather pants, skirts and coats.
42,112	Reed Elsever Science (Wrks)	Philadelphia, PA	08/26/2002	Medical books typesetting.
42,113	Wackenhut Security (Wrks)	San Manuel, AZ	09/04/2002	Security guard service.
42,114	Minnesota Brewing Co (Wrks)	St. Paul, MN	08/15/2002	Beer, grain belt beer, pigs eye beer.
42,115	Federal Mogul Corp (Comp)	Sevierville, TN	08/30/2002	Lighting applications thermal flashers.
42,116	XESystems, Inc. (Wrks)	Stamford, CT	08/29/2002	Diamond back digital wide body printer.
42,117	Superior Telecommunication (Wrks)	Tarboro, NC	08/28/2002	C-Service wire, underground cable.
42,118	Lenox China (Wrks)	Oxford, NC	09/04/2002	China giftware.
42,119	J-Star Industries, Inc. (Wrks)	Fort Atkinson, WI	08/30/2002	Diary farmstead equipment: feeders, mix.
42,120	Argyle Industries, Inc (Wrks)	Argyle, WI	08/28/2002	Master brake cylinders, water pumps.
42,121	Agere Systems (Wrks)	Breinigville, PA	09/04/2002	Wavelength pump lasers.
42,122	Neshoba Lumber, LLC (Wrks)	Philadelphia, MS	08/28/2002	Lumber.
42,123	Coleman Cable, Inc. (Comp)	El Paso, TX	08/27/2002	Power cords for vacuum cleaners.
42,124	Norfolk Southern Corp (TWU)	Hollidaysburg, PA	08/30/2002	Build and repair freights cars.
42,125	River Oaks Furniture, Inc (Comp)	Tupelo, MS	08/30/2002	Upholstered furniture, sofas, chairs.
42,126	Northern Cap Mfg. (Wrks)	Minneapolis, MN	08/23/2002	Headwear: hats and caps.
42,127	Sun Apparel (Wrks)	El Paso, TX	08/30/2002	Jeans.
42,128	Kellwood Co (Wrks)	Heflin, AL	08/27/2002	Robes, loungewear, swimwear cover-ups.
42,129	CSPX (Wkrs)	Auburn, ME	08/29/2002	Shoe accessories.
42,130	Hewlett Packard (Wrks)	Vancouver, WA	09/04/2002	Print mechanism testing and prototypes.
42,131	Surgical Corp/East-West (Comp)	Irvington, NY	08/26/2002	Wholesale of disposable gauze products.
42,132	Fashion Star, Inc. (Wrks)	Carrollton, GA	08/24/2002	Ladies blouses, skirts, and slacks.
42,133	Angelica Image Apparel (Comp)	Savannah, TN	08/26/2002	Healthcare apparel: tops, pants, gowns.
42,134	Tyco Electronics (Wrks)	Melbourne, FL	08/16/2002	Printed circuit boards.
42,135	GB Machining (Comp)	San Jose, CA	08/21/2002	Machined parts for semiconductors.
42,136	Goodyear Tire and Rubber (USWA)	Akron, OH	09/07/2002	Tire molds and associated components.
42,137	General Binding Corp (Comp)	Buffalo Grove, IL	08/26/2002	Punch and bind machines.
42,138	Classic Clay Concepts (Comp)	Lake Oswego, OR	08/26/2002	Stoneware garden containers.
42,139	Fabry Industries (Comp)	Green Bay, WI	08/27/2002	Gloves and mittens.

APPENDIX—Continued

[Petitions instituted on 09/16/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
42,140	DeZurik/Copes-Vulcan (Wrks)	Sartell, MN	08/14/2002	Valves.
42,141	Manufacturers' Services (Comp)	Mt Prospect, IL	08/27/2002	Modems and other telecommunication equip.
42,142	Tinplate Partners Int'l (Wrks)	Gary, IN	08/24/2002	Tinplate steel products for food, house.
42,143	Dana Corp (Comp)	Hastings, NE	08/23/2002	Piston rings.
42,144	Toyo Tanso PA Graphite (Wrks)	Brookvile, PA	08/28/2002	Isomolded graphite.
42,145	Acme Electronic LLC (IUE)	Cuba, NY	08/28/2002	Amplifiers for MRI scanners.
42,146	Apex Automation (Wrks)	Elizabethtown, PA	08/28/2002	Custom automated machinery.
42,147	Universal Manufacturing (USWA)	Zelienople, PA	08/29/2002	Steel scaffolds.
42,148	Supervalu, Inc (Wrks)	Belle Vernon, PA	09/04/2002	Pet foods, water, etc.

[FR Doc. 02–26737 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,053]

Arnold Tool & Die Works, Inc., Council Bluffs, Iowa; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 3, 2002 in response to a worker petition, which was filed by a company official on behalf of workers at Arnold Tool & Die Works, Inc., Council Bluffs, Iowa.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 9th day of October, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–26756 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,992]

General Electric Transportation Systems, A Subsidiary of General Electric Company, Erie, Pennsylvania; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 19, 2002 in response to a worker petition, which was filed by the United Electrical, Radio and Machine Workers of America (EU), Local 506 on behalf of workers at General Electric Transportation Systems, a subsidiary of General Electric Company, Erie, Pennsylvania.

The petition is a duplicate of the petition for which the Department recently issued a negative determination, TA–W–41,543. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 16th day of September, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–26745 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,761]

Glen Oaks Industries, Inc., Dallas, Texas; Formerly Employed at Marietta Sportswear Manufacturing Co., Inc., Marietta, Oklahoma; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 29, 2002, applicable to workers of Glen Oaks Industries, Inc., Marietta Sportswear Manufacturing Co., Inc., Dallas, Texas. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred involving employees of Glen Oaks Industries, Inc., Dallas, Texas, formerly employed at Marietta Sportswear Manufacturing Co., Inc. Marietta, Oklahoma. The employees were engaged in employment related to the production of men's dress slacks until the plant closed in February, 2002.

The intent of the Department's certification is to include all workers of Glen Oaks Industries, Inc., Dallas, Texas, formerly employed at Marietta Sportswear Manufacturing Co., Inc., Marietta, Oklahoma who were adversely affected by increased imports.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–41,761 is hereby issued as follows:

All workers of Glen Oaks Industries, Inc., Dallas, Texas, formerly employed at Marietta Sportswear Manufacturing Co., Inc., Marietta, Oklahoma, who became totally or partially separated from employment on or after June 13, 2001, through August 29, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 25th day of September, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–26753 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,188]

Laird Technologies, Delaware Water Gap, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 30, 2002, in response to a petition filed on behalf of workers at Laird Technologies, Delaware Water Gap, Pennsylvania.

The petitioners requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed in Washington, DC this 8th day of October, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–26757 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,973]

Lapcor Plastics, Manitowoc, Wisconsin; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 19, 2002 in response to a worker petition, which was filed by Pace, Local 7–0449 on behalf of workers at Lapcor Plastics, Manitowoc, Wisconsin.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–41,930). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 17th day of September 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–26743 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 1, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 1, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 23rd day of September, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 09/23/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
42,149	Modine Manufacturing (Co.)	Knoxville, TN	08/16/2002	Aluminum oil and charge air coolers.
42,150	Precision Castparts (Wkrs)	North Grafton, MA	09/04/2002	Beams, brackets, drag struts, gear beams.
42,151	Electric Systems (Co.)	Glysburg, PA	09/10/2002	Custom wine harnesses.
42,152	Pringle Power Vac (Wkrs)	Walla Walla, WA	09/11/2002	Power vacuum equipment.
42,153	Wells Lamon Corp. (Wkrs)	Waynesboro, MS	09/04/2002	Leather and textile work gloves.
42,154	Traction Technologies (Co.)	Jonesboro, AR	09/04/2002	Axle tubes, gears, pinion mate shafts.
42,155	Franklin Mint (The) (Wkrs)	Franklin Center, PA	09/05/2002	Collectible dolls, plates, cars.
42,156	Wisconsin Automated Mach (Co.)	Oshkosh, WI	09/05/2002	Metal cutting band saws.
42,157	A O Smith Electrical (Co.)	Upper Sandusky, OH	09/04/2002	Aluminum endframes, rotors, shafts.
42,158	O-Cedar Brands (Co.)	Portland, IN	09/05/2002	Brushes, mops and brooms.
42,159	Landis Gardner (Wkrs)	Waynesboro, PA	09/03/2002	Cylindrical grinding machines.
42,160	Atadis U S.A. (IBT)	McAdoo, PA	08/29/2002	Cigars and cigarettes.
42,161	Lons Industries (Co.)	Loris, SC	08/30/2002	Yarn, polyester, rayon, acrylic staple.
42,162	Forney, Inc. (USWA)	Hermitage, PA	09/04/2002	Testing equip. for concrete, asphalt.
42,163	VF Imagewear (West) (Co.)	Sparta, TN	09/04/2002	Men's work clothing.
42,164	Exide Technology (Wkrs)	Columbus, GA	08/22/2002	Batteries.
42,165	Wirtz Manufacturing (Wkrs)	Port Huron, MI	08/30/2002	Filling, casting and assembly machinery.
42,166	Best Manufacturing (Co.)	Johnson City, TN	08/30/2002	Disposable synthetic rubber gloves.
42,167	ADC Telecommunications (Wkrs)	Le Sueur, MN	09/04/2002	Wiring lines.
42,168	Gulfstream Aerospace (Wkrs)	Bethany, OK	09/06/2002	Aircraft parts.
42,169	Alcoa, Inc (Co.)	Badin, NC	09/06/2002	Molten aluminum metal.
42,170	FMC Corporation (UFCW)	Town of Tonawan, NY	09/09/2002	Sodium, ammonium, and potassium persulfa.
42,171	Foothills Apparel (Co.)	Albany, KY	09/10/2002	Shirts.
42,172	Volex (Co.)	Clinton, AR	09/06/2002	Power cords, electric cords.
42,173	ADC Telecommunications (Wkrs)	Vadnais Heights, MN	09/04/2002	Optical laser products, pump lasers.
42,174	Sterling Fibers (Co.)	Pace, FL	09/17/2002	Acrylic fibers and textile goods.
42,175	Hilti, Inc. (Wkrs)	New Castle, PA	08/23/2002	Repair and condition molds.
42,176	Georgia Pacific (IAM)	Ft Bragg, CA	07/22/2002	Wood logs.
42,177	Fred B. Moe Logging (Co.)	Centralia, WA	09/06/2002	Raw logs.

[FR Doc. 02–26735 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,313]

Montgomery Wards, El Paso, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 5, 2001 in response to a worker petition filed on behalf of workers at Montgomery Wards, El Paso, Texas. The workers were engaged in retail sales and did not produce an article.

The company has gone out of business and the Department of Labor has been unable to locate company officials or to obtain information necessary to reach a determination on worker eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 7th day of October 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–26752 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,978]

Nidec America Corporation, Power Supply Division, Canton, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 19, 2002 in response to a worker petition which was filed by the company on behalf of workers at Nidec America Corporation, Power Supply Division, Canton, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, DC this 16th day of September, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–26744 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41, 609]

Nokia Mobile Phones Americas, Inc., Fort Worth, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 3, 2002, in response to worker petition that was filed on behalf of workers at Nokia Mobile Phones Americas, Inc., Fort Worth, Texas.

An active certification covering the petitioning group of workers at the subject firm remains in effect (TA–W–39,300). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 26th day of September, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–26742 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,417]

NTN-Bower Corporation, Hamilton, AL; Notice of Negative Determination on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Former Employees of NTN-Bower Corp.* v. *United States Secretary of Labor*, No. 02–00315.

The Department's initial negative determination of eligibility to apply for trade adjustment assistance (TAA) for the workers and former workers of NTN-Bower Corporation, located in Hamilton, Alabama was issued on March 27, 2002, and published in the **Federal Register** on April 5, 2002 (67 FR 16441). The denial was based on the fact that workers of the subject firm did not meet criterion (3) as indicated in the initial investigation. The company did not import tapered roller bearings nor did customers import tapered roller bearings during 2000 or 2001.

On voluntary remand, the Department conducted a further survey of a major customer regarding their purchases of tapered roller bearings (TRB) during 1999, 2000 and 2001. The response from the major customer was not acquired during the initial survey.

The results of the survey show that the major customer did not import tapered roller bearings during the relevant period.

Conclusion

After careful consideration of the results of the remand investigation, I affirm the original notice of negative determination of eligibility to apply for trade adjustment assistance for workers and former workers of NTN-Bower Corporation, Hamilton, Alabama.

Signed in Washington, DC this 3rd day of October, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–26740 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,255]

Potlatch Corporation, Sappi Fine Paper North America, Honeywell Corporation, Minnesota Pulp and Paper Division, Brainerd, MN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification Regarding Eligibility To Apply for Worker Adjustment Assistance on February 20, 2002, applicable to workers of Potlatch Corporation, Minnesota Pulp and Paper Division, Brainerd, Minnesota. The notice was published in the **Federal Register** on February 28, 2002 (67 FR 9325). The certification was amended on July 16, 2002 to include workers whose wages were reported to the Honeywell Corporation tax account. The notice was published in the **Federal Register** on July 24, 2002 (67 FR 48487).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of high line coated printing paper.

The company reports that Sappi Fine Paper North America purchased Potlatch Corporation, Minnesota Pulp and Paper Division on May 13, 2002. Information shows that employees separated from Potlatch after the May 13, 2002 selling date, were separated as employees of Sappi Fine Paper and, therefore, were not found eligible for trade adjustment assistance under the current certification covering Potlatch employees.

The intent of the Department's certification is to include all workers of Potlatch Corporation, Minnesota, Pulp and Paper Division, who were adversely affected by increased imports.

Accordingly, the Department is amended the certification determination to properly reflect this matter.

The amended notice applicable to TA–W–39,255 is hereby issued as follows:

All workers of Potlatch Corporation, Sappi Fine Paper North America, Honeywell Corporation, Minnesota Pulp and Paper Division, Brainerd, Minnesota who become totally or partially separated from employment on or after May 1, 2000, through February 20, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 26th day of September, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–26751 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42, 025]

Sappi Fine Paper North America, Cloquet, MN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 26, 2002, in response to a petition that was filed on behalf of workers at Sappi Fine Paper North America, Cloquet, Minnesota.

An active certification covering the petitioning group of workers is already in effect (TA–W–38,400, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 26th day of September, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–26746 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,814]

Trus Joist A Weyerhaeuser Business, Engineered Wood Products Operations, Stayton, OR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 15, 2002, in response to a worker petition that was filed by a company official on behalf of workers at Trus Joist a Weyerhaeuser Business, Engineered Wood Products Operations, Stayton, Oregon

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 8th day of October, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–26755 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,392]

White Mountain Stitching Company, Littleton, NH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 29, 2002, applicable to workers of White Mountain Stitching Company, Littleton, New Hampshire. The notice was published in the **Federal Register** on August 9, 2002 (67 FR 51870).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of wallets and handbags.

New information provided by the State shows that workers separated from employment at White Mountain Stitching Company had their wages reported under a separate unemployment insurance (UI) tax account for ADP Total Source III, Diamond Bar, California.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of White Mountain Stitching Company who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,392 is hereby issued as follows:

All workers of White Mountain Stitching Company, Littleton, New Hampshire, including those whose wages are reported to ADP Total Source III, Diamond Bar, California, who became totally or partially separated from employment on or after March 21, 2001, through July 29, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 9th day of October, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–26754 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC., provided such request is filed in writing with the Director of DTAA not later than November 1, 2002.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than November 1, 2002.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC. 20210.

Signed at Washington, DC., this 19th day of September, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Acme Electronics, LLC (Wkrs)	Cuba, NY	09/04/2002	NAFTA–6,526	Power supply systems.
Autoline Industries (Co.)	McElhatten, PA	09/09/2002	NAFTA–6,527	Water pumps, disc brake callpers etc.
U.S. Manufacturing (Wkrs)	Port Huron, MI	09/09/2002	NAFTA–6,528	Axle housing.
Coleman Cable (Co.)	El Paso, TX	09/03/2002	NAFTA–6,529	Power cords.
Sun Apparel (Wkrs)	El Paso, TX	09/04/2002	NAFTA–6,530	Jeans.
Venice T-Shirt and Medical Corp. (Co.)	Venice, CA	08/30/2002	NAFTA–6,531	Knit shirts.
SAPPI (Wkrs)	Cloquet, MN	09/05/2002	NAFTA–6,532	Pulpwood.
DeZurik (Wkrs)	Sartell, MN	09/06/2002	NAFTA–6,533	Valves.
Altadis U.S.A.—Consolidated Cigar (Co.).	McAdoo, PA	09/09/2002	NATTA–6,534	Cigars.
American Meter (Wkrs)	Erie, PA	09/09/2002	NAFTA–6,535	Meters.
Wisconsin Automated Machinery (Wkrs)	Oshkosh, WI	09/02/2002	NAFTA–6,636	Metal cutting band saws.
65097J (CBO)	Alekanagik, AL	09/05/2002	NAFTA–6,537	Fresh salmon.
59511H (CBO)	Aleknagik, AK	09/05/2002	NAFTA–6,538	Fresh salmon.
56739H (CBO)	Aleknagik, AK	09/05/2002	NAFTA–6,539	Fresh salmon.
5689Q (CBO)	Aleknagik, AK	09/05/2002	NAFTA–6,540	Fresh salmon.
58590DX (CBO)	Aleknagik, AK	09/05/2002	NAFTA–6,541	Fresh salmon.
56175H (CBO)	Aleknagik, AK	09/05/2002	NAFTA–6,542	Fresh salmon.
65605V (CBO)	Aleknagik, AK	09/05/2002	NAFTA–6,543	Fresh salmon.
58534G (CBO)	Aleknagik, AK	09/05/2002	NAFTA–6,544	Fresh salmon.
60381N (CBO)	Aleknagik, AK	09/05/2002	NAFTA–6,545	Fresh salmon.
60381N (CBO)	Aleknagik, AK	09/05/2002	NAFTA–6,546	Fresh salmon.
56585O (CBO)	Aleknagik, AK	09/05/2002	NAFTA–6,547	Fresh salmon.
57327S (CBO)	Aleknagik, AK	09/05/2002	NAFTA–6,548	Fresh salmon.
55917A (CBO)	Aleknagik, AK	09/05/2002	NAFTA–6,549	Fresh salmon.
68828I (CBO)	Aleknagik, AK	09/05/2002	NAFTA–6,550	Fresh salmon.
57748Q (CBO)	Aleknagik, AK	09/05/2002	NAFTA–6,551	Fresh salmon.
57749J (CBO)	Aleknagik, AK	09/05/2002	NAFTA–6,552	Fresh salmon.
58075V (CBO)	Aleknagik, AK	09/05/2002	NAFTA–6,553	Fresh salmon.
55348J (CBO)	Aleknagik, AK	09/05/2002	NAFTA–6,554	Fresh salmon.
61932R (CBO)	Aleknagik, AK	09/05/2002	NAFTA–6,555	Fresh salmon.
59347M (CBO)	Aleknagik, AK	09/05/2002	NAFTA–6,556	Fresh salmon.
55124B (CBO)	Chigniklake, AK	09/05/2002	NAFTA–6,557	Fresh salmon.
57331M (CBO)	Clarkspoint, AK	09/05/2002	NAFTA–6,558	Fresh salmon.
67320B (CBO)	Clarkspoint, AK	09/05/2002	NAFTA–6,559	Fresh salmon.
61977V (CBO)	Clarkspoint, AK	09/05/2002	NAFTA–6,560	Fresh salmon.
58475G (CBO)	Clarkspoint, AK	09/05/2002	NAFTA–6,561	Fresh salmon.
57738S (CBO)	Clarkspoint, AK	09/05/2002	NAFTA–6,562	Fresh salmon.
58702U (CBO)	Clarkspoint, AK	09/05/2002	NAFTA–6,563	Fresh salmon.
5732oW (CBO)	Clarkspoint, AK	09/05/2002	NAFTA–6,564	Fresh salmon.
57539S (CBO)	Clarkspoint, AK	09/05/2002	NAFTA–6,565	Fresh salmon.
57687H (CBO)	Clarkspoint, AK	09/05/2002	NAFTA–6,566	Fresh salmon.
57436I (CBO)	Clarkspoint, AK	09/05/2002	NAFTA–6,567	Fresh salmon.
65655K (CBO)	Clarkspoint, AK	09/05/2002	NAFTA–6,568	Fresh salmon.
61712F (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,569	Fresh salmon.
61358P (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,570	Fresh salmon.
57803W (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,571	Fresh salmon.
59194H (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,572	Fresh salmon.
65811Q (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,573	Fresh salmon.
66280G (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,574	Fresh salmon.
55724E (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,575	Fresh salmon.
55946A (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,576	Fresh salmon.
55153C (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,577	Fresh salmon.
64128B (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,578	Fresh salmon.
68167V (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,579	Fresh salmon.
5679oR (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,580	Fresh salmon.
64799G (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,581	Fresh salmon.
55022I (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,582	Fresh salmon.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
65470B (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,583	Fresh salmon.
56739M (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,584	Fresh salmon.
57548Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,585	Fresh salmon.
67590E (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,586	Fresh salmon.
55864E (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,587	Fresh salmon.
66987N (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,588	Fresh salmon.
61291B (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,589	Fresh salmon.
59590W (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,590	Fresh salmon.
55571X (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,591	Fresh salmon.
57392Q (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,592	Fresh salmon.
67873L (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,593	Fresh salmon.
55102V (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,594	Fresh salmon.
65913K (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,595	Fresh salmon.
66427I (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,596	Fresh salmon.
56728W (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,597	Fresh salmon.
61326M (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,598	Fresh salmon.
60231P (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,599	Fresh salmon.

[FR Doc. 02–26736 Filed 10–21–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of September and October, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,530; Adcap-Dunn Manufacturing Co., Camp Hill, AL
TA–W–41,041A; United Central Industrial Supply Co. LLC, Virginia Machine Tool Co., Bassett, VA
TA–W–41,792; J.B. Tool and Machine, Inc., Wapakoneta, OH
TA–W–41,975; Versa Tool, Meadville, PA
TA–W–41,208 & A; Valeo Climate Control, USA–2 Div., Automotive Air Conditioning Condenser Line, Grand Prairie, TX and Aluminum Tubing Line, Grand Prairie, TX
TA–W–41,844; Terex Mining Manufacturing Facility, Tulsa, OK
TA–W–41,890; Kaman Aerospace Microwave Cable Assembly Div., Middletown, CT
TA–W–41,947; Pella Plastic, Plant #3, New Hope, TN
TA—W–42,040; Lockheed Martin Distribution Technologies, Inc., Tulsa, OK
TA–W–41,796; Tredegar Film Products, Carbondale, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,945; ExxonMobil Lubricants and Petroleum Specialties Co., Bakerstown Grease Plant, Gibsonia, PA
TA–W–41,936; Fishking Processors, Inc., Los Angeles, CA
TA–W–41,769; Siemens Demag Delaval, Trenton, NJ

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–42,027; NCS Learn, East Lansing, MI
TA–W–42,036; Electronic Data Systems Corp., I Solutions Center, Fairborn, OH
TA–W–41,041; United Central Industrial Supply Co, LLC, Blue Ridge Industrial Supply Co., Bassett, VA
TA–W–41,950; International Data LLC, Data-Capture Div., El Paso, TX
TA–W–41,850; Global Apparel, LLC, New York, NY

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–41,929; MEL, Inc., Winchester, MA

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–42,021; Bronxwood Dyeing Co., Inc., Bronx, NY
TA–W–41,876; Meggitt Avionics, a Wholly Owned Subsidiary of Meggitt PLC, Manchester, NH

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–42,060; United Sweater Mills Corp., Jersey City, NJ: August 20, 2001
TA–W–42,017; Motorola, Tempe Final Manufacturing (TFM), Tempe, AZ: August 6, 2001
TA–W–42,002; Metso Minerals, Inc., Clintonville, WI: August 6, 2001
TA–W–41,866; Ingersoll-Rand Co., Rock Drill Div., Roanoke, VA: August 16, 2002
TA–W–41,857; DMI Furniture, Inc, Huntingburg, IN: June 24, 2001
TA–W–41,605; Bemis Manufacturing Co., Crandon Woodworking Div., Crandon, WI: April 16, 2001
TA–W–41,599; Clearfield Machine Co., Clearfield, PA: May 20, 2001
TA–W–41,556; Fedders Appliances, Effingham, IL: January 8, 2002
TA–W–41,481; Siemens Energy and Automation, Inc., Power Distribution Infrastructure and Controls Div., Bellefontaine, OH: April 25, 2001
TA–W–40,621; General Electric Co (GE), Transportation Systems Div., Global Signaling, Warrensburg, MO: November 19, 2000
TA–W–42,048; Fashion Tanning Co., Inc., Gloversville, NY: August 12, 2001
TA–W–42,028; Loretex Corp., Guilderland Center, NY: August 8, 2001
TA–W–42,024; McInnes Steel Co., Corry, PA: July 23, 2001
TA–W–42,019; Encon Eye Protection, a Subsidiary of Encon Corp., Coudersport, PA: August 8, 2001
TA–W–42,009; Storage Tek, MAT–FRU Operation, Louisville, CO: July 31, 2001
TA–W–41,999; New Holland Industries, Inc., New Holland, PA: August 6, 2001
TA–W–41,993; Philips Semiconductors, a Subsidiary of Royal Philips Electronics, NV, Albuquerque, NM: August 5, 2001
TA–W–41,974; Amerock Corp., Rockford, IL: July 23, 2001
TA–W–41,968; Crown Cork and Seal Co., Inc., Portland, OR: August 1, 2001
TA–W–41,918; Unilever Best Foods North America, Santa Cruz, CA: July 24, 2001
TA–W–41,917; The Pfaltzgraff Co., Also Known as Susquehanna Pfaltzgraff, York, PA: July 12, 2001
TA–W–41,901; Johnson and Johnson Apparel, Inc., Kenly, NC: July 11, 2001
TA–W–41,874 & A, B; Sebago, Inc., Bridgton, ME, Westbrook, ME and Gorham, ME: September 19, 2002
TA–W–41,867 & A; Tee Jays Manufacturing Co., Inc., Plant 7, Florence, AL and Plant 17, Florence, AL: July 2, 2001
TA–W–41,716; Motorola, Inc, Global Telecom Solutions Sector (GTSS), Cellular Infrastructure Group, Fort Worth, TX: May 21, 2001
TA–W–41,706; Henry's Cutting Service, Hialeah, FL: May 10, 2001
TA–W–41,534; 3M Center, Coated Abrasives and Industrial Tape Div., St. Paul, MN: April 22, 2001

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), subchaper D, chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of September and October, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05788A; United Central Industrial Supply Co. LLC, Virginia Machine Tool Co., Bassett, VA
NAFTA–TAA–06310; J.B. Tool and Machine, Inc., Wapakoneta, OH
NAFTA–TAA–06423; ExxonMobil Lubricants and Petroleum Specialties Co., Bakerstown Grease Plant, Gibsonia, PA
NAFTA–TAA–06458; Versa Tool, Inc., Meadville, PA
NAFTA–TAA–06241; Henry's Cutting Service, Hialeah, FL
NAFTA–TAA–06512; Fishking Processors, Inc., Los Angeles, CA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

NAFTA–TAA–05788; United Central Industrial Supply Co, LLC, Blue Ridge Industrial Supply Co., Bassett, VA
NAFTA–TAA–06434; International Data LLC, Data-Capture, El Paso, TX
NAFTA–TAA–06474; Yakima Products, Inc., d/b/a Watermark, Materials Department, Arcata, CA

The investigation revealed that criteria (1) has not been met. Sales or production did not decline during the relevant period as required for certification.

NAFTA–TAA–6415; Mel, Inc., Winchester, MA

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–06468; TI Automotive Systems, Sanford Div., Sanford Div., Sanford, FL: August 16, 2001
NAFTA–TAA–06493; United Sweater Mills, Corp., Jersey City, NJ: August 23, 2001
NAFTA–TAA–06525; Perfection-Schwank, Inc., Waynesboro, GA: September 5, 2001
NAFTA–TAA–06027; TLD Lantis Corp., a Subsidiary of Teleflex Lionel-DuPont (TLD), Salinas, CA: March 21, 2001
NAFTA–TAA–06389; Federal-Mogul Corp., Friction Products Div., Winchester, VA: July 19, 2001
NAFTA–TAA–06488; Kimberly-Clark Corp., Neenah Cold Springs Facility, Neenah, WI: August 22, 2001
NAFTA–TAA–06397; Johnson and Johnson Apparel, Inc., Kenly, NC: July 11, 2001

I hereby certify that the aforementioned determinations were issued during the months of September

and October, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 8, 2002.

Edward A. Tomchick

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–26741 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–4833]

Crest Uniform Company, New York, NY; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on April 27, 2001, in response to a petition filed on behalf of workers at Crest Uniform Company, New York, New York. The workers produced uniforms and career apparel. The facility closed in late 2000.

Workers at the subject firm were certified eligible to apply for Trade Adjustment Assistance on June 6, 2001 (TA–W–38,892). A new investigation and determination would not affect the benefits workers are currently eligible to receive. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 17th day of September, 2002.

Edward A. Tomchick,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–26747 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,400]

Potlatch Corporation, Sappi Fine Paper North America Including Temporary Workers of Olsten Temporary Services, Employed at Potlatch Corporation, Cloquet, MN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 27, 2001, applicable to workers of Potlatch Corporation, Cloquet, Minnesota. The notice was published in the **Federal Register** on April 5, 2001 (66 FR 18117). The certification was amended on April 13, 2001 to include leased workers of Olsten Temporary Services employed at Potlatch Corporation, Cloquet, Minnesota. The notice was published in the **Federal Register** on April 19, 2001 (66 FR 20165).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of wood products, including paper, oxboard, paper board, tissue and two by fours.

The company reports that Sappi Fine Paper North America purchased Potlatch Corporation on May 13, 2002. Information shows that employees separated from Potlatch after the May 13, 2002 selling date, were separated as employees of Sappi Fine Paper and, therefore, were not found eligible for trade adjustment assistance under the current certification covering Potlatch employees.

The intent of the Department's certification is to include all workers of Potlatch Corporation who were adversely affected by increased imports.

Accordingly, the Department is amending the certification determination to properly reflect this matter.

The amended notice applicable to TA–W–38,400 is hereby issued as follows:

All workers of Potlatch Corporation, Sappi Fine Paper North America, including temporary workers of Olsten Temporary Services, Duluth, Minnesota, engaged in the production of wood products, including paper, oxboard, paper board, tissue and two by fours at Potlatch Corporation, Cloquet, Minnesota, who became totally or partially separated from employment on or after November 27, 1999, through February 27, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 26th day of September, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–26750 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6262]

Temco Aquisitions, Inc., Hibbing, MN; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on June 3, 2002 in response to a petition filed on behalf of workers at TEMCO Acquisitions, Inc., Hibbing, Minnesota.

The petitioners were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 4th day of October, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–26748 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—6332]

Trus Joist A Weyerhaeuser Business Engineered Wood Products Operations, Stayton, OR; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on July 2, 2002 in response to a petition filed by a company on behalf of workers at Trus Joist a Weyerhaeuser Business, Engineered Wood Products Operations, Stayton, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 8th day of October 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–26749 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Preparation and Maintenance of Accurate and Up-to-Date Certified Mine Maps for Surface and Underground Coal Mines; Submittal of Underground Mine Closure Maps; and Notification of MSHA Prior to Opening New Mines or the Reopening of Inactive or Abandoned Mines

ACTION: Notice; Extension of public comment period.

SUMMARY: The Department of Labor published a notice in the **Federal Register** on August 21, 2002 (67 FR 54233) requesting public comment concerning the proposed extension of the information collection related to the Record of Mine Closure addressed in 30 CFR 75.1204 and 75.1204–1; the inclusion of standards requiring MSHA notification and inspection prior to mining when opening a new mine or reopening an inactive or abandoned mine addressed in 30 CFR 75.373 and 75.1721; and the inclusion of standards requiring underground and surface mine operators to prepare and maintain accurate and up-to-date mine maps addressed in 30 CFR 75.1200, 75.1200–1, 75.1201, 75.1202, 75.1202–1, 75.1203, 75.372, 77.1200, 77.1201, and 77.1202. The comment period for this notice was to close on October 22, 2002.

In response to a request from the public, the comment period has been extended to November 30, 2002.

DATES: Submit comments on or before November 30, 2002.

ADDRESSES: Send comments to David L. Meyer, Director, Office of Administration and Management, 1100 Wilson Boulevard, Room 2125, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via internet e-mail to *Meyer-David@msha.gov*, along with an original printed copy. Mr. Meyer can be reached at (202) 693–9802 (voice) or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane E. Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Ms. Tarr can be contacted at Tarr-Jane@msha.gov (internet e-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

Dated in Arlington, Virginia, this 18th day of October, 2002.

David L. Meyer,

Director of Administration and Management.

[FR Doc. 02–26919 Filed 10–18–02; 10:32 am]

BILLING CODE 4510–43–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Change in Subject and Time of Meeting

The National Credit Union Administration Board determined that its business required the deletion of the following item from the previously announced closed meeting (**Federal Register,** Vol. 67, No. 199, pp. 63682–63683, October 15, 2002) scheduled for Thursday, October 17, 2002.

1. Administrative Action under Part 702 of NCUA's Rules and Regulations. Closed pursuant to Exemptions (8), (9)(A)(ii) and (9)(B).

The Board voted unanimously that this item be removed from the closed agenda.

The previously announced item were:

1. Administrative Action under Part 702 of NCUA's Rules and Regulations. Closed pursuant to Exemptions (8), (9)(A)(ii) and (9)(B).

2. One (1) Personnel Matter. Closed pursuant to Exemptions (2) and (6).

In addition, the time of the previously announced closed Board meeting was changed from 11:30 a.m. on October 17, 2002 to 9:15 a.m. on the same date.

For Further Information Contact: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–26901 Filed 10–17–02; 4:51 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on October 30, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, October 30, 2002—8:30 a.m. until the conclusion of business.*

The Subcommittee will meet with representatives of the NRC staff and the Exelon Generation Company, LLC, to review the license renewal application for Peach Bottom Atomic Power Station Units 2 and 3, and the associated safety evaluation report with open items. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify one of the individuals named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, Exelon Generation Company, LLC, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and

the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Mr. Timothy Kobetz (telephone 301/415–8716) or Mr. Ramin Assa, Cognizant Staff Engineer (telephone 301–415–6885) between 7:30 a.m. and 4:30 p.m. (EDT). Persons planning to attend this meeting are urged to contact one of the above named individuals at least two working days prior to the meeting to be advised of any potential changes in the proposed agenda.

Dated: October 16, 2002.

Sher Bahadur,

Associate Director for Technical Support ACRS/ACNW.

[FR Doc. 02–26828 Filed 10–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 9, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: *Wednesday, November 6, 2002—3 p.m. until the conclusion of business.*

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the proposed agenda.

Dated: October 16, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–26829 Filed 10–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of October 21, 28, November 4, 11, 18, 25, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 21, 2002

There are no meetings scheduled for the Week of October 21, 2002.

Week of October 28, 2002—Tentative

Wednesday, October 30, 2002

2 p.m.—Discussion of Security Issues (Closed—Ex. 1 & 9)

Thursday, October 31, 2002

9:25 a.m.–Affirmation Session (Public Meeting) (If needed)

9:30 a.m.–Briefing on EEO Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

2:30 p.m.–Briefing on Proposed Rulemaking to Add New Section 10 CFR 50.69, "Risk-Informed Categorization and Treatment of Structures, Systems, and Components for Nuclear Power Reactors" (Public Meeting) (Contact: Eileen McKenna, 301–415–2189, or Timothy Reed, 301–415–1462)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Friday, November 1, 2002

9 a.m.—Discussion of Security Issues (Closed—Ex. 1)

Week of November 4, 2002—Tentative

There are no meetings scheduled for the Week of November 4, 2002.

Week of November 11, 2002—Tentative

Thursday, November 14, 2002

2 p.m.—Discussion of Management Issues (Closed—Ex. 2)

Week of November 18, 2002—Tentative

Thursday, November 21, 2002

2 p.m.—Discussion of Security Issues (Closed—Ex. 1)

Week of November 25, 2002—Tentative

There are no meetings scheduled for the week of November 25, 2002.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: R. Michelle Schroll (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: October 17, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 02–26995 Filed 10–17–02; 2:17 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Medical Use Licenses, Issuance and Availability of NUREG

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG–1556, Volume 9, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Medical Use Licenses." This document consolidates guidance on medical licensing into a single, comprehensive source and provides guidance for licensing under revised 10 CFR Part 35, "Medical Use of Byproduct Material," which will be effective on October 24, 2002 (67 FR 20249; April 24, 2002; corrections to rule were published in the **Federal Register** on October 9, 2002; 67 FR 62872). A Summary of Public Comments and NRC Responses will be published as a separate document, Appendix BB to NUREG–1556 Volume 9. These documents will also be available in electronic form on CD-rom.

ADDRESSES: A free single copy of final NUREG–1556, Volume 9, and Appendix BB (on paper or CD-rom), may be requested by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Carrie Brown, Mail Stop T 9–C24, Washington, DC 20555–0001; e-mail: *CXB@nrc.gov*; telephone: (301) 415–8092. Single copies of the documents, in paper form and on CD-rom, are also available for inspection and/or copying for a fee in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. NUREG–1556, Volume 9, and Appendix BB will be available on the NRC's website at *<http://www.nrc.gov>* in the electronic reading room and at *http://www.nrc.gov/materials/miau/miau-reg-initiatives/by-product.html.*

FOR FURTHER INFORMATION CONTACT: Roger W. Broseus, Rulemaking and Guidance Branch, M/S T 9–C24, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–7608; e-mail *RWB@nrc.gov.*

SUPPLEMENTARY INFORMATION: On August 25, 1998 (63 FR 45270), NRC announced the availability of draft NUREG–1556, Volume 9, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Medical Use Licenses," dated August 1998. This draft document, which was prepared by a team composed of NRC staff and staff from State Departments of Health, was published for public comment in parallel with the proposed revision of Part 35, "Medical Use of Byproduct Material." As a result of comments received on the August 1998 draft, it was revised and published as draft NUREG–1556, Volume 9, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Medical Use Licenses" (March 2002). The notice of availability of the March 2002 draft was published on April 5, 2002 (67 FR 16467), and input on the guidance was requested. The NRC invited the public to comment on questions pertaining to the level of detail and format in the guidance, model procedures, licensing guidance specific to diagnostic nuclear medicine, and other guidance that should be considered for reference in NUREG–1556, Volume 9, such as additional voluntary industry consensus standards or other publicly available documents. The March 2002 draft NUREG included Appendix Z, which provided a summary of comments on the 1998 draft and NRC responses.

On April 25, 2002, NRC held a public workshop to obtain stakeholder comments on the March 2002 draft, with emphasis on therapeutic applications of byproduct materials. A second public workshop was held on April 30, 2002, to receive stakeholder input on guidance, with emphasis on diagnostic applications of byproduct materials. In addition to the feedback from the workshops, the NRC also received written public comments during a 60-day comment period (April 5 to June 4, 2002). A summary of comments and NRC responses will be published as a separate Appendix BB to NUREG–1556, Volume 9, which will also include the summary of comments and NRC responses on the August 1998 draft NUREG. The staff considered all comments, including constructive suggestions to improve the document, in the preparation of the final NUREG report.

The final version of NUREG–1556, Volume 9, is now available for use by applicants, licensees, NRC license reviewers, and other NRC staff. This document supersedes the guidance previously found in—

(1) Regulatory Guide (RG) 10.8, Revision 2, "Guide for the Preparation of Applications for Medical Use Programs";

(2) Appendix X to RG 10.8, Revision 2, "Guidance on Complying With New Part 20 Requirements";

(3) Draft RG DG–0009, "Supplement to Regulatory Guide 10.8, Revision 2, Guide for the Preparation of Applications for Medical Use Programs";

(4) Draft RG FC 414–4, "Guide for the Preparation of Applications for Licenses for Medical Teletherapy Programs";

(5) RG 8.23, "Radiation Safety Surveys at Medical Institutions, Revision 1";

(6) RG 8.33, "Quality Management Program";

(7) RG 8.39, "Release of Patients Administered Radioactive Materials";

(8) Policy and Guidance Directive (P&GD) 03–02, "Licensing Lixiscope and BMA";

(9) Policy and Guidance Directive (P&GD) 03–08, "Standard Review Plan for Teletherapy";

(10) Policy and Guidance Directive (P&GD) 3–17, "Review of Training and Experience Documentation Submitted by Proposed Physician User Applicants";

(11) Policy and Guidance Directive (P&GD) FC 87–2, "Standard Review Plan for License Applications for the Medical Use of Byproduct Material";

(12) Policy and Guidance Directive (P&GD) FC 86–4, Revision 1, "Information Required for Licensing Remote Afterloading Devices";

(13) Addendum to Revision 1 to P&GD FC 86–4, "Information Required for Licensing Remote Afterloading Devices—Increased Source Possession Limits";

(14) Policy and Guidance Directive (P&GD) FC 92–01 "Information Required for Licensing Mobile Nuclear Medicine Services," and

(15) Policy and Guidance Directive (P&GD) 3–15, "Standard Review Plan for Review of Quality Management Programs."

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated in Rockville, Maryland, this 15th day of October, 2002.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 02–26830 Filed 10–21–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions, granting authority to make appointments under Schedule C in the excepted service as required by 5 CFR 6.1 and 213.103.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedule C between between September 1, 2002 and September 30, 2002. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule C

Commission on Civil Rights

Special Assistant to a Commissioner. Effective September 17, 2002.

Commodity Futures Trading Commission

Special Assistant to a Commissioner. Effective September 25, 2002.

Department of Agriculture

Special Assistant to the Administrator, Farm Service Agency. Effective September 6, 2002.

Confidential Assistant to the Administrator, Rural Housing Service. Effective September 12, 2002.

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective September 18, 2002.

Staff Assistant to the Administrator, Risk Management Agency. Effective September 25, 2002.

Director of External Affairs to the Administrator, Risk Management Agency. Effective September 25, 2002.

Staff Assistant to the Administrator, Farm Service Agency. Effective September 30, 2002.

Department of Commerce

Confidential Assistant to the Assistant Secretary for Technology. Effective September 4, 2002.

Department of Defense

Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective September 4, 2002.

Special Advisor to the Under Secretary of Defense (Policy). Effective September 20, 2002.

Department of Education

Confidential Assistant to the Director, Office of Public Affairs. Effective September 4, 2002.

Special Assistant to the Assistant Secretary for Postsecondary Education. Effective September 12, 2002.

Special Assistant to the Chief of Staff to the Deputy Secretary. Effective September 12, 2002.

Special Assistant to the Assistant Secretary for Postsecondary Education. Effective September 12, 2002.

Special Assistant to the Director, Office of Public Affairs. Effective September 17, 2002.

Department of Energy

Senior Policy Advisor to the Director of Science. Effective September 16, 2002.

Department of Health and Human Services

Special Assistant to the Chief of Staff. Effective September 11, 2002.

Speechwriter to the Deputy Assistant Secretary for Public Affairs. Effective September 25, 2002.

Confidential Assistant to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy). Effective September 26, 2002.

Department of Housing and Urban Development

Special Assistant to the Assistant Secretary for Public Affairs. Effective September 4, 2002.

Media Coordinator to the Assistant Secretary for Public Affairs. Effective September 12, 2002.

Deputy White House Liaison to the Assistant to the Secretary and White House Liaison. Effective September 17, 2002.

Department of the Interior

Special Assistant to the Deputy Secretary. Effective September 26, 2002.

Department of Justice

Chief, Congressional Affairs to the Administrator, Drug Enforcement Administration. Effective September 5, 2002.

Special Assistant to the Director, Community Relations Service. Effective September 10, 2002.

Department of Labor

Special Assistant to the Chief Financial Officer. Effective September 4, 2002.

Chief of Staff to the Assistant Secretary for Disability Employment Policy. Effective September 11, 2002.

Special Assistant to the Assistant Secretary for Disability Employment Policy. Effective September 11, 2002.

Research Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective September 16, 2002.

Senior Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective September 18, 2002.

Deputy Director to the Director, Women's Bureau. Effective September 19, 2002.

Special Assistant to the Assistant Secretary for Mine Safety and Health. Effective September 20, 2002.

Special Assistant to the Secretary of Labor. Effective September 26, 2002.

Department of State

Special Assistant to the Senior Coordinator for International Women's Issues. Effective September 5, 2002.

Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective September 5, 2002.

Special Assistant to the Deputy Assistant Secretary for Academic Exchanges. Effective September 6, 2002.

Senior Advisor to the Assistant Secretary for Educational and Cultural Affairs. Effective September 10, 2002.

Special Assistant to the Director of White House Liaison Staff. Effective September 12, 2002.

Foreign Affairs Officer to the Under Secretary, United States Permanent Representative to the Organization of American States. Effective September 12, 2002.

Foreign Affairs Officer to the Director Policy Planning. Effective September 20, 2002.

Senior Policy Advisor to the Assistant Secretary for Diplomatic Security, Bureau of Diplomatic Security. Effective September 25, 2002.

Department of Transportation

Senior Advisor to the Administrator, Federal Aviation Administrator. Effective September 17, 2002.

Department of the Treasury

Senior Advisor for Latin America and Caribbean Nations to the Assistant Secretary, International Affairs. Effective September 6, 2002.

Special Assistant to the Executive Secretary. Effective September 30, 2002.

Environmental Protection Agency

Program Advisor (Publications) to the Associate Administrator. Effective September 5, 2002.

Senior Advisor to the Chief Financial Officer. Effective September 17, 2002.

Federal Emergency Management Agency

Assistant Division Director to the Director, Congressional and Intergovernmental Affairs Division. Effective September 17, 2002.

General Services Administration

Confidential Assistant to the Chief of Staff. Effective September 5, 2002.

Senior Advisor to the Regional Administrator, Region 4, Atlanta, GA. Effective September 12, 2002.

National Credit Union Administration

Staff Assistant to a Board Member. Effective September 18, 2002.

President's Commission on White House Fellowships

Associate Director to the Executive Director of the President's Commission on White House Fellowships. Effective September 6, 2002.

Securities and Exchange Commission

Confidential Assistant to a Commissioner. Effective September 12, 2002.

Confidential Assistant to a Commissioner. Effective September 24, 2002.

Small Business Administration

Press Secretary to the Associate Administrator for Communications and Public Liaison. Effective September 10, 2002.

Special Assistant to the Administrator for Field Operations Restructuring. Effective September 12, 2002.

Regional Administrator, Region III, Philadelphia, PA to the Administrator, Small Business Administration. Effective September 17, 2002.

Social Security Administration

Special Assistant to the Chief of Staff. Effective September 6, 2002.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–26799 Filed 10–21–02; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of FFP Partners, L.P., To Withdraw its Class A Units of Limited Partnership Interests From Listing and Registration on the American Stock Exchange LLC File No. 1–09510

October 16, 2002.

FFP Partners, L.P., a Delaware limited partnership ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Class A Units of Limited Partnership Interests Common Stock ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Trustees ("Board") of the Issuer approved resolutions on September 26, 2002 to withdraw the Issuer's Security from listing on the Amex. In making its decision to withdraw the Issuer's Security from the Exchange, the Board considered the low number of record holders, the erratic and thin trading of the securities and the burden on the Issuer's resources due to the costs associated with maintaining the listing requirements for its Security.

The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before November 6, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–26827 Filed 10–21–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25768; 813–240]

GDC Partners Fund, LLC, et al.; Notice of Application

October 15, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 ("Act") exempting applicant from all provisions of the Act and the rules and regulations under the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (f), (g), and (j)), section 30 (except for certain provisions of paragraphs (a), (b), (e), and (h)), and section 36 through 53, and the rules and regulations under those sections.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain limited liability companies and other entities formed for the benefit of eligible current and former employees of Gibson, Dunn & Crutcher LLP ("GDC") and its affiliates from certain provisions of the Act. Each such entity will be an "employees' securities company" within the meaning of section 2(a)(13) of the Act.

APPLICANTS: GDC Partners Fund, LLC ("Fund") and GDC.

FILING DATES: The application was filed on March 6, 2000, and amended on October 15, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 11, 2002, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, 333 South Grand Avenue, Los Angeles, CA 90071.

FOR FURTHER INFORMAITON CONTACT: John L. Sullivan, Senior Counsel, at (202)

942–0681, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Fund is a Delaware limited liability company formed pursuant to a limited liability company agreement ("Investment Fund Agreement"). The applicants may in the future offer additional pooled investment vehicles identical in all material respects (other than form of organization, investment objective and strategy) to the Fund (each, a "Subsequent Fund") (together, the Fund and the Subsequent Fund are sometimes referred to as the "Investment Funds"). The applicants anticipate that each Subsequent Fund will also be structured as a limited liability company, although a Subsequent Fund could be structured as a domestic or offshore general partnership, limited partnership or corporation. Each Investment Fund will operate as a non-diversified, closed-end management investment company.

2. The Fund was established to enable the Eligible Investors (as defined below) to participate in certain investment opportunities that come to the attention of GDC, a law firm organized as a California limited liability partnership. The investment opportunities may include separate accounts with registered and unregistered investment advisers, investments in other pooled investment vehicles such as registered investment companies, investment companies exempt from registration under the Act, commodity pools, and other securities investments (each particular investment being referred to herein as an "Investment."). Participation as investors in an Investment Fund will allow the Eligible Investors, as defined below, who are members of the Investment Fund (each, a "Member") to diversify their investments and to have the opportunity to participate in investments that might not otherwise be available to them or that might be beyond their individual means.

3. Interests in an Investment Fund ("Units") will be offered and sold in reliance upon the exemption from registration under the Securities Act of 1933 (the "Securities Act") contained in Section 4(2) of the Securities Act or Regulation D under the Securities Act. Units will be offered only to GDC, any entity controlling, controlled by, or under common control with GDC ("GDC Entity") or persons (each an "Eligible Investor") who meet the following criteria: (a) Current or former partners of, or key administrative employees of, GDC or a GDC Entity ("Eligible Employees"), the immediate family members of Eligible Employees, which are parents, children, spouses of children, spouses, and siblings, including step or adoptive relationships ("Immediate Family Members"), and trusts or other entities the sole beneficiaries of which consist of Eligible Employees or their Immediate Family Members ("Eligible Trusts"); and (b) who are (i) "accredited investors" as that term is defined in Regulation D under the Securities Act, and (ii) sophisticated in investment matters. Any GDC Entity that acquires interests in an Investment Fund will be an accredited investor.

4. An Eligible Employee or Immediate Family Member must meet the standards of an "accredited investor" in rule 501(a)(5) or 501(a)(6) of Regulation D under the Securities Act, and an Eligible Trust must be an accredited investor under rule 501(a) of Regulation D. An Eligible Investor must have sufficient knowledge, sophistication and experience in business and financial matters to be capable of evaluating the merits and risk of an investment in an Investment Fund and be able to bear the economic risk of such investment and to afford a complete loss of such investment.

5. An Investment Fund will have an investment committee ("Investment Committee") which will consist of not less than two persons ("Managers"), all of whom will also be Members. The chief function of the Investment Committee will be to review and select Investments for the Investment Fund.

6. The specific investment objectives and strategies for a particular Investment Fund will be set forth in an informative memorandum relating to the Units offered by the Investment Fund, and each Eligible Investor will receive a copy of the informative memorandum before making an investment in the Investment Fund. The terms of an Investment Fund will be disclosed to each Eligible Investor at the time the investor is invited to participate in the Investment Fund. Each Investment Fund will send its Members an annual report regarding its operations. The annual report of the Investment Fund will contain audited financial statements. In addition, the Investment Fund will transmit a report to each Member setting out information with respect to the Member's distributive share of income, gains, losses, credits and other items for federal income tax purposes, resulting from the operation of the Investment Fund during that year.

7. Members will not be entitled to redeem their respective interests in an Investment Fund. A Member will be permitted to transfer his or her interest only with the express consent of the Managers and then only to a GDC Entity or an Eligible Investor. No fee of any kind will be charged in connection with the sale of Units of an Investment Fund.

8. The Investment Fund Agreement provides that the Managers may require a Member to withdraw from the Fund if they, in their sole discretion, deem such withdrawal in the best interest of the Investment Fund. Upon withdrawal, a Member will be paid at least the lesser of (a) the amount actually paid by the Member to acquire the Units, or (b) the fair market value of the Units determined in good faith by the Managers.

9. An Investment Fund will not acquire any security issued by a registered investment company if immediately after the acquisition, the Investment Fund would own more than 3% of the total outstanding voting stock of the registered investment company.

10. Administration of each Investment Fund will be vested in the Managers. The Investment Fund Agreement provides that the Fund will bear its own expenses or that such expenses shall be borne by GDC. An Investment Fund may reimburse GDC for direct costs of disbursements and expenses incurred by GDC on behalf of the Investment Fund. No management fee or other compensation will be paid by the Investment Fund or the Members to the Managers or the Investment Committee.

11. An Investment Fund will not borrow from any person if the borrowing would cause any person not named in section 2(a)(13) of the Act to own any outstanding securities of the Investment Fund (other than short-term paper). All borrowings by an Investment Fund with respect to the funding of Investments will be non-recourse to the Members but generally will be secured by a pledge of the Members' respective capital accounts and unfunded capital commitments. If GDC or a GDC entity makes a loan to an Investment Fund, the lender will be entitled to receive interest at a rate that is permissible under applicable banking or tax regulations, provided that the rate will be no less favorable to the borrower than the rate obtainable on an arm's length basis.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will give due weight to, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, the disposition of the proceeds of the securities issued by the company, the character of securities in which those proceeds will be invested, and the existence of any relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities (other than short-term paper) are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under section 6(b) and 6(e) of the Act exempting an Investment Fund from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), and sections 36 through 53 of the Act, and the rules and regulations under those sections.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit an Investment Fund (a) to invest in companies, partnerships or other investment vehicles offered, sponsored or managed by GDC or any affiliated person as defined in section 2(a)(3) of the Act, (b) to invest in securities of issuers for which GDC or any affiliated person thereof may perform or have performed legal services and from which they may have received fees, (c) to purchase interests in any company or other investment vehicle (i) in which GDC or its partners or employees owns 5% or more of the voting securities, or (ii) that is otherwise an affiliated person of the Investment Fund or GDC; and (d) to participate as a selling securityholder in a public offering in which GDC or any affiliated person thereof acts as or represents as counsel a member of the selling group or the issuer or underwriter of such securities.

4. Applicants state that the exemption sought from section 17(a) is consistent with the protection of investors and the purposes of the Act. Applicants state that the Members will be informed of the possible extent of the dealings by the issuer of such Investments and its sponsors with GDC or any affiliated person thereof. Furthermore, since the Members are experienced professionals acting on behalf of financial services businesses, they will be able to evaluate the risks associated with such dealings. Applicants also assert that the community of interest among the Members and GDC will serve to reduce any risk of abuse in transactions involving an Investment Fund and GDC or any affiliated person thereof.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from participating in any joint enterprise, or other joint arrangement, with the company, unless approved by the Commission. Applicants request relief to permit an Investment Fund to engage in transactions in which an affiliated person of the Investment Fund or an affiliated person of such person participates as a joint or a joint and several participant with the Investment Fund.

6. Applicants submit that strict compliance with section 17(d) would cause an Investment Fund to forego investment opportunities simply because a Member, GDC or other affiliated persons of the Investment Fund also had or contemplated making a similar investment. Applicants also contend that because certain attractive investment opportunities require that each participant make available funds in an amount that may be substantially greater than that available to the investor alone, there may be certain attractive opportunities of which an Investment Fund may be unable to take advantage except as a co-participant with other persons, including affiliates. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent.

7. The Investment Funds may be given the opportunity to co-invest with entities to which GDC provides, or has provided services, and from which it may have received fees, but which are not affiliated persons of the Fund or GDC or affiliated persons of such affiliated persons. Applicants believe that such entities should not be treated as Co-Investors (as defined below) for purposes of condition 4 below. When such entities permit others to co-invest with them, it is common for the transaction to be structured such that all investors have the opportunity to dispose of their investment at the same time. It is important to GDC that the interests of its clients take priority over the interests of the Investment Funds and that the activities of its clients not be burdened by activities of the Investment Funds. In addition, applicants assert that the relationship of an Investment Fund to a client of GDC is fundamentally different from such Investment Fund's relationship to GDC and its affiliated persons. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Investment Funds from overreaching by GDC and its affiliated persons, whereas the same concerns are not present with respect to the Investment Funds vis-à-vis unaffiliated persons of GDC or the Investment Fund who are clients of GDC.

8. Section 17(f) of the Act requires a registered investment company to place and maintain its securities only in the custody of certain qualified custodians.

Applicants request an exemption from the requirements contained in section 17(f) and in rule 17f–2 thereunder to permit the following exceptions from rule 17f–2: (a) Compliance with paragraph (b) of the rule may be achieved through safekeeping in the locked files of GDC or of a partner of GDC; (b) for purposes of paragraph (d) of the rule, (i) employees of GDC will be deemed to be employees of the Investment Funds, (ii) the Managers of an Investment Fund will be deemed to be officers of such Investment Fund and (iii) the Managers of an Investment Fund will be deemed to be board of directors of such Investment Fund, and (c) instead of the verification procedure under paragraph (f) of the rule,

verification will be effected quarterly by two employees of GDC. Applicants expect that many of the Investment Funds' investments will be evidenced only by partnership agreements or similar documents, rather than by negotiable certificates that could be misappropriated. Applicants assert that these instruments are most suitably kept in GDC's files, where they can be referred to as necessary.

9. Section 17(g) of the Act and rule 17g–1 under the Act generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that certain persons, none of whom is an interested person of an Investment Fund (as defined in section 2(a)(19) of the Act), take certain actions and make certain approvals concerning bonding. Applicants request exemptive relief so that such actions and approvals required to be taken may be taken by the Managers regardless of whether they are deemed to be an "interested person" of an Investment Fund, as each is likely to be considered an interested person of the Investment Fund. Applicants could not comply with rule 17g–1 absent such relief. Applicants also request an exemption from the requirement contained in rule 17g–1 that an investment company must have a majority of directors who are not "interested persons" of the company, that those disinterested persons select and nominate any other disinterested directors, and that any legal counsel of such disinterested persons be independent.

10. Section 17(j) of the Act and paragraph (b) of rule 17j–1 under the Act make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that each registered investment company to adopt a written code of ethics and to monitor all transactions of each access person of such investment company. Applicants request an exemption from the provisions of rule 17j–1, except for the antifraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to an Investment Fund. Requiring an Investment Fund to adopt a written code of ethics and requiring access persons to report each of their securities transactions would be time-consuming and expensive and would serve little purpose in light of, among other things, the community of interests among the Members of the Investment Fund by virtue of their common association with GDC.

11. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e) of the Act, and the rules and regulations thereunder, that registered investment companies file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to an Investment Fund and would entail administrative and legal costs that outweigh any benefit to the Members. Applicants request exemptive relief to the extent necessary to permit an Investment Fund to report annually to its Members in the manner described in the application. Applicants also request an exemption from section 30(h) of the Act to the extent necessary to exempt the Managers and any other persons who may be deemed to be members of an advisory board of an Investment Fund from filing Forms 3, 4 and 5 under section 16 of the Securities Exchange Act of 1934, as amended ("Exchange Act"), with respect to their ownership of Units in the Investment Fund. Applicants assert that, because there is no trading market for Units and the transferability of Units is severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to file them.

Applicants' Conditions

1. Each proposed transaction, to which an Investment Fund is a party, otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (the "Section 17 Transactions") will be effected only if the Investment Committee determines that (a) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to Members of the Investment Fund and do not involve overreaching of the Investment Fund or its Members on the part of any person concerned, and (b) the transaction is consistent with the interests of the Members of the Investment Fund, the Investment Fund's organizational documents and the Investment Fund's reports to its Members.

In addition, the Investment Committee will record and preserve a description of such Section 17 Transactions, the findings of the Investment Committee, the information or materials upon which the findings are based, and the basis therefore. All such records will be maintained for the life of the Investment Fund and at least two years thereafter and will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. The Investment Committee will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Investment Fund or any affiliated person of such person, promoter or principal underwriter.

3. An Investment Fund will maintain and preserve, for the life of the Investment Fund and at least two years thereafter, such accounts, books and other documents constituting the record forming the basis for the audited financial statements and annual reports of the Investment Fund to be provided to the Members, and agrees that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

4. The Investment Committee will not purchase for an Investment Fund any investment in which a Co-Investor (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Investment Fund and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the Investment Fund holding such investment sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Investment Fund holding such investment has the opportunity to dispose of its investment prior to or concurrently with, on the same terms as, and on a *pro rata* basis with the Co-Investor. The term "Co-Investor" with respect to the Investment Fund means any person who is (a) an affiliated person of the Investment Fund, (b) GDC and any GDC Entity, (c) a current or former partner or employee of GDC or a GDC Entity, (d) a company in which a member of the Investment Committee, GDC or a GDC Entity acts as an officer, director, or general partner, or has a similar capacity to control the sale or disposition of the company's securities, or (e) an investment vehicle offered, sponsored, or managed by GDC.

The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor (a) to its direct or indirect wholly owned subsidiary, to any company (a "Parent") of which the Co-Investor is a direct or indirect wholly owned subsidiary, or to a direct or indirect wholly owned subsidiary of its Parent, (b) to immediate family members of the Co-Investor or a trust established for the benefit of any such family member, (c) when the investment is comprised of securities that are listed on a national securities exchange registered under section 6 of the Exchange Act, or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder.

5. An Investment Fund will send to each Member who had an interest in the Investment Fund at any time during the fiscal year then ended, financial statements audited by the Investment Fund's independent accountants. At the end of each fiscal year, the Investment Committee will make a valuation or have a valuation made of all of the assets of the Investment Fund as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Investment Fund. In addition, within 90 days after the end of each fiscal year of the Investment Fund or as soon as practicable thereafter, the Investment Fund will send a report to each person who was a Member at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Member of his or her federal and state income tax returns and a report of the investment activities of the Investment Fund during such year.

6. In any case where purchases or sales are made from or to an entity affiliated with an Investment Fund by reason of a 5% or more investment in the entity by GDC, a GDC Entity or a GDC or GDC Entity's partner or employee, such individual will not participate in the Investment Committee's determination of whether or not to effect the purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Hemagen Diagnostics, Inc. Common Stock, $.01 par value) From the Boston Stock Exchange, Inc. File No. 1–11700

October 16, 2002.

Hemagen Diagnostics, Inc., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value ("Security"), from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The Issuer stated in its application that it has complied with the Rules of the BSE that govern the removal of securities from listing and registration and all applicable laws in effect in the State of Delaware, in which it is incorporated.

On September 6, 2002, the Board of Directors ("Board") of the Issuer approved a resolution to withdraw the Company's Security from listing on the Exchange. In making the decision to withdraw the Security from listing and registration on the BSE, the Issuer's Board considered the relative liquidity provided by the BSE versus other securities exchanges and the cost associated with maintaining multiple listings. The Issuer stated in its application that the Security is currently traded on the Nasdaq SmallCap Market. The Issuer represented that it will maintain its listing on the Nasdaq SmallCap Market.

The Issuer's application relates solely to the Security's withdrawal from listing on the BSE and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before November 6, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–26826 Filed 10–21–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27578]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 16, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 12, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 12, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

PG&E Corporation, et al. (70–10047)

PG&E Corporation ("PG&E Corp."), a holding company claiming exemption from registration under section 3(a)(1) of the Act by rule 2, One Market, Spear

Tower, Suite 400, San Francisco, California 94105, Pacific Gas and Electric Company ("PG&E"), a direct public-utility company subsidiary of PG&E Corp., Newco Energy Corporation ("Newco"), a direct nonutility subsidiary of PG&E, Electric Generation LLC ("Gen"), a direct nonutility subsidiary of Newco, all at 77 Beale Street, San Francisco, California 94177, have filed an application with the Commission under sections 9(a)(2) and 10 of the Act.

On April 6, 2001, PG&E filed a petition under chapter 11 of the U.S. Bankruptcy Code. On September 20, 2001, PG&E Corp. and PG&E (collectively, "Proponents") jointly submitted to the United States Bankruptcy Court for the Northern District of California ("Bankruptcy Court") a plan of reorganization for PG&E. The Proponents subsequently amended that plan (as amended, "Plan"). PG&E is a debtor-in-possession, and continues to provide all of the electric generation, electric transmission, gas transmission, and gas and electric local distribution services that it did before, except that it is not able to purchase power to supply its net open position and is only able to make infrastructure investments. PG&E Corp., Newco, and Gen (collectively, "Applicants") request authority to effect certain transactions, described below, as set forth in the Plan.[1]

I. Description of the Applicants

PG&E Corp., a California corporation, became the holding company of PG&E on January 1, 1997. Through other subsidiaries, PG&E Corp. is engaged in a number of nonutility businesses.[2] PG&E Corp.'s common stock and related preferred stock purchase rights are publicly traded on the New York Stock Exchange.

Newco was incorporated under the laws of the State of California on October 19, 2001. It is a wholly owned, direct subsidiary of PG&E. Newco is the sole member of three limited liability companies: ETrans LLC ("ETrans"); Gen; and GTrans LLC ("GTrans"). Currently, Gen is an inactive nonutility subsidiary that owns all of the outstanding ownership interests of twenty-seven limited liability companies (collectively, "GenSub LLCs").[3] The GenSub LLCs are California limited liability companies formed on October 30, 2001.

PG&E, a California corporation, is a public-utility company engaged principally in the business of providing regulated electricity and natural gas distribution and transmission services throughout most of northern and central California. Currently, all of the outstanding shares of common stock of PG&E are held directly or indirectly by PG&E Corp.[4] In addition, PG&E has a number of series of publicly held preferred stock outstanding. The company's service territory covers approximately 70,000 square miles, and includes all or a portion of forty-eight of California's fifty-eight counties. As of December 31, 2001, PG&E employed approximately 19,000 people. PG&E's generation facilities consist primarily of hydroelectric and nuclear generating plants, and have an aggregate net operating capacity of approximately 6,649 megawatts ("MW"). As of December 31, 2000, PG&E owned approximately 18,648 miles of interconnected transmission lines of 60 kilovolts ("kV") to 500 kV and transmission substations having a capacity of approximately 7,091 megavolt-amperes ("MVa"). PG&E distributes electricity to its customers through approximately 116,460 circuit miles of distribution system and distribution substations having a capacity of approximately 24,894 MVa. PG&E relinquished operational control, but not ownership, of its electric transmission facilities to the California Independent System Operator ("Cal-ISO").[5] PG&E also owns and operates a gas transmission, storage and distribution system in California. As of December 31, 2001, PG&E's gas system consisted of approximately 6,254 miles of transmission pipelines, three gas storage facilities, and 38,410 miles of gas distribution lines. PG&E's peak send-out of gas on its integrated system in California during the year ended December 31, 2001, was 3,793 million cubic feet ("MMcf"). The total volume of gas throughput during 2001 was approximately 916,635 MMcf of which 270,556 MMcf was sold to direct end-use or resale customers and 646,079 MMcf was transported as customer-owned gas. As of December 31, 2001, PG&E served approximately 3.9 million gas customers.

Currently, the Federal Energy Regulatory Commission ("FERC") regulates PG&E's electric transmission rates and access, interconnections, operation of the Cal-ISO, and terms and rates of wholesale electric power sales. In addition, most of PG&E's hydroelectric facilities operate in accordance with licenses issued by FERC. The Nuclear Regulatory Commission ("NRC") oversees the licensing, construction, operation and decommissioning of nuclear facilities, including PG&E's Diablo Canyon Power Plant ("DCPP") and the retired Humboldt Bay Power Plant Unit 3. The CPUC has jurisdiction to set retail rates and conditions of service for PG&E's electric distribution, gas distribution and gas transmission services in California. The CPUC also has jurisdiction over PG&E's sales of securities, dispositions of utility property, energy procurement on behalf of its electric and gas retail customers, and certain aspects of PG&E's siting and operation of its electric and gas transmission and distribution systems. In addition, the California Energy Commission has jurisdiction over the siting and construction of new thermal electric generating facilities fifty MW and greater in size.

II. The Plan

As of November 30, 2001, the total allowed claims against PG&E was $13.135 billion. The Plan provides that PG&E pay its creditors $3.92 billion in cash that it currently has on hand and, as discussed below, finance the remaining $9.215 billion through asset sales, issuances of new securities and replacement mortgage bonds, and continuations of existing debt.

A. Asset Sales

Under the Plan, PG&E's four distinct lines of business—electric transmission; electric generation; gas transmission; and gas and electric distribution—would be structurally separated by dividing PG&E's assets and liabilities. PG&E would transfer, among other things, its electric transmission assets to ETrans in exchange for approximately $400 million in cash[6] and approximately $650 million in long-term notes issued to PG&E for transfer to its creditors.[7]

In exchange for approximately $850 million in cash[8] and approximately $1,550 million in long-term notes issued to PG&E for transfer to its creditors,[9] PG&E would transfer, among other things, most of its electric generation assets to the GenSub LLCs.

PG&E would transfer, among other things, certain gas transmission assets, to GTrans in exchange for $400 million in cash[10] and $500 million in long-term notes issued to PG&E for transfer to its creditors.[11]

B. Other Financing

1. Under the Plan, PG&E would issue approximately $3,706 million in new long-term notes to the public or to third parties in private offerings. PG&E would also issue new mortgage bonds to replace existing mortgage bonds. In addition, certain existing debts of PG&E would remain in place, for which PG&E would be responsible.

C. Asset and Debt Allocation

The Plan provides that: ETrans acquire 8.9% of PG&E's assets and assume 11.4% of its debt; Gen acquire 29.7% of PG&E's assets and assume twenty-six percent of its debt; and GTrans acquire 7.8% of PG&E's assets and assume 9.8% of its debt. Correspondingly, PG&E would retain 53.5% of its assets and be responsible for 52.8% of its debt.

III. The Reorganization

After its electric generation, electric transmission, and gas transmission assets are transferred, PG&E would dividend to PG&E Corp. all of its stock in Newco, and PG&E Corp. would dividend to its shareholders all of the common stock of PG&E (collectively, "Reorganization").[12] After the Reorganization, PG&E ("Reorganized PG&E") would no longer be an associate company with respect to ETrans, Gen, or GTrans. Applicants project, on a pro forma basis, that the common equity of PG&E Corp., as a percentage of its total capitalization, would be 21.1% as of December 31, 2002.

In accordance with lease agreements between the GenSub LLCs and their parent company, Gen would operate its subsidiaries' facilities.[13] Consequently, upon receipt by the GenSub LLCs of PG&E's utility assets, Gen would be a public-utility company within the meaning of the Act by virtue of its operation of those assets. Under the Plan, Gen and PG&E would enter into a Master Power Purchase and Sales Agreement ("PSA"). The PSA provides that, for twelve years, Gen sell and Reorganized PG&E purchase the capacity, energy and other electrical products from Gen's facilities and procured by Gen under its certain contracts. Applicants state that they are seeking approval from the FERC for the proposed market-based rates provided for by the PSA. Under the PSA, Reorganized PG&E would have the right to dispatch (*i.e.*, direct the timing and level of operation) the facilities within legal and contractual constraints so that the output is delivered primarily when Reorganized PG&E needs it to serve its customers. The GenSub LLCs may also be public-utility companies by virtue of their direct ownership of generating facilities,[14] in which case Gen would also be a "holding company" as a result of its ownership of all the outstanding ownership interests in the GenSub LLCs.[15] Applicants also state that Gen would claim exemption by rule 2 from registration under section 3(a)(1) of the Act. Applicants state that, after the Reorganization, the FERC would have license and operating jurisdiction over most of the hydroelectric facilities and rate jurisdiction over the sale of the output of Gen and its subsidiaries, and the NRC would continue its jurisdiction over the operations of the Diablo Canyon Power Plant. Applicants project, on a pro forma basis, that the common equity of Gen, as a percentage of its total capitalization, would be −97.2% as of December 31, 2002.

ETrans would be a public-utility company as a result of its ownership and operation of transmission assets. Applicants state that the FERC would continue to have jurisdiction over the rates, terms and conditions for all transmission and transmission-related services provided by ETrans. They also state that the FERC would have jurisdiction over ETrans' participation in the Cal-ISO or any future FERC-approved Western regional transmission organizations that would have operating control over ETrans' transmission assets under FERC tariffs. Applicants project, on a *pro forma* basis, that the common equity of ETrans, as a percentage of its total capitalization, would be 33.8% as of December 31, 2002.

PG&E Corp. and Newco would also be "holding companies," within the meaning of the Act, as a result of holding ownership interests in ETrans, Gen, the GenSub LLCs and, in the case of PG&E Corp., Newco. Applicants state that PG&E Corp. would continue to claim exemption,[16] and Newco would claim exemption, from registration by rule 2 under section 3(a)(1) of the Act. Applicants state that, with the exception of GTrans,[17] PG&E Corp. would continue to own its existing nonutility businesses through PG&E NEG.

Reorganized PG&E would continue to provide gas and electric distribution services using assets that it currently owns. PG&E's preferred stock would remain in place as the preferred stock of Reorganized PG&E. Applicants state that the CPUC would continue to have jurisdiction over Reorganized PG&E's retail electric and gas distribution assets, rates, and services. Applicants project, on a *pro forma* basis, that the common equity of Reorganized PG&E, as a percentage of its total capitalization, would be 44.4% as of December 31, 2002.

IV. Summary of Proposed Transactions

Applicants request authority for: (1) Gen to acquire directly the GenSub LLCs; (2) Newco to acquire directly Gen and ETrans, and to acquire indirectly the GenSub LLCs; and (3) PG&E Corp. to acquire directly Newco, and acquire indirectly Gen, and the GenSub LLCs

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[1] To date, the Bankruptcy Court has not approved the Plan or any other proposed plan to reorganize PG&E, including the plan submitted by the California Public Utilities Commission ("CPUC").

[2] These nonutility subsidiaries are organized under its wholly owned direct subsidiary, PG&E National Energy Group LLC ("PG&E NEG").

[3] The GenSub LLCs are: Diablo Canyon LLC; Mokelumne River Project LLC; Rock Creek-Cresta Project LLC; Haas-Kings River Project LLC; Crane Valley Project LLC; Pit 1 Project LLC; Hat Creek 1 and 2 Project LLC; Poe Project LLC; Pit 3, 4 and 5 Project LLC; Upper NF Feather River Project LLC; Spring Gap-Stanislaus Project LLC; Kern Canyon Project LLC; Kilarc-Cow Creek Project LLC; Chili Bar Project LLC; Desabla-Centerville Project LLC; McCloud-Pit Project LLC; Drum-Spaulding Project LLC; Merced Falls Project LLC; Bucks Creek Project LLC; Potter Valley Project LLC; Phoenix Project LLC; Kerckhoff 1 and 2 Project LLC; Narrows Project LLC; Balch 1 and 2 Project LLC; Helms Project LLC; Battle Creek Project LLC; and Tule River Project LLC.

[4] PG&E Corp. holds approximately ninety-four percent of PG&E's common stock directly and approximately six percent indirectly through PG&E Holdings LLC ("PG&E Holdings"), a wholly-owned subsidiary of PG&E.

[5] The Cal-ISO controls the operation of the California transmission system, is responsible for assuring the reliability of the electric system, provides open access transmission service on a nondiscriminatory basis, has responsibility for meeting applicable reliability criteria, planning transmission additions and assuring the maintenance of adequate reserves, and is subject to tariffs filed with the FERC.

[6] Applicants state that ETrans would raise this cash by selling long-term notes to the public or to third parties in private offerings.

[7] Applicants state that the allocation between cash and notes may change based on market conditions and other factors.

[8] Applicants state that Gen, the parent of the GenSub LLCs, would raise this cash by selling long-term notes to the public or to third parties in private offerings.

[9] See above, at n. 7.

[10] Applicants state that GTrans would raise this cash by selling long-term notes to the public or to third parties in private offerings.

[11] See above, at n. 7.

[12] PG&E Holdings LLC would retain its ownership of approximately six percent of PG&E's outstanding common shares.

[13] The term of each lease is for as long as each GenSub LLC holds a license issued by the FERC to operate (or by the NRC to possess, use or operate) its facility.

[14] Applicants argue that the GenSub LLCs would not be "public-utility companies" within the meaning of the Act but, alternatively, request authority for Gen to acquire them directly and Newco and PG&E Corp. to acquire them indirectly.

[15] *See supra*, at n. 8.

[16] On July 5, 2001, the California Attorney General filed a petition requesting that the Commission terminate PG&E Corp.'s claimed exemption and require that PG&E Corp. register under section 5 of the Act or modify the company's exemption to ensure compliance with California law.

[17] GTrans would not be a public-utility company within the meaning of the Act because, according to Applicants, it would provide only gas transmission services.

indirectly.[18] If necessary, Applicants also request authority for PG&E to acquire ETrans and Gen on an interim basis, between the time that utility assets are transferred to ETrans and Gen and the Reorganization is completed.[19]

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26825 Filed 10–21–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITES AND EXCHANGE COMMISSION

[Release No. IC–25769; File No. 812–12873]

London Pacific Life & Annuity Company; Notice of Application

October 16, 2002.

AGENCY: The Securities and Exchange Commission ("SEC or Commission").

ACTION: Notice of application for an Order of approval pursuant to section 26(c) and Order of exemption pursuant to Sections 6(c) and 17(b) of the Investment Company Act of 1940 ("1940 Act").

Applicants: London Pacific Life & Annuity Company, LPLA Separate Account One and LPT Variable Insurance Series Trust (collectively, the "Applicants").

SUMMARY: Applicants seek an order approving the substitution of the shares of the portfolios ("Replaced Portfolios") of the LPT Variable Insurance Series Trust (the "LPT Trust") with shares of certain portfolios ("Substituting Portfolios") of the MFS(R) Variable Insurance Trust ("MFS Trust") as follows: (1) Shares of the RS Diversified Growth Portfolio with shares of the MFS New Discovery Series; (2) shares of the Harris Associates Value Portfolio with shares of the MFS Value Series; (3) shares of the LPA Core Equity Portfolio with shares of the MFS Value Series; (4) shares of the Strong Growth Portfolio with shares of the MFS Investors Growth Stock Series; and (5) shares of the MFS Total Return Portfolio with shares of the MFS Total Return Series. Applicants also seek an order of exemption pursuant to section 17(b) of the 1940 Act to permit certain in-kind redemptions and purchases in connection with the substitution.

[18] *See supra*, at n.8.

[19] Applicants also state that, if necessary, PG&E will claim exemption from registration by rule 2 under the Act for the interim period during which it will hold all of the ownership interests in Newco.

DATES: The initial Application was filed on August 23, 2002. The amended and restated application was filed on October 2, 2002.

Hearing or Notification of Hearing: An order granting the amended and restated application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 6, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Lynn K. Stone, Blazzard, Grodd & Hasenauer, P.C., PO Box 5108, Westport, Connecticut, 06881. Copies to George C. Nicholson, London Pacific Life & Annuity Company, 3101 Poplarwood Court, Raleigh, North Carolina, 27604.

FOR FURTHER INFORMATION CONTACT: Curtis A. Young, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the amended and restated application. The complete amended and restated application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549, (tel. (202) 942–8090).

Applicants' Representations

1. London Pacific Life & Annuity Company ("London Pacific") was organized in 1927 in North Carolina as a stock life insurance company. London Pacific is authorized to sell life insurance and annuities in 40 states and the District of Columbia. London Pacific's ultimate parent is London Pacific Group Limited, an international fund management firm chartered in Jersey, Channel Islands.

2. On July 3, 2002, the Commissioner of Insurance ("Commissioner") of the North Carolina Department of Insurance issued an order ("Summary Order") declaring that London Pacific was under the supervision of the Commissioner. The Summary Order requires London Pacific to obtain prior written approval from the Commissioner before undertaking a number of various actions. Supplementary Instructions issued by the Commissioner, effective July 9, 2002, require London Pacific to make certain reports to the Commissioner or its representative and to limit payment to affiliates. The Supplementary Instructions also require that certain transactions are to be expressly approved by the North Carolina Department of Insurance during the period of supervision of London Pacific unless London Pacific is subsequently otherwise notified. On August 6, 2002, an Order of Rehabilitation and Preliminary Injunction was issued in the Superior Court of Wake County, North Carolina. The Commissioner was appointed as Rehabilitator of London Pacific. As Rehabilitator, the Commissioner is authorized to take possession of all of London Pacific's assets and properties, and continue to operate their businesses and manage their properties as deemed appropriate, pursuant to applicable North Carolina Insurance Law.

3. LPLA Separate Account One ("Separate Account") is a segregated asset account of London Pacific. The Separate Account was established by London Pacific on November 21, 1994, under North Carolina insurance laws. The Separate Account is used to fund certain Contracts issued by London Pacific. The Separate Account is divided into subaccounts, each of which invests in and reflects the investment performance of a specific underlying registered investment company or portfolio thereof. The Separate Account is registered as a unit investment trust under the 1940 Act.

4. The Separate Account supports certain variable annuity contracts (collectively, the "Contracts") issued by London Pacific. As of May 1, 2002, the Contracts are no longer available for new sales and existing Owners are not permitted to make additional contributions to the Contracts. Each of the Contracts gives London Pacific the right to substitute one or more underlying mutual funds or portfolios for others. These contractual provisions have also been disclosed in the prospectuses relating to the Contracts.

5. The LPT Trust was established as a Massachusetts business trust on January 23, 1995. The LPT Trust is comprised of five separate series ("Portfolios" or "Replaced Portfolios"). The LPT Trust is registered as an open-end management investment company under the 1940 Act (File No. 811–8960) and its shares are registered as securities under the 1933 Act (File No. 033–88792). The shares of the LPT Trust are sold exclusively to the Separate Account of London Pacific to fund benefits under the Contracts. LPIMC Insurance Marketing Services ("LPIMC") is the investment adviser for the LPT Trust. LPIMC is a wholly-owned subsidiary of London Pacific. LPIMC has engaged sub-advisers for each of the Portfolios of the LPT Trust to make investment decisions and place orders.

6. Applicants request the Commission's approval to effect the substitutions of the shares of the Replaced Portfolios with shares of certain portfolios of the MFS Trust (the "Substitution"). The Substituting Portfolios are each a series of the MFS Trust, an open-end management investment company registered under the 1940 Act (File No. 811–08326), the shares of which are registered as securities under the 1933 Act (File No. 33–74668). Applicants represent that the Substituting Portfolios, in general, have similar investment objectives to, more assets, better performance and lower expense ratios than, the Replaced Portfolios. The Replaced Portfolios and the corresponding Substituting Portfolios are as follows:

Replaced portfolios	Substituting portfolios
RS Diversified Growth Portfolio	MFS New Discovery Series.
Harris Associates Value Portfolio	MFS Value Series.
LPA Core Equity Portfolio	MFS Value Series.
Strong Growth Portfolio	MFS Investors Growth Stock Series.
MFS Total Return Portfolio	MFS Total Return Series.

7. For the shares of each Replaced Portfolio held on behalf of the Separate Account at the close of business on the date selected for the Substitution, London Pacific will redeem those shares for cash or in-kind. Simultaneously, London Pacific, on behalf of the Separate Account Applicant, will place a purchase order for shares of each Substituting Portfolio so that each purchase will be for the exact amount of the redemption proceeds, which may be partly or wholly-in kind. Accordingly, at all times monies attributable to Owners then invested in the Replaced Portfolio will remain fully invested and will result in no change in the amount of any Owner's contract value, death benefit or investment in the Separate Account Applicant.

8. In connection with the redemption of all shares of each Replaced Portfolio, it is anticipated that the Replaced Portfolio will incur brokerage fees and expenses in connection with such redemption. To alleviate the potential impact, the redemptions for certain Replaced Portfolios will be effected partly for cash and partly for portfolio securities redeemed "in-kind". In addition, Applicants will use the in-kind and cash redemption proceeds to purchase shares of the Substituting Portfolio. In effecting the in-kind redemptions and transfers, the LPT Trust has informed the Applicants that it will comply with the requirements of Rule 17a-7 under the 1940 Act and the procedures established thereunder by the Board of Trustees of the LPT Trust.

9. As noted above, the portfolio securities received from the in-kind redemptions will be used together with the cash proceeds to purchase the shares of the Substituting Portfolios. The Applicants have determined that partially effecting the redemption of shares of the Replaced Portfolios "in-kind" is appropriate, based on the similarity of certain types of portfolio securities that may be held by the Replaced Portfolio and its corresponding Substituting Portfolio. The LPT Trust has advised the Applicants that the valuation of any "in-kind" redemptions will be made on a basis consistent with the normal valuation procedures of the Replaced Portfolio and that of the Substituting Portfolio.

10. The full net asset value of the redeemed shares held by the Separate Account Applicant will be reflected in the Owners' contract values following the Substitution. The Applicants represent that the Owners will not bear, directly or indirectly, any expenses, including brokerage expenses, for the Substitution so that the full net asset value of redeemed shares of the Replaced Portfolio held by the Separate Account Applicant will be reflected in the Owners' contract values following the Substitution.

11. The LPT Trust is fully advised of the terms of the Substitution. Applicants anticipate that until the Substitution occurs, the LPT Trust will conduct the trading of portfolio securities in accordance with the investment objectives and strategies stated in the LPT Trust's prospectus and in a manner that provides for the anticipated redemptions of shares held by the Separate Account Applicant.

12. Applicants have determined that the Contracts allow the Substitution as described in the application, and that the transactions can be consummated as described therein under applicable insurance laws and under the Contracts. In addition, prior to effecting the Substitution, Applicants will have complied with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Contracts are qualified for sale.

13. Affected Owners will not incur any fees or charges, directly or indirectly, as a result of the Substitution, nor will the rights or obligations of London Pacific under the Contracts be altered in any way. The proposed Substitution will not have any adverse tax consequences to Owners. The proposed Substitution will not cause Contract fees and charges currently being paid by existing Owners to be greater after the proposed Substitution than before the proposed Substitution. The proposed Substitution will not be treated as a transfer for the purpose of assessing transfer fees. Moreover, London Pacific will allow the Owners, with respect to shares substituted, to transfer the contract values held in the subaccount invested in the Substituting Portfolio for a period of thirty-one days without collecting transfer fees or imposing any additional restrictions on transfers. The Contracts provide that there are currently no restrictions on the number of transfers that can be made. Currently, London Pacific does not assess a transfer fee on the first 12 transfers made in a contract year. Moreover, such a transfer will not be counted as a transfer request under any contractual provisions of the Contracts that limit the number of transfers that may be made without charge.

14. In anticipation of the filing of this Application, the Applicants have supplemented the prospectuses for the Contracts to reflect the proposed Substitution. Within five days after the Substitution, London Pacific will send to Owners written notice of the Substitution, substantially in the form attached to the Application as Exhibit C (the "Notice"), identifying the shares of the Replaced Portfolios that have been

eliminated and the shares of the Substituting Portfolios that have been substituted. London Pacific will include in such mailing the applicable prospectus supplement for the Contracts of the Separate Account Applicant describing the Substitution. In addition, London Pacific will provide a copy of the prospectus for the Substituting Portfolios with the Notice. Owners will be advised in the Notice that for a period of thirty-one days from the mailing of the Notice, Owners may transfer all assets, as substituted, to any other available subaccount without limitation or transfer charge (the "Free Transfer Period").

Applicants' Legal Analysis

1. Section 26(c) (formerly, Section 26 (b)) of the 1940 Act provides that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the [SEC] shall have approved such substitution." Section 26(b) of the 1940 Act (now section 26 (c)) was enacted as part of the Investment Company Act Amendments of 1970. Prior to the enactment of these amendments, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five (5) days after the substitution. In 1966, the SEC, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted security, recommended that section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval.

2. The purposes, terms and conditions of the Substitution are consistent with the principles and purposes of section 26(c) and do not entail any of the abuses that section 26(c) is designed to prevent. Simply put, Owners will be assessed no charges whatsoever in connection with the Substitution and their annual fund expense ratios are expected to decrease. In addition, to the extent an Owner does not wish to participate in the Substitution, he or she is free to transfer to any other option available under the relevant Contract prior to the Substitution and within 31 days after the date of the Notice for the Substitution without any transfer fee. Moreover, as discussed below, Owners will be substituted into a Substituting Portfolio whose investment objectives are substantially similar to those of the Replaced Portfolio.

3. Applicants submit that the Substitution does not present the type of costly forced redemption or other harms that section 26(c) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons:

(1) The Substitution will continue to fulfill Owners' objectives and risk expectations, because the investment objectives of each Substituting Portfolio are substantially similar to those of each Replaced Portfolio.

(2) After receipt of the Notice informing an Owner of the Substitution, an Owner may request that his or her assets be reallocated to another subaccount at any time during the Free Transfer Period. The Free Transfer Period provides sufficient time for Owners to consider their reinvestment options;

(3) The Substitution will be at net asset value of the respective shares, without the imposition of any transfer or similar charge;

(4) Neither the Owners, the Replaced Portfolio nor the Substituting Portfolio will bear any costs of the Substitution, including brokerage fees, and accordingly, the Substitution will have no impact on the Owners' Contract values;

(5) The Substitution will in no way alter the contractual obligations of London Pacific or the rights and privileges of Owners under the Contracts;

(6) The Substitution will in no way alter the tax benefits to Owners; and

(7) The Substitution is expected to confer certain economic benefits on Owners by virtue of enhanced asset size and lower expenses, as described below.

4. The Applicants have determined that each Substituting Portfolio is an appropriate replacement for each Replaced Portfolio and an appropriate investment vehicle for the Owners because they share similar investment objectives. The investment objectives of each Replaced Portfolio and of each Substituting Portfolio and an explanation as to why Applicants believe they are similar are contained below.

Replaced Portfolio

RS Diversified Growth Portfolio

Substituting Portfolio

MFS New Discovery Series

The investment objective for the RS Diversified Growth Portfolio is long-term capital growth. The investment objective for the MFS New Discovery Series is capital appreciation.

The RS Diversified Growth Portfolio invests at least 65% of its total assets in common and preferred stocks and warrants of small-to-medium sized companies that have a market capitalization of $3 billion or less. The subadviser may invest a larger percentage of the assets of the Portfolio in a single company than do other investment advisers. The MFS New Discovery Series invests, under normal market conditions, at least 65% of its net assets in equity securities of emerging growth companies. Equity securities include common stocks and related securities, such as preferred stocks, convertible securities and depositary receipts for those securities. While emerging growth companies may be of any size, the series will generally focus on smaller capitalization emerging growth companies that are early in their life cycle. Small cap companies are defined by MFS as those companies with market capitalizations within the range of market capitalizations in the Russell 2000 Stock Index as of November 30, 2001, between $4.1 million and $8.4 billion.

Replaced Portfolio

Harris Associates Value Portfolio

Substituting Portfolio

MFS Value Series

The investment objective for the Harris Associates Value Portfolio is long-term capital appreciation. The MFS Value Series seeks capital appreciation and reasonable income.

The Harris Associates Value Portfolio invests at least 65% of its total assets in stocks or securities that can be converted into stocks. The subadviser tries to find undervalued stocks for the Portfolio. The subadviser may invest up to 25% of the assets in securities of non-U.S. companies and may invest up to 25% of the assets in lower quality, higher-yielding, bonds (junk bonds). The MFS Value Series invests, under normal market conditions, at least 65% of its net assets in income producing equity securities of companies which the adviser believes are undervalued in the market relative to their long term potential. Equity securities include common stocks and related securities, such as preferred stocks, convertible securities and depositary receipts for those securities. While the series may invest in companies of any size, the series generally focuses on undervalued companies with large market capitalizations. The series seeks to achieve a gross yield that exceeds that of the Standard & Poor's 500 Composite Stock Index. The series may invest in junk bonds. The series may invest in foreign securities through which it may have exposure to foreign currencies.

Replaced Portfolio

LPA Core Equity Portfolio

Substituting Portfolio

MFS Value Series

The LPA Core Equity Portfolio seeks long-term capital growth and income. The MFS Value Series seeks capital appreciation and reasonable income.

The LPA Core Equity Portfolio will invest at least 80% of its assets in the stocks of large, well-established companies that have a market capitalization greater than $1 billion. Under normal circumstances, the subadviser will invest the assets of the Portfolio equally among a list of stocks of approximately 100 companies that it considers to be "corporate leaders," primarily in The Dow Jones Industrial Average. The MFS Value Series invests, under normal market conditions, at least 65% of its net assets in income producing equity securities of companies which the adviser believes are undervalued in the market relative to their long term potential. Equity securities include common stocks and related securities, such as preferred stocks, convertible securities and depositary receipts for those securities. While the series may invest in companies of any size, the series generally focuses on undervalued companies with large market capitalizations. The series seeks to achieve a gross yield that exceeds that of the Standard & Poor's 500 Composite Stock Index. The series may invest in junk bonds. The series may invest in foreign securities through which it may have exposure to foreign currencies.

Replaced Portfolio

Strong Growth Portfolio

Substituting Portfolio

MFS Investors Growth Stock Series

The Strong Growth Portfolio seeks long-term capital growth and income. The MFS Investors Growth Stock Series seeks long-term growth of capital and future income rather than current income. The Strong Growth Portfolio will invest at least 65% of its assets in stocks and securities that can be converted into stocks, which may include a substantial amount of stocks of companies that have a market capitalization of $3 billion or less. The Strong Growth Portfolio may invest up to 35% of its assets in debt obligations such as bonds, including up to 5% in junk bonds. The subadviser may also invest up to 25% of the assets in foreign securities, including investments directly in securities of non-U.S. Companies or depository receipts. The MFS Investors Growth Stock Series invests, under normal market conditions, at least 80% of its net assets in common stocks and related securities, such as preferred stocks, convertible securities and depositary receipts for those securities, of companies which MFS believes offer better than average prospects for long-term growth. The series typically invests in large cap companies (market capitalizations of $10 billion or higher). The series may invest in foreign securities through which it may have exposure for foreign currencies. The series has engaged and may engage in active and frequent trading to achieve its principal investment strategies.

Replaced Portfolio

MFS Total Return Portfolio

Substituting Portfolio

MFS Total Return Series

Both these portfolios seek to provide above average income (compared to a portfolio invested entirely in equity securities) consistent with the prudent employment of capital and secondarily to provide a reasonable opportunity for growth of capital and income.

The MFS Total Return Portfolio seeks to meets its goal by investing between 40% and 75% of its assets in stocks and securities that can be converted into stocks and at least 25% of its assets in debt obligations, including up to 20% in lower-quality, higher-yielding bonds (junk bonds). The MFS Total Return Series, under normal market conditions, invests at least 40%, but not more than 75%, of its net assets in common stocks and related securities, such as preferred stocks, bonds, warrants and rights convertible into stock, and depositary receipts for those securities, and at least 25% of its net assets in non-convertible fixed income securities.

5. Accordingly, Applicants have specifically determined that the Substituting Portfolios are appropriate investment vehicles for Owners who have allocated values to the Replaced Portfolios and that the Substitution will be consistent with Owners' investment objectives.

6. As of December 31, 2001, each Substituting Portfolio had lower expense ratios than its corresponding Replaced Portfolio. Further, since the Trust's inception, London Pacific has voluntarily reimbursed certain operating expenses of each Portfolio of the Trust. The Commissioner, as Rehabilitator of London Pacific, has determined that state insurance laws preclude London Pacific from continuing to reimburse expenses of the Trust. Therefore, effective August 31, 2002, expenses of the Trust will no longer be reimbursed.

7. Applicants believe that the addition of assets resulting from the Substitution will likely result in lower expense ratios for the Owners that have allocated their contract values to the Substituting Portfolios. Even in the one instance where the management fee of the Substituting Portfolio is higher (*i.e.*, with respect to substitution of the MFS Value Series for shares of the LPA Core Equity Portfolio), the overall expense ratio of the Substituting Portfolio is significantly lower.

8. With respect to the LPA Core Equity subaccount of the London Pacific Separate Account investing in the MFS Value Series, Applicants represent that there will be no increase in the contract charges from their current levels for a period of at least two years from the date of the Commission order requested herein.

9. (i) London Pacific will not receive, for 3 years from the date of the substitutions, any direct or indirect benefits from the Substituting Portfolios, their advisors or underwriters (or their affiliates), in connection with assets representing contract values of contracts affected by the substitutions, at a higher rate than it had received from the Replaced Portfolios, their advisors or underwriters (or their affiliates), including without limitation 12b–1 shareholder service, administration or other service fees, revenue sharing or other arrangements in connection with such assets; and (ii) the substitutions and the selection of the Replacement Portfolios were not motivated by any financial consideration paid or to be paid to London Pacific by the Replacement Portfolios, their advisors or underwriters, or their respective affiliates.

10. The assets of the Replaced Portfolios have continued to decline. As of July 29, 2002, the assets of the Replaced Portfolios totaled $28,343,852 as compared to a total of $44,853,295 at December 31, 2001.

11. London Pacific anticipates that the discontinuance of the Trust expense reimbursement arrangement, described elsewhere herein, will result in a substantial increase in Trust expenses and a corresponding decrease in the performance of the Portfolios.

12. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any security or other

property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described above from purchasing any security or other property from such registered investment company. Section 2(a)(3) of the 1940 Act defines the term "affiliated" person. The proposed Substitution will be effected in part through in-kind redemptions and purchases and may be deemed to entail the indirect purchase of shares of a related Substituting Portfolio with portfolio securities of the Replaced Portfolio and the indirect sale of securities of the Replaced Portfolio for shares of the Substituting Portfolio.

13. Section 17(b) of the 1940 Act provides that the Commission may grant an Order exempting transactions prohibited by section 17(a) of the 1940 Act upon application if evidence establishes that:

1. The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve over-reaching on the part of any person concerned;

2. The proposed transaction is consistent with the investment policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and

3. The proposed transaction is consistent with the general purposes of the 1940 Act. The Applicants represent that the terms of the proposed transactions, as described in this Application are: reasonable and fair, including the consideration to be paid and received; do not involve over-reaching; are consistent with the policies of the Replaced Portfolios of the Trust; and are consistent with the general purposes of the 1940 Act.

14. Applicants represent that for all the reasons stated above, with regard to section 26(c) of the 1940 Act, the Substitution is reasonable and fair. It is expected that existing and future Owners will benefit from the consolidations of assets in each Substituting Portfolio. The transactions effecting the Substitution will be effected in conformity with section 22(c) of the 1940 Act and Rule 22c–1 thereunder. Moreover, the partial in-kind redemptions of portfolios' securities of the Replaced Portfolios will be effected in conformity with Rule 17a–7 under the 1940 Act and the procedures of the Trust established pursuant to Rule 17a–7. The Owners' interests after the Substitution, in practical economic terms, will not differ in any measurable way from such interests immediately prior to the Substitution. In each case, the consideration to be received and paid is, therefore, reasonable and fair.

Applicants' Conclusions

Applicants submit, for all of the reasons stated herein, that their requests meet the standards set out in sections 6(c), 17(b) and 26(c) of the 1940 Act and that an Order should, therefore, be granted. Accordingly, Applicants request an Order pursuant to sections 6(c), 17(b) and 26(c) of the 1940 Act approving the Substitution.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26850 Filed 10–21–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [67 FR 63713, October 15, 2002].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, October 17, 2002, at 10 a.m.

CHANGE IN THE MEETING: Time Change.

The Closed Meeting scheduled for Thursday, October 17 at 10 a.m. was changed to Thursday, October 17, 2002, at 11 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 17, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26927 Filed 10–18–02; 11:13 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 21, 2002: A Closed Meeting will be held on Tuesday, October 22, 2002, at 10 a.m.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, October 22, 2002, will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions; and

Adjudicatory matters.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 17, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26932 Filed 10–18–02; 11:12 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46655; File No. SR–Amex–2001–06]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto by the American Stock Exchange LLC Relating to Relief and Temporary Specialists

October 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 14, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On August 20, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On October 1, 2002, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] On October 8, 2002, the Exchange submitted Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rules 172 ("Temporary Specialists") and 173 ("Responsibility of Temporary Specialist") to require specialists units consisting of fewer than three members to arrange for the registration of one or more relief specialists. The Exchange also proposes to specify the financial requirements for relief specialists and to revise the Exchange's rules regarding the appointment of temporary specialists. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

Relief and Temporary Specialists

Rule 172. *(a) Relief Specialists.—Any member registered as a regular specialist must either (1) be associated with other members also registered as regular specialists in the same securities, either through a partnership, limited liability company, member corporation or a joint account, and arrange for at least one member of the group to be in attendance during the hours when the Exchange is open for business, or (2) arrange for the registration by at least one other member as relief specialist, who would always be available, in the regular specialist's absence, to take over the "book" and to service the market, so that there would be no interruption of the continuity of service during the hours when the Exchange is open for business.*

The same obligations and responsibilities for the maintenance and stabilization of the market which rest upon regular specialists, rest also upon relief specialists while in possession of the "book."

A member registered as a specialist will be permitted to register as a relief specialist for only one particular specialist or specialist group. The Committee on Floor Member Performance will approve the registration of a regular specialist as a relief specialist provided that the surrounding circumstances are such as to permit the member to act in such relief capacity, and at the same time insure the adequate servicing of the securities in which the member is registered as a regular specialist and the proper performance of the member's specialist functions therein.

(b) Temporary Specialists.—In the event of an emergency, such as the absence of the regular and relief specialists, or when the volume of business in the particular stock or stocks is so great that it cannot be handled by the regular and relief specialists without assistance, a Floor Official may authorize a member of the Exchange who is not registered as a specialist or relief specialist in such stock or stocks, to act as temporary specialist for that day only.

A member who acts as a temporary specialist by such authority is required to file with Trading Analysis, at the end of the day, a report showing (a) the name of the security or securities in which the member so acted, (b) the name of the regular specialist, (c) the time of day when the member so acted, and (d) the name of the Floor Official who authorized the arrangement.

The Floor Official will not give such authority for the purpose of permitting a member not registered as specialist or relief specialist habitually to relieve a regular specialist at lunch periods, etc.

If a temporary specialist substitutes for a regular specialist, and if no regular or relief specialist is present, the temporary specialist is expected to assume the obligations and responsibilities of regular specialists for the maintenance and stabilization of the market. [Notwithstanding the provisions of Rule 170, a regular member, although not himself registered as a specialist, may with the prior approval of a Floor Official Act temporarily for a registered specialist. A member registered as a specialist may, without prior approval of a Floor Official, assist another member acting as a specialist at the same post.]

[Responsibility of Temporary Specialist] *Relief and Temporary Specialist Financial Requirements*

Rule 173. *(a) A full time relief specialist, i.e., one who may be called upon to act as a relief specialist for an entire business day, shall have no financial requirement so long as his or her dealings while relieving the regular specialist are effected for the account of the regular specialist. A full time relief specialist must satisfy the financial requirements of Rule 171 with respect to the securities in which he or she is acting as a relief specialist if the relief specialist, or the specialist unit providing the relief specialist, participates in the profit and loss of the dealings by the relief specialist.*

(b) There is no financial requirement with respect to a member registered as a part-time relief specialist, i.e., one who may be called upon to act as a relief specialist for less than the entire business day, usually for lunch periods, etc. Dealings effected by a part-time relief specialist while relieving the regular specialist must be made for the account of the regular specialist being relieved.

(c) There is no financial requirement for a temporary specialist acting pursuant to Rule 172(b).

[When a member takes temporarily the book of a specialist, he shall, while in possession of that book and for the balance of that particular day, stand in the same relationship to the book as the registered specialist for whom he acts.]

* * * * *

[3] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 17, 2001 ("Amendment No. 1") (replacing the original filing in its entirety). Amendment No. 1: (1) Makes minor technical changes to the proposed rule text; (2) notes in the purpose section of the proposal that the Committee on Floor Member Performance ("Performance Committee") will review and approve the registration of relief specialists; and (3) provides a citation for further details on the Interim Seat Allocation Program.

[4] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated September 30, 2002 ("Amendment No. 2") (replacing the original filing in its entirety). Amendment No. 2, among other things: (1) Amends the proposed rule text to provide that relief and temporary specialists are expected to assume the same obligations and responsibilities of regular specialists for the maintenance and stabilization of the market; (2) clarifies in the proposed rule text that the Performance Committee will review and approve the registration of relief specialists; and (3) provides in the proposed rule text that there are no financial requirements for temporary specialists.

[5] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated October 7, 2002 ("Amendment No. 3") (replacing the original filing in its entirety). Amendment No. 3, in part: (1) Corrects technical errors in the proposed rule text and purpose section of the proposed rule change; (2) clarifies that temporary specialists have no financial requirements; and (3) clarifies the appeals process from decisions of the Performance Committee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Commentary .03 to Amex Rule 171 formerly required specialist units on the Exchange to consist of at least three members. In 1997, the Exchange eliminated this rule as part of a package of changes intended to update Amex rules.[6] The Exchange believes that repealing the "three member" requirement for specialist units has encouraged qualified new firms to enter the specializing business on the Amex by eliminating the entry cost of acquiring or leasing three regular memberships. The Exchange, however, is concerned that units consisting of less than three members may lack sufficient personnel resources to deal with heavy volume and absences from the Floor (notwithstanding the recently approved interim member program).[7] Consequently, the Exchange believes that units with fewer than three members should have formal back-up arrangements. The Amex also believes that the Exchange's current "Temporary Specialists" Rule only provides for emergency, rather than planned, support and is otherwise dated and in need of revision.

To address these concerns, the Exchange is proposing to adopt the New York Stock Exchange, Inc.'s ("NYSE") policies with respect to relief and temporary specialists.[8] The Exchange proposes that specialist units consisting of fewer than three persons would be required to identify at least one relief specialist that would be available to step-in for the regular specialist when required.[9] Relief specialists would be registered as such pursuant to Amex Rule 170(a).[10] The Exchange will permit the registration of a relief specialist when it believes that the relief specialist will be able to perform his or her responsibilities as a relief specialist while assuring adequate performance in the securities in which he or she is registered as a regular specialist. The Exchange proposes that a relief specialist be subject to the same responsibilities for the maintenance and stabilization of the market as the regular registered specialist in a security, and that a member only would be permitted to register as a relief specialist for one unit.

The Exchange proposes to register both "part-time" relief specialists and "full-time" relief specialists. A part-time relief specialist is a member who may be called upon to act as a relief specialist for less than an entire business day, *e.g.*, during lunch periods. The Exchange proposes that dealings effected by a part-time relief specialist while relieving the regular specialist must be made for the account of the regular specialist who is being relieved. The Exchange also proposes that there is no separate financial requirement for a part-time relief specialist. A full-time relief specialist is a member who may be called upon to act as a relief specialist for an entire business day or more. The Exchange proposes that a full-time relief specialist has no separate capital requirement if his or her dealings are effected for the account of the regular specialist being relieved. If, however, dealings by the full-time relief specialist are for an account in which the relief specialist has an interest, then the Exchange proposes that the full-time relief specialist must satisfy applicable financial requirements.[11]

All arrangements for relief specialists would be subject to review and approval by the Exchange's Committee on Floor Member Performance.[12] The Exchange also proposes that specialist units with less than three persons have six months or such longer time as the Chief Executive Officer of the Exchange may determine is appropriate from the date of SEC approval of the proposed rule change to obtain Exchange approval for their relief specialist arrangements.

The proposed temporary specialist provision would allow a Floor Official to appoint a temporary specialist in the event of an emergency, or other unusual situations where existing regular and relief specialists are unable to adequately manage the volume of business in the particular stock or stocks. The proposed temporary specialist rule provides that a temporary specialist is expected to assume the responsibilities of a regular specialist for the maintenance and stabilization of the market, and has no separate financial requirement. The proposed rules also requires that a temporary specialist report his or her appointment to the Exchange's Trading Analysis Division at the end of the trading session.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act[13] in general, and furthers the objectives of Section 6(b)(5)[14] in particular, in that the Exchange's proposed rules are designed to promote just and equitable principles of trade and protect investors and the public interest by ensuring adequate professional staffing on the Exchange Floor at all times.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[6] See Securities Exchange Act Release No. 38238 (February 4, 1997), 65 FR 6591 (February 12, 1997) (approving SR–Amex–96–39, which, amongst other things, removed the prohibition against specialist units of less than three natural persons).

[7] See Securities Exchange Act Release No. 43016 (July 7, 2000), 65 FR 44552 (July 18, 2000) (approving SR–Amex–00–19, an Interim Seat Allocation Program, which allows an active member to temporarily allocate its membership to an interim member when the active member is absent from the trading floor).

[8] See NYSE Rules 104.15, 104.17 and 104.24.

[9] The Exchange notes that specialists units with more than three persons may also arrange for relief specialists pursuant to this proposed rule. Telephone conversation among William Floyd-Jones, Assistant General Counsel, Amex, Terri Evans, Assistant Director, and Lisa N. Jones, Attorney, Division, Commission, dated May 30, 2002.

[10] Amex Rule 170(a) states: "No member shall act as a specialist in any security unless such member is registered as a specialist in such security by the Exchange and such registration may be revoked or suspended at any time by the Exchange."

[11] See Amex Rule 171 ("Specialist Financial Requirements").

[12] The Exchange's Committee on Floor Member Performance ("Performance Committee") is responsible for reviewing the performance of specialists and other Floor members and providing non-disciplinary remediation with respect to poor performance. Members may appeal decision of the Performance Committee to the Amex Adjudicatory Council. See Amex Rule 26.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to File No. SR–Amex–2001–06 and should be submitted by November 12, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46658; File No. SR–GSCC–2002–08]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Revising GSCC's Schedule of Money Tolerances

October 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 11, 2002, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends GSCC's schedule of money tolerances.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(B) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC's rules contain a Schedule of Money Tolerances ("Schedule") that permits GSCC to compare a trade with a discrepancy in its settlement amount or start amount if the discrepancy falls within a specified money tolerance. Specifically, the Schedule provides for: (i) a money tolerance of $1 per million on the settlement amount of a trade, which is applied to buy-sell transactions and to the close leg of repo transactions in real time; (ii) a money tolerance of $40 per million on the settlement amount of a trade, which is applied to buy-sell transactions and the close leg of repo transactions at the end-of-day phased comparison process; and (iii) a money tolerance of $1 per repo transaction on the start amount of a repo transaction.

GSCC understands, based on member input, that one of the tolerances in the Schedule is inappropriate and creates risk. Specifically, the real-time money tolerance of $1 per million on the settlement amount is causing repo transactions with differences of as much as nearly four basis points in the rate to compare immediately during the day. (The data on repo transactions is submitted to GSCC interactively, which now is how the large majority of data is submitted to GSCC.) In the past, these differences normally were discovered and corrected by members on a unilateral basis during the day, but because trades submitted in real time typically are compared shortly after execution, there is not sufficient time for them to be unilaterally corrected on GSCC's system. In order to remedy this problem, the proposed rule change amends the money tolerance on settlement money that is applied in real time to ten cents per million.

The proposed rule change also amends this section of the Schedule to indicate that a settlement money difference of less than $1.00 will not prevent a trade from being matched by GSCC. For example, assume that two members submit a $9 million trade with a $0.98 difference in the settlement amount. Applying the $0.10 per million money tolerance, which in this case is $0.90, without the $1.00 minimum would lead to the trade not being matched because the discrepancy of $0.98 is greater than the tolerance of $0.90. The minimum tolerance of $1.00, however, would permit this trade to match. GSCC believes that a money difference of less than $1.00 is de minimis and should not result in trades not being compared.

GSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it lessens the risk of members' trades with significant money differences being compared before such differences can be corrected.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(4) [4] promulgated thereunder because the proposal effects a change in an existing service of GSCC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of GSCC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of GSCC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to the File No. SR–GSCC–2002–08 and should be submitted by November 12, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

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[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(4).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46663; File No. SR–NASD–2002–40]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to Proposed Rule Change, by NASD, Relating to NASD Rules 1022, 1032, 2210, 3010, 3370, IM–1022–1, and IM–1022–2 and New Rules 2865 and IM–2210–7

October 15, 2002.

I. Introduction

On March 22, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act") [1] and Rule 19b–4 thereunder,[2] a proposal to adopt new rules and amend existing rules to provide for the trading of security futures. Notice of the proposed rule change and Amendment No. 1 thereto was published for comment in the **Federal Register** on July 18, 2002.[3] The Commission received two comment letters regarding the proposed rule change.[4] On September 5, 2002, NASD filed Amendment No. 2 to the proposed rule change.[5] On September 26, 2002, NASD filed Amendment No. 3 to the proposed rule change.[6] This order approves the proposed rule change, accelerates approval of Amendment Nos. 2 and 3, and solicits comments from interested persons on those amendments.

II. Description of the Proposed Rule Change

The rule change modifies existing NASD rules and adopts new rules to accommodate the trading of security futures (*i.e.*, futures on individual stocks and narrow-based stock indices).[7] A description of the rule change follows.

A. New Security Futures Rule 2865

Under the rule change, NASD is adopting Rule 2865 as its security futures rule. The new rule is based on NASD's existing options rule, Rule 2860. Some aspects of Rule 2865 are substantially similar to corresponding provisions of Rule 2860. However, several provisions of Rule 2865 are tailored specifically to security futures.

Delivery of Security Futures Risk Disclosure Statement

Rule 2865(b)(1) will require every member to deliver the security futures risk disclosure statement to each customer at or prior to the time the customer's account is approved for trading security futures. The disclosure statement will discuss the risks of security futures, how they trade, margin, effects of leverage, settlement procedures, customer account protections, and the tax consequences of trading security futures.[8]

Discretionary Accounts

Rule 2865(b)(18) establishes discretionary account procedures for security futures that are similar to those for options. These procedures will require that the written authorization of the customer required by NASD Rule 2510 specifically authorize security futures trading in the account. Under the rule change, a discretionary account, even if it is permitted to trade options, cannot trade security futures unless a new written discretionary account authorization specifically authorizing security futures trading is on file.

Statements of Account

Rule 2865(b)(15) will require members to deliver a customer account statement no less frequently than each month where there has been an entry during the preceding month with respect to a security futures contract, and quarterly to all customers that have an open security futures position or money balance. The statement must provide specific information regarding the customer's position, including the market price, mark-to-market value and nominal value of each security futures position as well as the mark-to-market price and market value of other security positions, the total value of all positions, the outstanding debit or credit balance, and account equity.[9]

Opening of Accounts

Rule 2865(b)(16) establishes specific procedures for members to follow in order to approve a customer account to trade security futures. These procedures include review by an appropriately qualified principal (a Registered Options and Security Futures Principal or a Limited Principal—General Securities Sales Supervisor), specific guidance as to information the member must ask the customer to provide, and a requirement for the member to furnish the security futures risk disclosure statement at or before the time the member accepts an order from the customer to purchase or sell a security future.

Suitability

Rule 2865(b)(19) establishes a heightened suitability standard for security futures, similar to that required for options. The rule provides that if an associated person recommends a security futures transaction, the associated person must have a reasonable basis to believe "that the customer has such knowledge and experience in financial matters that the customer may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the security future." This standard would extend to trading strategies as well as individual trades.

Trading Ahead

Rule 2865(b)(25) will require members to exercise due care to avoid trading ahead of customer orders in the same security futures contract. A member must exercise this due care when the member has gained knowledge of or reasonably should have gained knowledge of the customer's order prior to transmitting the member's order for a proprietary account or in any account in which the member or an associated person has an interest.

B. Front Running Policy

NASD will amend its front running policy, IM–2110–3, to apply to security futures in the same manner that it applies to options. Under the rule change, when a member has material, non-public market information concerning an imminent block transaction in a stock, the member will not be able to trade the security future overlying that stock in its proprietary account, other accounts in which it has an interest, or discretionary accounts. Once the material, non-public market information has been made publicly available, however, the restrictions would no longer apply.

C. Qualifications, Registration and Supervision of Registered Persons

1. Registration Procedures and Examinations

The securities industry has a wide array of qualification examinations that registered persons can take to qualify to engage in various aspects of the securities business. To accommodate the introduction of security futures, the rule change modifies several NASD registration categories, and permits the "grandfathering" of persons already registered in those categories. The following registration categories will be broadened to include security futures activities:

- Registered Options Principal (Series 4), which becomes Registered Options and Security Futures Principal.
- Limited Principal—General Securities Sales Supervisor (Series 9/10).
- General Securities Representative (Series 7).
- Limited Representative—Options (Series 42), which becomes Limited Representative—Options and Security Futures.

NASD is working with other self-regulatory organizations to develop new and revised qualification examinations that will test applicants on topics related to security futures. NASD anticipates that new and revised qualification examinations for the associated registration categories will be completed six months after retail trading in security futures begins. For registered representatives wishing to engage in a security futures business, a new Series 43 examination will be offered. Thereafter, new applicants may choose to take only the Series 7, or, if they wish to engage in security futures business, both the Series 7 and Series 43. Further, because some existing registrants may actually wish to take revised qualification examinations, NASD is modifying its registration categories to allow it to accept other examinations that address security futures, such as the revised Series 3 (containing questions on security futures).

For persons who are or become registered in one of these categories before the implementation of new examinations, the rule change institutes a firm-element continuing education requirement. Under the rule change, NASD will require each such person to complete this program prior to conducting a business in security futures. Thus, these registrants may be "grandfathered" so that they will not have to retake any expanded examinations. These grandfathering procedures will lapse on December 31, 2006. After that date, registrants who have passed an examination that does not include security futures, and who have not already completed this firm-element continuing education program, will be required to retake an examination to function in a registration category with respect to security futures.

2. Other Personnel—Related Changes

The rule change amends other NASD rules relating to the hiring, registration, and supervision of personnel. NASD is amending Rule 1060(a) to exempt from registration with NASD persons associated with a member whose functions are related solely and exclusively to transactions in security futures, provided that they are registered with a registered futures association. In addition, NASD is modifying Rule 3010(e) to require members, when reviewing a job applicant's employment experience that includes experience with a broker-dealer registered pursuant to Section 15(b)(11) of the Act,[10] to review a copy of Commodity Futures Trading Commission ("CFTC") Form 8–T: Notice of Termination of Associated Person, NFA Associate, Branch Office

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 46186 (July 11, 2002), 67 FR 47412.

[4] Letter from Jonathan Barton, Chairman, Steering Committee on Securities Futures of the Futures Industry Association and the Securities Industry Association, Inc. ("SIA/FIA Committee"), to Jonathan Katz, Secretary, Commission, dated August 9, 2002; Letter from Richard G. DuFour, Executive Vice President, Chicago Board Options Exchange ("CBOE"), to Jonathan Katz, Secretary, Commission, dated August 21, 2002.

[5] See letter from Gary L. Goldsholle, Associate General Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated September 5, 2002.

[6] See letter from Gary L. Goldsholle, Associate General Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated September 26, 2002.

[7] See e.g., Section 3(a)(55) of the Act, 15 U.S.C. 78c(a)(55).

[8] See Securities Exchange Act Release No. 46612, (October 7, 2002) (file No. SR–NASD–2002–128).

[9] Amendment No. 2 modified the originally proposed wording of these requirements.

[10] 15 U.S.C. 78o(b)(11).

Manager, Designated Supervisor or Principal.[11]

The rule change amends Rule 3050, which requires associated persons who seek to open accounts or place securities orders with an NASD firm that is not their employer to notify both their employer firm and the executing firm before doing so. Specifically, NASD is broadening the scope of this rule to cover accounts with broker-dealers registered pursuant to Section 15(b)(11) of the Act.

NASD also is modifying its "Taping Rule" (Rule 3010(b)(2)), which requires members who employ certain amounts of personnel who have worked at disciplined firms to adopt special supervisory procedures, including the tape-recording of all telephone calls with customers or prospective customers. The rule change broadens the scope of the Taping Rule to include Futures Commission Merchants ("FCMs") and Introducing Brokers ("IBs") within the group of intermediaries that can potentially meet the definition of a "disciplined firm." The rule change borrows NFA's definition of a disciplined firm.

D. Advertising Rule for Security Futures

Under the rule change, NASD will regulate communications with the public regarding security futures through amendments to its existing rules and the addition of Interpretive Material to Rule 2210 (the "Advertising Rule"). Among other things, the rule change specifies that advertisements and sales literature concerning security futures must be approved by "a principal qualified to supervise security futures activities."[12] A General Securities Principal (Series 24) would not be authorized to approve advertisements and sales literature concerning security futures.

The rule change establishes a pre-use filing requirement for advertisements concerning security futures. In general, a member will be required to file a security futures advertisement with NASD's Advertising/Investment Companies Regulation Department at least 10 days before its use. The Department will review the advertisement and then either approve it, disapprove it, or specify changes that the firm must make before using the communication.

While communications regarding security futures will be subject to the general requirements of NASD's advertising rule, the rule change also establishes several specific requirements on the content of communications regarding security futures. IM–2210–7(d) will require that any statement referring to the potential advantages of security futures be balanced with a statement, in the same degree of specificity, of the corresponding risks. All communications regarding security futures must include a warning that they are not suitable for all investors. In addition, all such communications must state that, upon request, the firm will provide documents that support any claims, comparisons, recommendations, statistics, or other technical data used in the communication. Moreover, communications that are not accompanied or preceded by the security futures risk disclosure statement may not contain statements of historical performance or projections, must be limited to general descriptions of security futures, and must contain contact information for obtaining a copy of the disclosure statement.

E. Short Sales

Transactions in security futures are excluded from the short sale provisions of Section 10(a) of the Act.[13] To harmonize NASD's rules with Section 10(a), NASD is amending the affirmative determination provisions of NASD Rule 3370 to exclude transactions in security futures from the application of the rule. In addition, NASD is amending the definition of "*bona fide* fully hedged" positions to include certain long single stock futures positions in connection with short positions in the underlying stock.

III. Summary of Comments and Response to Comments

As noted above, the Commission received two comment letters regarding the proposed rule change.[14] The SIA/FIA Committee expressed the view that, to the greatest extent possible, NASD should make proposed Rule 2865 a comprehensive stand alone rule for security futures products. The SIA/FIA Committee also noted its concern with respect to cases where an NASD member may also be a member of an exchange trading security futures. In such an instance of dual membership, the SIA/FIA Committee argued that the NASD's rules should make clear that the particular exchange's trading rules would take precedence with respect to orders executed on that exchange. In addition, the SIA/FIA Committee urged the NASD to defer to NFA qualifications and rules to the greatest extent possible for dual registrant firms for customers whose transactions will be booked in futures accounts.

The SIA/FIA Committee also detailed five specific areas of concern. First, the SIA/FIA Committee expressed concern with the proposed amendments to NASD Rule 1022, which sets out the various principal registration types and would establish the qualifying examinations that must be taken to attain those principal registration types with respect to security futures. The SIA/FIA Committee asserted that the proposed NASD rule would apply examination requirements too broadly across varying types of securities futures activities and is ambiguous as to the application of examination requirements to other activities.

Second, the SIA/FIA Committee maintained that the intermarket front-running interpretation now applicable to trading in the options and cash markets should not be extended to security futures due to the unique nature of security futures trading. In addition, the SIA/FIA Committee urged that actual knowledge of the processing of a block trade should be a component of a front-running violation.

Third, the SIA/FIA Committee expressed the view that further harmonization between the NASD and NFA rules was necessary with regard to the proposed communications rules. The SIA/FIA Committee stated that there should be no material regulatory differences in what FCMs on the one hand and broker-dealers, on the other hand, can say to current or prospective customers and when and how it can be said.

Fourth, the SIA/FIA Committee articulated a number of concerns regarding proposed NASD Rule 2865. The SIA/FIA Committee argued that Rule 2865(b)(12), dealing with confirmations, should be deleted due to the Commission's final action with respect to SEC Rule 10b–10.[15] In addition, the SIA/FIA Committee stated that language in proposed Rule 2865(b)(15), regarding account statements, indicating that security futures have a market value should be deleted, because security futures will have a mark-to-market price, rather than a market value as such. The SIA/FIA Committee also suggested deleting language in the same provision regarding margin computation. In Rule 2865(b)(16)(B) and (D), the SIA/FIA Committee recommended conforming the language to more closely match the analogous NFA rule on minimum net equity requirements. The SIA/FIA Committee also noted that it does not believe that there should be a requirement for customers to acknowledge receipt of the risk disclosure statement for options, and therefore that a conforming amendment should be made in proposed Rule 2260(b)(16)(D). The SIA/FIA Committee also expressed concern with regard to proposed Rule 2865(b)(17), and requested that the NASD clarify that, with respect to customer complaints, the maintenance of a separate record for security futures complaints is unnecessary. The SIA/FIA Committee requested that NASD incorporate IM–2310–3, regarding suitability obligations to institutional customers, into Rule 2865(b)(19), either directly or by reference. The SIA/FIA Committee also asserted that the audit trail requirements of proposed Rule 2865 would impose undue burdens on the industry and should be eliminated in favor of internal surveillance tools. Finally, with respect to Rule 2865(b)(24), the SIA/FIA Committee recommended that the NASD adopt a conforming Interpretive Memorandum regarding the prohibition against trading ahead of customer orders when the member is aware or reasonably should be aware of such order.

Fifth, the SIA/FIA Committee requested that NASD modify its proposed amendments to Rule 3370. Specifically, the Committee suggested rule language that would apply the affirmative determination obligation of the Rule to members that hold a security futures position unless the member had assurances that the position would be liquidated prior to expiration.

In its comment letter, CBOE raised three concerns about the proposed rule change with regard to discretionary accounts. First, the CBOE stated its belief that the proposed NASD rule does not sufficiently mirror the comparable CBOE and New York Stock Exchange, Inc. ("NYSE") rules regarding the review and acceptance of security futures discretionary accounts by principals qualified to supervise security futures activities and specifically delegated the authority to review and accept such discretionary accounts.

In addition, CBOE expressed concern about the confirmations provision in the proposed rule change, which required that initial and maintenance margin be disclosed on the confirmation, but did not require that the purchase price of such transaction be included. CBOE stated that the purpose of the confirmation is to disclose to the customer the terms of the transaction, not the required margin.

Finally, CBOE expressed concern with the characterization of security futures products having an equity value under proposed Rule 2865(b)(15)(B). The CBOE stated its belief that the rule should clarify that security futures contracts, aside from their accrued profit or loss, have zero value for equity purposes.

The NASD responded to the commenters in Amendment No. 2. NASD stated that it believed that several of the SIA/FIA Committee's comments would have eased restrictive aspects of the proposed rules. NASD stated further that it believed that the proposed rule change would further the goal of investor protection by using the NASD's options rules as the basis for the majority of its security futures rules.

However, NASD did agree to make several changes in response to the commenters' suggestions. Specifically, NASD responded to the commenters' concern with respect to confirmations by eliminating NASD's proposed confirmation requirement. The NASD also addressed the SIA/FIA Committee's comment with respect to Rule 2865(b)(15)(B) by eliminating the provision, which pertained to margin equity requirements.

In addition, NASD noted in Amendment No. 2 that it did not agree to make the changes requested by CBOE regarding discretionary accounts. NASD stated that it would consider amending both its options and security futures rules once CBOE's proposed rule change regarding discretionary accounts has been approved. In addition, the NASD amended the account statement requirement to provide that the market price, mark-to-market value and nominal value of security futures must be disclosed on customer account statements.

Finally, NASD stated that it intends to clarify the following issues through a Notice to Members: The application of the NASD's best execution rule, Rule 2320, to security futures; that the Series 55 qualification will not be needed for associated persons to trade security futures; that NASD intends to recognize the Series 30 qualification as acceptable for an associated person in a firm registered as a broker/dealer and either a futures commission merchant or introducing broker to supervise security futures; that the suitability obligations to institutional customers interpretation, IM–2310–3, will apply to security futures; and when the trading ahead of customer orders requirement, Rule 2865(b)(25), will apply.

IV. Discussion

After careful review, and consideration of all comments received, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[16] In particular, the Commission finds that the proposal is consistent with the requirements of Section 15A(b)(6) of the Act,[17] which requires, among other things, that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

The Commission notes that the rules NASD has proposed for security futures are modeled after its rules governing options. The system of joint regulation of security futures established by the Commodity Futures Modernization Act is intended to prevent competitive advantages from arising solely out of differences between securities regulation and futures regulation. In addition, NASD's rules reflect the risks to investors that apply specifically to options transactions.

The Commission believes that the rule change should promote just and equitable principles of trade by preventing regulatory disparities from occurring between options and security futures. In addition, the Commission believes that by recognizing the specific risks of security futures, the rule changes should protect investors that trade security futures.

V. Amendment Nos. 2 and 3

The Commission finds good cause to approve Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

In Amendment No. 2, NASD made a series of changes to the originally proposed rule text that clarified or corrected the text without changing the substance of requirements. In Amendment No. 3, NASD amended its filing to state that NASD would make the rule changes effective on the date approved by the Commission.

[11] NASD also is modifying NASD Rule 3010(e) to reflect that members may now review Form U–5s through an internet connection to the WebCRD system, rather than by otherwise obtaining actual copies of such documents.

[12] NASD Rule 2210(b)(1). As originally proposed, this approval would have been required to be performed by a Registered Options and Security Futures Principal. In Amendment No. 2, however, NASD altered this by supplying the quoted language.

[13] 15 U.S.C. 78j(a)(2).

[14] *See* n. 4, *supra*.

[15] *See* Securities Exchange Act Release No. 46471 (September 6, 2002), 67 FR 58302 (September 13, 2002).

[16] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78o(b)(6).

The Commission believes that these amendments merely serve to clarify certain provisions of the proposed rules, and make technical changes that do not raise substantive issues. Accordingly, the Commission believes that there is good cause, consistent with Section 19(b) of the Act,[18] to approve Amendment Nos. 2 and 3 on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 2 and 3, including whether they are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NASD–2002–40 and should be submitted by November 12, 2002.

VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NASD–2002–40), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26781 Filed 10–21–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46662; File No. SR–PCX–2002–61]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. To Amend a Market Data Revenue Sharing Program for Certain Transactions on the PCX in Tape A Securities

October 15, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On October 11, 2002, the PCX amended the proposal.[3] The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6)[5] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through PCXE, proposes to modify its fee schedule for services provided to ETP Holders[6] and Sponsored Participants[7] on the Archipelago Exchange, the equities trading facility of PCXE. Specifically, the Exchange proposes to amend its market data revenue sharing program for Tape A securities[8] traded on the Exchange. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Schedule of Fees and Charges for Exchange Services

* * * * *

Archipelago Exchange: Other Fees and Charges

Market Data Revenue Sharing Credit	
Tape A Securities:	
Liquidity Provider Credit	*40% tape revenue credit per qualifying trade (applicable to limit orders that are residing in the Book and that execute against inbound marketable orders).*
Directed Order	*40% tape revenue credit per qualifying trade (applicable to any market maker that executes against a Directed Order within the Directed Order Process, as defined in PCXE Rule 7.37(a)).*
Cross Order	*40% tape revenue credit per qualifying trade (applicable to any Cross Order, as defined in PCXE Rule 7.31(s), where the ETP Holder or Sponsored Participant represents all of one side of the transaction and all or a portion of the other side).*
Tape B Securities:	
Liquidity Provider Credit	50% tape revenue credit per qualifying trade (applicable to limit orders that are residing in the Book and that execute against inbound marketable orders [in Tape A or B securities]).
Directed Order	50% tape revenue credit per qualifying trade (applicable to any market maker that executes against a Directed Order [in a Tape A or B security] within the Directed Order Process, as defined in PCXE Rule 7.37(a)).
Cross Order	50% tape revenue credit per qualifying trade (applicable to any Cross Order, as defined in PCXE Rule 7.31(s), where the ETP Holder or Sponsored Participant represents all of one side of the transaction and all or a portion of the other side [in a Tape A or B security].

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PCX, through PCXE, proposes to amend its fees charged to ETP Holders and Sponsored Participants (collectively "Users") that access the ArcaEx trading facility by amending its program for sharing with Users market data revenue derived from transactions in Tape A securities.

Background

On May 28, 2002, the Exchange filed with the Commission a proposed rule change to implement, on a pilot basis through June 28, 2002, a mechanism for sharing market data revenue with Users on ArcaEx.[9] The proposed rule change became effective upon filing pursuant to Section 19(b)(3)(A) of the Act,[10] and the PCXE implemented the program on June 1, 2002. On June 27, 2002, the Exchange filed with the Commission a proposed rule change to extend the market data revenue pilot program through August 30, 2002.[11] On July 2, 2002, the Commission summarily abrogated the PCX's proposed rule change and certain proposed rule changes of the National Association of Securities Dealers, Inc. and the Cincinnati Stock Exchange relating to market data revenue sharing.[12] Accordingly, after consultation with Commission staff, on July 9, 2002, the PCX filed with the Commission a proposed rule change to reinstate its market data revenue sharing program, and to reduce the level of the transaction credits paid to Users with respect to transactions in issues listed on the American Stock Exchange (*i.e.* "Tape B" securities).[13]

On August 7, 2002, the PCX established a market data revenue sharing program for certain transactions in Tape A securities.[14] With the instant proposed rule change, the Exchange proposes to amend that program by reducing the level of the transaction credits paid to Users with respect to transactions in such issues. Under the program, the Exchange will share a portion of its gross revenues derived from market data fees with (i) Any User that provides liquidity in a Tape A securities by entering a resting limit order into the ArcaEx Book that is then executed against an incoming marketable order within the Display Order, Working Order, or Tracking Order processes; (ii) any Market Maker that executes against a Directed Order in a Tape A security within the Directed Order Process;[15] and (iii) any User that represents all of one side and all or a portion of the other side of a Cross Order[16] execution in a Tape A security. Any User that meets these requirements will receive a 40% tape revenue credit per qualifying transaction that is reported over the Consolidated Tape Association's ("CTA") Tape A Network. The proposed tape revenue credit is intended to create additional incentives to market participants to provide liquidity on the ArcaEx facility.[17]

2. Statutory Basis

The Exchange believes the proposal is consistent with the requirements of Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5),[19] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission

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[18] 15 U.S.C. 78s(b).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* October 10, 2002 letter from Peter D. Bloom, Regulatory Policy, PCX, to Joseph Morra, Special Counsel, Division of Market Regulation ("Division"), Commission ("Amendment No. 1"). In Amendment No. 1, the PCX provided a new Exhibit A that replaces in its entirety the text of the proposed rule that was included in the original filing. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on October 11, 2002, the date that the PCX filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] *See* PCXE Rule 1.1(n).

[7] A "Sponsored Participant" is "a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] Rule 7.29." *See* PCXE Rule 1.1(tt).

[8] Tape A securities include securities that are listed for trading on the New York Stock Exchange.

[9] *See* Securities Exchange Act Release No. 46070 (June 12, 2002), 67 FR 42089 (June 20, 2002)(SR–PCX–2002–28).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] *See* SR–PCX–2002–37.

[12] *See* Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002)(File Nos. SR–PCX–2002–37, SR–NASD–2002–61, SR–NASD–2002–68, and SR–CSE–2002–06)(Order of Summary Abrogation).

[13] *See* Securities Exchange Act Release No. 46293 (August 1, 2002), 67 FR 51314 (August 7, 2002)(SR–PCX–2002–42).

[14] SR–PCX–2002–56.

[15] The Directed Order Process is the first step in the ArcaEx execution algorithm. Through this Process, Users may direct an order to a Market Maker with whom they have a relationship and the Market Maker may execute the order. To access this process, the User must submit a Directed Order, which is a market or limit order to buy or sell that has been directed to the particular market maker by the User. *See* PCXE Rule 7.37(a) (description of "Directed Order Process").

[16] A Cross Order is defined as a two-sided order with instructions to match the identified buy-side with the identified sell-side at a specified price (the cross price), subject to price improvement requirements. *See* PCXE Rule 7.31(s).

[17] Although the PCX characterized the instant proposed rule change as "reinstating" its market data revenue sharing program for Tape A securities, the Commission notes that the PCX's Tape A market data revenue sharing program was not terminated by the PCX's decision to withdraw SR–PCX–2002–56 and simultaneously file the instant proposed rule change. *See* September 27, 2002 letter from Peter D. Bloom, Director, Policy Development, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division, Commission. As a result, the PCX agreed to re-characterize the instant filing as "amending" its market data revenue sharing program for Tape A securities. October 10, 2002 telephone conversation between Peter D. Bloom, Regulatory Policy, PCX, and Joseph Morra, Special Counsel, Division, Commission.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes such waiver is consistent with the protection of investors and the public interest. The Commission notes that the PCX's market data revenue sharing program for Tape A securities is substantially similar to Nasdaq's program.[22] For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[23]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to file number SR–PCX–2002–61 and should be submitted by November 12, 2002.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6).

[22] *See* Securities Exchange Act Release No. 46551 (September 25, 2002), 67 FR 61705 (October 1, 2002) (SR–NASD–2002–111) (amending NASD Rule 7010(c)(2)).

[23] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46661; File No. SR–PCX–2002–63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. To Amend Its Clearly Erroneous Policy

October 15, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 23, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE" or "Corporation"), proposes to amend PCXE Rule 7.11(d) to confer authority on a PCXE officer designated by the Corporation who, in addition to the Chief Executive Officer and President, may nullify transactions or modify their terms arising out of any disruption or malfunction in the Archipelago Exchange ("ArcaEx") trading system, the equities trading facility of PCXE. Below is the text of the proposed rule change. Proposed new language is *italicized*. Proposed deletions are in [brackets].

* * * * *

PCX Equities, Inc.

Rule 7

Equities Trading; Clearly Erroneous Policy

Rule 7.11(a)–(c)—No change.

(d) System Disruption and Malfunctions. In the event of any disruption or a malfunction in the use or operation of any electronic communications and trading facilities of the Corporation, the Chief Executive Officer, [or the] President, *or such other officer designated by the Corporation* may declare a transaction arising out of the use or operation of such facilities during the period of such disruption or malfunction null and void or modify the terms of these transactions. Absent extraordinary circumstances, any such action of the Chief Executive Officer, [or] President *or designated Corporation officer* pursuant to this subsection (d) shall be taken within thirty (30) minutes of detection of the erroneous transaction. Each ETP Holder involved in the transaction shall be notified as soon as practicable, and the ETP Holder aggrieved by the action may appeal such action in accordance with the provisions of Rule 10.13.

* * * * *

Rule 10

Disciplinary Proceedings; Hearings and Review of Decisions by the Corporation

Rule 10.13

(a) General Provisions. This Rule provides the procedure for persons aggrieved by any of the following actions taken by the Corporation to apply for an opportunity to be heard and to have the action reviewed. These actions are:

(1)–(3)—No change.

(4) The prohibition or limitation with respect to access to services provided by the Corporation, or the access to services of any ETP Holder taken pursuant to the Bylaws, or Rules or procedures of the Corporation; [or]

(5)Actions taken by the Corporation pursuant to Rule 7.11;

(6)[5]—No change.

(7)[6] Actions taken by the Corporation pursuant to Rule 7.23; *or*

(8)[7]—No change.

(b)–(m)—No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, in the event of any disruption or malfunction in the use or operation of the ArcaEx trading facility, only the Chief Executive Officer or President may declare a transaction arising out of the use of the facility during the period of such disruption or malfunction null and void or modify the terms of such transaction. Absent extraordinary circumstances, any such action of the Chief Executive Officer or President would be taken within thirty (30) minutes of detection of the erroneous transaction. Each ETP Holder involved in the transaction would be notified as soon as practicable, and the ETP Holder aggrieved by the action could appeal such action in accordance with the provisions of PCXE Rule 10.13.

The Exchange is proposing to amend PCXE Rule 7.11(d) to confer authority on a PCXE officer designated by the Corporation who, in addition to the Chief Executive Officer and President, may nullify transactions or modify their terms arising out of any disruption or malfunction in the ArcaEx trading system. This rule change will provide the PCXE with more flexibility in making time-sensitive decisions in the absence or unavailability of the Chief Executive Officer or President. The proposed rule amendment parallels PCXE Rule 7.11(b) relating to executions that are "clearly erroneous" when there is an obvious error in the terms of an order, such as price, quantity or identification of the security. The rule change also adds language to Rule 10.13 regarding appeals for non-disciplinary matters by clarifying that any ETP Holder aggrieved by an officer's determination under the PCXE's "Clearly Erroneous Policy" may appeal such action. Proposed Rule 10.13(a)(5) reiterates the statement in Rule 7.11 that any determination made by the Corporation under this policy is subject to the provisions of Rule 10.13.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[3] of the Act, in general, and further the objectives of Section 6(b)(5),[4] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of PCX. All submissions should refer to File No. PCX–2002–63 and should be submitted by November 12, 2002.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26786 Filed 10–21–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46660; File No. SR–Phlx–2002–50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Permanent Approval of the Pilot Program Providing for Broker-Dealer Access to AUTOM

October 15, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on September 18, 2002, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") submitted to the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On October 2, 2002, Phlx submitted Amendment No. 1 to the proposed rule change.[3] On October 9, 2002, Phlx submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, has been filed by the Phlx as a "non-controversial" rule change under

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Richard Rudolph, Director and Counsel, Phlx, to Jennifer Colihan, Division of Market Regulation ("Division"), Commission dated October 1, 2002. In Amendment No. 1, Phlx requested that the filing be designated as a non-controversial rule change pursuant to section 19(b)(3)(A) of the Act. In addition, the rule text was amended to reflect permanent changes to the rule that were approved in Securities Exchange Act Release No. 46296 (August 1, 2002), 67 FR 52506 (August 12, 2002) (SR–Phlx–2002–37). Finally, the Exchange represented that since the commencement of the pilot, it has not experienced any issues relating to capacity or its ability to receive, route, and automatically execute orders for the account(s) of broker-dealers via AUTOM.

[4] *See* letter from Richard Rudolph, Director and Counsel, Phlx, to Jennifer Colihan, Division, Commission, dated October 9, 2002. In Amendment No. 2, the rule text was amended to accurately reflect the text that was approved on a pilot basis. See Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (SR–Phlx–2001–40).

Rule 19b–4(f)(6)[5] under the Act. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt, on a permanent basis, Exchange Rules 1080(b)(i)(C) and 1080(b)(ii), and Commentary .05 to Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X).[6] The rules had previously been approved on a six-month pilot basis (the "pilot").[7] The pilot, scheduled to expire on October 15, 2002, permits access to AUTOM, the Exchange's electronic options order routing, delivery, execution and reporting system, to off-floor broker-dealers, and allows the automatic execution of eligible broker-dealer orders on an issue-by-issue basis.

The text of the proposed rule change is available at the Office of the Secretary, the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit off-floor broker-dealers, on a permanent basis and subject to certain restrictions designed to ensure the maintenance of a fair and orderly market, to have electronic access through AUTOM to the specialist's limit order book and the Exchange's automatic execution system ("AUTO–X").[8] The Exchange is proposing permanent approval of the proposed rule change to remain competitive, and to improve the efficiency with which orders for the account(s) of broker-dealers are currently executed. The Exchange believes that providing broker-dealers with access to the specialist's limit order book and automatic executions would promote more efficient and expeditious execution of broker-dealer orders than under the prior Exchange practice of re-routing to a Floor Broker booth. Under the prior Exchange practice, such orders were represented in the crowd by a Floor Broker after such Floor Broker's receipt thereof.[9]

The Exchange also believes that the proposed rule change is consistent with the purposes underlying the Commission mandate to adopt new, or amend existing, rules that substantially enhance incentives to quote competitively and substantially reduce disincentives for market participants to act competitively.[10] The Exchange believes that providing broker-dealers with access to the specialist's limit order book and the Exchange's AUTO–X system should eliminate any actual or perceived technological advantage the specialist may have respecting access to the limit order book.

The proposal would permit certain off-floor broker-dealer limit orders to be eligible for entry into AUTOM. Generally, off-floor broker-dealer limit orders up to 200 contracts, depending on the option, would be eligible for AUTOM order delivery on an issue-by-issue basis, subject to the approval of the Options Committee. The Options Committee, however, may determine to increase the eligible order delivery size, on an issue-by-issue basis. The proposed rule change provides that the following types of off-floor broker-dealer limit orders are eligible for AUTOM: day, GTC, simple cancel, simple cancel to reduce size (cancel leaves), cancel to change price, cancel with replacement order. The purpose of this provision is to ensure that off-floor broker-dealers do not have an actual or perceived disadvantage respecting on-floor specialists and registered options traders ("ROTs").

Proposed Commentary .05 would establish certain conditions and restrictions on the use of AUTOM, as explained further below. First, the proposed rule states that orders for the account(s) of off-floor broker-dealers must be represented on the Exchange floor by a floor member. The proposed rule contemplates that such a floor member may be a floor broker or the specialist. The Exchange believes that the proposed rule change should result in more orders being handled electronically (as opposed to the previous practice of causing broker-dealer orders to be handled manually), thereby enhancing the audit trail for broker-dealer orders. Second, the proposed rule provides that off-floor broker-dealer orders delivered via AUTOM shall be for a minimum size of one (1) contract.

Third, proposed Commentary .05 states that the restrictions and prohibitions concerning electronically generated orders and off-floor market makers set forth in Exchange Rules 1080(i) and (j) apply to orders entered for the account(s) of off-floor broker-dealers. Exchange Rule 1080(i) prohibits members from entering, permitting, or facilitating the entry of, orders into AUTOM if those orders are created and communicated electronically without manual input (*i.e.*, order entry by public customers or associated persons of members must involve manual input such as entering the terms of an order into an order-entry screen or manually selecting a displayed order against which an off-setting order should be sent).[11]

Rule 1080(j) prohibits members from entering, or facilitating the entry of, into AUTOM, as principal or agent, limit orders in the same options series from off the floor of the Exchange, for the account or accounts of the same or related beneficial owners, in such a manner that the off-floor member or the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such options contract on a regular or continuous basis.[12]

Fourth, proposed Commentary .05 provides that off-floor broker-dealer limit orders entered via AUTOM establishing a bid or offer may establish priority, and the specialist and crowd may match such a bid or offer and be at parity, subject to the yield provisions of Exchange Rule 1014. The proposed rule change provides that the specialist and any other ROT then in the trading crowd may match an off-floor broker-dealer's bid or offer. The Exchange believes that allowing a specialist or ROT to match an off-floor broker-dealer's order, and thus be on parity, would preserve the important affirmative market-making obligations of specialists and ROTs.

Fifth, the proposed rule change provides that off-floor broker-dealer limit orders that are eligible for execution via AUTO–X entered via AUTOM for the account(s) of the same beneficial owner may not be entered in options on the same underlying security more frequently than every 15 seconds.[13] The purpose of this provision is to remain consistent with recently adopted Exchange rules that include such a 15-second restriction against orders entered via AUTOM for the account(s) of the same beneficial owner in options on the same underlying security more frequently than every 15 seconds.[14]

Finally, the proposal also allows off-floor broker-dealer limit orders to be executed automatically, on an issue-by-issue basis subject to the approval of the Exchange's Options Committee, via AUTO–X, which is the automatic execution feature of AUTOM. The Exchange believes that this should enable the Phlx to be competitive with other options exchanges that allow automatic executions for broker-dealer orders by assuring broker-dealers sending their proprietary orders to the Exchange that electronic delivery and execution of such orders would not be interrupted.

The proposed rule change allows the AUTO–X guarantee for off-floor broker-dealer limit orders to be for a different number of contracts, on an issue-by-issue basis, than the AUTO–X guarantee for public customer orders, subject to the approval of the Options Committee.[15] In August, 2002, however, the Commission approved proposed changes to the rule that require specialists to guarantee automatic executions for off-floor broker-dealer orders for a minimum of 10 contracts in Top 120 options.[16] The Exchange believes that these provisions are consistent with the recently expanded Quote Rule[17] and recently adopted Exchange Rules that allow different firm size guarantees for customers than for broker-dealers.[18]

The proposed rule change provides that AUTO–X eligible off-floor broker-dealer limit orders may be eligible for automatic execution via the Exchange's National Best Bid or Offer ("NBBO") Step-Up Feature.[19] Engagement of the NBBO Step-Up Feature is not mandatory for off-floor broker-dealer orders, but rather may be engaged on an issue-by-issue basis (subject to the approval of the Options Committee).

The Exchange represents that, since the commencement of the pilot, it has not experienced any issues relating to capacity or its ability to receive, route, and automatically execute orders for the account(s) of broker-dealers via AUTOM.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with section 6(b) of the Act[20] in general, and with section 6(b)(5) of the Act[21] specifically, in that it is designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest and promote just and equitable principles of trade by providing off-floor broker-dealers increased access to the specialist's limit order book, and automatic executions, which should provide incentives for Phlx market participants to quote competitively, and which in turn should result in competitive pricing and enhanced liquidity on the Exchange specifically, and in the options markets in general.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; (3) become operative for 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to that date, it has become effective pursuant to section 19(b)(3)(A) of the Act[22] and Rule 19b–4[23] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[25] permits the Commission to designate a shorter time if such action is consistent with the protection of

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[5] 17 CFR 240.19b–4(f)(6). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on October 9, 2002, the date the Phlx filed Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

[6] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[7] *See* Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (SR–Phlx–2001–40).

[8] The electronic "limit order book" is the Exchange's automated specialist limit order book, which automatically routes all unexecuted AUTOM orders to the book and displays orders real-time in order of price-time priority. Orders not delivered through AUTOM may also be entered onto the limit order book. *See* Exchange Rule 1080, Commentary .02.

[9] Prior to the implementation of the pilot, incoming broker-dealer orders delivered via AUTOM were ineligible for delivery to the specialist, such that they were rejected by the system and routed either to the appropriate Floor Broker booth or to the point of origin of the order. Such orders were either represented by the appropriate Floor Broker on the Exchange or rerouted to the originating broker or dealer.

[10] The Exchange notes that on September 11, 2000, the Commission issued an order, which requires the Exchange (as well as the other respondent options exchanges, American Stock Exchange LLC, Chicago Board Options Exchange, Inc. ("CBOE"), and Pacific Exchange, Inc.) to implement certain undertakings. *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File 3–10282.

[11] *See* Securities Exchange Act Release No. 43376 (September 28, 2000), 65 FR 59488 (October 5, 2000) (SR–Phlx–00–79).

[12] *See* Securities Exchange Act Release No. 43939 (February 7, 2001), 66 FR 10547 (February 15, 2001) (SR–Phlx–01–05).

[13] Recently, the Exchange filed proposed amendments to this provision that would provide that the Options Committee may, on an issue-by-issue basis, determine to permit the entry of such multiple orders upon the request of the specialist registered in the issue. Such permission shall not exempt Order Entry Firms and Users from any other provision in this Rule, including, without limitation, the prohibition against unbundling in Phlx Rule 1080(b)(iv); the prohibition against the entry of electronically generated orders in Phlx Rule 1080(i); and the prohibition against effectively operating as a market-maker from off floor in Rule 1080(j). See SR–Phlx–2002–40.

[14] *See* Exchange Rule 1080(c)(ii).

[15] The Exchange believes that this amended provision should result in a larger number of AUTO–X eligible orders delivered electronically to the Exchange.

[16] *See* Securities Exchange Act Release No. 46296 (August 1, 2002), 67 FR 52506 (August 12, 2002) (SR–Phlx–2002–37).

[17] 17 CFR 240.11Ac1–1.

[18] See Exchange Rule 1082.

[19] The NBBO Step-Up Feature automatically executes eligible orders at the NBBO when the Exchange's disseminated quote is inferior to the NBBO. For a complete description of the NBBO Step-Up Feature, *see* Securities Exchange Act Release No. 43684 (December 6, 2000), 65 FR 78237 (December 14, 2000) (partially approving SR–Phlx–00–93).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4.

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

investors and the public interest. The Phlx has requested that the Commission waive the 30-day operative delay. In order to allow the pilot to continue on an uninterrupted basis, the Commission believes waiving the 30-day operative date is consistent with the protection of investors and the public interest. [26] In addition, the Commission notes that the Exchange represents that, since the commencement of the pilot, it has not experienced any issues relating to capacity or its ability to receive, route, and automatically execute orders for the account(s) of broker-dealers via AUTOM. For these reasons, the Commission designates the proposal to be effective and operative on October 15, 2002.

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[27]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx.

All submissions should refer to File No. SR–Phlx–2002–50 and should be submitted by November 12, 2002.

[26] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[27] *See* note *supra*.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26783 Filed 10–21–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3451]

State of Mississippi; [Amendment #1]

In accordance with a notice received from the Federal Emergency Management Agency, dated October 6, 2002, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on September 23, 2002, and continuing through October 6, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is December 2, 2002, and for economic injury the deadline is July 1, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 15, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–26833 Filed 10–21–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 4165]

30-Day Notice of Information Collection; Form DS–19, Passport Amendment/Validation Application; OMB Number 1405–0007

AGENCY: Department of State, Bureau of Consular Affairs, Passport Services.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Regular—Extension of a currently approved collection.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

[28] 17 CFR 200.30–3(a)(12).

Title of Information Collection: Passport Amendment & Validation Application.

Frequency: On Occasion.

Form Number: DS–19.

Respondents: Individuals or Households.

Estimated Number of Respondents: 230,912.

Average Hours Per Response: 1/12 hr. (5 min).

Total Estimated Burden: 19,243.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW., Room H904, Washington, DC 20522, and at 202–633–2460. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: September 30, 2002.

Florence G. Fultz,

Acting Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–26854 Filed 10–21–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4166]

30-Day Notice of Proposed Information Collection: Form DS–64, Statement Regarding a Lost or Stolen Passport; OMB #1405–0014

AGENCY: Department of State, Bureau of Consular Affairs, Passport Services.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of

Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Regular—Extension of a currenly approved collection.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection: Statement Regarding Lost or Stolen Passport.

Frequency: On Occasion.

Form Number: DS–64.

Respondents: Individuals or Households.

Estimated Number of Respondents: 75,000.

Average Hours Per Response: 1/12 hr. (5 min).

Total Estimated Burden: 6,250.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW., Room H904, Washington, DC 20522, and at 202–633–2460. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: September 30, 2002.

Florence G. Fultz,

Acting Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–26855 Filed 10–21–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 4167]

30-Day Notice of Information Collection; Form DS–71, Affidavit of Identifying Witness (Formerly Form DSP–71); OMB Control Number 1405–0088

AGENCY: Department of State, Bureau of Consular Affairs, Passport Services.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Regular—Extension of a currently approved collection.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection: Affidavit of Identifying Witness.

Frequency: On Occasion.

Form Number: DS–71.

Respondents: Individuals or Households.

Estimated Number of Respondents: 120,000.

Average Hours Per Response: 1/12 hr. (5 min).

Total Estimated Burden: 10,000.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW., Room H904, Washington, DC 20522, and at 202–633–2460. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: September 30, 2002.

Florence G. Fultz,

Acting Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–26856 Filed 10–21–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4169]

Culturally Significant Object Imported for Exhibition Determinations: "Ceramica y Cultura: The Story of Mexican and Spanish Mayolica"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Ceramica y Cultura: The Story of Mexican and Spanish Mayolica," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Museum of International Folk Art, from on or about November 17, 2002, to on or about September 7, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Orde F. Kittrie, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619–5078). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: October 16, 2002.

Miller Crouch,

Assistant Secretary for Educational and Cultural Affairs, Acting, Department of State.

[FR Doc. 02–26853 Filed 10–21–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice: 4150]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on November 13, 14, and 15, in Washington, DC. Pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and (4), it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda will include updated committee reports, a world threat overview and a round table discussion that calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–1003, phone: 202–663–0533.

Dated: October 2, 2002.

Peter E. Bergin,

Director of the Diplomatic Security Service, Department of State.

[FR Doc. 02–26851 Filed 10–21–02; 8:45 am]

BILLING CODE 4710–24–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–257]

WTO Dispute Settlement Proceeding Regarding the U.S. Department of Commerce Final Countervailing Duty Determination Concerning Certain Softwood Lumber From Canada

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that, on August 19, 2002, the United States received a request from the Government of Canada for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") regarding the U.S. Department of Commerce ("DOC") final countervailing duty determination concerning certain softwood lumber from Canada. The panel was established on October 1, 2002. Canada alleges that the initiation and conduct of the countervailing duty investigation, the final determination, the provision of expedited and administrative reviews, and related matters are inconsistent with various provisions of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement") and the General Agreement on Tariffs and Trade 1994 ("GATT 1994"). USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before December 1, 2002 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0048@ustr.gov*, Attn: "DS257 Dispute" in the subject line, or (ii) by mail, to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: DS257 Dispute, with a confirmation copy sent electronically to the e-mail address above or by fax to 202–395–3640.

FOR FURTHER INFORMATION CONTACT: Amber L. Cottle, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)), USTR is providing notice that, on August 19, 2002, the United States received a request from the Government of Canada for the establishment of a WTO dispute settlement panel regarding the DOC final countervailing duty determination concerning certain softwood lumber from Canada. The panel was established on October 1, 2002.

Major Issues Raised and Legal Basis of the Complaint

The notice of the DOC final countervailing duty determination concerning certain softwood lumber from Canada was published in the **Federal Register** on April 2, 2002, and the notice of the DOC amended final determination was published on May 22, 2002. The notices explain the basis for the DOC's final determination that Canada provides countervailable subsidies to the Canadian lumber industry.

In its panel request, Canada describes its claims in the following manner:

1. Initiation of the Investigation

In initiating the *Lumber IV* investigation, the United States violated Articles 10, 11.4 and 32.1 of the SCM Agreement. Specifically, contrary to Article 11.4, the initiation of the *Lumber IV* investigation was not based on an objective and meaningful examination and determination of the degree of support for the application by the domestic industry, because the "Continued Dumping and Subsidy Offset Act of 2000" (CDSOA), by requiring that a member of the U.S. industry support the application as a condition of receiving payments under the CDSOA, made impossible an objective and meaningful examination of industry support for the application.

2. Commerce's Final Countervailing Duty Determination

In making the final determination, the United States acted inconsistently with Articles 1, 2, 10, 14, 19, 22 and 32 of the SCM Agreement and Article VI of GATT 1994. Specifically:

(a) Commerce violated Articles 10, 19.1, 19.4 and 32.1 of the SCM Agreement and Article VI:3 of GATT 1994 by imposing countervailing duties in respect of practices that are not subsidies because there is no "financial contribution" by government.

Commerce found that Canadian provincial stumpage programs provide goods or services and are, therefore, financial contributions by government under Article 1.1(a) of the SCM Agreement. Commerce erred in this finding. Canadian provincial stumpage programs do not constitute the provision of goods or services within the meaning of Article 1.1(a) of the SCM Agreement and are not "financial contributions" by a government;

(b) Commerce violated Articles 10, 14, 14(d), 19.1 19.4 and 32.1 of the SCM Agreement and Article VI:3 of GATT 1994 by imposing countervailing duties in respect of practices that are not subsidies because there is no "benefit conferred".

Commerce erred by:

(i) Determining and measuring the adequacy of remuneration for the alleged provision of goods or services in relation to purported prevailing market conditions in a country other than the country of provision,

(ii) Incorrectly assessing and comparing evidence related to those purported market conditions, and

(iii) Rejecting evidence of prevailing market conditions for the alleged good or service in question in the country of provision within the meaning of Article 14(d) of the SCM Agreement;

(c) Commerce violated Articles 10, 19.1, 19.4 and 32.1 of the SCM Agreement and Article VI:3 of GATT 1994 by imposing countervailing duties in instances where no subsidy exists. Commerce erroneously and impermissibly *presumed* that an alleged subsidy passes through an arm's s-length transaction to a downstream user of an input;

(d) Commerce violated Articles 1.2, 2.1, 2.4, 10, 19.1, 19.4 and 32.1 of the SCM Agreement by imposing countervailing duties where the alleged subsidies are not "specific" within the meaning of Article 2 of the SCM Agreement.

Commerce erroneously and impermissibly made a finding of "specificity",

(i) Based solely on the unsupported and incorrect assertion that only three industries use provincial stumpage, and

(ii) Without taking into account the extent of diversification of economic activity within the jurisdiction of the alleged granting authority;

(e) Commerce violated Article 19.4 of the SCM Agreement and Article VI:3 of GATT 1994 by inflating the alleged subsidy rate through the use of impermissible methodologies, including by:

(i) Calculating the alleged stumpage benefit on the basis of the whole softwood log, and then attributing that benefit to only a portion of the products produced from that log,

(ii) Excluding relevant shipments from the denominator such that the numerator and the denominator of the alleged benefit calculation where not congruent,

(iii) Allocating the total alleged stumpage benefit over a sales value that had been demonstrated on the record to be inaccurate, and

(iv) Excluding from the denominator shipments of companies demonstrated to be unsubsidized; and

(f) Commerce violated Articles 10, 12, 22 and 32.1 of the SCM Agreement and Article X:3(a) of GATT 1994 because the investigation was not conducted in accordance with fundamental substantive and procedural requirements. In particular:

(i) Commerce refused to accept or consider relevant evidence offered on a timely basis, contrary to Article 12.1 of the SCM Agreement,

(ii) Commerce gathered and relied upon information not made available to the parties and not verified, contrary to Articles 12.2, 12.3, 12.5 and 12.6 of the SCM Agreement,

(iii) Commerce failed to address significant evidence and arguments in its determination, contrary to Article 22.5 (and Article 22.4 as it relates to Article 22.5) of the SCM Agreement,

(iv) Commerce failed to issue timely decisions and to provide reasonable schedules for questionnaire responses, briefings, and hearings contrary to Articles 12.1, 12.2, 12.3 and 22.5 (and Article 22.4 as it relates to Article 22.5) of the SCM Agreement, and

(v) Commerce improperly applied facts available to cooperative parties, contrary to Article 12.7 of the SCM Agreement.

3. Expedited and Administrative Reviews

(a) In initiating "expedited reviews" with respect to the *Lumber IV* investigation, the United States has violated Articles 10, 19.3, 19.4 and 32.1 of the SCM Agreement and Article VI:3 of GATT 1994 because:

(i) Commerce has failed to ensure that each exporter requesting an expedited review is granted a review and given an individual countervailing duty rate, and

(ii) Commerce's proposed methodology for calculating company-specific countervailing duty rates fails to properly establish an individual countervailing duty rate for each exporter granted a review.

(b) U.S. law specifically prohibits company-specific administrative reviews in aggregate cases. In conducting the Lumber IV investigation on an aggregate basis, the United States has therefore violated Articles 10, 19.3, 19.4, 21.1, 21.2 and 32.1 of the SCM Agreement and Article VI:3 of GATT 1994 because:

(i) Commerce is prohibited under U.S. law from conducting company-specific administrative reviews in this case except for companies with zero or *de minimis* rates, and

(ii) A rate obtained following an aggregate administrative review will replace any company-specific rates arrived at through the expedited review process.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Persons submitting comments may either send one copy by U.S. mail, first class, postage prepaid, to Sandy McKinzy at the address listed above or transmit a copy electronically to *FR0048@ustr.gov*, with "DS257" in the subject line. For documents sent by U.S. mail, USTR requests that the submitter provide a confirmation copy, either electronically or by fax to 202–395–3640. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by the that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include nonconfidential comments received by USTR from the public with respect to the dispute; the U.S. submissions to the panel in the dispute, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 02–26761 Filed 10–21–02; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–264]

WTO Dispute Settlement Proceeding Regarding the U.S. Department of Commerce Final Antidumping Determination Concerning Certain Softwood Lumber From Canada

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that, on September 13, 2002, the United States received a request from the Government of Canada for consultations under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") regarding the U.S. Department of Commerce ("DOC") final determination of sales at less than fair value with respect to certain softwood lumber from Canada. The panel request alleges that the initiation of the investigation, the conduct of the investigation, and the final determination are inconsistent with various provisions of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and the Agreement on

Implementation of Article VI of GATT 1994. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before December 1, 2002 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR00498@ustr.gov*, Attn: "DS264 Dispute" in the subject line, or (ii) by mail to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the Untied States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: DS264 Dispute, with a confirmation copy sent electronically to the email address above or by fax to 202–395–3640.

FOR FURTHER INFORMATION CONTACT: Amber L. Cottle, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC (202) 395–3581.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding ("DSU"). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised and Legal Basis of the Complaint

The notice of the DOC final determination of sales at less than fair value with respect to certain softwood lumber from Canada was published in the **Federal Register** on April 2, 2002, and the notice of the DOC amended final determination was published on May 22, 2002. The notices explain the basis for the DOC's final determination that certain softwood lumber from Canada is being sold, or is likely to be sold, in the United States at less than fair value.

In its consultation request, Canada describes its claims in the following manner:

The measures it issue include the initiation of the investigation, the conduct of the investigation and the Final Determination. The Government of Canada considers these measures and, in particular, the determinations made and methodologies adopted therein by the United States Department of Commerce under authority of the United States Tariff Act of 1930, to violate the Anti-dumping Agreement and the GATT 1994 (in particular Articles 1 and 18.1 of the Anti-dumping Agreement and Article VI of the GATT 1994) for, among others, the following reasons:

1. The United States Department of Commerce improperly initiated the anti-dumping investigation that resulted in the Final Determination in contravention of Article 5 of the anti-dumping Agreement (including Articles 5.2, 5.3, 5.4 and 5.8). The application to initiate filed by the U.S. applicant failed to provide evidence of dumping, injury and causation that was reasonably available, including prices at which softwood lumber was sold in Canada. As a whole, the application did not contain "sufficient evidence" to justify the initiation of an investigation. Further, the initiation of the investigation was not based on an objective and meaningful examination and determination of the degree of support for the application by the domestic industry because the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA), by requiring that a member of the U.S. industry support the application as a condition of receiving payments under the CDSOA, made an objective and meaningful examination of industry support for the application impossible.

2. The United States Department of Commerce improperly applied a number of methodologies inconsistent with Article VI of the GATT 1994 and Articles 1, 2 (including Articles 2.1, 2.2, 2.4 and 2.6) and 9.3 of the Antidumping Agreement as a result of improper and unfair comparisons between the export price and the normal value, resulting in artificial and/or inflated margins of dumping. These included:

(a) Reliance on unrepresentative home market prices and improper determinations that sales of the like products in Canada were not in the ordinary course of trade, the effect of which led the Department of Commerce to disregard a significant proportion of domestic sales of like products (identical or similar goods) for purposes of making price to price comparisons and for purposes of calculating profit in determining constructed values;

(b) Failure to properly allocate costs in calculating the cost of production of the like product in Canada, including the failure to extend the value-based cost allocation methodology to take into account differences in lumber dimension, the effect of which led to improperly determining constructed values and profit, distortions in the application of the sales below cost test, and limiting the use of like products for purposes of making price to price comparison;

(c) Application of the practice of "zeroing", the effect of which was to inflate margins of dumping and which, in the recommendations and rulings of the Dispute Settlement Body in an earlier dispute, was found to be consistent with the Anti-dumping Agreement when establishing the existence of margins of dumping;

(d) Failure, when conducting comparisons between like products, to make due allowance for differences that affect price comparability;

(e) The use of an unreasonable amount for profit in the calculation of constructed values;

(f) Failure to apply a reasonable method in calculating amounts for administrative, selling and general expenses, including improper adjustment to export price and an improper allocation of genral and administrative expenses financial expenses; and

(g) Failure to apply a reasonable method to account for by-product revenues as offsets in calculating cost of production.

3. The United States Department of Commerce failed to establish a clear, definitive and proper product scope for investigation and improperly initiated and pursued the investigation with regard to certain products contrary to Articles 5.1, 5.2, 5.4 and 5.8 of the Anti-dumping Agreement. The Department of Commerce further failed to give parties opportunity to defned their interests in contravention of Article X:3(a) of the GATT 1994 and Article 6 of the Anti-dumping Agreement (including Articles 6.1, 6.2, 6.4 and 6.9), by failing to issue timely decisions and provide reasonable schedules for briefing and hearings, and to adequately consider the representations of the parties.

Public Comment: Requirement for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Persons submitting commerns may either send one copy by U.S. mail, first class, postage prepaid, to Sandy McKinzy at the address listed above or transmit a copy electronically to *FR0049@ustr.gov*, with "DS264" in the subject line. For documents sent by U.S. mail, USTR requests that the submiter provide a confirmation copy, either electronically or by fax to 202–395–3640. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that informaiton contained in a comment submitted by that person be treated as confidential business information must certify that such informaton is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; the U.S. submissions to the panel in the dispute, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 02–26762 Filed 10–21–02; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–260]

WTO Dispute Settlement Proceeding Regarding EC Provisional Safeguard Measures Against Imports of Certain Steel Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on September 16, 2002, pursuant to a request from the United States, a panel was established under the Marrakesh Agreement Establishing the World Trade Organization ("WTO") to examine the provisional safeguard measures imposed by the European Communities ("EC") against imports of certain steel products. These measures appear to be inconsistent with the EC's obligations under Article XIX of the GATT 1994 and Articles 2, 3, 4, 5, 6, and 12 of the Agreement on Safeguards. USTR invites written comment from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before October 30, 2002, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0038@USTR.GOV*, with "Dispute on EC Safeguard Measures on Steel" in the subject line, or (ii) by mail, to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: Dispute on EC Safeguard Measures on Steel, with a confirmation copy sent electronically or by fax to 202–395–3640.

FOR FURTHER INFORMATION CONTACT: L. Daniel Mullaney, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Pursuant to Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), USTR is providing notice that on September 16, 2002, a WTO panel was established pursuant to a request by the United States. The panel, which will hold its meetings in Geneva, Switzerland, is expected to issue a report on its findings and recommendations within six to nine months after its establishment.

Major Issues Raised and Legal Basis of the Complaint

The United States considers that provisional safeguard measures taken by the European Communities ("EC") with regard to imports of certain steel products are inconsistent with the EC's commitments and obligations under the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and the Agreement on Safeguards ("Safeguards Agreement"). The measures in question (collectively, the "Safeguard Measures") include Commission Regulation (EC) No 560/2002 of 27 March 2002, as amended by Commission Regulation (EC) No 950/2002 of 3 June 2002, and Commission Regulation (EC) No 1287/2002 of 15 July 2002, as well as any other amendments thereto or extensions thereof, and any related measures. In particular, the Safeguard Measures appear to be inconsistent with:

(1) Article 2.1 of the Safeguards Agreement and Article XIX:1(a) of the GATT 1994, in that the EC applied the Safeguard Measures to certain steel products in the absence of a determination that such products are being imported in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

(2) Article 4.1(b) of the Safeguards Agreement, in that the EC did not make a determination of the existence of a threat of serious injury based on facts and not merely on allegation, conjecture or remote possibility.

(3) Article 4.2 (a) of the Safeguards Agreement, in that there was no investigation to determine, and no determination of, whether increased imports have caused or are threatening to cause serious injury, in which the EC evaluated all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

(4) Article 4.2 (b) of the Safeguards Agreement, in that there was no investigation demonstrating, and no determination of, the existence of a causal link between increased imports of the product concerned and serious injury or threat thereof on the basis of objective evidence. The EC also failed to ensure that injury caused at the same time by factors other than imports was not attributed to increased imports.

(5) Article 4.2(c) of the Safeguards Agreement, in that the EC failed to publish, in accordance with the provisions of Article 3, a detailed analysis of the case under investigation as well as a demonstration of the relevance of the factors examined.

(6) Article 6 of the Safeguards Agreement, in that the Safeguard Measures were not taken pursuant to a

preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury to the domestic industry that produces like or directly competitive products.

(7) Article 6 of the Safeguards Agreement and Article XIX:2 of the GATT 1994 in that the EC took the Safeguard Measures in the absence of critical circumstances where delay would cause damage which it would be difficult to repair.

(8) Article 3 of the Safeguards Agreement, in that:

(a) The Safeguard Measures were not applied following an investigation by the competent authorities of the Member pursuant to procedures previously established and made public in consonance with Article X of the GATT 1994;

(b) The Safeguard Measures were not applied following an investigation which included reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentation of other parties and to submit their views, *inter alia*, as to whether or not the application of the Safeguard Measures would be in the public interest;

(c) The EC did not publish a report setting forth findings and reasoned conclusions reached on all pertinent issues of fact and law.

(9) Article 5.1 of the Safeguards Agreement, in that the Safeguard Measures were not applied by the EC only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment.

(10) Article 12.1 of the Safeguards Agreement, in that the EC did not immediately notify the Committee on Safeguards upon:

(a) Initiating an investigation relating to serious injury or threat thereof and the reasons for it;

(b) Making a finding of serious injury or threat thereof caused by increased imports; and

(c) Taking a decision to apply or extend a safeguard measure.

(11) Article 12.4 of the Safeguards Agreement, in that the EC failed to make a notification to the Committee on Safeguards before taking the Safeguard Measures.

(12) Article 2.2 of the Safeguards Agreement and Article I of GATT 1994, in that the EC applied its Safeguard Measures to the goods of some WTO Members, while excluding the goods of other countries whose territories are not part of a free trade area or a customs union and who are not developing country WTO Members.

(13) Articles 2.1, 4, 5.1 and 6 of the Safeguards Agreement and Article XIX of GATT 1994, in that there is a lack of parallelism between the products for which an increase in imports was claimed and the products on which the Safeguards Measures were imposed.

(14) Article XIX:1(a) of GATT 1994, in that there were no unforeseen developments, as a result of which a product is being imported in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of the like or directly competitive products.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Persons submitting comments may either send one copy by U.S. mail, first class, postage prepaid, to Sandy McKinzy at the address listed above or transmit a copy electronically to *FR0038@ustr.gov*, with "Dispute on EC Safeguard Measures on Steel" in the subject line. For documents sent by U.S. mail, USTR requests that the submitter provide a confirmation copy, either electronically or by fax to 202–395–3640. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 3, First Floor, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–260, Dispute on EC Safeguard Measures on Steel) may be made by calling the Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 02–26760 Filed 10–21–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Review Under 49 U.S.C. 41720 of Delta/Northwest/Continental Agreements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Extension of waiting period.

SUMMARY: Delta Air Lines, Northwest Airlines, and Continental Airlines have submitted code-sharing and frequent-flyer program reciprocity agreements to the Department for review under 49 U.S.C. 41720. That statute requires such agreements between major U.S. passenger airlines to be submitted to the Department at least thirty days before the agreements' proposed effective date and authorizes the Department to extend the waiting period for these agreements at the end of the thirty-day period. The Department has determined to extend the waiting period for the Delta/Northwest/Continental agreements for an additional thirty days, from October 22 to November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: Delta, Northwest, and Continental submitted code-sharing and frequent-flyer program reciprocity agreements to us for review under 49 U.S.C. 41720 on August 23, more than thirty days before the airlines planned to implement these agreements. Under that statute we may extend the waiting period by 150 days for code-sharing agreements and by sixty days for other types of agreements. We have already extended the waiting period for these agreements once by thirty days. 67 FR 59328 (September 20, 2002).

We have been informally reviewing the agreements submitted by Delta, Continental, and Northwest. We are considering the comments submitted by interested parties, the three airlines' agreements, and other information in our possession, and we have been consulting with the Justice Department, which is responsible for enforcing the antitrust laws in the airline industry. Several carriers recently jointly asked the Department to extend the waiting period for the code-share agreement for the full 150-day period permitted by law and grant their request for a more extensive production of evidence from Delta, Continental, and Northwest. That request, received in writing late in the day on October 15, 2002, was made by Air Tran Airways, America West Airlines, Frontier Airlines, JetBlue Airways, Midwest Express Airlines, Southwest Airlines, and Spirit Airlines.

We have again determined that we need more time for our analysis of the issues presented by the Delta/Continental/Northwest joint venture agreements. Those issues are important and require careful consideration. We have therefore determined to extend the waiting period by another thirty days, from October 22 to November 21. We took similar action on the United/US Airways joint venture agreements. 67 FR 59328 (September 20, 2002). We will also consider the joint request made by several carriers to further extend the waiting period for the proposed code-share agreement and for additional evidence and will deal with it separately.

We intend to complete our review as promptly as possible, so that the three airlines will know our views on whether and under what terms they may go forward with the agreements.

Issued in Washington, DC on October 18, 2002.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–26973 Filed 10–21–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7514]

National Preparedness for Response Exercise Program (PREP)

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability and notice of meeting.

SUMMARY: The U.S. Coast Guard, Research and Special Programs Administration, U.S. Environmental Protection Agency, and Mineral Management Service, in concert with representatives from various State governments, industry, environmental interest groups, and the general public, developed the *National Preparedness for Response Exercise Program (PREP) Guidelines* to reflect the consensus agreement of the entire oil spill response community. This notice announces the availability of the revised 2002 PREP Guidelines and announces the participating agencies' intent to hold a public meeting in November 2002.

DATES: A public meeting will be held from 8:30 a.m. to 11:30 a.m. on November 7, 2002, in Galveston, Texas.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Comments and materials received from the public and the 2002 PREP Guidelines are part of this docket and are available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

The 2002 PREP Guidelines also can be found on the following Web site: *http://www.uscg.mil/hq/nsfcc/nsfweb/*. Hard copies of the PREP Guidelines are available at no cost by writing or faxing the *PREP Coordinator* at Commandant (G–MOR), 2100 Second Street SW., Washington, DC 20593–0001, fax: 202–267–4065. Please indicate the quantity when ordering. Quantities are limited to 10 per order.

The public meeting will be held in Galveston, Texas, at the Moody Gardens Convention Center, One Hope Blvd., Galveston, Texas, 77554.

FOR FURTHER INFORMATION CONTACT: For questions on this notice and general information regarding PREP Guidelines and the schedule, contact Mr. Robert Pond, Office of Response, Plans and Preparedness Division (G–MOR–2), Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone: 202–267–6603, fax: 202–267–4065, or e-mail: *rpond@comdt.uscg.mil*. If you have questions on viewing material in the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone: 202–366–5149.

SUPPLEMENTARY INFORMATION:

Background and Purpose

In 1994, the U.S. Coast Guard (USCG), and the Research and Special Programs Administration (RSPA) of the Department of Transportation, the U.S. Environmental Protection Agency (U.S. EPA), and the Minerals Management Service (MMS) of the Department of Interior, coordinated the development of the PREP Guidelines. Through a series of public workshops involving representatives from many State governments, the regulated community, environmental interest groups, and the general public, the National Preparedness for Response Exercise Program (PREP) Guidelines were crafted to reflect the consensus agreement of the entire oil spill response community regarding an appropriate exercise program, including exercise types, frequency, scope, and objectives.

For their part, the USCG, RSPA, U.S. EPA, and MMS agreed that an industry entity may use the PREP Guidelines as one means of complying with the pollution response exercise requirements in 33 U.S.C. 1321(j). (For USCG rules, see 33 CFR part 154, subpart F (Response Plans for Oil Facilities) and 33 CFR part 155, subpart D (Response Plans); for RSPA rules, see 49 CFR part 194 (Response Plans for Onshore Oil Pipelines); for U.S. EPA rules, see 40 CFR part 112, subpart D (Response Requirements); and for MMS rules, see 30 CFR part 254 (Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line).)

Since 1994, USCG, RSPA, U.S. EPA, and MMS have hosted public workshops in 1995 (60 FR 19804, April 20, 1995), 1997 (62 FR 36864, July 9, 1997), and 2000 (65 FR 40160, June 29, 2000) to review the PREP Guidelines and consider need for changes. The first two workshops produced recommendations to preserve the 1994 PREP Guidelines without amendment. Based on comments from the 2000 workshop, the USCG, RSPA, U.S. EPA, and MMS recommended amending the

PREP Guidelines to clarify or alter certain exercise parameters and standards.

Key Changes and Clarifications to PREP Guidelines

Several key changes have been made to the PREP Guidelines. The 2002 PREP Guidelines clarify the exercise parameters found in the 1994 version and do not increase or decrease the scope or scale of individual exercises or of the overall program. One exception is the potential frequency for government initiated unannounced exercises, which changes the number of exercises for U.S. EPA regulated facilities from four per year per planning area to no more than 10 percent of such facilities per year.

There also were some minor changes made to individual agency sections and the appendices, with the majority of changes being made to Section 2 "Guiding Principles."

Section 2 changes included the following:

- The subsection "Equipment Deployment Exercises" was revised to include greater specificity of equipment types to be deployed, along with a more detailed description of the regional Oil Spill Removal Organizations concept. The revision also included encouragement to exercise "systems" rather than individual pieces of equipment, and to use equipment deployment exercises to test the effectiveness of response planning strategies.
- The subsection "Spill Management Team Exercises" was revised to clarify criteria for allowing multiple planholders to take credit for a single spill management team exercise.
- The subsection "Area Exercises" was revised to clarify the scope of an exercise including minimum spill size, a requirement to include industry-funded equipment deployment, and to reiterate that the goal is to exercise the entire response community with the unified command framework.
- The section "Government Initiated Unannounced Exercises" was revised to clarify exercise expectations. Among the 2002 revisions are the expectations of satisfactory performance by planholders and to advise them of the change in the number of potential exercises in an EPA region (up to 10 percent of planholders).

Approach to Revision of PREP Guidelines

On June 29, 2000, we published a notice in the **Federal Register** (65 FR 40160) requesting comments on the 1994 PREP Guidelines and announcing a public workshop to address current concerns with the PREP Guidelines.

On August 29, 2000, in Washington, DC, the Coast Guard held a public workshop. Based on the comments, the National Schedule Coordination Committee (NSCC)—comprised of representatives from the Coast Guard, RSPA, U.S. EPA, and MMS—proposed changes to the 1994 PREP Guidelines.

On April 13, 2001, we published a notice of availability and request for comment in the **Federal Register** (66 FR 19282) seeking comments on the proposed changes to the PREP Guidelines.

On August 7, 2001, we published an extension of comment period notice in the **Federal Register** (66 FR 41293) extending the comment period due to a delay in the availability of the proposed changes to the PREP Guidelines.

On March 13, 2002, we published a notice of availability and request for comments in the **Federal Register** (67 FR 11368). This notice advised the public of the proposed final changes to the 2002 PREP Guidelines that have been revised based on a review of the comments made in response to the initial changes proposed in April 2001.

Availability of Document

The 2002 PREP Guidelines are available electronically in this docket or from the sources indicated in **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

The USCG, in conjunction with RSPA, U.S. EPA, and MMS, will hold a public meeting to discuss the 2002 PREP Guidelines on the following date and at the following location: Galveston, Texas, November 7, 2002, from 8:30 a.m. to 11:30 a.m. at the Moody Gardens Convention Center, One Hope Blvd., Galveston, Texas, 77554.

The meeting may conclude before the allotted time if all matters of discussion have been addressed.

Dated: October 16, 2002.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–26864 Filed 10–21–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meetings.

SUMMARY: This notice is to advise interested persons that RSPA will conduct public meetings in preparation for and to report the results of the twenty-second session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) to be held December 2–6, 2002 in Geneva, Switzerland.

DATES: November 20, 2002, 9:30 a.m.–12:30 p.m., Room 6244–6248. December 18, 2002, 9:30 a.m.–12:30 p.m., Room 6244–6248.

ADDRESSES: Both meetings will be held at DOT Headquarters, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Bob Richard, International Standards Coordinator, or Duane Pfund, Assistant International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of the first meeting will be to prepare for the twenty-second session of the UNSCOE and to discuss draft U.S. positions on UNSCOE proposals. The primary purpose of the second meeting will be to provide a briefing on the outcome of the UNSCOE session. Topics to be covered during the public meetings include (1) Requirements for the transport of solids in bulk containers including portable tanks, (2) Harmonized requirements for compressed gas cylinders, (3) Classification of individual substances, (4) Requirements for packagings used to transport hazardous materials including a U.S. proposal to require a repetitive shock test, (5) Requirements for infectious substances and clinical waste, (6) Security of dangerous goods in transport. The public is invited to attend without prior notification. Due to the heightened security measures participants are encouraged to arrive early to allow time for security checks necessary to obtain access to the building.

Documents

Copies of documents for the UNSCOE meeting and the meeting agenda may be obtained by downloading them from the United Nations Transport Division Web site at: *http://www.unece.org/trans/main/dgdb/dgsubc/c32002.html*. This site may also be accessed through RSPA's Hazardous Materials Safety Homepage at *http://hazmat.dot.gov/instandards.htm*. RSPA's site provides additional information regarding the UNSCOE and related matters such as a summary of decisions taken at the twenty-first session of the UNSCOE.

Frits Wybenga

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–26823 Filed 10–21–02; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–584 (Sub–No. 1X)]

Canada Southern Railway Company—Abandonment Exemption—In Niagara County, NY

Canada Southern Railway Company (CSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.15-mile line of railroad between milepost 0.0 and milepost 0.15, in the city of Niagara Falls, in Niagara County, NY. The line traverses United States Postal Service Zip Code 14305.

CSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 21, 2002,[1] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 1, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 12, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to CSR's representative: Diane P. Gerth, Leonard, Street and Deinard Professional Association, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 25, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by CSR's filing of a notice of consummation by October 22, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV*.

[1] While applicant initially indicated a proposed consummation date of November 15, 2002, because the verified notice was filed on October 2, 2002, consummation may not take place prior to November 21, 2002. Applicant's representative has subsequently confirmed that consummation cannot occur before November 21, 2002.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

Decided: October 15, 2002.

By the Board, Beryl Gordon, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–26691 Filed 10–21–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Reports, Forms and Recordkeeping Requirements; Activity Under OMB Review; Submission of Audit Reports Part 248

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 9, 2002 (67 FR 51927).

DATES: Written comments should be submitted by November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@bts.gov*.

Comments: Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information on respondents, in including the use of automated collection techniques or other forms of information technology.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: BTS Desk Officer.

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics (BTS)

Title: Submission of Audit Reports—Part 248.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2138–0004.

Forms: None.

Affected Public: Large certificated air carriers.

Number of Respondents: 75.

Estimated Time per Response: 15 minutes.

Total Annual Burden: 20 hours.

Needs and Uses: BTS collects independent audited financial reports from U.S. certificated air carriers. Carriers not having an annual audit must file a statement that no such audit has been performed. In lieu of the audit report, BTS will accept the annual report submitted to the stockholders. The audited reports are needed by the Department of Transportation as (1) a means to monitor an air carrier's continuing fitness to operate, (2) reference material used by analysts in examining foreign route cases, (3) reference material used by analyst in examining proposed mergers, (4) a means whereby BTS sends a copy of the report to the International Civil Aviation Organization (ICAO) in fulfillment of a U.S. treaty obligation, and (5) corroboration of a carrier's Form 41 filings.

Donald W. Bright,

Acting Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. 02–26821 Filed 10–21–02; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Reports, Forms and Recordkeeping Requirements; Activity Under OMB Review; Reporting Required for International Civil Aviation Organization (ICAO)

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) , this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 9, 2002 (67 FR 51927).

DATES: Written comments should be submitted by November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@bts.gov*.

Comments: Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information on respondents, in including the use of automated collection techniques or other forms of information technology.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: BTS Desk Officer.

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics (BTS)

Title: Reporting required for International Civil Aviation Organization.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2138–0039.

Forms: BTS Form EF.

Affected Public: Large certificated air carriers.

Number of Respondents: 40.

Estimated Time per Response: 40 minutes.

Total Annual Burden: 26 hours.

Needs and Uses: As a party to the Convention on International Civil Aviation (Treaty), the United States is obligated to provide ICAO with financial and statistical data on operations of U.S. carriers. Over 99% of the data filed with ICAO is extracted from the air carriers' Form 41 submissions to BTS. BTS Form EF is the means by which BTS supplies the remaining 1% of the air carrier data to ICAO.

Donald W. Bright,

Acting Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. 02–26822 Filed 10–21–02; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Comptroller of the Currency Agency Information Collection Activities: Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, "Recordkeeping Requirements for Securities Transactions—12 CFR part 12."

DATES: You should submit comments by December 23, 2002.

ADDRESSES: You should direct comments to the Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0142, 250 E Street, SW., Washington, DC 20219. Due to disruptions in the OCC's mail service since September 11, 2001, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

A copy of the comments should also be sent to the OMB Desk Officer for the OCC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or by e-mail to *jlackeyj@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: You can request additional information from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Recordkeeping Requirements for Securities Transactions—12 CFR 12.

OMB Number: 1557–0142.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements in 12 CFR part 12 are required to ensure national bank compliance with securities laws and to improve the protection afforded persons who purchase and sell securities through banks. The transaction confirmation information provides customers with a record regarding the transaction and provides banks and the OCC with records to ensure compliance with banking and securities laws and regulations. The OCC uses the required information in its examinations to, among other things, evaluate a bank's compliance with the antifraud provisions of the Federal securities laws.

The information collection requirements contained in 12 CFR part 12 are as follows:

Section 12.3 requires a national bank effecting securities transactions for customers to maintain records for at least three years. The records required by this section must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information.

Section 12.4 requires a national bank to give or send to the customer a written notification of transaction or a copy of the registered broker/dealer confirmation relating to the securities transaction.

Sections 12.5(a), (b), (c), and (e) require a national bank, as an alternative to complying with § 12.4, to provide notification to customers of trust transactions, agency transactions, and periodic plan transactions.

Sections 12.7(a)(1) through (a)(3) require a national bank to develop and maintain written securities trading policies and procedures.

Section 12.7(a)(4) requires bank officers and employees to report to the bank all personal transactions in securities made by them or on their behalf in which they have a beneficial interest.

Section 12.8 requires a national bank to file a written request with the OCC for a waiver of one or more of the requirements set forth in §§ 12.2 through 12.7.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 745.

Estimated Total Annual Responses: 745.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 3,913 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 17, 2002.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 02–26831 Filed 10–21–02; 8:45 am]

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Federal Register

Tuesday,
October 22, 2002

Part II

Federal Communications Commission

47 CFR Chapter I

Possible Revision or Elimination of Rules; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

Possible Revision or Elimination of Rules

AGENCY: Federal Communications Commission.

ACTION: Review of regulations under the Regulatory Flexibility Act; comments requested.

SUMMARY: This document invites members of the public to comment on the Commission's rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act of 1980. The purpose of the review is to determine whether Commission rules whose ten-year anniversary dates are in the years 2000 through 2002, as contained in the Appendix, should be continued without change, amended, or rescinded in order to minimize any significant impact the rules may have on a substantial number of small entities. Upon receipt of comments from the public, comments will be evaluated and action may be taken to rescind or amend the Commission's rules.

DATES: Comments may be filed on or before November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Carolyn Fleming Williams or Karen Beverly, Office of Communications Business Opportunities, Federal Communications Commission, (202) 418–0990.

ADDRESSES: Federal Communications Commission, Office of Secretary, 445 12th Street, SW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: Each year an opportunity will be created for review and comment by interested parties on the Commission's rules that may require amendment or rescission.

1. Pursuant to the Regulatory Flexibility Act of 1980, see 5 U.S.C. section 610, the Federal Communications Commission (FCC) hereby publishes a plan for the review of rules issued by the agency in calendar years 1990, 1991 and 1992 which have, or might have, a significant economic impact on a substantial number of small entities. The purpose of the review will be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of such rules upon a substantial number of small entities.

2. This document lists the FCC regulations to be reviewed during the next twelve months. In succeeding years, as here, lists will be published for the review of regulations promulgated ten years proceeding the year of review.

3. In reviewing each rule under this plan to minimize the possible significant economic impact on small entities, consistent with the stated objectives of the applicable statutes, the FCC will consider the following factors:

(a) The continued need for the rule;

(b) The nature of complaints or comments received concerning the rule from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(e) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

4. Appropriate information has been provided for each rule, including a brief description of the rule and the need for and legal basis of the rule. The public is invited to comment on the rules chosen for review by. All relevant and timely comments will be considered by the FCC before final action is taken in this proceeding. To file formally in this proceeding, participants should file an original and four copies of all comments. Comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

List of Rules for Review Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 610, for 1990, 1991, 1992. All listed rules are in Title 47 of the Code of Federal Regulations.

PART 25—SATELLITE COMMUNICATIONS

Subpart B—Application and Licenses

Brief Description: These rules establish the requirements and conditions under which space and earth stations may be licensed.

Need: To establish proper procedures for submitting the correct information for filing space and earth stations applications.

Legal Basis: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332.

Section Number and Title:

25.110 Filing of applications, fees, and number of copies.
25.111 Additional information.
25.112 Defective applications.
25.113 Construction permits, station licenses, launch authority.
25.114 Applications for space station authorizations.
25.115 Application for earth station authorizations.
25.116 Amendments to applications.
25.117 Modification of station license.
25.118 Modifications not requiring prior authorization.
25.119 Assignment or transfer of control of station authorization.
25.120 Application for special temporary authorization.
25.121 License term and renewals.
25.130 Filing requirements for transmitting earth stations.
25.131 Filing requirements for receive-only earth stations.
25.132 Verification of earth station antenna performance standards.
25.133 Period of construction; certification of commencement of operation.
25.134 Licensing provisions of Very Small Aperture Terminal (VSAT) networks.
25.135 Licensing provisions for earth station networks in the non-voice, non-geostationary mobile-satellite service.
25.136 Operating provisions for earth station networks in the 1.6/2.4 GHz mobile-satellite service.
25.137 Application requirements for earth stations operating with non-U.S. licensed space stations.
25.138 Blanket licensing provisions of GSO FSS Earth Stations in the 18.58–18.8 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 28.35–28.6 GHz (Earth-to-space) and 29.5–30.0 GHz (Earth-to-space) bands.
25.140 Qualifications of fixed-satellite space station licensees.
25.141 Licensing provisions for the radio determination satellite service.
25.142 Licensing provisions for the non-voice, non-geostationary mobile-satellite service.
25.143 Licensing provisions for the 1.6/2.4 GHz mobile-satellite service.
25.144 Licensing provisions for the 2.3 GHz satellite digital audio radio service.
25.145 Licensing conditions for the Fixed-Satellite Service in the 20/30 GHz bands.
25.150 Receipt of applications.
25.151 Public notice period.
25.152 Dismissal and return of applications.
25.153 Repetitious applications.
25.154 Opposition to applications and other pleadings.
25.155 Mutually exclusive applications.
25.156 Consideration of applications.
25.160 Administrative sanctions.
25.161 Automatic termination of station authorization.
25.162 Cause for termination of interference protection.
25.163 Reinstatement.

Subpart D—Technical Operations

Brief Description: This rule requires that all video satellite uplink transmissions, licensed under Part 25 be encoded with a signal to identify the station. The rules specifies that a subcarrier based system will be used to transmit the identification.

Need: The need for better radio spectrum management to control interference, allow flexibility to deal with new technology and standardize the proliferating number of pseudo-automatic identification systems now coming into use make this item necessary. The intended effect is improved radio spectrum management.

Legal Basis: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332.

Section Number and Title:

25.281 Automatic Transmitter Identification System (ATIS).

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

Brief Description: The rule sets forth the requirements and procedures for carriers to file information on their U.S. international telecommunications traffic including minutes and revenues.

Need: The rule provides essential data that is used by both the agency and carriers for international facilities planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes.

Legal Basis: 47 U.S.C. 154, 201, 203, 219.

Section Number and Title:

43.61 Reports of international telecommunications traffic.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Brief Description: The rule sets forth the procedures for U.S. carriers, engaged in international telecommunications, seeking approval to make changes in accounting rates.

Need: The rule provides U.S. carriers with a mechanism to quickly seek agency approval to implement simple accounting rate changes. The rule also enables the Commission to monitor the international accounting rates of carriers to ensure consistency with agency policies and the public interest.

Legal Basis: 47 U.S.C. 154, 201, 211.

Section Number and Title:

64.1001 International settlements policy and modification requests.

Rule	Year added	Bureau or office
1.17	1990	EB
1.65(c)	1990, 1991	EB
1.80(a)(4), (b)(3)	1990	EB
1.791	1990	CCB
1.824	1991	MMB
1.931(a)	1991	WTB

Office of General Counsel

Subpart I—Procedures Implementing the National Environmental Policy Act of 1969

Brief Description: These rules implement the National Environmental Policy Act of 1969, including actions that may have a significant impact on the environment and require the preparation of an Environmental Assessment (EA), and the determination of environmental impacts for the construction of facilities where no preconstruction authorization from the Commission is required.

Need: These rules implement the National Environmental Policy Act of 1969.

Legal Basis: 42 U.S.C. 4321–4335.

Section Number and Title:

1.1307(b) notes 1, 2, 3 Actions that may have a significant environmental effect for which Environmental Assessments (EAs) must be prepared
1.1312 Facilities for which no preconstruction authorization is required.

Subpart P—Implementation of the Anti-Drug Abuse Act of 1988

Brief Description: These rules implement the Anti-Drug Abuse Act of 1988 to determine the eligibility for professional and commercial licenses issued by the Commission with respect to any denials of Federal benefits imposed by Federal or state courts.

Need: These rules implement the Anti-Drug Abuse Act of 1988.

Legal Basis: 21 U.S.C. 862.

Section Number and Title:

1.2001 Purpose.
1.2002 Applicants Required to submit information.
1.2003 Applications affected.

PART 22—PUBLIC MOBILE SERVICES

Subpart H—Cellular Radiotelephone Service

Brief Description: These rules prescribe procedures for Cellular Radiotelephone Service licensees in the public mobile services.

Need: These rules are established to provide procedures for cellular licensees. The rules govern licensing, technical standards, and other matters relating to cellular service.

Legal Basis: 47 U.S.C. 154, 303, 309, 332.

Section Number and Title:

22.911 Cellular geographic service area.
22.943(b) Limitations on assignments and transfers of cellular authorizations.
22.945(c) Interests in multiple applications.
22.947(c) Five year build-out period.
22.949 Unserved area licensing process.
22.951 Minimum coverage requirement.
22.953 Conten and form of applications.

PART 80—STATIONS IN THE MARITIME SERVICES

Brief Description: These rules include radio services in the Maritime Mobile Service, the Maritime Mobile-Satellite Service, the Maritime Radiodetermination Service, and stations in the Fixed Service that support maritime operations. Regardless of service, marine stations are either considered to be stations on shipboard or stations on land. A license is required for each land station. Ship stations are licensed by rule (no individual license needed) when they operate only on domestic voyages and are not required by law to carry a radio. Rules concerning domestic marine communications are matched to requirements of the U.S. Coast Guard, which monitors marine distress frequencies continuously in U.S. waters.

Need: These marine radio service rules are promulgated to promote safety and operational activities of nonfederal maritime activities, including U.S. vessels that traverse international waters. The rules also reduce radio interference among radio users by promoting the efficient use of the radio spectrum.

Legal Basis: Secs. 4, 303, 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450; 3 UST 4726; 12 UST 2377.

Section Number and Title:

Subpart B—Applications and Licenses

80.54 Automated Maritime Telecommunications System (AMTS)—system licensing.

Subpart C—Operating Requirements and Procedures

80.122 Public coast stations using facsimile and data.
80.141 General provisions for ship stations.

Subpart E—General Technical Standards

80.203 Authorization of transmitters for licensing.
80.205 Bandwidths.
80.207 Classes of emission.
80.211 Emission limitations.
80.213 Modulation requirements.

80.223 Special requirements for survival craft stations.

Subpart G—Safety Watch Requirements and Procedures

80.310 Watch required by voluntary vessels.

Subpart H—Frequencies

80.355 Distress, urgency, safety, call and reply Morse code frequencies.
80.357 Morse code working frequencies.
80.363 Frequencies for facsimile.
80.371 Public correspondence frequencies.
80.373 Private communications frequencies.
80.374 Special provisions for frequencies in the 4000–4063 kHz and the 8100–8195 kHz bands shared with the fixed service.
80.375 Radiodetermination frequencies.
80.385 Frequencies for automated systems.
80.387 Frequencies for Alaska fixed stations.

Subpart K—Private Coast Stations and Marine Utility Stations

80.514 Marine VHF frequency coordinating committee(s).

Subpart Q—Compulsory Radiotelegraph Installations for Vessels 1600 Gross Tons

80.802 Inspection of Stations.
80.836 General Exemptions.

Subpart S—Compulsory Radiotelephone Installations for Small Passenger Boats

80.909 Radiotelephone transmitter.
80.913 Radiotelephone receivers.
80.923 Antenna system.
80.931 Test of radiotelephone installation.

Subpart U—Radiotelephone Installations Required by the Bridge-to-Bridge Act

80.1001 Applicability.
80.1011 Transmitter.
80.1013 Receiver.

Subpart V—Emergency Position Indicating Radiobeacons (EPIRB'S)

80.1059 Special Requirements for Class S EPIRB stations.
80.1061 Special Requirements for 406.025 MHz EPIRBs.

Subpart W—Global Maritime Distress and Safety System (GMDSS)

80.1065 Applicability.
80.1067 Inspection of station.
80.1069 Maritime sea areas.
80.1071 Exemptions.
80.1073 Radio operator requirements for ship stations.
80.1074 Radio maintenance personnel for at-sea maintenance.
80.1075 Radio records.
80.1077 Frequencies.
80.1081 Functional Requirements.
80.1083 Ship radio installations.
80.1085 Ship radio equipment-General.
80.1087 Ship radio equipment-Sea area A1.
80.1089 Ship radio equipment-Sea areas A1 and A2.
80.1091 Ship radio equipment-Sea areas A1, A2 and A3.
80.1093 Ship radio equipment-Sea areas A1, A2, A3 and A4.
80.1095 Survival craft equipment.
80.1099 Ship sources of energy.
80.1101 Performance standards.
80.1103 Equipment authorization.
80.1105 Maintenance Requirements.
80.1109 Distress, Urgency, and safety communications.
80.1111 Distress alerting.
80.1113 Transmission of a distress alert.
80.1115 Transmission of a distress alert by a station not itself in distress.
80.1117 Procedure for receipt and acknowledgment of distress alerts.
80.1119 Receipt and acknowledgement of distress alerts by coast stations and coast earth stations.
80.1121 Receipt and acknowledgement of distress alerts by ship stations and ship earth stations.
80.1123 Watch requirements for ship stations.
80.1125 Search and rescue coordinating communications.
80.1127 On-scene communications.
80.1129 Locating and homing signals.
80.1131 Transmissions of urgency communications.
80.1133 Transmissions of safety communications.
80.1135 Transmissions of maritime safety information.

PART 87—AVIATION SERVICES

Brief Description: The Aviation Services consist of three internationally-allocated services. (1) The Aeronautical Mobile Service includes aeronautical advisory stations, aeronautical enroute stations, airport control stations, and automatic weather observation stations. (2) The Aeronautical Radio Navigation Service includes stations used for navigation, obstruction warning, instrument landing, and measurement of altitude and range. (3) The Aeronautical Fixed Service is a system of fixed stations used for point-to-point communications for aviation safety, navigation, or preparation for flight. The Commission regulates the Aviation Services in cooperation with the Federal Aviation Administration.

Need: These aviation radio services rules are promulgated to promote safety and provide systems of non-governmental use of radio for aeronautical communications, aeronautical radio navigation, and search and rescue operations. The rules also reduce radio interference among radio users by promoting the efficient use of the radio spectrum.

Legal Basis: 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151, 152, 153, 154, 155, 156, 301 through 609.

Section Number and Title:

Subpart A–General Information

87.5 Definitions.

Subpart B–Applications and Licenses

87.51 Aircraft earth station commissioning.

Subpart D–Technical Requirements

87.131 Power and emissions.
87.133 Frequency stability.
87.137 Types of emission.
87.139 Emission limitations.
87.141 Modulation requirements.
87.145 Acceptability of transmitters for licensing.
87.147 Authorization of equipment.

Subpart E–Frequencies

87.171 Class of station symbols.
87.173 Frequencies.

Subpart F–Aircraft Stations

87.175 Scope of Service.
87.187 Frequencies.
87.189 Requirements for public correspondence equipment and operations.

Subpart G–Aeronautical Advisory Stations (UNICOMS)

87.213 Scope of Service.
87.215 Supplemental Eligibility.
87.217 Frequencies.

Subpart I–Aeronautical Enroute and Aeronautical Fixed Stations

87.263 Frequencies.

Subpart J–Flight Test Stations

87.303 Frequencies.

Subpart L–Aeronautical Utility Mobile Stations

87.347 Supplemental Eligibility.
87.349 Frequencies.

Subpart O–Airport Control Tower Stations

87.419 Supplemental Eligibility.
87.421 Frequencies.
87.425 Interference.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

Brief Description: These services include both Private Land Mobile Radio (PLMR) services and Commercial Mobile Radio Services (CMRS). PLMR services allow businesses, local governments, public safety entities, educational institutions, hospitals,

service providers and utilities to build their own internal communication systems to meet specialized needs. CMRS provides service to customers. CMRS services regulated under Part 90 include the provision of service to Industrial/Business Pool below 470 MHz on a for-profit basis, the Specialized Mobile Radio Service, the 220 MHz Service, the Location and Monitoring Service, and Private Paging. Channels are in the 30–50, 150–170, 220–222, 420–512, 700, 800, and 900 MHz bands. Some channels are shared; others are exclusive. Frequencies are often assigned in pairs for use in two-way communications. Common uses are for dispatch communications, alerting, monitoring, alarms, operational communications, and the provision of service (either on a private carriage basis or as a Commercial Mobile Radio Service) to others.

Need: These land mobile radio services rules are promulgated to promote flexibility to radio users in meeting their communications needs where communications are used as a tool for businesses to provide their products and services more economically.

Legal Basis: Secs. 4, 303; 48 Stat., as amended 1066, 1082; 47 U.S.C. 154, 303.

Section Number and Title:

Subpart G—Applications and Authorizations

90.127 Submission and filing of applications.
90.135 Modification of license.

Subpart J—Non-Voice and Other Specialized Operations

90.235 Secondary fixed signaling operations.

Subpart K—Standards for Special Frequencies or Frequency Bands

90.257 Assignment and use of frequencies in the band 72–76 MHz.

Subpart L—Authorizing in the Band 470–512 MHz (UHF–TV Sharing)

90.317 Fixed ancillary signaling and data transmissions.

Subpart S—Regulations Governing Licensing and Use of Frequencies in the 806–824, 851–869, 896–901, and 935–940 MHZ Bands.

90.609 Special limitations on amendment of applications for assignment or transfer of authorizations for radio systems above 800 MHz.
90.619 Frequencies available for use in the U.S./Mexico and U.S./Canada border areas.
90.621 Selection and assignment of frequencies.
90.637 Restrictions on operational fixed stations.
90.655 Special licensing requirements for Specialized Mobile Radio systems.
90.656 Responsibilities of base station licensees of Specialized Mobile Radio systems.
90.658 Loading data required for base station licensees of trunked Specialized Mobile Radio systems to acquire additional channels or to renew trunked systems licensed before June 1, 1993.

PART 95—PERSONAL RADIO SERVICES

Brief Description: The Personal Radio Services provide the general public with short-range wireless communications for a variety of activities. The services include the General Mobile Radio Service (GMRS), the Family Radio Service (FRS), the Radio Control Radio Service (R/C Service), the Citizens Band Radio Service, the 218–219 MHz Service, the Low Power Radio Service (LPRS), the Wireless Medical Telemetry Service (WMTS), and the Medical Implant Communications Service (MICS). GMRS allows short-range two-way communications to facilitate the activities of the licensee and their immediate family members. FRS allows short-range voice communications. The R/C Service allows the remote operation and control devices such as model airplanes and aircraft. The 218–219 MHz Service is a two-way radio service that allows licensees to provide communications services to subscribers in a specific service area. LPRS is used to provide auditory assistance communications for people with disabilities or people requiring language translation, health care related communications, and law enforcement tracking signals. WMTS is used to measure and record physiological parameters and other patient-related information. MICS is used to transmit operational, diagnostic, or therapeutic information concerning medical implant devices to health care professionals.

Need: These personal radio services rules are promulgated to promote flexibility of users to take advantage of new technology and equipment.

Legal Basis: Secs. 4, 303; 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

Section Number and Title:

Subpart D—Citizens Band (CB) Radio Service

95.418 (CB Rule 18) How do I use my CB station in an emergency or to assist a traveler?

Subpart E—Technical Regulations

95.623 R/C transmitter channel frequencies.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Subpart A—Terminology

Brief Description: This rule provides definitions for terms used in rules.

Need: This rule is essential for the implementation and understanding of other rule sections.

Legal Basis: 47 U.S.C. 302.

Section Number and Title:

2.1(c) Definitions.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Subpart B—Allocation, Assignment and Use of Radio Frequencies

Brief Description: These rules display the Table of Frequency Allocations, which sets forth a "road map" of the service allocations of radio frequency spectrum throughout the world. The Table of Allocations also indicates how spectrum is allocated among Federal Government users, who are subject to the regulatory jurisdiction of the Department of Commerce's National Telecommunications and Information Administration, and non-Federal users, who are subject to the Commission's jurisdiction. The table further shows the services to which the various spectrum bands are allocated. The precise technical rules governing each service regulated by the Commission, however, are set forth in the several other parts of the Commission's rules.

Need: These rules are promulgated to promote the efficient use of the radio spectrum in order to prevent harmful interference among users of radio frequencies, to ensure safety of life and property, and to promote interoperability among radio frequencies throughout the world.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title:

2.106 Table of Frequency Allocations

Subpart J—Equipment Authorization Procedures

Brief Description: These rules provide technical standards for radio equipment and their part and components.

Need: These rules permit the Commission to carry out its responsibilities under the Communications Act and the various treaties and international regulations, and to promote the efficient utilization of the spectrum.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title:

2.948 Description of measurement facilities
2.1033(b)(11) Application for certification
2.1055(a)(2) Measurements required: Frequency stability

Subpart K—Importation of Devices Capable of Causing Harmful Interference

Brief Description: These rules are designed to prevent interference from radio-frequency devices and to facilitate the filing of FCC Form 740 information regarding equipment importation.

Need: These rules control technical criteria, reducing filing and handling burden on both importers and the federal government, including the U.S. Customs Service.

Legal Basis: 27 U.S.C. 154(I), 302, 303(r).

Section Number and Title:

2.1201 Purpose
2.1202 Exclusions
2.1203 General requirement for entry into the U.S.A.
2.1204 Import conditions
2.1205 Filing of required declaration
2.1207 Examination of imported equipment

Subpart N—FCC Procedure for Testing Class A, B, and S Emergency Position Indicating Radiobeacons (EPIRBs)

Brief Description: These rules set standards for testing Class A, B, and S Emergency Position Indicating Radiobeacons (EPIRBs)

Need: These rules are necessary to provide manufacturers with information necessary to develop EPIRB equipment that will comply with technical standards, and to ensure the appropriate measurement of such equipment to determine its compliance with our technical rules.

Legal Basis: 47 U.S.C. 154, 302

Section Number and Title:

2.1 Introduction
2.1503 Test environment
2.1505 Test instrumentation and equipment
2.1507 Test frequencies
2.1509 Environmental and duration tests
2.1511 Measurements of radiated emissions
2.1513 Measurements of modulation characteristics
2.151 Spectral Measurements
2.1517 Data recording/reporting requirements

PART 5—EXPERIMENTAL RADIO SERVICE (OTHER THAN BROADCAST)

Subpart B—Applications and Licenses

Brief Description: These rules set out eligibility, application, licensing and operating procedures and requirements for experimental stations.

Need: These rules permit the experimentation in new radio technology and applications while ensuring the protection of incumbent services.

Legal Basis: 47 U.S.C. 154, 302, 307.

Section Number and Title:

5.51(c) Eligibility of license
5.53(b) Stations authorization required

PART 15—RADIOFREQUENCY DEVICES

Brief Description: These rules provide the parameters necessary to permit the unlicensed operation of radiofrequency devices, including specification of the levels of wanted and unwanted emissions and frequencies of permitted operation

Need: These rules are necessary to promote the efficient use of the radio spectrum by preventing harmful interference to licensed radio services that share the same or nearby spectrum as unlicensed devices. Such licensed services include broadcast, cellular, safety-of-life communications, U.S. Government operations, and others.

Legal Basis: 47 U.S.C. 154, 302, 307.

Section Number and Title:

Subpart A—General

15.3 Definitions
15.31 Measurement standards
15.35 Measurement detector functions and bandwidths
15.13 Transition provisions for compliance with the rules

Subpart B—Unintentional Radiators

15.107 Conducted limits
15.109 Radiated emission limits
15.115 TV interface devices, including cable system terminal devices
15.119 Closed caption decoder requirements for analog television receivers

Subpart C—Intentional Radiators

15.203 Antenna requirement
15.205 Restricted bands of operation
15.207 Conducted limits
15.209 Radiated emission limits; general requirements
15.214 Cordless telephones
15.221 Operation in the band 525–1705 kHz
15.229 Operation in the band 40.66–40.70 MHz
15.237 Operation in the bands 72.0–73.0 MHz, 74.6–74.8 MHz, and 75.2–76.0 MHz
15.245 Operation within the bands 902–928 MHz, 2435–2465 MHz, 5785–5815 MHz, 10500–10550 MHz, and 14075–14175 MHz
15.247 Operation within the bands 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz
15.249 Operations within the bands 902–928 MHz, 2400–2483.5 MHz, 5725–2875 MHz, and 24.0–24.25 GHz 6

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Subpart A— Terminology

Brief Description: This rule provides definitions for terms used in rules.

Need: This rule is essential for the implementation and understanding of other rule sections.

Legal Basis: 47 U.S.C. 302

Section Number and Title:

2.1(c) Definitions

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Subpart B—Allocation, Asignment and Use of Radio Frequencies

Brief Description: These rules display the Table of Frequency Allocations, which sets forth a "road map" of the service allocations of radio frequency spectrum throughout the world. The Table of Allocations also indicates how spectrum is allocated among Federal Government users, who are subject to the regulatory jurisdiction of the Department of Commerce's National Telecommunications and Information Administration, and non-Federal users, who are subject to the Commission's jurisdiction. The table further shows the services to which the various spectrum bands are allocated. The precise technical rules governing each service regulated by the Commission, however, are set forth in the several other parts of the Commission's rules.

Need: These rules are promulgated to promote the efficient use of the radio spectrum in order to prevent harmful interference among users of radio frequencies, to ensure safety of life and property, and to promote interoperability among radio frequencies throughout the world.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title:

2.107 Table of Frequency Allocations

Subpart J—Equipment Authorization Procedures

Brief Description: These rules provide technical standards for radio equipment and their part and components.

Need: These rules permit the Commission to carry out its responsibilities under the Communications Act and the various treaties and international regulations, and to promote the efficient utilization of the spectrum.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title:

2.948 Description of measurement facilities

2.1033(b)(11) Application for certification
2.1055(a)(2) Measurements required; Frequency stability

Subpart K—Importation of Devices Capable of Causing Harmful Interference

Brief Description: These rules are designed to prevent interference from radio-frequency devices and to facilitate the filing of FCC Form 740 information regarding equipment importation.

Need: These rules control technical criteria, reducing filing and handling burden on both importers and the federal government, including the U.S. Customs Service.

Legal Basis: 27 U.S.C. 154(I), 302, 303(r).

Section Number and Title:

2.1201 Purpose
2.1202 Exclusions
2.1203 General requirement for entry into the U.S.A.
2.1204 Import conditions
2.1205 Filing of required declaration
2.1207 Examination of imported equipment

Subpart N—FCC Procedure for Testing Class A, B, and S Emergency Position Indicating Radiobeacons (EPIRBs)

Brief Description: These rules set standards for testing Class A, B, and S Emergency Position Indicating Radiobeacons (EPIRBs)

Need: These rules are necessary to provide manufacturers with information necessary to develop EPIRB equipment that will comply with technical standards, and to ensure the appropriate measurement of such equipment to determine its compliance with our technical rules.

Legal Basis: 47 U.S.C. 154, 302

Section Number and Title:

2.1502 Introduction
2.1503 Test environment
2.1506 Test instrumentation and equipment
2.1508 Test frequencies
2.1510 Environmental and duration tests
2.1512 Measurements of radiated emissions
2.1514 Measurements of modulation characteristics
2.1516 Spectral Measurements
2.1518 Data recording/reporting requirements

PART 5—EXPERIMENTAL RADIO SERVICE (OTHER THAN BROADCAST)

Subpart B—Applications and Licenses

Brief Description: These rules set out eligibility, application, licensing and operating procedures and requirements for experimental stations.

Need: These rules permit the experimentation in new radio technology and applications while ensuring the protection of incumbent services.

Legal Basis: 47 U.S.C. 154, 302, 307.

Section Number and Title:

5.51(c) Eligibility of license
5.53(b) Stations authorization required

PART 15—RADIO FREQUENCY DEVICES

Brief Description: These rules provide the parameters necessary to permit the unlicensed operation of radiofrequency devices, including specification of the levels of wanted and unwanted emissions and frequencies of permitted operation.

Need: These rules are necessary to promote the efficient use of the radio spectrum by preventing harmful interference to licensed radio services that share the same or nearby spectrum as unlicensed devices. Such licensed services include broadcast, cellular, safety-of-life communications, U.S. Government operations, and others.

Legal Basis: 47 U.S.C. 154, 302, 307.

Section Number and Title:

Subpart A—General

15.4 Definitions
15.32 Measurement standards
15.36 Measurement detector functions and bandwidths
15.38 Transition provisions for compliance with the rules

Subpart B—Unintentional Radiators

15.108 Conducted limits
15.110 Radiated emission limits
15.116 TV interface devices, including cable system terminal devices
15.120 Closed caption decoder requirements for analog television receivers

Subpart C—Intentional Radiators

15.204 Antenna requirement
15.206 Restricted bands of operation
15.208 Conducted limits
15.210 Radiated emission limits; general requirements
15.215 Cordless telephones
15.222 Operation in the band 525–1705 kHz
15.229 Operation in the band 40.66–40.70 MHz
15.238 Operation in the bands 72.0–73.0 MHz, 74.6–74.8 MHz, and 75.2–76.0 MHz
15.246 Operation within the bands 902–928 MHz, 2435–2465 MHz, 5785–5815 MHz, 10500–10550 MHz, and 14075–14175 MHz
15.248 Operation within the bands 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz
15.250 Operations within the bands 902–928 MHz, 2400–2483.5 MHz, 5725–2875 MHz, and 24.0–24.25 GHz

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

Subpart A—General

Brief Description: The rules and regulations set forth in this section provide for the certification of cable television systems and for their operation in conformity with standards for carriage of television broadcast signals, program exclusivity, cablecasting, access channels, and related matters.

Need: Theses rules prescribe definitions of cable television terms and requirements for waivers for special relief, enforcement, complaints, as well as declaratory ruling procedures.

Legal basis: 47 U.S.C. 154, 303, 339

Section Number and Title:

76.5(jj) Definitions: Rural area.
76.5(kk) Definitions: Technically integrated.
76.7(e) General special relief, waiver, enforcement, complaint, show cause, forfeiture, and declaratory ruling procedures. Additional procedures and written submissions.

Subpart D—Carriage of Television Broadcast Signals

Brief Description: These rules provide for the carriage of television broadcast signals on cable television systems. Subject to the Commission's network nonduplication, syndicated exclusivity and sports broadcasting rules, cable systems must carry the entirety of the program schedule of every local television station carried pursuant to the Commission's mandatory carriage provisions or the retransmission consent provisions. A broadcaster and a cable operator may negotiate for partial carriage of the signal where the station is not eligible for must-carry rights, either because of the station's failure to meet the requisite definitions or because the cable system is outside the station's market area.

Need: These rules prescribe requirements and obligations concerning cable television system carriage of television broadcast signals.

Legal basis: 47 U.S.C. 154

Section Number and Title:

76.54(c) Significantly viewed signals, method to be followed for special showings.

Subpart G—Cablecasting

Brief Description: These rules provide for origination cablecasting concerning legally qualified candidates for public office, and rates charged for use of cable television systems by candidates in connection with campaign activities, including political files and fairness doctrines. Also, the rules include

information concerning the rates, terms, conditions and all discounts and privileges offered to commercial advertisers be disclosed and made available to candidates They also prescribe provisions for origination cablecasting for any advertisements of or information concerning any lottery, gift, enterprise, or similar scheme offering prizes dependent in whole or in part upon lot of chance.

Need: These rules prescribe requirements that enable legally qualified political candidates to use cable television facilities.

Legal basis: 47 U.S.C. 154

Section Number and Title:

76.205 Origination cablecasts by legally qualified candidates for public office; equal opportunities.
76.206(a)(1)(i)(ii) Candidates Rates. Charges for use of cable television systems.
76.206(2) Candidates Rates. Charges for use of cable television systems.
76.207 Political file (This section was renumbered as Section 76.1701 pursuant to the Commission's reorganization and renumbering of Section 76 as part of the 1998 Biennial Review-Multichannel Video and Cable Television Service, 65 FR 53610).
76.213(c) Lotteries.
76.213(e) Lotteries.
76.221(a) Sponsorship identification. (This section was renumbered as Section 76.1715 pursuant to the Commission's reorganization and renumbering of Section 76 as part of the 1998 Biennial Review-Multichannel Video and Cable Television Service, 65 FR 53610).
76.225 Commercial limits in children's programs

Subpart H—General Operating Requirements

Brief Description: These rules provide guidelines for general operation requirements including customer service obligations and cable records which must be made available to the public for inspection are provided for in this section.

Need: These rules prescribe general operating and recordkeeping requirements for cable television systems.

Legal basis: 47 U.S.C. 154, 521

Section number and Title:

76.305(a) Records to be maintained locally by cable system operators. Recordkeeping requirements. (This section was renumbered as 76.1700(a) pursuant to the Commission's reorganization and renumbering of Section 76 as part of the 1998 Biennial Review—Multichannel Video and Cable Television Service, 65 FR 53610).
76.305(c) Records to be maintained locally by cable system operators. (This section was renumbered as 76.1700(c) pursuant to the Commission's reorganization and renumbering of Section 76 as part of the 1998 Biennial Review—Multichannel Video and Cable Television Service). (65 FR 53610)

Subpart J—Ownership of Cable Systems

Brief Description: The Commission rules restrict the ability of television broadcast stations, national television networks, MMDS, and SMATV systems to own or control interests in cable systems. These rules also restrict the ownership interest of cable operators and their ability to own or control video programming services. While there are no prohibitions on foreign ownership of cable television systems, foreign governments or their representatives may not own CARS stations.

Need: This section prescribes rules for the diversity of cable television system ownership and restrictions on ownership interests by video programming providers.

Legal basis: 47 U.S.C. 154, 533

Section Number and Title:

76.501 Cross-ownership.

Subpart K—Technical Standards

Brief description: These rules provide technical performance standards for the operation of cable television systems to ensure the delivery of satisfactory television signals to cable subscribers. Local franchising authorities are generally authorized to enforce these technical standards through their franchising process.

Need: These rules prescribe technical standards applicable to cable television service.

Legal basis: 47 U.S.C. 154, 303, and 601

Section Number and Title:

76.601 (c)(1) Performance Tests
76.601 (c)(2) Performance Tests
76.601 (c)(4) Performance Tests
76.601 Note Performance Tests
76.605 (a) Technical Standards
76.605 (b) Technical Standards
76.605 (Note 1) Note 1
76.605 (Note 2) Note 2
76.605 (Note 3) Note 3
76.605 (Note 4) Note 4
76.605 (Note 5) Note 5
76.605 (Note 6) Note 6
76.606 Closed Captioning
76.607 Complaint Resolution (This section was renumbered as Section 76.1713 pursuant to the Commission's reorganization and renumbering of Section 76 as part of the 1998 Biennial Review—Multichannel Video and Cable Television Service, 65 FR 53610).
76.609 (d)(2) Measurements
76.609 (e) Measurements
76.609 (g) Measurements
76.609 (h)(2) Measurements
76.609 (j) Measurements

PART 78—CABLE TELEVISION RELAY SERVICE

Subpart A—General

Brief Description: The rules and regulations prescribe regulations, definitions and other pertinent rules relating to cable television relay service (CARS).

Need: These rules set forth guidelines for the licensing and operation of fixed or mobile cable television relay service stations (CARS) used for the transmission of television and related audio signals, signals of standard and FM broadcast stations, signals of instructional television fixed stations, and cablecasting from the point of reception to a terminal point from which the signals are distributed to the public by cable.

Legal basis: 47 U.S.C. 154, 303

Section Number and Title:

78.3 Other pertinent rules
78.5 (g) Definitions: Unattended operation.

Subpart B—Applications and Licenses

Brief Description: These rules set forth procedures for applying for licenses to operate cable antenna relay service stations. Cable systems uses these microwave relay stations to obtain certain signals when it is impractical to use cable delivery. Cable operators may purchase microwave relay service from companies providing such common carrier services, or they may operate their own relay stations licensed by the Commission.

Need: These rules prescribe application and licensing requirements applicable to cable television relay service.

Legal basis: 47 U.S.C. 154, 303.

Section Number and Title:

78.11 (a) Permissible service
78.11 (c) Permissible service
78.11 (d) Permissible service
78.11 (e) Permissible service
78.11 (f) Permissible service
78.11 (g) Permissible service
78.13 (d) Eligibility for license
78.15 (c) Contents of applications
78.27 (a) License conditions
78.33 (b) Special temporary authority
78.105 (a)(1) Antenna systems
78.105 (b) Antenna systems

PART 1—PRACTICE AND PROCEDURE

Subpart C—Rulemaking Proceedings

Brief Description: This rule requires that, whenever an expression of interest has been filed in a proceeding to amend the FM or TV Table of Allotments, and the filing party seeks to dismiss or withdraw the expression of interest, the party must file with the Commission a request for approval of the dismissal or withdrawal.

Need: Without the requirement, the Commission could not monitor the Tables.

Legal Basis: 47 U.S.C. 154, 303, 307.

Section Number and Title:

1.420 (j) Additional procedures in proceedings for amendment of the FM or TV Tables of Allotments.

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

Subpart K—Multipoint Distribution Service

Brief Description: These rules prescribe procedures for Multipoint Distribution Service (MDS) licensees in the domestic public fixed radio services.

Need: These rules are established to provide procedures for common carrier MDS licensees. These rules supply requirements for cable television and the competitive bidding process; instructions for specific application forms, partitioned service areas, basic trading areas, and all other procedures applicable to MDS.

Legal Basis: 47 U.S.C. 151, 154, 201, 202, 203 204, 205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 552, 554, 602.

Section Number and Title:

21.911 Annual reports.
21.914 Mutually-exclusive MDS applications.

PART 73—RADIO BROADCAST SERVICES

Subpart A—AM Broadcast Stations

Brief Description: These rules provide for compliance and authorization of AM radio equipment and licenses.

Need: These rules prescribe certain technical requirements and procedures for AM broadcast radio services.

Legal Basis: 47 U.S.C. 154, 303, 334, 336.

Section Number and Title:

73.35 Calculation of improvement factors.
73.151 Field strength measurements to establish performance of directional antennas.
73.152 Modification of directional antenna data.
73.183 Groundwave signals.

Subpart B—FM Broadcast Stations

Brief Description: These rules provide for compliance and authorization of FM radio equipment and licenses.

Need: These rules prescribe certain technical requirements and procedures for FM broadcast radio services.

Legal Basis: 47 U.S.C. 154, 303, 334, 336.

Section Number and Title:

73.208 Reference points and distance computations.
73.215 Contour protection for short stations.

Subpart E—Television Broadcast Stations

Brief Description: These rules provide for compliance and authorization of television broadcast equipment and licenses.

Need: These rules prescribe certain technical requirements and operating procedures for television broadcast services.

Legal Basis: 47 U.S.C. 154, 155, 303, 334, 336.

Section Number and Title:

73.670 Commercial limits in children's programs.
73.687 Transmission system requirements.

Subpart H—Rules Applicable to all Broadcast Stations

Brief Description: These rules provide for compliance and authorization of all broadcast services.

Need: These rules prescribe operating procedures applicable to all broadcast services.

Legal Basis: 47 U.S.C. 154, 303, 334, 336.

Section Number and Title:

73.1212 Sponsorship identification; list retention; related requirements.
73.1217 Broadcast hoaxes.
73.1942 Candidate rates.
73.1943 Political file.
73.1944 Reasonable access.
73.3556 Duplication of programming on commonly owned or time brokered stations.
73.3588 Dismissal of petitions to deny or withdrawal of informal objections.
73.3589 Threats to file petitions to deny or informal objections.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

Subpart D—Remote Pickup Broadcast Stations

Brief Description: This rule prescribes the frequency, type of equipment and method that a remote pickup broadcast station shall use when identifying itself on the air.

Need: Operators identify their remote pickup broadcast stations using the means described in this rule. Without this rule, the Commission and the public would be unable to identify the station.

Legal Basis: 47 U.S.C. 154, 303, 307, 554.

Section Number and Title:

74.482 Station identification.

Subpart E—Aural Broadcast Auxiliary Stations

Brief Description: This rule assists in prescribing operating procedures exclusive to aural broadcast auxiliary stations.

Need: This rule describes the different classes of aural broadcast auxiliary stations, which assists parties in determining which operating procedures apply to a particular station.

Legal Basis: 47 U.S.C. 154, 303, 307, 554.

Section Number and Title:

74.501 Classes of aural broadcast auxiliary stations.

Subpart I—Instructional Television Fixed Service

Brief Description: These rules prescribe operating procedure exclusive to instructional television fixed service stations.

Need: These rules promote procedures for instructional television fixed service (ITFS) broadcasting stations, frequencies on fixed broadcast stations, fixed service applications, multi-channel distribution and all other procedures applicable to television fixed service.

Legal Basis: 47 U.S.C. 154, 303, 307, 554.

Section Number and Title:

74.986 Involuntary ITFS station modifications.
74.990 Use of available instructional television fixed service frequencies by wireless cable entities.
74.991 Wireless cable application procedures.
74.992 Access to channels licensed to wireless cable entities.

Subpart L—FM Broadcast Translator Stations and FM Broadcast Booster Stations

Brief Description: These rules prescribe operating procedures exclusive to FM broadcast translator and FM broadcast booster stations.

Need: These rules provide procedures pertaining to transmitting FM signal channels for primary stations, FM radio broadcast stations, and FM booster stations.

Legal Basis: 47 U.S.C. 154, 303, 307, 554.

Section Number and Title:

74.1201 Definitions.
74.1205 Protection of channel 6 TV broadcast stations.

PART 1—PRACTICE AND PROCEDURE

Subpart C—Rulemaking Proceedings

Brief Description: This rule requires that, whenever an expression of interest

has been filed in a proceeding to amend the FM or TV Table of Allotments, and the filing party seeks to dismiss or withdraw the expression of interest, the party must file with the Commission a request for approval of the dismissal or withdrawal.

Need: Without the requirement, the Commission could not monitor the Tables.

Legal Basis: 47 U.S.C. 154, 303, 307.

Section Number and Title:

1.420 (j) Additional procedures in proceedings for amendment of the FM or TV Tables of Allotments.

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

Subpart K—Multipoint Distribution Service

Brief Description: These rules prescribe procedures for Multipoint Distribution Service (MDS) licensees in the domestic public fixed radio services.

Need: These rules are established to provide procedures for common carrier MDS licensees. These rules supply requirements for cable television and the competitive bidding process; instructions for specific application forms, partitioned service areas, basic trading areas, and all other procedures applicable to MDS.

Legal Basis: 47 U.S.C. 151, 154, 201, 202, 203, 204, 205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 552, 554, 602.

Section Number and Title:

21.911 Annual reports.
21.914 Mutually-exclusive MDS applications.

PART 73—RADIO BROADCAST SERVICES

Subpart A–AM Broadcast Stations

Brief Description: These rules provide for compliance and authorization of AM radio equipment and licenses.

Need: These rules prescribe certain technical requirements and procedures for AM broadcast radio services.

Legal Basis: 47 U.S.C. 154, 303, 334, 336.

Section Number and Title:

73.35 Calculation of improvement factors.
73.151 Field strength measurements to establish performance of directional antennas.
73.152 Modification of directional antenna data.
73.183 Groundwave signals.

Subpart B—FM Broadcast Stations

Brief Description: These rules provide for compliance and authorization of FM radio equipment and licenses.

Need: These rules prescribe certain technical requirements and procedures for FM broadcast radio services.

Legal Basis: 47 U.S.C. 154, 303, 334, 336.

Section Number and Title:

73.208 Reference points and distance computations.
73.215 Contour protection for short-spaced stations.

Subpart E—Television Broadcast Stations

Brief Description: These rules provide for compliance and authorization of television broadcast equipment and licenses.

Need: These rules prescribe certain technical requirements and operating procedures for television broadcast services.

Legal Basis: 47 U.S.C. 154, 155, 303, 334, 336.

Section Number and Title:

73.670 Commercial limits in children's programs.
73.687 Transmission system requirements.

Subpart H—Rules Applicable to All Broadcast Stations

Brief Description: These rules provide for compliance and authorization of all broadcast services.

Need: These rules prescribe operating procedures applicable to all broadcast services.

Legal Basis: 47 U.S.C. 154, 303, 334, 336.

Section Number and Title:

73.1212 Sponsorship identification; list retention; related requirements.
73.1217 Broadcast hoaxes.
73.1942 Candidate rates.
73.1943 Political file.
73.1944 Reasonable access.
73.3556 Duplication of programming on commonly owned or time brokered stations.
73.3588 Dismissal of petitions to deny or withdrawal of informal objections.
73.3589 Threats to file petitions to deny or informal objections.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

Subpart D—Remote Pickup Broadcast Stations

Brief Description: This rule prescribes the frequency, type of equipment and method that a remote pickup broadcast station shall use when identifying itself on the air.

Need: Operators identify their remote pickup broadcast stations using the means described in this rule. Without this rule, the Commission and the public would be unable to identify the station.

Legal Basis: 47 U.S.C. 154, 303, 307, 554.

Section Number and Title:

74.482 Station identification.

Subpart E—Aural Broadcast Auxiliary Stations

Brief Description: This rule assists in prescribing operating procedures exclusive to aural broadcast auxiliary stations.

Need: This rule describes the different classes of aural broadcast auxiliary stations, which assists parties in determining which operating procedures apply to a particular station.

Legal Basis: 47 U.S.C. 154, 303, 307, 554.

Section Number and Title:

74.501 Classes of aural broadcast auxiliary stations.

Subpart I—Instructional Television Fixed Service

Brief Description: These rules prescribe operating procedure exclusive to instructional television fixed service stations.

Need: These rules promote procedures for instructional television fixed service (ITFS) broadcasting stations, frequencies on fixed broadcast stations, fixed service applications, multi-channel distribution and all other procedures applicable to television fixed service.

Legal Basis: 47 U.S.C. 154, 303, 307, 554.

Section Number and Title:

74.986 Involuntary ITFS station modifications.
74.990 Use of available instructional television fixed service frequencies by wireless cable entities.
74.991 Wireless cable application procedures.
74.992 Access to channels licensed to wireless cable entities.

Subpart L—FM Broadcast Translator Stations and FM Broadcast Booster Stations

Brief Description: These rules prescribe operating procedures exclusive to FM broadcast translator and FM broadcast booster stations.

Need: These rules provide procedures pertaining to transmitting FM signal channels for primary stations, FM radio broadcast stations, and FM booster stations.

Legal Basis: 47 U.S.C. 154, 303, 307, 554.

Section Number and Title:

74.1201 Definitions.
74.1205 Protection of channel 6 TV broadcast stations.

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Need: Without the requirement, the Commission could not monitor the Tables.

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Subpart A—AM Broadcast Stations

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Section Number and Title:

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Section Number and Title:

73.208 Reference points and distance computations.
73.215 Contour protection for short-spaced stations.

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Section Number and Title:

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73.687 Transmission system requirements.

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Section Number and Title:

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Section Number and Title:

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Need: These rules promote procedures for instructional television fixed service (ITFS) broadcasting stations, frequencies on fixed broadcast stations, fixed service applications, multi-channel distribution and all other procedures applicable to television fixed service.

Legal Basis: 47 U.S.C. 154, 303, 307, 554.

Section Number and Title:

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74.990 Use of available instructional television fixed service frequencies by wireless cable entities.
74.991 Wireless cable application procedures.
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Need: These rules provide procedures pertaining to transmitting FM signal channels for primary stations, FM radio broadcast stations, and FM booster stations.

Legal Basis: 47 U.S.C. 154, 303, 307, 554.

Section Number and Title:

74.1201 Definitions.
74.1205 Protection of channel 6 TV broadcast stations.

Common Carrier Bureau's List of Rules for Review Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 610 for 2000, 2001, 2002

All listed rules are in Title 47 of the Code of Federal Regulations.

PART 1—PRACTICE AND PROCEDURE

Subpart I—Procedures Implementing the National Environmental Policy Act of 1969

Brief Description: The rules contained in subpart 1 implement the requirements of the National Environmental Policy Act (NEPA) as well as a series of other federal environmental laws, such as the Endangered Species Act of 1973, as amended, the National Historic Preservation Act of 1966, the Wilderness Act of 1964, as amended, laws relating to Indian Ceremonial Sites and the Wildlife Refuge Laws. In addition the Commission's environmental rules implement Executive Orders regarding flood plains and wetlands regulation. By statute and/or as set forth in the regulations of the Council on Environmental Quality (CEQ), the Commission is responsible for ensuring compliance with these laws. The rules also identify certain special issues for consideration, including the impact of high-intensity white lights on towers in residential neighborhoods and the effect of radiofrequency emissions on the human environment.

Need: The Commission's environmental rules identify those sensitive environmental issues which Commission licensees must address. As the primary Federal agency managing and licensing radio spectrum broadcasters, wireless telephone carriers and other public and private radio users, the Commission complies with NEPA by requiring its licensees to assess and, if found, report the potential environmental consequences of their proposed projects.

Legal Basis: 47 U.S.C. 154(i), 154(j), and 303(r).

Section Number and Title:

1.1303 Scope.
1.1306 Actions which are categorically excluded from environmental processing.
1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.
1.1312 Facilities for which no preconstruction authorization is required.

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

Brief Description: This rule contains procedures and standards for allocating telephone company investment, expenses, taxes, and reserves between the state and federal jurisdictions.

Need: This rule permits carriers that serve high-cost areas to allocate additional local loop costs to the interstate jurisdiction and recover those costs through the universal service mechanism.

Legal Basis: Sec. 4; 48 Stat. 1066, as amended, 47 U.S.C. 154. Sec. 205, 219, 220, 221(c), 48 Stat. 1077 as amended, 1078; 47 U.S.C. 154, 205, 219, 220, 221(c).

Subpart F—Universal Service Fund

Section Number and Title:

36.601 General.
36.621 Study area total unseparated loop cost.
36.622 National and study area average unseparated loop costs.

PART 61—TARIFFS

Subpart H—Applications for Special Permission

Brief Description: The Part 61 rules are designed to implement the provisions of sections 201, 202, 203 and 204 of the Communications Act and ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. The Part 61 rules govern the filing, form, content, public notice periods, and accompanying support materials for tariffs. Part 61 rules also establish the pricing rules and related requirements that apply to incumbent local exchange carriers that are subject to price cap regulation.

Need: At the time the Commission implemented the Treasury Department Lockbox Collection Program for all fees, requiring that submissions with fees be filed only with the lockbox bank in Pittsburgh, the tariff rules were revised to specify that any special permission application must be filed with the fee payment at the lockbox bank, while the attachments must be filed at the Office of the Secretary.

Legal Basis: 47 U.S.C. 154, 201, 202, 203, 205, 403.

Section Numbers and Titles:

61.151 Scope.
61.152 Terms of applications and grants.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart I—Procedures Implementing the Telecommunication Relay Services and Related Customer Premises Equipment for Persons With Disabilities

Brief Description: Title IV of the Americans with Disabilities Act (ADA), which is codified at section 225 of the Communications Act of 1934, as amended (the Act), mandates that the Commission ensure that interstate and intrastate telecommunications relay services (TRS) are available, to the extent possible and in the most efficient manner, to individuals in the United States with hearing and speech disabilities. Title IV aims to further the Act's goal of universal service by providing to individuals with hearing or speech disabilities, telephone services that are functionally equivalent to those available to individuals without such disabilities. The ADA requires the Commission to establish functional requirements, guidelines, and operational procedures for TRS, and to establish minimum standards for carriers' provisioning of TRS. To establish a TRS that provides services which are functionally equivalent to telephone services available to voice users, Congress directed, among other things, that the Commission prohibit TRS providers from "failing to fulfill the obligations of common carriers by refusing calls."

On July 26, 1991, the Commission released its First Report and Order on TRS. This item stated that, "the Commission is amending its rules to require that each common carrier providing telephone voice transmission services shall, no later than July 26, 1993, provide throughout the area in which it offers service, telecommunications relay services (TRS), individually, through designees, through a competitively selected vendor, or in concert with other carriers."[1] This Report and Order adopted the Commission's Part 64, subpart F, rules.

In addition, one part of payphone service within the purview of NSD (Part 64, Subpart F) concerns TRS. In its First Report and Order on TRS (1991), the Commission interpreted the ADA to require TRS providers to handle any type of call normally provided by common carriers, including coin sent paid TRS calls. Due to technical concerns, the Commission has not been able to enforce this requirement. Presently, a Report and Order is being written which would eliminate this requirement.

Need: This rule implements the provisions of the ADA of 1990.

Legal Basis: 47 U.S.C. 51, 54(l), 54(j), 201–205, and 403.

[1] Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Report and Order and Request for Comments, CC Docket No. 90–571, 6 FCC Red 4657 (1991) (1991 Report and Order). *See* 47 CFR § 64.604(a)(3).

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart B—Restrictions on Indecent Telephone Message Services

Brief Description: This rule implements the provisions of section 223(b) of the Act relating to defenses to prosecution for indecent commercial communications.

Need: This rule is intended to implement the statutory restrictions on commercial provision by telephone of indecent communications.

Legal Basis: Sec. 1, 4, 218–220, 223, 48 Stat. 1070, as amended; 47 U.S.C. 151, 154, 218–220, 223.

Section Number and Title:

64.201 Restrictions on indecent telephone message services.

Subpart G—Furnishing of Enhanced Services and Customer-Premises Equipment by Bell Operating Companies; Telephone Operator Services

Brief Description: This rule sets forth information that must be made available by operator service providers to consumers.

Need: This rule protects consumers by ensuring that they have access to useful information about the rates charged by operator service providers, and that they are able to reach the operator service provider of their choice.

Legal Basis: Sec. 1, 4, 218–220, 226, 48 Stat. 1070, as amended; 47 U.S.C. 151, 154, 218–220, 226.

Section Number and Title:

64.703 Consumer information.
64.707 Public dissemination of information by providers of operating services.
64.708 Definitions.

Subpart L—Restrictions on Telephone Solicitation

Brief Description: This rule imposes restrictions on telephone solicitation.

Need: This rule adopts measures to implement requirements designed to protect telephone subscribers from unsolicited telephone calls without unnecessarily restricting legitimate telephone marketing and sales.

Legal Basis: Sec. 1, 4, 218–220, 227, 48 Stat. 1070, as amended; 47 U.S.C. 151, 154, 218–220, 227.

Section Number ant Title:

64.1200 Delivery restrictions.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart N—Expanded Interconnection

Brief Description: This rule requires that larger incumbent local exchange carriers (LECs), which do not participate in the National Exchange Carrier Association tariff, must provide expanded interconnection. Subpart N requires these incumbent LECs to allow other parties to interconnect with their networks through physical or virtual collocation for the provision of interstate access and switched transport services. Any interested party, including competitive LECs, interexchange carriers, and end users may take expanded interconnection from the LECs subject to this rule.

Need: This rule promotes increased competition in the provision of interstate services by removing barriers to competitive provision of special access and switched transport services. In particular, subpart N makes collocation and interconnection available to parties not covered by Part 51 of the Commission's rules such as large businesses and universities.

Legal Basis: 47 U.S.C. 151, 154, and 201–205.

Section Number and Title:

64.1401 Expanded interconnection.
64.1402 Rights and responsibilities of interconnectors.

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

Subpart A—General

Brief Description: This rule defines the point of demarcation between customer premises telephone wiring and the line owned and/or controlled by the local exchange carrier.

Need: This rule is necessary to establish competition in the provision and maintenance of inside wire.

Legal Basis: 47 U.S.C. 151–154, 201–205, and 303(r).

Section Number and Title:

68.3 Definitions (Demarcation Point).
68.105 Minimum Point of Entry and Demarcation Point.

Brief Description: This rule requires that all telephones be compatible with hearing aid devices.

Need: This rule implements the provisions of the Hearing Aid Compatibility Act of 1988.

Legal Basis: 47 U.S.C. 151–154, 201–205, and 303(r).

Section Number and Title:

68.4 Hearing-aid Compatible Telephones.

Subpart B—Conditions on Use of Terminal Equipment

Brief Description: This rule authorizes telecommunications common carriers to discontinue service when harm occurs originating from customer-installed equipment.

Need: This rule allows telecommunications common carriers to avoid harm to the public switched telephone network and to other customers' service originating from customer-installed wiring or equipment.

Legal Basis: 47 U.S.C. 151–154, 201–205, and 303(r).

Section Number and Title:

68.108 Incidence of harm.

Brief Description: This rule requires the providers of wireline telecommunications notify customers that a temporary discontinuance of service may be required; afford the customer the opportunity to take corrective action; and, inform the customer of his right to file a complaint with the Commission.

Need: This rule specifies that public buildings and businesses must make available hearing aid compatible telephones, and by what date.

Legal Basis: 47 U.S.C. 151–154, 201–205, and 303(r).

Section Number and Title:

68.112 Hearing aid-compatibility.

Subpart C—Terminal Equipment Approval Procedures

Brief Description: This rule states the requirements pertaining to customer installation of inside wire that will protect the public switched telephone network.

Need: The rule directs customer premises wiring to be installed in such a way that it will not harm the public switched telephone network.

Legal Basis: 47 U.S.C. 151–154, 201–205, and 303(r).

Section Number and Title:

68.213 Installation of other than "fully protected" non-system simple customer premises wiring.

Subpart D—Conditions for Terminal Equipment Approval

Brief Description: This rule requires automatic dialing devices that deliver a recorded message to release the called party's telephone line promptly.

Need: Prior to this rule, automatic dialing devices delivering a recorded message could and did prevent a called party from acquiring a dial tone for an extended period of time. This rule avoids situations in which a called party cannot access his telephone line to make emergency and other calls.

Legal Basis: 47 U.S.C. 151–154, 201–205, and 303(r).

Section Number and Title:

68.318(c) Line seizure by automatic telephone dialing systems.

Brief Description: This rule requires that all customer premises equipment and software be capable of accessing operator service providers using equal access codes.

Need: This rule facilitates competition among operator service providers by requiring that all callers have access to 10XXX code services.

Legal Basis: 47 U.S.C. 151–154, 201–205, and 303(r).

Section Number and Title:

68.318(e) Requirement that registered equipment allow access to common carriers.

PART 69—ACCESS CHARGES

Subpart B—Computation of Charges

Brief Description: The Part 69 rules are designed to implement the provisions of sections 201 and 202 of the Communications Act and protect consumers by preventing the exercise of market power by incumbent local exchange carriers by ensuring that rates are just, reasonable, and not unjustly or unreasonably discriminatory. The requirement for a certain minimum set of access charge rate elements and the rate calculation rules for rate-of-return carriers also greatly reduce the resources required in the tariff review process.

Need: Section 69.101 was adopted to replace rate-of-return regulation with a form of incentive regulation, one that directly limits rates by means of price caps, for the largest local exchange carriers. Section 69.119 was adopted to stimulate the introduction of innovative new enhanced services. Section 69.120 established a new switched access element for queries by interexchange carriers to local exchange carrier line information databases. Section 69.127 was adopted to encourage efficient use of transport facilities by allowing pricing that reflects costs, creating a rate structure conducive to interexchange competition, and avoiding interference with the development of interstate access competition.

Legal Basis: 47 U.S.C. 154, 201, 202, 203, 205, 403.

Section Numbers and Titles:

69.101 General.

69.119 Basic service element expedited approval process.

69.120 Line information database.

69.127 Transitional equal charge rule.

Subpart D—Apportionment of Net Investment

Brief Description: The Part 69 rules protect customers from the exercise of market power by incumbent local exchange carriers. The requirement for a minimum set of access charge rate elements and the pricing rules for both rate-of-return and price-cap LECs greatly reduce the Commission resources required to ensure carrier compliance with sections 201 and 202 of the Communications Act. These requirements also greatly facilitate analysis of access charges by other interested parties.

Need: Section 69.301 was adopted to facilitate more cost-based pricing and greater efficiency in the provision of transport service.

Legal Basis: 47 U.S.C. z154, 201, 202, 203, 205, 218, 220, 403.

Section Number and Title:

69.301 General.

Subpart G—Exchange Carrier Association

Brief Description: The Part 69 rules also provide for the establishment of the National Exchange Carrier Association (NECA), which files tariffs on behalf of many of the smaller, rate-of-return local exchange carriers. Annual access tariff filings, including the average schedule formula changes filed by the National Exchange Carrier Association, were adopted to assure that rates would be reasonable, would reflect rules changes, and would become more closely aligned with costs.

Need: Previously, the National Exchange Carrier Association was required to file updates to its average schedule formula, or certify that no change was required, by June 30 each year, which was six months before the January 1 effective date of the annual access tariffs. In the same rulemaking that changed the effective date for annual access tariffs from January 1 to July 1, the average schedule formula filing deadline was extended from June 30 to December 31 each year, six months before the effective date for annual access tariffs.

Legal Basis: 47 U.S.C. 154, 201, 202, 203, 205, 218, and 403 and 5 U.S.C. 553.

Section Numbers and Titles:

69.606 Computation of average schedule company payments.

[FR Doc. 02–26429 Filed 10–21–02; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Tuesday,
October 22, 2002

Part III

Department of Labor

Secretary's Order 2–2002; Delegation of Authorities and Assignment of Responsibilities to the Assistant Secretary for Policy; Notice

DEPARTMENT OF LABOR

Office of the Secretary

Secretary's Order 2–2002; Delegation of Authorities and Assignment of Responsibilities to the Assistant Secretary for Policy

1. Purpose

To define and delegate authorities and responsibilities to the Assistant Secretary for Policy.

2. Authorities and Directives Affected

a. Authorities

This Order is issued pursuant to 29 U.S.C. 551 *et seq.*; 5 U.S.C. 301; 5 U.S.C. 5315; the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act [*see* 5 U.S.C. 601 *et seq.* and 15 U.S.C. 657]; the Federal Advisory Committee Act [5 U.S.C. App.]; General Services Administration regulations governing Federal Advisory Committee management (41 C.F.R. 102–3, Subpart A); Executive Order 12838, "Termination and Limitation of Federal Advisory Committees" (February 10, 1993); Executive Order 12866, "Regulatory Planning and Review" (September 30, 1993), as amended by Executive Order 13258 (February 26, 2002); Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking" (August 13, 2002); and Office of Management and Budget Circular A–135, "Management of Federal Advisory Committees" (October 5, 1994).

b. Directives Affected

(1) This Order does not affect the authorities and responsibilities assigned by any other Secretary's Order, unless otherwise expressly so provided in this or another Order.

(2) Secretary's Order 2–82, which delegated authority and assigned responsibilities to the Assistant Secretary for Policy (OASP), is cancelled.

(3) This Order does not affect Secretary's Order 2–2000, which establishes policy and assigns responsibilities for the development, implementation, institutionalization, and continuing support of Department of Labor public Internet services.

(4) This Order does not affect the procurement and contracting authority of the Assistant Secretary for Administration and Management. (*see* Secretary's Order 4–76.)

3. Background

The Office of the Assistant Secretary for Policy (OASP) has traditionally provided advice and assistance to the Secretary and Deputy Secretary in a number of areas, including policy development, program implementation, program evaluations, research, budget and performance analysis, and legislative and other policy support. The Secretary of Labor advises the President and represents the Department of Labor (DOL or Department) in Cabinet deliberations dealing with significant and complex issues of, *e.g.*, a scientific, financial, and statistical nature, particularly as these issues have an impact on the welfare of the American workforce. The accelerating rate of technological and economic change compels the availability to the Secretary of a cadre of skilled analysts who can respond quickly to urgent policy matters. Thus, this Order refocuses OASP's role to provide support, analysis, and advice to the Secretary and Deputy Secretary on policy, programmatic, technical, regulatory, and compliance assistance issues.

This Order also compiles current OASP responsibilities and delineates additional responsibilities, including institutionalization of the Office of Economic Policy and Analysis, the Office of Regulatory Policy, the Office of Programmatic Policy, and the Office of Research and Technology Policy. The Order also addresses OASP's role with respect to the Policy Planning Board (*see* Secretary's Order 3–2002); the management of compliance with the Federal Advisory Committee Act and related laws and regulations; the requirements of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA); the coordination and management of the overall DOL public web site presence; and the administration of the DOL Working Partners for an Alcohol and Drug-Free Workplace program.

Finally, this Order and concurrently issued Secretary's Order 4–2002 (Office of Small Business Programs) substantially consolidate and restructure the Department's compliance assistance programs and enhance its outreach efforts. Compliance assistance has become an essential and integral part of how the Department conducts its business and fulfills its mission. In order to avert and deter violations of wage, safety, employee benefits, and other laws that it administers, the Department must offer strong, effective compliance assistance programs. Employers and employees must have access to clear, accurate, and understandable information on achieving compliance with laws under the Department's jurisdiction. This Order consequently establishes the position of Chief Compliance Assistance Officer within OASP and also assigns to OASP the responsibility of assuring the Department's full, effective, and resourceful implementation of compliance assistance initiatives.

4. Delegation of Authorities and Assignment of Responsibilities

a. *The Assistant Secretary for Policy* is delegated authority and assigned responsibility for:

(1) Advising the Secretary and Deputy Secretary and supervising the preparation of studies, analyses, public statements and other policy statements with respect to the Secretary's duties in the areas of policy and economic policy formulation, including the impact of Departmental policies and programs on general economic policy.

(2) Consistent with Secretary's Order 3–2002, providing analytic and administrative leadership and support for the Department's Policy Planning Board.

(3) Establishing the following offices and positions within OASP:

(a) An Office of Compliance Assistance, to be headed by a Chief Compliance Assistance Officer, which will implement, manage, and coordinate Departmental compliance assistance policies, initiatives and programs, including Department-wide cross-cutting initiatives.

(b) An Office of Economic Policy and Analysis, to be headed by a Chief Economist, which will implement, manage, and coordinate Departmental economic policy and analysis.

(c) An Office of Regulatory Policy, to be headed by a Director, which will implement, manage, and coordinate Departmental regulatory policy.

(d) An Office of Programmatic Policy, to be headed by a Director, which will implement, manage, and coordinate Departmental programmatic policy.

(e) An Office of Research and Technology Policy, to be headed by a Director, which will implement, manage, and coordinate Departmental research and technology policy.

(4) Providing the analytical support required by the Secretary, Deputy Secretary, and Policy Planning Board with respect to policy issues and trends which require economic analyses or other expertise, including:

(a) Providing analysis of issues in the macroeconomic and microeconomic policy areas.

(b) Preparing recommendations and analyses with respect to long- and short-term economic trends, preparing economic studies and analyses related to the formulation of policy, and preparing economic analyses relating to economic impact of Departmental policies, regulations, and programs on general administration policy within the United States.

(5) In consultation with the Office of the Solicitor, representing the Secretary in a variety of forums attended by officials in the government and with appropriate outside parties and maintaining continuous and personal liaison with those groups and the White House on matters involving policy, Departmental programs, economic issues, regulations, or compliance assistance.

(6) Reviewing cross-cutting activities within the Department as they pertain to the Secretary's broader policy functions, including Government Performance Results Act and other Departmental reports, budget and legislative proposals, and Congressional reports, and coordinating selected reports to OMB and other agencies.

(7) Conducting appropriate research and evaluation activities in accord with the Secretary's selected priorities within the Department.

(8) In consultation with the Office of the Solicitor, and primarily through the Office of Compliance Assistance, providing general oversight of, and guidance for, the Department's compliance with the Regulatory Flexibility Act, as amended by SBREFA, and related laws (including EO 12866, EO 13272, or equivalent executive orders), including such activities as:

(a) Developing and implementing the written Departmental policies and procedures concerning the potential impact of draft rules on small entities, as required by Section 3(a) of EO 13272.

(b) Providing analysis, guidance, review, and technical assistance, as necessary, to program agencies which are preparing required studies such as regulatory impact and flexibility studies.

(c) Providing guidance and technical assistance, as necessary, to program agencies during the Small Business Advocacy Review Panel process (if applicable).

(d) Preparing, coordinating, and reviewing the Department's Semi-Annual Regulatory Agenda.

(e) In coordination with the Office of Small Business Programs, acting as the Department's liaison with the Small Business Administration (SBA), including SBA's Chief Counsel for Advocacy under SBREFA.

(f) Consistent with Secretary's Order 3–2002, providing analysis for the Policy Planning Board.

(9) In consultation with the Office of the Solicitor, ensuring that the Department meets the requirements for advisory committee operations set forth in the Federal Advisory Committee Act, as well as related laws, regulations, and guidance, by

(a) Serving as the Department's Advisory Committee Management Officer.

(b) Coordinating with DOL Agency Heads and the White House Liaison on the appointment of individuals to advisory committees.

(c) Providing administrative oversight and direction for the Department's advisory committees to assure that requirements are met regarding charters, membership notice, conduct, planning, reporting, and termination of committee operations.

(10) Consistent with DOL Secretary's Order 2–2000, coordinating and managing the overall public web site presence to ensure that web site-based information and services are cohesive, accessible, timely, accurate, and authoritative.

(11) Administering the Department's Working Partners for an Alcohol and Drug-Free Workplace Program and its Small Business initiative.

(12) Coordinating and consulting, as appropriate, with other DOL agencies in fulfilling the above responsibilities.

(13) Performing any additional or similar duties which may be assigned by the Secretary.

b. *The Assistant Secretary for Administration and Management* is delegated authority and assigned responsibility for:

(1) Ensuring that any transfer of budgetary resources arising from this Order is fully consistent with the established requirements of the Department and that consultation and negotiation, as appropriate, with representatives of any employees affected by this exchange of responsibilities are conducted.

(2) Ensuring that appropriate administrative and management support is furnished, as required, for the efficient and effective operation of these programs.

c. *The Solicitor of Labor* is responsible for providing legal advice and assistance to all Department of Labor officials relating to implementation and administration of all aspects of this Order.

d. *DOL Agency heads* are responsible for coordinating with OASP on policies and activities relating to the mission of their respective agencies, including:

(1) In consultation with the Office of the Solicitor, fulfilling the requirements of the Regulatory Flexibility Act, as amended by SBREFA, and related laws, including appropriate coordination with small entities in the development of rules, production of plain language compliance guides, and responding to requests for information.

(2) In consultation with the Office of the Solicitor, implementing the requirements of the Federal Advisory Committee Act, and related laws, regulations and guidance for all committees within their jurisdiction.

(3) Ensuring that reports concerning degree of achievement of the above objectives are accurate and submitted in a timely manner.

5. Reservation of Authority and Responsibility

a. The submission of reports and recommendations to the President and the Congress concerning the administration of statutory or administrative provisions is reserved to the Secretary.

b. This Secretary's Order does not affect the authorities or responsibilities of the Office of Inspector General under the Inspector General Act of 1978, as amended, or under Secretary's Order 2–90 (January 31, 1990).

6. Redelegation/Reassignment of Authority

All authorities and responsibilities enumerated in this Order may be redelegated or reassigned within OASP.

7. Effective Date

This Order is effective immediately.

Dated: October 10, 2002.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 02–26739 Filed 10–21–02; 8:45 am]

BILLING CODE 4510–23–P

Federal Register

Tuesday,
October 22, 2002

Part IV

Department of Labor

Secretary's Order 4–2002; Office of Small Business Programs; Notice

DEPARTMENT OF LABOR

Office of the Secretary

Secretary's Order 4–2002; Office of Small Business Programs

1. Purpose

To define the authorities and responsibilities of the Office of Small Business Programs (OSBP) in the Department of Labor (DOL or Department).

2. Authority and Directives Affected

a. Authorities

This Order is issued pursuant to 29 U.S.C. 551 *et seq.*; 5 U.S.C. 301; the Small Business Act [15 U.S.C. 631 *et seq.*], including section 15(k) [15 U.S.C. 944(k)]; the Historically Underutilized Business Zone Act of 1997 [15 U.S.C. 631 note]; the Regulatory Flexibility Act [see 5 U.S.C. 601 *et seq.*]; the Small Business Regulatory Enforcement Fairness Act [see 5 U.S.C. 601 *et seq.* and 15 U.S.C. 657]; Executive Order 12432, "Minority Business Enterprise Development" (EO 12432) (July 14, 1983); Executive Order 12928, "Promoting Procurement with Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals, Historically Black Colleges and Universities [HBCUs], and Minority Institutions' (EO 12928) (September 16, 1994); Executive Order 13125, as amended by Executive Order 13216, "Increasing Opportunity and Improving Quality of Life of Asian Americans and Pacific Islanders' (EO 13125) (June 7, 1999); Executive Order 13230, "President's Advisory Commission on Educational Excellence for Hispanic Americans" (EO 13230) (October 12, 2001); Executive Order 13256, "President's Board of Advisors on Historically Black Colleges and Universities" (EO 13256) (February 12, 2002); and Executive Order 13270, "Tribal Colleges and Universities."

b. Directives Affected

(1) This Order does not affect the authorities and responsibilities assigned by any other Secretary's Order, unless otherwise expressly so provided in this or another Order.

(2) Secretary's Order 2–97 is cancelled.

(3) This Order does not affect the procurement and contracting authority of the Assistant Secretary for Administration and Management. (*see* Secretary's Order 4–76.)

3. Background

This Secretary's Order and concurrently issued Secretary's Order 2–2002 (Assistant Secretary for Policy) substantially consolidate and restructure the Department's compliance assistance programs and enhance its outreach efforts. Specifically, this Order reflects the transfer, to the Assistant Secretary for Policy by Secretary's Order 2–2002, of OSBP's prior responsibilities with respect to Departmental compliance assistance efforts for certain constituencies, oversight of the Department's advisory committees, and certain responsibilities under the Small Business Regulatory Enforcement Fairness Act (SBREFA).

OSBP retains its function as the Department's ombudsman for small businesses under SBREFA, as well as its responsibilities for the Department's relationship with minority communities and populations, businesses, and academic institutions, under related executive orders, such as Executive Orders 12432, 12928, 13125, 13216, 13230, 13256, and 13270. Under these directives, the Department promotes efforts to increase the involvement of minority businesses, Historically Black Colleges and Universities, Tribal Colleges and Universities, Asian American and Pacific Islanders, and Hispanic Americans in the Department's programs, including procurement; develops related Departmental policy and guidelines; establishes program plans; and monitors and reports on results achieved.

4. Delegation of Authority and Assignment of Responsibilities

a. *The Director, Office of Small Business Programs* is responsible for:

(1) Ensuring that the Department fulfills its responsibility to provide procurement opportunities for small business concerns, small disadvantaged businesses, women-owned small businesses, Historically Underutilized Business Zone (HUBZone) businesses, and businesses owned by service-disabled veterans, including:

a. Establishing DOL and agency goals, in cooperation with agencies and in accordance with 15 U.S.C. 644, for the participation by such entities in appropriate procurement actions.

b. Consulting with the Small Business Administration (SBA) as necessary and preparing the annual plan and annual report from the Secretary to the SBA Administrator on participation of small entities in procurement actions by the Department.

c. Conducting outreach programs, seminars, and similar initiatives for such entities and acting as the Department's liaison to such entities for program procurement activities.

d. Providing training regarding utilization of small and disadvantaged businesses to DOL employees whose duties and functions relate to procurement.

e. Ensuring the Department's compliance with the procurement and property disposal requirements of section 223(a) of the Small Business Act (15 U.S.C. 637(b)).

f. Acting as the Department's Director of the Office of Small and Disadvantaged Business Utilization.

(2) Ensuring that small business specialists are appointed throughout the Department, and are trained in performing their duties.

(3) Publishing information materials required by sections 8 and 15 of the Small Business Act.

(4) Acting as the Department's ombudsman to small businesses, including responding to inquiries or complaints arising under SBREFA.

(5) Serving, in coordination with OASP, as the Department's liaison with the SBA's Small Business and Agriculture Regulatory Enforcement Ombudsman and providing the Department's response and other input related to the SBA Ombudsman's Regulatory Fairness Recommendations Report to Congress.

(6) Acting as the Department's liaison to minority businesses and institutions; planning, coordinating, monitoring, evaluating, and reporting on the Department's related activities under Executive Orders 12432 and 12928, including efforts to increase the involvement of minority businesses in the Department's programs and plans; coordination of related memoranda of understanding; and service as the Department's liaison to the Department of Commerce's Minority Business Development Agency.

(7) Acting as the Department's liaison to Tribal Colleges and Universities; planning, coordinating, monitoring, evaluating, and reporting on the Department's related activities under EO 13270, including efforts to increase the involvement of Tribal Colleges and Universities in the Department's programs and plans; coordination of related memoranda of understanding; and service as the Department's liaison to the President's Board of Advisors on Tribal Colleges and Universities and the White House Initiative on Tribal Colleges and Universities.

(8) Acting as the Department's liaison to Asian Americans and Pacific Islanders; planning, coordinating, monitoring, evaluating, and reporting on the Department's activities under EO 13125, as amended by EO 13216, including efforts to increase the involvement of Asian Americans and Pacific Islanders in the Department's programs and plans; coordination of related memoranda of understanding; and service as the Department's liaison to the President's Advisory Commission on Asian Americans and Pacific Islanders and the White House Initiative on Asian Americans and Pacific Islanders.

(9) Acting as the Department's liaison to Hispanic Americans; planning, coordinating, monitoring, evaluating, and reporting on the Department's activities under EO 13230, including efforts to increase the involvement of Hispanic Americans in the Department's programs and plans; coordination of related memoranda of understanding; and service as the Department's liaison to the President's Advisory Commission on Educational Excellence for Hispanic Americans and the White House Initiative on Educational Excellence for Hispanic Americans.

(10) Acting as the Department's liaison to HBCUs; planning, coordinating, monitoring, evaluating, and reporting on the Department's related activities under Executive Orders 12928 and 13256, including efforts to increase the participation of HBCUs in the Department's programs and plans; coordination of related memoranda of understanding; and service as the Department's liaison to the President's Board of Advisors on HBCUs and the White House Initiative on HBCUs.

(11) Coordinating, as necessary, with the Office of the Assistant Secretary for Policy on compliance assistance initiatives.

(12) Coordinating, as necessary, with the Assistant Secretary for Administration and Management on procurement actions related to OSBP's responsibilities under this Order and on consolidation of the Department's Annual Acquisition Plan and Procurement Forecast (AAP–PF).

(13) Coordinating and consulting, as appropriate, with other DOL agencies in fulfilling the above responsibilities.

(14) Performing any additional or similar duties which may be assigned by law or by the Secretary.

b. *The Assistant Secretary for Administration and Management* is delegated authority and assigned responsibility for:

(1) Ensuring that any transfer of resources affecting this Order is fully consistent with the established requirements of the Department and that consultation and negotiation, as appropriate, with representatives of any employees affected by this exchange of responsibilities are conducted.

(2) Ensuring that appropriate administrative and management support is furnished, as required, for the efficient and effective operation of these programs.

(3) Coordinating, as necessary, with the Director of the Office of Small Business Programs on procurement actions related to their responsibilities under this Order and on consolidation of the Department's AAP–PF.

c. *The Solicitor of Labor* is responsible for providing legal advice and assistance to all Department of Labor officials relating to implementation and administration of all aspects of this Order.

d. *DOL Agency Heads* are responsible for:

(1) Developing Agency annual acquisition plans, and annual small and disadvantaged business utilization plans, consistent with Agency responsibilities.

(2) Developing Agency minority institution activity plans, consistent with Agency responsibilities, to promote the objectives of Executive Orders 12432, 12928, 13125, 13216, 13230, 13256, and 13270 or similar laws.

(3) Conferring with Agency program and procurement officials to establish Agency monetary procurement goals, minority institution commitments, minority business development plans, and ensuring that Agency program and procurement officials cooperate to achieve these objectives.

(4) Ensuring that reports concerning degree of achievement of the above objectives are accurate and submitted in a timely manner.

5. Reservations of Authority and Responsibility

a. The submission of reports and recommendations to the President and the Congress concerning the administration of statutory or administrative provisions is reserved to the Secretary, as is the submission of the Department's annual plan and annual report to the SBA on participation by small business concerns, small disadvantaged businesses, women-owned small businesses, HUBZone businesses, and businesses owned by service-disabled veterans, in the Department's procurement actions.

b. This Secretary's Order does not affect the authorities or responsibilities of the Office of Inspector General under the Inspector General Act of 1978, as amended, or under Secretary's Order 2–90 (January 31, 1990).

6. Transfer of Authority

The Director of the Office of Small Business Programs may transfer the authority and responsibility set forth in paragraphs 4a(6)–(10) to other agency heads, as appropriate.

7. Effective Date

This Order is effective immediately.

Dated: October 10, 2002.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 02–26738 Filed 10–21–02; 8:45 am]

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Federal Register

Tuesday,
October 22, 2002

Part V

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; North Carolina: Approval of Miscellaneous Revisions to Regulations Within the North Carolina State and County Implementation Plans; Final and Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC 89–200240(a); FRL–7395–5]

Approval and Promulgation of Implementation Plans; North Carolina: Approval of Miscellaneous Revisions to Regulations Within the North Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On April 13, 1999, the North Carolina Department of Environment and Natural Resources, submitted revisions to the North Carolina State Implementation Plan (SIP). These revisions include amending regulations relating to ozone, particulate matter, and other miscellaneous rules within the Air Pollution Control Requirements subchapter. In addition, North Carolina has also submitted rule revisions to the General Provisions, Construction and Operations Permits and Exclusionary Rules sections of their Air Quality Permits Subchapter. The purpose of these revisions is to make the revised regulations consistent with the requirements of the Clean Air Act as amended in 1990. The EPA is approving these revisions.

DATES: This direct final rule is effective December 23, 2002 without further notice, unless EPA receives adverse comment by November 21, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Randy Terry, 404/562–9032.

North Carolina Department of Environment and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Randy B. Terry at 404/562–9032, or by electronic mail at *terry.randy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On April 13, 1999, the North Carolina Department of Environment and Natural Resources, submitted revisions to the North Carolina SIP. These revisions include the amending of regulations relating to ozone, particulate matter, and other miscellaneous rules within the Air Pollution Control Requirements subchapter. In addition North Carolina has also submitted rule revisions to the General Provisions, Construction and Operations Permits and Exclusionary Rules sections of their Air Quality Permits Subchapter. A detailed analysis of each of the major revisions submitted is listed below.

II. Analysis of North Carolina's Submittal

Subchapter 2D

.0405 Ozone, and .0410 PM 2.5 Particulate Matter

These rules were amended to adopt the federal revisions to the National Ambient Air Quality Standards (NAAQS) for ozone and particulate matter as state air quality standards.

.0503 Particulates From Fuel Burning Indirect Heat Exchangers, .0504 Particulates From Wood Burning Indirect Heat Exchangers

These rules were updated to add new definitions for "functionally dependant," "indirect heat exchanger," and "plant site."

Subchapter 2Q

.0102 Activities Exempted From Permit Requirements

This rule has been amended to clarify permit exemptions for municipal solid waste landfills that are not required to have a title V permit and to add a paragraph for exemptions when there is no applicable requirement under title V.

.0103 Definitions

This rule has been amended to add a definition for "Sawmill."

.0107 Confidential Information

This rule was amended to revise the deadline in which the Director is required to respond to a request to treat information as confidential and to add language that clarifies that such information is to be treated as confidential until the Director decides that the information is not confidential.

.0300 Construction and Operating Permits

This section was revised, by adding headings, to each subparagraph under rule .0304 Applications to clarify the process of applications. These headings cover items such as obtaining and filing applications, information to accompany application, when to file applications for permit renewal, ownership or name change and requesting additional information. In addition, rule .0511 Synthetic Minor Facilities has been moved and is now listed as rule .0315.

.0800 Exclusionary Rules

This section was revised to add language clarifying that coverage under this section is voluntary and explains the procedure for an owner or operator to request that their facility not be covered by this section. Additionally, a new rule was added that applies to facilities whose only sources requiring a permit are one or more peak shaving generators and their associated fuel storage tanks.

III. Final Action

EPA is approving the aforementioned changes to the SIP because the revisions are consistent with Clean Air Act and EPA regulatory requirements. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective December 23, 2002 without further notice unless the Agency receives adverse comments by November 21, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 23, 2002 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 23, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 1, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II—North Carolina

2. Section 52.1770(c), Table 1 is amended to read as follows:

a. Revise column heading "Comments" to read "Explanations."

b. Under Subchapter 2D by revising entries for ".0405," ".0503," ".0504," and adding in numerical order a new entry for ".0410."

c. Under Subchapter 2Q by revising entries ".0102," ".0103," ".0107," ".0304," ".0306," ".0309," ".0801," ".0803," and ".0808" and adding in numerical order a new entry for ".0314" and ".0315."

§ 52.1770 Identification of plan.

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(c) * * *

TABLE 1.—EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
Subchapter 2D Air Pollution Control Requirements				
*	*	*	*	*
Section .0400 Ambient Air Quality Standards				
*	*	*	*	*
Sect. .0405	Ozone	05/01/99	10/22/02, 2002, [FR cite].	

TABLE 1.—EPA APPROVED NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
•	•	•	•	•
Sect. .0410	PM 2.5 Particulate Matter	05/01/99	10/22/02, [FR cite].	
Section .0500 Emission Control Standards				
•	•	•	•	•
Sect. .0503	Particulates From Fuel Burning Indirect Heat Exchangers.	05/01/99	10/22/02, [FR cite].	
Sect. .0504	Particulates From Wood Burning Indirect Heat Exchangers.	05/01/99	10/22/02, [FR cite].	
•	•	•	•	•
Subchapter 3Q—Air Quality Permits Section .0100 General Provisions				
•	•	•	•	•
Sect. .0102	Activities Exempted From Permit Requirements.	05/01/99	10/22/02, [FR cite].	
Sect. .0103	Definitions	05/01/99	10/22/02, [FR cite].	
•	•	•	•	•
Sect. .0107	Confidential Information	05/01/99	10/22/02, [FR cite].	
•	•	•	•	•
Section .0300 Construction and Operation Permits				
•	•	•	•	•
Sect. .0304	Applications	07/01/99	10/22/02, [FR cite].	
•	•	•	•	•
Sect. .0306	Permits Requiring Public Participation	07/01/99	10/22/02, [FR cite].	
•	•	•	•	•
Sect. .0309	Termination, Modification and Revocation of Permits.	07/01/99	10/22/02, [FR cite].	
•	•	•	•	•
Sect. .0314	General Permit Requirements	07/01/99	10/22/02, [FR cite].	
Sect. .0315	Synthetic Minor Facilities	07/01/99	10/22/02, [FR cite].	
•	•	•	•	•
Section .0800 Exclusionary Rules				
Sect. .0801	Purpose and Scope	05/01/99	10/22/02, [FR cite].	
•	•	•	•	•
Sect. .0803	Coating, Solvent Cleaning, Graphic Arts Operations.	05/01/99	10/22/02, [FR cite].	
•	•	•	•	•
Sect. .0808	Peak Shaving Generators	07/01/99	10/22/02, [FR cite].	

[FR Doc. 02–26569 Filed 10–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC89–200240(b); FRL–7395–4]

Approval and Promulgation of Implementation Plans North Carolina: Approval of Miscellaneous Revisions to Regulations Within the North Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the North Carolina Department of Environment and Natural Resources, for the purpose of amending regulations relating to ozone, particulate matter, and other miscellaneous rules within, the Air Pollution Control Requirements subchapter. In addition North Carolina has also submitted rule revisions to the General Provisions, Construction and Operations Permits and Exclusionary Rules sections of their Air Quality Permits Subchapter. In the Final Rules section of this **Federal Register**, the EPA is approving the North Carolina SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before November 21, 2002.

ADDRESSES: All comments should be addressed to: Randy Terry; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Randy Terry, 404/562–9032.

North Carolina Department of Environment and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Randy B. Terry, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9032. Mr. Terry can also be reached via electronic mail at *terry.randy@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: October 1, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–26570 Filed 10–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC 92–200238b; FRL–7395–3]

Approval and Promulgation of Implementation Plans; North Carolina: Approval of Miscellaneous Revisions to Regulations Within the Forsyth County Local Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On July 30, 1999, the Forsyth County Environmental Affairs Department through, the North Carolina Department of Environment and Natural Resources, submitted revisions to the Forsyth County Local Implementation Plan (LIP). These revisions include amending regulations relating to ozone, particulate matter, the monitoring: recordkeeping: reporting section and other miscellaneous rules within, the Air Pollution Control Requirements subchapter. In addition Forsyth County has also submitted rule revisions to the General Provisions, Construction and Operations Permits and Exclusionary Rules sections of their Air Quality Permits Subchapter. The purpose of these revisions is to make the revised regulations consistent with the requirements of the Clean Air Act as amended in 1990. The EPA is approving these revisions.

DATES: This direct final rule is effective December 23, 2002 without further notice, unless EPA receives adverse comment by November 21, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Randy Terry, 404/562–9032.

North Carolina Department of Environment and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

Forsyth County Environmental Affairs Department, 537 North Spruce Street, Winston-Salem, North Carolina 27101.

FOR FURTHER INFORMATION CONTACT: Randy B. Terry at 404/562–9032, or by electronic mail at *terry.randy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 30, 1999, the Forsyth County Environmental Affairs Department, through the North Carolina Department of Environment and Natural Resources, submitted revisions to the Forsyth County LIP. These revisions include the amending of regulations relating to ozone, particulate matter, the monitoring: recordkeeping: reporting section and other miscellaneous rules within, the Air Pollution Control Requirements subchapter. In addition Forsyth County has also submitted rule revisions to the General Provisions, Construction and Operations Permits and Exclusionary Rules sections of their Air Quality Permits Subchapter. A detailed analysis of each of the major revisions submitted is listed below.

II. Analysis of Forsyth County's Submittal

Subchapter 3A

.0110 CFR Dates and .0112 ASTM Dates

These rules were moved to section 3D, rule .0104 and added language that allows for automatically including any future amendments to both the Code of Federal Regulations (CFR) and American Society of Testing Material (ASTM) unless a specific rule specifies otherwise.

Subchapter 3D

.0405 Ozone, and .0410 PM 2.5 Particulate Matter

These rules were amended to adopt the revisions to the National Ambient Air Quality Standards (NAAQS) for ozone and particulate matter.

.0501 Compliance With Emission Control Standards, .0503 Particulates From Fuel Burning Indirect Heat Exchangers, .0504 Particulates From Wood Burning Indirect Heat Exchangers

These rules were clarified to provide more detailed explanations of the ASTM and updated to add new definitions for "functionally dependant," "indirect heat exchanger," and "plant site."

Section .0600 Monitoring: Recordkeeping: Reporting

This section was amended to clarify and revise existing rules, add general requirements, extend alternative and monitoring and reporting procedures, require a quality assurance monitoring program and add a compliance assurance monitoring rule.

.0903 Recordkeeping: Reporting: Monitoring

This rule was amended to include language that requires the owner or operator of any volatile organic compound (VOC) emission source, or control equipment subject to the requirements of this section to comply with the monitoring, recordkeeping, and reporting requirements in section .0600 of this Subchapter.

Subchapter 3Q

.0102 Activities Exempted From Permit Requirements

This rule has been amended to clarify permit exemptions for municipal solid waste landfills that are not required to have a title V permit and to add a paragraph for exemptions when there is no applicable requirement under title V.

.0103 Definitions

This rule has been amended to add a definition for "Sawmill."

.0107 Confidential Information

This rule was amended to revise the deadline in which the Director is required to respond to a request to treat information as confidential and to add language that clarifies that such information is to be treated as confidential until the Director decides that the information is not confidential.

.0300 Construction and Operating Permits

This section was revised, by adding headings, to each subparagraph under rule .0304 Applications to clarify the process of applications. These headings cover items such as obtaining and filing applications, information to accompany application, when to file applications for permit renewal, ownership or name change and requesting additional information. In addition, rule .0511 Synthetic Minor Facilities has been moved and is now listed as rule .0315.

.0800 Exclusionary Rules

This section was revised to add language clarifying that coverage under this section is voluntary and explains the procedure for an owner or operator to request that their facility not be covered by this section. Additionally, a new rule was added that applies to facilities whose only sources requiring a permit are one or more peak shaving generators and their associated fuel storage tanks.

III. Final Action

EPA is approving the aforementioned changes to the SIP because the revisions are consistent with Clean Air Act and EPA regulatory requirements. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective December 23, 2002 without further notice unless the Agency receives adverse comments by November 21, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 23, 2002 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 23, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 19, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II—North Carolina

2. Section 52.1770(c), Table 2 is amended to read as follows:

a. By adding Subchapter 3A to beginning of table.

b. Under Subchapter 3D by adding in numerical order new entries for "Section .100," "Section .0400," "Section .0500," "Section .0600," and "Section .0900."

c. Under Subchapter 3Q by revising entries ".0102" and ".0103," adding in numerical order a new entry for ".0107," and adding new "Sections .0300 and .0800."

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

TABLE 2.—EPA APPROVED FORSYTH COUNTY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
	Subchapter 3A Air Quality Control			
	Sectioon .100 In General			
Sect .0110	CFR Dates	05/24/99	10/22/02, [FR cite]	Repealed.
Sect. .0112	ASTM Dates	05/24/99	10/22/02, [FR cite]	Repealed.
	Subchapter 3D Air Pollution Control Requirements			
	Section .100 Definitions and References			
Sect. .0104	Incorporation By Reference	05/24/99	10/22/02, [FR cite].	
	Section .0400 Ambient Air Quality Standards			
Sect. .0405	Ozone	05/24/99	10/22/02, [FR cite].	
Sect. .0410	PM 2.5 Particulate Matter	05/24/99	10/22/02, [FR cite].	
	Section .0500 Emission Control Standards			
Sect. 0501	Compliance With Emission Control Standards	05/24/99	10/22/02, [FR cite].	
Sect. .0503	Particulates From Fuel Burning Indirect Heat Exchangers.	05/24/99	10/22/02, [FR cite].	
Sect. .0504	Particulates From Wood Burning Indirect Heat Exchangers.	05/24/99	10/22/02, [FR cite].	
	Section .0600 Monitoring: Recordkeeping: Reporting			
Sect. .0601	Purpose and Scope	05/24/99	10/22/02, [FR cite].	
Sect. .0602	Definitions	05/24/99	10/22/02, [FR cite].	
Sect. 0604	Exceptions to Monitoring and Reporting Requirements.	05/24/99	10/22/02, [FR cite].	
Sect. .0605	General Recordkeeping and Reporting Requirements.	05/24/99	10/22/02, [FR cite].	
Sect. .0606	Sources Covered By Appendix P of 40 CFR Part 51.	05/24/99	10/22/02, [FR cite].	
Sect. .0607	Large Wood and Wood-Fossil fuel Combination Units.	07/01/99	10/22/02, [FR cite].	
Sect. .0608	Other Large Coal or Residual Oil Burners	05/24/99	10/22/02, [FR cite].	
Sect. .0610	Federal Monitoring Requirements	05/24/99	10/22/02, [FR cite].	
Sect. .0611	Monitoring Emissions From Other Sources	05/24/99	10/22/02, [FR cite].	
Sect. .0612	Alternative Monitoring and Reporting Procedures	05/24/99	10/22/02, [FR cite].	
Sect. .0613	Quality Assurance Program	05/24/99	10/22/02, [FR cite].	
Sect. .0614	Compliance Assurance Monitoring	05/24/99	10/22/02, [FR cite].	
	Section .0900 Volatile Organic Compounds			
Sect. .0903	Recordkeeping: Reporting: Monitoring	05/24/99	10/22/02, [FR cite].	
.	. . . . .			
	Subchapter 3Q—Air Quality Permits			
	Section .0100 General Provisions			
Sect. .0102	Activities Exempted From Permit Requirements	05/24/99	10/22/02, [FR cite].	
Sect. .0103	Definitions	05/24/99	10/22/02, [FR cite].	
Sect. .0107	Confidential Information	05/24/99	10/22/02, [FR cite].	
	Section .0300 Construction and Operation Permits			
Sect. .0304	Applications	07/01/99	10/22/02, [FR cite].	
Sect. .0306	Permits Requiring Public Participation	07/01/99	10/22/02, [FR cite].	
Sect. .0309	Termination, Modification and Revocation of Permits.	07/01/99	10/22/02, [FR cite].	
Sect. .0314	General Permit Requirements	05/24/99	10/22/02, [FR cite].	
Sect. .0315	Synthetic Minor Facilities	07/01/99	10/22/02, [FR cite].	

TABLE 2.—EPA APPROVED FORSYTH COUNTY REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
	Section .0800 Exclusionary Rules			
Sect. .0801	Purpose and Scope	05/24/99	10/22/02, [FR cite].	
Sect. .0803	Coating, Solvent Cleaning, Graphic Arts Operations.	05/24/99		
Sect. .0808	Peak Shaving Generators	07/01/99	10/22/02, [FR cite].	

[FR Doc. 02–26571 Filed 10–21–02; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC92–200238a; FRL–7395–2]

Approval and Promulgation of Implementation Plans; North Carolina: Approval of Miscellaneous Revisions to Regulations Within the Forsyth County Local Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the Local Implementation Plan (LIP) revision submitted by the Forsyth County Environmental Affairs Department, through the State of North Carolina, for the purpose of amending regulations relating to ozone, particulate matter, the monitoring: recordkeeping: reporting section and other miscellaneous rules within, the Air Pollution Control Requirements subchapter. In addition Forsyth County has also submitted rule revisions to the General Provisions, Construction and Operations Permits and Exclusionary Rules sections of their Air Quality Permits Subchapter. In the Final Rules section of this **Federal Register**, the EPA is approving the Forsyth County LIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before November 21, 2002.

ADDRESSES: All comments should be addressed to: Randy Terry; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Randy Terry, 404/562–9032.

Forsyth County Environmental Affairs Department, 537 North Spruce Street, Winston-Salem, North Carolina 27101.

North Carolina Department of Environment and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Randy B. Terry, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9032. Mr. Terry can also be reached via electronic mail at *terry.randy@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: September 19, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–26572 Filed 10–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC 98–200237a; FRL–7377–8]

Approval and Promulgation of Implementation Plans; North Carolina: Approval of Miscellaneous Revisions to The Mecklenburg County Local Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On May 25, 2001, the Mecklenburg County Department of Environmental Protection, through the North Carolina Department of Environment and Natural Resources, submitted revisions to the Mecklenburg County Local Implementation Plan (LIP). These revisions include the amending of volatile organic compound (VOC) emissions and other miscellaneous revisions. Additionally, Mecklenburg County Air Pollution Control Ordinance (MCAPCO) 2.0950 Interim Standards For Certain Source Categories is being repealed. The purpose of these revisions is to make the revised regulations consistent with the State Implementation Plan for North Carolina and the requirements of the Clean Air Act as amended in 1990. The EPA is approving these revisions.

DATES: This direct final rule is effective December 23, 2002 without further notice, unless EPA receives adverse comment by November 21, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Randy Terry, 404/562–9032.

North Carolina Department of Environment and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

Mecklenburg County Department of Environmental Protection, 700 North Tryon Street, Charlotte, North Carolina 28202–2236.

FOR FURTHER INFORMATION CONTACT: Randy B. Terry at 404/562–9032, or by electronic mail at *terry.randy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On May 25, 2001, the Mecklenburg County Department of Environmental Protection, through the North Carolina Department of Environment and Natural Resources, submitted revisions to the Mecklenburg county LIP. These revisions include definitions, VOC emissions, transportation conformity, and general provisions regulations. A detailed analysis of each of the major revisions submitted is listed below.

II. Analysis of Mecklenburg County's Submittal

MCAPCO 1.5102 Definition of Terms

This rule was revised to remove the definition of "irrevocable contract."

MCAPCO 1.5211 Applicability

This rule was amended to remove language that prohibited permits for sources listed in paragraph (c), of this regulation, to contain construction and operating conditions which allow minor equipment and product additions/substitutions and/or minor increases in emissions of certain air pollutants.

MCAPCO 2.0518 Miscellaneous Volatile Organic Compounds Emissions

This rule has been amended to add language that explains facilities do not need to comply with the requirements of paragraph (d) of this regulation if they comply with MCAPCO regulation 2.0958. This amendments make it the facilities responsibility to notify MCDEP prior to choosing compliance with MCAPCO 2.0958 and to modify the permit to construct and operate issued in accordance with MCAPCO Section 1.5200.

The following rules from the North Carolina SIP are being adopted in full by reference into the Mecklenburg county LIP.

15 A NCAC 2D

.0523 Control of Conical Incinerators (MCAPCO 2.0523)
.0610 Delegation Federal Monitoring Requirements (MCAPCO 2.0610)
.0902 Applicability (MCAPCO 2.0902)
.0951 Miscellaneous Volatile Organic Compounds Emissions (MCAPCO 2.0951)
.0958 Work Practices for Sources of Volatile Organic Compounds (MCAPCO 2.0958)

The following rule was repealed previously in the North Carolina SIP and is now being repealed in the Mecklenburg LIP.

.0950 Interim Standards for Certain Source Categories (MCAPCO 2.0950)

III. Final Action

EPA is approving the aforementioned changes to the SIP because the revisions are consistent with Clean Air Act and EPA regulatory requirements. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective December 23, 2002 without further notice unless the Agency receives adverse comments by November 21, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 23, 2002 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond

that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 23, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 14, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II—North Carolina

2. Section 52.1770(c) is amended by adding a new table 3 to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

TABLE 3.—EPA APPROVED MECKLENBURG COUNTY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Article 1.000 Permitting Provisions For Air Pollution Sources, Rules and Operating Regulations For Acid Rain Sources, Title V and Toxic Air Pollutants				
Section 1.5100 General Provisions and Administrations				
1.5102	Definition of Terms	11/21/00	10/22/02, [FR cite]	
Section 1.5200 Air Quality Permits				
1.5211	Applicability	11/21/00	10/22/02, [FR cite]	
Article 2.0000 Air Pollution Control Regulations and Procedures				
Section 2.0500 Emission Control Standards				
2.0518	Miscellaneous Volatile Organic Compounds Emissions.	11/21/00	10/22/02, [FR cite]	
2.0523	Control of Conical Incinerators	11/21/00	10/22/02, [FR cite]	
Section 2.0600 Air Pollutants: Monitoring: Reporting				
2.0610	Delegation Federal Monitoring Requirements	11/21/00	10/22/02, [FR cite]	
Section 2.0900 Volatile Organic Compounds				
2.0902	Applicability	11/21/00	10/22/02, [FR cite]	
2.0950	Interim Standards for Certain Source Categories	11/21/00	10/22/02, [FR cite]	

TABLE 3.—EPA APPROVED MECKLENBURG COUNTY REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
2.0951	Miscellaneous Volatile Organic Compounds Emissions.	11/21/00	10/22/02, [FR cite]	
2.0958	Work Practices for Sources of Volatile Organic Compounds.	11/21/00	10/22/02, [FR cite]	

[FR Doc. 02–23582 Filed 10–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC98–200237b; FRL–7377–7]

Approval and Promulgation of Implementation Plans; North Carolina: Approval of Miscellaneous Revisions to The Mecklenburg County Local Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the Local Implementation Plan (LIP) revision submitted by the Mecklenburg County Department of Environmental Protection, through the State of North Carolina, for the purpose of approving regulations pertaining to volatile organic compound emissions and other miscellaneous sections of the Mecklenburg County Air Pollution Control Ordinance. In the Final Rules section of this **Federal Register**, the EPA is approving the Mecklenburg county LIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule.

The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before November 21, 2002.

ADDRESSES: All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Randy Terry, 404/562–9032.

Mecklenburg County Department of Environmental Protection 700 North Tryon Street, Charlotte, North Carolina 28202–2236.

North Carolina Department of Environment and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Randy B. Terry at 404/562–9032, or by electronic mail at *terry.randy@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register.**

Dated: August 14, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–23583 Filed 10–21–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Tuesday,
October 22, 2002

Part VI

General Services Administration

Privacy Act of 1974; System of Records; Notice

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: General Services Administration.

ACTION: Notice of a new system of records subject to the Privacy Act of 1974.

SUMMARY: The General Services Administration (GSA) is providing notice of intent to revise the Credit Data on Individual Debtors (GSA/PPFM–7) system of records. The revision incorporates new and revised laws and regulations and reflects organizational and procedural changes in GSA since the last update.

DATES: Comments on the proposed revision must be provided by November 21, 2002. The revised system or records will become effective without further notice on November 21, 2002 unless comments require otherwise.

ADDRESSES: GSA Privacy Act Officer, General Services Administration (GSA), CAI, 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jinaita Kanarchuk by phone, (202) 501–1452, or e-mail *jinaita.kanarchuk@gsa.gov*.

GSA/PPFM–7

SYSTEM NAME:

Credit Data on Individual Debtors.

SYSTEM LOCATION:

Records are located at the following GSA Central Office and Regional addresses of the GSA Office of Finance:

- GSA Building, 1800 F Street, NW., Washington, DC 20405.
- 1500 East Bannister Road, Kansas City, MO 64131.
- Fritz G. Lanham Federal Building, 819 Taylor Street, Fort Worth TX 76102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered include employees, former employees, and other individuals who are indebted to GSA or any other agency or department of the United States; a State, territory or commonwealth of the United States, or the District of Columbia (hereinafter collectively referred to as "States"); or individuals that may become indebted to GSA or another agency or department of the United States as the result of a privately owned vehicle (POV) being involved in an accident with a GSA Fleet vehicle.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may contain information from commercial and agency investigative reports showing debtors' assets, liabilities, income, and expenses; identifying information, such as names and taxpayer identification numbers (TINs) (*i.e.*, Social Security Numbers or employer identification numbers); debtor contact information, such as work and home address, and work and home telephone numbers; and name of employer and employer address. The records for claims against nongovernmental individuals (*i.e.*, claims arising from vehicle accidents) may contain information on privately owned vehicles (POVs), including, but not limited to: (a) The owner, year, make, model, tag number and State of the vehicle; and (b) the driver's or owner's insurance company information, including name, address, telephone number and policy number. Debts include unpaid taxes, loans, assessments, fines, fees, penalties, overpayments, advances, extensions of credit from sales of goods or services, third party claims, and other amounts of money or property owed to, or collected by, GSA, any other Federal entity or a State, including past due support that is being enforced by a State.

The records also may contain information about: (a) The debt, such as the original amount of the debt, the debt account number, the date of debt origination, the amount of delinquency or default, date of delinquency or default, the basis for the debt, the amounts accrued for interest, penalties, and administrative costs; and the payments on the account; (b) actions taken to collect or resolve the debt, such as demand letters or invoices sent, documents or information required for referral of accounts to collection agencies, to other Federal entities, or for litigation, and notes taken regarding telephone or other communications related to the collection or resolution of the debt; and (c) the referring or collecting governmental entity that is collecting or is owed the debt, such as the name, telephone number, and address of the governmental entity contact.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3) and 3711(e), as amended by the Debt Collection Act of 1982, 5 U.S.C. 5514; the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 et seq.; Cash Management Improvement Act Amendments of 1992, 31 U.S.C. 3335, 3718, 3720A and 6503; Deficit Reduction act of 1984, Pub. L. 98–369, 98 Stat. 494 (codified as amended in scattered sections of 26 U.S.C.); Taxpayer Relief Act of 1997, Pub. L. 105–34, 11 Stat. 788 (codified in scattered sections of 26 U.S.C.); Internal Revenue Service Restructuring And Reform Act of 1998, Pub. L. 105–206, 112 Stat. 685 (codified in scattered sections of 26 U.S.C.); 26 U.S.C. 6402; 26 U.S.C. 6331; 31 U.S.C. Chapter 37 (Claims), Subchapter I (General) and Subchapter II (Claims of the U.S. Government); Title 31 Code of Federal Regulations, Chapter IX, parts 901–904.

PURPOSE(S):

The purpose of the system is to assemble and maintain information on individuals who are indebted to GSA, other Federal entities, and States for the purpose of effecting enforced collections from the debtors, including past due support enforced by States. The information contained in the records is maintained for the purpose of taking action to facilitate collection and resolution of debts using various methods, including, but not limited to, requesting repayment of debt by telephone or in writing, pursuing offset, levy, administrative wage garnishment, centralized salary offset, referral to collection agencies or litigation, and using other collection or resolution methods authorized or required by law. The information is also maintained for the purpose of providing collection information about the debt to other Federal entities or States collecting the debt, providing statistical information on debt collection operations, and testing and developing enhancements to computer systems containing the records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, 5 U.S.C. 552a(b), GSA may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. A record from this system may be used where pertinent in any legal proceeding before a court, magistrate, or administrative body in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings.

b. A record from this system may be disclosed to the Department of Justice, United States Attorney, or Department of the Treasury for the purpose of litigation or in anticipation of litigation to enforce collection of a delinquent debt or to obtain the Department of Justice's concurrence in a decision to compromise, suspend, or terminate collection action on a debt and GSA determines that the disclosure is relevant or necessary to the litigation.

c. A record from this system may be disclosed to a congressional office on behalf of and at the request of the individual who is the subject of the record.

d. A record from this system may be disclosed to any Federal agency where the debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect a debt owed the Federal government on GSA's behalf. GSA may negotiate with the debtor for voluntary repayment or may initiate administrative or salary offset procedures or other authorized debt collection methods under the provisions of the Debt Collection Act of 1982, 5 U.S.C. 5514, or the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 et seq.

e. In the event that a record in this system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute, particular program statute, or regulation, rule, order, or license issued pursuant thereto, the relevant record may be referred to the appropriate Federal, State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, order, or license.

f. A record from this system may be disclosed to any Federal, State or local agency, U.S. Territory or commonwealth, or the District of Columbia, or their agents or contractors, including private collection agencies (consumer and commercial):

(1) To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to: Requests for repayment by telephone or in writing; negotiation of voluntary repayment or compromise agreements; offsets of Federal payments, which may include the disclosure of information contained in the records for the purpose of providing the debtor with appropriate pre-offset notice and to otherwise comply with offset prerequisites, to facilitate voluntary repayment in lieu of offset, and to otherwise effectuate the offset process; referral of debts to private collection agencies, to Treasury-designated debt collection centers, or for litigation; obtaining administrative and court-ordered wage garnishment; conducting debt sales; publishing names and identities of delinquent debtors in the media or other appropriate places; creating a Centralized Salary Offset program; and pursuing any other debt collection method authorized by law.

(2) To conduct computerized comparisons to locate Federal payments to be made to debtors.

(3) To conduct authorized computer matching programs in compliance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, to identify and locate individuals receiving Federal payments (including but not limited to salaries, wages and benefits), which may include the disclosure of information contained in the records for the purpose of requesting voluntary repayment or implementing Federal employee salary offset or other offset procedures.

(4) To collect a debt owed to GSA, another Federal entity, or State through the offset of payments made by States, territories, commonwealths, or the District of Columbia.

(5) To account for or report on the status of debts for which such entity has a financial or other legitimate need for the information in the performance of official duties.

(6) To deny Federal financial assistance in the form of loans or loan guarantees to an individual who owes a delinquent debt to GSA or another Federal entity or who owes delinquent child support that has been referred to GSA for collection by administrative offset.

(7) To develop, enhance, and/or test databases, matching communications, or other computerized systems that facilitate debt collection processes.

(8) To provide assistance with any other appropriate debt collection purpose.

g. A record from this system may be disclosed to any individual or other entity receiving Federal payments in conjunction with payments made to a debtor for the purpose of providing notice of an information about offsets from such Federal payments.

h. A record from this system may be disclosed to any individual or entity:

(1) To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to: pursuing administrative or court-ordered wage garnishment; reporting information to commercial credit bureaus; conducting asset searches; publishing the names and identities of delinquent debtors in the media or other appropriate places; conducting debt sales; or initiating Centralized Salary Offsets.

(2) To deny Federal financial assistance in the form of loans or loan guarantees to an individual who owes a delinquent debt to the United States or delinquent child support that has been referred to GSA for collection by administrative offset.

(3) To pursue any other appropriate debt collection purpose.

i. A record from this system may be disclosed to credit reporting agencies or credit bureaus for the purpose of adding to a credit history file or obtaining a credit history file or comparable credit information for use in debt collection. As authorized by the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.*, GSA may report current (not delinquent) and delinquent consumer or commercial debts to these entities to aid the collection of debts, typically by providing an incentive to the person to repay the debt in a timely manner. GSA may report on delinquent debts to the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS).

j. A record from this system may be disclosed to the Internal Revenue Service and applicable State and local governments for tax reporting purposes. Under the provisions of the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.*, GSA is permitted to provide the Department of Treasury with Form 1099–C information on canceled or forgiven debts so that the Department of Treasury may file the form on GSA's behalf with the IRS. W–2 and 1099 Forms contain information on items to be considered as income to an individual, including payments to persons not treated as employees (*e.g.*, fees paid to consultants and experts) and amounts written-off as legally or administratively uncollectible in whole or in part.

k. A record from this system may be disclosed to banks enrolled in the Treasury Credit Card Network to collect a payment or debt when the individual has given his or her credit card number for this purpose.

l. A record from this system may be disclosed to the Department of Treasury or other Federal agency with whom GSA has entered into an agreement establishing the terms and conditions for debt collection cross servicing operations on behalf of GSA to satisfy, in whole or in part, debts owed to the United States. Cross servicing includes the possible use of all debt collections

tools such as administrative offset, referral to debt collection contractors, and referral to the Department of Justice.

m. Records from this system may be disclosed to the Department of Treasury, government corporations, State or local agencies, or other Federal agencies to conduct computer matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or benefit payments and are delinquent in their repayment of debts owed to the United States under certain programs administered by the GSA in order to collect the debts under the provisions of the Debt Collection Act of 1982, as amended, 5 U.S.C. 5514, or the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.*, by voluntary payment or administrative or salary offset procedures.

n. A record from this system may be disclosed to the National Archives and Records Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

o. A record from this system may be disclosed to, or received from, the Department of Treasury for the purpose of allowing the GSA National Payroll Center (NPC) to participate in the Centralized Salary Offset (CSO) program, or similar offset program. Agencies must notify the Department of Treasury of all delinquent debts over 180 days past due so that recovery may be made by centralized administrative offset. This includes debts that GSA seeks to recover from the pay account of an employee of another agency by salary offset, or by another agency seeking recovery from a GSA employee, including client agency employees, by salary offset.

p. A record from this system may be disclosed to, or received from, another agency or department of the United States when a GSA Fleet vehicle has been involved in an accident with an individual or commercial POV.

Disclosure to consumer reporting agencies: Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, as amended, 31 U.S.C. 3701(a)(3) and 3711(e).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper form in file folders stored in lockable metal filing cabinets and in electronic form in computers or on transportable electronic media including but not limited to, floppy discs, CD–ROMs or zip disks.

RETRIEVABILITY:

Credit data is maintained by debtor name and claim number and is cross-referenced with the Social Security Number (when available) to verify name and address.

SAFEGUARDS:

When not in use by authorized personnel, records are stored in lockable metal filing cabinets. Electronic files are protected by the use of passwords.

RETENTION AND DISPOSAL:

The records are a part of the GAO site auditing collection files and are cut off at the end of the fiscal year, held 1 year, and then retired under Record Group 217 (GAO). Records created prior to July 2, 1975, will be retained by GAO for 10 years and 3 months after the period of the account. Records created on or after July 2, 1975, will be retained by GAO for 6 years and 3 months after the period of the account.

SYSTEM MANAGER(S) AND ADDRESS:

Branch Chief (BCDR), Financial Initiatives Division, Office of Finance, Office of the Chief Financial Officer, General Services Administration, Room 3121, 1800 F Street, NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

Inquiries by individuals under the Privacy Act of 1974, as amended (5 U.S.C. 552a) regarding claims pertaining to themselves should be addressed to the system manager. All individuals making inquiries should provide as much descriptive information as possible to identify the particular record desired. The system manager will advise as to whether GSA maintains the records requested by the individual.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to records should be addressed to the system manager and should include the individual's name and address.

CONTESTING RECORDS PROCEDURES:

GSA rules for contesting the contents of the records and for appealing initial determinations are promulgated in 41 CFR 105.64.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from individual debtors; credit bureaus; agency investigative reports; other GSA systems of records; Federal and State agencies to which debts are owed; Federal employing agencies and other entities that employ the individual; Federal and State agencies issuing payments; collection agencies; locator and asset search companies; Federal, State or local agencies furnishings identifying information and/or addresses of debtors; or from public documents.

Dated: October 17, 2002.

Daniel K. Cooper,

Director, Information Management Division.

[FR Doc. 02–26843 Filed 10–21–02; 8:45 am]

BILLING CODE 6820–34–M

Federal Register

Tuesday,
October 22, 2002

Part VII

Department of Labor

Secretary's Order 5–2002; Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Occupational Safety and Health; Notice

DEPARTMENT OF LABOR

Office of the Secretary

Secretary's Order 5–2002; Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Occupational Safety and Health

1. Purpose

To delegate authority and assign responsibility to the Assistant Secretary for Occupational Safety and Health.

2. Authorities and Directives Affected.

a. Authorities

This Order is issued pursuant to 29 U.S.C. 551 *et seq.*; 5 U.S.C. 301; 5 U.S.C. 5315; the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.*; the Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35, 37–41, 43–45; the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 351–354, 356–357; the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 329, 333; the Maritime Safety Act of 1958, 33 U.S.C. 941; the National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 954(m)(2); 5 U.S.C. 7902 and any executive order thereunder, including Executive Order 12196 ("Occupational Safety and Health Programs for Federal Employees") (February 26, 1980); the Surface Transportation Assistance Act of 1982, 49 U.S.C. 31105; the Asbestos Hazard Emergency Response Act of 1986, 15 U.S.C. 2651; the International Safe Container Act, 46 U.S.C. App.1506; the Safe Drinking Water Act, 42 U.S.C. 300j–9(i); the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610 (a)—(d); the Federal Water Pollution Control Act, 33 U.S.C. 1367; the Toxic Substances Control Act, 15 U.S.C. 2622; the Solid Waste Disposal Act, 42 U.S.C. 6971; the Clean Air Act, 42 U.S.C. 7622; the Wendell H. Ford Aviation Investment and Reform Act For the 21st Century, 49 U.S.C. 42121; the Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A.

b. Directives Affected

Secretary's Order 3–2000 is cancelled.

3. Background

This Order constitutes the basic Secretary's Order for the Occupational Safety and Health Administration (OSHA), superseding Order 3–2000. This Order delegates and assigns responsibility to OSHA for enforcement of Section 806 (protection for employees of publicly-traded companies providing evidence of fraud) of Pub. L. 107–204, the Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A, and makes other minor conforming modifications. All other authorities and responsibilities set forth in this Order were delegated or assigned previously to the Assistant Secretary for OSHA in Secretary's Order 3–2000, and this Order continues those delegations and assignments in full force and effect, except as expressly modified herein.

4. Delegation of Authority and Assignment of Responsibility

a. *The Assistant Secretary for Occupational Safety and Health.* (1) The Assistant Secretary for Occupational Safety and Health is delegated authority and assigned responsibility for administering the safety and health, and whistleblower, programs and activities of the Department of Labor, except as provided in paragraph 4.a.(2) below, under the designated provisions of the following laws:

(a) Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.*

(b) Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35, 37–41, 43–45.

(c) McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 351–354, 356–357.

(d) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 329, 333.

(e) Maritime Safety Act of 1958, 33 U.S.C. 941.

(f) National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 954(m)(2).

(g) 5 U.S.C. 7902 and any executive order thereunder, including Executive Order 12196 ("Occupational Safety and Health Programs for Federal Employees") (February 26, 1980).

(h) Surface Transportation Assistance Act of 1982, 49 U.S.C. 31105.

(i) Asbestos Hazard Emergency Response Act of 1986, 15 U.S.C. 2651.

(j) International Safe Container Act, 46 U.S.C. App.1506.

(k) Safe Drinking Water Act, 42 U.S.C. 300j-9(i).

(l) Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851.

(m) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610 (a)—(d).

(n) Federal Water Pollution Control Act, 33 U.S.C. 1367.

(o) Toxic Substances Control Act, 15 U.S.C. 2622.

(p) Solid Waste Disposal Act, 42 U.S.C. 6971.

(q) Clean Air Act, 42 U.S.C. 7622.

(r) Wendell H. Ford Aviation Investment and Reform Act For the 21st Century, 49 U.S.C. 42121.

(s) Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A.

(t) Responsibilities of the Secretary of Labor with respect to safety and health, or whistleblower, provisions of any other Federal law except those responsibilities which are assigned to another DOL agency.

(2) The authority of the Assistant Secretary for Occupational Safety and Health under the Occupational Safety and Health Act of 1970 does not include authority to conduct inspections and investigations, issue citations, assess and collect penalties, or enforce any other remedies available under the statute, or to develop and issue compliance interpretations under the statute, with regard to the standards on:

(a) Field sanitation, 29 CFR 1928.110; and

(b) Temporary labor camps, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Assistant Secretary for Occupational Safety and Health retains enforcement responsibility over temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

Nothing in this Order shall be construed as derogating from the right of States operating OSHA-approved State plans under 29 U.S.C. 667 to continue to enforce field sanitation and temporary labor camp standards if they so choose. The Assistant Secretary for OSHA retains the authority to monitor the activity of such States with respect to field sanitation and temporary labor camps. Moreover, the Assistant Secretary for OSHA retains all other agency authority and responsibility under the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps, such as rulemaking authority.

(3) The Assistant Secretary for OSHA is hereby delegated authority and assigned responsibility to invoke all appropriate claims of governmental privilege, arising from the functions of OSHA, following personal consideration of the matter, and in accordance with the following guidelines:

(a) Informant's Privilege (to protect from disclosure the identity of any person who has provided information to OSHA in matters arising under an authority delegated or assigned in this paragraph): A claim of privilege may be asserted where the Assistant Secretary has determined that disclosure of the privileged matter may: (1) Interfere with an investigative or enforcement action taken by OSHA under an authority delegated or assigned to OSHA in this paragraph; (2) adversely affect persons who have provided information to OSHA; or (3) deter other persons from reporting a violation of law or other authority delegated or assigned to OSHA in this paragraph.

(b) Deliberative Process Privilege (to withhold information which may disclose pre-decisional intra-agency or inter-agency deliberations, including the analysis and evaluation of fact, written summaries of factual evidence, and recommendations, opinions or advice on legal or policy matters in matters arising under this paragraph): A claim of privilege may be asserted where the Assistant Secretary has determined that disclosure of the privileged matter would have an inhibiting effect on the agency's decision-making processes.

(c) Privilege for Investigational Files Compiled for Law Enforcement Purposes (to withhold information which may reveal OSHA's confidential investigative techniques and procedures): The investigative file privilege may be asserted where the Assistant Secretary has determined the disclosure of the privileged matter may have an adverse impact upon OSHA's implementation of an authority delegated or assigned in this paragraph, by: (1) Disclosing investigative techniques and methodologies; (2) deterring persons from providing information to OSHA; (3) prematurely revealing the facts of OSHA's case; or (4) disclosing the identities of persons who have provided information under an express or implied promise of confidentiality.

(d) Prior to filing a formal claim of privilege, the Assistant Secretary shall personally review all documents sought to be withheld (or, in a case where the volume is so large that all of them cannot be personally reviewed in a reasonable time, an adequate and representative sample of such documents), together with a description or summary of the litigation in which the disclosure is sought.

(e) In asserting a claim of governmental privilege, the Assistant Secretary may ask the Solicitor of Labor, or the Solicitor's representative, to file any necessary legal papers or documents.

(4) The Assistant Secretary for Occupational Safety and Health is also delegated authority and assigned responsibility for:

(a) Serving as Chairperson of the Federal Advisory Council on Occupational Safety and Health, as provided for by Executive Order 12196.

(b) Coordinating Agency efforts with those of other officials or agencies having responsibilities in the occupational safety and health area.

b. *The Assistant Secretary for Occupational Safety and Health and the Assistant Secretary for Employment Standards* are directed to confer regularly on enforcement of the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps (see paragraph 4.a.(2) of this Order), and to enter into any memoranda of understanding which may be appropriate to clarify questions of coverage which arise in the course of such enforcement.

c. *The Solicitor of Labor* is responsible for providing legal advice and assistance to all Department of Labor officials relating to implementation and administration of all aspects of this Order. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

d. *The Commissioner of Labor Statistics* is delegated authority and assigned responsibility for:

(1) Furthering the purpose of the Occupational Safety and Health Act by developing and maintaining an effective program of collection, compilation, analysis, and publication of occupational safety and health statistics consistent with the provisions of Secretary's Orders 4–81 and 5–95.

(2) Making grants to states or political subdivisions thereof in order to assist them in developing and administering programs dealing with occupational safety and health statistics under Sections 18, 23, and 24 of the Occupational Safety and Health Act.

(3) Coordinating the above functions with the Assistant Secretaries for Occupational Safety and Health and Employment Standards.

5. Reservation of Authority and Responsibility

a. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutory provisions and Executive Orders listed in paragraph 4.a. above is reserved to the Secretary.

b. The commencement of legal proceedings under the statutory provisions listed in paragraph 4.a. above, except proceedings before Department of Labor administrative law judges and the Administrative Review Board under the statutes identified in paragraph 4.a.(1)(h) or paragraphs 4.a.(1)(k-t) above, is reserved to the Secretary. The Solicitor will determine in each case whether such legal proceedings are appropriate and may represent the Secretary in litigation as authorized by law.

c. Nothing in this Order shall limit or modify the delegation of authority and assignment of responsibility to the Administrative Review Board by Secretary's Order 1–2002 (September 24, 2002).

6. Redelegation of Authority

The Assistant Secretary for Occupational Safety and Health, the Solicitor of Labor, and the Commissioner of Labor Statistics may redelegate authority delegated in this Order.

7. Effective Date

This delegation of authority and assignment of responsibility is effective immediately.

Dated: October 10, 2002.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 02–26836 Filed 10–21–02; 8:45 am]

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H.J. Res. 123/P.L. 107–244

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Rules and Regulations

Federal Register
Vol. 67, No. 205
Wednesday, October 23, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

RIN 0584–AD08

Codification of Poultry Substitution and Modification of Commodity Inventory Controls for Recipient Agencies

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends USDA's Food Distribution Program regulations. The rule has two distinct parts. The first part of the rule allows limited poultry substitution and full substitution of all other commodities except for beef and pork. The second part of the rule reduces current commodity recordkeeping and reporting requirements for some local level recipient agencies, such as schools.

The Department has operated a demonstration project program since Feb. 1, 1996, which has allowed commercial poultry to be substituted for commodity poultry in processing. Substitution of most donated foods with commercial foods has always been permitted under current regulations. Current regulations provide a list of 16 commodities that may be substituted without the prior approval of the Food and Nutrition Service (FNS). Any other commodity, except for meat and poultry, may be substituted with the prior written approval of FNS under 7 CFR § 250.30(f)(4) of the current regulations. Required Certified Public Accountant (CPA) audits have not shown any significant problems with these substitution options. No substitution of inferior or non-domestic product has been identified. Therefore, this rule amends the regulations to allow limited poultry substitution, with a substitution plan approved by both FNS and Agriculture Marketing Service (AMS) grading; and full substitution for all other commodities except for beef and pork, on a permanent basis, without prior written approval form FNS.

Secondly, because of changes in the commercial market and the food donation programs, USDA has tested the effects of allowing vendors to use commercial labels on some commodity products purchased for schools. Commercial labeling had already been introduced in other USDA food donation programs with good results. However, commercial labels complicate the current inventory procedures that require commodity inventories to be kept separate from purchased inventories. Therefore, FNS is amending the current inventory requirements for USDA's Child Nutrition Programs in order to accommodate the use of commercial labels on some commodity products.

EFFECTIVE DATE: This rule is effective November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Suzanne Rigby, Chief, Schools and Institutions Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or telephone (703) 305–2644.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant impact on a substantial number of small entities. State agencies, school food authorities and schools choosing to utilize this new method of inventory control will be affected. However, the majority of entities participating in the Food Distribution Programs will not be affected.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The program addressed in this action is listed in the Catalog of Federal Domestic Assistance under No. 10.550, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notices published at 48 FR 29114, June 24, 1983, and 49 FR 22676, May 31, 1984).

Paperwork Reduction Act

Information collection requirements associated with the commodity processing program are approved under 0584–0293. This rule deletes the requirement for schools to maintain a dual inventory control system. Although the current inventory control requirements represent a burden on schools, estimated at 1.8 million hours annually for recipient agencies, this burden was not identified to or approved by the Office of Management and Budget. Therefore, deleting the

burden requires no change to 0584–0293.

Allowing the limited substitution of donated poultry with commercial poultry significantly streamlines the manufacturing process for processors and allows recipients to receive end products on a timely basis. However, this rule does not relieve the processor from any of the current reporting or record keeping requirements contained in the regulations. Therefore, no changes are required to the current burden hours shown in 0584–0293.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the applications of its provisions.

Background

The Food Distribution Program regulations (hereinafter all references to regulations in this rulemaking are to regulations in Title 7 of the Code of Federal Regulations unless indicated otherwise), beginning at § 250.3 and continuing through § 250.30, set forth the terms and conditions under which distributing agencies, subdistributing agencies, and recipient agencies may enter into contracts with commercial firms for the further processing of donated foods.

On February 21, 2002, the Department published a proposed rule in the **Federal Register** (67 FR 7977) that would (1) Amend the Food Distribution regulations to allow limited substitution of poultry products consistent with the demonstration project in effect since 1996; (2) make fruits, vegetables, and eggs eligible to be substituted under the 100 percent yield concept without prior approval from FNS; and (3) eliminate the requirement for recipient agencies to maintain inventory records for USDA purchased commodities separate from other food inventory. The proposed rule provided a 60-day comment period. This final rule implements these provisions while incorporating some of the changes suggested in the public comments on the proposed rule.

Analysis of Comments

The Department received written comment from 82 different entities consisting of distributing agencies, recipient agencies, processors, consultants, and various interest groups. Forty-three commenters generally supported the proposed changes to the regulations. Thirty-three commenters generally opposed the proposed changes to the regulations. Six commenters only offered suggestions to improve the final rule.

a. Poultry Substitution

Fifteen commenters on poultry substitution, all participants in the demonstration project in either processing or distributing, cited their ability to have end products delivered "just in time" for use in the meal service as a positive reason to support the proposed regulations. Thirteen commenters saw savings in the costs associated with storing commodities. Five commenters believe poultry substitution made inventory procedures at commercial distributors more manageable. Four commenters believe that competition increased among poultry processors. Two recipient agency commenters cited increased participation in the school lunch program because they could now show consistency between commodity and commercial end products.

Of the 33 commenters opposed to the proposed changes to the regulation, 19 opposed specific proposed changes regarding poultry substitution. However, not one commenter opposed the general concept of poultry substitution. Ten commenters believe that the proposed changes were too vague. They also believe that the Department did not furnish sufficient poultry substitution guidelines in the proposed rule. Four commenters on this provision believe that the proposed regulations lack clarity. The Department has considered the suggestions made by these commenters and has provided further detail for poultry substitution in both the preamble and regulatory text of this final rule.

Seven commenters regarding poultry substitution believe that the Department had dropped the requirement that any commercial food item substituted for commodity product be of U.S. origin. Three commenters stated that the "Buy American" provisions of § 250.23 are addressed in the Child Nutrition Program (CNP) regulations at § 210.21(d) and do not need to be a part of the part 250 regulations. The Department became aware of the purported omission of a U.S. origin requirement in the proposed rule during the comment period and publicly indicated on the Food Distribution website that this requirement still applies. The applicability of this requirement for substitution is reemphasized in this final regulation. Although "Buy American" is discussed in the CNP regulations, those regulations specifically address only school food authorities. Numerous other types of recipient agencies rely on the part 250 regulations for their guidance. Therefore, this rule amends the proposed language of § 250.23 to make clear the Department's intent to have all recipient agencies "Buy American" whenever possible.

Five commenters suggested that the Department clarify the definitions of "full substitution" and "limited substitution." The Department agrees with these commenters and has included definitions of these terms in § 250.3, Definitions, as subparagraphs under the definition of "substitution."

Three commenters believe that the Department should include detailed penalties for processors who fail to comply with the regulation. The Department believes that sufficient penalties are already described in the regulations.

Five commenters regarding poultry substitution believe the Department should publish data to support its assertion that the poultry demonstration projects merit a regulatory amendment to make this practice permanent. The public has been on notice for the last six years regarding the demonstration project to explore poultry substitution. During that period, prior to the publishing of the proposed rule to make the poultry substitution option permanent, the Department did not receive any written comment either for or against poultry substitution as defined in the demonstration project. However, during numerous public meetings over the same six years, the Department was continually encouraged by recipient agencies, processors, and State distributing agencies to make the poultry substitution option permanent. The Department does acknowledge that some of its pilot projects in more recent years have caused some reporting problems for both the processor and the recipients. These issues will be addressed as processors file the final substitution plans required under this rule change with FNS and AMS. The pilot programs were designed to test different ways of doing business in the commodity program and are a separate issue from poultry substitution.

b. Inventory Recordkeeping Changes

The Department received thirty-seven comments specifically addressing the changes to the proposed commodity inventory and recordkeeping requirements. Seventeen of the commenters indicated that the proposed changes would reduce paperwork for recipient agencies so that they could keep only one inventory record rather than one record for commodity foods and one record for purchased or commercial foods.

Twenty commenters opposed the proposed changes to the inventory recordkeeping regulations. However, the Department believes that the discussion of a commercial labels demonstration project in the preamble of the proposed rule may have confused those commenters. It appears that all 20 of the negative commenters were expressing opposition to the use of commercial labels rather than the proposed regulation change. Of the 20, 11 represent recipient agencies that were opposed to the commercial labels because of the visual difficulty in separating them from purchased items. It is assumed that this opposition would not exist once the commenters understood that the proposed regulation would eliminate the need for recipients to keep separate inventory records. Three comments expressed concerns that distributors might substitute commodity products with commercially labeled products of lesser quality. However, the Department believes that the disincentives for substituting inferior product far outweigh any possible perceived financial gain from such a substitution. Three commenters expressed concerns about identifying commodity foods to be used in Presidentially declared disasters when the commodities are not recorded separate from purchased foods. Three commenters expressed concerns about tracking commodities with commercial labels in a recall situation or when registering a product complaint. FNS has already issued guidance for both supplying foods to disaster situations and for handling commodities in a recall or complaint situation.

Some commenters suggested that the Department provide guidance to recipient agencies for implementing any new procedures resulting from the change in inventory requirements. The Department intends to provide additional guidance and technical assistance as needed.

One commenter suggested that the Department identify specific types of recipient agencies for which the change is intended. The provisions contained in this rule relative to inventory and recordkeeping requirements are applicable to local-level recipient agencies participating in the National School Lunch Program, Child and Adult Care Food Program, the Nutrition Services Incentive Program, the Summer Food Service Program for Children, and other recipient agencies, such as charitable institutions and summer camps, that receive commodities outside of specifically authorized programs. They are not applicable to recipient agencies participating in the Emergency Food Assistance Program (TEFAP) under part 251, Food Distribution Program on Indian Reservations (FDPIR) under parts 253 and 254, or the Commodity Supplemental Food Program (CSFP) under part 247. Local level organizations involved in the administration of these programs are, by definition, subdistributing agencies and, therefore, remain subject to the inventory and recordkeeping requirements contained in part 250, except where the provisions in part 250 are inconsistent with the provisions contained in regulations specific to these programs. For example, recordkeeping requirements have been relaxed for food pantries and soup kitchens under part 251, the Emergency Food Assistance Program (TEFAP) regulations. However, since food packages containing specific types of commodities must be distributed monthly to eligible households participating in CSFP and FDPIR, and the amount of financial resources available to purchase such commodities are limited, inventory and recordkeeping requirements have not been relaxed for these programs. In addition, inventory and recordkeeping requirements have not been relaxed for TEFAP recipient agencies that distribute commodities to other local-level recipient agencies. At this time, FNS is of the opinion that maintaining current inventory and recordkeeping requirements at this level is a necessary means of maintaining program integrity given the manner in which such requirements have been relaxed at the food pantry and soup kitchen level. The definition of "subdistributing agency" in § 250.3 has been revised to clarify that TEFAP, CSFP, and FDPIR recipient agencies are subdistributing agencies.

While the provisions contained in this rule are not intended to affect the administration of TEFAP, CSFP, or FDPIR recipient agencies, FNS will continue to examine current inventory and recordkeeping requirements imposed on these agencies, and where appropriate, revise them.

Changes in the Substitution Regulations

Substitution of donated foods with commercial foods has always been permitted under current regulations. However, current regulations at § 250.30(f)(1)(i) provide a list of 16 commodities that could be substituted without the prior approval of FNS. Any other commodity, except for meat and poultry, could be substituted with the prior written approval of FNS under § 250.30(f)(4) of the current regulations. The Department is amending the regulations at § 250.30(f) to allow full substitution in the further processing of all commodities except for beef, pork, and poultry without prior written approval from FNS. Any substitution of fully substitutable commodities is subject to a 100-percent yield requirement. As requested by commenters on the proposed rule, a description of "full substitution" has been added to § 250.3, as a subparagraph under the definition of "substitution". Under the 100-percent yield concept, the processor is responsible for all manufacturing losses. The processor must return to the contracting agency the same number of pounds of the commodity in finished end product that were delivered to the processor for further processing. Any commercial product substituted for donated commodity must be of U.S. origin and of equal or better quality than the donated commodity. Substitution remains an option available to processors.

The Department is also amending the regulations at § 250.30(f) to allow the limited substitution of commercial bulk pack poultry and poultry parts for USDA donated bulk pack poultry and poultry parts on a permanent basis. Limited substitution means that a processor can substitute commercial product for donated commodity product with some restrictions. Restrictions include, but are not limited to, the prohibition against substituting for backhauled commodity product. FNS may also prohibit substitution of certain types of the same generic commodity. (For example, FNS may decide to permit substitution for bulk chicken but not for canned chicken.) As requested by commenters on the proposed rule, a description of "limited substitution" has been added to § 250.3, as a subparagraph under the definition of "substitution". Substitution is an option available to the processor, not a mandatory practice. Any substitution of commercial poultry or poultry parts for commodity poultry or poultry parts must be performed using poultry of U.S origin that is equal or superior in every particular to the USDA specification for commodity poultry.

Processors will need to submit a poultry substitution plan to FNS and AMS for approval. Once approved, the plan will be permanent. Any proposed

changes to the procedures that are addressed in the plan would require submission of a revised plan and approval by USDA before implementation.

The following general conditions apply to all poultry substitution plans: Only bulk pack chicken, chicken parts, and bulk pack turkey delivered by USDA vendors to the processor will be eligible for substitution. No backhauled product will be eligible. (Backhauled product is typically cut-up frozen poultry parts delivered to schools that may be turned over to processors for further processing at a later time.) Substitution of commercial poultry for donated poultry may occur in advance of the actual receipt of the donated poultry by the processor. Should a processor choose to use the substitution option prior to the commodity being purchased by the USDA, the processor assumes all risks. Any variation between the amount of commercial poultry substituted and the amount of donated poultry received by the processor will be adjusted according to guidelines furnished by USDA.

Any donated poultry not used in end products because of substitution can only be used by the processor at one of its facilities in other commercial processed products. It cannot be sold as an intact unit. In lieu of processing the donated poultry, however, the processor may use the product to fulfill other USDA contracts awarded for delivery to another processor provided all terms of the other contract are met. The substitution plan must contain (1) A step-by-step description of how production will be monitored; (2) a complete description of the records that will be maintained for (a) the commercial poultry substituted for the donated poultry, and (b) the disposition of the donated poultry delivered; and (3) how the substitution will be tracked for the purpose of monthly reporting to the State distributing agencies. As with the processing of donated poultry into end products, AMS graders must monitor the processing of any substituted commercial poultry to ensure that program integrity is maintained.

Changes in the Inventory Control Regulations

Beginning in 1996, the Department piloted the use of commercial labels in place of USDA labels on commodities supplied to the Emergency Temporary Assistance Program. The use of commercial labels was also permitted on some price-support products that are provided to the National School Lunch Program. The pilot has demonstrated excellent benefits for recipient agencies including reduced delivery delays, increased competition, and reduced program costs. In addition, the project has helped eliminate a perceived stigma implied by the "generic" USDA labels.

However, using commercial labels has made it difficult for recipients to distinguish between donated commodities and commercially purchased items in order to comply with the current regulatory requirement to inventory donated commodities separately. These Federal requirements for inventory of donated commodities have always been more stringent than the Federal requirements for foods that have been purchased using Federal reimbursement dollars from the National School Lunch Program. It is recognized that schools currently must use generally accepted inventory and business management practices in order to safeguard commercially purchased products and maintain the financial integrity of their child nutrition operations. Therefore, during the period November 2000 to June 2001, the Department tested a procedure in two States that allowed schools to inventory commodity foods along with purchased foods. Anecdotal evidence from these States suggests that this procedure was well received and beneficial.

For these reasons, the Department has determined that requirements in part 250 for separate inventory maintenance of donated commodities by recipient agencies are redundant and more onerous than necessary to safeguard the value of commodities received by schools. Therefore, the Department is amending the regulations at § 250.13(a) to require that recipient agencies use specific guidance to be provided by the Food and Nutrition Service to value commodities for the purpose of OMB Circular A–133, and at § 250.14(b), § 250.14(e), and § 250.14(f)(1) and (f)(2) to remove the requirement that "recipient agencies" inventory USDA donated food separately. A technical amendment has also been made in § 250.14(c) to improve sentence structure. Section 250.14(e) is revised to reduce physical inventory requirements for recipient agencies in this section. State warehouses, State contracted commercial warehouses, and subdistributing agencies continue to be required to maintain separate inventories of donated commodities. They also are required to continue to perform annual physical inventories and reconciliation of donated commodities.

List of Subjects in 7 CFR Part 250

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and record keeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR part 250 is amended to read as follows:

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for part 250 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a–1, 1859, 2014, 2025; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

2. In § 250.3:

a. Revise the definition of *Subdistributing agency*; and

b. In the definition for *Substitution*, remove "; or" at the end of paragraph (a) and add in its place a period and add new paragraphs (c) and (d).

The revision and additions read as follows:

§ 250.3 Definitions.

* * * * *

Subdistributing agency means an agency performing one or more distribution functions for a distributing agency other than, or in addition to, functions normally performed by common carriers or warehousemen. A subdistributing agency may also be a recipient agency. State and local agencies, and Indian Tribal Organizations administering the Emergency Food Assistance Program, the Food Distribution Program on Indian Reservations, or the Commodity Supplemental Food Program, are subdistributing agencies subject to all provisions relative to subdistributing agencies contained in this part, unless specifically exempt under part 251, part 253, part 254, or part 247 of this chapter.

* * * * *

Substitution * * *

(c) A processor can substitute commercial product for donated commodity, as described in paragraph (a) of this section, without restrictions under full substitution. The processor must return to the contracting agency, in finished end products, the same number of pounds of commodity that the processor originally received for processing under full substitution. This is the 100-percent yield requirement.

(d) A processor can substitute commercial product for donated commodity product, as described in paragraph (a) of this section, with some restrictions under limited substitution. Restrictions include, but are not limited to, the prohibition against substituting for backhauled poultry commodity product. FNS may also prohibit substitution of certain types of the same generic commodity. (For example, FNS may decide to permit substitution for bulk chicken but not for canned chicken.)

* * * * *

3. In § 250.13 add a new sentence at the end of paragraph (a)(5) to read as follows:

§ 250.13 Distribution and control of donated foods.

(a) * * *

(5) * * * For purposes of complying with OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations on inventory valuation, recipient agencies shall comply with guidance provided by the Food and Nutrition Service. (For availability of OMB Circulars referenced in this paragraph (a), see 5 CFR 1310.3.)

* * * * *

4. In § 250.14:

a. Remove the word "Stock" at the beginning of paragraph (b)(4) and add in its place the words "Excepting recipient agencies, stock";

b. Remove the word "Conduct" from the beginning of the third sentence in paragraph (c) and add in its place the word "conduct", and remove the period at the end of the second sentence;

c. Revise paragraph (e);

d. Remove the words "or recipient agency's" in paragraph (f)(1) introductory text and add in its place the word "agency's"; and

e. Remove the words "and recipient agencies" in the second sentence of paragraph (f)(2).

The revision reads as follows:

§ 250.14 Warehousing, distributing and storage of donated foods.

* * * * *

(e) *Physical inventory.* During the annual review required by paragraph (c) of this section, distributing agencies and subdistributing agencies shall take a physical inventory of their storage facilities. The physical inventory shall be reconciled with each storage facility's book inventory. The reconciliation records shall be maintained by the agency that contracted for or maintained the storage facility. Food items that have been lost, stolen, or found to be out of condition, shall be identified and recorded. Potential excessive inventory, as described in paragraph (f) of this section, shall be reported by the subdistributing agency to the distributing agency. Corrective action on each deficiency noted during these inventories shall be initiated immediately, and a written report of those corrective actions shall be forwarded to the distributing agency. Where applicable, the distributing agency shall pursue claims in accordance with § 250.15(c).

* * * * *

5. In § 250.16, revise paragraph (a)(2) to read as follows:

§ 250.16 Maintenance of records.

(a) * * *

(2) Distributing agencies shall require all subdistributing agencies to maintain accurate and complete records with respect to the receipt, distribution/disposal, and inventory of donated foods, including end products processed from donated foods. Subdistributing agencies and recipient agencies must document any funds that arise from the operation of the distribution program, including refunds made to recipient agencies by a processor in accordance with § 250.30(k). Further, these documents should allow an independent determination of the specific accounts that benefit from these funds.

* * * * *

6. In § 250.23, revise paragraph (a)(2) to read as follows:

§ 250.23 Buy American.

(a) * * *

(2) A food product manufactured in the U.S. primarily using food grown in the U.S.

* * * * *

7. In § 250.30:

a. Revise paragraph (f)(1) introductory text;

b. Remove paragraph (f)(1)(i) and redesignate paragraph (f)(1)(ii) as paragraph (f)(1)(i); add a new paragraph (f)(1)(ii);

c. Revise newly redesignated paragraph (f)(1)(i);

d. Remove the words "specifically listed in paragraph (f)(1)(i) of this section" in the second sentence of paragraph (f)(2);

e. Remove the words "by the Agricultural Stabilization and Conservation Service (ASCS) in the original inspection of donated foods" in the fourth sentence of paragraph (f)(2) and add in their place the words "in the original USDA procurement specification";

f. Remove paragraph (f)(4) and redesignate paragraph (f)(5) as paragraph (f)(4); and

g. Amend the introductory text of paragraph (g) by adding a sentence after the second sentence.

The revisions and additions read as follows:

§ 250.30 State processing of donated foods.

* * * * *

(f) * * * (1) The processing contract may provide for substitution of donated foods as defined in § 250.3 except that donated beef and donated pork shall not be substitutable. Any substitution of commercial product for commodities other than beef, pork, or poultry is subject to a 100-percent yield requirement. Under the 100-percent yield requirement, the processor is responsible for any manufacturing losses.

(i) All components of commercial foods substituted for any donated food must be of U.S. origin and identical or superior in every particular of the donated food specification. Records must be maintained to allow independent verification that the substituted food meets the above condition.

(ii) Poultry shall be eligible for limited substitution. Any processors that wish to substitute poultry must have a plan approved by both FNS and AMS. Only bulk pack chicken, chicken parts, and bulk pack turkey delivered by USDA vendors to the processor are eligible for substitution. No backhauled poultry product may be substituted. (Backhauled product is typically cut-up frozen poultry parts delivered to schools that may be turned over to processors for further processing at a later time.) Should a processor want to amend its approved plan, it shall submit any amendments to USDA for approval prior to implementing such amendments.

(A) Substitution of commercial poultry may occur in advance of the actual receipt of the donated poultry by the processor. Should a processor choose to use the substitution option prior to the commodity being purchased by the USDA, the processor shall assume all risks. Any donated poultry not used in end products because of substitution shall only be used by the processor at one of its facilities in other commercially processed products and cannot be sold as an intact unit. However, in lieu of processing the donated poultry, the processor may use the commodity product to fulfill other USDA contracts awarded for delivery to another processor provided all terms of the other contract are met. Any variation between the amount of commercial poultry substituted and the amount of donated poultry received by the processor shall be adjusted according to guidelines furnished by USDA.

(B) The substitution plan shall contain a step-by-step description of how production will be monitored; a complete description of the records that will be maintained for the commercial poultry substituted for the donated poultry and the disposition of the donated poultry delivered; and how the substitution will be tracked for the purpose of monthly reporting to the State distributing agencies. Poultry substitution shall not be subject to the 100-percent yield requirement; however, the AMS Grading Service must verify processing yields. Should a processor choose to have all production of a specific end product, identified by name and product code, produced under AMS grading, then the label "Contains Commodities Donated by the United States Department of Agriculture. This Product Shall Only Be Sold to Eligible Recipient Agencies" shall not be required. Finished poultry end products that have not been produced under AMS grading supervision may not be substituted for finished commodity end products.

* * * * *

(g) * * * As with the processing of donated poultry into end products, AMS graders must monitor the processing of any substituted commercial poultry to ensure that program integrity is maintained. * * *

* * * * *

Dated: October 16, 2002.

Roberto Salazar,

Administrator, Food and Nutrition Service

[FR Doc. 02-26874 Filed 10-22-02; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 319

[Docket No. 98-030-4]

RIN 0579-AA97

Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are establishing regulations providing for use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. The irradiation treatment provides protection against fruit flies and the mango seed weevil. This action provides an alternative to other currently approved treatments (various fumigation, cold, and heat treatments, and systems approaches employing techniques such as greenhouse growing) against fruit flies and the mango seed weevil in fruits and vegetables.

EFFECTIVE DATE: October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. Gadh, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale MD 20737-1236; (301) 734-5210.

SUPPLEMENTARY INFORMATION:

Background

In response to growing commercial interest in the use of irradiation as a treatment for agricultural products, the Animal and Plant Health Inspection Service (APHIS) has been developing policies for evaluating irradiation methods and evaluating research on the efficacy of irradiation.

To set a framework for developing APHIS' irradiation policy, we published a notice entitled "The Application of Irradiation to Phytosanitary Problems" in the **Federal Register** on May 15, 1996 (61 FR 24433-24439, Docket No. 95-088-1). Among other things, the notice discussed how APHIS, in collaboration with the Agricultural Research Service (ARS), would evaluate scientific research to determine the minimum irradiation doses necessary to kill or render sterile particular pests associated with particular articles. The notice emphasized that minimum dose levels are important and necessary, but that dose levels by themselves do not constitute a complete treatment schedule or an adequate regulatory framework. Treatment schedules, in addition to specifying minimum doses, may employ irradiation as a single treatment, as part of a multiple treatment, or as a component of a systems approach combined with other pest mitigation measures. The regulatory framework for employing irradiation treatments must also address system integrity or quality control issues, including methods to ensure that the irradiation is properly conducted so that the specified dose is achieved, and must address matters such as packaging or safeguarding of the treated articles to prevent reinfestation.

In a proposed rule published in the **Federal Register** on May 26, 2000 (65 FR 34113-34125, Docket No. 98-030-1), we proposed a framework for the use of phytosanitary irradiation treatments for imported fruits and vegetables, and proposed specific standards for an irradiation treatment for fruit flies and the mango seed weevil (*Sternochetus mangiferae* (Fabricus), formerly known as *Cryptorhynchus mangiferae*) in imported fruits and vegetables. We solicited comments concerning our proposed rule for a period of 60 days, ending July 25, 2000. On August 4, 2000, we published a **Federal Register** notice that reopened and extended the comment period until August 21, 2000 (65 FR 47908, Docket No. 98-030-2). By the end of this comment period we received 2,212 comments, including many form letters and form postcards.

The various issues raised in these comments are discussed below by topic.

Comments Outside the Scope of APHIS' Authority

Approximately 2,000 of the comments we received on the proposed rule were a form letter, or slight variations of the form letter. In addition to comments addressing the proposed rule, discussed below, these form letters raised several issues that concern matters under the regulatory authority of other Federal and State agencies, not APHIS. We do not intend to reopen debate over matters that have been resolved through rulemaking by other agencies that have primary authority in these areas.

For example, one concern expressed is that irradiation will make foods unsafe to eat. The Food and Drug Administration (FDA) has primary regulatory responsibility for ensuring that approved irradiation doses do not render foods unsafe to eat. FDA regulations (21 CFR 179.26) establish a limit of 1.0 kilogray for disinfestation of arthropod pests in food. None of the irradiation doses contained in our rule exceed one quarter of this approved safe dose limit. A similar concern is whether irradiation could generate harmful chemicals from the cartons in which fruits and vegetables are irradiated. FDA has addressed safe packaging materials in 21 CFR 179.26, where it specifically allows wax-coated paperboard, the common carton type for fruits and vegetables.

Other comments suggested that irradiation facilities are inherently unsafe, and that workers and the public may be exposed to dangerous levels of radiation as the result of accidents at the plants or during transport of radioisotopes to and from plants. The Nuclear Regulatory Commission, the Occupational Safety and Health Administration, and the United States Department of Transportation have the primary regulatory responsibility for issues including irradiation facility construction, operation, employee and public safety, and transportation of radioisotopes. Their requirements in these areas were established through public rulemaking by the respective agencies.

Many comments also stated that irradiation would reduce the nutritional value of fruits and vegetables, particularly through vitamin depletion, and could also mask the effects of spoilage. Again, regulation of these matters is outside the scope of the current rulemaking and outside the statutory authority of APHIS. However, on these points we do note for the record the following information from the August 2000 report by the United States General Accounting Office, "Food Irradiation: Available Research Indicates That Benefits Outweigh Risks" (GAO/RCED-00-217):

> There is also some vitamin loss associated with irradiation—with certain vitamins, such as thiamin (B1), ascorbic acid (C), and alpha-tocopherol (E)—more affected by irradiation than others. However, according to the Institute of Food Technologists, it is highly doubtful that there would ever be any vitamin deficiency resulting from eating irradiated food. For example, thiamin is the most radiation-sensitive, water-soluble vitamin. With regard to this vitamin, the American Dietetic Association's position statement on food irradiation notes that FDA evaluated an extreme case in which all meat, poultry, and fish were irradiated at the maximum permissible dose under conditions resulting in the maximum destruction of thiamin. Even in these circumstances, the average thiamin intake was above the Recommended Dietary Allowance, leading FDA to conclude that there was no deleterious effect on the total dietary intake of thiamin as a result of irradiating foods. In its 1980 evaluation of food irradiation, the Joint Expert Committee convened by FAO, WHO, and IAEA concluded that irradiation caused no special nutritional problems in food. Another meeting of experts in 1997—organized by the same three international organizations—concluded that even high doses of irradiation (*i.e.*, over 10 kGy) would not result in nutrient losses that could adversely affect a food's nutritional value.
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> Irradiation cannot reverse the spoilage process—the bad appearance, taste, and/or smell will remain the same after irradiation. In addition, current regulations do not allow food processors to use doses of irradiation on meat, poultry, fruits, and vegetables that would be high enough to sterilize extremely contaminated food. If a processor attempted to use a sterilization dose on many of these products, the odor, flavor, taste, and texture would be seriously impaired and the consumer would reject such products.

APHIS Should Use Treatments and Procedures Other Than Irradiation To Control Pests

Numerous commenters stated that APHIS should not employ irradiation as a treatment but should instead use other treatments and procedures to prevent the introduction of dangerous plant pests associated with imported fruits and vegetables. They stated that these other methods were preferable to the human health risks and environmental effects the commenters believe are associated with irradiation. The suggested alternatives included fumigation with methyl bromide, cold treatment, heat treatment, pressure treatment, controlled atmosphere treatments altering carbon dioxide concentrations, and several developing technologies such as use of laser ultraviolet light pulses. Some commenters also suggested that APHIS should only allow articles to be imported from areas free from significant pests.

We have not made any changes to the rule in response to these comments. Again, we emphasize that importers are free to choose other treatments authorized by the regulations in lieu of irradiation. The reason that irradiation may be attractive to certain importers, particularly those importing fresh tropical fruits from fruit fly-infested regions, is that irradiation allows fruits of higher quality to be imported. Alternative heat, cold, and fumigation treatments often cause unacceptable phytotoxicity (damage to the fruits). Also, these alternative treatments often must be used on fruit harvested before it is fully ripe. The irradiation alternative allows importers to sell riper, more valuable fruit, with less damage.

In authorizing irradiation treatments, we have considered both the efficacy and the environmental effects of irradiation compared to other treatments already authorized by our regulations. The irradiation treatments in the final rule are effective against the listed plant pests. As discussed below, an environmental assessment and finding of no significant impact have been prepared for this rule, documenting the conclusions that the irradiation methods in this rule would not present a risk of introducing or disseminating plant pests, would have environmental effects that are substantially less than those of some other authorized treatments, and would not have a significant impact on the quality of the human environment.

It is true that several technologies under development may also provide effective treatments for various plant pests (*e.g.*, pressure treatments, controlled atmospheres, and laser ultraviolet light pulses). To date, we have not seen conclusive scientific documentation that establishes standard methodologies for these treatments, or that demonstrates that these treatments effectively control pests of concern in fruits and vegetables subject to APHIS regulations. APHIS is always willing to evaluate petitions to add new treatments to our import regulations. Petitioners should submit a detailed description of the methodology and standards of the treatment to be evaluated, and should include any scientific studies that document the effectiveness of the treatment and related issues (*e.g.*, quality effects on treated articles).

Prohibition of Irradiation Facilities in Southern States

In the proposed rule, § 305.2(b) provided that irradiation could be conducted prior to the arrival of articles in the United States, or after arrival, but limited the location of facilities in the United States to certain northern States where the climate would preclude the successful establishment of the targeted fruit flies. We proposed that irradiation facilities could be located in any State on the mainland United States except Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, and Virginia. We proposed this location restriction as a safeguard against the possibility that, despite container and movement restrictions designed to prevent this possibility, fruit flies could escape from regulated articles in the United States prior to treatment.

Four commenters stated that this restriction should be dropped. They stated that the restriction was unnecessary because imported shipments could be successfully safeguarded to prevent the escape of pests between the time the articles arrive and the time they are irradiated to destroy any pests associated with them. One commenter specifically suggested that in lieu of prohibiting irradiation in southern States, APHIS could impose stringent packaging requirements to prevent the escape of pests, such as plastic shrouding, banding of boxes, insect-proof screening, and additional labeling to prevent misrouting of articles. Another commenter described planned operating procedures for an irradiation facility to operate at a southern port of arrival. These procedures would subject containers arriving at the port to a sanitizing wash upon arrival, then move the unsealed containers directly into the irradiation facility before they are opened. The facility would have insect suppression systems to prevent the escape of insects, including solid walls separating untreated product from treated product. Another commenter stated that an irradiation facility in

Florida had already demonstrated the ability to move high-risk fruits and vegetables into the facility without escape of pests, treat them, and move them to their final destinations in Texas and California without reinfestation. That commenter submitted as evidence the protocols for moving and irradiating guavas, mangos, and sweet potatoes.

These commenters, in addition to arguing that irradiation facilities could safely operate in southern States, maintained that severe business and economic losses would result from prohibiting irradiation in southern States. They stated that this action would prevent the most logical ports from accepting shipments of fruits and vegetables from South America and Mexico. They also noted that the South has a large demand for the types of fresh fruits and vegetables that would enter in accordance with the rule. These commenters also noted that southern ports are currently allowed to import a large volume of fruits and vegetables that must be treated after arrival with treatments other than irradiation—*e.g.*, cold treatment, or fumigation with methyl bromide—and that the rule would be inconsistent to allow one kind of trade but not the other.

After careful consideration of these comments, we have decided that allowing irradiation facilities in all southern States under the requirements of the proposed rule, or under safeguards described in general terms by the commenters, would permit an unacceptable risk that fruit fly populations could become established and flourish in the southern climate, and therefore we are not changing the proposed general prohibition of irradiation facilities in southern States although, as discussed below, we are allowing irradiation facilities to be established at three ports in southern States if the facilities meet special conditions. The commenters requesting us to allow irradiation facilities in other southern States make strong arguments that there are notable business advantages related to certain port locations and established trade patterns for imported fruits and vegetables. However, our primary consideration must be the risk of introduction and establishment of dangerous plant pests.

The commenters argue that importing fruit fly host materials from fruit fly-infested regions for irradiation in southern States would be no riskier than other importations (and interstate movements) that are currently allowed. However, the examples they cite are not completely relevant. In the case of the Florida irradiation facility that irradiates guavas, mangos, and sweet potatoes for movement to Texas and California, the irradiated articles are of domestic origin. While they may be exposed to the Caribbean fruit fly, which is established in certain parts of Florida, they do not represent a risk of spreading exotic species of fruit flies. Also, even the risks associated with Caribbean fruit fly have become a concern to other States. In its own comment on the proposed rule, the California Department of Food and Agriculture expressed concern over the number of live Caribbean fruit fly larvae emerging from guavas irradiated in Florida, and was considering developing a quality control program for such fruit and reviewing its policy regarding the acceptance of heavily infested irradiated fruit from Florida. The other pests for which these articles are irradiated in Florida (weevils and surface pests) do not have the pest risk potential represented by exotic fruit flies. The argument that allowing this facility to irradiate imported fruit fly host material would not increase risks over the level of its current operations is therefore unconvincing.

We also disagree with the argument that southern ports are currently allowed to import a large volume of fruits and vegetables that must be treated after arrival with treatments other than irradiation—*e.g.*, cold treatment, or fumigation with methyl bromide—and that this justifies allowing irradiation in all southern States. Generally, the articles allowed to be imported into southern ports for fumigation treatment upon arrival are not high-risk fruit fly host materials; when such articles are allowed to be imported, they must be treated prior to arrival. Some higher-risk articles (*e.g.*, citrus, apples, grapes, and pears) are allowed to be imported into three southern ports (Wilmington, NC; Gulfport, MS; and the Atlanta, GA, airport) for cold treatment after arrival. Unlike northern ports, at least two of these three ports (Gulfport and Atlanta) do not have sufficient biological barriers, including climatic conditions, to prevent the introduction and establishment of fruit flies and other insect pests that could escape from shipments of imported fruit after arrival in the United States. Cold treatment after arrival is allowed at these three ports because APHIS has imposed special conditions to mitigate the risk of the introduction of fruit flies and other insect pests into the United States (*see* 7 CFR 319.56–2d(b)(5)(iv), (vi), and (vii)).

The special conditions appropriate for allowing cold treatment after arrival would also be sufficient to safely allow irradiation treatment after arrival, although several requirements for cold treatment facilities (*e.g.*, back-up cooling systems and cold holding rooms) would not be needed for irradiation facilities at these ports. Therefore, we are changing this final rule to allow irradiation facilities to be located at the ports of Gulfport, Wilmington, and Atlanta. We are accomplishing this change by adding a footnote to § 305.2(b), which lists States where facilities may be located, to read as follows: "Irradiation facilities may be located at the maritime ports of Gulfport, MS, or Wilmington, NC, or the airport of Atlanta, GA, if the following special conditions are met: The articles to be irradiated must be imported packaged in accordance with paragraph (g)(2)(i)(A) of this section; the irradiation facility and APHIS must agree in advance on the route by which shipments are allowed to move between the vessel on which they arrive and the irradiation facility; untreated articles may not be removed from their packaging prior to treatment under any circumstances; blacklight or sticky paper must be used within the irradiation facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the facility; and the facility must have contingency plans, approved by APHIS, for safely destroying or disposing of fruit."

These special conditions are derived from the special conditions in § 319.56–2d(b)(5) that are required for cold treatment facilities in Wilmington, Gulfport, and Atlanta. The purposes of the conditions are as follows.

Insect-proof packaging; no removal from packaging prior to treatment. These requirements guard against the possible escape of adult, larval, or pupal fruit flies or other pests.

Approval of the route by which shipments are allowed to move between the vessel on which they arrive and the irradiation facility. This requirement allows APHIS to ensure the articles are not moved through areas containing crops or wild plants that are good host material for fruit flies, and to ensure timely, low-risk delivery to the irradiation facility.

Fruit fly attractants and traps in the irradiation facility and surrounding areas. The dual purpose is to both kill escaped fruit flies and to reveal their presence so further control efforts can be planned.

Contingency plans for safely destroying or disposing of fruit. If irradiation operations are delayed due to equipment failure or for other reasons, APHIS may order articles destroyed to avoid risks that pests might escape them while they are in storage.

We are not changing the final rule to allow irradiation at other ports in southern States at this time. Post-arrival cold treatments at the ports of Wilmington, Gulfport, and Atlanta were initially allowed in the mid-1990s after APHIS evaluated detailed petitions from port authorities, State governments, and business interests who worked jointly to develop detailed proposals for the siting, operations, and safeguarding of cold treatment facilities at these ports. Requests to allow irradiation at other southern ports would have to be evaluated in a similar manner. In each case we would have to thoroughly evaluate the risk situation of the suggested port, including the individual port's latitude, microclimate, immediate host availability, and past fruit fly infestations. After such evaluation, if APHIS determines special conditions that would allow post-arrival irradiation treatment to occur without risk of spreading pests, we would initiate rulemaking to allow such treatment at the designated ports.

Therefore, with the exception noted above for Wilmington, Gulfport, and Atlanta, this final rule includes the requirement of the proposal that irradiation facilities in southern States may not treat imported articles in accordance with the regulations. However, we welcome detailed petitions from businesses working in concert with port authorities and State governments who believe that post-arrival irradiation treatment facilities can safely operate at particular southern ports.

Recommended Doses

The proposed rule, in § 305.2, set forth the following irradiation doses:

IRRADIATION FOR FRUIT FLIES AND SEED WEEVILS IN IMPORTED FRUITS AND VEGETABLES

Scientific name	Common name	Dose (gray)
(1) *Bactrocera dorsalis*	Oriental fruit fly	250
(2) *Ceratitis capitata*	Mediterranean fruit fly	225
(3) *Bactrocera cucurbitae*	Melon fly	210
(4) *Anastrepha fraterculus*	South American fruit fly	150
(5) *Anastrepha suspensa*	Caribbean fruit fly	150
(6) *Anastrepha ludens*	Mexican fruit fly	150
(7) *Anastrepha obliqua*	West Indian fruit fly	150
(8) *Anastrepha serpentina*	Sapote fruit fly	150
(9) *Bactrocera tryoni*	Queensland fruit fly	150
(10) *Bactrocera jarvisi*	(No common name)	150
(11) *Bactrocera latifrons*	Malaysian fruit fly	150
(12) *Sternochetus mangiferae* (Fabricus)	Mango seed weevil	100

Six commenters made comments suggesting changes to these dose rates. Four of these commenters suggested specific dose rate changes, and two addressed the need for research on dose rates more generally. Several commenters drew attention to the statement in the proposed rule (pp. 34113–34114) that "The dose of ionizing radiation, calculated in gray, must be sufficient to prevent adult emergence of each species of fruit fly in fruits and vegetables. Each dose is set at the lowest level that achieves this effect; the dose will not necessarily kill larvae immediately after treatment." Three commenters stated that APHIS did not set doses at the lowest level that will prevent adult emergence and cited research reports to support their positions.

The commenters who suggested specific changes to doses suggested the following doses for the final rule:

Scientific name	Common name	Proposed dose (gray)	Dose suggested by commenters
(1) *Bactrocera dorsalis*	Oriental fruit fly	250	150
(2) *Ceratitis capitata*	Mediterranean fruit fly	225	150
(3) *Bactrocera cucurbitae*	Melon fly	210	150
(4) *Anastrepha fraterculus*	South American fruit fly	150	100
(5) *Anastrepha suspensa*	Caribbean fruit fly	150	100
(6) *Anastrepha ludens*	Mexican fruit fly	150	100
(7) *Anastrepha obliqua*	West Indian fruit fly	150	100
(8) *Anastrepha serpentina*	Sapote fruit fly	150	100
(9) *Bactrocera tryoni*	Queensland fruit fly	150	100
(10) *Bactrocera jarvisi*	(No common name)	150	100
(11) *Bactrocera latifrons*	Malaysian fruit fly	150	100
(12) *Sternochetus mangiferae* (Fabricus)	Mango seed weevil	100	300

One commenter stated that the new doses were supported by "numerous sound science based studies," but did not identify specific studies. Two commenters referred to research reports contained in "Proceedings of the Final Research Coordination Meeting on Use of Irradiation as a Quarantine Treatment of Food and Agricultural Commodities" (IAEA 1992) and "Report of ICGFI Task Force on Irradiation as a Quarantine Treatment of Fresh Fruits and Vegetables" (ICGFI 1991). These studies support the proposition that a 150 gray treatment for *B. dorsalis*, *B. cucurbitae*, and *C. capitata* is effective in preventing emergence of adult flies.

Another commenter cited studies by Hallman (1999), Bustos *et al.* (1992), and Gould & von Windeguth (1991) to support doses of 100 gray to treat for *A. suspensa*, *A. ludens*, *A. obliqua*, *A. serpentina*, *B. jarvisi*, and *B. tryoni*. This commenter also stated that the research suggests that the doses of 250 gray for *B. dorsalis* and 225 gray for *C. capitata*

may be too high, but suggested that APHIS seek further research to demonstrate this rather than changing those doses at this time. This commenter also suggested that the dose for mango seed weevil, *S. mangiferae*, should be raised to 300 gray, because the 100 gray dose was based on two limited studies that did not fully evaluate the efficacy of irradiating the weevils in mangoes, rather than in laboratory vials, and due to the extremely high rate of infestation of many foreign mangoes by the seed weevil.

Another commenter cited recent research indicating that a dose of 100 gray prevents adult emergence of *A. ludens*, *A. obliqua*, and *A. serpentina*, and that a dose of 150 gray does so for *C. capitata*. The research cited showed no adult emergence at these doses after study of more than 100,000 irradiated third instar larvae in mangoes.

In addition to suggesting that smaller doses may be effective in controlling fruit flies, several commenters stated that the proposed doses, as applied in commercial operation, would cause an unacceptably high level of damage to the quality of fresh fruit. These commenters noted that commercial irradiators treating large lots often must expose some of the lot (*e.g.*, outer layers) to two to three times the minimum dose in order to ensure that the entire lot receives at least the minimum dose. Therefore, some of the fruit treated to a minimum dose of 150 gray could receive a dose of up to 450 gray, a dose that significantly reduces the quality of some fruits. A minimum dose of 250 gray (proposed for *B. dorsalis*) would result in some of the lot being exposed to up to 750 gray, a level that would reduce most fruits to an unsaleable quality. These commenters also noted that there is a direct relationship between dose and cost of treatment; the higher the dose, the greater the cost; and suggested that it might not be economically feasible for commercial irradiators to treat fruit using the proposed doses.

Based on these comments concerning doses, we have decided to increase the dose for mango seed weevil from 100 gray to 300 gray, and to leave all the other doses at their proposed levels. We have reexamined research on irradiation as a means to control seed weevils, and the preponderance of it supports using a higher dose than the 100 gray we proposed. The only research that found 100 gray to be effective against mango seed weevil was a limited study involving a very few insects; other research by Heather and Corcoran (1990) [1], Jessup and Rigney (1990) [2], and Follett [3] found that a dose in the 300 gray range was necessary to effectively control the weevil.

The comments suggesting lowered doses for other pests, and the research supporting these comments, may have merit, but such research must be carefully evaluated and verified before we lower doses below the proposed levels, which we know are effective. APHIS, in cooperation with the Agricultural Research Service and others, will evaluate the lower doses recommended by commenters. If we determine that any or all of the recommended lower doses are effective, we will initiate rulemaking in the future to reduce the doses. However, this evaluation process will take time, and the current final rule maintains the proposed higher doses so that irradiation treatments may occur while this evaluation is underway.

Barriers Between Treated and Untreated Articles in Irradiation Facilities

Several commenters addressed the possibility that, while articles are in an irradiation facility, pests might move from articles that have not yet been irradiated to articles that have been irradiated. If this happens, irradiated articles would pose a risk of spreading these pests. They noted that if the irradiation facility is outside the United States, this risk is addressed by the proposed requirement that articles must be in insect-proof cartons before, during, and after irradiation. However, the proposal did not require insect-proof cartons at irradiation facilities in the United States. Also, while the proposed physical layout for irradiation facilities, with physically separate locations for treated and untreated articles (§ 305.2(e)(2), would prevent mixing of articles, it would not prevent the self-movement of pests from untreated articles to treated articles in the facility. The proposal only required that facility areas for untreated and treated articles "must be separated by a permanent physical barrier such as a wall or chain link fence 6 or more feet high to prevent transfer of cartons." While the proposal stated that normal business practices result in material moving through a facility quickly for cost reasons, and that untreated material would not remain in a facility long enough for adult flies to emerge from untreated materials and move to treated materials, these commenters stated that unforseen delays and processing backlogs could sometimes allow enough time for pests to move from untreated to treated articles. They suggested that for this reason, irradiation facilities in the United States should be required either to use insectproof cartons, or to have a solid barrier impervious to fruit flies between areas of the facility where untreated articles are kept and areas of the facility where treated articles are kept.

We have not made any change based on these comments because there is only a slight risk of this scenario occurring, because it is extremely improbable that larvae could crawl from the untreated to the treated area of the facility, and articles do not remain in the untreated section long enough for flies to hatch and move to the treated area. Section 305.2(c) addresses even these slight risks, by stating that in the compliance agreement a facility must sign with APHIS, "the facility operator must agree to comply with any additional requirements found necessary by the Administrator to prevent the escape, prior to irradiation, of any fruit flies that may be associated with the articles to be irradiated." In drawing up that compliance agreement, we will consider on a case-by-case basis for each facility whether safeguards are needed to prevent the escape or movement of pests at that facility.

Monitoring of Foreign Irradiation Facilities by Foreign Plant Protection Organizations and by APHIS

Several commenters suggested that effective monitoring of operations at foreign irradiation facilities was crucial to ensure that treatments were safe and effective. These commenters pointed out that in some countries the national plant protection organization could provide most of this monitoring, while in others APHIS would have to provide most of the monitoring, depending on different situations in different countries. They suggested that the section of the rule dealing with monitoring should be flexible enough to let APHIS vary its level of monitoring as needed, based on the infrastructure and capabilities of plant protection organizations in different countries. They also suggested

[1] Heather, N.W., and Corcoran, R.J. "Effects of ionizing energy on fruit flies and seed weevil in Australian mangoes". Proceedings of the IAEA/FAO Research Coordination Meeting on the Use of Irradiation as a Quarantine Treatment of Food and Agricultural Commodities, Kuala Lumpur, Malaysia, August, 1990.

[2] Jessup, A.J., and Rigney, C.J. "Gamma irradiation as a commodity treatment against Dacus tryoni, Queensland fruit fly, in fresh fruit." Proceedings of the IAEA/FAO Research Coordination Meeting on the Use of Irradiation as a Quarantine Treatment of Food and Agricultural Commodities, Kuala Lumpur, Malaysia, August, 1990.

[3] Dr. Peter Follett, Agricultural Research Service, USDA. Personal communication (1999).

that the activities that foreign plant protection services will conduct to enforce the regulations and monitor compliance should be recorded in an agreement between the foreign plant protection service and APHIS.

We agree with this comment, and have decided that the monitoring section of the rule should allow APHIS to target its monitoring as needed and provide the appropriate level of monitoring, ranging from intermittent monitoring of operations and inspection of records to a continual APHIS presence at facilities and regular inspection of untreated and treated articles for pests. We also believe that providing this level of monitoring may require APHIS to arrange for foreign plant protection services to deposit monies into a trust fund to reimburse APHIS for services, as is common practice under many other APHIS import regulations (*e.g.*, importing Fuji apples from Japan and the Republic of Korea under § 319.56–2cc, or importing Hass avocados from Mexico under § 319.56–2ff). We also agree that the activities of foreign plant protection services in support of the regulations should be recorded in a work plan that the foreign plant protection service submits to APHIS.

Supplemental Proposed Rule

Because the issues of appropriate levels of monitoring, foreign plant protection service work plans, and another issue mentioned by commenters—carton irradiation indicators, were not specifically raised in the proposed rule, we published a supplemental proposed rule to seek public comment on these issues. That supplemental proposed rule was published in the **Federal Register** on March 15, 2002 (67 FR 11610–11614, Docket 98–030–3). We accepted public comments on the supplemental proposed rule for 30 days, ending April 15, 2002. We received 67 comments during that period.

In that supplemental proposed rule, we proposed changing the monitoring section of the rule to allow APHIS to provide an appropriate level of monitoring at irradiation facilities depending on the situations in different countries, to establish two kinds of work plans to document requirements and activities, and to establish trust funds with national plant protection organizations to reimburse APHIS for its expenses.

These changes reflect our position that APHIS should sign work plans with foreign plant protection services to clearly state what regulatory requirements and levels of inspection, monitoring, and other activities apply to importation of irradiated articles into the United States and into the signatory foreign country, and that APHIS should be able to target its monitoring as needed, ranging from intermittent monitoring of operations and inspection of records to a continual APHIS presence at facilities and regular inspection of untreated and treated articles for target and nontarget pests.

With respect to the work plans, the supplemental proposed rule provided, in support of the equivalence principle, that APHIS and each foreign plant protection service will sign an irradiation treatment framework equivalency work plan that clearly states what legislative, regulatory, and other requirements must be met, and what monitoring and other activities must occur, for irradiated articles to be imported into the United States, or into the foreign country.

Of the approximately 10 comments that addressed this proposed revision of proposed § 305.2(f), most supported the changes. One commenter addressed the language in proposed § 305.2(f)(1) that would require the framework equivalency work plan to include "citations for any requirements that apply to the importation of irradiated fruits and vegetables." The commenter pointed out that some countries may not develop or legislate original requirements regarding irradiation, but may rely on and cite irradiation standards developed by international bodies such as the International Consultative Group on Food Irradiation, the International Plant Protection Convention, and others. APHIS is aware of this, and believes no change to the proposed language is needed. The framework equivalency work plan can cite whatever requirements the respective countries apply to irradiated fruits and vegetables, whether they are laws or regulations of that country or international guidelines or standards.

One commenter addressed the statement in proposed § 305.2(f)(1)(ii) that the framework equivalency plan must describe "the type and amount of inspection, monitoring, or other activities that will be required in connection with allowing the importation of irradiated fruits and vegetables." This commenter stated that inspection and monitoring of irradiation processing should not differ significantly from other treatment methods, *e.g.*, heat or cold treatments, fumigation, or controlled atmosphere treatments.

APHIS does not believe any change is necessary in regard to this comment. The proposed language does not set any required level for inspection and monitoring activities; it merely asks each country to state the level of such activities it chooses to require in the framework equivalency plan. We do not agree that all types of treatment necessarily require the same level of monitoring and inspection to verify that they are effective. The level required depends on the nature of the treatments and their technical complexity, including the number of critical control points to be monitored.

This commenter also noted that the framework equivalency plan is silent on the role of the irradiation facility, and suggested the facility should be involved in developing framework equivalency plans because facilities bear the major responsibility for making effective monitoring possible.

We do not believe any change is needed in response to this comment. The point of the framework equivalency plan is to document consistency in national requirements for importation of irradiated fruits and vegetables. The proposed regulations present no barrier to consultations between a foreign plant protection service and an irradiation facility during development of a framework equivalency plan, but it is not APHIS' place to require foreign governments to have such consultations when developing their import requirements. With regard to documenting the role and specific responsibilities of irradiation facilities under our regulations, we note that proposed § 305.2(d) requires that both a compliance agreement and an annual work plan be developed and signed by APHIS and the foreign irradiation facility.

One commenter objected to the trust fund agreement in proposed § 305.2(f)(3), stating that it is unnecessary for APHIS to send personnel to foreign countries to monitor irradiation processing. He stated that between the framework equivalency work plan and the facility preclearance work plan in proposed § 305.2(f), APHIS had set up a system where equivalency in national requirements existed, in terms of the Sanitary and Phytosanitary (SPS) Agreement of the World Trade Organization. Article 4 of that Agreement states that "Members shall accept the sanitary and phytosanitary measures of other members as equivalent, even if these measures differ from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary

or phytosanitary protection." If this situation applies, the commenter stated, "it is more cost effective for both importing and exporting countries to establish and agree to the "equivalency work plan," including the procedure for operation of irradiation facilities required for treating fruits and vegetables, than to continue to depend on inspection and monitoring of operation of quarantine treatments by officials from importing countries. Exporting countries *must* ensure that fruits are produced through Good Agricultural Practices (GAPs), and handled and processed or treated through proper protocols under Good Manufacturing Practices (GMPs) to be in compliance with the requirements of the importing countries. Each step in the production, handling, processing/treatment *must* be certified by the competent authorities in importing countries. The final product must be certified by the national plant protection organization that proper quarantine treatment, *e.g.* irradiation, was done * * *."

In response to this comment, APHIS understands that equivalency issues under the SPS Agreement are complex and evolving. First, we note that USDA collects funds for the foreign activities of its inspectors in accordance with specific statutory authority, 7 U.S.C. 7753(a), which states "The Secretary may enter into reimbursable fee agreements with persons for preclearance of plants, plant products, biological control organisms, and articles at locations outside the United States for movement into the United States."

Secondly, we disagree that, by jointly developing a framework equivalency work plan and a facility preclearance work plan, APHIS and the exporting country will demonstrate that equivalency exists. At most, developing these plans will help identify *to what degree* equivalency exists, and may also identify areas where the procedures and technical expertise of the exporting country do not meet the United States' "appropriate level of sanitary or phytosanitary protection." Certainly, the level of inspection and monitoring performed by APHIS employees under the trust fund agreement will vary depending on the effectiveness—the equivalency—of the activities of the foreign plant protection service.

In developing the framework equivalency work plan—a joint activity—both APHIS and the exporting country will have the opportunity to negotiate the necessary or appropriate conditions to establish and run the program. In some cases, there may be concerns about whether the exporting country has adequate technical expertise, experience, and oversight capability to ensure an irradiation treatment program is conducted properly. In other cases, the host government may have more capability. This final rule does not preclude the exporting country from proposing alternative approaches or options for meeting any concerns we may have that might cause us to increase the level of activities by APHIS inspectors under the trust fund agreement. Also, the framework equivalency work plan will be subject to annual review, which allows for the possible reduction of oversight (and associated costs) as confidence grows in the program.

Thirdly, costs associated with implementing an inspection, treatment, or other safeguarding program are normal and expected in agricultural trade. The obligation in the SPS Agreement is that "* * *any fees imposed for procedures related to control, inspection, and approval are equitable in relation to any fees charged on like domestic products or products originating in any other Member and should be no higher than the actual cost of the service" (Annex C). In other words, APHIS should avoid inconsistent or discriminatory charges or fees, and we believe the final rule does this.

One commenter stated that the work plans and monitoring provisions in proposed § 305.2(f) are premature and are subject to challenge, vis-a-vis pending revisions to the two main General Standards of the Codex Alimentarius Commission that relate to food irradiation. If and when these standards are approved, they could become official WTO guidance addressing operational requirements at irradiation facilities, including dosimetry, recordkeeping, inventory control, inspections, and other matters. The commenter stated that any conflict between U.S. food standards and those of a WTO member nation could be challenged under the WTO's binding dispute resolution system.

We are making no change based on this comment. The fact that the Codex Alimentarius Commission is working on developing standards for the future does not provide any current basis for a challenge to our regulations. If and when international standards are ready for adoption, we will examine them to determine whether any of our regulations should be amended to be consistent with them. We also note that APHIS has consistently worked with bodies developing international guidelines for irradiation of fruits and vegetables, and we believe our final rule is consistent with the anticipated products of these bodies.

One commenter suggested a change to proposed § 305.2(h)(3), which read "The utilization of the dosimetry system, including the number and placement of dosimeters used, must be in accordance with American Society for Testing and Materials (ASTM) standards." This commenter pointed out that much of the ASTM "standards" are actually guidelines that are meant to be flexible and adaptive, and to state that they "must" be followed is confusing. The commenter also noted that there are other authoritative sources similar to ASTM standards regarding dosimetry, such as standards developed by the National Institute of Standards and Technology, that are in wide use in U.S. and foreign nuclear industries.

We agree that the reference in proposed § 305.2(h)(3) was too definite and restrictive, and implied that the ASTM published precise dosimetry standards that all irradiation facilities could and must follow exactly. In fact, the ASTM describes its dosimetry guide as a document that "covers the basis for selecting and calibrating dosimetry systems used to measure absorbed dose * * *. It discusses the types of dosimetry systems that may be employed during calibration or on a routine basis as part of quality assurance in commercial radiation processing of products. This guide also discusses interpretation of absorbed dose and briefly outlines measurements of the uncertainties associated with the dosimetry. The details of the calibration of the analytical instrumentation are addressed in individual dosimetry system standard practices * * *. This guide should be used along with standard practices and guides for specific dosimetry systems and applications covered in other standards."

In fact, the ASTM standards for dosimetry describe basic principles, effective techniques, and best practices, but do not provide absolute or mandatory standards for dosimetry systems. To recognize this, we are changing the statement in § 305.2(h)(3) to read as follows: "When designing the facility's dosimetry system and procedures for its operation, the facility operator must address guidance and principles from American Society for Testing and Materials (ASTM) standards or an equivalent standard recognized by the Administrator."

Irradiation Indicators and Tests To Identify Irradiated Fruit

Several commenters on the original proposed rule suggested that we should require that prior to irradiation, indicators should be attached to cartons of articles. These indicators would change color, or undergo some other obvious change, when exposed to irradiation in the required dose range for regulated articles. The commenters stated that these indicators would be a very useful safeguard and could be used by enforcement personnel and others as a quick check to confirm that a particular carton had in fact been exposed to the required level of radiation. Commenters identified several devices and dye-impregnated labels that react to radiation in the 150–250 gray range.

Because we did not propose to require any such indicators or tests in the proposed rule, we discussed their use in the supplemental proposed rule. In the supplemental proposed rule, we proposed to change the paragraph addressing packaging, § 305.2(g)(1), to state that "each carton must bear an indicator device, securely attached prior to irradiation, that changes color or provides another clear visual change when it is exposed to radiation in the dose range required by this section for the pests for which the articles are being treated."

We received more than 20 comments on this proposed change. Several were mildly supportive of using carton indicators, but the large majority of comments opposed the requirement for numerous technical, operational, and cost-benefit reasons. Several commenters cited the report, "Standardized methods to verify absorbed dose in irradiated food for insect control," published in 2001 by the International Atomic Energy Agency, IAEA, Vienna, IAEA–TECDOC–1201. The commenters stated that the findings of that report indicated that, at present, color indicator devices are not suitable and not reliable to be used in phytosanitary applications and should not be used until such devices are further developed and are thoroughly tested for reliability.

Other commenters cited the document ASTM Standard E 1539–98, "Standard Guide for Use of Radiation-Sensitive Indicators." Section 7.3 of that document states: "Some irradiation or storage conditions may result in false positive or negative observations. For these reasons, indicators should not be used as a criterion for product release. Also, external environmental influences may make the interpretation of the indicators meaningless outside the irradiation facility unless appropriate controls are used."

One commenter cited several additional research articles[4] that evaluate the effectiveness, sensitivity, and vulnerability to environmental effects of irradiation indicators.

Several commenters noted that the few indicators currently on the market were not sensitive enough to properly document the proposed dose ranges of 100 to 250 gray. They noted that the margin of error for such indicators appeared to be about 100 gray—meaning that an indicator designed to change color at a dose of 250 gray might change at a dose as low as 150 gray, or not change until it received a dose of 350 gray. These commenters noted that if irradiation facilities concentrate on indicator color change as a measure of success, they could subject some articles to unnecessarily high doses, or even pass some articles that received less than the required doses.

Several commenters suggested that APHIS should concentrate on ensuring that irradiation facilities conduct and document proper and effective dosimetry programs and not require carton indicators unless and until they are proven reliable, useful, and cost-effective at a later date. They suggested that inspectors at the port of entry, if they find insects or larvae in an irradiated shipment or have other questions about the adequacy of the irradiation, could use the required labeling and documentation to check on the treatment of that shipment—*e.g.*, by matching carton lot numbers from the port with carton lot numbers in the facility's records. Inspectors could readily verify with the facility operator that a particular shipment had been irradiated, and could also check APHIS monitoring records for that facility. Given modern communications and databases, such verification would not unduly delay release of shipments at ports.

Other commenters took issue with a statement in the economic analysis for the supplemental proposal that use of indicators would increase the price of imported articles by only "a few cents per pound." These commenters pointed out that, even if this is true, the cost of irradiating articles at some facilities could be as low as 5 cents per pound, and increasing this cost to 8 cents by requiring indicators amounted to a 60 percent cost increase for treatment. They also noted that a price differential of 3 cents per pound could be a critical disadvantage in some market situations.

We have carefully analyzed all the data and opinions submitted recommending against the indicator requirement, and we have decided not to require indicators at this time. While we believe that a conceivable indicator could be employed as a possible cross-check at ports of entry, apparently there is no such indicator that is: (1) Currently available at low cost; (2) validated to be sensitive and reliable in the appropriate dose ranges; and (3) validated to be resistant to false positives and false negatives caused by environmental effects. We also concur with commenters that, at least during the early implementation of this program and the first operations of irradiation facilities under the regulations, it is important to concentrate on effective dosimetry programs and recordkeeping at facilities, and effective communications between APHIS inspectors and facilities to backtrack treatment records for individual shipments, rather than attempting to use problematic indicator technologies.

One commenter wrote, in support of requiring indicators, that it was a manufacturer of luminescence technology devices that were sensitive to irradiation in the dose ranges APHIS proposed. While these indicators do not change color in a manner visible to the naked eye, their state change after irradiation can be read by an inexpensive device similar to a barcode scanner. This commenter claimed that such indicators have advantages in terms of cost, resistance to environmental effects, and counterfeit resistance.

While such devices are not consistent with the type of indicator APHIS proposed—which was for an indicator "that changes color or provides another clear visual change"—APHIS will consider such devices, along with other types of indicator technology, in its future consideration of whether to require indicators. We wish to emphasize that we welcome suggestions regarding ways indicators might be used effectively, and technical descriptions of available indicators. Also, since irradiation facilities in foreign countries,

[4] Ehlermann, D.A.E. (Federal Research Centre for Nutrition, Karlsruhe (DE). Inst. of Process Engineering). "Validation of a label dosimeter for food irradiation applications by subjective and objective means." Appl. Radiat. Isot.; v. 48(9), p. 1197–1201; 1997.

Ehlermann, D.A.E. (Federal Research Centre for Nutrition, Karlsruhe (Germany). Inst. of Process Engineering). "Validation of a label dosimeter with regard to dose assurance in critical applications as quarantine control." International Atomic Energy Agency, IAEA: Vienna (Austria); 1999, p. 265–270; IAEA–TECDOC—1070; IAEA–SM–356/38.

International Atomic Energy Agency. "Standardized methods to verify absorbed dose in irradiated food for insect control." IAEA: Vienna, 2001, IAEA–TECDOC–1201.

Razem, D. (Ruder Boskovic Inst., Zagreb (Croatia)). "Dosimetric performance of and environmental effects on sterin irradiation indicator labels." Radiat. Phys. Chem.; v. 49(4) p. 491–495.

and the government agencies that regulate irradiation in those countries, ultimately bear a great deal of responsibility for ensuring that products are irradiated in accordance with APHIS requirements, we welcome any suggestions from those sources on the use of indicators or other methods for confirming that products were properly irradiated.

Other Comments on the Supplemental Proposed Rule

We received approximately 50 comments on the supplemental proposed rule that were similar to the 2000 form-letter comments we received on the original proposal. These comments generally raised issues that are outside the scope of the current rulemaking, such as the safety of irradiation facilities and the nutritional value of irradiated food.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule with the changes discussed in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide an alternative to other currently approved treatments against fruit flies and the mango seed weevil in fruits and vegetables, thus relieving restrictions. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

The economic analysis for the changes in this document is set forth below. It provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis regarding the effect of this rule on small entities. In the initial regulatory flexibility analysis in the proposed rule we stated that we did not have all the data necessary for a comprehensive analysis of the effects of this rule on small entities, and we invited comments concerning potential effects. In particular, we solicited data to help determine the number and kinds of small entities that may incur benefits or costs from implementation of this proposed rule. We did not receive any comments challenging our estimates of the number and kinds of small entities affected, although several comments did state that the additional cost of requiring carton indicators (a requirement removed from this final rule, as discussed elsewhere in this document) would have adverse impacts on both large and small importers.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of injurious plant pests.

This rule will permit the treatment of imported fruits and vegetables by irradiation, in place of or in conjunction with existing phytosanitary treatments or other protocols, for 11 species of fruit flies and one species of seed weevil. Irradiation could take place prior to shipment to the United States or after arrival. There are requirements for certification of the facilities, treatment monitoring, pallet security, and recordkeeping for irradiation at all facilities, and packaging and labeling requirements for articles irradiated before arrival in the United States. Irradiation facilities must use an approved dosimetry system during treatment and keep records to verify effective irradiation. For irradiation after arrival, compliance agreements will impose requirements on the transit from ports to irradiation facilities, to ensure all shipments requiring irradiation are delivered to the facility and are not rerouted to sale prior to treatment.

Firms in the United States primarily affected by this rule will be ones conducting the irradiation treatments. They could be variously classified by the Small Business Administration, depending on each one's particular business enterprises. A firm providing irradiation services strictly for the treatment of crops, including imported fruits and vegetables, would be included in the Standard Industry Classification (SIC) category 0723 (Crop Preparation Services, except Cotton Ginning). A firm would qualify as a small entity if it had annual revenues of $5 million or less. If a firm that imports or wholesales fruits and vegetables were to perform the irradiation itself, it would be included in SIC 5148 (Fresh Fruits and Vegetables), since its principal activity would remain importing or wholesaling. In this case, the firm would be designated as a small entity if it had 100 or fewer employees.

Firms expected to benefit most immediately from this rule, however, would not belong in either of these SIC categories. They would be companies that currently provide irradiation services on contract for decontamination or sterilization purposes and could readily adapt to perform phytosanitary irradiation. They are classified within SIC 2099 (Food Preparations, N.E.C.) or SIC 2842 (Specialty Cleaning, Polishing, and Sanitation). The former category includes firms that irradiate food items, such as spices, seeds, culinary herbs, vegetable seasoning, and poultry, to destroy harmful pathogens. Included in SIC 2842 are firms that primarily provide irradiation services for the sterilization of medical devices, pharmaceutical preparations, and raw materials used in cosmetic products.

Four firms with SIC 2099 or 2842 designations have been identified that provide irradiation services on contract. For both categories, employment of 500 or fewer persons qualifies a firm as a small entity. Three of the four firms are considered small. (The fourth one had been a small entity until last year, when it was purchased by another corporation.)

Of these four companies, the one that is not a small entity is the only one engaged at present in phytosanitary irradiation. This firm treats papayas, carambolas, litchis, and other tropical fruits from Hawaii that are moved interstate to the mainland United States. Irradiation of the fruit in accordance with 7 CFR 318.13–4f, performed at facilities in Illinois, removes the risk of Mediterranean, Oriental, and melon fruit fly introduction, while also lengthening the shelf life of the fruit. Treatment of the Hawaiian fruit, however, is a small part of the firm's business; irradiation services are mainly provided for sterilization purposes through a network of facilities in nine States and Canada.

Similarly, the second of the four firms has 12 facilities throughout the United States, 8 of which are used for medical sterilizations and 4 for other purposes. One of the 12 facilities, located in southern California, has been adapted for irradiation of fruits and vegetables for the purpose of lengthening shelf life.

The other two firms that provide irradiation services are single-facility businesses. One, in Maryland, principally conducts medical and pharmaceutical sterilizations, and the other, in Florida, has been irradiating

poultry products for the retail market and hospitals since 1993.

In addition to these four firms, companies that use irradiation to sterilize their own products could also benefit from this rule by contracting their irradiation facilities for phytosanitary purposes. Location, throughput capacity, the irradiating processes used, and other characteristics of the facilities would help determine whether the cost of their services would be competitive in comparison to the cost of alternative methods of treatments.

While these firms are technologically capable of taking advantage of treatment opportunities afforded by this rule, any economic effects on them will ultimately depend on the cost effectiveness of irradiation when compared to alternative phytosanitary treatments. A 1994 study sheds light on the benefits and costs of irradiation versus methyl bromide (MB) fumigation for the treatment of imported fruits and vegetables.[5] Economic benefits in this study were estimated in terms of preventing potential economic losses in U.S. fruit and vegetable markets that would result from discontinuation of MB as a fumigant for imports. In fiscal year 1996, 14 percent of imported fruits, nuts, and vegetables, valued at about $345 million, were treated with MB, 80 percent at U.S. ports and 20 percent in preclearance programs in foreign locations.[6] Although temperature-modifying treatments are possible alternatives for some fruits and vegetables, MB fumigation is the principal, and sometimes sole, phytosanitary treatment available for many commodities.

The 1994 study focused on short- and medium-term costs and benefits of irradiation treatment in off-season U.S. import markets for grapes, nectarines, okra, peaches, and plums. Grapes comprise over 80 percent, by value, of imported fruits and vegetables fumigated with MB, but they have a low tolerance for irradiation. When grapes were included in the analysis, irradiation treatment costs, in 1998 dollars, ranged from 1.6 to 3.9 cents per pound. Excluding grapes, irradiation cost estimates ranged from 3.4 to 3.9 cents per pound.[7] These unit costs reflect the substantial economies of size that could be captured by irradiation facilities, due to the concentration of imported fruit at certain ports of arrival.

Preshipment and quarantine uses of MB, along with critical agricultural and emergency uses, are exempted from the MB phase out required by the Clean Air Act.[8] These exemptions essentially segment the MB market into restricted and unrestricted parts. Demand for MB used for exempted purposes is expected to remain unaffected as its use as a soil fumigant is restricted. However, reduced production due to the phase out may cause the price of MB used for phytosanitary purposes to rise, due to an increase in the unit cost of production. Most MB in the world is manufactured by only three companies, two in the United States and one in Israel. Whether their economies of production can be maintained will depend on the demand for MB for exempted purposes in the United States and other developed countries, and overall demand in developing countries (where final phase out is scheduled under the Montreal Protocol for 2015).

The demand for irradiation as a treatment alternative will be influenced by product quality and phytotoxicity issues. Product shelf life can be extended by irradiation. Moreover, some fruits and vegetables that are damaged by fumigation or temperature-modifying treatments are tolerant of irradiation. On the other hand, as indicated above for grapes, some fruits and vegetables are considered not very tolerant of irradiation. Assuming consumers accept irradiation as a phytosanitary treatment, its use will be determined not only by the availability of alternative treatments and relative costs but also by its enhancing or diminishing effects on product quality.

When the latter range of unit costs (3.4 to 3.9 cents per pound) are applied to fumigated quantities of 11 varieties of fruits imported in fiscal year 1996 that have a high or medium tolerance of irradiation, costs of irradiation treatment range, in 1998 dollars, between $2.7 million and $3.1 million.[9] Applying MB fumigation costs assumed in the 1994 study, 0.6 to 1.2 cents per pound in 1998 dollars, yields a total treatment cost of $0.5 million to $0.9 million for this same set of imports. It is apparent that the use of irradiation for phytosanitary purposes is probably not a cost-competitive alternative to MB fumigation at present. However, the phase-out of MB as a soil fumigant may result in an increase in its unit cost of production, thereby making the cost of irradiation and other treatment alternatives more competitive.

This rule will broaden the choices among phytosanitary treatment alternatives for U.S. fruit and vegetable importers. No net societal gains and losses other than small price-related changes are expected from this rule if irradiation is used only to treat fruits and vegetables that would have been imported otherwise using an alternative treatment. Income earned by firms providing the irradiation services would be income forgone by the displaced fumigators or other treatment providers. But if irradiation enables importations that would not otherwise occur, then societal gains (increased imports) could be attributed to its phytosanitary use. Irradiation treatment most likely will both serve as an alternative treatment for a fraction of current imports and stimulate additional imports for certain fruits and vegetables, such as papaya, that need to be treated for fruit flies and have a high tolerance for irradiation.

Allowing irradiation to be used as a phytosanitary treatment for 11 fruit fly species and one seed weevil species would most immediately benefit four firms, three of which are small entities, that currently provide irradiation services on contract for sterilization and decontamination purposes. Participation of these firms, and entry of other firms, in the treatment of imported

[5] "Costs and Benefits of Irradiation Versus Methyl Bromide Fumigation for Disinfestation of U.S. Fruit and Vegetable Imports," by Kenneth W. Forsythe, Jr. and Phylo Evangelou, ERS Staff Report No. AGES 9412, March 1994.

[6] "Quarantine Uses of Methyl Bromide by the United States, Fiscal Year 1996" (Draft), APHIS-PPD-PAD, April 1997; available in the APHIS reading room (see **ADDRESSES**).

[7] To adjust irradiation unit costs estimated in the 1994 study from 1987 dollars to 1998 dollars, values are multiplied by a factor of 1.23 (producer price index for capital equipment, series ID: WPSSOP3200, Bureau of Labor Statistics, U.S. Dept. of Labor).

[8] Ten percent of methyl bromide used annually in agriculture in the United States is for commodity and quarantine treatment, compared to 85 percent for soil fumigation and 5 percent for structural fumigation. The 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law 105–277) made specific changes to the Clean Air Act, to harmonize the U.S. phaseout of methyl bromide with the Montreal Protocol phaseout schedule for developed countries. This schedule requires U.S. methyl bromide production and importation reductions (from 1991 levels) of 25 percent in 1999, 50 percent in 2001, 70 percent in 2003, and 100 percent in 2005; exempted from this phaseout schedule are critical agricultural, emergency, and preshipment and quarantine uses. With respect to traded commodities, the amendment states that "the [EPA] Administrator shall exempt the production, importation, and consumption of methyl bromide to fumigate commodities entering or leaving the United States or any State (or political subdivision thereof) for purposes of compliance with Animal and Plant Health Inspection Service requirements * * *" (*www.epa.gov/ozone/mbr/mbrqa.html*).

[9] The 11 fruits are apricot, banana/plantain, grapefruit, orange, papaya, peach/ nectarine, pineapple, plum, strawberry, tangerine, and tomato. The combined weight of import shipments of these fruits that were fumigated with MB in fiscal year 1996 was approximately 78.3 million pounds. This represented only 2.43 percent, by weight, of total imports of these 11 fruits (see, *op. cit.*, "Quarantine Uses of Methyl Bromide by the United States, Fiscal Year 1996" [Draft], Table 1). The range of costs is probably underestimated, since it assumes economies of size would be captured in all cases.

fruits and vegetables will depend upon the demand that develops for irradiation in relation to alternative treatments.

The economic effects of the changes adopted from the supplemental proposed rule result from the establishment of trust fund agreements to reimburse APHIS for its activities monitoring irradiation facilities in foreign countries. We are requiring that the inspection and monitoring activities performed by a foreign plant protection service at irradiation facilities located overseas be recorded in an agreement signed by the foreign service and APHIS. The purpose of the agreement is to ensure appropriate levels of inspection and monitoring at the facilities, thereby reducing any pest risk due to misunderstandings or shortcomings in the oversight of irradiation and related processes at facilities.

When a foreign plant protection service establishes a trust fund agreement to reimburse APHIS for expenses, that service may or may not pass along the cost of depositing those funds to producers in that country, depending on the service's funding mechanisms. If it passes along that cost to foreign producers, those producers will likely raise the price of fruits and vegetables exported to the United States to cover the costs. However, we expect that trust fund agreement costs to have a negligible effect on the prices paid by U.S. merchants and consumers for the imported produce.

The benefits of the trust fund agreements accrue because the agreements will increase the reliability of irradiation as a phytosanitary treatment. Thus, benefits are evaluated in terms of preventing potential economic losses in U.S. fruit and vegetable markets that could occur if pests should enter the United States with articles that were not properly irradiated because trust fund agreements to monitor treatments were not in effect. These benefits cannot be readily quantified. As an example, however, averting the costs associated with a single fruit fly outbreak in the United States would save more than the total costs for trust fund agreements over many years.

The major alternative to this rule would be to not allow these irradiation treatments. In that case, importers and irradiation businesses would not accrue the benefits described above, and firms providing existing treatment alternatives would continue operating as at present (with MB fumigation becoming less competitive as its supply is constrained).

This final rule contains information collection requirements, which have been approved by the Office of Management and Budget (*see* "Paperwork Reduction Act" below).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the irradiation methods in this rule would not present a risk of introducing or disseminating plant pests and would not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under "**FOR FURTHER INFORMATION CONTACT**."

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0155.

List of Subjects

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, title 7, chapter III, of the Code of Federal Regulations is amended as follows:

1. A new part 305 is added to read as follows:

PART 305—PHYTOSANITARY TREATMENTS

Sec.

305.1 Definitions.
305.2 Irradiation treatment of imported fruits and vegetables for certain fruit flies and mango seed weevils.

Authority: 7 U.S.C. 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 305.1 Definitions.

The following definitions apply for the purposes of this part:

Administrator. The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any person delegated to act for the Administrator in matters affecting this part.

APHIS. The Animal and Plant Health Inspection Service, United States Department of Agriculture.

Dose mapping. Measurement of absorbed-dose within a process load using dosimeters placed at specified locations to produce a one-, two-, or three-dimensional distribution of absorbed dose, thus rendering a map of absorbed-dose values.

Dosimeter. A device that, when irradiated, exhibits a quantifiable change in some property of the device that can be related to absorbed dose in a given material using appropriate analytical instrumentation and techniques.

Dosimetry system. A system used for determining absorbed dose, consisting of dosimeters, measurement instruments and their associated reference standards, and procedures for the system's use.

Inspector. Any employee of the Animal and Plant Health Inspection Service or other person authorized by the Administrator to inspect and certify the plant health status of plants and products under this part.

§ 305.2 Irradiation treatment of imported fruits and vegetables for certain fruit flies and mango seed weevils.

(a) *Approved doses.* Irradiation at the following doses for the specified fruit flies and seed weevils, carried out in accordance with the provisions of this section, is approved as a treatment for all fruits and vegetables:

IRRADIATION FOR FRUIT FLIES AND SEED WEEVILS IN IMPORTED FRUITS AND VEGETABLES

Scientific name	Common name	Dose (gray)
(1) *Bactrocera dorsalis*	Oriental fruit fly	250
(2) *Ceratitis capitata*	Mediterranean fruit fly	225
(3) *Bactrocera cucurbitae*	Melon fly	210
(4) *Anastrepha fraterculus*	South American fruit fly	150
(5) *Anastrepha suspensa*	Caribbean fruit fly	150
(6) *Anastrepha ludens*	Mexican fruit fly	150
(7) *Anastrepha obliqua*	West Indian fruit fly	150
(8) *Anastrepha serpentina*	Sapote fruit fly	150
(9) *Bactrocera tryoni*	Queensland fruit fly	150
(10) *Bactrocera jarvisi*	(No common name)	150
(11) *Bactrocera latifrons*	Malaysian fruit fly	150
(12) *Sternochetus mangiferae* (Fabricus)	Mango seed weevil	300

(b) *Location of facilities.* Where certified irradiation facilities are available, an approved irradiation treatment may be conducted for any fruit or vegetable either prior to shipment to the United States or in the United States. Irradiation facilities certified under this section may be located in any State on the mainland United States except Alabama, Arizona, California, Florida, Georgia[1], Kentucky, Louisiana, Mississippi1, Nevada, New Mexico, North Carolina1, South Carolina, Tennessee, Texas, and Virginia. Prior to treatment, the fruits and vegetables to be irradiated may not move into or through any of the States listed in this paragraph, except that movement is allowed through Dallas/Fort Worth, Texas, as an authorized stop for air cargo, or as a transloading location for shipments that arrive by air but that are subsequently transloaded into trucks for overland movement from Dallas/Fort Worth into an authorized State by the shortest route.

(c) *Compliance agreement with importers and facility operators for irradiation in the United States.* If irradiation is conducted in the United States, both the importer and the operator of the irradiation facility must sign compliance agreements with the Administrator. In the facility compliance agreement, the facility operator must agree to comply with any additional requirements found necessary by the Administrator to prevent the escape, prior to irradiation, of any fruit flies that may be associated with the articles to be irradiated. In the importer compliance agreement, the importer must agree to comply with any additional requirements found necessary by the Administrator to ensure the shipment is not diverted to a destination other than treatment and to prevent escape of plant pests from the articles to be irradiated during their transit from the port of first arrival to the irradiation facility in the United States.

(d) *Compliance agreement with irradiation facilities outside the United States.* If irradiation is conducted outside the United States, the operator of the irradiation facility must sign a compliance agreement with the Administrator and the plant protection service of the country in which the facility is located. In this agreement, the facility operator must agree to comply with the requirements of this section, and the plant protection service of the country in which the facility is located must agree to monitor that compliance and to inform the Administrator of any noncompliance.

(e) *Certified facility.* The irradiation treatment facility must be certified by the Administrator. Recertification is required in the event of an increase or decrease in the amount of radioisotope, a major modification to equipment that affects the delivered dose, or a change in the owner or managing entity of the facility. Recertification also may be required in cases where a significant variance in dose delivery has been measured by the dosimetry system. In order to be certified, a facility must:

(1) Be capable of administering the minimum absorbed ionizing radiation doses specified in paragraph (a) of this section to the fruits and vegetables;[2]

(2) Be constructed so as to provide physically separate locations for treated and untreated fruits and vegetables, except that fruits and vegetables traveling by conveyor directly into the irradiation chamber may pass through an area that would otherwise be separated. The locations must be separated by a permanent physical barrier such as a wall or chain link fence 6 or more feet high to prevent transfer of cartons, or some other means approved during certification to prevent reinfestation of articles and spread of pests;

(3) If the facility is located in the United States, the facility will only be certified if the Administrator determines that regulated articles will be safely transported to the facility from the port of arrival without significant risk that plant pests will escape in transit or while the regulated articles are at the facility.

(f) *Monitoring and interagency agreements.* Treatment must be monitored by an inspector. This monitoring will include inspection of treatment records and unannounced inspections of the facility by an inspector, and may include inspection of articles prior to or after irradiation. Facilities that carry out irradiation

[1] Irradiation facilities may be located at the maritime ports of Gulfport, MS, or Wilmington, NC, or the airport of Atlanta, GA, if the following special conditions are met: The articles to be irradiated must be imported packaged in accordance with paragraph (g)(2)(i)(A) of this section; the irradiation facility and APHIS must agree in advance on the route by which shipments are allowed to move between the vessel on which they arrive and the irradiation facility; untreated articles may not be removed from their packaging prior to treatment under any circumstances; blacklight or sticky paper must be used within the irradiation facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the facility; and the facility must have contingency plans, approved by APHIS, for safely destroying or disposing of fruit.

[2] The maximum absorbed ionizing radiation dose and the irradiation of food is regulated by the Food and Drug Administration under 21 CFR part 179.

operations must notify the Director of Preclearance, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, of scheduled operations at least 30 days before operations commence, except where otherwise provided in the facility preclearance work plan. To ensure the appropriate level of monitoring, before articles may be imported in accordance with this section, the following agreements must be signed:

(1) *Irradiation treatment framework equivalency work plan.* The plant protection service of a country from which articles are to be imported into the United States in accordance with this section must sign a framework equivalency work plan with APHIS. In this plan, both the foreign plant protection service and APHIS will specify the following items for their respective countries:

(i) Citations for any requirements that apply to the importation of irradiated fruits and vegetables;

(ii) The type and amount of inspection, monitoring, or other activities that will be required in connection with allowing the importation of irradiated fruits and vegetables into that country; and

(iii) Any other conditions that must be met to allow the importation of irradiated fruits and vegetables into that country.

(2) *Facility preclearance work plan.* Prior to commencing importation into the United States of articles treated at a foreign irradiation facility, APHIS and the plant protection service of the country from which articles are to be imported must jointly develop a preclearance work plan that details the activities that APHIS and the foreign plant protection service will carry out in connection with each irradiation facility to verify the facility's compliance with the requirements of this section. Typical activities to be described in this work plan may include frequency of visits to the facility by APHIS and foreign plant protection inspectors, methods for reviewing facility records, and methods for verifying that facilities are in compliance with the requirements for separation of articles, packaging, labeling, and other requirements of this section. This facility preclearance work plan will be reviewed and renewed by APHIS and the foreign plant protection service on an annual basis.

(3) *Trust fund agreement.* Irradiated articles may be imported into the United States in accordance with this section only if the plant protection service of the country in which the irradiation facility is located has entered into a trust fund agreement with APHIS. That agreement requires the plant protection service to pay, in advance of each shipping season, all costs that APHIS estimates it will incur in providing inspection and treatment monitoring services at the irradiation facility during that shipping season. Those costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement will describe the general nature and scope of APHIS services provided at irradiation facilities covered by the agreement, such as whether APHIS inspectors will monitor operations continuously or intermittently, and will generally describe the extent of inspections APHIS will perform on articles prior to and after irradiation. The agreement requires the plant protection service to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the plant protection service to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any more articles irradiated in that country may be imported into the United States. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the plant protection service or held on account until needed, at the option of the plant protection service.

(g) *Packaging.* Fruits and vegetables that are irradiated in accordance with this section must be packaged in cartons in the following manner:

(1) All fruits and vegetables treated with irradiation must be shipped in the same cartons in which they are treated. Irradiated fruits and vegetables may not be packaged for shipment in a carton with nonirradiated fruits and vegetables.

(2) For all fruits and vegetables irradiated prior to arrival in the United States:

(i) The fruits and vegetables to be irradiated must be packaged either:

(A) In insect-proof cartons that have no openings that will allow the entry of fruit flies. The cartons must be sealed with seals that will visually indicate if the cartons have been opened. The cartons may be constructed of any material that prevents the entry of fruit flies and prevents oviposition by fruit flies into the articles in the carton;[3] or

(B) In noninsect-proof cartons that are stored immediately after irradiation in a room completely enclosed by walls or screening that completely precludes access by fruit flies. If stored in noninsect-proof cartons in a room that precludes access by fruit flies, prior to leaving the room each pallet of cartons must be completely enclosed in polyethylene, shrink-wrap, or another solid or netting covering that completely precludes access to the cartons by fruit flies.

(ii) To preserve the identity of treated lots, each pallet-load of cartons containing the fruits and vegetables must be wrapped before leaving the irradiation facility in one of the following ways:

(A) With polyethylene shrink wrap;

(B) With net wrapping; or

(C) With strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap.

(iii) Packaging must be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment. Pallets that remain intact as one unit until entry into the United States may have one such label per pallet. Pallets that are broken apart into smaller units prior to or during entry into the United States must have the required label information on each individual carton.

(h) *Dosimetry systems at the irradiation facility.* (1) Dosimetry mapping must indicate the doses needed to ensure that all the commodity will receive the minimum dose prescribed.

(2) Absorbed dose must be measured using an accurate dosimetry system that ensures that the absorbed dose meets or exceeds the absorbed dose required by paragraph (a) of this section (150, 210, 225, 250, or 300 gray, depending on the target species of fruit fly or seed weevil).

(3) When designing the facility's dosimetry system and procedures for its operation, the facility operator must address guidance and principles from American Society for Testing and Materials (ASTM) standards[4] or an equivalent standard recognized by the Administrator.

(i) *Records.* An irradiation processor must maintain records of each treated lot for 1 year following the treatment date and must make these records available for inspection by an inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays). These records must include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation.

(j) *Request for certification and inspection of facility.* Persons requesting certification of an irradiation treatment facility must submit the request for approval in writing to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Oxford Plant Protection Center, 901 Hillsboro Street, Oxford, NC 27565. The initial request must identify the owner, location, and radiation source of the facility, and the applicant must supply additional information about the facility construction, treatment protocols, and operations upon request by APHIS if APHIS requires additional information to evaluate the request. Before the Administrator determines whether an irradiation facility is eligible for certification, an inspector will make a personal inspection of the facility to determine whether it complies with the standards of this section.

(k) *Denial and withdrawal of certification.* (1) The Administrator will withdraw the certification of any irradiation treatment facility upon written request from the irradiation processor.

(2) The Administrator will deny or withdraw certification of an irradiation treatment facility when any provision of this section is not met. Before withdrawing or denying certification, the Administrator will inform the irradiation processor in writing of the reasons for the proposed action and provide the irradiation processor with an opportunity to respond. The Administrator will give the irradiation processor an opportunity for a hearing regarding any dispute of a material fact, in accordance with rules of practice that will be adopted for the proceeding. However, the Administrator will suspend certification pending final determination in the proceeding if he or she determines that suspension is necessary to prevent the spread of any dangerous insect. The suspension will be effective upon oral or written notification, whichever is earlier, to the irradiation processor. In the event of oral notification, written confirmation will be given to the irradiation processor within 10 days of the oral notification. The suspension will continue in effect pending completion of the proceeding and any judicial review of the proceeding.

(l) *Department not responsible for damage.* This treatment is approved to assure quarantine security against the listed fruit flies. From the literature available, the fruits and vegetables authorized for treatment under this section are believed tolerant to the treatment; however, the facility operator and shipper are responsible for determination of tolerance. The Department of Agriculture and its inspectors assume no responsibility for any loss or damage resulting from any treatment prescribed or monitored. Additionally, the Nuclear Regulatory Commission is responsible for ensuring that irradiation facilities are constructed and operated in a safe manner. Further, the Food and Drug Administration is responsible for ensuring that irradiated foods are safe and wholesome for human consumption. (Approved by the Office of Management and Budget under control number 0579–0155)

[3] If there is a question as to the adequacy of a carton, send a request for approval of the carton, together with a sample carton, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Oxford Plant Protection Center, 901 Hillsboro Street, Oxford, NC 27565.

[4] Designation ISO/ASTM 51261–2002(E), "Standard Guide for Selection and Calibration of Dosimetry Systems for Radiation Processing," American Society for Testing and Materials, *Annual Book of ASTM Standards.*

PART 319—FOREIGN QUARANTINE NOTICES

2. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

3. In § 319.56–2, a new paragraph (k) is added to read as follows:

§ 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(k) Any fruit or vegetable that is required by this subpart or the Plant Protection and Quarantine Treatment Manual to be treated or subjected to other growing or inspection requirements to control one or more of the 11 species of fruit flies and one species of seed weevil listed in § 305.2(a) of this chapter as a condition of entry into the United States may instead be treated by irradiation in accordance with part 305 of this chapter.

4. In § 319.56–2x, paragraph (a), the introductory text preceding the table is revised to read as follows:

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) The following fruits and vegetables may be imported into the United States only if they have been treated in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1 of this chapter. Treatment by irradiation in accordance with part 305 of this chapter may be substituted for treatments in the PPQ Treatment Manual for the mango seed weevil *Sternochetus mangiferae* (Fabricus) or for one or more of the following 11 species of fruit flies: *Anastrepha fraterculus, Anastrepha ludens, Anastrepha obliqua, Anastrepha serpentina, Anastrepha suspensa, Bactrocera cucurbitae, Bactrocera dorsalis, Bactrocera tryoni, Bactrocera jarvisi, Bactrocera latifrons,* and *Ceratitis capitata.*

* * * * *

Done in Washington, DC, this 18th day of October, 2002.

Bobby R. Acord,

Acting Under Secretary, Marketing and Regulatory Programs.

[FR Doc. 02–27027 Filed 10–18–02; 4:38 pm]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Forage Seeding Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correcting amendment.

SUMMARY: This document contains corrections to the final regulation which was published Wednesday, August 15, 2001 (66 FR 42729–42730). This document pertains to the Forage Seeding Crop Provisions for 2004 and subsequent crop years.

EFFECTIVE DATE: October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Arden Routh, Risk Management Specialist, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Kansas City, MO, 64133, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background on Need for Correction

The final rule published on August 15, 2001, has a June 30 contract change date and a September 30 cancellation/sales closing date for South Dakota counties with both fall and spring seeded forage. The final planting date for fall seeded forage in these counties

is September 1. Thus, that final rule allows producers to purchase crop insurance 30 days beyond the final planting date. In order to maintain the integrity and actuarial soundness of the crop insurance program, it is necessary that producers' decisions regarding their participation in the program occur before they have any information on imminent or actual damages to their crops. Accordingly, for South Dakota counties with both fall and spring seeded forage, the cancellation/sales closing date is being changed to July 31 and the contact change date is being changed to April 30.

List of Subjects in 7 CFR Part 457

Crop Insurance.

Accordingly, 7 CFR part 457 is corrected by making the following correcting amendment:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

§ 457.151 [Corrected]

2. Revise sections 4 and 5 of the crop provisions in § 457.151 to read as follows:

* * * * *

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date for counties with a March 15 cancellation date and April 30 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation and termination dates
California, Nevada, New Hampshire, New York, Pennsylvania, South Dakota counties for which the Special Provisions designate both fall and spring final planting dates, and Vermont.	July 31.
South Dakota counties for which the Special Provisions designate only a spring final planting date, and all other states	March 15.

* * * * *

Signed in Washington, DC, on October 16, 2002.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 02–26924 Filed 10–22–02; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–58–AD; Amendment 39–12907; AD 2002–21–01]

RIN 2120–AA64

Airworthiness Directives; Britax Sell GmbH & Co. OHG Water Boilers, Coffee Makers, and Beverage Makers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), that is applicable to Britax Sell GmbH & Co. OHG water boilers, coffee makers, and beverage makers. That AD currently requires inspecting the wiring for indications of overheating or electrical arcing, and if indications are found, replacing the wiring. This amendment requires replacing the wiring on those water boilers, coffee makers, and beverage makers whether or not they show indications of overheating or electrical arcing. This amendment is prompted by revisions to the manufacturer's service bulletin that were not incorporated in the proposed rule. The actions specified by this AD are intended to prevent a fire in the galley compartment due to inadequate crimping of the electrical terminal contact pins, which could result in smoke in the cockpit and cabin and loss of control of the airplane.

DATES: Effective November 27, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 27, 2002. The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the **Federal Register** as of June 15, 2002 (66 FR 29467; May 31, 2001).

ADDRESSES: The service information referenced in this AD may be obtained from Britax Sell GmbH & Co. OHG, MPL Mr. H.D. Poggensee, P.O. Box 1161, 35721 Herborn Germany, telephone international code 49–2772–707–0; fax international code 49–2772–707–141. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street., NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7155; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–10–13, Amendment 39–12239 (66 FR 29467, May 31, 2001), which is applicable to Britax Sell GmbH & Co. OHG water boilers, coffee makers, and beverage makers was published in the **Federal Register** on June 7, 2002 (67 FR 39311). That action proposed to require replacing the wiring on those water boilers, coffee makers, and beverage makers whether or not they show indications of overheating or electrical arcing in accordance with Britax Sell GmbH & Co. OHG service bulletins (SB's) No. E33–4–010SB, Revision 1, dated August 1, 2001; No. E33–4–011SB, Revision 2, dated January 31, 2001; E33–4–012SB, Revision 1, dated November 20, 2000; and E33–4–015SB, Revision 1, dated November 15, 2000.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Requested Change to the Unsafe Condition Statement

One commenter, the manufacturer, considers the unsafe condition statement "which could result in smoke in the cockpit and cabin and loss of control of the airplane" to be exaggerated and not applicable.

The FAA does not agree. The commenter states that the unsafe condition can result in smoke in the cabin under certain circumstances. The FAA considers any smoke or possibility of fire in the cabin or cockpit to be a very serious condition. Therefore, no change will be made to the unsafe condition statement in the final rule.

Question About the Need To Issue This Final Rule

The same commenter questions the need to issue the rule again. The commenter feels that, since approximately one and one-half years have passed since the final rule was issued, all units should be in compliance.

The FAA partially agrees. The FAA agrees that, based on the compliance times specified in AD 2001–10–13, all units that were specified by serial number (SN) in AD 2001–10–13 should be in compliance. However, since that rule was issued, a service bulletin revision that was not incorporated by reference in the NPRM has been incorporated into the amendment and that revision expands the SN range of the water boilers in Table 1. Since the service bulletins are not mandatory to U.S. operators without an AD, the FAA must publish this rule to ensure that the unsafe condition has been eliminated from all affected U.S. registered airplanes.

Beverage Maker Corrections

The same commenter states that in Table 1, (4) Beverage Maker, Appliance Part Number (ii) 64771–001–003, the SN's are incorrectly called out as follows: * * *, 00–04–0042 thru 00–04–0042, * * *.

The FAA agrees. That SN series is corrected in this final rule to read * * *, 00–04–0040 thru 00–04–0042, * * *.

Economic Analysis Correction

The same commenter states that the number of work hours to perform the replacement of the wires is 1 work hour, not 10 work hours as stated in the proposal.

The FAA agrees. The FAA has adjusted the economic analysis in this final rule.

Water Boiler Serial Numbers Expanded

Service bulletin (SB) No. E33–4–010SB, dated October 20, 2000, specified in the NPRM, is not the latest revision. SB No. E33–4–010SB, Revision 1, dated August 1, 2001, expands the SN range listed in Table 1, (3). Table 1 (3) and reference to the revised SB have been changed.

Additional Changes to Table 1 of This AD

Additionally, the FAA has corrected the coffee maker appliance part number in Table 1 that was listed incorrectly in SB E33–4–012SB, Revision 1, dated November 20, 2000, from 64753–201–003 to 64763–201–003.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

The FAA estimates that 175 products installed on airplanes of U.S. registry would be affected by this AD. The FAA has been notified that the manufacturer may provide the wiring kit free of charge. The FAA estimates that it would take approximately 1.0 work hour per product to do the wire replacement, that there are five products per airplane, that the required parts will cost approximately $20 per product, and that the average labor rate is $60 per work hour. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $14,000.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12239 (66 FR 29467, May 31, 2001) and by adding a new airworthiness directive, Amendment 39–12907, to read as follows:

2002–21–01 Britax Sell GmbH & Co OHG: Amendment 39–12907. Docket No. 2000–NE–58–AD. Supersedes AD 2001–10–13, Amendment 39–12239.

Applicability: This airworthiness directive (AD) is applicable to Britax Sell GmbH & Co. OHG water boilers, coffee makers, and beverage makers, listed by part number (P/N) and serial number (SN) in Table 1 of this AD. These products are installed on, but not limited to, Airbus Industrie A319, A320, A330, AVRO RJ, Bombardier DHC–8–400, and Boeing Company 717, 737, 747, 757, 767, 777 airplanes.

Note 1: This AD applies to each product identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For products that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent a fire in the galley compartment due to inadequate crimping of the electrical terminal contact pins, which could result in smoke in the cockpit and cabin and loss of control of the airplane, do the following:

(a) Replace wiring on temperature limiters of remote water boilers, coffee makers, water boilers, and beverage makers that are listed by P/N in Table 1 of this AD during the next repair, maintenance, or descaling of the product, during the next airplane check that allows for replacing the wiring, or within one

calendar year after the effective date of this AD, whichever occurs earlier, in accordance with the applicable service bulletin (SB) specified for the appliance in Table 1 as follows:

TABLE 1.—APPLIANCE P/N AND APPLICABLE SB FOR WIRE REPLACEMENT

Appliance	Appliance P/N	SN	Tank assembly P/N	Replace wiring in accordance with SB
(1) Remote Water Boiler	62204–001–029, 62204–001–031, 62204–001–037, 62204–001–043, 62204–001–047, and 62204–001–049.	00–04–0001 thru 00–07–0033 and 00–07–0038.	62203–001–005 6603–001–007	E33–4–007SB, Revision 2, dated December 4, 2000, Accomplishment Instructions 3.A through 3.0.
(2) Coffee Maker	(i) 64755	00–05–0001 and 00–09–0003.	64761–025–001	E33–4–009SB, dated October 24, 2000, Accomplish Instructions 3.A. through 3.J.
	(ii) 64753–001–003	00–01–0001 thru 00–09–0079, 00–09–0101.	64761–025–001	E33–4–011SB, Revision 2, dated January 31, 2001, Accomplish Instructions 3.A. through 3.J.
	(iii) 64763–201–003	00–05–0001, 00–05–0002, 00–07–0003, and 00–07–0004.	64761–025–001	E33–4–012SB, Revision 1, dated November 20, 2000, Accomplish Instructions 3.A. through 3.J.
	(iv) 64769–001–005 and 64769–001–007	00–04–0001 thru 00–09–0033.	64769–025–003	E33–4–013SB, dated October 23, 2000, Accomplish Instructions 3.A. through 3.Q.
	(v) 64790–1	00–08–0001 thru 00–08–0003.	64790–393–101	E33–4–015SB. Revision 1, dated November 15, 2000. Accomplish Instructions 3.A. through 3.L.
(3) Water Boiler	62197–001–001	00–04–0001 thru 00–09–0052 and 00–09–0055.	62197–015–001	E33–4–010SB. Revision 1, dated August 1, 2001. Accomplish Instructions 3.A. through 3.S
(4) Beverage Maker	(i) 64771–001–001	00–04–0013 thru 00–04–0039, 00–04–0043 thru 00–08–0302, 00–08–0307 thru 00–08–0346, and 00–09–0368 thru 00–09–0371.	64771–025–005	E33–4–014SB. Revision 1, dated November 6, 2000, Accomplishment Instructions 3.A. through 3.J.
	(ii) 64771–001–003	00–02–0001 thru 00–03–0005, 00–04–0007 thru 00–04–0012, 00–04–0040 thru 00–04–0042, 00–04–0053 thru 00–04–0057, 00–05–0087 thru 00–05–0094, 00–07–0135 thru 00–07–0138, 00–08–0303 thru 00–08–306, 00–08–0347 thru 00–08–0354, and 00–09–0365 thru 00–09–0367.	64771–025–001	E33–4–016SB. Revision 1, dated November 6, 2000. Accomplishment Instructions 3.A. through 3.J.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(d) The actions must be done in accordance with the following Britax Sell GmbH & Co. OHG service bulletins (SB's):

Document No.	Pages	Revision	Date
E33–4–007SB Total pages: 7	All	2	December 4, 2000.
E33–4–009SB Total pages: 5	All	Original	October 24, 2000.
E33–4–010SB Total Pages: 5	All	1	August 1, 2001.
E33–4–011SB Total pages: 5	All	2	January 31, 2001.
E33–4–012SB Total pages: 5	All	1	November 20, 2000.
E33–4–013SB Total pages: 5	All	Original	October 23, 2000.
E33–4–014SB Total pages: 5	All	1	November 6, 2000.
E33–4–015SB Total pages: 5	All	1	November 15, 2000.
E33–4–016SB Total pages: 5	All	1	November 6, 2000.

The incorporation by reference of SB's E33–4–007SB, Revision 2, dated December 4, 2000; E33–4–009SB, dated October 24, 2000; E33–4–013SB, dated October 23, 2000; E33–4–014SB, Revision 1, dated November 6, 2000; and E33–4–016SB, Revision 1, dated November 6, 2000 was approved by the Director of the Federal Register on June 15, 2001 (66 FR 29467; May 31, 2001). The incorporation by reference of E33–4–010SB, Revision 1, dated August 1, 2001; E33–4–011SB, Revision 2, January 31, 2001; E33–4–012SB, Revision 1, dated November 20, 2000; and E33–4–015SB, Revision 1, dated November 15, 2000 was approved by the Director of the Federal Register on November 27, 2002, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Britax Sell GmbH & Co. OHG, MPL Mr. H.D. Poggensee, P.O. Box 1161, 35721 Herborn Germany, telephone international code 49–2772–707–0; fax international code 49–2772–707–141. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in LBA airworthiness directive 2000–379, dated November 13, 2000.

Effective Date

(e) This amendment becomes effective on November 27, 2002.

Issued in Burlington, Massachusetts, on October 7, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–26207 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–33–AD; Amendment 39–12923; AD 2002–21–16]

RIN 2120–AA64

Airworthiness Directives; Bombardier-Rotax GmbH Type 912 F, 912 S and 914 F Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Bombardier-Rotax GmbH Type 912 F, 912 S and 914 F series reciprocating engines. This action requires venting of the lubrication system and inspection of the valve train on all engines. This action also requires venting of the lubrication system of all engines on which the lubrication system has been opened, and any engine on which the propeller has been rotated one full turn in the reverse direction. This amendment is prompted by reports of several in-flight engine failures, all of which resulted in forced landings. The actions specified in this AD are intended to prevent damage to the engine valve train due to inadequate venting of the lubrication system which can result in an in-flight engine failure and forced landing.

DATES: Effective October 28, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 28, 2002.

Comments for inclusion in the Rules Docket must be received on or before December 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–33–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Bombardier-Rotax GmbH, Welser Strasse 32, A–4623 Gunskirchen, Austria; telephone 7246–601–232; fax 7246–601–370. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: Austro Control, which is the airworthiness authority for Austria, notified the FAA that an unsafe condition may exist on Bombardier-Rotax GmbH 912 F, 912 S and 914 F series reciprocating engines. Austro Control advises that there have been seven in-flight engine failures that occurred within 50 hours time-in-service (TIS) after installation of a new or overhauled engine. Investigations by Austro Control have indicated that the failures were due to inadequate venting

of the lubrication systems. Inadequate venting of the lubrication system can cause damage to the engine valve train as a result of low-pressure compression of trapped air while at maximum camshaft speed resulting in high impact stresses to valve train components.

Manufacturer's Service Information

Bombardier-Rotax GmbH has issued Mandatory Service Bulletin (MSB) No. SB–912–036/SB–914–022, Revision 1, dated August 2002, and Service Instruction SI–04–1997, Revision 3, dated September 2002. MSB No. SB SB–912–036/SB–914–022, Revision 1, dated August 2002, provides procedures for inspecting engines for correct venting of the oil system and procedures for inspecting the valve train for damage caused by inadequate venting. Austro Control has classified this service bulletin as mandatory and issued AD No.113R1 in order to assure the airworthiness of these Bombardier-Rotax GmbH engines in Austria. The manufacturer has also issued Service Instruction SI–04–1997 that provides instructions for venting the oil lubrication system after installation of the engine, after the lubrication system has been opened or drained during maintenance work, and after turning the propeller one full turn in the wrong direction of rotation.

Differences Between This AD and the Manufacturer's Service Information

Bombardier-Rotax GmbH MSB SB–912–036/SB–914–022 allows up to 5 hours TIS before venting and inspecting for correct venting of the oil system on engines with less than 50 TIS since the lubrication system has been opened and drained, since an oil change was performed, or since the propeller was rotated one full turn in the wrong direction of rotation. The FAA has determined that the venting and inspecting of the valve train must be done before further flight.

Bilateral Airworthiness Agreement

This engine model is manufactured in Austria and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Austro Control has kept the FAA informed of the situation described above. The FAA has examined the findings of Austro Control, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Bombardier-Rotax GmbH 912 F, 912 S and 914 F series reciprocating engines of the same type design, this AD is being issued to prevent damage to the engine valve train due to inadequate venting of the lubrication system which can result in an in-flight engine failure and forced landing. This AD requires:

- Before further flight, venting the lubrication system and inspecting for the correct venting of the oil system.
- Thereafter, before engine start, properly venting the lubrication system after initial installation of a new or overhauled engine, after opening the oil system, after an engine oil change, and after the propeller was rotated one full turn in the wrong direction of rotation.

The actions must be done in accordance with the mandatory service bulletin and service instruction described previously.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–33–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–21–16 Bombardier-Rotax GmbH: Amendment 39–12923. Docket No. 2002–NE–33–AD.

Applicability: This airworthiness directive (AD) is applicable to Bombardier-Rotax GmbH 912 F, 912 S and 914 F series reciprocating engines. These engines are installed on, but not limited to, Diamond Aircraft Industries, DA20–A1, Diamond Aircraft Industries GmbH Model HK 36 TTS, Model HK 36TTC, and Model HK 36 TTC–ECO, Iniziative Industriali Italiane S.p.A. Sky Arrow 650 TC and Sky Arrow 650 TCN, Aeromot-Industria Mecanico Metalurgica ltda., Models AMT–300 and AMT–200S, and Stemme S10–VT aircraft.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent damage to the engine valve train due to inadequate venting of the lubrication system which can result in an in-flight engine failure and forced landing, do the following:

Initial Venting and Inspection for Correct Venting

(a) Before further flight, for all Bombardier-Rotax GmbH 912 F, 912 S and 914 F series reciprocating engines, do the following:

(1) Perform venting and inspection for venting of the hydraulic valve tappets in accordance with section 3.1.1 through section 3.1.4 of the Accomplishment Instructions of Rotax Mandatory Service Bulletin (MSB) SB–912–036/SB–914–022, Revision 1, dated August 2002.

(2) Inspect the engine valve train in accordance with section 3.1.5 through section 3.2 of the Accomplishment Instructions of Rotax MSB SB–912–036/SB–914–022, Revision 1, dated August 2002.

Repetitive Venting of the Lubrication System

(b) Thereafter, for all Bombardier-Rotax GmbH 912 F, 912 S and 914 F series reciprocating engines, before starting the engine, vent the lubrication system in accordance with section 3 Accomplishment Instructions of Rotax Service Instruction, No. SI–04–1997, Revision 3, dated September 2002, after any of the following:

(1) The installation of a new or overhauled engine.

(2) The oil system has been opened allowing air to be ingested into the valve train (e.g. an oil change, or the oil pump, oil cooler, or suction line was removed and oil drained from the oil galleries).

(3) The engine oil was changed.

(4) The propeller was rotated one full turn in the wrong direction of rotation.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits are not permitted.

Manufacture's Service Information that has been Incorporated by Reference

(e) The venting and inspection must be done in accordance with the following Rotax mandatory service bulletin (MSB) and service instruction (SI):

Document No.	Pages	Revision	Date
MSB SB–912–036/SB–914–022 Total pages: 6	All	1	August 2002.
SI SI–04–1997 Total pages: 6	All	3	September 2002.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier-Rotax GmbH, Welser Strasse 32, A–4623 Gunskirchen, Austria; telephone 7246–601–232; fax 7246–601–370. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Austro Control airworthiness directive No. 113R1.

Effective Date

(f) This amendment becomes effective on October 28, 2002.

Issued in Burlington, Massachusetts, on October 17, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–26912 Filed 10–18–02; 2:39 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–06]

Amendment Class D Airspace; Huntington, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace at Tri-State/Milton J. Ferguson Field Airport, Huntington, WV. This action is necessary to insure continuous altitude coverage for Instrument Flight Rues (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On June 24, 2002 a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by extending Class D airspace upward from 3,300 feet mean sea level (MSL) to 3,400 feet MSL at Tri-State/Milton J. Ferguson Field Airport, Huntington, WV, was published in the **Federal Register** (67 FR 42511). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace area designations for airspace extending upward from the surface are published in Paragraph 5000 of FAA Order

7400.9K, dated August 30, 2002 and effective September 16, 2002. The Class D airspace designation listed in this document will be published in the order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) extends Class D airspace from the surface of the earth to and including 3,400 feet MSL for aircraft conducting IFR operations at Tri-State/Milton J. Ferguson Field Airport, Huntington, WV. The previous Class D airspace ceiling was 3,300 feet.

The FAA has determined that this regulations only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D airspace areas extending upward from the surface of the earth.

* * * * *

AEA WV D Huntington, WV [REVISED]

Tri-State/Milton J. Ferguson Field Airport, Huntington, WV

(Lat. 38°22'00" N., long. 82°33'29" W.)

That airspace extending upward from the surface to and including 3,400 feet MSL, within a 4-mile radius of Tri-State/Milton J. Ferguson Field Airport.

* * * * *

Issued in Jamaica, New York on October 8, 2002.

John G. McCartney,

Acting Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–27036 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30336; Amdt. No. 438]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, November 28, 2002.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on October 18, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows, effective at 0901 UTC.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 438, Effective Date: November 28, 2002]

From	To	MEA
§ 95.6001 Victor Routes—U.S.		
§ 95.6067 VOR Federal Airway 67 Is Amended to Read in Part		
Cedar Rapids, IA VOR/DME	Waterloo, IA VORTAC	2,900
Waterloo, IA VORTAC	Foyde, IA FIX	3,000
§ 95.6222 VOR Federal Airway 222 Is Amended to Read in Part		
Junction, TX VORTAC	Stonewall, TX VORTAC	4,000
§ 95.6222 VOR Federal Airway 556 Is Amended to Read in Part		
Junction, TX VORTAC	Stonewall, TX VORTAC	4,000

[FR Doc. 02–27037 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–46667]

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending its rules to delegate authority to the Director of the Division of Market Regulation ("Director") to publish acknowledgments of receipt of notices filed with the Commission pursuant to Section 6(g) of the Securities Exchange Act of 1934 ("Exchange Act") by exchanges registering as national securities exchanges to trade security futures products. This delegation of authority will facilitate the timely publication of such acknowledgments, which is required by Section 6(g)(3) of the Exchange Act.

EFFECTIVE DATE: October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer Colihan, Special Counsel, at (202) 942–0735 or Mia Zur, Law Clerk, at (202) 942–7309, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: The Commission is adopting an amendment to Rule 30–3 of its Rules of Organization and Program Management governing Delegations of Authority to the Director.[1] The Commission is adding paragraph (a)(77) to Rule 30–3 to authorize the Director to publish acknowledgments of receipt of notices of registration submitted pursuant to Section 6(g) of the Exchange Act.[2]

Section 6(g) of the Exchange Act provides that an exchange may register as a national securities exchange solely for the purposes of trading security futures products by filing a written notice with the Commission if the exchange is designated as a contract market by the Commodity Futures Trading Commission or is registered as a derivative transaction execution facility under Section 5a of the Commodity Exchange Act. Rule 6a–4 under the Exchange Act provides that an exchange wishing to become registered under Section 6(g) must provide written notice on Form 1–N. Pursuant to Section 6(g)(2)(B) of the Exchange Act, such registrations are effective contemporaneously with the submission of the written notice.[3] Section 6(g)(3) of the Exchange Act directs the Commission to promptly publish acknowledgments of receipt of all such notices in the **Federal Register**. This delegation of authority to the Director is intended to conserve Commission resources by permitting the Division of Market Regulation to publish acknowledgments of receipt of Form 1–N. Nevertheless, the staff may submit matters to the Commission for consideration as it deems appropriate.

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedures Act,[4] that these amendments relate solely to agency organization, procedure, or practice, and do not relate to a substantive rule. Accordingly, notice, opportunity for public comment, and publication of the amendment prior to its effective date are unnecessary.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

Text of Amendment

In accordance with the preamble, the Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for Part 200, subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–3 is amended by adding paragraph (a)(77) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

[1] 17 CFR 200.30–3.

[2] 15 U.S.C. 78f(g).

[3] 15 U.S.C. 78f(g)(2)(B).

[4] 5 U.S.C. 553(b)(3)(A).

(a) * * *

(77) Pursuant to Section 6(g)(3) of the Act, 15 U.S.C. 78f(g)(3), to publish acknowledgement of receipt of a notice of registration as a national securities exchange for the sole purpose of trading security futures products under Section 6(g) of the Act and Rule 6a–4 of the Act (17 CFR 240.6a–4).

* * * * *

By the Commission.

Dated: October 16, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26883 Filed 10–22–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Carprofen

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for the veterinary prescription use of carprofen oral caplets in dogs for the control of postoperative pain associated with soft tissue and orthopedic surgery.

DATES: This rule is effective October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: mberson@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d Street, New York, NY 10017–5755, filed a supplement to NADA 141–053 for RIMADYL (carprofen) Caplets for Dogs. The supplemental NADA provides for the veterinary prescription use of carprofen oral caplets in dogs for the control of postoperative pain associated with soft tissue and orthopedic surgery. The supplemental application is approved as of July 8, 2002, and the regulations are amended in 21 CFR 520.309 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetics Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning July 8, 2002.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.309 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 520.309 Carprofen.

(a) *Specifications.* (1) Each caplet contains 25, 75, or 100 milligrams (mg) carprofen.

(2) Each chewable tablet contains 25, 75, or 100 mg carprofen.

(b) *Sponsor.* See No. 000069 in § 510.600(c) of this chapter for use of caplets described in paragraph (a)(1) of this section as in paragraphs (d)(1)(i), (d)(2), and (d)(3) of this section and chewable tablets described in paragraph (a)(2) of this section as in paragraphs (d)(1)(ii), (d)(2)(ii), and (d)(3) of this section.

* * * * *

(d) *Conditions of use in dogs*—(1) *Amount*—(i) 2 mg per pound (/lb) of body weight once daily or 1 mg/lb twice daily. For the control of postoperative pain, administer approximately 2 hours before the procedure.

(ii) 2 mg/lb of body weight once daily or 1 mg/lb twice daily.

(2) *Indications for use.* (i) For the control of postoperative pain associated with soft tissue and orthopedic surgery.

(ii) For the relief of pain and inflammation associated with osteoarthritis.

(3) *Limitations.* Federal Law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: September 30, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–26876 Filed 10–22–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CGD05–02–087]

RIN 2115–AA97 and 2115–AA98

Anchorage Grounds and Safety Zone; Delaware Bay and River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Army Corps of Engineers will begin dredging parts of the Delaware River including Anchorage 7 off Marcus Hook. Because of the dredging operations, temporary additional requirements will be imposed in Anchorage 6 off Deepwater Point and Anchorage 9 near the entrance to Mantua Creek. Vessels desiring to use these anchorage grounds will need to observe these temporary requirements and no vessels will be permitted in the safety zone without the permission of the Captain of the Port.

DATES: This rule is effective from October 12, 2002, to November 2, 2002.

ADDRESSES: Documents indicated in this preamble as available are available as part of docket CGD05–02–087 for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Brian Ly, Lieutenant Junior Grade Xaimara Vicencio-Roldan, or Lieutenant Junior Grade Kevin Sligh, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) the Coast Guard finds that good cause exists for not publishing a NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. The U.S. Army Corps of Engineers, Philadelphia District, informed the Coast Guard on October 4, 2002, that dredging operations would commence on October 12, 2002. Publishing a NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to protect mariners against potential hazards associated with the dredging operations in Anchorage 7 off Marcus Hook and to modify the anchorage regulations to facilitate vessel traffic. In addition, notifications will be made via Notice to Mariners.

Background and Purpose

The U.S. Army Corps of Engineers (ACOE) notified the Coast Guard that it needed to conduct dredging operations on the Delaware River, in the vicinity of Anchorage 7 off Marcus Hook. The dredging is needed to maintain the project depth of the anchorage. During the dredging operations from October 12, 2002 through October 22, 2002, Marcus Hook Anchorage will be closed from Buoy "A" (LLNR 3165) to Buoy "B" (LLNR 3180). Then from October 22, 2002 through November 2, 2002, the Marcus Hook Anchorage will be closed from Buoy "B" (LLNR 3180) to Buoy "C" (LLNR 3205).

For the protection of mariners transiting in the vicinity of dredging operations, the Coast Guard is also establishing a safety zone around the dredging vessel PULLEN. The safety zone will ensure mariners remain a safe distance from the potentially dangerous dredging equipment.

Discussion of Rule

In 33 CFR 110.157(b)(2), vessels are allowed to anchor for up to 48 hours in the anchorage grounds listed in § 110.157(a), which includes Anchorage 7. However, because of the limited anchorage space available in Anchorage 7, the Coast Guard is adding a temporary paragraph in 33 CFR 110.157(b)(11) to provide additional requirements and restrictions on vessels utilizing Anchorage 7. During the effective period, vessels desiring to use Anchorage 7 must obtain permission from the Captain of the Port Philadelphia at least 24 hours in advance. The Captain of the Port will permit only two vessels at a time to anchor in Anchorage 7 and will grant permission on the "first come, first serve" basis. Vessels will be directed to a location within Anchorage 7 where it may anchor, and will not be permitted to remain in the Anchorage 7 from more than 12 hours.

The Coast Guard expects that vessels normally permitted to anchor in Anchorage 7 will use Anchorage 6 off Deepwater (Anchorage 6) or Anchorage 9 near the entrance to Mantua Creek (Anchorage 9), because they are the closest anchorage grounds to Anchorage 7. To control access to Anchorage 7, the Coast Guard is requiring a vessel desiring to anchor in Anchorage 7 obtain advance permission from the Captain of the Port. To control access to Anchorage 6 and 9, the Coast Guard is requiring any vessel 700 feet or greater in length to obtain advance permission from the Captain of the Port before anchoring. The Coast Guard is also concerned that the holding grounds in Anchorage 6 and 9 are not as adequate as in Anchorage 7. Therefore, a vessel 700 to 750 feet in length is required to have one tug standing alongside while at anchor, and a vessel of over 750 feet in length must have two tugs standing alongside. The tug(s) must have sufficient horsepower to prevent the vessel they are attending from swinging into the channel.

The Coast Guard is also establishing a safety zone within a 150-yard radius of the dredging operations being conducted in the Marcus Hook Anchorage by the dredge vessel PULLEN. The safety zone will protect mariners transiting the area from the potential hazards associated with dredging operations. No vessel may enter the safety zone unless it receives permission from the Captain of the Port.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this rule requires certain vessels to have one or two tugs alongside while at anchor, the requirement only applies to vessels 700 feet or greater in length, that choose to anchor in Anchorage 6 and 9. Alternate anchorage grounds such as Anchorage A off the entrance to the Mispillion River ("Anchorage A," described in § 110.157(a)(1) or Anchorage 1 off Bombay Hook Point ("Anchorage 1," described in § 110.157(a)(2)) in Delaware Bay, are also reasonably close and generally available. Vessels anchoring in Anchorages A and 1 are not required to have tugs alongside, except when specifically directed to do so by the Captain of the Port because of a specific hazardous condition. Furthermore, few vessels 700 feet or greater are expected to enter the port during the effective period. The majority of the vessels expected are less than 700 feet and thus will not be required to have tugs alongside.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule's greatest impact is on vessels 700 feet and greater in length which choose to anchor in Anchorage 6 and 9 and will have virtually no impact on any small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you

wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Security Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to security that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(f) and (g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation.

List of Subjects

33 CFR Part 110

Anchorage Grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 110 and 165 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. A new temporary § 110.157(b)(11) is added to read as follows:

§ 110.157 Delaware Bay and River.

* * * * *

(b) * * *

(11) Additional requirements and restrictions for the anchorage grounds defined in paragraphs (a)(7), (a)(8), and (a)(10) of this section.

(i) Prior to anchoring in Anchorage 7 off Marcus Hook, as described in paragraph (a)(8) of this section, vessels must first obtain permission from the Captain of the Port, Philadelphia, at least 24 hours in advance of arrival. Permission to anchor will be granted on a "first-come, first-serve" basis. The Captain of the Port will allow only two vessels at a time to anchor in Anchorage 7, and no vessel may remain within Anchorage 7 for more than 12 hours.

(ii) For Anchorage 6 off Deepwater Point as described in paragraph (a)(7) of this section, and Anchorage 9 near entrance to Mantua Creek as described in paragraph (a)(10) of this section.

(A) Any vessel 700 feet or greater in length requesting anchorage shall obtain permission from the Captain of the Port, Philadelphia, Pennsylvania, at least 24 hours in advance.

(B) Any vessel from 700 to 750 feet in length shall have one tug alongside at all times while the vessel is at anchor.

(C) Any vessel greater than 750 feet in length shall have two tugs alongside at all times while the vessel is at anchor.

(D) The master, owner or operator of a vessel at anchor shall ensure that a tug required by this section is of sufficient horsepower to assist with necessary maneuvers to keep the vessel clear of the navigation channel.

(iii) For the purposes of paragraph (b)(11) of this section, Captain of the Port means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf. The Captain of the Port can be reached at (215) 271–4940.

(iv) *Effective dates.* Paragraph (b)(11) of this section is effective from October 12, 2002 until November 2, 2002.

* * * * *

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

3. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

4. Add temporary § 165.T05–087 to read as follows:

§ 165.T05–087 Safety Zone; Delaware Bay and River.

(a) *Location.* The following area is a safety zone: All waters within the arc of a circle with a 150-yard radius of the dredging vessel PULLEN operating in the vicinity of Anchorage 7, Marcus Hook Anchorage.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4940.

(3) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(c) *Definition.* For the purposes of this temporary section, Captain of the Port means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(d) *Effective dates.* This section is effective from October 12, 2002 to November 2, 2002.

Dated: October 11, 2002.

A.E. Brooks,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 02–26820 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–127]

Drawbridge Operation Regulations; Florida East Coast Railroad Bridge, St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Florida East Coast Railroad Bridge across the St. Johns River, mile 24.9, Jacksonville, Florida. This deviation allows the bridge to remain in the closed position from 11 p.m. until 7 a.m. each day from October 27, 2002 until November 2, 2002, for emergency repairs.

DATES: This deviation is effective from 11 p.m. on October 27 until 7 a.m. on November 2, 2002.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket [CGD07–02–127] will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, FL 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Branch at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Florida East Coast Railroad Bridge across the St. Johns River, Jacksonville, Florida, is a single leaf bascule bridge with a vertical clearance of 9 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 195 feet. The current operating regulation in 33 CFR 117.325(c) requires that: (1) The bridge be constantly tended and have a mechanical override capability for the automated operation. A radiotelephone must be maintained at the bridge for the safety of navigation. (2) The draw is normally in the fully open position, displaying flashing green lights to indicate that vessels may pass. (3) When a train approaches, large signs on both the upstream and downstream sides of the bridge flash "Bridge Coming Down," the lights go to flashing red, and siren signals sound. After an eight minute delay, the draw lowers and locks if there are no vessels under the draw. The draw remains down for a period of eight minutes or while the approach track circuit is occupied. (4) After the train has cleared, the draw opens and the lights return to flashing green.

On October 9, 2002, the bridge owner, Florida East Coast Railroad, requested a deviation from the current operating regulations to allow the owner and operator to keep this bridge in the closed position during certain times each day to facilitate emergency repairs. The Commander, Seventh Coast Guard District has granted a temporary deviation from the operating requirements listed in 33 CFR 117.325(c) to complete emergency repairs to the bridge. Under this deviation the Florida East Coast Railroad Bridge, across the St. Johns River, mile 24.9, Jacksonville, FL, need not open from 11 p.m. until 7 a.m., each day, from October 27, 2002 until November 3, 2002.

Dated: October 16, 2002.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 02–27031 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–001]

RIN 2115–AA97

Security Zones; Captain of the Port Chicago Zone, Lake Michigan

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard published a final rule on August 16, 2002, creating a permanent security zone on the navigable waters of the Des Plaines River, the Kankakee River, the Rock River, and Lake Michigan. The section number for the security zones in that rule was incorrect. This document corrects the section number for the security zones.

DATES: This correction is effective October 23, 2002.

FOR FURTHER INFORMATION CONTACT: MST3 Kathryn Vare[illegible], U.S. Coast Guard Marine Safety Office Chicago, at (630) 986–2175.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard published a permanent security zone in the **Federal Register** on August 16, 2002, (67 FR 53501), adding section 165.908.

Need for Correction

As published, the section number used in the amendatory instruction and regulatory text was incorrect.

Correction of Publication

In rule FR Doc. 02–20755 published on August 16, 2002 (67 FR 53501) make the following corrections. On page 53502, in the third column, in line 49 and in line 50, change "165.908" to read "165.910".

Dated: September 30, 2002.

L. M. Henderson,

Commander, U.S. Coast Guard, Acting Captain of the Port Chicago.

[FR Doc. 02–27032 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–522]

RIN 2115–AA97

Safety Zone; M/V ROY A. JODREY Shipwreck, Wellesley Island, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of the St. Lawrence River around the shipwreck of the M/V ROY A. JODREY. This safety zone is necessary to ensure the safety of site workers, recreational divers and the general public from the hazards associated with a pollution cleanup operation being conducted on the M/V ROY A. JODREY. This safety zone is intended to restrict vessels from anchoring, and unauthorized individuals from diving, on or around the shipwreck.

DATES: This rule is effective from 11 a.m. (local) on October 10, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD09–02–522 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd, Buffalo, New York 14203 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Craig Wyatt, U.S. Coast Guard Marine Safety Office Buffalo, at (716) 843–9574.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard just recently became aware of oil being released from the wreckage of the M/V ROY A. JODREY. Further investigation indicates that oil is located in spaces throughout the vessel and that a recovery operation is necessary to ensure against future oil pollution.

Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property. The safety zone will protect divers and individuals involved in the recovery process by creating an area free of vessels anchoring and unknown divers being in close proximity to recovery machinery. In addition, it will assist in protecting the integrity of the hull from possible damage due to vessels anchoring in the area or recreational divers inadvertently causing further discharge prior to the completion of the recovery operation. The recovery operation is planned to start immediately to prevent, as much as possible, future oil pollution.

Background and Purpose

This safety zone is necessary to ensure the safety of divers and the general public from exposure to oil or hazardous materials both at the wreck and at downstream sites to which oil and hazardous material may be liberated by recreational diving activity or anchors of other vessels. The Captain of the Port Buffalo has authorized all vessels transiting through this area to pass through the safety zone, all vessels intending to stop and any divers intending on visiting the wreckage of the M/V ROY A. JODREY must request permission from the Captain of the Port Buffalo or his designated on-scene representative prior to entry.

The safety zone will consist of all waters and adjacent shoreline of the St. Lawerence River encompassed by the arc of a circle with a 150-yard radius with its center in approximate position 44°19.55 N, 075°56.00 W. These coordinates are based upon North American Datum 1983 (NAD 83). This location is in close vicinity to U.S. Coast Guard Station Alexandria Bay.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Buffalo (*see* **ADDRESSES.**)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, it is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subject in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.917 to read as follows:

§ 165.917 Safety Zone; M/V ROY A. JODREY, St. Lawrence River, Wellesley Island, New York.

(a) *Location.* The following area is safety zone: all waters and adjacent shoreline encompassed by the arc of a circle with a 150-yard radius of the wreck of the M/V ROY A. JODREY, with its center in approximate position 44°19.55 N, 075°56.00 W (NAD 83).

(b) *Regulations.*

(1) The regulations in § 165.23 apply to this section.

(2) Except as provided in this section, no vessel or person may enter or remain in this safety zone without the permission of the Captain of the Port.

(3) The Captain of the Port Buffalo has authorized all vessels to transit through the safety zone on the condition that they proceed directly through the zone without stopping.

(4) Any vessel wanting to stop, fish, anchor or discharge divers inside the zone, or any divers wanting to visit the wreckage of the M/V ROY A. JODREY, must request permission from the Captain of the Port Buffalo or his designated on-scene representative prior to entry into the zone.

Dated: October 10, 2002.

P.M. Gugg,

Commander, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 02–26819 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–082–FOAa; FRL–7397–5]

Determination of Attainment of the 1-Hour Ozone Standard for San Diego County, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking contains EPA's final determination that the San Diego area has attained the 1-hour ozone national ambient air quality standard (NAAQS) by the deadline required by the Clean Air Act (CAA). Elsewhere in this **Federal Register**, we are withdrawing our prior direct final determination, because an adverse comment was submitted on that action. In this rulemaking, we are responding to that comment and issuing our final determination of attainment.

EFFECTIVE DATE: This determination is effective on November 22, 2002.

ADDRESSES: You can inspect the docket for this action at EPA's Region 9 office during normal business hours, at the following location: Air Planning Office, USEPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

FOR FURTHER INFORMATION CONTACT: Dave Jesson, U.S. EPA Region 9, at (415) 972–3957, or *jess david@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to EPA.

I. Background

For background on the San Diego 1-hour ozone classification, status, and air quality, please refer to our direct final determination of attainment, which was published on August 23, 2002 (67 FR 54580). In that same issue, we published an accompanying proposed determination of attainment, whose public comment period expired on September 23, 2002 (67 FR 54601). Because we received an adverse comment during the public comment period, we are withdrawing the direct final determination elsewhere in this **Federal Register**, responding to the comment, and finalizing our determination of attainment. As stated in our proposal, we will not institute a second comment period on this action.

II. Response to Public Comment

We received one public comment from the Environmental Health Coalition of San Diego (EHC). We summarize the content of that comment and respond below.

Comment 1: EPA should clarify the definition of a 1-hour ozone exceedance. The 1-hour standard is 0.12 parts per million (ppm). It is EHC's position that any 1-hour ozone measurement greater than 0.120 ppm constitutes an exceedance.

Response: Although the 1-hour ozone NAAQS itself includes no discussion of specific data handling conventions, our publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the 1-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard, which is 0.12 parts per million (ppm). 40 CFR 50.9(a) states that: "The level of the national 1-hour primary and secondary ambient air quality standards for ozone . . . is 0.12 parts per million. . . . The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million . . . is equal to or less than 1, as determined by appendix H to this part." We have clearly communicated the data handling conventions for the 1-hour ozone NAAQS in regulation and guidance documents, as discussed below. In the 1990 CAA Amendments, Congress expressly recognized the continuing validity of EPA guidance.

As early as 1977, EPA issued guidance that the level of our NAAQS dictates the number of significant figures to be used in determining whether the standard was exceeded (*Guidelines for the Interpretation of Air Quality Standards*, OAQPS No. 1.2–008, February 1977). In addition, the regulations governing the reporting of annual summary statistics from ambient monitoring stations for use by EPA in determining national air quality status clearly indicate the rounding convention to be used for 1-hour ozone data.[1]

In 1979, EPA issued additional guidance specific to ozone in which EPA provided that "the stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of .12 ppm means that measurements are to be rounded to two decimal places (.005 rounds up), and, therefore, .125 ppm is the smallest concentration value in excess of the level of the standard." *Guideline for the Interpretation of Ozone Air Quality Standards*, January 1979, EPA–450/4–79–003, p. 6. EPA's guidance on air quality modeling is consistent with the Guideline. See, for example, *Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS*, June 1996, EPA–454/G–95–007, pp. 1–3.

The level of the 1-hour ozone NAAQS is defined in 40 CFR 50.9 as 0.12 parts per million (ppm), not 120 parts per billion (ppb) as implied by the commenter. In other words, the 1-hour ozone NAAQS is specified as two significant digits and the data handling approach employed to compare ambient air quality data to the 1-hour ozone standard is to round to two decimal places as per the regulations and guidance referenced above.

In the 1990 Amendments to the CAA, Congress expressly provided that "[e]ach regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator under this CAA, as in effect before the date of the enactment of the CAA Amendments of 1990 shall remain in effect according to its terms. . . ." Section 193. Thus, under the amended CAA, Congress expressly carried forward EPA interpretations set forth in guidance such as the guideline documents interpreting the NAAQS.

Comment 2: The commenter requests a complete list of all 1-hour ozone measurements that exceeded 0.120 ppm during 1999–2001 within San Diego County, and an explanation of why any of these events was not counted as an exceedance.

Response: As discussed in response to Comment 1, we do not consider values less than 0.125 ppm to be exceedances of the 1-hour ozone NAAQS, since the standard is 0.12 ppm and standard rounding conventions apply. Nevertheless, for informational purposes we present below in Table 1—"San Diego Peak 1-Hour Ozone Concentrations and Design Values, 1999–2001," a list of all concentrations greater than 0.120 ppm recorded at each ozone monitor within San Diego County for the period 1999–2001, and the design value rounded to the third decimal point for each monitor.

TABLE 1.—SAN DIEGO PEAK 1-HOUR OZONE CONCENTRATIONS AND DESIGN VALUES, 1999–2001

[Source: EPA's Aerometric Information Retrieval System]

Monitor	Concentrations > 0.120	Design value
Alpine (PAMS/SLAMS)	0.135 ppm (5/08/01) 0.124 ppm (6/13/99) 0.121 ppm (4/26/00)	0.118 ppm.
Camp Pendleton (PAMS/SLAMS)	None	0.098 ppm.
Chula Vista (SLAMS)	None	0.099 ppm.
Del Mar (SLAMS)	None	0.092 ppm.
El Cajon (PAMS/NAMS)	0.122 ppm (5/08/01)	0.104 ppm.
Escondido (SLAMS)	0.141 ppm (9/30/01) 0.124 ppm (9/16/00) 0.123 ppm (4/08/00)	0.110 ppm.
Oceanside (SLAMS)	None	0.091 ppm.
Otay Mesa (SLAMS)	None	0.089 ppm.
San Diego/Overland (PAMS/NAMS)	0.135 ppm (9/30/01)	0.106 ppm.
San Diego/12th St (SLAMS)	None	0.088 ppm.

According to our regulations and guidance, an area is in attainment if its design value does not exceed the 0.12 ppm 1-hour ozone standard and the area has averaged less than 1 exceedance per year at each monitor for the applicable

[1] "The air quality concentration should be rounded to the number of significant digits used in specifying the concentration intervals. The digit to the right of the last significant digit determines the rounding process. If this digit is greater than or equal to 5, the last significant digit is rounded up. The insignificant digits are truncated. For example, 100.5 ug/m3 rounds to 101 ug/m3 and 0.1245 ppm rounds to 0.12 ppm." 40 CFR part 58, appendix F, 2 Required Information.

3-year period. Table 1 shows that no San Diego monitor had a design value greater than 0.120 ppm for the period 1999–2001. Table 1 also shows that only 3 exceedances of the NAAQS occurred during this period: the 0.135 ppm concentration recorded at Alpine on May, 8, 2001; the 0.141 ppm concentration recorded at Escondido on September 30, 2001; and the 0.135 ppm concentration recorded at Overland/San Diego on September 30, 2001. Thus, even assuming (as the commenter mistakenly does) that all values above 0.120 ppm are exceedances of the NAAQS, the San Diego area would have attained the standard during this period.

Comment 3: Any emission source exceeding its permitted NO_X emission limit by even 0.1 ppm would potentially be subject to a Notice of Violation. This same standard should be applied to the analysis of ambient ozone data.

Response: We determine an exceedance of the NAAQS according to our regulations and established policies, as summarized in response to Comment 1 above, not by analogy to a local air agency's application of its rules. Moreover, the San Diego County Air Pollution Control District (SDCAPCD) has indicated that the District applies to its compliance determinations the same significant digit interpretation and rounding conventions that we use for the NAAQS.[2]

Comment 4: The commenter expressed concern that the District is already acting to relax new source review (NSR) requirements to become effective when EPA redesignates the area to attainment. Given that the District does not yet have either an approved maintenance plan for the 1-hour ozone NAAQS or an approved attainment plan for the 8-hour ozone NAAQS, this relaxation is premature.

Response: The proposed relaxation is consistent with the Clean Air Act and EPA policy, which provide that the Prevention of Significant Deterioration permitting program may replace the NSR program when an area is redesignated to attainment.[3] EPA agrees with the commenter that a provision for continued offsets would be beneficial in positioning the area to attain expeditiously the 8-hour ozone NAAQS, and we believe that retention of the offset provisions could also contribute toward attainment of the fine particulate matter (PM–2.5) NAAQS in San Diego County. Consequently, EPA supports the SDCAPCD's intention to retain an offset requirement for purposes of State law, although such retention is not federally mandated.

[2] "San Diego APCD Staff Responses to EHC Comments on EPA's Finding of Attainment." This document is included in the docket for this action.

[3] "Generally, the requirements of the part D NSR permitting nonattainment program will be replaced by the PSD program once an area is redesignated to attainment * * *" General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, April 16, 1992 (57 FR 13564).

III. Final Action

No comments were submitted that change our proposed finding. Under CAA section 181(b)(2)(A), we are therefore finalizing our finding that the San Diego area has attained the 1-hour ozone NAAQS by the applicable attainment deadline of November 15, 2001.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely determines that the San Diego area has attained a previously-established national ambient air quality standard based on an objective review of measured air quality data. As such, the action imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely makes a determination based on air quality data, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This action also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use voluntary consensus standards (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. EPA believes that VCS are inapplicable to today's final action because the action does not require the public to perform activities conducive to the use of VCS. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 9, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 02–26991 Filed 10–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA 082–FOAb; FRL–7397–6]

Withdrawal of Direct Final Determination of Attainment of the 1-Hour Ozone Standard for San Diego County, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On August 23, 2002 (67 FR 54580), EPA published a direct final determination that the San Diego area had attained the 1-hour ozone air quality standard by the deadline required by the Clean Air Act. The direct final action was published without prior proposal because EPA anticipated no adverse comment. The

direct final rule stated that if adverse comments were received by September 23, 2002, EPA would publish a timely withdrawal in the **Federal Register**. EPA received a timely adverse comment and is, therefore, withdrawing the direct final approval. Elsewhere in this issue EPA addresses the comments in a final action based on the parallel proposal also published on August 23, 2002 (67 FR 54601). As stated in the parallel proposal, EPA will not institute a second comment period on this action.

DATES: The direct final rule published on August 23, 2002 (67 FR 54580), is withdrawn as of October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Dave Jesson, EPA Region IX, (415) 972–3957 or *jesson.david@epa.gov*.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: October 9, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 02–26989 Filed 10–22–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR 1002

[STB Ex Parte No. 542 (Sub–No. 9)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—Policy Statement

AGENCY: Surface Transportation Board, Transportation.

ACTION: Policy statement.

SUMMARY: The Surface Transportation Board (Board) clarifies the scope of its rule assessing a fee for filing an appeal to a Surface Transportation Board adjudicative decision or a petition to revoke a notice of exemption as including all forms of appeal from all types of adjudicative decisions on the merits. This fee applies to petitions to revoke and petitions to reject, even where the petitioning party has not had an earlier opportunity to present its views to the Board.

DATES: This policy statement is effective October 23, 2002 immediately.

FOR FURTHER INFORMATION CONTACT: Anne K. Quinlan, (202) 565–1727. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Under the Independent Offices Appropriations Act, 31 U.S.C. 9701 (IOAA), federal agencies are obliged to establish fees for specific services provided to identifiable beneficiaries. Office of Management and Budget (OMB) Circular No. A–25 contains guidelines for agencies to apply in assessing and collecting those fees.

Pursuant to the IOAA and Circular No. A–25, the Board established a fee item, at 49 CFR 1002.2(f)(61), covering "Appeals to a Surface Transportation Board decision and petitions to revoke an exemption pursuant to 49 U.S.C. 10502(d)." The $150 fee, which recovers only a small portion of the costs incurred in handling these types of matters, was proposed to apply to "most appeals to the Board's decisions." To illustrate some examples, the Board stated:

> The fee would cover the following types of appeals: (1) An appeal of right to an initial decision as set forth [at] 49 CFR 1115.2; (2) a petition for administrative review as set forth [at] 49 CFR 1115.3; (3) a petition to reopen an administratively final decision as set forth in 49 CFR 1115.4; and (4) a petition to revoke an exemption pursuant to 49 U.S.C. 10502(d).

Regulations Governing Fees for Service, STB Ex Parte No. 542 (STB served Apr. 4, 1996), at 8–9.

In a different phase of the 1996 rulemaking proceeding in Ex Parte No. 542, some parties asked us not to apply fee item 61 to petitions to revoke filed in exemption proceedings in which the carrier seeking a license has already paid a fee, arguing that any expenses borne by the agency to consider the petition to revoke should already have been built into the fee paid by the carrier seeking the license. We rejected the argument and explicitly found that "the costs for administrative appeals are [not] included in the costs for the initial proceeding. * * * Our costs for a proceeding do not include costs for staff time expended beyond issuance of the initial decision. * * *" *Regulations Governing Fees for Service*, 1 S.T.B. 179, 202 (1996) (*1996 Fee Update*). The Board confirmed this ruling in denying a further request for reopening. *Regulations Governing Fees for Service*, 1 S.T.B. 883, 886 (1996), *aff'd sub nom. United Transp. Union-Illinois Legislative Bd.* v. *STB*, No. 97–1038 (D.C. Cir. Nov. 10, 1997), 1997 U.S. App. LEXIS 37560.

This matter apparently continues to produce some uncertainty, and we therefore wish to make it clear that fee item 61 was always intended to apply to petitions to revoke or to reject exemptions, even when the party has not had an earlier opportunity to present its views to us. As we indicated in our prior decisions, these appeals and petitions generate substantial work on our part—far more than is reflected by the nominal fee charged—and the costs have never been covered by the fees paid with the initial filing. Therefore, under the IOAA, we are obliged to establish a fee for these specific services provided to identifiable beneficiaries. Of course, as we stated in adopting fee item 61, any party for whom the nominal filing fee poses a hardship may seek a waiver of the fee in an individual case.

We do not propose a new rule or policy here, as we are simply confirming that we have always considered fee item 61 to cover appeals and petitions to revoke or reject an exemption, even when the petition is the filer's first opportunity to inform us of the filer's views. For that reason, we do not seek public comment on this announcement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: October 16, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–26965 Filed 10–22–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 101802A]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2002 Pacific halibut bycatch allowance specified for the yellowfin sole fishery category.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 20, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.The 2002 halibut bycatch allowance specified for the BSAI trawl yellowfin sole fishery category, which is defined at § 679.21(e)(3)(iv)(B)(1), is 886 metric tons (67 FR 956, January 8, 2002).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 halibut bycatch allowance specified for the yellowfin sole fishery in the BSAI has been caught. Consequently, the Regional Administrator is closing directed fishing for yellowfin sole by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding 2002 halibut bycatch allowance specified for the yellowfin sole fishery in the BSAI constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B). These procedures are unnecessary and contrary to the public interest because of the need to implement these measures in a timely fashion to avoid exceeding 2002 halibut bycatch allowance specified for the yellowfin sole fishery in the BSAI. This constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 18, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–26977 Filed 10–18–02; 2:35 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 205
Wednesday, October 23, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA58

Review Inspection Requirements

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) published an advanced notice of proposed rulemaking in the **Federal Register** on August 21, 2002, asking for comments on amending the regulations the United States Grain Standards Act (Act), as amended. The revision will allow interested persons to specify the quality factor(s) that would be redetermined during a reinspection or appeal inspection for grade. The 60 day comment period will close October 21, 2002. It has been brought to our attention that several potential commenters need additional time to formulate their responses to the proposed rule. Therefore, we are reopening and extending the comment period to provide interested parties with additional time in which to comment.

DATES: Comments must be received on or before November 21, 2002.

ADDRESSES: Written comments must be submitted to Tess Butler, GIPSA, USDA, Room 1647–S, Stop 3604, Washington, DC 20250; FAX (202) 690–2755; e-mail, *comments.gipsadc@usda.gov*.

All comments received will be made available for public inspection in Room 1647-South Building, 1400 Independence Avenue, SW, Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: John Giler, at (202) 720–1748.

SUPPLEMENTARY INFORMATION: GIPSA published a proposed rule in the **Federal Register** on August 21, 2002 (67 FR 54133), asking for comments to allow interested persons to specify the quality factor(s) that would be predetermined during a reinspection or appeal inspection for grade. The regulations to be amended are issued under the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*)

Comments on the proposed rule were required to be received on or before October 21, 2002. Several potential commenters have indicated a need for additional time to formulate their responses to the proposed rule. Therefore, GIPSA is reopening and extending the comment period for the proposed rules for an additional 30 days. The action will allow interested persons additional time to prepare and submit comments.

Dated: October 17, 2002.

Donna Reifschneider,

Administrator.

[FR Doc. 02–26922 Filed 10–22–02; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM237; Notice No. 25–02–08–SC]

Special Conditions: Boeing Model 777–200 Series Airplanes; Overhead Crew Rest Compartments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for Boeing Model 777–200 series airplanes. This airplane will have novel or unusual design features associated with the installation of an overhead flightcrew rest and an overhead flight attendant rest. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before November 22, 2002.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM237, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM237. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2195; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On December 19, 2001, the Boeing Commercial Airplane Group (BCAG), P.O. Box 3707, Seattle, Washington, 98124, applied for a change to Type Certificate No. T00001SE for a design change to install an overhead flightcrew rest (OFCR) and an overhead flight attendant rest (OFAR) in the Boeing Model 777–200 series airplanes. The Boeing Model 777–200 series airplanes are large twin engine airplanes with various passenger capacities and ranges depending upon airplane configuration.

The OFCR compartment, adjacent to Door 1, is located in the overhead above the main passenger cabin and will include a maximum of two private berths and two seats. Occupancy of the OFCR will be limited to a maximum of four occupants. Several different OFAR compartments are being proposed under this design change. The OFAR adjacent to Door 3 will have berths for a maximum of seven occupants. The OFAR adjacent to Door 5 will have three compartment options available, with berths for a maximum of six, eight or ten occupants.

Both crew rests, the OFCR and OFAR, will be accessed from the main deck by stairs. In addition, an emergency hatch that opens directly into the main passenger cabin area will be provided for each compartment. A smoke detection system, an oxygen system, and occupant amenities will also be provided. These compartments will only be occupied in flight, not during taxi, takeoff, or landing.

Overhead crew rest compartments have been previously installed and certified in the main passenger cabin area, above the main passenger area, and below the passenger cabin area adjacent to the cargo compartment of the Boeing Model 777–200, –300 series airplanes. Also, overhead crew rest compartments have been installed on the Boeing Model 747 series airplanes.

The FAA has previously issued special conditions that contain the additional safety standards that must be met for the overhead crew rests on Boeing Model 747 series airplanes. The FAA certified the lower lobe flight attendant rest on the Boeing Model 777–200 series airplanes by an equivalent level of safety finding to the requirements of § 25.819. In addition, the FAA recently issued Special Conditions No. 25–169–SC, dated December 1, 2000, amended on May 2, 2001, for Boeing Model 777–200 series airplanes for overhead crew rest compartments for Flight Structures Inc. of Arlington, Washington. The FAA also issued Special Conditions No. 25–192–SC, dated November 6, 2001, for Model 777–200 series airplanes for overhead crew rest compartments for the Boeing Commercial Airplane Group—Wichita Division Designated Alteration Station (DAS) of Wichita, Kansas.

Type Certification Basis

Under the provisions of § 21.101, Amendment 21–69, effective September 16, 1991, Boeing Commercial Airplane Group must show that the Model 777–200 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet No. T00001SE or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. T00001SE for the Boeing Model 777–200 series airplanes include 14 CFR part 25, as amended by Amendments 25–1 through 25–82. The U.S. type certification basis for the Boeing Model 777–200 series airplanes is established in accordance with 14 CFR 21.17 and 21.29 and the type certification application date. The type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777–200 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777–200 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2) Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1) Amendment 21–69, effective September 16, 1991.

Compliance with these proposed special conditions does not relieve the applicant from the existing airplane certification basis requirements. One particular area of concern is that the overhead crew rest installation creates a smaller compartment volume within the overhead area of the airplane. The applicant must comply with the requirements of §§ 25.365(e), (f), and (g), for the overhead crew rest compartment, as well as any other airplane compartments whose decompression characteristics are affected by the installation of an overhead crew rest compartment. Compliance with § 25.831 must be demonstrated for all phases of flight where occupants will be present.

Novel or Unusual Design Features

While the installation of an overhead crew rest compartment is not a new concept for large transport category airplanes, each compartment design has unique features by virtue of its design, location, and use on the airplane. Previously, crew rest compartments have been installed and certified in the main passenger cabin area of the Boeing Model 777–200 and –300 series airplanes and the overhead area of the passenger compartment of the Model 777–200. Other crew rest compartments have been installed below the passenger cabin area adjacent to the cargo compartment. Similar overhead crew rest compartments have also been installed on the Boeing Model 747 series airplanes. The modification is evaluated with respect to the interior and assessed in accordance with the certification basis of the airplane. However, part 25 does not provide all of the requirements for crew rest compartments within the overhead area of the passenger compartment. Further, these special conditions do not negate the need to address other applicable part 25 regulations.

Due to the novel or unusual features associated with the installation of this overhead crew rest compartment, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations incorporated by reference in the type certificate.

Operational Evaluations and Approval

These special conditions outline requirements for overhead crew rest compartment design approvals (*i.e.*, type design changes and supplemental type certificates) administered by the FAA's Aircraft Certification Service. Prior to operational use of an overhead crew rest compartment, the FAA's

Flight Standards Service must evaluate and approve the "basic suitability" of the overhead crew rest compartment for crew occupation. Additionally, if an operator wishes to utilize an overhead crew rest compartment as "sleeping quarters," the crew rest compartment must undergo an additional evaluation and approval (Reference §§ 121.485(a), 121.523(b) and 135.269(b)(5)). Compliance with these special conditions does not ensure that the applicant has demonstrated compliance with the requirements of part 121 or part 135.

In order to obtain an operational evaluation, the type design holder must contact the Aircraft Evaluation Group (AEG) in the Flight Standards Service and request a "basic suitability" evaluation or a "sleeping quarters" evaluation of their crew rest. The results of these evaluations should be documented in a 777 Flight Standardization Board (FSB) Report Appendix. Individual operators may reference these standardized evaluations in discussions with their FAA Principal Operating Inspector (POI) as the basis for an operational approval, in lieu of an on-site operational evaluation.

Any changes to the approved overhead crew rest compartment configuration that effect crewmember emergency egress or any other procedures affecting the safety of the occupying crewmembers and/or related training shall require a re-evaluation and approval. The applicant for a crew rest design change that affects egress, safety procedures, or training is responsible for notifying the FAA's AEG that a new crew rest evaluation is required.

Procedures must be developed to assure that a crewmember entering the overhead crew rest compartment through the vestibule to fight a fire will examine the vestibule and the lavatory areas for the source of the fire prior to entering the remaining areas of the crew rest compartment. These procedures are intended to assure that the source of the fire is not between the crewmember and the primary exit.

Discussion of the Proposed Special Conditions

In general, the requirements listed in these proposed special conditions are similar to those previously approved in earlier certification programs, such as for the Boeing Model 777–200 series airplanes and Boeing Model 747 overhead crew rest compartments. These proposed special conditions establish seating, communication, lighting, personal safety, and evacuation requirements for the overhead crew rest compartment. In addition, passenger information signs, supplemental oxygen, and a seat or berth for each occupant of the crew rest compartment would be required. These items are necessary because of turbulence and/or decompression. When applicable, the proposed requirements parallel the existing requirements for a lower deck service compartment and provide an equivalent level of safety to that provided for main deck occupants.

Proposed Special Condition No. 1

It is proposed that seats and berths must be certified to the maximum flight loads. Due to the location and configuration of the overhead crew rest compartment, it is proposed that occupancy during taxi, takeoff, and landing would be prohibited, and occupancy limited to crewmembers during flight. Occupancy would be limited to four in the overhead flightcrew rest (OFCR) or the combined total of approved seats and berths in the OFCR whichever is less. Occupancy would be limited to twelve in an overhead flight attendant rest (OFAR), or the combined total of approved seats and berths in the OFAR, whichever is less. Requirements are proposed for door access and locking and the installation of ashtrays. Appropriate placards are proposed to prohibit passenger access, access by crewmembers not trained in evacuation procedures, smoking and hazardous quantities of flammable fluids, explosives, or other dangerous cargo. The phrase "hazardous quantities" as used in this SC permits trained crewmembers to continue to carry baggage containing minute quantities of flammable fluids (*e.g.*, finger nail polish, aerosol hairspray, etc.) that would pose no threat to the airplane or its occupants. This wording is consistent with the existing wording of §§ 25.831(d), 25.855 (h)(2), 25.857 (b)(2), (c)(3) & (e)(4) and 25.1353(c)(3).

During a previous publication of substantially identical special conditions, a comment was received after the comment period closed. The commenter thought that requiring placards prohibiting storage of "hazardous quantities of flammable fluids" was unnecessary and a duplication of International Air Transport Association (IATA) Dangerous Goods Regulations, specifically, "Provisions for Dangerous Goods Carried by Passengers or Crew." The FAA concurs with the commenter that the placard requirement is similar to the IATA requirement, however, based on several factors the FAA finds that the duplication is warranted and consistent with maintaining an equivalent level of safety. While flammable fluid placards are not required in the passenger cabin, it is also an occupied area with a high degree of monitoring by passengers and crew. By contrast the overhead crew rest compartment may go unoccupied for long periods of time. The fire protection methods employed for this type of remote area are predicated on minimization of flammable materials.

Proposed Special Condition No. 2

It is proposed that to preclude occupants from being trapped in the crew rest compartment in the event of an emergency, there must be at least two emergency evacuation routes that could be used by each occupant of the overhead crew rest compartment to rapidly evacuate to the main cabin. These two routes must be sufficiently separated to minimize the possibility of an event rendering both routes inoperative. The main entry route meeting the appropriate requirements may be utilized as one of the emergency evacuation routes, or alternatively two other emergency routes must be provided. The intent of Special Condition No. 2(b) is to ensure that one of the two routes would be clear of moving occupants under most foreseeable circumstances.

The following clarifies the intent of Special Condition No. 2(b) concerning the utility of the egress routes. There are three issues that should be considered. First, occupied passenger seats are not considered an impediment to the use of an egress route, (for example, the egress route drops into one row of seats by means of a hatch), provided that the seated occupants do not inhibit the opening of the egress route (for example, a hatch).

Second, an egress route may utilize areas where normal movement of passengers occurs if it is demonstrated that the passengers would not impede egress to the main deck. If the egress means (a hatch in this design) opens into a main aisle, cross aisle, or galley complex to an extent that it contacts a standing ninety-fifth percentile male, then the contact should only momentarily interrupt the opening of the egress hatch. The interruption to the egress means can be considered momentary if the egress means would continue to open normally once the person has moved out of the way.

Third, the escape hatch should be provided with a means to prevent it from being inadvertently closed by a passenger on the main deck. This will ensure main deck passengers can not prevent the overhead crew rest occupants from using the escape route. The crew should be able to stow the escape hatch prior to landing.

Training requirements for the occupants of the overhead crew rest area are included in the proposal.

New qualitative and quantitative criteria have been added to this special condition since the issuance of Special Conditions No. 25–192–SC to clarify how compliance can be shown to Special Condition No. 2(a).

Proposed Special Condition No. 3

It is proposed that each evacuation route must be designed and procedures specified to allow for removal of an incapacitated person from the crew rest compartment to the main deck. Additional assistants to evacuate an incapacitated person may ascend up to one half the elevation change from the main deck to the overhead compartment, or to the first landing, whichever is lower. This proposed special condition allows for five passenger seats to be emptied for the purpose of demonstrating evacuation of an incapacitated person, where the escape route is over seats.

Proposed Special Condition No. 4

It is proposed that exit signs, placards for evacuation routes, illumination for signs, placards and door handles be required. This proposed special condition allows for exit signs with a reduced background area to be used. The material surrounding the sign must be light in color to more closely match and enhance the illuminated background of the sign that has been reduced in area (letter size stays the same). These reduced background area signs have been allowed under previous equivalent levels of safety for small transport executive jets.

Proposed Special Condition No. 5

An emergency lighting system is proposed to prevent the occupants from being isolated in a dark area due to loss of the crew rest compartment lighting. The emergency lighting must be activated under the same conditions as the main deck emergency lighting system.

Proposed Special Condition No. 6

It is proposed that a two-way voice communications and public address speaker(s) be required to alert the occupants to an in-flight emergency. Also, a system to alert the occupants of the overhead crew rest compartment in the event of decompression and to don oxygen masks is proposed.

Proposed Special Condition No. 7

It is proposed to inform occupants of each overhead crew rest of an emergency situation via emergency alarm means, use of the public address system, or crew interphone system. It is proposed that power is to be maintained to the emergency alarm system for a specific duration after certain failures.

Proposed Special Condition No. 8

It is proposed that a means be required that is readily detectable by seated or standing occupants of the overhead crew rest compartment to indicate when seat belts should be fastened. The requirement for visibility of the sign by standing occupants may be met by a general area sign that is visible to occupants standing in the main floor area or corridor of the crew rest compartment. It would not be essential that the sign be visible from every possible location in the crew rest compartment. However, the sign should not be remotely located or located where it may be easily obscured.

Proposed Special Condition No. 9

It is proposed that the overhead crew rest compartment, which is remotely located from the passenger cabin, be equipped with these tools specified to fight a fire should a fire occur: a hand-held fire extinguisher, protective breathing equipment, and a flashlight.

This proposed requirement has been modified from previously issued Special Conditions No. 25–192–SC to clarify how it should be interpreted relative to the requirements of § 25.1439(a). Amendment 25–38 modified the requirements of § 25.1439(a) by adding, "In addition, protective breathing equipment must be installed in each isolated separate compartment in the airplane, including upper and lower lobe galleys, in which crewmember occupancy is permitted during flight for the maximum number of crewmembers expected to be in the area during any operation." The requirements of § 25.1439(a) apply to the overhead crew rest compartment, which is an isolated separate compartment. However, the PBE requirements for isolated separate compartments of § 25.1439(a) are not appropriate because the overhead crew rest compartment is novel and unusual in terms of the number of occupants. In 1976 when Amendment 25–38 was adopted, small galleys were the only isolated compartments that had been certificated with a maximum of two crewmembers expected to occupy those galleys. Special Condition No. 9 addresses overhead crew rest compartments that can accommodate up to 12 crewmembers. This large number of occupants in an isolated compartment was not envisioned at the time Amendment 25–38 was adopted. In the event of a fire, the occupant's first action should be to leave the confined space, unless the occupant(s) is fighting the fire. It is not appropriate for all overhead crew rest compartment occupants to don PBE. Taking the time to don the PBE would prolong the time for the occupant's emergency evacuation and possibly interfere with efforts to extinguish the fire.

Proposed Special Condition No. 10

A smoke detection system and appropriate warnings are proposed since the overhead crew rest compartment is remotely located from the main passenger cabin and will not always be occupied. The smoke detection system must be capable of detecting a fire in each area of the compartment created by the installation of a curtain or door.

Proposed Special Condition No. 11

It is proposed that the overhead crew rest compartment be designed such that fires within the compartment can be controlled without having to enter the compartment; or, the design of the access provisions must allow crew equipped for firefighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, to don the firefighting equipment, and to gain access must not exceed the time for the crew rest compartment to become smoke filled, making it difficult to locate the fire source.

Proposed Special Condition No. 12

The proposed special condition requirement concerning fires within the compartment was developed for, and applied to, Boeing Model 777–200 and –300 series airplanes lower lobe crew rest compartments. It was not applied to the overhead crew rest compartment in earlier certification programs such as the Boeing Model 747 airplanes. The Model 747 special conditions were issued before the new flammability requirements were developed. This requirement originated from a concern that a fire in an unoccupied overhead crew rest compartment could spread into the passenger compartment or affect other vital systems, before it could be extinguished. The proposed special conditions would require either the installation of a manually activated fire containment system that is accessible from outside the overhead crew rest compartment, or a demonstration that the crew could satisfactorily perform the

function of extinguishing a fire under the prescribed conditions. A manually activated built-in fire extinguishing system would be required only if a crewmember could not successfully locate and extinguish the fire during a demonstration where the crewmember is responding to the alarm.

The overhead crew rest compartment smoke or fire detection and fire suppression systems (including airflow management features which prevent hazardous quantities of smoke or fire extinguishing agent from entering any other compartment occupied by crewmembers or passengers) is considered complex in terms of paragraph 6d of Advisory Circular (AC) 25.1309–1A, "System Design and Analysis." In addition, the FAA considers failure of the overhead crew rest compartment fire protection system (*i.e.*, smoke or fire detection and fire suppression systems) in conjunction with an overhead crew rest fire to be a catastrophic event. Based on the "Depth of Analysis Flowchart" shown in Figure 2 of AC 25.1309–1A, the depth of analysis should include both qualitative and quantitative assessments (reference paragraphs 8d, 9, and 10 of AC 25.1309–1A). In addition, it should be noted that hazardous quantities of flammable fluids, explosives, or other dangerous cargo are prohibited from being carried in the overhead crew rest compartment, a prohibition addressed in proposed Special Condition No. 1(a)(5).

The requirements to enable crewmember(s) quick entry to the overhead crew rest compartment and to locate a fire source inherently places limits on the amount of baggage that may be carried and the size of the overhead crew rest compartment. The overhead crew rest compartment is limited to stowage of crew personal luggage and it is not intended to be used for the stowage of cargo or passenger baggage. The design of such a system to include cargo or passenger baggage would require additional requirements to ensure safe operation.

The FAA accepts the fact that during the one-minute smoke detection time that penetration of a small quantity of smoke from this overhead crew rest design into an occupied area on this airplane configuration would be acceptable based upon the limitations placed in this and other associated special conditions. The FAA position is predicated on the fact that these special conditions place sufficient restrictions in the quantity and type of material allowed in crew carry-on bags that the threat from a fire in this remote area would be equivalent to that experienced on the main cabin.

Proposed Special Condition No. 13

It is proposed that the oxygen equipment and a supplemental oxygen deployment warning for the overhead crew rest compartment must be equivalent to that provided for main deck passengers.

Proposed Special Condition No. 14

Requirements are proposed for a divided overhead crew rest compartment to address supplemental oxygen equipment and deployment means, signs, placards, curtains, doors, emergency illumination, alarms, seat belt fasten signals, and evacuation routes.

The wording in the Special Condition No. 14(g) was modified from previously issued special conditions to clarify that oxygen masks are not required in common areas where seats or berths are not installed. A visual indicator to don oxygen masks is required in these areas. The visual indicator is in addition to the aural alert for donning oxygen masks.

Proposed Special Condition No. 15

It is proposed to eliminate the requirements for flight deck communication as required by Special Condition No. 6, and emergency fire fighting and protective equipment as required by Special Condition No. 9, for lavatories or other small areas within an overhead crew rest compartment.

Proposed Special Condition No. 16

It is proposed that where a waste disposal receptacle is fitted, it must be equipped with an automatic fire extinguisher.

Proposed Special Condition No. 17

It is proposed that the materials in the crew rest compartment must meet the flammability requirements of § 25.853(a), and the mattresses must meet the fire blocking requirements of § 25.853(c).

Proposed Special Condition No. 18

This proposed requirement is a reiteration of existing main deck lavatory requirements to provide clear applicability. Overhead crew rest compartment lavatories would be required to comply with the existing rules on lavatories in the absence of other specific requirements. In addition, any lavatory located in the crew rest compartment must also meet the requirements of Special Condition No. 10 for smoke detection due to placement within this remote area.

Proposed Special Condition No. 19

This special condition proposes fire protection requirements for overhead crew rest stowage compartments as a function of size (compartment interior volume). The special condition has been revised from the special conditions previously issued due to the introduction of larger stowage compartments into the overhead crew rest compartment. The fire protection requirements proposed for stowage compartments in the overhead crew rest compartment are more stringent than those for stowage in the main passenger cabin because the overhead crew rest compartment is a remote area that can remain unoccupied for long periods of time in contrast to the main cabin that is under continuous monitoring by the cabin crew and passengers. For stowage compartments less than 25 ft^3 the safety objective of these proposed requirements is to contain the fire. The FAA research indicates that properly constructed compartments meeting the proposed material requirements will prevent burn through. For stowage compartments greater than 25 ft^3 but less than 200 ft^3 the safety of objective of these proposed requirements is to detect and contain the fire for sufficient time to allow it to be extinguished by the crew. The requirements for these sizes of compartments are comparable to the requirements for Class B cargo compartments. The proposed fire protection requirements are intended to provide a level of safety for the overhead crew rest compartment that is equivalent the level of safety established by the existing regulations for the main cabin.

These proposed special conditions along with the original type certification basis provide the regulatory requirements necessary for certification of this modification. Other special conditions may be developed, as needed, based on further FAA review and discussions with the applicant, manufacturer, and civil aviation authorities.

The addition of galley equipment or a kitchenette incorporating a heat source (*e.g.*, cook tops, microwaves, coffee pots, etc.), other than a conventional lavatory or kitchenette hot water heater, within the overhead crew rest compartment, may require further special conditions to be considered. A hot water heater is acceptable without further special conditions consideration.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 777–200 series airplanes. Should the Boeing Commercial Airplane Group apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1) Amendment 21–69, effective September 16, 1991.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 777–200 series airplanes with overhead crew rest compartments. These special conditions apply to both overhead flightcrew rest (OFCR) compartments and/or overhead flight attendant rest (OFAR) compartments, unless specifically stated otherwise.

1. Occupancy of the overhead crew rest compartment is limited to the total number of installed bunks and seats in each compartment. There must be an approved seat or berth able to withstand the maximum flight loads when occupied for each occupant permitted in the overhead crew rest compartment. The maximum occupancy is four in the OFCR and twelve in the OFAR.

(a) There must be appropriate placards, inside and outside each entrance to the overhead crew rest compartment to indicate:

(1) The maximum number of occupants allowed,

(2) That occupancy is restricted to crewmembers that are trained in the evacuation procedures for the overhead crew rest compartment,

(3) That occupancy is prohibited during taxi, take-off and landing,

(4) That smoking is prohibited in the overhead crew rest compartment, and

(5) That hazardous quantities of flammable fluids, explosives, or other dangerous cargo are prohibited from the overhead crew rest compartment.

(b) There must be at least one ashtray on the inside and outside of any entrance to the overhead crew rest compartment.

(c) There must be a means to prevent passengers from entering the overhead crew rest compartment in the event of an emergency or when no flight attendant is present.

(d) There must be a means for any door installed between the overhead crew rest compartment and passenger cabin to be capable of being quickly opened from inside the compartment, even when crowding occurs at each side of the door.

(e) For all doors installed, there must be a means to preclude anyone from being trapped inside the overhead crew rest compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the compartment at any time.

2. There must be at least two emergency evacuation routes, which could be used by each occupant of the overhead crew rest compartment to rapidly evacuate to the main cabin and be able to be closed from the main passenger cabin after evacuation. In addition—

(a) The routes must be located with sufficient separation within the overhead crew rest compartment, and between the evacuation routes, to minimize the possibility of an event rendering both routes inoperative.

Compliance to the requirements of Special Condition No. 2(a) may be shown by inspection or by analysis. Regardless which method is used, the maximum acceptable exit separation is 60 feet measured between exit openings.

Compliance by Inspection

An overhead crew rest compartment in which the evacuation routes are located such that each occupant of the seats and berths has an unobstructed route to at least one of the evacuation routes regardless of the location of a fire would be acceptable by inspection. A fire within a berth that only blocks the occupant of that berth from exiting the berth need not be considered. Therefore, exits which are located at absolute opposite ends (*i.e.*, adjacent to opposite end walls) of the crew rest would require no further review or analysis with regard to exit separation.

Compliance by Analysis

Analysis must show the overhead crew rest compartment configuration and interior features provide for all occupants of the overhead crew rest to escape the compartment in the event of a hazard inside or outside of the compartment. Elements to consider in this evaluation are as follows:

(1) Fire inside or outside the overhead crew rest compartment considered separately and the design elements used to reduce the available fuel for the fire,

(2) Design elements to reduce the fire ignition sources in the overhead crew rest compartment,

(3) Distribution and quantity of emergency equipment within the overhead crew rest compartment,

(4) Structural failure or deformation of components that could block access to the available evacuation routes (*e.g.*, seats, folding berths, contents of stowage compartments, etc),

(5) An incapacitated person blocking the evacuation routes,

(6) Any other foreseeable hazard not identified above that could cause the evacuation routes to be compromised.

Analysis must consider design features affecting access to the evacuation routes. The design features that should be considered include but are not limited to seat back break over, the elimination of rigid structure that reduces access from one part of the compartment to another, the elimination of items that are known to be the cause of potential hazards, the availability of emergency equipment to address fire hazards, the availability of communications equipment, supplemental restraint devices to retain items of mass that could hinder evacuation if broken loose and load path isolation between components that contain the evacuation routes.

Analysis of the fire threats should be used in determining the placement of required fire extinguishers and PBEs and should take into consideration the possibility of fire in any location in the overhead crew rest compartment. The location and quantity of PBEs and fire extinguishers should allow occupants located in any approved seats or berths access to the equipment necessary to fight a fire in the overhead crew rest compartment.

The intent of this special condition is to provide sufficient exit separation, therefore the exit separation analysis described above should not be used to approve exits which have less physical separation (measured between the centroid of each exit opening) than the minimums prescribed below, unless compensating features are identified and submitted to the FAA for evaluation and approval.

For overhead crew rest compartments with one exit located near the forward or aft end of an overhead crew rest compartment (as measured by having the centroid of the exit opening within 20 percent of the forward or aft end of the total overhead crew rest compartment length) the exit separation should not be less than 50 percent of the total overhead crew rest compartment length.

For overhead crew rest compartments with neither required exit located near the forward or aft end of the overhead crew rest compartment (as measured by not having the centroid of either exit opening within 20 percent of the forward or aft end of the total overhead

crew rest compartment length) the exit separation should not be less than 30 percent of the total overhead crew rest compartment length.

(b) The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing below or against the escape route. One of the two evacuation routes should not be located where, during times in which occupancy is allowed, normal movement by passengers occurs (*i.e.*, main aisle, cross aisle or galley complex) that would impede egress from the overhead crew rest compartment. If an evacuation route utilizes an area where normal movement of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If there is low headroom at or near the evacuation route, provisions must be made to prevent or to protect occupants (of the overhead crew rest compartment) from head injury. The use of evacuation routes must not be dependent on any powered device. If the evacuation path is over an area where there are passenger seats, a maximum of five passengers may be displaced from their seats temporarily during the evacuation process of an incapacitated person(s). If the evacuation procedure involves the evacuee stepping on seats, the seats must not be damaged to the extent that they would not be acceptable for occupancy during an emergency landing.

(c) Emergency evacuation procedures, including the emergency evacuation of an incapacitated occupant from the overhead crew rest compartment, must be established. All of these procedures must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

(d) There must be a limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the use of evacuation routes.

3. There must be a means for the evacuation of an incapacitated person (representative of a ninety-fifth percentile male) from the overhead crew rest compartment to the passenger cabin floor.

(a) The evacuation must be demonstrated for all evacuation routes. A crewmember (a total of one assistant within the overhead crew rest compartment) may provide assistance in the evacuation. Additional assistance may be provided by up to three persons in the main passenger compartment. These additional assistants must be standing on the floor while providing assistance. For evacuation routes having stairways, the additional assistants may ascend up to one half the elevation change from the main deck to the overhead crew rest compartment, or to the first landing, whichever is lower.

4. The following signs and placards must be provided in the overhead crew rest compartment:

(a) At least one exit sign, located near each exit, meeting the requirements of § 25.812(b)(1)(i), except that a sign with reduced background area of no less than 5.3 square inches (excluding the letters) may be utilized, provided that it is installed such that the material surrounding the exit sign is light in color (*e.g.*, white, cream, light beige). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch wide background border around the letters would also be acceptable.

(b) An appropriate placard located near each exit defining the location and the operating instructions for each evacuation route.

(c) Placards must be readable from a distance of 30 inches under emergency lighting conditions.

(d) The exit handles and evacuation path operating instruction placards must be illuminated to at least 160 microlamberts under emergency lighting conditions.

5. There must be a means in the event of failure of the aircraft's main power system, or of the normal overhead crew rest compartment lighting system, for emergency illumination to be automatically provided for the overhead crew rest compartment.

(a) This emergency illumination must be independent of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient for the occupants of the overhead crew rest compartment to locate and transfer to the main passenger cabin floor by means of each evacuation route.

6. There must be means for two-way voice communications between crewmembers on the flight deck and occupants of the overhead crew rest compartment. There must also be two-way communications between the occupants of the overhead crew rest compartment and each flight attendant station required to have a public address system microphone per § 25.1423(g) in the passenger cabin.

7. There must be a means for manual activation of an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each pair of required floor level emergency exits to alert occupants of the overhead crew rest compartment of an emergency situation. Use of a public address or crew interphone system will be acceptable, providing an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight, after the shutdown or failure of all engines and auxiliary power units (APU), or the disconnection or failure of all power sources dependent on their continued operation (*i.e.*, engine & APU), for a period of at least ten minutes.

8. There must be a means, readily detectable by seated or standing occupants of the overhead crew rest compartment, which indicates when seat belts should be fastened. In the event there are no seats, at least one means must be provided to cover anticipated turbulence (*e.g.* sufficient handholds). Seat belt type restraints must be provided for berths and must be compatible for the sleeping attitude during cruise conditions. There must be a placard on each berth requiring that seat belts must be fastened when occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head location, there must be a placard identifying the head position.

9. In lieu of the requirements specified in § 25.1439(a) that pertain to isolated compartments and to provide a level of safety equivalent to that which is provided occupants of a small isolated galley, the following equipment must be provided in the overhead crew rest compartment:

(a) At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur, (b) Two protective breathing equipment (PBE) devices approved to Technical Standard Order (TSO)–C116 or equivalent, suitable for firefighting, or one PBE for each hand-held fire extinguisher, whichever is greater, and

(c) One flashlight.

Note: Additional PBEs and fire extinguishers in specific locations, (beyond the minimum numbers prescribed in Special Condition No. 9 may be required as a result of the egress analysis accomplished to satisfy Special Condition No. 2(a).

10. A smoke or fire detection system (or systems) must be provided that monitors each occupiable area within the overhead crew rest compartment, including those areas partitioned by curtains. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication to the flightdeck within one minute after the start of a fire;

(b) An aural warning in the overhead crew rest compartment; and

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

11. The overhead crew rest compartment must be designed such that fires within the compartment can be controlled without a crewmember having to enter the compartment, or the design of the access provisions must allow crewmembers equipped for firefighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, to don the firefighting equipment, and to gain access must not exceed the time for the compartment to become smoke-filled, making it difficult to locate the fire source.

12. There must be a means provided to exclude hazardous quantities of smoke or extinguishing agent originating in the overhead crew rest compartment from entering any other compartment occupied by crewmembers or passengers. This means must include the time periods during the evacuation of the overhead crew rest compartment and, if applicable, when accessing the overhead crew rest compartment to manually fight a fire. Smoke entering any other compartment occupied by crewmembers or passengers when the access to the overhead crew rest compartment is opened, during an emergency evacuation, must dissipate within five minutes after the access to the overhead crew rest compartment is closed. Hazardous quantities of smoke may not enter any other compartment occupied by crewmembers or passengers during subsequent access to manually fight a fire in the overhead crew rest compartment (the amount of smoke entrained by a firefighter exiting the overhead crew rest compartment through the access is not considered hazardous). During the one-minute smoke detection time, penetration of a small quantity of smoke from the overhead crew rest compartment into an occupied area is acceptable. Flight tests must be conducted to show compliance with this requirement.

If a built-in fire extinguishing system is used in lieu of manual firefighting, then the fire extinguishing system must be designed so that no hazardous quantities of extinguishing agent will enter other compartments occupied by passengers or crew. The system must have adequate capacity to suppress any fire occurring in the overhead crew rest compartment, considering the fire threat, volume of the compartment and the ventilation rate.

13. There must be a supplemental oxygen system equivalent to that provided for main deck passengers for each seat and berth in the overhead crew rest compartment. The system must provide an aural and visual warning to warn the occupants of the overhead crew rest compartment to don oxygen masks in the event of decompression. The warning must activate before the cabin pressure altitude exceeds 15,000 feet. The aural warning must sound continuously for a minimum of five minutes or until a reset push button in the overhead crew rest compartment is depressed. Procedures for crew rest occupants in the event of decompression must be established. These procedures must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

Procedures for overhead crew rest compartment occupants in the event of decompression must be established. These procedures must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

14. The following requirements apply to overhead crew rest compartments that are divided into several sections by the installation of curtains or partitions:

(a) To compensate for sleeping occupants, there must be an aural alert that can be heard in each section of the overhead crew rest compartment that accompanies automatic presentation of supplemental oxygen masks. A visual indicator that occupants must don an oxygen mask is required in each section where seats or berths are not installed. A minimum of two supplemental oxygen masks are required for each seat or berth. There must also be a means by which the oxygen masks can be manually deployed from the flight deck.

(b) A placard is required adjacent to each curtain that visually divides or separates, for privacy purposes, the overhead crew rest compartment into small sections. The placard must require that the curtain(s) remains open when the private section it creates is unoccupied. The vestibule section adjacent to the stairway is not considered a private area and, therefore, does not require a placard.

(c) For each section of the overhead crew rest compartment created by the installation of a curtain, the following requirements of these special conditions must be met with the curtain open or closed:

(1) No smoking placard (Special Condition No. 1),

(2) Emergency illumination (Special Condition No. 5),

(3) Emergency alarm system (Special Condition No. 7),

(4) Seat belt fasten signal or return to seat signal as applicable (Special Condition No. 8), and

(5) The smoke or fire detection system (Special Condition No. 10).

(d) Overhead crew rest compartments visually divided to the extent that evacuation could be affected must have exit signs that direct occupants to the primary stairway exit. The exit signs must be provided in each separate section of the overhead crew rest compartment, and must meet the requirements of § 25.812(b)(1)(i).

(e) Sections within an overhead crew rest compartment that are created by the installation of a rigid partition with a door physically separating the sections, the following requirements of these special conditions must be met with the door open or closed:

(1) There must be a secondary evacuation route from each section to the main deck, or alternatively, it must be shown that any door between the sections has been designed to preclude anyone from being trapped inside the compartment. Removal of an incapacitated occupant within this area must be considered. A secondary evacuation route from a small room designed for only one occupant for short time duration, such as a changing area or lavatory, is not required. However, removal of an incapacitated occupant within a small room, such as a changing area or lavatory, must be considered.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) There may be no more than one door between any seat or berth and the primary stairway exit.

(4) There must be exit signs in each section meeting the requirements of § 25.812(b)(1)(i) that direct occupants to the primary stairway exit. An exit sign with reduced background area as described in Special Condition No. 4(a) may be used to meet this requirement.

(f) For each smaller section within the main overhead crew rest compartment created by the installation of a partition with a door, the following requirements of these special conditions must be met with the door open or closed:

(1) No smoking placards (Special Condition No. 1);

(2) Emergency illumination (Special Condition No. 5);

(3) Two-way voice communication (Special Condition No. 6);

(4) Emergency alarm system (Special Condition No. 7);

(5) Seat belt fasten signal or return to seat signal as applicable (Special Condition No. 8);

(6) Emergency firefighting and protective equipment (Special Condition No. 9); and

(7) Smoke or fire detection system (Special Condition No. 10).

15. The requirements of two-way voice communication with the flight deck and provisions for emergency firefighting and protective equipment are not applicable to lavatories or other small areas that are not intended to be occupied for extended periods of time.

16. Where a waste disposal receptacle is fitted, it must be equipped with an automatic fire extinguisher that meets the performance requirements of § 25.854(b).

17. Materials (including finishes or decorative surfaces applied to the materials) must comply with the flammability requirements of § 25.853(a) as amended by Amendment 25–83. Mattresses must comply with the flammability requirements of § 25.853(c), as amended by Amendment 25–83.

18. The addition of a lavatory within the overhead crew rest compartment would require the lavatory to meet the same requirements as those for a lavatory installed on the main deck except with regard to Special Condition No. 10 for smoke detection.

19. All enclosed stowage compartments within the overhead crew rest compartment that are not limited to stowage of emergency equipment or airplane supplied equipment (*i.e.*, bedding) must meet the design criteria given in the table below. Enclosed stowage compartments greater than 200 ft^3 in interior volume are not addressed by this special condition. The in flight accessibility of very large enclosed stowage compartments and the subsequent impact on the crewmembers' ability to effectively reach any part of the compartment with the contents of a hand fire extinguisher will require additional fire protection considerations similar to those required for inaccessible compartments such as Class C cargo compartments.

Fire protection features	Stowage compartment interior volumes		
	Less than 25 ft^3	25 ft^3 to 57 ft^3	57 ft^3 200 ft^3
Materials of construction [1]	Yes	Yes	Yes.
Detectors [2]	No	Yes	Yes.
Liner [3]	No	Yes	Yes.
Locating Device [4]	No	Yes	Yes.

[1] *Material.* The material used to construct each enclosed stowage compartment must at least be fire resistant and must meet the flammability standards established for interior components (*i.e.*, 14 CFR part 25 Appendix F, parts I, IV, and V) per the requirements of § 25.853. For compartments less than 25 ft^3 in interior volume, the design must ensure the ability to contain a fire likely to occur within the compartment under normal use.

[2] *Detectors.* Enclosed stowage compartments equal to or exceeding 25 ft^3 in interior volume must be provided with a smoke or fire detection system to ensure that a fire can be detected within a one-minute detection time. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication in the flight deck within one minute after the start of a fire,

(b) An aural warning in the overhead crew rest compartment, and

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

[3] *Liner.* If it can be shown that the material used to construct the stowage compartment meets the flammability requirements of a liner for a Class B cargo compartment (*i.e.*, § 25.855 at Amendment 25–93, and Appendix F, part I, paragraph (a)(2)(ii)), then no liner would be required for enclosed stowage compartments equal to or greater than 25 ft^3 in interior volume but less than 57 ft^3 in interior volume. For all enclosed stowage compartments equal to or greater than 57 ft^3 in interior volume but less than or equal to 200 ft^3, a liner must be provided that meets the requirements of § 25.855 for a Class B cargo compartment.

[4] *Location Detector.* Overhead crew rest compartment which contain enclosed stowage compartments exceeding 25 ft^3 interior volume and which are located away from one central location such as the entry to the overhead crew rest compartment or a common area within the overhead crew rest compartment would require additional fire protection features and/or devices to assist the firefighter in determining the location of a fire.

Issued in Renton, Washington on October 15, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–27035 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. FHWA–2002–11819]

RIN 2125–AE94

Designation of Dromedary Equipped Truck Tractor-Semitrailers as Specialized Equipment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is requesting comments on a proposal to include as specialized equipment, dromedary equipped truck tractor-semitrailer combination vehicles when hauling munitions for the U.S. Department of Defense (DOD). This proposal is in response to a petition from the U.S. DOD, specifically the Department of the Army (DA) that would help to expedite the movement of munitions for the military, especially in times of national emergency.

DATES: Comments must be received on or before November 22, 2002.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or submit electronically at *http://dmses.dot.gov/submit*. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgement page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Forjan, Office of Freight Management and Operations (202–366–6817), or Mr. Raymond W. Cuprill, Office of the Chief Counsel (202–366–1377), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dms.dot.gov/submit*. Acceptable formats include: MSWord (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software, from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara*.

Background

On June 22, 2001, the FHWA received a petition from the U.S. Department of the Army (DA), to amend 23 CFR 658.13 to include as "specialized equipment," dromedary equipped truck tractor-semitrailer combination vehicles, when transporting Class 1 explosives [1] for the U.S. Department of Defense (DOD). A copy of the petition is included in the docket.

The U.S. DOT regulations require Class 1 explosives, such as ammunition shells, to be transported separately from the fuses or detonators (49 CFR 177.848). The most efficient way for Military Traffic Management Command (MTMC) munitions carriers to comply with this regulation is to use dromedary containers to carry ammunition-fuses, with the ammunition in the semitrailer. A dromedary, also known as a "drom," is a box, deck, or plate mounted behind the cab and forward of the fifth wheel on the frame of the power unit of a truck tractor-semitrailer combination. With drom equipment, a single shipment of fuses and ammunition requires only one vehicle, but without drom equipment, the same shipment requires two vehicles. Shipping these non-compatible explosives in the same vehicle combination reduces the number of vehicles needed to transport munitions, increases military readiness and reduces the number of vehicles on the road.

Under the Surface Transportation Assistance Act of 1982 (STAA) [49 U.S.C. 31111(b)(1)(B), formerly 49 U.S.C. App. 2311(b)] States may not enforce an overall length limit against truck tractor-semitrailer combination vehicles operating on the National Network [2] or under reasonable access thereto. The same STAA also defined a truck tractor as a noncargo carrying power unit that operates in combination with a semitrailer or trailer. Drom equipped truck tractors are obviously cargo carrying, and, as a result, any combination vehicle that includes one of these units may be subjected to an overall length limit at the discretion of any State. In implementing the STAA during the mid-1980s, the FHWA chose to "grandfather" existing drom equipped units by allowing any such unit that could show that it was in use on December 1, 1982, to be considered a truck tractor for regulatory purposes. The reason for doing this was to allow an existing fleet of equipment to use up its useful life. By now the presumption must be that the vast majority of the units that would have met the 1982 grandfather requirement, are no longer in service, and those few that might remain, could not begin to satisfy the demands of the Defense Department for moving munitions. More importantly, the improvements in safety features and fuel efficiency of truck tractors over the last 20 years, pragmatically rule out use of older equipment by any carrier in the business today.

The FHWA received a similar petition [3] in 1989 from a group representing munitions carriers. While the petition was under consideration, the military action in the Middle East called Operation Desert Storm began. Because of the extreme urgency of moving munitions destined for U.S. military forces in the Persian Gulf, the FHWA issued an emergency rule (56 FR 4164, February 1, 1991) valid for six months, that declared vehicle combinations consisting of truck tractors equipped with dromedary units not exceeding 65 inches in length pulling semitrailers to be specialized equipment when hauling muntions, thus exempting these vehicles from State enforcement of overall length regulations. After the conclusion of Operation Desert Storm, the emergency rule was allowed to expire in August 1991. Subsequently, the FHWA again focused on the merits of the petition and ultimately denied it. The basic reasoning for denial was that since only one or two States were enforcing overall length limits at the time, the FHWA felt it would be inconsistent with the Executive Order on Federalism (E.O. 12612) in effect at the time to preempt State authority for what was considered a local problem, limited in scope. Although denying the petition, the FHWA recognized that even localized enforcement could interrupt this vital Defense Department activity of moving ammunition to where it could support our troops. Shortly after expiration of the emergency rule, the FHWA, through its field offices, asked States to continue to allow dromedary equipped munitions carriers as they had under the provisions of the emergency rule.

According to the current petition, some of the States that voluntarily refrained from imposing fines (after being approached by the FHWA following the Gulf War) have gone back to imposing fines. In addition, even if the States have enacted remedial legislation, it is not always consistent with neighboring States.

The major point of the 2001 petition is that a Federal standard is the only long-term solution to a growing problem

[1] As defined in 49 CFR 173.50. As noted in 49 CFR 173.53, prior to January 1, 1991, Class 1 explosives were known as Class A, B, or C explosives.

[2] As defined in 23 CFR 658, the National Network is the composite of the individual network of highways in each State on which vehicles authorized by the provisions of the STAA are allowed to operate. The network in each State includes the Interstate System, exclusive of those portions excepted under § 658.11(f) or deleted under § 658.11(d), and those portions of the Federal-aid Primary System in existence on June 1, 1991, set out by the FHWA in appendix A to this part.

[3] December 22, 1989, from the North American Transportation Consultants, Inc. A copy of the petition and FHWA action are included in the docket.

that directly affects the manner and efficiency with which the U.S. DOD carries out its mission with respect to supporting our troops and defending the country. The U.S. DOD indicates that there is a constant need to move munitions in support of smaller contingencies (other than the Gulf War/Desert Storm) such as actions in Iraq, Kosovo, Haiti, and Somalia. Taken individually, these do not generate the high visibility public interest that may result in the issuance of emergency rules.

The solution to this problem, as proposed by the U.S. DOD and included in the proposed rule published today, is to provide a specialized equipment designation for the combination vehicle in question. A truck tractor equipped with a dromedary unit operating in combination with a semitrailer is proposed to be designated "specialized equipment," when transporting Class 1 explosives, and/or any munitions related security material, as specified by the U.S. DOD in compliance with 49 CFR part 177. This designation would require States to allow operation of this combination on the National Network (NN), and provide reasonable access between the NN and service facilities and terminals. In order to accommodate the typical equipment in use today for this type of operation, the proposal includes a requirement that all States allow these combinations up to an overall length of 75 feet.

This designation would apply only to combinations directly used in carrying munitions for the U.S. DOD. When operating empty, the designation would continue to apply if the carrier can document that hauling munitions is the company's business, or that the most recent load consisted of a qualifying munitions load. The designation would not apply if any other cargo were being carried in either the semitrailer or dromedary unit. For those instances, the combination would no longer be considered "specialized equipment," and would become subject to State regulations for drom equipped truck truck-semitrailers.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. We will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. We may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, we will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

We have determined that this proposed action is a significant regulatory action within the meaning of Executive Order 12866 and the U.S. DOT regulatory policies and procedures. This proposed action comes in response to a request from, and would directly affect activities under the direct control, of the U.S. Department of Defense (DOD): supplying munitions to the military. The proposed action will improve the shipment of munitions by standardizing the regulatory control that States apply to the vehicles typically used for this activity. The anticipated result will be an improvement in the efficiency with which munitions are shipped. This potential improvement will aid the national security effort with respect to the armed forces, as well as activities associated with homeland security.

The proposed rule provides, at the Federal level, a regulatory standard that already exists in many States. Although it would preempt restrictions imposed by about 10 States, it would not affect any State's ability to discharge a traditional State government function, *i.e.*, issuing citations to illegally overlength vehicles.

The vehicles covered by this proposal are already operating in most States, and will not have to be modified in any way to achieve compliance. Accordingly, the anticipated annual economic effect of this rulemaking will be negligible. The proposed action will not have an adverse effect on any other governmental agency, any level of government, the industry, or the public, nor will it change any compliance or reporting requirements that already exist. The agency has decided that a 30-day comment period is needed for this proposal because of the critical need to implement the regulation in a timely manner. On going military actions require a continuous supply of munitions. It is critical that this supply stream is not interrupted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entitles and has determined that the action would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive order 13132, dated August 4, 1999, and the FHWA has determined that this proposed action has sufficient federalism implications to warrant the preparation of a Federalism summary impact statement.

The proposal would provide a consistent national regulation applying only to vehicles hauling munitions for the Department of Defense in support of military activities. The proposal is based on the authority provided by 49 U.S.C. 31111(g) that allows the Secretary to make the decisions necessary to accommodate specialized equipment. The FHWA has also determined that, while this proposed action would preempt any inconsistent State law or State regulation, it would not affect the State's ability to discharge traditional State government function. The States would continue to be able to enforce length restrictions against these vehicles. What might change, however, depending on existing State law, would be the threshold at which an enforcement action is taken.

By allowing the vehicle described in this proposal to transport munitions, the total number of trucks needed to perform this task would be reduced. This reduction, in turn, improves the safety climate on the highway system and in a small way slows infrastructure wear. Only a small number of States (less than 10) would be affected by this rule, as most States already allow the combination vehicle covered by this proposed rule. However, due to the needs of the military and the nature of the cargo, it is imperative that all States allow the combination vehicle under discussion to operate. Even if only one or two States can prohibit, or deter this vehicle and its cargo, timely support of the military can be severely impacted.

The FHWA has engaged in consultation with States over this issue in past years. In February 1991, as a result of the activities surrounding the Desert Shield/Desert Storm campaign, the FHWA issued an emergency rule allowing the use of dromedary units to transport munitions (56 FR 4164, February 1, 1991) for many of the same reasons used in support of the current petition. That rule was in effect for 6 months, and was not renewed for various reasons deemed important in responding to the conditions at that time. After the emergency rule expired, in place of a regulatory solution the FHWA urged all States and in particular those where enforcement actions were taking place to recognize the importance of the situation, and to try and accommodate munitions haulers in some manner. According to the U.S. DOD's petitions, this "persuasion" method appeared to work, at least for a few years into the mid-1990's. As this verbal agreement method of handling the issue began to breakdown, a few States again began to enforce length rules on these combinations, causing interruptions in munitions delivery. While inconvenient, these actions did not become critically disruptive until the current activities aimed at terrorist actions around the world became a national priority.

Recently, the FHWA solicited comment on the Federalism implications of this proposed rule from the National Governors' Association (NGA) as representatives for the State officials. On May 9, 2002, the FHWA sent a letter seeking comment on the Federalism implications of this proposed rule to the NGA[4]. To date, the FHWA has received no response or indication of concerns about the Federalism implications of this rulemaking from the NGA. The FHWA will continue to adhere to Executive Order 13132 when issuing a final rule in this proceeding. Comment is solicited specifically on the Federalism implications of this proposal.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Programs Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). What is being proposed in each issue of this proposed rule would reduce the regulatory requirements that must be complied with. This proposed rule does not add any regulatory requirement that would require any expenditure by any private sector party, or governmental agency.

[4] A copy of this letter is included in the docket.

Executive Order 12988 (Civil Justice Reform)

This proposed action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this proposal under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not economically significant and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The Agency has analyzed this proposal for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposal under Executive Order 13175, dated November 6, 2000, and believes that the proposed action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs in Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this section with the Unified Agenda.

List of Subjects in 23 CFR Part 658

Grants Program—transportation, Highways and roads, Motor carrier—size and weight.

Issued on: October 17, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend 23 CFR part 658 as follows:

PART 658—TRUCK SIZE AND WEIGHT; ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for part 658 continues to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111–31114; 49 CFR 1.48(b).

2. Amend § 658.5 by adding the term "dromedary unit", and amending the definition of "tractor or truck tractor", placing them in alphabetical order, to read as follows:

§ 658.5 Definitions.

* * * * *

Dromedary unit. A box, deck, or plate mounted behind the cab and forward of the fifth wheel on the frame of the power unit of a truck tractor-semitrailer combination.

* * * * *

Tractor or Truck Tractor. The noncargo carrying power unit that operates in combination with a semitrailer or trailer, except that a truck tractor and semitrailer engaged in the transportation of automobiles may,

transport motor vehicles on part of the power unit, and a truck tractor equipped with a dromedary unit operating in combination with a semitrailer hauling munitions for the U.S. Department of Defense may use the dromedary unit to carry a portion of the cargo.

3. Add § 658.13(e)(6) to read as follows:

§ 658.13 Length.

* * * * *

(e) *Specialized equipment*— * * *

(6) *Munitions carriers using dromedary equipment.* A truck tractor equipped with a dromedary unit operating in combination with a semitrailer is considered to be specialized equipment, providing the combination is transporting Class 1 explosives and/or any munitions related security material as specified by the U.S. Department of Defense. No State shall impose an overall length limitation of less than 75 feet on the combination while in operation.

[FR Doc. 02–27040 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–131478–02]

RIN 1545–BB25

Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain dispositions and deconsolidations of such stock. In addition, this document contains proposed regulations that suspend certain losses recognized on the disposition of such stock. The regulations apply to corporations filing consolidated returns. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by January 21, 2003. Outlines of topics to be discussed at the public hearing scheduled for January 15, 2003, at 10 a.m. must be received by December 27, 2002.

ADDRESSES: Send submissions to CC:ITA:RU (REG–131478–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG–131478–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at www.irs.gov/regs. The public hearing will be held in room 6718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Aimee K. Meacham, (202) 622–7530; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya M. Cruse, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by December 23, 2002. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in § 1.1502–35(c) and § 1.1502–35(f). This information is required by the IRS to verify compliance with section 1502. This information will be used to determine whether the amount of tax has been calculated correctly. The collection of information is required to properly determine the amount permitted to be taken into account as a loss. The respondents are corporations filing consolidated returns. The collection of information is required to obtain a benefit.

Estimated total annual reporting and/or recordkeeping burden: 10,500 hours.

Estimated average annual burden per respondent: 2 hours.

Estimated number of respondents: 5,250.

Estimated annual frequency of responses: on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 1502 of the Internal Revenue Code (Code) states that—

> [t]he Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

The legislative history regarding that grant of authority states that "[a]mong the regulations which it is expected that the commissioner will prescribe are [regulations addressing the] extent to which gain or loss shall be recognized upon the sale by a member of the affiliated group of stock issued by any other member of the affiliated group [and] the basis of property * * * acquired, during the period of affiliation, by a member of the affiliated group, including the basis of such property after such period of affiliation." S. Rep. No. 960, 70th Cong., 1st Sess. 15 (1928).

In 1991, the IRS and Treasury Department promulgated § 1.1502–20, which set forth rules regarding the extent to which a loss recognized by a member of a consolidated group on the disposition of stock of a subsidiary member of the same group was allowed. Section 1.1502–20 provided that a loss recognized by a group member on the disposition of subsidiary member stock was allowable only to the extent it exceeded the sum of "extraordinary gain dispositions," "positive investment adjustments," and "duplicated loss." The rule not only implemented section 337(d), which directed the Secretary to promulgate regulations to prevent the circumvention of corporate tax on appreciated property through the filing of a consolidated return, but also was intended to further single entity principles by preventing the deduction of stock losses that reflected a subsidiary member's loss carryforwards, deferred deductions, and unrecognized losses inherent in its assets.

In Rite Aid Corp. v. *United States*, 255 F.3d 1357 (Fed. Cir. 2001), the United States Court of Appeals for the Federal Circuit considered the validity of the duplicated loss component of § 1.1502–20. The court held that the duplicated loss component of § 1.1502–20 was an invalid exercise of regulatory authority.

In response to the *Rite Aid* decision, the IRS and Treasury Department issued Notice 2002–11 (2002–7 I.R.B. 526), stating that the interests of sound tax administration would not be served by the continued litigation of the validity of the duplicated loss component of § 1.1502–20. Notice 2002–11 announced that, because of the interrelationship in the operation of all of the loss disallowance factors of § 1.1502–20, the IRS and Treasury Department had decided that new rules governing loss disallowance on sales of subsidiary stock by members of consolidated groups should be implemented.

On March 7, 2002, the IRS and Treasury Department filed with the **Federal Register** temporary regulations under sections 337(d) and 1502 governing the determination of a consolidated group's allowable stock loss on a disposition of subsidiary member stock. Those regulations included § 1.337(d)–2T, which generally allows a loss on the disposition of subsidiary member stock only to the extent that a taxpayer can establish that the stock loss is not attributable to the recognition of built-in gain. Section 1.337(d)–2T does not disallow stock loss that reflects loss carryforwards, deferred deductions, or built-in asset losses of the subsidiary member.

Concurrently with the filing of § 1.337(d)–2T with the **Federal Register**, the IRS and Treasury Department issued Notice 2002–18 (2002–12 I.R.B. 644), which stated that regulations would be promulgated that would defer or otherwise limit the utilization of a loss on stock (or another asset that reflects the basis of stock) in transactions that facilitate the group's utilization of a single economic loss more than once. Notice 2002–18 is based on the principle that a consolidated group should not be able to obtain more than one tax benefit from a single economic loss. See *Charles Ilfeld Co.* v. *Hernandez*, 292 U.S. 62 (1934) (disallowing a worthless stock deduction recognized on a liquidation of a subsidiary member because the group had already obtained the tax benefit from the operating losses that gave rise to the deduction). The Notice stated that the regulations would apply to dispositions occurring on or after March 7, 2002.

Explanation of Provisions

These proposed regulations reflect the principle set forth in Notice 2002–18 that a consolidated group should not be able to obtain more than one tax benefit from a single economic loss. The proposed regulations consist primarily of two rules: a basis redetermination rule and a loss suspension rule. The proposed regulations also include a basis reduction rule to address certain cases not within the scope of the loss suspension rule. Finally, the proposed regulations include certain anti-avoidance rules to address certain transactions designed to avoid the application of the basis redetermination and loss suspension rules.

The rules in these proposed regulations are intended to address at least two types of transactions that may allow a group to obtain more than one tax benefit from a single economic loss. In the first type of transaction, a group absorbs an inside loss (*e.g.*, a loss carryforward, a deferred deduction, or a loss inherent in an asset) of a subsidiary member and then a member of the group recognizes a loss on a disposition of stock of that subsidiary member that is duplicative of the inside loss. For example, assume that in Year 1, P, a member of a group, forms S with a contribution of $80 in exchange for 80 shares of common stock of S (representing all of the outstanding stock of S). In Year 2, P contributes Asset A with a basis of $70 and a value of $20 to S in exchange for an additional 20 shares of S common stock. In Year 3, S sells Asset A and recognizes a $50 loss, which offsets income of P on the group's return. Under the investment adjustment rules of § 1.1502–32, P's basis in each share of S common stock it holds is reduced by a pro rata share of the $50 loss, with the result that the shares acquired in Year 1 have a basis of $40 and the shares acquired in Year 2 have a basis of $60. In Year 4, P sells the shares acquired in Year 2 for $20 and recognizes a $40 loss, which offsets income of P on the group's return. In this transaction, the group has obtained a total of $90 tax benefit from the single $50 loss.

Alternatively, assume that, in Year 1, P forms S with a contribution of $100 in exchange for all of the common stock of S. In Year 2, P contributes Asset A with a basis of $50 and a value of $20 to S in exchange for all of the preferred stock of S. In Year 3, S sells Asset A and recognizes a $30 loss, which offsets income of P on the group's return. Under the investment adjustment rules of § 1.1502–32, P's basis in each share of S common stock it holds is reduced by a pro rata share of the $30 loss. P's basis in its preferred shares, however, is not reduced. In Year 4, P sells the preferred stock of S for $20 and recognizes a $30 loss, which offsets income of P on the group's return. In this transaction, the group has obtained a $60 tax benefit from the single $30 economic loss in Asset A.

Although, in both cases, a taxable disposition of the S common stock acquired in Year 1 would offset the excess tax benefit, the group has various non-taxable alternatives by which to ensure that the excess tax benefit is not reduced, including retention of the remaining shares of S or the liquidation of S in a transaction described in section 332.

In the second type of transaction, a member of the group recognizes a loss on a disposition of subsidiary member stock that is duplicative of an inside loss of the subsidiary member, the subsidiary remains a member of the group, and the group subsequently recognizes the inside loss of that subsidiary member. For example, assume that in Year 1, P forms S with a contribution of $80 in exchange for 80 shares of the common stock of S. In Year 2, P contributes Asset A with a basis of $50 and a value of $20 to S in exchange for an additional 20 shares of S common stock. In Year 3, P sells the 20 shares of S common stock that it acquired in Year 2 for $20 and recognizes a $30 loss, which offsets income of P on the group's return. The sale of the 20 shares of S common stock does not result in the deconsolidation of S. In Year 4, S sells Asset A and recognizes a $30 loss, which also offsets income of P on the

group's return. In this transaction, the group has obtained the use of two losses from the single economic loss in Asset A. Again, although a taxable disposition by P of its remaining S common stock would offset the tax benefit of one of the losses, the group has various non-taxable alternatives by which to ensure that the excess tax benefit is not reduced, including retention of the remaining shares of S or the liquidation of S in a transaction described in section 332.

A. Basis Redetermination Rule

The investment adjustment rules of § 1.1502–32 are premised on certain assumptions regarding the shareholders' interests in the subsidiary. One assumption is that the subsidiary's losses are borne by the holders of the common stock before the holders of the preferred stock. Another assumption is that each share within a class is entitled to an equal portion of the subsidiary's items of income and gain, and, in the case of common stock, of deduction and loss. The investment adjustment rules, therefore, generally allocate basis adjustments without regard to differences in members' bases in their shares of the stock of the subsidiary member and without regard to whether a basis adjustment reflects an item of income, gain, deduction, or loss that was built-in with respect to contributed property. These assumptions can give rise to the results illustrated in the transactions described above.

The basis redetermination rule attempts to mitigate the effect of the assumptions underlying the investment adjustment rules by reversing certain investment adjustments to take into account the source of certain items of deduction and loss. In addition, where the subsidiary member remains a member of the group, the basis redetermination rule equalizes members' bases in subsidiary stock such that the loss suspension rule, described below, need not include inordinately complex rules to address the method by which inside losses reduce stock basis under § 1.1502–32.

The proposed regulations require the redetermination of the basis of subsidiary member stock held by members of the group immediately before a disposition or deconsolidation of a share of subsidiary member stock when the basis of such stock exceeds its value. The rule applies differently when the subsidiary remains a member of the group after its stock is disposed of or deconsolidated from when the subsidiary does not remain a member of the group.

If a subsidiary remains a member of the group, the basis redetermination rule requires that all members of the group aggregate their bases in all shares of the subsidiary member. That basis is then allocated first to the shares of the subsidiary member's preferred stock that are owned by the members of the group in proportion to, but not in excess of, their value on the date of the disposition or deconsolidation. After the allocation of the aggregated basis to all shares of the preferred stock of the subsidiary member held by members of the group, any remaining basis is allocated among all common shares of subsidiary member stock held by members of the group in proportion to their value on the date of the disposition or deconsolidation. This rule reallocates past adjustments to reflect an economic allocation of the built-in items of deduction and loss with respect to contributed property. The rule also reallocates stock basis that arose from capital contributions of property and stock basis that arose as a result of positive investment adjustments. The reallocation of basis obviates the need for complex rules addressing basis adjustments resulting from an inside loss that was reflected in a stock loss that is suspended pursuant to the loss suspension rule described below.

If the subsidiary is no longer a member of the group immediately after the disposition or deconsolidation of its stock, the basis redetermination rule requires a reallocation of a certain amount of the basis of the stock of the subsidiary member owned by group members. In particular, the amount of basis subject to reallocation is equal to the lesser of (1) the loss inherent in the stock disposed of or deconsolidated, and (2) the subsidiary member's items of deduction and loss that were taken into account in computing the adjustment to the basis of any share of stock of the subsidiary member, other than the shares disposed of or deconsolidated, during the time such subsidiary member was a member of the group. However, only those items of deduction and loss that are attributable to formerly unrecognized or unabsorbed items reflected in the basis of the subsidiary member stock disposed of or deconsolidated are included in the computation of the amount of basis subject to reallocation. For example, if a share of stock has a basis in excess of value because the stock was acquired in exchange for a built-in loss asset, the stock's basis reflects that unrecognized loss. If that loss is later recognized, the basis adjustment resulting from that recognition is an item of loss attributable to a formerly unrecognized item reflected in the basis of such stock. The proposed regulations contain a presumption that all items of deduction and loss included in the computation of prior investment adjustments to the basis of members' shares of the subsidiary member are attributable to the recognition and absorption of a deduction or loss reflected in the basis of the shares that are disposed of or deconsolidated. The regulations do, however, permit groups to establish that particular items of deduction and loss are not reflected in the basis of the shares disposed of or deconsolidated, and, therefore, are not reallocated to other shares.

If the subsidiary is no longer a member of the group immediately after the disposition or deconsolidation of its stock, the basis in the shares of subsidiary member stock disposed of or deconsolidated is reduced by the amount of basis subject to reallocation. Then, to the extent of the amount of basis subject to reallocation, the basis of all preferred shares of stock of the subsidiary member that are held by members of the group immediately after the disposition or deconsolidation is increased such that the basis of each such share equals, but does not exceed, its value immediately before the disposition or deconsolidation. Finally, to the extent that the amount of basis subject to reallocation does not increase the basis of such preferred shares of the subsidiary member, such amount increases the basis of all common shares of stock of the subsidiary member held by members of the group immediately after the disposition or deconsolidation in a manner that, to the greatest extent possible, causes the ratio of the basis to the value of each such share to be the same.

The basis redetermination rule does not apply if the group disposes of all its stock of the subsidiary member within a single taxable year, in one or more fully taxable transactions, or is allowed a worthless stock deduction with respect to all of the subsidiary member stock owned by the members. Under those circumstances, if a second tax benefit has been derived from an economic loss, the second tax benefit will be recaptured in the taxable year in which it was obtained.

The proposed regulations also include a look-through rule that applies the basis redetermination rule to stock of lower-tier subsidiary members when there is a disposition or deconsolidation of stock of a higher-tier member. In addition, the proposed regulations provide that basis adjustments made pursuant to the basis redetermination rule result in basis adjustments to higher-tier member stock.

While the basis redetermination rule may prevent the recognition of a current loss on a particular share of subsidiary member stock, it does not prevent a group from obtaining a benefit from its investment in the subsidiary member. The basis redetermination rule affects only the timing of the group's loss and, in so doing, prevents the group from inappropriately duplicating a single economic loss.

B. Loss Suspension Rule

The loss suspension rule prevents duplication of an economic loss by effectively disallowing a stock loss if the economic loss giving rise to that stock loss is later reflected on the group's return as in the second type of transaction described above.

1. Suspension of Stock Loss

Under the loss suspension rule, if, after application of the basis redetermination rule, a member of a consolidated group recognizes a loss on the disposition of stock of a subsidiary member of the same group, and the subsidiary member is a member of the same group immediately after the disposition, then the selling member's stock loss is suspended to the extent of the duplicated loss with respect to such stock. The proposed regulations also include a special rule that applies the loss suspension rule in cases of a disposition of stock of a subsidiary member that leaves the group where the subsidiary owns stock of another subsidiary that remains a member of the group. In addition, the proposed regulations include a substitute asset rule that suspends a member's loss recognized on a disposition of an asset other than stock of a subsidiary member where such member's basis in the asset disposed of was determined, directly or indirectly, in whole or in part, by reference to the basis of stock of a subsidiary member with respect to which there was a duplicated loss, and immediately after the disposition, the subsidiary member is a member of such group.

The amount of duplicated loss is the excess of (1) the sum of the aggregate basis of the subsidiary member's assets (excluding stock in other subsidiary members of the group), the subsidiary member's losses that are carried to its first taxable year after the disposition, and the subsidiary member's deductions that have been recognized but deferred under another provision, over (2) the sum of the value of stock of the subsidiary member and the subsidiary member's liabilities that have been taken into account for tax purposes. Each of these items in the computation (except stock value) includes the subsidiary member's allocable share of the same items of any lower-tier subsidiary. This definition of duplicated loss is substantially identical to the one in former § 1.1502–20, except that securities of other members of the group are not excluded from the computation of the subsidiary's aggregate asset basis.

The application of the loss suspension rule can be illustrated as follows. Assume P, the common parent of a consolidated group, forms S in Year 1 by contributing $100 to S in exchange for all 10 shares of S's outstanding stock. Immediately after the contribution, S purchases a building for $100. In Year 2, the value of the building declines to $10. At the end of Year 2, P sells one share of S stock for $1 and recognizes a $9 loss. (Because the basis of P's shares of S stock is uniform at the time of the disposition, the basis redetermination rule does not alter P's basis in the share sold.) Immediately after the sale, S is still a member of the P group because P continues to own 90% of the S stock. On the date of the stock sale, S's duplicated loss is $90, the excess of its asset basis ($100) over the value of the assets (deemed to be equal to the aggregate stock value, $10). Of the total duplicated loss, 10%, or $9, is allocable to the share sold. Thus, under the loss suspension rule the $9 stock loss is suspended.

2. Reduction of Suspended Stock Loss

Because a suspended stock loss reflects the subsidiary member's unrecognized or unabsorbed deductions and losses, the suspended loss is reduced, with the result that it will not later be allowed, as the subsidiary member's deductions and losses are taken into account (i.e., absorbed) in determining the group's consolidated taxable income (or loss). The reduction of suspended loss is appropriate because, once the group takes the inside loss into account in determining consolidated taxable income (or loss), the group should not be able to take such loss (in the form of the stock loss or otherwise) into account again in determining consolidated taxable income or loss. Using the facts of the above example, assume that, in Year 3, S sells its building for $10 and recognizes a $90 loss. The P group uses the entire $90 loss to offset income of another member of the group. Under these proposed regulations, the absorbed loss ($90) reduces the suspended loss amount ($9), but not below zero. Thus, P will benefit from the economic loss once on its return, no suspended stock loss will remain, and P's basis in its remaining S stock will be reduced by its allocable share of the loss ($81).

The proposed regulations generally presume that all deductions and losses are attributable first to the duplicated loss that gave rise to a suspended stock loss. The presumption, however, is rebuttable. If a taxpayer can establish that an item of deduction or loss was not part of the duplicated loss that gave rise to a suspended stock loss, the taxpayer will not be required to reduce its suspended stock loss. To illustrate, assume that, instead of selling the building, S retained the building and, in Year 3, earned $50 which it then used to purchase a truck. In Year 4, S sells the truck, recognizing a $25 loss. That loss offsets income of another member of the P group. Assuming that P and S have kept adequate records, P should be able to establish that the loss on the truck was not reflected in the stock loss (because it was attributable to an asset that was acquired after the disposition of stock that gave rise to the suspended stock loss). In that case, P would not be required to reduce its suspended stock loss. The IRS and Treasury Department are concerned about, and specifically request comments regarding, the administrability aspects of this exception.

3. Allowance of Suspended Stock Loss

The proposed regulations provide that any suspended stock loss remaining at the time the subsidiary member leaves the group is allowed, to the extent otherwise allowable under applicable provisions of the Code and regulations thereunder. The loss is allowed on a return filed for the taxable year that includes the last day that the subsidiary member is a member of the group. Once the subsidiary member is no longer a member of the group, the group will not typically be able to use the subsidiary member's deductions or losses on the group's return. Accordingly, it is appropriate to allow any suspended stock loss remaining at the time the subsidiary member leaves the group.

The proposed regulations also provide that any suspended stock loss remaining is allowed at the time the group is allowed a worthless stock deduction with respect to all of the subsidiary member stock owned by members. In such cases, the basis reduction rule, described below, may reduce a worthless stock deduction effectively to prevent any second tax benefit that could be derived from the economic loss that gave rise to the suspended stock loss.

The proposed regulations require that in order for a group to be allowed a loss that was recognized on the disposition of a subsidiary member and that was suspended, the group must file a statement of allowable loss with the consolidated return for the year in which the loss is allowable.

C. Application of the Basis Redetermination and Loss Suspension Rules Generally

The IRS and Treasury Department do not expect that the basis redetermination and the loss suspension rules will apply frequently. This expectation is based on the assumption that, when a group seeks to raise capital, the common parent will typically issue stock directly or sell all of the stock of a subsidiary member. Alternatively, groups sometimes seek to raise capital by creating minority interests in a subsidiary member. In such cases, however, the group will typically cause the subsidiary member to issue shares directly to the nonmember. Thus, the IRS and Treasury Department believe that a member's sale of less than all of the stock of a subsidiary member to a nonmember, which may trigger application of the basis redetermination and loss suspension rules, is not a common transaction in the absence of tax incentives.

D. Basis Reduction Rule

The loss suspension rule apples only if there has been a disposition of subsidiary member stock and the subsidiary member is a member of the group immediately after the disposition. The IRS and Treasury Department, however, are concerned that a group may obtain more than one tax benefit from a single economic loss in certain cases in which a group member recognizes a loss with respect to subsidiary member stock and, in connection with such recognition event, the subsidiary member ceases to exist. For example, suppose P owns all of the stock of S. P's basis in its S stock is $100 and the value of the S stock is $0 because S is insolvent. S liquidates into P. In that case, P will recognize a loss of $100 on the disposition of the S stock. Because S is not a member of the P group immediately after the disposition of S stock, the loss suspension rule will not apply. The portion of the group's consolidated net operating and net capital loss carryforwards attributable to S, however, may remain with the P group. Therefore, to that extent, any loss on the stock of the subsidiary duplicates those losses. To address this case, these proposed regulations provide that if a member disposes of subsidiary member stock and on the following day the subsidiary is not a member of the group and does not have a separate return year, then the basis of the subsidiary member stock is reduced to the extent of the consolidated net operating loss and net capital loss carryforwards attributable to such subsidiary member, as though they were absorbed immediately prior to the disposition.

Similarly, where the subsidiary becomes worthless under the standards of § 1.1502–80(c), the group may be allowed a worthless stock loss while consolidated net operating and net capital loss carryforwards attributable to the worthless subsidiary member remain unabsorbed. Although the subsidiary may be viewed as remaining in the group, rather than rely on existing rules, including the excess loss account recapture rules, to prevent the possible duplication of the unabsorbed losses, these proposed regulations provide for a negative stock basis adjustment similar to that described above in such cases.

E. Anti-avoidance Rules

The IRS and Treasury Department are concerned that, in certain cases, taxpayers may structure transactions to avoid the application of the basis redetermination and loss suspension rules in a manner that is not consistent with the purpose of the proposed regulations to prevent a consolidated group from obtaining more than one tax benefit from a single economic loss. In particular, suppose P acquires 80 shares of S common stock in exchange for $80. In a later year, P contributes an asset with a basis of $50 and a value of $20 to S in exchange for 20 shares of S preferred stock. The following year, S sells the contributed asset, recognizing a loss of $30. As a result of the sale of the asset, P's basis in the S common stock is reduced by $30 from $80 to $50. In contemplation of the sale of the S preferred stock, P contributes the 80 shares of S common stock to PS, a partnership, in a transaction described in section 721. Because P's basis in the S common stock does not exceed the value of such stock, the deconsolidation of the S common stock does not trigger the application of the basis redetermination rule. In the same year, but after the contribution of the S common stock to PS, P sells the S preferred stock, recognizing $30 of loss. Absent the application of an anti-avoidance rule, the P group will have obtained more than one tax benefit from the single economic loss inherent in the contributed asset. Accordingly, the proposed regulations provide that if a share of subsidiary member stock is deconsolidated and such deconsolidation is with a view to avoiding application of the basis redetermination rule prior to the disposition of loss stock of the subsidiary member, then the basis redetermination rule will apply immediately prior to the deconsolidation.

In addition, suppose in Year 1, P forms S with a contribution of $100 in exchange for 100 shares of common stock of S which at that time represents all of the outstanding stock of S. In Year 2, P contributes 20 shares of common stock of S to PS, a partnership, in a transaction described in section 721. In Year 3, P contributes an asset with a basis of $50 and a value of $20 to PS in a transaction described in section 721. Also in Year 3, PS contributes the built-in loss asset to S and P contributes an additional $80 to S in transfers to which section 351 applies. In Year 4, S sells the built-in loss asset for $20, recognizing a loss of $30. The P group uses that loss to offset income of P. Also in Year 4, P sells its entire interest in PS for $40, recognizing a loss of $30, or PS sells its S stock for $20, recognizing a loss of $30. In either case, the P group would obtain more than one tax benefit from the single economic loss in the contributed asset. Accordingly, the proposed regulations provide that where a member of a consolidated group contributes a built-in loss asset to a partnership or a deconsolidated corporation, that partnership or deconsolidated corporation subsequently contributes the built-in loss asset to a subsidiary member of the group, and those contributions are with a view to avoiding the application of the basis redetermination rule or the loss suspension rule, adjustments must be made to prevent the consolidated group from obtaining more than one tax benefit from a single economic loss in the case.

The IRS and Treasury Department are also concerned that it may be possible to avoid the loss suspension rule by disposing of a sufficient amount of subsidiary member stock to cause a deconsolidation of the subsidiary member, but then engage in a transaction that has the effect of re-importing to the group losses of that subsidiary member. To address this concern, the proposed regulations include an anti-avoidance rule that prevents the group from obtaining the tax benefit of the re-imported loss. The rule applies whenever (1) a group recognizes and is allowed a loss on the disposition of subsidiary member stock with respect to which there is a duplicated loss, (2) as a result of that disposition or another disposition, the subsidiary member leaves the group, and (3) within ten (10) years after the date the subsidiary member leaves the group, a loss of the subsidiary member is re-imported into the group. A loss of a subsidiary may be re-imported into the group when the subsidiary member rejoins the group at a time when it has losses or deferred deductions that it had on the date of the disposition or has losses or deferred deductions that are attributable to built-in loss assets held by the subsidiary member on the date of the disposition, or has built-in loss assets that were built-in loss assets of the subsidiary member on the date of the disposition. A loss of a subsidiary member may also be re-imported into the group when a member of the group succeeds to losses or deferred deductions of the subsidiary member that were losses or deferred deductions of the subsidiary member on the date of the disposition, or losses or deferred deductions that are attributable to assets that were built-in loss assets of the subsidiary member on the date of the disposition, or acquires built-in loss assets that were built-in loss assets of the subsidiary member on the date of the disposition. If the anti-avoidance rule applies, then these proposed regulations generally prohibit the use of the re-imported item of deduction or loss to offset income of the group.

F. Application of Anti-Abuse Rules

Finally, the proposed regulations make clear that the proposed rules do not preclude the application of anti-abuse rules of the Code and regulations thereunder, including to a transaction entered into to invoke the basis redetermination rule to avoid the effect of any other provision of the Code or regulations.

G. Request for Comments

The IRS and Treasury Department are considering alternative approaches to the basis redetermination rule that would mitigate basis disparities in stock of a subsidiary member. In this regard, the IRS and Treasury Department are considering an approach that would adjust the bases of all shares of subsidiary member stock held by group members upon any acquisition of subsidiary member stock. Comments are requested regarding the appropriateness and desirability of such an approach as well as suggestions for alternative approaches.

In addition, under the proposed regulations, the basis redetermination and loss suspension rules apply only to certain events involving stock that has a basis in excess of value. The IRS and Treasury Department, however, are considering the appropriateness and feasibility of a rule that applies the principles of the basis redetermination and loss suspension rules to certain events involving stock that has a value in excess of basis. With respect to the application of the principles of the loss suspension rule to dispositions of stock that has a value in excess of basis and that reflects duplicated gain, a rule might require taking into account the stock gain upon the disposition of the stock but would eliminate gain recognized on the disposition of assets that had a built-in gain at the time of the stock transaction. The IRS and Treasury Department request comments on appropriate and administrable applications of the principles of the basis redetermination and loss suspension rules to dispositions and deconsolidations of stock that has a built-in gain.

Finally, as an alternative or supplement to the rule providing for basis reduction for unabsorbed losses in certain cases where the subsidiary member ceases to exist or the group is allowed a worthless stock deduction with respect to the stock of such subsidiary member, the IRS and Treasury Department are considering whether it would be more appropriate to restrict the losses pursuant to the approach set forth in section 382(g)(4)(D). Comments are requested regarding whether such an approach would be appropriate, desirable and administrable, as well as the application of such an approach in the context of consolidated attributes.

Proposed Effective Date

These regulations, other than the anti-avoidance rule that relates to the re-importing of losses, are proposed to apply to transactions that occur on or after March 7, 2002, but only if such transactions occur during a taxable year the original return for which is due (without regard to extensions) after the date these regulations are published as temporary or final regulations in the **Federal Register**. The anti-avoidance rule that relates to the re-importing of loss is proposed to apply to losses re-imported as a result of an event that occurs on or after October 18, 2002, that triggers the application of such rule, but only if such event occurs during a taxable year the original return for which is due (without regard to extensions) after the date these regulations are published as temporary or final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations, which tend to be larger businesses. Moreover, the number of taxpayers affected and the average burden are minimal. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 15, 2003, beginning at 10 a.m. in room 6718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written or electronic comments and an outline of the topics to be discussed and

the time to be devoted to each topic (a signed original and eight (8) copies) by December 27, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Aimee K. Meacham of the Office of the Associate Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. Section 1.1502–32 is amended by:

1. Revising paragraph (a)(2).

2. Adding paragraphs (b)(3)(iii)(C), (b)(3)(iii)(D), and (b)(3)(vi).

The revision and additions read as follows:

§ 1.1502–32 Investment adjustments.

(a) * * *

(2) *Application of other rules of law.* The rules of this section are in addition to other rules of law. See, e.g., section 358 (basis determinations for distributees), section 1016 (adjustments to basis), § 1.1502–11(b) (limitations on the use of losses), § 1.1502–19 (treatment of excess loss accounts), § 1.1502–31 (basis after a group structure change), and § 1.1502–35 (additional rules relating to stock loss). P's basis in S's stock must not be adjusted under this section and other rules of law in a manner that has the effect of duplicating an adjustment. For example, if pursuant to § 1.1502–35(c)(3) and paragraph (b)(3)(iii)(C) of this section the basis in stock is reduced to take into account a loss suspended under § 1.1502–35(c)(1), such basis shall not be further reduced to take into account such loss, or a portion of such loss, if any, that is later allowed pursuant to § 1.1502–35(c)(5). See also paragraph (h)(5) of this section for basis reductions applicable to certain former subsidiaries.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(C) *Loss suspended under § 1.1502–35(c).* Any loss suspended pursuant to § 1.1502–35(c) is treated as a noncapital, nondeductible expense incurred during the tax year that includes the date of the disposition to which such section applies. See § 1.1502–35(c)(3). Consequently, the basis of a higher-tier member's stock of P is reduced by the suspended loss in the year it is suspended.

(D) *Loss disallowed under § 1.1502–35(g)(3)(iii).* Any loss the use of which is disallowed pursuant to § 1.1502–35(g)(3)(iii)(A) or (B) is treated as a noncapital, nondeductible expense incurred during the taxable year that includes the date on which such loss is recognized. Any loss the use of which is disallowed pursuant to § 1.1502–35(g)(3)(iii)(C) and with respect to which no waiver described in paragraph (b)(4) of this section is filed is treated as a noncapital, nondeductible expense incurred during the taxable year that includes the day after the event described in § 1.1502–35(g)(3)(iii)(C) that gives rise to the application of § 1.1502–35(g)(3). See § 1.1502–35(g)(3)(iv).

* * * * *

(vi) *Special rules in the case of certain transactions subject to § 1.1502–35.* If a member of a group disposes of a share of subsidiary member stock or a share of subsidiary member stock is deconsolidated, and, at the time of such disposition or deconsolidation, the basis of such share exceeds its value, all members of the group are subject to the provisions of § 1.1502–35, which generally require a redetermination of members' basis in all shares of subsidiary stock.

3. Section 1.1502–35 is added to read as follows:

§ 1.1502–35 Disposition or deconsolidation of subsidiary member stock.

(a) *Purpose.* The purpose of this section is to prevent a group from obtaining more than one tax benefit from a single economic loss. The provisions of this section shall be construed in a manner consistent with that purpose and in a manner that reasonably carries out that purpose.

(b) *Redetermination of basis on disposition or deconsolidation of subsidiary member stock*—(1) *Application.* Except as provided in paragraph (b)(4) of this section, this paragraph (b) applies if a member of a consolidated group disposes of stock of a subsidiary member or a share of subsidiary member stock is deconsolidated, and such disposed of or deconsolidated stock has a basis that exceeds it value immediately prior to such disposition or deconsolidation. If, immediately after such disposition or deconsolidation, the subsidiary member remains a member of the group, then, immediately before such disposition or deconsolidation, the basis in each share of subsidiary member stock owned by each member of the group shall be redetermined in accordance with the provisions of paragraph (b)(2) of this section. If, immediately after such disposition or deconsolidation, the subsidiary is not a member of the group, then immediately before such disposition or deconsolidation, the basis in each share of subsidiary member stock owned by each member of the group shall be redetermined in accordance with the provisions of paragraph (b)(3) of this section.

(2) *Redetermination of subsidiary member stock basis if subsidiary member remains a member of the same group.* If the subsidiary member the stock of which is disposed of or deconsolidated remains a member of the group, all of the members' basis in the shares of subsidiary member stock shall be aggregated. Such aggregated basis shall be allocated first to the shares of the subsidiary member's preferred stock that are owned by the members of the group, in proportion to, but not in excess of, the value of those shares on the date of the disposition or deconsolidation that gave rise to the application of this paragraph (b). After allocation of the aggregated basis to all shares of the preferred stock of the subsidiary member held by members of the group, any remaining basis shall be allocated among all common shares of subsidiary member stock held by members of the group in proportion to the value of such shares on the date of the disposition or deconsolidation that gave rise to the application of this paragraph (b).

(3) *Redetermination of subsidiary member stock basis if subsidiary member does not remain a member of the group*—(i) *Calculation of Reallocable Basis Amount.* The reallocable basis amount shall equal the lesser of—

(A) The amount by which the basis of the disposed of or deconsolidated stock exceeds the value of such stock immediately prior to the disposition or deconsolidation that gave rise to the application of this paragraph (b); and

(B) The total of the subsidiary member's (and any predecessor's) items of deduction and loss, and the subsidiary member's (and any predecessor's) allocable share of items of deduction and loss of all lower-tier subsidiary members, that were taken into account in computing the adjustment to the basis of any share of stock of the subsidiary member (and any predecessor) under § 1.1502–32 other than the stock of the subsidiary member the disposition or deconsolidation of which gave rise to the application of this paragraph (b), during the time such subsidiary member (or any predecessor) was a member of the group, except to the extent the group can establish that all or a portion of such items would not have been reflected in a computation of the duplicated loss with respect to the disposed of or deconsolidated stock of the subsidiary member (or any predecessor) at any time prior to such disposition or deconsolidation.

(ii) *Allocation of reallocable basis amount.* If the subsidiary member the stock of which is disposed of or deconsolidated does not remain a member of the group, the basis in the shares of subsidiary member stock that were disposed of or deconsolidated shall be reduced by the reallocable basis amount. Then, to the extent of the reallocable basis amount, the basis of all the preferred shares of stock of the subsidiary member that are held by members of the group immediately after the disposition or deconsolidation shall be increased such that the basis of each such share shall equal, but not exceed, its value immediately before the disposition or deconsolidation. If the reallocable basis amount is not sufficient to increase the basis of each such share of preferred stock to its value immediately before the disposition or deconsolidation, the basis of each such share shall be increased in a manner that, to the greatest extent possible, causes the ratio of the basis to the value of each such share to be the same. Then, to the extent the reallocable basis amount does not increase the basis of shares of subsidiary member preferred stock pursuant to the second sentence of this paragraph (b)(3)(ii), such amount shall increase the basis of all common shares of subsidiary member stock held by members of the group immediately after the disposition or deconsolidation in a manner that, to the greatest extent possible, causes the ratio of the basis to the value of each such other share to be the same.

(4) *Exception to application of redetermination rules.* This paragraph (b) shall not apply to a disposition of subsidiary member stock if, within the taxable year of such disposition, in one or more fully taxable transactions, the group disposes of its entire equity interest in the subsidiary member or is allowed a worthless stock loss under section 165(g) (taking into account the provisions of § 1.1502–80(c)) with respect to all of the subsidiary member stock owned by members.

(5) *Special rule for lower-tier subsidiaries.* If—

(i) A member of a consolidated group disposes of stock of a subsidiary member of the same group or a share of subsidiary member stock is deconsolidated, and, immediately before the disposition or deconsolidation, the member's basis in the disposed of or deconsolidated share of subsidiary member stock exceeds its value;

(ii) The subsidiary member owns stock of another subsidiary member of the same group and, immediately before the disposition or deconsolidation, the basis of some or all of such stock exceeds its value; and

(iii) Immediately after the disposition or deconsolidation, another member of the same group owns stock of such other subsidiary member, then the basis in each share of such other subsidiary member shall be redetermined pursuant to this paragraph (b) as if the stock of such other subsidiary member owned by the subsidiary member had been disposed of or deconsolidated. This paragraph (b)(5) shall not apply in the case of a disposition of subsidiary member stock if, within the taxable year of the disposition of subsidiary member stock, in one or more fully taxable transactions, the group disposes of its remaining equity interests in the other subsidiary member or is allowed a worthless stock loss under section 165(g) (taking into account the provisions of § 1.1502–80(c)) with respect to such other subsidiary member. These same principles shall apply to stock of subsidiary members of the same group that are owned by such other subsidiary member.

(6) *Stock basis adjustments for higher-tier stock.* The basis adjustments required under this paragraph (b) result in basis adjustments to higher-tier member stock. The adjustments are applied in the order of the tiers, from the lowest to highest. For example, if a common parent owns stock of a subsidiary member that owns stock of a lower-tier subsidiary member and the subsidiary member recognizes a loss on the disposition of a portion of its shares of the lower-tier subsidiary member stock, the common parent must adjust its basis in its subsidiary member stock under the principles of § 1.1502–32 to reflect the adjustments that the subsidiary member must make to its basis in its stock of the lower-tier subsidiary member.

(7) *Ordering rule.* The rules of this paragraph (b) apply after the rules of § 1.1502–32 are applied. Paragraph (b)(5) of this section (and any resulting basis adjustments to higher-tier member stock made pursuant to paragraph (b)(6) of this section) applies prior to paragraph (b)(2) or (b)(3) of this section (and any resulting basis adjustments to higher-tier member stock made pursuant to paragraph (b)(6) of this section).

(c) *Loss suspension*—(1) *General rule.* Any loss recognized by a member of a consolidated group with respect to the disposition of a share of subsidiary member stock shall be suspended to the extent of the duplicated loss with respect to such share of stock if, immediately after the disposition, the subsidiary is a member of the consolidated group of which it was a member immediately prior to the disposition (or any successor group).

(2) *Special rule for lower-tier subsidiaries.* This paragraph (c)(2) applies if neither paragraph (c)(1) nor (f) of this section applies to a member's disposition of a share of stock of a subsidiary member (the departing member), a loss is recognized on the disposition of such share, and the departing member owns stock of one or more other subsidiary members (a remaining member) that is a member of such group immediately after the disposition. In that case, such loss shall be suspended to the extent the duplicated loss with respect to the departing member stock disposed of is attributable to the remaining member or members.

(3) *Treatment of suspended loss.* For purposes of the rules of § 1.1502–32(b)(3)(iii), any loss suspended pursuant to paragraph (c)(1) or (c)(2) of this section is treated as a noncapital, nondeductible expense of the member that disposes of subsidiary member stock incurred during the taxable year that includes the date of the disposition of stock to which paragraph (c)(1) or (c)(2) of this section applies. See § 1.1502–32(b)(3)(iii)(C). Consequently, the basis of a higher-tier member's stock of the member that disposes of subsidiary member stock is reduced by the suspended loss in the year it is suspended.

(4) *Reduction of suspended loss*—(i) *General rule.* The amount of any loss suspended pursuant to paragraphs (c)(1) and (c)(2) of this section shall be reduced, but not below zero, by the subsidiary member's (and any successor's) items of deduction and loss,

and the subsidiary member's (and any successor's) allocable share of items of deduction and loss of all lower-tier subsidiary members, that are allocable to the period beginning on the date of the disposition that gave rise to the suspended loss and ending on the day before the first date on which the subsidiary member (or any successor) is not a member of the group of which it was a member immediately prior to the disposition (or any successor group), and that are taken into account in determining consolidated taxable income (or loss) of such group for any taxable year that includes any date on or after the date of the disposition and before the first date on which the subsidiary member (or any successor) is not a member of such group. The preceding sentence shall not apply to items of deduction and loss to the extent that the group can establish that all or a portion of such items was not reflected in the computation of the duplicated loss with respect to the subsidiary member stock on the date of the disposition of such stock.

(ii) *Operating rules*—(A) *Year in which deduction or loss is taken into account.* For purposes of paragraph (c)(4)(i) of this section, a subsidiary member's (or any successor's) deductions and losses are treated as taken into account when and to the extent they are absorbed by the subsidiary member (or any successor) or any other member. To the extent that the subsidiary member's (or any successor's) deduction or loss is absorbed in the year it arises or is carried forward and absorbed in a subsequent year (*e.g.*, under section 172, 465, or 1212), the deduction is treated as taken into account in the year in which it is absorbed. To the extent that a subsidiary member's (or any successor's) deduction or loss is carried back and absorbed in a prior year (whether consolidated or separate), the deduction or loss is treated as taken into account in the year in which it arises and not in the year in which it is absorbed.

(B) *Determination of items that are allocable to the post-disposition, pre-deconsolidation period.* For purposes of paragraph (c)(4)(i) of this section, the determination of whether a subsidiary member's (or any successor's) items of deduction and loss and allocable share of items of deduction and loss of all lower-tier subsidiary members are allocable to the period beginning on the date of the disposition of subsidiary stock that gave rise to the suspended loss and ending on the day before the first date on which the subsidiary member (or any successor) is not a member of the consolidated group of which it was a member immediately prior to the disposition (or any successor group) is determined pursuant to the rules of § 1.1502–76(b)(2), without regard to § 1.1502–76(b)(2)(ii)(D), as if the subsidiary member ceased to be a member of the group at the end of the day before the disposition and filed separate returns for the period beginning on the date of the disposition and ending on the day before the first date on which it is not a member of such group.

(5) *Allowable loss*—(i) *General rule.* To the extent not reduced under paragraph (c)(4) of this section, any loss suspended pursuant to paragraph (c)(1) or (c)(2) of this section shall be allowed, to the extent otherwise allowable under applicable provisions of the Internal Revenue Code and regulations thereunder, on a return filed by the group of which the subsidiary was a member on the date of the disposition of subsidiary stock that gave rise to the suspended loss (or any successor group) for the taxable year that includes the day before the first date on which the subsidiary (or any successor) is not a member of such group or the date the group is allowed a worthless stock loss under section 165(g) (taking into account the provisions of § 1.1502–80(c)) with respect to all of the subsidiary member stock owned by members.

(ii) *No tiering up of certain adjustments.* No adjustments shall be made to a member's basis of stock of a subsidiary member (or any successor) for a suspended loss that is taken into account under paragraph (c)(5)(i) of this section. See § 1.1502–32(a)(2).

(iii) *Statement of allowed loss.* Paragraph (c)(5)(i) of this section applies only if the separate statement required under this paragraph (c)(5)(iii) is filed with, or as part of, the taxpayer's return for the year in which the loss is allowable. The statement must be entitled "ALLOWED LOSS UNDER § 1.1502–35(c)(5)" and must contain the name and employer identification number of the subsidiary the stock of which gave rise to the loss.

(6) *Special rule for dispositions of certain carryover basis assets.* If—

(i) A member of a group recognizes a loss on the disposition of an asset other than stock of a subsidiary member;

(ii) Such member's basis in the asset disposed of was determined, directly or indirectly, in whole or in part, by reference to the basis of stock of a subsidiary member and, at the time of the determination of the member's basis in the assets disposed of, there was a duplicated loss with respect such stock of the subsidiary member; and

(iii) Immediately after the disposition, the subsidiary member is a member of such group, then such loss shall be suspended pursuant to the principles of paragraphs (c)(1) and (c)(2) of this section to the extent of the duplicated loss with respect to such stock at the time of the determination of basis of the asset disposed of. Principles similar to those set forth in paragraphs (c)(3), (4), and (5) of this section shall apply to a loss suspended pursuant to this paragraph (c)(6).

(7) *Coordination with loss deferral, loss disallowance, and other rules*—(i) *In general.* Loss recognized on the disposition of subsidiary member stock or another asset is subject to redetermination, deferral, or disallowance under other applicable provisions of the Internal Revenue Code and regulations thereunder, including sections 267(f) and 482. Paragraphs (c)(1), (c)(2), and (c)(6) of this section do not apply to a loss that is disallowed under any other provision. If loss is deferred under any other provision, paragraphs (c)(1), (c)(2), and (c)(6) of this section apply when the loss would otherwise be taken into account under such other provision. However, if an overriding event described in paragraph (c)(7)(ii) of this section occurs before the deferred loss is taken into account, paragraphs (c)(1), (c)(2), and (c)(6) of this section apply to the loss immediately before the event occurs, even though the loss may not be taken into account until a later time.

(ii) *Overriding events.* For purposes of paragraph (c)(7)(i) of this section, the following are overriding events—

(A) The stock ceases to be owned by a member of the consolidated group;

(B) The stock is canceled or redeemed (regardless of whether it is retired or held as treasury stock); or

(C) The stock is treated as disposed of under § 1.1502–19(c)(1)(ii)(B) or (c)(1)(iii).

(d) *Definitions*—(1) *Disposition. Disposition* means any event in which gain or loss is recognized, in whole or in part.

(2) *Deconsolidation. Deconsolidation* means any event that causes a share of stock of a subsidiary member that remains outstanding to be no longer owned by a member of any consolidated group of which the subsidiary is also a member.

(3) *Value. Value* means fair market value.

(4) *Duplicated loss*—(i) *In general.* Duplicated loss is determined immediately after a disposition and equals the excess, if any, of—

(A) The sum of—

(*1*) The aggregate adjusted basis of the subsidiary member's assets other than any stock that subsidiary member owns in another subsidiary member; and

(*2*) Any losses attributable to the subsidiary member and carried to the subsidiary member's first taxable year following the disposition; and

(*3*) Any deductions of the subsidiary member that have been recognized but are deferred under a provision of the Internal Revenue Code (such as deductions deferred under section 469); over

(B) The sum of—

(*1*) The value of the subsidiary member's stock; and

(*2*) Any liabilities of the subsidiary member that have been taken account for tax purposes.

(ii) *Special rules.* (A) The amounts determined under paragraph (d)(4)(i) of this section with respect to a subsidiary member include its allocable share of corresponding amounts with respect to all lower-tier subsidiary members. If 80 percent or more in value of the stock of a subsidiary member is acquired by purchase in a single transaction (or in a series of related transactions during any 12-month period), the value of the subsidiary member's stock may not exceed the purchase price of the stock divided by the percentage of the stock (by value) so purchased. For this purpose, stock is acquired by purchase if the transferee is not related to the transferor within the meaning of sections 267(b) and 707(b)(1), using the language "10 percent" instead of "50 percent" each place that it appears, and the transferee's basis in the stock is determined wholly by reference to the consideration paid for such stock.

(B) The amounts determined under paragraph (d)(4)(i) of this section are not applied more than once to suspend a loss under this section.

(5) *Predecessor and Successor.* A predecessor is a transferor of assets to a transferee (the successor) in a transaction—

(i) To which section 381(a) applies;

(ii) In which substantially all of the assets of the transferor are transferred to members in a complete liquidation;

(iii) In which the successor's basis in assets is determined (directly or indirectly, in whole or in part) by reference to the transferor's basis in such assets, but the transferee is a successor only with respect to the assets the basis of which is so determined; or

(iv) Which is an intercompany transaction, but only with respect to assets that are being accounted for by the transferor in a prior intercompany transaction.

(6) *Successor group.* A surviving group is treated as a successor group of a consolidated group (the terminating group) that ceases to exist as a result of—

(i) The acquisition by a member of another consolidated group of either the assets of the common parent of the terminating group in a reorganization described in section 381(a)(2), or the stock of the common parent of the terminating group; or

(ii) The application of the principles of § 1.1502–75(d)(2) or (3).

(7) *Preferred stock, common stock. Preferred stock* and *common stock* shall have the meanings set forth in § 1.1502–32(d)(2) and (3), respectively.

(8) *Lower-tier.* A subsidiary member is *lower-tier* with respect to a member if or to the extent investment basis adjustments under § 1.1502–32 with respect to the stock of the former member would affect investment basis adjustments with respect to the stock of the latter.

(e) *Examples.* For purposes of the examples in this section, unless otherwise stated, all groups file consolidated returns on a calendar-year basis, the facts set forth the only corporate activity, all transactions are between unrelated persons, and tax liabilities are disregarded. The principles of paragraphs (a) through (d) of this section are illustrated by the following examples:

Example 1. (i) P owns 100 percent of the common stock of each of S1 and S2. S1 and S2 each have only one class of stock outstanding. P's basis in the stock of S1 is $100 and in the stock of S2 is $120. P, S1, and S2 are all members of the P group. S1 and S2 form S3. In Year 1, in transfers to which section 351 applies, S1 contributes $100 to S3 in exchange for all of the common stock of S3 and S2 contributes an asset with a basis of $50 and a value of $20 to S3 in exchange for all of the preferred stock of S3. S3 becomes a member of the P group. In Year 3, in a transaction that is not part of the plan that includes the formation of S3, S2 sells the preferred stock of S3 for $20. Immediately after the sale, S3 is a member of the P group.

(ii) Under paragraph (b)(1) of this section, because S2's basis in the preferred stock of S exceeds the value of such shares immediately prior to the sale and S is a member of the P group immediately after the sale, all of the P group members' bases in the stock of S3 is redetermined pursuant to paragraph (b)(2) of this section. Of the group members' total basis of $150 in the S3 stock, $20 is allocated to the preferred stock, the fair market value of the preferred stock on the date of the sale, and $130 is allocated to the common stock. S2's sale of the preferred stock results in the recognition of $0 of gain/loss. Pursuant to paragraph (b)(6) of this section, the redetermination of S1's and S2's bases in the stock of S3 results in adjustments to P's basis in the stock of S1 and S2. In particular, P's basis in the stock of S1 is increased by $30 to $130 and its basis in the stock of S2 is decreased by $30 to $90.

Example 2. (i) P owns 75 shares of common stock of S each with a basis and value equal to $1. S is a member of the P group. On January 1st of Year 1, in a transfer to which section 351 applies, P contributes Asset A, which has a basis of $100 and value of $25, to S in exchange for 25 shares of common stock of S. In Year 1, S incurs $40 of ordinary operating expenses and takes a depreciation deduction in the amount of $10 with respect to Asset A. Those deductions offset income of P in Year 1. Pursuant to § 1.1502–32, the negative investment adjustment of $50 with respect to the stock of S reduces the basis of each share of S common stock by $0.50. Therefore, P's original 75 shares of S common stock each has a basis of $0.50 and each of the 25 shares of S common stock that P acquired in Year 1 has a basis of $3.50. In Year 3 in a transaction that is not part of a plan that includes the Year 1 contribution, P sells the 25 shares of common stock it acquired in Year 1 for $12.50. As a result of that sale, S ceases to be a member of the P group.

(ii) Under paragraph (b)(1) of this section, because P's basis in the 25 shares of common stock it acquired in Year 1 exceeds its value immediately prior to the sale and S is not a member of the P group immediately after the disposition, P's basis in its shares of S common stock is redetermined pursuant to paragraph (b)(3) of this section. Pursuant to paragraph (b)(3)(i) of this section, the reallocable basis amount is $37.50 (the lesser of the amount by which P's basis in the S common stock sold exceeds the value of such stock immediately prior to the sale ($87.50 minus $12.50, or $75) and the aggregate amount of S's items of deduction and loss that were previously taken into account in the computation of the adjustment to the basis of the S common stock other than the stock disposed of, under § 1.1502–32, during the time that S was a member of the P group ($37.50)). P, however, may be able to establish that $30 of the $37.50 of items of deduction and loss taken into account in computing the adjustment to the basis of the S common stock (other than the S common stock disposed of) in Year 1 was not attributable to a loss that was already reflected in P's basis in its shares of S common stock disposed of. Assuming that P can establish this fact, pursuant to paragraph (b)(3)(i) of this section, the reallocable basis amount would be $7.50. In that case, P's basis in the 25 shares of S common stock sold would be reduced from $87.50 to $80 pursuant to paragraph (b)(3)(ii) of this section. Accordingly, P would recognize a loss of $67.50 on the sale of the 25 shares of S common stock for $12.50. In addition, the basis of each remaining share of S common stock would be increased in an aggregate amount of $7.50 in a manner that, to the greatest extent possible, causes the ratio of the basis to the value of each such other share to be equal. In this case, the basis of each of the 75 shares of S common stock retained would be increased by $0.10 to $0.60.

Example 3. (i) In Year 1, P forms S by contributing Asset A with a basis of $90 and

a value of $10 in exchange for one share of S common stock (CS1) in a transfer to which section 351 applies. In Years 2 and 3, in successive but unrelated transfers to which section 351 applies, P transfers $10 to S in exchange for one share of S common stock (CS2). Asset B with a basis of $2 and a value of $10 in exchange for one share of S common stock (CS3), and Asset C with a basis of $100 and a value of $10 in exchange for one share of S common stock (CS4). In Year 4, S sells Asset A, recognizing $80 of loss that is used to offset income of P recognized during Year 4. As a result of the sale of Asset C, the basis of each of P's four shares of S common stock is reduced by $20. Therefore, the basis of CS1 is $70. CS2 has an excess loss account of $10. CS3 has an excess loss account of $18. CS4 has a basis of $80. In Year 5 in a transaction that is not part of a plan that includes the Year 1 contribution, P sells CS1 for $10. Immediately after the sale of CS1, S is not a member of the P group.

(ii) Under paragraph (b)(1) of this section, because P's basis in CS1 exceeds its value immediately prior to the sale and S is not a member of the P group immediately after the disposition, P's basis in its shares of S common stock is redetermined pursuant to paragraph (b)(3) of this section. Pursuant to paragraph (b)(3)(i) of this section, the reallocable basis amount is $60 (the lesser of the amount by which P's basis in the S common stock sold exceeds the value of such stock immediately prior to the sale ($60) and the aggregate amount of S's items of deduction and loss that were previously taken into account in the computation of the adjustment to the basis of the S common stock other than the stock disposed of, under § 1.1502–32, during the time that S was a member of the P group ($60)). Pursuant to paragraph (b)(3)(ii) of this section, P's basis in CS1 is reduced from $70 to $10. On the sale of CS1, therefore, P recognizes $0 gain/loss. Then, P's basis in the remaining S common stock is increased in an aggregate amount of $60 in a manner that, to the greatest extent possible, causes the ratio of the basis to the value of each such share to be same. In this case, $20 of the reallocable basis amount is allocated to CS2 and $28 of the reallocable basis amount is allocated to CS3 so as to increase the basis of such shares to $10, the basis of CS1. The remaining $12 of the reallocable basis amount is allocated equally to CS2 and CS3 so as to increase the basis of each such share from $10 to $16.

Example 4. (i) In Year 1, P forms S with a contribution of $80 in exchange for 80 shares of the common stock of S, which at that time represents all of the outstanding stock of S. S becomes a member of the P group. In Year 2, P contributes Asset A with a basis of $50 and a value of $20 in exchange for 20 shares of the common stock of S in a transfer to which section 351 applies. In Year 3, in a transaction that is not part of the plan that includes the Year 2 contribution, P sells the 20 shares of the common stock of S that it acquired in Year 2 for $20. At that time, S has $80 and Asset A, the basis and value of which have not changed. In Year 4, S sells Asset A for $20, recognizing a $30 loss. That $30 loss is used on the P group return to offset income of P. In Year 5, P sells its remaining S common stock for $80.

(ii) Under paragraph (b)(1) of this section, because P's basis in the common stock sold exceeds its value immediately prior to the sale and S is a member of the P group immediately after the sale, P's basis in all of the stock of S is redetermined pursuant to paragraph (b)(2) of this section. Of P's total basis of $130 in the S common stock, a proportionate amount is allocated to each of the 100 shares of S common stock. Accordingly, $26 is allocated to the common stock of S that is sold and $104 is allocated to the common stock of S that is retained. On P's sale of the 20 shares of the common stock of S for $20, P recognizes a loss of $6. Because the sale of the 20 shares of common stock of S does not result in the deconsolidation of S, under paragraph (c)(1) of this section, that loss is suspended to the extent of the duplicated loss with respect to the shares sold. The duplicated loss with respect to the shares sold is $6. Therefore, the entire $6 loss is suspended. Pursuant to paragraph (c)(4) of this section, the amount of the suspended loss is reduced, but not below zero, by S's items of deduction and loss that are allocable to the period beginning on the date of the Year 2 disposition of the S stock and ending on the day before the first date on which S is not a member of the P group and that are taken into account in determining consolidated taxable income (or loss) of the P group for any taxable year that includes any date on or after the date of the Year 2 disposition and before the first date on which S is not a member of the P group, except to the extent the P group can establish that all or a portion of such items was not included in the calculation of the duplicated loss with respect to the shares of S sold on the date of the Year 2 disposition. Because the loss recognized on the sale of Asset A was included in the calculation of the duplicated loss with respect to the S common stock sold on the date of the sale and is absorbed by the P group, the suspended loss is reduced to zero pursuant to paragraph (c)(4) of this section. Accordingly, no amount of suspended loss is allowed under paragraph (c)(5) of this section. Under § 1.1502–32, P's basis in its S stock is reduced by $24. Accordingly, such basis is reduced from $104 to $80. P recognizes $0 gain/loss on the Year 5 sale of its remaining S common stock.

Example 5. (i) The facts are the same as in *Example 4*, except that instead of selling Asset A for $20, S sells Asset A for $45, recognizing a $5 loss. In addition in Year 5, P sells its remaining S common stock for $100.

(ii) As in *Example 4*, P recognizes a loss of $6 on the sale of the 20 shares of the common stock of S and that loss is suspended under paragraph (c)(1) of this section. Pursuant to paragraph (c)(4) of this section, assuming the P group cannot establish that only a portion of the loss recognized on the sale Asset A was reflected in the computation of the duplicated loss with respect to the 20 shares of S common stock sold, the amount of the suspended loss is reduced by the $5 loss recognized on the sale of Asset A to $1. Under § 1.1502–32, P's basis in its S stock is reduced by $4 from $104 to $100. In Year 5, when P sells its remaining S common stock for $100, it recognizes $0 gain/loss. Pursuant to paragraph (c)(5) of this section, the remaining $1 of the suspended loss is allowed on the P group's return for Year 5.

Example 6. (i) The facts are the same as in *Example 4*, except that S does not sell Asset A prior to the sale of its remaining S common stock.

(ii) As in *Example 4*, P recognizes a loss of $6 on the sale of the 20 shares of the common stock of S and that loss is suspended under paragraph (c)(1) of this section. In Year 5 when P sells its remaining S common stock for $80, it recognizes a loss of $24. Pursuant to paragraph (c)(5) of this section, for the year that includes the date of the deconsolidation of S, the suspended loss attributable to its Year 2 sale of S common stock is allowed to the extent it has not been reduced pursuant to paragraph (c)(4) of this section. Because S had no items of loss and deduction that are allocable to the period beginning on the date of the Year 2 disposition of the S stock and ending on the day before the first date on which S is not a member of the of the P group, the suspended loss is not reduced pursuant to paragraph (c)(4) of this section. Accordingly, pursuant to paragraph (c)(5) of this section, the entire $6 suspended loss is allowed on the P group's return for Year 5.

Example 7. (i) In Year 1, P forms S1 with a contribution of $200 in exchange for all of the common stock of S1, which represents all of the outstanding stock of S1. In the same year, S1 forms S2 with a contribution of $80 in exchange for 80 shares of the common stock of S2, which at that time represents all of the outstanding stock of S2. S1 and S2 become members of the P group. In the same year, S2 purchases Asset A for $80. In Year 2, S1 contributes Asset B with a basis of $50 and a value of $20 in exchange for 20 shares of the common stock of S2 in a transfer to which section 351 applies. In Year 3, S1 sells the 20 shares of the common stock of S2 that it acquired in Year 2 for $20. At that time, the bases and values of Asset A and Asset B are unchanged. In Year 4, S2 sells Asset A for $50, recognizing a $30 loss. That $30 loss is used on the P group return to offset income of P. In Year 5, S1 sells its remaining S2 common stock for $56.

(ii) Under paragraph (b)(1) of this section, because S1's basis in the S2 common stock sold exceeds its value immediately prior to the sale and S2 is a member of the P group immediately after the sale, S1's basis in all of the stock of S2 is redetermined pursuant to paragraph (b)(2) of this section. Of S1's total basis of $130 in the S2 common stock, a proportionate amount is allocated to each of the 100 shares of S2 common stock. Accordingly, a total of $26 is allocated to the common stock of S2 that is sold and $104 is allocated to the common stock of S2 that is retained. On S1's sale of the 20 shares of the common stock of S2 for $20, S1 recognizes a loss of $6. Because the sale of the 20 shares of common stock of S2 does not result in the deconsolidation of S2, under paragraph (c)(1) of this section, that loss is suspended to the extent of the duplicated loss with respect to the shares sold. The duplicated loss with respect to the shares sold is $6. Therefore, the entire $6 loss is suspended. Pursuant to paragraph (c)(3) of this section and § 1.1502–32(b)(3)(iii)(C), the suspended loss is treated as a noncapital, nondeductible expense incurred by S1 during the tax year that includes the date of the disposition of stock to which paragraph (c)(1) of this section applies. Accordingly, P's basis in its S1 stock is reduced from $200 to $194. Pursuant to paragraph (c)(4) of this section, the amount of the suspended loss is reduced, but not below zero, by S2's items of deduction and loss that are allocable to the period beginning on the date of the Year 3 disposition of the S2 stock and ending on the day before the first date on which S2 is not a member of the P group, and that are taken into account in determining consolidated taxable income (or loss) of the P group for any taxable year that includes any date on or after the date of the Year 3 disposition and before the first date on which S2 is not a member of the P group, except to the extent the P group can establish that all or a portion of such items was not included in the calculation of the duplicated loss with respect to the S2 stock sold on the date of the disposition. Assuming the P group can establish that the $30 loss generated by S2 on the sale of Asset A was not included in the calculation of the duplicated loss with respect to the S2 stock sold on the date of the disposition, such loss does not reduce the suspended loss. In that case, for the taxable year that includes the day before the first date in Year 5 on which S is not a member of the P group, the P group is allowed to take into account the $6 suspended loss. On the other hand, if the P group cannot establish that the $30 loss generated by S2 on the sale of Asset A was not included in the calculation of the duplicated loss with respect to the S2 stock sold on the date of the disposition, pursuant to paragraph (c)(4) of this section, such loss reduces the suspended loss to zero, and no amount of suspended loss is allowed under paragraph (c)(5) of this section. In either case, under § 1.1502–32, S1's basis in its remaining S2 stock is reduced by $24 from $80 to $56. S1 recognizes $0 gain/loss on the sale of its remaining S2 stock.

Example 8. (i) In Year 1, P forms S1 with a contribution of Asset A with a basis of $50 and a value of $20 in exchange for 100 shares of common stock of S1 in a transfer to which section 351 applies. Also in Year 1, P and S1 form S2. P contributes $80 to S2 in exchange for 80 shares of common stock of S2. S1 contributes Asset A to S2 in exchange for 20 shares of common stock of S2 in a transfer to which section 351 applies. In Year 3, in a transaction that is not part of a plan that includes the Year 1 contributions, P sells its 100 shares of S1 common stock for $20. At that time, S1 owns 20 shares of common stock of S2 and S2 has $80 and Asset A, the basis and value of which have not changed. In Year 4, S2 sells Asset A for $20, recognizing a $30 loss. That $30 loss is used on the P group return to offset income of P. In Year 5, P sells its S2 common stock for $80.

(ii) Because the P group disposes of its entire equity interest in S1 within a single taxable year, pursuant to paragraph (b)(4) of this section, paragraph (b) of this section does not apply immediately prior to the disposition to cause a redetermination of P's basis in its S1 common stock. Pursuant to paragraph (b)(5) of this section, however, because, immediately prior to the disposition of the S1 stock, P's basis in such stock exceeds its value, S1 owns stock of S2 (another subsidiary member of the same group) and, immediately prior to the disposition of the S1 stock, such S2 stock has a basis that exceeds its value, and, immediately after the disposition of the S1 stock, P owns stock of S2, the basis in each share of S2 that is owned by members of the P group must be redetermined as provided in paragraph (b) of this section as if S1's S2 stock had been disposed of or deconsolidated. Because S2 is a member of the group immediately after the disposition of the S1 stock, the group member's basis in the S2 stock is redetermined pursuant to paragraph (b)(2) of this section immediately prior to the sale of the S1 stock. Of the group members' total basis of $130 in the S2 stock, $26 is allocated to S1's 20 shares of S2 common stock and $104 is allocated to P's 80 shares of S2 common stock. Pursuant to paragraph (b)(6) of this section, the redetermination of S1's basis in the stock of S2 results in an adjustment to P's basis in the stock of S1. In particular, P's basis in the stock of S1 is decreased by $24 to $26. On P's sale of its 100 shares of S1 common stock for $20, S1 recognizes a loss of $6. Because S1 is not a member of the P group immediately after S1's disposition of the S2 stock, paragraph (c)(1) of this section does not apply to suspend such loss. Pursuant to paragraph (c)(2) of this section, however, because P recognizes a loss with respect to the disposition of the S1 stock and S1 owns stock of S2 (which is a member of the P group immediately after the disposition), such loss is suspended up to $6, an amount equal to the amount by which the duplicated loss with respect to the stock of S1 sold is attributable to S2's adjusted basis in its assets, loss carryforwards and deferred deductions. Pursuant to paragraph (c)(4) of this section, the amount of the suspended loss is reduced, but not below zero, by S2's items of deduction and loss that are allocable to the period beginning on the date of the Year 3 disposition of the S1 stock and ending on the day before the first date on which S2 is not a member of the P group and that are taken into account in determining the consolidated taxable income (or loss) of the P group for any taxable year that includes any date on or after the date of the Year 3 disposition and before the first date on which S2 is not a member of the P group, except to the extent the P group can establish all or a portion of such items were not included in the calculation of the duplicated loss with respect to the S1 stock sold or were not attributable to S2's adjusted basis in its assets, loss carryforwards, or deferred deductions. Because the loss recognized on the sale of Asset A was included in the calculation of the duplicated loss with respect to the S1 stock on the date of the sale of the S1 stock and is absorbed by the P group, the suspended loss is reduced to zero pursuant to paragraph (c)(4) of this section. Accordingly, no amount of suspended loss is allowed under paragraph (c)(5) of this section. Under § 1.1502–32, P's basis in its S2 stock is reduced by $24 from $104 to $80. P recognizes $0 gain/loss on the sale of its S2 common stock.

Example 9. (i) In Year 1, P forms S with a contribution of $80 in exchange for 80 shares of common stock of S which at that time represents all of the outstanding stock of S. S becomes a member of the P group. In Year 2, P contributes Asset A with a basis of $50 and a value of $20 in exchange for 20 shares of common stock of S in a transfer to which section 351 applies. In Year 3, in a transaction that is not part of a plan that includes the Year 1 and Year 2 contributions, P contributes the 20 shares of S common stock it acquired in Year 2 to PS, a partnership, in exchange for a 20 percent capital and profits interest in a transaction described in section 721. In Year 4, P sells its interest in PS for $20, recognizing a $30 loss.

(ii) Under paragraph (b)(1) of this section, because P's basis in the S common stock contributed to PS exceeds its value immediately prior to its deconsolidation and S is a member of the P group immediately after the deconsolidation, P's basis in all of the S stock is redetermined pursuant to paragraph (b)(2) of this section. Of P's total basis of $130 in the common stock of S, a proportionate amount is allocated to each share of S common stock. Accordingly, $26 is allocated to the S common stock that is contributed to PS and, under section 722, P's basis in its interest in PS is $26. P recognizes a $6 loss on its disposition of its interest in PS. Because P's basis in its interest in PS was determined by reference to the basis of S stock and at the time of the determination of P's basis in its interest in PS such S stock had a duplicated loss of $6, and, immediately after the disposition, S is a member of the P group, such loss is suspended to the extent of such duplicated loss. Principles similar to those of paragraphs (c)(3), (4), and (5) of this section shall apply to such suspended loss.

(f) *Basis reduction on worthlessness and certain dispositions not followed by separate return years.* If a member of a group disposes of subsidiary member stock and on the following day the subsidiary is not a member of the group and does not have a separate return year, then, immediately prior to the recognition of any gain or loss with respect thereto, and immediately after all other adjustments under § 1.1502–32 with respect thereto, the basis of upper-tier members in the stock of the subsidiary member shall be reduced to the extent of the consolidated net operating losses and net capital losses that would be treated as attributable to such subsidiary member (and lower-tier members) under the principles of § 1.1502–21(b)(2)(iv), as though such losses were absorbed by the group. In addition, if, taking into account the provisions of § 1.1502–80(c), stock of a

subsidiary member is treated as worthless under section 165, then, immediately prior to the allowance of any loss or inclusion of an excess loss account with respect thereto, and immediately after all other adjustments under § 1.1502–32 with respect thereto, the basis of upper-tier members in the stock of the worthless member shall be reduced to the extent of the consolidated net operating losses and net capital losses that would be treated as attributable to such subsidiary member (and lower-tier members) under the principles of § 1.1502–21(b)(2)(iv), as though such losses were absorbed by the group.

(g) *Anti-avoidance rules.* (1) *Disposition or deconsolidation of gain share in avoidance.* If a share of subsidiary member stock has a basis that does not exceed its value and the share is deconsolidated with a view to avoiding application of the rules of paragraph (b) of this section prior to the disposition of a share of subsidiary member stock that has a basis that does exceed its value, the rules of paragraph (b) of this section shall apply immediately prior to the deconsolidation.

(2) *Transfers of loss property in avoidance.* If a member of a consolidated group contributes an asset with a basis that exceeds its value to a partnership in a transaction described in section 721 or a corporation that is not a member of such group in a transfer described in section 351, such partnership or corporation contributes such asset to a subsidiary member in a transfer described in section 351, and such contributions are undertaken with a view to avoiding the rules of paragraph (b) or (c) of this section, adjustments must be made to carry out the purposes of this section.

(3) *Anti-loss reimportation*—(i) *Application.* This paragraph (g)(3) applies if—

(A) A member of a group recognizes and is allowed a loss on the disposition of a share of stock of a subsidiary member with respect to which there is a duplicated loss;

(B) As a result of that disposition or another disposition, the subsidiary member ceases to be a member of such group; and

(C) Within the 10-year period beginning on the date the subsidiary member ceases to be a member of such group—

(*1*) The subsidiary member (or any successor) again becomes a member of such group (or any successor group) when the subsidiary member (or any successor) owns any asset that has a basis in excess of value at such time and that was owned by the subsidiary member on the date of the disposition and that had a basis in excess of value on such date;

(*2*) The subsidiary member (or any successor) again becomes a member of such group (or any successor group) when the subsidiary member (or any successor) owns any asset that has a basis in excess of value at such time and that has a basis that reflects, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary member on the date of the disposition and that had a basis in excess of value on such date;

(*3*) In a transaction described in section 381 or section 351, any member of such group (or any successor group) acquires any asset of the subsidiary member (or any successor) that was owned by the subsidiary member on the date of the disposition and that had a basis in excess of its value on such date, or any asset that has a basis that reflects, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary member on the date of the disposition and that had a basis in excess of its value on such date, and, immediately after the acquisition of such asset, such asset has a basis in excess of its value;

(*4*) The subsidiary member (or any successor) again becomes a member of such group (or any successor group) when the subsidiary member (or any successor) has any losses or deferred deductions that were losses or deferred deductions of the subsidiary member on the date of the disposition;

(*5*) The subsidiary member (or any successor) again becomes a member of such group (or any successor group) when the subsidiary member (or any successor) has any losses or deferred deductions that are attributable to any asset that was owned by the subsidiary member on the date of the disposition and that had a basis in excess of value on such date;

(*6*) The subsidiary member (or any successor) again becomes a member of such group (or any successor group) when the subsidiary member (or any successor) has any losses or deferred deductions that are attributable to any asset that had a basis that reflected, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary member on the date of the disposition and that had a basis in excess of value on such date; or

(*7*) Any member of such group (or any successor group) succeeds to any losses or deferred deductions of the subsidiary member (or any successor) that were losses or deferred deductions of the subsidiary member on the date of the disposition, that are attributable to any asset that was owned by the subsidiary member on the date of the disposition and that had a basis in excess of value on such date, or that are attributable to any asset that had a basis that reflected, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary member on the date of the disposition and that had a basis in excess of value on such date.

(ii) *Operating rules*—(A) For purposes of paragraph (g)(3)(i)(C) of this section, assets shall include stock and securities and the subsidiary member (or any successor) shall be treated as having its allocable share of losses and deferred deductions of all lower-tier subsidiary members and as owning its allocable share of each asset of all lower-tier subsidiary members.

(B) For purposes of paragraphs (g)(3)(i)(C)(*4*), (*5*), and (*6*) of this section, unless the group can establish otherwise, if the subsidiary member (or any successor) again becomes a member of such group (or any successor group) at a time when the subsidiary member (or any successor) has any losses or deferred deductions, such losses and deferred deductions shall be treated as losses or deferred deductions that were losses or deferred deductions of the subsidiary member on the date of the disposition, losses or deferred deductions that are attributable to assets that were owned by the subsidiary member on the date of the disposition and that had bases in excess of value on such date, or losses or deferred deductions that are attributable to assets that had bases that reflected, directly or indirectly, in whole or in part, the bases of assets that were owned by the subsidiary member on the date of the disposition and that had bases in excess of value on such date.

(C) For purposes of paragraph (g)(3)(i)(C)(*7*) of this section, unless the group can establish otherwise, if a member of such group (or any successor group) succeeds to any losses or deferred deductions of the subsidiary member (or any successor), such losses and deferred deductions shall be treated as losses or deferred deductions that were losses or deferred deductions of the subsidiary member on the date of the disposition, losses or deferred deductions that are attributable to assets that were owned by the subsidiary member on the date of the disposition and that had bases in excess of value on such date, or losses or deferred deductions that are attributable to assets that had bases that reflected, directly or indirectly, in whole or in part, the bases of assets that were owned by the subsidiary member on the date of the disposition and that had bases in excess of value on such date.

(iii) *Loss disallowance.* If paragraph (g)(3) of this section applies, then, to the extent that the aggregate amount of loss recognized by members of the group (and any successor group) on dispositions of the subsidiary member stock was attributable to a duplicated loss of such subsidiary member, and such loss was allowed, such group (or any successor group) will be denied the use of—

(A) Any loss recognized that is attributable to, directly or indirectly, an asset that was owned by the subsidiary member on the date of the disposition and that had a basis in excess of value on such date, to the extent of the lesser of the loss inherent in such asset on the date of the disposition of the subsidiary member stock and the loss inherent in such asset on the date of the event described in paragraph (g)(3)(i)(C) of this section that gives rise to the application of this paragraph (g)(3); and

(B) Any loss recognized that is attributable to, directly or indirectly, an asset that has a basis that reflects, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary on the date of the disposition and that had a basis in excess of its value on such date, to the extent of the lesser of the loss inherent in the asset that was owned by the subsidiary on the date of the disposition the basis of which is reflected, directly or indirectly, in whole or in part, in the basis of such asset on the date of the disposition and the loss inherent in such asset on the date of the event described in paragraph (g)(3)(i)(C) of this section that gives rise to the application of this paragraph (g)(3); and

(C) Any loss or deferred deduction described in paragraph (g)(3)(i)(C)(*4*), (*5*), (*6*), or (*7*) of this section.

(iv) *Treatment of disallowed loss.* For purposes of § 1.1502–32(b)(3)(iii), any loss the use of which is disallowed pursuant to paragraph (g)(3)(iii)(A) or (B) of this section is treated as a noncapital, nondeductible expense incurred during the taxable year that includes the date on which such loss is recognized. See § 1.1502–32(b)(3)(iii)(D). In addition, any loss or deferred deduction the use of which is disallowed pursuant to paragraph (g)(3)(iii)(C) of this section and with respect to which no waiver described in § 1.1502–32(b)(4) is filed is treated as a noncapital, nondeductible expense incurred during the taxable year that includes the day after the event described in paragraph (g)(3)(iii) of this section that gives rise to the application of this paragraph (g)(3).

(4) *Examples.* The principles of this paragraph (g) are illustrated by the following examples.

Example 1. (i) In Year 1, P forms S with a contribution of $80 in exchange for 80 shares of common stock of S which at that time represents all of the outstanding stock of S. S becomes a member of the P group. In Year 2, P contributes Asset A with a basis of $50 and a value of $20 in exchange for 20 shares of preferred stock of S in a transfer to which section 351 applies. In Year 3, S sells Asset A for $20, recognizing a loss of $30. Under § 1.1502–32, P's basis in its common stock of S is reduced from $80 to $50. With a view to avoiding the application of the basis redetermination rule prior to a sale of the S preferred stock, in Year 4, P contributes the 80 shares of S common stock it acquired in Year 1 to PS, a partnership, in exchange for a 20 percent capital and profits interest in a transaction described in section 721. Also in Year 4, P sells its preferred stock of S for $20, recognizing a $30 loss.

(ii) Under paragraph (g)(1) of this section, the rules of paragraph (b) of this section shall apply immediately prior to the deconsolidation of the S common stock.

Example 2. (i) In Year 1, P forms S with a contribution of $100 in exchange for 100 shares of common stock of S which at that time represents all of the outstanding stock of S. S becomes a member of the P group. In Year 2, P contributes 20 shares of common stock of S to PS, a partnership, in exchange for a 20 percent capital and profits interest in a transaction described in section 721. In Year 3, P contributes Asset A with a basis of $50 and a value of $20 to PS in exchange for an additional capital and profits interest in PS in a transaction described in section 721. Also in Year 3, PS contributes Asset A to S and P contributes an additional $80 to S in transfers to which section 351 applies. In Year 4, S sells Asset A for $20, recognizing a loss of $30. The P group uses that loss to offset income of P. Also in Year 4, P sells its entire interest in PS for $40, recognizing a loss of $30.

(ii) Pursuant to paragraph (g)(2) of this section, if P's contributions of S stock and Asset A to PS were undertaken with a view to avoiding the basis redetermination or the loss suspension rule, adjustments must be made such that the group does not obtain more than one tax benefit from the $30 loss inherent in Asset A.

Example 3. (i) In Year 1, P forms S with a contribution of Asset A with a value of $100 and a basis of $120, Asset B with a value of $50 and a basis of $70, Asset C with a value of $90 and a basis of $100 in exchange for all of the common stock of S and S becomes a member of the P group. In Year 2, in a transaction that is not part of a plan that includes the contribution, P sells the stock of S for $240, recognizing a loss of $50. At such time, the bases and values of Assets A, B, and C have not changed since their contribution to S. In Year 3, S sells Asset A, recognizing a $20 loss. In Year 3, S merges into M in a reorganization described in section 368(a)(1)(A). In Year 4, P purchases all of the stock of M for $300. At that time, M has a $10 net operating loss. In addition, M owns Asset D, which was acquired in an exchange described in section 1031 in connection with the surrender of Asset B. Asset C has a value of $80 and a basis of $100. Asset D has a value of $60 and a basis of $70. In Year 5, P has operating income of $100 and M recognizes $20 of loss on the sale of Asset C. In Year 6, P has operating income of $50 and M recognizes $50 of loss on the sale of Asset D.

(ii) P's $50 loss on the sale of S stock is entirely attributable to duplicated loss. Therefore, pursuant to this paragraph (g)(3), assuming the P group cannot establish otherwise, M's $10 net operating loss is treated as attributable to assets that were owned by S on the date of the disposition and that had bases in excess of value on such date. Without regard to any other limitations on the group's use of M's net operating loss, the P group cannot use M's $10 net operating loss pursuant to paragraph (g)(3)(iii)(C) of this section. Pursuant to paragraph (g)(3)(iv) of this section and § 1.1502–32(b)(3)(iii)(D), such loss is treated as a noncapital, nondeductible expense of M incurred during the taxable year that includes the day after the reorganization. In addition, the P group is denied the use of $10 of the loss recognized on the sale of Asset C. Finally, the P group is denied the use of $10 of the loss recognized on the sale of Asset D. Pursuant to paragraph (g)(3)(iv) of this section and § 1.1502–32(b)(3)(iii)(D), each such disallowed loss is treated as a noncapital, nondeductible expense of M incurred during the taxable year that includes the date of the disposition of the asset with respect to which such loss was recognized.

(h) *Application of anti-abuse rules.* The rules of this section do not preclude the application of anti-abuse rules under other provisions of the Internal Revenue Code and regulations thereunder, including to a transaction that is entered into to invoke the basis redetermination rule to avoid the effect of any provision of the Internal Revenue Code or regulations thereunder.

(i) [Reserved].

(j) *Effective date.* This section, except for paragraph (g)(3) of this section, applies with respect to dispositions and deconsolidations occurring on or after March 7, 2002, but only if such transactions occur during a taxable year the original return for which is due (without regard to extensions) after the date these regulations are published as temporary or final regulations in the **Federal Register**. Paragraph (g)(3) of this section applies to events described in paragraph (g)(3)(iii) of this section occurring on or after October 18, 2002, but only if such events occur during a taxable year the original return for which is due (without regard to extensions) after the date these regulations are published as temporary

or final regulations in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 02–011]

RIN 2115–AA97

Security Zone; Port Valdez and Valdez Narrows, Valdez, AK

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a security zone encompassing the Trans-Alaska Pipeline (TAPS) Valdez Terminal Complex, Valdez, Alaska and TAPS Tank Vessels and a security zone in the Valdez Narrows, Port Valdez, Alaska. The security zones are necessary to protect the Alyeska Marine Terminal and Vessels from damage or injury from sabotage, destruction or other subversive acts. Entry of vessels into these security zones is prohibited unless specifically authorized by the Captain of the Port, Prince William Sound, Alaska.

DATES: Comments and related material must reach the Coast Guard on or before December 23, 2002.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office, P.O. Box 486, Valdez, Alaska 99686. Marine Safety Office Valdez, AK, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Valdez, AK between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lt. Chris Beadle, U.S. Coast Guard Marine Safety Office Valdez, Alaska, (907) 835–7222.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP Prince William Sound 02–011), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 81/2 by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Valdez at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

The Coast Guard is taking this action for the immediate protection of the national security interests in light of terrorist acts perpetrated on September 11, 2001. The port of Valdez is a vital national commercial port, supporting the transfer and transport of a significant percentage of oil used in the United States. As such, it is crucial that actions be taken to protect the flow of commerce from possible terrorist or subversive acts designed to damage maritime facilities and vessels transiting to and from the Port of Valdez. The proposed rule would replace existing regulations in 33 CFR 165.1701 and the temporary rule issued in July, which will expire December 31, 2002, that created temporary § 165.T17–010, entitled "Port Valdez and Valdez Narrows, Valdez, Alaska." The proposed rule would work to safely control the flow of commercial traffic and protect vital maritime facilities by creating security zones and check-in procedures designed to identify threats for response by appropriate law enforcement resources.

On November 7, 2001, we published three temporary final rules in the **Federal Register** (66 FR 56208, 56210, 56212) that created security zones effective through June 1, 2002. The section numbers and titles for these security zone regulations are—

§ 165.T17–003—Security zone; Trans-Alaska Pipeline Valdez Terminal Complex, Valdez, Alaska,

§ 165.T17–004—Security zone; Port Valdez, and

§ 165.T17–005—Security zones; Captain of the Port Zone, Prince William Sound, Alaska.

Then on June 4, 2002, we published a temporary final rule (67 FR 38389) that established security zones to replace those security zones that expired June 1, 2002. That rule issued in June, which expired July 30, 2002, created temporary § 165.T17–009, entitled "Port Valdez and Valdez Narrows, Valdez, Alaska".

Then on July 26, 2002 we published a temporary final rule (67 FR 49582–84) that established security zones to replace temporary § 165.T17–009 that expired July 30, 2002. That rule issued in July, which will expire December 31, 2002, created temporary § 165.T17–010, entitled "Port Valdez and Valdez Narrows, Valdez, Alaska". This proposed rule would remove the temporary security zones in § 165.T17–010 and add permanent security zones in a new 33 CFR 165.1701.

Comments received regarding the temporary final rules currently in place will be taken into consideration.

Discussion of Proposed Rule

This proposed rule would establish three security zones in new 33 CFR 165.1701(a) and move the current safety zone in existing 33 CFR 165.1701 to new 33 CFR 165.1701(b). This proposed rule also would establish procedures for vessel entry into the security and safety zones for management of the natural resources administered by the Alaska Department of Natural Resources.

The Trans-Alaska Pipeline (TAPS) Valdez Marine Terminal security zone encompasses the waters of Port Valdez between Allison Creek to the east and Sawmill Spit to the west and offshore to marker buoys A and B (approximately 1.5 nautical miles offshore from the TAPS Terminal). The Tank Vessel moving security zone encompasses the waters within 200 yards of a TAPS tanker within the Captain of the Port, Prince William Sound Zone. The Valdez Narrows security zone encompasses the waters 200 yards either side of the Tanker Optimum Trackline through Valdez Narrows between Entrance Island and Tongue Point. This zone is enforced only when a TAPS tanker is in the zone. The TAPS safety zone encompasses all waters within 200 yards of on shore and off shore facilities of the TAPS Terminal and is a safety buffer between potentially hazardous terminal operating areas and areas to which vessels may be permitted entry by the Captain of the Port, Prince William Sound, during State of Alaska managed fisheries openings and/or closings.

The Coast Guard has worked closely with local and regional users of Port Valdez and Valdez Narrows waterways to develop these security zones and the NPRM in order to mitigate the impact on commercial and recreational users. The limited size of the terminal security zone is designed to minimize impact on mariners while ensuring public safety by preventing interference with terminal operations. The Tank Vessel moving security zone and the Valdez Narrows security zone will be enforced only while vessels are transiting the area and are designed to provide a safe operating distance while minimizing threats to tanker operations.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the limited size of the zones and the limited duration of the Tank Vessel moving security zone and the Valdez Narrows security zone. Additionally, vessels will not be precluded from transiting and operating in these areas as The Captain of The Port will consider requests for entry on a case-by-case basis and requests for entry will be approved as appropriate. Those desiring to transit the area of the security or safety zones must contact the Captain of the Port under the provisions of proposed 33 CFR 165.1701(d).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would affect the following entities, some of which might be small entities: The owners and operators of commercial fishing vessels and native subsistence fishermen. Some of the areas that these entities might desire to use for fishing may fall within the security or safety zones. However, The Captain of The Port will consider requests for entry into the security or safety zones on a case-by-case basis and requests for entry will be approved as appropriate; therefore, it is likely that very few, if any, small entities will be impacted by this rule.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lt. Chris Beadle, U.S. Coast Guard Marine Safety Office Valdez, Alaska, (907) 835–7222.

Collection of Information

This proposed rule contains information collection requirements that have not been approved by OMB. This proposed rule would modify an existing collection of information requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The Captain of the Port, Prince William Sound, Alaska requires information on vessel owners and operators, and their vessels, crews and passengers desiring entry into the proposed security and safety zones in Port Valdez and Valdez Narrows, Alaska. This information is required to ensure port and vessel safety and security, uninterrupted fishing industry openings, control vessel traffic, develop contingency plans and enforce applicable laws and regulations.

You are not required to respond to a collection of information unless it displays a currently valid control number from OMB.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and respo[illegible]ibilities between the

Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation since implementation of this action will not result in any inconsistencies with any Federal, State, or Local laws or administrative determinations relating to the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set forth in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

§ 165.T17–013 [Removed]

2. Remove § 165.T17–013.

3. Revise § 165.1701 to read as follows:

§ 165.1701 Port Valdez and Valdez Narrows, Valdez, Alaska—security and safety zones.

(a) *Security zone locations.* The following areas are security zones:

(1) *Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal), Valdez, Alaska and TAPS Tank Vessels.* All waters enclosed within a line beginning on the southern shoreline of Port Valdez at 61°04′57″ N, 146°26′20″ W; thence northerly to 61°06′30″ N, 146°26′20″ W; thence east to 61°06′30″ N, 146°21′15″ W; thence south to 61°05′07″ N, 146°21′15″ W; thence west along the shoreline and including the area 2000 yards inland along the shoreline to the beginning point. This security zone encompasses all waters approximately 1 mile north, east and west of the TAPS Terminal between Allison Creek (61°05′07″ N, 146°21′15″ W) and Sawmill Spit (61°04′57″ N, 146°26′20″ W).

(2) *Tank Vessel Moving Security Zone.* All waters within 200 yards of any TAPS tank vessel maneuvering to approach, moor, unmoor or depart the TAPS Terminal or transiting, maneuvering, laying to or anchored within the boundaries of the Captain of the Port, Prince William Sound Zone described in 33 CFR 3.85(b).

(3) *Valdez Narrows, Port Valdez, Valdez, Alaska.* All waters within 200 yards of the Valdez Narrows Tanker Optimum Track line bounded by a line beginning at 61°05′16.0″ N, 146°37′20.0″ W; thence south west to 61°04′00.0″ N, 146°39′52.0″ W; thence southerly to 61°02′33.5″ N, 146°41′28.0″ W; thence north west to 61°02′40.5″ N, 146°41′47.5″ W; thence north east to 61°04′06.0″ N, 146°40′14.5″ W; thence north east to 61°05′23.0″ N, 146°37′40.0″ W; thence south east back to the starting point at 61°05′16.0″ N, 146°37′20.0″ W.

(i) The Valdez Narrows Tanker Optimum Track line is a line commencing at 61°05′23.0″ N, 146°37′22.5″ W; thence south westerly to 61°04′03.2″ N, 146°40′03.2″ W; thence southerly to 61°03′00″ N, 146°41′12″ W.

(ii) This security zone encompasses all waters approximately 200 yards either side of the Valdez Narrows Optimum Track line.

(b) The following location is a safety zone: all waters within 200 yards of the shore and offshore facilities of the TAPS Terminal between Allison Creek (61°05′07″ N, 146°21′15″ W) and Sawmill Spit (61°04′57″ N, 146°26′20″ W).

(c) *Regulations.* (1) Entry into or remaining in these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Prince William Sound via the request process set out in paragraph (d) of this section.

(2) For the purposes of this section, paragraphs (a), (e), and (f) of § 165.33 do not apply to the following vessels or individuals legally on board those vessels:

(i) Public vessels of the United States; and

(ii) Vessels engaged in the movement of oil from the TAPS terminal or fuel to the TAPS terminal and that have reported their movements to the Vessel Traffic Service or vessels that are performing work at the TAPS Terminal including, but not limited to tugs, oil spill response vessels, boom boats, security and safety vessels.

(3) *Enforcement of Valdez Narrows security zone.* Section 165.33(a) will not be enforced in the Valdez Narrows security zone, described in paragraph (a)(3) of this section, except when a tank vessel greater than 20,000 DWT is in the Valdez Narrows security zone. Vessels must stay clear of the Valdez Narrows security zone when a transiting tank vessel approaches the Valdez Narrows VTS Special Area from the vicinity of Entrance Island to the north and Tongue Point to the south of Valdez Narrows. The Valdez Narrows VTS Special Area is depicted as the purple dashed lines on National Oceanic and Atmospheric Administration chart 16707 and is described in § 161.60(b) of this subchapter.

(4) Vessels other than those described in paragraph (c)(2) of this section desiring access to the security and safety zones set out in paragraphs (a) and (b) of this section shall secure permission from the Captain of the Port under the procedures listed in paragraph (d).

(d) *Permits.* (1) The Captain of the Port may allow access to the security and safety zones in order to encourage utilization of natural resources, promote tourism and provide for other reasonable use consistent with the needs of security and safety within Port Valdez and Prince William Sound. Vessels desiring access must obtain a permit from the Captain of the Port in the following manner:

(2) Applicants must submit an application via written request to the Captain of the Port at least 48 hours prior to the desired time of entry into a security or safety zone. Applications submitted less than 48 hours prior to the desired time of entry may be accepted by the Captain of the Port on a case by case basis. The written request must:

(i) Demonstrate good cause for entry into a security or safety zone.

(ii) Describe the vessel(s) entering (including name, visible identifying numbers, markings, etc.) and time(s)/date(s) of entry.

(iii) Provide certification that all crew members and other persons on board are U.S. citizens or provide names and identifying information on all non-U.S. citizens (passport, etc.) and certification that all other crew and other persons on board are U.S. citizens.

(iv) Provide a name and contact information for the applicant or the applicant's designated point of contact.

(v) If the application is submitted less than 48 hours prior to the desired entry into a security or safety zone it must provide the reason the applicant was unable to meet the 48 hour deadline. The Captain of the Port may consider circumstances beyond the applicant's control as acceptable for relief from the 48 hour deadline. "Beyond the applicant's control" may include, but is not limited to, short notice fishing openers, gear retrieval for short notice fishing closures or other actions by state or federal wildlife or natural resources management agencies. If an application does not meet the 48 hour deadline and is not accepted, the Captain of the Port shall provide the reason(s) why the application is denied in a written response to the applicant.

(vi) Applications may be delivered in person or by mail to Captain of the Port, U.S. Coast Guard Marine Safety Office, PO Box 486, 105 Clifton Drive, Valdez, Alaska, 99686–0486.

(3) Upon approval the Captain of the Port shall issue a letter permitting access to a security or safety zone specifying time(s)/date(s) of entry, check-in, check-out and emergency vacate procedures. This letter shall be carried aboard the vessel and presented upon request to any on-scene patrol personnel of the Coast Guard.

(4) The Captain of the Port may require a permittee to monitor certain radio frequencies, display special visual signals such as flags or markers, enter and depart at specific locations and undergo a vessel examination prior to entry into any security or safety zone.

(5) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port and the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a vessel displaying a U.S. Coast Guard ensign, by siren, radio, flashing light, or other means, or by on-scene Coast Guard patrol personnel, the operator of the vessel shall proceed as directed. Coast Guard Auxiliary and local or state agencies may be present to inform vessel operators of the requirements of this section and other applicable laws. Coast Guard Auxiliary and local or state agencies and may have on board their vessels Coast Guard patrol personnel.

(e) *Authority.* In addition to 33 U.S.C. 1231 and 49 CFR 1.46, the authority for this section includes 33 U.S.C. 1226.

Dated: September 25, 2002.

M.A. Swanson,

Commander, U.S. Coast Guard, Captain of the Port, Prince William Sound, Alaska.

[FR Doc. 02–26974 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket # WA–70–7148; FRL –7397–8]

Approval and Promulgation of Air Quality Implementation Plan; Washington

AGENCY: Environmental Protection Agency (EPA or "we").

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve most, but not all of the State Implementation Plan (SIP) revisions for visibility submitted by the State of Washington on November 5, 1999. Significant provisions of this SIP revision that we propose to approve include an improved smoke management plan and the Southwest Air Pollution Control Agency (SWAPCA) emission limitations on the Centralia Power Plant located in central western Washington.

DATES: Comments must be received on or before November 22, 2002.

ADDRESSES: Written comments should be addressed to Steven K. Body, EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101. You may see copies of the relevant documents used in this proposed action during normal business hours at the following location: EPA Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, EPA Region 10, Office of Air Quality, at (206) 553–0782.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

Background

I. Background on Visibility
- A. What is visibility protection and why do we have it?
- B. What are the main visibility protections provided by federal rules?
- C. How has visibility been protected in Washington?

II. What are the required provisions of a visibility SIP?
- A. Long Term Strategy
- B. Monitoring
- C. BART

III. What does this proposed Visibility SIP revision change and how do these changes compare to federal requirements?
- A. Provisions to revise the protection of Integral Vistas
- B. Provisions to revise the Smoke Management Plan
  - i. What is Washington's Smoke Management Plan?
  - ii. How does Washington's 1999 proposed SIP Revision change the Plan?
  - iii. How does the Smoke Management Plan compare to federal requirements?
- C. Provisions to include the SWAPCA RACT Emission Limitations for Centralia Power Plant
- D. Provisions to revise the State's Best Available Retrofit Technology and New Source Review Rules

Administrative Requirements

Background

I. Background on Visibility

A. What Is Visibility Protection and Why Do We Have It?

Section 169A of the federal Clean Air Act (CAA or Act) requires states to protect visibility in mandatory Class I federal areas. Mandatory Class I federal areas are specified large National Parks or Wilderness Areas. In Washington, there are 8 mandatory Class I federal areas; the Mount Rainier National Park, North Cascades National Park, Olympic National Park, Alpine Lake Wilderness Area; Glacier Peak Wilderness Area, Goat Rocks Wilderness Area, Mount Adams Wilderness Area, and Pasayten Wilderness Area. 40 CFR 81.434 The federal rules regulating visibility protection are set out in 40 CFR part 51, subpart P.

B. What Are the Main Visibility Protections Provided by the Federal Rules?

The Clean Air Act sets out a goal of preventing any future and remedying any existing impairment of visibility in mandatory Class I federal areas. 42 U.S.C. 7491. Employing a close coordination process among the state and the federal land managers (FLM), the federal rules require monitoring of visibility in mandatory Class I federal areas, as well as the development of a long-term strategy for making reasonable progress towards the national visibility goal. The visibility protection rules also provide for an assessment of visibility impacts from any new or major modification to a major stationary

source that may affect mandatory Class I federal areas. Additionally, in the event that a federal land manager certifies impairment of visibility in a mandatory Class I federal area that could be caused, or contributed to, by an existing stationary facility, emission limitations representing Best Available Retrofit Technology (BART) may be imposed on the facility.

The federal visibility rules were modified in 1999 to include provisions for addressing regional haze. See 64 FR 35714, July 1, 1999. Regional haze is visibility impairment which results from the cumulative impact of emissions from many point and non-point sources. All states are currently in the process of developing revisions to their SIPs to address the regional haze provisions. Therefore, the SIP submission under discussion in this action is not required to comply with the regional haze provisions of 40 CFR part 51, subpart P.

C. How Has Visibility Been Protected in Washington?

The initial proposed Visibility SIP for Washington was submitted by the State and approved in part by EPA on May 4, 1987, (52 FR 16243). EPA approved the Washington State Visibility Protection Program (with exceptions described below), certain provisions of 173–403 Washington Administrative Code (WAC) Implementation of Regulations for Air Contaminant Sources, and the 1983 Smoke Management Program. EPA disapproved Section V.B., the new source review program, Appendix A, the Proposed Best Available Retrofit Technology (BART) rule, and the Proposed New Source Review Regulations.

II. What are the Required Provisions of a Visibility SIP?

40 CFR 51.302 provides the requirements for Visibility SIPs. These requirements and how the Washington Visibility SIP meets these requirements are summarized below.

A. Long-Term Strategy

The SIP needs to include a long-term (10–15 year) strategy that includes emission limitations, schedules of compliance, and other measures as deemed necessary to make reasonable progress toward the national goal. See 40 CFR 51.302(c)(2)(i). In general, Section VI of the proposed 1999 SIP revision provides a discussion of the long-term strategy, including measures for stationary sources, mobile sources, area sources, and interstate coordination. The long-term strategy must include:

- A strategy for evaluating visibility in mandatory Class I federal areas by visual observation or other appropriate monitoring techniques. See 40 CFR 51.305(a). Section V of the proposed 1999 SIP revision provides for monitoring through the IMPROVE monitoring network and an assessment strategy.
- A provision for the available visibility data and provide a mechanism for its use in decisions required by the regulations. See 40 CFR 51.305(b). Section IX of the proposed 1999 SIP revision provides for the development and use of available data for SIP review and development.
- A strategy covering any existing impairment the Federal Land Manager certifies to the State and integral vista of which the Federal Land Manager notifies the State at least 6 months prior to plan submission. See 40 CFR 51.306(a)(1). Section I of the proposed 1999 SIP revision discusses certification of impairment in federal mandatory Class I areas. Section III of the proposed 1999 SIP revision discusses integral vistas.
- A discussion, with reasonable specificity, why the long-term strategy is adequate for making reasonable progress. See 40 CFR 51.306(a)(3). Section VI of the proposed 1999 SIP revision discusses all source categories, the control measures that apply to them, and a qualitative assessment of how these are adequate for making reasonable progress. Section IX of the proposed 1999 SIP revision discusses the evaluation of progress toward achieving the national visibility goal.
- Coordination of the long-term strategy with other existing plans and goals, including those provided by affected Federal Land Managers. See 40 CFR 51.306(a)(3). Section IV of the proposed 1999 SIP revision provides for the consultation with Federal Land Managers for the review and revision of the visibility SIP and New Source Review rules.
- Provisions for periodic review and revision as appropriate of not less than every three years. See 40 CFR 51.306(c). This review must include:

(1) Progress achieved in remedying existing impairment;

(2) The ability of the long-term strategy to prevent future impairment;

(3) Any change in visibility since the last report;

(4) Additional measures, including the need for SIP revisions that may be needed to assure reasonable progress;

(5) The progress achieved in implementing BART and meeting other schedules set forth in the long-term strategy; and

(6) The impact of any exemption granted under 40 CFR 51.303.

(7) The need for BART to remedy existing visibility impairment of any integral vista.

Section IV of the proposed 1997 SIP revision provides for the review of the visibility SIP.

- Provisions for review of the impacts of any new or modified major stationary source. See 40 CFR 51.306(d). The Washington Department of Ecology has a fully delegated Prevention of Significant Deterioration (PSD) program. The Department of Ecology was notified of this delegation by letter dated February 7, 2002.

B. Monitoring

The plan must contain an assessment of visibility impairment and a discussion of how each element of the plan relates to preventing future or remedying existing impairment. See 40 CFR 51.302(c)(2)(ii). Section V of the proposed 1993 SIP revision provides for visibility monitoring of the mandatory Class I federal areas. Section IV of the proposed 1999 SIP revision provides a general discussion of the effect of measures on preventing future and remedying existing impairment.

C. BART

The plan must contain emission limitations representing BART for any existing facility that meets the requirements of 40 CFR 51.301(e), and for which impairment has been certified by the Federal Land managers and for which the State has determined such impairment is reasonably attributed to that source. (40 CFR 51.302(c)(2)(iii).

The State has not determined that existing impairment in any mandatory Class I federal area for which impairment has been certified can be reasonably attributed to a specific major stationary source.

III. What Does This Proposed Visibility SIP Revision Change and How Do These Changes Compare to the Federal Requirements?

A. Provisions To Revise the Protection of Integral Vistas

The 1987 SIP included a list of "Preliminary Integral Vistas" that were proposed by the National Park Service (NPS). The 1987 SIP provides that until the NPS finalizes the list of vistas, the panoramas listed in the January 15, 1981 **Federal Register** (Table III–2) will be protected under the visibility SIP. These integral vistas were never finalized by the NPS in accord with 40 CFR 51.304. Thus, there are no federally recognized Integral Vistas to be

protected. In the interim, no emission limitation was established for a source that specifically protected an integral vista, nor is the State proposing to revise and relax an emission limitation established for integral vista protection. The 1999 proposed SIP revision removes the provisions that would have continued these protections. The federal visibility regulations (40 CFR 51.304(d)) indicate that a state need not in its implementation plan list any integral vista the identification of which was not made in accordance with the criteria in 40 CFR 51.304(a). Since no integral vistas have been identified by the FLM, there is no relaxation of SIP emission requirements and since the 1999 proposed SIP revision meets the applicable requirements for visibility protection in mandatory Class I federal areas, EPA proposes approval of this revision.

B. Provisions To Revise the Smoke Management Plan

i. What Is Washington's Smoke Management Plan?

Washington's Smoke Management Plan (SMP) is a program designed to manage smoke impacts from the burning of silviculture and agriculture wastes. The SMP balances forest and agricultural land burning with preventing smoke from being carried to, or accumulating in, designated areas and other areas sensitive to smoke.

ii. How Does Washington's 1999 Proposed SIP Revision Change the Plan?

The Smoke Management Plan (SMP) of 1998 submitted in the proposed 1999 Visibility SIP revision is a significant improvement over the 1983 SMP included in the 1987 SIP. The 1983 SMP provides for reduced emissions through optimization of fuel conditions (*i.e.* dry fuel), improves ventilation and dispersion through meteorology, and minimizes impact by controlling smoke drift into populated areas. There is no consideration for protection of visibility in mandatory Class I federal areas.

The 1998 SMP requires approval from the Resource Protection Division Manager, Department of Natural Resources for all burns. Approval requirements differ depending whether the fire is a "large fire" involving over 100 tons of fuel or small fire. Large fire burn approval considers a number of factors including likelihood of intrusion into populated areas and Class I areas, air quality regulations, violation of emission reductions targets, violations of another state's air quality standards, and whether smoke will disperse within given timeframes. Operators of small fires (less than 100 ton of fuel) must call a toll free phone number and follow the instructions that apply for that day and location of the proposed burn.

The SMP further requires emissions from burning be reduced by 20% from baseline levels (defined in the SMP) by December 1994 and until December 2000. Emissions from burning must be permanently reduced by 50% from baseline levels by December 2000.

iii. How Does the Smoke Management Plan Compare to Federal Requirements?

The visibility protection provisions at 40 CFR part 51, subpart P suggest that states consider Smoke Management Plans in developing long-term strategies for visibility protection. However, there are no specific federal requirements for states to develop and adopt Smoke Management Plans. In September 1992, the Environmental Protection Agency published *The Prescribed Burning Background Document and Technical Information Document for Best Available Control Measures* to assist states in the development of Smoke Management Plans (EPA–450/2–92–003). These are a few examples of how the federal government acknowledges the benefits of smoke management plans.

C. Provisions To Include the SWAPCA RACT Emission Limits for Centralia Power Plant

Centralia Power Plant (CPP) is a coal fired electrical generating station that has a potential to emit (PTE) 90,000 t/yr SO2. It is a BART eligible source as defined by 40 CFR 51.301. It is located near the mandatory Class I federal area, Mt. Rainier National Park in Washington state. The National Park Service has certified visibility impairment at Mt. Rainier National Park. The State of Washington has NOT determined that this visibility impairment is reasonably attributable to the CPP.

The SIP must contain emission limitations representing BART and schedules for compliance with BART for each existing stationary facility identified according to 40 CFR 51.302 (c)(4). The state needs to identify each existing facility which may reasonably be anticipated to cause or contribute to impairment of visibility in any Class I federal areas where the impairment in the mandatory Class I area is reasonably attributable to that existing stationary facility. The State has not identified any source or group of small sources, including the Centralia Power Plant (CPP), as existing facilities that may reasonably be expected to contribute to visibility impairment to Class I areas. Therefore, under 40 CFR 51.302(c)(4), a BART analysis is not required for CPP. In the future regional haze SIP, a BART analysis may be required for the CPP under 40 CFR 51.308(e).

In a separate activity the State, Southwest Air Pollution Control Authority (SWAPCA), the National Park Service and Forest Service, owners of the CPP, and EPA entered into a negotiated agreement to establish emission limits for SO2, NO_X, and PM–10 for the CPP. The SWAPCA, who has regulatory authority over the CPP, issued the CPP a Reasonably Available Control Technology (RACT) order under state law that contain emission limitations. This RACT Order is included in the proposed 1999 Visibility SIP revision.

Both SWAPCA in their Technical Support Document for the RACT Order and EPA Region 10 have independently conducted an analysis of the emission limits in the RACT Order comparing them against what would have been required using the Clean Air Act definition of BART and EPA BART guidelines. Additional details on this analyses can be found in the Technical Support Document accompanying this proposed action and docket of this proposed action. The conclusion of both analysis is that the RACT Order emission limits for SO2 and PM–10 represent BART. EPA proposes to approve these emissions limitations as meeting the BART requirements of 40 CFR 51.308(c)(4). Additionally, while the NO_X emission limitation may have represented BART when the emission limits in the RACT Order were negotiated, recent technology advancements have been made. EPA cannot say that the emission limitations in the SWAPCA RACT Order for NO_X represent BART. However EPA proposes to approve the emission limits for NO_X as a strengthening of the SIP for visibility purposes.

D. Provisions To Revise the State's Best Available Retrofit Technology and New Source Review Rules

The proposed 1999 SIP revision also included revised rules for Best Available Retrofit Technology (BART) (WAC 173–400–151 and New Source Review (NSR) (WAC 173–400–110, 112, 113, & 141). Subsequent to the submittal in 1999, the State has verbally indicated that new rules are being developed and the rules in this submittal will soon be obsolete. EPA proposes to take no action on these rules.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed

action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 10, 2002.

Ronald A. Kreizenbeck,

Acting Regional Administrator, EPA, Region 10.

[FR Doc. 02–26992 Filed 10–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP No. CO–001–0068; FRL–7397–3]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Governor of Colorado on November 5, 1999. The November 5, 1999 submittal exempts military training exercises at the United States Army Installation Fort Carson and United States Army Pinon Canon Maneuver Site (PCMS) from opacity limits. The intended effect of this action is to allow the use of smoke and obscurants for military training exercises when operated under applicable requirements. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before November 22, 2002.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA, Region 8, (303) 312–6144.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we" or "our" is used means EPA.

I. Analysis of the State Submittal

A. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan admitted by a State must be adopted after reasonable notice and public hearing. Section 110(1) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA must also determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria are set out at 40 CFR part 51, appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of submission. This submittal became complete by operation of law on May 5, 2000, in accordance with section 110(k)(1)(B) of the Act.

To entertain public comment, the State of Colorado, after providing adequate public notice, held a public hearing on July 17, 1998, to address the revision to the SIP. Following the public hearing and public comment period, the Colorado Air Quality Control Commission adopted the revision. The revision to Regulation No. 1 was adopted on July 17, 1998, and the Governor of Colorado submitted the revisions to the SIP with a letter dated November 5, 1999.

B. Summary of SIP Revision

Regulation No. 1 Emission Control for Particulates, Smokes, Carbon Monoxide and Sulfur Dioxide

Colorado has added a new subsection D to Regulation No. 1, section II, which provides an exemption for U.S. military training exercises at the United States Army Installation Fort Carson and the United States Army Pinon Canon Maneuver Site (PCMS) from opacity limits. The emissions of fog oil and other short duration military smokes, of twelve minutes or less, will be exempted from the opacity limits specified in Regulation No. 1, section II. Regulation No. 1, section II.A currently mandates ". . . no owner or operator of a source shall allow or cause the emission into the atmosphere of any air pollutant which is in excess of 20% opacity." The military engages in training which creates emissions in excess of the 20% opacity standard, thus this exemption is necessary for the military to carry out realistic obscurant training.

The exemption is only granted if other restrictions are met, including the following: A three kilometer buffer zone for the entire perimeter of Fort Carson and PCMS is required, and no smoke generation will occur within this buffer zone; smoke generation will cease if smoke crosses or is in danger of crossing the boundary of Fort Carson or PCMS; and an observer will be posted to determine if training should be halted if there is potential for the smoke to drift across the boundary of Fort Carson and PCMS.

A modeling analysis of the smoke training exercises was conducted in an effort to determine the ambient air impacts at locations outside the Ft. Carson boundary. However, the modeling study did not address a potential maximum emissions scenario where a larger quantity of emissions could be emitted at locations closer to the property boundary. The report also did not address the possibility that certain smoke generation activities may release smaller particles which would stay airborne longer and be more likely to impact off-site receptors. In addition, the period of meteorological data that was used in the modeling study was insufficient to characterize the most adverse meteorological conditions that can occur in the Ft. Carson area. Therefore, EPA believes the modeling results are inconclusive, and our proposed approval of the opacity exemption is not based on these results. Several monitoring studies were also conducted over a period of years and the results of these studies were included with this SIP revision. However, it is not clear whether the monitoring data was collected during the Army's smoke training exercises, thus these data were also not used as a basis for the proposed approval of Colorado's SIP revision.

As stated above, the military engages by design in training that creates emissions in excess of the 20% opacity standard. Based on this fact and the restrictions that are imposed on the military's use of smokes by the proposed rule, the EPA is proposing to approve this SIP revision.

II. Proposed Action

EPA is proposing to approve revisions Colorado's Regulation No. 1, submitted on November 5, 1999. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the *Addresses* section of this document.

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. The Colorado SIP revisions that are the subject of this document do not interfere with the maintenance of the NAAQS or any other applicable requirement of the Act because the State of Colorado is requiring that an observer be placed to visibly determine whether the smoke is in danger of crossing the perimeter and will cease smoke generation if this occurs. This is protective of the NAAQS because PM10 concentrations are clearly visible to the human eye at levels much lower than the 24 hour PM10 NAAQS. Therefore, section 110(l) requirements are satisfied.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 10, 2002.

Jack W. McGraw,

Acting Regional Administrator, Region 8.

[FR Doc. 02–26990 Filed 10–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7399–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of the Rocky Mountain Arsenal National Priorities List Site from the National Priorities List; extension of the public comment period.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 announced its intent to delete the western tier parcel of the Rocky Mountain Arsenal National Priorities List Site (RMA/NPL Site) On-Post Operable Unit (OU) from the National Priorities List (NPL) on September 23, 2002 (67 FR 59487). The 30-day public comment period is scheduled to end on October 23, 2002. During the public meeting held on October 10, 2002, a formal request was made to extend the public comment period. In response, EPA is extending the public comment period for an additional 30 days concluding on November 22, 2002.

The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EPA bases its proposal to delete the western tier of the RMA/NPL Site on the determination by EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), that all appropriate actions under CERCLA have been implemented to protect human health, welfare, and the environment and that no further response action by responsible parties is appropriate.

This partial deletion pertains only to the western tier of the On-Post OU of the RMA/NPL Site and does not include the rest of the On-Post OU or the Off-Post OU. The rest of the On-Post OU and the Off-Post OU will remain on the NPL and response activities will continue at those OUs.

DATES: Comments concerning this proposed partial deletion may be submitted to EPA on or before November 22, 2002.

ADDRESSES: Comments may be mailed to: Catherine Roberts, Community Involvement Coordinator (8OC), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202-2466, 1–800–227–8917 or (303) 312–6025.

Comprehensive information on the RMA/NPL Site, as well as information specific to this proposed partial deletion, is available through EPA's Region 8 Superfund Records Center in Denver, Colorado. Documents are available for viewing by appointment from 8:00 a.m. to 4:00 p.m., Monday through Friday excluding holidays by calling (303) 312–6473. The Administrative Record for the RMA/NPL Site and the Deletion Docket for this partial deletion are maintained at the Joint Administrative Records Document Facility, Building 129, Room 2024, Commerce City, Colorado 80022–1748, (303) 289–0362. Documents are available for viewing from 12:00 p.m. to 4:00 p.m., Monday through Friday or by appointment.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Williams, Remedial Project Manager (8EPR–F), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver Colorado, 80202–2466, (303) 312–6660.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Partial Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) Region 8 announces a thirty (30) day extension of the public comment period for the intent to delete the western tier parcel of the Rocky Mountain Arsenal National Priorities List (RMA/NPL) Site, Commerce City, Colorado, from the National Priorities List (NPL) and requests comment on this proposed action. The NPL constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9605. EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Site is proposed in accordance with 40 CFR 300.425(e) and Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List (60 FR 55466 (Nov. 1, 1995)). As described in 40 CFR 300.425(e)(3), portions of a site deleted from the NPL remain eligible for further remedial actions if warranted by future conditions.

EPA will accept comments concerning its intent for partial deletion of the RMA/NPL Site until November 22, 2002.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this proposed partial deletion. Section IV discusses the western tier of the RMA/NPL Site and explains how it meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health or the environment. In making such a determination pursuant to section 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or

Section 300.425(e)(1)(ii). All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities for portions not deleted from the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts. The U.S. Army and Shell Oil Company will be responsible for all future remedial actions required at the area deleted if future site conditions warrant such actions.

III. Deletion Procedures

Upon determination that at least one of the criteria described in Section 300.425(e) of the NCP has been met, EPA may formally begin deletion procedures. The following procedures were used for this proposed deletion of the western tier of the RMA/NPL Site:

(1) EPA has recommended the partial deletion and has prepared the relevant documents.

(2) The State of Colorado, through the CDPHE, concurred with publication of the notice of intent for partial deletion.

(3) Concurrent with the national Notice of Intent for Partial Deletion, a local notice was published in a newspaper of record and distributed to appropriate federal, State, and local officials, and other interested parties. These notices announced a thirty (30) day public comment period on the deletion package, ending October 23, 2002, based upon publication of the notice in the **Federal Register** and a local newspaper of record.

(4) Concurrent with this national Notice of the Public Comment Extension, a local notice has been published in a newspaper of record and has been distributed to appropriate federal, State, and local officials, and other interested parties. These notices announce a thirty (30) day extension of the public comment period, which ends on November 22, 2002.

(5) EPA has made all relevant documents available at the information repositories listed previously for public inspection and copying.

Upon completion of the thirty (30) calendar day extension of the public comment period, EPA Region 8 will evaluate each significant comment and any significant new data received before issuing a final decision concerning the proposed partial deletion. EPA will prepare a responsiveness summary for each significant comment and any significant new data received during the public comment period and will address concerns presented in such comments and data. The responsiveness summary will be made available to the public at the EPA Region 8 office and the information repository listed above and will be included in the final deletion package. Members of the public are encouraged to contact EPA Region 8 to obtain a copy of the responsiveness summary. If, after review of all such comments and data, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of the western tier of the RMA/NPL Site does not actually occur until a final notice of partial deletion is published in the **Federal Register**. A copy of the final partial deletion package will be placed at the EPA Region 8 office and the information repository listed above after a final document has been published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

This notice announces a thirty (30) day extension of the public comment period for the proposed partial deletion of the RMA/NPL Site. EPA Region 8 announced its intent to delete the western tier parcel of the RMA/NPL Site from the NPL on September 23, 2002. The original basis for deleting the western tier parcel from the RMA/NPL Site has not changed. The **Federal Register** notice (67 FR 59487) provides a thorough discussion of the basis for the intended western tier parcel deletion.

Dated: October 16, 2002.

Robert E. Roberts,

Regional Administrator, U.S. Environmental Protection Agency, Region 8.

[FR Doc. 02–27130 Filed 10–22–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Cerulean Warbler as Threatened With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the cerulean warbler (*Dendroica cerulea*) as threatened, under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). We find that the petition presented substantial information indicating that listing this species may be warranted. We are initiating a status review to determine if listing the cerulean warbler is warranted.

DATES: The finding announced in this document was made on September 24, 2002. To be considered in the 12-month finding for this petition, comments and information should be submitted to the Service by January 21, 2003.

ADDRESSES: Data, information, comments, or questions should be submitted to the Field Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, 608 East Cherry Street, Room 200, Columbia, MO 65201, or by facsimile to (573) 876–1914. The complete petition finding, supporting literature, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Amy Salveter at the Columbia, Missouri, Field Office see **ADDRESSES**), or at (573) 876–1911, extension 113.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is based on information contained in the petition, supporting information submitted with the petition, and information otherwise available to us at the time we make the finding. To the maximum extent practicable, we make this finding within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If we find that substantial information was presented, we commence a review of the status of the species. After considering the comments and information submitted to us during the status review comment period following this 90-day finding, we will issue an additional finding (*i.e.*, the 12-month finding) determining whether listing is in fact warranted.

On October 31, 2000, we received a petition to list the cerulean warbler as a threatened species and to designate critical habitat for the species pursuant to the Act. The petition was submitted by the Southern Environmental Law Center, which acted on its own behalf, and for 27 other organizations, and 7 scientists.

The letter clearly identified itself as a petition, and included the name, signature, and address of the representative of the parties submitting the petition. The petition referenced supporting information on the species' description, natural history, habitat, and population status. It also presented information on threats to the cerulean warbler including present or threatened destruction, modification, or

curtailment of the species' habitat or range; predation; the inadequacy of existing regulatory mechanisms to protect the species; and other natural or manmade factors affecting the species' continued existence. This notice announces and summarizes our 90-day finding for the October 30, 2000, petition.

The cerulean warbler is a neotropical migratory bird that winters in montane forests of northern South America and breeds in deciduous forests of the eastern United States and southern Canada. The breeding range of cerulean warbler generally extends from the eastern Great Plains in eastern North and South Dakota, Nebraska, Kansas, and Oklahoma; south to Arkansas, Mississippi, Tennessee, northern Alabama and Georgia, and South Carolina; and north to Massachusetts, southern Quebec, southeastern Ontario, Michigan, Wisconsin, and central Minnesota (Hamel 2000a, Rosenberg *et al.* 2000). Breeding cerulean warblers are found in the Mississippi and Ohio River valleys, but appear to be concentrated in the upper Ohio valley in West Virginia and western Pennsylvania (Hamel 2000a, 2000b, Rosenberg *et al.* 2000). During migration, the birds pass through the southern United States, across the Gulf of Mexico to the highlands of Central America, and on to South America. Cerulean warblers winter in the middle and lower elevations of the subtropical zone of the eastern slope of the Andes and other mountains in northern South America (Hamel 2000a). Their winter range generally extends from Colombia and Venezuela south, mostly along the eastern slope of the Andes, to southern Peru and perhaps northern Bolivia (AOU 1998).

The petitioners assert that the cerulean warbler is threatened by destruction, modification, or curtailment of habitat or range by logging on public and private lands, construction of water projects *e.g.*, reservoirs, sewer lines and stream channelization), agricultural practices and urbanization through: (1) Loss and fragmentation of breeding habitat in the United States *e.g.*, loss of tall, mature deciduous forest, especially extensive bottomland hardwood forest throughout the floodplain of the Lower Mississippi River Alluvial Valley), (2) loss of winter habitat (within a relatively narrow elevation zone of the Andes in South America), and (3) loss of migratory habitat *e.g.*, development of property along the beaches of Texas, Louisiana, and the Florida panhandle). According to the petitioners, logging creates smaller and more fragmented forest tracts, resulting in higher rates of cerulean warbler nest predation by jays, crows, raccoons, opossums, and snakes. They also cite existing regulations and guidelines as inadequate mechanisms for protecting cerulean warbler breeding and wintering habitats on public and private lands. Finally, the petitioners assert that other natural or human-caused factors affecting the cerulean warbler's continued existence are the likely increase in nest parasitism by cowbirds resulting from the destruction and fragmentation of forests as well as direct mortality resulting from collisions with communication towers.

Historical data on the distribution and abundance of cerulean warblers are scant. However, it is clear from the nineteenth century accounts of several prominent naturalists that the cerulean warbler was a conspicuous and abundant species throughout the Ohio and Mississippi River valleys (Hamel 2000a). Presently, cerulean warblers are much less numerous, and they are absent from some areas where they were abundant (Hamel 2000a, Smith *et al.* 1996). However, the species has increased in numbers or expanded its range in the northeastern United States (Hamel 1992; R. Mulvihill, *in litt.* 3 April 2001), Quebec (Ouellet 1967), and Ontario (Eagles 1987, Oliarnyk and Robertson 1996), perhaps in response to the maturation of previously harvested forests. McCracken (1993) reports that cerulean warbler populations remain fairly stable overall in Canada. Current population trends and estimates are derived from several sources, such as the Breeding Bird Survey, Breeding Bird Census, Breeding Bird Atlas projects, research and monitoring.

Much of the support provided by the petitioners for the listing of cerulean warbler under the Endangered Species Act is based on Breeding Bird Survey (BBS) data they cite as an indication of a declining trend for this species. While it is clear that the cerulean warbler's range has contracted and the overall population has declined, the species exists at high densities at various locations in the core of its range, populations are increasing in several areas, and new populations have been identified. Using a standardized method for extrapolating bird populations from BBS data, the total population of cerulean warblers is estimated at 214,000 pairs (K. Rosenberg, *in litt.* 13 June 2002). Roughly 70% of this population is concentrated in the North Cumberland Plateau and Ohio Hills physiographic areas.

The adequacy of the BBS as a method to monitor forest birds, such as cerulean warblers, has been questioned (Peterjohn *et al.* 1995, James *et al.* 1996). These concerns focus on changes in habitat along roadside routes, which would reduce the detectability of the birds potentially more than their numbers. This is because habitat loss due to development tends to be focused along roadsides, thus areas with habitat lost to development likely will be over-sampled by BBS surveys, with the resulting data possibly overstating the actual decline of the cerulean warbler throughout its range. Furthermore, because BBS routes are always located along roadsides, BBS coverage may not adequately sample those forested habitats that frequently are more distant from roads, such as the bottomlands and ridgetops that are preferred by cerulean warblers (Hamel 2000a, 2000b). This criticism of BBS suggests that other census techniques might be developed that could be more effective for detecting cerulean warblers. For example, recent surveys conducted by canoe on rivers in Missouri have revealed several previously unknown cerulean warbler populations (Robbins 2001); however this method would be difficult to implement on a larger scale. In addition, there are several logistical concerns about the BBS, which arise from the nature of BBS as a volunteer program. Some biologists believe that another problem with BBS data for cerulean warblers is the potential for unfamiliarity with the song of this species among BBS observers (Hamel 2000a).

We and our colleagues who oversee and analyze BBS data believe that BBS data are of questionable value for reliably determining trends for making listing determinations even for declining mature forest associated species, like the cerulean warbler. For example, BBS routes in eastern Kentucky and West Virginia, particularly in the more remote parts of those States where cerulean warblers are numerous *e.g.*, in West Virginia, cerulean warblers were reported from 74 percent of the sites surveyed during the Cerulean Warbler Atlas Project, Rosenberg *et al.* 2000), were not uniformly covered throughout the period of the BBS; therefore, trend calculations cannot effectively utilize the data from some of these routes (Hamel 2000a). The net effect of these differences in coverage is to introduce an unknown amount of uncertainty into the BBS trend estimates, particularly in some of the areas central to the cerulean warbler's breeding range (Hamel 2000a). Moreover, Sauer (1993) indicated that, while sufficient sampling intensity in the BBS existed to detect a 50 percent decline in population of the species over a 25-year period with a probability of 0.9, low relative abundance of this species mandated caution when interpreting trend results.

The BBS estimate of the cerulean warbler's average annual population trend (for the period 1966 to 1996) of −3.7 percent per year (95 percent confidence interval −2.5 to −5.0) is based on 236 survey routes. The average annual trend for the survey period 1966 to 1979 (−5.5 percent per year, $n = 113$) indicates a significant decline in the cerulean warbler population over the first half of the survey period. However, the trend estimate for the remainder of the survey period, 1980 to 1996 (−0.4 percent per year, $n = 183$), is not significantly different from a stable population. These trend estimates suggest that the population declined most dramatically prior to 1980, and may not have declined since then. Whether this represents the primary or sole period of decline or perhaps indicates that, by 1980, populations were reduced to the point that the BBS became a less useful monitoring tool rangewide, is not clear (Hamel 2000b).

Hamel (2000a) stated that land use changes brought about by increasing human populations in the breeding, migratory, and winter range of cerulean warbler are the underlying causes of the population decline of the bird in this century. According to Hamel (2000a), Robbins *et al.* (1992a) compiled the most extensive listing of potential threats facing cerulean warblers. This list included six items which they categorized as constraints on the breeding grounds as well as non-breeding season constraints: (1) Loss of mature deciduous forest, especially along stream valleys; (2) fragmentation and increasing isolation of remaining mature deciduous forest; (3) change to shorter (timber harvest) rotation periods and even-aged management, so that less deciduous forest habitat reaches maturity; (4) loss of key tree species, especially oaks from oak wilt and gypsy moths, sycamores from a fungus, elms from Dutch elm disease, and American chestnuts from chestnut blight; (5) nest parasitism by the brown-headed cowbird; and (6) environmental degradation from acid rain and stream pollution. However, research is needed to determine whether these potential threats affect cerulean warbler populations, and if so, whether the effects of these potential threats vary across the species' breeding and winter range.

We agree with the petitioner's contention that there appear to be several potential threats to cerulean warbler migratory, breeding, and wintering habitats. Demographic data, and especially recruitment data, are currently lacking across the cerulean warbler's range, making it impossible to determine the important features of habitat that provide for successful reproduction, thus complicating the evaluation of potential threats to that habitat. We believe there are significant gaps in the threats data currently available to us, including: the degree to which timber management and harvest on privately owned forest habitat constitute a benefit or threat to the species; loss of habitat due to development has not been quantified or analyzed across the species' range; mountaintop mining impacts assessments and modeling effects on individual species, including the cerulean warbler, are currently unavailable; the magnitude of wintering habitat loss and its role in the species' decline; and mortality factors during migration.

We have reviewed the petition, supporting documentation, and other information available in our files. On the basis of the best scientific and commercial information, we find that substantial information exists indicating that listing the cerulean warbler as threatened may be warranted. When we make a 90-day finding that listing may be warranted, we are required to initiate a review of the status of the species. Following the status review we will issue a 12-month petition finding as required by section 4(b)(3)(B) of the Act. The 12-month finding considers all additional data received during the status review and determines whether listing is warranted. If the 12-month finding is "warranted," we elevate the species to candidate status and assign it a listing priority number. We will then commence work on a proposal to list the species in the order dictated by its listing priority number and the listing priority numbers of other candidate species.

The petitioners also requested that critical habitat be designated for the cerulean warbler. We always consider the need for critical habitat designation when listing species. If the 12-month finding determines that listing the cerulean warbler is warranted, then the designation of critical habitat will be addressed in the subsequent proposed rule.

Public Information Solicited

When we make a finding that substantial information exists to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species involved, including providing an opportunity for data and other information to be provided by the public for our consideration. A rangewide status assessment of cerulean warbler was completed in April 2000, and this status assessment is available on the Service's Web site at *http://midwest.fws.gov/endangered/lists/concern.html#Birds*. This status assessment reviewed most of the information available at that time, so we are primarily interested in receiving data on the species that have become available since April 2000. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of the cerulean warbler. Of particular interest is information pertaining to the factors the Service uses to determine if a species is threatened or endangered: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued existence.

If you wish to comment or provide data for our consideration, you may submit your comments and materials to the Field Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, 608 East Cherry Street, Room 200, Columbia, Missouri 65201. Our practice is to make comments, including names and home addresses of respondents, available for public review. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment and explain the reason for your request. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

References Cited

You may request a list of all references cited in this document, as

well as others, from the Columbia, Missouri Field Office (see **ADDRESSES**).

Author

The primary author of this document is Amy Salveter, Columbia, Missouri Field Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: September 24, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–27004 Filed 10–22–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 67, No. 205

Wednesday, October 23, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–078–2]

Monsanto Co.; Availability of Determination of Nonregulated Status for Corn Genetically Engineered for Insect Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that the Monsanto Company corn designated as Event MON 863, which has been genetically engineered for insect resistance, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms and products. Our determination is based on our evaluation of data submitted by Monsanto Company in its petition for a determination of nonregulated status, our analysis of other scientific data, and comments received from the public in response to a previous notice. This notice also announces the availability of our written determination document and our finding of no significant impact.

EFFECTIVE DATE: October 8, 2002.

ADDRESSES: You may read a copy of the determination, an environmental assessment and finding of no significant impact, the petition for a determination of nonregulated status submitted by Monsanto Company, and all comments received on the petition and the environmental assessment in our reading room. The reading room is located in room 1141, USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure that someone is available to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Biotechnology Regulatory Services, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–8365. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: *Kay.Peterson@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 2001, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 01–137–01p) from Monsanto Company (Monsanto) of St. Louis, MO, requesting a determination of nonregulated status under 7 CFR part 340 for corn (*Zea mays* L.) designated as Corn Rootworm Protected Corn Event MON 863 (MON 863), which has been genetically engineered for resistance to the larvae of certain corn rootworm (CRW) species. The Monsanto petition stated that the subject corn should not be regulated by APHIS because it does not present a plant pest risk.

On March 14, 2002, APHIS published a notice in the **Federal Register** (67 FR 11458–11459, Docket No. 00–078–1) announcing that the Monsanto petition and an environmental assessment (EA) were available for public review. This notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject corn and food products derived from it. APHIS received 1,383 comments on the petition and the EA during the 60-day comment period, which ended May 13, 2002. The comments were received from private individuals, farmers (including corn growers and organic farmers), universities, seed companies, State governors, State department of agriculture directors, State corn growers' associations, State and regional agricultural business and trade associations, a national corn growers' association, an organic trade association, a State seed association, a consumer group, an environmental organization, a university cooperative extension specialist, an agronomic consultant, and a corn product manager. There were 542 comments in support of the subject petition, and 841 were opposed. The comment letters in support of deregulation for MON 863 stressed the environmental benefits of using MON 863 to control CRW, including the reductions in pesticide use and user exposure to toxic chemicals, reductions in farm labor time and costs, the effectiveness and consistency of MON 863 in controlling CRW, and the advantages to growers in increased yields and crop quality. Other comments in favor of deregulation for the subject corn concerned the absence of evidence of plant pest and environmental risk presented by MON 863.

The comments in opposition to deregulation for MON 863 corn included allegations concerning the potential for polluting the purity of organically grown corn, the inevitability of the development of insect resistance to *Bacillus thuringiensis* (Bt) and the consequent loss to organic farmers of the spray form of Bt, the toxic effects of Bt-containing pollen on nontargets, the potential for upsetting the microbial balances in the soil, the possible development of human allergic reactions to Bt corn, and the need for a moratorium on genetically engineered crops due to the alleged inadequacy of U.S. regulation of genetically engineered crops. One commenter contended that a full environmental impact assessment was required prior to commercial growing of MON 863 corn because allowing large-scale commercialization of this corn constituted a major Federal action significantly affecting the environment. The commenter further found the EA inadequate in its treatment of the potential for the development of insect resistance to the Cry 3Bb1 protein, the unavailability to the public of certain information on nontarget effects, the failure to address the cumulative issue of gene stacking through cross-pollination, the failure to address the susceptibility of MON 863 to corn stunt disease, the failure to adequately address the impacts on organic farmers of contamination by transgenic varieties, the failure to

address the economic impacts on U.S. corn farmers of the loss of European markets, and the failure to address the environmental impacts of the illegal grant of certain genetic resources from the public trust into the possession of commercial entities. One additional comment concerned the need for study of the impacts of Bt corn in the ruminant and human diets and the potential for lateral gene flow in the enteric milieu. We have provided responses to these comments as an attachment to our finding of no significant impact, which is available from the person listed under **FOR FURTHER INFORMATION CONTACT.**

MON 863 corn has been genetically engineered to express a Cry3Bb1 insecticidal protein derived from the common soil bacterium *Bacillus thuringiensis* subsp. *kumamotoensis* (*Bt kumamotoensis*). The petitioner stated that the Cry3Bb1 protein is effective in controlling the larvae of CRW pests (Coleoptera, *Diabrotica* spp.). The subject corn also contains the *nptII* marker gene derived from the bacterium *Escherichia coli*. The *nptII* gene encodes neomycin phosphotransferase type II and is used as a selectable marker in the initial laboratory stages of plant cell selection. Expression of the added genes is controlled in part by gene sequences from the plant pathogens cauliflower mosaic virus and *Agrobacterium tumefaciens*. Particle gun acceleration technology was used to transfer the added genes into the recipient inbred yellow dent corn line A634.

The subject corn has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pathogens. This corn has been field tested since 1998 in the United States under APHIS notifications. In the process of reviewing the notifications for field trials of the subject corn, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

Determination

Based on its analysis of the data submitted by Monsanto, a review of other scientific data, field tests of the subject corn, and comments submitted by the public, APHIS has determined that MON 863 corn: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than corn developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not harm threatened or endangered species or organisms, such as bees, that are beneficial to agriculture; and (5) will not cause damage to raw or processed agricultural commodities. Therefore, APHIS has concluded that the subject corn and any progeny derived from hybrid crosses with other nontransformed corn varieties will be as safe to grow as corn in traditional breeding programs that is not subject to regulation under 7 CFR part 340.

The effect of this determination is that Monsanto's MON 863 corn is no longer considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the subject corn or its progeny. However, importation of MON 863 corn or seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An EA was prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that MON 863 corn and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and FONSI are available upon request from the individual listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Done in Washington, DC, this 17th day of October 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–26923 Filed 10–22–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13.

Bureau: International Trade Administration.

Title: Antidumping and Countervailing Duties, Procedures for Initiation of Downstream Product Monitoring.

Agency Form Number: ITA–4119P.

OMB Number: 0625–0200.

Type of Request: Regular Submission.

Burden: 15 hours.

Number of Respondents: 1.

Avg. Hours Per Response: 15 hours.

Needs and Uses: The International Trade Administration's (ITA), Import Administration, AD/CVD Enforcement, implements the U.S. antidumping and countervailing duty law. Under section 1320 of the Omnibus Trade and Competitiveness Act of 1988, a domestic producer of an article that is like a component part of a downstream product may petition the Department of Commerce to designate the downstream product for monitoring. Section 1320, and the Department's rule 19 CFR 351.223, requires that the petition identify the downstream product to be monitored, the relevant component part, and the likely diversion of foreign exports of the component part into increased exports of the downstream product to the United States. ITA will evaluate the petition and will issue either an affirmative or negative "monitoring" determination.

Affected Public: Businesses or other for-profits.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution, NW., Washington, DC 20230 or via internet at *dHynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: October 17, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–26889 Filed 10–22–02; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Offsets in Military Reports.

Agency Form Number: n/a.

OMB Approval Number: 0694–0084.

Type of Request: Renewal of an existing collection of information.

Burden: 1,000 hours.

Average Time Per Response: 10 hours per response.

Number of Respondents: 100 respondents.

Needs and Uses: The Defense Production Act Amendments of 1992, section 123 (P.L. 102558), which amended section 309 or the Defense Production Act of 1950, requires United States firms to furnish information regarding offset agreements exceeding $5,000,000 in value associated with sales of weapon systems or defense-related items to foreign countries. The information collected on offset transactions will be used to assess the cumulative effect of offset compensation practices on U.S. trade and competitiveness, as required by statute.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Paperwork Clearance Officer, (202) 482–0266, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: October 17, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–26890 Filed 10–22–02; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13.

Bureau: International Trade Administration.

Title: Export Assistance Center Internet Website Form.

Agency Form Number: N/A.

OMB Number: 0625–0237.

Type of Request: Regular submission.

Burden: 667 hours.

Number of Respondents: 5,750.

Avg. Hours Per Response: 5–20 minutes.

Needs and Uses: The Newport Beach U.S. Export Assistant Center, which is a combined effort of the U.S. Department of Commerce, Export-Import Bank, and Small Business Administration provides a comprehensive array of export counseling and trade finance services to small and medium-sized U.S. exporting firms. It proposes the extension of the Office of Management and Budget's authorization for this information collection form to continue the usefulness of its interactive website. In addition, this generic form will be used in its entirety or with minor modifications by all U.S. Export Assistance Centers and the Office of Domestic Operations. The form will ask U.S. exporting firm respondents to provide general background information and identify which service(s) they are interested in.

Affected Public: Businesses or other for-profits.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution, NW., Washington, DC 20230 or via internet at *dHynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: October 17, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–26891 Filed 10–22–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–588–804, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Japan, and the United Kingdom: Partial and Full Rescissions of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Partial and Full Rescissions of Antidumping Duty Administrative Reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce published a notice of initiation of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Japan, and the United Kingdom on June 25, 2002. The merchandise covered by these orders are ball bearings and parts thereof from France, Germany, Japan, and the United Kingdom and spherical plain bearings and parts thereof from France. The period of review is May 1, 2001, through April 30, 2002. The Department of Commerce is rescinding these administrative reviews in part or full.

EFFECTIVE DATE: October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos or Richard Rimlinger at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–1757 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department) regulations are to 19 CFR Part 351 (2001).

Background

On May 15, 1989, the Department published in the **Federal Register** (54 FR 20909) the antidumping duty orders on ball bearings and parts thereof from France, Germany, Japan, and the United Kingdom and on spherical plain bearings and parts thereof from France. On June 25, 2002, pursuant to 19 CFR 351.213(b), we published a notice of initiation of administrative reviews of these orders (67 FR 42753).

Subsequent to the initiation of these reviews, we received timely withdrawals of the requests we had received for the following reviews: INA-Schaeffler KG (INA) and Sachs Handel GmbH and ZF Sachs (collectively Sachs) with respect to ball bearings from Germany; SKF France S.A. (SKF France) with respect to spherical plain bearings from France; Barden Corporation (U.K.) Ltd. (Barden) with respect to ball bearings from the United Kingdom; Asahi Seiko Co., Ltd. (Asahi), and Nachi-Fujikoshi Corporation (Nachi) with respect to ball bearings from Japan. Because there were no other requests for review of the above-named firms, we are rescinding the reviews with respect to these companies in accordance with 19 CFR 351.213(d). Because there are no other requests for reviews of the orders on ball bearings from the United Kingdom and on spherical plain bearings from France, we are rescinding the reviews of these orders in full.

Rescission of Reviews

In accordance with 19 CFR 351.213(d), the Department will rescind an administrative review "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." The Department is also authorized to extend this deadline if it decides that it is reasonable to do so. INA, Sachs, SKF France, Barden, and Asahi withdrew their requests for their respective reviews within the 90–day time limit. The Torrington Company (Torrington) withdrew its request for the review of Nachi after the 90–day period had expired. Because there were no other requests to review Nachi and no other interested party objected, the Department has decided to accept Torrington's withdrawal request.

Because the Department received no other requests for the reviews of INA, Sachs, Asahi, and Nachi, it is rescinding the reviews in part with respect to shipments of ball bearings from Germany and Japan by these firms. Also, because the Department received no other requests to review spherical plain bearings from France other than those sold by SKF and no other requests to review ball bearings from the United Kingdom other than those sold by Barden, the Department is rescinding the reviews of these orders completely. The above partial and complete rescissions are pursuant to 19 CFR 351.213(d)(1). The Department will issue appropriate assessment instructions to the U.S. Customs Service within 15 days of publication of this notice.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these rescissions in accordance with 19 CFR 351.213(d)(4).

Dated: October 16, 2002.

Louis Apple,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–27010 Filed 10–22–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–507–501; C–507–601]

Certain In-Shell Pistachios (C–507–501) and Certain Roasted In-Shell Pistachios (C–507–601) From the Islamic Republic of Iran: Extension of Time Limit for Final Results of Countervailing Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limit for final results of countervailing duty new shipper reviews.

EFFECTIVE DATE: October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds or Darla Brown, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2786.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to issue preliminary results within 180 days after the date on which the review was initiated and final results within 90 days after the date on which the preliminary results are issued. However, if the Secretary determines the case is extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act allows the Department to extend the time limit for the preliminary results of new shipper reviews to a maximum of 300 days and for the final results to 150 days from the date of issuance of the preliminary results.

Background

On November 7, 2001, we published in the **Federal Register** the initiation of a new shipper review of the countervailing duty order on in-shell pistachios from the Islamic Republic of Iran (Iran), covering the period October 1, 2000, through September 30, 2001. *See* 66 FR 56277. On November 27, 2001, we published in the **Federal Register** the initiation of a new shipper on roasted in-shell pistachios from Iran covering the same period. *See* 66 FR 59235. On September 4, 2002, (67 FR 56534), we published the preliminary results for the in-shell and roasted in-shell new shipper reviews.

Extension of Final Results of Review

Upon further review of the information submitted on the record of these new shipper reviews, we have concluded that it is necessary to conduct a verification of the questionnaire responses. Given our decision to conduct verification, we have determined these cases are extraordinarily complicated. Therefore, the Department is extending the time limits for completion of the final results until no later than January 24, 2002. *See* the Decision Memorandum from Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, to Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, dated concurrent with this notice, which is on file in the Central Records Unit.

This extension is in accordance with section 751(a)(2)(B)(iv) of the Act.

Dated: October 16, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–27011 Filed 10–22–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–507–501]

Certain In-Shell Pistachios From the Islamic Republic of Iran: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit or preliminary results of countervailing duty administrative review.

EFFECTIVE DATE: October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds or Darla Brown, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce ("the Department") to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested. However, if it is not practicable to complete the preliminary results of review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days.

Background

On April 17, 2002 the Department initiated an administrative review of the countervailing duty order on certain in-shell pistachios from the Islamic Republic of Iran (Iran). *See* 67 FR 20089. The preliminary results are currently due no later than December 2, 2002.

Extension of Time Limit for Preliminary Results of Review

Upon further examination of the information submitted on the record of the administrative review, we have concluded that it is necessary to conduct a verification of the questionnaire responses. Because it is the Department's practice to verify administrative reviews prior to the issuance of preliminary results, we do not believe it is practicable to complete the preliminary results of the administrative review within the 245-day statutory time frame. Therefore, the Department is extending the time limits for completion of the preliminary results until April 1, 2003. *See* the Decision Memorandum from Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, to Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, dated concurrent with this notice, which is on file in the Central Records Unit.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: October 17, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–27012 Filed 10–22–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Barnes Nursery, Inc. From an Objection by the Ohio Department of Natural Resources

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of appeal and request for comments.

SUMMARY: Barnes Nursery, Inc. has filed a notice of appeal with the Department of Commerce asking that the Secretary of Commerce override the Ohio Department of Natural Resources' objection to the Barnes Nursery, Inc. after-the-fact permit to maintain an excavated channel and berm system intended to store water for agricultural purposes. This project is located in Erie County, Ohio adjacent to east Sandusky Bay.

DATES: Public comments on the appeal are due within 60 days of the publication of this notice.

ADDRESSES: Comments should be sent to Molly Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Public filings made by the parties to the appeal may be available at the NOAA Office of the Assistant General Counsel for Ocean Services and the offices of the Ohio Department of Natural Resources, 1952 Belcher Drive—Bldg. C–4, Columbus, OH 43215.

FOR ADDITIONAL INFORMATION CONTACT: Molly Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 or at 301–713–2967, extension 215.

SUPPLEMENTARY INFORMATION:

I. Notice of Appeal

On July 10, 20001, Barnes Nursery, Inc. (Appellant) filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.*, and the Department of Commerce's implementing regulations, 15 CFR part 930, subpart H (revised, effective January 8, 2001). The appeal is taken from an objection by the Ohio Department of Natural Resources (state) to the Appellant's consistency certification for a U.S. Army Corps of Engineers' after-the-fact permit to maintain an excavated channel and berm system intended to store water for agricultural purposes. This project is located in Erie County, Ohio adjacent to East Sandusky Bay.

The CZMA provides that a timely objection by a state precludes any federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the State's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) The proposed activity furthers the national interest as articulated in section 302 or 303 of the CZMA, in a significant or substantial manner, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively, and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of the Ohio Department of Natural Resources' management program. 15 CFR 930.121.

II. Public Comments

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR

930.121. Comments are due within 60 days of the publication of this notice and should be sent to Molly Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Copies of comments will also be forwarded to the Appellant and the State.

III. Appeal Documents

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the NOAA Office of the Assistant General Counsel for Ocean Services and the Ohio Department of Natural Resources.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

Dated: October 1, 2002.

James R. Walpole,

General Counsel.

[FR Doc. 02–26903 Filed 10–22–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101102H]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public scoping meeting for a supplemental environmental impact statement (SEIS).

SUMMARY: NMFS announces a public scoping meeting to determine issues for an SEIS for the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) in accordance with the National Environmental Policy Act of 1969 (NEPA). The North Pacific Fishery Management Council (Council) is proposing management measures to improve the economic efficiency of the Gulf of Alaska (GOA) groundfish fisheries which also may address conservation, safety, and social concerns. The Council is considering one or more methods of allocating fishing privileges such as: individual fishing quotas (IFQs); individual processing quotas (IPQs); allocations to communities; fishing cooperatives program; or other measures.

DATES: The public scoping meeting will be held on Friday, October 25, 2002, from 1 to 4 p.m. Written comments will be accepted through November 15, 2002 (see **ADDRESSES**).

ADDRESSES: The meeting will be held at the Hilton Anchorage Hotel, Spruce Room, 500 West Third Avenue, Anchorage, AK.

Written comments on issues and alternatives for the SEIS should be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel-Durall, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Comments may be sent via facsimile (fax) to 907–586–7557. NMFS will not accept comments by e-mail or internet.

An analysis of the issues and alternatives will be available through the North Pacific Fishery Management Council, 605 West 4th, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, (907) 586–7228 or email: glenn.merrill@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS published a notice of intent to prepare an SEIS on May 29, 2002 (67 FR 37393). The notice of intent provides additional information on the SEIS public scoping process and may be obtained through NMFS (See **ADDRESSES**).

NMFS is holding public scoping meetings and accepting written comments to determine the issues of concern and the appropriate range of management alternatives to be addressed in the SEIS. NMFS has held seven public scoping hearings in Alaska at Sand Point, King Cove, Kodiak, Cordova, Homer, and Petersburg, and also in Seattle, WA. The meeting announced in this document is intended to provide an additional opportunity for public comment during the scoping period. This meeting is being held in Anchorage to help facilitate participation by Native Alaskan tribal governments attending the 2002 Conference of the Alaska Federation of Natives. NMFS will notify Native Alaskan tribal governments prior to this meeting.

Additional information on the public scoping process may be obtained through NMFS (see **ADDRESSES**), or via the NMFS website at http://www.fakr.noaa.gov/. The specific options for rationalization may be obtained through the Council (see **ADDRESSES**), or via the Council website at http://www.fakr.noaa.gov/npfmc/.

Public Involvement

NMFS is seeking written public comments on the scope of issues that should be addressed in the SEIS and alternatives and options that should be considered for management of the GOA groundfish fisheries.Public comments on specific aspects of the rationalization programs should be submitted to NMFS (see **ADDRESSES**). The public also will be able to provide oral and written comments at the meeting. The Council will make a draft analysis of these alternative programs available for public review and comment. Copies of the analysis can be requested from the Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Glenn Merrill, NMFS, (see **ADDRESSES**), (907) 586–7228, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 et. seq.

Dated: October 18, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–26978 Filed 10–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 2002–C–001]

Patent and Trademark Office Acquisition Guidelines (PTAG)

AGENCY: U.S. Patent and Trademark Office, Commerce.

ACTION: Notice of proposed guidelines and request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) is publishing a notice of the proposed guidelines which it will apply to its acquisitions.

DATES: Written comments should be submitted on or before November 22, 2002.

ADDRESSES: Submit written comments to: USPTO, Office of Procurement, Washington, DC 20231. Electronic comments may be submitted to: *Mike.Anastasio@uspto.gov*. Copies of all comments will be available for public inspection at *http://www.uspto.gov/web/offices/ac/comp/proc/* or in Suite 810, Crystal Park One, 2011 Crystal Drive, Arlington, Virginia 22202, from 8:30 a.m. until 5 p.m., Monday through Friday. Please submit comments only and cite PTAG in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Messina, Procurement Analyst, USPTO, Office of Procurement, at (703) 305–8014.

SUPPLEMENTARY INFORMATION:

Background

a. On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act ("USPTO Efficiency Act"), Pub. L. 106–113—Appendix I, Title IV, Subtitle G, 113 Stat. 1501A–572, which took effect March 29, 2000. *See* 35 U.S.C. 1. The USPTO Efficiency Act expressly provides that the USPTO "shall retain responsibility for decisions regarding the management and administration of its operations and shall exercise independent control of its * * * procurements * * *." To this end, the USPTO Efficiency Act expressly granted the USPTO the authority to make purchases and to enter into contracts for supplies or services without regard to the provisions of the Federal Property and Administrative Services Act of 1949 (FPAS) (40 U.S.C. 471 *et seq.*). 35 U.S.C. 2(b)(4)(A). FPAS is also codified at 41 U.S.C. 251 *et seq.* The pertinent portions of FPAS from which USPTO is exempt are found at 41 U.S.C. 251 *et seq.*

b. As relevant to the USPTO, the Federal Acquisition Regulation (FAR) is issued by the Administrator of the General Services Administration under the authority of FPAS. Because the USPTO is not subject to FPAS, it is not required to follow the FAR.

c. On April 5, 2000, the USPTO published a **Federal Register** notice stating that until otherwise indicated, USPTO will continue to follow the FAR and Department of Commerce regulations applicable to the United States Patent and Trademark Office. 65 Fed. Reg. 17,858–01 (2000).

d. Continuing to follow the FAR indefinitely will not permit the USPTO to utilize the procurement flexibilities provided by the USPTO Efficiency Act. On the other hand, the FAR contains procedures for compliance with a large number of procurement-related statutes, Executive Orders, and regulations to which the USPTO is still subject and with which it must continue to comply. The FAR also ensures that decisions are made fairly and in the best interests of the Government.

e. Accordingly, the USPTO will continue to use the FAR as guidance in its acquisitions. This notice sets forth additional proposed guidance concerning alternate procurement procedures that may be used by the USPTO.

Nature of Proposed Guidelines

Neither the FAR nor the procedures set forth in this notice will be binding on USPTO contracting officers or other USPTO employees involved in the procurement process. However, USPTO employees may assume that following either the FAR procedures or, to the extent applicable, the alternate procedures set forth in this notice will ensure compliance with applicable legal requirements and result in fair and appropriate decisions. USPTO employees may use procedures other than those set forth in the FAR and this notice so long as these procedures comply with all applicable statutes, Executive Orders and regulations, will further the legitimate interests of the USPTO and are calculated to result in fair decisions.

Neither the FAR nor the alternate guidance provided in this notice is binding on USPTO vendors or any other member of the public, except to the extent provisions therefrom are incorporated in legally enforceable contracts. Instructions set forth in solicitations or other procurement documents are also binding in that they may establish conditions on an offeror's continued participation in the procurement process.

The alternate procedures set forth in this notice are intended to incorporate brevity of content, streamlined procedures, innovation in process, flexibility, and discretion to the acquisition process while ensuring objectivity and maximum reasonable competition.

The following are highlights of the benefits the USPTO hopes to achieve through this alternate guidance:

- Increase the competitive threshold from $2500 to $5000 to decrease processing time and costs.
- Use "maximum reasonable competition" instead of "full and open competition" for a more efficient procurement process.
- Reflect the USPTO's increased flexibility in procuring printing services.
- Increase the threshold for the use of simplified acquisition procedures for commercial items from $5 million to $10 million to reduce the lead time for processing requirements and decrease acquisition costs.
- Provide guidance on the use of an Alternative Streamlined Contracting Approach. This process involves the early identification of highly qualified vendors, which will reduce the investment of vendor time and resources, provide greater flexibility, and establish better partnerships with the vendor community. The use of a pre-set number of firms for the competitive range also reduces unreasonable contractor expectations.
- Permit limited discussions after the establishment of the competitive range in lieu of making an award without discussions. USPTO hopes to reduce processing time and administrative burdens associated with proposal revisions.
- Permit use of contract types not included in the FAR (*i.e.*, contract types that combine elements of the various contract types listed in the FAR (Labor Hour Award Fee, for one example). This provides greater flexibility to improve mission accomplishment and improved partnering relationships with vendors.

Proposed Guidelines

Expanded Use of Electronic Commerce

Recognizing that the Internet provides a valuable means of disseminating information, USPTO intends to continue and expand its use of electronic commerce to facilitate streamlining of the acquisition process. While the USPTO will continue to synopsize proposed actions and contract awards, the objective is to use the USPTO Office of Procurement web site as the foremost method of publicizing requirements, business opportunities, and providing procurement information to the business community.

Competition

The USPTO will endeavor to acquire products and services to the maximum extent possible in all acquisitions on a competitive basis; however, it is exempt from the requirement to meet the test of "full and open competition" as defined in FAR Part 6.

The USPTO will use competition as a principal tool in achieving results and intends to adopt means of affording competition that it determines will effectually serve the performance goals established for particular acquisitions.

It is the policy of the USPTO to promote competition to the maximum extent possible. Competition reduces the risk of having to rely on only one source for critical goods or services and reduces costs. USPTO intends to balance these considerations with the program benefits that can be gained from developing a reduced supplier base and building strategic alliances with its suppliers. The degree of competition sought will be influenced by knowledge of the marketplace and successful past performance records, with competition in most cases limited

to a reasonable number of capable sources.

Under the USPTO process, all firms will be apprised of opportunities, but only those judged to be the most viable will commit the resources to fully participate. USPTO intends to have an open interchange with industry about USPTO potential requirements and contractor capabilities long before any formal solicitation is issued. It is the policy of the USPTO to inform all firms of opportunities and seek to ensure only the most viable will need to commit resources to fully participate.

Where justifications for limiting competition are prepared, they will be approved at the following levels:

a. Justifications of procurements $1,000,000 or less will be approved by the Contracting Officer.

b. Justifications over $1,000,000 and less than $10,000,000 will be approved by the Director, Office of Procurement.

c. Justifications greater than $10,000,000 will be approved by the Agency Competition Advocate.

Simplified Acquisition Procedures

Competitive quotations need not be sought for purchases under $5,000 provided that the Contracting Officer can readily determine the price to be fair and reasonable. Written solicitations should only be utilized when appropriate given the complexity of the requirement.

The USPTO contracting officer may use procedures similar to those set forth at subpart 13.5 of the FAR for acquisitions of commercial items not in excess of $10 million.

Alternative Streamlined Contracting Approach

The Contracting Officer may utilize the streamlined process described below to solicit offers. The characteristics of this process include:

a. Early identification of the most highly qualified contractors;

b. Establishing a pre-set number of firms for the competitive range to limit the investment of contractor time and resources and to reduce the administrative burden of the procurement process; and

c. Conducting negotiations only where it is practical and efficient to do so and without the requirement for a common cut-off date for concluding negotiations.

The USPTO intends to use a project team to conduct acquisitions under the alternative streamlined contracting approach. The project team will be a multi-disciplinary team that consists of a warranted contracting officer, representatives from the program office whose requirement is the subject of the procurement, the Office of Corporate Planning, and the Office of the General Counsel. The project team will possess the necessary authority needed to conduct all aspects of the acquisition. No further approvals will be required to conduct the acquisition.

The Alternative Streamlined Contracting Process is conducted as follows:

a. A project team conducts all aspects of the acquisition.

b. The team employs strategies and methods that best fulfill the needs of the acquisition.

c. When using the streamlined Alternative Streamlined Contracting Approach, USPTO may employ announcements of opportunities rather than announcement of individual actions over $25,000.

d. Initially, a high-level solicitation document is used. It should solicit basic and essential information such as offeror qualifications, broad-based product data, proposed technical concept, past performance, and pricing. The solicitation document will typically consist of:

1. information on goals and objectives of the requirement,

2. specific procedures related to conducting the acquisition,

3. instructions to offerors on preparing a response,

4. information on how responses will be evaluated,

5. budget information on the value of the acquisition, where appropriate, and

6. project and acquisition timeframes and schedules.

e. A competitive range will be established after initial evaluation of responses. Respondents judged as not being among the most highly rated will be eliminated from further consideration.

f. After establishment of the competitive range, a detailed Statement of Need is issued to solicit additional information and obtain a more complete offer from all firms. The Statement of Need will incorporate the principles of performance-based contracting to permit offerors the opportunity to propose the best solution to meet the USPTO's needs.

g. Oral presentations may be used. The Contracting Officer should maintain an adequate record of oral presentations.

Based on responses to the Statement of Need, the Contracting Officer may negotiate or conduct discussions only with the highest ranked offeror based on the evaluation factors set forth in the solicitation. If the USPTO Contracting Officer is unable to reach agreement with this offeror, negotiations will be initiated with the next highest-ranked firm. This process will continue until those firms remaining in the competitive range have been considered. If agreement cannot be reached, negotiations may be reopened with all firms in the competitive range or the solicitation may be canceled.

Selecting Contract Types

Where appropriate, the USPTO may use any contract type (*e.g.*, fixed price or labor hour) provided for in the FAR without regard to any limitations specified therein, and in addition may use hybrid or other contract types not provided for in the FAR.

Indefinite-Delivery Contracts

Because it is exempt from the FPAS, the USPTO is not required to make multiple awards for indefinite-quantity contracts under any circumstances, or, where multiple awards are made, to use any specific procedures for placing task or delivery orders. Contracting Officers are encouraged, however, to consider the use of multiple awards where doing so would result in benefits to the USPTO. A solicitation contemplating multiple awards should address the procedures the USPTO will use for selecting between contractors when awarding task or delivery orders. Where a specific procurement includes procedures for seeking task or delivery order proposals from multiple contractors, applying these procedures to individual requirements below $5,000 normally will not be in the best interest of the USPTO.

Options

Because of the USPTO's exemption from FPAS, it may make award on the basis of unpriced options contained in an existing contract without seeking further competition. The USPTO intends to consider the use of this technique in connection with performance based contracting under the following circumstances:

a. the award of additional option periods to the incumbent contractor without competition is used as an incentive and reward for good contract performance;

b. the solicitation notifies offerors that unpriced options will be used as a performance incentive; and

c. the contract includes provisions for measuring contract performance and the pricing, negotiation, and exercise of additional option periods.

Acquisition Plans

Acquisition planning serves two important purposes: it establishes how an agency will meet programmatic requirements within the agency's budgetary goals and it serves as a guideline for the acquisition.

Annual Acquisition Plans—As a means of funds control, prioritization, and workload scheduling, USPTO intends to continue to utilize yearly acquisition plans that are tied to the budget process. The plans should be updated as priorities and funding changes occur to ensure accuracy and currency. Plans will be concise. All planned acquisitions for a given fiscal year should be included on the yearly acquisition plan.

Separate Project Agreements—The USPTO may use a separate project agreement for individual or multiple actions that utilize the Alternative Streamlined Contracting Approach. Project Agreement documents tailored to the size and complexity of the various acquisitions will be developed.

Individual Acquisition Plans—The content of the individual acquisition plan shall be left to the discretion of the Contracting Officer. At a minimum, acquisitions plans should contain the following:

a. Statement of need.

b. Applicable conditions.

c. Cost.

d. Risks.

e. Plan of action.

f. Milestones.

Printing Requirements

The Patent and Trademark Efficiency Act, 35 U.S.C. 2(b)(4)(B), exempts the USPTO from requirements for printing by the Government Printing Office. Accordingly the USPTO intends to acquire printing by the most economic and efficient means available, which may in particular acquisitions include the Government Printing Office.

Market Research

The purpose of USPTO's approach to market research is to identify and determine the availability of products or services that will satisfy its requirements. The USPTO will use such research, as appropriate, to help it ascertain the most efficient acquisition strategy—with consideration of the range of potential sources, availability of commercial items, and identification of standard commercial practices. Accordingly, the USPTO intends to conduct market research that, to the extent possible, is based upon clear statements of an acquisition's intended outcome and does not foreclose, before research is conducted, the consideration of any reasonable solution or technology for accomplishing its goal. The best result of market research will be achieved when there is a clear statement of the acquisition's intended outcome.

Market research is the responsibility of the entire acquisition team. USPTO Contracting Officers should work closely with technical/program staff to ensure that appropriate market research is conducted. The extent and results of market research efforts should be documented in acquisition planning documents and/or project agreements when the Alternative Streamlined Contracting Approach is utilized.

Bid Protests

The USPTO continues to be subject to the bid protest jurisdiction of the General Accounting Office and of the Court of Federal Claims. The USPTO is also subject to 6 Executive Order 12979 concerning protests to the agency. Its procedures for considering such protests are available at: *http://www.uspto.gov/web/offices/ac/comp/proc/protest.htm*.

Dated: October 17, 2002.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 02–26968 Filed 10–22–02; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Romania

October 17, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63033, published on December 4, 2001.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 17, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on October 23, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
435	18,749 dozen.
443	31,068 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Philip J. Martello,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–26913 Filed 10–22–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 19(a)(2) of the Federal Advisory Committee Act

(P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: 28–31 October 2002.

Time(s) of Meeting: 0900–1700, 28 October 2002, 0900–1200, 31 October 2002.

Place: Carlisle Barracks, Pennsylvania.

1. The Army Science Board is holding a General Membership Meeting on 28–31 October 2002. The meeting will be held at the U.S. Army War College, Carlisle Barracks, Pennsylvania. The meeting will begin at 0900hrs on the 28th and will end at approximately 1200hrs on the 31st. For further information, please contact Major Robert Grier—703–604–7478 or email: *robert.grier@saalt.army.mil.*

Wayne Joyner,

Executive Assistant, Army Science Board.

[FR Doc. 02–26911 Filed 10–22–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Public Meeting on the Draft Environmental Impact Statement for Basing the Advanced Amphibious Assault Vehicle at Marine Corps Base Camp Pendleton, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the National Environmental Policy Act as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy has prepared a Draft Environmental Impact Statement (DEIS) for basing the advanced amphibious assault vehicle at Marine Corps Base (MCB) Camp Pendleton, CA. Two public meetings will be held in order to collect public comments. These meetings are for interested persons to ask questions and provide comments on the DEIS. Each meeting will be conducted in an open house format and participants may attend some or all of the meeting(s).

DATES AND ADDRESSES: The first public meeting will be held on Monday, November 18, 2002, from 6 p.m. to 9 p.m. in the City of San Clemente Auditorium, 100 N. Calle Seville, San Clemente, CA. The second public meeting will be held on Wednesday, November 20, 2002, from 6 p.m. to 9 p.m. in the City of Oceanside Community Room, 330 North Coast Highway, Oceanside, CA. All written comments regarding the DEIS should be received by December 3, 2002, and directed to Commander, Southwest Division, Naval Facilities Engineering Command, Code 5CPR.15 (Attn: Ms. Lisa Seneca), 937 North Harbor Drive, San Diego, CA 92132.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Seneca, telephone (619) 532–4744, fax (619) 532–4160.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps is developing the advanced amphibious assault vehicle (AAAV) to replace the amphibious assault vehicle (AAV) as its primary combat vehicle for transporting troops on land, at sea, and from ship to shore. The AAAV is designed to satisfy many operational requirements to provide increased capabilities compared to the AAV and seamlessly link maneuver on ships and maneuver ashore.

The DEIS analyzes the potential environmental impacts associated with the proposed action, which involves the replacement of the AAV with the AAAV at MCB Camp Pendleton, the demolition, construction and modification of facilities at MCB Camp Pendleton to support the AAAV, and conducting AAAV training exercises at San Clemente Island.

The DEIS has been distributed to various Federal, state and local agencies, elected officials, special interest groups and individuals. The DEIS is available for public review at the following libraries:

- Carlsbad City Library, 1250 Carlsbad Village Dr, Carlsbad, CA.
- La Costa Branch Library, 6949 El Camino Real, Suite 200, Carlsbad, CA.
- Del Mar Branch Library, 1309 Camino Del Mar, Del Mar, CA.
- Imperial Beach Branch Library, 819 Imperial Beach Blvd, Imperial Beach, CA.
- Oceanside Public Library, 330 North Coast Highway, Oceanside, CA.
- Ocean Beach Branch Library, 4801 Santa Monica Ave, San Diego, CA.
- East San Diego Branch Library, 4089 Fairmount Ave, San Diego, CA.
- San Diego Central Library, 820 East St, San Diego, CA.

Dated: October 17, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–26908 Filed 10–22–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

The following patents are available for licensing:

U.S. Patent Number 6,338,456: LANDING IMPACT ABSORBING DEPLOYMENT SYSTEM FOR AIRCRAFT WITH DAMAGED LANDING GEAR. ABSTRACT: Inflation of impact absorbing bags is effected in time delayed relation to selective jettisoning of damaged landing gear on a helicopter prior to landing for replacement of the landing gear by the bags, without puncture thereof by the landing gear being jettisoned. U.S. Patent Number 6,371,410: EMERGENCY LANDING IMPACT ABSORBING SYSTEM FOR AIRCRAFT. ABSTRACT: Inflation of impact absorbing bags is effected on a portable platform positioned on an emergency landing zone after jettisoning of damaged landing gear from a helicopter fuselage. The impact absorbing bags when inflated form a cradle shape conforming to the bottom of the helicopter fuselage. U.S. Patent Number 6,386,830: QUIET AND EFFICIENT HIGH-PRESSURE FAN ASSEMBLY. ABSTRACT: A high-pressure vane-axial fan assembly is provided. A rotor assembly has a plurality of rotor blades disposed circumferentially around and extending radially outward from a hub. Each rotor blade has an airfoil cross-section and is constructed to define a straight-ruled leading edge that extends outward from the hub. The rotor blade is rotated along its span relative to the straight-ruled leading edge. The plurality of rotor blades defines a solidity of greater than 1. A stator assembly has a plurality of stator vanes disposed circumferentially around and extending radially from the frame. There are a lesser number of stator vanes than rotor blades. The stator assembly is positioned adjacent the rotor assembly such that an axial gap is defined between the trailing edge of the stator vanes. The axial gap increases with radial distance from the hub as defined by the shape of the trailing edge of the rotor blades and the shape of the leading edge of the stator vanes. The axial gap is a minimum of the rotor blade's axial chord length along a central portion thereof. U.S. Patent Number 6,382,912: CENTRIFUGAL COMPRESSOR WITH VANELESS DIFFUSER. ABSTRACT: A centrifugal compressor or pump has a vaneless diffuser within which a radially extending passage is formed between a fixed plate surface and a profile contoured shroud surface establishing a pinch point location of minimum passage area intermediate inlet and outlet ends of the diffuser passage. Convergent and divergent flow portions of the diffuser passage respectively extend to and from the pinch point to establish convergent flow from the inlet end and divergent flow toward the outlet end for exit outflow at a flow angle less than that of a convergent inflow angle from the inlet end imposed along an initial profile segment. U.S. Patent Number 6,294,849: MAGNETOSTRICTIVE ACTUATOR WITH LOAD COMPENSATING OPERATIONAL MODIFICATION. ABSTRACT: A magnetostrictive actuator has an active rod deformed under exposure to magnetic bias of a magnetic field that is modified in accordance with variable external input loading transferred through gearing to rotationally displace a segmented magnetic shell relative to a fixed segmented magnetic shell within which the magnetic field is established. U.S. Patent Number 6,235,541: PATTERNING ANTIBODIES ON A SURFACE. ABSTRACT: Substrates are patterned with antibodies attached thereto at discrete locations from which absorption resistant coating is removed by selectively controlled mechanical scribing contact to avoid chemical removal so as to decrease fabrication costs and increase fabrication speed. U.S. Patent Number 6,170,422: ATTACHMENT OF EQUIPMENT TO COMPOSITE SANDWICH CORE STRUCTURES. ABSTRACT: Equipment is removably connected by a load transfer element and a removable fastener bolt to a core sandwich type of bulkhead through a plug-in insert, adhesively bonded to the bulkhead at interface surfaces within a pocket formed in the bulkhead for reception of such insert. U.S. Patent Number 6,138,724: SHIPBOARD PAINT DISPENSING SYSTEM. ABSTRACT: A storage chamber within a paint dispensing reservoir tank is maintained filled with paint from a refill paint source during recirculation of such paint through a paint cleansing filter within the chamber for supply of filter cleansed paint to a paint dispensing outlet under control of a metering system involving use of a valve controlled air-powered pump and flow metering regulating cylinders. U.S. Patent Number 6,038,995: COMBINED WEDGE-FLAP FOR IMPROVED SHIP POWERING. ABSTRACT: The inventive combination of a stern wedge and a stern flap demonstrates hydrodynamic properties which, for purposes of enhancing the powering performance of a ship, are superior to those of either a solitary stern wedge or a solitary stern flap. For many inventive embodiments the stern wedge portion's lower surface and the stern flap portion's lower surface are slanted at approximately equal angles with respect to the buttock centerline, thereby optimally consolidating the stern portion's lower surface and the flap portion's lower surface so as to effectively create an overall hydrodynamic lower surface which is slanted approximately at one and the same angle. U.S. Patent Number 6,208,268: VEHICLE PRESENCE, SPEED AND LENGTH DETECTING SYSTEM AND ROADWAY INSTALLED DETECTOR THEREFOR. ABSTRACT: An improved detector is provided for installation in a roadway surface. The detector finds utility in a highway vehicle detection system for determining vehicle presence, vehicle speed and vehicle length. First and second matched induction coil magnetic sensors are maintained at or near the roadway surface. Each of the sensors has a longitudinal axis aligned normal to the roadway surface. The first and second sensors are separated from one another by a known distance in a direction substantially aligned with a direction of traffic flow. Each of the sensors generate a differential magnetic field signature with respect to time to indicate a passing vehicle's leading and trailing edge magnetic signatures. Vehicle speed is determined by a time-distance relationship using the leading and trailing edge magnetic signatures and the known distance. Vehicle length is determined by a time-speed relationship using the leading and trailing edge magnetic signatures and the determined vehicle speed. A triaxial magnetometer maintained at a location in close proximity to the first and second sensors measures a DC magnetic field. The DC magnetic field has vertical and horizontal magnetic field components with the horizontal components including a component substantially aligned with the direction of traffic flow and a component substantially perpendicular to the direction of traffic flow. The vertical and horizontal components caused by the passing vehicle are used to determine vehicle presence. An ELF communications system may be incorporated with the detector to link roadside and vehicle transmitted received information.

ADDRESSES: Requests for copies of the patents cited should be directed to: Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Boulevard, West Bethesda, MD 20817–5700, and must include the patent number.

FOR FURTHER INFORMATION CONTACT: Mr. Dick Bloomquist, Director, Technology Transfer Office, Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Boulevard, West Bethesda, MD 20817–5700, telephone (301) 227–4299.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: October 17, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–26907 Filed 10–22–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of proposed information collection requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by October 30, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before December 23, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Lauren Wittenberg, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.* .

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the

requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: October 17, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New Collection.

Title: Teacher Cancellation Low Income Directory.

Abstract: There are 57 State Agencies that contribute to the development of a directory of elementary and secondary schools which qualify for the teacher cancellation benefit. The directory allows post-secondary institutions to determine whether or not a teacher who received a Federal Perkins Loan, Direct loan, or Federal Family Education Loan at their school is eligible to receive a loan cancellation as provided under Title I of the Elementary and Secondary Education Act of 1965.

Additional Information: Emergency clearance of this collection is necessary because if the collection were not approved for use by November 1, public harm to students applying for eligibility would occur.

Frequency: Annually.

Affected Public: Individuals or household, State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1.

Burden Hours: 6983.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2174. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Joe Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–26894 Filed 10–22–02; 8:45 am]

BILLING CODE 4000–1–P

DEPARTMENT OF ENERGY

Office of Science; Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, November 5, 2002, 8 a.m. to 5 p.m., and Wednesday, November 6, 2002, 8 a.m. to 12 p.m.

ADDRESSES: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

FOR FURTHER INFORMATION CONTACT: Sharon Long; Office of Basic Energy Sciences; U. S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: (301) 903–5565.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

Tuesday, November 5, 2002.

- Welcome and Introduction.
- Office of Science Highlights.
- Basic Energy Sciences Highlights.
- Overview of the Division of Chemical Sciences, Geosciences, and Biosciences.
- Preliminary Summary of the Workshop on Basic Research Needs to Assure a Secure Energy Future.
- Update on Nanoscale Science Research Centers.
- Update on Linac Coherent Light Source.

Wednesday, November 6, 2002.

- Overview of Upcoming BESAC Activities.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Sharon Long at 301–903–6594 (fax) or *sharon.long@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule. This notice is being published less than 15 days before the date the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC 20585; between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on October 17, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–26961 Filed 10–22–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, November 20, 2002, 1 p.m.–8:30 p.m.

ADDRESSES: Holiday Inn, Santa Fe, 4048 Cerrillos Road, Santa Fe, NM.

FOR FURTHER INFORMATION CONTACT: Menice Manzanares, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; fax (505) 989–1752 or e-mail: *mmanzanares@doeal.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1:00 p.m.—Call to Order by Ted Taylor, DDFO; Establishment of a Quorum; Welcome and Introductions by Jim Brannon, Board Chair; Approval of Agenda; Approval of Sept. 25, 2002 Meeting Minutes.
1:15 p.m—Public Comment.
1:30 p.m—Board Business.
A. Recruitment/Membership Update.
B. Report from Chairman Brannon.
C. Report from DOE, Ted Taylor, DDFO.
D. Report from Executive Director, Menice S. Manzanares.
E. New Business.
2:30 p.m.—Break.
2:45 p.m.—Reports for Committees.
A. Community Outreach Committee, Debra Walsh.
B. Monitoring and Surveillance Committee, Jim Brannon.
C. Environmental Restoration Committee, Dr. Fran Berting.
D. Waste Management Committee, Richard Gale.
E. Ad Hoc Committee on CAB Self Evaluation, Don Jordan.
3:30 p.m.—Resolutions.
4:00 p.m.—Discussion of Board Processes.
5:00 p.m.—Dinner Break.
6:00 p.m.—Continue Discussion of Board Process.
7:30 p.m.—Break.
7:45 p.m.—Public Comment.
8:15 p.m.—Recap of Meeting.
8:30 p.m.—Adjourn.

This agenda is subject to change at least one day in advance of the meeting. A final agenda will available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 IndependenceAvenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9:00 a.m.-4:00 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanares at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: http:www.nnmcab.org.

Issued in Washington, DC on October 17, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–26962 Filed 10–22–02; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 7, 2002, 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Update on Rocky Flats site closure progress.
2. Discuss end-state strategy for surface water.
3. Review draft recommendation language on surface soil, subsurface soil, and long-term stewardship.
4. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 8:30 a.m. to 4:30 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb French at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML*.

Issued in Washington, DC, on October 17, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–26963 Filed 10–22–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–6–000]

CenterPoint Energy Gas Transmission Company; Notice of Request Under Blanket Authorization

October 16, 2002.

Take notice that on October 9, 2002, Centerpoint Energy Gas Transmission Company (CEGT), formerly Reliant Energy Gas Transmission Company, whose main office is located at 1111 Louisiana Street, Houston, Texas 77210, filed in Docket No. CP03–6–000, a request pursuant to 157.205 and 157.208 (18 CFR sections 157.205 and 157.208) of the Commission's Regulations under the Natural Gas Act (NGA), for authorization to acquire, own, and operate certain pipeline facilities and to construct facilities, all as more fully set forth in the Application, which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659

Specifically, CEGT proposes to acquire approximately 28.97 miles of interstate pipeline facilities owned by Ozark Gas Transmission, L.L.C. (Ozark) located in Pittsburg and Latimer Counties, Oklahoma, including 28.32 miles of 20-inch diameter pipeline, approximately 0.65 miles of smaller diameter pipelines, and other appurtenant facilities. Additionally, CEGT proposes to construct approximately 2,600 feet of 20-inch diameter pipe and related pigging and measurement facilities, to connect the Ozark facilities to CEGT's system. The estimated cost of this project is $12,508,612. CEGT's filing is related to Ozark's abandonment application filed on August 23, 2002 in Docket No. CP02–428–000.

Any questions concerning this request may be directed to Lawrence O. Thomas, Director, Rate and Regulatory, CenterPoint Energy Gas Transmission Company, 525 Milam Street, Shreveport, Louisiana 71111 at (318) 429–2804.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26939 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–439–002]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

October 16, 2002.

Take notice that on October 10, 2002, CenterPoint Energy Gas Transmission Corporation (CEGT), formerly known as Reliant Energy Gas Transmission Company, tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets to be effective on October 1, 2002:

First Revised Sheet No. 279
First Revised Sheet No. 280
First Revised Sheet No. 281
Substitute Original Sheet No. 293A
First Revised Sheet No. 300
First Revised Sheet No. 301
Substitute Third Revised Sheet No. 399
First Revised Sheet No. 400A
Second Substitute Fourth Revised Sheet No. 435

CEFT states that the purpose of this filing is to comply with the Commission's Letter Order regarding CEGT's filing to comply with Order No. 587–O.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at http://www.ferc.gov using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26950 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–426–001]

Dominion Transmission Inc.; Notice of Compliance Filing

October 16, 2002.

Take notice that on October 10, 2002, Dominion Transmission Inc. (DTI) submitted for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with an effective date of October 1, 2002:

Second Revised Sheet No. 1052
Second Revised Sheet No. 1053
First Revised Sheet No. 1056
Fourth Revised Sheet No. 1057
Fourth Revised Sheet No. 1173

DTI states that the revised sheets are submitted to comply with the Commission's Order No. 587–O and the Commission's September 25, 2002 order in Docket No. RP02–426–000 (September 25 Order). DTI's compliance filing incorporates the changes required by the September 25 Order.

DTI's states that a copy of the filing has been served upon all of DTI's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations.

All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26948 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–485–002]

Enbridge Pipelines (KPC); Notice of Compliance Filing

October 16, 2002.

Take notice that on October 10, 2002, Enbridge Pipelines (KPC) (Enbridge KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of November 10, 2002:

Second Revised Sheet No. 15
First Revised Sheet No. 16A
First Revised Sheet No. 17
Second Revised Sheet No. 21
First Revised Sheet No. 23
Second Revised Sheet No. 26
Second Revised Sheet No. 28
Second Revised Sheet No. 30

Enbridge KPC states that the filing is being made to comply with the Commission's September 10, 2002 "Order on Initial Decision" in Docket No. RP99–485–000. Enbridge KPC states that its compliance filing is consistent with the Commission's September 10, 2002 order.

Enbridge KPC states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding, as well as all customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26960 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket Nos. CP03–2–000, et. al.]

Federal Energy Regulatory Commission

October 16, 2002.

Energy West Development, Inc.; Notice of Application

On October 3, 2002, Energy West Development, Inc. (Energy West), PO Box 2229, Great Falls, Montana, 59403, filed an application pursuant to section 7 of the Natural Gas Act (NGA), as amended, and sections 157 Subparts A and F and 284 Subpart G of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations thereunder. Energy West requests authorization: to convert about 34 miles of oil pipeline to natural gas pipeline operation; for a Subpart F construction, operation and abandonment blanket certificate (CP03–3–000); and, for a Subpart G transportation blanket certificate (CP03–4–000). The facilities are necessary to provide additional incremental firm and interruptible transportation service of 13,500 Decatherms per Day(Dth/d) for market area load, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 502–8659.

The requested certificate would authorize Energy West to convert to natural gas operation an existing pipeline running from Cody, Wyoming to Warren, Montana that originally was constructed and used for the transportation of non-jurisdictional liquids, but that in recent years has laid dormant. Energy West also seeks acceptance of an initial tariff and initial rates, and requests that the Commission accept for filing a negotiated rate transaction with Prairielands Energy Marketing, Inc. that does not conform to the proposed initial rates. Energy West submitted precedent agreements with Prairielands Energy Marketing, Inc.(10,000 Dth/d) and Howell Petroleum Corp.(5,000 Dth/d) for interruptible transportation service; and, with Energy West Resources, Inc. for 10,000 Dth/d of firm transportation service. Energy West also requests expedited consideration of its application and certain waivers of the Commission's regulations.

Questions regarding the application may be directed to: John C. Allen, President and General Counsel, Energy West Development, Inc., PO Box 2229, Great Falls, Montana, 59403, or call (406) 791–7500; or, Patrick J. Joyce, Blackwell Sanders Peper Martin LLP, 13710 FNB Parkway, Suite 200, PO Box 542090, Omaha, Nebraska, 68154 or call (402) 964–5012.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November 5, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the

proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the nonparty commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26937 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–462–001 and –002 and RP01–37–003 and –004]

Equitrans, L.P.; Errata Notice

October 16, 2002.

In the Commission's Order on Rehearing and Compliance with Order Nos. 637, 587–G and 587–L issued October 10, 2002, in the above-proceeding, on page 5, paragraph 14, of the order, change "October 1, 2002" to "November 1, 2002". The sentence should read as follows:

"With the exception of the items discussed below, the Commission accepts Equitrans's proposed compliance tariff sheets, effective November 1, 2002".

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26946 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–19–000]

Florida Gas Transmission Company; Notice of Tariff Filing

October 16, 2002.

Take notice that on October 11, 2002, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to become effective November 11, 2002:

[Fifth Revised Sheet No. 174]

FGT states that in the instant filing, it is proposing tariff revisions setting forth the criteria that would permit FGT to terminate a temporary capacity relinquishment. Specifically, in a new Section 18 L of FGT's General Terms and Conditions, Transporter's Right to Terminate a Temporary Capacity Relinquishment, FGT is proposing that FGT may elect to terminate a temporary capacity relinquishment upon 30-days' written notice if the relinquishing shipper has failed to maintain creditworthiness and the rate paid by the acquiring shipper is less than the relinquishing shipper's contract rate. Additionally, FGT is proposing that the acquiring shipper may avoid termination of the temporary capacity relinquishment by agreeing to pay for the remainder of the relinquishment the lower of the relinquishing shipper's contract rate or the maximum tariff rate under the applicable rate schedule. FGT believes the tariff revisions being proposed are similar to those recently approved by the Federal Energy Regulatory Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26957 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–49–001]

Great Lakes Gas Transmission Limited Partnership; Notice of Application

October 16, 2002.

Take notice that on September 30, 2002, Great Lakes Gas Transmission Limited Partnership (Great Lakes), 5250 Corporate Drive, Troy, Michigan 48098, filed in Docket No. CP02–49–001 Fifth Revised Sheet No. 16 to its FERC Gas Tariff, Second Revised Volume No. 1, in compliance with the Commission's Order issued February 7, 2002 in Docket No. CP02–49–000 which authorized the abandonment of the Summerfield Meter Station located in Clare County, Michigan. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 502–8659.

Great Lakes states that by its filing of the proposed tariff sheet, which removes the Summerfield Meter Station from its tariff list of Physical Receipt Points, Great Lakes gives notice of the abandonment of its Summerfield Meter Station facilities, as required by the February 7, 2002 Commission Order.

Any person desiring to intervene or to protest this filing should file on or before November 6, 2002, with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26936 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–504–001]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

October 16, 2002.

Take notice that on October 7, 2002, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets in compliance with the Commission's September 20, 2002 letter order:

Substitute Original Sheet No. 10B
Original Sheet No. 10B.01
Substitute Second Revised Sheet No. 66A
Substitute Fourth Revised Sheet No. 67

Iroquois states that these tariff sheets are being filed to replace sheets accepted to become effective on September 20, 2002, therefore the proposed tariff sheets also reflect an effective date of September 20, 2002.

In its initial August 20, 2002 filing in Docket No. RP02–504, Iroquois proposed modifications to its tariff to permit it to reserve existing firm transportation capacity for future projects and to clarify and modify the provisions of its tariff concerning its customers' ability to make changes to their receipt and delivery points. The Commission's Order accepted Iroquois' tariff sheets, but required Iroquois to modify certain aspects of its proposal to conform to recent Commission policy regarding capacity reservation and delivery point changes. The substitute tariff sheets submitted with Iroquois' filing make those required changes.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26953 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–17–000]

Missouri Interstate Gas, LLC; Notice of Tariff Filing

October 16, 2002.

Take notice that on October 8, 2002, Missouri Interstate Gas, LLC (Missouri) tendered for filing revise Pro Forma tariff sheets replacing the pro forma tariff filed by Missouri on July 3, 2002.

Missouri states that the filing is being made in accordance with the Commission's September 24, 2002 order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26955 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–448–002]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

October 16, 2002.

Take notice that on October 10, 2002 National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed on Appendix A to its filing.

National Fuel states that this filing is being made in compliance with the Commission's Letter Order issued on September 25, 2002, in the above-referenced docket. The September 25 Order directed National Fuel to file revised tariff sheets to rectify certain matters with respect to National Fuel's August 1, 2002 filing made to comply with the Commission's Order No. 587-O.

National Fuel states that copies of this filing were served upon its customers, interested state commissions and the parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26951 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–338–001]

Natural Gas Pipeline Company of America; Notice of Motion to Make Effective Proposed Changes in FERC Gas Tariff

October 16, 2002.

Take notice that on October 10, 2002, Natural Gas Pipeline Company of America (Natural) filed a motion to make certain tariff sheets effective on November 10, 2002.

Natural states that the purpose of this filing is to move into effect certain tariff sheets which, in the Commission's Order Accepting Tariff Sheet and Conditionally Accepting and Suspending Other Tariff Sheets Subject to Refund and Establishing a Technical Conference dated June 7, 2002 were conditionally accepted and suspended, subject to refund. Natural has also proposed some additional revisions in certain of these tariff sheets to address issues raised in protests.

Natural requests waivers of the Commission's Regulations to the extent necessary to permit these tariff sheets to become effective November 10, 2002.

Natural states that copies of the filing are being mailed to all parties on the official service list in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before October 23, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26947 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–573–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 16, 2002.

Take notice that on September 30, 2002, Northern Natural Gas Company (Northern) tendered for filing has part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Second Revised Sheet No. 253, Original Sheet No. 253A, and Third Revised Sheet No. 297, with an effective date of October 31, 2002.

Pursuant to the Commission order issued September 24, 2002 in Docket No. CP02–139–000, Northern is proposing changes to Section 26 (Request for Throughput Service) and Section 52 (Right of First Refusal) of the General Terms and Conditions of its tariff to set forth its proposal regarding the reservation of capacity for future expansion projects and extension rights for interim shippers.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before October 23, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26954 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–18–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 16, 2002.

Take notice that on October 10, 2002, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of October 1, 2002:

First Revised Sheet No. 5–C
Twelfth Revised Sheet No. 7
Twelfth Revised Sheet No. 8.1
Fifth Revised Sheet No. 266
Fifth Revised Sheet No. 267

Northwest states that the purpose of this filing is to restore required language to Northwest's tariff now that the Commission's experimental waiver of the rate ceiling on short-term capacity release transactions has expired.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26956 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–1–000]

ONEOK Field Services Company; Notice of Petition for Rate Approval

October 16, 2002.

Take notice that on October 1, 2002, ONEOK Field Services Company (ONEOK) filed a petition for approval of $0.026 per Dth as its rate for interruptible Section 311 transportation service on ONEOK's Transmission System.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed with the Secretary of the Commission on or before October 31, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits I the docket number field to access the document. For Assistant, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26945 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–463–001]

Portland Natural Gas Transmission System; Notice of Compliance Filing

October 16, 2002.

Take notice that on October 10, 2002, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 324 and Sub. Third Revised Sheet No. 380. The proposed effective date of these revised tariff sheets is October 1, 2002.

PNGTS states that, pursuant to section 154.402 of the Commission's regulations, it is filing the referenced tariff sheet to comply with a letter order issued in the captioned docket by the FERC on September 30, 2002.

PNGTS states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS"

link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26952 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–436–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

October 16, 2002.

Take notice that on October 10, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing with an effective date of October 1, 2002.

Tennessee states that these tariff sheets are being filed in compliance with the Commission's Order dated September 25, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26949 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP95–197–046 and RP97–71–038]

Federal Energy Regulatory Commission; Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

October 16, 2002.

Take notice that on October 10, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 certain revised tariff sheets listed on Appendix C attached to the filing, to be effective October 1, 2002.

Transco states that the purpose of the filing is to comply with the Commission's Order issued September 30, 2002, which directed Transco to (i) refile certain tariff sheets to remove the effects of the proposed section 5 tariff changes relating to the unbundling of the costs associated with its Emergency Eminence Storage Withdrawal Service and (ii) file a response to protest a by The KeySpan Delivery Companies.

Transco states that copies of the filing are being mailed to all parties in Docket Nos. RP95–197 and RP97–71 and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26959 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–20–000]

Transwestern Pipeline Company; Notice of Tariff Filing

October 16, 2002.

Take notice that on October 11, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to become effective November 11, 2002:

Fourth Revised Sheet No. 95J
Sixth Revised Sheet No. 95K
Seventh Revised Sheet No. 95L

Transwestern states it is proposing tariff revisions setting forth the criteria that would permit Transwestern to terminate a temporary capacity release. Specifically, in a new section 30.4 (g) of Transwestern's General Terms and Conditions, Transporter's Right to Terminate a Temporary Capacity Release, Transwestern is proposing that Transwestern may elect to terminate a temporary capacity release upon 30-day written notice if the Releasing Shipper has failed to maintain creditworthiness and the rate paid by the Replacement Shipper is less than the Releasing Shipper's contract rate. Additionally, Transwestern is proposing that the Replacement Shipper may avoid termination of the temporary capacity release by agreeing to pay, for the remainder of the capacity release, the lower of the Releasing Shipper's contract rate or the maximum tariff rate under the applicable rate schedule. Transwestern believes the tariff revisions being proposed are similar to those recently approved by the Federal Energy Regulatory Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the

Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26958 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–420–000]

Red Lake Gas Storage, L.P.; Notice of Public Comment Meeting and Site Visit for the Proposed Red Lake Gas Storage Project and Request for Comments on Environmental Issues

October 16, 2002.

The staff of the Federal Energy Regulatory Commission (Commission) is issuing this notice to announce the date and location of a public scoping meeting on the proposed Red Lake Gas Storage Project. The Commission staff will be preparing an environmental assessment (EA) for Red Lake Gas Storage, L.P.'s project in Mohave County, Arizona. The planned facilities would consist of two solution-mined underground salt caverns, about 52 miles of various diameter pipeline, a 25,000-horsepower (hp) compressor station, a 9,000-hp compressor station, four water withdrawal wells, four brine disposal wells, and appurtenant facilities. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity. You are invited to attend the public meeting to enter into the Commission's record any comments you might have. Comments received at the scoping meeting will help us to determine the issues to be evaluated in the EA. The date, time, and location are shown below:

Date and Time: November 14, 2002, 7 to 10 pm.

Location Phone: Mohave Community College, Kingman Campus, Room Number 111, 1971 Jagerson Avenue, Kingman, AZ 86401.

Phone: (928) 757–4331.

For additional information, please contact Mr. Thomas Russo of the Commission's Office of External Affairs at (202) 502–8004.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26935 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–1–000]

El Paso Natural Gas Company; Notice of Intent to Prepare an Environmental Assessment for the Proposed Power-Up Project and Request for Comments on Environmental Issues

October 16, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Power-up Project involving construction and operation of facilities by El Paso Natural Gas Company (El Paso) in Pinal and Cochise Counties, Arizona, Hidalgo and Luna Counties, New Mexico, and El Paso, Winkler, and Culbertson Counties, Texas.[1] These facilities would consist of about 151,600 horsepower (hp) of compression at nine existing or new compressor stations. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice El Paso provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

El Paso wants to expand the capacity of its facilities in Arizona, New Mexico, and Texas to transport an additional 320,000 thousand cubic feet (mcf) per day of natural gas on its Line 2000. El Paso seeks authority to construct and operate:

Phase I Facilities (February 2004)

1. Wink Compressor Station—Install three Taurus 60s turbine compressor units, with appurtenances, rated at approximately 23,100 hp at a new site in Section 32, P.S.L. Block 5, Winkler County, Texas.

2. El Paso Compressor Station—Install one Mars 100 turbine compressor unit, with appurtenances, rated at 15,000 hp at the existing El Paso Compressor Station located in Section 18, Block 80, El Paso County, Texas.

3. Lordsburg Compressor Station—Install one Mars 100 turbine compressor unit, with appurtenances, rated at 15,000 hp at the existing Lordsburg Compressor Station located in Section 8, Township 23 South, Range 17 West, Hidalgo County, New Mexico.

4. Tom Mix Compressor Station—Install two Taurus 70 turbine compressor units, with appurtenances, rated at 20,620 hp at a former oil pumping station located in Section 21, Township 8 South, Range 13 East, Pinal County, Arizona.

Phase 2 Facilities (April 2004)

5. Black River Compressor Station—Install one Mars 100 turbine compressor unit, with appurtenances, rated at 15,000 hp at a former oil pumping station located in Section 17, T&P Township 2, Block 60, Culberson County, Texas.

6. Florida Compressor Station—Install one Mars 100 turbine compressor unit, with appurtenances, rated at 15,000 hp at the existing Florida Compressor Station located in Section 14, Township

[1] El Paso's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

24 South, Range 6 West, Luna County, New Mexico.

7. Cimarron Compressor Station—Install one Mars 100 turbine compressor unit, with appurtenances, rated at 15,000 hp at a new site located in Section 10, Township 13 South, Range 25 East, Cochise County, Arizona. Phase 3 Facilities (April 2005)

8. Cornudas Compressor Station—Install two Taurus 70 turbine compressor units, with appurtenances, rated at 20,620 hp at the existing Cornudas Compressor Station located in Section 17, University Land, Block [illegible] Hudspeth County, Texas.

9. Casa Grande Compressor Station—Install two Centaur 50 turbine compressor units, with appurtenances, rated at 12,260 hp at the existing Casa Grande Compressor Station located in Section 17, Township 6 South, Range 3 East, Pinal County, Arizona.

El Paso would also install certain appurtenant facilities within the compressor stations, pursuant to Section 2.55(a) of the Commission's Statements of General Policy and Interpretations Under the Natural Gas Act. These facilities would include station piping, valves and fittings, gas cooling equipment, compressor station yard facilities (yard lighting, gravel or other ground covering), gas scrubbers, auxiliary buildings, cathodic protection systems, and an evaporative pond.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 81.5 acres of land. Following construction, about 35.4 acres would be maintained as new aboveground facility sites. The remaining 46.1 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

1. Geology and soils.
2. Land use.
3. Water resources.
4. Cultural resources.
5. Vegetation and wildlife.
6. Air quality and noise.
7. Endangered and threatened species.
8. Hazardous waste.
9. Public safety.

We will not discuss impacts to the following resource areas since they are not present in the project area, or would not be affected by the proposed facilities:

1. Federal-, state-, or local- designated natural, recreational, scenic, or special use areas.
2. Wetlands.
3. Fisheries.
4. Perennial waterbodies.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by El Paso. This preliminary list of issues may be changed based on your comments and our analysis.

1. The operation of the compressor units at the nine existing and new compressor stations would affect air quality and increase noise levels near the station.
2. About 23 acres of desert scrub vegetation would be affected by construction of which about 4 acres would be permanently affected by operation of the project.
3. Twenty federally listed endangered or threatened species may occur in the proposed project area.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

1. Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426.
2. Label one copy of the comments for the attention of Gas Branch 2.
3. Reference Docket No. CP03–1–000.
4. Mail your comments so that they will be received in Washington, DC on or before November 12, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY 1–202–502–8659, or at *FERCONLINESUPPORT@FERC.GOV*. The FERRIS link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26938 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "FERRIS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Washington, DC 20426, or call 1–202–502–8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

October 16, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12182–000.

c. *Date filed*: June 4, 2002.

d. *Applicant*: Bridgeport Hydro, LLC.

e. *Name and Location of Project*: The Bridgeport Dam Project would be located on the East Walker River in Mono County, California. The project would be located on an existing dam owned by Walker River Irrigation District. The project would be partially located on lands administered by Walker River Irrigation District and may affect lands of the Toiyabe National Forest.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant contact*: Mr. Brent L. Smith, Northwest Power Services, Inc., PO Box 535, Rigby, ID 83442, (208) 745–0834.

h. *FERC Contact*: Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12182–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project*: The proposed project would consist of: (1) an existing 900-foot-long, 63-foot-high earthfill dam, (2) an existing impoundment, Bridgeport Reservoir, with a surface area of 3,125 acres and a storage capacity of 44,100 acre-feet at normal maximum water surface elevation 6,450 feet msl, (3) a proposed powerhouse with a total installed capacity of 1 megawatt, (4) a proposed 150-foot-long, 5.5-foot-diameter steel penstock, (5) a proposed 1-mile-long, 15 kv transmission line, and (6) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 3.4 GWh.

k. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at Bridgeport Hydro, LLC., 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified

development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26940 Filed 10–22–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

October 16, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12218–000.

c. *Date filed*: June 17, 2002.

d. *Applicant*: Brantley Hydro, LLC.

e. *Name and Location of Project*: The Brantley Dam Project would be located on the Pecos River in Eddy County, New Mexico. The project would be located on an existing dam administered by the U.S. Bureau of Reclamation (BOR) and would be partially located on lands administered by the BOR.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant contact*: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

h. *FERC Contact*: Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12218–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project*: The proposed project, using the Bureau of Reclamation's existing Brantley Dam and Reservoir, would consist of: (1) A proposed 100-foot-long, 5.5-foot-diameter steel penstock, (2) a proposed powerhouse with an installed capacity of 1.4 megawatts, (3) a proposed 3-mile-long, 25-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 4.4 GWh.

k. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at Brantley Hydro, LLC., 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26941 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 16, 2002.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications*: Preliminary Permit (Competing).

b. *Project Nos.*: 12297–000 and 12312–000.

c. *Dates filed*: July 5, 2002, and July 23, 2002.

d. *Applicants*: Heflin Hydro, LLC and Universal Electric Power Corporation.

e. *Name and Location of Project*: The Heflin Lock and Dam Project is proposed to be located on the Tombigbee River in Greene County, Alabama, and to utilize the U.S. Army Corps of Engineers' (Corps) existing Gainesville Lock and Dam.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts*: For Heflin Hydro, LLC: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

For Universal: Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact*: Tom Papsidero, (202) 502–6002.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the noted project numbers on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. Description of Project: Each applicant proposes to use the existing Gainesville Lock and Dam. Heflin's project would consist of: (1) Two 14-foot-diameter, 50-foot-long concrete penstocks, (2) a powerhouse containing two generating units with a total installed capacity of 24 megawatts, (3) a 1-mile-long, 50-kilovolt transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 82 gigawatthours.

Universal's project would consist of: (1) Seven 8-foot-diameter, 50-foot-long steel penstocks, (2) a powerhouse containing seven generating units with a total installed capacity of 23.2 megawatts, (3) a 600-foot-long, 14.7-kilovolt transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 102 gigawatthours.

k. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV*. For TTY, call (202) 502–8659. A copy of Universal's application is also available for inspection and reproduction at the address in item g. above. A copy of Heflin's application is available for inspection and reproduction at Heflin Hydro, LLC., 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26942 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 16, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12363–000.

c. *Date filed*: September 12, 2002.

d. *Applicant*: City of Anoka, Minnesota.

e. *Name and Location of Project*: The Rum River Dam Hydroelectric Project would be located at an existing dam owned by the Applicant on the Rum River in Anoka County, Minnesota.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact*: Mr. Daniel J. Voss, Director, Anoka Municipal Utility, 2015 First Avenue North, Anoka, MN 55303, (763) 576–2904.

h. *FERC Contact*: James Hunter, (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12363–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities

of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project*: The proposed project would consist of: (1) The existing 236-foot-long, 14.3-foot-high (with timber flashboards) concrete overflow dam, with a 20-foot-wide Tainter gate-controlled spillway, creating a 210-acre impoundment at normal water surface elevation 845 feet, (2) a powerhouse, proposed to be built at the site of the former powerhouse at the left abutment, containing one or two generating units with a total installed capacity of 560 kilowatts, (4) a 100-foot-long, 7.2-kilovolt overhead transmission line connecting to the City's existing distribution system, and (5) appurtenant facilities. The project would have an average annual generation of 2.3 gigawatthours.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV* . For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application— Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26943 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 16, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: New Major License.

b. *Project No.*: P–5334–019.

c. *Date filed*: October 2, 2001.

d. *Applicant*: Charter Township of Ypsilanti.

e. *Name of Project*: Ford Lake Hydroelectric Station.

f. *Location*: On the Huron River, Washtenaw County, within the township of Ypsilanti, MI. The project does not affect Federal lands.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. §§ 791 (a)—825(r).

h. *Applicant Contact*: Ms. Joann Brinker, Administrative Services/Human Resources Director, Charter Township of Ypsilanti, 7200 South Huron River Driver, Ypsilanti, Mi 48197, (734) 484–0065.

i. *FERC Contact*: Monte TerHaar, (202) 502–6035 or *monte.terhaar@ferc.gov*.

j. *Cooperating Agencies*: We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing documents described in item k below.

k. *Deadline for filing motions to intervene and protests and requests for*

cooperating agency status: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

l. This application has been accepted, but is not ready for environmental analysis at this time.

m. The existing Ford Lake Hydroelectric Project consists of: (1) A 1,050 acre reservoir; (2) a 110-foot-long earth embankment dam; (3) a 46.5-foot-long powerhouse with 2 hydroelectric turbines; (4) a 172-foot-long spillway with six bays, each with a 6-foot by 8-foot sluice gate; (5) a 380-foot-long earth embankment; (6) a 175-foot-long emergency spillway; (7) two vertical shaft turbine/generator units with an installed capacity of 1,920 kilowatts at normal pool elevation; and (8) appurtenant facilities. The project operates run-of-river with a normal reservoir elevation maintained between 684.4 and 684.9 feet MSL. Average annual generation between 1995 and 2000 has been 8,664 megawatthours. Generated power is sold to Detroit Power. No new facilities are proposed.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

o. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26944 Filed 10–22–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7397–7]

Gulf of Mexico Program Policy Review Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

The Charter for the Environmental Protection Agency's Gulf of Mexico Program Policy Review Board (GMPPRB) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2 section 9(c). The purpose of GMPPRB is to provide advice and recommendations to the Administrator of EPA on issues associated with plans to improve and protect the water quality and living resources of the Gulf of Mexico.

It is determined that GMPPRB is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Gloria Car, Designated Federal Officer, U.S. EPA, Gulf of Mexico Program Office (*Mail Code*: EPA/GMPO), Stennis Space Center, MS, 39529, Telephone (228) 688–2421, or *car.gloria@epa.gov*.

Dated: October 15, 2002.

Gloria D. Car,

Designated Federal Officer.

[FR Doc. 02–26988 Filed 10–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7398–2]

Meetings of the Small Systems Affordability Working Group of the National Drinking Water Advisory Council

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meetings.

SUMMARY: Under section 10(a)(2) of Pub. L. 92–423, "The Federal Advisory Committee Act," notice is hereby given of the forthcoming meetings of the Small Systems Affordability Work Group, of the National Drinking Water Advisory Council, established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*).

DATES: The affordability work group will meet on November 7–8, 2002 (9 a.m.–5:30 p.m. on November 7 and 8:30 a.m.–3:30 p.m. on November 8), then on December 18–19, 2002 (9 a.m.–5:30 p.m. on December 18 and 8:30 a.m.–3:30 p.m. on December 19), and again on January 13–14, 2003 (9 a.m.–5:30 p.m. on January 13 and 8:30 a.m.–3:30 p.m. on January 14).

ADDRESSES: The meetings will be held at RESOLVE Inc., 1255 23rd Street, NW., Suite 275, Washington, DC and are open to the public, but from past experience, seating will likely be limited.

FOR FURTHER INFORMATION CONTACT: For more information on the location and times of these meetings, or general background information please contact the Safe Drinking Water Hotline (phone: 800–426–4791 or (703) 285–1093; e-mail: *hotline-sdwa@epa.gov*). Members of the public are requested to contact RESOLVE if they plan on attending at (202) 944–2300. Any person needing special accommodations at either of these meetings, including wheelchair access, should contact RESOLVE (contact information previously noted), at least five business days before the meeting so that appropriate arrangements can be made. For technical information contact Mr. Amit Kapadia, Designated Federal Officer, Small Systems Affordability Work Group, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4607M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (e-mail: *kapadia.amit@epa.gov*; Tel: 202–564–4879).

SUPPLEMENTARY INFORMATION: As part of the 2002 appropriations process, Congress directed EPA to "begin immediately to review the Agency's affordability criteria and how small system variance and exemption programs should be implemented for arsenic" (Conference Report 107–272, page 175). Congress further directed the Agency to prepare a report, which EPA submitted (Report to Congress: Small System Arsenic Implementation Issues: EPA 815–R–02–003), "on its review of the affordability criteria and the administrative actions undertaken or planned to be undertaken by the Agency, as well as potential funding mechanisms for small community compliance and other legislative actions, which, if taken by the Congress, would best achieve appropriate extensions of time for small communities while also guaranteeing maximum compliance." (Conference Report 107–272, page 175).

In evaluating treatment technologies for small systems, EPA currently uses an affordability threshold of 2.5% of median household income. EPA's national-level affordability criteria consist of two major components: an expenditure baseline and an affordability threshold. The expenditure baseline (derived from annual median household water bills) is subtracted from the affordability threshold (a share of median household income that EPA believes to be a reasonable upper limit for these water bills) to determine the expenditure margin (the maximum increase in household water bills that can be imposed by treatment and still be considered affordable). EPA compares the cost of treatment technologies against the available expenditure margin to determine if an affordable compliance technology can be identified. If EPA cannot identify an affordable compliance technology, then it attempts to identify a variance technology. Findings must be made at both the Federal and State level that compliance technologies are not affordable for small systems before a variance can be granted.

EPA is asking the NDWAC for advice on its national-level affordability criteria and the methodology used to establish these criteria. Taking into consideration the structure of the Safe Drinking Water Act and the limitations of readily available data and information sources, EPA is seeking the Council's opinion of the national level affordability criteria, methodology for deriving the criteria, and approach to applying those criteria to NPDWRs.

As part of the Council's review of EPA's national-level affordability criteria, the Agency is seeking input on (1) the Agency's overall approach, (2) alternatives, if any, to the use of median household income as a metric, (3) alternatives, if any, to 2.5% as a metric, (4) alternatives, if any, to calculating the expenditure baseline, (5) the usefulness of a separate criteria for ground and surface water systems, (6) including an evaluation of the potential availability of financial assistance, and (7) the need for making affordability determinations on a regional basis. Other issue areas may also be discussed. The meeting is open to the public; statements from the public will be taken at the close of the meeting. EPA is not soliciting written comments and is not planning to formally respond to comments.

This will be the third, fourth, and fifth work group meetings on this topic. At the first meeting held on September 11–12 , the work group was briefed by EPA on the approach to affordability taken by the Agency. At the first meeting, the work group also devised an approach to answer the Agency's charge questions. For the second work group meeting (to be held on October 21–22), other technical experts on financial assistance have been invited to speak. The purpose of these last three meetings is to continue the workgroup deliberations and to draft a report for the full National Drinking Water Advisory Council.

Dated: October 17, 2002.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 02–26994 Filed 10–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0275; FRL–7276–8]

Hydrogenated Starch Hydrolysate; Notice of Filing a Pesticide Petition to Establish an Exemption From the Requirement of a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0275 must be received on or before November 22, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Treva Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8373; e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2002–0275. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0275. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0275. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0275.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0275. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 9, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner, and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Hydrogenated Starch Hydrolysate

PP 2E6503

EPA has received a pesticide petition (2E6503) from Grain Processing Corporation, 1600 Oregon Street, Muscatine, Iowa 52761 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for hydrogenated starch hydrolysate (HSH) in or on growing crops or when applied to the raw agricultural commodity after harvest. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Like any other carbohydrate, HSH degrades readily in the soil and other substrates into carbon dioxide and water. HSH (CAS number 68425–17–2) is a carbohydrate polymer with a theoretical molecular weight (in amu) of 1,000–3,600. It can be supplied as a liquid syrup or white powder. The empirical formula of the components of HSH are:

Components	Formula
Sorbitol	$C_6H_{14}O_6$
Maltitol	$C_{12}H_{24}O_{11}$
Hydrogenated polysaccharides	$C_{12}H_{24}O_{11}$ plus $C_6H_{10}O_5$ for each additional glucose moiety in the chain

HSH is highly soluble in water. The aqueous solution has a pH range of 4.0–6.0. It hydrolyzes slowly to glucose and sorbitol. It combusts at 300 °C to carbon dioxide and water.

2. *Analytical method.* The qualitative analysis of HSH in the products to which it has been added may be accomplished by extraction of the sorbitol and maltitol moieties with appropriate solvents, followed by gas chromatography of the extracts. Similarly, the quantity of HSH occurring in food may be estimated by determining the amount of maltitol recovered and applying an appropriate factor. Information on the sensitivity and reproducibility of the method has also been developed.

3. *Magnitude of residues.* HSH is readily degraded by microorganisms on leaf surfaces and in the soil. Due to the solubility of this carbohydrate, rain, or other water sources wash the carbohydrate into the soil where it is degraded by microorganisms into carbon dioxide and water. No harmful residues are produced.

B. Toxicological Profile

HSH has been widely used in foods since the early 1980s. It has been marketed extensively by Roquette, Lonza and SPI Polyols for years. Grain Processing Corporation produces HSH using a process that is equivalent to the process petitioned to the Food and Drug Administration by Lonza and Roquette Freres for GRAS (generally recognized as safe) affirmation. In support of the safety of our HSH, Grain Processing Corporation and SPI Polyols cites data

submitted by Roquette in its Lycasin® 80/55 petition regarding numerous studies relating to the safety of the ingredient, including reports on: Digestion, absorption, distribution and excretion; acute oral toxicity, subchronic toxicity, genotoxicity, reproduction, biological tolerance, human exposure, and laxation effects.

1. *Acute toxicity*. The acute oral toxicity of HSH has been evaluated. The acute oral lethal dose (LD_{50}) of HSH is greater than 10 grams/kilogram (g/kg).

2. *Genotoxicty*. As stated in Roquette's GRAS submission of Lycasin® 80/55, HSH is nonmutagenic and nonclastogenic in short-term *in vivo*, and *in vitro* studies.

3. *Reproductive and developmental toxicity*. Again as noted in Roquette's GRAS submission of Lycasin® 80/55 HSH products, when administered to rats over 3-generations, produce no significant effects on reproduction.

4. *Subchronic toxicity*. In Roquette's GRAS submission for Lycasin® 80/55, it is noted that when administered orally to rats and dogs in amounts of 5 g/kg to 15 g/kg of body weight per day for 90 days, HSH produced no toxicologically meaningful effects which could not be accounted for by the presence of sorbitol. The possible treatment related effects are aggregates in the renal pelvis of some rats, diarrhea in most dogs, and minimal ectasia in the renule tubules of some dogs.

5. *Chronic toxicity*. HSH is used extensively in foods. Grain Processing Corporation is not aware of any chronic toxic effects associated with this product.

6. *Animal metabolism*. The GRAS submission for Lycasin® 80/55 developed by Roquette Freres states that over 96% of HSH (Lycasin® 80/55) is broken down by the mammalian digestive system into the GRAS substances, glucose and sorbitol, the remaining 4% is in the form of maltitol. One half of the maltitol is excreted in the feces and the majority of the remainder is excreted in the urine.

Within the first 2 hours after oral administration of HSH (Lycasin® 80/55), virtually all of the glucose to glucose bonds are broken down in the digestive system, producing a resulting mixture of glucose, sorbitol, and maltitol. Within 7 hours, 95% of the total maltitol, is broken down into glucose and sorbitol. Of the remaining 5% of maltitol, 2% is found in the digestive tube and fecal contents, less than 1% is found in the plasma, and approximately 1% is excreted in the urine.

There is no accumulation of maltitol in the plasma, liver, kidneys, or spleen of rats fed 13.5 g/kg/day of Lycasin® 80/55 for 10 days irrespective of whether measurements are made 12 hours or 10 days after cessation of dosing.

Lycasin® 80/55 at the dose levels tested, 30 to 180 grams per day, produces no significant variations in the clinical chemical, hematological or urinary profile of humans with the exception of glucose and insulin peaks which are less than 50% of those produced by equivalent amounts of glucose, and 50 to 90% of those produced by sucrose. The only significant clinical effects are flatulence and diarrhea, which can be accounted for by the presence of free and bound sorbitol. The mean laxative threshold in adult males is approximately 180 grams per day, while in females the threshold is approximately 100 grams per day. In children, the threshold is approximately 60 grams per day, about half that of adults.

7. *Metabolite toxicology*. None of the metabolites of HSH are considered to be of toxicological significance for the use of this product as a pesticide inert ingredient.

8. *Endocrine disruption*. Grain Processing Corporation is not aware of any endocrine disruption with the use of this product.

C. Aggregate Exposure

1. *Dietary exposure*. This product is already used extensively in foods. Studies have shown that it is safe even when consumed at levels of up to 100 g/day.

i. *Food*. As a pesticide inert ingredient HSH will not result in any harmful exposure. The proposed use will not result in any dietary exposure beyond what is currently present in commonly consumed foods.

ii. *Drinking water*. There is no anticipated human exposure to HSH through drinking water. HSH is expected to be degraded by soil microorganisms to carbon dioxide and water before it reaches surface or ground water. Moreover, in water, HSH hydrolyses to glucose and sorbitol.

2. *Non-dietary exposure*. No significant non-dietary human exposure to HSH is anticipated.

D. Cumulative Effects

HSH is a widely used food ingredient, is readily digested by humans, and there are no cumulative effects. Except for possible occupational exposure of the pesticide mixer/loader/applicator, the proposed use of HSH will not result in the exposure of other persons.

E. Safety Determination

1. *U.S. population*. The proposed use of HSH does not pose a safety concern for the U.S. population due to the non-toxic nature of the compound and the absence of exposure.

2. Infants and children. Infants and children will not be exposed to HSH from its proposed use as a pesticide inert ingredient.

F. International Tolerances

Grain Processing Corporation is unaware of any international tolerances for this product. HSH was developed by a Swedish company in the 1960's and has been widely used by the food industry for many years, especially in confectionery products. Roquette's petition indicates that Roquette's Lycasin® products have been approved for use in food in Europe since 1963, as indicated below.

Country	Year of Approval
Sweden	1963 (reaffirmed in 1975)
Switzerland	1968
Norway	1975
Finland	1975 (reaffirmed in 1980)
Denmark	1976

[FR Doc. 02–26993 Filed 10–22–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0188; FRL–7199–7]

Availability of the Risk Assessments on FQPA Tolerance Reassessment Progress and Tolerance Reassessment Decision (TRED) for Hexazinone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's tolerance reassessment decision and related documents for hexazinone including the *Hexazinone Overview, Hexazinone Summary, Hexazinone Decision Document (TRED)*, and supporting risk assessment documents. EPA has reassessed the 25 tolerances, or legal limits, for residues of hexazinone in or on raw agricultural commodities. These tolerances are now considered safe under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: Comments on the tolerance reassessment decision for hexazinone, must be received by EPA on or before November 22, 2002. In the absence of substantive comments, the tolerance reassessment decision will be considered final. Comments on the human health and ecological effects risk assessments for hexazinone, must be received by EPA on or before November 22, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in the **SUPPLEMENTARY INFORMATION** section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0188 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Dirk V. Helder, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–4610; e-mail address: helder.dirk@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, but will be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides. The Agency has not attempted to describe all the persons or entities who may be interested in or affected by this action. If you have questions in this regard, consult the persons listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

You can obtain copies of the TRED and related documents discussed in this notice on EPA's website at http://www.epa.gov/pesticides/reregistration/status.htm. Information on pesticide reregistration and tolerance reassessment, including the purpose and status of Agency programs to complete Reregistration Eligibility Decisions (REDs), Interim REDs, and Tolerance Reassessment Decisions (TREDs), is available at http://www.epa.gov/pesticides/reregistration. General information is available on the Office of Pesticide Programs' home page, http://www.epa.gov/pesticides/.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0188. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0188 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0188. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has reassessed the risks associated with current food uses of the pesticide hexazinone, reassessed 25 existing tolerances, and reached a tolerance reassessment and risk management decision. The Agency is issuing for comment the resulting report on FQPA tolerance reassessment progress, including the *Hexazinone Overview, Hexazinone Summary, Hexazinone Decision Document (TRED),* and supporting risk assessment documents.

EPA must review tolerances and tolerance exemptions that were in effect when FQPA was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the tolerances and exemptions included in this notice. EPA completed the hexazinone Reregistration Eligibility Decision (RED) prior to the 1996 enactment of the FQPA; therefore, while no reregistration decision is required at present, risks from non-occupational exposure to hexazinone through food, drinking water, and residential uses must be reassessed. There are no residential uses of hexazinone. The Agency has reassessed the 25 tolerances for hexazinone and determined that residues in food and drinking water are not expected to pose risk concerns. Because existing data were inadequate to calculate residue estimates for pasture and rangeland grass and grass hay, EPA constructed the maximum theoretical dietary burden (MTDB) of hexazinone to livestock using protective assumptions for the contributions of other hexazinone treated feed items. Thus, tolerances for meats and milk can be reassessed. Additional field trial data for grass forage and grass hay, as well as rotational crop studies for corn and wheat are required. Because of the relatively low volume of use on pasture and rangeland, data from these confirmatory studies are not expected to significantly change current dietary risk estimates. Some tolerances may be revised once additional data has been submitted to and reviewed by the Agency. The current tolerance expression for hexazinone in 40 CFR 180.396 is for "combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1H,3H)-dione) and its metabolites, calculated as hexazinone." The tolerance expression should be modified to include specific metabolites A, B, C, D, and E, identified by the appropriate chemical name. Final tolerances are being proposed as part of this Tolerance Reassessment Decision (TRED). In addition, occupational and ecological risk management decisions were made as part of the 1994 hexazinone RED.

EPA works with affected parties to reach the tolerance reassessment decisions. The Agency therefore is issuing the hexazinone decision as a final decision with a public comment period. All comments received during the public comment period will be considered by the Agency. If any comment significantly affects the Agency's decision, EPA will publish an amendment to the decision in the **Federal Register.** In the absence of substantive comments, the tolerance reassessment decisions reflected here will be considered final.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: October 4, 2002.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02-26577 Filed 10-22-02; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2002-0223; FRL-7274-1]

Availability of the Report on FQPA Tolerance Reassessment Progress and Risk Management Decision (TRED) for Metolachlor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the report on the Food Quality Protection Act (FQPA) tolerance reassessment progress and Risk Management Decision (TRED) for metolachlor for public comment. EPA has reassessed the 81 tolerances, or legal limits, established for residues of metolachlor in/on raw agricultural commodities (RACs). These tolerances are now considered safe under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the FQPA of 1996.

DATES: Comments, identified by docket ID number OPP-2002-0223, must be received on or before November 22, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP-2002-0223 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Anne Overstreet, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-8068; fax number: (703) 308-8005; e-mail address: overstreet.anne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, but will be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides. The Agency has not attempted to describe all the persons or entities who may be interested in or affected by this action. If you have questions in this regard, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**— Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

You can obtain copies of the TRED and related documents discussed in this notice on EPA's website at http://www.epa.gov/pesticides/reregistration/status.htm.

Available documents include the TRED, supporting technical documents, and **Federal Register** notices. Information on pesticide reregistration and tolerance reassessment, including the purpose and status of Agency programs to complete Reregistration Eligibility Decisions (REDs), Interim REDs, and Tolerance Reassessment Decisions (TREDs), is available at http://www.epa.gov/pesticides/tolerance. General information is available on the Office of Pesticide Programs' Home Page, http://www.epa.gov/pesticides.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP-2002-0223. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP-2002-0223 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP-2002-0223. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

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E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burdens or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has assessed the risks associated with current and proposed food uses of metolachlor, reassessed 81 existing tolerances, and reached a tolerance reassessment and risk management decision. The Agency is issuing the resulting report on FQPA Tolerance Reassessment Progress and Risk Management Decision for metolachlor, known as a TRED, as well as a summary, overview, and technical support documents.

EPA must review tolerances and tolerance exemptions that were in effect when FQPA was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. In total, 81 tolerances have been reassessed and are now considered safe under section 408(q) of FFDCA.

The Agency has determined that there are no dietary (food or drinking water) or aggregate risks of concern for metolachlor, so mitigation of these risks is not necessary. EPA is able to make the FQPA safety finding for all current and proposed uses of metolachlor.

EPA must consider the cumulative effects of pesticides that have common mechanisms of toxicity, and may issue final tolerance reassessment decisions for these pesticides only after their cumulative risks have been considered. The Agency has examined this common mechanism potential for metolachlor and has concluded that only some of the pesticides that comprise the class of chloroacetanilides should be designated as a "Common Mechanism Group" based on the development of nasal turbinate tumors. Because only acetochlor, alachlor, and butachlor should be grouped based on a common mechanism of toxicity for nasal turbinate tumors, a cumulative assessment is not necessary to determine whether tolerances established for residues of metolachlor in/on RACs are reassessed as safe.

EPA works extensively with affected parties to reach the tolerance reassessment decisions presented in TREDs. The Agency therefore is issuing the metolachlor TRED as a final decision. However, the docket remains open, and if the Agency receives any comments within the next 30 days which significantly affect the Agency's decision, EPA will publish an

amendment to the TRED in the **Federal Register**. In the absence of substantive comments, the tolerance reassessment decisions reflected in this TRED will be considered final.

List of Subjects

Environmental protection, Pesticides and pests, Metolachlor.

Dated: October 2, 2002.

Lois Ann Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–26578 Filed 10–22–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

October 11, 2002.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact A. Marie Moyd, Federal Communications Commission, (202) 418–2111.

Federal Communications Commission

OMB Control No.: 3060–0997.

Expiration Date: 05/31/2005.

Title: 47 CFR section 52.15(k), Numbering Utilization and Compliance Audit Program.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 25 respondents; 33 per response (avg.); 825 total annual burden hours (for all collections under this control number).

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Third Party Disclosure.

Description

The state of the nation's numbering resources has a direct effect on the growth of competition in the telecommunications industry. The nation's numbering resources are depleting rapidly. Under the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Congress granted the Federal Communications Commission (Commission) exclusive jurisdiction over the United States' portion of the North American Numbering Plan (NANP). *See* 47 U.S.C. 251(e). The purpose of the audits is to monitor telecommunications carriers' compliance with Commission's numbering rules and to verify the accuracy and validity of the numbering data submitted to the Commission. The audits will also allow the Commission to identify inefficiencies in the manner in which carriers use numbers, including excessive use of certain categories of numbers (*e.g.*, administrative, aging, or intermediate numbers). By ensuring compliance with Commission rules that promote efficient number usage, the numbering audits will help preserve the nation's numbering resources.

The Commission staff developed a standardized audit program for conducting random audits. This standard audit program consists of audit procedures, an internal controls questionnaire, and a corresponding data request. The independent auditor would conduct audits using these tools. The audit procedures generally require the audited carrier to respond to requests for information from the independent auditor. The internal controls questionnaire and the data request require audited carriers to respond to specific requests for information during the audit. The independent auditor will report its audit findings to the Commission. The Commission staff will review and modify the audit program on an on-going basis. The Commission will use the audit results to determine whether the audited carriers are complying with the Commission's rules, and whether the audited carriers' numbering data submitted to the Commission, *e.g.*, FCC Form 502, is accurate and valid. To the extent that the Commission finds evidence of potential violations, possible enforcement action may be taken. *See* Second Report and Order, 16 FCC Rcd at 349, para. 96; *see* also 47 CFR 52.15(k). Obligation to respond: Mandatory. Public reporting burden for the collections of information are as noted above. Send comments regarding the burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 02–26926 Filed 10–22–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 94–102; DA 02–2560]

Small Business Size Standards

AGENCY: Federal Communications Commission.

ACTION: Notice; comments invited.

SUMMARY: The Commission seeks comment on a proposed special small business size standard for Tier III wireless carriers in the Enhanced 911 (E911) proceeding. This action is taken pursuant to a requirement in the Small Business Act.

DATES: Comments are due on or before November 6, 2002, and reply comments are due on or before November 21, 2002.

ADDRESSES: Parties who choose to file by paper must file an original and four copies of each filing. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. A copy should also be sent to Jennifer Tomchin, Room 3C–400, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jennifer Tomchin, Attorney, 202–418–1310.

SUPPLEMENTARY INFORMATION:

1. On July 26, 2002, the Commission adopted an Order (E911 Small Carriers Order) staying certain wireless enhanced 911 (E911) Phase II deployment deadlines for Tier II and Tier III carriers, with conditions. (*See* Order to Stay in CC Docket No. 94–102, FCC 02–210, released July 26, 2002.) Pursuant to this Order, Tier II carriers were defined as non-nationwide carriers that had over 500,000 subscribers as of year-end 2001, and Tier III carriers were defined as all other non-nationwide carriers. In the E911 Small Carriers Order, the Commission noted that it would solicit public comment on the proposed size standard for Tier III carriers, in accordance with Section 121.902(b) of the SBA's small business size regulations. The Commission now seeks comment on this matter for purposes of obtaining SBA approval of the Tier III size standard. This action will not affect the deadlines or conditions set forth in the E911 Small Carriers Order, including applicable reporting requirements.

2. In the E911 Small Carriers Order, the Commission defined Tier II, or mid-size carriers, as those non-nationwide carriers with over 500,000 subscribers as of year-end 2001. The Commission defined Tier III carriers as all other non-nationwide carriers. The Commission found this to be the appropriate level to distinguish between Tier II and Tier III carriers, noting that each of the Tier II carriers reported over $85 million in annual revenues for 2001, and thus should have sufficient resources to pursue an E911 Phase II solution more quickly than the smaller carriers. The Commission reasoned that relatively larger carriers should have a greater ability to obtain location technologies in a shorter period of time as compared with the smallest carriers. Additionally, a standard based on number of subscribers rather than the number of employees may more accurately reflect the size of the carrier's wireless network and as a result, the scope of work required to implement Phase II service.

3. Interested parties may file comments on or before November 6, 2002, and reply comments on or before November 21, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

4. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the filing to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic copy by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message: "get form <your email address>." A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html*.

5. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. A copy should also be sent to Jennifer Tomchin, 445 12th Street, SW., Room 3-C400, Washington, DC 20554.

6. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., CY–B402, Washington, DC 20554 (telephone 202–863–2893; facsimile 202–863–2898) or via e-mail at *qualexint@aol.com*. In addition, one copy of each submission must be filed with the Chief, Policy Division, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554. Documents filed in this proceeding will be available for public inspection during regular business hours in the Commission's Reference Information Center, 445 12th Street, SW., Washington, DC 20554, and will be placed on the Commission's Internet site.

Federal Communications Commission.

James D. Schlichting,

Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 02–27064 Filed 10–22–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011829.

Title: The Ro Ro Ancillary Agreement.

Parties: RoRo Korea Inc., Wallenius Wilhelmsen Lines AS, Walleniusrederierna AB, Wilh. Wilhelmsen ASA, Hyundai Merchant Marine Co., Ltd.

Synopsis: Under the proposed agreement, Hyundai Merchant Marine agrees not to compete in the roll-on roll-off or lift-on lift-off trade on a worldwide basis for three years. Hyundai also agrees not to reveal trade secrets to third parties for five years, use trade secrets to cause harm to the ro-ro industry for three years, or offer employment to employees in the ro-ro industry for one year. This agreement is an ancillary agreement to RoRo Korea's purchase of Hyundai Merchant Marine's ro-ro assets.

Agreement No.: 011830.

Title: Indamex/APL Agreement.

Parties: The Shipping Corporation of India Ltd., Contship Containerlines, a division of CP Ships (UK) Limited, CMA CGM S.A., APL Co. Pte. Ltd./American President Lines, Ltd.

Synopsis: The proposed agreement would authorize the parties to share vessel space between the U.S. East Coast and ports in India, Pakistan, Sri Lanka, Portugal, the United Arab Emirates, ports in the Bangladesh to Philippines range, ports bordering the Mediterranean Sea, and ports bordering the Red Sea. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: October 18, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–26980 Filed 10–22–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to

contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Cargo Transport, Inc. dba Blue Ocean Marine, 44190 Mercure Circle, Suite 195, Dulles, VA 20166, Officers: David Bernhardt, President (Qualifying Individual), Michael Moore, C.E.O.

Goodway Cargo International Freight Forwarders, Inc. dba Goodway Cargo Line, 2801 N.W. 74th Avenue, Suite 102, Miami, FL 33122, Officers: Jose Antonio Da Silva, President (Qualifying Individual), Marcos A. Dasilva, Treasury

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

Cargo Gate International, Inc., 20435 South Western Avenue, Torrance, CA 90501, Officer: Andrew Han Kang, President (Qualifying Individual)

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

JAG INT'L of So. Fla., Inc., 2700 W. Atlantic Blvd., Suite 200–19, Pomano Beach, FL 33069, Officer: Kimberly Boehm, President, Qualifying Individual

Dated: October 18, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–26979 Filed 10–22–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: Background.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal.

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the ethodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before December 23, 2002.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e– mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report:

1. Report of Terms of Credit Card Plans

Agency form number: FR 2572

OMB control number: 7100–0239

Frequency: Semi–annual

Reporters: Financial institutions

Annual reporting hours: 75 hours

Estimated average hours per response: 0.25 hours

Number of respondents: 150

Small businesses are affected.

General description of report: This information collection is voluntary (15 U.S.C. §1646(b)) and is not given confidential treatment.

Abstract: This report collects data on credit card pricing and availability from a sample of at least 150 financial institutions that offer credit cards to the general public. The information is reported to the Congress and made available to the public in order to promote competition within the industry. The Board publishes the information in a brochure titled "SHOP: The Card You Pick Can Save You Money" (SHOP), available through Publication Services at the Board and on the Board's public web site, www.federalreserve.gov/pubs/shop.

Board of Governors of the Federal Reserve System, October 17, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–26896 Filed 10–22–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: *Background.* Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer—Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503

Final Approval Under OMB Delegated Authority of the Extension For Three Years, Without Revision, of the Following Reports:

1. Report title: Recordkeeping and Disclosure Requirements in Connection with Regulation B (Equal Credit Opportunity)

Agency form number: unnum Reg B

OMB Control number: 7100–0201

Frequency: Event–generated

Reporters: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.

Annual reporting hours: 169,603 hours

Estimated average hours per response: Notice of action, 2.50 minutes; credit history reporting, 2 minutes; monitoring data, 0.50 minutes; appraisal report upon request 5.00 minutes; notice of right to appraisal, 0.25 minutes; recordkeeping of self–test, 2 hours; and recordkeeping of corrective action for self–test, 8 hours

Number of respondents: 1,350

Small businesses are affected.

General description of report: This information collection is mandatory (15 U.S.C. 1691(a)(1)). The adverse action disclosure is confidential between the institution and the consumer involved. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)).

Abstract: The Equal Credit Opportunity Act and Regulation B prohibit discrimination in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age, or other specified bases. To aid in implementation of this prohibition, the statute and regulation also subject creditors to various mandatory disclosure requirements, notification provisions, credit history reporting, monitoring rules, and recordkeeping requirements. These requirements are triggered by specific events and disclosures must be provided within the time periods established by the Act and regulation.

2. Report title: Recordkeeping and Disclosure Requirements in Connection With Regulation E (Electronic Funds Transfer)

Agency form number: unnum Reg E

OMB Control number: 7100–0200

Frequency: Event–generated

Reporters: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.

Annual reporting hours: 48,868 hours

Estimated average hours per response: Initial terms disclosure, 1.5 minutes; change in terms disclosure, 1 minute; periodic disclosure, 7 hours; and error resolution rules, 30 minutes

Number of respondents: 1,289

Small businesses are affected.

General description of report: This information collection is mandatory (15 U.S.C. 1693 et seq.). Since the Federal Reserve does not collect any information, no issue of confidentiality arises. However, the information, if made available to the Federal Reserve, may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. § 552 (b)(4), (6), and (8)). The disclosures required by the rule and information about error allegations and their resolution are confidential between the institution and the consumer.

Abstract: The Electronic Funds Transfer Act and Regulation E are designed to ensure adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services provided to consumers. Institutions offering EFT services must disclose to consumers certain information, including: initial and updated EFT terms, transaction information, periodic statements of activity, the consumer's potential liability for unauthorized transfers, and error resolution rights and procedures. EFT services include automated teller machines, telephone bill payment, point–of–sale transfers in retail stores, fund transfers initiated through the internet, and preauthorized transfers to or from a consumer's account.

Board of Governors of the Federal Reserve System, October 17, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–26895 Filed 10–22–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the

Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 15, 2002.

Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Commerce Bancorp, Inc., Duncan, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Commerce, Duncan, Oklahoma (in organization).

2. Community Bankshares, Inc., Greenwood Village, Colorado; to acquire 100 percent of the voting shares of Community Banks of Tracy, Tracy, California (formerly known as Tracy Federal Bank, FSB).

Board of Governors of the Federal Reserve System, October 17, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–26897 Filed 10–22–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 6, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Midwest Banc Holdings, Inc., Melrose Park, Illinois; to acquire Big Foot Financial Corporation, Long Grove, Illinois, and thereby indirectly acquire Fairfield Savings Bank, F.S.B., Long Grove, Illinois, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y. Comments on this application must be received no later than November 15, 2002.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Signature Bancshares, Inc., Springfield, Missouri; to engage *de novo* through Signature Investment Services, LLC, Springfield, Missouri, in securities brokerage activities, pursuant to § 225.28(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, October 17, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–26898 Filed 10–22–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Establishment of the Secretary's Advisory Committee on Genetics, Health, and Society

ACTION: Notice of establishment.

SUMMARY: The Secretary of the Department of Health and Human Services (HHS) has determined that the establishment of the Secretary's Advisory Committee on Genetics, Health, and Society is necessary and in the public interest in connection with the duties of the Secretary, HHS, and that such duties can best be performed through the advice and counsel of such a group.

The Secretary's Advisory Committee on Genetics, Health, and Society is established to: (1) Provide a forum for expert discussion and deliberation and the formulation of advice and recommendations on the range of complex and sensitive medical, ethical, legal and social issues raised by new technological developments in human genetics; (2) assist the Department of Health and Human Services and, at their request, other Federal agencies in exploring issues raised by the development and application of genetic technologies; and, (3) make recommendations to the Secretary of Health and Human Services concerning how such issues should be addressed.

The function of the committee is to explore, analyze, and deliberate on the broad range of human health and societal issues raised by the development and use, as well as potential misuse, of genetic technologies and make recommendations to the Secretary of Health and Human Services (Secretary), and other entities as appropriate. The scope of the Committee's charge includes assessing how genetic technologies are being integrated into health care and public health; studying the clinical, ethical, legal and societal implications of new medical applications, such as preimplantation genetic diagnosis, and emerging technological approaches to clinical testing, identifying opportunities and gaps in research and data collection efforts; exploring the use of genetics in bioterrorism; examining current patent policy and licensing practices for their impact on access to genetic technologies; analyzing uses of genetic information in education, employment, insurance, including health, disability, long-term care, and life, and law, including family, immigration, and forensics; and serving as a public forum for discussion of emerging scientific, ethical, legal and social issues raised by genetic technologies.

The Committee shall consist of a core of 13 members, including the Chair. Members and the Chair shall be selected by the Secretary, or designee, from authorities knowledgeable about molecular biology, human genetics, health care, public health, bioterrorism, ethics, forensics, law, psychology, social sciences, education, occupational health, insurance, and other relevant fields. Of the appointed members, at least two members shall be specifically selected for their knowledge of consumer issues and concerns and the view and perspectives of the general public.

Unless renewed by appropriate action prior to its expiration, the Secretary's Advisory Committee on Genetics, Health, and Society charter will expire two years from the date of establishment.

Dated: October 17, 2002.

LaVerne Stringfield,

Director, NIH Office of Federal Advisory Committee Policy.

[FR Doc. 02–27030 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security.

Time and Date: October 22, 2002; 9 a.m.–5 p.m. October 23, 2002; 9 a.m.–1 p.m.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue SW., Washington, DC.

Status: Open.

Purpose: In the morning session on October 22, the Subcommittee on Standards and Security will review the current status of implementation of the Health Insurance Portability and Accountability Act (HIPAA) and will discuss best practices resulting from that implementation. In the afternoon the subcommittee will be briefed on drug terminologies from the Food and Drug Administration (FDA) and will discuss and prepare for the November full Committee meeting relating to the issues of ICD–10–CM and ICD–10–PCS. On October 23 the subcommittee will review a summary of the testimony from the expert panel in medical terminology heard at the August 28–29 subcommittee meeting. From the review and discussion the subcommittee intends to define the scope and the criteria for recommendations to the Department on the selection of Patient Record Medical Information (PMRI) terminologies under HIPAA.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Karen Trudel, Senior Technical Advisor, Security and Standards Group, Centers for Medicare and Medicaid Services, MD: C5–24–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, telephone: 410–786–9937; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Dated: October 15, 2002.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–26882 Filed 10–22–02; 8:45 am]

BILLING CODE 4551–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors Meeting, National Institute for Occupational Safety and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Time and Date: 9 a.m.—3 p.m., November 20, 2002.

Place: Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, NW., Washington, DC 20001, telephone 202/628–2100, fax 202/879–7938.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The Secretary, the Assistant Secretary for Health, and by delegation the Director, Centers for Disease Control and Prevention, are authorized under Sections 301 and 308 of the Public Health Service Act to conduct directly or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health. The Board of Scientific Counselors shall provide guidance to the Director, National Institute for Occupational Safety and Health on research and preventions programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings and disseminating results. The Board shall evaluate the degree to which the activities of the National Institute for Occupational Safety and Health: (1) conform to appropriate scientific standards, (2) address current, relevant needs, and (3) produce intended results.

Matters to be Discussed: Agenda items include a report from the Director of NIOSH; Response to the BSC Report on NIOSH Beryllium Research; Discussion of Public Health Infrastructure for Occupational Safety and Health; Update on Musculoskeletal Research: Update on Approaches to Reducing Occupational Health Disparities; Closing Report.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Roger Rosa, Executive Secretary, BSC, NIOSH, CDC, 200 Independence Avenue, SW., Room 715H, Washington, DC 20201, telephone (202)205–7856, fax (202)260–4464.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 17, 2002.

John Burckhardt,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–26910 Filed 10–22–02; 8:45 am]

BILLING CODE 4163–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Alaska State Plan Amendment 01–009

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on October 24, 2002, at 10 a.m., Seattle Regional Office; 2201 Sixth Avenue; Room 1206; Seattle, Washington 98121, to reconsider our decision to disapprove Alaska State Plan Amendment (SPA) 01–009.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by November 7, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, Centers for Medicare & Medicaid Services, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244–2670, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Alaska State Plan Amendment (SPA) 01–009. Alaska submitted SPA 01–009 on December 27, 2001.

The issue is whether the State's proposed rates are in compliance with the provisions of section 1902(a)(30)(A) of the Social Security Act (the Act),

which requires that payments under the plan be "consistent with efficiency, economy and quality of care."

The proposed SPA would increase the Medicaid payment rate for inpatient and outpatient services at facilities paid as Indian Health Service (IHS) facilities (including tribal facilities operated under contracts or compacts pursuant to Public Law 93–638). The IHS sets Medicaid billing rates for inpatient and outpatient services furnished by Alaska IHS facilities, which are announced in the **Federal Register**. Alaska's proposed rates would substantially exceed the IHS published rates, and Alaska provided no analysis of why it would be consistent with efficiency, economy, and quality of care to pay rates higher than the rate authorized by IHS. Absent any such analysis, the CMS found that the proposed rates were not consistent with efficiency, economy, and quality of care as required under section 1902(a)(30)(A) of the Act. Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Alaska SPA 01–009.

Section 1116 of the Act and 42 CFR, part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. The CMS is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Alaska announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Robert Labbe,
Director, Division of Medical Assistance, Department of Health and Social Services, P.O. Box 110601, Juneau, AK 99811–0601.

Dear Mr. Labbe: I am responding to your request for reconsideration of the decision to disapprove Alaska State Plan Amendment (SPA) 01–009. Alaska submitted SPA 01–009 on December 27, 2001. This SPA would increase the Medicaid payment rate for inpatient and outpatient services at facilities paid as Indian Health Service (IHS) facilities (including tribal facilities operated under contracts or compacts pursuant to Public Law 93–638). The IHS sets Medicaid billing rates for inpatient and outpatient services furnished by Alaska IHS facilities, which are announced in the **Federal Register**. Alaska's proposed rates would substantially exceed the IHS published rates, and Alaska provided no analysis of why it would be consistent with efficiency, economy, and quality of care to pay rates higher than the rate authorized by IHS. Absent any such analysis, CMS found that the proposed rates were not consistent with efficiency, economy, and quality of care as required under section 1902(a)(30)(A) of the Act. Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Alaska SPA 01–009.

I am scheduling a hearing on your request for reconsideration to be held at 10:00 a.m., October 24, 2002, Seattle Regional Office; 2201 Sixth Avenue; Room 1206; Seattle, Washington 98121, to reconsider our decision to disapprove Alaska SPA 01–009.

If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,

Thomas A. Scully.

Authority: Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: October 11, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–26904 Filed 10–22–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Virginia State Plan Amendment 01–14

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing to be held on December 11, 2002, 10 a.m., Suite 216, The Public Ledger Building, 150 S. Independence Mall West; Philadelphia, Pennsylvania 19106, to reconsider our decision to disapprove Virginia State Plan Amendment 01–14.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by November 7, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244–2670, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Virginia State Plan Amendment (SPA) 01–14. Virginia submitted SPA 01–14 on December 14, 2001. The amendment would revise the State's payment methodology to provide for supplemental payments for inpatient and outpatient services furnished by non-state government owned or operated facilities.

The issue is whether this SPA sets out a definite payment methodology for supplemental payments for inpatient and outpatient services furnished by non-state government owned or operated facilities in compliance with the requirements of the Centers for Medicare & Medicaid Services' (CMS) regulations at 42 CFR 430.10 and 447.252(b). First, the methodology set out in the proposed plan amendment is contingent on unexplained factors including size criteria and Medicaid participation criteria that are not described, and the hospital's acceptance of an intergovernmental transfer agreement that is not described. As a result, the proposed State plan amendment does not "comprehensively" describe the State Medicaid program, and does not contain "all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation" consistent with these regulatory requirements. Second, the State was on notice that CMS would review this proposed state plan amendment with heightened scrutiny because of CMS" concern that the payment level was not consistent with efficiency, economy, and quality of care. During a portion of the period covered by this amendment, the methodology would result in total aggregate payments at the level of 150 percent of the amount that would be paid for the services under Medicare payment principles. In a State Medicaid Director's letter dated November 23, 2002, CMS informed states of the intention not to approve amendments submitted after the November 23, 2001, issuance of a notice of proposed rulemaking that would lower the permissible aggregate payment level from 150 percent to 100 percent of the amount that would be paid for the services under Medicare payment principles.

Section 1116 of the Social Security Act (the Act) and 42 CFR, part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. The CMS is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants. Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Virginia SPA 01–14.

The notice to Virginia announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Patrick W. Finnerty,
Director, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23119.

Dear Mr. Finnerty: I am responding to your request for reconsideration of the decision to disapprove Virginia State Plan Amendment (SPA) 01–14. Virginia submitted SPA 01–14 on December 14, 2001. The amendment would revise the State's payment methodology to provide for supplemental payments for inpatient and outpatient services furnished by non-state government owned or operated facilities.

The issue is whether this SPA sets out a definite payment methodology for supplemental payments for inpatient and outpatient services furnished by non-state government owned or operated facilities in compliance with the requirements of the Centers for Medicare & Medicaid Services' (CMS) regulations at 42 CFR 430.10 and 447.252(b). First, the methodology set out in the proposed plan amendment is contingent on unexplained factors including size criteria and Medicaid participation criteria that are not described, and the hospital's acceptance of an intergovernmental transfer agreement that is not described. As a result, the proposed state plan amendment does not "comprehensively" describe the state Medicaid program, and does not contain "all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation" consistent with these regulatory requirements. Second, the State was on notice that CMS would review this proposed state plan amendment with heightened scrutiny because of CMS" concern that the payment level was not consistent with efficiency, economy, and quality of care. During a portion of the period covered by this amendment, the methodology would result in total aggregate payments at the level of 150 percent of the amount that would be paid for the services under Medicare payment principles. In a State Medicaid Director's letter dated November 23, 2002, CMS informed states of the intention not to approve amendments submitted after the November 23, 2001, issuance of a notice of proposed rulemaking that would lower the permissible aggregate payment level from 150 percent to 100 percent of the amount that would be paid for the services under Medicare payment principles.

Based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Virginia SPA 01–14.

I am scheduling a hearing on your request for reconsideration to be held on December 11, 2002, at 10 a.m., Suite 216, The Public Ledger Building, 150 S. Independence Mall West; Philadelphia, Pennsylvania 19106 to reconsider our decision to disapprove Virginia SPA 01–14.

If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding offtcer may be reached at (410) 786–2055.

Sincerely,

Thomas A. Scully.

Authority: Section 1116 of the Social Security Act (42 U.S.C. section 1316), (42 CFR Section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: October 11, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–26905 Filed 10–22–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of South Carolina State Plan Amendment 01–14(A)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing to be held on December 2, 2002, at 10 a.m., Atlanta Federal Center, 61 Forsyth Street, SW., Suite 4T20, Executive Conference Room, Atlanta, Georgia 30303–8909, to reconsider our decision to disapprove South Carolina State Plan Amendment 01–14 (A).

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by November 7, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244–2670, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove South Carolina State Plan Amendment (SPA) 01–14(A). South Carolina submitted SPA 01–014(A) on December 21, 2001. In this amendment, South Carolina proposed to revise the methodology for calculating supplemental payments for inpatient and outpatient services furnished by non-state government owned or operated facilities.

The issue is whether the State's proposed revised methodology for calculating supplemental payments for inpatient and outpatient services furnished by non-state government owned or operated facilities was consistent with the requirements of

section 1902(a)(30)(A) of the Social Security Act (the Act), as implemented by the Centers for Medicare & Medicaid Services' (CMS) regulations at 42 CFR 447.272 and 447.321. The proposed methodology would increase supplemental payments to non-state government owned or operated facilities to result in aggregate payments based on 150 percent of the estimated amount that would be paid for the same services under Medicare payment principles. In accordance with the regulations at 42 CFR 447.272 and 447.321, as amended on January 18, 2002, effective May 14, 2002, aggregate payments to non-state government owned or operated hospitals may not exceed 100 percent of the reasonable estimate of the amount that would be paid for the same services under Medicare payment principles. Because the proposed payment methodology would provide for payments above the permissible level after that date, CMS concluded that the proposed methodologies are not in compliance with applicable regulations and the SPA could not be approved. Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved South Carolina SPA 01–14(A).

Section 1116 of the Act and 42 CFR, part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. The CMS is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to South Carolina announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. William Prince, Medicaid Director, South Carolina Department of Health and Human Services, P.O. Box 8206, Columbia, SC 29202–8206.

Dear Mr. Prince: I am responding to your request for reconsideration of the decision to disapprove South Carolina State Plan Amendment (SPA) 01–14(A). South Carolina submitted SPA 01–14(A) on December 21, 2001. In this amendment, South Carolina proposed to revise the methodology for calculating supplemental payments for inpatient and outpatient services furnished by non-state government owned or operated facilities.

The issue is whether the State's proposed revised methodology for calculating supplemental payments for inpatient and outpatient services furnished by non-state government owned or operated facilities was consistent with the requirements of section 1902(a)(30)(A) of the Social Security Act (the Act), as implemented by the Centers for Medicare & Medicaid Services (CMS) regulations at 42 CFR 447.272 and 447.321. The proposed methodology would increase supplemental payments to non-state government owned or operated facilities to result in aggregate payments based on 150 percent of the estimated amount that would be paid for the same services under Medicare payment principles. In accordance with the regulations at 42 CFR 447.272 and 447.321, as amended on January 18, 2002, effective May 14, 2002, aggregate payments to non-state government owned or operated hospitals may not exceed 100 percent of the reasonable estimate of the amount that would be paid for the same services under Medicare payment principles. Because the proposed payment methodology would provide for payments above the permissible level after that date, CMS concluded that the proposed methodologies are not in compliance with applicable regulations and the SPA could not be approved. Based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved South Carolina SPA 01–14(A).

I am scheduling a hearing on your request for reconsideration to be held on December 2, 2002, at 10 a.m., Atlanta Federal Center, 61 Forsyth Street, SW., Suite 4T20, Executive Conference Room, Atlanta, Georgia 30303–8909, to reconsider our decision to disapprove South Carolina SPA 01–14(A).

If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,

Thomas A. Scully.

Authority: Section 1116 of the Social Security Act (42 U.S.C. section 1316); (42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: October 11, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–26906 Filed 10–22–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0012]

Agency Information Collection Activities; Announcement of OMB Approval; Postmarketing Adverse Drug Experience Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Postmarketing Adverse Drug Experience Reporting" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 22, 2002 (67 FR 47821), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0230. The approval expires on September 30, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: October 16, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–26875 Filed 10–22–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, U.S.C, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Proposed Project: Progress Reports for Continuation Training Grants (OMB No. 0915–0061)—Extension

The HRSA Progress Reports for Continuation Training Grants are used for the preparation and submission of continuation applications for titles VII and VIII health professions and nursing education and training programs. The Uniform Progress Report measures grantee success in meeting (1) the objectives of the grant project and (2) the cross-cutting outcomes developed for the Bureau's education and training programs. Part I of the progress report is designed to collect information to determine whether sufficient progress has been made on the approved project objectives, as grantees must demonstrate satisfactory progress to warrant continuation of funding. Part II collects information on activities specific to a given program and Part III, Comprehensive Performance Management System, collects data on overall project performance related to the Bureau of Health Profession's strategic goals, objectives, outcomes and indicators. Progress will be measured based on the objectives of the grant project and outcome measures and indicators developed by the Bureau to meet requirements of the Government Performance and Results Act (GPRA).

To respond to the requirements of GPRA, the Bureau developed goals, outcomes and indicators that provide a framework for collection of outcome data for its Title VII and VIII programs. An outcome based performance system is critical for measuring whether program support is meeting national health workforce objectives. At the core of the performance measurement system are found cross-cutting goals with respect to workforce quality, supply, diversity and distribution of the health professions workforce. A demonstration project to assess availability of the data needed to support the indicators was conducted, and data from this project are currently being analyzed.

The grantees were able to obtain, and submit progress reports electronically for fiscal year 2001.

Estimates of annualized reporting burden are as follows:

Type of respondent	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Health Care Professionals	1,550	1	1,550	20	31,000

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11A–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 17, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–26914 Filed 10–22–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Infant Mortality; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following advisory committee meeting. The meeting is open to the public.

Name: Advisory Committee on Infant Mortality (ACIM).

Date and Time: November 20, 2002; 9 a.m.–5 p.m., November 21, 2002; 8:30 a.m.–3 p.m.

Place: The Hyatt Regency Crystal City Hotel, 2799 Jefferson Davis Highway, Arlington, Virginia 22202, (703) 418–1234.

Purpose: The Committee provides advice and recommendations to the Secretary of Health and Human Services on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; factors affecting the continuum of care with respect to maternal and child health care, including outcomes following childbirth; factors determining the length of hospital stay following childbirth; strategies to coordinate the variety of Federal, State, and local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start initiative and infant mortality objectives from *Healthy People 2010.*

Agenda: Topics that will be discussed include the following: Early Postpartum Discharge; Low-Birth Weight; Disparities in Infant Mortality; and the Healthy Start Program. Agenda items are subject to change as priorities are further determined.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Peter C. van Dyck, M.D., M.P.H., Executive Secretary, ACIM, Health Resources and Services Administration (HRSA), Parklawn Building, Room 18–05, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–2170.

Individuals who are interested in attending any portion of the meeting or who have questions regarding the meeting should contact Ann M. Koontz, C.N.M., Dr. P.H., HRSA, Maternal and Child Health Bureau, Telephone (301) 443–6327.

Dated: October 17, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–26915 Filed 10–22–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Nurse Education and Practice; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following advisory committee meeting. The meeting is open to the public.

Name: National Advisory Council on Nurse Education and Practice.

Date and Time: November 7, 2002, 8:30 a..m.–5 p.m., November 8, 2002, 8:30 a.m.–3 p.m.

Place: The Hotel Washington, Pennsylvania Avenue, NW at 15th St., Washington, DC 20004.

Agenda: Agency, Bureau and Division administrative updates. Overview of the Nurse Reinvestment Act, Pub. L. 107–205; staff legislative workgroup reports; and Council workgroup sessions with discussion and recommendations for implementation of legislation. Presentations and discussion of bioterrorism workforce issues with focus on nursing. Reports of the Institute of Medicine Health Professions Summit meeting with discussion regarding future interdisciplinary activities and report of the Development of a Funding Methodology for the Allocation of Title VIII Funds: Phase II.

For Further Information Contact: Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Ms. Elaine G. Cohen, Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–1405.

Dated: October 17, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–26916 Filed 10–22–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health/National Institute of Environmental Health Sciences

Proposed Collection; Comment Request; Organochlorine Exposure in Relation to Timing of Natural Menopause

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Environmental Health Sciences (NIEHS), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Organochlorine Exposure in Relation to Timing of Natural Menopause. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* Smoking has been shown in many studies to be associated with a 1-2 year decrease in age at natural menopause. However, relatively little is known about the effect of other potential toxicants, including organochlorines such as polychlorinated biphenyls (PCBs) and 1,1 dichloro- 2,2-bis(p-chlorophenyl) ethylene (p,p'-DDE (DDE). We will assess timing of menopause among women who previously participated in the North Carolina Infant Feeding Study. PCB and DDE levels were analyzed in blood and breast milk samples around delivery and after pregnancy. The median age of the women as of March, 2002, is 50 years. Data will be collected in a telephone interview focusing on reproductive and menstrual history with additional information samples in order to classify menopausal status of women who had undergone hysterectomy with retention of at least one ovary, women who are currently using hormone replacement therapy whose use began while still having periods, and women who report very short, very long, or irregular menstrual cycle lengths during the past 12 months. PCB and DDE levels will also be determined in these samples, allowing us to assess the correlation between current and baseline (1978–1982) PCB and DDE measures. The purpose of this study is to assess the association between the baseline organochlorine measurements and timing of natural menopause. A secondary aim will be to conduct exploratory analyses of the association between specific factors (*e.g.*, pregnancy history, weight change) and rate of change in collected and demographic, social and behavioral factors that could affect timing of menopause. Approximately 50% of participants based on sampling strata that involve criteria relating to age and menopausal status will also have a blood sample collection. Follicle stimulating hormone and luteinizing hormone will be measured in these organochlorine levels. *Frequency of Response:* On occasion (one half-hour long telephone interview and ten minutes for biological specimens collection for half of the study population). *Affected Public:* Individuals. *Type of Respondents:* We will enroll women who participated in the North Carolina Infant Feeding Study. The annual reporting burden is as follows: *Estimated Number of Respondents:* 857. *Estimated Number of Responses per Respondent:* See table below. *Average Burden Hours Per Response:* 0.5 for the telephone interview and 0.334 for the blood collection; and *Estimated Total Burden Hours Requested:* 571.45. The average annual burden hours requested is 428.5 for the telephone interview and 142.95 for the blood collection. The annualized cost to respondents is estimated at $10 (assuming $20 hourly wage × 0.50 hours) for the interview and $6.658 (assuming a $20 hourly wage × 0.334 hours) for blood collection. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total burden hours requested
Telephone Interview (CATI)	857	1	.5	428.5
Biological Collections	*428	1	.334	142.95
Total	1,285			571.45

*Expect approximately 50% of the (n=857) participants to complete the blood draw.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of collection of information on whose who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Glinda Cooper, Epidemiology Branch, NIEHS, Building 101, AE–05, P.O. Box 12233, Research Triangle Park, NC 27709 or call non-toll-free number (929) 541–0799 or E-mail your request, including your address to: *cooper1@niehs.nih.gov*.

Comments Due Date: Comments regarding this information are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: October 12, 2002.

Francine Little,

NIEHS, Associate Director for Management.

[FR Doc. 02–27029 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request, National Kidney Disease Education Program Evaluation Survey

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register**. August 5, 2002 (67 FR 50678–50679), and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection:

Title: National Kidney Disease Education Program Evaluation Survey. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* NIDDK will conduct a survey to monitor and evaluate the effects of a pilot kidney disease education program. This will be accomplished through baseline and follow-up surveys of the primary target audience members, *i.e.*, African American adults and primary care providers, in four pilot site locations. The search is designed to assess the overall impact of the program, but also to provide information that will be useful in developing and refining this and future programs. *Frequency of Response:* A baseline and follow-up survey will each require a onetime response. *Affected Public:* Individuals or households, clinics or doctor's offices. *Type of Respondents:* African-American adults and primary care providers (*e.g.*, physicians, physician assistants, nurse practitioners, etc.). The annual reporting burden is as follows: *Estimated Number of Respondents:* 2,000; *Estimated Number of Responses per Respondent:* 1 (Respondents will answer a single survey: African American adults will complete a 20 minute computer assisted telephone interview (CATI); Primary care providers will complete a 10 minute faxed survey); *Average Burden Hours Per Response:* .298 and *Estimated Total Annual Burden Hours Requested:* 596. The annualized total cost to respondents is estimated at $10,684. All respondents will be contacted via telephone. To reduce respondent burden and overall costs of administering the study, it is expected that random digit dialing will be used to contact African American adults and telephone lists will be used to contact primary care providers. Because different program materials will be developed for each audience the questionnaires will be tailored such that respondents will be asked only target-audience pertinent questions. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Number of respondents	Frequency of response	Average time per response	Annual hour burden
African Americans	1,600	1.0	.33	528
Primary Care Providers	400	1.0	.17	68
Total	2,000			596

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 102353, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Thomas Hostetter, Project Officer, Director, NIDDK National Kidney Disease Education Program, NIH, Building 31, 6707 Democracy Bldg, Room 625, Bethesda, MD 20892–2560.

or call non-toll free number 301–594–8864 or e-mail your request, including your address, to: *hostettert@extra.niddk.nih.gov.*

Comments Due Date: Comments regarding this information are best assured of having full effect if they are received within 30 days of the date of this publication.

Dated: October 17, 2002.

John C. Condray,

Acting Project Clearance Liaison, NIDDK, National Institutes of Health.

[FR Doc. 02–27028 Filed 10–21–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Exploratory/Developmental Grants: Overcoming barriers to early phase clinical trials.

Date: December 3, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lalita D Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405. (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.999, Cancer Control, National Institutes of Health, HHS)

Dated: October 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27013 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Toxicology.

Date: December 10–11, 2002.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Thomas M. Vollberg, Ph.D., Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 703/7142, Rockville, MD 20852. 301/594–9582. *vollbert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.999, Cancer Control, National Institutes of Health, HHS)

Dated: October 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27014 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Molecular Targets for Nutrients in Prostate Cancer Prevention.

Date: November 19–20, 2002.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 703/7142, Rockville, MD 20852. 301/594–9582. *vollbert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27021 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol and Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: October 29, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contract Person: Karen P. Peterson, Phd, Scientific Review Administrator, Extramural Project Review Branch, National Institute of Alcohol Abuse, and Alcoholism, National Institutes of Health, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003. (301) 451–3883. *kp177z@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: November 7, 2002.

Time: 10 a.m. to 11:30 am.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Karen P. Peterson, Phd, Scientific Review Administrator, Extramural Project Review Branch, National Institute of Alcohol Abuse, and Alcoholism, National Institutes of Health, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003. (301) 451–3883. *kp177z@nih.gov.*

Name of Committee: National Institute of Alcohol Abuse and Alcoholism Special Emphasis Panel. Review of research applications and KO5's.

Date: November 8, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: Sean N. O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute of Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 executive Boulevard, Bethesda, MD 20892-7003. 301–443–2861.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: October 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27015 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. "Development and testing of a Modified Vaccinia Ankara (MVA) Vaccine".

Date: November 12, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Georgetown, Fortune Room, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert C. Goldman, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 3124, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–496–8424. *rg159w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27016 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Autism Susceptibility Loci.

Date: November 19, 2002.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608. 301–443–1340. *haraj@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Mental Health Education Grants.

Date: November 25, 2002.

Time: 3 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608. 301–443–1340. *haraj@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Institutional Research Training Grants.

Date: November 26, 2002.
Time: 7:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340. *haraj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27017 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Cooperative Reproductive Science Research Centers at Minority Institutions.
Date: December 11, 2002.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Mechanisms of Skeletal Repair.
Date: December 10, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Tracy A. Shahan PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27019 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27018 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Mechanisms of Skeletal Repair.
Date: December 10, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Tracy A. Shahan PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27019 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Translational Research for the Prevention and Control of Diabetes.
Date: November 19, 2002.
Time: 8:00 AM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20814.
Contact Person: Michele L. Barnard, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institute of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–8898.

Name of Committee: National Institutes of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Diabetic Nephropathy.
Date: November 20, 2002.
Time: 1:00 PM to 2:00 PM.
Agenda: To review and evaluate grant applications,
Place: 6701 Democracy Blvd., Bethesda, MD 20814. (Telephone Conference Call).
Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institute of Health, Room 748, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

October 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27020 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, SBIR Topic 80 Phase II.
Date: November 19, 2002.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate contract proposals.
Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709. (Telephone Conference Call).
Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of R01 Applications.
Date: December 9, 2002.
Time: 9:30 a.m. to 1 p.m.
Agenda: To review and evaluate contract proposals.
Place: NIEHS, South Campus, Building 101, Conference Room C, Research Triangle Park, NC 27709.
Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. 919/541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: October 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27022 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Cellular Repair Studies: Auditory and Vestibular.
Date: November 26, 2002.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: 6120 Executive Blvd., Suite 400C, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Craig A. Jordan, PhD, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180. 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: October 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27023 Filed 10–23–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, Hearing and Balance Feasibility Grants.
Date: November 25, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.
Contact Person: Ali A. Azadegan, DVM, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD, NIH, EPS–400C, 6120 Executive Blvd., MSC 7180, Bethesda, MD 20892–7180. (301) 496–8683. *azadegan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: October 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27024 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BM–1 (02): Bacteriology & Microbiology 1: Quorum.

Date: October 24–25, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892. (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biobehavioral Regulation and Ethology.

Date: October 25, 2002.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC 20005–2750.

Contact Person: Luci Roberts, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892. (301) 435–0692. roberlu@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Plant Expressions and Microfluidics.

Date: October 27, 2002.

Time: 6:30 p.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892. (301) 435–8367. atreyap@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neurosciences 6 01.

Date: October 29–30, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Jay Cinque, MSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, CDF Instrument Development R01's.

Date: November 1, 2002.

Time: 8 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel & Suites, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, CDF SBIR/STTR.

Date: November 1, 2002.

Time: 12:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel & Suites, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–B (01) M: Member Conflicts in Biophysics and Chemistry.

Date: November 4, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Donald Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, Orthopedics and Musculoskeletal Study Section.

Date: November 4–5, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Daniel F. McDonald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892. (301) 435–1215. *mcdonald@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 4.

Date: November 4–5, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892. (301) 435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, HIV/AIDS Intervention Research Regular Meeting.

Date: November 4–5, 2002.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892. (301) 435–1167. *srinivar@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 REN 01.

Date: November 4, 2002.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892. (301) 435–1042. *shaikha@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SMB 03 Dermatology and Rheumatology.

Date: November 5, 2002.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Paul D. Wagner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892. (301) 435–6809, *wagnerp@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 F10 20L: Fellowships: Pathophysiology and Cardiovascular Sciences.

Date: November 6–7, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Peter J. Perrin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892. (301) 435–0682. *perrinp@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reparative Medicine, ZRG 1 SSS–M 01.

Date: November 6–7, 2002.

Time: 8:30 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814. 301/435–1743. *sipej@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to Review SBIR & STTR applications on AIDS-Related Behavioral Science Studies.

Date: November 6, 2002.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892. (301) 435–1167. *srinivar@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PTHB 01M: Member Conflict: Molecular Biology of Cancer.

Date: November 6, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Call).

Contact Person: Martin L. Podarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892. (301) 435–1717.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Breast Cancer.

Date: November 6, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7804, Bethesda, MD 20814–9692. 301–435–3504. *fungv@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Multimedia Interventions for Childhood Obesity.

Date: November 6, 2002.

Time: 12 p.m. to 1:15 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7848, Bethesda, MD 20892. (301) 435–3554. *shirleym@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27026 Filed 10–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4768–C–03]

Notice of Funding Availability for Revitalization of Severely Distressed Public Housing, HOPE VI Revitalization Grants, Fiscal Year 2002; Notice of Technical Corrections

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for Revitalization of Severely Distressed Public Housing, HOPE VI Revitalization Grants, Notice of Technical Corrections.

SUMMARY: This notice makes a number of technical corrections to HUD's Fiscal Year (FY) 2002 Notice of Funding Availability for Revitalization of Severely Distressed Public Housing, HOPE VI Revitalization Grants.

DATES: *Application Due Date.* Revitalization grant applications are due to HUD Headquarters on or before 5:15 p.m., Eastern Time, on December 6, 2002.

FOR FURTHER INFORMATION CONTACT: Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410; telephone (202) 401–8812; fax (202) 401–2370 (these are not toll free numbers). Persons with hearing-or speech-impairments may call via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On July 31, 2002 (67 FR 49766), HUD published its Fiscal Year (FY) 2002 Notice of Funding Availability for Revitalization of Severely Distressed Public Housing, HOPE VI Revitalization Grants (HOPE VI NOFA), which announced the availability of approximately $492.5 million in FY 2002 funds for the HOPE VI Revitalization Program. The July 31, 2002 HOPE VI NOFA provided an application due date of November 29, 2002. Because November 29, 2002, falls on the Friday after Thanksgiving, HUD extended the application due date under the July 31, 2002 HOPE VI NOFA for one week to Friday December 6, 2002, in a notice published on September 27, 2002 (67 FR 61150). This notice makes a number of technical corrections to the July 31, 2002 HOPE VI NOFA.

In Section VI(A)(1), the reference to "Section IV(A)(2)" is corrected to "Section VI(A)(2)" instead, changing the "IV" to "VI."

Section VIII (B)(4) is corrected to make explicit that the average market rental costs calculated from apartment listings is based upon the rent for 3-bedroom apartments.

In the last sentence of Section IX(D)(10), "allocated" is changed to "reserved," and in the first sentence of Section IX(D)(10)(a), "allocation" is changed to "reservation." Both changes are made to correctly express the tax credit procedure involved.

A sentence is added to Section IX(D)(10)(b)(ii) to provide that a letter from the investor may be used to document the dollar amount expected from the sale of equity.

In Section IX(G)(1)(c), the reference to "1:20" should be to "1:2.0" instead, adding a decimal point that had been omitted inadvertently from the ratio.

In Section IX(G)(3)(a), the ratio is corrected from "1:1.0" to ".1:1.0" adding a decimal point before the first

digit; in Section IX(G)(3)(b), the ratio is corrected from "1:.1" to ".1:1.0" reversing the order of the digits; and in Section IX(G)(4)(b), the ratio is corrected from "1:.1" to "1:1.0" removing the decimal point before the second digit.

In Section XII(E)(3), the reference to "Section (1)" is changed to "Section (2)."

Accordingly, FR Doc. 02–19276, the Fiscal Year (FY) 2002 Notice of Funding Availability for Revitalization of Severely Distressed Public Housing, HOPE VI Revitalization Grants, published in the **Federal Register** on July 31, 2002 (67 FR 49766) is corrected as follows:

1. *On page 49769, in column 3, revise Section VI(A)(1) to read as follows:*

(1) The total amount you may request in your Revitalization application is limited to $20 million or the sum of the amounts in Section VI(A)(2), whichever is lower.

2. *On page 49775, in column 2, revise Section VIII(B)(4) to read as follows:*

(4) Need for Affordable Housing in the Community—3 Points.

The applicant must demonstrate the need for affordable housing in the community. The need for affordable housing in the community is measured by a lack of supply of private market housing that can be rented at the Section 8 fair market rent (FMR), as adjusted by HUD, and in the community. To make this calculation, use the most recently published FMR, as adjusted, for a 3-bedroom apartment and apartment listings in a newspaper of general circulation that serves the majority of the community (the jurisdiction covered by the FMR). In the apartment listings, track and tabulate the rents for 3-bedroom apartments for a period of 30 consecutive days during the application preparation period, counting each 3-bedroom apartment once for the period of days it appears in the listings (*e.g.*, if the same apartment appears in the listings every day for a period of 7 days, you would count it one time). Calculate the average market rental costs, based on your tabulations, and compare them to the FMR, as adjusted, for a 3-bedroom apartment. In your application you will document information about your analysis. Points will be awarded in accordance with one of the following, based on your analysis:

(a) You will receive 3 Points if the average market rental costs are over 130 percent of FMR.

(b) You will receive 2 Points if the average market rental costs are over 120 percent of FMR.

(c) You will receive 1 Point if the average market rental costs are over 110 percent of FMR.

(d) You will receive 0 Points if the average market rental costs are 110 percent or less of FMR or if there is inadequate information to rate this factor.

3. *On page 49776, in column 2, revise the last sentence of Section IX(D)(10) to read as follows:*

(10) * * * Tax credits are generally reserved annually through State Housing Finance Agencies, a directory of which can be found at *http://www.ncsha.org/ncsha/public/statehfadirectory/index.htm*

4. *On page 49776, in column 3, revise the first sentence of Section IX(D)(10)(a) to read as follows:*

(a) If you propose to include LIHTC equity as a development resource for your first phase of development, your application must include a LIHTC reservation letter from your State or local Housing Finance Agency. * * *.

5. On *page 49776, in column 3, revise Section IX(D)(10)(b)(ii) to read as follows:*

(ii) The dollar amount expected from the sale of equity. If this information is not provided, HUD will count 80 percent of the total tax credit amount. The dollar amount expected from the sale of equity may be detailed in a letter from the investor, instead of in a letter from your State or local Housing Finance Agency. All other criteria in Section IX(D)(10)(b)(i)–(vii) must be included in a commitment letter from your State or local Housing Finance Agency.

6. *On page 49777, in column 2, revise Section IX(G)(1)(c) to read as follows:*

(c) You will receive 5 Points if the ratio is between 1:2.0 and 1:2.49.

7. *On page 49777, in column 3, revise Section IX(G)(3)(a) to read as follows:*

(a) You will receive 2 Points if the ratio of your documented anticipatory resources to the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) is .1:1.0 or higher.

8. *On page 49777, in column 3, revise Section IX(G)(3)(b) to read as follows:*

(b) You will receive 0 Points if the ratio of your documented anticipatory resources to the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) resources is less than .1:1.0.

9. *On page 49777, in column 3, revise Section IX(G)(4)(b) to read as follows:*

(b) You will receive 0 Points if the ratio of your documented collateral resources to the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) is less than 1:1.0.

10. *On page 49780, in column 3, revise Section XII(E)(3) to read as follows:*

(3) You will receive 2 points if you meet only one of the factors described in Section (2) above.

Dated: October 15, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 02–26892 Filed 10–22–02; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of availability of the Draft Lookout Mountain Forest and Rangeland Health Project Plan, Associated Amendments to the Baker Resource Management Plan and Draft Environmental Impact Statement

AGENCY: Baker Resource Area, Vale District, Bureau of Land Management.

ACTION: Notice of availability of the Draft Lookout Mountain Forest and Rangeland Health Project Plan, Associated Amendments to the Baker Resource Management Plan (RMP) and Draft Environmental Impact Statement (DEIS).

SUMMARY: The Baker Resource Area is providing the Lookout Mountain Forest and Rangeland Health Project DEIS for public review and comment. The planning area encompasses approximately 25,160 acres of public land managed by the Baker Resource Area, Vale District and located in Baker county in northeastern Oregon. Some of the alternatives include amendments to portions of the Baker RMP, which was originally approved in 1989. The Bureau of Land Management (BLM) has and will continue to work closely with all interested parties to identify the management decisions that are best suited to the needs of the public. For comments to be most helpful, they should relate to specific concerns or conflicts that are within the legal responsibilities of the BLM and they should be able to be resolved in this planning process. Specific comments are the most useful in helping us improve the analysis and in the development of the preferred alternative. In addition to public comments, the BLM is particularly interested in state, local and Tribal government comments regarding plan consistency. Documents referenced in this DEIS may be examined at the Baker Resource Area Office during normal working hours. The Baker RMP to which the DEIS is tiered also is available for review at the Vale District and Oregon State Offices during normal working hours, and on the internet at *http://www.or.blm.gov/Vale/Planning-EnvirnAnalyses.htm.*

DATES: The comment period will end 90 days after the publication of the Environmental Protection Agency's Notice of Availability of the DEIS in the **Federal Register**. Supplemental notices indicating the precise dates of DEIS availability and the comment period will be printed in local newspapers and sent to mailing list addressees. Comments must be received on or before the end of the comment period at the address listed below. No public meetings, open houses, or field tours of the project area have been scheduled at this time. If there is sufficient public interest, public meetings will be arranged to discuss the management alternatives and answer questions. At least 15 days public notice will be given for activities where the public is invited to attend. All meetings will be published on the Vale District Web site *http://www.or.blm.gov/Vale/Planning-EnvirnAnalyses.htm* and in the Baker City Herald and Argus-Observer (Ontario) newspapers. Comments, including names and addresses of commentors, will be available for public review. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

ADDRESSES: The responsible field official is Penelope Dunn Woods, Baker Resource Area Manager. Written comments should be sent to Ted Davis, Supervisory Natural Resource Specialist, Baker Resource Area, Bureau of Land Management, 3165 10th St., Baker City, Oregon 97814. Planning records are available at this address for inspection during normal working hours. Requests for copies of the draft plan can also be made by telephone to Ted Davis at (541) 523–1431.

SUPPLEMENTARY INFORMATION: The DEIS contains descriptions and analyses of five action alternatives, and a no-action alternative, each developed with differing emphasis. The range of management direction includes commercial and precommercial timber harvest, riparian restoration activities, road relocation and decommissionings, fuel hazard reduction treatments including prescribed burning, and other land management direction. The portions of the Baker Resource Management Plan that would be most affected and amended by the action alternatives involve visual resource management and alternative road access. The action alternatives would support the National Fire Policy. There are no identified substantive adverse effects on energy resources or transmission. Public comments were considered in developing and analyzing issues and alternatives, along with input from local and Tribal governments, known interest groups, and data developed by BLM staff. The alternatives were designed to address, in different ways, the land and resource management issues identified in the early stages of the planning process. There were no requests for formal cooperator status by other federal, state, local or Tribal governments.

Authority: Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA).

Dated: May 29, 2002.

Penelope Dunn Woods,

Field Manager, Baker Resource Area.

[FR Doc. 02–26934 Filed 10–22–02; 8:45 am]

BILLING CODE 4310–AG–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The U.S. International Trade Commission (USITC or Commission) has submitted a proposed information collection package to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, (44 U.S.C. Chap. 35), requesting renewal of a currently approved collection: *USITC Reader Satisfaction Survey* (OMB No.: 3117–0188). On August 15, 2002, the USITC published in the **Federal Register** a notice of proposed information collection and request for comments on the *USITC Reader Satisfaction Survey*. No public comments to the August 15, 2002, **Federal Register** notice were received by the Commission. The USITC has also conducted a review of the proposed information collection as required by 5 CFR 1320.8.

EFFECTIVE DATE: October 16, 2002.

Purpose of Information Collection: The requested extension of a currently approved collection (one-page survey) is for use by the Commission, and complies with objectives set forth in the Government Performance and Results Act of 1993 (Pub. L. 103–62), to establish measures to improve information on program performance, and specifically, to focus on evaluating results, quality, and customer satisfaction. The one-page survey will be placed inside the cover of certain public reports issued annually or on occasion by the Commission pursuant to section 332 of the Tariff Act of 1930 (19 U.S.C. 1332), and including public reports that meet agency requirements for the USITC Research Program.

Public Comments Regarding the Information Collection: OMB is required to make a decision concerning extension of this currently approved collection between 30 and 60 days after publication of this notice. To be assured of consideration, comments must be received at OMB by the Desk Officer/USITC by November 22, 2002.

ADDRESSES: Comments should be addressed to: Desk Officer for U.S. International Trade Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (telephone No. 202–395–3897). Copies of any comments should also be provided to Robert Rogowsky, Director of Operations, U.S. International Trade Commission, 5[illegible] E Street, SW., Washington, D[illegible] 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Summary of Proposal

(1) *Number of forms submitted:* One.

(2) *Title of form: USITC Reader Satisfaction Survey.*

(3) *Type of request:* Renewal of a currently approved collection.

(4) *Frequency of use:* Annual or on occasion information gathering.

(5) *Description of Respondents:* Interested parties receiving most public reports issued by the USITC, with the exception of Title VII reports.

(6) *Estimated number of respondents:* 600 annually.

(7) *Estimated total number of hours to complete the forms:* 100 hours annually.

(8) *Recordkeeping burden:* There is no retention period for recordkeeping required.

(9) *Response burden:* Less than 10 minutes for each individual respondent.

(10) *Summary of the collection of information:* Single-page survey requests readers' comments about value and quality of USITC reports.

(11) Information requested on a voluntary basis is not proprietary in nature, but rather for program evaluation purposes and is not intended to be published. Commission treatment of questionnaire responses will be followed; responses will be aggregated and will not be presented in a manner that will reveal the individual parties that supplied the information.

FOR FURTHER INFORMATION CONTACT: Karl Tsuji, Office of Industries, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436 (telephone No. 202–205–3434). Copies of the public notice (Agency Form Submitted for OMB Review) along with the survey and Supporting Statement to be submitted to OMB will be posted on the Commission's World Wide Web site at *http://www.usitc.gov/whatsnew.htm* or the agency submissions to OMB in connection with this request may be obtained from Karl Tsuji, at the above address or telephone number. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal (telephone No. 202–205–1810).

By order of the Commission.

Issued: October 17, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–26878 Filed 10–22–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–989 (Final)]

Ball Bearings From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–989 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of certain ball bearings and parts thereof, provided for in subheadings 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.50, 8431.20.00, 8431.39.00, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.25, 8482.99.35, 8482.99.65, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.60, 8708.93.30, 8708.93.60, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.40, 8708.99.49, 8708.99.58, 8708.99.80, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: October 8, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain ball bearings and parts thereof from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on February 13, 2002, by the American Bearing Manufacturers Association, Washington, DC.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on February 19, 2003, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on March 4, 2003, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 24, 2003. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 27, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is February 26, 2003. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 11, 2003; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 11, 2003. On March 26, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 28, 2003, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as "antifriction bearings, regardless of size, precision grade or use, that employ balls as the rolling element (whether ground or unground) and parts thereof (inner ring, outer ring, cage, balls, seals, shields, etc.) that are produced in China. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts and parts thereof, ball bearings (including thrust, angular contact, and radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. The scope includes ball bearing type pillow blocks and parts thereof, and wheel hub units incorporating balls as the rolling element. With regard to finished parts, all such parts are included in the scope of the petition. With regard to unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by the petition are those that will be subject to heat treatment after importation."

By order of the Commission.

Issued: October 17, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–26879 Filed 10–22–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1006, 1008, and 1009 (Final)]

Urea Ammonium Nitrate Solutions From Belarus, Russia, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–1006, 1008, and 1009 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Belarus, Russia, and Ukraine of urea ammonium nitrate solutions, provided for in subheading 3102.80.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of urea ammonium nitrate solutions from Belarus, Russia, and Ukraine are being sold in the United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b). These investigations were requested in a petition filed on April 19, 2002, by the Nitrogen Solutions Fair Trade Committee, an ad hoc coalition of U.S. producers consisting of CF Industries, Inc., Long Grove, IL; Mississippi Chemical Corp., Yazoo City, MS; and Terra Industries, Inc., Sioux City, IA.

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as "all mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution, regardless of nitrogen content by weight, and regardless of the presence of additives, such as corrosion inhibitors."

preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on December 5, 2002, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on December 18, 2002, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 11, 2002. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. If unable to allocate amongst themselves respective times of testimony within the maximum allowable, all parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference that is scheduled for this purpose at 9:30 a.m. on December 16, 2002, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is December 12, 2002. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is December 27, 2002; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before December 27, 2002. On January 13, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 15, 2003, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: October 17, 2002..

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–26880 Filed 10–22–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

TIME AND DATE: October 29, 2002 at 10 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. TA–421–1 (Remedy) (Pedestal Actuators from China)—briefing and vote. (The Commission is currently scheduled to transmit its views and remedy proposals to the President and U.S. Trade Representative on November 7, 2002.)
5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 18, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–27089 Filed 10–21–02; 11:03 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Steven Tyler Everett, M.D.; Revocation of Registration

On May 28, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Steven Tyler Everett, M.D. (Dr. Everett) of Port St. Lucie, Florida, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BE4443064 under 21 U.S.C. 824(a), and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Dr. Everett is not currently authorized to practice medicine or handle controlled substances in Florida, the State in which he practices. The order also notified Dr. Everett that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Everett at his registered location in Port St. Lucie, Florida. On June 17, 2002, DEA received an undated signed receipt indicating that the Order to Show Cause was received on his behalf. DEA has not received a request for hearing or any other reply from Dr. Everett or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Everett is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Everett currently possesses DEA Certificate of Registration BE4443064 and that registration remains valid until August 31, 2004. The Deputy Administrator further finds that on July 10, 2001, the State of Florida, Department of Health (Department of Health) filed a three-count Administrative Complaint against Dr. Everett seeking the revocation of his medical license. As a basis for revocation, the Department of Health alleged, *inter alia*, that Dr. Everett engaged in a sexual relationship with a patient and that he committed fraud in the practice of medicine by writing a prescription for injectable Demerol (a Schedule II controlled substance) in the name of one patient while knowing the drug was intended for and would be used by another.

On October 23, 2001, the Department of Health issued a Final Order, revoking Dr. Everett's license to practice medicine. The investigative file contains no evidence that the Final Order has been stayed or that Dr. Everett's medical license has been reinstated. Therefore, the Deputy Administrator finds that Dr. Everett is not currently authorized to practice medicine in the State of Florida. As a result, it is reasonable to infer that he is also without authorization to handle controlled substances in that State.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances in the State in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Muttaiya Darmarajeh, M.D.*, 66 FR 52936 (2001); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Here, it is clear that Dr. Everett's medical license has been revoked and he is not licensed to handle controlled substances in the State of Florida, where he is registered with DEA. Therefore, he is not entitled to a DEA registration in that State.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 828 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BE4443064, issued to Steven Tyler Everett, MD., be, and it hereby is revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are denied. This order is effective November 22, 2002.

Dated: September 30, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–26966 Filed 10–22–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Samuel Silas Jackson, D.D.S.; Revocation of Registration

On March 5, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Samuel Silas Jackson, D.D.S. of Nashville, Tennessee, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BJ5820558 under 21 U.S.C. 824(a)(2), (a)(3), and (a)(4), and deny any pending applications for renewal or modification of that registration for reason that Dr. Jackson was convicted of a felony offense related to controlled substances, is not authorized to handle controlled substances in the State of Tennessee, and his continued registration would be inconsistent with the public interest. The order also notified Dr. Jackson that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Jackson at his registered location in Nashville, Tennessee, and DEA received a signed receipt indicating that it was received on March 11, 2002. A second copy of the Order to Show Cause was sent by certified mail to Dr. Jackson at a location in Forrest City, Arkansas. DEA again received a signed receipt indicating that the Order to Show Cause was received on behalf of Dr. Jackson. DEA has not received a request for hearing or any other reply from Dr. Jackson or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Jackson is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that on January 24, 2002, Dr. Jackson entered into an Agreed Order of Revocation with the Tennessee Department of Health, Board of Dentistry (the Board). As the caption of the order suggests, Dr. Jackson agreed to the revocation of his state license to practice dentistry. The Board found, *inter alia*, that Dr. Jackson entered into a conspiracy with a known drug trafficker/federal fugitive and with a confidential informant with the Drug Enforcement Administration; and that Dr. Jackson conspired with others to perform dental work and arrange for plastic surgery in California for two fugitives. These actions by Dr. Jackson were carried out for the purpose of altering the fugitives' dental records and physical appearance, and to aid their avoiding identification and apprehension by law enforcement officers. The Board also found that on or about March 16, 2000, Dr. Jackson entered a guilty plea in the United States District Court for the Middle District of Tennessee to one felony count of conspiracy to be an accessory after the fact, in violation of 18 U.S.C. 371 and 373.

There is no evidence in the record that Dr. Jackson's license to medicine in the State of Tennessee has been reinstated. Therefore, the Deputy Administrator finds that since Dr. Jackson is not currently authorized to practice medicine in the State of Tennessee, it is reasonable to infer that he is not authorized to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Joseph Thomas Allevi, M.D.*, 67 FR 35581 (2002); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Here, it is clear that Dr. Jackson is not licensed to handle controlled substances in Tennessee, where he is registered with DEA. Therefore, he is not entitled to maintain that registration. Because Dr. Jackson is not entitled to a DEA registration in Tennessee due to his lack of state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address whether Dr. Jackson's registration should be revoked based upon the other grounds asserted in the Order to Show Cause. *See Nathaniel-Aikens-Afful, M.D.*, 62 FR 16871 (1997).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823

and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BJ5820558, issued to Samuel Silas Jackson, D.D.S., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective November 22, 2002.

Dated: October 1, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–25967 Filed 10–22–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP)–1364]

Office of Juvenile Justice and Delinquency Prevention: Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is announcing the meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention. The purpose of this meeting is for the Council to discuss its goals and priorities for Fiscal Year 2003, review the Annual Report to Congress, and be briefed on the impact of marijuana on youth.

This meeting will be open to the public. Members of the public who wish to attend the meeting should notify the Juvenile Justice Resource Center, at 301–519–6473 (this is not a toll-free number) by 5 p.m., ET, on Friday, November 1, 2002. For security purposes, photo identification will be required.

DATES: Friday, November 8, 2002, 10 a.m. to 1 p.m. (ET).

ADDRESSES: The meeting will take place at the U.S. Department of Justice, Office of Justice Programs, Main Conference Room, 3rd Floor, 810 Seventh Street NW., Washington, DC 20531.

Oral and Written Comments

Anyone who wishes to submit oral or written comments should contact Bob Hubbard, Designated Federal Official for the Coordinating Council on Juvenile Justice and Delinquency Prevention, OJJDP, 810 Seventh Street, NW., Washington DC 20531; Telephone: 202–616–3567 (This is not a toll-free number); Fax: 202–307–2093; E-mail: *hubbard@ojp.usdoj.gov*. Requests for the opportunity to present oral comments at the meeting must be made in writing to Bob Hubbard and be received no later than 12 noon, Eastern Time, on Friday, November 1, 2002.

Public statements presented at the meeting should not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total of 10 minutes.

Written comments (at least 20 copies) may be mailed to the Office of Juvenile Justice and Delinquency Prevention, 810 7th Street NW., Washington, DC 20531, by October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting should contact Daryel Dunston, Program Manager, Juvenile Justice Resource Center, at 301–519–6473. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Coordinating Council on Juvenile Justice and Delinquency Prevention, established pursuant to section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. Sec. 5601 *et seq.*). Documents such as meeting announcements, agendas, minutes, and interim and final reports will be available on the Council's Web page at *ojjdp.ncjrs.org/council/index.html*.

Dated: October 16, 2002.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 02–26881 Filed 10–22–02; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewal

The NSF management officials having responsibility for the Oversight Council for the International Arctic Research Center (#9535) have determined that renewing this group for another year is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation, by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Service Administration.

For more information contact Susanne Bolton at (703) 292–7488.

Dated: October 18, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–26981 Filed 10–22–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (1755).

Dates: November 6–8, 2002.

Time:

10 a.m.–5:30 p.m. Wednesday, November 6, 2002.

8:30 a.m.–5:30 p.m. Thursday, November 7, 2002.

8:30 a.m.–3 p.m. Friday, November 8, 2002.

Place: National Science Foundation, Stafford II, 4121 Wilson Boulevard, Suite 555 Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Thomas Spence, Directorate for Geosciences, National Science Foundation, Suite 705, 4101 Wilson Boulevard, Arlington, Virginia 22230, Phone 703–292–8500.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

Agenda:

Day 1: Education and Diversity Subcommittee Meeting, Division Subcommittee Meetings.

Day 2: Directorate activities and plans, Cross-directorate programs.

Day 3: Communications and Information Exchange, Priority areas, GPRA.

Dated: October 15, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–26982 Filed 10–22–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–27]

BWX Technologies, Inc.

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of receipt of request from BWX Technologies, Inc. (BWXT), to amend Special Nuclear Material License SNM–42 to approve Industrial Waste Landfill No. 1, Decommissioning Plan and Final Status Survey Plan. The NRC is providing a notice of an opportunity for a hearing.

SUMMARY: Notice is hereby given that the NRC has received, by letter dated June 11, 2002, a request from BWXT to amend its NRC Special Nuclear Material License SNM–42, to approve BWXT's Industrial Waste Landfill No. 1, Decommissioning Plan and Final Status Survey Plan (ADAMS Accession Number ML021690397). The NRC is providing a notice of an opportunity for a hearing.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Olivier, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8A33, Washington, DC 20555. Telephone (301) 415–8098.

SUPPLEMENTARY INFORMATION: By its submittal dated June 11, 2002, BWXT requested that the NRC amend Special Nuclear Materials License SNM–42 to approve BWXT's Industrial Waste Landfill No. 1, Decommissioning Plan and Final Status Survey Plan.

From 1972 until 1990, BWXT operated two industrial waste landfills at its Nuclear Products Division site. The first landfill was used from 1972 until 1976. The second landfill was used in two sections. The first section operated from 1977 until 1988; the second section operated from 1989 until 1990. Use of the landfills was discontinued after June 1990, because the filter cake material was found to contain low levels of radioactive contamination.

Both landfills were operated in a relatively similar manner. Filter cake material was placed in a series of parallel trenches. Each trench was excavated; sludge material was transported to the trench at one end and dumped by roto-hopper in piles until this area within the trench was full. Successive piles of filter cake material placed in the trenches were mounded above ground level. The volume of the filter cake placed in the trenches was reduced by approximately 30% after allowing it to dry, resulting in the mound above ground settling below grade. Excavated material from the trench was used as a cover of top soil approximately two feet in depth. The surface was then allowed to vegetate naturally.

The Decommissioning Plan and Final Status Survey Plan for Industrial Waste Landfill No. 1 were developed in accordance with 10 CFR 70.38 "Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas" and in response to a NRC letter dated February 26, 2001. Regulatory Guide 3.65, "Standard Format and Content of Decommissioning Plans for Licensees Under 10 CFR parts 30, 40, and 70" (NRC 1989), and draft NUREG/CR5849, "Manual for Conducting Radiological Surveys in Support of License Termination" (NRC 1992) were used in the development of the Decommissioning Plan and Final Status Survey Plan for Industrial Waste Landfill No. 1. BWXT's objective is to:

1. Demonstrate through characterization of the landfill, or portions thereof, that the average contamination levels meet the criteria of Option 1 of NRC's 1981 Branch Technical Position. (See 46 FR 52061, October 23, 1981).

OR

2. Demonstrate through characterization of the landfill that the average contamination levels, the characteristics of the material buried, and the site characteristics, meet the criteria of Option 2 to NRC's 1981 Branch Technical position. For those areas decommissioned under Option 2, capping of the landfill will be necessary to assure the minimum burial depth.

BWXT's June 11, 2002, request will be reviewed by the NRC staff using NUREG–1520, "Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility," and NUREG–1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs."

The amendment application is available for public inspection and copying at the NRC Public Document Room, U.S. Nuclear Regulatory Commission Headquarters, Room 0–1F21, 11555 Rockville Pike, Rockville, MD 20852.

Notice of Opportunity for Hearing

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The licensee, BWX Technologies, Inc., Nuclear Products Division, PO Box 785, Lynchburg, VA 24505–0785, Attention Mr. Carl Yates, Licensing Officer, and

(2) The NRC staff, by delivery to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to Michael Lesar, Chief, Rules Review and Directives Branch, Division of Administration Services, Office of

Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Dated in Rockville, Maryland, this 17th day of October, 2002.

For the U.S. Nuclear Regulatory Commission.

Eric J. Leeds,

Deputy Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–26983 Filed 10–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on October 28, 2002. The meeting will take place at the address provided below. All sessions of the meeting will be open to the public with the exception of the first session, which will be closed for a security briefing and to conduct administrative business related to internal personnel rules and/or practices of ACMUI members. Topics of discussion in the public session will include: (1) Status of the implementation of the revised title 10, Code of Federal Regulations, part 35; (2) Status of NUREG 1556, Vol. 9 (Consolidated Guidance About Materials Licensees: Program-Specific Guidance About Licenses of Broad Scope); (3) Status: ACMUI Subcommittee's training and experience recommendations as they pertain to the revised title 10 Code of Federal Regulations, part 35; and, (4) Discussion of the National Materials Program report.

DATES: The public meeting will be held on Monday October 28, 2002, from 10 a.m. to 5 p.m. The closed session will be held from 8 a.m. to 9:45 a.m on October 28.

ADDRESSES: U.S. Nuclear Regulatory Commission, Two White Flint North Building, Conference Room T2B3, 11545 Rockville Pike, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: Angela R. Williamson, telephone (301) 415–5030; e-mail *arw@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Conduct of the Meeting

Manuel D. Cerqueira, M.D., will chair the meeting. Dr. Cerqueira will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Angela Williamson, U.S. Nuclear Regulatory Commission, Two White Flint North, Mail Stop T8F5, Washington, DC 20555–0001. Submittals must be postmarked by October 24, 2002, and must pertain to the topics on the agenda for the meeting.

2. Questions from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection on NRC's web site (*www.nrc.gov*) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about December 3, 2002. Minutes of the meeting will be available on or about January 7, 2003.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in title 10, *U.S. Code of Federal Regulations*, part 7.

Dated: October 17, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–27003 Filed 10–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Plant Operations; Notice of Meeting

The ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Plant Operations will hold a joint meeting on November 1, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, November 1, 2002—8:30 a.m. until the conclusion of business.

The joint Subcommittees will be briefed by the staff on progress related to two risk-informed regulatory programs under the scope of the Reactor Oversight Program (ROP), namely: (a) efforts to develop risk-informed improvements to the technical specifications, and (b) progress related to the Industry Trends Program (ITP) index for initiating events. This joint Subcommittee meeting is a follow-up to a prior briefing on the ROP at the 493rd meeting of the ACRS on June 6, 2002. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify one of the staff engineers named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding these matters.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Ms. Maggalean W. Weston (telephone: 301–415–3151) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: October 17, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–26997 Filed 10–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Safeguards and Security; Notice of Meeting

The ACRS Subcommittee on Safeguards and Security will hold a closed meeting on October 31, 2002, NRC Auditorium, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be closed to public attendance to protect information classified as national security information pursuant to 5 U.S.C. 552b(c)(1).

The agenda for the subject meeting shall be as follows:

Thursday, October 31, 2002—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss the NRC's ongoing work on the evaluation of NRC license facilities for safeguards and security vulnerabilities. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Further information contact: Dr. Richard P. Savio (telephone 301/415–7363) between 7:30 a.m. and 4:15 p.m. (EDT).

Dated: October 17, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–26998 Filed 10–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Safety Research Program; Notice of Meeting

The ACRS Subcommittee on Safety Research Program will hold a meeting on November 6, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, November 6, 2002—8:30 a.m. until the conclusion of business.

The Subcommittee will review the NRC safety research program and prepare a draft of the ACRS Annual Research Report to the Commission. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Dr. Richard P. Savio (telephone 301/415–7363) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the proposed agenda.

Dated: October 17, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–26999 Filed 10–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on November 12–14, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of portions that will be closed to discuss Framatome ANP-Richland proprietary information per 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, November 12, 2002—1 p.m. until the conclusion of business.

The Subcommittee will discuss the status of the Office of Nuclear Regulatory Research Rod Bundle Heat Transfer Program experiments being conducted at Pennsylvania State University.

Wednesday and Thursday, November 13–14, 2002—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the Framatome ANP-Richland S–RELAP5 realistic thermal-hydraulic code version and its application to large-break LOCA analyses. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, Framatome ANP-Richland and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Mr. Paul A. Boehnert (telephone 301–415–8065) between 7:30 a.m. and 5 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: October 17, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–27000 Filed 10–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Thermal-Hydraulic Phenomena (GSI–189); Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena (GSI–189) will hold a meeting on November 5, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, November 5, 2002—8:30 a.m. until 12:30 p.m.

The purpose of this meeting is to discuss the results of additional analyses to quantify uncertainties to support the NRC Office of Nuclear Regulatory Research's proposed recommendation to resolve GSI–189, Susceptibility of Ice Condenser and Mark III Containments to Early Failure from Hydrogen Combustion During a Severe Accident. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301–415–3151) between 7:30 a.m. and 5 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: October 17, 2002.

Sher Bahadur,

Associate Director for Technical Support. ACRS/ACNW.

[FR Doc. 02–27001 Filed 10–22–02; 8:45 am]

BILLING CODE 7590—P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. (as shown in Attachment 1) EA–02–104]

Order Modifying Licenses (Effective Immediately)

In the Matter of All 10 CFR part 50 licensees who currently store or have near term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72.

I

The licensees identified in Attachment 1 to this Order have been issued a general license by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing storage of spent fuel in an independent spent fuel storage installation (ISFSI) in accordance with the Atomic Energy Act of 1954, 10 CFR part 50, and 10 CFR part 72. This Order is being issued to all licensees who currently store spent fuel or have identified near term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. Commission regulations at 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require these licensees to maintain safeguards contingency plan procedures in accordance with 10 CFR part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR 73.55.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 2[1] of this Order, on all licensees who currently store spent fuel or have identified near term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect pending notification from the Commission that a significant change in the threat environment has occurred, or the Commission determines that other changes are needed.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued advisories or on their own. It is also recognized that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the additional security measures implemented by the licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that the security measures must be embodied in an Order, consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat

[1] Attachment 2 contains SAFEGUARDS information and will not be released to the public.

environment, all general licenses issued pursuant to 10 CFR 72.210 to the licensees identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that in the circumstances described above, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 72 and 73, it is hereby ordered, effective immediately, that all general licenses identified in Attachment 1 to this Order are modified as follows:

A. All licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the licensee's security plan. The licensees shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by April 16, 2003, or the first day that spent fuel is initially placed in the ISFSI, whichever is later.

B.1. All licensees shall, within 20 days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensees' justification for seeking relief from or variation of any specific requirement.

2. Any licensee that considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact the safe storage of spent fuel must notify the Commission, within 20 days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C.1. All licensees shall, within 20 days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 2.

2. All licensees shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding the provisions of 10 CFR 72.186, all measures implemented or actions taken in response to this Order shall be maintained pending notification from the Commission that a significant change in the threat environment has occurred, or the Commission determines that other changes are needed.

Licensee responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 72.4. In addition, licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

IV

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[2]

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

For the Nuclear Regulatory Commission.

[2] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714 (d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714 (d), please see 67 FR 20884; April 29, 2002.

Dated this 16th day of October, 2002.

Margaret V. Federline,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

Attachment 1—Address List

Oliver D. Kingsley, Jr., President and Chief Nuclear Officer, Dresden Nuclear Power Station, Docket No. 72–37, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555

Michael B. Sellman, President and CEO, Point Beach Nuclear Plant, Docket No. 72–5, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016

Michael B. Sellman, President and CEO, Palisades Plant, Docket No. 72–7, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016

Robert F. Saunders, President and Chief Nuclear Officer, Davis-Besse Nuclear Power Station, Docket No. 72–14, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308

Robert G. Byram, Senior Vice President & Chief Nuclear Officer, Susquehanna Steam Electric Station, Docket No. 72–28, PPL Susquehanna, LLC, 2 North Ninth Street, Allentown, PA 18101

Oliver D. Kingsley, Jr., President and Chief Nuclear Officer, Peach Bottom Atomic Power Station, Docket No. 72–29, Exelon Generation Company, 4300 Winfield Road, Warrenville, IL 60555

Michael S. Tuckman, Executive Vice President Nuclear Generation, Oconee Nuclear Station, Docket No. 72–40, Duke Energy Corporation, 526 South Church St, Mail Code EC 07 H, Charlotte, NC 28242

Michael S. Tuckman, Executive Vice President, Nuclear Generation, William B. McGuire Nuclear Station, Docket No. 72–38, Duke Energy Corporation, 526 South Church St, Mail Code EC 07 H, Charlotte, NC 28242

W.G. Hairston, III, President and Chief Executive Officer, Edwin I. Hatch Nuclear Plant, Docket No. 72–36, Southern Nuclear Operating Company, Inc., 40 Inverness Center Parkway, Birmingham, AL 35242

Gary J. Taylor, Senior Vice President and Chief Operating Officer, Arkansas Nuclear One, Docket No. 72–13, Entergy Operations Inc., 1340 Echelon Parkway, Jackson, MS 39213

Harold B. Ray, Executive Vice President, San Onofre Nuclear Generating Station, Docket No. 72–41, Southern California Edison, 8631 Rush Street, Rosemead, CA 91770

James M. Levine, Executive Vice President and Chief Operating Officer, Palo Verde Nuclear Generating Station, Docket No. 72–44, Arizona Public Service Company, 400 North 5th Street, MS 9046, Phoenix, AZ 85004

J.V. Parrish, Chief Executive Officer, Columbia Generating Station, Docket No. 72–35, Energy Northwest, MD 1023, Snake River Warehouse, North Power Plant Loop, Richland, WA 99352

Michael B. Sellman, President and Chief Executive Officer, Duane Arnold Energy Center, Docket No. 72–32, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016

Robert A. Fenech, Senior Vice President, Nuclear, Fossil, and Hydro Operations, Big Rock Point Nuclear Plant, Docket No. 72–43, Consumers Energy Company, 212 West Michigan Avenue, Jackson, MI 49201

Michael Kansler, Senior Vice President and Chief Operating Officer, James A. Fitzpatrick Nuclear Power Plant, Docket No. 72–12, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601

Russell A. Mellor, President, Yankee Nuclear Power Station, Docket No. 72–31, Yankee Atomic Electric Company, 19 Midstate Drive, Suite 200, Auburn, MA 01501

Michael J. Meisner, Chief Nuclear Officer, Maine Yankee Atomic Power Station, Docket No. 72–30, Maine Yankee Atomic Power Company, 321 Old Ferry Road, Wiscasset, ME 04578–4922

K. J. Heider, Vice President—Operations and Decommissioning, Haddam Neck Plant, Connecticut Yankee Atomic Power Co., Docket No. 72–39, 362 Injun Hollow Road, East Hampton, CT 06424–3099

Oliver D. Kingsley, Jr. President and Chief Nuclear Officer, Oyster Creek Nuclear Generating Station, Docket No. 72–15, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555

John A. Scalice, Chief Nuclear Officer and Executive Vice President, Sequoyah Nuclear Plant, Docket No. 72–34, Tennessee Valley Authority, 6A Lookout Place, 1101 Market Street, Chattanooga, TN 37402–2801

W.G. Hairston, III, President and Chief Executive Officer, Joseph M. Farley Nuclear Plant, Docket No. 72–42, Southern Nuclear Operating Company, Inc., 40 Inverness Center Parkway, Birmingham, AL 35242

[FR Doc. 02–26986 Filed 10–22–02; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. (as shown in Attachment 1) EA–02–104]

Order Modifying Licenses (Effective Immediately)

In the matter of: all 10 CFR part 72 licensees who currently store or have near term plans to store spent fuel in an ISFSI under the specific license provisions of 10 CFR part 72.

I

The licensees identified in Attachment 1 to this Order have been issued a specific license by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing storage of spent fuel in an independent spent fuel storage installation (ISFSI) in accordance with the Atomic Energy Act of 1954, and 10 CFR part 72. This Order is being issued to all licensees who currently store spent fuel or have identified near term plans to store spent fuel in an ISFSI under the specific license provisions of 10 CFR part 72. Commission regulations at 10 CFR 72.184(b) require these licensees to maintain safeguards contingency plan procedures in accordance with 10 CFR part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR 73.51 or 73.55, as applicable.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 [1] of this Order, on all licensees who currently store spent fuel or have identified near term plans to store spent fuel in an ISFSI under the specific license provisions of 10 CFR part 72. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect pending notification from the Commission that a significant change in the threat environment has occurred, or the Commission determines that other changes are needed.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued advisories or on their own. It is also recognized that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the additional security measures implemented by the licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that the security measures must be embodied in an Order, consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all specific licenses issued pursuant to 10 CFR 72.40 to the licensees identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that in the circumstances described above, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 72 and 73, it is hereby ordered, effective immediately, that all specific licenses identified in Attachment 1 to this Order are modified as follows:

A. All licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the licensee's security plan. The licensees shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by April 16, 2003, or the first day that spent fuel is initially placed in the ISFSI, whichever is later.

B.1. All licensees shall, within 20 days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensees' justification for seeking relief from or variation of any specific requirement.

2. Any licensee that considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact the safe storage of spent fuel must notify the Commission, within 20 days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C.1. All licensees shall, within 20 days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 2.

2. All licensees shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding the provisions of 10 CFR 72.186, all measures implemented or actions taken in response to this Order shall be maintained pending notification from the Commission that a significant change in the threat environment has occurred, or the Commission determines that other changes are needed.

Licensee responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 72.4. In addition, licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

IV

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either

[1] Attachment 2 contains SAFEGUARDS information and will not be released to the public.

by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[2]

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

For the Nuclear Regulatory Commission.

Dated this 16th day of October, 2002.

Margaret V. Federline,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

Attachment 1—Address List

Steve Redeker, Manager, Plant Closure & Decommissioning, Rancho Seco, Docket No. 72–11, Sacramento Municipal Utility District, 14440 Twin Cities Road, Herald, CA 95638

Stephen M. Quennoz, Vice President Power Supply/Generation, Trojan Nuclear Plant, Docket No. 72–17, Portland General Electric Company, 121 South West Salmon Street, Portland, OR 97204

Mr. Warren Bergholz, Acting Manager, Idaho Operations Office, Docket Nos. 72–9 and 72–20, U.S. Department of Energy, 850 Energy Drive, Idaho Falls, ID 83401

Michael B. Sellman, President and CEO, Prairie Island Nuclear Generating Plant, Docket No. 72–10, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016

Charles Cruse, Vice President—Nuclear Energy, Calvert Cliffs Nuclear Power Plant, Docket No. 72–8, Constellation Energy Group, Inc., 1650 Calvert Cliffs Pkwy, Office 2–OTF, Lusby, MD 20657

David Christian, Sr. Vice President Nuclear and Chief Nuclear Officer, North Anna Power Station, Docket No. 72–16, Virginia Electric & Power Company, 5000 Dominion Blvd., Glen Allen, VA 23060–6711

David Christian, Sr. Vice President Nuclear and, Chief Nuclear Officer, Surry Power Station, Docket No. 72–2, Virginia Electric & Power Company, 5000 Dominion Blvd., Glen Allen, VA 23060–7611

C.S. (Scotty) Hinnant, Senior Vice President and Chief Nuclear Officer, H.B. Robinson Steam Electric Plant, Docket No. 72–3, Progress Energy, Inc., 410 South Wilmington St., Raleigh, NC 27601

Michael S. Tuckman, Executive Vice President Nuclear Generation, Oconee Nuclear Station, Docket No. 72–4, Duke Energy Corporation, 526 South Church St, Mail Code EC 07 H, Charlotte, NC 28242

[FR Doc. 02–26987 Filed 10–22–02; 8:45 am]

BILLING CODE 7590–01–P

[2] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884, April 29, 2002.

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Office of Science and Technology Policy

AGENCY: Office of Science and Technology Policy.

ACTION: Notice of availability.

SUMMARY: The Office of Science and Technology Policy (OSTP) has finalized its Information Quality Guidelines, which describe OSTP's pre-dissemination information quality control and an administrative mechanism for requests for correction of information publicly disseminated by OSTP. The final Information Quality Guidelines are posted on OSTP's web site, *http://www.ostp.gov*.

DATES: OSTP's pre-dissemination review applies to information that OSTP first disseminates on or after October 1, 2002. OSTP's administrative mechanism for correcting information that OSTP disseminates applies to information that OSTP disseminates on or after October 1, 2002, regardless of when OSTP first disseminated the information.

FOR FURTHER INFORMATION CONTACT: Stan Sokul, Office of Science and Technology Policy, Washington, DC 20502. Telephone: (202) 456–7116.

SUPPLEMENTARY INFORMATION: Pursuant to prior Office of Management and Budget (OMB) guidance, on May 1, 2002, OSTP posted an initial draft of these guidelines on its web site, and published a Notice of their availability in the **Federal Register** seeking public comment by June 14, 2002. OSTP submitted draft guidelines to OMB on August 1, 2002, and revised draft guidelines again on September 24, 2002. These final guidelines reflect the results of the OMB review process.

In response to OSTP's **Federal Register** Notice, two public comments were received, from the Competitive Enterprise Institute (CEI) and the Center for Regulatory Effectiveness (CRE). Both public comments consisted of identical commentary on federal agency compliance with the Data Quality Act generally. In addition, the CRE comment enclosed a legal opinion stating that no agency dissemination of information should be excluded from the Data Quality Act (*i.e.*, challenging any exclusions to the definition of "information"), and the CEI comment included an argument why OSTP should cease disseminating the National Assessment on Climate Change. OSTP also received a June 10, 2002, and a September 5, 2002, "Memorandum for President's Management Council" from OMB. These OMB Memoranda provided agencies with additional guidance on designing information quality guidelines.

OSTP modified its May 1, 2002, draft guidelines in several respects in response to the OMB Memoranda and in response to OSTP–OMB discussions as part of OMB's review of OSTP's draft guidelines, but made no alterations in response to the public comments. While in many instances the OSTP guidelines conformed to the CRE/CEI commentary or the commentary was not applicable, in several instances the CRE/CEI commentary did challenge OMB guidelines that OSTP had followed. OSTP interprets the statute, however, as giving OMB broad discretion in providing guidance under the Data Quality Act to federal agencies, so OSTP did not alter its own guidelines to deviate from OMB's guidance. A summary of significant amendments to OSTP's initial draft guidelines follows, in order of the text:

A new paragraph 2 was added to section I, to clarify that OSTP will treat information quality as integral to every step of the information creation, collection, maintenance and dissemination processes.

Paragraph 12 of section II(B) was modified to state that when reviewing the quality of information being prepared by other agencies (*e.g.*, when OSTP coordinates an inter-agency drafting process), OSTP may request that the agencies certify in writing that the information they are providing complies with their own pre-dissemination review processes and that, upon such certification, OSTP can presume such information complies with the Data Quality Act and OMB's guidelines.

Paragraph 1 of section III(A), involving correction requests, was modified to state that OSTP's failure to comply with its own or OMB's information quality guidelines can form the basis of a complaint.

Paragraph 2 of section III(A) was modified to delete any specific timeliness requirements.

Paragraph 3 of section III(A) was modified to require a complaint to reference OSTP's or OMB's information quality guidelines as well as the information alleged to be incorrect.

Paragraph 7 of section III(A) was modified to clarify that requestors bear the burden of proof with respect to the necessity of a correction and the type of correction to be made.

A new subsection C, Rulemaking and Other Public Comment Procedures, was added to section III, to clarify the circumstances under which OSTP would make corrections during a notice and comment proceeding prior to final agency action in that proceeding.

In section V, Definitions, paragraph 2(f) was modified to clarify that information contained in testimony before the courts, administrative bodies or Congress is excluded from the definition of "information" only to the extent that the information contained in such testimony was already previously disseminated. Paragraph 3 was similarly modified with respect to information contained in press releases.

Paragraph 6(b)(ii)(A) of section V was modified to clarify that reproducibility of original and supporting data will be assured according to commonly accepted scientific, financial, or statistical standards.

Dated: October 16, 2002.

Barbara Ann Ferguson,

Assistant Director for Budget and Administration, Office of Science and Technology Policy.

[FR Doc. 02–26899 Filed 10–22–02; 8:45 am]

BILLING CODE 3170–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46668; File No. 10–132]

Acknowledgement of Receipt of Notice of Registration as a National Securities Exchange Pursuant to Section 6(g) of the Securities Exchange Act of 1934 by the Chicago Mercantile Exchange Inc.

October 16, 2002.

Section 6(g) of the Securities Exchange Act of 1934 ("Exchange Act")[1] provides that an exchange may register as a national securities exchange solely for the purposes of trading security futures products by filing a written notice with the Securities and Exchange Commission ("Commission") if such exchange is designated as a contract market by the Commodity Futures Trading Commission or registered as a derivative transaction execution facility under section 5a of the Commodity Exchange Act.[2] Rule 6a–4 under the Exchange Act[3] requires that such an exchange submit written notice of registration to the Commission on Form 1–N.[4] An exchange's registration as a national securities exchange becomes effective contemporaneously with the submission of the written notice on Form 1–N.[5]

On August 29, 2002, the Chicago Mercantile Exchange Inc. ("CME") filed a Form 1–N with the Commission.[6] Pursuant to section 6(g)(3) of the Exchange Act,[7] the Commission hereby acknowledges receipt of the Form 1–N, as amended, submitted by CME. Copies of the Form 1–N submitted by CME, including all exhibits, are available in the Commission's Public Reference Room, File No. 10–132.

For questions regarding this Release, contact: Theodore Lazo, Senior Special Counsel at (202) 942–0745, or Jennifer Colihan, Special Counsel at (202) 942–0735; Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26884 Filed 10–22–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78f(g).

[2] 7 U.S.C. 7a.

[3] 17 CFR 240.6a–4.

[4] Upon receipt of a Form 1–N, the Division of Market Regulation examines the notice to determine whether all necessary information has been supplied and whether all other required documents have been furnished in proper form. Exchange Act Rule 202.3(b)(3), 17 CFR 202.3(b)(3).

[5] Section 6(g)(2)(B) of the Exchange Act.

[6] CME provided the Commission with an initial Form 1–N on December 29, 2001. On August 29, 2002, CME filed an amendment to its Form 1–N to complete the required exhibits.

[7] 15 U.S.C. 78f(g)(3).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–01185]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Chicago Stock Exchange, Inc. (General Mills, Inc., Common Stock, $.10 Par Value)

October 17, 2002.

General Mills, Inc., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.10 par value ("Security"), from listing and registration on the Chicago Stock Exchange, Inc. ("CHX" or "Exchange").

The Issuer states in its application that it has met the complied with the requirements of the CHX Article XXVIII, Rule 4, by complying with Exchange's rules governing an issuer's voluntary withdrawal of a security from listing and registration. In making the decision to withdraw the Security from listing and registration on the CHX, the Issuer considered the annual volume of its Security trading on the Exhange, and the cost and expenses to maintain a dual listing of its Security on the New York Stock Exchange, Inc. ("NYSE") and on the CHX. The Issuer states that the Security has traded on the NYSE since 1928.

The Issuer's application relates solely to the withdrawal of the Security from listing on the CHX and shall have no affect upon the Security's continued listing and registration on the NYSE under Section 12(b) of the Act.[3]

Any interested person may, on or before November 7, 2002, submit by

[1] 15 U.S.C. 78l(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78l(b).

letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the CHX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–26931 Filed 10–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–13776]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (GreenMan Technologies, Inc., Common Stock, $.01 Par Value) From the Boston Stock Exchange, Inc.

October 17, 2002.

GreenMan Technologies, Inc., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value ("Security"), from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The Issuer stated in its application that it has complied with the Rules of the BSE that govern the removal of securities from listing and registration on the Exchange. In making the decision to withdraw the Security from listing and registration on the BSE, the Issuer states that the Security began trading on the American Stock Exchange LLC ("Amex") on September 20, 2002, and that during the last seven years, there has been no trading activity in the Security on the BSE.

The Issuer's application relates solely to the Security's withdrawal from listing on the BSE and shall not affect its listing on the Amex or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before November 7, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–26928 Filed 10–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46670; File No. 10–134]

Acknowledgement of Receipt of Notice of Registration as a National Securities Exchange Pursuant to Section 6(g) of the Securities Exchange Act of 1934 by the Nasdaq Liffe Markets, LLC.

October 16, 2002.

Section 6(g) of the Securities Exchange Act of 1934 ("Exchange Act")[1] provides that an exchange may register as a national securities exchange solely for the purposes of trading security futures products by filing a written notice with the Securities and Exchange Commission ("Commission") if such exchange is designated as a contract market by the Commodity Futures Trading Commission or registered as a derivative transaction execution facility under section 5a of the Commodity Exchange Act.[2] Rule 6a–4 under the Exchange Act[3] requires that such an exchange submit written notice of registration to the Commission on Form 1–N.[4] An exchange's registration as a national securities exchange becomes effective contemporaneously with the submission of the written notice on Form 1–N.[5]

On August 26, 2002, the Nasdaq Liffe Markets, LLC ("NQLX") filed a Form 1–N with the Commission. Pursuant to section 6(g)(3) of the Exchange Act,[6] the Commission hereby acknowledges receipt of the Form 1–N submitted by NQLX.[7] Copies of the Form 1–N submitted by NQLX, including all exhibits, are available in the Commission's Public Reference Room, File No. 10–134.

For questions regarding this Release, contact: Theodore Lazo, Senior Special Counsel at (202) 942–0745, or Jennifer Colihan, Special Counsel at (202) 942–0735; Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26886 Filed 10–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46669; File No. 10–133]

Acknowledgement of Receipt of Notice of Registration as a National Securities Exchange Pursuant to Section 6(g) of the Securities Exchange Act of 1934 by OneChicago, LLC

October 16, 2002.

Section 6(g) of the Securities Exchange Act of 1934 ("Exchange Act")[1] provides that an exchange may register as a national securities exchange solely for the purposes of trading security futures products by filing a written notice with the Securities and Exchange Commission ("Commission") if such exchange is designated as a contract market by the Commodity Futures Trading Commission or registered as a derivative transaction execution facility under section 5a of the Commodity Exchange Act.[2] Rule 6a–4 under the Exchange Act[3] requires that such an exchange submit written notice of registration to the Commission on Form 1–N.[4] An exchange's registration as a national securities exchange becomes effective contemporaneously with the submission of the written notice on Form 1–N.[5]

On August 22, 2002, OneChicago, LLC ("OneChicago") filed a Form 1–N with the Commission. Pursuant to section 6(g)(3) of the Exchange Act,[6] the Commission hereby acknowledges receipt of the Form 1–N submitted by OneChicago. Copies of the Form 1–N submitted by OneChicago, including all exhibits, are available in the Commission's Public Reference Room, File No. 10–133.

For questions regarding this Release, contact: Theodore Lazo, Senior Special Counsel at (202) 942–0745, or Jennifer Colihan, Special Counsel at (202) 942–0735; Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26885 Filed 10–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–16079]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC; (PracticeWorks, Inc., Common Stock, $.01 Par Value)

October 17, 2002.

PracticeWorks, Inc., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on August 13, 2002 to withdraw the Issuer's Security from listing on the Amex. The Issuer states that trading in the Security on the Nasdaq National Market commenced on October 1, 2002. The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before November 7, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–26930 Filed 10–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–14760]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (RAIT Investment Trust, Common Stock of Beneficial Interest, $.01 Per Share) From the American Stock Exchange LLC

October 17, 2002.

RAIT Investment Trust, a Maryland real estate investment trust ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock of Beneficial Interest, $.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on January 11, 2002 to withdraw the Issuer's Security from listing on the Amex. The Issuer states that the Security has traded on the New York Stock Exchange, Inc. ("NYSE") since January 2002. The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and shall not affect its listing on the NYSE or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before November 7, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–26929 Filed 10–22–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25772; 812–12518]

BLDRS Index Funds Trust, Series 1, *et al.*; Notice of Application

October 17, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under (a) section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 4(2), 14(a), 22(d), 24(d) and

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[1] 15 U.S.C. 78*l*(b).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 17 CFR 200.30–3(a)(1).
[5] 15 U.S.C. 78*l*(g).
[6] 17 CFR 200.30–3(a)(1).
[7] 15 U.S.C. 78*l*(d).
[8] 17 CFR 240.12d2–2(d).

[1] 15 U.S.C. 78*l*(b).
[2] 17 CFR 200.30–3(a)(1).
[3] 15 U.S.C. 78*l*(g).
[4] 17 CFR 240.6a–4.
[5] Upon receipt of a Form 1–N, the Division of Market Regulation examines the notice to determine whether all necessary information has been supplied and whether all other required documents have been furnished in proper form. Exchange Act Rule 202.3(b)(3), 17 CFR 202.3(b)(3).
[6] Section 6(g)(2)(B) of the Exchange Act.
[7] 15 U.S.C. 78*f*(g)(3).
[8] Commissioner Goldschmid did not participate in this matter.
[9] 15 U.S.C. 78*f*(g).
[10] 7 U.S.C. 7a.
[11] 17 CFR 240.6a–4.
[12] Upon receipt of a Form 1–N, the Division of Market Regulation examines the notice to determine whether all necessary information has been

26(a)(2)(C) of the Act and rule 22c–1 under the Act, (b) sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and (c) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Applicants: BLDRS Index Funds Trust, Series 1, 2, 3, 4, 5, 6 and 7 (the "Fund"), Nasdaq Financial Products Services, Inc. (together with its successors in interest,[1] and with any person, directly or indirectly, controlling, controlled by, or under common control with, Nasdaq Financial Products Services, Inc., "Sponsor"), and ALPS Distributors, Inc. ("Distributor").

Summary of Application: Applicants request an order that would permit the following: (a) The Fund, a unit investment trust ("UIT") with multiple series (each series, a "Trust") whose portfolios will consist of the component stocks of various specified indices (collectively, the "Benchmark Indices," and each, a "Benchmark Index"), to issue shares ("Trust Shares") that are only redeemable in Creation Unit aggregations (as defined below); (b) secondary market transactions in Trust Shares to occur at negotiated prices; (c) dealers to sell Trust Shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933 ("Securities Act"); (d) the Trust, rather than the Sponsor, to bear certain expenses associated with its creation and maintenance; (e) certain "affiliated persons" of the Trust to deposit securities into, and receive securities from, the Trust in connection with the purchase and redemption of Trust Shares; and (f) the Trust to reimburse the Sponsor for payment of an annual licensing fee to The Bank of New York ("BoNY"). The order also would exempt the Sponsor from the Act's requirement that it purchase, or place with others, $100,000 worth of Trust Shares.

Filing Dates: The application was filed on May 15, 2001, and amended on October 15, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 7, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o John L. Jacobs, Executive Vice President, The Nasdaq Stock Market, Inc., 1735 K Street, NW., Washington, DC 20006–1500.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Senior Counsel, or Michael W. Mundt, Senior Special Counsel, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. Each Trust is a unit investment trust that will be organized under the laws of the State of New York. Sponsor is a wholly owned subsidiary of The Nasdaq Stock Market, Inc. ("Nasdaq"). The Bank of New York ("BoNY") will act as trustee to the Trusts ("Trustee") pursuant to a trust agreement entered into by and between BoNY and the Sponsor (the "Trust Agreement"). Distributor is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and will serve, on an agency basis, as principal underwriter of the Trusts.

2. Each Trust will hold a portfolio of securities ("Portfolio Securities") consisting of substantially all of the securities in substantially the same weighting as the component securities of the Benchmark Index that it tracks (the "Index Securities"). There are seven initial Trusts. The Benchmark Indices for the seven initial Trusts (the "Initial Benchmark Indices") will be compiled by BoNY (the "BoNY Index Provider").[2] Pursuant to guidelines adopted by BoNY for the Index Provider, the BoNY personnel involved in compiling the Benchmark Indices cannot include any BoNY employees who are members of the BoNY division that provides trustee services to the Trusts, any broker-dealer affiliated with BoNY, BoNY's asset management division, or BoNY's private banking group.

3. In the future, applicants may offer additional Trusts based on other Benchmark Indices ("Future Trusts"). Any Future Trust will (a) be organized under New York state law pursuant to a trust agreement substantially identical to the Trust Agreement, (b) be sponsored by the Sponsor, and (c) comply with the terms and conditions of the requested order. No entity that creates, compiles, sponsors or maintains a Benchmark Index will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Sponsor, Distributor or promoter of the Trust.

4. Trust Shares, units of beneficial interest in the Trusts, are designed to provide investors with an instrument that closely tracks the Benchmark Indices, trades like a share of common stock, and pays periodic dividends proportionate to those paid by the Portfolio Securities held by the Trust.[3] The Trustee will make adjustments to the Portfolio Securities to reflect changes made by the BoNY Index Provider to the composition and weighting of the Index Securities.[4] All adjustments to the Portfolio Securities will be made by the Trustee as set forth in the Trust Agreement and will be non-discretionary. Applicants state that the Trustee, consistent with its fiduciary

[1] "Successors in interest" means any entity or entities that result from a reorganization into another jurisdiction, or a change in the type of business organization.

[2] The Initial Benchmark Indices are the (a) BoNY Asia 50 ADR Index, (b) BoNY Developed Markets 100 ADR Index, (c) BoNY Emerging Markets 50 ADR Index, (d) BoNY Europe 100 ADR Index, (e) BoNY Latin America 35 ADR Index, (f) BoNY International 100 Index, and (g) BoNY International Telecom 35 ADR Index. The Initial Benchmark Indices are sub-indices of the BoNY ADR Index, which is an index of all U.S. exchange-listed Depositary Receipts ("DRs"), subject to certain eligibility requirements. Applicants note that BoNY is a prominent participant in the DR market, and receives various fees and commissions in connection with its DR program functions. BoNY has informed applicants that the index compilation is bound by objective criteria, and that the identity of the depositary bank for a DR is never a criterion in the selection of Index Securities. As discussed in the application, BoNY represents that its DR sales efforts are not coordinated with the compilation of the Benchmark Indices.

[3] The Trusts will make quarterly distributions when dividends on the Portfolio Securities and other income of the Trust, if any, exceed fees and expenses accrued by the Trust during the previous quarter. The Trustee may vary the frequency of dividend distributions under certain circumstances.

[4] The BoNY Index Provider determines, comprises and calculates Benchmark Indices without regard to any Trust. BoNY has instituted formal firewall procedures to ensure that no BoNY personnel involved in providing trustee services to the Trusts have access to information regarding changes to the Benchmark Indices prior to their public announcement.

duties, may utilize a broker-dealer that is an "affiliated person," as defined in section 2(a)(3) of the Act, of the Trustee (each, an "Affiliated Broker-Dealer") in executing the transactions that are necessitated by the required adjustment(s). Applicants state that neither BoNY nor any Affiliated Broker-Dealer purchases or sells DRs on a principal basis, or intends to sell DRs or any other securities to any Trust on a principal basis. BoNY and its Affiliated Broker-Dealers would engage in transactions with a Trust on an agency basis only.[5]

5. Each Trust will pay the Trustee a fee ranging from 0.06% to 0.10% of the net asset value ("NAV") of the Trust on an annualized basis, such percentage to vary based on the NAV of the Trust. The Trustee in its discretion may waive all or any portion of such fee. Trust fees and expenses will be paid first out of income received by the Trust in the form of dividends and other distributions on Portfolio Securities.[6]

6. Pursuant to a license agreement ("License Agreement"), the BoNY Index Provider has granted Sponsor a license to use the Benchmark Indices and certain trademarks of BoNY. Sponsor will pay the BoNY Index Provider an annual licensing fee for each Benchmark Index and will seek reimbursement from each Trust for the fee charged in connection with its Benchmark Index. Sponsor will pay Distributor a flat annual fee for services provided to the Trusts. Sponsor will not seek reimbursement from any Trust for such payment without obtaining prior exemptive relief from the Commission.

7. Trust Shares will be issued in aggregations of 50,000 shares ("Creation Units"). The price of a Creation Unit for each of the initial Trusts will be approximately $2,500,000. Orders to purchase Creation Units generally must be delivered to the Distributor through a party that has executed a participant agreement with the Distributor and Trustee, and is either (a) a participant in the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC," and the NSCC process of placing orders, the "Trust Shares Clearing Process"), or (b) a Depository Trust Company ("DTC") participant.

8. An investor wishing to purchase a Creation Unit from the Trust will have to transfer to the Trustee a "Portfolio Deposit," consisting of the following: (a) A portfolio of securities substantially similar in composition and weighting to the Index Securities ("Deposit Securities"); (b) a cash payment equal to the dividends accrued on the Portfolio Securities since the last dividend payment on the Portfolio Securities, net of expenses and liabilities ("Income Net of Expense Amount"); and (c) a cash payment or credit to equalize any differences between the market value of the Deposit Securities and the NAV of the Trust on a per Creation Unit basis ("Balancing Amount," and together with the Income Net of Expense Amount, the "Cash Component").[7] The Sponsor, or its designee, will make available on each business day a list of the names and the required number of shares of each of the Deposit Securities in the current Portfolio Deposit, as well as the Income Net of Expense Amount, effective through and including the previous business day, per outstanding Trust Share.[8] The Sponsor will make available on the Exchange, every 15 seconds of each business day, the sum of the Income Net of Expense Amount and the value of the Deposit Securities, on a per Trust Share basis. An investor making a Portfolio Deposit will be charged a service fee ("Transaction Fee") to be paid to the Trustee to defray the Trustee's costs in processing transactions for the Trust.[9]

9. Orders to purchase Creation Units will be placed with the Distributor, who will be responsible for transmitting orders to the Trustee. The Distributor will issue confirmations of acceptance, issue delivery instructions to the Trustee to implement the delivery of Creation Units, and maintain records of the orders and the confirmations. The Distributor also will be responsible for delivering prospectuses to purchasers of Creation Units and may provide certain other administrative services.

10. Persons purchasing Creation Units from the Trust may hold the Trust Shares or sell some, or all, of them in the secondary market. Trust Shares will be listed either on a national securities exchange, as defined in section 2(a)(26) of the Act, or on the Nasdaq Stock Market, Inc. ("Nasdaq") with respect to National Market Securities as designated by Nasdaq pursuant to rule 11Aa3–1(6) under the Exchange Act, which is a subset of national market system securities, as defined by rule 11Aa2–1 under the Exchange Act (each, an "Exchange"). Trust Shares will be traded in the secondary market as individual units (*i.e.*, in less than Creation Unit aggregations) in the same manner as other equity securities. Trust Shares of the initial Trusts will be listed on Nasdaq. The price of each Trust Share that trades on Nasdaq will be based on the current bid-offer market. Applicants expect the price of the initial Trust Shares trading on Nasdaq to be approximately $50 per Trust Share. Transactions involving Trust Shares on Nasdaq will be subject to customary brokerage commissions and charges. Applicants expect that the price at which Trust Shares trade will be disciplined by arbitrage opportunities created by the continuous ability to purchase or redeem Creation Units at their NAV, which should ensure that Trust Shares will not trade at a material premium or discount in relation to their NAV.[10]

[5] BoNY has adopted firewall procedures that prohibit communications regarding changes or proposed changes to the Benchmark Indices between any Affiliated Broker-Dealer and the BoNY personnel involved in the compilation of the Benchmark Indices.

[6] Applicants expect that the income of the Trust may be insufficient to pay the fees and expenses of the Trust. In such circumstances, the Trustee will sell Portfolio Securities to generate sufficient cash to pay the Trust fees and expenses in excess of Trust income. The Trustee is ordinarily required to sell Portfolio Securities whenever the Trustee determines that accrued fees and expenses exceed dividends and other Trust accrued income on a projected basis by more than 0.01% of the NAV of the Trust.

[7] At the close of the market on each business day, the Trustee will calculate the NAV of each Trust, divide that amount by the total number of shares outstanding (yielding a "Per Trust Share NAV"), multiply the Per Trust Share NAV by the number of Trust Shares in a Creation Unit (*e.g.*, 50,000), thereby calculating the NAV per Creation Unit. The Trustee will then calculate the required number of shares of Index Securities and the Cash Component that will comprise a Portfolio Deposit for the following business day.

[8] The cash equivalent of an Index Security may be included in the Cash Component of a Portfolio Deposit in lieu of the Index Security if (a) the Trustee determines that an Index Security is likely to be unavailable or available in insufficient quantity for inclusion in a Portfolio Deposit, or (b) a particular investor is restricted from investing or engaging in transactions in the Index Security (for example, when the investor is a broker-dealer restricted by regulation or internal policy from investing in securities issued by a company on whose board of directors one of its principals serves or when the investor is a broker-dealer and the security is on its "restricted list").

[9] The Transaction Fee will be $10 per each security "name" (*i.e.*, each security identified by a separate CUSIP number) in the Portfolio Deposit, rounded to the nearest $500 per Participating Party (as defined below) per day, regardless of the number of Creation Units purchased by such Participating Party on such day. "Participating Party" means an NSCC participant who may place orders through the Trust Shares Clearing Process. The Transaction Fee may be changed by the Trustee with the Sponsor's consent, but will not exceed 0.20% of the value of a Creation Unit. Investors who purchase Creation Units outside the Trust Shares Clearing Process will pay the Transaction Fee plus an amount not to exceed three times the Transaction Fee. The amount of the Transaction Fee will be disclosed in the prospectus for the Trust.

[10] Applicants do not anticipate any special liquidity issues as to constituents in the Initial Benchmark Indices, in light of the fact that constituent DRs are selected based on liquidity that is high relative to DRs that would otherwise fit the relevant criteria. The constituent DRs of the Initial

Continued

11. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs, which could include institutional investors. Nasdaq market makers also may purchase Trust Shares in connection with their market making activities.[11] Applicants anticipate that several parties will act as market makers on Nasdaq, resulting in a highly efficient market for Trust Shares. Applicants expect that secondary market purchasers of Trust Shares will include both institutional and retail investors.[12]

12. Applicants will make available a standard Trust Shares product description ("Product Description") to members and member organizations of the relevant Exchange for distribution to investors purchasing Trust Shares in accordance with the Exchange's rules. The rules of the National Association of Securities Dealers ("NASD") require that NASD members distribute a Product Description to all purchasers of Trust Shares. The Product Description will provide a plain English overview of the relevant Trust, including the material risks and potential rewards of owning Trust Shares, and disclose the salient aspects of Trust Shares. The Product Description will advise investors that a prospectus for Trust Shares is available without charge upon request from the investor's broker or from the Distributor. Applicants believe that the volume of purchase transactions in which an investor will not receive a Product Description will not constitute a significant portion of the market activity in Trust Shares.

13. Trust Shares will not be individually redeemable, except upon termination of the Trust. Trust Shares will be redeemable in Creation Unit aggregations only. An investor redeeming a Creation Unit will receive a portfolio of securities typically identical in composition and weighting to the Deposit Securities as of the date the redemption request was made ("Redemption Securities"). The redeeming investor may receive the cash equivalent of an Index Security (a) when the Trustee determines that an Index Security is likely to be unavailable or available in insufficient quantity for delivery by the Trust, or (b) upon the request of the redeeming investor (because, for example, the redeeming investor is restricted by regulation or otherwise from holding an Index Security). The redeeming investor also may receive, or may pay, cash in an amount equal to the Cash Component in effect on the relevant business day for Portfolio Deposits ("Cash Redemption Amount"). The redeeming investor will pay a Transaction Fee, which will be calculated in the same manner as a Transaction Fee payable in connection with the purchase of a Creation Unit on the relevant business day.

14. Because each Trust will ordinarily redeem in kind, rather than in cash, the Trustee will not have to maintain cash reserves for redemptions. This will allow the assets of each Trust to be committed as fully as possible to tracking the relevant Benchmark Index, and allow each Trust to track the relevant Benchmark Index more closely than other market basket products that must allocate a portion of their assets to cash for redemptions.

Applicants' Legal Analysis

1. Applicants request an order under (a) section 6(c) of the Act granting an exemption from sections 2(a)(32), 4(2), 14(a), 22(d), 24(d) and 26(a)(2)(C) of the Act and rule 22c–1 under the Act, (b) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act, and (c) section 17(d) and rule 17d– 1 under the Act to permit certain joint transactions.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities, or transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Sections 4(2) and 2(a)(32) of the Act

3. Section 4(2) of the Act defines a UIT as an investment company that, among other things, issues only redeemable securities. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Trust Shares would not be individually redeemable, applicants request an order that would permit the Trust to register as a UIT and issue Trust Shares that are redeemable in Creation Units only. Applicants state that investors may purchase and redeem Trust Shares through the Trust in Creation Units. Applicants further state that, because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell individual Trust Shares in the secondary market at approximately NAV.

Section 14(a) of the Act

4. Section 14(a) of the Act provides, in pertinent part, that no registered investment company may make an initial public offering of its securities unless it has a net worth of at least $100,000, or provision is made in connection with the registration of its securities that (a) firm agreements to purchase $100,000 of its securities will have been made by not more than 25 persons, and (b) all proceeds, including sales loads, will be refunded to investors if the investment company's net worth is less than $100,000 within 90 days after the effective date of the registration statement. Applicants state that section 14(a) was designed to address the formation of undercapitalized investment companies.

5. Rule 14a–3 under the Act exempts from section 14(a) UITs that invest only in "eligible trust securities," which do not include equity securities, subject to certain safeguards, including the refund of any sales load collected from investors. Applicants will comply in all respects with rule 14a–3, except that the Trust will not restrict its investments to "eligible trust securities" and the Trustee will not refund the Transaction Fee. Applicants contend that the Trust's investment in equity securities does not negate the effectiveness of the rule's safeguards nor subject investors to any greater risk of loss due to investment in an undercapitalized investment company. With respect to the Transaction Fee, applicants assert that it is not a sales load in that it is not a profit-based amount representing compensation to the Sponsor, but rather reimbursement of settlement costs incurred by the Trustee in connection with Portfolio Deposits. Applicants note that the Transaction Fee will be paid not by retail investors, but by institutional and other well-capitalized investors who can afford the purchase price of a Creation Unit, who are more sophisticated, and who do not require the protections of section 14(a).

Section 22(d) of the Act and Rule 22c–1 Under the Act

6. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is being currently offered to the public by or through an underwriter, except at the current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV next computed after receipt of a tender of the security for redemption or of an order to purchase or sell the security. Applicants state that secondary market trading in Trust Shares will take place at negotiated prices, not at a current offering price described in the prospectus and not at a price based on NAV. Thus, purchases and sales of Trust Shares in the secondary market will not comply with section 22(d) and rule 22c–1, and applicants request an exemption from these provisions.

7. Applicants maintain that, while there is little legislative history regarding section 22(d), its provisions and those of rule 22c–1 appear to have been designed to (a) prevent dilution caused by certain riskless trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) assure an orderly distribution of shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price. Applicants believe that none of these purposes will be thwarted by permitting Trust Shares to trade in the secondary market at negotiated prices. Applicants state that secondary market trading in Trust Shares does not involve the Trust and cannot, therefore, result in dilution of Trust assets. Applicants also state that, to the extent different prices exist during a trading day, or from day to day, for Trust Shares, such variances occur as a result of third-party market forces, such as supply and demand, and not as a result of unjust or discriminatory manipulation. Therefore, applicants assert that secondary market transactions in Trust Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Trust Shares and their NAV remains narrow.

Section 24(d) of the Act

8. Section 24(d) of the Act provides, in pertinent part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by a UIT. Applicants request an exemption from section 24(d) to permit dealers in Trust Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.[13]

9. Applicants state that the secondary market for Trust Shares is significantly different from the typical secondary market for UIT securities, which is usually maintained by the sponsor of the UIT. Trust Shares will be listed on an Exchange and will be traded in a manner similar to the shares of common stock issued by operating companies and closed-end investment companies. Dealers selling shares of operating companies and closed-end investment companies in the secondary market are generally not required to deliver a prospectus to a purchaser.

10. Applicants contend that Trust Shares, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because Trust Shares will be exchange-listed, prospective investors will have access to several types of market information about the product. Applicants state that quotations, last sale price, and volume information will be continually available on a real-time basis through the consolidated tape and will be available throughout the day on broker's computer screens and other electronic services. The previous day's price and volume information also will be published in the financial section of newspapers. The Sponsor will publish daily, on a per Trust Share basis, the Income Net of Expense Amount. Applicants also provide that the Fund's Web site will contain quantitative information, updated on a daily basis, regarding the previous business day's NAV and the reported closing price. The Web site also will include for each Trust, a calculation of the premium or discount of the closing price against NAV and data, in chart format, displaying the frequency distribution of discounts and premiums of the closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

11. In addition, secondary market purchasers generally will receive the Product Description. Applicants state that, while the Product Description is not intended as a substitute for a prospectus, it will contain pertinent information about Trust Shares. Applicants also note that Trust Shares will be understandable to retail investors as a product that tracks the Benchmark Indices.

Section 26(a)(2)(C) of the Act

12. Section 26(a)(2)(C) of the Act requires, among other things, that a UIT's trust indenture prohibit payments to the trust's depositor (in the case of a Trust, the Sponsor), and any affiliated person of the depositor, except payments for performing certain administrative services. Applicants request an exemption from section 26(a)(2)(C) to permit any Trust to reimburse the Sponsor for certain licensing, registration, and marketing expenses.

13. Applicants state that, ordinarily, a sponsor of a UIT has an opportunity to profit in connection with the creation of a trust in two ways—through the difference between the acquisition cost of the securities and their value on the date of deposit in the trust and, to the extent a secondary market is maintained for units, through the imposition of sales charges on resales of units. Expenses normally incurred in the creation and maintenance of a trust can then be offset against such profits. Applicants assert, however, that under the proposed structure, the usual sources of income are not available because the Sponsor will not impose a sales load or deposit Index Securities

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Benchmark Indices are traded and priced on national securities exchanges and Nasdaq, as are the constituent securities of other indices on which exchange-traded funds investing in domestic securities are based. Accordingly, applicants believe that the pricing transparency for DRs should be equivalent to that of other securities that are traded and priced on national securities exchanges and Nasdaq. Because there are no apparent differences in the pricing transparency between DRs and such other equity securities, applicants believe that there will be no corresponding differences in, and no deleterious effects on, the arbitrage efficiency of the Trusts.

[11] The listing requirements established by Nasdaq require that at least two market makers be registered in Trust Shares in order for the Trust to maintain a listing on Nasdaq. Registered market makers must make a continuous two-sided market in a listing or face regulatory sanctions. No particular market maker will be contractually obligated to make a market in Trust Shares.

[12] Trust Shares will be registered in book-entry form only. DTC or its nominee will be the record owner of all outstanding Trust Shares. Beneficial ownership of Trust Shares will be shown on the records of DTC or its participants.

[13] Applicants are not seeking relief from the prospectus delivery requirement for non-secondary market transactions, including purchases of Creation Units or those involving an issuer. Applicants state that persons purchasing Creation Units will be cautioned in the prospectus that some activities on their part may, depending on the facts and circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent Trust Shares, and sells Trust Shares directly to its customers, or if it chooses to couple the purchase of a supply of new Trust Shares with an active selling effort involving solicitation of secondary market demand for Trust Shares. The prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The prospectus will also state that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Trust Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

into the Trust. Though the Trusts will be listed on Nasdaq (the parent company of Sponsor), which will receive trading fees in connection with the trading of Trust Shares on Nasdaq, the Sponsor will not be involved in the maintenance of a secondary market for Trust Shares. Applicants contend that motivation for the limitations imposed in section 26(a)(2)(C) of the Act was the fear that sponsors could take unfair advantage of a trust to profit, when profits were already being generated through sales charges and market gains (on the securities deposited by the sponsor). Applicants contend that in the proposed structure, no such opportunity to profit exists for Sponsor.

14. Applicants state that permitting a Trust to reimburse the Sponsor for the Trust's expenses, as discussed above, would be no more disadvantageous to the holders of Trust Shares than allowing the expenses to be imposed indirectly as offsets to sales loads and other charges, as is done by typical UITs. Applicants state that a Trust will pay the Sponsor only its actual out-of-pocket expenses. Finally, applicants state that the payment is capped at 30 basis points of the Trust's NAV on an annualized basis, with any expenses in excess of that amount to be absorbed by the Sponsor.

Section 17(a) of the Act

15. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from selling any security to or purchasing any security from, the investment company. Section 2(a)(3) defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person, and any person controlling, controlled by or under common control with the other person. Section 2(a)(9) provides that a control relationship will be presumed where one person owns 25% or more of another person's voting securities. Applicants state that, because the definition of "affiliated person" includes any person owning 5% or more, or more than 25%, of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be an affiliated person of the Trust so long as 20 or fewer Creation Units are in existence. Applicants request an exemption from section 17(a) under section 6(c) and 17(b) to permit persons that are affiliated persons solely by virtue of a 5% or more, or more than 25%, ownership interest in a Trust (or affiliated persons of such persons that are not otherwise affiliated with the Trusts) to purchase and redeem Creation Units through in-kind transactions.

16. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company and with the general provisions of the Act. Applicants assert that no useful purpose would be served by prohibiting the affiliated persons described above from making in-kind purchases and redemptions of Creation Units. The composition of a Portfolio Deposit made by a purchaser, like the Redemption Securities and Cash Redemption Amount given to a redeeming investor, will be the same regardless of the investor's identity, and will be valued under the same objective standards applied to valuing the Portfolio Securities in connection with determining the Trust's NAV. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the affiliated persons described above to effect a transaction detrimental to other holders of Trust Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Funds.

Section 17(d) of the Act and Rule 17d–1 Under the Act

17. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of, or principal underwriter for, a registered investment company, or any affiliated person of the affiliated person or the principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other arrangement or profit-sharing plan in which the investment company participates, unless an application regarding the joint transaction has been filed with the Commission and granted by order. Under rule 17d–1, in passing upon such applications, the Commission considers whether the participation of the registered investment company in the joint transaction is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different or less advantageous than that of other participants.

18. Section 2(a)(3)(F) of the Act defines an "affiliated person" of another person to include, in the case of an unincorporated investment company not having a board of directors, its depositor. Applicants state that the Sponsor may be deemed to be an affiliated person of a Trust because it will bear all aspects of the role of depositor in structuring and creating the Trust, other than that of actually depositing Portfolio Securities into the Trust.

19. Applicants request an order under rule 17d–1 that would permit a Trust to reimburse the Sponsor for the payment to the BoNY Index Provider of an annual license fee under the License Agreement. Applicants believe that relief is necessary because the Trust's undertaking to reimburse the Sponsor might be deemed a joint enterprise or other joint arrangement in which the Trust is a participant, in contravention of section 17(d) and rule 17d–1.

20. The License Agreement allows applicants to use the Benchmark Indices as bases for Trust Shares and to use certain of BoNY's trade name and trademark rights. Applicants believe that BoNY is a valuable name that is well-known to investors and believe that investors will desire to invest in instruments that closely mirror the Benchmark Indices. In view of this, applicants state that it is necessary to obtain from BoNY the License Agreement so that appropriate reference to BoNY may be made in materials describing Trust Shares and the Trust. Applicants assert that the terms and provisions of the License Agreement are comparable to the terms and provisions of other similar license agreements and that the annual license fee is for fair value, is in an amount comparable to that which would be charged by the BoNY Index Provider for similar arrangements, and is in an amount comparable to that charged by licensors in connection with the formation of other UITs based on other indices. For these reasons, applicants state that the proposed license fee arrangement satisfies the standards of section 17(d) and rule 17d–1.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a Future Trust by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless (a) applicants have requested and received with respect to such Future Trust, either exemptive relief from the Commission or a no action letter from the Division of Investment Management of the Commission, or (b) the Future Trust will be listed on an Exchange without the need for filing pursuant to rule 19b–4 under the Exchange Act.

2. The prospectus and the Product Description of each Trust will clearly disclose that, for purposes of the Act, Trust Shares are issued by that Trust and the acquisition of Trust Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

3. As long as a Trust operates in reliance on the requested order, the Trust Shares will be listed on an Exchange.

4. The Web site for the Trusts, which will be publicly accessible at no charge, will contain the following information, on a per Trust Share basis, for each Trust: (a) The prior business day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appfopriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Trust will state that the Web site for the Trusts has information about the premiums and discounts at which the Trust Shares have traded.

5. The prospectus and annual report for each Trust will also include: (a) the information listed in condition 4(b) above, (i) in the case of the prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable), and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Trust Share basis for one, five and ten year periods (or life of the Trust), (i) the cumulative total return and the average annual total return based on NAV and market price, and (ii) the cumulative total return of the relevant Benchmark Index.

6. Before a Trust may rely on the order, the Commission will have approved pursuant to rule 19b–4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in Trust Shares to deliver a Product Description to purchasers of Trust Shares.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26933 Filed 10–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46666; File No. SR–MSRB–2002–09]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of the Proposed Rule Change Relating to Arbitration

October 16, 2002.

On August 19, 2002, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–2002–09). The proposed rule change relates to MSRB Rule G–35, on arbitration.

The Commission published the proposed rule change for comment in the **Federal Register**, September 9, 2002.[3] The Commission did not receive any comment letters relating to the forgoing proposed rule change.

I. Description of the Proposed Rule Change

In 1997, the MSRB amended Rule G–35, on arbitration, to provide that it would not accept any new arbitration claims filed on or after January 1, 1998 (the "1997 amendments").[4] The MSRB noted that any customer or securities dealer with a claim, dispute or controversy against a broker, dealer or municipal securities dealer ("dealer") involving its municipal securities activities may submit that claim to the arbitration forum of any self-regulatory organization ("SRO") of which the dealer is a member, including the National Association of Securities Dealers, Inc. ("NASD"). Bank dealers, however, are unique in that they are subject to the MSRB's rules but are not members of any other SRO. Thus, it was necessary to provide an alternative arbitration forum for claims involving the municipal securities activities of bank dealers. The 1997 amendments accomplished this by providing that as of January 1, 1998 every bank dealer, as defined in Rule D–8,[5] shall be subject to the NASD's Code of Arbitration Procedure (the "NASD's Code") for every claim, dispute or controversy arising out of or in connection with the municipal securities activities of the bank dealer acting in its capacity as such. Furthermore, the 1997 amendments required that bank dealers abide by the NASD's Code as if they were "members" of the NASD for purposes of arbitration.

At the time of the 1997 amendments, the MSRB stated that it would "continue to operate its program in order to administer its current, open cases and any new claims received prior to January 1, 1998, but will discontinue administering its arbitration program when all such cases have been closed."[6] The MSRB further stated that, at such time, it would submit a filing to the Commission to delete sections 1 through 37 of Rule G–35, and rescind Rule A–16, on arbitration fees and deposits.[7] On May 14, 2002, the MSRB transferred its final, open arbitration case to the NASD. There are no further arbitration cases pending before the MSRB. Accordingly, the MSRB submitted the proposed rule change to delete sections 1 through 37 of Rule G–35, on arbitration, and to rescind Rule A–16, on arbitration fees and deposits. The proposed rule change also incorporates by reference into Rule G–35 changes to the NASD's Code.[8] The MSRB notes that any customer or securities dealer with a claim, dispute or controversy against a bank dealer involving its municipal securities activities may continue to submit that claim to the NASD's arbitration program.

As noted in the 1997 amendments, the MSRB deems it no longer appropriate to administer an arbitration program. All non-bank dealers engaged in municipal securities activities are members of the NASD, and the NASD's arbitration program is available to those dealers and their customers for any claim, dispute or controversy arising out of, or in connection with, the municipal securities activities of such dealers. The MSRB believes that the proposed rule change provides for the protection of investors and the public interest including those investors who wish to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–46440 (August 30, 2002), 67 FR 57255.

[4] File No. SR–MSRB–1997–04, *approved* in Release No. 34–39378 (Dec. 1, 1997).

[5] Rule D–8 defines "bank dealer" to mean a municipal securities dealer which is a bank or a separately identifiable department or division of a bank as defined in Rule G–1.

[6] File No. SR–MSRB–1997–04 at page 2.

[7] *Id.* at page 3.

[8] In April 2002, at the request of the SEC's Division of Market Regulation, the MSRB requested that, pursuant to section 36 of the Act and Rule 0–12 thereunder, the SEC grant an exemption from the requirements of section 19(b) of the Act and Rule 19b–4 thereunder to allow the MSRB to incorporate by reference into Rule G–35 any changes to the NASD's Code without requiring that the MSRB submit a separate filing for each such change. *See* letter from Diane G. Klinke, General Counsel, MSRB, to Jonathan G. Katz, Secretary, SEC, dated April 4, 2002.

pursue arbitration claims against bank dealers in connection with their municipal securities activities by ensuring that there is an arbitration forum available (*i.e.*, the NASD arbitration program) for such claims.

II. Summary of Comments

The Commission did not receive any comment letters addressing the MSRB's proposed rule change.

III. Discussion

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposal is consistent with the requirements set forth under the Act and the rules and regulations thereunder, which govern the MSRB.[9] The language of Section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[10]

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would continue to subject bank dealers to the NASD's Code of Arbitration Procedure in connection with their municipal securities activities. Non-bank dealers already are subject to the NASD's Code by virtue of being NASD members.

After careful review, the Commission finds that the MSRB's proposed rule change relating to Rule G–35, on arbitration, meets the requisite statutory standard. The Commission believes that this proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder. In addition, the Commission finds that the proposed rule is consistent with the requirements of section 15B(b)(2)(C) of the Act, as set forth above.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,[11] that the proposed rule change (File No. SR–MSRB–2002–09) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26887 Filed 10–22–02; 8:45 am]

BILLING CODE 8010–01–P

[9] Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78o–4(b)(2)(C).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

The Ticket To Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Meeting.

DATES: November 12, 2002, 10 a.m.–4:20 p.m.; November 13, 2002, 9 a.m.–5 p.m.; November 14, 2002, 9 a.m.–1:00 p.m.

ADDRESSES: Hyatt Regency Albuquerque, at Albuquerque Convention Center, 330 Tijeras NW., Albuquerque, NM 87102, (505) 842–1234, Fax: (505) 842–1184.

SUPPLEMENTARY INFORMATION:

Type of meeting: This is a quarterly meeting open to the public. The public is invited to participate by coming to the address listed above. Public comment will be taken during the quarterly meeting. The public is also invited to submit comments in writing on the implementation of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 at any time.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the President, the Congress and the Commissioner of the Social Security Administration on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings, hear presentations, conduct full Panel deliberations on the implementation of TWWIIA and receive public testimony. The focus of this meeting will be on marketing, public education, training and technical assistance activities in support of implementation of TWWIIA.

The Panel will meet in person commencing on Tuesday, November 12, 2002 from 10 a.m. to 4:20 p.m.; Wednesday, November 13, 2002 from 9 a.m. to 5 p.m.; and Thursday, November 14, 2002 from 9 a.m. to 1 p.m.

Agenda: The Panel will hold a quarterly meeting. Briefings, presentations, full Panel deliberations and other Panel business will be held Tuesday, Wednesday and Thursday, November 12, 13, and 14, 2002. Public testimony will be heard in person Tuesday, November 12, 2002 from 3:50 p.m. to 4:20 p.m. and on Thursday, November 14, 2002 from 9 a.m. to 9:30 a.m. The Panel is particularly interested in hearing public comment regarding marketing, public education, training and technical assistance activities in support of implementation of TWWIIA.

Members of the public must schedule a timeslot in order to comment. In the event that the public comments do not take up the scheduled time period for public comment, the Panel will use that time to deliberate and conduct other Panel business.

Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule time slots. Each presenter will be called on by the Chairperson in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA Implementation, no longer than 5 pages, may be submitted in person or by mail, fax or email on an on-going basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Kristen M. Breland, at *kristen.m.breland@ssa.gov* or calling (202) 358–6423.

The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel* at least one week before the meeting or can be received in advance electronically or by fax upon request.

Contact Information: Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

• Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW, Suite 700, Washington, DC, 20024.

• Telephone contact with Kristen Breland at (202) 358–6423.

• Fax at (202) 358–6440.

E-mail to *TWWIIAPanel@ssa.gov.*

Dated: October 15, 2002.

Deborah M. Morrison,

Designated Federal Officer.

[FR Doc. 02–26917 Filed 10–22–02; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority that covers the Social Security Administration (SSA). Notice is hereby given that Subchapter S4E, which covers the Office of Telecommunications and Systems Operations, is being amended to reflect a realignment of functions and renaming of one subordinate organization. The new material and changes are as follows:

Section S4E.10 The Office of Telecommunications and Systems Operations—(Organization)

Delete: K. The Division of Telecommunications Systems (S4EN)

Establish: K. The Division of Monitoring and Online Systems (S4EN)

Section S4E.10 The Office of Telecommunications and Systems Operations—(Functions)

Replace in its entirety:

D. Division of Systems User Services and Facilities (S4EE)

1. Provides all data center computer hardware implementation support for OTSO and coordinates the installation of all major hardware and software. Provides technical evaluation support for the procurement, acceptance, testing, installation and implementation of equipment and software.

2. Plans and coordinates computer facility environmental systems requirements. Provides computer facilities support for all Agency computer processing centers.

3. Provides a centralized contact for the management of all online storage media resources in the National Computer Center (NCC) and the Program Service Centers (PSC). Manages enterprise-level data storage resources in both mainframe and open systems environments to maintain the integrity, reliability, and performance of state-of-the-art storage technology. Responsible for all business critical data backup and recovery planning and operation. Advises Agency management on all aspects of data and storage media management.

4. Provides technical oversight for the Agency on high volume, enterprise-class printing technology and hardware. Responsible for reengineering SSA print workloads to take advantage of new print technology and automated mail insertion technology.

5. Provides all electronic scanning and imaging computer hardware and software implementation support for SSA. Coordinates the installation of all major scanning and imaging hardware and software. Provides technical evaluation support for the procurement, acceptance, testing, installation and implementation of scanning and imaging equipment and software.

6. Responsible for the design, development, acquisition, implementation and management of automated data center operations management hardware and software tools for OTSO.

G. The Division of Operational Capacity Performance Management (S4EJ)

1. Evaluates computer performance and monitors resource utilization to ensure that OTSO's operational computer systems capacity is utilized effectively and efficiently. Ensures that OTSO's systems performance objectives are being met and that databases are efficiently implemented. Prepares recommendations to OTSO management and as directed, performs similar functions for other SSA components.

2. Ensures that sufficient IT capacity is available to process present and future workloads, coordinating decisions on target systems for new/modified workloads and systems configuration changes.

3. Serves as the Office of Systems resource and repository for Enterprise Capacity Planning data and reporting.

4. Provides recommendations and services to other OTSO components in the interpretation of reports and data resulting from evaluation and utilization studies.

5. Uses operational research tools to investigate operational efficiency problems and develop workload and utilization relationships.

6. Responsible for analysis of configuration, topology, connectivity, automation and availability of SSA's national network in support of performance management, resource utilization and capacity planning. Responsible for long-term network management resource utilization reporting and problem management reporting.

7. Performs modeling and analysis of new applications and designs to determine performance impacts. Projects future capacity requirements for Enterprise Systems components and continually monitors performance to validate projections.

8. Collects data necessary to measure operations performance in providing timely output services as delineated in the Service Level Agreements (SLA). Prepares periodic reports on SLA compliance.

9. Identifies the cause of Enterprise performance problems and reports the findings.

10. Directs the design, development and implementation of software to gather and report statistical information on the functioning of SSA Enterprise Systems. Evaluates and implements COTS performance management software, and designs, develops and implements custom capacity performance data collection and reporting system. Distributes the information to other SSA components to report on performance and utilization.

11. Responsible for 800 number voice utilization data collection and reporting.

H. The Division of Telecommunications Security and Standards (S4EK)

1. Develops, publishes and implements standards and operating procedures within OTSO. Develops and controls enforcement mechanisms to ensure adherence to operational standards. Administers the Federal systems standards program within OTSO.

2. Directs the planning, implementation and evaluation of the systems security program in OTSO and SSA privacy and security policies.

3. Serves as OTSO liaison with other SSA components in matters of privacy and security. Provides for the security of all OTSO resources in the centralized OTSO computer boundaries established by the Deputy Commissioner for Finance, Assessment and Management.

4. Provides planning, evaluation and oversight on disaster recovery capabilities in order to maintain continuity of data center operations. Develops, implements and evaluates systems and procedures for the security and protection of data. Directs the continuity of operations program for OTSO.

I. The Division of Resource Management and Acquisition (S4EL)

1. Directs OTSO's participation in the Information Technology Systems (ITS) procurement process. Manages, plans,

and coordinates the activities relating to business and financial planning of SSA's telecommunications needs.

2. Performs technical and cost reviews of all OTSO/ITS procurements. Performs technical review of procurement proposals for ITS resources, network hardware, software and related services.

3. Provides support for ITS Technical Evaluation Committees.

4. Supports contract administration for all OTSO/ITS contracts.

5. Provides technical support to Project Officers in the development, modification and administration of ITS contracts.

6. Directs the renewal process for existing lease and maintenance contracts for ITS and telecommunications equipment and services.

7. Manages the fiscal administration of ITS contracts, collecting, analyzing and reporting performance data to support required fiscal and other contractual proceedings.

8. Provides for the centralized certification and authorization for the lease and maintenance of SSA's ITS and telecommunications equipment.

9. Provides necessary staff support to users within OTSO for the development of procurement documents and documentation.

10. Develops short-term and long-range tactical and strategic planning and maintains the OTSO macro-procurement plan which relates to planned acquisitions of ITS and telecommunications equipment, software, system design and system support services and implementation of telecommunication expansion.

11. Serves as Project Officer for ITS re-competition/ongoing maintenance contracts.

12. Provides technical support to OTSO and other SSA components during major procurement activities. Ensures that procurement documentation complies with directives published by SSA and higher monitoring authorities. Provides recommendations for disposition of procurement proposals for ITS resources.

13. Formulates an OTSO-wide Systems Plan and assigns responsibility to OTSO components for various parts of the Plan. Works with OTSO components to evaluate their proposed systems objectives in terms of technical feasibility, availability of resources and systems costs. Identifies the major OTSO activities and resources needed to support these objectives. Directs and coordinates the OTSO technical work-power, equipment and other special costs for the SSA budget process and justifies these on the basis of the President's Management Agenda and the Commissioner's priorities.

14. Directs the preparation of detailed project plans, including resource estimates for projects of which OTSO has the lead. Monitors progress and use of work-power and equipment resources by OTSO components against their approved plans. Develops standard methods for project management and assists OTSO components in their use.

15. Manages a centralized inventory of all SSA ITS and telecommunications equipment, and manages the ITS excess equipment process.

J. The Division of Integration and Environmental Testing (S4EM)

1. Directs and controls all activities with the release of new or enhanced versions of host, client/server, and web (internet/intranet) programmatic and telecommunications-related software. Enforces software acceptance and certifications standards. Directs the staging of program modules to be tested.

2. Develops and maintains extensive test databases for use in the acceptance, integration and environmental testing processes. Develops and incorporates the use of software simulators and emulators in software acceptance testing.

3. Directs the integration testing of new or enhanced communications host, client/server, and web (internet/intranet) software, and network communications software. Participates in the movement and/or migration of software systems and associated files between complexes and processing components. Directs the migration of web software.

4. Directs environmental testing to ensure that all new or enhanced software is compatible with changing hardware configurations. Directs the integration of new or enhanced SSA programmatic software. Administers the generation of finalized testing results for evaluation. Directs software performance evaluations, parallel testing, timing studies, inter/intra-system relationship and testing trend analysis.

5. Responsible for administering integration and acceptance testing for production IT hardware.

6. Provides the checks and balances on SSA's production IT systems and equipment procurement for complying with contractual performance requirements throughout the life cycle of the procurement.

7. For all host, client/server, and web (internet/intranet) application software, manages and controls libraries, controls and migrates software into the production environment. For host implementations, designs and develops backup and recovery procedures. For client/server, develops installation scripts for migration of software to production.

8. Administers all activities pertaining to configuration management for the OTSO change management system.

9. Responsible for SSANet software distribution and version management.

10. Serves as the focal point for release coordination activities for the integration and production phases of the life cycle for host, client/server and web (internet/intranet) applications.

11. Develops and maintains pristine workstation images for the configurations/builds in the production environment.

K. The Division of Monitoring and Online Systems (S4EN)

1. Procures, installs, modifies and tunes all online/batch teleprocessing monitor systems software, vendor support products, data base management systems, web based and middle-ware solutions. Designs, modifies, implements and installs specialized teleprocessing system software to support new teleprocessing application software including in-house modifications.

2. Directs the continuous monitoring of all teleprocessing, data base and middle-ware system software and performs problem determination and resolution.

3. Participates in the establishment of teleprocessing software standards for application design and for the use of data base packages within the SSA network environment. Formulates policy for data base applications software systems and monitors and optimizes performance of that software.

4. Develops teleprocessing software procedures for computer operations components.

5. Manages all online teleprocessing and data base management systems.

6. Installs and manages Unix operating systems on distributed data base and data base backup servers.

M. The Division of National Network Services and Operations (S4EQ)

1. Manages the installation, relocation and operation of SSA's telecommunications network facilities for the transmission of program and management data over SSA established networks.

2. Monitors telecommunications operations, analyzes equipment problems and effects proper maintenance and repair.

3. Develops and directs the implementation of new procedures and updates existing procedures for network node operations.

4. Reports outages to vendor management for prompt resolution and is responsible for the repair of advanced communications electronics equipment.

5. Provides emergency support services for equipment reconfiguration as well as repair, assembly/disassembly and installation of advanced telecommunications electronics.

6. Serves as the initial point of contact for user and technical problem determination for telecommunications. Diagnoses data-center hardware and network problems and coordinates network operations issues with applications and systems support staff.

7. Monitors and controls functions for the nationwide telecommunications system. Develops operational procedures to modernize and streamline network operation and develops plans for automation.

8. Manages traffic flow between telecommunications complexes and other SSA complexes.

9. Communicates status of the network to other network nodes and advises users of abnormal or extraordinary situations affecting network operations.

10. Monitors voice communications operations, analyzes equipment problems and effects proper maintenance and repair.

11. Directs all teleprocessing system software problem determination and resolution.

12. Coordinates with other OTSO components in addressing teleprocessing software concerns regarding system capacity issues and system configuration proposals.

13. Operates and maintains an integrated systems and technical coordination control center and help desk to coordinate problem identification and resolution activities.

14. Operates large scale computer resources providing level 3 monitoring and problem determination for large scale operations, online teleprocessing regions and data base management systems.

15. Provides operational status and workload information to field offices using the SSA telecommunications network. Provides statistical analyses of, and reports on, operations performance at meeting both user and computer center management service objectives.

16. Serves as focal point for all user systems problems, questions, complaints and corrective actions regarding the full range of production services.

O. The Division of Client/Server Configuration (S4ES)

1. Directs the design, development, implementation, maintenance and support of specialized data communications software (*i.e.*, Email and Remote LAN Access) to support SSA's international network (SSANet).

2. Manages and coordinates all change management system control relating to client server hardware and software changes to SSANet under the auspices of the change management facility.

3. Performs Level 3 client server monitoring and problem determination for the SSANet.

4. Interfaces with SSANet users to determine the impact of new applications and workloads and supports user liaison and systems development activities of other SSA components in the resolution of client server problems.

5. Manages client server software changes to ensure compatibility with hardware modifications at Central Office and all remote network platform locations.

6. Directs the planning, analysis and design of specialized client server software systems for providing information relevant to the development of existing and proposed client server systems.

7. Responsible for client server projects, including acquisition, implementation, integration and control.

8. Develops, disseminates and enforces standards and policies relating to workstations, workstation configurations, peripherals, LANs and LAN operating systems (OS).

9. Works with SSA users to provide solutions to LAN telecommunications needs that are consistent with SSA-network architecture policies; determines client server interfacing hardware needs, implementing solutions, planning and expansion; and determines staff hardware training needs. Assists SSA client server users in determining and refining services and support requirements, configuration and engineering solutions, planning for future needs, coordinating implementation and evaluating effectiveness.

10. Develops and distributes research papers on applied technology and its relationship to existing and future client server requirements. Also develops alternate systems configurations to meet specific alternative requirements (non-traditional technology approaches).

11. Solves client server problems by applying information on state-of-the-art OS, and client server hardware currently available in the marketplace. Develops turn-key client server systems and special menus to meet unusual customer requirements.

12. Works with SSA client server users at the headquarters' campus and at OHA, OGC and OIG sites as well as the state DDS sites; to develop, test and support component specific applications, initiatives and configurations.

13. Performs systems analysis, configuration design, and software selection, implementation and procurement support for microcomputers, minicomputers and computer graphics system and equipment for various components of OTSO. Provides state-of-the-art technical expertise including the evaluation of new and existing systems activities and provides support for enhancements, modifications, design and/or redesign. Researches and tests current off-the-shelf products for their network configuration to LAN and workstation needs. Researches and analyzes emerging office systems developments to ensure technology awareness and provide supporting systems development, design and planning implementation.

14. Responsible for all aspects of engineering (hardware and software), design, configuration, implementation and maintenance of host architecture for multiple remote LAN access/mobile computing solutions for SSA. Includes all private host/client architectures, Virtual Private Network, and wireless access to SSANet via computers and PDAs.

15. Conducts research and development of state-of-the-art technology for the purpose of remote connectivity as well as improved remote systems security. This includes potential hardware and software solutions as well as biometrics technology.

16. Supports multiple telecommunications methods of remote connectivity including analog, ISDN, Cable/DSL and Satellite for both mobile and static locations.

17. Conducts hardware evaluation for notebook-computer products that may be used for remote access agencywide, including addressing compatibility issues with existing product lines as well as Section 508 considerations.

18. Supports configuration management and installation of local area networks including building, configuring and imaging workstations and servers.

Dated: October 15, 2002.

Reginald F. Wells,

Deputy Commissioner for Human Resources.

[FR Doc. 02–26918 Filed 10–22–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4172]

Office of Foreign Missions; 30-Day Notice of Proposed Information Collection: Form DS–98, Application for Diplomatic Exemption from Taxes on Utilities; Form DS–99, Application for Diplomatic Exemption from Taxes on Gasoline; OMB Control Number 1405–0069

AGENCY: Department of State, Bureau of Diplomatic Security, Office of Foreign Missions.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Re-instatement without change of expired information collection.

Originating Office: Bureau of Diplomatic Security, Office of Foreign Missions, Vehicle, Tax and Customs Unit, DS/OFM/VTC/TC.

Title of Information Collection: Application for Diplomatic Exemption from Taxes on Utilities, (Form DS–98); Application for Diplomatic Exemption from Taxes on Gasoline (Form DS–99).

Frequency: Typically, several applications are submitted by the entitled individual at the beginning of their tour of duty, and then none afterwards.

Form Numbers: DS–98 and DS–99.

Respondents: Foreign diplomatic or consular missions and their personnel; certain foreign government organizations, designated international organizations and certain of their personnel; and foreign military personnel assigned to the staff of a foreign mission in the United States.

Estimated Number of Respondents: Form DS–98, approximately 1250 individual; 25 organizational respondents; Form DS–99, approximately 1660 individual respondents, 30 organizational respondents.

Average Hours Per Response: the average time per response is approx. 1 minute.

Total Estimated Burden: 49 hours.

Public comments are being solicited to permit the agency to:

- Enhance the quality, utility, and clarity of the information being collected.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection form and supporting documents may be obtained from Mr. Edmond McGill, U.S. Department of State, DS/OFM/VTC/TC, SA–33, 3501 International Place, NW., Washington, DC 20008, 202–895–3618.

Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: September 18, 2002.

Lynwood M. Dent Jr.,

Deputy Assistant Secretary of State and Deputy Director, Office of Foreign Missions, Bureau of Diplomatic Security, Department of State.

[FR Doc. 02–27008 Filed 10–22–02; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice 4174]

Office of the Coordinator for Counterterrorism; Designation of Foreign Terrorist Organizations

AGENCY: Department of State.

Pursuant to section 219 of the Immigration and Nationality Act ("INA"), as added by the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104–132, § 302, 110 Stat. 1214, 1248 (1996), and amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104–208, 110 Stat. 3009 (1996) and by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, P.L. 107–56 (2001), the Secretary of State hereby designates, effective October 23, 2002, the following organization as a foreign terrorist organization: Jemaah Islamiya.

Dated: October 16, 2002.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 02–27146 Filed 10–22–02; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 4171]

Notice of Receipt of Application for a Presidential Permit for Pipeline Facilities To Be Constructed and Maintained on the Border of the United States

AGENCY: Department of State, Office of International Energy and Commodities Policy.

ACTION: Notice.

Notice is hereby given that the Department of State has received an application from PMI Services North America, Inc. (PMI) for a Presidential permit, pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993, authorizing the construction, connection, operation, and maintenance at the U.S.-Mexican border in the vicinity of Brownsville, Texas of a liquid pipeline capable of carrying refined petroleum products, including diesel, motor gasoline, jet fuel and liquefied petroleum gas, and related facilities.

PMI is a corporation organized and existing under the laws of the State of Delaware and with its principal office located in Houston, Texas. The proposed new 10-inch diameter pipeline would originate at an existing Transmontaigne Product Services, Inc. (TPSI) storage and distribution terminal at the Port of Brownsville, Texas and cover approximately 27 miles, crossing under the Rio Grande River and terminating at a currently existing PEMEX pipeline in Curva, Texas, Tamaulipas, Mexico. It is anticipated that initial deliveries of diesel to the United States will be approximately 10,000 barrels per day in Brownsville, but the pipeline capacity would be approximately 100,000 barrels of liquid petroleum product per day in either direction.

As required by E.O. 11423, the Department of State is circulating this application to concerned federal agencies for comment.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before November 22, 2002, to Pedro Erviti, Office of International Energy and Commodities Policy, Department of State, Washington, DC 20520. The application and related documents that are part of the record to be considered by the Department of State in connection with this application are available for inspection in the Office of International Energy and Commodities Policy during normal business hours.

FOR FURTHER INFORMATION CONTACT: Pedro Erviti, Office of International Energy and Commodities Policy (EB/ESC/IEC/EPC), Department of State, Washington, DC 20520; or by telephone at (202) 647–1291; or by fax at (202) 647–4037.

Dated: October 17, 2002.

Matthew T. McManus,

Acting Director, Office of International Energy and Commodities Policy, Department of State.

[FR Doc. 02–27009 Filed 10–22–02; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) has determined that, as of the date of publication of this notice in the **Federal Register**, the Republic of Sierra Leone will begin receiving the trade benefits provided for in the African Growth and Opportunity Act for articles other than textiles and apparel.

EFFECTIVE DATE: October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Constance Hamilton, Senior Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106–200) (AGOA) provides trade benefits to the countries of sub-Saharan Africa to promote increased trade and investment between the United States and sub-Saharan Africa to promote increased trade and investment between the United States and sub-Saharan Africa and economic development in the region.

In Proclamation 7360 (Oct. 2, 2000), the President designated Sierra Leone as a "beneficiary sub-Saharan African country," as well as a "lesser developed beneficiary sub-Saharan African country," but with delayed implementation. Proclamation 7360 delegated to the USTR the authority to determine the effective date of the designation of Sierras Leone as a beneficiary sub-Saharan African country, and, therefore, the date upon which Sierra Leone will be considered a lesser developed beneficiary sub-Saharan African country and begin receiving the trade benefits of the AGOA for articles other than textiles and apparel. The President directed the USTR to announce any such determination in the **Federal Register.** Based on progress that Sierra Leone has made in stabilizing its political and security situation, I have determined that Sierra Leone should begin receiving the trade benefits of the AGOA for articles other than textiles and apparel, effective as of the date of the publication of this notice in the **Federal Register.** Sierra Leone may now begin the process to become eligible for the trade benefits of the AGOA for textile and apparel articles.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 02–26900 Filed 10–22–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of intent to prepare an environmental impact statement and conduct public scoping meetings.

SUMMARY: This Notice provides information to Federal, state, and local agencies, affected Native American tribes, and other interested persons on the Federal Aviation Administration's (FAA's) intent to prepare an environmental impact statement (EIS) for the Oklahoma Space Industry Development Authority's (OSIDA's) proposal to operate a commercial launch site at the Clinton-Sherman Industrial Airpark (CSIA). The FAA, as the lead Federal agency; will prepare the EIS in accordance with the National Environmental Policy Act (NEPA) of 1969 (42 United States Code (U.S.C.) 4321 *et seq.*) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations (CFR) parts 1500–1508), as part of its licensing process for the proposed Oklahoma Spaceport. Because the United States Air Force proposes to continue its use of CSIA (preferred alternative site for the Spaceport) as a training facility, the FAA has requested and the United States Air Force has agreed to be a cooperating agency (40 CFR 1501.6) on this EIS.

OSIDA has entered into memoranda of understanding (MOUs) with various interested parties who wish to construct and operate facilities for the purpose of conducting commercial space launches of reusable launch vehicles (RLVs) from the proposed Oklahoma Spaceport. The potential users of the launch site would be responsible for obtaining any necessary permits or approvals including a launch license from the FAA. Proposed operations include the launch, reentry, landing, and recovery of orbital and sub-orbital launch vehicles. OSIDA plans to support the launch of communications, commercial, and government satellites into low earth orbits, as well as using vehicles for travel to other parts of the world and space tourism.

Background

The FAA is preparing an EIS to analyze the environmental impacts of OSIDA's proposed operation of a launch facility in Oklahoma. The EIS will cover construction of facilities, ground activities (component testing, transportation and storage of fuels and explosives, *etc.*), pre-flight vehicle and payload preparation activities, launch, reentry, and landing/recovery operations.

The FAA is the lead Federal agency in preparing the EIS because of its licensing authority for commercial launch activities under 49 U.S.C. subtitle IX, ch. 701, formerly the Commercial Space Launch Act of 1984, as amended (CSLA). The CSLA authorizes the Secretary of Transportation to oversee, license and coordinate U.S. commercial space launch activities. Under the CSLA, the Secretary exercises this authority in a manner that ensures the protection of public health and safety, the safety of property, and national security and foreign policy interests of the United States. The Secretary has delegated this authority to the Administrator of the FAA, who in turn has delegated this authority to the Associate Administrator for Commercial Space Transportation (AST). OSIDA intends to apply for a license to operate a launch site at CSIA or an alternative location. Because licensing OSIDA's operations is a major Federal action, compliance with NEPA is required.

A license to operate a launch site authorizes a licensee to operate a launch site in accordance with the representations contained in the licensee's application, with terms and

conditions contained in any license order accompanying the license, and subject to the licensee's compliance with 49 U.S.C. subtitle IX, ch.701 and this chapter. 14 CFR part 420.41(a) A license to operate a launch site authorizes a licensee to offer its launch site to a launch operator for each launch point for the type and any weight class of launch vehicle identified in the license application and upon which the licensing determination is based. 14 CFR part 420.41(b) Issuance of a license to operate a launch site does not relieve a licensee of its obligation to comply with any other laws or regulations; nor does it confer any proprietary, property, or exclusive right in the use of airspace or outer space. 14 CFR part 420.41(c) A license to operate a launch site remains in effect for five years from the date of issuance unless surrendered, suspended, or revoked before the expiration of the term and is renewable upon application by the licensee. 14 CFR part 420.43

OSIDA is a state agency created by the Oklahoma legislature in 1999 by Senate Bill 720. The agency is governed by a Board of Directors appointed by the Governor and confirmed by the Senate. The mission of the agency is to create an Oklahoma Spaceport, attract space industry to the State and encourage space-related technology in the state school system at all levels. OSIDA has broad authority legislated by the State to attract industry and develop a Spaceport for economic development. Facilities at the Spaceport may be improved, newly constructed using bond revenues, and leased to companies located on-site. A 168-square mile area including the current CSIA has been designated by the legislature as the Oklahoma Spaceport Territory. OSIDA has been given the ownership of the 2,700-acre CSIA.

Proposed Action

The Proposed Action is to issue a launch site operator license to OSIDA for the CSIA or an alternative site. The launch site operator license is for the purpose of operating a facility in order to launch, reenter, land, or recover RLVs. In addition the proposed site may be available for static engine firings, launch vehicle manufacturing, and other testing and manufacturing activities. The operations will be conducted from a proposed site, which would include existing and newly constructed facilities and infrastructure. The function of the Spaceport will be to provide a facility to launch manned vehicles, satellites and other payloads into sub-orbital trajectories and eventually into prescribed orbits for commercial and government customers. Under the Proposed Action, the FAA would issue a launch site operator license to OSIDA for the operation of a site to launch, land, and recover RLVs. Upon issuance of required FAA approvals, OSIDA would open the site to commercial operations. The first sub-orbital launch is proposed for 2006. Launch providers may use vehicles that have been addressed in the launch site operator license application, proposed to include RLVs launched vertically, horizontally, or from the air. These RLVs may land vertically or horizontally.

Alternative Sites

A number of airports in Southwestern Oklahoma are being considered as alternative locations for OSIDA's proposed facility. Included among the alternatives that could be considered are airport facilities in the towns of Sayre, Frederick, and Hobart. These facilities are being considered in part because of their relatively remote locations. The FAA will work with OSIDA to ensure that a reasonable range of alternatives is evaluated in the EIS.

Scoping Meetings

The EIS will assess environmental impacts associated with the Proposed Action; reasonable alternatives including the No Action alternative; foreseeable future actions; and cumulative effects. Two public scoping meetings will be held to solicit input from the public on potential issues that may need to be evaluated in the EIS. The first public scoping meeting will be held on November 13, 2002, at 6 p.m., at the Western Technology Center located in Burns Flat, Oklahoma. The second public scoping meeting will be held on November 14, 2002, at 6 p.m., at the Metro Technology Center Springlake Campus located in Oklahoma City, Oklahoma. The exact locations will be published in local newspapers as well as on the FAA/AST website (*http://ast.faa.gov/*), OSIDA website (*http://www.okspaceport.state.ok.us*) and the EIS public information website (*http://www.okspaceporteis.com*).

FOR FURTHER INFORMATION CONTACT: Public input and comments are solicited concerning the proposed action. Comments and questions concerning the public scoping process or the EIS process should be addressed to Mr. Douglas W. Graham, Federal Aviation Administration, Office of the Associate Administrator for Commercial Space Transportation, Suite 331/AST–100, 800 Independence Avenue, SW., Washington, DC 20591; phone (202) 267–8568 or by e-mail at *doug.graham@faa.gov*.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 02–27034 Filed 10–22–02; 8:45 am]

BILLING CODE 4310–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172: future Air-Ground Communications in the Very High Frequency (VHF) Aeronautical Data Band (118–137 MHz)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 172 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA, Special Committee 172: Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz).

DATES: The meeting will be held November 5–7, 2002 from 9 am to 5 pm each day.

ADDRESSES: The meeting will be held at William J. Hughes Technical Center, Atlantic City Airport, ACB Conference Room, 2nd Floor, Column J267, Atlantic City, NJ

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, SW, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*. (2) FAA Technical Center Contact; Mr. Andy Colon; telephone (609) 485–4348; e-mail *andy.colon@tc.faa.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463, 5 U.S.C., Appendix (2), notice is hereby given for a Special Committee 172 meeting. The agenda will include:

- November 5
- Opening plenary Session (Welcome and Introductory Remarks, Review of Agenda, Review Summary of previous meeting)
- Form Working Group (WG)-2—continue plan of action and development for DO–224B, VHF Digital Link Minimum Aviation system Performance Standard
- November 6
- Continue in WG–2
- Reconvene Plenary to:
  - Review Status of DO–271A, Minimum Operational Performance Standards for Aircraft VDL Mode 3 Transceiver Operating in the Frequency Range 117.975–137.000 MHz, and DO–224A change 2, Signal-In-Space Minimum Aviation System Performance Standards (MASPS) for Advanced VHF Digital Data Communications Including Compatibility with Digital Voice Techniques at the Program Management Council Meeting
  - Review of Relevant International Activities
  - EUROCAE WG–47 status and issues
  - Others as appropriate
- Closing Plenary Session (Other Business, Date and Place of Next Meeting, Adjourn)
- November 7
- NEXCOM Demonstrations. For advance arrangements, contact the on-site representative.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Dated: Issued in Washington, DC, on October 9, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–27038 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–06–U–00–BLI To Use the Revenue From a Passenger Facility Charge (PFC) at Bellingham International Airport, Submitted by the Port of Bellingham, Bellingham International Airport, Bellingham, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use PFC revenue at Bellingham International Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before November 22, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Brian Henshaw, Aviation Analyst, at the following address: PO Box 1677, Bellingham, WA 98227.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Bellingham International Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 02–06–U–00–BLI to use PFC revenue at Bellingham International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 10, 2002, the FAA determined that the application to use the revenue from a PFC submitted by Port of Bellingham, Bellingham International Airport, and Bellingham, Washington was submitted by Port of Bellingham, Bellingham International Airport, and Bellingham, Washington was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 18, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: January 1, 2000.

Proposed charge expiration date: June 1, 2003.

Total requested for use approval: $1,200,000.

Brief description of proposed project: Terminal Rehabilitation and Expansion.

Class or classes of air carriers, which the public agency has requested not to be required to collect PFC's: Non-scheduled air taxi/commercial operators, utilizing aircraft having seating capacity of less than 20 passengers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Bellingham International Airport.

Issued in Renton, Washington, on October 10, 2002.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02–27039 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 2003 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: Appendix A of this Notice contains the Federal Transit Administration's (FTA) comprehensive compilation of the Federal Fiscal Year 2003 certifications and assurances to be used in connection with all Federal assistance programs FTA administers during Federal Fiscal Year 2003, in compliance with 49 U.S.C. 5323(n).

EFFECTIVE DATE: These certifications and assurances became effective on October 1, 2002, the first day of fiscal year 2003.

FOR FURTHER INFORMATION CONTACT: FTA staff in the appropriate Regional Office listed below. For copies of other related documents, *see* the FTA Web Site at *http://www.fta.dot.gov* or contact FTA's Office of Public Affairs at (202) 366–4019.

Region 1: Boston

States served: Maine, New Hampshire, Vermont, Connecticut, Rhode Island, and Massachusetts

Telephone # (617) 494–2055

Region 2: New York

States served: New York, New Jersey, and the Virgin Islands

Telephone # (212) [illegible]8–2170

Region 3: Philadelphia

States served: Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and District of Columbia
Telephone # (215) 656–7100

Region 4: Atlanta

States served: Kentucky, Georgia, North Carolina, South Carolina, Florida, Alabama, Mississippi, Tennessee, and Puerto Rico
Telephone # (404) 562–3500

Region 5: Chicago

States served: Minnesota, Wisconsin, Michigan, Illinois, Indiana, and Ohio
Telephone # (312) 353–2789

Region 6: Dallas/Ft. Worth

States served: Arkansas, Louisiana, Oklahoma, Texas, and New Mexico
Telephone # (817) 978–0550

Region 7: Kansas City

States served: Missouri, Iowa, Kansas, and Nebraska
Telephone # (816) 329–3920

Region 8: Denver

States served: Colorado, Utah, Wyoming, Montana, North Dakota, and South Dakota
Telephone # (303) 844–3242

Region 9: San Francisco

States served: California, Hawaii, Guam, Arizona, Nevada, American Samoa, and the Northern Mariana Islands
Telephone # (415) 744–3133

Region 10: Seattle

States served: Idaho, Oregon, Washington, and Alaska
Telephone # (206) 220–7954

SUPPLEMENTARY INFORMATION: Before FTA may award a Federal grant or cooperative agreement, the Applicant must submit all certifications and assurances pertaining to itself and its project as required by Federal laws and regulations. These certifications and assurances must be submitted to FTA irrespective of whether the project is financed under the authority of 49 U.S.C. chapter 53, or Title 23, United States Code, or another Federal statute.

The Applicant's Annual Certifications and Assurances for Federal Fiscal Year 2003 cover all projects for which the Applicant seeks funding during Federal Fiscal Year 2003 through the next fiscal year until FTA issues annual Certifications and Assurances for Federal Fiscal Year 2004. An Applicant's Annual Certifications and Assurances applicable to a specific grant or cooperative agreement generally remain in effect for either the life of the grant or cooperative agreement to closeout or the life of the project or project property when a useful life or industry standard life is in effect, whichever occurs later; except, if the Applicant provides certifications and assurances in a later year that differ from certifications and assurances previously provided, the later certifications and assurances will apply to the grant, cooperative agreement, project, or project property, unless FTA permits otherwise.

Background: Since Federal Fiscal Year 1995, FTA has been consolidating the various certifications and assurances that may be required into a single document for publication in the **Federal Register**. FTA intends to continue publishing this document annually in conjunction with its publication of the FTA annual apportionment Notice, which sets forth the allocations of funds made available by the latest U.S. Department of Transportation annual appropriations act.

Federal Fiscal Year 2003 Changes: Changes are as follows:

(1) In Certification 1(j)(18), a reference to the latest Office of Management and Budget (OMB) A–133 Compliance Supplement for the U.S. Department of Transportation, dated March 2002, has been substituted for the previous OMB A–133 Compliance Supplement.

(2) The titles of several categories of certifications and assurances have been shortened for consistency with the titles of those categories shown in TEAM–Web, FTA's electronic award and management system and other minor editorials changes have been made.

Text of Federal Fiscal Year 2003 Certifications and Assurances: The text of the certifications and assurances in Appendix A of this Notice also appears in TEAM–Web (*http://ftateamweb.fta.dot.gov/fta-flash2b.html*) in the "Recipients" option at the "Cert's & Assurances" tab of "View/Modify Recipients." It is important that each Applicant be familiar with all sixteen (16) certification and assurance categories and their requirements, as they may be a prerequisite for receiving FTA financial assistance. Provisions of this Notice supersede conflicting statements in any FTA circular containing a previous version of the Annual Certifications and Assurances. The certifications and assurances contained in those FTA circulars are merely examples, and are not acceptable or valid for Federal Fiscal Year 2003; do not rely on the provisions of certifications and assurances appearing in FTA circulars.

Significance of Certifications and Assurances: Selecting and submitting certifications and assurances to FTA, either through TEAM–Web or submission of the Signature Page(s) of Appendix A, signifies the Applicant's intent to comply with the requirements of the certifications and assurances selected to the extent they apply to a project for which the Applicant submits an application for assistance in Federal Fiscal Year 2003.

Requirement for Attorney's Signature: FTA requires a current (Federal Fiscal Year 2003) affirmation, signed by the Applicant's attorney, of the Applicant's legal authority to certify compliance with the obligations imposed by the certifications and assurances the Applicant has selected. Irrespective of whether the Applicant makes a single selection for all 16 categories or selects individual options from the 16 categories, the Affirmation of Applicant's Attorney from a previous year is not acceptable.

Deadline for Submission: All Applicants for FTA formula program or capital investment program assistance, and current FTA grantees with an active project financed with FTA formula program or capital investment program assistance, are expected to provide Federal Fiscal Year 2003 Certifications and Assurances within 90 days from the date of this publication or with their first grant application in Federal Fiscal Year 2003, whichever is first. FTA encourages other Applicants to submit their certifications and assurances as soon as possible.

Preference for Electronic Submission: Applicants registered in TEAM–Web must submit their certifications and assurances, as well as their applications, in TEAM–Web. Only if an Applicant is unable to submit its certifications and assurances in TEAM–Web should the Applicant use the Signature Page(s) in Appendix A of this Notice.

Procedures for Electronic Submission: The TEAM–Web "Recipients" option at the "Cert's & Assurances" tab of "View/Modify Recipients" contains fields for selecting the categories of certifications and assurances to be submitted. Within that tab is a field for the Applicant's authorized representative to enter its personal identification number (PIN), which constitutes the Applicant's electronic signature for the certifications and assurances it has selected; in addition, there is a field for the Applicant's attorney to enter his or her PIN, affirming the Applicant's legal authority to make and comply with the certifications and assurances the Applicant has selected. In certain circumstances, the Applicant may enter its PIN in lieu of its Attorney's PIN, provided that the Applicant has on file the Affirmation of Applicant's Attorney in Appendix A of this Notice, written and signed by the attorney and dated this Federal fiscal year. For more information, applicants may contact the appropriate Regional Office listed in this Notice or the TEAM–Web Helpdesk.

Procedures for Paper Submission: If an Applicant is unable to submit its certifications electronically, it must mark the certifications and assurances it is making on the Signature Page(s) in Appendix A of this Notice and submit it to FTA. The Applicant may signify compliance with all Categories by placing a single mark in the appropriate space or select the Categories applicable to itself and its projects. In certain circumstances, the Applicant may enter its signature in lieu of its Attorney's signature in the Affirmation of Applicant's Attorney section of the Signature Page(s), provided that the Applicant has on file the Affirmation of Applicant's Attorney in Appendix A of this Notice, written and signed by the attorney and dated this Federal fiscal year. For more information, applicants may contact the appropriate Regional Office listed in this Notice.

References: The Transportation Equity Act for the 21st Century, Pub. L. 105–178, June 9, 1998, as amended by the TEA–21 Restoration Act, Pub. L. 105–206, July 22, 1998, 49 U.S.C. chapter 53, Title 23, United States Code, other Federal laws administered by FTA, U.S. DOT and FTA regulations at 49 CFR, and FTA Circulars.

Dated: October 15, 2002.

Jennifer L. Dorn,

Administrator.

Appendix A—Federal Fiscal Year 2003 Certifications and Assurances for Federal Transit Administration Assistance Programs

In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for Federal Transit Administration (FTA) programs. FTA requests each Applicant to provide as many certifications and assurances as needed for all programs for which it will seek FTA assistance in Federal Fiscal Year 2003. FTA strongly encourages the Applicant to submit its certifications and assurances through TEAM–Web, FTA's electronic award and management system at *http://ftateamweb.fta.dot.gov/fta-flash2b.html*.

Sixteen (16) Categories of certifications and assurances are listed by numbers 01 through 16 in the TEAM–Web "Recipients" option at the "Cert's & Assurances" tab of "View/Modify Recipients," and on the opposite side of the Signature Page(s) at the end of this document. Category 01 applies to all Applicants. Categories 02 through 16 will apply to and be required for some, but not all, Applicants and projects.

01. Required of Each Applicant

Each Applicant for FTA assistance must provide all certifications and assurances in this Category "01." FTA may not award any Federal assistance until the Applicant provides these certifications and assurances by selecting Category "01."

A. Authority of Applicant and Its Representative

The authorized representative of the Applicant and the attorney who sign these certifications, assurances, and agreements affirm that both the Applicant and its authorized representative have adequate authority under applicable state and local law and the Applicant's by-laws or internal rules to:

(1) Execute and file the application for Federal assistance on behalf of the Applicant;

(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant; and

(3) Execute grant agreements and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal requirements in carrying out any project supported by an FTA grant or cooperative agreement. The Applicant agrees that it is under a continuing obligation to comply with the terms and conditions of the grant agreement or cooperative agreement issued for its project with FTA. The Applicant recognizes that Federal laws, regulations, policies, and administrative practices may be modified from time to time and those modifications may affect project implementation. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

C. Debarment, Suspension, and Other Responsibility Matters for Primary Covered Transactions

As required by U.S. DOT regulations regarding Governmentwide Debarment and Suspension (Nonprocurement) at 49 CFR 29.510:

(1) The Applicant (Primary Participant) certifies, to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not, within a three (3) year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this certification had one or more public transactions (Federal, state, or local) terminated for cause or default.

(2) The Applicant also certifies that, if it later becomes aware of any information contradicting the statements of paragraph (1) above, it will promptly provide that information to FTA.

(3) If the Applicant (Primary Participant) is unable to certify to all statements in paragraphs (1) and (2) of this certification, it shall indicate so in its applications, or in the transmittal letter or message accompanying its annual certifications and assurances, and provide a written explanation to FTA.

D. Drug-Free Workplace Agreement

As required by U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 CFR part 29, Subpart F, and as modified by 41 U.S.C. 702, the Applicant agrees that it will provide a drug-free workplace by:

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace and specifying actions that will be taken against its employees for violation of that prohibition;

(2) Establishing an ongoing drug-free awareness program to inform its employees about:

(a) The dangers of drug abuse in the workplace;

(b) Its policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that may be imposed upon its employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each of its employees to be engaged in the performance or implementation of the grant agreement or cooperative agreement be given a copy of the statement required by paragraph (1) of this certification;

(4) Notifying each of its employees in the statement required by paragraph (1) of this certification that, as a condition of employment financed with Federal assistance provided by the grant agreement or cooperative agreement, the employee will be required to:

(a) Abide by the terms of the statement; and

(b) Notify the employer (Applicant) in writing of any conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after that conviction;

(5) Notifying FTA in writing, within ten (10) calendar days after receiving notice required by paragraph (4)(b) above from an employee or otherwise receiving actual notice of that conviction; the Applicant, as employer of any convicted employee, must

provide notice, including position title, to every project officer or other designee on whose project activity the convicted employee was working, and that notice shall include the identification number(s) of each affected grant agreement or cooperative agreement;

(6) Taking one of the following actions within thirty (30) calendar days of receiving notice under paragraph (4)(b) of this agreement with respect to any employee who is so convicted:

(a) Taking appropriate personnel action against that employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(b) Requiring that employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency; and

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) of this agreement. The Applicant agrees to maintain a list identifying its headquarters location and each workplace it maintains in which project activities supported by FTA are conducted, and make that list readily accessible to FTA.

E. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance it submits to FTA has been or will be submitted for intergovernmental review to the appropriate state and local agencies in accordance with applicable state requirements. The Applicant also assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR part 17.

F. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, "Title VI Program Guidelines for Federal Transit Administration Recipients", and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:

(1) The Applicant assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.

(3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.

(4) The Applicant assures that it will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.

(5) As required by 49 CFR 21.7(a)(2), the Applicant will include in each third party contract or subagreement provisions to invoke the requirements of 49 U.S.C. 5332 and 49 CFR part 21, and include provisions to invoke those requirements in deeds and instruments recording the transfer of real property, structures, improvements.

G. Disadvantaged Business Enterprise Assurance

In accordance with 49 CFR 26.13(a), the Recipient assures that it shall not discriminate on the basis of race, color, national origin, or sex in the implementation of the project and in the award and performance of any third party contract, or subagreement supported with Federal assistance derived from the U.S. DOT or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR part 26. The Recipient assures that it shall take all necessary and reasonable steps set forth in 49 CFR part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with Federal assistance derived from the U.S. DOT. The Recipient's DBE program, as required by 49 CFR part 26 and approved by the U.S. DOT, will be incorporated by reference and made part of the grant agreement or cooperative agreement for any Federal assistance awarded by FTA or U.S. DOT. Implementation of this DBE program is a legal obligation of the Recipient, and failure to carry out its terms shall be treated as a violation of the grant agreement or cooperative agreement. Upon notification by the Government to the Recipient of its failure to implement its approved DBE program, the U.S. DOT may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.*

H. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR 27.9, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, *et seq.*, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*, and implementing U.S. DOT regulations at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

I. Procurement Compliance Certification

The Applicant certifies that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, "Third Party Contracting Requirements," as amended and revised, as well as other requirements FTA may issue. The Applicant certifies that it will include in its contracts financed in whole or in part with FTA assistance all clauses required by Federal laws, executive orders, or regulations, and will ensure that each subrecipient and each contractor will also include in its subagreements and contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

J. Certifications and Assurances Required by the U.S. Office of Management and Budget (SF–424B and SF–424D)

As required by the U.S. Office of Management and Budget (OMB), the Applicant certifies that it:

(1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in its application;

(2) Will give FTA, the Comptroller General of the United States, and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;

(3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;

(4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval;

(5) Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:

(a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR part 25, which prohibit discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap;

(d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;

(e) The Drug Abuse Office and Treatment Act of 1972, Pub. L. 92–255, March 21, 1972, and amendments thereto, 21 U.S.C. 1174 *et seq.* relating to nondiscrimination on the basis of drug abuse;

(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, Pub. L. 91–616, Dec. 31, 1970, and amendments thereto, 42 U.S.C. 4581 *et seq.* relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd–3 and 290ee–3, related to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing;

(i) Any other nondiscrimination provisions in the specific statutes under which Federal assistance for the project may be provided including, but not limited, to 49 U.S.C. 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity, and section 1101(b) of the Transportation Equity Act for the 21st Century, 23 U.S.C. 101 note, which provides for participation of disadvantaged business enterprises in FTA programs; and

(j) Any other nondiscrimination statute(s) that may apply to the project;

(6) Will comply with, or has complied with, the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in any purchase. As required by sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR 24.4, the Applicant assures that it has the requisite authority under applicable state and local law to comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR part 24, and will comply with or has complied with that Act and those U.S. DOT implementing regulations, including but not limited to the following:

(a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(b) The Applicant will provide fair and reasonable relocation payments and assistance as required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations, or associations displaced as a result of any project financed with FTA assistance;

(c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24 and FTA procedures;

(d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(e) The Applicant will carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;

(f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(g) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will provide Federal financial assistance for the Applicant's eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631;

(h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;

(7) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 276a through 276a(7), the Copeland Act, as amended, 18 U.S.C. 874 and 40 U.S.C. 276c, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 through 333, regarding labor standards for federally assisted subagreements;

(8) To the extent applicable, will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring recipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

(9) Will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4831(b), which prohibits the use of lead-based paint in construction or rehabilitation of residence structures;

(10) Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from the awarding agency;

(11) Will record the Federal interest in the title of real property in accordance with FTA directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project;

(12) Will comply with FTA requirements concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, "Seismic Safety," 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41;

(13) Will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to ensure that the complete work conforms with the approved plans and specifications, and will furnish progress reports and such other information as may be required by FTA or the state;

(14) Will comply with any applicable environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.* and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;

(b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;

(c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;

(d) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 U.S.C. 4321 note;

(e) Assurance of project consistency with the approved state management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*;

(f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 *et seq.*;

(g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300h *et seq.*;

(h) Protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*; and

(i) Environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of national, state, or local significance or any land from a historic site of national, state, or local significance that will be used in a transportation project as required by 49 U.S.C. 303;

(j) Protection of the components of the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 *et seq.*; and

(k) Provision of assistance to FTA in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f; the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469a–1 *et seq.*; and Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note;

(15) To the extent applicable, will comply with the requirements of the Hatch Act, 5 U.S.C. 1501 through 1508, and 7324 through 7326, which limit the political activities of state and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal funds including a Federal loan, grant agreement, or cooperative agreement except, in accordance with 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom that Act does not otherwise apply;

(16) Will comply with the National Research Act, Pub. L. 93–348, July 12, 1974, as amended, 42 U.S.C. 289 *et seq.*, and U.S. DOT regulations, "Protection of Human Subjects," 49 CFR part 11, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance;

(17) Will comply with the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 *et seq.*, and U.S. Department of Agriculture regulations, "Animal Welfare," 9 CFR subchapter A, parts 1, 2, 3, and 4, regarding the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal assistance;

(18) Will have performed the financial and compliance audits as required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.* and by OMB Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations," and OMB A–133 Compliance Supplement provisions for the Department of Transportation, March 2002; and

(19) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the project.

02. Lobbying

An Applicant that submits, or intends to submit this fiscal year, an application for Federal assistance exceeding $100,000 must provide the following certification. FTA may not award Federal assistance for an application exceeding $100,000 until the Applicant provides this certification by selecting Category "02."

A. As required by U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for a Federal assistance exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid by or on behalf of the Applicant to any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of any Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and

(2) If any funds other than Federal appropriated funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application to FTA for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," including the information required by the instructions accompanying the form, which form may be amended to omit such information as authorized by 31 U.S.C. 1352.

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

03. Private Mass Transportation Companies

A State or local government Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 to acquire the property or an interest in the property of a private mass transportation company or to operate mass transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing mass transportation company must provide the following certification. FTA may not award Federal assistance for that type of project until the Applicant provides this certification by selecting Category "03."

As required by 49 U.S.C. 5323(a)(1), the Applicant certifies that before it acquires the property or an interest in the property of a private mass transportation company or operates mass transportation equipment or facilities in competition with, or in addition, to transportation service provided by an existing mass transportation company, it has or will have:

A. Found that the assistance is essential to carrying out a program of projects as determined by the plans and programs of the metropolitan planning organization;

B. Provided for the participation of private mass transportation companies to the maximum extent feasible consistent with applicable FTA requirements and policies;

C. Paid just compensation under state or local law to a private mass transportation company for its franchises or property acquired; and

D. Acknowledged that the assistance falls within the labor standards compliance requirements of 49 U.S.C. 5333(a) and 5333(b).

04. Public Hearing

An Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 for a capital project that will substantially affect a community or a community's mass transportation service must provide the following certification. FTA may not award Federal assistance for that type of project until the Applicant provides this certification by selecting Category "04."

As required by 49 U.S.C. 5323(b), the Applicant certifies that it has, or before submitting its application, it will have:

A. Provided an adequate opportunity for a public hearing with adequate prior notice of the proposed project published in a newspaper of general circulation in the geographic area to be served;

B. Held that hearing and provided FTA a transcript or detailed report summarizing the issues and responses, unless no one with a significant economic, social, or environmental interest requests a hearing;

C. Considered the economic, social, and environmental effects of the project; and

D. Determined that the project is consistent with official plans for developing the urban area.

05. Acquisition of Rolling Stock

An Applicant seeking FTA assistance to acquire rolling stock must provide the following certification. FTA may not provide assistance to acquire rolling stock until the Applicant provides this certification by selecting Category "05."

As required by 49 U.S.C. 5323(m) and implementing FTA regulations at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663 when procuring revenue service rolling stock. Among other things, the Applicant agrees to conduct or cause to be conducted the requisite pre-award and post-delivery reviews, and maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

06. Bus Testing

An Applicant seeking FTA assistance to acquire any new bus model or any bus model with a new major change in configuration or components must provide the following certification. FTA may not provide assistance for the acquisition of new buses until the Applicant provides this certification by selecting Category "06."

As required by FTA regulations, "Bus Testing," at 49 CFR 665.7, the Applicant certifies that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components, or before authorizing final acceptance of that bus (as described in 49 CFR part 665), the bus model:

A. Will have been tested at a bus testing facility approved by FTA; and

B. Will have received a copy of the test report prepared on the bus model.

07. Charter Service Agreement

An Applicant seeking FTA assistance to acquire or operate transportation equipment or facilities using Federal assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310), or Title 23, U.S.C. must enter into the following Charter Service Agreement. FTA may not provide assistance for projects authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310), or Title 23, U.S.C. until the Applicant enters into this charter service agreement by selecting Category "07."

A. As required by 49 U.S.C. 5323(d) and FTA regulations, "Charter Service," at 49 CFR 604.7, the Applicant agrees that it and its recipients will:

(1) Provide charter service that uses equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310), or Title 23, U.S.C., only to the extent that there are no private charter service operators willing and able to provide the charter service that it or its recipients desire to provide, unless one or more of the exceptions in 49 CFR 604.9 applies; and

(2) Comply with the requirements of 49 CFR part 604 before providing any charter service using equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310), or Title 23, U.S.C. for transportation projects.

B. As The Applicant understands that:

(1) The requirements of 49 CFR part 604 will apply to any charter service it provides;

(2) The definitions of 49 CFR part 604 apply to this charter service agreement; and

(3) A violation of this charter service agreement may require corrective measures and imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

08. School Transportation Agreement

An Applicant seeking FTA assistance to acquire or operate transportation facilities and equipment using Federal assistance authorized by 49 U.S.C. chapter 53 or Title 23, U.S.C. must enter into the following School Transportation Agreement. FTA may not provide assistance for such projects until the Applicant enters into this agreement by selecting Category "08."

A. As required by 49 U.S.C. 5323(f) and FTA regulations, "School Bus Operations," at 49 CFR 605.14, the Applicant agrees that it and all its recipients will:

(1) Engage in school transportation operations in competition with private school transportation operators only to the extent permitted by 49 U.S.C. 5323(f), and Federal regulations; and

(2) Comply with the requirements of 49 CFR part 605 before providing any school transportation using equipment or facilities acquired with Federal assistance awarded by FTA and authorized by 49 U.S.C. chapter 53 or Title 23 U.S.C. for transportation projects.

B. As The Applicant understands that:

(1) The requirements of 49 CFR part 605 will apply to any school transportation service it provides;

(2) The definitions of 49 CFR part 605 apply to this school transportation agreement; and

(3) A violation of this school transportation agreement may require corrective measures and imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

09. Demand Responsive Service

An Applicant seeking direct Federal assistance to support demand responsive service must provide the following certification. FTA may not award Federal assistance directly to an Applicant to support its demand responsive service until the Applicant provides this certification by selecting Category "09."

As required by U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," at 49 CFR 37.77, the Applicant certifies that its demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service offered to persons without disabilities. When viewed in its entirety, the Applicant's service for persons with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) Response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

10. Alcohol Misuse and Prohibited Drug Use

If the Applicant is required by Federal regulations to provide the following certification concerning its activities to prevent alcohol misuse and prohibited drug use in its transit operations, FTA may not provide Federal assistance to that Applicant until it provides this certification by selecting Category "10."

As required by FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 655, subpart I, the Applicant certifies that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR part 655.

11. Interest and Other Financing Costs

An Applicant that intends to request reimbursement of interest or other financing costs incurred for its capital projects must provide the following certification. FTA may not provide assistance to support those costs until the Applicant provides this certification by selecting Category "11."

In compliance with 49 U.S.C. 5307(g), 49 U.S.C. 5309(g)(2)(B), 49 U.S.C. 5309(g)(3)(A), and 49 U.S.C. 5309(n), the Applicant certifies that it will not seek reimbursement for interest and other financing costs unless its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

12. Intelligent Transportation Systems Program

An Applicant for FTA assistance for an Intelligent Transportation Systems (ITS) project, defined as any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the National ITS Architecture," must provide the following assurance. FTA may not award any Federal assistance for an ITS project until the Applicant provides this assurance by selecting Category "12."

In compliance with Section VII of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," at 66 Fed. Reg. 1459, January 8, 2001, in the course of implementing an ITS project, the Applicant assures that it will comply, and require its third party contractors and subrecipients to comply, with all applicable requirements imposed by Section V (Regional ITS Architecture) and Section VI (Project Implementation) of that Notice.

13. Urbanized Area, JARC, and Clean Fuels Programs

Each Applicant for Urbanized Area Formula Program assistance authorized by 49 U.S.C. 5307, each Applicant for Job Access and Reverse Commute Program assistance authorized by section 3037 of the Transportation Equity Act for the 21st Century, 49 U.S.C. 5309 note, and each Applicant for Clean Fuels Formula Program assistance authorized by 49 U.S.C. 5308 must provide the following certifications. FTA may not award Federal assistance for those programs until the Applicant provides these certifications and assurances by selecting Category "13." A state or other Applicant providing certifications and assurances that require the compliance of its prospective subrecipients is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances.

In addition, each Applicant that received Transit Enhancement funds authorized by 49 U.S.C. 5307(k)(1) must list the projects carried out during that Federal fiscal year with those funds in its quarterly report for the fourth quarter of the preceding Federal fiscal year. That list constitutes the report of transit enhancement projects carried out during that fiscal year, which report is required to be submitted as part of the

Applicant's annual certifications and assurances, in accordance with 49 U.S.C. 5307(k)(3), and is therefore incorporated by reference and made part of the Applicant's annual certifications and assurances. FTA may not award Urbanized Area Formula Program assistance to any Applicant that has received Transit Enhancement funds authorized by 49 U.S.C. 5307(k)(1), unless that Applicant's quarterly report for the fourth quarter of the preceding Federal fiscal year has been submitted to FTA and includes the requisite list.

A. Certifications Required for the Urbanized Area Formula Program

(1)As required by 49 U.S.C. 5307(d)(1)(A) through (J), the Applicant certifies that:

(a) It has or will have the legal, financial, and technical capacity to carry out the proposed program of projects;

(b) It has or will have satisfactory continuing control over the use of Project equipment and facilities;

(c) It will adequately maintain the equipment and facilities;

(d) It will ensure that the elderly and handicapped persons, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307, or for the Job Access and Reverse Commute Program at section 3037 of the Transportation Equity Act for the 21st Century (TEA–21), 49 U.S.C. 5309 note, not more than fifty (50) percent of the peak hour fare;

(e) In carrying out a procurement financed with Federal assistance authorized for the Urbanized Area Formula Program, 49 U.S.C. 5307, or the Job Access and Reverse Commute Program, section 3037 of TEA–21, 49 U.S.C. 5309 note, it: (1) Will use competitive procurement (as defined or approved by the Secretary), (2) will not use exclusionary or discriminatory specifications, and (3) will comply with applicable Buy America laws;

(f) It has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it: (1) Has made available, or will make available, to the public information on the amounts available for the Urbanized Area Formula Program, 49 U.S.C. 5307 and, if applicable, the Job Access and Reverse Commute Grant Program, 49 U.S.C. 5309 note, and the program of projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, a proposed program of projects for activities to be financed; (3) has published or will publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; (5) has ensured or will ensure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final program of projects; and (7) has made or will make the final program of projects available to the public;

(g) It has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) and applicable FTA policy (specifying Federal and local shares of project costs);

(h) It will comply with: 49 U.S.C. 5301(a) (requirements for transportation systems that maximize mobility and minimize fuel consumption and air pollution); 49 U.S.C. 5301(d) (requirements for transportation of the elderly and persons with disabilities); 49 U.S.C. 5303 through 5306 (planning requirements); and 49 U.S.C. 5301(d) (special efforts to design and provide mass transportation for the elderly and persons with disabilities);

(i) It has a locally developed process to solicit and consider public comment before raising fares or implementing a major reduction of transportation; and

(j) As required by 49 U.S.C. 5307(d)(1)(J), unless it has determined that it is not necessary to expend one (1) percent of the amount of Federal assistance it receives for this fiscal year apportioned in accordance with 49 U.S.C. 5336 for transit security projects, it will expend at least one (1) percent of the amount of that assistance for transit security projects, including increased lighting in or adjacent to a transit system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned transit system.

(2) As required by 49 U.S.C. 5307(k)(3), if it has received Transit Enhancement funds authorized by 49 U.S.C. 5307(k)(1), its quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of the projects it has implemented during that fiscal year using those funds, and that report is incorporated by reference and made part of its certifications and assurances.

B. Certification Required for Capital Leasing

As required by FTA regulations, "Capital Leases," at 49 CFR 639.15(b)(1) and 49 CFR 639.21, to the extent the Applicant acquires any capital asset by lease financed with Federal assistance authorized for 49 U.S.C. 5307 or section 3037 of TEA–21, 49 U.S.C. 5309 note, the Applicant certifies that:

(1) It will not use Federal assistance authorized for 49 U.S.C. 5307 or section 3037 of TEA–21, 49 U.S.C. 5309 note, to finance the cost of leasing any capital asset until it performs calculations demonstrating that leasing the capital asset would be more cost-effective than purchasing or constructing a similar asset;

(2) It will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and

(3) It will not enter into a capital lease for which FTA can only provide incremental funding unless it has the financial capacity to meet its future obligations under the lease in the event Federal assistance is not available for capital projects in subsequent years.

C. Certification Required for the Sole Source Acquisition of an Associated Capital Maintenance Item

As required by 49 U.S.C. 5325(c), the Applicant certifies that when it procures an associated capital maintenance item as authorized by 49 U.S.C. 5307(b)(1), it will use competition, unless the original manufacturer or supplier of the item is the only source for the item and the price of the item is no more than the price similar customers pay for that item, and will, for each such procurement, maintain sufficient records on file and easily retrievable for FTA inspection.

D. Clean Fuels Formula Grant Program Certification

As required by 49 U.S.C. 5308(c)(2), the Applicant certifies that vehicles financed with Federal assistance provided for the Clean Fuels Formula Program, 49 U.S.C. 5308, will be operated only with clean fuels.

14. Elderly and Persons with Disabilities Program

An Applicant that intends to administer the Elderly and Persons with Disabilities Program on behalf of a state must provide the following certifications and assurances. In providing certifications and assurances that require the compliance of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award assistance for the Elderly and Persons with Disabilities Program until the Applicant provides these certifications and assurances by selecting Category "14."

The Applicant administering, on behalf of the state, the Elderly and Persons with Disabilities Program authorized by 49 U.S.C. 5310 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5310; and to implement and manage the project.

B. The state assures that each subrecipient either is recognized under state law as a private nonprofit organization with the legal capability to contract with the state to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310.

C. The private nonprofit subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the state concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities.

D. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

E. The state assures that, before issuing the state's formal approval of a project, its Elderly and Persons with Disabilities Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; all projects to be implemented in urbanized areas recommended for approval are included in the metropolitan Transportation Improvement Program in which the subrecipient is located; and any public body that is a prospective subrecipient of capital assistance has provided an opportunity for a public hearing.

F. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. Having taken appropriate measures to secure the necessary compliance by each subrecipient, the state assures, on behalf of each subrecipient, that:

(1) The subrecipient has or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment financed with Federal assistance awarded for its project;

(2) The subrecipient has coordinated or will coordinate to the maximum extent feasible with other transportation providers and users, including social service agencies authorized to purchase transit service;

(3) The subrecipient has complied or will comply with all applicable civil rights requirements;

(4) The subrecipient has complied or will comply with applicable requirements of U.S. DOT regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(5) The subrecipient has complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(6) The subrecipient has complied or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(7) Viewing its demand responsive service to the general public in its entirety, the subrecipient has complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standards of equivalent service set forth in 49 CFR 37.77(c), before purchasing non-accessible vehicles for use in demand responsive service for the general public;

(8) The subrecipient has established or will establish a procurement system, and has conducted or will conduct its procurements in compliance with all applicable provisions of Federal laws, executive orders, regulations, FTA Circular 4220.1D, "Third Party Contracting Requirements," as amended and revised, and other Federal requirements that may be applicable;

(9) The subrecipient has complied or will comply with the requirement that its project provide for the participation of private mass transportation companies to the maximum extent feasible;

(10) The subrecipient has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(11) The subrecipient has complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(12) The subrecipient has complied or will comply with all applicable nonprocurement suspension and debarment requirements;

(13) The subrecipient has complied or will comply with all applicable bus testing requirements for new bus models;

(14) The subrecipient has complied or will comply with applicable FTA Intelligent Transportation Systems architecture requirements to the extent required by FTA; and

(15) The subrecipient has complied or will comply with all applicable pre-award and post-delivery review requirements.

G. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR 771.117(c). The state certifies that, until the required Federal environmental finding is made, financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c). The state further certifies that, until the required Federal conformity finding has been made, no financial assistance will be provided for a project requiring a Federal conformity finding in accordance with the U.S. Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93.

H. The state assures that it will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

I. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the State and its subrecipients will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by its subrecipients to assure compliance with applicable Federal requirements.

15. Nonurbanized Area Formula Program

An Applicant that intends to administer the Nonurbanized Area Formula Program on behalf of a state must provide the following certifications and assurances. In providing certifications and assurances that require the compliance of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award Nonurbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances by selecting Categories "1" through 11" and "15."

The Applicant administering, on behalf of the state, the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5311; and to implement and manage the project.

B. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

C. The state assures that before issuing the state's formal approval of the project, its Nonurbanized Area Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; and projects are included in a metropolitan Transportation Improvement Program, to the extent applicable.

D. The state has provided for a fair and equitable distribution of Federal assistance authorized for 49 U.S.C. 5311 within the state, including Indian reservations within the state.

E. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. Having taken appropriate measures to secure the necessary compliance by each subrecipient, the state assures, on behalf of each subrecipient, that:

(1) The subrecipient has or will have, by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment financed with Federal assistance awarded for its project;

(2) The subrecipient has coordinated or will coordinate to the maximum extent feasible with other transportation providers and users, including social service agencies authorized to purchase transit service;

(3) The subrecipient has complied or will comply with all applicable civil rights requirements;

(4) The subrecipient has complied or will comply with applicable requirements of U.S. DOT regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(5) The subrecipient has complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(6) The subrecipient has complied or will comply with the transit employee protective provisions of 49 U.S.C. 5333(b), by one of the following actions: (a) signing the Special Warranty for the Nonurbanized Area Formula Program, (b) agreeing to alternative comparable arrangements approved by the Department of Labor (DOL), or (c) obtaining

a waiver from DOL; and the state has certified the subrecipient's compliance to DOL;

(7) The subrecipient has complied or will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance;

(8) The subrecipient has complied or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(9) Viewing its demand responsive service to the general public in its entirety, the subrecipient has complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standards of equivalent service set forth in 49 CFR 37.77(c), before purchasing non-accessible vehicles for use in demand responsive service for the general public;

(10) The subrecipient has established or will establish a procurement system, and has conducted or will conduct its procurements in compliance with all applicable provisions of Federal laws, executive orders, regulations, FTA Circular 4220.1D, "Third Party Contracting Requirements," as amended and revised, and other Federal requirements that may be applicable;

(11) The subrecipient has complied or will comply with the requirement that its project provide for the participation of private enterprise to the maximum extent feasible;

(12) The subrecipient has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(13) The subrecipient has complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(14) The subrecipient has complied or will comply with all applicable nonprocurement suspension and debarment requirements;

(15) The subrecipient has complied or will comply with all applicable bus testing requirements for new bus models;

(16) The subrecipient has complied or will comply with all applicable pre-award and post-delivery review requirements;

(17) The subrecipient has complied with or will comply with all assurances FTA requires for projects involving real property;

(18) The subrecipient has complied or will comply with applicable FTA Intelligent Transportation Systems architecture requirements, to the extent required by FTA; and

(19) The subrecipient has complied or will comply with applicable prevention of alcohol misuse and prohibited drug use program requirements, to the extent required by FTA.

F. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR 771.117(c). The state certifies that, until the required Federal environmental finding is made, financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c). The state further certifies that, until the required Federal conformity finding is made, no financial assistance will be provided for a project requiring a Federal conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93.

G. The state assures that it will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

H. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the State and its subrecipients will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by its subrecipients to assure compliance with applicable Federal requirements.

I. In compliance with the requirements of 49 U.S.C. 5311(f), the state assures that it will expend not less than fifteen (15) percent of the amounts of Federal assistance as provided in 49 U.S.C. 5311(f) and apportioned during this Federal fiscal year to carry out a program within the State to develop and support intercity bus transportation, unless the chief executive officer of the state, or his or her designee, duly authorized under state law, regulations or procedures, certifies to the Federal Transit Administrator that the intercity bus service needs of the state are being adequately met.

16. State Infrastructure Bank Program

An Applicant for a grant of Federal assistance for deposit in its State Infrastructure Bank (SIB) must provide the following certifications and assurances. In providing certifications and assurances that require the compliance of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award assistance for the SIB program to the Applicant until the Applicant provides these certifications and assurances by selecting Categories "1" through 11," and "16."

The state serving as the Applicant for Federal assistance for its State Infrastructure Bank (SIB) program authorized by either section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, certifies and assures that the following requirements and conditions have been or will be fulfilled pertaining to any transit Project financed with Federal assistance derived from its SIB:

A. The state organization serving as the Applicant (state) agrees and assures the agreement of the SIB and each recipient of Federal assistance derived from the SIB within the state (subrecipient) that each transit Project financed with Federal assistance derived from SIB will be administered in accordance with:

(1) Applicable provisions of section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or of the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, and any further amendments thereto;

(2) The provisions of any applicable Federal guidance that may be issued;

(3) The terms and conditions of Department of Labor Certification(s) of Transit Employee Protective Arrangements that are required by Federal law or regulations;

(4) The provisions of the FHWA and FTA cooperative agreement with the state to establish the state's SIB program; and

(5) The provisions of the FTA grant agreement with the state that provides Federal assistance for the SIB, except that any provision of the Federal Transit Administration Master Agreement incorporated by reference into that grant agreement will not apply if it conflicts with any provision of National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or section 1511 of TEA–21, as amended, 23 U.S.C. 181 note, Federal guidance pertaining to the SIB program, the provisions of the cooperative agreement establishing the SIB program within the state, or the provisions of the FTA grant agreement.

B. The state agrees to comply with, and assures the compliance of the SIB and each subrecipient of assistance provided by the SIB with, all applicable requirements for the SIB program, as those requirements may be amended from time to time. Pursuant to the requirements of subsection 1511(h)(2) of TEA–21, 23 U.S.C. 181 note, the state understands and agrees that any previous cooperative agreement entered into with FHWA and FTA under section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, has been or will be revised to comply with the requirements of TEA–21.

C. The state assures that the SIB will provide Federal assistance from its Transit Account only for transit capital projects eligible under section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note or under section 1511 of TEA–21, 23 U.S.C. 181 note, and that those projects will fulfill all requirements imposed on comparable capital transit projects financed by FTA.

D. The state understands that the total amount of funds to be awarded for a grant agreement will not be immediately available for draw down. Consequently, the state assures that it will limit the amount of Federal assistance it draws down for deposit in the SIB to amounts that do not exceed the limitations specified in the underlying grant agreement or the approved project budget for that grant agreement.

E. The state assures that each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized by Federal statute for use in the SIB, and to implement, manage, operate, and maintain the project and project property for which such assistance will support.

F. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

G. The state recognizes that the SIB, rather than the State itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. Having taken appropriate measures to secure the necessary compliance by the SIB, the state assures, on behalf of the SIB, that:

(1) The SIB has complied or will comply with all applicable civil rights requirements;

(2) The SIB has complied or will comply with applicable requirements of U.S. DOT regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(3) The SIB will provide Federal assistance only to a subrecipient that is either a public or private entity recognized under state law as having the legal capability to contract with the state to carry out its proposed project;

(4) Before the SIB enters into an agreement with a subrecipient under which Federal assistance will be disbursed to the subrecipient, the subrecipient's project is included in the Statewide Transportation Improvement Program; all projects in urbanized areas recommended for approval are included in the metropolitan Transportation Improvement Program in which the subrecipient is located; and the requisite certification that an opportunity for a public hearing has been provided;

(5) The SIB will not provide Federal financial assistance for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until the required Federal environmental finding has been made. Moreover, the SIB will provide no financial assistance for a project requiring a Federal conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until the required Federal conformity finding has been made;

(6) Before the SIB provides Federal assistance for a transit project, each subrecipient will have complied with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project; and

(7) The SIB will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed, including specific provisions that any security or debt financing instrument the SIB may issue will contain an express statement that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

H. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. Having taken appropriate measures to secure the necessary compliance of each subrecipient, the state assures, on behalf of each subrecipient, that:

(1) The subrecipient has complied or will comply with all applicable civil rights requirements;

(2) The subrecipient has complied or will comply with applicable requirements of U.S. DOT regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(3) The subrecipient has complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(4) The subrecipient has complied or will comply with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project;

(5) The subrecipient has complied or will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance;

(6) The subrecipient has complied with or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(7) Viewing its demand responsive service to the general public in its entirety, the subrecipient has complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standards of equivalent service set forth in 49 CFR 37.77(c), before purchasing non-accessible vehicles for use in demand responsive service for the general public;

(8) The subrecipient has established or will establish a procurement system, and has conducted or will conduct its procurements in compliance with all applicable provisions of Federal laws, executive orders, regulations, FTA Circular 4220.1D, "Third Party Contracting Requirements," as amended and revised, and other implementing requirements FTA may issue;

(9) The subrecipient has complied or will comply with the requirement that its project provides for the participation of private mass transportation companies to the maximum extent feasible;

(10) The subrecipient has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(11) The subrecipient has complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(12) The subrecipient has complied or will comply with all nonprocurement suspension and debarment requirements;

(13) The subrecipient has complied or will comply with all applicable bus testing requirements for new bus models;

(14) The subrecipient has complied or will comply with all applicable pre-award and post-delivery review requirements;

(15) The subrecipient has complied with or will comply with all assurances FTA requires for projects involving real property;

(16) The subrecipient has complied or will comply with applicable FTA Intelligent Transportation Systems architecture requirements, to the extent required by FTA; and

(17) The subrecipient has complied or will comply with applicable prevention of alcohol misuse and prohibited drug use program requirements, to the extent required by FTA.

I. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the SIB and its subrecipients, as well as the states, will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by the SIB and its subrecipients to assure compliance with applicable Federal requirements.

BILLING CODE 4910–57–P

Appendix A

FEDERAL FISCAL YEAR 2003 CERTIFICATIONS AND ASSURANCES FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS

(Signature page alternative to providing Certifications and Assurances in TEAM-Web)

Name of Applicant: _____

The Applicant agrees to comply with applicable requirements of Categories 01 - 16. _____
(The Applicant may make this selection in lieu of individual selections below.)

OR

The Applicant agrees to comply with the applicable requirements of the following Categories it has selected:

Category	Description	
01.	Required of Each Applicant	_____
02.	Lobbying	_____
03.	Private Mass Transportation Companies	_____
04.	Public Hearing	_____
05.	Acquisition of Rolling Stock	_____
06.	Bus Testing	_____
07.	Charter Service Agreement	_____
08.	School Transportation Agreement	_____
09.	Demand Responsive Service	_____
10.	Alcohol Misuse and Prohibited Drug Use	_____
11.	Interest and Other Financing Costs	_____
12.	Intelligent Transportation Systems Program	_____
13.	Urbanized Area, JARC, and Clean Fuels Programs	_____
14.	Elderly and Persons with Disabilities Program	_____
15.	Nonurbanized Area Formula Program	_____
16.	State Infrastructure Bank Program	_____

(Both sides of this Signature Page must be appropriately completed and signed as indicated.)

Appendix A

FEDERAL FISCAL YEAR 2003 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE

(Required of all Applicants for FTA assistance and all FTA Grantees with an active capital or formula project)

AFFIRMATION OF APPLICANT

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW, on behalf of the Applicant, I declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and Federal requirements applicable to each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2003.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in Appendix A, should apply, as required, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 2003.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, as implemented by U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with the Urbanized Area Formula Program, 49 U.S.C. 5307, and may apply to any other certification, assurance, or submission made in connection with any other program administered by FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature_____ Date: _____

Name_____
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): _____

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project.

Signature_____ Date: _____

Name_____
Attorney for Applicant

Each Applicant for FTA financial assistance (except 49 U.S.C. 5312(b) assistance) and each FTA Grantee with an active capital or formula project must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its signature in lieu of the Attorney's signature, provided the Applicant has on file this Affirmation, signed by the attorney and dated this Federal fiscal year.

[FR Doc. 02–26975 Filed 10–22–02; 8:45 am]
BILLING CODE 4910–57–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2000–6887]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before December 23, 2002.

ADDRESSES: Comments may be submitted in writing to the U.S. Department of Transportation's Docket Management Section, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. Alternatively, comments may be submitted electronically by logging onto the docket management Web site at *http://dms.dot.gov*. Click on "Help" or "Electronic Submission" to obtain instructions for filing the document electronically. In the submittal, the commenter should refer to the docket number.

FOR FURTHER INFORMATION CONTACT: For further information, contact Mr. Joseph Scott, Office of Crash Avoidance Standards, 400 Seventh Street, SW., Washington, DC 20590. Mr. Scott's telephone number is (202) 366–8525. His fax number is (202) 493–2739. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) How to enhance the quality, utility, and clarity of the information to be collected;

(4) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Tires and Rim Labeling.

OMB Control Number: 2127–0503.

Affected Public: Tire and Rim Manufacturers.

Form Number: The tires and rims are labeled in accordance with the agency's Federal Motor Vehicle Safety Standards (FMVSSs) and regulations.

Abstract: Each tire manufacturer and rim manufacturer must label their tire or rim with the applicable safety information. These labeling requirements ensure that tires are mounted on the appropriate rims; and that the rims and tires are mounted on the vehicles for which they are intended. This requirement received its latest OMB clearance in the year 2000, and has a current expiration date of September 30, 2003.

The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000 mandates a rulemaking proceeding to revise and update the safety performance requirements for tires. In response, NHTSA proposed a new Federal Motor Vehicle Safety Standard requiring all new tires for use on vehicles with a gross vehicle weight rating of 10,000 pounds or less to meet new and more stringent performance requirements. The new Federal Motor Vehicle Safety Standard (FMVSS) No. 139 is titled "New pneumatic radial tires for motor vehicles with a GVWR of 10,000 pounds or less except motorcycles and low-speed vehicles." Most SUVs, vans, trailers, and pickup trucks will be required to comply with the same tire selection and rim requirements as passenger cars. FMVSS No. 120 continues to apply to vehicles over 10,000 pounds GVWR and motorcycles.

To accommodate the vehicles equipped with tires that comply with FMVSS No. 139, FMVSS No. 110 will be re-titled "Tire selection and rims for motor vehicles with a GVWR of 10,000 pounds or less" and the current non-passenger rim marking requirements of FMVSS No. 120 will be also be placed in FMVSS No. 110. These rim marking requirements mandate that each rim or, at the option of the manufacturer in the case of a single-piece wheel, each wheel disc shall be marked with the following: (1) The designation that indicates the source of the rim's published nominal dimensions, (2) the rim size designation, and in case of multipiece rims, the rim type designation, (3) the symbol DOT, constituting a certification by the manufacturer of the rim that the rim complies with all applicable Federal motor vehicle safety standards, and (4) a designation that identifies the manufacturer of the rim by name, trademark, or symbol, and (5) the month, day and year or the month and year of manufacture, expressed either numerically or by use of a symbol, at the option of the manufacturer.

Any manufacturer that elects to express the date of manufacture by means of a symbol shall notify NHTSA in writing of the full names and addresses of all manufacturers and brand name owners utilizing that symbol and the name and address of the trademark owner of that symbol, if any. The notification shall describe in narrative form and in detail how the month, day, and year or the month and year are depicted by the symbol. Such description shall include an actual size graphic depiction of the symbol, showing and/or explaining the interrelationship of the component parts of the symbol as they will appear on the rim or single piece wheel disc, including dimensional specifications, and where the symbol will be located on the rim or single piece wheel disc. The notification shall be received by NHTSA not less than 60 calendar days before the first use of the symbol. All information provided to NHTSA under this paragraph will be placed in the public docket. Each manufacturer of wheels shall provide an explanation of its date of manufacture symbol to any person upon request.

Based on the facts that these are existing rim labeling requirements that they do not affect either the production or quantity of rims produced, NHTSA believes that this maintenance effort will not result in any net increase in the burden on those parties currently covered by existing regulations; therefore, the estimated annual burden and estimated number of respondents remains unchanged with estimated annual burden of 5,679,585, and estimated number of respondents of 6,673.

Issued on: October 18, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–26972 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–12319; Notice 2]

Guardian Industries Corporation; Grant of Application for Decision for Determination of Inconsequential Noncompliance

This notice grants the application by Guardian Industries Corporation (Guardian) of Auburn Hills, Michigan to be exempted from the notification and remedy requirements of 49 U.S.C. 30118 and 30120 for a noncompliance with 49 CFR 571.205, Federal Motor Vehicle Safety Standard (FMVSS) No. 205, "Glazing Materials." Guardian has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Pursuant to 49 CFR part 556, Guardian has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301, "Motor Vehicle Safety." The basis of the grant is that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published June 3, 2002, (67 FR 38315) affording an opportunity for comment. The comment closing date was July 3, 2002. No comments were received.

From November 2000 to February 2001, Guardian manufactured 11,562 tempered glass sunroof parts that do not meet the labeling requirements of paragraph S6 of FMVSS No. 205. The parts were marked with the manufacturer's model number M–934, which corresponds to a tempered glass with 4.0 mm nominal thickness. The correct manufacturer's model number should have been M–937, which is tempered glass with a 5.0 mm nominal thickness.

FMVSS No. 205, paragraph S6 "Certification and marking," requires that each piece of glazing material shall be marked in accordance with Section 6 of the American National Standard "Safety Code for Safety Glazing Materials for Glazing Materials for Glazing in Motor Vehicles Operating on Land Highways" Z–26.1–1977, January 26, 1977, as supplemented by Z26.1a, July 3, 1980 (ANS Z26). This specifies all safety glazing materials for use in accordance with this code shall be legibly and permanently marked in letters and numerals at least 0.070 inch (1.78 mm) in height, with the words "American National Standard" or the characters "AS" and, in addition, with a model number that will identify the type of construction of the glazing material.

Guardian submitted a test report indicating the tempered glass parts in question were in full compliance with 49 CFR 571.205 except that the parts were affixed with the incorrect manufacturer's model number. The noncompliance was discovered during a routine in-house quality control inspection.

NHTSA has reviewed Guardian's application and, for the reasons discussed in this paragraph, concludes that the noncompliance of the Guardian tempered glass sunroof parts is inconsequential to motor vehicle safety. Guardian has provided documentation indicating that the sunroof parts do comply with all other safety performance requirements of the standard except the labeling. In spite of the incorrect labeling being affixed to the tempered glass part described herein, the correct part was sold and shipped for use in the fabrication of the sunroof assemblies. Since the sunroof assemblies would be ordered by its unique part number and not the manufacturer's model number (*i.e.*, M–934), the noncompliance would not result in the wrong part being used in an original equipment manufactured (OEM) application. If there was an attempt to install a mislabeled sunroof part into the sunroof assembly, Guardian confirmed to NHTSA that the glass construction would not properly fit. NHTSA also has determined that the lack of proper labeling of the sunroof parts would not affect driver visibility. The sunroof is not in the driver's normal forward field of view. Since the sunroof parts comply with all other safety performance requirements of the standard except the labeling, NHTSA determined that the noncompliance would not affect the other purposes of FMVSS No. 205 that include reducing injuries from glazing surfaces or minimizing possibility of occupants being thrown through the vehicle windows in collisions.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety.

Accordingly, the application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

The applicant is hereby informed that all products manufactured on and after the date it determined the existence of this noncompliance must fully comply with the requirements of FMVSS No. 205.

Authority: 49 U.S.C. 30118(b), 30120(h), delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 17, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–26971 Filed 10–22–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34234]

Minnesota Prairie Line, Inc.—Modified Rail Certificate

On September 23, 2002, Minnesota Prairie Line, Inc. (MPL)[1] filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, Subpart C, *Modified Certificate of Public Convenience and Necessity*, to acquire the common carrier obligation for a rail line extending from approximately milepost 51.4, at or near Norwood, MN, to approximately milepost 145.7, at or near Hanley Falls, MN, a total distance of approximately 94 miles.

The line was abandoned in 1982. *Chicago and North Western Transportation Co.—Abandonment Between Norwood and Madison, MN*, ICC Docket No. AB–1 (Sub-No. 142) (ICC served Dec. 2, 1982; corrected decision served Dec. 12, 1982). Subsequently, the Minnesota Valley Regional Rail Authority (Authority), a political subdivision of the State of Minnesota, bought the line. Since the date of the acquisition, several railroads

[1] MPL is a subsidiary of Twin Cities & Western Railroad Company (TCW), a Class III carrier.

have attempted to acquire and operate the line without success. The most recent operator, Minnesota Central Railroad Co., filed for bankruptcy in August 2000, and MPL expresses its belief that rail freight service has not been provided over the line since that time. According to MPL, the line has been virtually inoperable for some time due to lack of maintenance, but the Authority is currently rehabilitating it.

The Authority and MPL have entered into a lease and operating agreement, effective January 15, 2002, with an initial term of 10 years, commencing upon the satisfaction of the conditions precedent set forth in the agreement, including receipt of necessary approval for rail operations.

As indicated, MPL will acquire the common carrier obligation to serve the line, pursuant to this modified certificate. MPL will contract with TCW to perform the actual service. It is currently intended that traffic will be moved east, interlining with TCW at or near Norwood, MN, though the line also connects to The Burlington Northern and Santa Fe Railway Company at or near Hanley Falls.

The line qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions*, Finance Docket No. 28990F (ICC served July 16, 1981).

At this time, the track rehabilitation is being subsidized, but there are no plans for rail operations to be subsidized. MPL represents that it has obtained liability insurance coverage.

MPL intends to restore service on segments of the line as rehabilitation progresses but before the entire line is rehabilitated.[2] Accordingly, the following preconditions for operations apply to the line: (i) The line must be rehabilitated to FRA class 1 operating condition; (ii) a shipper must install and maintain industry track that connects to a rehabilitated portion of the line; and (iii) the shipper must arrange, at its own cost, to have goods transported to an accessible point on a rehabilitated portion of the line and there transloaded to/from railcars.

This notice will be served on the Association of American Railroads as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads (Business Services Group), 50 F Street, NW., Washington DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 1120 G Street, NW., Suite 520, Washington, DC 20005.

Board decisions and notices are available on our website at *www.stb.dot.gov*.

Decided: October 16, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–26964 Filed 10–22–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the calendar quarter beginning October 1, 2002, the interest rates for overpayments will be 5 percent for corporations and 6 percent for non-corporations, and the interest rate for underpayments will be 6 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2002–59 (*see*, 2002–38 IRB 557, dated September 23, 2002), the IRS determined the rates of interest for the calendar quarter beginning October 1, 2002, and ending December 31, 2002. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). For corporate overpayments, the rate is the Federal short-term rate (3%) plus two percentage points (2%) for a total of five percent (5%). For overpayments made by non-corporations, the rate is the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). These interest rates are subject to change for the calendar quarter beginning January 1, 2003, and ending March 31, 2003.

For the convenience of the importing public and Customs personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpay-ments (Eff. 1–1–99)
Prior to 070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	

[2] The Authority is performing its rehabilitation with deliberate speed, and MPL anticipates that some portions of the line may become serviceable earlier than others.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpay-ments (Eff. 1–1–99)
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5

Dated: October 17, 2002.

Robert C. Bonner,

Commissioner of Customs.

[FR Doc. 02–26920 Filed 10–22–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Treasury Current Value of Funds Rate

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of rate for use in Federal debt collection and for discount and rebate evaluation.

SUMMARY: Pursuant to Section 11 of the Debt Collection Act of 1982, as amended, 31 U.S.C. 3717, the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash management requirements (I TFM 6–8000) prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of cash discounts. In addition, 5 CFR 1315.8 of the Prompt Payment rule on "Rebates" requires that this rate be used in determining when agencies should pay purchase card invoices when the card issuer offers rebates. Notice is hereby given that the applicable rate is 2 percent for calendar year 2003.

DATES: The rate will be in effect for the period beginning on January 1, 2003 and ending on December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Risk Management Division, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227 (Telephone: (202) 874–6650).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and is based on investment rates set for purposes of Pub. L. 95–147, 91 Stat. 1227. The rate is computed each year by averaging Treasury Tax and Loan (TT&L) account investment rates for the 12-month period ending every September 30, rounded to the nearest whole percentage, for applicability effective January 1. The rate is subject to quarterly revisions if the annual average, on a 12-month moving average basis, changes by 2 per centum. The rate in effect for the calendar year 2003 reflects the average investment rates for the 12-month period that ended September 30, 2002.

Dated: October 18, 2002.

Bettsy H. Lane,

Assistant Commissioner, Federal Finance.

[FR Doc. 02–27005 Filed 10–22–02; 8:45 am]

BILLING CODE 7810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Information Reporting Program Advisory Committee (IRPAC) will hold a public meeting on Friday November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Lorenza Wilds, National Public Liaison, CL:NPL:PAC, Room 7567 IR, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone: (202) 622–5188 (not a toll-free number). E-mail address: **public_liaison@irs.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section

10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), a public meeting of the IRPAC will be held on Friday, November 8, 2002, from 9:00 a.m. to 4:00 p.m. in Room 2140, main Internal Revenue Service building, 1111 Constitution Avenue, NW., Washington, DC 20224. *Issues to be discussed include:* Tax Reporting Requirements for Required Minimum Distributions (RMD), Establishing Electronic Filing of the Form 990 Series as a Priority Because of its Far Reaching Impact on All Taxpayers, Expand the TIN Matching System to Allow Payers of Designated Distributions to Use the System, Sales of Single Stock Futures Should Not be Subject to Gross Proceeds Reporting on Form 1099–B, Schedule K–1 Enhancements, Eliminate Bad Debt Line on Schedule C, Separate Form W–4 for Nonresidents Aliens, and Penalties for Incorrect SSN Reported on Form W–2. Reports from the four IRPAC subgroups, Tax Exempt & Government Entities, Large and Mid-size Business, Small Business/Self-Employed, and Wage & Investment, will also be presented and discussed. Last minute agenda changes may preclude advance notice. The meeting room accommodates approximately 50 people, IRPAC members and Internal Revenue Service officials inclusive. Due to limited seating and security requirements, please call Lorenza Wilds to confirm your attendance. Ms. Wilds can be reached at (202) 622–5188. Attendees are encouraged to arrive at least 30 minutes before the meeting begins to allow sufficient time for purposes of security clearance. Please use the main entrance at 1111 Constitution Avenue to enter the building. Should you wish the IRPAC to consider a written statement, please call (202) 622–5188, or write to: Internal Revenue Service, Office of National Public Liaison, CL:NPL:PAC, 1111 Constitution Avenue, NW., Room 7567 IR, Washington, DC 20224 or e-mail: **public_liaison@irs.gov.*

Dated: October 17, 2002.

Nancy A. Thoma,

Designated Federal Official, Branch Chief, Planning & Advisory Councils.

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Part II

Federal Election Commission

11 CFR Parts 100 and 114
FCC Database on Electioneering Communications; Final Rules

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 114

[Notice 2002–20]

Electioneering Communications

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission promulgates new rules regarding electioneering communications, which are certain television and radio communications that refer to a clearly identified Federal candidate and that are publicly distributed to the relevant electorate within 60 days prior to a general election or within 30 days prior to a primary election for Federal office. The final rules implement a portion of the Bipartisan Campaign Reform Act of 2002 ("BCRA") that adds to the Federal Election Campaign Act ("FECA") new provisions regarding electioneering communications. BCRA defines "electioneering communications," exempts certain communications from the definition, provides limited authorization to the Commission to promulgate additional exemptions, and requires public disclosure of specified information regarding who made the electioneering communication and its cost. Additionally, BCRA prohibits corporations and labor organizations from making electioneering communications, and the final rules also implement this prohibition. Further information is provided in the Supplementary Information that follows.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, Mr. J. Duane Pugh Jr., Acting Special Assistant General Counsel, or Mr. Anthony T. Buckley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, 116 Stat. 81 (Mar. 27, 2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* This is one of a series of rulemakings the Commission is undertaking to implement the provisions of BCRA.

Section 402(c)(1) of BCRA establishes a general deadline of 270 days for the Commission to promulgate regulations to carry out BCRA. The President of the United States signed BCRA into law on March 27, 2002, so the 270-day deadline is December 22, 2002. The final rules will take effect on November 6, 2002, which is the day following the November 5, 2002 general election, except the final rules do not apply to any runoff elections required by the results of the November 2002 general election. 2 U.S.C. 431 note.

Because of the brief time period before the deadline for promulgating these rules, the Commission received and considered public comments expeditiously. The Notice of Proposed Rulemaking ("NPRM") on which these final rules are based was made publicly available on the FEC's Website on August 2, 2002 and was published in the **Federal Register** on August 7, 2002. 67 FR 51,131 (Aug. 7, 2002). The written comments were due by August 21, 2002 for those who wished to testify or by August 29, 2002 for all other commenters. The names of commenters and their comments are available at *http://www.fec.gov/register.htm* under "Electioneering Communications." The Commission held a public hearing on the NPRM on August 28 and 29, 2002, at which it heard testimony from 12 witnesses. Transcripts of the hearing are available at *http://www.fec.gov/register.htm* under "Electioneering Communications."[1]

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on electioneering communications were transmitted to Congress on October 11, 2002.

Explanation and Justification

Introduction

BCRA at 2 U.S.C. 434(f)(3) defines a new term, "electioneering communications." This term includes broadcast, cable, or satellite communications: (1) That refer to a clearly identified Federal candidate; (2) that are transmitted within certain time periods before a primary or general election; and (3) that are targeted to the relevant electorate, which is the relevant Congressional district or State that candidates for the U.S. House of Representatives or the U.S. Senate seek to represent. Those paying for electioneering communications cannot use funds from national banks, corporations, foreign nationals,[2] or labor organizations to pay for electioneering communications. *See* 2 U.S.C. 441b(b)(2) and 441e(a)(2). They must also meet certain disclosure requirements. *See* 2 U.S.C. 434(f). BCRA's sponsors have explained in the legislative debates and in their comments on this rulemaking that these new "electioneering communications" provisions, set out at 2 U.S.C. 434(f) and 441b(b)(2), are designed to ensure that such communications are paid for with funds subject to the prohibitions and limitations of FECA. According to the sponsors, "putative 'issue ads'" have been used to circumvent FECA's prohibition on the use of labor organization and corporate treasury funds in connection with Federal elections. *See* 148 Cong. Rec. S2141 (daily ed. Mar. 20, 2002) (statement of Sen. McCain). In the sponsors' view, this is accomplished by creating and airing advertisements that avoid the specific language that the Supreme Court said expressly advocates the election or defeat of a candidate. *See* 148 Cong. Rec. at S2140–2141; *see also Buckley* v. *Valeo*, 424 U.S. 1, 44 n.52 (1976); 11 CFR 100.22.[3]

BCRA's principal sponsors cited various studies and investigations that they say show that the express advocacy test does not distinguish genuine issue ads from campaign ads. 148 Cong. Reg. at S2140–2141 (statement of Sen. McCain). For example, Senator McCain cited a study by the Brennan Center for Justice, *Buying Time 2000*, that found that "97 percent of the electioneering ads reviewed" did not use the words and phrases cited by the *Buckley* Court, and that more than 99 percent of the "group-sponsored soft money ads" studied were in fact campaign ads. 148 Cong. Rec. at S2141. *See also* 148 Cong. Rec. S2137 (statement of Sen. Snowe referencing Annenberg Public Policy Center, *Issue Advertising in the 1999–2000 Election Cycle* (2001)). Senators Snowe and Jeffords stated that, because the electioneering communications provisions focus on the key elements of when, how, and to whom a communication is made, rather than relying on the express advocacy test or the intent of the advertiser, they are a clearer, more accurate test of whether an advertisement is campaign-related. *Id.* at S2117–18 (statement of Sen. Jeffords); S2135–37 (statement of Sen. Snowe).

The final rules add a new definition of "electioneering communication," located at 11 CFR 100.29. The new definition is added to current 11 CFR part 100 because it has general applicability to Title 11 of the Code of Federal Regulations. The final rules also amend 11 CFR 114.2 and 114.10 and create new § 114.14 to address the prohibition on corporations and labor organizations directly or indirectly disbursing funds for electioneering communications. In conjunction with these final rules, the Commission is also issuing Interim Final Rules regarding a Federal Communications Commission database that can be used to determine whether a communication is an electioneering communication.

Please note that the reporting requirements for electioneering communications are not part of the final rules. The Commission intends to incorporate the revised proposed rules into a Consolidated Reporting NPRM as discussed below in connection with 11 CFR part 104. However, it is important to note that the Commission agrees with a commenter who observed that BCRA imposes reporting obligations and fund source limitations and prohibitions on the person making the electioneering communication, not on the broadcaster or satellite or cable system operator who publicly distributes it.

I. Definition of "Electioneering Communication"

A. 11 CFR 100.29(a) Operative Definition of "Electioneering Communication"

The definition of "electioneering communication" at 11 CFR 100.29(a) largely tracks the definition in BCRA at 2 U.S.C. 434(f)(3). Paragraph (a) defines "electioneering communication" as any broadcast, cable, or satellite communication that: (1) Refers to a clearly identified Federal candidate; (2) is publicly distributed within certain time periods before an election; and (3) is targeted to the relevant electorate, that is, the relevant Congressional district or State that candidates for the U.S. House of Representatives or the U.S. Senate seek to represent.

Paragraph (a)(2) refers to the "public distribution" of a communication, while BCRA refers to the "making" of a communication. Making a communication could be interpreted to mean any of a number of actions in the process of issuing a communication, from the formulation of a concept for the communication through the public distribution of a communication. The regulation uses a different term than the statute to clarify that the operative event is the dissemination of the communication, rather than the disbursement of funds related to creating a communication. All of the commenters who addressed this provision, including the principal Congressional sponsors of BCRA, agreed with this clarification.

B. Alternative Definition of "Electioneering Communication"

BCRA at 2 U.S.C. 434(f)(3)(A)(ii) provides an alternative definition of "electioneering communication" that would take effect in the event the definition in 2 U.S.C. 434(f)(3)(A)(i) is held to be constitutionally insufficient "by final judicial decision." The alternative definition of "electioneering communication" is "any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate." 2 U.S.C. 434(f)(3)(A)(ii). The Commission did not propose regulations to implement this alternative statutory definition in the NPRM. 67 FR 51,132. The Commission, however, did seek comment as to whether it should promulgate an alternative definition as part of these final rules. Specifically, the Commission inquired whether such a regulation should simply reiterate the wording of the statute, or whether it should provide additional guidance as to what types of communications promote, support, attack, or oppose a candidate and suggest no plausible meaning other than an exhortation to vote for or against a candidate.

Most of the commenters who addressed BCRA's alternative definition of "electioneering communication" agreed with the Commission's proposed approach to promulgate regulations to implement this alternative definition only when and if it becomes necessary to do so. In the absence of a judicial decision invalidating the existing definition, regulations related to the alternative definition would be potentially confusing and premature or even entirely unnecessary, according to these commenters. Additionally, some argued that any court decision regarding 2 U.S.C. 434(f)(3)(A) may provide guidance for the appropriate standard that the Commission should use in promulgating regulations under the alternative definition. Two commenters advocated promulgating regulations now so that the pending litigation could be informed by the manner in which the Commission would enforce the alternative definition. They also argued that the period between a final decision in that litigation and the 2004 elections is likely to be too short to permit the Commission to complete a rulemaking in time to provide guidance, if the operative definition is invalidated. They further argued that the alternative definition's application to the entire election cycle, and not just the 30- or 60-day periods to which the current definition is limited, exacerbates the timing issue.

Because promulgating regulations that implement the alternative definition is premature and may cause confusion, the Commission does not intend to do so unless and until a final judicial decision makes it necessary to do so by holding that 2 U.S.C. 434(f)(3)(A)(i) is constitutionally insufficient. The Commission notes that if such a decision issues, the statutory alternative definition would become effective, and the decision may supplement the statute's language to provide guidance until the Commission issues implementing regulations.

C. Terms Used in "Electioneering Communication" Definition

Paragraph (b) of 11 CFR 100.29 defines some of the terms used in paragraph (a)'s definition of "electioneering communication." It has been reorganized from the NPRM so that the terms are defined in the order in which they appear in paragraph (a).

1. 11 CFR 100.29(b)(1) Definition of "Broadcast, Cable, or Satellite Communication"

BCRA's legislative history establishes that electioneering communications are limited to television and radio communications, and not other media. The electioneering communication provisions originated as an amendment to the predecessor of BCRA introduced by Senators Snowe and Jeffords in 1998. That amendment, and all of the subsequent versions of that amendment prior to the 107th Congress, defined an

[1] Oral testimony at the Commission's public hearing and written comments are both considered "comments" in this document.

[2] The ban on foreign national funds is being addressed in a separate rulemaking. *See* NPRM on Contribution Limitations and Prohibitions, 67 *FR* 54,366, 54,372–75 and 54,379 (Aug. 22, 2002).

[3] "Express advocacy" was first defined by the Supreme Court as "communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" *Buckley*, 424 U.S. at 44 n.52. The Supreme Court created the express advocacy test to save the statutory phrase "for the purpose of * * * influencing"—the "critical phrase" within the definitions of "expenditure" and "contribution" at 2 U.S.C. 431(8) and (9)—from unconstitutional vagueness and overbreadth while furthering the goal of Congress "to insure both the reality and the appearance of the purity and openness of the federal election process." *Buckley*, 424 U.S. at 77–78. The Supreme Court's express advocacy test marks the dividing line between candidate advocacy regulated by the FECA and issue advocacy. *Id.* at 42, 44, 80.

electioneering communication to include "any broadcast from a television or radio broadcast station." *See* 144 Cong. Rec. S938 (daily ed. Feb. 24, 1998); *see also* S.26 (106th Congress), 145 Cong. Rec. S425 (daily ed. Jan. 19, 1999). Likewise, the floor debates on the electioneering communications provision during the 107th Congress frequently referred to television and radio ads. *See, e.g.*, 148 Cong. Rec. S2117 (daily ed. Mar. 20, 2002) (remarks of Sen. Jeffords). During a final explanation of these provisions, Senator Snowe again stated that they would apply to "so-called issue ads run on television and radio only." 148 Cong. Rec. S2135 (daily ed. Mar. 20, 2002). During an early debate on the amendment, Senator Snowe was asked whether the definition of electioneering communication would "apply to the Internet." She replied, "No. Television and radio." *See* 144 Cong. Rec. S973 and S974 (daily ed. Feb. 25, 1998). Consistent with Congressional intent, new 11 CFR 100.29(b)(1) states that a broadcast, cable, or satellite communication is a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system. This definition limits the scope of electioneering communications to television and radio. (The exclusion of the Internet and other forms of communication is further discussed below in connection with 11 CFR 100.29(c)(1).)

Proposed 11 CFR 100.29(b)(2) would have exempted Low Power FM Radio, Low Power Television, and citizens band radio from inclusion in broadcast, cable, or satellite communication. NPRM, 67 FR 51,133. The commenters were divided on whether these communications media should be included or excluded. While many would probably agree with the commenter who stated that BCRA was primarily aimed at "traditional" radio and television, most who specifically mentioned Low Power FM Radio, Low Power Television, and citizens band radio believed that BCRA provided no authority to exclude these forms of radio and television. Among those opposed to the exemption were the six principal Congressional sponsors of BCRA. Considering BCRA's unqualified language, particularly in light of the comments, the Commission has decided not to exclude these forms of radio and television from the definition of "electioneering communications" in the final rule. In doing so, the Commission notes that any communication over these media would have to be received by 50,000 persons or more in the relevant Congressional district or State before the communication could be considered an electioneering communication. Additionally, the costs of the communication would have to exceed $10,000 before disclosure requirements applied. Finally, to the extent a fee for the public distribution of a communication is not charged, the communication is excluded from the definition of "electioneering communication" pursuant to 11 CFR 100.29(b)(3)(i).

2. 11 CFR 100.29(b)(2) Definition of "Refers to a Clearly Identified Candidate"

Section 100.29(b)(2) defines the phrase "refers to a clearly identified candidate." This phrase is already defined in the Commission's rules at 11 CFR 100.17, which states that "clearly identified" means the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as "the President," "your Congressman," or "the incumbent," or through an unambiguous reference to his or her status as a candidate such as "the Democratic presidential nominee" or "the Republican candidate for Senate in the State of Georgia." The final rule tracks the language of the current rule in 11 CFR 100.17. This approach appears to be consistent with legislative intent. *See* 148 Cong. Rec. S2144 (daily ed. Mar. 20, 2002) (statement of Sen. Feingold indicating that a communication "refers to a clearly identified candidate" if it "mentions, identifies, cites, or directs the public to the candidate's name, photograph, drawing or otherwise makes an 'unambiguous reference' to the candidate's identity"). Please note that the definition would not be based on the intent or purpose of the person making the communication. Of the six commenters who addressed this issue, five supported the Commission's proposal, while the sixth found it vague and too broad. Given the well-established body of law construing this term, the Commission does not agree with this latter comment.

3. 11 CFR 100.29(b)(3) Definition of "Publicly Distributed"

a. 11 CFR 100.29(b)(3)(i) General definition

Section 100.29(b)(3)(i) defines "publicly distributed" as "aired, broadcast, cablecast or otherwise disseminated for a fee through the facilities of a television station, radio station, cable television system, or satellite system." Because BCRA applies expressly to "any broadcast, cable, or satellite communication," the Commission intends this definition to include any technological methods of disseminating a communication through the facilities listed above. One commenter cautioned that some telephone calls and e-mail messages can be transmitted, in part, through the facilities of a television station, radio station, cable television system, or satellite system and might therefore meet the definition of "publicly distributed" as proposed in the NPRM. 67 FR 51,145. However, a communication must be available to 50,000 or more persons in a particular Congressional district or State in order to be an electioneering communication, and it is highly unlikely the communications the commenter addressed would be so widely disseminated.

b. 11 CFR 100.29(b)(3)(i) "For a fee"

The Commission specifically asked in the NPRM if the definition of "electioneering communication" should be limited to paid advertisements. *See* 67 FR 51,136. Much of the legislative history and virtually all of the studies cited in legislative history and presented to the Commission in the course of this rulemaking focused on paid advertisements in considering what should be included within electioneering communications. *See, e.g.*, 148 Cong. Rec. S2112, S2114–16, S2117, S2124, S2135, S2140–41, S2154, and S2155 (daily ed. Mar. 20, 2002) (remarks of Sens. Schumer, Levin, Cantwell, Jeffords, McConnell, Snowe, McCain, Feinstein, and Dodd, respectively); Campaign Finance Institute Task Force on Disclosure, *Issue Ad Disclosure: Recommendations for a New Approach* (2001); Annenberg Public Policy Center, *Issue Advertising in the 1999–2000 Election Cycle* (2001); Craig B. Holman and Luke P. McLoughlin, Brennan Center for Justice, *Buying Time 2000: Television Advertising in the 2000 Federal Elections* (2001), Executive Summary *reprinted in* 148 Cong. Rec. S2118 (daily ed. Mar. 20, 2002); and Jonathan S. Krasno and Daniel E. Seltz, Brennan Center for Justice, *Buying Time: Television Advertising in the 1998 Congressional Elections* (2000).

Many commenters who addressed this specific issue agreed that the legislative history abundantly documents that paid advertisements were the focus of the electioneering communication provisions. One commenter suggested that the electioneering communication regulations should cover program-length, paid advertisements, known as "infomercials," as well as the shorter paid advertisements, known as commercials. Several other commenters discussed entertainment programming, educational programming, or documentaries and argued that BCRA was not intended to reach these communications.

One commenter argued, however, that limiting electioneering communications to paid programming would permit corporations that operate broadcast, cable, or satellite systems to distribute communications that would be electioneering communications but for this limitation, and that such a result is plainly inconsistent with BCRA. This commenter also cited the $10,000 threshold for reporting electioneering communications, which provides partial relief to those who distribute advertisements or programming without paying for distribution costs.

Based on the legislative history of BCRA, the Commission has determined that electioneering communications should be limited to paid programming. The Commission has added an additional element to the definition of "publicly distributed" in the final rules that was not in the definition proposed in the NPRM. The final rule at 11 CFR 100.29(b)(3)(i) includes the qualifier "for a fee" to reflect the Commission's determination that electioneering communications should be limited to paid programming. By including this qualifier, the Commission limits the definition of "electioneering communications" to those communications for which the operator of a broadcast station, cable system, or satellite system seeks or receives payment for the public distribution of the communication.[4] The Commission believes the addition of "for a fee" to the definition of "publicly distributed" implements the well-documented Congressional intent regarding which communications are included within the definition of "electioneering communications." As suggested by the question in the NPRM, the Commission believes this is best accomplished by incorporating the criterion in the definition, rather than creating an exemption from the definition.

A communication's production costs will not be considered fees for this purpose; the fees included in the definition are limited to charges for distribution. Therefore, under this criterion both program-length paid shows, including infomercials, and commercials are subject to the electioneering communication requirements.

The Commission has carefully considered the concern that corporate-owned broadcast, cable, or satellite systems could evade the prohibition on corporate contributions by providing free airtime for communications. The Commission notes that a broadcaster, or a cable or satellite system operator's judgment to provide free distribution services shares some characteristics of the broadcaster or system operator's editorial judgments involved in the use of the news story exemption, which is recognized in FECA, BCRA, and Commission regulations. 2 U.S.C. 431(9)(B); 2 U.S.C. 434(f)(3)(B)(i); and 11 CFR 100.132. Thus, a broadcaster's decision to provide free airtime for communications will not create liability for the person that produced the communication.

c. 11 CFR 100.29(b)(3)(ii) Additional Definition for Presidential Primaries and Conventions

BCRA defines electioneering communication to include communications that "in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate." 2 U.S.C. 434(f)(3)(A)(i)(III). BCRA then defines "targeting to the relevant electorate," referring to Congressional candidates only. 2 U.S.C. 434(f)(3)(C). Thus, as discussed in the NPRM, a plausible reading of BCRA is that a communication that refers to a presidential or vice-presidential candidate does not need to be targeted to the relevant electorate to qualify as an electioneering communication. 67 FR 51,134. Under this interpretation, a communication that refers to a clearly identified presidential or vice-presidential candidate and that meets the timing and medium requirements for electioneering communications would be considered an electioneering communication, without considering the number or geographic locations of persons receiving the communication. For example, a television ad that clearly identifies a presidential primary candidate that is run anywhere in the United States could be considered an electioneering communication if the ad aired within 30 days of a primary election taking place anywhere in the United States, even if, in the States in which the ad actually aired, the primary election were months away or had already taken place.

The Commission expressed concerns regarding this interpretation in the NPRM. Such a sweeping impact on communications would be insufficiently linked to pending primary elections, may not have been contemplated by Congress, and could raise constitutional concerns.[5] So interpreted, the restrictions on electioneering communications would take effect even if an ad were aired only in a State that has already held its primary, and thus would restrict ads more than 60 days before a general election, arguably in contravention of BCRA.

The Commission invited comment on three different interpretations of BCRA's requirements for an electioneering communication that refers to presidential or vice-presidential primary candidates. The Commission first proposed two alternative regulatory provisions addressing this issue when it defines how a BCRA provision would apply with respect to presidential candidates. 67 FR 51,134. One alternative was linked to BCRA's definition of "electioneering communications" as communications "made within * * * 30 days before a primary * * * election." 2 U.S.C. 434(f)(3)(A)(i)(II)(bb). In contrast to 2 U.S.C. 434(f)(3)(A)(i)(III), which is expressly limited to candidates other than President or Vice President, section 434(f)(3)(A)(i)(I) refers to "candidate[s] for Federal office" without qualification. Thus, candidates for President are included among those contemplated in section 434(f)(3)(A)(i)(I) and (II). Consequently, the express language of the statute permits the Commission to define when a communication that refers to a clearly identified candidate for President is made within 30 days before a primary or national nominating convention.

The Commission proposed that a communication that refers to a clearly identified candidate for President would be "publicly distributed within 30 days before a primary election, preference election, or convention or caucus of a political party," only where and when the communication can be received by 50,000 or more persons within the State holding such election, convention or caucus. (This portion of the "electioneering communication" definition was included as Alternative 1–B in proposed 11 CFR 100.29(b)(4).)

[4] Thus, the maker of an electioneering communication cannot avoid the definition of "electioneering communications" by failing to pay the distributor's fee.

[5] Considering the 2000 calendar, such an interpretation would have resulted in nationwide application of the electioneering communication rules to communications mentioning a presidential or vice-presidential candidate for more than 270 days between late-December of 1999 to the election in November 2000.

As an alternative means of addressing the concerns about the potential sweep of the electioneering communication provisions to presidential primary candidates, the Commission proposed that a communication would be considered an electioneering communication only if it can be received by 50,000 or more persons in either a State in which a presidential primary will occur within 30 days, or nationwide if within 30 days of the national nominating convention of that candidate's party. (This provision appeared in the proposed rules as Alternative 1–A in 11 CFR 100.29(a)(1)(iv).)

Separately, the Commission sought comments on whether BCRA's electioneering communications restrictions as applied to communications depicting presidential and vice-presidential candidates could not be triggered by a primary election, but would be limited to the 30 days before a party's national nominating convention and the 60 days before the general election. 67 FR 51,135. This interpretation was based on the phrasing of BCRA's limitation of electioneering communications to those made "within 30 days before a primary or preference election, or a convention or caucus of a political party *that has authority to nominate a candidate*, for the office sought by the candidate." 2 U.S.C. 434(f)(3)(A)(i)(II)(bb) (emphasis added). This interpretation viewed the restrictive adjective clause "that has authority to nominate a candidate" as modifying all the preceding objects: Both "a convention or caucus of a political party" and "a primary or preference election." Because the presidential candidates of the two major parties can only be nominated at their party's national nominating convention, no State primary or preference election would satisfy this aspect of the definition. Thus, the only communications that refer to major party presidential candidates that could be considered electioneering communications are those within 30 days of the convention or 60 days of the general election.

Many commenters addressed this issue. Three commenters believe that any effort by the Commission to make the 50,000 person standard applicable to communications that refer to presidential candidates is inconsistent with the plain language of the statute. Twelve commenters rejected this view, supporting either Alternative 1–A or 1–B. Many of the comments discussed the effect of the alternatives on national nominating conventions. Most of those who favored Alternative 1–A, the addition to the general definition of "electioneering communications," stated that they did so because they approved of its express application to communications 30 days before the national nominating convention. They argued that the national nominating conventions are elections with a national effect, so the relevant base of viewers or listeners for a communication shortly before a convention is nationwide, like the general election. One of those who favored Alternative 1–B, the specification of how "made within 30 days before a primary election" would apply to presidential primaries, suggested that the Commission expand the alternative to cover ads 30 days prior to the conventions. Another commenter who favored Alternative 1–A also stated that Alternative 1–B would be sufficient if expanded to address explicitly national nominating conventions. Only one commenter was opposed to including national nominating conventions. That commenter argued that because only delegates can vote at national nominating conventions, it is inappropriate to require that the communication reach more than 50,000 persons nationally.

Commenters who rejected the interpretation that electioneering communications cannot be related to presidential primaries because none have "the authority to nominate a candidate" described the narrow interpretation as plainly inconsistent with BCRA.[6] In doing so, the comments argued that the clause "that has authority to nominate a candidate," modifies "a convention or caucus of a political party" only, so that "a primary or preference election * * * for the office sought by the candidate" is not modified by the "authority" clause. The enclosure of the "authority" clause in a pair of commas supports this reading of the provision, according to these commenters. The principal Congressional sponsors of BCRA were among those who endorsed this interpretation.

The Commission declines to interpret BCRA to exempt presidential primaries from the electioneering communication provisions. The Commission also rejects the interpretation of BCRA that would lead to a nationwide application of the electioneering communication provisions with respect to presidential primaries. Instead, the Commission has determined that in defining "publicly distributed," the regulation will further specify how a communication is publicly distributed within 30 days of a presidential primary or preference election or a national nominating convention. Given the number of states that hold presidential primaries over the course of several months using a variety of methods to select delegates to the national nominating conventions, the Commission is issuing clarifying regulations. Similarly, the multiple days over which national nominating conventions generally are conducted also call for specificity as to precisely when the 30-day period begins and ends. New § 100.29(b)(3)(ii) incorporates the language from Alternative 1–A in the NPRM and uses the device of Alternative 1–B, which was defining "publicly distributed" in these circumstances. Thus, under 11 CFR 100.29(b)(3)(ii)(A), in order to qualify as an electioneering communication, a broadcast, cable, or satellite communication that refers to a clearly identified candidate for his or her party's nomination for President or Vice President must be publicly distributed within 30 days before a primary election in such a way that the communication can be received by 50,000 or more persons within the State holding the primary election.

One commenter inquired whether the 30-day period prior to a national nominating convention begins 30 days prior to the first or last day of the convention. A plain language reading of BCRA leads to the conclusion that the period to which the electioneering communication provisions apply begins 30 days prior to the first day of a convention or caucus and continues to the end of the convention or caucus. For each day within this period, at least one day of the convention or caucus will be in the subsequent 30 days. The Commission specifies in the final rule at § 100.29(b)(3)(ii)(B) that the period begins running 30 days before the first day of the national nominating convention.

The Commission notes that a caucus or convention that selects or apportions delegates to a national nominating convention or expresses a preference for the nomination of presidential candidates would be considered a primary election pursuant to 11 CFR 100.2(c)(2), 100.2(c)(3), and 9032.7. In some States, caucuses or conventions that occur prior to the statewide caucus, convention, or primary determine the distribution of the statewide delegation to the national nominating convention among candidates for President or Vice President. In such cases, the Commission would likely consider the

[6] The lone commenter who supported the interpretation preferred it because of the more limited result.

caucus or convention that selects or apportions delegates to a national nominating convention to be the triggering event for purposes of the 30-day period in 11 CFR 100.29(a)(2). In light of the variations in party procedures among the States, and in order to avoid confusion over which event in a political party's nominating process in a particular State will trigger the 30-day electioneering communication period for candidates for President or Vice President who seek that political party's nomination, the Commission will publish on its Web site a list of the one event for each political party in each State that triggers the 30-day period for candidates for President or Vice President who seek that political party's nomination.

The Commission has also determined that a similar clarification for the 60 days preceding the general election is unnecessary because the date of the general election does not vary across the States. Without the ambiguity caused by the multiple dates and jurisdictions of the primary elections, BCRA's plain language clearly establishes the time period for electioneering communications related to the presidential general election. 2 U.S.C. 434(f)(3)(A)(i)(II)(aa).

4. 11 CFR 100.29(b)(4) Clarifying Primary and General Elections

The Commission's current rules at 11 CFR 100.2 contain definitions of "general election," "primary election," "runoff election," "caucus or convention," and "special election" that will be applicable to 11 CFR 100.29. Under 11 CFR 100.2(f), a "special election" can be a primary, general, or runoff election. BCRA, however, groups "special election" with general and runoff elections for purposes of an electioneering communication. In the NPRM, proposed § 100.29(a)(2) would have clarified that, for purposes of section 100.29, "special elections" and "runoff elections" would be treated consistently with 11 CFR 100.2(f); that is, they could be considered primary elections, if held to nominate a candidate; and general elections, if held to elect a candidate. 67 FR 51,132.

Several commenters supported proposed § 100.29(a)(2). The principal Congressional sponsors of BCRA were among the supporters, and they also noted that Title II of BCRA will not apply to any runoff or special election resulting from the 2002 general election. *See* 2 U.S.C. 431 note (BCRA, § 402(a)(4), 116 Stat. at 112). In order to be consistent with section 100.2(f), the final rules incorporate the language of proposed § 100.29(a)(2). However, the final rules place the provisions pertaining to special or runoff elections in 11 CFR 100.29(b)(4).

One commenter found the Commission's definition of these terms, both in existing regulations and in the proposed regulations, to be problematic. This commenter argued that the definition of "election" should be restricted to include only elections in which the candidate referred to is running, citing another party's primary as an example that should be excluded. The Commission agrees, and has added language to proposed § 100.29(a)(2) to clarify that a primary, preference election, convention or caucus held by a political party (including those that constitute a special election or a run-off election) triggers a 30-day period that is only applicable to candidates who seek the nomination of that political party. Thus, for example, the date on which the Libertarian Party's candidate for Senate is nominated would have no bearing on communications that refer to a clearly identified candidate who seeks the Democratic Party's nomination for the same Senate seat, unless a candidate were to seek the nomination of both parties for that Senate seat.

The same commenter also stated that no legitimate purpose is served by including elections in which a candidate is unopposed, as required by current 11 CFR 100.2(a). The final rules follow the proposed rules because nothing in BCRA or its legislative history reflects any Congressional intent to distinguish between elections in which a candidate has opposition and those in which he or she does not.

A commenter requested clarification regarding "preference election" as used in 2 U.S.C. 434(f)(3)(A)(i)(II)(bb) and 11 CFR 100.29(a)(2). Section 100.2(c)(2) defines a "preference election" to be a primary election, while, in contrast, BCRA's electioneering communication provision refers separately to primary and preference elections. However, the Commission believes no substantive difference was intended, so the proposed regulation at 11 CFR 100.29(a)(2) follows the statute.

The same commenter also raised the issue of an independent candidate's ability to choose when the primary is considered to occur pursuant to 11 CFR 100.2(a)(4). The final rule text does not specifically state the Commission's intention in this regard, as the Commission decided it was not necessary to address the issue at this time.

This commenter also expressed concern that the dates of non-major parties nominating conventions may not be widely known among members of the public. BCRA's reference to a convention of a political party that has authority to nominate a candidate for the office sought by the candidate is not limited to major party conventions. Consequently, the Commission does not have the authority under BCRA to exclude non-major parties by regulation.

Finally, the commenter questions the application of the timing requirements for electioneering communications in States that may have precinct, county, district, or regional caucuses or conventions that select delegates to the statewide caucus or convention. As the commenter points out, the statewide caucus or convention has the authority to nominate a candidate, so the statewide caucus or convention satisfies § 100.29(a)(2). If none of the earlier caucuses or conventions has the authority to nominate a candidate, by definition, they would not mark the end of a 30-day period under §100.29(a)(2). This same analysis also answers the commenter's concern about States that have caucuses or conventions prior to a primary election. For example, Connecticut and Utah have conventions prior to primary elections scheduled for the 2002 Congressional races. BCRA's limitation on "conventions and caucuses" to those "that [have] the authority to nominate a candidate" addresses this situation by excluding convention and caucuses that do not have that authority. As noted above in connection with 11 CFR 100.29(b)(4), a caucus or convention that selects or apportions delegates to a national nominating convention would likely mark the end of a 30-day period of electioneering communications; the Commission will provide guidance on its web site on a State-by-State, party-by-party basis.

5. 11 CFR 100.29(b)(5) Definition of "Targeted to the Relevant Electorate"

BCRA defines "targeted to the relevant electorate" at 2 U.S.C. 434(f)(3)(C) as a communication that can be received by 50,000 or more persons either in the Congressional district the candidate seeks to represent, in the case of a candidate for Representative, Delegate, or Resident Commissioner to the U.S. House of Representatives; or in the State the candidate seeks to represent, in the case of a candidate for the U.S. Senate. The NPRM included proposed § 100.29(b)(3) that followed the statutory language, and that proposal is now made final at 11 CFR 100.29(b)(5). NPRM, 67 FR 51,133. The commenters who addressed this provision agreed with tracking the statutory language in the regulation and focused their comments on the

interpretative questions posed in the NPRM.[7]

The definition of "targeted to the relevant electorate" includes communications that can be received beyond the relevant geographical area. A communication that can be received by large numbers of persons outside the relevant district or State is nonetheless a targeted communication, as long as 50,000 persons in the relevant area can also receive it. Conversely, an electioneering communication would not include a communication that reaches fewer than 50,000 persons in the State or district where the clearly identified candidate is running, even if at the same time it also reaches 50,000 or more persons in a State or district where the clearly identified candidate is not running. The Commission noted this interpretation in the NPRM, and most of the commenters who addressed it supported the interpretation. One commenter suggested that the Commission address in the final rule what it deemed an adjoining market problem. The commenter thought an ad that is broadcast on stations intended for an audience in one State might reach more than 50,000 persons in another State, for example, because media markets may extend beyond State lines. The commenter posited the example of an ad broadcast on Massachusetts television stations that is intended to influence a Member of Congress from Massachusetts with respect to a bill that is supported by the President. Such an ad might be broadcast more than 30 days before the Massachusetts primary, so it would not be an electioneering communication, even if it clearly identified the Member who is seeking reelection. However, because several Massachusetts television stations' broadcast signals reach a large audience in New Hampshire, if the ad also clearly identifies a President seeking reelection, it would constitute an electioneering communication if it is broadcast within 30 days of the New Hampshire presidential primary election. However, BCRA is clear: If a communication can be received in a State or district by 50,000 or more persons, and if it meets the timing, content, and medium requirements related to electioneering communications, the communication is an electioneering communication, regardless of how many potential audience members or what percentage of the total potential audience reside in another State or district. Therefore, the final rule at § 100.29(b)(5) does not reflect the commenter's suggestion.

D. The Federal Communications Commission and Determining the Size of a Potential Audience

The subsidiary definitions proposed in the NPRM included a provision at 11 CFR 100.29(b)(5) that addresses how to obtain information about a communication's potential audience. 67 FR 51,134. The proposed provision explained that the Federal Communications Commission's web site would provide information about the number of individuals in Congressional districts or States that can receive a communication publicly distributed by a television station, radio station, cable television system, or satellite system. Based on this proposal and the comments received on the issues raised by it, the Commission is promulgating an Interim Final Rule in a separate rulemaking.

E. Exemptions From Definition of "Electioneering Communication" in BCRA

BCRA generally defines "electioneering communications" at 2 U.S.C. 434(f)(3)(A) and provides three exceptions to the definition in section 434(f)(3)(B)(i) through (iii). BCRA also provides the Commission with authority to promulgate regulations that exempt additional communications from the definition of "electioneering communications." 2 U.S.C. 434(f)(3)(B)(iv). BCRA also imposes a significant limitation on this authority: the Commission may exempt only communications that do not promote, support, attack, or oppose a Federal candidate. *Id.*

In the Commission's regulations, 11 CFR 100.29(a) and (b) define "electioneering communications," and § 100.29(c) provides for exceptions to the definition. The exceptions in 11 CFR 100.29(c)(1) through (4) are based on the express language of BCRA. The Commission proposed a number of additional exemptions in the NPRM. After carefully considering the extensive written comments and testimony, which highlighted the difficulties involved in crafting permissible exemptions, the Commission has decided to promulgate two exemptions: one for State and local candidates, 11 CFR 100.29(c)(5), and another for certain nonprofit organizations operating under 26 U.S.C. 501(c)(3). The Commission has also decided not to promulgate any further exemptions.

1. 11 CFR 100.29(c)(1) Communications Other Than Broadcast, Cable or Satellite

BCRA expressly limits electioneering communications to broadcast, cable, or satellite communications. As discussed above in connection with 11 CFR 100.29(b)(1), the legislative history establishes that BCRA's focus was on radio and television ads. Based on the statutory language and the legislative history, the final rule at 11 CFR 100.29(c)(1) provides examples of communications that are *not* included in the definition of electioneering communication. The list of exemptions includes communications appearing in print media, including a newspaper or magazine, handbills, brochures, bumper stickers, yard signs, posters, billboards, and other written materials, including mailings; communications over the Internet, including electronic mail; and telephone communications.

Most of the comments received on proposed 11 CFR 100.29(c)(1) discussed the exemption for the Internet. Those who did comment on the remainder of the paragraph, including the principal Congressional sponsors of BCRA, agreed that it conformed to BCRA.

The Internet is included in the list of exceptions in the final rules in section 100.29(c)(1) because, in most instances, it is not a broadcast, cable, or satellite communication. BCRA's legislative history, which is discussed above in connection with 11 CFR 100.29(b)(1), establishes Congress's intent to exclude communications over the Internet from the electioneering communication provisions. The Commission concludes that Congress did not seek to regulate the Internet in subtitle A of Title II of BCRA. The relatively few commenters who opposed the Internet exemption did not disagree with this conclusion; rather, they argued that as the Internet develops, aspects of it might come to be used in a manner like radio or television. To these commenters, this potential evolution of the Internet calls for a more precise approach and makes the exemption as proposed too broad a treatment of this issue. The Commission has decided to include the exemption in the final rules, rather than attempt to craft a regulation that responds to unknown, future developments.

The NPRM noted that "webcasts" or other communications that are distributed only over the Internet would be excluded from the definition of electioneering communications, but television or radio communications that are simultaneously "webcast" over the Internet or archived for viewing or listening over the Internet would be included in the definition of electioneering communications. 67 FR 51,133. Some comments on the definition of "broadcast, cable, or satellite communication" in proposed § 100.29(b)(1) and the exemption in proposed § 100.29(c)(1) suggest that a clarification is in order. The discussion in the NPRM was intended to make clear that if a communication meets the content, timing, media, and potential audience criteria for an electioneering communication, webcasting that communication, or archiving it for later viewing via the Internet, will not remove the television or radio aspect of the communication from the definition of "electioneering communication." Thus, the exemption for communications on the Internet is not so broad that it could inoculate a television and radio communication that otherwise satisfies the electioneering communication criteria from the electioneering communication rules, merely because the communications is also webcast or archived for later viewing or listening over the Internet. The Internet aspect of the communication, including the number of potential recipients, will not be considered in determining whether a communication meets the definition of an "electioneering communication."

The NPRM also asked how WebTV should be treated. 67 FR 51,133. One commenter stated that WebTV is an alternative means of accessing the Internet, so it would be subject to the Internet exemption in § 100.29(c)(1). Another commenter argued that the regulation should explain that the Internet exemption applies no matter what equipment is used to access the Internet. The Commission agrees that accessing the Internet with WebTV or any other technology is included within the Internet exemption. Because the exemption is not limited to any particular technology to access the Internet, the text of the final rule follows the proposed rule.

Some argued that the exemption in proposed 11 CFR 100.29(c)(1) should be expanded to include public access television and radio channels and digital audio radio satellite. Others argued that because those services are undeniably television, radio, and satellite, any exemption for them would be contrary to the plain language of BCRA. The Commission agrees with the latter viewpoint, so no specific exemption of this nature is included in the final rules.

2. 11 CFR 100.29(c)(2) Exemption for a News Story, Commentary or Editorial

The exemption for a news story, commentary or editorial in 11 CFR 100.29(c)(2) closely follows the statutory language from 2 U.S.C. 434(f)(3)(B)(i), which exempts such communications from the definition of "electioneering communication," unless the facilities distributing the communication are owned or controlled by any political party or committee, or a candidate. The final rule adds that communications distributed by such facilities are exempt from the electioneering communication definition if the communications meet the requirements of 11 CFR 100.132(a) and (b).

The commenters supported a rule that refers to the existing media exemption. The commenters also supported the regulation's inclusion of broadcast, cable, and satellite communications, in place of the statute's reference to broadcast communications. The legislative history gives no reason to narrow this particular aspect of electioneering communications, and the commenters, including the principal Congressional sponsors of BCRA, agreed with the consistent use of the broader phrase.

Some of the comments suggested additional exemptions for documentaries, educational programming, or entertainment, which apparently reflects a concern that this exemption would be narrowly interpreted. The Commission interprets "news story commentary, or editorial" to include documentaries and educational programming in this context. Entertainment programming is not mentioned in BCRA, so the final regulation does not include it either. Please note, however, that the limitation of the definition of "electioneering communications" to those in which a fee is charged or paid for a public distribution will likely exempt from the definition of "electioneering communications" nearly all of the entertainment programming discussed by the commenters.

3. 11 CFR 100.29(c)(3) Exemption for Expenditures and Independent Expenditures

Title II, subtitle A of BCRA also specifically provides an exemption for communications that constitute expenditures or independent expenditures under the Federal Election Campaign Act. 2 U.S.C. 437(f)(3)(B)(ii). In the NPRM, two alternatives were proposed to implement this provision. 67 FR 51,135–36. The first alternative reiterated the statutory exemption as proposed in § 100.29(c)(3). Under this alternative, any expenditure of a Federal political committee and any independent expenditure would not be subject to the electioneering communication reporting requirements, but would remain subject to FECA's other reporting requirements and its prohibitions and limitations on funding sources. The comments from BCRA's principal sponsors explained that the electioneering communication provisions were "mainly concerned with election-related disbursements that avoided regulation under FECA." They stated that because expenditures and independent expenditures are subject to regulation under FECA, the statutory exemption from Title II, subtitle A of BCRA ensures that BCRA's Title II, subtitle A applies to disbursements that are not subject to FECA's other requirements, prohibitions, and limitations. The exemption's purpose, the sponsors therefore argue, is to avoid requiring political committees to report the same expenditures twice.

Most who commented on this issue urged the Commission to implement Alternative 2–A, which repeats the statutory language. Only one commenter preferred Alternative 2–B, which would have limited the exemption to "candidate-specific expenditures" that are reportable as an in-kind contribution or a party committee coordinated expenditure, or an independent expenditure. This commenter preferred what it characterized as duplicative reporting required under that alternative to a reporting scheme it considered incomplete. The commenter agreed, however, that the purpose of the exemption for expenditures was to avoid duplicative and potentially conflicting reporting requirements. Because Alternative 2–B would lead to duplicative reporting and because Alternative 2–A includes BCRA's language, the Commission has decided that the final rule will include Alternative 2–A's language, with one modification.

It is possible that a group could pay for an ad and claim that the payment is an expenditure because it was for the purpose of influencing a Federal election, as expenditure is defined in 2 U.S.C. 431(9). As such, the group could claim that the ad was exempt from the definition of "electioneering communication" as an expenditure pursuant to 2 U.S.C. 437(f)(3)(B)(ii). However, the group could simultaneously claim that it does not meet the major purpose test, and therefore it is not required to register as a political committee or to report its expenditures. Thus, the group running

[7] One commenter claimed that BCRA's targeting definition is backward. This commenter argued that targeting should be limited to ads crafted specifically for a particular district or State. Such a focus would ensure that the ad's purpose was to influence the election in a manner objectively discernible, and it would distinguish an electioneering communication from an issue ad, which presumably would seek a broader audience. However, even this commenter recognized at the Commission's hearing that the Commission must use BCRA's targeting definition.

an ad could invoke the BCRA exemption for expenditures, which prevents double reporting, and simultaneously claim the expenditure is not subject to FECA reporting requirements because the group is not a political committee under FECA. To prevent such a situation, the Commission has clarified the final rule at 11 CFR 100.29(c)(3) to limit the exemption to expenditures and independent expenditures that are required to be reported as such under the Act and the Commission's regulations. This clarification follows suggestions from several commenters, including the principal Congressional sponsors of BCRA. Under this regulation, the campaign committees of Federal candidates and the national party committees will be totally exempt from the electioneering communications provisions.

4. 11 CFR 100.29(c)(4) Exemption for Candidate Debates or Forums

BCRA includes an exemption at 2 U.S.C. 434(f)(3)(B)(iii) for a communication that "constitutes a candidate debate or forum conducted pursuant to regulations adopted by the Commission, or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum." The final rules in 11 CFR 100.29(c)(4) implement this provision and refer to 11 CFR 110.13, which contains the Commission's current regulation on candidate debates. All of the commenters that addressed this issue agreed with the proposed rules in 11 CFR 100.29(c)(4), except that one commenter argued that the requirements of § 110.13 should not apply in this context to limit the exemption from the electioneering communication definition. However, BCRA expressly refers to regulations adopted by the Commission in this regard, and 11 CFR 110.13 applies to candidate debates. The Commission finds no reason to adopt a different standard in the electioneering communication exemption. Additionally, pursuant to the operation of §§ 110.13 and § 114.4(f),[8] if the conduct of a debate does not meet the requirements of § 110.13, any corporate or labor organization funding for such a debate would constitute a prohibited contribution or expenditure.[9]

F. Regulatory Exemptions From Definition of "Electioneering Communication"

In addition to the exemptions expressly created by BCRA, the statute also provides that "to ensure the appropriate implementation" of the electioneering communication provisions, the Commission may promulgate regulations exempting other communications from the "electioneering communications" definition. 2 U.S.C. 434(f)(3)(B)(iv). However, the statutory authorization to exempt communications is expressly limited in two ways. The exemption must be promulgated consistent with the requirements of the new electioneering communication provision, and the exempted communication must not be a "public communication" that refers to a clearly identified candidate for Federal office and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office. 2 U.S.C. 434(f)(3)(B)(iv) (referencing 2 U.S.C. 431(20)(A)(iii)).

Some of the commenters argued that the exemption authority provided to the Commission is extremely limited. Relying upon legislative history, the principal Congressional sponsors of BCRA explained the exemption authority would "allow the Commission to exempt communications that 'plainly and unquestionably' are 'wholly unrelated' to an election and do not 'in any way' support or oppose a candidate. In addition, any exemption that applies to entities other than parties and candidates must preserve the 'bright line' quality of the original provision." *See* 148 Cong. Rec. H410–411 (daily ed. Feb. 13, 2002) (statement of Rep. Shays).

In its consideration of potential exemptions, the Commission has used the express language of the statute as its guide for the extent of its exemption authority. Thus, the Commission acknowledges that the statute limits its exemption authority by providing that the Commission may not exempt communications that promote, support, attack or oppose a candidate. The Commission's exemption authority is also limited by BCRA's use of "bright line" distinctions between electioneering communications and other communications.

In the NPRM, the Commission proposed regulatory text for three exemptions in addition to the statutory exemptions. Proposed 11 CFR 100.29(c)(5) through (7). Among these was a proposed exemption available to State and local candidates. See NPRM, proposed 11 CFR 100.29(c)(7), 67 FR 51,145. Additionally, several commenters suggested an exemption for any communication made by a tax-exempt organization described in 26 U.S.C. 501(c)(3). As described in detail below, the Commission adopted only these two exemptions, one for communications paid for by State or local candidates that is similar to the exemption at proposed 11 CFR 100.29(c)(7), and the other for communications paid for by certain nonprofit organizations operating under 26 U.S.C. 501(c)(3).

1. 11 CFR 100.29(c)(5) Exemption for State and Local Candidates

The Commission proposed an exemption in the NPRM that would cover communications by State and local candidates and officeholders that refer to a clearly identified Federal candidate, provided that mention of a Federal candidate is merely incidental to the candidacy of one or more individuals for State or local office. 67 FR 51,136. For example, under this approach, an ad for a State or local candidate that featured such candidate's views on education would not have been rendered an electioneering communication if the ad were to indicate whether the candidate supported or opposed the President's education policy.

Four commenters thought the Commission's formulation of such an exemption was vague, subject to abuse, not supported by BCRA, and therefore beyond the Commission's exemption authority. Nonetheless, these same commenters supported an alternative formulation that exempts communications by State or local candidates or State or local political parties that refer to clearly identified Federal candidates, provided the communications do not promote, support, attack or oppose a Federal candidate. By using that standard, the commenters believed the exemption would also serve to harmonize the operation of Title I and subtitle A of Title II of BCRA as they apply to State and local parties and their candidates.

Title I of BCRA permits State, district, or local party committees, organizations, or their candidates to use non-Federal funds for communications that clearly identify a Federal candidate, but do *not* promote, support, attack, or oppose any Federal candidate. *See* 2 U.S.C. 431(20)(A)(iii) and 11 CFR 100.24(b)(3) (defining Federal election activity to include only those public communications that promote, support, attack or oppose a clearly identified Federal candidate); 2 U.S.C. 441i(b)(1) and 11 CFR 300.32(a)(1) (association of State office candidates or incumbents required to use Federal funds for Federal election activity); 2 U.S.C. 441i(b)(1) and 11 CFR 300.32(a)(2) (same for State, district, and local party committees); 2 U.S.C. 441i(f)(1) and 11 CFR 300.71 (State and local candidates required to use Federal funds for a communication that does promote, support, attack or oppose a Federal candidate). Therefore, according to these commenters, absent an exemption, if a State, district, or local party committee, organization, or a State or local candidate creates and distributes a radio or television communication that refers to a clearly identified Federal candidate, but does *not* promote, support, attack or oppose any Federal candidate, and is not otherwise a contribution or expenditure, Title I of BCRA would permit the use of non-Federal funds to pay for that communication. However, if the same communication were publicly distributed and met the timing and targeting requirements of subtitle A of Title II, then the communication would also be an electioneering communication, so the use of corporate or labor organization funds to pay for it would be prohibited by subtitle A of Title II. According to these commenters, this inconsistent result is contrary to the intention of Title I in permitting the use of non-Federal funds for these purposes. Additionally, the principal Congressional sponsors argue that "effectively tak[ing] state candidates and parties out of the Title II prohibitions and reporting requirements * * * is consistent with the purposes of BCRA."

The Commission agrees that an exemption for State and local candidates that is within the parameters of 2 U.S.C. 434(f)(3)(B)(iv) is appropriate in order to harmonize Title I and subtitle A of Title II of BCRA. Accordingly, the final rules include an exemption from the definition of "electioneering communication" for communications that are not described in 2 U.S.C. 431(20)(A)(iii) and that are paid for by State or local candidates in connection with an election to State or local office. *See* 11 CFR 100.29(c)(5). Thus, this exemption covers public communications by State and local candidates that do *not* promote, support, attack, or oppose federal candidates. *See* new 11 CFR 300.72 exempting these communications from certain requirements of Title I of BCRA.

In contrast, however, State and local candidates making public communications that satisfy the description set forth in 2 U.S.C. 431(20)(A)(iii) (i.e. public communications by State and local candidates that promote, support, attack, or oppose Federal candidates), are governed by Title I of BCRA and not by subtitle A of Title II of BCRA. Thus, under 2 U.S.C. 441i(f), 11 CFR 100.5(a), and 11 CFR 300.71, these communications must be paid for with Federal funds meeting the limits, prohibitions, and reporting requirements of the Act, including the contribution limits set forth at 2 U.S.C. 441a(a)(1)(C) applicable to political committees that are not the authorized campaign committees of Federal candidates. The reporting obligations of State and local candidates making communications promoting, supporting, attacking, or opposing federal candidates are governed by a number of provisions depending on the exact nature of the communications and the persons making them. *See, e.g.*, 11 CFR 300.36(a)(associations and groups of State and local candidates that are not political committees), 11 CFR 300.36(b)(associations and groups of State and local candidates that are political committees), 11 CFR 300.71(individuals who are State or local candidates), and 2 U.S.C. 434(g)(any person who makes an independent expenditure).

2. 11 CFR 100.29(c)(6) Exemption for 501(c)(3) Organizations

The Commission received comment from members of the non-profit community expressing concern that subtitle A of Title II of BCRA could inadvertently stifle the ability of charitable organizations to carry out their core functions by limiting or prohibiting their advertising on television and radio. One commenter wrote that a broad reading of BCRA could mean that "[c]harities would be prohibited from broadcasting fundraising appeals or public service announcements that feature people who are candidates if the appeals run within 30 days of a primary or 60 days of a general election. Documentaries and other educational programming featuring individuals who are candidates would also be banned."

Several commenters requested that the Commission exercise its authority to craft exemptions for communications that do not promote, support, attack, or oppose a candidate for federal office when made by corporations organized under 26 U.S.C. 501(c)(3). These commenters pointed out that the tax code expressly prohibits organizations described in section 501(c)(3) from "participat[ing] in, or interven[ing] in * * * any political campaign on behalf of (or in opposition to) any candidate for public office." 26 U.S.C. 501(c)(3). As such, noted another commenter, because "501(c)(3) organizations are absolutely prohibited by the [Internal Revenue Code] from engaging in or funding any activity that even insinuates support or opposition to a candidate for public office, they are held to a demonstrably higher regulatory standard than other corporations." Therefore, the commenter concluded, "BCRA's application to 501(c)(3)s [would] prohibit[ ] activity that is already forbidden," and the activities the Internal Revenue Service permits 501(c)(3) organizations to engage in are activities "that BCRA was not intended to reach."

Many commenters noted that the penalties for violating the Internal Revenue Code prohibitions are severe, *viz.*, "revocation of tax-exempt status [and] other potential penalties * * * including substantial taxes on the electioneering activity and penalties that personally apply to managers of an organization that knowingly violate the prohibition."

Some supporters of BCRA submitted comments discouraging the creation of a categorical exemption for 501(c)(3) organizations. Many such commenters referred to statements made by Representative Shays, a chief sponsor of the BCRA legislation, as definitive evidence that Congress did not intend BCRA to give the Commission authority to create such an exemption. *See* 148 Cong. Rec. H411 (daily ed. Feb. 13, 2002) (Statement of Rep. Shays). In written comments to the Commission,

[8] Nonprofit corporations are permitted by 11 CFR 114.4(f) to use their funds and funds donated by corporations or labor organizations to stage debates in accordance with 11 CFR 110.13. 11 CFR 114.1(a)(2)(x) exempts any activity specifically permitted by 11 CFR part 114 from the definition of "contribution and expenditure."

[9] The Commission received a Petition for Rulemaking from a number of corporations owning and operating news organizations, television stations, newspapers, cable channels, and other media ventures, as well as media trade associations. The petition asked the Commission to amend its regulation on sponsorship of candidate debates to "make clear that it does not apply to the sponsorship of a candidate debate by a news organization or a trade organization composed of, or representing, members of the press." The petition asserts that any regulation of the sponsorship of debates by news organizations or related trade associations is contrary to the clear intent of the U.S. Congress, irreconcilable with other FEC decisions, in conflict with the regulatory decisions of the Federal Communications Commission, and unconstitutional. A Notice of Availability for the petition was published on May 9, 2002. 65 FR 31,164. Two comments were received by the end of the public comment period, on June 10, 2002. Some commenters on the Electioneering Communications rulemaking urged the Commission to accelerate consideration of the petition. However, the Commission intends to defer consideration of whether to issue a Notice of Proposed Rulemaking until after the statutorily required BCRA rulemakings are completed by the end of the year. In the meantime, the Commission's debate regulations remain in effect.

however, the congressional sponsors, including Representative Shays, drew a distinction between Congress' decision not to include a statutory exemption and the Commission's discretion to create a regulatory exemption, based upon the Commission's understanding of the needs of these organizations balanced against the past practices of non-profits in this area. "(W)hile the issues of Public Service Announcements and ads created by 501(c)(3) charities were raised during the drafting of Title II, Congress did not create statutory exemptions for these types of ads. Before doing so, the Commission must be convinced that such ads have been run in the past during the pre-election windows and that exempting them will not create opportunities for evasion of the statute."

Testimony on these issues was elicited in a public hearing, specifically, as to whether there is a history of ads run by 501(c)(3) organizations close to elections and whether theses organizations tend to violate the Internal Revenue Service prohibitions against political activity. Witnesses agreed that this activity was rare, but also that 501(c)(3) corporations make extraordinary efforts to avoid Internal Revenue Service prohibitions against political activity when ads are run. The representative of one non-profit organization testified that "(t)here's no demonstrated record of abuse by public charities in terms of electioneering. That's not the group that the campaign finance laws were meant to address. * * *." The Commission also notes that all of the examples mentioned in testimony as the type of ads that Congress meant to limit were based on ads run by 501(c)(4) or other types of organizations, not 501(c)(3) organizations.

More compelling, however, was the testimony of one non-profit organization as to the effect on charitable organizations that could arise should the Commission fail to provide an exemption. One witness testified that, "already the tax rules are complicated enough. If you throw in election law on top of that, there are many groups that will just throw up their hands and say we're not going to get involved (in grassroots lobbying activity), it's just too risky, it's too much to take on."

Second, many commenters expressed concern that investigations under BCRA, even when a complaint is without merit, could have a disastrous effect on a charitable organization. One witness stated, "(w)e've already seen some evidence of people on different sides of issues reporting the groups that have opposed them on the issues to various authorities looking for an investigation, and even if a non-profit had in no way violated campaign finance laws, especially if it were a public charity, just being investigated by the FEC would have a devastating effect on the organization." The same witness also noted that the Commission's advisory opinion process would not be a satisfactory alternative, as too many organizations would fear that any request they direct to the Commission would only raise with the Internal Revenue Service the issue of whether they are contemplating electoral activity. Other non-profit organizations testified that they did not have the financial resources to retain legal counsel and seek an advisory opinion from the Commission, although legal counsel is not required to seek an advisory opinion. The Commission also notes that the rationale for exempting 501(c)(3) organizations applies to all such organizations, which makes a regulatory exemption more appropriate than an exemption granted in an advisory opinion, which is necessarily limited to the particular facts and circumstances of the request and is granted on a case-by-case basis.

Section 501(c)(3) of the Internal Revenue Code exempts from taxation certain trusts and corporations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals. It is the communications of these organizations that the Commission exempts from Title II, subtitle A of BCRA at 11 CFR 100.29(c)(6).

Section 501(c)(3) organizations are barred as a matter of law from being involved in partisan political activity. The Commission believes the purpose of BCRA is not served by discouraging such charitable organizations from participating in what the public considers highly desirable and beneficial activity, simply to foreclose a theoretical threat from organizations that has not been manifested, and which such organizations, by their very nature, do not do.

In exempting 501(c)(3) organizations from Title II, subtitle A of BCRA, the Commission is not delegating enforcement of the electioneering communication provisions to the Internal Revenue Service. Rather the Commission anticipates that the Internal Revenue Service will continue to review the activities of 501(c)(3) organizations to make sure those organizations comply with the tax code, without reference to Title II of BCRA. Should the Internal Revenue Service determine, under its own standards for enforcing the tax code, that an organization has acted outside its 501(c)(3) status, the organization would be open to complaints that it has violated or is violating Title II of BCRA. Additionally, under 2 U.S.C. 438(f), the Commission and the Internal Revenue Service must work together to promulgate rules that are mutually consistent. The final rules, including new 11 CFR 100.29(c)(6), therefore, do not permit any activity that is prohibited under the Internal Revenue Code and regulations prescribed thereunder.

G. Other Exemptions Considered

In the NPRM, the Commission proposed for an exemption related to the popular name of legislation. Proposed 11 CFR 100.29(c)(5). Four alternatives, designated Alternative 3-A through 3-D, were included for another exemption related to grass-roots lobbying. 11 CFR 100.29(c)(6). Additionally, the Commission sought comment on several other potential exemptions. 67 FR 51,136. As described in detail below, the Commission has concluded that none of these exemptions is consistent with the limited authority provided to the Commission by the statute to make exemptions for communications that do not promote, support, attack or oppose a Federal candidate. Consequently, the Commission is not promulgating any of the other exemptions to the definition of "electioneering communication" proposed in the NPRM.

1. Proposed 11 CFR 100.29(c)(5) Popular Name of Legislation

In the NPRM, the Commission proposed an exemption at 11 CFR 100.29(c)(5) that would have exempted a communication that refers to a bill or law by its popular name where that name happens to include the name of a Federal candidate, if the popular name is the sole reference made to a Federal candidate. 67 FR 51,136. Many commenters were opposed to this exemption.

The argument most frequently cited in opposition to this exemption is the absence of an objective standard for the popular name of a bill or law. This lack of an objective standard would make the proposed exemption an easy means of evading the electioneering communication provisions, because a constructed popular name could be used to link a candidate to a popular or unpopular position. In the view of these commenters, such communications could easily promote, support, attack or oppose a Federal candidate, which would make an exemption for these communications beyond the Commission's authority.

Even some of the supporters of this exemption acknowledged the problem of the lack of an objective standard as to what constitutes a popular name of a bill or law. Three supporters proposed responses: one suggested that the Commission limit its exemption to only the original sponsors of the legislation, which would exclude co-sponsors. Another suggested that the Commission limit the exemption to "the unique name generally used by the media." A third suggested that the exemption be limited to communications publicly distributed nationwide. According to this commenter, if such communications use a candidate's name as the popular name of a bill, the nationwide audience would demonstrate the purpose of the communication is truly related to the legislation, and not the particular candidate's election because only a small portion of the audience for a nationwide communication could vote for or against the candidate. This rationale for this proposal applies only to non-presidential candidates.

Opponents of this proposed exemption also argued it was unnecessary. They observed that speakers who wished to communicate about a bill or legislation could use the candidate's name and simply avoid that candidate's particular State or Congressional district during the narrow time period covered by the definition of "electioneering communication." Additionally, even during that time and in that district, the commenters pointed out that the legislation could be discussed without mentioning the particular candidate. Thus, to these commenters, the absence of the exemption would have a limited impact on speakers, but the presence of an exemption would provide the opportunity for significant abuse.

The Commission is persuaded by the examples cited by the commenters and other examples from its own history of enforcement actions that communications that mention a candidate's name only as part of a popular name of a bill can nevertheless be crafted in a manner that could reasonably be understood to promote, support, attack or oppose a candidate. Furthermore, this type of exemption is not necessary because communications can easily discuss proposed or pending legislation without including a Federal candidate's name by using a variety of other means of identifying the legislation. In addition, the Commission recognizes that there are valid concerns as to which names to include in a bill's popular name, which are not necessarily resolved by the mechanical use of the name of only the original sponsors. Nor would this approach adequately address the names of the sponsors of amendments to the legislation. Consequently, the final rules do not include an exemption for such communications.

2. Proposed 11 CFR 100.29(c)(6) Exemption for Lobbying Communications

The Commission proposed four alternatives designated Alternatives 3–A through 3–D in the NPRM that would exempt communications that are devoted to urging support for or opposition to particular pending legislation or other matters, where the communications request recipients to contact various categories of public officials regarding the issue. 67 FR 51,136.

Alternative 3–A would have excluded any communication devoted exclusively to urging support for or opposition to particular pending legislation or executive matters, where the communication only requests recipients to contact an official without promoting, supporting, attacking, or opposing a candidate or indicating the candidate's position on the legislation in question. Alternative 3–B would have excluded any communication concerning only a pending legislative or executive matter, in which the only reference to a Federal candidate is a brief suggestion that the candidate be contacted and urged to take a particular position, and no reference to a candidate's record, position, statement, character, qualifications, or fitness for an office or to an election, candidacy, or voting is included. Alternative 3–C would have excluded any communication that does not include express advocacy, and that refers either to a specific piece of legislation or to a general public policy issue and contains contact information for the person whom the communication urges the audience to contact. Alternative 3–D would have excluded any communication that urges support of or opposition to any legislation or policy proposal and only refers to contacting a clearly identified incumbent candidate to urge the legislator to support or oppose the matter, without referring to any of the legislator's past or present positions.

A wide range of commenters addressed these alternatives, and none of the alternatives was favorably received. The most frequently expressed comments were that each of the alternatives could be easily evaded so that a communication that met the requirements for an exemption nonetheless would also promote, support, attack, or oppose a Federal candidate. Each of the alternatives included terms that commenters found vague. The "promote, support, attack, or oppose" standard was considered inappropriate by some for this context, which will apply to entities other than candidates and political party committees. Alternative 3–C's exemption of all communications was singled out by some commenters who argued it would completely undermine BCRA's requirement because it would exempt virtually all of the ads that led Congress to enact the electioneering communication provisions; however, this alternative was also supported by other commenters who found it the least objectionable of the four alternatives. Several commenters argued that the apparent distinction between incumbent legislators and all other candidates in Alternative 3–D could raise constitutional issues.

Some commenters urged the Commission to promulgate another proposal that shares most of the elements of Alternative 3–B. With disagreement about only one issue, these commenters proposed an exemption for communications that contain the following elements: (A) The communication is devoted exclusively to a pending legislative or executive branch matter and (B) its only reference to a clearly identified Federal candidate is a statement urging the public to contact the Federal candidate or a reference that asks the candidate to take a particular position on the pending legislative or executive branch matter. The proposed formulation of the exemption advocated by these commenters would *not* extend to any communication that included any reference to any of the following: any political party, the candidate's record or position on any issue, or the candidate's character, qualifications or fitness for office or to the candidate's election or candidacy. Other commenters went further than this proposal and also required that the candidate not be named or appear in the communication; the candidate could only be identified as "Your Congressman" or a similar reference that does not include the candidate's name.

The Commission concludes that communications exempted under any of the alternatives for this proposal could well be understood to promote, support, attack, or oppose a Federal candidate. Although some communications that are devoted exclusively to pending public

policy issues before Congress or the Executive Branch may not be intended to influence a Federal election, the Commission believes that such communications could be reasonably perceived to promote, support, attack, or oppose a candidate in some manner. The Commission has determined that all of the alternatives for this proposed exemption, including those proposed by the commenters, do not meet this statutory requirement.

3. Exemption for Business Advertisements

In the NPRM, the Commission invited suggestions on whether to promulgate an exemption for communications that refer to a clearly identified candidate in the context of promoting a candidate's business, including a professional practice, for example. 67 FR 51,136. However, no draft exemption was included in the proposed rules.

The commenters who addressed this issue urged the Commission to adopt an exemption for such advertisements, arguing that candidates who use television or radio to promote their commercial interests have an interest in continuing to do so during the relevant periods before elections. One commenter suggested that a narrowly drawn exemption would be appropriate and that it should be limited to ads that promote the business's product or service and that identify the candidate only by stating his or her name as part of the name of the business. This commenter believed that if the candidate appeared or spoke in such ads, they would constitute electioneering communications.

The Commission has determined that a narrow exemption for such ads is not appropriate and cannot be promulgated consistent with the Commission's authority under 2 U.S.C. 434(f)(3)(B)(iv). Based on past experience, the Commission believes that it is likely that, if run during the period before an election, such communications could well be considered to promote or support the clearly identified candidate, even if they also serve a business purpose unrelated to the election.

4. Ballot Initiatives and Referenda

In the NPRM, the Commission invited specific suggestions on whether communications that promote a ballot initiative or referendum should be exempt from the definition of "electioneering communications." 67 FR 51,136. The NPRM did not, however, include regulatory language for this potential exemption.

The comments received on this issue were divided. Supporters of this exemption argued that the subject matters of these communications and the purpose of those who sponsor these ads make them an unlikely vehicle to be used to promote, support, attack, or oppose a Federal candidate. One of the commenters argued that disbursements promoting or opposing a ballot initiative or referendum represent "the type of speech indispensable to decisionmaking in a democracy" and are therefore entitled to the highest degree of First Amendment protection. *See First National Bank of Boston* v. *Bellotti*, 435 U.S. 765, 777 (1978). Opponents of the exemption argued that such an exemption would be subject to abuse because communications that promote, support, attack, or oppose a Federal candidate could be tailored easily to qualify for any such exemption. In fact, one commenter directly challenged the argument that communications about ballot initiatives or referenda are unlikely to relate to Federal candidates. This commenter stated: "Increasingly, political consultants have been putting initiatives * * * on the ballot specifically to [affect] candidate races. It is too easy to imagine an initiative designed to provoke a backlash against a targeted candidate for the House or Senate." This commenter distinguished *Bellotti's* protections as applying to communications about referenda, but not necessarily communications that clearly identify a Federal candidate.

No such exemption is included in the final rules. The Commission believes that communications qualifying for a ballot initiative or referendum exemption could well be understood to promote, support, attack, or oppose Federal candidates. As ballot initiatives or referenda become increasingly linked with the public officials who support or oppose them, communications can use the initiative or referenda as a proxy for the candidate, and in promoting or opposing the initiative or referendum, can promote or oppose the candidate. Consequently, it would be quite difficult to exempt such communications without violating the limited exemption authority provided to the Commission by BCRA in 2 U.S.C. 434(f)(3)(B)(iv).

5. Public Service Announcements

The NPRM asked whether public service announcements should be exempted. Generally speaking, public service announcements (or "PSAs") can be communications for which the broadcaster or satellite or cable system operator does not charge a fee for publicly distributing. 67 FR 51,136. As such, these communications would not meet the definition of "electioneering communications" pursuant to the operation of 11 CFR 100.29(b)(3)(i). However, broadcasters, and satellite and cable system operators do sometimes charge fees for publicly distributing other communications commonly known as PSAs and either the person who produced the PSA or some third party pays for its public distribution. Because of this fee, these PSAs would be subject to the definition of "electioneering communications," unless exempted. In support of an exemption for all PSAs, several commenters pointed to the many worthy causes that use PSAs to accomplish their missions and not to influence Federal elections. Other commenters, however, did not dispute the existence of PSAs that are not related to Federal elections, but instead pointed to the possibility that such an exemption could be easily abused by using a PSA to associate a Federal candidate with a public-spirited endeavor in an effort to promote or support that candidate. Other commenters explained that historically PSAs have been used for "electorally related purposes" and that such communications are "at the very heart of what the statute is trying to get to."

While the Commission acknowledges that many worthy causes use PSAs for purposes wholly unrelated to Federal elections, the Commission nonetheless concludes that television and radio communications that include clearly identified candidates and that are distributed to a large audience in the candidate's State or district for a fee are appropriately subject to the electioneering communications provisions in BCRA. Even without such an exemption, an enormous array of communications could still promote PSA subject matters during the periods before elections, so long as Federal candidates are not clearly identified. Consequently, a PSA exemption is not included in the final rules.

6. Local Tourism

The NPRM asked if communications that use Federal candidates to encourage local tourism should be exempted from the "electioneering communications" definition. 67 FR 51,136. Only a few commenters addressed this issue, and they supported such an exemption. However, the Commission believes that these communications could serve two purposes: promoting local tourism, but doing so in a way that also could be reasonably perceived to promote or support the Federal candidate appearing in the communication. Because such an exemption may encompass communications that could be viewed to promote, support, attack, or oppose a Federal candidate, the Commission has decided not to include such an exemption in the final rules.

II. Ban on the Use of Corporate and Labor Organization Funds

BCRA amends 2 U.S.C. 441b by extending the prohibition on the use of corporate and labor organization treasury funds to the financing, directly or indirectly, of electioneering communications. The NPRM proposed to implement this restriction in several ways: through the amendment of 11 CFR 114.2 to reflect the stated restriction; through the amendment of 11 CFR 114.10 to allow qualified non-profit corporations ("QNCs") to make not only independent expenditures, but also electioneering communications; and through the creation of 11 CFR 114.14 to restrict the indirect use of corporate and labor organization treasury funds to finance electioneering communications.

A. 11 CFR 114.2 Prohibitions on Contributions and Expenditures by Corporations and Labor Organizations.

In the NPRM, the Commission proposed to revise 11 CFR 114.2(b) by restructuring the current provisions into paragraphs (b)(1) and (b)(2)(i) and (ii). The proposed rule would also add a new paragraph (b)(2)(iii) that would address electioneering communications by corporations and labor organizations. For the reasons stated below, the Commission has adopted the language of proposed section 114.2(b) in the final rules. Therefore, paragraph (b)(1) states the general prohibition on corporations and labor organizations making contributions; paragraph (b)(2)(i) provides for the corresponding prohibitions on corporate and labor organization expenditures; paragraph (b)(2)(ii) restricts express advocacy by corporations and labor organizations to those outside the restricted class; and paragraph (b)(2)(iii) prohibits electioneering communications by corporations and labor organizations to those outside the restricted class. Additionally, paragraph (b)(2)(iii) does not apply to State party committees and State candidate committees that incorporate under 26 U.S.C. 527(e)(1) and are not political committees. The additional language to this paragraph is to ensure that these incorporated State party and candidate committees are permitted to engage in electioneering communications in the same manner as unincorporated State party committees and candidate committees that are not political committees. The prohibitions in paragraph (b)(2) do not apply to qualified nonprofit corporations ("QNCs") as described in 11 CFR 114.10.

1. Qualified Nonprofit Corporations

Several commenters addressed the application of 11 CFR part 114 to QNCs. The Commission received three comments regarding the overall revisions to section 114.2, one of which was from the sponsors of BCRA. All three sets of comments agreed with the revisions that implement BCRA's changes to 2 U.S.C. 441b, and specifically agreed with the proposed rules permitting QNCs to make electioneering communications. Several other commenters addressed only the provision that allows QNCs to make electioneering communications. These commenters supported the proposal, viewing this as a correct application of the Supreme Court's decision in *FEC* v. *Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) ("*MCFL*").

Two commenters responded in favor of a proposal in the NPRM that the Wellstone amendment, which establishes rules for "targeted communications," should not be read to apply to communications that refer to a clearly identified candidate for President or Vice President. *See* 2 U.S.C. 441b(c)(6). Under this interpretation, incorporated 501(c)(4) organizations that do not qualify as QNCs, and incorporated section 527 organizations that are not political committees registered with and reporting to the Commission, would be able to make electioneering communications that refer to a clearly identified candidate for President or Vice President, as long as they did not use impermissible funds, because such communications are not "targeted." These commenters both argued that this interpretation can be supported by the language of the statute and that it would mitigate constitutional concerns about the statute's application.

Two other commenters argued specifically against this view, one of whom noted that this is an incorrect interpretation of 2 U.S.C. 441b(c)(6) and that this section is properly interpreted to cover all communications that mention candidates for President or Vice President. The second commenter stated that, to the extent that the Commission proposes to construe presidential primary elections to be subject to a targeting requirement for purposes of the definition of "electioneering communication," it should also construe the Wellstone amendment to apply to such targeted communications. A third commenter argued that the Wellstone provision is directly contrary to *MCFL*, and that, as a result, this commenter supported in principle the application of the QNC exception.

Three commenters argued that the ban on corporate expenditures is unconstitutional under the *MCFL* ruling. According to one of these commenters, Congress was aware of the *MCFL* ruling when it passed BCRA, and could have made an exemption for *MCFL* corporations if it had wanted to. Because Congress did not create such an exemption, the Commission has no legal ability to do so, according to this commenter. This commenter also stated that the Commission should "follow a policy of non-enforcement with regard to qualified non-profits." The other commenters presented similar arguments. They argued that it was clear that "the purpose of the provision was to close a 'loophole' that would allow all 'interest groups,' regardless of their status, to run 'sham issue ads.'" *See, e.g.*, 147 Cong. Rec. S2846 (daily ed. Mar. 26, 2001) (statement of Sen. Wellstone). These commenters further argued that, "even supporters of BCRA recognized that the Wellstone amendment would present constitutional problems in the wake of the Supreme Court's decision in *MCFL*. *See, e.g.*, 147 Cong. Rec. S2883 (Mar. 26, 2001) (statement of Sen. Edwards)." According to these commenters, it is undeniable from the text of BCRA that Congress intended to ban even *MCFL* corporations from making expenditures for electioneering communications, and the Commission cannot save the statute from facial invalidity by promulgating contradictory regulations.

With respect to the argument that the Commission cannot allow QNCs to make electioneering communications because to do so would violate BCRA, the Commission notes that, during the final passage of BCRA, additional statements were made regarding the prohibition on corporate expenditures. At that time, one of the principal sponsors of BCRA stated that, "[t]he legislation does not purport in any way, shape or form to overrule or change the Supreme Court's construction of the Federal Election Campaign Act in *MCFL*. Just as an *MCFL*-type corporation, under the Supreme Court's ruling, is exempt from the current prohibition on the use of corporate funds for expenditures containing 'express advocacy,' so too is an *MCFL*-type corporation exempt from the prohibition in the Snowe-Jeffords amendment on the use of its treasury funds to pay for 'electioneering communications.' Nothing in the bill purports to change *MCFL*." 148 Cong. Rec. S2141 (daily ed. Mar. 20, 2002) (statement of Sen. McCain).

Although Senator McCain referred to "Snowe-Jeffords" without mentioning the Wellstone amendment, he clearly explained that under the proposed legislation, an *MCFL* corporation would be allowed to use its treasury funds to pay for electioneering communications. He specifically referred to that part of the Snowe-Jeffords amendment that prohibits the "use of (a corporation's) treasury funds to pay for 'electioneering communications,'" the main provision of this amendment that remains unaltered by the passage of the Wellstone amendment. *See id.*

In addition, the original Snowe-Jeffords amendment applied to all section 501(c)(4) and 527 corporations, not just *MCFL* corporations. Senator McCain's statement thus recognizes that *MCFL* will have the same effect under BCRA for electioneering communications as it did under the FECA for independent expenditures, which must contain express advocacy.

Further, the original Snowe-Jeffords amendment would not have allowed the use of treasury funds that came from corporations and labor organizations; rather, entities that accept corporate and labor organization funds would have been required to pay for electioneering communications exclusively with funds provided by individuals who are United States citizens or nationals or lawfully admitted for permanent residence, 2 U.S.C. 441b(c)(2), and unless a section 501(c)(4) corporation deposited these funds into a separate account, the statute would have considered that 501(c)(4) corporation to have paid for the electioneering communication with impermissible corporate or labor organization funds. 2 U.S.C. 441b(c)(3)(B). Senator McCain's reference to treasury funds, therefore, manifests an understanding that the *MCFL* protections are built into the Snowe-Jeffords and Wellstone amendments.

Thus, the Commission concludes that the legislative history indicates that the intent of BCRA was to treat electioneering communications in a similar manner as independent expenditures. Part of that treatment is the application of *MCFL* to electioneering communications made by these QNCs.

2. Affiliation of Entities Permitted To Make Electioneering Communications With Those Entities That Are Not Permitted; Effect of Prior Incorporation

The Commission sought comments on whether an entity prohibited from making an electioneering communication, *i.e.* a labor organization or a corporation that is not a QNC, may be affiliated with an entity that is permitted to make electioneering communications, provided that the entity permitted to make such communications received no prohibited funds from the entity prohibited from doing so.

Several commenters offered interpretations of section 441b(c)(3)(A), which treats an electioneering communication as made by a prohibited entity if the prohibited entity "directly or indirectly disburses any amount" for the cost of the communication. One commenter interpreted this to mean that a permitted entity may not receive any funds or financial support from a prohibited entity if the permitted entity intends to make electioneering communications. Another commenter stated that Congress expressly determined that corporate and union funds may not be used by any person to make electioneering communications, but that Congress stopped short of prohibiting "affiliated" organizations from using funds from individuals to make electioneering communications. That commenter also stated that it would be inappropriate for the Commission to consider unilaterally imposing restrictions that are not required by statutory language, particularly when Congress expressly included provisions addressing closely related entities elsewhere. *See, e.g.* 2 U.S.C. 323(d).

Other commenters, including BCRA's sponsors, did not specifically refer to the affiliation question, but stated that corporations and labor organizations must be prohibited from setting up, operating, or controlling unincorporated accounts that are not federal political committees. However, BCRA's sponsors and other commenters agreed that BCRA does not prohibit corporations or labor organizations from using their separate segregated funds to pay for electioneering communications, even though corporate treasury funds may be used for the establishment, administration, and solicitation of contributions to these separate segregated funds. *See* 11 CFR 114.5(b). BCRA's sponsors noted that this situation was specifically discussed during the Senate debate concerning BCRA. *See, e.g.*, 148 Cong. Rec. S2141 (daily ed. Mar. 20, 2002) (statement of Sen. McCain) ("Under the bill, corporations and labor unions could no longer spend soft money on broadcast, cable or satellite communications that refer to a clearly identified candidate for federal office during the 60 days before a general election and the 30 days before a primary, and that are targeted to the candidate's electorate. These entities could, however, use their PACs to finance such ads. This will ensure that corporate and labor campaign ads proximate to Federal elections, like other campaign ads, are paid for with limited contributions from individuals and that such spending is fully disclosed.")

Several commenters argued that nothing in BCRA prevents an organization that is prohibited from making an electioneering communication from affiliating with an organization that can. One pointed out that organizations that are not permitted to make electioneering communications may be affiliated with a QNC, which is expressly permitted to make electioneering communications.

One commenter supporting this position argued that, on at least one occasion, the Supreme Court has "allowed Congress to restrict constitutionally protected speech while noting that the organization subject to the restriction was permitted to create an affiliate organization that was not subject to the restriction," citing *Regan v. Taxation With Representation*, 461 U.S. 540 (1983) (where the Supreme Court upheld statutory limits on lobbying by charitable organizations, but noted that such organizations had the option of creating an affiliated section 501(c)(4) organization to engage in unlimited lobbying). This commenter also argued that *MCFL* demonstrated the Supreme Court's "reluctance to burden protected speech, and, at the very least, suggests that the Court would reject any restriction on organizations affiliating to expand the scope of permissible communications."

The Commission has concluded that section 441b(c)(3)(A) and its legislative history support the determination that the general treasury funds of a corporation or labor organization may not be used to establish, administer, or solicit funds for, an affiliated organization that would accept funds from individuals to pay for electioneering communications. This is because the establishment, administration, or solicitation of funds for, the affiliate would result in the indirect payment of impermissible funds for electioneering communications. Senator McCain's statement above reflects Congressional intent that communications meeting the timing, content and audience elements of an electioneering communication must be financed with permissible funds contributed by individuals to separate segregated funds, and not with corporate or labor organization funds. Such communications are considered expenditures, not electioneering communications. *See* 11 CFR 100.29(c)(3). As expenditures, they are paid for by an entity, the SSF, which is permitted under section 441b of the FECA to use corporate or labor organization funds for its establishment, administration, and for the solicitation of contributions. However, BCRA provides no comparable opportunity for a corporation or labor organization to establish, administer, or solicit for an entity that makes electioneering communications.

The Commission does not, however, see any statutory basis for creating restrictions on electioneering communications by a permitted entity whose affiliation with a prohibited entity is based on non-financial factors (*e.g.*, overlapping officers or members). *See* 11 CFR 100.5(g). So long as such entities maintain separate finances, the permitted entity's electioneering communications would not be treated as having been made by the prohibited entity, because there would be no direct or indirect disbursement by the prohibited entity. Likewise, the Commission does not see any basis for restricting individuals who work for entities barred from making electioneering communications from pooling their own funds to finance electioneering communications, provided no corporate or labor organization funds are used.

The Commission also sought comment on whether a 501(c)(4) organization or a 527 organization that was previously incorporated and has changed its status to become a limited liability company or similar type of entity under State law would be permitted to pay for electioneering communications with funds that were donated by individuals to the organization during the time it was incorporated. One commenter who addressed this question argued that these funds should be considered corporate funds that cannot be used to pay for electioneering communications. The Commission agrees.

B. 11 CFR 114.10 Exemption for Qualified Nonprofit Corporations

MCFL's exemption for QNCs to make independent expenditures is codified in 11 CFR 114.10.[10] In the NPRM, the Commission proposed revising 11 CFR 114.10 to set out standards for establishing QNC status for those section 501(c)(4) corporations wishing to make electioneering communications as well as independent expenditures. For the reasons stated below, the Commission has decided to incorporate the language of the proposed rules, with certain modifications for filing certification of QNC status, into the final rules. Therefore, the title of § 114.10 is redrafted to reflect its application to electioneering communications, as is the discussion of the scope of § 114.10 found in paragraph (a). The title of § 114.10 is slightly different from what was proposed in the NPRM. There are no changes to paragraphs (b) and (c). Paragraph (d) is redesignated as "Permitted corporate independent expenditures and electioneering communications." Paragraph (d)(1) remains unchanged substantively, but contains a correction to the citation of the definition of "independent expenditure." Paragraph (d)(2) tracks the language of paragraph (d)(1), except that it substitutes "electioneering communication" for "independent expenditure," and it references the definition of "electioneering communication" at 11 CFR 100.29. Former paragraph (d)(2) is redesignated as paragraph (d)(3), with an additional reference to paragraph (d)(2).

1. Certifying QNC Status

The NPRM also proposed that the procedures for the certification of qualified nonprofit corporation status be revised to provide separate procedures for those making electioneering communications. The Commission has decided to adopt the proposed rules pertaining to these procedures. Thus, the procedures for corporations making independent expenditures, which were found at 11 CFR 114.10(e)(1)(i) and (ii), are now redesignated as 11 CFR 114.10(e)(1)(i)(A) and (B). Paragraphs (e)(1)(ii)(A) and (B) are added to describe the procedures for demonstrating qualified nonprofit corporation status when making electioneering communications. These provisions are similar to the provisions for qualified nonprofit corporations making independent expenditures, except that the threshold for certification is $10,000. Further, corporations are not required to submit certifications prior to making independent expenditures or electioneering communications. The pre-BCRA rules are being modified to permit corporations that have received a favorable judicial ruling concerning their QNC status, in litigation in which the same corporation was a party, to certify that application of that ruling to the corporation's activities in subsequent years confers QNC status. Advance certifications are not necessary given that the Commission anticipates that reporting will be tied to the date that the independent expenditure is publicly disseminated or the electioneering communication is publicly distributed. The Explanation and Justification for the Commission's decision to adopt the proposed revisions to 11 CFR 114.10 are discussed in further detail below.

Several commenters asserted that the threshold for certifying QNC status should be lower, and they specifically mentioned setting it at the same level as that for QNCs that wish to make independent expenditures. One commenter argued that setting the level at $10,000 would only make sense if a corporation could only spend $10,000 of its treasury funds on electioneering communications before encountering the 2 U.S.C. 441b prohibition. Another commenter stated that the level for certifying should be set at $250 for the QNC "to establish its right to spend any corporate funds on electioneering communications," and that "an *MCFL* corporation can spend its funds on electioneering communications only if it establishes it is qualified to do so, even if its spending never reaches the $10,000 threshold amount." The sponsors of BCRA also argued that the threshold for certifying QNC status should be $250, using the same reasoning as above.

Certain commenters suggested that the Commission should establish a different QNC standard for corporations that wish to make electioneering communications than the standard for those that wish to make independent expenditures, noting, in one instance, that "the *MCFL* exemption must be expanded * * * in response to the greater speech burden at issue in the context of 'electioneering communications' versus express advocacy." According to this commenter, "[w]ith respect to express advocacy, the Government's regulatory interest (however weak) is at its zenith, and the category of speech that is burdened is strictly defined. 'Electioneering communications,' however, constitute a much larger

[10] In filing for QNC status, a corporation certifies that it meets five qualifications: (1) That it is a social welfare organization as described in 26 U.S.C. 501(c)(4); (2) that its only purpose is issue advocacy, election influencing activity or research, training or educational activities tied to the corporation's political goals; (3) that the corporation does not engage in business activities; (4) that the corporation has no shareholders or persons, other than employees and creditors, who either have an equitable or similar interest in the corporation or who receive a benefit that they lose if they end their affiliation; and (5) that the corporation was not established by a corporation or labor organization, does not accept direct or indirect donations from such organizations and, if unable to demonstrate that it has not accepted such donations, has a written policy against accepting donations from them. *See* 11 CFR 114.10(c)(1) through (5).

category of political expression that is further removed from advocating for a particular candidate; the Government's regulatory interest is therefore even more attenuated and the burden upon political speakers' expression is heightened." Another commenter argued that "the regulatory regime managing any exemption from coverage should be tailored to reflect the much weaker interests at stake." This commenter also stated that, under the proposed regulations, groups can never know in advance whether their QNC certification will be accepted, thus leaving them to "speak at their peril."

Several commenters, as noted above, argued that the Commission could not create an exception for *MCFL* corporations. By extension, these commenters opposed the certification procedure at 11 CFR 114.10.

The Commission concludes that the proposed rule is better left intact in the final rules. Several reasons lead to this conclusion. First, the Commission is aware of nothing suggesting that Congress intended a threshold lower than $10,000 for filing the certification, and setting the certification threshold at the level that first triggers reporting under the statute minimizes the burden on QNCs. In this respect, the certification threshold for electioneering communications is comparable to the certification threshold for independent expenditures. Further, as noted above, the Commission has concluded that statements of electioneering communications need not be filed until the communication is publicly distributed, because until such time as the communication can be received by 50,000 persons, it is not an "electioneering communication." Likewise, until a person makes an electioneering communication, the Commission has no reason to seek certification of QNC status. Further, the threshold provides a clear rule that is easy to follow.

Moreover, while one commenter argued that "an *MCFL* corporation can spend its funds on electioneering communications only if it establishes it is qualified to do so," this misconstrues the certification of QNC status. Corporations may spend funds for electioneering communications as long as they meet the requirements of qualified non-profit corporation status. If they spend $10,000 or more, they must certify to the Commission that they meet this status. However, they need not obtain prospective approval of QNC status prior to making electioneering communications or, for that matter, independent expenditures.[11] Further, if a corporation does not qualify for QNC status, it is not permitted to use any general treasury funds for electioneering communications, and there was nothing in the proposed rules, nor is there anything in the final rules, to suggest otherwise.

Further, the commenters advancing the argument that the Commission should create an entirely different standard for QNC status with respect to electioneering communications, than the standard for QNC status with respect to independent expenditures, miss a central point that concerned the sponsors of BCRA: that certain communications that do not necessarily expressly advocate for a candidate's election or defeat, may nevertheless have an impact on an election. There is no indication that Congress intended the *MCFL* exception to apply differently to groups making electioneering communications than to those making independent expenditures. The qualifications for QNC status in pre-BCRA 11 CFR 114.10(c) are objective qualifications that would be apparent to any corporation contemplating whether to make an electioneering communication.

Nevertheless, the Commission recognizes that certain courts have held that organizations incorporated under 26 U.S.C. 501(c)(4) that do not meet all of the strictures contained in the Commission's regulations at 11 CFR 114.10(c)(1) through (c)(5) may still make independent expenditures without violating the prohibition at 2 U.S.C. 441b(a). It is appropriate for the Commission to allow the prevailing organization to certify its status based on the court ruling. Accordingly, the Commission is modifying pre-BCRA 11 CFR 114.10(e)(1) (new § 114.10(e)(1)(i)(B)), to allow organizations that prevail in litigation to certify their QNC status based on the favorable ruling. This modification to the rules does not require any modification to the current certification on the Commission's Form 5 for independent expenditures, and on the new form the Commission intends to create for electioneering communications, Form 9. On Form 5, that certification reads, in relevant parts: "(I)f the independent expenditures are reported herein were made by a corporation, I certify that the corporation is a (QNC) under the Commission's regulations." This statement would remain true regardless of the reason for QNC status: either compliance with the Commission's standards in § 114.10(c) of the regulations, or pursuant to judicial decision, as contemplated by new paragraph (e)(1)(i)(B) of § 114.10. Because paragraph (e)(1)(i)(B) is referenced by the paragraph that addresses certification for QNCs making electioneering communications, paragraph (e)(1)(ii)(B), this holds equally for electioneering communications.

[11] Of course, corporations are free to file for QNC status before making electioneering communications if they are concerned about "speaking at their peril."

2. Disclaimers

Section 11 CFR 114.10(g) is revised to require qualified nonprofit corporations to comply with the requirements of 11 CFR 110.11 regarding non-authorization notices ("disclaimers") when making electioneering communications. The final rule mirrors the proposed rule. BCRA amended 2 U.S.C. 441d to require disclaimers for electioneering communications. No comments were received regarding this provision.

3. Segregated Bank Account

Identical in substance to the proposed rule, § 114.10(h) states that qualified nonprofit corporations may establish a segregated bank account for the purpose of depositing funds to be used to pay for electioneering communications, as identified in 11 CFR part 104. The one revision is a change to correct the citation to where the rules address the segregated bank account. This proposal met with general approval by the commenters.

Proposed § 114.10(i) would track the language in 2 U.S.C. 441b(c)(5), which states that nothing in 2 U.S.C. 441b(c) shall be construed to authorize an organization exempt from taxation under 26 U.S.C. 501(a) to carry out any activity that is prohibited under the Internal Revenue Code. No comments were received regarding this paragraph; this paragraph appears in the final rules.

4. "*De Minimis*" Standard

The Commission also sought comment on whether a provision should be added to the rules incorporating a *de minimis* standard for QNCs, in light of court decisions such as *Minnesota Citizens Concerned for Life, Inc.* v. *FEC*, 936 F. Supp. 633 (D. Minn. 1996), *aff'd*, 113 F.3d 129 (8th Cir. 1997) ("*MCCL*"). *MCCL* allowed QNCs to engage in a certain amount of business activity, accept a *de minimis* amount of funds from corporations and labor organizations, and still qualify for QNC status. In making this ruling, the court of appeals relied on its previous ruling in *Day* v. *Holahan*, 34 F.3d 1356 (8th Cir. 1994), in which the court addressed a Minnesota statute that had been based on the Supreme Court's *MCFL* ruling, and which was similar to the Commission's rules at 11 CFR 114.10. In *Day*, the court noted that the key issue was "the amount of for-profit corporate funding a nonprofit receives, rather than the establishment of a policy not to accept significant amounts. . . . (T)he facts before us in this case present no risk of 'the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas.' The state, far from having shown that MCCL is amassing great wealth as a result of corporate donations, implicitly concedes that MCCL has not received any significant contributions from for-profit corporations." *Day*, 34 F.3d at 1364 (citation omitted).

Several commenters opposed a *de minimis* exception. One of these commenters cited the Supreme Court's language in *MCFL* regarding the policy of the organization against accepting contributions from corporations or labor organizations. The second commenter argued that the Commission does not have the authority to write a *de minimis* standard, suggesting it could only do so if BCRA is unconstitutional, and further asserting that only the courts may pass on the constitutionality of legislation passed by Congress. This commenter further argued that there has been no court case that has addressed whether a *de minimis* standard is required for electioneering communications. Further, this commenter stated that *MCFL* did not contemplate such an exception. BCRA's principal sponsors also argued that no section 501(c)(4) organization that accepts even a *de minimis* amount of corporate or labor organization funds can meet the definition of a QNC. They argue that this position is consistent with *MCFL*, and nothing in the legislative history of BCRA suggests a contrary intent.

Other commenters supported a *de minimis* exception. One commenter argued that the Commission should apply the *MCCL* standards. This commenter maintained that *MCCL* expands the reach of *MCFL*, but is constitutionally consistent with it. The commenter further argued that, without such an allowance, organizations that accept a small amount of corporate or labor organization funding would face uncertainty about their status as QNCs and their ability to make electioneering communications.

Another commenter also supported allowing corporations that accept "a modest or incidental or *de minimis* amount" of corporate or labor organization funds to qualify for QNC status, stating that many organizations that accept such funds remain overwhelmingly supported by individual members and contributors who subscribe to the views and advocacy of the organization. Other commenters argued that the failure to adopt such a provision would result in a failure to cure the unconstitutionality of the electioneering communications provisions. Another commenter argued that the consensus view of the courts of appeals that have considered the question is that there should be a *de minimis* standard. This commenter further argued that the Commission should adopt the standard articulated in *North Carolina Right to Life* v. *Bartlett*, 168 F.3d 705 (4th Cir. 1999) (where the court determined that the acceptance of up to eight percent of overall revenues did not preclude North Carolina Right to Life from qualifying for a state *MCFL* exemption because the corporate funds were "but a fraction of its overall revenue" and were not "of the traditional form").

The final rules maintain the prohibition against QNCs accepting any funds from corporations or labor organizations and do not allow them to accept a *de minimis* amount. The Commission has previously considered the issue of whether to allow QNCs to accept a *de minimis* amount of corporate or labor organization funding. *See Explanation and Justification for Regulations on Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures*, 60 FR 35,292 (July 6, 1995). At that time, the Commission noted that "(t)he *MCFL* Court was concerned that business corporations and labor organizations could improperly influence qualified nonprofit corporations and use them as conduits to engage in political spending," and that "the Court saw *MCFL*'s policy of not accepting business corporation or labor organization donations as the way to address these concerns." 60 FR at 35,301. Further, the Commission cited the Supreme Court's decision in *Austin* v. *Michigan Chamber of Commerce*, 494 U.S. 652 (1990), to support a complete ban on the acceptance of corporate or labor organization funds, noting the Court's concerns that "the danger of 'unfair deployment of wealth for political purposes' exists whenever a business corporation or labor organization is able to funnel donations through a qualified nonprofit corporation." 60 FR at 35,301. Accordingly, the Commission determined that qualified nonprofit corporations should not be allowed to accept any funds from corporations or labor organizations.

The Commission recognizes that certain courts of appeals have recognized a *de minimis* exception permitting the acceptance by QNCs of corporate and labor organization funds. These circuit courts, however, have not defined the exception in the same terms, and therefore, two circuits would not necessarily apply the *de minimis* exception to the same set of circumstances. *Compare MCCL*, 936 F. Supp 633 (D. Minn. 1996) (*MCFL*-corporation status allowed where organization had not received "any significant contributions from for-profit corporations") *with NCRL*, 168 F.3d 705 (4th Cir. 1999) (*MCFL*-corporation status allowed where up to eight percent of the organization unspecified overall revenues came from corporations, where such corporate payments were "not of the traditional form"). Although the Commission does not believe it is appropriate to establish a *de minimis* exception at this time, the Commission retains the discretion to revisit this issue in a subsequent rulemaking proceeding or otherwise. *See* 62 FR 65,040 (Dec. 10, 1997) (pending *MCFL* Petition for Rulemaking). Court rulings regarding the effect of *de minimis* corporate funding on QNC certifications for specific organizations are discussed, above, and are addressed in the final rules at 11 CFR 114.10(e)(1)(i)(B).

C. 11 CFR 114.14 Further Restrictions on the Use of Corporate and Labor Organization Funds for Electioneering Communications

In the NPRM, the Commission proposed a new rule, 11 CFR 114.14, to implement the provisions in 2 U.S.C. 441b(b)(2), (c)(1) and (c)(3) prohibiting corporations and labor organizations from directly or indirectly disbursing any amount from general treasury funds for any of the costs of an electioneering communication. Proposed 11 CFR 114.14(a) would have contained the prohibition that applies to corporations and labor organizations generally. The rule is meant to eliminate any instance of a corporation or labor organization providing funds out of their general treasury funds to pay for an electioneering communication, including through a non-Federal account. This met with general approval from the commenters and remains in the final rule as paragraph (a)(1). As noted in the NPRM, the Commission does not view BCRA as in any way prohibiting or restricting payments for electioneering

communications from otherwise lawful funds raised and spent by the Federal account of a separate segregated fund.

1. Contributor Liability by Corporations and Labor Organizations

The NPRM also sought comments on the standards to be employed to determine liability of the corporation or labor organization providing the funds. One commenter stated that the standard should be whether the corporation or labor organization intends that the person to whom it supplies the funds will use them for an electioneering communication, or whether it knows or should know that the funds will be used for an electioneering communication. Another commenter suggested that, if the funds are provided for another purpose, that should, absent evidence to the contrary, lead to the conclusion that this regulation has not been violated. Further, if the funds are provided subject to a prohibition against their use to pay for electioneering communications, that should, absent evidence to the contrary, lead to the same conclusion. Another commenter suggests that a corporation or labor organization should be liable if it "specifically directs" or "suggests" that the funds be used for electioneering communications, or if it knows or should know that the funds will be used for electioneering communications. The sponsors of BCRA also suggested this latter standard.

Paragraph (a)(2) sets forth the standards to be applied in determining whether the knowledge requirement exists by providing three alternative ways, any one of which would establish that a corporation or labor organization has knowingly given, disbursed, donated, or otherwise provided, funds used to pay for an electioneering communication.

The first knowledge standard is that of actual knowledge. The second standard requires awareness on the part of the corporation or labor organization of certain facts that would lead a reasonable person to conclude that there is a substantial probability funds will be used to pay for an electioneering communication. This second standard is in effect a "reason to know" standard, and is different from a "should have known" standard. Restatement (Second) of Agency, sec. 9, cmts. d and e (1958). The third standard addresses situations in which the corporation or labor organization is or becomes aware of facts that should have led any reasonable person to inquire about the intent of the person receiving the funds for their use, however, the corporation or labor organization failed to so inquire. This third alternative is in effect a willful blindness standard covering situations in which a known fact may not equal a substantial probability of illegality but at least should prompt an inquiry.

The final rules at new 11 CFR 114.14(b), like the proposed rule, prohibit any person who accepts corporate or labor organization funds from using those funds to pay for an electioneering communication, or to provide those funds to any other person who would subsequently use those funds to pay for all or part of the costs of an electioneering communication. The rule is intended to effectuate BCRA's treatment of an electioneering communication as being made by a corporation or labor organization if such an entity indirectly disburses any amount for the cost of the communication from their general treasury funds. 2 U.S.C. 441b(c)(3)(A). No commenter addressed this rule.

Proposed paragraph (c) of 11 CFR 114.14 would have provided certain limited exceptions to allow corporations or labor organizations to provide funds that might subsequently be used for electioneering communications. These exceptions are salary, royalties, or other income earned from *bona fide* employment or other contractual arrangements, including pension or other retirement income; interest earnings, stock or other dividends, or proceeds from the sale of the person's stocks or other investments; or receipt of payment representing fair market value for goods or services rendered to a corporation or labor organization. No commenter suggested any other instances of corporate or labor organization general treasury funds that might properly be used to pay for electioneering communications other than those listed at paragraphs (c)(1) through (3), and the proposed exceptions received general support from the commenters. These exceptions are being included in the final rules.

2. Accounting of Funds To Ensure That No Funds Received From Corporations or Labor Organizations Are Used for Electioneering Communications

Section 114.14(d)(1), like the proposed rules, requires persons who receive funds from a corporation or a labor organization that do not meet the exceptions of paragraph (c) to demonstrate through a reasonable accounting method that no such funds were used to pay for any portion of an electioneering communication. The Commission sought comment on whether a specific accounting method should be required, such as first-in-first-out, last-in-first-out, or any other method. Several commenters did not propose specific methods, but urged the Commission to require "a more specffic and stringent accounting method," or "a higher standard of accounting than 'reasonable' methods." The principal sponsors of BCRA stated that the Commission "should insist on a high level of certainty in any accounting method used to make this demonstration."

Further, commenting on the special account available to QNCs at 11 CFR 114.10(h), several commenters suggested that this option be available to all persons who make electioneering communications. One commenter stated that it interpreted paragraph (h) to permit non-QNC entities to set up such an account. Likewise, the sponsors of BCRA noted that QNCs are not the only entities that might want to set up such accounts.

While the Commission did not intend to exclude non-QNCs from establishing segregated bank accounts similar to those described at paragraph (h), the proposed rules were not explicit that non-QNCs may do so. Moreover, as § 114.10 applies only to QNCs, some non-QNCs may not realize that such an account would be available to them.

Accordingly, the Commission has added a provision to 11 CFR 114.14(d) that specifically allows any person who wishes to make electioneering communications to establish a separate bank account from which it pays for electioneering communications. 11 CFR 114.14(d)(2). This account must only contain funds contributed directly to it by individuals who are United States citizens or nationals or lawfully admitted for permanent residence. If persons use only funds from such an account to pay for an electioneering communication, then they will have demonstrated against any charge to the contrary that they did not use funds from a corporation or labor organization to pay for the communication, and their disclosure of their contributors will be limited to the names and addresses of those persons who donated or otherwise provided funds to the account. However, if a person uses any other funds from outside of this account to pay for the electioneering communication, then it will have to disclose the names and addresses of all persons who contributed to the entity, as required by 11 CFR 104.171(c)(8), and will have to provide a more detailed accounting to demonstrate that the funds used did not come from a corporation or labor organization. The ability to establish this segregated bank account is also intended to address, in part, the concerns of those commenters who objected to disclosing their entire donor base.

III. Reporting Requirements

In the NPRM, the Commission stated that one of the other BCRA-related rulemaking projects is reporting. 67 FR 51,131. This reporting rulemaking is intended to consolidate all of the proposed amendments to 11 CFR part 104 included in the various BCRA-related NPRMs into one NPRM. Because public disclosure is one of the most important aspects of the FECA, the Commission concluded that a consolidated rulemaking on reporting would allow the public, especially those required to file reports and statements under the FECA and BCRA, to review, understand, and comment on the new and revised reporting requirements as the result of BCRA in a comprehensive manner.

Consequently, the final rules on electioneering communications do not include the changes to 11 CFR 100.19, 104.19, and 105.2 that were part of the proposed rules. Rather, a brief discussion of the major issues and comments relating to the reporting of electioneering communications is included in this Explanation and Justification. *See* below. The Consolidated Reporting NPRM will include revised proposed rules for electioneering communications reporting that will take into consideration the comments that the Commission received in response to the Electioneering Communications NPRM.

A. Disclosure Date

BCRA requires persons who make electioneering communications to file disclosure statements with the FEC within 24 hours of the disclosure date. 2 U.S.C. 434(f)(1). In the previously published NPRM, proposed § 104.19(a)(1)(i) and (ii) would define "disclosure date" as the date on which "a person has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000." NPRM, 67 FR at 51,145. The NPRM, however, sought comment on whether the disclosure date should be the date on which the electioneering communications are publicly distributed. Thus, under this scenario, an organization could make disbursements or enter into a contract to make disbursements that exceed $10,000 but would not be required to disclose the disbursements or contract until the electioneering communication is aired, broadcast or otherwise disseminated by television, radio, cable, or satellite.

All nine commenters who addressed this issue disagreed with the proposed rule and advocated adopting a final rule that would define "disclosure date" as the date of the airing of the electioneering communication. They argued that there is no electioneering communication, and therefore no reporting requirement, until the communication is actually aired or otherwise publicly distributed. One witness at the hearing did acknowledge that in some cases it may be difficult to ascertain when an electioneering communication airs for purposes of triggering the 24-hour reporting period because some contracts may not specify a time that the communication will be aired or because in some instances the broadcaster may fail to air the communication during the block of time specified in the contract. This issue will be further explored in the consolidated reporting NPRM.

B. Direction or Control

The previously published NPRM included two proposed alternatives, identified as Alternative 4–A and Alternative 4–B, to implement the BCRA requirement to disclose "any person sharing or exercising direction or control over the activities" of the person making the disbursement for electioneering communications. *See* 2 U.S.C. 434(f)(2)(A); 67 FR 51,146 (Aug. 7, 2002). Many of the commenters expressed the belief that both alternatives are vague and could encompass a large number of people, especially if the communications are made by membership organizations. Some of the commenters were also concerned that disclosing this information may reveal sensitive or confidential information and the decision-making process of organizations, especially non-profit organizations, thereby placing them at a competitive disadvantage. For these reasons, these commenters argued that the Commission should require limited, if any, disclosure of persons who share or exercise direction or control over the person who makes disbursements for electioneering communications or the activities involved in making electioneering communications.

In contrast, several commenters, including the Congressional sponsors of BCRA, disagreed with both alternatives, arguing that neither would disclose sufficiently the information required by BCRA. *See id.* They argued that the purpose of this disclosure requirement in 2 U.S.C. 434(f)(2)(A) is to reveal not only those who have direction or control over the electioneering communications but also those who have direction or control over the organization that makes the electioneering communications.

This issue will be further explored in the consolidated reporting NPRM.

C. Identification of Candidates and Elections

Under 2 U.S.C. 434(f)(2)(D), candidates clearly identified in the electioneering communications, and the elections to which the electioneering communications pertain, must be disclosed in 24-hour statements filed with the Commission. The previously published NPRM provided two alternatives to proposed 11 CFR 104.19(b)(5), identified as Alternative 5–A and Alternative 5–B, that would implement this statutory provision. 67 FR 51,146. Both alternatives would require disclosure of the election and each clearly identified candidate that would be referred to in the electioneering communication, but contain different language. Commenters preferred the language of Alternative 5–B because it would be easier to read and would be more consistent with 2 U.S.C. 434(f)(2)(D). This will be further explored in the consolidated reporting NPRM to follow.

D. Disclosure of Contributors and Donors

BCRA requires persons who make electioneering communications and who establish segregated bank accounts for electioneering communications to disclose the names and addresses of contributors who contribute an aggregate of $1,000 or more to that segregated bank account. 2 U.S.C. 434(f)(2)(E).[12] If the organization that makes electioneering communications does not use a segregated bank account, then BCRA requires it to disclose the names and addresses of all contributors who contribute an aggregate of $1,000 or more to that organization from the beginning of the preceding year through the disclosure date. 2 U.S.C. 434(f)(2)(F). In reading these two sections of BCRA together with 2 U.S.C. 441b(c)(3)(B), the Commission stated in the NPRM that these disclosure requirements for segregated bank accounts appear to apply only to qualified nonprofit corporations organized under 26 U.S.C. 501(c)(4). *See* 67 FR 51,143. Therefore,

[12] Please note that this discussion uses the terms "contributors" and "contribute." However, in certain circumstances, it may be more appropriate to refer to "donors" and "donations." This distinction will be addressed in more detail in the consolidated reporting NPRM to follow.

previously proposed 11 CFR 104.19(b)(6) would have required only QNCs to disclose their contributors for purposes of electioneering communications.

The NPRM explained that proposed section 104.19(b)(7) would clearly state that all persons who are permitted to make electioneering communications under BCRA, including QNCs that do not use segregated bank accounts, would be required to disclose their contributors who contribute an aggregate of over $1,000 during the given time period. 67 FR 51,143. Nevertheless, some commenters interpreted proposed § 104.19(b)(7) to apply only to QNCs and objected to limiting the disclosure requirements to only QNCs. They argued that BCRA does not limit the requirements of 2 U.S.C. 434(f)(2)(E) and (F) to just QNCs. Consequently, they recommended that all persons who may make electioneering communications should be required to disclose their contributors under proposed § 104.19(b)(7), and that the option for segregated bank accounts in proposed § 104.19(b)(6) should be extended to all persons who may make electioneering communications. This topic will also be addressed in the consolidated reporting NPRM to be published shortly.

One commenter argued that the members of the organizations it represented could be subject to negative consequences if their names are disclosed in connection with an electioneering communication. As a preliminary matter, the Commission notes that any group may opt to use a separate bank account under 11 CFR 114.14(d)(2), which would provide limited disclosure. The FECA provides for an advisory opinion process concerning the application of any of the statutes within the Commission's jurisdiction or any regulations promulgated by the Commission, and such a group could also seek an advisory opinion from the Commission to determine if the group would be entitled to an exemption from disclosure that would be analogous to the exemption provided to the Socialist Workers Party in Advisory Opinions 1990–13 and 1996–46 (both of which allowed the Socialist Workers Party to withhold the identities of its contributors and persons to whom it had disbursed funds because of a reasonable probability that the compelled disclosure of the party's contributors' names would subject them to threats, harassment, or reprisals from either government officials or private parties). BCRA's legislative history recognizes the need for limited exceptions in these circumstances. *See* 148 Cong. Rec. S2136 (daily ed. Mar. 20, 2002) (remarks of Sen. Snowe).

E. NPRM on Consolidated Reporting

As stated above, the Consolidated Reporting NPRM will include revised proposed rules for reporting electioneering communications. The Commission appreciates the comments that it received and anticipates that they will prove useful in revising the proposed rules. The Commission encourages the commenters, as well as others who did not comment on the initial proposed rules, to review the revised proposed rule that will be part of the Consolidated Reporting NPRM and to submit comments at the appropriate time.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached final rules do not have a significant economic impact on a substantial number of small entities. The bases of this certification are several. First, the only burden the final rules impose is on persons who make electioneering communications, and that burden is a minimal one, requiring persons who make such communications to provide the names and addresses of those who made donations to that person, when the costs of the electioneering communication exceed $10,000. If that person is a corporation that qualifies as a QNC, then it must also certify that it meets that status. The number of small entities affected by the final rules is not substantial.

The Commission has adopted several rules that seek to reduce any burden that might accrue to persons who must file reports. First, the Commission has interpreted the reporting requirement such that no reporting is required until after an electioneering communication is publicly distributed. In many cases, this will only require that person to file one report with the Commission. Also, the Commission has allowed all persons paying for electioneering communications to establish segregated bank accounts, and to report the names and addresses of only those persons who contributed to those accounts. Further, the Commission has interpreted the statute to not require that a certification of QNC status be filed until the person is also required to file a disclosure report. These are significant steps the Commission has taken to reduce the burden on those who would make electioneering communications. The overall burden on the small entities affected by the final rules will not amount to $100 million on an annual basis.

Furthermore, because the Commission has interpreted BCRA to mean that political committees do not, by definition, make disbursements for electioneering communications, neither BCRA nor the final rules require any additional reports by any type of Federal political committee. Moreover, the requirements of these final rules are no more than what is strictly necessary to comply with the new statute enacted by Congress.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 114

Business and industry, Elections, Labor.

For the reasons set out in the preamble, subchapter A of chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for 11 CFR part 100 is revised to read as follows:

Authority: 2 U.S.C. 431, 434, 438(a)(8).

2. New § 100.29 is added to read as follows:

§ 100.29 Electioneering communication (2 U.S.C. 434(f)(3)).

(a) *Electioneering communication* means any broadcast, cable, or satellite communication that:

(1) Refers to a clearly identified candidate for Federal office;

(2) Is publicly distributed within 60 days before a general election for the office sought by the candidate; or within 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate, and the candidate referenced is seeking the nomination of that political party; and

(3) Is targeted to the relevant electorate, in the case of a candidate for Senate or the House of Representatives.

(b) For purposes of this section—

(1) *Broadcast, cable, or satellite communication* means a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system.

(2) *Refers to a clearly identified candidate* means that the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as "the President," "your Congressman," or "the incumbent," or through an unambiguous reference to his or her status as a candidate such as "the Democratic presidential nominee" or "the Republican candidate for Senate in the State of Georgia."

(3)(i) *Publicly distributed* means aired, broadcast, cablecast or otherwise disseminated for a fee through the facilities of a television station, radio station, cable television system, or satellite system.

(ii) In the case of a candidate for nomination for President or Vice President, *publicly distributed* means the requirements of paragraph (b)(3)(i) of this section are met and the communication:

(A) Can be received by 50,000 or more persons in a State where a primary election, as defined in 11 CFR 9032.7, is being held within 30 days; or

(B) Can be received by 50,000 or more persons anywhere in the United States within the period between 30 days before the first day of the national nominating convention and the conclusion of the convention.

(4) *A special election* or a *runoff election* is a primary election if held to nominate a candidate. A *special election* or a *runoff election* is a general election if held to elect a candidate.

(5) *Targeted to the relevant electorate* means the communication can be received by 50,000 or more persons—(i) In the district the candidate seeks to represent, in the case of a candidate for Representative in or Delegate or Resident Commissioner to, the Congress; or

(ii) In the State the candidate seeks to represent, in the case of a candidate for Senator.

(c) *Electioneering communication* does not include any communication that:

(1) Is publicly disseminated through a means of communication other than a broadcast, cable, or satellite television or radio station. For example, electioneering communication does not include communications appearing in print media, including a newspaper or magazine, handbill, brochure, bumper sticker, yard sign, poster, billboard, and other written materials, including mailings; communications over the Internet, including electronic mail; or telephone communications;

(2) Appears in a news story, commentary, or editorial distributed through the facilities of any broadcast, cable, or satellite television or radio station, unless such facilities are owned or controlled by any political party, political committee, or candidate. A news story distributed through a broadcast, cable, or satellite television or radio station owned or controlled by any political party, political committee, or candidate is nevertheless exempt if the news story meets the requirements described in 11 CFR 100.132(a) and (b);

(3) Constitutes an expenditure or independent expenditure provided that the expenditure or independent expenditure is required to be reported under the Act or Commission regulations;

(4) Constitutes a candidate debate or forum conducted pursuant to 11 CFR 110.13, or that solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum;

(5) Is not described in 2 U.S.C. 431(20)(A)(iii) and is paid for by a candidate for State or local office in connection with an election to State or local office; or

(6) Is paid for by any organization operating under section 501(c)(3) of the Internal Revenue Code of 1986. Nothing in this section shall be deemed to supersede the requirements of the Internal Revenue Code for securing or maintaining 501(c)(3) status.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

3. The authority citation for part 114 is revised to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434, 437d(a)(8), 438(a)(8), 441b.

4. In § 114.2, paragraph (b) is revised to read as follows:

§ 114.2 Prohibitions on contributions and expenditures.

* * * * *

(b)(1) Any corporation whatever or any labor organization is prohibited from making a contribution as defined in 11 CFR 100.7(a). Any corporation whatever or any labor organization is prohibited from making a contribution as defined in 11 CFR 114.1(a) in connection with any Federal election.

(2) Except as provided at 11 CFR 114.10, corporations and labor organizations are prohibited from:

(i) Making expenditures as defined in 11 CFR 100.8(a);

(ii) Making expenditures with respect to a Federal election (as defined in 11 CFR 114.1(a)), for communications to those outside the restricted class that expressly advocate the election or defeat of one or more clearly identified candidate(s) or the candidates of a clearly identified political party; or

(iii) Making payments for an electioneering communication to those outside the restricted class. However, this paragraph (b)(2)(iii) shall not apply to State party committees and State candidate committees that incorporate under 26 U.S.C. 527(e)(1), provided that:

(A) The committee is not a political committee as defined in 11 CFR 100.5;

(B) The committee incorporated for liability purposes only;

(C) The committee does not use any funds donated by corporations or labor organizations to make electioneering communications; and

(D) The committee complies with the reporting requirements for electioneering communications at 11 CFR part 104.

* * * * *

5. In § 114.10, the section heading and paragraphs (a), (d), (e) and (g) are revised and paragraphs (h) and (i) are added to read as follows:

§ 114.10 Nonprofit corporations exempt from the prohibitions on making independent expenditures and electioneering communications.

(a) *Scope.* This section describes those nonprofit corporations that qualify for an exemption in 11 CFR 114.2. It sets out the procedures for demonstrating qualified nonprofit corporation status, for reporting independent expenditures and electioneering communications, and for disclosing the potential use of donations for political purposes.

* * * * *

(d) *Permitted corporate independent expenditures and electioneering communications.* (1) A qualified nonprofit corporation may make independent expenditures, as defined in 11 CFR 100.16, without violating the prohibitions against corporate expenditures contained in 11 CFR part 114.

(2) A qualified nonprofit corporation may make electioneering communications, as defined in 11 CFR 100.29, without violating the prohibitions against corporate expenditures contained in 11 CFR part 114.

(3) Except as provided in paragraphs (d)(1) and (d)(2) of this section, qualified nonprofit corporations remain subject to the requirements and limitations of 11 CFR part 114, including those provisions prohibiting corporate contributions, whether monetary or in-kind.

(e) *Qualified nonprofit corporations; reporting requirements.*—(1) *Procedures for demonstrating qualified nonprofit corporation status.* (i) If a corporation makes independent expenditures under paragraph (d)(1) of this section that aggregate in excess of $250 in a calendar year, the corporation shall certify, in

accordance with paragraph (e)(1)(i)(B) of this section, that it is eligible for an exemption from the prohibitions against corporate expenditures contained in 11 CFR part 114.

(A) This certification is due no later than the due date of the first independent expenditure report required under paragraph (e)(2)(i) of this section.

(B) This certification may be made either as part of filing FEC Form 5 (independent expenditure form) or, if the corporation is not required to file electronically under 11 CFR 104.18, by submitting a letter in lieu of the form. The letter shall contain the name and address of the corporation and the signature and printed name of the individual filing the qualifying statement. The letter shall also certify that the corporation has the characteristics set forth in paragraphs (c)(1) through (c)(5) of this section. A corporation that does not have all of the characteristics set forth in paragraphs (c)(1) through (c)(5) of this section, but has been deemed entitled to qualified nonprofit corporation status by a court of competent jurisdiction in a case in which the same corporation was a party, may certify that application of the court's ruling to the corporation's activities in a subsequent year entitles the corporation to qualified nonprofit corporation status. Such certification shall be included in the letter submitted in lieu of the FEC form.

(ii) If a corporation makes electioneering communications under paragraph (d)(2) of this section that aggregate in excess of $10,000 in a calendar year, the corporation shall certify, in accordance with paragraph (e)(1)(ii)(B) of this section, that it is eligible for an exemption from the prohibitions against corporate expenditures contained in 11 CFR part 114.

(A) This certification is due no later than the due date of the first electioneering communication statement required under paragraph (e)(2)(ii) of this section.

(B) This certification must be made as part of filing FEC Form 9 (electioneering communication form).

(2) *Reporting independent expenditures and electioneering communications.* (i) Qualified nonprofit corporations that make independent expenditures aggregating in excess of $250 in a calendar year shall file reports as required by 11 CFR part 104.

(ii) Qualified nonprofit corporations that make electioneering communications aggregating in excess of $10,000 in a calendar year shall file statements as required by 11 CFR 104.14.

* * * * *

(g) *Non-authorization notice.* Qualified nonprofit corporations making independent expenditures or electioneering communications under this section shall comply with the requirements of 11 CFR 110.11.

(h) *Segregated bank account.* A qualified nonprofit corporation may, but is not required to, establish a segregated bank account into which it deposits only funds donated or otherwise provided by individuals, as described in 11 CFR part 104, from which it makes disbursements for electioneering communications.

(i) *Activities prohibited by the Internal Revenue Code.* Nothing in this section shall be construed to authorize any organization exempt from taxation under 26 U.S.C. 501(a), including any qualified nonprofit corporation, to carry out any activity that it is prohibited from undertaking by the Internal Revenue Code, 26 U.S.C. 501, *et seq.*

6. Section 114.14 is added to read as follows:

§ 114.14 Further restrictions on the use of corporate and labor organization funds for electioneering communications.

(a)(1) Corporations and labor organizations shall not give, disburse, donate or otherwise provide funds, the purpose of which is to pay for an electioneering communication, to any other person.

(2) A corporation or labor organization shall be deemed to have given, disbursed, donated, or otherwise provided funds under paragraph (a)(1) of this section if the corporation or labor organization knows, has reason to know, or willfully blinds itself to the fact, that the person to whom the funds are given, disbursed, donated, or otherwise provided, intended to use them to pay for an electioneering communication.

(b) Persons who accept funds given, disbursed, donated or otherwise provided by a corporation or labor organization shall not:

(1) Use those funds to pay for any electioneering communication; or

(2) Provide any portion of those funds to any person, for the purpose of defraying any of the costs of an electioneering communication.

(c) The prohibitions at paragraphs (a) and (b) of this section shall not apply to funds disbursed by a corporation or labor organization, or received by a person, that constitute—

(1) Salary, royalties, or other income earned from bona fide employment or other contractual arrangements, including pension or other retirement income;

(2) Interest earnings, stock or other dividends, or proceeds from the sale of the person's stocks or other investments; or

(3) Receipt of payments representing fair market value for goods provided or services rendered to a corporation or labor organization.

(d)(1) Persons who receive funds from a corporation or a labor organization that do not meet the exceptions of paragraph (c) of this section must be able to demonstrate through a reasonable accounting method that no such funds were used to pay any portion of an electioneering communication.

(2) Any person who wishes to pay for electioneering communications may, but is not required to, establish a segregated bank account into which it deposits only funds donated or otherwise provided by individuals, as described in 11 CFR part 104. Use of funds exclusively from such an account to pay for an electioneering communications shall satisfy paragraph (d)(1) of this section. Persons who use funds exclusively from such a segregated bank account to pay for an electioneering communication shall be required to only report the names and addresses of those individuals who donated or otherwise provided an amount aggregating $1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year.

Dated: October 11, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–26482 Filed 10–22–02; 8:45 am]

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FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 2002–21]

FCC Database on Electioneering Communications

AGENCY: Federal Election Commission.

ACTION: Interim final rules with requests for comments.

SUMMARY: The Federal Election Commission is promulgating interim final rules regarding electioneering communications, which are certain television and radio communications that refer to a clearly identified Federal candidate and that are targeted to the relevant electorate within 60 days before a general election or within 30 days before a primary election for Federal office. These interim final rules implement a portion of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), which adds to the Federal Election Campaign Act new provisions regarding "electioneering communications." BCRA defines electioneering communications to mean certain communications that can be received by 50,000 or more persons in the State or district that a candidate seeks to represent. The interim final rules: Identify the Web site of the Federal Communications Commission ("FCC") as the appropriate place to acquire information as to whether a communication will be capable of being received by 50,000 persons; allow those who make communications to rely on information on the FCC's Web site to determine whether their communications will be capable of being received by 50,000 or more persons in a given area; set out the formulae to be used to determine whether a communication can be received by 50,000 or more persons; and specify three ways that a person can demonstrate that a communication did not reach 50,000 persons in a particular Congressional district or State, if the FCC database is silent on the matter. Further information is provided in the Supplementary Information that follows.

DATES: These rules are effective on November 22, 2002. Comments must be received on or before January 21, 2003.

ADDRESSES: All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *FCCdatabase@fec.gov* and must include the full name, electronic mail address, and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address, and the postal service address of the commenter will not be considered. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web site within ten business days of the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, or Mr. Anthony T. Buckley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, 116 Stat. 81 (Mar. 27, 2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* Among these amendments are provisions in Title 2 of BCRA that address electioneering communications. The Commission published a Notice of Proposed Rulemaking ("NPRM") on which these interim final rules are based in the **Federal Register** on August 7, 2002. 67 FR 51,131 (Aug. 7, 2002). Written comments were due by August 21, 2002 for those who wished to testify or by August 29, 2002 for all other commenters. The names of commenters and their comments are available at *http://www.fec.gov/register.htm* under "Electioneering Communications." The Commission held a public hearing on the NPRM on August 28 and 29, 2002, at which it heard testimony from 12 witnesses. Transcripts of the hearing are available at *http://www.fec.gov/register.htm* under "Electioneering Communications."[1]

The Electioneering Communications NPRM had several components, including the definition of "electioneering communication"; the prohibitions on corporations and labor organizations from making disbursements for electioneering communications, with limited exceptions; the reporting requirements; and the database that will be developed and maintained by the Federal Communications Commission ("FCC") to determine whether a communication reaches 50,000 persons in the relevant Congressional district or State.

Throughout this rulemaking, the Commission and the FCC have recognized that the creation of the FCC database will be a difficult and complicated undertaking, given the statutory deadline for promulgation of rules implementing BCRA.[2] For the Commission, the difficulties reside not in the development of the database, but in determining the various ways that communications can be distributed and the options for measuring how many persons can receive them. Therefore, the Commission is separating the final rules addressing the FCC database from the final rules on Electioneering Communications so that it may continue to receive and consider comments and information on the FCC database.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The interim final rules on the FCC database on electioneering communications were transmitted to Congress on October 11, 2002.

Explanation and Justification

Introduction

BCRA at 2 U.S.C. 434(f)(3) defines a new term, "electioneering communications." This term includes broadcast, cable, or satellite communications: (1) That refer to a clearly identified Federal candidate; (2) that are transmitted within certain time periods before a primary or general election; and (3) that are "targeted to the relevant electorate," that is, the relevant Congressional district or State. A communication is "targeted to the relevant electorate" if it can be received by 50,000 or more persons in the Congressional district or State.[3]

Pursuant to section 201(b) of BCRA,[4] the FCC "shall compile and maintain any information (that this Commission] may require to carry out [the electioneering communications disclosure requirements of BCRA,) and shall make such information available to the public on the (FCC's) Web site." These requirements are necessary to promote compliance with the disclosure and funding requirements in the new law regarding electioneering communications. Those who wish to make communications that meet the content, timing, and medium requirements of the electioneering communication definition must be able to easily determine whether the radio or television stations, cable systems, or satellite systems on which they wish to publicly distribute their communications will reach 50,000 or more persons in the State (U.S. Senate

[1] Oral testimony at the Commission's public hearing and written comments are both considered "comments" in this document.

[2] Section 402(c)(1) of BCRA establishes a general deadline of 270 days for the Commission to promulgate regulations to carry out BCRA. The President of the United States signed BCRA into law on March 27, 2002, so the 270-day deadline is December 22, 2002. The interim final rules do not apply to any runoff elections required by the results of the November 5, 2002 general election. 2 U.S.C. 431 note.

[3] *See* the Electioneering Communications Final Rules, which are promulgated in conjunction with these interim final rules, for the implementation of the definition of "electioneering communication."

[4] This section of BCRA has not been codified.

candidates or presidential primary candidates) or Congressional district (U.S. House of Representatives candidates) in which the candidate mentioned in the communication is running.

11 CFR 100.29(b)(6)—Information Available on the FCC Web Site

In the NPRM, the Commission described some of the search capabilities that will be necessary and some features that would be helpful on the FCC's Web site, as well as some contemplated for the Commission's own Web site. The Commission also posed a number of questions related to the techniques for determining whether a communication will reach 50,000 or more persons in a Congressional district or State. The NPRM invited comments on what additional information, Web site features, or search options should be made available. Finally, the NPRM stated that the final rule would list the types of information that the FCC determines it will provide on its Web site.

The Media Bureau of the Federal Communications Commission provided comments on these issues, as did ten other commenters. The FCC acknowledges that BCRA requires it to create, maintain and make available to the public on its Web site a database of information necessary to determine if a communication can be received by 50,000 or more persons in any Congressional district or State. The FCC emphasized that "this undertaking could be extraordinarily complex and will require the expenditure of substantial resources in terms of time, money, and personnel." The FCC cautioned that, at a minimum, this database will involve the integration of information regarding the population and the geography of Congressional districts and State boundaries, and that it could also require the FCC to examine "more detailed information relating to the specific programming services transmitted or carried by each broadcast station, cable system, and satellite system in the country."

The FCC also stated that the "creation and maintenance of a database that complies with * * * BCRA will be, no matter what the details, a large and difficult undertaking." The FCC provided numerical data that underscore the magnitude of its task, noting that, as of June 30, 2002, there are 8450 FM radio stations, 4811 AM radio stations, and 1712 full-power analog television stations operating in the United States, and that as of August 27, 2002, there are 516 digital television stations, 10,500 cable systems, and several satellite providers. Because of the nature of this task, the FCC asked this Commission to craft rules that will simplify the task to the extent possible. The FCC sought flexibility and discretion to implement the database based upon its expertise and available data, so that it will be able to provide the public with the information as quickly and accurately as possible.

One commenter argued that the proposal in the NPRM regarding what information should be available on the FCC Web site was not sufficient. This commenter suggested that the Commission also require the FCC "to compile and maintain a database, available on the World Wide Web, of certain information that has to be collected anyway under section 504 of the BCRA." Section 504 of BCRA, amends the Communications Act of 1934 to require broadcast licensees to maintain certain records regarding requests to purchase broadcast time for the purpose of communicating a message of a political nature. *See* 47 U.S.C. 315(e).

Eight commenters either stated specifically that they supported the database concept as described in the NPRM, or by their comments, appeared to support it. One commenter urged the Commission to defer to the FCC's determination of the specifics of how the database should operate.

In order to provide the FCC with the most flexibility possible, the Commission has decided not to include in the final rule any additional requirements as to the types of information to be made available on the FCC's Web site. Instead, the interim final rule lists only what is required by BCRA: the FCC's Web site will provide information that will permit those who wish to make communications to determine easily whether the radio or television stations, cable systems, or satellite systems through which they wish to publicly distribute their communications will reach 50,000 or more persons in a particular State or Congressional district, and, therefore, whether they are required to file statements of electioneering communications with the Federal Election Commission. Due to the stated challenge the FCC is facing in creating this Web site database, and because section 504 of BCRA includes information unrelated to electioneering communications, the Commission does not believe it is appropriate to require the FCC to include such information in its database.

The Commission also received comments on the statement in the proposed rule at § 100.29(b)(5) that reliance on the FCC information will be a complete defense to a charge that a communication was capable of being received by 50,000 or more persons, and that as a result, the communication met the definition of an "electioneering communication." All of the commenters who addressed this topic agreed that reliance on the information provided on the FCC Web site should be sufficient, and many of them believed it should be a complete defense to any liability arising under BCRA. One commenter argued that the Commission should permit challenges to the information provided on the FCC Web site. Another commenter argued that, if the database cannot state whether a communication transmitted over a particular outlet reaches 50,000 or more persons, then it should be presumed to not reach 50,000 or more persons. Another commenter argued that the Commission should announce that it will not entertain complaints of violations until the technological issues are resolved and the targeting information is available as proposed.

Under the interim final rules at 11 CFR 100.29(b)(6)(i), if the FCC database indicates that a communication cannot be received by 50,000 or more persons in a particular Congressional district or State, then such information shall be a complete defense against any charge that such communication constitutes an electioneering communication with respect to that particular district or State, as long as such information is posted on the FCC's Web site on or before the date the communication is publicly distributed.

The proposed rule in the NPRM would have stated that a defense involving the information on the FCC Web site would be available if the person making the communication relied on the information prior to the public distribution of the communication. The interim final rule removes the reliance requirement. The information on the FCC Web site is intended to state objective facts regarding the reach of broadcast systems and networks, and cable and satellite systems. These facts are true regardless of whether the person making the communication knew of them or intended to make an electioneering communication.

However, the Commission is concerned that the FCC database may not be able to provide information for every possible system or network, or may not be operational in time for any special elections in 2003 when such information might be necessary. In those situations, paragraphs (b)(6)(ii)(A) through (C) set out three ways a person can establish a defense to a charge that a communication reached 50,000 or more persons in a particular district or State.

The first method is if the person reasonably relied on written documentation obtained from the entity publicly distributing the communication, stating that the communication cannot be received by 50,000 or more persons in the specified Congressional district (for U.S. House of Representatives candidates) or State (for U.S. Senate candidates or presidential primary candidates).

The second method is if the communication is not publicly distributed on a broadcast station, radio station or cable system located, in whole or in part, in any Metropolitan Area (MA). For many years, the Commission has used the Office of Management and Budget's (OMB) definition of MA in other portions of the Commission's regulations governing national convention host committee financing. *See* 11 CFR 9008.52(c)(2) ("For purposes of this section, any business (including any branch of a national or regional chain, a franchise, or a licensed dealer) or labor organization or other organization with offices or facilities located within the Metropolitan Area (MA) of the convention city shall be considered local.") *See also* Explanation and Justification, 59 FR 33,610 (June 29, 1994). Because MAs contain at least 50,000 inhabitants under OMB's definition, a communication aired or transmitted by an entity outside of any such areas in the specified district or State will not be presumed to reach 50,000 persons.

The third method is if the person making the communication reasonably believes that the communication cannot be received by 50,000 or more persons in the relevant Congressional district or State. Such belief must be reasonably based on information in possession of the maker of the communication prior to or at the time the communication is made. For example, if a person engaged a media buyer to secure broadcast time, and that media buyer reasonably informed that person that the communication would not reach 50,000 persons in the relevant Congressional district or State, then that would result in a reasonable belief as to the reach of the communication.

To assure persons that the information on the FCC Web site is reliable, the Commission encourages the FCC to establish a date by which all information on the Web site will be considered correct and unchangeable for a coming election cycle, and to post that date on its Web site.

11 CFR 100.29(b)(7)—Determining Whether a Communication Can Be Received by 50,000 or More Persons

In the NPRM, the Commission also sought comments on how the term "persons" should be interpreted for purposes of determining the required potential audience for electioneering communications. *See* 2 U.S.C. 434(f)(3)(C). The term "person" is defined in 2 U.S.C. 431(11) and in current Commission regulations at 11 CFR 100.10 to mean an individual, partnership, association, corporation, labor organization and any other organization or group of persons. The NPRM suggested that persons other than individuals should be excluded because partnerships and other legal entities are, by definition, not part of the "relevant electorate." Therefore, limiting "persons" to individuals or natural persons was proposed.

All nine commenters who addressed this issue favored construing "persons" to mean natural persons or individuals. Several commenters thought the term should be further limited to include only persons who are, as described by the commenters, either voting-age citizens, registered voters, eligible voters, or those entitled to vote.

In reviewing what this provision is intended to accomplish, the Commission has determined that attempting to define "person" by itself is not the best approach. Rather, the Commission has determined that the more appropriate course is to define the term "can be received by 50,000 or more persons," because this phrase is a more accurate reflection of the concept Congress sought to address in BCRA. This approach enables the Commission, with the assistance of the FCC, to employ varying factors to determine whether a communication has the necessary audience for it to be considered an electioneering communication. Due to the nature of the technologies involved, precision is not always feasible in measuring how many persons in a particular Congressional district or State can receive a television or radio communication. Nor is it required by BCRA, which only employs a more or less than 50,000 persons standard.

In adopting this approach, the Commission is, in effect, assessing the number of individuals without attempting to determine how many of them may be registered voters or eligible voters. The Commission is concerned that to attempt to further define the universe of individuals is not required by BCRA and could seriously and unnecessarily complicate the effort to provide information in a timely manner.

The Commission has identified several methodologies that are included in the interim final rules in 11 CFR 100.29(b)(7)(i)(A) through (H) to determine whether a communication meets BCRA's audience standard in a particular Congressional district or State. While these methodologies cannot achieve complete precision, the Commission believes they could aid in reliably and objectively determining whether a communication can be received by 50,000 or more persons in a Congressional district or State, as required by BCRA.

The Commission has ascertained that there are a number of different situations that will involve various calculations and configurations to make this determination. Some communications are broadcast by television stations, radio stations, or networks. These broadcast signals may also be redistributed by cable or satellite systems. Other communications appear on a single cable system, which may involve more than one cable franchise. Still other communications appear on cable networks (CNN, FOX News, USA, for example) that are publicly distributed via cable and satellite. Because Congressional districts are the most problematic, the discussion of the methodologies herein will address them specifically. Points made in this discussion can be extrapolated to apply statewide for Senate and presidential primary elections.

For over-the-air television broadcasters, broadcast contours appear to be the best way to gauge viewership. Thus, if a Congressional district lies entirely within a Grade B broadcast contour, the potential viewership of that station would be the population of that district.

A broadcast contour is the geographic line within which the broadcast signal is at a particular strength. For example, the line demarcating the Grade B contour represents the area where fifty percent of the population can receive the signal, and fifty percent cannot. The Commission understands that the FCC is capable of comparing the geographic sweep of broadcast contours, state boundaries and Congressional districts. Contours are a construction, not a geographic certainty; use of contours will both under- and over-count an audience. Nevertheless, based on the technology, contours are the most reliable, readily available measure of audiences that "can receive" a broadcast signal and, according to the FCC, are regularly relied upon in that agency and in the telecommunications industry.

Using population figures is consistent with the Commission's previously stated proposal, and was supported by a number of commenters, who agreed that "persons" should mean natural persons. Subscribers of cable or satellite television within the broadcast contour are not counted in the interim final rules at 11 CFR 100.29(b)(7)(i)(E), as that would result in the double-counting of certain persons. If a communication is simultaneously broadcast on a network, where multiple stations broadcasting the same material each reach a portion of the Congressional district, the populations within those portions must be combined to determine whether a communication reaches 50,000 or more persons. This method is found in the interim final rules at 11 CFR 100.29(b)(7)(i)(F)(*1*).

For a broadcast station with Grade B broadcast contours that do not cover an entire Congressional district, one way to determine the relevant viewership is to first ascertain the population within that portion of the district within the broadcast contour. With respect to the remaining portion of the district, a calculation must be made of the viewership of cable and satellite television that retransmit the broadcast station, and that result is added to the first number to determine whether the 50,000-person threshold is met. This method is found in the interim final rules at 11 CFR 100.29(b)(7)(i)(F)(*2*).

When determining viewership of a cable system or satellite system, the number of subscribers to each system provides a baseline. However, it is unlikely that the number of subscribers exactly equals viewership—inevitably, in many households where one person is the subscriber, there will be several people who are viewers. Accordingly, the interim rules in 11 CFR 100.29(b)(7)(ii) use a multiplier to account for this fact. One multiplier that could be used is the current average U.S. household size, which at present is 2.62 persons. *See* Jason Fields and Lynne M. Casper, *America's Families and Living Arrangements: March 2000*, Current Population Reports, P20–537, U.S. Census Bureau, Washington, DC, 2001. All cable and satellite systems carrying the broadcast channel and operating within the district or State must be considered.

Thus, in the hypothetical described above, if the Congressional district is served by a cable system, and it is determined that 10,000 of the cable system's subscribers reside outside of the broadcast contour but within the Congressional district, then 26,200 (2.62 × 10,000) persons are added to the population within the contour to determine if the communication can be received by 50,000 or more persons.

With respect to communications publicly distributed solely on cable or satellite systems, the same sort of calculations described above must be made under the interim final rules at 11 CFR 100.29(b)(7)(i)(G) and (H). With respect to cable television networks, the Commission notes that not all cable systems carry all cable networks. Nevertheless, for the sake of simplicity, the interim final rules assume that every cable and satellite system carries every cable network, and calculations are based on this assumption. This creates a rebuttable presumption as to the reach of a particular cable network, which may be overcome by demonstrating that the cable system in question did not carry that network at the time a communication was transmitted. This rebuttable presumption is set forth in the interim final rules at 11 CFR 100.29(b)(7)(iii).

With respect to communications publicly distributed via AM or FM radio stations, each of these media have their own terminology for the reach of over-the-air signals, which are reflected in the interim final rules at 11 CFR 100.29(b)(7)(i)(A) through (D). The analysis involved with these communications is similar to that for over-the-air only television broadcast stations. Information regarding the term used for FM stations, "primary service contour," can be found on the FCC's Web site at: *http://www.fcc.gov/mb/audio/fmclasses.html*. With respect to AM stations, the FCC's rules at 47 CFR part 73 describe the various classes of radio stations and the types of service areas (primary and/or secondary) that are applicable to them. The Commission's rules at 11 CFR 100.29(b)(7)(i)(C) and (D) use the phrase "outward service area" to address the fact that some stations may have a reach further than a primary service area.

Several commenters addressed whether the regulations should require aggregation of recipients of the same communication from multiple outlets and, if so, whether the regulations should aggregate substantially similar communications for this purpose. Theoretically, one communication could be publicly distributed via several small outlets, each of which reaches fewer than 50,000 persons in the relevant area, but in the aggregate reach 50,000 or more persons in the relevant area. The commenters agreed that the size of radio and television audiences might eliminate this concern as a practical matter. The commenters generally favored a potential audience measure that considers the viewers or listeners of each station separately and does not aggregate those figures, except in one instance. For example, the commenters argued that if the identical television advertisement is separately broadcast on three broadcast stations, each of which reaches slightly fewer than 50,000 distinct individuals in the relevant area, no electioneering communication should result. (This example assumes the broadcast stations are not also distributed on a cable or satellite system serving the relevant area.)

Similarly, some of the commenters argued that if a cable system has 45,000 viewers in the relevant area and if it distributes an ad on several of the channels under its control—a news channel, a sports channel, and a lifestyle channel, for example—no electioneering communication could result as none of these distributions would be available to 50,000 or more persons in the relevant area. The only instance in which audience aggregation was supported by the commenters was if a television communication is simultaneously distributed by a network programming provider on multiple broadcast stations, then the combined potential audiences of all the broadcast stations along with any individuals who can receive the stations on a cable or satellite system should be analyzed to determine if 50,000 or more individuals in the relevant area can receive the communication. If so, then an electioneering communication would result, assuming the timing and content requirements are also met. The interim final rules take this approach.

These interim final rules represent an initial effort by the Commission to provide clear guidance to the Federal Communications Commission and to those who would make electioneering communications, as to how to determine whether a communication can be received by 50,000 or more persons. The Commission seeks comments on whether this approach is appropriate. Additionally, the Commission seeks comments on whether it should defer to the Federal Communications Communication to determine whether a communication can be received by 50,000 or more persons within a Congressional district or State. The Commission also seeks comments on whether the various formulae it has adopted for making these calculations are reasonable. The Commission is especially interested in comments addressing any alternative means of accomplishing the same task.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that these interim final rules do not have a significant economic impact on a substantial number of small entities. The basis of this certification is that these rules do not require any small entity to take any action or incur any cost.

List of Subjects in 11 CFR Part 100

Elections.

For the reasons set out in the preamble, subchapter A of chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

2. Section 100.29 is amended by adding paragraphs (b)(6) and (b)(7) to read as follows:

§ 100.29 Electioneering communication (2 U.S.C. 437(f)).

* * * * *

(b) * * *

(6) (i) Information on the number of persons in a Congressional district or State that can receive a communication publicly distributed by a television station, radio station, a cable television system, or satellite system, shall be available on the Federal Communications Commission's Web site, *http://www.fcc.gov*. A link to that site is available on the Federal Election Commission's Web site, *http://www.fec.gov*. If the Federal Communications Commission's Web site indicates that a communication cannot be received by 50,000 or more persons in the specified Congressional district or State, then such information shall be a complete defense against any charge that such communication constitutes an electioneering communication, so long as such information is posted on the Federal Communications Commission's Web site on or before the date the communication is publicly distributed.

(ii) If the Federal Communications Commission's Web site does not indicate whether a communication can be received by 50,000 or more persons in the specified Congressional district or State, it shall be a complete defense against any charge that a communication reached 50,000 or more persons when the maker of a communication:

(A) Reasonably relies on written documentation obtained from the broadcast station, radio station, cable system, or satellite system that states that the communication cannot be received by 50,000 or more persons in the specified Congressional district (for U.S. House of Representatives candidates) or State (for U.S. Senate candidates or presidential primary candidates);

(B) Does not publicly distribute the communication on a broadcast station, radio station, or cable system, located in any Metropolitan Area in the specified Congressional district (for U.S. House of Representatives candidates) or State (for U.S. Senate candidates or presidential primary candidates); or

(C) Reasonably believes that the communication cannot be received by 50,000 or more persons in the specified Congressional district (for U.S. House of Representatives candidates) or State (for U.S. Senate candidates or presidential primary candidates).

(7) (i) *Can be received by 50,000 or more persons* means—

(A) In the case of a communication transmitted by an FM radio broadcast station or network, where the Congressional district or State lies entirely within the station's or network's protected or primary service contour, that the population of the Congressional district or State is 50,000 or more; or

(B) In the case of a communication transmitted by an FM radio broadcast station or network, where a portion of the Congressional district or State lies outside of the protected or primary service contour, that the population of the part of the Congressional district or State lying within the station's or network's protected or primary service contour is 50,000 or more; or

(C) In the case of a communication transmitted by an AM radio broadcast station or network, where the Congressional district or State lies entirely within the station's or network's most outward service area, that the population of the Congressional district or State is 50,000 or more; or

(D) In the case of a communication transmitted by an AM radio broadcast station or network, where a portion of the Congressional district or State lies outside of the station's or network's most outward service area, that the population of the part of the Congressional district or State lying within the station's or network's most outward service area is 50,000 or more; or

(E) In the case of a communication appearing on a television broadcast station or network, where the Congressional district or State lies entirely within the station's or network's Grade B broadcast contour, that the population of the Congressional district or State is 50,000 or more; or

(F) In the case of a communication appearing on a television broadcast station or network, where a portion of the Congressional district or State lies outside of the Grade B broadcast contour—

(*1*) That the population of the part of the Congressional district or State lying within the station's or network's Grade B broadcast contour is 50,000 or more: or

(*2*) That the population of the part of the Congressional district or State lying within the station's or network's broadcast contour, when combined with the viewership of that television station or network by cable and satellite subscribers within the Congressional district or State lying outside the broadcast contour, is 50,000 or more; or

(G) In the case of a communication appearing exclusively on a cable or satellite television system, but not on a broadcast station or network, that the viewership of the cable system or satellite system lying within a Congressional district or State is 50,000 or more; or

(H) In the case of a communication appearing on a cable television network, that the total cable and satellite viewership within a Congressional district or State is 50,000 or more.

(ii) Cable or satellite television viewership is determined by multiplying the number of subscribers within a Congressional district or State, or a part thereof, as appropriate, by the current national average household size, as determined by the Bureau of the Census.

(iii) A determination that a communication can be received by 50,000 or more persons based on the application of the formula at paragraph (b)(7)(i)(G) or (H) of this section shall create a rebuttable presumption that may be overcome by demonstrating that—

(A) One or more cable or satellite systems did not carry the network on which the communication was publicly distributed at the time the communication was publicly distributed; and

(B) Applying the formula to the remaining cable and satellite systems results in a determination that the cable network or systems upon which the communication was publicly distributed could not be received by 50,000 persons or more.

* * * * *

Dated: October 11, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–26483 Filed 10–22–02; 8:45 am]

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Federal Register

Wednesday,
October 23, 2002

Part III

Environmental Protection Agency

40 CFR Parts 136, 141, and 143

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; National Primary Drinking Water Regulations; and National Secondary Drinking Water Regulations; Methods Update; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 136, 141, and 143

[FRL–7379–6]

RIN 2040–AD59

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; National Primary Drinking Water Regulations; and National Secondary Drinking Water Regulations; Methods Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule revises wastewater and drinking water regulations to include updated versions of test procedures (*i.e.*, analytical methods) for the determination of chemical, radiological, and microbiological pollutants and contaminants in wastewater and drinking water. The updated versions of analytical methods have been published by one or more of the following organizations: ASTM International (ASTM; formerly the American Society for Testing and Materials), United States Geological Survey (USGS), United States Department of Energy (DOE), American Public Health Association (APHA), American Water Works Association (AWWA), and Water Environment Federation (WEF). Previously approved versions of the methods remain approved.

DATES: This final rule is effective on November 22, 2002. The incorporation by reference of the publications listed in today's rule is approved by the Director of the Federal Register as of November 22, 2002. For judicial review purposes, this final rule is promulgated as of 1 p.m. (Eastern time) on November 6, 2002 as provided at 40 CFR 23.2 and 23.7.

ADDRESSES: The record for this rulemaking has been established under docket number W–99–21. Copies of the public comments received, EPA responses, and all other supporting documents (including references included in this document) are available for review at the U.S. Environmental Protection Agency, Water Docket, on Monday through Friday, excluding Federal holidays, between 9 a.m. and 3:30 p.m. Eastern Time. Please contact the Water Docket for an appointment. From August 12, 2002 through August 26, 2002, the Water Docket will be closed. Beginning on August 27, 2002, the Water Docket will be located at EPA West, 1301 Constitution Avenue, NW., Room B135, Washington, DC 202–566–2426.

FOR FURTHER INFORMATION CONTACT: For information regarding wastewater methods contact Khouane Ditthavong, Engineering and Analysis Division (4303T), USEPA Office of Science and Technology, 1200 Pennsylvania Ave., NW., Washington, DC 20460, 202–566–1068 (e-mail: *Ditthavong.Khouane@epa.gov*). For information regarding the drinking water methods, contact Herbert J. Brass, Technical Support Center (MS 140), USEPA, Office of Ground Water and Drinking, 26 West Martin Luther King Drive, Cincinnati, OH 45268 (e-mail: *Brass.Herb@epa.gov*).

SUPPLEMENTARY INFORMATION:

Potentially Regulated Entities

A. Clean Water Act

EPA Regions, as well as States, Territories, and Tribes, are authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits that comply with the technology-based and water quality-based requirements of the Clean Water Act. In doing so, the NPDES permitting authorities, including authorized States, Territories, and Tribes, make a number of discretionary choices associated with permit writing, including the selection of pollutants to be measured and, in many cases, limited, in permits. If EPA has "approved" (*i.e.*, promulgated through rulemaking) standardized testing procedures for a given pollutant, the NPDES permit must specify that analysis of that pollutant be conducted in accordance with one of the approved testing procedures or an approved alternate test procedure. Permitting authorities may, at their discretion, require the use of any method approved at 40 CFR part 136 in the permits they issue. Therefore, NPDES permits may incorporate the testing procedures in today's rulemaking so dischargers with NPDES permits could be affected by the standardization of testing procedures in this rulemaking. In addition, States, Territories, or authorized Tribes responsible for providing certification of Federal licenses under Clean Water Act section 401, could be regulated by today's rulemaking because these organizations are directed to use the standardized testing procedures. Categories and entities that may ultimately be regulated include:

Category	Examples of potentially regulated entities
State, Territorial, and Tribal Governments	States, Territories, and Tribes authorized to administer the NPDES permitting program; States, Territories, and Tribes providing certification under Clean Water Act section 401.

B. Safe Drinking Water Act

Public water systems are the regulated entities required to conduct analyses to measure for contaminants in water samples. However, EPA Regions, as well as States, and Tribal governments with primacy to administer the regulatory program for public water systems under the Safe Drinking Water Act, sometimes conduct analyses to measure for contaminants in water samples. If EPA has established a maximum contaminant level ("MCL") for a given drinking water contaminant, the Agency also approves (*i.e.*, promulgates through rulemaking) standardized testing procedures for analysis of the contaminant. Once EPA standardizes such test procedures, analysis using a standard (or approved alternate test procedures) is required. Public water systems required to test water samples must use one of the approved standardized test procedures. Categories and entities that may ultimately be regulated include:

Category	Examples of potentially regulated entities	NAICS[a]
State, Local, and Tribal Governments	State, Local, and Tribal Governments that analyze water samples on behalf of public water systems required to conduct such analysis; State, Local, and Tribal Governments that operate public water systems required to conduct analytic monitoring.	924110
Industry	Private operators of public water systems required to conduct analytic monitoring	221310

Category	Examples of potentially regulated entities	NAICS[a]
Municipalities	Municipal operators of public water systems required to conduct analytic monitoring	924110

[a] National American Industrial Classification System.

These tables are not intended to be exhaustive, but rather provide a guide for readers regarding entities likely to be regulated by this action. The tables list the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the tables could also be regulated. To determine whether your facility or organization is regulated by this action, you should carefully examine the applicability language at 40 CFR 136.1 (NPDES permits and CWA) and 40 CFR 141.2 (definition of public water system). If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Information on Internet Access

This **Federal Register** document has been placed on the Internet at the following location: *http://www.epa.gov/fedrgstr.*

Availability and Sources for Methods

Copies of final methods published by ASTM are available for a nominal cost through ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959. Copies of final methods published by USGS are available for a nominal cost through the United States Geological Survey, U.S. Geological Survey Information Services, Box 25286, Federal Center, Denver, CO 80225–0425. Copies of final methods published by DOE are available for a nominal cost through the Environmental Measurements Laboratory, U.S. Department of Energy, 376 Hudson Street, New York, NY 10014–3621. Copies of *Standard Methods* are available for a nominal cost from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005.

I. Legal Authorities

A. Clean Water Act

This regulation is promulgated under the authority of sections 301, 304(h), 307, and 501(a) of the Clean Water Act (CWA), 33 U.S.C. 1311, 1314(h), 1317, 1361(a) (the "Act"). Section 301 of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit, issued under section 402 of the Act. Section 304(h) of the Act requires the EPA Administrator to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit applications pursuant to section 402 of this Act." Section 501(a) of the Act authorizes the Administrator to "prescribe such regulations as are necessary to carry out his functions under this Act." EPA publishes CWA analytical method regulations at 40 CFR Part 136. The Administrator also has made these test procedures applicable to monitoring and reporting of NPDES permits (40 CFR part 122, §§ 122.21, 122.41, 122.44, and 123.25), and to implementation of the pretreatment standards issued under section 307 of the Act (40 CFR part 403, §§ 403.10 and 403.12).

B. Safe Drinking Water Act

The Safe Drinking Water Act (SDWA), as amended in 1996, requires EPA to promulgate national primary drinking water regulations (NPDWRs) that specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants (SDWA section 1412 (42 U.S.C. 300g–1)). NPDWRs apply to public water systems pursuant to SDWA section 1401(1)(A) (42 U.S.C. 300f(1)(A)). According to SDWA section 1401(1)(D), NPDWRs include "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including accepted methods for quality control and testing procedures * * *" (42 U.S.C. 300f(1)(D)). In addition, SDWA section 1445(a) authorizes the Administrator to establish regulations for monitoring to assist in determining whether persons are acting in compliance with the requirements of the SDWA (42 U.S.C. 300j–4). EPA's promulgation of analytical methods is authorized under these sections of the SDWA as well as the general rulemaking authority in SDWA section 1450(a), (42 U.S.C. 300j–9(a)).

II. Regulatory Background and History

EPA has promulgated analytical methods for all currently regulated wastewater and drinking water pollutants and contaminants. For most contaminants, EPA has promulgated regulations approving the use of more than one standardized analytical method, and regulated entities may use any one of these approved methods for determining compliance with an MCL, an NPDES permit or another monitoring requirement. After any regulation is published, EPA may amend the regulations to approve additional methods or modifications to existing approved methods, or withdraw approved methods that become obsolete.

On January 16, 2001, EPA published a direct final rule that was to approve many updated methods published by non-EPA organizations for use in wastewater and drinking water compliance monitoring (66 FR 3466–3497). On the same day, EPA published a companion proposal that proposed approval of all methods in the direct final rule methods (66 FR 3526–3527). The proposal was to serve as the basis for a final rule if the direct final was withdrawn due to adverse comments. Because adverse comments were received from one commenter, EPA withdrew the direct final rule on May 15, 2001 (66 FR 26795) and deferred final action in order to respond to those comments. Today's rulemaking constitutes EPA's final action on the proposed rule.

III. Summary of Final Rule

A. This rule amends the regulations at 40 CFR part 136 to:

(1) Allow the use of 19 updated methods published by the ASTM International (ASTM; formerly the American Society for Testing and Materials) in the 1999 *Annual Book of ASTM Standards*, Vols. 11.01 and 11.02.

(2) Allow the use of 189 updated methods published by the Standard Methods Committee in *Standard Methods for the Examination of Water and Wastewater*, 19th edition, 1995, and 20th edition, 1998.

(3) Allow the use of 22 methods published by the United States Geological Survey (USGS) in open file reports and method compendiums.

(4) Correct minor editorial errors and update method source references.

B. This rule amends the regulations at 40 CFR Part 141 to:

(1) Allow the use of 12 updated methods published in the 1999 *Annual Book of ASTM Standards*, Vols. 11.01 and 11.02.

(2) Allow the use of 62 updated methods published by the Standard

Methods Committee in *Standard Methods for the Examination of Water and Wastewater*, 20th edition, 1998.

(3) Allow the use of six updated methods published by the Department of Energy (DOE) in the document "EML Procedures Manual," 28th Edition, Volume 1, 1997, for determinations of radionuclide contaminants.

(4) Correct minor editorial errors and update method source references.

C. This rule amends the regulations at 40 CFR Part 143 to:

(1) Recommend an updated version of a method (D 4327–97) published in the 1999 *Annual Book of ASTM Standards*, Vol. 11.01.

(2) Recommend updated versions of 12 methods published by the Standard Methods Committee in *Standard Methods for the Examination of Water and Wastewater*, 20th edition, 1998.

(3) Correct update method source references.

IV. Changes From the January 16, 2001 Rule Proposal

A. Editorial Corrections

Standard Methods 6220 B, 6230 B, and 6200 C were correctly specified in the rule text of the January, 16, 2001, direct final rule, but they were incorrectly referenced in Table 3 (64 FR 3470) of the preamble to that rule. Corrections to the preamble errors are noted as follows:

STANDARD METHODS NUMBER CHANGES (CORRECTED)

18th edition	19th edition	20th edition
6220 B 6230 B	6220 B 6230 B	6200 C 6200 C

Edits to 40 CFR Part 136

Two errors in the rule section of the January 2001 direct final rule at 40 CFR part 136.3 are corrected in today's rule as follows:

(1) A portion of a citation originally intended as a placeholder in footnote 45 to Table IB was inadvertently included. This citation is corrected to reference the correct USGS document number. "98–xxx" is changed to "00–170."

(2) Footnote 44 to Table 1B is renumbered, and a new footnote 44 is added to conform with a final rule that was published on December 30, 1999 (64 FR 73414). The December 1999 rule renumbered footnote 44 to footnote 51, and amended footnote 44 to specify information about a cyanide method that was the subject of the December 1999 rule. The direct final rule inadvertently overlooked these 1999 amendments.

Edits to 40 CFR Part 141

A commenter noted an error and EPA noted an omission in the references to methods at 40 CFR part 141.21 for determination of E coli. in drinking water. The error and omission are addressed, in today's rule, by revising 40 CFR 141.21 as follows:

(1) Footnote 1 to the table in paragraph (f)(3), paragraphs (f)(6)(i), (f)(6)(ii) and (f)(8) are revised to clarify instructions for the determining E coli. A commenter noted that the E coli. methods in the 19th and 20th editions of *Standard Methods* describe or reference procedures differently than the 18th edition version of these methods. These differences are editorial, not substantive, and all three versions of these methods provide equivalent results. Today's correction adds clarifying language to make the equivalency of the 18th, 19th and 20th edition versions of these *E coli.* methods more apparent.

(2) Sentence 6 of paragraph (f)(5) is revised to add a citation to the 20th edition of *Standard Methods* that was inadvertently omitted in the January 2001 direct final rule. The Agency's intent in the January 16, 2001 direct final rulemaking was and is to allow use of more recent editions of *Standard Methods*, such as the 20th edition.

B. Additional Technical Edits to 40 CFR Part 136.3

A commenter noted several editorial errors in the current 40 CFR part 136.3 tables. EPA is correcting these errors in today's rule. Correction of these errors is not a substantive change to EPA regulations. These are simple editorial corrections that improve the clarity and accuracy of the regulations.

Edits to Table 1C

(1) A typographical error in the listing of the method for parameter 3 (acrolein) is corrected. Method "604" is changed to "624."

(2) An incorrect reference to Method 610 for parameter 4, acrylonitrile, is removed. Method 610 is not applicable to determinations of acrylonitrile.

(3) An incorrect reference to Method 6410B for parameter 22, carbon tetrachloride is removed. Method 6410B is not applicable to determinations of carbon tetrachloride.

(4) A misspelling of the analyte listing for parameter 27 is corrected, "chloraform" is changed to "chloroform." Also, a missing number in the note specified in the "Other" column was inadvertently omitted, "Note, p. 130." is changed to "Note 3, p. 130."

(5) A missing reference to footnote 5 is added to parameter 82, N-Nitrosodimethylamine, and removed for parameters 83 and 103, N-Nitrosodi-n-propylamine, and 2,3,7,8-tetrachlorodibenzo-*p*-dioxin, respectively. Footnote 5 expands the analytical scope of Method 625 to include additional parameters. However, the annotation of these parameters in Table IC omitted parameter 82, and should not have included parameters 83 and 103.

(6) A typographical error in the analyte listing for parameter 87 is corrected, 2,2′-oxybis(1-chloropropane) is changed to 2,2′-oxybis(1-chloropropane). In addition, an alternative analyte name, bis(2-chloroisopropyl) ether, is added for parameter 87. These changes conform the CFR listing of parameter 87 with the dual, equivalent name designation of this parameter in the methods (EPA Methods 611, 625 and 1625B) approved for compliance determinations of parameter 87.

(7) A typographical error in the reference to the compliance method for parameter 105, tetrachloroethene, is corrected. Method "6410 B [18th, 19th]" is changed to "6210 B [18th, 19th]." Method 6410 B is not applicable to determinations of tetrachloroethene.

(8) An incorrect reference to Method "1625[5a]" for parameter 103 (2,3,7,8-tetrachlorodibenzo-*p*-dioxin) is removed along with the superfluous footnote 5a to table 1C. Method 1625 is not applicable to determinations of this parameter.

Edits to Table 1D

A typographical error in the analyte listing for parameter 11 is corrected. "δ-BHC" is changed to "γ-BHC."

Edits to Tables 1B and 1C

To correctly specify the approved revision of listed EPA methods, a revision letter is added to the method listings for EPA methods in Table 1C. References to EPA methods "1613," "1624" and "1625" are changed to "1613B," "1624B" and "1625B," respectively. In Table IB, EPA Method "1631" is changed to "1631C."

V. Response to Comments

EPA proposed the method updates in today's rule on January 16, 2001 (66 FR 3526). The public comment period closed on March 19, 2001. EPA received comments from one commenter. A discussion of the significant comments follows. A complete copy of the comments and EPA's responses are included in the Docket for today's final rule.

A. Approving Multiple Editions of Standard Methods

The commenter stated that approval of multiple editions of *Standard Methods* is a new requirement and an added burden to the regulatory authorities that must keep track of all approved methods. EPA disagrees that tracking multiple editions of *Standard Methods* is a new requirement or unduly burdensome. The Agency currently cites more than one edition of the same method, *e.g.* footnote 4 to the table of inorganic methods at 40 CFR 141.23 allows use of either the 18th or 19th edition versions of all the Standard Methods listed in the table. For this reason, the Agency always cites an approved method by both method number and date (or edition) of publication to avoid confusion about which versions are approved, and to allow incorporation of the method by reference in the CFR in lieu of publication of the entire method in the CFR. This citation policy means that existing State databases would be designed to accommodate the edition as well as the number of an approved method so that multiple versions of an approved method can be tracked.

EPA recognizes that there are tradeoffs between the current approach of allowing use of several versions of a test method, and the suggested revision (received in a comment) to allow only the most recent version of that method. Allowing use of only the 20th edition of *Standard Methods* may have more consequences than just the purchase of the 20th edition book. A laboratory may routinely use only a few methods that are published in *Standard Methods*, and these may be methods that have been reprinted in the 20th edition with no editorial or technical changes. Under the suggested revision to allow use of only the 20th edition of *Standard Methods*, a laboratory may be required to update method citations in existing quality assurance manuals and laboratory standard operating procedures as well as provide analysts with a copy of the 20th edition version of the method even when the methods have not changed from previous editions.

Furthermore, withdrawal of previous editions of *Standard Methods* was not proposed for public comment in the January 2001 rule, and the suggestion to allow use of only the 20th edition of *Standard Methods* is outside the scope of today's regulatory amendments. Public comment on previous proposals to withdraw older versions of methods, indicated that most laboratories prefer the flexibility to use these versions if the methods have not changed significantly in new editions of the manuals. Thus, EPA continues to allow use of older editions of *Standard Methods*.

B. Technical Differences Between Methods

The commenter suggested that some methods in the 18th edition of *Standard Methods* are obsolete because of technical and editorial updates in newer editions. EPA disagrees that the methods in the 18th edition of *Standard Methods* approved in today's rule are obsolete.

The methods approved by today's rule are technically equivalent to previously approved versions. Only methods using time-tested technologies are approved by today's rule. For the purposes of compliance monitoring, however, none of these methods are obsolete and all methods provide the necessary technical information. Therefore, EPA believes the use of previously approved editions of *Standard Methods* continues to be appropriate.

C. Withdrawing Methods That Use Older Technology

The commenter suggested colorimetric methods for trace metals analysis, with the exception of hexavalent chromium, be dropped from the list of approved methods at 40 CFR part 136, Table IB, arguing that these methods are obsolete. The commenter stated that many of these methods list interferences not encountered by atomic absorption, atomic emission, or mass spectrometry techniques. The commenter also stated that many of these methods also increase the amount of hazardous waste generated in the laboratory and that the detection limits attained by the colorimetric methods may not be low enough to meet permit requirements. EPA disagrees for several reasons.

Colorimetric metals methods have been in use a long time, and explain how to handle the analytical difficulties noted by the commenter. Although many of the colorimetric methods have the potential to generate more laboratory wastes than some newer methods, these methods produce acceptable compliance monitoring information, and the commenter did not provide any data to demonstrate otherwise. Colorimetric methods often provide a low-cost alternative to high energy analysis methods that have high labor and equipment costs. Finally, withdrawal of these methods was not proposed for public comment and is outside the scope of today's amendments.

D. Digestion Preceding Sample Analysis

The commenter noted that 40 CFR part 136.3, Table IB, parameter 31, referring to total Kjeldahl nitrogen (TKN), specifies "digestion and distillation followed by" one of several new techniques. The commenter asked if "digestion and distillation followed by" means that digestion and distillation are required prior to analysis of a sample for NPDES compliance monitoring. EPA requires the use of separate digestion and distillation procedures prior to TKN analysis by certain methods, as specified in Table IB. "Digestion and distillation followed by," in the context of Table IB, requires the use of one of the listed digestion and distillation procedures for the Titration, Nesslerization and Electrode test methods. Today's rule reformats Table IB with appropriate indentation to reflect this requirement more clearly.

Other TKN methods explicitly require alternate sample preparation procedures, such as the semiautomated block digestion (*e.g.*, EPA Method 351.2). For these methods, TKN analysis does not require the use the digestion and distillation procedures discussed in the preceding paragraph, because the alternate sample preparation procedures will provide the desired results.

E. Metals Methods in 20th Edition of Standard Methods

The commenter inquired about the status of the graphite furnace and flame atomic absorption methods for metals analyses (GFAA and FLAA, respectively) that were revised in the 20th edition of *Standard Methods*, but not proposed for approval in the January 16, 2001 rule. The commenter recommended that EPA either approve or not approve all versions (18th, 19th and 20th edition) and not split approval of these methods by edition number. EPA did not propose, and today's rule does not approve, the 20th Edition versions of Methods 3111B, 3111D,

3112 B, 3113 B and 3114 B, which include the GFAA and FLAA methods noted by the commenter. These versions of the five methods are not acceptable because the method performance requirements specified in the 20th edition are not equivalent or better than in the 18th and 19th edition versions of these methods. The 20th edition of *Standard Methods* introduces less stringent quality control (QC) acceptance criteria (in Section 3020 of each method) than in the older versions. Specifically, the 18th and 19th edition versions specify that a recovery of a check standard outside the range of 95% to 105% suggests a potential problem, and a recovery outside the range of 90% to 110% indicates that the system is out of control. The 20th edition weakened and increased these limits to 90% to 100% and 80% to 120%, respectively. The editors of *Standard Methods* did not provide a basis for weakening the QC requirements in these methods, and they did not suggest applying these less stringent criteria to previous editions of the methods.

VI. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment (5 U.S.C. 601(3)–(5).) In addition to the above, to establish an alternative small business definition, agencies must consult with the Small Business Administration's (SBA) Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities under the SDWA, EPA considered small entities to be public water systems serving fewer than 10,000 persons. This is the cut-off level specified by Congress in the 1996 Amendments to the SDWA for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register** (63 FR 7620, February 13, 1998), requested comment, consulted with the SBA, and expressed its intention to use the alternative definition for all future drinking water regulations in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that final rule, the alternative definition would be applied to this regulation as well.

For purposes of assessing the impacts of today's rule on small entities under the CWA, we defined: (1) Small businesses according to SBA size standards; (2) small governmental jurisdictions as governments of a city, county, town, school district or special district with a population of less than 50,000; and (3) small organizations as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Today's rule approves additional updated versions of ASTM Methods, *Standard Methods*, United States Geological Survey (USGS) methods, and United States Department of Energy (DOE) methods for compliance with wastewater monitoring and drinking water standards and monitoring requirements but does not require the use of these specific versions. Previous versions of these ASTM, *Standard Methods*, USGS, and DOE methods are not being withdrawn. State, territorial, Tribal, and local governments and public and privately owned public water systems and laboratories performing analyses on behalf of these systems may continue to use the previous versions after the promulgation of today's rule. The final rule merely provides additional options. Any of the testing procedures currently listed at 40 CFR parts 136, 141, or 143 can be used if monitoring is otherwise required for this pollutant under the CWA or SDWA. This rule also makes minor technical corrections and clarifications to the regulations.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. This rule imposes no enforceable duty on any State, local or Tribal governments or the private sector. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of sections 202, 203, and 205 of the UMRA.

This rule provides additional analytical methods with which to conduct analyses for contaminants in wastewater and drinking water, and thus provides operational flexibility to laboratory analysts. Since the rule does not withdraw earlier versions of methods, EPA anticipates no increase in expenditure or burden.

D. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action merely provides additional options on the selection of testing procedures when monitoring is otherwise required under the CWA or SDWA. Any of the testing procedures approved at 40 CFR parts 136, 141, or 143 can be used if such monitoring is required for a pollutant or contaminant. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

E. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995, ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards. In this rulemaking EPA is approving updated versions of previously approved voluntary consensus standards published by ASTM and Standard Methods for many wastewater and drinking water contaminants.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is neither "economically significant" as defined under Executive Order 12866, nor does it concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule provides governmental and other public and private entities conducting analysis in wastewater and drinking water the option to use additional, updated analytical methods to monitor pollutants under the CWA or SDWA. Such regulated entities may choose any of these additional methods or continue to use the methods listed under 40 CFR parts 136, 141, and 143. Thus, Executive Order 13132 does not apply to this rule.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and the Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

Today's rule provides Tribes conducting analysis in wastewater and drinking water the option to use additional updated analytical methods to monitor pollutants under the CWA or SDWA. Tribes may choose any of these additional methods or continue to use the methods listed under 40 CFR parts 136, 141, and 143. Thus, Executive Order 13175 does not apply to this rule.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on November 22, 2002.

J. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

K. Plain Language Directive

Executive Order 12866 requires each agency to write its rules in plain language. Readable regulations help the public find requirements quickly and understand them easily. They increase compliance, strengthen enforcement, and decrease mistakes, frustration, phone calls, appeals, and distrust of government. EPA made every effort to write this preamble to the final rule in as clear, concise, and unambiguous manner as possible. Today's final rule is mostly in a table format consistent with the format of the CFR sections we are amending.

List of Subjects

40 CFR Part 136

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 141

Environmental protection, Chemicals, Incorporation by reference, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 143

Environmental protection, Chemicals, Indians-lands, Water supply.

Dated: September 12, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations, is amended as follows:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

1. The authority citation for part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977.)

2. Section 136.3 is amended:

a. In paragraph (a) by revising the introductory text and Tables IA, IB, IC, ID, and IE.

b. In paragraph (b) by revising references (6) and (10), and adding references (44) through (51).

§ 136.3 Identification of test procedures.

(a) Parameters or pollutants, for which methods are approved, are listed together with test procedure descriptions and references in Tables IA, IB, IC, ID, IE, and IF. The full text of the referenced test procedures are incorporated by reference into Tables IA, IB, IC, ID, IE, and IF. The incorporation by reference of these documents, as specified in paragraph (b) of this section, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed in paragraph (b) of this section. Information regarding obtaining these documents can be obtained from the EPA Office of Water Statistics and Analytical Support Branch at 202–566–1000. Documents may be inspected at EPA's Water Docket, EPA West, 1301 Constitution Avenue, NW., Room B135, Washington, DC (Telephone: 202-566–2426); or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. These test procedures are incorporated as they exist on the day of approval and a notice of anys change in these test procedures will be published in the **Federal Register**. The discharge parameter values for which reports are required must be determined by one of the standard analytical test procedures incorporated by reference and described in Tables IA, IB, IC, IE, and IF, or by any alternate test procedure which has been approved by the Administrator under the provisions of paragraph (d) of this section and §§ 136.4 and 136.5. Under certain circumstances (paragraph (b) or (c) of this section or 40 CFR 401.13) other test procedures may be more advantageous when such other test procedures have been previously approved by the Regional Administrator of the Region in which the discharge will occur, and providing the Director of the State in which such discharge will occur does not object to the use of such alternate test procedure.

TABLE IA.—LIST OF APPROVED BIOLOGICAL METHODS

Parameter and units	Method [1]	EPA	*Standard Methods* 18th, 19th, 20th ed.	ASTM	USGS
Bacteria:					
1. Coliform (fecal), number per 100 mL.	Most Probable Number (MPN), 5 tube 3 dilution, or Membrane filter (MF) [2] single step.	p. 132 [3] ..... p. 124 [3]	9221C E [4] 9222D [4]	.....	B–0050–85 [5]
2. Coliform (fecal) in presence of choline, number per 100 mL.	MPN, 5 tube, 3 dilution, or MF, single step [6]	p. 132 [3] ..... p. 124 [3]	9221C E [4] 9221D [4]		
3. Coliform (total), number per 100 mL.	MPN, 5 tube, 3 dilution, or MF [2] single step or two step	p. 114 [3] ..... p. 108 [3]	9221B [4] 9222B [4]	.....	B–0025–85 [5]
4. Coliform (total), in presence of clorine, number per 100 mL.	MPN, 5 tube, 3 dilution, or ..... MF [2] with enrichment	p. 114 [3] ..... p. 111 [3]	9221B [4] 9222 (B+B.5c) [4]		
5. Fecal streptococci, number per 100 mL.	MPN, 5 tube, 3 dilution ..... MF [2] or ..... Plate count	p. 139 [3] ..... p. 136 [3] ..... p. 143 [3]	9230B [4] 9230C [4]	.....	B–0055–85 [5]
Aquatic Toxicity:					
6. Toxicity, acute, fresh water organisms, LC50, percent effluent.	Daphnia, Ceriodaphnia, Fathead Minnow, Rainbow Trout, Brook Trout, or Bannerfish Shiner mortality.	Sec. 9 [7]			
7. Toxicity, acute, estuarine and marine organisms, LC50, percent effluent.	Mysid, Sheepshead Minnow, or Menidia spp. mortality.	Sec. 9 [7]			
8. Toxicity, chromic, fresh water organisms, NOEC or IC25, percent effluent.	Fathead minnow larval survival and growth.	1000.0 [8]			
	Fathead minnow embryo-larval survival and teratogenicity.	1001.0 [8]			
	Ceriodaphnia survival and reproduction.	1002.0 [8]			
	Selenastrum growth	1003.0 [8]			
9. Toxicity, chronic estuarine and marine organisms, NOEC or IC25, percent effluent.	Sheepshead minnow larval survival and growth.	1004.0 [9]			
	Sheepshead minnow embryo-larval survival and teratogenicity.	1005.0 [9]			
	Menidia beryllina larval and growth	1006.0 [9]			
	Mysidopsis bahia, growth, and fecundity.	1007.0 [9]			
	Arbacia punctulata fertilization	1008.0 [9]			
	Champia parvula reproduction	1009.0 [9]			

TABLE IA.—LIST OF APPROVED BIOLOGICAL METHODS—Continued

Parameter and units	Method [1]	EPA	*Standard Methods* 18th, 19th, 20th ed.	ASTM	USGS

Notes to Table IA:

[1] The method must be specified when results are reported.

[2] A 0.45 µm membrane filter (MF) or other pore size certified by the manufacturer to fully retain organisms to be cultivated and to be free of extractables which could interfere with their growth.

[3] USEPA. 1978. Microbiological Methods for Monitoring the Environment, Water, and Wastes. Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio. EPA/600/8–78/017.

[4] APHA. 1998, 1995, 1992. Standard Methods for the Examination of Water and Wastewater. American Public Health Association. 20th, 19th, and 18th Editions. Amer. Publ. Hlth. Assoc., Washington, DC.

[5] USGS. 1989. U.S. Geological Survey Techniques of Water-Resource Investigations, Book 5, Laboratory Analysis, Chapter A4, Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples, U.S. Geological Survey, U.S. Department of the Interior, Reston, Virginia.

[6] Because the MF technique usually yields low and variable recovery from chlorinated wastewaters, the Most Probable Number method will be required to resolve any controversies.

[7] USEPA. 1993. Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms. Fourth Edition. Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio. August 1993, EPA/600/4–90/027F.

[8] USEPA. 1994. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms. Third Edition. Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency USEPA. 1994, Cincinnati, Ohio. (July 1994, EPA/600/4–91/002).

[9] Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. Second Edition. Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio (July 1994, EPA/600/4–91/003). These methods do not apply to marine waters of the Pacific Ocean.

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and method	Reference (method number or page)				
	EPA [1, 35]	*Standard Methods* [Edition(s)]	ASTM	USGS [2]	Other
1. Acidity, as $CaCO_3$, mg/L:					
Electrometric endpoint or phenolphthalein endpoint.	305.1	2310 B(4a) [18th, 19th, 20th].	D1067–92	I–1020–85	
				I–2030–85	
2. Alkalinity, as $CaCO_3$, mg/L:					
Electrometric of Colorimetric titration to pH 4.5, manual or automatic.	310.1	2320 B [18th, 19th, 20th].	D1067–92	I–1030–85	973.43 [3]
	310.2	.....	.....	I–2030–85	

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1,35]	*Standard Methods* [Edition(s)]	ASTM	USGS [2]	Other
3. Aluminium—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration[36]	202.1	3111 D [18th, 19th]		I–3051–85	
AA furnace	202.2	3113 B [18th, 19th]			
Inductively Coupled Plasma/Atomic Emission Spectrometry (ICP/AES)[36].	200.7[5]	3120 B [18th, 19th, 20th].		I–4471–97[50]	
Direct Current Plasma (DCP)[36].			D4190–94		Note 34.
Colorimetric (Eriochrome cyanine R).		3500–Al B [20th] and 3500–Al D [18th, 19th].			
4. Ammonia (as N), mg/L:					
Manual, distillation (at pH 9.5)[6] followed by.	350.2	4500–NH_3 B [18th, 19th, 20th].			973.49[3]
Nesslerization	350.2	4500–NH_3 C [18th]	D1426–98(A)	I–3520–85	973.49[3]
Titration	350.2	4500–NH_3 C [19th, 20th] and 4500–NH_3 E [18th].			
Electrode	350.3	4500–NH_3 D or E [19th, 20th] and 4500–NH_3 F or G [18th].	D1426–98(B).		
Automated phenate, or	350.1	4500–NH_3 G [19th, 20th] and 4500–NH_3 H [18th].		I–4523–85	
Automated electrode					Note 7.
5. Antimony–Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration[36]	204.1	3111 B [18th, 19th]			
AA furnace	204.2	3113 B [18th, 19th]			
ICP/AES[36]	200.7[5]	3120 B [18th, 19th, 20th].			
6. Arsenic–Total[4] mg/L:					
Digestion[4] followed by	206.5				
AA gaseous hydride	206.3	3114 B 4.d [18th, 19th].	D2972–97(B)	I–3062–85	
AA furnace	206.2	3113 B [18th, 19th]	D2972–97(C)	I–4063–98[49]	
ICP/AES[36] or	200.7[5]	3120 B [18th, 19th, 20th].			
Colorimetric (SDDC)	206.4	3500–As B [20th] and 3500–As C [18th, 19th].	D2972–97(A)	I–3060–85	
7. Barium–Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration[14]	208.1	3111 D [18th, 19th]		I–3084–85	
AA furnace	208.2	3113 B [18th, 19th]	D4382–95		
ICP/AES[14]	200.7[5]	3120 B [18th, 19th, 20th].			
DCP[14]					Note 34.
8. Beryllium–Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration	210.1	3111 D [18th, 19th]	D3645–93(88)(A)	I–3095–85	
AA furnace	210.2	3113 B [18th, 19th]	D3645–93(88)(B)		
ICP/AES	200.7[5]	3120 B [18th, 19th, 20th].		I–4471–97[50]	
DCP, or			D4190–94		Note 34.
Colorimetric (aluminon		3500–Be D [18th, 19th].			
9. Biochemical oxygen demand (BOD_5), mg/L:					
Dissolved Oxygen Depletion.	405.1	5210 B [18th, 19th, 20th].		I–1578–78[8]	973.44,[3] p. 17[9]
10. Boron[37]–Total, mg/L:					
Colorimetric (curcumin)	212.3	4500–B B [18th, 19th, 20th].		I–3112–85	
ICP/AES, or	200.7[5]	3120 B [18th, 19th, 20th].		I–4471–97[50]	

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1,35]	*Standard Methods* [Edition(s)]	ASTM	USGS [2]	Other
DCP			D4190–94		Note 34.
11. Bromide, mg/L:					
Titrimetric	320.1		D1246–95(C)	I–1125–85	p. S44[10]
12. Cadmium—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration[36]	213.1	3111 B or C [18th, 19th].	D3557–95 (A or B)	I–3135–85 or I–3136–85.	974.27,[3] p. 37[9]
AA furnace	213.2	3113 B [18th, 19th]	D3557–95(D)	I–4138–89[51]	
ICP/AES[36]	200.7[5]	3120 B [18th, 19th, 20th].		I–1472–85 or I–4471–97[50]	
DCP[36]			D4190–94		Note 34.
Voltametry[11], or			D3557–95(C).		
Colorimetric (Dithizone)		3500–Cd D [18th, 19th].			
13. Calcium—Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration	215.1	3111 B [18th, 19th]	D511–93(B)	I–3152–85	
ICP/AES	200.7[5]	3120 B [18th, 19th, 20th].		I–4471–97[50]	
DCP, or					Note 34.
Titrimetric (EDTA)	215.2	3500–Ca B [20th] and 3500–Ca D [18th, 19th].	D511–93(A).		
14. Carbonaceous biochemical oxygen demand (CBOD 3), mg/L[12]:					
Dissolved Oxygen Depletion with nitrification inhibitor.		5210 B [18th, 19th, 20th].			
15. Chemical oxygen demand (COD), mg/L; Titrimetric	410.1	5220 C [18th, 19th, 20th].	D1252–95(A)	I–3560–85	973.46,[3] p. 17[9]
or	410.2			I–3562–85	
Spectrophotometric, manual or automatic.	410.3. 410.4.	5220 D [18th, 19th, 20th].	D1252–95(B)	I–3561–85	Notes 13, 14.
16. Chloride, mg/L:					
Titrimetric (silver nitrate) or.		4500–Cl^- B [18th, 19th, 20th].	D512–89(B)	I–1183–85	
(Mercuric nitrate)	325.3	4500–Cl^- C [18th, 19th, 20th].	D512–89(A)	I–1184–85	973.51[3]
Colorimetric, manual or				I–1187–85	
Automated (Ferricyanide).	325.1 or 325.2	4500–Cl^- E [18th, 19th, 20th].		I–2187–85	
17. Chlorine—Total residual, mg/L; Titrimetric:					
Amperometric direct	330.1	4500–Cl D [18th, 19th, 20th].	D1253–86(92).		
Iodometric direct	330.3	4500–Cl B [18th, 19th, 20th].			
Back titration ether endpoint[15] or.	330.2	4500–Cl C [18th, 19th, 20th].			
DPD–FAS	330.4	4500–Cl F [18th, 19th, 20th].			
Spectrophotometric, DPD.	330.5	4500–Cl G [18th, 19th, 20th].			
Or Electrode					Note 16.
18. Chromium VI dissolved, mg/L; 0.45 micron filtration followed by:					
AA chelation-extraction or.	218.4	3111 C [18th, 19th]		I–1232–85	
Colorimetric (Diphenylcarbazide).		3500–Cr B [20th] and 3500–Cr D [18th, 19th].	D1687–92(A)	I–1230–85	
19. Chromium-Total,[4] mg/L; Digestion[4] followed by:					
AA direct aspiration[36]	218.1	3111 B [18th, 19th]	D1687–92(B)	I–3236–85	974.27[3]
AA chelation-extraction	218.3	3111 C [18th, 19th].			

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1, 35]	*Standard Methods* [Edition(s)]	ASTM	USGS [2]	Other
AA furnace	218.2	3113 B [18th, 19th]	D1687–92(C)	I–3233–93 [46].	
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].			
DCP [36] or			D4190–94		Note 34.
Colorimetric (Diphenylcarbazide).		3500–Cr B [20th] and 3500–Cr D [18th, 19th].			
20. Cobalt—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	219.1	3111 B or C [18th, 19th].	D3558–94(A or B)	I–3239–85	p. 37 [9]
AA furnace	219.2	3113 B [18th, 19th]	D3558–94(C)	I–4243–89 [51].	
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50].	
DCP			D4190–94		Note 34.
21. Color platinum cobalt units or dominant wavelength, hue, luminance purity:					
Colorimetric (ADMI), or. (Platinum cobalt), or	110.1	2120 E [18th, 19th, 20th].			Note 18.
Spectrophotometric	110.2	2120 B [18th, 19th, 20th].		I–1250–85	
	110.3	2120 C [18th, 19th, 20th].			
22. Copper—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	220.1	3111 B or C [18th, 19th].	D1688–95(A or B)	I–3270–85 or I–3271–85.	974.27 [3] p. 37 [9]
AA furnace	220.2	3113 B [18th, 19th]	D1688–95(C)	I–4274–89 [51]	
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].		I—4471—97 [50]	
DCP [36] or			D4190–94		Note 34.
Colorimetric (Neocuproine) or.		3500–Cu B [20th] and 3500–Cu D [18th, 19th].			
(Bicinchoninate)		3500–Cu C [20th] and 3500–As B [18th, 19th].			Note 19.
23. Cyanide—Total, mg/L:					
Manual distillation with $MgCl_2$ followed by.		4500–CN C [18th, 19th, 20th].	D2036–98(A)		
Titrimetric, or		4500–CN D [18th, 19th, 20th].			p. 22 [9]
Spectrophotometric, manual or.	335.2 [31]	4500–CN E [18th, 19th, 20th].	D2036–98(A)	I–3300–85	
Automated [20]	335.3 [31]			I–4302–85	
24. Available Cyanide, mg/L:					
Manual distillation with $MgCl_2$ followed by titrimetric or Spectrophotometric.	335.1	4500–CN G [18th, 19th, 20th].	D2036–98(B)		
Flow injection and ligand exchange, followed by amperometry.					OIA–1677 [44]
25. Fluoride—Total, mg/L:					
Manual distillation [6] followed by.		4500–F B [18th, 19th, 20th].			
Electrode, manual or	340.2	4500–F C [18th, 19th, 20th].	D1179–93(B)		
Automated				I–4327–85	
Colorimetric (SPADNS)	340.1	4500–F D [18th, 19th, 20th].	D1179–93(A)		
Or Automated complexone.	340.3	4500–F E [18th, 19th, 20th].			
26. Gold—Total,[4] mg/L; Digestion [4] followed by:					

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1, 35]	*Standard Methods* [Edition(s)]	ASTM	USGS [2]	Other
AA direct aspiration	231.1	3111 B [18th, 19th]			
AA furnace, or	231.2				
DCP					Note 34.
27. Hardness—Total, as $CaCO_3$, mg/L:					
Automated colorimetric,	130.1				
Titrimetric (EDTA), or Ca plus Mg as their carbonates, by inductively coupled plasma or AA direct aspiration (See Parameters 13 and 33).	130.2	2340 B or C [18th, 19th, 20th].	D1126–86(92)	I–1338–85	973.52B [3]
28. Hydrogen ion (pH), pH units:					
Electrometric measurement, or.	150.1	4500–H^+ B [18th, 19th, 20th].	D1293–84 (90)(A or B).	I–1586–85	973.41 [3]
Automated electrode				I–2587–85	Note 21.
29. Iridium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration or	235.1	3111 B [18th, 19th]			
AA furnace	235.2				
30. Iron—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	236.1	3111 B or C [18th, 19th].	D1068–96(A or B)	I–3381–85	974.27 [3]
AA furnace	236.2	3113 B [18th, 19th]	D1068–96(C)		
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP [36] or			D4190–94		Note 34.
Colorimetric (Phenanthroline).		3500–Fe B [20th] and 3500–Fe D [18th, 19th].	D1068–96(D)		Note 22.
31. Kjeldahl Nitrogen—Total, (as N), mg/L:					
Digestion and distillation followed by.	351.3	4500–N_{org} B or C and 4500–NH_3 B [18th, 19th, 20th].	D3590–89(A)		
Titration	351.3		D3590–89(A)		973.48 [3]
Nesslerization	351.3	4500–NH_3 C [18th]	D3590–89(A)		
Electrode	351.3	4500–NH_3 C [19th, 20th] and 4500–NH_3 E [18th].			
Automated phenate colorimetric.	351.1			I–4551–78 [8]	
Semi-automated block digestor colorimetric.	351.2		D3590–89(B)	I–4515–91 [45].	
Manual or block digestor potentiometric.	351.4		D3590–89(A)		
Block digester, followed by Auto distillation and Titration, or.					Note 39.
Nesslerization, or					Note 40.
Flow injection gas diffusion					Note 41.
32. Lead—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	239.1	3111 B or C [18th, 19th].	D3559–96(A or B)	I–3399–85	974.27 [3]
AA furnace	239.2	3113 B [18th, 19th]	D3559–96(D)	I–4403–89 [51]	
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP [36]			D4190–94		Note 34.
Voltametry [11] or			D3559–96(C)		
Colorimetric (Dithizone)		3500–Pb B [20th] and 3500–Pb D [18th, 19th].			
33. Magnesium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	242.1	3111 B [18th, 19th]	D511–93(B)	I–3447–85	974.27 [3]

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1, 35]	*Standard Methods* [Edition(s)]	ASTM	USGS [2]	Other
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP or					Note 34.
Gravimetric		3500–Mg D [18th, 19th].			
34. Manganese-Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	243.1	3111 B [18th, 19th]	D858–95(A or B)	I–3454–85	974.27 [3]
AA furnace	243.2	3113 B [18th, 19th]	D858–95(C)		
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP [36], or			D4190–94		Note 34
Colorimetric (Persulfate), or.		3500–Mn B [20th] and 3500–Mn D [18th, 19th].			920.203 [3]
(Periodate)					Note 23.
35. Mercury—Total [4], mg/L:					
Cold vapor, manual or	245.1	3112 B [18th, 19th]	D3223–91	I–3462–85	977.22 [3]
Automated	245.2				
Oxidation, purge and trap, and cold vapor atomic fluorescence spectrometry (ng/L).	1631C [43]				
36. Molybdenum—Total [4], mg/L; Digestion [4] followed by:					
AA direct aspiration	246.1	3111 D [18th, 19th]		I–3490–85	
AA furnace	246.2	3113 B [18th, 19th]		I–3492–96 [47]	
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP					Note 34.
37. Nickel—Total;[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	249.1	3111 B or C [18th, 19th].	D1886–90(A or B)	I–3499–85.	
AA furnace	249.2	3113 B [18th, 19th]	D1886–90(C)	I–4503–89 [51].	
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50].	
DCP [36], or			D4190–94		Note 34.
Colorimetric (heptoxime).		3500–Ni D [17th].			
38. Nitrate (as N), mg/L:					
Colorimetric (Brucine sulfate), or Nitrate-nitrite N minus Nitrite N (See parameters 39 and 40).	352.1				973.50,[3] 419D,[17] p. 28 [9]
39. Nitrate-nitrite (as N), mg/L:					
Cadmium reduction, Manual or.	353.3	4500–NO_3^- E [18th, 19th, 20th].	D3867–99(B).		
Automated, or	353.2	4500–NO_3^- F [18th, 19th, 20th].	D3867–99(A)	I–4545–85.	
Automated hydrazine	353.1	4500–NO_3^- H [18th, 19th, 20th].			
40. Nitrite (as N), mg/L; Spectrophotometric:					
Manual or	354.1	4500–NO_2^- B [18th, 19th, 20th].			Note 25.
Automated (Diazotization).				I–4540–85.	
41. Oil and grease—Total recoverable, mg/L:					
Gravimetric (extraction)	413.1	5520B [18th, 19th, 20th] [38].			

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1, 35]	*Standard Methods* [Edition(s)]	ASTM	USGS [2]	Other
Oil and grease and non-polar material, mg/L: Hexane extractable material (HEM): n-Hexane extraction and gravimetry.	1664A [42]	5520B [18th, 19th, 20th] [38].			
Silica gel treated HEM (SGT–HEM): Silica gel treatment and gravimetry.	1664A [42].				
42. Organic carbon—Total (TOC), mg/L:					
Combustion or oxidation.	415.1	5310 B, C, or D [18th, 19th, 20th].	D2579–93 (A or B)		973.47,[3] p. 14 [24]
43. Organic nitrogen (as N), mg/L:					
Total Kjeldahl N (Parameter 31) minus ammonia N (Parameter 4).					
44. Orthophosphate (as P), mg/L; Ascorbic acid method:					
Automated, or	365.1	4500–P F [18th, 19th, 20th].		I–4601–85	973.56 [3]
Manual single reagent	365.2	4500–P E [18th, 19th, 20th].	D515–88(A)		973.55 [3]
Manual two reagent	365.3.				
45. Osmium—Total [4], mg/L; Digestion [4] followed by:					
AA direct aspiration, or	252.1	3111 D [18th, 19th].			
AA furnace	252.2.				
46. Oxygen, dissolved, mg/L:					
Winkler (Azide modification), or.	360.2	4500–O C [18th, 19th, 20th].	D888–92(A)	I–1575–78 [8]	973.45B [3]
Electrode	360.1	4500–O G [18th, 19th, 20th].	D888–92(B)	I–1576–78 [8].	
47. Palladium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration, or	253.1	3111 B [18th, 19th]			p. S27 [10]
AA furnace	253.2				p. S28 [10]
DCP					Note 34.
48. Phenols, mg/L:					
Manual distillation [26]	420.1				Note 27.
Followed by:.					
Colorimetric (4AAP) manual, or.	420.1				Note 27.
Automated [19]	420.2.				
49. Phosphorus (elemental), mg/L:					
Gas-liquid chromatography.					Note 28.
50. Phosphorus—Total, mg/L:					
Persulfate digestion followed by.	365.2	4500–P B, 5 [18th, 19th, 20th].			973.55 [3]
Manual or	365.2 or 365.3	4500–P E [18th, 19th, 20th].	D515–88(A)		
Automated ascorbic acid reduction.	365.1	4500–P F [18th, 19th, 20th].		I–4600–85	973.56 [3]
Semi-automated block digestor.	365.4		D515–88(B)	I–4610–91 [45].	
51. Platinum—Total,[4] mg/L: Digestion [4] followed by:					
AA direct aspiration	255.1	3111 B [18th, 19th].			
AA furnace	255.2.				

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1, 35]	*Standard Methods* [Edition(s)]	ASTM	USGS [2]	Other
DCP					Note 34
52. Potassium—Total,[4] mg/L: Digestion [4] followed by:					
AA direct aspiration	258.1	3111 B [18th, 19th]		I–3630–85	973.53 [3]
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].			
Flame photometric, or		3500–K B [20th] and 3500–K D [18th, 19th].			
Colorimetric					317 B [17]
53. Residue—Total, mg/L:					
Gravimetric, 103–105°	160.3	2540 B [18th, 19th, 20th].		I–3750–85.	
54. Residue—filterable, mg/L:					
Gravimetric, 180°	160.1	2540 C [18th, 19th, 20th].		I–1750–85.	
55. Residue—nonfilterable (TSS), mg/L:					
Gravimetric, 103–105° post washing of residue.	160.2	2540 D [18th, 19th, 20th].		I–3765–85.	
56. Residue—settleable, mg/L:					
Volumetric, (Imhoff cone), or gravimetric.	160.5	2540 F [18th, 19th, 20th].			
57. Residue—Volatile, mg/L:					
Gravimetric, 550°	160.4			I–3753–85.	
58. Rhodium-Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration, or	265.1	3111 B [18th, 19th].			
AA furnace	265.2.				
59. Ruthenium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration, or	267.1	3111 B [18th, 19th].			
AA furnace	267.2.				
60. Selenium—Total,[4] mg/L; Digestion [4] followed by:					
AA furnace	270.2	3113 B [18th, 19th]	D3859–98(B)	I–4668–98 [49].	
ICP/AES,[36] or	200.7 [5]	3120 B [18th, 19th, 20th].			
AA gaseous hydride		3114 B [18th, 19th]	D3859–98(A)	I–3667–85.	
61. Silica [37]—Dissolved, mg/L; 0.45 micron filtration followed by:					
Colorimetric, Manual or	370.1	4500–SiO_2 C [20th] and 4500–Si D [18th, 19th].	D859–94	I–1700–85.	
Automated (Molybdosilicate), or.				I–2700–85.	
ICP	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50].	
62. Silver—Total,[4] mg/L: Digestion [4 29] followed by:					
AA direct aspiration	272.1	3111 B or C [18th, 19th].		I–3720–85	974.27,[3] p. 37 [9]
AA furnace	272.2	3113 B [18th, 19th]		I–4724–89 [51]	
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP					Note 34.
63. Sodium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	273.1	3111 B [18th, 19th]		I–3735–85	973.54 [3]
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50]	
DCP, or					Note 34.
Flame photometric		3500 Na B [20th] and 3500 Na D [18th, 19th].			

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method number or page)				
	EPA [1, 35]	*Standard Methods* [Edition(s)]	ASTM	USGS [2]	Other
64. Specific conductance, micromhos/cm at 25 °C:					
Wheatstone bridge	120.1	2510 B [18th, 19th, 20th].	D1125–95(A)	I–2781–85	973.40 [3]
65. Sulfate (as SO_4), mg/L:					
Automated colorimetric (barium chloranilate).	375.1.				
Gravimetric	375.3	4500–SO_4^{-2}C or D [18th, 19th, 20th].			925.54 [3]
Turbidimetric	375.4		D516–90		426C [30]
66. Sulfide (as S), mg/L:					
Titrimetric (iodine), or	376.1	4500–S^{-2}F [19th, 20th] or 4500–S^{-2}E [18th].		I–3840–85.	
Colorimetric (methylene blue).	376.2	4500–S^{-2}D [18th, 19th, 20th].			
67. Sulfite (as SO_3), mg/L:					
Titrimetric (iodine-iodate).	377.1	4500–SO_3^{-2}B [18th, 19th, 20th].			
68. Surfactants, mg/L:					
Colorimetric (methylene blue).	425.1	5540 C [18th, 19th, 20th].	D2330–88.		
69. Temperature, °C:					
Thermometric	170.1	2550 B [18th, 19th, 20th].			Note 32.
70. Thallium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	279.1	3111 B [18th, 19th].			
AA furnace	279.2.				
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].			
71. Tin—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	282.1	3111 B [18th, 19th]		I–3850–78 [8].	
AA furnace, or	282.2	3113 B [18th, 19th].			
ICP/AES	200.7 [5].				
72. Titanium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	283.1	3111 D [18th, 19th].			
AA furnace	283.2.				
DCP					Note 34.
73. Turbidity, NTU:					
Nephelometric	180.1	2130 B [18th, 19th, 20th].	D1889–94(A)	I–3860–85.	
74. Vanadium—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration	286.1	3111 D [18th, 19th].			
AA furnace	286.2		D3373–93.		
ICP/AES	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50].	
DCP, or			D4190–94		Note 34.
Colorimetric (Gallic Acid).		3500–V B [20th] and 3500–V D [18th, 19th].			
75. Zinc—Total,[4] mg/L; Digestion [4] followed by:					
AA direct aspiration [36]	289.1	3111 B or C [18th, 19th].	D1691–95(A or B)	I–3900–85	974.27,[3] p. 37 [9]
AA furnace	289.2.				
ICP/AES [36]	200.7 [5]	3120 B [18th, 19th, 20th].		I–4471–97 [50].	
DCP,[36] or			D4190–94		Note 34.
Colorimetric (Dithizone) or.		3500–Zn E [18th, 19th].			
(Zincon)		3500–Zn B [20th] and 3500–Zn F [18th, 19th].			Note 33.

Table 1B Notes:

[1] "Methods for Chemical Analysis of Water and Wastes," Environmental Protection Agency, Environmental Monitoring Systems Laboratory—Cincinnati (EMSL–CI), EPA–600/4–79–020, Revised March 1983 and 1979 where applicable.

[2] Fishman, M.J., *et al.* "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments, "U.S. Department of the Interior, Techniques of Water-Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

[3] "Official Methods of Analysis of the Association of Official Analytical Chemists," methods manual, 15th ed. (1990).

[4] For the determination of total metals the sample is not filtered before processing. A digestion procedure is required to solubilize suspended material and to destroy possible organic-metal complexes. Two digestion procedures are given in "Methods for Chemical Analysis of Water and Wastes, 1979 and 1983". One (Section 4.1.3), is a vigorous digestion using nitric acid. A less vigorous digestion using nitric and hydrochloric acids (Section 4.1.4) is preferred; however, the analyst should be cautioned that this mild digestion may not suffice for all samples types. Particularly, if a colorimetric procedure is to be employed, it is necessary to ensure that all organo-metallic bonds be broken so that the metal is in a reactive state. In those situations, the vigorous digestion is to be preferred making certain that at no time does the sample go to dryness. Samples containing large amounts of organic materials may also benefit by this vigorous digestion, however, vigorous digestion with concentrated nitric acid will convert antimony and tin to insoluble oxides and render them unavailable for analysis. Use of ICP/AES as well as determinations for certain elements such as antimony, arsenic, the noble metals, mercury, selenium, silver, tin, and titanium require a modified sample digestion procedure and in all cases the method write-up should be consulted for specific instructions and/or cautions.

Note to Table 1B Note 4: If the digestion procedure for direct aspiration AA included in one of the other approved references is different than the above, the EPA procedure must be used. Dissolved metals are defined as those constituents which will pass through a 0.45 micron membrane filter. Following filtration of the sample, the referenced procedure for total metals must be followed. Sample digestion of the filtrate for dissolved metals (or digestion of the original sample solution for total metals) may be omitted for AA (direct aspiration or graphite furnace) and ICP analyses, provided the sample solution to be analyzed meets the following criteria:

a. has a low COD (<20)

b. is visibly transparent with a turbidity measurement of 1 NTU or less

c. is colorless with no perceptible odor, and

d. is of one liquid phase and free of particulate or suspended matter following acidification.

[5] The full text of Method 200.7, "Inductively Coupled Plasma Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes," is given at Appendix C of this Part 136.

[6] Manual distillation is not required if comparability data on representative effluent samples are on company file to show that this preliminary distillation step is not necessary; however, manual distillation will be required to resolve any controversies.

[7] Ammonia, Automated Electrode Method, Industrial Method Number 379–75 WE, dated February 19, 1976, Bran & Luebbe (Technicon) Auto Analyzer II, Bran & Luebbe Analyzing Technologies, Inc., Elmsford, NY 10523.

[8] The approved method is that cited in "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments", USGS TWRI, Book 5, Chapter A1 (1979).

[9] Amencan National Standard on Photographic Processing Effluents, Apr. 2, 1975. Available from ANSI, 25 West 43rd Street, New York, NY 10036.

[10] "Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency", Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[11] The use of normal and differential pulse voltage ramps to increase sensitivity and resolution is acceptable.

[12] Carbonaceous biochemical oxygen demand ($CBOD_5$) must not be confused with the traditional BOD_5 test method which measures "total BOD". The addition of the nitrification inhibitor is not a procedural option, but must be included to report the $CBOD_5$ parameter. A discharger whose permit requires reporting the traditional BOD_5 may not use a nitrification inhibitor in the procedure for reporting the results. Only when a discharger's permit specifically states $CBOD_5$ is required can the permittee report data using a nitrification inhibitor.

[13] OIC Chemical Oxygen Demand Method, Oceanography International Corporation, 1978, 512 West Loop, PO Box 2980, College Station, TX 77840.

[14] Chemical Oxygen Demand, Method 8000, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, PO Box 389, Loveland, CO 80537.

[15] The back titration method will be used to resolve controversy.

[16] Orion Research Instruction Manual, Residual Chlorine Electrode Model 97–70, 1977, Orion Research Incorporated, 840 Memorial Drive, Cambridge, MA 02138. The calibration graph for the Orion residual chlorine method must be derived using a reagent blank and three standard solutions, containing 0.2, 1.0, and 5.0 mL 0.00281 N potassium iodate/100 mL solution, respectively.

[17] The approved method is that cited in Standard Methods for the Examination of Water and Wastewater, 14th Edition, 1976.

[18] National Council of the Paper Industry for Air and Stream Improvement, Inc. Technical Bulletin 253, December 1971.

[19] Copper, Biocinchoinate Method, Method 8506, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, PO Box 389, Loveland, CO 80537.

[20] After the manual distillation is completed, the autoanalyzer manifolds in EPA Methods 335.3 (cyanide) or 420.2 (phenols) are simplified by connecting the re-sample line directly to the sampler. When using the manifold setup shown in Method 335.3, the buffer 6.2 should be replaced with the buffer 7.6 found in Method 335.2.

[21] Hydrogen ion (pH) Automated Electrode Method, Industrial Method Number 378–75WA, October 1976, Bran & Luebbe (Technicon) Autoanalyzer II, Bran & Luebbe Analyzing Technologies, Inc., Elmsford, NY 10523.

[22] Iron, 1,10-Phenanthroline Method, Method 8008, 1980, Hach Chemical Company, PO Box 389, Loveland, CO 80537.

[23] Manganese, Periodate Oxidation Method, Method 8034, Hach Handbook of Wastewater Analysis, 1979, pages 2–113 and 2–117, Hach Chemical Company, Loveland, CO 80537.

[24] Wershaw, R.L., *et al,* "Methods for Analysis of Organic Substances in Water," Techniques of Water-Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A3, (1972 Revised 1987) p. 14.

[25] Nitrogen, Nitrite, Method 8507, Hach Chemical Company, PO Box 389, Loveland, CO 80537.

[26] Just prior to distillation, adjust the sulfuric-acid-preserved sample to pH 4 with 1 + 9 NaOH.

[27] The approved method is cited in Standard Methods for the Examination of Water and Wastewater, 14th Edition. The colorimetric reaction is conducted at a pH of 10.0±0.2. The approved methods are given on pp 576–81 of the 14th Edition: Method 510A for distillation, Method 510B for the manual colorimetric procedure, or Method 510C for the manual spectrometric procedure.

[28] R.F. Addison and R.G. Ackman, "Direct Determination of Elemental Phosphorus by Gas-Liquid Chromatography," Journal of Chromatography, Vol. 47, No. 3, pp. 421–426, 1970.

[29] Approved methods for the analysis of silver in industrial wastewaters at concentrations of 1 mg/L and above are inadequate where silver exists as an inorganic halide. Silver halides such as the bromide and chloride are relatively insoluble in reagents such as nitric acid but are readily soluble in an aqueous buffer of sodium thiosulfate and sodium hydroxide to pH of 12. Therefore, for levels of silver above 1 mg/L, 20 mL of sample should be diluted to 100 mL by adding 40 mL each of 2 M $Na_2S_2O_3$ and NaOH. Standards should be prepared in the same manner. For levels of silver below 1 mg/L the approved method is satisfactory.

[30] The approved method is that cited in Standard Methods for the Examination of Water and Wastewater, 15th Edition.

[31] EPA Methods 335.2 and 335.3 require the NaOH absorber solution final concentration to be adjusted to 0.25 N before colorimetric determination of total cyanide.

[32] Stevens, H.H., Ficke, J.F., and Smoot, G.F., "Water Temperature—Influential Factors, Field Measurement and Data Presentation," Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 1, Chapter D1, 1975.

[33] Zinc, Zincon Method, Method 8009, Hach Handbook of Water Analysis, 1979, pages 2–231 and 2–333, Hach Chemical Company, Loveland, CO 80537.

[34] "Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, Method AES0029," 1986—Revised 1991, Thermo Jarrell Ash Corporation, 27 Forge Parkway, Franklin, MA 02038.

[35] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic are provided in Appendix D of this part titled, "Precision and Recovery Statements for Methods for Measuring Metals".

[36] "Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals", CEM Corporation, PO Box 200, Matthews, NC 28106–0200, April 16, 1992. Available from the CEM Corporation.

[37] When determining boron and silica, only plastic, PTFE, or quartz laboratory ware may be used from start until completion of analysis.

[38] Only use Trichlorotrifluorethane (1,1,2-trichloro-1,2,2-trifluoroethane; CFC–113) extraction solvent when determining Total Recoverable Oil and Grease (analogous to EPA Method 413.1). Only use *n*-hexane extraction solvent when determining Hexane Extractable Material (analogous to EPA Method 1664A). Use of other extraction solvents is strictly prohibited.

[39] Nitrogen, Total Kjeldahl, Method PAI–DK01 (Block Digestion, Steam Distillation, Titrimetric Detection), revised 12/22/94, OI Analytical/ALPKEM, PO Box 9010, College Station, TX 77842.

[40] Nitrogen, Total Kjeldahl, Method PAI–DK02 (Block Digestion, Steam Distillation, Colorimetric Detection), revised 12/22/94, OI Analytical/ALPKEM, PO Box 9010, College Station, TX 77842.

[41] Nitrogen, Total Kjeldahl, Method PAI–DK03 (Block Digestion, Automated FIA Gas Diffusion), revised 12/22/94, OI Analytical/ALPKEM, PO Box 9010, College Station, TX 77842.

[42] Method 1664, Revision A "n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT–HEM; Non-polar Material) by Extraction and Gravimetry" EPA–821–R–98–002, February 1999. Available at NTIS, PB–121949, U.S. Department of Commerce, 5285 Port Royal, Springfield, Virginia 22161.

[43] USEPA. 2001. Method 1631, Revision C, "Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry," March 2001. Office of Water, U.S. Environmental Protection Agency (EPA–821–R–01–024). The application of clean techniques described in EPA's draft Method 1669: Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels (EPA–821–R–96–011) are recommended to preclude contamination at low-level, trace metal determinations.

[44] Available Cyanide, Method OIA–1677 (Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry), ALPKEM, A Division of OI Analytical, PO Box 9010, College Station, TX 77842–9010.

[45] "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Ammonia Plus Organic Nitrogen by a Kjeldahl Digestion Method", Open File Report (OFR) 00–170.

[46] "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Chromium in Water by Graphite Furnace Atomic Absorption Spectrophotometry", Open File Report (OFR) 93–449.

[47] "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Molybdenum by Graphite Furnace Atomic Absorption Spectrophotometry", Open File Report (OFR) 97–198.

[48] "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Total Phosphorus by Kjeldahl Digestion Method and an Automated Colorimetric Finish That Includes Dialysis" Open File Report (OFR) 92–146.

[49] "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Arsenic and Selenium in Water and Sediment by Graphite Furnace-Atomic Absorption Spectrometry" Open File Report (OFR) 98–639.

[50] "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Elements in Whole-water Digests Using Inductively Coupled Plasma-Optical Emission Spectrometry and Inductively Coupled Plasma-Mass Spectrometry", Open File Report (OFR) 98–165.

[51] "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediment", Open File Report (OFR) 93–125.

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS

Parameter[1]	EPA method number[2,7]			Other approved methods		
	GC	GC/MS	HPLC	*Standard Methods* [Edition(s)]	ASTM	Other
1. Acenaphthene	610	625, 1625B	610	6440 B [18th, 19th, 20th].	D4657–92	Note 9, p.27.
2. Acenaphthylene	610	625, 1625B	610	6440 B, 6410 B [18th, 19th, 20th].	D4657–92	Note 9, p.27.
3. Acrolein	603	624[4], 1624B				
4. Acrylonitrile	603	624[4], 1624B				
5. Anthracene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
6. Benzene	602	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6220 B [18th, 19th].		
7. Benzidine		625[5], 1625B	605			Note 3, p.1.
8. Benzo(a)anthracene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
9. Benzo(a)pyrene	610,	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
10. Benzo(b)fluoranthene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
11. Benzo(g, h, i)perylene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
12. Benzo(k)fluoranthene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
13. Benzyl chloride						Note 3, p 130: Note 6, p. S102.

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter[1]	EPA method number[2,7]			Other approved methods		
	GC	GC/MS	HPLC	*Standard Methods* [Edition(s)]	ASTM	Other
14. Benzyl butyl phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
15. Bis(2-chloroethoxy) methane	611	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
16. Bis(2-chloroethyl) ether	611	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
17. Bis(2-ethylhexyl) phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
18. Bromodichloromethane	601	624, 1624B		6200 C [20th] and 6230 B [18th, 19th], 6200 B [20th] and 6210 B [18th, 19th].		
19. Bromoform	601	624, 1624B		6200 C [20th] and 6230 B [18th, 19th], 6200 B [20th] and 6210 B [18th, 19th].		
20. Bromomethane	601	624, 1624B		6200 C [20th] and 6230 B [18th, 19th], 6200 B [20th] and 6210 B [18th, 19th].		
21. 4-Bromophenylphenyl ether	611	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
22. Carbon tetrachloride	601	624, 1624B		6200 C [20th] and 6230 B [18th, 19th].		Note 3, p. 130.
23. 4-Chloro-3-methylphenol	604	625,1625B		6410 B, 6420 B [18th, 19th, 20th].		Note 9, p. 27.
24. Chlorobenzene	601, 602	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6220 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th],.		Note 3, p. 130.
25. Chloroethane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
26. 2-Chloroethylvinyl ether	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
27. Chloroform:	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		Note 3, p 130.
28. Chloromethane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th] 6200C [20th] and 6230 B [18th, 19th].		
29. 2-Chloronaphthalene	612	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter[1]	EPA method number[2,7]			Other approved methods		
	GC	GC/MS	HPLC	*Standard Methods* [Edition(s)]	ASTM	Other
30. 2-Chlorophenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].		Note 9, p. 27.
31. 4-Chlorophenylphenyl ether	611	625, 1625B		6410 B, [18th, 19th, 20th].		Note 9, p. 27.
32. Chrysene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
33. Dibenzo(a,h)anthracene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
34. Dibromochloromethane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th] 6200 C [20th] and 6230 B [18th, 19th].		
35. 1,2-Dichlorobenzene	601, 602, 612	624, 625, 1625B.		6200 C [20th] and 6220 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th], 6410 B [18th, 19th, 20th].		Note 9, p 27.
36. 1,3-Dichlorobenzene	601, 602, 612	624, 625, 1625B.		6200 C [20th] and 6220 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th], 6410 B [18th, 19th, 20th].		Note 9, p. 27.
37. 1,4-Dichlorobenzene	601, 602, 612	624, 625, 1625B.		6200 C [20th] and 6220 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th], 6410 B [18th, 19th, 20th].		Note 9, p. 27.
38. 3,3-Dichlorobenzidine		625, 1625B	605	6410 B [18th, 19th, 20th].		
39. Dichlorodifluoromethane	601			6200 C [20th] and 6230 B [18th, 19th].		
40. 1,1-Dichloroethane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
41. 1,2-Dichloroethane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
42. 1,1-Dichloroethene	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number [2, 7]			Other approved methods		
	GC	GC/MS	HPLC	*Standard Methods* [Edition(s)]	ASTM	Other
43. trans-1,2-Dichloroethene	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
44. 2,4-Dichlorophenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].		Note 9, p. 27.
45. 1,2-Dichloropropane	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
46. cis-1,3-Dichloropropene	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
47. trans-1,3-Dichloropropene	601	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
48. Diethyl phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
49. 2,4-Dimethylphenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].		Note 9, p. 27.
50. Dimethyl phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
51. Di-n-butyl phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
52. Di-n-octyl phthalate	606	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
53. 2,3-Dinitrophenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].		
54. 2,4-Dinitrotoluene	609	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
55. 2,6-Dinitrotoluene	609	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
56. Epichlorohydrin						Note 3, p. 130; Note 6, p. S102.
57. Ethylbenzene	602	624, 1624B		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6220 B [18th, 19th].		
58. Fluoranthene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
59. Fluorene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
60. 1,2,3,4,6,7,8-Heptachlorodibenzofuran.		1613B				
61. 1,2,3,4,7,8,9-Heptachlorodibenzofuran.		1613B				
62. 1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin.		1613B				
63. Hexachlorobenzene	612	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number [2, 7]			Other approved methods		
	GC	GC/MS	HPLC	*Standard Methods* [Edition(s)]	ASTM	Other
64. Hexachlorobutadiene	612	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
65. Hexachlorocyclopentadiene	612	[5]625, 1625B		6410 [18th, 19th, 20th].		Note 9, p. 27.
66. 1,2,3,4,7,8-Hexachlorodibenzofuran.		1613B.				
67. 1,2,3,6,7,8-Hexachlorodibenzofuran.		1613B.				
68. 1,2,3,7,8,9-Hexachlorodibenzofuran.		1613B.				
69. 2,3,4,6,7,8-Hexachlorodibenzofuran.		1613B.				
70. 1,2,3,4,7,8-Hexachlorodibenzo-p-dioxin.		1613B.				
71. 1,2,3,6,7,8-Hexachlorodibenzo-p-dioxin.		1613B.				
72. 1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin.		1613B.				
73. Hexachloroethane	616	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
74. Ideno(1,2,3-cd) pyrene	610	625, 1625B	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
75. Isophorone	609	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27.
76. Methylene chloride	601	624, 1624B		6200 C [20th] and 6230 B [18th, 19th].		Note 3, p. 130.
77. 2-Methyl-4,6-dinitrophenol	604	625, 1625B		6420 B, 6410 B [18th, 19th, 20th].		Note 9, p. 27.
78. Naphthalene	610	625, 1625B	610	6440 B, 6410 B [18th, 19th, 20th].		Note 9, p. 27.
79. Nitrobenzene	609	625, 1625B		6410 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27.
80. 2-Nitrophenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].		Note 9, p. 27
81. 4-Nitrophenol	604	625, 1625B		6410 B, 6420 B [18th, 19th, 20th].		Note 9, p. 27
82. N-Nitrosodimethylamine	607	625[5], 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27
83. N-Nitrosodi-n-propylamine	607	625, 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27
84. N-Nitrosodiphenylamine	607	625[5], 1625B		6410 B [18th, 19th, 20th].		Note 9, p. 27
85. Octachlorodibenzofuran		1613B.				
86. Octachlorodibenzo-p-dioxin		1613B.				
87. 2,2'-Oxybis(2-chloropropane) [also known as bis(2-chloroisopropyl) ether].	611	625, 1625B		6410 B [18th, 19th, 20th].		
88. PCB–1016	608	625		6410 B [18th, 19th, 20th].		Note 3, p. 43
89. PCB–1221	608	625		6410 B [18th, 19th, 20th].		Note 3, p. 43
90. PCB–1232	608	625		6410 B [18th, 19th, 20th].		Note 3, p. 43
91. PCB–1242	608	625		6410 B [18th, 19th, 20th].		Note 3, p. 43
92. PCB–1248	608	625.				
93. PCB–1254	608	625		6410 B [18th, 19th, 20th].		Note 3, p. 43
94. PCB–1260	608	625		6410 B, 6630 B [18th, 19th, 20th].		Note 3, p. 43
95. 1,2,3,7,8-Pentachlorodibenzofuran.		1613B.				

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number [2, 7]			Other approved methods		
	GC	GC/MS	HPLC	*Standard Methods* [Edition(s)]	ASTM	Other
96. 2,3,4,7,8-Pentachlorodibenzofuran.		1613B.				
97. 1,2,3,7,8,-Pentachlorodibenzo-p-dioxin.		1613B.				
98. Pentachlorophenol	604	625, 1625B ..		6410 B, 6630 B [18th, 19th, 20th].		Note 3, p. 140; Note 9, p. 27
99. Phenanthrene	610	625, 1625B ..	610	6410 B, 6440 B [18th, 19th, 20th].	D4657–92	Note 9, p. 27
100. Phenol	604	625, 1625B ..		6420 B, 6410 B [18th, 19th, 20th].		Note 9, p. 27
101. Pyrene	610	625, 1625B ..	610	6440 B, 6410 B D4675–92 [18th, 19th, 20th].	D4675–92	Note 9, p. 27
102. 2,3,7,8-Tetrachlorodibenzofuran.		1613B.				
103. 2,3,7,8-Tetrachlorodibenzo-p-dioxin.		613, 1613B.				
104. 1,1,2,2-Tetrachloroethane	601	624, 1624B ..		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		Note 3, p. 130
105. Tetrachloroethene	601	624, 1624B ..		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		Note 3, p. 130
106. Toluene	602	624, 1624B ..		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6220 B [18th, 19th].		
107. 1,2,4-Trichlorobenzene	612	625, 1625B ..		6410 B [18th, 19th, 20th].		Note 3, p. 130; Note 9, p. 27.
108. 1,1,1-Trichloroethane	601	624, 1624B ..		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
109. 1,1,2-Trichloroethane	601	624, 1624B ..		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		Note 3, p. 130
110. Trichloroethene	601	624, 1624B ..		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
111. Trichlorofluoromethane	601	624		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		
112. 2,4,6-Trichlorophenol	604	625, 1625B ..		6420 B, 6410 B [18th, 19th, 20th].		Note 9, p. 27.

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]	EPA method number [2, 7]			Other approved methods		
	GC	GC/MS	HPLC	*Standard Methods* [Edition(s)]	ASTM	Other
113. Vinyl chloride	601	624, 1624B ..		6200 B [20th] and 6210 B [18th, 19th], 6200 C [20th] and 6230 B [18th, 19th].		

Table IC notes:

[1] All parameters are expressed in micrograms per liter (µg/L) except for Method 1613B in which the parameters are expressed in picograms per liter (pg/L).

[2] The full text of Methods 601–613, 624, 625, 1624B, and 1625B, are given at Appendix A, "Test Procedures for Analysis of Organic Pollutants," of this Part 136. The full text of Method 1613B is incorporated by reference into this Part 136 and is available from the National Technical Information Services as stock number PB95–104774. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B, "Definition and Procedure for the Determination of the Method Detection Limit," of this Part 136.

[3] "Methods for Benzidine: Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater," U.S. Environmental Protection Agency, September, 1978.

[4] Method 624 may be extended to screen samples for Acrolein and Acrylonitrile. However, when they are known to be present, the preferred method for these two compounds is Method 603 or Method 1624B.

[5] Method 625 may be extended to include benzidine, hexachlorocyclopentadiene, N-nitrosodimethylamine, and N-nitrosodiphenylamine. However, when they are known to be present, Methods 605, 607, and 612, orMethod 1625B, are preferred methods for these compounds.

[6] "Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency," Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[7] Each Analyst must make an initial, one-time demonstration of their ability to generate acceptable precision and accuracy with Methods 601–603, 624, 625, 1624B, and 1625B (See Appendix A of this Part 136) in accordance with procedures each in Section 8.2 of each of these Methods. Additionally, each laboratory, on an on-going basis must spike and analyze 10% (5% for Methods 624 and 625 and 100% for methods 1624B and 1625B) of all samples to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these Methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect and cannot be reported to demonstrate regulatory compliance.

NOTE: These warning limits are promulgated as an "interim final action with a request for comments."

[8] "Organochlorine Pesticides and PCBs in Wastewater Using Empore TM Disk" 3M Corporation Revised 10/28/94.

[9] USGS Method 0–3116–87 from "Methods of Analysis by U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments" U.S. Geological Survey, Open File Report 93–125.

TABLE 1D.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]

Parameter	Method	EPA [2, 7]	*Standard Methods* 18th, 19th, 20th Ed.	ASTM	Other
1. Aldrin	GC	608	6630 B & C ..	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B		
2. Ametryn	GC				Note 3, p. 83; Note 6, p S68.
3. Aminocarb	TLC				Note 3, p. 94; Note 6, p. S16.
4. Atraton	GC				Note 3, p. 83; Note 6, p. S68.
5. Atrazine	GC				Note 3, p. 83; Note 6, p. S68; Note 9.
6. Azinphos methyl	GC				Note 3, p. 25; Note 6, p. S51.
7. Barban	TLC				Note 3, p. 104; Note 6, p. S64.
8. α-BHC	GC	608	6630 B & C ..	D3086–90	Note 3, p. 7; Note 8.
	GC/MS	625 [5]	6410 B.		
9. β-BHC	GC	608	6630 C	D3086–90	Note 8.
	GC/MS	625 [5]	6410 B.		
10. δ-BHC	GC	608	6630 C	D3086–90	Note 8.
	GC/MS	625 [5]	6410 B.		
11. γ-BHC (Lindane)	GC	608	6630 B & C ..	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B.		
12. Captan	GC		6630 B	D3086–90	Note 3, p. 7.
13. Carbaryl	TLC				Note 3, p. 94, Note 6, p. S60.
14. Carbophenothion	GC				Note 4, p. 27; Note 6, p. S73.
15. Chlordane	GC	608	6630 B & C ..	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B.		
16. Chloropropham	TLC				Note 3, p. 104; Note 6, p. S64.
17. 2,4-D	GC		6640 B		Note 3, p. 115; Note 4, p. 40.
18. 4,4'-DDD	GC	608	6630 B & C ..	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B.		

TABLE 1D.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]—Continued

Parameter	Method	EPA [2,7]	*Standard Methods* 18th, 19th, 20th Ed.	ASTM	Other
19. 4,4′-DDE	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B.		
20. 4,4′-DDT	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B.		
21. Demeton-O	GC				Note 3, p. 25; Note 6, p. S51.
22. Demeton-S	GC				Note 3, p. 25; Note 6, p. S51.
23. Diazinon	GC				Note 3, p. 25; Note 4, p. 27; Note 6, p. S51.
24. Dicamba	GC				Note 3, p. 115.
25. Dichlofenthion	GC				Note 4, p. 27; Note 6, p. S73.
26. Dichloran	GC		6630 B & C		Note 3, p. 7.
27. Dicofol	GC			D3086–90.	
28. Dieldrin	GC	608	6630 B & C		Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B.		
29. Dioxathion	GC				Note 4, p. 27; Note 6, p. S73.
30. Disulfoton	GC				Note 3, p. 25; Note 6 p. S51.
31. Diuron	TLC				Note 3, p. 104; Note 6, p. S64.
32. Endosulfan I	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625 [5]	6410 B.		
33. Endosulfan II	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 8.
	GC/MS	625 [5]	6410 B.		
34. Endosulfan Sulfate	GC	608	6630 C		Note 8.
	GC/MS	625	6410 B.		
35. Endrin	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625 [5]	6410 B.		
36. Endrin aldehyde	GC	608			Note 8.
	GC/MS	625.			
37. Ethion	GC				Note 4, p. 27; Note 6, p. S73.
38. Fenuron	TLC				Note 3, p. 104; Note 6, p. S64.
39. Fenuron-TCA	TLC				Note 3, p. 104; Note 6, p. S64.
40. Heptachlor	GC	608	6630 B & C	3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410 B.		
41. Heptachlor epoxide	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 6, p. S73; Note 8.
	GC/MS	625	6410 B.		
42. Isodrin	GC				Note 4, p. 27; Note 6, p. S73.
43. Linuron	GC				Note 3, p. 104; Note 6, p. S64.
44. Malathion	GC		6630 C		Note 3, p. 25; Note 4, p. 27; Note 6, p. S51
45. Methiocarb	TLC				Note 3, p. 94; Note 6, p. S60.
46. Methoxychlor	GC		6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 27; Note 8.
47. Mexacarbate	TLC				Note 3, p. 94; Note 6, p. S60.
48. Mirex	GC		6630 B & C		Note 3, p. 7; Note 4, p. 27.
49. Monuron	TLC				Note 3, p. 104; Note 6, p. S64.
50. Monuron	TLC				Note 3, p. 104; Note 6, p. S64.
51. Nuburon	TLC				Note 3, p. 104; Note 6, p. S64.
52. Parathion methyl	GC		6630 C		Note 3, p. 25; Note 4, p. 27.
53. Parathion ethyl	GC		6630 C		Note 3, p. 25; Note 4, p. 27.
54. PCNB	GC		6630 B & C		Note 3, p. 7.
55. Perthane	GC			D3086–90	Note 4, p. 27.
56. Prometron	GC				Note 3, p. 83; Note 6, p. S68; Note 9.
57. Prometryn	GC				Note 3, p. 83; Note 6, p. S68; Note 9.
58. Propazine	GC				Note 3, p. 83; Note 6, p. S68; Note 9.
59. Propham	TLC				Note 3, p. 104; Note 6, p. S64.
60. Propoxur	TLC				Note 3, p. 94; Note 6, p. S60.
61. Secbumeton	TLC				Note 3, p. 83; Note 6, p. S68.
62. Siduron	TLC				Note 3, p. 104; Note 6, p. S64.
63. Simazine	GC				Note 3, p. 83; Note 6, p. S68; Note 9.

TABLE 1D.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]—Continued

Parameter	Method	EPA [2,7]	*Standard Methods* 18th, 19th, 20th Ed.	ASTM	Other
64. Strobane	GC		6630 B & C		Note 3, p. 7.
65. Swep	TLC				Note 3, p. 104; Note 6, p. S64.
66. 2,4,5-T	GC		6640 B		Note 3, p. 115; Note 4, p. 40.
67. 2,4,5-TP (Silvex)	GC		6640 B		Note 3, p. 115; Note 4, p. 40.
68. Terbuthylazine	GC				Note 3, p. 83; Note 6, p. S68.
69. Toxaphene	GC	608	6630 B & C	D3086—90	Note 3, p. 7; Note 4, p. 27; Note 8.
	GC/MS	625	6410B.		
70. Trifluralin	GC		6630 B		Note 3, p. 7; Note 9.

Table ID notes:

[1] Pesticides are listed in this table by common name for the convenience of the reader. Additional pesticides may be found under Table 1C, where entries are listed by chemical name.

[2] The full text of Methods 608 and 625 are given at Appendix A. "Test Procedures for Analysis of Organic Pollutants," of this Part 136. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B, "Definition and Procedure for the Determination of the Method Detection Limit," of this Part 136.

[3] "Methods for Benzidine, Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater," U.S. Environmental Protection Agency, September 1978. This EPA publication includes thin-layer chromatography (TLC) methods.

[4] "Methods for Analysis of Organic Substances in Water and Fluvial Sediments," Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A3 (1987).

[5] The method may be extended to include α-BHC, γ-BHC, endosulfan I, endosulfan II, and endrin. However, when they are known to exist, Method 608 is the preferred method.

[6] "Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency." Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[7] Each analyst must make an initial, one-time, demonstration of their ability to generate acceptable precision and accuracy with Methods 608 and 625 (See Appendix A of this Part 136) in accordance with procedures given in Section 8.2 of each of these methods. Additionally, each laboratory, on an on-going basis, must spike and analyze 10% of all samples analyzed with Method 608 or 5% of all samples analyzed with Method 625 to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect and cannot be reported to demonstrate regulatory compliance. These quality control requirements also apply to the Standard Methods, ASTM Methods, and other Methods cited.

Note: These warning limits are promulgated as an "Interim final action with a request for comments."

[8] "Organochlorine Pesticides and PCBs in Wastewater Using Empore™ Disk", 3M Corporation, Revised 10/28/94.

[9] USGS Method 0–3106–93 from "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Triazine and Other Nitrogen-containing Compounds by Gas Chromatography with Nitrogen Phosphorus Detectors" U.S. Geological Survey Open File Report 94–37.

TABLE 1E.—LIST OF APPROVED RADIOLOGIC TEST PROCEDURES

Parameter and units	Method	Reference (method number or page)			
		EPA [1]	*Standard Methods* 18th, 19th, 20th Ed.	ASTM	USGS [2]
1. Alpha-Total, pCi per liter	Proportional or scintillation counter.	900	7110 B	D1943–90	pp. 75 and 78 [3]
2. Alpha-Counting error, pCi per liter.	Proportional or scintillation counter.	Appendix B	7110 B	D1943–90	p. 79
3. Beta-Total, pCi per liter	Proportional counter	900.0	7110 B	D1890–90	pp. 75 and 78 [3]
4. Beta-Counting error, pCi	Proportional counter	Appendix B	7110 B	D1890–90	p. 79
5. (a) Radium Total pCi per liter	Proportional counter	903.0	7500Ra B	D2460–90	
(b) Ra, pCi per liter	Scintillation counter	903.1	7500Ra C	D3454–91	p. 81

Table 1E notes:

[1] "Prescribed Procedures for Measurement of Radioactivity in Drinking Water," EPA–600/4–80–032 (1980), U.S. Environmental Protection Agency, August 1980.

[2] Fishman, M.J. and Brown, Eugene, "Selected Methods of the U.S. Geological Survey of Analysis of Wastewaters," U.S. Geological Survey, Open-File Report 76–177 (1976).

[3] The method found on p. 75 measures only the dissolved portion while the method on p. 78 measures only the suspended portion. Therefore, the two results must be added to obtain the "total".

* * * * *

(b) * * *

References, Sources, Costs, and Table Citations:

* * * * *

(6) American Public Health Association. 1992, 1995, and 1998. Standard Methods for the Examination of Water and Wastewater. 18th, 19th, and 20th Edition (respectively). Available from: Amer. Publ. Hlth. Assoc., 1015 15th Street, NW., Washington, DC 20005. Table IA, Note 4. Tables IB, IC, ID, IE.

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(10) Annual Book of ASTM Standards, Water, and Environmental Technology, Section 11, Volumes 11.01 and 11.02, 1994, 1996, and 1999. Available from: ASTM International, 100 Barr Harbor Drive, P.O. Box C–700, West Conshohocken, PA 19428–2959. Tables IB, IC, ID, and IE.

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(44) "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory Determination of

Ammonium Plus Organic Nitrogen by a Kjeldahl Digestion Method and an Automated Photometric Finish that Includes Digest Cleanup by Gas Diffusion", Open File Report (OFR) 00–170. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Table IB, Note 45.

(45) "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Chromium in Water by Graphite Furnace Atomic Absorption Spectrophotometry", Open File Report (OFR) 93–449. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Table IB, Note 46.

(46) "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Molybdenum in Water by Graphite Furnace Atomic Absorption Spectrophotometry", Open File Report (OFR) 97–198. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Table IB, Note 47.

(47) "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Total Phosphorus by Kjeldahl Digestion Method and an Automated Colorimetric Finish That Includes Dialysis" Open File Report (OFR) 92–146. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Table IB, Note 48.

(48) "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Arsenic and Selenium in Water and Sediment by Graphite Furnace—Atomic Absorption Spectrometry" Open File Report (OFR) 98–639. Table IB, Note 49.

(49) "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Elements in Whole-Water Digests Using Inductively Coupled Plasma-Optical Emission Spectrometry and Inductively Coupled Plasma-Mass Spectrometry", Open File Report (OFR) 98–165. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Table IB, Note 50.

(50) "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Triazine and Other Nitrogen-containing Compounds by Gas Chromatography with Nitrogen Phosphorus Detectors" U.S.Geological Survey Open File Report 94–37. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Table ID, Note 9.

(51) "Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments", Open File Report (OFR) 93–125. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Table IB, Note 51; Table IC, Note 9.

* * * * *

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for Part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 141.21 is amended:

a. By revising footnote 1 to the table in paragraph (f)(3).

b. By revising the 6th sentence in paragraph (f)(5).

c. By revising paragraphs (f)(6)(i) and (f)(6)(ii).

d. By removing the third sentence in paragraph (f)(8), and by removing the second sentence and adding two sentences in its place.

§ 141.21 Coliform sampling.

* * * * *

(f) * * *

(3) * * *

[1] Standard Methods for the Examination of Water and Wastewater, 18th edition (1992), 19th edition (1995), or 20th edition (1998). American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005. The cited methods published in any of these three editions may be used.

(5) * * * The preparation of EC medium is described in Method 9221E (paragraph 1a) in Standard Methods for the Examination of Water and Wastewater, 18th edition (1992), 19th edition (1995), and 20th edition (1998); the cited method in any one of these three editions may be used. * * *

(6) * * *

(i) EC medium supplemented with 50 µg/mL of 4-methylumbelliferyl-beta-D-glucuronide (MUG) (final concentration), as described in Method 9222G in Standard Methods for the Examination of Water and Wastewater, 19th edition (1995) and 20th edition (1998). Either edition may be used. Alternatively, the 18th edition (1992) may be used if at least 10 mL of EC medium, as described in paragraph (f)(5) of this section, is supplemented with 50 µg/mL of MUG before autoclaving. The inner inverted fermentation tube may be omitted. If the 18th edition is used, apply the procedure in paragraph (f)(5) of this section for transferring a total coliform-positive culture to EC medium supplemented with MUG, incubate the tube at 44.5 ± 0.2°C for 24 ± 2 hours, and then observe fluorescence with an ultraviolet light (366 nm) in the dark. If fluorescence is visible, E. coli are present.

(ii) Nutrient agar supplemented with 100 µg/mL of 4-methylumbelliferyl-beta-D-glucuronide (MUG) (final concentration), as described in Method 9222G in Standard Methods for the Examination of Water and Wastewater, 19th edition (1995) and 20th edition (1998). Either edition may be used for determining if a total coliform-positive sample, as determined by a membrane filter technique, contains E. coli. Alternatively, the 18th edition (1992) may be used if the membrane filter containing a total coliform-positive colony(ies) is transferred to nutrient agar, as described in Method 9221B (paragraph 3) of Standard Methods (18th edition), supplemented with 100 µg/mL of MUG. If the 18th edition is used, incubate the agar plate at 35°C for 4 hours and then observe the colony(ies) under ultraviolet light (366 nm) in the dark for fluorescence. If fluorescence is visible, E. coli are present.

* * * * *

(8) * * * Copies of the analytical methods cited in Standard Methods for the Examination of Water and Wastewater (18th, 19th, and 20th editions) may be obtained from the American Public Health Association *et al.*; 1015 Fifteenth Street, NW., Washington, DC 20005–2605. Copies of the MMO–MUG Test, as set forth in the article "National Field Evaluation of a Defined Substrate Method for the Simultaneous Enumeration of Total Coliforms and Escherichia coli from Drinking Water: Comparison with the Standard Multiple Tube Fermentation Method" (Edberg *et al.*) may be obtained from the American Water Works Association Research Foundation, 6666 West Quincy Avenue, Denver, CO 80235. * * *

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3. Section 141.23 is amended by revising the table and the footnotes in paragraph (k)(1) to read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

* * * * *

(k) * * *

(1) * * *

Contaminant and methodology [13]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	Other
1. Alkalinity:					
Titrimetric		D1067—92B	2320 B	2320 B	
Electrometric titration					I–1030–85 [5]
2. Antimony:					
Inductively Coupled Plasma (ICP)—Mass Spectrometry.	200.8 [2].				
Hydride-Atomic Absorption.		D3697–92			
Atomic Absorption; Platform.	200.9 [2]				
Atomic Absorption; Furnace.			3113 B		
3. Arsenic: [14]					
Inductively Coupled Plasma [15].	200.7 [2]		3120 B	3120 B	
ICP-Mass Spectrometry	200.8 [2].				
Atomic Absorption; Platform.	200.9 [2].				
Atomic Absorption; Furnace.		D2972–97C	3113 B		
Hydride Atomic Absorption.		D2972–97B	3114 B		
4. Asbestos:					
Transmission Electron Microscopy.	100.1 [9].				
Transmission Electron Microscopy.	100.2 [10].				
5. Barium:					
Inductively Coupled Plasma.	200.7 [2]		3120 B	3120 B	
ICP-Mass Spectrometry	200.8 [2].				
Atomic Absorption; Direct.			3111 D		
Atomic Absorption; Furnace.			3113 B		
6. Beryllium:					
Inductively Coupled Plasma.	200.7 [2]		3120 B	3120 B	
ICP-Mass Spectrometry	200.8 [2].				
Atomic Absorption; Platform.	200.9 [2].				
Atomic Absorption; Furnace.		D3645—97B	3113 B		
7. Cadmium:					
Inductively Coupled Plasma.	200.7 [2]				
ICP-Mass Spectrometry	200.8 [2]				
Atomic Absorption; Platform.	200.9 [2]				
Atomic Absorption; Furnace.			3113 B.		
8. Calcium:					
EDTA titrimetric		D511—93A	3500–Ca D	3500–Ca B.	
Atomic Absorption; Direct Aspiration.		D511—93B	3111 B.		
Inductively Coupled Plasma.	200.7 [2]		3120 B	3120 B.	
9. Chromium:					
Inductively Coupled Plasma.	200.7 [2]		3120 B	3120 B.	
ICP-Mass Spectrometry	200.8 [2].				
Atomic Absorption; Platform.	200.9 [2].				
Atomic Absorption; Furnace.			3113 B.		
10. Copper:					
Atomic Absorption; Furnace.		D1688–95C	3113 B.		
Atomic Absorption; Direct Aspiration.		D1688–95A	3111 B.		
Inductively Coupled Plasma.	200.7 [2]		3120 B	3120 B.	

Contaminant and methodology [13]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	Other
ICP-Mass spectrometry	200.8 [2].				
Atomic Absorption; Platform.	200.9 [2].				
11. Conductivity:					
Conductance		D1125–95A	2510 B	2510 B.	
12. Cyanide:					
Manual Distillation followed by.		D2036–98A	4500–CN⁻ C	4500–CN⁻ C.	
Spectrophotometric, Amenable.		D2036–98B	4500–CN⁻ G	4500–CN⁻ G.	
Spectrophotometric Manual.		D2036–98A	4500–CN⁻ E	4500–CN⁻ E	I–3300–85 [5]
Spectrophotometric Semi-automated.	335.4 [6].				
Selective Electrode			4500–CN⁻ F	4500–CN⁻ F.	
13. Fluoride:					
Ion Chromatography	300.0 [6]	D4327–97	4110 B	4110 B.	
Manual Distill.; Color. SPADNS.			4500–F⁻ B,D	4500–F⁻ B,D	
Manual Electrode		D1179–93B	4500–F⁻ C	4500–F⁻ C	
Automated Electrode					380–75WE [11]
Automated Alizarin			4500–F⁻ E	4500–F⁻ E	29–71W [11]
14. Lead:					
Atomic Absorption; Furnace.		D3559–96D	3113 B.		
ICP-Mass spectrometry	200.8 [2].				
Atomic Absorption; Platform.	200.9 [2].				
Differential Pulse Anodic Stripping Voltammetry.					Method 1001 [16]
15. Magnesium:					
Atomic Absorption		D511–93 B	3111 B.		
ICP	200.7 [2]		3120 B	3120 B.	
Complexation Titrimetric Methods.		D511–93 A	3500–Mg E	3500–Mg B.	
16. Mercury:					
Manual, Cold Vapor	245.1 [2]	D3223–97	3112 B.		
Automated, Cold Vapor	245.2 [1].				
ICP-Mass Spectrometry	200.8 [2].				
17. Nickel:					
Inductively Coupled Plasma.	200.7 [2]		3120 B	3120 B.	
ICP-Mass Spectrometry	200.8 [2].				
Atomic Absorption; Platform.	200.9 [2].				
Atomic Absorption; Direct.			3111 B.		
Atomic Absorption; Furnace.			3113 B.		
18. Nitrate:					
Ion Chromatography	300.0 [6]	D4327–97	4110 B	4110 B	B–1011 [8]
Automated Cadmium Reduction.	353.2 [6]	D3867–90A	4500–NO_3^- F	4500–NO_3^- F.	
Ion Selective Electrode			4500–NO_3^- D	4500–NO_3^- D	601 [7]
Manual Cadmium Reduction.		D3867–90B	4500–NO_3^- E	4500–NO_3^- E.	
19. Nitrite:					
Ion Chromatography	300.0 [6]	D4327–97	4110 B	4110 B	B–1011 [8]
Automated Cadmium Reduction.	353.2 [6]	D3867–90A	4500–NO_3^-	4500–NO_3^- F.	
Manual Cadmium Reduction.		D3867–90B	4500–NO_3^- E	4500–NO_3^- E	
Spectrophotometric			4500–NO_2^- B	4500–NO_2^- B.	
20. Ortho-phosphate: [12]					
Colorimetric, Automated, Ascorbic Acid.	365.1 [6]		4500–P F	4500–P F.	
Colorimetric, ascorbic acid, single reagent.		D515–88A	4500–P E	4500–P E.	
Colorimetric Phosphomolybdate; Automated-segmented Flow;					I–1601–85 [5]
					I–2601–90 [5]

Contaminant and methodology [13]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	Other
Automated Discrete					I–2598–85 [5]
Ion Chromatography	300.0 [6]	D4327–97	4110 B	4110 B.	
21. pH:					
Electrometric	150.1 [1] 150.2 [1].	D1293–95	4500–H^+ B	4500–H^+ B.	
22. Selenium:					
Hydride-Atomic Absorption.		D3859–98A	3114 B.		
ICP-Mass Spectrometry	200.8 [2].				
Atomic Absorption; Platform.	200.9 [2].				
Atomic Absorption; Furnace.		D3859–98B	3113 B.		
23. Silica:					
Colorimetric, Molybdate Blue;.					I–1700–85 [5]
Automated-segmented Flow.					I–2700–85 [5]
Colorimetric		D859–95.			
Molybdosilicate			4500–Si D	4500–SiO_2 C.	
Heteropoly Blue			4500–Si E	4500–SiO_2 D.	
Automated for Molybdate-reactive Silica.			4500–Si F	4500–SiO_2 E.	
Inductively Coupled Plasma.	200.7 [2]		3120 B	3120 B.	
24. Sodium:					
Inductively Coupled Plasma.	200.7 [2].				
Atomic Absorption; Direct Aspiration.			3111 B.		
25. Temperature:					
Thermometric			2550	2550.	
26. Thallium:					
ICP-Mass Spectrometry	200.8 [2].				
Atomic Absorption; Platform.	200.9 [2].				

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents listed in footnotes 1–11 and 16 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA'sDrinking Water Docket, EPA West, 1301 Constitution Avenue, NW, Room B135, Washington, DC (Telephone: 202–566–2426); or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[1] "Methods for Chemical Analysis of Water and Wastes", EPA/600/4–79/020, March 1983. Available at NTIS, PB84–128677.

[2] "Methods for the Determination of Metals in Environmental Samples—Supplement I", EPA/600/R–94/111, May 1994. Available at NTIS, PB95–125472.

[3] *Annual Book of ASTM Standards*, 1994, 1996, or 1999, Vols. 11.01 and 11.02, ASTM International; any year containing the cited version of the method may be used. The previous versions of D1688–95A, D1688–95C (copper), D3559–95D (lead), D1293–95 (pH), D1125–91A (conductivity) and D859–94 (silica) are also approved. These previous versions D1688–90A, C; D3559–90D, D1293–84, D1125–91A and D859–88, respectively are located in the *Annual Book of ASTM Standards*, 1994, Vol. 11.01. Copies may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[4] Standard Methods for the Examination of Water and Wastewater, 18th edition (1992), 19th edition (1995), or 20th edition (1998). American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005. The cited methods published in any of these three editions may be used, except that the versions of 3111 B, 3111 D, 3113 B and 3114 B in the 20th edition may not be used.

[5] Method I–2601–90, Methods for Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediment, Open File Report 93–125, 1993; For Methods I–1030–85; I–1601–85; I–1700–85; I–2598–85; I–2700–85; and I–3300–85 See Techniques of Water Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A–1, 3rd ed., 1989; Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225–0425.

[6] "Methods for the Determination of Inorganic Substances in Environmental Samples", EPA/600/R–93/100, August 1993. Available at NTIS, PB94–120821.

[7] The procedure shall be done in accordance with the Technical Bulletin 601 "Standard Method of Test for Nitrate in Drinking Water", July 1994, PN 221890–001, Analytical Technology, Inc. Copies may be obtained from ATI Orion, 529 Main Street, Boston, MA 02129.

[8] Method B–1011, "Waters Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography," August 1987. Copies may be obtained from Waters Corporation, Technical Services Division, 34 Maple Street, Milford, MA 01757.

[9] Method 100.1, "Analytical Method For Determination of Asbestos Fibers in Water", EPA/600/4–83/043, EPA, September 1983. Available at NTIS, PB83–260471.

[10] Method 100.2, "Determination of Asbestos Structure Over 10μm In Length In Drinking Water", EPA/600/R–94/134, June 1994. Available at NTIS, PB94–201902.

[11] Industrial Method No. 129–71W, "Fluoride in Water and Wastewater", December 1972, and Method No. 380–75WE, "Fluoride in Water and Wastewater", February 1976, Technicon Industrial Systems. Copies may be obtained from Bran & Luebbe, 1025 Busch Parkway, Buffalo Grove, IL 60089.

[12] Unfiltered, no digestion or hydrolysis.

[13] Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2X preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis (i.e., no sample digestion) will be higher. For direct analysis of cadmium and arsenic by Method 200.7, and arsenic by Method 3120 B sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Preconcentration may also be required for direct analysis of antimony, lead, and thallium by Method 200.9; antimony and lead by Method 3113 B; and lead by Method D3559–90D unless multiple in-furnace depositions are made.

[14] If ultrasonic nebulization is used in the determination of arsenic by Methods 200.7, 200.8, or SM 3120 B, the arsenic must be in the pentavalent state to provide uniform signal response. For methods 200.7 and 3120 B, both samples and standards must be diluted in the same mixed acid matrix concentration of nitric and hydrochloric acid with the addition of 100 µL of 30% hydrogen peroxide per 100ml of solution. For direct analysis of arsenic with method 200.8 using ultrasonic nebulization, samples and standards must contain one mg/L of sodium hypochlorite.

[15] After January 23, 2006 analytical methods using the ICP–AES technology, may not be used because the detection limits for these methods are 0.008 mg/L or higher. This restriction means that the two ICP–AES methods (EPA Method 200.7 and SM 3120 B) approved for use for the MCL of 0.05 mg/L may not be used for compliance determinations for the revised MCL of 0.01 mg/L. However, prior to 2005 systems may have compliance samples analyzed with these less sensitive methods.

[16] The description for Method Number 1001 for lead is available from Palintest, LTD, 21 Kenton Lands Road, P.O. Box 18395, Erlanger, KY 41018. Or from the Hach Company, P.O. Box 389, Loveland, CO 80539.

* * * * *

4. Section 141.24 is amended by revising the 11th, 12th and last sentences in paragraph (e)(1), before the Table, to read as follows:

§ 141.24 Organic chemicals, sampling and analytical requirements.

* * * * *

(e) * * *

(1) * * * Method 6651 shall be followed in accordance with Standard Methods for the Examination of Water and Wastewater, 18th edition (1992), 19th edition (1995), or 20th edition (1998), American Public Health Association (APHA); any of these three editions may be used. Method 6610 shall be followed in accordance with Standard Methods for the Examination of Water and Wastewater, (18th Edition Supplement) (1994), or with the 19th edition (1995) or 20th edition (1998) of Standard Methods for the Examination of Water and Wastewater; any of these three editions may be used. * * * ASTM Method D 5317–93 is available in the *Annual Book of ASTM Standards* (1999), Vol. 11.02, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or in any edition published after 1993.

* * * * *

5. Section 141.25 is amended by revising the Table and footnotes in paragraph (a) to read as follows:

§ 141.25 Analytical methods for radioactivity.

(a) * * *

Contaminant	Methodology	Reference (method or page number)								
		EPA[1]	EPA[2]	EPA[3]	EPA[4]	SM[5]	ASTM[6]	USGS[7]	DOE[8]	Other
Naturally occurring:										
Gross alpha[11] and beta.	Evaporation ..	900.0 ...	p 1	00–01 ..	p 1	302, 7110 B	.....	R–1120–76.		
Gross alpha[11].	Co-precipitation.	.....	.....	00–02 ..	.....	7110 C				
Radium 226.	Radon emanation.	903.1 ...	p 16	Ra–04	p 19	305,7500–Ra C	D 3454–97	R–1141–76.	Ra–04	N.Y.[9]
	Radiochemical.	903.0 ...	p 13	Ra–03	.....	304,7500–Ra B	D 2460–97	R–1140–76.		
Radium 228.	Radiochemical.	904.0 ...	p 24	Ra–05	p 19	7500–Ra D	.....	R–1142–76.	.....	N.Y.[9], N.J.[10]
Uranium[12].	Radiochemical.	908.0 ...	.....	.....	.....	7500–U B				
	Fluorometric	908.1 ...	.....	.....	.....	7500–U C (17th Ed.).	D2907–97	R–1180–76, R–1181–76.	U–04	
	Alpha spectrometry.	.....	.....	00–07 ..	p 33	7500–U C (18th, 19th or 20th Ed.).	D 3972–97	R–1182–76.	U–02	
	Laser Phosphorimetry.	.....	.....	.....	.....	.....	D 5174–97			
Man-made:										
Radioactive cesium.	Radiochemical	901.0 ...	p 4	.....	.....	7500–CsB	D 2459–72	R–1111–76.		
	Gamma ray spectrometry.	901.1 ...	.....	.....	p 92	7120	D 3649–91	R– 1110–76.	4.5.2.3	
Radioactive iodine	Radiochemical	902.0 ...	p 6, p 9	.....	.....	7500–I B, 7500–I C, 7500–I D.	D 3649–91			
	Gamma ray spectrometry.	901.1 ...	.....	.....	p 92	7120	D 4785–93	.....	4.5.2.3	
Radioactive Strontium 89, 90.	Radiochemical	905.0 ...	p 29	Sr–04 ..	p 65	303, 7500–Sr B	.....	R–1160–76.	Sr–01, Sr–02	
Tritium	Liquid scintillation.	906.0 ...	p 34	H–02 ...	p 87	306, 7500–3H B	D 4107–91	R–1171–76.		
Gamma emitters.	Gamma ray ..	901.1 ...	.....	.....	p 92	7120	D 3649–91	R–1110–76.	Ga–01–R.	
	Spectrometry	902.0, 901.0.	.....	.....	.....	7500–Cs B, 7500–I B.	D 4785–93			

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of documents 1 through 10 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, EPA West, 1301 Constitution Avenue, NW., Room B135, Washington, DC (Telephone: 202–566–2426); or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[1] "Prescribed Procedures for the Measurement of Radioactivity in Drinking Water", EPA 600/4–80–032, August 1980. Available at the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (Telephone 800–553–6847), PB 80–224744.

[2] "Interim Radiochemical Methodology for Drinking Water", EPA 600/4–75–008(revised), March 1976. Available NTIS, ibid. PB 253258.

[3] "Radiochemistry Procedures Manual", EPA 520/5–84–006, December, 1987. Available NTIS, ibid. PB 84–215581.

[4] "Radiochemical Analytical Procedures for Analysis of Environmental Samples", March 1979. Available at NTIS, ibid. EMSL LV 053917.

[5] "Standard Methods for the Examination of Water and Wastewater", 13th, 17th, 18th, 19th Editions, or 20th edition, 1971, 1989, 1992, 1995, 1998. Available at American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005 . Methods 302, 303, 304, 305 and 306 are only in the 13th edition. Methods 7110B, 7500–Ra B, 7500–Ra C, 7500–Ra D, 7500–U B, 7500–Cs B, 7500–I B, 7500–I C, 7500–I D, 7500–Sr B, 7500–3H B are in the 17th, 18th, 19th and 20th editions. Method 7110 C is in the 18th, 19th and 20th editions. Method 7500–U C Fluorometric Uranium is only in the 17th Edition, and 7500–U C Alpha spectrometry is only in the 18th, 19th and 20th editions. Method 7120 is only in the 19th and 20th editions. Methods 302, 303, 304, 305 and 306 are only in the 13th edition.

[6] *Annual Book of ASTM Standards*, Vol. 11.01 and 11.02, 1999; ASTM International any year containing the cited version of the method may be used. Copies may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[7] "Methods for Determination of Radioactive Substances in Water and Fluvial Sediments", Chapter A5 in Book 5 of Techniques of Water-Resources Investigations of the United States Geological Survey, 1977. Available at U.S. Geological Survey (USGS) Information Services, Box 25286, Federal Center, Denver, CO 80225–0425.

[8] "EML Procedures Manual", 28th (1997) or 27th (1990) Editions, Volumes 1 and 2; either edition may be used. In the 27th Edition Method Ra–04 is listed as Ra–05 and Method Ga–01–R is listed as Sect. 4.5.2.3. Available at the Environmental Measurements Laboratory, U.S. Department of Energy (DOE), 376 Hudson Street, New York, NY 10014–3621.

[9] "Determination of Ra–226 and Ra–228 (Ra–02)", January 1980, Revised June 1982. Available at Radiological Sciences Institute for Laboratories and Research, New York State Department of Health, Empire State Plaza, Albany, NY 12201.

[10] "Determination of Radium 228 in Drinking Water", August 1980. Available at State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, Bureau of Radiation and Inorganic Analytical Services, 9 Ewing Street, Trenton, NJ 08625.

[11] Natural uranium and thorium-230 are approved as gross alpha calibration standards for gross alpha with co-precipitation and evaporation methods; americium-241 is approved with co-precipitation methods.

[12] In uranium (U) is determined by mass, a 0.67 pCi/μg of uranium conversion factor must be used. This conversion factor is based on the 1:1 activity ration of U–234 and U–238 that is characteristic of naturally occurring uranium.

* * * * *

6. Section 141.74 is amended by revising the footnote 1 to the Table in paragraph (a)(1) and by revising the first three sentences of paragraph (a)(2) to read as follows:

§ 141.74 Analytical and monitoring requirements.

(a) * * *

(1) * * *

[1] Except where noted, all methods refer to Standard Methods for the Examination of Water and Wastewater, 18th edition (1992), 19th edition (1995), or 20th edition (1998), American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005. The cited methods published in any of these three editions may be used.

* * * * *

(2) Public water systems must measure residual disinfectant concentrations with one of the analytical methods in the following table. Except for the method for ozone residuals, the disinfectant residual methods are contained in the 18th, 19th, and 20th editions of Standard Methods for the Examination of Water and Wastewater, 1992, 1995, and 1998; the cited methods published in any of these three editions may be used. The ozone method, 4500–O_3 B, is contained in both the 18th and 19th editions of Standard Methods for the Examination of Water and Wastewater, 1992, 1995; either edition may be used. * * *

* * * * *

Contaminant	EPA	ASTM[3]	SM[4] 18th and 19th ed.	SM[4] 20th ed.	Other
1. Aluminum	200.7[2]		3120 B	3120 B.	
	200.8[2]		3113 B.		
	200.9[2]		3111 D.		
2. Chloride	300.0[1]	D4327–97	4110 B	4110 B.	
			4500–Cl^- D	4500—Cl^- D.	
		D512–89B	4500–Cl^- B	4500–Cl^- B.	
3. Color			2120 B	2120 B.	
4. Foaming Agents			5540 C	5540 C.	
5. Iron	200.7[2]		3120 B	3120 B.	
	200.9[2]		3111 B.		
			3113 B.		
6. Manganese	200.7[2]		3120 B	3120 B.	
	200.8[2]		3111 B.		
	200.9[2]		3113 B.		
7. Odor			2150 B	2150 B.	
8. Silver	200.7[2]		3120 B	3120 B	I–3720–85[5]
	200.8[2]		3111 B.		
	200.9[2]		3113 B.		
9. Sulfate	300.0[1]	D4327–97	4110 B	4110 B.	
	375.2[1]		4500–SO_4^{2-} F	4500–SO_4^{2-} F.	
			4500–SO_4^{2-} C, D	4500–SO_4^{2-} C, D.	
		D516–90	4500–SO_4^{2-} E	4500–SO_4^{2-} E.	
10. Total Dissolved Solids			2540 C	2540 C.	
11. Zinc	200.7[2]		3120 B	3120 B.	
	200.8[2]		3111 B.		

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, EPA West, 1301 Constitution Avenue, NW, Room B135, Washington, DC (Telephone: 202–566–2426); or at the Office of Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC 20408.

[1] "Methods for the Determination of Inorganic Substances in Environmental Samples", EPA/600/R–93–100, August 1993. Available at NTIS, PB94–120821.

[2] "Methods for the Determination of Metals in Environmental Samples—Supplement I", EPA/600/R–94–111, May 1994. Available at NTIS, PB 95–125472.

[3] *Annual Book of ASTM Standards*, 1994, 1996, or 1999, Vols. 11.01 and 11.02, ASTM International; any year containing the cited version of the method may be used. Copies may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[4] Standard Methods for the Examination of Water and Wastewater, 18th edition (1992), 19th edition (1995), or 20th edition (1998). American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005. The cited methods published in any of these three editions may be used, except that the versions of 3111 B, 3111 D, and 3113 B in the 20th edition may not be used.

[5] Method I–3720–85, *Techniques of Water Resources Investigation of the U.S. Geological Survey*, Book 5, Chapter A–1, 3rd ed., 1989; Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225–0425.

[FR Doc. 02–23727 Filed 10–22–02; 8:45 am]

BILLING CODE 6560–50–P

PART 143—NATIONAL SECONDARY DRINKING WATER REGULATIONS

1. The authority citation for Part 143 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

2. Section 143.4 is amended by revising the Table and footnotes in paragraph (b) to read as follows:

§ 143.4 Monitoring.

* * * * *

(b) * * *

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Federal Register

Wednesday,
October 23, 2002

Part IV

Environmental Protection Agency

40 CFR Part 131
Water Quality Standards for Alabama; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–7397–2]

RIN 2040–AD35

Water Quality Standards for Alabama

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to establish a designated use for a segment of Five Mile Creek in Alabama. If this proposal is promulgated as final, the Federal designated use will supersede the State's designated use that EPA disapproved in 1986 and 1991. EPA disapproved the State's designated use because it is inconsistent with the Clean Water Act and EPA's implementing regulations. Specifically, EPA is proposing a designated use for the protection of fish and wildlife.

DATES: EPA will accept public comments on this proposed rule until December 23, 2002. Comments postmarked after this date may not be considered. A public hearing will be held on December 12, 2002 from 2 to 5 P.M. and from 7 to 9 P.M. Both oral and written comments will be accepted at the hearing.

ADDRESSES: Send your comments by mail to: Docket Manager, Proposed Water Quality Standards for Alabama, EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104, Attention Docket ID No. OW–2002–0023. Comments may also be submitted electronically, or through hand delivery/courier. Follow the detailed instructions as provided in Section I.C. of the **SUPPLEMENTARY INFORMATION** section. The public hearing will occur at the Sheraton Birmingham, 2101 Richard Arrington Jr. Boulevard North, Birmingham, Alabama, 35203.

FOR FURTHER INFORMATION CONTACT: Fritz Wagener, Water Quality Standards Coordinator, U.S. EPA Region 4, Water Management Division, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia, 30303–3104 (telephone: 404–562–9267) or James Keating, U.S. EPA Headquarters, Office of Science and Technology, 1200 Pennsylvania Avenue NW, Washington, DC, 20460 (telephone: 202–566–0383).

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

I. General Information
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IX. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments
X. Executive Order 13211—Energy
XI. Paperwork Reduction Act
XII. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996
XIII. Unfunded Mandates Reform Act
XIV. National Technology Transfer and Advancement Act
XV. Endangered Species Act
XVI. Plain Language

I. General Information

A. Potentially Affected Entities

Citizens concerned with water quality in Alabama may be interested in this rulemaking. Facilities discharging pollutants to certain waters of the United States in Alabama could be indirectly affected by this rulemaking since water quality standards are used in determining water quality-based National Pollutant Discharge Elimination System (NPDES) permit limits. Categories and entities that may indirectly be affected include:

Category	Examples of those potentially affected
Industry	Industries discharging pollutants to the segment of Five Mile Creek identified in § 131.34.
Municipalities	Publicly-owned treatment works discharging pollutants to the segment of Five Mile Creek identified in § 131.34.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES facilities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by this action, you should carefully examine the water body segment identified in § 131.34 of today's proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. OW–2002–0023. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing under *Proposed Water Quality Standards for Alabama* at Water Management Division, EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104, phone # 404–562–9267. This Docket Facility is open from 9:00 AM to 3:30 PM, Monday through Friday, excluding legal holidays. A reasonable fee will be charged for copies.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's Electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available through the docket facility identified in I.B.1.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket, visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." While EPA is not required to consider these late comments, we will make every attempt to consider them.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EDOCKETS. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID OW–2002–0023. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. Email. Comments may be sent by electronic mail (e-mail) to *wagener.fritz@epa.gov*, Attention Docket ID No. OW–2002–0023. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the address identified in I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send your comments to: Docket Manager, Proposed Water Quality Standards for Alabama, EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104, Attention Docket ID No. OW–2002–0023.

3. By Hand Delivery or Courier. Deliver your comments to the address identified in I.C.2., attention Docket ID OW–2002–0023. Such deliveries are only accepted during the Docket's normal hours of operation as identified in I.B.1.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. Statutory and Regulatory Background

Section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA or "the Act") directs States, Territories, and authorized Tribes (hereafter referred to as "States"), with oversight by EPA, to adopt water quality standards to protect the public health and welfare, enhance the quality of water and serve the purposes of the CWA. Under section 303, States are required to develop water quality standards for waters of the United States within the State. Section 303(c) provides that water quality standards shall include the designated use or uses to be made of the water, and criteria necessary to protect those uses. The designated uses to be considered by States in establishing water quality standards are specified in the Act: public water supplies, propagation of fish and wildlife, recreation, agricultural uses, industrial uses and navigation. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. The results of this triennial review must be submitted to EPA, and EPA must approve or disapprove any new or revised standards.

Section 303(c) of the CWA authorizes the EPA Administrator to promulgate water quality standards to supersede State standards that have been disapproved, or in any case where the Administrator determines that a new or revised standard is needed to meet the CWA's requirements. Today EPA is proposing Federal standards to supersede a portion of Alabama's standards that EPA has disapproved and the State has not revised.

EPA regulations implementing section 303(c) are published at 40 CFR part 131. Under these rules, the minimum elements that must be included in a State's water quality standards include: use designations for all water bodies in the State, water quality criteria sufficient to protect those use designations, and an antidegradation policy. *See* 40 CFR 131.6. States may also include policies generally affecting the standards' application and implementation in their standards. *See* 40 CFR 131.13. These policies are also subject to EPA review and approval.

Water quality standards establish the "goals" for a water body through the establishment of designated uses. Designated uses, in turn, determine what water quality criteria apply to specific water bodies. Section 101(a)(2) of the Act establishes as a national goal "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and * * * recreation in and on the water," wherever attainable. These national goals are commonly referred to as the "fishable/swimmable" goals of the Act. Section 303(c)(2)(A) requires water quality standards to "protect the public health and welfare, enhance the quality of water, and serve the purposes of this Act." EPA's regulations at 40 CFR part 131 interpret and implement these provisions by requiring that water quality standards provide for fishable/swimmable uses unless those uses have been shown to be unattainable. This effectively creates a rebuttable presumption of attainability, *i.e.*, a default designation of fishable/swimmable beneficial uses should apply in the absence of sufficient information to the contrary. The mechanism in EPA's regulations used to overcome this presumption is a use attainability analysis (UAA).

Under 40 CFR 131.10(j), States are required to conduct a UAA whenever the State designates or has designated uses that do not include the uses specified in section 101(a)(2) of the CWA, or when the State wishes to remove a designated use that is specified in section 101(a)(2) of the CWA, or adopt subcategories of uses that require less stringent criteria. Uses are considered by EPA to be attainable, at a minimum, if the uses can be achieved (1) when effluent limitations under section 301(b)(1)(A) and (B) and section 306 are imposed on point source dischargers, and (2) when cost effective and reasonable best management practices are imposed on nonpoint source dischargers. 40 CFR 131.10 lists grounds upon which to base a finding that attaining the designated use is not feasible, as long as the designated use is not an existing use: (i) Naturally occurring pollutant concentrations prevent the attainment of the use; (ii) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; (iii) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; (iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way which would result in the attainment of the use; (v) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses; or (vi) Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

A UAA is defined in 40 CFR 131.3(g) as a "structured scientific assessment of the factors affecting the attainment of a use which may include physical, chemical, biological, and economic factors' (see §§ 131.3 and 131.10). In a UAA, the physical, chemical and biological factors affecting the attainment of a use are evaluated through a water body survey and assessment.

Guidance on water body survey and assessment techniques is contained in the Technical Support Manual, Volumes I–III: Water Body Surveys and Assessments for Conducting Use Attainability Analyses. Volume I provides information on water bodies in general, Volume II contains information on estuarine systems and Volume III contains information on lake systems (Volumes I–II, November 1983; Volume III, November 1984). Additional guidance is provided in the Water Quality Standards Handbook: Second Edition (EPA–823-B–94–005, August 1994). Guidance on economic factors affecting the attainment of a use is contained in the Interim Economic Guidance for Water Quality Standards: Workbook (EPA–823-B–95–002, March 1995). In developing today's proposal, EPA followed the same procedures set out for States in 40 CFR part 131, and EPA's implementing policies, procedures, and guidance.

EPA regulations effectively establish a "rebuttable presumption" that fishable/swimmable uses are attainable and therefore should apply to a water body unless it is affirmatively demonstrated that such uses are not attainable. EPA adopted this approach to help achieve the national goal articulated by Congress that, "wherever attainable," water quality provide for the "protection and propagation of fish, shellfish and wildlife" and for "recreation in and on the water." CWA section 101(a). While facilitating achievement of Congress' goals, the rebuttable presumption approach preserves States' paramount role in establishing water quality standards in weighing any available evidence regarding the attainable uses of a particular water body. The rebuttable presumption approach does not restrict

the discretion that States have to determine that fishable/swimmable uses are not, in fact, attainable in a particular case. Rather, if the water quality goals articulated by Congress are not to be met in a particular water body, the regulations simply require that such a determination be based upon a credible, "structured scientific assessment" of use attainability.

EPA believes that the "use" of a water body is the most fundamental articulation of its role in the aquatic and human environments, and all of the water quality protections established by the CWA follow from the water's designated use. If a use lower than fishable/swimmable is designated based on inadequate information or superficial analysis, water quality-based protections that might have enabled the water to achieve the goals articulated by Congress in section 101(a) may not be put in place. As a result, the true potential of the water body may not be realized, and a resource highly valued by Congress may be lost.

EPA seeks, through its oversight under section 303(c) of the CWA, to ensure that any State's decision to forego protection of a water body's potential to support fishable/swimmable uses results from a "structured" analysis of use attainment. Where, as in the case of this segment of Five Mile Creek in Alabama, the State provides no analysis to support a less than fishable/swimmable use designation, EPA disapproves the use designation. In some cases, as Alabama has done with regard to most of the use classifications originally disapproved by EPA (see section II.C., below), the State will revise its use classifications to protect fishable/swimmable uses.

In other cases, the State will conduct a more thorough analysis of use attainability to support a less than fishable/swimmable designated use. Indeed, Alabama has done so for several of the streams originally disapproved by EPA in 1986. However, where a State does neither, as in the case of a segment of Five Mile Creek, EPA will undertake Federal rulemaking to ensure the water quality goals of the CWA are effectively implemented.

In developing the attached proposed rule, EPA evaluated all available information, including physical, biological, and chemical parameters, to determine whether fishable/swimmable uses could be attained. As explained in detail below, EPA believes the available information regarding this water body segment does not rebut the presumption that fishable/swimmable uses are attainable. In fact, EPA believes that all of the currently available information affirmatively supports the conclusion that full fishable/swimmable uses are attainable.

EPA is working within the existing State framework and relying on the State's Fish and Wildlife (F&W) designated use for the protection of fishable/swimmable water. Similarly, EPA is deferring to the State water quality criteria necessary for meeting a F&W designated use. EPA's approach in this rulemaking does not undermine the State's primary role in designating uses for waters in Alabama. If the State reclassifies the segment of Five Mile Creek with a fishable/swimmable designated use prior to EPA's finalizing this rule, EPA would approve the State's action and not finalize this rule. Alternatively, if the State completes a sound analysis of use attainability, taking into account appropriate biological, chemical and physical factors, and concludes that the fishable/swimmable use is not attainable for this water body segment, EPA would approve the State's action if it meets all requirements of EPA's regulations at 40 CFR part 131, and not finalize this rule (or initiate rulemaking to rescind the rule if the State submits an adequate analysis after EPA takes final action). EPA encourages the State to continue evaluating the appropriate use designation for this segment of Five Mile Creek.

B. Current Alabama Water Quality Standards

Alabama's water quality regulations at 335–6–10 and 335–6–11 establish the following designated uses for assignment to water bodies in the State: Outstanding Alabama Water, Public Water Supply, Swimming and Other Whole Body Water-Contact Sports, Shellfish Harvesting, Fish and Wildlife (F&W), Limited Warmwater Fishery (LWF), Agricultural and Industrial Water Supply (A&I). Alabama has applied these use designations, singly or in some combination, to all surface waters of the State.

The current use designation adopted by the State for the segment of Five Mile Creek addressed in today's proposal is A&I. The best usage of waters designated for the A&I use includes "agricultural irrigation, livestock watering, industrial cooling and process water supplies, and any other usage, except fishing, bathing, recreational activities, including water-contact sports, or as a source of water supply for drinking or food-processing purposes." The Alabama water quality regulations describe the A&I use as follows:

> The waters, except for natural impurities which may be present therein, will be suitable for agricultural irrigation, livestock watering, industrial cooling waters, and fish survival. The waters will be usable after special treatment, as may be needed under each particular circumstance, for industrial process water supplies.
>
> This category includes watercourses in which natural flow is intermittent and non-existent during droughts and which may, of necessity, receive treated wastes from existing municipalities and industries, both now and in the future. In such instances, recognition must be given to the lack of opportunity for mixture of the treated wastes with the receiving stream for purposes of compliance. It is also understood in considering waters for this classification that urban runoff or natural conditions may impact any waters so classified.

EPA's regulations at 40 CFR part 131 require that waters designated for a use less protective than a fishable/swimmable use, such as the A&I use, be supported by a use attainability analysis, because neither the best usage or conditions related to the best usage for these waters include the fishable/swimmable uses, nor do all the criteria necessary to protect those uses apply. For example, only "fish survival" is included as a condition of the best usage, and recreational activities are specifically excluded as uses for A&I waters. As such, the criteria adopted to support the A&I use do not provide protection for the propagation of aquatic life, nor protection from human pathogens during the swimming season.

As discussed in section II.C., EPA disapproved the designation of the A&I use for the segment of Five Mile Creek addressed in today's proposal. In developing today's proposal, EPA evaluated Alabama's existing water quality standards to determine which State use designations correspond to "fishable/swimmable" uses, and would therefore ensure protection of the CWA section 101(a)(2) goals. Rather than establish a new Federal use designation for this segment of Five Mile Creek, EPA believes it is preferable to apply a use designation that both meets the goals of the CWA and is consistent with longstanding State standards regulations. Because water quality standards for this segment, if ultimately promulgated, will be the basis for establishing NPDES permit limits by the State, the Agency believes that using an existing State use designation will facilitate implementation of the standards. This also facilitates withdrawal of Federal standards in the future, if Alabama takes appropriate action justifying such withdrawal.

EPA is proposing the State's F&W use set out at 335–6–10–.03 of the State's regulations for the segment of Five Mile Creek from Newfound Creek to Ketona.

The State's F&W use includes aquatic life uses and seasonal recreational uses that are consistent with the Clean Water Act section 101(a)(2) goals of fishable/swimmable. The best usage of waters designated for the State's F&W use include "fishing, propagation of fish, aquatic life, and wildlife, and any other usage except for swimming and water-contact sports or as a source of water supply for drinking or food-processing purposes." The conditions related to best usage for F&W waters require that these waters "will be suitable for fish, aquatic life and wildlife propagation."

The State, in the listing of other usages of waters designated for the F&W use recognizes that waters designated for the F&W use "may be used for incidental water contact and recreation during June through September, except that water contact is strongly discouraged in the vicinity of discharges or other conditions beyond the control of the Department or the Alabama Department of Public Health," and that these waters, "under proper sanitary supervision by the controlling health authorities, will meet accepted standards of water quality for outdoor swimming places and will be considered satisfactory for swimming and other whole body water-contact sports." This aspect of the F&W use is protected by criteria for fecal coliform bacteria identical to the criteria adopted for the Swimming and Other Whole Body Water-Contact Sports use classification. The bacteria criteria apply June through September for the F&W use, whereas the bacteria criteria apply year round for the Swimming and Other Whole Body Water-Contact Sports use. EPA regulations at 40 CFR 131.10(f) provide States the option to "adopt seasonal uses as an alternative to reclassifying a water body or segment thereof to uses requiring less stringent criteria" as long as water quality criteria reflect the seasonal uses. As described below, the Alabama Environmental Management Commission determined that the F&W use was appropriate for this segment of Five Mile Creek in their recent reclassification efforts. EPA agrees that the F&W use, as applied to this segment of Five Mile Creek, reflects the CWA 101(a)(2) goal for "recreation in and on the water".

Provisions of the Fish and Wildlife water use classification also apply to the State's Limited Warmwater Fishery (LWF) use classification, with the following exceptions. The best usage of waters for the months from May through November include "agricultural irrigation, livestock watering, industrial cooling and process water supplies, and any other usage, except fishing, bathing, recreational activities, including water-contact sports, or as a source of water supply for drinking or food-processing purposes." Also, the conditions related to best usage for the months from May through November require that the waters "will be suitable for agricultural irrigation, livestock watering, and industrial cooling waters. The waters will be usable after special treatment, as may be needed under each particular circumstance, for industrial process water supplies."

The standards for the LWF use also specify that, "This category includes watercourses in which natural flow is intermittent, or under certain conditions non-existent, and which may receive treated wastes from existing municipalities and industries. In such instances, recognition is given to the lack of opportunity for mixture of the treated wastes with the receiving stream for purposes of compliance. It is also understood in considering waters for this classification that urban runoff or natural conditions may impact any waters so classified."

Given that the LWF use incorporates several provisions associated with the A&I use for the months from May through November, 40 CFR part 131 requires that waters designated for the LWF use be supported by a use attainability analysis, because neither the best usage or conditions related to the best usage for these waters include all of the Clean Water Act section 101(a)(2) uses of fully fishable/swimmable.

If EPA promulgates final water quality standards as proposed, Alabama's existing water quality criteria adopted to protect the F&W use would apply to this segment of Five Mile Creek. These criteria are set out at 335–6–10–.05 (General Conditions Applicable to All Water Criteria), 335–6–10–.06 (Minimum Conditions Applicable to All State Waters), 335–6–10–.07 (Toxic Pollutant Criteria Applicable to State Waters), and 335–6–10–.09(4) (Specific Water Quality Criteria—Fish and Wildlife use).

Subsection 335–6–10–.05 establishes State policies applicable to all State waters regarding analytical procedures, collection of samples used to determine compliance with water quality criteria, mixing zones, criteria exceedances due to natural conditions, recreational use of State waters, and schedules of compliance with new water quality standards. Compliance with a modified effluent limit based on a new standard is required as soon as possible, "but in all cases within three years of the adoption of the new standard."

Subsection 335–6–10–.06 contains the "free from" toxicity provisions of Alabama's water quality standards applicable to all State waters. These provisions relate to general protection of State waters from adverse effects due to substances attributable to sewage, industrial wastes or other wastes from settling, floating, and toxicity.

Section 335–6–10–.07 includes a tabular listing of water quality criteria applicable to State waters pursuant to applicable designated uses. Included are: (1) Numeric criteria or criteria equations for protection of aquatic life from acute toxic effects for 24 parameters, (2) numeric criteria or criteria equations for protection of aquatic life from chronic toxic effects for 29 parameters (which apply to all State waters except those waters classified for Agricultural and Industrial Water Supply uses), (3) human health-based criteria equations, (4) Maximum Contaminant Levels for 100 parameters (applicable to waters classified for drinking water purposes), and (5) the minimum instream design flows to be used in application of water quality criteria.

This section also includes the criteria equations for 98 parameters for protection of human health from the consumption of fish and shellfish applicable to all State waters. Because the State's human health-based water quality criteria apply to all State waters, regardless of classification, human health criteria were not considered to have a direct effect in the analysis of the proposed revised classification of the Fish and Wildlife use for the stream segment considered in this proposed rule.

Subsection 335–6–10.09(4)(e) (Specific Criteria) contains the water quality criteria related to the protection of the above uses, including numeric and/or narrative criteria for pH, temperature, dissolved oxygen, whole effluent toxicity, bacteria, radioactivity and turbidity.

Criteria for protection of aquatic life for dissolved oxygen (DO) are contained in the Alabama water quality standards at Subsection (4)(e)(4), which includes, in pertinent part:

(i) For a diversified warm water biota, including game fish, daily dissolved oxygen concentrations shall not be less than 5 mg/l at all times; except under extreme conditions due to natural causes, it may range between 5 mg/l and 4 mg/l, provided that the water quality is favorable in all other parameters. The normal seasonal and daily fluctuations shall be maintained above these levels.

(iv) In the application of dissolved oxygen criteria referred to above, dissolved oxygen shall be measured at a depth of 5 feet in waters 10 feet or greater in depth; and for those waters less than 10 feet in depth, dissolved oxygen criteria will be applied at mid-depth.

Subsection 335–6–10–.09(4)(e) also includes a reference to toxicity-based criteria applicable to the Fish and Wildlife use in section 335–6–10–.07. This Subsection includes narrative criteria for the protection from adverse effects of taste, odor, and color effects, including aesthetic qualities, as well as narrative criteria for the protection of palatability and marketability of fish, wildlife, shrimp and crabs taken from State waters.

C. Factual Background

1. Summary of State and EPA Administrative Actions

In a letter dated October 14, 1986, the EPA Regional Administrator for Region 4 disapproved use designations adopted by the Alabama Department of Environmental Management (ADEM) for 49 stream segments, including the segment of Five Mile Creek from Newfound Creek to Ketona, because the State failed to support a use classification less than "fishable/swimmable" in accordance with 40 CFR 131.10(j). From 1986 to 1991, 20 of the use designations were either upgraded to the Fish and Wildlife (F&W) use classification by ADEM or approved as the Agricultural and Industrial Water Supply (A&I) use by EPA based on a supporting analysis. On July 18, 1991, the EPA Regional Administrator for Region 4 disapproved 30 use designations adopted by ADEM, including the designation of A&I for the segment of Five Mile Creek from Newfound Creek to Ketona.

Between July 18, 1991 and today's proposal, ADEM reclassified the use designations of 17 of these 30 segments to the F&W use designation. On August 1, 2000, ADEM incorporated a new use classification of Limited Warmwater Fishery (LWF) as a provision of the State water quality regulations at 335–6–10–.09 (6), and ADEM has since reclassified 10 of these 30 stream segments to the LWF use designation. Four of these 10 reclassification actions included alternative water quality criteria which established more stringent criteria than the LWF designation requires for these four segments based on consideration of site specific conditions. EPA approved some of the reclassification actions involving the LWF use on March 15, 2001. In addition, EPA approved ADEM's A&I use designation for one of these 30 segments on March 15, 2000. The State made revisions and provided additional supporting analyses for the other segments. These recent actions and new information are being reviewed by EPA Region 4 under section 303 (c) of the CWA.

Although ADEM reclassified a segment of Five Mile Creek from Locust Fork to Newfound Creek to F&W in April 1997, the State has not completed actions to reclassify the segment of Five Mile Creek from Newfound Creek to Ketona to F&W or completed a use attainability analysis for this segment to show that the F&W use is not attainable. This is the only remaining segment of the 30 segments disapproved by EPA on July 18, 1991, that does not now have an approved use designation or State-designated use reclassification action under review.

2. Summary of Legal Actions

During the period from 1996 to the present when some of the administrative actions summarized above occurred, EPA has been served with several notices of intent to sue and subsequent suits for failure to take certain actions under section 303(c) of the CWA with regard to water quality standards disapproved by EPA. In each case, the Agency has entered into a consent decree with plaintiffs setting deadlines for EPA to take certain actions, which are described below.

The first of these legal actions was filed on September 18, 1996, when the Legal Environmental Assistance Foundation, Inc. (LEAF) filed suit in District Court in Alabama against EPA for failing to promptly propose Federal replacement water quality standards for a subset of use designations in Alabama disapproved by EPA. LEAF v. Browner No. CV–96–ETC–2454–S (N.D. Ala.). Under a consent decree that EPA and plaintiffs entered into on September 11, 1997, EPA proposed on March 5, 1998, to establish Federal water quality standards for nine stream segments in Alabama in a similar manner as today's proposed rule.

On April 28, 1999, the Alabama Rivers Alliance, Inc. (ARA) filed a 60-day notice under Section 505 of the Clean Water Act, stating an intention to file suit against EPA for failure to promulgate final standards for the stream segments addressed in EPA's March 5, 1998 proposal, and for failure to promptly propose replacement Federal standards for the remaining stream segments disapproved by EPA. This notice combined the contents of similar notices previously filed by LEAF on July 20, 1998 and May 23, 1995.

These parties filed suit on July 17, 2000. LEAF v. Browner No. CV–96–ETC–2454–S (N.D. Ala.). EPA and the plaintiffs subsequently signed a second consent decree which was entered by the court on January 23, 2001, which required that EPA either promulgate Federal standards for the stream segments addressed in the March 5, 1998 proposal, or approve the applicable State water quality standards for these 9 stream segments, no later than March 15, 2001. On December 5, 2000, ADEM had reclassified the use classifications for seven of the stream segments addressed in EPA's March 5, 1998, proposal to the LWF use, and reclassified the use designation for one of the stream segments addressed in EPA's March 5, 1998, proposal to the F&W use. On March 15, 2001, EPA approved these revisions to the State's water quality standards. Also on that date, based on the provisions of 40 CFR 131.10(g)(6), EPA approved the A&I use designation for the remaining stream segment that was addressed in EPA's March 5, 1998 proposal.

Under the terms and conditions of the January 23, 2001, consent decree (as amended on January 2, 2002), EPA was also required to sign a **Federal Register** notice proposing federal use designations for the eight remaining stream segments with a disapproved designated use, or withdraw the EPA disapproval of the existing Alabama standards for these eight stream segments by October 15, 2002. The attached proposal for the segment of Five Mile Creek from Newfound Creek to Ketona, combined with EPA Region 4's approval of the State's revisions to the remaining streams' designated uses will fulfill EPA's obligation under the consent decree.

3. Recent State Actions on Use Designation for Five Mile Creek

The ADEM held a public hearing on February 19, 2002, to consider proposed amendments to ADEM Administrative Code Rule 335–6–11–.02, which included a reclassification of a segment of Five Mile Creek from the A&I use to the F&W use. The public hearing was held to receive data, views, and arguments from interested persons regarding the proposed rules. The public comment period lasted from December 23, 2001, to February 22, 2002, a total of 61 days. Several commenters expressed support for the proposed reclassification of Five Mile Creek from Newfound Creek to Ketona.

However, one commenter opposed the reclassification because the level of total dissolved solids (including chlorides and sulfates) in the effluent of Sloss Industries (a discharger to Five Mile Creek) may result in its failure to meet

the chronic effluent toxicity requirements for LWF and F&W, and the cost of removing these salts were not considered in the reclassification. The commenter asserted that if those removal costs were considered, and if all costs were considered independent of the finances of the parent company (Walter Industries), then a substantial economic burden (as allowed by EPA's regulations at 40 CFR 131.10 (g)(6)) would be established.

In its Reconciliation Statement, which contains responses to comments received during the public comment period, ADEM stated that it "believes the proposed Fish and Wildlife (F&W) use classification is attainable for this segment of Five Mile Creek. ADEM bases (SIC) its decision on the fact that none of the six factors [identified at 40 CFR 131.10(g)] can be used to support a designated use less than the F&W classification, which EPA has approved as consistent with the fishable/swimmable goal." ADEM added, "The reclassification of Five Mile Creek from A&I to F&W will result in more stringent permit requirements for Sloss Industries, and additional treatment controls will be necessary. However, a feasibility study of the treatment control alternatives available to Sloss Industries demonstrates that: (1) The F&W permit limitations can be met by the facility, and (2) the incremental costs of meeting the F&W permit limits (over and above the costs of meeting the A&I permit limits) will not result in substantial and widespread economic impact." With respect to costs, ADEM based its conclusions on a Draft Economic Impact Analysis prepared by EPA, dated December 2001, and EPA's Response to Sloss Industries' comments, dated March 2002.

On April 9, 2002, the Alabama Environmental Management Commission approved reclassified use designations for several stream segments in the State, including the proposed segment of Five Mile Creek. On May 15, 2002, the Joint Legislative Committee of Administrative Regulation Review disapproved the proposed amendment of Alabama Administrative Code Rule 335–6–11–.02, which would upgrade the aforementioned segment of Five Mile Creek from an A&I to F&W use classification. The Committee subsequently proposed an amendment deleting any changes to the status of this segment of Five Mile Creek. On June 25, 2002, the Alabama Environmental Management Commission approved the Joint Legislative Committee's proposed amendment deleting any changes to the status of this segment of Five Mile Creek.

III. Use Designation for Five Mile Creek in Alabama

A. Overview

In terms of Alabama's water quality standards, EPA believes that the F&W use designation appropriately reflects fishable/swimmable uses. EPA has evaluated all available data and information to determine whether the F&W use is attainable. EPA's analysis was informed by the regulatory provisions at 40 CFR part 131 and technical guidance that EPA has provided to States for the development of use attainability analyses. As noted above, EPA regulations define a use attainability analysis as an assessment of the factors affecting attainment of a use, which may include "physical, chemical, biological and economic factors * * *." 40 CFR 131.3(g). Consistent with this provision, EPA evaluated several categories of information in today's analysis of use attainability.

First, EPA evaluated available information regarding the characteristics of the waters in terms of habitat and the biological communities present. If the waters currently reflect habitat conditions and support biological communities commensurate with the F&W use designation, EPA considered this to be strong evidence in favor of an F&W designation. To facilitate this evaluation, EPA examined a 1997 study performed by EPA regarding the habitat and biological conditions in Five Mile Creek (the findings of this study are discussed below in section III.B). A related factor considered by EPA was the use designation in the adjacent segments of Five Mile Creek that are designated as F&W. If the segment of Five Mile Creek designated as A&I was similar in character to adjacent segments designated as F&W by the State, EPA considered such information as supporting the attainability of the F&W use.

Second, EPA reviewed available information regarding ambient stream chemical characteristics. EPA extracted chemical-specific data from the EPA Storage and Retrieval (STORET) Legacy system, which houses ambient water quality data for water bodies throughout the United States, including Alabama. EPA's evaluation focused on those pollutant parameters for which new or more stringent criteria would apply to the affected stream segment in Five Mile Creek. EPA evaluated the extent to which current ambient stream chemical concentrations met the F&W criteria. Significant exceedances of criteria established to protect fishable/swimmable uses may indicate that, notwithstanding the physical habitat and aquatic community present, the use is impaired to some extent. Where the biological and other information indicates that a water body is or could be generally supportive of the F&W use, exceedances of criteria for particular pollutant parameters may not be sufficient to preclude a F&W use. Rather, in some cases an aquatic community could reflect ambient conditions which are less than ideal. In such cases, full attainment of the criteria that support the use might lead to development of a more robust and diverse aquatic community than is currently present.

If significant exceedances of F&W water quality criteria (in terms of relative magnitude above the applicable criteria, duration and frequency of exceedance above the criteria, and the number and types of pollutants) occurred on a consistent basis, such information could suggest that a F&W use is currently not being fully attained. However, considerable judgment must be exercised when evaluating the extent to which current exceedances of water quality criteria in the stream indicate that the F&W use is not attainable within the meaning of the water quality standards regulations. Findings regarding attainability must take into account not only present circumstances, but also the pollutant reductions that would be achieved, at a minimum, through imposition of technology-based controls for point sources as well as implementation of best management practices for nonpoint sources.

The last broad category of information considered by EPA in its decision-making process was monitoring information for each of the dischargers on the stream segment (as reflected in Discharge Monitoring Reports or DMRs). As discussed in detail in section V.C., EPA analyzed the extent to which the proposed Federal use designations may lead to the development of more stringent NPDES permit limits and, if so, what types of controls would be needed by these facilities to meet such limits. Discharger information was used in one of two ways by the Agency. First, monitoring data was used to assess point sources to the affected stream segment and to assist in determining whether their pollutant discharges could contribute to ambient exceedances of criteria. Second, the Agency used the monitoring data to determine whether dischargers would need to significantly alter their operations (or could, in fact, meet permit limits that would be associated with the F&W use). Information indicating that dischargers could

generally meet such revised limits would support the presumption that the F&W use is attainable.

The location of elevated ambient levels of pollutants, combined with effluent monitoring data from permitted industrial and municipal wastewater discharges, provided information on possible sources of the pollutants, and whether combined sewer overflow (CSO) or other sources of storm water runoff might be contributing to any elevated pollutant levels. For example, if elevated pollutant levels occurred at stream locations upstream of permitted industrial and municipal wastewater discharges, or for pollutants not discharged in significant quantities from those sources, then this suggests that other sources are responsible for pollutant loadings to the stream segment. If elevated pollutant levels occurred at stream locations downstream of permitted industrial and municipal wastewater discharges, and there are records of discharge of those pollutants, then this suggests that those sources are contributing to pollutant loading. Based on the projected sources of pollutants, EPA projected potential costs of meeting criteria to protect the F&W use.

B. Proposed Use Designation for Five Mile Creek

Based upon the approach described above, EPA evaluated all available data and information to determine whether the F&W use is attainable for Five Mile Creek. If, prior to any final rulemaking by EPA, Alabama classifies Five Mile Creek with use designations consistent with the CWA and 40 CFR part 131, EPA will approve those use designations, eliminating the need to promulgate Federal water quality standards.

In 1997 EPA conducted a biological survey of several streams in the Birmingham area, including Five Mile Creek. The rapid bioassessment protocol utilized by agency scientists evaluated habitat, water chemistry, and benthic macroinvertebrate and fish communities. The study design allowed comparison of data from two sampling stations within the A&I segment to data from two sampling stations in the adjacent F&W segments (one in the upstream F&W segment and one in the downstream F&W segment). The results of this survey documented that Five Mile Creek had the most intact riparian zone and stream habitat of the Birmingham streams assessed in the study. All four stations received similar habitat evaluation scores (ranging from 118 to 123 (compared to the score of 118 at the reference site)). The total number of macroinvertebrate taxa differed from 20 at both stations in the A&I segment to 26 and 27 in the F&W segments, yet both stations in the A&I segment were rated as similar to the stations in the F&W segment. Likewise, based on the evaluation of fish communities, one station in the A&I segment was rated as similar to the stations in the F&W segments. The biological survey revealed evidence of a reduction in pollution sensitive macro-invertebrates at both stations in the A&I segment (Ephemeroptera, Plecoptera, Trichoptera (EPT) scores of 1 and 2 in the A&I segment versus 3 and 5 in the F&W segments), indicating that dischargers to the A&I segments may be affecting the local biological community.

The results of this survey reveal evidence that there is a viable resident aquatic community in the A&I segment of Five Mile Creek that would benefit from increased protection afforded with a F&W use designation. The habitat as well as the macroinvertebrate and fish communities found at sampling stations in the A&I segment are similar to those of the F&W segments of Five Mile Creek. This information supports the assertion that F&W is attainable for this segment.

Ambient chemical monitoring data are available for two stations on Five Mile Creek (FM1 and FM2) covering more than 20 years. EPA only evaluated data since 1980 to best reflect more recent stream conditions. Station FM1 is located just below two industrial dischargers, ABC Coke and Sloss Industries. Station FM2 is located downstream of FM1 and below the Five Mile Creek Waste Water Treatment Plant outfall. Available data from these stations include dissolved oxygen concentrations, levels of fecal coliform bacteria, and concentrations of various toxic priority pollutants and ammonia.

Dissolved oxygen (DO) levels, necessary to support aquatic life, are generally very good in Five Mile Creek. The mean DO concentration at FM1 is 8.7 mg/L (191 observations), with only 2.6% of these observations less than 5 mg/L (the F&W criterion). The mean DO concentration at FM2 is 8.48 mg/L with only 1.4% of observations less than 5 mg/L.

Criteria for fecal coliform bacteria are set to protect public health and welfare, as well as the seasonal recreational swimming use component of F&W. At station FM1, located upstream of the municipal wastewater discharge, 96.6% of the 88 observations from May 1989 to October 1998 meet (*i.e.*, are less than) the F&W single sample maximum criterion of 2,000 units per 100 mL. The geometric mean of fecal coliform bacteria measurements for this station is 145 units per 100 mL, below the F&W geometric mean criterion of 200 per 100 mL for June through September. At station FM2, below Five Mile Creek Waste Water Treatment Plant, 94.3% of the 87 observations from June 1989 to October 1998 have bacteria counts less than the F&W single sample maximum criterion of 2,000 per 100 mL. The geometric mean of measurements for this station is 232 per 100 mL for all observations, which is less than the F&W geometric mean criterion of 1,000 per 100 mL outside the swimming season. However, the geometric mean between June and September of 363 per 100 mL exceeds the F&W geometric mean criterion of 200 per 100 mL for this period of time. The exceedances of F&W fecal coliform criteria are generally not indicative of significant sewage treatment problems in this segment, yet appear largely attributable to the upstream Waste Water Treatment Plant. Optimization of Five Mile Creek Waste Water Treatment Plant's existing chlorination process would likely reduce fecal coliform levels to the necessary levels.

Criteria for toxic pollutants protect the waters for aquatic life survival (acute criteria) and propagation (chronic criteria) as well as human health from the consumption of aquatic organisms. Acute aquatic life criteria and human health criteria apply both to the A&I and F&W use; however, the F&W use also has chronic aquatic life criteria. Reported concentrations of copper, cyanide, mercury, and zinc occasionally exceed the acute and chronic aquatic life criteria at both stations. Reported concentrations of lead occasionally exceed the chronic criterion at both stations and arsenic concentrations occasionally exceed the human health (organisms only) criterion at both stations. In particular, reported concentrations of cyanide frequently exceed the chronic aquatic life criterion at both stations.

Both stations are downstream of facilities that discharge some of these pollutants found to be exceeding the ambient criteria. However, for other of these pollutants, there are no records indicating a discharge of such pollutants is occurring from the permitted facilities. As a result, some pollutants may continue to exceed criteria even with control of these permitted wastewater discharges, and additional controls on other sources might be needed to meet the current A&I use. If additional controls on other sources are put in place to meet the current A&I use, EPA projects that these controls would also provide the reductions needed to attain the F&W use. Jefferson County is

currently under a 1995 Consent Agreement with U.S. EPA to eliminate combined sewer overflow (CSO) discharges and frequent bypasses of the treatment facilities. However, there are no data on the relative contributions of the latter in relation to loadings from urban areas.

While conditions in this segment of Five Mile Creek indicate some ambient toxic pollutant exceedances, the stream segment meets the F&W criteria in most cases. EPA recognizes that additional controls on sources of certain pollutants would need to be implemented to meet criteria applicable to both the current A&I use as well as the proposed F&W use. However, based on currently available information, implementation of such control measures has not been shown to be infeasible (impacts of achieving reductions through point source controls are discussed further in section V. below).

As noted above, assessments of riparian zone, habitat, biological health, and ambient water quality demonstrate that this segment of Five Mile Creek supports viable benthic macroinvertebrate and fish communities and has physical parameters similar to those found to occur in the portions of Five Mile Creek currently classified for the F&W use. Also, while the discharges to this segment have some impact on water quality, the information available to EPA supports the conclusion that additional control measures are feasible. EPA believes that the currently available information as a whole supports the attainability of the F&W use. Therefore, EPA is proposing to reclassify this segment of Five Mile Creek to the F&W use designation.

C. Request for Comment and Data

EPA believes the F&W proposed designated use is appropriate considering the requirements of the CWA and the data and information available to EPA at the time of today's proposal. EPA acknowledges that additional data and information may exist which may further support or contradict the attainability of a F&W proposed designated use. Accordingly, the Agency will evaluate any new data and information submitted to EPA by the close of the public comment period with regard to designating the use for this stream segment. Based on that evaluation of any new data or information, EPA will make a final decision whether the F&W designated use in today's proposal is appropriate and consistent with the CWA. To assist the Agency in ensuring that this decision is based on the best available information, the Agency is soliciting additional information. To assist commenters, the following paragraphs provide guidance on the type of information EPA considers relevant.

Specifically, EPA is seeking information that would assist in determining (1) whether the designated use identified above is currently being attained or has been attained in the past; (2) whether natural conditions or features or human caused conditions prevent the attainment of this use and whether these conditions can or cannot be remedied or would cause more environmental damage to correct than to leave in place; or (3) whether controls more stringent than those required by section 301(b) and 306 of the CWA would be needed to attain the use, and whether implementation of such controls would result in substantial and widespread social and economic impact. Below is a general discussion of the types of data/information requested by the Agency:

Ambient Monitoring Information: (1) Any in-stream data for the Five Mile Creek stream segment subject to this proposal reflecting either natural conditions (*e.g.*, in-stream flow data or other data relating to stream hydrology) or human-caused conditions which cannot be remedied and which prevent the F&W use or water quality criteria from being attained; (2) any available in-stream biological data; (3) any chemical and biological monitoring data that verify improvements to water quality as a result of treatment plant/facility upgrades and/or expansions; and (4) any in-stream data reflecting nonpoint sources of pollution or best management practices that have been implemented for nonpoint source control.

Water Quality Modeling Information: (1) Any data or information on analytical models which can be used to evaluate or predict stream quality, flow, morphology; (2) any physical, biological or chemical characteristics relating to designated uses; and (3) the results of any such models which can be used to evaluate the attainment of designated uses.

Economic Data: Any information relating to costs and benefits associated or incurred as a result of facility or treatment plant expansions or upgrades. This information includes: (1) Qualitative descriptions or quantitative estimates of any costs and benefits associated with facility or treatment plant expansions or upgrades, or associated with facilities or treatment plants meeting permit limits; (2) any information on costs to households in the community with facility or treatment plant expansions or upgrades, whether through an increase in user fees, an increase in taxes, or a combination of both; (3) descriptions of the geographical area affected; (4) any changes in median household income, employment, and overall net debt as a percent of full market value of taxable property; and (5) any effects of changes in tax revenues if the private-sector entity were to go out of business, including changes in income to the community if workers lose their jobs, and effects on other businesses both directly and indirectly influenced by the continued operation of the private sector entity.

IV. Alternative Regulatory Approaches and Implementation Mechanisms

Today's proposal reflects EPA's determination that F&W is an appropriate use designation for the segment of Five Mile Creek from Newfound Creek to Ketona, based upon the information available to EPA at this time. EPA will consider any data or information submitted to the Agency by the close of the comment period in developing a final rule. However, it is possible that data and information may become available after completion of this rulemaking that will be relevant to the water quality standards for this stream. If EPA ultimately promulgates a Federal F&W use designation for this stream, there are several mechanisms available to ensure that the use and its implementing mechanisms appropriately take into account future information. These mechanisms are described below.

A. Designating Uses

States have considerable discretion in designating uses. The State may find that changes in use designations are warranted. As stated above, EPA will review any new or revised use designations adopted by the State for Five Mile Creek to determine if the standards meet the requirements of the CWA and implementing regulations. If approved, EPA would subsequently initiate withdrawal of any final Federal water quality standards which may result from today's proposal. However, the State must conduct a use attainability analysis as described in 40 CFR 131.3(g) when adopting water quality standards which result in uses which do not include fishable/swimmable, or which result in subcategories of uses which require less stringent criteria.

B. Site-Specific Criteria

The State may also develop data which indicates a site-specific water quality criterion for a particular pollutant is appropriate and take action

to adopt such a criterion into their water quality standards. Site specific criteria are allowed by regulation and are subject to EPA review and approval. 40 CFR 131.11(a) requires States to adopt criteria to protect designated uses which are based on sound scientific rationale and which contain sufficient parameters or constituents to protect the designated use. In adopting water quality criteria, States should establish numerical values based on 304(a) criteria, 304(a) criteria modified to reflect site specific conditions, or other scientifically defensible methods, or establish narrative criteria where numerical criteria cannot be determined, or to supplement numeric criteria. See 40 CFR 131.11(b).

Currently, EPA guidance describes three procedures for States and Tribes to follow in deriving site-specific criteria. These are the Recalculation Procedure, the Water-Effect Ratio Procedure and the Resident Species Procedure. These procedures can be found in the Water Quality Standards Handbook (EPA–823–B940005a, 1994). EPA also recognizes there may be naturally occurring concentrations of pollutants which may exceed the national criteria published under section 304(a) of the CWA, and has issued policy guidance on establishing site specific aquatic life criteria equal to natural background. (Memo from Tudor T. Davies, Director, Office of Science and Technology to the Regional Water Management Division Directors, and State and Tribal Water Quality Management Program Directors, dated November 5, 1997).

Today's proposed rule does not limit Alabama's ability to modify the criteria applicable to the Federal F&W use.

C. Variances

Water quality standards variances are another alternative which can provide a facility with a limited period of time to comply with water quality standards. EPA recognizes that Alabama has chosen not to include a variance procedure in its State standards. EPA is providing an explanation of this procedure as additional information the public may find useful, and as discussed below, the proposed rule contains a Federal variance procedure.

EPA believes variances are particularly suitable when the cause of non-attainment is discharger-specific and/or it appears that the designated use in question will eventually be attainable. EPA has approved the granting of water quality standards variances by States in circumstances which would otherwise justify changing a use designation on grounds of unattainability (*i.e.*, the six circumstances described in 40 CFR 131.10(g)). In contrast to a change in standards which removes a use designation for a water body, a water quality standards variance only applies to the discharger to whom it is granted and only to the pollutant parameter(s) upon which the finding of unattainability was based; the underlying standard remains in effect for all other purposes.

For example, if a designated aquatic life use is currently precluded because of high levels of metals from past mining activities which cannot be remediated in the short term, but it is expected that water quality will eventually improve, a temporary variance may be granted to a discharger with relaxed criteria for such metals, until remediation progresses and the use becomes attainable. The practical effect of such a variance is to allow a permit to be written using less stringent criteria for the problem parameters, while encouraging ultimate attainment of the underlying standard. All other parameter/pollutant criteria for that use would remain in effect. A water quality standards variance provides a mechanism for assuring compliance with sections 301(b)(1)(C) and 402(a)(1) of the CWA that require NPDES permits to meet applicable water quality standards, while granting temporary relief to point source dischargers for certain parameters.

While 40 CFR 131.13 allows States to adopt variance procedures for State-adopted water quality standards, such State procedures may not be used to grant variances from Federally promulgated standards. EPA believes that it is appropriate to provide comparable Federal procedures to address new data and information that may become available in the future. Therefore, EPA is proposing to authorize the Region 4 Regional Administrator to grant water quality standard variances where a permittee submits data indicating that the F&W designated use is not attainable for any of the reasons in 40 CFR 131.10(g). This variance procedure will apply to the F&W use for the specific segment of Five Mile Creek in today's proposal.

Today's proposed rule spells out the process for applying for and granting such variances. The Administrator is delegating to the Regional Administrator the authority to propose and grant these variances. This delegation should expedite the processing of variance requests. EPA is proposing to use informal adjudication processes in reviewing and granting variance requests. That process is contained in 40 CFR 131.34(b)(4) of today's proposed rule. Because water quality standard variances are revised water quality standards, the proposal provides that the Regional Administrator will provide public notice of the proposed variance and provide for an opportunity for public comment. EPA understands that variance related issues can often arise in the context of permit issuance. EPA Region 4 will work closely with the State permitting authorities to ensure that variance requests will be considered in conjunction with the State NPDES permitting process.

The proposed variance procedures require an applicant for a water quality standards variance to submit a request to the Regional Administrator (or his delegatee) with supporting information. The applicant must demonstrate that the designated use is unattainable for one of the reasons specified in 40 CFR 131.10(g). A variance may not be granted if the use could be attained, at a minimum, by implementing effluent limitations required under sections 301(b) and 306 of the CWA and implementing reasonable best management practices for nonpoint source control.

Under the proposal, a variance may not exceed five years or the term of the NPDES permit, whichever is less. A variance may be renewed if the permittee demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if EPA finds that the conditions of 40 CFR 131.10(g) are not met or if the permittee did not comply with the conditions of the original variance.

EPA is soliciting comment on the need for a variance process for EPA-promulgated use designations, the appropriateness of the particular procedures proposed today, and whether the proposed variance procedures are sufficiently detailed.

V. Economic Analysis

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866. EPA's proposed rule does not itself establish any requirements directly applicable to regulated entities. While implementation of today's rule may ultimately result in some new or revised permit conditions for some dischargers, EPA's action today does not impose any requirements on dischargers. Nonetheless, EPA is attempting, within the limits of these uncertainties, to make an estimate of the potential costs which might ultimately result from this rule-making. The following is a summary of the economic analysis (EA) prepared for this proposed rule. Further discussion is

included in the full EA, which is included in the docket for this rule-making.

A. Method for Estimating Costs

Before estimating potential costs, EPA performed a screening-level analysis of use attainability to determine both the achievability of criteria that support the F&W use for the stream where they are exceeded, and the sources of pollutants that would need to be controlled. EPA then estimated costs by evaluating National Pollutant Discharge Elimination System (NPDES) permitted dischargers to the specific segment of Five Mile Creek. The table below lists the municipal and industrial facilities potentially affected by a change in designated use. All three facilities are classified as major dischargers (municipal facilities discharging more than one million gallons per day (mgd) or industrial facilities discharging toxic pollutants in toxic amounts).

FIVE MILE CREEK FACILITIES POTENTIALLY AFFECTED BY THE USE UPGRADE

Facility (capacity)	NPDES No.
ABC Coke (0.12 mgd)	AL0003417
Five Mile Creek Wastewater Treatment Plant (WWTP) (20 mgd).	AL0026913
Sloss Industries (3.2 mgd)	AL0003247

In evaluating these facilities, EPA used data and information from its Permit Compliance System and publicly available data sources, modeling results provided by ADEM, and information on facility treatment processes provided by EPA Region IV. EPA estimated revised facility effluent limits for conventional pollutants if data indicate that the segment is not currently attaining the State's receiving water criteria for the higher use designation, and the facility currently has permit limits for the pollutants. For toxic pollutants, EPA calculated revised effluent limits for pollutants exhibiting reasonable potential to exceed the State's criteria for each use (following Alabama's implementation procedures for developing effluent limits). EPA made a determination that reasonable potential exists to contribute to the exceedence of the water quality standard if the receiving water concentration that would result from discharge of a facility's maximum effluent concentration (MEC) would cause an exceedance of any of the State's criteria (*e.g.*, acute or chronic) for toxic pollutants.

For some toxic pollutants, NPDES permits for the two industrial facilities currently include only effluent guideline-based limits that represent best available technology (BAT). Section 301(b)(1)(c) of the CWA and EPA regulations at 40 CFR 122.44(d) require that more stringent limits be included in permits where necessary to meet applicable water quality standards. Therefore, EPA calculated water quality-based limits that would be necessary to achieve the A&I acute aquatic life and human health criteria. These effluent limits are consistent with the current A&I use, but have not been implemented in facility permits. EPA then estimated revised effluent limits for all toxic pollutants that would apply under a F&W classification based on acute and chronic aquatic life, and human health criteria (for consumption of organisms only). EPA used the two-value steady-state wasteload allocation procedure specified in EPA's Technical Support Document for Water Quality-based Toxics Control to make these calculations. EPA compared the MEC to the projected limits to estimate the pollutant loading reductions necessary for compliance. This conservative approach maximizes the estimate of necessary pollutant loading reductions.

EPA estimated the most cost-effective control strategy for each facility to achieve compliance. To estimate the potential costs associated with the controls, EPA used readily available documentation and updated these sources to 2002 dollars.

B. Estimated Costs Associated With Fish and Wildlife (F&W) Use

Point source dischargers to the 19.4 mile segment of Five Mile Creek are not meeting their current permit limits (some limits developed only to meet BAT and other limits developed to meet criteria to protect the current State designated use of A&I), and would require additional controls to come into compliance with these limits. Further, some of the current permit limits for these facilities are not reflective of the current (A&I) use designation, and additional costs would be incurred to meet limits based on the current A&I use designation. The annual costs to meet the State's current use designation of A&I for Five Mile Creek, which are not part of the costs for today's proposal to establish the F&W use designation for the same waterbody, could range from $4 million to $10 million.

Once in compliance with limits to meet the current A&I use, only process optimization is needed for these facilities to achieve the incremental pollutant loading reductions associated with a F&W use. The table below summarizes the estimated annual costs of these controls for today's proposal. In addition, based on ambient data for several pollutants, it appears that additional controls on other sources might be needed to meet criteria to protect the current A&I use in a more consistent manner. EPA projects that these controls would also provide the reductions needed to similarly meet the criteria associated with the F&W use.

ESTIMATED ANNUAL INCREMENTAL FACILITY COSTS TO ACHIEVE F&W USE CLASSIFICATION

[Millions of 2002 $]

Facility	Total capital	Annual capital [1]	O&M	Total annual
ABC Coke	0.11	0.011	0.0	0.011
Five Mile Creek WWTP	0.36	0.034	0.0	0.034
Sloss Industries	0.26	0.025	0.0	0.025
Total	0.73	0.070	0.0	0.070

[1] Reflects capital costs annualized at 7% over 20 years.

Toxic Pollutants. Analysis of effluent monitoring data indicates that ABC Coke and Sloss Industries would require additional controls to meet A&I acute aquatic life or human health criteria for PAHs, cyanide, ammonia, and metals. Both facilities would comply with projected effluent limits to meet F&W criteria with optimization of the treatment processes needed to reduce pollutant levels to the projected A&I limits.

Conventional Pollutants. Fecal coliform bacteria counts in Five Mile Creek exceed the geometric mean criterion of 200 per 100 ml for a F&W use. The most likely source of fecal coliform bacteria is the Five Mile Creek WWTP. This facility does not have a limit for fecal coliforms and there are no effluent data for this pollutant. However, optimization of the existing chlorination process at the facility would likely reduce fecal coliform bacteria in the effluent to levels that would meet the F&W criterion.

C. Estimated Pollutant Loading Reductions Associated with F&W Use

The table below summarizes the pollutant loading reductions needed for ABC Coke, Sloss Industries, and Five Mile Creek WWTP to comply with projected effluent limits associated with F&W use. For comparison, also shown are the reductions necessary to comply with the current designated use of A&I.

POLLUTANT LOADING REDUCTIONS ASSOCIATED WITH THE USE CLASSIFICATIONS

[lb/yr]

Pollutant	Use classification	
	A&I [1]	F&W [2]
Ammonia-N	185,668	0
Benzo(a)Anthracene	152	0
Benzo(a)Pyrene	201	0
Benzo(b)Fluoranthene	211	0
Benzo(k)Fluoranthene	79.1	0
Chrysene	160	0
Total Copper	261	0
Total Cyanide	6,772	157
Total Lead	34.4	356
Total	193,539	513

[1] Based on reducing the maximum effluent concentration to the current or projected limit.
[2] Load reduction of zero indicates that the projected A&I and F&W limits are equal.

VI. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VII. Executive Order 13045—Children's Health

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This proposed rule, if promulgated, would establish water quality standards to meet the requirements of the CWA and the implementing Federal regulations.

VIII. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule would not affect the nature of the relationship between EPA and States generally, for the rule only applies to a water body segment in Alabama. Further, the proposed rule would not substantially affect the relationship of EPA and the State of Alabama, or the distribution of power or responsibilities between EPA and the various levels of government. The proposed rule would not alter the State's authority to issue NPDES permits or the State's considerable discretion in implementing these water quality standards. Further, this proposed rule would not preclude Alabama from adopting water quality standards that meet the requirements of the CWA. Thus, Executive Order 13132 does not apply to this proposed rule.

Although Executive Order 13132 does not apply to this rule, EPA did consult with representatives of the State government in developing this rule. Prior to this proposed rulemaking action, EPA had numerous phone calls, meetings and exchanges of written correspondence with Alabama's Department of Environmental Management to discuss EPA's concerns with the State's water quality standards, possible remedies for addressing the disapproved sections of the water quality standards, the use designation in today's proposal, and the Federal rulemaking process. The data and descriptive information from these exchanges was essential to evaluating and analyzing the attainment of use designations for the stream segment in today's proposal. For a more detailed description of EPA's interaction with the State on this proposed rulemaking, refer to section II.C.2. EPA will continue to work with the State before finalizing these water quality standards for Alabama. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

IX. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA

to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and India tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. There are no Indian Tribes in Jefferson County, Alabama, where Five Mile Creek is located. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits comment on this proposed rule from tribal officials.

X. Executive Order 13211—Energy

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

XI. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). It does not include any information collection, reporting, or record-keeping requirements. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

XII. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering these economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. The RFA requires analysis of the impacts of a rule on the small entities subject to the rule's requirements. *See United States Distribution Companies* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996). Today's proposed rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. ("[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule*," *United Distribution* at 1170, quoting *Mid-Tex Elec. Co-op* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by United Distribution court).) The Agency is thus certifying that today's proposed rule will not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA.

Under the CWA water quality standards program, States must adopt water quality standards for their waters and must submit those water quality standards to EPA for approval; if the Agency disapproves a State standard and the State does not adopt appropriate revisions to address EPA's disapproval, EPA must promulgate standards consistent with the statutory requirements. EPA also has the authority to promulgate criteria or standards in any case where the Administrator determines that a new or revised standard is necessary to meet the requirements of the Act. These State standards (or EPA-promulgated standards) are implemented through various water quality control programs including the National Pollutant Discharge Elimination System (NPDES) program, which limits discharges to navigable waters except in compliance with an EPA permit or a permit issued under an approved State program. The CWA requires that all NPDES permits include any limits on discharges that are necessary to meet applicable water quality standards.

Thus, under the CWA, EPA's promulgation of water quality standards establishes standards that the State implements through the NPDES permit process. The State has discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet the standards. While the State's implementation of Federally promulgated water quality standards may result in new or revised discharge limits being placed on small entities, the standards themselves do not apply to any discharger, including small entities.

Today's proposed rule, as explained earlier, does not itself establish any requirements that are applicable to small entities. As a result of this action, the State of Alabama will need to ensure that permits it issues include any limitations on discharges necessary to comply with the standards established in the final rule. In doing so, the State will have a number of discretionary choices associated with permit writing. While Alabama's implementation of the rule may ultimately result in some new or revised permit conditions for some dischargers, EPA's action today does not impose any of these as yet unknown requirements on small entities.

XIII. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or Tribal governments or the private sector. The proposed rule imposes no enforceable duty on any State, local or Tribal governments or the private sector; rather, this rule proposes designated uses for Five Mile Creek in Alabama which, when combined with State adopted water quality criteria, constitute water quality standards for that stream. The State may use these resulting water quality standards in implementing its water quality control programs. Today's proposed rule does not regulate or affect any entity and, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. As stated, the proposed rule imposes no enforceable requirements on any party, including small governments. Moreover, any water quality standards, including those proposed here, apply broadly to dischargers and are not uniquely applicable to small governments. Thus, this proposed rule is not subject to the requirements of section 203 of UMRA.

XIV. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comment on this aspect of the proposed rulemaking, and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

XV. Endangered Species Act

Section 7 of the Endangered Species Act (ESA) requires Federal agencies, in consultation with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS), to ensure their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of habitat of such species which have been designated as "critical." Consultation is designed to assist Federal agencies in complying with the requirements of section 7 by supplying a process within which FWS and NMFS provide such agencies with advice and guidance on whether an action complies with the substantive requirements of ESA.

There are no Federally listed species known to utilize this segment of Five Mile Creek and there is no critical habitat designated in Five Mile Creek. Therefore, EPA is not conducting section 7 consultation on this rulemaking with the FWS.

XVI. Plain Language

Executive Order 12886 directs each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example:

—Have we organized the material to suit your needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that isn't clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—What else could we do to make the rule easier to understand?

List of Subjects in 40 CFR Part 131

Environmental protection, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: October 15, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 131.34 is added to subpart D to read as follows:

§ 131.34 Alabama.

(a) *Use designations for surface waters.* In addition to the State adopted use designations, the following water body segment in Alabama has the beneficial use designated in this paragraph (a).

Basin	Stream segment	From	To	Classification
Warrior	Five Mile Creek	Newfound Creek	Ketona	Fish & Wildlife.

(b) *Water quality standard variances.* (1) The Regional Administrator, EPA Region 4, is authorized to grant variances from the water quality standards in paragraph (a) of this section where the requirements of this paragraph (b) are met. A water quality standard variance applies only to the permittee requesting the variance and only to the pollutant or pollutants specified in the variance; the underlying water quality standard otherwise remains in effect.

(2) A water quality standard variance shall not be granted if:

(i) Standards will be attained by implementing effluent limitations required under sections 301(b) and 306 of the CWA and by the permittee implementing reasonable best management practices for nonpoint source control; or

(ii) The variance would likely jeopardize the continued existence of any threatened or endangered species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of such species' critical habitat.

(3) Subject to paragraph (b)(2) of this section, a water quality standards variance may be granted if the applicant demonstrates to EPA that attaining the water quality standard is not feasible because:

(i) Naturally occurring pollutant concentrations prevent the attainment of the use;

(ii) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met;

(iii) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;

(iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way which would result in the attainment of the use;

(v) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses; or

(vi) Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

(4) *Procedures.* An applicant for a water quality standards variance shall submit a request to the Regional Administrator of EPA Region 4. The application shall include all relevant information showing that the requirements for a variance have been met. The applicant must demonstrate that the designated use is unattainable for one of the reasons specified in paragraph (b)(3) of this section. If the Regional Administrator preliminarily determines that grounds exist for granting a variance, he shall provide public notice of the proposed variance and provide an opportunity for public comment. Any activities required as a condition of the Regional Administrator's granting of a variance shall be included as conditions of the NPDES permit for the applicant. These terms and conditions shall be incorporated into the applicant's NPDES permit through the permit reissuance process or through a modification of the permit pursuant to the applicable permit modification provisions of Alabama's NPDES program.

(5) A variance may not exceed five years or the term of the NPDES permit, whichever is less. A variance may be renewed if the applicant reapplies and demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if the applicant did not comply with the conditions of the original variance, or otherwise does not meet the requirements of this section.

[FR Doc. 02–26845 Filed 10–22–02; 8:45 am]
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Federal Register

Wednesday,
October 23, 2002

Part V

Department of Housing and Urban Development

24 CFR Part 5

Clarification of Eligibility of Citizens of Freely Associated States for Housing Assistance; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–4754–F–01]

RIN 2577–AC35

Clarification of Eligibility of Citizens of Freely Associated States for Housing Assistance

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: Recently enacted law provides that citizens of the Freely Associated States (the Marshall Islands, the Federated States of Micronesia, and Palau) are eligible to receive housing assistance under Section 8, public housing, and other programs while lawfully residing in the United States, its territories and possessions. However, while residing in Guam, such aliens are not entitled to a preference over United States citizens or nationals. This rule makes conforming changes to HUD's regulations concerning restrictions on assistance to noncitizens.

DATES: *Effective Date:* November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Glenda N. Green, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, at (202) 708–0950. Persons with hearing- or speech-impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Background.

On January 14, 1986, Congress approved the Compacts of Free Association between the United States and the Federated States of Micronesia, and between the United States and the Government of the Marshall Islands (48 U.S.C. 1901 note). Section 141 of the Compacts of Free Association grants born or naturalized citizens of Micronesia and the Marshall Islands, and those entitled to citizenship by lineal descent, the right to establish legal residence in the United States and its territories and possessions, and to be employed in the United States. On November 14, 1986, Congress approved the Compact of Free Association with the Government of Palau (48 U.S.C. 1931 note)(collectively, this rule refers to these documents as the "Compacts of Free Association"). Section 141 of the Compact of Free Association with Palau contains analogous provisions, with the exception, not relevant to the purposes of this rulemaking, of the lineal descent provision.

Section 3(b) of Public Law 106–504 (approved November 13, 2000) amended section 214(a) of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a(a)) which governs restrictions on housing assistance provided by HUD. As a result of this amendment, citizens of the Freely Associated States lawfully residing in the United States, its territories and possessions, are now among those noncitizens eligible for the housing assistance covered in that section. Such assistance includes public housing, Section 8 housing (both tenant and project-based), the development grant programs, and assistance under sections 235 and 236 of the National Housing Act and the Rent Supplement program under 12 U.S.C. 1701s. Additionally, Section 3(b) amends 42 U.S.C. 1436a(a) to provide that aliens legally residing in Guam under the provisions of section 141 of the Compacts of Free Association shall not be entitled to a preference in receiving housing assistance over any United States citizen or national residing in Guam. These provisions are codified in 42 U.S.C. 1436a(a)(7).

II. HUD Notice PIH 2001–27.

On August 3, 2001, HUD issued Notice PIH 2001–27 to provide guidance on the implementation of section 3(b) of Public Law 106–504. This guidance advised, and HUD strongly reiterates, that:

- PHAs must notify in writing all affected families that as a result of Public Law 106–504, citizens of the Marshall Islands, the Federated States of Micronesia, and Palau ("the Freely Associated States") living in the United States, its territories and possessions, are now eligible to receive housing assistance.
- If a family, prior to the approval of Public Law 106–504, was considered "mixed" and receiving prorated assistance because certain of its members were eligible under the legal and regulatory provisions in effect before the statutory change, and other members were citizens of the Freely Associated States who are now eligible, such family is no longer "mixed" but is now fully eligible.
- PHAs must conduct interim reexaminations and make any rent adjustments as soon as possible. Notice PIH 2001–27 provided the process for making retroactive rent adjustments.

In addition, HUD advises that:

- PHAs in the United States, its territories and possessions, including Guam, must (if the waiting list is open for applications) accept an application from a citizen of the Freely Associated States. This is true notwithstanding the provision of the law regarding preferences in Guam.
- Citizens of the Freely Associated States may receive a local housing preference, established by the PHA. However, within Guam, such preference cannot allow them to receive housing assistance in preference to applicants who are United States citizens or nationals residing in Guam. Date and time of application are not a preference, so citizens of the Freely Associated States receive the benefit of prior date and time of application.
- Households consisting entirely of citizens of the Freely Associated States must be treated the same as United States citizens in the selection, admission, and occupancy of federally assisted housing in Guam, with the exception of the restriction on preferences. For example, let us assume for the sake of discussion that the Guam Housing and Urban Renewal Authority has a local preference for families paying more than 50% of their income for rent.[1] Let us also assume that family #1, all of whose members are citizens of the Freely Associated States, is eligible for the selection preference, and has applied for a unit of a particular bedroom size on May 15, 2002, at 10 a.m. Let us further assume that family #2 of eligible United States citizens, not entitled to any selection preference, applied for a unit of the same bedroom size on May 15, 2002, at 9:30 a.m., that no other applications were filed between these two times, and that there is one unit of the appropriate bedroom size available. The question is, could family #1 from the Freely Associated States be moved ahead of family #2 of United States citizens because of their preference, even though their application was later in time? The answer is no because the law prohibits such family from receiving a preference in housing assistance over any United States citizen or national residing in Guam.

However, let us change the example slightly. Let us now assume that family #2's application was filed by an eligible family of citizens of the Freely Associated States, but one that is not entitled to the selection preference, there are no other applications, and only one unit is available, as in the previous example. Family #1 from the Freely Associated States that has a preference would get the benefit of the preference in that case and be given the unit ahead of family #2 without the preference, even though its application was a half-hour later in time.

Finally, if family #2's application was filed by the family from the Freely Associated States, and family #1's application was filed by the U.S. citizen family, and neither had any selection preferences, family #1's application would be selected according to the normal priority based on date and time of application.

[1] This is a hypothetical example for discussion purposes only and is not intended to be an accurate representation of the Guam Housing and Urban Renewal Authority's tenant selection policies or preferences.

III. This Final Rule

This rule merely conforms HUD's regulations to existing law. Therefore, public comment is unnecessary, and this rule is being issued as a final rule.

This final rule amends 24 CFR part 5, subpart E, the implementing regulation for 42 U.S.C. 1436a. Specifically, the rule adds a new paragraph 5.506(c) to conform the rule to the limitation on preferences in 42 U.S.C. 1436a(a)(7). It should be noted that current 24 CFR 5.506(a)(2) now includes citizens of the countries in the Compacts of Free Association (including those living in Guam and other territories and possessions) by virtue of cross-reference to 42 U.S.C. 1436a(a).

IV. Findings and Certifications

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is "impractical, unnecessary, or contrary to the public interest" (see 24 CFR 10.1). In this case, public comment is unnecessary, since this rule simply conforms HUD's regulations to statutory changes that are currently in effect, in order to emphasize and communicate those legal changes to HUD's regulated community.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely conforms HUD's regulations to existing law.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact to this final rule is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This interim rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

For the foregoing reasons, HUD amends 24 CFR part 5, subpart E as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

Subpart E—Restrictions on Assistance to Noncitizens

1. The authority citation for subpart E continues to read as follows:

Authority: 42 U.S.C. 1436a and 3535d.

2. Amend 24 CFR 5.506 as follows:

a. Add a new paragraph (c) to read as follows:

§ 5.506 General provisions.

* * * * *

(c) *Preferences.* Citizens of the Republic of Marshall Islands, the Federated States of Micronesia, and the Republic of Palau who are eligible for assistance under paragraph (a)(2) of this section are entitled to receive local preferences for housing assistance, except that, within Guam, such citizens who have such local preference will not be entitled to housing assistance in preference to any United States citizen or national resident therein who is otherwise eligible for such assistance.

Dated: September 20, 2002.

Michael Liu,

Asistant Secretary for Public and Indian Housing.

[FR Doc. 02–27046 Filed 10–22–02; 8:45 am]

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October 23, 2002

Part VI

Department of Housing and Urban Development

24 CFR Part 15
Testimony of Employees in Legal Proceedings; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 15

[Docket No. FR–4783–F–01]

RIN 2501–AC90

Testimony of Employees in Legal Proceedings

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD regulations to delegate authority to the General Counsel to authorize, for good cause shown, an employee to testify as an expert or opinion witness in both matters in which the United States is a party as well as in matters exclusively among non-federal litigants.

DATES: Effective Date: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Carole W. Wilson, Associate General Counsel, Office of Litigation, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10258, Washington, DC 20410, telephone (202) 708–0300 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services) (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This rule amends the HUD regulations in subpart D of 24 CFR part 15 to provide explicitly that only the Secretary or the General Counsel may authorize an exception to the general prohibition against an employee of the Department being called to testify as an expert or opinion witness by a party other than the United States. The rule also defines "good cause" for when HUD may permit expert or opinion testimony under specified circumstances.

The general rule currently in 24 CFR 15.302 only permits employees of the Department to provide expert or opinion testimony on behalf of the United States. The objective of HUD's decision to authorize its employees to provide such testimony on behalf of non-federal litigants for good cause shown is to allow HUD to respond to meritorious requests for expert and opinion testimony, for example in criminal proceedings or administrative disciplinary actions for misconduct in connection with a HUD program. HUD believes that the amendment made by this rule will strengthen the integrity of HUD programs, and support HUD's partners in ensuring that business is conducted in accordance with HUD's core values and ethical standards.

Findings and Certifications

Justification for Final Rule

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule under which prior notice and comment are not required. One exception provides that the notice and public procedure may be omitted with respect to rules governing the Department's organization or the Department's own internal practices or procedures. This rule authorizes the General Counsel to make determinations regarding the testimony of employees of the Department in legal proceedings, and, as such, is limited to the Department's internal practices and procedures. Prior notice and comment are, therefore, not required.

Environmental Review

This rule would not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule would not impose a Federal mandate that will result in expenditure by State, local, or tribal governments and the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities. The rule only addresses the Department's internal practices and procedures.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 15

Administrative practice and procedure, courts.

Accordingly, for the reasons described in the preamble, HUD is amending 24 CFR part 15 to read as follows:

PART 15—PUBLIC ACCESS TO HUD RECORDS UNDER THE FREEDOM OF INFORMATION ACT AND TESTIMONY AND PRODUCTION OF INFORMATION BY HUD EMPLOYEES

1. The authority citation for 24 CFR part 15 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

Subpart A also issued under 5 U.S.C. 552.

Section 15.107 also issued under E.O. 12958, 60 FR 19825, 3 CFR Comp., p. 333.

Subparts C and D also issued under 5 U.S.C. 301.

2. Revise § 15.302(a) to read as follows:

§ 15.302 Testimony in proceedings in which the United States is a party.

(a) In any legal proceeding in which the United States is a party, an employee of the Department may not be called to testify as an expert or opinion witness by any party other than the United States unless specifically authorized by the Secretary or the General Counsel for good cause shown. An employee may be called by a non-federal party to testify as to facts.

* * * * *

3. Revise § 15.303 to read as follows:

§ 15.303 Legal proceedings among non-federal litigants; general rule.

(a) In any legal proceeding exclusively among non-federal litigants, no employee of the Department may, unless specifically authorized by the Secretary or General Counsel for good cause shown, testify as an expert or opinion witness as to any matter related to his or her duties or the functions of the Department, including the meaning of Departmental documents.

(b) For purposes of this subpart, "good cause" includes action necessary to prevent a miscarriage of justice or to promote a significant interest of the Department.

4. Revise § 15.305 to read as follows:

§ 15.305 Legal proceedings among non-federal litigants; expert or opinion testimony.

If, while testifying in a legal proceeding exclusively among non-federal litigants, an employee of the Department is asked for expert or opinion testimony, the employee shall, unless specifically authorized by the Secretary or General Counsel in accordance with § 15.303, decline to answer on the grounds that he or she is forbidden to do so by this part.

Dated: October 16, 2002.

Mel Martinez,

Secretary.

[FR Doc. 02–27045 Filed 10–22–02; 8:45 am]

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Federal Register

Wednesday,
October 23, 2002

Part VII

The President

Proclamation 7612—National Character Counts Week, 2002

Proclamation 7613—National Forest Products Week, 2002

Federal Register
Vol. 67, No. 205
Wednesday, October 23, 2002

Presidential Documents

Title 3—

The President

Proclamation 7612 of October 18, 2002

National Character Counts Week, 2002

By the President of the United States of America

A Proclamation

President Theodore Roosevelt once said that, "Character, in the long run, is the decisive factor in the life of an individual and of nations alike." During National Character Counts Week, Americans reaffirm our dedication to promoting good character and upholding the timeless virtues that make our Nation strong.

Our Founding Fathers understood that our country would survive and flourish if our Nation was committed to good character and an unyielding dedication to liberty and justice for all. Throughout our history, our most honorable heroes practiced the values of hard work and honesty, commitment to excellence and courage, and self-discipline and perseverance. Today, as we work to preserve peace and freedom throughout the world, we are guided by a national character that respects human dignity and values every life.

The future success of our Nation depends on our children's ability to understand the difference between right and wrong and to have the strength of character to make the right choices. To help them reach their full potential and live with integrity and pride, we must teach our children to be kind, responsible, honest, and self-disciplined. These important values are first learned in the family, but all of our citizens have an obligation to support parents in the character education of our children.

Our schools play a crucial role in teaching the skills, knowledge, and moral values that will help our children succeed. As Martin Luther King, Jr., stated, ". . . intelligence is not enough. Intelligence plus character—that is the goal of true education." By guiding children to understand universal values such as respect, tolerance, compassion, and commitment to family and community, our schools are working to achieve this goal.

My Administration is committed to promoting character by encouraging public service and civic awareness. The USA Freedom Corps is helping citizens discover volunteer opportunities in their communities and spreading the message that everyone can do something to care for their neighbors in need. This past June, we convened the White House Conference on Character and Community, which showcased programs from around the country that are proving that sound values can be effectively taught.

By affirming the importance of good character in our society and encouraging all people to lead lives of virtuous purpose, we can prepare our Nation, and especially our Nation's children, for the challenges and opportunities that lie ahead. Strengthening our national character will help secure greater opportunity, prosperity, and hope for all.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 20 through October 26, 2002, as National Character Counts Week. I call upon all public officials, educators, librarians, and all the people of the United States to observe this week with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

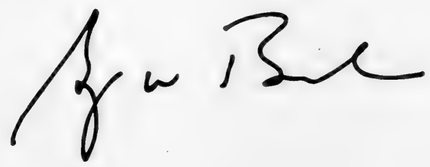

[FR Doc. 02–27192
Filed 10–22–02; 9:07 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7613 of October 18, 2002

National Forest Products Week, 2002

By the President of the United States of America

A Proclamation

America's forests are one of our greatest natural resources. They offer majestic beauty and fabulous recreational opportunities for all Americans to enjoy. They also are an important source of materials that help our Nation's economy to grow and flourish. By observing National Forest Products Week, we recognize the countless ways in which forests enrich our lives, and we renew our commitment to preserving these natural assets for future generations.

Forests strengthen our economy by supplying us with renewable, energy-efficient, and environmentally friendly resources that are the source of good jobs and valuable products. The wood we get from forests is a prime construction and manufacturing product that is used to build our homes and many other essential structures. Wood is also recyclable, biodegradable, and serves as a raw material for many items we use and enjoy every day, including paper, tissue, furniture, packaging materials, musical instruments, and postage stamps. The use of wood for biomass energy generation derived from thinning projects conserves fossil fuels and strengthens rural economies.

In addition, our Nation's forests protect watersheds, preserve water quality, help keep our air clean, and provide habitat for our wildlife.

To protect these vital natural resources, we must take affirmative steps towards managing our forests better, and we must work together to safeguard the health of our forests. My Administration has developed the Healthy Forests Initiative, which seeks to restore the health of our woodlands and prevent forest fires through a combination of thinning overgrowth and restoring fire-damaged areas. For the safety of our citizens, the good of our forests, and the prosperity of our economy, we must make forest health a national priority.

Recognizing the importance of our forests in ensuring our Nation's well-being, the Congress, by Public Law 86–753 (36 U.S.C. 123), as amended, has designated the week beginning on the third Sunday in October of each year as "National Forest Products Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 20 through October 26, 2002, as National Forest Products Week. I call upon all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

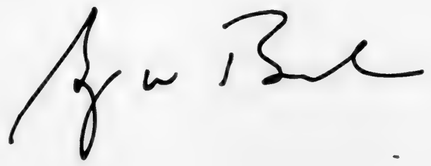

[FR Doc. 02–27193
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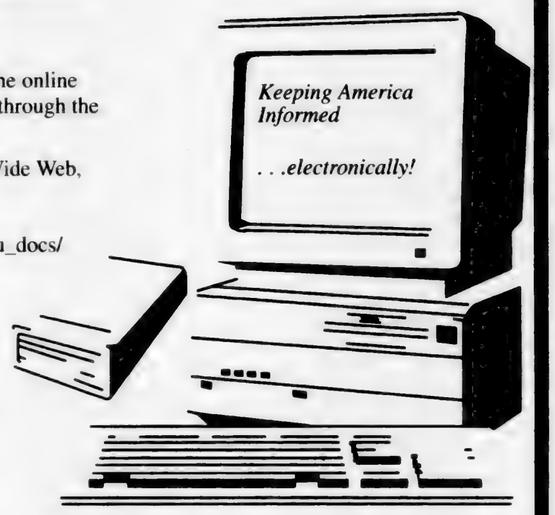

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE56

Small Business Size Standards; Inflation Adjustment to Size Standards.

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is adopting as final the size standards promulgated as an interim final rule effective on February 22, 2002. This rule, like the interim final rule, adjusts the monetary-based size standards (e.g., receipts, net income, net worth, and assets) by 15.8 percent to account for the effects of inflation since 1994. SBA is also adopting a provision in its regulations that will require, at least once every five years, an assessment of the impact of inflation on monetary-based size standards. This periodic review will generally ensure that monetary-based standards are current with inflation trends.

DATES: This final rule is effective on October 24, 2002.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION:

Inflation Adjustment

On January 23, 2002 (67 FR 3041), SBA issued an interim final rule, effective February 22, 2002, that increased our monetary-based size standards by 15.8 percent in order to restore eligibility to firms that may have lost small business status due solely to the effects of inflation since the last inflation adjustment in 1994 (see 67 FR 3041 for a description of methodology adjusting size standards for inflation). Small business size standards are based on the six-digit industry codes of the North American Industry Classification System (NAICS). In addition, SBA has several programs that have their own size standards (e.g., Certified Development Company Program, Surety Bond Guarantee Program, Sale of Government Property, etc.). The size standards that SBA changed are those that are receipts-based and those based upon other monetary measures of business size. Employee-based, production-based, and other size standards established by legislation are unaffected by inflation, and are not part of this rulemaking. However, some receipt-based standards that were recently increased were not adjusted as the inflation effect had been factored into the new size standard. In the interim final rule, SBA did not apply the inflation increase to the $1 million size standard for Travel Agencies and the $1.5 million size standard for Real Estate Agencies because it believed that the increase would be too small to serve any meaningful purpose.

This final rule adopts the changes promulgated in the interim final rule.

Inflation Review

In the interim final rule, SBA added a provision to its size standards regulations requiring that at least once every five years it will assess the impact of inflation on its monetary-based size standards. This provision provides assurances to the public that SBA is monitoring inflation and is making a decision whether or not to adjust size standards within a reasonable period of time since its last inflation adjustment. If SBA decides not to make an inflation adjustment after a review, it will continue to monitor inflation on an annual basis until such time an adjustment is made. SBA received favorable comments on this provision and adopts the language contained in the interim final rule without change.

Discussion of Comments on the Interim Final Rule

SBA received 32 comments on the interim final rule's inflation adjustment and SBA's provision requiring it to assess at least every five years the impact of inflation on its size standards. Five comments were received from two members of Congress, seven comments came from four industry associations, while the remainder of the comments were received from businesses operating in various industries.

SBA received no comments opposing the 15.8 percent inflation adjustment. Five comments supported the provision requiring SBA to assess every five years the impact of inflation on its size standards. One comment recommended that SBA perform a biennial inflation review of its size standards. Six comments were received on the Travel Agencies industry size standard. Two comments addressed issues concerning the way inflation was calculated. Three comments addressed a concern about the listing of size standards in the interim final rule. The remaining comments addressed size standards issues pertaining to specific industries. Below, we address each significant issue raised by these comments and explain our reason for adopting or rejecting the comment's recommendation.

Travel Agencies Be Included in Inflation Adjustment

SBA received five comments supporting an inflationary increase for the travel agencies size standard. SBA had decided that it would not include travel agencies in its inflation adjustment because a 15.8 percent would be too small to warrant an increase to a size standard of only $1 million. These commenters believe that the travel agencies size standard should be increased by the 15.8 percent inflation adjustment at this time. They emphasized the fact that revenues for travel agencies are counted differently than other industry revenues. Travel agencies are allowed to exclude funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. One commenter pointed out that $1 million in commissions equates to approximately $20 million in sales and a 15.8 percent inflationary increase would equate to $23 million in sales. In addition, SBA received one comment requesting that the size standard for travel agencies be increased beyond the amount for inflation.

At the time of the interim final rule SBA was reviewing the Travel Agencies size standard. We subsequently proposed and adopted a $3 million size standard for travel agencies (see 67 FR 38186, dated May 31, 2002, effective July 1, 2002).

Biennial Inflation Review

One commenter believed that a biennial review of size standards would be more timely to reflect changes in business conditions. SBA is not adopting this comment. Under the adopted provision, if SBA finds that inflation increased significantly before the required five-year review, it has the authority to initiate an adjustment to the monetary size standards. SBA believes that a policy of adjusting for inflation on a more frequent interval than it has in the past is appropriate, but that it must retain the discretion to decide when inflation adjustments need to be made in light of inflation trends and other factors that influence the decision on size standards.

Projected Inflation Adjustment Approach

One commenter requested SBA consider a projected or forward adjustment approach that would take into account "what the average increase would be at the mid-point for the next five year adjustment period." The commenter believed by adopting this approach SBA would always have current monetary-based size standards and eliminate the "catch up" approach with 5-year adjustments. SBA does not agree that this additional adjustment is better than its new policy of reviewing and making inflation adjustments on a regular basis. Furthermore, forecasting future inflation involves much uncertainty. Past inflation trends have proven not to be accurate measures of future inflation, especially in times of extremely high or low rates of inflation.

The Use of the Personal Consumption Expenditures Chain-Type Price Index

To measure the rate of inflation, one commenter recommended that SBA use the "Personal Consumption Expenditures (PCE) Chain-Type Price Index" instead of the "Gross Domestic Product (GDP) Chain-Type Price Index." This commenter believes that "Due to recent world events causing a downturn for the United States economy * * * the use of a Chain-Type Price Index for GDP does not properly reflect industry differences from industry-to-industry."

SBA does not adopt this comment. As discussed in the preamble of the interim final rule, SBA decided to convert from the "Implicit Price Deflator for GDP" to the GDP Chain-Type Price Index for its measure for the inflation adjustment. This index is a broader measure of inflation for the entire economy than the PCE Chain-Type Price Index. The recommended PCE Chain-Type Price Index measures primarily purchases by U.S. individuals from private businesses and excludes the purchases of business and government. Furthermore, both indices track inflation very closely. Between the fourth quarter of 1993 to the fourth quarter of 2001, the two indices were only three-tenths of one percent different. This minor difference has no effect on the adopted size standards.

Application of New Size Standards

One commenter requested that under the effective date, SBA change the word "issued" to "closing" in the statement "For the purposes of Federal procurements, this rule applies to solicitations, except for noncompetitive Section 8(a) contracts, *issued* (emphasis added) on or after February 22, 2002." The commenter stated that "the rule as now written, creates a situation where an entity that qualifies as a small business on February 22, 2002, as intended by the rule, would be precluded from pursuing a previously issued, but still open solicitation, for which that businesses would otherwise be qualified."

SBA does not adopt this comment. When contracting officers plan their procurements they explore the possibility of setting aside their solicitation for small business programs based upon the number of small businesses, at that time, able to submit an acceptable proposal or bid. Potential bidders then decide to pursue a contracting opportunity based partly on the potential competition. SBA is concerned that there would be legal and administrative burdens placed on contracting agencies if it were to make this change. Any change to the size standard of a pending solicitation must depend on the specific circumstances of the solicitation. SBA believes that it is the contracting officer's decision whether to amend a solicitation to incorporate the new size standards rather than SBA impose that requirement.

Listing of Size Standards

SBA received three comments concerning the industries listed in the interim final rule. One commenter recommended that SBA publish the entire table of size standards. Two commenters recommended that we publish all the size standards under NAICS code 562910, Remediation Services. These commenters believed that the publication of only the Remediation Services size standard that increased to $12 million and not the segmented size standard of 500 employees for Environmental Remediation Services caused confusion within the industry. SBA also received several phone calls regarding this NAICS code because many firms and contracting officers erroneously viewed SBA's action as eliminating the segmented size standard for Environmental Remediation Services. SBA has not eliminated the 500-employee size standard for Environmental Remediation Services.

The interim final rule listed only those NAICS industries and size standards changed by the inflation adjustment. SBA recognizes that the interim final rule may have led to the misinterpretation of its size standards. SBA considered publishing the size standards for all industries within the NAICS sectors in which one or more of the monetary-based size standards are revised. However, on September 6, 2002, SBA published the entire table of size standards (see 67 FR 55944), which included the inflation adjustment, as part of a correction to a proposed rule (see 67 FR 52633, dated August 13, 2002) to adopt the use of the Office of Management and Budget's 2002 revisions to the NAICS (this rule was adopted on August 13, 2002 (67 FR 52597) and was effective on October 1, 2002). This published listing should eliminate any misunderstanding of which size standards changed as a result of the inflation increase. A complete listing of current size standards is available at SBA's Size Standards' Web site at *http://www.sba.gov/size*, or by calling (202) 205–6618 for a copy of the table of size standards.

More Than an Inflation Adjustment for Specific Industries and Programs

SBA received 10 comments requesting additional increases beyond the inflation adjustment to SBA's Surety Bond program and seven industries: Accounting Services, Architectural and Engineering Services, Mapping Services, Construction Inspection and Management Services, Facility Support Services, Refuse Collection, and Automobile Dealers. The purpose of this final rule and the interim final rule is to adjust monetary-based size standards for the effects of inflation. Any additional change to a size standard based on other considerations must be assessed specifically through a separate rulemaking action. SBA is currently reviewing the size standards for the Surety Bond program, Facility Management Services, Refuse Collection, Accounting Services, and Automobile Dealers to determine if a change is warranted. SBA recently reviewed, with significant public input, and increased the size standards for

Architectural and Engineering Services and, Mapping Services (64 FR 26275, dated May 14, 1999), and Construction and Inspection Management Services (65 FR 37689, dated June 16, 2000). SBA does not plan on revisiting these industries unless significant changes occur in these industries.

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (44 U.S.C. Ch. 35) and the Paperwork Reduction Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that this proposed rule is a "significant" regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. More information follows in our Regulatory Impact Analysis and Final Regulatory Flexibility Analysis. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose new reporting or record keeping requirements, other than those required of SBA. For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. Our Regulatory Impact Analysis follows.

Regulatory Impact Analysis

i. Is There a Need for the Regulatory Action?

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. For those size standards based on monetary measures of size (receipts, net worth, assets, etc.), SBA has made periodic adjustments to restore the real value of the size standard eroded by increases in the general level of prices.

ii. What Are the Potential Benefits and Costs of This Regulatory Action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. Under this rule, 8,760 additional firms generating $55 billion percent of sales, or 29.3 percent of sales, will obtain small business status and become eligible for these programs. These include SBA's financial assistance programs, economic injury disaster loans and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses, and veteran-owned and service disabled veteran-owned small businesses, as well as those awarded through full and open competition after application of the HUBZone or SDB price adjustment. Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses. Other Federal agencies also use SBA size standards for a variety of regulatory and program purposes. SBA does not have information on each of these programs to evaluate the impact of size standard changes. However, in cases where an SBA's size standard is not appropriate, an agency may establish its own size standard with the approval of the SBA Administrator (see 13 CFR 121.801).

The benefits of a size standard increase to a more appropriate level would accrue to three groups: (1) Businesses that benefit by gaining small business status from the higher size standards that also use small business assistance programs, (2) growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the higher size standard, and (3) Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses would benefit from the SBA's programs, 7(a) Guaranteed Loan Program and Certified Development Company (504) Program. SBA estimates that approximately $17 million in new Federal loan guarantees could be made to these newly defined small businesses. This represents 0.19% of the $9 billion in loans that were guaranteed by the SBA under these two financial programs to firms in industries with monetary-bases size standards.

The newly defined small businesses would also benefit from SBA's economic injury disaster loan program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected.

SBA estimates that approximately $39.2 million of additional Federal contracts may be awarded to businesses becoming newly designated small businesses. The percentage increase of annual sales attributed to these new small businesses is estimated at seven-tenths of one percent. SBA applied this factor to the fiscal year 2000 total small business prime contractor initial awards which totaled $5.6 billion [$5.6B × .007 (.7 of 1%) = $39.2M].

Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. The larger base of small businesses would likely increase competition and lower the prices on set-aside procurements. A large base of small business may create an incentive for Federal agencies to set aside more procurements creating greater opportunities for all small businesses. Large businesses with small business subcontracting goals may also benefit from a larger pool of small businesses by enabling them to better achieve their subcontracting goals and at lower prices. No estimate of cost savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

To the extent that up to 8,760 additional firms could become active in Federal small business programs, this may entail some additional administrative costs to the Federal government associated with additional bidders for Federal small business procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA's PRO-Net data base program. Among businesses in this group seeking SBA assistance, there will be some additional costs associated with compliance and verification of small business status and protests of small business status. These costs are likely to generate minimal incremental administrative costs since administrative mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal government may be higher on some Federal contracts. With greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small

businesses rather than using full and open competition. The movement from unrestricted to set-aside is likely to result in competition among fewer bidders for a contract. Also, higher costs may result if additional full and open contracts are awarded through HUBZone and SDB price adjustments. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of policy, procurements may be set aside for small businesses or under the 8(a), HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

The proposed size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and losses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, there may be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contracting opportunities as Federal agencies decide to set aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to HUBZone or small disadvantaged businesses instead of a large business since those two categories of small businesses are eligible for price adjustments for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contacts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The potential transfer of contracts away from large and currently defined small businesses would be limited by the number of newly defined and expanding small businesses were willing and able to sell to the Federal Government. The potential distributional impacts of these transfers may not be estimated with any degree of precision since the data on the size of business receiving a Federal contract are limited to identifying small or other-than-small businesses.

The inflation adjustment to SBA's monetary-based size standards operators is consistent with SBA's statutory mandate to assist small business. This regulatory action also promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with State, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism to develop their own size standards.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this rule addressing the need for, and objectives of, the rule; the significant issues raised by commenters to the initial regulatory flexibility analysis; SBA's description and estimate of the number of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the rule; and alternatives to the final rule considered by SBA that minimize the impact on small businesses.

(1) What Is the Need for, and Objectives of, This Rule?

A review of the latest available inflation indices show inflation has increased a sufficient amount to warrant an adjustment to the current receipt-based size standards. As discussed in the supplemental information, the objective of this rule is to restore the small business eligibility of businesses who have grown above the size standard due to inflation rather than to an expansion of business activity.

(2) What Significant Issues Were Raised By the Public Comments in Response to the Initial Regulatory Flexibility Analysis (IFRA)?

SBA received no comments in response to the IRFA of the Interim Final Rule.

(3) What Is SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

SBA estimates that there will be approximately 8,760 newly designated small business, distributed as follows by NAICS Sectors and Subsectors:

ESTIMATE OF FIRMS GAINING SMALL BUSINESS STATUS

	Number of firms	Associated annual sales (billion)
Retail		
Sectors 44–45	2,800	$17
Services		
Sectors 51, 52, 54, 55, 61, 62, 71, 72, 81, and Subsectors 531, 532, 561	4,100	22
Finance, Insurance and Real Estate		
Sectors 52–53	650	3
Transportation & Utilities,		
Sectors 22 & 48	450	3
Construction and Refuse		
Sector 23 & Subsector 562	760	10
Total	8,760	55

Source: *1997 Economic Census*, U.S. Census Bureau, Special Tabulation for SBA. Sales estimates restated to 2000 dollars.

The percentage increase in the number of small businesses that will result from this rule, compared to the existing base of small businesses, is estimated to be about two-tenths of one percent. The special tabulation of the 1997 Economic Census for SBA reports 5,082,970 total firms in the U.S. economy as defined by this census. We estimate that 98.4 percent of all businesses in the U.S. are currently defined as small under the existing size standards. Under the rule, this will increase to 98.6 percent. The percentage increase of annual sales in the U.S. economy attributed to these new small businesses is likely to be approximately seven-tenths of one percent. This will be applied to a base of 28.6 percent. Thus under this proposal the percent of sales attributed to firms defined as small businesses in the U.S. is likely to increase to 29.3 percent.

Currently, 5,003,048 businesses are small. Less than five percent of these businesses utilize SBA programs. For example, in SBA's PRO-Net (a SBA database of small businesses interested in contracting with the Federal Government) 195,000 firms are currently registered. In fiscal year 2001, 43,817 firms received 7(a) guaranteed loans. Thus, with this inflation adjustment, the likely impact of this rule would be limited to the 8,760 firms that will gain small business status as a result of this rule. This figure is based on the U.S. Census Bureau's special tabulation of the 1997 Economic Census for SBA's Office of Size Standards, using size distribution of firms' tables. The following table shows these data.

TABLE 1.—INDUSTRY DATA

Category	Firms
Total Businesses	5,082,970
Current Small Businesses (all sectors)	5,003,048
Current Small Businesses (affected sectors)	5,001,642
Small Businesses with the adoption of this rule	5,011,808
Small Businesses Registered in PRO–Net	195,000
Small Businesses with 7(a) Loans	43,817

The 8,760 firms gaining small business status will become eligible to seek available SBA assistance provided that they meet other program requirements.

In addition, SBA cannot ascertain the entire impact of this inflation adjustment on current small businesses as many Federal, state, and local agencies and authorities use SBA's size standards for their programs and SBA does not have information on each of these uses to evaluate the impact of the size standards changes.

(4) Will This Rule Impose Any Additional Reporting or Recordkeeping Requirements on Small Businesses?

This rule does not impose any new information collection requirements from SBA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. A new size standard does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing size standards expands access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(5) What Are the Steps SBA Has Taken To Minimize the Significant Economic Impact on Small Businesses?

Most of the economic impact on small businesses will be positive. The most significant benefits to businesses that would obtain small business status as a result of adoption of this final rule are (1) eligibility for the Federal Government's procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and businesses located in Historically Underutilized Businesses Zones; and (2) the eligibility for SBA's financial assistance programs such as 7(a), 504, and Economic Injury Disaster Loan (EIDL) Assistance programs.

SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $39.2 million per year under the small business set-aside program, the 8(a) program or unrestricted contracts. This represents 0.7 of 1 percent of the $5.6 billion the Federal government awarded to small business prime contractors in FY2000 for initial awards. We view the additional amount of contract activity as the potential amount of transfer from non-small to newly designated small firms. In many cases, businesses that had been small but outgrew the size standards within the past seven years due to inflation will again be considered small businesses. This does not represent the creation of new contracting activity by the Federal government, merely a possible reallocation or transfer to different size firms.

Under SBA's 7(a) Guaranteed Loan program and Certified Development Company (504) program, SBA estimates that approximately $17 million in new Federal loan guarantees could be made to these newly defined small businesses. This represents 0.19 percent of the $9 billion in loans that were guaranteed by the SBA under these two financial programs to firms in industries with monetary-based size standards. Considering that the average size of firms gaining small business status will be $6 million, demand for assistance will likely be less than the overall participation rate for SBA loans among firms of all sizes. In any given year less than 1 percent of all small businesses receive SBA financing. Since larger firms are less likely to seek SBA financial assistance, we believe that no more than one-half of 1 percent of the newly designated small business would seek SBA assistance. SBA estimates that approximately 45 out of the 8,760 firms would seek SBA financing. SBA financial assistance recipients of this size on average obtain assistance worth $375,000, so the impact in terms of new loans generated is estimated to be $17 million.

The adopted inflation adjustment to size standards will minimize the impact on small businesses in two ways. First, small and more periodic inflation adjustments than SBA had adopted in the past will help to retain small business status for many businesses and limit the number of businesses whose status changes from small to nonsmall back to small. Second, more frequent inflation adjustments avoid the situation where existing small businesses find themselves immediately competing against a large number of newly defined small businesses. For example, SBA estimated that 20,000 businesses gained small business status from the 1994 inflation compared to the 8,760 businesses by this final rule's adjustment.

(6) Alternatives

(a) What Are the Legal Policies or Factual Reasons for Selecting the Alternative Adopted in the Final Rule?

As stated in the Small Business Act 15. U.S.C. 631 and 13 CFR part 121, SBA establishes size standards based on industry characteristics and for non-manufacturing concerns on the basis of the annual average gross receipts of a business concern over a period of three years. As these referenced concerns' receipts are subject to the effects of inflation, SBA must make an adjustment of 15.8 percent in order to restore eligibility to firms that may have lost small business status solely due to the effect of inflation.

(b) What Alternatives Did SBA Reject?

SBA considered two alternatives to this rule. First, to wait until inflation has increased a greater amount before proposing an adjustment to receipt-based size standards. Previous inflation adjustments ranged between 48 percent to 100 percent. SBA believes that more frequent adjustments are necessary since smaller amounts of inflation can change the small business eligibility of a large number of businesses.

Second, SBA considered a policy of automatically adjusting size standards for inflation on a fixed schedule. SBA

believes inflation must be closely monitored to assess the impact of inflation on size standards. Automatic adjustments may lead to inappropriate changes to size standards and prevent the Agency from taking into consideration other factors that bear on the review of size standards, such as changes in industry structure or Administration policies. Furthermore, an automatic adjustment could require SBA to make insignificant changes (*i.e.*, 1 percent) or to wait a longer period of time than necessary to adjust size standards if inflation rapidly increases.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

Accordingly, the interim rule amending 13 CFR part 121, which was published at 67 FR 3041 on January 23, 2002, is adopted as a final rule.

Dated: October 10, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–27060 Filed 10–23–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–44–AD; Amendment 39–12920; AD 2002–21–13]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 35, 35R, A35, and B35 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 98–13–02, which currently requires operating limitations on Raytheon Aircraft Company (Raytheon) Beech Models 35, 35R, A35, and B35 airplanes. This AD is the result of Raytheon developing inspection and modification procedures that, when accomplished on the affected airplanes, will eliminate the need for the operating limitations. This AD retains the operating limitations for the affected airplanes until the recently developed inspection and modification procedures are accomplished. This AD also requires repetitive inspections of the fuselage structure. The actions specified by this AD are intended to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

DATES: This AD becomes effective on December 10, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 10, 2002.

ADDRESSES: You may get the service information referenced in this AD from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–44–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA Taken Any Action on the Raytheon Airplane Ruddervator System to This Point?

AD 98–13–02, Amendment 39–10590 (63 FR 31916, June 11, 1998), currently requires the following on Raytheon Beech Models 35, A35, B35, and 35R airplanes:

—Fabricating a placard that restricts the never exceed speed (Vne) to no more than 144 miles per hour (MPH) or 125 knots (KTS) indicated airspeed (IAS) and installing this placard on the instrument panel within the pilot's clear view;
—Marking a red line on the airspeed indicator glass at 144 MPH (125 KTS);
—Marking a white slippage mark on the outside surface of the airspeed indicator between the glass and case; and
—Inserting a copy of this AD into the Limitations Section of the pilot's operating handbook/airplane flight manual (POH/AFM).

In addition, AD 94–20–04, Amendment 39–9032 (59 FR 49785, September 30, 1994), requires the following on certain Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B airplanes, as well as the Beech Models 35, A35, B35, and 35R airplanes:

—Checking the ruddervator static balance and rebalancing the ruddervators when the balance is not in accordance with manufacturer's specifications or anytime the ruddervators are repaired or repainted;
—Repetitively inspecting the fuselage bulkheads for damage and replacing any damaged parts;
—Installing stabilizer reinforcements for some airplane models, as applicable;
—Fabricating and installing airspeed limitation placards;
—Incorporating certain airspeed limitations into the POH/AFM;
—Inspecting the empennage, aft fuselage, and ruddervator control system for damage and replacing or repairing any damaged parts; and
—Ensuring the accuracy of the airplane basic weight and balance information and immediately correcting any discrepancies.

Accomplishment of these actions is required in accordance with the instructions to either Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, as applicable and as specified in Beech Service Bulletin No. 2188, dated May, 1987, and the applicable maintenance and shop manuals.

What Has Happened Since AD 94–20–04 and AD 98–13–02 To Initiate This Action?

AD 94–20–04 contains minor errors and FAA receives periodic calls from the public for clarification.

In addition, Raytheon has issued Recommended Service Bulletin No. SB 27–3358, Issued: February, 2000, which includes procedures for inspecting the aft fuselage, ruddervator, and related systems for acceptable condition and rebalancing the ruddervators to new specifications (upper limit reduced from 19.8 to 18 inch-pounds (tail heavy)). Accomplishing these inspections will eliminate the need for the operating limitations of AD 98–13–02. This service bulletin also includes the procedures necessary for continuing the repetitive inspections of the empennage, aft fuselage, and ruddervator control system (the inspections that AD 94–20–04 currently requires).

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Raytheon Beech Models 35, 35R, A35, and B35 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 26, 2001 (66 FR 16418). The NPRM proposed to supersede AD 98–13–02, Amendment 39–10590. The NPRM also proposed to require you to inspect the aft fuselage, ruddervator, and related systems for acceptable condition on Beech Models 35, 35R, A35, and B35 airplanes; adjust ruddervator balance to the new limits; and repair or replace damaged parts, as necessary. This proposed inspection requirement along with the new proposed limits for the ruddervator balance (set forth in Raytheon SB 27–3358, section 3.A) would terminate the need for the operating limitations for those airplanes.

Was the Public Invited to Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Allow Equipment Options for Propeller Balancing and Give Credit if the Equipment Has Been Recently Balanced

What Is the Commenter's Concern?

Several commenters state that requiring the propeller to be balanced in accordance with the service information is too restrictive. Raytheon Service Bulletin SB 27–3358 specifies the propeller balance in accordance with the Chadwick-Helmuth Dynamic Propeller balancer/analyzer procedure. These commenters believe that this is too restrictive because several different manufacturers' equipment is available. They request that FAA include other options. These commenters also request that we give credit to those owners/operators who already recently had the propeller balancing accomplished.

What Is FAA's Response to the Concern?

The proposed AD does not specify balancing of the propellers. This is only specified in paragraph (12) of Raytheon Service Bulletin SB 27–3358, Issued: February, 2000. We do recommend balancing the propellers to 0.02 inch per second (ips) or better using suitable equipment (if you have not already done the balancing within the last 5 years).

We are not changing the final rule based on these comments.

Comment Issue No. 2: Allow Equipment Options for Skin Thickness and Acknowledge Differences in Skin Thickness

What Is the Commenter's Concern?

Several commenters present the same concern with the equipment used to measure skin thickness as that concern with the propeller balancing. That concern is specifying only one piece of equipment. These same commenters also state that there are differences in skin thickness, *e.g.*, 0.016 inch instead of 0.018 inch.

What Is FAA's Response to the Concern?

We concur that specifying only one piece of equipment for the skin thickness measurement is too restrictive.

We are changing the final rule AD action to state that you must accomplish this measurement in accordance with a digital ultrasonic skin tester or equivalent skin tester or by direct methods that utilize calipers and micrometers.

We also concur that there are differences in skin thickness. We are adding to the final rule AD action reference to the different skin thicknesses that are specific to each airplane serial number and the location (fuselage stations) of each affected skin part number.

Comment Issue No. 3: Only Require a Designated Engineer Review (DER) of Modifications When Major Structural Changes Have Been Made

What Is the Commenter's Concern?

Several commenters state that a DER review for major structural modifications can be very expensive. These commenters recommend that an airframe and powerplant (A&P) mechanic be allowed to accomplish this review.

What Is FAA's Response to the Concern?

The proposed AD does not specify a DER review of major structural modifications. This is only specified in Raytheon Service Bulletin SB 27–3358, Issued: February, 2000. If an A&P mechanic suspects that the modifications might extensively affect the structural integrity of the airplane, a DER review is highly recommended.

We will add the following note to the final rule AD:

"Only the inspections, repairs, replacements, and airplane basic weight and balancing requirements are required by paragraphs (d)(5), (d)(6), (d)(7), (d)(7)(i), and (d)(7)(ii) of this AD and the Appendix to this AD. Other actions specified in Raytheon Service Bulletin SB 27–3358 such as a DER review for major structural modifications are not required by this AD. If you have major modifications incorporated in the aft fuselage or empennage, we recommend a Structures DER review to ensure that the structural integrity is maintained after the modifications."

Comment Issue No. 4: This AD Will Not Address the Problem Unless the Counterweight Configuration is Updated

What Is the Commenter's Concern?

One commenter relates an experience of making physical changes to counter weights as part of repainting. These changes used modified Beech parts that resulted in getting good balance and minimum weight. In fact, the commenter states that the balance required the same weight as was used with the airplane's 1949 delivery, even though the ruddervators had new skins with factory epoxy primer. The commenter points out the proposed AD will not address the problem unless the counterweight configuration is updated.

What Is FAA's Response to the Concern?

We do not concur. We do not have any information that indicates a balance specified in the service information cannot be obtained on the affected airplanes. If the balance cannot be obtained, we will consider alternative methods of compliance (AMOCs) to this portion of the AD provided substantiating information is submitted with the request.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 5: The NPRM Is Confusing About When the Speed Restrictions Are Required and When They May Be Removed

What Is The Commenter's Concern?

One commenter states that it is unclear when the speed restrictions must be incorporated and when they may be removed. The commenter requests clarification on this subject.

What Is FAA's Response to the Concern?

The NPRM retains the speed restrictions from AD 98–13–02, which was effective on July 7, 1998. The Compliance column of the chart in paragraph (d)(1) of the AD states this.

In addition, paragraph (d)(7)(iii) states "Discontinue the placard and operating limitations required by paragraphs (d)(1) through (d)(4) of this AD." This is in sequence with the actions required that lead up to this limitations removal.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 6: This AD Does Not Address the Root Cause of the Problem

What Is the Commenter's Concern?

One commenter states that FAA has not found any specific fault with the affected airplanes that could be corrected to prevent the tail vibration.

The proposed AD would only provide actions to detect and correct the damage after it happened and would allow this potential damage to occur. The commenter requests that FAA identify the root cause of the problem and then work to develop a modification that would prevent the problem from reoccurring.

What Is FAA's Response to the Concern?

Raytheon has analyzed and tested for many years to find the root cause for the problem. Raytheon has not been able to identify an obvious single cause for the ruddervator problems on the affected airplanes. However, Raytheon's analyses indicate that the new limits of the ruddervator balance set by this AD will greatly enhance the ruddervator stability.

Therefore, FAA has determined that it is imperative that those operating the affected airplanes follow all operating limitations and restrictions, ensure that all balance limits are correct, and follow all criteria and maintenance manual procedures.

Because of the age of these airplanes (some of which are over 40 years old), we must closely monitor the continued airworthiness safety even if all limits, operations, and maintenance procedures are followed.

Additional maintenance or operating procedures may be necessary to ensure their continued operational safety.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 7: Increase the 2-year Compliance Time to 3 Years

What Is the Commenter's Concern?

One commenter states that there are not enough maintenance facilities to accomplish the inspections in paragraph (d)(7) of the proposed AD on all affected airplanes within 2 years. The commenter recommends that FAA change this compliance time to 3 years.

What Is FAA's Response to the Concern?

We concur and will change the final rule AD action accordingly.

Comment Issue No. 8: This AD Is Being Used for Maintenance

What Is the Commenter's Concern?

One commenter states that FAA is using this AD to enforce the use of correct maintenance procedures and to establish better or improved maintenance procedures on the affected airplanes. The commenter states that this is an incorrect use of an AD and punishes those who have adequately maintained their airplanes. We infer that the commenter either wants the NPRM withdrawn or wants an exemption from the AD.

What Is FAA's Response to the Concern?

Although we concur that part of this action is mandating better or improved maintenance procedures, we do not agree that this is an incorrect use of an AD. We are not issuing this AD to enforce the current procedures in the maintenance manual. An incorrect use of an AD would be to mandate the exact same actions that were part of the operators maintenance program at the time of aircraft delivery.

The actions of this AD are not to be used instead of the current maintenance practices. They are to work concurrently with the current maintenance practices. Based on the service history we have received on this subject over the years and our evaluation of the subject, we have determined that this AD is justified and the proposed actions should be complied with.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 9: Remove the Repetitive Requirement for the Skin Thickness Measurement

What Is the Commenter's Concern?

Several commenters request that FAA remove the repetitive requirement for measuring the skin thickness. The commenters state that the inspection is done to determine whether the thickness is reduced beyond acceptable limits due to corrosion or due to surface polishing or abrasion over time.

What Is FAA's Response to the Concern?

The FAA concurs. The intent was to only require the skin thickness measurement once within the next 100 hours TIS.

We will change the repetitive skin thickness measurement in the final rule AD to a one-time action.

Comment Issue No. 10: Do Not Require the Rebalancing of the Ruddervator if the Logbooks Show it is Already Within the Correct Balance Limits

What Is the Commenter's Concern?

One commenter states that the ruddervator rebalancing limits should not be required if the logbook shows that these limits are currently met. The commenter recommends that we give accomplishment credit for this portion of the AD when the logbook entry shows that the ruddervator limits are met.

What Is FAA's Response to the Concern?

We concur that accomplishment credit should be given if the logbook "positively" shows that the ruddervators meet the limits specified in the service bulletin. To "positively" show this, the entry must indicate that the ruddervator is within the specified limits and list the details of the balancing. This includes balancing methods used and the amount of weights and washers used.

We will change the final rule AD action accordingly.

Comment Issue No. 11: Allow the Option of Accomplishing Either the Inspections, Modifications, and Balancing Requirements or Operating Within the Current Speed Restrictions

What Is the Commenter's Concern?

Several commenters state the actions in the proposed AD should only be required for those airplane operators who choose to exceed the current speed restrictions. The commenters suggest that the AD should provide the choice of accomplishing the proposed inspections, modifications, and balancing requirements or maintaining the speed restrictions currently required by AD 98–13–02.

What Is FAA's Response to the Concern?

We do not concur that the inspections, modifications, and balancing requirements should be optional. Some of the affected airplanes are over 40 years old. A thorough inspection over that provided during annual and 100-hour inspections is necessary to ensure the continued airworthiness of these airplanes. The inspections in the proposed AD provide this type of inspection.

Also, this AD will impose tighter margins on the ruddervator balance and this will improve the dynamic characteristics of the airplane and yield a more stable airplane.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 12: Do Not Require 100–Hour TIS Inspections of the Ruddervator Travel

What Is the Commenter's Concern?

Several commenters state that the ruddervator travel need not be inspected every 100 hours TIS. These commenters state that this is too repetitive. The commenters do not recommend a different compliance time so we infer that the commenters want a one-time inspection of the ruddervator travel.

What Is FAA's Response to the Concern?

We concur that the ruddervator travel should only be a one-time action.

We are changing the AD final rule action accordingly.

Comment Issue No. 13: Make the Repetitive Inspection Intervals Annual Instead of Every 100 Hours TIS

What Is the Commenter's Concern?

One commenter states that the 100-hour TIS interval for the proposed inspection is too frequent. The commenter recommends FAA change these to annually.

What Is FAA's Response to the Concern?

We do not concur. These aging airplanes are prone to fatigue cracking in the frames and skins. Our analysis indicates that this is due to airplane operation and that 100-hour TIS interval inspections are necessary to address the continued operational safety of these airplanes.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 14: Allow Removal and Weighing of the Elevator Assembly Using a Simple Balance Beam Method

What Is the Commenter's Concern?

The commenter states that the method outlined in the service bulletin for balancing the ruddervator is unnecessary and could be accomplished using a simple balance beam method. The commenter recommends FAA change the proposed AD to allow this method.

What Is FAA's Response to the Concern?

We partially concur. We have determined that the AD should require the ruddervator be balanced using procedures in Raytheon Service Bulletin SB 27–3358. We would consider other methods on a case-by-case basis if substantiating information is submitted with a request for an alternative method of compliance.

We are not changing the final rule AD action based on this comment.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the changes and clarifications discussed above and minor editorial corrections. We have determined that these changes, clarifications, and minor corrections:

—Will not change the meaning of the AD; and

—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 2,211 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the initial inspections:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
55 workhours at $60 per hour = $3,300	$500 per airplane	$3,800	$8,401,800

The above figures are based only on the initial inspections and do not take into account the cost of repetitive inspections or adjustments, repairs, or replacements that will be necessary based on the results of the inspections. We have no way of determining the number of repetitive inspections each owner/operator of the affected airplanes will incur or what adjustments, repairs, or replacements will be necessary based on the results of the inspections.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–13–02, Amendment 39–10590 (63 FR 31916, June 11, 1998), and by adding a new AD to read as follows:

2002–21–13 Raytheon Aircraft Company (Beech Aircraft Corporation formerly held Type Certificate (TC) No. A–777): Amendment 39–12920; Docket No. 2000–CE–44–AD; Supersedes AD 98–13–02, Amendment 39–10590.

(a) *What airplanes are affected by this AD?* This AD affects Beech Models 35, 35R, A35, and B35 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes referenced in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

Note 1: Only the inspections, repairs, replacements, and airplane basic weight and balancing requirements as specified in this AD are required by paragraphs (d)(5), (d)(6), (d)(7), (d)(7)(i), (d)(7)(ii) of this AD and the Appendix to this AD. Other actions specified in Raytheon Service Bulletin SB 27–3358 such as a DER review for major structural modifications are not required by this AD. If you have major modifications incorporated

in the aft fuselage or empennage, we recommend a Structures DER review to ensure structural integrity is maintained after the modifications.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Fabricate a placard that restricts the never exceed speed (Vne) to no more than 144 miles per hour (MPH) or 125 knots (KTS) indicated airspeed (IAS), and install this placard on the instrument panel within the pilot's clear view. The placard should utilize letters of at least 0.10-inch in height and contain the following words: "Never exceed speed, Vne, 144 MPH (125 KTS) IAS".	Within the next 10 hours time-in-service (TIS) after July 7, 1998 (the effective date of AD 98–13–02), unless already accomplished.	Not Applicable.
(2) Mark a red line on the airspeed indicator glass at 144 MPH (125 KTS) and mark a white slippage mark on the outside surface of the airspeed indicator between the glass and case.	Within the next 10 hours time-in-service (TIS) after July 7, 1998 (the effective date of AD 98–13–02), unless already accomplished.	Not Applicable.
(3) Insert a copy of this AD into the Limitations Section of the airplane flight manual (AFM).	Within the next 10 hours time-in-service (TIS) after July 7, 1998 (the effective date of AD 98–13–02), unless already accomplished.	Not Applicable.
(4) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may fabricate and install the placard as required by paragraph (d)(1) of this AD and insert this AD into the Limitations Section of the AFM as required by paragraph (d)(3) of this AD.	Within the next 10 hours time-in-service (TIS) after July 7, 1998 (the effective date of AD 98–13–02), unless already accomplished.	Make an entry into the aircraft records showing compliance with this AD in accordance with 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(5) Visually inspect the empennage, aft fuselage, and ruddervator control system for damage: (i) Part of this is an inspection of the aft fuselage skin for wrinkles or cracks. Specific skin thicknesses are presented in Figures 1 and 2 of this AD. The skin thickness measurement is not repetitive. (ii) The inspection and setting of the travels on the elevator and elevator trim tabs are not repetitive. (iii) Repair or replace any damaged parts and set the elevator controls, rudder and tab system controls, cable tensions, and rigging.	Inspect within the next 100 hours TIS after the last inspection required by AD 94–20–04 or within the next 25 hours TIS after December 10, 2002 (the effective date of this AD), whichever occurs later, and thereafter at intervals not to exceed 100 hours TIS, except for the skin thickness measurement and the inspection and setting of the travels on the elevator and elevator trim tabs, which are one-time actions. Accomplish any repairs, replacements, and adjustments prior to further flight after the applicable inspection.	Accomplish the inspection and repairs or replacements in accordance with the procedures in paragraphs (5)(a) through (5)(f) of the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Service Bulletin No. SB 27–3358, Issued: February, 2000, and use a digital ultrasonic skin tester or equivalent skin tester or direct methods that utilize calipers and micrometers. Specific skin thicknesses are contained in Figures 1 and 2 of this AD.
(6) Verify the accuracy of the airplane basic weight and balance information and correct any discrepancies.	Accomplish the airplane basic weight and balance accuracy verification within the next 100 hours TIS after December 10, 2002 (the effective date of this AD), unless already accomplished as previously required by AD 94–20–04. Correct any discrepancies prior to further flight after the verification.	Use the procedures contained in the Appendix to this AD.
(7) Inspect the aft fuselage, ruddervator, and related systems for acceptable condition: (i) Repair or replace any parts found unacceptable as specified in the service bulletin. (ii) Rebalance the ruddervators to the new specifications that reduce the upper limit from 19.8 to 18 inch-pounds (tail heavy). This is not necessary initially if you can positively verify in the logbook that the ruddervators meet the limits specified in the service bulletin: (A) To positively show this, the entry must indicate that the ruddervator is within the specified limits and list the details of the balancing. (B) This must include the balancing methods used and the amount of weights and washers used.	Accomplish the inspections within the next 3 years after December 10, 2002 (the effective date of this AD), unless already accomplished. Accomplish any repair or replacement prior to further flight after the inspection. Accomplish any ruddervator rebalancing prior to further flight after the inspection, unless previously accomplished within the last 100 hours TIS, and thereafter when the ruddervators are repaired or repainted (even if stripes are added or paint is touched up).	Accomplish the inspection and repairs or replacements in accordance with the procedures in the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Service Bulletin No. SB 27–3358, Issued: February, 2000. Accomplish the rebalancing in accordance with Section 3A(8) of the service bulletin and use the procedure in Section 3 of Beech Shop Manual 35–590096B19 (or subsequent revision).

Actions	Compliance	Procedures
(iii) Discontinue the placard and operating limitations required by paragraphs (d)(1) through (d)(4) of this AD.		

(e) *Where can I find Figures 1 and 2 of this AD?* Figures 1 and 2 of this AD, as referenced in paragraph (d)(5)(i) of this AD, follow:

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Skin Thickness – Raytheon Aircraft (Beech) Models 35, 35R, A35, and B35

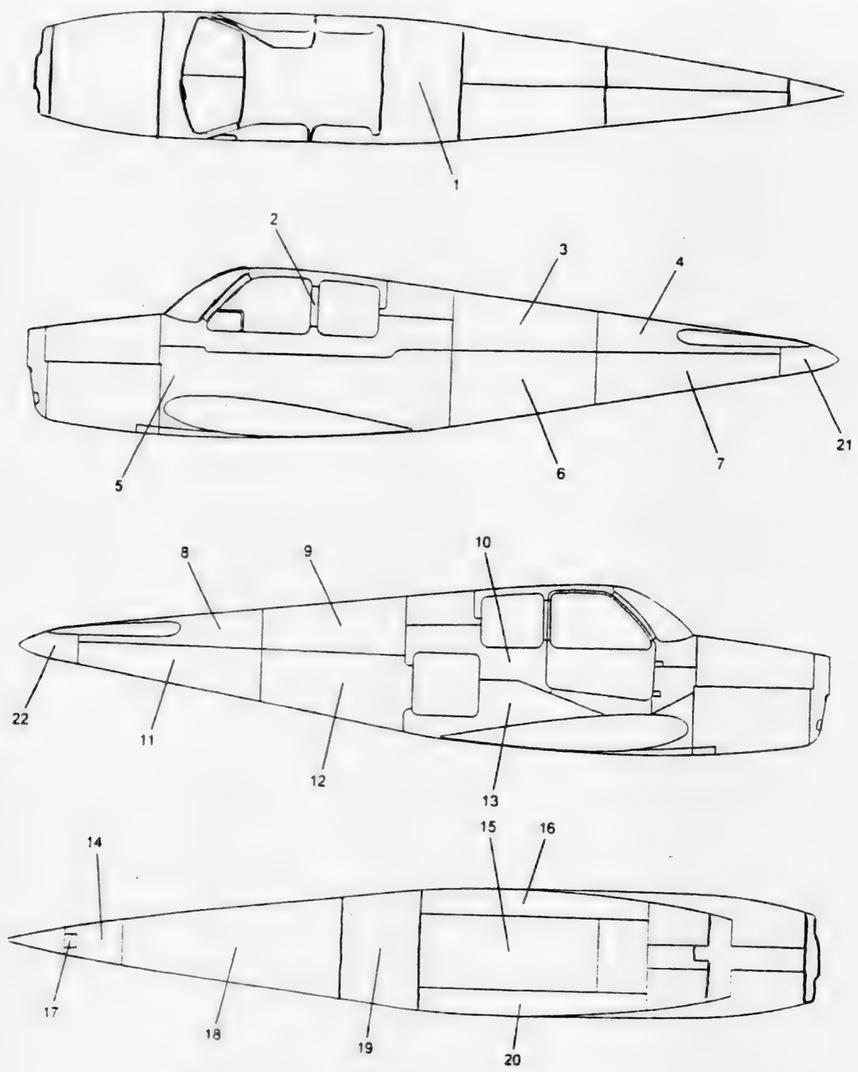

Figure 1

Skin Thickness – Raytheon Aircraft (Beech) Models 35, 35R, A35, and B35

INDEX NUMBER	PART NUMBER	SKIN THICKNESS	SKIN TOLERANCE	LOCATION	EFFECTIVITY
1	35-410006-26	0.016	See ANSI AA H35.2(M)		
2	35-410006-20	0.025	See ANSI AA H35.2(M)		
3	35-410008-2	0.016	See ANSI AA H35.2(M)	FS 151 - FS 272	D-1 through D-15
	35-410008-2	0.016		FS 151 – FS 233.5	D-16 through D-1574
	35-410008-20	0.016		FS 151 – FS 207	D-1575 & After
4	35-410008-18	0.025	See ANSI AA H35.2(M)	FS 233.5 – FS 272	D-16 through D-1574
	35-410008-22	0.025		FS 207 – FS 272	D-1575 & After
5	35-410006-6	0.025	See ANSI AA H35.2(M)		D-1 through D-1500
	35-410359-2	0.025			D-1501 & After
6	35-410007-2	0.016	See ANSI AA H35.2(M)	FS 207 – FS 272	D-1 through D-1574
	35-410007-24	0.016			D-1575 & After
	35-410007-24	0.020			Class III
7	35-410007-26	0.020	See ANSI AA H35.2(M)	FS 207 – FS 272	D-1575 & After
8	35-410009-12	0.025	See ANSI AA H35.2(M)	FS 233.5 – FS 272	D-16 through D-1574
	35-410009-18	0.025		FS 207 – FS 272	D-1575 & After
9	35-410009-2	0.016	See ANSI AA H35.2(M)	FS 151 - FS 272	D-1 through D-15
	35-410009-2	0.016		FS 151 – FS 233.5	D-16 through D-1574
	35-41009-16	0.016		FS 151 – FS 207	D-1575 & After
10	35-410006-22	0.025	See ANSI AA H35.2(M)	FS 207 – FS 272	
11	35-410010-18	0.020	See ANSI AA H35.2(M)		D-1575 & After
12	35-410010-2	0.016	See ANSI AA H35.2(M)	FS 151 - FS 272	D-1 through D-1574
	35-410010-16	0.016		FS 151 – FS 233.5	D-1575 & After
	35-410010-16	0.020		FS 151 – FS 207	Class III
13	35-410006-8	0.025	See ANSI AA H35.2(M)		D-1 through D-1500
	35-410359-4	0.025			D-1501 & After
14	35-410022BSC	0.032	See ANSI AA H35.2(M)		
15	35-410006-42	0.020	See ANSI AA H35.2(M)		D-1 through D-1500
	35-410359-6	0.020			D-1501 & After
16	35-410006-34	0.020	See ANSI AA H35.2(M)		D-1 through D-1500
	35-410359-8	0.020			D-1501 & After
17	35-410012-2	0.016	See ANSI AA H35.2(M)		
18	35-410011-2	0.016	See ANSI AA H35.2(M)		
19	35-410006-40	0.016	See ANSI AA H35.2(M)		
	35-410014BSC	0.016			Record Change
20	35-410006-32	0.020	See ANSI AA H35.2(M)		D-1 through D-1500
	35-410359-10	0.020			D-1501 & After
21	TAILCONE				
22	TAILCONE				

Figure 2

BILLING CODE 4910–13–C

(f) *Can I comply with this AD in any other way?* (1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) Alternative methods of compliance approved in accordance with AD 98–13–02, which is superseded by this AD, are approved as alternative methods of compliance for the corresponding portion of this AD.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Service Bulletin SB 27–3358, Issued: February, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(j) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 98–13–02, Amendment 39–10590.

(k) *When does this amendment become effective?* This amendment becomes effective on December 10, 2002.

Appendix to AD 2002–21–13

Weight and Balance Accuracy Method No. 1

1. Review existing weight and balance documentation to assure completeness and accuracy of the documentation from the most recent FAA-approved weighing or from factory delivery to date of compliance with this AD.

2. Compare the actual configuration of the airplane to the configuration described in the weight and balance documentation.

3. If equipment additions or deletions are not reflected in the documentation or if modifications affecting the location of the center of gravity (*e.g.*, paint or structural repairs) are not documented, determine the accuracy of the airplane weight and balance data in accordance with Method No. 2.

Weight and Balance Information Accuracy Method No. 2

1. Determine the basic empty weight and center of gravity (CG) of the empty airplane using the Weighing Instructions in the Weight and Balance section of the airplane flight manual/pilot's operating handbook (AFM/POH).

2. Record the results in the airplane records, and use these new values as the basis for computing the weight and CG information as specified in the Weight and Balances section of the AFM/POH.

Issued in Kansas City, Missouri, on October 15, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–26661 Filed 10–23–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–216–AD; Amendment 39–12912; AD 2002–21–06]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes, that currently requires revisions to the Airplane Flight Manual; installation of inspection aids on the wing upper surfaces; and, among other actions, installation of an overwing heater blanket system or primary upper wing ice detection system, and installation of a heater protection panel or an equipment protection device on certain overwing heater blanket systems. This amendment retains those requirements and adds a requirement to disable the anti-ice systems for the upper wing surface on certain airplanes. The actions specified in this AD are intended to prevent ingestion of ice into one or both engines and consequent loss of thrust from one or both engines; and damage to the upper wing skin surface and its structure, due to prolonged short-circuit electrical arcing of certain anti-ice systems.

DATES: Effective November 8, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 8, 2002.

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as January 17, 1992 (57 FR 2014, January 17, 1992).

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 7, 2001 (66 FR 17499, April 2, 2001).

Comments for inclusion in the Rules Docket must be received on or before December 23, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–216–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–216–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Daniel Bui, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5339; fax (562) 627–5210.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: On May 30, 2001, the FAA issued AD 2001–06–16 COR, amendment 39–12163 (66 FR 31121, June 11, 2001), applicable to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. That amendment corrected an incorrect paragraph reference in AD 2001–06–16, amendment 39–12163 (66 FR 17499, April 2, 2001). AD 2001–06–16 was prompted by incidents in which ice accumulation on the wing upper surfaces shed into the engines during takeoff. AD 2001–06–16 COR requires revisions to the Airplane Flight Manual (AFM); installation of inspection aids on the wing upper surfaces; and, among other actions, installation of an overwing heater blanket system or primary upper wing ice detection system, and installation of a heater protection panel or an equipment protection device on certain overwing heater blanket systems. The actions required by AD 2002–06–16 COR are intended to prevent ice accumulation on the wing upper surfaces, which could result in ingestion of ice into one or both engines and consequent loss of thrust from one or both engines.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2001–06–16 COR, the FAA has received reports of short-circuit electrical arcing at the upper wing interface unit and on the wing upper surface of the Honeywell Anti-Ice System, which was installed per Supplemental Type Certificate (STC) SA6061NM. During the investigation of one incident, a burn-through hole resulting from a high energy electrical short was observed on the cover plate of the interface unit. Investigation of another incident revealed a small pitting hole on the upper wing surface near the heater. Wire chafing appears to have caused the over-wing heater blanket system to short circuit. This condition, if not corrected, could cause prolonged short-circuit electrical arcing of the anti-ice system, which could result in damage to the upper wing skin surface and its structure.

Issuance of New Service Information

Honeywell has issued Alert Service Bulletin, 109XXXX–30–38, dated August 8, 2002, which describes procedures to disable the upper wing surface anti-ice system for those airplanes on which STC SA6061NM has been installed. The Honeywell anti-ice system specified in that service bulletin is identical to the Allied Signal overwing heater blanket system referred to in AD 2001–06–16 COR.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 2001–06–16 COR. This AD continues to require revisions to the Airplane Flight Manual (AFM); installation of inspection aids on the wing upper surfaces; and, among other actions, installation of an overwing heater blanket system or primary upper wing ice detection system, and installation of a heater protection panel or an equipment protection device on certain overwing heater blanket systems. This AD also requires disabling the anti-ice systems for the upper wing surface of airplanes equipped with Honeywell Anti-Ice Systems installed per STC SA6061NM, per the service bulletin described previously.

Explanation of Change to Applicability

The FAA has revised the applicability of the AD 2002–06–16 COR to identify model designations as published in the most recent type certificate date sheet for the affected models.

Removal of Note 6 From AD 2001–06–16 COR

Note 6 of AD 2001–06–16 COR states that installation of an overwing heater blanket system per Allied Signal STC SA6061NM (also known and specified in this AD as a Honeywell anti-ice system installed per STC SA6061NM) is an approved means of compliance with the requirements of paragraph (f)(2)(ii) of that AD. Since this AD requires disabling the system installed per STC SA6061NM, the FAA has removed the wording of the previous Note 6 from this AD, and renumbered the notes accordingly.

Interim Action

This is considered to be interim action. Honeywell has advised that it currently is developing a modification that will address reactivating the anti-ice system that will be disabled per the requirements of this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–216–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment AD 2001–06–16 COR, 39–12163 (66 FR 31121, June 11, 2001), and by adding a new airworthiness directive (AD), amendment 39–12912, to read as follows:

2002–21–06 **McDonnell Douglas:** Amendment 39–12912. Docket 2002–NM–216–AD. Supersedes AD 2001–06–16 COR, Amendment 39–12163.

Applicability: All Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (l)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the upper wing skin surface and its structure, due to prolonged short-circuit electrical arcing of the anti-ice system; accomplish the following:

Restatement of AD 2001–06–16 COR

Airplane Flight Manual Revision

(a) Within 10 days after January 17, 1992 (the effective date of AD 92–03–02, amendment 39–8156), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"Ice on Wing Upper Surfaces

CAUTION

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and difficult to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [END OF CAUTIONARY NOTE]

The wing upper surfaces must be physically checked for ice when the airplane has been exposed to conditions conducive to ice formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation when any of the following conditions occur:

(1) When the ambient temperature is less than 50 degrees F and high humidity or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present;

(2) When frost or ice is present on the lower surface of either wing;

(3) After completion of de-icing.

When inspection aids (*i.e.* tufts, decals, mount pads, painted symbols, and paint stripes) are installed in accordance with McDonnell Douglas MD–80 Service Bulletin 30–59, the physical check may be made by assuring that all installed tufts move freely.

NOTE

This limitation does not relieve the requirement that aircraft surfaces are free of frost, snow, and ice accumulation, as required by Federal Aviation Regulations Sections 91.527 and 121.629. [END OF NOTE]"

AFM Configuration Deviation List Revision

(b) Within 10 days after January 17, 1992, revise the Configuration Deviation List (CDL) Appendix of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"30–80–01 Triangular Decal and Tuft Assemblies

Up to two (2) decals or tufts per side may be missing, provided:

(a) At least one decal and tuft on each side is located along the aft spar line; and

(b) The tufts are used for performing the physical check to determine that the upper wing is free of ice by observing that the tufts move freely.

Up to eight (8) decals and/or tufts may be missing, provided:

(a) Takeoff may not be initiated unless the flight crew verifies that a physical (hands-on) check is made of the upper wing in the location of the missing decals and/or tufts to assure that there is no ice on the wing when icing conditions exist;

OR

(b) When the ambient temperature is more than 50 degrees F."

Installation of Inspection Aids

(c) Within 30 days after January 17, 1992, install inspection aids (*i.e.*, tufts, decals, mount pads, painted symbols, and paint stripes) on the inboard side of the wings' upper surfaces, in accordance with McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; Revision 1, dated January 5, 1990; or Revision 2, dated August 15, 1990.

Repetitive Tests and One-Time Inspection

(d) For airplanes on which an overwing heater blanket system was installed without installation of a heater protection panel (HPP) or an equipment protection device (EPD) prior to May 7, 2001 (the effective date of 2001–06–16 COR, amendment 39–12163): Within 60 days days after May 7, 2001, accomplish the actions specified in paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) For airplanes on which the overwing heater blanket system was installed in accordance with McDonnell Douglas Service Bulletin MD80–30–071, Revision 02, dated February 6, 1996; or McDonnell Douglas Service Bulletin MD80–30–078, Revision 01, dated April 8, 1997: Accomplish paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(i) Remove secondary access covers, and perform a one-time detailed visual inspection to detect discrepancies (mechanical damage or punctures in the upper skin of the blanket, prying damage on the panel, and fuel leakage) of the overwing heater blanket, in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997. And,

(ii) Accomplish paragraph (d)(1)(ii)(A) or (d)(1)(ii)(B) of this AD.

(A) Perform dielectric withstanding voltage and resistance tests in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997. Repeat the tests thereafter at intervals not to exceed 150 days, until installation of an HPP in accordance with paragraph (f)(1)(i) or (f)(1)(ii) of this AD, as applicable.

(B) Deactivate the overwing heater blanket system until accomplishment of dielectric withstanding voltage and resistance tests specified in paragraph (d)(1)(ii)(A). If the overwing heater blanket system is deactivated as provided by this paragraph, continue to accomplish the requirements of paragraphs (a), (b), and (c) of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) For airplanes on which the overwing heater blanket system was installed in accordance with TDG Aerospace, Inc., STC SA6042NM: Accomplish paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.

(i) Remove secondary access covers, and perform a one-time detailed visual inspection to detect discrepancies (mechanical damage or punctures in the upper skin of the blanket, prying damage on the panel, and fuel leakage) of the overwing heater blanket, in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997. And,

(ii) Accomplish paragraph (d)(2)(ii)(A) or (d)(2)(ii)(B) of this AD.

(A) Perform dielectric withstanding voltage and resistance tests in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997. Repeat the tests thereafter at intervals not to exceed 150 days, until installation of an EPD in accordance with paragraph (f)(2)(i) of this AD.

(B) Deactivate overwing heater blanket system until accomplishment of dielectric withstanding voltage and resistance tests specified in paragraph (d)(2)(ii)(A). If the overwing heater blanket system is deactivated as provided by this paragraph, continue to accomplish the requirements of paragraphs (a), (b), and (c) of this AD.

Corrective Action

(e) If any discrepancy is detected during any inspection or test performed in accordance with paragraph (d) of this AD, prior to further flight, repair or replace the affected heater blanket, in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997; except as provided in paragraph (h) of this AD.

Note 3: McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997, references TDG Aerospace Document E95–451, Revision B, dated January 31, 1996, as an additional source of service information for accomplishment of repair or replacement of the overwing heater blanket.

Installation of Overwing Heater Blanket or Primary Upper Wing Ice Detection System

(f) Within 3 years after May 7, 2001, do the requirements of either paragraph (f)(1) or (f)(2) of this AD.

(1) Do the actions specified in paragraph (f)(1)(i) or (f)(1)(ii) of this AD, as applicable.

(i) For airplanes listed in Group 1 in McDonnell Douglas Service Bulletin MD80–30–090, dated October 19, 1999: Install an overwing heater blanket system in accordance with McDonnell Douglas Service Bulletin MD80–30–071, Revision 02, dated February 6, 1996; and modify and reidentify the existing HPP in accordance with McDonnell Douglas Service Bulletin MD80–30–090. Modification of the existing HPP in accordance with this paragraph constitutes terminating action for the repetitive inspections required by (d)(1)(ii)(A) of this AD.

(ii) For airplanes listed in Group 2 in McDonnell Douglas Service Bulletin MD80–30–090, dated October 19, 1999: Install an overwing heater blanket system in accordance with McDonnell Douglas Service Bulletin MD80–30–078, Revision 01, dated April 8, 1997; and install an HPP and associated wiring in accordance with McDonnell Douglas Service Bulletin MD80–30–090. Installation of an HPP and associated wiring in accordance with this paragraph constitutes terminating action for the repetitive inspections required by (d)(1)(ii)(A) of this AD.

Note 4: For other airplanes, accomplishment of the requirements of paragraph (f)(1)(i) or (f)(1)(ii) of this AD may be acceptable per paragraph (i)(1) of this AD.

(2) Accomplish the actions specified in either paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this AD.

(i) Install an overwing heater blanket system, and install an EPD that provides a circuit protection function to the overwing heater blanket, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Installation of an EPD in accordance with this paragraph constitutes terminating action for the repetitive inspections required by (d)(2)(ii)(A) of this AD.

Note 5: Installation of an overwing heater blanket system and installation of an EPD that provides a circuit protection function to the overwing heater blanket, in accordance with TDG Aerospace, Inc., SA6042NM, or TDG Master Drawing List (MDL) E93–104, Revision R, dated October 25, 2000; is an approved means of compliance with the requirements of paragraph (f)(2)(i) of this AD.

(ii) Install an overwing heater blanket system in accordance with a method approved by the Manager, Los Angeles ACO.

(iii) Install an FAA-approved primary upper wing ice detection system in accordance with a method approved by the Manager, Los Angeles ACO.

Note 6: Boeing (McDonnell Douglas) has received FAA approval of a primary upper wing ice detection system that is considered to be an alternative method of compliance (AMOC) with the requirements of paragraph (f)(2)(iii) of this AD. Information concerning such AMOCs may be obtained from the Los Angeles ACO.

AFM Revision

(g) Except as provided by paragraph (h) of this AD, prior to further flight after accomplishment of the installation required by paragraph (f)(1) or (f)(2) of this AD, revise the Limitations Section of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM. After accomplishment of the installation required by paragraph (f)(1) or (f)(2) of this AD and this AFM revision, the AFM revisions required by paragraphs (a) and (b) of this AD may be removed from the AFM, and the inspection aids required by paragraph (c) of this AD may be removed from the airplane.

"Ice on Wing Upper Surfaces

CAUTION

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and difficult to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [END OF CAUTIONARY NOTE]"

MMEL Provision

(h) An airplane may be operated with an inoperative overwing heater blanket or primary upper wing ice detection system for 10 days per the Master Minimum Equipment List (MMEL), provided that the actions specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD are done before further flight.

(1) Revise the Limitations Section of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"Ice on Wing Upper Surfaces

CAUTION

The wing upper surfaces must be physically checked for ice when the airplane has been exposed to conditions conducive to ice formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation when any of the following conditions occur:

(1) When the ambient temperature is less than 50 degrees F and high humidity or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present;

(2) When frost or ice is present on the lower surface of either wing;

(3) After completion of de-icing.

When inspection aids (*i.e.* tufts, decals, mount pads, painted symbols, and paint stripes) are installed in accordance with McDonnell Douglas MD–80 Service Bulletin 30–59, the physical check may be made by assuring that all installed tufts move freely.

NOTE

This limitation does not relieve the requirement that aircraft surfaces are free of frost, snow, and ice accumulation, as required by Federal Aviation Regulations Sections 91.527 and 121.629. [END OF NOTE]"

(2) Revise the CDL Appendix of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"30–80–01 Triangular Decal and Tuft Assemblies

Up to two (2) decals or tufts per side may be missing, provided:

(a) At least one decal and tuft on each side is located along the aft spar line; and

(b) The tufts are used for performing the physical check to determine that the upper wing is free of ice by observing that the tufts move freely.

Up to eight (8) decals and/or tufts may be missing, provided:

(a) Takeoff may not be initiated unless the flight crew verifies that a physical (hands-on) check is made of the upper wing in the location of the missing decals and/or tufts to assure that there is no ice on the wing when icing conditions exist;

OR

(b) When the ambient temperature is more than 50 degrees F."

(3) Install inspection aids (*i.e.*, tufts, decals, mount pads, painted symbols, and paint stripes) on the inboard side of the wings' upper surfaces, in accordance with McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; Revision 1, dated January 5, 1990; or Revision 2, dated August 15, 1990.

New Requirements of This AD

Note 7: The Honeywell Anti-Ice System specified in paragraphs (i), (j), and (k) of this AD, is also known and specified as an overwing heater blanket system installed in accordance with AlliedSignal Supplemental Type Certificate (STC) STC SA6061NM.

For Airplanes Equipped With a Honeywell Anti-Ice System Installed per STC SA6061NM

(i) For airplanes equipped with a Honeywell Anti-Ice System installed per STC SA6061NM: Accomplish the actions specified in paragraphs (i)(1), (i)(2), (i)(3), and (i)(4) of this AD, at the times specified in those paragraphs.

(1) Within 72 hours after the effective date of this AD, disable the Honeywell Anti-Ice System installed per STC SA6061NM, per Honeywell Alert Service Bulletin 109XXXX–30–38, dated August 8, 2002.

(2) Within 72 hours after the effective date of this AD, revise the Limitations Section of the FAA-approved AFM to include the following (this may be accomplished by inserting a copy of this AD in the AFM):

"Ice on Wing Upper Surfaces

CAUTION

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and difficult to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [END OF CAUTIONARY NOTE]

The wing upper surfaces must be physically checked for ice when the airplane has been exposed to conditions conducive to ice formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation when any of the following conditions occur:

(1) When the ambient temperature is less than 50 degrees F and high humidity or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present;

(2) When frost or ice is present on the lower surface of either wing;

(3) After completion of de-icing.

When inspection aids (*i.e.* tufts, decals, mount pads, painted symbols, and paint stripes) are installed in accordance with McDonnell Douglas MD–80 Service Bulletin 30–59, the physical check may be made by assuring that all installed tufts move freely.

NOTE

This limitation does not relieve the requirement that aircraft surfaces are free of frost, snow, and ice accumulation, as required by Federal Aviation Regulations Sections 91.527 and 121.629. [END OF NOTE]"

AFM Configuration Deviation List Revision

(3) Within 72 hours after the effective date of this AD, revise the CDL Appendix of the FAA-approved AFM to include the following (this may be accomplished by inserting a copy of this AD in the AFM):

"30–80–01 Triangular Decal and Tuft Assemblies

Up to two (2) decals or tufts per side may be missing, provided:

(a) At least one decal and tuft on each side is located along the aft spar line; and

(b) The tufts are used for performing the physical check to determine that the upper wing is free of ice by observing that the tufts move freely.

Up to eight (8) decals and/or tufts may be missing, provided:

(a) Takeoff may not be initiated unless the flight crew verifies that a physical (hands-on) check is made of the upper wing in the location of the missing decals and/or tufts to assure that there is no ice on the wing when icing conditions exist;

OR

(b) When the ambient temperature is more than 50 degrees F."

Installation of Inspection Aids

(4) Within 30 days after the effective date of this AD, install inspection aids (*i.e.*, tufts, decals, mount pads, painted symbols, and paint stripes) on the inboard side of the wings' upper surfaces, in accordance with McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; Revision 1, dated January 5, 1990; or Revision 2, dated August 15, 1990.

Note 8: Operators should note that certain AMOCs have been approved as acceptable methods of compliance with paragraph (i)(4) of this AD. Information concerning such AMOCs may be obtained from the Manager, Los Angeles ACO.

Installation of Overwing Heater Blanket or Primary Upper Wing Ice Detection System

(j) For airplanes equipped with disabled Honeywell Anti-Ice Systems installed per STC SA6061NM: Within 3 years after May 7, 2001, accomplish the requirements of paragraph (j)(1), (j)(2), or (j)(3) of this AD.

(1) Install an overwing heater blanket system, and install an EPD that provides a circuit-protection function to the overwing heater blanket, in accordance with a method approved by the Manager, Los Angeles ACO, FAA.

Note 9: Installation of an overwing heater blanket system and installation of an EPD that provides a circuit-protection function to the overwing heater blanket, in accordance with TDG Aerospace, Inc., SA6042NM, or TDG Master Drawing List (MDL) E93–104, Revision R, dated October 25, 2000; is an approved means of compliance with the requirements of paragraph (j)(1) of this AD.

(2) Install an overwing heater blanket system in accordance with a method approved by the Manager, Los Angeles ACO.

(3) Install an FAA-approved primary upper wing ice detection system in accordance with a method approved by the Manager, Los Angeles ACO.

Note 10: Boeing (McDonnell Douglas) has received FAA approval of an acceptable primary upper wing ice detection system, which is considered to be an acceptable method of compliance with the requirements of paragraph (j)(3) of this AD when accomplished in accordance with a method approved by the Manager, Los Angeles ACO.

AFM Revision

(k)(1) For airplanes equipped with a disabled Honeywell Anti-Ice Systems installed per STC SA6061NM: Prior to further flight after accomplishment of the installation required by paragraph (j)(1), (j)(2), or (j)(3) of this AD, revise the Limitations Section of the FAA-approved AFM to include the following (this may be accomplished by inserting a copy of this AD in the AFM):

"Ice on Wing Upper Surfaces

CAUTION

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and difficult to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [END OF CAUTIONARY NOTE]"

(2) After accomplishment of the installation required by paragraph (j)(1) of this AD and this AFM revision, the AFM revisions and CDLs required by paragraphs (i)(2) and (i)(3) of this AD may be removed from the AFM, and the inspection aids required by paragraph (i)(4) of this AD may be removed from the airplane.

Alternative Methods of Compliance (AMOCs)

(l)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) The following AMOCs were approved previously per AD 92–03–02, amendment 39–8156, and are approved as AMOCs with the indicated paragraphs of this AD:

(i) Installation of a non-skid, striped triangular symbol per Option 5 of McDonnell Douglas Service Bulletin MD80–30–059, Revision 4 through Revision 7, is approved as an AMOC with paragraphs (b) and (i)(2) of this AD; and

(ii) Revision of the Configuration Deviation List (CDL) Appendix of the AFM by inserting a copy of CDL Appendix, Section I, Page 2A, dated March 10, 1993, into the AFM, is approved as an AMOC with paragraphs (c) and (i)(3) of this AD.

Note 11: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(m) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(n) Unless otherwise specified in this AD, the actions shall be done in accordance with the applicable service document identified in the following table:

Service Document	Revision Level	Date
Honeywell Alert Service Bulletin 109XXXX–30–38	Original	August 8, 2002
McDonnell Douglas Alert Service Bulletin MD80–30A087	Original	September 22, 1997
McDonnell Douglas Service Bulletin 30–59	Original	September 18, 1989
McDonnell Douglas Service Bulletin 30–59	1	January 5, 1990
McDonnell Douglas Service Bulletin 30–59	2	August 15, 1990
McDonnell Douglas Service Bulletin MD80–30–071	02	February 6, 1996
McDonnell Douglas Service Bulletin MD80–30–078	01	April 8, 1997
McDonnell Douglas Service Bulletin MD80–30–090	Original	October 19, 1999

(1) The incorporation by reference of Honeywell Alert Service Bulletin 109XXXX–30–38, dated August 8, 2002, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; McDonnell Douglas Service Bulletin 30–59, Revision 1, dated January 5, 1990; and McDonnell Douglas Service Bulletin 30–59, Revision 2, dated August 15, 1990; was approved previously by the Director of the Federal Register as of January 17, 1992 (57 FR 2014, January 17, 1992).

(3) The incorporation by reference of the remaining service bulletins listed in Table 1 of this AD, was approved previously by the Director of the Federal Register as of May 7, 2001 (66 FR 17499, April 2, 2001).

(4) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(o) This amendment becomes effective on November 8, 2002.

Issued in Renton, Washington, on October 9, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–26480 Filed 10–23–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–57–AD; Amendment 39–12915; AD 2002–21–09]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes. This AD requires, among other actions, various

inspections to detect cracks of the cockpit enclosure window sill, and follow-on and corrective actions, as applicable. The actions specified by this AD are intended to prevent fatigue cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective November 29, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 29, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5324; fax (562) 627–5210.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on July 17, 2002 (67 FR 46932). That action proposed to require, among other actions, various inspections to detect cracks of the cockpit enclosure window sill, and follow-on and corrective actions, as applicable.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the supplemental NPRM or the FAA's determination of the cost to the public.

Explanation of Change to Proposed Rule

The FAA has corrected paragraph (j)(2) of this final rule to state that an alternative method of compliance (AMOC) that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Designated Engineering Representative (DER) authorized by the FAA to make such findings, and to clarify that a DER is not permitted to approve an inspection method.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 809 Model DC–9–10, –20, –30, –40, and –50 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 572 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the initial inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $137,280, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–21–09 McDonnell Douglas: Amendment 39–12915. Docket 2000–NM–57–AD.

Applicability: Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, and DC–9–51 airplanes; listed in Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 2: Where there are differences between the AD and the referenced service bulletin, the AD prevails.

Initial Inspections

(a) Before the accumulation of 40,000 total landings, or within 5,000 landings after the effective date of this AD, whichever occurs later, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002.

(1) Do a general visual inspection to determine if any existing repair of the internal doublers and frame structure of the fuselage skin of the cockpit enclosure window sill has been accomplished before the effective date of this AD.

Note 3: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(2) Do inspections to detect cracks or loose or missing fasteners of the cockpit enclosure window sill per paragraphs 3.B.1. through 3.B.6. of the Accomplishment Instructions of the service bulletin. The inspections include a general visual inspection to detect loose or missing fasteners or cracks of the upper nose skins of the cockpit; a high frequency eddy current (HFEC) inspection for cracking of Zees; and detailed, borescope, and HFEC inspections for cracking of the skins and frames.

Note 4: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Note 5: If any cracked Zee is found during any inspection per paragraph (a)(2) of this AD, refer to paragraph (h) of this AD.

Condition 1 (No Previous Repair and No Crack)

(b) If no previous repair and no crack is found during the inspections required by paragraphs (a)(1) and (a)(2) of this AD: Do the actions specified in paragraph (b)(1) or (b)(2) of this AD, at the times specified in those paragraphs.

Condition 1, Option 1: Repetitive Inspections

(1) Condition 1, Option 1: Repeat the inspections required by paragraph (a)(2) of this AD every 5,000 landings, until paragraph (b)(2) of this AD is done. If any crack is found, before further flight, determine the applicable Condition as specified in the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002, and do the applicable actions required by this AD.

Condition 1, Option 2: Permanent Repair

(2) Condition 1, Option 2: Do paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 1, Option 2 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002. This terminates the repetitive inspections per paragraph (b)(1) of this AD.

Note 6: Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002, refers to Boeing Service Rework Drawing SR09530268, Revision D, dated November 29, 2001, as an additional source of service information for identifying parts to be inspected, and repairing, replacing, or reworking those parts.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (b)(2)(i) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack is found, do paragraph (g) of this AD.

Condition 2 (Any Crack Within Flyable Limits for Temporary Repair)

(c) If any crack is found during the initial inspection required by paragraph (a)(2) of this AD or during any repetitive inspection required by paragraph (b)(1) of this AD, and that crack is WITHIN the flyable limits specified in Condition 2 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002: Do the actions specified in paragraph (c)(1) OR (c)(2) of this AD.

Note 7: Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002, refers to Boeing Service Rework Drawing SR09530268, Revision D, dated November 29, 2001, as the source for determining flyable limits.

Condition 2, Option 1: Temporary Repair and Repetitive Inspections

(1) Condition 2, Option 1: Do paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), and (c)(1)(iv) of this AD, at the times specified in those paragraphs.

(i) Before further flight, do the temporary repair (including installation of doublers) per Condition 2, Option 1, of the Accomplishment Instructions of the service bulletin.

(ii) Within 2,000 landings after doing the temporary repair, do a general visual inspection to detect cracks of the skins and external doublers. If NO crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 2,000 landings until paragraph (c)(2)(i) of this AD is done.

(iii) Within 3,500 landings after doing the temporary repair, do borescope and HFEC inspections to detect cracks of the internal structure. If NO crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 3,500 landings until paragraph (c)(2)(i) of this AD is done.

Note 8: If any crack is found during any inspection per paragraph (c)(1)(ii) or (c)(1)(iii) of this AD, refer to paragraph (f) of this AD.

(iv) Except as provided by paragraph (f) of this AD, within 8,000 landings after doing the temporary repair, do the permanent repair specified in paragraph (c)(2) of this AD.

Condition 2, Option 2: Permanent Repair

(2) Condition 2, Option 2: Do paragraphs (c)(2)(i) and (c)(2)(ii) of this AD at the times specified in those paragraphs.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 2, Option 2, of the Accomplishment Instructions of the service bulletin. This terminates the repetitive inspections required by paragraphs (c)(1)(ii) and (c)(1)(iii) of this AD.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (c)(2)(i) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack and no crack progression is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack or crack progression is found, do paragraph (g) of this AD.

Condition 3 (Existing Temporary Repairs Per Certain Service Information)

(d) If any temporary repair is found during any inspection required by paragraph (a)(1) of this AD and that repair WAS accomplished per the service information identified in Condition 3 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002: Do the actions specified in paragraph (d)(1) or (d)(2) of this AD. Also, if the Station Y=83.550 frames have been repaired before the effective date of this AD per DC–9/MD–80 Structural Repair Manual, Section 53–03, Figure 34, or Boeing Service Rework Drawing S509530127, do a one-time inspection of the frames for crack growth emanating beyond the repair angles. If any crack progression is found, before further flight, replace the frames with new frames per the Accomplishment Instructions of the service bulletin.

Condition 3, Option 1: Repetitive Inspections

(1) Condition 3, Option 1: Do paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii) of this AD at the times specified in those paragraphs.

(i) Within 2,000 landings after doing the temporary repair, or before further flight after accomplishment of the initial inspections in paragraph (a) of this AD, whichever is later, do a general visual inspection to detect cracks of the skins and external doublers. If NO crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 2,000 landings until paragraph (d)(2)(i) of this AD is done.

Note 9: If any crack outside the flyable limits is found during any inspection per paragraph (d)(1)(i) or (d)(1)(ii) of this AD, refer to paragraph (f) of this AD.

(ii) Within 3,500 landings after doing the temporary repair, or before further flight after accomplishment of the initial inspections in paragraph (a) of this AD, whichever is later, do borescope and HFEC inspections to detect cracks of the internal structure. If NO crack is found that is outside the flyable limits specified in Condition 2 of the Accomplishment Instructions of the service bulletin, repeat the inspection every 3,500 landings until paragraph (d)(2)(i) of this AD is done.

(iii) Except as provided by paragraph (f) of this AD, within 8,000 landings after doing the temporary repair, or before further flight if more than 8,000 landings have been accumulated since the temporary repair, do the permanent repair specified in paragraph (d)(2)(i) of this AD.

Condition 3, Option 2: Permanent Repair

(2) Condition 3, Option 2: Do paragraphs (d)(2)(i) and (d)(2)(ii) of this AD at the times specified in those paragraphs.

(i) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 3, Option 2 of the Accomplishment Instructions of the service bulletin. This terminates the repetitive inspections required by paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(ii) Within 40,000 landings after doing the permanent repair required by paragraph (d)(2)(i) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack and no crack progression is found: Repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack or crack progression is found, do paragraph (g) of this AD.

Condition 4 (Existing Repairs Per Other Service Information)

(e) If any repair is found during any inspection required by paragraph (a)(1) of this AD, and the repair was not accomplished per the service information identified in Condition 4 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002: Before further flight, repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

Condition 5 (Crack Outside Flyable Limits for Temporary Repair)

(f) If any crack is found during any inspection required by paragraph (a)(2), (b)(1), (c)(1)(ii), (c)(1)(iii), (d)(1)(i), or (d)(1)(ii) of this AD; AND that crack is OUTSIDE the limits specified in Condition 2 of the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002; AND a permanent repair was NOT previously accomplished per this AD: Do paragraphs (f)(1) and (f)(2) of this AD at the times specified in those paragraphs.

(1) Before further flight, do all actions associated with the permanent repair (including detailed and eddy current inspections of various parts; and repair, replacement, or rework of those parts, as applicable) per Condition 5 of the Accomplishment Instructions of the service bulletin.

(2) Within 40,000 landings after doing the permanent repair required by paragraph (f)(1) of this AD, repeat the inspections specified in paragraph (a)(2) of this AD to detect any crack of the completed repair, per the Accomplishment Instructions of the service bulletin. If no crack and no crack progression is found, repeat the inspections specified in paragraph (a)(2) of this AD every 5,000 landings. If any crack or crack progression is found, do paragraph (g) of this AD.

Corrective Actions: Cracking Following Permanent Repair

(g) If any crack or crack progression is found during any inspection required by paragraph (b)(2)(ii), (c)(2)(ii), (d)(2)(ii), or (f)(2) of this AD: Before further flight, repair per a method approved by the Manager, Los Angeles ACO.

Corrective Action for Cracked Zee

(h) If any cracked Zee is found during any inspection performed per paragraph (a)(2) of this AD: Before further flight, replace the cracked Zee with a new part per the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002.

Previously Accomplished Inspections and Repairs

(i) Inspections and repairs accomplished before the effective date of this AD per the Accomplishment Instructions of Boeing Service Bulletin DC9–53–290, dated December 14, 1999, are acceptable for compliance with the corresponding actions in this AD.

Alternative Methods of Compliance

(j)(1) An alternative method of compliance (AMOC) or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Los Angeles ACO, to make such findings.

Note 10: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(k) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(l) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin DC9–53–290, Revision 01, dated March 15, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(m) This amendment becomes effective on November 29, 2002.

Issued in Renton, Washington, on October 11, 2002.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–26664 Filed 10–23–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30334; Amdt. No. 3027]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 24, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 24, 2002.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independent Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on October 11, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective November 28, 2002*

Savannah, GA, Savannah Intl, RADAR-1, Amdt 9, CANCELLED
Lee's Summit, MO, Lee's Summit Muni, RNAVA (GPS) RWY 18, Orig
Lee's Summit, MO, Lee's Summit Muni, RNAVA (GPS) RWY 29, Orig
Lee's Summit, MO, Lee's Summit Muni, RNAVA (GPS) RWY 36, Orig
Lee's Summit, MO, Lee's Summit Muni, VOR/DME–A, Orig
Lee's Summit, MO, Lee's Summit Muni, NDB RWY 18, Amdt 1
Lee's Summit, MO, Lee's Summit Muni, GPS RWY 29, Orig, CANCELLED
Lee's Summit, MO, Lee's Summit Muni, VOR–A, Orig–A, CANCELLED
Cleveland, OH, Cleveland-Hopkins Intl, ILS RWY 6L, Orig
Cleveland, OH, Cleveland-Hopkins Intl, ILS RWY 6R, Amdt 18
Cleveland, OH, Cleveland-Hopkins Intl, ILS RWY 24R, Orig
Cleveland, OH, Cleveland-Hopkins Intl, RNAV (GPS) Y RWY 6L, Orig
Cleveland, OH, Cleveland-Hopkins Intl, RNAV (GPS) Z RWY 6L, Orig
Cleveland, OH, Cleveland-Hopkins Intl, RNAV (GPS) Y RWY 24R, Orig
Cleveland, OH, Cleveland-Hopkins Intl, RNAV (GPS) Z RWY 24R, Orig
Alva, OK, Alva Regional, RNAV (GPS) RWY 35, Orig
Alva, OK, Alva Regional, GPS RWY 35, Orig, CANCELLED
Hinton, OK, Hinton Muni, RNAV (GPS) RWY 17, Orig
Hinton, OK, Hinton Muni, RNAV (GPS) RWY 35, Orig
El Paso, TX, El Pas Intl, GPS RWY 22, Orig

* * * *Effective January 23, 2003*

Alexandria, LA, Esler Regional, ILS RWY 26, Amdt 14
Alexandria, LA, Esler Regional, NDB OR GPS RWY 26, Amdt 8
Alexandria, LA, Esler Regional, LOC BC RWY 8, Amdt 10C, CANCELLED

Note: The FAA published the following procedure in Docket No. 30332, Amdt No. 3025 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 195, Page 62638–62640; dated October 8, 2002) under section 97.27 effective November 28, 2002, which is hereby amended rescinded:

Dallas-Fort Worth, TX, Dallas-Fort Worth International, ILS RWY 35C, Amdt 7
Dallas-Fort Worth, TX, Dallas-Fort Worth International, Converging ILS RWY 35C, Amdt 5
Dallas-Fort Worth, TX, Dallas-Fort Worth International, RNAV (GPS) RWY 35C, Orig
Dallas-Fort Worth, TX, Dallas-Fort Worth International, GPS RWY 35C, Orig–A, CANCELLED
Gordonsville, VA, Gordonsville Muni, NDB OR GPS RWY 23, Amdt 1, CANCELLED

Note: The FAA published the following procedure in Docket No. 30332, Amdt No. 3025 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 195, Page 62638–62640; dated October 8, 2002) under section 97.27 effective November 28, 2002, which is hereby amended to read as follows:

Durhamville, NY, Kamp, VOR OR GPS RWY 28, Amdt 1B, CANCELLED

[FR Doc. 02–27098 Filed 10–23–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30335; Amdt. No. 3028]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 24, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of October 24, 2002.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC

For Purchase—Individual SIAP copies my be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce. I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on October 11, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

FDC Date	State	City	Airport	FDC No.	Subject
09/05/02	TX	Dallas	Addison	2/9363	ILS Rwy 15, Amdt 9A
09/20/02	TX	Del Rio	Del Rio Intl	2/9902	LOC 13, Orig-A
09/23/02	TX	Corpus Christi	Corpus Christi	2/9952	ILS Rwy 13, Amdt 26A
09/23/02	TX	Corpus Christi	Corpus Christi	2/9954	NDB Rwy 13, Amdt 25
09/23/02	FM	Yap Island	Yap Intl	2/9977	NDB Rwy 7, Amdt 1
09/25/02	TX	Houston	Sugar Land Muni Hull Field	2/0115	NDB Rwy 35, Amdt 15
09/25/02	WI	Madison	Dane County Regional Truax Field	2/0136	VOR Rwy 13, Orig
09/26/02	CA	Sacramento	Sacramento Mather	2/0179	RNAV (GPS) Rwy 4R, Orig
09/27/02	FL	Sarasota(Bradenton)	Sarasota/Bradenton Intl	2/0201	ILS Rwy 14, Amdt 4
09/27/02	FL	Sarasota(Bradenton)	Sarasota/Bradenton Intl	2/0202	ILS Rwy 32, Amdt 5
09/27/02	CA	Palm Springs	Bermuda Dunes	2/0208	VOR–A, Orig
09/27/02	TN	Knoxville	McGhee Tyson	2/0218	ILS Rwy 5L, Amdt 7A
10/02/02	OR	Aurora	Aurora State	2/0339	GPS Rwy 17, Amdt 1
10/02/02	OR	Aurora	Aurora State	2/0340	GPS Rwy 35, Amdt 1A
10/02/02	OR	Aurora	Aurora State	2/0341	LOC Rwy 17, Orig-A
10/02/02	OK	Oklahoma City	Will Rogers World	2/0362	Radar, Amdt 20
10/02/02	OK	Oklahoma City	Will Rogers World	2/0363	ILS Rwy 17R, Amdt 9D
10/02/02	OK	Oklahoma City	Will Rogers World	2/0364	ILS Rwy 17L, Orig-D
10/02/02	OK	Oklahoma City	Will Rogers World	2/0365	NDB Rwy 35R, Amdt 5C
10/02/02	OK	Oklahoma City	Will Rogers World	2/0366	ILS Rwy 35R, Amdt 8D
10/02/02	OK	Oklahoma City	Will Rogers World	2/0367	NDB Rwy 17R, Amdt 24B
10/02/02	GA	Rome	Richard B. Russell	2/0382	VOR/DME or GPS Rwy 1, Amdt 8B
10/03/02	TX	Houston	Ellington Field	2/0414	ILS Rwy 22, Amdt 3B
10/03/02	WY	Casper	Natrona County Intl	2/0443	ILS Rwy 3, Amdt 5A
10/03/02	TN	Knoxville	Knoxville Downtown Island	2/0446	LOC Rwy 26, Amdt 3A
10/03/02	AK	Scammon Bay	Scammon Bay	2/0470	GPS Rwy 10, Orig
10/03/02	AK	Scammon Bay	Scammon Bay	2/0471	GPS Rwy 28, Orig
10/03/02	TX	Denton	Denton Muni	2/0478	GPS Rwy 35, Amdt 1
10/03/02	TX	Muleshoe	Muleshoe Muni	2/0489	VOR/DME–A, Amdt 1
10/03/02	CA	Sacramento	McClellan Airfield	2/0497	ILS Rwy 16, Orig-B

FDC Date	State	City	Airport	FDC No.	Subject
10/04/02	AR	Batesville	Batesville Regional	2/0517	NDB or GPS Rwy 7, Amdt 5C
10/04/02	NH	Manchester	Manchester	2/0521	ILS Rwy 6, Orig-A
10/04/02	WA	Spokane	Spokane Intl	2/0561	ILS Rwy 3 (Cat I, II, III), Amdt 4
10/04/02	WA	Spokane	Spokane Intl	2/0562	RNAV (GPS) Rwy 3, Orig-B
10/04/02	MA	Westfield	Barnes Muni	2/0576	GPS Rwy 2, Orig
10/04/02	MA	Westfield	Barnes Muni	2/0577	GPS Rwy 20, Orig
10/04/02	MA	Westfield	Barnes Muni	2/0578	ILS Rwy 20, Amdt 5
10/04/02	MA	Westfield	Barnes Muni	2/0579	NDB Rwy 20, Amdt 15
10/04/02	MA	Westfield	Barnes Muni	2/0580	VOR Rwy 20, Amdt 20
10/04/02	MA	Westfield	Barnes Muni	2/0581	VOR Or Tacan Rwy 2, Amdt 4
10/04/02	OK	Oklahoma City	Will Rogers World	2/0587	LOC BC Rwy 35L, Amdt 10D
10/07/02	WA	Spokane	Spokane Intl	2/0626	VOR Rwy 3, Amdt 12
10/07/02	WA	Seattle	Boeing Field/King County Intl	2/0627	ILS Rwy 13R, Amdt 28A
10/07/02	WA	Seattle	Boeing Field/King County Intl	2/0627	ILS Rwy 13R, Amdt 28A
10/07/02	MS	Jackson	Hawkins Field	2/0631	NDB Rwy 16, Amdt 5

[FR Doc. 02–27088 Filed 10–23–02; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") announces that, because ranges of comparability have not changed significantly, the current ranges of comparability for refrigerators, refrigerator-freezers, and freezers will remain in effect until further notice.

EFFECTIVE DATE: January 22, 2003.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202–326–2889); *hnewsome@ftc.gov*.

SUPPLEMENTARY INFORMATION: The rule was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975 ("EPCA").[1] The rule covers several categories of major household appliances including refrigerators, refrigerator-freezers, and freezers.

I. Background

The rule requires manufacturers of all covered appliances to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an "EnergyGuide" label, fact sheets (for some appliances), and in catalogs. The rule requires manufacturers to include, on labels and fact sheets, an energy consumption or efficiency figure and a "range of comparability." This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models similar to the labeled model. The rule also requires manufacturers to include, on labels for some products, including those that are the subject of this notice, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report certain information annually to the Commission by specified dates for each product type.[2] These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information on labels consistent with these changes, the Commission will publish new ranges if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission will publish a statement that the prior ranges remain in effect for the next year.

II. 2002 Refrigerator Information

The annual submissions of data for refrigerators, refrigerator-freezers, and freezers have been made and analyzed by the Commission. The ranges of comparability for the products have not changed significantly for these products.[3] Therefore, the current ranges for these products (16 CFR Part 305, Appendices A1 through A8 and B1 through B3) will remain in effect until further notice.[4]

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–26970 Filed 10–23–02; 8:45 am]

BILLING CODE 6750–01–M

[1] 42 U.S.C. 6294. The statute also requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] Reports for refrigerators, refrigerator-freezers, and freezers are due August 1.

[3] The Commission's analysis excluded models with energy consumption figures that do not meet the current DOE energy conservation standards. See 62 FR 23102 (April 28, 1997).

[4] See November 19, 2001 (66 FR 57867), November 26, 2001 (66 FR 59050), December 10, 2001 (66 FR 63749), and January 29, 2002 (67 FR 4173).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 00C–1321]

Listing of Color Additives Exempt From Certification; Mica-Based Pearlescent Pigments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of mica-based pearlescent pigments as color additives in contact lenses. This action is in response to a petition filed by Wesley Jessen Corp.

DATES: This regulation is effective November 26, 2002. Submit written or electronic objections and requests for a hearing by November 25, 2002. See Section VIII of the **SUPPLEMENTARY INFORMATION** section of this document for information on the filing of objections.

ADDRESSES: Submit written or electronic objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3076.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of June 7, 2000 (65 FR 36148), FDA announced that a color additive petition (CAP 0C0271) had been filed by Wesley Jessen, Corp., 333 East Howard Ave., Des Plaines, IL 60018 (now Ciba Vision Corp., 11460 Johns Creek Pkwy., Duluth, GA 30097–1556). The petition proposed to amend the color additive regulations in part 73 (21 CFR part 73 subpart D—Medical Devices) to provide for the safe use of mica to color contact lenses. During its subsequent review of the petition, the agency determined that the subject color additives are composite pigments composed of mica coated with iron oxides or mica coated with titanium dioxide. Therefore, in the **Federal Register** of May 20, 2002 (67 FR 35551), the agency published an amended filing notice to state that the petition proposes that the color additive regulations be amended to provide for the safe use of mica coated with iron oxides or mica coated with titanium dioxide, collectively identified as mica-based pearlescent pigments, in contact lenses.

II. Identity and Manufacturing

Mica-based pearlescent pigments consist of either mica platelets coated with titanium dioxide or mica platelets coated with iron oxides. These color additives are manufactured by preparing a suspension of mica platelets, and then adding a solution of a soluble salt of titanium or of iron, and a base to precipitate titanium hydroxide or iron hydroxide onto the mica platelets. These particles are heated (calcined) at 800 to 900 °C to obtain mica coated with titanium dioxide or mica coated with iron oxides. These color additives create a pearlescent effect and are known commonly as pearlescent pigments. Therefore, the agency is establishing mica-based pearlescent pigments as the common or usual name of the color additives.

III. Safety Evaluation

During its review of the safety of the use of mica-based pearlescent pigments in contact lenses, the agency considered the exposure to the color additives from the petitioned use. The agency notes that it is highly unlikely that the color additives or their components would migrate out of the contact lens into the aqueous environment of the eye, because: (1) These pigments are insoluble in aqueous media, and (2) they are an integral part of the contact lens. Therefore, the agency concludes that the exposure to the components of the color additives, including any impurities that may be present in them, from the petitioned use would be negligible (Ref. 1).

The agency notes that two of the components of the color additives, iron oxides (§ 73.3125) and titanium dioxide (§ 73.3126), already are listed for use as color additives in contact lenses. Therefore, the agency concludes that the use of iron oxides or titanium dioxide in mica-based pearlescent pigments does not present a safety concern (Ref. 2).

Although mica currently is not regulated for use as a color additive in contact lenses, it has been approved for safe use in coloring cosmetics generally, including those applied to the area of the eye, including the eyeball (§§ 73.2496 and 70.3(s)). Generally, the toxicological tests the agency requires to demonstrate that a color additive is safe for use in coloring cosmetics applied to the eye area are adequate to support the safety of a color additive used in contact lenses. In both cases, the tests must show that the color additive is safe and not expected to cause adverse effects under the conditions of use. This is reflected in the agency's current guidance document for contact lens manufacturers (Ref. 3).

In this case, the toxicological data which supported the approval of mica for use in eye area cosmetics are sufficient to support the safe use of mica in contact lenses. These data showed that instillation of a solution containing 5-percent mica directly into the eyes of rabbits did not produce any evidence of ocular or iridial irritation (Ref. 4). In contrast to this exaggerated and direct exposure to mica in the eye, the exposure to mica from its proposed use in contact lenses would be negligible, and if any incidental exposure to mica were to occur, it would not be a safety concern. Therefore, the agency concludes that mica also may be used safely to color contact lenses (Ref. 2).

The regulations listing mica for use in coloring drugs (§ 73.1496) and cosmetics (§ 73.2496) provide specifications to ensure the safe use of mica in those products. To ensure that the mica used in the manufacture of mica-based pearlescent pigments is of comparable purity to the already regulated mica, the agency is requiring in new § 73.3128 that mica used to manufacture the color additives meet the identity and specifications for mica in § 73.1496. The agency also has considered the need to establish purity specifications for the mica-based pearlescent pigments. As noted previously, the agency has determined that the exposure to the components of mica-based pearlescent pigments, including any impurities that may be present in them from the petitioned use, would be negligible. Given the negligible exposure to the color additive and the specifications that are being established for the mica component of the color additive, the agency concludes that it is not necessary to establish separate specifications for the mica-based pearlescent pigments in new § 73.3128.

IV. Conclusion

Based on the data in the petition and other relevant material, FDA concludes that the petitioned use of mica-based pearlescent pigments as color additives in contact lenses is safe, the additives will achieve their intended technical effects, and thus, are suitable for this use. The agency concludes that part 73 should be amended as set forth in this document. In addition, based upon the factors listed in 21 CFR 71.20(b), the

agency concludes that certification of mica-based pearlescent pigments is not necessary for the protection of the public health.

V. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VI. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for CAP 0C0271 (65 FR 36148, June 7, 2000). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VII. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Objections

Any person who will be adversely affected by this regulation may file with the Dockets Management Branch (see **ADDRESSES**) written objections by (see **DATES**). Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

IX. References

1. Carberry, S. E., memorandum entitled "Use of Mica-Based Pearlescent Pigments as Colorants for Contact Lenses" from the Division of Petition Review (HFS–265) to the Division of Petition Review (HFS–265), Center for Food Safety and Applied Nutrition, FDA, March 28, 2002.

2. Johnson, C. B., memorandum entitled "Use of Mica-Based Pearlescent Pigments to Color Contact Lenses: Toxicology Review" from the Division of Petition Review (HFS–225) to the Division of Petition Review (HFS–215), Center for Food Safety and Applied Nutrition, FDA, November 9, 2001.

3. Center for Devices and Radiological Health, Premarket Notification (510(k)) Guidance Document for Daily Wear Contact Lenses, Addendum to Chemistry Guidance for Listing Color Additives in Contact Lenses, Part 5, p.149, (http://www.fda.gov/cdrh/ode/conta.html) May 1994.

4. Gittes, H. R., memorandum entitled "Eye Area Studies" from the Division of Toxicology (HFF–152) to the Petitions Control Branch (HFF–334), Center for Food Safety and Applied Nutrition, FDA, May 17, 1977.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

2. Section 73.3128 is added to subpart D to read as follows:

§ 73.3128 Mica-based pearlescent pigments.

(a) *Identity and specifications.* The color additive is formed by depositing titanium or iron salts from a basic solution onto mica, followed by calcination to produce titanium dioxide or iron oxides on mica. Mica used to manufacture the color additive shall conform in identity and specifications to the requirements of § 73.1496(a)(1) and (b).

(b) *Uses and restrictions.* (1) Mica-based pearlescent pigments listed in paragraph (a) of this section may be used as a color additive in contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization and compliance with this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) with respect to the contact lenses in which the additive is used.

(c) *Labeling.* The label of the color additive shall conform to the requirements in § 70.25 of this chapter.

(d) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the act.

Dated: September 30, 2002.

L. Robert Lake,

Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 02–27048 Filed 10–23–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8869]

RIN 1545–AU77

Subchapter S Subsidiaries; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 8869), which were published in the **Federal Register** on Tuesday, January 25, 2000 (65 FR 3843), relating to the treatment of corporate subsidiaries of S corporations.

EFFECTIVE DATE: January 25, 2000.

FOR FURTHER INFORMATION CONTACT: Jeanne M. Sullivan (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 1361 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 8869) contains an error which may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.1361–5 [Corrected]

2. In § 1.1361–5, paragraph (c)(1), the first sentence is amended by removing the language "paragraph (b) of this section)" and adding the language "§ 1.1362–5(b))" in its place.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–27042 Filed 10–23–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Narragansett Bay, East Passage, Coddington Cove, RI

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is amending its regulations to establish a restricted area in waters adjacent to Naval Station Newport in Newport, Rhode Island. This amendment will close off an open area in Coddington Cove east of a line that connects Coddington Point at latitude 41° 31′ 24.0″ N, longitude 071° 19′ 24.0″ W; with the outer end of the Coddington Cove Breakwater on the north side of the cove at latitude 41° 31′ 55.7″ N, longitude 071° 19′ 28.2″ W. The regulations are necessary to safeguard Navy vessels and United States Government facilities from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions which may exist as a result of Navy use of the area.

EFFECTIVE DATE: November 25, 2002.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC at (202) 761–4618, or Mr. Richard Roach, Corps of Engineers, New England District, Regulatory Division, at (978) 318–8211 or (800) 343–4789.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps is amending the restricted area regulations in 33 CFR part 334 by adding § 334.81 to establish a restricted area in waters adjacent to Naval Station Newport at Newport Rhode Island.

Procedural Requirements

A. Review Under Executive Order 12866

This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

B. Review Under the Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act (Public Law 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps expects that the economic impact of this restricted area will have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this rule will have no significant economic impact on small entities.

C. Review Under the National Environmental Policy Act

The New England District has prepared an Environmental Assessment (EA) for this action. We have concluded, based on the minor nature of the additional restricted area regulations, that this action will not have a significant impact to the quality of the human environment, and preparation of an Environmental Impact Statement (EIS) is not required. The EA may be reviewed at the New England District office listed at the end of **FOR FURTHER INFORMATION CONTACT,** above.

D. Unfunded Mandates Act

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Act. We have also found under section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

E. Submission to Congress and the General Accounting Office

Pursuant to section 801(a)(1)(A) of the Administrative Procedure Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army has submitted a report containing this Rule to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office. This Rule is not a major Rule within the meaning of section 804(2) of the Administrative Procedure Act, as amended.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.81 is added to read as follows:

§ 334.81 Narragansett Bay, East Passage, Coddington Cove, Naval Station Newport, Naval Restricted Area, Newport, Rhode Island.

(a) *The area.* All of the navigable waters of Coddington Cove east of a line that connects Coddington Point at latitude 41° 31′ 24.0″ N, longitude 071° 19′ 24.0″ W; with the outer end of the Coddington Cove Breakwater on the north side of the cove at latitude 41° 31′ 55.7″ N, longitude 071° 19′ 28.2″ W.

(b) *The regulation.* All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Naval authority, vessels of the United States Coast Guard, and local or state law enforcement vessels, are prohibited from entering the restricted area without specific permission from the Commanding Officer, Naval Station Newport, USN, Newport, Rhode Island or his/her authorized representative.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the United States Navy, Commanding Officer Naval Station Newport, and/or such agencies or persons as he/she may designate.

Dated: September 26, 2002.

Michael G. Ensch,

Acting Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 02–26646 Filed 10–23–02; 8:45 am]

BILLING CODE 3710–92–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0235; FRL–7276–9]

Clopyralid; Pesticide Tolerance Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of September 25, 2002, establishing tolerances for clopyralid. This document is being issued to correct unnecessary tolerances for meat byproducts except kidney of cattle, goats, horses, and sheep at 1.0 parts per million.

DATES: This regulation is effective October 24, 2002.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–6224; and e-mail address: miller.joanne@epamail.epa.gov

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0235. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

III. What Does this Technical Correction Do?

Tolerances for clopyralid on various commodities were published in the **Federal Register** on September 25, 2002 (67 FR 60152) (FRL–7198–4) including meat byproducts except liver of cattle, goats, horses and sheep at 36.0 parts per million. These tolerances superseded tolerances previously established for meat byproducts except kidney of cattle, goats, horses and sheep at 1.0 ppm. This technical correction removes the lower tolerances from § 180.431.

IV. Why is this Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical correction final without prior proposal and opportunity for comment, because EPA is merely correcting the section to remove certain commodities from the previously published final rule. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

V. Do Any of the Regulatory Assessment Requirements Apply to this Action?

This action corrects tolerances established under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this technical correction has been exempted from review under Executive Order 12866 due to its lack of significance, this technical correction is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). In addition, this technical correction does not contain any information collections subject to OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels, or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 4, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs

Therefore, 40 CFR part 180 is corrected as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.431 [Amended]

2. In § 180.431, in paragraph (a), the table is amended by removing the entries for "cattle, meat byproducts, except kidney"; "goats, meat byproducts, except kidney"; "horses, meat byproducts, except kidney"; and "sheep, meat byproducts, except kidney."

[FR Doc. 02–27132 Filed 10–23–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7399–6]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds one new site to the NPL; the Libby Asbestos site located in Libby, Montana. It is being added to the General Superfund Section of the NPL.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be November 25, 2002.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, "Availability of Information to the Public" in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center; Office of Emergency and Remedial Response (mail code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW; Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act

("SARA"), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action." ("Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities Section"). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on September 5, 2002 (67 FR 56757).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions * * *." 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. plant site") in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the name "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the "nature and extent of the problem presented by the release" will be determined by a remedial investigation/feasibility study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

As of October 1, 2002, the Agency has deleted 265 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of October 1, 2002, EPA has deleted 32 portions of 29 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL.

As of October 1, 2002, there are a total of 846 sites on the CCL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund.*

II. Availability of Information to the Public

A. Can I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the Libby Asbestos site in this final rule are contained in dockets located both at EPA Headquarters and in the Region 8 office.

B. What Documents Are Available for Review at the Headquarters and Region 8 Dockets?

The Headquarters and Region 8 dockets for this rule contain the documents that formed the basis for Montana's decision to designate the site as its top priority. The Dockets also contain comments received, and the Agency's responses to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List Final Rule—Libby Asbestos, October 2002."

C. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, 202/566–0276.

The contact information for the Region 8 docket is: David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757.

D. How Can I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/* (look under the Superfund sites category) or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Addition to the NPL

This final rule adds one site to the NPL; the Libby Asbestos site located in Libby, Montana. It is being added to the General Superfund Section of the NPL based on its designation as a State top priority pursuant to CERCLA section 105(a)(8)(B) and section 300.425(c)(2) of the NCP.

B. Status of NPL

With the one new site added to the NPL in today's final rule; the NPL now contains 1,234 final sites; 1,076 in the General Superfund Section and 158 in the Federal Facilities Section. In addition, there are 61 sites proposed and awaiting final agency action, 55 in the General Superfund Section and 6 in

the Federal Facilities Section. Final and proposed sites now total 1,295. (These numbers reflect the status of sites as of October 1, 2002. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

C. What Did EPA Do With the Public Comments It Received?

EPA reviewed all comments received on the Libby Asbestos site which was proposed to the NPL on February 26, 2002 (67 FR 8836).

EPA responded to all relevant comments received and EPA's responses to site-specific public comments are addressed in the "Support Document for the Revised National Priorities List Final Rule—Libby Asbestos, October 2002."

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Final Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. How Has EPA Complied With the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of a hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

VII. Possible Changes to the Effective Date of the Rule

A. Has This Rule Been Submitted to Congress and the General Accounting Office?

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

B. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

C. What Could Cause the Effective Date of This Rule to Change?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919,103 S. Ct. 2764 (1983) and Bd. of Regents of the University of *Washington* v. *EPA*, 86 F.3d 1214,1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

VIII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

IX. Executive Order 12898

A. What Is Executive Order 12898?

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to This Final Rule?

No. While this rule revises the NPL, no action will result from this rule that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

X. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is

preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

XI. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Final Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XII. Executive Orders on Federalism

What Are the Executive Orders on Federalism and Are They Applicable to This Final Rule?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

XIII. Executive Order 13084

What Is Executive Order 13084 and Is It Applicable to This Final Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Under section 3(b) of Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. The addition of sites to the NPL will not impose any substantial direct compliance costs on Tribes. While Tribes may incur costs from participating in the investigations and cleanup decisions, those costs are not compliance costs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

XIV. Executive Order 13175

A. What Is Executive Order 13175?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

B. Does Executive Order 13175 Apply to This Final Rule?

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

XV. Executive Order 13211

A. What Is Executive Order 13211?

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as "significant energy actions." Section 4(b) of Executive Order 13211 defines "significant energy actions" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action."

B. Is This Rule Subject to Executive Order 13211?

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866 (See discussion of Executive Order 12866 above.)

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 18, 2002.

Marianne Lamont Horinko,

Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Table 1 of Appendix B to part 300 is amended by adding the following site in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes[a]
MT	Libby Asbestos	Libby	S

[a] A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (if scored, HRS score need not be ≤ 28.50).
C = Sites on construction completion list.
S = State top priority (included among the 100 top priority sites regardless of score).
P = Sites with partial deletion(s).

[FR Doc. 02–27127 Filed 10–23–02; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–3

[FTR Amdt. 108; Correction]

Federal Travel Regulation; Corrections and Additions; Correction

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule; correction.

SUMMARY: This is to correct the final rule published in the **Federal Register** at 67 FR 57963, September 13, 2002, by changing an entry and reference that was inadvertently revised.

EFFECTIVE DATE: October 24, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie Duarte at (202) 501–4755, General Services Administration, Regulatory Secretariat, Washington, DC 20405.

Correction

In final rule document 02–22414 beginning on page 57963 in the issue of September 13, 2002, make the following correction:

§ 302–3.101 [Corrected]

On page 57969, in the first column below the table, correct amendatory instruction 58 to read as follows:

58. Amend § 302–3.101 by removing from Table A, column 2, entry 4, "Use of relocation service companies (part 302–12 of this chapter)" and adding "Use of a relocation services company (part 302–12 of this chapter)." in its place; and amending Table B, column 2, entry 5, by removing "302–15" and adding "301.15" in its place.

Dated: October 15, 2002.

Rodney Lantier,

Director, Regulatory and Federal Assistance Publications Division.

[FR Doc. 02–26842 Filed 10–23–02; 8:45 am]

BILLING CODE 6820–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[EB Docket No. 01–66; DA 02–2312]

FCC Certification of Emergency Alert System (EAS) Decoder

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission announces that An equipment authorization for an EAS decoder unit has been granted to equipment Manufacturer TFT, Inc. Low Power FM (LPFM) stations and cable systems that serve fewer Than 5,000 subscribers may comply with EAS equipment requirement requirements by Installing an EAS decoder unit, rather than and EAS encoder/decoder unit.

DATES: Effective October 24, 2003.

FOR FURTHER INFORMATION CONTACT: Bonnie Gay at (202) 418–1228.

SUPPLEMENTARY INFORMATION: In a Report and Order released on February 26, 2002, the Commission granted low power FM stations a temporary waiver of the requirement in the EAS rules to

install FCC-certified decoders. This Commission action was based upon the fact that, at that time, there were no FCC-certified EAS decoders on the market. The Commission, therefore, amended the EAS rules to exempt low power FM stations from installing FCC-certified EAS decoders until one year after the Commission published in the **Federal Register** a Public Notice indicating that at least one EAS decoder has been certified. The Commission also amended the EAS rules in the Report and Order to permit cable systems serving fewer than 5,000 subscribers to use an FCC-certified decoder, if such a device became available by October 1, 2002, in lieu of an encoder/decoder unit.

On July 23, 2002, the Commission staff granted an equipment authorization for an EAS decoder unit to equipment manufacturer TFT, Inc.

Accordingly, within one year of publication of this Public Notice in the **Federal Register**, LPFM station will be required to install certified EAS decoders. In addition, cable systems that serve fewer than 5,000 subscribers may comply with the Commission's requirement to install EAS equipment by October 1, 2002, by installing a certified EAS decoder, rather than both an encoder and a decoder.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–27093 Filed 10–23–02; 8:45 am]

BILLING CODE 6712–02–P

Proposed Rules

Federal Register

Vol. 67, No. 206

Thursday, October 24, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 02–AEA–12]

Amendment to Class D Airspace, Norfolk NAS, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed amendment would lower the upper limit of the Class D airspace at Norfolk NAS, Norfolk, VA. This action would lower the upper limits of the existing Class D airspace from 2,500 feet mean sea level (MSL) to up to but not including 2,000 feet MSL. This upper limit would coincide with the lower limit of the Norfolk, VA Class C airspace.

DATES: Comments must be received on or before December 1, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 02–AEA–12, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamacia, NY 11434–4809. An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, FAA Eastern Region, 1 Aviation Plaza, Jamaica NY, 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809: telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–AEA–12". The postcard will be date/time stamped and returned to the commenter. All commenters received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket closing both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitted a request to the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809. Communications must identify the docket number of this NMPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an action to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to adjust the controlled airspace for Instrument Flight Rules (IFR) procedures at NAS Norfolk (Chambers), Norfolk, VA. This action would lower the upper limit of the Class D airspace from 2,500 feet MSL to 2,000 feet MSL. This lower ceiling of the Class D airspace would coincide with the lower limit of the Norfolk, VA Class C airspace and remove the overlap in airspace designations.

Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulation Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is proposed to be amended as follows:

Paragraph 5000 Class D airspace areas extending upward from the surface of the earth.

* * * * *

AEA VA D Norfolk NAS, VA [Revised]

NAS Norfolk (Chambers), Norfolk, VA
(Lat. 36°56'15"N., long. 76°17'25"W.)

That airspace extending upward from the surface to but not including 2,000 feet MSL within a 4.3-mile radius of NAS Norfolk (Chambers) excluding that airspace southeast of a line connecting the 4.3-mile radius of Norfolk NAS and the 5-mile radius of Norfolk International Airport.

* * * * *

Issued in Jamaica, New York, on October 9, 2002.

John G. McCartney,

Acting Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–26582 Filed 10–23–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–03]

Proposed Amendment to Class E Airspace; Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend the Class E airspace area at Philadelphia, PA. The proliferation of airports within a thirty seven mile radius of Philadelphia International Airport with approved Instrument Flight Rules (IFR) operations and the resulting overlap of designated Class E–5 airspace has made this proposal necessary. The proposal would consolidate the Class E–5 airspace designations for twenty six airports and result in the recision of fourteen separate Class E–5 descriptions through separate rulemaking action. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before November 25, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 02–AEA–03, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809. An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–AEA–03." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Philadelphia, PA. The proposal would consolidate the following Class E–5 airspace designations into the Philadelphia, PA designation: Philadelphia International Airport, PA; North Philadelphia Airport, PA; Wings Airfield, PA; Willow Grove NAS, PA; Rhone-Poulenc Rorer Collegeville Heliport, PA; Pennridge Airport, PA; Quakertown Airport, PA; Doylestown Airport, PA; Collegeville/Perkiomen Valley Airport, PA; Pottstown-Limerick Airport, PA; Pottstown Municipal Airport, PA; Brandywine Airport, PA; Toughkennamon/New Garden Airport, PA; Chester County G. O. Carlson Airport, PA; New Castle County Airport, DE; Summit Airpark, DE; Trenton Mercer Airport, NJ; South Jersey Regional Airport, NJ; Flying W Airport, NJ; Cross Keys Airport, NJ; Red Lion Airport, NJ; Camden County Airport, NJ; Hammonton Municipal Airport, NJ; Rudy's Airport, NJ; Kroelinger Airport, NJ; and Millville Municipal Airport, NJ. This action would result in the recision of fourteen Class E–5 designations under a separate docket. The affected airspace would subsequently be incorporated into the Philadelphia, PA description. The airspace will be defined to accommodate the approaches and contain IFR operations to and from those airports. This change would have no impact on aircraft operations since the type of airspace designation is not changing. Furthermore, the IFR approach procedures for the individual airports within the area would not be affected. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Philadelphia, PA [Revised]

Philadelphia International Airport
(Lat. 39°52'19" N., long. 75°14'28" W.)
Chester County G. O. Carlson Airport, PA
(Lat. 39°58'44" N., long. 75°51'56" W.)
New Castle County Airport, DE
(Lat. 39°40'43" N., long. 75°36'24" W.)
Summit Airpark, DE
(Lat. 39°31'13" N., long. 75°43'14" W.)
Millville Municipal Airport, NJ
(Lat. 39°22'05" N., long. 75°04'25" W.)

That airspace extending upward from 700 feet above the surface within a 31-mile radius of Philadelphia International Airport extending clockwise from a 225° bearing to a 307° bearing from the airport and within a 37-mile radius of Philadelphia International Airport extending from a 307° bearing to a 053° bearing from the airport and within a 33-mile radius of Philadelphia International Airport extending from a 053° bearing to a 173° bearing from the airport and within a 10-mile radius of Philadelphia International Airport extending from a 173° bearing from the airport and within a 7-mile radius of Chester County G. O. Carlson Airport and within a 6.7-mile radius of New Castle County Airport and within a 8-mile radius of Summit Airpark and within a 6.5-mile radius of Millville Municipal Airport, excluding the airspace that coincides with the Wrightstown, NJ; Pittstown, NJ; Princeton, NJ; Reading, PA; and Allentown, PA Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on October 9, 2002.

John G. McCartney,

Acting Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–26583 Filed 10–23–02; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 34–46685; IC–25773; File No. S7–39–02]

RIN 3235–AI67

Improper Influence on Conduct of Audits

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: As directed by Section 303(a) of the Sarbanes-Oxley Act of 2002, we are proposing rules to prohibit officers and directors of an issuer, and persons acting under the direction of an officer or director, from taking any action to fraudulently influence, coerce, manipulate or mislead the auditor of the issuer's financial statements for the purpose of rendering the financial statements materially misleading.

DATES: Comments should be received on or before November 25, 2002.

ADDRESSES: You should send three copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. You also may submit your comments electronically to the following address: *rule-comments@sec.gov*. Please use only one method of delivery. All comment letters should refer to File No. S7–39–02; this file number should be included in the subject line if you use electronic mail. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549–0102. We will post electronically-submitted comment letters on the Commission's Internet Web site (*http://www.sec.gov*). We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Michael J. Kigin, Associate Chief Accountant, or Robert E. Burns, Chief Counsel, at (202) 942–4400, Office of the Chief Accountant, or Fiona A. Philip, Senior Counsel, or David M. Estabrook, Associate Chief Accountant, at (202) 942–4510, Division of Enforcement, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing to redesignate rule 13b2–2 of Regulation 13B–2[1] as rule 13b2–2(a) and to add new rule 13b2–2(b).

I. Executive Summary

On July 30, 2002, the Sarbanes-Oxley Act of 2002 (the "Act")[2] was enacted. Section 303(a) of the Act states:

> It shall be unlawful, in contravention of such rules or regulations as the Commission shall prescribe as necessary or appropriate in the public interest and for the protection of investors, for any officer or director of an issuer, or any other person acting under the direction thereof, to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of that issuer for the purpose of rendering such financial statements materially misleading.

As mandated by the Act, the Commission is proposing rules to implement section 303(a).[3] The proposed rules, in combination with the existing rules under Regulation 13B–2, are designed to ensure that management makes open and full disclosures to, and has honest discussions with, the auditor of the issuer's financial statements. These rules prohibit officers or directors of an issuer,[4] or persons acting under

[1] 17 CFR 240.13b2–1 *et seq.*

[2] Pub. L. 107–204, 116 Stat. 745 (2002).

[3] Section 303 of the Act states:

(a) RULES TO PROHIBIT.—It shall be unlawful, in contravention of such rules or regulations as the Commission shall prescribe as necessary or appropriate in the public interest and for the protection of investors, for any officer or director of an issuer, or any other person acting under the direction thereof, to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of that issuer for the purpose of rendering such financial statements materially misleading.

(b) ENFORCEMENT.—In any civil proceeding, the Commission shall have exclusive authority to enforce this section and any rule or regulation issued under this section.

(c) NO PREEMPTION OF OTHER LAW.—The provisions of subsection (a) shall be in addition to, and shall not supersede or preempt, any other provision of law or any rule or regulation issued thereunder.

(d) DEADLINE FOR RULEMAKING.—The Commission shall "

(1) propose the rules or regulations required by this section, not later than 90 days after the date of enactment of this Act; and

(2) issue final rules or regulations required by this section, not later than 270 days after that date of enactment.

[4] The proposed rules would be included in Regulation 13B–2 under the Securities Exchange

Continued

their direction, from subverting the auditor's responsibilities to investors to conduct a diligent audit of the financial statements and to provide a true report of the auditor's findings.

II. Discussion of Proposed Rules

A. Introduction

The proposed rules would supplement the rules currently in Regulation 13B–2. The current rules address the falsification of books, records and accounts [5] and false or misleading statements, or omissions to make certain statements, to accountants.[6] Proposed rule 13b2–2(b)(1), which substantially would mirror the language in section 303(a) of the Act, specifically would prohibit officers and directors, and persons acting under their direction, from fraudulently influencing, coercing, manipulating or misleading the auditor of the issuer's financial statements for the purpose of rendering the issuer's financial statements misleading. Proposed rule 13b2–2(b)(2) would provide examples of actions that improperly influence an auditor that could result in "rendering the issuer's financial statements materially misleading." This paragraph also would clarify that such actions should not occur at any time in connection with the professional engagement.

B. Discussion

Proposed rule 13b2–2(b)(1) would address activities by an officer or director of an issuer, or any other person acting under the direction of an officer or director. The Commission has defined the term "officer" to include the company's "president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated." [7] The term "officer" includes an issuer's chief executive officer and other executive officers.[8]

Should We Amend the Definition of "Officer" in Rule 3b–2 To Include Specific References to Additional Individuals and Entities Who May Perform "Corresponding Functions"? Should We Amend Regulation 13B2 To Craft a Special Definition of a Public Company Officer for the Purposes of that Regulation? If We Amend Rule 3b–2 or Regulation 13B–2, Who Should Be Included or Excluded From the Definition of "Officer"?

As noted above, proposed rule 13b2–2(b)(1) would cover the activities of not only officers and directors of the issuer who engage in an attempt to misstate financial statements but also "any other person acting under the direction thereof." Activities by such "other persons" currently may constitute violations of the anti-fraud or other provisions of the securities laws [9] or aiding or abetting [10] or causing [11] an issuer's violations of the securities laws. Section 303(a) and the proposed rule would provide the Commission [12] with an additional means of addressing efforts by persons acting under the direction of an officer or director to improperly influence the audit process and the accuracy of the issuer's financial statements. We interpret Congress' use of the term "direction" to encompass a broader category of behavior than "supervision."[13] In other words, someone may be "acting under the direction" of an officer or director even if they are not under the supervision or control of that officer or director. Such persons might include not only the issuer's employees but also, for example, customers, vendors or creditors who, under the direction of an officer or director, provide false or misleading confirmations or other false or misleading information to auditors, or who enter into "side agreements." In appropriate circumstances, persons acting under the direction of officers and directors also may include other partners or employees of the accounting firm (such as consultants or forensic accounting specialists retained by counsel for the issuer) and attorneys, securities professionals, or other advisers who, for example, pressure an auditor to limit the scope of the audit, to issue an unqualified report on the financial statements when such a report would be unwarranted,[14] to not object to an inappropriate accounting treatment, or not to withdraw an issued opinion on the issuer's financial statements. In the case of a registered investment company, persons acting under the direction of officers and directors of the investment company may include, among others, officers, directors, and employees of the investment company's investment adviser, sponsor, depositor, administrator, principal underwriter, custodian, transfer agent, or other service providers.[15]

Should We Define by Rule the Scope of "Any Other Person Acting Under the Direction" of an Officer or Director?

Proposed rule 13b2–2(b)(1) addresses "any action to fraudulently influence, coerce, manipulate, or mislead" the auditor of the issuer's financial statements for the purpose of rendering the financial statements materially misleading. Much of the conduct addressed by this section, particularly efforts to "manipulate or mislead" the auditor, generally would be subject to other provisions of the securities laws and the Commission's regulations, including the existing rules in Regulation 13B–2. The proposed rule, however, would provide an additional means to address conduct to fraudulently influence,[16] coerce, manipulate, or mislead an auditor during his or her examination or review of the issuer's financial statements, including conduct that did not succeed in affecting the audit or review.[17] Types of conduct that the Commission believes might constitute improper influence include, but are not limited to, directly or indirectly:

- Offering or paying bribes or other financial incentives, including offering future employment or contracts for non-audit services,
- Providing an auditor with inaccurate or misleading legal analysis,
- Threatening to cancel or canceling existing non-audit or audit engagements if the auditor objects to the issuer's accounting,
- Seeking to have a partner removed from the audit engagement because the partner objects to the issuer's accounting,
- Blackmailing, and
- Making physical threats.

The facts and circumstances of each case, including the purpose of the conduct (as discussed below), would be relevant to determining whether the conduct would violate the proposed rule.

Should the Types of Conduct That Might Constitute Actions To Fraudulently Influence an Auditor Be Set Forth in the Rule? If so, Which Items Listed in the Preceding Paragraph Should Be Included or Excluded? What Additional Types of Conduct, if any, Should Be Included?

Proposed rule 13b2–2(b)(1) would address the improper influence of "any independent public or certified public accountant" engaged in the performance of an audit or review of an issuer's financial statements.[18] Prior to the adoption of the Act, similar phrases commonly were used in the securities laws and the Commission's regulations to refer to the accountant providing audit and review services to a Commission registrant. Although the Act, in anticipation of accounting firms registering with the Public Company Accounting Oversight Board (the "Board"),[19] changed several of these references,[20] such terms continue to appear in certain sections of the securities law [21] and related schedules.[22] We believe that section 303 of the Act includes all accountants [23] engaged in auditing or reviewing an issuer's financial statements or issuing attestation reports [24] to be filed with the Commission. Once firms are required to register with the Board, the term "independent public or certified public accountant," as used in the proposed rule, would include registered public accounting firms [25] and persons associated with such a public accounting firm,[26] as defined in the Act.

Should We Define by Rule the Phrase "Independent Public or Certified Public Accountant"? The Rules Currently in Regulation 13B–2 Refer to "Accountant" as Opposed to "Independent Public or Certified Public Accountant." Should These Rules, or the Proposed Rules, be Changed To Refer to the Same Term? Which Term Should Be Used?

Proposed rule 13b2–2(b)(1) tracks the language in section 303(a) of the Act regarding the improper influence of an accountant "engaged in the performance of an audit" of the issuer's financial statements. Both the Commission [27] and the accounting profession [28] have recognized that the need for an auditor to maintain an independent and unbiased attitude begins when the accountant is selected to perform audit

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Act of 1934 ("Exchange Act"). Section 3(a)(8) of the Exchange Act, 15 U.S.C. 78c(a)(8), defines "issuer" as follows:

The term "issuer" means any person who issues or proposes to issue any security; except that with respect to certificates of deposit for securities, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is, or is to be, used.

[5] 17 CFR 240.13b2–1 states that no person shall, directly or indirectly, falsify or cause to be falsified, any book, record or account subject to section 13(b)(2)(A) of the Exchange Act. Section 13(b)(2) of the Exchange Act states:

Every issuer which has a class of securities registered pursuant to section 12 of this title and every issuer which is required to file reports pursuant to section 15(d) of this title shall (A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

[6] 17 CFR 240.13b2–2 states that no director or officer of an issuer, in connection with an audit or examination of the issuer's financial statements or the preparation of any document or report to be filed with the Commission, directly or indirectly shall (a) make or cause to be made a materially false or misleading statement to an accountant or (b) omit to state, or cause another person to omit to state, any material fact necessary to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant.

[7] Rule 3b–2 under the Exchange Act, 17 CFR 240.3b–2. A person may be an "officer" for purposes of Rule 3b–2 regardless of the person's title or the legal entity with which he or she is associated. For example, officers of wholly owned subsidiaries of public companies and promoters may be "officers" of public companies.

The definition of "director" under the Exchange Act has a similar functional and flexible nature. *See* section 3(a)(7) of the Exchange Act, 15 U.S.C. 78c(a)(7), which states, "The term 'director' means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated."

[8] Rule 3b–7 under the Exchange Act, 17 CFR 240.3b–7, states, "The term "executive officer," when used with reference to a registrant, means its president, vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration, or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy making functions for the registrant."

[9] See, *e.g.*, Section 10(b) of the Exchange Act, 15 U.S.C. 78j, and Rule 10b–5 thereunder, 17 CFR 240.10b–5.

[10] See, *e.g.*, section 20(e) of the Exchange Act, 15 U.S.C. 78t(e).

[11] See, *e.g.*, section 21C of the Exchange Act, 15 U.S.C. 78u–3.

[12] Section 303(b) of the Act states, "The Commission shall have exclusive authority to enforce this section and any rule or regulation issued under this section."

[13] See, *e.g.*, Webster's Dictionary (9th edition), which defines "direction" to include not only guidance or supervision of action or conduct but also explicit instruction.

[14] "An 'unqualified opinion' [or unqualified report] states that the financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows of the entity in conformity with generally accepted accounting principles." AICPA, Statement on Auditing Standards No. ("SAS") 58, "Reports on Audited Financial Statements," ¶ 10; Codification of Statements on Auditing Standards ("AU") § 508.10.

[15] Some of these individuals also would be covered under provisions of the rule tailored to investment companies. *See* section II.C. of this release, *Issues Related to Investment Companies.*

[16] We view "fraudulently" as modifying only "influence."

[17] It is the act of fraudulently influencing, coercing, manipulating, or misleading the auditor, for the purpose of rendering misleading financial statements, that is unlawful. There is no requirement in section 303(a) of the Act that the purpose be achieved.

[18] Section 303(a) uses the phrase "independent public or certified accountant," which appears, for example, in items 25, 26 and 27 of Schedule A to the Securities Act of 1933. 15 U.S.C. 77aa(25), (26) and (27). Since the passage of the 1933 Act, however, the general reference to "certified accountant" has been replaced by "certified public accountant." To avoid any possible confusion, we have used "certified public accountant" in the proposed rules.

[19] *See* section 102 of the Act, which provides that beginning 180 days after the Commission determines that the Board, as established by Title I of the Act, is appropriately organized and has the capacity to carry out and enforce the requirements of that title, it shall be unlawful for any person that is not a registered public accounting firm to prepare any audit report with respect to any issuer.

[20] *See, e.g.*, sections 205(b) and (c) of the Act.

[21] *See, e.g.*, section 13(a) of the Exchange Act, 15 U.S.C. 78m(a), and section 8(e) of the Securities Act of 1933 (the "1933 Act"), 15 U.S.C. 77h(e).

[22] *See, e.g.*, items 25, 26 and 27 of Schedule A of the 1933 Act, 15 U.S.C. 77aa(25), (26) and (27).

[23] The rule would apply regardless of whether the accountant was a certified public accountant. For example, some states require accountants to have years of experience before being deemed to be a CPA. Efforts to mislead such an individual during his or her performance of audit procedures would fall within the proposed rules.

[24] *See, e.g.*, section 404 of the Act, which mandates that the Commission prescribe rules that require (1) each annual report filed under sections 13(a) and 15(d) of the Exchange Act contain a management statement of responsibilities for, and assessment of the effectiveness of, the issuer's internal control structure and procedures for financial reporting, and (2) the auditor to attest to, and report on, the assessment made by management.

[25] Section 2(a)(12) of the Act defines "registered public accounting firm" to mean "a public accounting firm registered with the Board in accordance with this Act."

[26] Section 2(a)(9)(A) of the Act defines "person associated with a public accounting firm" (or with a "registered public accounting firm") to mean "any individual proprietor, partner, shareholder, principal, accountant, or other professional employee of a public accounting firm, or any other independent contractor or entity that, in connection with the preparation or issuance of any audit report—(i) shares in the profits of, or receives compensation in any other form from, that firm, or (ii) participates as agent or otherwise on behalf of such accounting firm in any activity of that firm." The Board, in section 2(a)(9)(B) of the Act, is given limited authority to exempt persons performing only ministerial tasks.

[27] Rule 2–01(f)(5)(ii) of Regulation S–X, 15 CFR 210.2–01(f)(5)(ii), which defines the "professional engagement period" to be: "The period of the engagement to audit or review the audit client's financial statements or to prepare a report filed with the Commission," and states: "(A) The professional engagement period begins when the accountant either signs an initial engagement letter (or other agreement to review or audit a client's financial statements) or begins audit, review, or attest procedures, whichever is earlier; and (B) The professional engagement period ends when the audit client or the accountant notifies the Commission that the client is no longer that accountant's audit client."

[28] American Institute of Certified Public Accountants ("AICPA") Code of Professional Conduct, ET § 101.02, which states:

The period of a professional engagement starts when the [AICPA] member begins to perform any professional engagement requiring independence for an enterprise, lasts for the entire duration of the professional relationship, which could cover many periods, and ends with the formal or informal notification of the termination of the professional relationship either by the member, by the enterprise, or by the issuance of a report, whichever is later. Accordingly, the professional engagement does not end with the issuance of a report and recommence with the signing of the following year's engagement.

or review services and continues until there is a formal or informal public notification that the professional relationship has ended.[29] To effectuate the intent of Congress, we believe the phrase "engaged in the performance of an audit" should be given a broad reading. We believe Congress intended that the phrase encompass the professional engagement period and any other time the auditor is called upon to make decisions regarding the issuer's financial statements, including during negotiations for retention of the auditor and subsequent to the professional engagement period when the auditor is considering whether to issue a consent on the use of prior years' audit reports. The proposed rules, therefore, would apply throughout the professional engagement and after the professional engagement has ended when the auditor is considering whether to consent to the use of, reissue, or withdraw prior audit reports. In limited circumstances, the proposed rules also may apply before the professional engagement period begins. For example, the proposed rules would apply if an officer, director, or person acting under the direction of an officer or director, offers to engage an accounting firm on the condition that the firm either issue an unqualified audit report on financial statements that do not conform with generally accepted accounting principles, or limit the scope or performance of audit or review procedures in violation of generally accepted auditing standards.

Should Proposed Rule 13b2–2(b)(2) Provide a Specific Definition of "Engaged in the Performance of an Audit"?

To be actionable under section 303 of the Act, the conduct must be "for the purpose of rendering [the issuer's] financial statements materially misleading."[30] Because the financial statements are prepared by management and the auditor conducts an audit or review of those financial statements, the auditor would not directly "render [the] financial statements materially misleading." Rather, the auditor might be improperly influenced to, among other things, issue an unwarranted report on the financial statements,[31] including suggesting or acquiescing in the use of inappropriate accounting treatments[32] or not proposing adjustments required for the financial statements to conform with generally accepted accounting principles.[33] An auditor also might be fraudulently influenced, coerced, manipulated or misled not to perform audit or review procedures that, if performed, might divulge material misstatements in the financial statements. Other examples of activities that would fall within the proposed rule would be for an officer, director, or person acting under an officer or director's direction, to improperly influence an auditor either not to withdraw a previously issued audit report when required by generally accepted auditing standards,[34] or not to communicate appropriate matters to the audit committee.[35] Proposed rule 13b2–2(b)(2) would make it clear that subparagraph (b)(1) would apply in such circumstances. As noted, the proposed rule would not be limited to the audit of the annual financial statements, but would include, among other things, improperly influencing an auditor during a review of interim financial statements[36] or in connection with the issuance of a consent to the use of an auditor's report.[37] Conducting reviews of interim financial statements and issuing consents to use past audit reports are sufficiently connected to the audit process, and improper influences during those processes are sufficiently connected to the harms that the Act seeks to prevent, that they should be within the scope of the proposed rules. The list of examples in the proposed rule is only illustrative; other actions also could result in rendering the financial statements materially misleading.

Is Subparagraph (b)(2) of the Proposed Rule Helpful or Necessary? Should it Be Deleted? If Subparagraph (b)(2) Should Be Adopted, are the Examples Appropriately Illustrative? Should More, or Fewer, Examples Be Included in the Rule? If so, What Examples Should be Added or Removed?

Section 303(a) states that conduct by an officer, director, or person acting under the direction of the officer or director designed to improperly influence an issuer's auditor is actionable if undertaken "for the purpose of" rendering the issuer's financial statements materially misleading. Under the proposed rule, an officer, director, or person acting under the direction of the officer who engaged in conduct to improperly influence an auditor would be culpable if he or she knew, or was unreasonable in not knowing, that the improper influence could, if successful, result in rendering financial statements materially misleading.[38]

The Commission is considering strongly other wording changes to make the rule effective in preventing improper influences. There are several changes, individually or collectively, that could accomplish that objective, and we solicit comment on the best approach. For example:

1. Should we replace the statement in subparagraphs (b)(1) and (c) that no person acting "under the direction" of an officer or director shall improperly influence the auditors of the issuer's financial statements, with a statement that no person acting "at the behest of" or "on behalf of" an officer or director shall improperly influence the auditors. Such language might better indicate that no specific direction by an officer or director is required to violate the proposed rules.

2. Should the word "fraudulently" in subparagraphs (b)(1) and (c)(2) be replaced with the word "improperly" or some other word to convey a mental state short of scienter?

3. Should the phrase in subparagraphs (b)(1) and (c)(2) that "if the person knew or was unreasonable in not knowing that such action could, if successful, result in rendering such financial statements materially misleading" be replaced with "for the purpose of, or have the effect of, rendering the financial statements materially misleading" or some other phrase to convey that proving a particular purpose or intent is not required?

C. Issues Related to Investment Companies

In contrast to other issuers, investment companies generally have contracts with service providers that perform virtually all of the management, administrative, and other services necessary to the investment company's operations, including preparation of the financial statements. These entities may include an investment company's investment adviser, sponsor, depositor, trustee, and administrator. For registered investment companies and business development companies,[39] the proposed prohibition on improper influence on the conduct of audits would cover not only officers and directors of the investment company itself, but also officers and directors of the investment company's investment adviser, sponsor, depositor, trustee, and administrator.[40] We are also proposing to amend existing rule 13b2–2 to cover officers and directors of these entities.[41]

Is it Necessary or Appropriate To Expressly Extend the Prohibition on Improper Influence on the Conduct of Audits, and Existing Rule 13b2–2, to Officers and Directors of the Investment Company's Service Providers? If so, Which Service Providers Should Be Covered?

III. General Request for Comments

We invite any interested person wishing to submit written comments on the proposed rules to do so. We specifically request comments from investors, accounting firms and registrants. We solicit comment on each component of the proposal.

IV. Paperwork Reduction Act

The Paperwork Reduction Act is not applicable to the proposed rules because they do not impose any collection of information requirements.

V. Costs and Benefits

The proposed rules implement a Congressional mandate. We recognize, however, that any implementation of the Act likely will result in costs and benefits and have an effect on the economy.

Because much of the conduct addressed by Section 303(a) and the proposed rules generally was prohibited under provisions of the securities laws that existed before enactment of the Sarbanes-Oxley Act, we do not anticipate that the proposed rules would increase significantly costs for issuers or accounting firms. Nonetheless, the Act and proposed rules might prompt some issuers to adopt procedures or guidelines that would assure additional care would be used by an issuer's officers and directors, and others acting under their direction, in communicating with auditors of the issuer's financial statements. For example, some issuers might require that more discussions include members of senior management or the issuer's legal counsel. Because no particular procedures related to such communications are required, and the nature and scope of those procedures are likely to vary among issuers, it is difficult to provide an accurate cost estimate.

As noted above, in some circumstances the proposed rules might apply before the professional engagement period begins. For example, the proposed rules would apply if an officer, director, or person acting under the direction of an officer or director, offers to engage an accounting firm on the condition that the firm either issue an unqualified audit report on financial statements that do not conform with generally accepted accounting principles, or limit the scope or performance of audit or review procedures in violation of generally accepted auditing standards. We believe, however, that such conduct would not be permitted under existing laws and regulations and, accordingly, the proposed rules should not result in a significant increase in costs for issuers.

Potential benefits of the proposed rules include increased investor confidence in the integrity of the audit process and, in turn, in the reliability of reported financial information. One of the most important factors in the successful operation of our securities markets is the trust that investors have in the reliability of the information used to make voting and investment decisions.[42]

Section 303(a) and the proposed rules are designed to provide added assurance that the full-disclosure purposes of the securities laws are fulfilled,[43] and to help restore the faith of America's investors in the integrity of the audit process and in the reliability of reported financial information. If section 303 of the Act and the proposed rules lead to increased investor confidence in financial reporting, they also may facilitate capital formation. An increased willingness of investors to participate in the securities markets might result in issuers being able to lower their cost of capital.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to the proposed revisions to rule 13b2–2 of Regulation 13B–2. The proposals would implement the statutory prohibition on officers and directors of an issuer, and persons acting under

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[29] Changes in the principal auditor of an issuer's financial statements are reported under item 4 of Form 8–K, 17 CFR 249.308. *See also* item 304 of Regulation S–K, 17 CFR 229.304, and item 304 of Regulation S–B, 17 CFR 228.304.

[30] There is no such requirement for Rule 13b2–1 or Rule 13b2–2.

[31] See Report of the Committee on Banking, Housing, and Urban Affairs, To Accompany S. 2673, "Public Company Accounting Reform and Investor Protection Act of 2002," 107th Cong., 2d Sess., (S.R. 107–205), at 26 (Comm. Print, July 3, 2002), which states that section 303 makes it unlawful for any officer or director of an issuer, or any person acting under the direction of an officer or director, to fraudulently influence, coerce, manipulate, or mislead the auditor of the issuer's financial statements "for the purpose of rendering the *audit report* misleading." (Emphasis added.)

[32] For example, an auditor might be fraudulently influenced to allow an issuer to correct material misstatements over time, or not to restate prior period financial statements, in violation of generally accepted accounting principles.

[33] *See* section 401(a) of the Act, which, among other things, adds section 13(i) to the Exchange Act, which requires that financial statements prepared in accordance with (or reconciled to) generally accepted accounting principles and filed with the Commission reflect all material correcting adjustments identified by a registered public accounting firm.

[34] *See, e.g.*, SAS 1, "Subsequent Discovery of Facts Existing at the Date of the Auditor's Report," AU § 561.

[35] *See, e.g.*, section 204 of the Act, which adds section 10A(k) to the Exchange Act and requires each registered public accounting firm to report certain matters to the audit committee, and AICPA, SAS 61, "Communication With Audit Committees" (as amended by SAS 89 and SAS 90).

[36] *See* Rule 10–01(d) of Regulation S–X, 17 CFR 210.10–01(d).

[37] *See, e.g.*, section 7(a) of the Securities Act of 1933, 15 U.S.C. 77g, which states in part, "If any accountant * * * is named as having prepared or certified any part of the registration statement, the written consent of such person shall be filed with the registration statement"; Rule 436 under the Securities Act of 1933, 17 CFR 230.436.

[38] We believe that the mental state requirements of the proposed rules generally should be construed consistently with the existing rules in Regulation 13B–2. Because there is no private right of action, among other reasons, the Commission believes that a lesser standard of liability is appropriate. See Release No. 34–15570 (Feb. 15, 1979); **44 Federal Register** 10970. See also, Report of the Committee on Banking, Housing, and Urban Affairs, To Accompany S. 2673, "Public Company Accounting Reform and Investor Protection Act of 2002," 107th Cong., 2d Sess., (S.R. 107–205), at 26 (Comm. Print, July 3, 2002), which cites as a reason for enacting section 303 the testimony of witnesses who were concerned with addressing fraud and other "misconduct in the audit process."

[39] Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act of 1940. See 15 U.S.C. § 80a-2(a)(48) (defining business development companies).

[40] Proposed rule 13b2–2(c)(2).

[41] Proposed rule 13b2–2(c)(1).

[42] *See* Accounting Series Release No. 296 (Aug. 20, 1981), which states in part: (T)he capital formation process depends in large part on the confidence of investors in financial reporting. An investor's willingness to commit his capital to an impersonal market is dependent on the availability of accurate, material and timely information regarding the corporations in which he has invested or proposes to invest. The quality of information disseminated in the securities markets and the continuing conviction of individual investors that such information is reliable are thus key to the formation and effective allocation of capital. Accordingly, the audit function must be meaningfully performed and the accountant's independence not compromised.

[43] *See, e.g.*, H.R. Rep. No. 1383, 73rd Cong., 2d Sess., 11 (1934), which states: Just as artificial manipulation tends to upset the true function of an open market, so the hiding and secreting of important information obstructs the operation of the markets as indices of real value. There cannot be honest markets without honest publicity. Manipulation and dishonest practices of the market place thrive upon mystery and secrecy.

This House Report also includes a letter from the Executive Assistant of the Committee on Stock List for the New York Stock Exchange, which recognizes management's need for accurate financial information and then states: [U]nder the conditions of today, the next object in order of importance has become to give stockholders, in understandable form, such information in regard to the business as will avoid misleading them in any respect and as will put them in possession of all information needed, and which can be supplied in financial statements, to determine the true value of their investments. * * * The exchange is interested in the accounts of companies as a source of reliable information for those who deal in stocks. It is not sufficient for the stock exchange that the accounts should be in conformity with law or even that they should be conservative; the stock exchange desires that they should be fully and fairly informative. *Id.* at 12.

their direction, improperly influencing the conduct of an audit or review of the issuer's financial statements.

A. Reasons for, and Objectives of, the Proposed Rules

The purpose of the proposed rules is to implement section 303(a) of the Act. The proposed rules would prohibit officers and directors of issuers, including "small businesses," and persons acting under their direction, from improperly influencing an accounting firm's audit or review of the issuer's financial statements. Today, it could be alleged generally that such conduct violated the anti-fraud or other provisions of the securities laws or aided and abetted or caused the issuer's violations of those sections. The proposed rules, and section 303(a) of the Act, would provide the Commission with an additional means to address such conduct and are intended to enhance the credibility of financial statements.

B. Legal Basis

We are proposing the amendments under the authority set forth in sections 3(a) and 303 of the Act; Schedule A and sections 5, 6, 7, 8, 10 and 19 of the 1933 Act; Sections 3, 10A, 12, 13, 14, 15, 17 and 23 of the Exchange Act; and Sections 6, 8, 20, 30, 31 and 38 of the Investment Company Act of 1940.

C. Small Entities Subject to the Proposed Rules

The proposals would affect small registrants that are small entities. Exchange Act Rule 0–10(a)[44] and 1933 Act Rule 157[45] define a company to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that approximately 2,500 companies are small entities, other than investment companies.

For purposes of the Investment Company Act, Rule 0–10[46] defines "small business" to be an investment company with net assets of $50 million or less as of the end of its most recent fiscal year. We estimate that approximately 225 investment companies meet this definition.

D. Reporting, Recordkeeping and Other Compliance Requirements

The enactment of section 303(a) of the Act and the adoption of the proposed rules might result in some issuers adopting more detailed procedures for communications between the company and the accounting firm that audits the company's financial statements. These procedures might increase costs associated with compliance with the securities laws.

At this time, we cannot estimate the likely burden that would be incurred by small businesses, although we assume the burden would be minor for most issuers.

E. Duplicative, Overlapping or Conflicting Federal Rules

We are not aware of any federal rules that conflict with the proposed rules. The improper conduct directly addressed in section 303(a) and the proposed rules, however, also under certain circumstances may constitute violations of the existing rules in Regulation 13B–2 or other sections of the securities laws. We were directed by Congress to perform this rulemaking, and section 303(c) of the Act expressly states that rules adopted under the section are in addition to and do not preempt or supersede any other rule or regulation.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities;
2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rules for small entities;
3. The use of performance rather than design standards; and
4. An exemption from coverage of the proposed amendments, or any part thereof, for small entities.

Section 303(a) of the Act does not provide an exemption for small businesses. The section does provide, however, that the rules adopted by the Commission should be "as necessary and appropriate in the public interest and for the protection of investors." We are inclined to apply the proposals to small business issuers. We believe investors in small companies, just as investors in large companies, would want and benefit from the added confidence in reported financial information that comes from knowing that efforts to fraudulently influence the performance of the audit have been prohibited.

We are using a performance standard rather than a design standard. In addition, Congress has dictated the timetable for this rulemaking.

We request comment on whether it is feasible to further clarify, consolidate, or simplify the proposed rules for small entities.

G. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. Specifically, we request comments regarding the number of small entities that may be affected by the proposed rules and the existence or nature of the potential impact on those small entities.

Commenters are requested to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed rules.

VII. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition and Capital Formation

For the purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[47] we are requesting information regarding the impact of the proposed rules on an annual basis. Commenters should provide empirical data to support their views.

Section 23(a)(2) of the Exchange Act[48] requires us, when adopting rules under the Exchange Act, to consider the impact on competition of any rule we adopt. Section 2(b) of the 1933 Act,[49] section 3(f) of the Exchange Act,[50] and section 2(c) of the Investment Company Act of 1940,[51] require us, when engaging in rulemaking where we are required to consider or determine whether the action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

The proposed rules would prohibit improper influences on auditors in connection with their reviews and audits of financial statements filed with the Commission. The proposals, therefore, should enhance investor confidence in the audit process and in the quality of information available to them, and lead to a more efficient market.

Because of the nature of the proposed rules, we do not believe that they would impose any burden on competition. They prohibit equally all officers and directors of public companies (and persons acting under their direction) from improperly influencing the auditor.

As noted in the cost-benefit section, if section 303 of the Act and the proposed rules lead to increased investor confidence in financial reporting, they also may facilitate capital formation. An increased willingness of investors to participate in the securities markets might result in issuers being able to lower their cost of capital. The possible effects of the proposed rules on efficiency, competition, and capital formation, however, are difficult to quantify. We request comment on these matters in connection with our proposed rules.

VIII. Statutory Authority

We are proposing the new rules under the authority set forth in sections 3(a) and 303 of the Act; Schedule A and sections 5, 6, 7, 8, 10 and 19 of the 1933 Act; Sections 3, 10A, 12, 13, 14, 15, 17 and 23 of the Exchange Act; and Sections 6, 8, 20, 30, 31 and 38 of the Investment Company Act of 1940.

Text of Proposed Rules and Amendments

List of Subjects in 17 CFR Part 240

Securities.

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.13b2–2 is revised to read as follows:

§ 240.13b2–2 Issuer's representations and conduct in connection with the preparation of required reports and documents.

(a) No director or officer of an issuer shall, directly or indirectly:

(1) Make or cause to be made a materially false or misleading statement; or

(2) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with:

(i) Any audit or examination of the financial statements of the issuer required to be made pursuant to this subpart; or

(ii) The preparation or filing of any document or report required to be filed with the Commission pursuant to this subpart or otherwise.

(b)(1) No officer or director of an issuer, or any other person acting under the direction thereof, shall directly or indirectly take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified public accountant engaged in the performance of an audit or review of the financial statements of that issuer that are required to be filed with the Commission if that person knew or was unreasonable in not knowing that such action could, if successful, result in rendering such financial statements materially misleading.

(2) For purposes of paragraphs (b)(1) and (c)(2) of this section, actions that "could, if successful, result in rendering such financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to fraudulently influence, coerce, manipulate, or mislead an auditor:

(i) To issue a report on an issuer's financial statements that is not warranted in the circumstances (due to material violations of generally accepted accounting principles, generally accepted auditing standards, or other standards);

(ii) Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

(iii) Not to withdraw an issued report; or

(iv) Not to communicate matters to an issuer's audit committee.

(c) In addition, in the case of an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), no officer or director of the company's investment adviser, sponsor, depositor, trustee, or administrator (or, in the case of paragraph (c)(2) of this section, any other person acting under the direction thereof) shall, directly or indirectly:

(1)(i) Make or cause to be made a materially false or misleading statement; or

(ii) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with:

(A) Any audit or examination of the financial statements of the investment company required to be made pursuant to this subpart; or

(B) The preparation or filing of any document or report required to be filed with the Commission pursuant to this subpart or otherwise; or

(2) Take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified public accountant engaged in the performance of an audit or review of the financial statements of that investment company that are required to be filed with the Commission if that person knew or was unreasonable in not knowing that such action could, if successful, result in rendering such financial statements materially misleading.

Dated: October 18, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27115 Filed 10–23–02; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Radio Island, Beaufort, NC

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers is proposing regulations to establish a restricted area in the vicinity of Radio Island, Beaufort, North Carolina. These regulations will enable the Navy to enhance security for Navy property, vessels, and personnel. The

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[44] 17 CFR 240.0–10(a).
[45] 17 CFR 230.157.
[46] 17 CFR 270.0–10.
[47] Pub. L. 104–121, title II, 110 Stat. 857 (1996).
[48] 15 U.S.C. 78w(a)(2).
[49] 15 U.S.C. 77b(b).
[50] 15 U.S.C. 78c(f).
[51] 15 U.S.C. 80a–2(c). to be filed with the Commission if that person knew or was unreasonable in not knowing that such action could, if successful, result in rendering such financial statements materially misleading.

regulations are necessary to safeguard Navy vessels and United States government facilities from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions which may exist as a result of Navy use of the area.

DATES: Written comments must be submitted on or before November 25, 2002.

ADDRESSES: Send comments to U.S. Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC at (202) 761–4618, or Mr. Scott McLendon, Corps of Engineers, Wilmington District, Regulatory Division, at (910) 251–4725.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and chapter XIX, of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps proposes to amend the restricted area regulations in 33 CFR part 334 by adding § 334.435 which establishes a restricted area adjacent to Radio Island, between the Morehead City Channel and the Beaufort Channel, Beaufort, North Carolina. The public currently has unrestricted access to surrounding waters. To better protect vessels and personnel during loading and unloading operations, the Commander, Navy Region, Mid-Atlantic has requested the Corps of Engineers establish a Restricted Area which will enable the Navy to implement a waterside security program that is currently not available at the facility.

Procedural Requirements

A. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

B. Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small Governments). The Corps expects that the economic impact of the establishment of this restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

C. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional restricted area regulations, that this action, if adopted, will not have a significant impact to the quality of the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT,** above.

D. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Act. We have also found under section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.435 is added to read as follows:

§ 334. 435 Radio Island, Beaufort, North Carolina, Naval Restricted Area.

(a) *The area.* Beginning at a point at latitude 34°42′21″ N., longitude 76°40′50.4″ W.; thence southwesterly to latitude 34°42′20.4″ N., longitude 76°40′53.4″ W.; thence southeasterly to latitude 34°42′15″ N., longitude 76°40′51.6″ W.; thence southeasterly to latitude 34°42′13.6″ N., longitude 76°40′49.4″ W., thence northeasterly to latitude 34°42′15.6″ N., longitude 76°40′41.4″ W.; thence northwesterly to latitude 34°42′22.8″ N., longitude 76°40′44.4″ W.; thence southwesterly to the point of beginning.

(b) *The regulation.* During those times when the U.S. Navy is conducting loading and unloading operations at the Radio Island Loading Ramp, no vessel or persons may enter the Restricted Area unless specific authorization is granted by the Commander, Navy Region, Mid-Atlantic and/or other persons or agencies as he/she may designate.

(c) *Enforcement.* The regulation in this section shall be enforced by the Commander, Navy Region, Mid-Atlantic, and/or persons or agencies as he/she may designate.

Dated: September 11, 2002.

Michael G. Ensch,

Acting Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 02–26647 Filed 10–23–02; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Naval Air Station North Island, San Diego, CA

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Notice of Proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers is proposing to amend its regulations to establish a new restricted area in waters adjacent to the Naval Air Station North Island (NASNI), San Diego, California. This amendment will restrict activities by the public on the northeast side of the base. The regulations are necessary to safeguard Navy vessels and United States Government facilities from sabotage and other subversive acts, accidents, or incidents of a similar nature.

DATES: Written comments must be submitted by November 25, 2002.

ADDRESSES: Send comments to U.S. Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC, at (202) 761–4618, or Mr. Russell L. Kaiser, Corps of Engineers, Los Angeles District, Regulatory Branch, at (213) 452–3293.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. V1) and chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps is proposing to amend the restricted area regulations in 33 CFR part 334 by adding a restricted area at § 334.865. The proposed restricted area is being established for safety and security purposes in support of accommodating the homeport of a third aircraft carrier at NASNI. The proposed restricted area is adjacent to a current U.S. Coast Guard security zone, which is enclosed by latitude/longitude coordinates: 32°42′52.5″ N, 117°11′45.0″ W; 32°42′55.3″ N, 117°11′45.0″ W; 32°42′55.0″ N, 117°11′30.5″ W; 32°42′40.0″ N, 117°11′06.5″ W; 32°42′37.2″ N, 117°11′06.8″ W; 32°42′28.5″ N, 117°11′ 11.0″ W; 32°42′21.5″ N, 117°10′47.7″ W; and 32°42′13.1″ N, 117°10′51.2″ W. The proposed connection of the restricted area with the security zone would occur at the following coordinates: 32°42′55.0″ N, 117°11′30.5″ W and 32°42′40.0″ N, 117 °11′06.5″ W.

Procedural Requirements

A. Review Under Executive Order 12866

This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

B. Review Under the Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act (Public Law 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps expects that the economic impact of this new restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal will have no significant economic impact on small entities.

C. Review Under the National Environmental Policy Act

The Los Angeles District is preparing an Environmental Assessment (EA) for this action. Although not expected at this time, based on the minor nature of the proposed additional restricted area regulations, an Environmental Impact Statement (EIS) would be prepared if determined appropriate. When the NEPA documentation is completed, it will be available for review at the Los Angeles District office listed at the end of **FOR FURTHER INFORMATION CONTACT,** above.

D. Unfunded Mandates Act

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Act. We have also found under section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.865 is added to read as follows:

§ 334.865 Naval Air Station North Island, San Diego, California, Restricted Area.

(a) *The area.* The waters within an area beginning at 32°42′55.0″ N, 117°11′30.5″ W; thence running easterly to 32°42′57.0″ N, 117°11′22.5″ W; thence running easterly to 32°42′56.0″ N, 117°11′19.0″ W; thence running southeasterly to 32°42′49.0″ N, 117°11′08.5″ W; thence running southeasterly to 32°42′44.5″ N, 117°11′06.5″ W; thence running southerly to 32°42′40.0″ N, 117°11′06.5″ W.

(b) *The regulation.* (1) The restricted area shall not be open to swimming, fishing, water-skiing, mooring or anchorage.

(2) Dragging, seining, other fishing operations, and other activities not under the direction of the United States, which might foul underwater installations within the restricted area, are prohibited.

(3) All tows entering the restricted area shall be streamed and shortened to the seaward of the area and towing appendages and catenaries shall not be dragged along the bottom while proceeding through the area.

(4) All vessels entering the restricted area shall proceed across the area by the most direct route and without unnecessary delay.

(5) No vessel or craft of any size shall lie-to or anchor in the restricted area at any time other than a vessel operated by or for the U.S. Navy, U.S. Coast Guard, other authorized military components, or other vessels authorized by Commander, Navy Region Southwest, or his/her designee.

(6) When security conditions dictate, Naval security forces may impose strict enforcement of stand-off distances within the restricted area. This enforcement will not prevent utilization of navigable channels, but will serve to control its use in order to protect vital National interests.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commander, Navy Region Southwest, and such agencies or persons as he/she may designate.

Dated: September 17, 2002.

Michael G. Ensch,

Acting Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 02–26645 Filed 10–23–02; 8:45 am]

BILLING CODE 3710–92–P

Notices

Federal Register
Vol. 67, No. 206
Thursday, October 24, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Grangeville, Idaho, Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Wednesday, November 20, 2002 in Pierce, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on November 20 begins at 10 a.m. at the Pierce Community Center, Pierce, Idaho. Agenda topics will include discussion of potential projects. A public forum will begin at 2:30 p.m. (PST).

FOR FURTHER INFORMATION CONTACT: Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 983–1950.

Dated: October 17, 2002.

Ihor Mereszczak,

Acting Forest Supervisor.

[FR Doc. 02–27114 Filed 10–23–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Library

Notice of Intent To Seek Approval To Collect Information

AGENCY: Agricultural Research Service, National Agricultural Library, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Library's intent to request approval for a new electronic mailing list subscription form from those working with nutrition and food safety.

DATES: Comments on this notice must be received by December 30, 2002 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Janice Schneider, Information Specialist Food and Nutrition Information Center, National Agricultural Library, 10301 Baltimore Avenue, Beltsville, MD, 20705–2351, comments may be sent by facsimile to (301) 504–6047, or fax (301) 504–6409. Submit electronic comments to: *jschneid@nal.usda.gov*

FOR FURTHER INFORMATION CONTACT: Janice Schneider, (301) 504–6047.

SUPPLEMENTARY INFORMATION:

Title: Electronic Mailing List Subscription Form.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: Approval for data collection from individuals working in the areas of nutrition and food safety.

Abstract: The form would include the following items:

This form contains seven items and is used to collect information about participants who are interested in joining an electronic discussion group. The form collects data to see if a person is eligible to join the discussion group. Because these electronic discussion groups are only available to people who work in the areas of nutrition and food safety it is necessary to gather this information. The questionnaire asks for the person's name, email address, job affiliation, phone number and address.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 minute per response.

Respondents: Individuals who are interested in joining an electronic discussion group.

Estimated Number of Respondents: 1000 per year.

Estimated Total Annual Burden on Respondents: 1000 Minutes or 16.66 hours.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: October 12, 2002.

Caird E. Rexroad,

Acting Associate Administrator, ARS.

[FR Doc. 02–27099 Filed 10–23–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by December 23, 2002.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036, South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. Fax: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for reinstatement.

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–4120.

Title: 7 CFR Part 1724, Electric Engineering, Architectural Services and Design Policies and Procedures.

OMB Control Number: 0572–0118.

Type of Request: Reinstatement of a previously approved collection.

Abstract: The rule requires borrower to use three RUS contract forms under certain circumstances. The use of standard forms helps assure RUS that:

- Appropriate standards and specifications are maintained;
- RUS loan security is not adversely affected; and
- Loan and loan guarantee funds are used effectively and for the intended purpose.

Standardization of forms by RUS results in substantial savings to:

- Borrowers—If standard forms were not used, borrowers would need to prepare their own documents at significant expense; and
- Government—If standard forms were not used, each document submitted by a borrower would require extensive and costly review by both RUS and the Office of General Counsel.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Businesses, not-for-profit institutions and others.

Estimated Number of Respondents: 155.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 155 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Development and Regulatory Analysis, at (202) 720–0812. Fax: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 17, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–27063 Filed 10–23–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

[I.D. 101802C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Survey to Measure Effectiveness of Community-Oriented Policing for Endangered Species Act Enforcement.

Form Number(s): None.

OMB Approval Number: 0648–0435.

Type of Request: Regular submission.

Burden Hours: 316.

Number of Respondents: 787.

Average Hours Per Response: 45 minutes for a survey of Washington State Department of Fish and Wildlife and NOAA personnel; 60 minutes for an interview of public officials, managers, and key stakeholders; and 20 minutes for a survey of citizens.

Needs and Uses: Community-oriented policing (COP) promotes the use of various resources and policing-community partnerships for developing strategies to identify, analyze, and address community problems at their source. Recognizing the significant role non-traditional enforcement efforts will play in Endangered Species Act enforcement in the Northwest, a measurement tool has been developed to ensure that the performance outcomes of these non-traditional enforcement (COP) efforts are effectively measured. Through this instrument, COP efforts can be evaluated for success and elements essential for achieving successful outcomes in future programs can be identified and quantified. Anadromous species enforcement will be the focus of the survey.

Affected Public: Individuals or households, Federal, State, Local or Tribal Government.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 17, 2002.

Gwellnar Banks,

management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–27164 Filed 10–23–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 101802E]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Economic Performance Data for West Coast (California-Alaska) Commercial Fisheries.

Form Number(s): None.

OMB Approval Number: 0648–0369.

Type of Request: Regular submission.

Burden Hours: 7,074.

Number of Respondents: 2,278.

Average Hours Per Response: 3 hours for catcher vessels; 8 hours for processors; and 1 hour for charter boat operators.

Needs and Uses: This proposed collection of economic performance

data for West Coast and Alaska fisheries supports a cooperative agreement between NOAA and the Pacific States Marine Fisheries Commission. The data will be used to: monitor economic performance of these fisheries, analyze the economic effects of current and alternative management measures, and to meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, National Environmental Policy Act, the Regulatory Flexibility Act, and Executive Order 12866. Data will also be used in support of State fishery management activities, by the industry, and the general public.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 17, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–27165 Filed 10–23–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: October 24, 2002.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than September 30, 2003.

	Period to be reviewed
Antidumping Duty Proceedings:	
Latvia: Steel Concrete Reinforcing Bars A–449–804	1/30/01–8/31/02
Joint Stock Company Liepajas Metalurgs.	
South Africa: Certain Hot-Rolled Carbon Steel Flat Products, A–791–809	5/3/01–8/31/02
Iscor, Ltd.	
Highveld Steel and Vanadium Corp., Ltd.	
Saldanha Steel, Ltd.	
South Korea: Stainless Steel Wire Rod, A–580–829	9/1/01—8/31/02
Changwon Specialty Steel Co., Ltd.	
Dongbang Special Steel Co., Ltd.	
South Korea: Steel Concrete Reinforcing Bars, A–580–844	1/30/01–8/31/02
Dongkuk Steel Mill Co., Ltd.	
Spain: Stainless Steel Wire Rod, A–469–807	9/1/01–8/31/02
Roldan, S.A.	
The People's Republic of China: Foundry Coke [1], A–570–862	3/8/01–8/31/02
CITIC Trading Co., Ltd.	
The People's Republic of China: Freshwater Crawfish Tail Meat [2], A–570–848	9/1/01–8/31/02

	Period to be reviewed
China Everbright	
China Kingdom Import & Export Co., Ltd., aka China Kingdoma Import & Export Co., Ltd., aka Zhongda Import & Export Co., Ltd.	
Fujian Pelagic Fishery Group Co.	
Huaiyin Foreign Trade Corporation (5)	
Jiangsu Hilong International Trading Co., Ltd.	
Huaiyin Foreign Trade Corporation (30)	
Jiangsu Cereals, Oils, & Foodstuffs Import & Export Corp.	
Nantong Delu Aquatic Food Co., Ltd.	
Nantong Shengfa Frozen Food Co., Ltd.	
Ningbo Nanlian Frozen Foods Co., Ltd.	
North Supreme Seafood (Zhejiang) Co., Ltd.	
Qingdao Rirong Foodstuff Co., Ltd., aka Qingdao Rirong Foodstuffs	
Qingdao Zhengri Seafood Co., Ltd., aka Qingdao Zhengri Seafoods	
Shanghai Taoen International Trading Co., Ltd.	
Shantou SEZ Yangfeng Marine Products Co.	
Shouzhou Huaxiang Foodstuffs Co., Ltd.	
Suqian Foreign Trade Corp., aka Suqian Foreign Trading	
Weishan Fukang Foodstuffs Co., Ltd.	
Weishan Zhenyu Foodstuff Co., Ltd.	
Yancheng Baolong Biochemical Products Co., Ltd.	
Yancheng Foreign Trade Corp., aka Yancheng Foreign Trading, aka Yang Chen Foreign Trading	
Yancheng Haiteng Aquatic Products & Foods Co., Ltd.	
Yancheng Yaou Seafoods	
Yangzhou Lakebest Foods Co., Ltd.	

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of foundry coke from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of freshwater crawfish tail meat from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

Countervailing Duty Proceedings:	
Argentina: Certain Hot-Rolled Steel Flat Products, C–357–815	1/1/01–12/31/01
Siderar S.A.I.C.	
Italy: Stainless Steel Wire Rod, C–475–821	1/1/01–12/31/01
Acciaierie Valbruna S.P.A.	

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under § 351.211 or a determination under § 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: October 18, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 02–27145 Filed 10–23–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–507–502]

Administrative Review of Certain In-Shell Raw Pistachios From Iran: Extension of Time Limit for Final Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 24, 2002.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall at (202) 482–1398, or Donna Kinsella at (202) 482–0194, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce ("the Department") to issue a final results of review within 90 days after the date on which the preliminary results were issued. However, if the Secretary concludes that a new shipper review is extraordinary complicated, the Secretary may extend the 90-day period to 150 days from the date of issuance of the preliminary results of review.

Background

On July 29, 2002, the Department issued the preliminary results of antidumping duty new shipper review on certain in-shell raw pistachios from Iran, covering the period July 1, 2000 through June 30, 2001. The final results are currently due no later than October 27, 2002.

Extension of Time Limit for Preliminary Results of Review

The instant new shipper review is extraordinarily complicated (*e.g.*, exchange rates, and cost of production issues) and a greater amount of time is necessary in order to complete this review. Therefore, pursuant to section 751(a)(2)(B)(iv) of the Act, the Department is extending the time limit for completion of the final results to 150 days from the issuance of the preliminary results, until December 26, 2002.

This extension of the time limit is in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 214(i)(2).

Dated: October 17, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–27144 Filed 10–23–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101502A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3–day Council meeting from November 5–7, 2002, to consider actions affecting New England fisheries in the U.S. exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, Wednesday, and Thursday, November 5, 6, and 7, 2002. The meeting will begin at 9 a.m. on Tuesday and at 8:30 a.m. on Wednesday and Thursday.

ADDRESSES: The meeting will be held at the Gloucester High School (Field House), 32 Leslie O. Johnson Road, Gloucester, MA 01930; telephone (978) 281–9870. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, November 5, 2002

Following introductions, the Council will consider and approve a list of management actions for 2003. A report from the Whiting Committee will follow, during which the committee will recommend final approval of Framework 37 to Northeast Multispecies Fishery Management Plan (FMP), an action that will affect small mesh multispecies, a group that includes whiting, red hake and offshore hake. The framework includes options to eliminate the year 4 default measures now specified in the FMP, increase opportunities to participate in the Cultivator Shoal fishery and adjust other measures in the northern and southern stock areas. The Council also will consider approving a new control date to determine future participation in the small mesh multispecies fishery. The Monkfish Committee report will follow beginning with a presentation of the Stock Assessment and Fishery Evaluation (SAFE) Report for the 2001 fishing year. The Council will then consider final approval of Framework Adjustment 2 to the Monkfish FMP. Measures would mirror those contained in the NMFS 2002 emergency rule, including a revision to the overfishing definition reference points and control rule, and adjustments to the days-at-sea allocations and/or trip limits to achieve monkfish targets for fishing year 2003.

The Council may also consider removing the default provision from the FMP, measures that would otherwise eliminate the directed monkfish fishery, and extending the effectiveness of Framework Adjustment 2 beyond the 2003 fishing year, until modified by the next plan amendment. The Skate Committee will request final approval of measures for inclusion in the FMP for the Northeast Skate Complex. These include, but are not limited to federal permits and reporting requirements, a prohibition on the possession, landing or sale of some skate species, and possession limits for the skate wing fishery. Before adjournment for the day, the Dogfish Committee will ask the Council to approve the 2003–2004 specifications, which may include a quota and trip limits. They will also review and ask for approval of a list of issues to be considered for inclusion in Amendment 1 to the Spiny Dogfish FMP.

Wednesday and Thursday, November 6–7, 2002

The Council meeting will re-convene on Wednesday to address issues related to groundfish management, beginning with a NMFS presentation on the results of a recent meeting entitled Workshop on Trawl Effects on Fishing Gear Performance. A report from the Groundfish Assessment Review meeting will follow. Once these briefings have occurred, the Council will receive an enforcement analysis for the draft Amendment 13 to the Northeast Multispecies FMP. The last agenda item will concern approval of the Amendment 13 draft measures, including a Draft Supplemental Environmental Impact Statement. The Council meeting will adjourn on Thursday once any other outstanding business has been addressed.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

The Council will consider public comments at a minimum of two Council meetings before making recommendations to the National Marine Fisheries Service Regional Administrator on any framework adjustment to a fishery management plan. Documents pertaining to framework adjustments are available for public review 7 days prior to a final vote by the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 18, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–27163 Filed 10–23–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration Science Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research, NOAA, Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education, and application of science to resource management and environmental assessment and prediction. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Tuesday, November 5, 2002, from 8:30 a.m. to 12 p.m.; Wednesday, November 6, 2002, from 1:30 p.m. to 5 p.m.; and Thursday, November 7, from 8:30 a.m. to 12 p.m. These times and the agenda topics described below may be subject to change. Refer to the web page listed below for a final meeting agenda.

Place: The meeting will be held on Tuesday, November 5 in Conference Room A at the Oklahoma College of Continuing Education Forum at 1700 Asp Avenue in Norman, OK. On Wednesday November 6 and Thursday November 7 the meeting will be held in Conference Rooms D and E at the United States Postal Service National Center for Employee Development, Training and Conference Center, 2805 Highway 9 East, in Norman.

Status: The meeting will be open to public participation with two 30-minute time periods set aside for direct verbal comments or questions from the public. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by Monday October 28, 2002, to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after October 28, 2002, will be distributed to the SAB, but may not be reviewed prior to the meeting date. Approximately thirty (30) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come, first-served basis.

Matters to be Considered: The meeting will include the following topics: (1) The NOAA Climate Change Research Initiative, (2) reports on program and laboratory reviews conducted under the auspices of the SAB, (3) briefings and discussions on activities of SAB subcommittees and working groups, (4) the NOAA National Severe Storms Laboratory, (5) the Cooperative Institute for Mesoscale Meteorological Studies (6) House of Representatives proposed language to institutionalize the SAB, (7) Fiscal Year 2003 Appropriations for NOAA, (8) the National Weather Service—NOAA Research Technology Transfer Program, and (9) public statements.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Uhart, Executive Director, Science Advisory Board, NOAA, Rm. 11142, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–0163, E-mail: *Michael.Uhart@noaa.gov*); or visit the NOAA SAB website at *http://www.sab.noaa.gov.*

Louisa Koch,

Acting Assistant Administrator, OAR.

[FR Doc. 02–27166 Filed 10–23–02; 8:45 am]

BILLING CODE 3510–KD–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

October 18, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.ustreas.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Bangladesh and exported during the period January 1, 2003 through December 31, 2003 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2003 period. Certain 2003 limits have been reduced for carryforward applied to the 2001 limits. Also, special carryforward that was applied to the 2002 limit for Category 347/348, in the amount of 175,230 dozen, is being deducted as 525,690 dozen from the 2003 limit, reflecting the 3:1 payback penalty.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 18, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Bangladesh and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	782,722 dozen.
331pt. [1]	184,031 dozen pairs.
334	252,195 dozen.
335	428,749 dozen.
336/636	767,257 dozen.
338/339	2,222,663 dozen.
340/640	5,024,468 dozen.
341	4,334,870 dozen.
342/642	720,146 dozen.
347/348	3,220,394 dozen.
351/651	1,207,941 dozen.

Category	Twelve-month restraint limit
352/652	17,063,426 dozen.
363	42,631,995 numbers
369–S [2]	2,857,654 kilograms.
634	835,419 dozen.
635	541,253 dozen.
638/639	2,818,745 dozen.
641	1,742,878 dozen.
645/646	665,210 dozen.
647/648	2,356,029 dozen.

[1] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[2] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 21, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–27090 Filed 10–23–02; 8:45 am]

BILLING CODE 3510–DR–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

October 18, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALs) for textile products, produced or manufactured in the Dominican Republic and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits and guaranteed access levels.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 18, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in the Dominican Republic and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Restraint limit
338/638	1,433,879 dozen.
339/639	1,706,313 dozen.
340/640	1,476,099 dozen.
342/642	1,038,765 dozen.
347/348/647/648.	3,533,491 dozen of which not more than 1,866,747 dozen shall be in Categories 647/648.
351/651	1,769,590 dozen.
433	23,721 dozen.
442	80,534 dozen.
443	147,338 numbers.
444	80,534 numbers.
448	41,488 dozen.
633	216,587 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 14, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), effective on January 1, 2003, you are directed to establish guaranteed access levels for properly certified textile products in the following categories which are assembled in the Dominican Republic from fabric formed and cut in the United States and re-exported to the United States from the Dominican Republic during the period January 1, 2003 through December 31, 2003:

Category	Guaranteed access level
338/638	1,150,000 dozen.
339/639	1,150,00 dozen.
340/640	1,000,000 dozen.
342/642	1,000,000 dozen.
347/348/647/648.	8,050,000 dozen.
351/651	1,000,000 dozen.
433	21,000 dozen.
442	65,000 dozen.
443	50,000 numbers.
444	30,000 numbers.
448	40,000 dozen.
633	60,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of February 25, 1987 (52 FR 6595), as amended, shall be denied entry unless the Government of the Dominican Republic authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–27091 Filed 10–23–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit and Guaranteed Access Level for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

October 18, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing an import limit and guaranteed access level.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limit and Guaranteed Access Level (GAL) for textile products in Categories 340/640, produced or manufactured in El Salvador and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limit and guaranteed access level for 2003.

This specific limit and guaranteed access level do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 18, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in El Salvador and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of 1,853,185 dozen.

The limit set forth above is subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in Categories 340/640 exported during 2002 shall be charged to the applicable category limit for that year (see directive dated November 16, 2001) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), effective on January 1, 2003, a guaranteed access level of 1,000,000 dozen is being established for properly certified textile products in Categories 340/640 assembled in El Salvador from fabric formed and cut in the United States which are re-exported to the United States from El Salvador during the period beginning on January 1, 2003 and extending through December 31, 2003.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of January 6, 1995 (60 FR 2740), as amended, shall be denied entry unless the Government of El Salvador authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

This specific limit and guaranteed access level do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–27092 Filed 10–23–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army

Prospective Grant of Exclusive Patent License

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209 and 37 CFR 404.7, U.S. Army Soldier and Biological Chemical Command (SBCCOM) hereby gives notice that it is contemplating the grant of an exclusive license in the United States to practice the below referenced inventions owned by the U.S. Government to CBTEK, L.L.C., 2607 Holman Avenue, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mr. John Biffoni, Intellectual Property Attorney, U.S. Army Soldier and Biological Chemical Command, ATTN: AMSSB–CC (Bldg E4435), Aberdeen Proving Ground, MD 21010–5424, Phone: (410) 436–1158; Fax: 410–436–2534 or E-mail: *John.Biffoni@sbccom.apgea.army.mil*.

SUPPLEMENTARY INFORMATION: The prospective exclusive license may be granted, unless SBCCOM receives written evidence and argument to establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7 on or before November 8, 2002. The following Patent Numbers, Titles and Issue dates are provided:

1. *Title:* "Hand-Held Temperature programmable Modular Gas Chromatograph."

Description: The present invention relates to a gas chromatograph system of reduced size, weight and low power consumption for hand-held field applications. More particularly, to a modular gas chromatography system, which is capable of being interfaced with other portable analyzers.

Patent Number: 5,856,616.

Issue Date: January 5, 1999.

2. *Title:* "Biological Classification System."

Description: The present invention relates to a hand-held chemical vapor detector for detecting biological substances in an indoor and outdoor setting. More specifically, the invention relates to a plasma chromatograph (PC) vapor detector that is interfaced to a biological sample processing and transfer introduction system.

Patent Application Number: 10/205,356.

Filed: 07/25/2002.

3. *Title:* "Injection Valves."

Description: The present invention relates generally to the field of valves and, in particular, to an alternative method for injecting sample fluids into chromatography columns.

Patent Application Number: Not yet assigned.

Filed: 09/11/02.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–27154 Filed 10–23–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement Titled: St. Charles International Airport Project, St. Charles Parish, LA

AGENCY: Department of the Army, Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, New Orleans District (MVN), has received an application from St. Charles International Airport, LLC, 3453 Meadow Lane, Houston, TX 77027 to build an international airport facility in St. Charles Parish, in the vicinity of the highway I–10/I–310 interchange near Kenner, Louisiana. The MVN is initiating this study under the authority of 30 CFR part 230. This study will investigate the feasibility of constructing an international airport faculty in St. Charles Parish.

FOR FURTHER INFORMATION CONTACT: Questions concerning the Environmental Impact Statement (EIS) should be addressed to Mr. Gib Owen at U.S. Army Corps of Engineers, PM–RS, P.O. Box 60267, New Orleans, LA 70160–0267, phone (504) 862–1337, fax number (504) 862–2572 or by E-mail at *gib.a.owen@mvn02.usace.army.mil.*

SUPPLEMENTARY INFORMATION: 1. Applicant proposes to construct an international airport facility and appurtenant structures on approximately 8,153 acres of which approximately 4,253 acres is plaustrine 1 and emergent wetland and 3,900 acres of open water. Facility would consist of the construction of: (1) Five runways (9,000 to 12,000 feet long) and accompanying taxiways; (2) taxiway over I–310; (3) overpass and access roadway from Highway I–10 to terminal facilities; (4) intermodal freight center including facilities for the handling, processing and storage of cargo; (5) passenger terminal; (6) grade reduction of Canadian National-Illinois Central railroad track; (7) flood protection levee approximately 56,829 feet in length; and (8) hurricane protection levee approximately 29,823 feet in length. Applicant proposes to demuck approximately 23,981,558 cubic yards of material from site. Applicant further proposes to fill area using approximately 59,032,115 cubic yards of material obtained from dredging the Mississippi River, the Bonnet Carre Floodway and commercial sources.

2. Scoping is the process for determining the range of alternatives and significant issues to be addressed in the EIS. For this analysis, a letter will be sent to all parties believed to have an interest in the analysis, requesting their input on alternatives and issues to be evaluated. The letter will also notify interested parties of public scoping meetings that will be held in the local area. Notices will also be sent to local news media. All interested parties are invited to comment at this time, and anyone interested in this study should request to be included in the study mailing list.

A public scoping meeting will be held in November or December 2002 at the Lake Pontchartrain Center 4545 Williams Boulevard in Kenner Louisiana. Additional meetings could be held, depending upon interest and if it is determined that further public coordination is warranted.

3. Significant Issues. The tentative list of resources and issues to be evaluated in the *EIS includes:* Wetlands (marshes and swamps); bottomland hardwoods; wildlife resources; aquatic resources including fisheries and essential fish habitat; coastal zone impacts; water quality; air quality; threatened and endangered species; recreation resources; cultural resources; aircraft noise; solid waste impacts; storm water runoff; and transportation impacts. Socioeconomic items to be evaluated in the EIS include: need for project; flood protection; business and industrial activity; employment; land use; property values; public/community facilities and services; tax revenues; population; community and regional growth; transportation; housing; community cohesion; and noise. Additionally, a No-Action alternative will be evaluated.

4. Cooperating Agency. The Federal Aviation Administration (FAA) will be a cooperating agency in the preparation of a draft EIS (DEIS) and will provide guidance and comment for areas within the expertise of the FAA.

5. Environmental Consultation and Review. The U.S. Fish and Wildlife Service (USFWS) will be assisting in the documentation of existing conditions and the assessment of effects of project alternatives through the Fish and Wildlife Coordination Act consultation procedures. The USFWS will provide a Fish and Wildlife Coordination Act report. Consultation will be accomplished with the USFWS and the National Marine Fisheries Service (NMFS) concerning threatened and endangered species and their critical habitat. The NMFS will be consulted on the effects of this proposed action on Essential Fish Habitat. The DEIS or a notice of its availability will be distributed to all interested agencies, organizations, and individuals.

6. Estimated Date of Availability. Funding levels will dictate the date when the DEIS is available. The earliest that the DEIS is expected to be available in the fall of 2004.

Dated: October 1, 2002.

Peter J. Rowan,

Colonel, U.S. Army, District Engineer.

[FR Doc. 02–27157 Filed 10–23–02; 8:45 am]

BILLING CODE 3710–84–P

DEPARTMENT OF DEFENSE

Department of Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Design Modifications and Recreational Enhancements to the Wyoming Valley Levee Raising Project at the Wilkes-Barre, PA Historic River Commons

AGENCY: Department of the Army, Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (Corps), Baltimore District, will prepare a Draft Supplemental Environmental Impact Statement (DSEIS). The DSEIS will evaluate the potential impacts to the natural, physical, and human environment resulting from the proposed Design Modifications and Recreational Enhancements to the Wyoming Valley Levee Raising Project at the Wilkes-Barre, PA Historic River Commons. The project goal is to reconnect Wilkes-Barre's urban district to the Susquehanna River reclaiming the river as a civic resource for the daily life of the inhabitants and visitors and making the river an identifying topographic symbol of the city.

The DSEIS will include documentation of baseline conditions, an evaluation of the no action alternative, and an evaluation of the proposed project features and associated impacts. The features to be evaluated for the proposed project include two portals (i.e., pedestrian gates) through the levee, a river landing, a boat dock/pier, and an amphitheater. Details concerning these features are provided in Section 4 below.

DATES: A public scoping meeting is scheduled for November 6, 2002, at 7 p.m., Kings College Burke Auditorium in the McGowan Building, on the corner of River and Union Streets in Wilke-Barre.

ADDRESSES: Send written comments and suggestions concerning the scope of the DSEIS, requests to speak at the public scoping meeting, or special requests to enable participation at the scoping meeting (e.g., interpreter for the hearing-impaired) to: Amy M. Guise, CENAB–PL, U.S. Army Corps of Engineers, Baltimore District, 10 South Howard Street, P.O. Box 1715, Baltimore, MD, 21203–1715. Telephone (410) 962–2941 or Electronic Mail: *amy.m.guise@usace.army.mil.* Requests to be placed on the mailing list or receive a copy of the DSEIS should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about the proposed project, contact Patricia Coury, CENAB–PL, U.S. Army Corps of Engineers, Baltimore District, 10 South Howard Street, P.O. Box 1715, Baltimore, MD, 21203–1715. Telephone (410) 962–2668 or Electronic Mail: *patricia.coury@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Public Participation

a. The Corps will conduct a public scoping meeting (see **DATES**) to gain input from interested agencies, organizations, and the general public concerning the content of the DSEIS, issues and impacts to be addressed in the DSEIS, and alternatives that should be analyzed.

b. The Corps invites full public participation to promote open communication and better decision-making. All persons and organizations that have an interest in the Design Modifications and Recreational Enhancements to the Wyoming Valley Levee Raising Project as they affect the community of Wilkes-Barre, Pennsylvania and the affected environment are urged to participate in this NEPA environmental analysis process. Assistance will be provided upon request to anyone having difficulty with learning how to participate.

c. Public comments are welcomed anytime throughout the NEPA process. Formal opportunities for public participation include: (1) The public scoping meeting to be held near the project site; (2) anytime during the NEPA process via mail, telephone or e-mail; (3) during the 45-day comment period on the Draft Environmental Impact Statement—approximately April to May, 2003; and, (4) review of the Final SEIS—August/September, 2003. Schedules and locations will be announced in local news media. Interested parties may also request to be included on the mailing list for public distribution of meeting announcements and documents. (See **ADDRESSES**).

d. To ensure that all issues related to the proposed project are addressed, the Corps will conduct an open process to define the scope of the DSEIS. Recommendations from interested agencies, local and regional stakeholders and the general public are encouraged to provide input in identifying areas of concern, issues and impacts to be addressed in the DSEIS, and the alternatives that should be analyzed. Scoping for the DSEIS will continue to build upon the knowledge and information developed by the Corps' investigations of flooding in the Wyoming Valley and the Susquehanna River basin.

e. Environmental issues will focus on, but are not limited to, effects on air quality, wetlands, water quality; fish and wildlife resources (including threatened and endangered species); hazardous, toxic, and radioactive waste; traffic; aesthetic resources; and cultural resources (including archaeological sites and historic architecture). The team will evaluate the environmental impacts (both adverse and beneficial) of the proposed actions.

2. Background

a. In 1999, the Luzerne County Flood Control Authority sponsored a citizens' participatory planning workshop to develop a community-based concept plan for the downtown Wilkes-Barre Susquehanna riverfront. This workshop culminated in a recommendation to the Authority that addressed how to develop the Wilkes-Barre Historic River Commons waterfront near the Market Street Bridge. The River Commons is part of the River Street Historic District and was listed on the National Register of Historic Places in 1980. Established in the 18th Century as the Central locale for the town, the River Commons is the area where both Fort Wyoming and Wilkes-Barre Fort were most likely located.

b. Based on the input, the Authority retained the services of a consultant to take the community's recommendations and develop them into a conceptual plan with preliminary drawings and a preliminary cost estimate. The project covers approximately 25 acres and runs over 4,200 feet from South Street at the west end at the Wilkes University campus to the Veterans Memorial Bridge and Luzerne County Courthouse near Kings College at its east end.

c. The Luzerne County Flood County Authority requested the Wilkes-Barre Riverfront Plan be added to the Wilkes-Barre section of the ongoing Wyoming Valley Levee Raising Project. Congressman Kanjorski also contacted the Corps requesting an evaluation of whether the features identified in the Riverfront Plan could be incorporated into the ongoing project. The Corps confirmed that they had the authority to undertake several of the proposed provisions, provided that they were technically feasible, environmentally acceptable, and economically justified.

3. Purpose and Need

a. The ongoing Wyoming Valley Levee Raising Project will project protection

against flood flows that would be caused by a reoccurrence of Tropical Storm Agnes (June 1972). The project consists of raising existing levees and floodwalls between three and five feet; modifying closure structures, drainage structures, and pump stations; relocating utilities; adding minor recreation facilities; and providing some new levees, closure structures, and floodwalls to maintain the integrity of the existing flood control system.

b. The Wyoming Valley Levee Raising Project's 1996 Phase II General Design Memorandum/Environmental Impact Statement recognized that there would be detrimental impacts to communities where flood protection passed through residential and commercial areas. Where possible, the levee raising design was to be sensitive to aesthetic, recreation, and environmental consideration. Contemporary Corps' projects incorporate a number of design features within urban areas to minimize the effects of large flood control projects on urban waterfronts. The purpose of modifying the Levee Raising Project through the Historic River Commons is to reconnect Wilkes-Barr's downtown to the Susquehanna River. These modifications will help reclaim the river as a civic resource for the daily life of residents and visitors and to make the river a unique amenity for the city.

4. Proposed Action and Alternatives

a. The proposed action is to modify flood damage reduction structures (*e.g.*, floodwall, levee, *etc.*) along the downtown Wilkes-Barre waterfront featuring more current urban flood protection design practices, methods, and materials. The features being considered for the proposed action include:

(1) Upstream Portal—An approximately 60-foot wide and 12-foot high upstream portal through the levee and a bridge above would provide pedestrian and emergency access to the Susquehanna River just upstream of the Market Street Bridge at the same grade as the Historic River Commons. During a flood event the portal would be closed with flood gates.

(2) Downstream Portal—An approximately 60-foot wide and 12-foot high downstream portal across from the Northampton Street and River Street intersection that would provide similar pedestrian and emergency access to the Susquehanna River. During a flood event the portal would also be closed with flood gates.

(3) River Landing—Upstream of the Market Street Bridge, a River Landing would be constructed upon the existing stability berm (approximately 900 feet long x 70 feet wide) that was previously constructed in 1999. When completed, this River Landing would create a concrete-surfaced, 1.2-acre riverfront plaza for people to congregate for waterfront events (*e.g.*, concerts, 4th of July fireworks, art shows, ethnic food festivals, *etc.*). A series of bollards, or similar structures, at the edge of the River Landing would provide for pedestrian safety. The River Landing would require limited re-grading, reconfiguring, and a riverside expansion of the rock stability berm to accommodate the necessary features.

(4) Pier/Dock—Connected to the River Landing would be a 340-foot long and 12-foot wide boating/fishing pier. Access to the pier would be via a fixed ramp directly from the River Landing. The dock itself would not have permanent boat slips, but would have adequate fendering to provide a location where boats could temporarily tie-up for a few hours at a time (public landing). The feature would compliment the existing boat launch in Nesbitt Park, across the river in Kingston, by providing additional areas for public access for fishing and recreational boating.

(5) Amphitheater and Stage—The amphitheater and stage would be constructed just downstream of the Market Street Bridge but upstream of the Downstream Portal. The amphitheater would consist of large stones or reinforced concrete blocks placed into the slope to provide bench seating for approximately 750 people. One row of seats would be above the existing riverside access road and the majority of the rows would be below the riverside access road grade. The performance stage would be built of sheetpile and concrete slightly above the existing grade near the river's edge.

(6) Paving Riverside Access Road—At the completion of the levee raising and the Riverfront Plan, the riverside access road at the base of the riverside of the levee would be paved as an element to the riverfront development plan. The paving of this road would be an improvement for recreational purposes and provide a biking/jogging/walking trail along the riverside toe of the levee.

(7) Miscellaneous Recreational Accoutrements—The flood control project—as designed and constructed throughout the Wyoming Valley—includes recreational features in the basic design. This reach of the Wilkes-Barre levee would include similar recreational features such as lights, seating areas with benches, trees/vegetation, educational kiosks, and trash receptables.

b. Alternatives for Evaluation. (1) The DSEIS will describe and assess the following 5 alternatives: No Action; Portals Only; Portals and River Landing; Portals, River Landing, and Boat Dock/Pier; Portals, River Landing, Boat Dock/Pier, and Amphitheater; and Stage.

(2) These alternatives, along with no action, will be the alternatives the Corps initially proposes to evaluate in the DSEIS. As necessary, reasonable alternatives that may become apparent as the evaluation proceeds will be addressed.

(3) The Miscellaneous Recreational Accoutrements and Paving of the Riverside Access Road will be evaluated in the DSEIS, but would be evaluated separately as actions to be conducted regardless of the alternative selected.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–27156 Filed 10–23–02; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Inland Waterways Users Board

AGENCY: Department of the Army, Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting.

Name of Committee: Inland Waterways Users Board (Board).

Date: November 21, 2002.

Location: Tremont House Hotel, 2300 Ship's Mechanic Row, Galveston, TX (1–409–763–0300).

Time: Registration will begin at 7:30 a.m. and the meeting is scheduled to adjourn at 1 p.m.

Agenda: The Board will hear briefings on navigation projects administered by the U.S. Army Corps of Engineers, Galveston District.

FOR FURTHER INFORMATION CONTACT: Mr. Norman T. Edwards, Headquarters, U.S. Army Corps of Engineers, CECW–PD, 441 G Street, NW., Washington, DC 20314–1000; Ph: 202–761–4559.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

Luz D. Ortiz

Army Federal Register Liaison Officer.

[FR Doc. 02–27155 Filed 10–23–02; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF ENERGY

Energy Information Administration

Policy Statement; Solicitation Of Comments On The Proposed Policy For Information In Statistical Tables Based On Confidential Historical Electric Power Survey Data

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Policy Statement; Solicitation of Comments on the Proposed Policy for Information in Statistical Tables Based on Confidential Historical Electric Power Survey Data.

SUMMARY: The EIA is requesting comments on a proposed policy to discontinue the use of disclosure limitation methods for information in statistical tables derived from confidential historical electric power survey data. This request is based on the need to provide additional tabulations that will improve and broaden the understanding of the electric power industry by releasing additional information. These data may be released at the national, State, or regional level. For this policy, confidential historical electric power survey data are defined as any electric power data collected in an EIA survey under a pledge of confidentiality during a survey period at least 3 years prior to the time of dissemination. These statistical tables are disseminated in various EIA products, including the Electric Power Monthly, Electric Power Annual, Coal Industry Annual, Quarterly Coal Report, Renewable Energy Annual, Natural Gas Monthly, Natural Gas Annual, Petroleum Marketing Monthly, Petroleum Supply Monthly, Petroleum Marketing Annual, Petroleum Supply Annual, Volumes 1 and 2, and Annual Energy Review. (EIA's electric power data are available on the web at *http://www.eia.doe.gov/*).

DATES: Comments must be filed by December 23, 2002. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Comments on this proposed policy should be directed to Dean Fennell. To ensure receipt of the comments by the due date, submission by FAX (202–287–1934) or e-mail (*Dean.Fennell@eia.doe.gov*) is recommended. The mailing address is Energy Information Administration, EI–53, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–0650. Alternatively, Mr. Fennell may be contacted by telephone at 202–287–1744.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Mr. Fennell at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA provides the public and other Federal agencies with opportunities to comment on collections of energy information conducted by EIA. As appropriate, EIA also requests comments on important issues relevant to the dissemination of energy information. Comments received help the EIA when preparing information collections and information products necessary to support EIA's mission.

The EIA collects survey information about the electric power industry from companies and organizations involved in the generation, transmission, distribution, and sales of electric power. This survey information is disseminated in a variety of information products and electronic data files used by government and private sector policymakers and analysts.

II. Current Actions

EIA is requesting public comments on a proposed policy to discontinue the use of disclosure limitation methods for information in statistical tables derived from confidential historical electric power survey data. This request is based on the need to provide additional tabulations that will improve and broaden the understanding of the electric power industry. These data may be released at the national, State, or regional level. (An example of this is publishing national level fuel consumption data in the Annual Energy Review, or publishing State or regional level data for fuel consumption, useful thermal output, or generation in reports such as the Electric Power Monthly or Natural Gas Annual.)

For this policy, confidential historical electric power survey data are defined as any electric power data collected in an EIA survey under a pledge of confidentiality during a survey period at least 3 years prior to the time of dissemination. The 3-year period includes the reporting year (the year for which data are currently being collected) and two prior years where data have been finalized. In the case of annual data, the EIA would disseminate information for 1998 and prior years without suppressing individual sensitive data cells in summary tables. For monthly data, historical data would be disseminated for 1999 and prior years without suppressing individual sensitive data cells in summary tables. While EIA will continue to maintain the confidentiality of individual data forms, EIA believes that the release of these historical data in tabular form (State, regional, or national level) will not affect the competitiveness of an individual company. EIA will continue to use its disclosure rules, which are designed to protect confidential data, and withhold sensitive data in summary level tables for the years that remain protected. At present, EIA will withhold sensitive annual data for 1999, 2000, and 2001 and sensitive monthly data for 2000, 2001, and 2002.

With respect to the confidentiality of information collected in EIA's electric power surveys, there are two categories. Some information is collected under a pledge of confidentiality and EIA takes various actions to ensure the protection of such information. Those steps include access controls on the individually-identifiable information, as well as the use of disclosure limitation methods to ensure statistical tables based on the confidential information do not have sensitive data cell values. A sensitive data cell value is one that could be used by a knowledgeable person to estimate too closely the confidential information reported by an individual survey respondent. EIA never publicly releases individually-identifiable information collected under a pledge of confidentiality.

Other electric power survey information is considered nonconfidential because EIA has determined that the public release of the information would not cause substantial

competitive harm to the survey respondents. EIA uses nonconfidential survey information in its products and may also make the information publicly available in individually-identifiable form.

EIA's proposed policy would eliminate the use of disclosure limitation methods on information displayed in statistical tables based on confidential historical electric power survey data if the survey data is at least 3 years old. EIA believes that because the data are old, this policy would not cause substantial competitive harm to the competitive position of any electric power survey respondent. This policy would expand the electric power information that could be provided in EIA information products by eliminating the requirement to withhold sensitive cells and other nonsensitive cells necessary to ensure protection of sensitive information.

III. Request for Comments

The public should comment on the actions discussed in item II. The questions below are general issues on which EIA is seeking public comments.

General Issues:

A. Is the proposed policy appropriate for EIA's confidential historical electric power survey data?

B. Is the assumption that the proposed policy would not cause substantial competitive harm to the competitive position of any survey respondent reasonable?

Comments submitted in response to this notice will be considered during development of EIA's final policy regarding the use of disclosure limitation methods for information in statistical tables with confidential historical electric power survey data. The comments will also become a matter of public record.

After EIA has completed development, a **Federal Register** notice will be issued announcing the policy.

Statutory Authority: Section 52 of the Federal Energy Administration Act (Pub. L. 93–275, 15 U.S.C. 790a).

Issued in Washington, DC, October 18, 2002.

Guy F. Caruso,

Administrator, Energy Information Administration.

[FR Doc. 02–27123 Filed 10–23–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7398–7]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby at (202) 566–1672, or email at *Auby.susan@epa.gov.* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1617.04; Stratospheric Ozone Protection, Servicing of Motor Vehicle Air Conditions; in 40 CFR part 82, subpart B; was approved 09/24/2002; OMB No. 2060–0247; expires 09/30/2005.

EPA ICR No. 1811.03; NESHAP for Polyether Polyols Production; in 40 CFR part 63, subpart PPP; was approved 09/26/2002; OMB No. 2060–0415; expires 09/30/2005.

EPA ICR No. 1856.03; NESHAP for Primary Lead Smelters; in 40 CFR part 63, subpart TTT; was approved 10/03/2002; OMB No. 2060–0414; expires 10/31/2005.

EPA ICR No. 1656.09; Information Collection Requirements for Registration and Documentation of Risk Management Plans under Section 112r of the Clean Air Act; in 40 CFR part 68; was approved 10/08/2002; OMB No. 2050–0144; expires 10/31/2005.

EPA ICR No. 1081.07; NESHAP for Inorganic Arsenic Emissions from Glass Manufacturing Plants; in 40 CFR Part 61, subpart N; was approved 10/04/2002; OMB No. 2060–0043; expires 10/31/2005.

EPA ICR No. 1821.03; NESHAP for Steel Pickling; in 40 CFR part 63, subpart CCC; was approved 10/04/2002; OMB No. 2060–0419; expires 10/31/2005.

EPA ICR No. 0222.06; Investigation into Possible Noncompliance of Motor Vehicles; was approved 10/03/2002; OMB No. 2060–0086; expires 08/31/2003.

Comments Filed

EPA ICR No. 2022.01; Reporting and Recordkeeping Requirements for the Brick and Structural Clay Products Manufacturing NESHAP; on 10/03/2002 OMB filed a comment.

Dated: October 17, 2002.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 02–27137 Filed 10–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7398–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Synopses of Proposed Contract Actions and Market Research Activity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Synopses of Proposed Contract Actions and Market Research Activity, OMB Control Number 2060–0039, expiration date December 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 25, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1910.02 and OMB Control No. 2030–0039, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-Mail at *auby.susan@epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1910.02, OMB No. 2030–0039. For technical questions about the ICR contact Jill Robbins at (202) 564–1052.

SUPPLEMENTARY INFORMATION:

Title: Synopses of Proposed Contract Actions and Market Research Activity, OMB Control Number 2060–0039, EPA ICR Number 1910.02, expiration date December 31, 2002. This is a request for extension of a currently approved collection.

Abstract: EPA's Office of Acquisition Management is required by the Federal Acquisition Regulation (FAR), parts 5 and 10, to publicize certain contract actions, and to conduct market research activity prior to solicitation of certain contract requirements. In addition to the mandated requirements, the FAR encourages the publication of contract actions and the conduct of market research in other instances. The information collected from these activities is used to make procurement decisions such as: the supply or service to procure, which sources to utilize, extent of small business participated, contract type, etc. Response to synopses notices and market research inquiries are voluntary, but may be required in order to be considered for the award of an Agency contract.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 07/05/2002, 67 FR 44828. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.75 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Businesses involved in EPA Procurement.

Estimated Number of Respondents: 9,746.

Frequency of Response: One time.

Estimated Total Annual Hour Burden: 28,316.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1910.02 and OMB Control No. 2030–0039 in any correspondence.

Dated: October 15, 2002.

Oscar Morales, Director,

Collection Strategies Division.

[FR Doc. 02–27138 Filed 10–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7398–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, General Administrative Requirements for Assistance Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: General Administrative Requirements for Assistance Programs, OMB Control Number 2030–0020, expiration date December 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 25, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 0938.09 and OMB Control No. 2030–0020, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001, and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Susan Auby at EPA by phone at (202) 566–1672, by E-Mail at *Auby.Susan@epa.gov* or download it off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0938.09. For technical questions about the ICR, contact William Hedling at 202–564–5377.

SUPPLEMENTARY INFORMATION:

Title: General Administrative Requirements for Assistance Programs, OMB Control Number 2030–0020, EPA ICR Number 0938.09, expiration date December 31, 2002. This is a request for extension of a currently approved collection.

Abstract: The information is collected from applicants/recipients of EPA assistance to monitor adherence to the programmatic and administrative requirements of the Agency's financial assistance program. It is used to make awards, pay recipients, and collect information on how Federal funds are being spent. EPA needs this information to meet its Federal stewardship responsibilities. This ICR renewal requests authorization for the collection of information under EPA's General Regulation for Assistance programs, which establishes minimum management requirements for all recipients of EPA grants or cooperative agreements (assistance agreements). Recipients must respond to these information requests to obtain and/or retain a benefit (Federal funds). 40 CFR part 30, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations," includes the management requirements for potential grantees from non-profit organizations. 40 CFR part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," includes the management responsibilities for potential state and local government grantees. These regulations include only those provisions mandated by statute, required by OMB Circulars, or added by EPA to ensure sound and effective financial assistance management. The information required by these regulations will be used by EPA award officials to make assistance awards and

assistance payments and to verify that the recipient is using Federal funds appropriately to comply with OMB Circulars A–21, A–87, A–102, A–110, A–122, A–128, and A–133, which set forth the pre-award, post-award, and after-the-grant requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on June 10, 2002; no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 33 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Not-for-profit institutions.

Estimated Number of Respondents: 5,100.

Frequency of Response: On occasion, quarterly, and annually.

Estimated Total Annual Hour Burden: 166,037.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, to the addresses listed above. Please refer to EPA ICR No. 0938.09 and OMB Control No. 2030–0020 in any correspondence.

Dated: October 17, 2002.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 02–27139 Filed 10–23–02; 8:45 am]

BILLING CODE 5560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7399–5]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104 (k); "Announcement of Proposal Deadlines for the Competition for the 2003 National Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants"

AGENCY: Environmental Protection Agency.

ACTION: Notice of the availability of Brownfields Grant Application Guidelines and deadlines for submissions of proposals.

SUMMARY: The United States Environmental Protection Agency (EPA) will begin to accept proposals for the National Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants on October 24, 2002. This notice provides information on how to obtain the application guidelines. These grants may be used to address sites contaminated by petroleum and hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum). The brownfields assessment grants (each funded up to $200,000 over two years) provide funding for a grant recipient to inventory, characterize, assess, and conduct planning and community involvement related to brownfield sites. The brownfields revolving loan fund grants (each funded up to $1,000,000 over five years) provide funding for a grant recipient to capitalize a revolving loan fund and to provide subgrants to carry out cleanup activities at brownfield sites that are owned by the subgrant recipient. The brownfields cleanup grants (each funded up to $200,000 over two years) provide funding for a grant recipient to carry out cleanup activities at brownfield sites that are owned by the grant recipient. (See Catalogue of Federal Domestic Assistance Number: 66.811; a revised CFDA number entry has been submitted for approval).

For the brownfields assessment grants, an applicant may request a waiver of the $200,000 limits and obtain funding up to $350,000 based on the anticipated level of contamination, size, or ownership status of the site. The revolving loan fund and cleanup grants require a 20 percent cost share, which may be in the form of a contribution of money, labor, material, or services from a non-federal source. If the cost share is in the form of contribution of labor, material, or other services, it must be incurred for an eligible and allowable cost under the grant and not for ineligible costs. An applicant may request a waiver of the 20 percent cost share requirement based on hardship.

The National brownfields assessment, revolving loan fund, and cleanup grants will be awarded on a competitive basis using a two-step proposal selection process. To ensure a fair selection process, evaluation panels consisting of EPA Regional and Headquarters staff and other federal agency representatives will assess how well the proposals meet the selection criteria outlined in the application booklet, *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants (October 2002).* Initial Proposals will be evaluated and ranked by Regional evaluation panels. EPA will determine those Initial Proposals that have the highest rankings, and then invite those applicants to prepare and submit Final Proposals, the second step in the two-part proposal process. Final Proposals will be evaluated and ranked by National Evaluation Panels. Final selections will be made by EPA senior management based upon the ranking of Final Proposals by the National Evaluation Panels. EPA decisions may also take into account other statutory and policy considerations, such as urban and non-urban distribution and other geographic factors; compliance with the statutory petroleum funding allocation; the benefits of promoting the long-term availability of funds under the RLF grants; designation as a federal Empowerment Zone, Enterprise Community, or Renewal Community; population; and whether the applicant is a federally recognized Indian tribe. Applicants are encouraged to contact and, if possible, meet with EPA Regional Brownfields Contacts.

DATES: This action is effective as of October 24, 2002. EPA expects to make up to 200 grant awards in fiscal year 2003, contingent upon the availability of funds. The application deadline for Initial Proposals for the 2003 assessment, revolving loan fund, and cleanup grants is December 16, 2002. All Initial Proposals must be postmarked by USPS or delivered at the appropriate U.S. EPA Regional Office by other means, no later than December 16, 2002, and a duplicate copy sent to U.S. EPA Headquarters. The application deadline for applicants who are invited to submit a Final Proposal is March 5, 2003. All Final Proposals must be postmarked by USPS or delivered at the appropriate U.S. EPA Regional Office by other means, no later than March 5, 2003, and a duplicate copy sent to U.S. EPA Headquarters.

ADDRESSES: Mailing addresses for U.S. EPA Regional Offices and U.S. EPA Headquarters are provided in the Proposal Guidelines.

Obtaining Proposal Guidelines: The proposal guidelines are available via the Internet: *http://www.epa.gov/brownfields/.* Copies of the Proposal Guidelines will also be mailed upon request. Requests should be made by calling the U.S. EPA Call Center at the following numbers: Washington, DC Metro Area at 703–412–9810, Outside Washington, DC Metro at 1–800–424–9346, TDD for the Hearing Impaired at 1–800–553–7672.

In order to ensure that the Guidelines are received in time to be used in the preparation of the proposal, applicants should request a copy as soon as possible and in any event no later than seven (7) working days before the proposal due date. Applicants who request copies after that date might not receive the proposal guidelines in time to prepare and submit a responsive proposal.

FOR FURTHER INFORMATION CONTACT: The U.S.EPA's Office of Solid Waste and Emergency Response, Office of Brownfields Cleanup and Redevelopment, (202) 566–2777.

SUPPLEMENTARY INFORMATION: On January 11, 2002, President George W. Bush signed into law the Small Business Liability Relief and Brownfields Revitalization Act. This act amended the Comprehensive Environmental Response, Compensation and Liability Act to authorize federal financial assistance for brownfields revitalization, including grants for assessment, cleanup, and job training.

Funding for the brownfields grants is authorized under Section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9604(k). Eligibility for brownfields assessment and revolving loan fund grants is limited to "eligible entities" as defined in section 104(k)(1) of CERCLA. These include a General Purpose Unit of Local Government; Land Clearance Authority or other quasi-governmental entity that operates under the supervision and control of, or as an agent of, a general purpose unit of local government; Governmental Entity Created by State Legislature; Regional council or group of general purpose units of local government; Redevelopment Agency that is chartered or otherwise sanctioned by a state; State; Indian Tribe other than in Alaska; and Alaska Native Regional Corporation, Alaska Native Village Corporation, and Metlakatla Indian Community.

Eligibility for brownfields cleanup grants is limited to "eligible entities" and nonprofits. For the purposes of the brownfields grant program, EPA will use the definition of nonprofit organizations contained in Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106–107. The term "nonprofit organization" means any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational, service, charitable, or similar purpose in the public interest; is not organized primarily for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization.

In addition, Intertribal Consortia, other than those composed of ineligible Alaskan tribes, are eligible to apply for the brownfields assessment, revolving loan fund, and cleanup grants. Coalitions of eligible governmental entities are eligible to apply for the brownfields revolving loan fund grants, but only one member of the coalition may receive a cooperative agreement.

The evaluation panels will review the proposals carefully and assess each response based on how well it addresses the criteria, briefly outlined below. There are two different types of criteria—threshold criteria and ranking criteria. Responses to the criteria will be utilized to determine whether to make an award and the amount of funds to be awarded. There is no guarantee of an award.

Assessment Grants—Initial Proposal

Threshold Criteria

A. Applicant Eligibility
B. Community Notification
C. Letter from the State or Tribal Environmental Authority
D. Description of Sites

Ranking Criteria

A. Community Need (a maximum of 40 points may be received for this criterion)
B. Leveraging of Additional Resources (a maximum of 40 points may be received for this criterion)
C. Ability to Manage Grants (a maximum of 20 points may be received for this criterion)
D. Site Selection Process (a maximum of 30 points may be received for this criterion)

Revolving Loan Fund Grants—Initial Proposal

Threshold Criteria

A. Applicant Eligibility
B. Community Notification
C. Legal Authority to Manage a Revolving Loan Fund
D. Cleanup Authority and Oversight Structure
E. Cost Share
F. Letter from the State or Tribal Environmental Authority
G. Description of Sites

Ranking Criteria

A. Community Need (a maximum of 40 points may be received for this criterion)
B. Leveraging of Additional Resources (a maximum of 40 points may be received for this criterion)
C. Ability to Manage Grants/ Management Structure (a maximum of 20 points may be received for this criterion)
D. Description of Target Market for RLF Loans and Subgrants (a maximum of 40 points may be received for this criterion)

Cleanup Grants—Initial Proposal

Threshold Criteria

A. Applicant Eligibility
B. Community Notification
C. Description of Sites
D. Cleanup Authority and Oversight Structure
E. Cost Share
F. Letter from the State or Tribal Environmental Authority

Ranking Criteria

A. Community Need (a maximum of 40 points may be received for this criterion)
B. Leveraging of Additional Resources (a maximum of 40 points may be received for this criterion)
C. Ability to Manage Grants (a maximum of 20 points may be received for this criterion)

Assessment Grants—Final Proposal (By Invitation Only)

Budget (a maximum of 15 points may be received for this criterion)

Ranking Criteria

A. Sustainable Reuse of Brownfields/ Development Potential (a maximum of 15 points may be received for this criterion)
B. Reduction of Threats to Human Health and the Environment (a maximum of 20 points may be received for this criterion)
C. Reuse of Existing Infrastructure (a maximum of 15 points may be received for this criterion)

D. Greenspace/Open Space (a maximum of 15 points may be received for this criterion)
E. Community Involvement (a maximum of 20 points may be received for this criterion)

Revolving Loan Fund Grants—Final Proposal (By Invitation Only)

Budget (a maximum of 15 points may be received for this criterion)

Ranking Criteria

A. Business Plan (a maximum of 20 points may be received for this criterion)
B. Sustainable Reuse of Brownfields/Development Potential (a maximum of 15 points may be received for this criterion)
C. Reduction of Threats to Human Health and the Environment (a maximum of 20 points may be received for this criterion)
D. Reuse of Existing Infrastructure (a maximum of 15 points may be received for this criterion)
E. Greenspace/Open Space (a maximum of 15 points may be received for this criterion)
F. Community Involvement (a maximum of 20 points may be received for this criterion)

Cleanup Grants—Final Proposal (By Invitation Only)

Budget (a maximum of 15 points may be received for this criterion)

Ranking Criteria

A. Sustainable Reuse of Brownfields/Development Potential (a maximum of 15 points may be received for this criterion)
B. Reduction of Threats to Human Health and the Environment (a maximum of 20 points may be received for this criterion)
C. Reuse of Existing Infrastructure (a maximum of 15 points may be received for this criterion)
D. Greenspace/Open Space (a maximum of 15 points may be received for this criterion)
E. Community Involvement (a maximum of 20 points may be received for this criterion)

EPA decisions may take into account other statutory and policy considerations, such as urban and non-urban distribution and other geographic factors; compliance with the statutory petroleum funding allocation; the benefits of promoting the long-term availability of funds under the RLF grants; designation as a federal Empowerment Zone, Enterprise Community, or Renewal Community; population; and whether the applicant is a federally recognized Indian tribe.

Dated: October 15, 2002.

Linda Garczynski,

Director, Office of Brownfields Cleanup and Redevelopment, Office of Solid Waste and Emergency Response.

[FR Doc. 02–27126 Filed 10–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0271; FRL–7276–5]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Camas Technologies, Inc., to conditionally register the pesticide product Qwel (CTI 13-19B) Liquid Concentrate containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0271. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may

be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of Macleaya extract, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of Macleaya extract during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Conditionally Approved Registrations

EPA issued a notice, published in the **Federal Register** of January 19, 2000 (65 FR 2948) (FRL–6485–1), which announced that Camas Technologies, Inc., P.O. Box 1357, Broomfield, CO 80038–1357, had submitted an application to conditionally register the pesticide product, Qwel Fungicide (EPA File Symbol 69876–R), containing Macleaya extract at 1.5% an active ingredient not included in any previously registered product.

The application was conditionally approved on September 19, 2002, as Qwel (CTI 13-19B) Liquid Concentrate, an end-use product; for foliar application to ornamental crops in enclosed greenhouses for the control of powdery mildew and *Alternaria* and *Septoria* leaf spots (EPA Registration Number 69876–1).

List of Subjects

Environmental protection, Pesticides and pest.

Dated: October 6, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–27128 Filed 10–23–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0267; FRL–7276–2]

Thymol and Eucalyptus Oil; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Maine Department of Agriculture, Food, and Rural Resources to use the pesticide thymol and eucalyptus oil (CAS numbers 89–83–8 and 8000–48–4, respectively) to treat up to 13,000 hives of honey and beeswax to control Varroa mite. The Applicant proposes the use of the new chemical, eucalyptus oil which has not been registered by EPA and the Applicant proposes a first food use of thymol. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments, identified by docket ID number OPP–2002–0267, must be received on or before November 8, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; fax number: (703) 308–5433; e-mail address: Sec-18-Mailbox@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a federal or state government agency involved in administration of environmental quality programs. Potentially affected entities may include, but are not limited to:

Federal or state government entity, (NAICS 9241), e.g., Department of Agriculture, Environment, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0267. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search,"

then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0267. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0267. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0267.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0267. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a federal or state agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Maine Department of Agriculture, Food, and Rural Resources has requested the Administrator to issue a specific exemption for the use of thymol and eucalyptus oil on honey and beeswax to control Varroa mite. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that Varroa mites were first detected in Maine in November of 1987. Since 1988, beekeepers have treated their colonies with fluvalinate to control Varroa. Varroa mite resistance to fluvalinate is widespread in Maine. In 1999, a section 18 emergency exemption was granted by EPA for the treatment of Varroa and the small hive beetle. During the fall of 2001, a Florida-Maine migratory beekeeping operation was determined to have Varroa with resistance to coumaphos and fluvalinate. Maine produced 231,000 pounds of honey in 2000 valued at $173,000 wholesale. The honey bee and beekeeping industry is essential for crop pollination. Maine is the primary producer of blueberries in the world, an industry that contributes $75 - 100 million to the state's annual economy. Honey bees also pollinate the state's apple crop and other fruits and vegetables with an estimated value of over $30 million per year.

The Applicant proposes to treat 13,000 hives in late summer or fall at least 5 months prior to harvesting the honey. A maximum of 26,000 tablets weighing 11 grams each will be used.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by EPA, as well as a first food use of a chemical. The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Maine Department of Agriculture, Food, and Rural Resources.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 6, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–27129 Filed 10–23–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7398–3]

Proposed Prospective Purchaser Agreement under CERCLA for the Midwest Portland Cement Superfund Site

AGENCY: United States Environmental Protection Agency ("USEPA").

ACTION: Proposal of CERCLA prospective purchaser agreement for the Midwest Portland Cement Superfund Site.

SUMMARY: USEPA is proposing to execute a Prospective Purchaser Agreement ("PPA") under authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, as amended, and under the inherent authority of the Attorney General of the United States to compromise and settle claims of the United States, for the transfer of title to property at the Midwest Portland Cement Superfund Site, located in East Fultonham, Ohio, to a purchaser who will obtain title to the Site through the judicial sale process. The PPA is intended to resolve the liability under CERCLA of the purchaser for costs incurred by USEPA in conducting response actions at the Site. In return for a covenant not to sue and contribution protection from USEPA, subject to standard reservations of rights, the purchaser will pay $350,000 in reimbursement of USEPA's response costs.

The Site was operated by the Midwest Portland Cement Company ("MPC") as a cement manufacturing and limestone mining facility until ceasing operations in March, 1993. USEPA's response action at the Site was completed on January 20, 1998. The Site is not on the National Priorities List. No further response activities by USEPA are anticipated at the Site at this time. The MPC estate is being liquidated under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Pennsylvania (Case No. 97–23098–JLC). MPC's real estate was the subject of a judicial sale that took place on June 18, 2002.

DATES: Comments on this proposed PPA must be received by November 25, 2002.

ADDRESSES: A copy of the proposed PPA is available for review at USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Kevin C. Chow at (312) 353–6181, prior to visiting the Region 5 office. Comments on the proposed PPA should be addressed to Kevin C. Chow, Office of Regional Counsel (C–14)), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Kevin C. Chow, Office of Regional Counsel, at (312) 353–6181.

SUPPLEMENTARY INFORMATION: In accordance with CERCLA, notice is hereby given of a proposed Prospective Purchaser Agreement concerning the Midwest Portland Cement Superfund Site, located at 6400 Maysville Pike, East Fultonham, Muskingum County, Ohio. The proposed PPA has been signed and approved by USEPA and the Department of Justice, subject to review by the public pursuant to this Notice. The purchaser—Belmont Leasing, Inc. ("Belmont Leasing")—participated in the judicial sale of the Site and successfully bid for title to the property. Belmont Leasing will be required to execute the signature page for the PPA at the closing of the sale. Under the proposed PPA, the Settling Respondent will pay $350,000 in reimbursement of USEPA's response costs, and will

provide for the productive re-use of the property. In addition, the Settling Respondent will: provide future access to the Site; exercise due care with respect to any existing contamination; covenant not to sue USEPA; cooperate with USEPA and the State of Ohio; comply with all relevant environmental laws and regulations, including conducting closure of any remaining hazardous waste management units identified by the Ohio Environmental Protection Agency ("OEPA") by meeting OEPA's closure performance standards in Ohio Administrative Code 3745–66–12 through 3745–66–20; and put notice of the PPA in the title records for the MPC real estate. USEPA believes the PPA is fair and in the public interest.

A 30-day period, beginning on the date of publication of this Notice, is open for comments on the proposed Prospective Purchaser Agreement.

William E. Muno,

Director, Superfund Division, United States Environmental Protection Agency, Region 5.

[FR Doc. 02–27131 Filed 10–23–02; 8:45 am]

BILLING CODE 6560–50–P

EXECUTIVE OFFICE OF THE PRESIDENT

Council on Environmental Quality

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Notice of availability of final guidelines.

SUMMARY: This notice announces the availability of final guidelines. These guidelines implement Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2002 (Pub. L. 106–554; H.R. 5658). Section 515 directs the Office of Management and Budget (OMB) to issue government-wide guidelines, followed by individual agency guidelines, to ensure and maximize the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by the agency and to establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with such guidelines. Each agency must also report periodically to the OMB director on the number, nature, and resolution of complaints received by the agency in regards to these requirements.

The Council on Environmental Quality (CEQ) has promulgated guidelines implementing these requirements. They are available at CEQ's offices at 722 Jackson Place, NW., Washington, DC 20503, and at the CEQ web site at *http://www.whitehouse.gov/ceq*. The final guidelines are intended to comply with both the statutory requirements noted above and the final guidelines published by OMB on February 22, 2002 (67 FR 36, 8452).

DATES: Effective October 18, 2002.

FOR FURTHER INFORMATION CONTACT: Dinah Bear, General Counsel, Council on Environmental Quality. Telephone: (202) 395–7421 or by e-mail to *dinah_bear@ceq.eop.gov*.

Dated: October 18, 2002.

James L. Connaughton,

Chairman, Council on Environmental Quality.

[FR Doc. 02–27066 Filed 10–23–02; 8:45 am]

BILLING CODE 3125–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2580]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

October 18, 2002.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice-and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by November 8, 2002. *See* Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the FM Table of Allotments (MM Docket No. 98–112, RM–9027, RM–9268, RM–9384).

Number of Petitions Filed: 1.

Subject: In the Matter of the Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ku-Band (IB Docket No. 01–96).

Number of Petitions Filed: 1.

Subject: Amendment of the FM Table of Allotments (MM Docket No. 01–104, RM–10103, RM–10323, RM–10324.

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–27094 Filed 10–23–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

Date & Time: Tuesday, October 29, 2002 at 10 a.m.

Place: 999 E Street, NW., Washington, DC.

Status: This Meeting Will be Closed to the Public.

Items to be Discussed:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

Date & Time: Thursday, October 31, 2001 at 10 a.m.

Place: 999 E Street, NW., Washington, DC (Ninth Floor)

Status: This Meeting Will be Open to the Public.

Items to be Discussed:

Correction and Approval of Minutes.

Final Rules and Explanation and Justification on Contribution Limitations and Prohibitions.

Administrative Matters.

Person to Contact for Information: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–27213 Filed 10–22–02; 11:31 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 18, 2002.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. KeyCorp, Cleveland, Ohio, and Buffalo Acquiror Sub, Inc., Cleveland, Ohio; to acquire 100 percent of the voting shares of Union Bankshares, Ltd., Denver, Colorado, and thereby indirectly acquire voting shares of Union Bank & Trust, Denver, Colorado.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Backlund Investment Co., Peoria, Illinois; to merge with Astoria Investment Company, Astoria, Illinois, and thereby indirectly acquire Farmers State Bank, Astoria, Astoria, Illinois; Bartonville Investment Co., Peoria, Illinois, and thereby indirectly acquire Bartonville Bank, Bartonville, Illinois; Backlund–White, Inc., Peoria, Illinois, and thereby indirectly acquire Glasford State Bank, Glasford, Illinois; Backlund–Scott Company, Wyoming, Illinois and thereby indirectly acquire Wyoming Bank & Trust Company, Wyoming, Illinois.

2. Backlund Investment Co., Peoria, Illinois; to acquire 100 percent of the voting shares of Dunlap Bank, Dunlap, Illinois.

3. Backlund Investment Co., Peoria, Illinois; to acquie at least 25 percent of the voting shares of Hopedale Investment Company, Hopedale, Illinois, and thereby indirectly acquire Community Bank of Hopedale, Hopedale, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1.First Banks, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Bank of Ste. Genevieve, Ste. Genevieve, Missouri.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. BankWest Nevada Corporation, Las Vegas, Nevada; to acquire 100 percent of the voting shares of Alliance Bank of Arizona, Phoenix, Arizona, (in organization).

Board of Governors of the Federal Reserve System, October 18, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–27065 Filed 10–23–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–186]

Availability of the Draft Online Learning Program, The Public Health Assessment Process and the Community, Public Comment Release

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability and request for public comment on the draft online learning program, The Public Health Assessment Process and the Community. This program was developed to provide community members with information about the ATSDR public health assessment process through interactive learning using the Internet. The program also provides a tool that ATSDR's cooperative agreement partners (agents of ATSDR) can use to introduce new staff members to concepts used in the public health assessment process and to facilitate communications with community members when discussing the public health assessment process.

SUMMARY: ATSDR conducts public health assessments to evaluate whether people have come in contact with hazardous substances released into the environment and whether contact with the substances has affected the health of those people exposed to the hazardous substances.

The process used to conduct public health assessments includes gathering information from community members about how they might have come in contact with hazardous substances released into the environment and the concerns they have about the effect of the substances on their health. In addition to information gathered from community members, ATSDR also evaluates environmental data pertaining to a particular release, evaluates toxicologic and epidemiologic data relevant to exposures, and evaluates existing health outcome data if appropriate. Recommendations might be made to eliminate or reduce exposure to harmful levels of hazardous substances that have been released into the environment. The online learning program provides information on the basic concepts used by ATSDR staff and agents of ATSDR in conducting public health assessments.

This online learning program is intended to assist community members in understanding the ATSDR public health assessment process and to provide additional information concerning the process that may not be available through other forums. Because interaction with community members is a critical component of the public health assessment process, ATSDR believes that public comments may help us improve the quality of the program. All comments received during the public comment period will be considered when making improvements to the program.

Availability: The draft online program, The Public Health Assessment Process and the Community, will be available to the public on or about October 15, 2002. The close of the comment period will be 60 days from the date of publication of this notice in the **Federal Register** and will be indicated on the first page of the Web site. Comments received after close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for more information about accessing the online learning program should be sent to Chief, Program Evaluation, Records, and Information Services Branch; Agency for Toxic Substances and Disease Registry; 1600 Clifton Road, NE, MS E–56; Atlanta, GA 30333. The online learning program may be accessed at the ATSDR

home page Training section at *www.atsdr.cdc.gov/training/public-health-assessment-overview/*.

Comments may be submitted online through the "Feedback" section of the program, which is accessible through a link at the top of each page. You may also send written comments and supporting documents to the address provided in the previous paragraph. Comments should be received by the end of the comment period. All written comments and data submitted in response to this notice and the draft online learning program should bear the docket control number ATSDR–186.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Bob Kay, telephone (404) 498–0382, ATSDR (Mailstop E–56) or Gail Godfrey, telephone (404) 498–0432, (Mailstop E–32), 1600 Clifton Road, NE, Atlanta, Georgia 30333, or call toll free 1–888–42-ATSDR, 1–888–422–8737. You may also e-mail Bob Kay at *bkay@cdc.gov* or Gail Godfrey at *ggodfrey@cdc.gov*.

SUPPLEMENTARY INFORMATION: ATSDR is mandated to conduct public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) [42 U.S.C. 9604(i)] and the Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6939a(c)].

The general procedures for the conduct of public health assessments are included in the ATSDR Final Rule on Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities (55 FR 5136, February 13, 1990, codified at 42 CFR part 90).

Areas emphasized in the online learning program include community involvement, exposure assessment, weight-of-evidence approaches to decision making, and developing public health action plans to address any public health hazards found during investigations.

The online learning program may be used by individuals to learn more about the public health assessment process, by community groups during meetings, and by individuals and groups as a communication tool when discussing concerns with the public health assessment team assigned to a site in their community. The program may also be used by agents of ATSDR to introduce new staff to the concepts of the public health assessment process and as a tool to stimulate communications with community members.

This notice announces the projected availability of the draft online learning program. The program has undergone extensive internal review.

ATSDR encourages the public's participation and comment on the further development of this online learning program.

Dated: October 18, 2002.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 02–27084 Filed 10–23–02; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–188]

Availability of Final Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of seven updated final toxicological profiles of priority hazardous substances comprising the fourteenth set prepared by ATSDR.

FOR FURTHER INFORMATION CONTACT: Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 1–888–422–8737 or (404) 498–0720.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised list of the 275 priority substances was announced in the **Federal Register** on October 25, 2001 (66 FR 54014). For prior versions of the list of substances see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744; November 17, 1997 (62 FR 61332) and October 21, 1999 (64 FR 56792).

Notice of the availability of drafts of these seven updated toxicological profiles for public review and comment was published in the **Federal Register** on October 11, 2000, (65 FR 60444), with notice of a 90-day public comment period for each profile, starting from the actual release date. Following the close of the comment period, chemical-specific comments were addressed, and where appropriate, changes were incorporated into each profile. The public comments and other data submitted in response to the **Federal Register** notices bear the docket control number ATSDR–162. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1825 Century Boulevard, Atlanta, Georgia, (not a mailing address) between 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

Availability

This notice announces the availability of seven updated final toxicological profiles comprising the fourteenth set prepared by ATSDR. The following toxicological profiles are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–553–6847. There is a charge for these profiles as determined by NTIS.

Fourteenth Set:

Toxicological profile	NTIS Order No.	CAS No.
1. Aldrin	PB2003–100134	000060–57–1
Dieldrin		000309–00–2
2. Beryllium	PB2003–100135	007440–41–7

Toxicological profile	NTIS Order No.	CAS No.
3. Creosote	PB2003–100136	008001–58–9
Coal Tars		008007–45–2
Coal Tar Pitch		065996–93–2
4. DDT	PB2003–100137	000050–29–3
DDD		000072–54–8
DDE		000072–55–9
5. Di (2-ethylhexyl) phthalate	PB2003–100138	000117–81–7
6. Hexachlorobenzene	PB2003–100139	000118–74–1
7. Methoxychlor	PB2003–100140	000072–43–5

Dated: October 18, 2002.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 02–27085 Filed 10–23–02; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–187]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), section 104(i)(3) (42 U.S.C. 9604(i)(3)) directs the Administrator of ATSDR to prepare toxicological profiles of priority hazardous substances and to revise and publish each updated toxicological profile as necessary. This notice announces the availability of the 16th set of toxicological profiles, which consists of two new drafts and three updated drafts, prepared by ATSDR for review and comment.

DATES: In order to be considered, comments on these draft toxicological profiles must be received on or before February 24, 2003. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for printed copies or CD-ROMs of the draft toxicological profiles should be sent to the attention of Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE, Atlanta, Georgia 30333. Electronic access to these documents is also available at the ATSDR website: *http://www.atsdr.cdc.gov/toxpro2.html*.

Comments regarding the draft toxicological profiles should be sent to the attention of Ms. Lori Miller, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Requests for printed copies or CD-ROMs of the draft toxicological profiles must be in writing, and must specifically identify the hazardous substance(s) profile(s) that you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–187. Send one copy of all comments and three copies of all supporting documents to Ms. Lori Miller at the above stated address by the end of the comment period. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business information or other confidential information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 1–888–422–8737 or (404) 498–0720.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain responsibilities for the ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these responsibilities is that the Administrator of ATSDR prepare toxicological profiles for substances included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised priority list of 275 hazardous substances was announced in the **Federal Register** on October 25, 2001 (66 FR 54014). For prior versions of the list of substances see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744); November 17, 1997 (62 FR 61332) and October 21, 1999 (64 FR 56792). (CERCLA also requires ATSDR to assure the initiation of a research program to fill data needs associated with the substances.)

Section 104(i)(3) of CERCLA (42 U.S.C. 9604(i)(3)) outlines the content of these profiles. Each profile will include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and these data are to be used to identify the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of research to determine these health effects.

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies,

which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles will be made available to the public on or about October 17, 2002.

Document No. and hazardous substance	CAS No.
1. Ammonia and	007664–41–7
ammonia compounds	various
2. Chlorine dioxide	10049–04–4
3. Copper	007440–50–8
cupric sulfate	007758–98–7
4. Polybrominated biphenyls and	067774–32–7
polybrominated diphenyl ethers	various
5. Synthetic vitreous fibers	various

All profiles issued as "Drafts for Public Comment" represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

Dated: October 18, 2002.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 02–27086 Filed 10–23–02; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84F–0331]

Quest International; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 4A3817) proposing that the food additive regulations be amended to provide for the safe use of white mineral oil as a component of defoaming agents for use in the brewing of beer.

FOR FURTHER INFORMATION CONTACT: Andrew Zajac, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy, College Park, MD 20740, 202–418–3095.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 25, 1984 (49 FR 42985), FDA announced that a food additive petition (FAP 4A3817) had been filed by J. E. Siebel Sons' Co., 4055 West Peterson Ave., Chicago, IL 60646. The petition proposed to amend the food additive regulations in § 173.340 *Defoaming agents* (21 CFR 173.340) to provide for the safe use of white mineral oil as defined by § 172.878(a) as a component of defoaming agents for use in the brewing of beer. On June 5, 2002, Quest International, 5115 Sedge Blvd., Hoffman Estates, IL 60192, informed FDA in writing that they had acquired J. E. Siebel Sons' Co. and had rights to FAP 4A3817. Quest International has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: October 9, 2002.

Alan M. Rulis,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 02–27047 Filed 10–23–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0363]

Determination of Regulatory Review Period for Purposes of Patent Extension; MIFEPREX; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending a previous determination of the regulatory review period for MIFEPREX that appeared in the **Federal Register** of January 25, 2002 (67 FR 3724). The agency is taking this action in response to received comments. FDA is publishing notice of that amendment as required by law.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4565.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 25, 2002 (67 FR 3724), FDA published its determination of the regulatory review period for MIFEPREX. On June 10, 2002, Corcept Therapeutics, Inc., (Corcept) filed a request for revision of the regulatory review period. On July 2, 2002, the applicant filed a comment, disagreeing with Corcept's request and maintaining that FDA's initial determination was correct.

The basis of Corcept's request is that August 4, 1994, is not the correct date an investigational new drug application (IND) covering the approved drug product became effective. Corcept asserts that June 13, 1983, is the appropriate date. FDA has re-examined its records and has determined that Corcept is correct. The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective is June 13, 1983.

The agency, the applicant, and Corcept agree that the relevant IND is IND 22,047. All agree that IND 22,047 became effective in 1983.

The applicant's argument for keeping the initial determination is based on the claim that August 4, 1994, represents the date the IND first covered the "approved human drug product." While acknowledging that IND 22,047 became effective in 1983, the applicant observes that during the next several years the only studies conducted were studies of mifepristone alone, that is, not in conjunction with the administration of other drugs. The 1994 date is when the applicant submitted an amendment to IND 22,047 to initiate studies of mifepristone when followed by the later administration of misoprostol. The final approved MIFEPREX labeling recommends that patients taking mifepristone take 400 micrograms of misoprostol 2 days after taking mifepristone unless a complete abortion has already been confirmed before that time. The applicant argues from these facts that the submission of the 1994 amendment represents the first time an IND for the "approved human drug product," as set forth in 21 CFR 60.22(a)(1), became effective.[1]

The investigational path of a new drug is rarely straightforward. From the time of the first submission of an IND to the time, usually years later, of final approval for marketing, the course of drug investigation goes up many blind alleys and frequently takes off in new directions. Rarely, if ever, is a drug approved under precisely the same conditions (i.e., indication(s), patient population(s), dosing regimen(s), duration of treatment, use in conjunction with other drugs, etc.) for which it is initially investigated. The decision to investigate MIFEPREX in conjunction with misoprostol under certain circumstances is typical of the kind of change that can occur in the investigation of a new drug.[2]

The applicant misperceives the nature of FDA's task in this kind of proceeding, one FDA has performed hundreds of times since 1984. A determination of the regulatory review period under 35 U.S.C. 156(g)(1)(B) is straightforward and largely ministerial in nature. Our role is not to probe a drug's investigational course and determine at what point in that course emerges the "approved human drug product." To do so would be to insert into a purely ministerial function an arbitrary element of uncertainty that would clearly subvert the purpose of the statute.[3]

The relevant IND became effective on June 13, 1983. That fact, upon which everyone agrees, is all that FDA need or should find in conducting the relevant portion of its regulatory review determination of MIFEPREX.[4]

Therefore, FDA has determined that the applicable regulatory review period for MIFEPREX is 6,318 days. Of this time, 4,662 days occurred during the testing phase of the regulatory review period, while 1,656 days occurred during the approval phase.

These periods of time were derived from the following dates, summarized from the January 25, 2002, notice and modified by this amendment:

1. *The date an exemption under section 505 of the act (21 U.S.C. 355) became effective*: June 13, 1983. The applicant claims August 3, 1994, as the date the IND became effective. However, for the reasons discussed previously, FDA has determined the IND effective date was June 13, 1983.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: March 18, 1996. FDA has verified the applicant's claim that the new drug application (NDA) for MIFEPREX (NDA 20–687) was initially submitted on March 18, 1996.

3. *The date the application was approved*: September 28, 2000. FDA has verified the applicant's claim that NDA 20–687 was approved on September 28, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. In its application for patent extension, the applicant seeks 1,825 days of patent term extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension.

Dated: October 16, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–27096 Filed 10–22–02; 8:45 am]

BILLING CODE 4160–01–S

[1] For purposes of part 60 (21 CFR part 60), "human drug product" is defined as "the active ingredient of a new drug or human biologic product (as those terms are used in the act and the Public Health Service Act), including any salt or ester of the active ingredient, as a single entity or in combination with another active ingredient." (See 21 CFR 60.3(b)(10).)

[2] The applicant tries to characterize MIFEPREX as mifepristone "in combination with another active ingredient" in an attempt to take advantage of portions of the definition of "human drug product" in 35 U.S.C. 156(f), that is, a human drug product means "the active ingredient of a new drug * * * as a single entity or in combination with another active ingredient." The applicant points to the definition of "combination product" at 21 CFR 3.2(e)(3) in this effort. A more useful description of a drug "in combination with another active ingredient" is found at 21 CFR 300.50 (two or more drugs combined in a single dosage form). MIFEPREX is not mifepristone "in combination with another active ingredient." MIFEPREX is single entity mifepristone.

[3] Indeed, using the kind of scrutiny recommended by the applicant, one could argue that the testing phase should be entirely disregarded for purposes of regulatory review period determinations because final labeling of any product, an essential element of an approved human drug product, is not established until well after the testing phase is complete.

[4] In our initial determination, we did not take into account the effect of 35 U.S.C. 156(g)(4)(C) and, instead, accepted as harmless the applicant's request for a later date.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Development of Donor Screening Assays for West Nile Virus; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled "Development of Screening Assays for West Nile Virus." The objectives of the workshop are to review current developments in West Nile Virus (WNV) transmission in the United States and to explore strategies to address issues related to the development of donor screening tests and the utility of virus inactivation methods.

Date and Time: The workshop will be held November 4 and 5, 2002, from 8 a.m. to approximately 5 p.m. on both days.

Location: The workshop will be held at the Hyatt Regency Bethesda, One Metro Center, Bethesda, MD.

Contact Person: Joseph Wilczek, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–6129, FAX 301–827–2843, e-mail: *wilczek@cber.fda.gov*.

SUPPLEMENTARY INFORMATION: FDA, Office of the Secretary/Office of Public Health and Science, the Centers for Disease Control and Prevention, the National Heart, Lung and Blood Institute at the National Institutes of Health, and the Health Resources Services Administration are co-sponsoring a public workshop to focus on scientific issues related to the development of tests that are suitable for screening blood and organ/tissue donors for WNV. The ongoing epidemic of WNV infections has raised concerns that WNV can be transmitted through blood transfusions and organ/tissue donations. Currently, there are no tests available to screen blood and organ/tissue donors for WNV nor are there data available about the stability of WNV in such tissues.

On the first day, the workshop will deal with the topics of WNV pathogenicity and epidemiology, methodologies suitable for screening WNV in blood and organ/tissue donors, and development of WNV screening assays for future large-scale implementation in a donor screening setting. On the second day, it will focus on the prospective studies for establishing the transmission to

recipients of blood, or human cells, tissues, and cellular or tissue based products, issues relevant to implementation of WNV tests, FDA's expectation for licensure of WNV tests, and strategies for inactivation.

Registration: Because seating space is limited, we recommend early registration. Mail, fax, or e-mail your registration information (including name, title, firm name, address, telephone, and fax number) to Joseph Wilczek (see *Contact Person*). Registration at the site will be done on a space available basis on the days of the workshop, beginning at 7:30 a.m. There is no registration fee for the workshop. If you need special accommodations due to a disability, please contact Joseph Wilczek at least 7 days in advance.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. In addition, the transcript will be placed on the FDA Web site at *http://www.fda.gov/cber/minutes/workshop-min.htm*.

Dated: October 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–27097 Filed 10–23–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

The President's New Freedom Commission on Mental Health; Notice of Meeting

Pursuant to Executive Order 13263, notice is hereby given of a meeting of the President's New Freedom Commission on Mental Health in November 2002.

The meeting will be open and will consider how to accomplish the Commission's mandate to conduct a comprehensive study of the United States mental health service delivery system and to make recommendations on improving the delivery of public and private mental health services for adults and children. The Commission meeting will focus on housing and homelessness, among other issues.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Additional information and a roster of Commission members may be obtained either by accessing the Commission website, *www.mentalhealthcommission.gov*, or by communicating with the contact whose name and telephone number is listed below.

Committee Name: The President's New Freedom Commission on Mental Health.

Meeting Date/Time: Open: November 13, 2002, 9:45 a.m. to 4:30 p.m., Open: November 14, 2002, 9:30 a.m. to 12 Noon.

Place: Le Meridien Hotel, 465 S. La Cienega Boulevard, Los Angeles, California 90048.

FOR FURTHER INFORMATION CONTACT: Claire Heffernan, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 13C–26, Rockville, MD 20857, Telephone: (301) 443–1545; Fax: (301) 480–1554 and e-mail: *Cheffern@samhsa.gov*, website: *www.mentalhealthcommission.gov*.

Dated: October 18, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–27049 Filed 10–23–02; 8:45 am]

BILLING CODE 4162–20–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–990 (Final)]

Non-Malleable Cast Iron Pipe Fittings From China

AGENCY: International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–990 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of non-malleable cast iron pipe fittings, provided for in subheadings 7307.11.00 and 7307.19.30 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: September 25, 2002.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk ((202) 205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of non-malleable cast iron pipe fittings from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on February 21, 2002, by Anvil International, Inc., Portsmouth, NH, and Ward Manufacturing, Inc., Blossburg, PA.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on January 29, 2003, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on February 11, 2003, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 3, 2003. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 6, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is February 5, 2003. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is February 19, 2003; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 19, 2003. On March 5, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 7, 2003, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: October 21, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–27147 Filed 10–23–02; 8:45 am]

BILLING CODE 7020–02–P

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as "finished and unfinished non-malleable cast iron pipe fittings with an inside diameter ranging from ¼ inch to 6 inches, whether threaded or un-threaded, regardless of industry or proprietary specifications. The subject fittings include elbows, ells, tees, crosses, and reducers as well as flanged fittings. These pipe fittings are also known as cast iron pipe fittings or gray iron pipe fittings. These cast iron pipe fittings are normally produced to ASTM A–126 and ASME B.16.4 specifications and are threaded to ASME B1.20.1 specifications. Most building codes require that these products are Underwriters Laboratories (UL) certified. The scope does not include cast iron soil pipe fittings or grooved fittings or grooved couplings.

Fittings that are made out of ductile iron that have the same physical characteristics as the gray or cast iron fittings subject to the scope above or which have the same physical characteristics and are produced to ASME B.16.3, ASME B.16.4, or ASTM A–395 specifications, threaded to ASME B1.20.1 specifications and UL certified, regardless of metallurgical differences between gray and ductile iron, are also included in the scope. These ductile fittings do not include grooved fittings or grooved couplings. Ductile cast iron fittings with mechanical joint ends (MJ), or push on ends (PO), or flanged ends and produced to American Water Works Associations (AWWA) specifications AWWA C110 or AWWA C153 are not included."

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Agri Energy, L.L.C., Broin and Associates, Inc., and Broin Management, L.L.C.*, ("Agri-Energy") Civil Action No. CV02–3787 MJD/JGL was lodged with the United States District Court for the District of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in Luverne, Minnesota, pursuant to section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act and regulations promulgated thereunder. In addition, the Compliant alleges that the plant is in violation of the New Source Performance Standards ("NSPS"), 40 CFR part 60, Subparts Db, Dc, DD, Kb, and VV; National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR part 63, pursuant to sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan ("SIP") which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, Agri-Energy will install air pollution control technology, comply with new, more stringent emission limits, and pay a civil penalty of $31,598. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Agri-Energy Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to: *United States* v. *Agri-Energy, L.L.C., Broin and Associates, Inc., and Broin Management, L.L.C.*, D.J. Ref. 90–5–2–1–07784.

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $13.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–27071 Filed 10–23–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Al-Corn Clean Fuel Cooperative*, ("Al-Corn"), Civil Action No. CV02–3792 DWF/SRN was lodged with the United States District Court for the District of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in Claremont, Minnesota, pursuant to section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act; the New Source Performance Standards ("NSPS"), 40 CFR part 60, subparts Db, Dc, DD, Kb, and VV; and the National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR part 63, pursuant to sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan ("SIP") which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, Al-Corn will install air pollution control technology, comply with new, more stringent emission limits, and pay a civil penalty of $36,800. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Heartland Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Al-Corn Clean Fuel Cooperative*, D.J. Ref. 90–5–2–1–07784/1.

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $15.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–27079 Filed 10–23–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree and Stipulation of Settlement and Order of Dismissal Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on September 30, 2002, two proposed settlement agreements were lodged with the United District Court of the Northern District of Indiana in the matter of *United States* v. *American Standard, Inc. et al.*, Civil No. 3:01CV0513RM. One proposed agreement is titled "Consent Decree with Perma-Fix Environmental Services of Michigan" ("Consent Decree") and the other is titled "Stipulation of Settlement and Order of Dismissal Between United States and LTV Steel Company" ("Stipulation of Dismissal").

In its Complaint, the United States sought to recover response costs incurred by the United States in connection with the Four County Landfill Site in Fulton County, Indiana (the "Site"). The complaint alleges that the United States undertook response actions as a result of releases or threatened releases of hazardous substances at the Site, and that Perma-Fix Environmental Services of Michigan ("Perma-Fix") and LTV Steel Company, Inc. ("LTV"), among other named defendants, were jointly and severally liable for the costs of such response actions.

Under the proposed Consent Decree, Perma-Fix will pay $153,585 to the Hazardous Substances Superfund as partial reimbursement of response costs that the United States paid in connection with the Site through April 30, 2002. Under the proposed Stipulation of Settlement, LTV has agreed to the entry of judgment against it for $63,389 in settlement of the United States' claims for recovery of response cost that the United States paid in connection with the Site through April 30, 2002. Since LTV filed a voluntary petition for bankruptcy in the Northern District of Ohio in December of 2000, which was docketed as *In Re LTV Steel Company, Inc.*, Bankruptcy No. 00–43866, the Stipulation of Settlement must be submitted to the bankruptcy court or approval pursuant to Bankruptcy Rule 9019. Under the terms of the Stipulation of Settlement, the United States shall be allowed a general unsecured claim for the agreed judgment amount of $63,389. Only the amount of cash received by EPA on its general unsecured claim shall be credited by EPA to the Hazardous Substance Superfund.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree and the proposed Stipulation of Settlement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *American Standard, Inc., et al.*, D.J. Ref. 90–11–3–07510.

The proposed Consent Decree and the proposed Stipulation of Settlement may be examined at the Office of the United States Attorney, 204 S. Main Street, South Bend, Indiana, 46601, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed Consent Decree, the proposed Stipulation of Settlement, or both, may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the consent Decree, please enclose a check in the amount of $7.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy of the Stipulation of Settlement, please enclose a check of $5.75 (25 cents per page) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–27067 Filed 10–23–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Central MN Ethanol Co-op*, ("Central MN"), Civil Action No. CV02–3786 PAM/RLE was lodged with the United States District Court for the District of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in Little Falls, Minnesota, pursuant to Section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act; the New Source Performance Standards ("NSPS"), 40 CFR pat 60, subparts Db, Dc, DD, Kb, and VV; and the National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR part 63, pursuant to sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan ("SIP") which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, Central MN will install air pollution control technology, comply with new, more stringent emission limits, and pay a civil penalty of $29,656. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Central MN Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Central MN Ethanol Co-op*, D.J. Ref. 90–5–2–1–07784/2.

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 555101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $16.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–27076 Filed 10–23–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Chippewa Valley Ethanol Company, L.L.P., and Glacial Plains Cooperative*, ("CVEC") Civil Action No. CV02–3794 DSD/SRN was lodged with the United States District Court for the District of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in Benson, Minnesota, pursuant to section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act and regulations promulgated thereunder. In addition, the Complaint alleges that the plant is in violation of the New Source Performance Standards ("NSPS"), 40 CFR part 60, subparts Db, Dc, DD, Kb, and VV; National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR part 63, pursuant to sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan ("SIP") which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, CVEC will install air pollution control technology, comply with new, more stringent emission limits, and pay a civil penalty of $38,624. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the CVEC Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Chippewa Valley Ethanol Company, L.L.P., and Glacial Plains Cooperative*, D.J. Ref. 90–5–2–1–07784/3.

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $14.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–27077 Filed 10–23–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Corn Plus*, ("Corn Plus") Civil Action No. CV02–3785 RHK/AJB was lodged with the United States District Court for the District of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in Winnebago, Minnesota, pursuant to section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act and regulations promulgated thereunder. In addition, the Complaint alleges that the plant is in violation of the New Source Performance Standards ("NSPS"), 40 CFR part 60, Subparts Db, Dc, DD, Kb,

and VV; National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR part 63, pursuant to sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan ("SIP") which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, Corn Plus will install air pollution control technology, comply with new, more stringent emission limits, and pay a civil penalty of $42,076. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Corn Plus Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Corn Plus*, D.J. Ref. 90–5–2–1–07784/4.

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $15.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–27072 Filed 10–23–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Diversified Energy Company*, ("DENCO"), Civil Action No. CV02–3784 ADM/RLE was lodged with the United States District Court for the District of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in Morris, Minnesota, pursuant to Section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act and regulations promulgated thereunder. In addition, the Complaint alleges that the plant is in violation of the New Source Performance Standards ("NSPS"), 40 CFR part 60, subparts Db, Dc, DD, Kb, and VV; National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR part 63, pursuant to sections 112(d) and 112(g) of the act; and the Minnesota state implementation plan ("SIP") which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, DENCO will install air pollution control technology, comply with new, more stringent emission limits, and pay a civil penalty of $34,975. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the DENCO Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Diversified Energy Company, D.J. Ref. 90–5–2–1–00784/5.*

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $18.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–27073 Filed 10–23–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Ethanol 2000, L.L.P., Broin and Associates, Inc., and Broin Management, L.L.C.*, ("Ethanol 2000") Civil Action No. CV02–3788 MJD/JGL was lodged with the United States District Court for the District of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in Luverne, Minnesota, pursuant to section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act and regulations promulgated thereunder. In addition, the Complaint alleges that the plant is in violation of the New Source Performance Standards ("NSPS"), 40 C.F.R. part 60, Subparts Db, Dc, DD, Kb, and VV; National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 C.F.R. part 63, pursuant to sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan ("SIP") which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, Ethanol 2000 will install air pollution control technology, comply with new, more stringent emission limits, and pay a civil penalty of $36,101. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Ethanol 2000 Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Ethanol 2000, L.L.P., Broin and Associates, Inc., and Broin Management, L.L.C.*, D.J. Ref. 90–5–2–1–07784/6.

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $14.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–27070 Filed 10–23–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Agra Resources Cooperative, d/b/a/ Exol, Broin and Associates, Inc., and Broin Management, L.L.C.*, Civil Action No. CV02–3789 MJD/JGL, ("Exol") was lodged with the United States District Court for the District of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in Albert Lea, Minnesota, pursuant to section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions, the New Source Performance Standards ("NSPS"), 40 CFR part 60, subparts Db, Dc, DD, Kb, and VV; and the National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR part 63, pursuant to sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan ("SIP") which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, Exol will install air pollution control technology, comply with new, more stringent emission limits, and pay a civil penalty of $30,409. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Exol Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Agra Resources Cooperative, d/b/a/ Exol, Broin and Associates, Inc., and Broin Management, L.L.C.*, D.J. Ref. 90–5–2–1–07784/7.

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $14.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–27069 Filed 10–23–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Gopher State Ethanol, Inc.*, ("Gopher State"), Civil Action No. CV02–3793 DSD/SRN was lodged with the United States District Court for the District of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in St. Paul, Minnesota, pursuant to section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration ("PSD"), provisions of the Act and regulations promulgated thereunder. In addition, the Complaint alleges that the plant is in violation of the New Source Performance Standards ("NSPS"), 40 CFR part 60, Subparts Db, Dc, DD, Kb, and VV; National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR part 63, pursuant to sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan ("SIP") which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, Gopher State will comply with new, more stringent emission limits, and pay a civil penalty of $18,904. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Gopher State Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Gopher State Ethanol, Inc.*, D.J. Ref. 90–5–2–1–07784/8.

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $14.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–27074 Filed 10–23–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Heartland Corn Products*, ("Heartland"), Civil Action No. CV02–3790 RHK/AJB was lodged with the United States District Court for the district of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in Wintrop, Minnesota, pursuant to section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act; the New Source Performance Standards

("NSPS"), 40 CFR part 60, subparts Db, Dc, DD, Kb, and VV; and the National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR part 63, pursuant to sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan ("SIP") which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, Heartland will install air pollution control technology, comply with new, more stringent emission limits, and pay a civil penalty of $39,969. The Minnesota Pollution Control agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Heartland Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20444–7611, and should refer to: *United States* v. *Heartland Corn Products*, D.J. Ref. 90–5–2–1–07784/9.

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $15.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–27078 Filed 10–23–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Minnesota Energy*, Civil Action No. CV02–3791 JEL/JGL was lodged with the United States District Court for the District of Minnesota.

In this action the United States sought to resolve claims against the owners and operators of an ethanol dry mill in Buffalo Lake, Minnesota, pursuant to section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act; the New Source Performance Standards ("NSPS"), 40 CFR part 60, subparts Db, Dc, DD, Kb, and VV; and the National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR part 63, pursuant to sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan ("SIP") which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, Minnesota Energy will install air pollution control technology, comply with new, more stringent emission limits,and pay a civil penalty of $29,360. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Minnesota Energy Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Minnesota Energy*, DJ. Ref. 90–5–2–1–07784/10.

The Consent Decree may be examined by the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC. 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $17.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–27068 Filed 10–23–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 2, 2002, a proposed Consent Decree in *United States* v. *Pro-Corn, L.L.C., Broin and Associates, Inc., and Broin Management, L.L.C.*, Civil Action No. CV02–3786 PAM/RLE was lodged with the United States District Court for the District of Minnesota.

In this action, the United States sought to resolve claims against operators of ethanol dry mills in Minnesota pursuant to Section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. § 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991). The Pro-Corn facility is located in Preston, Minnesota. The United States sought injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act and regulations promulgated thereunder. In addition, the Complaint alleges that the plant is in violation of the New Source Performance Standards ("NSPS"), 40 CFR part 60, subparts Db, Dc, DD, Kb, and VV; National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR part 63, pursuant to Sections 112(d) and 112(g) of the Act; and the Minnesota state implementation plan ("SIP") which incorporates and/or implements the above-listed federal regulations. Under the proposed settlement, Pro-Corn will install air pollution control technology, comply with new, more stringent emission limits, and pay a civil penalty of $32,828. The Minnesota Pollution Control Agency has joined in the settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Pro-Corn Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Pro-Corn, L.L.C., Broin and Associates, Inc., and Broin Management, L.L.C.*, D.J. Ref. 90–5–2–1–07784/11.

The Consent Decree may be examined at the Office of the Attorney General, NCL Towers Suite 900, 445 Minnesota Street, St. Paul, MN 55101–2127, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $14.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–27075 Filed 10–23–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 16, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or E-mail: *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: New collection.

Title: Quick Turnaround Surveys on Workforce Investment Act Implementation.

OMB Number: 1205–ONEW.

Affected Public: State, Local, or Tribal Government.

Type of Response: Reporting.

Frequency: 1-time each.

Number of Respondents: 250.

Annual Responses: 5,000.

Average Response Time: 1.5 hours.

Estimated Burden Hours: 7,500.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Employment and Training Administration is seeking Office of Management and Budget approval for a plan to collect data from state workforce agencies and local workforce investment areas on issues relating to the governance and administration, budgeting and funding, and service design and delivery structure of workforce programs authorized by the Workforce Investment Act. Section 172 of the Workforce Investment Act is the authority by which ETA will collect information proposed in this information collection plan.

Marlene J. Howze,

Acting Departmental Clearance Officer.

[FR Doc. 02–27104 Filed 10–23–02; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Education and Training of Plan Fiduciaries Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group of the Advisory Council on Employee Welfare and Pension Benefit Plans assigned to study the issue of educating and training plan fiduciaries will hold an open public meeting on Thursday, November 7, 2002, in Room N–5437 A–C, U.S. Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210.

The purpose of the open meeting, which will run from 9 a.m. to approximately noon, is for Working Group members to finalize their report and recommendations for presentation to the full Advisory Council and ultimately, to the Secretary of Labor.

Members of the public are encouraged to file a written statement pertaining to the topic by sending 20 copies on or before October 30, 2002, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals wish disabilities who need special accommodations should contact Sharon Morrissey by October 30 at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Written statements will be accepted and included in the record of the meeting if received on or before October 30.

Signed at Washington, DC this 18th day of October, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–27100 Filed 10–23–02; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

120th Full Meeting of the Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 120th open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held Friday, November 8, 2002, in the Secretary of Labor's Conference Room S–2508, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

The purpose of the meeting, which will begin at 10 a.m. and end at approximately noon, is for the Council's

three Working Group chairs to present their groups' final reports and recommendations for approval by the full Council before the reports are forwarded to the Secretary of Labor. Also at the meeting, the five departing members will be cited for the completion of their three-year terms of service.

Members of the public are encouraged to file a written statement pertaining to the three Working Group issue assignments—fiduciary training and education, orphan plans, and electronic reporting—by submitting 20 copies on or before October 30, 2002 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210.

Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Sharon Morrissey by October 30 at the address indicated.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Written statements will be accepted and included in the record of the meeting if received on or before October 30, 2002.

Signed at Washington, DC, this 18th day of October, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–27101 Filed 10–23–02; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Orphan Plans Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Thursday, November 7, 2002, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study orphan plans, which are plans abandoned by all plan fiduciaries designated to manage and operate the plans and their assets.

The sessions will take place in Room N–5437 A–C, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 1 p.m. to approximately 3 p.m., is for Working Group members to finalize their reports and recommendations for presentation to the full Advisory Council and ultimately, to the Secretary of Labor.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before October 30, 2002, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Sharon Morrissey by October 30 at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Written statements will be accepted and included in the record of the meeting if received on or before October 30.

Signed at Washington, DC, this 18th day of October, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–27102 Filed 10–23–02; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Electronic Reporting, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Thursday, November 7, 2002, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group studying electronic reporting.

The session will take place in Room N–5437 A–C, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will last from 3:15 p.m. to approximately 5 p.m., is for Working Group members to complete their report and recommendations for presentation to the full Advisory Council, and ultimately, to the Secretary of Labor.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before October 30, 2002, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations who wish to address the Working Group should forward their request to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Sharon Morrissey by October 30 at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Written statements will be accepted and included in the record of the meeting if received on or before October 30.

Signed at Washington, DC, this 18th day of October, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 02–27103 Filed 10–23–02; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Daniel Schneider, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of title 5, United States Code.

1. *Date:* November 1, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Stabilization of Humanities Collections, submitted to the Division of Preservation and Access at the July 1, 2002 deadline.

2. *Date:* November 5, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2002 deadline.

3. *Date:* November 8, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2002 deadline.

4. *Date:* November 18, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the September 16, 2002 deadline.

5. *Date:* November 19, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2002 deadline.

6. *Date:* November 22, 2002.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Library & Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2002 deadline.

Daniel Schneider,

Acting Advisory Committee Management Officer.

[FR Doc. 02–27050 Filed 10–23–02; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[License No. 19–00915–03, Docket No. 03004530]

Consideration of Amendment Request to Remediate a Radioactive Waste Burial Site at the U.S. Department of Agriculture Facility in Ames, IA and Opportunity for a Hearing

The Nuclear Regulatory Commission is considering amending the United States Department of Agriculture's Byproduct Materials License No. 19–00915–03 to authorize excavation and remediation of the radioactive waste burial site located at its facilities in Ames, Story County, Iowa.

The U.S. Department of Agriculture (USDA) submitted a request dated August 16, 2002, for an amendment to Nuclear Regulatory Commission (NRC) License No. 19–00915–03. The licensee requests approval to decommission a radioactive waste burial site located on its property in Ames, Iowa. USDA proposes to excavate the site and retrieve the buried radioactive waste for shipment to a commercial waste disposal site in accordance with the procedures contained in that and subsequent submissions. The licensee has retained Cabrera Services, Inc., an NRC licensee (License No. 06–30556–01), to perform the decommissioning and remediation of the site.

The amendment request by United States Department of Agriculture and related documents are available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, PA 19406. The documents may also be viewed in the Agency-wide Document Access and Management System (ADAMS) located on the NRC Web site at *http://www.nrc.gov*. These documents include:

Letter from U.S. Department of Agriculture to USNRC, Region I, dated August 16, 2002 requesting approval to remediate burial site at National Animal Disease Center, Ames, IA, with enclosed Work Plan. (ML022330227)

Letter from Cabrera Services to USNRC, Region I, dated August 20, 2002 providing documents used in historical assessment of burial site (ML022390595).

Letter from USEPA, Region VII to UDSA, dated August 6, 2002, regarding Engineering Evaluation and Cost Analysis for NADC, Ames, IA (ML022270115).

Fax from USDA to USNRC, Region I dated September 11, 2002 providing additional information (ML022550516).

Engineering Evaluation and Cost Analysis for USDA National Animal Disease Center, Revision 1, Final, dated August 14, 2002 (ML022690109).

Environmental Assessment and Finding of No Significant Impact, dated October 24, 2002 (ML022890591).

Any person whose interest may be affected by the issuance of this action may file a request for a hearing. Any hearing request must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 and Region I, Chief, Nuclear Materials Safety Branch, 475 Allendale Road, King of Prussia, PA 19406), and on the licensee (U.S. Department of Agriculture, 5601 Sunnyside Avenue, Mail Stop 5510, Beltsville, MD. 20705); and must comply with the requirements for requesting a hearing set forth in the Commission's regulations, 10 CFR Part 2, Subpart L, "Information Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the request must address in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding (including the reasons why the requestor should be permitted a hearing);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely—that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (*i.e.*, health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at King of Prussia, Pennsylvania, this 16th day of October, 2002.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 02–26984 Filed 10–23–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Request for Candidates

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The U.S. Nuclear Regulatory Commission seeks qualified candidates for the Advisory Committee on Nuclear Waste. Submit resumés to: Ms. Sherry Meador, Administrative Assistant, ACRS/ACNW, Mail Stop T2E–26, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or email address *SAM@NRC.gov*.

SUPPLEMENTARY INFORMATION: The Commission established the Advisory Committee on Nuclear Waste (ACNW) to provide independent technical review of and advice on matters related to the management of nuclear waste, including all aspects of nuclear waste disposal facilities, as directed by the Commission. The ACNW undertakes independent studies and reviews related to disposal, storage, and transportation of both high- and low-level radioactive waste including interim storage of spent nuclear fuel; materials safety; and facilities decommissioning. This encompasses activities related to rulemakings, associated regulatory guides, and technical positions developed to support and clarify NRC's nuclear materials and radioactive waste regulations. Committee members are selected from a variety of engineering and scientific disciplines, such as risk assessment, chemistry, mechanical engineering, civil engineering, materials sciences, and the earth sciences. At this time, candidates are being sought who have 15–20 years of experience, including graduate level education, in the management and disposal of radioactive waste. Committee members serve a 4-year term with the possibility of reappointment for a total service of 8 years.

Criteria used to evaluate candidates include education and experience, demonstrated skills in nuclear waste management matters, and the ability to solve complex technical problems. The Commission, in selecting its Committee members, considers the need for a specific expertise to accomplish the work expected to be before the ACNW. For this position, the expertise must be directly related to the area of radioactive waste disposal, site remediation and closure activities, nuclear fuel reprocessing, chemistry, chemical exchange processes, and nuclear fuel cycle. Consistent with the requirements of the Federal Advisory Committee Act, the Commission seeks candidates with diverse backgrounds, so that the membership on the Committee will be fairly balanced in terms of the points of view represented and functions to be performed by the Committee.

Candidates for ACNW appointments may be involved in or have financial interests related to NRC-regulated aspects of the nuclear industry. Because conflict-of-interest considerations may restrict the participation of a candidate in ACNW activities, the degree and nature of any such restriction on an individual's activities as a member will be considered in the selection process. Each qualified candidate's financial interests must be reconciled with applicable Federal and NRC rules and regulations prior to final appointment. This might require divestiture of securities or discontinuance of certain contracts or grants. Information regarding these restrictions will be provided upon request.

A resume describing the educational and professional background of the candidate, including any special accomplishments and professional references should be provided. Candidates should provide their current address, telephone number, and e-mail address. All candidates will receive careful consideration. Appointment will be made without regard to such factors as race, color, religion, national origin, sex, age, or disabilities. Candidates must be citizens of the United States and be able to devote approximately 70–100 days per year to Committee business. Applications will be accepted until December 20, 2002.

Dated: October 17, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–27002 Filed 10–23–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[License No. 19–00915–03; Docket Number 03004530]

U.S. Department of Agriculture, Ames, IA; Environmental Assessment and Finding of No Significant Impact; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for remediation of radioactive waste burial site, U.S. Department of Agriculture, Ames, IA.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of the EA and FONSI for the remediation of the radioactive waste burial site at the U.S. Department of Agriculture facility in Ames, IA.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission is considering amending the United States Department of Agriculture's Byproduct Materials License No. 19–00915–03 to authorize excavation and remediation of the radioactive waste burial site located at its facilities in Ames, Story County, Iowa.

1. Introduction

The U.S. Department of Agriculture (USDA) submitted a request dated August 16, 2002, for an amendment to Nuclear Regulatory Commission (NRC) License No. 19–00915–03. The licensee requests approval to decommission a radioactive waste burial site located on its property in Ames, Iowa. USDA proposes to excavate the site and retrieve the buried radioactive waste for shipment to a commercial waste disposal site in accordance with the procedures contained in that and subsequent submissions. The licensee has retained Cabrera Services, Inc., an NRC licensee (License No. 06–30556–01), to perform the decommissioning and remediation of the site.

The burial site is approximately 0.25 acre (0.1 hectare, 11,000 ft^2 2, 1000 m^2) in the National Animal Disease Center (NADC) located on USDA property in Ames, Story County, Iowa. In addition to the burial site, about 80 NADC research laboratories and other facilities are located on the 320 acre (130 hectare) NADC property. The licensee buried radioactive material and associated chemical waste (mostly liquid scintillation media) at the site from 1971 (when 10 CFR 20.304 authorized burial of defined radioactive waste) until January 1981 (when 10 CFR 20.304 was withdrawn). The waste buried is typical of that generated by bench scale research with radionuclides and includes such items as lead pigs, vials, pipettes, packaging materials, gloves, absorbent paper, test tubes, scintillation vials, carbon filters, and liquid scintillation counting fluid. The licensee estimates that the volume of buried waste is 40 cubic yards (30 m^3) containing 250 millicuries of hydrogen 3, carbon 14, and nickel 63. The waste was placed in double plastic (polyethylene) bags and then buried in 16 separate pits, each approximately 6 feet (1.8 m) deep. The pits lie along a straight line over a distance of about 300 feet (91 m). Each burial is covered by about 3 feet (0.9 m) of soil.

2. Purpose and Need for the Proposed Action

The licensee plans to construct additional research facilities at NADC that may disturb and/or cover part or all of the burial site. Removal of the buried waste will facilitate the construction activities and will avoid future contamination of the soil and/or groundwater with radioactive and/or chemical waste.

There is currently no evidence of soil or groundwater contamination with radioactive material or hazardous chemicals. However, in addition to the fact that it will be necessary to disturb at least part of the burial during the planned construction, the waste may deteriorate with the passage of time, resulting in future soil and/or groundwater contamination. Therefore, the licensee plans to remediate the site prior to construction of the new facilities. The licensee is also coordinating the remediation activities with the U.S. Environmental Protection Agency (EPA) because the buried waste includes hazardous chemicals. USDA applied for and obtained from EPA approval for remediation of the burial site.

3. Proposed Action

The licensee plans to remove the buried waste and any associated contamination, properly dispose of all waste generated and release the burial site for unrestricted use prior to construction activities.

The licensee performed an extensive review of available records and interviewed appropriate personnel to determine the locations, structure of and identity of the radioactive materials present in the burials. Records indicate that hydrogen 3, carbon 14, sodium 22, sulfur 35, chlorine 36, potassium 40, chromium 51, nickel 63, iodine 125, iodine 131, and radium 226 were used at the facility during the period when the burials were made. However, sulfur 35, chromium 51, iodine 125, iodine 131, and sodium 22 have relatively short half-lives and were eliminated from consideration during the planning of the decommissioning because the quantities were small and have undergone decay for more than 10 half-lives. The licensee's records indicate that potassium 40 was purchased only once in 1967, in an exempt amount, and, therefore, it was also not considered further. Similarly, chlorine 36 was screened out because it was acquired in solution and, according to both available records and interviews with users, waste containing chlorine 36 was disposed of to the sanitary sewer at the time of its use. The licensee concluded that all radium 226 was in the form of a single one millicurie sealed source. It is not clear if that source was disposed in a burial, but, if it is present, it should be possible to locate it during dose rate surveys of the site that will be performed before and during the excavations or during the sorting and repackaging of the waste for disposal. The licensee has concluded that the buried radioactive waste contains less than 250 millicuries of radioactive material (hydrogen 3, carbon 14, and nickel 63). The waste was buried in double plastic (polyethylene) bags in 16 separate pits, each approximately 6 feet (1.8 m) deep. These pits lie along a straight line about 6 feet (1.8 m) apart over a distance of about 300 feet (91 m). There are about 3 feet (0.9 m) of cover soil over each pit. The licensee used these conclusions in planning the removal of the burials.

In November 1989 the licensee opened the first burial pit. Observation and soil samples taken at that time did not indicate leakage of radioactivity or chemicals from the bag that was buried in the pit. The licensee performed additional monitoring in 1996 by drilling six wells approximately 15 feet (4.6 m) deep around the burial site. Analyses of soil samples taken as recently as April 2000, from these wells did not indicate presence of any volatile organic compounds. In September 2002, water samples from the wells did not indicate any radioactivity above background. Based on this information and observations of the burial in 1989, the licensee has concluded that the plastic bags containing the waste are largely intact which should facilitate removal of the waste.

The licensee plans to retrieve the buried waste by excavating the burial site in three stages. The first stage will be accomplished using a mechanical excavator to dig a trench 8 feet (2.4 m) to 12 feet (3.7 m) wide and 3 feet (0.9 m) deep approximately 300 feet (91 m) long that will include all 16 pits. The second stage will involve digging a narrower trench symmetrically located within the first trench. This will be accomplished by carefully removing soil in 2–4 inch (5–10 cm) layers to reduce the risk of puncturing or tearing the buried bags. The third stage will begin when the top of a bag or other evidence of waste appears. Then excavation will be performed by hand (to minimize the potential for rupture of bags or the spread of waste or contamination) until each bag or all identifiable waste is retrieved. A one-foot layer of surrounding soils will be removed from all surfaces of each pit following the extraction of the bags and/or waste.

After all visible waste and the additional foot of soil is removed, the pits will be surveyed for radioactive contamination following an approach developed using the guidance provided in NUREG 1575, "Multi-Agency Radiation Survey and Site Investigation Manual" (MARSSIM). The licensee will collect samples from the surface and at a depth of about 1 foot (30 cm) below the bottom and behind the walls of each pit. Each sample will be analyzed for radioactivity and compared to the decommissioning goals selected by the licensee (described below). The measurements will be made with a Minimum Detectable Activity (MDA) of about 50% of the goal.

The surface sample data will be compared to the decommissioning goal. The subsurface sample data will be compared to a background reference area to demonstrate that residual contamination is limited to the first 15 cm of soil, if any is present at all. The sampling procedure is designed to assure the decommissioning goals are applied in a fashion consistent with the limitations placed on the published screening values which are the basis for approval of the goals. Additional soil, in 6 inch layers, will be removed if the analytical results indicate contamination in excess of the goals in surface samples or in excess of background in the subsurface samples.

If the licensee's surveys indicate the presence of significant soil contamination, sufficient characterization will be performed to support the development of custom derived concentration guidelines (DCGLs) for the site.

The NRC published screening values for radioactive contamination in soil based on an annual dose limit of 25 millirems in the **Federal Register** (64 FR 68395–96, December 7, 1999 and 65 FR 37186, June 13, 2002). The licensee used EPA's Generic Soil Screening Guidance, the computer code RESRAD and a dose limit of 15 millirems/year in order to choose decommissioning goals that would be acceptable to the NRC as well as the EPA. The values selected by the licensee are less than the published screening values and, therefore, are acceptable to the NRC for surface soil. As discussed above, the licensee's procedures are appropriate to assure that the goals are applied in accordance with published guidance.

All excavated waste will be stored temporarily in an enclosed sealand container after visual examination to verify integrity of each bag. The licensee has procedures for gathering and containing any waste which may escape from the bags. There will be a closed tent within this container fitted with a High Efficiency Particulate Air (HEPA) filtration unit to control potential airborne contaminants. Each bag or container of waste will be opened within the tent and the waste material will be segregated, characterized in accordance with approved licensee procedures, applicable regulations and waste disposal facility acceptance criteria. All waste, including any contaminated soil, will be properly packaged and shipped off site for disposal at an appropriate commercial waste disposal facility. The traffic generated by the shipment of the radioactive waste is expected to be a small fraction of the traffic for the entire site. The licensee estimates less than 10 truckloads with no more than three trucks at the site at any one time. The licensee has appropriate procedures for controlling the exposures of workers and releases to the environment during these operations.

Following the removal of all waste and contaminated soil, any additional necessary final status surveys will be performed in accordance with the guidance in NUREG 1575, "Multi-Agency Radiation Survey and Site Investigation Manual" (MARSSIM). Based on the actual survey results, the licensee will prepare and submit for approval a ground water monitoring plan for a specified time period. The licensee expects to complete the decommissioning of the site late in 2002, submit a Final Status Survey Report and request approval to release the site for unrestricted use.

4. Alternatives to the Proposed Action

The licensee considered four alternatives with regard to the burial site. One alternative is to take no action. Under this alternative monitoring and control would continue, but decommissioning actions would not be performed. Therefore, the risk of exposure to existing chemical and radiological material would not be reduced, and would be expected to increase over time. In addition, the licensee would either be forced to relocate the planned building or to take control measures similar to those proposed for the decommissioning during construction. The impact of relocating the building would be additional design and construction expenses along with delays in construction. If the building is not relocated, the additional control measures during construction would have impacts similar or greater than those expected during the remediation.

A second alternative is to implement additional containment and institutional controls. This might involve covering the burial site with additional soil cover and additional institutional and engineering controls to help ensure that the waste material remains contained within the burial site. This alternative would prevent future use of the burial site location. The licensee concluded that this alternative does not adequately control risks and does not meet the requirements of regulatory agencies (EPA and the NRC). The main impacts of this alternative are permanent loss of use of the land area and the additional cost for containment and institutional controls.

A third alternative considered by the licensee involves excavation of the buried waste and transporting it to an on-site storage facility until disposal off site. The licensee estimated that this alternative would take over 5 years to implement. The licensee did not consider this alternative further because of the impacts of additional costs, additional construction on the site and the loss of use of the location for a protracted period of time.

The preferred alternative is removal of the buried waste and any contaminated soil followed by prompt and appropriate disposal, as described above. This alternative allows productive use of the area of the burial site and prevents future contamination of soil and possibly groundwater with radioactive material and hazardous chemicals.

5. Affected Environment and Justification of the Action

The burial site is about 0.25 acre (0.1 hectare) of the 320 acre (130 hectare) NADC research complex in Story County, within the incorporation limits of Ames, Iowa. There are more than 80 buildings and other facilities in the research complex. The city of Ames had a population of approximately 51,000 according to the 2000 census. All people in the vicinity of NADC are served by ground water, either from the Ames municipal wells or from private wells. The nearest potable municipal well is located approximately 1.8 miles (2.9 km) from the waste site. The nearest private residence is 0.8 mile (1.3 km) from the waste site.

The NADC research complex is bounded on the east by Interstate Highway 35, on the south by the USDA's National Veterinary Services Laboratories (an additional 153 acres (62 hectares) of USDA property), on the west by Dayton Road and on the north by agricultural lands. Land use in the vicinity of the NADC is commercial to the south, residential to the west and agricultural to the north and east.

Topography in the vicinity of NADC is gently rolling with a divide which causes approximately one third of the facility's drainage to flow towards the southwest with the rest of the drainage flowing generally northeast. The drainage flows overland and percolates into the soil. It can be intercepted by storm sewers, roadside ditches, or it can reach the Skunk River about one mile (1.6 km) southwest of the burial site. The Skunk River is not used for drinking water. Near the burial site, the ground water flows west with a slight southwest trend. The ground water flow is somewhat independent of surficial water flow. Soil of the site is mainly composed of clay loams and loams.

Four major aquifer types exist in Story County: Alluvial aquifers, bedrock aquifers, buried channel aquifers, and drift aquifers. The upper bedrock aquifer underlies all of Story County. Overlying the upper bedrock aquifer are surficial aquifers and surface streams. The upper bedrock aquifer and surficial aquifers produce approximately 75 percent of the county's public water supply. Drift aquifers, which are not present in the vicinity of NADC produce the remaining 25 percent. A buried channel aquifer provides drinking water in the Ames area. Only the upper bedrock aquifer is present under NADC and is approximately 150 feet (48 m) beneath the ground surface. There are approximately 50 feet (15 m) of essentially impermeable clay between the aquifer and the ground surface at NADC. Therefore, the burial has presented and the planned decommissioning activities will present, little danger to the potable water supply.

While the burial site is unlikely to affect potable water supplies, the upper local groundwater table may be less than 5 feet (1.5 m) beneath the surface during the rainy seasons of the year. Water levels in the monitoring wells around the burial site have been measured at less than 4 feet (1.2 m) beneath the ground in early spring. It is possible that the buried waste may at times have been be surrounded by the ground water. Over time contact between the buried waste and ground water might make contamination available to surface plants and foraging animals. However, recent sampling of these wells found no radioactivity above natural background in the water.

The vegetation on the site is primarily introduced grasses and alfalfa and most of the undeveloped land on the NADC is utilized for animal foraging and pasture. Animals that inhabit the site are moles, deer mice, red fox, striped skunk, raccoon, badger, and an occasional whitetail deer. Birds such as horned larks, killdeer, vesper sparrow, and ring necked pheasants would likely inhabit the site. No unusual, threatened or endangered species of vegetation or wildlife are known or expected to occur on the site. There are approximately 15 acres (6.1 hectares) of wetlands in a ravine approximately one-half mile to the east of NADC.

Analyses of soil and water samples from the monitoring wells and one of the burial pits indicate that the buried waste material has not left the burials and has not had an adverse impact on the surrounding environment. However, the licensee plans construction activities near the burial site and these activities will change the underground profile of the burial site. If the waste remains buried, the leakage may occur during construction or in the future. Leaking material could be transferred to soil and local plants and thence to foraging animals. Due to the planned disturbance of the area and the possible future deterioration of the waste it is prudent to remediate the site now. This will avoid the spread of contamination into the environment and possibility of exposure of members of the public.

6. Environmental Impacts of the Proposed Action and Mitigating Measures

The licensee and its contractors have committed to comply with all pertinent environmental requirements to protect human health and the environment during the implementation of the proposed action. The licensee will follow appropriate standards set by the U.S. Occupational Safety & Health Administration (OSHA) to ensure worker health and safety, and will obtain all necessary permits from the local and state authorities.

Impacts of decommissioning activities such as increased noise and traffic are not expected to be significant because of the small area to be remediated and the fact that only a few pieces of construction equipment will be used to avoid dispersal of the waste during remediation. The burial site is currently fenced and not available to general access. The exclusion area and congestion in the area will increase somewhat during remediation, but the time of remediation is short (4 to 6 weeks) and there is adequate space to reroute traffic and other activities. The main environmental impacts are expected to be disturbance of the ground surface, the possibility of local soil erosion and the collection of precipitation in open excavations leading to the generation of potentially contaminated water.

The licensee's procedures for the excavation of the site are described in detail in a letter dated August 16, 2002, with enclosed Work Plan. The procedures are adequate to prevent or control soil erosion and the spread of radioactive and chemical contamination. Since the amount of radioactivity is not large and is most likely well contained, the risk of contamination spread is low and can be controlled by the licensee's procedures. Berms will be built around the excavated pits and soil storage areas to prevent water from getting into these areas and to control erosion. During excavation and screening dust will be controlled by misting with water and excavated soil will be covered to prevent it from becoming airborne. Wash water and precipitation will be collected, stored in tanks, sampled and disposed of in accordance with applicable regulatory requirements.

The licensee has developed procedures to control personnel exposures and to prevent the spread of radioactive contamination to other areas during and following excavation. A boundary (Construction Zone) will be established to mark the areas where excavation and remedial activities will be performed. Access to the areas within this boundary will be controlled by the use of temporary fencing with clearly defined access points. A Radiological Control Zone will be established within the Construction Zone to isolate the areas that could become radiologically contaminated. All areas will be appropriately posted.

Airborne contamination surveys and other appropriate radiological surveys of the soil and the trench surfaces will be made during and after removal of each soil layer. These surveys will determine if there was leakage into the soil from the waste and ensure that workers are not exposed to radiation from any unexpected source.

Spread of contamination from the burials would likely be by surficial or underground water currents. Such a spread of contamination is expected to be directed downward or laterally and, therefore, radioactive contamination is not expected in the top layer of soil. Therefore, the soil excavated during the first and second stages (top layers) will be spread in a 6-inch layer on polyethylene sheeting of at least 10 mil thickness in a designated lay down area for screening and potential segregation. The plan is to use as much of this soil as possible for backfill of the trench. Soil excavated during the third stage (after the tops of the bags become visible) will be loaded into intermodal containers and covered with tarps. This soil will be more extensively sampled for contamination. All soil contaminated in excess of the of the decommissioning goals will be shipped to an approved disposal site.

After radiological surveys confirm that the site meets the decommissioning goals, the burial site will be filled with the excavated non-contaminated soil and, if necessary, additional clean fill. The site will either be incorporated into a major construction project or appropriately vegetated. All waste and any contaminated soil removed will be transferred to a commercial burial site. The licensee will perform final radiological surveys of the site to ensure that the site meets NRC criteria for release for unrestricted use.

All contaminated items or material, including the equipment used in the excavation, will either be decontaminated in a designated area near the burial site, or disposed of in accordance with licensee's approved radiation safety procedures.

The licensee's procedures to initiate, accomplish and complete the remediation of the burial site adequately address concerns about the protection and radiological safety of members of the public and workers, the environment, and natural resources in the area.

7. Endangered Species and Historical Site Review

No unusual, threatened, or endangered species of vegetation or wildlife are known or expected to occur on the NADC property. There are no habitats of endangered species on the NADC property. Wetlands near the NADC property are not involved in the remediation activities. These conclusions were confirmed in discussions with the U.S. Fish and Wildlife Service.

The Iowa State Historical Society has reviewed the site and planned activities and concluded that it is unlikely that any areas of historical significance are involved.

8. Agencies and Persons Consulted

Scott Marquess, U.S. Environmental Protection Agency. The EPA is reviewing the proposed remediation, has approved the project and will monitor the implementation of the remediation activities.

Daniel McGhee, State of Iowa, Department of Public Health. The Department of Public Health representative indicated knowledge of the site including the research uses of radioactive material, supports the removal of the burial site and had no special concerns about the removal.

Wayne Fisher, U.S. Fish and Wildlife Service. Contact discussed in Section 7.

Daniel K Higginbottam, Iowa State Historic Preservation Office. Contact discussed in Section 7.

9. Sources Used

Letter from U.S. Department of Agriculture to USNRC, Region I, dated August 16, 2002, requesting approval to remediate burial site at National Animal Disease Center, Ames, IA, with enclosed Work Plan (ML022330227).

Engineering Evaluation and Cost Analysis for USDA National Animal Disease Center, Revision 1, Final, dated August 14, 2002 (ML022690109).

Letter from Cabrera Services to USNRC, Region I, dated August 20, 2002, providing documents used in historical assessment of burial site (ML022390595).

Letter from USEPA, Region VII to UDSA, dated August 6, 2002, regarding Engineering Evaluation and Cost Analysis for NADC, Ames, IA (ML022270115).

Fax from USDA to USNRC, Region I dated September 11, 2002 providing additional information (ML022550516).

Fax from Cabrera Services to USNRC, Region I, dated October 3, 2002 which encloses letter from Iowa State Historical Society to USDA, date July 22, 2002 (ML022890418).

10. Finding of no Significant Impact

Pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Commission's regulations in 10 CFR part 51, the Commission has determined that there will not be a significant effect on the quality of the human environment resulting from the excavation and retrieval of the buried waste and transfer to an off site waste disposal facility. Accordingly, the preparation of an Environmental Impact Statement is not required for the proposed amendment to Byproduct Material License No. 19–00915–03, which will authorize decommissioning of the burial site. This determination is based on the foregoing Environmental Assessment performed in accordance with the procedures and criteria in 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions."

The amendment request by United States Department of Agriculture and related documents are available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, PA 19406. The documents may also be viewed in the Agency-wide Document Access and Management System (ADAMS) located on the NRC website at *www.nrc.gov*.

Dated at King of Prussia, Pennsylvania, this 16th day of October, 2002.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 02–26985 Filed 10–23–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Meeting on the Memorandum of Understanding Between the Environmental Protection Agency and the Nuclear Regulatory Commission; Consultation and Finality on Decommissioning and Decontamination of Contaminated Sites

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of meeting.

SUMMARY: NRC will host a public meeting in Rockville, Maryland. During the meeting, staff from the Environmental Protection Agency and the Nuclear Regulatory Commission will discuss the Memorandum of Understanding (MOU) Between the Environmental Protection Agency and the Nuclear Regulatory Commission titled, "Consultation and Finality on Decommissioning and Decontamination of Contaminated Sites," and proposed plans for its implementation. The MOU can be viewed on the Internet at the following Web site: *http://www.nrc.gov/reading-rm/doc-collections/news/2002/02-120.html*. EPA also has additional information at the following Web site: *http://www.epa.gov/superfund/resources/radiation/mou.htm*.

Purpose: This meeting will provide an opportunity to discuss the MOU and next steps in implementation.

DATES: The meeting is scheduled for Tuesday November 5, 2002, from 1 pm to 4:30 pm. The meeting is open to the public.

ADDRESSES: NRC's Auditorium is at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC building is not available; however, the meeting site is located adjacent to the White Flint Station on the Metro Red Line.

FOR FURTHER INFORMATION CONTACT: Patricia A. Santiago, telephone (301) 415–7269, e-mail: *pas2@nrc.gov*, Eric Pogue, telephone (301) 415–6064, e-mail: *erp@nrc.gov*, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or Stuart Walker, Office of Emergency and Remedial, U.S. Environmental Protection Agency, Washington, DC 20555, telephone (703) 603–8748, e-mail: *walker.stuart@epa.gov*.

Dated at Rockville, Maryland, this 17th day of October, 2002.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

Agenda

12:30–1:00	Meet and Greet
1:00–1:15	Welcome and Opening Remarks
1:15–2:15	Overview of MOU
2:15–2:45	Public Questions
2:45–3:00	NRC Next Steps/Guidance
3:00–3:15	EPA Next Steps/Guidance
3:15–3:30	Closing Remarks
3:30–3:45	Public Questions
3:45–4:30	Staff Available for additional discussion

[FR Doc. 02–27124 Filed 10–23–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Memorandum of Understanding Between the U.S. Environmental Protection Agency and the U.S. Nuclear Regulatory Commission; Consultation and Finality on Decommissioning and Decontamination of Contaminated Sites

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission signed a Memorandum of Understanding (MOU) with the Environmental Protection Agency on the radiological decommissioning and decontamination of NRC-licensed sites. The MOU signed by NRC and EPA provides that EPA will defer exercise of authority under the Comprehensive Environmental Response, Compensation and Liability Act (Superfund) for the majority of facilities decommissioned under NRC authority. The MOU includes provisions for NRC and EPA consultation for certain sites when, at the time of license termination, (1) groundwater contamination exceeds EPA-permitted levels; (2) NRC contemplates restricted release or alternate criteria for release of the site; and/or (3) residual radioactive soil concentrations exceed levels defined in the MOU.

SUPPLEMENTARY INFORMATION: The MOU responds to a 1999 report from the House Committee on Appropriations that stated: "in the interest of ensuring that sites do not face dual regulation, the Committee strongly encourages both agencies to enter into an MOU which clarifies the circumstances for EPA's involvement at NRC sites when requested by the NRC." The MOU also is responsive to a Government Accounting Office report issued in 2000. The MOU does not fully meet the intent of the Appropriations Committee because the threat of dual regulation remains for certain licensees. Thus, although the MOU reduces dual jurisdiction, the NRC will continue efforts to seek legislation that would eliminate the possibility of dual regulation of all NRC decommissioning licensees.

The MOU does not impose any new requirements on NRC licensees and will reduce the involvement of EPA with NRC licensees who are decommissioning. Most sites are expected to meet the NRC criteria for unrestricted use, and NRC believes that only a few sites will have groundwater or soil contamination in excess of the levels specified in the MOU which trigger consultation with EPA. If there are other hazardous materials on the site, EPA may be involved in cleanup.

FOR FURTHER INFORMATION CONTACT: Patricia A. Santiago at (301) 415–7269, e-mail: *pas2@nrc.gov*, or Eric Pogue at (301) 415–6064, e-mail: *erp@nrc.gov*, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or Stuart Walker, Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, Washington, DC 20555, telephone (703) 603–8748, e-mail: *walker.stuart@epa.gov*.

The MOU between the EPA and the NRC is entitled "Consultation and Finality on Decommissioning and Decontamination of Contaminated Sites" and is attached to this notice. The MOU was signed by the Administrator of the U.S. Environmental Protection Agency on September 30, 2002, and by the Chairman of the U.S. Nuclear Regulatory Commission on October 9, 2002.

Dated in Rockville, Maryland, this 17th day of October, 2002.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

I. Introduction

The Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC), in recognition of their mutual commitment to protect the public health and safety and the environment, are entering into this Memorandum of Understanding (MOU) in order to establish a basic framework for the relationship of the agencies in the radiological decommissioning and decontamination of NRC-licensed sites. Each Agency is entering into this MOU in order to facilitate decision-making. It does not establish any new requirements or rights on parties not subject to this agreement.

II. Purpose

The purpose of this MOU is to identify the interactions of the two agencies for the decommissioning and decontamination of NRC-licensed sites and to indicate the way in which those interactions will take place. Except for section VI, addressing corrective action under the Resource Conservation and Recovery Act (RCRA), this MOU is limited to the coordination between EPA, when acting under its Comprehensive Environmental Response, Compensation and Liability act (CERCLA) authority, and NRC, when a facility licensed by the NRC is undergoing decommissioning, or when a facility has completed decommissioning, and the NRC has terminated its license. It continues a basic policy of EPA deferral to NRC decision-making in the decommissioning of NRC-licensed sites except in certain circumstances, and establishes the procedure to govern the relationship between the agencies in connection with the decommissioning of sites at which those circumstances arise.

III. Background

An August 3, 1999, report (106–286) from the House Committee on Appropriations to accompany the bill covering EPA's FY 1999 Appropriations/FY 2000 budget request states:

Once again the Committee notes that the Nuclear Regulatory Commission (NRC) has and will continue to remediate sites under its jurisdiction to a level that fully protects public health and safety, and believes that any reversal of the long-standing policy of the Agency to defer to the NRC for cleanup of NRC's licensed sites is not a good use of public or private funds. The interaction of the EPA with the NRC, NRC licensees, and others, with regard to sites being remediated under NRC regulatory requirements—when not specifically requested by the NRC—has created stakeholder concerns regarding the authority and finality of NRC licensing decisions, the duration and costs of site cleanup, and the potential future liability of parties associated with affected sites. However, the Committee recognizes that there may be circumstances at specific NRC licensed sites where the Agency's expertise may be of critical use to the NRC. In the interest of ensuring that sites do not face dual regulation, the Committee strongly encourages both agencies to enter into an MOU which clarifies the circumstances for EPA's involvement at NRC sites when requested by the NRC. The EPA and NRC are directed to report to the Committee on Appropriations no later than May 1, 2000, on the status of the development of such an MOU.

Since September 8, 1983, EPA has generally deferred listing on the CERCLA National Priorities List (NPL) those sites that are subject to NRC's licensing authority, in recognition that NRC's actions are believed to be consistent with the CERCLA requirement to protect human health and the environment. However, as EPA indicated in the **Federal Register** notice announcing the policy of CERCLA deferral to NRC, if EPA "determines that sites which it has not listed as a matter

of policy are not being properly responded to, the Agency will consider listing those sites on the NPL" (see 48 FR 40658).

EPA reaffirms its previous 1983 deferral policy. EPA expects that any need for EPA CERCLA involvement in the decommissioning of NRC licensed sites should continue to occur very infrequently because EPA expects that the vast majority of facilities decommissioned under NRC authority will be decommissioned in a manner that is fully protective of human health and the environment. By this MOU, EPA agrees to a deferral policy regarding NRC decision-making without the need for consultation except in certain limited circumstances as specified in paragraphs V.C.2 and V.C.3.

One set of circumstances in which continued consultation should occur, pursuant to the procedures defined herein, relates to sites at which the NRC determines during the license termination process that there is radioactive ground-water contamination above certain limits. Pursuant to its License Termination rule, NRC applies a dose criterion that encompasses all pathways, including ground water. In its cleanup of sites pursuant to CERCLA, by contrast, EPA customarily establishes a separate ground-water cleanup standard in which it applies certain Maximum Contaminant Levels (MCLs, found at 40 CFR 141) promulgated for radionuclides and other substances pursuant to the Safe Drinking Water Act. NRC has agreed in this MOU to consult with EPA on the appropriate approach in responding to the circumstances at particular sites with ground-water contamination at the time of license termination in excess of EPA's MCLs or those sites for which NRC contemplates either restricted release or the use of alternate criteria for license termination, or radioactive contamination at the time of license termination exceeds the corresponding levels in Table 1 as provided in section V.C.2.

IV. Principles

In carrying out their respective responsibilities, the EPA and the NRC will strive to:

1. Establish a stable and predictable regulatory environment with respect to EPA's CERCLA authority in and NRC's decommissioning of contaminated sites.

2. Ensure, to the extent practicable, that the responsibilities of the NRC under the AEA and the responsibilities of EPA under CERCLA are implemented in a coordinated and consistent manner.

V. Implementation

A. Scope

This MOU is intended to address issues related to the EPA involvement under CERCLA in the cleanup of radiologically contaminated sites under the jurisdiction of the NRC. EPA will continue its CERCLA policy of September 8, 1983, which explains how EPA implements deferral decisions regarding listing on the NPL of any sites that are subject to NRC's licensing authority. The NRC's review of sites under NRC jurisdiction indicates that few of these sites have radioactive ground-water contamination in excess of the EPA's MCLs. At those sites at which NRC determines during the license termination process that there is radioactive ground-water contamination above the relevant EPA MCLs, NRC will consult with EPA and, if necessary, discuss with EPA the use of flexibility under EPA's phased approach to addressing ground-water contamination. NRC has agreed in this MOU to consult with EPA on the appropriate approach in responding to the circumstances at particular sites where ground-water contamination will exceed EPA's MCLs, NRC contemplates either restricted release or the use of alternate criteria for license termination, or radioactive contamination at the time of license termination exceeds the corresponding levels in Table 1 as provided in Section V.C.2.

B. General

Each agency will keep the other agency generally informed of its relevant plans and schedules, will respond to the other agency's requests for information to the extent reasonable and practicable, and will strive to recognize and ameliorate to the extent practicable any problems arising from implementation of this MOU.

C. NRC Responsibilities

1. NRC will continue to ensure remediation of sites under its jurisdiction to a level that fully protects public health and safety.

2. For NRC-licensed sites at which NRC determines during the license termination process that there is radioactive ground-water contamination in excess of EPA's MCLs, or for which NRC contemplates either restricted release (10 CFR 20.1403) or the use of alternate criteria for license termination (10 CFR 20.1404), NRC will seek EPA's expertise to assist in NRC's review of a decommissioning or license termination plan. In addition, NRC will consult with EPA if either the planned level of residual radioactive soil concentrations in the proposed action or the actual residual level of radioactive soil concentrations found in the final site survey exceed the radioactive soil concentration in Table 1. With respect to all such sites, the NRC will consult with EPA on the application of the NRC decommissioning requirements and will take such action as the NRC determines to be appropriate based on its consultation with EPA. For example, if NRC determines during the license termination process that there will be radioactive ground-water contamination in excess of EPA's MCLs at the time of license termination, then NRC will discuss with EPA the use of flexibility under EPA's phased approach for addressing ground-water contamination. If NRC does not adopt recommendations provided by the EPA, NRC will inform EPA of the basis for its decision not to do so.

3. NRC will defer to EPA regarding matters involving hazardous materials not under NRC's jurisdiction.

D. EPA Responsibilities

1. If the NRC requests EPA's consultation on a decommissioning plan or license termination plan, EPA will provide, within 90 days of NRC's notice to EPA, written notification of its views on the matter.

2. Consistent with this MOU, EPA agrees to a policy of deferral to NRC decision making on decommissioning without the need for consultation on sites other than those presenting the circumstances described in sections V.C.2 and V.C.3. The agencies will consult with each other pursuant to the provisions of this MOU with respect to those sites presenting the circumstances described in sections V.C.2 and V.C.3. EPA does not expect to undertake CERCLA actions related to radioactive contamination at a site that has been decommissioned in compliance with the NRC's standards, including a site addressed under section V.C.2, despite the agencies decision to engage in consultation on such sites. EPA's deferral policy, and its expectation of not taking CERCLA action, continues to apply to sites that are covered under section V.C.2.

3. For NRC-licensed sites presenting the circumstances described in section V.C.2 and for which NRC has not adopted the EPA recommendation, EPA will consult with NRC on any CERCLA actions EPA expects to take if EPA does not agree with the NRC's decision.

4. EPA will resolve any CERCLA concerns involving hazardous substances outside of NRC's jurisdiction at NRC licensed sites, including concerns involving hazardous constituents that are not under the authority of NRC. As provided in section V.D.2, EPA under CERCLA will defer or consult with NRC as appropriate regarding matters involving AEA materials under NRC's jurisdiction.

E. Other Provisions

1. Nothing in this MOU shall be deemed to establish any right nor provide a basis for any action, either legal or equitable by any person, or class of persons challenging a government action or failure to act.

2. Each agency will appoint a designated contact for implementation of this MOU. The designated individuals will meet at least annually or at the request of either agency to review NRC-licensed sites that meet the criteria for consultation pursuant to section V.C.2. The NRC designated contact is the Director, Office of Nuclear Materials Safety and Safeguards, and the EPA designated contact is the Director, Office of Emergency and Remedial Response, or as each designee delegates.

3. This MOU will remain in effect until terminated by the written notice of either party submitted six months in advance of termination.

4. Within six months of the execution of this MOU, each party will revise its guidance to its Headquarters and Regional Offices to reflect the terms of this MOU.

5. If differences arise that cannot be resolved by senior EPA and NRC management within 90 days, then either senior EPA or NRC management may raise the issue to their respective agency head.

VI. Corrective Action Under RCRA

Some NRC sites undergoing decommissioning may be subject to cleanup under RCRA corrective action authority. This authority, administered either by EPA or authorized states, requires cleanup of releases of hazardous waste or constituents at hazardous waste treatment, storage or disposal facilities. NRC sites subject to RCRA corrective action will be expected to meet RCRA cleanup standards for chemical contamination within EPA's jurisdiction. EPA Office of Solid Waste's policy is to encourage regional and State program implementers to coordinate RCRA cleanups with decommissioning, as appropriate, at those NRC sites subject to EPA's corrective action authority.[1]

EPA will continue to support coordination of cleanups under the RCRA corrective action program with decommissioning at NRC sites consistent with its March 5, 1997 policy. In addition, under RCRA the majority of States are authorized to implement the corrective action requirements. States are not signatories to this MOU; however, EPA will encourage States to act in accordance with this policy where they have responsibility for RCRA corrective action at NRC sites undergoing decommissioning.

Items 1 and 3 of the "Other Provisions" of section V.E. apply to this section.

Dated: September 30, 2002.

Christine T. Whitman, *Administrator, U.S. Environmental Protection Agency.*

Dated: October 9, 20002.

Richard A. Meserve, *Chairman, U.S. Nuclear Regulatory Commission.*

BILLING CODE 7590–01–M

[1] See letter from Elizabeth Cotsworth, Acting Director, Office of Solid Waste to James R. Roewer, USWAG, dated March 5, 1997.

MOU Table 1: Consultation Triggers for Residential and Commercial/Industrial Soil Contamination

Except for radium-226, thorium-232, or total uranium, concentrations should be aggregated using a sum of the fraction approach to determine site specific consultation trigger concentrations. This table is based on single contaminant concentrations for residential and commercial/industrial land use when using generally accepted exposure parameters. Table users should select the appropriate column based on the site's reasonably anticipated land use.

Radionuclide	Residential Soil Concentration	Industrial/Commercial Soil Concentration
H-3	228 pCi/g	423 pCi/g
C-14	46 pCi/g	123,000 pCi/g
Na-22	9 pCi/g	14 pCi/g
S-35	19,600 pCi/g	32,200,000 pCi/g
Cl-36	6 pCi/g	10,700 pCi/g
Ca-45	13,500 pCi/g	3,740,000 pCi/g
Sc-46	105 pCi/g	169 pCi/g
Mn-54	69 pCi/g	112 pCi/g
Fe-55	269,000 pCi/g	2,210,000 pCi/g
Co-57	873 pCi/g	1,420 pCi/g
Co-60	4 pCi/g	6 pCi/g
Ni-59	20,800 pCi/g	1,230,000 pCi/g
Ni-63	9,480 pCi/g	555,000 pCi/g
Sr-90+D	23 pCi/g	1,070 pCi/g
Nb-94	2 pCi/g	3 pCi/g
Tc-99	25 pCi/g	89,400 pCi/g
I-129	60 pCi/g	1,080 pCi/g
Cs-134	16 pCi/g	26 pCi/g
Cs-137+D	6 pCi/g	11 pCi/g
Eu-152	4 pCi/g	7 pCi/g
Eu-154	5 pCi/g	8 pCi/g

MOU Table 1: Consultation Triggers for Residential and Commercial/Industrial Soil Contamination

Except for radium-226, thorium-232, or total uranium, concentrations should be aggregated using a sum of the fraction approach to determine site specific consultation trigger concentrations. This table is based on single contaminant concentrations for residential and commercial/industrial land use when using generally accepted exposure parameters. Table users should select the appropriate column based on the site's reasonably anticipated land use.

Radionuclide	Residential Soil Concentration	Industrial/Commercial Soil Concentration
Ir-192	336 pCi/g	544 pCi/g
Pb-210+D	15 pCi/g	123 pCi/g
Ra-226	5 pCi/g	5 pCi/g
Ac-227+D	10 pCi/g	21 pCi/g
Th-228+D	15 pCi/g	25 pCi/g
Th-232	5 pCi/g	5 pCi/g
U-234	401 pCi/g	3,310 pCi/g
U-235+D	20 pCi/g	39 pCi/g
U-238+D	74 pCi/g	179 pCi/g
total uranium	47 mg/kg	1230 mg/kg
Pu-238	297 pCi/g	1,640 pCi/g
Pu-239	259 pCi/g	1,430 pCi/g
Pu-241	40,600 pCi/g	172,000 pCi/g
Am-241	187 pCi/g	568 pCi/g
Cm-242	32,200 pCi/g	344,000 pCi/g
Cm-243	35 pCi/g	67 pCi/g

[FR Doc. 02–27125 Filed 10–23–02; 8:45 am]
BILLING CODE 7950–01–C

OVERSEAS PRIVATE INVESTMENT CORPORATION

November 7, 2002 Public Hearing

Time and Date: 2 p.m. Thursday, November 7, 2002.

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

Status: Hearing Open to the Public at 2 p.m.

Purpose: Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Procedures

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., Tuesday, November 5, 2002. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to a afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Tuesday, November 5, 2002. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

For Further Information Contact: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *cdown@opic.gov*.

Dated: October 22, 2002.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 02–27270 Filed 10–22–02; 2:56 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Central Maine Power Company to Withdraw its Dividend Series Preferred Stock (par value $100) 3.5% Series, from Listing and Registration on the American Stock Exchange LLC File No. 1–05139

October 18, 2002.

Central Maine Power Company, a Maine corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Dividend Series Preferred Stock (par value $100), 3.5% Series ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Maine, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on June 14, 2002 to withdraw the Issuer's Security from listing on the Amex. In making the decision to withdraw its Security from the Amex, the Board cites low trading volume, the expense of maintaining the listing on the Amex, and the existence of adequate alternative trading markets. The Security has been trading over-the-counter since June 2002. The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under Section 12(b) of the Act, [3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before November 8, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–27149 Filed 10–23–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration on the New York Stock Exchange, Inc. (El Paso Tennessee Pipeline Co., 8¼% Cumulative Preferred Stock, Series A) File No. 1–09864

October 18, 2002.

El Paso Tennessee Pipeline Co., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its 8¼% Cumulative Preferred Stock, Series A ("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The Issuer stated in its application that it has met the requirements of the NYSE rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Trustees ("Board") of the Issuer approved a resolution on October 8, 2002 to withdraw the Issuer's Security from listing on the NYSE. In making its decision to withdraw the Issuer's Security from the Exchange, the Board notes that the Security is held by less than three hundred (300) persons. In addition, the board considered the low number of record holders, the erratic and thin trading of the securities, and the burden on the Issuer's resources due to the costs associated with maintaining the listing requirements for its Security.

The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under section 12(b) of the Act [3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before November 8, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–27151 Filed 10–23–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).
[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of FFP Marketing Company, Inc. to Withdraw its Common Shares, $.01 par Value, From Listing and Registration on the American Stock Exchange LLC File No. 1–13727

October 18, 2002.

FFP Marketing Company, Inc., a Texas corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Shares, $.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Texas, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Trustees ("Board") of the Issuer approved resolutions on September 26, 2002 to withdraw the Issuer's Security from listing on the Amex. In making its decision to withdraw the Issuer's Security from the Exchange, the Board notes the low number of stockholders of record results in a disproportionately high cost associated with being publicly traded, the extent and nature of trading in the Security is erratic and thin, and the burden on the Issuer's resources due to the costs associated with maintaining the listing requirements for its Security.

The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under section 12(b) of the Act [3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before November 8, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–27150 Filed 10–23–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27580]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

October 18, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 12, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy of the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 12, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Unitil Corporation, et al. (70–10084)

Notice of Proposed Merger of Two Unitil Utility Subsidiaries; Order Authorizing Solicitation of Proxies or Consents

Unitil Corporation ("Unitil"), 6 Liberty Lane West, Hampton, New Hampshire 03842–1720, a registered holding company under the Act, and tow of its retail electric utility subsidiaries, Concord Electric Company ("CECo"), One McGuire Street, Concord, New Hampshire 03301, and Exeter & Hampton Electric Company ("E&H"), 114 Drinkwater Road, Kensington, New Hampshire 03833, (collectively, "Applicants"), have filed an application-declaration ("Application") under sections 6, 7, 9, 10 and 12(c) and 12(e) of the Act and rules 43, 44, 45, 54 and 62 under the Act.

The Application seeks approvals relating to the proposed merger of CECo and E&H. Applicants propose that E&H will merge into CECo to form a single retail electric utility subsidiary of Unitil to the named Unitil Energy Systems Inc. ("UES"). Applicants state that the proposed merger is one element of Unitil's restructuring proposal under the New Hampshire Electricity Restructuring Law (codified as RSA 374–F). By merging E&H into CECo, the Applicants state that they will simplify the corporate structure of Unitil's holding company system and achieve cost efficiency and service quality improvements.

CECo is engaged in the transmission and distribution of electric energy at regulated rates to approximately 28,000 customers in Concord and the capital region of New Hampshire. CECo is regulated as a public utility in New Hampshire. As of June 30, 2002, CECo reported net utility plant of $37,417,000 and operating revenues for the 12 months ended June 30, 2002 of $52,263,000.

E&H is engaged in the transmission and distribution of electric energy at regulated rates to approximately 41,000 customers in Exeter and the seacoast region of New Hampshire. E&H is regulated as a public utility by the New Hampshire Public Utilities Commission. As of June 30, 2002, E&H reported net utility plant of $43,221,000 and operating revenues for the 12 months ended June 30, 2002 of $58,053,000.

The utility operations of CECo and E&H are administered and coordinated through Unitil's centralized service company, Unitil Service Corp., and each company has, since 1986, secured all of its requirements for electric energy from Unitil Power Company ("UPC"), a subsidiary generating company of Unitil. The companies have different

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).
[5] 17 CFR 200.30–3(a)(1).

retail tariffs, rates and rate bases. As proposed, the merger will result in a new unified rate structure and a single rate base as well as the elimination of any inefficiencies and duplicative costs resulting from the operation of the companies as two separate entities.

To accomplish the merger, the companies will enter into an agreement approved by their respective boards of directors ("Merger Agreement"). Consummation of the transactions proposed in the Merger Agreement will be subject to the receipt of all necessary regulatory approvals and to approval by the shareholders of each company. As a result of the merger, all of E&H's assets and liabilities will, by operation of law, become the assets and liabilities of CECo.

Description of Outstanding Equity Securities of CECo and E&H

CECo currently has 250,000 authorized shares of common stock ("CECo Common Stock"), of which 131,745 shares are issued and outstanding and owned both of record and beneficially by Unitil; 2,250 authorized shares of non-cumulative preferred stock ("CECo Non-Cumulative Preferred Stock"), all of which are issued and outstanding and none of which is owned, of record or beneficially, by Unitil; and 15,000 authorized shares of cumulative preferred stock ("CECo Cumulative Preferred Stock"), of which 2,150 shares are issued and outstanding in a single series designated the "8.70% Series," none of which is owned, of record or beneficially, by Unitil. Holders of the CECo Common Stock and the CECo Non-Cumulative Preferred Stock are entitled to vote on all matters brought before the shareholders of CECo. Each outstanding share is entitled to one vote. The CECo Non-Cumulative Preferred Stock is not entitled to vote as a separate class. The CECo Cumulative Preferred Stock is not entitled to vote on any matter, except as may otherwise be authorized or required by the New Hampshire Business Corporation Act. Under the Business Corporation Act, the CECo Cumulative Preferred Stock will not be entitled to vote on the merger and related transactions.

E&H currently has 197,417 authorized shares of common stock ("E&H Common Stock"), of which 195,000 shares are issued and outstanding and owned both of record and beneficially by Unitil; and 25,000 authorized shares of cumulative preferred stock ("E&H Cumulative Preferred Stock"), of which a total of 9,704 shares are issued and outstanding in four series as follows: 840 shares of the "5% Dividend Series," 1,680 shares of the "6% Dividend Series," 3,331 shares of the "8.75% Dividend Series" and 3,853 shares of the "8.25% Dividend Series." None of the E&H Cumulative Preferred Stock is owned, of record or beneficially, by Unitil. The E&H Cumulative Preferred Stock is not entitled to vote as a separate class, unless such a class vote is otherwise authorized or required by the Business Corporation Act. Under the Business Corporation Act, each series of the E&H Cumulative Preferred Stock will be entitled to vote as a separate class on the proposed merger with CECo, since, as described below, the terms of the Merger Agreement provide for the issuance to the holders of the E&H Cumulative Preferred Stock in exchange for their shares of E&H Cumulative Preferred Stock an equal number of shares of CECo Cumulative Preferred Stock in four new series which will have the same terms and conditions as the existing series of the E&H Cumulative Preferred Stock. As part of the Merger Agreement, the board of directors of CECo and the holders of CECo Common Stock and CECo Non-Cumulative Preferred Stock will approve an amendment to the CECo Articles of Incorporation creating the four new series of CECo Cumulative Preferred Stock to be issued in the merger to the holders of the E&H Cumulative Preferred Stock.

The authorized and unissued shares of CECo Cumulative Preferred Stock may be issued in series by CECo from time to time upon authorization of its board of directors, with the terms of each new series to be approved by the vote of two-thirds of the outstanding shares of CECo Common Stock and CECo Non-Cumulative Preferred Stock.

Terms of the Merger Agreement

The Merger Agreement requires all of the issued and outstanding shares of E&H Common Stock to be converted into a single share of CECo Common Stock, and each share of E&H Cumulative Preferred Stock to be converted, as explained above, into a share of a new series of CECo Cumulative Preferred Stock. The shares of CECo Common Stock, CECo Non-Cumulative Preferred Stock and CECo Cumulative Preferred Stock issued and outstanding immediately prior to the merger will remain outstanding and will not be affected by the merger.

Amendments to Debt Indentures

E&H is party to an Indenture of Mortgage and Deed of Trust dated December 1, 1952("E&H Indenture"), and CECo is party to an Indenture of Mortgage and Deed of Trust dated July 15, 1958 ("CECo Indenture"). There are currently three series of bonds outstanding under each of the indentures. The Applicants propose to consolidate the indentures. All of the currently outstanding bonds of E&H and CECo would remain outstanding. Bondholders under the new indenture would be secured ratably in all of the real property assets of UES on the same terms on which they are currently secured in the real property assets of CECo and E&H. The consent of each bondholder under the E&H Indenture and the CECo Indenture will be necessary to accomplish the proposed combination, amendment and restatement of the two indentures. Applicants request authority to seek bondholders' consent.

While the CECo Indenture and the E&H Indenture are largely identical instruments, there are differences between them. As part of the combination, amendment and restatement process, CECo and E&H propose to conform the provisions of the indentures. Any special provisions applicable to the separate series of bonds under each indenture which are contained in supplemental indentures will be preserved in the combination, amendment and restatement of the two Indentures. The proposed combination, amendment and restatement will not effect any material economic change in the provisions applicable to the bonds or any series of the bonds, such as their respective rates of interest, maturities, amounts outstanding or redemption features.

Boards of Directors and Shareholder Approvals

The Merger Agreement must be approved by the boards of directors of CECo and E&H. In addition, the Merger Agreement and related amendments to CECo's Articles of Incorporation must be approved by the holders of CECo Common Stock and CECo Non-Cumulative Preferred Stock, voting together as a single class, and by the holders of E&H Common Stock and each series of E&H Cumulative Preferred Stock, each voting as a separate class. Because Unitil effectively controls the boards of directors of each of E&H and CECo since it owns all of the issued and outstanding shares of common stock of each company, approval of the Merger Agreement and related amendments to CECo's Articles of Incorporation by those boards of directors is assured. Approval by the holders of CECo Common Stock and CECo Non-Cumulative Preferred Stock is also assured since Unitil controls the vote of more than 99% of these shares.

Approval of the Merger Agreement by the holders of E&H Common Stock is assured since Unitil controls the vote of these shares. Unitil does not, however, control the vote of any outstanding series of E&H Cumulative Preferred Stock. Unitil intends to solicit written consents in favor of the Merger Agreement and related transactions from the holders of each outstanding series of the E&H Cumulative Preferred Stock. The solicitation of consent is subject to New Hampshire law and the terms of E&H's governance documents. Under Section 7.04 of the New Hampshire Business Corporation Act, the holders of E&H Cumulative Preferred Stock can take action by unanimous written consent, and E&H's governance documents are in agreement. E&H has the right to call each outstanding series for redemption under the terms of each series and will call for redemption any series which does not consent to the Merger Agreement and related transactions. Therefore, the consent of the E&H Cumulative Preferred is assured.

Tax and Accounting Consequences of the Merger

The merger has been structured to qualify for tax purposes as a tax-free "reorganization" under section 368(a) of the Internal Revenue Code. As a result, no gain or loss will be recognized by CECo or E&H or the holders of CECo Common Stock, CECo Non-Cumulative Preferred Stock, CECo Cumulative Preferred Stock, E&H Common Stock or E&H Cumulative Preferred Stock. CECo and E&H expect that the merger will qualify as a common control merger for accounting and financial reporting purposes. The accounting for a common control merger is similar to a pooling of interests. Under this accounting treatment, the combination of the ownership interests of the two companies is recognized and the recorded assets, liabilities, and capital accounts are carried forward at existing historical balances to the consolidated financial statements of UES as the surviving company following the merger.

On a pro forma basis and giving effect to the merger, as of June 30, 2002, UES will have total assets of approximately $112,047,000, including net utility plant of $80,638,000, and operating revenues for the 12 months ended June 30, 2002 of approximately $110,316,000. UES's pro forma consolidation capitalization as of June 30, 2002 (assuming the exchange of all of the E&H Cumulative Preferred Stock for new shares of UES Cumulative Preferred Stock) will be as follows:

Common Stock Equity, 28,411,000,000 amount outstanding, 35%.

Preferred Stock, 1,195,000,000 amount outstanding, 1.5%.

Short-term Debt, 1,550,000,000 amount outstanding, 1.9%.

Long-term Debt, 50,000,000,000 amount outstanding, 61.6%.

Money Pool Matters

CECo and E&H participate in the Unitil system money pool arrangement ("Money Pool") that is funded, as needed, through bank borrowings and surplus funds invested by the participants in the Money Pool and as authorized by HCAR Nos. 35–26737 (June 30, 1997); 35–27182 (June 9, 2000); 35–37207 (Dec. 15, 2000) and 35–27345 (Feb. 14, 2001). Participation in the Money Pool, including short-term debt borrowings, by CECo and E&H are authorized by the New Hampshire Public Utility Commission and, therefore, are exempt under rule 52 of the Act. However, borrowings by and loans to Unitil's other utility subsidiary, Fitchburg Gas and Electric Light Company ("Fitchburg"), dare not exempt. Following the merger, it is proposed that UES be authorized to make loans to Fitchburg on the same terms as CECo's and E&H's current authorization. All other terms, conditions and limitations under the Money Pool orders will continue to apply without change.

Order For Solicitation of Proxies and Contents

E&H has requested that an order be issued authorizing commencement of the solicitation of proxies or consents from the holders of the outstanding shares of its preferred stock for the purpose of seeking approval of the merger and related transactions and the solicitation of consents from bondholders in connection with the proposed indenture amendments. It appears to the Commission that the applicants' declarations regarding the proposed solicitation of proxies and consents should be permitted to become effective immediately under rule 62(d).

Fees, commissions and expenses paid or incurred in connection with the solicitation of proxies or consents are estimated to be not more than $2,000. Unitil further stats that no state or federal commission, other than this Commission, has jurisdiction over the solicitation of proxies or consents.

Unitil states, for purposes of rule 54, that the conditions specified in rule 53(a) are satisfied and that none of the adverse conditions specified in rule 53(b) exist. As a result, the Commission will not consider the effect on the Unitil system of the capitalization or earnings of any Unitil subsidiary that is an exempt wholesale generator or foreign utility company, as each is defined in sections 32 and 33 of the Act, respectively, in determining whether to approve the proposed transactions.

It is ordered, under rule 62 under the Act, that the declaration regarding the proposed solicitation of proxies or consents form the holders of outstanding shares of E&H preferred stock for the purpose of seeking approval of the merger and related transactions and the solicitation of consents from bondholders in connections with the proposed indenture amendments become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27119 Filed 10–23–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46675; File No. SR–OPRA–2002–04]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan to Revise Fees Charged by OPRA

October 17, 2002.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 4, 2002, the Options Price Reporting Authority ("OPRA")[2] submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and

[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five participants to the OPRA Plan that operate an options market are the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange LLC, the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. The New York Stock Exchange, Inc. is a signatory to the OPRA Plan, but sold its options business to the CBOE in 1997. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

Quotation Information ("OPRA Plan"). The proposed OPRA Plan amendment would revise device-based and Enterprise Rate professional subscriber fees charged by OPRA in respect of its Basic Service, and eliminate OPRA's "Back-up Facility Access Fee." The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

I. Description and Purpose of the Amendment

The purpose of the amendment is to make modest increases in device-based and Enterprise Rate professional subscriber fees charged by OPRA in respect of its Basic Service. Specifically, OPRA proposes to increase by amounts ranging from 7.39% to 8.11% the device-based information fee payable to OPRA by professional subscribers to OPRA's Basic Service, and to increase by 7.5% the Enterprise Rate fee that these same subscribers may elect to pay as an alternative to the device-based fee. OPRA's Basic Service consists of market data and related information pertaining to equity and index options ("OPRA Data").[3] Professional subscribers are persons who subscribe to OPRA Data and do not qualify for the reduced fees charged to nonprofessional subscribers. OPRA's Enterprise Rate is based on the number of a professional subscriber's U.S. registered representatives and independent investment advisers who contract with the subscriber to provide advisory services to the subscriber's customers. Professional subscriber device-based fees charged to members will continue to be discounted by two percent for members who preauthorize payment by electronic funds transfer through an automated clearinghouse system.

OPRA estimates that the overall effect of the proposed increases in Basic Service professional subscriber fees will be to increase revenues derived from these fees by approximately 7.5%.

The proposed increases in the device-based professional subscriber fees and in the Enterprise Rate fee are intended to generate additional revenues for OPRA that are needed to cover actual and anticipated increases in the costs of collecting, consolidating, processing and disseminating options market. These increases reflect the costs of continuing enhancements to and upgrades of the OPRA system to enable it to handle a greater volume of market information as a result of the continuing expansion of listed options trading, and to support OPRA's proposed new "best bid and offer" service planned for early 2003.

OPRA also proposes to eliminate its "Back-up Facility Access Fee," in order to eliminate any possible impact this fee may have on discouraging OPRA's subscribers from establishing prudent back-up facilities.[4] Devices used solely as part of a back-up facility will no longer be subject to fees imposed by OPRA unless and until they are actually used in support of a professional subscriber's operations, in which event regular professional subscriber device charges will apply for each month in which such devices are so used.

II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (c)(3)(i) of Rule 11Aa3–2 under the Act,[5] OPRA designates this amendment as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, thereby qualifying for effectiveness upon filing. The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2) under the Act,[6] if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a national market system; or otherwise in furtherance of the purposes of the Act. In order to give persons subject to these fees advance notice of the changes, OPRA proposes to put them into effect beginning January 1, 2003.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR-OPRA–2002–04 and should be submitted by November 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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[3] At this time, no changes are proposed to be made to fees charged for access to information pertaining to foreign currency options ("FCO") provided through OPRA's FCO Service.

[4] The Back-up Facility Access Fee does not apply to OPRA's FCO Service.

[5] 17 CFR 240.11Aa3–2(c)(3)(i).

[6] 17 CFR 240.11Aa3–2(c)(2).

[7] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46683; File No. SR–CBOE–2002–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to Permanent Approval of the 100 Spoke RAES Wheel

October 17, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on May 24, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On July 17, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On September 26, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Nancy L. Nielsen, Director of Arbitration and Assistant Secretary, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 16, 2002 ("Amendment No. 1"). Amendment No. 1 is described in Section II.A., below.

[4] *See* Letter from Madge M. Hamilton, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 26, 2002 ("Amendment No. 2"). Amendment No. 2 is described in Section II.A., below.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to eliminate the pilot program and make permanent the 100 Spoke RAES Wheel System. The CBOE further proposes to modify the calculation of the participation distribution for market makers participating on the 100 Spoke RAES Wheel by eliminating the "vacation penalty."

Below is the text of the proposed rule change, as amended. Proposed new language is in *italics*; proposed deletions are in brackets.

Chapter VI Doing Business on the Exchange Floor

Section A: General

RULE 6.8

* * * * *

* * * Interpretations and Policies

.01–.05 No change.

.06(a)–(b) No change.

(c) Under the "100 spoke RAES Wheel," [for a pilot period ending November 28, 2002,] RAES orders would be assigned to market makers according to the percentage of their in-person agency contracts traded in that class (excluding RAES contracts traded) compared to all of the market-maker in-person agency contracts traded (excluding RAES contract) during the review period. The review period will be determined by the appropriate Floor Procedure Committee and may be for any period not in excess of *10 trading days*, [two weeks] *within the previous 30 calendar days. The trading days within the review period may be for non-consecutive trading days.* The percentage distribution *will be calculated at the conclusion of each trading day and will* be applied to the 100 Spoke RAES Wheel distribution on the following trading day [determined during a review period will be effective for the succeeding review period]. On each revolution of the RAES wheel, subject to the exceptions described below, each participating market maker (who is logged onto RAES at the time) will be assigned enough contracts to replicate his percentage of contracts on RAES that he traded in-person in that class during the review period. [The review period will most likely be for an expiration cycle with the percentage distribution to be effective for the succeeding calendar month.] A participation percentage will be calculated for each market-maker for each class that the market-maker trades. For this purpose all DPM Designees of the same DPM unit will have their percentage aggregated into a single percentage for the DPM unit.

Once a market-maker has logged onto RAES, he will be assigned contracts on the RAES Wheel until his market-maker participation percentage has been met. This may mean that multiple orders (or an order and a part of the succeeding order) will be assigned to the same market-maker on the Wheel. To understand how the RAES orders will actually be allocated to market-makers to meet those percentages, one must understand the concepts of "spokes" and "wedges." A "spoke" is 1% of the RAES wheel and often may be equal to one contract. The appropriate Floor Procedure Committee may determine the number of contracts that make up one spoke. Each market-maker logged onto RAES for that class, regardless of his participation percentage, is entitled to be assigned at least one spoke on every revolution of the RAES wheel. For example, if a spoke equals one contract then there will be 100 spokes that will be assigned to market-makers on every revolution of the RAES wheel. If a spoke is defined as five contracts then there will be 500 RAES contracts assigned to the participating market-makers before the RAES wheel completes one revolution. Generally, the RAES Wheel will consist of the number of spokes replicating the cumulative percentage of all market-makers logged onto the system who have a participation percentage plus one spoke for each market-maker that does not have a specific participation percentage.

A "wedge" is the maximum number of spokes that a market-maker may be consecutively assigned at any one time on the RAES wheel. Because the size of the wedge may be smaller than the number of contracts to which a particular market-maker is entitled during one revolution of the RAES Wheel, that market-maker will receive more than one turn during one revolution of the RAES wheel. The wedge size will be variable, at the discretion of the appropriate Floor Procedure Committee and may be different for different classes or the same for all classes.

The appropriate Floor Procedure Committee will notify the membership of each class of options that is subject to the "100 Spoke RAES Wheel".

(d) No change.

.07–.09 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. The Initial Proposal

On May 25, 2000, the Commission approved, on a pilot basis, the Exchange's proposal to amend Rule 6.8 to provide the appropriate Floor Procedure Committee ("FPC") with a third choice for apportioning RAES trades among participating market-makers, the 100 Spoke RAES Wheel.[5] In those classes where the 100 Spoke RAES Wheel is employed, the distribution of RAES trades to participating market-makers is essentially identical to the distribution of in-person agency market-maker trades for non-RAES trades in that class. The pilot program has been extended five times, most recently until November 28, 2002.[6]

Under the 100 Spoke RAES Wheel, RAES orders are assigned to market-makers according to the percentage of their in-person agency contracts (excluding RAES contracts) traded in that class compared to the in-person agency contracts (excluding RAES contracts) of all of the market-makers traded during the review period. Agency

[5] Securities Exchange Act Release No. 42824 (May 25, 2000), 65 FR 37442 (June 14, 2000). RAES is the Exchange's automatic execution system for public customer market or marketable limit orders of less than a certain size.

[6] Securities Exchange Act Release No. 46644 (October 10, 2002) (pilot program extended until November 28, 2002) (SR–CBOE–2002–60); Securities Exchange Act Release No. 46149 (June 28, 2002), 67 FR 45161 (July 8, 2002) (pilot program extended until September 28, 2002) (SR–CBOE–2002–34); Securities Exchange Act Release No. 45230 (January 3, 2002), 67 FR 1380 (January 10, 2002) (pilot program extended until June 28, 2002) (SR–CBOE–2001–68); Securities Exchange Act Release No. 44749 (August 28, 2001), 66 FR 46487 (September 5, 2001) (pilot program extended until December 28, 2001) (SR–CBOE–2001–47); Securities Exchange Act Release No. 44020 (February 28, 2001), 66 FR 13985 (March 8, 2001) (pilot program extended until August 28, 2001) (SR–CBOE–01–07).

contracts are any contracts represented by an agent (booked orders and orders represented by brokers) and do not include contracts traded between market-makers in person in the trading crowd. A particular market-maker's entitlement will change based upon the percentage of agency contracts that market-maker traded in the review period. For example, if a particular market-maker traded 10% of all the in-person agency contracts (excluding RAES contracts) of class ABC for a particular review period, then that market-maker would be assigned 10% of the RAES contracts during the next trading period. The review period is determined by the appropriate FPC.

The RAES Wheel can be envisioned as having a number of spokes, each generally representing one percent of the total participation of all market-makers in the class. Thus, a market-maker will generally be assigned one spoke for each one percent of his or her market-maker participation during the review period. If the spoke size is one and all market-makers who traded in-person agency contracts in that option class during the review period are logged onto RAES, and no other market-makers are logged on, the RAES Wheel would consist of 100 spokes, representing 100 percent of all market-maker activity during the review period. The appropriate FPC may establish a larger spoke size. Setting the spoke size to five contracts. for example, would redefine the RAES Wheel for a particular option class as a Wheel of 500 contracts. A larger Wheel would mean the Wheel would not revolve as quickly through the logged on market-makers, but a larger Wheel would not change the participation percentage of the individual market-makers.

A wedge is the maximum number of spokes that may be consecutively assigned at any one time to a market-maker during a rotation of the RAES Wheel. The purpose of the wedge is to break up the distribution of contracts into smaller groupings to reduce the exposure of any one market-maker to market risk. If the size of the wedge is smaller than the number of spokes to which a particular market-maker may be entitled based on his or her participation percentage, then that market-maker would receive one or more additional assignments during one revolution of the RAES Wheel. For example, in the case where one spoke is equal to one contract and the market-maker's participation percentage is 15 percent (15 percent of 100 spokes) and the wedge size is ten, that market-maker first would be assigned ten contracts on the RAES Wheel and then five contracts at a different place on the RAES during the same revolution of the RAES Wheel. The wedge size is variable at the discretion of the appropriate FPC and may be established at different levels for different classes, or at the same level for all classes.

The Exchange represents that the 100 Spoke RAES Wheel has worked as anticipated by providing an efficient and effective alternative allocation method for assigning RAES trades. The Exchange further represents that, in those classes where the 100 Spoke RAES Wheel is employed, the distribution of RAES trades is essentially identical to the distribution of in-person agency market-maker trades on non-RAES trades in that class during the relevant review period. Therefore, CBOE requests permanent approval of the 100 Spoke RAES Wheel.

b. Amendment No. 1

In Amendment No. 1, CBOE clarified the calculation of the participation distribution for market-makers participating on the 100 Spoke RAES Wheel. Specifically, Amendment No. 1 modified Interpretation .06(c) of Rule 6.8 to adjust the applicable review period to account for vacations by market-makers. CBOE indicated that without this revision, if a market-maker takes even a single trading day off over the two-week review period, the market-maker is allocated a number of spokes that is less than the market-maker's average daily percentage of the trading volume, resulting in a "vacation penalty." Thus, in Amendment No. 1, CBOE amended the rule text to specify that rather than "two weeks" (as previously specified) the operative review period will be the prior "10 trading days," *i.e.*, last ten days in which the market-maker had trading activity, subject to the condition that the review period cannot extend back more than 30 calendar days (in order to assure that the review period is not based on stale activity). The Amendment further specified that the trading days within the review period may be non-consecutive trading days, and that the percentage distribution "will be calculated at the conclusion of each trading day and will be applied to the 100 Spoke RAES Wheel distribution on the following trading day".

c. Amendment No. 2

CBOE filed Amendment No. 2 in order to clarify various items discussed in the narrative portion of the original filing and Amendment No. 1. Although Amendment No. 2 did not propose changes to the proposed rule text (as amended by Amendment No. 1), it did provide further explanation of the following items.

First, CBOE explained that, in calculating the review period, the 10 trading days used to compute one market-maker's RAES participation distribution may be a different 10 trading days than another market-maker signed onto RAES in the same trading crowd, and that the 10-day review periods may overlap. In addition, CBOE clarified that the individual market-makers have no discretion over which 10 trading days will be used in the calculation. The proposed rule change permits the appropriate FPC to set a review period not to exceed 10 trading days. Once the appropriate FPC has set the number of days to be used in the calculation of the market-maker's participation distribution, the Exchange looks back that number of trading days to calculate each market-maker's participation right.

Second, CBOE reiterated that, under the proposed rule, the Exchange will conduct the calculation for the market-maker participation distribution at the conclusion of each trading day and apply the market-makers' RAES participation distribution to the following trading day. CBOE further explained that, since the calculation of the participation distribution is done at the end of each trading day, the 10-day review period for each market-maker will be done on a rolling basis, *i.e.*, each time the calculation is conducted the non-RAES agency trading volume for the current day, if any, is added to the 10-day review period, and the non-RAES agency trading volume for the oldest day used for the previous day's calculation is deleted. According to CBOE, this calculation encourages market-makers to actively trade every day, since each day's trading activity will have an effect on the market-maker's RAES participation distribution for the next trading day.

Third, CBOE corrected the formula for determining market-maker participation percentage on the 100 Spoke RAES Wheel, which had been stated incorrectly in Amendment No. 1 (the numerator and denominator were inadvertently reversed). In Amendment No. 2, CBOE clarified that in order to obtain a market-maker's participation percentage, the "non-RAES agency trading volume" for a given market-maker is divided by the "total volume," *i.e.*, the sum of the volume of the non-RAES agency trades for all traders in a particular options class (which is determined by adding together the trading volume for each market-maker and DPM during his or her relevant 10-day review period). CBOE provided the following example: Market-Maker A traded every day for three weeks, then in week four did not trade on Monday or Tuesday, but traded the rest of the week, and the appropriate FPC set the review period at ten non-consecutive trading days. CBOE would calculate Market-Maker A's participation percentage by looking at the last ten days out of the last 30 calendar days that Market-Maker A traded. Thus, the Exchange would count Wednesday, Thursday, and Friday in week four, all five trading days of week three and Thursday and Friday of week two to compute the ten-day review period for Market-Maker A. The Exchange then would sum the volume of the non-RAES agency trades for Market-Maker A in order to calculate Market-Maker A's ten-day non-RAES agency trading volume. The Exchange then would sum the volume of the non-RAES agency trades for all traders in a particular options class to obtain the total non-RAES agency trading volume ("total volume").[7] The non-RAES agency trading volume for Market-Maker A would then be divided by the total volume to obtain Market-Maker's A's participation percentage on the 100 Spoke RAES Wheel. This calculation would eliminate the "vacation penalty" and provide greater incentive for market-makers to participate on the 100 Spoke RAES Wheel.

To further explain its proposal, in Amendment No. 2 CBOE included the following specific example showing how market makers' review periods and participation percentages on the 100 Spoke RAES Wheel would be calculated.

For example, the trading pit for XYZ option consists of Market-Makers A, B, C, D and E. Market-Maker A took the week of January 21, 2002, off for vacation. January 21, 2002, was a holiday and the Exchange was closed for trading. After the close on Friday, January 25, 2002, the Exchange calculates the participation percentage for Monday, January 28, 2002. The Exchange would calculate the non-RAES agency trading volume for each market-maker during each market-maker's 10-day review period. Market-Maker A had total non-RAES agency trading volume of 20,000 contracts for trading on January 7, 8, 9, 10, 11,14, 15, 16, 17, and 18. Market-Maker B had total non-RAES agency trading volume of 20,000 contracts for trading on January 11, 14, 15, 16, 17, 18, 22, 23, 24 and 25. Market-Maker C had total non-RAES agency trading volume of 10,000 contracts for trading on January 11, 14, 15, 16, 17, 18, 22, 23, 24 and 25. Market-Maker D had total non-RAES agency trading volume of 20,000 for trading on January 11, 14, 15, 16, 17, 18, 22, 23, 24 and 25. Market-Maker E had total non-RAES agency trading volume of 30,000 contracts for trading on January 11, 14, 15, 16, 17, 18, 22, 23, 24 and 25. The Exchange would add the total non-RAES agency trading volume for Market-Makers A, B, C, D and E to get a total volume of 100,000 contracts. Each market-maker's total non-RAES agency trading volume would be divided by 100,000 contracts. Therefore, on Monday, January 28, 2002, Market-Maker A would have a RAES participation distribution of 20 percent, Market-Maker B would have a RAES participation distribution of 20 percent; Market-Maker C would have a RAES participation distribution of 10 percent, Market-Maker D would have a RAES participation distribution of 20 percent and Market-maker E would have a RAES participation distribution of 30 percent.

[7] The Exchange noted that the total volume is not based on a specific two-week calendar period, but instead is calculated by adding together the trading volume for each market-maker and DPM during his or her relevant 10-day review period.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, will continue to be consistent with the requirements of section 6(b)(5) of the Act.[8] Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[9] The Exchange represents that, as anticipated, the 100 Spoke RAES Wheel has rewarded those market-makers who are most active in providing the services that a market-maker is expected to perform, *i.e.*, providing liquidity to agency business in the assigned product. The Exchange represents that this has enhanced the ability of the Exchange to provide instantaneous, automatic execution of RAES-eligible orders at the best available prices. In addition, the Exchange believes that the proposed rule change, as amended, promotes just and equitable principles of trade by eliminating the "vacation penalty." The Exchange further believes that the proposed rule change, as amended, protects investors and is in the public interest by creating an incentive for more market-makers to participate on the 100 Spoke RAES Wheel, which provides more liquidity for the automatic execution of orders.

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No.

SR–CBOE–2002–27 and should be submitted by November 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27116 Filed 10–23–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46686; File No. SR–NYSE–2002–51]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Listing and Trading of Exchange Traded Funds Based on Dow Jones STOXX 50 SM and Dow Jones EURO STOXX 50SM Indexes.

October 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade, under Section 703.16 of the Listed Company Manual (the "LCM") and the Exchange's Rule 1100 *et seq.*, shares of the Fresco Dow Jones STOXX 50 Fund and Fresco Dow Jones EURO STOXX 50 Fund (each, a "Fund" and together, the "Funds"). The Funds are each a separate series of Fresco Index Shares Funds (the "Trust").[3] UBS Global Asset Management (US) Inc. ("UBS Global AM"), an indirect wholly owned asset management subsidiary of UBS AG ("UBS"), acts as the advisor (the "Advisor") to the Funds. UBS Global Asset Management International Ltd. ("UBS Global AM Ltd."), an indirect wholly owned asset management subsidiary of UBS, acts as the sub-advisor to the Funds. STOXX Limited, a joint venture among Deutsche Boerse AG, Dow Jones & Company, Inc., Euronext Paris SA and SWX Swiss Exchange ("STOXX"), provides and services the Dow Jones STOXX 50 and Dow Jones EURO STOXX 50 indexes (each an "Index" or "Underlying Index"). STOXX Limited is not affiliated with the Trust, the Funds, UBS Global AM or the Exchange.

Indexes[5]

The Dow Jones STOXX 50 Index represents the performance of the 50 largest companies, across all components of the 18 Dow Jones STOXX 600SM market sector indexes are a subset of the pan-European Dow Jones STOXXSM Total Market Index and contain the 600 largest stocks traded on the major exchanges in Europe.

The Dow Jones EURO STOXX Index represents the performance of the 50 largest companies, across all components of the 18 Dow Jones EURO STOXX 600SM market sector indexes. The Dow Jones EURO STOXX 600SM market sector indexes are a subset of the Dow Jones EURO STOXXSM Total Market Index and contain the 600 largest stocks traded on the major exchanges in the Eurozone.[6]

The Dow Jones STOXX 50 and Dow Jones EURO STOXX 50 Indexes track the large-cap markets of the European and Eurozone regions. Both these Dow Jones STOXX blue-chip indexes are currently in use globally as the basis for investment products, such as derivatives and exchange-traded funds. Their components have a high degree of liquidity and represent the largest companies across all 18 market sectors defined by the Dow Jones Global Classification standard.

Derived from the broader total market indexes for each of the two regions, Europe and the Eurozone, these two blue-chip indexes each represent about 60% of the market capitalization of their underlying benchmarks.

The index universes for each of the Dow Jones STOXX 50 Index and the Dow Jones EURO STOXX 50 Index are defined, respectively, as all components of the 18 Dow Jones STOXX 600 market sector indexes and all components of the 18 Dow Jones EURO STOXX market sector indexes. The Dow Jones STOXX 600 market sector indexes contain the 600 largest stocks traded on the major exchanges of 17 European countries. STOXX, Dow Jones STOXX 50, Dow Jones EURO STOXX 50 and Dow Jones STOXX 600 are each service markets of STOXX Limited.

The Dow Jones EURO STOXX market sector indexes represent the Eurozone portion of the Dow Jones STOXX Total Market Index ("TMI"), which in turn covers 95% of the total market capitalization of the stocks traded on the major exchanges of 17 European countries.

For each of the 18 Dow Jones STOXX 600 market sector indexes, the component stocks are ranked by free-float market capitalization. The largest stocks are added to the selection list until the coverage is close to, but still less than, 60% of the free float market capitalization of the corresponding Dow Jones STOXX TMI market sector index. If the next-ranked stock brings the coverage closer to 60% in absolute terms, then it is also added to the selection list. Any remaining stocks that are Dow Jones STOXX 50 Index components are added to the selection list. The stocks on the selection list are ranked by free-float market capitalization. In exceptional cases, the STOXX Limited Supervisory Board may make additions and deletions to the selection list. Within each of the 18 Dow Jones EURO STOXX market sector indexes, the component stocks are ranked by free-float capitalization. The largest stocks are added to the selection list until the coverage is close to, but still less than, 60% of the free-float market capitalization of the corresponding Dow Jones EURO STOXX TMI market sector index. If the next-ranked stock brings the coverage closer to 60% in absolute terms, then it is also added to the selection list. Any remaining stocks that are current Dow Jones EURO STOXX 50 Index components are added to the selection list. The stocks on the selection list are ranked by free-float market capitalization. In exceptional cases, the STOXX Limited Supervisory Board may make additions and deletions to the selection list.

The 40 largest stocks on the selection list for each index are chosen as components. Any remaining current components of the index ranked between 41 and 60 are added as index components. If the component number is still below 50, then the largest stocks on the selection list are added until the index contains 50 stocks.

The indexes are each weighted by free-float market capitalization. Each component's weight is capped at 10% of the index's total free-float market capitalization. Each component's weight is capped at 10% of the index's total free-float market capitalization. Weights are reviewed quarterly. The creator and compiler of the Dow Jones STOXX SM Indexes is STOXX Limited.

The Funds of the Trust will use the Dow Jones STOXX Indexes pursuant to a sub-licensing agreement with an affiliate of UBS Global AM. Such affiliate has entered into an agreement with STOXX Limited and is authorized thereunder to sub-license the Indexes to the Funds. As of the date hereof, STOXX Limited is not affiliated with Trust, the Funds, UBS Global AM to the Exchange.

General Description of the Fund

The Funds offer and issue shares ("Fund Shares") at their net asset value ("NAV") only in aggregations of a specified number of Fund Shares (referred to as a "Creation Unit"), principally in exchange for a basket of equity securities included in the Underlying Index (the "Deposit Securities"), together with a deposit of a specified cash payment (the "Cash Component").[7] Fund Shares are redeemable only in Creation Units, principally, in exchange for portfolio securities and a specified cash payment. Creation Units are aggregations of 50,000 Fund Shares. The Trust reserves the right to offer a "cash" option for creations and redemptions of Fund Shares. All standard orders to create a Creation Unit must be received by UBS Global AM, as principal underwriter, no later than the close of the regular trading session on the NYSE (ordinarily 4 p.m. New York time) on the date such order is placed in order for creation of Creation Units to be effected based upon the NAV of Funds Shares as next determined on such date after receipt of the order in proper form. In the case of custom orders, the order must be received by UBS Global AM, as principal underwriter, no later than 11 New York time.[8]

"Passive" or Indexing Investment Approach

The Funds seeks to replicate as closely as possible, before expenses, the price and yield of the Underlying Index.

The Fund uses a "passive" or indexing approach in seeking to achieve the investment objectives of each Fund.

Replication

Each Fund uses an "indexing" investment approach, attempting to replicate, before expenses, the price and yield of each Underlying Index. Each Fund generally will invest in all of the stocks comprising its Underlying Index in proportion to their weighings in the Underlying Index. However, each Fund may, in certain circumstances, purchase only a sample of stocks in its Underlying Index in proportions expected by the Advisor to replicate generally the performance of the Index as a whole, choose to overweight a stock in the Index, purchase securities not in the Index which the Advisor are appropriate to substitute for the securities contained in the Index, or utilize other available investment techniques in seeking to track the Index.

Each Fund will invest at least 90% of its total assets in the stocks of the Underlying Index. Each Fund may invest its remaining assets in money market instruments, convertible securities, structured notes and in options and futures contracts. Each Fund also intends to maintain the required level of diversification so as to qualify as a regulated investment company under the Internal Revenue Code (the "Code"). Compliance with the diversification requirements of the Code could limit the investment flexibility of each Fund.

Correlation

An index is a theoretical financial calculation while the ETF is an actual investment portfolio. The performance of each Fund and its Underlying Index will vary somewhat due to, among other things, operating expenses incurred by the Funds, transaction costs, market impact and timing variances. The Fund's Advisory seeks a correlation of 95% or better between the Fund's performance and the price and yield performance of the Underlying Index. A figure of 100% would indicate perfect

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Trust is registered under the Investment Company Act of 1940, as amended (the "1940 Act"). The Trust has filed with the Commission a Registration Statement on the Form N–1A under the Securities Act of 1933 as amended (the "Securities Act") and under the Investment Company Act of 1940 relating to the Fund (File Nos. 333–92106 and 811–21145, respectively).

[4] The Trust is registered under the Investment Company Act of 1940, as amended (the "1940 Act"). The Trust has filed with the Commission a Registration Statement on the Form N–1A under the Securities Act of 1933 as amended (the "Securities Act") and under the Investment Company Act of 1940 relating to the Fund (File Nos. 333–92106 and 811–21145, respectively).

[5] The Exchange attached a detailed description of each of the Underlying Indexes for the Funds as Exhibit 2 to its Form 19b–4. This description includes, but is not limited to, information regarding index description, component selection criteria, country representation and Index maintenance. Descriptions of each Index, including any changes thereto, may be found on the STOXX Web site at *http://www.stoxx.com.*

[6] The "Eurozone" includes the countries of the European Monetary Union. Telephone conference between Elena Daley, Office of General Counsel, NYSE, and Florence Harmon, Division of Market Regulation, Commission, on October 18, 2002.

[7] The Cash Component is an amount equal to the difference between the net asset value of the Fund Shares (Per Creation Unit) and the market value of the Deposit Securities. If the Cash Component is a positive number (*i.e.*, the NAV per Creation Unit Aggregation exceeds the market value of the Deposit Securities), the Cash Component shall be such positive amount. If the Cash Component is a negative number (*i.e.*, the NAV per Creation Unit Aggregation is less than the market value of the Deposit Securities), the Cash Component shall be such negative amount and the creator will received cash in an amount equal to the Cash Component.

[8] A custom order may be placed by an Authorized Participant in the event that the Trust permits or requires the substitution of an amount of cash to be added to the Cash Component to replace any Deposit Security which may not be available in sufficient quantity for delivery or which may not be eligible for trading by such Authorized Participant or the investor for which it is acting. Telephone conference between Elena Daley, Office of General Counsel, NYSE, and Florence Harmon, Division of Market Regulation, Commission, on October 18, 2002.

correlation. Any correlation of less than 100% is called "tracking error."

Industry Concentration Policy

The Funds will not concentrate their investments in an industry (*i.e.* hold 25% or more of its total assets in the stocks of a particular industry or group of industries), except that each Fund will concentrate to approximately the same extent that its Underlying Index concentrates in the stocks of such particular industry or group of industries.

Creations and Redemptions of Fund Shares

The Fund Shares are "created" at their NAV by authorized participants, large investors and institutions, only in Creation Units consisting of 50,000 Shares. A "creator" deposits into each Fund the Deposit Securities and the Cash Component in exchange for 50,000 Fund Shares.

Similarly, Fund Shares can only be redeemed in Creation Units of 50,000 Fund Share, principally in-kind for a specified portfolio of stocks held by the relevant Fund ("Fund Securities") plus cash in an amount equal to the difference between the NAV of the Fund Shares being redeemed and the value of the Fund Securities (the "Cash Redemption Amount"). Except when aggregated in Creation Units, Fund Shares are not redeemable. The prices at which creations and redemptions occur are based on the next calculation of NAV after an order is received in proper form.

Creations and redemptions must be made through a firm that is a Depository Trust Company participant and, that has executed an agreement with the Distributor and Transfer Agent with respect to creations and redemptions of Creation Unit ("Participant Agreement"). The Trust will impose transaction fees in connection with creation and redemption transactions.

Clearance and Settlement

Deposit Securities must be delivered to an account maintained at the applicable local sub-custodian of the Trust on or before 2 p.m., New York time, on the Contractual Settlement Date.[9] Participant must also make available on or before the Contractual Settlement Date, by means satisfactory to the Trust, immediately available or same day funds estimated by the Trust to be sufficient to pay the Cash Component next determined after acceptance of the order to purchase Fund Shares, together with the applicable creation transaction fee (as described in the Prospectus). Any excess funds will be returned following settlement of the issue of the Creation Unit.

A Creation Unit will not be issued until the transfer of good title to the Trust of the portfolio of Deposit Securities and the payment of the Cash Component and the creation transaction fee have been completed. When the sub-custodian confirms to the custodian that the required securities included in the portfolio deposit (or, when permitted in the sole discretion of the Trust, the cash value thereof) have been delivered to the account of the relevant sub-custodian, the custodian shall notify UBS Global AM, as the principal underwriter, and the Trust will issue and cause the delivery of the Creation Unit via DTC.

Availability of Information Regarding Fund Shares and Underlying Indices

The list of names and amount of each security constituting the current Deposit Securities, and the Cash Component effective as of the previous business day, per outstanding share of each Fund, is expected to be made available each business day immediately prior to the opening of business on the Exchange. The list of names and amounts of each security constituting the Fund Securities is also expected to be made available each business day. In addition, an amount representing the sum of the estimated Cash Component effective through and including the previous business day, plus the current value of the Deposit Securities in U.S. dollars, on a per share basis, is expected to be disseminated every 15 seconds during the Exchange's regular trading hours, through the facilities of the Consolidated Tape Association ("CTA").

The value of each Underlying Index will be updated intra-day on a real-time basis as individual component securities of the Underlying Index change in price. These intra-day values of the Underlying Indexes will be disseminated every 15 seconds throughout the trading day. In addition, there will be disseminated a value for each Underlying Index once each trading day, based on closing prices in the relevant exchange market.

The net asset value of each Fund is calculated by the Funds' custodian and determined each business day, normally at the close of regular trading of the Exchange (ordinarily 4 p.m. New York time). In addition, the Trust maintains a web site that provides general information about the Funds, including the Funds' prospectus and daily trading volume and closing price for each Fund. The closing price of each Fund is also readily available from, as applicable, the relevant exchanges, automated quotation systems, or on-line information services such as Bloomberg or Reuters.

Dissemination of Indicative Portfolio Value

In order to provide updated information relating to each Fund for use by investors, professionals and persons wishing to recreate or redeem Fund Shares, and since each Fund is based on an Index which includes non-U.S. components, there will be disseminated through the facilities of the CTA an updated indicative portfolio value ("Value") for each Fund traded on the Exchange as calculated by a securities information provided ("Value Calculator"). The Value will be disseminated for each Fund on a per Share basis every 15 seconds during regular Exchange trading hours. The equity securities values included in the Value are the values of, and the Deposit Securities disseminated for that trading day. In addition to the value of the Deposit Securities for each Fund, a the Value includes the estimated Cash Component. The Value also reflects changes in currency exchange rates between the U.S. dollar and the applicable home foreign currency.

The Value may not reflect the value of all securities included in the applicable Underlying Index. In addition, the Value does not necessarily reflect the precise composition of the current portfolio of securities held by each Fund at a particular point in time. The currency exchange rate used in the calculation of the Value may also differ from that used by the Fund's custodian in the calculation of each Fund's NAV. Therefore, the Value for each Fund on a per Share basis disseminated during the Exchange's trading hours should not be viewed as a real-time update of the NAV of each Fund, which is calculated only once a day. While the Value that will be disseminated immediately prior to the opening of business of the Exchange (currently 9:30 a.m., EST) is expected to be generally very close to the previous day's NAV on a per Share basis, it is possible that each Fund's Value diverge from its NAV during any trading day. In such case, the Value will not precisely reflect the value of the relevant Fund portfolio.

[9] The "Contractual Settlement Date" is the earlier of (i) the date upon which all of the required Deposit Securities, the Cash Component and any other cash amounts which may be due are delivered to the Trust and (ii) the latest day for settlement on the customary settlement cycle in the jurisdiction where any of the securities of the relevant Fund are customarily traded.

During the trading day, however, the Funds expect that the Value should closely approximately the value per Fund share of the portfolio of securities for the relevant Fund except under unusual circumstances (*e.g.*, in the case of extensive rebalancing of multiple securities in a Fund at the same time by the Advisor). The circumstances that might cause the Value to be different from a Fund's NAV would not be different from circumstances causing any index fund or trust to diverge from its underlying benchmark index.

The Exchange believes that dissemination of the Value based on the Deposit Securities provides additional information regarding the Funds that would not otherwise be available to the public and is useful to professionals and investors in connection with Fund Shares trading on the Exchange or the creation or redemption of Fund Shares.

For foreign stocks that trade on principal foreign markets during hours that overlap regular trading hours on the Exchange, the Value Calculator will update the applicable Value every 15 seconds to reflect price changes in the applicable foreign market or markets, and convert such prices into U.S. dollars based on the current currency exchange rate. When the principal foreign market or markets are closed but the Exchange is open, the Value will be updated every 15 seconds to reflect changes in currency exchange rates after such markets close.

Other Characteristics of the Fund

It is anticipated that a minimum of three Creation Units for each Fund will be outstanding at the commencement of trading on the Exchange. The number of Shares per Creation Unit is 50,000.

Fund Shares will be registered in book-entry only form through the Depository Trust Company ("DTC"). Trading in Fund Shares on the Exchange will be effected normally until 4 p.m. each business day. The minimum trading increment for Fund Shares on the Exchange initially will be $0.01.

Dividends from net investment income will be declared and paid at least annually by each Fund. Distributions of realized securities gains, if any, generally will be declared and paid at least once a year, but each Fund may make distributions on a more frequent basis to comply with distribution requirements of the Code. Each Fund may make the DTC book-entry Dividend Reinvestment Service available for use by beneficial owners of the Fund through DTC Participants for reinvestment of their cash proceeds.

Original and Annual Listing Fees

The Exchange original listing fee applicable to the listing of each Fund will be $5,000. The annual continued listing fee for each Fund will be $2,000.

Stop and Stop Limit Orders

Commentary .30 to Exchange Rule 13 provides that stop and stop limit orders in an Investment Company Unit shall be elected by a quotation, but specifies that if the electing bid on an offer is more than 0.10 points away from the last sale and is for the specialist's dealer account, the prior approval of a Floor Official is required for the election to be effective.

Trading Halts

The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in each Fund. Trading on the Exchange in the Fund Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, making trading in the Fund Shares inadvisable. these may include (1) the extent to which trading is not occurring in the Deposit Security(s) or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition trading in Fund Shares is subject to trading halts caused by extraordinary market volatility pursuant to Exchange's "circuit breaker" rules.[10]

Surveillance Procedures

The Exchange's written surveillance procedures for Fund Shares will be similar to the procedures utilized for other Investment Company Units. the Exchange also intends to utilize its existing surveillance procedures to monitor trading in the Fund, including situations where specialists purchase or redeem Creation Units to ensure compliance with NYSE Rule 460.10, which requires that such purchases or redemptions facilitate the maintenance of a fair and orderly market in the subject security (see the description of the Rule and its application below).

Rule 460.10

Rule 460.10 generally precludes certain business relationships between an issuer and the specialist in the issuer's securities. Exceptions in the Rule permit specialists in Fund Shares to enter into Creation Unit transactions through the Distributor to facilitate the maintenance of a fair and orderly market. A specialist Creation Unit transaction may only be effected on the same terms and conditions as any other investor, and only at the net asset value of the Fund Shares. A specialist may acquire a position in excess of 10% of the outstanding issue of the Fund Shares, provided, however,that a specialist registered in a security issued by an investment company may purchase and redeem the investment company unit or securities that can be subdivided or converted into such unit, from the investment company as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

[10] Rule 80B.

Prospectus Delivery

The Commission has granted the Trust an exemption from certain prospectus delivery requirements under section 24(d) of the Investment Company Act of 1940.[11] Any product description used in reliance on a section 24(d) exemptive order will comply with all representations made therein and all conditions thereto. The Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus or product description delivery requirements applicable to the Funds. Any product description used in reliance on the section 24(d) exemptive order will comply with all representations made and all conditions contained in the application for the order.

Suitability

Pursuant to Exchange Rule 405, before a member, member organization, allied member or employee of such member organization undertakes to recommend a transaction in Fund Shares, such member or member organization should make a determination that such Fund Shares are suitable for such customer. If any recommendation is made with respect to such Fund Shares, the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks and any special characteristics of the recommended transaction, and is financially able to bear the risks of the recommended transaction.

Information Circular to Members

The Exchange will distribute an information circular to its members in connection with the trading in the Fund. The circular will discuss the special characteristics and risks of

[11] *See* Investment Company Act Release No. 25738 (October 11, 2002).

trading this type of security. Specifically, the circular, among other things, will discuss what the Fund is, how it is created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing Fund Shares prior to or concurrently with the confirmation of a transaction, applicable Exchange rules, dissemination information, trading information and the applicability of suitability rules.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[13] of the Act, in general, and furthers the objectives of section 6(b)(5),[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investor and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5).[15] The Commission believes that the Exchange's proposal to trade the Funds will allow investors to achieve desired investment objectives through the purchase of an instrument linked to the Dow Jones STOXX 50 and Dow Jones EURO STOXX 50 indexes. These objectives include participating in or gaining exposure to these indexes while limiting somewhat downside risk and participating in foreign securities markets. In addition, trading of the Funds can produce added benefits to investors through the increased competition between other markets trading the product. Specifically, the Commission believes that NYSE's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell at negotiated prices throughout the trading day securities that replicate the performance of several portfolios of stock,[16] and by increasing the availability of the Funds as investment tools. Accordingly, as discussed below, the rule proposal is consistent with the requirements of Section 6(b)(5) that Exchange rules facilitate transactions in securities, remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[17]

As the Commission noted in greater detail in the order approving iShares (formally "World Equity Benchmark Securities" or "WEBS") for listing and trading on the American Stock Exchange LLC ("Amex"),[18] the estimated cost of individual Fund Shares described herein should make it attractive to individual retail investors who wish to hold a security replicating the performance of a portfolio of stocks, including foreign stocks. The Commission also notes that such Funds should provide investors with several advantages over standard open-end investment companies; in particular, investors can trade the Funds continuously throughout the day in secondary markets at negotiated prices.[19] In contrast, Investment Company Act of 1940 ("Investment Company Act") Rule 22c–1[20] limits holders and prospectus holders of open-end management investment company shares to purchasing or redeeming securities of the fund based on the next asset value of the securities held by the fund as designated by the board of directors. Thus, the Funds should allow investors to respond quickly to market changes through intra-day trading for opportunities, expand the opportunity for retail investors to engage in hedging strategies, and reduce transaction costs for trading a portfolio of stocks.

The Commission notes that, although the respective values of the Funds are based on the value of the securities and cash held in the Funds, Fund Shares are not leveraged instruments. Fund Shares are essentially equity securities that represent an interest in a portfolio of stocks designed to reflect substantially the applicable Dow Jones STOXX 50 and Dow Jones EURO STOXX 50 indexes. Accordingly, it is appropriate to regulate the Funds in a manner similar to other equity securities. Nonetheless, the Commission believes that the unique nature of the Funds raises certain disclosure, trading, and other issues that need to be addressed. The remainder of this section addresses these issues, although they are discussed in greater detail in the Amex WEBS Approval Order, where the Commission initially approved WEBS for trading as a new product.

A. Disclosure

The Commission believes that NYSE's proposal should provide for adequate disclosure to investors relating to the terms, characteristics, and risks of trading the Funds. All investors in the Funds will receive a prospectus or a Product Description[21] regarding the product. The prospectus or Product Description will address the special characteristics of the Funds, including a statement regarding their redeemability and method of creation, and that Fund Shares are not individually redeemable.

The Commission notes that the Exchange has represented that it will also distribute an information circular all NYSE members prior to the commencement of trading of the Funds explaining the unique characteristics and risks of the Funds. The circular will note, for example, Exchange member responsibilities, including that, before an Exchange member undertakes to recommend a transaction in the Funds, it should make a determination that it is in compliance with applicable rules of other self-regulatory organizations of which it is a member, including suitability rules. The circular will also address members' responsibility to deliver a prospectus or product description to all investors purchasing the Funds, as well as highlight the characteristics of the Funds, including that Fund Shares are only redeemable in Creation Unit size aggregation.[22] The information circular will also discuss the Trust's option of redeeming the Funds solely for cash, which is unique to these products.

B. Dissemination of the Fund Portfolio Information

The Commission believes that investors will be provided with timely and useful information concerning the value of the Funds. The Commission notes that the information will be disseminated through facilities of the CTA and reflects the currently available information concerning the value of the assets comprising the deposit securities. The information will be disseminated every fifteen seconds during the hours of 9:30 a.m. to 4 p.m. Eastern Standard Time and will be available to all investors, regardless of where the transaction is executed. In addition, because the value is expected to closely track the applicable Fund series, the Commission believes the Values will provide investors with adequate information to determine the intra-day value of a given Fund series.[23] In the Amex WEBS Approval Order, the Commission noted that it expected Amex to monitor the disseminated Value, and if Amex determines that the Value does not closely track applicable WEBS/iShares series, it will arrange to disseminate an adequate alternative. Here, the Commission expects the NYSE to similarly monitor the disseminated Value of the Funds.

C. Surveillance

The Commission notes that NYSE has submitted surveillance procedures for the Funds and believes that those procedures are adequate to address concerns associated with the listing and trading of such securities, including any concerns associated with specialists purchasing and redeeming Creation Units. The Exchange has represented that its surveillance procedures should allow it to identify situations where specialists purchase or redeem Creation Units to ensure compliance with NYSE Rule 460.10, which requires that such purchases or redemptions facilitate the maintenance of a fair and orderly market in the subject security.

D. Specialists

The Commission finds that it is consistent with the Act to allow a specialist registered in a security issued by an Investment Company to purchase or redeem the listed security from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in that security. The Commission believes that such market activities should enhance liquidity in such security. The Commission believes that such market activities should enhance liquidity in such security and facilitate a specialist's market making responsibilities. In addition, because the specialist only will be able to purchase and redeem Fund Shares on the same terms and conditions as any other investor (and only at the NAV), and Creation transactions must occur through the distributor and not directly with the issuer, the Commission believes that concerns regarding potential abuse are minimized. As noted above, the Exchange's surveillance procedures also should ensure that such purchases are only for the purpose of maintaining fair and orderly markets, and not for any other improper or speculative purposes. Finally, the Commission notes that its approval of this aspect of the Exchange's rule proposal does not address any other requirements or obligations under the federal securities laws that may be applicable.[24]

E. Accelerated Approval

After careful review, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to section 19(b)(2) of the Act.[25] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Exchange. Accordingly, the Commission finds that the listing and trading of the Fund Shares is consistent with the Act, and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interests.[26] The Commission further finds that accelerated approval will enable the Exchange to begin listing and trading the Fund Shares on the Exchange immediately. The Commission therefore approves this proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

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[12] The information circular will also discuss exemptive relief granted by the Commission from certain rules under the Exchange Act. The applicable rules are: Rule 10a-1, Rule 10b-10, Rules 14e-5, Rules 10b-17, Rule 11d1-2, Rules 15c1-5 and 15c1-6, and Rules 101 and 102 of Regulation M under the Exchange Act.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(5).

[16] The Commission notes that unlike typical open-end investment companies, where investors have the right to redeem their fund shares on a daily basis, investors in the Funds can redeem them in creation unit size aggregations (of 50,000 Fund Shares) only plus cash in an amount equal to the difference between the NAV of the Fund Shares being redeemed and the value of the Fund Securities.

[17] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] The Funds are similar in nature were formerly known as World Equity Benchmark Securities ("WEBS") and were approved for listing and trading on the Amex in 1996. *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) ("Amex WEBS Approval Order"). The Commission hereby incorporates by reference the discussion and rationale for approving WEBS provided in the Amex WEBS Approval Order.

[19] The Commission believes that the Funds will not trade at a material discount or premium in relation to their NAV, because of potential arbitrage opportunities. *See* Amex WEBS Approval Order, *supra* note 16. The mere potential for arbitrage should keep the market price of Fund Shares comparable to their NAVs; therefore, arbitrage activity likely will not be significant. In addition, the Funds will redeem in-kind, thereby enabling the Fund to invest virtually all of its assets in securities comprising the Dow Jones STOXX 50 and Dow Jones EURO STOXX 50 indexes.

[20] 17 CFR 270.22c–1. Investment Company Act Rule 22c–1 generally provides that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security may sell, redeem, or repurchase the security only at a price based on the NAV next computed after receipt of an investor's request to purchase, redeem, or resell. The NAV of an open-end management investment company generally is computed once daily Monday to Friday as designated by the investment company's board of directors. The Commission granted WEBS an exemption from this provision to allow them to trade in the secondary market at negotiated prices. *See* Amex WEBS Approval Order, *supra* note 16.

[21] *See* Investment Company Release No. 25623 (June 25, 2002).

[22] The Commission notes that the information circular should also discuss exemptive relief granted by the Commission from certain rules under the Act. The applicable rules are: Rule 10a–1, Rule 10b–10; Rule 14e–5; Rule 10b–17; Rule 11d1–2; Rules 15c1–5 and 15c1–6; and Rules 101 and 102 of Regulation M under the Exchange Act.

[23] In addition, the Amex WEBS Approval Order states that the statement of additional information ("SAI") to the preliminary prospectus states that each series will calculate its NAV per share at the close of the regular trading session for the Amex on each day that the Amex is open for business. NAV generally will be based on the last quoted sales price on the exchange where the security primarily is traded. *See* Amex WEBS Approval Order, *supra* note 16. Such NAV calculations will be similarly done for the Funds.

[24] The Commission notes that with respect to the Funds, broker-dealers and other persons are cautioned in the prospectus and/or the Fund's SAI that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act of 1933.

[25] 15 U.S.C. 78s(b)(2).

[26] 15 U.S.C. 78f(b)(5).

the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number SR–NYSE–2002–51 and should be submitted by November 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27120 Filed 10–23–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46682; File No. SR–Phlx–2002–51]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Relating to Amending Exchange Rule 607, Registration Fee, and Deleting Exchange Rule 608, Charge for Making Transaction

October 17, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 20, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed an amendment to the proposed rule change on October 2, 2002.[3] The Exchange has filed the proposal as a "non-controversial" rule change pursuant to section 19(b)(3)(A)(iii) of the Act,[4] and Rule 19b-4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Exchange Rule 607, Registration Fee, to conform the rule to section 31 of the Act,[7] as amended by H.R. 1088, the Investor and Capital Markets Fee Relief Act ("Fee Relief Act").[8] In addition, the Exchange proposes to delete Exchange Rule 608, Charge for Making Transaction.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

Rule 607. *Transaction* [Registration] Fee

Every member and member organization *shall pay to the Exchange in such manner and at such time as the Exchange shall direct, the fees specified in Section 31 of the Securities Exchange Act of 1934, and rules thereunder, for all sales upon the Exchange of securities specified in Section 31 of the Securities Exchange Act of 1934, and rules thereunder.* [clearing transactions effected on the Exchange, shall pay to the Exchange the sum of one cent for each $500 or fraction thereof of the dollar volume of his or its sales upon the Exchange (other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States or such securities issued or guaranteed by corporations in which the United States has a direct or an indirect interest as shall be designated for exemption from the provisions of this Section by the Secretary of the Treasury), in reimbursement to the Exchange of the Registration Fee imposed under Section 31 of the Securities Exchange Act of 1934, as amended, in accordance with such rules as the Committee may prescribe.]

[Rule 608. Charge for Making Transaction]

[Every member or member organization who is required by Rule 607 to pay any sum to the Exchange in respect of any sale upon the Exchange shall charge and collect from the person for whom he was acting in making such transaction an amount, which shall be determined by Section 31 of the Securities Exchange Act of 1934 as the sum of one cent for each $500 or fraction thereof of the dollar amount involved in such transaction.]

[Supplementary Material:]

[Registration Fee]

[.01 Every member and member organization engaged in clearing or settling transactions effected upon the Exchange shall maintain a daily record of the aggregate dollar amount of the sales of securities made upon the Exchange and cleared or settled by him or it. The amount of money shall be computed upon the actual sales price, disregarding commissions, taxes or accrued interest on bonds. Blotter dates shall be used throughout. All sales on the Exchange shall be included, whether the securities are tax-exempt or not, except securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States or such securities issued or guaranteed by corporations in which the United States has a direct or an indirect interest as shall be designated for exemption from the provisions of this section by the Secretary of the Treasury. Odd-lot dealers shall record both the full lots and the odd lots which they sell on the Exchange. If a member organization clears and settles a transaction for a member or member organization that in turn clears it for another principal, only the member organization settling the transaction shall include it in its record. Monthly reports of the daily totals above referred to shall be submitted to the Secretary's office in the manner described below.

.02 At or before 10:30 o'clock a.m. on the 10th day of each month each member or member organization required to report to the Exchange shall submit a report on a form supplied by the Exchange showing: aggregate dollar sales volume; the Registration Fee due thereon; principal amount of bonds; number of shares of stock and number of rights to subscribe.

.03 Every such reporting member and member organization shall pay to the Exchange a sum equal to one cent for each $500 or fraction thereof of the total aggregate dollar sales volume reported monthly.

.04 With respect to all transactions which are required by these directions to be included in the foregoing report, the member or member organization responsible for reporting any transaction to the Exchange shall charge to the account, as billed, for which such transaction was made the sum of one cent for each $500 or fraction thereof represented by such transaction.

Whenever the account against which such charge is made is that of a member or member organization who is acting for a principal, such member or member organization shall withhold from the sum credited to the account of such principal, as billed, an amount equal to one cent for each $500 or fraction thereof represented by the transaction made for such principal.

.05 In rendering to customers confirmations of sales made on the Exchange for their account, the charge required by these directions either shall be shown separately or be treated in the same manner as transfer taxes. In either case the confirmation shall contain an explanatory legend.

.06 Members or organizations that cease the clearing or settling of security transactions shall promptly render reports for any interim period resulting from such change, and shall pay promptly any sum due under the above directions.

.07 When sales are made on the Exchange for a customer each item reported in writing to the customer must be separately used as the basis for computing the fee appertaining thereto. If the written report shows as a single item the sale of two or more lots of the same security at the same price on the same day, the fee may be computed upon the total of such lots as a unit; otherwise each sale, whether reported together with others or separately, must be independently made the basis for computing the fee relating thereto.

.08 Members or organizations who settle transactions for other members or organizations, and who consequently are required to report sales on the Exchange and pay a fee thereon pursuant to paragraphs 1 and 2 above, must charge the account of the member or organization for whom they act on the same basis as is prescribed above with respect to transactions made for customers. This applies also to organizations carrying accounts of Floor traders and non-clearing members or organizations both in Philadelphia and elsewhere.

.09 The use of daily, weekly, or any similar totals of transactions made for a particular customer or for a particular account as a basis for computing the fee chargeable to such customer or account, whether member or nonmember, is prohibited.

.10 When differences in the computation of the fee arise in good faith, such as when an organization has rendered to a customer a single report covering two or more lots of the same security at the same price, and, because of "give-ups" or otherwise, it is necessary to bill or record the transaction as two or more separate lots, or when similar differences arise between a main office and a branch office, such differences may be adjusted between the organizations or offices involved by mutual agreement.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 607 to conform the rule to section 31 of the Act, as amended by the Fee Relief Act. Section 31 of the Act provides for the assessment of transaction fees to be paid to the Commission by national securities exchanges and national securities associations. Among other things, the Fee Relief Act reduced the amount of the assessment of transaction fees under section 31 of the Act and required the Commission to make annual adjustments to the fee rates for certain fiscal years.

In addition to conforming Exchange Rule 607 to recent Congressional changes, the proposal will allow for future adjustments to be made automatically to the rates as specified by the Commission and in section 31 of the Act. In addition, the Exchange proposes to delete Exchange Rule 608 because the requirements in Exchange Rule 608 are outdated and no longer necessary due to the fact that many of the procedures in Exchange Rule 608 have been automated. No such reporting is needed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[9] in general and furthers the objectives of sections 6(b)(4)[10] and 6(b)(5)[11] of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members, it promotes just and equitable principles of trade and it protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) from the date on which it was filed, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Because the proposed rule change will codify the Exchange's current section 31 billing practice and allow the Exchange to conform Exchange Rule 607 to section 31 of the Act, the Exchange has requested that the Commission waive the pre-filing notice requirement of at least five business days (or such shorter time as designated by the Commission) and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii).[14] The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate

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[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Cynthia K. Hoekstra, Counsel, Phlx, to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation, SEC, dated October 1, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the basis upon which the proposal would become effective under the Act and requested that the Commission waive the five-day pre-filing notice requirement.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Phlx asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[7] See 15 U.S.C. 78ee.

[8] See Pub. L. No. 107–123, 115 Stat. 2390 (2002).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR–Phlx–2002–51 and should be submitted by November 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27117 Filed 10–23–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3452]

State of Louisiana [Amendment #1]

In accordance with a notice received from the Federal Emergency Management Agency, dated October 16, 2002, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on October 1, 2002, and continuing through October 16, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is December 2, 2002, and for economic injury the deadline is July 3, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 18, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–27122 Filed 10–23–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3448]

State of Texas; [Amendment #3]

In accordance with a notice received from the Federal Emergency Management Agency, dated October 15, 2002, the above numbered declaration is hereby amended to include Webb County in the State of Texas as a disaster area due to damages caused by Tropical Storm Fay beginning on September 6, 2002, and continuing through September 30, 2002.

In addition, applications for economic injury loans from small businesses located in Jim Hogg, Maverick and Zapata Counties may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary county have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 25, 2002, and for economic injury the deadline is June 26, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 18, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–27121 Filed 10–23–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Federal Assistance to Provide Financial, Counseling, Technical Assistance and Long Term Training to Small Business Owners and Those Interested in Starting a Small Business

AGENCY: Small Business Administration.

ACTION: SBDC 2003 Program Announcement for CY 2003.

SUMMARY: The Small Business Administration plans to issue a supplemental SBDC Program Announcement for CY 2003 to invite applicants from Institutions of Higher Education and Women's Business Centers to establish, manage, and oversee a Small Business Development Center (SBDC) Network in the Commonwealth of Virginia.

The authorizing legislation is Section 21 of the Small Business Act, (15 U.S.C. Section 648).

SBA's Richmond District Office will hold a bidders conference on November 19, 2002.

SBA's Richmond District Office must receive applications/proposals by December 6, 2002.

SBA will select the applicants competitively. The successful applicant will receive an award to provide long term training, counseling and technical assistance to business persons who want to start or expand a small business.

The applicant must submit a one year plan that describes the network, sources of match, training and technical assistance activities. Award recipients must provide non-Federal matching funds, *i.e.*, one-non Federal dollar for each Federal dollar for the project-year. At least half of the matching requirement must be in cash. The remainder may be in-kind or in waived indirect cost.

DATES: SBA will mail program announcements to interested parties, immediately, upon request. The opening date will be October 21, 2002.

FOR FURTHER INFORMATION CONTACT: Charles Gastón, (804) 771–2741 x 140 or Jorge Cardona, (202) 205–7303.

Johnnie L. Albertson,

Associate Administrator for Small Business Development Centers.

[FR Doc. 02–27062 Filed 10–23–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Privacy Act of 1974 System of Records Notice

AGENCY: Small Business Administration.

ACTION: Notice of new system of records.

SUMMARY: The Small Business Administration is adding a new system of records to the Agency's Privacy Act System of Records. The new system collects and maintains personal and commercial information on individuals named in loan files, throughout the life of SBA's interest in the loan, under all of the Agency's business (non-disaster) loan programs. Data collected will be used by Headquarters, Regional Offices, District Offices, Branch Offices, Processing Centers, Servicing Centers, SBA Resource Partners, (*i.e.*, participating lenders, Certified Development Companies, lending program intermediaries), contractors and qualified investors. Data will be used for Lender Oversight, Loan Monitoring, Portfolio Risk Management and Asset Sales.

DATES: The new system will be effective without further notice November 25, 2002, unless comments are received that result in a need for modification.

ADDRESSES: Address comments to LeAnn M. Oliver, Deputy Associate Administrator for Financial Assistance, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Steve Kucharski, Office of Financial Assistance (202) 205 7551.

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SYSTEM NAME:

Loan Monitoring System (LMS), U.S. Small Business Administration (SBA).

SYSTEM LOCATION:

SBA Headquarters, Regional Offices, District Offices, Branch Offices, Processing Centers, and Servicing Centers (see Appendix A for addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (*i.e.* borrowers, guarantors, principals of businesses named in loan records), throughout the life of SBA's interest in a loan, under all of the Agency's business (non-disaster) loan programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal and commercial information (*i.e.* credit history, financial information, identifying number or other personal identifier) on individuals named in business loan files, throughout the life of SBA's interest in the loan, under all of the Agency's business (non-disaster) loan programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 85–536, 15 U.S.C. 631 *et seq.* (Small Business Act, all provisions relating to loan programs); 5 U.S.C. 301; 44 U.S.C. 3101 (Records Management by Federal Agencies); and Pub. L. 103–62 (GPRA).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED, OR REFERRED:

(a) To the SBA Resource Partner, its successors or assigns, (*i.e.* participating lender, certified development company, micro lender) who initially collected the individual's information for the purpose of making and servicing loans.

(b) To a Congressional office from an individual's record when the office is inquiring on the individual's behalf. The Member's access rights are no greater than the individual's.

(c) To the Federal, state, local or foreign agency or organization which investigates, prosecutes, or enforces violations, statues, rules, regulations, or orders issued when an agency identifies a violation or potential violation of law, arising by general or program statute, or by regulation, rule, or order.

(d) To Agency volunteers, interns, experts and contractors for use in their official duties.

(e) To qualified investors who have signed a confidentiality agreement related to review of files for the purpose of evaluating, negotiating and implementing the purchase of loans from the Agency as a part of the Agency's Asset Sales program.

(f) To the Department of Justice (DOJ) when:

(1) The agency, or any component thereof; or

(2) Any employee of the agency in his or her official capacity; or

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components;

is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(g) To disclose them in a proceeding before a court or adjudicative body before which the Agency is authorized to appear, when:

(1) The agency, or any component thereof; or

(2) Any employee of the agency in his or her official capacity; or

(3) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(h) To request information from a Federal, State, local agency or a private credit agency maintaining civil, criminal or other information relevant to determining an applicant's suitability for a business loan. This applies to individuals involved in business loans.

(i) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Electronic Records are in a secure server and paper records are in files. Loan files are in a secured area, sometimes locked files, sometimes locked file rooms.

RETRIEVABILITY:

Electronic Records: By individual name, personal identifier, SBA Identifier, Participating Lender Identifier, Participating Lender Name, business name, and business identifier.

Paper Records: By individual name, personal identifier and SBA Identifier.

SAFEGUARDS:

Electronic Records: Access and use is limited to Agency officials acting in their official capacities, with a need-to-know, and to SBA Resource Partners. Access and use by SBA Resource Partners will generally be via the Internet, with restricted password(s)/passcode(s). SBA Resource Partners, their successors or assigns, will have access only to those individual records that were collected by that particular partner. Information contained in files will be available only to potential asset sale purchasers who have executed a confidentiality agreement. Only SBA employees in the performance of their official duties, who are granted access to the records by Agency issuance of User IDs and/or passcodes, may amend or review the records.

Paper Records: Access and use is limited to Agency officials acting in their official capacities, with a need-to-know. SBA Resource Partners, their successors or assigns, will have access only to those individual records that were collected by that particular partner. Information contained in loan files will be available only to potential asset sale purchasers who have executed

[16] See section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on October 2, 2002, the date that the Exchange filed Amendment No. 1.

[17] 17 CFR 200.30–3(a)(12).

a confidentiality agreement. Only those SBA employees in the performance of their official duties may amend or review the records.

RETENTION AND DISPOSAL:

In accordance with SBA SOP 00 41 2, Item Nos. 50:04, 50:08, 50:09, 50:10, 50:11, 50:12, 50:13, 50:19, 50:22, 55:02. Records are retained for the life of SBA's interest in the business loan and are disposed of according to the reference in the SOP that pertains to a particular type of record; retention period varies according to the type of record.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Associate Administrator for Capital Access, Associate Administrator for Lender Oversight, Regional Administrators, District Directors, Branch Managers, Loan Service Center Directors, and Loan Processing Centers Directors (see Appendix A for addresses).

NOTIFICATION PROCEDURE:

An individual may submit a written record inquiry to the appropriate Systems Manager or Privacy Act Officer. Individuals inquiring about this system must follow the SBA Privacy Act Regulations at 13 CFR part 102 subpart B.

RECORDS ACCESS PROCEDURES:

Systems Manager or Privacy Act Officer will determine procedures. Individuals inquiring about this system must follow the SBA Privacy Act Regulations at 13 CFR part 102 subpart B.

CONTESTING RECORD PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought, as indicated in 13 CFR part 102 subpart B.

RECORD SOURCE CATEGORIES:

Individuals and businesses to whom the record belongs, financial institutions, credit reporting agencies, law enforcement agencies and SBA resource partners.

Dated: June 27, 2002.

Christopher Holleman,

Acting Senior Privacy Act Official.

[FR Doc. 02–27061 Filed 10–23–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4170]

Bureau of Political-Military Affairs; Denied Persons Pursuant to UN Security Council Resolution

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of persons that are subject to an arms embargo in implementation of UN Security Council Resolution 1390 (2002). This action is being taken pursuant to Sections 38 and 42 of the Arms Export Control Act and in accordance with Section 5 of the UN Participation Act (UNPA) and E.O. 12918.

EFFECTIVE DATE: October 24, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Sweeney, Munitions Control Analyst, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 633–2700.

SUPPLEMENTARY INFORMATION: Section 2(c) of UN Security Council Resolution 1390 (2002) requires an arms embargo against those individuals, groups, undertakings and entities listed in the consolidated list created pursuant to UN Security Council Resolutions 1267 (1999) and 1333 (2000). Specifically, the Resolution requires that Member States prevent the direct or indirect supply, sale and transfer, to those on the Sanctions Committee list, from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related material of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities. U.S. manufacturers and exporters and any other affected parties are hereby notified the Department has imposed a policy of denial for any new license application or other request for approval for the export or transfer of defense articles or defense services if any of the names on the list below appear in connection with the application or other request for approval subject to Section 38 of the Arms Export Control Act. This action also precludes the use of any exemptions from licensing or other approval (e.g. brokering) requirements available under the International Traffic in Arms Regulations (ITAR) involving any person on the list.

The term "person", as defined in 22 CFR 120.14 of the ITAR, means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities.

This action has been taken pursuant to sections 38 and 42 of the AECA (22 U.S.C. 2778 and 2791) and § 126.7 of the International Traffic in Arms Regulations in furtherance of the foreign policy of the United States, and in accordance with section 5 of the UNPA (22 U.S.C. 287(c)) and E.O. 12918.

In accordance with these authorities the following persons are subject to this arms embargo:

A. Resolution 1267 (1999)

Individuals

1. Mullah Mohammad Rabbani, Chairman of the Ruling Council, Head of the Council of Ministers;
2. Mullah Hadji Mohammad Hassan, First Deputy, Council of Ministers; Governor of Kandahar;
3. Maulavi Abdul Kabir, Second Deputy, Council of Ministers; Governor of Nangahar Province; Head of Eastern Zone;
4. Mullah Mohammed Omar, Leader of the Faithful ('Amir ul-Mumineen'), Afghanistan;
5. Mullah Mohammed Tahre Anwari, Administrative Affairs;
6. Maulavi Sayyed Haqqan, Minister of Administrative Affairs;
7. Maulavi Abdul Latif Mansur, Minister of Agriculture;
8. Mullah Shams-ur-Rahman, Deputy Minister of Agriculture;
9. Maulavi Attiqullah Akhund, Deputy Minister of Agriculture;
10. Maulavi Abdul Ghafoor, Deputy Minister of Agriculture;
11. Akhtar Mohammad Mansour, Minister of Civil Aviation and Transportation;
12. Hadji Tahis, Deputy Minister of Civil Aviation;
13. Mullah Mohammad Naim, Deputy Minister of Civil Aviation;
14. Hidayatuallah Abu Turab, Deputy Minister of Civil Aviation;
15. Mullah Yar Mohammad Rahimi, Minister of Communication;
16. Mullah Haji Alla Dad Tayeb, Deputy Minister of Communication;
17. Maulavi Abdul Razaq, Minister of Commerce;
18. Maulavi Faiz Mohammad Faizan, Deputy Minister of Commerce;
19. Maulavi Nik Mohammad, Deputy Minister of Commerce;
20. Mullah Matiullah, Kabul Custom House;
21. Maulavi Dadullah Akhund, Minister of Construction;
22. Mullah Hadji Ubaidullah Akhund, Minister of Defense;
23. Mullah Fazel M. Mazloom, Deputy Chief of Army Staff;
24. Mullah Baradar, Deputy, Minister of Defence;
25. Mullah Abdul Rauf, Commander of Central Corpus;
26. Mullah Amir Khan Motaql, Minister of Education;

27. Mullah Mohammad Nasim Hanafi, Deputy Minister of Education;
28. Maulavi S. Ahmed Skahidkhel, Deputy Minister of Education;
29. Mullah Abdul Wasay Aghajan Motasem, Minister of Finance;
30. Mullah Arefullah Aref, Deputy Minister of Finance;
31. Mullah Haji M. Ahmadi, President of Da Afghanistan Bank;
32. Abdul Wakil Mutawakil, Minister of Foreign Affairs;
33. Abdul Rahman Zahed; Deputy Minister of Foreign Affairs;
34. Mullah Abdul Jalil, Deputy Minister of Foreign Affairs;
35. Dr. Abdul Satar Paktis, Protocol Dept., Ministry of Foreign Affairs;
36. Maulavi Faiz, Information Dept., Ministry of Foreign Affairs;
37. Shams-us-Safa Aminzai, Press-Centre, Ministry of Foreign Affairs;
38. Maulavi Abdul Baqi, Consulate Dept., Ministry of Foreign Affairs;
39. M. Jawaz Waziri, UN Dept., Ministry of Foreign Affairs;
40. Maulavi Djallalouddine Haqani, Minister of Frontier Affairs;
41. Maulavi Abdul Hakim Monib, Deputy Minister of Frontier Affairs;
42. Alhaj M. Ibrahim Omari, Deputy Minister of Frontier Affairs;
43. Qari Don Mohammad, Minister Higher Education;
44. Maulavi Hamidullah Nomani, High Ranking Official in the Ministry of Higher Education;
45. Zabihullah Hamidi, Deputy Minister of Higher Education;
46. Maulavi Arsalan Rahmani, Deputy Minister of Higher Education;
47. Maulavi Qudratuallah Jamal, Minister of Information;
48. Mullah Abdul Baqi, Vice-Minister of Information and Culture;
49. Maulavi Abdul Rahman Ahman Hottak, Deputy (Cultural) Minister of Information and Culture;
50. Maulavi Rahimullah Zurmati, Deputy (Publication) Minister of Information and Culture;
51. Abdulhai Motmacn, Information and Culture Dept., Kandahar;
52. Maulavi Mohammad Yaqoub, Head of BIA;
53. Mullah Abdul Razaq, Minister of Interior Affairs;
54. Mullah Abdul Samad Khaksar, Deputy (Security) Minister of Interior Affairs;
55. Mohammad Sharif, Deputy Minister of Interior Affairs;
56. Maulavi Noor Jalal, Deputy (Administrative) Minister of Interior Affairs;
57. Maulavi Saed M. Azim Agha, Passport and Visa Dept.;
58. Mullah Nooruddin Turabi, Minister of Justice;
59. Maulavi Jalaluddine Shinwari, Deputy Minister of Justice;
60. Alhaj Mullah Mohammad Essa Akhund, Minister of Mines and Industries;
61. Maulavi Sayeedur Rahman Haqani, Deputy Minister of Mines and Industries;
62. Mullah Abdul Salam Zaief, Deputy Minister of Mines and Industries;
63. Maulavi Mohammad Azam Elmi, Deputy Minister of Mines and Industries;
64. Qari Din Mohammad Hanif, Minister of Planning;
65. Maulavi Ezatullah, Deputy Minister of Planning;
66. Maulavi M. Musa Hottak, Deputy Minister of Planning;
67. Mullah Mohammad Abbas Akhund, Minister of Public Health;
68. Sher Abbas Stanekzai, Deputy Minister of Public Health;
69. Maulavi Mohammadullah Mati, Minister of Public Works;
70. Maulavi Rostam Nuristani, Deputy Minister of Public Works;
71. Hadji Molla Atiqullah, Deputy Minister of Public Works;
72. Maulavi Najibullah Haqqani, Deputy Minister of Public Works;
73. Maulavi Sayyed Ghiassouddine Agha, Minister of Haj and Religious Affairs;
74. Maulavi Moslim Haqqani, Deputy Minister of Haj and Religious Affairs;
75. Maulavi Qalamudin Momand, Deputy Minister of Haj Afairs;
76. Maulavi Abdul Raqib Takhari, Minister of Repatriation;
77. Ramatullah Wahidyar, Deputy Minister for Martyrs and Repatriation;
78. Mohammad Sediq Akhundzada, Deputy Minister of Martyrs and Repatriation;
79. Maulavi Mohammad Wali, Minister of Department of Preventing Vice and Propagating Virtue;
80. Maulavi Mohammad Salim Haqqani, Deputy Minister of Preventing Vice and Propagating Virtue;
81. Maulavi Sayed Esmatullah Asem, Deputy Minister of Preventing Vice and Propagating Virtue;
82. Qari Ahmadulla, Minister of Security (Intelligence);
83. Maulavi Abdul-Haq-Wasseq, Deputy Minister of Security (Intelligence);
84. Maulavi Ehsanullah, Deputy Minister of Security (Intelligence);
85. Mullah Habibullah Reshad, Head of Investigation Dept.;
86. Mullah Ahmed Jan Akhund, Minister of Water and Electricity;
87. Eng. Mohammad Homayoon, Deputy Minister of Water and Electricity;
88. Maulavi Saiduddine Sayyed, Vice-Minister of Work and Social Affairs;
89. Maulavi Abdul Jabbar, Governor of Baghlan Province;
90. Maulavi Nurullah Nuri, Governor of Balkh Province; Head of Northern Zone;
91. Muhammad Islam, Governor of Bamiyan Province;
92. Mullah Janan, Governor of Fariab;
93. Mullah Dost Mohammad, Governor of Ghazni Province;
94. Maulavi Khair Mohammad Khairkhwah, Governor of Heart Province;
95. Maulavi Abdul Bari, Governor of Helmand Province;
96. Maulavi Walijan, Governor of Jawzjan Province;
97. Mullah M. Hasan Rahmani, Governor of Kandahar Province;
98. Mullah Manan Nyazi, Governor of Kabul Province;
99. Maulavi A. Wahed Shafiq, Deputy Governor of Kabul Province;
100. Alhaj Mullah Sadudin Sayed, Mayor of Kabul City;
101. Maulavi Shafiquallah Mohammadi, Governor of Khost Province;
102. Maulavi Nazar Mohammad, Governor or Kunduz Province;
103. M. Eshaq, Governor of Laghman Province;
104. Maulavi Zia-ur-Rahman Madani, Governor of Logar Province;
105. Maulavi Hamsudin, Governor of Wardak (Msidan) Province;
106. Maulavi A. Kabir, Governor of Nangarhar Province;
107. Mullah M. Rasul, Governor of Nimroz Province;
108. Maulavi Tawana, Governor of Paktia Province;
109. Mullah M. Shafiq, Governor of Samangan Province;
110. Maulavi Aminullah Amin, Governor of Saripul Province;
111. Maulavi Abdulhai Salek, Governor of Urouzgan Province;
112. Maulavi Ahmad Jan, Governor of Zabol Province;
113. Noor Mohammad Saqib, Chief Justice of Supreme Court;
114. Maulavi Sanani, Head of Dar-ul-Efta;
115. Maulavi Samiullah Muazen, Deputy of High Court;
116. Maulavi Shahabuddin Delawar, Deputy of High Court;
117. Abdul Rahman Agha, Chief Justice of Military Court;
118. Mullah Mustasaed, Head of Academy of Sciences;
119. Maulavi Esmatullah Asem, SG of Afghan Red Crescent Society (ARCS);
120. Maulavi Qalamuddin, Head of Olympic Committee;
121. Abdul Salam Zaeef, Taliban Ambassador to Pakistan;

122. Abdul Hakim Mujahid, Taliban envoy to the United Nations;
123. General Rahmatullah Safi, Taliban representative in Europe;
124. Mullah Hamidullah, Head of Ariana Afghan Airlines;
125. Alhaj Mullah Sadruddin, Mayor of Kabul City;
126. Amir Khan Muttaqi, Taliban representative in UN-led talks;
127. Mr Jan Mohmmad Madani, Charge d'Affaires, Taliban Embassy, Abu Dhabi;
128. Mr Shamsalah Kmalzada, Second Secretary, Taliban Embassy, Abu Dhabi;
129. Mr Azizirahman, Third Secretary, Taliban Embassy, Abu Dhabi;
130. Mr Mawlawi Abdul Manan, Commercial Attache, Taliban Embassy, Abu Dhabi;
131. Malawi Abdul Wahab, Taliban Charge d'Affairs in Riyadh; Taliban "Embassy," Islamabad
132. Mullah Abdul Salam Zaeef (Ambassador Extraordinary & Plenipotentiary);
133. Ilabibullab Fauzi (First Secretary/ Deputy Head of Mission);
134. Mohammad Sobail Shaheen (Second Secretary);
135. Mohammad Sarwar Siddiqmal (Third Secretary);
136. Mullah Mohammad Zahid (Third Secretary);
137. General Abdul Qadeer (Military Attache);
138. Maulavi Nazirullah Anafi (Commercial Attache);
139. Maulavi Abdul Ghafar Qurishi (Repatriation Attache);
140. Mohammad Daud (Administrative Attache); Taliban "Consulate General," Peshawar
141. Maulavi Najibullah (Consul General);
142. Qari Abdul Wali (First Secretary);
143. Syed Allamuddin (Second Secretary);
144. Maulavi Akhtar Mohmmad (Education Attache);
145. Alhaj Maulavi Mohammad Saddiq (Trade Representative); Taliban "Consulate General," Karachi
146. Maulavi Rahamatullah Kakazada (Consul General);
147. Mufti Mohammad Aleem Noorani (First Secretary);
148. Haji Abdul Ghafar Shenwary (Third Secretary);
149. Maulavi Gul Ahmad Hakimi (Commercial Attache); Taliban "Consulate General," Quetta
150. Maulavi Abdullah Murad (Consul General);
151. Maulavi Abdul Haiy Aazem (First Secretary);
152. Maulavi Hamdullah (Repatriation Attache);

Entities

1. De Afghanistan Momtaz Bank.

B. Resolution 1333 (2000)

Individuals

1. Abd Al-Hadi Al-Iraqi (a.k.a. Abu Abdallah, Abdal Al-Hadi Al-Iraqi);
2. Abdul Rahman Yasin (a.k.a. Taha, Abdul Rahman S.; a.k.a. Taher, Abdul Rahman S.; a.k.a. Yasin, Abdul Rahman Said; a.k.a. Yasin, Aboud) DOB: 10 Apr 1960; POB: Bloomington, Indiana, U.S.A.; Citizen U.S.A.;
3. Abdullah Ahmed Abdullah (a.k.a. Abu Mariam, a.k.a. Al-Masri, Abu Mohamed; a.k.a. Saleh); Afghanistan; DOB: 1963; POB: Egypt; Citizen Egypt;
4. Abdullkadir, Hussein Mahamud, Florence, Italy;
5. Abu Hafs the Mauritanian (a.k.a. Mahfouz Ould Al-Walid, Khalid Al-Shanqiti, Mafouz Walad Al-Walid, Mahamedou Oui Slahi) DOB 1 Jan 75;
6. Abu Zubaydah (a.k.a. Abu Zubaida, Abd Al-Hadi Al-Wahab, Zain Al-Abidin Muhahhad Husain, Zain Al-Abidin Muhahhad Husain, Zayn Al-Abidin Muhammad Husayn, Tariq); Thought to be a Saudi, Palestinian and Jordanian national. Close associate of Usama Bin Laden and facilitator of terrorist travel. DOB: 12 March 71; POB: Riyadh, Saudi Arabia;
7. Agha, Haji Abdul Manan (a.k.a. Saiyid, Abd Al-Man, Am) Pakistan;
8. Ahmed Khalfan Ghailani (a.k.a. "Ahmed The Tanzanian"; a.k.a. "Foopie"; a.k.a. "Fupi"; a.k.a. Ahmad, Abu Bakr; a.k.a. Ahmed, A.; a.k.a. Ahmed, Abubakar; a.k.a. Ahmed, Abubakar K.; a.k.a. Ahmed, Abubakar Khalfan; a.k.a. Ahmed, Abubakary K.; a.k.a. Ahmed, Ahmed Khalfan; a.k.a. Al Tanzani, Ahmad; a.k.a. Ali, Ahmed Khalfan; a.k.a. Bakr, Abu; Ghailani, Abubakary Khalfan Ahmed; a.k.a. Ghailani, Ahmed; a.k.a. Ghilani, Ahmad Khalafan; a.k.a. Hussein, Mahafudh Abubakar Ahmed Abdallah; a.k.a. Khabar, Abu; a.k.a. Khalfan, Ahmed; a.k.a. Mohammed, Shariff Omar); DOB: 13 Apr. 1974; Alt. DOB: 14 Apr. 1974; Alt. DOB: 1 Aug. 1970; POB: Zanzibar, Tanzania; Citizen Tanzania;
9. Ahmed Mohammed Hamed Ali (a.k.a. Abdurehman, Ahmed Mohammed; a.k.a. Abu Fatima; a.k.a. Abu Islam; a.k.a. Abu Khadiijah; a.k.a. Ahmed Hamed; a.k.a. Ahmed The Egyptian; a.k.a. Ahmed, Ahmed; a.k.a. Al-Masri, Ahmad; a.k.a. Al-Surir, Abu Islam; a.k.a. Ali, Ahmed Mohammed; a.k.a. Ali, Hamed; a.k.a. Hamed, Ahmed; a.k.a. Shieh, Ahmed; a.k.a. Shuaib) Afghanistan; DOB: 1965; POB: Egypt; Citizen: Egypt;
10. Al-Fawaz, Khalid (a.k.a. Al-Fauwaz, Khaled; Al-Fauwaz, Khaled A.; Al-Fawwaz, Khalid; Al Fawwaz, Khalik; Al-Fawwaz, Khaled; Al Fawwaz, Khaled); DOB: August 25, 1962; 55 Hawarden Hill, Brooke Road, London NW2 7BR, UK.
11. Al-Hamti, Muhammad (a.k.a. Al-Ahdal, Mohammad Hamdi Sadiq; a.k.a. Al-Makki, Abu Asim), Yemen;
12. Al-Haq, Amin (a.k.a. Amin, Muhammad; a.k.a. Ah Haq, Dr. Amin; Ul-Haq, Dr. Amin); DOB: 1960; POB: Nangahar Province, Afghanistan; Afghan national, Security coordinator for Usama Bin Laden.;
13. Ali, Abbas Abdi, Mogadishu, Somalia;
14. Ali, Yusaf Ahmed, Hallbybybacken 15, 70 Spanga, Sweden; DOB: 20 November 1974;
15. Al-Jadawi, Saqar; DOB: 1965; Thought to be a Yemeni and Saudi national. Aide to Usama Bin Laden.;
16. Al-Jaziri, Abu Bakr, nationality Algerian, Address: Peshawar, Pakistan—affiliated with Afghan Support Committee (ASC);
17. Al-Kadr, Ahmad Sa'id (a.k.a. Al-Kanadi, Abu Abd Al-Rahman); DOB: 01 March 1948; POB: Cairo, Egypt; Thought to be an Egyptian and Canadian national.;
18. Al-Libi, Abd al-Muhsin, a.k.a. Ibrahim Ali Muhammad Abu Bakr—affiliated with Afghan Support Committee (AFC) and Revival of Islamic Heritage Society (RIHS);
19. Al-Masri, Abu Hamza (a.k.a. Al-Misri, Abu Hamza); DOB April 15, 1958; 9 Alboume Road, Shepherds Bush, London W12 OLW, UK; 8 Adie Road, Hammersmith, London W6 OPW, UK;
20. Al-Qadi, Yasin (a.k.a. Kadi, Shaykh Yassin Abdullah; a.k.a. Kahdi, Yasin) Jeddah, Saudi Arabia.
21. Al-Sharif, Sa'd; DOB: 1969; POB: Saudi Arabia; Brother-in-law and close associate of Usama Bin Laden. Said to be head of Usama Bin Laden's financial organization.;
22. Anas Al-Liby (a.k.a. Al-Bibi, Anas; a.k.a. Al-Raghie, Nazih; a.k.a. Al-Raghie, Nazih Abdul Hamed; a.k.a. Al-Sabai, Anas) Afghanistan; DOB: 30 Mar 1964; Alt. DOB: 14 May 1964; POB: Tripoli, Libya; Citizen: Libya;
23. Aouadi, Mohamed Ben Belgacem (a.k.a. Aouadi, Mohamed Ben Belkacem); DOB 12/11/1974; POB Tunisia; Address: Via A. Masina n. 7, Milan, Italy;
24. Aweys, Dahir Ubeldullahi, via Cipriano Facchinetti 84, Rome, Italy;
25. Aweys, Hassan Dahir (a.k.a. Ali, Sheikh Hassan Dahir Aweys) (a.k.a. Awes, Shaykh Hassan Dahir); DOB: 1935; Citizen: Somalia;
26. Ayman Al-Zawahari (a.k.a. Ahmed Fuad Salim; a.k.a. Aiman Muhammed Rabi Al-Zawahiri)

Operational and Military Leader of Jihad Group. Thought to be an Egyptian national. Former leader of Egyptian Islamic Jihad, now a close associate of Usama Bin Laden. DOB: 19 Jun 1951; POB: Giza;
27. Ben Heni, Lased; DOB 02/05/1969; POB Libya;
28. Bin Marwan, Bilal; DOB: 1947; Senior lieutenant of Usama Bin Laden;
29. Bin Muhammad, Ayadi Chafiq (a.k.a. Ayadi Shafiq, Ben Muhammad; a.k.a. Ayadi Chafik, Ben Muhammad; a.k.a. Aiady, Ben Muhammad); Helene Meyer Ring 10–1415–80809, Munich, Germany; 129 Park Road, NW8, London, England; 28 Chausse Di Lille, Moscron, Belgium, Darvingasse 1/2/58–60, Vienna, Austria; Tunisia; DOB: 21 January 1963; POB: Safais (Sfax), Tunisia;
30. Bouchoucha, Mokhtar (a.k.a. Bushusha, Mokhtar); DOB 10/13/1969; POB Tunisia; Address: Via Milano n.38, Spinadesco (CR), Italy;
31. Charaabi, Tarek (a.k.a. Sharaabi, Tarek); DOB 03/31/1970; POB Tunisia; Address: Viale Bligny n.42, Milan, Italy;
32. Darkazanli, Mamoun; Uhlenhorster Weg 34, Hamburg, 22085 Germany; DOB: August 4, 1958; POB: Aleppo, Syria;
33. Es Sayed, Abdelkader Mahmoud (a.k.a. Es Sayed, Kader); DOB 12/26/1962; POB Egypt; Address: Via del Fosso di Centocelle n.66, Rome, Italy;
34. Essid, Sami Ben Khemais; DOB 02/10/1968; POB Tunisia; Address: Via Dubini n.3, Gallarate (VA);
35. Fahid Mohammed Ally Msalam (a.k.a. Al-Kini, Usama; a.k.a. Ally, Fahid Mohammed; a.k.a. Msalam, Fahad Ally; a.k.a. Msalam, Fahid Mohammed Ali; a.k.a. Msalam, Mohammed Ally; a.k.a. Musalaam, Fahid Mohammed Ali; a.k.a. Salem, Fahid Muhamad Ali); DOB: 19 Feb 1976; POB: Mombasa, Kenya; Citizen Kenya;
36. Fazul Abdullah Mohammed (a.k.a. Abdall, Fazul; a.k.a. Adballah, Fazul; a.k.a. Aisha, Abu; a.k.a. Al Sudani, Abu Seif; a.k.a. Ali Fadel Abdallah Mohammed; a.k.a. Fazul Abdalla; a.k.a. Fazul Abdallah; a.k.a. Fazul, Abdallah Mohammed; a.k.a. Fazul, Haroon; a.k.a. Fazul, Harun; a.k.a. Haroon; a.k.a. Haroun, Fadhil; a.k.a. Harun; a.k.a. Luqman, Abu; a.k.a. Mohammed, Fazul; a.k.a. Mohammed, Fazul Abdilahi; a.k.a. Mohammed Fouad; a.k.a. Muhamad, Fadil Abdallah); DOB: 25 Aug 1972; Alt. DOB: 25 Dec 1974; Alt. DOB: 25 Feb 1974; POB: Moroni, Comoros Islands; Citizen Comoros; Alt. Citizen Kenya;
37. Hijazi, Riad (a.k.a. Hijazi, Raed M.; a.k.a. Al-Hawen, Abu-Ahmad; a.k.a. Al-Maghribi Rashid (The Moroccan); a.k.a. Al-Amriki, Abu-Ahmad (The American); a.k.a. Al-Shahid, Abu-Ahmad), Jordan; DOB: 1968; POB: California, U.S.A.;
38. Himmat, Ali Ghaleb, via Posero 2, ch-6911 Campione D'Italia, Switzerland; DOB: 16 June 1938; POB: Damascus, Syria; citizenship: Switzerland and Tunisia;
39. Huber, Albert Friedrich Armand (a.k.a. Huber, Ahmed), Mettmenstetten, Switzerland; DOB: 1927;
40. Ibn Al-Shaykh Al-Libi;
41. Jim'ale Ahmed Nur Ali (a.k.a. Jimale, Ahmed Ali) (a.k.a. Jim'ale, Ahmad Nur Ali) (a.k.a. Jumale, Ahmed Nur) (a.k.a. Jumali, Ahmed Ali) P.O. Box 3312, Dubai, UAE; Mogadishu, Somalia;
42. Kabie, Abdullahi Hussein, Bakara Market, Dar Salaam Buildings, Mogadishu, Somalia;
43. Ladehyanoy, Mufti Rashid Ahmad (a.k.a. Ludhianvi, Mufti Rashid Ahmad; a.k.a. Armad, Mufti Rasheed; a.k.a. Wadehyanoy, Mufti Rashid Ahmad); Karachi, Pakistan;
44. Mahmound, Sultan Bashir-Ud-Din (a.k.a. Mahmood, Sultan Bashiruddin; a.k.a. Mehmood, Dr. Bashir Uddin; a.k.a. Mekmud, Sultan Baishiruddin), Street 13, Wazir Akbar Khan, Kabul, Afghanistan (alt. DOB 1937; alt. DOB 1938; alt. DOB 1939; alt. DOB 1940; alt. DOB 1941; alt. DOB 1942; alt. DOB 1943; alt. DOB 1944; alt. DOB 1945; nationality: Pakistani);
45. Majeed, Abdul (a.k.a. Majeed Chaudhry Abdul; a.k.a. Majid, Abdul) DOB: 15 April 1939; DOB: 15 April 1939; alt. DOB 1938; nationality: Pakistani);
46. Makhtab Al-Khidamat/Al Kifah;
47. Mansour, Mohamed, (a.k.a. Al-Mansour, Dr. Mohamed), ob. Heslibachstr. 20, Kusnacht, Switzerland; Zurich, Switzerland; DOB: 1928; POB: Egypt or UAE;
48. Mansour-Fattouh, Zenab, Zurich, Switzerland;
49. Muhammed Atif (a.k.a. Subhi Abu Sitta, Abu Hafs Al Masri, Sheik Taysir Abdullah, Mohamed Atef, Abu Hafs Al Masri El Khabir, Taysir) DOB: 1956; POB: Alexandria, Egypt; Alt. DOB: 1951; Alt. DOB: 1944; Thought to be an Egyptian national. Senior lieutenant to Usama Bin Laden.;
50. Muhammad Salah (a.k.a. Nasr Fahmi Nasr Hasanayn);
51. Muhsin Musa Matwalli Atwah (a.k.a. Abdel Rahman; a.k.a. Abdul Rahman; a.k.a. Al-Muhajir, Abdul Rahman; a.k.a. Al-Namer, Mohammed K.A.), Afghanistan; DOB: 19 Jun 1964; POB: Egypt; Citizen: Egypt;
52. Mustafa Mohamed Fadhil (a.k.a. Al Masri, Abd Al Wakil; a.k.a. Al-Nubi, Abu; a.k.a. Ali, Hassan; a.k.a. Anis, Abu; a.k.a. Elbishy, Moustafa Ali; a.k.a. Fadil, Mustafa Muhamad; a.k.a. Fazul, Mustafa; a.k.a. Hussein, a.k.a. Jihad, Abu; a.k.a. Khalid; a.k.a. Man, Nu; a.k.a. Mohammed, Mustafa; a.k.a. Yussrr, Abu); DOB: 23 Jun 1976; POB: Cairo, Egypt; Citizen: Egypt; Alt. Citizen: Kenya; Kenyan Id. No. 12773667; Serial No. 201735161;
53. Nada, Youssef, (a.k.a. Nada, Youssef M.) (a.k.a. Nada, Youssef Mustafa), via Arogno 32, 6911 Campione d'Italia, Italy; via per Arogno 32, ch-6911 Campione d'Italia, Switzerland; via Riasc 4, ch-6911 Campione d'Italia I, Switzerland; DOB: 17 May 1931 or 17 May 1937; POB: Alexandria, Egypt; Citizen: Tunisia;
54. Nasreddin, Ahmed Idris (a.k.a. Nasreddin, Ahmad I.; a.k.a. Nasreddin, Hadji Ahmed; a.k.a. Nasreddine, Ahmed Idriss); Corso Sempione 69, 20149 Milan, Italy; 1 via della Scuole, 6900 Lugano, Switzerland; Piazzale Biancamano, Milan, Italy; Rue De Cap Spartel, Tangiers, Morocco; DOB: 22 November 1929; POB: Adi Ugri, Ethiopia;
55. Sayf-Al Adl (a.k.a. Saif Al-'Adil) DOB: 1963; POB: Egypt. Thought to be an Egyptian national. Responsible for Usama Bin Laden's security.;
56. Shaykh Sai'id (a.k.a. Mustafa Muhammad Ahmad); POB: Egypt;
57. Sheikh Ahmed Salim Swedan (a.k.a. Ahmed The Tall; a.k.a. Ally, Ahmed; a.k.a. Bahamad; a.k.a. Bahamad, Sheik; a.k.a. Bahamadi, Sheikh; a.k.a. Suweidan, Sheikh Ahmad Salem; a.k.a. Swedan, Sheikh; a.k.a. Swedan, Sheikh Ahmed Salem); DOB: 9 Apr 1969; Alt. DOB: 9 Apr 1960; POB: Mombasa, Kenya; Citizen: Kenya;
58. Tariq Anwar Al-Sayyid Ahmad (a.k.a. Hamdi Ahmad Farag, Amr Al-Fatih Fathi); DOB: 15 March 63; POB: Alexandria, Egypt;
59. Thirwat Salah Shihata (a.k.a. Tarwat Salah Abdallah, Salah Shihata Thirwat, Shahata Thirwat); DOB: 29 Jun 60; POB: Egypt;
60. Tufail, Mohammed (a.k.a. Tufail, S.M.; a.k.a. Tuffail, Sheik Mohammed) (nationality: Pakistani);
61. Usama Bin Laden (a.k.a. Usama Bin Muhammed Bin Awad, Osama Bid Laden; a.k.a. Abu Abdallah Abd Al-Hakim); DOB: 30 Jul 57; POB: Jeddah, Saudi Arabia; Alt. DOB: 28 Jul 57; Alt. POB: Yemen; Saudi citizenship withdrawn, now officially and Afghan national;
62. Uthman, Omar Mahmoud (a.k.a. Al-Silistini, Abu Qatada; a.k.a. Takfiri, Abu Umr; a.k.a. Abu Umar, Abu Omar; a.k.a. Uthman, Al-Samman; a.k.a. Umar, Abu Umar; a.k.a. Uthman, Umar; a.k.a. Abu Ismail) London, England; DOB: 30 December 1960 or 13 December 1960;
63. Yuldashev, Tohir (a.k.a. Yuldashev, Takhir), Uzbekistan;

64. Zia, Mohammad (a.k.a. Zia, Ahmad); C/O Ahmed Shah; C/O Painda Mohammad Al-Karim Set, Peshawar, Pakistan; C/O Alam General Store Shop 17, Awami Market, Peshawar, Pakistan; C/O Zahir Sha S/;

Entities

1. Abu Sayyaf Group (a.k.a. Al Harakat Al Islamiyya);

2. Afghan Support Committee (ASC) a.k.a. Lajnat ul Masa Eidatul Afghania, Jamiat Ayat-ur-Rhas al Islamia, Jamiat Ihya ul Turafh al Islamia, and Ahya ul Turas, Office Locations; Headquarters-G.T. Road (probably Grand Trunk Road), near Pushtoon Garhi Pabbi, Peshwar, Pakistan; Cheprahar Hadda, Mia Omar Sabaqah School, Jalabad, Afghanistan;

3. The Aid Organization Of The Ulema (a.k.a. Al Rashid Trust; Al Rasheed Trust; Al-Rasheed Trust; Al-Rashid Trust); Pakistan; Addresses: Kitab Ghar, Darul Ifta Wal Irshad, Nazimabad No. 4, Karachi, Pakistan, Phone 6683301, Phone 0300–8209199, Fax 6623814; 302b–40, Good Earth Court, Opposite Pia Planitarium, Block 13a, Gulshan-I Iqbal, Karachi, Phone 4979263; 617 Clifton Center, Block 5, 6th Floor, Clifton, Karachi, Phone 587–2545; 605 Landmark Plaza, 11 Chundrigar Road, Opposite Jang Building, Karachi, Pakistan, Phone 2623818–19; Jamia Masjid, Sulaiman Park, Begum Pura, Lahore, Pakistan, Phone 042–6812081;

4. Al Baraka Exchange L.L.C., P.O. Box 3313 Deira Dubai, UAE; P.O. Box 20066, Dubai, UAE;

5. Al-Barakaat, Mogadishu, Somalia; Dubai, UAE;

6. Al-Barakaat Bank, Mogadishu, Somalia;

7. Al-Barakat Bank of Somalia (Bss) (a.k.a. Barakat Bank of Somalia), Mogadishu, Somalia; Bossaso, Somalia;

8. Al-Barakat Finance Group, Dubai, UAE; Mogadishu, Somalia;

9. Al-Barakat Financial Holding Co., Dubai, UAE; Mogadishu, Somalia;

10. Al-Barakat Global Telecommunications (a.k.a. Barakaat Globetelcompany), P.O. Box 3313, Dubai, UAE; Mogadishu, Somalia; Hargeysa, Somalia;

11. Al-Barakat Group of Companies Somalia Limited (a.k.a. Al-Barakat Financial Company), P.O. Box 3313, Dubai, UAE; Mogadishu, Somalia;

12. Al-Barakat International (a.k.a. Baraco Co.), Box 2923, Dubai, UAE;

13. Al-Barakat Investments, P.O. Box 3313, Deira, Dubai, UAE;

14. Al-Barakat Wiring Service, 2940 Pillsbury Avenue, Suite 4, Minneapolis, Minnesota 55408;

15. Al-Hamati Sweets Bakeries, Al-Mukallah, Hadhramawt, Governorate, Yemen;

16. Al-Haramain Islamic Foundation—Bosnia and Herzegovina;

17. Al-Haramain Islamic Foundation—Somalia;

18. Al-Itihadd Al-Islamiya/AIAI;

19. Al-Jihad/Egyptian Islamic Movement (a.k.a. Egyptian Al-Jihad, Egyptian Islamic Jihad, Jihad Group, New Jihad);

20. Al-Nur Honey Press Shops (a.k.a. Al-Nur Honey Center), Sanaa, Yemen;

21. Al Taqwa Trade, Property and Industry Company Limited, (f.k.a. Al Taqwa Trade, Property and Industry) (f.k.a. Al Taqwa Trade, Property and Industry Establishment) (f.k.a. Himmat Establishment), C/O Asat Trust Reg., Altenbach 8, 9490 Vaduz Fl, Liechtenstein;

22. Al Qa'ida/Islamic Army (a.k.a. "The Base," Al Qaeda, Islamic Salvation Foundation, the Group for the Preservation of the Holy Sites, The Islamic Army for the Liberation of Holy Places, The World Islamic Front for the Jihad Against Jews and Crusaders, Usama Bin Laden Network, Usama Bin Laden Organization);

23. Al Rashid Trust (a.k.a. Al-Rasheed Trust); Kitas Ghar, Nazimabad 4, Dahgel-Iftah, Karachi, Pakistan; Jamia Maajid, Sulalman Park, Melgium Pura, Lahore, Pakistan; Office Dha'rbi-M'unin, Opposite Khyber Bank, Abbottabad Road, Mansehra, Pakistan; Office Dha'rbi-M'unin ZR Brothers, Katcherry Road, Chowk Yadgaar, Peshawar, Pakistan; Office Dha'rbi-M'unin, Rm No. 3. Moti Plaza, Near Liaquat Bagh, Muree Road, Rawalpindi, Pakistan; Office Dha'rbi-M'unin, Top Floor, Dr. Dawa Khan Dental Clinic Surgeon, Main Baxac, Mingora, Swat, Pakistan; Operations in Afghanistan: Heart Jalalabad, Kabul, Kandahar, Mazar Sherif. Also operations in Kosovo, Chechnya.;

24. Al-Shifa, Honey Press for Industry and Commerce, P.O. Box 8089, Al-Hasabah, Sanaa, Yemen; By the Shrine Next to the Gas Station, Jamal Street, Ta'iz, Yemen; Al-Arudh Square, Khur Maksar, Aden, Yemen; Al-Nasr Street, Doha, Qatar;

25. Armed Islamic Group (a.k.a. Al Jamm'ah Al-Islamiah Al-Islamiah Al-Musallah, GIA, Groupement Islamique Arme);

26. Asat Trust Reg., Altenbach 8, 9490 Vaduz Fl, Liechtenstein;

27. Asbat Al-Ansar;

28. Bank Al Taqwa Limited (a.k.a. Al Taqwa Bank) (a.k.a. Bank Al Taqwa), P.O. Box N–4877, Nassau, Bahamas; C/O Arthur D. Hanna & Company, 10 Deveaux Street, Nassau, Bahamas;

29. Barakaat Construction Company, P.O. Box 3313, Dubai, UAE;

30. Barakaat Group of Companies, P.O. Box 3313, Dubai, UAE; Mogadishu, Somalia;

31. Barakaat International, Hallbybacken 15, 70 Spanga, Sweden;

32. Barakaat International Foundation, Box 4036, Spanga Stockholm, Sweden; Rinkebytorget 1, 04 Spanga, Sweden;

33. Barakaat North America, Inc., 925 Washington Street, Dorchester, Massachusetts; 2019 Bank Street, Ottawa, Ontario, Canada;

34. Barakaat Red Sea Telecommunications, Bossaso, Somalia; Nakhiil, Somalia; Huruuse, Somalia; Raxmo, Somalia; Ticis, Somalia; Kowthar, Somalia; Noobir, Somalia; Bubaarag, Somalia; Gufure, Somalia; Xuuxuule, Somalia; Ala Aamin, Somalia; Guureeye, Somalia; Najax, Somalia; Carafaat, Somalia;

35. Barakaat Telecommunications Co. Somalia, Ltd., P.O. Box 3313, Dubai, UAE;

36. Barakat Banks and Remittances, Mogadishu, Somalia; Dubai, UAE;

37. Barakaat Boston, 266 Neponset Avenue, Apt. 43, Dorchester, Massachusetts 02122–3224;

38. Barakat Computer Consulting (BCC), Mogadishu, Somalia;

39. Barakat Consulting Group (BCG), Mogadishu, Somalia;

40. Barakat Global Telephone Company, Mogadishu, Somalia; Dubai, UAE;

41. Barakat International Companies (BICO), Mogadishu, Somalia; Dubai, UAE;

42. Barakaat International, Inc. 1929 South 5th Street, Suite 205, Minneapolis, Minnesota;

43. Barakat Post Express (BPE), Mogadishu, Somalia;

44. Barakat Refreshment Company, Mogadishu, Somalia; Dubai, UAE;

45. Barakat Telecommunications Company Limited (a.k.a. Btelco), Bakara Market, Dar Salaam Buildings, Mogadishu, Somalia; Kievitlaan 16, T'veld, Noord-Hollan, The Netherlands;

46. Barakaat Wire Transfer Company, 4419 South Brandon Street, Seattle, Washington;

47. Barako Trading Company, LLC, P.O. Box 3313, Dubai, UAE;

48. Baraka Trading Company, P.O. Box 3313, Dubai, UAE;

49. Harakat Ul-Mujahidin/HUM (a.k.a. Al-Faran, Al-Hadid, Al-Hadith, Harakat Ul-Ansar, HUA, Harakat Ul-Mujahideen);

50. Heyatul Ulya, Mogadishu, Somalia;

51. Islamic Army of Aden;

52. Islamic Movement of Uzbekistan (a.k.a. IMU);

53. Jaish-I-Mohammed (a.k.a. Army of Mohammed), Pakistan;

54. Jam'yah Ta'awun Al-Islamia (a.k.a. Society of Islamic Cooperation) (a.k.a. Jam'iyat Al Ta'awun Al Islamiyya) (a.k.a. Jit), Qandahar City, Afghanistan;

55. Libyan Islamic Fighting Group;

56. Mamoun Darkazanll Import-Export Company (a.k.a. Darkazanli Company, Darkazanli Export-Import Sonderposten), Uhlenhorsterweg 3411 Hamburg, Germany;

57. Nada Management Organization Sa (f.k.a. Al Taqwa Management Organization Sa), Viale Stefano Franscini 22, Ch–6900 Lugano Ti, Switzerland;

58. Parks Trading Company, PO Box 3313, Deira, Dubai, UAE;

59. Rabita Trust, Room 9a, 2nd Floor, Wahdat Road, Education Town, Lahore, Pakistan; Wares Colony, Lahore, Pakistan;

60. Red Sea Barakat Company Limited, Mogadishu, Somalia; Dubai; UAE;

61. Revival of Islamic Heritage Society (RIHS), a.k.a. Jamiat Ihia Al-Turath Al-Islamiya, Revival of Islamic Society Heritage on the African Continent, Jamia Ihya ul Turath, Office Locations: Pakistan and Afghanistan;

62. Salafist Group for Call and Combat/GSPC (a.k.a. Le Groupe Salafiste Pour La Prediction et le Combat);

63. Somali Internet Company, Mogadishu, Somalia;

64. Somali International Relief Organization, 1806 Riverside Avenue, 2nd Floor, Minneapolis, Minnesota;

65. Somali Network Ab, Hallybybacken 15, 70 Spanga, Sweden;

66. Unmah Tameer E-Nau (Utn), Street 13, Wazir Akbar Khan, Kabul, Afghanistan; Pakistan;

67. Wafa Humanitarian Organization (a.k.a. Al Wafa, Al Wafa Organization, Wafa Al-Igatha Al-Islamia), Jordan House No. 125, Street 54, Phase II Hayatabad, Peshawar, Pakistan, Offices in: Saudi Arabia, Kuwait, and UAE;

68. Youssef M. Nada, Via Riasc 4, Ch–6911 Campionie D'Italia I, Switzerland;

69. Youssef M. Nada & Co. Gescellschaft M.B.H., Kaertner Ring 2/2/5/22, 1010 Vienna, Austria.

Dated: October 8, 2002.

John R. Bolton,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 02–27152 Filed 10–23–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4175]

Public Meeting With Interested Parties for the Department of State and Other Agencies To Receive Views on Proposals To Modify and Expand the Role of the International Mobile Satellite Organization (IMSO)

AGENCY: Department of State, Bureau of Economic and Business Affairs, Office of the Coordinator for International Communications and Information Policy.

ACTION: Notice of meeting and request for comments.

DATE, TIME AND PLACE: Tuesday, November 19, 2002, 9:30 am–12 pm, Department of State, 2201 C Street NW., Washington, DC.

SUMMARY: The International Mobile Satellite Organization (IMSO) Assembly of Parties (member governments) has created an Intersessional Working Group (IWG) to undertake a detailed study of a possible extension or expansion of IMSO's mandate. The issue to be addressed at this meeting is the role of IMSO in respect of the Global Maritime Distress and Safety System (GMDSS), aeronautical safety services, and service to rural and remote areas of developing countries, including the principle and the legal methodology of a possible extension or expansion of IMSO's mandate. The Department of State wishes to receive the views of the public on the issues that will be addressed by the IWG, the first meeting of which is scheduled for January 20–24, 2003.

The two principal issues that have given rise to the creation of the IWG are: (1) Questions concerning the criteria for and potential consequences of the recognition by the International Maritime Organization (IMO) of additional service providers for the satellite component of the GMDSS and any possible role for IMSO with respect to such additional providers (currently, only Inmarsat Ltd. Of London is recognized as a satellite service provider of GMDSS); and (2) formal proposals of the Party of Denmark to amend the IMSO Convention to give the IMSO an expanded mandate with respect to GMDSS, aeronautical safety services, and mobile communications in rural and remote areas.

Currently, the IMSO oversees only Inmarsat, particularly with regard to Inmarsat's provision of GMDSS services. The IMO, which has responsibility for establishing maritime safety standards, has thus far only recognized Inmarsat as a provider of the satellite component of the GMDSS. However, questions have arisen out of the possibility that the IMO may recognize additional satellite telecommunication companies as GMDSS providers in the near future, and what the role, if any, the IMSO should have in such a case.

The proposal of the Party of Denmark would expand the purpose of the IMSO "to ensure that one or more of the public interests set forth * * * are met by each * * * entity or entities through which a mobile satellite communications system is operated." The "public interests" are: "(1) Ensuring the provision of global maritime satellite communications services for the GMDSS; (2) ensuring the provision of global aeronautical mobile satellite safety communications services; and (3) seeking to serve all areas where there is a need for mobile satellite communications, giving due consideration to the rural and remote areas of developing countries."

The Department of State will prepare comments and proposals on the above issues to be submitted to the IWG participants before December 20, 2002. The purpose of this meeting is to solicit input and suggestions from interested parties for use in formulating the U.S. response that will be discussed at the January 2003 IWG meeting. The Terms of Reference for the IWG, the amendment proposal of the Party of Denmark, and certain other documents can be found on the Internet Web page of the Office of the Coordinator for International Communications and Information Policy: *http://www.state.gov/e/eb/cip/.*

Please confirm attendance at the meeting using the contact information below. The meeting will be held in an informal roundtable fashion. However, up to 15 minutes will be allocated to anyone who wishes to make a formal presentation. Copies of written comments and proposals to be discussed at the meeting should be provided electronically seven days in advance and will be posted on the Web page. Additional written comments (provided electronically) will be accepted by the Department of State until December 4, 2002 and will be posted on the Web page.

MAILING ADDRESS: Send comments to Brian Hunt, Office of the Coordinator—International Communications and Information Policy, Mail Code EB/CIP, U.S. Department of State, 2201 C Street NW., Washington DC 20520–5820. Paper submissions must include a copy on diskette in Word or ASCII format.

Electronic copies may be sent via e-mail to *huntbj@state.gov*.

TO CONFIRM ATTENDANCE OR FOR ADDITIONAL INFORMATION: For additional information, contact Brian Hunt—voice: 202–647–5832, fax: 202–647–5957, e-mail: *huntbj@state.gov*.

Dated: October 18, 2002.

Steven W. Lett,

Deputy U.S. Coordinator, International Communications and Information Policy, Department of State.

[FR Doc. 02–27153 Filed 10–23–02; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Utah, Wasatch, Carbon, and Emery Counties, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway improvement project in Utah, Wasatch, Carbon, and Emery Counties, Utah.

FOR FURTHER INFORMATION CONTACT: Sandra Garcia, Transportation and Environmental Engineer, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84118, Telephone: (801) 963–0182.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Utah Department of Transportation, will prepare an EIS on a proposal to improve US Highway 6 (US 6) in Utah, Wasatch, Carbon, and Emery Counties, Utah. The proposed improvements would involve reconstruction of the existing US 6 between Interstate-15 (I–15) at Spanish Fork and I–70 at Green River, a distance of about 206 kilometers (128 miles).

Improvements to the corridor are considered necessary to maximize safety by designing the highway to meet current standards and to provide for existing and future travel demand. Also, included in the proposal is the relocation of the port of entry in Helper, Utah. Alternatives under consideration include (1) taking no-action (no-build); (2) using alternate travel modes; (3) widening the existing two-lane highway to four lanes; and (4) adding passing and climbing lanes. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment to improve overall safety.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in Green River, Price, and Spanish Fork in November 2002. In addition, a public hearing will be held after the draft EIS has been prepared. The draft EIS will be available for public and agency review and comment before the public hearing.

To ensure that a full range of issues related to the proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalogue of Federal and Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 16, 2002.

William R. Gedris,

Structural/Environmental Engineer, Salt Lake City, Utah.

[FR Doc. 02–27081 Filed 10–23–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of Alternatives Analysis and Environmental Impact Statement for Commuter Corridor Between the Cities of Deland and Kissimmee, FL

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA); the Central Florida Regional Transportation Authority (locally known as LYNX); METROPLAN ORLANDO, the Metropolitan Planning Organization (MPO) for the Orlando and Kissimmee, Florida urbanized areas; the Volusia County Metropolitan Planning Organization (Volusia County MPO); and the Florida Department of Transportation (FDOT) intend to conduct scoping meetings and prepare an Alternatives Analysis leading to an Environmental Impact Statement (EIS) to evaluate commuter transportation improvements in the CSX Transportation (CSXT) freight rail corridor between the cities of Deland and Kissimmee, Florida in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended.

This Notice of Intent is being published at this time to notify interested parties and to invite participation in the study. The study area will generally follow the existing CSXT Corridor from Deland, Florida to Kissimmee, Florida through the City of Orlando. The corridor analysis is necessary to explore alternative modes of north-south travel to Interstate 4 (I–4), currently under reconstruction and limited by capacity constraints.

The following alternatives will be evaluated in the study: (1) A baseline alternative based on existing LYNX operations, the most recent LYNX Transportation Development Plan for the corridor including but not limited to transit preferential treatments and/or Bus Rapid Transit (BRT) and other relevant studies. (2) Commuter Rail with Light Rail Transit (LRT), and without LRT, consistent with the METROPLAN ORLANDO 2020 Cost Feasible Long Range Plan associated bus feeder and public transit circulator service and the joint operations of CSXT. [**Note:** The alternative without LRT is to provide information to local decision makers as a part of the Long Range Plan update process and is not intended to be an alternative for consideration unless local decision makers modify the 2020 Cost Feasible Plan.] (3) A No Action Alternative with LRT.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to Ms. LaChant Barnett, Project Manager, LYNX, 445 West Amelia Street, Suite 800, Orlando, Florida, 32801 by December 19, 2002. *Scoping Meetings:* Scoping for the study will be developed during review of previous studies and consultation with affected agencies and interested persons through correspondence and at public meetings.

ADDRESSES: A series of four public scoping meetings will be held in the corridor to explain the purpose of the study, describe the process that will be followed, define the limits of the study area, to answer any questions that may exist and to receive comments, thoughts and/or opinions relevant to the study. Dates, times and locations of the scoping meetings are as follows:

Tuesday, October 29, 2002, 11:30 am–1:30 p.m., Orlando Public Library—Albertson Conference Room—3rd Floor, 101 East Central Boulevard, Orlando, Florida 32801.

Wednesday, October 30, 2002, 5:30 p.m.–7:30 p.m., Kissimmee Courthouse, Board of County Commissioners Boardroom, 1 Courthouse Square, Suite 4700, Kissimmee, Florida 34741.

Wednesday, November 6, 2002, 5:30 p.m.–7:30 p.m., Eastmonte Civic Center, 830 Magnolia Drive, Altamonte Springs, FL 32701.

Thursday, November 7, 2002, 5:30 p.m.–7:30 p.m., DeBary Public Library, 200 North Charles R. Beall Blvd., DeBary, Florida 32713.

An Interagency Scoping Meeting has been scheduled for:

Tuesday, November 12, 2002, 9 a.m.–11 a.m., Lynx (Educational Leadership Center Building), 3rd Floor Board Media Room, 445 W. Amelia St., Suite 800, Orlando, FL 32801.

All meeting locations are accessible to persons with disabilities. In accordance with the Americans with Disabilities Act of 1990, persons needing a special accommodation at these meetings because of a disability or physical impairment should contact Mr. Ron Jones at LYNX, (407) 841–2279, at least 48 hours before the meeting. If hearing impaired, contact LYNX at (407) 423–0787 (TDD).

FOR FURTHER INFORMATION CONTACT: LaChant Barnett, Project Manager, LYNX, 445 West Amelia Street, Suite 800, Orlando, Florida, 32801. You may also contact Derek R. Scott, Community Planner, FTA, 61 Forsyth Street, SW, Suite 17T50, Atlanta, GA 30303, (404) 562–3500.

SUPPLEMENTARY INFORMATION:

1. Notice of Intent

This Notice of Intent to prepare an Alternatives Analysis leading to an Environmental Impact Statement is being published at this time to advise interested parties of the study and to invite their comments. FTA regulations and guidance in accordance with NEPA will be used in the analysis and preparation of the Central Florida North/South Commuter Corridor Study.

2. Scoping

The FTA, LYNX, METROPLAN ORLANDO, Volusia County MPO and FDOT invite comments both at the public meetings listed above and in writing for a period of 45 days following the last public meeting. Comments should focus on identifying specific social, economic or environmental impacts to be evaluated. Comments should focus on the scope of the alternatives and impacts to be considered.

Persons wishing to be placed on a mailing list to receive further information as the study progresses, Contact Ms. LaChant Barnett at LYNX, 445 West Amelia Street, Suite 800, Orlando, Florida 32801.

3. Study Area and Project Need

The study area is an approximately 55-mile corridor extending from the City of Deland in Volusia County to the City of Kissimmee in Osceola County passing through Seminole and Orange Counties including the City of Orlando. A potential fixed guideway transit project would operate in the existing CSXT railroad corridor, as an alternative north-south travel mode to Interstate 4.

4. Alternatives

The alternatives proposed for evaluation include:

(1) A Baseline Alternative based on existing LYNX operations, the most recent LYNX Transportation Development Plan for the corridor including but not limited to transit preferential treatments and/or Bus Rapid Transit (BRT), and other relevant studies. This alternative or a variation exhibiting "the best that can be done" will serve as a proposal to FTA for a New Starts Baseline.

(2) A Commuter Rail Alternative with Light Rail Transit (LRT), consistent with the METROPLAN ORLANDO 2020 Cost Feasible Plan; and, without LRT for informational purposes. This alternative will address the potential commuter rail service as well as other associated bus feeder and public transit circulator services. The alternative will also address the joint operations of CSXT mainline freight and passenger services and local freight services that operate in the existing CSXT corridor. The physical features of the alternative will also be defined.

(3) A No Action Alternative without LRT for the opening year 2005 and with LRT for the target years 2015 and 2025, based on the existing LYNX transit system plus improvements envisioned for two planning horizons as indicated in the Volusia County MPO and METROPLAN ORLANDO 2020 Cost Feasible Plans and proposed changes for 2025 plans. The No Action Alternative is to specifically include the 20 miles of LRT from just north of SR 436, south to SR 528 and any bus service improvements during the appropriate target years. Impacts to the regional transportation system resulting from the No Action Alternative will be identified.

5. Probable Effects

Should the study proceed from the Alternatives Analysis to an Environmental Impact Statement, preliminary steps will be taken to allow the FTA, LYNX, METROPLAN ORLANDO, Volusia County MPO and FDOT to evaluate the project's potential for significant adverse impacts during construction and operation and to identify feasible mitigation measures for those impacts. The specific analyses that would take place at that point are land use, neighborhood character, social conditions, economic conditions and displacement, visual and aesthetic considerations, historic resources, archaeological resources, transit (ridership, operations and maintenance), traffic, parking, Air quality, noise and vibration, energy, hazardous materials, water quality, natural resources (vegetation and wildlife), construction and construction impacts, cumulative impacts and environmental justice (disproportionate adverse impacts on minority and low-income populations).

This study is being completed concurrent with an SDEIS for the north-south LRT project. This project will utilize information from the SDEIS, as appropriate. Information on the LRT SDEIS may be obtained from Jennifer Stults, LYNX Project Manager, 445 West Amelia Street, Suite 800, Orlando, FL 32801, (407) 841–2279, *jstults@golynx.com*.

Issued on: October 18, 2002.

Jerry Franklin,

FTA Regional Administrator.

[FR Doc. 02–27095 Filed 10–23–02; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB–167 (Sub–No. 1095X)]

Consolidated Rail Corporation—Abandonment Exemption—Lancaster and Chester Counties, PA

AGENCY: Surface Transportation Board, Transportation.

ACTION: Notice of reinitiation of the National Historic Preservation Act section 106 process and request for comments.

SUMMARY: This notice to the parties discusses the background of the abandonment exemption proceeding, describes the Surface Transportation Board's reinitiation of the National Historic Preservation Act section 106 process, and requests comments on several specific issues.

DATES: Comments are due by December 9, 2002.

ADDRESS: If you wish to file comments regarding this Notice, you should send an original and two copies to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Troy Brady. Please refer to Docket No. *AB–167 (Sub-No. 1095X)* in all correspondence addressed to the Board.

FOR FURTHER INFORMATION CONTACT: Troy Brady, the environmental contact for this case, by phone at (202) 565–1643 or by fax at (202) 565–9000. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In *Friends of the Atglen-Susquehanna Trail, Inc.* v. *Surface Transportation Bd.*, 252 F.3d 246 (3rd Cir. 2001) (*FAST*), the United States Court of Appeals for the Third Circuit vacated and remanded to the Surface Transportation Board (Board) a case involving the agency's historic review of a proposal to abandon 66.5 miles of track called the Enola Branch in Lancaster and Chester Counties, PA. The Board's decision to allow abandonment of rail service on the Enola Branch is unaffected by the court's remand. However, the court ruled that the Board failed to comply fully with the procedural requirements of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA), when in 1997 and 1999 the Board denied the requests of the Friends of the Atglen-Susquehanna Trail, Inc. (FAST) to reopen and broaden the historic preservation condition imposed by the Board's predecessor, the Interstate Commerce Commission (ICC),[1] in a 1990 decision permitting Consolidated Rail Corporation (Conrail) to fully abandon the Enola Branch except for the bridges.

The Board's Section of Environmental Analysis (SEA) has reinitiated the section 106 historic review process pursuant to the court's remand. Since the court's decision, SEA has been working to bring the diverse parties with different interests together so that the Board can move the historic review process to completion in accordance with the law and the court's decision, as described further below.

SEA consulted with the Advisory Council on Historic Preservation (ACHP) and the Pennsylvania State Historic Preservation Officer (SHPO) while preparing this Notice to the Parties (Notice), and provided them with the opportunity to review and comment on the Notice prior to issuance. The Notice incorporates the comments of ACHP and SHPO received to date. The intent of this Notice is threefold: (1) To bring all consulting parties up to date on the background of the case; (2) to describe the Board's reinitiation of the NHPA process and proposed next steps; and (3) to solicit comments on the five issues delineated at the end of this Notice.

[1] The ICC Termination Act of 1995, Pub. L. 104–88, abolished the ICC and transferred certain rail functions, including the rail line abandonment functions at issue in this case, to the Board, effective January 1, 1996.

I. Background

A. The NHPA

Before authorizing a rail line abandonment, the Board must comply with section 106 of the NHPA, which requires Federal agencies to consider the effects of their decisions on historic properties. ACHP has issued regulations implementing the NHPA. *See* 36 CFR part 800. These regulations were revised in December 2000, and SEA is following the current ACHP regulations in the reinitiation of the NHPA process for this case.

The requirements of the NHPA are procedural in nature and do not require a particular result. *See FAST*, 252 F.3d at 263. NHPA establishes a three-step process under which the agency must consult with the appropriate SHPO and other consulting parties to determine: (1) Which, if any, historic resources could be affected by the agency's action (Identification Phase); (2) whether those properties would be adversely affected by the agency's action (Assessment Phase); and, if so, (3) what conditions, if any, should be imposed to avoid, minimize or mitigate those adverse effects (Mitigation Phase). *See* 36 CFR 800.1(a).

During the Identification Phase, the agency must determine which properties that could be affected by the project are listed on or eligible for listing on the National Register of Historic Places (National Register). If the agency and the SHPO do not agree on this threshold eligibility question, or at ACHP's request, the agency must obtain an eligibility determination from an official in the Department of the Interior known as the Keeper of the National Register (Keeper).

During the Assessment Phase, the agency must determine whether the properties identified as historic will be adversely affected by the proposed abandonment. The general practice of the Board has been to assume that the abandonment of a rail line will negatively impact any properties involved that are identified as historic.

Finally, during the Mitigation Phase, the agency must develop appropriate mitigation measures to avoid, minimize or mitigate adverse effects on the historic properties so identified. Those measures must be crafted in consultation with the SHPO, ACHP, the railroad, and other consulting parties, with input from the public. The agency's mitigation plan is then formulated into a proposed Memorandum of Agreement (MOA), which, if agreed upon, is signed by the consulting parties. If no agreement on mitigation is reached, the consultation may be terminated, and the agency must request and take into account ACHP's formal comments prior to issuing a final decision.

B. This Case

The Enola Branch extends across Lancaster County, PA, from approximately milepost 27 (1 mile east of Safe Harbor, at the confluence of Conestoga Creek with the Susquehanna River) easterly to the Chester County, PA, line at milepost 4.03. A short portion of the Enola Branch (between mileposts 4.03 and 0.0) lies in Chester County. The Enola Branch passes though the Townships of West Sadsbury, Sadsbury, Bart, Eden, Providence, Martic and Conestoga, and the Borough of Quarryville.

In 1989 Conrail sought authority from the ICC to abandon the Enola Branch pursuant to 49 U.S.C. 10903 and ICC regulations codified at 49 CFR 1152.50. The ICC issued a decision in 1990 allowing the abandonment subject to a condition, developed as a result of consultation with the SHPO, that Conrail retain its interest in, and take no steps to alter the historic integrity of, 83 bridges—the only properties on the line that had been identified as historic—until completion of the historic review process. The purpose of the condition was to allow the ICC to work with consulting parties to develop a plan to avoid, minimize, or mitigate any adverse effects of the abandonment on the bridges. The development of a mitigation plan was held in abeyance, however, pending negotiations to transfer the line for interim trail use/rail banking under 16 U.S.C. 1247(d) or other public use under former 49 U.S.C. 10906 (now 49 U.S.C. 10905). When those negotiations proved unsuccessful, the NHPA process was resumed.

Following extensive negotiations and consultations with Conrail and the Pennsylvania SHPO, SEA developed proposed historic preservation mitigation measures for the bridges. At the suggestion of the SHPO, Conrail would be required to document (to the level of Pennsylvania state standards) certain bridges prior to their removal, and to fund and furnish materials for a display relating to the Enola Branch in a transportation museum administered by the SHPO.

While this process was moving forward, FAST filed a petition with the Board to reopen the proceeding and broaden the NHPA condition so that it would apply to the entire line, rather than only the bridges on the line. The Board denied FAST's request in a decision issued in 1997. In that decision, the Board also narrowed the properties determined to be historic to 32 of the 83 bridges, in light of subsequent statements by the SHPO, and clarified that its condition embraced certain archeological sites.

FAST sought Board reconsideration of the 1997 decision. FAST also sought the involvement of ACHP. In a March 1998 letter, ACHP advised the Board of ACHP's determination that the Board had not fully complied with NHPA requirements for the first two stages of the historic review process for the Enola Branch. In the meantime, SEA, which believed that only the Mitigation Phase of the NHPA process for the bridges remained open, had consulted with the SHPO and Conrail on appropriate mitigation for the identified bridges. SEA drafted a proposed MOA reflecting that consultation,[2] which was sent to the SHPO, ACHP and Conrail for their signatures later in 1998.

The SHPO declined to sign the MOA until the Board consulted with ACHP. ACHP, in turn, explained that it believed that its consideration of the draft MOA was untimely, as the draft MOA could be properly considered only after the issue of whether the entire line should be subject to an historic review was resolved. ACHP then formally referred the eligibility matter to the Keeper, who concluded that the entire Enola Branch was eligible for inclusion in the National Register.[3] Nevertheless, in 1999 the Board denied FAST's petition for reconsideration of the 1997 decision. The Board set out its view that the Identification Phase of the NHPA process had been completed in 1990 for the non-bridge parts of the line and that only the Mitigation Phase remained open and only as to the bridges. Given the impasse with ACHP, which had declined to comment on bridge mitigation, the Board decided to terminate its consultation with ACHP and to impose a section 106 condition consisting of the provisions of the unexecuted MOA as its bridge mitigation measures. FAST then sought judicial review.

[2] The MOA would have provided for photographic documentation of all of the historic bridges and the development of a public, interpretative display, in the form of a 6–8 minute video, outlining the history of the Enola Branch.

[3] The SHPO also had written a letter to the Pennsylvania Department of Transportation to the same effect.

C. The Court's FAST Decision

The court's concern that resulted in the remand was "less with the substantive results reached by the [Board] on the historic eligibility of the Enola Branch than with the procedures and reasoning the [Board] followed in reaching those results." The NHPA is a "stop, look, and listen" provision, and the court concluded that the Board had not "touched all the procedural bases." *FAST*, 252 F.3d at 263.

With respect to the Board's actions in the Identification Phase, the court found that the identification process under the ACHP regulations is a "fluid and ongoing one" in which changing perceptions of historical significance are considered. *Id.* Therefore, the court determined that, once ACHP brought the Keeper into the process, the Keeper's conclusions had to be considered. *Id.* at 264. The court was not persuaded that the Board had given the Keeper's determinations sufficient consideration. *Id.* The court also faulted the Board for not adequately involving ACHP in the process or considering evidence submitted by other parties (specifically Lancaster County) regarding the historic significance of the Enola Branch. *Id.* at 265–66. Finally, the court found that the Board had not followed the proper procedures for terminating consultation with ACHP, *id.* at 266–67, and directed that, on remand, the Board follow the procedures of the NHPA regulations in concluding the case, *Id.* at 267.

II. Reinitiation of the NHPA Section 106 Process

In accordance with the court's remand, SEA is conducting the NHPA process anew in this case. Below, SEA sets forth the steps it has taken to date and outlines its plans to complete this proceeding.

A. Identification of Potential Consulting Parties

SEA has undertaken consultations with ACHP, the SHPO, and other consulting parties, including the Commonwealth of Pennsylvania and the Lancaster County Planning Commission, to obtain information both on how to conclude the NHPA process here and on potential consulting parties. In addition to ACHP and the SHPO, SEA has identified 54 potential consulting parties.[4] SEA is serving a copy of this Notice on each of these parties, and will publish this Notice in the **Federal Register** to alert any additional consulting parties to the opportunity to take part in the ongoing NHPA process.

B. Identification Phase

As stated above, the identification of historic properties is the first phase of the section 106 process. As noted, in this case the Keeper has determined that the entire line is historic,[5] rather than only selected bridges and archeological sites.[6] Therefore, SEA will treat the entire line as historic in accordance with the Keeper's determination and the ACHP regulations.

C. Assessment Phase

As stated above, the Board generally assumes that abandonment of a rail line would adversely impact any properties

[4] These potential consulting parties include: parties previously involved in the case (Norfolk Southern Corporation, FAST, and the Keeper); members of Congress (Honorable Arlen Specter, United States Senate; Honorable Rick Santorum, United States Senate; and Honorable Joseph R. Pitts, United States House of Representatives); state leaders and agencies (Honorable Mark Schweiker, Governor; Pennsylvania Department of Transportation; Pennsylvania Public Utility Commission; Pennsylvania Bureau of State Parks; and Pennsylvania Department of Conservation and Natural Resources); tribes (Absentee-Shawnee Tribe of Oklahoma; Cayuga Nation; Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Oneida Indian Nation; Oneida Tribe of Indians of Wisconsin; Onondaga Indian Nation; Seneca Nation of Indians; Seneca-Cayuga Tribe of Oklahoma; St. Regis Mohawk Tribe; Stockbridge-Munsee Community of Wisconsin; Tonawanda Band of Seneca Indians; and Tuscarora Nation); local agencies and organizations (Atglen Borough, Chester County Planning Commission, Chester County Parks and Recreation Department, Delaware Valley Regional Planning Commission, Lancaster County Planning Commission, Lancaster County Department of Parks and Recreation, Bart Township Supervisors, Bart Township Planning Commission, Conestoga Township Supervisors, Conestoga Township Planning Commission, Eden Township Supervisors, Eden Township Planning Commission, Martic Township Supervisors, Martic Township Planning Commission, Parkesburg Borough, Providence Township Supervisors, Providence Township Planning Commission, Quarryville Borough Council, Quarryville Borough Planning Commission, Sadsbury Township Supervisors, Sadsbury Township Planning Commission, West Sadsbury Township Supervisors, and West Sadsbury Township Planning Commission); historic preservation organizations (Chester County Historic Preservation Network, Preservation Pennsylvania, Historic Preservation Trust of Lancaster County, and Central Pennsylvania Conservancy); Amtrak; and the Law Firm of Malatesta Hawke & McKeon LLP.

[5] Evidently, little if any track remains on the Enola Branch. However, in this case, "the historical eligibility of the line as a whole does not require the presence of the tracks and other railroad equipment." *See FAST*, 252 F.3d at 262.

[6] As explained above, the historic preservation condition imposed in the Board's 1997 decision covered only certain bridges and archeological sites on the Enola Branch.

involved that are identified as historic, unless it obtains evidence that there would be no adverse effect, and both ACHP and the SHPO agree with the Board that abandonment of the Enola Branch would adversely affect historic sites and structures.

D. Mitigation Phase

In order to develop appropriate mitigation, SEA requests additional information from all consulting parties regarding the physical condition of the Enola Branch. After the court issued its decision in *FAST*, SEA requested a description of the current condition of the rail line from Norfolk Southern Corporation (NS), which acquired the Enola Branch from Conrail in 1998.[7] NS submitted a letter stating that the road bed and embankments of the rail line are still intact, though there is substantial overgrowth in the area. While NS indicated that the Enola Branch has been subject to periodic inspections for right-of-way clean up and Amtrak's maintenance of certain power lines, NS stated that there has been no comprehensive inspection of the rail line and associated structures in the last 10 years.

The Enola Branch originally included 83 bridges, prior to Conrail's application for abandonment. In its letter, NS stated that approximately 65 grade-separated structures on the line remain in place and are in different states of usability. According to NS, the Pennsylvania Public Utility Commission has served orders for removal, conveyance to local municipalities, or assumption of maintenance responsibilities by the Commonwealth of Pennsylvania, regarding bridge structures on the rail line.

As the ICC explained in its decision adopting the rules that continue to govern the Board's implementation of the NHPA,[8] the agency's ability to protect historic properties is very limited. The Board cannot deny authority for a railroad to take an action that would otherwise meet the relevant statutory criteria solely on the ground that it would adversely affect historic resources. Moreover, with respect to rail line abandonments, the Board can impose historic preservation conditions only to the extent that the particular property is owned by the railroad seeking abandonment (either full ownership in fee or a long-term interest in the property) and the property has a sufficient nexus to the proposal under review. When the Board imposes historical preservation conditions on particular property, the Board cannot force the applicant to sell or donate its property, or impose a restrictive covenant upon the deed. Essentially, documentation of the historic resources (taking photographs or preparing a history) before they are altered or removed is the only form of nonconsensual mitigation the Board can require. Although the Board has limited authority to protect historic properties, if the consulting parties agree to undertake additional mitigation beyond what the Board may require (such as preservation of a resource), such consensual mitigation can be incorporated in the MOA.

As stated above, in the 1990's a proposed MOA was developed for the Enola Branch that would have provided for photographic documentation of all of the historic bridges to Pennsylvania's state standards, and the development of a public, interpretative display, in the form of a 6–8 minute video, outlining the history of the Enola Branch. SEA specifically requests comments on whether the provisions of this previously developed MOA proposal would constitute appropriate mitigation at this time and, if not, suggestions for additional or alternative mitigation measures.

E. Formulation of an MOA

Based on public comment in response to this Notice and other input that SEA receives from the SHPO, ACHP, the railroad and others, SEA expects over the next several months to develop, in conjunction with the consulting parties, appropriate measures to avoid, minimize, or mitigate adverse effects on the historic properties identified in this case. After such mitigation measures have been determined, SEA will incorporate the proposed mitigation into an MOA and then circulate, and—as required under the law—seek public comment on the MOA. SEA requests comments on how it can best publicize the proposed MOA. Once an MOA is signed, the NHPA review in this case will be complete in accordance with the NHPA and the court's decision, and the section 106 condition imposed in this case can be removed.[9]

III. Comments

SEA specifically invites comments from consulting parties and members of the public on the following:

1. Identification of additional consulting parties;
2. Any need for further assessment of adverse effects on the line;
3. Appropriate mitigation measures (including comments on the measures specified in the earlier MOA and suggestions for additional or alternative measures, as well as information regarding the current condition of the rail line);
4. Methods or outlets for publicizing a proposed MOA; and
5. Any other pertinent issues relevant to this proceeding.

Decided: October 15, 2002.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 02–27111 Filed 10–23–02; 8:45 am]

BILLING CODE 4915–00–P

[7] On June 23, 1997, NS and CSX Transportation Inc. sought permission from the Board to acquire Conrail and to divide its assets between them. On July 23, 1998, the Board approved the Conrail Acquisition. *CSX Corp., et al. & Norfolk Southern Corp., et al.—Control and Operation Leases/Agreements—Conrail Inc., et al.*, STB Finance Docket No. 33388 (decision No. 89) (STB served July 23, 1998). The Pennsylvania Rail Lines LLC, a subsidiary of Conrail, now owns the Enola Branch and leases it to NS.

[8] *See Implementation of Environmental Laws*, 7 I.C.C.2d 807, 828–29 (1991).

[9] Agency officials and consulting parties can expedite the section 106 process by addressing multiple steps simultaneously where appropriate, as long as the consulting parties and the public have an adequate opportunity to express their views and the SHPO (and Tribal Historic Preservation Officer(s), when involved) agree that it is appropriate. *See FAST*, 252 F.3d at 252; 36 CFR 800.3(g).

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Minority Bank Deposit Program Certification Form for Admission

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning form FMS 3144 "Minority Bank Deposit Certification Form for Admission."

DATES: Written comments should be received on or before December 23, 2002.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha Thomas-Mitchell, Risk Management Division, 401 14th Street, SW., Washington, DC 20227, (202) 874–6757.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Minority Bank Deposit Program Certification Form for Admission.

OMB Number: 1510–0048.

Form Number: FMS 3144.

Abstract: This form is used by financial institutions to apply for participation in Minority Bank Deposit Program. Institutions approved for acceptance in the program are entitled to special assistance and guidance from Federal agencies, State and local governments, and private sector organizations.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 150.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 75.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Bettsy Lane,

Assistant Commissioner, Federal Finance.

[FR Doc. 02–27112 Filed 10–23–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Oriska Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 2 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002 at 67 FR 44294.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 67 FR 44323, July 1, 2002.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html*. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: October 8, 2002.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, financial Management Service.

[FR Doc. 02–27113 Filed 10–23–02; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–27–89; FI–61–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–27–89 (TD 8366), Real Estate Mortgage Conduits; Reporting Requirements and Other Administrative Matters, and FI–61–91 (TD 8431), Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements (1.67–3, 1.860D–4, 1.860F–4, 1.6049–4 and 1.6049–7).

DATES: Written comments should be received on or before December 23, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: FI–27–89, Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters, and FI–61–91, Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements.

OMB Number: 1545–1018.

Regulation Project Number: FI–27–89 and FI–61–91.

Abstract: The regulations prescribe the manner in which an entity elects to be taxed as a real estate mortgage investment conduit (REMIC) and the filing requirements for REMICs and certain brokers.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 655.

Estimated Time Per Respondent: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 978.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 16, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–27159 Filed 10–23–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–63–84; EE–96–85]

Notice and Request for Comments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning and existing temporary regulation, EE–63–84 (TD 8073) and notice of proposed rulemaking, EE–96–85, Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984 (1.505(c)–1T, 1.1042–1T and 1.463–1T).

DATES: Written comments should be received on or before December 23, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984.

OMB Number: 1545–0916.

Regulation Project Number: EE–63–84 (temporary regulation) and EE–96–85 (notice of proposed rulemaking).

Abstract: The regulations provide rules relating to effective dates and certain other issues arising under sections 91. 223 and 511–561 of the Tax Reform Act of 1984. The regulations affect qualified employee benefit plans, welfare benefit funds, and employees receiving benefits through such plans.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and individuals.

Estimated Number of Respondents: 12,800.

Estimated Time Per Respondent: 31 minutes.

Estimated Total Annual Burden Hours: 6,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 16, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–27160 Filed 10–23–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–102–86]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–102–86 (TD 8316), Cooperative Housing Corporations (1.216–1(d)(2)).

DATES: Written comments should be received on or before December 23, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*) Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Cooperative Housing Corporations.

OMB Number: 1545–1041.

Regulation Project Number: PS–102–86 Final.

Abstract: Section 1.216–1(d)(2) of this regulation allows cooperative housing corporations to make an election whereby the amounts of mortgage interest and/or real estate taxes allocated to tenant-stockholders of the corporation will be based on a reasonable estimate of the actual costs attributable to each tenant-stockholders based on the number of shares held in the corporation.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 625.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 16, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–27161 Filed 10–23–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 67, No. 206
Thursday, October 24, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 48–2002]

Foreign-Trade Zone 185—Culpeper, Virginia; Application For Foreign-Trade Subzone Status, Flint Ink North America Corporation (Pigments, Inks, and Varnish Products) Weyers Cave, VA

Correction

In notice document 02–26416 beginning on page 64095 in the issue of Thursday, October 17, 2002, make the following correction:

On page 64096, in the first column, in the third full paragraph, in the sixth line, "January 2, 2003" should read "December 31, 2002".

[FR Doc. C2–26416 Filed 10–23–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–1–000]

El Paso Natural Gas Company; Notice of Application

October 10, 2002.

Correction

In notice document 02–26386 beginning on page 64108 in the issue of Thursday, October 17, 2002, make the following correction:

On page 64108, in the second column, the docket number is corrected to read as set forth above.

[FR Doc. C2–26386 Filed 10–23–02; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
October 24, 2002

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for *Chlorogalum purpureum*, a Plant From the South Coast Ranges of California; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG75

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for *Chlorogalum purpureum*, a Plant From the South Coast Ranges of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for two varieties of purple amole: *Chlorogalum purpureum* var. *purpureum* (purple amole) and *Chlorogalum purpureum* var. *reductum* (Camatta Canyon amole). A total of approximately 2,443 ha (5,910 ac) of land fall within the boundaries of the critical habitat designation. Critical habitat is located in San Luis Obispo and Monterey counties, California. Located on Federal, State, and private lands, this critical habitat designation will require consultation by the Service under section 7 of the Act on actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation.

We have revised the proposal to eliminate lands at Camp Roberts under section 3(5)(A), and lands at Ft. Hunter Liggett under section 4(b)(2). It is our policy that if any areas containing the primary constituent elements are currently being managed to address the conservation needs of *Chlorogalum purpureum* management or protection, these areas would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act and would not be included in this final rule. We have determined that this is the case at Camp Roberts due to their having an approved Integrated Natural Resources Management Plan which addresses the conservation needs of *Chlorogalum purpureum*.

We have also determined that the direct and indirect costs to the Army, including reduction in military readiness, from designation of critical habitat at Ft. Hunter Liggett are such that the benefits of excluding those lands exceed the benefits of their inclusion.

DATES: This rule becomes effective on November 25, 2002.

ADDRESSES: Comments and materials received, as well as supporting documentation used, in the preparation of this final rule will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA, 93003.

FOR FURTHER INFORMATION CONTACT: Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section) (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

The genus *Chlorogalum* is a member of Liliaceae (lily family). *Chlorogalum purpureum* is endemic to clay soils that occur in the south coast ranges of Monterey and San Luis Obispo counties. *Chlorogalum purpureum* var. *purpureum* occurs in the Santa Lucia Range of southern Monterey County on lands managed by the U.S. Army Reserve (Army Reserve) at Fort Hunter Liggett, and in northern San Luis Obispo County on lands managed by the California Army National Guard (CANG) at Camp Roberts. *Chlorogalum purpureum* var. *reductum* occurs in one region of the La Panza Range of San Luis Obispo County on both private lands and public lands managed by the U.S. Forest Service (the Los Padres National Forest (LPNF)) and California Department of Transportation (CalTrans). The two varieties of *Chlorogalum* were listed as threatened species on March 20, 2000 (65 FR 14878).

Chlorogalum purpureum is a low-growing lily that forms a rosette at the base of the plant (basal rosette) that is made up of linear and flat, bright green leaves. It is the only member of the genus *Chlorogalum* with bluish-purple flowers that open during daylight hours. *Chlorogalum purpureum* produces a rosette of typically 4 to 7 basal leaves that are 2 to 5 millimeters (mm) (0.1 to 0.2 inch (in)) wide with wavy margins. The bulb is between 2.5 and 3 centimeters (cm) (0.98 to 1.2 in) and is found in the upper few inches of soil. The inflorescence (flower-cluster of a plant or arrangement of the flowers on the flowering stalk) produces bluish-purple flowers in a raceme (single stem with multiple branches). Each flower has six ovules (structure that develops into a seed if fertilized), six tepals (petals and sepals that appear similar), and six stamens (pollen-producing male organs) with bright yellow anthers (pollen sacs). Most fruits that have been examined, both in the field and under cultivation, produce between three and six seeds (D. Wilken, Santa Barbara Botanic Garden, *in litt.*, 2001). *Chlorogalum purpureum* var. *purpureum* has an inflorescence that is 25 to 40 cm (10 to 16 in) high, in contrast to *C. p.* var. *reductum* which has a shorter inflorescence that is 10 to 20 cm (4 to 8 in) high (Hoover 1964, Jernstedt 1993, Wilken 2000). Studies are currently underway to examine the phylogenetic relationships within *Chlorogalum* species (D. Wilken, *in litt.*, 2001).

Chlorogalum purpureum is a summer-dormant perennial herb that forms a bulb. The inflorescence develops during early spring, followed by flowering and fruit development during May and June. By the time the fruit has matured, the leaves wither and the inflorescence dries and turns light brown in color. Reproduction is primarily by seed, and the seed set apparently increases with insect pollination (D. Wilken, *in litt.*, 1998). Like other members of the lily family, *C. purpureum* is probably in a mycorrhizal relationship with a fungus (a close association between the plant and soil fungus, where the fungus aids in nutrient and water uptake), which can alter growth and competitive interactions between species (Allen 1991). The taxon has also been observed to grow on undisturbed soils that are cryptogamic or have cryptogamic crusts (E. L. Painter, pers. comm., 2002). Cryptogamic crusts consist of nonvascular photosynthetic plants (primarily cyanobacteria, green algae, lichens, and mosses) that protect the soils from erosion, aid in water infiltration, augment sites for seed germination, aid in carbon and nitrogen fixation, and increase soil nutrients (Beymer 1992, Belnap *et al.* 2001). These special crusts may enhance the habitat conditions (*e.g.*, retain soil moisture, reduce wind and water erosion, contribute to soil organic matter, etc.), thus increasing the likelihood that young bulbs will survive over the long term. Although the relationship is not well understood and more research is needed, presence of cryptogamic crusts is also known to discourage annual weed growth by functioning as a living mulch (Belnap *et al.* 2001).

Chlorogalum purpureum var. *purpureum*

Chlorogalum purpureum var. *purpureum* is located on Fort Hunter Liggett and Camp Roberts military lands, which are located on the eastern side of the Santa Lucia Range in southern Monterey and northern San Luis Obispo counties. The known populations primarily exist within an open grassland community, with a smaller number of individuals found within scattered oak woodland communities and open areas within shrubland communities. A low amount of cover of herbaceous species is present, possibly reducing competition for resources. Cryptogamic crusts are frequently found where *C. p.* var. *purpureum* occurs in areas that have had little to no disturbance (E. L. Painter, pers. comm., 2001).

The species was first described by Townsend Stith Brandegee in 1893. Following the initial collection and description, historic occurrences of plants were identified at "Milpitas Ranch," "the plain west of Jolon," "near Jolon," "open grassy areas near Jolon," and a number of other locations within what is currently Fort Hunter Liggett property (Hoover 1940, Skinner and Pavlik 1994, Matthews 1997 and Painter 1999 *in* Wilken 2000). Although currently known to exist only on military property at Fort Hunter Liggett and Camp Roberts, recent surveys along the boundary of Training Area 13 at Fort Hunter Liggett suggest that the species may be found on privately-owned property adjacent to Fort Hunter Liggett (Wilken 2000).

While a thorough survey of the installation has not yet been completed, *Chlorogalum purpureum* var. *purpureum* has been found at a number of sites on Fort Hunter Liggett, including the cantonment, Ammunition Supply Point (ASP), and Training Areas 10, 13, 22, 23, 24, and 25. Surveys of *C. p.* var. *purpureum* conducted at Fort Hunter Liggett have found the plants to occur in scattered clusters. Recent surveys have characterized the species' habitat, including general soil types, topography, and microhabitat communities. Depending on the location, plants may occur on both deep and relatively thin soils (Wilken 2000). Most of the soils are loamy, underlain by clay, and support fine gravel on the surface that is generally less than 5 mm (0.2 in) in diameter (Wilken 2000). Cryptogamic crusts with a dominant component of early-stage cyanobacteria have been observed frequently on the installation; advanced-stage cryptogamic crusts, that include mosses, have been observed in areas of the cantonment where little to no activities appear to have disturbed the sites (E. L. Painter, pers. comm., 2001, 2002). Cyanobacterial organisms within a cryptogamic crust may be visible as black filaments on or near the soil's surface, primarily when soil conditions are moist (Belnap *et al.* 2001).

During surveys conducted in 1999, most (78 percent) of the sites where the species occurs were associated with flat topography (Wilken 2000). The majority of the other sites were on slopes of less than 10 percent (Wilken 2000). Sites were commonly associated with flat topography or found along the base of hills; a few populations occurred along ridge-top terraces (H. Crowell, Service, pers. obs., 2001; D. Wilken, *in litt.*, 2001; Wilken 2000). These areas are between 300 and 620 meters (m) (1,000 and 2,050 feet (ft)) in elevation. Examination of digital data shows a small percentage of plants occur on slopes up to 50 percent at Fort Hunter Liggett. No strong association appears to exist between presence of plants and slope aspect (Wilken 2000).

Of the known sites surveyed in 1999, approximately 42 percent were found in grassland communities, 29 percent were found between tree canopies in oak savanna or woodland communities, 13 percent were found to occur along ecotones between grassland and either oak woodland or shrubland communities, and the remaining were located within open areas between shrub species, most commonly *Eriogonum fasciculatum* (California buckwheat) and *Adenostoma fasciculatum* (chamise) (Wilken 2000). Within the grassland community, the most common grass species (*e.g.*, nonnative *A. caryophylla* and *B. hordeaceus*) did not always dominate in terms of frequency or cover; the most frequent species were native annual forbs such as *Lasthenia californica*, *Linanthus liniflorus*, *Micropus californicus*, and *Navarretia* spp. (Navarretia) (Wilken 2000). Insect species, which may contribute to *C. p.* var. *purpureum* pollination, were observed during recent surveys and include unidentified native bees and an unidentified, small blue butterfly (L. Clark, Fort Hunter Liggett, pers. comm., 2002). Detailed studies of pollinators need to be conducted. During surveys conducted by the Fort Hunter Liggett Environmental Office since 1999, new patches of plants have been documented within the same range and localities of known occurrences (*i.e.*, Training Areas 10, 13, 22, 25, the ASP and the Cantonment.)

Surveys conducted at Camp Roberts have led to the discovery of *Chlorogalum purpureum* var. *purpureum* at one location on the west side of the installation. This occurrence is almost entirely restricted to claypan soils, which are frequently cryptogamic (CANG 2001a). The *C. p.* var. *purpureum* population (estimated at approximately 10,000 individuals in 2000 and over 200,000 individuals in 2001) at Camp Roberts occupies approximately 81 ha (200 ac) and occurs in annual grasslands north of the Nacimiento River in Training Areas O2 and O3 (CANG 2001a). *Chlorogalum purpureum* var. *purpureum* predominately occurs on soils with a high concentration of pebbles or gravel underlain by hard-packed clay (CANG 2001a). The claypan soils are of the Placentia complex (sandy loam soils, underlain by clay soils, which become very hard on a 5 to 9 percent slope), with a much smaller percentage of plants occurring on the Arbuckle-Positas complex (very deep, well-drained sandy and gravelly loam soils with a 9 to15 percent slope) (USDA 2000, CANG 2001a). As at Fort Hunter Liggett, the frequently observed cryptogamic soil crusts are composed primarily of cyanobacteria (E. L. Painter, pers. comm., 2001). The elevation of the *C. p.* var. *purpureum* population is lower than what is found at Fort Hunter Liggett, ranging between 244 and 256 m (800 and 840 ft) at Camp Roberts. At Camp Roberts, *C. p.* var. *purpureum* occupies microhabitat sites found within open grasslands or surrounded by scattered oak woodlands. Little cover by other grasses and forbs is present where *Chlorogalum purpureum* var. *purpureum* is found. Common plant associates include *Erodium* spp., *Hemizonia* spp. (tarplant, tarweed), *Trichostema lanceolatum* (vinegar weed), *Eremocarpus setigerus* (turkey mullein, dove weed), *Bromus* spp. (brome), *Amsinckia* spp. (fiddleneck), and *Nassella* spp. (needlegrass) (J. Olson *in* CANG 2001a). During recent surveys, *Erodium* spp. were the most common associate (J. Olson in CANG 2001a). Based on their recent surveys, researchers at Camp Roberts believe grazing by sheep (through a Camp Roberts agricultural lease) may be beneficial to *C. p.* var. *purpureum* by reducing competition from nonnative herbaceous species and found that the direct impact to the plants was minimal during surveys (CANG 2000a). However, more research is needed to test this hypothesis.

Chlorogalum purpureum var. *reductum*

Chlorogalum purpureum var. *reductum* has been found at only two sites in central San Luis Obispo County. The larger site, located near Camatta Canyon, is located on both sides of the two-lane State highway 58 on a narrow, flat-topped ridge that supports blue oak savannah on Forest Service lands within

the LPNF. The population continues north of the highway on private lands. A few plants (213 individuals counted in 2000) also exist on the right-of-way along the highway, which is designated as a Botanical Management Area by CalTrans (J. Luchetta, CalTrans, *in litt.*, 2001). The taxon occurs on hard, red claypan soils on flat or gently sloping terrain. *Chlorogalum purpureum* var. *reductum* occupies microhabitat sites found within open grasslands, oak (*Quercus douglasii*) woodlands and oak savannah, and open areas between shrub species, most commonly chamise (Borchert 1981, Warner 1991). Cover from other herbaceous species is minimal, with most herbaceous species not growing above 10 cm (4 in) high (Borchert 1981). As with *C. p.* var. *purpureum*, plants appear to be associated with a cryptogamic crust (E. L. Painter, pers. comm., 1998). The elevation of the larger site, located near Camatta Canyon, is between 305 and 625 m (1,000 and 2,050 ft). This population is estimated to cover approximately 3 ha (8 ac) on the south side of the highway, with additional plants found on private property on the north side of the highway covering likely a smaller amount of area (Gaskin 1990, Lopez 1992). Site visits during 2001 revealed a decrease in the number of flowering plants compared to 1994 and 1995 (A. Koch, California Department of Fish and Game (CDFG), pers. comm., 2001). The second site is located approximately 5 to 8 kilometers (km) (3 to 5 miles (mi)) south of the large site and is estimated to occupy less than 0.1 ha (0.25 ac), consisting of several hundred plants in two or more patches on private land (D. Chipping, California Polytechnic State University, *in litt.*, 1997; A. Koch, pers. comm., 2001).

The well-drained red clay soils where this taxon occurs contain a large amount of gravel and pebbles (Hoover 1964, Lopez 1992). A soil survey at LPNF found this general area to be made up of the Modesto-Yorba-Agua Dulce families of soils. Modesto soils (30 percent) are soft, grayish-brown coarse sandy loams with 10 percent pebbles. Yorba soils (30 percent) are slightly hard, light olive-brown loams with 10 percent pebbles. Agua Dulce soils (25 percent) are soft, brown sandy loams with 10 percent pebbles and 2 percent cobbles (USDA 1993). However, this soil survey may have been too general to have captured the exact soil type at this site. A substantial amount of gopher activity has been observed surrounding, but not within, the large *Chlorogalum purpureum* var. *reductum* population, suggesting that the hard soils where the plant occurs may be difficult for gophers to move through (M. Borchert, LPNF, pers. comm., 2001). Native plants associated with *C. p.* var. *reductum* include *Achyrachaena mollis* (blow-wives); chamise; *Allium* spp. (onion); *Brodiaea coronaria* (crown brodiaea); *Calystegia malacophylla* (morning-glory, Sierra false bindweed); *Clarkia purpurea* (winecup clarkia); *Crassula erecta* (= *Crassula connata* var. *connata*, sand pygmy weed); *Dichelostemma pulchellum* (= *Dichelostemma capitatum* ssp. *capitatum*, blue dicks); *Eriogonum elongatum* (wild or longstem buckwheat); *Eriogonum fasciculatum* (California buckwheat); *Lasthenia chrysostoma* (goldfields); *Layia platyglossa* (tidy-tips); *Lepidium* spp. (peppergrass); *Linanthus liniflorus* (narrow flowered flaxflower); *Lupinus* spp. (lupine), including *L. concinnus* (Bajada lupine); *Malacothrix* spp. (desert dandelion); *Matricaria matricarioides* (pineapple weed); *Micropus californicus* (slender cottonweed); *Castilleja* spp. (Indian paintbrush); *Triphysaria* spp. (owl's clover); *Pinus sabiniana* (gray or foothill pine); *Plagiobothrys nothofulvus* (popcorn flower); *Poa* spp. (bluegrass); *Quercus douglasii* (blue oak); *Quercus lobata* (valley oak); *Sanicula* spp. (sanicle), including *Sanicula bipinnatifida* (purple sanicle); *Vulpia* microtachys *var. pauciflora* (Pacific fescue); and *Zigadenus* spp. (death camas); and nonnative plants, including *Avena barbata* (slender wild oat), *Bromus hordeaceus* (soft brome), *Bromus rubens* (red brome), *Erodium botrys* and *E. moschatum* (storksbill, filaree), *Hypochaeris glabra* (smooth cat's ear), and *Schismus barbatus* (Mediterranean grass).

Chlorogalum purpureum var. *purpureum* and *C. p.* var. *reductum* appear to be narrowly distributed. Some discontinuities in their distribution are likely due to unsuitable intervening habitat and establishment of roadways that fragment the existing patches of plants. In addition, *C. p.* var. *purpureum* distribution was likely affected by the settlement of Jolon in Monterey County, row crop farming, establishment of nonnative invasive plant species such as *Centuarea solstitialis* (yellow star-thistle) and annual nonnative grasses, and possibly the establishment of the San Antonio Reservoir in southern Monterey County. Habitats for both varieties of *Chlorogalum* may change as a result of rainfall, fires, and other naturally occurring events. These factors may cause the habitat suitability of given areas to vary over time, thus affecting the distribution of *C. p.* var. *purpureum* and *C. p.* var. *reductum*.

Previous Federal Action

Federal actions for *Chlorogalum purpureum* began when a report (House Doc. No. 94–51) of plants considered to be endangered, threatened, or extinct in the United States was prepared by the Smithsonian Institution and presented to Congress on January 9, 1975. Both *C. p.* var. *purpureum* and *C. p.* var. *reductum* were included as endangered plant species. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) stating its acceptance of the report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3)) of the Act and its intention to review the status of the plant taxa named therein.

On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This list included *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum* based on comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. In 1978, amendments to the Endangered Species Act required that all proposals more than two years old be withdrawn. On December 10, 1979, the Service withdrew the portion of the June 16, 1976 proposal that had not been made final, including *C. p.* var. *purpureum* and *C. p.* var. *reductum*.

On December 15, 1980, the Service published an updated Candidate Notice of Review for plants (45 FR 82480) which included *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum* as category 2 candidates (species for which data in our possession indicated listing may be appropriate, but for which additional biological information was needed to support a proposed rule). Both *Chlorogalum* taxa were included in the revised plant notices of review that were published on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144) as category 1 candidates (species for which we had on file sufficient information on biological vulnerability and threats to support the preparation of listing proposals, but issuance of the proposed rule was precluded by other pending listing proposals of higher priority). In the Notice of Review published February 28, 1996 (61 FR 7596), we discontinued the use of

different categories of candidates, and defined "candidate species" as those meeting the definition of former category 1. We maintained *C. purpureum* var. *purpureum* and *C. p.* var. *reductum* as candidate taxa in that Notice.

The proposed rule to list both varieties of *Chlorogalum purpureum* as threatened species was published in the **Federal Register** on March 30, 1998 (63 FR 15158). The final rule listing them as threatened was published in the **Federal Register** on March 20, 2000 (65 FR 14878).

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time *Chlorogalum purpureum* was listed, we found that designation of critical habitat was prudent but not determinable and stated that we would designate critical habitat once we had gathered the necessary data.

On June 17, 1999, our failure to issue final rules for listing *Chlorogalum purpureum* and eight other plant species as endangered or threatened, and our failure to make a final critical habitat determination for the nine species was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *Babbitt* (Case No. C99–2992 (N.D.Cal.)). On May 22, 2000, the judge signed an order for the Service to propose critical habitat for the species by September 30, 2001, and to make a final critical habitat designation for the species by May 1, 2002. Subsequently, the parties agreed to extend the deadline to submit a proposed critical habitat designation for publication in the **Federal Register** to November 2, 2001 and a final critical habitat designation to October 11, 2002. The proposed rule to designate critical habitat for the species was published on November 8, 2001 (67 FR 56508). In the proposal, we proposed to designate approximately 8,898 ha (21,980 ac) of land in Monterey and San Luis Obispo counties as critical habitat. The publication of the proposed rule opened a 60-day public comment period, which was scheduled to close on January 7, 2002. Due to unforeseen circumstances resulting from the closure of the Department of the Interior's internet service and subsequent inability for public comments to be sent through electronic mail by the closing date, comments were accepted until January 14, 2002. On May 7, 2002 we published a notice of availability of the draft economic analysis on the proposed determination (67 FR 30644). On May 15, 2002, we published a notice in the Monterey Herald and the San Luis Obispo Telegram Tribune announcing the reopening of the comment period on the proposal to designate critical habitat for *C. purpureum*. This second public comment period closed on June 6, 2002.

Summary of Comments and Recommendations

We solicited comments from appropriate Federal, State, and local agencies, scientific organizations, and other interested parties. Additionally, we invited public comment through the publication of a notice in the Monterey Herald on November 15, 2001, and in the San Luis Obispo Telegram Tribune on November 16, 2001, on the proposed critical habitat; we invited public comment again on May 15, 2002, for the publication of the draft economic analysis. We received individually written letters from 24 parties, which included 5 designated peer reviewers, 5 Federal agencies, 1 county jurisdiction outside of California, and 13 private citizens or interested nonprofit organizations. One Federal agency provided a letter commenting on the proposed critical habitat and one commenting on the draft economic analysis. One additional letter was received from a private party after the closing date. Of the 24 parties responding individually, 20 supported the proposed designation, 4 were opposed, and no responses were neutral. Ten of the individual letters that supported the proposal appeared to be identical. The four commenters opposing the proposal specifically opposed designation of critical habitat on lands they own or manage on Fort Hunter Liggett and Camp Roberts and requested that these areas be excluded from critical habitat designation.

We reviewed all comments received for substantive issues and new information regarding critical habitat and *Chlorogalum purpureum*. Similar comments were grouped into four general issues (*i.e.*, Biological Justification and Methodology, Economic Analysis, Site-specific Areas and Other Comments, Legal and Procedural Comments) relating specifically to the proposed critical habitat determination and draft economic analysis on the proposed determination. These are addressed in the following summary.

Issue 1: Biological Justification and Methodology

Comment 1: The proposed rule was not based on the best scientific data available, thus resulting in a "broad-brush" approach to the critical habitat proposal. The commenter believed the proposed critical habitat includes lands that do not contain the primary constituent elements (especially soils and plant communities).

Our Response: We disagree that the rule was not based on the best scientific data available. As stated in the proposed rule, we are required to make decisions based on the best information available at the time of designation. Our policy on information standards is found under the section entitled "Critical Habitat" in the rule. It states that we should use the listing package for the species as well as additional information obtained from recovery plans, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (*i.e.*, gray literature). In addition, we have consulted with biologists and experts who are familiar either with the species or the geographic area in which it occurs. The final critical habitat rule also incorporates new life-history information submitted during the comment periods by Fort Hunter Liggett and various individuals. Many new locations of *Chlorogalum purpureum* var. *purpureum* were reported to us following the publication of the proposed rule. In all cases, these sites occurred within the proposed critical habitat boundary. Therefore, we are confident that the GIS model we used to identify the proposed critical habitat boundaries represents the best current assessment of habitat that is essential for the long-term conservation of this taxon.

As stated in the proposed and final rules under the section entitled "Criteria Used to Identify Critical Habitat," we made an effort to avoid developed areas, structures, facilities, or unsuitable areas that are unlikely to contain the primary constituent elements of *Chlorogalum purpureum* habitat. However, we did not map critical habitat in sufficient detail to exclude all areas not likely to contain the primary constituent elements essential for the conservation of the species (*i.e.*, too small a scale). Federal actions conducted in areas within the boundaries of the mapped

units that do not contain any of the primary constituent elements therefore would not trigger a section 7 consultation unless those activities may affect the species or primary constituent elements in the adjacent critical habitat.

Comment 2: Eleven commenters (including 10 identical comment letters) recommended that we conduct thorough surveys (preferably before the final designation) for plants at Fort Hunter Liggett and Camp Roberts to ascertain the full extent of the range of *Chlorogalum purpureum* var. *purpureum*. They suggested that optimal habitat for *C. purpureum* appears to be associated with the presence of cryptogamic crusts (biological soil crusts composed of cyanobacteria, green algae, lichens, mosses, microfungi, and other bacteria). Therefore, it seems appropriate to survey and map the occurrences of such crusts at both installations. Additionally, they recommended that surveys should be focused on areas with other suitable habitat features and species compositions, and with known historical occurrences.

Our Response: Both the Army Reserve at Fort Hunter Liggett and the CANG at Camp Roberts have conducted surveys for *Chlorogalum purpureum* var. *purpureum* in multiple areas containing suitable habitat with associated species (R. Root, pers. comm. 2002, L. Clark, pers. comm. 2002, D. Wilken 2000). Additional distribution surveys are expected by both installations according to the Service's review of recent draft INRMP documents or conversations with installation biologists (H. Crowell, pers. comm. 2002). In the last decade, surveys conducted for the military by Colorado State University, the Santa Barbara Botanic Garden, Jones and Stokes Associates, and the Fort Hunter Liggett Environmental Office have documented approximately 685 acres of *C. p.* var. *purpureum* of varying densities on the Fort Hunter Liggett installation (Fort Hunter Liggett unpublished digital data, 2002). Each year, the Fort Hunter Liggett Environmental Office continues to discover new sites where *Chlorogalum purpureum* var. *purpureum* occurs during their environmental review process for ongoing activities on the installation. However, new sites identified are generally clustered within the known range on Fort Hunter Liggett.

Chlorogalum purpureum var. *purpureum* was first discovered at Camp Roberts in 2000 (CANG 2001b). Approximately 200 acres of varying densities of plants have been documented in one location on the Camp Roberts installation based on surveys conducted by biologists from the Santa Barbara Botanic Garden, the Jepson Herbarium, and the Camp Roberts Environmental Office. Fairly thorough surveys have been conducted at Camp Roberts in 2000 and 2001 by the Santa Barbara Botanic Garden and the Camp Roberts Environmental Office staff and consultants; sensitive plant surveys will continue throughout the installation regularly (R. Root, CANG, pers. comm., 2002). According to their Integrated Natural Resource Management Plan (INRMP), an amendment to their INRMP, and recent coordination meetings, Camp Roberts also plans to survey and monitor impacts of rotational grazing, effects of military training activities on *Chlorogalum purpureum* var. *purpureum*, and the taxon's association with cryptogamic soils (CANG 2001b; R. Root, pers. comm., 2002). These studies and surveys will be conducted as part of their long-term *Chlorogalum purpureum* var. *purpureum* monitoring program.

Based on the life-history characteristics of the species (*e.g.*, timing of flowering, annual dormancy, etc.) there is a narrow period each year when the taxon is identifiable and within which surveys can be conducted. In addition, surveys are needed for multiple years to determine presence or absence of the species due to its potential to remain seasonally dormant for an extended period of time. The ongoing life-history study conducted at Fort Hunter Liggett has found known individual mature plants to be dormant for at least three years, indicating that it is likely common for this species to remain dormant during the growing season (Liz Clark, Fort Hunter Liggett, pers. comm., 2002). During dormancy, *Chlorogalum purpureum* is not detectable on the surface. Thus, thorough surveys to document the full range of *C. purpureum* in suitable habitat throughout the installation will likely require multiple years to be completed. In summary, new *C. p.* var. *purpureum* sites are being found within previously known locations at Fort Hunter Liggett, and the 2000 discovery of the Camp Roberts population is concentrated within one location. Additional surveys and research studies are expected to occur at both installations during the next five years that will assist both the Service and the military agencies in determining additional occurrences of *C. purpureum*, impacts of activities, and the taxon's association with other biological features (*e.g.*, cryptogamic crusts). While additional survey information would be helpful, we are using the best information available at this time, and we do not believe the lack of additional surveys hinders our ability to evaluate which areas should be designated as critical habitat.

Comment 3: One commenter questioned why Camp Roberts was included in the proposed critical habitat designation when the Service did not know *Chlorogalum purpureum* occurred there at the time the species was listed. The commenter specifically asked "why critical habitat within the geographic area occupied by the taxon at the time the species was listed would be inadequate to ensure the conservation of the species."

Our Response: While we were unaware of the Camp Roberts population at the time the species was listed, we believe that, based on information we have received regarding the Camp Roberts population and the species' life history, the population at Camp Roberts falls within the geographic area occupied by the species at the time it was listed. Although there are no historical records of the taxon *C. p. purpureum* at the Camp Roberts location, the location of its discovery in 2000 still falls within the range of the species, which, at the time of listing, ranged from Fort Hunter Liggett in southern Monterey County to the La Panza Range, LPNF, in San Luis Obispo County where *C. p.* var. *reductum* is known to occur. Because *C. p.* var. *purpureum* also has such a restricted range (*i.e.*, found at only two locations), it was important to include both locations in the proposed critical habitat. However, we have removed the Camp Roberts Unit from the final critical habitat because adequate conservation measures are now in place for the taxon. This removal is discussed further in comment #17 and the "Relationship of Critical Habitat to Military Lands" and "Summary of Changes from the Proposed Rule" sections of this document.

Comment 4: One commenter questioned the Service's statement that "* * *some areas not included in the critical habitat designation * * *may include habitat appropriate for introduction of *Chlorogalum purpureum* in the future." The commenter questioned whether the Service refers to "introduction" of *C. purpureum* into unoccupied, suitable habitat in the future as an introduction by natural or human means.

Our Response: If an event triggers a decline in the *Chlorogalum purpureum* population to such an extent that human-induced introduction is warranted to prevent extinction of the species, it may be necessary for the recovery of the species to "introduce" plants by human means. Introduction of plants would occur in suitable areas that the plant could naturally re-colonize, but is impeded by existing threats. These types of actions are more appropriately addressed as part of recovery planning for this species.

Comment 5: One commenter stated "scientific data is lacking to support the Service's conclusion that military activities are likely to destroy any crypotgamic crusts and that *Chlorogalum purpureum* relies on cryptogamic crusts."

Our Response: We disagree with the commenter's interpretation that the Service stated that *Chlorogalum purpureum* relies on cryptogamic crusts in the proposed critical habitat designation. We stated that "the taxon frequently grows on soils that are cryptogamic or have cryptogamic crusts;" "these special crusts may enhance the habitat conditions, thus increasing the likelihood that young bulbs will survive over the long term;" and that certain activities "will likely destroy any cryptogamic crusts that are present, thus negatively affecting vascular plant germination and decreasing the amount of nutrients available for proper plant development." While we believe there may be an association between the species and cryptogamic crusts, we have no evidence demonstrating the relationship.

At least one species expert has identified a possible relationship between *Chlorogalum purpureum* and the presence of cryptogamic crusts (E. L. Painter, pers. comm., 1998, 2001, 2002). Therefore, we believe it is important to examine this association further when considering the long-term conservation and recovery of this species. Cryptogamic crusts are good indicators of physical disturbance, such as livestock, human foot traffic, and motorized vehicles (Belnap 1995 *in* Belnap *et al.* 2001). These activities can destroy the soil structure by compacting it into an impermeable surface layer that causes reduced infiltration rates and increased surface runoff (Belnap *et al.* 2001). Vehicles can also turn soils over and bury crustal organisms. Disturbance that removes or kills crustal organisms results in greater impact and slower recovery of the soil surface than disturbance that leaves crushed crust in place (Belnap *et al.* 2001). In addition, preliminary Land Condition Trend Analysis (LCTA) data from Fort Lewis, Washington, has documented negative impacts to cryptogamic crusts and vegetation in grassland ecosystems due to uses by M1A1 Abrams tanks, which are also used at Camp Roberts and Fort Hunter Liggett. We believe it is important to consider these potential vehicles impacts on cryptogamic soils (during *C. purpureum* monitoring and LCTA monitoring at Fort Hunter Liggett and Camp Roberts) when examining long-term effects on *C. purpureum* and its habitat, and potential impacts to other federally threatened and endangered species.

Comment 6: One commenter stated that scientific data is lacking to support the Service's conclusion that the model used for the proposed critical habitat designation for *Chlorogalum purpureum* var. *purpureum* (based on soil type) should be expanded to include additional areas beyond those identified in the model (*i.e.*, areas between the model boundaries and the nearest ridgeline). Additionally, the commenter stated that the Service inappropriately included formerly cultivated areas within the proposed critical habitat boundary.

Our Response: We disagree with the comment that formerly cultivated areas were inappropriately included within the proposed critical habitat boundary. We believe that habitat within formerly cultivated areas still contains the appropriate soil and vegetation types (which are crucial physical components the species requires) that could support *Chlorogalum purpureum* var. *purpureum*. These areas are essential to the conservation of the species because the species will require areas for dispersal. Some formerly cultivated areas are identified within a zone that provides connectivity between populations, and thus supports pollinator activity and gene flow between patches of plants, and are thus also essential to the conservation of the species.

During preparation of the proposed critical habitat designation for this species, we used SPOT Corporation 30 meter Imagery, dated June 1993, in an attempt to exclude areas that we knew were under cultivation or were formerly cultivated and were likely not essential to the conservation of the species. For the final critical habitat designation, we also excluded all areas identified by the military who provided additional information that was not available for the proposed rule. These excluded areas are formerly cultivated lands found throughout the proposed critical habitat on FHL property, or areas that do not provide population connectivity between patches of plants.

Issue 2: Economic Comments

Comment 7: Two commenters believed the negative economic impact on the CANG, the Army Reserve, and their military missions outweighs the benefit of the proposed critical habitat designation. The commenters believed a critical habitat designation would cause adverse economic impacts, disrupt the military's ability to perform their mission, and require additional consultation and technical support for new consultations. One of the commenters believed the critical habitat designation at Fort Hunter Liggett would require rescheduling of military training until consultations are completed, thus increasing the costs for modifying or moving the existing infrastructure to support relocated training activities, and diverting resources from conservation management to administrative efforts for the Army and the Service.

Our Response: We recognize the direct costs identified by the military are significant, and indirect costs and impacts on military training and readiness are even greater.

The proposed critical habitat area on Camp Roberts military installation is essential to the conservation of *Chlorogalum purpureum* var. *purpureum*. However, designation of critical habitat is not necessary due to the long-term conservation measures that the CANG has agreed to implement as part of their INRMP. This is further discussed in the section entitled "Relationship of Critical Habitat to Military Lands."

The lands proposed to be designated on Fort Hunter Liggett are essential for the conservation of *Chlorogalum purpureum* var. *purpureum*. These lands currently provide habitat for the species, and have done so since military training commenced there in the 1940s. The conservation needs on these lands will likely also be adequately addressed under the management plan currently being developed by Ft. Hunter Liggett and the Service. This is further discussed in the section entitled "Relationship of Critical Habitat to Military Lands." Fort Hunter Liggett has already reinitiated consultation on their programmatic biological opinion, including a conference opinion on the proposed critical habitat for *C. p.* var. *purpureum*. This reinitiation was necessitated by new information on federally listed species in addition to the listing of *C. purpureum*, not by the proposal of critical habitat for *C. purpureum*. Therefore, rescheduling of military training would not be necessary regarding ongoing military activities

that have been addressed as part of the programmatic consultation.

Comment 8: Fort Hunter Liggett stated they believe the draft economic analysis is based on considerations and factors that the Service is no longer considering. The commenter also stated the Service recommended curtailing military training and land use, and the new restrictions proposed by the Service are qualitatively different from those found in the draft economic analysis or the proposed critical habitat designation.

Our Response: The Service met with Fort Hunter Liggett on multiple occasions to discuss the status of *Chlorogalum purpureum* var. *purpureum*, the Service's concerns, the Service's recommended strategy for the long-term conservation of the taxon on the installations, and the adequacy of their draft INRMP. The Service identified a number of military activities that may influence critical growth stages of *C. p.* var. *purpureum* and recommended that Fort Hunter Liggett minimize the adverse effects and severity of those effects. The Service proposes to continue to work with the military to ensure that implementation of such recommended minimization measures would not curtail training.

Comment 9: Fort Hunter Liggett stated the increased monitoring recommended by the Service would require the new employment of two GS–11 equivalent biologists for 10 years, costing Fort Hunter Liggett approximately $2,100,000.

Our Response: As discussed in Comment 8, the Service provided long-term conservation recommendations to Fort Hunter Liggett for *Chlorogalum purpureum* var. *purpureum*. Regarding monitoring, the Service recommended that Fort Hunter Liggett develop management strategies to minimize threats to *C. p.* var. *purpureum* based on research, life history monitoring, and the species' responses to vegetation management. We recognize this is a real cost to the Army.

Comment 10: Fort Hunter Liggett stated the cordon required to permanently restrict the proposed critical habitat areas recommended by the Service would cost the Army Reserve approximately $250,000 plus additional maintenance costs over 10 years.

Our Response: As discussed in Comments 8 and 9, the Service provided long-term conservation recommendations in a consultation with Fort Hunter Liggett for *Chlorogalum purpureum* var. *purpureum* that should be considered regardless of a critical habitat designation and as part of their long-term management plans in their INRMP. Regarding protection of *C. p.* var. *purpureum*, the Service recommended that patches of plants be protected from those types of activities that are known to damage vegetation (*e.g.*, crushing seeds with the wheels or tracks of vehicles, bivouacking activities, soil surface scraping, introducing or spreading nonnative plant species, etc.).

Comment 11: Fort Hunter Liggett stated that increased restrictions on training would make many Army Reserve, National Guard, and other military units incapable of training at Fort Hunter Liggett. They stated that units would be forced to travel to another state to meet their training requirements and the cost for units to travel extensive distances to train would be significant. Fort Hunter Liggett stated the direct economic costs to the installation would be $2,350,000 if the Service's recommendations were implemented, and the costs to military readiness would be much higher. Types of training that the Army believes would no longer be viable at Ft. Hunter Liggett with the proposed designation of critical habitat include: training in the establishment of emergency airfields; training in the defense of emergency and established airfields; use of the machine gun and grenade ranges; use of the long-established tank trail between Camp Roberts and the Fort; and staging for a variety of other types of training, including live-fire exercises.

Our Response: We will continue to work with Fort Hunter Liggett to identify conservation measures and adaptive management considerations for *Chlorogalum purpureum* var. *purpureum*. The conservation recommendations provided to Fort Hunter Liggett during our consultation on their draft INRMP were designed to be implemented without necessitating the relocation of military training units to another state. However, we are not military experts, and defer to their judgement regarding the actual, as opposed to intended, impacts of the recommendations.

We recognize and have considered fully the concerns of Fort Hunter Liggett that critical habitat on their installation would impact the training mission and cause adverse economic impacts and adverse impacts to military readiness.

Issue 3: Site-Specific Areas and Other Comments

Comment 12: One commenter urged the Service to support Fort Hunter Liggett's effort to control *Centuarea solstitialis* (yellow star-thistle) and to consider this in the implementation of the critical habitat designation, suggesting that the Service should not restrict the installation's efforts to control such an invasive species.

Our Response: The Service has participated in meetings and discussions with Fort Hunter Liggett and supports the control efforts that the installation has made for *Centuarea solstitialis*. The Service has also expressed concerns to Fort Hunter Liggett regarding the use of herbicides on the installation due to potential adverse effects to federally-listed species, including *Chlorogalum purpureum* var. *purpureum*, vernal pool fairy shrimp (*Branchinecta lynchi*), and arroyo toad (*Bufo californicus*).

Comment 13: Due to the absence of historical occurrences, one commenter questioned the Service's suggestion that *Chlorogalum purpureum* var. *purpureum* could re-colonize both occupied and adjacent unoccupied habitat at Camp Roberts.

Our Response: Because historical records are not available for the *Chlorogalum purpureum* var. *purpureum* population at Camp Roberts, there is no data available to estimate if *C. p.* var. *purpureum* could re-colonize areas of the installation. However, future annual monitoring may show that the population could increase by natural means into adjacent unoccupied habitat.

Comment 14: One commenter stated that the Service did not take into account efforts being made by the Army at Fort Hunter Liggett to protect *Chlorogalum purpureum* var. *purpureum* through distribution surveys, life history research, military land stewardship, and carnivore management (*e.g.*, wild pig control) that protects against excessive herbivory.

Our Response: We disagree. Fort Hunter Liggett biologists provided us with what they indicated were the most current data on *Chlorogalum purpureum* var. *purpureum* occurrences at Fort Hunter Liggett during the time the proposed rule was being prepared. We also used biological assessments, environmental assessments, and annual reports submitted to us by the Directorate of Public Works at Fort Hunter Liggett when reviewing areas we believed were essential for the proposed critical habitat designation. We also reviewed additional surveys conducted by the Santa Barbara Botanic Garden (Wilken 2000) and data from the life history study conducted by the Fort Hunter Liggett Environmental Office. However, based on our review of the management actions and conservation measures described in Fort Hunter Liggett's recent programmatic biological assessment (Army Reserve 2002) and

draft INRMP, we conclude that areas on the installation would still benefit from special management as described in the Act and to that end we continue to work with the military to develop an INRMP. This is further discussed in the section entitled "Relationship of Critical Habitat to Military Lands."

Comment 15: One commenter stated that data and indicator species show the compatibility of military training and sensitive species. They suggested that the presence of sensitive species and cryptogamic crusts amidst low levels of disturbance at established monitoring plots at Fort Hunter Liggett are evidence of their compatibility. The commenter stated that the presence of many sensitive species on Fort Hunter Liggett is an indicator that the installation's stewardship maintains ecosystem functions and processes, compared to the agricultural practices on surrounding lands that have reduced habitat for many of these listed species. In addition, the commenter stated that military training results in a patchy distribution of temporary soil surface disturbance that typically recovers within a growing season for annual vascular plants and within three to five years for fully formed cryptogamic crusts. They stated that scientific data are also lacking to support the Service's conclusions that soil surface disturbance from military training will likely result in death of seeds, seedlings, and adult plants through burial or grinding, and that tracked vehicles will turn over soils, thus killing any adults or seedlings that are in their first year of growth and burying any crustal organisms that were present. The commenter stated that *C. p.* var. *purpureum* thrives in heavily-used training areas and protected sites on Fort Hunter Liggett. The commenter was concerned about the inclusion of lands containing the taxon that were recently and formerly heavily used for military training.

Our Response: The Service commends the Army Reserve for efforts they have made to date to reduce further losses of sensitive species and other species native to the San Antonio Valley, Nacimiento Valley, and the Santa Lucia Mountains. We agree that much of the surrounding habitat has been lost due to agricultural use, including crop farming and vineyard development, likely resulting in the loss of *Chlorogalum purpureum* var. *purpureum* plants and other sensitive species. Indicators of *C. p.* var. *purpureum* compatibility with military training include such parameters as recruitment or survivorship. Although Fort Hunter Liggett has conducted monitoring since 1998, the monitoring was not designed to assess the effects of military training activities on *C. p.* var. *purpureum*, according to Fort Hunter Liggett staff (Liz Clark, FHL, pers. comm., 2002). Moreover, changes to the monitoring program in 2000 have resulted in the availability of only two years of data to assess such factors as survivorship and recruitment. Based on the biology of this species and our preliminary analysis of data collected at monitoring plots at Fort Hunter Liggett, additional data are needed to accurately assess levels of recruitment. While it has survived through many years of military training, monitoring focused on military activities or a rigorous assessment of population trends is needed to determine the effect of military activities conducted at Fort Hunter Liggett on *C. purpureum*.

Studies conducted at other military installations have shown that military activities such as bivouacking and soil surface disturbance (*e.g.*, excavations, grading) do have adverse effects on vegetation and the soil surface (Trame and Harper 1997, Whitecotton *et al.* 1999, Wolford 2001). Activities in Training Area 25 (a heavily-used training area) at Fort Hunter Liggett have caused soil compaction and soil ruts that alter microhabitat characteristics (Painter and Neese 1998; D. Steeck, pers. obs., 1998; J. Chesnut, consulting biologist, *in litt.*, 1998), and loss of most herbaceous vegetation (D. Steeck, pers. obs., 1997, 1998, aerial photography). Vehicle tracks were also evident in 45 of 188 patches of *Chlorogalum purpureum* var. *purpureum* visited during 1999 surveys (Wilken 2000). Tracks or roads were adjacent to another 35 patches (Wilken 2000). Tracks in populations of *C. p.* var *purpureum* have also been reported by others familiar with Fort Hunter Liggett (Painter and Neese 1998; J. Chesnut, *in litt.*, 1998). These types of activities damage seedlings and adult plants, especially if they occur during the growing season. However, we are unable to confirm the commenter's statement that cryptogamic crusts are fully formed within three to five years. According to the reports and data available to us at this time, we are unaware of any data collected on cryptogamic crusts or the extent of cryptogamic crusts on Fort Hunter Liggett. Species experts have identified a possible relationship between *Chlorogalum purpureum* and the presence of cryptogamic crusts. Thus, we recommend studies and surveys to provide a better understanding of cryptogamic crusts at Fort Hunter Liggett. The first biological soil crusts to develop following a disturbance are cyanobacteria, appearing in colonies that are black to blue-green and are visible primarily when the surface is moist (Belnap *et al.* 2001). The development of these crusts is followed by growth of algae, bryophytes (mosses, liverworts), and lichens. Timing, the type of soil surface disturbance, and its intensity can influence the composition of these cyptogamic crusts. Repeated disturbances to cryptogamic soils will generally keep the crusts at an early-successional stage (*i.e.*, cyanobacteria-dominated) by preventing lichen or moss colonization (Belnap *et al.* 2001). Recovery rates to fully formed crusts (mosses, liverworts, and lichens) are dependent on many factors. Visual assessments can be used to assess moss and lichen cover, but cannot be used to measure the degree of recovery of cyanobacterial biomass and soil stability (Belnap *et al.* 2001). Studies have found various linear recovery rates which differ from region to region. These studies have determined that shady sites with less sandy soils are quicker to recover than exposed sites with sandier soils (Belnap *et al.* 2001). Unfortunately, we are currently unaware of available data that identifies the recovery rates of cryptogamic crusts in the California coastal areas.

Comment 16: One commenter stated that scientific data is lacking to support the Service's conclusion that Fort Hunter Liggett could support a larger population of purple amole. They believed that special management considerations should focus on agricultural and urban development.

Our Response: Unoccupied areas (located adjacent to or between occupied habitat) that are not fully protected or currently known to support the taxon likely contain favorable habitat conditions for plants to occur. These areas also support the surrounding habitat by helping maintain ecosystem processes and functions, such as connectivity between patches of plants, pollinator activity between existing colonies, and seed dispersal mechanisms between existing colonies and other potentially suitable sites. Thus, the area may support additional *Chlorogalum purpureum* var. *purpureum* occurrences provided proper management occurs. We agree that management for *C. purpureum* should include consideration of the needs of the species in management of cultivation and control of nonnative vegetation. However, when considering the long-term conservation and recovery of this species we must consider all threats to the species, which also

include potential threats from military training activities.

Comment 17: Two commenters believed that a critical habitat designation for *Chlorogalum purpureum* var. *purpureum* would not provide any net benefit to the species because "assured management" is already in place at Fort Hunter Liggett and Camp Roberts. One commenter stated that Camp Roberts has completed an INRMP and Endangered Species Management Plan (ESMP), that Fort Hunter Liggett is coordinating with the Service on development of their INRMP and associated ESMP, and that the plans from both installations are certain to be implemented, as they are requirements that are given "resourcing priority." The second commenter stated that existing management actions at Fort Hunter Liggett are currently protecting purple amole, the ecosystem, and the functions listed by the Service. Additionally, they suggested that Fort Hunter Liggett's INRMP and ESMP, although currently in draft form, provide an adequate method for Fort Hunter Liggett and the Service to actively promote the protection and recovery of *C. p.* var. *purpureum*.

Our Response: We agree that the military is currently implementing special management on the lands. INRMPs can provide special management for lands such that they no longer meet the definition of critical habitat when the following criteria are met: (1) A current INRMP must be complete and provide a conservation benefit to the species, (2) the plan must provide assurances that the conservation management strategies will be implemented, and (3) the plan must provide assurances that the conservation strategies will be effective (*i.e.*, provide for periodic monitoring, adaptive management, and revisions as necessary). If all of these criteria are met, then the lands covered under the plan would likely no longer meet the definition of critical habitat and designation would not be necessary.

To date, Camp Roberts has amended their final INRMP to provide for sufficient conservation management and protection for *Chlorogalum purpureum* var. *purpureum*. An ESMP has not been prepared for *C. p.* var. *purpureum* at Camp Roberts. As a result of the Camp Roberts INRMP, we are not designating critical habitat on Camp Roberts.

Adequate management for the conservation of *Chlorogalum purpureum* var. *purpureum* is currently under development at Fort Hunter Liggett though an INRMP. The installation has prepared a draft INRMP that is being revised. Fort Hunter Liggett's ESMP expired in September 2001 and is not scheduled to be updated until 2003. Nevertheless, Fort Hunter Liggett does continue to implement conservation measures and management actions. We believe that the additional protection and management are necessary, as well as a structured monitoring program that provides information on recruitment, survival, and effects of military actions on the species and its habitat and will be addressed in the INRMP.

Comment 18: If critical habitat is designated at Camp Roberts, the commenter requested that the proposed acreage be reduced to minimize adverse effects on military training activities. Part of this request was based on the absence of purple amole on 90 percent of the proposed critical habitat.

Our Response: We have removed Camp Roberts from the final designation of critical habitat. See the section entitled "Relationship of Critical Habitat to Military Lands" for further information.

Comment 19: One commenter questioned the use of the word "recovery" regarding *Chlorogalum purpureum* var. *purpureum* at Camp Roberts military installation because it implies a historical presence, even though there is no historical record of the taxon at the installation.

Our Response: As mentioned in Comment 13 above, we acknowledge that historical records are not available for the *Chlorogalum purpureum* var. *purpureum* population at Camp Roberts. For conservation of the species to occur, all methods and procedures should be utilized to bring *C. p. purpureum* to the point at which the measures provided by the Act are no longer necessary. These measures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, and transplantation. Because *C. p.* var. *purpureum* is only known to occur at Camp Roberts and Fort Hunter Liggett at this time, the CANG and Army Reserve are in the best and primary position to influence the long-term conservation of this species. In addition, according to section 2(c) of the Act, Federal agencies shall seek to conserve endangered and threatened species and shall utilize their authorities in furtherance of the purposes of the Act.

Comment 20: One commenter recommended that the Service request access from private landowners for annual surveys.

Our Response: The Act requires that the best available data be used to make decisions on critical habitat designations. Conducting new surveys falls outside of this requirement. Further, the Service must have specific permission of private landowners to conduct surveys on private property. Funding and timing limitations also preclude the collection of new information at this time. However, as part of the recovery process for this species, additional survey needs may be identified and implemented.

Issue 4: Legal and Procedural Comments

Comment 21: Camp Roberts stated that they should be excluded from the critical habitat designation because the benefit of excluding military lands from critical habitat designation outweighs the benefits of including military lands in the designation. Fort Hunter Liggett requested to be excluded from the final critical habitat designation because they believe the proposed critical habitat will preclude military training on 11,840 acres of land at Fort Hunter Liggett, resulting in a severe impact to Fort Hunter Liggett's military mission, operations, and protection of cultural and natural resources. Fort Hunter Liggett stated they believe the continued use of military training sites and the operations and maintenance activities of existing facilities are at risk, including established conservation measures. They also stated that future training missions are at risk, and compounding mitigation and conservation measures are eroding training capabilities.

Our Response: We address the issue of military lands and the role of INRMPs in detail in the section entitled "Relationship of Critical Habitat to Military Lands." As discussed in that section, subsection 4(b)(2) of the Act allows us to exclude areas where the benefits of exclusion outweigh the benefits of inclusion. In addition, under subsection 3(5)(A) of the Act, areas where an INRMP provides a conservation benefit to the species, such that additional special management is unnecessary, may not meet the definition of critical habitat.

Our analysis of the costs and benefits leads us to conclude that the benefits of including lands on Fort Hunter Leggett do not outweigh the costs. Camp Roberts' lands have been removed based on their INRMP. Our analysis is discussed in comment 18 above, the section entitled "Relationship of Critical Habitat to Military Lands." And the section entitled, "Summary of Changes from the Proposed Rule".

Fort Hunter Liggett has recently initiated formal consultation with us on both *Chlorogalum purpureum* var. *purpureum* and its proposed critical habitat. Once consultation is complete, Fort Hunter Liggett will not need to reinitiate it unless their proposed actions have changed or new information becomes available on the species that would warrant a re-evaluation. The population of *Chlorogalum pupureum* var. *purpureum* found in Fort Hunt Liggett has survived in the midst of military training. There is little basis for expecting this circumstance will change in the absence of a critical habitat designation, particularly in light of the fact that the military and the Service are developing an INRMP to ensure special management. Conversely, the cost of disruption of military training is large in terms of both additional expenditures and adverse impacts to military readiness.

Comment 22: Eleven commenters recommended that the Service initiate section 7 consultation with the Army as soon as possible, and on an ongoing basis.

Our Response Section 7(a)(2) of the Act requires Federal agencies to consult with the Service to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat determined to be critical to a species. Therefore, it is the responsibility of the Army Reserve, the CANG, and LPNF to initiate consultation with the Service for those actions that may jeopardize the continued existence of *Chlorogalum purpureum*.

Comment 23: Based on survey results, eleven commenters suggested that changes in the critical habitat designation should be considered on an ongoing basis.

Our Response We have taken into account additional information, including additional survey results, that were provided to us during the comment period on the proposed rule. We will continue to monitor and collect new information and may revise the critical habitat designation in the future if new information supports a change.

Comment 24: One commenter suggested that it is possible that the proposed designation has minimized the review of scientific data available at the installations in an attempt to comply with court-ordered schedules.

Our Response We disagree with this comment. We agree that we are required under a court approved settlement agreement to finalize this critical habitat designation by October 11, 2002. When developing any listing proposal or proposed critical habitat designation we use the best information available at the time, and solicit information from a variety of sources. We use information from Federal and State agencies, consultants, and researchers during the development of the proposal. When available, we incorporate information from recovery plans as well. These plans often have information that was not available at the time a species was listed. Comments received on the proposed designation, the draft economic analysis, and additional information received during the comment periods have been taken into account in the development of this final determination.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from six experts who have knowledge of the species, the geographic region where the species occurs, and/or familiarity with the principles of conservation biology. Five of the peer reviewers responded and supported the proposal, providing us with comments which were summarized in the previous section and incorporated into the final rule. One reviewer did not respond.

Summary of Changes From the Proposed Rule

Based on a review of public comments and the draft economic analysis, we reevaluated our proposed critical habitat designation and made changes as necessary. These include the following:

(1) We modified the description of the primary constituent elements. These modifications include a more defined soil surface definition, and removal of the wording "frequently cryptogamic soils" and the proposed primary constituent element No. 3, which are addressed in further detail in the "Special Management Considerations or Protections" section below.

(2) We added a section describing the special management considerations or protections that *Chlorogalum purpureum* may require. We believe that this new section will help to identify activities that address section 3(5)(A)(i)(II) of the Act, and also assist land managers in developing management strategies for *C. purpureum*.

(3) We removed the Camp Roberts Unit from the final designation. Camp Roberts' INRMP includes long-term conservation measures and adaptive management for *Chlorogalum purpureum* var. *purpureum* on Camp Roberts property and because information received since proposing critical habitat for this species indicates that the private lands proposed within this unit are not essential to the conservation of the species.

A survey was conducted in 2002 by the Santa Barbara Botanic Garden within suitable habitat on adjacent private land (*i.e.*, Palm property) north of the known Camp Roberts population. This survey confirmed the absence of the taxon on the property during the peak flowering season and the lower likelihood of the plants to occur on the property due to less suitable habitat (*e.g.*, different soil type, high density of cobbles and rocks) interspersed throughout most of the suitable areas (D. Wilken, *in litt.*, 2002). Review of recent aerial photographs unavailable at the time of the critical habitat proposal revealed a significant amount of ground disturbance (*i.e.*, grading, excavation) on other private land areas proposed as critical habitat north of Camp Roberts (H. Crowell, pers. obs., 2002). Therefore, we have determined that the private lands proposed within this unit do not currently provide the primary constituent elements that are essential to the conservation of the species.

Camp Roberts' INRMP includes an assessment of the species' ecological needs on the installation, a statement of goals and priorities, a detailed description of management actions to be implemented to provide for the ecological needs of the taxon, and a monitoring and adaptive management plan that will be peer-reviewed and approved by the Service. Since Camp Roberts' INRMP addresses the needs of the species, we have concluded that no additional special management or protection of the habitat is necessary, and that the Camp Roberts portion of this unit does not meet the definition of critical habitat.

(4) Military lands at Fort Hunter Liggett were removed because the costs associated with loss of training areas and traveling to alternate training sites outweighs the benefit of inclusion as critical habitat. In addition, we note that the military is developing an INRMP and undertaking other measures designed to provide special management for the species. This INRMP and the other measures would most likely justify exclusion of this area under section 3(5)(A) in the near future, but the actual decision was based on our decision that the benefits of exclusion exceed the benefits of designation. For clarity we have renamed the proposed Fort Hunter Liggett Unit to Jolon Unit to reflect these changes.

(5) The boundary for the Camatta Canyon critical habitat unit was reduced

in size from 1,933 ha (4,770 ac) to 1,772 ha (4,378 ac). The 159 ha (392 ac) reduction is a result of more defined and detailed mapping using aerial photographs to exclude those areas where unsuitable habitat types (*e.g.*, dense woodland or scrub vegetation) exist.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

Section 7(a)(2) of the Act requires Federal agencies to consult with the Service to ensure that any action it authorizes, funds, or carries out is not likely to result in the destruction or adverse modification of habitat determined to be critical to a species. Section 7 of the Act also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

To be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify (to the extent known using the best scientific and commercial data available) habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat for a species, to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will not often have sufficient information to identify all areas essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential to the conservation of the species. We will not speculate about what areas might be found to be essential if better information becomes available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life-cycle needs of the species, then the area will not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), which provide essential life cycle needs of the species. However, we may be restricted by minimum mapping unit or map scale.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, we will not designate critical habitat in areas outside the geographic area occupied by the species when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of those areas.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should, at a minimum, be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, unpublished materials, and expert opinions.

Habitat is often dynamic, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, it should be understood that critical habitat designations do not suggest that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information to these planning efforts calls for a different outcome.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain the physical and biological features essential for the conservation of *Chlorogalum purpureum*. This included information from the California Natural Diversity Data Base (CNDDB 2000), soil survey maps (Soil Conservation Service 1978, 1980), recent biological surveys and reports, additional information provided by interested parties, and discussions with botanical experts.

We believe that future conservation and recovery of this species depends not only on protection of areas it currently occupies, but also the opportunity to increase its current distribution. This is supported by the historic loss of the habitats that likely harbored additional populations of *Chlorogalum purpureum*.

The private property adjacent to the Camatta Canyon critical habitat unit is occupied by above-ground plants and most likely a seed bank. In addition, each of the units includes areas that are considered unoccupied by the species. "Occupied" is defined here as any area with above-ground *Chlorogalum purpureum* plants or a seed or bulb bank of indefinite boundary. All occupied sites contain the primary constituent elements and are essential to the conservation of the species, as described below. "Unoccupied" is defined here as an area that contains no above-ground *Chlorogalum purpureum* plants and for which it is unknown if dormant plants exist or a seed or bulb bank is present. Both occupied and unoccupied areas that are designated as critical habitat are essential to the conservation of the species.

Determining the specific areas that this species occupies is difficult for two reasons: (1) The way the current distribution of *Chlorogalum purpureum* is mapped can be variable, depending on the scale at which patches of individuals are recorded (*e.g.*, many small patches versus one large patch); and (2) depending on the climate and other annual variations in habitat conditions, the extent of the distributions may either appear to shrink or temporarily disappear due to the dormancy characteristics of the species, or, if there is a residual seed bank present, enlarge and cover a more extensive area. Because it is logistically difficult to determine how extensive the seed bank is at any particular site and because above-ground plants may or may not be present in all patches within a site each year, we cannot quantify in a meaningful way what proportion of each critical habitat unit may actually be occupied by *C. purpureum*. Therefore, patches of unoccupied habitat are interspersed among patches of occupied habitat; the inclusion of unoccupied habitat in our critical habitat units reflects the dynamic nature of the life history characteristics of this species. Unoccupied areas provide habitat into which populations might expand, provide connectivity or linkage between colonies within a unit, and may support populations of pollinators and seed dispersal organisms.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, when determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and may require special management considerations or protection. These include, but are not limited to—space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the known historic geographical and ecological distributions of a species.

Changes in habitat for both varieties of *Chlorogalum purpureum* have occurred due to alteration of lands, direct loss of plants due to construction, widening of roads, displacement by nonnative annual grasses, inappropriate livestock grazing, and potentially by alteration of fire cycles. Livestock grazing may be detrimental to this taxon depending on the intensity of livestock use and the extent to which livestock congregate in the area. Special management for critical habitat may also be needed for conditions where indirect, negative impacts from recreation, military activities, and competition or predation from nonnative species (*i.e.*, pigs, nonnative annual grasses, etc.) occur. Most if not all of these activities may destroy any cryptogamic crusts that are present, and could potentially affect vascular plant germination and decrease the amount of nutrients available for proper plant development (Belnap *et al.* 2001). However, as noted earlier, additional research is necessary to confirm this. In addition to indirect impacts, direct loss of individual plants can occur from military training activities at Fort Hunter Liggett and Camp Roberts, and off-road vehicle use at LPNF. Ideally, the habitat that supports both varieties of C. purpureum should have little to no soil surface disturbance. Death of seeds, plants and any cryptogamic crust organisms can occur depending on the severity, size, frequency, and timing of soil disturbance. Soil surface disturbance can result in the death of seeds, seedlings and adult plants through burial or grinding.

Based on our knowledge to date, the primary constituent elements of critical habitat for *Chlorogalum purpureum* var. *purpureum* consist of, but are not limited to:

(1) Soils that are sandy clay to loamy clay, well drained on the surface, and are often overlain with fine gravel; and,

(2) plant communities in functioning ecosystems that support associated plant and animal species (*e.g.*, pollinators, predator-prey species, etc.), including valley and foothill grassland (most similar to the needlegrass series and California annual grassland series *in* Sawyer and Keeler-Wolf (1995)), blue oak woodland or oak savannahs (Holland 1986), and open areas within shrubland communities (most similar to the Chamise series *in* Sawyer and Keeler-Wolf (1995), although percent cover of chamise at known *Chlorogalum purpureum* var. *purpureum* areas is unknown). Within these vegetation community types, *C. p.* var. *purpureum* typically appears where there is little cover from other species which compete for resources available for growth and reproduction.

Based on our knowledge to date, the primary constituent elements of critical habitat for *Chlorogalum purpureum* var. *reductum* consist of, but are not limited to:

(1) Well-drained, red clay soils with a large component of gravel and pebbles on the upper soil surface; and,

(2) Plant communities in functioning ecosystems that support associated plant and animal species (*e.g.*, pollinators, predator-prey species, etc.), including grassland (most similar to the California annual grassland series *in* Sawyer and Keeler-Wolf (1995) or the pine bluegrass grassland, non-native grassland and wildflower field descriptions in Holland (1986)), blue oak woodland or oak savannahs (Holland 1986), oak woodland, and open areas within shrubland communities (most similar to the Chamise series *in* Sawyer and Keeler-Wolf (1995), although percent cover of chamise at known *Chlorogalum purpureum* var. *reductum* areas is unknown). Within these vegetation communities *C. p.* var. *reductum* appears where there is little cover of other species which compete for resources available for growth and reproduction.

At least one of the primary constituent elements must be present in order for an area to be considered critical habitat. Because *Chlorogalum purpureum* is documented to occur within trails (*i.e.*, passageways that are established, not graded, and do not support a paved surface) that support the appropriate soils and vegetation, as described in the primary constituent elements, these areas may constitute critical habitat. Surveys and information provided to us by land owners or species experts have contributed to our understanding that *C. purpureum* readily grows on well-drained surfaces that are underlain by clay soils that are

embedded with a fine gravel, and are found in areas where competition with other plant species is minimal (Wilken 2000; E. L. Painter, pers. comm., 2001). In most areas where *C. purpureum* occurs, it occupies microhabitat sites where there is little cover from other herbaceous species. Where *C. purpureum* occurs within grassland communities, the likelihood of plants occurring may decrease with an increase in the density of other nonnative herbaceous species, such as, but not limited to *Avena* ssp., *Bromus* ssp., and *Centuarea solstitialis*.

Site Selection

We selected critical habitat areas to provide for the conservation of *Chlorogalum purpureum* at one site where it is known to occur. Two other locations (Camp Roberts and Fort Hunter Liggett) are also essential to the conservation of the species and were identified in the proposed critical habitat designation. However, we have removed these areas from the final designation as described in the "Summary of Changes From the Proposed Rule" and "Relationship of Critical Habitat to Military Lands" sections of this critical habitat rule because special management is already being provided at Camp Roberts and costs outweigh the benefits of designation at Fort Hunt Liggett. Additionally, special management provisions are being developed for lands at Fort Hunter Liggett.

The long-term conservation of *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum* is dependent upon the protection of existing populations, and the maintenance of ecological functions within these sites, including connectivity between sites within close geographic proximity. This connectivity facilitates pollinator activity, seed dispersal mechanisms, and the ability to maintain occasional fire that promotes the openness of vegetative cover which is advantageous to the species.

Threats to the habitat of *Chlorogalum purpureum* include: alteration of lands, direct loss of plants due to construction, widening of roads, displacement by nonnative annual grasses, inappropriate livestock grazing, and potential alteration of fire cycles (65 FR 14878; March 20, 2000). Direct loss of individual plants can also occur due to military training activities at Fort Hunter Liggett and Camp Roberts, and off-road vehicle (ORV) use at LPNF. (65 FR 14878; March 20, 2000). The areas we are designating as critical habitat provide the habitat components essential for the conservation of *Chlorogalum purpureum*. Given the species' need for an open plant community structure, the risk from nonnative species competition, predation (*e.g.*, herbivory), or soil surface disturbance, we believe that these areas may require special management considerations or protection.

Special Management Considerations or Protections

Special management considerations or protections may be needed to maintain the primary constituent elements for *Chlorogalum purpureum* within the units being proposed as critical habitat. In some cases, protection of existing habitat and current ecological processes may be sufficient to ensure that populations of *C. purpureum* are maintained at those sites, and have the ability to reproduce and disperse into surrounding habitat. In other cases, however, active management may be needed to maintain the primary constituent elements for *C. purpureum*. We have outlined below the most likely kinds of special management and protection that *C. purpureum* critical habitat may require.

(1) The soils on which *Chlorogalum purpureum* is found should be maintained. Physical properties of the soil, such as its chemical composition, structure, and drainage capabilities, would best be maintained by limiting or restricting the use of herbicides, fertilizers, or other soil amendments; and by minimizing or avoiding activities that result in soil compaction (*e.g.*, off-road wheeled and tracked vehicle use, trampling by people and livestock) and those that would alter the hydrology of areas immediately adjacent to or upslope of the species and its critical habitat.

(2) The soil surface should be maintained to enhance cryptogamic crust formation by minimizing the intensity, frequency, duration, and acreage of soil surface disturbance. The soil surface should be protected at relict sites (*i.e.*, sites with well-developed crusts) to provide reference areas and baseline comparisons for research. Because cryptogamic crusts are highly susceptible to hot fires (Belnap *et al.* 2001) and the presence of nonnative annual grasses in *Chlorogalum purpureum* habitat may promote fires. Annual, intense fires should be avoided. The effects of activities that can damage biotic soil crusts (*e.g.*, excavations, off-road vehicle use, trampling) should be reduced by moving them to areas where crusts are less vulnerable, limiting the area affected, and conducting such activities in dryer seasons.

(3) The associated plant and animal communities should be maintained to ensure the habitat needs of pollinators and seed dispersal agents are maintained, and predator-prey relationships are functioning. The use of pesticides should be restricted so that viable populations of pollinators are present to facilitate reproduction of *Chlorogalum purpureum*. Fragmentation of habitat through road construction, development, and certain types of fencing should be limited. Additionally, predator-prey relationships should be managed and protected. For example, installation of fencing could exclude predator species (*e.g.*, coyotes, bobcats, San Joaquin kit fox), thus causing an increase in prey species (*e.g.*, ground squirrels, gophers, rabbits) abundance. A change such as this could result in increased herbivory, bulb predation, or burrowing that could affect *C. purpureum* growth and survival.

(4) In all plant communities where *Chlorogalum purpureum* occurs, invasive, nonnative species such as *Centuarea solstitialis* (yellow star-thistle), *Avena* spp. (wild oats), *Bromus* spp. (*B. hordeaceus, B. diandrus, B. madritensis, B. rubens* (brome)), *Erodium* spp. (storksbill or fillaree), and other species need to be actively managed and controlled to maintain the open habitat that *Chlorogalum purpureum* needs. Nonnative annual grasses may promote fires by providing recurring annual fuel sources. Thus, proactive management should be implemented to prevent annual fires, unless future research demonstrates that a series of annual fires can benefit *Chlorogalum purpureum* by reducing competition from nonnative species.

(5) Certain critical habitat areas (*i.e.*, suitable, unoccupied habitat between or adjacent to known patches of *Chlorogalum purpureum*) may need to be temporarily fenced or demarcated to identify exclusion areas for protection from accidental or intentional trampling by humans, livestock, or off-road vehicle use. Heavy disturbance to these critical areas may be detrimental to this species' persistence. Seasonal exclusions may work in certain areas to protect the critical habitat and *C. purpureum* plants during the critical season of growth and reproduction.

(6) In areas where *Chlorogalum purpureum* and its habitat occur in conjunction with off-road vehicle traffic (*e.g.*, military wheeled and tracked vehicles, OHVs), we recommend managing to minimize the severity of those effects. Management should include: limiting or avoiding new structures and permanent roads and trails; managing excavations, scrapings, or other ground surface disturbance; managing tracked and wheeled vehicle use during *C. purpureum* growing and dormant seasons; and managing foot traffic, bivouacking, and congregations of high numbers of people during *C. purpureum* growing and dormant seasons. These types of activities should be managed to limit loss of adults, bulbs, and seeds, loss of habitat, increased soil compaction, and increased nonnative species encroachment.

(7) Monitoring programs should be developed or enhanced so that areas occupied by purple amole are studied, allowing for a full range of life-history data and a thorough analysis of the compatibility and impacts of those activities that may adversely affect the species. Representative areas should be chosen throughout the distribution of the species, including large, high-density populations that have a higher potential for persistence. Monitoring studies should be designed to aid in the determination of population stability as well as provide basic life-history information and data on the ecological needs of the species (*e.g.*, identification and status of pollinator species, disturbance factors, etc.).

Criteria Used To Identify Critical Habitat

Chlorogalum purpureum was likely more widespread in the past, and the current population size is small. Therefore, the likelihood that chance or unforeseen disturbance will reduce the population size is high, and we believe it is important to preserve all areas that currently support populations of *Chlorogalum purpureum*. We included some areas that may not currently contain *C. purpureum* (due to former cultivation, threats from nonnative species, or other factors) but harbor the necessary primary constituent elements. These areas were included to maintain connectivity between sites. We also included habitat for *C. purpureum* adjacent to, and contiguous with, areas of known occurrences to maintain landscape-scale processes. Each mapping unit contains habitat that is occupied by *C. purpureum*.

As described in the "Background," "Primary Constituent Elements," and "Special Management Considerations or Protections" sections, the species depends upon habitat components beyond the immediate, occupied areas. These components include specific soil types, supporting vegetation communities with which the species is associated, and sufficient habitat areas to support the ecological processes on which the species depends (*e.g.*, hydrologic regimes, a diverse ecosystem that supports the appropriate pollinators and seed dispersal mechanisms, sufficient areas of appropriate habitat so the plant can expand and re-colonize areas, natural predator-prey relationships that promote species survival, and minimal competition from non-native species).

A seed or bulb bank likely exists within habitat that occurs adjacent to the current known distribution of *Chlorogalum purpureum*. The extent of this seed or bulb bank is unknown. However, other studies have determined that ecosystems with annual weed species have large seed banks, especially where the land has been grazed (Baskin and Baskin 1998). The critical habitat units for both varieties of *Chlorogalum* contain habitat with annual native and weed species and have experienced livestock grazing either currently (LPNF) or historically (Fort Hunter Liggett). Because it is logistically difficult to determine how extensive a seed or bulb bank is at any particular site, and because above-ground plants may or may not be present in all patches within a site each year, we cannot quantify what proportion of critical habitat units may actually be occupied by a seed or bulb bank. However, any seed or bulb bank present is critical for the species' survival. If, for example, a fire destroys adult plants prior to seed dispersal, no seeds will be set for next year's growth. Therefore, a seed or bulb bank that occurs in the surrounding habitat could aid in reducing population declines and extirpation. The inclusion of unoccupied habitat in the critical habitat unit reflects the dynamic nature of the life history characteristics (*e.g.*, seasonal dormancy, timing of flowering, etc.) of this species.

Species necessary for pollination and seed dispersal of *Chlorogalum purpureum* extend beyond the boundary of the known distribution of *C. purpureum*. It is necessary to protect sufficient areas surrounding the known occurrences of *C. purpureum* because occupied habitat that is limited in size can maintain few pollinators. Additionally, pollinators of *C. purpureum* are likely to be generalist species that also pollinate other plants in the habitats where *C. purpureum* occurs. A reduction in pollinator visitation to the species could reduce seed output, resulting in decreases in flowering plant density, inflorescence density, or population size.

Plants with life-history characteristics such as *Chlorogalum purpureum* have distributions that are known to fluctuate (expand or decrease) over long time periods in response to both natural and human-induced events (*e.g.*, rainfall, fire, recreation activities, herbicide use, change in private land use practice, etc.). These factors may cause the habitat suitability of given areas to vary over time, and thus affect the distribution of *C. purpureum*. Those areas with appropriate soil conditions outside of the known occurrences of both varieties of *C. purpureum* and adjacent to the plateau areas where *C. p.* var. *reductum* occurs are favorable for population expansion and reintroductions.

The ability of an organism to survive and reproduce depends upon available resources. For *Chlorogalum purpureum*, those resources occur within and beyond the boundaries of the known distribution of the species. Without including the surrounding area, the fitness (*i.e.*, the extent to which the species' genes are passed on and represented in subsequent generations) of *C. purpureum* may be reduced. For many wildlife and plant species, the entire landscape (rather than site-specific characteristics) may be influential. The exact amount of area needed for *C. purpureum* cannot be determined without obtaining detailed information on measurable variables that reflect the plant's health, reproduction, and survival. These data are currently not available. Unless further studies are conducted that suggest otherwise, we believe the habitat encompassed within the critical habitat boundaries is necessary for *C. purpureum* expansion, reproduction, and survival. It incorporates those characteristics needed by the taxon, in addition to supporting those ecological functions necessary for *C. purpureum* persistence.

When selecting areas of critical habitat for *Chlorogalum purpureumy*, we made an effort to avoid developed areas that are unlikely to contribute to the conservation of the species. However, we did not map critical habitat in sufficient detail to exclude all developed areas, or other lands unlikely to contain the primary constituent elements essential for the conservation of *C. purpureum*. Areas within the boundaries of the mapped units, such as buildings, hard-packed roads (*e.g.*, asphalt, paved, etc.), parking lots, railroads, airport runways and other paved areas, lawns, and other urban landscaped areas will not contain any of the primary constituent elements. Federal actions limited to these areas would therefore not trigger a section 7 consultation, unless they may affect the

species and/or primary constituent elements in adjacent critical habitat.

Critical habitat for *Chlorogalum purpureum* var. *reductum* includes one unit, the Camatta Canyon unit, which currently supports one population of this taxon with two known occurrences. Limited data on soils and habitats were available for delineating the critical habitat boundaries for *C. p.* var. *reductum*. No GIS data layers were available to create a combined soil, slope, and vegetation model such as that created for *C. p.* var. *purpureum*. Therefore, the critical habitat designation is based on the existing known populations, and observations of soil characteristics and vegetation community types made by various researchers and agencies. This unit was developed by encompassing the extent of appropriate topography and vegetation community types surrounding the known populations. Because the ecological processes, soil types, and vegetation community upon which *C. p.* var. *reductum* depends extend beyond the boundary of its known distribution, we included the plateau areas, the known distribution, and a portion of the adjacent vegetation community in the critical habitat boundary. Encroaching activities not conducive to *C. p.* var. *reductum* persistence, that may adversely affect or destroy the plant and habitat that is critical for its expansion and survival, should be limited by the current boundaries. These activities include, but are not limited to, off-road vehicle use, livestock grazing, herbivory, expansion of nonnative species (that out-compete smaller, herbaceous species), and ground disturbance by gophers.

Thorough surveys of the distribution of *Chlorogalum purpureum* var. *reductum* have not been conducted in San Luis Obispo County. Additionally, life-history characteristics (*e.g.*, seasonal dormancy) of the species make it difficult to quantify the taxon's exact distribution. Therefore, the plants are likely more widespread than observed. Multi-year surveys are needed to determine the presence or absence of the species. Monitoring *C. p.* var. *purpureum* at Fort Hunter Liggett has revealed that individual mature plants can be dormant for at least three years (Liz Clark, Fort Hunter Liggett, pers. comm., 2002). During dormancy, *C. purpureum* is not detectable on the surface. Additionally, new *C. p.* var. *purpureum* sites are being found within the range of the taxon at Fort Hunter Liggett. We expect "new patches" of *C. p.* var. *reductum* also to be revealed in the Camatta Canyon Unit if surveys are conducted within the critical habitat boundary in those areas where the primary constituent elements occur. Data collected on *C. p.* var. *purpureum* indicate that the species commonly grows on slopes less than 20 percent. However, plants have also been documented on steeper slopes up to 50 percent. Therefore, steeper areas are incorporated into the critical habitat boundary.

An extension of the plateau where *Chlorogalum purpureum* var. *reductum* is currently known to occur exists between the northern and southern site. These plateau extensions may potentially support *C. p.* var. *reductum* (D. Chipping, California Polytechnic State University, *in litt.*, 1997). Additional *C. p.* var. *reductum* plants likely occur on private property which falls between the two known sites and within the critical habitat boundary (A. Koch, pers. comm., 2001). This area harbors the soils and vegetation appropriate for *C. p.* var. *reductum* growth and expansion. We believe protecting the habitat between the two sites provides connectivity and therefore provides for gene flow and an increase in population size in the long term.

Critical Habitat Designation

The critical habitat areas described below constitute our best assessment of the areas needed for the conservation of *Chlorogalum purpureum* at this time. Critical habitat for *C. purpureum* includes (1) private property adjacent to Fort Hunter Liggett property, Monterey County; and (2) on LPNF property, a small strip of state lands adjacent to Highway 58, and adjacent private property in San Luis Obispo County. We have excluded approximately 4,282 ha (10,586 ac) of land as critical habitat for *C. p.* var. *purpureum*. We have designated approximately 1,772 ha (4,378 ac) of land as critical habitat for *C. p.* var. *reductum*. Approximately 25 percent of this total area consists of Federal lands, private lands comprise approximately 75 percent, and State lands comprise less than 0.1 percent.

As discussed throughout this rule, the long-term conservation of *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum* is dependent upon the protection of existing populations, and the maintenance of ecological functions within these sites, including connectivity between sites within close geographic proximity. *Chlorogalum purpureum* was likely more widespread in the past, and the current population size is small and faces threats to its habitat as described in the final listing rule and this critical habitat designation. Therefore, the likelihood that chance or unforseen disturbance will reduce the population size is high, and we believe it is important to preserve all areas that currently support populations of *Chlorogalum purpureum*.

In addition, the designated areas surrounding the known distribution of both varieties of *Chlorogalum purpureum* are essential because:

(1) Thorough surveys of the distribution of *Chlorogalum purpureum* have not been conducted. Additionally, life-history characteristics (*e.g.*, seasonal dormancy) of *C. purpureum* make it difficult to quantify the species' exact distribution. Therefore, the plants are likely more widespread than observed. Surveys conducted for several years are needed to determine the presence or absence of the species.

(2) A seed or bulb bank likely exists within habitat that occurs adjacent to the current known distribution of *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum*. The extent of this seed or bulb bank is unknown. However, other studies have determined that ecosystems with annual species have large seed banks, especially where the land has been grazed (Baskin and Baskin 1998). Because it is logistically difficult to determine how extensive the seed or bulb bank is at any particular site, and because above-ground plants may or may not be present in all patches within a site each year, we cannot quantify what proportion of the critical habitat unit may actually be occupied by *C. purpureum*. However, any seed or bulb bank present is critical for the species' survival. If, for example, a fire destroys adult plants prior to seed dispersal, no seeds will be set for the following years' growth. A seed or bulb bank that occurs in the surrounding habitat could help limit population declines and extirpation. The inclusion of unoccupied habitat in the critical habitat unit reflects the dynamic nature of the life history characteristics (*e.g.*, seasonal dormancy, timing of flowering, etc.) of this species.

(3) Species necessary for pollination and seed dispersal of *Chlorogalum purpureum* extend beyond the boundary of the known distribution of *C. purpureum*. It is necessary to protect sufficient areas surrounding the known occurrences of *C. purpureum* because occupied habitat that is limited in size can maintain few pollinators. Additionally, the pollinators of *C. purpureum* are likely to be generalists that also pollinate other plants in the grassland, oak savannah, and chaparral habitat where the plant occurs. A reduction in pollinator visitation to *C. purpureum* could reduce seed output, resulting in decreases in flowering plant density, inflorescence density, or population size.

(4) Plants with life-history characteristics such as *Chlorogalum purpureum* have distributions that are known to fluctuate (expand or decrease) over long time periods in response to natural and unpredictable events (*e.g.*, rainfall, fire, recreation activities, herbicide use, change in private land use practice). These factors may cause the habitat suitability of given areas to vary over time, and thus affect the distribution of *C. purpureum*. Areas beyond the known occurrences of *C. purpureum* that have appropriate soil conditions are favorable for population expansion and reintroductions (if necessary in the future).

The ability of an organism to survive and reproduce depends upon available resources. For *Chlorogalum purpureum*, those resources occur beyond the boundaries of the known distribution of the species. Without including the surrounding area, the fitness (*i.e.*, the extent to which the species genes are passed on and represented in subsequent generations) of *Chlorogalum purpureum* may be reduced. For many wildlife and plant species, the entire landscape (rather than site-specific characteristics) may be influential. The exact amount of area needed for *Chlorogalum purpureum* cannot be determined without studying measurable variables which reflect the plant's health, reproduction, and survival. Very little of this information is available for *C. p.* var. *purpureum* or *C. p.* var. *reductum*. Therefore, unless the results of future studies suggest otherwise, we believe the habitat encompassed within the critical habitat boundaries is necessary for *C. purpureum* expansion, reproduction, and survival because the area has those characteristics needed by the species, in addition to supporting those ecological functions necessary for *C. purpureum* persistence.

A brief description of the critical habitat units are given below:

Jolon Unit

This unit consists of 620 ha (1,532 ac) of private property near Jolon Road. This population is probably a remnant of a much larger population that historically extended beyond the immediate Fort Hunter Liggett area. The land within this unit provides those characteristics essential for the species discussed above.

Camatta Canyon Unit

This unit consists of one area that encompasses the similar topographic features and vegetative communities that surround the only two known occurrences of this species. The Camatta Canyon Unit (1,772 ha (4,378 ac)) encompasses the plateau on both the north and south sides of Highway 58 near Camatta Canyon, extending south approximately 5 km (3 mi) to include two private inholding areas within the LPNF boundaries.

The land within this unit provides those characteristics essential for the species discussed above. More specifically, the area surrounding the known distribution of *Chlorogalum purpureum* var. *reductum* and the plateau adjacent to the known distribution (*i.e.*, finger-like extensions in northern portion of the unit) are essential because:

(1) *Chlorogalum purpureum* var. *reductum* is found at only two sites in the La Panza Range in central San Luis Obispo County. The two sites likely make up one "population" of plants due to the close proximity of the sites and the characteristic "patchiness" of plants that has been observed with both varieties of *C. purpureum*. The limited geographic distribution of *C. p.* var. *reductum* increases the likelihood of its extinction. The risk of extinction elevates the need for protecting all existing plants, habitat, and soil conditions for the taxon's expansion. Additionally, ecological attributes upon which the species relies (*e.g.*, pollinators, seed dispersal agents) should be protected. Activities that may adversely affect or destroy the plant and the habitat that is critical for its survival and expansion should be limited. These activities include, but are not limited to, off-road vehicle use, livestock grazing, herbivory, and ground disturbance by gophers.

(2) Thorough surveys of the distribution of *Chlorogalum purpureum* var. *reductum* have not been conducted in the area. Surveys are needed across multiple years to determine the presence or absence of the species. Monitoring of *C. p.* var. *purpureum* at Fort Hunter Liggett has found known individual mature plants to be dormant for at least three years. During dormancy, both varieties of *Chlorogalum* are not detectable on the surface. Because discoveries of new *C. p.* var. *purpureum* sites are being found within the range of the taxon at Fort Hunter Liggett, one may expect "new patches" of *C. p.* var. *reductum* to occur in the Camatta Canyon Unit if surveys were conducted within the critical habitat boundary in those areas where the primary constituent elements occur.

(3) An extension of the plateau/flat-top area where *Chlorogalum purpureum* var. *reductum* is currently known to occur exists between the northern site and the southern site. This area harbors the soils and vegetation appropriate for *C. p.* var. *reductum* growth and expansion. We believe it is important to provide connectivity between the two sites. Additionally, the area encompasses what appear to be flat-top/mesa-like extensions (which likely contain suitable habitat) that occur between the two known distributions (D. Chipping, California Polytechnic State University, *in litt.*, 1997). A. Koch (CDFG, pers. comm., 2001) also notes that *C. p.* var. *reductum* occurs on private property which falls between the two known sites and within the critical habitat boundary line.

(4) The vegetation community that *Chlorogalum purpureum* var. *reductum* depends on extends beyond the boundary of the known distribution. By encompassing plateau areas, the known distribution, and a portion of the adjacent vegetation community that the species depends on, ecological functions (*e.g.*, cryptogamic crust formation, predator-prey relationships, pollinator activity) within the habitat are maintained such that "edge effects" from encroaching activities not conducive to *C. p.* var. *reductum* persistence (*e.g.*, off-road vehicle use, livestock grazing, etc.) do not inhibit the taxon's expansion or survival. Additionally, adjacent grassland and oak woodland habitat that is adversely affected could result in greater rates of herbivory or regeneration/expansion of nonnative plants that can outcompete smaller, herbaceous species such as *C. p.* var. *reductum*.

Lands proposed are under private, State, and Federal jurisdiction. State lands are managed by CalTrans, and Federal lands are managed by the the Forest Service (*i.e.*, LPNF). The approximate areas of proposed critical habitat by land ownership are shown in Table 1.

TABLE 1.—APPROXIMATE AREAS, GIVEN IN HECTARES (HA) AND ACRES (AC)[1] OF PROPOSED CRITICAL HABITAT FOR *Chlorogalum purpureum* BY LAND OWNERSHIP

Unit name	Private	State	Federal	Total
Jolon	620 ha (1,532 ac)			620 ha (1,532 ac)

TABLE 1.—APPROXIMATE AREAS, GIVEN IN HECTARES (HA) AND ACRES (AC) [1] OF PROPOSED CRITICAL HABITAT FOR *Chlorogalum purpureum* BY LAND OWNERSHIP—Continued

Unit name	Private	State	Federal	Total
Camatta Canyon	1,324 ha (3,271 ac)	7 ha (18 ac)	441 ha (1,089 ac)	1,772 ha (4,378 ac)
Total	1,944 ha (4,803 ac)	7 ha (18 ac)	441 ha (1,089 ac)	2,443 ha (5,910 ac)

[1] Approximate acres have been converted to hectares (2.47 ac = 1 ha). Based on the level of precision of mapping of each unit, hectares and acres have been rounded to the nearest whole number. Totals are sums of units.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify a species' critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the action agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect *Chlorogalum purpureum* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act or any other activity requiring Federal action (*i.e.*, funding, authorization) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, as well as actions on non-Federal lands that are not federally funded, authorized, or permitted, will not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Chlorogalum purpureum* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Destruction of grassland, oak woodland, and oak savannah communities, and open areas found within shrubland communities, including but not limited to, introduction of nonnative species, heavy recreational use, maintenance of an unnatural fire regime, development, road maintenance, agricultural activities, discing, mowing, or chaining;

(2) Unmanaged soil compaction or disturbance of upper soil surfaces. These activities include, but are not limited to, grazing, fire management, or mechanical disturbance such as by vehicles with tracks or heavy wheels, and trampling by livestock and people; and,

(3) Unmanaged application or runoff of pesticides, herbicides, fertilizers, or other chemical or biological agents.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 ensures that actions funded, authorized, or carried out by Federal agencies are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify the listed species' critical habitat. Actions likely to jeopardize the continued existence of a species are those that would appreciably reduce the likelihood of the species' survival and recovery, and actions likely to destroy or adversely modify critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. The units we are designating are occupied by either above-ground plants or a *Chlorogalum purpureum* seed bank. Federal agencies already consult with us on activities in areas where the species may be present to ensure that their actions do not jeopardize the continued existence of the species. The units also contain some areas which are considered unoccupied. However, we believe for those areas we have ultimately identified as critical habitat, that the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Few additional consultations are likely to be conducted due to the designation of critical habitat. Actions on which Federal agencies consult with us include, but are not limited to:

(1) Development on private lands requiring permits from Federal agencies, such as authorization from the Corps, pursuant to section 404 of the Clean Water Act, or a section 10(a)(1)(B) permit from the Service, or some other Federal action that includes Federal funding that will subject the action to the section 7 consultation process (*e.g.*, from the Federal Highway Administration, Federal Emergency Management Agency, or the Department of Housing and Urban Development);

(2) Military activities of the U.S. Department of Defense (Army Reserve) on their lands or lands under their jurisdiction;

(3) Activities of the Forest Service on their lands or lands under their jurisdiction;

(4) The release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(5) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act; and

(6) Construction of communication sites licensed by the Federal Communications Commission, and authorization of Federal grants or loans.

Where federally-listed wildlife species occur on private lands proposed for development, any Habitat Conservation Plans (HCPs) submitted by the applicant to secure a permit to take, according to section 10(a)(1)(B) of the Act, would be subject to the section 7 consultation process. Several other species that are listed under the Act have been documented to occur in the same general areas as the current distribution of *Chlorogalum purpureum*. Listed wildlife species identified either on Fort Hunter Liggett or in close proximity to this area include San Joaquin kit fox (*Vulpes macrotis mutica*), vernal pool fairy shrimp (*Branchinecta lynchi*), California red-legged frog (*Rana aurora draytonii*), arroyo toad (*Bufo californicus*), bald eagle (*Haliaeetus leucocephalus*), California condor (*Gymnogyps californianus*), and least Bell's vireo (*Vireo bellii* pusillus). The California tiger salamander (*Ambystoma tigrinum californiense*), a candidate wildlife species (taxon for which the Service has sufficient biological information to support a proposal to list as endangered or threatened), has also been documented at Fort Hunter Liggett. Species that are listed under the Act that may occur in the same general area as *C. p.* var. *reductum* include vernal pool fairy shrimp, longhorn fairy shrimp (*Branchinecta longientenna*), California red-legged frog, and California condor.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181 (503/231–6131, FAX 503/231–6243).

Relationship of Critical Habitat to Military Lands

Section 3(5)(A) and Exclusions Under Section 4(b)(2)

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Special management and protection are not required if adequate management and protection are already in place. Adequate special management or protection is provided by a legally operative plan/agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and that manages for the long-term conservation of the species. If any areas containing the primary constituent elements are currently being managed to address the conservation needs of *Chlorogalum purpureum* management or protection, these areas would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act and would not be included in this final rule.

To determine if a plan provides adequate management or protection we consider—(1) Whether there is a current plan specifying the management actions and whether such actions provide sufficient conservation benefit to the species; (2) whether the plan provides assurances that the conservation management strategies will be implemented; and (3) whether the plan provides assurances that the conservation management strategies will be effective. In determining if management strategies are likely to be implemented, we consider whether—(a) A management plan or agreement exists that specifies the management actions being implemented or to be implemented; (b) there is a timely schedule for implementation; (c) there is a high probability that the funding source(s) or other resources necessary to implement the actions will be available; and (d) the party(ies) have the authority and long-term commitment to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands. In determining whether an action is likely to be effective, we consider whether—(a) The plan specifically addresses the management needs, including reduction of threats to the species; (b) such actions have been successful in the past; (c) there are provisions for monitoring and assessment of the effectiveness of the management actions; and (d) adaptive management principles have been incorporated into the plan.

The Sikes Act Improvement Act of 1997 (Sikes Act) requires each military installation that encompasses land and

water suitable for the conservation and management of natural resources to have completed, by November 17, 2001, an INRMP. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the installation. Each INRMP includes an assessment of the ecological needs of the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. Under section 7 of the Act, we consult with the military on the development and implementation of INRMPs for installations with listed species. Military installations with approved INRMPs which address the needs of species generally do not meet the definition of critical habitat discussed above, as they require no additional special management or protection. Therefore, we generally do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan likely would not meet the definition of critical habitat. The Department of Defense has prepared an INRMP for the CANG at Camp Roberts that meets these criteria, and we have determined that these lands do not meet the definition of critical habitat under section 3(5)(A). We believe the assurances provided through the INRMP are sufficient to provide for the conservation of *Chlorogalum purpureum* var. *purpureum*. Consequently, these lands have not been included in this critical habitat designation.

The Department of the Army is currently developing an INRMP for Fort Hunter Liggett that addresses long-term conservation measures and adaptive management for *Chlorogalum purpureum* var. *purpureum*. We met with Fort Hunter Liggett on March 6, June 4, and June 17, 2002, to discuss the content of the installation's draft INRMP regarding the adequacy of conservation measures for *C. p.* var. *purpureum*. We provided written comments for consideration in developing the draft INRMP on May 31, June 4, and June 17, 2002. Our written comments conveyed the current status of the plant, criteria necessary for INRMPs to successfully preclude critical habitat designation, our concerns with Fort Hunter Liggett management of *C. p.* var. *purpureum* habitat, and a recommended strategy detailing measures that would provide for the long-term conservation of the species on the installation.

Fort Hunter Liggett biologists initiated a long-term monitoring program in 1998 to investigate life-history information on *Chlorogalum purpureum* var. *purpureum* in 23 plots placed subjectively where *C. p.* var. *purpureum* was known to occur. This monitoring program was reviewed and revised by academicians in 2000 and changes were made such that only two years of data are available for analysis. Data on leaf number, leaf width, flowering, numbers of fruits, and seed production were collected during the monitoring effort. Vegetative cover and disturbance type were recorded if found. Although the monitoring program provided life-history information, it was not designed to assess either population trends or effects of military activities on *C. p.* var. *purpureum*. We have reviewed the data and determined that it cannot be used to assess the above issues since—(1) The data cannot describe levels of recruitment on the installation, as seedlings cannot be accurately identified; (2) the relative age of individuals cannot be reliably determined from leaf number or width; (3) the monitoring effort lacked adequate sample size and random placement of plots; and (4) the plant undergoes dormancy for several years at a time. However, future experiments that expose plants of known age (by using lab-grown plants) to varying levels of impacts could provide valuable information on the effects of military training. Because the species is relatively slow to mature, an assessment of changes in population size would likely require more than a decade. Discussion regarding the INRMP will include a review of the monitoring program.

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Fort Hunter Liggett has commented that critical habitat on their installation would impact the training mission and cause adverse economic impacts. The military has provided information detailing annual direct costs of $2.3 million. These costs do not include additional costs, both monetary and human, incurred by local units that travel to Fort Hunt Liggett to train and who likely would be forced to train in other states. Types of training that the Army believes would no longer be viable at Ft. Hunter Liggett with the proposed designation of critical habitat include: training in the establishment of emergency airfields; training in the defense of emergency and established airfields; use of the machine gun and grenade ranges; use of the long-established tank trail between Camp Robert and the Fort; and staging for a variety of other types of training, including live-fire exercises.

We are working with Fort Hunter Liggett to identify conservation measures and adaptive management considerations for the conservation of *Chlorogalum purpureum* var. *purpureum*. Because the habitat identified as the Fort Hunter Liggett Unit does provide one or both of the primary constituent elements and requires special management considerations or protection, it was proposed for designation as critical habitat. We note that the military is developing an INRMP and is currently undertaking other measures designed to provide special management for the species. This INRMP, when completed, and the other measures would most likely justify exclusion of this area under section 3(5)(A) at that time. However, because the benefits of exclusion of critical habitat on Fort Hunter Liggett outweigh the benefits of the designation, we are excluding Fort Hunter Liggett under section 4(b)(2).

Economic Analysis

As stated above, section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat.

Following the publication of the proposed critical habitat designation, a draft economic analysis was prepared to estimate the potential economic effect of the designation. The draft analysis was made publicly available for review on May 7, 2002 (67 FR 30644). We accepted comments on the draft analysis through June 6, 2002.

Our draft economic analysis evaluated the potential future effects associated with the listing of *Chlorogalum purpureum* as a threatened species under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a "without critical habitat" baseline and compared it to a "with critical habitat" scenario. The "without critical habitat" baseline represented the current and expected economic activity under all modifications prior to the critical habitat designation, including protections afforded the species under Federal and State laws. Information received during the comment period further informed our economic review. As a result, we have identified significant but unquantified indirect costs that would be incurred by the military related to redirection of training activities and reduced military readiness.

The majority of consultations resulting from the critical habitat designation for *Chlorogalum purpureum* are likely to address ongoing activities (*e.g.*, grazing) at LPNF. Every consultation must consider how an action would affect the listed species and its habitat, whether or not critical habitat has been designated; for this reason, consultations that are reinitiated solely because of the designation of critical habitat will not result in recommendations or requirements for projects to be modified.

Our economic analysis recognizes that there may be costs from delays associated with reinitiating completed consultations after a critical habitat designation is made final.

Following the close of the comment period on the draft economic analysis, a final addendum was completed which incorporated public comments on the draft analysis.

We concluded that the designation of critical habitat as proposed would result in a significant economic impact to the military. Based on data provided by the military during the comment period, total estimated section 7 costs are likely to exceed $2.3 million in direct costs, plus the currently unquantified economic and human costs associated with changes in military training activities at Fort Hunter Liggett and a potential resulting reduction in military readiness. This data supported our decision to exclude Fort Hunter Liggett under section 4(b)(2). State agencies are not expected to be impacted by the designation of critical habitat. Costs to private landowners are expected to be approximately $28,000 for section 7 consultations, all attributable solely to the critical habitat designation. These estimates are based on the existing consultation history with agencies in the area and increased public awareness and technical assistance regarding clarification of the requirements that critical habitat might impose on private landowners. Therefore, we conclude that minimal incremental costs are anticipated as a result of this designation of critical habitat for *Chlorogalum purpureum*.

A copy of the final economic analysis and supporting documents are included in our administrative record and may be obtained by contacting our Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (EO) 12866, this is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

(a) In the economic analysis, we determined that this rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. *Chlorogalum purpureum* was listed as threatened in March of 2000. Since that time we have conducted, and will continue to conduct, formal and informal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of *C. purpureum*.

Under the Act, Federal agencies shall consult with the Service to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat. The Act does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 2 below). Based upon our experience with this species and its needs, we conclude that any Federal action or authorized action that could potentially result in the destruction or adverse modification of critical habitat would also be considered as "jeopardy" under the Act in areas occupied by the species.

Accordingly, the designation of currently occupied areas as critical habitat is not anticipated to have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding beyond the effects resulting from the listing of this species. Non-Federal persons who do not have a Federal "sponsorship" in their actions are not restricted by the designation of critical habitat. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. These impacts were evaluated in our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule).

TABLE 2.—IMPACTS OF CHLOROGALUM PURPUREUM LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation [1]
Federal Activities Potentially Affected [2].	Activities such as field maneuvers by troops or vehicles, training, bivouacking, construction and facility development conducted by the Army Reserve at Fort Hunter Liggett. Activities authorized or conducted by the Forest Service at LPNF, such as livestock grazing, road maintenance or construction, and recreation.	Activities by these Federal agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.

TABLE 2.—IMPACTS OF CHLOROGALUM PURPUREUM LISTING AND CRITICAL HABITAT DESIGNATION—Continued

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation [1]
Private or other non-Federal Activities Potentially Affected [3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for *Chlorogalum purpureum* by mechanical, chemical, or other means or appreciably decrease habitat value or quality through indirect effects (*e.g.*, edge effects, invasion of exotic plants or animals, fragmentation of habitat).	Funding, authorization, or permitting actions by Federal agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of *Chlorogalum purpureum* since its listing in 2000. We evaluated the impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation in our economic analysis (see Economic Analysis section of this rule). We do not expect prohibition against adverse modification of critical habitat to impose any restrictions in addition to those that currently exist on currently occupied land and will not create inconsistencies with other agencies' actions on unoccupied lands.

(c) We do not expect this final rule to materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above, we do not anticipate that the adverse modification analysis (resulting from critical habitat designation) will have any incremental effects.

(d) OMB has determined that this rule raises novel and legal or policy issues. Therefore, this rule is significant under E.O. 12866, and, as a result, has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. In this rule, we are certifying that the critical habitat designation for *Chlorogalum purpureum* will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

Small entities include small organizations, such as independent non-profit organizations, small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species may be present, Federal agencies already are required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Chlorogalum purpureum*. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since *C. purpureum* was proposed for listing we have conducted only one formal consultation with Fort Hunter Liggett and one with LPNF. We are currently in the process of preparing two biological opinions for *C. p.* var. *purpureum*. None of the past or ongoing consultations involves an applicant that qualifies as a small entity.

In the draft economic analysis, we found that the proposed designation could potentially impose total economic costs for consultations and modifications to projects within proposed critical habitat for *Chlorogalum purpureum* var. *purpureum* on privately-owned land up to $12,000 over a 10-year period in the Jolon Unit (formerly Fort Hunter Liggett Unit) and up to $2,000 over a 10-year period in the Camp Roberts Unit. We also found the proposed designation could potentially impose total economic costs for consultations and modifications to projects within proposed critical habitat for *C. p.* var. *reductum* on privately-owned land up to $14,000 over a 10-year period in the Camatta Canyon Unit.

For the final designation, the Service has concluded that the proposed lands within the boundaries of Camp Roberts, as discussed in the "Relationship of Critical Habitat to Military Lands" section of this rule, do not meet the definition of critical habitat under section 3(5)(A) of the Act. Therefore, any projects or activities on these lands will not be subject to consultations as a result of critical habitat designation for *Chlorogalum purpureum* var. *purpureum* and the estimated cost of up to $2,000 over a 10-year period for private lands in the Camp Roberts Unit would no longer be applicable.

While SBREFA does not explicitly define either "substantial number" or "significant effect," the Small Business Administration, as well as other Federal agencies, have interpreted these terms to represent an impact on 20 percent or greater of the number of small entities in any industry and an effect equal to three percent or more of a business' annual sales. In determining whether this rule could "significantly affect a substantial number of small entities," the economic analysis first determined whether critical habitat could potentially affect a "substantial number" of small entities in counties supporting critical habitat areas.

On Federal lands included in this proposed critical habitat designation, grazing is the only activity identified as possibly having an economic effect on small entities. Currently, there is only one grazing permittee at LPNF out of all Federal lands included in this rule, and there is no indication that other entities will apply for grazing permits in the foreseeable future. This does not represent a substantial number of small grazing entities. The grazing permittee at LPNF is for the Navajo Allotment in the Santa Lucia Ranger District. Only a portion of critical habitat lies within this grazing allotment. The draft economic analysis and final addendum address the potential costs associated with activities taking place in LPNF, totaling approximately $38,000 to all parties including LPNF, the Service, and private landowners.

Most of the remainder of the proposed designation is on private land. On private lands, activities that lack Federal involvement would not be affected by the critical habitat designation. Current activities of an economic nature that occur on private lands in the area encompassed by this proposed designation are primarily agricultural, such as live-stock grazing and farming. Because these areas are zoned rural and not near cities or towns, multiple-unit residential or commercial development is unlikely. Therefore, Federal agencies such as the Economic Development Administration, which is occasionally involved in funding municipal projects elsewhere, are unlikely to be involved in projects in these areas. In rural regions of San Luis Obispo and Monterey counties, previous consultations under section 7 of the Act between us and other Federal agencies most frequently involved the Corps or the Federal Highway Administration (FHWA). In FHWA consultations, the applicant is either the California State Department of Transportation or the County, neither of which is considered a small entity as defined here. Corps consultations involve wetlands or waterways and occur due to the presence of species (or their critical habitat) that spend at least part of their life in aquatic habitats. *Chlorogalum purpureum* is an upland plant species and unlikely to be the subject of consultations with the Corps. In agricultural areas, the Natural Resources Conservation Service (NRCS) occasionally funds activities on farms or ranches that require consultation with us. These consultations are infrequent, however. In the last decade, in all of Monterey and San Luis Obispo counties combined, the NRCS has completed only four formal consultations with the Service. NRCS is currently initiating two additional formal consultations, although neither involve *C. purpureum*. San Luis Obispo and Monterey counties encompass about 4 million acres of land and support over 40 listed species. Based on the low level of past activity, we expect few, if any, consultations with the NRCS or other federal agencies on the approximately 4,821 acres of non-federal lands in this rule. For these reasons, the Service determines that the number of small entities likely to be affected by this rule will not be substantial.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for any small businesses that may be required to consult with us regarding their project's impact on *Chlorogalum purpureum* and its critical habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a very limited consultation history for *Chlorogalum purpureum*, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats

it faces, as described in the final listing rule and this critical habitat designation.

It is likely that an agricultural land owner or developer could modify a project or take measures to protect *Chlorogalum purpureum*. Based on the types of modifications and measures that have been implemented in the past for plant species, steps could be taken such as installing fencing or re-aligning a project to avoid sensitive areas. The cost for implementing these measures for one project is expected to be of the same order of magnitude as the total cost of the consultation process, *i.e.*, approximately $10,000. It should be noted that a developer likely would already be required to undertake such measures due to regulations in the California Environmental Quality Act (CEQA). These measures are not likely to result in a significant economic impact to project proponents.

As required under section 4(b)(2) of the Act, we conducted an analysis of the potential economic impacts of this critical habitat designation, and that analysis was made available for public review and comment before finalization of this designation. Based on estimates provided in the economic analysis, the potential economic impact of critical habitat designation for *Chlorogalum purpureum* over the next 10 years is about $96,000. Out of this about 27 percent, or $26,000, could potentially be borne by the private sector. However, due to the 2,217-acre reduction of designation of private lands in the final rule, the actual impact of critical habitat designation on private landowners will be less than that estimated in the economic analysis.

In summary, we have considered whether this rule would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons, that it will not affect a substantial number of small entities. Furthermore, we believe that the potential compliance costs for the remaining number of small entities that may be affected by this rule will not be significant. Therefore, we are certifying that the designation of critical habitat for *Chlorogalum purpureum* will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we determined whether designation of critical habitat would cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that they must ensure that any programs involving Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for *Chlorogalum purpureum* in a takings implication assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by *Chlorogalum purpureum* would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Chlorogalum purpureum*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB Control Number.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a Government-to-Government basis. The designated critical habitat for *Chlorogalum purpureum* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.12(h) revise the entry for *Chlorogalum purpureum* under "FLOWERING PLANTS" to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Chlorogalum purpureum.	Purple amole (Camatta Canyon amole).	U.S.A. (CA)	Liliaceae—Lily	T	689	17.96(a)	NA

3. Amend § 17.96(a), by adding critical habitat for purple amole (*Chlorogalum purpureum*) in alphabetical order under Family Liliaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Liliaceae: *Chlorogalum purpureum* (purple amole)

(1) Critical habitat units are depicted for Monterey and San Luis Obispo counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Chlorogalum purpureum* var. *purpureum* consist of, but are not limited to:

(i) Soils that are sandy clay to loamy clay, well-drained on the surface, and are often overlain with fine gravel; and,

(ii) Plant communities in functioning ecosystems that support associated plant and animal species (*e.g.*, pollinators, predator-prey species, etc.), including valley and foothill grassland, blue oak woodland or oak savannahs, and open areas within shrubland communities. Within these vegetation community types, *C. p.* var. *purpureum* appears where there is little cover of other species which compete for resources available for growth and reproduction.

(3) The primary constituent elements of critical habitat for *Chlorogalum purpureum* var. *reductum* consist of, but are not limited to:

(i) Well-drained, red clay soils with a large component of gravel and pebbles on the upper soil surface; and,

(ii) Plant communities in functioning ecosystems that support associated plant and animal species (*e.g.*, pollinators, predator-prey species, etc.), including grassland, blue oak woodland (*Quercus douglasii*) or oak savannahs, and open areas within shrubland communities. Within these vegetation communities *C. p.* var. *reductum* appears where there is little cover of other species which compete for resources available for growth and reproduction.

(4) Critical habitat does not include existing features and structures, such as buildings, hard-packed roads (*e.g.*, asphalt, pavement), aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing any of the primary constituent elements.

(5) *Critical Habitat Map Units*—Data layers defining map units were mapped using Universal Transverse Mercator (UTM) coordinates.

(6) Note: Map 1—Index Map follows:

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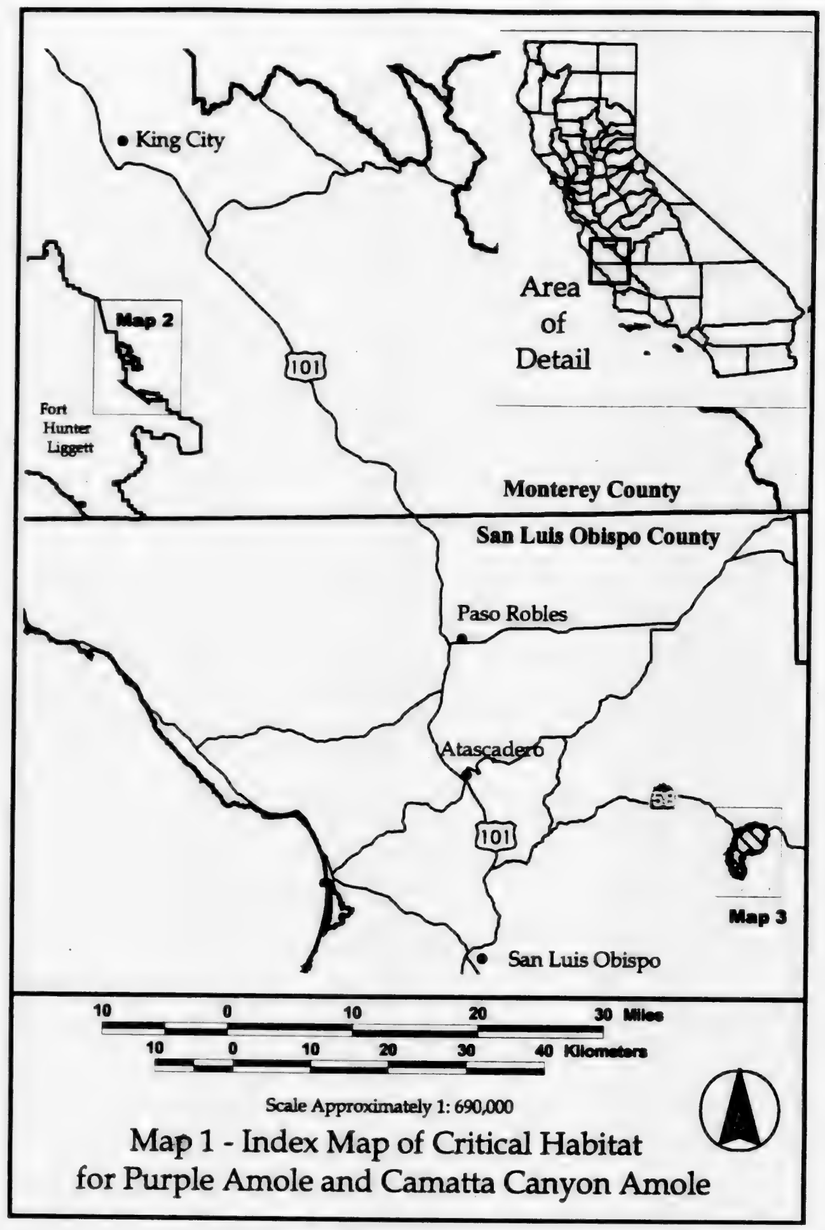

Map 1 - Index Map of Critical Habitat for Purple Amole and Camatta Canyon Amole

(7) *Jolon Unit.*

(i) *Chlorogalum purpureum* var. *purpureum*. Monterey County, California. From USGS 1:24,000 quadrangle map Jolon. Lands bounded by UTM zone 10 NAD83 coordinates (E,N): 666160, 3986620; 666160, 3986620; 666160, 3986620; 666160, 3986620; 666441, 3986630; 666441, 3986630; 666456, 3985980; 666441, 3986630; 666468, 3985460; 666471, 3985340; 666646, 3985110; 666965, 3985110; 667260, 3985130; 667281, 3984880; 667567, 3984910; 667699, 3984690; 667849, 3984770; 668125, 3984770; 668175, 3984600; 668224, 3984470; 668334, 3984260; 668086, 3984250; 668094, 3984040; 668004, 3984040; 667888, 3983960; 667891, 3983860; 668085, 3983860; 668118, 3983590; 668538, 3983430; 668526, 3983290; 668780, 3983360; 668909, 3983300; 668905, 3983060; 669317, 3983070; 669346, 3982270; 669638, 3982120; 669638, 3981950; 669463, 3981960; 669396, 3981850; 668647, 3981840; 668649, 3982250; 668435, 3982790; 668126, 3982790; 668122, 3982620; 667509, 3982620; 667426, 3982950; 667272, 3982930; 667261, 3983040; 667283, 3983420; 666998, 3983420; 666907, 3983410; 666887, 3984220; 666496, 3984220; 666468, 3985460; 667720, 3980200; 667067, 3980190; 667067, 3980190; 667720, 3980200; 667417, 3979930; 668171, 3979370; 668123, 3979400; 668061, 3979450; 668002, 3979490; 667943, 3979540; 667884, 3979580; 667829, 3979620; 667781, 3979650; 667741, 3979680; 667417, 3979930; 668283, 3979290; 668315, 3979270; 668335, 3979260; 668311, 3979270; 668283, 3979290; 669233, 3978620; 669242, 3978640; 669244, 3978640; 669255, 3978650; 669303, 3978720; 669365, 3978680; 669374, 3978620; 669441, 3978600; 669504, 3978600; 669542, 3978660; 669614, 3978730; 669639, 3978810; 669616, 3978890; 669610, 3978900; 669594, 3978940; 669654, 3978930; 670986, 3978670; 671848, 3978660; 671854, 3978560; 671879, 3978440; 671888, 3978350; 671880, 3978370; 671821, 3978350; 671804, 3978280; 671833, 3978220; 671933, 3978220; 671918, 3978130; 671922, 3978070; 671947, 3978020; 671981, 3977950; 671985, 3977900; 671964, 3977870; 671961, 3977850; 670600, 3977840; 670599, 3977640; 669239, 3978620; 669233, 3978620; 672077, 3977850; 672099, 3977870; 672171, 3977930; 672199, 3977970; 672200, 3977850; 672077, 3977850;

(ii) Note: See Map 2.

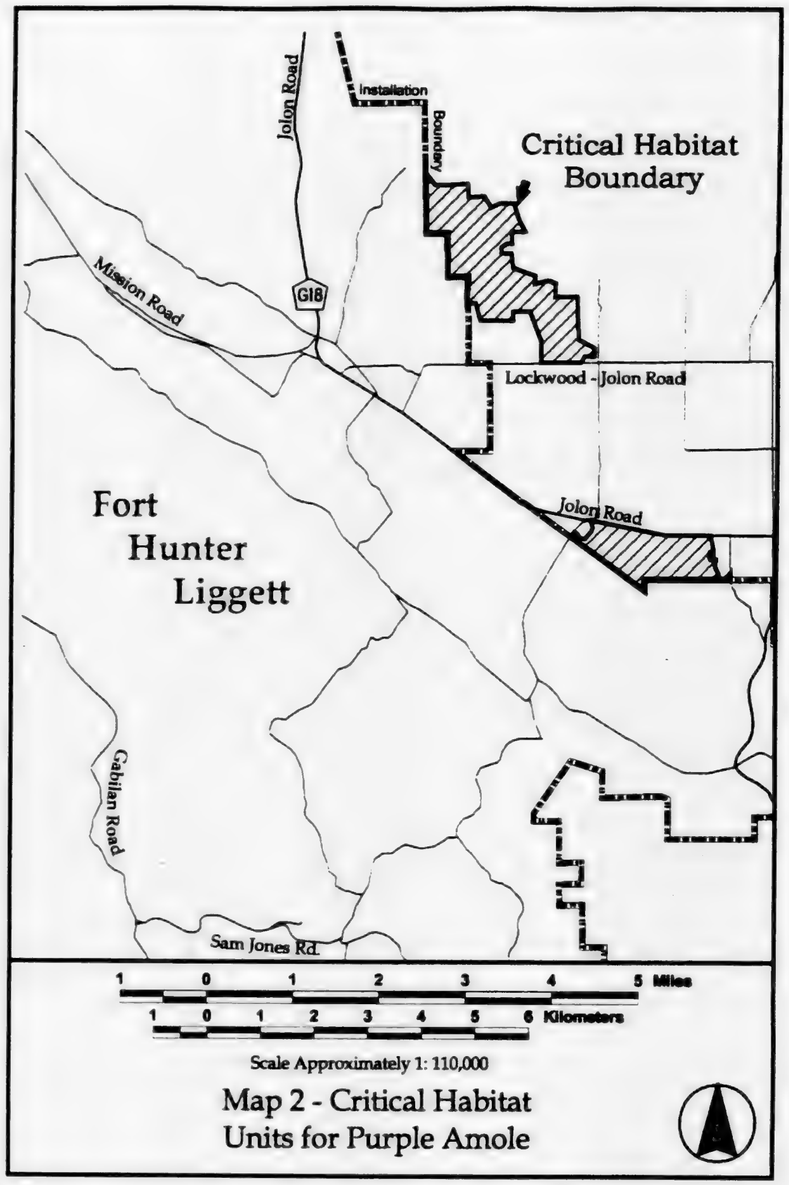

Scale Approximately 1: 110,000

Map 2 - Critical Habitat Units for Purple Amole

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(8) *Camatta Canyon Unit.*

(i) *Chlorogalum purpureum* var. *reductum*. San Luis Obispo County, California. From USGS 1:24,000 quadrangle maps Camatta Ranch, La Panza Ranch, and Pozo Summit. Lands bounded by the following UTM zone 10 NAD83 coordinates (E, N): 747763, 3918050; 747749, 3918040; 747714, 3918020; 747690, 3918000; 747683, 3917980; 747690, 3917960; 747722, 3917940; 747754, 3917900; 747749, 3917870; 747724, 3917870; 747647, 3917860; 747633, 3917860; 747616, 3917850; 747612, 3917840; 747615, 3917830; 747641, 3917820; 747727, 3917790; 747718, 3917780; 747687, 3917760; 747655, 3917750; 747635, 3917740; 747612, 3917720; 747597, 3917690; 747590, 3917660; 747598, 3917630; 747593, 3917600; 747578, 3917580; 747544, 3917560; 747530, 3917550; 747525, 3917540; 747528, 3917510; 747527, 3917470; 747521, 3917430; 747510, 3917410; 747461, 3917370; 747434, 3917370; 747411, 3917360; 747398, 3917360; 747387, 3917350; 747385, 3917330; 747396, 3917280; 747396, 3917250; 747381, 3917220; 747368, 3917180; 747366, 3917150; 747357, 3917140; 747343, 3917130; 747319, 3917130; 747285, 3917140; 747270, 3917150; 747263, 3917160; 747261, 3917190; 747256, 3917230; 747246, 3917270; 747224, 3917340; 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(ii) Note: Map 3 follows:

BILLING CODE 4310–55–P

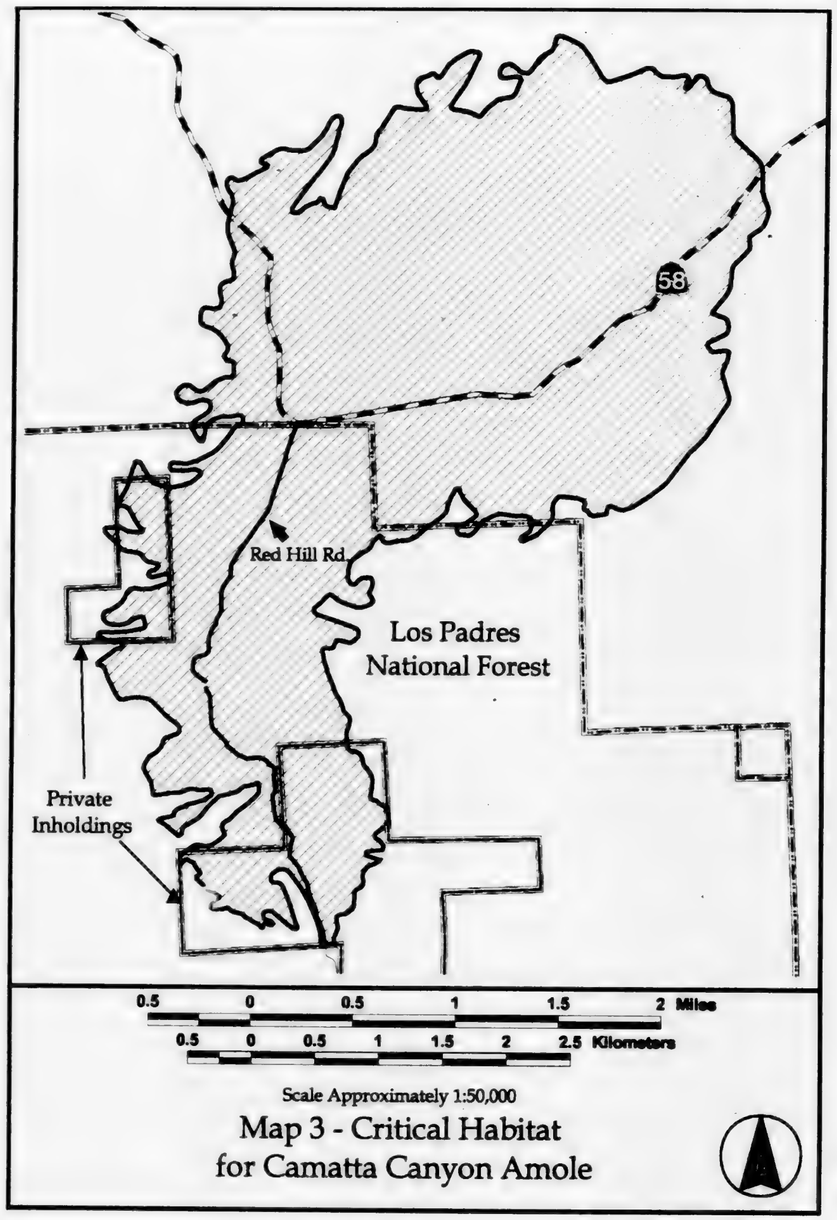

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Dated: October 15, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–26768 Filed 10–23–02; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Thursday,
October 24, 2002

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 314

Applications for FDA Approval to Market a New Drug: Patent Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug is Invalid or Will Not be Infringed; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 02N–0417]

RIN 0910–AC48

Applications for FDA Approval to Market a New Drug: Patent Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Invalid or Will Not be Infringed

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its patent listing requirements for new drug applications (NDAs). The proposal would clarify the types of patents that must and must not be listed and revise the declaration that NDA applicants must provide regarding their patents to help ensure that NDA applicants list only appropriate patents. The proposal would also revise the regulations regarding the effective date of approval for certain abbreviated new drug applications (ANDAs) and certain applications submitted under section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (505(b)(2) applications). In certain situations, Federal law bars FDA from making the approval of an ANDA or 505(b)(2) application effective for 30 months if the applicant certified that the patent claiming a drug is invalid or will not be infringed, and the patent owner or NDA holder brings suit for patent infringement. The proposal also would state that there will be only one opportunity for a 30-month stay in the approval date of each ANDA or 505(b)(2) application. The proposal is designed to make the patent listing process more efficient and to enhance the ANDA and 505(b)(2) application approval processes.

DATES: Submit written or electronic comments by December 23, 2002. Submit written comments on the information collection requirements by November 25, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Jarilyn Dupont, Office of Policy, Planning, and Legislation (HFW–14), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION:

I. Background

A. What Is the Relationship Between Patent Listing, Patent Certification, and the Date of Approval for Certain Applications?

Title I of the Drug Price Competition and Patent Term Restoration Act (Public Law 98–417, 98 Stat. 1585 (1984) ("Hatch-Waxman amendments")) amended the act to authorize the approval of duplicate or "generic" versions of approved drug products. Title I also amended section 505(b)(1) of the act (21 U.S.C. 355(b)(1)) by requiring all NDA applicants to file, as part of the NDA, "the patent number and the expiration date of any patent which claims the drug for which the applicant submitted the application or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug." Section 505(c)(2) of the act imposes a similar patent listing obligation on persons whose NDAs we have approved when the NDA holder could not have filed the patent information with its application (either because the application was filed before the act required NDA applicants to submit patent information or because the patent issued after we had approved the NDA).

We publish patent information in our approved drug products list entitled "Approved Drug Products With Therapeutic Equivalence Evaluations." The list is known popularly as the "Orange Book" because of its orange-colored cover.

The Hatch-Waxman amendments also require persons submitting a 505(b)(2) application or ANDA to make certifications regarding the listed patents pertaining to the drug which they intend to duplicate (see sections 505(b)(2)(A)(i) through (b)(2)(A)(iv) and 505(j)(2)(A)(vii)(I) through (j)(2)(A)(vii)(IV) of the act). In brief, these certifications state that:

- Patent information has not been filed;
- The patent has expired;
- The patent will expire on a specific date; or
- The patent is invalid or will not be infringed.

If the ANDA or 505(b)(2) application applicant certifies that the patent is invalid or will not be infringed (a certification known as a "paragraph IV" certification because it is the fourth type of patent certification described in the act), the act requires the applicant to notify the patent owner and NDA holder (see sections 505(b)(3) and 505(j)(2)(B) of the act.) In general, the notice states that an abbreviated application has been submitted for the drug with respect to which the paragraph IV certification is made and also includes a "detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed" (*id.*). If an action for patent infringement is brought within 45 days after the paragraph IV certification has been received, then we may not make the approval of an abbreviated application effective for 30 months, or such shorter or longer period as a court may order or the date of a court decision (see sections 505(c)(3)(C) and 505(j)(4)(B)(iii) of the act).

These statutory provisions reflect the Hatch-Waxman amendments' attempt to balance two competing interests: Promoting competition between "brand-name" and "generic" drugs and encouraging research and innovation. The act promotes competition by creating a process to expedite the filing and approval of ANDAs and 505(b)(2) applications and for resolving challenges to patents before marketing begins. At the same time, the act seeks to protect the patent owner's or NDA holder's interests by giving it the opportunity to list patents, to receive paragraph IV certifications, and to delay an ANDA's or 505(b)(2) application's effective date of approval during patent infringement litigation. (We will refer to the date the approval is made effective as the "approval date" throughout the remainder of this preamble.)

We published regulations pertaining to patent listing and patent certifications in the **Federal Register** on October 3, 1994 (59 FR 50338). The regulations regarding the submission of patent information are at §§ 314.50(h) and 314.53 (21 CFR 314.50(h) and 314.53), while the patent certification requirements are at §§ 314.50(i) and 314.94(a)(12) for 505(b)(2) applications and ANDAs respectively.

B. What Events Led to This Proposal?

In recent years, we have seen NDA applicants list new patents shortly before other listed patents for the same drug product are scheduled to expire. Some listings, such as those for BuSpar (buspirone hydrochloride), Paxil (paroxetine hydrochloride), Tiazac (diltiazem hydrochloride), and Prilosec (omeprazole), have resulted in high profile litigation. (We discuss some of these cases in section II.A of this document.) A number of disputes over recently listed patents have addressed whether the patent meets the regulatory requirements for listing in the Orange Book and have sometimes resulted in decisions that are not entirely consistent with our regulatory policy or our interpretation of our regulations.

Additionally, on May 16, 2001, the Bureau of Competition and the Policy Planning Staff of the Federal Trade Commission (FTC) submitted a citizen petition (FDA docket number 01P–0248) (FTC Citizen Petition) that requested our guidance concerning the criteria that a patent must meet before it is listed in the Orange Book. The FTC Citizen Petition asked us to clarify several patent listing issues and indicated that FTC was conducting an extensive study of generic drug competition. FTC issued the study in July 2002, in a report entitled *Generic Drug Entry Prior to Patent Expiration: An FTC Study* (FTC Report). The FTC Report focused on the procedures used to facilitate a generic drug's entry into the market before the expiration of a patent or patents that pertain to the brand-name drug product. The FTC Report noted that FTC had submitted a citizen petition to us. FTC also recommended that the law be changed to "permit only one automatic 30-month stay per drug product per ANDA to resolve infringement disputes over patents listed in the Orange Book prior to the filing date of the generic applicant's ANDA" (see FTC Report at page ii). The FTC Report explained, "To permit only one 30-month stay per drug product per ANDA should eliminate most of the potential for improper Orange Book listings to generate unwarranted 30-month stays" (*id.* at page v (footnote omitted)). In an appendix to its report, FTC asked that we issue a regulation or guidance clarifying whether an NDA holder could list various types of patents in the Orange Book. The types of patents for which FTC sought clarification were patents that claimed metabolites, polymorphs, or intermediates, product by process patents, and double patents (see FTC Report at pages A–39–A–45).

II. Description of the Proposed Rule

Given these patent listing issues, the FTC citizen petition, and the FTC Report, we decided to issue this proposed rule to help NDA applicants and NDA holders determine whether specific patents must be submitted to us for listing and to help 505(b)(2) application applicants, ANDA applicants, and other interested parties determine whether a patent listing is proper. This proposed rule will address:

- The types of patents that must and must not be listed;
- The patent certification statement that NDA applicants must submit as part of an NDA, an amendment to an NDA, or a supplement to an NDA; and
- The 30-month stay in effective dates of approval for a 505(b)(2) application or an ANDA.

A. Proposed § 314.53(b)—What Patents Must Be Listed in the Orange Book?

1. *What Does the Current Regulation Say?*

Our patent listing regulation, at § 314.53, applies to persons submitting an NDA, an amendment to an NDA, or a supplement to an NDA. Section 314.53(b) describes the patents for which information must be submitted and states, in part, that the applicant:

> * * * shall submit information on each patent that claims the drug that is the subject of the new drug application or amendment or supplement to it and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product. For purposes of this part, such patents consist of drug substance (ingredient) patents, drug product (formulation and composition) patents, and method of use patents. Process patents are not covered by this section and information on process patents may not be submitted to FDA.

Section 314.53 reflects the statutory provision that requires NDA applicants to file the patent number and expiration date of any patent which "claims the drug for which the applicant submitted the application or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture[,] use, or sale of the drug" (see section 505(b)(1) of the act). Thus, both the act and our regulations establish two distinct criteria for a patent intended for listing in the Orange Book: (1) The patent must claim the approved drug product or a method of using the approved drug product; and (2) the patent must be one with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the patent owner sought to engage in the drug's manufacture, use, or sale.

2. *How Have We Interpreted the Regulation?*

As we mentioned earlier in section I.B of this preamble, the FTC Citizen Petition sought our guidance on whether an NDA holder can list a patent claiming an unapproved aspect of an approved drug. The petition maintained that the act and our regulations do not allow listing of a patent that claimed "only an unapproved component, an unapproved formulation, or an unapproved use of a drug product" (see FTC Citizen Petition at page 3).

Our longstanding interpretation is that the term "drug" in the patent listing provisions means the approved drug product. We successfully argued in *Pfizer v. FDA*, 753 F. Supp. 171 (D. Md. 1990), that the term "drug" as used in sections 505(b)(1) and 505(c)(2) of the act refers to the "drug product" for which the NDA was filed. Pfizer had maintained that "drug" meant both the drug substance (active ingredient) and the drug product, and thus any patent claiming any drug product which contained the active ingredient that was the subject of the approved NDA must be submitted, regardless of whether the patent claims the approved drug product itself. This case began with our refusal to list a patent in the Orange Book because Pfizer did not certify that the drug and the formulation or composition of the drug claimed by the patent were currently approved. The drug dosage form covered by Pfizer's approved NDA was a capsule, but the patent Pfizer had sought to list claimed a tablet.

The court upheld our position that: (1) An NDA approval covers a specific drug product; (2) the approved drug product becomes the listed drug; and (3) ANDA applicants must certify only to patents claiming that listed drug. The court found that "FDA's interpretation is not only reasonable but also consistent with the language of the statute, Congressional intent, prior judicial interpretations of [21 U.S.C.] § 355, and the agency's own regulations" (see 753 F. Supp. at 171–72). It also found that section 505(b)(1) of the act modifies the statutory definition of "drug" at section 201(g)(1) of the Act (21 U.S.C. 321(g)(1)) to allow listing only of patents which claim the drug "for which the applicant submitted the application." Further, the court noted that sections 505(b)(1)(B) and (C) of the act require that an NDA application contain "a full list of the articles used as components of such drug" and "a full statement of the

composition of such drug," and that these requirements made sense only for a drug product and not for a drug substance that was independent of the approved NDA. Because Pfizer's NDA covered a specific drug product in capsule form (as opposed to covering the drug product's active ingredient alone or covering other dosage forms that contain the active ingredient), the court held that Pfizer could not list the patent covering the tablets.

In 1994, after the *Pfizer* decision had issued, we published a final rule that codified the patent listing requirement at 21 CFR 314.53 (see 59 FR 50338 (October 3, 1994)). Although the rule repeated the statutory requirement that the patent must claim the drug that is the subject of the NDA, the final rule replaced the proposed rule's reference to patents consisting of "drug (ingredient) patents" with patents consisting of "drug *substance* (ingredient) patents" (see 59 FR 50338 at 50343) (emphasis added). We also replaced "patents that claim a drug or drug product" with "patents that claim a drug *substance* or drug product" (*id.*) (emphasis added). Our intent was to clarify that the rule's reference to "drug" in the phrase "drug or drug product" was intended to mean "drug substance" rather than "drug product." (The rule mentioned drug products separately.) We made this change because some patents claim the approved drug product's active ingredient rather than the entire drug product (i.e., the drug product's active and inactive ingredients). In other words, if the patent claims the drug substance that was approved in the NDA, it must be listed.

However, some courts interpreted § 314.53 differently than we had intended. In *Zenith Laboratories, Inc.* v. *Abbott Laboratories, Inc.*, 1996 WL 33344963 (D. N.J. 1996), Abbott had listed patents for the dihydrate form of terazosin hydrochloride (the drug substance in the NDA-approved product whose trade name was Hytrin) and also for the anhydrous form of terazosin hydrochloride that differed from Hytrin's drug substance only in its crystalline forms. (An anhydrous form of a chemical contains no water molecules, whereas a dihydrous form contains two water molecules.) Zenith had filed an ANDA to market a drug product containing a different form of terazosin hydrochloride, and claimed that the active ingredient in its product had a different crystalline structure from Hytrin, did not infringe the patent on Hytrin, and that Abbott's patents on the anhydrous form of the active ingredient did not cover the approved drug product. The court found that the patents at issue did claim the approved drug product. The court interpreted § 314.53(b) to mean that, if a patent claims the drug substance of an approved drug product, then the patent is covered by the approved drug product and may be listed in the Orange Book even if the patent claims a form of the drug substance that is different than the form in the approved drug product. Moreover, the court indicated that we may approve an ANDA for a drug product that contains the patented form of the active ingredient. The court also cited two statements from the Orange Book to support its ruling that different forms of the same active ingredient may be considered pharmaceutically equivalent if their dissolution, solubility, and absorption are the same as the listed drug. The court concluded that the patents were likely to be construed as claiming the drug substance for the NDA-approved drug regardless of the differences in hydration.

In *Ben Venue Laboratories, Inc.* v. *Novartis Pharmaceutical Corp.*, 10 F. Supp.2d 446 (D.N.J. 1998), Novartis had listed a patent which claimed the crystalline pentahydrate form of Aredia (pamidronate disodium). The ANDA applicant argued that the appropriateness of the patent listing turned on whether Novartis' approved product contained a crystalline hydrate of pamidronate (*id.* at page 453). The parties did not dispute that the final drug product did not contain the pentahydrate form of pamidronate. Novartis admitted that its dosage form contained an anhydrous form of pamidronate, but argued that patent was properly submitted because the patent covered the "drug substance" and because § 314.53 required the listing of such patents (*id.*). The court found that it was proper to list a patent that claims a component of the approved drug product even when that component does not appear in the exact same form in the final drug product (*id.* at pages 453–457). The court distinguished the *Pfizer* opinion as depending largely on the applicant's attempt to list a patent for a new, unapproved tablet (*id.* at page 455).

The court also noted that *Pfizer* predated our 1994 final rule and stated that:

> The statute governing listing of patents merely states that NDA applicants shall file "any patent which claims the drug." 21 U.S.C. § 355(b)(1). The regulations clearly indicate that the FDA interprets the ambiguous term "drug" in 21 U.S.C. § 355(b)(1) to include certain drug substances or active ingredient patents, and requires their listing in the Orange Book. The Court concludes that the FDA's construction of the statute to require listing of certain drug substance patents as well as drug product patents is a permissible reading of the statute, and the parties do not argue otherwise. See *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Counsel* [sic], 467 U.S. 837 (1984). Therefore Ben Venue's assertion that "the drug substance or active ingredient does not determine proper listing" and that "the drug product—and it alone—controls the proper listing," * * * are inaccurate. See 10 F. Supp.2d at page 455.

Although we were not a party to the litigation, we implicitly did not accept the conclusion or reasoning of the *Zenith Laboratories* and *Ben Venue Laboratories* decisions. On February 7, 2001, we wrote to Biovail Laboratories to confirm the propriety of a corrected patent listing under § 314.53(f). Biovail had changed its manufacturing process for Tiazac (diltiazem hydrochloride), but had not sought our approval before making those changes. The approved product contained diltiazem hydrochloride in time-release coated beads, whereas Biovail's changed product contained both immediate release diltiazem hydrochloride powder and time-release coated beads. Biovail asserted that the changes were within the scope of its approved NDA, yet we learned about the changes only through litigation between Biovail and another company. In our letter to Biovail, we stated that, "FDA does not list patents for drug substances, compositions, formulations and methods of use that are not approved for the listed drug" (see Letter from Ralph Lillie, Director, Office of Information Technology, Center for Drug Evaluation and Research, to Biovail Laboratories, Inc., dated March 23, 2001). We also took the position that Biovail had to submit a supplement to its NDA to cover the immediate release diltiazem component and stated that:

> Patents for drug substances, composition, formulations, and methods of use that are not approved for the listed drug are not listed in the Orange Book. A patent submitted in an application or supplement that is not yet approved will be listed in the Orange Book only if, and when the drug product is approved.

(See *id.* at page 2.)

On November 21, 2000, we responded to a citizen petition (FDA docket number 00P–0499) submitted by Lord, Bissell & Brook on behalf of Apotex, Inc. The petition asserted, in part, that two patents claiming anhydrous forms of paroxetine hydrochloride did not claim the hemihydrate listed drug. (An anhydrous form of paroxetine hydrochloride has no water molecules associated with it, whereas a hemihydrate form has one water molecule associated with every two paroxetine molecules.) Relying on the NDA holder's representations that the patents claimed the approved drug product, we concluded that the patents had been correctly submitted for listing. We stated that, "Patents must be listed if they claim the drug substance, or active ingredient, of an approved drug product, or if they claim a drug substance that is the component of such a product" (Response from Janet Woodcock, M.D., Director, Center for Drug Evaluation and Research, to Hugh L. Moore et al., Lord, Bissell & Brook, dated November 21, 2000, at page 6 (footnote omitted)). In a footnote, we noted that our position was "fully consistent with *Pfizer*" because the *Pfizer* case "involved the question of the listing of patents for a drug in a dosage form other than the dosage form approved by FDA" (*id.* at page 6, note 18), whereas the paroxetine situation involved a patent which, according to the NDA holder, claimed the approved drug product. We further stated that we considered anhydrous and hemihydrous forms of drug substances to be pharmaceutical equivalents and to contain the same active ingredient (*id.* at page 6, note 16). We cited *Zenith Laboratories* and *Ben Venue Laboratories* for the proposition that courts, rather than FDA, would resolve whether the patent covered the approved drug. Our letter did not take issue with the holdings of those courts (*id.* at page 5, note 13).

Recently, in *Andrx Pharmaceuticals, Inc.* v. *Biovail Corp.*, 276 F.3d 1368 (Fed. Cir. 2002), a case involving the patent listing correspondence with Biovail Laboratories described in a preceding paragraph, the court held that "the critical question is the relationship of the patent to the drug products and drug substances covered by the NDA" (*id.* at page 1376). The issue in the *Andrx Pharmaceuticals* case was Biovail's listing of a patent that claimed an extended release formulation of diltiazem that was different from the one we had approved. In a footnote, the Court of Appeals for the Federal Circuit cited our 1994 final rule and interpreted the final rule as changing our patent listing procedures (*id.* at page 1377, note 5). The court stated that our supposed change in position was a "more liberal construction" of the statute and led to more patents being listed in the Orange Book (*id.*).

3. Which Patents Would the Proposal Require to Be Listed or Not Listed?

Given these court decisions which are not entirely consistent with our policies, the FTC Report, the FTC Citizen Petition, and other documents questioning patent listing requirements, we decided to clarify our regulations to describe the types of patents that must and must not be listed. Consequently, proposed § 314.53(b) would state, in relevant part, that an applicant submitting an NDA, amending an NDA, or submitting a supplement to an NDA:

> * * * shall submit information on each patent that claims the drug or a method of using the drug that is the subject of the new drug application or amendment or supplement to it and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product. For purposes of this part, such patents consist of drug substance (ingredient) patents, drug product (formulation and composition) patents, *product by process patents*, and method of use patents. Process patents, *patents claiming packaging*, *patents claiming metabolites*, and *patents claiming intermediates* are not covered by this section, and information on these patents may not be submitted to FDA. *For patents that claim the drug substance, the applicant shall submit information only on those patents that claim the drug substance that is the subject of the pending or approved application or that claim a drug substance that is the same as the active ingredient that is the subject of the approved or pending application within the meaning of section 505(j)(2)(A)(ii) of the Act. For patents that claim a drug product, the applicant shall submit information only on those patents that claim a drug product that is the subject of a pending or approved application. For patents that claim a method of use, the applicant shall submit information only on those patents that claim indications or other conditions of use that are the subject of a pending or approved application. For approved applications, the applicant shall identify the indication or other condition of use in the approved labeling that corresponds to the listed patent and claim identified.* * * *

We have italicized the new or revised regulatory language to make it more readily identifiable for this preamble discussion. We explain the proposed changes in more detail in the following paragraph.

a. What Patents Must Not Be Listed Under the Proposal?

Proposed § 314.53(a) would expressly state that information on patents claiming packaging, patents claiming metabolites, and patents claiming intermediates must not be submitted. In general, we find that these patents fail to meet the two prong criteria for listing because they do not claim the approved drug product.

Patents claiming a drug product's packaging or container may not be listed. We find that, although information regarding a drug's packaging or container is part of an NDA (see 21 CFR 314.50(d)(1)(ii)(a)), we do not approve that packaging or container per se. The packaging or container is therefore distinct from the approved drug product, so a patent that claims a type of packaging or container fails to satisfy the first prong because the patent does not claim the drug. In addition, in contrast to the active ingredient, inactive ingredients, and conditions of use, the Hatch-Waxman amendments do not identify a listed drug's packaging or container as an element for us to review or consider in determining whether to approve an ANDA or 505(b)(2) application.

The failure to claim the approved product is especially apparent for patents claiming metabolites because those metabolites exist only *after* a person has taken the drug and his or her body has broken the drug down into the metabolite. While there have been no court decisions regarding the listing of patents claiming a metabolite, one court has examined whether a person can seek patent term restoration for a patent claiming a metabolite rather than the approved drug itself. In *Hoechst-Roussel Pharmaceuticals, Inc.* v. *Lehman*, 103 F.3d 756 (Fed. Cir. 1997), a court had to decide whether the Patent and Trademark Office correctly interpreted the patent term extension provisions at 35 U.S.C. 156. The patent term extension provisions were part of the Hatch-Waxman amendments (as Title II of the Hatch-Waxman amendments). The patent term extension provisions require that the patent for which an extended term is sought to "claim" the approved drug (see 35 U.S.C. 156(a) and 156(g)(1)(B) (discussing how a product must have been subject to a regulatory review period before its commercial marketing or use and defining the regulatory review period, in part, in terms of an NDA approval)). However, the patent in question claimed a metabolite rather than the approved drug itself. The court considered the meaning of the term "claim," and the term's relationship to the concept of infringement, and concluded that a patent claiming a metabolite or the use of a metabolite does not claim the approved drug product. The court's reasoning and conclusion are equally applicable to patent listings. Therefore, we conclude that a patent claiming a metabolite does not claim an approved drug and does not meet the statutory requirements for listing in the Orange Book.

The proposal would also instruct applicants not to submit patent information if the patent claims an intermediate. Intermediates are materials that are produced during the steps of the processing of active pharmaceutical ingredient, but are not

present in the final drug product themselves (see Food and Drug Administration, "Guidance for Industry: Q7A—Good Manufacturing Practice Guidance for Active Pharmaceutical Ingredients" (August 2001)). Under existing FDA regulations, intermediates are "in-process materials" rather than drug substances or even drug components (see 21 CFR 210.3(b)(9); 211.110). Thus, patents that claim intermediates do not claim the approved drug product and, for that reason, fail the first prong for listing.

We note that, as is currently the case, patents that claim methods of use that are not approved for the listed drug or are not the subject of a pending application may not be submitted.

b. *What Additional Patents Would the Proposal Require to be Listed?*

1. *Product by Process Patents*

The proposal would include "product by process patents" in the class of patents that must be listed because product by process patents are a type of product patent. In brief, a product by process patent claims a product by using or listing process steps to wholly or partially define the claimed product (see *In re Luck*, 476 F.2d 650 (C.C.P.A. 1973); *In re Brown*, 459 F.2d 531, 535 (C.C.P.A. 1972)). In a product by process patent, the claims must particularly point out and distinctly claim the product or genus of products for which patent protection is sought (see *In re Brown*, 459 F.2d at page 535). These patents, therefore, meet the two-prong criteria for patent listing because they claim the approved drug product and are of a type with respect to which a claim of patent infringement could reasonably be made if a person not licensed by the patent owner engaged in the manufacture, use, or sale of the drug; consequently, including product by process patents in the class of patents that must be listed is appropriate.

We must emphasize that product by process patents differ from process patents because, in a product by process patent, the patented invention is the product (as opposed to the process used to make the product) (see *In re Bridgeford*, 357 F.2d 679, 682 (C.C.P.A. 1966)). Section 505(b)(1) of the act does not require information on process patents, and we do not list process patents in the Orange Book (see §§ 314.50(i)(2) and 314.53(b)).

We are concerned, however, that persons unfamiliar with patent law might confuse product by process patents with process patents, and seek to list process patents with us. Therefore, we invite comment on ways to ensure that only appropriate product by process patents are listed, while maintaining the act's restriction against listing process patents.

2. *Patents Claiming a Different Form of the Drug Substance*

Section 314.53(b) currently states, "For patents that claim a drug substance or drug product, the applicant shall submit information only on those patents that claim a drug product that is the subject of a pending or approved application." The proposal would revise this sentence to read as follows:

> For patents that claim the drug substance, the applicant shall submit information only on those patents that claim the drug substance that is the subject of the pending or approved application or that claim a drug substance that is the same as the active ingredient that is the subject of the approved or pending application within the meaning of section 505(j)(2)(A)(ii) of the act. For patents that claim a drug product, the applicant shall submit information only on those patents that claim a drug product that is the subject of a pending or approved application.

This would mean that an applicant would be able to submit patent information on a drug substance even when the patented drug substance was a different form than the drug substance that is the subject of the pending or approved NDA as long as the drug substances are the "same" active ingredient under section 505(j)(2)(A)(ii) of the act. Whether two different drug substances are the "same" active ingredient is a scientific determination based upon the specific characteristics of the drug substances involved. We have, for example, determined that anhydrous and hydrated entities, and different polymorphs (different crystalline forms of the same substance), may be the "same" active ingredient (see Food and Drug Administration, "Approved Drug Products With Therapeutic Equivalence Evaluations," 22nd Ed., section 1.7 at page xv (2002)). Therefore, for example, if the approved drug substance was an anhydrate, and the patent claimed a hemihydrate, proposed § 314.53(b) would allow the applicant to submit patent information for the hemihydrate *if* the anhydrate and hemihydrate are the "same" active ingredient.

In making a determination that two drug substances are the same active ingredient, the NDA holder should consider whether the drug substances can be expected to perform the same with respect to such characteristics as dissolution, solubility, and bioavailability. We invite comment on whether we should revise the codified language to require the NDA holder to submit additional information regarding the basis for the assertion that the drug substances are the same active ingredient.

We recognize that allowing NDA applicants and NDA holders to submit such patent information appears to conflict with our longstanding position that the patent must claim the approved drug product or the drug product that is the subject of the application. However, we believe this change in our patent listing policy is both reasonable and appropriate, and may even conserve agency and industry resources. Our rationale for allowing such drug substance patents to be listed depends, in large part, on our position concerning pharmaceutical and therapeutic equivalence. We consider drug products to be pharmaceutically equivalent if they have the same active ingredient(s), the same dosage form, the same route of administration, and are identical in strength or concentration. We consider drug products to be therapeutically equivalent if they are pharmaceutically equivalent and can be expected to have the same clinical effect and safety profile when administered to patients under the conditions specified in the labeling. A major premise in the ANDA approval system is that the ANDA drug is therapeutically equivalent to the brand-name or "reference listed drug." In assessing whether the active ingredients in the reference listed drug and the generic drug product are the "same," and would support a determination of therapeutic equivalence, we have concluded that, in certain instances, the generic drug's active ingredient does not have to have the exact physical form as the reference listed drug's active ingredient (see Letter from Dennis Baker, Associate Commissioner for Regulatory Affairs, FDA, to Donald O. Beers and David C. Korn, Arnold & Porter, and to William J. McNichol, Jr., Marc J. Scheineson, and Tracy Zurzolo Frisch, Reed Smith LLP, dated February 15, 2002, at pages 3–4, 7, 9–11). We have approved ANDAs when the drug substance in the generic drug product was a different polymorph than the drug substance in the listed drug. These products are therapeutically equivalent.

If a generic drug product can be the "same" as the reference listed drug, notwithstanding differences in the drug substances' physical form, then it is consistent to interpret "drug substance," for purposes of listing patent information, as including drug substances having different physical forms. We note that the Hatch-Waxman amendments contained the patent listing and ANDA provisions in the same title, so it would be logical for us to interpret these two provisions of the act in a consistent manner (see *Ben Venue Laboratories*, 10 F.Supp.2d, at page 457).

Additionally, it is conceivable that an ANDA applicant may file an ANDA for a drug product that contains a drug substance that does not share the same chemical structure as the NDA-approved drug, but is nevertheless covered by a patent. For example, assume that the NDA drug is a hydrated form of the drug substance, and the ANDA drug substance would be an anhydrate. If the patent for the NDA drug claims the hydrated drug substance, the ANDA applicant would be able to certify, correctly under current FDA regulations, that it was not infringing the patent and file a paragraph IV certification. However, if the patent owner also had a patent on the anhydrous form and the NDA holder were not allowed to submit patent information on the anhydrate because the patent does not claim the approved drug product, the ANDA applicant consulting the Orange Book would have no notice of the patent claiming the anhydrate. The missing patent information could mislead potential ANDA applicants into submitting ANDAs containing the anhydrate and unknowingly infringing the patent claiming the anhydrate. We, in turn, could expend resources on reviewing an ANDA for a drug that is covered by the unlisted patent, and the patent owner could expend resources in defending the patent. This waste in agency and industry resources could be avoided if we require NDA applicants and NDA holders to submit information on patents that claim drug substances that are the same active ingredient as that in the listed drug product.

Again, we recognize that requiring the submission of patent information on drug substances that are the same active ingredient, even when those drug substances are in a form that differs from the drug substance in the approved drug product, appears to be a change from our previous position. As discussed previously, we believe this change is justified by our position on pharmaceutical and therapeutic equivalence. We invite comment as to the potential impact of this change on the submission of ANDAs and 505(b)(2) applications.

We also acknowledge that the interaction between the act's requirements, our pre-existing regulations, and our positions in court cases and elsewhere can make it difficult to interpret the act's patent listing requirements and ANDA and 505(b)(2) application approval requirements in a simple, harmonious manner. Although patents on different forms of an active ingredient are properly listed, and a pending ANDA containing a different form of the drug substance may be considered to have the "same" active ingredient as the reference listed drug, we must emphasize that this proposed rule does not alter the requirement for NDA holders to submit a supplement before changes are made to the synthesis of the drug substance (see 21 CFR 314.70(b)(1)(iv)). If an NDA holder wishes to use an active ingredient whose form is different from the active ingredient described in the approved NDA, the NDA holder must seek our approval before it uses the different form of the active ingredient. Changes in the form of an active ingredient warrant the filing of a supplemental NDA because of the possible health consequences associated with the new form of the drug substance.

B. Proposed § 314.53(c)(2)(i)—What Does the Patent Declaration Say?

Section 314.53(c)(2)(i) requires a person submitting an NDA, an amendment to an NDA, or an NDA supplement, to submit a signed declaration as part of its submission of patent information if the patent covers the drug's formulation, composition, and/or method of use. The declaration states:

> The undersigned declares that Patent No. ____ covers the formulation, composition, and/or method of use of (name of drug product). This product is (*currently approved under section 505 of the Federal Food, Drug, and Cosmetic Act*) [or] (*the subject of this application for which approval is being sought*).

(Emphases in original.) We designed this declaration to help ensure that appropriate patents are listed and to preclude any need on our part to decide patent issues because we lack the patent expertise, resources, and statutory mandate to scrutinize patent listings (see 54 FR 28872 at 28909 (July 10, 1989)).

This declaration may be insufficient in practice to prevent NDA applicants and NDA holders from attempting to list inappropriate patents. The FTC Report suggested that "many of the later-issued patents do not appear to claim the approved drug product or an approved use of the drug" (see FTC Report at 37), but recognized that we lack the expertise and resources to review or decide patents disputes (*id.* at page 41; see also *aai Pharma* v. *Thompson*, 296 F.3d 227 (4th Cir. 2002) ("the FDA has no expertise in making patent law judgments")). The courts have also concurred in our view that we lack the authority to review the "listability" of patents (see *American Biosci.* v. *Thompson*, 269 F.3d 1077, 1084 (D.C. Cir. 2001); *In re Buspirone Patent Litigation*, 185 F.Supp.2d 363, 371 (S.D.N.Y. 2002); *Watson Pharm., Inc.* v. *Henney*, Civ. No. U.S. Dist. LEXIS 2477, at 7–8 (D. Md. Jan. 17, 2001); *Mylan Pharm., Inc.* v. *Thompson*, 139 F.Supp.2d 1, 10–11 (D.D.C.) *rev'd on other grounds*, 268 F.3d 1323 (Fed. Cir. 2001)). The FTC Report also noted that ANDA applicants must certify to a listed patent even if they dispute the appropriateness of the listing (see FTC Report at 37; see also 21 CFR 314.94(a)(12)(vii)). Although we continue to lack the expertise, resources, and legal authority to examine patent issues, we can ask NDA applicants and NDA holders to provide more patent information to help ensure that only appropriate patents are listed. The proposed rule, if finalized, will prompt NDA holders and NDA applicants to make careful and well-considered representations in their patent declarations and produce greater compliance with our patent listing requirements.

The proposed rule would, therefore, revise § 314.53(c)(1) and (c)(2) by rewording the general patent declaration requirement in paragraph (c)(1) and by replacing the existing, general declaration at paragraph (c)(2)(i) with a more detailed declaration that would act as a "checklist" that would focus on patent claims and would ensure that applicants submit only appropriate patent information and stand behind the accuracy of that information. Proposed § 314.53(c)(1) and (c)(2)(i) would read as follows:

(1) *General requirements.* An applicant described in paragraph (a) of this section shall submit the declaration described in paragraph (c)(2) of this section for each claim of the patent that meets the requirements described in paragraph (b) of this section.

(2) *Patent declaration.* For each patent that claims a drug substance (active ingredient), drug product (formulation and composition), and/or method of use, the applicant shall submit the following declaration:

This is a submission of patent information for an NDA submitted under section 505 of the Federal Food, Drug, and Cosmetic Act (the Act).

Time sensitive patent information pursuant to 21 CFR 314.53 for NDA # ____

The following is provided in accordance with section 505(b) of the Act:

Trade Name: _____

Active Ingredient(s): _____

Strength(s): _____

Dosage Form(s): _____

Approval Date (if the submission is a supplement to an approved NDA):

_____

Please provide the following information for each patent submitted, and identify the relevant claim(s) by number.

A. 1. United States patent number:

_____

2. Expiration date: _____

3. Name of the Patent Owner:

_____

4. Agent (if patent owner or applicant does not reside or have a place of business in the United States)

_____

B. For each patent identified in A, please provide the following information:

1. The type of patent claims that apply to the drug substance or drug product that is the subject of the application:

2. Drug Substance (Active Ingredient)

___ Yes ___ No

a. Claim number(s): _____

3. Drug Product (Composition/ Formulation):

___ Yes ___ No

a. Claim number(s): _____

4. Method of Use:

___ Yes ___ No

a. Claim number(s): _____

C. For each drug substance claim identified, please provide the following information:

1. Is the claim one that claims the drug substance that is the active ingredient in the approved or pending NDA, an amendment to the NDA, or a supplement to the NDA?

___ Yes ___ No

If "yes," please identify the claim(s) by number.

2. Is the claim one that claims a drug substance that is the "same" active ingredient as the active ingredient in the pending or approved NDA, amendment to the NDA, or a supplement to the NDA?

___ Yes ___ No

If "yes," please identify the claim(s) by number.

3. If the answer to question C.1 or C.2 is "yes," do you acknowledge that an ANDA or 505(b)(2) application containing the same active ingredient that is claimed by the patent is the "same" for ANDA or 505(b)(2) approval purposes?

___ Yes ___ No

[If the answers to questions C.1, and C.2, or C.3 is "no," stop here. The patent may not be listed in the Orange Book as a patent that claims the drug substance.]

D. For each drug product claim identified, please provide the following information:

1. Is the claim one that claims the approved formulation or composition and/or the formulation or composition for which approval is being sought?

___ Yes ___ No

If "yes," please identify the claim(s) by number.

[If the answer to question D.1 is "no" in every instance, stop here. The patent may not be listed in the Orange Book as a patent that claims the drug product.]

E. For each method of use claim identified, please provide the following information:

1. Is the claim one that claims:

(a) an approved method of use of the approved drug product? If "yes," please identify the use with reference to the approved labeling for the drug product and identify the relevant patent claim number(s);

___ Yes ___ No

(b) a method of use of the approved drug product for which use approval is being sought; or

___ Yes ___ No

(c) a method of use of the drug product for which approval is being sought?

___ Yes ___ No

If the answer to questions E.1(b) or (c) is "yes", please identify the use with reference to the proposed labeling for the drug product and identify relevant patent claim number(s).

[If the answers to questions E.1(a) through (c) are "no," stop here. The patent may not be listed in the Orange Book as a patent that claims a method of use.]

Note that the proposed declaration would emphasize identification of the relevant patent claims by number. The number would correspond to the patent claim number in the patent itself. Precise identification of the relevant patent claims will help all parties focus on the same claim and may prevent arguments as to whether a particular claim pertained to the approved drug product or was infringed by the product described in an ANDA or 505(b)(2) application.

We are also proposing to require NDA holders and NDA applicants to identify the specific pending or approved use claimed by a method of use patent. This information will assist parties in assessing patent infringement matters and should expedite our approval of ANDAs and 505(b)(2) applications that do not seek approval for the protected use.

The proposal would also amend § 314.53(c)(2)(ii) to place more emphasis on patent claims rather than on the patent generally. Section 314.53(c)(2)(ii) currently instructs an NDA holder to amend its patent declaration within 30 days after approval of its application.

Current FDA regulations also address the content of the notice of certification of invalidity or noninfringement of patent that ANDA and 505(b)(2) application applicants must submit if their applications contain a paragraph IV certification (see §§ 314.95(c) and 314.52(c) respectively (21 CFR 314.95(c) and 314.53(c))). Section 505(j)(2)(A) of the act, however, states that we may "not require that an abbreviated application contain information in addition to that required by clauses (i) through (viii)." (No comparable statutory restriction exists for 505(b)(2) applications.) We invite comment on whether our current regulations regarding notice to the NDA holder and patent owner by ANDA applicants and 505(b)(2) application applicants could or should be amended.

C. *Proposed §§ 314.94(a) and 314.52(a)—How Many Times Can an Application's Approval Date Be Delayed for a 30-Month Period?*

We have consistently maintained that the Hatch-Waxman amendments create the opportunity for multiple 30-month stays to an ANDA's or 505(b)(2) application's approval date if those applicants submitted a paragraph IV certification and an action is brought for patent infringement within the statutory 45-day period. For example, assume that an ANDA applicant submitted a paragraph IV certification, provided the proper notice to the NDA holder and patent owner, and was sued for patent infringement within 45 days after providing the notice. Under section 505(j)(4)(B)(iii) of the act, we would be obliged to not approve the ANDA for a 30-month period beginning on the date of the receipt of the notice provided by the ANDA applicant to the NDA holder and patent owner, although the 30-month period could be longer or shorter depending on a court order or resolution of the litigation. If the NDA holder submitted new patent information to us, and the new patent information resulted in another paragraph IV certification and another action for patent infringement, our position has been that another 30-month stay in the effective date of ANDA approval could result.

We recently stated our position in *Andrx Pharmaceuticals, Inc.* v. *Biovail Corp.*, No. 01–6194-civ-Dimitrouleas/ Johnson (S.D. Fla.). We argued that the 30-month stay provided by section 505(j)(5)(B)(iii) of the act "is not rendered inapplicable to a patent newly listed in the Orange Book simply because the holder of the NDA has already received the benefit of such a stay with respect to a previously listed patent for the same drug" (see Memorandum of Federal Defendants in Opposition to Plaintiff's Motion for Summary Judgment Declaring Additional 30-Month Stay Inapplicable or Eliminated, at page 5). Andrx had argued that a 30-month stay in the approval date applies only where an ANDA applicant provides notice in the context of an original ANDA and not in an amended ANDA. We argued that section 505(j)(5)(B)(iii) of the act provides for a stay of up to 30 months regardless of whether the paragraph IV certification was part of an original ANDA or an amended ANDA. We stated that the act's reference to section 505(j)(2)(B)(i) of the act, which itself refers to sections 505(j)(2)(B)(ii) and (B)(iii) of the act, required that section 505(j)(2)(B) be read as a whole and, as a result, requires us to make a 30-month stay available whenever a paragraph IV certification was filed and timely patent litigation ensued, thereby permitting multiple 30-month stays of a single ANDA approval.

We also maintained, in *Andrx Pharmaceuticals, Inc.*, that if the 30-month stay applied only when an original ANDA contained a paragraph IV certification, an applicant could amend an ANDA to include a paragraph IV certification, and there would be no notice to the NDA holder or patent owner and no opportunity for even a single, 30-month stay. We stated that such a result could not be reconciled with the Hatch-Waxman amendments' intent to strike a balance between generic drug approval and encouraging future innovation (*id.* at page 9, note 6).

We note, along with the FTC Report, that the number of 30-month stays per product has been increasing. The FTC Report found that, before 1998, patent infringement litigation "generated, at most, one 30-month stay per drug product per ANDA," and most cases (eight out of nine) involved alleged infringement of one or two patents (see FTC Report at page 36). However, after 1998, FTC found that, for drug products with substantial annual net sales, patent litigation was increasing, with a growing number of NDA holders or patent owners (five out of eight cases) alleging infringement of three or more patents (*id.*). The FTC Report even noted one instance where the NDA holder had listed 12 patents in the Orange Book (*id.* at page 45). The FTC Report also found that NDA holders were beginning to list later-issued patents, many of which "do not appear to claim the approved drug product or an approved use of the drug," after an ANDA had been filed, and this resulted in a delay of FDA approval by 4 to 40 months (*id.* at page 36). In some cases, a single ANDA has been subject to as many as five stays (*id.* at page 46). The FTC Report addressed multiple stays in the context of a limited number of "blockbuster" drugs. The total number of stays in ANDA approvals is higher, and we agree with FTC that the number of stays appears to be increasing over time.

Consequently, we examined the act to assess whether requiring successive 30-month stays was the only reasonable interpretation of the act. We determined that another reasonable interpretation existed. Accordingly, through this proposed rule, we intend to adopt a different interpretation of the act. Our revised interpretation would limit the number of 30-month stays to the opportunity for only one stay per ANDA. Our reasoning is as follows:

- Section 505(j)(2)(B)(iii) of the act states that if an ANDA is amended to "include" a paragraph IV certification, then the notice to the NDA holder and to the patent owner "shall be given when the amended application is submitted."
- However, if the ANDA contained a paragraph IV certification, then any ANDA amendment containing a paragraph IV certification does not amend the ANDA to "include" a paragraph IV certification because the ANDA already contained a paragraph IV certification.
- In the circumstances described previously, the submission of a second paragraph IV certification in an ANDA amendment or supplement does not trigger the notice requirement in section 505(j)(2)(B)(ii) of the act because the ANDA is never amended or supplemented to "include" (i.e., contain) a paragraph IV certification.
- Consequently, under section 505(j)(5)(B)(iii) of the act, only one 30-month stay in the ANDA's approval date is possible, because the subsequent paragraph IV certifications will not have resulted in a second notice to the patent owner and NDA holder, and the 45-day period for filing a patent infringement suit, as described in section 505(j)(5)(B)(iii) of the act, will not have run. To put it another way, if the ANDA applicant is not obliged to submit the notice to the patent owner and NDA holder, then the pre-requisites to trigger the 30-month stay in an ANDA's approval date are not met, so the 30-month stay would not be available.

A similar argument for a single, 30-month stay per application can be made for 505(b)(2) applications that contain a paragraph IV certification.

Under this interpretation of the act, ANDA and 505(b)(2) application applicants would still be required to make paragraph IV certifications where applicable, but the addition of a second paragraph IV certification to an ANDA or a 505(b)(2) application that had already contained at least one paragraph IV certification would not trigger an obligation to provide a second notice to the NDA holder or to the patent owner and would not result in another opportunity for a 30-month stay. Instead, as in the case of paragraph I (no patent information has been filed) or paragraph II (patent has expired) certifications, the subsequent paragraph IV certification would allow us to approve the ANDA or 505(b)(2) application immediately if the Act would otherwise permit us to do so.

The parties would, of course, be free to litigate issues regarding patent infringement, but proposed multiple, 30-month stays per ANDA or 505(b)(2) application would no longer be possible. Our interpretation would not adversely affect a patent owner's ability to protect its patent rights. If an ANDA or 505(b)(2) application applicant makes one paragraph IV certification, the patent owner and the NDA holder would always receive notice and would always have the opportunity to protect the patented invention. If the NDA holder files *another* patent later, and the ANDA or 505(b)(2) application applicant believes that the later-filed patent is invalid or will not be infringed, the patent owner and NDA holder are still able to protect the later-filed patent because: (1) The notice already alerted the patent owner and NDA holder to the existence of the ANDA or 505(b)(2) application; and (2) any defense of the later-filed patent will not depend on the existence of a subsequent notice to the patent owner or NDA holder. In other words, with respect to later-filed or subsequently filed patents, the patent owner and NDA holder still have patent infringement and judicial remedies available to them even without receiving another notice. The patent owner, for example, can still seek an injunction to protect the patent on such terms as a court deems reasonable under 35 U.S.C. 283. If a court finds that the patent is infringed, the patent owner may be entitled to damages under 35 U.S.C. 284.

We recognize that there are other arguments to support a single, 30-month stay in each ANDA or 505(b)(2) application's approval date. For example, one argument could be that the act contemplates only one 30-month stay in an ANDA's approval date because section 505(j)(5)(B)(iii) of the act refers to "the" 30-month stay. This argument presumes that the original ANDA contained a paragraph IV certification and resulted in a 30-month stay. We do not concur with this

interpretation of the act because, in certain situations, it could result in no notice to the patent owner or NDA holder. For example, if the original ANDA contained a paragraph III certification (stating that the patent will expire on a specific date), and the ANDA applicant later amends the ANDA to contain a paragraph IV certification, one could argue that no notice to the patent owner or NDA holder would be necessary, and there would not be an opportunity for even a single, 30-month stay. In contrast, under our proposed interpretation of the act, the opportunity for one 30-month stay in the abbreviated application's effective date always exists, and the patent owner and NDA holder would always receive one notice from the ANDA or 505(b)(2) application applicant who challenges at least one of the listed patents. This would preserve the balance between encouraging ANDA and 505(b)(2) application approvals and encouraging innovation because: (1) The elimination of multiple 30-month stays will lead to faster ANDA or 505(b)(2) application approvals, and (2) the patent owner and NDA holder will still receive notice and will be able to take steps to defend the patented invention from alleged patent infringement. As courts have observed, "The Hatch-Waxman Act represented Congress's efforts to strike a compromise between the competing interests of pioneer pharmaceutical companies and generic manufacturers" (see *Mylan Pharmaceuticals, Inc.* v. *Thompson*, 139 F.Supp.2d 1, 4 (D.D.C. 2001); see also *Mylan Pharmaceuticals, Inc.* v. *Henney*, 94 F.Supp.2d 36, 52–53 (D.D.C. 2000) (interpretation of Hatch-Waxman must take into account the compromise nature of the statute); *Fisons Corp.* v. *Shalala*, 860 F.Supp. 859, 862 (D.D.C. 1994) ("A variety of federal courts have recognized that this Act represents a compromise, and aids both sets of drug manufacturers; see, e.g., *Tri-Bio Laboratories* v. *United States*, 836 F.2d 136, 139 (3rd Cir. 1987))." A maximum of one 30-month stay per ANDA or 505(b)(2) application represents a reasonable compromise.

Additionally, we note that interpreting the act to allow only a maximum of one 30-month stay per ANDA or 505(b)(2) application is consistent with the specific legislative history that accompanied the passage of the Hatch-Waxman amendments.[1]

When the 97th Congress considered patent term extension legislation, many members were concerned that the bill would not prevent brand-name companies from obtaining multiple patent term extensions for patents that claimed a drug and, by doing so, inhibit competition from generic drugs (see 128 Cong. Rec. H6916, H6919 (September 13, 1982) (remarks of Rep. Kastenmeier)). Some charged that the bill would extend the effective patent life of top-selling drugs for more than 17 years (the patent term that existed at the time) through "pyramiding" or "evergreening" of patents (*id.* at page H6922) (remarks of Rep. Gore). The House of Representatives, by a vote of 250 to 132, rejected passing the bill by suspension of the rules, and so the bill failed to be passed despite unanimous support in the Senate and strong support in the House. When the Senate revisited the legislation in the next year, the President of the Pharmaceutical Manufacturers Association (now known as the Pharmaceutical Research and Manufacturers of America) testified that, in 1982:

> * * * critics of the bill sought to create the impression that innovative firms were acquiring patents in constellation, pyramiding one on top of another to extend effective protection. Among people not knowledgeable about the intricacies of patent law, this understandably occasioned alarm and suspicion.

(See Hearing on S. 1306, Senate Judiciary Cmte., 98th Cong., 1st Sess. 56–57 (testimony of Lewis A. Engman, President, Pharmaceutical Manufacturers Association)).

The statutory language creating paragraph IV certifications, provisions for giving notice of such certifications, and rules governing amended applications is identical to language in S. 2748 as introduced by Senator Hatch in 1984. The House Judiciary Committee reported essentially identical language by voice vote, and the only relevant report language states that notice is required under paragraph 505(j)(2)(B)(iii) when an ANDA "is subsequently amended so as to bring it *within* this notice requirement" (see H. Rep. 98–857, Part 2, 98th Cong., 2d Sess. 14 (1984) (emphases added)). This understanding by the House Judiciary Committee suggests that if an ANDA applicant had provided notice to the patent owner and NDA holder, and then amended the ANDA to make a patent certification regarding a newly-filed patent, then the ANDA applicant would not have to provide another notice because, by virtue of its first notice to the patent owner and NDA holder, the ANDA applicant was *already* within the notice requirement. Our proposed interpretation is thus consistent with the legislative history.

For all these reasons, we propose to amend §§ 314.95(a)(3) and 314.52(a)(3) to state that the requirement to provide a notice of invalidity or noninfringement of patent:

> * * * does not apply to a use patent that claims no uses for which the applicant is seeking approval. This paragraph also does not apply if the applicant amends its application to add a certification under [§ 314.94(a)(12)(i)(A)(*4*) for an ANDA applicants or § 314.50(i)(1)(i)(A)(*4*) for 505(b)(2) application applicants] when the application already contained a certification under [§ 314.94(a)(12)(i)(A)(*4*) or § 314.50(i)(1)(i)(A)(*4*)] to another patent.

The proposed amendments to §§ 314.95(a)(3) and 314.52(a)(3), if made final, will lead to a changed interpretation of §§ 314.95(d) and 314.52(d) respectively. Sections 314.95(d) and 314.52(d) state that if an application is amended to include a paragraph IV certification, then the ANDA or 505(b)(2) application applicant shall send the notice of certification of invalidity or noninfringement of patent at the same time that it submits its amendment to us. Under the proposed rule, an ANDA or 505(b)(2) applicant who is amending its application to include a paragraph IV certification must provide notice to the patent owner and NDA holder only if the ANDA or 505(b)(2) application did not previously contain a paragraph IV certification.

III. Implementation

A. How Would the Rule Affect Notices?

Under the framework proposed in this rule, the possibility exists that if two ANDA applicants file paragraph IV certifications to a later-filed patent, and one ANDA applicant has already submitted a paragraph IV certification to a previously-filed patent, one ANDA applicant could be subject to a 30-month stay with respect to the later-filed patent while the other would not. To illustrate this problem:

1. Assume that ANDA applicant #1 files a paragraph IV certification to a patent, while ANDA applicant #2 files a paragraph III certification to the same patent. The patent owner brings a suit for patent infringement against ANDA applicant #1 and obtains a 30-month stay in the ANDA's approval date.
2. Assume that the NDA holder files another patent.
3. If ANDA applicants ## 1 and 2 both file paragraph IV certifications for the second patent, the proposed rule, if finalized, would not require ANDA applicant #1 to provide notice to the patent owner and NDA holder, because the ANDA previously contained a paragraph IV certification. However, ANDA applicant #2 is subject to a potential 30-month stay in the ANDA approval date because it would be required to provide notice to the patent owner and NDA holder.

While this hypothetical situation appears to treat the two ANDA applicants differently, we believe that our interpretation does treat the ANDA applicants alike, because both ANDA applicants would be subject to the possibility of only one 30-month stay in the ANDA approval date.

Our proposed interpretation of the 30-month stay does not affect an ANDA applicant's eligibility for 180-day exclusivity. In brief, section 505(j)(5)(B)(iv) of the act gives the ANDA applicant who files the first paragraph IV certification for a listed patent 180 days of exclusivity (against other ANDA applicants). We interpret the 180-day exclusivity provision as providing 180-day exclusivity to the first ANDA applicant whose ANDA contains a paragraph IV certification to a patent, even if the paragraph IV certification is one that would not result in an obligation to notify the patent owner and NDA holder and would not subject the applicant to the risk of patent litigation and a 30-month stay. The FTC Report suggested that if only a single, 30-month stay per ANDA were allowed, the number of patents listed after NDA approval might decrease (see FTC Report at page v).

B. How Would the Rule Affect Pending Applications?

Assuming that we issue a final rule, we intend to apply the rule to pending applications as follows:

- For patents filed for an NDA that has not been approved by the effective date of a final rule, the rule would apply on the effective date. For example, if the final rule were to become effective 60 days after the date of publication in the **Federal Register**, and an NDA was pending on the 60th day after the final rule's publication date, the NDA applicant would have to comply with the final rule's patent listing and patent declaration requirements. ANDA and 505(b)(2) application applicants would be subject to the revised notice requirement. Each ANDA or 505(b)(2) application referencing that NDA would be subject to the possibility of only one 30-month stay per ANDA or 505(b)(2) application.
- If we have approved the NDA as of the final rule's effective date, and no ANDA has been filed before that date, then any patent listed before that date would be subject to the pre-existing regulation. For example, if the final rule were to become effective 60 days after the date of publication in the **Federal Register**, and we approved the NDA on the 59th day after the date of publication, the NDA applicant would *not* have to amend its patent listing and patent declaration to comply to the final rule. ANDA and 505(b)(2) applications submitted after the effective date would be subject to the revised notice requirement. Each ANDA or 505(b)(2) application referencing that NDA would be subject to the possibility of only one 30-month stay per ANDA or 505(b)(2) application.
- If we have approved the NDA as of the final rule's effective date, and an ANDA or 505(b)(2) application has been filed before that date, then any patent listed before that date would be subject to the pre-existing regulation, as described in the example immediately above. The ANDA or 505(b)(2) application applicant would have to provide notice to the patent owner and NDA holder if the ANDA or 505(b)(2) application contained a paragraph IV certification. Multiple 30-month stays in the approval date would be possible.
- If the NDA holder or NDA applicant files patent information after the final rule's effective date, then the NDA holder or applicant is subject to the final rule's patent listing and patent declaration requirements, and ANDA or 505(b)(2) application applicants would not have to provide notice if their applications previously contained a paragraph IV certification. Only one 30-month stay per each ANDA's or 505(b)(2) application's approval date would be possible.

This proposed rule provides sufficient notice to all interested parties, whether they are NDA holders, NDA applicants, ANDA applicants, or 505(b)(2) application applicants, to adjust their submissions and actions by the time we issue a final rule. (This assumes, of course, that we issue a final rule.) NDA holders who wish to receive the benefits of the pre-existing regulation will have enough time to decide whether to pursue additional patents and to list them. ANDA and 505(b)(2) application applicants will be able to plan their submissions more efficiently as they will know whether their applications will be subject to the possibility of one or more 30-month stays of approval if they make a paragraph IV certification. If we were to adopt an alternative implementation plan, we would risk upsetting legitimate expectations held by those who had relied on our earlier interpretation of the act. However, we invite comments on how a final rule should be implemented.

IV. Legal Authority

Our principal legal authority for the proposed rule exists at sections 505 and 701 (21 U.S.C. 371) of the act. Section 505(b) of the act describes the contents of an NDA and 505(b)(2) applications, including the patent listing and patent certification requirements. Section 505(j) of the act describes the contents of an ANDA, including patent certification requirements. Both sections 505(b) and 505(j) of the act also describe the 30-month stay of approval dates of a 505(b)(2) application or ANDA if the 505(b)(2) applicant or ANDA applicant made a paragraph IV certification and a timely action for patent infringement ensues.

The proposed rule would clarify the types of patents which NDA applicants and NDA sponsors must and must not submit to FDA for listing in the Orange Book. It would also require a more detailed patent declaration from NDA applicants and NDA holders.

For 505(b)(2) applicants and ANDA applicants, the proposal would have the effect of reducing the number of notifications sent to patent owners and NDA holders. Sections 505(b)(2)(A) and 505(j)(2)(A)(vii) of the act, respectively, require patent certifications, while sections 505(b)(3)(A) and 505(j)(2)(B) of the act require those applicants who have made a paragraph IV certification to provide a notice to the patent owner and NDA holder. Because the proposal would not require ANDA applicants and 505(b)(2) applicants to provide notice if: (a) the original ANDA or 505(b)(2) application contained a paragraph IV certification; and (b) the applicants amend their applications to include another paragraph IV certification in response to another patent listing, fewer notifications of invalidity or noninfringement of a patent would result.

Thus, section 505 of the act, in conjunction with our general rulemaking authority in section 701(a) of the act, serves as our principal legal authority for this proposal.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(h) and 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

[1] We further note that, although reliance on legislative history may have its perils, its use is more justified where, as in this case, the statute is ambiguous (see, e.g., *PanAmSat Corp.* v. *FCC*, 198 F.3d 890, 895 (D.C. Cir. 1999) (stating that a court does not resort to legislative history "to cloud a statutory text that is clear") (citation omitted).

VI. Executive Order 13132: Federalism

The agency has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). We describe these provisions below in this section of the document with an estimate of the annual reporting burden. Our estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

We invite comments on: (1) Whether the collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Applications for FDA Approval to Market a New Drug: Patent Listing Requirements and Application of 30-month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Invalid or Will Not Be Infringed

Description: The proposed rule would clarify the types of patent information that must and must not be submitted to FDA as part of an NDA or as an amendment or supplement to an NDA. The proposal would also require persons submitting an NDA or amendment or supplement to such an application to make a detailed patent declaration as part of the application. The proposal would also permit the possibility of only one 30-month stay of each ANDA's or 505(b)(2) application's approval date in the event of patent infringement litigation because the proposal would not require ANDA applicants or 505(b)(2) applicants to provide a notice of certification of invalidity or noninfringement of patent if their applications already contain such a certification.

Description of Respondents: Persons submitting, amending, or submitting a supplement to an NDA, and persons submitting an ANDA or 505(b)(2) application containing a patent certification of invalidity or noninfringement of patent.

We estimate the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Frequency of Responses	Total Annual Responses	Hours per Response	Total Hours
314.50(a) through (f), (h), and (k)	80	1.55	124	1,690	209,560
314.52(a)(3) and 314.95(a)(3)	37	1	37	16	592
Total					210,152

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimates are based on the following assumptions.

- According to our earlier information collection estimates for §§ 314.52 and 314.95, there are an estimated 37 respondents who provide a notice of certification of invalidity or noninfringement of patent each year, and each respondent submits an estimated 2 responses, with an estimated 16 burden hours per response. Because the proposed rule would allow only one 30-month stay in the effective date of approval for each 505(b)(2) application or ANDA, this would mean that these 505(b)(2) or ANDA applicants would (if the rule is finalized) file only one notice per year (unless they are filing multiple applications for different drugs and making paragraph IV certifications in more than one case). So, assuming that these applicants submit only one 505(b)(2) application or ANDA per year that contains a paragraph IV certification, the applicants would submit only one notice of certification of invalidity or noninfringement of patent each year. Thus, the information collection burden for §§ 314.52 and 314.95 would decrease to 592 hours (37 respondents x 1 response per respondent x 16 hours per response = 592 hours).
- To estimate the number of enhanced patent declarations that will be submitted annually, we referred to historical data on submissions of NDAs. In 2001 and 2002, we received 94 and 66 NDAs respectively. We therefore estimate that there will be 80 ((94 applications + 66 applications)/2 years = 80 applications/year) annual instances where an NDA applicant or NDA holder would be affected by the proposed patent listing and patent declaration requirements. According to our earlier information collection estimates for § 314.50(h) (the provision under which we covered patent listing and patent declaration matters as described in § 314.53), there are an estimated 1.55 annual responses per respondent. So, using the same 1.55 ratio, this would mean that 80 NDA applicants and NDA holders would submit 124 annual responses (80 respondents x 1.55 responses per respondent = 124 responses). However, proposed § 314.53(b) and (c) would have different impacts on the hours per response. On the one hand, proposed § 314.53(b) might decrease the reporting burden because it would specify certain patents that must not be filed in the Orange Book and thus discourage NDA applicants and NDA holders from submitting information on those patents. On the other hand, proposed § 314.53(b) would also require NDA applicants and NDA holders to submit patent information on different forms of the drug substance, and this could result in more patent information being submitted. We cannot determine whether the potential net effect will increase, decrease, or not change the overall burden associated with submitting patent information, so we have not assigned any change in the total reporting burden for the proposed change in patent information alone. In contrast, proposed § 314.53(c) would make the patent declaration more detailed. The change in the declaration would increase the burden hours per response in § 314.50(h) (the provision under which we covered patent declarations described in § 314.53(c)) because respondents would be required to be more precise in their declarations. Based on other rules that require respondents to compile and submit information in their possession, we estimated that the revised patent declaration will result in an additional information collection burden of 24 hours. However, the previous burden hour estimate of 1,666 hours for § 314.50 covered paragraphs (a) through (f), in addition to paragraphs (h) and (k). We are unable to determine how many of the 1,666 hours were devoted to patent declarations, so, in this table, we simply add 24 hours to the 1,666 hour estimate for § 314.50(a) through (f), (h), and (k), resulting in a burden hour estimate of 1,690 hours (1,666 hours + 24 hours) to account for a respondent's need for more time to make and verify the patent declaration. Thus, the information collection burden for § 314.50(a) through (f), (h), and (k) would increase to 209,560 hours (124 annual responses x 1,690 hours per response = 209,560 hours). We invite comment as to whether we need to adjust our estimate of 24 burden hours per response.

We have submitted the information collection requirements of this rule to OMB for review. Interested persons are requested to send comments regarding information collection to the Office of Information and Regulatory Affairs, OMB (see **ADDRESSES**).

VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, and the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity). Unless the agency certifies that the rule is not expected to have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act, as amended by SBREFA, requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. Section 202 of UMRA requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). We have conducted analyses of the proposed rule, and have determined that the proposed rule is consistent with the principles set forth in the Executive order and in these statutes.

The proposed rule is an economically significant regulatory action as defined by the Executive order. With respect to the Regulatory Flexibility Act, the agency certifies that this proposed rule is not expected to have a significant impact on a substantial number of small entities. The proposed rule is also a major rule under the Congressional Review Act. The discussion of costs and benefits is consistent with the requirements of the Unfunded Mandates Reform Act.

A. Objectives of the Proposed Regulation

The proposed rule has multiple objectives. We are clarifying the types of patents that must and must not be listed and revising the declaration that NDA applicants must provide regarding their patents. In addition, through this proposal, we are adopting a different interpretation of the act that will limit the number of 30-month stays to one per ANDA or 505(b)(2) application. This clarification, revision, and reinterpretation will help ensure that NDA applicants list appropriate patents in the Orange Book while preventing the NDA holders from thwarting generic entry through the use of multiple 30-month stays. Through these actions, we are preserving the balance struck in the Hatch-Waxman Amendments between encouraging innovation and encouraging the availability of generic drugs. The estimated 10-year total costs of this proposed rule are approximately $51.5 billion and the annualized cost is $4.9 billion. The estimated 10-year total benefits of this proposed rule are approximately $53.9 billion and the annualized benefit is $5.1 billion. These 10-year total benefits include consumer savings of approximately $34.8 billion from earlier access to less expensive prescription pharmaceuticals. The 10-year benefits exceed the costs by approximately $2.4 billion and the annualized benefits exceed the annualized costs by approximately $230 million.

1. The 30-Month Stay

The Hatch-Waxman Amendments benefit consumers by bringing lower priced generic versions of previously approved drugs to market, while simultaneously promoting new drug innovation through the restoration of patent life lost during regulatory proceedings. A firm wishing to market a generic version of a previously approved innovator drug can submit an ANDA. An ANDA refers to a previously approved NDA (the "listed drug") and relies upon our finding of safety and effectiveness for the listed drug.

Persons submitting an ANDA or a 505(b)(2) application must make certifications regarding the listed patents claiming the drug they wish to duplicate. The applicant must certify one of the following for each patent: (1) That no patent information on the drug product that is the subject of the ANDA has been submitted to us; (2) that such patent has expired; (3) the date on which such patent expires; or (4) that such patent is invalid or will not be infringed by the manufacture, use, or sale of the drug product for which the ANDA is submitted. These certifications are known as "paragraph I," "paragraph II," "paragraph III," and "paragraph IV" certifications, respectively.

A paragraph IV certification begins a process in which the question of whether the listed patent is valid or will be infringed by the proposed generic product may be answered by the courts prior to the expiration of the patent. The ANDA or 505(b)(2) application applicant who files a paragraph IV certification to a listed patent must notify the patent owner and the NDA holder for the listed drug that it has filed an application containing a paragraph IV certification. The notice must include a detailed statement of the factual and legal basis for the applicant's opinion that the patent is not valid or will not be infringed. If the NDA holder or patent owner files a patent infringement suit against the ANDA or 505(b)(2) application applicant within 45 days of the receipt of notice, we may not give final approval to the ANDA or 505(b)(2) application for at least 30 months from the date of the notice. This 30-month stay per ANDA or 505(b)(2) application will apply unless the court reaches a decision earlier in the patent infringement case or otherwise orders a longer or shorter period for the stay.

We recognize that, in recent years, NDA holders have been able to use multiple 30-month stays to delay

generic competition. Under current regulations, the patent certification process allows for one or more 30-month stays of an ANDA or 505(b)(2) application's approval. NDA holders can prevent FDA approval of ANDAs or 505(b)(2) applications beyond the initial 30-month stay by listing an additional patent in the Orange Book after the applicant has filed its ANDA or 505(b)(2) application. These applicants would be required to re-certify to the newly-listed patent. The NDA holder would then be given 45 days to file suit for patent infringement, and our approval of the initial ANDA or 505(b)(2) application would be delayed for an additional 30-month period from the notice date or until a court decision in the newly instituted patent litigation.

According to the FTC Report, from 1992 to 2000, NDA holders have listed patents in the Orange Book after an ANDA has been filed for a drug product on eight occasions. Six of these eight occasions have occurred since 1998. In all eight of these instances, the subsequent patent resulted in a delay to generic access to markets beyond the initial 30-month stay. We are not aware of any case in which a court has decided that the ANDA infringed upon the subsequent listed patent. According to the FTC Report, in the four instances of multiple stays in which a court has decided on the validity or infringement of a later-listed patent, the patent has been found either invalid or not infringed by the ANDA.[2]

2. The Economic Impact of Generic Competition

The generic drug industry plays an important role in the economics of the healthcare industry. According to Caves, Whinston, and Hurwitz (1991), generic drug prices can be as little as 20 percent of the brand-name price for the same product.[3] Laws encouraging doctors to prescribe generic drugs when available are a part of the current effort to hold down the cost of healthcare.[4] A report from the Congressional Budget Office (CBO) report estimated that in 1994 (when the generic drug market was smaller than its current size) consumers saved between $8 and $10 billion by substituting generic for brand-name drugs in pharmacy sales.[5] While the first 30-month stay enhances the incentive to innovate, subsequent stays generated by later-listed patents do not seem to give rise to the same incentives in most cases. By using multiple 30-month stays, NDA holders are able to delay competition from generic drugs. Delaying generic competition harms consumers by slowing the introduction of lower priced products to the market and thwarts the intent of the Hatch-Waxman Amendments.

The agency considered potential impacts on innovation and believes any negative effect to be minimal. While the initial 30-month stay is part of the balance struck in the Hatch-Waxman amendments to reward innovation, the subsequent stays are not part of this balance. The patents that form the basis for these subsequent stays do not appear to warrant automatic protection from generic competition.

According to the FTC report, every court ruling involving a subsequent 30-month stay has found the underlying patent to be either invalid or not infringed. Also according to the FTC report, extending patents through multiple stays is a strategy that has become popular in the last few years and is not a longstanding universally-recognized source of research funding. Subsequent stays could actually hinder innovation through the replacement effect, in that they provide a disincentive for an NDA holder to improve upon its own product. Moreover, to the extent that subsequent 30-month stays might be associated with increases in spending on research, these increases do not necessarily improve social welfare.[6]

B. Costs of the Regulation

This section develops estimates of the cost to NDA holders from the proposed rule. As previously stated, this proposed rule clarifies those types of patents that must or must not be listed and eliminates the use of multiple 30-month stays per ANDA to delay generic competition. The innovator drug industry, as NDA holders, would be expected to bear the costs of the proposed rule. Generic drug companies and consumers would be expected to benefit. The impact on these entities that benefit is addressed in section III.C of this preamble. We do not estimate a specific impact involving those submitting 505(b)(2) applications. We recognize these applicants, like those submitting ANDAs, must make certifications and would be affected by this proposed rule. We believe any benefits would be difficult to quantify with any precision and would be quite small, relative to the benefits to generic drug companies.

This proposed rule will be costly to NDA holders because earlier generic competition will erode innovator market share. This loss of market share to generics will result in reduced revenues to the innovator. These reduced revenues would be mitigated somewhat by a reduction in the administrative, marketing, and sales expenses.

To estimate the impact of earlier generic competition, we estimate the revenues to NDA holders and generics under a base case scenario under which multiple 30-month stays per ANDA are not allowed and a scenario in which generic entry may be delayed subject to an additional stay. The impact of the proposed rule would be the difference between the two scenarios.

1. Delaying Generic Competition

To estimate the impact of delays to generic competition, we use a modified version of the economic model from our report to Congress on the pediatric exclusivity provision to the Food and Drug Administration Modernization Act.[7] Generic entry erodes the listed drug's market share, typically over a period of several years. At the same time, the price of the typical generic drug is also falling. By tracking the decline of listed drug's market share and the fall in the price of the generic competition, the model calculates changes in sales over time for innovator and generic sectors.

In the model, we assume the reference listed drug's market share falls from 100 percent to 60 percent in the first year of generic marketing, and then to 45 and 30 percent in years two and three. The price of the average generic drug falls with time, and this is also captured by the model. The model assumes for each 6-month interval over the first 3 years of competition, the generic price as a fraction of innovator price falls from 100 percent at introduction, to 80 percent after 6 months, and finally 33.5 percent after 3 years.[8] Several studies have shown generic competition to have only very small effect on innovators' prices.[9] Innovator prices do frequently rise after generic entry, but we lack the data to confidently incorporate an estimate of this into this model. If innovator price increases were incorporated into this model, the magnitudes of the estimated impacts would be expected to be larger. We request comment providing data on price behavior after generic entry into the market.

The model calculates the impact on innovator and generic sectors each month for a 10-year period. Using immediate generic entry as a base case, the model calculates the relative impact of delaying entry for a certain number of months. These monthly impacts on each sector are converted to present value using a 7 percent discount rate.

According to appendix H of the FTC report, there have been 8 multiple 30-month stays, but the frequency of these stays has been increasing. Four drugs experienced multiple stays during 2000 and 2001. Based on this information, we assume that, absent this proposed rule, there would be 2 (4 drugs/2 years) situations with multiple 30-month stays each year. Thus, in calculating the annual impact of this proposed rule, we multiply the peak annual sales of the average affected drug by 2 to account for the frequency of the event. While we believe this to be a reasonable estimate, we recognize, as mentioned in the FTC Report, that a substantial sales volume of brand-name drug products will be coming off patent in the next few years. If there are more drugs affected by this rule than we estimate, this would increase both the benefits and costs of this rule.

To develop a profile of the typical drug for which there were multiple 30-month delays, we started with the instances in Appendix H and table 4–3 of the FTC Report. As two instances from the FTC report concern different dosage forms of the same drug, gabapentin, we count it only once in our analysis. Generic competition for one of the drugs, Cisplatin, was delayed because of a single 30-month stay and an alleged double patent. As we do not believe this situation is addressed by this proposed rule, we eliminated it from the analysis. The information on the six remaining drugs is contained in table 2.

TABLE 2.—DRUGS USED IN ANALYSIS

Active Ingredient	FTC Stay Period (Months)	Estimated Additional Stay Period (Months)	Estimated Peak Sales (000)
Buspirone	30[1]	4	$700
Terazosin	70[2]	46	$580
Gabapentin	37	24	$1,710
Paroxetine	65	34	$3,780
Paclitaxel	60[1]	3	$1,020
Diltiazem	60[1]	28	$380
Average	50 (+20)	+23	$1,360

[1] Potentially, but actually shorter because of a court decision.
[2] Periods not overlapping.
Sales Data Sources: Buspirone 2000 data, BMS Web site; Terazosin 1999 data, Pharmacy Times Web site; Gabapentin 2001 data, Drug Topics Web site; Paroxetine 2001 data, Scrip 2737, p. 15; Paclitaxel 2000 data, BMS Web site; Ditiazem 2001 data, Forest Form 10K. For data prior to 2001, sales were escalated to the 2001 level using CPI-U. For drugs that have not yet reached peak sales, the peak was estimated with a linear projection.

Table 2 includes the inflation adjusted peak sales and subsequent delay for each of the six drugs. As a reference, we include delay information from the FTC report. Based on the delay and sales information for the six drugs, we find the typical delayed drug to have peak annual sales of $1,360 million and subject to a 23-month delay. As we do not possess current sales figures for all the drugs involved, we invite comment on the accuracy of these estimates.

2. Impact of Delay on the Innovator Sector

The model results obtained from comparing the no delay and delay scenarios are provided in table 3. To account for the frequency of occurrence, we multiply the peak sales estimate by 2. To the extent that this proposed rule would eliminate multiple 30-month stays per ANDA after the first, the estimated impact on innovators would be an annual revenue decrease of $3,159.50 million (approximately $3.2 billion).

TABLE 3.—RESULTS OF DELAY ANALYSES

Scenario	Sales (000)	Delay (Months)	Impact (In Millions)		
			Innovator	Generic	Consumer
Base Case	$2,720[1]	23	($3,160)	$1,120	$2,040

[1] Includes 2.0 frequency factor.

[2] FTC Report, p. iv.

[3] Caves, Richard, M. D. Whinston, and M. A. Hurwitz. 1991. "Patent Expiration, Entry, and Competition in the U.S. Pharmaceutical Industry," Brookings Papers in Economic Activity: Microeconomics, p. 36.

[4] Hellerstein, Judith K. 1994. "The Importance of the Physician in the Generic Versus Trade-Name Prescription Decision," *RAND Journal of Economics*: 29:1:108–136.

[5] Congressional Budget Office, *How Increased Competition From Generic Drugs Has Affected Prices and Returns in the Pharmaceutical Industry* (July 1998). Note that the sale of drugs through pharmacies is a subset of all drug sales so total savings to consumers would be expected to be higher than the given figure.

[6] A more detailed discussion of the replacement effect and of the relationship between research and social welfare can be found in Jean Tirole, *The Theory of Industrial Organization* (Cambridge: MIT Press, 1988), pp. 392, 399–400.

[7] U.S. Food and Drug Administration, *The Pediatric Exclusivity Provision: Status Report to Congress*, January 2001, p. 43

[8] The decline over 3 years at 6-month intervals is as follows: 100 percent at introduction (0 months); 80 percent (6 months); 60 percent (12 months); 52.5 percent (18 months); 45 percent (24 months); 37.5 percent (30 months); 33.5 percent (36 months). The ultimate price ratio of 33.5 percent is consistent with a market with 10 generic entrants, per Caves, Whinston, and Hurwitz (1991), p. 36, table 9.

[9] See Box 4 in Congressional Budget Office (1998), p. 30.

The cost impact on innovators is driven by the fact that a delay in generic entry extends the time the innovator collects peak sales and shortens the time the innovator collects 30 percent of peak sales. Absent discounting, the impact on innovators would be the length of the delay times 70 percent of the peak innovator drug revenues.

This impact on innovators may be mitigated to a small degree by potential decreases in the administrative, marketing, and sales costs associated with the product. A recent study of top pharmaceutical companies found that marketing, administrative, and advertising expenses averaged 27 percent of revenues.[10] Part of this figure includes certain fixed costs that would not change with a decline in revenues. Moreover, to the extent that some of these support costs are discretionary, they would most likely be focused on periods of intense marketing, such as product roll-outs. Nevertheless, with the erosion of market share, the rewards to marketing would decline and the need for administrative support would be expected to decrease.

Assuming half the 27 percent figure to be discretionary support costs, and the discretionary support costs for the product in question to be one-third of the average, then discretionary support costs would be 4.5 percent of revenues (27 percent/6). The relevant annual cost reduction would be $142.2 million ($3.160 billion x 4.5 percent). As we lack precise data on the relationship between revenues and support costs, we invite comment on the accuracy of this estimate.

3. Other Issues Related to Burdens to Innovators

The proposed rule would require NDA holders to submit a more detailed patent declaration. To estimate the number of enhanced patent declarations that will be submitted annually, we referred to historical data on submission of NDAs, excluding those for orphan drugs. In 2000 and 2002, there were 94 and 66 NDAs respectively. We therefore estimate that there will be 80 ((94 + 66) / 2) annual instances where an NDA holder or NDA applicant will face this additional declaration burden. Based on earlier information collection estimates, we assume there to be an estimated 1.55 annual responses per respondent. Using this same 1.55 ratio, this would mean that the 80 NDA applicants and NDA holders would submit 124 annual responses (80 respondents x 1.55 responses per respondent).

[10] Families USA, *Profiting From Pain: Where Prescription Dollars Go*, July 2002, p. 3.

We believe that, while the NDA holder or NDA applicant possesses the additional patent information, there will be a burden in completing the more detailed declaration. Based on other rules that require respondents to compile and submit information in their possession, we estimate the burden to be 24 hours per event. A regulatory affairs specialist could perform the tasks associated with this process. Based on the total average hourly compensation (including a 40 percent load factor for benefits) of $55.72, the cost would be $1,337 ($55.72 per hour x 24 hours) per event.[11] The burden on individual firms would depend on the number of declarations they submit. The estimated annual burden to all declarants is $165,778 ($1,337 per event x 124 annual events).

We also considered a potential impact due to the numbers of patents listed. The proposed rule would require the submission of patent information for patents that claim different forms of the drug substance, and this would appear to increase the number of patent filings. At the same time, the proposed rule would clarify the types of patents that must not be submitted, and this would appear to reduce the number of patent filings. These two countervailing effects are of uncertain magnitude. We cannot quantify an impact, if any, from a change in the number of patents listed, but we invite comment.

4. Enforcement Costs

The proposed rule, if finalized, can be enforced using existing resources.

5. Total Costs of the Regulation

The annual cost of the proposed rule includes the lost revenues to innovator firms from the erosion of market share, mitigated by the decrease in support costs, and the additional cost of completing the more detailed patent declaration. The estimated 1-year loss in revenues from erosion of market share is $3,159.50 million, the reduction in support costs would reduce this loss by $142.20 million, and the estimated annual additional cost of completing the revised declarations is approximately $166,000. Thus, the estimated 1-year cost to innovator firms is $3,017.47 million (approximately $3.0 billion).

According to projections produced by the Office of the Actuary at the Centers for Medicare and Medicaid Services, expenditures on prescription pharmaceuticals are expected to increase dramatically in the near future. This $3.0 billion 1-year estimate does not take these increases into consideration and must be adjusted to account for them. Prescription drug expenditures for 2003, for example, are expected to be 12.8 percent greater than for 2002.[12] After using the average annual percent changes in prescription drug expenditures to adjust the annual cost, the total reduction in revenues to the innovator sector over the 10-year period 2002 through 2011 is estimated to be $51,507.55 million, or approximately $51.5 billion. Annualizing this impact over that 10-year period at a 7 percent discount rate yields an annualized cost of $4,863.76 million, or approximately $4.8 billion.

C. Benefits of the Regulation

This section develops estimates of the benefits from the proposed rule. Eliminating multiple 30-month stays per ANDA will prevent delays in generic drug competition. The 70 percent of the market lost by innovators is a gain to both generic drug companies and consumers. Generic drug companies gain through additional sales, and, to the extent that generic prices are lower than innovator prices, consumers benefit from the "price gap."

1. Gains to the Generic Drug Industry

We estimated the increase in sales to generic drug companies using the same model used to estimate losses in sales to innovators. Assuming typical drug peak sales to be $2.72 billion (including 2.0 frequency factor) and a typical delay of 23 months, the estimated increase in 1-year revenues to generic firms is $1,119 million (approximately $1.1 billion). After accounting for the baseline increases in pharmaceutical expenditures, the total increase in generic industry revenues for the period 2002 to 2011 is estimated to be $19,117.47 million or approximately $19.1 billion. The annualized cost, using a 7 percent discount rate is $1,805.23 million or approximately $1.81 billion.

While we recognize that the generic drug industry is doing more marketing than it used to do, the effort is still substantially smaller than what is done by innovator firms, and we do not make adjustments for reductions associated support costs.

[11] Hourly rate for "lawyer" from the Bureau of Labor Statistics 2000 National Compensation Survey is $38.70, adjusted for inflation at 2.85 percent (unadjusted CPI–U) and 40 percent for benefits.

[12] The annual percent increases in prescription drug expenditures for each year, 2003 through 2011, are assumed to be 12.8 (2003), 12.3 (2004), 11.7 (2005), 11.0 (2006), 10.7 (2007), 10.5 (2008), 10.3 (2009), 10.2 (2010), and 10.1 (2011). See National Health Care Expenditures Projections: 2001–2011, Centers for Medicare & Medicaid Services, Office of the Actuary, table 11.

2. Gains to Consumers

The model assumes that after generic entry, the market will eventually stabilize where the price of a generic drug will be 33.5 percent of the equivalent innovator drug. The gain to consumers would be the difference between the generic and innovator price. This price gap is equal to 66.5 percent of the innovator price. Under our assumptions, the estimated consumer impact of the proposed rule is a 1-year gain of $2,040 million (approximately $2 billion). This gain would be from the elimination of multiple 30-month stays per ANDA that delay the availability of less expensive drugs.

After increasing this 1-year estimate to account for the annual expected increases in baseline pharmaceutical expenditures, the total expected benefit to consumers for the period 2002 to 2011 is $34,822.35 or approximately $34.8 billion. The annualized benefit to consumers, using a 7 percent discount rate, would be $3,288.21 or approximately $3.3 billion.

It is difficult to determine which subgroups of consumers will benefit most from access to generic drugs. The previously cited report on Pediatric Exclusivity noted that about 21 percent of pharmaceutical spending came from public sources (Federal, State & Local, Medicare and Medicaid) and that this figure was expected to rise. The report also noted that cheaper drugs would disproportionately benefit lower income consumers in that these consumers would be less likely to have insurance.

3. Other Issues Related to Benefits

In the past, some studies have allocated a portion of the gains to generic drugs to the distribution sector (e.g., retail drug stores). These studies typically based this approach on the belief that generic drugs carried a substantially larger retail markup, in absolute dollar terms, than did innovator drugs.

This belief appears to be based on literature using limited data from the mid–1980s, a period when the generic drug industry was substantially different from its current state. For this analysis, we referred to more recent information, such as that found in the CBO report, and found no evidence of substantially larger absolute retail markup for generic drugs. While we believe recent data supports our belief that the absolute markups are approximately the same, we invite comment on this issue.

4. Total Benefits of the Regulation

The 1-year benefits of the regulation will include the increase in revenues to generic firms and the savings to consumers from the earlier availability of less expensive pharmaceuticals. The estimated total 1-year benefit is $3,159 million (approximately $3.2 billion). Adjusting this benefit to account for the expected increase in baseline pharmaceutical expenditures, the total benefit for the years 2002 through 2011 is expected to be $53,931.97 million or approximately $53.9 billion. Annualizing this stream of benefits over that 10-year period at a 7 percent discount rate yields an annualized cost of $5,093 million or approximately $5.1 billion.

TABLE 4.—BENEFITS OF THE PROPOSED RULE TO GENERICS AND CONSUMERS

Issue	One-Year Impact (Millions)
Generic Earlier Access to Market	$1,119.96
Consumer Drug Savings	$2,039.54
Total Benefits	$3,159.50

D. Comparison of Costs and Benefits

The estimated 10-year total costs of this proposed rule are $51,508 million. These costs would be borne by innovator firms in the form of reduced revenues, mitigated by a reduction in support costs, and an increased cost of completing the revised patent declaration. The estimated annualized cost is $4,864 million.

The estimated 10-year benefits of this proposed rule are $53,932 million. These benefits would accrue to the generic drug firms and consumers in the form of increased revenues and increased income from access to cheaper drugs, respectively. The estimated annualized benefit is $5,093 million. Absent the additional cost of completing the declaration and the reduction in support costs, the costs equal the benefits because the economic impact of this proposed rule is a transfer, as consumers shift consumption from the products of the innovator drug firms to those of generic drug firms. The total 10-year quantified benefits exceed the costs by $2,424 million and the annualized benefits exceed the annualized costs by $229 million. While the quantified benefits do exceed the quantified costs, this proposed rule has the additional important benefit of preserving the balance struck in the Hatch-Waxman amendments.

E. Regulatory Alternatives

In creating this proposed rule, we considered several regulatory alternatives, including not regulating. We rejected the alternative of not regulating because under the current situation, NDA holders are able to use multiple 30-month stays to delay generic entry and thwart the intent of the Hatch-Waxman amendments. We also considered using the current system of patent declarations. This alternative was also rejected because the current declaration may be insufficient to prevent NDA holders and NDA applicants from listing patents that should not be listed under the law. This is particularly important in light of the fact that we lack the resources, expertise, and authority to evaluate patents to determine whether they should be listed in the Orange Book.

F. Impact on Small Entities

Unless the agency certifies that the rule is not expected to have a significant impact on a substantial number of small entities, the Regulatory Flexibility Act, as amended by SBREFA requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. According to standards established by the Small Business Administration, a small pharmaceutical manufacturer employs fewer than 750 employees. We do not know the precise number of innovator companies expected to use multiple 30-month stays to delay generic entry. Nevertheless, we do not believe any of these innovator companies to be small. Moreover, none of the innovator companies identified in the FTC report as having used multiple 30-month stays would qualify as a small entity. Therefore, the agency certifies that this proposed rule is not expected

to have a significant impact on a substantial number of small entities.

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 314 be amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 355a, 356, 356a, 356b, 356c, 371, 374, 379e.

2. Section 314.52 is amended by redesignating paragraph (a)(3) as paragraph (a)(4) and by adding new paragraph (a)(3) to read as follows:

§ 314.52 Notice of certification of invalidity or noninfringement of a patent.

(a) * * *

(3) This paragraph does not apply to a use patent that claims no uses for which the applicant is seeking approval. This paragraph also does not apply if the applicant amends its application to add a certification under § 314.50(i)(1)(i)(A)(*4*) when the application already contained a certification under § 314.50(i)(1)(i)(A)(*4*) to another patent.

* * * * *

3. Section 314.53 is amended by revising paragraphs (b) and (c)(1) through (c)(2) to read as follows:

§ 314.53 Submission of patent information.

* * * * *

(b) *Patents for which information must be submitted.* An applicant described in paragraph (a) of this section shall submit information on each patent that claims the drug or a method of using the drug that is the subject of the new drug application or amendment or supplement to it and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product. For purposes of this part, such patents consist of patents that claim the drug substance (ingredient), patents that claim the drug product (formulation and composition), product by process patents, and patents that claim a method of use. Process patents, patents claiming packaging, patents claiming metabolites, and patents claiming intermediates are not covered by this section, and information on these patents may not be submitted to FDA. For patents that claim the drug substance, the applicant shall submit information only on those patents that claim the form of the drug substance that is the subject of the pending or approved application or that claim a drug substance that is the "same" as the active ingredient that is the subject of the approved or pending application within the meaning of section 505(j)(2)(A)(ii) of the act. For patents that claim a drug product, the applicant shall submit information only on those patents that claim a drug product that is the subject of a pending or approved application. For patents that claim a method of use, the applicant shall submit information only on those patents that claim indications or other conditions of use that are the subject of a pending or approved application. For approved applications, the applicant shall identify the indication or other condition of use in the approved labeling that corresponds to the listed patent and claim identified.

(c) * * * (1) *General requirements.* An applicant described in paragraph (a) of this section shall submit the declaration described in paragraph (c)(2) of this section for each claim of the patent that meets the requirements described in paragraph (b) of this section.

(2) *Patent declaration.* (i) For each patent that claims a drug substance (active ingredient), drug product (formulation and composition), and/or method of use, the applicant shall submit the following declaration:

This is a submission of patent information for an NDA submitted under section 505 of the Federal Food, Drug, and Cosmetic Act (the Act).

Time sensitive patent information pursuant to 21 CFR 314.53 for NDA # _____

The following is provided in accordance with section 505(b) of the Act:

Trade Name: _____

Active Ingredient(s): _____

Strength(s): _____

Dosage Form(s): _____

Approval Date (if the submission is a supplement to an approved NDA): _____

Please provide the following information for each patent submitted, and identify the relevant claim(s) by number.

A. 1. United States patent number: _____

2. Expiration date: _____

3. Name of the Patent Owner: _____

4. Agent (if patent owner or applicant does not reside or have a place of business in the United States) _____

B. For each patent identified in A, please provide the following information:

1. The type of patent claims that apply to the drug substance or drug product that is the subject of the application:

2. Drug Substance (Active Ingredient)

___ Yes ___ No

a. Claim number(s): _____

3. Drug Product (Composition/Formulation):

___ Yes ___ No

a. Claim number(s): _____

4. Method of Use:

___ Yes ___ No

a. Claim number(s): _____

C. For each drug substance claim identified, please provide the following information:

1. Is the claim one that claims the drug substance that is the active ingredient in the approved or pending NDA, an amendment to the NDA, or a supplement to the NDA?

___ Yes ___ No

If "yes," please identify the claim(s) by number.

2. Is the claim one that claims a drug substance that is the "same" active ingredient as the active ingredient in the pending or approved NDA, amendment to the NDA, or a supplement to the NDA?

___ Yes ___ No

If "yes," please identify the claim(s) by number.

3. If the answer to question C.1 or C.2 is "yes," do you acknowledge that an ANDA or 505(b)(2) application containing the same active ingredient that is claimed by the patent is the "same" for ANDA or 505(b)(2) approval purposes?

___ Yes ___ No

[*If the answers to questions C.1, and C.2, or C.3 is "no," stop here. The patent may not be listed in the Orange Book as a patent that claims the drug substance.*]

D. For each drug product claim identified, please provide the following information:

1. Is the claim one that claims the approved formulation or composition and/or the formulation or composition for which approval is being sought?

___ Yes ___ No

If "yes," please identify the claim(s) by number.

[*If the answer to question D.1 is "no" in every instance, stop here. The patent may not be listed in the Orange Book as a patent that claims the drug product.*]

E. For each method of use claim identified, please provide the following information:

1. Is the claim one that claims:

(a) an approved method of use of the approved drug product? If "yes," please identify the use with reference to the approved labeling for the drug product and identify the relevant patent claim number(s);

___ Yes ___ No

(b) a method of use of the approved drug product for which use approval is being sought; or

___ Yes ___ No

(c) a method of use of the drug product for which approval is being sought?

___ Yes ___ No

If the answer to questions E.1(b) or (c) is "yes," please identify the use with reference to the proposed labeling for the drug product and identify relevant patent claim number(s). [*If the answers to questions E.1(a) through (c) are "no," stop here. The patent may not be listed in the Orange Book as a patent that claims a method of use.*]

(ii) Amendment of patent information upon approval. Within 30 days after the date of approval of its application, if the application contained a declaration required under paragraph (c)(2)(i) of this section, the applicant shall, by letter, amend the declaration to identify the patent claims that claim the drug substance, drug product, or method of use that has been approved.

* * * * * *

4. Section 314.95 is amended by revising paragraph (a)(3) to read as follows:

§ 314.95 Notice of certification of invalidity or noninfringement of a patent.

(a) * * *

(3) This paragraph does not apply to a use patent that claims no uses for which the applicant is seeking approval. This paragraph also does not apply if the applicant amends its application to add a certification under § 314.94(a)(12)(i)(A)(*4*) when the application already contained a certification under § 314.94(a)(12)(i)(A)(*4*) to another patent.

* * * * * *

Dated: September 19, 2002.

Lester M. Crawford,

Deputy Commissioner.

Tommy G. Thompson,

Secretary of Health and Human Services.

[FR Doc. 02–27082 Filed 10–14–02; 11:57 am]

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Federal Register

Thursday,
October 24, 2002

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 31
Federal Acquisition Regulation; Reimbursement of Relocation Costs on a Lump-Sum Basis; Proposed Rule

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation; Reimbursement of Relocation Costs on a Lump-Sum Basis

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are considering revising the relocation cost principle to expand the use of reimbursement of costs on a lump-sum basis. The Councils are requesting comments regarding this potential change. The Councils will consider the comments received in their decision whether to develop a proposed rule. Should the Councils decide to draft a proposed rule, an additional 60-day public comment period will be provided.

DATES: Interested parties should submit comments in writing on or before December 23, 2002 to be considered in the formulation of a proposed rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to: *farnotice.relocationcosts@gsa.gov*.

Please submit comments only and cite FAR Notice on Reimbursement of Relocation Costs on a Lump-Sum Basis in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAR Notice on Reimbursement of Relocation Costs on a Lump-Sum Basis.

SUPPLEMENTARY INFORMATION: The relocation cost principle at FAR 31.205–35 permits the Government to reimburse contractors for relocation costs (with the exception of miscellaneous costs) up to the employee's actual expenses. For miscellaneous costs that are addressed at FAR 31.205–35(a)(5), the Government may reimburse the contractor a flat or lump-sum amount up to $5,000, in lieu of actual costs. The Councils are considering revising FAR 31.205–35, Relocation costs, to permit contractors the option of claiming employee relocation costs based on actual costs, an appropriate lump-sum basis, or a combination of the two approaches.

While individual receipts are not required with a lump-sum approach, contractors would still have to demonstrate that amounts paid are reasonable and appropriate for the circumstances of each relocating employee. The Councils anticipate that this change may achieve overall benefits by reducing administrative costs for contractors and by improving employee morale. However, there is concern that permitting lump-sum payments in lieu of actual costs may result in an increase in costs to the Government. Therefore, the Councils invite interested parties to provided the following information to help assess the potential costs and benefits of the lump-sum reimbursement approach. Note that public comments provided in response to this notice will be available in their entirety to any requester, including any requester under the Freedom of Information Act (5 U.S.C. 552). Under no circumstances should respondents provide any information unless they do so with a clear understanding that their comments will be made available to the public.

1. *Commercial practice.* What has been your company's experience in using a lump-sum approach instead of an actual cost method for reimbursement of employee relocation expenses? If used, is the practice to use the lump-sum approach for total costs of relocating employees, or only certain types of costs? If so, which types?

2. *Reasonableness.* How would your company ensure that relocation costs charged to the Government using a lump-sum approach are reasonable?

3. *Limits.* Does your company now use commercially available data, such as that developed by the Employee Relocation Council, in order to establish reimbursement limits on relocation costs? If so, what sources of commercially available data do you use, and how do you use the data? If not, what other criteria or standards could be (or are being) used to assess reasonableness?

4. *Benefits.* What are the types and amounts of savings or other benefits that you anticipate would result if reimbursement on a lump-sum basis were permitted?

5. *Costs.* What are the types and amounts of costs or other disadvantages that you anticipate would result if reimbursement on a lump-sum basis were permitted?

Dated: October 18, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–27083 Filed 10–23–02; 8:45 am]

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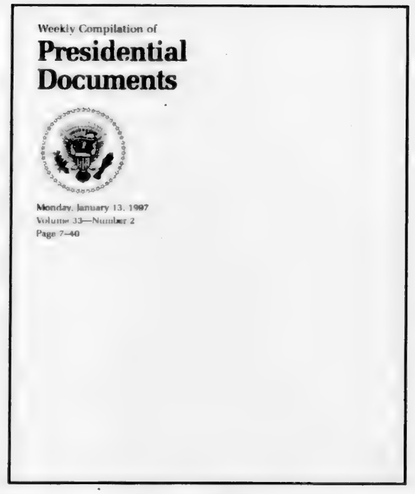

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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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Title 3—

The President

Presidential Determination No. 03–02 of October 16, 2002

Presidential Determination on FY 2003 Refugee Admissions Numbers and Authorizations of In-Country Refugee Status

Memorandum for the Secretary of State

In accordance with section 207 of the Immigration and Nationality Act (the "Act") (8 U.S.C. 1157), as amended, and after appropriate consultations with the Congress, I hereby make the following determinations and authorize the following actions:

The admission of up to 70,000 refugees to the United States during FY 2003 is justified by humanitarian concerns or is otherwise in the national interest; provided, however, that this number shall be understood as including persons admitted to the United States during FY 2003 with Federal refugee resettlement assistance under the Amerasian immigrant admissions program, as provided below.

The 70,000 admissions numbers shall be allocated among refugees of special humanitarian concern to the United States in accordance with the following regional allocations; provided, however, that the number allocated to the East Asia region shall include persons admitted to the United States during FY 2003 with Federal refugee resettlement assistance under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in section 101(e) of Public Law 100–202 (Amerasian immigrants and their family members); provided further that the number allocated to the former Soviet Union shall include persons admitted who were nationals of the former Soviet Union, or in the case of persons having no nationality, who were habitual residents of the former Soviet Union, prior to September 2, 1991:

Africa	20,000
East Asia	4,000
Eastern Europe	2,500
Former Soviet Union	14,000
Latin America/Caribbean	2,500
Near East/South Asia	7,000
Unallocated Reserve	20,000

The 20,000 unallocated numbers shall be allocated as needed to regional ceilings where shortfalls develop. Unused admissions numbers allocated to a particular region may be transferred to one or more other regions if there is an overriding need for greater numbers for the region or regions to which the numbers are being transferred. You are hereby authorized and directed to consult with the Judiciary Committees of the Congress prior to any such use of the unallocated numbers or reallocation of numbers from one region to another.

Pursuant to section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, I hereby determine that assistance to or on behalf of persons applying for admission to the United States as part of the overseas refugee admissions program will contribute to the foreign policy interests of the United States and designate such persons for this purpose.

An additional 10,000 refugee admissions numbers shall be made available during FY 2003 for the adjustment to permanent resident status under section 209(b) of the Immigration and Nationality Act (8 U.S.C. 1159(b)) of aliens

who have been granted asylum in the United States under section 208 of the Act (8 U.S.C. 1158), as this is justified by humanitarian concerns or is otherwise in the national interest.

In accordance with section 101(a)(42) of the Act (8 U.S.C. 1101(a)(42)) and after appropriate consultation with the Congress, I also specify that, for FY 2003, the following persons may, if otherwise qualified, be considered refugees for the purpose of admission to the United States within their countries of nationality or habitual residence:

a. Persons in Vietnam

b. Persons in Cuba

c. Persons in the former Soviet Union

You are authorized and directed to report this determination to the Congress immediately and to publish it in the **Federal Register**.

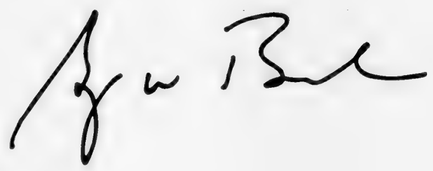

THE WHITE HOUSE,
Washington, October 16, 2002.

[FR Doc. 02–27365
Filed 10–24–02; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 03–03 of October 16, 2002

Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority and conditions contained in section 534(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002, Public Law 107–115, as provided for in the Joint Resolution Making Continuing Appropriations for the Fiscal Year 2003, and for other purposes, Public Law 107–240. I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204.

This waiver shall be effective for a period of 6 months from the date hereof. You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

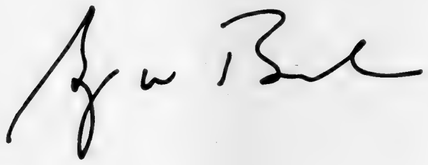

THE WHITE HOUSE,
Washington, October 16, 2002.

[FR Doc. 02–27366
Filed 10–24–02; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 67, No. 207
Friday, October 25, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM234; Special Conditions No. 25–218–SC]

Special Conditions: Avions Marcel Dassault—Breguet Aviation, Falcon 10; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Avions Marcel Dassault—Breguet Aviation Falcon 10 airplane modified by Garrett Aviation Services. This modified airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of a Universal Avionics EFI–550 Flat Panel Flight Display System that performs critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 11, 2002. Comments must be received on or before November 25, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM234, 1601 Lind Avenue SW., Renton Washington, 98055–4056; or delivered in duplicate to the Transport Directorate at the above address. All comments must be marked: Docket No. NM234. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment hereon is impracticable, because these procedures would significantly delay certification of the airplane, which is imminent. In addition, as the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting such written comments, data, or views, as they may desire. The most helpful commits reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the commit closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On September 6, 2002, Garrett Aviation Services, 1200 North Airport Drive, Capital Airport Springfield, IL 62707, applied for a Supplemental Type Certificate (STC) to modify the Avions Marcel Dassault—Breguet Aviation Falcon 10 airplane approved under Type Certificate No. A33EU. The AMD/BA Falcon 10 is a transport category airplane. The AMD/BA Falcon 10 airplane is powered by two Airesearch Manufacturing Company TFE731–2–1C turbofans with a maximum takeoff weight of 18,300 pounds. This airplane operates with a 2-pilot crew and can hold up to 9 passengers. The modification incorporates the installation of dual Universal Avionics EFI–550 Flat Panel Flight Displays. The EFI–550 Display System is installed as a replacement for the existing mechanical ADI and HSI display instruments, while also providing additional functional capability and redundancy. The EFI–550 Display System is microprocessor based digital, flat panel display which adapts analog input signals to digital information when interfaced with the existing flight director and flight guidance system. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Amendment 21–69, effective September 16, 1991, Garrett Aviation Services must show that the AMD/BA Falcon 10 airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A33EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the modified AMD/BA Falcon

10 airplane includes 14 CFR part 25, dated February 1, 1964, as amended by Amendments 25–1 through 25–20, except for special conditions and exceptions noted in Type Certificate Data Sheet (TDCS) A33EU.

If the Administrator finds that the applicable airworthiness regulations (that is, part 25, as amended) do not contain adequate or appropriate safety standards for the AMD/BA Falcon 10 airplane because of novel or unusual design features, special conditions are prescribed under the provisions § 21.16

In addition to the applicable airworthiness regulations and special conditions, the AMD/BA Falcon 10 airplane must comply with the noise certification requirement of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should Garrett Aviation Services apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

As noted earlier, the AMD/BA Falcon 10 airplane modified by Garrett Aviation Services will incorporate Universal Avionics EFI–550 Flat Panel Flight Displays that will perform critical functions. These systems have to potential to be vulnerable to HIRF external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards that address the protection of this equipment from the adverse effect of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the AMD/BA Falcon 10 airplane modified by Garrett Aviation Services. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1. OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10KHz to 18GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability: As discussed above, these special conditions are applicable to the AMD/BA Falcon 10 airplane modified by Garret Aviation Services. Should Garrett Aviation Services apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(2), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features on the AMD/BA Falcon 10 airplanes modified by Garrett Aviation Services. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and that good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above. 3

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Avions Marcel Dassault—Breguet Aviation, Falcon 10 airplanes modified by Garrett Aviation Services.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington on October 11, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–27175 Filed 10–24–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM236; Special Conditions No. 25–220–SC]

Special Conditions: Bombardier Model CL–600–1A11 and CL–600–2A12 Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Bombardier Model CL–600–1A11 and CL–600–2A12 airplanes modified by Gulfstream Aerospace Corporation. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of a Rockwell Collins FDS–2000 Electronic Display System that performs critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of this system from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 11, 2002. Comments must be received on or before November 25, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM236, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM236. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Connie Beane, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2796; facsimile (425) 227–1100.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification, and thus delivery, of the affected airplane. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On July 31, 2002, Gulfstream Aerospace Corporation, Dallas, Texas, applied for a supplemental type certificate (STC) to modify Bombardier Model CL–600–1A11 and CL–600–2A12 airplanes. These airplanes are low-wing, pressurized transport category airplanes with two fuselage-mounted jet engines. They are capable of seating a maximum of 19 passengers, depending upon the configuration. The modification incorporates the installation of a Rockwell Collins FDS–2000 five "tube" Electronic Display System consisting of the following major components:

- Five (5) AFD–2000A Adaptive Flight Displays: Pilot Electronic Attitude Indicator (EADI), Pilot Electronic Horizontal Situation Indicator (EHSI), Multi-Function Display (MFD), Copilot EADI, Copilot EHSI.
- Three (3) DCP–2000 Display Control Panels: Pilot, MFD, Copilot.
- Two (2) DCU–2000 Data Concentrator Units.

This system has a potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Amendment 21–69, effective September 16, 1991, Gulfstream Aerospace Corporation must show that Bombardier Model CL–600–1A11 and CL–600–2A12 airplanes, as modified to include installation of the Rockwell Collins FDS–2000 Electronic Display System, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A21EA or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as

part of Amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The specific regulations included in the certification basis for Bombardier Model CL–600–1A11 and CL–600—A12 airplanes include 14 CFR part 25, dated February 1, 1965, including amendments 25–1 through 25–37, and sections 25.675(a), 25.685(a), 25.733(c), 25.775(e), 25.787(c), 25.815, 25.841(b), 25.951(a), 25.979(d) and (e), 25.1041, 25.1143(e), 25.1303(a), 25.1322, 25.1385(c), 25.1557(b), and 25.1583(a) of Amendment 25–38; sections 25.901(b) and (c), 25.903(c) and (e), 25.933(a), 25.943, 25.959, 25.1091(a) and (d), 25.1145(c), 25.1199(b) and (c), 25.1207, 25.1549, and 25.1585(a)(9) of Amendment 25–40; and section 25.1309 of Amendment 25–41; section 25.1353(c) of Amendment 25–42; section 25.571 and 25.629(d)(4)(v) of Amendment 25–45; and sections 25.351 and 25.603 of Amendment 25–46.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Bombardier Model CL–600–1A11 and CL–600–2A12 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the airplane's type certification basis in accordance with § 21.101(b)(2). Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should Gulfstream Aerospace Corporation apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

As noted earlier, Bombardier Model CL–600–1A11 and CL–600–2A12 airplanes modified by Gulfstream Aerospace Corporation will incorporate the Rockwell Collins FDS–2000 Electronic Display System that will perform critical functions. This system may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain safety standards adequate or appropriate to protect this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide such protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations which are incorporated by reference, special conditions are needed for Bombardier Model CL–600–1A11 and CL–600–2A12 airplanes modified by Gulfstream Aerospace Corporation. These special conditions will require that the Rockwell Collins FDS–2000 Electronic Display System, which perform critical functions, be designed and installed to preclude component damage and interruption of function due to the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root mean square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 Mhz	700	50
700 MHz–1 GHz	700	100
1GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability: As discussed above, these special conditions are applicable to Bombardier Model CL–600–1A11 and CL–600–2A12 airplanes modified by Gulfstream Aerospace Corporation to incorporate the Rockwell Collins FDS–2000 Electronic Display System. Should Gulfstream Aerospace Corporation apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate A21EA to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain design features on Bombardier Model CL–600–1A11 and CL–600–A12 airplanes modified by Gulfstream Aerospace Corporation to incorporate a Rockwell Collins FDS–2000 Electronic Display System. It is not a rule of general applicability and affects only the applicant which applied to the FAA for approval of these features on the airplanes.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Bombardier Model CL–600–1A11 and CL–600–2A12 airplanes as modified by Gulfstream Aerospace Corporation.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 11, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–27171 Filed 10–24–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM235; Special Conditions No. 25–219–SC]

Special Conditions: Boeing 727–100 and –200 Series Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 727–100 and –200 series airplanes modified by Aircraft Systems & Manufacturing, Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of new dual Innovative Solutions & Support (IS&S) Mach Airspeed Indicators that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 11, 2002. Comments must be received on or before November 25, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM235, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM235. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Connie Beane, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2796; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification, and thus delivery, of the affected airplane. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On June 19, 2002, Aircraft Systems & Manufacturing, Inc., Georgetown, Texas, applied for a supplemental type certificate (STC) to modify Boeing Model 727–100 and –200 series airplanes. These airplanes are low-wing, pressurized transport category airplanes with three fuselage-mounted jet engines. They are capable of seating between 120 and 189 passengers, depending upon the model and configuration. The modification incorporates the installation of dual IS&S Mach Airspeed Indicators, replacing the existing Mach Airspeed Indicators. The Mach Airspeed Indicators have two modes, normal and

standby, which incorporate both a repeater function and a pneumatic function. These systems have a potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Amendment 21–69, effective September 16, 1991, Aircraft Systems & Manufacturing, Inc. must show that the Boeing Model 727–100 and –200 series airplanes, as modified to include the new dual IS&S Mach Airspeed Indicators, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3WE or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The specific regulations included in the certification basis for the Boeing Model 727–100 and –200 series airplanes include Civil Air Regulations (CAR) 4b, as amended by amendments 4b–1 through 4b–12.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, CAR 4b, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 727–100 and –200 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing 727–100 and "200 series airplanes must comply with fuel vent and exhaust emissions requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the airplane's type certification basis in accordance with § 21.101(b)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should Aircraft Systems & Manufacturing, Inc. apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

Boeing Model 727–100 and –200 airplanes modified by Aircraft Systems & Manufacturing, Inc. will incorporate new dual IS&S Mach Airspeed Indicators that will perform critical functions. These systems may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards that address the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be novel or unusual design features.

Discussion

There is no specific regulation that addresses protection requirements of electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing Model 727–100 and –200 series airplanes modified by Aircraft Systems & Manufacturing, Inc. These special conditions require that the new dual IS&S Mach Airspeed Indicators, which perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strengths components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–MHz 200	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability: As discussed above, these special conditions are applicable to the Boeing Model 727–100 and -200 airplanes modified by Aircraft Systems & Manufacturing, Inc. to install new dual IS&S Mach Airspeed Indicators. Should Aircraft Systems & Manufacturing, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate A3WE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain design features on the Boeing Model 727–100 and –200 series airplanes modified by Aircraft Systems & Manufacturing, Inc. to include the new dual IS&S Mach Airspeed Indicators. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplanes.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Boeing Model 727 –100 and –200 series airplanes as modified by Aircraft Systems & Manufacturing, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 11, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–27170 Filed 10–24–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–85–AD; Amendment 39–12917; AD 2002–21–11]

RIN 2120–AA64

Airworthiness Directives; EXTRA Flugzeugbau GmbH Model EA–300S Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain EXTRA Flugzeugbau GmbH (EXTRA) Model EA–300S airplanes. This AD requires you (for all affected airplanes) to inspect the upper longeron at the horizontal stabilizer attachment for cracks using a fluorescent dye check penetrant method, repair any cracks found, and modify the horizontal stabilizer. This AD also requires a limit on operation to the Normal category until accomplishment of the initial inspection and modification on airplanes with less than 200 hours time-in-service (TIS). This AD is the result of reports of fatigue cracks at the horizontal stabilizer attachment on the affected airplanes. The actions specified by this AD are intended to detect and correct cracks in the horizontal stabilizer attachment, which could result in structural failure of the aft fuselage with consequent loss of control of the airplane.

DATES: This AD becomes effective on December 17, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 17, 2002.

ADDRESSES: You may get the service information referenced in this AD from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, D–46569 Hunxe, Federal Republic of Germany; telephone: (0 28 58) 91 37–00; facsimile: (0 28 58) 91 37–30. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–85–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

On October 17, 1997, FAA issued a Special Airworthiness Information Bulletin (SAIB) to recommend an inspection of the horizontal stabilizer attachment on EXTRA Models EA–300, EA–300L, and EA–300S airplanes. The SAIB recommended compliance with EXTRA Service Bulletin SB–300–2–95.

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, did not consider the actions of the service bulletin mandatory and consequently did not issue an AD against airplanes on the German register. The FAA also did not issue an AD at this time because the service history did not warrant such action.

Since that time, FAA has received information that indicates fatigue cracks at the horizontal stabilizer attachment are occurring on the above-referenced airplanes. These airplanes are utilized in aerobatic maneuvers and the stress in the area of the horizontal stabilizer can lead to cracks in this area, as well as in the upper longerons and diagonal braces.

What Is the Potential Impact If FAA Took No Action?

This condition, if not corrected, could lead to structural failure of the aft fuselage with consequent loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain EXTRA Models EA–300, EA–300L, and EA–300S airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 26, 2001 (66 FR 49148). The NPRM proposed to require:

—For all affected airplanes: an inspection of the upper longeron at the horizontal stabilizer attachment for cracks using a fluorescent dye check penetrant method, repair of any cracks found, and modification of the horizontal stabilizer; and

—On airplanes with less than 200 hours time-in-service (TIS) as of the effective date of the proposed AD: a limit on operation to the Normal category until accomplishment of the initial inspection and modification.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. One person responded. The following presents the comments received on the proposal from this person and FAA's response to each comment:

Comment Issue No. 1: There Is No Justification for an AD

What Is the Commenter's Concern?

The commenter states that FAA has no justification for issuing the proposed AD. These concerns include:

1. The service bulletin adequately addresses the problem.
2. The manufacturer was unaware of FAA's intent to propose an AD.
3. The LBA never even considered issuing an AD.
4. The accident Model EA–300S airplane was used for competition and was operated outside the design envelope.

We infer that the commenter wants the NPRM withdrawn.

What Is FAA's Response to the Concern?

We do not concur that the NPRM should be withdrawn. The following addresses each of the issues specified above:

1. The only way FAA can enforce the actions of a service bulletin on airplanes registered for operation in the United States is by issuing an AD.
2. We notified the LBA, which is the airworthiness authority for Germany (the State of Design of the affected airplanes), of our intent to issue an AD. This is in accordance with the bilateral agreement between the United States and Germany.
3. According to our correspondence, the LBA believed that this condition was only isolated to those aircraft in the United States, and thus LBA was not planning on initiating AD action.
4. We agree that the correct use of an AD is not to address a structural failure when the airplanes are flown outside of their certificated limits. However, we are not aware of any crew statements or other information that the failures of the aft fuselage structure were due to airplanes flying outside the design envelope.

We are not changing the final rule AD action as a result of these comments.

Comment Issue No. 2: Remove the Models EA–300 and EA–300L From the Applicability of the AD

What Is the Commenter's Concern?

The commenter states that we have not shown how the condition on the Model EA–300S airplanes is likely to exist or develop on the Models EA–300 and EA–300L airplanes. The commenter points out that no service history exists on fatigue failure of the aft fuselage structure for the Models EA–300 and EA–300L airplanes. The commenter also states that EXTRA has said that only the Model EA–300S airplanes are conducive to this condition.

What Is FAA's Response to the Concern?

We concur that no service history exists on the fatigue failures of the aft fuselage structure for the Models EA–300 and EA–300L airplanes. While EXTRA may have made statements that only the Model EA–300S airplanes were affected by this condition, EXTRA has included the Models EA–300 and EA–300L airplanes in every service bulletin revision level related to this subject.

We have re-evaluated all information related to this subject and have decided to only apply the AD to the Model EA–300S airplanes. We will continue to monitor this subject on the Models EA–300 and EA–300L airplanes and may implement future rulemaking action if necessary.

We are changing the final rule AD action so that only the Model EA–300S airplanes are contained in the Applicability.

Comment Issue No. 3: Cost Estimate is Too Low

What Is the Commenter's Concern?

The commenter states that we underestimated the cost impact that the proposed AD would have upon the public. The commenter estimates that the proposed AD costs three times more than what we estimated, but the commenter does not provide any specific labor and parts costs.

What Is FAA's Response to the Concern?

Due to the unavailability of cost information on this subject, we estimated the labor and parts cost to accomplish the inspection and any repairs. As in any aircraft modification or repair, there is chance of variation in cost estimates from airplane to airplane.

We have determined that our cost estimate is as accurate as possible at this time. No substantiating information was presented to show that it is in error. Therefore, we are not changing the final rule as a result of this comment.

FAA's Determination

What Is FAA's Final Determination on this Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for removing the Models EA–300 and EA–300L airplanes from the Applicability and minor editorial corrections. We have determined that this removal and the minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 21 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
24 workhours × $60 per hour = $1,440	Not applicable	$1,440	$1,440 × 21 = $30,240.

We estimate the following costs to accomplish any necessary repair or replacement that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such repair or replacement:

Labor cost	Parts cost	Total cost per airplane
40 workhours × $60 per hour = $2,400	Parts provided at no cost	$2,400 per airplane.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–21–11 Extra Flugzeugbau GmbH: Amendment 39–12917; Docket No. 99–CE–85–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model EA–300S airplanes, serial numbers 1 through 29, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the horizontal stabilizer attachment, which could result in structural failure of the aft fuselage with consequent loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) For all affected airplanes, inspect, using a fluorescent dye penetrant method, the upper longeron at the horizontal stabilizer attachment for cracks in the areas depicted in Figure 1 of this AD.	Upon accumulating 250 hours time-in-service (TIS) or within the next 50 hours TIS after December 17, 2002 (the effective date of this AD), whichever occurs later.	In accordance with Part I of Extra Service Bulletin No. 300–2–95 (pages 2–6 at Issue: C, dated July 15, 1998; and pages 1 and 7 through 11 at Issue: D, dated January 30, 2001). No further action is required by this paragraph if the modification is already accomplished in accordance with Part II of Extra Service Bulletin No. 300–2–95 (all pages at Issue: C, dated July 15, stabilizer 1998).
(2) For all affected airplanes, if no crack(s) is (are) found during the inspection required by this AD, modify the upper longeron at the horizontal stabilizer attachment.	Prior to further flight after the inspection required by paragraph (d)(1) of this AD.	In accordance with Part II of Extra Service Bulletin No. 300–2–95 (pages 2–6 at Issue: C, dated July 15, 1998; and pages 1 and 7 through 11 at Issue: D, dated January 30, 2001). No further action is required by this paragraph if already accomplished in accordance with Part II of Extra Service Bulletin No. 300–2–95 (all pages at Issue: C, dated July 15, 1998).
(3) For all affected airplanes, if any crack is found during the inspection required by this AD and the cracks(s) is (are) in Area A or Area B as depicted in Figure 1 of this AD, accomplish the following: (i) Repair and modify the upper longeron at the horizontal stabilizer attachment; and (ii) Weld the cracks tight during repair.	Prior to further flight after the inspection where any crack is found in Area A or Area B as depicted in Figure 1 of this AD.	In accordance with Part II of Extra Service Bulletin No. 300–2–95, Issue: D, dated January 30, 2001. No further action is required by this paragraph if already accomplished in accordance with Part II of Extra Service Bulletin No. 300–2–95 (all pages at Issue: C, dated July 15, 1998).
(4) For all affected airplanes, if any crack is found during the inspection and the crack(s) is (are) in Area C as depicted in Figure 1 of this AD, accomplish the following: (i) Obtain a repair scheme from the manufacturer; (ii) Incorporate this repair scheme; and (iii) Accomplish any follow-up actions as directed by the FAA.	Prior to further flight after the inspection where any crack is found.	In accordance with a repair scheme obtained from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, D–46569 Hünxe, Federal Republic of Germany; telephone: (0 28 58) 91 37–00; facsimile: (0 28 58) 91 37–30. Obtain this repair scheme through the FAA at the address specified in paragraph (g) of this AD.

Actions	Compliance	Procedures
(5) For airplanes with less than 200 hours TIS as of the effective date of this AD, limit operation to the Normal category by accomplishing the following: (i) Fabricate two placards using letters of at least 1/10-inch in height consisting of the following words: "OPERATIONS LIMITED TO NORMAL CATEGORY"; (ii) Install these placards on the airplane instrument panels (one on the front panel and one on the rear panel) next to the airspeed indicators within the pilot's clear view; and (iii) Insert a copy of this AD into the Limitations Section of the Airplane Flight Manual (AFM).	Within the next 50 hours TIS after December 17, 2002 (the effective date of this AD), until the inspection and the modification required by this AD are accomplished	Not Applicable.
(6) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may fabricate and install the placard as required by paragraphs (d)(5)(i) and (d)(5)(ii) of this AD and insert this AD into the Limitations Section of the AFM as required by paragraph (d)(5)(iii) of this AD.	Within the next 50 hours TIS after December 17, 2002 (the effective date of this AD), until the first inspection and the modification required by this AD are accomplished.	Make an entry into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(7) For all affected Model EA–300S airplanes, modify the fuselage frame underneath the stabilizer attachment.	Within the next 200 hours TIS after December 17, 2002 (the effective date of this AD).	In accordance with Part III of Extra Service Bulletin No. 300–2–95 (pages 2–6 at Issue: C, dated July 15, 1998; and pages 1 and 7 through 11 at Issue: D, dated January 30, 2001).
(8) For all affected airplanes with less than 200 hours TIS as of the effective date of this AD, the inspection, modification, and repair, as necessary (as specified in paragraphs (d)(1) through (d)(4) of this AD) may be accomplished instead of the operational limitations of paragraph (d)(5) of this AD.	At any time, but it must be accomplished upon accumulating 250 hours TIS or within the next 50 hours TIS after December 17, 2002 (the effective date of this AD), whichever occurs later.	Inspect in accordance with Figure 1 of this AD and Part I of Extra Service Bulletin No. 300–2–95 (pages 2–6 at Issue: C, dated July 15, 1998; and pages 1 and 7 through 11 at Issue: D, dated January 30, 2001). Modify in accordance with Part II of the service bulletin. Repair in accordance with the service bulletin or a repair scheme obtained manufacturer, as applicable.

(e) *Where can I find Figure 1 of this AD?* Figure 1 of this AD, as referenced in paragraphs (d)(3), (d)(4), and (d)(8) of this AD, follows:

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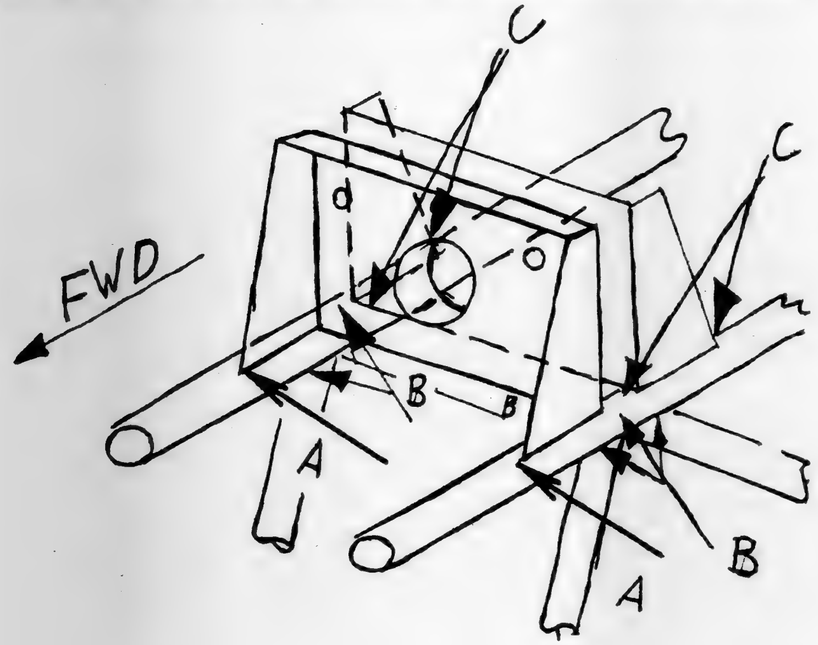

Figure 1

(f) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note : This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Extra Flugzeugbau GmbH Service Bulletin No. SB–300–2–95 (pages 2–6 at Issue: C, dated July 15, 1998; and pages 1 and 7 through 11 at Issue: D, dated January 30, 2001). The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, D–46569 Hünxe, Federal Republic of Germany. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(j) *When does this amendment become effective?* This amendment becomes effective on December 17, 2002.

Issued in Kansas City, Missouri, on October 11, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–26660 Filed 10–24–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–47–AD; Amendment 39–12916; AD 2002–21–10]

RIN 2120–AA64

Airworthiness Directives; Pratt and Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) that is applicable to Pratt and Whitney (PW) model 4000 series turbofan engines. That action required PW4000 engines with potentially reduced stability margin to be limited to no more than one engine on each airplane, and required removing engines that exceed high pressure compressor (HPC) cycles-since-overhaul (CSO) or cycles-since-new (CSN) from service based on the engine's configuration and category. That action also required establishing a minimum build standard for engines that are returned to service, and performing cool-engine fuel spike testing (Testing-21) on engines to be returned to service after having exceeded HPC cyclic limits or after shop maintenance.

This amendment establishes requirements similar to those in the existing AD being superseded, and introduces a rules-based criterion to determine the engine category classification for engines installed on Airbus A300 airplanes. This amendment also adds requirements to manage the engine configurations installed on Boeing 747 airplanes, and requires that repetitive Testing-21 be performed on certain configuration engines. This amendment also establishes criteria that requires Testing-21 on certain engines with Phase 0 or Phase 1, FB2T, or FB2B fan blade configurations. In addition, this amendment re-establishes high pressure compressor (HPC)-to-high pressure-turbine (HPT) cycles-since-overhaul (CSO) cyclic mismatch criteria, and adds criteria to address engine installation changes, engine transfers, and thrust rating changes. Also, this amendment establishes criteria to allow engine stagger without performing Testing-21 for engines which are over their respective limits. This amendment also introduces new requirements on the Phase 3, first run subpopulation engines which were identified after the issuance of NPRM Docket No. 2000–NE–47–AD.

The Phase 3, first run subpopulation engines have a significant increase in surge rate and Testing-21 failure rate than the rest of the PW4000 fleet. In order to manage the subpopulation engines to preclude a dual-engine surge, immediate action is required.

This immediately adopted rule includes the requirements proposed in the NPRM as well as the required actions for the Phase 3, first run subpopulation engines.

This amendment is prompted by investigation and evaluation of PW4000 series turbofan engines surge data, and continuing reports of surges in the PW4000 fleet. The actions specified in this AD are intended to prevent engine takeoff power losses due to HPC surge.

DATES: Effective November 12, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of November 12, 2002.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 17, 2002 (67 FR 1, January 2, 2002).

Comments for inclusion in the Rules Docket must be received on or before December 24, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The Pratt & Whitney service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108, telephone (860) 565–6600; fax (860) 565–4503. All service information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–25–11, Amendment 39–12564 (67 FR 1, January 2, 2002), which is applicable to Pratt and Whitney (PW) model 4000 series turbofan engines, was published in the **Federal Register** on July 23, 2002. That action proposed to establish requirements similar to those in AD 2001–25–11, to introduce rules-based criterion to determine the engine category classification for engines installed on Airbus A300 airplanes, and to add requirements to manage the engine configurations installed on Boeing 747 airplanes. That action also proposed to require repetitive Testing-21 be performed on certain configuration engines. That action also proposed to establish criteria which would require Testing-21 on certain engines with Phase 0 or Phase 1, FB2T or FB2B fan blade configurations. In addition, that action proposed to re-establish HPC-to-HPT cycles-since-overhaul cyclic mismatch criteria, and add criteria to address engine installation changes, engine transfers, and thrust rating changes. Also, that action proposed to establish criteria to allow engine stagger without performing Testing-21 for engines over their respective limits.

This final rule; request for comments supersedes AD 2001–25–11 by requiring the same actions as the proposal, and in addition, introduces new requirements for the Phase 3, first run subpopulation engines that were identified after the issuance of the proposal.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of the following Pratt & Whitney service information:

- Service Bulletin PW4ENG72–714, Revision 1, dated November 8, 2001.
- Service Bulletin PW4ENG72–749, dated June 17, 2002.
- Internal Engineering Notice IEN 96KC973D, dated October 12, 2001.
- Temporary Revision (TR) TR 71–0018, dated November 14, 2001.
- TR 71–0026, dated November 14, 2001.
- TR 71 71–0035, dated November 14, 2001.
- Cleaning, Inspection, and Repair (CIR) procedure CIR 51A357, Section 72–35–68, Inspection/Check-04, Indexes 8–11, dated September 15, 2001.
- CIR 51A357, Section 72–35–68, Repair 16, dated June 15, 1996.
- PW4000 PW engine manual (EM) 50A443, 71–00–00, TESTING–21, dated March 15, 2002.
- PW4000 PW EM 50A822, 71–00–00, TESTING–21, dated March 15, 2002.
- PW 4000 PW EM 50A605, 71–00–00, TESTING–21, dated March 15, 2002.

Additional Service Information

The FAA has reviewed and approved the technical contents of Chromalloy Florida Repair Procedures, 00 CFL–039–0, dated December 27, 2000 and 02 CFL–024–0, dated September 15, 2002.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Pratt & Whitney PW4000 series turbofan engines of this same type design, the AD is issued to prevent engine takeoff power losses due to HPC surges, and supersedes AD 2001–25–11 to require:

- Establishing requirements similar to those in the existing AD, and use of a rules-based criterion to determine the engine category classification for engines installed on Airbus A300 airplanes.
- Adding requirements to manage the engine configurations installed on Boeing 747 airplanes. This engine and airplane combination would allow, for certain engine configurations, one of the four installed engines to remain on-wing until the HPC has accumulated up to 2,600 CSN or CSO before Testing-21 or until an HPC overhaul is required.
- Configuration F engines to repeat Testing-21 every 800 CST.
- Establishing criteria which would require Testing-21 on engines with Phase 0 or Phase 1, FB2T or FB2B fan blade configurations complying with the requirements of AD 2001–09–05, (66 FR 22908, May 7, 2001); AD 2001–09–10, (66 FR 21853, May 2, 2001), or AD 2001–01–10, (66 FR 6449, January 22, 2001).
- Re-establishing HPC-to-HPT CSO cyclic mismatch criteria.
- Establishing criteria to address engine installation changes, engine transfers, and thrust rating changes.
- Establishing criteria to allow an engine to be removed from service and reinstalled on an airplane, without requiring Testing-21, if this engine is the unmanaged engine for that airplane.
- Adding Configuration G engines, which represents the Phase 3, first run subpopulation engines and establishes requirements that reduces stagger limits.
- Adding Configuration H engines, which represents the Phase 3, first run subpopulation engines to repeat Testing-21 every 600 CST.

The actions are required to be done in accordance with the service information described previously, and have been coordinated with the Transport Airplane Directorate.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–47–AD." The postcard will be date stamped and returned to the commenter.

Comments

The FAA received several comments to NPRM, Docket No. 2000–NE–47. Even though this amendment is a final rule; request for comments, the FAA has chosen to address all comments received. Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received, from the nine commenters.

Request Reason for Engine Category 1, 2, or 3 Limit Threshold Values

One commenter states that there is no reason why 200,000 cycles and 1.45 exhaust pressure ratio (EPR) should be the threshold values used in the AD to determine A300 4158 engine category 1, 2, or 3 limits, and asks for a technical reason for these values. The FAA disagrees. The FAA asked the original equipment manufacturer (OEM) to establish a rules-based criterion in which to determine the engine category classification for engines installed on Airbus A300 airplanes. The OEM chose a statistical approach and derived the values of 200,000 cycles and 1.45 EPR to represent the boundary conditions in determining the categories. The FAA has reviewed and concurs with this approach. This commenter also states that parameters in addition to EPR could better define the categorization. This commenter suggests using parameters such as rear hook wear and heat shield wear. The FAA disagrees. Although the FAA would support using additional parameters, there is not enough data to do so. Currently, data supports EPR as a parameter to correlate takeoff EPR values to a possible group 3 surge event. While the FAA agrees that rear hook wear may contribute to surge events, there is not enough data to develop a correlation of rear hook wear and heat shield wear to a surge event. The OEM indicates and the FAA agrees, that the heat shield wear is a third-order effect. This commenter also states that the definition of surge is unclear and that noise alone is insufficient to justify a Group 3 surge event. The FAA agrees. It was never the intent to imply that noise alone would classify an event as a Group 3 surge. The FAA also agrees with this first commenter that noise is a good reason to check the DFDR data and follow the trouble shooting process. The FAA has reviewed the definition of surge and has added words to the Group 3 surge definition for clarification.

Intent To Approve "On-Wing" Version of Testing-21

One commenter questions if it is the FAA's intent to approve the "on-wing" version of Testing-21 and include it into proposed paragraph (h)(1) as an equivalent to the "test cell" version. The FAA is reviewing the data for "on wing" version of Testing-21 but has yet to approve it. Therefore, "on wing" version of Testing-21 is not included in this paragraph of the AD. The FAA agrees with the commenter that, if approved, the FAA would have added this as an option into the paragraph, thereby eliminating the need for alternative methods of compliance (AMOC's). Unfortunately adequate data does not yet exist to approve the "on wing" version of Testing-21. If, at a later date, the FAA makes a finding of equivalence, the operator or the OEM can request an alternate method of compliance to use the "on-wing" version of Testing-21 in place of the "test cell" Testing-21.

Unnecessary and Confusing Text

This commenter also states that the following text of AD paragraph, under the heading Engines That Surge, "* * * or before further flight if airplane-level troubleshooting procedures require immediate engine removal" is unnecessary and may create confusion. The FAA disagrees. It is implied that the airplane level troubleshooting is surge related troubleshooting, because the paragraph states "airplane-level surge". However, to prevent possible confusion, wording in the paragraph has been changed to "airplane level surge troubleshooting." This commenter also requests that any regulatory action on the Phase 3, fist run subpopulation engines be incorporated within this AD. The FAA agrees. This AD adds Configurations G and H engines, which represent these Phase 3, first run subpopulation engines requiring reduced limits. This subpopulation was identified after the issuance of the NPRM. Since an unsafe condition has been identified, immediate actions are required on these Phase 3, first run subpopulation engines.

Date of AD Should Coincide With Availability of the Ring Style HPC Case

Another commenter suggests that the effective date of this AD should coincide with the availability of the ring style HPC case, since this new HPC case is the terminating action. The FAA disagrees. Although we agree that the terminating action to this AD requires a hardware change to a ring style HPC case, the current rate of risk accumulation indicates corrective action must be initiated before hardware availability. The ring style HPC case will complete its certification within the first quarter of 2003, with Service Bulletins issuance expected shortly thereafter. However, AD action is required now to minimize the risk. This AD implements action necessary to ensure the risk remains at acceptable levels. This commenter also requests clarification of the requirements on engines which have passed Testing-21. The FAA confirms that once an engine has passed Testing-21, it becomes a Configuration F or H engine and will remain a Configuration F or H engine until the HPC is overhauled, or is replaced with a new or overhauled HPC. Configuration F and H engines are required to repeat Testing-21 within 800 cycles and 600 cycles respectively, since last test or be removed for HPC overhaul, unless it will be used as a single unmanaged engine as permitted by this AD. This commenter also requests that the FAA consider increasing the hard-time limit for HPC overhaul to 2,900 cycles so that any engine which is removed for stagger at HPC 2,100 cycles since overhaul (CSO) in accordance with the AD, can be used up to 2,900 cycles after passing Testing-21. The FAA partially agrees. The 2,100 cycles is not a hard-time limit, but a stagger limit for PW 4056 Configuration B or C engines installed on Boeing 747 airplanes in accordance with Table 3 of the NPRM. Unless designated as the unmanaged engine, these engines on the Boeing 747 must be removed from service before accumulating 2,100 CSN or CSO and perform Testing-21 or complete an HPC overhaul. If Testing-21 is successful, the engine is returned to service as a Configuration F engine. As a Configuration F engine, Testing-21 is required within 800 cycles since last test. In the commenter's example, 800 cycles since last test would be 2,900 CSO. As additional clarification, one of the four installed engines may remain on-wing until the HPC has accumulated up to 2,600 CSN or CSO before Testing-21 or until an HPC overhaul is required.

Question on Unmanaged Engine Concept

Another commenter questions why the new unmanaged engine concept of the Boeing 747/PW4056 fleet is limited to 2,600 HPC cycles since new or since overhaul. Since the Phase 3, first run engine configuration's stagger limit is already at 2,600 cycles, this commenter asks the FAA to consider similar manageable time allowance for these engines over its stagger limit. The FAA disagrees. In order to safely manage the fleet risk, PW and Boeing needed to adjust the B747/PW4056 fleet risk. It is a coincidence that the Phase 3, first run engine's stagger limit is also 2,600 cycles. To safely manage the overall program risk, the FAA must maintain the stagger limits and add cycle limits on the unmanaged engine configuration installed on the Boeing 747 airplane. In addition, since the NPRM was issued, a subpopulation of the Phase 3, first run engines has been identified which requires a further limit reduction.

This commenter also states that operators who have been initially categorized as an A300 PW4158 category 2 operator should not have to reassess their category. The commenter states that since the low surge rate of category 2 operators has been proven through their surge experience for a dedicated period of time with respective fleet takeoff EPR application, it is felt that reevaluation is unnecessary. The commenter requests the FAA allow initial category 2 operators to retain the same category throughout the field management plan. The FAA agrees that if takeoff EPR application does not change, the operator will likely remain a category 2 operator. However, additional data suggests that an operator may have a shift in its takeoff EPR values due to various reasons, like route changes. Since the possibility exists of an operator changing their takeoff EPR application, the FAA requires a takeoff EPR re-assessment to ensure proper categorization of the operator. This commenter objects to the retest requirement of Testing-21 on any shop-visited engine. This commenter states that without detailed analysis on the effect of module separation, retest requirement against every engine that has module separation for shop minor maintenance would result in an unnecessary burden to the operator without any benefit on surge risk reduction. The FAA agrees. However, to identify the workscopes that may be exempt from Testing-21 would require knowledge of the specific details of each workscope. By using the AMOC process, each workscope can be evaluated on a case-by-case basis to ensure continued stability of the engine.

Change the Limitation for Configuration F Engines

Another commenter requests that the FAA change the limitation for Configuration F engines from 800 cycles to an option of either 800 cycles or the applicable threshold in Table 2 or Table 3 in the NPRM, whichever is greater. The FAA disagrees. The cyclic limit threshold manages overall risk, taking into account the HPC surge margin deterioration. Using the commenter's example, this AD requires that if a Configuration C engine is in the shop at 300 cycles and performs Testing-21, it becomes a Configuration F engine and must repeat Testing-21 within 800 cycles. Allowing it to continue in-service until its stagger limit of 2,100 cycles before requiring Testing-21, as the commenter suggests, doesn't take into account the possible HPC surge margin deterioration effects created due to the malfunction that brought the engine into the overhaul shop. Depending upon the workscope of this engine, a technical argument could be developed to support the engine remaining on-wing longer than the 800 cycles. However, this must be done on a case-by-case basis to fully evaluate the workscope and its effect on engine stability. If the workscope was non-evasive to the engine's HPC surge margin, the AMOC process could be used by the operator. This commenter also states that the most current published dates of the PW4000 engine manual (EM) 50A605, 71–00–00, TESTING–21 procedure, and PW4000 CIR Manual 51A357, Section 72–35–68 Inspection/Check-04, are March 15, 2002. The FAA agrees and the appropriate changes have been made to the AD.

Question Regarding Off-Wing and On-Wing Maintenance

This commenter also questions if proposed paragraph (i)(1) is applicable to both on-wing and off-wing maintenance. Proposed paragraph (i)(1) is only applicable during a shop visit when the HPC is not overhauled and a major engine flange separation does not take place. If complying with the listed AD's in proposed paragraph (k) Testing-21 is required whenever any quantity of fan blades are replaced with new blades, overhauled or have the leading edges recontoured. This commenter also requests that the FAA consider the following as an exception to proposed paragraph (m)(3): Testing-21 would not be required on engines with more than 800 cycles remaining to the thresholds listed in Tables 2 and 3, when separating a major flange if the purpose of the workscope was to repair oil leaks in the forward sump, 2.5 bleed system, exhaust case cracks, or to replace fan exit vanes, provided no other work was done to the gas path. The commenter also states that the exception should also permit the removal of gas path items provided they are returned to the same engine. The FAA agrees that depending upon the workscope, some exceptions to this paragraph can be made. However, specific details of the entire workscope would have to be identified to assess the possible effects of HPC surge margin. The AMOC process allows for a case-by-case review of the overall workscope. Those that do not affect HPC surge margin could be candidates for an AMOC. This commenter also suggests an additional requirement be added to proposed paragraph (r)(2)(ii). This paragraph currently states that Configuration E engines require removal within 25 cycles, or immediately, based on troubleshooting. But it does not state what to do with the engine. The commenter suggests adding a requirement to remove the cutback stator configuration from the engine. The FAA understands the concern. After the engine removal, HPC overhaul is required before return to service. Although not economically practical, an HPC overhaul could occur without replacing the cutback stators and this engine could be returned to service until it reaches 1,300 cycles-since-new limit. As long as this engine is removed from service before accumulating 1,300 CSN, it meets the risk criteria of the field management plan that is acceptable to the FAA. Therefore, this paragraph has not been modified but now appears as paragraph (q)(2)(ii).

Disagree With Economic Analysis

A commenter disagrees with the economic analysis as noted in the NPRM. The increased restrictions on the Boeing 747 fleet in addition to PW's projected Testing-21 failure rate of 30% increased the number of Testing-21 performed and increased the required HPC overhauls for the years 2002 and 2003. The FAA agrees. The economic analysis also needs to include the effects of the reduced limits on the Phase 3, first run subpopulation engines. The economic analysis has been revised. Based on field data, the non-subpopulation engine Testing-21 failure rate is 12% and not 30%. In addition, the subpopulation engine Testing-21 failure rate is 20%. The economic analysis has been revised to include these failure rates, the increased restrictions on the Boeing 747 fleet, and the reduced limits on the Phase 3, first run subpopulation engines. Although the FAA recognizes that the subpopulation fleet management plan and the added restrictions on the Boeing 747 fleet have increased the economic burden to some of the operators, the FAA believes these actions are necessary to safely manage the Boeing 747 fleet risk.

Concern for Engines Needing To Use Testing-21 Following Split Shipment

A commenter is concerned that newly overhauled engines which are split at flange E for split shipment transportation reasons must perform Testing-21 based on the stability testing requirements of the AD. This would become an open loop if the customer had no test cell. The FAA agrees, and has added a paragraph to exempt split-shipped engines from Testing-21, if the engine's HPC was overhauled or Testing-21 was successfully passed following the engine shop visit.

Question Regarding Category 2 Criteria

One commenter is currently operating to the category 2 limits in accordance with AD 2001–25–11. Under the requirements of the proposal, this operator, who has a small fleet, will not have accumulated 200,000 cycles and, therefore, will no longer be a category 2 operator. In addition, because they will not have enough EPR data to support operation to category 1 limits, they will be required to operate to the category 3 limits. This operator has asked the FAA to reconsider their fleet categorization. The FAA has reviewed this situation with the OEM. The OEM has suggested it may be feasible for the operator to obtain a sufficient amount of EPR data that can be used as the basis for an AMOC to operate to Category 1 limits. By using the AMOC process, the feasibility of an alternate method can be evaluated on a case-by-case basis.

One commenter has no objections to the rule as proposed.

Changes to A300 Category 1, 2, 3 Criteria

In addition, the FAA has reviewed additional data from the OEM regarding changes to the A300 Category 1, 2, 3 Takeoff EPR criteria based on further assessment of A300 operator takeoff data. The OEM data suggests a need to change the limits of the percentage of takeoffs greater than 1.45 takeoff EPR data to values that are less conservative relative to the original limits in the NPRM. The original NPRM values were conservative to allow additional time to access the takeoff EPR field data. The FAA has reviewed the data and agrees that changes are necessary. Therefore, the limits in paragraphs (f)(9), (h)(1), and (h)(2) in this AD have been revised. Also, the FAA has reviewed and approved PW SB PW4ENG–72–749 and Chromalloy Florida Repair Procedure 02 CFL–024–0 as acceptable methods to repair the HPC inner case mid hook. Therefore, these procedures are incorporated by reference and are added

as additional methods of compliance to paragraph (k)(2)(i) of this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will not increase the scope of the AD. The FAA has determined, however, that an additional opportunity for comment should be afforded because of the changes made to this AD.

Economic Analysis

There are approximately 2,115 engines of the affected design in the worldwide fleet. The FAA estimates that 711 engines installed on airplanes of U.S. registry would be affected by this AD. The economic analysis estimates an annual cost from November 2002 through the end of March 2007, (4.4 years or 53 months) at which time the ring style HPC case is predicted to be 100% incorporated into the fleet. However, the cost of the ring case incorporation is not being assessed within this analysis. The FAA estimates 30 test cell stability tests per month based on the latest Testing-21 reports from the total fleet. Over 4.4 years (or 53 months), the FAA estimates a fleetwide total of 1590 test cell stability tests or on average 361 test cell stability tests per year. For the domestic fleet (33.6% of worldwide fleet), a yearly rate of 121 test cell stability tests per year is estimated. Assuming a 12% Testing-21 failure rate using the latest statistics, 14 engines per year for the domestic fleet would require an HPC overhaul. In addition, the FAA estimates 2 surges per month based on April 2001 through September 2002 actual Group 3 surge events. Over 4.4 years (or 53 months), the FAA estimates a total of 106 HPC surges and on average 24 fleetwide surges per year. For the domestic fleet, the FAA estimates 8 surges per year. Therefore, the FAA estimates for the domestic fleet 121 test cell stability tests per year and 22 HPC overhauls per year. It is estimated that the cost to industry of a test cell stability test will average $15,000 and an HPC overhaul will cost approximately $400,000. Based on these figures, the total average annual cost of the AD to U.S. operators is estimated to be $10,615,000.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12564 (67 FR 1, January 2, 2002), and by adding the following new airworthiness directive:

2002–21–10 Pratt & Whitney: Amendment 39–12916. Docket No. 2000–NE–47–AD. Supersedes AD 2001–25–11, Amendment 39–12564.

Applicability: This airworthiness directive (AD) is applicable to Pratt and Whitney (PW) model PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines. These engines are installed on, but not limited to, certain models of Airbus Industrie A300, Airbus Industrie A310, Boeing 747, Boeing 767, and McDonnell Douglas MD–11 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (s) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent engine takeoff power losses due to HPC surges, do the following:

(a) When complying with this AD, determine the configuration of each engine on each airplane using the following Table 1:

TABLE 1.—ENGINE CONFIGURATION LISTING

Configuration	Configuration description	Description
(1) Phase 1 without high pressure turbine (HPT) 1st turbine vane cut back (1TVCB).	A	Engines that did not incorporate the Phase 3 configuration at the time they were originally manufactured, or have not been converted to Phase 3 configuration; and have not incorporated HPT 1TVCB using any revision of service bulletin (SB) PW4ENG 72–514.
(2) Phase 1 with 1TVCB	B	Same as Configuration A except that HPT 1TVCB has been incorporated using any revision of SB PW4ENG 72–514.
(3) Phase 3, 2nd Run	C	Engines that incorporated the Phase 3 configuration at the time they were originally manufactured, or have been converted to the Phase 3 configuration during service; and that have had at least one high pressure compressor (HPC) overhaul since new.
(4) Phase 3, 1st Run	D	Same as Configuration C except that the engine has not had an HPC overhaul since new, except those engines that are defined as Configuration Designator G.

TABLE 1.—ENGINE CONFIGURATION LISTING—Continued

Configuration	Configuration description	Description
(5) HPC Cutback Stator Configuration Engines.	E	Engines that currently incorporate any revision of SB's PW4ENG72–706, PW4ENG72–704, or PW4ENG72–711.
(6) Engines that have passed Testing-21	F	Engines which have successfully passed Testing-21 performed in accordance with paragraph (i) of this AD. Once an engine has passed a Testing-21, it will remain a Configuration F engine until the HPC is overhauled, or is replaced with a new or overhauled HPC.
(7) Phase 3, 1st Run Subpopulation Engines. These engines are identified by model and serial numbers (SN's) as follows: PW4152: SN 724942 through SN 724944 inclusive; PW4158: SN 728518 through SN 728533 inclusive; PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062: SN 727732 through SN 728000 inclusive and SN 729001 through SN 729010 inclusive; PW4460, PW4462: SN 733813 through SN 733840 inclusive.	G	Engines that incorporated the Phase 3 configuration at the time they were originally manufactured, that were built from August 29, 1997 up to the incorporation of the HPC inner rear case with the Haynes material rear hook at the original engine manufacturer and have not had an HPC overhaul since new.
(8) Engines from Configuration G that have passed Testing-21.	H	Engines that have successfully passed Testing-21 performed in accordance with paragraph (i) of this AD. Once an engine has passed a Testing-21, it will remain a Configuration H engine until the HPC is overhauled, or is replaced with a new or overhauled HPC.

Configuration E Engines Installed on Boeing 747, 767, and MD–11 Airplanes

(b) For Configuration E engines, do the following:

(1) Before further flight, limit the number of engines with Configuration E as described in Table 1 of this AD, to one on each airplane.

(2) Remove all engines with Configuration E from service before accumulating 1,300 cycles-since-new (CSN) or cycles-since-conversion to Configuration E, whichever is later.

Configuration G and H Engines Installed on Boeing 747, 767, MD–11, and Airbus A300 and A310 Airplanes

(c) For Configuration G engines installed on Boeing 747, 767, MD–11, and Airbus A300 and A310 airplanes, except as provided in paragraph (b) of this AD:

(1) Within 30 days after the effective date of this AD, remove from service engines that exceed the CSN limits for Configuration G engines listed in Row A of the following Table 2.

TABLE 2.—CONFIGURATION G AND H LIMITS

Row	Configuration designator	B747 PW4056	B767 PW4052	B767 PW4056	B767 PW4060 PW4060A PW4060C PW4062	MD–11 PW4460 PW4462	A300/310 PW4152 4156A PW4158
A	G	3,000 CSN	4,400 CSN	3,600 CSN	3,000 CSN	2,800 CSN	4,400 CSN
B	G	1,700 CSN	3,000 CSN	2,100 CSN	1,350 CSN	1,150 CSN	2,800 CSN
C	H	600 cycles-since-passing Testing-21 (CST)	600 CST	600 CST	600 CST	600 CST	600 CST

(2) Within 60 days after the effective date of this AD, remove from service engines that exceed the CSN limits for Configuration G engines listed in Row B of Table 2 of this AD.

(3) Thereafter, ensure that no Configuration G engine exceeds the HPC CSN limits listed in Row B of Table 2 of this AD.

(4) Within 60 days after the effective date of this AD, remove from service engines that exceed the CST limits for Configuration H engines listed in Row C of Table 2 of this AD.

(5) Thereafter, ensure that no Configuration H engine exceeds the CST limits listed in Row C of Table 2 of this AD.

(6) Configuration G and H engines may be returned to service after completing paragraph (i) of this AD.

Engines Installed on Boeing 767 and MD–11 Airplanes

(d) For engines installed on Boeing 767 and MD–11 airplanes, except as provided in paragraph (b) and (c) of this AD, within 50 airplane cycles after the effective date of this AD, limit the number of engines that exceed the HPC CSN, HPC cycles-since-overhaul (CSO), or HPC CST limits in Table 3 of this AD, to not more than one engine per airplane. Thereafter, ensure that no more than one engine per airplane exceeds the HPC CSN, CSO, or CST limit in Table 3 of this AD. *See* paragraph (i) of this AD for return to service requirements.

Engines Installed on Boeing 747 Airplanes

(e) Except as provided in paragraph (b) and (c) of this AD, within 50 airplane cycles after the effective date of this AD, and thereafter, manage the engine configurations installed on Boeing 747 airplanes as follows:

(1) Limit the number of Configuration A, B, C, or E engines that exceed the HPC CSN or HPC CSO limits listed in Table 3 of this AD, to not more than one engine per airplane. Table 3 follows:

TABLE 3.—ENGINE LIMITS FOR BOEING AIRPLANES

Configuration designator	B747–PW4056	B767–PW4052	B767–PW4056	B767–PW4060 PW4060A PW4060C PW4062	MD–11 PW4460 PW4462
A	1,400 CSN or CSO	3,000 CSN or CSO	1,600 CSN or CSO	900 CSN or CSO	800 CSN or CSO.
B	2,100 CSN or CSO	4,400 CSN or CSO	2,800 CSN or CSO	2,000 CSN or CSO	1,200 CSN or CSO.
C	2,100 CSO	4,400 CSO	2,800 CSO	2,000 CSO	1,300 CSO.
D	2,600 CSN	4,400 CSN	3,000 CSN	2,200 CSN	2,000 CSN.
E	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO.
F	800 CST	800 CST	800 CST	800 CST	800 CST.

(2) The single Configuration A, B, C, or E engine per airplane that exceeds the HPC CSN or CSO limits listed in Table 3 of this AD, must be limited to 2,600 HPC CSN or CSO for Configuration A, B, or C engines, or 1,300 HPC CSN or cycles-since-conversion to Configuration E, whichever is later, for Configuration E engines.

(3) Remove from service Configuration D engines before accumulating 2,600 CSN.

(4) Remove from service Configuration F engines before accumulating 800 CST.

(5) Configuration A, B, C, D, and F engines may be returned to service after completing paragraph (i) of this AD.

Engines Installed on Airbus A300 and A310 Airplanes

(f) Use paragraphs (f)(1) through (f)(9) to determine which Airbus A300 PW4158 engine category 1, 2, or 3 limits of the following Table 4 of this AD apply to your engine fleet:

TABLE 4.—ENGINE LIMITS FOR AIRBUS AIRPLANES

Configuration designator	A300 PW4158 category 1, and A310 PW4156 and PW4156A	A300 PW4158 category 2, and A310 PW4152	A300 PW4158 category 3
A	900 CSN or CSO	1,850 CSN or CSO	500 CSN or CSO.
B	2,200 CSN or CSO	4,400 CSN or CSO	1,600 CSN or CSO.
C	2,200 CSO	4,400 CSO	1,600 CSO.
D	4,400 CSN	4,400 CSN	4,400 CSN.
E	Not Applicable	Not Applicable	Not Applicable.
F	800 CST	800 CST	800 CST.

(1) Determine the number of Group 3 takeoff surges experienced by engines in your fleet before April 13, 2001. Count surge events for engines that had an HPC overhaul and incorporated either SB PW 4ENG 72–484 or SB PW4ENG 72–575 at the time of overhaul. Do not count surge events for engines that did not have the HPC overhauled (*i.e.* 1st run engine) or had the HPC overhauled but did not incorporate either SB PW4ENG 72–484 or SB PW4ENG 72–575. See paragraph (r)(5) of this AD for a definition of a Group 3 takeoff surge.

(2) Determine the number of cumulative HPC CSO accrued by engines in your fleet before April 13, 2001. Count HPC CSO for engines that had an HPC overhaul and incorporated either SB PW4ENG 72–484 or SB PW4ENG 72–575 at the time of overhaul. Do not count HPC CSO accrued on your engines while operating outside your fleet.

(3) Calculate the surge rate by dividing the number of Group 3 takeoff surges determined in paragraph (f)(1) of this AD, by the number of cumulative HPC CSO determined in paragraph (f)(2) of this AD, and then multiply by 1,000.

(4) If the surge rate calculated in paragraph (f)(3) of this AD is less than 0.005, go to paragraph (f)(5) of this AD. If the surge rate calculated in paragraph (f)(3) of this AD is greater than or equal to 0.005, go to paragraph (f)(6) of this AD.

(5) If the cumulative HPC CSO determined in paragraph (f)(2) of this AD is greater than or equal to 200,000 cycles, use A300 PW4158 Category 2 limits of Table 4 of this AD. If less than 200,000 cycles, go to paragraph (f)(7) of this AD.

(6) If the surge rate calculated in paragraph (f)(3) of this AD is greater than 0.035, use A300 PW 4158 Category 3 limits of Table 4 of this AD. If less than or equal to 0.035, go to paragraph (f)(7) of this AD.

(7) Determine the percent of takeoffs with greater than a 1.45 Takeoff engine pressure ratio (EPR) data for engines operating in your fleet. Count takeoffs from a random sample of at least 700 airplane takeoffs that has occurred over at least a 3-month time period, for a period beginning no earlier than 23 months prior to the effective date of this AD. See paragraph (r)(6) of this AD for definition of Takeoff EPR data.

(8) If there is insufficient data to satisfy the criteria of paragraph (f)(7) of this AD, use A300 PW4158 Category 3 limits of Table 4 of this AD.

(9) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (f)(7) of this AD is greater than 31%, use A300 PW 4158 Category 3 limits listed in Table 4 of this AD. If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (f)(7) of this AD is less than or equal to 31%, use A300 PW 4158 Category 1 limits listed in Table 4 of this AD.

(g) For engines installed on Airbus A300 or A310 airplanes, except as provided in paragraph (c) of this AD, within 50 airplane cycles after the effective date of this AD, limit the number of engines that exceed the CSN, CSO, or CST limits listed in Table 4 of this AD, to no more than one engine per airplane. Thereafter, ensure that no more than one engine per airplane exceeds the HPC CSN, CSO, or CST limits listed in Table 4 of this AD. See paragraph (i) of this AD for return to service requirements.

(h) For Airbus A300 PW4158 engine operators, except those operators whose engine fleets are determined to be Category 3 classification based on surge rate in accordance with paragraph (f)(6) of this AD, re-evaluate your fleet category within 6 months from the effective date of this AD, and thereafter, at intervals not to exceed 6 months, using the following criteria:

(1) For operators whose engine fleets are initially classified as Category 1 or 3 in accordance with paragraph (f) of this AD, determine the percent of takeoffs with greater than a 1.45 Takeoff EPR data for engines operating in your fleet. Count takeoffs from a sample of at least 200 takeoffs that occurred over the most recent six month time period since the last categorization was determined, or the total number of takeoffs accumulated over 6 months if less than 200 takeoffs. See paragraph (r)(6) of this AD for definition of takeoff EPR data.

(i) If there is insufficient data to satisfy the criteria of paragraph (h)(1) of this AD, use A300 PW4158 Category 3 limits listed in Table 4 of this AD.

(ii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(1) of this AD is greater than 31%, use A300 PW4158 Category 3 limits listed in Table 4 of this AD.

(iii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(1) of this AD is less than or equal to 31%, use A300 PW4158 Category 1 limits listed in Table 4 of this AD.

(2) For operators whose engine fleets are initially classified as Category 2 in accordance with paragraph (f) of this AD, determine the percent of takeoffs with greater than a 1.45 Takeoff EPR data for engines operating in your fleet. Count takeoffs from a sample of at least 200 takeoffs that occurred over the most recent six month time period since the last categorization was determined, or the total number of takeoffs accumulated over 6 months if less than 200 takeoffs. See paragraph (r)(6) of this AD for definition of takeoff EPR data.

(i) If there is insufficient data to satisfy the criteria of paragraph (h)(2) of this AD, use A300 PW4158 Category 3 limits listed in Table 4 of this AD.

(ii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(2) of this AD is greater than 37%, use A300 PW4158 Category 3 limits listed in Table 4 of this AD.

(iii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(2) of this AD is greater than or equal to 21% and less than or equal to 37%, use A300 PW4158 Category 1 limits listed in Table 4 of this AD.

(iv) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(2) of this AD is less than 21%, use A300 PW4158 Category 2 limits listed in Table 4 of this AD.

Return to Service Requirements for All Engines (Testing-21)

(i) Engines removed from service in accordance with paragraph (c), (d), (e), or (g) of this AD may be returned to service under the following conditions:

(1) After passing a cool-engine fuel spike stability test (Testing-21) that has been done in accordance with one of the following PW4000 Engine Manuals (EM) as applicable, except for engines configured with Configuration E, or engines that have experienced a Group 3 takeoff surge:

(i) PW4000 EM 50A443, 71–00–00, TESTING–21, dated March 15, 2002.

(ii) PW4000 EM 50A822, 71–00–00, TESTING–21, dated March 15, 2002.

(iii) PW4000 EM 50A605, 71–00–00, TESTING–21, dated March 15, 2002; or

(2) Engines tested before the effective date of this AD, in accordance with any of the following PW4000 EM Temporary Revisions, meet the requirements of Testing-21:

(i) PW4000 EM 50A443, Temporary Revision No. 71–0026, dated November 14, 2001.

(ii) PW4000 EM50A822, Temporary Revision No. 71–0018, dated November 14, 2001.

(iii) PW4000 EM50A605, Temporary Revision No. 71–0035, dated November 14, 2001; or

(3) Engines tested before the effective date of this AD, in accordance with PW IEN 96KC973D, dated October 12, 2001, meet the requirements of Testing-21; or

(4) The engine HPC was replaced with an HPC that is new from production with no time in service; or

(5) The engine HPC has been overhauled, or the engine HPC replaced with an overhauled HPC with zero cycles since overhaul; or

(6) An engine that is either below or exceeds the limits of Table 3 or Table 4 of this AD may be removed and installed on another airplane without Testing-21, as long as the requirements of paragraph (c), (d), (e), or (g) of this AD are met at the time of engine installation.

Phase 0 or Phase 1, FB2T or FB2B Fan Blade Configurations

(j) For engines with Phase 0 or Phase 1, FB2T or FB2B fan blade configurations complying with the requirements of AD 2001–09–05, (66 FR 22908, May 5, 2001), AD 2001–09–10, (66 FR 21853, May 2, 2001), or AD 2001–01–10, (66 FR 6449, January 22, 2001), do the following:

(1) Operators complying with the AD's listed in paragraph (j) of this AD using the weight restriction compliance method, must perform Testing-21 in accordance with paragraph (i)(1) of this AD whenever any quantity of fan blades are replaced with new fan blades, overhauled fan blades, or with fan blades having the leading edges recontoured after the effective date of this AD, if during the shop visit the HPC is not overhauled and separation of a major engine flange, located between "A" flange and "T" flange, does not occur.

(2) If an operator changes from the weight restriction compliance method to the fan blade leading edge recontouring method after the effective date of this AD, testing-21 in accordance with paragraph (i)(1) of this AD is required each time fan blade leading edge recontouring is done, if the fan blades accumulate more than 450 cycles since new or since fan blade overhaul, or since the last time the fan blade leading edges were recontoured.

Minimum Build Standard

(k) Use the following minimum build standards:

(1) After the effective date of this AD, do not install an engine with HPC and HPT modules where the CSO of the HPC is 1,500 cycles or greater than the CSN or CSO of the HPT.

(2) For any engine that undergoes an HPC overhaul after the effective date of this AD:

(i) Inspect the HPC mid hook and rear hook of the HPC inner case for wear in accordance with PW Clean, Inspect and Repair (CIR) Manual PN 51A357, section 72–35–68 Inspection/Check-04, indexes 8–11, dated September 15, 2001. If the HPC rear hook is worn beyond serviceable limits, replace the HPC inner case rear hook with an improved durability hook in accordance with PW SB PW4ENG 72–714, Revision 1, dated November 8, 2001, or Chromalloy Florida Repair Procedure 00 CFL–039–0, dated December 27, 2000. If the HPC inner case mid hook is worn beyond serviceable limits, repair the HPC inner case mid hook in accordance with PW CIR PN 51A357 section 72–35–68, Repair-16, dated June 15, 1996, or in accordance with PW SB PW4ENG 72–749, dated June 17, 2002, or Chromalloy Florida Repair Procedure 02 CFL–024–0, dated September 15, 2002.

(ii) After the effective date of this AD, any engine that undergoes an HPC overhaul may not be returned to service unless it meets the build standard of PW SB PW4ENG 72–484, PW4ENG 72–486, PW4ENG 72–514, and PW4ENG 72–575. Engines that incorporate the Phase 3 configuration already meet the build standard defined by PW SB PW4ENG 72–514.

(3) After the effective date of this AD, any engine that undergoes separation of the HPC and HPT modules must not be installed on an airplane unless it meets the build standard of PW SB PW4ENG 72–514. Engines that incorporate the Phase 3 configuration already meet the build standard defined by PW SB PW4ENG 72–514.

Stability Testing Requirements

(l) After the effective date of this AD, Testing-21 must be performed in accordance with paragraph (i)(1) of this AD, before an engine can be returned to service after having undergone maintenance in the shop, except under any of the following conditions:

(1) The engine HPC was overhauled, or replaced with an overhauled HPC with zero cycles since overhaul; or

(2) The engine HPC was replaced with an HPC that is new from production with no time in service; or

(3) The shop visit did not result in the separation of a major engine flange located between "A" flange and "T" flange; or

(4) Engines with an HPC having zero CSN or CSO, or engines that successfully passed Testing-21 with zero CST; and are split at Flange E for transportation reasons as specified in the applicable Storage/Transport section of the applicable Engine Manual.

Thrust Rating Changes, Installation Changes, and Engine Transfers

(m) When a thrust rating change has been made by using the Electronic Engine Control (EEC) programming plug, or an installation change has been made during an HPC overhaul period, use the lowest cyclic limit of Table 3 or Table 4 of this AD, associated with any engine thrust rating change or with any installation change made during the affected HPC overhaul period. *See* paragraph (r)(1) for definition of HPC overhaul period.

(n) When a PW4158 engine is transferred to another PW4158 engine operator whose engine fleet has a different category, use the lowest cyclic limit in Table 4 of this AD that was used or will be used during the affected HPC overhaul period.

(o) When a PW 4158 engine operator whose engine fleet changes category in accordance with paragraph (h) of this AD,

use the lowest cyclic limits in Table 4 of this AD that were used or will be used during the affected HPC overhaul period.

(p) Engines with an HPC having zero CSN or CSO at the time of thrust rating change, or installation change, or engine transfer between PW4158 engine operators, or subsequent change in operator engine fleet category in accordance with paragraph (h) of this AD in the direction of lower to higher Table 4 limits, are exempt from the lowest cyclic limit requirement in paragraphs (m), (n), and (o) of this AD.

Engines That Surge

(q) For engines that experience a surge, and after troubleshooting procedures are completed for airplane-level surge during forward or reverse thrust, do the following:

(1) For engines that experience a Group 3 takeoff surge, remove the engine from service before further flight and perform an HPC overhaul.

(2) For any engine that experiences a forward or reverse thrust surge at EPR's greater than 1.25 that is not a Group 3 takeoff surge, do the following:

(i) For Configuration A, B, C, D, F, G, and H engines, remove engine from service within 25 CIS or before further flight if airplane-level troubleshooting procedures require immediate engine removal, and perform Testing-21 in accordance with paragraph (i)(1) of this AD.

(ii) For Configuration E engines, remove engine from service within 25 CIS or before further flight if airplane-level troubleshooting procedures require immediate engine removal.

Definitions

(r) For the purposes of this AD, the following definitions apply:

(1) An HPC overhaul is defined as restoration of the HPC stages 5 through 15 blade tip clearances to the limits specified in the applicable fits and clearances section of the engine manual.

(2) An HPC overhaul period is defined as the time period between HPC overhauls.

(3) An HPT overhaul is defined as restoration of the HPT stage 1 and 2 blade tip clearances to the limits specified in the applicable fits and clearances section of the engine manual.

(4) A Phase 3 engine is identified by a (−3) suffix after the engine model number on the data plate if incorporated at original manufacture, or a "CN" suffix after the engine serial number if the engine was converted using PW SB's PW4ENG 72–490, PW4ENG 72–504, or PW4ENG 72–572 after original manufacture.

(5) A Group 3 takeoff surge is defined as the occurrence of any of the following engine symptoms that usually occur in combination during an attempted airplane takeoff operation (either at reduced, derated or full rated takeoff power setting) after takeoff power set, which can be attributed to no specific and correctable fault condition after completing airplane-level surge during forward thrust troubleshooting procedures:

(i) Engine noises, including rumblings and loud "bang(s)."

(ii) Unstable engine parameters (EPR, N1, N2, and fuel flow) at a fixed thrust setting.

(iii) Exhaust gas temperature (EGT) increase.

(iv) Flames from the inlet, the exhaust, or both.

(6) Takeoff EPR data is defined as Maximum Takeoff EPR if takeoff with Takeoff-Go-Around (TOGA) is selected or Flex Takeoff EPR if takeoff with Flex Takeoff (FLXTO) is selected. Maximum Takeoff EPR or Flex Takeoff EPR may be recorded using any of the following methods:

(i) Manually recorded by the flight crew read from the Takeoff EPR power management table during flight preparation (*see* Aircraft Flight Manual (AFM) chapter 5.02.00 and 6.02.01, or Flight Crew Operation Manual (FCOM) chapter 2.09.20) and then adjusted by adding 0.010 to the EPR value recorded; or

(ii) Automatically recorded during Takeoff at 0.18 Mach Number (Mn) (between 0.15 and 0.20 Mn is acceptable) using an aircraft automatic data recording system and then adjusted by subtracting 0.010 from the EPR value recorded; or

(iii) Automatically recorded during takeoff at maximum EGT, which typically occurs at 0.25–0.30 Mn, using an aircraft automatic data recording system.

Alternative Methods of Compliance

(s) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(t) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Testing-21 Reports

(u) Within 60 days of test date, report the results of the cool-engine fuel spike stability assessment tests (Testing-21) to the ANE–142 Branch Manager, Engine Certification Office, 12 New England Executive Park, Burlington, MA 01803–5299, or by electronic mail to *9-ane-surge-ad-reporting@faa.gov*. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056. Be sure to include the following information:

(1) Engine serial number.

(2) Engine configuration designation per Table 1 of this AD.

(3) Date of the cool-engine fuel spike stability test.

(4) HPC Serial Number, and HPC time and cycles-since-new and since-compressor-overhaul at the time of the test.

(5) Results of the test (Pass or Fail).

Documents That Have Been Incorporated by Reference

(v) The actions must be done in accordance with the following Pratt and Whitney (PW) service bulletin (SB), Internal Engineering Notice (IEN), Temporary Revisions (TR's), Clean, Inspection, and Repair Manual (CIR) repair procedures, engine manual (EM) sections, and Chromalloy Florida Repair Procedure:

Document No.	Pages	Revision	Date
PW SB PW4ENG72–714	1–2	1	Nov. 8, 2001.
	3	Original	June 27, 2000.
	4	1	Nov. 8, 2001.
	5–12	Original	June 27, 2001.
Total pages: 12			
PW SB PW4ENG72–749	All	Original	June 17, 2002.
Total pages: 12			
PW IEN 96KC973D	All	Original	Oct. 12, 2001.
Total pages: 19			
PW TR 71–0018	All	Original	Nov. 14, 2001.
Total pages: 24			
PW TR 71–0026	All	Original	Nov. 14, 2001.
Total pages: 24			
PW TR 71–0035	All	Original	Nov. 14, 2001.
Total pages: 24			
PW CIR 51A357, Section 72–35–68, Inspection/Check-04, Indexes 8–11	All	Original	Sept. 15, 2001.
Total pages: 5			
PW CIR 51A357, Section 72–35–68, Repair 16	All	Original	June 15, 1996.

Document No.	Pages	Revision	Date
Total pages: 1			
PW4000 EM 50A443, 71–00–00, TESTING–21	All	Original	Mar. 15, 2002.
Total pages: 20			
PW4000 EM 50A822, 71–00–00, TESTING–21	All	Original	Mar. 15, 2002.
Total pages: 20			
PW4000 EM 50A605, 71–00–00, TESTING–21	All	Original	Mar. 15, 2002.
Total pages: 20			
Chromalloy Florida Repair Procedure, 00 CFL–039–0			
Summary	1–3	Original	Dec. 27, 2000.
Insp/chk-01	801	Original	Dec. 27, 2000.
Repair-01	901–903	Original	Dec. 27, 2000.
Total pages: 7			
Chromalloy Florida Repair Procedure, 02 CFL–024–0			
Summary	1–5	Original	Sept. 15, 2002.
Inspection	801–802	Original	Sept. 15, 2002.
Repair	901–906	Original	Sept. 15, 2002.
Total pages: 13			

The incorporation by reference of SB PW4ENG72–714, dated November 8, 2001, IEN 96KC973D, dated October 12, 2001, TR 71–0018, TR 71–0026, and TR 71–0035, all dated November 14, 2001, CIR 51A357, section 72–35–68, Inspection/Check-04, Indexes 8–11, dated September 15, 2001, and CIR 51A357, section 72–35–68, Repair 16, dated June 15, 1996 was approved by the Director of the Federal Register as of January 17, 2002 (67 FR 1, January 2, 2002). The incorporation by reference of SB PW4ENG72–749, dated June 17, 2002, EM 50A443, section 71–00–00, Testing-21, EM 50A822, section 71–00–00, Testing-21, EM 50A605, and section 71–00–00, Testing-21, all dated March 15, 2002, Chromalloy Florida Repair Procedure, 00 CFL–039–0, dated December 27, 2000, and Chromalloy Florida Repair Procedure, 02 CFL–024–0, dated September 15, 2002, was approved by the Director of the Federal Register on November 12, 2002, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Pratt and Whitney document copies may be obtained from Pratt and Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600; fax (860) 565–4503. Chromalloy Florida document copies may be obtained from Chromalloy Florida, 630 Anchors St., NW., Walton Beach, FL 32548; telephone (850) 244–7684; fax (850) 244–6322. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(w) This amendment becomes effective on November 12, 2002.

Issued in Burlington Massachusetts, on October 11, 2002.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–26909 Filed 10–24–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–392–AD; Amendment 39–12921; AD 2002–21–14]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200CB, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757–200, –200CB, and –300 series airplanes. This AD requires determining the part numbers of the master control valve on the pressure bottles that activate the off-wing escape slides, and performing corrective action if necessary. This action is necessary to prevent failure of an escape slide to deploy or inflate correctly, which could cause the slide to be unusable during an emergency evacuation and result in consequent injury to passengers or crewmembers. This action is intended to address the identified unsafe condition.

DATES: Effective November 29, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 29, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Victor Wicklund, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1426; fax (425) 227–1181.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757–200, –200CB, and –300 series airplanes was published in the **Federal Register** on February 26, 2002 (67 FR 8741). That action proposed to require determining the part numbers of the master control valve on the pressure bottles that activate the off-wing escape slides, and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters concur with the proposed AD. One additional

commenter states that it does not operate any affected airplanes.

Revise Applicability Statement

One commenter requests that the FAA revise the applicability statement to specify "Model 757–200, –200CB, and –300 series airplanes, line numbers 1 through 905, equipped with an off-wing escape slide system, ..." The applicability statement of the proposed AD specifies "Model 757–200, –200CB, and –300 series airplanes, as listed in Boeing Special Attention Service Bulletin 757–25–0214 or 757–25–0216, both dated April 6, 2000, ..." The commenter states that revising the applicability statement would make it easier to identify affected airplanes without referring to the service information.

The FAA concurs and has revised the applicability statement of this final rule accordingly.

Identify Manufacturers

One commenter requests that we revise paragraphs (a)(1), (a)(2), and (b) of the proposed AD to identify the manufacturers associated with each of the part numbers listed in those paragraphs. The commenter states that this change would eliminate any confusion about the correct part number of the airplane manufacturer or vendor.

We concur and have revised paragraphs (a)(1), (a)(2), and (b) of this final rule accordingly.

Include Instructions to Deactivate Cargo Loading System

One commenter requests that Boeing Special Attention Service Bulletin 757–25–0216, dated April 6, 2000, include instructions to deactivate the aft cargo loading system on Boeing Model 757–300 series airplanes, if such a system is installed, before doing the proposed inspections and corrective actions.

Though the commenter provides no justification for the change, we infer that the commenter makes this recommendation in the interest of the safety of maintenance personnel. While this AD is not intended to address safety concerns related to cargo loading systems, we find that the commenter's recommendation represents a sound precaution that operators may want to consider when accomplishing the actions required by this AD. Therefore, we have added Note 2 to this final rule (and renumbered a subsequent note accordingly) to state that operators may want to deactivate any installed cargo handling system before undertaking the actions required by paragraph (a) of this AD.

Extend Compliance Time

One commenter, the airplane manufacturer, requests that we extend the proposed compliance time from 18 months to 36 months. The commenter states that a 36-month compliance time would allow operators to accomplish the necessary actions at a regularly scheduled maintenance interval. The commenter justifies its request by stating that, in the unlikely event an off-wing escape slide fails to automatically inflate, the escape slide can still be inflated using the manual inflation handle. Thus, the escape slide would still be available if needed for an emergency evacuation. The FAA acknowledges that the manual inflation handle provides a reduction of risk. Therefore, we concur that the compliance time for paragraph (a) of this AD may be extended to 36 months and yet still maintain an adequate level of safety in the fleet. We have revised paragraph (a) of this final rule accordingly.

Revise Cost Impact Estimate

One commenter disagrees with our estimate of the cost impact of the proposed AD. The commenter notes that the estimate only considers direct labor costs for removal and reinstallation of the valves and does not assess the costs that operators may incur for replacement or modification of the valves. The commenter states that, while the parts manufacturer has been exchanging the subject valves at no cost to operators, once the exchange program ends, operators will be charged for valve modification or exchange.

We infer that the commenter is requesting that we revise the cost estimate in this final rule to include an estimate of the cost of required parts if the parts are not covered by the parts manufacturer's exchange program. We concur. If an operator must purchase a replacement valve, we estimate that it will cost $15,000. We have revised the Cost Impact section of this final rule accordingly. We also have included a statement that the "parts manufacturer may cover the cost of replacement parts associated with this AD, subject to the conditions of its exchange program," and, thus, the costs attributable to this AD may be less than stated.

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes previously described. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 435 Model 757–200, –200CB, and –300 series airplanes of the affected design in the worldwide fleet. We estimate that 360 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $21,600, or $60 per airplane.

Should an operator be required to accomplish the replacement of the valve and placard, it will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $15,000. Based on these figures, the cost impact of the replacement is estimated to be $15,120 per airplane. The parts manufacturer may cover the cost of replacement parts associated with this AD, subject to the conditions of its exchange program. As a result, the costs attributable to this AD may be less than stated above.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–21–14 Boeing: Amendment 39–12921. Docket 2000–NM–392–AD.

Applicability: Model 757–200, –200CB, and –300 series airplanes; line numbers 001 through 905 inclusive; equipped with an off-wing escape slide system; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of an escape slide to deploy or inflate correctly, which could cause the slide to be unusable during an emergency evacuation and result in consequent injury to passengers or crewmembers, accomplish the following:

Inspection/Corrective Action

(a) Within 36 months after the effective date of this AD: Determine the part numbers (P/N) of the master control valve installed on each of the two pressure bottles located in the forward end of the aft cargo compartment that activate the off-wing escape slides, per Boeing Special Attention Service Bulletin 757–25–0214 (for Model 757–200 and 200CB series airplanes), or 757–25–0216 (for Model 757–300 series airplanes), both dated April 6, 2000, as applicable.

Note 2: To reduce the risk of accidental injury to maintenance personnel, operators may want to deactivate any installed cargo handling system before undertaking the actions required by paragraph (a) of this AD.

(1) If any P/N found on any valve is Boeing P/N S416N207–6 (Pacific Scientific P/N 42000802–1), before further flight, replace the affected valve with a new valve or rework the valve, as applicable; and replace the placard on the corresponding pressure bottle assembly with a new placard, per the applicable service bulletin.

(2) If the P/N shown on both valves is not Boeing P/N S416N207–6 (Pacific Scientific P/N 42000802–1), no further action is required by this paragraph.

Spares

(b) As of the effective date of this AD, no person shall install a master control valve, Boeing P/N S416N207–6 (Pacific Scientific P/N 42000802–1), on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Special Attention Service Bulletin 757–25–0214, dated April 6, 2000; or Boeing Special Attention Service Bulletin 757–25–0216, dated April 6, 2000; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on November 29, 2002.

Issued in Renton, Washington, on October 16, 2002.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–27080 Filed 10–24–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–11–AD; Amendment 39–12924; AD 2002–21–17]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney (PW) JT8D–200 series turbofan engines. This amendment requires the installation of stops on the fan exit guide vane case. This amendment is prompted by reports of the flange between the fan duct case and the fan exit guide vane case separating due to a fan blade fracture event. The actions specified by this AD are intended to prevent the flange between the fan duct case and the fan exit guide vane case from separating due to a fan blade failure. Separations of that flange could result in damage to the airplane.

DATES: Effective November 29, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 29, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600; fax (860) 565–4503. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park,

Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Pratt & Whitney (PW) JT8D–200 series turbofan engines was published in the **Federal Register** on July 10, 2002 (67 FR 45680). That action proposed to require the installation of stops on the fan exit guide vane case in accordance with Pratt & Whitney (PW) service bulletin No. 6100, Revision 2, dated December 9, 1998.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Exemption of Stops for Improved Fan Blade Incorporations

One commenter states that the fan exit guide vane case stops should not be required for engines that incorporate the improved fan blades required by AD 99–10–11. The commenter states that the installation of the improved fan blades prevents fan blade failures which cause fan case failures; therefore, the stops should not be required once the improved fan blades are incorporated.

The FAA does not agree. It is true that the fan blade modification mandated by AD 99–10–11 greatly improves the durability of the fan blades. However, the modifications cannot guarantee that a fan blade will never be released for any cause. Further, airworthiness standards for engines require that the design and construction of engines be such that failure of the most critical fan blade does not lead to an unsafe condition. Separation of the fan exit guide vane case from the fan duct assembly can lead to a number of unsafe conditions that hazard the aircraft. The intent of this AD is to return the engine to the level of safety prescribed by the airworthiness standards in the Code of Federal Regulations.

Change Definition of Shop Visit

Two commenters state that the definition of shop visit should be changed to exclude line-maintenance type shop visits.

The FAA agrees. The shop visit definition has been changed in this final rule.

Increased Operational Costs

One commenter states that the installation of the stops will add additional weight that will increase the operational costs associated with increased annual fuel requirements and therefore this AD should not be issued.

The FAA does not agree. While the annual fuel burn requirements may increase due to additional weight, the FAA has determined that this potential cost increase is outweighed by the increase in safety that will result from the lower risk of aircraft damage after the installation of the stops.

Applicability Clarification

One commenter states that the applicability section needs clarification to indicate which case and duct part numbers the stops must be installed on.

The FAA agrees. The applicability has been changed to state the part numbers for the cases and the ducts that will require the installation of the stops in the AD.

Allow Additional Options for Rubber Strips

One commenter states that the AD should allow additional options for rubber strips on the forward ID of each stop to prevent vibration instead of using silicone and allow bolt hole clocking options for the stops. The commenter states that the silicone is cumbersome to apply and difficult to remove, and the clocking options are requested to prevent interference with brackets or case repairs.

The FAA does not agree. The FAA is not familiar with the details of the design changes being requested, however, we will evaluate them as an alternate method of compliance if submitted in accordance with paragraph (d) of this AD.

Previous SB Compliance To Constitute AD Compliance

One commenter requests that compliance with the previous SB's PW ASB 6100, Original and Revision 1, constitute compliance with the AD. Many of the commenter's engines have already complied to the earlier SB's.

The FAA agrees. Credit for compliance to earlier revisions of PW ASB 6100 has been added to this final rule.

Agreement With Proposal as Written

The National Transportation Safety Board agrees with the proposal as written.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 1,346 PW JT8D–200 series engines of the affected design in the worldwide fleet. The FAA estimates that 821 engines installed on airplanes of U.S. registry would be affected by this AD. The FAA also estimates that it would take approximately 1.5 work hours per engine to perform the actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $5,200 per engine. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $4,343,090.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–21–17 Pratt & Whitney: Amendment 39–12924. Docket No. 2002–NE–11–AD.

Applicability: This airworthiness directive (AD) is applicable to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines that do not incorporate the fan exit guide vane case, part number (P/N) 805919 or 815377, and the improved durability and impact resistant fan duct assembly, P/N 805918–01. These engines are installed on, but not limited to McDonnell Douglas MD–80 and series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent the flange between the fan duct and the fan exit guide vane from separating due to a fan blade failure, which could result in damage to the airplane, do the following:

Installation of Hardware

(a) At the next shop visit after the effective date of this AD, install stops on the fan exit guide vane case in accordance with paragraphs 2.A. through 2.C.(1) of the Accomplishment Instructions of Pratt & Whitney (PW) service bulletin (SB) No. 6100, Revision 2, dated December 9, 1998.

(b) Engines that have had stops installed using PW SB No. 6100, Revision 1 dated April 9, 1992, or original issue dated November 9, 1992, are considered to be in compliance with paragraph (a) of this AD.

Definitions

(c) For the purposes of this AD, a shop visit is defined as an engine removal, where engine maintenance entails separation of pairs of major mating engine flanges or the removal of a disk, hub, or spool at a maintenance facility regardless of other planned maintenance except as follows:

(1) Engine removal for the purpose of performing field maintenance type activities at a maintenance facility in lieu of performing them on-wing is not a shop visit.

(2) Separation of flanges of the combustion chamber and turbine fan duct assembly (split flanges) for the purpose of accessing non-rotating accessory hardware is not a shop visit.

(3) Separation of flanges for the purpose of shipment without subsequent internal maintenance is not a shop visit.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(f) The installations must be done in accordance with Pratt & Whitney (PW) Service Bulletin No. 6100, Revision 2, dated December 9, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on November 29, 2002.

Issued in Burlington, Massachusetts, on October 18, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–27183 Filed 10–24–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–18]

Amendment of Class D Airspace; Titusville, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace at Titusville, FL. Daytona Beach Approach Control is the controlling air traffic control facility for Instrument Flight Rules (IFR) operations at Spacecoast Regional Airport, FL. Due to the high volume of Visual Flight Rules (VFR) traffic overflying the Spacecoast Regional Airport at low altitudes, Daytona Beach Approach Control has requested the Titusville, FL Class D airspace be lowered from 2,500 feet MSL to 1,900 feet MSL.

EFFECTIVE DATE: 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On August 27, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class D airspace at Titusville, FL, (67 FR 54976). Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class D airspace at Titusville, FL.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120, EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Titusville, FL [Revised]

Spacecoast Regional Airport, FL
(Lat. 28°30'53" N, long. 80°47'57" W.)

That airspace extending upward from the surface to and including 1,900 feet MSL within a 4-mile radius of Space Coast Regional Airport; excluding the portion within Restricted area R–2934 when it is effective. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on October 17, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–27172 Filed 10–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–7]

Modification of Class D Airspace; Knob Noster, Whiteman AFB, MO; Modification of Class E Airspace; Knob Noster, Whiteman AFB, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Knob Noster, Whiteman AFB, MO, modifies Class E airspace designated as a surface area for Knob Noster, Whiteman AFB, MO and modifies Class E airspace extending upward from 700 feet above the surface of the earth at Knob Noster, Whiteman AFB, MO. Modifications to the Knob Noster, Whiteman AFB, MO Class D airspace and the Knob Noster, Whiteman AFB, MO Class E airspace designated as a surface area are required in order to provide adequate controlled airspace for circling requirements of Category E aircraft executing instrument flight procedures. The extension of the Knob Noster, Whiteman AFB, MO Class E airspace extending upward from 700 feet above the surface of the earth is no longer required. This action modifies Class D airspace, Class E airspace designated as a surface area and Class E airspace extending upward from 700 feet above the surface of the earth at Knob Noster, Whiteman AFB, MO.

EFFECTIVE DATE: 0902 UTC, December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, August 28, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class D and Class E airspace at Knob Noster, Whiteman AFB, MO (67 FR 21136). The proposal was to modify Class D airspace and Class E airspace designated as a surface area to contain instrument approach procedures and to eliminate the extension to Class E airspace extending upward from 700 feet above the surface of the earth. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000, Class E airspace areas extending upward from the surface of the earth in paragraph 6002, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth in paragraph 6005, of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document would be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) modifies Class D and Class E airspace at Knob Noster, Whiteman AFB, MO to provide adequate controlled airspace for aircraft executing instrument flight procedures. It also removes from Class E airspace designation airspace no longer required to be identified as controlled airspace. The areas will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ACE MO D Knob Noster, MO

Whiteman AFB, MO
(Lat. 38°43'49" N., long. 93°32'53" W.)

That airspace extending upward from the surface to and including 3,400 feet MSL and within a 6.5-mile radius of Whiteman AFB. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ACE MO E2 Knob Noster, MO

Whiteman AFB, MO
(Lat. 38°43'49" N., long. 93°32'53" W.)

That airspace extending upward from the surface within a 6.5-mile radius of Whiteman AFB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Knob Noster, MO

Whiteman AFB, MO
(Lat. 38°43'49" N., long. 93°32'53" W.)

That airspace extending upward from 700 feet above the surface of the earth within a 7-mile radius of Whiteman AFB.

* * * * *

Issued in Kansas City, MO, on October 9, 2002.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 02–27176 Filed 10–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–9]

Amendment to Class E Airspace; Gordon, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Gordon, NE.

EFFECTIVE DATE: 0901 UTC, November 28, 2002.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on August 20, 2002 (67 FR 53877). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments wee anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 28, 2002. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 2, 2002.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 02–27179 Filed 10–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–14]

Establishment of Class E5 Airspace; Spruce Pine, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E5 airspace at Spruce Pine, NC. An Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Avery County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

EFFECTIVE DATE: 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On August 20, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E5 airspace at Spruce Pine, NC, (67 FR 53895). This action provides adequate Class E5 airspace for IFR operations at Avery County Airport, Spruce Pine, NC. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace at Spruce Pine, NC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule

will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Spruce Pine, NC [New]

Avery County Airport, NC

Point In Space Coordinates
(Lat 35°55′52″N, long. 82°00′43″W.)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 35°55′52″N, long. 82°00′43″W) serving Avery County Airport.

* * * * *

Issued in College Park, Georgia, on October 17, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–27173 Filed 10–24–02; 8:45 am]

BILLING CODE 4910–13–M

POSTAL SERVICE

39 CFR Part 111

Simplified Address Format for Letter-Size and Flat-Size Standard Mail and Periodicals

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends some of the standards and identification procedures for Standard Mail and Periodicals letter-size and flat-size mail using the simplified address format as provided in *Domestic Mail Manual* (DMM) A040. The new requirements will improve the processing and distribution of such mail and will also clarify and expand the standards for identifying this mail that does not bear a specific delivery address.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: O.B. Akinwole, (703) 292–3643.

SUPPLEMENTARY INFORMATION: On August 22, 2002, the Postal Service published for public comment in the **Federal Register** a proposed rule (FR 67 54397–54399) that expanded provisions for mailers using the simplified address format. The Postal Service also invited comments on the proposed rule from interested parties and accepted comments until September 23, 2002. No comments were received during the comment period. This final rule contains the DMM standards adopted by the Postal Service after the comment period ended.

Some mailers elect to use the simplified form of address for their mass mailings. Simplified address is an alternate-addressing format that allows mailers to prepare mailpieces without using individual names and addresses within very specific requirements. Instead of using individual addresses, the mailpieces are simply addressed as "Postal Customer" (or a similar designation as permitted). Eligibility to use the simplified address format is determined by the type of route selected for distribution, and in some instances by the type of mailer, as follows:

- Rural Routes, Highway Contract Routes, and Post Office Boxes. Any mailer may use simplified address format for the distribution of mail to rural routes, highway contract routes, and Post Office boxes at offices without city carrier service. Distribution of such mail is made to each boxholder on a rural route or highway contract route, each family on a rural route or highway contract route (at any Post Office), or all Post Office boxholders at a Post Office without city carrier service.
- City Routes and Post Office Boxes. Only certain authorized governmental entities may use the simplified address format for the distribution of mail to city routes or to Post Office boxes at Post Offices with city carrier service. Authorized governmental entities include U. S. Congress and Federal Government agencies or state, county, or municipal governments, and the governments of the District of Colombia, the Commonwealth of Puerto Rico, and any U.S. territory or possession listed in *Domestic Mail Manual* (DMM) G010. Distribution of such mail must be made to each stop or possible delivery on city carrier routes, or to each Post Office box at Post Offices with city carrier service.

Domestic Mail Manual (DMM) A040 is revised to clarify the preparation requirements for letters and flats that use the simplified address format. Additionally, all congressional mailings using the simplified address format will use PS Tag 11, Congressional Mail, "Postmaster—Open and Distribute" on all containers to ensure appropriate handling through downstream postal processes. This tag, which will help identify congressional mail as it moves through the mailstream, will be firmly attached to the mailing container.

This revision is a result of recommendations and suggestions from mailers and Postal Service personnel and will ensure that customer expectations for accurate processing and timely delivery are met. This will be achieved by clarifying and reinforcing procedures that will increase the identification of containers used in preparation of this type of mail. The Postal Service and mailers who use this mail format believe that clarifying and reinforcing the preparation and container labeling requirements will enable more accurate processing of the mail. It will also help maintain the integrity of mail using the simplified address format and prevent potential service breakdowns that may occur when such mail is inadvertently separated from the container identifying its destination as a result of inadequate preparation and container labeling. These discrepancies can cause unnecessary delays during postal handling and may increase postal processing costs.

The *Domestic Mail Manual* is revised as follows. These changes are incorporated by reference in the *Code of Federal Regulations*. See CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 5552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend *Domestic Mail Manual* A040, E200, and M200 as follows:

Domestic Mail Manual (DMM)

A Addressing

A000 Basic Addressing

* * * * *

A040 Alternative Addressing Formats

1.0 SIMPLIFIED ADDRESS

* * * * *

1.2 Use—City Routes, P.O. Boxholders

[Revise 1.2 by deleting the last sentence in the first paragraph and replacing it with the following sentence:]

* * * The following also applies:

* * *

* * * * *

1.3 Mail Preparation

[Revise 1.3 as follows:]

All pieces must be prepared in carrier route or 5-digit carrier route or carrier routes containers; 3-digit carrier route or carrier routes containers are not allowed. All flat-size pieces must be prepared in carrier route or 5-digit carrier sacks. All pieces for the same carrier route must be tied in packages of 50, so far as practicable, and each package must bear a facing slip showing desired distribution (*e.g.*, 5-digit ZIP Code and route number). If the pieces are tied in quantities other than 50 each, the actual number must be shown on the facing slip. Delivery statistics for routes may be obtained as described in A930. Pieces in such mailings must also meet the following standards:

a. All pieces must be in the same processing category.

b. Pieces must be marked according to M012.

c. Letter-size pieces must be prepared in trays, and flat-size pieces must be prepared in sacks under M220 or M620, as applicable.

d. If selective distribution is desired, enough pieces must be presented to cover the route or routes selected.

[Delete 1.4. Redesignate 1.5, 1.6, and 1.7 as 1.4, 1.5 and 1.6, respectively.]

* * * * *

4.0 CONGRESSIONAL FRANK

* * * * *

[Redesignate current 4.3 and 4.4 as 4.4 and 4.5, and add new 4.3 to read as follows:]

4.3 Mail Preparation

Mailers must prepare containers of mail using the simplified address format in the manner listed below:

a. Containers of congressional frank mailpieces using the simplified address format must be prepared under A040.

b. PS Tag 11, *Congressional Mail, "Postmaster—Open and Distribute"* must be securely affixed to each sack or tray of congressional mail to ensure adequate identification of the mail. On trays, the tag must be affixed to the end that bears the tray label.

[Redesignate current 4.3 and 4.4 as 4.4 and 4.5, and add new 4.3 to read as follows:]

* * * * *

E Eligibility

* * * * *

E200 Periodicals

E230 Carrier Route Rates

* * * * *

3.0 WALK-SEQUENCE DISCOUNTS

* * * * *

3.3 Addressing Standards

[Revise 3.3b as follows:]

b. Official matter, whether mailed under congressional frank or by certain government entities for delivery on a city route, may use the appropriate simplified address format described in A040.

* * * * *

M Mail Preparation and Sortation

* * * * *

M200 Periodicals (Nonautomation)

* * * * *

M220 Carrier Route Rates

1.0 BASIC INFORMATION

1.1 General Preparation Standards

[Add new item h to read as follows:]

* * * h. Pieces with a simplified address must meet the corresponding preparation standards in A040 and the eligibility standards in E215.

* * * * *

[Revise the heading of 3.0 to read as follows:]

3.0 PREPARATION (LETTER-SIZE PIECES)

[Designate 3.0 as 3.1 and add new 3.2 to read as follows:]

3.2 Tray Line 2 for Pieces with Simplified Address

For trays that contain letter-size pieces with a simplified address prepared under A040, use "MAN" on Line 2 in place of "BC."

* * * * *

[An appropriate amendment to 39 CFR part 111 will be published to reflect these changes.]

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–27233 Filed 10–24–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 247–0364a; FRL–7396–1]

Revision to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NOX) and carbon monoxide (CO) from stationary internal combustion engines. In accordance with the Clean Air Act as amended in 1990 (CAA or the Act), we are taking action on a local rule that regulates these emission sources.

DATES: This rule is effective on December 24, 2002, without further notice, unless EPA receives adverse comments by November 25, 2002. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted SIP revision at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Ventura County Air Pollution Control District, 669 Country Square Drive, Ventura, CA 93003

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. This is not an EPA Web site and it may not contain the same version of the rule that was submitted to EPA. Readers should verify that the adoption date of the rule listed is the same as the rule submitted

to EPA for approval and be aware that the official submittal is only available at the agency addresses listed above.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION:
Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule addressed by this proposal with the dates that it was revised by the local air agency and submitted to EPA by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule number	Rule title	Revised	Submitted
VCAPCD	74.9	Stationary Internal Combustion Engines	11/14/00	05/08/01

On July 20, 2001, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

The previous version of VCAPCD Rule 74.9 is SIP Rule 74.9, Stationary Internal Combustion Engines, approved into the SIP on August 23, 1995 (60 FR 43713).

C. What Is the Purpose of the Submitted Rule Revisions?

Rule 74.9 regulates NO_X and CO emissions from stationary internal combustion engines with a brake horsepower rating of 50 or greater located at a major stationary source. The SIP rule applies to such engines throughout VCAPCD, which includes the mainland severe ozone nonattainment area plus two Channel Islands designated unclassifiable. 40 CFR 81.305. The purpose of changing Rule 74.9 relative to the SIP Rule is to include an exemption to the rule for engines operated on the two Channel Islands, San Nicolas Island (SNI) and Anacapa Island (AI). The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), must not interfere with applicable requirements including requirements concerning attainment (see section 110(l)), and must not relax existing requirements in effect prior to enactment of the 1990 CAA amendments (see section 193). The VCAPCD regulates sources within a severe ozone nonattainment area. 40 CFR 81.305. Therefore Rule 74.9 must fulfill RACT requirements for such sources.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation, Cutpoints, Deficiencies, and Deviations* (the "Blue Book"), U.S. EPA, OAQPS (May 25, 1988).
- *State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990* (the "NO_X Supplement to the General Preamble"), U.S. EPA, 57 FR 55620 (November 25, 1992).
- *Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Spark-Ignited Internal Combustion Engines*, California Air Resources Board (November 2001).

B. Does the Rule Meet the Evaluation Criteria?

The revised Rule 74.9 includes an exemption for engines used on the offshore SNI and AI. The exemptions to Rule 74.9 are reasonable, because the VCAPCD federal ozone nonattainment area does not include SNI and AI and the 1994/1995 ozone Air Quality Management Plan does not rely on decreasing NO_X emission controls on SNI and AI. Therefore there will be no interference with the requirements concerning attainment of the ozone National Ambient Air Quality Standards in the VCAPCD nonattainment area and the rule complies with section 110(l) of the CAA.

The revisions to Rule 74.9 do not affect the requirements for sources within the nonattainment area. For these sources, Rule 74.9 exceeds RACT requirements for NOX emission standards and meets the more stringent NOX and CO emission standards for Best Available Retrofit Control Technology (BARCT).

We believe the rule is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve The Rule

The VCAPCD Rule 74.9 TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by November 25, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 24, 2002.

This will incorporate the rule into the federally-enforceable SIP.

III. Background Information

Why Was This Rule Submitted?

NO_X helps produce ground-level ozone, smog, and particulate matter which harm human health and the environment. EPA has established National Ambient Air Quality Standards (NAAQS) for ozone. Section 110(a) of the CAA requires states to submit regulations in order to achieve and maintain the NAAQS. Table 2 lists some of the national milestones leading to the submittal of these local agency NO_X rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 24, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 30, 2002.

Keith Takata,

Acting Regional Administrator, , Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(284)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(284) * * *

(i) * * *

(D) Ventura County Air Pollution Control District

(*1*) Rule 74.9, adopted on July 21, 1981 and amended on November 14, 2000.

* * * * *

[FR Doc. 02–27134 Filed 10–24–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 431 and 438

[CMS–2104–F2]

RIN–0938–AK96

Medicaid Program; Medicaid Managed Care: New Provisions Correcting Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correcting amendment.

SUMMARY: In the June 14, 2002 issue of the **Federal Register** (67 FR 40989), we published a final rule implementing the Medicaid managed care provisions of the Balanced Budget Act of 1997. The effective date of the final rule was August 13, 2002. This document corrects a limited number of technical and typographical errors identified in the June 14, 2002 final rule.

EFFECTIVE DATE: This correcting amendment is effective November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Bruce Johnson, (410) 786–0615.

SUPPLEMENTARY INFORMATION:

Background

Need for Corrections

In FR Doc. 02–14747 of June 14, 2002, (67 FR 40989), we published final regulations that implemented the statutory provisions from the Balanced Budget Act of 1997 (BBA) related to Medicaid managed care. As published, a provision of § 431.220, and several provisions of the new part 438, contained technical errors. The errors included typographical errors, incorrect cross-references, incorrectly designated paragraphs, and contradictions. We are in this final rule correcting the identified errors.

Summary of Technical Corrections to the Regulations Text of the June 14, 2002 Medicaid Managed Care Final Rule

Section 431.220 identifies when the State agency must grant a fair hearing to a beneficiary, and was amended by the June 14, 2002 final rule to add new reasons or circumstances under which a State fair hearing must be granted. Section 438.56(f)(2) specifies that an enrollee may request a State fair hearing, for example, if the enrollee is dissatisfied with the State agency's determination that there is not good cause for disenrollment. The preamble to the final rule makes clear that it was CMS" intent that these new rights be provided.

However, we inadvertently neglected to include a cross-reference to this new right in § 431.220, under the heading "*When a hearing is required*". This is corrected by adding a new item (7) to § 431.220, identifying the new circumstance when a State fair hearing must be granted as related to disenrollment.

In § 438.8, which identifies provisions that apply to PIHPs and PAHPs, paragraph (b) identifies provisions of part 438 that apply to prepaid ambulatory health plans (PAHPs). In this provision, we inadvertently omitted a reference to prohibitions against affiliations with individuals debarred by Federal agencies in § 438.610. Again, it is clear from the preamble, and from the text of § 438.610, that this provision was intended to apply to PAHPs. This error is corrected by adding a new item (8) to § 438.8(b) to reference prohibited affiliations with individuals debarred by Federal agencies in § 438.610.

In § 438.10, which sets forth requirements relating to information, in subparagraph (e)(1)(ii) the term "PIHP" and in subparagraph (i)(3) the term "potential enrollee," are in the singular form, but should be plural to conform with other nouns that are plural in the provision. These grammatical errors are corrected by making the terms plural.

In several paragraphs, there were inaccurate cross-references to other provisions of the regulations text. In § 438.10(f)(6)(iv), the reference to "§ 438.10(h)" should be "§ 438.10(h)(1)". In § 438.52(d), the reference to paragraphs "(b)(2) or (b)(3)" should be "(b) or (c)". In § 438.100(b)(iii), the reference to "§ 438.10(f)(6)(xiii)" should be "§ 438.10(f)(6)(xii)". In § 438.102(c), the reference to "§ 438.10(e)(2)(ii)" should be "§ 438.10(e)(2)(ii)(E)". These are corrected in this final rule by inserting the correct regulatory citations.

In both subparagraph (b)(2) and paragraph (c) in § 438.102, which addresses provider-enrollee communications, we added the clarifying term "paragraphs" following "§ 438.102'.

In § 438.114, governing emergency and post-stabilization services, the requirements in paragraphs (a) through (e) were intended to apply to all types of managed care programs. It is clear from the preamble to the final rule that this was CMS's intent. However, in paragraph (d)(ii), "PIHP" and "PAHP" inadvertently were omitted.

This is corrected in this final rule by including a reference to "PIHP" and "PAHP".

Paragraph (b)(2)(i) of § 438.116, which sets forth solvency standards, creates an exception to the solvency standard in paragraph (b) for entities that do not provide both inpatient hospital and physician services. By definition, PAHPs would not provide inpatient services. Therefore, the references to PAHPs in paragraph (b) are extraneous. This is corrected in this final rule by removing the two references to PAHPs in paragraphs (b)(1) and (2).

In two places, paragraphs are incorrectly designated. In § 438.214, on provider selection, there are two paragraphs designated "(a)". This is corrected in this final rule by redesignating the second paragraph as "(b)". In § 438.810, on expenditures for enrollment broker services, the last paragraph (c) is actually a continuation of paragraph (b) specifying conditions that enrollment brokers must meet. This is corrected in this final rule by redesignating paragraph "(c)" as "(b)(3)".

In § 438.730, on sanctions by CMS, subparagraphs (e)(1) and (e)(2), the term "HMO" is used. The BBA replaced the term "Health Maintenance Organization (HMO)" with "Managed Care Organization (MCO)". The obsolete references to HMO in paragraph (e) of § 438.730 are corrected in this final rule by removing "HMO" and replacing it with the new acronym "MCO".

In § 438.810, governing expenditures for enrollment broker services, a reference to PAHPs was inadvertently omitted from the definition of "Choice counseling" in paragraph (a), even though the text in the remainder of the provisions in § 438.810 includes such a reference. This is corrected in this final rule by including the term "PAHP" in the definition of "Choice counseling".

Waiver of Proposed Rulemaking

Ordinarily, a final rule is first published in the **Federal Register** in proposed form to provide a period for public comment before the provisions of the final rule take effect. We can waive this procedure, however, if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporate a statement of finding in the final rule.

We find that it is unnecessary to undertake notice and public comment procedures in this case because the technical corrections made in this final rule do not make any substantive policy changes. This document merely makes technical corrections and conforming changes designed to clarify the provisions of the June 14, 2002 final rule, which was subjected to notice and comment. Therefore, for good cause, we waive notice and public comment procedures under 5 U.S.C. 553(b)(B).

Correction of Errors

In FR Doc. 02–14747 of June 14, 2002, (67 FR 4089), we are making the following corrections:

Corrections to the Regulations Text

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 438

Grant programs-health, Managed care entities, Medicaid, Quality assurance, Reporting and recordkeeping requirements.

Accordingly, 42 CFR parts 431 and 438 are corrected by making the following correcting amendments:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 431.220 [Corrected]

2. In § 431.220, add new paragraph (a)(7) to read as follows:

§ 431.220 When a hearing is required.

(a) * * *

(7) Any enrollee who is entitled to a hearing under subpart B of part 438 of this chapter.

* * * * *

PART 438—MANAGED CARE

1. The authority citation for part 438 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 438.8 [Corrected]

2. In § 438.8, add a new paragraph (b)(8) to read as follows:

§ 438.8 Provisions that apply to PIHPs and PAHPs.

* * * * *

(b) * * *

(8) Prohibitions against affiliations with individuals debarred by Federal agencies in § 438.610.

§ 438.10 [Corrected]

3. In § 438.10(e)(1)(ii), "PIHP" is revised to read "PIHPs".

4. In § 438.10(f)(6)(iv), the last reference to "§ 438.10(h)" is revised to read "§ 438.10(h)(1)".

5. In § 438.10(i)(3), the last reference to "potential enrollee" is revised to read "potential enrollees".

§ 438.52 [Corrected]

6. In § 438.52(d), the reference to "(b)(2) or (b)(3)" is revised to read "(b) or (c)".

§ 438.100 [Corrected]

7. In § 438.100(b)(2)(iii), the reference to "§ 438.10(f)(6)(xiii)" is revised to read "§ 438.10(f)(6)(xii)".

§ 438.102 [Corrected]

8. In § 438.102(b)(2), "§ 438.10(e) and (f)" is revised to read "§ 438.10, paragraphs (e) and (f)".

9. In § 438.102(c), "§ 438.10(e)(2)(ii) and (f)(6)(xii)" is revised to read "§ 438.10, paragraphs (e)(2)(ii)(E) and (f)(6)(xii)".

§ 438.114 [Corrected]

10. In § 438.114(d)(1)(ii), the phrase "PIHP, PAHP" is added between "MCO" and "or applicable State entity".

§ 438.116 [Corrected]

11. In § 438.116(b)(1), "MCO, PIHP, and PAHP" is revised to read "MCO or PIHP".

12. In § 438.116(b)(2), "MCO, PIHP, or PAHP" is revised to read "MCO or PIHP".

§ 438.703 [Corrected]

13. In § 438.703(e)(1) and (e)(2), the term "HMO" is revised to read "MCO".

§ 438.810 [Corrected]

14. In § 438.810(a), in the definition of "Choice counseling", ", PAHP," is added between "PIHP" and "or PCCM".

15. In § 438.810, paragraph (c) is redesignated as paragraph (b)(3).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: October 17, 2002.

Ann Agnew,

Executive Secretary to the Department.

[FR Doc. 02–27256 Filed 10–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 208 and 216

[DFARS Case 2001–D017]

Defense Federal Acquisition Regulation Supplement; Competition Requirements for Purchase of Services Under Multiple Award Contracts

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 803 of the National Defense Authorization Act for Fiscal Year 2002. Section 803 requires DoD to issue DFARS policy requiring competition in the purchase of services under multiple award contracts.

DATES: Effective Date: October 25, 2002.

Applicability Date: This rule applies to all orders for services placed under multiple award contracts on or after October 25, 2002, regardless of whether the multiple award contracts were awarded before, on, or after that date.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2001–D017.

SUPPLEMENTARY INFORMATION:

Notification of training opportunities: DoD and civilian agency contracting professionals that place orders under multiple award contracts using DoD funds, and contractors that sell services on multiple award contracts, should receive training on the new procedures for placing orders over $100,000 for services. DoD has developed many training tools on Section 803 and will be providing training in the DC metro area. Please visit the Defense Procurement Home Page, "Interest Items" drop-down box, for Section 803 training materials and lists of training opportunities at *http://www.acq.osd.mil/dp*. Additional questions regarding training should be directed to Melissa Rider at

melissa.rider@osd.mil or (703) 695–1098.

A. Background

This rule amends DFARS Parts 208 and 216 to implement Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107). Section 803 requires DoD to issue DFARS policy requiring competition in the purchase of services under multiple award contracts. Multiple award contracts include the Multiple Award Schedules (MAS) Program operated by the General Services Administration (GSA) and multiple award indefinite-quantity (task and delivery) order contracts issued pursuant to FAR 16.504. Competition requirements for the MAS are set forth in DFARS 208.404–70. Competition requirements for multiple award indefinite-quantity contracts other than the MAS are covered in DFARS 216.505–70.

While DFARS 208.404–70, addressing MAS ordering, focuses on competition, DoD recognizes that additional regulatory coverage is needed to improve practices related to the acquisition of services under the MAS. In this regard, the Director of Defense Procurement is working with the other members of the Federal Acquisition Regulatory Council on separate revisions to FAR Subpart 8.4 that will provide Governmentwide guidance on considerations, in addition to competition, that must be taken into account to ensure sound MAS purchasing. These considerations include, among others, use of statements of work, effective pricing of orders, and proper documentation of award decisions.

In addition, the Administrator of the Office of Federal Procurement Policy (OFPP) has determined that additional clarification is necessary with respect to the structuring of orders under the MAS. FAR 12.207 currently requires that agencies use firm-fixed-price contracts or fixed-price contracts with economic price adjustment for the acquisition of commercial items. FAR 12.207 further states that use of any other contract type to acquire commercial items is prohibited. However, GSA's non-regulatory special ordering procedures for services permit use of additional contract types for commercial item acquisitions, which is the sole focus of the MAS. In particular, GSA's special ordering procedures permit orders to be priced on a time-and-materials or labor-hour basis under limited circumstances, *i.e.*, when the ordering office makes a determination that it is not possible at the time of placing the order to estimate accurately the extent or duration of the work or to anticipate cost with any reasonable degree of confidence. The special ordering procedures rely on somewhat different and less stringent safeguard provisions than those that the FAR imposes when time-and-materials and labor-hour contracts are used.

The OFPP Administrator intends to work with the other FAR Council members to develop appropriate revisions to current FAR coverage to address the use of time-and-materials and labor-hour contracts for commercial item acquisitions, including safeguards that are needed to effectively protect taxpayer interests when these contractual arrangements are used under FAR Part 12.

DoD published a proposed rule at 67 FR 15351 on April 1, 2002, and held a public meeting on April 29, 2002. Seventy-one sources submitted written comments on the proposed rule. DoD considered all comments in the development of the final rule. A summary of the comments grouped by subject area is provided below:

1. Small Business Impact

Comment: The rule, as applied to the Federal Supply Schedules, could harm the small business community, as the requirement to provide all contractors a fair notice of the intent to make a purchase will dramatically increase the number of competitors for each task, which will likely reduce the odds of winning an award and which will increase bid and proposal costs. The additional procedural burden imposed by this rule will encourage contracting officers to bundle requirements, thereby making it less likely that DoD's small business goals will be met.

DoD Response: The intent of the rule is to ensure fairness and enhance competition. The rule requires the Government to provide fair notice and opportunity. Because the rule does not require the contractor to respond to every notice—leaving the decision to respond to the contractor " the fair notice requirement, as imposed by this rule, should not increase bid and proposal costs. In addition, the final rule has taken into account the resource burdens associated with the fair notice process that might precipitate efforts to bundle. With respect to Federal Supply Schedule purchases, for example, DoD has revised the rule to shift the emphasis from providing fair notice to all contractors to providing fair notice to as many contractors as practicable based on effective market research. The final rule should increase competition while minimizing burden (otherwise associated with notifying all contractors) by allowing contracting officers to provide notice to a reasonable number of offerors that can do the required work. DoD does not believe the rule will negatively affect the ability of DoD to meet its small business goals. However, a reminder that orders placed against Federal Supply Schedules may be credited toward the ordering agency's small business goals has been added to the rule.

Comment: It is unclear whether small business participation will be significantly affected and whether DoD will be allowed to continue with the practice of setting aside a portion of the work under multiple award contracts exclusively for small business concerns.

DoD Response: The rule does not change the policies associated with small business considerations. The preferences afforded small business concerns under FAR 8.404(b)(6) still apply.

2. Brooks Act Applicability

Comment: The rule should not apply to architect-engineer services. Acquisitions of architect-engineer services are governed by the Brooks Act (40 U.S.C. 541–544), as implemented in FAR Subpart 36.6.

DoD Response: Concur. The final rule has been amended to clarify that acquisitions of architect-engineer services are subject to the Brooks Act and the procedures in FAR Subpart 36.6.

3. Training

Comment: Sufficient training for contracting, program management, and requirements personnel is needed to ensure that services are acquired in accordance with regulatory requirements. Industry should have access to the same tools as Government personnel.

DoD Response: Concur. DoD has developed training packages that will be released with this DFARS rule and has revised the Defense Acquisition University contracting coursework to focus on the proper way to make awards under Federal Supply Schedules, Governmentwide acquisition contracts, multi-agency contracts and multiple award contracts. Additionally, DoD is exploring ways to best reach the program management community and has asked the Defense Acquisition University to insert material in its program management courses. DoD intends to make the Government training tools available to industry. An information briefing on this DFARS rule is available on the Defense Procurement Web site at http://www.acq.osd.mil/dp under "Special Interest Items" in the dropdown box entitled "Section 803."

4. Clarification of Services Covered

Comment: DoD should revise the rule to clarify that the scope of the term "services" for purposes of the rule does not apply to product-like solutions, ancillary services, and transaction-based services. For example, the regulations that implement the Service Contract Act exempt contracts principally for the maintenance, calibration, or repair of many types of equipment, including automatic data processing equipment.

DoD Response: Do not concur. Section 803 provides no authority for DoD to limit the scope of the term "services" in the manner recommended by the respondent.

5. Electronic Notice

Comment: DoD should post the notice of fair opportunity to a specific web page or FedBizOpps.

DoD Response: Do not concur. The notice requirement is sufficiently addressed in the rule. The method of meeting that requirement is a management decision more appropriately made at the contracting office level. It should be noted that steps are being taken to improve transparency through electronic means. For example, GSA recently introduced "e-buy", among other things, to assist MAS customers in providing fair notice to MAS contractors. The availability of e-buy is highlighted in the rule.

6. Civilian Agency Applicability/ Economy Act

Comment: Clarification is needed regarding the applicability of Section 803 to civilian agencies and interagency acquisitions made under the Economy Act.

DoD Response: Section 803 applies to all DoD requirements for services, regardless of which agency acquires the services. The final rule addresses this issue by adding a statement to clarify that the rule also applies to orders placed by non-DoD agencies on behalf of DoD.

7. Effective Date

Comment: Clarification is needed regarding the timing for applicability of the rule.

DoD Response: Section 803 applies to all purchases of services made under multiple award contracts, regardless of whether the multiple award contracts were entered into before, on, or after the effective date of this rule. This DFARS rule contains the same effective date and applicability requirements. Contracting officers must review the terms and conditions of existing contracts to determine if modifications to the contracts are needed.

8. Exceptions to the Rule

Comment: The rule should provide an exception that allows a sole-source follow-on to an initially placed sole-source order with adequate justification and legal review.

DoD Response: The statute does not provide this authority. Section 803 authorizes use of the exceptions in 2304c(b) which allow for a logical follow-on to a task or delivery order already issued on a competitive basis.

9. Burden on Industry and Government

Comment: The rule is difficult to understand; the notification requirement will unnecessarily slow down the acquisition process and increase acquisition costs; and it will be burdensome for each company to continuously receive solicitations for work they have no interest in performing.

DoD Response: The intent of the rule is to ensure fairness by requiring a fair notice, fair opportunity to respond, and fair consideration of offers. The value added by the fairness component should outweigh any burdens associated with the rule. The final rule was drafted to provide as much flexibility as permitted by Section 803.

10. Blanket Purchase Agreement (BPA) Issues

Comment: The rule should be revised to delete the overly restrictive requirement that single award BPA tasks or services be firm-fixed-price, as this is not required by statute or policy. The BPA competition requirements in 208.404–70(d) should apply only to the initial establishment of the BPA, and thereafter the traditional Federal Supply Schedule rules for the placement of orders should apply.

DoD Response: DoD does not agree with the respondent's recommendation regarding the use of traditional Federal Supply Schedule rules for placement of orders, as this is contrary to the provisions of Section 803. However, as noted above, the OFPP Administrator intends to work with the other FAR Council members to develop appropriate FAR coverage addressing the use of time-and-materials and labor-hour contracts for commercial item acquisitions, including safeguards that are needed to effectively protect the government's interest when these contractual arrangements are used.

11. Ordering Procedures

Comment: The ordering procedures in the proposed rule were derived from FAR 16.505(b)(1), which was based upon the fair opportunity requirements of the Federal Acquisition Streamlining Act of 1994 (FASA). Section 803 displaced the ordering procedures under FASA. Therefore, appropriate revisions should be made to the rule, *e.g.*, the statement in 216.505–70(d)(3)(ii) to "Not use any method (such as allocation or designation of any preferred awardee)" is unnecessary and confuses the issue, because Section 803 now requires that orders be placed on a competitive basis that affords all contractors a fair opportunity to submit an offer. Obviously, an allocation method cannot be used under the Section 803 description of competitive basis, so there is no need to mention this issue.

DoD Response: DoD agrees that language in the proposed rule at 216.505–70(d)(3)(i) through (iv) and 216.505–70(e)(2) and (3) is not essential given that the rule makes competition requirements clear.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule clarifies and strengthens existing FAR requirements for competition in the placement of orders under multiple award contracts. The rule makes no change to preferences afforded small business concerns under FAR 8.404(b)(6) for the placement of orders against Federal Supply Schedules. FAR 8.404(b)(6) specifies that contracting officers should (1) consider including one or more small, women-owned small, and/or small disadvantaged business schedule contractor(s) when conducting evaluations and before placing an order; and (2) for orders exceeding the micro-purchase threshold, give preference to the items of small business concerns when two or more items at the same delivered price will satisfy the requirement.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 208 and 216

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 208 and 216 are amended as follows:

1. The authority citation for 48 CFR Parts 208 and 216 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. The heading of Subpart 208.4 is revised to read as follows:

Subpart 208.4—Federal Supply Schedules

3. Section 208.404 is amended by adding paragraph (b) to read as follows:

208.404 Using schedules.

* * * * *

(b) *Ordering procedures for optional use schedules—*

(2) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.* The procedures at FAR 8.404(b)(2), regarding review of catalogs or pricelists of at least three schedule contactors, do not apply to orders for services exceeding $100,000. Instead, use the procedures at 208.404–70.

(3) *Orders exceeding the maximum order threshold.*

(i) For orders for services exceeding $100,000, use the procedures at 208.404–70 in addition to the procedures at FAR 8.404(b)(3)(i).

(7) *Documentation.* For orders for services exceeding $100,000, use the procedures at 208.404–70 in addition to the procedures at FAR 8.404(b)(7).

4. Section 208.404–70 is added to read as follows:

208.404–70 Additional ordering procedures for services.

(a) This subsection—

(1) Implements Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107); and

(2) Also applies to orders placed by non-DoD agencies on behalf of DoD.

(b) Each order for services exceeding $100,000 shall be placed on a competitive basis in accordance with paragraph (c) of this subsection, unless the contracting officer waives this requirement on the basis of a written determination that—

(1) One of the circumstances described at FAR 16.505(b)(2)(i) through (iii) applies to the order; or

(2) A statute expressly authorizes or requires that the purchase be made from a specified source.

(c) An order for services exceeding $100,000 is placed on a competitive basis only if the contracting officer provides a fair notice of the intent to make the purchase, including a description of the work the contractor shall perform and the basis upon which the contracting officer will make the selection, to—

(1) As many schedule contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that offers will be received from at least three contractors that can fulfill the work requirements, and the contracting officer—

(i)(A) Receives offers from at least three contractors that can fulfill the work requirements; or

(B) Determines in writing that no additional contractors that can fulfill the work requirements could be identified despite reasonable efforts to do so (documentation should clearly explain efforts made to obtain offers from at least three contractors); and

(ii) Ensures all offers received are fairly considered; or

(2) All contractors offering the required services under the applicable multiple award schedule, and affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered. Posting of a request for quotations on the General Services Administration's electronic quote system, "e-Buy" (*http://www.gsaAdvantage.gov*), is one medium for providing fair notice to all contractors as required by this paragraph (c).

(d) Single and multiple blanket purchase agreements (BPAs) may be established against Federal Supply Schedules (see FAR 8.404(b)(4)) if the contracting officer—

(1) Follows the procedures in paragraphs (b) and (c) of this subsection;

(2)(i) For a single BPA, defines the individual tasks to be performed; or

(ii) For multiple BPAs, forwards the statement of work and the selection criteria to all multiple BPA holders before placing orders; and

(3) Reviews established BPAs no less than annually to determine whether the BPA still represents the best value.

(e) Orders placed against Federal Supply Schedules may be credited toward the ordering agency's small business goals (see FAR 8.404(b)(6)).

PART 216—TYPES OF CONTRACTS

5. Section 216.501–1 is added to read as follows:

216.501–1 Definitions.

Multiple award contract, as used in this subpart, means—

(1) A multiple award task order contract entered into in accordance with FAR 16.504(c); or

(2) Any other indefinite-delivery, indefinite-quantity contract that an agency enters into with two or more sources under the same solicitation.

6. Section 216.505–70 is added to read as follows:

216.505–70 Orders for services under multiple award contracts.

(a) This subsection—

(1) Implements Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107);

(2) Applies to orders for services exceeding $100,000 placed under multiple award contracts, instead of the procedures at FAR 16.505(b)(1) and (2) (see Subpart 208.4 for procedures applicable to orders placed against Federal Supply Schedules);

(3) Also applies to orders placed by non-DoD agencies on behalf of DoD; and

(4) Does not apply to orders for architect-engineer services, which shall be placed in accordance with the procedures in FAR subpart 36.6.

(b) Each order for services exceeding $100,000 shall be placed on a competitive basis in accordance with paragraph (c) of this subsection, unless the contracting officer waives this requirement on the basis of a written determination that—

(1) One of the circumstances described at FAR 16.505(b)(2)(i) through (iv) applies to the order; or

(2) A statute expressly authorizes or requires that the purchase be made from a specified source.

(c) An order for services exceeding $100,000 is placed on a competitive basis only if the contracting officer—

(1) Provides a fair notice of the intent to make the purchase, including a description of the work the contractor shall perform and the basis upon which the contracting officer will make the selection, to all contractors offering the required services under the multiple award contract; and

(2) Affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.

(d) When using the procedures in this subsection—

(1) The contracting officer should keep contractor submission requirements to a minimum;

(2) The contracting officer may use streamlined procedures, including oral presentations;

(3) The competition requirements in FAR part 6 and the policies in FAR subpart 15.3 do not apply to the ordering process, but the contracting officer shall consider price or cost under each order as one of the factors in the selection decision; and

(4) The contracting officer should consider past performance on earlier orders under the contract, including quality, timeliness, and cost control.

[FR Doc. 02–27110 Filed 10–24–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 201

[DFARS Case 2002–D021]

Defense Federal Acquisition Regulation Supplement; Contracting Officer Qualifications

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 824 of the National Defense Authorization Act for Fiscal Year 2002. Section 824 revised the qualification requirements that a new entrant into the contracting field must meet in order to serve as a contracting officer with authority to award or administer contracts exceeding the simplified acquisition threshold.

EFFECTIVE DATE: October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2002–D021.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises DFARS 201.603–2 to implement Section 824 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107). Section 824 amended 10 U.S.C. 1724 to revise the qualification requirements that a new entrant into the contracting field must meet in order to serve as a contracting officer with authority to award or administer contracts exceeding the simplified acquisition threshold. The revised qualifications include a requirement for a baccalaureate degree and 24 semester credit hours of study in a business-related discipline.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2002–D021.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 201

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 201 is amended as follows:

1. The authority citation for 48 CFR part 201 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 201.603–2 is revised to read as follows:

201.603–2 Selection.

(1) In accordance with 10 U.S.C. 1724, in order to qualify to serve as a contracting officer with authority to award or administer contracts for amounts above the simplified acquisition threshold, a person must—

(i) Have completed all contracting courses required for a contracting officer to serve in the grade in which the employee or member of the armed forces will serve;

(ii) Have at least 2 years experience in a contracting position;

(iii) Have—

(A) Received a baccalaureate degree from an accredited educational institution; and

(B) Completed at least 24 semester credit hours, or equivalent, of study from an accredited institution of higher education in any of the following disciplines: accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management; and

(iv) Meet such additional requirements, based on the dollar value and complexity of the contracts awarded or administered in the position, as may be established by the Secretary of Defense.

(2) The qualification requirements in paragraph (1)(iii) of this subsection do not apply to a DoD employee or member of the armed forces who—

(i) On or before September 30, 2000, occupied—

(A) A contracting officer position with authority to award or administer contracts above the simplified acquisition threshold; or

(B) A position either as an employee in the GS–1102 occupational series or a member of the armed forces in an occupational specialty similar to the GS–1102 series;

(ii) Is in a contingency contracting force; or

(iii) Is an individual appointed to a 3-year developmental position. Information on developmental opportunities is contained in DoD Manual 5000.52–M, Acquisition Career Development Program.

(3) Waivers to the requirements in paragraph (1) of this subsection may be authorized. Information on waivers is contained in DoD Manual 5000.52–M.

[FR Doc. 02–27107 Filed 10–24–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 208, 239, 251, and 252

[DFARS Case 2000–D023]

Defense Federal Acquisition Regulation Supplement; Enterprise Software Agreements

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy pertaining to the use of enterprise software agreements for the acquisition of commercial software and software maintenance.

EFFECTIVE DATE: October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile

(703) 602–0350. Please cite DFARS Case 2000–D023.

SUPPLEMENTARY INFORMATION:

A. Background

This rule adds a new DFARS Subpart 208.74 to address the use of enterprise software agreements for the acquisition of commercial software and software maintenance in accordance with the DoD Enterprise Software Initiative. This initiative promotes the use of enterprise software agreements with contractors that offer DoD favorable terms and pricing for commercial software and related services. Associated DFARS changes are made in Parts 208, 239, 251, and 252.

DoD published a proposed rule at 67 FR 4231 on January 29, 2002. Five sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule. A discussion of the comments is provided below:

Comment: Due to a lack of central budget control, "profit centers" cannot bargain as a unit to establish an Enterprise Software Agreement (ESA), and vendors must contract with each organization individually. *DoD Response:* The lack of a centralized approach to DoD software budgeting is a prime reason for the existence of the Enterprise Software Initiative (ESI). By consolidating established department and agency requirements for commercial software, ESI gains pricing and terms concessions not normally available to the individual or the small command buyer.

Comment: New vendors may be at a competitive disadvantage. Lack of objective performance criteria will deny new vendors the opportunity to compete on merit versus familiarity. *DoD Response:* ESI does not eliminate the need for acquisition planning and market research. Use of ESAs is not mandatory, but must be considered only when requirements for products available under the agreements have already been established.

Comment: The term "most favored customer" at 208.7403(e)(2) is vague and should be eliminated from the rule. *DoD Response:* The intent is to give the software product manager (SPM) the opportunity to adjust the ESA to provide the best value to the customer. The language at 208.7403(e)(2) has been revised to more clearly convey this intent.

Comment: The rule will reduce the number of vendors able to market and sell commercial software products to DoD. *DoD Response:* Authorized commercial resellers with General Services Administration (GSA) Federal Supply Schedules are eligible to carry ESAs for commercial software products. In this sense, the software manufacturer determines the universe of potentially eligible resellers, and the resellers themselves decide whether or not to apply for and maintain a GSA Schedule, and whether or not to comply with the terms and conditions of a DoD ESA.

Comment: The "nonstandard" methods of the rule may encourage software manufacturers to keep products off ESAs. *DoD Response:* The use of blanket purchase agreements against GSA Schedules is a standard DoD acquisition practice. There is no evidence to indicate that this rule will discourage manufacturers from seeking ESAs or from placing commercial products on ESAs.

Comment: Industrial funding fees will cancel potential savings of volume purchases. *DoD Response:* No additional resources are required to manage ESAs. DoD ESAs result in lower overhead for contract maintenance and result in net savings or cost avoidance for the Government.

Comment: Use of BPAs against GSA Schedules for the acquisition of software implies incorporation of the clause at FAR 52.227–14, Rights of Data. This clause may conflict with DoD policy on intellectual property rights and uses. The rule should follow DoD, not GSA, policy. *DoD Response:* Use of BPAs against GSA Schedules is a standard acquisition practice in DoD and is in accordance with FAR subpart 8.4 and DFARS subpart 208.4.

Comment: Customized terms and conditions must often be negotiated. The 90-day process for allowing the SPM to negotiate on behalf of the purchaser adds needless delay and cost. *DoD Response:* Many ESAs contain special provisions for pricing and other terms and conditions. Should those provisions not be sufficient, the SPM is given up to 90 days to renegotiate the ESA. Historically, the turn-around time has been much quicker than 90 days. However, purchasers have the option to pursue a waiver to the use of the ESA if the SPM cannot negotiate satisfactory terms and conditions within the purchaser's required timeframe.

Comment: The use of the term "commercial software or related services such as software maintenance" is overly broad. The phrase "related services" should be deleted. *DoD Response:* The phrase "related services" does address a broad range of services. It is the intent of ESI to address software asset management across the spectrum and throughout the life cycle of enterprise software management, rather than limit its scope to software acquisition and software maintenance.

Comment: The term "software maintenance" should be defined. *DoD Response:* A definition of "software maintenance" has been added at 208.7401.

Comment: Read literally, the rule could require DoD customers to acquire hardware without preloaded software. *DoD Response:* The rule is not intended to preclude the acquisition of preloaded software with computers from the original equipment manufacturer. The language at 208.7400(a) has been revised to clarify the intent.

Comment: The rule appears to support the development of software acquisition processes without the benefit of public comment. This may result in processes inconsistent with Federal Acquisition Streamlining Act requirements pertaining to the acquisition of commercial items. *DoD Response:* DoD policy is to make maximum practical use of GSA Schedules, and ESI has established BPAs against GSA Schedules for DoD use. Software asset management encompasses all aspects of life-cycle management. Should any elements of implementing the software asset management process require public comment, those elements will be published accordingly as has been done for this DFARS rule.

Comment: Software manufacturers and resellers cannot be expected to offer the favorable terms and discounts sought through ESI without DoD's commitment to purchase the quantities that result in the lowest prices. There is no evidence that DoD is willing or is able to make such a commitment. *DoD Response:* Many manufacturers and resellers have offered favorable terms and conditions without a commitment to specific quantities, for a chance at increased market share or additional DoD exposure.

Comment: The acquisition procedures in 208.7403 should be revised for clarity and for consistency with DoD Chief Information Officer Guidance and Policy Memorandum No. 12–8430 dated July 26, 2000, pertaining to requirements for use of ESAs, rationale for use of alternate sources, and reimbursement of funds to the SPM. *DoD Response:* This section has been revised to clarify procedures for determining when use of an ESA is appropriate, and to clarify documentation requirements when use of an alternate source is deemed necessary. However, SPM reimbursement of funds is a procedure handled outside of the contracting arena, and, therefore, is not considered appropriate for inclusion in this DFARS rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most enterprise software agreements are blanket purchase agreements established under Federal Supply Schedules. Establishment of such agreements is already permitted by section 8.404(b)(4) of the Federal Acquisition Regulation.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 208, 239, 251, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 208, 239, 251, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 208, 239, 251, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 208.001 is amended by revising paragraph (a)(1)(v) to read as follows:

208.001 Priorities for use of Government supply sources.

(a)(1)(v) *See* Subpart 208.70, Coordinated Acquisition, and Subpart 208.74, Enterprise Software Agreements.

* * * * *

3. Subpart 208.74 is added to read as follows:

Subpart 208.74—Enterprise Software Agreements

Sec.
208.7400 Scope of subpart.
208.7401 Definitions.
208.7402 General.
208.7403 Acquisition procedures.

208.7400 Scope of subpart.

This subpart prescribes policy and procedures for acquisition of commercial software and software maintenance, including software and software maintenance that is acquired—

(a) As part of a system or system upgrade, where practicable;

(b) Under a service contract;

(c) Under a contract or agreement administered by another agency (*e.g.*, under an interagency agreement);

(d) Under a Federal Supply Schedule contract or blanket purchase agreement established in accordance with FAR 8.404(b)(4); or

(e) By a contractor that is authorized to order From a Government supply source pursuant to FAR 51.101.

208.7401 Definitions.

As used in this subpart—

Enterprise software agreement means an agreement or a contract that is used to acquire designated commercial software or related services such as software maintenance.

Enterprise Software Initiative means an initiative led by the DoD Chief Information Officer to develop processes for DoD-wide software asset management.

Golden Disk means a purchased license or entitlement to distribute an unlimited or bulk number of copies of software throughout DoD.

Software maintenance means services normally provided by a software company as standard services at established catalog or market prices, *e.g.*, the right to receive and use upgraded versions of software, updates, and revisions.

Software product manager means the Government official who manages an enterprise software agreement.

208.7402 General.

Departments and agencies shall fulfill requirements for commercial software and related services, such as software maintenance, in accordance with the DoD Enterprise Software Initiative (ESI) (see Web site at *http://www.don-imit.navy.mil/esi).* ESI promotes the use of enterprise software agreements (ESAs) with contractors that allow DoD to obtain favorable terms and pricing for commercial software and related services. ESI does not dictate the products or services to be acquired.

208.7403 Acquisition procedures.

(a) After requirements are determined, the requiring official shall review the information at the ESI website to determine if the required commercial software or related services are available from DoD inventory (*e.g.*, Golden Disks and DoD-wide software maintenance agreements). If the software or services are available, the requiring official shall fulfill the requirement from the DoD inventory.

(b) If the required commercial software or related services are not in the DoD inventory, and not on an ESA, the contracting officer or requiring official may fulfill the requirement by other means. Existing ESAs are listed on the ESI website.

(c) If the commercial software or related services are on an ESA, the contracting officer or requiring official shall review the terms and conditions and prices in accordance with otherwise applicable source selection requirements.

(d) If an ESA's terms and conditions and prices represent the best value to the Government, the contracting officer or requiring official shall fulfill the requirement for software or services through the ESA.

(e) If existing ESAs do not represent the best value to the Government, the software product manager (SPM) shall be given an opportunity to provide the same or a better value to the Government under the ESAs before the contracting officer or requiring official may continue with alternate acquisition methods.

(1) The contracting officer or requiring official shall notify the SPM of specific concerns about existing ESA terms and conditions or prices through the ESI webpage.

(2) The SPM shall consider adjusting, within the scope of the ESA, terms and conditions or prices to provide the best value to the customer.

(i) Within 3 working days, the SPM shall—

(A) Update the ESA;

(B) Provide an estimated date by which the update will be accomplished; or

(C) Inform the contracting officer or requiring official that no change will be made to the ESA.

(ii) If the SPM informs the contracting officer or requiring official that no change will be made to the ESA terms and conditions or prices, the contracting officer or requiring official may fulfill the requirement by other means.

(iii) If the SPM does not respond within 3 working days or does not plan to adjust the ESA within 90 days, the contracting officer or requiring official may fulfill the requirement by other means.

(3) A management official designated by the department or agency may waive the requirement to obtain commercial software or related services through an ESA after the steps in paragraphs (e)(1) and (e)(2)(i) of this section are complete. The rationale for use of an alternate source shall be included in the waiver

request and shall be provided to the SPM.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

4. Subpart 239.1 is added to read as follows:

Subpart 239.1—General

Sec.
239.101 Policy.

239.101 Policy.

See Subpart 208.74 when acquiring commercial software or software maintenance.

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

5. Section 251.102 is amended as follows:

a. By revising paragraph (f);

b. In Table 51–1, by revising paragraph 1.;

c. In Table 51–1, in paragraph 2.b.(1) in the last sentence, and in paragraph 2.b.(2) in the last sentence, by removing "telefax" and adding in its place "facsimile"; and

d. In Table 51–1, by adding paragraph 2.c. to read as follows:

251.102 Authorization to use Government supply sources.

* * * * *

(f) The authorizing agency is also responsible for promptly considering requests of the DoD supply source for authority to refuse to honor requisitions from a contractor that is indebted to DoD and has failed to pay proper invoices in a timely manner.

Table 51–1, Authorization To Purchase From Government Supply Sources

* * * * *

1. You are hereby authorized to use Government sources in performing Contract No. _____ for _____ [insert applicable military department or defense agency], as follows: _____ [Insert applicable purchasing authority given to the contractor.]

2. * * *

c. Enterprise Software Initiative. Place orders in accordance with the terms and conditions of the attached Enterprise Software Agreement(s), or instructions for obtaining commercial software or software maintenance from Enterprise Software Initiative inventories, and this authorization. Attach a copy of this authorization to the order (unless a copy was previously furnished to the Enterprise Software Agreement contractor).

Insert the following statement in the order:

This order is placed under written authorization from _____ dated (*_____). In the event of any inconsistency between the terms and conditions of this order, and those of the Enterprise Software Agreement, the latter will govern.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.251–7000 is amended as follows:

a. By revising the clause date and paragraph (a);

b. By removing paragraph (b) and redesignating paragraphs (c) through (f) as paragraphs (b) through (e); and

c. In newly designated paragraph (c)(4), in the last sentence, by removing "Such" and adding in its place "The". The revised text reads as follows:

252.251–7000 Ordering From Government Supply Sources.

* * * * *

Ordering from Government Supply Sources (OCT 2002)

(a) When placing orders under Federal Supply Schedules, Personal Property Rehabilitation Price Schedules, or Enterprise Software Agreements, the Contractor shall follow the terms of the applicable schedule or agreement and authorization. Include in each order:

(1) A copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule, Personal Property Rehabilitation Price Schedule, or Enterprise Software Agreement contractor).

(2) The following statement: Any price reductions negotiated as part of an Enterprise Software Agreement issued under a Federal Supply Schedule contract shall control. In the event of any other inconsistencies between an Enterprise Software Agreement, established as a Federal Supply Schedule blanket purchase agreement, and the Federal Supply Schedule contract, the latter shall govern.

(3) The completed address(es) to which the Contractor's mail, freight, and billing documents are to be directed.

* * * * *

[FR Doc. 02–27109 Filed 10–24–02; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 212, 226, and 237

[DFARS Case 2000–D306]

Defense Federal Acquisition Regulation Supplement; Performance-Based Contracting Using Federal Acquisition Regulation Part 12 Procedures

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 821(b) of the National Defense Authorization Act for Fiscal Year 2001. Section 821(b) permits DoD to treat certain performance-based service contracts and task orders as contracts for the procurement of commercial items.

EFFECTIVE DATE: October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; facsimile (703) 602–0350. Please cite DFARS Case 2000–D306.

SUPPLEMENTARY INFORMATION:

A. Background

This rule revises and finalizes the interim rule published at 66 FR 63335 on December 6, 2001. The rule implements Section 821(b) of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398). Section 821(b) permits DoD to use Federal Acquisition Regulation (FAR) Part 12 (Acquisition of Commercial Items) procedures for performance-based service contracts and task orders, if certain conditions are met.

Four respondents submitted comments on the interim rule. A discussion of the comments is provided below:

Comment: The rule appears to contradict the language in FAR Subpart 13.5, which permits the use of simplified procedures for the acquisition of commercial items in amounts exceeding the simplified acquisition threshold but not exceeding $5 million. Section 212.102 of the rule prohibits the use of FAR Subpart 13.5 procedures when using FAR Part 12 for acquisitions that are performance-based. *DoD Response:* Do not concur. FAR 12.102 authorizes the use of FAR Part 12 in conjunction with FAR Part 13, 14, or 15, when acquiring supplies or services that meet the definition of commercial item at FAR 2.101. DFARS 212.102 provides additional authority for use of FAR Part 12 to acquire services that do *not* meet the definition of commercial item, when performance-based contracting methods are used. Therefore, the prohibition against use of FAR Subpart 13.5 in conjunction with FAR Part 12 applies only to performance-based contracts for services that do not meet the definition of commercial item but can be acquired using FAR Part 12 pursuant to the authority in DFARS 212.102.

Comment: The statement in 212.102(a)(i) specifying that the rule applies to contracts or task orders ". . . entered into on or before October 30, 2003" should be changed to apply to contracts or task orders ". . . entered into after October 30, 2000, but before October 30, 2003." The statute became effective on October 30, 2000, and this new authority is not available to task orders that were awarded prior to that date, but would be applicable to task orders awarded after that date even though the contract was awarded before October 30, 2000. *DoD Response:* Do not concur. The interim rule became effective on December 6, 2001. Since this date is in the past, there is no need to include it in the DFARS text. In addition, the rule, as written, does not preclude application to task orders issued under contracts that were awarded before the rule became effective.

Comment: The statement in 212.102(a)(i) that requires the use of quality assurance surveillance plans should be deleted from the rule. While such plans are a common best practice for performance-based contracts, this requirement is not part of the statute and, therefore, is not "in accordance with the Act." *DoD Response:* Do not concur. While quality assurance surveillance plans are not specifically addressed in the statute, this requirement should be retained, because the plans are an element of performance-based contracting. See FAR Subpart 37.6, which establishes quality assurance as a component of performance-based contracting.

Comment: The statement in 212.102(a)(i) that permits application of the rule if award is made "to an entity that provides similar services at the same time to the general public under terms and conditions similar to those in the contract" should be changed to add, at the end, the phrase "or task order." Under the law, it is clear that the two similarity tests are appropriately applied at either the contract level or at the task order level. *DoD Response:* Concur. The statement has been amended to add the phrase "or task order."

Comment: The cross-reference text at 237.601 should be changed from "See 212.102 for the use of FAR Part 12 procedures with performance-based contracting" to "See 212.102 for additional authority and specific conditions where it is appropriate to use FAR Part 12 procedures with performance-based contracting." This change is necessary to avoid any misconception that DFARS 212.102 contains the *only* provisions for use of FAR Part 12 for performance-based contracts. Public Law 106–398 clearly established these conditions as an additional incentive for use of the performance-based service contract under FAR Part 12. *DoD Response:* Do not concur. The change is not necessary, as the DFARS does not indicate such a limitation.

Comment: The text at 212.102(a)(ii) should be changed from "* * * modify paragraph (a) of the clause at FAR 52.212–4 * * *" to "* * * tailor paragraph (a) of the clause at FAR 52.212–4* * *" *DoD Response:* Concur. The word "tailor" is consistent with the terminology used in FAR Part 12. This change has been made in the final rule.

Comment: The statement in 212.102(a)(i) that permits application of the rule if award is made "to an entity that provides similar services at the same time to the general public * * *" may exclude some small businesses, including 8(a) and native-owned firms, that focus their efforts on Government contracts. *DoD Response:* Partially concur. Firms that direct their efforts exclusively toward providing services to the Government will not meet this condition of the rule. However, this condition was established by Section 821(b) of Public Law 106–398 and cannot be deleted.

Comment: The rule reclassifies all service contracts of less than $5 million as subject to FAR Part 12 procedures. DFARS 226.104(1) precludes use of the clause at 252.226–7001, Utilization of Indian Organizations and Indian-Owned Economic Enterprises—DoD Contracts, in any contract that uses FAR Part 12 procedures. Therefore, this rule eliminates all service contracts of less than $5 million from the Indian Incentive Program, thereby causing significant harm to Native American service companies and Indian Tribal Corporations. DoD should remove the Part 12 exclusion from the clause prescription at DFARS 226.104(1). *DoD Response:* Partially concur. DoD does not agree that the rule reclassifies all service contracts of less than $5 million as subject to FAR Part 12. The rule is limited to performance-based contracting for services that meet specific criteria. DoD does agree that, as the interim rule was written, the Indian Incentive Program could not be used for any performance-based service contracts awarded using FAR Part 12 procedures. The FAR Part 12 exclusion at DFARS 226.104 was established prior to this rule and was intended to apply to the acquisition of supplies and services that meet the definition of commercial item at FAR 2.101. Since this rule permits the use of FAR Part 12 procedures for acquisition of services that do not meet the definition of commercial item, DFARS 226.104 has been amended to clarify that there is no restriction on use of the clause at 252.226–7001 in performance-based contracts for services that either are not commercial items, or are treated as commercial items solely as a result of the authority in 212.102.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule permits the use of FAR Part 12 procedures for the award of certain performance-based service contracts and task orders. While the use of FAR Part 12 procedures will improve the efficiency of contracting for these services, the economic impact on small entities will not be substantial.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 212, 226, and 237

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 212 and 237, which was published at 66 FR 63335 on December 6, 2001, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Parts 212, 226, and 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Section 212.102 is revised to read as follows:

212.102 Applicability.

(a)(i) In accordance with Section 821 of the National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398), the contracting officer also may use FAR Part 12 for any performance-based contracting for services if the contract or task order—

(A) Is not awarded using the procedures in FAR Subpart 13.5;

(B) Is entered into on or before October 30, 2003;

(C) Has a value of $5 million or less;

(D) Meets the definition of performance-based contracting at FAR 2.101;

(E) Uses quality assurance surveillance plans;

(F) Includes performance incentives where appropriate;

(G) Specifies a firm-fixed price; and

(H) Is awarded to an entity that provides similar services at the same time to the general public under terms and conditions similar to those in the contract or task order.

(ii) In exercising the authority specified in paragraph (a)(i) of this section, the contracting officer should tailor paragraph (a) of the clause at FAR 52.212–4 as may be necessary to ensure the contract's remedies adequately protect the Government's interests.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

3. Section 226.104 is revised to read as follows:

226.104 Contract clause.

Use the clause at 252.226–7001, Utilization of Indian Organizations and Indian-Owned Economic Enterprises—DoD Contracts, in solicitations and contracts for supplies or services that—

(1)(i) Are other than commercial items; or

(ii) Qualify to use FAR Part 12 procedures solely through the authority in 212.102; and

(2) Are expected to exceed the simplified acquisition threshold.

[FR Doc. 02–27108 Filed 10–24–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2002–D028]

Defense Federal Acquisition Regulation Supplement; Caribbean Basin Country—Honduras

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add Honduras to the list of Caribbean Basin countries whose products DoD may acquire under the Trade Agreements Act, in accordance with a determination of the United States Trade Representative.

EFFECTIVE DATE: October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2002–D028.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the clauses at DFARS 252.225–7007, Buy American Act-Trade Agreements—Balance of Payments Program, and 252.225–7021, Trade Agreements, to add Honduras to the definition of "Caribbean Basin country." The rule implements the direction of the United States Trade Representative to treat the products of Honduras as eligible products in acquisitions subject to the Trade Agreements Act (67 FR 46239, July 12, 2002).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2002–D028.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 252 is amended as follows:

1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7007 [Amended]

2. Section 252.225–7007 is amended as follows:

a. By revising the clause date to read "(OCT 2002)"; and

b. In paragraph (a)(1) by adding, in alphabetical order, "Honduras" to the list of countries.

252.225–7021 [Amended]

3. Section 252.225–7021 is amended as follows:

a. By revising the clause date to read "(OCT 2002)"; and

b. In paragraph (a)(1) by adding, in alphabetical order, "Honduras" to the list of countries.

[FR Doc. 02–27105 Filed 10–24–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D. 101102F]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action 16--Adjustment of the Commercial Fishery from the Oregon-California Border to the Humboldt South Jetty

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from the Oregon-California Border to the Humboldt South Jetty, was modified to close at midnight on Friday, September 20, 2002, and then reopen Thursday, September 26, 2002, through midnight on Friday, September 27, 2002. On September 19, 2002, the Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that the quota of 10,000 chinook salmon would be reached by September 20, 2002. However, after reevaluating the available catch and effort data on September 24, 2002, it was found that there was enough salmon left in the chinook quota to allow an additional 2 days of fishing. These actions were necessary to conform to the 2002 management goals.

DATES: Closure in the area from the Oregon-California Border to the Humboldt South Jetty effective 2359 hours local time (l.t.), September 20, 2002;

Reopening in the area from the Oregon-California Border to the Humboldt South Jetty effective 0001 hours l.t., September 26, 2002, through 2359 hours l.t., September 27, 2002, after which the fishery will remain closed until opened through an additional inseason action, which will be published in the **Federal Register** for the west coast salmon fisheries, or until the effective date of the year 2003 management measures.

Comments will be accepted through November 12, 2002.

ADDRESSES: Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator modified the season for the commercial salmon fishery in the area from the Oregon-California Border to the Humboldt South Jetty, to close at midnight on Friday, September 20, 2002, and then reopen Thursday, September 26, 2002, through midnight on Friday, September 27, 2002. On September 19, 2002, the Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that the quota of 10,000 chinook salmon would be reached by September 20, 2002. However, after reevaluating the available catch and effort data on September 24, 2002, it was found that there was enough salmon left in the chinook quota to allow an additional 2 days of fishing. Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1), and modification of fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i).

In the 2002 annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002), NMFS announced the commercial fishery for all salmon except coho in the area from the Oregon-California Border to the Humboldt South Jetty would open August 16, 2002, through the earlier of August 30, 2002, or an 3,000–chinook quota, and September 1, 2002, through the earlier of September 30, 2002, or a 10,000–chinook quota. The area also had a possession and landing limit of 40 fish per day, with all fish required to be landed within the area and within 24 hours of any closure of the fishery.

On September 19, 2002, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council (Council) and the California Department Fish and Game (CDFG) by conference call. Information related to catch to date, the chinook catch rate, and effort data indicated that it was likely that the chinook quota would be reached by Friday, September 20, 2002. As a result, the State of California recommended, and the Regional Administrator concurred, that the area from the Oregon-California Border to the Humboldt South Jetty close effective at midnight on Friday, September 20, 2002. All other restrictions that apply to this fishery remained in effect as announced in the 2002 annual management measures. In addition, the parties agreed to reevaluate the fishery the following week and assess the possibility of further open fishing periods if the catch estimates turned out to be low.

On September 24, 2002, the Regional Administrator again consulted with representatives of the Council and the CDFG by conference call. Information related to catch to date, the chinook catch rate, and effort data indicated that there was enough chinook left in the quota to allow 2 more days of fishing. As a result, the State of California recommended, and the Regional Administrator concurred, that the commercial salmon fishery in the area from the Oregon-California Border to the Humboldt South Jetty should be modified to reopen Thursday, September 26, 2002, through midnight on Friday, September 27, 2002, to access the available chinook left in the quota. In addition, the landing restriction language was modified to a possession and landing limit of 40 fish per day, with no vessel landing or delivering more than 80 chinook for the entire 2 day open period, all fish required to be landed within the area and within 24 hours of the fishery closure. Additionally, salmon caught outside the open area were not allowed to be landed in the area until after midnight on Saturday, September 28, 2002. This final modification was needed to clarify the intent of the landing restriction and minimize complications related to catch accounting that may result from landing salmon from outside the catch area. All other restrictions that applied to this fishery remained in effect as announced in the 2002 annual management measures and subsequent inseason actions.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the States. The States manage the fisheries in State waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411 (a)(2), actual notice to fishers of the above described actions were given prior to the effective dates by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

These actions do not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), or delaying the effectiveness of this rule for 30 days under 5 U.S.C. 553(d)(3), because such notification and delay is impracticable and contrary to the public interest. As previously noted, actual notice of these actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002) and the West

Coast Salmon Plan. Prior notice and opportunity for public comment is impracticable because NMFS and the State agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the limits to which the fishery must be in place. Moreover, such prior notice and the opportunity for public comment is contrary to the public interest because it does not allow fishers appropriately controlled access to the available fish at the time they are available.

The AA finds good cause to waive the 30–day delay in effectiveness required under 5 U.S.C. 553(d)(3). A delay in effectiveness of this action would not allow fishers appropriately controlled access to the available fish at the time they are available.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 21, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–27262 Filed 10–24–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 207
Friday, October 25, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–38–AD]

RIN 2120–AA64

Airworthiness Directives; Brackett Aircraft Company, Brackett Single Screen Air Filter

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Brackett Aircraft Company (Brackett) single screen air filter assemblies that are installed on airplanes. This proposed AD would require you to check the Brackett single screen air filter assembly for correct installation. This proposed AD would also require you to install an additional screen, replace the Brackett single screen air filter assembly with a double screen filter, or replace with another approved design filter at a specified time. This proposed AD is the result of several reports of service difficulties of incorrect installation of the air filters. The actions specified by this proposed AD are intended to detect and correct incorrect installation of the air filter, which could result in failure of the air filter. Such failure could lead to engine/turbocharger ingestion of the air filter foam element.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before November 26, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–38–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–38–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Brackett Aircraft Company, 7052 Government Way, Kingman, Arizona 86401; telephone: (928) 757–4009; facsimile: (928) 757–4433. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Roger Pesuit, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard; telephone: (562) 627–5251; facsimile: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–38–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The FAA has received several reports of service difficulties of incorrect installation of the Brackett single screen air filters on Cessna 206 and 210 series airplanes that incorporate Supplemental Type Certificate (STC) No. SA71GL. A safety recommendation was issued by FAA that recommended corrective action as a result of a fatal accident involving a Cessna Model T210N airplane.

Investigation of this accident revealed that the air filter assembly had been installed with the screen incorrectly positioned on the upstream side of the frame. Incorrect installation of the air filter assembly resulted in portions of the air filter foam element entering the turbocharger compressor inlet.

We determined this to be the cause of the reported power loss. The manufacturer has developed a double screen air filter that precludes incorrect air filter installation.

What Are the Consequences if the Condition Is Not Corrected?

If not detected and corrected, the air filter foam element could be ingested into the engine/turbocharger compressor. This condition could lead to loss of power during a critical phase of flight.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on type design aircraft that incorporate a Brackett single screen air filter assembly;

—The Brackett single screen air filter assemblies should be immediately inspected for correct installation and eventually replaced; and
—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to visually or by touch check the Brackett single screen air filter assembly for correct installation. This proposed AD would also require you to add a second screen, replace the Brackett single screen air filter with a double screen filter, or replace with another approved design filter at a specified time.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 2,000 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed replacements:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 = $60	$44	$104	$104 × 2,000 = $208,000

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Brackett Aircraft Company: Docket No. 2002–CE–38–AD.

(a) *What airplanes are affected by this AD?* This AD affects Brackett single screen air filter assemblies, part number BA–2410, that are installed on, but not limited to, the following aircraft that are certificated in any category and incorporate Supplemental Type Certificate (STC) No. SA71GL:

Cessna model	Serial Nos.
TP206A, TP206B, TP206C, TP206D, TP206E, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, TU206G and T207A.	All serial numbers.
210	All equipped with air conditioning.
T210F, T210G, T210H, T210J, T210K, T210L, T210M, T210N, 210R, and T210R	All serial numbers.

(b) *Who must comply with this AD?* Anyone who wishes to operate an aircraft equipped with one of the affected single screen air filters must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct incorrect installation of the air filter, which could result in failure of the air filter. Such failure could lead to engine/turbocharger ingestion of the air filter foam element.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Visually or by touch check the single screen Brackett air filter assembly (part number (P/N) BA–2410) to ensure that it is installed with the screen on the down stream side of the filter assembly. Accomplish the following: (i) Remove both upper engine cowlings. (ii) Open the alternate air access door located on the right side of the engine compartment by applying pressure. (iii) While viewing through the alternate air access door, use an inspection mirror and light to check that the screen is installed on the down stream side of the filter assembly; OR (iv) Partially insert a hand into the open alternate air access door and touch the back of the filter element, feeling for the presence of the screen or absence of the screen.	Within the next 25 hours time in service (TIS) after the effective date of this AD	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may accomplish the visual or touch check of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(2) Verify that the BA–2410 air filter assembly has screens on both sides. Install an additional screen P/N 2404–00 on the BA–2410 air filter assembly if it is not already equipped with screens on both sides. Alternatively, replace the single screen Bracket air filter assembly, P/N BA–2410, with an FAA-approved filter that is not Brackett P/N BA–2410	*If the air filter assembly is installed incorrectly:* Prior to further flight after the visual or by touch check required by paragraph (d)(1) of this AD. *If the air filter is installed correctly:* Within the next 100 hours TIS after the effective date of this AD	In accordance with the applicable airplane maintenance instructions. The owner/operator may not accomplish the replacement/modification, unless he/she holds the proper mechanic authorization.
(3) You may accomplish the replacement required by this AD instead of the check specified in paragraph (d)(1) of this AD	Within the next 25 hours TIS after the effective date of this AD	In accordance with the applicable airplane or STC supplied maintenance instructions.
(4) Do not install, on any affected airplane, any single screen Brackett air filter assembly, P/N BA–2410	As of the effective date of this AD	Not applicable.

Note 1: Corrective action, if required, must be accomplished by appropriately rated maintenance personnel. The owner/operator may not accomplish the replacement/modification, unless he/she holds the proper mechanic authorization.

Note 2: The compliance time of 100 hours TIS for replacement is based on FAA Safety Recommendation, Control Number 02.122, that recommends modifying to a dual screen configuration at 100 hours TIS.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Los Angeles Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Roger Pesuit, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard; telephone: (562) 627–5251; facsimile: (562) 627–5210.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Brackett Aircraft Company, 7052 Government Way, Kingman, Arizona 86401; telephone: (928) 757–4009; facsimile: (928) 757–4433. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 18, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–27197 Filed 10–24–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–32–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Company (Raytheon) Model 1900D airplanes. This proposed AD would require you to inspect the

alternating current (AC) inverter and modify the AC inverter and inverter sync wire shield. This proposed AD is the result of reports that electrical noise causes the inverter to shut down in flight with loss of AC-powered flight instruments. The actions specified by this proposed AD are intended to prevent electrical noise causing the inverter to shut down, which could result in failure of key aircraft electrical systems. Such failure could lead to loss of flight instruments during flight.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before January 2, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–32–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–32–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Todd Dixon, Aerospace Engineer, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4152; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–32–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The FAA has received nine reports of electrical noise causing the alternating current (AC) inverter to shut down on certain airplanes. These airplanes are equipped with KGS Electronics AC Inverter part number (P/N) SPC–10(PW), Mod 2, serial numbers 306 to 803. The shut down of the inverter resulted in the loss of the electronic flight information system (EFIS), Radio Magnetic Indicator (RMI), and related AC-powered systems. Some airplanes experienced the loss of engine torque indication.

What Are the Consequences if the Condition Is Not Corrected?

Such failure of the inverter could lead to loss of flight instruments during a critical phase of flight.

Is There Service Information That Applies to This Subject?

Raytheon has issued Mandatory Service Bulletin SB 24–3215, Rev. 1, issued February 1999, revised June 2001.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

—AC inverter inspection;

—AC inverter modification; and

—AC inverter sync wire shield modification.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Raytheon Model 1900D airplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 232 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed AC inverter inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 = $120 for each inverter	No cost for parts	$240	232 × $240 = $55,680.

We estimate the following costs to accomplish any necessary AC inverter modification that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such modification:

Labor cost	Parts cost	Total cost per airplane
2 workhours × $60 = $120 for each inverter ($240 per aircraft)	$310	$550 for each airplane.

We estimate the following costs to accomplish any necessary AC inverter sync wire shield modification that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such modification:

Labor cost	Parts cost	Total cost per airplane
8 workhours × $60 = $480	$6	$486

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is within 6 months after the effective date of the AD.

Why Is the Proposed Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

Failure of the aircraft AC inverters is only unsafe during airplane operation. However, this unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 50 hours time-in-service (TIS) as it would be for an airplane with 1,000 hours TIS.

For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this proposed AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Raytheon Aircraft Company: Docket No. 2002–CE–32–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

(1) *Group 1 Airplanes:* Model 1900D, serial numbers UE–1 through UE–265.

(2) *Group 2 Airplanes:* Model 1900D, serial numbers UE–266 through UE–388.

(3) *Group 3 Airplanes:* Model 1900D, serial numbers UE–389 through UE–410.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent electrical noise causing the alternating current (AC) inverter to shut down, which could result in failure of key aircraft electrical systems. Such failure could lead to loss of flight instruments during a critical phase of flight.

Note 1: Refer to paragraph (a) to determine if your airplane is assigned to Group 1, Group 2, or Group 3. If your airplane is assigned to Group 1, Group 2, or Group 3, you only have to accomplish the requirements of either paragraph (d), (e), or (f), respectively.

(d) *What actions must I accomplish to address this problem if I have a Group 1 airplane?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the AC inverter to determine if the KGS Electronics AC Inverter part number (P/N) SPC–10(PW), with a serial number in the range of 306 through 803, is installed and is identified as Mod 2DD. (i) This may be accomplished by checking the logbook and positively showing that Mod 2DD inverter is installed. A person holding a pilot's certificate may accomplish this check. (ii) If, by checking the airplane logbook or by visual inspection, it can be positively shown that Mod 2DD inverter is installed, then the requirements of paragraph (d)(2) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Within 6 months after the effective date of this AD	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev. 1, issued February 1999, revised June 2001.
(2) If during the inspection required in paragraph (d)(1), it is found that the Mod 2DD inverter is not installed, accomplish the AC inverter modification	Before further flight after the paragraph (d)(1) inspection of this AD	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev. 1, issued February 1999, revised June 2001, and the Model 1900D Airliner Maintenance Manual.
(3) Inspect the AC inverter to determine if STC #SA00245WI–D is installed. (i) This may be accomplished by checking the logbook and positively showing that STC #SA00245WI–D has never been installed. A person holding a pilot's certificate may accomplish this check. (ii) If, by checking the logbook or visual inspection, it can be positively shown that STC #SA00245WI–D has never been installed, then the requirements of paragraph (d)(4) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Within 6 months after the effective date of this AD	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev. 1, issued February 1999, revised June 2001.
(4) If during the inspection required in paragraph (d)(3), STC #SA00245WI–D is found installed, accomplish the AC inverter sync wire shield modification.	Before further flight after the paragraph inspection of this AD	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev. 1, issued February 1999, revised June 2001, and the Model 1900D Airliner Maintenance Manual.
(5) Do not install, on any affected airplane, any KGS Electronics AC inverter S/N between 306 through 803 not identified as Mod 2DD	As of the effective date of this AD	Not applicable.
(6) Do not install STC #SA00245WI–D on any airplane unless the AC inverter modification required in paragraph (d)(4) of this AD is accomplished.	As of the effective date of this AD	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev. 1, issued February 1999, revised June 2001, and the Model 1900D Airliner Maintenance Manual.

(e) *What actions must I accomplish to address this problem if I have a Group 2 airplane?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the AC inverter to determine if the KGS Electronics AC Inverter part number (P/N) SPC–10(PW), with a serial number in the range of 306 through 803, is installed and is identified as Mod 2DD. (i) This may be accomplished by checking the logbook and positively showing that Mod 2DD inverter is installed. A person holding a pilot's certificate may accomplish this check. (ii) If, by checking the airplane logbook or visual inspection, it can be positively shown that Mod 2DD inverter is installed, then the requirements of paragraphs (e)(2) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Within 6 months after the effective date of this AD.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev.1, issued February 1999, revised June 2001.

Actions	Compliance	Procedures
(2) If during the inspection required in paragraph (e)(1), Mod 2DD is not installed, accomplish the AC inverter modification.	Before further flight after the paragraph (e)(1) inspection of this AD.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev.1, issued February 1999, revised June 2001, and the Model 1900D Airliner Maintenance Manual.
(3) Accomplish the AC inverter sync wire shield modification.	Within 6 months after the effective date of this AD.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev.1, issued February 1999, revised June 2001, and the Model 1900D Airliner Maintenance Manual.
(4) Do not install, on any affected airplane, any KGS Electronics AC inverter S/N between 306 through 803 not identified as Mod 2DD.	As of the effective date of this AD.	Not applicable.

(f) *What actions must I accomplish to address this problem if I have a Group 3 airplane?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the AC inverter to determine if the KGS Electronics AC Inverter part number (P/N) SPC–10(PW), with a serial number in the range of 306 through 803, is installed and is identified as Mod 2DD. (i) This may be accomplished by checking the logbook and positively showing that Mod 2DD is installed on the inverter. A person holding a pilot's certificate may accomplish this check. (ii) If, by checking the airplane logbook or visual inspection, it can be positively shown that the Mod 2DD inverter is installed, then the requirements of paragraph (f)(2) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9)	Within 6 months after the effective date of this AD.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev. 1, issued February 1999, revised June 2001.
(2) If during the inspection required in paragraph (f)(1), it is found that the Mod 2DD inverter is not installed, accomplish the AC inverter modification.	Before further flight after the paragraph (f)(1) inspection of this AD.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Aircraft Service Bulletin SB 24–3215, Rev. 1, issued February 1999, revised June 2001, and the Model 1900D Airliner Maintenance Manual.
(3) Do not install, on any affected airplane, any KGS Electronics AC inverter with serial number in the range of 306 through 803 not identified as Mod 2DD.	As of the effective date of this AD.	Not applicable.

Note 2: An owner/operator of an airplane assigned to a Group may disregard the above Group paragraphs that do not apply to his/her airplane.

(g) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 3: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(h) *Where can I get information about any already-approved alternative methods of compliance?* Contact Todd Dixon, Aerospace Engineer, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4152; facsimile: (316) 946–4407.

(i) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(j) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 18, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–27196 Filed 10–24–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 60

[Docket No. FAA–2002–12461; Notice No. 02–11]

RIN 2120–AH07

Flight Simulation Device Initial and Continuing Qualification and Use; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); correction.

SUMMARY: This document makes a correction to the proposed rule published in the **Federal Register** on September 25, 2002 (67 FR 60284), which proposes to establish flight simulation device qualification requirements in a new part. The FAA inadvertently omitted a table in the original NPRM.

DATES: Send your comments on or before December 24, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12461 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Edward Cook, National Simulator Program Staff (AFS–205), Flight Standards Service, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 305–6100.

SUPPLEMENTARY INFORMATION: On September 25, 2002, the FAA published Notice No. 02–11, Flight Simulation Device Initial and Continuing Qualification and Use (67 FR 60284). The NPRM proposed to amend the regulations to establish flight simulation device qualification requirements for all certificate holders in a new part. The FAA inadvertently omitted a table entitled "Table of Alternative Source Data FTD Levels 2, 3, and 5. Single Engine (Turbo-Propeller) Airplane." The table provides a range of performance that is typical for single engine, turbo-propeller powered airplanes for the indicated objective tests located in Attachment 2 of appendix B to part 60.

Correction

In proposed rule FR Doc. 02–14785, published on September 25, 2002 (67 FR 60284), make the following corrections:

PART 60—[CORRECTED]

Appendix B to part 60—[Corrected]

1. On page 60403, in Attachment 2 to appendix B to part 60, immediately following Figure 6. Small, Multi-Engine (Reciprocating) Airplane, Rudder Pedal Position vs. Force, add the following table:

Attachment 2 to appendix B to part 60—Flight Training Device (FTD) Objective Tests

* * * * *

Table of Alternative Source Data FTD Levels 2, 3, and 5. Single Engine (Turbo-Propeller) Airplane

QPS Requirement	
Applicable Test and Test Number	**Authorized Performance Range**
2. Performance	
a. Takeoff.	
(1) Ground acceleration time; brake release to liftoff speed	20–30 Seconds.
b. Climb.	
(1) Normal climb with nominal gross weight, at best rate-of-climb airspeed.	Climb airspeed = 95–115 knots. Climb rate = 800–1800 fpm (4–9 m/sec).
c. Ground Deceleration.	
(1) Deceleration time from 80 knots to zero; with a nominal gross weight; using wheel brakes on a dry runway.	20–35 Seconds.
d. Engines.	
(1) Acceleration; idle to takeoff power	4–8 Seconds.
(2) Deceleration; takeoff power to idle	3–7 Seconds.
3. Handling Qualities.	
a. Static Control Checks.	
(1)(b) Column position vs. force	Plot of Column Position vs. Force must fall within the shaded areas shown in Figure 7 of this appendix (Single Engine [Turbo-Propeller] Airplanes).

Table of Alternative Source Data FTD Levels 2, 3, and 5. Single Engine (Turbo-Propeller) Airplane—Continued

QPS Requirement	
Applicable Test and Test Number	**Authorized Performance Range**
(2)(b) Wheel position vs. force	Plot of Wheel Position vs. Force must fall within the shaded areas shown in Figure 8 of this appendix (Single Engine [Turbo-Propeller] Airplanes).
(3)(b) Pedal position vs. force	Plot of Rudder Pedal Position vs. Force must fall within the shaded areas shown in Figure 9 of this appendix (Single Engine [Turbo-Propeller] Airplanes).
(4) Nosewheel steering force	Plot of Rudder Pedal Position vs. Force must fall within the shaded areas shown in Figure 9 of this appendix (Single Engine [Turbo-Propeller] Airplanes).
(5) Rudder pedal steering calibration with full rudder pedal travel	10–30 degrees of nosewheel angle, both sides of neutral.
(8) Brake pedal position vs. force; at maximum pedal deflection	50–100 lbs (22–44 daN) of force.
b. Longitudinal.	
(1) Power change force. (a) Trim for straight and level flight at 80% of normal cruise airspeed with necessary power. Reduce power to flight idle. Do not change trim or configuration. After stabilized, record column force necessary to maintain original airspeed; or	8 lbs (3.5 daN) of Push force to 8 lbs (3.5 daN) of Pull force.
(b) Trim for straight and level flight at 80% of normal cruise airspeed with necessary power. Add power to maximum setting. Do not change trim or configuration. After stabilized, record column force necessary to maintain original airspeed.	12–22 lbs (5.3–9.7 daN) of force (Push).
(2) Flap/slat change force. (a) Trim for straight and level flight with flaps fully retracted at a constant airspeed within the flaps-extended airspeed range. Do not adjust trim or power. Extend the flaps to 50% of full flap travel. After stabilized, record stick force necessary to maintain original airspeed; or	5–15 lbs (2.2–6.6 daN) of force (Pull).
(b) Trim for straight and level flight with flaps extended to 50% of full flap travel, at a constant airspeed within the flaps-extended airspeed range. Do not adjust trim or power. Retract the flaps to zero (fully retracted). After stabilized, record stick force necessary to maintain original airspeed.	5–15 lbs (2.2–6.6 daN) of force (Push).
(3) Gear change force. (a) Trim for straight and level flight with landing gear retracted at a constant airspeed within the landing gear-extended airspeed range. Do not adjust trim or power. Extend the landing gear. After stabilized, record stick force necessary to maintain original airspeed; or	2–12 lbs (0.88–5.3 daN) of force (Pull).
(b) Trim for straight and level flight with landing gear extended, at a constant airspeed within the landing gear-extended airspeed range. Do not adjust trim or power. Retract the landing gear. After stabilized, record stick force necessary to maintain original airspeed..	2–12 lbs (0.88–5.3 daN) of force (Push).
(4) Gear and flap operating times. (a) Extend gear	2–12 seconds.
(b) Retract gear	2–12 seconds.
(c) Extend flaps, zero to 50% travel	(c) 3–13 seconds.
(d) Retract flaps, 50% travel to zero	(d) 3–13 seconds.
(5) Longitudinal trim	Must be able to trim longitudinal stick force to "zero" in each of the following configurations: (a) cruise; (b) approach; and (c) landing.
(7) Longitudinal static stability	Must exhibit positive static stability.

Table of Alternative Source Data FTD Levels 2, 3, and 5. Single Engine (Turbo-Propeller) Airplane—Continued

QPS Requirement	
Applicable Test and Test Number	**Authorized Performance Range**
(8) Stall warning (actuation of stall warning device) with nominal gross weight; wings level; clean configuration, and a deceleration rate of approximately one (1) knot per second.	
(a) Landing configuration	60–90 knots; ± 5 degrees of bank.
(b) Clean configuration	Landing configuration speed, + 10–20 percent.
(9)(b) Phugoid dynamics	Must have a phugoid with a period of 30–60 seconds; and may not reach ½ or double amplitude in less than 2 cycles.
c. Lateral Directional.	
(1) Roll response. Roll rate must be measured through at least 30 degrees of roll. Aileron control must be deflected 50 percent of maximum travel.	Must have a roll rate of 6–40 degrees/second.
(2) Response to roll controller step input. Trim for straight and level flight at nominal gross weight and approach airspeed. Roll into a 30 degree bank turn and stabilize. When ready, input a 50 percent aileron control opposite to the direction of turn. When reaching zero bank angle, rapidly neutralize the aileron control and release. Record the response from at least 2 seconds prior to the initiation of control input opposite to the direction of turn until at least 20 seconds after neutralization of the controls.	Roll rate must decrease to not more than 10 percent of the roll rate achieved, within 1–3 seconds of control release.
(3)(a) and (b) Spiral stability. Cruise configuration and normal cruise airspeed. Establish a 20–30 degree bank. When stabilized, neutralize the aileron control and release. Must be completed in both directions of turn.	Initial bank angle (± 5 degrees) after 20 seconds.
(4)(b) Rudder response. Use 50 percent of maximum rudder deflection. Applicable to approach or landing configuration.	6–12 degrees/second yaw rate.
(5)(b) Dutch roll, yaw damper off. Applicable to cruise and approach configurations	A period of 2–5 seconds; and ½–3 cycles.
(6) Steady state sideslip. Use 50 percent rudder deflection; Applicable to approach and landing configurations.	2–10 degrees of bank; 4–10 degrees of sideslip; and 2–10 degrees of aileron.
4. Cockpit Instrument Response.	
Instrument systems response to an abrupt pilot controller input. One test is required in each axis (pitch, roll, and yaw).	300 milliseconds or less.

* * * * *

Issued in Washington, DC, on October 18, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 02–27169 Filed 10–24–02; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 247–0364b; FRL–7396–2]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_X) and carbon monoxide (CO) from stationary internal combustion engines. In accordance with the Clean Air Act as amended in 1990 (CAA or the Act), we are taking action on a local rule that regulates these emission sources.

DATES: Any comments on this proposal must arrive by November 25, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted rule revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revision and TSD at the following locations:

Air and Radiation Docket and Information Center (6102T), U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Ventura County Air Pollution Control District, 669 Country Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of the local VCAPCD Rule 74.9. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 30, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–27135 Filed 10–24–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 43, 63, and 64

[IB Docket No. 02–324, IB Docket No. 96–261, FCC No 02–285]

International Settlements Policy Reform and International Settlement Rates

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document initiates a proceeding to re-examine the Commission's International Settlements Policy (ISP). The purpose of this proceeding is to: obtain further information about the competitive status of the U.S.-international marketplace; seek comment widely on a variety of proposals to reform the Commission's current application of the ISP and settlement rate policies; and request information on the issue of foreign mobile termination rates.

DATES: Comments are due December 10, 2002 and reply comments are due January 9, 2003.

ADDRESSES: Federal Communications Commission at 445 12th Street, SW., Room TW–B204, Washington, DC, 20554.

FOR FURTHER INFORMATION: James Ball, Chief, Policy Division, International Bureau, Lisa Choi, Senior Legal Advisor, Policy Division, International Bureau or Gardner Foster, Attorney Advisor, Policy Division, International Bureau at (202) 418–1460. Information regarding this proceeding and others may also be found on the Commission's website at *www.fcc.gov*. Regarding the information collections requirements contact Judy Boley at (202) 418–0214, 445 12th Street, SW., Rm. 1–C804, Washington, DC 20554 or via Internet at *jboley@fcc.gov* and Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* in IB Docket No. 02–324; IB Docket No. 96–261; FCC 02–285, adopted October 10, 2002 and released on October 11, 2002. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419 interested parties may file comments on or before December 10, 2002, and reply comments on or before January 9, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Copies of the *Notice of Proposed Rulemaking* and any subsequently-filed documents in this matter may be obtained from Qualex International, in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 863–2893, via facsimile at (202) 863–2898, or via e-mail at *qualexint@aol.com*. The *Notice of Proposed Rulemaking* and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554.

Paperwork Reduction Act

The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden

invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collections techniques or other forms of information technology. This *Notice of Proposed Rulemaking* contains proposed information collections. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the **Federal Register**.

Summary of Notice of Proposed Rulemaking

The Commission initiates this rulemaking to examine possible reform of our International Settlements Policy (ISP) and International Simple Resale (ISR) and benchmarks policies. The Commission's policies in this area have been and will continue to protect U.S. consumers where competition may be nonexistent or insufficient. The Commission last examined the reform of the ISP in 1999. Since then, there has developed increased participation and competition in the U.S.-international marketplace, decreased settlement and end-user rates, and growing liberalization and privatization in foreign markets. In addition, as a result of U.S. policies and other factors, the average U.S.-international settlement rate has fallen from $0.35 in 1997 to $0.14 in 2001 and, correspondingly, U.S. calling prices have dropped from $0.67 in 1997 to $0.33 in 2001. These developments provide an opportunity for the Commission to review and reform our existing regulatory requirements that may be inhibiting the benefits of lower calling prices and greater service innovations to consumers. We consider in this proceeding adopting more market-based policies. In addition, in this NPRM, we inquire whether foreign mobile termination rates may be adversely affecting U.S. consumers and the market for U.S.-international services.

Initial Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) on the possible significant economic impact on small entities by the policies and actions considered in the NPRM. The test of the IRFA is set forth. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM as provided in paragraph 56 of this Notice of Proposed Rulemaking. The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

Pursuant to sections 1, 4(i)–4(j), 201–205, 214, 303(r), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–154(j), 201–205, 214, 303(r), 309, this Notice of Proposed Rulemaking is hereby adopted.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center shall send a copy of this Notice of Proposed Rulemaking, including the initial regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (1981).

List of Subjects in 47 CFR Parts 0, 43, 63 and 64

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–27312 Filed 10–24–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2002–D019]

Defense Federal Acquisition Regulation Supplement; Transportation of Supplies by Sea—Commercial Items

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to add an alternate version of a clause, pertaining to transportation of supplies by sea, to the list of clauses included in contracts for commercial items to implement statutes or Executive orders. The alternate version of the clause applies to contracts at or below the simplified acquisition threshold.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before December 24, 2002, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2002–D019 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D019.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule corrects an oversight in the final rule published at 67 FR 38020 on May 31, 2002, under DFARS Case 2000–D014, Ocean Transportation by U.S.-Flag Vessels. That rule added requirements for contractors to use U.S.-flag vessels when transporting supplies by sea under contracts at or below the simplified acquisition threshold, in accordance with 10 U.S.C. 2631. The rule provided an Alternate III for use with the clause at DFARS 252.247–7023, Transportation of Supplies by Sea, in contracts at or below the simplified acquisition threshold, to minimize the information required from contractors under these contracts. This proposed rule adds Alternate III of 252.247–7023 to the list of clauses at 252.212–7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items, as it was inadvertently omitted from the previous DFARS rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most entities providing ocean transportation of freight are not small businesses, and the rule minimizes the information required from contractors under contracts valued at or below the simplified acquisition threshold. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D019.

C. Paperwork Reduction Act

The information collection requirements in this rule are covered by Office of Management Budget Clearance Number 0704–0245, and have been approved for use through July 31, 2004.

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR part 252 as follows:

1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Section 252.212–7001 is amended as follows:

a. By revising the clause date to read "(XXX 2002)"; and

b. In paragraph (b), by revising entry "252.247–7023" to read as follows:

252.212–7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

* * * * *

(b) * * *

252.247–7023 Transportation of Supplies by Sea (May 2002) (Alternate I) (Mar 2000) (Alternate II) (Mar 2000) (Alternate III) (May 2002) (10 U.S.C. 2631).

* * * * *

[FR Doc. 02–27106 Filed 10–24–02; 8:45 am]

BILLING CODE 5001–08–P

Notices

Federal Register
Vol. 67, No. 207
Friday, October 25, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Provincial Advisory Committee (OPAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic Advisory Committee (OPAC) will meet on November 22, 2002. The meeting will be held at the Olympic National Forest Headquarters office at 1835 Black Lake Blvd. SW., Olympia, Washington. The meeting will begin at 9:30 a.m. and end at approximately 3:30 p.m. Agenda topics are: (1) Current status of key Forest issues; (2) Status update on the Resource Advisory Committees for Rural Schools and Community Self-Determination Act of 2000; (3) Consultation with Indian Tribes; (4) Social and Economic Monitoring of the Northwest Forest Plan; (5) Regional Ecosystem Office Update; (6) Road Management Update; (7) Olympic National Forest Northwest Forest Plan Monitoring Report Validation; (8) Open forum; and (9) Public comments.

All Olympic Province Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Ken Eldredge, Province Liaison, USDA, Olympic National Forest Headquarters, 1835 Black Lake Blvd., Olympia, WA 98512–5623, (360) 956–2323 or Dale Hom, Forest Supervisor, at (360) 956–2301.

Dated: October 21, 2002.

Dale Hom,

Forest Supervisor, Olympic National Forest.

[FR Doc. 02–27202 Filed 10–24–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee (RAC) will meet beginning at 2 p.m. on Sunday, November 17 through noon, Tuesday, November 19, 2002, in Wrangell, Alaska. The purpose of this meeting is to: Receive training pertinent to committee operations; to establish administrative procedures by which the committee will operate; and to create the process by which projects covered under Title II, Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act, will be identified and evaluated.

DATES: The meeting will be held commencing at 2 p.m. on Sunday, November 17 and adjourn at noon, Tuesday, November 19, 2002.

ADDRESSES: The meeting will be held at Harding's Old Sourdough Lodge, 1104 Peninsula, Wrangell, Alaska.

FOR FURTHER INFORMATION CONTACT: Chip Weber, Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99929, phone (907) 874–2323, e-mail *cweber@fs.fed.us*, or Patty Grantham, Petersburg District Ranger, P.O. Box 1328, Petersburg, AK 99833, phone (907) 772–3871, e-mail *pagrantham@fs.fed.us*.

SUPPLEMENTARY INFORMATION: This will be the first meeting of the committee, and will focus on training regarding Federal Advisory Committee processes, and on the content of the Payments to States legislation (Pub. L. 106–393); on administrative procedures regarding the functioning of the Wrangell-Petersburg RAC; and on developing the process by which projects will be requested and evaluated for recommendation for Title II funding. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: October 18, 2002.

Thomas Puchlerz,

Forest Supervisor.

[FR Doc. 02–27200 Filed 10–24–02; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed collection; comment request.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to the annual certifications of nonprofit agencies serving people who are blind (Committee Form 403).

DATES: Comments must be submitted on or before December 24, 2002.

ADDRESSES: Written comments and/or requests for information, including copies of the form and supporting documentation, should be directed to: Janet Yandik, Information Management Specialist, Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Jefferson Plaza 2, Suite 10800, Arlington, VA 22202–3259, e-mail: *jyandik@jwod.gov*; phone: (703) 603–7746; fax: (703) 603–0655.

SUPPLEMENTARY INFORMATION: The Committee has an annual certification form for nonprofit agencies serving people who are blind (Committee Form 403, OMB Control Number 3037–0001.)

Information on the form is needed to ensure that nonprofit agencies serving people who are blind, that participate in the Javits-Wagner-O'Day program, continue to meet the requirements of 41 U.S.C. 46–48c.

Committee Form 403 has been modified to add the following items:

1. In section 5, Certification: A line will be added for the Agency Executive's email address.
2. In section 7, Data for Work Performed under Javits-Wagner-O'Day (JWOD) Act Only: A line will be added to count the number of people who are blind, who worked on JWOD products and the number of blind who worked on JWOD services.
3. In section 8, Placement and Promotion of People Who Are Blind: A third column will be added entitled "Direct Placement" to account for individuals placed into competitive or supported employment, but cannot currently be accounted for under the JWOD and NON–JWOD categories.
4. In section 9, Sales Data: A block will be added to collect sales data from Base Supply Centers separate from the service sales.

Sheryl D. Kennerly,

Director of Information Management.

[FR Doc. 02–27254 Filed 10–24–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed collection; comment request.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to the annual certifications of nonprofit agencies serving people who have severe disabilities (Committee Form 404).

DATES: Comments must be submitted on or before December 24, 2002.

ADDRESSES: Written comments and/or requests for information, including copies of the form and supporting documentation, should be directed to: Janet Yandik, Information Management Specialist, Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Jefferson Plaza 2, Suite 10800, Arlington, VA 22202–3259, e-mail: *jyandik@jwod.gov*; phone: (703) 603–7746; fax: (703) 603–0655.

SUPPLEMENTARY INFORMATION: The Committee has an annual certification form for nonprofit agencies serving people who have severe disabilities (Committee Form 404, OMB Control Number 3037–0002.)

Information on the form is needed to ensure that nonprofit agencies serving people who have severe disabilities, that participate in the Javits-Wagner-O'Day program, continue to meet the requirements of 41 U.S.C. 46–48c.

Committee Form 404 has been modified to add the following items:

1. In section 5, Certification: A line will be added for the Agency Executive's email address.
2. In section 7, Data for Work Performed under Javits-Wagner-O'Day (JWOD) Act Only: A line will be added to count the number of people who are severely disabled, who worked on JWOD products and the number of severely disabled who worked on JWOD services.
3. In section 8, Placement and Promotion of People with Severe Disabilities: A third column will be added entitled "Direct Placement" to account for individuals placed into competitive or supported employment, but cannot currently be accounted for under the JWOD and NON–JWOD categories.
4. In section 9, Sales Data: A block will be added to collect sales data from Base Supply Centers separate from the service sales.

Sheryl D. Kennerly,

Director of Information Management.

[FR Doc. 02–27255 Filed 10–24–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: November 24, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. If approved, the action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Base Supply Center, Federal Law Enforcement Training Center, Brunswick, Georgia.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Contract Activity: Federal Law Enforcement Training Center (FLETC).
Service Type/Location: Custodial Service, Camp Bullis (Buildings 5000, 6110, and 6201), San Antonio, Texas.
NPA: Professional Contract Services, Inc., Austin, Texas.

Contract Activity: MEDCOM Health Care Acquisition Activity, Fort Sam Houston, Texas.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–27253 Filed 10–24–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Quarterly Survey of State and Local Tax Revenues; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 24, 2002.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dhynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to David A. Kellerman, Chief, Public Finance Analysis Branch-B, Governments Division, U.S. Census Bureau, Washington, DC 20233–6800 (301–763–7242).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request an extension of the Quarterly Survey of State and Local Tax Revenue. The Bureau needs State and local tax data to publish benchmark statistics on public sector taxes; to provide data to the Bureau of Economic Analysis for GDP calculations and other economic indicators; and to provide data for economic research and comparative studies of governmental finances. Data are collected on a quarterly basis from State and local tax collecting agencies.

Tax collection data are used to measure economic activity for the Nation as a whole, as well as for comparison among the various states. These data also are useful in comparing the mix of taxes employed by individual states, and in determining the revenue raising capacity of different types of taxes.

The Quarterly Survey of Property Tax Collections (form F–71) is sent to 5,739 local government tax collecting agencies in 530 county areas. While some counties are served by a single county level tax collection agency, others have county, city, township, and even school district collectors. Each agency is asked to report the total property tax collections during the past quarter.

The Quarterly Survey of State Tax Collections (Form F–72) is sent to a state level revenue, finance, or budget agency in each state to report tax collection data for the preceding 3-month period.

The Quarterly Survey of Selected Local Taxes (Form F–73) is sent to 70 local tax collection agencies known to have substantial collections of local general sales and/or local individual income taxes.

The expected decrease in the respondent burden is due to a slight reduction in the universe of the survey. Due to the disincorporation and consolidation of certain tax collecting agencies, the number of respondents receiving Form F–71 has decreased by 61. The F–73 increased by 15 due to creation of a new sample. There are no planned content changes to any form.

II. Method of Collection

The F–71 portion of the survey is conducted by mail canvass. Responses are screened manually and then entered on a microcomputer

F–73 forms are sent to respondents by mail canvass or electronically via e-mail. Several respondents have requested to conduct the survey through electronic mail.

F–72 forms are sent to respondents by either facsimile or e-mail (as requested). Respondents are given the option of returning the forms through facsimile, mail or electronically via e-mail.

Telephone follow up of large property tax collectors is the main method used to maximize response. In those instances when we are not able to obtain a response, estimates are made for non-respondents by using data of the same quarter from the last year it had been received.

III. Data

OMB Number: 0607–0112.

Form Number: F–71, F–72, and F–73.

Type of Review: Regular.

Affected Public: State and local governments.

Estimated Number of Respondents: 5,860.

Estimated Time Per Response: 25 minutes.

Estimated Total Annual Burden Hours: 5,911.

Estimated Total Annual Cost: The estimated cost to the respondents is $107,226.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 21, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–27214 Filed 10–24–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2002 Survey of Business Owners and Self-Employed Persons (SBO).

Form Number(s): SBO–1, SBO–2.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 416,666 hours.

Number of Respondents: 2,500,000.

Avg Hours Per Response: 10 minutes.

Needs and Uses: The 2002 Survey of Business Owners and Self-Employed Persons (SBO) will provide the only comprehensive, regularly collected source of information on selected economic and demographic characteristics for businesses and business owners by gender, ethnicity, and race. It is conducted as part of the economic census program. This survey was previously known as the Survey of Minority-Owned Business Enterprises (SMOBE) and the Survey of Women-Owned Business Enterprises (SWOBE).

For the 2002 SBO, significant changes have been made to the questionnaire. These changes include the following:

- The questions about race and ethnicity have been modified to meet the OMB guidelines to allow respondents the opportunity to select more than one race. Also, per the OMB guidelines, the Hispanic origin question is placed before the race question.
- The survey adopts person-level reporting for a variety of characteristics for up to three individual owners, because background research suggested difficulty with aggregate reporting of race and ethnicity combinations for multiple owners.
- Several new questions have been borrowed from the former Characteristics of Business Owners survey, which has not been funded for the upcoming economic census. These items will fill the void for many data users.
- A new question has also been added to increase our understanding of the businesses' use of alternative employment arrangements.

These data are needed to evaluate the extent and growth of business ownership by minorities and women in order to provide a framework for assessing and directing Federal, state, and local government programs designed to promote the activities of disadvantaged groups. The Small Business Administration and the Minority Business Development Agency use the SBO data when allocating resources for their business assistance programs. The data are also widely used by private firms and individuals to evaluate their own businesses and markets, by the media for news stories, by researchers and academia for determining firm characteristics, and by the legal profession in evaluating the concentration of minority businesses in particular industries and/or geographic areas.

Affected Public: Businesses or other for-profit.

Frequency: Every five years.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 131, 193, & 224.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: October 21, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–27215 Filed 10–24–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Income and Program Participation (SIPP) Wave 8 of the 2001 Panel

ACTION: Proposed collection; Comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 24, 2002.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judith H. Eargle, Census Bureau, FOB 3, Room 3387, Washington, DC 20233–0001, (301) 763–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or "waves" over the life of the panel. The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information about child support agreements, support for non-household members, functional limitations and disabilities (adults/children), adult well-being, and welfare reform. These supplemental questions are included with the core and are referred to as "topical modules."

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2001 Panel is currently scheduled for three years and will include nine waves of interviewing beginning February 2001. Approximately 50,000 households will be selected for the 2001 Panel, of which 37,500 are expected to be interviewed. We estimate that each household will contain 2.1 people, yielding 78,750 interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Three waves of interviewing will occur in the 2001 SIPP Panel during FY 2003. The total annual burden for the 2001 Panel SIPP interviews would be 118,125 hours in FY 2003.

The topical modules for the 2001 Panel Wave 8 collect information about:

- Child Support Agreements.
- Support for Non-Household Members.
- Functional Limitations and Disabilities (Adults/Children).
- Adult Well-Being.
- Welfare Reform.

Wave 8 interviews will be conducted from June 2003 through September 2003.

A 10-minute reinterview of 2,500 people is conducted at each wave to ensure accuracy of responses.

Reinterviews would require an additional 1,253 burden hours in FY 2003.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of one to four years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2001 Panel, respondents are interviewed a total of nine times (nine waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: 0607–0875.
Form Number: SIPP/CAPI Automated Instrument.
Type of Review: Regular.
Affected Public: Individuals or Households.
Estimated Number of Respondents: 78,750 people per wave.
Estimated Time Per Response: 30 minutes per person, on average.
Estimated Total Annual Burden Hours: 119,378.
Estimated Total Annual Cost: The only cost to respondents is their time.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for the Office of Management and Budget approval of this information collection. They also will become a matter of public record.

Dated: October 21, 2002.

Madeleine Clayton,

Management Analyst.

[FR Doc. 02–27212 Filed 10–24–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee will meet on November 12, 2002, 9:30 a.m., in the Herbert C. Hoover Building, Room 6087B, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Opening remarks and introductions.
2. Presentation of papers and comments by the public.
3. Discussion on Committee's annual report and plan.
4. Report from laser working group.
5. Update on revision of the Militarily Critical Technologies List.
6. Report on thermal imaging licensing initiatives.
7. Comment on revisions to the Export Administratiaon Regulations.
8. Elections of Chairman.

Closed Session

9. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BIS *MS*: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 29, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: October 22, 2002.

Lee Ann Carpenter,

Commerce Liaison Officer.

[FR Doc. 02–27204 Filed 10–24–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–880]

Notice of Initiation of Antidumping Duty Investigation: Barium Carbonate From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of antidumping duty investigation.

EFFECTIVE DATE: October 25, 2002.

FOR FURTHER INFORMATION CONTACT: David Layton (202) 482–0371 or Tisha Loeper-Viti (202) 482–7425, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are references to the provisions codified at 19 CFR part 351 (2002).

The Petition

On September 30, 2002, the Department received a petition filed in proper form by Chemical Products Corporation (CPC, or the petitioner). The Department received a supplement to the petition on October 16, 2002.

In accordance with section 732(b)(1) of the Act, the petitioner alleges that imports of barium carbonate from the People's Republic of China (the PRC) are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in sections 771(9)(C) of the Act, and it has demonstrated sufficient industry support with respect to the antidumping investigation that it is requesting the Department to initiate. *See infra*, "Determination of Industry Support for the Petition."

Scope of Investigation

The merchandise covered by this investigation is barium carbonate, regardless of form or grade. The product under investigation is currently classifiable under subheading 2836.60.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

We reviewed the description of the domestic like product presented in the petition. Based upon our review of the petitioner's claims, we concur that there is a single domestic like product, which is defined in the "Scope of Investigation" section above. This is consistent with determinations in past investigations to treat all barium carbonate products as a single class or kind of merchandise. *See, e.g., International Trade Commission Notices (No. 731–TA–31 Final): Precipitated Barium Carbonate from the Federal Republic of Germany*, 46 FR 32698 (June 24, 1981).

Finally, the Department has determined that, pursuant to section 732(c)(4)(A) of the Act, the petition contains adequate evidence of industry support and, therefore, polling is unnecessary. *See* the *Import Administration Antidumping Investigation Initiation Checklist, Industry Support section*, October 21, 2002 (the Initiation Checklist), on file in the Central Records Unit, Room B–099 of the main Department of Commerce building.

We determined that the petitioner has demonstrated industry support representing more than 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, because the petitioner represents more than 50 percent of total production of the like product, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) are also met. In addition, the Department received no opposition to the petition. Accordingly, we determine that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its

[1] *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp.639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

decision to initiate this investigation. The sources of data relating to U.S. and home market prices and factors of production are discussed in greater detail in the Initiation Checklist. Should the need arise in our preliminary or final determinations to use any of this information as facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

Regarding information involving non-market economy countries (NME), the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the country's NME status and the granting of separate rates to individual exporters. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994).

Export Price

The petitioner based export price (EP) on price quotes from several Chinese exporters within the period of investigation (POI) for the sale of powdered and calcined barium carbonate produced in the PRC. The petitioner calculated a net U.S. price by deducting inland freight expenses in the PRC using a surrogate value for rail freight in accordance with our NME calculation methodology.

Normal Value

The petitioner alleges that the PRC is an NME country, and notes that in all previous investigations the Department has determined that the PRC is an NME. *See, e.g., Notice of Final Determination in the Less Than Fair Value Investigation of Steel Wire Rope From the People's Republic of China*, 66 FR 12759, 12761 (Feb. 28, 2001). In accordance with section 771(18)(C) of the Act, any determination that a foreign country has at one time been considered an NME shall remain in effect until revoked. Therefore, the PRC will continue to be treated as an NME country unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because the PRC's status as an NME remains in effect, the petitioner determined the dumping margin using an NME analysis.

The petitioner asserts that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) A market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to that of the PRC in terms of per-capita gross national income. Based on the information provided by the petitioner, we believe that the petitioner's use of India as a surrogate country is appropriate for purposes of initiation of this investigation.

The petitioner estimated the quantities of inputs required to produce powdered and calcinated barium carbonate in the PRC based on the petitioner's own experience and adjusted for known differences in production in the PRC. These known differences include: (1) The use of coal as a fuel source and as a material input to reduce barite ore; (2) the production of carbon dioxide gas by heating limestone; and (3) the use of kerosene to heat the calciner.

For valuing the inputs, the petitioner attempted to use contemporaneous price data for the anticipated POI where it was available. Where this was not the case, the petitioner used information otherwise available as detailed below. The petitioner valued inputs of steam coal, limestone, lime, alum, and flocculant using Indian import statistics recorded for the months of January to June 2001 in the Monthly Statistics of the Foreign Trade of India. Barite ore was valued using a contemporaneous price quote from an Australian producer of barite ore because the petitioner demonstrated that the Indian import statistics value was abberationally high and the petitioner was unable to find an import value for any other possible surrogate country. The values for ferrous sulfate and sodium sulfate were based on the values reported in the publication *Chemical Weekly* for the period January to June 2002. The value for calcium sulfate was based on a publicly available price quote from a price list published on the Internet by Indian Chemical Industries (*see http://www.indian-chemicals.com*). A value for water was based on the average industrial price in four Indian metropolitan areas for the period 1995–1997 as reported in the Second Water Utilities Data Book: Asian and Pacific Region (1997). Electricity was valued using data from the 2001–02 Annual Report on the Working of State Electricity Boards published by the Power and Energy Division of the Planning Commission of India. All surrogate values that fell outside the anticipated POI, January 1, 2002, through June 30, 2002, were adjusted for inflation using sector-specific price indices (for electricity) and wholesale price indices (for all other inputs).

To determine factory overhead, selling, general and administrative (SG&A) expenses, and financial expenses and profit, the petitioner relied on rates derived from the financial statements of National Peroxide Ltd. (NPL) and Calibre Chemicals (CC), which are two Indian producers of bulk chemicals. Based on the information provided by the petitioner, we believe that the surrogate values represent information reasonably available to the petitioner and are acceptable for purposes of initiation of this investigation. Because the Department normally includes only operational income in calculating surrogate profit rates, we reduced NPL's profit rate to zero after deducting non-operational income (from property development) from its overall income.

Based upon a comparison of EP to adjusted normal value (NV), the revised estimated dumping margins range from 214.17 to 308.18 percent.

Fair Value Comparison

Based on the data provided by the petitioner, there is reason to believe that imports of barium carbonate from the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV.

The petitioner contends that the industry's injured condition is evident by a decline in prices, declining profitability, reduced levels of capacity utilization, declining shipments, lost sales and revenue due to PRC imports, and declining market share. The allegations of injury and causation are supported by relevant evidence including ITC import data, lost sales and revenue data, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* the Initiation Checklist.

Initiation of Antidumping Investigation

Based upon our examination of the petition on barium carbonate, we have found that it meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of barium carbonate from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representative of the government of the PRC. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(C)(2).

ITC Notification

We have notified the ITC of our initiation as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine no later than November 14, 2002, whether there is a reasonable indication that imports of barium carbonate from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 21, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–27261 Filed 10–24–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–853]

Bulk Aspirin from the People's Republic of China: Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review.

SUMMARY: On August 7, 2002, the Department of Commerce published a notice of preliminary results of its changed circumstances review in bulk aspirin from the People's Republic of China examining whether Jilin Henghe Pharmaceutical is the successor-in-interest to Jilin Pharmaceutical Company Ltd. and Jilin Pharmaceutical Import and Export Corporation. We have now completed the changed circumstances review and determine Jilin Henghe Pharmaceutical to be the successor-in-interest to Jilin Pharmaceutical Company Ltd. and Jilin Pharmaceutical Import and Export Corporation.

EFFECTIVE DATE: October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Julie Santoboni or Cole Kyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4194 and (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the "Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to 19 CFR Part 351 (2001).

Background:

On August 7, 2002, in accordance with Section 751(b) of the Act and 19 CFR 351.216 and 351.221(c)(3), the Department published its preliminary results in the **Federal Register**, preliminarily finding Jilin Henghe Pharmaceutical ("Jilin Henghe") to be the successor-in-interest to Jilin Pharmaceutical Company Ltd. and Jilin Pharmaceutical Import and Export Corporation (collectively, "Jilin Pharmaceutical"). We invited interested parties to comment on these findings. No comments were received (*see Bulk Aspirin from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Changed Circumstances Review*, 67 FR 51167) ("*Preliminary Results*").

Scope of the Review

The product covered by this review is bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption). Bulk aspirin may be imported in two forms, as pure ortho-acetylsalicylic acid or as mixed ortho-acetylsalicylic acid. Pure ortho-acetylsalicylic acid can be either in crystal form or granulated into a fine powder (pharmaceutical form). This product has the chemical formula $C_9H_8O_4$. It is defined by the official monograph of the United States Pharmacopoeia 23 ("USP"). It is currently classifiable under the *Harmonized Tariff Schedule of the United States* ("HTSUS") subheading 2918.22.1000.

Mixed ortho-acetylsalicylic acid consists of ortho-acetylsalicylic acid combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances. The presence of other active substances must be in concentrations less than that specified for particular nonprescription drug combinations of aspirin and active substances as published in the *Handbook of Nonprescription Drugs*, eighth edition, American Pharmaceutical Association. This product is currently classifiable under HTSUS subheading 3003.90.0000.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Final Results of Review

Because we received no comments on the preliminary results, for the reasons stated in the *Preliminary Results* and based on the facts on the record, we find Jilin Henghe to be the successor-in-interest to Jilin Pharmaceutical for antidumping duty cash deposit purposes. In order to make this determination, we examined the management structure of Jilin Henghe and Jilin Pharmaceutical, including, but not limited to, financial statements, stock purchase agreements, sales documents and organizational charts. Since the record shows that Jilin Henghe maintained the same management among other things, we determine that Jilin Henghe is the successor-in-interest to Jilin Pharmaceutical.

Jilin Henghe will be assigned the same antidumping duty cash-deposit rate with respect to the subject merchandise as Jilin Pharmaceutical, its predecessor company. This cash deposit requirement will be effective upon publication of this notice of final results of changed circumstances review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date. This cash deposit rate shall remain in effect until publication of the final results of the next administrative review.

This determination is issued and published in accordance with sections 751(b)(1) and 777(l)(1) of the Act.

Dated: October 18, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–27259 Filed 10–24–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Forged Stainless Steel Flanges from India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Helen Kramer at (202) 482–0405 (Snowdrop Trading, Pvt. Ltd.), Michael Ferrier at (202) 482–1394 (Isibars, Ltd.) Shireen Pasha at (202) 482–0193 (Echjay Forgings Ltd./Pushpaman Exports), or Dena Aliadinov at (202) 482–3362 (Viraj Forgings, Ltd.), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department of Commerce ("the Department") to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested, and a final determination within120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On March 27, 2002, the Department initiated an administrative review of the antidumping duty order on forged stainless steel flanges from India for the following companies: Metal Forging Rings & Bearings; Snowdrop Trading, Pvt. Ltd.; Viraj Group; Bhansali Ferromet Pvt. Ltd.; Echjay Forgings Ltd./ Pushpaman Exports; Isibars, Ltd.; Panchmahal Steel, Ltd.; Patheja Forgings & Auto Parts, Ltd.; and Viraj Forgings, Ltd. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 67 FR 14696 (March 27, 2002). The Department received timely responses from Snowdrop Trading, Pvt. Ltd. ("Snowdrop"); Echjay Forgings Ltd./ Pushpaman Exports ("Echjay"); Isibars, Ltd. ("Isibars"); and Viraj Forgings, Ltd. ("Viraj") (Viraj is part of the Viraj Group). The period of review (POR) is February 1, 2001, through January 31, 2002. The preliminary results are currently due on October 31, 2002.

Extension of Time Limit for Preliminary Results of Review

The instant review involves procedural difficulties that necessitate a greater amount of time in order to preliminarily complete this review, including the number of companies under review; the inability of one of the companies to meet the Department's deadlines for responses to the questionnaire due to a natural disaster; the delay in obtaining financial statements because the companies' fiscal years ends in March; the lack of legal representation for two companies; and the involvement of two of the companies under review in simultaneous antidumping proceedings. Because of these issues, we find it is not practicable to complete this review within the initial time limits mandated by section 751(a)(3)(A) of the Act. Therefore, we are fully extending the due date for the preliminary results to 365 days after the last day of the anniversary month of the antidumping order, which is February 28, 2003. The final results will continue to be 120 days after the date the preliminary results are issued.

This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: October 18, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–27260 Filed 10–24–02; 8:45 am]

BILLING CODE 3510–DS–S

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Friday, November 1, 2002, 10 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Petition to HP 99–1 Polyvinyl Chloride (PVC) (Decision)

The Commission will consider options relating to Petition to HP 99–1 requesting ban of polyvinyl chloride (PVC) in all toys and other products intended for children five years of age and under.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: October 23, 2002.

Todd A. Stevenson,

Secretary.

[FR Doc. 02–27410 Filed 10–23–02; 2:35 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 24, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 22, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision of a currently approved collection.

Title: National Assessment of Educational Progress: 2003 Charter Schools Questions.

Frequency:

Affected Public: Not-for-profit institutions (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 658800.

Burden Hours: 169101.

Abstract: The charter schools in the NAEP sample will complete the NAEP School Questionnaire, through which they will provide information on instructional organization and time, parental involvement, stability of the teaching staff, and characteristics of the student body. The purpose of the NAEP Charter School Questions is to be able to describe the schools in terms of some key features unique to charter schools. There is no one kind of charter school—who they serve, how they are funded, how they operate, and to whom they must report varies depending on state legislation and the terms of the charter. Nevertheless, it is important for NAEP to be able to describe the charter schools in the sample so that the results can be interpreted in a meaningful way.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the Browse Pending Collections link and by clicking on link number 2176. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–27191 Filed 10–24–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, NV

AGENCY: Department of Energy.

ACTION: Notice of Distribution.

SUMMARY: The Department of Energy (DOE) announces the distribution and availability of the Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (DOE/EIS–0250F) in paper and CD ROM format. The Nuclear Waste Policy Act of 1982, as amended (NWPA) (42 U.S.C. 10101 *et seq.*) requires that any recommendation from the Secretary of Energy to the President that the President approve the Yucca Mountain site for the development of a repository must include a final environmental impact statement (EIS). Accordingly, the Department prepared this Final EIS consistent with the NWPA, the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) regulations that implement the procedural provisions of NEPA (40 CFR parts 1500–1508), and the DOE procedures implementing NEPA (10 CFR part 1021). The Final EIS has been filed with the U.S. Environmental Protection Agency. The Final EIS provides information on potential environmental impacts that could result from a Proposed Action to construct, operate and monitor, and eventually close a repository for the disposal of spent nuclear fuel and high-level radioactive waste at Yucca Mountain in Nevada, including potential impacts from transporting spent nuclear fuel and high-level radioactive waste to the repository. The Final EIS also considers the potential environmental impacts from an alternative referred to as the No-Action Alternative, under which a repository would not be developed at Yucca Mountain.

DATES: The Final EIS accompanied the Secretary of Energy's recommendation to the President regarding the suitability of the Yucca Mountain site for the development of a geologic repository on February 14, 2002, and was made available to the public electronically on the Internet and in public reading rooms at that time, pursuant to the NWPA. On February 15, 2002, the President transmitted his recommendation of the site to Congress. After the State of Nevada submitted a notice of disapproval on April 8, 2002, the U.S. House of Representatives and the Senate passed a resolution to approve the site on May 8 and July 9, 2002 respectively. The President signed the resolution approving the site on July 23, 2002.

ADDRESSES: Written requests for further information on the Final EIS, and requests for paper copies of the document (or a CD–ROM version) should be directed to: Dr. Jane Summerson, EIS Document Manager, M/S 010, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 364629, North Las Vegas, Nevada 89036–8629, Telephone 1–800–225–6972, Facsimile 1–800–967–0739.

The Final EIS is available electronically on the Internet at *www.ymp.gov* and will also be available on the DOE NEPA Web site at *http://tis.eh.doe.gov/nepa/*. Addresses of the locations where paper copies of the Final EIS are available for public review are listed in this Notice in the **SUPPLEMENTARY INFORMATION** section under "Distribution and Availability of the Final EIS."

FOR FURTHER INFORMATION CONTACT: Dr. Jane Summerson, EIS Document Manager, M/S 010, U.S. Department of

Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 364629, North Las Vegas, Nevada 89036–8629, Telephone 1–800–225–6972, Facsimile 1–800–967–0739.

General information on the DOE NEPA process may be requested from: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Telephone 1–202–586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 1995, the Department published a Notice of Intent (60 FR 40164) to prepare an Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada. The purpose of the Notice of Intent was to inform the public of the proposed scope of the Repository EIS, to solicit public input, and to announce that scoping meetings would be held from August through October 1995. During that period 15 public scoping meetings were held throughout the United States to obtain public comments regarding the scope, alternatives, and issues that should be addressed in the EIS. The scoping period closed on December 5, 1995. In May 1997, DOE published the Summary of Public Scoping Comments Related to the Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-level Radioactive Waste at Yucca Mountain, Nye County, Nevada, which summarized the comments received by DOE during the scoping process and described how DOE planned at that time to address issues raised during scoping. A Notice of Availability for the Summary of Public Scoping Comments document was published on July 9, 1997 (62 FR 36789).

On August 13, 1999, DOE published a notice in the **Federal Register** announcing the availability of the Draft Environmental Impact Statement (64 FR 44200). The comment period for the Draft EIS was 199 days, with 21 public hearings conducted nationally and in the State of Nevada. On May 4, 2001, DOE published a notice in the **Federal Register** announcing the availability of a Supplement to the Draft Environmental Impact Statement (66 FR 22540). The comment period for the Supplement to the Draft EIS was 57 days, with 3 public hearings conducted in the State of Nevada.

Alternatives Considered

The Final EIS evaluates a Proposed Action and a No-Action Alternative. Under the Proposed Action, DOE would construct, operate and monitor, and eventually close a geologic repository at Yucca Mountain for the disposal of as much as 70,000 metric tons of spent nuclear fuel and high-level radioactive waste. The Proposed Action includes the transportation of spent nuclear fuel and high-level radioactive waste to Yucca Mountain from commercial and DOE sites. Under the No-Action Alternative, DOE would end activities at Yucca Mountain, and commercial and DOE sites would continue to store spent nuclear fuel and high-level radioactive waste, packaged as necessary for their safe on-site management.

Two national transportation scenarios are evaluated in the Final EIS. The mostly legal-weight truck [1] scenario assumes that, with a few exceptions, spent nuclear fuel and high-level radioactive waste would be shipped to the repository by legal-weight truck over existing highways. The mostly rail scenario assumes that spent nuclear fuel and high-level radioactive waste would be shipped to Nevada by rail, with some exceptions (based largely on the on-site loading limitations at some commercial sites).

The Nevada transportation implementing alternatives parallel the national transportation scenarios. However, because no rail access currently exists to the repository site, the EIS considers different implementing alternatives for the construction of either a new branch rail line to the proposed repository, or an intermodal transfer station [2] with associated highway routes for heavy-haul trucks.[3]

Under the No-Action Alternative, DOE would end activities at Yucca Mountain and undertake site reclamation to mitigate adverse environmental impacts from those activities. The commercial nuclear power utilities and DOE would continue to store spent nuclear fuel and high-level radioactive waste. Because it would be highly speculative to attempt to predict future events, DOE decided to illustrate that set of possibilities by focusing its analysis of the No-Action Alternative on the potential impacts of two scenarios. Scenario 1 assumes that spent nuclear fuel and high-level radioactive waste would remain at the 72 commercial and 5 DOE sites under institutional control for at least 10,000 years. Scenario 2 also assumes that spent nuclear fuel and high-level radioactive waste would remain at the 77 sites in perpetuity, but under institutional control for only about 100 years.

Final EIS

The Final EIS differs from the Draft EIS and Supplement in several respects. Changes were made in the Final EIS in response to comments on the Draft EIS and Supplement, to correct errors in the Draft EIS and Supplement, and to provide new information or improved analyses relevant to the Final EIS. The Final EIS includes the Readers Guide and Summary; Volume I—Impact Analyses (Chapters 1–15); Volume II—Appendices A–O; and Volume III—Comment Response Document (Parts 1–4). In addition, Volume IV contains information regarding transportation and repository accident scenarios, and is only available as discussed below. Included with the Final EIS is an errata sheet, which describes errors in the Final EIS identified by DOE after the EIS was approved in February 2002. These errors have been considered both individually and collectively, and DOE has determined that no errors identified would cause a significant change to the environmental impacts, nor would they change the conclusions reached in the Final EIS.

The Final EIS evaluates (1) the potential impacts of the construction, operation and monitoring, and eventual closure of a repository; (2) the potential long-term impacts of repository disposal of spent nuclear fuel and high-level radioactive waste; (3) the potential impacts of transporting these materials to the repository; and (4) the potential impacts of not proceeding with a repository. The Final EIS identifies the Department's preferred alternative, which is to proceed with the proposed action to construct, operate and monitor, and eventually close a repository at Yucca Mountain, and to use mostly rail, both nationally and in Nevada, to transport spent nuclear fuel and high-level radioactive waste to the repository.

Distribution and Availability of the Final EIS

Paper copies of the Readers Guide and Summary and the errata sheet, and a CD-ROM of the Final EIS (Volumes I, II, and III), were distributed to Members of Congress, Federal, State, and Indian tribal governments, local officials, persons, agencies, and organizations who commented on the Draft EIS and Supplement to the Draft EIS, and others who have indicated an interest in the EIS process. Paper copies of the 5,000-page Final EIS may also be requested as indicated previously in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections of this notice. However, in light of the events of September 11, 2001, Volume IV is available only upon written request to the DOE EIS Document Manager at the address provided in the **ADDRESSES** section. The Final EIS is available electronically on the Internet at *www.ymp.gov*, and will also be available on the DOE NEPA Web site at *http://tis.eh.doe.gov/nepa/*. Addresses of Public Reading Rooms and libraries where the Final EIS is available for public review are listed below. Copies of references considered in preparation of the Final EIS are available at the following Public Reading Rooms: University of Nevada–Las Vegas, Nevada; University of Nevada–Reno, Nevada; Beatty Yucca Mountain Science Center, Nevada; and the DOE Headquarters Office in Washington, DC.

The Environmental Protection Agency has published a separate Notice of Availability of the Final EIS.

Public Reading Rooms.

California

Inyo County—Contact: Andrew Remus; (760) 878–0447; Inyo County Yucca Mountain Repository Assessment Office; 168 North Edwards Street; Post Office Drawer L; Independence, CA 93526.

Oakland Operations Office—Contact: Judy Weiss; (510) 637–1762; U. S. Department of Energy Public Reading Room; EIC; 1301 Clay Street, Room 700N; Oakland, CA 94612–5208.

Colorado

National Renewable Energy Laboratory—Contact: John Horst; (303) 275–4709; Public Reading Room; 1617 Cole Boulevard; Building 17–4; Golden, CO 80401.

Rocky Flats Public Reading Room—Contact: Gary Morell; (303) 469–4435; College Hill Library; 3705 112th Avenue; Westminster, CO 80030.

DOE Headquarters

Headquarters Office—Contact: Carolyn Lawson; (202) 586–3142; U.S. Department of Energy; Room 1E–190, Forrestal Building; 1000 Independence Avenue, SW; Washington, DC 20585.

Georgia

Atlanta Support Office—Contact: Ron Henderson; (404) 562–0555; Department of Energy; Public Reading Room; 75 Spring Street, Suite 200; Atlanta, GA 30303.

Southeastern Power Administration—Contact: Joel W. Seymour; (706) 213–3810; U.S. Department of Energy; Reading Room; 1166 Athens Tech Road; Elberton, GA 30635–6711.

Idaho

Boise State University Library—Contact: Elaine Watson; (208) 426–1737; Government Documents; 1910 University Drive; Boise, ID 83725–1430.

Idaho Operations Office—Contact: Brent Jacobson; (208) 526–1144; U.S. DOE Public Reading Room; 1776 Science Center Drive M/S 2300; Idaho Falls, ID 83415.

Illinois

Chicago Operations Office—Contact: Tiffany Fotno; (312) 996–2738; Document Department; University of Illinois at Chicago; 801 South Morgan Street M/C 234; Chicago, IL 60680.

Louisiana

Strategic Petroleum Reserve Project Management Office—Contact: Deanna Harvey (FE 445); (504) 734–4316; U.S. Department of Energy; SPRPMO Reading Room; 900 Commerce Road, East; New Orleans, LA 70123.

Nevada

Lander County—Contact: Mickey Yarbro; (775) 635–2885; 315 S. Humboldt Street, Battle Mountain, NV 89820.

Beatty Yucca Mountain Science Center—Contact: Marina Anderson; (775) 553–2130; 100 North E Avenue; Beatty, NV 89003.

Lincoln County—Contact: Lola Stark; (775) 726–3511; Box 1068 100 Depot Avenue, Suite 15; Caliente, NV 89008.

Nevada State Clearinghouse—Contact: Heather Elliot; (775) 684–0209; Department of Administration; 209 Musser Street, Room 200; Carson City, NV 89701.

White Pine County—Contact: Josie Larson; (775) 289–2033; Nuclear Waste Project Office; 959 Campton Street; Ely, NV 89301.

Eureka County—Contact: Leonard Fiorenzi; (775) 237–5372; Eureka County Public Works; 701 South Main St.; Eureka, NV 89301.

Churchill County—Contact: Alan Kalt; (775) 428–0212; 155 North Taylor Street, Suite 182; Fallon, NV 89046–2478.

Esmeralda County—Contact: George McCorkell; (775) 485–3419; Yucca Mountain Public Information Center; 105 S. Main Street; Goldfield, NV 89013.

Mineral County—Contact: Linda Mathius; (775) 945–2484; First & A Streets; Hawthorne, NV 89415.

Clark County—Contact: Irene Navis; (702) 455–5129; 500 South Grand Central Parkway #3012; Las Vegas, NV 89106.

Las Vegas, Nevada—Contact: Susie Skarl; (702) 895–2200; University of Nevada Las Vegas; Lied Library; 4505 Maryland Parkway; Las Vegas, NV 89154–7039.

Las Vegas Yucca Mountain Science Center—Contact: Claire Whetsel; (702) 295–1312; 4101–B Meadows Lane; Las Vegas, NV 89107.

Nye County—Contact: Les Bradshaw; (775) 727–7727; Department of Natural Resources and Federal Facilities; 1210 E. Basin Avenue, Suite 6; Pahrump, NV 89060.

Pahrump Yucca Mountain Science Center—Contact: John Pawlak; (775) 727–0896; 1141 South Highway 160, Suite #3; Pahrump, NV, 89041.

Reno, Nevada—Contact: Patrick Ragains; (775) 784–6500, Ext. 309; University of Nevada, Reno; The University of Nevada Libraries; Business and Government Information Center M/S 322; 1664 N. Virginia Street; Reno, NV 89557–0044.

New Mexico

University of New Mexico—Contact: Dave Baldwin; (505) 277–5441; U.S. DOE Contract Reading Room; Zimmerman Library; Albuquerque, NM 87131–1466.

Ohio

Fernald Area Office—Contact: Diana Rayer; (513) 648–7480; U.S. Department of Energy; Public Information Room; 10995 Hamilton Cleves Highway, M/S 78; Harrison, OH 45030.

Oklahoma

National Energy Technology Lab, National Petroleum Technology Office—Contact: Bernadette Ward; (918) 699–2033; U.S. Department of Energy; 1 Williams Tower I, West 3rd Street, Suite 1400; Tulsa, OK 74103.

Southwestern Power Administration—Contact: Marti Ayres; (918) 595–6609; U.S. Department of Energy; Public Reading Room; 1 West 3rd, Suite 1600; Tulsa, OK 74103–3519.

Oregon

Bonneville Power Administration—Contact: Bill Zimmerman; (503) 230–7334; U.S. Department of Energy; BPA–C–ILL–1; 905 NE 11th Street; Portland, OR 97232.

[1] Truck with a gross vehicle weight (both truck and cargo) of less than 80,000 pounds.

[2] An intermodal transfer station is a facility at the juncture of rail and road transportation used to transfer shipping casks containing spent nuclear fuel and high-level radioactive waste from rail to truck and empty casks from truck to rail.

[3] Shipment of a rail cask (weighing up to 300,000 pounds) on a special truck and trailer combination that would have a total weight of approximately 500,000 pounds.

Pennsylvania

Pittsburgh Energy Technology Center—Contact: Ann C. Dunlap; (412) 386–6167; U.S. Department of Energy; Building 922/M210; Cochrans Mill Road; Pittsburgh, PA 15236–0940.

South Carolina

Savannah River Operations Office—Contact: Pauline Conner; (803) 725–1408; Gregg-Graniteville Library; University of South Carolina-Aiken; 171 University Parkway; Aiken, SC 29801.

University of South Carolina—Contact: William Suddeth; (803) 777–4841; Thomas Cooper Library; Documents/Microforms Department; Green and Sumter Streets; Columbia, SC 29208.

Tennessee

Oak Ridge Operations Office—Contact: Walter Perry; (865) 241–4780; U.S. Department of Energy; 475 Oakridge Turnpike; Oak Ridge, TN 37830.

Texas

Southern Methodist University—Contact: Joseph Milazzo; (214) 768–2561; Fondren Library East; Government Information; 6414 Hilltop Lane, Room 102; Dallas, TX 75275.

Utah

University of Utah—Contact: Walter Jones; (801) 581–8863; Marriott Library Special Collections; 295 South 15th East; Salt Lake City, UT 84112–0860.

Washington

Richland Operations Center—Contact: Terri Traub; (509) 372–7443; U.S. Department of Energy; Public Reading Room; 2770 University Drive; Room 101L; Mailstop H2–53; Richland, WA 99352.

Issued in Washington, DC, October 11, 2002.

Margaret S. Y. Chu,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 02–27207 Filed 10–24–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–06: Human Genome Program—Ethical, Legal, and Social Implications

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications in support of the Ethical, Legal, and Social Implications (ELSI) subprogram of the Human Genome Program (HGP). Applications should focus on issues of: (1) Genetics and the workplace, and (2) complex or multigenic traits. This particular research notice invites research applications that address ethical, legal, and social implications resulting from the use of information and knowledge resulting from the HGP. This notice is part of a transition towards a wider societal implications activity in OBER, linked to the Genomes to Life program and no longer focusing principally on human genomics.

DATES: Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 03–06, should be received by 4:30 p.m., E.S.T., November 25, 2002. Early submissions are encouraged. A response discussing the potential program relevance and encouraging or discouraging a formal application generally will be communicated within 20 days of receipt.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.S.T., February 13, 2003, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2003.

ADDRESSES: Preapplications, referencing Program Notice 03–06, should be sent to: Dr. Daniel W. Drell, Office of Biological and Environmental Research, SC–72/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290.

Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS website. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*. The full text of Program Notice 03–06 is available via the Internet using the following web site address: *http://www.sc.doe.gov/production/grants/grants.html*.

If you are unable to submit an application through IIPS please contact the Grants and Contracts Division, Office of Science at (301) 903–5212 in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel W. Drell, Office of Biological and Environmental Research, SC–72/Germantown Building, Office of Science, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290, telephone: (301) 903–6488 or e-mail: *daniel.drell@science.doe.gov*.

SUPPLEMENTARY INFORMATION: The DOE encourages the submission of applications that will address, analyze, or anticipate ELSI issues associated with human genome research in two broad areas:

I. Genetics and the Workplace

Research is encouraged on the uses, impacts, implications of, and privacy of genetic and other disease-related information in the workplace. A particular emphasis of this solicitation is screening and monitoring programs that involve the collection and evaluation of worker genetic information. Examples might include surveillance programs (involving asymptomatic screening or testing) for exposure to workplace hazards (*e.g.*, beryllium or other metals), or how testing results might influence policy formulation in the absence of definitive associations between test results and health outcomes. Research is also encouraged on the use of the workplace as a research venue and the resulting challenges for Institutional Review Boards (IRBs) that are responsible for the oversight of such activities. Research could explore historical experiences, current practices, international practices, the economics of, and lessons learned as they pertain to the collection and use of worker screening test information. Research can include issues arising from the creation, use, maintenance, privacy, and disclosure of genetic and/or medical information obtained in workplace settings that can include, but are not limited to, workplaces at which DOE activities are taking place or have in the past. The final product should lead to best practices guidance or suggestions for policy relevant recommendations.

II. Complex or Multigenic Traits

Research is encouraged that addresses the ethical, legal, and societal implications of advances in the scientific understanding of complex or multi-genic characteristics and conditions, (*e.g.*, gene-environment interactions), that result in diseases or disease susceptibilities. Conditions may include, but are not limited to, behavioral conditions, diseases of aging, vulnerability to substance abuse, susceptibility to workplace exposure hazards (chemicals or radiation), or other common conditions with a partial genetic basis. This research may address:

(1) Studies that explore the novel ethical, legal, and social issues raised by research on, and new insights into, complex conditions.

(2) The responses of institutions (*e.g.*, courts, employers, financial institutions, companies or company health officers, schools, etc., including Federal Agencies) that must deal with "genetic uncertainty," (*e.g.*, uncertainty about the significance of results of screening for susceptibility genes, uncertainty about the role of yet-undefined environmental influences, and uncertainty about the implications of different alleles at highly polymorphic genes when those alleles are not fully characterized).

All applications should demonstrate knowledge of the relevant literature, any related completed activities, and should include detailed plans for the gathering and analysis of factual information and the associated ethical, legal, and social implications. All applications should include, where appropriate, detailed discussion of human subjects protection issues, (*e.g.*, storage of, manipulation of, and access to personal genetic data). Provisions to ensure the inclusion of women, minorities, and potentially disabled individuals must be described, unless specific exclusions are scientifically necessary and justified in detail. All proposed research applications should provide a plan for rigorous assessments to evaluate progress or outcomes. Where a product (guidelines, recommendations, documents, etc.) is the result, dissemination plans including timelines must be discussed. All applications should include letters of agreement to collaborate from potential collaborators; these letters should specify the contributions the collaborators intend to make if the application is accepted and funded.

In previous solicitations in this program, a focus on educational efforts for specific groups was included. Here, applications for the development and dissemination of educational materials will *not* be considered in order that OBER can encourage as high priorities those projects that address the explicitly stated goals of this solicitation.

DOE does *not* encourage applications dealing with issues consequent to the initiation or implementation of genetic testing protocols. Also, DOE does not encourage survey-based research, unless a compelling case is made that this methodology is critical to address an issue of uncommon significance. Applications for the writing of scholarly publications or books should include justifications for the relevance of the publications or books, to the goals of this notice, as well as discussion of the estimated readership and impact. DOE ordinarily will not provide unlimited support for a funded program and thus strongly encourages the inclusion of plans for transition to self-sustaining status.

Additional Request for Small Grants

The DOE also encourages small grant applications, to a maximum of $33,000 total costs, for innovative and exploratory activities within the previously described areas. Such exploratory grants could be used to carry out pilot or investigative research on an issue consistent with any of the above areas of ELSI research, support a sabbatical leave to organize and hold a conference, or to initiate start-up studies that could generate preliminary data for a subsequent grant application. This program could be appropriate for a research scientist interested in exploring a related area of ELSI research, or a scholar conducting ELSI research of one type to explore an ELSI research topic of a different type. Such applications must use the standard DOE application forms which can be found on the Internet at: *http://www.sc.doe.gov/production/grants/grants.html*, but the description of research activities should not be more than five pages and curriculum vitae should not exceed two pages. These small grants, which will be peer reviewed, will not extend beyond one year from the award date. It is expected that up to five of these awards might be made in Fiscal Year 2003. As with larger applications to this notice, applications are required to be submitted electronically through the IIPS.

Program Funding

It is anticipated that approximately $600,000 will be available for multiple grant awards (including any small grants) to be made during Fiscal Year 2003, contingent upon the availability of appropriated funds. Multiple year funding of grant awards is expected, and is also contingent upon the availability of funds. Previous awards have ranged from $50,000 per year up to $500,000 per year with terms from one to three years; most awards average about $200,000 per year for two or three years (not applicable for any small grants as stated above.) Similar award sizes are anticipated for new grants. Generally, conference awards do not exceed $25,000 and indirect costs are not allowed as part of conference grant awards.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, DOE National Laboratories, industry, non-profit organizations, other federal laboratories and federally funded research and development centers (FFRDCs), where appropriate, and to incorporate cost sharing and/or consortia wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the Internet at: *http://www.sc.doe.gov/production/grants/Colab.html*.

Preapplications

A brief preapplication should be submitted. The preapplication should identify, on the cover sheet, the institution, Principal Investigator name, address, telephone, fax and e-mail address, title of the project, and the field of scientific research. The preapplication should consist of a two to three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed for responsiveness to the scope and research needs described in this notice. Preapplications are strongly encouraged but not required prior to submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Merit Review

Applications will be subjected to a scientific merit review (peer review) and will be evaluated against the following

evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,

2. Appropriateness of the Proposed Method or Approach,

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors, such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal-reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made. DOE policy requires that potential applicants adhere to 10 CFR 745 "Protection of Human Subjects", or such later revision of those guidelines as may be published in the **Federal Register**.

The Office of Science, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules," which is available via the World Wide Web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf*, (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington DC on October 21, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–27206 Filed 10–24–02; 8:45 am]

BILLING CODE 6450–03–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory

Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory (NETL), U.S. Department of Energy (DOE).

ACTION: Notice of availability of a financial assistance solicitation.

SUMMARY: NETL announces that, pursuant to 10 CFR 600.8(a)(2), and in support of advanced coal research to U.S. colleges and universities, it intends to conduct a competitive Program Solicitation No. DE–PS26–03NT41634 and award financial assistance grants to qualified recipients. Applications will be subjected to a merit review by a technical panel of DOE subject-matter experts and external peer reviewers. Awards will be made to a limited number of applicants based on: the scientific merit of the applications, application of relevant program policy factors, and the availability of funds.

Once released, the solicitation will be available for downloading from the "Industry Interactive Procurement System" (IIPS) Internet page. At this internet site you will be able to register with IIPS, enabling you to download the solicitation and to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at 800–683–0751 or email the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. Questions relating to the solicitation content must be submitted electronically through IPPS. All responses to questions will be released on the IIPS home page as will all amendments. The solicitation will only be available in IIPS.

DATES: The solicitation will be available for downloading on the DOE/ NETL's Homepage at *http://www.netl.doe.gov/business* and the IIPS "Industry Interactive Procurement System" Internet page located at *http://e-center.doe.gov* on or about October 21, 2002. Applications must be prepared and submitted in accordance with the instructions in the Program Solicitation and must be received at NETL by December 2, 2002. Prior to submitting your application to the solicitation, periodically check the NETL Website for any amendments.

FOR FURTHER INFORMATION CONTACT: Debra A. Duncan, U.S. Department of Energy, National Energy Technology Laboratory, PO Box 10940 (MS 921–107), Pittsburgh, Pennsylvania 15236–0940; Telephone: 412–386–5700; Facsimile: 412–386–6137; e-mail: *duncan@netl.doe.gov*.

SUPPLEMENTARY INFORMATION: Through Program Solicitation DE–PS26–03NT41634, the DOE is interested in applications from U.S. colleges and universities, and university-affiliated research centers submitting applications through their respective universities. Applications will be selected to complement and enhance research being conducted in related Fossil Energy programs. Applications may be submitted individually (*i.e.*, by only one college/university or one college partnering with one other college/university) or jointly (*i.e.*, by Ateams' made up of (1) three or more colleges/universities, or (2) two or more colleges/universities and at least one industrial partner. Collaboration, in the form of joint applications, is *encouraged* but not required.

Eligibility

Applications submitted in response to this solicitation must address coal research in one of the key focus areas of the Core Program or as outlined in the Innovative Concepts (IC) Phase I and Phase II Programs.

Background

The current landscape of the U.S. energy industry, not unlike that in other parts of the world, is undergoing a transformation driven by changes such as deregulation of power generation, more stringent environmental standards and regulations, climate change concerns, and other market forces. With these changes come new players and a refocusing of existing players in providing energy services and products. The traditional settings of how energy (both electricity and fuel) is generated, transported, and utilized are likely to be very different in the coming decades. As market, policy, and regulatory forces evolve and shape the energy industry both domestically and globally, the opportunity exists for universities, government, and industry partnerships to invest in advanced fossil energy technologies that can return public and economic benefits many times over. These benefits are achievable through

the development of advanced coal technologies for the marketplace.

Energy from coal-fired powerplants will continue to play a dominant role as an energy source, and therefore, it is prudent to use this resource wisely and ensure that it remains part of the sustainable energy solution. In that regard, our focus is on a concept we call Vision 21. Vision 21 is a pathway to clean, affordable energy achieved through a combination of technology evolution and innovation aimed at creating the most advanced fleet of flexible, clean and efficient power and energy plants for the 21st century. Clean, efficient, competitively priced coal-derived products, and low-cost environmental compliance and energy systems remain key to our continuing prosperity and our commitment to tackle environmental challenges, including climate change. It is envisioned that these Vision 21 plants can competitively produce low-cost electricity at efficiencies higher than 60% with coal. This class of facilities will involve "near-zero discharge" energy plants—virtually no emissions will escape into the environment. Sulfur dioxide and nitrogen oxide pollutants would be removed and converted into environmentally benign substances, perhaps fertilizers or other commercial products. Carbon dioxide could be (1) Concentrated and either recycled or disposed of in a geologically permanent manner, or (2) converted into industrially useful products, or (3) by creating offsetting natural sinks for CO_2.

Clean coal-fired powerplants remain the major source of electricity for the world while distributed generation, including renewables, will assume a growing share of the energy market. Technological advances finding their way into future markets could result in advanced co-production and co-processing facilities around the world, based upon Vision 21 technologies developed through universities, government, and industry partnerships.

This Vision 21 concept, in many ways is the culmination of decades of power and fuels research and development. Within the Vision 21 plants, the full energy potential of fossil fuel feedstocks and "opportunity" feedstocks such as biomass, petroleum coke, and other materials that might otherwise be considered as wastes, can be tapped by integrating advanced technology "modules." These technology modules include fuel-flexible coal gasifiers and combustors, gas for fuels and chemical synthesis. Each Vision 21 plant can be built in the configuration best suited for its market application by combining technology modules. Designers of Vision 21 plant would tailor the plant to use the desired feedstocks and produce the desired products by selecting and integrating the appropriate "technology modules."

The goal of Vision 21 is to effectively eliminate, at competitive costs, environmental concerns associated with the use of fossil fuel for producing electricity and transportation fuels. Vision 21 is based on three premises: that we will need to rely on fossil fuels for a major share of our electricity and transportation fuel needs well into the 21st century; that it makes sense to rely on a diverse mix of energy resources, including coal, gas, oil, biomass and other renewables, nuclear, and so-called "opportunity" resources, rather than on a reduced subset of these resources; and that R&D directed at resolving our energy and environmental issues can find affordable ways to make energy conversion systems meet even stricter environmental standards.

To accomplish the program objective, applications will be accepted in three program areas: (1) The Core Program, (2) the IC Phase I Program, and (3) the IC Phase II Program.

University Coal Research (UCR) Core Program

To develop and sustain a national program of university research in fundamental coal studies, the DOE is interested in innovative and fundamental research pertinent to coal conversion and utilization. The maximum DOE funding and period of performance for each Individual college/university award under the UCR Core Program is:

12 month project period: $ 80,000 (max. DOE funds)

13–24 month project period: $140,000 (max. DOE funds)

25–60 month project period: $200,000 (max. DOE funds)

Cost sharing is not required but is strongly encouraged.

The maximum DOE funding for each Joint university award (three or more universities partnering) under the UCR Core Program is $400,000 requiring a 36-month performance period. Cost sharing is not required but is strongly encouraged.

The maximum DOE funding for each Joint University/Industry award (two or more universities partnering with at least one industrial partner) under the UCR Core Program is $400,000 requiring a 36-month performance period. A minimum of twenty-five percent (25%) cost sharing of the total proposed project cost is required.

The DOE anticipates funding at least one application in each focus area under the UCR Core Program; however, high-quality applications in a higher priority focus area may be given more consideration during the selection process. Research in this area is *limited* to the following six (6) focus areas and is listed numerically in descending order of programmatic priority.

Core Program Focus Areas

Focus Area 1.0: Materials and Components for Vision 21 Systems

The advanced power systems concepts being pursued under Vision 21 are directed toward very high efficiency and low emissions, particularly of carbon dioxide. Many of these systems depend on the ability to separate hydrogen, oxygen, or carbon dioxide from mixtures containing these gases. Because of the very high overall efficiency and cost goals, R&D emphasizing gas separations and high temperature materials that are significant improvements over conventional methods/systems are of interest. Particular areas of interest are:

Focus Area 1.1: Membranes for Hydrogen Separation

Hydrogen separation in gasification-based systems can be a main source of low cost H_2 for use in refineries, as fuel for fuel cells, and for H_2 product gas. Various ceramic membranes, including both high- and low-temperature membranes and novel non-membrane methods are being developed and tested for hydrogen separation. Two types of ceramic membranes are being investigated for the recovery of hydrogen from coal gasification streams: porous membranes and dense membranes. These membrane types differ significantly in their microstructures, and, therefore, gas separation takes place by entirely different hydrogen diffusion mechanisms as described below. Grant applications are sought to further the development of either or both types of these ceramic membranes for commercial hydrogen production. Proposed approaches must demonstrate that the hydrogen can be produced in large quantities and at high purity; therefore, both the permeation properties and the selectivity of the membranes must be well characterized and understood.

Focus Area 1.2: Ultra-High Performance Materials

Intermetallic compounds offer the potential for the use of metallic structures at temperatures well above 1000 °1C, perhaps up to 1500 °1C. Ongoing progress in the development of

these alloy systems suggests that properties can be achieved that will allow them to be used in engineering applications. The temperature range of interest overlaps that in which ceramic materials are thought to be needed, *i.e.*, these alloys are alternatives to ceramics. Examples of such alloys are Laves phase alloys such as Cr_2Ta and boron modified molybdenum silicide based on Mo_5Si_3. The challenges with these alloys are to modify them to provide acceptable mechanical properties, including ductility and toughness, and corrosion resistance to allow them to be used in structural applications such as gas turbines. Innovative approaches to the processing of these materials are sought which will provide useful product forms while maintaining a structure that has adequate fracture toughness.

Focus Area 1.3: Coatings Development

Component reliability and long-term trouble-free performance of structural materials are essential in power-generating processes that utilize coal as a feedstock. The two major elements of this materials technology category address these concerns through the development of surface protection by coatings, claddings, *etc.*, and examination of the corrosion behavior of the structural components, (both alloys and ceramics) and protective (thermal and environmental) barriers applied to the component surfaces. There is a need to demonstrate/confirm the efficacy of conventional gas turbines in a coal-derived synthesis gas system. Different hot gas environments are obtained and there is a dearth of long-term performance data for these environments. Applications based on selection and verification testing of turbine hot path component materials and protective coatings are invited.

Additionally, hot corrosion and erosion-corrosion models to predict the lives of candidate gas turbine hot gas path materials in realistic environments for a gas turbine operating on coal-derived gases are needed. These models are necessary to assess potential lives of such components, and establish changes to these environments that would significantly extend these lives.

Focus Area 2.0: Sensors and Control

Sensors for high temperature (1000 °C), harsh environment applications represent a significant research and development challenge. New uses of high temperature materials or advancements in materials science are needed to develop the basis for novel in-situ or at line micro-sensing systems to monitor gases commonly present in coal and coal-derived syngas applications. Sensor materials and platforms capable of detecting one or more of the following are of interest: NO_x, SO_x, CO, H_2, O_2, CH_4, NH_3, mercury, and arsenic.

These sensors and detection systems, when placed in protective housings can serve as low cost devices that are critical to operating power systems at peak efficiency and minimal emissions. Subsequently, the sensing materials must be able to function appropriately at temperatures at or near 1000 °C, and the minimum test temperature for the sensors is 500 °C. Micro-sensors designed with or fabricated using high temperature substrates and materials including but not limited to silicon carbide, alumina, or sapphire are of interest. While revolutionary ideas that have the sound scientific basis to support significant advancements in this technology area are sought, extractive systems or incremental improvements over existing technology are discouraged.

In addition to gas sensor development, new approaches to embedded sensor designs or novel non-destructive evaluation (NDE) techniques that facilitate on-line monitoring of critical parts or components (*e.g.*, stress, corrosion, pressure, thermal barrier coating wear, refractory wear, *etc.*) are needed. Sensors need to be able to function in an ultra high temperature harsh environment. "Smart" sensing capabilities such as self-diagnostics and wireless data communication are desirable features.

Successful application of these sensors or NDE techniques will improve system control, protect capital equipment investment, and promote safety through prevention of catastrophic equipment failure. Equipment that could potentially benefit from component monitoring includes gasifiers, turbines, engines, pumps, advanced combustors, fuel cells; other equipment commonly employed in energy and power generation systems.

Focus Area 3.0: Advanced Coal Systems By-Product Utilization

Currently more than a million tons of byproducts are generated annually in the U.S. However, utilization rates of the material remain to be only approximately 30 percent. NETL has a goal to see utilization increased to 50% by 2010. Grant applications are needed to identify novel concepts for increased utilization of byproducts to assist in meeting NETL's utilization goal both in the gasification and coal combustion programmatic areas.

Focus Area 3.1: Gasification

The economics of gasification can be improved by fully utilizing all outlet streams of the process. Sale of value-added byproducts from waste streams and minimization of waste disposal can substantially improve the economics of gasification processes. By-products include ash/slag and sulfur. Applications are sought that will expand market options, such as improving the quality of slags and improving the use of sulfur. Applications are encouraged which do one of the following:

a. Seek to find, and provide proof of concept for, a viable commercial market for coal gasification slag in its natural high moisture, high carbon state.

b. Will develop the methods for reducing the carbon content, moisture content and particle size of the ash/slag so that it will be more marketable.

c. Would lead to the development of new markets and ways to utilize sulfur.

Focus Area 3.2: Coal Combustion

In December of 2001, Environmental Protection Agency (EPA) announced its intention to regulate mercury emissions from coal-fired power plants. Although the best mercury control technology has yet to be determined, DOE is funding tests where activated carbon is being used to control mercury emissions. Preliminary research suggests that the addition of activated carbon to the fly ash could make the fly ash unmarketable or increase the cost of disposal.

a. Research is necessary to identify technologies to mitigate the affects of high carbon concentrations on resale of the ash.

b. Novel utilization technologies for this fly ash that contains very high concentrations of either unburned or activated carbon.

Other environmental regulations are leading many utilities to install selective catalytic reduction systems (SCR). It has been estimated that 80–90 new installations of SCR will occur in the next several years. Questions exist as to the effect of SCR on ash samples from coal-fired units. Grant applications are sought to establish a better understanding of the effect of SCR systems on fly ash and consequently evaluating that fly ash for mercury removal potential including the specific characteristics of the fly ash that have higher mercury capture potential (*i.e.*, amount of carbon, form of carbon present, coal origin).

Finally, future regulations for emissions control of $PM_{2.5}$, regional haze or sulfur dioxide will require lower emissions of sulfur dioxide from power plants. Since many utilities will add flue gas desulfurization systems (FGD) that will generate additional quantities of by-products, grant applications are also sought to identify novel uses of this FGD material.

Focus Area 4.0: Computational Chemistry for Reforming Technology

The use of fuel cells is anticipated to undergo a large expansion in the future. The market for these power sources is expected to expand dramatically in the coming years because they offer high-energy efficiency and low emissions. Many fuel cells rely on high purity hydrogen as the fuel. When used in this way, hydrogen serves as an energy carrier. Hydrogen may be generated from conventional fossil fuels, coal being a foremost candidate. Although hydrogen has highly desirable properties for use in a fuel cell, its distribution from the central point of manufacture to the point of use remains a stubborn problem. At present, the infrastructure for the transport, storage, and dispensing of hydrogen is largely lacking and expensive to install.

Transporting and storing other fuels with higher volumetric energy density than hydrogen would alleviate some of the major roadblocks. Methanol is one potential energy transport molecule. Commercial production of methanol from coal is now well established. Reforming methanol to generate hydrogen at the point of use still needs to be improved. Catalytic reformers that can operate on a small scale intermittently, reliably, and efficiently over a long period of time are design challenges to chemical engineers. Computational chemistry is becoming an ever more powerful tool that speeds the development of improved catalysts. Application of computational chemistry to the development of leading principles for improved methanol reforming catalysts and catalytic systems can be an effective way to speed their entry into the marketplace.

To assist advancement in the field of methanol reforming technology, applications in computational chemistry that address fundamental chemical processes in producing fuel cell grade hydrogen from methanol are requested. Computational chemistry can provide guidance in the search for more effective, durable, and poison resistant catalytic materials. The overall intent is to speed the development of improved catalyst and reactor systems by providing insight on the major issues such as the function and use of promoters, coking resistance, stability during thermal cycling, and tolerance to operation over a range of flow and thermal conditions. The applications must deal with a specific methanol reforming issue in terms of the fundamental chemistry and physics of the molecular processes involved. Applications based on generic catalyst issues such as those called for in previous solicitations will not be considered unless they deal specifically with a methanol reforming.

Focus Area 5.0: Electrical Interconnects for Coal-Based Solid Oxide Fuel Cell Systems

The push toward oxygen-based coal gasification technologies creates an opportunity to supply pure oxygen to solid oxide fuel cell (SOFC) power generators supplied with coal synthesis gas. When operating on pure oxygen vice air, the power density of SOFCs is nearly double. The research challenge is to develop a suitable electrical interconnect that can survive in both the oxidizing environment of pure oxygen and the reducing environment of coal synthesis gas.

Much research has been performed in the past with regard to ceramic oxide interconnect materials, primarily on lanthanum chromate ($LaCrO_3$), for high temperature (>800 °C) operation. Recent developments in SOFC research have advanced the potential for lower temperature operation in the range of 500 to 800 °C.

Cold gas clean-up processes make the application of low temperature SOFCs more attractive by minimizing the energy requirements to heat both the oxidant and the fuel gas up to the SOFC operating temperature. Resolving oxidation problems with metallic interconnects to maintain high electrical conductivity in the relatively low partial pressure of oxygen in air is a major focus of current SOFC research. For coal-based SOFCs supplied with pure oxygen, even advanced metallic interconnects emerging from this research are expected to suffer serve oxidation. Thus a more robust ceramic-oxide interconnect capable of high electrical conductivity at temperatures ranges from 500 to 800 °C is required.

Grant applications are sought to investigate and characterize ceramic-oxide electrical interconnects, other than $LaCrO_3$ for SOFC applications in coal-based power plants. Of specific interest is fundamental research on ceramic interconnect material chemical, electrical conductivity and mechanical properties in oxidizing and reducing environments for coal-based power plants. It is particularly important to investigate the compatibility and adhesion of the interconnect, and the interfacial resistance with other SOFC components to make quality electrical connections with SOFC materials.

Focus Area 6.0: Partitioning and Mechanism Studies for Mercury and Associated Trace Metals Within Coal-Fired Processes

Understanding mercury chemistry and process-related speciation mechanisms and transformations in laboratory experiments provide necessary steps to first understanding partitioning and subsequently developing mercury removal processes for industrial and coal-fired applications for PC-boilers, cyclone boilers, tangentially-fired boilers, fluidized-bed boilers and gasification processes. Past research has shown a reasonable link between mercury speciation and several parameters including the various constituents of fly ash (*i.e.*, unburned carbon/ LOI); fly ash properties (such as fly ash alkalinity); and process specific information (coal rank, boiler type, flue-gas temperature, Cl concentration, NO_x concentration, sulfur compounds, and CO/CO_2 concentrations).

Grant applications are sought to further understand partitioning and chemistry of mercury and other trace metal and organic substances in coal-fired (bituminous, subbituminous, and lignite) systems. Specifically, modeling or experiments using statistical analysis of these identified parameters on chemical intermediaries and mechanisms is sought.

UCR IC Phase I Program

The goal of solicited research under the IC Phase I Program is to develop unique approaches for addressing fossil energy-related issues. These approaches should represent significant departures from existing approaches, not simply incremental improvements. The IC Phase-I Program seeks "out-of-the-box" thinking; therefore, well-developed ideas, past the conceptual stage, are not eligible for the Phase I Program. Applications are invited from individual college/university researchers. The maximum DOE funding for each Phase I award under the IC Program is $50,000 and will require a 12-month performance period. Joint applications (as described under the Core Program) will also be accepted, although no additional funds are made available for joint versus individual applications. Unlike the Core Program, student participation in the IC Phase I proposed research is strongly encouraged, however, not required.

In the twenty-first century, the challenges facing coal and the electric utility industry continue to grow.

Environmental issues such as pollutant control, both criteria and trace pollutants, waste minimization, and the co-firing of coal with biomass, waste, or alternative fuels will remain important. The need for increased efficiency, improved reliability, and lower costs will be felt as an aging utility industry faces deregulation. Advanced power systems, such as a Vision 21 plant, and environmental systems will come into play as older plants are retired and utilities explore new ways to meet the growing demand for electricity.

Innovative research in the coal conversion and utilization areas will be required if coal is to continue to play a dominant role in the generation of electric power. IC applications will be accepted in any of the focus areas listed in the Core Program or the following seven (7) IC Phase II focus areas that are shown in random order and not in order of programmatic priority.

IC Phase I Focus Areas

Focus Area 1.0: Smart Sensors

The development of innovative concepts and techniques for smart sensing are needed to foster the development and implementation of advanced power generation technologies using coal or coal derived syngas. Approaches to sensing combustion related parameters at ultra-high temperatures using laser-based techniques and other non-destructive rapid assessment techniques are encouraged.

Many innovative approaches to sensing are being developed using laser-based techniques or micro-sensors fabricated with silicon as the substrate material. While these developments are viewed favorably, the are not applicable to many industrial systems due to the high temperature harsh conditions. This solicitation seeks to overcome the temperature barriers associated with novel sensing techniques.

The ultimate goal is the utilization of sensor networks, which are low cost, reliable, and accurate for the real-time monitoring. Integrating these sensor networks with advanced control algorithms are envisioned for the on-line optimization of complex power and chemical production facilities conceived under the Vision 21 Program.

Focus Area 2.0: N_2/CO_2 Separation

Since the primary source of greenhouse gas emissions, primarily carbon dioxide, is combustion of fossil fuels such as coal or natural gas, options to reduce carbon dioxide emissions are being examined. In particular, inorganic membranes based on metals, ceramics or zeolites are suitable for the separation of such gases because they can sustain severe conditions such as high pressure, chemical corrosion, and high temperature. Approaches are needed whereby the membrane can be tailored to separate carbon dioxide from the nitrogen, the latter being the predominant component in the flue gas of a fossil fuel fired power plant. For example, the separation could be caused by dopants in the inorganic membrane that prefer to bond with carbon dioxide and facilitate its surface diffusion along the pore wall. Applications are invited wherein factors such as concentration of dopant and pore diameter will be investigated, along with molecular simulations, in order to maximize the separation factor.

Focus Area 3.0: Direct Utilization of Carbon in Fuel Cells

High and intermediate temperature fuel cells offer significant advantages in the direct conversion of carbon to electrical power without an intermediate coal gasification process. Both slurry based and solid-state (*e.g.*, consumable electrodes) based fuel cells have the potential to more directly utilize coal than conventional fuel cell technologies that operate on clean coal synthesis gas.

Grant applications are sought for identification and characterization of one or more (considering the time and financial constraints) fuel cell concepts that utilize carbon from coal. The characterization should demonstrate as much as possible both the power density achievable and the degree of power degradation versus operating time. The characterization should include chemical stability between the components and the impact of coal contaminants on fuel cell performance and operating life. Lifetime effects (phase stability, thermal expansion compatibility, conductivity aging, and electrode sintering) should be considered and characterized as much as possible. The characterization of the material set should in general be as complete as possible and not duplicate publicly known information.

Focus Area 4.0: Mercury and Associated Trace Metal Chemistry Studies Within NO_X Control Systems

By the year 2010, it is estimated that over 50% of coal-fired utilities will install either selective catalytic reduction or selective non-catalytic reduction units to meet NO_X emission limits. Understanding mercury chemistry and process-related speciation mechanisms and transformations related to NO_X control systems would provide necessary information to develop more effective, less costly mercury removal processes for industrial and coal-fired boilers. Past research has shown a probable relationship between degree of mercury oxidation and age of NO_X catalyst, coal rank, size (or residence time) of NO_X control vessel, degree of NO_X conversion, amount of SO_2 converted to SO3, and ammonia slip. Grant applications are sought to further understand partitioning and chemistry of mercury and other trace metal and organic substances in coal-fired (bituminous, subbituminous, and lignite) systems utilizing SCR/SNCR or ammonia injection. Specifically, statistical analysis clarifying the importance of each of these identified parameters and/or their interactions on chemical intermediaries and mechanisms is sought.

Focus Area 5.0: Water Impacts From Coal-Burning Power Plants

Producing electric power from coal has impacts to water quality from the beginning of the process, mining the coal, to the disposal of ash remaining after the coal has been combusted. Coal mining has left large amounts of overburden wastes that contain sulfide minerals that weather to form sulfuric acid. Many of these areas are causing problems with water quality and re-vegetation. It is estimated that 10,000 miles of streams in the United States are affected by acid mine drainage. The Environmental Protection Agency (EPA) has initiated a Total Maximum Daily Load (TMDL) program to restore impaired water bodies, some of which are degraded from past mining. Coal washing is used to remove pyritic sulfur and other impurities that could be emitted into the air; however, wastewater from this process may release these substances to water bodies. A large quantity of water is used in power plants to condense the steam leaving the turbine. Once-through cooling systems can damage aquatic life and add heat to streams. The EPA has developed new regulations under the Clean Water Act, section 316(b), to reduce once through cooling usage of water and improve cooling water intake structures. Re-circulating cooling towers require the addition of biocides and corrosion inhibitors, which may be released to water bodies during blowdowns. Wet scrubbing of air pollutants from flue gas generates a large quantity of wastewater. Ash ponds have the potential for creating run-off problems and groundwater infiltration. Research opportunities for improving water quality associated with coal combustion for power generation include: (1) Novel active and passive treatment technologies to address acid mine drainage; (2) innovative solutions to restoring abandoned mine lands to enhance watersheds; (3) improved intake and outflow structures for cooling water; (4) novel uses for waste heat from power plant cooling; (5) advanced water-related sensors and controls at power plants to minimize adverse impacts to water quality; (6) novel treatment techniques for scrubber wastewater; and (7) novel techniques for reducing coal-washing waste and ash pond runoff.

Focus Area 6.0: Simulation of CO_2–Brine-Mineral Interactions

One strategy under evaluation to mitigate increasing atmospheric concentrations of CO_2 is to inject it into geological formations such as deep saline aquifers. When CO_2 is injected into brine formations it can be trapped by several mechanisms. The CO_2 can react with the host rock and/or brine to form mineral carbonates (mineral trapping) or it can become dissolved in and react with the slow moving basinal brine (hydrodynamic trapping) to form carbonic acid and its dissociation products. Mineral trapping is the preferred storage mechanism. In order the begin to evaluate the feasibility of geological sequestration in deep saline aquifers the thermodynamic and kinetic properties of the H_2O-CO_2–NaCl system must be known in order to simulate chemical reactions in these complex systems. These properties are not only critical for the interpretation of laboratory experiments, but also to field scale tests, and reservoir scale simulation. Most simulations of these systems use an equation of state (EOS) to describe the properties of the H_2O–CO_2–NaCl system. The thermodynamic properties for gas-liquid-salt systems can be described by EOS, which describes the quantitative relationships between intensive parameters of a system (*e.g.*, T, P) and extensive parameters (*e.g.*, volume, mass). Consequently, research directed toward evaluation of the ability of existing EOS to accurately estimate the properties of this system is of interest to the U.S. DOE.

Grant applications directed toward critical evaluation of the ability of existing equations of state (EOS) to predict the properties of the H_2O–CO_2–NaCl system at temperatures up to 200 C and pressures up to 500 atmospheres are sought. A comparison of the ability of existing EOS to describe the properties of the system under these conditions is needed. An estimation of the deviation between properties predicted using various EOS found in the literature with measured values under a wide range of temperature and pressure must be included. Based upon the results of this evaluation of existing EOS, the researchers may decide to develop a new EOS as part of the application.

Focus Area 7.0: CO_2 Separation From Coal Gasification Process

Separation of CO_2 from coal derived synthesis gas for capture and sequestration is a key technology in the reduction of greenhouse gases emissions to the environment. If required today, existing technologies, such as Rectisol and Selexol, can be applied to capture CO_2; however, such applications require expensive solvent and operate at less than 40°C, imparting a severe energy penalty on the system. The following CO_2 separation technologies are being investigated in existing projects: production of carbon dioxide hydrates, dry scrubbing processes with regenerable sorbents, and membrane separation (dense ceramic and polymer). Applications are invited that incorporate "outside-the-box" approaches to the separation of CO_2 from the coal gasification process. As this would be the first step toward a completely novel approach, applications comprising literature studies, theoretical approaches and/or modeling analysis, etc. would be expected. The goal of this work would be to find an approach that:

1. Does not require expensive/proprietary solvents or cool temperatures.
2. Is not already being considered by existing projects.
3. Minimizes the cost of CO_2 separation.

Technologies that produce both high-pressure hydrogen and CO_2 (in separate streams) are preferred.

UCR IC Phase II Program

The goal of the Phase II Program, the principal R&D effort of the IC Program, is to solicit research that augments research previously funded through the Phase I Program. Only recipients receiving a Phase I grant awarded in fiscal year 2001 will be eligible to submit an application for continuation of their Phase I projects. The maximum DOE funding for each Phase II award under the IC Program is $200,000 and will require a 36-month performance period. Its anticipated that institutions submitting an application with approaches that appear sufficiently promising from the Phase I efforts could receive a Phase II award in 2003. Applications will be accepted in the following focus areas:

Focus Area 1.0 Advanced Sensors for Vision 21 Systems

Focus Area 2.0 Carbon Sequestration

Focus Area 3.0 Mercury and Other Emissions in Advanced Power Systems

Focus Area 4.0 Thermodynamics Measurement for Mixture of Asymmetric Hydrocarbons

Issued in Pittsburgh, PA on October 16, 2002.

Dale A. Siciliano,

Acting Director, Acquisition and Assistance Division.

[FR Doc. 02–27208 Filed 10–24–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–495–001]

Algonquin LNG, Inc.; Notice of Compliance Filing

October 18, 2002.

Take notice that on October 11, 2002, Algonquin LNG, Inc. (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub Seventh Revised Sheet No. 83, to be effective October 1, 2002.

ALNG states that it is making this filing pursuant to a letter order issued by the Commission in the captioned docket on September 26, 2002. The September 26 order conditionally accepted tariff sheets filed with ALNG's initial compliance filing for implementation of Order No. 587-O, subject to ALNG filing certain explanations. This filing includes the requested explanations and a revised tariff sheet that reflects modifications in accordance with the September 26 order.

ALNG states that copies of its filing have been mailed to all affected customers, state commissions and parties on the Commission's official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27289 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–24–000]

Algonquin LNG, Inc.; Notice of Proposed Changes in FERC Gas Tariff

October 18, 2002.

Take notice that on October 15, 2002, Algonquin LNG, Inc. (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2 the following tariff sheets to become effective on October 15, 2002:

First Revised Volume No. 1

Second Revised Sheet No. 1
First Revised Sheet No. 74C
First Revised Sheet No. 75

Original Volume No. 2

First Revised Sheet No. 1

ALNG proposes to cancel its FERC Gas Tariff Original Volume No. 2 in its entirety and to update its FERC Gas Tariff, Volume No. 1 by making minor non-substantive tariff revisions.

ALNG states that copies of this filing were served on all affected customers of Maritimes and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27291 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–430–001]

ANR Pipeline Company; Notice of Compliance Filing

October 17, 2002.

Take notice that on October 11, 2002, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing, with an effective date of October 1, 2002.

ANR states that these tariff sheets are being filed in compliance with the Commission's Letter Order dated September 27, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27280 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–424–001]

ANR Storage Company: Notice of Compliance Filing

October 18, 2002.

Take notice that on October 11, 2002, ANR Storage Company (ANR Storage), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in appendix A to the filing, with an effective date of October 1, 2002.

ANR Storage states that these tariff sheets are being filed in compliance with the Commission's Letter Order dated September 27, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27057 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–433–001]

Blue Lake Gas Storage Company; Notice of Compliance Filing

October 17, 2002.

Take notice that on October 11, 2002, Blue Lake Gas Storage Company (Blue Lake), tendered for filing FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, with an effective date of October 1, 2002.

Blue Lake states that these tariff sheets are being filed in compliance with the Commission's Letter Order dated September 27, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27058 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–418–001]

Canyon Creek Compression Company; Notice of Compliance Filing

October 18, 2002.

Take notice that on October 15, 2002, Canyon Creek Compression Company (Canyon) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Second Revised Sheet No. 140A to be effective October 1, 2002.

Canyon states that the purpose of this filing is to comply with the Commission's Letter Order dated September 30, 2002 which conditionally accepted the tariff sheet tendered by Canyon in compliance with Order No. 587–O.

Canyon states that copies of the filing are being mailed to each person designated on the official service list in Docket No. RP02–418–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27277 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–438–002]

CenterPoint Energy-Mississippi River Transmission Corporation; Notice of Compliance Filing

October 18, 2002.

Take notice that on October 11, 2002, CenterPoint Energy-Mississippi River Transmission Corporation (MRT), formerly known as Mississippi River Transmission Corporation, tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to be effective on October 1, 2002:

Substitute Tenth Revised Sheet no. 80.
Substitute First Revised Sheet no. 80A.
Substitute Fourth Revised Sheet no. 119.
Sixth Revised Sheet no. 120.

MRT states that the purpose of this filing is to comply with the Commission's Letter Order regarding MRT's filing to comply with Order no. 587–O.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27283 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–480–001]

Central New York Oil And Gas Company, LLC; Notice of Compliance Filing

October 17, 2002.

Take notice that on October 11, 2002, Central New York Oil And Gas Company, LLC (CNYOG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, to be effective October 1, 2002:

First Revised Sheet No. 81
Second Revised Sheet No. 82
First Revised Sheet No. 83
First Revised Sheet No. 84
Third Revised Sheet No. 103

CNYOG states that the purpose of its filing is to comply with the Commission's September 26, 2002 order in this proceeding which accepted CNYOG's revised tariff sheets as generally complying with Order No. 587–O and directed CNYOG to file revised tariff sheets incorporating verbatim NAESB Revised Standard 1.3.2, as revised by NAESB's November 30, 2001 errata.

CNYOG further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27059 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–35–000]

Eastern Shore Natural Gas Company; Notice of Tariff Filing

October 18, 2002.

Take notice that on October 16, 2002, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, bear a proposed effective date of November 1, 2002.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedule SST. The costs of the above referenced storage service comprise the rates and charges payable (or a portion thereof) under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27292 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–468–001]

Garden Banks Gas Pipeline, LLC; Notice of Compliance Filing

October 18, 2002.

Take notice that on October 15, 2002 Garden Banks Gas Pipeline, LLC (Garden Banks) tendered for filing as part of its FERC Gas Tariff—Original Volume No. 1 the following tariff sheets, with a proposed effective date of October 1, 2002:

Substitute Eighth Revised Sheet No. 136
Substitute Second Revised Sheet No. 137

Garden Banks states that the purpose of its filing is to effectuate changes to its tariff to comply with Order No. 587–O, and, a letter order and an errata issued September 26 and October 4, 2002, respectively, in Docket No. RP02–468–000.

Garden Banks states that a copy of this filing has been served upon its customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27284 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–396–001]

Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Filing

October 18, 2002.

Take notice that on October 15, 2002, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff Second Revised Volume No. 1 the following tariff sheets, proposed to be effective October 1, 2002:

Second Substitute Seventh Revised Sheet No. 10A
Second Substitute Eighth Revised Sheet No. 41
Substitute Sixth Revised Sheet No. 42
Substitute Eighth Revised Sheet No. 50C

Great Lakes states that these tariff sheets are being filed to comply with the Commission's Letter Order of September 27, 2002 in Docket No. RP02–396, wherein Great Lakes, July 29, 2002 Order No. 587–O compliance filing was conditionally accepted pending filing of certain revised tariff sheets. Order No. 587–O adopted Version 1.5 of the standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27274 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–434–001]

High Island Offshore System, L.L.C., Notice of Compliance Filing

October 18, 2002.

Take notice that on October 11, 2002, High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in appendix A to the filing, with an effective date of October 1, 2002..

HIOS states that these tariff sheets are being filed in compliance with the Commission's Letter Order dated September 26, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27282 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–415–001]

Horizon Pipeline Company, L.L.C.; Notice of Compliance Filing

October 18, 2002.

Take notice that on October 11, 2002, Horizon Pipeline Company, L.L.C. (Horizon) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, certain tariff sheets to be effective October 1, 2002.

Horizon states that the purpose of this filing is to comply with the Commission's Letter Order dated September 27, 2002 which conditionally accepted the tariff sheets tendered by Horizon in compliance with Order No. 587–O.

Horizon states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP02–415.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's rRegulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27275 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket No. RP02–482–001]

Kern River Gas Transmission Company; Notice of Compliance Filing

October 18, 2002.

Take notice that on October 15, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised First Revised Sheet No. 154; First Revised First Revised Sheet No. 155; First Revised Sheet No. 155-A; Substitute Second Revised Sheet No. 177; Substitute Original Revised Sheet No. 181-B; First Revised First Revised Sheet No. 832 ; and First Revised First Revised Sheet No. 833, to be effective October 1, 2002.

Kern River states that the purpose of this filing is to submit revised tariff sheets to comply with the Commission's September 30, 2002 "Order on Compliance Filing" by incorporating NAESB Standard 5.3.2 in Kern River's tariff; (2) by revising Kern River's proposed title tracking service; and (3) by updating the version number on certain NAESB Standards incorporated by reference on Sheet No. 177.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27286 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–419–001

Kinder Morgan Interstate Gas Transmission LLC; Notice of Compliance Filing

October 18, 2002

Take notice that on October 11, 2002, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1-A, certain tariff sheets to be effective October 1, 2002.

KMIGT states that the purpose of this filing is to comply with the Commission's Letter Order issued on September 27, 2002, in Docket No. RP02–419–000.

KMIGT states that copies of the filing are being served on all parties set out on the Commission's official service list in Docket No. RP02–419–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27278 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–505–001]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Compliance Filing

October 18, 2002.

Take notice that on October 11, 2002, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1–B, Substitute Second Revised Sheet No. 54A to be effective October 1, 2002.

KMIGT states that the purpose of this filing is to comply with the Commission's "Order Conditionally Accepting Tariff Sheets" issued on September 27, 2002, in Docket No. RP02–505–000.

KMIGT states that copies of the filing are being served on all parties set out on the Commission's official service list in Docket No. RP02–505–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27290 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–489–001]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

October 18, 2002.

Take notice that on October 15, 2002, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendices A and B of the filing, to be effective October 1, 2002 or November 1, 2002, as specified in the filing.

Maritimes states that it is making this filing pursuant to a letter order issued by the Commission in the captioned docket on September 27, 2002. The September 27 order conditionally accepted certain tariff sheets filed with Maritimes' initial compliance filing for implementation of Order No. 587–O, and required that Maritimes revise or remove other tariff sheets as discussed in the body of the order. The tariff sheets listed in Appendices A and B of Maritimes' filing reflect these modifications.

Maritimes states that copies of its filing have been mailed to all affected customers of Maritimes and interested state commissions, and to all parties on the Commission's official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27288 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–420–001]

Natural Gas Pipeline Company of America, Notice of Compliance Filing

October 18, 2002.

Take notice that on October 11, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective October 1, 2002.

Natural states that the purpose of this filing is to comply with the Commission's Letter Order dated September 27, 2002 which conditionally accepted the tariff sheets tendered by Natural in compliance with Order No. 587–O.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP02–420.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27279 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–429–001]

Steuben Gas Storage Company, Notice of Compliance Filing

October 18, 2002.

Take notice that on October 11, 2002, Steuben Gas Storage Company (Steuben), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in the attached appendix A to the filing, with an effective date of October 1, 2002.

Steuben states that these tariff sheets are being filed in compliance with the Commission's Letter Order dated September 30, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27281 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–425–001]

Texas Gas Transmission Corporation; Notice of Compliance Filing

October 17, 2002.

Take notice that on October 11, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to become effective October 1, 2002:

Substitute Fourth Revised Sheet No. 181

Texas Gas states that this filing is in compliance with the Commission Order issued on September 27, 2002 (100 FERC ¶ 61,369), which required revisions to a tariff sheet previously filed on August 1, 2002 to implement the various standards of Version 1.5 of the North American Energy Standards Board as adopted by Commission Order No. 587–O.

Texas Gas states that copies of the revised tariff sheet is being mailed to Texas Gas's jurisdictional customers and interested state commissions, as well as those parties appearing on the official service list in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or

for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27055 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–470–001]

Trailblazer Pipeline Company; Notice of Compliance Filing

October 18, 2002.

Take notice that on October 15, 2002, Trailblazer Pipeline Company (Trailblazer) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Second Revised Sheet No. 147A to be effective October 1, 2002.

Trailblazer states that the purpose of this filing is to comply with the Commission's Letter Order dated September 30, 2002 which conditionally accepted the tariff sheet tendered by Trailblazer in compliance with Order No. 587-O.

Trailblazer states that copies of the filing are being mailed to each person designated on the official service list in Docket No. RP02–470–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27285 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–009]

Transcontinental Gas Pipe Line Corporation; Notice of Negotiated Rates

October 18, 2002.

Take notice that on October 10, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the executed service agreements and amendments to those agreements that contain a negotiated rate under Rate Schedule FT applicable to the MarketLink Phase II Expansion Project between Transco and various MarketLink Phase II customers.

Transco states that the purpose of the instant filing is to comply with requirements specified in the Commission's Order issued December 13, 2000, "Order Amending Certificate and Denying Request for Stay," which required Transco, among other things, to file, not less than 30 days prior to the commencement of service of the MarketLink Phase II Expansion Project, the negotiated rate agreements or tariff sheets reflecting the essential elements of its negotiated rate agreements. The anticipated effective date of these negotiated rate agreements is November 1, 2002.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27293 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–010]

Transcontinental Gas Pipe Line Corporation; Notice of Negotiated Rates

October 18, 2002.

Take notice that on October 10, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the executed service agreements and amendments to those agreements that contain a negotiated rate under Rate Schedule FT applicable to the Leidy East Expansion Project between Transco and various Leidy East customers.

Transco states that the purpose of the instant filing is to comply with requirements specified in the Commission's Order issued October 25, 2001, "Order Issuing Certificate," which required Transco, among other things, to file, not less than 30 days prior to the commencement of service of the Leidy East Phase 2 Expansion Project, the negotiated rate agreements or tariff sheets reflecting the essential elements of its negotiated rate agreements. The anticipated effective date of these negotiated rate agreements is November 1, 2002.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27294 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–417–001]

Venice Gathering System, L.L.C.; Notice of Compliance Filing

October 18, 2002.

Take notice that on October 11, 2002, Venice Gathering System, L.L.C. (Venice) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets bearing an effective date of October 1, 2002:

Fourth Revised Sheet No. 47
Second Revised Sheet No. 53
Second Revised Sheet No. 57
Original Sheet No. 122A
Fourth Revised Sheet No. 52
Fourth Revised Sheet No. 56
Fourth Revised Sheet No. 78
Original Sheet No. 123A

Venice states that the filing was made in compliance with the Commission's September 26, 2002 order in the captioned proceeding. Venice further states that the revised tariff sheets reflect changes prescribed by Order No. 587–O and, specifically, new North American Energy Standards Board (NAESB) standards governing Title Transfer Tracking Service, definitions, and timelines applicable to non-biddable releases.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27276 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–132–003]

Viking Gas Transmission Company; Notice To Place Tariff Sheets Into Effect

October 17, 2002.

Take notice that on October 11, 2002 Viking Gas Transmission Company (Viking) tendered for filing a Motion To Place Settlement Rates into Effect on an Interim Basis Subject To Conditions (Motion) and tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing to become effective July 1, 2002 subject to the conditions set forth in Viking's Motion.

Viking states that the purpose of this filing is to place the Settlement Rates into effect on an interim basis subject to certain conditions in accordance with the Offer of Settlement filed in this proceeding on September 13, 2002.

Viking states that copies of this filing have been served on all parties designated on the official service list in this proceeding, on all Viking's jurisdictional customers and to affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27054 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–427–002]

Williams Gas Pipelines Central, Inc.; Notice of Compliance Filing

October 17, 2002.

Take notice that on October 11, 2002,Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to become effective October 1, 2002:

Substitute First Revised Second Revised Sheet No. 240

Williams states that this filing is in compliance with the Commission Order issued on September 27, 2002 (100 FERC ¶ 61,371), which required revisions to a tariff sheet previously filed on August 1, 2002 to implement the various standards of Version 1.5 of the North American Energy Standards Board as adopted by Commission Order No. 587–O.

Williams states that copies of the revised tariff sheet are being mailed to Williams' jurisdictional customers and interested state commissions, as well as

those parties appearing on the official service list in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27056 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–483–001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

October 18, 2002.

Take notice that on October 11, 2002, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Eighth Revised Sheet No. 371, with an effective date of October 1, 2002.

Williston Basin states that the filing is being made in compliance with the Commission's Order issued September 27, 2002 in Docket No. RP02–483–000.

Williston Basin states that the instant filing complies with the Commission's Order by removing NAESB Standard 2.3.30 from Subsection 47.2 of its FERC Gas Tariff, Second Revised Volume No. 1 as directed by the Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Webs ite at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27287 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–34–000, et al.]

FPL Energy Hancock County Wind, LLC, et al.; Electric Rate and Corporate Regulation Filings

October 16, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. FPL Energy Hancock County Wind, LLC

[Docket No. ER03–34–000]

Take notice that on October 11, 2002, FPL Energy Hancock County Wind, LLC tendered for filing an application for authorization to sell energy and capacity at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: November 1, 2002.

2. PEC Energy Marketing, Inc.

[Docket No. ER03–35–000]

Take notice that on October 11, 2002, PEC Energy Marketing, Inc. filed a Notice of Cancellation of its Rate Schedule FERC No. 1.

Comment Date: November 1, 2002.

3. Calpine Northbrook Energy Marketing, LLC

[Docket No. ER03–36–000]

Take notice that on October 11, 2002, Calpine Northbrook Energy Marketing, LLC filed a Notice of Succession to reflect that SkyGen Energy Marketing, LLC has changed its name to Calpine Northbrook Energy Marketing, LLC, and an amendment to its rate schedule.

Comment Date: November 1, 2002.

4. Sierra Pacific Power Company and Nevada Power Company

[Docket No. ER03–37–000]

Take notice that on October 11, 2002, Sierra Pacific Power Company (Sierra) and Nevada Power Company (Nevada Power) tendered for filing pursuant to Section 205 of the Federal Power revised Service Schedule Nos. 1–7 to their Open Access Transmission Tariff (OATT). This filing is intended to update the ancillary services rates included in the OATT. Sierra and Nevada Power request that the revised tariff be made effective on January 1, 2003.

Comment Date: November 1. 2002.

5. MidAmerican Energy Company

[Docket No. ES03–4–000]

Take notice that on October 7, 2002, MidAmerican Energy Company (MidAmerican) filed an application under section 204 of the Federal Power Act seeking authorization to issue various forms of long-term debt with a principal amount not to exceed $700 million during a two-year period.

MidAmerican also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: November 6, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27052 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 346–037-Minnesota]

Minnesota Power, Inc. d.b.a. ALLETE, Inc.; Notice of Availability of Environmental Assessment

October 17, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the Blanchard Project located on the Mississippi River, in Morrison County, Minnesota, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental effects of the project and has concluded that approval of the project, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll free 1–866–208–3676.

Any comments should be filed within 30 days from the issuance date of this notice and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix "Blanchard Project No. 346" to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Website under the "e-Filing" link. For further information, contact Tom Dean at (202) 502–6041.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27053 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM02–16–000]

Notice of Public Forum and Agenda

October 21, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of public forum and agenda.

SUMMARY: The Federal Energy Regulatory Commission will host a public forum to discuss issues and proposals associated with establishing a new licensing process. This one-day forum will be held from 9:00 a.m. until 4:00 p.m. The FERC Commissioners will attend, and representatives from federal and state agencies, tribes, non-governmental organizations, and the industry have been invited to participate. All interested persons are invited to attend.

DATES: November 7, 2002.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426/

FOR FURTHER INFORMATION CONTACT: Timothy Welch, 888 First Street, NE., Washington, DC 20426, (202) 502–8760.

Hydroelectric Licensing Regulations Under the Federal Power Act; Notice of Public Forum and Agenda

[Docket No. RM02–16–000]

October 18, 2002.

As announced in the Notice Requesting Comments and Establishing Public Forums and Procedures and Schedule, issued on September 12, 2002, the Federal Energy Regulatory Commission (Commission) will host a public forum on November 7, 2002, to discuss issues and proposals associated with establishing a new licensing process. This one-day forum will be held in the Commission meeting room, 888 First Street, NE, Washington, DC, from 9:00 a.m. to 4:00 p.m.

The FERC Commissioners will attend, and representatives from federal and state agencies, tribes, non-government organizations, and the industry have been invited to participate. All interested persons are invited to attend. The goal is to identify the need for a new licensing process, key issues a new process should address, as well as how a new licensing process can better accommodate all interested parties' needs. Time will be allotted for audience comment and response to the panelists. We look forward to an informative discussion of the issues associated with development of a new licensing process.

The Forum is not intended to address issues pending in individually docketed hydropower cases before the Commission. Therefore, all participants are requested to address the agenda topics and avoid discussing the merits of individual proceedings. The agenda may be viewed on the Commission's Web site: *www.ferc.gov/hydro/docs/hydro.*

Requir ments for Paper and Electronic Filings

Comments or other documents related to this forum may be filed in paper format or electronically. Those filing electronically do not need to make a paper filing.

For paper filings, an original and 8 copies of the comments should be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Paper filings should, at the top of the first page, refer to Docket No. RM02–16–000. The deadline to file comments is December 6, 2002.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov*, click on "e-Filing" and then follow the instructions on the screen. First-time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filing is available at 202–502–8258 or by e-mail to efiling@ferc.gov. Comments should not be submitted to the E-mail address.

All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426, during regular business hours. Additionally, all comments may be viewed on the

Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. For assistance, call 202–502–8371, or toll free 1–866–208–3676, or for TTY 202–502–8659, or by e-mail to FERCONLINESUPPORT@ferc.gov.

Opportunities for Listening and Viewing the Workshop Offsite and for Obtaining a Transcript

The Capitol Connection offers the opportunity for remote listening and viewing of theforum, which is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on "FERC".

The forumwill be transcribed. Those interested in obtaining a copy of the transcript immediately for a fee should contact Ace-Federal Reporters, Inc. at 202–347–3700, or 1–800–336–6646. Two weeks after the forum, the transcript will be available for free on the Commission's FERRIS system.

Anyone without access to the Commission's Web site or who have questions about the forum should contact Tim Welch at 202–502–8760, or e-mail *timothy.welch@ferc.gov*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27272 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD02–22–000]

Notice of Technical Conference and Agenda; Midwest Energy Infrastructure Conference

October 17, 2002.

As announced in the Notice of Conference issued on September 13, 2002, the Federal Energy Regulatory Commission (FERC) will hold a conference on November 13, 2002 to discuss issues regarding energy infrastructure in the midwestern states. These states include Ohio, West Virginia, Michigan, Indiana, Kentucky, Wisconsin, Illinois, Missouri, Minnesota, Iowa, North Dakota, South Dakota, Nebraska, Kansas, and Oklahoma. This half-day conference will begin at 1 p.m. and conclude at approximately 6 p.m., and will be held at the Sheraton Chicago Hotel and Towers, 301 East North Water Street, Chicago, Illinois (1–800–325–3535). All interested persons are invited to attend.

The conference will focus on the adequacy of the electric, gas and other energy infrastructure in the Midwest. The FERC Commissioners will attend, and the Governors and state utility commissioners of the midwestern states have been invited to participate. The goal is to identify the current state of infrastructure in the Midwest, present and future infrastructure needs, and the means for and barriers to fulfilling those needs. We look forward to an informative discussion of the issues to clarify how we can facilitate and enhance a comprehensive, collaborative approach to energy infrastructure development and reliability for the midwestern states. It is becoming increasingly clear that a well-functioning energy infrastructure is necessary to meet America's energy demands and achieve workable, competitive markets.

The conference Agenda is appended to this Notice. As indicated, the purpose of the conference is to discuss regional infrastructure issues among the panelists, and federal and state officials. It is not intended to deal with issues pending in individually docketed cases before the Commission, such as applications involving hydropower, natural gas certificates, or the formation of Regional Transmission Organizations (RTOs). Therefore, all participants are requested to address the agenda topics and avoid discussing the merits of individual proceedings.

Opportunities for Listening to and Obtaining Transcripts of the Conference

The Capital Connection will offer this meeting live via telephone and audio on the internet for a fee. There will not be live video coverage or videotapes of the conference. For more information about Capitol Connection's services, contact David Reininger or Julia Morelli (703–993–3100), or go to *http://www.capitolconnection.org*.

Audio tapes of the meeting will be available from VISCOM (703–715–7999).

Additionally, transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646), for a fee. They will be available for the public on the Commission's FERRIS system two weeks after the conference.

A reminder to please register for the conference online on the Commission Web site at *http://www.ferc.gov/calendar/courses-outreach/coursesoutreach.htm*. Scroll down and click on "Midwest Energy Infrastructure Conference". There is no registration fee.

Questions about the conference program should be directed to: Carol Connors, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *carol.connors@ferc.gov*.

Linwood A. Watson, Jr.,

Deputy Secretary.

Federal Energy Regulatory Commission Midwest Energy Infrastructure Conference

[Docket No. AD02–22–000]

Conference Agenda

Sheraton Chicago Hotel and Towers 301 East North Water Street Chicago, Illinois November 13, 2002

I. Opening Remarks and Introductions—1 p.m. to 1:15 p.m.

Chairman Pat Wood, Commissioner
Nora Mead Brownell, Commissioner
William Massey and Commissioner
Linda Breathitt

II. Overview of Current Energy Infrastructure 1:15 p.m. to 1:30 p.m.

- Jeff Wright, Office of Energy Projects, FERC

III. Forecasts for Future Energy Use and Economic Impacts of Energy—1:30 p.m. to 2 p.m.

- Rick Mattoon, Senior Economist, Federal Reserve Bank of Chicago

IV. Cross Border Issues/Future Energy Relations and Energy Transfer With Canada—2 p.m. to 3 p.m.

Roundtable discussion on infrastructure constraints and improvements needed in energy supply and transmission to and from our neighboring trading partner, Canada.

- Ga,tan Caron, Chief Operating Officer, National Energy Board—Canada
- Kelly Hunter, Market Access Officer, Export Power Marketing Department, Manitoba Hydro
- Dennis Prince, Vice President, Regulatory Strategy, Alliance Pipeline
- [To be announced]

V. Powering New Generation—3 p.m. to 4 p.m.

Roundtable discussion of infrastructure limitations in the Midwest in the delivery and production of natural gas, electricity and renewable energy (*e.g.*, barriers to siting, construction, and investment).

- Jim Cleary, President, ANR Pipeline Company
- Jake Williams, Vice President, Generation Development, Peabody Energy
- Carl Holmes, Kansas State Representative
- Jim Torgerson, President, Midwest Independent System Operator (MISO)

Break—4 p.m. to 4:15 p.m.

VI. New Technology—4:15 p.m. to 5:15 p.m.

Roundtable discussion on promoting new technologies to ensure energy reliability.

- John Howe, Vice President, Electric Industry Affairs, American Superconductor
- Scott Castelaz, Vice President, Marketing and Corporate Development, Encorp
- Robert Schainker, Ph.D., EPRI
- Tracy Anderson, Business Development Manager, 3M

VII. Discussion by State, Federal, and Canadian Officials of Next Steps and Closing Remarks by FERC Commissioners—5:15 p.m. to 6 p.m.

- Susan Wefald, President, North Dakota Public Service Commission
- Ruth Kretschmer, Commissioner, Illinois Commerce Commission
- Diane Munns, Chairman, Iowa Utilities Board
- Jim Burg, Chairman, South Dakota Public Utilities Commission
- David Svanda, Commissioner, Michigan Public Service Commission

[FR Doc. 02–27051 Filed 10–24–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL02–9–000]

Notice of Public Conference and Agenda

October 21, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of public conference and agenda.

SUMMARY: The Federal Energy Regulatory Commission will convene a public conference to engage industry members and the public in a dialogue about policy issues facing the natural gas industry today and the Commission's regulations of the industry for the future. The one-day conference will convene at 9 a.m.

DATES: October 25, 2002.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Ken Niehaus, 888 First Street, NE., Washington, DC 20426, (202) 502–6398.

Natural Gas Markets Conference

[Docket No. PL02–9–000]

October 18, 2002.

1. As announced in the Notice of Conference issued September 26, 2002, the Federal Energy Regulatory Commission (FERC or Commission) will convene a public conference on October 25, 2002, at 9:00 a.m., in the Commission Meeting Room (2C) to engage industry members and the public in a dialogue about policy issues facing the natural gas industry today and the Commission's regulation of the industry for the future. All interested persons are invited to attend.

Location

2. The conference will be held in the Commission Meeting Room. Observers will be accommodated on a space available basis, but seating will also be available in an overflow room, which will have a broadcast of the discussion. All visitors must check-in at the First Street entrance. All visitors should have picture identification readily available to ensure a quick check-in.

Participation

3. The conference consists of four sessions and an open forum. The first session consists of two panels. Panel A will present opposing views on forecasted supply/demand. Panel B, which is comprised of industry representatives, will respond to the first panel's viewpoints. Panel A participants should file written statements concerning their topics in advance to allow the Panel B participants the opportunity to formulate their responses.

4. The second session will discuss the applicability of the Commission's open season and open access requirements to LNG facilities. Proponents for LNG development will discuss concerns that the Commission's policies may interfere with the ability to capitalize necessary upstream development. The third session will focus on whether the Commission's current policies and definitions of gathering and transmission as they apply to offshore facilities help or hinder the development of offshore supply sources. The fourth session consists of two panels that will address flexibility in pipeline operations. They will discuss customer needs and how they can be met.

5. Following the session presentations, the Commission will provide an open forum to provide an opportunity for market participants and other interested persons to raise issues and make policy recommendations for Commission consideration. All open forum presentations should be limited to five minutes. A sign-up sheet for the open forum will be available the morning of the conference.

Procedures To File Comments

6. Panel participants are encouraged to file written statements concerning their topics prior to October 24, 2002. All other interested persons may file additional comments on the issues discussed at the conference, or other matters relevant to this proceeding, by November 15, 2002. Comments should include a one-page, single spaced, position summary. Comments may be filed in paper format or electronically. Those filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, and should refer to Docket No. PL02–9–000.

7. Comments filed via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site (http://www.ferc.gov) and clock on "Make an e-filing," and then follow the instructions for each screen. First-time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of the comments.

8. User assistance for electronic filing is available at 202–502–8258 or by e-mail to efiling@ferc.gov. Comments should not be submitted to the e-mail address. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington, DC 20426 during regular business hours. Additionally, all written statements and comments may be viewed, printed, or downloaded remotely via Internet through FERC's Homepage using the FERRIS link. User assistance for FERRIS is available at 866–208–3676, or by e-mail at webmaster@ferc.gov.

Off-the-Record Communications

9. The purpose of this conference is to discuss generic issues and not contested cases pending before the Commission. If any comments raise specific issues concerning pending

contested cases, those comments will be subject to the Commission's Off-the-Record Communications rules located in Subpart V of Part 385 of the Commission's regulations, including the public notice requirements and sanctions listed in sections 385.2201(h) and (i).

Transcripts

10. Transcripts of the conference will be available from Ace Reporting Company (202–347–3700) for a fee. The transcript also will be available on the Commission's FERRIS system two weeks after the conference. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live or over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on "FERC."

11. For additional information, please contact Ken Niehaus at 202 502–6398 or at *kenneth.niehaus@ferc.gov*.

Linwood A. Watson, Jr.,
Deputy Secretary.

Natural Gas Markets Conference

October 25, 2002.

9:00 AM Opening Remarks
9:10 AM Session I—Supply and Demand—Anticipated long term growth issues.

Moderator—William Hederman, Director—Office of Market Oversight and Investigations

Panel A

Wayne Andrews, Vice President, Equity Research
Raymond James
Vello Kuuskraa, President, Advanced Resources International

Panel B

Craig Chancellor, Calpine Corporation
Mike Warren, Chairman, President & CEO, Energen Corporation
Paul Cicio, Executive Director, Industrial Energy Consumers of America
Fred Fowler, Interstate Natural Gas Association of America
Mike Stice, President, Gas Power, ConocoPhillips
Mark Pinney, Canadian Association of Petroleum Producers
Bruce Schwartz, Director, Corporate & Government Ratings, Standards & Poor

10:15 AM Break
10:30 AM Session II—LNG—Applicability of the Commission open season and open access requirements on LNG import facilities.

Moderator—Ed Murrell, Office of Markets, Tariffs, and Rates

Phil Bainbridge, Vice President, Global LNG, BP Energy Company
Ron P. Billings, Vice President, Global LNG Exxon/Mobile Gas Marketing Company
John Hritcko, Jr., Vice President, Shell NA LNG Inc.
Stephen L. Huntoon, Hackberry LNG Terminal, LLC.
Claude Devillers, Managing Director, Merzbach Group
Richard L Grant, President and CEO, Tractebel LNG, North America

11:30 AM Session III—Offshore Gathering Policy—The Commission's definition of offshore gathering and its impact on the development of offshore facilities.

Moderator—Robert Christin—Office of the General Counsel

Bill Benham, Vice President, Regulatory Affairs BP Energy Company
Joseph W. Kimmel, Vice President, Marketing and Transportation, Shell Offshore Inc.
James Costan, McGuireWoods LLP
David P. Halphen, Shell Gas Transmission
Allen Armstrong, Williams Field Services
W. Jonathan Airey, Independent Petroleum Association of America

12:30 PM Lunch

1:30 PM Session IV—Flexibility in Pipeline Operations—Pipeline infrastructure and its ability to meet the needs of all future customers.

Moderator—Robert Cupina—Office of Energy Projects

Panel A

Tom Skains, President & Chief Operating Officer, Piedmont Natural Gas
Bert Kalish, Vice President, Government Relations, American Public Gas Association
Dena Wiggins, General Counsel, Process Gas Consumers
Craig Chancellor, Calpine Corporation
Harvey Morris, California Public Utility Commission

Panel B

Paul D. Koonce, Senior Vice President, Portfolio Management, Dominion Resources, Inc.
John Hopper, Falcon Storage
Richard Daniel, EnCana Storage
Carl Levander, Vice President, Regulatory & Strategic Initiatives, NiSource Pipeline Group
Frank Ferrazzi, Interstate Natural Gas Association of America

3:00 PM Open Forum

[FR Doc. 02–27271 Filed 10–24–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

October 18, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659.

Exempt

Docket Number	Date filed	Presenter or requester
1. Project No. 1354–000	10–04–02	Don Jack.
2. CP02–396–000	10–04–02	Gini R. Cooper.
3. Project No. 2030–036	10–16–02	Julie Keil (Nan Allen).
4. Project No. 2030–036	10–16–02	Nan Allen.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–27273 Filed 10–24–02; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7399–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Approval of State Coastal Nonpoint Pollution Control Programs

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Approval of State Coastal Nonpoint Pollution Control Programs, EPA ICR Number 1569.05, OMB Control Number 2040–0153, expiring on April 30, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 25, 2002.

ADDRESSES: Comments should be sent to, and copies of the ICR may be obtained without charge from, the Nonpoint Source Control Branch, Assessment and Watershed Protection Division (4503–T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Stacie Craddock at EPA by phone at (202) 566–1204, by fax at (202) 566–1545, by e-mail at *craddock.stacie@epa.gov*, or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1569.05.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are 18 coastal States and 3 Territories with conditionally approved Coastal Nonpoint Pollution Control Programs.

Title: Approval of Coastal Nonpoint Pollution Control Programs, (OMB Control No. 2040–0153; EPA ICR No. 1569.05) expiring April 30, 2003.

Abstract: Under the provisions of national Program Development and Approval Guidance implementing section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) which was jointly developed and published by EPA and the National Oceanic and Atmospheric Administration (NOAA), 26 coastal States and 5 coastal Territories with Federally approved Coastal Zone Management Programs have developed and submitted to EPA and NOAA Coastal Nonpoint Pollution Programs. EPA and NOAA have approved 8 States and 2 Territories, and conditionally approved 18 States and 3 Territories. The conditional approvals will require States and Territories to submit additional information in order to obtain final program approval. Recent administrative changes mutually agreed to by States, Territories, EPA and NOAA are expected to expedite the final approval process. CZARA section 6217 requires States and Territories to obtain final approval of their Coastal Nonpoint Pollution Programs in order to retain their full share of funding available to them under section 319 of the Clean Water Act and section 306 of the Coastal Zone Management Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 125 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose information.

Respondents/Affected Entities: 18 States and 3 Territories.

Estimated Number of Respondents: 21.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 2,625.

Estimated Total Annualized Cost Burden: $91,875.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 02–27236 Filed 10–24–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7399–8]

Clean Air Act Advisory Committee; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

The charter for the Environmental Protection Agency's Clean Air Act Advisory Committee (CAAAC) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 section 9(c). The purpose of CAAAC is to provide advice and recommendations to the EPA Administrator on issues associated with policy and technical issues associated with implementation of the Clean Air Act.

It is determined that CAAAC is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Paul Rasmussen, CAAAC Designated Federal Officer, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460 (Mail code 6102A).

Dated: September 6, 2002.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 02–27235 Filed 10–24–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6634–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements filed October 14, 2002 through October 18, 2002 pursuant to 40 CFR 1506.9.

EIS No. 020428, Final EIS, DOE, NV, Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste, Construction, Operation, Monitoring and Eventually Closing a geologic repository at Yucca Mountain, Nye County, NV. *Wait Period Ends:* November 25, 2002, *Contact:* Dr. Jane R. Summerson (800) 947–3477. This document is available on the Internet at: *http://(www.ymp.gov).*

EIS No. 020429, Draft EIS, BLM, OR, Lookout Mountain Forest and Rangeland Health Project, Baker Resource Management Plan (RMP) Amendment, Visual Resource Management (VRM) Implementation, Baker City, Baker County, OR, Comment Period Ends: January 23, 2003, *Contact:* Ted Davis (541) 523–1431. This document is available on the Internet at: *http://www.or.blm.gov/Vale/Planning/Planning-EnvirnAnalyses.htm.*

EIS No. 020430, Draft EIS, FSA, Programmatic EIS-Emergency Conservation Program (ECP), Improvement and Expansion, To Provide Emergency Funding to Farmers and Ranchers, In the Agricultural Lands of the United States, Comment Period End: December 9, 2002, *Contact:* Don Steck (202) 690–0224. This document is available on the Internet at: *http://www.fsa.usda.gov/dafp/cepd/epb/nepa.htm.*

EIS No. 020431, Draft EIS, AFS, UT, Duck Creek-Swains Access (Duck/Swains), Management Project, To Improve Wildlife Habitat, Soil and Watershed Conditions, and Management of Motorized Vehicle Use, Dixie National Forest, Cedar City Ranger District, Iron, Garfield and Kane Counties, UT, *Comment Period Ends:* December 9, 2002, *Contact:* Priscilla Summers (435) 865–3700.

EIS No. 020432, Final EIS, AFS, MT, Moose Post-Fire Project, Proposal to Decrease Potential Mortality from Bark Beetles to Remaining Live Douglas-fir and Spruce Trees, Recover Merchantable Wood Fiber, Reduce Future Fire Risk and Modify Existing Road Access, Glacier View Ranger District, Flathead National Forest, Flathead County, MT, *Wait Period Ends:* November 25, 2002, *Contact:* Michele Draggoo (406) 387–3827.

EIS No. 020433, Draft Supplement, FHW, WA, Elliott Bridge No. 3166 Replacement, Updated and Reevaluated Information, Proposal to Replace the 149th Avenue SE. Crossing the Cedar River, Funding, U.S. CGD Bridge Permit and Section 404 Permit, City of Renton, King County, WA, *Comment Period Ends:* December 16, 2002, *Contact:* James A. Leonard (360) 753–9408.

EIS No. 20434, Draft EIS, JUS, CA, Sacramento County Juvenile Hall Expansion Project, To Accommodate 90 new beds in the Short-Term, and 240 new beds in the Long-Term, Sacramento County, CA, *Comment Period Ends:* December 9, 2002, *Contact:* Philip Merkle (202) 307–3914. This document is available on the Internet at: *http://www.sacpublicworks.net/jjc/hall/index.htm.*

EIS No. 020435, Final EIS, FHW, CO, Colorado Forest Highway 80, Guanella Pass Road (also known as Park County Road 62/Clear Creek County Road 381/Forest Development Road 118) from US 285 in Grant to Georgetown, Improvements, Funding and US Army COE Section 404, NPDES and Special Use Permits Issuance, Park and Clear Creek Counties, CO, *Wait Period Ends:* November 27, 2002, *Contact:* Richard J. Cushing (303) 716–2138. This FEIS was inadvertently omitted from the 9/27/2002 FR. The CEQ Wait Period is Calculated from 9/27/2002. The FHWA requested an additional 30 days be added to the Wait Period which will end on 11/27/2002.

EIS No. 020436, Draft EIS, FHW, NB, US–81 Highway, Yankton Bridge Replacement, Missouri River Crossing between the City of Yankton, Yankton County, South Dakota and Cedar County, Nebraska, Comment Period Ends: December 9, 2002, Contact: Edward Kosola (402) 437–5521.

EIS No. 020437, Draft EIS, NOA, WA, CA, OR, 2003 Pacific Coast Groundfish Fishery, Proposed Groundfish Acceptable Biological Catch and Optimum Yield Specifications and Management Measures, Implementation, WA, OR and CA, *Comment Period Ends:* December 9, 2002, *Contact:* D. Robert Lohn (206) 526–6150.

Amended Notices

EIS No. 020351, Draft EIS, NOA, AK, OR, WA, CA, Programmatic EIS—Pacific Salmon Fisheries Management Plan, Off the Coasts of Southeast Alaska, Washington, Oregon and California, and the Columbia River Basin, Implementation, Magnuson-Stevens Act, AK, WA, OR and CA, *Comment Period Ends:* November 22, 2002, *Contact:* D. Robert Lohn (206) 526–6150. Revision of FR Notice Published on 8/23/2002: CEQ Comment Period Ending 10/22/2002 has been Extended to 11/22/2002.

Dated: October 21, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–27263 Filed 10–24–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6634–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–COE–H35005–KS Rating EO2, KS–10 Highway (commonly known as South Lawrence Trafficway) Relocation, Issuance or Denial of US Army COE Section 404 Permit Request, Lawrence City, Douglas County, KS.

Summary: EPA expressed environmental objections to the preferred alternative based upon possible impacts to a National Natural landmark (Baker Wetlands), and the absence of a Clean Water Act 404(b)(1) evaluation. EPA recommended further analysis and coordination to discern Environmental Justice impacts and to ensure compliance with Executive Order 13007 (Indian Sacred Sites).

ERP No. D–COE–K39074–CA Rating EC2, Bolinas Lagoon Ecosystem Restoration, Removal of up to 1.5 Million Cubic Yards of Sediment from the bottom of the Lagoon to Allow Restoration of Tidal Movement and Eventual Restoration of Tidal Habitat, Marin County, CA.

Summary: EPA raised environmental concerns due to projected impacts to jurisdictional wetlands associated with the project's implementation, and a lack of analysis regarding efforts to avoid and minimize, as fully as practicable, such impacts. Although the DEIS proposes to dispose approximately 1.5 million cubic yards of dredged material at an EPA-designated ocean dredged material disposal site, the DEIS does not address alternate options to potentially reuse the dredged material or consistency with applicable Federal requirements.

ERP No. D–NRS–H34029–MO Rating LO, Little Otter Creek Watershed Plan, Installation of One Multi-Purpose Reservoir and Development of Basic Facilities for Recreational Use, Implementation, Caldwell County, MO.

Summary: EPA expressed a lack of objections to the proposed project. It was recommended that the FEIS include more information on wetland mitigation, farm acquisitions and available conservation incentive programs.

ERP No. D–SAW–K64021–CA Rating EC2, Natomas Basin Habitat Conservation Plan, Issuance of Incidental Take Permit and the Adoption of an Implementing Agreement or Agreements, Natomas Basin, Sacramento and Sutter Counties, CA.

Summary: EPA expressed environmental concerns regarding the scientific support for the mitigation ratio, the feasibility of implementing the HCP due to the cost and availability of potential reserve lands, the cumulative effects analysis, and the environmental consequences analysis. EPA urged adoption of more frequent HCP review periods or a shorter permit period and greater consideration of measures to avoid or minimize incidental take.

ERP No. D–SAW–K70008–AZ Rating EC2, Roosevelt Habitat Conservation Plan, Issuance of an Incidental Take Permit to Allow Continued Operation of Roosevelt Dam and Lake, Implementation, Gila and Maricopa Counties, AZ.

Summary: EPA expressed environmental concerns regarding the feasibility of acquiring sufficient off-site mitigation habitat, critical water rights to support this habitat, and the evaluation of cumulative impacts. EPA recommended aggressive implementation of water use efficiencies to maximize beneficial use of project water and to continue to pursue other water and power supply options in order to increase the reliability and flexibility of their water and power supply management plans.

ERP No. DA–COE–G39002–00 Rating LO, Red River Chloride Control Project, Authorization to Reduce the Natural Occurring Levels of Chloride in the Wichita River Only Portion, North, Middle and South Forks, Wichita River and Red River, Implementation, Tulsa District, Wichita County, TX.

Summary: EPA had a lack of objections to the proposed project.

ERP No. DS–COE–E30038–FL Rating EC2, Phipps Ocean Park Beach Restoration Project to Provide Shore Protection for the Shoreline surrounding Phipps Ocean Park within the Town of Palm Beach, Regulatory Authorization and U.S. Army COE Section 10 and 404 Permits Issuance, Palm Beach County, FL.

Summary: EPA has environmental concerns regarding the direct and indirect consequences of this proposal which will require additional information to determine if the unavoidable losses will be appropriately mitigated.

Final EISs

ERP No. F–COE–L39058–00, McNary Reservoir and Lower Snake River Reservoirs, Maintenance of the Authorized Navigation Channel and Dredged Material Management Plan (DMMP), Walla Walla District, Lower Snake River and Columbia River, ID and WA.

Summary: EPA continues to have significant environmental objections with the lack of a sediment reduction strategy, the potential effects from the proposed creation of salmonid habitat, the lack of an adequate monitoring plan, and the lack of clarity related to the role of the Local Sediment Management Group.

ERP No. F–FAA–B51017–MA, Logan Airside Improvements Planning Project (EOEA #10458), Construction and Operation of a New Unidirectional Runway 14/32, Centerfield Taxiway and Additional Taxiway Improvements and New Information Providing Clarification of the Delay Problems, Boston International Airport, Funding, Airport Layout Plan Approval and NPDES Permit, Boston, MA.

Summary: EPA expressed environmental concerns about the enforcement/monitoring of the runway 14/32 wind restriction, the establishment of an appropriate wind threshold for the restriction, demand management/peak period pricing, Environmental Justice, baseline and growth projections, and air quality issues.

ERP No. F–FHW–G40166–LA, I–49 Connector, Construction from Evangeline Thruway, US 90 and US 197 in Urbanized Lafayette, Funding, US Army COE Section 10 and 404 Permits Issuance, Parish of Lafayette, LA.

Summary: EPA has no objections to the selection of the preferred alignment and offered no further comments on the Final EIS.

ERP No. F–FRC–B03010–00, Islander East Pipeline Project, Interstate Natural Gas Pipeline Facilities Construction and Operation to provide 285,000 dekatherms per day (Dth/d) of Natural Gas to Energy Markets in Connecticut,

Long Island and New York City, New Haven, CT and Suffolk County, NY.

Summary: EPA expressed environmental concerns that the FEIS lacks information to understand impacts to wetlands and waters of the US; disagreed with the conclusion that project construction and operation will result in limited adverse environmental impacts; expressed concerns about marine impacts and encouraged close coordination between FERC and the applicant with land trust/conservation organizations along the proposed pipeline route.

ERP No. F–FRC–B05192–ME, Presumpscot River Projects, Relicensing of Five Hydroelectric Projects for Construction and Operation, Dundee Project (FERC No. 2942); Gambo Project (FERC No. 2931); Little Falls Project (FERC No. 2932); Mallison Falls Project (FERC No. 2941) and Saccarappa Project (FERC No. 2897), Cumberland County, ME.

Summary: EPA expressed outstanding environmental concerns about dam removal effects on water quality and recommended that higher flows be considered at the Dundee and Mallison Falls dams. EPA also continued to urge consistency with the Casco Bay Estuary Project.

ERP No. F–FRC–L03011–WA, Georgia Strait Crossing Pipeline (LP) Project, Construction and Operation to Transport Natural Gas from the Canadian Border near Sumas, WA to US/Canada Border at Boundary Pass in the Strait of Georgia, Docket Nos. CP01–176–000 and CP01–179–000, Whatcom and San Juan Counties, WA.

Summary: EPA continues to have significant environmental objections with the proposal given the lack of evaluation of reasonable alternatives, the lack of integration with the evaluation and decision making processes being conducted in Canada for the Canadian portion of the project, and the high risks associated with seismic hazards.

ERP No. F–FRC–L05220–WA, Warm Creek (No. 10865) and Clearwater Creek (No. 11485) Hydroelectric Project, Issuance of License for the Construction and Operation located in the Middle Fork Nooksack River (MFNR) Basin, WA.

Summary: EPA raised environmental objections regarding the proposed projects, including the potential negative impacts to aquatic and terrestrial endangered species, and adverse effects to old growth forest, water quality and cultural and spiritual resources of affected Tribes. EPA recommended that the FERC select the No Action alternative.

ERP No. F–FRC–L05222–ID, Four Mid-Snake River Hydroelectric Projects, Applications for New License for the Existing Projects: Shoshone Falls-FERC No. 2778, Upper Salmon Falls-FERC No. 2777, Lower Salmon Falls-FERC No. 2061 and Bliss-FERC No. 1975, Snake River, ID.

Summary: EPA expressed environmental objections that the final EIS did not identify a preferred alternative. EPA continues to have objections to the No Action alternative, the Applicant Proposed Project, and the Seasonal Run-of-River alternative as they would result in continued negative effects to native fish, aquatic invertebrates, and riparian and wetland habitats. EPA recommended licensing and implementing the Year-Round Run-of-River alternative.

ERP No. F–IBR–J39029–SD, Angostura Unit—(Dam, Reservoir and Irrigation Facilities) Renewal of a Long-Term Water Service Contract, Cheyenne River Basin, Pine Ridge Reservation, Bismarck County, SD.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NRS–G36154–OK, Rehabilitation of Aging Flood Control Dams in Oklahoma, Authorization and Funding, OK.

Summary: EPA has no objection to the proposed action since the document adequately responded to comments offered on the Draft EIS.

ERP No. FA–COE–H36012–MO, St. Johns Bayou and New Madrid Floodway Project, Channel Enlargement and Improvement, Flood Control and National Economic Development (NED), New Madrid, Mississippi and Scott Counties, MO.

Summary: EPA continues to have environmental objections to the project and believes that the recommended plan (alternative 3–1.B) raises substantive environmental issues.

ERP No. FS–COE–F36163–00, Upper Des Plaines River, Flood Damage Reduction at Site 37, Construction of a Concrete Floodwall along Des Plaines River, Milwaukee Avenue, Willow Road and Palatine Road in Mt. Prospect, Cook County, IL.

Summary: EPA had no objections to the proposed project and commended the Corps on their wetland mitigation proposal.

Dated: October 22, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–27264 Filed 10–24–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2002–0010; FRL 6724–7]

Toxic Chemical Release Reporting; Community Right-to-Know; Request for Comment on Change of Contractor Handling Trade Secret Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces an upcoming change in location and contractor designated to manage the Toxics Release Inventory (TRI) data processing for all TRI submissions including TRI Trade Secret and confidential information submitted pursuant to 40 CFR part 350. In compliance with 40 CFR part 350 ("Trade Secrecy Claims for Emergency Planning and Community Right-to-Know Information") facilities submitting TRI reports may be eligible to claim Trade Secret for the specific chemical identity of a toxic chemical being reported. Pursuant to 40 CFR 350.23 ("Disclosure to authorized representatives"), information entitled to trade secret or confidential treatment may not be disclosed by the Agency to the Agency's authorized representative until each affected submitter has been furnished notice of the contemplated disclosure by the EPA program office and has been afforded a period found reasonable by that office (not less than five working days) to submit its comments. Pursuant to this **Federal Register** notice, comments are limited to the change of contractor handling trade secret and confidential information submitted under 40 CFR part 350. Once the transition to the new location has been completed, information regarding the new mailing address will be posted on the TRI Web site (*http://www.epa.gov/tri*) and will be included in the *2002 Toxic Chemical Release Inventory Reporting Forms and Instructions.*

DATES: Comments, identified by the docket control number OEI–2002–0010, must be submitted on or before 5 working days after publication in the **Federal Register**.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For general information, contact The Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 or (703) 412–9810, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/*. For technical information about this change in contractor and location for TRI data processing, contact: Wendy Timm, Toxics Release Inventory Program Division, OEI (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460, Telephone: 202–566–0725; Fax: 202–566–0727; email: *timm.wendy@epa.gov*. Once the transition to the new location has been completed, information regarding the new mailing address will be posted on the TRI Web site (*http://www.epa.gov/tri*) and will be included in the *2002 Toxic Chemical Release Inventory Reporting Forms and Instructions.*

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

A. *Affected Entities:* Entities that will be affected by this action are those facilities that manufacture, process, or otherwise use certain toxic chemicals listed on the Toxics Release Inventory (TRI) and which are required under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986, to report annually to EPA their environmental releases of such chemicals.

Currently, those industries with the following SIC code designations (that meet all other threshold criteria for TRI reporting) must report toxic chemical releases and other waste management activities:

- 20–39, manufacturing sector
- 10, metal mining (except for SIC codes 1011, 1081, and 1094)
- 12, coal mining (except for SIC code 1241 and extraction activities)
- 4911, 4931 and 4939, electrical utilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
- 4953, RCRA Subtitle C hazardous waste treatment and disposal facilities
- 5169, chemicals and allied products wholesale distributors
- 5171, petroleum bulk plants and terminals
- 7389, solvent recovery services, and
- Federal facilities in any SIC code

To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions at 40 CFR part 350 and 40 CFR part 372. If you have any questions regarding the applicability of this action to a particular entity, consult the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. How Can I Get Copies of This Document and Other Related Information?

A. Docket. EPA has established an official public docket for this action under Docket ID No. OEI–2002–0010.

The public docket includes information considered by EPA in developing this action, including the documents listed below, which are physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not physically located in the docket, please consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the Notice of Change of Contractor Handling TRI Submissions including TRI Trade Secret Claims Docket is (202) 566–1752.

B. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.A. Once in the system, select "search," then key in the appropriate docket identification number.

III. How Can I Respond to This Notice?

A. How and To Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number (*i.e.*, OEI–2002–0010) in your correspondence.

1. By mail. All comments should be sent in triplicate to: Office of Environmental Information (OEI/TRI), Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Ariel Rios Building, Washington, DC 20460.

2. In person or by courier. Comments may be delivered in person or by courier to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. Electronically. Submit your comments electronically by e-mail to: "*oei.docket@epa.gov*". Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OEI–2002–0010. Electronic comments on this document may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit to the Agency?

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR part 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

IV. What Is the General Background for This Action?

The Toxics Release Inventory (TRI) is mandated by the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and the Pollution Prevention Act (PPA) of 1990. EPCRA Section 313 and PPA Section 6607 establishes requirements for Federal, State, and local governments and industry regarding reporting of toxic chemical releases and other waste management quantities.

Under Section 322 of EPCRA and 40 CFR part 350, facilities submitting TRI reports may be eligible to claim Trade Secret for the specific chemical identity of the toxic chemical being reported. Pursuant to 40 CFR 350.23 ("Disclosure to authorized representatives"), information entitled to trade secret or confidential treatment may not be disclosed by the Agency to the Agency's authorized representative until each affected submitter has been furnished notice of the contemplated disclosure by the EPA program office and has been afforded a period found reasonable by that office (not less than five working days) to submit its comments. Such notice shall include a description of the information to be disclosed, the identity of the contractor, subcontractor, or grantee, the contract, subcontract, or grant number, if any, and the purposes to be served by the disclosure. This notice may be published in the **Federal Register** or may be sent to individual submitters.

The Contract to manage the TRI data submissions was recompeted in 1998 and was awarded to the Computer Based Systems Incorporated, now known as Titan Systems, Inc. This contract will end January 31, 2003. The new contract will transition to Computer Sciences Corporation (CSC) (GSA Contract GSOOT99ALD0203) by the end of December 2002. This new facility will be located in New Carrollton, MD. All TRI submissions including trade secret and confidential information submitted pursuant to 40 CFR part 350 will be managed by CSC.

In accordance with 40 CFR 350.23, EPA has determined that CSC and their subcontractors require access to trade secret and confidential information submitted under 40 CFR part 350 in order to receive, manage, process, and safely store such information. The contractor's and subcontractor's personnel will be required to sign a "Confidentiality Agreement" prior to being permitted access to trade secret and confidential information submitted under 40 CFR part 350. All contractor and subcontractor access to TRI trade secret and confidential information will take place at the contractor's facility in New Carrollton, MD. The contractor will have appropriate procedures and facilities in place to safeguard the TRI trade secret and confidential information to which the contractor and subcontractors have access during the term of this contract.

List of Subjects

Environmental protection, Trade Secret and Confidential Information, TRI Data Processing.

Dated: October 21, 2002.

Elaine G. Stanley,

Director, Office of Information Analysis and Access.

[FR Doc. 02–27234 Filed 10–24–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, October 22, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and resolution activities.

In calling the meeting, the Board determined, on motion of Director James E. Gilleran (Director, Office of Thrift Supervision), seconded by Mr. E. Wayne Rushton, acting in the place and stead of Director John D. Hawke, Jr. (Comptroller of the Currency), concurred in by Director John M. Reich (Appointive), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: October 22, 2002.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 02–27325 Filed 10–23–02; 10:30 am]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

[No. 2002–N–12]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2002–03 third quarter review cycle under the Finance Board's community support requirement regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

DATES: Bank members selected for the 2002–03 third quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board on or before December 13, 2002.

ADDRESSES: Bank members selected for the 2002–03 third quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Office of Supervision, Community Investment & Affordable Housing, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, or by electronic mail at *fitzgeralde@fhfb.gov*.

FOR FURTHER INFORMATION CONTACT: Emma J. Fitzgerald, Program Analyst, Office of Supervision, Community Investment & Affordable Housing, by telephone at 202/408–2874, by electronic mail at *fitzgeralde@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to the requirements of section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirement regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). The Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the December 13, 2002 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before November 12, 2002, each Bank will notify the members in its district that have been selected for the 2002–03 third quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's Web site: *http://www.fhfb.gov*. Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2002–03 third quarter community support review cycle:

Member	City	State
Federal Home Loan Bank of Boston—District 1		
Collinsville Savings Society	Collinsville	Connecticut.
The Guilford Savings Bank	Guilford	Connecticut.
Tolland Bank	Vernon	Connecticut.
Northwest Community Bank	Winsted	Connecticut.
Bar Harbor Banking and Trust Company	Bar Harbor	Maine.
Calais Federal Savings and Loan Association	Calais	Maine.
Camden National Bank	Camden	Maine.
Damariscotta Bank and Trust Company	Damariscotta	Maine.
Franklin Savings Bank	Farmington	Maine.
Katahdin Trust Company	Patten	Maine.
Peoples Heritage Bank, N.A	Portland	Maine.
Rockland Savings & Loan Association	Rockland	Maine.
Abington Savings Bank	Abington	Massachusetts.
Athol Savings Bank	Athol	Massachusetts.
Boston Bank of Commerce	Boston	Massachusetts.
Capital Crossing Bank	Boston	Massachusetts.
Security Federal Savings Bank	Brockton	Massachusetts.
The Canton Institution for Savings, The Bank of Canton	Canton	Massachusetts.
Clinton Savings Bank	Clinton	Massachusetts.
Danvers Savings Bank	Danvers	Massachusetts.
Lafayette Federal Savings Bank	Fall River	Massachusetts.
The Falmouth Co-operative Bank	Falmouth	Massachusetts.
Florence Savings Bank	Florence	Massachusetts.
Colonial Co-operative Bank	Gardner	Massachusetts.
Hingham Institution for Savings	Hingham	Massachusetts.
Peoples Savings Bank	Holyoke	Massachusetts.
Roxbury Highland Bank	Jamaica Plain	Massachusetts.
Equitable Co-operative Bank	Lynn	Massachusetts.
Mansfield Co-operative Bank	Mansfield	Massachusetts.
Milford Federal Savings & Loan Association	Milford	Massachusetts.
Newton South Co-operative Bank	Newton	Massachusetts.
Northampton Cooperative Bank	Northampton	Massachusetts.
Colonial Federal Savings Bank	Quincy	Massachusetts.
Reading Co-operative Bank	Reading	Massachusetts.
South Shore Savings Bank	South Weymouth	Massachusetts.
Southbridge Savings Bank	Southbridge	Massachusetts.
Family Federal Savings, F.A	Stow	Massachusetts.
Mechanics Co-Operative Bank	Taunton	Massachusetts.
Hometown Bank, a Cooperative Bank	Webster	Massachusetts.
Woronoco Savings Bank	Westfield	Massachusetts.
Bow Mills Bank and Trust	Bow	New Hampshire.
Citizens Bank New Hampshire	Manchester	New Hampshire.
Newport Federal Savings Bank	Newport	Rhode Island.
National Bank of Middlebury	Middlebury	Vermont.
Union Bank	Morrisville	Vermont.

Member	City	State
Northfield Savings Bank	Northfield	Vermont.
Merchants Bank	South Burlington	Vermont.
Federal Home Loan Bank of New York—District 2		
Audubon Savings Bank	Audubon	New Jersey.
Bogota Savings Bank	Bogota	New Jersey.
Peoples Savings Bank	Bordentown	New Jersey.
Colonial Bank FSB	Bridgeton	New Jersey.
Century Savings Bank	Bridgeton	New Jersey.
NVE Savings Bank	Englewood	New Jersey.
Glen Rock Savings Bank	Glen Rock	New Jersey.
Roma Federal Savings Bank	Hamilton	New Jersey.
Kearny Federal Savings Bank	Kearny	New Jersey.
Schuyler Savings Bank	Kearny	New Jersey.
Lincoln Park Savings & Loan Association	Lincoln Park	New Jersey.
Metuchen Savings Bank	Metuchen	New Jersey.
First Morris Bank and Trust	Morristown	New Jersey.
Boiling Springs Savings Bank	Rutherford	New Jersey.
Gloucester County Federal Savings Bank	Sewell	New Jersey.
Sturdy Savings Bank	Stone Harbor	New Jersey.
Penn Federal Savings Bank	West Orange	New Jersey.
Woodstown National Bank	Woodstown	New Jersey.
Evans National Bank	Angola	New York.
Independence Community Bank	Brooklyn	New York.
Elmira Savings Bank, FSB	Elmira	New York.
Cattaraugus County Bank	Little Valley	New York.
Chinatown Federal Savings Bank	New York	New York.
Abacus Federal Savings Bank	New York	New York.
The Pavilion State Bank	Pavilion	New York.
SI Bank & Trust	Staten Island	New York.
SBU Bank	Utica	New York.
Wallkill Valley FS&LA	Wallkill	New York.
Doral Bank	Catano	Puerto Rico.
Oriental Bank & Trust	San Juan	Puerto Rico.
Federal Home Loan Bank of Pittsburgh—District 3		
Altoona First Savings Bank	Altoona	Pennsylvania.
Pennsylvania State Bank	Camp Hill	Pennsylvania.
First Carnegie Deposit	Carnegie	Pennsylvania.
Coatesville Savings Bank	Coatesville	Pennsylvania.
Slovenian S&LA of Franklin-Conemaugh	Conemaugh	Pennsylvania.
First National Community Bank	Dunmore	Pennsylvania.
Halifax National Bank	Halifax	Pennsylvania.
Peoples National Bank	Hallstead	Pennsylvania.
Polonia Bank	Huntingdon Valley	Pennsylvania.
Mauch Chunk Trust Company	Jim Thorpe	Pennsylvania
1st Summit Bank	Johnstown	Pennsylvania.
Grange National Bank	Laceyville	Pennsylvania.
The First National Bank of McConnellsburg, PA	McConnellsburg	Pennsylvania.
Mifflinburg Bank and Trust Company	Mifflinburg	Pennsylvania.
Union National Community Bank	Mount Joy	Pennsylvania.
The Muncy Bank and Trust Company	Muncy	Pennsylvania.
First Penn Bank	Philadelphia	Pennsylvania.
United American Savings Bank	Pittsburgh	Pennsylvania.
EurekaBank	Pittsburgh	Pennsylvania.
Iron and Glass Bank	Pittsburgh	Pennsylvania.
Slovak Savings Bank	Pittsburgh	Pennsylvania.
Bank Pittsburgh	Pittsburgh	Pennsylvania.
Scottdale Bank and Trust Company	Scottdale	Pennsylvania.
Leesport Bank	Shenandoah	Pennsylvania.
Northwest Savings Bank	Warren	Pennsylvania.
Peoples State Bank of Wyalusing	Wyalusing	Pennsylvania.
City National Bank of West Virginia	Charleston	West Virginia.
Citizens Bank of Morgantown	Morgantown	West Virginia.
First National Bank	Ronceverte	West Virginia.
Advance Financial Savings Bank	Wellsburg	West Virginia.
Federal Home Loan Bank of Atlanta—District 4		
The Exchange Bank of Alabama	Altoona	Alabama.
Bank of Alabama	Birmingham	Alabama.
First Commercial Bank	Birmingham	Alabama.

Member	City	State
New South Federal Savings Bank	Birmingham	Alabama.
First National Bank	Brewton	Alabama.
Central State Bank	Calera	Alabama.
The Camden National Bank	Camden	Alabama.
The Peoples Bank	Clio	Alabama.
The Commercial Bank of Demopolis	Demopolis	Alabama.
Southland Bank	Dothan	Alabama.
The Southern Bank Company	Gadsden	Alabama.
First National Bank	Hamilton	Alabama.
The Headland National Bank	Headland	Alabama.
Frontier National Bank	Lanett	Alabama.
First State Bank	Lineville	Alabama.
First Citizens Bank	Luverne	Alabama.
Citizens Bank, Inc	Robertsdale	Alabama.
The Slocomb National Bank	Slocomb	Alabama.
First Tuskegee Bank	Tuskegee	Alabama.
First Liberty National Bank	Washington	D.C.
Riggs Bank N.A	Washington	D.C.
Wilmington Trust FSB	Wilmington	Delaware.
Pointe Bank	Boca Raton	Florida.
Bankunited, FSB	Coral Gables	Florida.
Bankatlantic	Fort Lauderdale	Florida.
Natbank N.A	Hollywood	Florida.
American Bank and Trust of Polk County	Lake Wales	Florida.
FloridaFirst Bank	Lakeland	Florida.
Orion Bank	Marathon	Florida.
Security Bank, N.A	Margate	Florida
Eagle National Bank of Miami	Miami	Florida.
Unibank	Miami	Florida.
Kislak National Bank	Miami Lakes	Florida.
Metro Savings Bank, F.S.B	Orlando	Florida.
First Federal Bank of North Florida	Palatka	Florida.
Bay Bank and Trust	Panama City	Florida.
Federal Trust Bank	Sanford	Florida.
Sarasota Bank	Sarasota	Florida.
Capital City Bank	Tallahassee	Florida.
Bay Financial Savings Bank, F.S.B	Tampa	Florida.
Bank of Alapaha	Alapaha	Georgia.
Athens First Bank and Trust Company	Athens	Georgia.
The Summit National Bank	Atlanta	Georgia.
Georgia Bank and Trust Company of Augusta	Augusta	Georgia.
United Community Bank White County	Blairsville	Georgia.
First Georgia Bank	Brunswick	Georgia.
The First Bank of Brunswick	Brunswick	Georgia.
Planters and Citizens Bank	Camilla	Georgia.
Community Bank and Trust	Cornelia	Georgia.
Newton Federal Savings and Loan Association	Covington	Georgia.
Southeastern Bank	Darien	Georgia.
First National Bank of Coffee County	Douglas	Georgia.
Farmers and Merchants Bank	Eatonton	Georgia.
Elberton Federal Savings & Loan Association	Elberton	Georgia.
Bank of Ellaville	Ellaville	Georgia
1st Community Bank	Fairburn	Georgia.
The Citizens Union Bank	Greensboro	Georgia.
The Coastal Bank	Hinesville	Georgia.
Crescent Bank & Trust Company	Jasper	Georgia.
Pineland State Bank	Metter	Georgia.
First National Bank of the South	Milledgeville	Georgia.
Gateway Bank and Trust	Ringgold	Georgia.
Farmers and Merchants Bank	Statesboro	Georgia.
Spivey State Bank	Swainsboro	Georgia.
Commercial Bank	Thomasville	Georgia.
First Federal Savings and Loan Association	Valdosta	Georgia.
Citizens Bank	Warrenton	Georgia.
Severn Savings Bank, F.S.B	Annapolis	Maryland.
Advance Bank	Baltimore	Maryland.
AmericasBank	Baltimore	Maryland.
FedMed Bank, FSB	Baltimore	Maryland.
Fraternity Federal S&L Association	Baltimore	Maryland.
Hamilton Federal S&L Association	Baltimore	Maryland.
Homewood Federal Savings Bank	Baltimore	Maryland.
Leeds Federal Savings Bank	Baltimore	Maryland.
Provident Bank of Maryland	Baltimore	Maryland.
Saint Casimirs Savings Bank	Baltimore	Maryland.

Member	City	State
Presidential Bank, FSB	Bethesda	Maryland.
Peoples Bank of Kent County	Chestertown	Maryland.
The Talbot Bank of Easton	Easton	Maryland.
The Peoples Bank of Elkton	Elkton	Maryland.
Madison and Bradford FS&L Association, Inc	Forest Hills	Maryland.
Eastern Savings Bank, FSB	Hunt Valley	Maryland.
Wyman Park FS&L Association	Lutherville	Maryland.
Valley Bank of Maryland	Owings Mill	Maryland.
Key Bank and Trust	Owings Mills	Maryland.
Enterprise Federal Savings Bank	Oxon Hill	Maryland.
North Arundel Federal Savings Bank, FSB	Pasadena	Maryland.
Baltimore County Savings Bank, F.S.B	Perry Hall	Maryland.
American Bank	Rockville	Maryland.
First Shore FS&L Association	Salisbury	Maryland.
Sykesville Federal Savings Association	Sykesville	Maryland.
Ashburton Federal S & L Association, Inc	Westminster	Maryland.
Equitable Bank	Wheaton	Maryland.
Home Savings Bank, SSB of Eden	Eden	North Carolina.
High Point Bank and Trust Company	High Point	North Carolina.
The Community Bank	Pilot Mountain	North Carolina.
RBC Centura	Rocky Mount	North Carolina.
Piedmont Federal Savings & Loan Association	Winston Salem	North Carolina.
First Palmetto Savings Bank, FSB	Camden	South Carolina.
Spratt Savings and Loan Association	Chester	South Carolina.
Plantation Federal Bank	Pawleys Island	South Carolina.
Woodruff Federal Savings & Loan Association	Woodruff	South Carolina.
Shore Bank	Accomac	Virginia.
Virginia Commerce Bank	Arlington	Virginia.
Bedford Federal Savings Bank	Bedford	Virginia.
First and Citizens Bank	Monterey	Virginia.
Farmers & Merchants Bank, Eastern Shore	Onley	Virginia.
First Federal Savings Bank	Petersburg	Virginia.
Community Bank	Staunton	Virginia.
Southside Bank	Tappahannock	Virginia.
Citizens and Farmers Bank	West Point	Virginia.
Federal Home Loan Bank of Cincinnati—District 5		
Kentucky Home Bank, Inc	Bardstown	Kentucky.
Bank of Clarkson	Clarkson	Kentucky.
Citizens F&SLA of Covington	Covington	Kentucky.
Heritage Community Bank	Danville	Kentucky.
South Central Savings Bank, FSB	Edmonton	Kentucky.
The Peoples Bank of Fleming County	Flemingsburg	Kentucky.
State National Bank of Frankfort	Frankfort	Kentucky.
Fredonia Valley Bank	Fredonia	Kentucky.
First Southern National Bank	Lancaster	Kentucky.
Bank of the Bluegrass and Trust Company	Lexington	Kentucky.
Peoples Security Bank	Louisa	Kentucky.
The First Capital Bank of Kentucky	Louisville	Kentucky.
First FS&LA of Morehead	Morehead	Kentucky.
Commonwealth Bank, F.S.B	Mt. Sterling	Kentucky.
Mount Sterling National Bank	Mt. Sterling	Kentucky.
Traditional Bank, Inc	Mt. Sterling	Kentucky.
Farmers National Bank	Walton	Kentucky.
The Apple Creek Banking Company	Apple Creek	Ohio.
Belmont Savings Bank	Bellaire	Ohio.
The Citizens National Bank of Bluffton	Bluffton	Ohio.
The Brookville Building and Savings Association	Brookville	Ohio.
First Federal Community Bank of Bucyrus	Bucyrus	Ohio.
First Federal S&LA of Centerburg	Centerburg	Ohio.
Columbia Savings Bank	Cincinnati	Ohio.
New Foundation Loan and Building Company	Cincinnati	Ohio.
The Franklin Savings and Loan Company	Cincinnati	Ohio.
Warsaw Federal S&LA of Cincinnati	Cincinnati	Ohio.
Charter One Bank, F.S.B	Cleveland	Ohio.
Third FS&LA of Cleveland	Cleveland	Ohio.
United Midwest Savings Bank	DeGraff	Ohio.
Hicksville Building, Loan and Savings Bank	Hicksville	Ohio.
Merchants National Bank	Hillsboro	Ohio.
NCB, FSB	Hillsboro	Ohio.
Home Savings Bank	Kent	Ohio.
Kenwood Savings Bank	Kenwood	Ohio.
First FS&LA of Lakewood	Lakewood	Ohio.

Member	City	State
Fairfield Federal S&LA of Lancaster	Lancaster	Ohio.
First National Bank	Lebanon	Ohio.
Leesburg Federal Savings Bank	Leesburg	Ohio.
The First Knox Bank of Mount Vernon	Mt. Vernon	Ohio.
New Carlisle Federal Savings Bank	New Carlisle	Ohio.
The Park National Bank	Newark	Ohio.
The First Savings Bank of Norwood	Norwood	Ohio.
American Savings Bank, fsb	Portsmouth	Ohio.
Home City Federal Savings Bank	Springfield	Ohio.
Belmont National Bank	St. Clairsville	Ohio.
Perpetual Federal Savings Bank	Urbana	Ohio.
Liberty Savings Bank, F.S.B	Wilmington	Ohio.
North Valley Bank	Zanesville	Ohio.
Farmers & Merchants Bank	Adamsville	Tennessee.
Bank of Alamo	Alamo	Tennessee.
First South Credit Union	Bartlett	Tennessee.
Bank of Crockett	Bells	Tennessee.
First Farmers and Merchants National Bank	Columbia	Tennessee.
Decatur County Bank	Decaturville	Tennessee.
First Independent Bank	Gallatin	Tennessee.
Chester County Bank	Henderson	Tennessee.
The Bank of Jackson	Jackson	Tennessee.
People's Community Bank	Johnson City	Tennessee.
Wilson Bank and Trust	Lebanon	Tennessee.
First National Bank of the Cumberlands	Livingston	Tennessee.
Trust One Bank	Memphis	Tennessee.
Citizens Bank	New Tazewell	Tennessee.
Newport Federal Bank	Newport	Tennessee.
Citizens National Bank	Sevierville	Tennessee.
Federal Home Loan Bank of Indianapolis—District 6		
Independent Federal Credit Union	Anderson	Indiana.
Boonville Federal Savings Bank	Boonville	Indiana.
First State Bank	Brazil	Indiana.
Riddell National Bank	Brazil	Indiana.
Union Savings and Loan Association	Connersville	Indiana.
Union FS&LA	Crawfordsville	Indiana.
First Federal Savings Bank	Evansville	Indiana.
Pacesetter Bank	Hartford City	Indiana.
MetroBank	Indianapolis	Indiana.
Kentland Federal Savings and Loan Association	Kentland	Indiana.
The La Porte Savings Bank	La Porte	Indiana.
Logansport Savings Bank, FSB	Logansport	Indiana.
Home Bank, F.S.B	Martinsville	Indiana.
Peoples Bank SB	Munster	Indiana.
Farmers State Bank	New Ross	Indiana.
First Bank Richmond, S.B	Richmond	Indiana.
Mid-Southern Savings Bank, FSB	Salem	Indiana.
Owen County State Bank	Spencer	Indiana.
Grant County State Bank	Swayzee	Indiana.
Liberty Savings Bank FSB	Whiting	Indiana.
Homestead Savings Bank, FSB	Albion	Michigan.
Commercial Bank	Alma	Michigan.
Fidelity Bank	Birmingham	Michigan.
Tri-County Bank	Brown City	Michigan.
Monarch Community Bank	Coldwater	Michigan.
Paramount Bank	Farmington Hills	Michigan.
Select Bank	Grand Rapids	Michigan.
Peoples State Bank	Hamtramck	Michigan.
Union Bank	Lake Odessa	Michigan.
Marshall Savings Bank, FSB	Marshall	Michigan.
Peoples State Bank of Munising	Munising	Michigan.
New Buffalo Savings Bank	New Buffalo	Michigan.
Thumb National Bank and Trust	Pigeon	Michigan.
Citizens First Savings Bank	Port Huron	Michigan.
LaSalle Federal Savings Bank	St. Joseph	Michigan.
The First National Bank of Three Rivers	Three Rivers	Michigan.
First National Bank	Wakefield	Michigan.
Federal Home Loan Bank of Chicago—District 7		
First Community Bank and Trust	Beecher	Illinois.
First State Bank of Beecher City	Beecher City	Illinois.

Member	City	State
Greater Chicago Bank	Bellwood	Illinois.
The First National Bank in Carlyle	Carlyle	Illinois.
BankChampaign, N.A	Champaign	Illinois.
Alliance, FSB	Chicago	Illinois.
Community Savings Bank	Chicago	Illinois.
Illinois Service FS&LA	Chicago	Illinois.
Labe Bank	Chicago	Illinois.
NAB Bank	Chicago	Illinois.
North Federal Savings Bank	Chicago	Illinois.
Oak Bank	Chicago	Illinois.
Pulaski Savings Bank	Chicago	Illinois.
South Central Bank	Chicago	Illinois.
Washington Federal Bank for Savings	Chicago	Illinois.
Family Federal Savings of Illinois	Cicero	Illinois.
West Town Savings Bank	Cicero	Illinois.
The John Warner Bank	Clinton	Illinois.
The Elizabeth State Bank	Elizabeth	Illinois.
Flora Bank & Trust	Flora	Illinois.
Community Bank Wheaton/Glen Ellyn	Glen Ellyn	Illinois.
Illinois State Bank	Lake in the Hills	Illinois.
Heritage State Bank	Lawrenceville	Illinois.
Fairfield Savings Bank, F.S.B	Long Grove	Illinois
1st State Bank of Mason City	Mason City	Illinois.
Mazon State Bank	Mazon	Illinois.
McHenry Savings Bank	McHenry	Illinois.
The City National Bank of Metropolis	Metropolis	Illinois.
First National Bank	Moline	Illinois.
Brown County State Bank	Mount Sterling	Illinois.
Wabash Savings Bank	Mt. Carmel	Illinois.
The Farmers Bank of Mt. Pulaski	Mt. Pulaski	Illinois.
Regency Savings Bank	Oak Park	Illinois.
BankFinancial, FSB	Olympia Fields	Illinois.
Pekin Savings Bank	Pekin	Illinois.
The Herget National Bank of Pekin	Pekin	Illinois.
Peru Federal Savings Bank	Peru	Illinois.
National Bank of Petersburg	Petersburg	Illinois.
Citizens State Bank of Shipman	Shipman	Illinois.
Farmers State Bank of Somonauk	Somonauk	Illinois.
Marine Bank, Springfield	Springfield	Illinois.
Town & Country Bank of Springfield	Springfield	Illinois.
Tremont Savings Bank	Tremont	Illinois.
Banner Banks	Birnamwood	Wisconsin.
Community First Bank	Boscobel	Wisconsin.
North Shore Bank, FSB	Brookfield	Wisconsin.
Dorchester State Bank	Dorchester	Wisconsin.
PremierBan	Fort Atkinson	Wisconsin.
Capital Bank	Green Bay	Wisconsin.
Green Lake State Bank	Green Lake	Wisconsin.
PyraMax Bank	Greenfield	Wisconsin.
Greenleaf Wayside Bank	Greenleaf	Wisconsin.
Hustisford State Bank	Hustisford	Wisconsin.
Mid America Bank	Janesville	Wisconsin.
Union State Bank	Kewaunee	Wisconsin.
Bank of Lake Mills	Lake Mills	Wisconsin.
Bank of Little Chute	Little Chute	Wisconsin.
Rural American Bank—Luck	Luck	Wisconsin.
AnchorBank, fsb	Madison	Wisconsin.
Home Savings Bank	Madison	Wisconsin.
The Peoples State Bank	Mazomanie	Wisconsin.
Bremer, National Association	Menomonie	Wisconsin.
Middleton Community Bank	Middleton	Wisconsin.
Milton Savings Bank	Milton	Wisconsin.
First Community Bank	Milton	Wisconsin.
Maritime Savings Bank	Milwaukee	Wisconsin.
Mutual Savings Bank	Milwaukee	Wisconsin.
West Pointe Bank	Oshkosh	Wisconsin.
Wisconsin State Bank	Random Lake	Wisconsin.
The Reedsburg Bank	Reedsburg	Wisconsin.
Dairy State Bank	Rice Lake	Wisconsin.
Community Business Bank	Sauk City	Wisconsin.
Baylake Bank	Sturgeon Bay	Wisconsin.
Superior Savings Bank	Superior	Wisconsin.
Farmers and Merchants Bank	Tomah	Wisconsin.
Bank of Waunakee	Waunakee	Wisconsin.

Member	City	State
West Bend Savings Bank	West Bend	Wisconsin.
First Citizens State Bank	Whitewater	Wisconsin.
Federal Home Loan Bank of Des Moines—District 8		
Raccoon Valley State Bank	Adel	Iowa.
Peoples State Bank	Albia	Iowa.
Community Bank	Alton	Iowa.
Bank Iowa	Altoona	Iowa.
First National Bank	Ames	Iowa.
Farmers & Traders Savings Bank	Bancroft	Iowa.
Chelsea Savings Bank	Belle Plaine	Iowa.
Boone Bank & Trust Company	Boone	Iowa.
Prairie State Bank	Brunsville	Iowa.
Guaranty Bank and Trust Company	Cedar Rapids	Iowa.
Cherokee State Bank	Cherokee	Iowa.
First State Bank	Conrad	Iowa.
Dubuque Bank & Trust Company	Dubuque	Iowa.
First Federal Savings Bank of Iowa	Fort Dodge	Iowa.
Gibson Savings Bank	Gibson	Iowa.
Mills County Bank, N.A	Glenwood	Iowa.
Security State Bank	Guttenburg	Iowa.
Farmers Savings Bank	Halbur	Iowa.
Farmers State Bank	Hawarden	Iowa.
First State Bank	Hawarden	Iowa.
Humboldt Trust & Savings Bank	Humboldt	Iowa.
State Central Bank	Keokuk	Iowa.
Heritage Bank	Marion	Iowa.
F&M Bank—Iowa	Marshalltown	Iowa.
Security State Bank	Red Oak	Iowa.
Lincoln Savings Bank	Reinbeck	Iowa.
Sibley State Bank	Sibley	Iowa.
Security State Bank	Stuart	Iowa.
First State Bank	Sumner	Iowa.
Farmers Savings Bank & Trust-Vinton	Vinton	Iowa.
Webster City Federal Savings Bank	Webster City	Iowa.
Community State Bank	West Branch	Iowa.
Citizens State Bank	Wyoming	Iowa.
Farmers State Bank of Adams	Adams	Minnesota.
Bremer Bank, National Association	Alexandria	Minnesota.
State Bank of Aurora	Aurora	Minnesota.
State Bank of Bellingham	Bellingham	Minnesota.
Star Bank, N.A	Bertha	Minnesota.
Farmers and Merchants State Bank	Blooming Prairie	Minnesota.
First National Bank of Blue Earth	Blue Earth	Minnesota.
Canton State Bank	Canton	Minnesota.
First National Bank of Deer River	Deer River	Minnesota.
The First National Bank of Deerwood	Deerwood	Minnesota.
State Bank of Kimball	Kimball	Minnesota.
Lake Elmo Bank	Lake Elmo	Minnesota.
First National Bank Le Center	Le Center	Minnesota.
First State Bank of LeRoy	LeRoy	Minnesota.
Community Federal Savings & Loan Association	Little Falls	Minnesota.
Prairie Sun Bank	Milan	Minnesota.
Peoples National Bank of Mora	Mora	Minnesota.
First Federal Savings Bank	Morris	Minnesota.
United Prairie Bank	New Ulm	Minnesota.
Community National Bank	North Branch	Minnesota.
Northwoods Bank of Minnesota	Park Rapids	Minnesota.
Pine City State Bank	Pine City	Minnesota.
Prior Lake State Bank	Prior Lake	Minnesota.
Minnwest Bank, MV	Redwood Falls	Minnesota.
First Independent Bank	Russell	Minnesota.
United Prairie Bank	Spicer	Minnesota.
Highland Bank	St. Michael	Minnesota.
First National Bank	Thief River Falls	Minnesota.
State Bank of Tower	Tower	Minnesota.
Security State Bank of Wanamingo	Wanamingo	Minnesota.
Belgrade State Bank	Belgrade	Missouri.
Ozark Mountain Bank	Branson	Missouri.
O'Bannon Banking Company	Buffalo	Missouri.
First National Bank	Camdenton	Missouri.
Horizon State Bank	Cameron	Missouri.
Bank 21	Carrollton	Missouri.

Member	City	State
State Bank of Missouri	Concordia	Missouri.
Eminence Security Bank	Eminence	Missouri.
Rockwood Bank	Eureka	Missouri.
Allen Bank & Trust Company	Harrisonville	Missouri.
Sun Security Bank of America	Holts Summit	Missouri.
Jonesburg State Bank	Jonesburg	Missouri.
Missouri Bank & Trust Company	Kansas City	Missouri.
Blue Ridge Bank & Trust Company	Kansas City	Missouri.
Kearney Commercial Bank	Kearney	Missouri.
Neosho Savings and Loan Association, F.A	Neosho	Missouri.
Bank of New Madrid	New Madrid	Missouri.
Charter 1 Bank	Owensville	Missouri.
Ozark Bank	Ozark	Missouri.
Progressive Ozark Bank	Salem	Missouri.
First National Bank of Sarcoxie	Sarcoxie	Missouri.
Security Bank and Trust Company	Scott City	Missouri.
Community State Bank	Shelbina	Missouri.
Central West End Bank	St. Louis	Missouri.
Missouri State Bank and Trust Company	St. Louis	Missouri.
Community Bank, NA	Summersville	Missouri.
Peoples Bank & Trust Company	Troy	Missouri.
The Bank of Urbana	Urbana	Missouri.
The Missouri Bank	Warrenton	Missouri.
Security Bank of Pulaski County	Waynesville	Missouri.
Farmers & Merchants Bank of Wright City	Wright City	Missouri.
First State Bank of North Dakota	Arthur	North Dakota.
Security State Bank of North Dakota	Jamestown	North Dakota.
The Goose River Bank	Mayville	North Dakota.
Bremer Bank, NA	Minot	North Dakota.
The First State Bank of Munich	Munich	North Dakota.
Liberty State Bank	Powers Lake	North Dakota.
Dacotah Bank	Valley City	North Dakota.
Dakota Heritage State Bank	Chancellor	South Dakota.
The First Western Bank Custer	Custer	South Dakota.
Reliabank Dakota	Estelline	South Dakota.
Campbell County Bank, Inc	Herreid	South Dakota.
Plains Commerce Bank	Hoven	South Dakota.
First State Bank of Miller	Miller	South Dakota.
CorTrust Bank, National Association	Mitchell	South Dakota.
American State Bank	Oldham	South Dakota.
American State Bank of Pierre	Pierre	South Dakota.
Farmers and Merchants State Bank	Plankinton	South Dakota.
First Premier Bank	Sioux Falls	South Dakota.
Valley Bank, N.A	Sioux Falls	South Dakota.
The First Western Bank Sturgis	Sturgis	South Dakota.
Commercial State Bank	Wagner	South Dakota.
First Western Bank Wall	Wall	South Dakota.
Federal Home Loan Bank of Dallas—District 9		
Elk Horn Bank & Trust Company	Arkadelphia	Arkansas.
First National Bank of Howard County	Dierks	Arkansas.
Merchants and Farmers Bank	Dumas	Arkansas.
Planters & Merchants Bank	Gillett	Arkansas.
Calhoun County Bank	Hampton	Arkansas.
Community First Bank	Harrison	Arkansas.
The Cleburne County Bank	Heber Springs	Arkansas.
One Bank & Trust	Little Rock	Arkansas.
Pinnacle Bank	Little Rock	Arkansas.
Pulaski Bank & Trust Company	Little Rock	Arkansas.
Farmers Bank & Trust	Magnolia	Arkansas.
Union Bank and Trust Company	Monticello	Arkansas.
Newport Federal Savings Bank	Newport	Arkansas.
Priority Bank	Ozark	Arkansas.
United Bank	Springdale	Arkansas.
Farmers & Merchants Bank	Stuttgart	Arkansas.
Abbeville Building and Loan	Abbeville	Louisiana.
The Business Bank of Baton Rouge	Baton Rouge	Louisiana.
Community Trust Bank	Choudrant	Louisiana.
Crowley Building & Loan Association	Crowley	Louisiana.
United Community Bank	Gonzales	Louisiana.
Central Progressive Bank	Hammond	Louisiana.
The Union Bank	Marksville	Louisiana.
Horizons Bank	Monroe	Louisiana.

Member	City	State
IberiaBank	New Iberia	Louisiana.
Crescent Bank & Trust	New Orleans	Louisiana.
Fidelity Homestead Association	New Orleans	Louisiana.
Citizens Bank & Trust Company	Plaquemine	Louisiana.
Iberville Building & Loan Association	Plaquemine	Louisiana.
Bank of Zachary	Zachary	Louisiana.
Magnolia State Bank	Bay Springs	Mississippi.
State Bank and Trust Company	Greenwood	Mississippi.
The First National Bank of South Mississippi	Hattiesburg	Mississippi.
Grand Bank for Savings, FSB	Hattiesburg	Mississippi.
Trustmark National Bank	Jackson	Mississippi.
OmniBank	Jackson	Mississippi.
Citizens Bank & Trust Company	Louisville	Mississippi.
BankFirst Financial Services	Macon	Mississippi.
Bank of New Albany	New Albany	Mississippi.
Bank of Okalona	Okalona	Mississippi.
First Federal Savings and Loan	Pascagoula	Mississippi.
Bank of Yazoo City	Yazoo City	Mississippi.
Union Savings Bank	Albuquerque	New Mexico.
Western Bank of Clovis	Clovis	New Mexico.
Gallup Federal Savings Bank	Gallup	New Mexico.
Citizens Bank of Las Cruces	Las Cruces	New Mexico.
The Bank of Las Vegas	Las Vegas	New Mexico.
Century Bank, FSB	Santa Fe	New Mexico.
IBM Texas Employees Federal Credit Union	Austin	Texas.
Franklin Bank, SSB	Austin	Texas.
Lamar Bank	Beaumont	Texas.
The First National Bank of Beeville	Beeville	Texas.
Bonham State Bank	Bonham	Texas.
Shelby Savings Bank, ssb	Center	Texas.
Chappell Hill Bank	Chappell Hill	Texas.
Charter Bank Northwest	Corpus Christi	Texas.
First Security State Bank	Cranfils Gap	Texas.
First National Bank of Crockett	Crockett	Texas.
First National Bank in Dalhart	Dalhart	Texas.
First State Bank of North Texas	Dallas	Texas.
Inwood National Bank	Dallas	Texas.
First Command Bank	Fort Worth	Texas.
Pioneer National Bank	Fredericksburg	Texas.
First State Bank	Happy	Texas.
Henderson Federal Savings Association	Henderson	Texas.
Coastal Bank ssb	Houston	Texas.
Community State Bank	Houston	Texas.
Encore Bank	Houston	Texas.
Riverway Bank	Houston	Texas.
State Bank	La Grange	Texas.
Spring Hill State Bank	Longview	Texas.
Angelina Savings Bank, FSB	Lufkin	Texas.
Northeast National Bank	Mesquite	Texas.
Guaranty Bank	Mt. Pleasant	Texas.
Olympic Savings Association	Refugio	Texas.
First State Bank	Stratford	Texas.
Alliance Bank	Sulphur Springs	Texas.
First State Bank Central Texas	Temple	Texas.
First Federal Savings & Loan	Tyler	Texas.
First National Bank of Weatherford	Weatherford	Texas.
Horizon Capital Bank	Webster	Texas.
Federal Home Loan Bank of Topeka—District 10		
Colorado Central Credit Union	Arvada	Colorado.
Valley Bank & Trust	Brighton	Colorado.
Farmers State Bank of Calhan	Calhan	Colorado.
BankWest	Castle Rock	Colorado.
Castle Rock Bank	Castle Rock	Colorado.
FirstBank of Colorado Springs	Colorado Springs	Colorado.
1st National Bank of Durango	Durango	Colorado.
First National Bank of Flagler	Flagler	Colorado.
Morgan Federal Bank	Fort Morgan	Colorado.
Colorado Federal Savings Bank	Greenwood Village	Colorado.
Colorado East Bank & Trust	Lamar	Colorado.
First National Bank in Lamar	Lamar	Colorado.
The First National Bank of Anthony	Anthony	Kansas.
Guaranty State Bank & Trust Company	Beloit	Kansas.

Member	City	State
Beverly State Bank	Beverly	Kansas.
Caldwell State Bank	Caldwell	Kansas.
The Elk State Bank	Clyde	Kansas.
Peoples Exchange Bank	Concordia	Kansas.
Citizens Bank, N.A	Fort Scott	Kansas.
Citizens State Bank and Trust Company	Hiawatha	Kansas.
Central Bank and Trust Company	Hutchinson	Kansas.
Inter-State FS&LA of Kansas City	Kansas City	Kansas.
Kanza Bank	Kingman	Kansas.
Citizens Savings and Loan Association, FSB	Leavenworth	Kansas.
First Savings Bank, F.S.B	Manhattan	Kansas.
First State Bank	Norton	Kansas.
First FS&LA of Olathe	Olathe	Kansas.
First Option Bank	Osawatomie	Kansas.
Valley State Bank	Roeland Park	Kansas.
The Roxbury Bank	Roxbury	Kansas.
The Columbian Bank and Trust Company	Topeka	Kansas.
The First National Bank	Ainsworth	Nebraska.
Community Bank	Alma	Nebraska.
Auburn State Bank	Auburn	Nebraska.
Bruning State Bank	Bruning	Nebraska.
Butte State Bank	Butte	Nebraska.
South Central State Bank	Campbell	Nebraska.
First National Bank and Trust Company	Columbus	Nebraska.
City Bank & Trust Company	Crete	Nebraska.
Cedar Security Bank	Fordyce	Nebraska.
Pinnacle Bank	Gretna	Nebraska.
Security Home Bank	Malmo	Nebraska.
Security National Bank of Omaha	Omaha	Nebraska.
Commercial Federal Bank	Omaha	Nebraska.
Horizon Bank	Waverly	Nebraska.
Bank of Yutan	Yutan	Nebraska.
First National Bank & Trust Company of Ardmore	Ardmore	Oklahoma.
Citizens Security Bank & Trust Company	Bixby	Oklahoma.
Chickasha Bank & Trust Company	Chickasha	Oklahoma.
First Bank and Trust	Clinton	Oklahoma.
The First Bank of Haskell	Haskell	Oklahoma.
Republic Bank of Norman	Norman	Oklahoma.
First National Bank of Oklahoma	Oklahoma City	Oklahoma.
Lakeside State Bank	Oologah	Oklahoma.
First American Bank and Trust Company	Purcell	Oklahoma.
Sulphur Community Bank	Sulphur	Oklahoma.
Federal Home Loan Bank of San Francisco—District 11		
Valley Independent Bank	El Centro	California.
Xerox Federal Credit Union	El Segundo	California.
Fremont Bank	Fremont	California.
Commercial Capital Bank, FSB	Irvine	California.
American First Credit Union	La Habra	California.
International City Bank	Long Beach	California.
California National Bank	Los Angeles	California.
Fidelity Federal Bank, A FSB	Los Angeles	California.
First Commerce Bank	Los Angeles	California.
National Bank of California	Los Angeles	California.
Preferred Bank	Los Angeles	California.
U.S. Trust Company of CA	Los Angeles	California.
Modesto Commerce Bank	Modesto	California.
The Vintage Bank	Napa	California.
Oak Valley Community Bank	Oakdale	California.
United Labor Bank	Oakland	California.
Palm Desert National Bank	Palm Desert	California.
Mid-Peninsula Bank	Palo Alto	California.
Malaga Bank	Palos Verdes Estates	California.
PFF Bank & Trust	Pomona	California.
Summit State Bank	Rohnert Park	California.
California S&L, AFA	San Francisco	California.
Pacific Business Bank	Santa Fe Springs	California.
Monterey Bank Bay	Watsonville	California.
Federal Home Loan Bank of Seattle—District 12		
Northrim Bank	Anchorage	Alaska.
Northern Schools Federal Credit Union	Fairbanks	Alaska.

Member	City	State
BankPacific, Ltd.	Hagatna	Guam.
Finance Factors, Limited	Honolulu	Hawaii.
Hawaii State Federal Credit Union	Honolulu	Hawaii.
The Bank of Commerce	Idaho Falls	Idaho.
Ireland Bank	Malad	Idaho.
First Federal Savings Bank of Twin Falls	Twin Falls	Idaho.
United Bank, N.A	Absarokee	Montana.
Wells Fargo Bank Wyoming, N.A	Billings	Montana.
Pioneer Federal Savings and Loan Association	Dillon	Montana.
Pacific Continental Bank	Eugene	Oregon.
First FS&LA of McMinnville	McMinnville	Oregon.
Albina Community Bank	Portland	Oregon.
Community First Bank	Prineville	Oregon.
Bank of American Fork	American Fork	Utah.
Home Savings Bank	Salt Lake City	Utah.
TransWest Credit Union	Salt Lake City	Utah.
Horizon Bank	Bellingham	Washington.
Bank of Fairfield	Fairfield	Washington.
Timberland Bank	Hoquiam	Washington.
Kitsap Bank	Port Orchard	Washington.
Puyallup Valley Bank	Puyallup	Washington.
First Savings Bank of Renton	Renton	Washington.
HomeStreet Bank	Seattle	Washington.
Washington First International Bank	Seattle	Washington.
Bank of Star Valley	Afton	Wyoming.
Wyoming Bank and Trust Company	Buffalo	Wyoming.
Oregon Trail Bank	Guernsey	Wyoming.
First National Bank & Trust	Powell	Wyoming.
First National Bank, Torrington	Torrington	Wyoming.
Pinnacle Bank, Wyoming	Torrington	Wyoming.

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before November 12, 2002, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2002–03 third quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2002–03 third quarter review cycle must be delivered to the Finance Board on or before the December 13, 2002 deadline for submission of Community Support Statements.

By the Federal Housing Finance Board.

Dated: October 18, 2002.

Arnold Intrater,

General Counsel.

[FR Doc. 02–26925 Filed 10–24–02; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–05]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Microbial Contamination of Produce: A Field Study of the Lower Rio Grande Valley, OMB No. 0920–0487—Extension—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background

Foodborne diseases are common; an estimated 6–33 million cases occur each year in the United States. Although most of these infections cause mild illness, severe infections and serious complications do occur. The public health challenges of foodborne diseases are changing rapidly. In recent years, new and emerging foodborne pathogens have been described and changes in food production have led to new food safety concerns. Foodborne diseases have been associated with many different foods, including recent outbreaks linked to contaminated fresh fruits (*e.g.*, cantaloupe, strawberries) and vegetables (*e.g.*, leaf lettuce, alfalfa sprouts).

NCEH proposes to conduct a study to determine what specific produce

processing practices are associated with fecal contamination of fruits and vegetables. Handling and processing methods used in the produce industry may increase the risk that these foods will become contaminated with fecal matter. The study will describe the chain of processing-shipping practices for five vulnerable produce groups (leafy greens, leafy herbs, green onions, cabbage, melon/cantaloupe). Critical practices where contamination with foodborne pathogens is likely will be identified by measuring the microbial quality of produce at each step during processing. Sources of fecal contamination will be determined by measuring the microbial quality of process water, measuring fecal indicator organisms on hand rinses from packing shed laborers, and conducting sanitary surveys of sources of human and animal feces in and around the processing areas. CDC, National Center for Environmental Health is requesting a 3-year clearance. There is no cost to respondents.

Respondents	No. of respondents	No. of responses/ respondent	Avg. burden/ response (in hours)	Total burden (in hours)
Packing Facility Recruiting visit	20	1	30/60	10
Packing Shed Manager Interview (in person)	20	2	30/60	20
Hand Rinse Sample Collection	100	2	30/60	100
Total				130

Dated: October 16, 2002.

John Moore,

Acting Associate Director, Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–27198 Filed 10–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–06]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Domestic Violence Prevention Enhancement and Leadership through Alliances (DELTA)—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Domestic violence is a large, potentially preventable source of physical and emotional harm for women, children, and families. One promising approach to domestic violence prevention is the coordinated community response (CCR) model wherein multiple agencies within a community come together to work collectively on domestic violence issues. However, many CCRs formed to date focus on responding to rather than preventing acts of violence. The CDC is launching the Domestic Violence Prevention Enhancement and Leadership Through Alliances (DELTA) demonstration program to stimulate the development of prevention-focused programs and the diffusion of the programs into the existing operations of CCRs, using nine state domestic violence coalitions as intermediaries.

This project, conducted by Mathematica Policy Research, Inc. (MPR) will first identify and describe each state's CCR structures and operations, then evaluate the DELTA Program's success in developing and disseminating prevention enhancements to CCRs. Mathematica will use an environmental scan to identify the full population of CCRs in each state, as well as profile the organizational, political, and economic landscape in which the CCRs operate. This information will assist CDC and the state coalitions in developing prevention enhancements that are responsive to the capacities and circumstances of local CCRs while at the same time providing baseline measures to facilitate and evaluation of the DELTA program. The DELTA program evaluation will then use these baseline measures, together with additional data collected each year throughout program implementation to assess how well the program performs in strengthening collaborative activity across domestic violence programs, developing prevention enhancements and incorporating them into current CCR operations, and institutionalizing organizational changes that will sustain primary prevention as part of the everyday workings of state coalitions and CCRs. Mathematica will conduct interviews with the nine state coalitions that are DELTA grantees every six months and conduct an annual survey of all local CCRs in the nine DELTA states. MPR will also conduct a one-time survey of state domestic violence coalitions and up to ten other organizations in each of the 41 non-DELTA states. There is no cost to respondents for any of these surveys.

Respondents	No. of respondents	No. of responses/ respondent	Avg. burden/ response (in hrs.)	Total burden (in hrs.)
Telephone interviews with administrators of state domestic violence coalitions in DELTA states	9	7	30/60	32
Telephone interviews with other organizations	36	1	30/60	18
Mail Survey of local CCRs in DELTA states	288	4	20/60	384
Mail survey of state domestic violence coalitions in non-Delta states	41	1	30/60	21
Mail survey of other state agencies or advocacy groups in non-Delta states	123	1	30/60	62
Telephone interviews with CCRs in Delta states	40	1	30/60	20
Total				537

Dated: October 16, 2002.

John Moore,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–27199 Filed 10–24–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifiers: CMS–10041]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Long Term Care Awareness Project; *Form No.:* CMS–10041 (OMB# 0938–0825); *Use:* CMS–CBC needs to collect these data to pilot test a national campaign to educate current and future Medicare beneficiaries and their families about long term health care needs, as requested in the Presidential Initiative for Fiscal Year 2000 Budget. Project findings will be used to design and implement a nationwide campaign. Respondents will be from two groups: 55–70 year-olds and persons with disability who are 18–64 years of age; *Frequency:* Quarterly; *Affected Public:* Individuals or Households; *Number of Respondents:* 2000; *Total Annual Responses:* 2000; *Total Annual Hours:* 667.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 17, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–27185 Filed 10–24–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–9042]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Request for Accelerated Payments and Supporting Regulations in 42 CFR Sections 412.116, 412.632, 413.64, 413.350, and 484.245; *Form No.:* CMS–9042 (OMB#0938–0269); *Use:* These form /instructions are used by fiscal intermediaries to access a provider's eligibility for accelerated payments. Such payment is granted if there is an unusual delay in processing bills. *Frequency:* On occasion; *Affected Public:* Business or other for-profit, and Not for-profit institutions; *Number of*

Respondents: 750; *Total Annual Responses:* 750; Total Annual Hours Requested: 375.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 17, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–27186 Filed 10–24–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

CMS–2087–FN

RIN 0938–AK91

Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2001

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final Notice.

SUMMARY: The Social Security Act provides for the Medicaid program to pay all or part of the Medicare Part B premiums (for months during the period beginning with January 1998, and ending with December 2002) for two specific eligibility groups of low-income Medicare beneficiaries, referred to as Qualifying Individuals. This notice announces the allotments that are available for State agencies to pay Medicare Part B premiums for these eligibility groups for Federal fiscal year 2001.

DATES: The allotments are available for expenditures made during the Federal fiscal year 2001 (beginning October 1, 2000).

FOR FURTHER INFORMATION CONTACT: Robert Nakielny, (410) 786–4466.

SUPPLEMENTARY INFORMATION:

I. Background

A. Before the Balanced Budget Act of 1997

Before the enactment of the Balanced Budget Act of 1997 (BBA), section 1902(a)(10)(E) of the Social Security Act (the Act) specified that a Medicaid State plan must provide for Medicare cost-sharing for three eligibility groups of low-income Medicare beneficiaries. These three groups included Qualified Medicare Beneficiaries (QMBs), Specified Low-income Medicare Beneficiaries (SLMBs), and Qualified Disabled and Working Individuals (QDWIs).

A QMB is an individual entitled to Medicare Part A with income at or below the Federal poverty level and resources below $4,000 for an individual and $6,000 for a couple. An SLMB is an individual who meets the QMB criteria, except that his or her income is between a State-established level (at or below the Federal poverty level) and 120 percent of the Federal poverty level. A QDWI is an individual who is entitled to enroll in Medicare Part A, whose income does not exceed 200 percent of the Federal poverty level for a family of the size involved, whose resources do not exceed twice the amount allowed under the Supplementary Security Income (SSI) program, and who is not otherwise eligible for Medicaid.

The definition of Medicare cost-sharing at section 1905(p)(3) of the Act includes payment for premiums, although QDWIs only qualify to have Medicaid pay their Medicare Part A premiums.

B. After the Balanced Budget Act of 1997

Section 4732 of the BBA amended section 1902(a)(10)(E) of the Act to require States to provide for Medicaid payment of all or part of the Medicare Part B premiums, during the period beginning January 1998 and ending December 2002, for selected members of two eligibility groups of low-income Medicare beneficiaries, referred to as Qualifying Individuals (QIs).

Under section 1902(a)(10)(E)(iv)(I) of the Act, State agencies are required to pay the full amount of the Medicare Part B premium for selected QIs who would be QMBs except that their income level is at least 120 percent but less than 135 percent of the Federal poverty level for a family of the size involved. These individuals cannot otherwise be eligible for medical assistance under the approved State Medicaid plan.

The second group of QIs, under section 1902(a)(10)(E)(iv)(II) of the Act, includes Medicare beneficiaries who would be QMBs except that their income is at least 135 percent but less than 175 percent of the Federal poverty level for a family of the size involved. These QIs may not be otherwise eligible for Medicaid under the approved State plan, but are eligible for a portion of Medicare cost-sharing consisting only of a percentage of the increase in the Medicare Part B premium attributable to the shift of Medicare home health coverage from Part A to Part B (as provided in section 4611 of the BBA).

Section 4732(c) of the BBA also added section 1933 of the Act, which specifies the provisions for State coverage of the Medicare cost-sharing for additional low-income Medicare beneficiaries.

Section 1933(a) of the Act specifies that a State agency must provide, through a State plan amendment, for medical assistance to pay for the cost of Medicare cost-sharing on behalf of QIs who are selected to receive assistance.

Section 1933(b) of the Act sets forth the rules that State agencies must follow in selecting QIs and providing payment for Medicare Part B premiums. Specifically, the State agency must permit all QIs to apply for assistance and must select individuals on a first-come, first-served basis in the order in which they apply. Under section 1933(b)(2)(B) of the Act, when selecting persons who will receive assistance in calendar years after 1998, State agencies must give preference to those individuals who received assistance as QIs, QMBs, SLMBs, or QDWIs in the last month of the previous year and who continue to be, or become, QIs. Under section 1933(b)(4), persons selected to receive assistance in a calendar year are entitled to receive assistance for the remainder of the year, but not beyond, as long as they continue to qualify. The fact that an individual is selected to receive assistance at any time during the year does not entitle the individual to continued assistance for any succeeding year. Because the State's allotment is limited by law, section 1933(b)(3) of the Act provides that the State agency must limit the number of QIs so that the amount of assistance provided during the year is approximately equal to the State's allotment for that year.

Section 1933(c) of the Act limits the total amount of Federal funds available for payment of Part B premiums each fiscal year and specifies the formula to be used to determine an allotment for each State from this total amount. For State agencies that execute a State plan amendment in accordance with section 1933(a) of the Act, a total of $1.5 billion was allocated over 5 years as follows: $200 million in FY 1998; $250 million in FY 1999; $300 million in FY 2000; $350 million in FY 2001; and $400 million in FY 2002.

The Federal matching rate for Medicaid payment of Medicare Part B premiums for QIs is 100 percent for expenditures up to the amount of the State's allotment. No Federal matching funds are available for expenditures in excess of the State's allotment amount. Administrative expenses associated with the payment of Medicare Part B premiums for QIs remain at the 50 percent matching level and may not be taken from the State's allotment.

The amount available for each fiscal year is to be allocated among States according to the formula set forth in section 1933(c)(2) of the Act. The formula provides for an amount to each State agency that is to be based on each State's share of the Secretary's estimate of the ratio of—

(1) An amount equal to the sum of the following:

(a) Twice the total number of individuals who meet all but the income requirements for QMBs, whose incomes are at least 120 percent but less than 135 percent of the Federal poverty level, and who are not otherwise eligible for Medicaid; and (b) The total number of individuals in the State who meet all but the income requirements for QMBs, whose incomes are at least 135 percent but less than 175 percent of the Federal poverty level, and who are not otherwise eligible for Medicaid; to

(2) The sum of all of these individuals under item (1) for all eligible States.

II. Provisions of This Notice

On January 25, 2002 (67 FR 3713), we published a proposed notice in the **Federal Register**. That notice contained the proposed allotments for Federal fiscal year 2001. We did not receive any public comments in response to that proposed notice.

Therefore, this notice announces the allotments available to individual States for Federal fiscal year 2001 for the Medicaid payment of Medicare Part B premiums for QIs identified under sections 1902(a)(10)(E)(iv)(I) and (II) of the Act. The formula used to calculate these allotments was described in detail in the January 26, 1998 **Federal Register** (63 FR 3752, 3754) and, except for the incorporation of the latest data, has been used here without changes.

FY 2001 State Allotments for Payment of Part B Premiums Under Sec. 4732 of the BBA of 1997

[Dollars in thousands]

State	(a) M1 [1]	(b) M2 [2]	(c) 2 × (a) + (b)	State share of (c) (percent)	State FY 2001 allocation
AK	1	4	6	0.10	$340
AL	28	74	130	2.10	7,357
AR	21	46	88	1.42	4,980
AZ	21	66	108	1.75	6,112
CA	108	310	526	8.50	29,766
CO	10	27	47	0.76	2,660
CT	8	57	73	1.18	4,131
DC	2	5	9	0.15	509
DE	6	10	22	0.36	1,245
FL	113	282	508	8.21	28,747
GA	22	67	111	1.79	6,281
HI	4	14	22	0.36	1,245
IA	17	59	93	1.50	5,263
ID	6	19	31	0.50	1,754
IL	38	148	224	3.62	12,676
IN	41	80	162	2.62	9,167
KS	10	40	60	0.97	3,395
KY	20	65	105	1.70	5,942
LA	24	67	115	1.86	6,508
MA	34	79	147	2.38	8,319
MD	26	52	104	1.68	5,885
ME	7	16	30	0.49	1,698
MI	36	138	210	3.40	11,884
MN	23	46	92	1.49	5,206
MO	24	78	126	2.04	7,130
MS	15	44	74	1.20	4,188
MT	4	11	19	0.31	1,075
NC	46	111	203	3.28	11,487
ND	5	13	23	0.37	1,302
NE	10	34	54	0.87	3,056
NH	2	12	16	0.26	905
NJ	35	101	171	2.76	9,677
NM	7	25	39	0.63	2,207
NV	6	23	35	0.57	1,981
NY	94	236	424	6.86	23,994
OH	51	161	263	4.25	14,883
OK	23	61	107	1.73	6,055
OR	8	39	55	0.89	3,112
PA	81	195	357	5.77	20,202
RI	9	18	36	0.58	2,037
SC	28	61	117	1.89	6,621
SD	5	13	23	0.37	1,302
TN	36	58	130	2.10	7,357
TX	81	223	385	6.22	21,787
UT	7	18	32	0.52	1,811

FY 2001 STATE ALLOTMENTS FOR PAYMENT OF PART B PREMIUMS UNDER SEC. 4732 OF THE BBA OF 1997—Continued

[Dollars in thousands]

State	(a) M1 [1]	(b) M2 [2]	(c) 2 × (a) + (b)	State share of (c) (percent)	State FY 2001 allocation
VA	31	87	149	2.41	8,432
VT	3	8	14	0.23	792
WA	22	48	92	1.49	5,206
WI	21	95	137	2.22	7,753
WV	13	42	68	1.10	3,848
WY	3	7	13	0.21	736
Total	1296	3593	6185	100.00	350,000

[1] Three-year average (1998–2000) of number of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 120% but less than 135% of FPL.

[2] Three-year average (1998–2000) of number of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 135% but less than 175% of FPL.

IV. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory planning and review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandate Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). A regulatory impact statement (RIA) must be prepared for major rules with economic effects of $100 million or more annually. Although we have determined this is a major rule, since it provides $400 million to a specialized category of low-income Medicare beneficiaries, these funds have already been budgeted and will not cause an adverse ill effect on the economy. Therefore, we will not provide an impact analysis under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief for small entities. For purposes of the RFA, States and individuals are not considered to be small entities.

This notice allocates, among the States, Federal funds to provide Medicaid payment for Medicare Part B premiums for QIs. The total amount of Federal funds available during a Federal fiscal year and the formula for determining individual State allotments are specified in the law. Because the formula for determination of State allotments is specified in the statute, there were no other options to be considered. Therefore, we have applied the statutory formula for the State allotments except for the use of specified data. Because the data specified in the law were not available, we have used comparable data from the U.S. Census Bureau on the number of possible QIs in the States, as described in detail in the January 26, 1998 **Federal Register**. These new allotments for FY 2002 incorporate the latest data from the U.S. Census Bureau from 1998–2000, as specified in the footnotes to the preceding table. Since the statutory formula calls for an estimate of individuals who could qualify for QI status, rather than the number of individuals who actually have that status, the exact numbers of those individuals will always be uncertain.

We believe the statutory provisions that are implemented in this final notice will have a positive effect on States and individuals. Federal funding at the 100 percent matching rate is available for Medicare cost-sharing for Medicare Part B premium payments for selected QIs, and a greater number of low-income Medicare beneficiaries will have their Medicare Part B premiums paid under Medicaid.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 100 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act, because we have determined and certify that this final notice will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandate Reform Act of 1995, Pub. L. 104–4, also requires that agencies assess anticipated costs and benefits before issuing any proposed rule and a final rule preceded by a proposed rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or any the private sector, or $110 million or more. This notice will have no consequential effect on the governments mentioned or on the private sector.

We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism. Because this notice simply provides notice of funding ceilings, as determined under the statute, we have determined that this notice does not significantly affect the rights, roles, and responsibilities of States.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget (OMB).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: May 28, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–27143 Filed 10–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2159–N]

RIN 0938–ZA34

Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1988 Continuance of Approval of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) as an Accrediting Organization

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the continued approval of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) as an accreditation organization for clinical laboratories under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) program. We have determined that the accreditation process of this organization provides reasonable assurance that the laboratories accredited by JCAHO meet the conditions required by the CLIA statute and its implementing regulations. Consequently, laboratories that voluntarily become accredited by JCAHO, in lieu of direct Federal oversight, and continue to meet JCAHO requirements would meet the CLIA condition level requirements for laboratories and, therefore, are not subject to routine inspection by State survey agencies to determine their compliance with CLIA requirements. These laboratories are, however, subject to Federal validation and complaint investigation surveys.

EFFECTIVE DATE: This notice is effective for the period October 25, 2002, through October 25, 2005.

FOR FURTHER INFORMATION CONTACT: Kathleen Todd, (410) 786–3385.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

On October 31, 1988, the Congress enacted the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Pub. L. 100–578. CLIA replaced in its entirety section 353(e)(2) of the Public Health Service Act, as enacted by the Clinical Laboratories Improvement Act of 1967. On July 31, 1992, we published a final rule in the **Federal Register** (57 FR 33992) implementing the accreditation provisions of CLIA. Under this rule, we may approve a private, nonprofit organization as an approved accreditation organization to accredit clinical laboratories under the CLIA program if the organization meets certain requirements. An organization's requirements for accrediting a laboratory must be equal to, or more stringent than, the applicable CLIA program requirements in 42 CFR part 493 (Laboratory Requirements). Therefore, a laboratory accredited by an approved accreditation organization that meets and continues to meet all of the accreditation organization's requirements would be considered to meet CLIA condition level requirements if it were inspected against CLIA regulations. The regulations in 42 GFR part 493, subpart E (Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program) specify the requirements an accreditation organization must meet to be an approved accreditation organization. We approve an accreditation organization for a period not to exceed 6 years.

In general, the approved accreditation organization must, among other conditions and requirements, meet the following conditions:

- Use inspectors qualified to evaluate laboratory performance and agree to inspect laboratories with the frequency determined by us.
- Apply standards and criteria that are equal to, or more stringent than, those condition level requirements established by us when taken as a whole.
- Provide reasonable assurance that these standards and criteria are continuously met by its accredited laboratories.
- Provide us with the name of any laboratory that has had its accreditation denied, suspended, withdrawn, limited, or revoked within 30 days of the action taken.
- Notify us at least 30 days before implementing any proposed changes in its standards.
- If we withdraw our approval, we will notify the accredited laboratory of the withdrawal within 10 days of the withdrawal. A laboratory can be accredited if, among other conditions and requirements, it meets the standards of an approved accreditation organization and authorizes the accreditation organization to submit records and other information to us as required.

In addition to requiring the publication of criteria for approving an accreditation organization and withdrawing this approval, CLIA regulations require us to perform an annual evaluation by inspecting a sufficient number of laboratories accredited by an approved accreditation organization, as well as by any other means that we determine appropriate.

II. Notice of Continued Approval of the Joint Commission on Accreditation of Healthcare Organizations as an Accreditation Organization

In this notice, we approve JCAHO as an organization that may continue to accredit laboratories for purposes of establishing their compliance with CLIA. The Centers for Disease Control and Prevention (CDC) and CMS have examined the JCAHO application and all subsequent submissions to determine equivalency with the requirements under 42 CFR part 493, subpart E that an accreditation organization must meet to be granted approved status under CLIA. We have determined that JCAHO complied with the applicable CLIA requirements and grant JCAHO approval as an accreditation organization under 42 CFR part 493, subpart E, as of October 25, 2002, through October 25, 2005, for all specialty and subspecialty areas under CLIA.

As a result of this determination, any laboratory that is accredited by JCAHO during this time period for an approved specialty or subspecialty is deemed to meet the applicable CLIA condition level requirements for the laboratories found in 42 CFR part 493 and, therefore, is not subject to routine inspection by a State survey agency to determine its compliance with CLIA requirements. The accredited laboratory, however, is subject to validation and complaint investigation surveys performed by us, or by any other Federal, State, or local public agency, or nonprofit organization under an agreement with the Secretary.

III. Evaluation of Joint Commission on Accreditation of Healthcare Organizations

The following describes the process used to determine that JCAHO, as a private, nonprofit organization, provides reasonable assurance that laboratories it accredits will meet the applicable requirements of CLIA.

A. Requirements for Approving an Accreditation Organization Under Clinical Laboratory Improvement Amendments of 1988

To determine whether we should grant approved status to JCAHO as a private, nonprofit organization for accrediting laboratories under CLIA for all specialty or subspecialty areas of human specimen testing it requested, we conducted a detailed and in-depth comparison of JCAHO's requirements

for its laboratories to those of CLIA. In summary, we evaluated whether JCAHO meets the following requirements:

- Provides reasonable assurance to us that it requires the laboratories it accredits to meet requirements that are equal to, or more stringent than, the CLIA condition level requirements (for the requested specialties and subspecialties) and would, therefore, meet the condition level requirements of CLIA if those laboratories had not been granted deemed status and had been inspected against condition level requirements.
- Meets the applicable requirements of 42 CFR part 493, subpart E.

As specified in the regulations of 42 CFR part 493, subpart E, the review of a private, nonprofit accreditation organization seeking approved status under CLIA includes, but is not limited to, an evaluation of the following:

- Whether the organization's requirements for its accredited laboratories are equal to, or more stringent than, the condition level requirements of the CLIA regulations.
- The organization's inspection process to determine the following:

—The composition of the inspection teams, qualifications of the inspectors, and the ability of the organization to provide continuing education and training to all of its inspectors.
—The comparability of the organization's full inspection and complaint inspection requirements to the Federal requirements including, but not limited to, inspection frequency, and the ability to investigate and respond to complaints against its accredited laboratories.
—The organization's procedures for monitoring laboratories that it finds out of compliance with its requirements.
—The ability of the organization to provide us with electronic data and reports that are necessary for effective validation and assessment of the organization's inspection process.
—The ability of the organization to provide us with electronic data related to the adverse actions resulting from unsuccessful proficiency testing (PT) participation in CMS-approved PT programs, as well as data related to the PT failures, within 30 days of the initiation of the action
—The ability of the organization to provide us with electronic data for all its accredited laboratories and the area of specialty and subspecialty testing.
—The adequacy of the numbers of staff and other resources.
—The organization's ability to provide adequate funding for performing the required inspections.

- Whether the organization has an agreement with us that requires it, among other conditions and requirements, to meet the following:

—Notify us of any laboratory that has had its accreditation denied, limited, suspended, withdrawn, or revoked by the accreditation organization, or that has had any other adverse action taken against it by the accreditation organization, within 30 days of the date the action is taken.
—Notify us within 10 days of a deficiency identified in an accredited laboratory if the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public.
—Notify us of all newly accredited laboratories, or laboratories whose areas of specialty or subspecialty are revised, within 30 days.
—Notify each laboratory accredited by the organization within 10 days of our withdrawal of approval of the organization as an accreditation organization.
—Provide us with inspection schedules, on request, for the purpose of conducting onsite validation inspections.
—Provide our agent, the State survey agency, or us with any facility-specific data that includes, but is not limited to, PT results that constitute unsuccessful participation in an approved PT program and notification of the adverse actions or corrective actions imposed by the accreditation organization as a result of unsuccessful PT participation.
—Provide us with written notification at least 30 days in advance of the effective date of any proposed changes in its requirements.
—Provide upon the request by any person, on a reasonable basis (under State confidentiality and disclosure requirements, if applicable), any laboratory's PT results with the explanatory information needed to assist in the interpretation of the results.

Laboratories that are accredited by an approved accreditation organization must, among other conditions and requirements, meet the following requirements:

- Authorize the organization to release to us all records and information required.
- Permit inspections as required by the CLIA regulations at 42 CFR part 493, subpart Q (Inspection).
- Obtain a certificate of accreditation under § 493.55 (Application for registration certificate and certificate of accreditation).

B. Evaluation of the Joint Commission on Accreditation of Healthcare Organizations Request for Continued Approval as an Accreditation Organization Under the Clinical Laboratory Improvement Amendments of 1988

We have examined JCAHO's assurance that it requires the laboratories it accredits to be, and that the organization is in compliance with, the following subparts of part 493:

1. Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program

JCAHO has requested continued approval to accredit all specialties and subspecialties and has submitted the following:

- Description of its PT monitoring process, inspection process, policies, and data management and analysis system.
- List of its inspection team size, composition, and education and experience.
- Investigative and complaint response procedures.
- Our notification agreements.
- Procedures for the removal or withdrawal of accreditation from a laboratory.
- Current list of accredited laboratories with an announced or unannounced inspection process.

We have determined that JCAHO has complied with the requirements under CLIA for approval as an accreditation organization under this subpart.

Our evaluation identified JCAHO requirements pertaining to waived testing that are more stringent than the CLIA requirements. The JCAHO waived testing requirements include the following:

- Defining the extent that waived test results are used in patient care.
- Identifying the personnel responsible for performing and supervising waived testing.
- Assuring that personnel performing waived testing have adequate, specific training and orientation to perform the testing and can demonstrate satisfactory levels of performance.
- Making certain that policies and procedures governing waived testing-related processes are current and readily available.
- Conducting defined quality control checks.
- Maintaining quality control and test records.

The CLIA requirements at § 493.15 only require that a laboratory follow manufacturer's instructions and obtain a certificate of waiver.

2. Subpart H—Participation in Proficiency Testing for Laboratories Performing Tests of Moderate or High Complexity, or Both

JCAHO's requirements for PT are equivalent to those of CLIA.

3. Subpart J—Patient Test Management for Moderate or High Complexity Testing, or Both

JCAHO's requirements in Patient Test Management are equivalent to those of CLIA.

4. Subpart K—Quality Control for Tests of Moderate or High Complexity, or Both

The quality control (QC) requirements of JCAHO have been evaluated against the applicable requirements of CLIA and its implementing regulations. We have determined that JCAHO's requirements, when taken as a whole, are more stringent than the CLIA requirements. The specific areas that are more stringent are the following:

- Requirements that laboratories must meet JCAHO's QC requirements for all waived testing performed.
- A requirement for mycobacteriology that laboratories perform daily QC of flourochrome acid-fast stains.
- Specific requirements for embryo laboratories that include standards for cryopreservation of specimens, embryo transfer procedures, and QC of the culture media used.
- Requirements for autopsy pathology that include appropriate refrigeration for cadaver storage when a delay occurs in performing an autopsy and requiring that provisional anatomic diagnoses are recorded in the clinical record within 3 days after the autopsy is performed.

5. Subpart M—Personnel for Moderate and High Complexity Testing

We have found that JCAHO's personnel requirements, when taken as a whole, are equal to the CLIA requirements.

6. Subpart P—Quality Assurance for Moderate or High Complexity Testing or Both

We have determined that JCAHO's requirements are equal to the CLIA requirements of this subpart.

7. Subpart Q—Inspections

JCAHO will continue to perform on-site inspections on a biennial basis. Therefore, we have determined that JCAHO's inspections are equivalent to CLIA.

8. Subpart R—Enforcement Procedures for Laboratories

JCAHO meets the requirements of subpart R to the extent that it applies to accreditation organizations. JCAHO policy stipulates the action it takes when laboratories it accredits do not comply with its requirements. JCAHO will deny, revoke, or limit accreditation of a laboratory as appropriate and report the action to us within 30 days. JCAHO also provides an appeal process for laboratories that have had accreditation denied, revoked, suspended, or limited.

We have determined that JCAHO's laboratory enforcement and appeal policies are equivalent to the requirements of this subpart as they apply to accreditation organizations.

IV. Federal Validation Inspections and Continuing Oversight

The Federal validation inspections of JCAHO accredited laboratories may be conducted on a representative sample basis or in response to substantial allegations of noncompliance (complaint inspections). The outcome of those validation inspections, performed by our agent, or the State survey agency, or us, will be our principal means for verifying that the laboratories accredited by JCAHO remain in compliance with CLIA requirements. This Federal monitoring is an ongoing process.

V. Removal of Approval as an Accrediting Organization

Our regulations provide, in part, that we may remove the approval of an accreditation organization, such as that of JCAHO, for cause, before the end of the effective date of approval. If validation inspection outcomes and the comparability or validation review produce findings as described in § 493.573 (Continuing Federal oversight of private nonprofit accreditation organizations and approved State licensure programs), we will conduct a review of an approved accreditation organization's program. In addition, we will conduct a review, when the validation review findings, irrespective of the rate of disparity (as defined in § 493.2), indicate widespread or systemic problems in the organization's accreditation processes that provide evidence that the organization's requirements, taken as a whole, are no longer equivalent to the CLIA requirements, taken as a whole. If validation inspection results over a 1-year period indicate a rate of disparity of 20 percent or more between the findings of the organization and those of CMS, we will conduct a review under § 493.575(a)(4).

If we determine that JCAHO has failed to adopt or maintain requirements that are equal to or more stringent than the CLIA requirements, or systematic problems exist in its inspection process, a probationary period as determined by us, not to exceed 1 year, may be given to JCAHO to adopt equal or more stringent requirements. We will make a final determination as to whether or not JCAHO retains its approved status as an accreditation organization under CLIA.

If approved status is withdrawn, an accreditation organization such as JCAHO may resubmit its application if it revises its program to address the rationale for the denial, demonstrates that it can reasonably assure that its accredited laboratories meet CLIA condition level requirements, and resubmits its application for approval as an accreditation organization in its entirety. However, if an approved accreditation organization requests reconsideration of an adverse determination in accordance with subpart D (Reconsideration of Adverse Determinations—Deeming Authority for Accreditation Organizations and CLIA Exemption of Laboratories Under State Programs) of part 488 (Survey, Certification, and Enforcement Procedures) of our regulations, it may not submit a new application until we issue a final reconsideration determination.

Should circumstances result in JCAHO having its approval withdrawn, we will publish a notice in the **Federal Register** explaining the basis for removing its approval.

VI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). Since this notice announces the continued approval of JCAHO as an accreditation organization for clinical laboratories under the CLIA program and has no economic impact

on the Medicare, Medicaid, and CLIA programs, we have determined this requirement does not apply to this notice.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 to $29 million in any 1 year. For purposes of the RFA, JCAHO, a private, nonprofit organization, is considered to be a small entity. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We have determined that this notice will not have a consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice will not have a substantial effect on State or local governments.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this notice will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Section 353 of the Public Health Service Act (42 U.S.C. 263a).

Dated: June 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–25947 Filed 10–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4038–N]

Medicare Program: Meeting of the Advisory Panel on Medicare Education—November 19, 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, section 10(a) (Pub. L. 92–463), this notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) on November 19, 2002. The Panel advises and makes recommendations to the Secretary of the Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. This meeting is open to the public.

DATES: The meeting is scheduled for November 19, 2002, from 9 a.m. to 4 p.m., e.d.s.t. *Deadline for Presentations and Comments:* November 12, 2002, 12 noon, e.d.s.t.

ADDRESSES: The meeting will be held at the Holiday Inn on the Hill, 415 New Jersey Avenue, NW., Washington, DC, 20001, (202) 638–1616.

FOR FURTHER INFORMATION CONTACT: Nancy Caliman, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, S2–23–05, Baltimore, MD, 21244–1850, (410) 786–5052. Please refer to the CMS Advisory Committees Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.cms.hhs.gov/faca/apme/default.asp*) for additional information and updates on committee activities, or contact Ms. Caliman via e-mail at *ncaliman@cms.hhs.gov*. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: Section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended, grants to the Secretary the authority to establish an advisory panel if the Secretary finds the panel necessary and in the public interest. The Secretary signed the charter establishing the Advisory Panel on Medicare Education (the Panel) on January 21, 1999 (64 FR 7849) and approved the renewal of the charter on January 18, 2001. The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are as follows:

- To develop and implement a national Medicare education program that describes the options for selecting a health plan under Medicare.
- To enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- To expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- To assemble an information base of best practices for helping consumers evaluate health plan options and build a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: Dr. Jane Delgado, Chief Executive Officer, National Alliance for Hispanic Health; Joyce Dubow, Senior Policy Advisor, Public Policy Institute, AARP; Timothy Fuller, Executive Director, National Gray Panthers; John Graham IV, Chief Executive Officer, American Diabetes Association; Dr. William Haggett, Senior Vice President, Government Programs, Independence Blue Cross; Thomas Hall, Chairman and Chief Executive Officer, Cardio-Kinetics, Inc.; David Knutson, Director, Health System Studies, Park Nicollet Institute for Research and Education; Brian Lindberg, Executive Director, Consumer Coalition for Quality Health Care; Katherine Metzger, Director, Medicare and Medicaid Programs, Fallon Community Health Plan; Dr. Laurie Powers, Co-Director, Center on Self-Determination, Oregon Health Sciences University; Dr. Marlon Priest, Professor of Emergency Medicine, University of Alabama at Birmingham; Dr. Susan Reinhard, Co-Director, Center for State Health Policy, Rutgers University and Chairperson of the Advisory Panel on Medicare Education; Dr. Everard Rutledge, Vice President of Community Health, Bon Secours Health Systems, Inc.; Jay Sackman, Executive Vice President, 1199 Service Employees International Union; Dallas Salisbury, President and Chief Executive Officer, Employee Benefit Research Institute; Rosemarie Sweeney, Vice President, Socioeconomic Affairs and Policy Analysis, American Academy of Family Physicians; and Bruce Taylor, Director, Employee Benefit Policy and Plans, Verizon Communications.

The agenda for the November 19, 2002 meeting will include the following:

- Recap of the previous (September 26, 2002) meeting.
- *Medicare & You* Campaign Update.
- Strategies and Approaches for Medicare Education.
- Listening Session with CMS Leadership.
- Public Comment.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should contact Ms. Caliman by 12 noon, November 12, 2002. A written copy of the oral presentation should also be submitted to Ms. Caliman by 12 noon, November 12, 2002. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Ms. Caliman by 12 noon, November 12, 2002. The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Ms. Caliman at least 15 days before the meeting.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217(a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

October 10, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–26673 Filed 10–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), (Federal Registers, Vol. 64, No. 249, p. 73057; Vol. 67, No. 81, p. 20804; and Vol. 66, No. 177, p. 47498 dated September 12, 2001) is amended to reflect changes to the Center for Beneficiary Choices and the Office of Research, Development and Information.

The specific amendments to part F are described below:

- Section F.10. (Organization) is amended to read as follows:

1. Public Affairs Office (FAC)
2. Center for Beneficiary Choices (FAE)
3. Office of Legislation (FAF)
4. Center for Medicare Management (FAH)
5. Office of Equal Opportunity and Civil Rights (FAJ)
6. Office of Research, Demonstration, and Information (FAK)
7. Office of Clinical Standards and Quality (FAM)
8. Office of the Actuary (FAN)
9. Center for Medicaid and State Operations (FAS)
10. Northeastern Consortium (FAU)
11. Southern Consortium (FAV)
12. Midwestern Consortium (FAW)
13. Western Consortium (FAX)
14. Office of Operations Management (FAY)
15. Office of Internal Customer Support (FBA)
16. Office of Information Services (FBB)
17. Office of Financial Management (FBC)

- Section F.20. (Functions) is amended by deleting the functional statement in its entirety for the Center for Beneficiary Choices. The new functional statement reads as follows:

2. Center for Beneficiary Choices (FAE)

- Serves as the focal point for all Agency interactions with beneficiaries, their families, care givers, health care providers, and others operating on their behalf concerning improving beneficiary ability to make informed decisions about their health and about program benefits administered by the Agency. These activities include strategic and implementation planning, execution, assessment and communications.
- Assesses beneficiary and other consumer needs, develops and oversees activities targeted to meet these needs, and documents and disseminates results of these activities. These activities focus on Agency beneficiary service goals and objectives and include: development of baseline and ongoing monitoring information concerning populations affected by Agency programs; development of performance measures and assessment programs; design and implementation of beneficiary services initiatives; development of communications channels and feedback mechanisms within the Agency and between the Agency and its beneficiaries and their representatives; and close collaboration with other Federal and State agencies and other stakeholders with a shared interest in better serving our beneficiaries.
- Develops national policy for all Medicare Parts A, B, and C beneficiary eligibility, enrollment, entitlement; premium billing and collection; coordination of benefits; rights and protections; dispute resolution process; as well as policy for managed care enrollment and disenrollment to assure the effective administration of the Medicare program, including the development of related legislative proposals.
- Oversees the development of privacy and confidentiality policies pertaining to the collection, use, and release to individually identifiable data.
- Coordinates beneficiary-centered information, education, and service initiatives.
- Develops and tests new and innovative methods to improve beneficiary aspects of health care delivery systems through Title XVIII, XIX, and XXI demonstrations and other creative approaches to meeting the needs of Agency beneficiaries.
- Assures, in coordination with other Centers and Offices, the activities of Medicare contractors, including managed care plans, agents, and State Agencies meet the Agency's requirements on matters concerning beneficiaries and other consumers.
- Plans and administers the contracts and grants related to beneficiary and customer service, including the State Health Insurance Assistance Program grants.
- Formulates strategies to advance overall beneficiary communications goals and coordinates the design and publication process for all beneficiary-centered information, education, and service initiatives.
- Builds a range of partnerships with other national organizations for effective consumer outreach, awareness, and

education efforts in support of Agency programs.

• Serves as the focal point for all Agency interactions with managed health care organizations for issues relating to Agency programs' policy and operations.

• Develops national policies and procedures related to the development, qualification and compliance of health maintenance organizations, competitive medical plans and other health care delivery systems and purchasing arrangements (such as prospective pay, case management, differential payment, selective contracting, *etc.*) necessary to assure the effective administration of the Agency's programs, including the development of statutory proposals.

• Handles all phases of contracts with managed health care organizations eligible to provide care to Medicare beneficiaries.

• Coordinates the administration of individual benefits to assure appropriate focus on long term care, where applicable, and assumes responsibility for the operational efforts related to the payment aspects of long term care and post-acute care services.

6. Office of Research, Development and Information

• Provides analytic support and information to the Administrator and the Executive Council needed to establish Agency goals and directions.

• Performs environmental scanning, identifying, evaluating, and reporting emerging trends in health care delivery and financing and their interactions with Agency programs.

• Manages strategic, crosscutting initiatives.

• Designs and conducts research and evaluations of health care programs, studying their impacts on beneficiaries, providers, plans, States and other partners and customers, designing and assessing potential improvements, and developing new measurement tools.

• Coordinates all Agency demonstration activities, including development of the research and demonstration annual plan, evaluation of all Agency demonstrations, and assistance to other components in the design of demonstrations and studies.

• Manages assigned demonstrations, including Federal review, approval, and oversight; coordinates and participates with departmental components in experimental health care delivery projects.

• Develops research, demonstration, and other publications and papers related to health care issues.

• Serves as a contact in CMS for international visitors. Responds to requests from intergovernmental agencies and the international community for information related to the United States health care system.

• Designs and conducts payment, purchasing, and benefits demonstrations.

Dated: October 16, 2002.

Ruben J. King-Shaw, Jr.,

Deputy Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 02–27194 Filed 10–24–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health/National Institute of Environmental Health Sciences

Proposed Collection; Comment Request; Environmental Factors in the Development of Polycystic Ovary Syndrome

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Environmental Health Sciences (NIEHS), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Environmental Factors in the Development of Polycystic Ovary Syndrome. *Type of Information Collection Request:* Revision of OMB No. 0925–0483 and expiration date 2/28/2003. *Need and Use of Information Collection:* The purpose of this study is to identify a cohort of living female twin pairs in which at least one member is likely to have Polycystic Ovary Syndrome (PCOS) for future study. Potential participants (~3,700) will come from the Mid-Atlantic Twin Registry (MATR) and were chosen based on their answers to several questions (in a preliminary MATR survey) concerning irregular periods and a history of polycystic cystic ovaries. The instrument to be used here will be administered by telephone by professional interviewers at the MATR. It contains 15 simple and direct questions and will take about 10 minutes to complete. Its contents deal with the frequency of menstrual periods, a history of polycystic ovaries, obesity, excess facial hair and other evidence of hyperandrogenism. Since this is such a short telephone survey, participants will receive no prior notification. Informed consent will be asked for verbally over the phone at the time of the interview. All participants will be asked about their willingness to participate in future studies if their answers meet certain criteria. The major objectives of future studies using this cohort are to determine more reliable concordance rates for PCOS in monozygotic and dizygotic twins, establish baseline heritability estimates, and develop hypotheses concerning possible pathogenetic and/or environmental factors. The findings from this study will aid in developing: (1) genetic tests to identify high risk women; (2) preventative strategies; and (3) more effective therapies for PCOS and related syndromes such as type 2 diabetes, obesity, idiopathic hyperanrogenism, and male pattern baldness. *Frequency of Response:* One time. *Affected Public:* Individuals or households. *Type of Respondents:* Adult women. The annual reporting burden is as follows: *Estimated Number of Respondents:* 3,700 *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 0.167; and *Estimated Total Annual Burden Hours Requested:* 206 per year for 3 years. The annualized cost to respondents is estimated at $6,179.00. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information Contact: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Patricia C. Chulada, Clinical Research Scientist, Clinical Research Office, NIEHS, PO Box 12233, Research Triangle Park, NC 27709 or call non-toll-free number (919) 541–7736 or e-mail your request, including your address to: *"chulada@niehs.nih.gov".*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: October 11, 2002.

Francine Little,

Associate Director for Management.

[FR Doc. 02–27187 Filed 10–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Sleep Disorders Research Advisory Board.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sleep Disorders Research Advisory Board.

Date: December 11, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To discuss sleep research and education priorities and programs.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Carl E. Hunt, MD, Director, National Center on Sleep Disorders Research, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 10138, Bethesda, MD 20892, (301) 435–0199.

Information is also available on the Institute's/Center's Home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27189 Filed 10–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitutue a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–16, Review of R13 Grants.

Date: November 20, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Room 3AN12, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–06, Review of R01 Grants.

Date: December 3, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Natcher Building, Room 4AN44, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–19, Review of R44 Grants.

Date: December 6, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst. of Dental and Craniofacial Research, National Institutes of Health, 45 Center Dr., Rm. Bethesda, MD 20892–6402.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–24, Review of R01 Grants.

Date: December 10, 2002.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Bldg., Conf. Rms. A & D, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–20, Review of R44 Grants.

Date: December 18, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher building, Conference Room C, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst. of Dental and Craniofacial Research, National Institutes of Health, 45 Center Dr., Rm, Bethesda, MD 20892–6402.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: October 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27188 Filed 10–24–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BDCN 5 02M: Cell Differentiation.
Date: October 23, 2002.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1785, *stuesses@csr.nih.gov*.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–4 (05) Neurosciences-Chronic Pain.
Date: October 24, 2002.
Time: 12 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CVB (03)S Aldosterone & CV damage.
Date: October 29, 2002.
Time: 2 p.m. to 3:15 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7818, Bethesda, MD 20892, (301) 435–1169, *dowellr@drg.nih.gov*.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mitochondria in Cancer Therapy.
Date: November 5, 2002.
Time: 11:30 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7804, Bethesda, MD 20892, (301) 435–1179, *riverse@csr.nih.gov*.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Infectious Diseases and Microbiology.
Date: November 6–7, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Biodefense and Therapeutics.
Date: November 6–7, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Jeanne N. Ketley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *Ketleyj@csr.nih.gov*.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS2 P01 Engineering Enzyme Specificity.
Date: November 7, 2002.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Four Points Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814
Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–8367, *atreyap@csr.nih.gov*.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular Study Section.
Date: November 7–8, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212, *johnsong@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–6 (10)–B Chemistry/Biophysics SBIR/STTR Panel.
Date: November 7–8, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Vonda K. Smith, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1789, *smithvo@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–0 (10) B:Small Business.
Date: November 7, 2002.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov*.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Epidemiology and Disease Control Subcommittee 2, Cancer Epidemiology.
Date: November 7–8, 2002.
Time: 8:30 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Denise Wiesch PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 7.
Date: November 7–8, 2002.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reparative Medicine ZRG1 SSS–M 02.
Date: November 7, 2002.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20814
Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *sipej@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reparative Medicine BRPs (PA–02–010) ZRG1 SSS–M 03.
Date: November 7–8, 2002.
Time: 2 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1743, *sipej@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–O (13)B: Small Business.
Date: November 7, 2002.
Time: 3 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SNEM–5 02M Member Conflict: Epidemology.
Date: November 8, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CCVS 01: Clinical CV Science.
Date: November 8, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 2180, MSC 7818, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–O 12 (B): Small Business.
Date: November 8, 2002.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739, *gangulyccsr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiovascular Response to Psychological Stress.
Date: November 8, 2002.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jeffrey W. Elias, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913, *eliasj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, New Therapeutic Approaches in Cancer.
Date: November 8, 2002.
Time: 1:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7804, Bethesda, MD 20892, (301) 435–1779, *riverse@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vision Sciences.
Date: November 8, 2002.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Atherosclierosis in Mutant Mice.
Date: November 8, 2002.
Time: 3 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7804, Bethesda, MD 20892, (301) 435–4522, *gibsonj@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 18, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27190 Filed 10–24–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–43]

Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 17, 2002.

John D. Garrity

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–26893 Filed 10–24–02; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the General Management Plan (GMP), Everglades National Park, FL

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service is preparing a General Management Plan and Environmental Impact Statement (GMP/EIS) for Everglades National Park, Florida.

The park's current *Master Plan*, approved in 1979, is no longer adequate to address the policy and operational issues now facing Everglades National Park. Conditions have changed over the last 23 years, and that plan does not provide sufficient direction for protecting natural and cultural resources and offering high quality visitor opportunities. The *Master Plan* predates the Everglades National Park Protection and Expansion Act of 1989, which increased the park by 109,000 acres and directed further protection of valuable ecological resources. The GMP/EIS will identify an overall direction for park management for the next 20 years by clearly prescribing desired types and levels of resource conditions and visitor experiences to be achieved throughout the park.

Determination of what should be achieved will be based on review of park legislation, purpose, significance and special mandates, and the body of laws and policies directing park management.

The National Park Service is initiating the scoping process for the GMP/EIS. In cooperation with Indian tribes, local, state, and other federal agencies, and the public, the plan will correct existing management deficiencies by determining: desired natural and cultural resource conditions, management prescriptions for all areas of the park, carrying capacities for resources and visitor use, appropriate types and levels of development and recreational use, and new opportunities for working cooperatively with neighboring communities.

Specific issues that will be addressed in the GMP/EIS will be determined by analyzing input from the Indian tribes; public; local, state and other federal agencies; public and private organizations with an interest in Everglades National Park; and park staff. The issues determined to be significant will guide development of alternatives for future management of Everglades National Park and will provide the framework for analyzing the impacts of the proposed alternatives.

DATES: To determine the scope of issues to be addressed in the GMP/EIS and identify pertinent issues related to the project, an introductory GMP newsletter that includes a public response form will be distributed to the public in September 2002. In addition, public scoping meetings will be held in the Fall of 2002. Public notice of the specific dates, times, and locations of the meetings will be provided in the newsletter, announced in local media, and posted on the Internet at *http://www.nps.gov/ever/planning/index.htm*. At each public scoping meeting representatives of the National Park Service will be available to discuss issues, concerns, and other matters related to the GMP project.

ADDRESSES: Additional comments or requests to be placed on the mailing list should be addressed to Superintendent, Everglades National Park, Attention: Fred Herling, 40001 State Rd. 9336, Homestead, Florida 33034.

FOR FURTHER INFORMATION CONTACT: Fred Herling, Supervisory Park Planner, Everglades National Park, 40001 State Road 9336, Homestead, FL, 33034, telephone 305–242–7704. Email: *Fred_Herling@nps.gov*.

SUPPLEMENTARY INFORMATION: The draft and final GMP/EIS documents will be distributed to all known interested parties and appropriate agencies. Full participation by Indian tribes, federal, state, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation of this document. At least six public meetings will be held to initiate the gathering of input for the GMP/EIS. The anticipated meeting locations are: Miami, Florida Keys, Florida City/Homestead, Everglades City, Naples, and Washington DC. Dates, times, and locations of the meetings will be provided in the newsletter, announced in local media, and posted on the Internet at *http://www.nps.gov/ever/planning/index.htm*.

Everglades National Park is the largest national park east of the Rocky Mountains, encompassing 1,509,000 acres of land and water in Dade, Monroe, and Collier counties, Florida. The park includes the largest designated wilderness area in the Eastern United States, totaling 1,296,500 acres. Congress called for the park to be "permanently reserved as a wilderness," preserving essential primitive conditions, including the natural abundance, diversity, behavior, and ecological integrity of unique flora and fauna. Located at the interface of temperate and subtropical environments, the park has a great diversity of resources including our nation's largest sawgrass prairie and mangrove ecosystem, the most significant breeding ground for tropical birds in North America, and 21 federally-listed threatened and endangered species. The park has over one million visitors each year.

The GMP/EIS will identify alternative management approaches based on the issues identified during the scoping phase of the project. The GMP/EIS will disclose to the public and decision makers the environmental consequences of implementing each alternative management approach. After reviewing the consequences and listening to public concerns, the decision-makers will select a preferred alternative that will guide management of Everglades National Park for the next 20 years. The responsible official for the Environmental Impact Statement is the Regional Director, National Park Service, Southeast Region, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: August 1, 2002.

Patricia A. Hooks,

Acting Regional Director, Southeast Region.

[FR Doc. 02–27250 Filed 10–24–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 5, 2002. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–343–1836. Written or faxed comments should be submitted by November 12, 2002.

Paul R. Lusignan,

Acting Keeper of the National Register of Historic Places.

GEORGIA

Cobb County

Cowen, Stephen D., House, 4940 Cowen Rd., Acworth, 02001299

KANSAS

Cloud County

Glasco Downtown Historic District, Roughly along Main St. from Railroad Av. to Fisher St., and Along Railroad Ave and Fisher St. bet Main and Buffalo Sts., Glasco, 02001307

Shawnee County

Holliday Park Historic District I, Roughly bounded by 10th Ave., Taylor, Polk, Huntoon, Clay and Fillmore Sts., Topeka, 02001308

Holliday Park Historic District II, 1009, 1015, 1019, 1021, 1025, 1031, 1035 SW Fillmore St., Topeka, 02001309

MISSOURI

Cole County

Broadway—Dunklin Historic District, (Southside Munichburg, Missouri MPS) Most of 600 Blk of Broadway, and the 200 and 300 Blks of West Dunklin St., Jefferson City, 02001300

Burch, Nelson C. and Gertrude A., House, (Southside Munichburg, Missouri MPS) 115 W. Atchison St., Jefferson City, 02001302

Burch, Oscar G. and Mary H., House, (Southside Munichburg, Missouri MPS) 924 Jefferson St., Jefferson City, 02001301

Grove, Claud D and Berenice Sinclair Grove House, 505 E. State St., Jefferson City, 02001310

Hess, Philip, House, (Southside Munichburg, Missouri MPS), 714 Washington St., Jefferson City, 02001304

Schmidt, Charles J. and Clara B. House, (Southside Munichburg, Missouri MPS), 215 W. Atchison St., Jefferson City, 02001303

Thomas, Albert and Wilhelmina, House, (Southside Munichburg, Missouri MPS), 224 W. Elm St., Jefferson City, 02001305

Zuendt, William E. and Frederica M., House, (Southside Munichburg, Missouri MPS), 920 Jefferson St., Jefferson City, 02001306

Lincoln County

Soil Erosion Nursery, United States Department of Agriculture, 2803 N MO 79, Elsberry, 02001311

New York

Columbia County

Requa House, 9 Requa Rd., Stuyvesant, 02001325

Delaware County

West Kortright Presbyterian Church, 49 W. Kortright Church Rd., West Kortright, 02001326

Erie County

Hellenic Orthodox Church of the Annunciation, Address Restricted, Buffalo, 02001329

Jefferson County

Holland Library, 7 Market St., Alexandria Bay, 02001330

Livingston County

Williamsburg Cemetery, Abel Rd., Hampton Corners, 02001328

Montgomery County

Pawling Hall, 86 Pawling St., Hagaman, 02001331

Niagara County

Bixby, Constant Riley W., House, 2888 Carmen Rd., Hartland, 02001333

Bradley, Amzi, Farmstead, 8915 Bradley Rd., Hartland, 02001332

Newton, Philo Cobblestone House, (Cobblestone Architecture of New York State MPS), 3573 Wruck Rd., Hartland, 02001334

Oneida County

Deansboro Railroad Station, 2707 NY 315, Deansboro, 02001327

Ulster County

Dubois—Sarles Octagon, 16 South St., Marlboro, 02001322

House at 184 Albany Avenue, (Albany Avenue, Kingston, Ulster County, New York MPS), 184 Albany Ave., Kingston, 02001317

House at 313 Albany Avenue, (Albany Avenue, Kingston, Ulster County, New York MPS), 313 Albany Ave., Kingston, 02001313

House at 322 Albany Avenue, (Albany Avenue, Kingston, Ulster County, New York MPS), 322 Albany Ave., Kingston, 02001318

House at 322 Albany Avenue, (Albany Avenue, Kingston, Ulster County, New York MPS), 322 Albany Ave., Kingston, 02001319

Kirkland Hotel, 2 Main St., Kingston, 02001323

Payne, Col. Oliver Hazard, Estate, US 9W, Esopus, 02001324

Reformed Protestamt Dutch Church of Klyne Esopus, 764 U.S. 9W, Esopus, 02001321

Sharp Burial Ground, (Albany Avenue, Kingston, Ulster County, New York MPS), Albany Ave., Kingston, 02001320

Smith, George J., House, (Albany Avenue, Kingston, Ulster County, New York MPS), 109 Albany Ave., Kingston, 02001316

Smith, John, House, (Albany Avenue, Kingston, Ulster County, New York MPS), 103 Albany Ave., Kingston, 02001315

Ten Broeck, Jacob, Stone House, (Albany Avenue, Kingston, Ulster County, New York MPS), 169 Albany Ave., Kingston, 02001312

PENNSYLVANIA

Fayette County

Aaron Building, Pittsburgh St. and Apple St., Connellsville, 02001336

Colonial National Bank Building, 101 E. Crawford St., Connellsville, 02001337

McClenathan, J.C., Dr., House and Office, 134 S. Pittsburgh St., Connellsville, 02001335

TENNESSEE

Davidson County

Oglesby School, 5724 Edmondson Pike, Nashville, 02001340

Overton County

Alpine Institute, TN 52, Alpine, 02001339

Warren County

First Methodist Church, 200 W. Main St., McMinnville, 02001341

Weakley County

First Christian Church, College St., Gleason, 02001338

VERMONT

Windham County

First Congregational Church and Meetinghouse, (Religious Buildings, Sites and Structures in Vermont MPS), Near jct. of VT 30 and VT 35, Townshend, 02001344

Windsor County

Saddlebow Farm, 2477 Gold Coast Rd., Bridgewater, 02001345

WISCONSIN

Crawford County

Commercial Hotel, 201 W. Blackhawk Ave., Prairie du Chien, 02001342

Dane County

Wisconsin Wagon Company Factory, 602 Railroad St., Madison, 02001343

[FR Doc. 02–27246 Filed 10–24–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: UCLA Fowler Museum of Cultural History, University of California, Los Angeles, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, Sec. 7, of the intent to repatriate cultural items in the possession of the UCLA Fowler Museum of Cultural History, University of California, Los Angeles, Los Angeles, CA, that meet the definition of

"unassociated funerary objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

In 1965, 33 unassociated funerary objects were removed from the Rancho site (CA-RIV-364), a documented cremation and burial site, Riverside County, CA, by Dr. Joseph L. Chartkoff. The objects are 21 Tizon Brown pottery sherds, 1 lathe-turned ink bottle, 3 glass fragments, 1 basalt core, 1 unmodified basalt flake, 1 unmodified stone flake, 1 brass button, 1 burned deer bone, 1 porcelain plate fragment, and 2 unmodified quartz flakes. Dr. Chartkoff donated these cultural items to the University of California, Los Angeles the same year.

The Rancho site (CA-RIV-364) is close to the present-day Pechanga Reservation, in the valley of Temecula Creek. Geographical location and archeological and oral traditional evidence support the association of this site with precontact and historic village sites within the territory of the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California. The site is well known, by both oral tradition and archeological documentation, to be a precontact and postcontact cremation and burial site. Members of the Pechanga Band of Luiseno Indians Cultural Committee identified the artifacts collected there as part of the traditional Luiseno cremation and memorial offering rites. According to Raymond Basquez, Chairperson of the tribal Cultural Resources Department, Elder, and traditional religious leader, when traditional cremation practices gave way after contact to inhumation, Luiseno peoples' personal possessions often were collected, burned, and placed at traditional cremation/cemetery areas. Some artifacts, such as the plate fragment, broken glass, lathe-turned inkbottle, and metal button, appear to date to the Spanish or Mexican period (late 1700s-early 1800s) in California. The Tizon Brown pottery sherds are consistent with a Late Prehistoric and historic age.

Officials of the UCLA Fowler Museum of Cultural History have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (3)(B), the 33 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of Native American individuals. Officials of the UCLA Fowler Museum of Cultural History also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between these unassociated funerary objects and the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact Diana Wilson, UCLA NAGPRA Coordinator, Office of the Vice Chancellor, Research, University of California, Los Angeles, Box 951405, Los Angeles, California 90095-1405, telephone (310) 825-1864, before November 25, 2002. Repatriation of the unassociated funerary objects to the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California may begin after that date if no additional claimants come forward.

Officials of the UCLA Fowler Museum of Cultural History are responsible for notifying officials of the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California that this notice has been published.

Dated: September 25, 2002

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02-27248 Filed 10-24-02; 8:45 am]

BILLING CODE 4310-70-S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Williamson Museum, Northwestern State University, Natchitoches, LA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, Sec. 5, of the completion of an inventory of human remains and associated funerary objects in the possession of the Williamson Museum, Northwestern State University, Natchotoches, LA. These human remains and associated funerary objects were removed from the Colfax Ferry site (16-NA-15), Rapids Parish, LA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal Agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains and associated funerary objects was made by the Williamson Museum professional staff and representatives of the Tunica-Biloxi Indian Tribe of Louisiana.

In 1959-1960, human remains were discovered by Dr. Clarence H. Webb during archeological excavations at the Colfax Ferry site (16-NA-15), Rapids Parish, LA. While most of the human remains were left in situ, the remains of seven individuals were removed by Dr. Webb and donated to the Williamson Museum in 1991. No known individuals were identified. The 74 associated funerary objects are 3 spoon fragments, 1 pewter spoon handle, 2 wrought nails, 19 cut nails, 2 pair of scissors, 1 pin, 2 iron tools, 1 butcher knife handle, 1 table knife, 1 long flattened iron tube, 1 ferrous can (fragments), 1 ferrous can or kettle (fragments), 10 wire rim can fragments, 1 brass disc, 1 silver earring dangle, 6 circular silver ornaments, 1 peppermint bottle, 2 French glass bottles, 1 goblet base, 2 cloth fragments, 3 gunflints, 1 lead musket ball, 1 quartz strike-a-lite, 1 can of vermillion, 1 flint flake, 1 triangular chert biface, and 7 European ceramic sherds (banded ware, blue-edged ware, cream ware). Dr. Webb donated other items from the Colfax Ferry site (16-NA-15) to the Louisiana Division of Archaeology.

The funerary objects recovered from the Colfax Ferry site (16-NA-15) indicate that these human remains and associated funerary objects were most likely interred between 1764 and 1820. Historiographic data, oral traditions, and information gained in consultation concerning the collection indicate that the Colfax Ferry site (16-NA-15) is located in the area occupied by the Pascagoula and Biloxi Indians during the late 18th and early 19th centuries. Descendants of the Pascagoula and Biloxi Indians are represented by the Tunica-Biloxi Indian Tribe of Louisiana.

Officials of the Williamson Museum have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (9) and 2 (10), the human remains listed above represent the physical remains of seven individuals of Native American ancestry. Officials of the Williamson Museum also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (3)(A), the 74 associated funerary objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony. Lastly, officials of the Williamson Museum have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Tunica-Biloxi Indian Tribe of Louisiana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Pete Gregory, Director, Williamson Museum, Northwestern State University, Natchitoches, LA 71457, telephone (318) 357-4364, before November 25, 2002. Repatriation of these human remains and associated funerary objects to the Tunica-Biloxi Indian Tribe of Louisiana may begin after that date if no additional claimants come forward.

The Williamson Museum is responsible for notifying the Tunica-Biloxi Indian Tribe of Louisiana that this notice has been published.

Dated: September 30, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02-27249 Filed 10-24-02; 8:45 am]

BILLING CODE 4310-70-S

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-1014-1018 (Preliminary)]

Polyvinyl Alcohol from China, Germany, Japan, Korea, and Singapore

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China, Germany, Japan, and Korea of polyvinyl alcohol, provided for in subheading 3905.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV). The Commission also determines that imports of polyvinyl alcohol from Singapore are negligible and therefore its investigation with regard to Singapore is terminated pursuant to section 733(a) of the Act.[2]

Commencement of Final Phase Investigations

Pursuant to §207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the Department of Commerce of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On September 5, 2002, a petition was filed with the Commission and Commerce by Celanese Chemicals, Ltd. of Dallas, TX and E.I. du Pont de Nemours & Co. of Wilmington, DE, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of polyvinyl alcohol from China, Germany, Japan, Korea, and Singapore. Accordingly, effective September 5, 2002, the Commission instituted antidumping duty investigations Nos. 731-TA-1014-1018 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 13, 2002 (67 FR 58076). The conference was held in Washington, DC, on September 26, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on October 21, 2002. The views of the Commission are contained in USITC Publication 3553 (October 2002), entitled Polyvinyl Alcohol from China, Germany, Japan, Korea, and Singapore: Investigations Nos. 731-TA-1014-1018 (Preliminary).

By order of the Commission.

Issued: October 22, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02-27229 Filed 10-24-02; 8:45 am]

BILLING CODE 7020-02-P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Lynn M. Bragg dissenting.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act, the Clean Air Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Emergency Planning and Community Right To Know Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *National Cooperative Refinery Association*, Civil Action No. 02-1363WEB, was lodged on October 11, 2002, with the United States District Court for the District of Kansas. The consent decree requires defendants National Cooperative Refinery Association to perform injunctive relief, requiring the cleaning and removal from service of two oil pipelines and to pay a total of $950,000 in civil penalties by electronic funds transfer to the United States Department of Justice, Mellon Bank.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States* v. *National Cooperative Refinery Association*, DOJ Ref. #90-5-1-1-06025.

The proposed consent decree may be examined at the office of the United States Attorney, 1200 Epic Center, 301 N. Main, Wichita, KS 67202 and at U.S. EPA Region 7, 901 N. 5th Street, Kansas City, KS 66101. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice,

Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $12.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Maher,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 02–27220 Filed 10–24–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 293–2002]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice proposes to make a minor change in its system of records entitled "Correspondence Management Systems (CMS) for the Department of Justice (DOJ)," DOJ–003. This system was originally published on June 4, 2001 (66 FR 29992); the correction notice was published on June 29, 2001 (66 FR 34743). The final rule for DOJ–003 was published August 8, 2001 (66 FR 41445); the correction notice was published on August 17, 2001 (66 FR 43308). This system is now being modified as follows and will be effective October 25, 2002.

The Department is retaining the entirety of the previously published notice and rule. There is only one addition to the notice. In the preamble to DOJ–003, the Department lists the notices previously published by individual Department of Justice components that are now covered by DOJ–003. This modification adds to that list the following notice of system of records: Office of the Pardon Attorney, "Miscellaneous Correspondence File," JUSTICE/OPA–002 (58 FR 6981, February 3, 1993).

A notice to remove OPA–002 from the Department's compilation of Privacy Act systems of records is published in today's **Federal Register**.

Therefore, the Privacy Act notice for the Office of the Pardon Attorney (OPA), "Miscellaneous Correspondence File, OPA–002", is added to the notice of the DOJ's Correspondence Management File, DOJ–003."

Dated: October 15, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–27218 Filed 10–24–02; 8:45 am]

BILLING CODE 4410–29–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 294–2002]

Privacy Act of 1974; Removal of a System of Records

Pursuant to the provisions of the Privacy Act 1974 (5 U.S.C. 552a), notice is given that the Department of Justice, Office of the Pardon Attorney (OPA) is removing a system of records, entitled "Miscellaneous Correspondence File, OPA–002." This system of records was last published February 3, 1993 (58 FR 6981).

The reason for the removal of the notice for OPA–002 is that this system of records notice is being incorporated into the notice for the "Correspondence Management System (CMS) for the Department of Justice (DOJ), DOJ–003," published June 4, 2001 (66 FR 29992), with correction notice published June 29, 2001 (66 FR 34743). The final rule for DOJ–003 was published August 8, 2001 (66 FR 41445), with correction notice published August 17, 2001 (66 FR 43308).

A notice to modify DOJ–003, with the addition of the notice of the Office of the Pardon Attorney's "Miscellaneous Correspondence File," is being published in today's **Federal Register**.

Therefore, the "Miscellaneous Correspondence File, OPA–002" is removed from the Department's compilation of Privacy Act systems of records.

Dated: October 15, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–27219 Filed 10–24–02; 8:45 am]

BILLING CODE 4410–29–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

[OAG 103F; A.G. Order No. 2623–2002]

RIN 1105–AA81

Guidelines for the Campus Sex Crimes Prevention Act Amendment to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act

AGENCY: Department of Justice.

ACTION: Final guidelines.

SUMMARY: The United States Department of Justice is publishing Final Guidelines to implement an amendment to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act enacted by the Campus Sex Crimes Prevention Act.

EFFECTIVE DATE: October 25, 2002.

FOR FURTHER INFORMATION CONTACT: C. Camille Cain, Deputy Director for Programs, Bureau of Justice Assistance, 810 Seventh Street NW, Washington, D.C. 20531. Telephone: (202) 514–6278. *E-mail: cainc@ojp.usdoj.gov.*

SUPPLEMENTARY INFORMATION: Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, 108 Stat. 1796, 2038 (codified at 42 U.S.C. 14071) contains the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (the "Wetterling Act"). The Wetterling Act sets minimum national standards for state sex offender registration and community notification programs, and directs the Attorney General to issue guidelines for such programs. The current Wetterling Act guidelines were published in the **Federal Register** at 64 FR 572 (Jan. 5, 1999), with corrections at 64 FR 3590 (Jan. 22, 1999). States that fail to comply with the Wetterling Act's requirements (as implemented and explained in the Attorney General's guidelines) are subject to a mandatory 10% reduction of the formula grant funding available under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program (42 U.S.C. 3756), which is administered by the Bureau of Justice Assistance of the Department of Justice.

Subsequent to the publication of the current Wetterling Act guidelines, Congress amended the Wetterling Act in the Campus Sex Crimes Prevention Act (the "CSCPA"), Pub. L. 106–386, div. B, § 1601, 114 Stat. 1464, 1537 (2000). The CSCPA provides special requirements relating to registration and community notification for sex offenders who are enrolled in or work at institutions of higher education. The CSCPA amendment to the Wetterling Act takes effect two years after its enactment date of October 28, 2000.

Supplementary guidelines are necessary to take account of the CSCPA amendment to the Wetterling Act. On March 8, 2002, the U.S. Department of Justice published Proposed Guidelines in the **Federal Register** (67 FR 10758) for that purpose.

Summary of Comments on the Proposed Guidelines

Following the publication of the Proposed Guidelines, the Department received several comments, all of which were carefully considered in finalizing the guidelines. A summary of the comments and responses to them are provided in the following paragraphs.

A. Availability of Information to the Campus Community

A number of comments noted that the Proposed Guidelines did not discuss the requirement under the CSCPA that information concerning the presence of registered sex offenders be made available to campus communities, and recommended that this requirement be articulated more clearly in the Final Guidelines. Comments to this effect were received from Senator Jon Kyl, the sponsor of the CSCPA, and from Daniel S. Carter, Senior Vice President of Security On Campus, Inc.

This issue was not addressed at length in the Proposed Guidelines because responsibility for implementation of the CSCPA is divided between the Attorney General and the Secretary of Education, and this issue relates to federal education law amendments that are within the purview of the Secretary of Education.

In part, the CSCPA added a new subsection to the Wetterling Act, 42 U.S.C. 14071(j), which requires states to obtain information concerning registrants' enrollment or employment at institutions of higher education, and to provide this information to campus police departments or other appropriate law enforcement agencies. The Attorney General is responsible for issuing guidelines relating to the Wetterling Act amendment of the CSCPA as part of his general responsibility for the issuance of guidelines under the Wetterling Act. *See* 42 U.S.C. 14071(a). The detailed discussion in the Proposed Guidelines was accordingly limited to the portions of the CSCPA that affect the Wetterling Act. The Proposed Guidelines explained: "These guidelines relate solely to the provisions of the CSCPA that amended the Wetterling Act, and hence affect state eligibility for full Byrne Grant funding."

The Proposed Guidelines, however, also noted: "In addition to adding subsection (j) to the Wetterling Act, the CSCPA amended federal education laws to ensure the availability to the campus community of information concerning the presence of registered sex offenders." 67 FR at 10759. The Department of Education is responsible for the issuance of regulations relating to those laws.

The CSCPA's education law amendments include the addition of a new provision, section 485(f)(1)(I) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)(1)(I)). This provision requires a statement advising the campus community where it can obtain the information identifying registered sex offenders who are enrolled or employed at the institution of higher education—information that the state is required to provide to the campus police department or other appropriate law enforcement agency pursuant to 42 U.S.C. 14071(j):

> (I) A statement advising the campus community where law enforcement agency information provided by a State under section 170101(j) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(j)), concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.

In addition, the CSCPA added a provision to section 444(b) of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g(b)(7)(A)), which specifies that that Act does not prohibit educational institutions from disclosing information provided to them concerning registered sex offenders.

Thus, under the CSCPA's provisions, information identifying the registered sex offenders at an institution of higher education must be provided to the campus police department or other appropriate law enforcement agency, and the campus community must be advised where it can obtain this information. The net effect of these provisions is that information identifying the registered sex offenders at an institution of higher education must be made available to the campus community by some means, for otherwise it would be impossible to comply with the requirement that the campus community be advised where this information can be obtained. The CSCPA affords discretion concerning the specific means by which this information will be made available to the campus community, and indicates more specifically by way of illustration that permissible options would include making the information available at an appropriate law enforcement office, or making the information available online. *See* 20 U.S.C. 1092(f)(1)(I) (quoted above).

In addition to the special provisions of the CSCPA concerning the availability of sex offender information to campus communities, the general community notification provision of the Wetterling Act, 42 U.S.C. 14072(e)(2), applies to registered sex offenders who are enrolled or employed at institutions of higher education just as it applies to other registered sex offenders. Subsection (e)(2) requires that relevant information be released concerning registrants as necessary to protect the public. The Attorney General's guidelines for the Wetterling Act explain the meaning and application of this requirement. *See* 64 FR 572, 581–82.

B. Mandatory or Discretionary Character of the CSCPA's Standards

James Thomas, Executive Director of the Pennsylvania Commission on Crime and Delinquency, provided comments on behalf of the Commonwealth of Pennsylvania. In part, the comments suggested that the CSCPA does not require states to obtain information concerning registered sex offenders' enrollment or employment at institutions of higher education, or to provide such information to law enforcement agencies.

Pennsylvania's comments pointed out that 42 U.S.C. 14071(j)(1)(A) states that persons required to register shall provide notice relating to their enrollment or employment at institutions of higher education "as required under State law," and that 42 U.S.C. 14071(j)(1)(B) provides that such persons shall report changes in their enrollment or employment status "in the manner provided by State law." The comments interpreted these phrases to mean that the states have discretion under the CSCPA's standards as to whether they will impose such obligations on registrants at all. In support of this interpretation, the comments stated that other federal statutes uniformly use the phrase "as required under State law" in referring to pre-existing state duties—citing 12 U.S.C. 1813(m)(4); 15 U.S.C. 1612(d); 26 U.S.C. 832(b)(7)(E)—rather than with the intent to impose a new federal obligation on states. (Only one of the cited statutes uses the exact phrase "as required under State law"; the other two use "as required by State law.") The comments also asserted that the phrase "in the manner provided by State law" is not used elsewhere in the United States Code.

However, the phrase "in the manner provided by State law" is used at an earlier point in the Wetterling Act itself, as part of a provision requiring change-of-address notice by registrants. Specifically, 42 U.S.C. 14071(b)(4) provides that a change of address by a person required to register under the Wetterling Act shall be reported by the person "in the manner provided by State law," and that "State procedures shall ensure" that the updated address information is promptly made available to an appropriate law enforcement agency and entered into the appropriate state records or data system. This provision does not mean that states have discretion under the Wetterling Act's standards as to whether or not they will

require change of address notice by registrants, but only conveys state discretion as to the manner in which this notice will be effected—for example, specifying which particular agency or official must be given the notice. *See* 64 FR 572, 580 (explanation of 42 U.S.C. 14071(b)(4) in Attorney General's guidelines).

In parallel fashion, 42 U.S.C. 14071(j)(1)(B) provides that a change of enrollment or employment status shall be reported by the person "in the manner provided by State law," and that "State procedures shall ensure" that the updated information is promptly made available to an appropriate law enforcement agency and entered into the appropriate state records or data system. The similarity of language evidences a similarity of legislative intent. Like 42 U.S.C. 14071(b)(4), 42 U.S.C. 14071(j)(1)(B) conveys state discretion concerning the particular manner in which changes in registration information will be reported, but does not convey discretion as to whether or not the reporting of such information will be required at all.

The other qualifying phrase noted in Pennsylvania's comments appears in 42 U.S.C. 14071(j)(1)(A), which says that, in addition to any other requirements of the Wetterling Act, a person who is required to register shall provide notice "as required under State law" concerning enrollment or employment at an institution of higher education in the state. In effect, the comments suggest that "as required under State law" should be read to mean: "if required under State law."

The phrase "as required under State law" does not appear verbatim elsewhere in the Wetterling Act, but a similar phrase—"as provided by State law"—appears in 42 U.S.C. 14071(b)(1)(A)(ii)–(iii). Section 14071(b)(1)(A)(ii)–(iii) requires state officials to advise registrants that if they change address, they must "report the change of address as provided by State law." This phrase does not mean that registrants are to be told that they have an obligation to report a change of address only if the state, in its discretion, chooses to impose such an obligation by state law. Rather, "as provided by State law" in § 14071(b)(1)(A)(ii)–(iii) evidently has the same meaning as "in the manner provided by State law" in § 14071(b)(4), referring to the specification by state law of the particular manner in which change of address information is to be reported.

Similarly, the requirement under § 14071(j)(1)(A) that registrants are to provide notice "as required under State law" means that they are to provide notice in the manner required under state law, not if required under state law. The parallel usages elsewhere in the Wetterling Act are more persuasive on this point than the appearance of "as required under [or by] State law" in a few statutes (cited in Pennsylvania's comments) that use that phrase in entirely different contexts and that have no relationship to the Wetterling Act or its subject matter.

Beyond the foregoing textual points, the interpretation suggested in Pennsylvania's comments is clearly inconsistent with the understanding presented to Congress in its consideration of the CSCPA:

> The purpose of [the CSCPA] is to guarantee that, when a convicted sex offender enrolls or begins employment at a college or university, members of the campus community will have the information they need to protect themselves. . . . The Campus Sex Crimes Prevention Act provides that offenders must register the name of any higher education institution where they enroll as a student or commence employment. It also requires that this information be promptly made available to law enforcement agencies in the jurisdictions where the institutions of higher education are located. . . .
>
> In order to ensure that the information is readily accessible to the campus community, the Campus Sex Crimes Prevention Act requires colleges and universities to provide the campus community with clear guidance as to where this information can be found, and clarifies that federal laws governing the privacy of education records do not prevent campus security agencies or other administrators from disclosing such information.

146 Cong. Rec. S10216 (Oct. 11, 2000) (remarks of Senator Kyl).

In contrast, under the interpretation suggested in Pennsylvania's comments, the CSCPA would not guarantee that information concerning the presence of registered sex offenders at institutions of higher education is obtained by or made available to anyone, because the decision whether to collect such information would be left to the discretion of individual states.

In addition to the interpretive issues discussed above, the comments received from Pennsylvania expressed a number of concerns about the practical impact of the CSCPA amendment to the Wetterling Act. Specifically, the comments expressed concern that: (1) Requiring employment and schooling information from registrants will complicate the registration process and result in fewer offenders registering properly and providing the required notifications concerning changes; (2) legislation will be needed to effectively implement the new requirements; and (3) the new requirements will have a fiscal impact in a tight budgetary situation, including the expense of modifying the registration database to add the fields and logic necessary to store and process the new data, and additional staff for the State Police Megan's Law section because of increased workload. The comments stated that Pennsylvania had not had sufficient time to implement the proposed guidelines and requested an extension of the implementation deadline, or if that could not be effected, an extension of the effective date of the reduction of Byrne Grant funding in case of noncompliance.

In response, the Department of Justice notes that the requirement to obtain information from registrants concerning enrollment or employment at institutions of higher education, and to make this information available to appropriate law enforcement agencies, is integral to the CSCPA amendment to the Wetterling Act and cannot be changed by the guidelines. States have considerable latitude as to the particular procedures to be used in carrying out these requirements, and may adopt procedures consistent with the statute and guidelines that minimize resulting costs and burdens in the context of their registration systems. As with other provisions of the Wetterling Act, the Department provides advice and consultation to states on request concerning the consistency of measures they are considering to implement subsection (j) with the statute and the guidelines.

Under the original provisions of the Wetterling Act and most previous amendments, the legislation allowed states three years to come into compliance, and authorized the Attorney General to grant an additional two years to states that were making good faith efforts to come into compliance. *See* 64 FR at 572 (explanation of deadlines in Attorney General's guidelines). However, the CSCPA provides that its amendment to the Wetterling Act takes effect two years after enactment, and does not give the Attorney General authority to grant additional time. The Department is accordingly required to reduce by 10% any formula Byrne Grant award to a state made after October 27, 2002, if the state is not in compliance with the requirements of 42 U.S.C. 14071(j) at the time of the award. Since the deadline is statutory and not subject to extension by the Attorney General, any request for additional time would need to be addressed to Congress.

C. Comments From the American Council on Education

David Ward, President of the American Council on Education (ACE), sent a letter on behalf of the ACE expressing support for the proposed guidelines for the CSCPA amendment to the Wetterling Act. The letter advised that the ACE had worked with Senator Kyl and other members of Congress in developing the CSCPA so that community members at institutions of higher education could have access to information regarding registered sex offenders enrolled or employed at a particular college or university; that the ACE intended to offer more detailed comments to the Department of Education as it develops guidelines to ensure the availability of information concerning the presence of registered sex offenders; and that the proposed guidelines from the Department of Justice accurately and appropriately represent the intention of the law and that the ACE does not recommend any changes.

D. Comments From a Kansas Respondent

Tiffany Muller, Sexual Assault Advocacy Coordinator at the Kansas Coalition Against Sexual and Domestic Violence (hereafter, the "Kansas Coalition"), submitted comments reflecting discussion of the CSCPA by a Sexual Assault Task Group made up of representatives from rape crisis centers and other interested agencies. The comments stated that the CSCPA was well received in Kansas, and that it provides a number of benefits, but that there were concerns about implementation and effectiveness in light of other current barriers. The specific concerns and suggestions were as follows:

1. Time for Registration in Interstate Situations

The comments from the Kansas Coalition asked how the duration of registration, and the related requirement to report attendance at a university, would be handled in situations involving multiple states with different registration periods—*e.g.*, a situation in which a person was initially registered in a state that requires registration for 10 years, but then attends a university in a neighboring state that requires registration for 15 years.

One type of situation this question covers is that in which a sex offender is convicted and initially registered in one state, but then changes his residence to another state and attends a university in the new state of residence. Under the standards of the CSCPA amendment to the Wetterling Act, the offender would be required to notify the new state of residence concerning his enrollment or employment at institutions of higher education in that state for however long he is required to register in that state. *See* 42 U.S.C. 14071(j) ("a person who is required to register in a State" shall provide notice concerning enrollment or employment at an institution of higher education in that state).

A second type of situation the question may refer to is one in which a sex offender continues to reside in the state in which he is convicted and initially registered, but attends a university in another state. This situation falls under another provision of the Wetterling Act, 42 U.S.C. 14071(b)(7)(B), which relates to registration by a state of non-residents who are in the state for purposes of employment or school attendance. The state of employment or school attendance must accept registration information from such non-residents for as long as they are required to be registered in their states of residence under the Wetterling Act's standards. *See* 64 FR 572, 585 (explanation of subsection (b)(7)(B) in Attorney General's guidelines).

The question may also be seeking more general information about the Wetterling Act's requirements regarding the duration of registration in interstate situations. In general, the Wetterling Act's standards require registration of at least 10 years for offenders in the offense categories covered by the Act, and lifetime registration for certain types of offenders. *See* 42 U.S.C. 14071(b)(6); 64 FR 572, 576, 582–83, 584. These requirements apply regardless of whether the registrant moves from one state to another. If an offender who is subject only to the limited (ten-year) registration requirement of the Wetterling Act changes his state of residence, the new state of residence may give him credit towards satisfaction of the ten-year requirement based on the amount of time he was registered in the previous state of residence. *See* 64 FR 572, 578, 580. In all circumstances, states are free to require registration for longer periods than the minimum required under the Wetterling Act's standards. See 64 FR 572, 575.

2. Breakdown in Communication

The comments from the Kansas Coalition stated that in some cities a campus police department would have immediate jurisdiction over the campus, but often would not patrol some student housing, and that campus police in Kansas often do not share information with local police departments. The comments suggested that the concerns raised by this breakdown in communication might be addressed by notifying both the campus and local law enforcement.

On this point, the Proposed Guidelines, and the Final Guidelines below, make it clear that states are free to notify both a campus police department and other law enforcement agencies: "Regardless of whether an institution of higher education has its own law enforcement unit, the Wetterling Act does not limit the discretion of states to make information concerning registrants enrolled or working at the institution available to other law enforcement agencies as well."

3. Use of Pamphlets in Notification

The comments from the Kansas Coalition suggested that schools could distribute pamphlets to help notify people that information is available about such matters as crime rates and registered offenders at institutions of higher education.

This comment relates to the means of carrying out provisions of the Higher Education Act of 1965, including the CSCPA amendment to that Act (20 U.S.C. 1092(f)(1)(I)), rather than to the CSCPA amendment to the Wetterling Act.

4. Standardized Guidelines

The comments from the Kansas Coalition noted a suggestion that states should have more standardized sex offender registration guidelines.

On this point, it may be noted that the Wetterling Act, and the Attorney General's guidelines for the Wetterling Act, provide minimum national standards for state sex offender registration programs, and thereby establish a baseline of common features for the state programs.

5. Monitoring of Offenders

The comments from the Kansas Coalition expressed concern that it would be fairly easy for offenders to be without monitoring—especially those in a very transient college population—since updates come from the offenders themselves and states are only required to check in with registered offenders once a year.

The Wetterling Act's standards require annual address verification for registrants generally, but quarterly address verification for certain registrants. States are free to check or verify address information and other registration information with greater

frequency than the minimum required by the Wetterling Act. *See* 42 U.S.C. 14071(b)(3); 64 FR 572, 575, 581, 584.

6. Inaccurate Reporting

The comments from the Kansas Coalition stated that many campuses are not accurately reporting and continue to cover up incidences of sexual assault, and that these same campuses may be resistant to reporting registered offenders to the public.

This comment relates to compliance with provisions of the Higher Education Act of 1965, including the CSCPA amendment to that Act (20 U.S.C. 1092(f)(1)(I)), rather than to the CSCPA amendment to the Wetterling Act.

E. Comments From a Tennessee Respondent

Tim Burchett, a state senator in Tennessee, sent a letter stating that he had recently learned that the U.S. Department of Justice, in a brief filed with the Supreme Court, had articulated a requirement that campus sex offender notifications must be made categorically without regard to any risk assessment. Senator Burchett stated that he had sponsored the law in Tennessee designed to achieve compliance with the campus notification requirements of the CSCPA, and that he wanted to make sure that Tennessee's law will meet this new requirement.

Senator Burchett further stated that Tennessee will make categorical notifications on campus for all registrants after the Tennessee law's effective date of October 27, 2002, and that for convictions prior to that date release of the information is at the discretion of law enforcement. He asked whether this would meet the CSCPA's requirements, or whether further amendment of the law would be needed requiring categorical notifications without regard to conviction date. He also suggested that it would be very helpful if an explanation of the categorical notification requirement could be included in the Final Guidelines, so that states will know exactly what is needed for compliance.

In three briefs filed with the Supreme Court, the Department of Justice has noted the CSCPA's requirements relating to the availability to campus communities of information concerning the presence of registered sex offenders. *See* Brief for the United States as Amicus Curiae Supporting Petitioner, at 2–3, 10, in *Connecticut Department of Public Safety* v. *Doe*, No. 01–1231 (April 2002) (amicus brief supporting the granting of certiorari); Brief for the United States as Amicus Curiae Supporting Petitioners, at 2, 6, 22–23, in *Godfrey* v. *Doe*, No. 01–729 (June 2002) (amicus brief supporting petitioners on the merits); Brief for the United States as Amicus Curiae Supporting Petitioners, at 4–5, 27–28, in *Connecticut Department of Public Safety* v. *Doe*, No. 01–1231 (July 2002) (amicus brief supporting petitioners on the merits). These requirements are categorical in that information must be made available to a campus community concerning the identities of all registered sex offenders who are enrolled or employed at the institution of higher education. As explained above, this follows from the requirement of 42 U.S.C. 14071(j) that information identifying all registrants at an institution of higher education must be provided to the campus police department or other appropriate law enforcement agency, together with the requirement of 20 U.S.C. 1092(f)(1)(I) that the campus community must be told where it can obtain this information.

The Wetterling Act's requirements generally apply to registrants who are convicted at any time after a state's establishment of a registration system that conforms to these requirements. Hence, a state must at a minimum apply the requirements of 42 U.S.C. 14071(j) to all persons registered on the basis of convictions occurring after the effective date of state legislation that implements the requirements of 42 U.S.C. 14071(j) in the state's registration system. States are also free to apply the requirements of 42 U.S.C. 14071(j) more broadly to persons registered on the basis of convictions occurring before the enactment or effectiveness of such state legislation. *See* 64 FR 572, 575, 581, 583.

Final Guidelines

The Campus Sex Crimes Prevention Act (CSCPA) provisions appear in subsection (j) of the Wetterling Act (42 U.S.C. 14071(j)). As provided in subsection (j), any person required to register under a state sex offender registration program must notify the state concerning each institution of higher education (*i.e.*, post-secondary school) in the state at which the person is a student or works, and of each change in enrollment or employment status of the person at such an institution. States can comply with the Wetterling Act's requirements concerning these registrants, in part, by: (1) Advising registrants concerning these specific obligations when they are generally advised of their registration obligations, as discussed in part II.A of the January 5, 1999, Wetterling Act guidelines (64 FR 572, 579), (2) including in the registration information obtained from each registrant information concerning any enrollment or employment at an institution of higher education in the state, and (3) establishing procedures for registrants to notify the state concerning any subsequent commencement or termination of enrollment or employment at an institution of higher education in the state. The failure of a registrant to notify the state concerning enrollment or employment at an institution of higher education or the termination of such enrollment or employment would constitute a failure to register or keep such registration current for purposes of subsection (d) of the Wetterling Act (42 U.S.C. 14071(d)), and must be subject to criminal penalties as provided in that subsection.

Under the requirements of subsection (j) of the Wetterling Act, state procedures must also ensure that information concerning a registrant enrolled or working at an institution of higher education is promptly made available to a law enforcement agency having jurisdiction where the institution is located, and entered into the appropriate state records or data system. This requirement applies both to any information initially obtained from registrants concerning enrollment or employment at institutions of higher education in the state, and information concerning subsequent changes in such enrollment or employment status. As paragraph (3) of subsection (j) makes clear, subsection (j) does not place any burden on an educational institution to request information about registrants enrolled or employed at the institution from the state, and the requirement that the state make the information available to a law enforcement agency having jurisdiction where the institution is located is not contingent on a request from the institution.

Subsection (j)'s requirement to promptly make the information available to a law enforcement agency having jurisdiction where the institution is located is supplementary to the requirement under subsection (b)(2)(A) and (4) of the Wetterling Act (42 U.S.C. 14071(b)(2)(A), (4)) to promptly make information concerning registrants available to a law enforcement agency having jurisdiction where the registrant resides. The legislative history of the CSCPA explains subsection (j)'s requirement as follows:

> Once information about an offender's enrollment * * * or employment * * * [at] * * * an institution of higher education has been provided to a state's sex offender registration program, that information should be shared with that school's law enforcement unit as soon as possible.
>
> The reason for this is simple. An institution's law enforcement unit will have the most direct responsibility for protecting that school's community and daily contact with those that should be informed about the presence of the convicted offender.
>
> If an institution does not have a campus police department, or other form of state recognized law enforcement agency, the sex offender information could then be shared with a local law enforcement agency having primary jurisdiction for the campus.
>
> 146 Cong. Rec. S10216 (Oct. 11, 2000) (remarks of Senator Kyl).

Thus, if an institution of higher education has a campus police department or other form of state recognized law enforcement agency, state procedures must ensure that information concerning the enrollment or employment of registrants at that institution (and subsequent changes in registrants' enrollment or employment status) is promptly made available to the campus police department or law enforcement agency. If there is no such department or agency at the institution, then state procedures must ensure that this information is promptly made available to some other law enforcement agency having jurisdiction where the institution is located. Regardless of whether an institution of higher education has its own law enforcement unit, the Wetterling Act does not limit the discretion of states to make information concerning registrants enrolled or working at the institution available to other law enforcement agencies as well.

The language of subsection (j) refers specifically to any registrant who "is employed, carries on a vocation, or is a student" at an institution of higher education in the state. These terms have defined meanings set forth in subsection (a)(3)(F)–(G) of the Wetterling Act (42 U.S.C. 14071(a)(3)(F)–(G)). In light of these definitions, the registrants to whom the requirements of subsection (j) apply are those who: (1) are enrolled in any institution of higher education in the state on a full-time or part-time basis, or (2) have any sort of full-time or part-time employment at an institution of higher education in the state, with or without compensation, for more than 14 days, or for an aggregate period exceeding thirty days in a calendar year.

The CSCPA provisions in subsection (j) of the Wetterling Act are supplementary to, and do not limit or supersede, the provisions in subsection (b)(7)(B) of the Wetterling Act that require states to accept registration information from offenders who reside outside a state but come into the state in order to work or attend school. Subsection (b)(7)(B) applies only to non-resident workers and students, but it is not limited in scope to those who work at or attend institutions of higher education (as opposed to other places of employment or schools). The requirements under subsection (b)(7)(B) are explained in part V.B.2 of the January 5, 1999, Wetterling Act guidelines (64 FR 572, 585).

The CSCPA's effective date for its amendment to the Wetterling Act is two years after enactment. Hence, following October 27, 2002, Byrne Formula Grant awards to states that are not in compliance with subsection (j) of the Wetterling Act will be subject to a mandatory 10% reduction. If a state's funding is reduced because of a failure to comply with the CSCPA amendment to the Wetterling Act or other Wetterling Act requirements by an applicable deadline, the state may regain eligibility for full funding thereafter by establishing compliance with all applicable requirements of the Wetterling Act. States are encouraged to submit information concerning existing and proposed sex offender registration provisions relating to compliance with the CSCPA amendment as soon as possible.

After the reviewing authority has determined that a state is in compliance with the Wetterling Act, the state has a continuing obligation to maintain its system's consistency with the Wetterling Act's standards, and will be required as part of the Byrne Formula Grant application process in subsequent program years to certify that the state remains in compliance with the Wetterling Act.

These guidelines relate solely to the provisions of the CSCPA that amended the Wetterling Act, and hence affect state eligibility for full Byrne Grant funding. In addition to adding subsection (j) to the Wetterling Act, the CSCPA amended federal education laws to ensure the availability to the campus community of information concerning the presence of registered sex offenders. The Department of Education is responsible for the issuance of regulations relating to those laws.

As noted above, the general guidelines for the Wetterling Act were published on January 5, 1999, and appear at 64 FR 572, with corrections at 64 FR 3590 (Jan. 22, 1999). The new CSCPA provisions in subsection (j), which these supplementary guidelines address, are only one part of the Wetterling Act. States must comply with all of the Wetterling Act's requirements in order to maintain eligibility for full Byrne Grant funding.

Dated: October 22, 2002.

Larry D. Thompson,

Acting Attorney General.

[FR Doc. 02–27257 Filed 10–24–02; 8:45 am]

BILLING CODE 4410–19–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Ethernet in the First Mile Alliance

Notice is hereby given that, on September 3, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Ethernet in the First Mile Alliance ("EFMA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Analog Devices, Norwood, MA; Broadcom, Irvine, CA; Harmonic, Inc., Sunnyvale, CA; National Semiconductor, Santa Clara, CA; and Panasonic Semiconductor Dev. Co., San Jose, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and EFMA intends to file additional written notifications disclosing all changes in membership.

On January 16, 2002, EFMA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2002 (67 FR 10760).

The last notification was filed with the Department on April 17, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 18, 2002 (67 FR 41482).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–27221 Filed 10–24–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 17, 2002, Polaroid Corporation, 1265 Main Street, Building W6, Waltham, Massachusetts 02454, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of 2,5-dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture bulk 2,5-dimethoxyamphetamine for conversion into a non-controlled substance.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 24, 2002.

Dated: October 21, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–27180 Filed 10–24–02; 8:45 am]

BILLING CODE 4410–04–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 4, 2002, Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Dihydrocodeine (9120)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Noroxymorphone (9668)	II
Fentanyl (9801)	II

The firm plans to produce bulk product for conversion and distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 24, 2002.

Dated: October 21, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–27181 Filed 10–24–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision of data collections using Form ETA 563, Quarterly Determinations, Allowance Activities, and Employability Services Under the Trade Act (1205–0016 expires 12/02), and reinstatement Form ETA 9027 (1205–0016 expired 11/90), Training Waivers Issued and Revoked.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before December 24, 2002.

ADDRESSES: Erin L. FitzGerald, Program Analyst, Division of Trade Adjustment Assistance, Room C–5311, 200 Constitution Ave., NW., Washington, DC 20210. Phone (202) 693–3506 (this is not a toll-free number), fax (202) 693–3584, e-mail *efitzgerald@doleta.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Trade Act of 1974, Section 236(d), as amended, requires the President to submit an annual report to the Congress on the trade agreements program, which includes information on trade adjustment assistance for workers. Furthermore, key workload data on the Trade Adjustment Assistance (TAA) and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) programs are needed to allocate program and administrative funds to State agencies administering the program for the Secretary. The Trade Adjustment Assistance Reform Act of 2002 amended the Trade Act of 1974. This revision to the ETA 563 (1205–0016 expires 12/02) incorporates changes necessary to accurately reflect the 2002 amendments.

The Trade Act of 1974, Section 231(a)(5)(A), as amended by the Trade Adjustment Assistance Reform Act of 2002, requires participants to be enrolled in training within 16 weeks of their most recent qualifying separation or 8 weeks of the certification covering the worker in order to receive income support. The Trade Act as amended, Section 231(c), allows the enrollment in training requirement to be waived, and provides 6 specific criteria for issuing waivers. Allowable reasons for waiving the training requirement include the worker is expected to be recalled, the worker possesses marketable skills, the worker is within 2 years of retirement, the worker is in poor health, enrollment is not available, and training is not available. The statute requires the State agencies administering the Trade Adjustment Assistance (TAA) program for the Secretary to report to the Secretary on training waivers issued and revoked. The data collected in the reinstated and revised ETA 9027 (1205–0016 expired 11/90) will serve as that report and will also be used in the Secretary's annual report to Congress on training waivers issued and revoked.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

This is a notice of proposed revision of collection of information currently approved by OMB (ETA 563, 1205–0016 expires 12/02) and proposed reinstatement with changes of a collection of information previously approved by OMB (ETA 9027, 1205–0016 expired 11/90). This revision of the ETA 563 incorporates amendments in benefit eligibility set forth in the Trade Adjustment Assistance Reform Act of 2002, reduces the burden hours, and eliminates data elements duplicated in the Trade Act Participant Report (TAPR) (1205–0392, expires 2/04). The reinstatement with changes of the ETA 9027 complies with amendments in waiver eligibility and required reporting set forth in the Trade Adjustment Assistance Reform Act of 2002.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Quarterly Determinations, Allowance Activities, and Employability Services Under the Trade Act; Training Waivers Issued and Revoked.

OMB Number: 1205–0016.

Recordkeeping: 2 years.

Affected Public: State or Local Government.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden
ETA 563	52	Quarterly	17,100	8 minutes	2,223 hours.
ETA 9027	52	Quarterly	180	15 minutes	45 hours.
Combined Reprogramming burden	52	One time		Minimal	Minimal.
Totals			17,280		2,268 hours.

Total Burden Cost (capital/startup): $100,000.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 22, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–27211 Filed 10–24–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning two proposed information collections of the Office of Workers' Compensation Programs (OWCP), Division of Longshore and Harbor Workers' Compensation (DLSHWC): "Payment of Compensation Without Award" (LS–206); and "Notice of Controversion of Right to Compensation" (LS–207). Copies of the proposed information collection requests can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before December 24, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, e-mail *pforkel@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act (LHWCA). The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employee in loading, unloading, repairing, or building a vessel. Under Sections 14(b) and (c) of the Act, a self-insured employer or insurance carrier is required to pay compensation within 14 days after the employer has knowledge of the injury or death of the employee. Upon making the first payment, the employer or carrier shall immediately notify the Longshore district director of the payment. Form LS–206 has been designated as the proper form on which report of first payment is to be made.

Pursuant to section 14(d) of the Act, if an employer controverts the right to compensation, he/she shall file with the Longshore deputy commissioner in the affected compensation district on or before the fourteenth day after he/she has knowledge of an alleged injury or death, a notice, in accordance with a form prescribed by the Secretary of Labor, stating that the right to compensation is controverted. The LS–207 is used for this purpose. These

information collections are currently approved for use through February 28, 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to meet the statutory requirements to provide compensation or death benefits under the Act to workers covered under the Act. There is no change in the substance or method of collection since the last OMB approval.

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Payment of Compensation Without Award.
OMB Number: 1215–0022.
Agency Number: LS–206.
Affected Public: Business or other for-profit.
Total Respondents: 900.
Total Responses: 26,100.
Frequency: On occasion.
Estimated Total Burden Hours: 6,525.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $10,440.

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Notice of Controversion of Right to Compensation.
OMB Number: 1215–0023.
Agency Number: LS–207.
Affected Public: Business or other for-profit.
Total Respondents: 900.
Total Responses: 18,900.
Frequency: On occasion.
Estimated Total Burden Hours: 4,725.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $7,985.25.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 21, 2002.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 02–27209 Filed 10–24–02; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: "Notice of Final Payment or Suspension of Compensation Benefits" (LS–208). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before December 24, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, e-mail *pforkel@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act (LHWCA). The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employee in loading, unloading, repairing, or building a vessel. Under section 14(g) of the Act, the employer or the employer's insurance carrier must file a report of the compensation paid to a claimant at the time final payment is made. The Act requires that the form must be filed within sixteen days of the final payment of compensation with the District Director in the compensation district in which the injury occurred. This information collection is currently approved for use through April 30, 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to notify OWCP district offices that payment of compensation benefits has been stopped or suspended in a case. The report is required by law. The report is necessary for OWCP to determine whether benefits have been suspended in a case and to effectively manage the case file and verify that the injured worker has received all benefits to which he/she is entitled under the Act. There is no change in the substance or method of collection since the last OMB approval.

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Notice of Final Payment or Suspension of Compensation Benefits.
OMB Number: 1215–0024.
Agency Number: LS–208.
Affected Public: Business or other for-profit.
Total Respondents: 500.
Total Responses: 18,950.
Frequency: On occasion.
Estimated Total Burden Hours: 4,738.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $10,890.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 21, 2002.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 02–27210 Filed 10–24–02; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volumes causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA020016 (Mar. 1, 2002)
Maine
ME020012 (Mar. 1, 2002)
Rhode Island
RI020005 (Mar. 1, 2002)

Volume II

Pennsylvania
PA020004 (Mar. 1, 2002)
PA020005 (Mar. 1, 2002)
PA020007 (Mar. 1, 2002)
PA020008 (Mar. 1, 2002)
PA020010 (Mar. 1, 2002)
PA020012 (Mar. 1, 2002)
PA020014 (Mar. 1, 2002)
PA020015 (Mar. 1, 2002)
PA020016 (Mar. 1, 2002)
PA020019 (Mar. 1, 2002)
PA020020 (Mar. 1, 2002)
PA020023 (Mar. 1, 2002)
PA020024 (Mar. 1, 2002)
PA020025 (Mar. 1, 2002)
PA020026 (Mar. 1, 2002)
PA020031 (Mar. 1, 2002)
PA020040 (Mar. 1, 2002)
PA020042 (Mar. 1, 2002)
PA020050 (Mar. 1, 2002)
PA020061 (Mar. 1, 2002)

Volume III

None

Volume IV

Illinois
IL020002 (Mar. 1, 2002)
IL020006 (Mar. 1, 2002)
IL020008 (Mar. 1, 2002)
IL020009 (Mar. 1, 2002)
IL020011 (Mar. 1, 2002)
IL020026 (Mar. 1, 2002)

Volume V

Iowa
IA020013 (Mar. 1, 2002)

Volume VI

None

Volume VII

California
CA020001 (Mar. 1, 2002)
CA020002 (Mar. 1, 2002)
CA020004 (Mar. 1, 2002)
CA020009 (Mar. 1, 2002)
CA020019 (Mar. 1, 2002)
CA020023 (Mar. 1, 2002)

CA020025 (Mar. 1, 2002)
CA020028 (Mar. 1, 2002)
CA020029 (Mar. 1, 2002)
CA020030 (Mar. 1, 2002)
CA020031 (Mar. 1, 2002)
CA020032 (Mar. 1, 2002)
CA020033 (Mar. 1, 2002)
CA020035 (Mar. 1, 2002)
CA020036 (Mar. 1, 2002)
CA020037 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 17th Day of October 2002.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–26921 Filed 10–24–02; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Notice of Intent To Award—Grant Awards for the Provision of Civil Legal Services to Eligible Low-Income Clients, for Service Areas in Michigan, Beginning January 1, 2003

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to make FY 2003 Competitive Grant Awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal services to eligible low-income clients, for service areas in Michigan, beginning January 1, 2003.

DATES: All comments and recommendations must be received on or before the close of business on November 25, 2002.

ADDRESSES: Legal Services Corporation—Competitive Grants, Legal Services Corporation, 750 First Street NE., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Reginald Haley, Office of Program Performance, (202) 336–8827.

SUPPLEMENTARY INFORMATION: Pursuant to LSC's announcement of funding availability on August 22, 2002 (67 FR 54495), LSC will award funds to one or more of the following organizations to provide civil legal services in the indicated service areas. Funding amounts shown are based on the 2000 census data as discussed in LSC Program Letter 02–8. Amounts are subject to change.

State & service area	Applicant name	Anticipated FY 2003 award
Michigan:		
MI–9	Legal Services of Northern Michigan, Inc	$ 648,993
MI–12	Legal Services of South Central Michigan, Inc	1,169,064
MI–13	Legal Aid and Defender Association, Inc	3,507,603
MI–14	Lakeshore Legal Aid	1,261,424
MI–14	Legal Services of Eastern Michigan	1,261,424
MI–15	Western Michigan Legal Services	1,518,531
MMI	Legal Services of South Central Michigan, Inc	441,801
NMI–1	Michigan Indian Legal Services, Inc	149,078

These grants and contracts will be awarded under the authority conferred on LSC by the Legal Services Corporation Act, as amended (42 U.S.C. 2996e(a)(1)). Awards will be made so that each service area is served, although none of the listed organizations are guaranteed an award or contract. This public notice is issued pursuant to the LSC Act (42 U.S.C. 2996f(f)), with a request for comments and recommendations concerning the potential grantees within a period of 30 days from the date of publication of this notice. Grants will become effective and grant funds will be distributed on or about January 1, 2003.

Dated: October 21, 2002.

Michael A. Genz,

Director, Office of Program Performance, Legal Services Corporation.

[FR Doc. 02–27148 Filed 10–24–02; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–125]

NASA Advisory Council, Earth Systems Science and Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council (NAC), Earth Systems Science and Applications Advisory Committee (ESSAAC).

DATES: Wednesday, November 13, 2002, 8:30 a.m. to 5:30 p.m.; and Thursday, November 14, 2002, 8:30 a.m. to 5:30 p.m.

ADDRESSES: Channel Inn Hotel, 650 Water Street SW, Captain's Room, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Williams, Code Y, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0241.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Welcome and Opening Remarks
- Agency Perspective & Plans
- Earth Science Enterprise (ESE) Perspective
- Climate Change Research Initiative / U.S. Global Change Research Program
- Overview & ESE Strategic Plan
- Research Strategy & Implementation Planning
- Applications Strategy & Implementation Planning
- NASA and ESE Education Planning—Data and Information Systems Strategy " Earth Science Information Systems and Services Subcommittee Update
- Technology Strategy and Implementation—Technology Subcommittee Update
- Committee Discussion/Writing Session

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors' register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–27252 Filed 10–24–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AREONAUTICS AND SPACE ADMINISTRATION

[Notice 02–126]

NASA Advisory Council, Earth Science Information Systems and Services Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council (NAC), Earth Systems Science and Applications Advisory Committee (ESSAAC).

DATES: Wednesday, October 30, 2002, 8:30 a.m. to 5:30 p.m.; and Thursday, October 31, 2002, 8:30 a.m. to 1 p.m.

ADDRESSES: Holiday Inn Capitol, Saturn and Venus Rooms, 500 C Street SW., Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Ms. Martha Maiden, Code YF, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1078.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Welcome and Introductory Comments
—Earth Science Enterprise (ESE) Strategic Thinking
—ESE Budget Overview
—Data Implementation Roadmap
—Strategic Evolution of ESE Data Systems (SEEDS) Status
—Earth Observation System (EOS) Science Operations and Development Status
—Earth Observation System Data and Information System (EOSDIS) Maintenance and Development (EMD) Procurement Status
—Development of Main Points and Concerns
—Summary of first day/ Recommendations Items
—General Discussion
—Long-term Archive (LTA) Introduction
—National Oceanic and Atmospheric Administration (NOAA) Class Plans and Development Status
—US Geological Survey (USGS) Eros Data Center (EDC) and Land Processes LTA
—Other reports
—Finalize Recommendations/Closing Remarks

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–27265 Filed 10–24–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before December 9, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Larry Baume, Acting Director, Life Cycle Management Division (NWML), National Archives and Records

Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1505. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, United States Patent and Trademark Office (N1–241–02–2, 2 items, 2 temporary items). Provisional patent applications and related copies that are received for initial review by the Office of Initial Patent Examination.

2. Department of Defense, Defense Threat Reduction Agency (N1–374–02–8, 17 items, 12 temporary items). Records relating to the operation of the Radiation Experiments Command Center (RECC). Temporary records include components of the RECC Database, related hard copy files, and administrative and working files as well as electronic copies of records created using word processing and electronic mail. Proposed for permanent retention are components and outputs of the RECC database, related system documentation, and paper files relating to human radiation experiments.

3. Department of Defense, National Reconnaissance Office (N1–525–02–2, 4 items, 4 temporary items). Employee grievance and management inquiry files. Also included are electronic copies of documents created using electronic mail and word processing.

4. Department of Energy, Idaho Operations Office (N1–434–02–1, 3 items 3 temporary items). Records relating recordings of ground velocity taken by a seismometer (seismogram records). Also included are the electronic copies of records created using electronic mail and word processing.

5. Department of Interior, U.S. Geological Survey (N1–57–02–4, 151 items, 145 temporary items). Records relating to acquisition, supply and grant matters, emergency planning, safety, security, and environmental matters, and property management. Records relate to such subjects as procurement, charge card purchases, grant programs, control of classified documents, protection and technical surveillance countermeasures, security and access control, misuse of government property, background investigations, safety training, hazardous waste management, emergency planning, environmental compliance, fire reports, personal property, motor vehicle and watercraft management, museum management, and real property management. Also included are electronic copies of records created using electronic mail, spreadsheet, and word processing applications. Proposed for permanent retention are recordkeeping copies of records relating to such subjects as agency document classification programs and policies, the protection of cultural resources and mineral resources, and pest management programs.

6. Department of Interior, U.S. Fish and Wildlife Service (N1–22–02–1, 8 items, 8 temporary items). Records relating to volunteer activities including such files as personnel records of volunteers, administrative files, reports, and rosters of volunteer personnel in both electronic and paper media. Also included are electronic copies of records created using electronic mail and word processing.

7. Department of State, Bureau of Administration (N1–59–02–5, 10 items, 10 temporary items). Records relating to personnel matters, including Foreign Service employee emergency locator records, files relating to leave, travel, and payroll, and death case files relating to agency employees who die while in-service. Also included are electronic copies of documents created using electronic mail and word processing.

8. Department of the Treasury, Office of General Counsel (N1–56–02–5, 58 items, 51 temporary). Attorney working files, document production records, legal matter files and related tracking systems, litigation files, standards of conduct files, records relating to the specific sanctions program, and other records accumulated by the Office of General Counsel. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such files as general counsel memoranda, general counsel opinions, and selected records relating to significant legal matters and litigation.

9. Department of the Treasury, Bureau of the Public Debt, (N1–53–02–8, 10 items, 10 temporary items). Inputs, outputs, system documentation, and master files of the Internal Revenue Information System. This system reports interest earned on foreign owned accounts and is used to prepare IRS Forms 1042–S that are mailed to account holders. Also included are electronic copies of documents created using electronic mail and word processing applications.

10. Department of the Treasury, Bureau of the Public Debt, (N1–53–02–9, 12 items, 11 temporary items). Records of the Office of Public Debt Accounting, including such records as debt statements and reconciliations, financial statements and reconciliations, accounting reviews, and exception reports. Historical reports of the Government's debt and expenses are proposed for permanent retention.

11. Department of the Treasury, Bureau of the Public Debt (N1–53–02–10, 17 items, 15 temporary items). Savings Bond Marketing Office records consisting of reports and documents generated from the Payroll Savings Participation System and the Call and Progress Summary System. Records are used to develop and focus marketing efforts. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of Action Bulletins and Printed Promotional Materials are proposed for permanent retention.

12. Department of the Treasury, Bureau of the Public Debt, (N1–53–02–14, 6 items, 6 temporary items). Electronic records and related output reports used in connection with the printing, tracking, and distribution of agency forms.

13. Central Intelligence Agency, Directorate of Intelligence (N1–263–02–3, 7 items, 7 temporary items). Inputs, master data, outputs, backup tapes, and documentation for the Trade Data Aggregation and Recovery System, an electronic system containing international import and export data.

14. Executive Office of the President, Office of Telecommunications Policy (N1–429–02–3, 3 items, 1 temporary item). Reports prepared by study groups of the International Telegraph and Telephone Consultative Committee, 1968–1972. Proposed for permanent retention are files of the Assistant Director of the Office of Telecommunications Policy, 1971–1972, and subject files pertaining to communications matters, 1952–1970.

15. Farm Credit Administration, Agency-wide (N1–103–02–1, 4 items, 4 temporary items). Administrative subject files and records that document the Farm Credit Banks Funding Corporation's funding approval process. Records include correspondence and reports, offering circulars, term sheets, and sale confirmations. Also included are electronic copies of records created using electronic mail and word processing.

16. Office of Navajo and Hopi Indian Relocation, Executive Direction (N1–220–02–18, 3 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to legislative history matters. Recordkeeping copies of these files are proposed for permanent retention.

17. Office of Navajo and Hopi Indian Relocation, Relocation Operations (N1–220–02–19, 7 items, 4 temporary items). Electronic copies of records created using electronic mail and word processing that relate to such matters as accommodation and stipulated settlement agreements, Hopi partitioned land reports, and residents on Hopi partitioned land who relinquished their interests in accommodation agreements. Recordkeeping copies of these files are proposed for permanent retention.

18. Tennessee Valley Authority, Transmission Power Supply (N1–142–01–4, 5 items, 5 temporary items). Paper and electronic surveying records including field notebooks, computation sheets, estimates, maps, reports, correspondence, and supporting materials. Also included are electronic copies of records created using word processing and electronic mail.

Dated: October 18, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–27182 Filed 10–24–02; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

1. *The title of the information collection:* Proposed Rule, 10 CFR part 50.48, "Fire Protection, Voluntary Adoption of NFPA 805 Fire Protection Requirements".

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* When reactor licensees choose to adopt NFPA 805 fire protection requirements (once), or when requesting NRC approval for use of alternative methods or analytical approaches under NFPA 805 (as needed).

5. *Who will be required or asked to report:* Current light water reactor licensees choosing to adopt NFPA 805 fire protection requirements.

6. *An estimate of the number of annual responses:* 6 (4 reactor plants adopting NFPA 805 fire protection requirements, and 2 reactor plants requesting to use alternative methods or analytical approaches).

7. *The estimated number of annual respondents:* Four licensees adopting NFPA 805 fire protection requirements, and two licensees requesting to use alternative methods or analytical approaches.

8. *An estimate of the net total number of hours needed to complete the requirement or request (annual total for all plants):* 3156 hours of reporting per year, and 180,800 hours of recordkeeping per year (offset by reductions in exemption request processing and cost reductions associated with reduced maintenance, operating and training costs for fire protection features which can be removed from the reactor plants.)

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* Applicable.

10. *Abstract:* The proposed rule would modify 10 CFR 50.48 to permit existing reactor licensees to voluntarily adopt a set of fire protection requirements contained in the National Fire Protection Association (NFPA) Standard 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants, 2001 Edition" (NFPA 805).

Submit, by November 25, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the NRC's submittal to OMB may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. The proposed rule "Revision of 10 CFR 50.48 to Permit Light-water Reactors to Voluntarily Adopt National Fire Protection Association (NFPA) Standard 805, 'Performance-based Standard for Fire Protection for Light-water Reactor Electric Generating Plants, 2001 Edition' as an Alternative Set of Risk-informed and performance-based Fire Protection Requirements" is or has been published in the **Federal Register** within several days of the publication date of this **Federal Register** Notice. The OMB clearance package and rule are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this notice and are also available at the

rule forum site, *http://ruleforum.llnl.gov*.

Comments and questions should be directed to the OMB reviewer by November 25, 2002: Bryon Allen, Office of Information and Regulatory Affairs (3150–0011), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 17th day of October 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–27241 Filed 10–24–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395]

South Carolina Electric and Gas Company, Virgil C. Summer Nuclear Station, Unit 1; Notice of Intent to Prepare an Environmental Impact Statement and Conduct Scoping Process

South Carolina Electric and Gas Company (SCE&G) has submitted an application for renewal of operating license NPF–12 for an additional 20 years of operation at Virgil C. Summer Nuclear Station (V.C. Summer), Unit 1. V.C. Summer is located in the southeastern corner of rural Fairfield County, South Carolina, approximately 26 miles northwest of Columbia, South Carolina. The application for renewal was submitted by letter dated August 6, 2002, pursuant to 10 CFR part 54. A notice of receipt of application, including the environmental report (ER), was published in the **Federal Register** on September 3, 2002 (67 FR 56316). A notice of acceptance for docketing of the application for renewal of the facility operating license was published in the **Federal Register** on October 10, 2002 (67 FR 62272). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) in support of the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29.

In accordance with 10 CFR 54.23 and 10 CFR 51.53(c), SCE&G submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR part 51 and is available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html*, which provides access through the NRC's Public Electronic Reading Room (PERR). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff at 1–800–397–4209, (301) 415–4737, or by email to *pdr@nrc.gov*. The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/summer.html*. In addition, the Thomas Cooper Library, located at 1322 Greene Street, Columbia, South Carolina 29208, and the Fairfield County Library, located at 300 Washington Street, Winnsboro, South Carolina 29180, have agreed to make the ER available for public inspection.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants," (NUREG–1437) in support of the review of the application for renewal of the V.C. Summer operating license for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. Title 10 of the CFR, section 10 CFR 51.95 requires that the NRC prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with the National Environmental Policy Act (NEPA) and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in this scoping process by members of the public and local, State, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, including any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, SCE&G.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold a public meeting for the V.C. Summer license renewal supplement to the GEIS. The scoping meeting will be held at the White Hall Fellowship Room at the White Hall A.M.E. Church located at 8594 State Highway 215 South, Jenkinsville, South Carolina, on Wednesday, December 11, 2002. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m. The second session will convene at 7:00 p.m. with a repeat of the overview portions of the meeting and will continue until 10:00 p.m. Both meetings will be transcribed and will include: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; (2) an overview by SCE&G of the proposed action, V.C. Summer license renewal, and the environmental impacts as outlined in the ER; and (3) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the White Hall Fellowship Room. No comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below.

Persons may register to attend or present oral comments at the meeting on the NEPA scoping process by contacting Mr. Gregory F. Suber by telephone at 1–800–368–5642, extension 1124, or by Internet to the NRC at *gxs@nrc.gov* no later than November 15, 2002. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Suber's attention no later than November 15, 2002, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scoping process for the supplement to the GEIS to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6 D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. To be considered in the scoping process, written comments should be postmarked by January 6, 2003. Electronic comments may be sent by the Internet to the NRC at *VCSummerEIS@nrc.gov*. Electronic submissions should be sent no later than January 6, 2003, to be considered in the scoping process. Comments will be available electronically and accessible through the NRC's PERR link, *http://www.nrc.gov/NRC/ADAMS/index.html*, at the NRC Home page.

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application was the subject of the aforementioned **Federal Register** notice of acceptance for docketing. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection through the PERR link. The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and a separate public meeting. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Suber at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 23rd, day of October, 2002.

For the Nuclear Regulatory Commission

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–27334 Filed 10–24–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3103]

Louisiana Energy Services Gas Centrifuge Enrichment Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of opportunity to provide public comments.

SUMMARY: In a **Federal Register** Notice (67 FR 61932), dated October 2, 2002, the U.S. Nuclear Regulatory Commission (NRC) requested comments from members of the public concerning a series of "white papers" presented to the NRC by the Louisiana Energy Services (LES) addressing licensing issues for a gas centrifuge uranium enrichment facility to be located in the area of Hartsville, Trousdale County, Tennessee. The October 2, 2002, **Federal Register** Notice provided a 30-day comment period. As a result of comments made at an October 14, 2002, public information forum sponsored by Trousdale County, Tennessee, the Commission is extending the comment period to November 13, 2002.

DATES: Comments are due by November 13, 2002. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy C. Johnson, Project Manager, Special Projects and Inspection Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8A33, Washington, DC 20555. Telephone (301) 415–7299, e-mail *TCJ@nrc.gov*.

SUPPLEMENTARY INFORMATION: In a **Federal Register** Notice (67 FR 61932), dated October 2, 2002, NRC published an opportunity for the public to provide comments on six pre-application policy issue "white papers." LES submitted these white papers to the Commission as LES believes that Commission direction on these issues will be essential to the conduct of an efficient regulatory review process. *The white papers addressed the following subjects:*

1. Analysis of need for the facility and the no-action alternative under the National Environmental Policy Act;
2. Environmental justice;
3. Financial qualifications;
4. Antitrust review;
5. Foreign ownership;
6. Disposition of depleted uranium tails.

A public meeting was held on April 30, 2002, to discuss these papers. Comments on the papers were submitted by two attendees at the meeting: the Department of Energy (DOE) and the United States Enrichment Corporation (USEC). The NRC prepared a meeting summary, dated May 28, 2002, which is publicly available. At the time of the April meeting, LES had not chosen a site for the facility.

On October 14, 2002, at a public information forum sponsored by

Trousdale County, Tennessee, several members of the public requested a 90-day extension of the comment period because the opportunity to provide comments was not locally advertised. On October 16, 2002, LES requested that NRC extend the comment period to end 30 days after the public information forum on October 14, 2002. After considering these requests, the Commission is extending the comment period. NRC considers that the extension provides sufficient time for members of the public to review the LES "white papers" and provide comment.

The April 24, 2002, LES "white papers"; the May 28, 2002, NRC Meeting Summary; DOE's July 25, 2002, comments; and USEC's June 19, 2002, comments are accessible electronically from the NRC Agency wide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/readingrm/adams.html*. The ADAMS Accession Numbers for these documents are: ML022350051, ML021480298, ML022350130, and ML021770197, respectively. These documents may also be examined and/or copied for a fee at NRC's Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

Members of the public may provide comments by November 13, 2002. The comments may be provided to Michael Lesar, Chief, Rules Review and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 18th day October, 2002.

For the U.S. Nuclear Regulatory Commission.

Melvyn N. Leach,

Chief, Special Projects and Inspection Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–27242 Filed 10–24–02; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Africa Investment Advisory Council Meeting

TIME AND DATE: Monday, October 21, 2002, Noon—3 PM (OPEN Portion) [1]

PLACE: Offices of the Corporation, Twelfth Floor Europe Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting OPEN to the Public.

MATTERS TO BE CONSIDERED:

1. Welcome & Introductory Remarks.
2. Introduction to OPIC Instruments & Africa Project Portfolios.
3. Africa Investment Advisory Council: Role & Administrative Issues.
4. Discussion/Q&A.

Note: Due to unforeseen circumstances, this notice is published less than 15 days prior to the meeting (41 CFR 102–3.150(b)).

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Marysue K. Shore at (202) 336–8630.

Dated: October 21, 2002.

Marysue K. Shore,

Senior Advisor to the President and Director, African Affairs, Overseas Private Investment Corporation.

[FR Doc. 02–27141 Filed 10–24–02; 8:45 am]

BILLING CODE 3210–01–M

[1] **Editorial Note:** This document was received at the Office of the Federal Register on October 21, 2002.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 11a1–1(T), SEC File No. 270–428, OMB Control No. 3235–0478.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 11a1–1(T)—Transaction Yielding Priority, Parity, and Precedence

On January 27, 1976, the Commission adopted Rule 11a1–1(T) under the Securities Exchange Act of 1934 ("Exchange Act") to exempt transactions of exchange members for their own accounts that would otherwise be prohibited under Section 11(a) of the Exchange Act. The rule provides that a member's proprietary order may be executed on the exchange of which the trader is a member, if, among other things: (1) The member discloses that a bid or offer for its account is for its account to any member with whom such bid or offer is placed or to whom it is communicated; (2) any such member through whom that bid or offer is communicated discloses to others participating in effecting the order that it is for account of a member; and (3) immediately before executing the order, a member (other than a specialist in such security) presenting any order for the account of a member on the exchange clearly announces or otherwise indicates to the specialist and to other members then present that he is presenting an order for the account of a member.

Without these requirements, it would not be possible for the Commission to monitor its mandate under the Exchange Act to promote fair and orderly markets and ensure that exchange members have, as the principle purpose of their exchange memberships, the conduct of a public securities business.

There are approximately 1,000 respondents that require an aggregate total of 333 hours to comply with this rule. Each of these approximately 1,000 respondents makes an estimated 20 annual responses, for an aggregate of 20,000 responses per year. Each response takes approximately 1 minute to complete. Thus, the total compliance burden per year is 333 hours (20,000 minutes/60 minutes per hour = 333 hours). The approximate cost per hour is $100, resulting in a total cost of compliance for the respondents of $33,333 (333 hours @ $100).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director for the Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: October 18, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27224 Filed 10–24–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Number IC–25774; 812–12598]

Corvis Corporation; Notice of Application

October 21, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under section 3(b)(2) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicant Corvis Corporation ("Corvis") seeks an order under section 3(b)(2) of the Act declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. Corvis is a telecommunications company that designs, manufactures, and sells high performance optical networking products.

FILING DATES: The application was filed on August 7, 2001 and amended on October 18, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 15, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, 7015 Albert Einstein Drive, Columbia, MD, 21046–9400.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Senior Counsel, at (202) 942–0528, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. Corvis, a Delaware corporation, is in the business of designing, manufacturing and selling high performance optical networking products through its direct and indirect interests in wholly-owned subsidiaries and Acme Grating, LLC ("Acme Grating"), a company it controls within the meaning of section 2(a)(9) of the Act.[1] As a development stage company, Corvis' operations consisted primarily of research and development, product design, manufacturing and testing of optical communications systems. As an operating company, Corvis has conducted field trials for customers, deployed transmission and switching equipment, built up finished goods inventory to support customer service orders, and sold products to its customers.

2. Corvis states that it needs to maintain a large amount of capital in order to cover expenses related to the research and development of new technology, products, product enhancements, and other operational expenses such as marketing. Corvis desires to use a portion of its working capital to invest in short-term, investment grade securities, as outlined in its investment policies which are attached to the application ("Capital Preservation Investments"), pending the use of such capital for its current and future operations. Corvis also states that it must preserve capital for carrying out future mergers and acquisitions and for entering into strategic partnerships and joint ventures.

3. Corvis also makes and expects to continue making investments in long-term, non-controlling, strategic investments in the debt or equity securities of other entities ("Strategic Investments"). Corvis states that its current Strategic Investments are invested in developing-stage privately held companies that are engaged in businesses that Corvis believes complement its technology. Corvis further states that it views its Strategic Investments as a means to facilitate the development of next-generation technology and foster positive relations with companies that Corvis believes will add value to its products.

4. In October 2000, Corvis created Corvis US Capital, Inc. ("US Capital"), a Delaware corporation, for tax and business reasons unrelated to the Act, to hold Corvis' cash, Capital Preservation Investments, Strategic Investments and other marketable investment securities. Corvis indirectly owns all of the outstanding securities (other than short-term paper and directors' qualifying shares) of US Capital. Corvis states that it has not, does not currently, and does not intend in the future to engage in short-term trading of any securities, including Capital Preservation Investments and Strategic Investments.

Applicant's Legal Analysis

1. Corvis seeks an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore not an investment company as defined in the Act.

2. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40% of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act provides that "investment securities" include all securities except government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which (i) are not investment companies, and (ii) are not relying on the exclusions from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act.

3. Corvis states that as of June 29, 2002, 82% of its total assets (exclusive of government securities and cash items), on an unconsolidated basis, consistent of investment securities as defined in section 3(a)(2) of the Act. Corvis believes that this percentage may rise as it acquires additional Capital Preservation Investments, writes down the value of certain assets (such as goodwill), takes restructuring charges, and disposes of other assets (such as excess or obsolete inventory and surplus equipment).

4. Rule 3a–1 provides an exemption from the definition of investment company if no more than 45% of a company's total assets consist of, and

[1] Corvis owns 49% of the voting shares and 99% of the economic interest in Acme Grating. Acme Grating owns certain licensed intellectual property that it uses to manufacture gratings that Corvis purchases and uses in its operations. Corvis states that, as of June 29, 2002, Acme Grating had total assets of $0.

not more than 45% of its net income over the last four quarters is derived from, securities other than government securities and securities of majority-owned subsidiaries and companies primarily controlled by it. Corvis states that it cannot rely upon rule 3a–1 under the Act because it has suffered operating losses for the twelve months ended June 29, 2002, while earning some investment income during the same period.

5. Section 3(b)(2) of the Act provides that, notwithstanding section 3(a)(1) of the Act, the Commission may issue an order declaring an issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly, through majority-owned subsidiaries, or controlled companies conducting similar types of business. Corvis requests an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore not an investment company as defined in the Act.

6. In determining whether a company is primarily engaged in a non-investment company business under section 3(b)(2), the Commission considers: (a) The issuer's historical development; (b) its public representations of policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income.[2]

a. *Historical Development.* Corvis has been a development stage company from the time of its inception until July 2000 and an operating company from that time to the present. As a development stage company, Corvis' operations consisted primarily of research and development, product design, manufacturing, and testing of optical communications systems. As an operating company, Corvis has conducted field trials for customers, deployed transmission and switching equipment and built up finished goods inventory to support customer service orders and sold products to its customers. Corvis states that all of its activities since its formation have been devoted solely to designing, manufacturing and marketing high performance optical communications systems. Corvis has not disposed of any of its Strategic Investments and does not plan to dispose of any Strategic Investments in the foreseeable future.

[2] Tonopah Mining Company of Nevada, 26 SEC 426, 427 (1947).

b. *Public Representations of Policy.* Corvis states that it has never represented that it is involved in any business other than designing, manufacturing and selling high performance optical networking products. Corvis asserts that it has consistently stated in its reports to stockholders, press releases and filings with the Commission that it is a telecommunications company. Corvis states that it has emphasized operating results and has never emphasized either its investment income or the possibility of significant appreciation from its Capital Preservation Investments or Strategic Investments as a material factor in its business or future growth.

c. *Activities of Officers and Directors.* Corvis states that its senior officers and directors are actively engaged in the management of telecommunications business and that their educational and business backgrounds are predominantly in the fields of engineering, physics, telecommunications, accounting, mathematics, marketing, software development, computer science, general management and law. Only two of the twenty-six directors, executive officers and key employees have a securities investment background or private equity experience. Three Corvis officers and a director from Corvis' Board of Directors ("Board"), who is not an officer or employee of Corvis, serve on a committee (the "Investment Committee") that manages the investment portfolio. The officers and director devote, on average, less than 1% of their time to matters relating to Capital Preservation Investments and Strategic Investments. The involvement of Corvis' Board in capital preservation efforts has been limited to establishing investment objectives for the Capital Preservation Investments. Further, Corvis states that its approximately 900 employees collectively spend approximately 58% of their time on research and development, 24% of their time designing and manufacturing products, 18% of their time on accounting, recruiting, marketing products, and other administrative matters, and less than 1% of their time on Capital Preservation Investments and Strategic Investments.

d. *Nature of Assets.* Corvis states that as of June 29, 2002, its total assets (exclusive of Government securities and cash items, as such terms have been interpreted by the Commission or its staff), consolidated with US Capital, was $581.50 million, approximately 14.9% of which represented investment securities as defined in section 3(a)(2) of the Act.[3] Corvis further represents that as of June 29, 2002, less than 1% of these investment securities were Strategic Investments, and the rest were Capital Preservation Investments. Corvis states that Capital Preservation Investments consist of short-term investment grade securities held by Corvis not for investment purposes, but to preserve its capital pending its use in operations. Corvis further states that Strategic Investments are not contemplated to comprise as much as 4% of Corvis' total assets.

e. *Sources of Income and Revenue.* Corvis states that its subsidiaries (other than US Capital) and Acme Grating, a controlled company, are emerging telecommunications businesses that typically generate little or no income for Corvis in the form of dividends or capital appreciation and have produced significant losses for Corvis to date. Corvis asserts that its activities as an operating company are more appropriately analyzed by evaluating Corvis' proportionate share of the revenues from directly-owned assets, wholly-owned subsidiaries and Acme Grating in light of Corvis' total revenues. Corvis states that, for the four quarters ending June 29, 2002, revenues from its directly-owned assets, wholly-owned subsidiaries and Acme Grating represented approximately 84.1% of Corvis' total revenues.[4] Corvis expects that in the future, the percentage of its total revenues derived from operating activities will ordinarily be over 80% and the percentage derived from investments will ordinarily be under 20%. Corvis represents that it does not intend to derive a significant percentage of its revenues from income derived from the sale of interest in non-controlled companies.

7. Corvis thus asserts that it satisfies the standards for an order under section 3(b)(2) of the Act.

[3] Corvis states that the value of its interests in controlled conducting similar types of business is $0 million. Additionally, for the purposes of this analysis, US Capital's holdings of money market fund shares have been treated as "cash items." Corvis states that these money market funds comply with rule 2a–7 of the Act and seek to maintain a stable net asset value of $1.00 per share. Corvis states that consolidating its assets with those of US Capital provides a more accurate picture of its telecommunications business because the assets held by US Capital will only consist of money market fund shares, other Capital Preservation Investments, some or all of the Strategic Investments and other marketable debt and equity securities. Moreover, since US Capital is a wholly-owned subsidiary, consolidation will not result in the type of distortions that could result from consolidating other types of subsidiaries.

[4] For purposes of this analysis, revenues of the wholly-owned subsidiaries were consolidated and revenues of Acme Grating, a controlled company, were attributed to Corvis in proportion to Corvis' interests in Acme Grating. Corvis uses the equity method of accounting for Acme Grating, which under Generally Accepted Accounting Principles ("GAAP") means that Acme Gratings' income or losses, but not revenues, are attributed to Corvis based on its ownership of Acme Grating. Acme Grating provided less than .1% of Corvis' total revenues. Corvis consolidates its wholly-owned subsidiaries, including US Capital, when preparing its financial statements in accordance with GAAP.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. Corvis will continue to allocate and utilize its accumulated cash and Capital Preservation Investments, whether held directly or through US Capital, for bona fide business purposes.

2. Corvis will not engage in trading in securities, either directly or through any of its subsidiaries, for short-term speculative purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27223 Filed 10–24–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and ExchangeCommission will hold the following meetings during the week of October 28, 2002:

A Closed Meeting will be held on Monday, October 28, 2002, at 10 a.m., and Open Meetings will be held on Wednesday, October 30, 2002 at 10 a.m., and Thursday, October 31, 2002 at 10 a.m.

Commissioner Campos, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Monday, October 28, 2002 will be:

Formal order of investigation;

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions; and

Adjudicatory matter.

The subject matter of the Open Meeting scheduled for Wednesday, October 30, 2002 will be:

1. The Commission will consider proposing new rules and amendments regarding the use of pro forma financial information in order to implement section 401(b) of the Sarbanes-Oxley Act of 2002. In addition, the Commission will consider an amendment to Form 8-K requiring the filing of earnings announcements and releases.

2. The Commission will consider whether to propose rules relating to section 401(a) of the Sarbanes-Oxley Act of 2002. The proposed rules would require companies to provide in their "Management's Discussion and Analysis" section of the Commission filings: (a) A discussion of off-balance sheet arrangements; (b) a table of aggregate contractual obligations due in short and long-term time horizons; and (c) either a table or textual disclosure of aggregate contingent liabilities and commitments in the short and long-term.

3. The Commission will consider whether to propose new rules that would prohibit an issuer's directors and executive officers from purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that prevents plan participants or beneficiaries from engaging in equity securities transactions, if the equity security was acquired in connection with the director or executive officer's service or employment as a director or executive officer. These rules would implement section 306(a) of the Sarbanes-Oxley Act of 2002. In addition, the proposed rules would require issuers to provide advance notice to their directors and executive officers and the Commission of the imposition of a pension plan blackout period.

The subject matter of the Open Meeting scheduled for Thursday, October 31, 2002 will be:

1. The Commission will consider whether to propose amendments to the definition of terms used in the exception from the definition of dealer for banks under section 3(a)(5) of the Securities Exchange Act of 1934. The Commission will consider whether to propose amendments to the related exemption for banks, savings associations, and savings banks as well as propose a new exemption concerning securities lending. These proposals relate to the implementation of the specific exceptions for banks from the definitions of "broker" and "dealer" that were amended by the Gramm-Leach-Bliley Act.

2. The Commission will consider proposed rules establishing standards of professional conduct for attorneys who appear and practice before the Commission in any way in the representation of issuers, as required by section 307 of the Sarbanes-Oxley Act of 2002. These standards would include a rule requiring an attorney to report "evidence of a material violation of securities laws or breach of fiduciary duty or similar violation by the company or any agent thereof" to the chief legal counsel or the chief executive officer of the company (or the equivalent); and, if they do not respond appropriately to the evidence, requiring the attorney to report the evidence to the audit committee, another committee of independent directors, or the full board of directors.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 23, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27349 Filed 10–23–02; 10:47 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46620A; File No. SR–NYSE–2002–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Shareholder Approval of Equity Compensation Plans and the Voting of Proxies

October 21, 2002.

Correction

In FR Document No. 02–26037, beginning on page 63486 in the issue for Friday, October 11, 2002, the word "less" in footnote 10 should be changed to "greater." Footnote 10 should read as follows:

[10] For these purposes, a "repricing" means any of the following (or any other action that has the same effect as any of the following): (1) Amending the terms of an option after it is granted to lower its strike price; (2) any other action that is treated as a repricing under generally accepted accounting principles; and (3) canceling an option at a

time when its strike price is equal to or greater than the fair market value of the underlying stock, in exchange for another option, restricted stock, or other equity, unless the cancellation and exchange occurs in connection with a merger, acquisition, spin-off or other similar corporate transaction. A cancellation and exchange described in clause (3) of the preceding sentence will be considered a repricing regardless of whether the option, restricted stock or other equity is delivered 2 simultaneously with the cancellation, regardless of whether it is treated as a repricing under generally accepted accounting principles, and regardless of whether it is voluntary on the part of the option holder.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27225 Filed 10–24–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46684; File No. SR–PCX–2002–69]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Adopt a New Interpretation Under PCXE Rule 7.37 in Securities Subject to the ITS Plan Exemption

October 17, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 15, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by PCX. PCX filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 17 CFR 200.30–2(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78s(b)(3)(A).
[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend certain rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE, to conform to the Commission's order granting a *de minimis* exemption from the trade-through restrictions of the Intermarket Trading System ("ITS") Plan in certain exchange-traded funds ("ETFs"). Below is the text of the proposed rule change. New text is in *italics*, while deletions appear in [brackets].

* * * * *

PCX Equities, Inc.

Rule 7—Equities Trading Orders and Modifiers

Rule 7.31(a)–(d)—No change.

(e) Immediate-or-Cancel Order. A market or limit order that is to be executed in whole or in part as soon as such order is received, and the portion not so executed is to be treated as canceled. *An immediate-or-cancel order for Trade-Through Exempt Securities (as defined in Rule 7.37) will be permitted to trade at a price no more than three cents ($0.03) away from the NBBO displayed in the Consolidated Quote.*

(f)–(u)—No change.

(v) NOW Order. A Limited Price Order that is to be executed in whole or in part on the Corporation, and the portion not so executed shall be routed pursuant to Rule 7.37(d) only to one or more NOW Recipients for immediate execution as soon as the order is received by the NOW Recipient. Any portion not immediately executed by the NOW Recipient shall be cancelled. If a NOW Order is not marketable when it is submitted to the Corporation, it shall be cancelled. *NOW Orders may not be Directed Orders. NOW Orders for Trade-Through Exempt Securities (as defined in Rule 7.37) may be routed and executed at a price that is no more than three cents ($0.03) away from the NBBO displayed in the Consolidated Quote.*

(w) PNP Order (Post No Preference). A limit order to buy or sell that is to be executed in whole or in part on the Corporation, and the portion not so executed is to be ranked in the Arca Book, without routing any portion of the order to another market center; provided, however, the Corporation shall cancel a PNP Order that would lock or cross the NBBO. *PNP Orders for Trade-Through Exempt Securities (as defined in Rule 7.37) will not be canceled at the time of order entry if such orders would lock or cross the NBBO. PNP Orders in Trade-Through Exempt Securities may be executed at a price no more than three cents ($0.03) away from the NBBO displayed in the Consolidated Quote.*

(x)—No change.

* * * * *

Order Execution

Rule 7.37. Subject to the restrictions on short sales under Rule 10a–1 under the Exchange Act, like-priced orders, bids and offers shall be matched for execution by following Steps 1 through 5 in this Rule; provided, however, for an execution to occur in any Order Process, the price must be equal to or better than the NBBO, unless the Archipelago Exchange has routed orders to [all] away markets at the NBBO, where applicable (however, a User may submit a NOW Order or Primary Only Order that may be routed to an away market without consideration of the NBBO). *This rule will not apply to securities that are subject to an exemption from the Commission under SEC Rule 11Aa3–2(f) to the trade-through provisions of the ITS Plan ("Trade-Through Exempt Securities"). Orders in Trade-Through Exempt Securities designated as IOC, NOW and PNP orders will be effected at a price no more than three cents ($0.03) away from the best bid and offer quoted in CQS.*

(a)–(e)—No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 28, 2002, the Securities and Exchange Commission issued an order granting a *de minimis* exemption from the trade-through restrictions of the Intermarket Trading System ("ITS") Plan in exchange-traded funds ("ETFs") tracking the Nasdaq-100 Index ("QQQ"), the Standard & Poor's 500 Index ("SPY"), and the Dow Jones Industrial Average ("DIA") (the "Order").[5] The exemption became operative on September 4, 2002, and covers transactions in the aforementioned ETFs that are executed no more than three cents ($0.03) away from the national best bid and offer ("NBBO") displayed in the Consolidated Quote. As a result of the Commission's Order, the Exchange proposes to make conforming changes to certain rules governing the ArcaEx trading facility. The proposed rule changes are summarized below.

The Exchange's current rules governing the order execution processes for orders in the ArcaEx Book [6] are set forth in PCXE Rule 7.37. Presently, Rule 7.37 provides, in part, that for an execution to occur in any Order Process, the price must be equal to or better than the NBBO. The Exchange is proposing to add interpretive language to make it clear to ETP Holders and Sponsored Participants (collectively "Users") that the requirements of this Rule will not apply to orders designated as Immediate-or-Cancel ("IOC"), NOW and Post No Preference ("PNP") in securities that are subject to an exemption from the Commission under SEC Rule 11Aa3–2(f) to the trade-through provisions of the ITS Plan, provided, however, that any resulting executions will be at a price no more than three cents $0.03 away from the national best bid and offer ("NBBO") displayed in the Consolidated Quote.

The Exchange is also proposing to amend the definitions of certain order types, as follows: First, the Exchange is proposing to modify the definition of the IOC Order as set forth in PCXE Rule 7.31(e) by adding the following text: "An immediate-or-cancel order for Trade-Through Exempt Securities (as defined in Rule 7.37) will be permitted to trade at a price no more than three cents ($0.03) away from the NBBO displayed in the Consolidated Quote." Second, the Exchange is proposing to amend Rule 7.31(v) relating to NOW Orders by adding the following text: "NOW Orders for Trade-Through Exempt Securities (as defined in Rule 7.37) may be routed and executed at a price that is no more than three cents ($0.03) away from the NBBO displayed in the Consolidated Quote." Finally, the Exchange proposes to amend the definition of the PNP Order as set forth in PCXE Rule 7.31(w) by adding the following text: "PNP Orders for Trade-Through Exempt Securities (as defined in Rule 7.37) will not be canceled at the time of order entry if such orders would lock or cross the NBBO. PNP Orders in Trade-Through Exempt Securities may be executed at a price no more than three cents ($0.03) away from the NBBO displayed in the Consolidated Quote."

The Exchange believes that these proposed rule changes are consistent with the terms and spirit of the Commission's Order and will allow market participants to benefit from this exemption.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[7] of the Act, in general, and further the objectives of Section 6(b)(5),[8] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PCX has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[11] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. The PCX has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[12] Waiving the pre-filing requirement and accelerating the operative date will provide investors increased liquidity and increased choice of execution venues while limiting the possibility that investors will receive significantly inferior prices. For these reasons, the Commission designates that the proposed rule change as effective and operative immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[5] *See* Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 27, 2002).

[6] ArcaEx maintains an electronic file of orders, called the ArcaEx Book, through which orders are displayed and matched. The ArcaEx Book is divided into four components, called processes—the Directed Order Process, the Display Order Process, the Working Order Process, and the Tracking Order Process. *See* PCXE Rule 7.37 for a detailed description of these order execution processes.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. PCX–2002–69 and should be submitted by November 15, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27226 Filed 10–24–02; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Cost-of-Living Increase and Other Determinations for 2003

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: The Commissioner has determined—

(1) A 1.4 percent cost-of-living increase in Social Security benefits under title II of the Social Security Act (the Act), effective for December 2002;

(2) An increase in the Federal Supplemental Security Income (SSI) monthly benefit amounts under title XVI of the Act for 2003 to $552 for an eligible individual, $829 for an eligible individual with an eligible spouse, and $277 for an essential person;

(3) The student earned income exclusion to be $1,340 per month in 2003 but not more than $5,410 in all of 2003;

(4) The dollar fee limit for services performed as a representative payee to be $30 per month ($58 per month in the case of a beneficiary who is disabled and has an alcoholism or drug addiction condition that leaves him or her incapable of managing benefits) in 2003;

(5) The national average wage index for 2001 to be $32,921.92;

(6) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base to be $87,000 for remuneration paid in 2003 and self-employment income earned in taxable years beginning in 2003;

(7) The monthly exempt amounts under the Social Security retirement earnings test for taxable years ending in calendar year 2003 to be $960 and $2,560;

(8) The dollar amounts ("bend points") used in the Primary Insurance Amount benefit formula for workers who become eligible for benefits, or who die before becoming eligible, in 2003 to be $606 and $3,653;

(9) The dollar amounts ("bend points") used in the formula for computing maximum family benefits for workers who become eligible for benefits, or who die before becoming eligible, in 2003 to be $774, $1,118, and $1,458;

(10) The amount of taxable earnings a person must have to be credited with a quarter of coverage in 2003 to be $890;

(11) The "old-law" contribution and benefit base to be $64,500 for 2003;

(12) The monthly amount deemed to constitute substantial gainful activity for statutorily blind individuals in 2003 to be $1,330, and the corresponding amount for non-blind disabled persons to be $800;

(13) The earnings threshold establishing a month as a part of a trial work period to be $570 for 2003; and

(14) Coverage thresholds for 2003 to be $1,400 for domestic workers and $1,200 for election workers.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Kunkel, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–3013. Information relating to this announcement is available on our Internet site at *http://www.ssa.gov/OACT/COLA/index.html*. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.ssa.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the Act, the Commissioner must publish within 45 days after the close of the third calendar quarter of 2002 the benefit increase percentage and the revised table of "special minimum" benefits (section 215(i)(2)(D)). Also, the Commissioner must publish on or before November 1 the national average wage index for 2001 (section 215(a)(1)(D)), the OASDI fund ratio for 2002 (section 215(i)(2)(C)(ii)), the OASDI contribution and benefit base for 2003 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 2003 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 2003 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 2003 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 2003 (section 203(a)(2)(C)).

Cost-of-Living Increases

General

The next cost-of-living increase, or automatic benefit increase, is 1.4 percent for benefits under titles II and XVI of the Act. Under title II, OASDI benefits will increase by 1.4 percent for individuals eligible for December 2002 benefits, payable in January 2003. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI payment levels will also increase by 1.4 percent effective for payments made for the month of January 2003 but paid on December 31, 2002. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f).

Automatic Benefit Increase Computation

Under section 215(i) of the Act, the third calendar quarter of 2002 is a cost-of-living computation quarter for all the purposes of the Act. The Commissioner is, therefore, required to increase benefits, effective for December 2002, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 2002, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 2001 to the third quarter of 2002.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetic mean of this index for the 3 months in that quarter. We round the arithmetic mean, if necessary, to the nearest 0.1. The Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 2001, is: for July 2001, 173.8; for August 2001, 173.8; and for September 2001, 174.8. The arithmetic mean for this calendar quarter is 174.1. The corresponding Consumer Price Index for each month in the quarter ending September 30, 2002, is: for July 2002, 176.1; for August 2002, 176.6; and for September 2002, 177.0. The arithmetic mean for this calendar quarter is 176.6. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 2002, exceeds that for the calendar quarter ending September 30, 2001 by 1.4 percent (rounded to the nearest 0.1), a cost-of-living benefit increase of 1.4 percent is effective for benefits under title II of the Act beginning December 2002.

Section 215(i) also specifies that an automatic benefit increase under title II, effective for December of any year, will be limited to the increase in the national average wage index for the prior year if the "OASDI fund ratio" for that year is below 20.0 percent. The OASDI fund ratio for a year is the ratio of the combined assets of the Old-Age and Survivors Insurance and Disability Insurance Trust Funds at the beginning of that year to the combined expenditures of these funds during that year. (The expenditures in the ratio's denominator exclude transfer payments between the two trust funds, and reduce any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.) For 2002, the OASDI fund ratio is assets of $1,212,533 million divided by estimated expenditures of $461,809 million, or 262.6 percent. Because the 262.6-percent OASDI fund ratio exceeds 20.0 percent, the automatic benefit increase for December 2002 is not limited.

Title II Benefit Amounts

In accordance with section 215(i) of the Act, in the case of workers and family members for whom eligibility for benefits (*i.e.*, the worker's attainment of age 62, or disability or death before age 62) occurred before 2003, benefits will increase by 1.4 percent beginning with benefits for December 2002 which are payable in January 2003. In the case of first eligibility after 2002, the 1.4 percent increase will not apply.

For eligibility after 1978, benefits are generally determined using a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, we determine benefits by means of a benefit table. You may obtain a copy of this table by writing to: Social Security Administration, Office of Public Inquiries, Windsor Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. The table is also available on the Internet at address *http://www.ssa.gov/OACT/ProgData/tableForm.html*.

Section 215(i)(2)(D) of the Act requires that, when the Commissioner determines an automatic increase in Social Security benefits, the Commissioner will publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). We refer to these benefits as "special minimum" benefits. These benefits are payable to certain individuals with long periods of relatively low earnings. To qualify for such benefits, an individual must have at least 11 "years of coverage." To earn a year of coverage for purposes of the special minimum benefit, a person must earn at least a certain proportion of the "old-law" contribution and benefit base (described later in this notice). For years before 1991, the proportion is 25 percent; for years after 1990, it is 15 percent. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 1.4 percent automatic benefit increase.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS PAYABLE FOR DECEMBER 2002

Number of years of coverage	Primary insurance amount	Maximum family benefit
11	$30.50	$46.40
12	61.80	93.40
13	93.30	140.40
14	124.40	187.10
15	155.60	233.90
16	186.90	281.20
17	218.40	328.40
18	249.70	375.20
19	280.90	422.20
20	312.20	469.00
21	343.70	516.40
22	374.70	563.10
23	406.50	610.80
24	437.80	657.40
25	469.00	703.90
26	500.70	751.80
27	531.70	798.50
28	563.00	845.30
29	594.30	892.60
30	625.60	939.10

Title XVI Benefit Amounts

In accordance with section 1617 of the Act, maximum SSI Federal benefit amounts for the aged, blind, and disabled will increase by 1.4 percent effective January 2003. For 2002, we derived the monthly benefit amounts for an eligible individual, an eligible individual with an eligible spouse, and for an essential person—$545, $817, and $273, respectively—from corresponding yearly unrounded Federal SSI benefit amounts of $6,541.65, $9,811.37, and $3,278.32. For 2003, these yearly unrounded amounts increase by 1.4 percent to $6,633.23, $9,948.73, and $3,324.22, respectively. Each of these resulting amounts must be rounded, when not a multiple of $12, to the next lower multiple of $12. Accordingly, the corresponding annual amounts, effective for 2003, are $6,624, $9,948, and $3,324. Dividing the yearly amounts by 12 gives the corresponding monthly amounts for 2003—$552, $829, and $277, respectively. In the case of an eligible individual with an eligible spouse, we equally divide the amount payable between the two spouses.

Title VIII of the Act provides for special benefits to certain World War II veterans residing outside the United States. Section 805 provides that "[t]he benefit under this title payable to a qualified individual for any month shall be in an amount equal to 75 percent of the Federal benefit rate (the maximum amount for an eligible individual) under title XVI for the month, reduced by the amount of the qualified individual's benefit income for the month." Thus the monthly benefit for 2003 under this provision is 75 percent of $552, or $414.00.

Student Earned Income Exclusion

A blind or disabled child, who is a student regularly attending school, college, or university, or a course of vocational or technical training, can have limited earnings that are not counted against his or her SSI benefits. The maximum amount of such income that may be excluded in 2002 is $1,320 per month but not more than $5,340 in all of 2002. These amounts increase based on a formula set forth in regulation 20 CFR 416.1112.

To compute each of the monthly and yearly maximum amounts for 2003, we increase the corresponding unrounded amount for 2002 by the latest cost-of-living increase. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10. The unrounded monthly amount for 2002 is $1,323.54. We increase this amount by 1.4 percent to $1,342.07, which we then round to $1,340. Similarly, we increase the unrounded yearly amount for 2002, $5,335.20, by 1.4 percent to $5,409.89 and round this to $5,410. Thus the maximum amount of the income exclusion applicable to a student in 2003 is $1,340 per month but not more than $5,410 in all of 2003.

Fee for Services Performed as a Representative Payee

Sections 205(j)(4)(A)(i) and 1631(a)(2)(D)(i) of the Act permit a qualified organization to collect from an individual a monthly fee for expenses incurred in providing services performed as such individual's representative payee. Currently the fee is limited to the lesser of: (1) 10 percent of the monthly benefit involved; or (2)

[13] 17 CFR 200.30–3(a)(12).

$30 per month ($57 per month in any case in which the individual is entitled to disability benefits and the Commissioner has determined that payment to the representative payee would serve the interest of the individual because the individual has an alcoholism or drug addiction condition and is incapable of managing such benefits). The dollar fee limits are subject to increase by the automatic cost-of-living increase, with the resulting amounts rounded to the nearest whole dollar amount. Due to the rounding provision, the current $30 amount remains the same for 2003, while the current $57 increases by 1.4 percent to $58 for 2003.

National Average Wage Index for 2001

General

Under various provisions of the Act, several amounts increase automatically with annual increases in the national average wage index. The amounts are: (1) The OASDI contribution and benefit base; (2) the retirement test exempt amounts; (3) the dollar amounts, or "bend points," in the primary insurance amount and maximum family benefit formulas; (4) the amount of earnings required for a worker to be credited with a quarter of coverage; (5) the "old-law" contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments); (6) the substantial gainful activity amount applicable to statutorily blind individuals; and (7) the coverage threshold for election officials and election workers. Also, section 3121(x) of the Internal Revenue Code requires that the domestic employee coverage threshold be based on changes in the national average wage index.

In addition to the amounts required by statute, two amounts increase automatically under regulatory requirements. The amounts are (1) the substantial gainful activity amount applicable to non-blind disabled persons, and (2) the monthly earnings threshold that establishes a month as part of a trial work period for disabled beneficiaries.

Computation

The determination of the national average wage index for calendar year 2001 is based on the 2000 national average wage index of $32,154.82 announced in the **Federal Register** on October 25, 2001 (66 FR 54047), along with the percentage increase in average wages from 2000 to 2001 measured by annual wage data tabulated by the Social Security Administration (SSA). The wage data tabulated by SSA include contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated directly from these data were $30,846.09 and $31,581.97 for 2000 and 2001, respectively. To determine the national average wage index for 2001 at a level that is consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiply the 2000 national average wage index of $32,154.82 by the percentage increase in average wages from 2000 to 2001 (based on SSA-tabulated wage data) as follows (with the result rounded to the nearest cent).

Amount

The national average wage index for 2001 is $32,154.82 times $31,581.97 divided by $30,846.09, which equals $32,921.92. Therefore, the national average wage index for calendar year 2001 is $32,921.92.

OASDI Contribution and Benefit Base

General

The OASDI contribution and benefit base is $87,000 for remuneration paid in 2003 and self-employment income earned in taxable years beginning in 2003.

The OASDI contribution and benefit base serves two purposes:

(a) It is the maximum annual amount of earnings on which OASDI taxes are paid. The OASDI tax rate for remuneration paid in 2003 is 6.2 percent for employees and employers, each. The OASDI tax rate for self-employment income earned in taxable years beginning in 2003 is 12.4 percent. (The Hospital Insurance tax is due on remuneration, without limitation, paid in 2003, at the rate of 1.45 percent for employees and employers, each, and on self-employment income earned in taxable years beginning in 2003, at the rate of 2.9 percent.)

(b) It is the maximum annual amount of earnings used in determining a person's OASDI benefits.

Computation

Section 230(b) of the Act provides the formula used to determine the OASDI contribution and benefit base. Under the formula, the base for 2003 shall be the larger of: (1) The 1994 base of $60,600 multiplied by the ratio of the national average wage index for 2001 to that for 1992; or (2) the current base ($84,900). If the resulting amount is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Amount

Multiplying the 1994 OASDI contribution and benefit base amount ($60,600) by the ratio of the national average wage index for 2001 ($32,921.92 as determined above) to that for 1992 ($22,935.42) produces the amount of $86,986.34. We round this amount to $87,000. Because $87,000 exceeds the current base amount of $84,900, the OASDI contribution and benefit base is $87,000 for 2003.

Retirement Earnings Test Exempt Amounts

General

We withhold Social Security benefits when a beneficiary under the normal retirement age (NRA) has earnings in excess of the applicable retirement earnings test exempt amount. (NRA is the age of initial benefit entitlement for which the benefit, before rounding, is equal to the worker's primary insurance amount. The NRA is age 65 for those born before 1938, and it gradually increases to age 67.) A higher exempt amount applies in the year in which a person attains his/her NRA, but only with respect to earnings in months prior to such attainment, and a lower exempt amount applies at all other ages below NRA. Section 203(f)(8)(B) of the Act, as amended by section 102 of Pub. L. 104–121, provides formulas for determining the monthly exempt amounts. The corresponding annual exempt amounts are exactly twelve times the monthly amounts.

For beneficiaries attaining NRA in the year, we withhold $1 in benefits for every $3 of earnings in excess of the annual exempt amount for months prior to such attainment. For all other beneficiaries under NRA, we withhold $1 in benefits for every $2 of earnings in excess of the annual exempt amount.

Computation

Under the formula applicable to beneficiaries who are under NRA and who will not attain NRA in 2003, the lower monthly exempt amount for 2003 shall be the larger of: (1) The 1994 monthly exempt amount multiplied by the ratio of the national average wage index for 2001 to that for 1992; or (2) the 2002 monthly exempt amount ($940). If the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Under the formula applicable to beneficiaries attaining NRA in 2003, the higher monthly exempt amount for 2003 shall be the larger of: (1) The 2002 monthly exempt amount multiplied by the ratio of the national average wage index for 2001 to that for 2000; or (2) the 2002 monthly exempt amount ($2,500). If the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Lower Exempt Amount

Multiplying the 1994 retirement earnings test monthly exempt amount of $670 by the ratio of the national average wage index for 2001 ($32,921.92) to that for 1992 ($22,935.42) produces the amount of $961.73. We round this to $960. Because $960 is larger than the corresponding current exempt amount of $940, the lower retirement earnings test monthly exempt amount is $960 for 2003. The corresponding lower annual exempt amount is $11,520 under the retirement earnings test.

Higher Exempt Amount

Multiplying the 2002 retirement earnings test monthly exempt amount of $2,500 by the ratio of the national average wage index for 2001 ($32,921.92) to that for 2000 ($32,154.82) produces the amount of $2,559.64. We round this to $2,560. Because $2,560 is larger than the corresponding current exempt amount of $2,500, the higher retirement earnings test monthly exempt amount is $2,560 for 2003. The corresponding higher annual exempt amount is $30,720 under the retirement earnings test.

Computing Benefits After 1978

General

The Social Security Amendments of 1977 provided a method for computing benefits which generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's "average indexed monthly earnings" to compute the primary insurance amount. We adjust the computation formula each year to reflect changes in general wage levels, as measured by the national average wage index.

We also adjust, or "index," a worker's earnings to reflect the change in general wage levels that occurred during the worker's years of employment. Such indexation ensures that a worker's future benefit level will reflect the general rise in the standard of living that will occur during his or her working lifetime. To compute the average indexed monthly earnings, we first determine the required number of years of earnings. Then we select that number of years with the highest indexed earnings, add the indexed earnings, and divide the total amount by the total number of months in those years. We then round the resulting average amount down to the next lower dollar amount. The result is the average indexed monthly earnings.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled before age 62, or dying before attaining age 62, in 2003, we divide the national average wage index for 2001, $32,921.92, by the national average wage index for each year prior to 2001 in which the worker had earnings. Then we multiply the actual wages and self-employment income, as defined in section 211(b) of the Act and credited for each year, by the corresponding ratio to obtain the worker's indexed earnings for each year before 2001. We consider any earnings in 2001 or later at face value, without indexing. We then compute the average indexed monthly earnings for determining the worker's primary insurance amount for 2003.

Computing the Primary Insurance Amount

The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. We call the dollar amounts in the formula governing the portions of the average indexed monthly earnings the "bend points" of the formula. Thus, the bend points for 1979 were $180 and $1,085.

To obtain the bend points for 2003, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2001 to that average for 1977. We then round these results to the nearest dollar. Multiplying the 1979 amounts of $180 and $1,085 by the ratio of the national average wage index for 2001 ($32,921.92) to that for 1977 ($9,779.44) produces the amounts of $605.96 and $3,652.59. We round these to $606 and $3,653. Accordingly, the portions of the average indexed monthly earnings to be used in 2003 are the first $606, the amount between $606 and $3,653, and the amount over $3,653.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 2003, or who die in 2003 before becoming eligible for benefits, their primary insurance amount will be the sum of

(a) 90 percent of the first $606 of their average indexed monthly earnings, plus

(b) 32 percent of their average indexed monthly earnings over $606 and through $3,653, plus

(c) 15 percent of their average indexed monthly earnings over $3,653.

We round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment described above are contained in section 215(a) of the Act (42 U.S.C.415(a)).

Maximum Benefits Payable to a Family

General

The 1977 amendments continued the long established policy of limiting the total monthly benefits that a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits that may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub.L. 96–265) established a formula for computing the maximum benefits payable to the family of a disabled worker. This formula applies to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, we compute the family maximum payable the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. We refer to such dollar amounts in the formula as the "bend points" of the family-maximum formula.

To obtain the bend points for 2003, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2001 to that average for 1977. Then we round this amount to the nearest dollar. Multiplying the amounts of $230, $332, and $433 by the ratio of the national average wage index for 2001 ($32,921.92) to that for 1977 ($9,779.44) produces the amounts of $774.28, $1,117.66, and $1,457.67. We round these amounts to $774, $1,118, and $1,458. Accordingly, the portions of the primary insurance amounts to be used in 2003 are the first $774, the amount

between $774 and $1,118, the amount between $1,118 and $1,458, and the amount over $1,458.

Consequently, for the family of a worker who becomes age 62 or dies in 2003 before age 62, we will compute the total amount of benefits payable to them so that it does not exceed

(a) 150 percent of the first $774 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $774 through $1,118, plus

(c) 134 percent of the worker's primary insurance amount over $1,118 through $1,458, plus

(d) 175 percent of the worker's primary insurance amount over $1,458.

We then round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment described above are contained in section 203(a) of the Act (42 U.S.C.403(a)).

Quarter of Coverage Amount

General

The amount of earnings required for a quarter of coverage in 2003 is $890. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, we generally credited an individual with a quarter of coverage for each quarter in which wages of $50 or more were paid, or with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, employers generally report wages on an annual basis instead of a quarterly basis. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978, up to a maximum of 4 quarters of coverage for the year.

Computation

Under the prescribed formula, the quarter of coverage amount for 2003 shall be the larger of: (1) The 1978 amount of $250 multiplied by the ratio of the national average wage index for 2001 to that for 1976; or (2) the current amount of $870. Section 213(d) further provides that if the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Quarter of Coverage Amount

Multiplying the 1978 quarter of coverage amount ($250) by the ratio of the national average wage index for 2001 ($32,921.92) to that for 1976 ($9,226.48) produces the amount of $892.05. We then round this amount to $890. Because $890 exceeds the current amount of $870, the quarter of coverage amount is $890 for 2003.

"Old-Law" Contribution and Benefit Base

General

The "old-law" contribution and benefit base for 2003 is $64,500. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. We compute the base under section 230(b) of the Act as it read prior to the 1977 amendments.

The "old-law" contribution and benefit base is used by:

(a) the Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(b) the Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Social Security Act),

(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and

(d) Social Security to determine a year of coverage (acquired whenever earnings equal or exceed 25 percent of the "old-law" base for this purpose only) in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation

The "old-law" contribution and benefit base shall be the larger of: (1) The 1994 "old-law" base ($45,000) multiplied by the ratio of the national average wage index for 2001 to that for 1992; or (2) the current "old-law" base ($63,000). If the resulting amount is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Amount

Multiplying the 1994 "old-law" contribution and benefit base amount ($45,000) by the ratio of the national average wage index for 2001 ($32,921.92) to that for 1992 ($22,935.42) produces the amount of $64,593.82. We round this amount to $64,500. Because $64,500 exceeds the current amount of $63,000, the "old-law" contribution and benefit base is $64,500 for 2003.

Substantial Gainful Activity Amounts

General

A finding of disability under titles II and XVI of the Act requires that a person, except for a title XVI disabled child, be unable to engage in substantial gainful activity (SGA). (A finding of disability under title XVI for a child is based on a different standard, not related to SGA.) A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability. Section 223(d)(4)(A) of the Act specifies a higher SGA amount for statutorily blind individuals while Federal regulations (20 CFR 404.1574 and 416.974) specify a lower SGA amount for non-blind individuals. Both SGA amounts increase in accordance with increases in the national average wage index.

Computation

The monthly SGA amount for statutorily blind individuals for 2003 shall be the larger of: (1) Such amount for 1994 multiplied by the ratio of the national average wage index for 2001 to that for 1992; or (2) such amount for 2002. The monthly SGA amount for non-blind disabled individuals for 2003 shall be the larger of: (1) Such amount for 2000 multiplied by the ratio of the national average wage index for 2001 to that for 1998; or (2) such amount for 2002. In either case, if the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

SGA Amount for Statutorily Blind Individuals

Multiplying the 1994 monthly SGA amount for statutorily blind individuals ($930) by the ratio of the national average wage index for 2001 ($32,921.92) to that for 1992 ($22,935.42) produces the amount of $1,334.94. We then round this amount to $1,330. Because $1,330 is larger than the current amount of $1,300, the monthly SGA amount for statutorily blind individuals is $1,330 for 2003.

SGA Amount for Non-Blind Disabled Individuals

Multiplying the 2000 monthly SGA amount for non-blind individuals ($700) by the ratio of the national average wage index for 2001 ($32,921.92) to that for 1998 ($28,861.44) produces the amount of $798.48. We then round this amount to $800. Because $800 is larger than the current amount of $780, the monthly SGA amount for non-blind individuals is $800 for 2003.

Trial Work Period Earnings Threshold

General

During a trial work period, a beneficiary receiving Social Security disability benefits may test his or her ability to work and still be considered disabled. We do not consider services performed during the trial work period as showing that the disability has ended until services have been performed in at least 9 months (not necessarily consecutive) in a rolling 60-month period. In 2002, any month in which earnings exceed $560 is considered a month of services for an individual's trial work period. In 2003, this monthly amount increases to $570.

Computation

The method used to determine the new amount is set forth in our regulations at 20 CFR 404.1592(b). Monthly earnings in 2003, used to determine whether a month is part of a trial work period, is such amount for 2001 multiplied by the ratio of the national average wage index for 2001 to that for 1999, or, if larger, such amount for 2002. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10.

Amount

Multiplying the 2001 monthly earnings threshold ($530) by the ratio of the national average wage index for 2001 ($32,921.92) to that for 1999 ($30,469.84) produces the amount of $572.65. We then round this amount to $570. Because $570 is larger than the current amount of $560, the monthly earnings threshold is $570 for 2003.

Domestic Employee Coverage Threshold

General

The minimum amount a domestic worker must earn so that such earnings are covered under Social Security or Medicare is the domestic employee coverage threshold. For 2003, this threshold is $1,400. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

Computation

Under the formula, the domestic employee coverage threshold amount for 2003 shall be equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 2001 to that for 1993. If the resulting amount is not a multiple of $100, it shall be rounded to the next lower multiple of $100.

Domestic Employee Coverage Threshold Amount

Multiplying the 1995 domestic employee coverage threshold amount ($1,000) by the ratio of the national average wage index for 2001 ($32,921.92) to that for 1993 ($23,132.67) produces the amount of $1,423.18. We then round this amount to $1,400. Accordingly, the domestic employee coverage threshold amount is $1,400 for 2003.

Election Worker Coverage Threshold

General

The minimum amount an election worker must earn so that such earnings are covered under Social Security or Medicare is the election worker coverage threshold. For 2003, this threshold is $1,200. Section 218(c)(8)(B) of the Act provides the formula for increasing the threshold.

Computation

Under the formula, the election worker coverage threshold amount for 2003 shall be equal to the 1999 amount of $1,000 multiplied by the ratio of the national average wage index for 2001 to that for 1997. If the amount so determined is not a multiple of $100, it shall be rounded to the nearest multiple of $100.

Election Worker Coverage Threshold Amount

Multiplying the 1999 election worker coverage threshold amount ($1,000) by the ratio of the national average wage index for 2001 ($32,921.92) compared to that for 1997 ($27,426.00) produces the amount of $1,200.39. We then round this amount to $1,200. Accordingly, the election worker coverage threshold amount is $1,200 for 2003.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004 Social Security-Survivors Insurance; 96.006 Supplemental Security Income)

Dated: October 18, 2002.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 02–27203 Filed 10–24–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 4173]

Extension of Certain Foreign Passports Validity

In accordance with section 212(a)(7)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(7)(B)), a nonimmigrant alien who makes an application for a visa or for admission into the United States is required to possess a passport that:

(1) Is valid for a minimum of six months beyond the date of the expiration of the initial period of the alien's admission into the United States or contemplated initial period of stay and,

(2) Authorizes the alien to return to the country from which he or she came, or to proceed to and enter some other country during such period. Because of the foregoing requirement, the governments of certain countries (and other competent authorities) have agreed that their passports will be recognized as valid for the return of the bearer for a period of six months beyond the expiration date specified in the passport, thereby effectively extending the validity period of the foreign passport an additional six months beyond its expiration date, see 22 CFR 41.104(b).

This public notice adds Romania to the list of competent authorities that have provided the necessary assurances to the Government of the United States. This notice also adds Bosnia-Herzegovina, Croatia, Guatemala and Guyana to the list. These countries have had agreements in place for some time, but were inadvertently dropped from the list in previous notices. The updated list of competent authorities that have made the necessary assurances is shown below:

Table of Foreign Passports Recognized for Extended Validity

Algeria
Antigua & Barbuda
Argentina
Australia
Austria
Bahamas, the
Bangladesh
Barbados
Belgium
Bolivia
Bosnia-Herzegovina
Brazil
Canada
Chile
Colombia
Costa Rica

Cote D'ivoire
Croatia
Cuba
Cyprus
Czech Republic
Denmark
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Ethiopia
Finland
France
Germany
Greece
Grenada
Guatemala
Guinea
Guyana
Hong Kong (Certificates of identity & passports)
Hungary
Iceland
India
Ireland
Israel
Italy
Jamaica
Sweden
Switzerland
Syria
Taiwan
Thailand
Togo
Trinidad & Tobago
Japan
Jordan
Korea
Kuwait
Laos
Latvia
Lebanon
Liechtenstein
Luxembourg
Macau
Madagascar
Malaysia
Malta
Mauritius
Mexico
Monaco
Netherlands
New Zealand
Nicaragua
Nigeria
Norway
Oman
Pakistan
Panama
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Romania
Russia
Senegal
Singapore
Slovak Republic
Slovenia
South Africa
Spain
Sri Lanka
St. Kitts & Nevis
St. Lucia
St. Vincent & the Grenadines
Sudan
Suriname
Tunisia
Turkey
United Arab Emirates
United Kingdom
Uruguay
Venezuela
Zimbabwe

Public Notice 4075 of August 6, 2002 published at 67 FR 50973 hereby superseded.

Dated: October 20, 2002.

George C. Lannon,

Acting Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 02–27232 Filed 10–24–02; 8:45 am]

BILLING CODE 4710–06–U

DEPARTMENT OF STATE

[Public Notice 4177]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Future Leaders Exchange (FLEX) Disability Reentry Workshop; Notice: Request for Grant Proposals

Summary: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for the FLEX Disability Reentry Workshop. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals for the conduct of a special reentry workshop to be held in April 2003 for students with disabilities participating in the 2002/03 Future Leaders Exchange (FLEX) program. Approximately 16–18 students will participate in this workshop. All programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further information.

Budget Guidelines: Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $35,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Administrative costs should be kept as low as possible. Cost sharing is encouraged. Allowable costs for the program include the following:

(1) Round-trip transportation for participants from their host communities to/from the workshop site.

(2) Daily travel at workshop site location as necessary.

(3) Accommodations and meals for participants during the time of the workshop.

(4) Rental of facilities and equipment.

(5) Fees for relevant excursions and cultural activities.

(6) Honoraria for speakers/trainers, as appropriate.

(7) Necessary reasonable accommodations.

(8) Materials development.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

The Future Leaders Exchange (FLEX) program brings secondary school students from Eurasia to the U.S. for an academic year. During their time in the U.S., FLEX students live with American host families and attend U.S. high schools.

Note: For more information on the FLEX program, you may refer to the Youth Programs Division Web site: [*http://exchanges.state.gov/education/citizens/students.*]

Since 1995, the FLEX program has included a component for students with disabilities. This has been challenging since individuals with disabilities are treated very differently in Eurasia than they are in the U.S. In Eurasia, most disabled young people attend special schools, largely institutions, and being disabled carries a major stigma. Most young, disabled individuals either are ignored by parents who are ashamed of them or are overprotected by parents who are concerned that they cannot function independently.

Generally, FLEX participants with disabilities adjust well to American life and culture and realize the same positive effects as non-disabled participants. However, after having enjoyed the accessibility and other disability supports that exist in the U.S., they frequently are not well-prepared to return to the less disability-friendly environments of their Eurasian home countries. The major purpose of this special reentry workshop is to help prepare them to readjust to their home cultures. It is Bureau policy that recruitment of people with disabilities at every level should be a priority in all sponsored programming. If this is to be done effectively, it becomes equally important to adequately prepare disabled program participants for the reverse culture shock that is sure to occur when they return home.

Therefore, this workshop should focus on the reentry and transition to home country of each student as a person with a disability, as the students will also be attending other reentry workshops conducted for all FLEX students by their respective placement organizations at the end of the program year. These other workshops will provide more general training for readjustment to their Eurasian home culture. Goals of the disability workshop are: (1) Facilitating readjustment as a person with a disability to a less disability-friendly environment; (2) conducting activities to further develop leadership skills and foster empowerment; (3) providing students with tools that will enable them to do outreach and work in support of disability rights in their home countries.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–03–21.

For Further Information Contact: The Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone: 202/619–6299, fax: 202/619–5311, e-mail: *lbeach@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Linda Beach on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Monday, December 16, 2002. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and seven copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–03–21, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. Applicants are also encouraged to submit proposals as Microsoft Word or Excel documents as well.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to all Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. Program planning and ability to achieve program objectives: Detailed agenda and relevant work plan should demonstrate substantive undertakings

and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the organization will meet the program's objectives and plan.

3. Support of diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. Institutional capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposing organization should demonstrate it has experience with disability programming and international youth exchange, as well as familiarity with Eurasian culture.

5. Institution's record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. Multiplier effect/Impact: Proposed programs should describe how workshop participants will be motivated and enabled to reach out to other individuals with disabilities in their home countries.

7. Follow-on activities: Proposals should describe how workshop participants would be provided with knowledge and tools that will prepare them to work in support of disability rights in their home countries.

8. Project evaluation: Proposals should include a plan to evaluate the activity's success. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended. Successful applicants will be expected to submit a final report after the project has been completed.

9. Cost-effectiveness/Cost Sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation of the FREEDOM Support Act.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: October 21, 2002.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 02–27231 Filed 10–24–02; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF STATE

[Public Notice 4176]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Islamic Countries Youth Initiative Academic Studies Program

SUMMARY: The Youth Programs Division, Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for grants in support of projects to bring to the United States high school students from countries with significant Muslim populations to attend school and live with host families. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) and public institutions may submit proposals to carry out projects for academic semester and year study, as described below.

Program Information

Overview

The goal of the program is to foster a community of shared interests and values developed through better mutual understanding through first-hand participation in an exchange. The objectives are to: Provide the opportunity for young people in selected countries to learn more about American society, people, institutions, values and culture; foster personal ties; enhance American understanding of the foreign students' countries and cultures; and support program alumni to put the knowledge and skills acquired on the exchange to good use in their home countries. The program seeks to select students with leadership potential and to develop their leadership skills while in the U.S. and when they return home.

This initiative is intended to lay a solid foundation for future exchanges by investing in the infrastructure in the U.S. and overseas necessary to ensure fulfillment of the exchange program's objectives. Funding will support pilot semester and year exchanges and incorporate lessons learned into perfecting the model for conducting future programs. Grants will be awarded both to organizations that have the necessary infrastructure and experience conducting academic high school exchange programs with the partner countries, as well as to those that seek to collaborate with the Bureau in building the necessary infrastructure for exchanges with the partner countries where this does not currently exist. The timing of grant awards and the amount of funding for this initiative are subject to the availability of money that will be transferred to the Bureau.

Guidelines

The partner countries for this pilot initiative will be selected based on a number of factors: (1) Foreign policy considerations, (2) a favorable climate for exchange, (3) data collected through an independent research study commissioned by the Bureau, and (4) the ability of the private sector to administer exchange programs, as demonstrated by the response to this RFGP. The tentative list includes: Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Ethiopia, India, Indonesia, Jordan, Kuwait, Lebanon, Malaysia, Morocco, Nigeria, Oman, Pakistan, Philippines, Qatar, Saudi Arabia, Senegal, Syria, Tunisia, Turkey, United Arab Emirates, West Bank/Gaza, and Yemen. The Bureau reserves the right to amend this list at any time as conditions change.

There are two phases that will be funded simultaneously. Phase I—As noted above, a portion of the funding will be awarded to organizations that (1) have in place the existing infrastructure in the U.S. and in the partner countries to undertake a program with the required quality features, as outlined in this RFGP and supplementary documents; (2) have a recent track record of successfully conducting high school academic year exchanges with the partner countries; and (3) demonstrate their ability to comply with all requirements for administering federal grants, including the relevant J–1 visa regulations. To be eligible for this phase of the initiative, the grantee organization must be already designated by the Department of State as a secondary school student exchange visitor sponsor. The Bureau expects to be able to make award decisions by April 1, 2003. It is anticipated that participants selected for participation in phase I programs will travel to the U.S. in the summer of 2004 for the 2004–05 academic year. In the unlikely event the grants can be awarded in time to enable an organization to screen, select, orient and place scholarship winners for participation in the 2003–04 academic year, this is a possibility. As an alternative, grant recipients may bring a contingent of students to the U.S. for the spring 2004 semester. Approximately $2,000,000 is available for phase I grants, including funds earmarked for a special project for Indonesia.

Phase II—In the second phase of the program, the Bureau seeks to award grant funding to assist in the establishment of academic year exchanges with countries where no or inadequate capability exists at the present time. The goal is to encourage organizations to form partnerships, consortia, and other arrangements to pool resources that will result in successful exchange activity. J–1 visa designation is not a requirement, but a thorough understanding of the secondary school student exchange visitor regulations is essential. Funding availability is April 1, 2003, the same as in phase I. Because of the longer lead time needed for phase II, exchange participants will not begin their programs before the 2004–05 academic year, at the earliest, and may also participate in the 2005–06 academic year. Approximately $4,500,000 is available for phase II grants.

The following apply to both phases of this program:

1. While the emphasis is on bringing foreign students to the U.S., programs that provide opportunities for American high school students to study in the partner countries for a semester or year are eligible for consideration.

2. The essential components for all academic study projects undertaken with Bureau grant funding are: Collaboration with American embassies overseas in planning and implementing the exchange; an open, merit-based recruitment and selection process; testing for adequate English language ability for foreign participants; in-country pre-departure orientation; placement in schools that are committed to pursuing the program's objectives and will assist the students to be successful in academic, extracurricular and social activities; the ability to maintain on-program support in the students' home and host countries for the duration of the exchange; enhancement programming during the exchange in leadership development, civil society issues (including citizen activism and community service), and cultural enrichment; ongoing orientation and reentry training; community outreach to amplify the impact of the program and promote mutual understanding; and the ability to track and work with alumni to reinforce what was learned on the exchange and help them adjust to their home environments and apply what they acquired to promote the program's goals.

3. All grantees are required to include people with physical disabilities in the exchange.

4. Grant funding will be used to develop cultural orientation materials for use by all organizations that benefit from ECA grants under this initiative. Organizations may submit a proposal to develop these materials as a project by itself or as part of a grant for the exchange component.

5. Collaboration with Department of State efforts and networking with educational, civic, and other organizations to engage public schools and the American public in hosting participants in this program.

6. All exchange participants must travel on J–1 visas using DS2019s issued by the ECA program office under its program designation.

7. Grant funding will be available to pay for a percentage of the students in phase II exchanges to participate in a pre-academic English enhancement and cultural adjustment program, on an as-needed basis.

Please refer to the Solicitation Package for further information, especially the Project Objectives, Goals and Implementation (POGI) and the Proposal Submission Instructions (PSI).

Budget Guidelines

The number of grants awarded under phase I will be determined by the number of competitive proposals judged meritorious. The minimum bid for any organization is the amount needed to sponsor 40 students. There is no maximum bid limit. For phase II, in developing countries where there has been no previous exchange experience, the minimum number of students per country is 40. The objective is to foster the level of programming necessary to sustain an in-country organization in a cost-effective manner. See the POGI for additional budget details. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs.

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–03–20.

FOR FURTHER INFORMATION CONTACT: The Youth Programs Division, Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs, U.S. Department of State, 301 4th Street, SW, Washington, DC 20547, 202–619–6299, fax 619–5311, *rpersiko@pd.state.gov* to request the POGI and PSI. These documents contain detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Robert Persiko on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's

Website: *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Monday, December 16, 2002. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original, one fully-tabbed copy, and eight copies with Tabs A–F of the application should be sent to:

U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–03–20, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the "Executive Summary," "Proposal Narrative," budget sections and resumes, as well as important appendices, as e-mail attachments in Microsoft Word and Excel to the program office at *rpersiko@pd.state.gov*. The Bureau will transmit these files electronically to the Public Affairs Section at the U.S. embassies for their review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. As noted above, ECA will be responsible for issuing DS–2019 forms to participants in this program. A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov/education/jexchanges*, or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Affairs personnel overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. The review is an assessment of the proposal's strengths and weaknesses in key areas. These criteria are not rank ordered and all carry equal weight in the proposal evaluation.

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission and the purposes outlined in the solicitation.

2. Program planning: Detailed agenda and relevant work plan should demonstrate the ability to ensure that the proposed project accomplishes the stated objectives in the desired time frame.

3. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual ties both during the exchange and after the participants return home.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity in all program aspects including participants (exchange students and hosts), sending and hosting communities, orientation, and program activities. Proposals should articulate a diversity plan, not just a statement of compliance.

5. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. Proposals for infrastructure building should convincingly describe the need and the plan to address that need in specific terms (*e.g.*, staffing, staff training, equipping and maintaining an office). The plan should demonstrate a thorough understanding of local requirements for establishing and registering an NGO.

6. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. Follow-on Activities: Proposals should provide a plan for continued contact with returnees to ensure that they are tracked over time, integrated into alumni associations, and provided opportunities to reinforce what the knowledge and skills they acquired on the exchange and share them with others.

8. Project Evaluation: The Bureau will provide baseline data and standard questionnaires for use in surveying participants and returnees to ensure that data is comparable from one program to another and will facilitate the demonstration of results. The proposal should indicate concurrence with this plan. Applicants may describe any experience conducting results-oriented evaluations. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

9. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

10. Cost-sharing: Proposals should maximize cost-sharing through institutional direct funding contributions, as well as other private sector support.

11. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and the feasibility of the implementation plan.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: October 21, 2002.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–27230 Filed 10–24–02; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 200/EUROCAE Working Group 60: Modular Avionics, First Joint Plenary Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 200/EUROCAE Working Group 60 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 200/EUROCAE Working Group 60: Modular Avionics.

DATES: The meeting will be held November 12–14, 2002 staring at 9 a.m.

ADDRESSES: The meeting will be held at EADS Airbus Hamburg-Finkenwerder (AIRBUS Plant, Haus 25, Room, Wintergarten 4th level) Kreetslag 10.21129, Hamburg, Germany.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org;* (2) Peter Anders; (e-mail) *peter.aners@airbus.com* (Phone) 49/40 7437 4002.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 200/EUROCAE Working Group 60 meeting. *NOTE: You must check in if attending this meeting. The agenda will include:*

- *November 12:*
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda, Review/Approve previous Common Plenary Summary, Review Open Action Items);
  - Brief status of work of Subgroup 1—Introduction, Modular Avionics Overview, Modular Avionics Design and Integration; Subgroup 2—Modular Avionics Systems and Component Certification and Reuse Change Process; and Subgroup 3—Significant Issues;
  - Review and update Final Report outline;
- *November 13:*
  - Subgroups 1–3 form and work in individual meetings;
- *November 14:*
  - Report of Subgroup 1–3 meetings;
  - Closing Plenary Session (Review Action Items, Date and Place of Next meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on October 17, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–27239 Filed 10–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–05–C–00–GRB to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Austin Straubel International Airport, Green Bay, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Austin Straubel International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 25, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas W. Miller, Airport Director of the Austin Straubel International Airport at the following address: 2077 Airport Drive, Green Bay, WI 54313–5596.

Air carriers and foreign air carriers may submit copies of written comments previously provided to County of Brown under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel J. Millenacker, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706, (612) 713–4359. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Austin Straubel International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 30, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Brown, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 20, 2003.

The following is a brief overview of the application.

Proposed charge effective date: February 1, 2003.

Proposed charge expiration date: January 1, 2016.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $23,319,000.

Brief description of proposed project: Air Carrier Terminal Expansion.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Austin Straubel International Airport, 2077 Airport Drive, Green Bay, WI.

Issued in Des Plaines, Illinois on October 7, 2002.

Mark McClardy,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 02–27177 Filed 10–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–06–C–00–DLH To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Duluth International Airport, Duluth, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Duluth International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before November 25, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Brian D. Ryks, Executive Director, of the Duluth Airport Authority at the following address: Duluth Airport Authority, Duluth International Airport, 4701 Grinden Drive, Duluth, MN 55811.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Duluth Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon Nelson, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706, telephone (612) 713–4358. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Duluth International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 23, 2002, the FAA determined that the application to impose and use the revenue form a PFC submitted by the Duluth Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 28, 2002.

The following is a brief overview of the application.

Proposed charge effective date: March 1, 2003.

Proposed charge expiration date: November 1, 2004.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $901,280.

Brief description of proposed projects: Preparation of Passenger Facility Charge application; purchase replacement snow removal equipment (SRE); construct SRE and material storage maintenance facility.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Non-scheduled Part 135 Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Duluth Airport Authority, 4701 Grinden Drive, Duluth, MN.

Issued in Des Plaines, IL, on October 10, 2002.

Mark McClardy,

Manager, Airports Planning/ Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 02–27178 Filed 10–24–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 27, 2002. No comments were received.

DATES: Comments must be submitted on or before November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, Maritime Administration, Office of Ports and Domestic Shipping, 400 Seventh Street, Southwest, Washington, DC 20590. Telephone: (202) 366–2307, Fax: (202) 366–6988; or e-mail: *kathleen.dunn@marad.dot.gov.*

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Application for Waiver of the Coastwise Trade Laws for Small Passenger Vessels.

OMB Control Number: 2133–0529.

Type of Request: Approval of an existing information collection.

Affected Public: Small passenger vessel owners desirous of operating in the coastwise trade.

Form(s): None.

Abstract: Owners of ship vessels desiring waiver of the coastwise trade laws affecting small passenger vessels may file a written application and justification for waiver to the Maritime Administration (MARAD). Since the authority to accept requests for waivers expired September 30, 2002, but may be reauthorized by Congress, MARAD is requesting the Office of Management and Budget (OMB) to approve this information collection on a voluntary basis. Such approval would permit MARAD to accept requests for waivers promptly upon renewal of the waiver authority by Congress. The agency would then review the application and make a determination whether to grant the requested waiver. In addition, upon reauthorization for MARAD to accept waivers, we would request OMB to restore the original approval of this information collection as "required to obtain or retain benefits." This request to OMB would not require additional public notice because such notice is hereby given.

Annual Estimated Burden Hours: 100 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on October 21, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–27240 Filed 10–24–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to "Reasons for Delays"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application

M—Modification request

PM—Party to application with modification request

Dated: Issues in Washington, DC, on October 10, 2002.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
New Exemption Application			
11862–N	The BOC Group, Murray Hill, NJ	4	12/31/2002
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	12/31/2002
12381–N	Ideal Chemical & Supply Co., Memphis, TN	4	12/31/2002
12412–N	Great Western Chemical Company, Portland, OR	4	11/29/2002
12440–N	Luxfer Inc., Riverside, CA	4	12/31/2002
12571–N	Air Products & Chemicals, Inc., Allentown, PA	4	11/29/2002
12648–N	Stress Engineering Services, Inc., Houston, TX	4	12/31/2002
12701–N	Fuel Cell Components & Integrators, Inc., Hauppauge, NY	1	11/29/2002
12706–N	Raufoss Composites AS, Raufoss, NO	4	11/29/2002
12715–N	Arkansas Eastman Division, Eastman Chemical Co., Batesville, AR	4	11/29/2002
12718–N	Weldship Corporation, Bethlehem, PA	4	11/29/2002
12751–N	Defense Technology Corporation, Casper, WY	4	11/29/2002

Application No.	Applicant	Reason for delay	Estimated date of completion
12843–N	United States Enrichment Corporation, Bethesda, MD	4	11/29/2002
12859–N	Atlantic Research Corporation, Gainesville, VA	4	11/29/2002
12867–N	G.L.I. Citergaz, 964 Civray, FR	1	12/31/2002
12902–N	C&S Railroad Corp., Jim Thorpe, PA	4	12/31/2002
12921–N	GATX Rail, Chicago, IL	4	12/29/2002
12929–N	Matheson Tri-Gas, East Rutherford, NJ	4	11/29/2002
12941–N	The Neiman Marcus Group, Longview, TX	4	11/29/2002
12950–N	Walnut Industries, Inc., Bensalem, PA	4	11/29/2002
12960–N	International Fuel Cells, South Windsor, CT	4	11/29/2002
12966–N	Scientific Cylinder Corporation, Englewood, CO	4	11/29/2002
12973–N	Viking Packing Specialist, Tulsa, OK	4	11/29/2002
12990–N	Technifab Products, Inc., Brazil, IN	4	12/31/2002
12991–N	General Plastics Manufacturing Company, Tacoma, WA	4	12/31/2002?≤
4453–M	Dyno Nobel, Inc., Salt Lake City, UT	4	12/31/2002
4884–M	Matheson Tri-Gas East Rutherford, NJ	4	11/29/2002
7060–M	Federal Express Memphis, TN	4	12/31/2002
7277–M	Structural Composites Industries, Pomona, CA	4	12/31/2002
8162–M	Structural Composites Industries Pomona, CA	4	12/31/2002
8308–M	Tradewind Enterprises, Inc., Hillsboro, OR	4	10/31/2002
8308–M	American Courier Express Corporation, Miramar, FL	4	10/31/2002
8495–M	Kidde Aerospace, Wilson, NC	4	11/29/02
8718–M	Structural Composities Industries, Pomona, CA	4	12/31/2002
8723–M	Dyno Nobel, Inc., Salt Lake City, UT	4	12/31/2002
10019–M	Structural Composites Industries, Pomona, CA	4	12/31/2002
10440–M	MASS Systems (A Unit of Ameron Global, Inc.), Baldwin Park, CA	4	10/31/2002
10751–M	Dyno Nobel, Inc., Salt Lake City, UT	4	12/31/2002
11194–M	Carleston Technologies Inc, Pressure Technology Div, Glen Burnie, MD	4	11/29/2002
11327–M	Phoenix Services, Inc., Pasadena, MD	1	11/29/2002
11537–M	JCI Jones Chemicals, Inc., Milford, VA	4	12/31/2002
11579–M	Dyno Nobel, Inc., Salt Lake City, UT	4	12/31/2002
11769–M	Great Western Chemical Company, Portland, OR	4	12/31/2002
11769–M	Great Western Chemical Company, Portland, OR	4	12/31/2002
11769–M	Hydrite Chemical Company, Brookfield, WI	4	12/31/2002
11791–M	The Coleman Company, Inc., Wichita, KS	4	12/31/2002
11850–M	Air Transport Association, Washington, DC	4	11/29/2002
11860–M	GATX Rail, Chicago, IL	4	12/31/2002
11911–M	Transfer Flow, Inc., Chico, CA	4	12/31/2002
19111–M	Transfer Flow, Inc., Chico, CA	4	12/31/2002
12065–M	Petrolab Company, Latham, NY	4	11/29/2002
12443–M	Dow Reichhold Speciality Latex, LLC, Chickamauga, GA	4	11/29/2002
12449–M	Chlorine Service Company, Inc., Kingwood, TX	4	11/29/2002
12599–M	Voltaix, Inc., North Branch, NJ	4	10/31/2002
12866–M	Delta Air Lines (Technical Operations Center), Atlanta, GA	4	11/29/2002

[FR Doc. 02–27167 Filed 10–24–02; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Agency Information Collection Activities: Proposed Collection(s); Comment Request

AGENCY: Surface Transportation Board, Transportation.

ACTION: 60-day notice and request for comments.

SUMMARY: The Surface Transportation Board (Board), as part of its continuing effort to reduce paperwork burdens, invites comment on the information collection(s) described below, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 (PRA). Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid Office of Management and Budget (OMB) control number. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under 44 U.S.C. 3506(c)(2)(A), Federal agencies are required to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. The Board is publishing this notice to comply with this requirement. We should note that OMB control numbers were obtained in the past for six of the seven collections of information that are the subject of this notice. Comments are requested concerning: (1) Whether the particular collections of information described below are necessary for the proper performance of the functions of the Board, including whether the collections have practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate.

DATES: Written comments are due on December 24, 2002.

ADDRESSES: Written comments (an original plus 1 copy) should be identified as Paperwork Reduction Act Comments, refer to the title of the specific collection(s) commented upon and be sent to: Anne K. Quinlan, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Anne K. Quinlan, (202) 565–1727. [Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.]

SUPPLEMENTARY INFORMATION:

Collection Number 1

OMB Control Number: 2140–XXXX.
Title: Class I Railroad Annual Report.
Form number: R1.
Type of review: Reinstatement, without change, of a previously approved collection for which OMB control number has expired.
Respondents: Class I railroads.
Number of respondents: Fewer than 10.

Estimated time per response: 800 hours, based on information provided by the railroad industry during the 1990's. This estimate includes time spent reviewing instructions; searching existing data sources; gathering and maintaining the data needed; completing and reviewing the collection of information; and converting the data from the carrier's individual accounting system to the Board's Uniform System of Accounts (USOA), see 49 U.S.C. 11141–43, 11161–64, 49 CFR 1200–1201, for presentation in the R–1 format for consistency of information across all reporting railroads. It is possible that the time required to produce this report is overstated, given the advances in computerized data collection and processing systems.

Frequency of response: Annual.
Total annual hour burden: Less than 8,000 hours annually.
Total annual "non-hour burden" cost: We have identified no "non-hour cost" burdens associated with this collection.
Needs and uses: Annual reports are required to be filed by Class I railroads under 49 U.S.C. 11145. The reports show operating expenses of the carriers, including those for right-of-way and structures, equipment, train and yard operations and general and administrative expenses. The reports are used by the Board, other Federal agencies and industry groups to monitor and assess railroad industry growth, financial stability, traffic and operations and to identify industry changes that may affect national transportation policy. Information from this report is also entered into the Board Uniform Rail Costing System (URCS), which is a cost measurement methodology. URCS was developed by the Board pursuant to 49 U.S.C. 11161 and is used as a tool in rail rate proceedings to calculate the variable costs associated with providing a particular service in accordance with 49 U.S.C. 10107(d).

The Board uses data from the reports to more effectively carry out its regulatory responsibilities, including acting on railroad requests for authority to engage in Board-regulated financial transactions such as mergers, acquisitions of control, consolidations and abandonments; developing the Uniform Rail Costing System (URCS); conducting rail revenue adequacy proceedings; developing rail cost adjustment factors; and conducting investigations and rulemakings.

Information from certain schedules contained in the reports that are filed is compiled and published on the Board's Web site, *http://www.stb.dot.gov.* Information in these reports is not available from any other source.

Collection Number 2

OMB Control Number: 2140–XXXX.
Title: Quarterly Report of Revenues, Expenses and Income—Railroads (Form RE&I).
Form number: None.
Type of review: Reinstatement, without change, of a previously approved collection for which OMB control number has expired.
Respondents: Class I railroads.
Number of respondents: Fewer than 10.
Estimated time per response: 6 hours.
Frequency of response: Quarterly.
Total annual hour burden: Less than 240 hours annually.
Total annual "non-hour burden" cost: We have identified no "non-hour cost" burdens associated with this collection.
Needs and uses: This collection is a report of railroad operating revenues, operating expenses and income items; it is a profit and loss statement. *See* 49 CFR 1243.1. It discloses net railway operating income on a quarterly and year-to-date basis for the current and prior year. The Board uses the information in this report to ensure competitive, efficient and safe transportation through general oversight programs that monitor and forecast the financial and operating condition of railroads, and through regulation of railroad rate and service issues and rail restructuring proposals, including railroad mergers, consolidations, acquisitions of control and abandonments. Information from the reports is used by the Board, other Federal agencies and industry groups to monitor and assess industry growth and operations, detect changes in carrier financial stability, and identify trends that may affect the national transportation system. Information from these reports is compiled by the Board and published on its Web site, *http://www.stb.dot.gov.* The information contained in these reports is not available from any other source.

Collection Number 3

OMB Control Number: 2140–XXXX.
Title: Quarterly Condensed Balance Sheet—Railroads (Form CBS).
Form number: None.
Type of review: Reinstatement, without change, of a previously approved collection for which OMB control number has expired.
Respondents: Class I railroads.
Number of respondents: Fewer than 10.
Estimated time per response: 6 hours.
Frequency of response: Quarterly.
Total annual hour burden: Less than 240 hours annually.
Total annual "non-hour burden" cost: We have identified no "non-hour cost" burdens associated with this collection.
Needs and uses: This collection shows the balance at the end of each quarter, for the current and prior year, of the carrier's assets and liabilities; quarterly and cumulative for the current and prior year, the carrier's gross capital expenditures; and quarterly and cumulative for the current and prior year, the carrier's revenue tons carried. *See* 49 CFR 1243.2. The Board uses the information in this report to ensure competitive, efficient and safe transportation through general oversight programs that monitor and forecast the financial and operating condition of railroads, and through specific regulation of railroad rate and service issues and rail restructuring proposals, including railroad mergers, consolidations, acquisitions of control and abandonments. Information from the reports is used by the Board, other Federal agencies and industry groups to assess industry growth and operations, detect changes in carrier financial stability and identify trends that may affect the National Transportation System. Information from these reports is compiled by the Board and published on its Web site, *http://www.stb.dot.gov.* The information contained in these reports is not available from any other source.

Collection Number 4

OMB Control Number: 2140–XXXX.
Title: Report of Railroad Employees, Service and Compensation—Wage Forms A and B.
Form number: None.

Type of review: Reinstatement, without change, of a previously approved collection for which OMB control number has expired.

Respondents: Class I railroads.

Number of respondents: Fewer than 10.

Estimated time per response: 107 hours, based on information provided by the railroad industry during the 1990's. It is possible that the time required to collect this information is overstated given the advances in computerized data collection and processing systems.

Frequency of response: Quarterly, with an annual summation.

Total annual hour burden: Less than 4,280 hours annually.

Total annual "non-hour burden" cost: We have identified no "non-hour cost" burdens associated with this collection.

Needs and uses: This collection shows the number of employees, service hours and compensation, by employee group (executive, professional, maintenance-of-way and equipment and transportation), of the reporting railroads. *See* 49 CFR 1245. The information is used by the Board to forecast labor costs and measure the efficiency of the reporting railroads. The information also is used by the Board to evaluate proposed regulated transactions that may impact rail employees, including mergers and consolidations, acquisitions of control, purchases and abandonments. Other Federal agencies and industry groups, including the Railroad Retirement Board, Bureau of Labor Statistics and Association of American Railroads, depend on the information contained in the reports to monitor railroad operations. Certain information from the reports is compiled and published on the Board's Web site, *http://www.stb.dot.gov*. The information contained in the reports is not available from any other source.

Collection Number 5

OMB Control Number: 2140–XXXX.

Title: Monthly Report of Number of Employees of Class I Railroads.

Form number: STB Form 350.

Type of review: Reinstatement, without change, of a previously approved collection for which OMB control number has expired.

Respondents: Class I railroads.

Number of respondents: Fewer than 10.

Estimated time per response: 1.25 hours.

Frequency of response: Monthly.

Total annual hour burden: Less than 150 hours annually.

Total annual "non-hour burden" cost: We have identified no "non-hour cost" burdens associated with this collection.

Needs and uses: This collection shows, for each reporting carrier, the average number of employees at mid-month in the six job classification groups that encompass all railroad employees. *See* 49 CFR 1246. The information is used by the Board to forecast labor costs and measure the efficiency of the reporting railroads. The information also is used by the Board to evaluate proposed regulated transactions that may impact rail employees, including mergers and consolidations, acquisitions of control, purchases and abandonments. Other Federal agencies and industry groups, including the Railroad Retirement Board, Bureau of Labor Statistics and Association of American Railroads, depend on the information contained in the reports to monitor railroad operations. Certain information from the reports is compiled and published on the Board's Web site, *http://www.stb.dot.gov*. The information contained in the reports is not available from any other source.

Collection Number 6

OMB Control Number: 2140–XXXX.

Title: Annual Report of Cars Loaded and Cars Terminated.

Form number: Form STB–54.

Type of review: Existing collection in use without an OMB control number.

Respondents: Class I railroads.

Number of respondents: Fewer than 10.

Estimated time per response: 4 hours.

Frequency of response: Annual.

Total annual hour burden: Less than 40 hours annually.

Total annual "non-hour burden" cost: We have identified no "non-hour cost" burdens associated with this collection.

Needs and uses: This collection reports the number of cars loaded and cars terminated on the reporting carrier's line. *See* 49 CFR 1247. Information in this report is entered into the Board's Uniform Rail Costing System (URCS), which is a cost measurement methodology. URCS was developed by the Board pursuant to 49 U.S.C. 11161 and is used as a tool in rail rate proceedings to calculate the variable costs associated with providing a particular service in accordance with 49 U.S.C. 10707(d). The Board also uses URCS to analyze the information that it obtains through the annual railroad industry waybill sample, *see* 49 CFR 1244, and in railroad abandonment proceedings to measure off-branch costs in accordance with 49 CFR 1152.32(n). There is no other source for the information contained in this report.

Collection Number 7

OMB Control Number: 2140–XXXX.

Title: Quarterly Report of Freight Commodity Statistics (Form QCS).

Form number: None.

Type of review: Reinstatement, without change, of a previously approved collection for which OMB control number has expired.

Respondents: Class I railroads.

Number of respondents: Fewer than 10.

Estimated time per response: 217 hours.

Frequency of response: Quarterly, with an annual summation.

Total annual hour burden: Less than 8,680 hours annually.

Total annual "non-hour burden" cost: We have identified no "non-hour cost" burdens associated with this collection.

Needs and uses: This collection, which is based on information contained in waybills used by railroads in the ordinary course of business, reports car loadings and total revenues by commodity code for each commodity that moved on the railroad during the reporting period. *See* 49 CFR 1248. Information in this report is entered into the Uniform Rail Costing System (URCS), which is a cost-measurement methodology. URCS was developed by the Board pursuant to 49 U.S.C. 11161 and is used in rail rate proceedings as a tool to calculate the variable costs of providing a particular rail service in accordance with 49 U.S.C. 10707(d). The Board also uses URCS to analyze the information that it obtains though the annual railroad waybill sample and in railroad abandonment proceedings to measure off-branch costs in accordance with 49 CFR 1152.32(n). There is no other source for the information contained in this report.

Dated: October 18, 2002.

Vernon A. Williams,

Secretary.

[FR Doc. 02–27216 Filed 10–24–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Reebie Associates on behalf of the Kansas City Southern Railway (WB595—10/22/02), for permission to use certain data from the Board's Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

FOR FURTHER INFORMATION CONTACT: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. 02–27217 Filed 10–24–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Federal Law Enforcement Training Center

FLETC Glynco, GA; Notice of Intent

AGENCY: Federal Law Enforcement Training Center, Treasury.

ACTION: Notice of intent to hold public meeting and prepare an environmental assessment.

SUMMARY: Notice is hereby given that the Federal Law Enforcement Training Center (FLETC), pursuant to the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations for Implementing the National Environmental Policy Act (40 CFR parts 1500–1508), and the Department of the Treasury Directive 75–02 (Department of the Treasury Environmental Quality Program), proposes to prepare an Environmental Assessment related to the limited acquisition of certain public roadways adjacent to the FLETC Glynco, Georgia facility. The proposed action is associated with a previous FLETC action involving the purchase of property and buildings located at the intersection of Sidney Lanier Drive and Ethridge Drive, Brunswick, Georgia, which are adjacent to the existing FLETC site. The action addressed herein includes acquisition of portions of these public roads near their intersection, construction of cul-de-sacs where these public roads are blocked to allow turnarounds, security fencing to connect and incorporate the property and buildings noted above into the perimeter of the adjacent FLETC site, and extension of the current FLETC internal perimeter road. Double leaf security gates will be installed in each cul-de-sac.

Meeting Information: Public participation in the scoping process will be an integral part of this project. During the scoping process the FLETC will seek information, comments, and guidance from agencies and the public that may be interested in, or affected by, this project. The scoping process will include: (a) Identification of potential issues; (b) identification of issues to be analyzed in depth; (c) elimination of insignificant issues; (d) identification of potential environmental effects; (e) exploration of potential alternatives; and (f) determination of potentially involved agencies. The FLETC will conduct a meeting associated with the scoping of the assessment of potential significant environmental impacts related to the project. The meeting will be advertised in a newspaper of general circulation in the project area. The meeting will be open to the interested public, and federal, state, and local government agencies, and will be held on November 7, 2002 from 7 p.m. until 9 p.m. at the Coastal Georgia Community College 3700 Altama Avenue Brunswick, Georgia in the Southeast Georgia Conference Center for Continuing Education Building. The public and agencies are invited to participate in the planning and analysis of the proposed project. Representatives of the FLETC and its consultants will be available at the meeting to discuss the FLETC's environmental review process, describe the project and alternatives under consideration, discuss the scope of environmental issues to be considered in accordance with the requirements of NEPA, and answer questions and written comments.

DATES: Written comments will be accepted until December 8, 2002.

ADDRESSES: *Send comments to:* FLETC, Building T–726, Glynco, GA 31524.

FOR FURTHER INFORMATION CONTACT: Susan Shaw, NEPA Coordinator/Project Manager, FLETC, at (912) 261–4557. Ms. Shaw's e-mail address is *sshaw@fletc.treas.gov*.

SUPPLEMENTARY INFORMATION: The Federal Law Enforcement Training Center has a mission of providing high quality, cost-effective training of federal law enforcement personnel. The Glynco, Georgia FLETC facility is the primary training location for FLETC, with others located in Maryland and New Mexico.

Alternatives being considered by the FLETC for this project include: (a) No Action—Continuation of the present road configuration and public access without security improvements to the buildings; (b) Proposed Action—Acquisition of public roads, inclusion of the buildings into the FLETC site, construction of cul-de-sacs, and construction of perimeter fencing and road; (c) Alternative—Improvements to building security without road acquisition, with continued isolation of the buildings from the contiguous FLETC site.

Based on the input received at the public meeting, and ongoing contact and involvement of the interested agencies and the public, the FLETC will prepare a Draft Environmental Assessment addressing the significance of the project and its impact for public review and comment. Distribution and placement of this document in publicly accessible places such as the regional library and government offices will occur. A Final Environmental Assessment will be prepared considering the comments from agencies and the public received following the review period for the draft document.

Should the FLETC determine, based on the information presented in the Final Environmental Assessment for the project, that the impacts of the acquisition and associated construction will not have a significant environmental impact, it will prepare a Finding of No Significant Impact (FONSI) for publication in the **Federal Register** and in a newspaper of general circulation in the project area. Should significant environmental impacts be determined to exist due to the project, the FLETC will proceed with the preparation of an Environmental Impact Statement, per the requirements of NEPA, the Council on Environmental Quality, and its own environmental policies and procedures.

Authority: The Council on Environmental Quality's National Environmental Policy Act, 40 CFR parts 1500 *et seq.*

Dated: October 21, 2002.

Paul Magalski,

Assistant Director, Office of Compliance, Federal Law Enforcement Training Center.

[FR Doc. 02–27195 Filed 10–24–02; 8:45 am]

BILLING CODE 4810–32–P

Corrections

Federal Register
Vol. 67, No. 207
Friday, October 25, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Draft Guidance for the Coastal and Estuarine Land Conservation Program

Correction

In notice document 02–26996 beginning on page 64874 in the issue of Tuesday, October 22, 2002, make the following corrections:

1. On page 64874, in the third column, the subject is corrected to read as set forth above.

2. On page 64875, in the first column, in the third and fourth lines, the web address is corrected to read as set forth as follows:

"*www.ocrm.nos.noaa.gov/landconservation.html*".

3. On the same page, in the same column, in the date line, "October 7, 2002" should read, "October 17, 2002".

[FR Doc. C2–26996 Filed 10–24–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–142–001]

Columbia Gas Transmission Corporation; Notice of Petition To Amend

October 11, 2002.

Correction

In notice document 02–26490 beginning on page 64356 in the issue of Friday, October 18, 2002, make the following correction:

On page 64356, in the first column, the docket number is corrected to read as set forth above.

[FR Doc. C2–26490 Filed 10–24–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
October 25, 2002

Part II

National Credit Union Administration

12 CFR Parts 703 and 704
Investment and Deposit Activities; Corporate Credit Unions; Final Rule

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703 and 704

Investment and Deposit Activities; Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is issuing final revisions to the rule governing corporate credit unions (corporates). The major revisions to the rule are in the areas of capital, credit concentration limits and services. The amendments enable corporates to remain competitive in the marketplace while retaining NCUA's historic focus on the safety and soundness of the corporate credit union system. The major changes to these areas necessitate some substantive changes to other provisions of the rule. Several other minor revisions are generally either a clarification or a modernization of the existing rule.

DATES: This rule is effective November 25, 2002, except that the revision of the definition "paid-in capital" in §704.2 is effective July 1, 2003. Compliance with this rule is not required until January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Kent Buckham, Director, Office of Corporate Credit Unions, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone (703) 518–6640; or Mary Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

On July 28, 1999, and November 22, 2000, NCUA issued advance notices of proposed rulemaking (ANPRs). 64 FR 40787, July 28, 1999; 65 FR 70319, November 22, 2000. Based on the comments received in response to the ANPRs, the Board issued a proposed rule. 66 FR 48742, September 21, 2001. In response to the comments received, particularly in the area of capital, the Board issued a revised proposed rule for another round of public comment. 67 FR 44270, July 1, 2002. The Board received 37 comments on the revised proposal: 22 from corporate credit unions, six from natural person credit unions, four from credit union trade associations, two from bank trade associations, two from state credit union leagues and one from a research firm. The commenters appreciated the Board's willingness to issue a revised proposal. The comments to the revised proposed rule have greatly assisted the Board in drafting the final rule and will be discussed in the relevant section of the section-by-section analysis.

B. Section-by-Section Analysis

Natural Person Credit Union Investments, Section 703.100

As in the initial proposed rule, the Board retained an increase in the limit on a natural person credit union's aggregate purchase of paid-in capital (PIC) and membership capital (MC) in one corporate to 2 percent of the credit union's assets measured at the time of purchase. Additionally, the Board retained the limit on a credit union's aggregate purchase of PIC and MC in all corporates of 4 percent.

Two commenters, both bank trade groups, noted continued opposition to the proposed increase. The commenters argued that it increases exposure to individual credit unions and raises the overall systemic risk. One commenter expressed support for the proposal but indicated the limit should be based on the natural person credit union's net worth rather than on its assets.

The Board remains convinced the revised limits on natural person credit union investments in PIC and MC in an individual corporate and in the aggregate are in the best interest of the credit union system. These changes have been retained in the final rule.

Definitions, Section 704.2

Daily Average Net Assets (DANA)

Although not specifically addressed in the rule, nineteen commenters continued to oppose the guidance on DANA issued by the Office of Corporate Credit Union (OCCU) in 2000 that was discussed in the preamble. Corporate Credit Union Guidance Letter No. 2000–03, August 30, 2000. The letter addressed the inclusion of future dated ACH items and uncollected cash letters that are perfectly matched on both the asset and liability sides of the balance sheet in the definition of DANA. As noted in the revised proposal, the issue is whether such transactions should be recorded on their settlement date (the date the funds are posted) or on the advice date (the date the corporate receives an advice indicating the funds will posted on a specific future date). 67 FR at 4270. All of the commenters on this issue noted their preference for recording these transactions on the settlement date.

The commenters stated that, while the American Institute of Certified Public Accountants (AICPA) has not taken an official position on this specific issue, there exists professional accounting guidance supporting exclusion of future dated ACH transactions from the definition of DANA. For example, the Financial Accounting Standards Board (FASB) Statement of Financial Accounting Concept's No. 6—Elements of Financial Statements defines liabilities as "probable future sacrifices of economic benefits arising from present obligations of a particular entity to transfer assets or provide services to other entitles as a result of past transactions or events." FASB No. 6 goes on to state that an item is not a liability "if the item involves a future sacrifice of assets that the entity will be obligated to make, but the events or circumstances that obligate the entity have not yet occurred." A number of commenters indicated they are under no legal obligation to pay the transactions on the advice date. Several commenters also noted that some corporates have received opinions from their CPA firms indicating accounting for such transactions as of the advice date is not in accordance with Generally Accepted Accounting Principles (GAAP).

The Board believes it is important to have consistency among corporates, as well with the other financial regulators. To ensure NCUA's position on this issue is consistent with that taken by the other financial regulators, NCUA staff contacted the Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision and the Federal Reserve Board. All of these financial regulators require their financial institutions to report future dated ACH transactions on their call reports as of the advice date. None of the financial regulators exclude future dated ACH transactions from their regulatory ratio calculations. As such, NCUA's position is consistent with the other financial regulators.

The Board remains convinced that a corporate should report future dated ACH items and uncollected cash letters on the advice date for both regulatory and 5310 (Corporate Credit Union Call Report) reporting purposes. For other financial statement reporting, corporates should follow their CPA firm's guidance.

Capital, Section 704.3

One commenter indicated the Board should not set a regulatory standard for each type of capital account, including retained earnings. The commenter suggests each corporate set its own limits for each type of capital it wants to hold. NCUA should just set a minimum overall capital level. Several commenters indicated that PIC should be counted equally with regular reserves and undivided earnings (RUDE) in all areas of the regulation.

One commenter recommended limiting the aggregate amount of MC and PIC that can be used to satisfy the total capital requirement to 100 percent of RUDE. One commenter indicated that the amount of MC that can be counted as "core capital" should be limited to 50 percent of retained earnings and PIC.

The Board is not persuaded to revise the treatment of the various capital accounts. The Board believes there is a very important distinction between internally generated capital, retained earnings, and other types of capital accounts. The Board continues to believe an adequate level of internally generated capital is essential to avoid erosion of member confidence in the event losses occur. The final regulation provides an adequate capital structure and appropriate types of capital accounts for corporates.

Requirements for Membership Capital, Section, 704.3(b)

The Board addresses the comments to this provision in conjunction with its discussion of the comments on Appendix A, Model Forms.

Requirements for Paid-in Capital, Section, 704.3(c)

One commenter suggested removing the prohibition conditioning membership, services, or prices for services on a credit union's ownership of PIC. The commenter indicated that PIC is no longer considered a temporary measure to strengthen capital, and the same restriction is not placed on MC. The Board continues to believe it is in the best interest of natural person credit unions and their members to be able to obtain the most efficient and cost effective services available. The Board does not want, in effect, to force natural person credit unions to commit to a long-term PIC account as a means of obtaining service or membership. PIC was intended to be an additional means for corporates to strengthen their levels of capital. The Board believes a natural person credit union's decision to invest in PIC should be based on its commitment to the corporate, not a requirement to obtain services. Forcing natural person credit unions to obtain PIC as a condition of membership may have the unintended consequence of having them seek products and services outside the system.

Fifteen commenters requested a "grandfathering" period ranging from 12 to 24 months on the implementation of the revised definition of PIC. While supportive of the change making PIC a perpetual, non-cumulative dividend account, the commenters believe that immediate adoption of the definition might give a competitive advantage to those corporates that issued PIC under the existing regulatory definition. Several commenters noted that some corporates held off issuing PIC to see what the regulatory changes were before dedicating the time and expense to that endeavor.

The Board views the issuance of PIC as a business decision for corporates. In response to the comments, the Board will permit corporates to issue PIC under the current definition of PIC until June 30, 2003. The effective date of the revised definition of PIC is delayed until July 1, 2003.

Earnings Retention Requirement, Section, 704.3(i)

Based on comments to the proposed rule, the Board in the revised proposal eliminated the requirement that established a minimum RUDE to moving DANA ratio of 2 percent. Three commenters opposed this action and requested the minimum RUDE ratio be reinstated.

In place of a minimum RUDE ratio, the Board proposed an earnings retention requirement. Five commenters indicated they supported the intent of the earnings retention requirement, but not the proposal in full. Seven commenters opposed the earnings retention requirement.

A number of commenters suggested the process for calculating the earnings retention ratio is virtually impossible because dividends are paid throughout the month on various accounts. Due to the timing of when financial statements are prepared, losses or expenses may not be fully appreciated until after dividends have already been paid. A corporate might pay dividends without realizing it had gone below the 2 percent level.

Four commenters indicated that PIC should be included with retained earnings in the earnings retention calculation. Another commenter suggested excluding the gains/losses on the sale of fixed assets and other non-operating gains/losses from the earnings retention calculation. One commenter suggested calculating the earnings retention requirement only on a quarterly basis, and another commenter suggested calculating on a year-to-year rather than month-to-month basis. One commenter believed that a total capital ratio alone would be sufficient for monitoring capital in corporate credit unions. Another commenter suggested that capital requirements for each corporate be based on the risk in that specific institution.

Twenty-seven commenters objected to the dividend restrictions in § 704.3(i)(5). Numerous commenters expressed concern that the dividend restrictions might give their competitors an advantage over credit union deposits. Many also expressed concern that natural person credit unions would seek riskier investments if they believed the corporate may be unable to pay dividends. This could result in a negative impact on the entire credit union system. Several commenters also noted that smaller natural person credit unions would be the most severely affected as they rely heavily on the dividends they earn from their deposits in corporates. Two commenters recommended that a corporate that falls below 2 percent be allowed to pay dividends, but be required to submit an earnings retention plan. Two other commenters objected to the dividend restrictions for state-chartered corporates because it moves control over undivided earnings out of the hands of the corporates and the state regulators and into the hands of the federal deposit insurer. One commenter noted that, even if NCUA were flexible in its approach to approving dividend payments, the perception of increased risk would have inflicted damage to the credit union network. Several commenters indicated that NCUA already has adequate regulatory and supervisory tools to ensure corporates build and maintain an appropriate level of capital.

Ten commenters recommended the adoption of a credit-risk weighted capital requirement as the best means of measuring capital in corporate credit unions.

The Board continues to believe that an earnings retention requirement is the appropriate means of ensuring adequate retained earnings on an ongoing basis. As noted in the preamble of the revised proposed rule, the Board is concerned that a minimum RUDE ratio may have the unintended consequence of limiting the traditional role of corporates as depositors of excess liquidity for natural person credit unions. The Board also believes, as stated numerous times in the past, that a credit-risk weighted capital requirement is not the best measure of risk in corporates. 67 FR at 44273.

The Board agrees failure to pay dividends would have a dramatic impact on a corporate, its members, and, potentially, the entire credit union system. The intent of proposed § 704.3(i)(5) was to ensure cooperative action between the corporate and NCUA and, if applicable, the state regulator in building retained earnings that have fallen below the minimum desired level. Therefore, the Board is persuaded that

§ 704.3(i)(5) should be revised to address the commenters' concerns while retaining the original intent of the proposed regulation. Any restriction on the payment of dividends has been eliminated from the final rule.

The final rule requires operational management of corporates to notify the board of directors, supervisory committee, OCCU Director and, if applicable, the state regulator if the retained earnings ratio falls below 2 percent. Notification of the occurrence is sufficient if the decrease in the retained earnings ratio is due solely to the increase in moving DANA and the dollar amount of retained earnings has remained constant or increased. This places no additional burden on a corporate that has an influx of funds due to excess liquidity in natural person credit unions.

If a corporate's retained earnings ratio declines below 2 percent due, in full or in part, to a decline in the dollar amount of retained earnings and the retained earnings ratio is not restored to at least 2 percent by the next month end, the corporate will be required to submit a retained earnings action plan.

The Board believes NCUA has sufficient supervisory authority over corporates, coupled with the notification and the retained earnings action plan requirements, to work with officials to address a decline in the retained earnings ratio below 2 percent in a timely and effective manner.

The Board is satisfied that the existing retained earnings ratio calculation method is sufficient. The timing of the notification within 10 calendar days is based on the date the determination is made that the retained earnings ratio has fallen below 2 percent. If necessary, the timing of the submission of a retained earnings action plan within 30 calendar days is based on the next month end after the month in which the retained earnings ratio has fallen below 2 percent. In some cases, the determination may be made during the month, while in other cases the determination may not be made until after the books are closed at the end of the month.

Board Responsibilities, Section 704.4

The revised proposed rule changed the term "operating policies" to "policies" throughout this section and changed the title of subsection (c) to "Other requirements." The commenters supported this change and it has been retained as proposed.

Investments, Section 704.5

The revised proposed rule deleted several investment related definitions no longer used in the regulation and amended the definitions of: Asset-backed security (ABS), Collateralized mortgage obligation (CMO), Forward settlement, Quoted market price, Mortgage related security, Regular-way settlement, Repurchase transaction, and Residual interest. One commenter suggested including the acronym "ABS" in the title for asset-backed security. The Board agrees, and the final rule includes the acronym. No commenters objected to the other provisions, and they have been deleted or amended as proposed.

Two commenters expressed concern about possible erroneous categorizations of home equity backed securities on the 5310 Call Report in light of the revised definitions of mortgage related security and asset-backed security. If there is any uncertainty about appropriate reporting, a corporate is encouraged to discuss the matter with its corporate examiner.

One commenter suggested deleting the definitions of: Credit enhancement; Dealer bid indication; Industry recognized information provider; Matched; and Small business related security, if they are no longer used in the regulation. The Board agrees and is deleting the first four terms since they are no longer used but is retaining the definition of "small business related security" since that term is used in § 704.5(h)(4).

Policies, Section 704.5(a)

The revised proposed rule combined the policy requirements in this section and deleted "if any" from § 704.5(a)(1) to clarify a corporate must have "appropriate tests and criteria" to evaluate investments it makes on an ongoing basis, as well as new investments. No comments were received on these provisions, and they have been retained as proposed.

The revised proposed rule deleted the requirement in § 704.5(a)(2) that the investment policy address the marketing of liabilities to its members. No comments were received on this provision, and it is deleted in the final rule.

The revised proposed rule added a requirement for a corporate to establish appropriate aggregate limits on limited liquidity investments. As with the initial proposed rule, the revised proposed rule defined "limited liquidity investment" to mean an investment without a quoted market price. The preamble specified "limited liquidity investment" means "a private placement or funding agreement." 67 FR at 44274, 44285.

One commenter did not object to the proposed definition and supported the proposed requirements for limited liquidity investments. Another commenter was concerned with the proposed definition. The commenter noted using the term "quoted market price" in the definition was problematic, since sales prices on most ABS and MBS are not publicly available and dealers do not post bid and asked quotes. The Board agrees and has revised the definition in the final rule so that it is consistent with the revised proposed preamble. The final rule limits "limited liquidity investments" to private placements and funding agreements. The requirements for limited liquidity investments are retained as proposed.

Authorized Activities, Section 704.5(c)(5). The revised proposed rule clarified an ABS must be domestically issued. No comments were received on this provision, and it is retained as proposed.

Section 704.5(c)(6). The revised proposed rule deleted this section, which provided specific authorization for CMOs. These investments are still authorized under § 704.5(c)(1) and (5). No comments were received on this provision, and it is deleted in the final rule.

Repurchase agreements, Section 704.5(d). The revised proposed rule made several changes to the requirements for repurchase agreements to conform them to current market practices. No comments were received on this provision, and it is retained as proposed.

Securities lending, Section 704.5(e). The revised proposed rule made several nonsubstantive changes to the requirements for securities lending transactions to clarify the rule and conform it more closely to current market practices. No comments were received on this provision, and it is retained as proposed.

Investment companies, Section 704.5(f). Section 704.5(f) of the revised proposed rule allows a corporate to invest in an investment company, for example, a mutual fund "provided that the prospectus of the company restricts the investment portfolio to investments and investment transactions that are permissible for that corporate credit union." One commenter stated that the prospectus of an investment company does not restrict the investment portfolio of an investment company, and suggested that the quoted language be changed to read "provided that all investments and investment transactions, as described in the prospectus of the company, are permissible for that corporate credit union." The Board appreciates the issue the commenter raises but does not believe a change is necessary.

A mutual fund must file a registration statement with the Securities and Exchange Commission (SEC) on Form N–1A. The prospectus is Part A of Form N–1A. According to the SEC's instructions for completing Part A, the prospectus will "describe the Fund's principal investment strategies, including the particular type or types of securities in which the Fund principally invests or will invest." SEC Final Rule, Registration Form Used by Open-End Management Companies (Item 4), 63 FR 13916, 13951, March 23, 1998.

To the extent that a prospectus for a particular mutual fund only discloses the securities it "principally" invests in, the fund might hold other investments that are impermissible for the corporate credit union. This is unacceptable. A corporate may not own investments indirectly through a mutual fund that it is prohibited from owning directly.

While the SEC's instructions on completing a prospectus do not require the prospectus disclose all permissible investment types, the instructions do not prohibit such disclosure either. Where the prospectus' description of investment types includes only investments permissible for corporates, and that it will not hold investments other than those described, the mutual fund will be permissible for the corporate.

The Board also notes that Part B of the registration statement, the Statement of Additional Information (SAI), provides additional information about the mutual fund's investment policies and permissible investment types. For example, the SAI will "[d]escribe any investment strategies, *including a strategy to invest in a particular type of security*, used by an investment adviser of the [mutual] fund in managing the fund that are *not* principal strategies * * *." Final Rule, Registration Form Used by Open-End Management Companies (Item 12(b)), 63 FR 13916, 13956, March 23, 1998, (emphasis added). In addition, the SAI will "[d]isclose, if applicable, the types of investments that a Fund may make while assuming [a temporary defensive position as described in the prospectus.]" *Id.*, Item 12(d).

If a prospectus is not clear, a corporate should obtain the SAI on any particular mutual fund directly from the fund company. A fund's prospectus, when read in conjunction with the SAI, should provide sufficient information on the types of investments the fund may make and whether they are restricted to those permissible for the corporate.

Prohibitions, Section 704.5(h). The revised proposed rule permitted trading securities but required transactions to be accounted for on a trade date basis and, in addition, no longer prohibited engaging in pair-off transactions and when-issued trading. The revised proposed rule retained the prohibitions on engaging in adjusted trading and short sales. No comments were received on these provisions and they are retained as proposed in the final rule.

The revised proposed rule prohibited investments in residual interests in ABS, deleted the prohibition on commercial mortgage related securities, and moved the prohibition on the purchase of mortgage servicing rights from the investments section to the permissible services section. The Board notes that the prohibition on the purchase of mortgage servicing rights, as explained in the permissible services section, is being retained as an impermissible investment. One commenter agreed with the deletion of the prohibition on investments in commercial mortgage-related securities. The commenter noted the market for privately-issued commercial mortgage-related securities has become well-established in recent years. The Board agrees, and these provisions have been deleted or amended as proposed.

Credit Risk Management, Section 704.6

The revised proposed rule defined "obligor" to mean the primary party obligated to repay an investment and excluded from the definition the originator of receivables underlying an asset-backed security, the servicer of such receivables, or an insurer of an investment. No comments were received on this definition, and it is retained as proposed.

The revised proposed rule deleted the definitions of "short-term investment" and "long-term investment" since they are no longer used. The revised proposed rule also deleted the definition of "expected maturity," since that term was only used in the definitions of these deleted terms. No comments were received on these definitions, and they are deleted in the final rule.

Policies, Section 704.6(a). The revised proposed rule amended the policy requirements to base credit limits on capital, rather than RUDE and PIC. A few commenters supported this provision. This provision is retained as proposed.

The revised proposed rule deleted the requirement that the credit risk management policy address loan credit limits. The revised proposed rule added to the examples of concentrations of credit risk an "originator of receivables" and an "insurer." No comments were received on these provisions, and they are retained as proposed.

Exemption, Section 704.6(b). The revised proposed rule required subordinated debt of government sponsored enterprises to meet the rule's credit risk management requirements. No comments were received on this provision, and it is retained as proposed.

Concentration limits, Section 704.6(c). The revised proposed rule established a general credit concentration limit of 50 percent of capital or a *de minimis* limit of $5 million for the aggregate of all investments in any single obligor, whichever is greater. One commenter, a bank trade group, asserted these changes would increase concentration limits. It claimed without explanation that the proposed 50 percent of capital limit would not have the overall effect of reducing credit concentration limits from the prior limits as stated in the preamble to the proposed rule. 67 FR at 44275. The Board disagrees. Using July 2002 month-end data for an unsecured obligation, the proposed 50 percent of capital limit, in comparison to the current limits, would decrease the corporate system's aggregate maximum investment in the unsecured obligations of a single obligor from $5.43 billion to $2.95 billion, reflecting a reduction in credit concentration of $2.48 billion. For secured obligations, there would be a large reduction because, unlike the revised proposal that had a limit of 50 percent of capital, corporates with Part I or Part II expanded authorities currently have no limitation.

Eleven commenters opposed the general credit concentration limit as too restrictive. Some commenters noted there is a relatively small number of AAA rated obligors. Thus, the proposed limits could force increased aggregate exposure to lower quality credits. A number of these commenters suggested a general credit concentration limit of 100 percent of capital on investments rated no lower than AA- (or equivalent) or A–1 (or equivalent). Two commenters recommended an increase to the credit concentration limit for investments rated AAA (or equivalent); one recommended a limit of 100 percent of capital. One commenter suggested differentiating between single obligor debt instruments and ABS or MBS, noting single obligor instruments, such as corporate debt instruments, are entirely dependent upon the performance of the issuing entity. Two commenters suggested NCUA generally reconsider the limits, with one suggesting NCUA permit a higher

percentage concentration limit for investments rated AA (double A flat) or higher.

As the Board noted in the revised proposed rule, the Board believes this 50 percent limit is the most credit exposure a corporate should prudently take in investment-grade quality investments. *Id.* The Board continues to believe the corporate network must exercise caution in placing membership capital at risk, and these provisions are retained as proposed.

Section 704.6(c)(2) of the revised proposed rule provided exceptions to the general credit concentration rule. For repurchase and securities lending transactions, the proposed limit was 200 percent of capital. Investments in corporate CUSOs were subject to the limitations in § 704.11. Investments in wholesale corporate credit unions and aggregate investments in other corporates were exempt. One commenter recommended limiting the exemption to wholesale corporates. The commenter asserted it was difficult to envision efficiencies for corporates investing in other non-wholesale corporates. As stated in the preamble to the revised proposal, the Board continues to believe that the benefits to the corporate system of applying this exemption to all corporates outweigh any potential concerns, and the Board is retaining the exemption in the final rule. 67 FR at 44275.

Revised proposed § 704.6(c)(3) deems an investment as "nonconforming" if it fails a credit concentration requirement because of a reduction in capital following the purchase of that investment. A corporate is required to exercise reasonable efforts to bring nonconforming investments into conformity within 90 days. Investments that remain nonconforming for 90 days are deemed to "fail" a requirement, and a corporate will have to comply with the requirements in § 704.10. No comments were received on this provision, and it is retained as proposed.

Two commenters recommended deleting § 704.6(c)(4), since proposed § 704.6(c)(3) addressed the same issue. The Board notes that § 704.6(c)(4) was deleted in the revised proposed rule and will remain deleted in the final rule.

Credit ratings, Section 704.6(d). This section reduced the applicable credit rating to AA- (or equivalent) for investments with long-term ratings and A–1 (or equivalent) for investments with short-term ratings. The revised proposed rule triggered the investment action plan requirements of § 704.10 if at least two ratings were downgraded and a corporate had relied on more than one rating to meet the minimum credit rating requirements at the time of purchase.

A state-chartered corporate supported this proposal, but believed additional investment authority was needed. The corporate noted its state supervisory authority permitted investment in all investment grade categories. Further, the commenter noted typical cash market practice for repurchase transactions is to require investment grade securities; the commenter noted it is more difficult to arrange repurchase agreements at favorable rates if the securities must be restricted to those with ratings in the top grades of the investment grade categories.

As noted in the preamble to the revised proposed rule, in light of the substantial flexibility already provided to corporates, the Board remains convinced a base level corporate should not be permitted to acquire more than limited credit risk exposure. Expanded authority provisions allow a broader spectrum of credit risk, and require increased due diligence by corporates that obtain such authority. 67 FR at 44276. Thus, this section is retained as proposed.

The proposed rule clarified investments in a corporate or a CUSO do not require a rating. One commenter recommended corporates be permitted to invest in other non-wholesale corporates only if that corporate had a credit rating from at least one nationally recognized statistical rating organization (NRSRO). It is not current market practice for corporates to obtain depositor ratings. While an NRSRO rating is a useful tool for investors to evaluate credit risk, it is no substitute for due diligence. The Board is convinced a corporate should be permitted to decide whether to purchase shares or deposits in another corporate. Thus, this provision is retained as proposed.

One commenter requested clarification of ratings relied upon "at the time of purchase." The commenter noted this might mean either the trade or settlement date. The commenter asserted industry practice was to assign an assumed rating for new-issue securities and not to provide an official rating until settlement date. The commenter suggested there was the potential for a corporate to be unable to purchase new-issue securities until settlement date when the official rating was assigned if the interpretation of "at the time of purchase" were trade date. The Board agrees industry practice is to assign an assumed rating for new-issue securities and not to provide an official rating until settlement date. However, the Board understands it is also industry practice that purchase offers are contingent on assignment of the assumed rating. This means a purchasing corporate could refuse delivery on the settlement date if a security did not receive the bargained for rating. Thus, "at the time of purchase" means the security must have either an official permissible rating on the trade date if purchase is not contingent on receipt of an official permissible rating or, for a new issue, an assumed permissible rating on the trade date and an official permissible rating on the settlement date.

To avoid confusion regarding the investment watch list requirements of § 704.6(e)(1), the revised proposed rule clarified in § 704.6(d)(4) that it is applicable only when the corporate relied upon more than one rating to meet the minimum credit rating requirements at the time of purchase. If there is a subsequent downgrade below the minimum requirement, then the investment must be placed on the investment watch list.

One commenter recommended a technical change in § 704.6(d)(4) to delete the words "any rating that" following "investment watch list" and to substitute "any investment for which a rating." The Board agrees, and the final rule reflects that substitution.

Reporting and documentation, Section 704.6(e). The revised proposed rule clarified that requirements for annual approval apply to each credit limit with each obligor or transaction counterparty. No comments were received on this provision, and it is retained as proposed.

Lending, Section 704.7

Section 704.7(c)(1) and (2). Currently, the aggregate secured and unsecured loan and line of credit limits to any one member credit union are based on the higher of a percentage of capital or a percentage of RUDE and PIC. The Board proposed basing the loan limits on a percentage of capital and eliminating the option of basing them on a percentage of RUDE and PIC. The Board received no comments on this section and has adopted this change in the final rule.

Section 704.7(c) and (d) and Appendix B to Part 704 reference "irrevocable" loans and lines of credit. In the revised proposed rule, the Board deleted the modifier "irrevocable" while clarifying in the preamble that the loan and line of credit limits apply to both "irrevocable" and "revocable" loans and lines of credit. One commenter objected to the deletion of the word "irrevocable" in the revised proposed rule. This commenter suggested re-inserting either "irrevocable" or "committed" in the final rule so that the limits do not apply to uncommitted lines of credit. The Board's intent is that the aggregate limits apply to all loans and lines of credit and, therefore, the Board is retaining the deletion in the final rule.

Section 704.7(d). This section addresses "Loans to nonmembers" and is subdivided into two subsections: Credit unions and Corporate CUSOs. A commenter suggested part 704 should not distinguish between corporate and natural person credit union CUSOs. This commenter recommended expanding § 704.7 to address loans to natural person credit union CUSOs rather than requiring those loans to comply with part 723. The rationale was that the part 723 collateral requirements put corporates at a disadvantage in the marketplace for natural person credit union CUSO related activities. In the final rule, the Board does not expand § 704.7 to address loans to natural person credit union CUSOs. The Board believes that the exceptions should only apply to loan limits for corporate CUSOs because these entities are wholly or partially owned by corporates. Also, loans to corporate CUSOs are currently required to comply with part 723's aggregate limits and most of that regulation's due diligence requirements.

Section 704.7(e)(3). This provision of the revised proposal, like the current rule, provides a partial exemption from the member business loan rule if a loan or line of credit to an "Other member" is fully guaranteed by a credit union or fully secured by U.S. Treasury or agency securities. One commenter requested clarification as to whether cash or shares are also included as permissible collateral to secure a loan, line of credit or letter of credit. Loans secured by cash or shares, rather than qualifying for a partial exemption, are not member business loans and, therefore, are not subject to any of the requirements of part 723. 12 CFR 723.1(b)(2).

Revised proposed § 704.7(e) clarified the applicability of the member business loan rule in part 723 to loans granted by a corporate. The Board did not receive any comments on this revision and, therefore, the Board retained this clarification in the final rule.

Revised proposed § 704.7(g) expanded the provision governing loan participations between corporates to include a requirement that a corporate execute a master participation loan agreement before the purchase or the sale of a participation loan. In conjunction with this requirement, the Board deleted the language that a participation loan agreement may be executed at any time before, during, or after the disbursement. No comments were received on this section, and this requirement is retained in the final rule.

The Board proposed allowing corporates to participate in loans with member natural person credit unions but only as an expanded Part V authority and with certain limitations. One commenter indicated proposed Part V authority should be a permissible activity for all corporates. The rationale was that, since natural person credit unions are permitted to engage in this activity, it is not a regulatory concern for NCUA. This commenter also stated that state law on participation lending should govern state-chartered corporates. As stated in the preamble to the proposed rule, since the Board believes "a number of corporates do not exhibit a level of infrastructure commensurate with the risks associated with this activity," corporates should apply for approval before entering into loan participations with natural person credit unions. 66 FR at 48748. For these reasons, the final rule only allows corporates with Part V authority to engage in participation lending with natural person credit unions. These safety and soundness concerns apply to state-chartered corporates as well as federal corporates. Another commenter recommended the Board grandfather corporates who have received a waiver to engage in participation lending with member natural person credit unions. The Board agrees and corporates with existing waivers continue to have the authority to enter into loan participations to the extent previously granted without applying for Part V authority.

One commenter recommended expanding Part V to permit a wholesale corporate to join with its member corporate in participating in a loan that the wholesale corporate is permitted to purchase in its own right from a nonmember natural person credit union. The Board believes it needs additional time to study this issue, which is being raised for the first time in response to the revised proposed rule. The Board notes that, after additional study, it may be open to considering this activity as permissible either by amending the regulation to expand Part V or as a waiver to Part V.

Finally, the Board proposed reorganizing the lending section to make it easier to read. No commenter objected to the reorganization and the final rule incorporates these changes.

Asset and Liability Management, Section 704.8

The revised proposed rule deleted the term "net interest income" because it is no longer used in the regulation and amended the definitions of "net economic value (NEV)" and "fair value." NEV means the fair value of assets minus the fair value of liabilities. The amended definition excluded from liabilities both PIC and MC, rather than excluding only PIC. One commenter again urged that all off balance sheet financial derivatives remain in the definition of NEV. As the Board explained in the revised preamble, for purposes of NEV measurement, GAAP does not require accounting for immaterial positions in financial derivatives on balance sheets. 67 FR at 44277.

The commenter also recommended limiting the aggregate amount of MC and PIC included in total capital to not more than 100 percent of RUDE in any NEV-related requirements. This would limit the aggregate amount of MC and PIC excluded from liabilities for purposes of NEV calculations to not more than retained earnings, resulting in NEV limits based on a percentage of two times the fair value of retained earnings. If a corporate were to realize a loss of substantially all of retained earnings, but not MC or PIC, the commenter's proposal would require a corporate without net unrealized gains to eliminate all interest rate risk. The Board does not believe this is the most advisable course of action to re-establish earnings. Instead, the Board has proposed conservative NEV limits based on capital, rather than a subset of capital. Under the Board's formulation, a loss of substantially all of retained earnings reduces the level of interest rate risk permitted, but does not require a corporate to eliminate all interest rate risk. Therefore, these provisions are deleted or amended as proposed.

The Board has made a technical change to the revised proposed definition of "fair value." In the first sentence of the definition "other than in" is changed to "as opposed to."

Policies, Section 704.8(a)(2). The revised proposed rule eliminated the redundancies with § 704.5(a) and changed the term "current NEV" to "base case NEV" to provide uniform usage throughout the regulation. No commenters addressed these provisions, and they are deleted or modified as proposed.

Section 704.8(a)(5). The revised proposed rule deleted the requirement for a policy limit on decline in net income. One commenter supported this

deletion, and it is deleted in the final rule.

Section 704.8(a)(6). The revised proposed rule added a requirement for the asset and liability management policy to address the tests used before purchase, to include an estimate of the impact of proposed investments on the percentage decline in NEV, as compared to the base case NEV. One commenter opposed this requirement. The commenter advocated the tests should be reviewed as a supervisory issue. As noted in the preamble to the revised proposed rule, this provision is intended to require a corporate to establish an ongoing process to identify, estimate, monitor and control interest rate risk between the periodic complete NEV analyses. 67 FR at 44277. The Board believes a corporate's board should establish policy parameters for this process and has retained this section as proposed.

Penalty for early withdrawals, Section 704.8(c). The revised proposed rule clarified that the minimum penalty for early certificate/share withdrawal, if early withdrawal is permitted, must be reasonably related to the rate that the corporate would be required to offer to attract funds for a similar term with similar characteristics. The preamble noted a gain does not appear consistent with the notion of a penalty for early withdrawal. 67 FR at 44278.

No commenters addressed the text of the revised proposed rule, however, nine commenters objected to the statement in the preamble that a gain does not appear consistent with the notion of a penalty for early withdrawal. *Id.* The commenters asserted a gain could be paid on early withdrawal of a share certificate and still meet the requirement of a penalty for early withdrawal. The commenters noted this is consistent with the "mark to market" premise of a penalty sufficient to cover the estimated replacement cost of the redeemed certificate. The commenters also noted the need to be competitive with alternative instruments that could provide members with liquidity and gains, without the need to increase the balance sheet of both the corporate and the member by a share secured loan if a gain could not be paid.

The Board does not believe that the concept of a penalty can be equated with the payment of a gain and reiterates that a gain is not permissible in conjunction with a penalty for early withdrawal. In addition, the Board is concerned that contractual provisions for redemption of a deposit at a gain may have the unintended consequence of encouraging a run on a substantially impaired corporate by members seeking to obtain gains. The Board acknowledges holders of debt securities may freely transact with third-party participants in the secondary market at a price that may result in a gain to the holder. However, debt security issuers typically are not subject to repurchase demands by debt holders. This is because the holder of a typical debt security does not have the right to put the debt to the issuer at a market price.

Interest rate sensitivity analysis, Section 704.8(d). The revised proposal deleted the requirement to conduct net interest income simulations. One commenter supported the elimination of the requirement for net interest income simulations, and it is deleted in the final rule.

The revised proposed rule deleted the word "Treasury" to permit evaluation of the impact of shocks in appropriate yield curves on its NEV and NEV ratio, since the market has moved away from the Treasury yield curve as a benchmark. No comments were received on this provision, and it is amended as proposed.

Section 704.8(d)(1)(i). The revised proposed rule increased from two to three percent the minimum base case NEV ratio that triggers monthly interest rate sensitivity analysis testing. One commenter suggested setting the trigger at four percent, rather than three percent, since the base case NEV ratio for most corporates will increase significantly because of the new definition of NEV.

The Board is comfortable with a three percent NEV trigger for monthly testing in base corporates, in large measure because the corporate system has improved its ability to identify, measure, monitor and control interest rate risk since the existing regulation was adopted. In addition, the estimation requirements of amended § 704.8(a)(6) typically provide adequate information for a base corporate with a minimum base case NEV ratio of at least three percent to monitor and control interest rate risk between complete periodic reevaluations. The Board recognizes base case NEV ratios are likely to increase substantially under the amended definition of NEV. The section is retained as proposed.

Section 704.8(d)(1)(ii) limited a corporate's risk exposure to levels that do not result in any NEV ratio resulting from the specified parallel shock tests, or a base case NEV ratio, of less than two percent, rather than the current one percent. No comments were received on this provision, and it is retained as proposed.

Section 704.8(d)(1)(iii). The proposal reduced the NEV decline limit for a base corporate from 18 to 15 percent. This represented an increased level of risk compared to the current rule, since the proposal excluded MCs from liabilities and, therefore, increased the base case NEV.

Two commenters recommended the Board retain the 18 percent limit: one noted this represented little interest rate risk and the other was not aware of any significant deterioration of a base corporate because of interest rate risk. In contrast, one commenter suggested reducing the NEV decline limit to 10 percent, to avoid increasing the amount of interest rate risk permitted.

As noted in the preamble to the revised proposed rule, the Board is comfortable with the increased risk because the corporate system has improved its ability to measure interest rate risk since the existing regulation was adopted. 67 FR at 44278. In addition, the estimation requirements of amended § 704.8(a)(6) provide adequate information for a corporate to monitor and control interest rate risk between complete periodic reevaluations. The Board does not believe it is prudent to increase the amount of interest rate risk that a base corporate may undertake further than the proposed 15 percent decline in NEV. Corporates meeting the requirements for expanded authority provisions are permitted to undertake additional interest rate risk. Thus, this section is retained as proposed.

Section 704.8(d)(2). The revised proposed rule required all corporates to assess annually whether it is appropriate to conduct periodic, additional, interest rate risk tests. These additional tests formerly were triggered based on the level of unmatched embedded options. No comments were received on this provision, and it is retained as proposed.

Regulatory Violations and Policy Violations, Section 704.8(e) and (f). The revised proposed changes were non-substantive, grammatical amendments and also designated the OCCU Director to respond to regulatory violations. No comments were received on these sections, and they are retained as proposed.

Divestiture, Section 704.10

The Board did not propose any changes to this provision; however, because of confusion concerning this provision, the Board proposed retitling it "Investment Action Plan." This change clarifies that divestiture is not the only remedy available under this section. No commenters opposed the title change; however, five commenters objected to the current inclusion of derivative contracts under the divestiture requirements of this section. They stated that these contracts are not investments and should not be subject to this provision. The commenters noted that these contracts are not freely tradable between third parties, as is the case with traditional investment instruments, and the cost for a corporate to "unwind" a derivative contract can be excessive.

The Board has consistently interpreted derivatives as subject to the requirements for investments. 12 CFR parts 703 and 704. Further, the Board believes these transactions should be subject to the requirements for an investment action plan because of the credit risk of the counterparty. Risk mitigation within the contract will have a significant impact on the Board's willingness to allow the corporate to hold instruments where the issuing entity has been downgraded. The Board is aware there are costs involved in unwinding a derivative contract and will review each plan submitted by a corporate weighing the costs of unwinding the derivative versus the risks associated with holding it. In addition, the Board has added clarifying language to Appendix B, Part IV to clarify how § 704.10 applies to derivative contracts. The Board remains convinced that corporates should not be allowed to hold financial contracts or investments from counterparties with excessive levels of credit risk and so will continue to interpret derivatives as investments under this provision. The Board is revising the title as proposed.

Corporate CUSOs, Section 704.11

The revised proposed rule added new due diligence requirements for corporates' loans to corporate CUSOs. These requirements were taken from the member business loan rule. No commenters commented on this provision and the Board is adopting it in the final rule.

The revised proposed rule maintains a limit of 15 percent of capital for investments in corporate CUSOs, increases the aggregate limit for loans and investments to 30 percent of capital, and retains the additional 15 percent for loans that are fully secured. One commenter objected stating the proposal was too limiting. Another commenter suggested clarifying that the 30 percent aggregate limit for loans and investments does not include the additional 15 percent for loans that are fully secured. The Board believes the increased limits strike the appropriate balance between added flexibility and safety and soundness and is retaining them as proposed in the final rule. The Board notes that the 30 percent aggregate limit does not include the additional 15 percent for loans that are fully secured.

The preamble to the revised proposed rule explained that the current audit requirements in § 704.11(d)(3) do not require a separate CPA audit for wholly owned CUSOs. This modification mirrored the practice that is currently permissible for natural person CUSOs. 63 FR 10743, 10747, March 5, 1998. Six commenters suggested that this exemption be stated in the regulation and it also apply to majority owned CUSOs. The Board agrees and the final regulation states that a wholly owned or majority owned CUSO is not required to obtain a separate annual audit if it is included in the corporate's consolidated audit.

Based on a request from six commenters, the revised proposal amended § 704.11(b) so that it mirrors § 712.6 of the natural person CUSO rule. Section 704.11(b) prohibits a corporate from acquiring control directly or indirectly of another "financial institution" and § 712.6 prohibits a natural person credit union from acquiring control directly or indirectly of another "depository financial institution." One commenter questioned the authority of the Board to limit "financial institution" with the modifier "depository." The Board's long-standing interpretation of financial institution is that it means a deposit taking institution. 51 FR 10353, 10354, March 26, 1986. This interpretation has been reflected in the natural person CUSO rule since 2001 and the Board believes adopting it in the corporate CUSO rule is appropriate. 66 FR 40575, August 3, 2001. This commenter also objected to the current prohibition on a corporate investing in the shares, stocks or obligations of a CUSO that is a financial institution. The commenter notes that this prohibition is broader than either the limitation in the Federal Credit Union (FCU) Act or the natural person CUSO regulation that only prohibit "acquir[ing] control directly or indirectly" and do not prohibit "invest[ing]" in a financial institution. 12 U.S.C. 1757(7)(I); 12 CFR 712.6. The Board agrees and is deleting this prohibition from the final rule.

The revised proposal clarified that the aggregate limit of § 723.16, the member business loan rule, applies to loans to CUSOs. No comments were received on this clarification and the Board is retaining it in the final rule.

Permissible Services, Section 704.12

The revised proposal listed eight broad categories of permissible financial services for corporates with examples under each category. This was modeled after the broad categories in parts 712 and 721. The Board received no comments on this provision, except as to its applicability to state-chartered corporates, and is retaining it in the final as proposed.

The revised proposal, at the commenters' suggestion, added a provision similar to the provisions in parts 712 and 721 concerning adding new permissible services. It permits corporates to petition the Board to add a new service to § 704.12 and encourages them to seek an advisory opinion from the Office of General Counsel (OGC) on whether a proposed service is already covered by one of the authorized categories before filing a petition. The rule does not require a corporate to come to OGC for an opinion every time it wants to provide a service not specifically listed as an example under a broad category. An opinion from OGC is recommended if there is doubt as to whether a specific service falls within one of the broad categories. In those situations, a corporate that does not consult with OGC runs the risk of engaging in an impermissible activity and being subject to supervisory action. Six commenters objected to or requested clarification on the applicability of this provision to state-chartered corporates. The commenters suggest that, at a minimum, since a state-chartered corporate's authority to engage in an activity is derived from its state statute and not the FCU Act, the appropriate approach for state charters is to request a waiver, rather than a rule change, to add an activity that may be impermissible for federal corporates. The Board would then base its decision to grant or deny the waiver on any safety and soundness concerns it has with the proposed activity. The Board agrees with the commenters and is revising the final rule to reflect a waiver process for state-chartered corporates.

The revised proposal deleted the requirement that services to nonmember natural person credit unions through a correspondent services agreement could only be provided to those natural person credit unions' branch offices in the corporate's geographic field of membership. In addition, the revised proposal clarified that a correspondent services agreement is an agreement between two corporates for one of the corporates to provide services to the members of the other. One commenter reiterated its objection to the clarification that correspondent services can only be provided through an agreement with another corporate credit union. The Board remains committed to the fundamental principle that credit

unions, including corporates, are formed to serve their members and is adopting the requirements in the revised proposal for correspondent services in the final rule.

The revised proposal also moved the current prohibition on the purchase of "mortgage servicing rights" from the investment section to this section and renamed it "loan servicing rights." The Board has reconsidered removing this prohibition from the investment section. The Board will retain the prohibition in the investment section to clarify that this is not a permissible investment. It will also include the prohibition in this section. Although this activity is a permissible service for natural person credit unions under limited circumstances, the Board has safety and soundness concerns with corporates engaging in this activity, and will continue to prohibit this service for corporates.

One commenter suggested clarifying that the prohibition on the purchase of loan servicing rights does not apply if a corporate has the authority to purchase loans and the purchase of servicing rights are in conjunction with that purchase. The Board agrees that the purchase of servicing rights in conjunction with the purchase of a loan is not prohibited.

Fixed Assets, Section 704.13

The revised proposal eliminated this section. No commenters commented on this change. Therefore, the revised proposal reflects this change.

Representation, Section 704.14

The revised proposal clarified the meaning of the term "credit union trade association" in § 704.14(a) by adding to the regulation the definition of "credit union trade association" that was in the preamble to the prior final rule. 59 FR 59357, 59358, November 17, 1994. The thirteen commenters that commented on this clarification objected to adding a definition of "credit union trade association." The commenters erroneously perceived this as a change and stated that it unnecessarily limited the pool of qualified applicants and is not needed in light of the recusal provisions in § 704.14(d). The commenters stated that the restrictive definition ignores the reality that natural person CEOs on corporate boards are often the most active in the credit union community serving multiple roles at the chapter, league and national level. Several of these commenters suggested amending the definition so that it is not so limiting. They suggested only including the state credit union leagues of the state in which the corporate is headquartered. One commenter fails to see how loyalty is divided if the chair serves on the board of an affinity group such as a defense, automotive or educational trade association. This commenter suggests only prohibiting state or multi-state leagues.

The Board continues to believe that the chairman of the board of a corporate should not serve simultaneously as an officer, director or employee of a national credit union trade association. As the Board stated when this provision was originally drafted, "the chair should be an individual whose loyalty is *in no way divided* between the corporate credit union and a trade association." 59 FR 59357, 59358, November 17, 1994 (emphasis added). The Board, however, agrees that the definition is broader than is necessary to accomplish its objective of having a chair "whose loyalty is in no way divided" and is deleting from the prohibition "and their affiliates and service organizations, and local, state, and national special interest credit union associations and organizations."

The revised proposal amended the requirement in § 704.14(a) that both federal and state-chartered corporates comply with federal corporate bylaws governing election procedures. All corporates will have to comply with § 704.14(a) governing election procedures but state-chartered corporates will not have to comply with federal corporate bylaws. No commenters commented on this amendment. The Board is retaining this change in the final rule.

Wholesale Corporate Credit Unions, Section 704.19

The revised proposed rule eliminated the proposed 1 percent minimum RUDE ratio requirement and replaced it with an earnings retention requirement when the retained earnings ratio falls below 1 percent.

Three commenters addressed the earnings retention requirement. One commenter disagreed with the proposal stating despite the two-tier corporate structure, the earnings retention requirement should be the same as established for retail corporates. This commenter is concerned with the potential for a significant financial crisis in the credit union industry if a wholesale corporate fails. The Board remains convinced a separate wholesale corporate earnings retention requirement is appropriate based upon the corporate system's tiered capital structure.

One commenter expressed concern with the earnings retention requirement being met by either the current month or rolling 3-month calculation. This commenter believes wholesale corporates should be permitted to meet the earnings retention requirement based on a rolling 12-month average as presently permitted for reserve transfers. The Board believes sufficient flexibility for meeting the earnings retention requirement exists by using either the current month or rolling 3-month calculation. The Board notes the OCCU Director may approve a decrease in the earnings retention amount in the rare event a lesser amount is necessary to avoid a significant adverse impact upon a wholesale corporate.

One commenter stated the .15 percent per annum earnings retention requirement when the retained earnings ratio is less than 1 percent and the core capital ratio is less than 3 percent neither considers the tiering of reserves in the corporate system nor the narrow margins necessary for a wholesale corporate to offer competitive investment products. This commenter believes the earnings retention factor should be .10 percent per annum when the retained earnings ratio is less than 1 percent and the core capital ratio is less than 3 percent. The Board is not persuaded by this argument. The Board considers wholesale corporates subject to .15 percent per annum earnings retention requirement to be thinly capitalized. The Board believes wholesale corporates have numerous options available to reduce the earnings retention requirement if the .15 percent per annum earnings retention requirement is too onerous. For example, wholesale corporates can issue additional PIC to increase the core capital ratio to at least 3 percent or they can use off balance sheet activities to shrink their balance sheet.

Two commenters disagreed with the payment of dividend language in revised proposed § 704.19(b)(5) for many of the same reasons commenters opposed the language contained in revised proposed § 704.3(i)(5) for retail corporates. One commenter recommended substituting a notification provision for the current language. The Board agrees and, for the reasons stated in § 704.3, the final rule replaces the limitations on the payment of dividends with notification and restoration plan requirements.

Appendix A to Part 704—Model Forms

The revised proposal added language to the model forms to clarify the treatment of MC and PIC in the event of the merger, liquidation, or charter conversion of a member credit union or the corporate credit union. Six commenters raised objections to the proposed clarifications. The commenters expressed concern that the additional requirements, rather than being a clarification to the existing language, alter the contractual agreement between the corporate and its members. A number of commenters also noted the additional language might create potential legal, regulatory, and operational problems. One commenter recommended leaving the added language in Appendix A and making the additional disclosure voluntary. Several commenters noted that natural person credit unions are not bound by part 704, nor is a continuing entity in the event of a charter conversion. Further, the commenters contended that, in the case of a liquidation or charter conversion, the member holding the MC or PIC account ceases to exist. As the entity no longer exists, its membership automatically terminates and its shares, including MC and PIC, should be paid out in accordance with applicable law. The commenters argued the model forms conflict with the Corporate Federal Credit Union Bylaws, and they may also conflict with applicable state laws for state-chartered credit unions. Several commenters indicated the existing language was adequate and it should be left up to each corporate to determine how to handle MC in the event of a merger, liquidation, or charter conversion based on its own capital management plan and applicable laws and regulations.

The Board does not believe the language added to Appendix A and to the requirements for MC in § 704.3(b)(3) create any additional legal, regulatory, or operational problems. The current regulation requires all MC accounts to have a minimum three-year notice. 12 CFR 704.2. The regulation does not provide any exceptions to the three-year notice requirement. The clarifying language has been added because OCCU has received inquiries as to how to handle MC in the event of merger, liquidation or charter conversion.

In the event of a merger, the existence of the MC should be identified as part of the due diligence process. The continuing credit union has the right to put the MC on notice. If the continuing credit union is a member of the corporate, an adjusted balance account may be adjusted at the next adjustment period. If the account is not an adjusted balance account, the continuing credit union would not be in violation of § 703.100, as that section specifically states the measure is assets "*at the time of purchase*" of the MC. In the event of a charter conversion, as with a merger, the existence and requirements of the MC should be identified during the due diligence leading up to a charter conversion. The new entity may place the MC on notice and collect the funds at the end of the three-year notice period. In the event of a liquidation, the Liquidating Agent may submit a request to the OCCU Director to allow the corporate to release the funds before the end of the three-year notice period.

The existing regulation is very specific that the only means by which a credit union may obtain its funds in an MC account is after the three-year notice or if it sells it to another credit union with the concurrence of the corporate. 12 CFR 704.2. The language was drafted to provide as much "permanence" to the three-year accounts as possible so they could be considered as capital. The regulatory requirements in the corporate rule and the contractual provisions of the MC concerning the three-year notice requirement do not conflict with the general provision in the Corporate Federal Credit Union Bylaws governing withdrawal of shares. Article III, Section 5 of the bylaws states a corporate's board may not require a member to give more than 60 days notice of intent to withdraw. This general withdrawal provision is not intended to apply to accounts that the member is contractually obligated to maintain for a period in excess of 60 days. Based on the requirements of current § 704.2, there should be no outstanding MC with conditions that would cause legal, regulatory, or operational concerns due to the addition of the clarifying language.

One commenter suggested revising the wording of § 704.3(b)(5) by changing the words "credit union" to "another member" to permit one member of the corporate to sell its MC to another member rather than only to a credit union in the corporate's field of membership. The Board concurs with the recommendation and has adopted this change in the final rule.

Appendix B to Part 704—Expanded Authorities and Requirements

In the revised proposed rule the Board proposed changes to: expand permissible credit ratings on investments; permit corporates that pre-commit to a higher level of capital the option of a higher level of interest rate risk; ease the requirements for corporates to participate in risk reducing derivative activities; and permit corporates to participate in loan participations with natural person credit unions. In addition, the revised proposal eliminated the proposed requirement for corporates to update the self assessment plan originally submitted for expanded authority. No comments were received objecting to the removal of this requirement and it is retained as proposed.

Base-Plus

In the revised proposed rule, the Board proposed a maximum NEV decline of 20 percent. Several commenters believed the limit should remain at its current 25 percent level, and one commenter believed the level should be decreased. The Board remains convinced that the proposed level is appropriate given the requirement of monthly NEV analysis. The Board is adopting the limits from the revised proposed rule.

Parts I and II

In the revised proposed rule, the Board proposed NEV decline limits based on capital levels. Several commenters opposed the proposed limits recommending the limits remain at current levels, and one commenter recommended lower levels. The Board has greater confidence in the ability of the corporate credit unions to model their balance sheets accurately; therefore, the limits were proposed at levels where the corporates can manage their balance sheets without taking excessive levels of risk. The Board was not convinced to change the levels either up or down; therefore, the Board is adopting the limits from the revised proposed rule.

The Board will permit any corporate currently approved for Part I or Part II Expanded Authorities to request to lower its NEV decline limit in conjunction with a request to lower its minimum capital requirement from 5 or 6 percent, respectively.

In the revised proposed rule, the Board proposed limits for the aggregate credit exposure to a single obligor at 50 percent of capital. Several commenters objected that the 50 percent of capital general concentration limit was too restrictive, particularly for corporates with expanded authorities. The commenters recommended increasing concentration limits to 100 percent, particularly for long-term instruments rated not lower than AA– and short-term investments rated no lower than A–1. The Board continues to believe this limit is the most credit exposure a corporate should prudently take in investment quality investments.

In the revised proposed rule, the Board established a 300 percent of capital limit for Part I, and 400 percent limit for Part II on aggregate investments in repurchase and securities lending agreements with any one counterparty. Several commenters objected to the

limits stating that these levels will significantly reduce their existing limits. The Board continues to believe the proposed levels are prudent given the secured nature of the activity and the increased requirements for credit analysis for Part I and II corporates; however, the Board believes increasing the limits beyond those proposed would raise safety and soundness concerns. The Board is adopting the limits as proposed in the revised proposed rule.

In the revised proposed rule, the Board tied minimum capital ratings of short-term investments to a minimum issuer long-term rating. One commenter contended that the requirement tying short-term and long-term ratings together is not representative of credit risks in the marketplace because long-term and short-term credit ratings should be assessed independently. The Board remains convinced that the overall credit quality of the issuer must fall within the limits of this rule and is adopting the proposed requirements.

Part II

The Board proposed lowering the minimum credit rating requirement for a long-term investment (including asset-backed securities) to BBB (flat). Three commenters recommended that BBB (flat) concentration limit be reduced to 25 percent and the concentration limit for AAA rated investments be increased to 100 percent of total capital. One commenter recommended the concentration limit for AAA rated investments be set at 75 percent for Part I and 100 percent for Part II. One commenter stated that corporates with higher levels of expanded authority have demonstrated the ability to manage the risks inherent in these lower rated instruments. The commenter also noted that corporates are in the business of managing risk. One commenter was opposed to permitting any investment in BBB (flat) rated securities. Based on the comments and further analysis of the risk, the Board believes the limit for BBB+ and BBB (flat) rated instruments with Part II authority should be reduced from the revised proposed rule level of 50 percent to 25 percent of capital. The Board agrees with the commenters that corporates with Part I or II authority do have additional credit monitoring capabilities allowing them to move down the credit scale and this authority requires the additional infrastructure stipulated in this rule and its appendixes.

Part III

In response to the proposed rule, several commenters noted that Part III granted preference to foreign banks over other foreign counterparties. The revised proposal permitted corporates to purchase investments from any approved entity with an acceptable NRSRO rating within a country with an acceptable country rating. This change allowed corporates greater flexibility in managing their investments. No comments were received and the Board is adopting this change as proposed.

In addition, the revised proposal incorporated the changes from the proposed rule. No comments were received and, for the reasons stated in the revised proposal, the Board is adopting these changes as proposed. 67 FR at 44283.

Part IV

Part IV expanded authorities have been restructured to provide more flexibility among corporates seeking to use derivatives to reduce risk. The current rule requires corporates to have either Part I or II expanded authorities to qualify for Part IV. The proposal removed this requirement. The Board believes that all corporates demonstrating and possessing the resources, knowledge, systems, and procedures necessary to measure, monitor, and control the risks associated with derivative transactions should be permitted to use these powers. As with all expanded authorities, the corporate in its application must detail the specific types of derivatives they may utilize. The Board believes that derivative transactions, used properly, reduce risk to the institution and its members.

In the revised proposed rule, the Board broadened the authority of corporates to enter into derivative transactions by adding government sponsored enterprises, member credit unions, and entities fully guaranteed by an entity with a minimum permissible rating for a comparable term investment. No negative comments were received, and the Board is adopting this change as proposed.

Several commenters noted that the revised proposed rule should state that Part III expanded authority was required for a corporate to enter into derivative contracts with a foreign counterparty. The Board has amended Part IV to clarify this.

In the revised proposed rule, Part IV (b)(1) detailed the requirements for counterparty credit ratings. Several commenters noted in their comments on § 704.10 that derivatives are not investments; therefore Section 704.10 should not apply. As previously stated, the Board has consistently interpreted derivatives as investments for purposes of parts 703 and 704. In addition, the Board believes that without credit mitigation within the contract, these instruments may present excessive levels of credit risk if a counterparty is downgraded. Therefore, Part IV is amended to clarify that compliance with § 704.10 is required if the counterparty is downgraded below permissible levels.

Delegations of Authority

Although not in the initial proposed rule, the Board, in an effort to streamline the regulatory approval process, has delegated to the OCCU Director in the revised proposal, the authority to act on its behalf in §§ 704.3(e), (g) and (i); 704.8(e); 704.10; 704.15; and 704.19(b).

Technical Correction

The Board has revised the wording in § 704.18(e) to conform to the new terminology in part 704.

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (those under $1 million in assets). The rule only applies to corporates, all of which have assets well in excess of $1 million. The final amendments will not have a significant economic impact on a substantial number of small credit unions and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the final regulation does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. NCUA currently has OMB clearance for part 704's collection requirements (OMB No. 3133–0129).

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The executive order states that: "National action limiting the policymaking discretion of the states shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance." The risk of loss to federally insured credit unions and the NCUSIF caused by actions of corporates are concerns of national scope. The final rule will help assure that proper safeguards are in place to ensure the safety and soundness of corporates.

The rule applies to all corporates that accept funds from federally insured credit unions. NCUA believes that the protection of such credit unions, and ultimately the NCUSIF, warrants application of the proposed rule to all corporates, including nonfederally insured. The rule does not impose additional costs or burdens on the states or affect the states' ability to discharge traditional state government functions. NCUA has determined that this rule may have an occasional direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. However, the potential risk to the NCUSIF without the final changes justifies them.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. The regulatory change is understandable and imposes minimal regulatory burden. NCUA requested comments on whether the proposed rule was understandable and minimally intrusive if implemented as proposed. No comments were received.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget is reviewing whether this rule is a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

12 CFR Part 703

Credit unions, Investments.

12 CFR Part 704

Credit unions, Reporting and recordkeeping requirements, Surety bonds.

By the National Credit Union Administration Board on October 17, 2002.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR parts 703 and 704 as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

1. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), and 1757(15).

2. Amend § 703.100 paragraph (c) by revising the second and third sentences and adding a fourth sentence to read as follows:

§ 703.100 What investments and investment activities are permissible for me?

* * * * *

(c) * * * Your aggregate amount of paid-in capital and membership capital in one corporate credit union is limited to two percent of your assets measured at the time of investment or adjustment. Your aggregate amount of paid-in capital and membership capital in all corporate credit unions is limited to four percent of your assets measured at the time of investment or adjustment. Paid-in capital and membership capital are defined in part 704 of this chapter.

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PART 704—CORPORATE CREDIT UNIONS

3. The authority citation for part 704 continues to read as follows:

Authority: 12 U.S.C. 1762, 1766(a), 1781, and 1789.

4. Amend § 704.2 as follows:

a. Remove the definition of "*commercial mortgage related security*", "*correspondent services*", "*credit enhancement*", "*dealer bid indication*", "*expected maturity*", "*industry recognized information provider*", "*long term investment*", "*market price*", "*matched*", "*member paid-in capital*", "*mortgage servicing*", "*net interest income*", "*non member paid-in capital*", "*non secured obligation*", "*prepayment model*", "*real estate mortgage investment conduit (REMIC)*", "*reserve ratio*", "*reserves and undivided earnings*", "*short-term investment*", and "*trade association*";

b. Revise the definitions of "*capital*", "*collateralized mortgage obligation (CMO)*", "*fair value*", "*forward settlement*", "*membership capital*", "*mortgage related security*", "*paid-in capital*", "*regular-way settlement*", "*repurchase transaction*", and "*residual interest*";

c. Amend the definitions of "*asset-backed security*" by revising the definition heading and the last sentence, and "*net economic value (NEV)*" by revising the second and third sentences; and

d. Add new definitions for "*core capital*", "*core capital ratio*", "*limited liquidity investment*", "*obligor*", "*quoted market price*", "*retained earnings*", and "*retained earnings ratio*".

§ 704.2 Definitions.

* * * * *

Asset-backed security (ABS) * * * This definition excludes mortgage related securities.

Capital means the sum of a corporate credit union's retained earnings, paid-in capital, and membership capital.

* * * * *

Collateralized mortgage obligation (CMO) means a multi-class mortgage related security.

Core capital means the corporate credit union's retained earnings and paid-in capital.

Core capital ratio means the corporate credit union's core capital divided by its moving daily average net assets.

* * * * *

Fair value means the amount at which an instrument could be exchanged in a current, arms-length transaction between willing parties, as opposed to a forced or liquidation sale. Quoted market prices in active markets are the best evidence of fair value. If a quoted market price in an active market is not available, fair value may be estimated using a valuation technique that is reasonable and supportable, a quoted market price in an active market for a similar instrument, or a current appraised value. Examples of valuation techniques include the present value of estimated future cash flows, option-pricing models, and option-adjusted spread models. Valuation techniques should incorporate assumptions that market participants would use in their estimates of values, future revenues, and future expenses, including assumptions about interest rates, default, prepayment, and volatility.

* * * * *

Forward settlement of a transaction means settlement on a date later than regular-way settlement.

* * * * *

Limited liquidity investment means a private placement or funding agreement.

* * * * *

Membership capital means funds contributed by members that: are adjustable balance with a minimum withdrawal notice of 3 years or are term certificates with a minimum term of 3 years; are available to cover losses that exceed retained earnings and paid-in capital; are not insured by the NCUSIF or other share or deposit insurers; and cannot be pledged against borrowings.

Mortgage related security means a security as defined in section 3(a)(41) of the Securities Exchange Act of 1934,15 U.S.C. 78c(a)(41), *e.g.*, a privately-issued security backed by mortgages secured by real estate upon which is located a dwelling, mixed residential and commercial structure, residential manufactured home, or commercial structure that is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization.

* * * * *

Net economic value (NEV) * * * All fair value calculations must include the value of forward settlements and embedded options. The amortized portion of membership capital and paid-in capital, which do not qualify as capital, are treated as liabilities for purposes of this calculation. * * *

Obligor means the primary party obligated to repay an investment, *e.g.*, the issuer of a security, the taker of a deposit, or the borrower of funds in a federal funds transaction. Obligor does not include an originator of receivables underlying an asset-backed security, the servicer of such receivables, or an insurer of an investment.

* * * * *

Paid-in capital means accounts or other interests of a corporate credit union that: are perpetual, non-cumulative dividend accounts; are available to cover losses that exceed retained earnings; are not insured by the NCUSIF or other share or deposit insurers; and cannot be pledged against borrowings.

* * * * *

Quoted market price means a recent sales price or a price based on current bid and asked quotations.

Regular-way settlement means delivery of a security from a seller to a buyer within the time frame that the securities industry has established for immediate delivery of that type of security. For example, regular-way settlement of a Treasury security includes settlement on the trade date ("cash"), the business day following the trade date ("regular way"), and the second business day following the trade date ("skip day").

Repurchase transaction means a transaction in which a corporate credit union agrees to purchase a security from a counterparty and to resell the same or any identical security to that counterparty at a specified future date and at a specified price.

* * * * *

Residual interest means the remainder cash flows from a CMO or ABS transaction after payments due bondholders and trust administrative expenses have been satisfied.

Retained earnings means the total of the corporate credit union's undivided earnings, reserves, and any other appropriations designated by management or regulatory authorities. For purposes of this regulation, retained earnings does not include the allowance for loan and lease losses account, accumulated unrealized gains and losses on available for sale securities, or other comprehensive income items.

Retained earnings ratio means the corporate credit union's retained earnings divided by its moving daily average net assets.

* * * * *

5. Amend § 704.3 as follows:

a. Amend paragraph (a) by revising the paragraph heading;

b. Redesignate paragraphs (d) through (g) as paragraphs (e) through (h) and paragraph (b) as paragraph (d);

c. Remove paragraph (c);

d. Add paragraphs (b), (c), and (i); and

e. Revise redesignated paragraphs (e) heading, (e)(1) introductory text, (e)(2) and (e)(3)(iii) and (f).

§ 704.3 Corporate credit union capital.

(a) *Capital plan.* * * *

(b) *Requirements for membership capital*—(1) *Form.* Membership capital funds may be in the form of a term certificate or an adjusted balance account.

(2) *Disclosure.* The terms and conditions of a membership capital account must be disclosed to the recorded owner of the account at the time the account is opened and at least annually thereafter.

(i) The initial disclosure must be signed by either all of the directors of the member credit union or, if authorized by board resolution, the chair and secretary of the board; and

(ii) The annual disclosure notice must be signed by the chair of the corporate credit union. The chair must sign a statement that certifies that the notice has been sent to member credit unions with membership capital accounts. The certification must be maintained in the corporate credit union's files and be available for examiner review.

(3) *Three-year remaining maturity.* When a membership capital account has been placed on notice or has a remaining maturity of less than three years, the amount of the account that can be considered membership capital is reduced by a constant monthly amortization that ensures membership capital is fully amortized one year before the date of maturity or one year before the end of the notice period. The full balance of a membership capital account being amortized, not just the remaining non-amortized portion, is available to absorb losses in excess of the sum of retained earnings and paid-in capital until the funds are released by the corporate credit union at the time of maturity or the conclusion of the notice period.

(4) *Release.* Membership capital may not be released due solely to the merger, charter conversion or liquidation of a member credit union. In the event of a merger, the membership capital transfers to the continuing credit union. In the event of a charter conversion, the membership capital transfers to the new institution. In the event of liquidation, the membership capital may be released to facilitate the payout of shares with the prior written approval of the OCCU Director.

(5) *Sale.* A member may sell its membership capital to another member in the corporate credit union's field of membership, subject to the corporate credit union's approval.

(6) *Liquidation.* In the event of liquidation of a corporate credit union, membership capital is payable only after satisfaction of all liabilities of the liquidation estate, including uninsured share obligations to shareholders and the National Credit Union Share Insurance Fund (NCUSIF), but excluding paid-in capital.

(7) *Merger.* In the event of a merger of a corporate credit union, membership capital transfers to the continuing corporate credit union. The minimum three-year notice period for withdrawal of membership capital remains in effect.

(8) *Adjusted balance accounts:*

(i) May be adjusted no more frequently than once every six months; and

(ii) Must be adjusted in relation to a measure, *e.g.*, one percent of a member credit union's assets, established and disclosed at the time the account is opened without regard to any minimum withdrawal period. If the measure is other than assets, the corporate credit union must address the measure's permanency characteristics in its capital plan.

(iii) *Notice of withdrawal.* Upon written notice of intent to withdraw membership capital, the balance of the account will be frozen (no further adjustments) until the conclusion of the notice period.

(9) *Grandfathering.* Membership capital issued before the effective date of this regulation is exempt from the limitation of § 704.3(b)(8)(i).

(c) *Requirements for paid-in capital*—(1) *Disclosure.* The terms and conditions of any paid-in capital instrument must be disclosed to the recorded owner of the instrument at the time the instrument is created and must be signed by either all of the directors of the member credit union or, if authorized by board resolution, the chair and secretary of the board.

(2) *Release.* Paid-in capital may not be released due solely to the merger, charter conversion or liquidation of a member credit union. In the event of a merger, the paid-in capital transfers to the continuing credit union. In the event of a charter conversion, the paid-in capital transfers to the new institution. In the event of liquidation, the paid-in capital may be released to facilitate the payout of shares with the prior written approval of the OCCU Director.

(3) *Callability.* Paid-in capital accounts are callable on a pro-rata basis across an issuance class only at the option of the corporate credit union and only if the corporate credit union meets its minimum level of required capital and NEV ratios after the funds are called.

(4) *Liquidation.* In the event of liquidation of the corporate credit union, paid-in capital is payable only after satisfaction of all liabilities of the liquidation estate, including uninsured share obligations to shareholders, the NCUSIF, and membership capital holders.

(5) *Merger.* In the event of a merger of a corporate credit union, paid-in capital shall transfer to the continuing corporate credit union.

(6) *Paid-in capital.* Paid-in capital includes both member and nonmember paid-in capital.

(i) Member paid-in capital means paid-in capital that is held by the corporate credit union's members. A corporate credit union may not condition membership, services, or prices for services on a credit union's ownership of paid-in capital.

(ii) Nonmember paid-in capital means paid-in capital that is not held by the corporate credit union's members.

(7) *Grandfathering.* A corporate credit union's authority to include paid-in capital as a component of capital is governed by the regulation in effect at the time the paid-in capital was issued. When a grandfathered paid-in capital instrument has a remaining maturity of less than 3 years, the amount that may be considered paid-in capital is reduced by a constant monthly amortization that ensures the paid-in capital is fully amortized 1 year before the date of maturity. The full balance of grandfathered paid-in capital being amortized, not just the remaining non-amortized portion, is available to absorb losses in excess of retained earnings until the funds are released by the corporate credit union at maturity.

* * * * *

(e) *Individual capital ratio requirement*—(1) When significant circumstances or events warrant, the OCCU Director may require a different minimum capital ratio for an individual corporate credit union based on its circumstances. Factors that may warrant a different minimum capital ratio include, but are not limited to:

* * * * *

(2) When the OCCU Director determines that a different minimum capital ratio is necessary or appropriate for a particular corporate credit union, he or she will notify the corporate credit union in writing of the proposed capital ratio and the date by which the capital ratio must be reached. The OCCU Director also will provide an explanation of why the proposed capital ratio is considered necessary or appropriate.

(3) * * *

(iii) After the close of the corporate credit union's response period, the OCCU Director will decide, based on a review of the corporate credit union's response and other information concerning the corporate credit union, whether a different minimum capital ratio should be established for the corporate credit union and, if so, the capital ratio and the date the requirement must be reached. The corporate credit union will be notified of the decision in writing. The notice will include an explanation of the decision, except for a decision not to establish a different minimum capital ratio for the corporate credit union.

(f) *Failure to maintain minimum capital ratio requirement.* When a corporate credit union's capital ratio falls below the minimum required by paragraphs (d) or (e) of this section, or Appendix B to this part, as applicable, operating management of the corporate credit union must notify its board of directors, supervisory committee, and the OCCU Director within 10 calendar days.

* * * * *

(i) *Earnings retention requirement.* A corporate credit union must increase retained earnings if the prior month-end retained earnings ratio is less than 2 percent.

(1) Its retained earnings must increase:

(i) During the current month, by an amount equal to or greater than the monthly earnings retention amount; or

(ii) During the current and prior two months, by an amount equal to or greater than the quarterly earnings retention amount.

(2) Earnings retention amounts are calculated as follows:

(i) The monthly earnings retention amount is determined by multiplying the earnings retention factor by the prior month-end moving daily average net assets; and

(ii) The quarterly earnings retention amount is determined by multiplying the earnings retention factor by moving daily average net assets for each of the prior three month-ends.

(3) The earnings retention factor is determined as follows:

(i) If the prior month-end retained earnings ratio is less than 2 percent and the core capital ratio is less than 3 percent, the earnings retention factor is .15 percent per annum; or

(ii) If the prior month-end retained earnings ratio is less than 2 percent and the core capital ratio is equal to or greater than 3 percent, the earnings retention factor is .10 percent per annum.

(4) The OCCU Director may approve a decrease to the earnings retention amount if it is determined a lesser amount is necessary to avoid a significant adverse impact upon a corporate credit union.

(5) Operating management of the corporate credit union must notify its board of directors, supervisory committee, the OCCU Director and, if applicable, the state regulator within 10 calendar days of determining that the retained earnings ratio has declined below 2 percent. If the decline in the retained earnings ratio is due, in full or in part, to a decline in the dollar amount of retained earnings and the retained earnings ratio is not restored to at least 2 percent by the next month end, a retained earnings action plan is required to be submitted within 30 calendar days.

(6) The retained earnings action plan must be submitted to the OCCU Director and, if applicable, the state regulator and, at a minimum, include the following:

(i) Reasons why the dollar amount of retained earnings has decreased;

(ii) Description of actions to be taken to increase the dollar amount of retained earnings within specific time frames; and

(iii) Monthly balance sheet and income projections, including assumptions, for the next 12-month period.

6. Amend § 704.4 by removing the word "operating" wherever it appears in paragraphs (a) and (b) and revising paragraph (c) introductory text to read as follows:

§ 704.4 Board responsibilities.

* * * * *

(c) *Other requirements.* The board of directors of a corporate credit union must ensure:

* * * * *

7. Amend § 704.5 as follows:

a. Revise paragraphs (a)(1) and (2), (c)(5), (d)(1), (e)(1), (3) and (4), (f), and (h)(2) and(3);

b. Remove paragraphs (c)(6), (d)(3) and (d)(6);

c. Redesignate paragraphs (d)(4) and (d)(5) as paragraphs (d)(3) and (d)(4);

d. Revise redesignated paragraphs (d)(3) and the first sentence of (d)(4);

e. Add paragraph (h)(4); and

f. Add at the end of paragraph (c)(4) after the ";" an "and."

§ 704.5 Investments.

(a) * * *

(1) Appropriate tests and criteria for evaluating investments and investment transactions before purchase; and

(2) Reasonable and supportable concentration limits for limited liquidity investments in relation to capital.

* * * * *

(c) * * *

(5) Domestically-issued asset-backed securities.

(d) * * *

(1) The corporate credit union, directly or through its agent, receives written confirmation of the transaction, and either takes physical possession or control of the repurchase securities or is recorded as owner of the repurchase securities through the Federal Reserve Book-Entry Securities Transfer System;

* * * * *

(3) The corporate credit union, directly or through its agent, receives daily assessment of the market value of the repurchase securities and maintains adequate margin that reflects a risk assessment of the repurchase securities and the term of the transaction; and

(4) The corporate credit union has entered into signed contracts with all approved counterparties and agents, and ensures compliance with the contracts.

* * *

(e) * * *

(1) The corporate credit union, directly or through its agent, receives written confirmation of the loan, obtains a first priority security interest in the collateral by taking physical possession or control of the collateral, or is recorded as owner of the collateral through the Federal Reserve Book-Entry Securities Transfer System;

* * * * *

(3) The corporate credit union, directly or through its agent, receives daily assessment of the market value of collateral and maintains adequate margin that reflects a risk assessment of the collateral and terms of the loan; and

(4) The corporate credit union has entered into signed contracts with all agents and, directly or through its agent, has executed a written loan and security agreement with the borrower. The corporate or its agent ensures compliance with the agreements.

(f) *Investment companies.* A corporate credit union may invest in an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a), provided that the prospectus of the company restricts the investment portfolio to investments and investment transactions that are permissible for that corporate credit union.

* * * * *

(h) * * *

(2) Engaging in trading securities unless accounted for on a trade date basis;

(3) Engaging in adjusted trading or short sales; and

(4) Purchasing stripped mortgage-backed securities, mortgage servicing rights, small business related securities, or residual interests in CMOs or asset-backed securities.

* * * * *

8. Amend § 704.6 by revising paragraph (a) introductory text and paragraphs (a)(3), (a)(4) and (b) through (e) to read as follows:

§ 704.6 Credit risk management.

(a) *Policies.* A corporate credit union must operate according to a credit risk management policy that is commensurate with the investment risks and activities it undertakes. The policy must address at a minimum:

* * * * *

(3) Maximum credit limits with each obligor and transaction counterparty, set as a percentage of capital. In addition to addressing deposits and securities, limits with transaction counterparties must address aggregate exposures of all transactions including, but not limited to, repurchase agreements, securities lending, and forward settlement of purchases or sales of investments; and

(4) Concentrations of credit risk (*e.g.*, originator of receivables, insurer, industry type, sector type, and geographic).

(b) *Exemption.* The requirements of this section do not apply to investments that are issued or fully guaranteed as to principal and interest by the U.S. government or its agencies or enterprises (excluding subordinated debt) or are fully insured (including accumulated interest) by the NCUSIF or Federal Deposit Insurance Corporation.

(c) *Concentration limits*—(1) *General rule.* The aggregate of all investments in any single obligor is limited to 50 percent of capital or $5 million, whichever is greater.

(2) *Exceptions.* Exceptions to the general rule are:

(i) Aggregate investments in repurchase and securities lending agreements with any one counterparty are limited to 200 percent of capital;

(ii) Investments in corporate CUSOs are subject to the limitations of § 704.11; and

(iii) Aggregate investments in corporate credit unions are not subject to the limitations of paragraph (c)(1) of this section.

(3) For purposes of measurement, each new credit transaction must be evaluated in terms of the corporate credit union's capital at the time of the transaction. An investment that fails a requirement of this section because of a subsequent reduction in capital will be deemed nonconforming. A corporate credit union is required to exercise reasonable efforts to bring nonconforming investments into conformity within 90 calendar days. Investments that remain nonconforming for 90 calendar days will be deemed to fail a requirement of this section and the corporate credit union will have to comply with § 704.10.

(d) *Credit ratings.*—(1) All investments, other than in a corporate credit union or CUSO, must have an applicable credit rating from at least one nationally recognized statistical rating organization (NRSRO).

(2) At the time of purchase, investments with long-term ratings must be rated no lower than AA– (or equivalent) and investments with short-term ratings must be rated no lower than A–1 (or equivalent).

(3) Any rating(s) relied upon to meet the requirements of this part must be identified at the time of purchase and must be monitored for as long as the corporate owns the investment.

(4) When two or more ratings are relied upon to meet the requirements of this part at the time of purchase, the board or an appropriate committee must place on the § 704.6(e)(1) investment watch list any investment for which a rating is downgraded below the minimum rating requirements of this part.

(5) Investments are subject to the requirements of § 704.10 if:

(i) One rating was relied upon to meet the requirements of this part and that rating is downgraded below the minimum rating requirements of this part; or

(ii) Two or more ratings were relied upon to meet the requirements of this part and at least two of those ratings are downgraded below the minimum rating requirements of this part.

(e) *Reporting and documentation.* (1) At least annually, a written evaluation of each credit limit with each obligor or transaction counterparty must be prepared and formally approved by the board or an appropriate committee. At least monthly, the board or an appropriate committee must receive an investment watch list of existing and/or potential credit problems and summary credit exposure reports, which demonstrate compliance with the corporate credit union's risk management policies.

(2) At a minimum, the corporate credit union must maintain:

(i) A justification for each approved credit limit;

(ii) Disclosure documents, if any, for all instruments held in portfolio. Documents for an instrument that has been sold must be retained until completion of the next NCUA examination; and

(iii) The latest available financial reports, industry analyses, internal and external analyst evaluations, and rating agency information sufficient to support each approved credit limit.

9. Amend § 704.7 by removing paragraphs (c) through (g), adding paragraphs (c) through (f) and redesignating paragraph (h) as paragraph (g) to read as follows:

§ 704.7 Lending.

* * * * *

(c) *Loans to members*—(1) *Credit unions.* (i) The maximum aggregate amount in unsecured loans and lines of credit to any one member credit union, excluding pass-through and guaranteed loans from the CLF and the NCUSIF, must not exceed 50 percent of capital.

(ii) The maximum aggregate amount in secured loans and lines of credit to any one member credit union, excluding those secured by shares or marketable securities and member reverse repurchase transactions, must not exceed 100 percent of capital.

(2) *Corporate CUSOs.* Any loan or line of credit must comply with § 704.11.

(3) *Other members.* The maximum aggregate amount of loans and lines of credit to any other one member must not exceed 15 percent of the corporate credit union's capital plus pledged shares.

(d) *Loans to nonmembers*—(1) *Credit unions.* A loan to a nonmember credit union, other than through a loan participation with another corporate credit union, is only permissible if the loan is for an overdraft related to the providing of correspondent services pursuant to § 704.12. Generally, such a loan will have a maturity of one business day.

(2) *Corporate CUSOs.* Any loan or line of credit must comply with § 704.11.

(e) *Member business loan rule.* Loans, lines of credit and letters of credit to:

(1) Member credit unions are exempt from part 723 of this chapter;

(2) Corporate CUSOs must comply with § 704.11; and

(3) Other members not excluded under § 723.1(b) of this chapter must comply with part 723 of this chapter unless the loan or line of credit is fully guaranteed by a credit union or fully secured by U.S. Treasury or agency securities. Those guaranteed and secured loans must comply with the aggregate limits of § 723.16 but are exempt from the other requirements of part 723.

(f) *Participation loans with other corporate credit unions.* A corporate credit union is permitted to participate in a loan with another corporate credit union provided the corporate retains an interest of at least 5 percent of the face amount of the loan and a master participation loan agreement is in place before the purchase or the sale of a participation. A participating corporate credit union must exercise the same due diligence as if it were the originating corporate credit union.

* * * * *

10. Amend § 704.8 as follows:

a. Remove paragraphs (a)(2), (a)(5) and (e);

b. Redesignate paragraphs (a)(3) and (a)(4) as (a)(2) and (a)(3), (a)(6) and (a)(7) as (a)(4) and (a)(5), and (f) and (g) as (e) and (f);

c. Add "; and" at the end of redesignated paragraph (a)(5) in place of the period;

d. Add paragraph (a)(6);

e. Revise redesignated paragraphs (a)(2), (e) and (f);

f. Add a sentence to the end of paragraph (c); and

g. Revise paragraphs (d)(1)(i) through (iii) and (d)(2) introductory text.

§ 704.8 Asset and liability management.

(a) * * *

(2) The maximum allowable percentage decline in net economic value (NEV), compared to base case NEV;

* * * * *

(6) The tests that will be used, prior to purchase, to estimate the impact of investments on the percentage decline in NEV, compared to base case NEV. The most recent NEV analysis, as determined under paragraph (d)(1)(i) of this section may be used as a basis of estimation.

* * * * *

(c) * * * This means the minimum penalty must be reasonably related to the rate that the corporate credit union would be required to offer to attract funds for a similar term with similar characteristics.

(d) * * *

(1) * * *

(i) Evaluate the risk in its balance sheet by measuring, at least quarterly, the impact of an instantaneous, permanent, and parallel shock in the yield curve of plus and minus 100, 200, and 300 basis points on its NEV and NEV ratio. If the base case NEV ratio falls below 3 percent at the last testing date, these tests must be calculated at least monthly until the base case NEV ratio again exceeds 3 percent;

(ii) Limit its risk exposure to levels that do not result in a base case NEV ratio or any NEV ratio resulting from the tests set forth in paragraph (d)(1)(i) of this section below 2 percent; and

(iii) Limit its risk exposures to levels that do not result in a decline in NEV of more than 15 percent.

(2) A corporate credit union must assess annually if it should conduct periodic additional tests to address market factors that may materially impact that corporate credit union's NEV. These factors should include, but are not limited to, the following:

* * * * *

(e) *Regulatory violations.* If a corporate credit union's decline in NEV, base case NEV ratio or any NEV ratio resulting from the tests set forth in paragraph (d)(1)(i) of this section violates the limits established by this rule and is not brought into compliance within 10 calendar days, operating management of the corporate credit union must immediately report the information to the board of directors, supervisory committee, and the OCCU Director. If any violation persists for 30 calendar days, the corporate credit

union must submit a detailed, written action plan to the OCCU Director that sets forth the time needed and means by which it intends to correct the violation. If the OCCU Director determines that the plan is unacceptable, the corporate credit union must immediately restructure the balance sheet to bring the exposure back within compliance or adhere to an alternative course of action determined by the OCCU Director.

(f) *Policy violations.* If a corporate credit union's decline in NEV, base case NEV ratio, or any NEV ratio resulting from the tests set forth in paragraph (d)(1)(i) of this section violates the limits established by its board, it must determine how it will bring the exposure within policy limits. The disclosure to the board of the violation must occur no later than its next regularly scheduled board meeting.

10a. Amend § 704.10 by revising the section heading and the first sentence of paragraph (a) to read as follows:

§ 704.10 Investment action plan.

(a) Any corporate credit union in possession of an investment, including a derivative, that fails to meet a requirement of this part must, within 30 calendar days of the failure, report the failed investment to its board of directors, supervisory committee and the OCCU Director. * * *

* * * * *

11. Amend § 704.11 by revising paragraph (b), redesignating paragraphs (c) through (e) as paragraphs (f) through (h), adding paragraphs (c), (d) and (e) and revising redesignated paragraph (g)(3) to read as follows:

§ 704.11 Corporate Credit Union Service Organizations (Corporate CUSOs).

* * * * *

(b) *Investment and loan limitations.* (1) The aggregate of all investments in member and nonmember corporate CUSOs must not exceed 15 percent of a corporate credit union's capital.

(2) The aggregate of all investments in and loans to member and nonmember corporate CUSOs must not exceed 30 percent of a corporate credit union's capital. A corporate credit union may lend to member and nonmember corporate CUSOs an additional 15 percent of capital if the loan is collateralized by assets in which the corporate has a perfected security interest under state law.

(3) If the limitations in paragraphs (b)(1) and (b)(2) of this section are reached or exceeded because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method without an additional cash outlay by the corporate, divestiture is not required. A corporate credit union may continue to invest up to the regulatory limit without regard to the increase in the GAAP valuation resulting from the corporate CUSO's profitability.

(4) The aggregate of all loans to corporate CUSOs must comply with the aggregate limit of § 723.16 of this chapter. This requirement does not apply to loans excluded under § 723.1(b).

(c) *Due diligence.* A corporate credit union must comply with the due diligence requirements of §§ 723.5 and 723.6(f) through (l) of this chapter for all loans to corporate CUSOs. This requirement does not apply to loans excluded under § 723.1(b).

(d) *Separate entity.* (1) A corporate CUSO must be operated as an entity separate from a corporate credit union.

(2) A corporate credit union investing in or lending to a corporate CUSO must obtain a written legal opinion that concludes the corporate CUSO is organized and operated in a manner that the corporate credit union will not reasonably be held liable for the obligations of the corporate CUSO. This opinion must address factors that have led courts to "pierce the corporate veil," such as inadequate capitalization, lack of corporate identity, common boards of directors and employees, control of one entity over another, and lack of separate books and records.

(e) *Prohibited activities.* A corporate credit union may not use this authority to acquire control, directly or indirectly, of another depository financial institution or to invest in shares, stocks, or obligations of an insurance company, trade association, liquidity facility, or similar organization.

* * * * *

(g) * * *

(3) Obtain an annual CPA opinion audit and provide a copy to the corporate credit union. A wholly owned or majority owned CUSO is not required to obtain a separate annual audit if it is included in the corporate credit union's annual consolidated audit; and

* * * * *

12. Revise § 704.12 to read as follows:

§ 704.12 Permissible services.

(a) *Preapproved services.* A corporate credit union may provide to members the preapproved services set out in this section. NCUA may at any time, based upon supervisory, legal, or safety and soundness reasons, limit or prohibit any preapproved service. The specific activities listed within each preapproved category are provided as illustrations of activities permissible under the particular category, not as an exclusive or exhaustive list.

(1) *Correspondent services agreement.* A corporate credit union may only provide financial services to nonmembers through a correspondent services agreement. A correspondent services agreement is an agreement between two corporate credit unions, whereby one of the corporate credit unions agrees to provide services to the other corporate credit union or its members.

(2) *Credit and investment services.* Credit and investment services are advisory and consulting activities that assist the member in lending or investment management. These services may include loan reviews, investment portfolio reviews and investment advisory services.

(3) *Electronic financial services.* Electronic financial services are any services, products, functions, or activities that a corporate credit union is otherwise authorized to perform, provide or deliver to its members but performed through electronic means. Electronic services may include automated teller machines, online transaction processing through a website, website hosting services, account aggregation services, and internet access services to perform or deliver products or services to members.

(4) *Excess capacity.* Excess capacity is the excess use or capacity remaining in facilities, equipment or services that: a corporate credit union properly invested in or established, in good faith, with the intent of serving its members; and it reasonably anticipates will be taken up by the future expansion of services to its members. A corporate credit union may sell or lease the excess capacity in facilities, equipment or services, such as office space, employees and data processing.

(5) *Liquidity and asset and liability management.* Liquidity and asset and liability management services are any services, functions or activities that assist the member in liquidity and balance sheet management. These services may include liquidity planning and balance sheet modeling and analysis.

(6) *Operational services.* Operational services are services established to deliver financial products and services that enhance member service and promote safe and sound operations. Operational services may include tax payment, electronic fund transfers and providing coin and currency service.

(7) *Payment systems.* Payment systems are any methods used to facilitate the movement of funds for transactional purposes. Payment systems may include Automated Clearing House, wire transfer, item processing and settlement services.

(8) *Trustee or custodial services.* Trustee services are services in which the corporate credit union is authorized to act under a written trust agreement to the extent permitted under part 724 of this chapter. Custodial and safekeeping services are services a corporate credit union performs on behalf of its member to act as custodian or safekeeper of investments.

(b) *Procedure for adding services that are not preapproved.* To provide a service to its members that is not preapproved by NCUA:

(1) A federal corporate credit union must request approval from NCUA. The request must include a full explanation and complete documentation of the service and how the service relates to a corporate credit union's authority to provide services to its members. The request must be submitted jointly to the OCCU Director and the Secretary of the Board. The request will be treated as a petition to amend § 704.12 and NCUA will request public comment or otherwise act on the petition within a reasonable period of time. Before engaging in the formal approval process, a corporate credit union should seek an advisory opinion from NCUA's Office of General Counsel as to whether a proposed service is already covered by one of the authorized categories without filing a petition to amend the regulation; and

(2) A state-chartered corporate credit union must submit a request for a waiver that complies with § 704.1(b) to the OCCU Director.

(c) *Prohibition.* A corporate credit union is prohibited from purchasing loan servicing rights.

§ 704.13 [Removed and Reserved]

13. Remove and reserve § 704.13.

14. Amend § 704.14 by revising paragraph (a) introductory text, redesignating paragraphs (b) through (d) as (c) through (e), and adding a new paragraph (b) to read as follows:

§ 704.14 Representation.

(a) *Board representation.* The board will be determined as stipulated in its bylaws governing election procedures, provided that:

* * * * *

(b) *Credit union trade association.* As used in this section, a credit union trade association includes but is not limited to, state credit union leagues and league service corporations and national credit union trade associations.

* * * * *

§ 704.18 [Amended]

15. Amend § 704.18(e)(1), including the table, by removing the words "reserve ratio" wherever they appear and adding in their place, the words "core capital ratio" and removing the words "reserves and undivided" wherever they appear adding in their place, the word "retained."

16. Amend § 704.19 by revising paragraph (b) and removing paragraph (c) as follows:

§ 704.19 Wholesale corporate credit unions.

* * * * *

(b) *Earnings retention requirement.* A wholesale corporate credit union must increase retained earnings if the prior month-end retained earnings ratio is less than 1 percent.

(1) Its retained earnings must increase:

(i) During the current month, by an amount equal to or greater than the monthly earnings retention amount; or

(ii) During the current and prior two months, by an amount equal to or greater than the quarterly earnings retention amount.

(2) Earnings retention amounts are calculated as follows:

(i) The monthly earnings retention amount is determined by multiplying the earnings retention factor by the prior month-end moving daily average net assets; and

(ii) The quarterly earnings retention amount is determined by multiplying the earnings retention factor by moving daily average net assets for each of the prior three month-ends.

(3) The earnings retention factor is determined as follows:

(i) If the prior month-end retained earnings ratio is less than 1 percent and the core capital ratio is less than 3 percent, the earnings retention factor is .15 percent per annum; or

(ii) If the prior month-end retained earnings ratio is less than 1 percent and the core capital ratio is equal to or greater than 3 percent, the earnings retention factor is .075 percent per annum.

(4) The OCCU Director may approve a decrease to the earnings retention amount set forth in this section if it is determined a lesser amount is necessary to avoid a significant adverse impact upon a wholesale corporate credit union.

(5) Operating management of the wholesale corporate credit union must notify its board of directors, supervisory committee, OCCU Director and, if applicable, the state regulator within 10 calendar days of determining the retained earnings ratio has declined below 1 percent. If the decline in the retained earnings ratio is due in full or in part, to a decline in the dollar amount of retained earnings and the retained earnings ratio is not restored to at least 1 percent by the next month end, a retained earnings action plan is required to be submitted within 30 calendar days.

(6) The retained earnings action plan must be submitted to the OCCU Director and, if applicable, the state regulator and, at a minimum, include the following:

(i) Reasons why the dollar amount of retained earnings has decreased;

(ii) Description of actions to be taken to increase the dollar amount of retained earnings within specific time frames; and

(iii) Monthly balance sheet and income projections, including assumptions for the ensuing 12-month period.

17. Revise Appendix A to part 704 as follows:

Appendix A to Part 704—Model Forms

This appendix contains sample forms intended for use by corporate credit unions to aid in compliance with the membership capital account and paid-in capital disclosure requirements of § 704.3.

SAMPLE FORM 1

Terms and Conditions of Membership Capital Account

(1) A membership capital account is not subject to share insurance coverage by the NCUSIF or other deposit insurer.

(2) A membership capital account is not releasable due solely to the merger, charter conversion or liquidation of the member credit union. In the event of a merger, the membership capital account transfers to the continuing credit union. In the event of a charter conversion, the membership capital account transfers to the new institution. In the event of liquidation, the membership capital account may be released to facilitate the payout of shares with the prior written approval of NCUA.

(3) A member credit union may withdraw membership capital with three years' notice.

(4) Membership capital cannot be used to pledge borrowings.

(5) Membership capital is available to cover losses that exceed retained earnings and paid-in capital.

(6) Where the corporate credit union is liquidated, membership capital accounts are payable only after satisfaction of all liabilities of the liquidation estate including uninsured obligations to shareholders and the NCUSIF.

(7) Where the corporate credit union is merged into another corporate credit union, the membership capital account will transfer to the continuing corporate credit union. The three-year notice period for withdrawal of the membership capital account will remain in effect.

(8) {If an adjusted balance account}: The membership capital balance will be adjusted ___(1 or 2)_____ time(s) annually in relation to the member credit union's _____ (assets or other measure) _____ as of _____(date(s))_____. {If a term certificate}: The membership capital account is a term certificate that will mature on _____(date) _____.

I have read the above terms and conditions and I understand them.

I further agree to maintain in the credit union's files the annual notice of terms and conditions of the membership capital account.

The notice form must be signed by either all of the directors of the member credit union or, if authorized by board resolution, the chair and secretary of the board of the credit union.

The annual disclosure notice form must be signed by the chair of the corporate credit union. The chair must then sign a statement that certifies that the notice has been sent to member credit unions with membership capital accounts. The certification must be maintained in the corporate credit union's files and be available for examiner review.

SAMPLE FORM 2

Terms and Conditions of Paid-In Capital

(1) A paid-in capital account is not subject to share insurance coverage by the NCUSIF or other deposit insurer.

(2) A paid-in capital account is not releasable due solely to the merger, charter conversion or liquidation of the member credit union. In the event of a merger, the paid-in capital account transfers to the continuing credit union. In the event of a charter conversion, the paid-in capital account transfers to the new institution. In the event of liquidation, the paid-in capital account may be released to facilitate the payout of shares with the prior written approval of NCUA.

(3) The funds are callable only at the option of the corporate credit union and only if the corporate credit union meets its minimum required capital and NEV ratios after the funds are called.

(4) Paid-in capital cannot be used to pledge borrowings.

(5) Paid-in capital is available to cover losses that exceed retained earnings.

(6) Where the corporate credit union is liquidated, paid-in capital accounts are payable only after satisfaction of all liabilities of the liquidation estate including uninsured obligations to shareholders and the NCUSIF, and membership capital holders.

(7) Where the corporate credit union is merged into another corporate credit union, the paid-in capital account will transfer to the continuing corporate credit union.

(8) Paid-in capital is perpetual maturity and noncumulative dividend.

I have read the above terms and conditions and I understand them. I further agree to maintain in the credit union's files the annual notice of terms and conditions of the paid-in capital instrument.

The notice form must be signed by either all of the directors of the credit union or, if authorized by board resolution, the chair and secretary of the board of the credit union.

18. Revise Appendix B to part 704 as follows:

Appendix B to Part 704—Expanded Authorities and Requirements

A corporate credit union may obtain all or part of the expanded authorities contained in this Appendix if it meets the applicable requirements of Part 704 and Appendix B, fulfills additional management, infrastructure, and asset and liability requirements, and receives NCUA's written approval. Additional guidance is set forth in the NCUA publication Guidelines for Submission of Requests for Expanded Authority.

A corporate credit union seeking expanded authorities must submit to NCUA a self-assessment plan supporting its request. A corporate credit union may adopt expanded authorities when NCUA has provided final approval. If NCUA denies a request for expanded authorities, it will advise the corporate credit union of the reason(s) for the denial and what it must do to resubmit its request. NCUA may revoke these expanded authorities at any time if an analysis indicates a significant deficiency. NCUA will notify the corporate credit union in writing of the identified deficiency. A corporate credit union may request, in writing, reinstatement of the revoked authorities by providing a self-assessment plan detailing how it has corrected the deficiency.

Minimum Requirement

In order to participate in any of the authorities set forth in Base-Plus, Part I, Part II, Part III, Part IV, and Part V of this Appendix, a corporate credit union must evaluate monthly the changes in NEV and the NEV ratio for the tests set forth in § 704.8(d)(1)(i).

Base-Plus

A corporate that has met the requirements for this Base-plus authority may, in performing the rate stress tests set forth in § 704.8(d)(1)(i), allow its NEV to decline as much as 20 percent.

Part I

(a) A corporate credit union that has met the requirements for this Part I may:

(1) Purchase investments with long-term ratings no lower than A– (or equivalent);

(2) Purchase investments with short-term ratings no lower than A–2 (or equivalent), provided that the issuer has a long-term rating no lower than A– (or equivalent) or the investment is a domestically-issued asset-backed security;

(3) Engage in short sales of permissible investments to reduce interest rate risk;

(4) Purchase principal only (PO) stripped mortgage-backed securities to reduce interest rate risk; and

(5) Enter into a dollar roll transaction.

(b) Aggregate investments in repurchase and securities lending agreements with any one counterparty are limited to 300 percent of capital.

(c) In performing the rate stress tests set forth in § 704.8(d)(1)(i), the NEV of a corporate credit union that has met the requirements of this Part I may decline as much as:

(1) 20 percent;

(2) 28 percent if the corporate credit union has a 5 percent minimum capital ratio and is specifically approved by NCUA; or

(3) 35 percent if the corporate credit union has a 6 percent minimum capital ratio and is specifically approved by NCUA.

(d) The maximum aggregate amount in unsecured loans and lines of credit to any one member credit union, excluding pass-through and guaranteed loans from the CLF and the NCUSIF, must not exceed 100 percent of the corporate credit union's capital. The board of directors must establish the limit, as a percent of the corporate credit union's capital plus pledged shares, for secured loans and lines of credit.

Part II

(a) A corporate credit union that has met the requirements for this Part II may:

(1) Purchase investments with long-term ratings no lower than BBB (flat) (or equivalent). The aggregate of all investments rated BBB+ (or equivalent) or lower in any single obligor is not to exceed 25 percent of capital;

(2) Purchase investments with short-term ratings no lower than A–2 (or equivalent), provided that the issuer has a long-term rating no lower than BBB (flat) (or equivalent) or the investment is a domestically issued asset-backed security;

(3) Engage in short sales of permissible investments to reduce interest rate risk;

(4) Purchase principal only (PO) stripped mortgage-backed securities to reduce interest rate risk; and

(5) Enter into a dollar roll transaction.

(b) Aggregate investments in repurchase and securities lending agreements with any one counterparty are limited to 400 percent of capital.

(c) In performing the rate stress tests set forth in § 704.8(d)(1)(i), the NEV of a corporate credit union which has met the requirements of this Part II may decline as much as:

(1) 20 percent;

(2) 28 percent if the corporate credit union has a 5 percent minimum capital ratio and is specifically approved by NCUA; or

(3) 35 percent if the corporate credit union has a 6 percent minimum capital ratio and is specifically approved by NCUA.

(d) The maximum aggregate amount in unsecured loans and lines of credit to any one member credit union, excluding pass-through and guaranteed loans from the CLF and the NCUSIF, must not exceed 100 percent of the corporate credit union's capital. The board of directors must establish the limit, as a percent of the corporate credit union's capital plus pledged shares, for secured loans and lines of credit.

Part III

(a) A corporate credit union that has met the requirements of either Part I or Part II of this Appendix and the additional requirements for Part III may invest in:

(1) Debt obligations of a foreign country;

(2) Deposits and debt obligations of foreign banks or obligations guaranteed by these banks;

(3) Marketable debt obligations of foreign corporations. This authority does not apply to debt obligations that are convertible into the stock of the corporation; and

(4) Foreign issued asset-backed securities.

(b) All foreign investments are subject to the following requirements:

(1) Investments must be rated no lower than the minimum permissible domestic rating under the corporate credit union's Part I or Part II authority;

(2) A sovereign issuer, and/or the country in which an obligor is organized, must have a long-term foreign currency (non-local currency) debt rating no lower than AA– (or equivalent);

(3) For each approved foreign bank line, the corporate credit union must identify the specific banking centers and branches to which it will lend funds;

(4) Obligations of any single foreign obligor may not exceed 50 percent of capital; and

(5) Obligations in any single foreign country may not exceed 250 percent of capital.

Part IV

(a) A corporate credit union that has met the requirements for this Part IV may enter into derivative transactions specifically approved by NCUA to:

(1) Create structured products;

(2) Manage its own balance sheet; and

(3) Hedge the balance sheets of its members.

(b) Credit Ratings:

(1) All derivative transactions are subject to the following requirements:

(i) If the counterparty is domestic, the counterparty rating must be no lower than the minimum permissible rating for comparable term permissible investments; and

(ii) If the counterparty is foreign, the corporate must have Part III expanded authority and the counterparty rating must be no lower that the minimum permissible rating for a comparable term investment under Part III Authority.

(iii) Any rating(s) relied upon to meet the requirements of this part must be identified at the time the transaction is entered into and must be monitored for as long as the contract remains open.

(iv) Section 704.10 of this part if:

(A) one rating was relied upon to meet the requirements of this part and that rating is downgraded below the minimum rating requirements of this part; or

(B) two or more ratings were relied upon to meet the requirements of this part and at least two of those ratings are downgraded below the minimum rating requirements of this part.

(2) Exceptions. Credit ratings are not required for derivative transactions with:

(i) Domestically chartered credit unions;

(ii) U.S. government sponsored enterprises; or

(iii) Counterparties if the transaction is fully guaranteed by an entity with a minimum permissible rating for comparable term investments.

Part V

A corporate credit union that has met the requirements for this Part V may participate in loans with member natural person credit unions as approved by the OCCU Director and subject to the following:

(a) The maximum aggregate amount of participation loans with any one member credit union must not exceed 25 percent of capital; and

(b) The maximum aggregate amount of participation loans with all member credit unions will be determined on a case-by-case basis by the OCCU Director.

§§ 704.3, 704.10, 704.15 [Amended]

19. In addition to the amendments set forth above, in 12 CFR part 704 remove the acronym "NCUA" wherever it appears and add in their place, the words "the OCCU Director" in the following places:

a. Redesignated § 704.3(e)(3)(i) and (ii), (g)(2)(v) and (g)(3).

b. Section 704.10(a) introductory text, (b) and (c).

c. Section 704.15(a) and (b).

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Federal Register

Friday,
October 25, 2002

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 136
National Parks Air Tour Management; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 136

[Docket No. FAA–2001–8690]

RIN 2120–AF46

National Parks Air Tour Management

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is codifying the provisions of title VIII of the National Parks Air Tour Management Act of 2000 (the Act), as a new part of its regulations. This action finalizes, in cooperation with the National Park Service, a 5,000-ft. above ground level (AGL) altitude that completes the definition of "commercial air tour operation" as required by the Act. If an operator conducts an operation below 5,000 ft. AGL over a national park, and that operation otherwise meets the statutory definition of a commercial air tour operation, that operator is defined as a commercial air tour operator and is required to meet the requirements of the Act and the new regulations. This final rule also codifies the provisions of Special Federal Aviation Regulation 78, the prohibition against commercial air tour flights over the Rocky Mountain National Park, as part of the new regulations. This action completes the codification of the new regulations and presents it for public information.

DATES: This final rule is effective January 23, 2003. All operators seeking to conduct commercial air tour operations, as defined by the Act, must file an application for operating authority and have interim operating authority before January 23, 2003 in order to avoid a break in operations.

FOR FURTHER INFORMATION CONTACT: Kent Stephens, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–7493.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management system (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page, type in the last four digits of the Docket number shown at the beginning of this document. Click on "search".

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the item you wish to view.

You can also get an electronic copy using the Internet through the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/acrs140.htm*.

You can also get a copy of this final rule by mail by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us at *9–AWA–SBREFA@faa.gov*.

Background

The National Parks Air Tour Management Act of 2000

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act applies to "commercial air tour operations" occurring over a unit of the national park system or tribal lands within or abutting a national park. A commercial air tour operation is defined in the Act as "any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over a national park, within ½ mile outside the boundary of any national park, or over tribal lands, during which the aircraft flies—(i) below a minimum altitude, determined by the Administrator in cooperation with the Director, above ground level (except solely for purposes of takeoff or landing, or necessary for safe operation of aircraft as determined under the rules and regulations of the Federal Aviation Administration requiring the pilot-in-command to take action to ensure the safe operation of the aircraft), or (ii) less than 1 mile laterally from any geographic feature within the park (unless more than ½ mile outside the boundary)." *See* 49 U.S.C. Section 40128(f)(4)(A). In making the determination as to whether a flight is a commercial air tour operation, the Act lists eight factors that the Administrator may consider. Id. at 40128(f)(4)(B). The term "tribal lands" is defined in the Act as "Indian Country (as that term is defined in section 1151 of title 18) that is within or abutting a national park." The term "National Park" is defined in the Act as "any unit of the National Park System." [1] All commercial air tour operations must be conducted in accordance with the following: (1) Title 49 of the U.S. Code (U.S.C.) Section 40128; (2) conditions and limitations prescribed for that operator by the FAA; and (3) any applicable air tour management plans (ATMPs).

The Act states that "Before commencing commercial air tour operations over a national park or tribal lands, a commercial air tour operator shall apply to the Administrator for authority to conduct the operations over the park or tribal lands." *See* 49 U.S.C. Section 40128(a)(2)(A). This application then triggers the process for the FAA, in cooperation with the National Park Service (NPS), to develop an ATMP for that park or tribal lands. The objective of an ATMP is to "develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and tribal lands." *See* 49 U.S.C. Section 40128(b)(1)(B).

The Act also provides that "upon application for operating authority, the Administrator shall grant interim operating authority under [49 U.S.C. Section 40128(c)] to a commercial air tour operator for commercial air tour operations over a national park or tribal lands for which the operator is an existing commercial air tour operator." *See* 49 U.S.C. Section 40128(c)(1). Such interim operating authority is subject to a number of requirements and limitations, including a limit on the number of commercial air tour operations that may be conducted on an interim basis pending issuance of the ATMP for that park.

In Section 802 of the Act, Congress found that the FAA has the authority "to preserve, protect and enhance the environment by minimizing, mitigating,

[1] There are currently 384 units of the National Park System in the United States. For a complete listing of all units of the National Park System see *http://www.nps.gov/legacy/nomenclature.html*.

or preventing the adverse effects of aircraft overflights, on public and tribal lands." Congress also found that the NPS has the responsibility of "conserving the scenery and natural and historic objects and wildlife in national parks and of providing for the enjoyment of the national parks in ways that leave the national parks unimpaired for future generations." *Id.* Further, the Act states that "the protection of tribal lands from aircraft overflights is consistent with protecting the public health and welfare and is essential to the maintenance of the natural and cultural resources of Indian tribes." *Id.*

The FAA's and NPS' Proposed Altitude and Comments Received on That Altitude

To meet the requirements of the Act, the FAA, in cooperation with the NPS, proposed an altitude of 5,000 ft. AGL that would complete the definition of a commercial air tour operation. (*See* 66 FR 21264; April 27, 2001.) The comment period on the proposal closed on June 11, 2001.

Approximately 2,400 comments were received on the proposal. The vast majority of these, however, are form letters making 4 major points: (1) They support the 5,000-ft. triggering altitude; (2) they believe that the FAA should recognize the NPS' expertise on natural quiet issues; (3) they urge immediate enforcement of the "no new entrant" clause of the Act and ask the FAA to ban those part 91 operators who did not register within 90 days of enactment of the Act; and (4) they ask the FAA to define the process by which ATMPs will be developed. Some of these points are also supported by environmental associations. National Parks Conservation Association (NPCA) encourages the FAA to adopt the proposed 5,000-ft. AGL altitude expeditiously so that the ATMP process may begin. NPCA is concerned that a lower altitude would allow some fixed-wing aircraft to conduct air tours without being subject to any rules or restrictions. NPCA also urges the FAA to clarify the ATMP process through guidance and to clarify the roles of the FAA and NPS in the process. Winter Wildlands Alliance supports the 5,000-ft. altitude because it will not interfere with general aviation traffic since operators must meet the rest of the definition of a commercial air tour operation to be defined as a commercial air tour operation under the Act. The Alliance also asks the FAA to begin immediate enforcement of the "no new entrant" clause. Jackson Hole Conservation Alliance comments that any altitude lower than 5,000 ft. would be unacceptable because it would invite uncontrolled damage to wildlife.

FAA Response: The FAA recognizes the support of the 5,000-ft. triggering altitude submitted by the majority of commenters either through individual comments or a form letter. The FAA and NPS will work together to develop ATMPs that mitigate or prevent significant adverse impacts on the environment. This cooperative relationship is consistent with the findings of Congress enumerated in Section 802 as follows:

—The FAA has sole authority to control airspace over the United States and the authority to preserve, protect, and enhance the environment by minimizing, mitigating, or preventing the adverse effects of aircraft overflights on public and tribal lands;

—the NPS has the responsibility of conserving the scenery and natural and historical objects and wildlife in national parks and of providing for the enjoyment of the national parks in ways that leave the national parks unimpaired for future generations.

The Act includes procedural requirements for establishing ATMPs, including holding at least one public meeting, publishing the proposed ATMP in the **Federal Register** for public comment, and soliciting the participation of Indian tribes whose tribal lands are, or may be, overflown by aircraft involved in a commercial air tour operation. 49 U.S.C. Section 40128(b)(4). Additionally, the Act provides that in establishing ATMPs the FAA is the "lead agency" and the NPS is a "cooperating agency" for purposes of compliance with regulations of the Council on Environmental Quality implementing the National Environmental Policy Act (NEPA). 49 U.S.C. Section 40128(b)(4)(C). In accordance with these provisions, the FAA and the NPS are working cooperatively to implement the Act.

The definition of a commercial air tour operation is complete with the publication of this final rule. All operators wishing to conduct commercial air tour operations over a unit of the national park system or tribal lands now have 90 days to apply for operating authority, in accordance with the procedures outlined in an advisory circular (AC). This AC may be obtained from the public docket, by calling the person listed under **FOR FURTHER INFORMATION CONTACT,** or on the Internet site established for the ATMP process: *http://www.atmp.faa.gov*.

The FAA earlier informed air tour operators of the requirements of the Act in a **Federal Register** notice published on May 26, 2000. However, in that notice, the FAA acknowledged that the definition of a commercial air tour operation was not yet complete. That definition is now complete and any operator defined as an air tour operator must obtain a part 135 or part 121 certificate, as appropriate, and operating authority if it operates over a national park.

In response to commenters' concerns about "new entrants", the Act authorizes the FAA, in cooperation with the NPS, to grant interim operating authority to new entrant air tour operators under certain circumstances and subject to certain limitations. See 49 U.S.C. Section 40128(c)(3). This provision of the Act is restated in Section 136.11(c) of this final rule.

Comment: Some individual commenters find the 5,000-ft. triggering altitude to be too restrictive and fear that it will capture flights other than commercial air tours, such as pilot training flights, while over a park. Another commenter is concerned that the altitude and related definitions of an air tour operator will allow some part 91 operators to slide through a loophole and not be governed by the regulations. One commenter expresses concern that, once in place, the restrictions on flying over parks would be extended to general aviation users, which in this instance would require burdensome deviations to fly over his State. Air Maui, a commercial operator, comments that there is no justification for the 5,000-ft. altitude and that a triggering altitude should be set by particular park or area.

Arizona Grand Canyon Chapter of the Sierra Club recommends careful scrutiny of point-to-point services that claim to not be air tour operators.

FAA Response: The law requires an altitude to be set by the Administrator to complete the definition of a commercial air tour operation. Once the definition is established, the operators covered by the definition can file for operating authority. The application for operating authority then triggers the ATMP process. Once established, an ATMP may, among other things, establish maximum or minimum altitudes—below the 5,000 ft. trigger altitude—for commercial air tour operations over the national park unit. Neither the FAA nor the NPS has the authority to extend the provisions of the Act to flights other than commercial air tour operations. Only Congress could effect such a change. Training flights and part 91 flights that are not commercial air tour operations are not captured under the Act. Criteria to determine whether a flight meets the definition are spelled out in the Act and

codified in the regulations at 14 CFR Section 136.3(d)(2). The Administrator may consider additional criteria in any specific circumstance. See 14 CFR Section 136.3(d)(2)(viii).

Comment: Many individuals do not understand the 5,000-ft. proposal as a triggering altitude but assumed that this is a proposed minimum operating altitude for parks in general. Most of these individuals support a 5,000-ft. minimum operating altitude over parks. A few individuals urge a ban on overflights of national parks. In addition, one of these individuals specifically recommends no flights at all below 16,000-ft. AGL if a total ban on commercial air tours over parks is not implemented. Another person's preference is that aircraft fly at altitudes and distances to prevent any noise pollution to the parks. One person recommends including non-motorized aircraft as part of that park overflight ban.

FAA response: Again, the law requires that the Administrator set the altitude to complete the definition of a commercial air tour operation. The FAA believes it is clear that the triggering altitude is to be used only to determine which air tour flights will be subject to this specific regulation. The suggestion to set a 16,000-ft. altitude is beyond the scope of the NPRM. The Act does not attempt to impose a ban over all units of the national park system, though a specific ATMP may ban commercial air tour operations (below 5,000 ft. AGL) over some or all of a particular park. The FAA knows of no commercial air tour operation that uses non-motorized aircraft. In any event, one element of the statutory definition of a "commercial air tour operation" is that it is conducted in a "powered aircraft." See 49 U.S.C. Section 40128(f)(4)(A).

Comment: One individual supports the 5,000-ft. triggering altitude, but raises the issue of how to deal with air carriers who must fly below that altitude for landing and takeoff when there is an airport within a park, such as Jackson Hole Airport in Wyoming. A few people propose exclusion for air tours operating out of Jackson Hole Airport since it is in Grand Teton National Park.

FAA response: The Act specifically states that aircraft may descend below the altitude set by the FAA, in cooperation with NPS, for purposes of take-off and landing. See 49 U.S.C. Section 40128(f)(4)(A)(i). Thus, for example, if an air carrier flight is operating below 5,000 ft. AGL above a unit of the National Park System, but that operation is strictly for purposes of takeoff and landing at an airport in or near the park, then such a flight is not a "commercial air tour operation." A Jackson Hole airport exclusion is not part of this rulemaking.

Comment: Another individual is concerned about how the number of operations performed by interim operators is counted. This commenter encourages the use of financial records to document actual flights conducted to protect the honest operator.

FAA response: The method that the Principal Operations Inspector for each operator will use in determining the number of actual flights that the operator conducted will be spelled out in a procedures manual being developed by the FAA. Financial records will certainly be one of the sources used, along with aircraft log books, flight plans, maintenance records, etc., in the determination of interim operating authorizations.

Comment: Nevada Commercial Aviation Council for Tourism supports the 5,000-ft. altitude and the exclusion of flying over the Lake Mead area as a transportation route from the ATMP process.

FAA response: Lake Mead is a unit of the national park system and is thus included in the ATMP process by the terms of the Act. The Act excludes flights over or near the Lake Mead Recreational Area that are solely for transportation to conduct a commercial air tour over the Grand Canyon. The Act states the factors to be used in determining whether a flight is a commercial air tour operation.

Comment: Helicopter Association International expresses no opinion on the 5,000-ft. triggering altitude, but notes that since most helicopter operations are conducted below 5,000 feet, this will not serve as an effective way of distinguishing helicopter air tour operations from other helicopter operations. One individual opposes unregulated helicopter tours due to noise impacts to visitors, fire danger, and negative impacts to wildlife.

FAA response: The ATMP process will take into consideration all effects of commercial air tour operations, whether fixed wing or rotary wing. The Act specifies additional criteria, other than altitude, for determining whether or not an operation is a commercial air tour operation.

Comment: National Air Transportation Association (NATA) and Aircraft Owners and Pilots Association (AOPA) recommend a triggering altitude of 3,000 ft. AGL. AOPA remarks that 3,000 ft. AGL is the start altitude for visual flight rules (VFR) cruising altitudes and this lower trigger altitude will better separate the commercial air tour aircraft from general aviation, avoiding an intermix with other higher altitude aircraft. AOPA notes that the National Parks Overflights Working Group (NPOWG) recommended 5,000-ft. AGL altitude only as a "place holder" that would be identified in association with other triggering altitudes that they considered. AOPA expresses concern that this altitude may be used to justify future restrictions on aircraft overflights. AOPA also commends the FAA for including the limited exemption for part 91 operators codified in the Act. Other commenters state that the 5,000-ft. AGL altitude is too restrictive, unnecessary and unreasonable and recommend alternative altitudes such as 2,000, 2,500 and 3,000 ft. AGL.

FAA response: A trigger altitude of 3,000 ft. AGL will not separate air tour traffic from general aviation. Nothing in the Act or this final rule requires general aviation operations to fly above the triggering altitude, regardless of whether that trigger altitude is 3,000 ft. AGL or 5,000 ft. AGL as proposed and adopted here. The FAA believes the 5,000-ft. trigger altitude reasonably captures any viable air tour traffic over a unit of the National Park System. The FAA agrees with the National Parks Conservation Association that the 5,000-ft. altitude is reasonable in that some fixed wing aircraft could possibly conduct a viable air tour above 3,000 ft. and not be "captured" in the definition, whereas a 3,000 ft. altitude would capture virtually all rotor wing aircraft. The Act does not authorize the FAA or NPS to evaluate significant adverse impacts of non commercial air tour operations.

Comment: Finally, one person recommends the NPS work with the FAA to implement relevant provisions of the Glacier National Park General Management Plan that would ban commercial air tours over the park.

FAA response: The General Management Plan will be a consideration in the development of any ATMP at Glacier National Park.

The Final Rule

In this rulemaking, the FAA establishes 5,000 feet AGL as the altitude that completes the definition of the term "commercial air tour operation." Therefore, any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over a national park, within ½ mile outside the boundary of any national park, or over tribal lands during which the aircraft flies below 5,000 feet above ground level (except solely for purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the Federal Aviation Administration requiring the pilot-in-command to take action to ensure the safe operation of the aircraft), or less than 1 mile laterally from any geographic feature within the park (unless more than ½ mile outside the boundary) would be subject to the provisions of the Act and the new part 136.

The 5,000-ft. AGL altitude addresses the great majority of current and potential commercial air tour operations over national park units. In addition, the NPOWG, which met from May 1997 through December 1997, considered a number of possible minimum altitudes and recommended that the minimum altitude be set at 5,000 ft. AGL. The Act acknowledged their efforts stating; "this title reflects the recommendations made by that Group." See Section 802 of the Act.

The FAA reminds readers that the 5,000-ft. altitude completes the definition of commercial air tour operation. This final rule notifies operators conducting commercial air tour operations, as defined in the Act, that such operations are subject to the provisions of the Act. Because this definition is now complete, Section 136.7 requires commercial air tour operators to apply for operating authority. Application by a person to conduct a commercial air tour operation over a unit of the National Park System triggers the ATMP process. It does not mean that all air tour operations will be required to be conducted above 5,000 ft. AGL or that they will be limited to that minimum altitude. Rather the air tour management plan for any given national park unit will define the altitudes (below 5,000 ft. AGL) at which operations may be conducted.

Environmental Review

The Act provides that the objective of an ATMP is to "mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and tribal lands." *See* 49 U.S.C. Section 40128(b)(a)(B). Accordingly, this final rule supports this statutory objective and promotes the goal of avoiding any significant adverse environmental impacts from commercial air tour operations.

In accordance with FAA Order 1050.1D, the FAA has determined that this final rule is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act (NEPA). In particular, this determination is based on FAA Order 1050.1D, Appendix 4, paragraph 4.i, which applies to "[r]egulatory documents which cover administrative or procedural requirements," and paragraph 4.j, which covers "[r]egulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment)."

NEPA compliance will be performed as part of the development of each ATMP prepared in accordance with this rule.

Economic Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreement Act of 1979 directs agencies to assess the effect of regulatory changes on international trade. Fourth, Public Law 104–4 requires federal agencies to assess the impact of any federal mandates on state, local, tribal governments, and the private sector. The FAA has determined that this rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and Department of Transportation policies and procedures (44FR11034, February 26, 1979). This final rule would not have a significant impact on a substantial number of small entities. In addition, this rule would not constitute a barrier to international trade. Finally, the FAA has determined that the rule would not impose a federal mandate on state, local, or tribal governments, or the private sector of $100 million per year.

Benefit—Cost Analysis

This final rule codifies in new part 136 the applicable provisions of the Act concerning commercial air tour operations over national parks or within ½ mile of the boundary of a national park, over tribal lands within or abutting national parks, or less than 1 mile laterally from any geographic feature within the park. The Act and the rule specifically exclude the Grand Canyon National Park and tribal lands within or abutting it, air transportation routes over the Lake Mead area, and land or waters located in Alaska. Congress directed the FAA, in cooperation with the NPS, to determine the minimum altitude under which commercial air tour operations would be subject to the provisions of the statute. An altitude of 5,000 ft. AGL completes the definition of a commercial air tour operation to determine who will be subject to part 136. The 5,000-ft. AGL altitude addresses the great majority of current and potential commercial air tour operations over national park units. In addition, the NPOWG, which met from May 1997 through December 1997, considered a number of possible minimum altitudes and recommended that the minimum altitude be set at 5,000 ft. AGL.

These new regulations simply codify statutory provisions from Public Law 106–181, and finalize Congress' directive that the Administrator determine an altitude to complete the definition set forth in 49 U.S.C. Section 40128 (f)(4)(A). The primary benefit of the regulations will be to enable the FAA and the NPS to develop acceptable and effective measures to mitigate or prevent the significant adverse effects, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and tribal lands.

The costs and benefits of this rule cannot be evaluated effectively without taking into account specific noise mitigation measures that would be incorporated in an ATMP for a specific park. The NPS and FAA thus intend to prepare such evaluations when specific plans specified in § 136.9 (Air Tour Management Plans) are proposed.

Regulatory Flexibility Determination and Assessment

The Regulatory Flexibility Act (RFA) of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organization, and government jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency

may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that this final rule by itself imposes no costs on small commercial air tour operators. The actual effect on small entities of implementing this rule will be determined by individual ATMPs. This final rule is limited to only what has been authorized by this Act. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant impact on a substantial number of small entities. The FAA solicits comments on this determination.

International Trade Impact Assessment

The Trade Agreement Act (TAA) of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The TAA also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above Act, the FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Reform Act Assessment

The Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

The FAA finds that no paperwork burden is imposed by the adoption of this final rule, which essentially adopts an altitude that completes the definition of commercial air tour operation. The paperwork burden imposed is the product of a Congressional mandate pursuant to the National Park Air Tour Management Act.

The FAA and NPS acknowledge, however, that the Air Tour Management Process will impose paperwork requirements on the public as individual management plans for parks are developed and interim operating authority is approved. This process is delineated in an advisory circular. A request for approval of the paperwork requirements has been submitted to OMB for approval. The description below is provided so that interested individuals may comment on the paperwork submission requirements.

Title: National Parks Air Tour Management.

Summary: Section 40128(a)(2)(A) of the Act requires that "Before commencing commercial air tour operations over a national park or tribal lands, a commercial air tour operator shall apply to the Administrator for authority to conduct the operations over the park or tribal lands." The FAA codified this section as 14 CFR 136.7(b). An advisory circular assists the operator in complying with this application process by listing the requirements:

- Name, mailing address, phone numbers of the company.
- Address of principal base where operations will be conducted.
- Proposed start up date for operations (for new entrants).
- Company certificate number if a certificated operator.
- Management personnel names, titles, phone numbers.
- Part 91 status; Part 135 single pilot, basic, full, or commuter operator status; or Part 121 status.
- Type and number of aircraft to be used in commercial air tour operations.
- National park or tribal lands over which commercial air tour operations will be conducted.
- The safety history of the operator.
- Any additional information that might provide the FAA with a better understanding of the proposed operation (*e.g.*, proposed or actual routes, altitudes, frequency of flights, time of flights, etc.).
- For existing operators, the greater of—

—The number of commercial air tour operations within the 12-month period preceding April 5, 2000, or from April 1, 1999, through March 31, 2000, or

—The average number of commercial air tour operations per 12-month period for the 36 months preceding April 5, 2000, or from April 1, 1997 through March 31, 2000, and

—For seasonal operations, the number of commercial air tour operations that occurred during the season or seasons covered by the 12-month period preceding April 5, 2000, or from April 1, 1999, through March 31, 2000.

- Other appropriate information as may be requested by the Administrator—
- Operators may submit the following optional data to support ATMP development—

—The economic benefits of the operator's commercial air tour operations to the park and community

—Impact of any potential restrictions on an operator's commercial air tour operations

—The advantages of the operator's air tours for its customers and the national parks and/or tribal lands they visit

—The number of air tour visitors the operator serves on an annual or seasonal basis

Except for the optional information, these are routine items that any company would maintain as a matter of business practice, and this information should not require more than an hour to collect. Operators are encouraged to submit the optional information, as it may aid in the ATMP development process. Operators may elect to submit this optional data as a group to reduce duplication of effort.

Use of the information: This information collection supports the final rule, which was mandated by the Act.

Respondents: We estimate that there would be about 174 respondents.

Frequency: This is a one-time collection.

Annual Burden Estimate: The estimate for the collection of routine company data is 1 hour; the collection of the optional information is 2 hours. We estimate that a clerical assistant should be able to produce the application package in 4 hours.

The hourly wage for a chief pilot/company president to produce the information is estimated as equivalent to a GS–14, Step 10, or $101,742 divided by 2080 hours = $49. per hour. Clerical assistance is estimated as equivalent to a GS–6, Step 1, or $28,253 divided by 2080 = $13.58 per hour.

174 operators × 3 hours × $49. = $25,578.

174 clerical assistants × 4 hours × $13.58 = $9, 451.78.

$25,578 + $9,451.78 = $35,029.78 (total cost of 174 operators completing operating authority applications).

The total reporting hour burden is 1218 hours.

The agency is soliciting comments on this information collection to—

(1) Evaluate the accuracy of the agency's estimate of the burden;

(2) Enhance the quality, utility and clarity of the information to be collected; and

(3) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirements by December 24, 2002 and should direct them to Docket No. FAA–2001–8609, U.S. DOT Dockets, Room PL–401, 400 7th Street, SW., Washington, DC 20590–0001. Comments should also be submitted to the Office of Information and Regulatory Affairs, OMB, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053, Attention: Desk Officer for FAA.

According to the regulations implementing the Paperwork Reduction Act of 1995 (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register** after the Office of Management and Budget approves it.

List of Subjects

14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Ethiopia, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements, Yugoslavia.

14 CFR Part 136

Air transportation, Aircraft, Aviation safety, National parks, Recreation and recreation areas, Reporting and recordkeeping requirements.

Adoption of Amendments

For the reasons set forth above, the Federal Aviation Administration amends chapter I of title 14 of the Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

2. Special Federal Aviation Regulation No. 78 is removed.

3. 14 CFR part 136 is added to read as follows:

PART 136—NATIONAL PARKS AIR TOUR MANAGEMENT

Sec.

136.1 Applicability.
136.3 Definitions.
136.5 Prohibition of commercial air tour operations over the Rocky Mountain National Park.
136.7 Overflights of national parks and tribal lands.
136.9 Air tour management plans (ATMP).
136.11 Interim operating authority.

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

§ 136.1 Applicability.

(a) This part restates and paraphrases several sections of the National Parks Air Tour Management Act of 2000, including section 803 (codified at 49 U.S.C. 40128) and sections 806 and 809. This part clarifies the requirements for the development of an air tour management plan for each park in the national park system where commercial air tour operations are flown.

(b) Except as provided in paragraph (c) of this section, this part applies to each commercial air tour operator who conducts a commercial air tour operation over—

(1) A unit of the national park system;

(2) Tribal lands as defined in this part; or

(3) Any area within one-half mile outside the boundary of any unit of the national park system.

(c) This part does not apply to a commercial air tour operator conducting a commercial air tour operation—

(1) Over the Grand Canyon National Park;

(2) Over that portion of tribal lands within or abutting the Grand Canyon National Park;

(3) Over any land or waters located in the State of Alaska; or

(4) While flying over or near the Lake Mead Recreation Area, solely as a transportation route, to conduct a commercial air tour over the Grand Canyon National Park.

§ 136.3 Definitions.

For purposes of this part—

(a) *Commercial air tour operator* means any person who conducts a commercial air tour operation.

(b) *Existing commercial air tour operator* means a commercial air tour operator that was actively engaged in the business of providing commercial air tour operations over a national park at any time during the 12-month period ending on April 5, 2000.

(c) *New entrant commercial air tour operator* means a commercial air tour operator that—

(1) Applies for operating authority as a commercial air tour operator for a national park or tribal lands; and

(2) Has not engaged in the business of providing commercial air tour operations over the national park or tribal lands for the 12-month period preceding enactment.

(d) *Commercial air tour operation*—

(1) Means any flight, conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over a national park, within ½ mile outside the boundary of any national park, or over tribal lands, during which the aircraft flies—

(i) Below 5,000 feet above ground level (except for the purpose of takeoff or landing, or as necessary for the safe operation of an aircraft as determined under the rules and regulations of the Federal Aviation Administration requiring the pilot-in-command to take action to ensure the safe operation of the aircraft);

(ii) Less than 1 mile laterally from any geographic feature within the park (unless more than ½ mile outside the boundary); or

(iii) Except as provided in § 136.5.

(2) The Administrator may consider the following factors in determining whether a flight is a commercial air tour operation for purposes of this part—

(i) Whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire;

(ii) Whether a narrative that referred to areas or points of interest on the surface below the route of the flight was provided by the person offering the flight;

(iii) The area of operation;

(iv) The frequency of flights conducted by the person offering the flight;

(v) The route of flight;

(vi) The inclusion of sightseeing flights as part of any travel arrangement package offered by the person offering the flight;

(vii) Whether the flight would have been canceled based on poor visibility of the surface below the route of the flight; and

(viii) Any other factors that the Administrator and Director consider appropriate.

(3) For purposes of § 136.5, means any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over a national park.

(e) *National park* means any unit of the national park system. (See title 16 of the U.S. Code, section 1, *et seq.*)

(f) *Tribal lands* means that portion of Indian country (as that term is defined in section 1151 of title 18 of the U.S. Code) that is within or abutting a national park.

(g) *Administrator* means the Administrator of the Federal Aviation Administration.

(h) *Director* means the Director of the National Park Service.

(i) *Superintendent* means the duly appointed representative of the National Park Service for a particular unit of the national park system.

§ 136.5 Prohibition of commercial air tour operations over the Rocky Mountain National Park.

All commercial air tour operations in the airspace over the Rocky Mountain National Park are prohibited regardless of altitude.

§ 136.7 Overflights of national parks and tribal lands.

(a) *General.* A commercial air tour operator may not conduct commercial air tour operations over a national park or tribal land except—

(1) In accordance with this section;

(2) In accordance with conditions and limitations prescribed for that operator by the Administrator; and

(3) In accordance with any applicable air tour management plan for the park or tribal lands.

(b) *Application for operating authority.* Before commencing commercial air tour operations over a national park or tribal lands, a commercial air tour operator shall apply to the Administrator for authority to conduct the operations over the park or tribal lands.

(c) *Number of operations authorized.* In determining the number of authorizations to issue to provide commercial air tour operations over a national park, the Administrator, in cooperation with the Director, shall take into consideration the provisions of the air tour management plan, the number of existing commercial air tour operators and current level of service and equipment provided by any such operators, and the financial viability of each commercial air tour operation.

(d) *Cooperation with National Park Service.* Before granting an application under this part, the Administrator, in cooperation with the Director, shall develop an air tour management plan in accordance with § 136.9 and implement such a plan.

(e) *Time limit on response to applications.* Every effort will be made to act on any application under this part and issue a decision on the application not later than 24 months after it is received or amended.

(f) *Priority.* In acting on applications under this paragraph to provide commercial air tour operations over a national park, the Administrator shall give priority to an application under this paragraph in any case where a new entrant commercial air tour operator is seeking operating authority with respect to that national park.

(g) *Exception.* Notwithstanding this section, commercial air tour operators may conduct commercial air tour operations over a national park under part 91 of this chapter if—

(1) Such activity is permitted under part 119 of this chapter;

(2) The operator secures a letter of agreement from the Administrator and the Superintendent for that park describing the conditions under which the operations will be conducted; and

(3) The number of operations under this exception is limited to not more than a total of 5 flights by all operators in any 30-day period over a particular park.

(h) *Special rule for safety requirement.* Notwithstanding § 136.11, an existing commercial air tour operator shall apply, not later than January 23, 2003 for operating authority under part 119 of this chapter, for certification under part 121 or part 135 of this chapter. A new entrant commercial air tour operator shall apply for such authority before conducting commercial air tour operations over a national park or tribal lands that are within or abut a national park. The Administrator shall make every effort to act on such application for a new entrant and issue a decision on the application not later than 24 months after it is received or amended.

§ 136.9 Air tour management plans (ATMP).

(a) *Establishment.* The Administrator, in cooperation with the Director, shall establish an air tour management plan for any national park or tribal land for which such a plan is not in effect whenever a person applies for authority to conduct a commercial air tour operation over the park. The air tour management plan shall be developed by means of a public process in accordance with paragraph (d) of this section. The objective of any air tour management plan is to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and tribal lands.

(b) *Environmental determination.* In establishing an air tour management plan under this section, the Administrator and the Director shall each sign the environmental decision document required by section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) which may include a finding of no significant impact, an environmental assessment, or an environmental impact statement and the record of decision for the air tour management plan.

(c) *Contents.* An air tour management plan for a park—

(1) May prohibit commercial air tour operations in whole or in part;

(2) May establish conditions for the conduct of commercial air tour operations, including, but not limited to, commercial air tour routes, maximum number of flights per unit of time, maximum and minimum altitudes, time of day restrictions, restrictions for particular events, intrusions on privacy on tribal lands, and mitigation of noise, visual, or other impacts;

(3) Shall apply to all commercial air tour operations within ½ mile outside the boundary of a national park;

(4) Shall include incentives (such as preferred commercial air tour routes and altitudes, and relief from caps and curfews) for the adoption of quiet technology aircraft by commercial air tour operators conducting commercial air tour operations at the park;

(5) Shall provide for the initial allocation of opportunities to conduct commercial air tour operations if the plan includes a limitation on the number of commercial air tour operations for any time period; and

(6) Shall justify and document the need for measures taken pursuant to paragraphs (c)(1) through (c)(5) of this section and include such justification in the record of decision.

(d) *Procedure.* In establishing an ATMP for a national park or tribal lands, the Administrator and Director shall—

(1) Hold at least one public meeting with interested parties to develop the air tour management plan;

(2) Publish the proposed plan in the **Federal Register** for notice and comment and make copies of the proposed plan available to the public;

(3) Comply with the regulations set forth in 40 CFR 1501.3 and 1501.5 through 1501.8 (for the purposes of complying with 40 CFR 1501.3 and 1501.5 through 1501.8, the Federal Aviation Administration is the lead agency and the National Park Service is a cooperating agency); and

(4) Solicit the participation of any Indian tribe whose tribal lands are, or may be, overflown by aircraft involved in a commercial air tour operation over the park or tribal lands to which the plan applies, as a cooperating agency under the regulations referred to in paragraph (d)(3) of this section.

(e) *Amendments.* The Administrator, in cooperation with the Director, may make amendments to an air tour management plan. Any such amendments will be published in the **Federal Register** for notice and comment. A request for amendment of an ATMP will be made in accordance with § 11.25 of this chapter as a petition for rulemaking.

§ 136.11 Interim operating authority.

(a) *General.* Upon application for operating authority, the Administrator shall grant interim operating authority under this section to a commercial air tour operator for commercial air tour operations over a national park or tribal land for which the operator is an existing commercial air tour operator.

(b) *Requirements and limitations.* Interim operating authority granted under this section—

(1) Shall provide annual authorization only for the greater of—

(i) The number of flights used by the operator to provide the commercial air tour operations within the 12-month period prior to April 5, 2000; or

(ii) The average number of flights per 12-month period used by the operator to provide such operations within the 36-month period prior to April 5, 2000, and for seasonal operations, the number of flights so used during the season or seasons covered by that 12-month period;

(2) May not provide for an increase in the number of commercial air tour operations conducted during any time period by the commercial air tour operator above the number the air tour operator was originally granted unless such an increase is agreed to by the Administrator and the Director;

(3) Shall be published in the **Federal Register** to provide notice and opportunity for comment;

(4) May be revoked by the Administrator for cause;

(5) Shall terminate 180 days after the date on which an air tour management plan is established for the park and tribal lands;

(6) Shall promote protection of national park resources, visitor experiences, and tribal lands;

(7) Shall promote safe commercial air tour operations;

(8) Shall promote the adoption of quiet technology, as appropriate, and

(9) Shall allow for modifications of the interim operating authority based on experience if the modification improves protection of national park resources and values and of tribal lands.

(c) *New entrant operators.* The Administrator, in cooperation with the Director, may grant interim operating authority under this paragraph (c) to an air tour operator for a national park or tribal lands for which that operator is a new entrant air tour operator if the Administrator determines the authority is necessary to ensure competition in the provision of commercial air tour operations over the park or tribal lands.

(1) *Limitation.* The Administrator may not grant interim operating authority under this paragraph (c) if the Administrator determines that it would create a safety problem at the park or on the tribal lands, or if the Director determines that it would create a noise problem at the park or on the tribal lands.

(2) *ATMP limitation.* The Administrator may grant interim operating authority under this paragraph (c) only if the ATMP for the park or tribal lands to which the application relates has not been developed within 24 months after April 5, 2000.

Issued in Washington, DC on October 17, 2002.

Marion C. Blakey,

Administrator.

[FR Doc. 02–27033 Filed 10–24–02; 8:45 am]

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Federal Register

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October 25, 2002

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 417, and 422
Medicare Program; Modifications to Managed Care Rules; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 417, and 422

[CMS–4041–P]

RIN 0938–AK71

Medicare Program; Modifications to Managed Care Rules

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement certain provisions of the Social Security Act (the Act) relating to the Medicare+Choice (M+C) program that were enacted in the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA).

It also proposes other changes to the M+C regulations based on program experience and feedback from M+C organizations.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 24, 2002.

ADDRESSES: In commenting, please refer to file code CMS–4041–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4041–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 445–G, Washington, DC 20201 or Centers for Medicare & Medicaid Services, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain proof of filing by stamping and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Tom Hutchinson, (410) 786–8953.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7197.

I. Background

A. Balanced Budget Act of 1997

Section 4001 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), added sections 1851 through 1859 to the Social Security Act (the Act) establishing a new Part C of the Medicare program, known as the Medicare+Choice (M+C) program. Under section 1851(a)(1) of the Act, every individual entitled to Medicare Part A and enrolled under Part B, except for individuals with end-stage renal disease, could elect to receive benefits either through the Medicare fee-for-service program or an M+C plan, if one was offered where he or she lived.

The primary goal of the M+C program was to provide Medicare beneficiaries with a wider range of health plan choices through which to obtain their Medicare benefits. The BBA authorized a variety of private health plan options for beneficiaries, including both the traditional managed care plans (such as those offered by health maintenance organizations (HMOs)) that had been offered under section 1876 of the Act, and new options that were not previously authorized. Three types of M+C plans were authorized under the new Part C, as follows:

- M+C coordinated care plans, including HMO plans (with or without point-of-service options), provider-sponsored organization (PSO) plans, and preferred provider organization (PPO) plans.
- M+C medical savings account (MSA) plans (combinations of a high-deductible M+C health insurance plan and a contribution to an M+C MSA).
- M+C private fee-for-service plans.

B. Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999

The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) amended the M+C provisions of the Act. Many of these amendments were reflected in a final rule with comment period published in the **Federal Register** on June 29, 2000 (65 FR 40170). We received five comments in response to that final rule, which will be addressed in the final rule responding to comments concerning this proposed rule.

Certain amendments to the new Part C made by the BBRA are relevant to the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), since the BIPA made changes to the BBRA amendments. For example, section 502 of the BBRA amended section 1851(f)(2) of the Act by providing that if an election or change in election to an M+C plan was made after the 10th day of a calendar month, the election would be effective the first day of the second calendar month following the date the election or change in election was made, not the first calendar month, as had been the case under the original M+C statute. As discussed in a final rule published on March 22, 2002 (67 FR 13278), the BIPA reversed this amendment and restored the original effective date.

Section 511(a) of the BBRA amended section 1853(a) of the Act by providing for a risk adjustment transition schedule for calendar years (CY) 2000 and 2001 that differed from the one that we had provided as part of our risk adjustment methodology. The BIPA further revised this transition schedule.

Section 512 of the BBRA amended section 1853 of the Act by adding a new paragraph (i) to provide for new entry bonus payments to encourage M+C organizations to offer plans where there were no M+C plans serving the area as of January 1, 2000. This BBRA provision was amended by the BIPA to permit M+C organizations entering counties that had been abandoned in 2001 to receive bonuses.

The final rule published on March 22, 2002 revised the regulations to reflect the changes to the BBRA provided in sections 502, 511, and 512 of the BIPA

C. Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), enacted December 21, 2000, further amended the M+C provisions of the Act. The final rule published on March 22, 2002 amended the regulations to reflect changes made by certain provisions of the BIPA, including those discussed in section I.B of this preamble, that amended provisions enacted in the BBRA. In this proposed rule, we propose to revise the regulations to implement sections 605, 606, 611, 612, 615, 617, 620, 621, and 623 of the BIPA.

1. Revision of Payment Rates for End-Stage Renal Disease (ESRD) Patients Enrolled in Medicare+Choice Plans

Section 605(a) of the BIPA amended section 1853(a)(1)(B) of the Act by requiring us to provide for appropriate adjustments to the M+C ESRD payment rates, effective January 1, 2002, to reflect the demonstration rate (including the risk adjustment methodology associated with the demonstration rate) of the social health maintenance organization ESRD capitation demonstration. This demonstration assessed whether it would be feasible to allow Medicare ESRD patients of all ages to enroll in M+C plans and to test risk-adjusted capitation payments for ESRD beneficiaries.

Before January 1, 2002, M+C ESRD capitation payments were based on State level base rates that were not risk-adjusted. The base payment rates were based on a base year (1997) amount that represented 95 percent of projected State average fee-for-service costs, as determined at the time.

Under section 605(c) of the BIPA, we were required to publish for public comment a description of the adjustments we proposed to make in accordance with section 605(a) of the BIPA. We published a proposed notice on May 1, 2001 (66 FR 21770) soliciting comments on the proposed adjustments. Section 605(c) of the BIPA further required us to publish these adjustments in final form so that the amendment made by section 605(a) would be implemented consistent with 605(b) (which provided that the adjustments were to become effective with payments made for January 2002. We published this final notice in the **Federal Register** on October 1, 2001 (66 FR 49958).

The new ESRD payment methodology set forth in the final notice published on October 1, 2001—

- Increased the ESRD base payment rate for 2002 by 3 percent. We determined in the final notice that a 3 percent increase in the base rate was the most appropriate proxy for 100 percent of the estimated per capita fee-for-service expenditures for ESRD beneficiaries, and the most appropriate way to reflect the demonstration rates; and
- Adjusted State per capita rates by age and sex factors, in order to reflect differences in costs among ESRD patients.

These adjustment factors and rates for CY 2002 for enrollees with ESRD can be found on our Web site at *http:www.cms.gov/stats/hmorates/aapccpg.htm#2002rates.*

For the purpose of M+C payment, ESRD beneficiaries include all beneficiaries with ESRD, whether entitled to Medicare because of ESRD, disability, or age. Under the new M+C ESRD payment methodology published on October 1, 2001, rates would continue to include the costs of beneficiaries with Medicare as Secondary Payer (MSP) status. (Costs to Medicare of M+C ESRD enrollees with MSP status do not include payments made by other primary payers such as employer group health plans or other insurers.)

We propose to revise § 422.250(a)(2)(i) to reflect these changes to the payment methodology for ESRD enrollees set forth in the October 1, 2001 final notice.

2. Permitting Premium Reductions as Additional Benefits Under Medicare+Choice Plans

Section 606 of the BIPA amended section 1854(f)(1) of the Act by allowing M+C organizations to reduce the standard Part B premiums for their M+C Medicare enrollees, as an additional benefit, if the M+C organization experiences an adjusted excess amount, as defined in § 422.312(a)(2), for that plan in a contract year, beginning in CY 2003. Under section 606 of the BIPA, M+C organizations could now elect to accept lower payments from us and apply 80 percent of the reduction to reduce the standard Part B premiums of M+C beneficiaries enrolled in that plan. The amount of the reduction in payments to the M+C organizations may not exceed 125 percent of the Medicare standard Part B premium rate set by us for that year, which is the amount that would result in eliminating the enrollee's liability for the Part B premium entirely. The reduction must be applied uniformly to all similarly situated enrollees of the M+C plan.

In addition, section 606 of the BIPA required that the list of information made available to each enrollee electing an M+C plan must also include a description of any reduction in the Part B premiums.

We would revise §§ 422.2, 422.111(f), 422.250(a)(1), and 422.312 to reflect these changes.

3. Payment of Additional Amounts for New Benefits Covered During a Contract Term

Section 611 of the BIPA amended section 1853(c)(7) of the Act by limiting the financial impact on M+C organizations of new coverage requirements adopted by the Congress. If we project that these new coverage requirements would result in a significant increase in costs to M+C organizations, M+C organizations would not be required to cover them under their contracts, but the services would be instead paid for on a fee-for-service basis through our fiscal intermediaries or carriers, until the next annual M+C payment announcement is made following the coverage change. After that, appropriate adjustments would be made to the payments made to M+C organizations to reflect the additional costs. Before the payment rate adjustments become effective, the change in benefits would not be part of the M+C organizations' contracts with us and would not be covered under the M+C plans. After the payment adjustments become effective, the change in benefits would become part of the M+C organizations' contracts with us and would be covered by the M+C plans.

We would revise §§ 422.109 and 422.256(b) accordingly.

4. Restriction on Implementation of Significant New Regulatory Requirements Midyear

Section 612 of the BIPA amended section 1856(b) of the Act to prohibit us from imposing significant new regulatory requirements on an M+C organization or plan, other than at the beginning of a calendar year. We propose in a new § 422.521 to define significant regulatory requirements as those which impose a new cost or burden on M+C organizations, and for which a mid-year effective date is not required by statute.

5. Election of Uniform Local Coverage Policy for a Medicare+Choice Plan Covering Multiple Localities

Section 615 of the BIPA amended section 1852(a)(2) of the Act by adding a section that would allow M+C organizations to achieve greater consistency of benefits for M+C plans covering multiple localities. In providing Medicare covered benefits to its enrollees, each M+C organization ordinarily must comply with, among other things, written coverage decisions of local carriers and intermediaries with jurisdiction for claims in the geographic area in which the services are covered

under the M+C plan. Some M+C organizations have plans that cover a large area, either a State or multiple counties in a State. Section 615 of the BIPA would allow those M+C organizations that offer a plan in an area large enough that more than one local coverage policy is applied in the service area, to elect to have the local coverage policy for that part of the area that is the most beneficial to the M+C enrollees apply to all M+C enrollees in the plan. The Secretary will make the final determination as to which local coverage policy is most beneficial to the M+C enrollees.

By electing to use this uniform coverage policy, M+C organizations could use economies of scale when printing and distributing marketing materials and descriptions of benefits for their M+C plans. This policy would also enable the M+C organizations to standardize coverage decisions and provider contracts across entire plans, rather than having different policies apply to different geographic areas of the same plan.

We propose to revise § 422.101(b)(3) to reflect the new option allowed by section 615 of the BIPA.

6. Medicare+Choice Program Compatibility With Employer or Union Group Health Plans

Section 617 of the BIPA amended section 1857 of the Act by allowing us to waive or modify requirements that hinder the design of, the offering of, or the enrollment in M+C plans under contracts between M+C organizations and employers, labor organizations, or the trustees of a fund established to furnish benefits to an entity's employees. Previously, M+C organizations that contracted with an employer group or with a State Medicaid agency to provide benefits had to comply with all requirements of the regulations found at part 422.

The authority in section 617 of the BIPA was first available for calendar year 2001. We accordingly informed M+C organizations that, in order to facilitate the offering of M+C plans under contracts with employers, labor organizations, or the trustees of a benefits trust fund, under this proposed rule we would, upon written request from an M+C organization, waive or modify those requirements in part 422 of the regulations that would hinder the design of, the offering of, or the enrollment in an M+C plan. We indicated that after we have approved a request for a waiver, the requesting M+C plan, and any other M+C organization, would be able to use the waiver in developing its Adjusted Community Rate Proposal (ACRP). Any M+C plan using the waiver must include that information in the cover letter of its ACRP submission to us. The waiver or modification would take effect once the ACRP has been approved.

We informed M+C organizations that, at least initially, we would approve the following three types of waivers under the authority in section 617 of the BIPA:

- Employer-Only Plans: We would allow M+C organizations to offer employer-only plans (M+C plans not available to the individual market). M+C organizations would not be required to market these plans to individuals. In addition, M+C organizations would not be required to have the marketing materials for employer-only plans reviewed and approved by us.
- Actuarial Swaps: We would allow M+C organizations to swap benefits not covered by Medicare of approximately equal value when an employer asks for a benefit package that differs from the package offered by the M+C organization to the individual market.
- Actuarial Equivalence: We would allow M+C organizations to raise the co-payments for certain benefits but provide a higher benefit level or a modification to the premium charged, as long as projected beneficiary liability was actuarially equivalent.

We also indicated that we would continue to review additional areas for waiver or modification and would issue further guidance once we have completed our review. We solicit comments on these categories, and whether we should provide for additional categories.

We propose to amend § 422.106 by adding a new paragraph (c) to reflect the authority in section 617 of the BIPA.

7. Permitting End-Stage Renal Disease Beneficiaries To Enroll in Another Medicare+Choice Plan if the Plan in Which They Are Enrolled Is Terminated

Section 620 of the BIPA amended section 1851(a)(3)(B) of the Act to permit beneficiaries with end-stage renal disease (ESRD) to enroll in another M+C plan if the plan in which they are enrolled terminates its contract with us or discontinues the plan in the area in which the beneficiary lives. Before the BIPA, beneficiaries with ESRD who were affected by an M+C plan termination had no Medicare options other than another plan offered by the same M+C organization or the original Medicare fee-for-service program.

Section 620 of the BIPA allows ESRD beneficiaries to elect to enroll in another M+C plan if their plan terminates its contract with us or discontinues the plan in their area. However, this provision only authorizes the beneficiaries to make one election based on that termination. If the new M+C plan in which the ESRD beneficiary enrolls pursuant to section 620 of the BIPA terminates, the ESRD beneficiary may enroll in another M+C plan. This is true for any subsequent M+C plan terminations or discontinuations that result in the beneficiary's disenrollment. However, if the ESRD beneficiary enrolls in another M+C plan after his or her plan terminates its contract or discontinues the plan in the area in which he or she lives, then disenrolls from the new plan for a reason other than that the plan is terminating or discontinuing the plan in his or her area, he or she may not enroll in another new M+C plan unless the new plan is offered by the same M+C organization offering the M+C plan in which he or she was enrolled. If there is no plan meeting this criterion available, the beneficiary must instead return to the original Medicare fee-for-service program.

While this provision refers to ESRD beneficiaries electing to continue enrollment in another M+C plan, we do not interpret this to mean that the enrollee must make the election immediately upon the termination of the M+C plan in which he or she is enrolled. This is because, under section 620(b)(2) of the BIPA, an individual whose plan was terminated or discontinued any time after December 31, 1998 is eligible for enrollment under this provision, and is to be treated as if the plan terminated as of the date of enactment of the BIPA. Since the BIPA was enacted in the middle of a month, and a beneficiary could not be expected to be informed of its provisions in time to enroll effective the first of the next month, we believe that the Congress contemplated that the opportunity to enroll in another plan provided in section 620 of the BIPA does not necessarily have to be exercised immediately upon termination of an M+C plan. In other words, we do not interpret "continue enrollment" necessarily to mean "continue without interruption".

We propose to revise § 422.50(a)(2) to reflect the provisions in section 620 of the BIPA.

8. Providing Choice for Skilled Nursing Facility Services Under the Medicare+Choice Program

Section 621 of the BIPA amended section 1852 of the Act by adding a new subsection (l). This new subsection would ensure that an M+C organization would give a Medicare beneficiary who is a resident of a skilled nursing facility (SNF) the option of returning to his or her "home SNF" for posthospital extended care services upon discharge from a hospital.

The term "home skilled nursing facility" would mean—

- The SNF in which the beneficiary resided at the time of admission to the hospital;
- A SNF providing posthospital extended care services through a continuing care retirement community that provided residence to the beneficiary at the time of admission to the hospital; or
- The SNF in which the spouse of the beneficiary is residing at the time of discharge from the hospital.

In order for a home SNF to be offered under this section, the SNF to which the beneficiary would be returned must either have a contract with the M+C organization to provide posthospital services or agree to accept substantially similar payment under the same terms and conditions that apply to SNFs under contract with the M+C organization. The coverage provided must be no less favorable to the beneficiary than coverage of posthospital services that are otherwise covered under the M+C plan.

The requirement to return the beneficiary to his or her home SNF would not apply if the applicable SNF is not qualified to provide benefits under Medicare Part A to beneficiaries not enrolled in an M+C plan. A SNF that is not contractually bound to do so could refuse to accept an M+C beneficiary or impose conditions on the acceptance of the beneficiary for posthospital extended care services.

The requirements of this new subsection first became applicable under contracts entered into or renewed on or after December 20, 2000.

This proposed rule would add a new § 422.133 to reflect the requirements of section 621 of the BIPA.

In addition to the requirements concerning returning beneficiaries to their home SNFs, this section also required that the Medicare Payment Advisory Commission (MEDPAC) conduct a study to analyze the effects of the new requirements. The study must examine the effects of the new requirements on the following:

- The scope of additional benefits provided under the M+C program.
- The administrative and other costs incurred by M+C organizations.
- The contractual relationships between M+C organizations and SNFs.

MEDPAC must submit a report on this study to the Congress no later than December 20, 2002.

9. Increased Civil Money Penalty for Medicare+Choice Organizations That Terminate Contracts Mid-Year

Section 1857(g)(3) of the Act, authorizes us to impose intermediate sanctions, including civil money penalties, on M+C organizations for the same reasons that we can terminate an M+C organization's contract. Section 1857(c)(2) of the Act provides that we may, at any time, terminate an M+C organization's contract if we determine that the M+C organization—

- Failed substantially to carry out the contract;
- Is carrying out the contract in a manner inconsistent with the efficient and effective administration of the M+C program; or
- No longer substantially meets the applicable conditions of the M+C program.

In §§ 422.510(a)(1) through (a)(12), we identified specific M+C organization behaviors that we have determined meet one of the grounds for termination described in section 1857(c)(2) of the Act. Further, in §§ 422.752(b) and 422.756(f)(3), we described the basis and procedures for imposing the intermediate sanctions that originate from M+C contract violations that are grounds for M+C contract termination by us.

Section 623 of the BIPA amended section 1857(g)(3) of the Act by providing us with enhanced civil money penalty authority, which we would implement in proposed § 422.758. Under section 623 of the BIPA, the Congress gave us the authority to establish and levy separate and distinct civil money penalties when our determination that an M+C organization has failed to substantially carry out the terms of its contract is based upon the M+C organization's termination of its contract with us in a manner other than that provided for in the M+C contract and in § 422.512. The new civil money penalty would apply to terminations occurring after December 21, 2000. The amount of this civil money penalty may not exceed $100,000, unless we establish a higher amount through further regulations.

We believe that the Congress extended the flexibility to establish a potentially higher civil money penalty in recognition of the fact that the $100,000 specified in the Act may, in some instances, not provide an effective deterrent to discourage M+C organizations from terminating their contracts in a manner inconsistent with the procedures described in the regulations. In developing this civil money penalty amount, it is appropriate for us to consider the number of Medicare beneficiaries who could be adversely affected by an M+C organization's decision to terminate its contract with us in a manner that violates M+C rules.

We propose to establish the amount of this civil money penalty as either $250 per Medicare member enrolled in the terminated M+C plan or plans at the time the M+C organization terminated its contract with us or $100,000, whichever is greater. We have added the "whichever is greater" provision to discourage violations of the contract termination provisions by M+C organizations with lower M+C plan enrollment. In either instance, this new civil money penalty would represent a substantial increase over the current civil money penalty of $25,000 for similar violations and would serve as an effective deterrent against M+C contract terminations violations that could potentially harm Medicare beneficiaries.

This provision of the BIPA would create a separate category of civil money penalty, with a dollar amount unique to the violation, that we can impose on M+C organizations that fail to substantially carry out the terms of their contracts with us by violating the contract termination provisions described in § 422.512. Accordingly, we would revise § 422.758 and add a new paragraph (b) that describes this civil money penalty.

D. Skilled Nursing Facility Care Under Medicare+Choice

Under section 1814(a)(2)(B) of the Act, the Medicare extended care skilled nursing facility (SNF) benefit covers skilled nursing care or other skilled rehabilitation services that are needed on a daily basis and only available in a SNF on an inpatient basis.

Generally, this benefit is only covered following a hospital stay of not less than 3 days. Under section 1812(f) of the Act, however, we may authorize coverage of SNF care without a prior hospital stay if two conditions are met. First, the coverage of these services must not result in any increase in Medicare program payments, and second, the coverage must not alter the acute care nature of the benefit.

We have determined that these conditions are met in the case of SNF services furnished by an M+C organization that covers SNF services. We are proposing to revise the regulations to reflect this determination, so that a SNF stay without a prior 3-day hospital stay can be covered by Medicare if the admission to the SNF occurred while the beneficiary was

enrolled in a M+C plan that covers SNF services.

Under section 1852(a) of the Act, organizations contracting with us under the M+C program must provide to their Medicare enrollees at least those items and services for which benefits are available under the original Medicare fee-for-service program. These M+C organizations may also furnish additional coverage, including cost-sharing for Medicare benefits and benefits not covered under the original Medicare fee-for-service program. One additional benefit that many M+C organizations have chosen to furnish is care in a SNF that does not follow a 3-day hospital stay.

Because these SNF services were not Medicare covered services, the cost of the services were included either as an additional benefit funded out of the adjusted excess calculated in the Adjusted Community Rate (ACR), or as a supplemental benefit for which a premium was charged. An enrollee receiving SNF services under these circumstances would remain entitled to the SNF Medicare benefit, which required a prior 3-day hospital stay. Moreover, an enrollee in a SNF for services covered as an additional or supplemental benefit without a prior 3-day hospital stay would no longer have the SNF services covered if he or she disenrolled from the M+C plan (or the plan terminated) in the middle of the SNF stay. By exercising our authority under section 1812(f) and allowing Medicare coverage of SNF services without the prior 3-day hospital stay by an M+C organization that covered them as an additional or supplemental benefit, the entire SNF stay would then be considered a Medicare covered benefit.

Our determination that SNF services furnished by M+C organizations meet the two tests in section 1812(f) is based on the fact that M+C organizations are paid a monthly per-Medicare enrollee payment to provide all contracted services. Thus, Medicare costs would not be affected by permitting SNF services to be covered by Medicare without the prior 3-day hospital stay. The savings from the 3-day hospital stay would be applied to the SNF care for those same 3 days. This would also provide incentives for the M+C organizations to provide care more cost effectively. Some evidence indicates that M+C organizations, particularly coordinated care plans, can shorten hospital stays and shift patients to post acute or subacute settings, such as SNFs, more quickly than under the original Medicare program. If SNF care is the appropriate level of care, M+C organizations may use SNF care rather than more expensive hospital care for similar patients requiring post hospital care. For some patients and diagnoses, the M+C organization may bypass the hospital stay and admit the beneficiary directly to a SNF.

We make a capitation payment for each enrollee using a formula set in section 1853 of the Act. Allowing an M+C organization to provide a SNF benefit that does not require a 3-day hospital stay as part of its basic Medicare benefit package would not affect any payments to M+C organizations. Since we are already paying for the transition from M+C organizations to the original Medicare program during a SNF stay, there would be no additional program costs. If those M+C enrollees had been in the original Medicare program, they would have had a 3-day hospital stay. M+C organizations that take advantage of this new benefit would furnish it the same way it has been used in the past, to shift care to the SNF setting that otherwise would have occurred in the hospital when the beneficiary's physician determines that a SNF stay would meet the level of care requirement.

We would add a § 409.20(c)(4), revise §§ 409.30(b) and 409.31(b), and add a new § 422.101(c) to reflect these changes.

E. Disenrollment by the M+C Organization

The interim final rule published in the **Federal Register** on June 26, 1998 (63 FR 35067) provided that an M+C plan enrollee who remained out of the M+C plan's the service area for more than 12 months was considered to have moved out of the service area, and must be disenrolled by the M+C organization offering the plan. There were several comments in response to this interim final rule concerning this issue. Commenters were concerned about beneficiaries being out of the service area of a plan, but still enrolled in the plan, in which case they could only receive urgent and emergent care. They believed that an enrollee who was out of the service area for more than 6 months should join another M+C plan that could provide all healthcare benefits, not just urgent and emergent care. As a result of these comments, in the final rule with comment period published in the **Federal Register** on June 29, 2000 (65 FR 40270, we shortened the time in which an enrollee could be out of the service area and still remain enrolled in the M+C plan from 12 months to 6 months.

However, this change had the consequence of limiting the "visitor" or "traveler" type programs that many M+C plans have for their enrollees who leave the service area for extended periods of time, exceeding 6 months. These programs allow enrollees to remain enrolled in the M+C plan and to receive more than just urgent and emergent care when out of the service area. For example, enrollees may temporarily stay with a relative while recuperating from an illness, or may temporarily travel to a more temperate climate during colder weather, or may just travel for an extended period of time. The M+C organizations have expressed concerns about the impact of the current 6-month rule on these programs. In response to these concerns, we propose to create an exception to the 6-month rule that would allow the plans to continue to offer these programs that extend the out-of-service-area benefits from 6 to 12 months. The M+C organizations offering these programs would be allowed to impose restrictions on obtaining benefits, except for urgent, emergent, and post stabilization care, and renal dialysis. Enrollees in these programs would not be disenrolled if they are out of the service area for up to 12 months, but enrollees in M+C plans without this program would continue to be disenrolled if they are out of the service area for 6 months or more. We propose to revise § 422.74(d)(4) to reflect this change.

F. Reporting Requirements for Physician Incentive Plans

Section 1852(j)(4)(B)(iii) of the Act required M+C organizations to provide us with descriptive information regarding their physician incentive plans (PIP) sufficient to permit us to determine whether the plan is in compliance with the applicable requirements. The current regulations interpreted this provision to require that an M+C organization submit the CMS PIP Disclosure Form (OMB No. 0938–0700) to us with its contract application and annually thereafter. In this proposed rule, we would change the reporting requirement to allow M+C organizations to maintain the required PIP information in their files (or their subcontractors' files) and submit it to us upon request (such as during a site visit). Furthermore, we propose to delete the specific requirements concerning the type of information that would have to be maintained.

We would retain all other requirements pertaining to physician incentive plans, such as the stop-loss provisions and the requirement that M+C organizations provide information to beneficiaries upon request. This change would also apply to HMOs contracting with us who are also required to submit the same information concerning their physician incentive plans.

When the physician incentive plan requirements were enacted, the Congress expressed concern that financial incentives could lead to physicians hesitating to provide needed referral services. Because this proposed rule would modify the reporting requirements, there may be concern that this could lead to a reduction in the quality of care provided to beneficiaries. However, we have taken a number of steps to improve the quality of care provided by M+C organizations, such as the collection of Health Plan Employer Data Information Sets (HEDIS) and the Consumer Assessment of Health Plans Survey (CAHPS), and we have implemented a number of other quality improvement projects. These improved quality assessments provide direct measures of quality and access that we believe make it less necessary to receive annual reports on PIP arrangements. In addition, this proposed approach would be consistent with the reporting requirements of private accrediting organizations, such as the National Committee for Quality Assurance (NCQA), which only reviews incentive plans when investigating quality problems.

We propose to revise §§ 417.479(h)(2) and 422.210(a) to reflect these changes.

G. M+C Appeals Process

1. Defining Who Can Request Organization Determinations

Currently, the M+C regulations at § 422.566(c) specify that any of the parties listed in § 422.574 can request an M+C organization determination. It has come to our attention that in some cases the use of this cross-reference has been misconstrued to mean that in order to request an organization determination on behalf of an enrollee, an affiliated provider would need to be an authorized representative, and a non-affiliated provider would need to be an assignee. Although we discussed this issue in our June 29, 2000 final rule (65 FR 40,282), some confusion has continued.

The intent of the regulation has always been for the provisions governing requests for organization determinations to be more inclusive than the provisions governing requests for appeals. To clarify this point, we are proposing to eliminate the existing cross-reference to § 422.574 and list those who may request an M+C organization determination under § 422.566(c). Determination requests may be made by—

- The enrollee (including his or her authorized representative);
- Any provider that furnishes, or intends to furnish, services to the enrollee; or
- The legal representative of a deceased enrollee's estate.

The fact that an individual or entity may request an organization determination does not necessarily entitle that individual or entity the right to request an appeal, unless the conditions for party status under § 422.574 are met.

2. Effectuation Times When M+C Organizations File Appeals

The current regulations at §§ 422.618 and 422.619 establish effectuation times when an M+C organization's denial of coverage or payment is overturned, either through its own reconsideration process or by an independent outside entity. The M+C organization may not appeal the overturning of its denial of coverage or payment in either of these situations. Section 422.618 also requires that if the independent outside entity's determination is reversed (in whole or in part) by an administrative law judge (ALJ), or at a higher level of appeal, the M+C organization must pay for, authorize, or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 60 calendar days from the date the M+C organization receives notice reversing the determination. In these situations, the M+C organization, like an enrollee, has 60 days to appeal.

The ambiguity in the current regulations, which require effectuation of a determination within 60 days, but also permit further appeal within the same time frame, results in confusion. To reconcile these two regulatory provisions, we are proposing that M+C organizations may await the outcome of a Departmental Appeals Board (the Board) review before effectuating a decision of an ALJ. This proposal would serve to balance the M+C organizations' right to appeal with the need to ensure that an enrollee would not be faced with a potentially large debt in the event that the Board overturns the ALJ after the service had been rendered to the enrollee. The Board's practice is to screen all of its cases upon arrival to identify and give priority to pre-service denial cases, including immediate assignment and resolution of cases involving imminent health risks.

In § 422.618(c), we would retain the 60-day effectuation requirement for reversals by an ALJ or higher level of appeal because we do not want to negate the M+C organizations' 60-day right to request an appeal to the Board or higher level. However, our expectation is that M+C organizations would not take the maximum 60 days to effectuate a decision they do not intend to appeal. We are proposing to redesignate the current § 422.618(c) as § 422.618(c)(1) and add a new § 422.618(c)(2) to allow for an exception to the 60-day standard if the M+C organization decides to request a board review consistent with § 422.608. We would allow the M+C organization to await the outcome of the Board review before it pays for, authorizes, or provides the service under dispute. Under the proposed provision, we would require an M+C organization that files an appeal with the Board concurrently to send a copy of its request and any accompanying documents to the enrollee. Additionally, the M+C organization would be required to notify the independent review entity of the requested appeal.

Consistent with this proposed change, we would also revise § 422.619(c) with regard to effectuating expedited reconsidered determinations. As in standard appeals, we would allow an exception for the M+C organization to await the outcome of the Board's review before the M+C organization authorizes or provides the service under dispute. Additionally, an M+C organization that files an appeal with the Board would be required concurrently to send a copy of its request and any accompanying documents to the enrollee, as well as notify the independent review entity of the requested appeal.

We considered reducing the time frame in § 422.619(c) from 60 days to 72 hours for the M+C organization to authorize or provide the service under dispute. This would have been consistent with our reasoning for other effectuation guidelines because if the M+C organization originally had rendered a decision favorable to the enrollee, it would have been required to do so within the maximum organization determination time frame. However, we decided to maintain the 60-day effectuation time frame, so that we do not limit the M+C organizations' 60-day window in which to appeal. If we had required M+C organizations to effectuate a decision within 72 hours, we would have forced them to decide whether to appeal within that same 72 hours. Thus, we would have had to require notice to the enrollee regarding effectuation. Moreover, the M+C organization would have to send a second notice to the enrollee when the M+C organization filed its appeal. To eliminate confusion for enrollees and a

cumbersome process for M+C organizations, we would maintain the requirement that when an expedited determination is reversed, in whole or in part, by an ALJ or at a higher level of appeal, the M+C organization must effectuate the decision within 60 days. We would emphasize, however, that the M+C organization would have to meet the medical exigency standard for providing or authorizing services as expeditiously as the enrollee's health condition requires regardless of the 60-day time frame.

H. Requiring Health Care Prepayment Plans (HCPPs) and Remaining Cost Plans To Follow the M+C Appeals Process

We are soliciting comments on whether HCPPs and the remaining cost plans should follow the M+C appeals and grievance processes under subpart M of part 422. Currently, HCPPs and the remaining cost plans adhere to the provisions under subpart Q of part 417, which implemented the former managed care program for risk contracts under section 1876 of the Act. We believe that the M+C appeals process provides enhanced enrollee protections, such as faster processing times and streamlined notice procedures. We recognize that the remaining cost plans are expected to be phased out by 2004, therefore we solicit comments concerning whether the burdens associated with complying with subpart M of part 422 outweigh the protections afforded to beneficiaries. Moreover, unlike cost plans, HCPPs do not provide in-patient hospital services, thus, we are not proposing that HCPPs follow §§ 422.620 through 422.622, which provide for immediate Peer Review Organization review for in-patient hospital discharges.

I. Technical Clarifications

1. Grace Period for Late Premium Payments

We are proposing a technical change in this proposed rule to address concerns M+C organizations have raised concerning when the 90-day grace period for premium payments begins running. The regulation currently provides, at § 422.74(d)(1)(ii), that an M+C organization may only disenroll a Medicare enrollee when the organization has not received payment within 90 days after the date it has sent a written notice of nonpayment to the enrollee. Several M+C organizations have asked that the 90-day grace period begin to run on the day the premium payment was due, not the day the notice was sent. We believe that as long as the beneficiary receives notice under § 422.74(d)(1)(i)(C) that he or she would be disenrolled if payment is not made by the end of the grace period, a 90-day grace period beginning at the payment due date is sufficient. Because the notice has to be provided within 20 days after the payment was due, this would ensure the enrollee of 70 days following the notice within which to make payment, and avoid disenrollment.

We are accordingly proposing to revise § 422.74(d)(1)(ii) to provide that the M+C organization may only disenroll a Medicare enrollee when the organization has not received payment within 90 days after the date the premium was due.

2. Payment for Hospice Care

We are proposing a clarification in this proposed rule to provide information concerning changes in M+C payments when an individual has elected hospice care.

We would revise § 422.266(d) to make clear that when enrollees of M+C plans elect to receive hospice care under § 418.24, we would not make any payment for the hospice care to the M+C plan beginning with the next month's payment after the election, except for the portion of the payment applicable to additional benefits, as described in § 422.312. Currently, the regulation refers to capitation payments being reduced to this amount. This clarification makes the language of the rules regarding hospice care for M+C enrollees the same as the rules for HMOs and CMPs.

We propose to revise § 422.266(c) to reflect this clarification.

II. Provisions of This Proposed Rule

The provisions of this proposed rule are as follows:

- In § 409.20, we would add a paragraph (c)(4) to add a definition of the term "posthospital SNF care" to include SNF care that does not follow a hospital stay if the beneficiary is enrolled in an M+C plan.
- In § 409.30, we would revise paragraph (b)(2) to add an exception to the preadmission requirements for enrollees of M+C organization plans.
- In § 409.31, we would add a new paragraph (b)(2)(iii) to add a condition to the level of care requirements that for an M+C enrollee, a physician has determined that a direct admission to a SNF without an inpatient hospital stay would be medically appropriate.
- In § 417.479, we would revise paragraph (h) to modify the reporting requirements concerning physician incentive plans.
- In § 422.2, we would revise the definition of additional benefits to include a reduction in the Medicare beneficiary's standard Part B premium.
- In § 422.50, we would revise paragraph (a)(2) to include in the exception to the general rule that a beneficiary with end-stage-renal-disease (ESRD) is not eligible to elect an M+C plan, that an individual with ESRD whose enrollment in an M+C plan is discontinued because we or the M+C organization terminated the organization's contract for the plan, is eligible to elect another M+C plan, if the original enrollment was terminated after December 31, 1998.
- In § 422.74, we would revise paragraph (d)(1)(ii) to reflect that an M+C organization may only disenroll a Medicare enrollee when the organization has not received payment within 90 days after the date the premium payment was due.
- In § 422.74, we would revise paragraph (d)(4) to allow M+C organizations to operate "visitor" or "traveler" programs that provide benefits beyond urgent and emergent care to their enrollees who are out of the service area for more than 6 months but less than 12 months.
- In § 422.101, we would revise paragraph (b)(3) to reflect the provisions in section 1852(a)(2)(C) of the Act permitting M+C organizations with plans that cover large areas encompassing more than one local coverage policy area to elect to have the local coverage policy for the part of the area that is the most beneficial to the M+C enrollees apply to all M+C enrollees in the plan. This policy allows M+C organizations to standardize coverage decisions and provider contracts across the entire plan, rather than having different policies apply to different geographic areas of the same plan.
- In § 422.101, we would add a paragraph (c) to include in the requirements relating to Medicare covered benefits the option to provide for coverage as a Medicare benefit of posthospital SNF care in the absence of a prior hospital stay.
- In § 422.106, we would add a new paragraph (c) to reflect the provisions in section 1857(i) of the Act permitting us to grant a waiver or modification of requirements in part 422 that hinder the design of, the offering of, or the enrollment in, M+C plans under contracts between M+C organizations and employers, labor organizations, or the trustees of benefits funds.
- In § 422.109, we would revise the definition of "significant cost" to include legislative changes in benefits and detail that if we project that the legislative changes in benefits would result in significant costs to M+C organizations, we would pay (through our fiscal intermediaries and carriers) the additional costs outside the contract until the next payment update. Subsequently, an adjustment would be made to payments under the contract to reflect the new costs.
- In § 422.111, we would add a new paragraph (f)(8)(iii) to add any reduction in Part B premiums to the list of information that must be disclosed to each enrollee electing an M+C plan.
- We would add a new § 422.133 to contain the new requirement that M+C organizations return residents of SNFs to their home SNF for posthospital extended care services after discharge from a hospital. This new section would contain the definition of home SNF, the requirements for return to the home SNF, and the exceptions to the general rule.
- In § 422.210, we would revise paragraph (a) to reflect changes to the reporting requirements concerning physician incentive plans.
- In § 422.250, we would revise paragraph (a)(1) to reflect that beginning with the initial payment for CY 2003, monthly payments to M+C organizations may be reduced by the amount described in new § 422.312(d) for the reduction of the beneficiary's standard Part B premium.
- In § 422.250, we would also revise paragraph (a)(2) to redesignate paragraph (a)(2)(i)(B) as (a)(2)(i)(C) and add a new paragraph (a)(2)(i)(B) to reflect that when we establish ESRD rates, we would apply appropriate adjustments, including risk adjustment factors.
- In § 422.256, we would revise paragraph (b) to reflect that we would make appropriate payment adjustments for new legislative changes in benefits that would result in significant costs to M+C organizations, based on an analysis by our chief actuary of the costs associated with the new legislative change in benefits.
- In § 422.266, we would revise paragraph (c) to clarify that when enrollees of M+C plans elect to receive hospice care under § 418.24, we would not make any payment for the hospice care to the M+C plan beginning with the next month's payment after the election, except for the portion of the payment applicable to additional benefits, as described in § 422.312.
- In § 422.312, we would redesignate paragraph (d) as paragraph (e) and add a new paragraph (d) to reflect that an M+C organization may apply adjusted excess amounts to additional benefits and accept lower payments from us, which would allow a reduction of standard Part B premiums for its enrollees. The reduction in standard Part B premiums could not equal more than 80 percent of the reduction in payments to the M+C organization and the payment reduction could not exceed 125 percent of the standard Part B premium. In addition, the reduction in premium would have to be applied uniformly to all similarly situated enrollees.
- We would add a new § 422.521 to indicate that we would not implement, other than at the beginning of a calendar year, regulations that would impose new cost or burden on M+C organizations or plan, unless a different effective date is required by statute.
- In § 422.566, we would revise paragraph (c) to delete the cross-reference to § 422.574 and enumerate who can request an organization determination.
- In § 422.618, we would revise paragraph (c) to add an effectuation exception when the M+C organization files an appeal with the Departmental Appeals Board in the case of a standard reconsidered determination.
- In § 422.619, we would revise paragraph (c) to add an effectuation exception when the M+C organization files an appeal with the Departmental Appeals Board in the case of an expedited reconsidered determination.
- In § 422.758, we would revise paragraph (b) to include the new maximum amount of the civil money penalty that we would impose on M+C organizations that terminate their contracts in a manner other than that described in § 422.512. The new penalty amount would be $100,000 or $250 per Medicare enrollee from the terminated plan or plans, whichever is greater.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Section 417.479(h)—This section states that each HMO must provide to us information concerning its physician incentive plans as requested, and each HMO must provide information to any Medicare beneficiary who requests it.

This section requires the HMOs to disclose information to us and to Medicare beneficiaries. While this requirement is subject to the PRA, the burden associated with this requirement is captured in approved collection 0938–0700, with an expiration date of April 30, 2004.

Section 422.50(a)(2)—This section states that an individual who develops end-stage renal disease while enrolled in an M+C plan or in a health plan offered by an M+C organization is eligible to elect an M+C plan offered by that organization. Also, an individual with end-stage renal disease whose enrollment in an M+C plan is terminated or discontinued after December 31, 1998 because we or the M+C organization terminated the M+C organization's contract for the plan or discontinued the plan in the area in which the individual resides is eligible to elect another M+C plan. An individual who elects an M+C plan under paragraph (a)(2)(ii) of this section may elect another M+C plan if the plan elected under paragraph (a)(2)(ii) also is terminated or discontinued in the area in which the individual resides.

The burden associated with this requirement is the time and effort for the individual to submit a new election form. While this section is subject to the PRA, this burden is currently captured in approved collection 0938–0753, due to expire October 31, 2002 (currently at OMB awaiting re-approval).

Section 422.74(d)(4)(i)—This section states that unless continuation of enrollment is elected under § 422.54, the M+C organization must disenroll an individual if the M+C organization establishes, on the basis of a written statement from the individual or other evidence acceptable to us, that the individual has permanently moved.

This section requires that the individual must prepare and provide a written statement to the M+C organization that he or she has permanently moved. While this requirement is subject to the PRA, the

burden associated with this requirement is captured in approved collection 0938–0753.

Section 422.106(c)(1)—M+C organizations may request, in writing, from us a waiver or modification of those requirements in part 422 that hinder the design of, the offering of, or the enrollment in, M+C plans under contracts between M+C organizations and employers, labor organizations, or the trustees of benefits funds.

We estimate that there will be approximately 200 requests for waivers or modifications submitted on an annual basis and that it will take approximately 2 hours to prepare each request. The total annual burden associated with this requirement is estimated to be 400 hours.

Section 422.106(c)(2)—This section states that approved waivers or modifications under this paragraph may be used by any M+C organization on developing its Adjusted Community Rate Proposal (ACRP). Any M+C organization using a waiver or modification must include that information in the cover letter of its ACRP submission.

The burden associated with this requirement is the time and effort for the M+C organization to include the information in the cover letter of its ACRP submission. Although this requirement is subject to the PRA, the burden is minimal; therefore, the burden is captured in the analysis for § 422.106(c)(1).

Section 422.111(f)(8)(iii)—This section has been revised to add any reduction in Part B premiums to the list of information that must be disclosed to each enrollee electing an M+C plan.

The burden associated with this requirement is the time and effort for the M+C organization to disclose information to each enrollee electing an M+C plan. Although this requirement is subject to the PRA, the burden associated with this requirement is captured in approved collection 0938–0778.

Section 422.210(a)(1)—This section states that each M+C organization must provide to us upon request, descriptive information about its physician incentive plan in sufficient detail to enable us to determine whether that plan complies with the requirements of § 422.208.

This section requires the M+C organization to prepare and submit, upon request, descriptive information to us. While this requirement is subject to the PRA, the burden associated with this requirement is captured in approved collection 0938–0700.

Section 422.266(a)—An M+C organization that has a contract under subpart K of this part must inform each Medicare enrollee eligible to select hospice care under § 418.24 of this chapter about the availability of hospice care (in a manner that objectively presents all available hospice providers, including a statement of any ownership interest in a hospice held by the M+C organization or a related entity).

While this requirement is subject to the PRA, the burden associated with it is captured in approved collections 0938–0753 and 0938–0302.

In summary, the total burden hours for this proposed rule is calculated to be 400 hours. The breakdown is as follows:

Section 417.479(h)—burden captured in 0938–0700
Section 422.50(a)(2)—burden captured in 0938–0753
Section 422.74(d)(4)(i)—burden captured in 0938–0753
Section 422.106(c)(1)—400 hours
Section 422.106(c)(2)—burden captured in 422.106(c)(1)
Section 422.111(f)(8)(iii)—burden captured in 0938–0788
Section 422.210(a)(1)—burden captured in 0938–0700
Section 422.266(a)—burden captured in 0938–0753 & 0302

If you comment on these information collection and recordkeeping requirements, please mail one original and three copies directly to the following: Centers for Medicare & Medicaid Services, Office of Information Services, Information Technology Investment Management Group, Attn: Dawn Willinghan, CMS–4041–P, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements in § 422.106. This requirement is not effective until it has been approved by OMB.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

As a result of the proposed changes to the M+C regulations that reflect the provisions of the BIPA in this proposed rule, this proposed rule is not a major rule with economically significant effects as defined in Title 5, U.S.C. section 804(2) and is not an economically significant rule under Executive Order 12866. This proposed rule would result in increases in total expenditures of less than $100 million per year.

However, we are providing estimates of the budgetary impact of section 605 of the Act, which mandated revised ESRD payments. The revised rates affect those M+C organizations that enroll the approximately 18,000 ESRD beneficiaries in their plans. The additional cash expenditures for these M+C ESRD beneficiaries under this provision of the BIPA are estimated to be—

- $35 million in FY 2002 (for 9 months of costs based on the effective date of January 2002);
- $55 million in FY 2003;
- $55 million in FY 2004;
- $60 million in FY 2005; and
- $65 million in FY 2006.

These estimates assume continuation of the current restrictions on enrollment in the M+C program for ESRD beneficiaries. These estimates also include the impact of adjusting for age and sex and the impact of raising the ESRD base rates by 3 percent.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status, or by having revenues of between $5.0 million and $25 million or less annually. (For details see the Small Business Administration publication that sets forth size standards for health care industries at 65 FR 69432.) Individuals and States are not included in the definition of small entities.

For purposes of the RFA, most managed care organizations are not considered to be small entities. We estimate that fewer than 5 out of 177 M+C organization contractors have annual revenues of $7.5 million or less. Approximately 35 percent of M+C organization contractors have tax-exempt status, and thus, for purposes of the RFA are considered to be small entities. We have examined the economic impact of this proposed rule on M+C organizations, including those that are tax-exempt, and thus small entities, and we find that overall the economic impact is positive, due to the revised ESRD rates mandated by section 605 of the BIPA, thus generating an increase in payments; we certify that this proposed rule would not have a significant impact on a substantial number of small businesses. The data available do not allow us to determine the distributional effects of this increase. We have not considered alternatives to lessen the impact or regulatory burden of this proposed rule because no burden is imposed.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (MSA) and has fewer than 100 beds. Almost 2 percent of M+C enrollees reside in payment areas outside MSAs. Because information on the payment terms in contracts between M+C organizations and their providers is not available, data are not available on the level of this economic impact.

B. The Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1998 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We have determined, and we certify that this proposed rule would have no consequential effect on State, local, or tribal governments.

C. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed or final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule would impose no direct requirement costs on State and local government, would not preempt State law, or have any Federalism implications.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 417

Administrative practice and procedure, Grants programs—health, Health care, Health insurance, Health maintenance organizations (HMO), Loan programs—health, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 422

Administrative practice and procedure, Health facilities, Health Maintenance Organizations (HMO), Medicare+Choice, Penalties, Privacy, Provider-sponsored organizations (PSO), Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 409—HOSPITAL INSURANCE BENEFITS

1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Posthospital SNF Care

2. In § 409.20, the following changes are made to read as set forth below:

A. Paragraph (c)(3) is revised.

B. Paragraph (c)(4) is added.

§ 409.20 Coverage of services.

* * * * *

(c) * * *

(3) The term *swing-bed hospital* includes a CAH with swing-bed approval under subpart F of part 485 of this chapter.

(4) The term *posthospital SNF care* includes SNF care that does not follow a hospital stay when the beneficiary is enrolled in a plan, as defined in § 422.4 of this chapter, offered by a Medicare+Choice (M+C) organization, that includes the benefits described in § 422.101(c) of this chapter.

Subpart D—Requirements for Coverage of Posthospital SNF Care

3. In § 409.30, paragraph (b)(2) is revised to read as follows:

§ 409.30 Basic requirements.

* * * * *

(b) * * *

(2) The following exceptions apply—

(i) A beneficiary for whom posthospital SNF care would not be medically appropriate within 30 days after discharge from the hospital or CAH, or a beneficiary enrolled in a Medicare+Choice (M+C) plan, may be admitted at the time it would be medically appropriate to begin an active course of treatment.

(ii) If, upon admission to the SNF, the beneficiary was enrolled in an M+C plan, as defined in § 422.4 of this chapter, offering the benefits described in § 422.101(c) of this chapter, the beneficiary will be considered to have met the requirements described in paragraphs (a) and (b) of this section, and also in § 409.31(b)(2), for the duration of the SNF stay.

4. In § 409.31 paragraph (b)(2)(ii) is revised, and a new paragraph (b)(2)(iii) is added to read as follows:

§ 409.31 Level of care requirement.

(b) * * *

(2) * * *

(ii) Which arose while the beneficiary was receiving care in a SNF or swing-bed hospital or inpatient CAH services; or

(iii) For which, for an M+C enrollee described in § 409.20(c)(4), a physician has determined that a direct admission to a SNF without an inpatient hospital or inpatient CAH stay would be medically appropriate.

* * * * *

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

5. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e–5, and 300e–9), and 31 U.S.C. 9701.

Subpart L—Medicare Contract Requirements

6. In § 417.479, paragraph (h)(1) and the heading of paragraph (h)(2) are revised and paragraph (h)(2) introductory text is added to read as follows:

§ 417.479 Requirements for physician incentive plans.

* * * * *

(h) *Disclosure requirements for organizations with physician incentive plans.* (1) *Disclosure to CMS.* Each HMO must provide to CMS information concerning its physician incentive plans as requested.

(2) *Disclosure to Medicare beneficiaries.* An HMO must provide the following information to any Medicare beneficiary who requests it:

* * * * *

PART 422—MEDICARE+CHOICE PROGRAM

7. The authority citation for part 422 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

8. In § 422.2, the introductory text is republished, and the definition of *Additional benefits* is revised to read as follows:

§ 422.2 Definitions.

As used in this part—

* * * * *

Additional benefits are health care services not covered by Medicare, reductions in premiums or cost-sharing for Medicare covered services, and reductions in the Medicare beneficiary's standard Part B premium, funded from adjusted excess amounts as calculated in the ACR.

* * * * *

Subpart B—Eligibility, Election, and Enrollment

9. In § 422.50, paragraph (a)(2) is revised to read as follows:

§ 422.50 Eligibility to elect an M+C plan.

(a) * * *

(2) Has not been medically determined to have end-stage renal disease, except that—

(i) An individual who develops end-stage renal disease while enrolled in an M+C plan or in a health plan offered by the M+C organization is eligible to elect an M+C plan offered by that organization; and

(ii) An individual with end-stage renal disease whose enrollment in an M+C plan was terminated or discontinued after December 31, 1998, because CMS or the M+C organization terminated the M+C organization's contract for the plan or discontinued the plan in the area in which the individual resides, is eligible to elect another M+C plan.

(iii) An individual who elects an M+C plan under paragraph (a)(2)(ii) of this section may elect another M+C plan if the plan elected under paragraph (a)(2)(ii) of this section also is terminated or discontinued in the area in which the individual resides.

* * * * *

10. In § 422.74, the following changes are made to read as set forth below:

A. Paragraph (d)(1)(ii) is revised.

B. Paragraph (d)(4) is revised.

§ 422.74 Disenrollment by the M+C organization.

* * * * *

(d) * * *

(1) * * *

(ii) The M+C organization only disenrolls a Medicare enrollee when the organization has not received payment within 90 days after the date the premium was due.

* * * * *

(4) *Individual no longer resides in the M+C plan's service area.*

(i) *Basis for disenrollment.* Unless continuation of enrollment is elected under § 422.54, the M+C organization must disenroll an individual if the M+C organization establishes, on the basis of a written statement from the individual or other evidence acceptable to CMS that the individual has permanently moved—

(A) Out of the M+C plan's service area; or

(B) From the residence in which the individual resided at the time of enrollment in the M+C plan to an area outside the M+C plan's service area, for those individuals who enrolled in the M+C plan under the eligibility requirements at § 422.50(a)(3)(ii) or (a)(4).

(ii) *Special rule.* If the individual has not moved from the M+C plan's service area (or residence, as described in paragraph (d)(4)(i)(B) of this section), but has left the service area (or residence) for more than 6 months, the M+C organization must disenroll the individual from the plan, unless the exception in paragraph (d)(4)(iii) of this section applies.

(iii) *Exception.* If the M+C plan covers services other than emergent, urgent, maintenance and poststabilization, and renal dialysis services (as described in §§ 422.100(b)(1)(iv) and 422.113) when the individual is out of the service area for a period of consecutive days longer than 6 months but less than 12 months, but within the United States (as defined in § 400.200 of this chapter), the M+C organization may elect to offer to the individual the option of remaining enrolled in the M+C plan if—

(A) The individual is disenrolled on the first day of the 13th month after the individual left the service area (or residence, if paragraph (d)(4)(i)(B) of this section applies);

(B) The individual understands and accepts any restrictions imposed by the M+C plan on obtaining these services while absent from the M+C plan's service area for the extended period; and

(C) The M+C organization makes this option available to all Medicare enrollees who are absent for an extended period from the M+C plan's service area. However, M+C organizations may limit this option to enrollees who travel to certain areas, as defined by the M+C organization, and who receive services from qualified providers who directly provide, arrange for, or pay for health care.

* * * * *

Subpart C—Benefits and Beneficiary Protections

11. In § 422.101, the following changes are made to read as follows:

A. Paragraph (b)(3) is revised.

B. Paragraph (c) is added.

§ 422.101 Requirements relating to basic benefits.

* * * * *

(b) * * *

(3) Written coverage decisions of local carriers and intermediaries with jurisdiction for claims in the geographic area in which services are covered under the M+C plan, except that M+C plans that cover areas encompassing more than one local coverage policy area may elect to have the local coverage decisions for the part of the area that is the most beneficial to the M+C enrollees apply with respect to all M+C enrollees in the plan. M+C plans that elect this option must consult with CMS prior to selecting the area that has local coverage policies that are most beneficial to M+C enrollees.

(c) M+C organizations may elect to furnish, as part of their Medicare covered benefits, coverage of posthospital SNF care as described in subparts C and D of this part, in the absence of the prior qualifying hospital stay that would otherwise be required for coverage of this care.

12. In § 422.106, the following changes are made to read as follows:

A. The section heading is revised.

B. Paragraphs (a) introductory text, (a)(1) and (a)(2) are revised.

C. Paragraph (b) introductory text is revised.

D. A new paragraph (c) is added.

§ 422.106 Coordination of benefits with employer or union group health plans and Medicaid.

(a) *General rule.* If an M+C organization contracts with an employer, labor organization, or the trustees of a fund established by one or more employers or labor organizations that cover enrollees in an M+C plan, or contracts with a State Medicaid agency to provide Medicaid benefits to individuals who are eligible for both Medicare and Medicaid, and who are enrolled in an M+C plan, the enrollees must be provided the same benefits as all other enrollees in the M+C plan, with the employer, labor organization, fund trustees, or Medicaid benefits supplementing the M+C plan benefits. Jurisdiction regulating benefits under these circumstances is as follows:

(1) All requirements of this part that apply to the M+C program apply to the M+C plan coverage provided to enrollees eligible for benefits under an employer, labor organization, trustees of a fund established by one or more employers or labor organizations, or Medicaid contract.

(2) Employer benefits that complement an M+C plan, and the marketing materials associated with the benefits, are not subject to review or approval by CMS. M+C plan benefits provided to enrollees of the employer, labor organization, or trustees of the fund established to furnish benefits, and the associated marketing materials, are subject to CMS review and approval.

(3) * * *

(b) *Examples.* Permissible employer, labor organization, benefit fund trustee, or Medicaid plan benefits include the following:

* * * * *

(c) *Waiver or modification.* (1) M+C organizations may request, in writing, from CMS, a waiver or modification of those requirements in this part that hinder the design of, the offering of, or the enrollment in, M+C plans under contracts between M+C organizations and employers, labor organizations, or the trustees of funds established by one or more employers or labor organizations to furnish benefits to the entity's employees, former employees, or members or former members of the labor organizations.

(2) Approved waivers or modifications under this paragraph may be used by any M+C organization in developing its Adjusted Community Rate Proposal (ACRP). Any M+C organization using a waiver or modification must include that information in the cover letter of its ACRP submission.

13. Section 422.109 is revised to read as follows:

§ 422.109 Effect of national coverage determinations (NCDs) and legislative changes in benefits.

(a) *Definitions.* The term *significant cost*, as it relates to a particular NCD or legislative change in benefits, means either of the following:

(1) The average cost of furnishing a single service exceeds a cost threshold that—

(i) For calendar years 1998 and 1999, is $100,000; and

(ii) For calendar year 2000 and subsequent calendar years, is the preceding year's dollar threshold adjusted to reflect the national per capita growth percentage described in § 422.254(b).

(2) The estimated cost of all Medicare services furnished as a result of a particular NCD or legislative change in benefits represents at least 0.1 percent of the national standardized annual capitation rate, as described in § 422.254(f), multiplied by the total number of Medicare beneficiaries for the applicable calendar year.

(b) *General rule.* If CMS determines and announces that an NCD or legislative change in benefits meets the criteria for significant cost described in paragraph (a) of this section, an M+C organization is not required to assume risk for the costs of that service or benefit until the contract year for which payments are appropriately adjusted to take into account the cost of the NCD service or legislative change in benefits.

(c) *Before payment adjustments become effective.* Before the contract year that payment adjustments that take into account the significant cost of the NCD service or legislative change in benefits become effective, the service or benefit is not included in the M+C organization's contract with CMS, and is not a covered benefit under the contract. The following rules apply to these services or benefits:

(1) Medicare payment for the service or benefit is made directly by the fiscal intermediary and carrier to the provider furnishing the service or benefit in accordance with original Medicare payment rules, methods, and requirements.

(2) Costs for NCD services or legislative changes in benefits for which CMS intermediaries and carriers will not make payment and are the responsibility of the M+C organization are—

(i) Services necessary to diagnose a condition covered by the NCD or legislative changes in benefits;

(ii) Most services furnished as follow-up care to the NCD service or legislative change in benefits;

(iii) Any service that is already a Medicare-covered service and included in the annual M+C capitation rate or previously adjusted payments; and

(iv) Any service, including the costs of the NCD service or legislative change in benefits, to the extent the M+C organization is already obligated to cover it as an additional benefit under § 422.312 or supplemental benefit under § 422.102.

(3) Costs for NCD services or legislative changes in benefits for which CMS fiscal intermediaries and carriers will make payment are—

(i) Costs relating directly to the provision of services related to the NCD or legislative change in benefits that were noncovered services before the issuance of the NCD or legislative change in benefits; and

(ii) A service that is not included in the M+C capitation payment rate.

(4) Beneficiaries are liable for any applicable coinsurance and deductible amounts.

(d) *After payment adjustments become effective.* For the contract year in which payment adjustments that take into account the significant cost of the NCD service or legislative change in benefits are in effect, the service or benefit is included in the M+C organization's contract with CMS, and is a covered benefit under the contract. Subject to all applicable rules under this part, the M+C organization must furnish, arrange, or pay for the NCD service or legislative change in benefits. M+C organizations may establish separate plan rules for these services and benefits, subject to CMS review and approval. CMS may, at its discretion, issue overriding instructions limiting or revising the M+C plan rules, depending on the specific NCD or legislative change in benefits. For these services or benefits, the Medicare enrollee will be responsible for M+C plan cost sharing, as approved by CMS or unless otherwise instructed by CMS.

14. In § 422.111, a new paragraph (f)(8)(iii) is added to read as follows:

§ 422.111 Disclosure requirements.

* * * * *

(f) * * *

(8) * * *

(iii) The reduction in Part B premiums, if any.

* * * * *

15. A new § 422.133 is added to subpart C to read as follows:

§ 422.133 Return to home skilled nursing facility.

(a) *General rule.* Beginning with contracts entered into or renewed on or after December 20, 2000, M+C plans must provide coverage of posthospital extended care services to Medicare enrollees through a home skilled nursing facility if the enrollee elects to receive the coverage through the home skilled nursing facility, and if the home skilled nursing facility either has a contract with the M+C organization or agrees to accept substantially similar payment under the same terms and conditions that apply to similar skilled nursing facilities that contract with the M+C organization.

(b) *Definitions.* In this subpart, *home skilled nursing facility* means—

(1) The skilled nursing facility in which the enrollee resided at the time of admission to the hospital preceding the receipt of posthospital extended care services;

(2) A skilled nursing facility that is providing posthospital extended care services through a continuing care retirement community in which the M+C plan enrollee was a resident at the time of admission to the hospital. A continuing care retirement community is an arrangement under which housing and health-related services are provided (or arranged) through an organization for the enrollee under an agreement that is effective for the life of the enrollee or for a specified period; or

(3) The skilled nursing facility in which the spouse of the enrollee is residing at the time of discharge from the hospital.

(c) *Coverage no less favorable.* The posthospital extended care scope of services, cost-sharing, and access to coverage provided by the home skilled nursing facility must be no less favorable to the enrollee than posthospital extended care services coverage that would be provided to the enrollee by a skilled nursing facility that would be otherwise covered under the M+C plan.

(d) *Exceptions.* The requirement to allow an M+C plan enrollee to elect to return to the home skilled nursing facility for posthospital extended care services after discharge from the hospital does not do the following:

(1) Require coverage through a skilled nursing facility that is not otherwise qualified to provide benefits under Part A for Medicare beneficiaries not enrolled in the M+C plan.

(2) Prevent a skilled nursing facility from refusing to accept, or imposing conditions on the acceptance of, an enrollee for the receipt of posthospital extended care services.

Subpart E—Relationships with Providers

16. In § 422.210 paragraph (a) and the introductory text to paragraph (b) are revised to read as follows:

§ 422.210 Disclosure of physician incentive plans.

(a) *Disclosure to CMS.* Each M+C organization must provide to CMS information concerning its physician incentive plans as requested.

(b) *Disclosure to Medicare beneficiaries.* Each M+C organization must provide the following information to any Medicare beneficiary who requests it:

* * * * *

Subpart F—Payments to Medicare+Choice Organizations

17. In § 422.250, the following changes are made to read as follows:

A. Paragraph (a)(1) is revised.

B. Paragraph (a)(2)(i)(B) is redesignated as (a)(2)(i)(C).

C. A new paragraph (a)(2)(i)(B) is added.

§ 422.250 General provisions.

(a) *Monthly payments*—(1) *General rule.*

(i) Except as provided in paragraphs (a)(2) or (f) of this section, CMS makes advance monthly payments equal to 1/12th of the annual M+C capitation rate for the payment area described in paragraph (c) of this section adjusted for such demographic risk factors as an individual's age, disability status, sex, institutional status, and other factors as it determines to be appropriate to ensure actuarial equivalence.

(ii) Effective January 1, 2000, CMS adjusts for health status as provided in § 422.256(c). When the new risk adjustment is implemented, 1/12th of the annual capitation rate for the payment area described in paragraph (c) of this section will be adjusted by the risk adjustment methodology under § 422.256(d).

(iii) Effective January 1, 2003, monthly payments may be reduced by the adjusted excess amount, as described in § 422.312(a)(2), and 80 percent of the reduction in monthly payments used to reduce the Medicare beneficiary's Part B premium, up to a total of 125 percent of Part B premium amount.

(2) * * *

(i) * * *

(B) CMS applies appropriate adjustments when establishing the rates, including risk adjustment factors. CMS also establishes annual changes in capitation rates using the methodology described in § 422.252. For 2002, a special adjustment is made to increase ESRD rates to 100 percent of estimated per capita fee-for-service expenditures and rates are adjusted for age and sex. In subsequent years, rates are adjusted for age, sex, and other factors, if appropriate.

* * * * *

18. In § 422.256, paragraph (b) is revised to read as follows:

§ 422.256 Adjustments to capitation rates and aggregate payments.

* * * * *

(b) *Adjustment for national coverage determination (NCD) services and legislative changes in benefits.* If CMS determines that the cost of furnishing an NCD service or legislative change in benefits is significant, as defined in § 422.109, CMS adjusts capitation rates or makes other payment adjustments for the next calendar year to take account of the new service or benefit. The change in payment amounts is based on an analysis by the CMS chief actuary of the costs associated with the NCD or legislative change in benefits. CMS will pay or arrange for payment of these additional costs until the adjusted payments are in effect.

* * * * *

19. In § 422.266, the following changes are made to read as follows:

A. Paragraph (a) introductory text is revised.

B. Paragraph (c) is revised.

§ 422.266 Special rules for hospice care.

(a) *Information.* An M+C organization that has a contract under subpart K of this part must inform each Medicare enrollee eligible to select hospice care under § 418.24 of this chapter about the availability of hospice care (in a manner that objectively presents all available hospice providers, including a statement of any ownership interest in a hospice held by the M+C organization or a related entity) if—

* * * * *

(c) *Payment.* (1) No payment is made to an M+C organization on behalf of a Medicare enrollee who has elected hospice care under § 418.24 of this chapter except for the portion of the payment applicable to the additional benefits described in § 422.312. This no-payment rule is effective from the first day of the month following the month of election to receive hospice care, until the first day of the month following the month in which the election is terminated.

(2) During the time the hospice election is in effect, CMS's monthly capitation payment to the M+C organization is reduced to an amount equal to the adjusted excess amount determined under § 422.312. In addition, CMS pays through the original Medicare program (subject to the usual rules of payment)—

(i) The hospice program for hospice care furnished to the Medicare enrollee; and

(ii) The M+C organization, provider, or supplier for other Medicare-covered services to the enrollee.

Subpart G—Premiums and Cost-Sharing

20. In § 422.312, the following changes are made to read as follows:

A. Paragraph (d) is redesignated as paragraph (e).

B. A new paragraph (d) is added.

§ 422.312 Requirement for additional benefits.

* * * * *

(d) *Reduction in payments.* Beginning January 1, 2003, as a part of providing additional benefits under paragraph (b) of this section, if there is an adjusted excess amount for the plan it offers, the M+C organization—

(1) May elect to receive a reduction (not to exceed 125 percent of the standard Part B premium amount) in its payments under § 422.250(a)(1), 80 percent of which will be applied to reduce the Part B premiums of its Medicare enrollees; and

(2) Must apply the reduction uniformly to all similarly situated enrollees of the M+C plan.

* * * * *

Subpart K—Contracts with Medicare+Choice Organizations

21. A new § 422.521 is added as set forth below:

§ 422.521 Effective date of new significant regulatory requirements.

CMS will not implement, other than at the beginning of a calendar year, regulations under this part that impose a new significant cost or burden on M+C organizations or plans, unless a different effective date is required by statute.

Subpart M—Grievances, Organization Determinations and Appeals

22. In § 422.566, paragraph (c) is revised to read as set forth below:

§ 422.566 Organization determinations.

* * * * *

(c) *Who can request an organization determination.* (1) Those individuals or entities who can request an organization determination are—

(i) The enrollee (including his or her authorized representative);

(ii) Any provider that furnishes, or intends to furnish, services to the enrollee; or

(iii) The legal representative of a deceased enrollee's estate.

(2) Those who can request an expedited determination are—

(i) An enrollee (including his or her authorized representative); or

(ii) A physician (regardless of whether the physician is affiliated with the M+C organization).

23. In § 422.618, paragraph (c) is revised to read as set forth below:

§ 422.618 How an M+C organization must effectuate standard reconsidered determinations or decisions.

* * * * *

(c) *Reversals other than by the M+C organization or the independent outside entity.* (1) *General rule.* If the independent outside entity's determination is reversed in whole or in part by the ALJ, or at a higher level of appeal, the M+C organization must pay for, authorize, or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 60 calendar days from the date it receives notice reversing the determination. The M+C organization must inform the independent outside entity that the organization has effectuated the decision or that it has appealed the decision.

(2) *Effectuation exception when the M+C organization files an appeal with the Departmental Appeals Board.* If the M+C organization requests Departmental Appeals Board (the Board) review consistent with § 422.608, the M+C organization may await the outcome of the review before it pays for, authorizes, or provides the service under dispute. An M+C organization that files an appeal with the Board must concurrently send a copy of its appeal request and any accompanying documents to the enrollee and must notify the independent outside entity that it has requested an appeal.

24. In § 422.619, paragraph (c) is revised to read as set forth below:

§ 422.619 How an M+C organization must effectuate expedited reconsidered determinations.

* * * * *

(c) *Reversals other than by the M+C organization or the independent outside entity.* (1) *General rule.* If the independent outside entity's expedited determination is reversed in whole or in part by the ALJ, or at a higher level of appeal, the M+C organization must authorize or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 60 days from the date it receives notice reversing the determination. The M+C organization must inform the independent outside entity that the organization has effectuated the decision or that it has appealed the decision.

(2) *Effectuation exception when the M+C organization files an appeal with the Departmental Appeals Board.* If the M+C organization requests Departmental Appeals Board (the Board) review consistent with § 422.608, the M+C organization may await the outcome of the review before it authorizes or provides the service under dispute. An M+C organization that files an appeal with the Board must concurrently send a copy of its appeal request and any accompanying documents to the enrollee and must notify the independent outside entity that it has requested an appeal.

Subpart O—Intermediate Sanctions

25. In § 422.758, the following changes are made to read as set forth below:

A. The introductory text is designated as paragraph (a).

B. Paragraph (a) is redesignated as paragraph (a)(1).

C. Paragraph (b) is redesignated as paragraph (a)(2).

D. A new paragraph (b) is added.

§ 422.758 Maximum amount of civil money penalties imposed by CMS.

* * * * *

(b) If CMS makes a determination under §§ 422.752(b) and 422.756(f)(3), based on a determination under § 422.510(a)(1) that an M+C organization has terminated its contract with CMS in a manner other than described under § 422.512—$250 per Medicare enrollee from the terminated M+C plan or plans at the time the M+C organization terminated its contract, or $100,000, whichever is greater.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 16, 2002.
Thomas A. Scully,
Administrator, Centers for Medicare & Medicaid Services.

Dated: July 17, 2002.
Tommy G. Thompson,
Secretary.
[FR Doc. 02–27142 Filed 10–24–02; 8:45 am]
BILLING CODE 4120–01–P

Federal Register

Friday,
October 25, 2002

Part V

Department of the Interior

National Park Service

Draft Environmental Impact Statement for the General Management Plan for Carl Sandburg Home National Historic Site; Notice

DEPARTMENT OF INTERIOR

National Park Service

Draft Environmental Impact Statement for the General Management Plan for Carl Sandburg Home National Historic Site

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of a draft environmental impact statement for the General Management Plan for Carl Sandburg Home National Historic Site, Flat Rock, North Carolina.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and National Park Service policy in Director's Order Number 2 (Park Planning) and Director's Order Number 12 (Conservation Planning, Environmental Impact Analysis, and Decision-making) the National Park Service announces the availability of a Draft Environmental Impact Statement and General Management Plan (DEIS/GMP) for Carl Sandburg Home National Historic Site, Flat Rock, North Carolina.

The DEIS/GMP analyzes three action alternatives and one no-action alternative for guiding management of the park over the next 20 years. The three action alternatives incorporate various management prescriptions to ensure resource protection and quality visitor experience conditions. The no-action alternative would continue current management practices and policies into the future.

DATES: The DEIS/GMP will be available for public review from October 15, 2002, through December 15, 2002. Public meetings will be held in November 2002. Representatives of the National Park Service will be available at the public meetings to receive comments, concerns, and other input from the public related to the DEIS/GMP. Public notice of the specific dates, times, and locations of the meetings will be provided in a newsletter, announced in local media, and posted on the Internet at *http://www.nps.gov/carl/gmp_info.htm.*

ADDRESSES: Copies of the DEIS/GMP are available from the Superintendent, Carl Sandburg Home National Historic Site, 1928 Little River Road, Flat Rock, North Carolina, 28731. Public reading copies of the DEIS/GMP will also be available for review at the following locations:

- Office of the Superintendent, Carl Sandburg Home National Historic Site, 1928 Little River Road, Flat Rock, North Carolina, 28731. Telephone: 828–693–4178.
- Division of Planning and Compliance, Southeast Regional Office, National Park Service, Attention: Tim Bemisderfer, 100 Alabama Street, 1924 Building, Atlanta, Georgia 30303. Telephone: 404–562–3124 ext. 693.
- An electronic copy of DEIS/GMP is available for download in .pdf format on the Internet at *http://www.nps.gov/carl/gmp_news.htm.*

FOR FURTHER INFORMATION CONTACT: Superintendent, Carl Sandburg Home National Historic Site, 1928 Little River Road, Flat Rock, North Carolina 28731. Telephone: 828–693–4178.

SUPPLEMENTARY INFORMATION: The DEIS/GMP analyzes three action alternatives and one no-action alternative for guiding management of the park over the next 20 years. Environmental consequences anticipated from implementing the various alternatives are addressed in the DEIS/GMP. Impact topics include cultural resources, natural resources, interpretation and museum operations, park operations and administration, and quality of life and the socioeconomic environment. The action alternatives are described as follows:

In the Sandburg Center alternative, the park serves as a national and worldwide focal point for learning about Carl Sandburg. Access to Sandburg information, literature, and research would be enhanced through an extensive internet database and traveling exhibits of Sandburg related historical objects. Visitors who come to the site in person would find extraordinary opportunities to learn about the life and works of Carl Sandburg. The alternative provides high quality museum space where visitors can gain additional access to information and objects currently housed in the museum preservation facility. Additional interpretive program areas would be created by rehabilitating the interior of one or more historic structures near the main house or barn, renovating the existing visitor contract station to improve its interpretive and visitor services function, and creating a visitor center outside the current authorized boundary of the park. The Sandburg Center alternative includes a Congressionally legislated boundary expansion of 110 acres for scenic view and boundary protection and up to 5 acres for construction of a visitor center and new parking area.

The Paths of Discovery alternative encourages park managers and local government leaders to collectively identify and address common needs. The concept supplements the park's traditional high quality interpretive program and provides additional community walking opportunity by constructing a new 3/4 mile interpretive trail parallel to Little River Road and the Back Drive. In turn, the park would encourage a community partnership strategy to address common needs like additional parking and multi purpose meeting space. The Paths of Discovery alternative includes a Congressionally legislated boundary expansion of 110 acres for scenic view and boundary protection and up to 5 acres for construction of a visitor center and new parking area.

In the Connemara Lifestyle alternative, visitors would experience the site much as Carl Sandburg knew it. Park management would focus on maintaining the site's historic landscape, structures, and furnishings and providing interpretive programs on site and at local schools. Primary access to the objects and information contained in the museum collection would occur at the amin house, an expanded visitor contact station, and through the internet or other mass media formats. Opportunities for access to objects and information would be greater than existing conditions but less than the Sandburg Center or Paths of Discovery alternatives. The Connemara Lifestyle alternative includes a Congressionally legislated boundary expansion of 25 acres for scenic view and boundary protection and up to 2 acres for construction of a new parking area. The Connemara Lifestyle alternative acknowledge uncertainty about increased federal funding by taking a conservative approach to proposing new infrastructure, additional staff, and increased maintenance responsibility.

In all action alternatives, the park would continue to provide guided tours of the Sandburg residence and maintain the historic landscape at a high level of integrity. Opportunities for walking would be available and closely managed to maintain the historic character of the site. The existing amphitheater would be relocated to a less intrusive location and the trailer restroom would be replaced by an appropriately designed modern facility at the same location. Any additional property interest acquired by the park would be acquired under a willing sell/willing buyer arrangement.

Dated: September 6, 2002.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 02–27244 Filed 10–24–02; 8:45 am]

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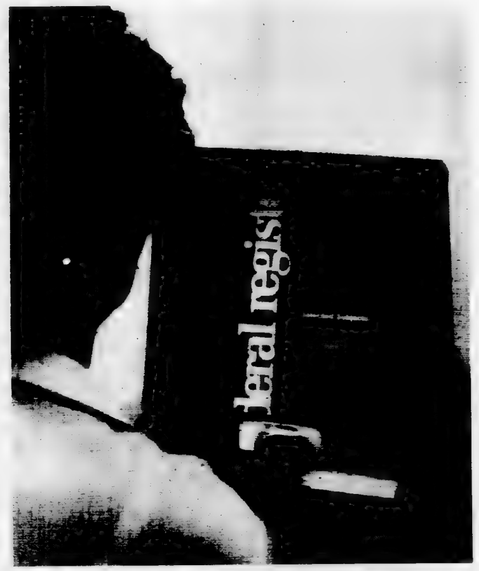

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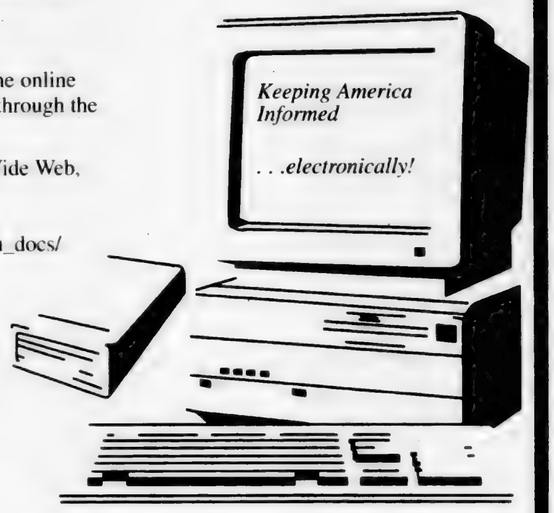

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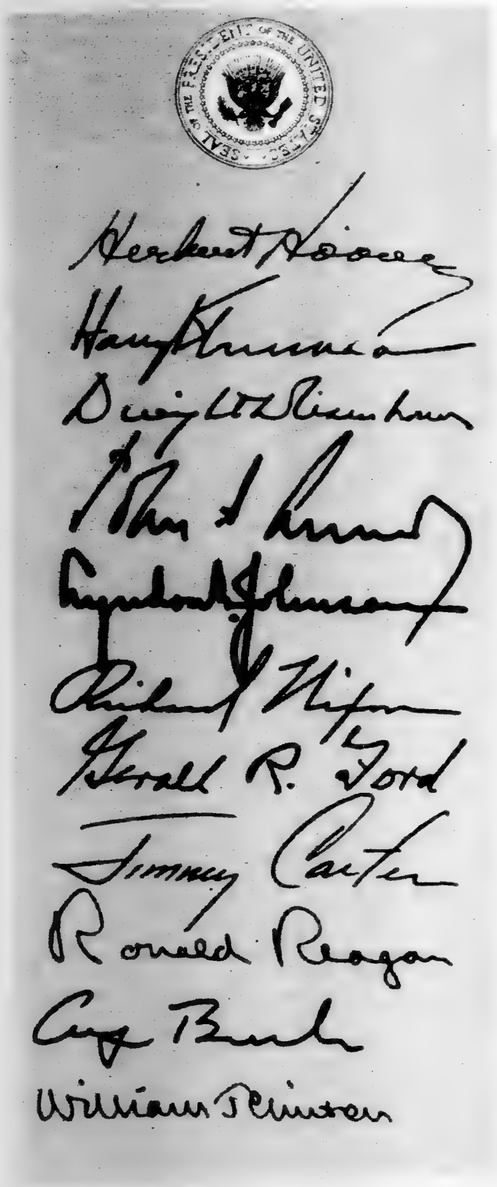

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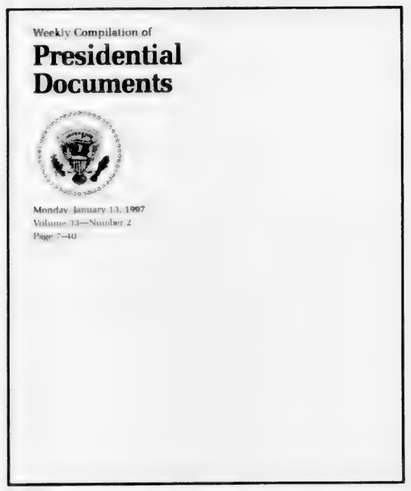

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Proposed Rules:
400 65732
407 65732
457 65732
993 65732
1400 65738

10 CFR
710 65690
Proposed Rules:
430 65742

14 CFR
25 (2 documents) 65692, 65695
61 65858

17 CFR
Proposed Rules:
4 65743

21 CFR
520 65697

24 CFR
982 65864

26 CFR
1 65697
Proposed Rules:
1 65842

31 CFR
5 65844
Proposed Rules:
5 65856

32 CFR
861 65698

33 CFR
117 (2 documents) 65706, 65707
Proposed Rules:
165 65746

38 CFR
3 65707

40 CFR
9 65708
52 (2 documents) 65710, 65713
81 65713
Proposed Rules:
52 (2 documents) 65749, 65750
81 65750

44 CFR
65 65718

47 CFR
73 65721
Proposed Rules:
73 (3 documents) 65750, 65751

48 CFR
208 65721
216 65721

50 CFR
229 65722
660 (3 documents) 65728, 65729, 65730

Rules and Regulations

Federal Register
Vol. 67, No. 208
Monday, October 28, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

RIN 3209–AA15

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises certain delegations of authority related to ethics from the Secretary of Agriculture and changes the USDA Designated Agency Ethics Official from the Director, Office of Ethics, to the Deputy Assistant Secretary for Administration, and further designates the Director, Office of Ethics, as the USDA Alternate Agency Ethics Official.

EFFECTIVE DATE: Effective October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Raymond J. Sheehan, Director, Office of Ethics, U.S. Department of Agriculture, Room 348–W—Stop 0122, 1400 Independence Avenue, SW., Washington, DC 20250–0122, telephone (202) 720–2251.

SUPPLEMENTARY INFORMATION:

I. Background

This amendment revises the current language of sections 2.24, 2.87, and 2.95 of part 2 of title 7 of the Code of Federal Regulations, to change the delegation of authority to serve as Designated Agency Ethics Official (DAEO) for the Department of Agriculture (USDA), from the position of Director, Office of Ethics, to the position of Deputy Assistant Secretary for Administration, and to designate the Director, Office of Ethics, as Alternate Agency Ethics Official.

Paragraph (a)(13) of section 2.24 addresses delegations from the Secretary to the Assistant Secretary for Administration relating to ethics. The regulation currently limits the authority of the Assistant Secretary for Administration over the ethics program to that of general supervision with no authority over the functions exercised by the Director, Office of Ethics, pursuant to that officer's delegation of DAEO authority. As amended, all references to the "Director, Office of Ethics" would be deleted and replaced by the "Deputy Assistant Secretary for Administration."

Section 2.87 relates to delegations of authority from the Assistant Secretary for Administration to the Deputy Assistant Secretary for Administration. There currently exists no reference in this section to any ethics responsibilities. Section 2.95 concerns delegations by the Assistant Secretary for Administration to the Director, Office of Ethics. That section reflects the current designation of the Director, Office of Ethics as DAEO. This amendment would delegate the DAEO function to the Deputy Assistant Secretary for Administration by adding that delegation to section 2.87 and removing the current DAEO delegation from section 2.95. This amendment also would designate the Director, Office of Ethics, as the Alternate Ethics Official.

II. Matters of Regulatory Procedure

Administrative Procedure Act

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**.

Congressional Review

The Department has determined this rulemaking is not a rule as defined in 5 U.S.C. 804, and, thus, does not require review by Congress. This rulemaking applies only to delegations of authority and responsibility to the employees and officers of the Department of Agriculture.

Executive Orders Nos. 12866 and 12988

Since this rule relates to Department personnel, it is exempt from the provisions of Executive Orders Nos. 12866 and 12988.

Regulatory Flexibility Act

In addition, this action is not a rule as defined by Public Law No. 96–354, the Regulatory Flexibility Act, and, thus, is exempt from the provisions of that Act.

Paperwork Reduction Act

The Department has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

Environmental Impact

This decision will not have a significant impact upon the quality of the human environment or the conversation of energy resources.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Dated: October 17, 2002.

Ann M. Veneman,

Secretary of Agriculture.

Accordingly, amend part 2, title 7, Code of Federal Regulations as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2. Paragraph (a)(13) of section 2.24 is revised to read as follows:

§ 2.24 Assistant Secretary for Administration.

a. * * *

* * * * * *

(13) *Related to ethics.* The Ethics function in the U.S. Department of Agriculture is under the authority of the Assistant Secretary for Administration for purposes of general supervision only. The Assistant Secretary does not have any authority over the functions exercised by the Deputy Assistant Secretary for Administration, pursuant to the Deputy Assistant Secretary's responsibilities as Designated Agency Ethics Official under the Office of

Government Ethics regulations at 5 CFR part 2638.

* * * * *

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

3. Section 2.87 is revised to read as follows:

§ 2.87 Deputy Assistant Secretary for Administration.

(a) *Delegations.* Pursuant to the Office of Government Ethics regulations at 5 CFR part 2638. The Deputy Assistant Secretary for Administration shall be the USDA Designated Agency Ethics Official and shall exercise all authority pursuant to the Office of Government Ethics regulations at 5 CFR part 2638.

(b) Pursuant to § 2.24(a), subject, to reservations in § 2.24(b), the following delegation of authority is made by the Assistant Secretary for Administration to the Deputy Assistant Secretary for Administration, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Assistant Secretary for Administration.

4. Section 2.95 is revised to read as follows:

§ 2.95 Director, Office of Ethics.

The Director, Office of Ethics, shall be the USDA Alternate Agency Ethics Official, pursuant to 5 CFR 2638.202, and shall exercise the authority reserved to the Designate Agency Ethics Official under 5 CFR part 2638 only in the absence or unavailability of the Designated Agency Ethics Official.

[FR Doc. 02–27184 Filed 10–25–02; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1435 and 1436

RIN 0560–AG73

2002 Farm Security and Rural Investment Act of 2002 Sugar Programs and Farm Facility Storage Loan Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule that was published in the **Federal Register** on Monday, August 26, 2002 (67 FR 54926). Several sections of the regulation were incorrectly numbered in the final rule. The corrections are provided in this document.

EFFECTIVE DATE: October 25, 2002.

FOR FURTHER INFORMATION CONTACT: Tom Witzig, 202–205–5851, email: *tom_witzig@wdc.fsa.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: In the final rule published on August 26, 2002, (67 FR 54926) make the following corrections.

§ 1435.308 [Corrected]

1. On page 54934, in the third column, under § 1435.308, paragraphs (a)(3), and (a)(4) are redesignated as paragraphs (b) and (c), respectively.

2. On page 54935, in the first column, under § 1435.308, paragraphs (a)(5), (b) and (c) are redesignated as paragraphs (d), (e) and (f), respectively.

§ 1436.37 [Corrected]

3. On page 54939, in the third column, § 1436.37 is redesignated as § 1436.19.

Signed in Washington, DC, on October 21, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–27228 Filed 10–25–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF ENERGY

10 CFR Part 710

RIN 1992–AA30

Eligibility for Security Police Officer Positions in the Personnel Security Assurance Program

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its regulations to allow newly hired individuals in security police officer positions who have received an interim Q access authorization through DOE's Accelerated Access Authorization Program to be eligible to hold a Personnel Security Assurance Program (PSAP) position.

EFFECTIVE DATE: This final rule will be effective November 27, 2002.

FOR FURTHER INFORMATION CONTACT: Linda Repass, Personnel Security Assurance Program Manager, Security Policy Staff, Office of Security, Department of Energy, SO–112, 1000 Independence Ave., SW., Washington, DC 20585, 301–903–4800.

SUPPLEMENTARY INFORMATION:

I. Background

The Personnel Security Assurance Program (PSAP) is a special access authorization program, established by DOE pursuant to the Atomic Energy Act of 1954, to assure the reliability of individuals whose positions: (1) Afford direct access to Category I quantities of special nuclear material (including guarding and transporting special nuclear material), (2) are identified as nuclear material production reactor operators, or (3) have the potential for causing unacceptable damage to national security. The PSAP regulations are at 10 CFR part 710, subpart B and currently require an employee or applicant for any PSAP position to have a Q access authorization based upon a full background investigation before being granted a PSAP access authorization. 10 CFR 710.60(c).

On April 4, 2002, DOE proposed a rule to amend 10 CFR 710.60 to permit security police officers (SPOs) to be eligible for a PSAP access authorization based on an interim access authorization obtained through the Department's Accelerated Access Authorization Program (AAAP) (*see* 67 FR 16061). DOE explained in the notice of proposed rulemaking (NOPR) that the events of September 11, 2001, have made use of the AAAP to expedite SPO screening vitally important, particularly because of the need for DOE to increase the size of its protective forces.

The AAAP was implemented to assist DOE managers and DOE contractors who request interim access authorization for individuals pursuant to DOE Order 472.1B, DOE Manual 472.1–1B, and related DOE directives. Entry into the AAAP is voluntary and written consent of the employee or applicant is required. The AAAP includes the following screening elements:

(1) Testing for the use of illegal drugs in accordance with the provisions of DOE directives implementing Executive Order 12564 or, for contractor employees, the provisions of 10 CFR part 707, "Workplace Substance Abuse Programs at DOE Sites";

(2) Completion of a National Agency Check; for contractor employees, this includes checks of Office of Personnel Management security indices, Department of Defense clearance indices, Federal Bureau of Investigation name and fingerprint indices, and Credit Bureau files, and for Federal employees, the National Agency Check also includes written inquiries to past employers, references given by the individual, and any educational institutions attended recently;

(3) A psychological assessment using a standard psychological screening test to determine if the individual has any psychological/behavioral condition which might call into question the individual's reliability, judgment, and trustworthiness;

(4) A controlled counterintelligence-scope polygraph examination in accordance with 10 CFR part 709; and

(5) Review of the applicant's completed "Questionnaire for National Security Positions" (Standard Form 86).

With the exception of the AAAP-specific psychological/behavioral evaluation, the AAAP screening elements are required elements for anyone in a PSAP position. Thus, as explained in the NOPR, the rule change proposed by DOE would enhance the ability of SPOs who have completed their required training and received an interim access authorization to assume PSAP duties prior to completion of their background investigation. Due to the controlled nature and continuous oversight of SPO positions, there is no appreciable risk to allowing assumption of PSAP duties by SPOs prior to completion and adjudication of the background investigation.

DOE received no comments in response to the NOPR.

II. Summary of Rule Amendment

Having received no public comment, DOE today is adopting the proposed rule as final without change.

This final rule amends section 710.60 of the PSAP regulations to permit newly hired SPOs who obtain interim access authorization through the AAAP to assume their PSAP duties before completion of the ongoing full background investigation. When effective, this provision will allow newly hired SPOs who obtain an interim access authorization through the AAAP and successfully complete the PSAP requirements to assume their PSAP duties immediately upon completing the 9-week basic SPO training course.

This final rule also adds to section 710.54 of the PSAP regulations a definition of the term "Accelerated Access Authorization Program" that contains the central elements of the AAAP.

III. Regulatory and Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a) and section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule would not directly regulate small businesses or other small entities. It would apply only to individuals who apply for SPO positions at sites owned or operated by DOE or DOE contractors. DOE management and operating contractors are not small businesses. Accordingly, DOE certified in the NOPR that the rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. DOE today affirms that certification.

D. Review Under the Paperwork Reduction Act

No new collection of information would be imposed by this proposed rule. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule would amend DOE's regulations governing access to PSAP and would not change the environmental effect of the PSAP regulations. Therefore, this rulemaking is covered under the Categorical Exclusion in paragraph A5 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 13132

Executive Order 13132, "Federalism," (64 FR 43255, August 10, 1999) requires agencies to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications." Policies that have federalism implications are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and determined that it would not have a substantial direct effect on the States,

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by the Executive Order.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each federal agency to prepare a written assessment of the effects of any federal mandate in a proposed or final rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a federal agency to develop an effective process to permit timely input by elected officers of state, local, and tribal governments on a proposed "significant intergovernmental mandate," and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect them. This rule does not contain any federal mandate, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999, Pub. L. 105–277, requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. Today's rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, or use.

Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

List of Subjects in 10 CFR Part 710

Administrative practice and procedure, Classified information, Government contracts, Government employees, Nuclear materials, Revocation, Security measures, Suspension.

Issued in Washington, on October 16, 2002.

Spencer Abraham,

Secretary of Energy.

For the reasons set forth in the preamble, part 710 of chapter III of title 10, Code of Federal Regulations is amended, as set forth below:

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 710 is revised to read as follows:

Authority: 42 U.S.C. 2165; 2201; 5815; 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; E.O. 10450, 3 CFR 1949–1953 Comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 Comp., p. 398, as amended, 3 CFR Chap. IV.

2. Section 710.54 of subpart B is amended by adding, in alphabetical order, the definition of "Accelerated Access Authorization Program" to read as follows:

§ 710.54 Definitions.

* * * * *

Accelerated Access Authorization Program means the DOE program for granting interim access to classified matter and special nuclear material based on a drug test, a National Agency Check, a psychological assessment, a counterintelligence-scope polygraph examination in accordance with 10 CFR part 709, and a review of the applicant's completed "Questionnaire for National Security Positions." (Standard Form 86).

* * * * *

3. Section 710.60 of subpart B is amended by revising paragraph (c) to read as follows:

§ 710.60 DOE security review and clearance determination.

* * * * *

(c) *Review for initial PSAP access authorization.* An initial PSAP access authorization requires the applicant or employee to have a DOE Q access authorization based upon a background investigation, except for Security Police Officers who may be granted PSAP access authorization based on an interim Q access authorization obtained through the Accelerated Access Authorization Program. The adjudication and determination for a PSAP access authorization shall be based upon a review of security information, including the results of the background investigation (or Accelerated Access Authorization Program screening elements in the case of Security Police Officers) and the information provided by management and medical sources.

* * * * *

[FR Doc. 02–27205 Filed 10–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM232; Special Conditions No. 25–221–SC]

Special Conditions: Avions Marcel Dassault-Breguet Aviation (AMD/BA) Model Falcon 10 Series AirPlanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes modified by Garrett Aviation Services. These airplanes, as modified, will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Innovative Solutions & Support Air Data Display Units (ADDU) with the IS&S Air Data Sensor and an analog interface unit (AIU) that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 15, 2002. Comments must be received on or before November 27, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM232, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Directorate at the above address. All comments must be marked: *Docket No. NM232.* Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

FAA's Determination as to Need for Public Process

The FAA has determined that notice and opportunity for prior public comment are unnecessary in accordance with 14 CFR 11.38, because the FAA has provided previous opportunities to comment on substantially identical special conditions and has fully considered and addressed all the substantive comments received. Based on a review of the comment history and the comment resolution, the FAA is satisfied that new comments are unlikely. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance. However, the FAA invites interested persons to participate in this rulemaking by submitting comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On August 22, 2002, Garrett Aviation Services, 1200 North Airport Drive, Capital Airport, Springfield, IL 62707, applied for a supplemental type certificate (STC) to modify Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes approved under Type Certificate No. A33EU. The Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplane is a small category airplane powered by two Airesearch Manufacturing Company TFE731–2–1C turbofan engines and having a maximum takeoff weight of 18,300 pounds. This airplane operates with a 2-pilot crew and can hold up to 9 passengers. The modification incorporates the installation of Innovative Solutions & Support Air Data Display Units (ADDU) and an analog interface unit (AIU). The ADDU replaces the existing analog flight instrumentation and provides additional functional capability and redundancy in the system. The AIU is a digital-to-analog adapter used to adapt signals driving the existing Sperry Flight Guidance Computer. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Amendment 21–69, effective September 16, 1991, Garrett Aviation Services must show that the Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A33EU, or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The original type certification basis for the modified Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes includes 14 CFR part 25 as amended by Amendments 25–1 through 25–20, dated February 1, 1964, except for special conditions and exceptions noted in Type Certificate Data Sheet (TDCS) A33EU.

If the Administrator finds that the applicable airworthiness regulations (that is, 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirement of part 36, including Amendment 36–1.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Garrett Aviation Services apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1).

Novel or Unusual Design Features

The Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes modified by Garrett Aviation Services will incorporate systems comprised of dual Air Data Display Units and an analog interface unit that will perform critical functions. These systems have the potential to be vulnerable to high-intensity radiated

fields (HIRF) external to the airplane. The current airworthiness standards (14 CFR part 25) do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes modified by Garrett Aviation Services. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown in accordance with either paragraph 1, or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table below are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz:	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz– 40	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes modified by Garret Aviation Services. Should Garrett Aviation Services apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes modified by Garrett Aviation Services. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes modified by Garrett Aviation Services.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. *For the purpose of these special conditions, the following definition applies: Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 15, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–27379 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM238; Special Conditions No. 25–222–SC]

Special Conditions: Avions Marcel Dassault—Breguet Aviation, Falcon 10; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Avions Marcel Dassault-Breguet Aviation, Falcon 10 airplanes modified by Garrett Aviation Services. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of the Collins ADC–87A Air Data Computer system that performs critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of this system from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 18, 2002. Comments must be received on or before November 27, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM238, 1601 Lind Avenue SW., Renton Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM238. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification, and thus delivery, of the affected airplane. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On August 13, 2001, Garrett Aviation Services, 1200 North Airport Drive, Capital Airport, Springfield, IL 62707, applied for a supplemental type certificate (STC) to modify Avions Marcel Dassault -Breguet Aviation (AMD/BA), Falcon 10 airplanes approved under Type Certificate No. A33EU . The AMD/BA Falcon 10 is a small transport category airplane, powered by two Airesearch Manufacturing Company Model TFE731–2–1C turbofan engines, with a maximum takeoff weight of 18,300 pounds. This airplane operates with a 2-pilot crew and can hold up to 9 passengers. The modification incorporates the installation of single or dual Collins ADC–87A Air Data Computers. The ADC–87A is installed as a new #2 ADC or as a replacement for the existing Collins ADC–80K Air Data Computer, while also providing additional functional capability and redundancy in the system. The ADC–87A is a microprocessor-based digital computer used to adapt signals driving the existing Collins FCS–80 Flight Guidance System. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101 (amendment 21–69, effective September 16, 1991), Garrett Aviation Services must show that the AMD/BA Falcon 10 airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A33EU, or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the modified AMD/BA Falcon 10 airplanes includes 14 CFR part 25, dated February 1, 1965, as amended by amendments 25–1 through 25–20, except for special conditions and exceptions noted in Type Certificate Data Sheet (TCDS) A33EU.

If the Administrator finds that the applicable airworthiness regulations (that is, part 25, as amended) do not contain adequate or appropriate safety standards for the AMD/BA Falcon 10 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the AMD/BA Falcon 10 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34, and the noise certification requirements of 14 CFR part 36, including amendment 36–1.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the airplane's type certification basis in accordance with § 21.101(b)(2),

(amendment 21–69, effective September 16, 1991).

Special conditions are initially applicable to the model for which they are issued. Should Garrett Aviation Services apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1), (amendment 21–69, effective September 16, 1991).

Novel or Unusual Design Features

As noted earlier, the AMD/BA Falcon 10 airplanes modified by Garrett Aviation Services will incorporate single or dual Collins ADC–87A Air Data Computers that will perform critical functions. These systems have the potential to be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards that address the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the AMD/BA Falcon 10 airplanes modified by Garrett Aviation Services. These special conditions require that the Collins ADC–87A Air Data Computers, which perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10KHz to 18GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to AMD/BA Falcon 10 airplanes modified by Garret Aviation Services. Should Garrett Aviation Services apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate A33EU to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1) (amendment 21–69, effective September 16, 1991).

Conclusion

This action affects only certain novel or unusual design features on the AMD/BA Falcon 10 airplanes modified by Garrett Aviation Services. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Avions Marcel Dassault—Breguet Aviation, Falcon 10 airplanes modified by Garrett Aviation Services.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 18, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–27377 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Carprofen

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for the veterinary prescription use of carprofen in dogs, by oral chewable tablet, for the control of postoperative pain associated with soft tissue and orthopedic surgery.

DATES: This rule is effective October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: mberson@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, filed a supplement to NADA 141–111 for veterinary prescription use of RIMADYL (carprofen) Chewable Tablets for the control of postoperative pain associated with soft tissue and orthopedic surgery in dogs. The supplemental NADA provides for use of carprofen chewable tablets in dogs for the control of postoperative pain associated with soft tissue and orthopedic surgery. The supplemental application is approved as of August 21, 2002, and the regulations are amended in 21 CFR 520.309 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and § 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.309 is amended by revising paragraphs (b), (d)(1), and (d)(2) to read as follows:

§ 520.309 Carprofen.

* * * * *

(b) *Sponsor.* See No. 000069 in § 510.600(c) of this chapter.

* * * * *

(d) * * * (1) *Amount.* 2 mg per pound (/lb) of body weight once daily or 1 mg/lb twice daily. For the control of postoperative pain, administer approximately 2 hours before the procedure.

(2) *Indications for use.* For the relief of pain and inflammation associated with osteoarthritis, and for the control of postoperative pain associated with soft tissue and orthopedic surgery.

* * * * *

Dated: September 30, 2002.

Stephen F. Sundlof,

Center for Veterinary Medicine.

[FR Doc. 02–27266 Filed 10–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9019]

RIN 1545–BA25

Unit Livestock Price Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the use of the unit-livestock-price method of accounting. The regulations affect livestock raisers and other farmers that elect to use the unit-livestock-price method. These regulations provide rules relating to the annual reevaluation of unit prices and the depreciation of livestock raised for draft, breeding, or dairy purposes.

EFFECTIVE DATE: These regulations are effective October 28, 2002.

FOR FURTHER INFORMATION CONTACT: A. Katharine Jacob Kiss at (202) 622–4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 471 of the Internal Revenue Code (Code). A notice of proposed rulemaking (REG–125626–01, 2002–9 IRB 604) was published in the **Federal Register** (67 FR 5074) on February 4, 2002. No public hearing was requested or held. One comment responding to the notice of proposed rulemaking was received. The proposed regulations are adopted by this Treasury decision.

Explanation of Provisions

The unit-livestock-price method provides for the valuation of different classes of animals in inventory at a standard unit price for each animal within a class. A taxpayer using the unit-livestock-price method must annually reevaluate its unit prices and must adjust the prices upward to reflect increases in the costs of raising livestock. The regulations allow taxpayers to both increase and decrease unit prices without obtaining the consent of the Commissioner. The regulations also clarify that a livestock raiser that uses the unit-livestock-price method may elect to remove from inventory after maturity an animal raised for draft, breeding, or dairy purposes and treat the inventoriable

cost of such animal as an asset subject to depreciation.

In the notice of proposed rulemaking, the IRS and Treasury Department requested comments on whether safe harbor unit prices should be made available to taxpayers using the unit-livestock-price method and, if so, what index should be used. The sole commentator requested that safe harbor unit prices should be made available, and suggested using the price index developed by a local state extension service for the safe harbor unit prices. Due to the lack of widespread interest in developing and using safe harbor unit prices, the final regulations do not adopt that suggestion.

Effective Date

These regulations are applicable to taxable years ending after October 28, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is A. Katharine Jacob Kiss, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.471–6 also issued under 26 U.S.C. 471. * * *

Par. 2. Section 1.471–6 is amended as follows:

1. In paragraph (c), the last sentence is removed.

2. Paragraph (f) is revised.

3. In paragraph (g), the first sentence is amended by removing the language "capital assets" and adding in its place "property used in a trade or business."

The revisions read as follows:

§ 1.471–6 Inventories of livestock raisers and other farmers.

* * * * *

(f) A taxpayer that elects to use the "unit-livestock-price method" must apply it to all livestock raised, whether for sale or for draft, breeding, or dairy purposes. The inventoriable costs of animals raised for draft, breeding, or dairy purposes can, at the election of the livestock raiser, be included in inventory or treated as property used in a trade or business subject to depreciation after maturity. *See* § 1.263A–4 for rules regarding the computation of inventoriable costs for purposes of the unit-livestock-price method. Once established, the methods of accounting used by the taxpayer to determine unit prices and to classify animals must be consistently applied in all subsequent taxable years. A taxpayer that uses the unit-livestock-price method must annually reevaluate its unit prices and adjust the prices either upward to reflect increases, or downward to reflect decreases, in the costs of raising livestock. The consent of the Commissioner is not required to make such upward or downward adjustments. No other changes in the classification of animals or unit prices may be made without the consent of the Commissioner. *See* § 1.446–1(e) for procedures for obtaining the consent of the Commissioner. The provisions of this paragraph (f) apply to taxable years ending after October 28, 2002.

* * * * *

Approved: October 2, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 02–27158 Filed 10–25–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 861

RIN 0701–AA67

Department of Defense Commercial Air Transportation Quality and Safety Review Program

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force has revised the Department of Defense Commercial Transportation Quality and Safety Review Program. This was necessary to reflect current and anticipated policies.

EFFECTIVE DATE: October 29, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Merlin Lyman, 618–229–4801.

SUPPLEMENTARY INFORMATION: This action is authorized by 10 U.S.C. 8013 and 10 U.S.C. 2640. The Department of the Air Force has determined that this rule is not a major rule because it will not have an annual effect on the economy of $100 million or more. The Secretary of the Air Force has certified that this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 to 612, because this rule does not have a significant economic impact on small entities as defined by the Act, and does not impose any obligatory information requirements beyond internal Air Force use.

List of Subjects in 32 CFR Part 861

Administrative practice and procedure, Air carriers, Aviation safety, Military air transportation.

For the reasons set forth in the preamble, the Air Force has revised 32 CFR Part 861 to read as follows:

PART 861—DEPARTMENT OF DEFENSE COMMERCIAL AIR TRANSPORTATION QUALITY AND SAFETY REVIEW PROGRAM

Sec.

861.1 References.
861.2 Purpose.
861.3 Definitions.
861.4 DOD commercial air transportation quality and safety review program.
861.5 DOD Commercial Airlift Review Board procedures.
861.6 DOD review of foreign air carriers.
861.7 Disclosure of voluntarily provided safety-related information.

Authority: 10 U.S.C. 2640, 8013.

§ 861.1 References.

The following references apply to this part:

(a) 10 U.S.C. 2640, Charter Air Transportation of Members of the Armed Forces.

(b) Department of Defense Directive 4500.53, *Department of Defense Commercial Air Transportation Quality and Safety Review Program.*

§ 861.2 Purpose.

Department of Defense Directive 4500.53, *Department of Defense Commercial Air Transportation Quality and Safety Review Program*, charges the Commander-in-Chief (CINC), United States Transportation Command (USTRANSCOM), with ensuring the establishment of safety requirements and criteria for evaluating civil air carriers and operators (hereinafter collectively referred to as "air carriers") providing air transportation and operational support services to the Department of Defense (DOD). It also charges the CINC with ensuring the establishment of a Commercial Airlift Review Board (CARB) and providing policy guidance and direction for its operation. This part establishes DOD quality and safety criteria for air carriers providing or seeking to provide air transportation and, at the discretion of the CARB or higher authority, operational support services to the DOD. This part also includes the operating procedures of the CARB. The CARB has the authority to suspend air carriers from DOD use or take other actions when issues of air carrier quality and air safety arise.

§ 861.3 Definitions.

(a) *Air carrier.* Individuals or entities that operate commercial fixed and rotary wing aircraft in accordance with the Federal Aviation Regulations (14 CFR Chapter I) or equivalent regulations issued by a country's Civil Aviation Authority (CAA) and which provide air transportation or operational support services. Commercial air carriers under contract with, or operating on behalf of the DOD shall have a FAA or CAA certificate.

(b) *Air transportation services.* The transport of DOD personnel or cargo by fixed or rotary wing commercial aircraft, where such services are acquired primarily for the transportation of DOD personnel and cargo, through donation or any form of contract, tender, blanket ordering agreement, Government charge card, Government or commercial transportation request (TR), bill of lading, or similar instruments. Air transportation services also include medical evacuation services, paratrooper drops, and charter airlift and group travel arranged by the Military Service Academies, foreign military sales, nonappropriated fund instrumentalities by other DOD and non-DOD activities for DOD personnel. All air carriers providing air transportation services to DOD must have a FAA or CAA certificate. The policy contained in this Directive shall not apply to individually procured, discretionary air travel, such as that associated with military leave or pass.

(c) *Civil Aviation Authority (CAA).* The CAA refers to the organization within a country that has the authority and responsibility to regulate civil aviation. The term CAA is used throughout this part since these requirements are applicable to both U.S. and foreign carriers doing business with DOD. The term CAA thus includes the U.S. Federal Aviation Administration (FAA).

(d) *Code sharing.* Code sharing is a marketing arrangement in which an air carrier places its designator code on a flight operated by another air carrier and sells tickets for that flight.

(e) *DOD approval.* DOD approval in the context of this part refers to the process by which air carriers seeking to provide passenger or cargo airlift services (hereinafter referred to as air transportation services) to the DOD must be screened and evaluated by the DOD Air Carrier Survey and Analysis Office or other entity authorized by the CARB, and approved for DOD use by the CARB. Once initial approval is obtained, a DOD approved air carrier must remain in an approved status to be eligible for DOD business. Although not generally required, the CARB or higher authority may, on a case-by-case basis, require DOD approval of air carriers providing operational support services to DOD.

(f) *DOD air carrier safety and quality review process.* Includes four possible levels of review with increasing authority. The responsibilities of each are described in more detail in the reference in § 861.1 (b). These levels consist of the:

(1) DOD Air Carrier Survey and Analysis Office;

(2) DOD Commercial Airlift Review Board (CARB);

(3) Commander-in-Chief, U.S. Transportation Command, or USCINCTRANS; and

(4) Secretary of Defense. (**Note:** A DOD-level body, the Commercial Airlift Review Authority, or CARA, provides advice and recommendations to the Secretary of Defense.)

(g) *Federal Aviation Administration (FAA) International Safety Assessment (IASA) program and categories.* The FAA IASA program assesses the ability of a foreign country's CAA to adhere to international standards established by the United Nation's technical agency for aviation, the International Civil Aviation Organization (ICAO). The FAA has established ratings for the status of countries as follows:

(1) *Category 1—Does comply with ICAO standards.* A country's CAA has been found to license and oversee air carriers in accordance with ICAO aviation safety standards.

(2) *Category 2—Does not comply with ICAO standards.* A country's CAA does not meet ICAO standards for aviation oversight. Operations to the U.S. by a carrier from a Category 2 country are limited to those in effect at the time a country is classified as Category 2 and are subjected to heightened FAA surveillance. Expansion or changes in services to the U.S. are not permitted while a country is in Category 2 status unless the carrier arranges to have new services conducted by an air carrier from a Category 1 country. Category 2 countries that do not have operations to the U.S. at the time of the FAA assessment are not permitted to commence such operations unless it arranges to have its flights conducted by an air carrier from a Category 1 country.

(3) *Non-rated.* A country's CAA is labeled "non-rated" if it has not been assessed by the FAA.

(h) *GSA City Pair Program.* A program managed by the General Services Administration in which U.S. air carriers compete for annual contracts awarding U.S. Government business for specific domestic and international scheduled service city pair routes.

(i) *Group travel.* Twenty-one or more passengers on orders from the same organization traveling on the same date to the same destination to attend the same function.

(j) *Letter of Warning.* A notice to a DOD approved air carrier of a failure to satisfy safety or airworthiness requirements which, if not remedied, may result in temporary nonuse or suspension of the air carrier by the DOD. Issuance of a *Letter of Warning* is not a prerequisite to a suspension or other action by the CARB or higher DOD authority.

(k) *On-site Capability Survey.* The most comprehensive evaluation performed by DOD's Air Carrier Survey and Analysis Office. Successful completion of this evaluation is required of most air carriers before they may be approved to provide air transportation services to DOD. Once approved, air carriers are subject to periodic On-site Capability Surveys, as

specified at Enclosure 3 in the reference in § 861.1(b).

(l) *Operational support services.* Missions performed by air carriers that use fixed or rotary-winged aircraft to provide services other than air transportation services as defined in paragraph (b) of this section. Examples include, but are not limited to, range instrumentation and services, target-towing, sling loads, and electronic countermeasures target flights. Air carriers providing only operational support services do not require advance DOD approval and are not subject to the initial or periodic on-site survey requirements under this part, unless directed by the CARB or higher authority. All air carriers providing operational support services to DOD must have a FAA or CAA certificate and are required to maintain applicable FAA or CAA standards absent deviation authority obtained pursuant to 14 CFR 119.55 or similar CAA rules.

(m) *Performance assessments.* Reviews conducted by U.S. air carriers when evaluating foreign air carriers with which they have code share arrangements, using performance-based factors. Such assessments include reviewing a variety of air carrier data including history, safety, scope/size, financial condition, equipment, flight operations and airworthiness issues.

(n) *Performance evaluations.* Reviews conducted by DOD as directed in the references in § 861.1(a) and (b). These evaluations include a review of air carrier flight operations, maintenance departments, safety programs and other air carrier areas as necessary. Performance evaluations are not conducted on-site, but rely on information collected primarily from the FAA and the National Transportation Safety Board (NTSB).

(o) *Preflight safety inspection.* A visual safety inspection of the interior and exterior of an air carrier's aircraft performed by DOD personnel in accordance with the references in § 861.1(a) and (b).

(p) *Suspension.* The exclusion of an air carrier from providing services to the DOD. The period of suspension will normally:

(1) Remain in effect until the air carrier furnishes satisfactory evidence that the conditions causing the suspension have been remedied and has been reinstated by the CARB, or;

(2) Be for a fixed period of time as determined at the discretion of the CARB.

(q) *Temporary nonuse.* The immediate exclusion of a DOD approved air carrier from providing services to the DOD pending a decision on suspension. Normally, temporary nonuse will be for a period of 30 days or less. However, by mutual agreement of the CARB and the air carrier involved, a suspension hearing or decision may be delayed and the air carrier continued in a temporary nonuse status for an extended period of time.

(r) *Voluntarily provided safety-related information.* Information which consists of nonfactual safety-related data, reports, statements, and other information provided to DOD by an air carrier at any point in the evaluation process described in this Part. It does not include factual safety-related information, such as statistics, maintenance reports, training records, flight planning information, and the like.

§ 861.4 DOD air transportation quality and safety requirements.

(a) *General.* The DOD, as a customer of air transportation and operational support services, expects air carriers used by DOD to employ programs and business practices that not only ensure good service but also enhance the safety, operational, and maintenance standards established by applicable Civil Aviation Authority (CAA) regulations. Accordingly, and as required by the references in § 861.1 (a) and (b), the DOD has established a set of quality and safety criteria and requirements that reflect the type programs and practices DOD seeks from air carriers providing services to DOD. Air carriers must meet and maintain these requirements in order to be eligible for DOD business. Air carriers providing air transportation services to DOD either directly by contract or agreement, or indirectly through the General Services Administration (GSA) City Pair Program or some other arrangement, must be approved by DOD prior to providing such services and remain in an approved status throughout the contract, agreement, or arrangement performance period. This approval entails successful completion of initial and recurring on-site surveys as well as periodic performance evaluations in accordance with the reference in § 861.1(b). The quality and safety criteria and requirements set forth in this part complement rather than replace the CAA criteria applicable to air carriers. Air carriers normally remain fully subject to applicable CAA regulations (CARs) while performing business for the DOD, even when the aircraft involved is used exclusively for DOD missions. The inspection and oversight criteria set forth in this part do not, as a general rule, apply to air carriers providing only operational support services to DOD. However, in the event concerns relating to the safety of such a carrier arise, the CARB or higher authority may, on a case-by-case basis, direct an appropriate level of oversight under the authority of this part.

(b) *Applicability.* (1) The evaluation, quality and safety criteria and requirements set forth in this part apply to air carriers providing or seeking to provide air transportation services to DOD.

(2) Foreign air carriers performing portions of GSA City Pair routes awarded to U.S. air carriers under a code-sharing arrangement, as well as foreign air carriers providing individually-ticketed passenger service to DOD personnel traveling on official business, may be subject to limited oversight and review pursuant to § 861.6.

(3) The inspection and oversight requirements, as well as the quality and safety criteria of this part may, on a case-by-case basis and at the discretion of the CARB or higher authority, be applied to air carriers seeking to provide or providing operational support services as defined in § 861.3(l).

(4) The inspection and oversight requirements of this part do not apply to aircraft engaged in medical transport services if procured under emergency conditions to save life, limb or eyesight. Likewise, the inspection and oversight requirements of this part are not applicable when DOD is not involved in the procurement of the medical transportation services. For example, when specific medical treatment is obtained on an individual basis by or for DOD personnel with medical transportation provided, as needed, at the direction of the non-DOD medical care giver. This includes situations where DOD, through TRICARE or otherwise, pays for such transportation as part of the costs of medical services provided.

(c) *Scope and nature of the evaluation program*—(1) *Evaluation requirement.* The provision of air transportation services under a contract or agreement with or on behalf of DOD, requires the successful completion of an initial on-site survey and approval by the CARB under this part in order to be eligible for DOD business. In addition, U.S. air carriers awarded contracts under the GSA City Pair Program, including those that perform part of the contract under a code-sharing arrangement with the U.S. air carrier awarded the contract, must successfully complete an initial on-site survey and be approved by the CARB for DOD use under this part prior to beginning performance of the GSA contract. Once approved by DOD, air carriers providing air transportation services are subject to recurring on-site surveys and performance evaluations and assessments throughout the duration of the relevant contract or agreement. The frequency and scope of these surveys and performance reviews will be in accordance with Enclosure 3 of the reference in § 861.1(b).

(2) *Office of primary responsibility.* Evaluations are performed by the DOD Air Carrier Survey and Analysis Office located at Scott Air Force Base, Illinois. The mailing address of this office is HQ AMC/DOB, 402 Scott Drive Unit 3A1, Scott AFB IL 62225–5302. The website address is *https://public.scott.af.mil/hqamc/dob/index.htm.*

(3) *Items considered in the evaluation process.* The specifics of the applicable DOD contract or agreement (if any), the applicable CAA regulations, and the experienced judgment of DOD personnel will be used to evaluate an air carrier's capability to perform services for DOD. The survey may also include, with the air carrier's coordination, observation of cockpit crew performance, as well as ramp inspections of selected company aircraft. In the case of air carriers seeking to provide air transportation services, after satisfactory completion of the initial survey and approval by the CARB as a DOD air carrier, follow-up surveys will be conducted on a recurring basis and when otherwise required to validate adherence to DOD quality and safety requirements. DOD personnel will also assess these quality and safety requirements when conducting periodic air carrier performance evaluations. The size of an air carrier, along with the type and scope of operations will be considered during the on-site survey. For example, while an air taxi operator may not have a formal flight control function, such as a 24-hour dispatch organization, that same air taxi operator is expected to demonstrate some type of effective flight following capability. On the other hand, a major air carrier is expected to have a formal flight control or dispatch function. Both, however, will be evaluated based on the effectiveness and quality of whatever flight following function they do maintain. In the case of air carriers seeking to provide operational support services, the type, scope and frequency of evaluation, if any, performed by DOD or other entity will be as directed by the CARB or higher authority.

(d) *Status of aircraft performing services for DOD.* All air carriers providing air transportation or operational support services to the DOD shall have FAA or CAA air carrier or commercial operator certificates and shall remain under FAA and/or CAA regulatory and safety oversight during performance of the DOD mission. Aircraft performing services for or on behalf of DOD shall be on the air carrier's operating certificate, and remain on that certificate while performing the DOD mission. The installation of any special equipment needed to perform services for DOD shall be FAA or CAA approved or an appropriate FAA or CAA waiver obtained.

(e) *Evaluation requirements.* The air carrier requirements stated in this part provide the criteria against which would-be DOD and GSA City Pair Program air carrier contractors, as well as air carriers providing services on behalf of DOD, may be subjectively evaluated by DOD. These requirements are neither all-inclusive nor inflexible in nature. They are not replacements for the certification criteria and other regulations established by the CAA. Rather, these requirements complement CAA certification criteria and regulations and describe the enhanced level of service required by DOD. The relative weight accorded these requirements in a given case, as well as the determination of whether an air carrier meets or exceeds them, is a matter within the sole discretion of the DOD Air Carrier Survey and Analysis Office and the CARB, subject to the statutory minimums provided in the reference in § 861.1(a).

(1) *Quality and safety requirements—prior experience.* U.S. and foreign air carriers applying for DOD approval in order to conduct air transportation services for or on behalf of DOD under a contract or agreement with DOD, the GSA City Pair Program, or by some other arrangement are required to possess 12 months of continuous service equivalent to the service sought by DOD. In applying this requirement, the following guidance will be used by DOD authorities:

(i) "12 months" refers to the 12 calendar months immediately preceding the request for DOD approval.

(ii) "Continuous" service means the carrier must have performed revenue-generating services of the nature for which DOD approval is sought, as an FAA Part 121, 125, 127, or 135 (14 CFR 121, 125, 127, or 135) air carrier (or foreign CAA equivalent if appropriate) on a recurring, substantially uninterrupted basis. The services must have occurred with such frequency and regularity as to clearly demonstrate the carrier's ability to perform and support sustained, safe, reliable, and regular services of the type DOD is seeking. Weekly flight activity is normally considered continuous, while sporadic or seasonal operations (if such operations are the only operations conducted by the carrier) may not suffice to establish a carrier's ability to perform and support services in the sustained, safe, reliable, and regular manner required by DOD. The ability of a carrier to perform services of the type sought by DOD may be called into question if there have been lengthy periods of time during the qualifying period in which the carrier has not operated such services. Consequently, any cessation, or nonperformance of the type of service for which approval is sought may, if it exceeds 30 days in length during the qualifying period and depending on the underlying factual circumstances, necessitate "restarting" the 12-month continuous service period needed to obtain DOD approval.

(iii) "Equivalent to the services sought by DOD" means service offered to qualify for DOD approval must be substantially equivalent to the type of service sought by DOD. The prior experience must be equivalent in difficulty and complexity with regard to the distances flown, weather systems encountered, international and national procedures, the same or similar aircraft, schedule demands, aircrew experience, number of passengers handled, frequency of operations, and management required. There is not a set formula for determining whether a particular type of service qualifies. The performance of cargo services is not considered to be "substantially equivalent" to the performance of passenger services, and may not be used to meet the 12 continuous months requirement for passenger services. However, when a carrier already providing cargo services to DOD applies to carry passengers, the CARB may consider the carrier's cargo performance and experience in assessing whether a carrier is qualified to carry passengers on a specific type or category of aircraft, over certain routes or stage lengths, or under differing air traffic control, weather, or other conditions. The following examples are illustrative and not intended to reflect or predict CARB action in any given case:

Example 1: Coyote Air has operated commercial passenger commuter operations in the U.S. for a number of years flying a variety of twin-engine turboprop aircraft. They have also been a DOD-approved cargo carrier, providing international cargo services using DC–10 freighter aircraft. Coyote Air purchases a passenger version DC–10, and seeks DOD approval to provide international passenger service for DOD. The CARB may decide that although Coyote Air has provided

passenger services for 12 continuous months, those services are not substantially equivalent to those being sought by DOD. While the carrier may have considerable operational experience with the DC–10, its commuter passenger operations are not substantially equivalent to the service now proposed—international passenger services on large jet aircraft.

Example 2: Acme Air has been a DOD-approved cargo carrier for several years, operating domestic and international missions with MD–11 freighter aircraft. At the same time, Acme has been performing commercial international passenger services with B–757 aircraft. Acme Air purchases a MD–11 passenger aircraft and applies to perform passenger services for DOD using the MD–11. Assuming Acme has performed B–757 passenger service for 12 continuous months immediately preceding its application, the CARB may consider these passenger services substantially equivalent to those proposed since both involve the operation of large multi-engine aircraft in an international environment. The CARB may also consider Acme's operational history with its MD–11 freighter aircraft in determining whether the carrier is competent to provide MD–11 passenger service in the same environment.

(iv) Once approved by DOD, an air carrier's failure to maintain continuous operations of the type for which approval has been granted may, at the discretion of the CARB, be grounds for nonuse or suspension under this part, rendering the carrier ineligible for DOD business during the nonuse or suspension period. Any cessation or nonperformance of the type of service for which approval has been obtained may, if it exceeds 30 days in length and depending on the circumstances, provide the basis for the CARB to take appropriate action.

(2) *Quality and safety requirements—air carrier management.* Management has clearly defined safety as the number one company priority, and safety is never sacrificed to satisfy passenger concern, convenience, or cost. Policies, procedures, and goals that enhance the CAA's minimum operations and maintenance standards have been established and implemented. A cooperative response to CAA inspections, critiques, or comments is demonstrated. Proper support infrastructure, including facilities, equipment, parts, and qualified personnel, is provided at the certificate holder's primary facility and en route stations. Personnel with aviation credentials and experience fill key management positions. An internal quality audit program or other method capable of identifying in-house deficiencies and measuring the company's compliance with their stated policies and standards has been implemented. Audit results are analyzed in order to determine the cause, not just the symptom, of any deficiency. The result of sound fiscal policy is evident throughout the company. Foreign code-sharing air carrier partners are audited at least every two years using DOD-approved criteria and any findings resolved. Comprehensive disaster response plans and, where applicable, family support plans, must be in place and exercised on a regular basis.

(3) *Quality and safety requirements—operations*—(i) *Flight safety.* Established policies that promote flight safety. These policies are infused among all aircrew and operational personnel who translate the policies into practice. New or revised safety-related data are promptly disseminated to affected personnel who understand that deviation from any established safety policy is unacceptable. An audit system that detects unsafe practices is in place and a feedback structure informs management of safety policy results including possible safety problems. Management ensures that corrective actions resolve every unsafe condition.

(ii) *Flight operations.* Established flight operations policies and procedures are up-to-date, reflect the current scope of operations, and are clearly defined to aviation department employees. These adhered-to procedures are further supported by a flow of current, management-generated safety and operational communications. Managers are in touch with mission requirements, supervise crew selection, and ensure the risk associated with all flight operations is reduced to the lowest acceptable level. Flight crews are free from undue management pressure and are comfortable with exercising their professional judgment during flight activities, even if such actions do not support the flight schedule. Effective lines of communication permit feedback from line crews to operations managers. Personnel records are maintained and reflect such data as experience, qualifications, and medical status.

(iii) *Flight crew hiring.* Established procedures ensure that applicants are carefully screened, including a review of the individual's health and suitability to perform flight crew duties. Consideration is given to the applicant's total aviation background, appropriate experience, and the individual's potential to perform safely. Freedom from alcohol abuse and illegal drugs is required. If new-hire cockpit crewmembers do not meet industry standards for experience and qualification, then increased training and management attention to properly qualify these personnel are required.

(iv) *Aircrew training.* Training, including recurrent training, which develops and refines skills designed to eliminate mishaps and improve safety, is essential to a quality operation. Crew coordination training that facilitates full cockpit crews training and full crew interaction using standardized procedures and including the principles of Crew Resource Management (CRM) is required. Programs involving the use of simulators or other devices that can provide realistic training scenarios are desired. Captain and First Officer training objectives cultivate similar levels of proficiency. Appropriate emergency procedures training (*e.g.*, evacuation procedures) is provided to flight deck and flight attendant personnel as a total crew whenever possible; such training focuses on cockpit and cabin crews functioning as a coordinated team during emergencies. Crew training—be it pilot, engineer, or flight attendant—is appropriate to the level of risk and circumstances anticipated for the trainee. Training programs have the flexibility to incorporate and resolve recurring problem areas associated with day-to-day flight operations. Aeromedical crews must also be trained in handling the specific needs of the categories of patients normally accepted for transportation on the equipment to be used. Trainers are highly skilled in both subject matter and training techniques. Training received is documented, and that documentation is maintained in a current status.

(v) *Captain upgrade training.* A selection and training process that considers proven experience, decision making, crew resource management, and response to unusual situations, including stress and pressure, is required. Also important is emphasis on captain responsibility and authority.

(vi) *Aircrew scheduling.* A closely monitored system that evaluates operational risks, experience levels of crewmembers, and ensures the proper pairing of aircrews on all flights is required. New captains are scheduled with highly experienced first officers, and new or low-time first officers are scheduled with experienced captains. Except for aircraft new to the company, captains and first officers assigned to DOD charter passenger missions possess at least 250 hours combined experience in the type aircraft being operated. The scheduling system involves an established flight duty time program for aircrews, including flight attendants, carefully managed so as to ensure proper crew rest and considers quality-of-life factors. Attention is given to the stress on aircrews during strikes, mergers, or periods of labor-management difficulties.

(vii) *In-flight performance.* Aircrews, including flight attendants and flight medical personnel, are fit for flight duties and trained to handle normal, abnormal, and emergency situations. They demonstrate crew discipline and a knowledge of aviation rules; use company-developed standardized procedures; adhere to checklists; and emphasize safety, including security considerations, throughout all preflight, in-flight, and postflight operations. Qualified company personnel evaluate aircrews and analyze results; known performance deficiencies are eliminated. Evaluations ensure aircrews demonstrate aircraft proficiency in accordance with company established standards. Flight crews are able to determine an aircraft's maintenance condition prior to flight and use standardized methods to accurately report aircraft deficiencies to the maintenance activity.

(viii) *Operational control/support.* Effective mission control includes communications with aircrews and the capability to respond to irregularities or difficulties. Clear written procedures for mission preparation and flight following aircraft and aircrews are provided. There is access to weather, flight planning, and aircraft maintenance data. There are personnel available who are knowledgeable in aircraft performance and mission requirements and that can correctly respond to emergency situations. There is close interface between operations and maintenance, ensuring a mutual awareness of aircraft operational and maintenance status. Procedures to notify DOD in case of an accident or serious incident have been established. Flight crews involved in such accidents or incidents report the situation to company personnel who, in turn, have procedures to evaluate the flight crew's capability to continue the mission. Aircraft involved in accidents or incidents are inspected in accordance with Civil Aviation Regulations and a determination made as to whether or not the aircraft is safe for continued operations.

(ix) *DOD charter procedures.* Detailed procedures addressing military charter requirements are expected. The level of risk associated with DOD charter missions does not exceed the risks inherent in the carrier's non-DOD daily flight operations. Complete route planning and airport analyses are accomplished, and actual passenger and cargo weights are used in computing aircraft weight and balance.

(4) *Quality and safety requirements—maintenance.* Maintenance supervisors ensure all personnel understand that in spite of scheduling pressure, peer pressure, supervisory pressure, or other factors, the airplane must be airworthy prior to flight. Passenger and employee safety is a paramount management concern. Quality, completeness, and integrity of work are trademarks of the maintenance manager and maintenance department. Nonconformance to established maintenance practices is not tolerated. Management ensures that contracted maintenance, including repair and overhaul facilities, is performed by maintenance organizations acceptable to the CAA.

(i) *Maintenance personnel.* Air carriers are expected to hire and train the number of employees required to safely maintain the company aircraft and support the scope of the maintenance operations both at home station (the company's primary facility) and at en route locations. These personnel ensure that all maintenance tasks, including required inspections and airworthiness directives, are performed; that maintenance actions are properly documented; and that the discrepancies identified between inspections are corrected. Mechanics are fit for duty, properly certificated, the company verifies certification, and these personnel possess the knowledge and the necessary aircraft-specific experience to accomplish the maintenance tasks. Noncertified and inexperienced personnel received proper supervision. Freedom from alcohol abuse and illegal drugs is required.

(ii) *Quality assurance.* A system that continuously analyzes the performance and effectiveness of maintenance activities and maintenance inspection programs is required. This system evaluates such functions as reliability reports, audits, component tear-down reports, inspection procedures and results, tool calibration program, real-time aircraft maintenance actions, warranty programs, and other maintenance functions. The extent of this program is directly related to the air carrier's size and scope of operation. The cause of any recurring discrepancy or negative trend is researched and eliminated. Action is taken to prevent recurrence of these discrepancies and preventive actions are monitored to ensure effectiveness. The results of preventive actions are provided to appropriate maintenance technicians.

(iii) *Maintenance inspection activity.* A process to ensure required aircraft inspections are completed and the results properly documented is required. Also required is a system to evaluate contract vendors, suppliers, and their products. Inspection personnel are identified, trained (initial and recurrent), and provided guidance regarding inspector responsibility and authority. The inspection activity is normally a separate entity within the maintenance department.

(iv) *Maintenance training.* Training is conducted commensurate with the size and type of maintenance function being performed. Continuing education and progressive experience are provided for all maintenance personnel. Orientation, familiarization, on-the-job, and appropriate recurrent training for all full and part-time personnel are expected. The use of such training aids as mockups, simulators, and computer-based training enhances maintenance training efforts and is desired. Training documentation is required; it is current, complete, well maintained, and correctly identifies any special authorization such as inspection and airworthiness release. Trainers are fully qualified in the subject manner.

(v) *Maintenance control.* A method to control maintenance activities and track aircraft status is required. Qualified personnel monitor maintenance preplanning, ensure completion of maintenance actions, and track deferred discrepancies. Deferred maintenance actions are identified to supervisory personnel and corrected in accordance with the criteria provided by the manufacturer or regulatory agency. Constant and effective communications between maintenance and flight operations ensure an exchange of critical information.

(vi) *Aircraft maintenance program.* Aircraft are properly certified and maintained in a manner that ensures they are airworthy and safe. The program includes the use of manufacturer's and CAA information, as well as company policies and procedures. Airworthiness directives are complied with in the prescribed time frame, and service bulletins are evaluated for applicable action. Approved reliability programs are proactive, providing management with visibly on the effectiveness of the maintenance program; attention is given to initial component and older aircraft inspection intervals and to deferred maintenance actions. Special tools and equipment are calibrated.

(vii) *Maintenance records.* Maintenance actions are well documented and provide a complete record of maintenance accomplished and, for repetitive actions, maintenance required. Such records as aircraft log books and maintenance documentation

are legible, dated, clean, readily identifiable, and maintained in an orderly fashion. Inspection compliance, airworthiness release, and maintenance release records, *etc.*, are completed and signed by approved personnel.

(viii) *Aircraft appearance.* Aircraft exteriors, including all visible surfaces and components, are clean and well maintained. Interiors are also clean and orderly. Required safety equipment and systems are available and operable.

(ix) *Fueling and servicing.* Aircraft fuel is free from contamination, and company fuel facilities (farms) are inspected and results documented. Procedures and instructions pertaining to servicing, handling, and storing fuel and oil meet established safety standards. Procedures for monitoring and verifying vendor servicing practices are included in this program.

(x) *Maintenance manuals.* Company policy manuals and manufacturer's maintenance manuals are current, available, clear, complete, and adhered to by maintenance personnel. These manuals provide maintenance personnel with standardized procedures for maintaining company aircraft. Management policies, lines of authority, and company maintenance procedures are documented in company manuals and kept in a current status.

(xi) *Maintenance facilities.* Well maintained, clean maintenance facilities, adequate for the level of aircraft repair authorized in the company's CAA certificate are expected. Safety equipment is available in hangars, shops, *etc.*, and is serviceable. Shipping, receiving, and stores areas are likewise clean and orderly. Parts are correctly packaged, tagged, segregated, and shelf life properly monitored.

(5) *Quality and safety requirements—security.* Company personnel receive training in security responsibilities and practice applicable procedures during ground and in-flight operations. Compliance with provisions of the appropriate standard security program, established by the Transportation Security Administration or foreign equivalent, is required for all DOD missions.

(6) *Quality and safety requirements—specific equipment requirements.* Air carriers satisfy DOD equipment and other requirements as specified in DOD agreements.

(7) *Quality and safety requirements—oversight of commuter or foreign air carriers in code-sharing agreements.* Air carriers awarded a route under the Passenger Standing Route Order (PSRO) program, the GSA City Pair Program, or other DOD program, that includes performance of a portion of the route by a commuter or foreign air carrier with which it has a code-sharing arrangement, must have a formal procedure in place to periodically review and assess the code-sharing air carrier's safety, operations, and maintenance programs. The extent of such reviews and assessments must be consistent with, and related to, the code-sharing air carrier's safety history. These procedures must also provide for actual inspections of the foreign code-sharing air carrier if the above reviews and assessments indicate questionable safety practices.

(8) *Quality and safety requirements—aeromedical transport requirements.* (i) The degree of oversight is as determined by the CARB or higher authority. When an inspection is conducted, DOD medical personnel may also participate to assess the ability to provide the patient care and any specialty care required by DOD. The CARB's review will be limited solely to issues related to flight safety.

(ii) Portable Electronic Devices (PEDs) used in the provision of medical services or treatment on board aircraft are tested for non-interference with aircraft systems and the results documented to show compliance with 14 CFR 91.21 or other applicable CAA regulations. If there are no CAA regulations, actual use/inflight testing of the same or similar model PED prior to use with DOD patients is the minimum requirement.

§ 861.5 DOD Commercial Airlift Review Board procedures

(a) This section establishes procedures to be used by the DOD when, in accordance with references in§ 861.1(a) and (b):

(1) An air carrier is subject to review or other action by the DOD Commercial Airlift Review Board, or CARB;

(2) A warning, suspension, temporary nonuse, or reinstatement action is considered or taken against a carrier by the CARB; or

(3) An issue involving an air carrier is referred by the CARB to higher authority for appropriate action.

(b) These procedures apply to air carriers seeking to provide or already providing air transportation services to DOD. It also applies to U.S. or foreign air carriers providing operational support services to DOD which, on a case-by-case basis and at the discretion of the CARB or higher authority, require some level of oversight by DOD.

(c) An air carrier's sole remedy in the case of a suspension decision by the CARB is the appellate process under this part.

(d) Quality and safety issues relating to air carriers used, or proposing to be used, by DOD, per reference (b) must be referred to the CARB for appropriate disposition.

(e) *CARB responsibilities.* As detailed in the reference in § 861.1(b), the CARB provides a multifunctional review of the efforts of the DOD Air Carrier Survey and Analysis Office and is the first level decision authority in DOD on quality and safety issues relating to air carriers. Responsibilities include, but are not limited to: the review and approval or disapproval of air carriers seeking initial approval to provide air transportation service to DOD; the review and approval or disapproval of air carriers in the program that do not meet DOD quality and safety requirements; the review and approval or disapproval of air carriers in the program seeking to provide a class of service different from that which they are currently approved; taking action to suspend, reinstate, or place into temporary nonuse or extended temporary nonuse, DOD approved carriers; taking action, on an as needed basis, to review, suspend, reinstate, or place into temporary nonuse or extended temporary nonuse, an air carrier providing operational support services to DOD; and, referring with recommendations, issues requiring resolution or other action by higher authority.

(f) *CARB administrative procedures.*—(1) *Membership.* The CARB will consist of four voting members appointed by USCINCTRANS from USTRANSCOM and its component commands. These members and their alternates will be general officers or their civilian equivalent, with experience in the operations, maintenance, transportation, or air safety fields. A Chairman and alternate will be designated. Nonvoting CARB members will be appointed as necessary by USCINCTRANS. A non-voting recorder will also be appointed.

(2) *Decisions.* Decisions of the CARB will be taken by a majority vote of the voting members present, with a minimum of three voting members (or their alternates) required to constitute a quorum. In the event of a tie, the Chair of the CARB will decide the issue.

(3) *Meetings of the CARB.* The CARB may meet either in person or by some electronic means. It will be convened by either USCINCTRANS or the Chair of the CARB. The meeting date, time, and site of the CARB will be determined at the time of the decision to convene the CARB. Minutes of CARB meetings will be taken by the recorder, summarized, and preserved with all other records relating to the CARB meeting. The recorder will ensure the air carrier and appropriate DOD and federal agencies are notified of the CARB's decision(s) and reasons therefore. In the event of a fatal accident, the CARB shall convene as soon as possible but not later than 72 hours after notification by the Chair.

(g) *CARB operating procedures.*—(1) *Placing an air carrier into temporary nonuse.* (i) In case of a fatal aircraft accident or for other good cause, two or more voting members of the CARB may jointly make an immediate determination whether to place the air carrier involved into a temporary nonuse status pending suspension proceedings. Prior notice to the air carrier is not required.

(ii) The carrier shall be promptly notified of the temporary nonuse determination and the basis therefore.

(iii) Temporary nonuse status terminates automatically if suspension proceedings are not commenced, as set out in paragraph (g)(2) of this section, within 30 days of inception unless the CARB and air carrier mutually agree to extend the temporary nonuse status.

(2) *Suspension of an air carrier.* (i) On a recommendation of the DOD Air Carrier Survey and Analysis Office or any individual voting member of the CARB, the CARB shall consider whether or not to suspend a DOD approved air carrier.

(ii) If the CARB determines that suspension may be appropriate, it shall notify the air carrier that suspension action is under consideration and of the basis for such consideration. The air carrier will be offered a hearing within 15 days of the date of the notice, or other such period as granted by the CARB, at which the air carrier may be present and may offer evidence. The hearings shall be as informal as practicable, consistent with administrative due process. Formal rules of evidence do not apply.

(iii) The types of evidence which may be considered includes, but is not limited to:

(A) Information and analysis provided by the DOD Air Carrier Survey and Analysis Office.

(B) Information submitted by the air carrier.

(C) Information relating to action that may have been taken by the air carrier to:

(*1*) Correct the specific deficiencies that led the CARB to consider suspension; and

(*2*) Preclude recurring similar deficiencies.

(D) Other matters the CARB deems relevant.

(iv) The CARB's decisions on the reception or exclusion of evidence shall be final.

(v) Air carriers shall have the burden of proving their suitability to safely perform DOD air transportation and/or operational support services by clear and convincing evidence.

(vi) After the conclusion of such hearing, or if no hearing is requested and attended by the air carrier within the time specified by the CARB, the CARB shall consider the matter and make a final decision whether or not to suspend the air carrier or to impose such lesser sanctions as appropriate. The air carrier will be notified of the CARB's decision.

(3) *Reinstatement.* (i) The CARB may consider reinstating a suspended carrier on either CARB motion or carrier motion, unless such carrier has become ineligible in the interim.

(ii) The carrier has the burden of proving by clear and convincing evidence that reinstatement is warranted. The air carrier must satisfy the CARB that the deficiencies, which led to suspension, have been corrected and that action has been implemented to preclude the recurrence of similar deficiencies.

(iii) Air carrier evidence in support of reinstatement will be provided in a timely manner to the CARB for its review. The CARB may independently corroborate the carrier-provided evidence and may, at its option, convene a hearing and request the participation of the air carrier.

(4) *Appeal of CARB decisions.* (i) An air carrier placed in suspension by the CARB may administratively appeal this action to USCINCTRANS. An appeal, if any, must be filed in writing, with the DOD Air Carrier Survey and Analysis Office, and postmarked within 15 workdays of receipt of notice of the CARB's suspension decision. In the sole discretion of USCINCTRANS, and for good cause shown, the suspension may be stayed pending action on the appeal.

(ii) Air carriers shall not be entitled to a de novo hearing or personal presentation before the appellate authority.

(iii) The decision of the appellate authority is final and is not subject to further administrative review or appeal.

(5) *Referral of issues to higher authorities.* The approval or disapproval of an air carrier for use by DOD, the placing of approved carriers into temporary nonuse status, and the suspension and reinstatement of approved carriers, are all decisions which must be made by the CARB. Other matters may be referred by the CARB to USCINCTRANS for appropriate action, with or without recommendations by the CARB. The CARB will forward for decision, through USCINCTRANS to the Under Secretary of Defense (Acquisition, Technology and Logistics) (USD(AT&L)), all air carrier use/nonuse recommendations involving foreign air carriers other than those providing charter transportation or operational support service to the Department of Defense.

§ 861.6 DOD review of foreign air carriers.

Foreign air carriers providing or seeking to provide services to DOD shall be subject to review and, if appropriate, approval by DOD. Application of the criteria and requirements of this part and the degree of oversight to be exercised by DOD, if any, over a foreign air carrier depends upon the type of services performed and, in some instances, by the quality of oversight exercised by the foreign air carrier's CAA. The scope and frequency of the review of any given foreign air carrier under this part will be at the discretion of the CARB or higher authority.

(a) *Foreign air carriers seeking to provide or providing air transportation services under a contract or Military Air Transportation Agreement with DOD, or pursuant to another arrangement entered into by, or on behalf of, DOD.* Foreign air carriers seeking to provide or providing air transportation services under a contract or Military Air Transportation Agreement with DOD, must meet all requirements of § 861.4, and be approved by the CARB in accordance with § 861.5. This includes foreign air carriers seeking to provide, or providing, airlift services to DOD personnel pursuant to an arrangement entered into by another federal agency, state agency, foreign government, international organization, or other entity or person on behalf of, or for the benefit of, DOD, regardless of whether DOD pays for the airlift services provided. For purposes of establishing the degree of oversight and review to be conducted under the DOD Commercial Air Transportation Quality and Safety Review Program, such foreign air carriers are considered the same as U.S. carriers. In addition, they must have an operating certificate issued by the appropriate CAA using regulations which are the substantial equivalent of those found in the U.S. FARs, and must maintain such certification throughout the term of the contract or agreement. The CAA responsible for exercising oversight of the foreign air carrier must meet ICAO standards as determined by ICAO, or the FAA under the FAA's International Aviation Safety Assessment Program.

(b) *Foreign air carriers providing passenger services under the GSA City Pair Program.* Foreign air carriers

performing any portion of a route awarded to a U.S. air carrier under the GSA City Pair Program pursuant to a code-sharing agreement with that U.S. air carrier, are generally not subject to DOD survey and approval under §§ 861.4 and 861.5. However, DOD will periodically review the performance of such foreign carriers. This review may consist of recurring performance evaluations, periodic examination of the U.S. code-sharing carrier's operational reviews and assessments of the foreign carrier and, where appropriate and agreed to by the air carriers concerned and DOD, on-site surveys of the foreign air carrier. Such carriers must also meet the 12 months prior experience requirement of § 861.4(e)(1). The CARB or higher authority may prescribe additional review requirements. Should circumstances warrant, use of these air carriers by DOD passengers on official business may be restricted or prohibited as necessary to assure the highest levels of passenger safety.

(c) *Other foreign air carriers carrying individually ticketed DOD passengers on official business.* Foreign air carriers carrying individually ticketed DOD passengers on official business are not subject to DOD survey and approval under §§ 861.4 and 861.5. However, the DOD Air Carrier Survey and Analysis Division may periodically review the performance of such carriers. Reviews may include voluntary on-site surveys as directed by the CARB or higher authority. In the event questions relating to the safety and continued use of the carrier arise, the matter may be referred to the CARB for appropriate action.

(d) *Foreign air carriers from countries in which the CAA is not in compliance with ICAO standards.* Unless otherwise authorized, use by DOD personnel on official business of foreign air carriers from countries in which the CAA is not in compliance with ICAO standards is prohibited except for the last leg into and the first leg out of the U.S. on such carriers. This includes foreign air carriers performing any portion of a route awarded to a U.S. air carrier under the GSA City Pair Program pursuant to a code-sharing agreement with that U.S. air carrier.

(e) *On-site surveys.* The scope of the on-site survey of a foreign air carrier will be at the discretion of the CARB. In the event a foreign air carrier denies a request made under this part to conduct an on-site survey, the CARB will consider all available information and make a use/nonuse recommendation to DOD. If placed in nonuse status by DOD, such air carriers will not be used unless, in accordance with the reference in § 861.1 (b), in the judgment of the appropriate Combatant Commander, no acceptable alternative to using the carrier exists and the travel is mission essential.

(f) *Foreign carriers providing operational support services to DOD.* Such carriers are subject to DOD oversight, on a case-by-case basis, to the extent directed by the CARB or higher authority.

§ 861.7 Disclosure of voluntarily provided safety-related information.

(a) *General.* In accordance with paragraph (h) of the reference in § 861.1 (a), DOD may withhold from public disclosure safety-related information voluntarily provided to DOD by an air carrier for the purposes of this Part if DOD determines that—

(1) The disclosure of the information would, in the future, inhibit an air carrier from voluntarily providing such information to DOD or another Federal agency for the purposes of this Part or for other air safety purposes; and

(2) The receipt of such information generally enhances the fulfillment of responsibilities under this Part or other air safety responsibilities involving DOD or another Federal agency.

(b) *Processing requests for disclosure of voluntarily provided safety-related information.* Requests for public disclosure will be administratively processed in accordance with 32 CFR Part 806, Air Force Freedom of Information Act Program.

(c) *Disclosure of voluntarily provided safety-related information to other agencies.* The Department of Defense may, at its discretion, disclose voluntarily provided safety-related information submitted under this Part by an air carrier, to other agencies with safety responsibilities. The DOD will provide such information to another agency only upon receipt of adequate assurances that it will protect the information from public disclosure, and that it will not release such information unless specifically authorized.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–27087 Filed 10–25–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–123]

Drawbridge Operation Regulations: Taunton River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Brightman Street Bridge, mile 1.8, across the Taunton River between Fall River and Somerset, Massachusetts. This deviation from the regulations allows the bridge to open only one lift span for the passage of vessel traffic from 9 p.m. on November 8, 2002 through 4 p.m. on November 22, 2002. During this deviation the Fall River lift span will remain in the closed position for vessel traffic and the Somerset lift span will be fully operational at all times. This deviation is necessary to facilitate scheduled maintenance at the bridge.

DATES: This deviation is effective from November 8, 2002 through November 22, 2002.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The bridge owner, Massachusetts Highway Department, requested a temporary deviation from the drawbridge operating regulations to facilitate necessary structural repairs at the bridge, replacement of the main floor beam, at the bridge.

Under this deviation the Brightman Street Bridge, mile 1.8, across the Taunton River in Massachusetts, will be allowed to open only a single lift span for the passage of vessel traffic from 9 p.m. on November 8, 2002 through 4 p.m. on November 22, 2002. During this deviation the Fall River lift span will remain in the closed position for vessel traffic and the Somerset lift span will be fully operational at all times.

There have been few requests to open this bridge during the requested time period scheduled for these structural repairs in past years. The Coast Guard and the bridge owner coordinated this closure with the facilities upstream from the bridge and no objections to this scheduled closure were received.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: October 18, 2002.

V.S. Crea,

Rear Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–27373 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–125]

Drawbridge Operation Regulations; Memorial Drawbridge, Atlantic Intracoastal Waterway, Daytona Beach, Volusia County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Memorial Drawbridge, across the Atlantic Intracoastal Waterway, mile 830.6, Daytona Beach, Florida. This deviation allows the bridge to only open a single leaf from 6 a.m. until 6 p.m. from November 2, 2002 until December 31, 2002. A double leaf opening will be available with 30-minutes advance notice to the bridge tender. From 6:01 p.m. until 5:59 a.m. the bridge will remain in the open to navigation position. This temporary deviation is required to allow the bridge owner to safely complete emergency repairs to the bridge.

DATES: This deviation is effective from 6 a.m. on November 2, 2002 until 6 p.m. on December 31, 2002.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket [CGD07–02–125] will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The existing regulations for the Memorial Drawbridge in 33 CFR 117.261(g), require the drawbridge to open on signal; except that from 7:45 a.m. to 8:45 a.m. and from 4:45 p.m. to 5:45 p.m., Monday through Saturday except Federal holidays, the draw need open only at 8:15 a.m. and 5:15 p.m.

Volusia county officials notified the Coast Guard on October 1, 2002, that they needed to operate the bridge on a single leaf schedule to effect emergency repairs. The drawbridge will be closed to vehicular traffic during the entire period of repair. The Commander, Seventh Coast Guard District has granted a temporary deviation from the operating requirements listed in 33 CFR 117.261(g) to complete emergency repairs to the drawbridge. This deviation, the Memorial Drawbridge, mile 830.6 at Daytona, need only open a single leaf, from 6 a.m. until 6 p.m. on November 2, 2002 to December 31, 2002. A double-leaf opening is available with a 30-minute advance notice to the bridge tender.

Dated: October 16, 2002.

Greg Shapley,

Chief, Bridge Administration Branch, Seventh Coast Guard District.

[FR Doc. 02–27372 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH42

Evidence for Accrued Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations dealing with accrued benefits, those benefits to which an individual was entitled under existing ratings or decisions, or those based on "evidence in the file at date of death," which were due and unpaid at the time the individual died. "Evidence in the file at date of death" is now interpreted as evidence in VA's possession on or before the date of the beneficiary's death, even if such evidence was not physically located in the VA claims folder on or before the date of death. Further, "evidence necessary to complete the application" for accrued benefits is now interpreted as information necessary to establish that the claimant is within the category of eligible persons and that circumstances exist which make the claimant the specific person entitled to the accrued benefits. These amendments reflect our interpretation of the governing statute.

DATES: Effective Date: November 27, 2002.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7213. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On March 4, 2002, we published in the **Federal Register** (67 FR 9638–9640) a proposed rule to amend the adjudication regulations to define the terms "evidence in the file at date of death" and "evidence necessary to complete the application" for the purpose of accrued benefits.

We are also correcting a technical error we made in the second amendatory language instruction of the proposed rule. We proposed to revise "paragraph (d)(4) *introductory text,*" (emphasis added) 67 FR 9640, whereas we meant to revise paragraph (d)(4) in its *entirety* (emphasis added). Despite the error in the amendatory instruction, our intent was clearly indicated in the **SUPPLEMENTARY INFORMATION** discussion of the proposed rule. There, we explained that "38 CFR 3.1000(d)(4) purports to define 'evidence in the file at date of death,'" but rather provides that VA may accept identifying, corroborating, or verifying information from certain evidence. 67 FR 9639. Further, we stated that we proposed "to revise § 3.1000(d)(4) to define 'evidence in the file at the (sic) date of death.'" 67 FR 9639. Accordingly, in this final rule, we revise paragraph (d)(4) in its entirety to conform with the explanation given in the preamble to the proposed rule.

We requested interested persons to submit comments on or before May 3, 2002. We received no comments. Based on the rationale set forth in the proposed rule, we are adopting the proposed rule as a final rule without change.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This final rule will have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary certifies that the adoption of the final rule will not have

a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule does not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Program Numbers

The catalog of Federal Domestic Assistance program numbers for this final rule are 64.104, 64.105, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: August 21, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.1000 is amended by revising the section heading, paragraph (c)(1), and paragraph (d)(4) , to read as follows:

§ 3.1000 Entitlement under 38 U.S.C. 5121 to benefits due and unpaid upon death of a beneficiary.

* * * * *

(c) * * *

(1) If an application for accrued benefits is incomplete because the claimant has not furnished information necessary to establish that he or she is within the category of eligible persons under the provisions of paragraphs (a)(1) through (a)(4) or paragraph (b) of this section and that circumstances exist which make the claimant the specific person entitled to payment of all or part of any benefits which may have accrued, VA shall notify the claimant:

(i) Of the type of information required to complete the application;

(ii) That VA will take no further action on the claim unless VA receives the required information; and

(iii) That if VA does not receive the required information within 1 year of the date of the original VA notification of information required, no benefits will be awarded on the basis of that application.

* * * * *

(d) * * *

(4) *Evidence in the file at date of death* means evidence in VA's possession on or before the date of the beneficiary's death, even if such evidence was not physically located in the VA claims folder on or before the date of death.

* * * * *

[FR Doc. 02–27407 Filed 10–25–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–7399–1]

OMB Approvals Under the Paperwork Reduction Act; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA.

EFFECTIVE DATE: This final rule is effective October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Marcia B. Mia, 202–564–7042; *mia.marcia@epa.gov*

SUPPLEMENTARY INFORMATION: EPA is amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. The amendment updates the table to list those information collection requirements promulgated under the Consolidated Federal Air Rule, (CAR) which appeared in the **Federal Register** on December 14, 2000 at 65 FR 78285. The amendment also updates the table to list the information collection requirements approved by OMB on August 31, 2002 under control number 2060–0443 for the consolidation of the ICR's for the referencing subparts of the CAR into the CAR ICR as follows: 40 CFR part 60, subpart Ka; 40 CFR part 60, subpart Kb; 40 CFR part 60, subpart VV; 40 CFR part 60, subpart DDD; 40 CFR part 60, subpart III; 40 CFR part 60, subpart NNN; 40 CFR part 60, subpart RRR; 40 CFR part 61, subpart BB; 40 CFR part 61, subpart Y; 40 CFR part 61, subpart V; 40 CFR part 63, subpart F; 40 CFR part 63, subpart G; 40 CFR part 63, subpart H; and 40 CFR part 63, subpart I. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations. The table lists CFR citations with reporting, recordkeeping, or other information collection requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

These ICRs were previously subject to public notice and comment prior to OMB approval. Due to the technical nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to amend this table without prior notice and comment.

I. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of October 28, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: October 17, 2002.

Oscar Morales,

Director, Collection Strategies Division, Office of Information Collection.

For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by:

a. Adding an entry title and citations for the ICR for 40 CFR part 65 under the heading "Consolidated Federal Air Rule"; and

b. Revising entries 60.113a–60.115a, 60.113b–60.116b, 60.482–2, 60–482–3, 60.482–4, 60.482–7, 60.482–8, 60.482–10, 60.483–1, 60.483–2, 60.484–60.487, 60.562–1, 60.562–2, 60.563–60.565, 60.613–60.615, 60.663–60.665, 60.703–60.705 under the heading "Standards of Performance for New Stationary Sources"; 61.242–1, 61.242–2, 61.242–3, 61.242–4, 61.242–7, 61.242–8, 61.242–10, 61.242–11, 61.243–1, 61.243–2, 61.244–61.247, 61.271–61.276, 61.300, 61.302–61.305, under the heading "National Emission Standards for Hazardous Air Pollutants'; and 63.103, 63.105, 63.117–63.118, 63.122–63.123, 63.129–63.130, 63.146–63.148, 63.151–63.152, 63.181–63.182 under the heading "National Emission Standards for Hazardous Air Pollutants for Source Categories" to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

40 CFR citation	OMB control no.
. . .	.
Standards of Performance New Stationary Sources[1]	
. . .	.
60.113a–60.115a	2060–0443
60.113b–60.116b	2060–0443
. . .	.
60.482–2	2060–0443
60.482–3	2060–0443
60.482–4	2060–0443
60.482–7	2060–0443
60.482–8	2060–0443
60.482–10	2060–0443
60.483–1	2060–0443
60.483–2	2060–0443
60.484–60.487	2060–0443
. . .	.
60.562–1	2060–0443
60.562–2	2060–0443
60.563–60.565	2060–0443
. . .	.
60.613–60.615	2060–0443
. . .	.
60.663–60.665	2060–0443
. . .	.
60.703–60.705	2060–0443
. . .	.
National Emission Standards for Hazardous Air Pollutants[2]	
. . .	.
61.242–1	2060–0443
61.242–2	2060–0443
61.242–3	2060–0443
61.242–4	2060–0443
61.242–7	2060–0443
61.242–8	2060–0443
61.242–10	2060–0443
61.242–11	2060–0443
61.243–1	2060–0443
61.243–2	2060–0443
61.244–61.247	2060–0443
. . .	.
61.271–61.276	2060–0443
61.300	2060–0443
61.302–61.305	2060–0443
. . .	.
National Emission Standards for Hazardous Air Pollutants for Source Categories[3]	
. . .	.
63.103	2060–0443
63.105	2060–0443
63.117–63.118	2060–0443
63.122–63.123	2060–0443
63.129–63.130	2060–0443
63.146–63.148	2060–0443
63.151–63.152	2060–0443
63.181–63.182	2060–0443
. . .	.
Consolidated Federal Air Rule	
65.5	2060–0443
65.6	2060–0443
65.47	2060–0443
65.48	2060–0443
65.66	2060–0443
65.63	2060–0443
65.67	2060–0443
65.87	2060–0443
65.102	2060–0443
65.103–65.106	2060–0443
65.109	2060–0443
65.111	2060–0443
65.117–65.120	2060–0443
65.159	2060–0443
65.160	2060–0443
65.162	2060–0443
65.163	2060–0443
65.164	2060–0443
65.165	2060–0443
65.166	2060–0443
. . .	.

[1] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 60, subpart A, which are not independent information collection requirements.

[2] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 61, subpart A, which are not independent information collection requirements.

[3] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

[FR Doc. 02–27140 Filed 10–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–01–48–7174a; A–1–FRL–7376–5]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Prevention of Significant Deterioration (PSD) of Air Quality Permit Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. The revision consists of a new rule, PART Env-A 623, "Prevention of Significant Deterioration (PSD) of Air Quality Permitting," that adopts into New Hampshire's SIP the federal PSD program provisions. The SIP revision also amends New Hampshire's permit procedural rule, PART Env-A 205, "Permit Notice and Hearing Procedures: Temporary Permits and Permits to Operate," to make the rule consistent with the new state PSD rule. The approval of this revision will make the New Hampshire PSD program consistent with the federal plan requirements for a SIP-approved PSD program. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule is effective on December 27, 2002 without further notice, unless EPA receives adverse comment by November 27, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Steven A. Rapp, Manager, Air Permits, Toxics and Indoor Programs, Office of Ecosystem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA-New England, 1 Congress Street—Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108, 1301 Constitution Avenue, NW., Washington DC; and the Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Brendan McCahill, (617) 918–1652; email at *McCahill.Brendan@epa.gov*.

SUPPLEMENTARY INFORMATION: On August 6, 2001, the State of New Hampshire submitted a formal request to revise its State Implementation Plan (SIP). This notice approves New Hampshire's submitted revisions and solicits comments on this approval. The SIP revision adopts into New Hampshire's SIP the federal PSD program provisions as set forth in 40 CFR 52.21. The SIP revision also amends two sections of New Hampshire's permit procedural rules required to implement the new state PSD program; Part Env-A 205.03, "Applications Subject to PSD Requirements," and Part-A 205.04, "Applications Subject to Nonattainment Requirements." Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

I. Summary of SIP Revision

The following table summarizes the contents of this document.

Table of Contents

I.A: What is the PSD Program?
I.B: What is the history of the PSD program in New Hampshire?
I.C: How will New Hampshire's SIP-approve PSD program under 40 CFR 51.166 differ from the delegated PSD program under 40 CFR 52.21?
II. Final Action
III. Administrative Requirements

I.A: What Is the PSD Program?

The Clean Air Act (CAA) requires new major sources and major modifications to major sources to obtain an air pollution permit before commencing construction. The PSD program is the set of regulations specifying the minimum permit requirements for new major sources or major modifications in areas that are in attainment of the national ambient air quality standards (NAAQS). The PSD program includes two major elements: (1) provisions for an air quality analysis that ensure new major sources or modifications do not violate NAAQS or applicable air quality increments and; (2) provisions for Best Available Control Technology (BACT) that require sources to install air pollutant controls and/or implement pollution reduction operations.

I.B: What Is the History of the PSD Program in New Hampshire?

In a March 18, 1982 letter to the Director of the New Hampshire Air Resources Agency, EPA delegated to New Hampshire the administrative provisions of the Federal PSD program under 40 CFR 52.21. Under the terms of the delegation, New Hampshire was responsible for: (1) receiving and processing PSD applications and (2) developing the preliminary determination and draft permit that documents New Hampshire's technical findings regarding the air impact analysis and BACT requirements. New Hampshire would then forward the preliminary determination and draft permit to EPA for final issuance. EPA retained authority to issue and enforce the final PSD permit.

On January 28, 1999, the New Hampshire Department of Environmental Services, Air Resources Division (ARD), submitted a SIP revision that consists of a new rule, PART Env-A 623, "Prevention of Significant Deterioration of Air Quality Permitting. The submittal was intended to adopt into New Hampshire's SIP the federal PSD program provisions as set forth in 40 CFR 52.21. However, due to issues with the federal citations referenced in the submittal, EPA could not fully approve the rule and therefore, did not take action on the submittal.

In a November 27, 2000 letter to the Regional Administrator, the ARD formally withdrew its January 28, 1999 SIP revision and requested full delegation to implement the federal PSD rules at 40 CFR 52.21 including the authority to issue and enforce PSD permits. In addition, the ARD requested authority to enforce PSD permits already issued by EPA. On July 9, 2001, EPA Region I approved the ARD's request to accept full delegation of the PSD program under 40 CFR 52.21.

On August 6, 2001, the ARD submitted SIP revisions that consist of new rule, PART Env-A 623 "Permit Notice and Hearing Procedures: Temporary Permits and Permits to Operate," that adopts into New Hampshire's SIP the federal PSD program provisions as set forth in 40 CFR 52.21. New Hampshire is also revising portions of its permit procedural rules, Env-A 205, "Permit Notice and Hearing Procedures: Temporary Permits and Permits to Operate," to make these rules consistent with the new state PSD rule.

I.C: How Will New Hampshire's SIP-Approve PSD Program Under 40 CFR 51.166 Differ From the Delegated PSD Program Under 40 CFR 52.21?

There are two sets of PSD regulations. The first set, 40 CFR 51.166, specifies the minimum requirements that a State PSD air quality permit program under Part C of Title I of the CAA must contain in order to obtain approval by EPA as a revision to the SIP. The second set, 40 CFR 52.21, delineates the federal PSD program, which applies as part of the SIP for states that have not submitted a PSD program that meets the requirements of 40 CFR 51.166. New Hampshire's SIP revision PART Env-A 623 adopts by reference into the State's SIP portions of the federal PSD program as promulgated in 40 CFR 52.21. By adopting portions of the federal PSD program as well as certain other provisions, PART Env-A 623 satisfies the minimum plan approval requirements for a PSD program under 40 CFR 51.166.

Since the state's new PSD program includes all the federal PSD program elements, the state program requirements will be equivalent to the federal program. However, New Hampshire adopted public participation and permit appeal procedural requirements that are specific to the state in place of procedures under the federal program. The federally delegated PSD program follows the public participation procedural requirements found in EPA's consolidated permit procedure regulation at 40 CFR part 124. The federal consolidated permit process regulation addresses, among other things, the appeal process for sevcral EPA permitting programs including the PSD program. The regulation requires that petitions of PSD permit decisions be addressed to Federal Environmental Appeals Board (EAB).

Under the SIP-approved PSD program, the appeal process follows the state's permit procedural rules for state-issued permits. With approval of New Hampshire's PSD rules, persons aggrieved by a PSD permit decision will now direct permit appeals to New Hampshire's Air Resources Council as required by the state's permit procedural requirements. If the Air Resources Council denies the appeal, the petitioner may request the state supreme court to hear the appeal.

EPA notes that New Hampshire's pending SIP-approved PSD rule did not define a date of the incorporated rule revision of 40 CFR 52.21. Without this date, New Hampshire believes its PSD rules will automatically incorporate and implement all future revisions to 40 CFR 52.21 without the need for additional state rulemaking. Typically, states need to revise their SIP-approved rules to comply with any revisions made to underlying federal rules.

II. Final Action

EPA is approving New Hampshire's PART Env-A 623, "Prevention of Significant Deterioration (PSD) of Air Quality Permit Requirements." In addition, EPA is approving New Hampshire's Part Env-A 205.03, "Applications Subject to PSD Requirements," and Part-A 205.04, "Applications Subject to Nonattainment Requirements" adopted by the state on February 17, 1995 and amended on July 23, 2001.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective December 27, 2002 without further notice unless the Agency receives relevant adverse comments by November 27, 2002.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 27, 2002 and no further action will be taken on the proposed rule.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 2002. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 3, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart EE—New Hampshire

2. Section 52.1520 is amended by adding paragraph (c)(60) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(60) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division August 6, 2001 and April 26, 1995.

(i) Incorporation by reference.

(A) Section 623.01 and sections 623.03 through 623.06 of New Hampshire's rule PART Env-A 623 rule entitled, "Prevention of Significant Deterioration (PSD) Of Air Quality Permit Requirements." This regulation was adopted in the State of New Hampshire on July 23, 2001.

(B) New Hampshire's rules PART Env-A 205.03, "Applications Subject to PSD Requirements," and PART Env-A 205.04, "Applications Subject to Nonattainment Requirements." These regulations were adopted in the State of New Hampshire on February 22, 1995 and amended on July 23, 2001.

(ii) Additional materials.

(A) Letter from the New Hampshire Air Resources Division dated August 6, 2001 submitting a revision to the New Hampshire State Implementation Plan.

(B) Letter from the New Hampshire Air Resources Division dated April 26, 1995 submitting a revision to the New Hampshire State Implementation Plan.

(C) Nonregulatory portions of the State submittal.

3. In § 52.1525, Table 52.1525 is amended by adding new entries to existing state citations for PART Env-A 200 and PART Env-A 600 to read as follows:

§ 52.1525—EPA-approved New Hampshire state regulations.

* * * * *

TABLE 52.1525—EPA-APPROVED RULES AND REGULATIONS [1]—NEW HAMPSHIRE

Title/subject	State citation chapter [2]	Date adopted by State	Date approved by EPA	Federal Register citation	52.1520	Explanations
•	•	•	•	•	•	•
Procedural Rules	Env-A 200	2/17/95 & 7/23/01	10/28/02	67 FR 65710	(c)(60)	Approving Env-A 205.03 & Env-A 205.04 as amended 7/23/01
•	•	•	•	•	•	•
Statewide Permitting System.	Env-A 600	7/23/01	10/28/02	67 FR 65710	(c)(60)	Adding Part Env-A 623: New Hampshire's PSD permit requirements.
•	•	•	•	•	•	•

[1] These regulations are applicable statewide unless otherwise noted in the Explanation section.

[2] When the New Hampshire Department of Environmental Services was established in 1987, the citation chapter title for the air regulations changed from CH Air to Env-A.

4. Section 52.1529 is revised to read as follows:

§ 52.1529 Significant deterioration of air quality.

New Hampshire's Part Env-A 623, "Requirements for Prevention of Significant Deterioration Permits," as submitted on August 6, 2001, is approved as meeting the requirements of Subpart 1, Part C, Title I, of the Clean Air Act.

[FR Doc. 02–25857 Filed 10–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket # ID–02–001; FRL–7398–1]

Approval and Promulgation of Air Quality Implementation Plans; State of Idaho; Northern Ada County Carbon Monoxide Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On January 17, 2002, the State of Idaho requested EPA to redesignate the Northern Ada County "not classified" carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS) and submitted a CO maintenance plan for Northern Ada County. In this action, EPA is approving the maintenance plan and redesignating the Northern Ada County CO nonattainment area to attainment.

DATES: This direct final rule will be effective December 27, 2002, unless EPA receives adverse comments by November 27, 2002. If relevant adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect. Please note that if EPA receives relevant adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of a relevant adverse comment.

ADDRESSES: Written comments may be mailed to: Steve Body, State and Tribal Programs Unit, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the United States Environmental Protection Agency, Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle WA.

FOR FURTHER INFORMATION CONTACT: Steve Body, State and Tribal Programs Unit, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle WA., 98101, Telephone number: (206) 553–0782.

SUPPLEMENTARY INFORMATION:

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I. What Is the Purpose of This Action?

EPA is redesignating the Northern Ada County "not classified" CO nonattainment area from nonattainment to attainment and approving the maintenance plan that will keep the area in attainment for the next 10 years.

EPA originally designated the Northern Ada County area as nonattainment for CO under the provisions of the 1977 Clean Air Act (CAA) Amendments (see 43 FR 8962, March 3, 1978). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C) of the CAA, the Northern Ada County area was designated nonattainment for CO by operation of law because the area had been designated as nonattainment before November 15, 1990. The Northern Ada County area is classified as an unclassified, or "not classified" CO nonattainment area because there were no violations of the CO standard in 1988 or 1989 prior to the 1990 Clean Air Act Amendments.

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the CAA provides the requirements for redesignation. These are:

(i) The Administrator determines that the area has attained the national ambient air quality standard;

(ii) The Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the Act;

(iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable reductions;

(iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) the State containing the area has met all requirements applicable to the area under section 110 and part D of the CAA.

Before an area can be redesignated to attainment, all applicable State Implementation Plan (SIP) elements must be fully approved.

II. What Is the State's Process To Submit These Materials to EPA?

The CAA requires States to follow certain procedural requirements for submitting SIP revisions to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted by the State after reasonable notice and public hearing. The State then submits the SIP revision to EPA for approval.

The Idaho Department of Environmental Quality (IDEQ), which has regulatory authority for sources of air pollution in the Northern Ada County CO nonattainment area, developed the CO maintenance plan. On October 23, 2001, IDEQ notified the public of the public hearing on the plan. On November 27, 2001 IDEQ held the public hearing at their offices in Boise, Idaho. On January 17, 2002, the State of Idaho adopted the *Limited Maintenance Plan for the Northern Ada County Carbon Monoxide Not-Classified Nonattainment area.* On January 17, 2002, the State submitted the proposed SIP to EPA. EPA has determined that

the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

III. EPA's Evaluation of the Redesignation Request and Maintenance Plan

EPA has reviewed the State's maintenance plan and redesignation request and is approving the maintenance plan and redesignating the area to attainment consistent with the requirements of CAA section 107(d)(3)(E). The following is a summary of EPA's evaluation and a description of how each requirement is met.

(a) The Area Must Have Attained the Carbon Monoxide NAAQS

Section 107(d)(3)(E)(i) requires that the Administrator determine that the area has attained the applicable NAAQS. The primary NAAQS for CO is 9 parts per million (ppm) (10 milligrams per cubic meter) for an 8-hour average, not to be exceeded more than once per year as determined at each monitoring site in the area. CO in the ambient air is measured by a reference method based on 40 CFR part 50, Appendix C. EPA considers an area as attaining the CO NAAQS when all of the CO monitors in the area have an exceedance rate of 1.0 or less each calendar year over a two-calendar year period. (*See* 40 CFR 50.8 and 40 CFR part 50 Appendix C.) EPA's interpretation of this requirement is that an area seeking redesignation to attainment must show attainment of the CO NAAQS for at least two consecutive calendar years (September 4, 1992, John Calcagni policy memorandum "Procedures for Processing Requests to Redesignate Areas to Attainment" ("Calcagni Memorandum")). In addition, the area must continue to show attainment through the date that EPA promulgates redesignation to attainment.

Idaho's CO redesignation request for the Northern Ada County area is based on valid ambient air quality data. Ambient air quality monitoring data for calendar years 1987 through 2001 show a measured exceedance rate of the CO NAAQS of 1.0 or less per year at all monitoring sites. These data were collected and analyzed as required by EPA (*see* 40 CFR 50.8 and 40 CFR part 50, Appendix C) and have been stored in EPA's Aerometric Information and Retrieval System (AIRS). These data have met minimum quality assurance requirements and have been certified by the State as being valid before being included in AIRS. EPA's evaluation of the ambient air quality data finds that the Northern Ada County area has not violated the CO standard since 1987.

(b) The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Section 107(d)(3)(E)(v) requires that an area must meet all applicable requirements under section 110 and part D of the CAA. EPA interprets this requirement to mean the State must meet all requirements that applied to the area prior to, or at the time of, the submission of a complete redesignation request.

1. CAA Section 110 Requirements

On January 31, 1972, Idaho submitted the SIP to EPA. EPA approved the SIP on May 31, 1972. See 37 FR 10861. Although section 110 of the CAA was amended in 1990, most of the changes were not substantial. Thus, we have determined that the SIP revisions approved in 1972 along with subsequent revisions that we have previously approved, continue to satisfy the requirements of section 110(a)(2). EPA has analyzed the SIP elements that are part of this action and determined they comply with the requirements of section 110(a)(2).

2. Part D Requirements

The Northern Ada County area was originally designated as nonattainment for CO on March 3, 1978 (see 43 FR 8962). Idaho's CAA Part D initial plan for the Northern Ada County CO nonattainment area was submitted on January 31, 1980, and approved by EPA on October 23, 1980. Idaho subsequently revised the nonattainment area plan and submitted that revision to EPA in 1984 and it was approved by EPA on June 5, 1985. A final revision was made to the plan and submitted to EPA June 29, 1994 and approved by EPA on December 1, 1994. See 59 FR 61546.

Prior to the 1990 CAA Amendments, EPA had begun development of its post-1987 policy for carbon monoxide; however, EPA did not finalize the post-1987 policy for CO because the Clean Air Act (CAA) was amended on November 15, 1990. Under section 107(d)(1)(C) of the CAA, the Northern Ada County area was by operation of law designated nonattainment for CO because the area had been previously designated nonattainment before November 15, 1990. In the November 6, 1991, **Federal Register**, (56 FR 56694) the Northern Ada County area was classified as a "not classified" CO nonattainment area as the area had not violated the CO NAAQS in 1988 or 1989.

Before the Northern Ada County "not classified" CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, whether classified or not classified.

The relevant Subpart 1 requirements are contained in sections 172(c) and 176 of the Act. The April 16, 1992, General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (*see* 57 FR 13498) ("General Preamble of April 16, 1992") provides our interpretation of the CAA requirements for not classified CO areas (see specifically 57 FR 13535). The General Preamble of April 16, 1992, reads, "Although it seems clear that the CO-specific requirements of subpart 3 of part D do not apply to CO "not classified" areas, the 1990 CAAA are silent as to how the requirements of subpart 1 of part D, which contains general SIP planning requirements for all designated nonattainment areas, should be interpreted for such CO areas. Nevertheless, because these areas are designated nonattainment, some aspects of subpart 1 necessarily apply."

Under section 172(b), the applicable section 172(c) requirements, as determined by the Administrator, were due no later than three years after an area was designated as nonattainment under section 107(d) of the amended CAA (see 56 FR 56694, November 6, 1991). In the case of the Northern Ada County area, the due date was November 15, 1993. Since the Northern Ada County CO redesignation request and maintenance plan were not submitted by Idaho until January 17, 2002, the General Preamble of April 16, 1992, provides that the applicable requirements of CAA section 172 are: 172(c)(3) (emissions inventory), 172(c)(5)(new source review permitting program), and 172(c)(7)(the section 110(a)(2) air quality monitoring requirements). *See* 57 FR 13535, April 16, 1992.

EPA has determined that the Part D requirements for Reasonably Available Control Measures (RACM), an attainment demonstration, reasonable further progress (RFP), and contingency measures (CAA section 172(c)(9)) are not applicable to "not classified" CO nonattainment areas. See 57 FR 13535, April 16, 1992.

Section 176 of the CAA contains requirements related to conformity. Although federal regulations (see 40 CFR 51.396) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment or that are subject to a federally approved maintenance plan, EPA has determined that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in our 1996 approval of the Boston carbon monoxide redesignation. (See 61 FR 2918, January 30, 1996.)

The remaining applicable requirements of CAA section 172 are discussed below.

A. Section 172(c)(3) Emissions Inventory

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of all actual emissions from all sources in the Northern Ada County CO nonattainment area. The emission inventory requirement for "not classified" CO nonattainment areas is detailed in the General Preamble of April 16, 1992. EPA has determined that an emissions inventory is required by CAA section 172(c)(3) regardless of air quality levels. An emissions inventory must be included as a revision to the SIP and was due three years from the time of the area's designation. For "not classified" CO areas, this date is November 15, 1993. To address the section 172(c)(3) requirement for a "current" inventory, EPA interpreted "current" to mean calendar year 1990 (see 57 FR 13502, April 16, 1992).

Idaho included in the January 17, 2002, proposed SIP revision, a Northern Ada County CO emission inventory for calendar year 1995. This year corresponds to the year used in calculating the design value contained in the SIP. The inventory has been reviewed by EPA and a copy of that review is in the docket to this action. EPA believes the inventory is comprehensive, accurate and current and meets the requirements of section 172(c)(3) of the CAA. It represents emissions that contributed to the design value in the plan. The design value shows that the area attains the CO standard. Therefore the emissions are at a level that would maintain the standard.

The requirements of section 172(c)(3) are met.

B. Section 172(c)(5) New Source Review (NSR)

The Clean Air Act Amendments of 1990 included revisions to the new source review (NSR) program requirements of the construction and operation of new and modified major stationary sources located in nonattainment areas. The Act requires states to amend their SIPs to reflect these revisions, but it did not require submittal of this element along with the other SIP elements. The Act established June 30, 1992 as the submittal date for the revised NSR programs. See Section 189(a) of the Act.

In the General Preamble of April 16, 1992, EPA issued guidance for states to follow in the development of revised programs to meet the requirements of the 1990 Amendments. EPA guidance calls for states to implement their existing NSR programs during the interval preceding our formal approval of their revised NSR programs.

The State of Idaho submitted to EPA on September 4, 1992, rules that met the requirements of the 1990 Clean Air Act Amendments and EPA approved those rules on July 23, 1993. *See* 58 FR 39445.

The requirements of section 172(c)(5) are met.

C. Section 172(c)(7) Compliance With CAA Section 110(a)(2): Air Quality Monitoring Requirements

According to the General Preamble of April 16, 1992, "not classified" CO nonattainment areas should meet the "applicable" air quality monitoring requirements of section 110(a)(2) of the CAA. The State of Idaho has operated a CO monitor in the Northern Ada County area since the early 1970's. In this proposed SIP revision, the State of Idaho further commits to operating the CO monitoring network into the future.

The requirements of section 172(c)(7) are met.

(c) The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA

Section 107(d)(3)(E)(ii) of the CAA provides that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

Based on the approval into the SIP of provisions under the pre-1990 CAA, our prior approval of a SIP revision required under the 1990 amendments to the CAA, and our approval of the State's commitment to maintain an adequate monitoring network, EPA has determined that, as of the date of this **Federal Register** action, Idaho has a fully approved CO SIP under section 110(k) for the Northern Ada County CO nonattainment area.

(d) The Area Must Show the Improvement in Air Quality Is Due to Permanent and Enforceable Emission Reductions

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The CO emissions reductions for the Northern Ada County area were achieved through a number of control measures. The primary emission reductions are the result of the Federal Motor Vehicle Emission Standards and fleet turnover. These reductions will continue into the maintenance period for the Northern Ada County area. There are several additional control measures including transportation control measures (transit, rideshare and I&M), stationary source controls through the NSR program, and several voluntary measures. Lastly, there are woodstove curtailment programs designed for particulate matter control during episodes of poor air quality that will provide reduction in CO emissions.

EPA has evaluated the various State and Federal control measures and the 1995 emission inventory, and we conclude that the improvement in air quality in the Northern Ada County nonattainment area has resulted from emission reductions that are permanent and enforceable.

(e) The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. For areas such as Northern Ada County that are utilizing EPA's limited maintenance plan approach, as detailed in the EPA guidance memorandum, "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, Group Leader, Integrated Policy and Strategies Group, Office of Air Quality and Planning Standards, dated October 6,

1995 ("Paisie Memorandum"), the maintenance plan demonstration requirement is considered to be satisfied for "not classified" areas if the monitoring data show the design value is at or below 7.65 ppm, or 85 percent of the level of the 8-hour CO NAAQS. The design value must be based on the 8 consecutive quarters of data. There is no requirement to project emissions or air quality over the maintenance period. EPA believes if the area begins the maintenance period at, or below, 85 percent of the level of the CO 8 hour NAAQS, the applicability of PSD requirements, the control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the initial 10-year maintenance period. In addition, the design value for the area must continue to be at or below 7.65 ppm until the time of final EPA action on the redesignation. The method for calculating the design value is presented in the June 18, 1990, EPA guidance memorandum entitled "Ozone and Carbon Monoxide Design Value Calculations", from William G. Laxton, Director of the OAQPS Technical Support Division, to Regional Air Directors.

Eight years after redesignation to attainment, the State must submit a revised maintenance plan that demonstrates continued maintenance of the CO NAAQS for an additional 10 years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for adoption and implementation, that are adequate to assure prompt correction of a violation.

The analysis of the pertinent maintenance plan requirements follows:

1. Emissions Inventory—Attainment Year

The plan must contain an attainment year emissions inventory to identify the level of emissions in the area which is sufficient to attain the CO NAAQS. This inventory is to be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time [1] and should represent emissions during the time period associated with the monitoring data showing attainment. The Northern Ada County CO maintenance plan contains an accurate, current, and comprehensive emission inventory for calendar year 1995.

2. Demonstration of Maintenance

As described in the Paisie Memorandum, the maintenance plan demonstration requirement is considered to be satisfied for "not classified" CO areas if the design value for the area is equal to, or less than 7.65 ppm. The CO design value for 1995 for the Northern Ada County area is 7.4 ppm, and the design value for 1996 is 4.9 ppm both of which are below the limited maintenance plan requirement of 7.65 ppm. Therefore, the Northern Ada County area has adequately demonstrated maintenance.

3. Monitoring Network and Verification of Continued Attainment

Continued ambient monitoring of an area is required over the maintenance period. Section VI(C) of the Northern Ada County CO maintenance plan provides for continued ambient monitoring in the area.

4. Contingency Plan

The Northern Ada County CO Limited Maintenance plan contains a contingency plan that would institute an oxygenated fuels program or other equivalent transportation control measure. The contingency plan is triggered either when an exceedance of the level of the 8 hour standard is recorded and any monitor, or when a monitor records non-overlapping 8 hour CO concentrations of 8 parts per million (ppm) on 4 or more days within a single winter season within the nonattainment area. EPA finds that the contingency measures provided in the maintenance plan are adequate to ensure prompt correction of a violation.

IV. Conformity

A. How Is Transportation Conformity Demonstrated to a Limited Maintenance Plan?

Section 176(c) of the Act defines transportation conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Also, the Act states that no Federal transportation activity will: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The Federal Transportation Conformity Rule, 40 CFR parts 51 and 93, applies to all nonattainment and maintenance areas. As prescribed by the conformity rule, once an area has an applicable state implementation plan with motor vehicle emissions budgets, the expected emissions from planned transportation activities must be consistent with ("conform to") such established budgets for that area. In the case of the Northern Ada County CO limited maintenance plan, however, the emissions budgets may be treated as essentially not constraining for the length of the initial maintenance period because there is no reason to expect that Northern Ada County will experience so much growth in that period that a violation of the CO air quality standard would result. In other words, emissions from on-road transportation sources need not be capped for the maintenance period because it is unreasonable to believe that emissions from such sources would increase to a level that would threaten the air quality in this area for the duration of this maintenance period.

Therefore, for the Northern Ada County CO maintenance area all federally funded and approved transportation actions that require conformity determinations under the transportation conformity rule can already be considered to satisfy the regional emissions analysis and "budget test" requirements in 40 CFR 93.118 of the rule. However, since Northern Ada County is still a maintenance area, transportation conformity determinations are still required for transportation plans, programs, and projects. Specifically, for such determinations, transportation plans, TIPs, and projects must still demonstrate that they are fiscally constrained (40 CFR part 108) and must meet the criteria for consultation and TCM implementation in the conformity rule (40 CFR 93.112 and 40 CFR 93.113). In addition, projects in Northern Ada County will still have to meet the criteria for CO hot spot analyses (40 CFR 93.116 and 40 CFR 93.123) that must incorporate the latest planning assumptions and models that are available.

B. What Is the Adequacy Status of This Limited Maintenance Plan?

On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision on EPA's third set of conformity revisions in response to a case brought by the Environmental Defense Fund. This decision stated that a conformity determination cannot be made using a submitted motor vehicle emission budget until EPA makes a positive determination that the submitted budget is adequate. In response to the court's decision, EPA issued guidance on our adequacy process on May 14, 1999.

In accordance with our guidance and the court decision, the Northern Ada County limited maintenance plan was posted for adequacy review of the motor vehicle emissions budget on March 20, 2002, on EPA's conformity Web site: *http://www.epa.gov/otaq/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity"). As a general rule, however, limited maintenance plans do not include budgets. Instead, the limited maintenance plan for Northern Ada County concludes that the area will continue to maintain the CO air quality standard regardless of the quantity of emissions from the on-road transportation sector; essentially, the budget is unlimited. Therefore, EPA's adequacy review of the Northern Ada County limited maintenance plan primarily focused on whether the area qualifies for the applicable limited maintenance policy for CO. From our review, EPA has concluded that Northern Ada County does meet the criteria for a limited maintenance plan, and therefore, is able to find this limited maintenance plan adequate for conformity purposes.

C. Are the Requirements for General Conformity Altered Under This Limited Maintenance Plan?

No. Although the requirements to perform a regional emissions analysis and budget test under the transportation conformity rule are altered under a limited maintenance plan, the requirements for general conformity are not changed. Upon today's approval of the Northern Ada County limited maintenance plan, 40 CFR part 93, subpart B General Conformity Rules for federal actions still apply.

V. Final Action

EPA is approving the Northern Ada County CO maintenance plan and redesignating the area to attainment.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: October 10, 2002.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

[1] The October 6, 1995, limited maintenance plan guidance memorandum states that current guidance on the preparation of emissions inventories for CO areas is contained in the following documents: "Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone: Volume I" (EPA–450/4–91–016), and "Procedures for Emission Inventory Preparation: Volume IV, Mobile Sources" (EPA–450/4–81–026d revised).

Subpart N—Idaho

2. Section 52.672 is added to Subpart N to read as follows:

§ 52.672 Approval of plans.

(a) *Carbon Monoxide.* (1) EPA approves as a revision to the Idaho State Implementation Plan, the Limited Maintenance Plan for the Northern Ada County Carbon Monoxide Not-Classified Nonattainment Area, submitted by the State on January 17, 2002.

(2) [Reserved].

(b) *Lead.* [Reserved]

(c) *Nitrogen Dioxide.* [Reserved]

(d) *Ozone.* [Reserved]

(e) *Particulate Matter.* [Reserved]

(f) *Sulfur Dioxide.* [Reserved]

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. In § 81.313, the table entitled "Idaho—Carbon Monoxide" is amended by revising the entry for "Boise—Northern Ada County" to read as follows:

§ 81.313 Idaho.

* * * * *

IDAHO—CARBON MONOXIDE

Designated Area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
. . . . .				
Boise-Northern Ada County Area:				
The Boise-Ada County nonattainment area is described as follows: Beginning at a point in the center of the channel of the Boise River which the section line between sections fifteen (15) and sixteen (16), Township three (3) north, range four (4) east crosses said river; thence down the center of the channel of the Boise River to a point opposite the mouth of Mores Creek. Thence in a straight line north forty four (44) degrees and 36 minutes west until the said line intersects the north line of Township five (5) north (12 Ter. Ses. 67); thence west to the northwest corner of Township five (5) north, range one (1) west; thence southerly to the northwest corner of Township three (3) north, range one (1) west; thence east to the northwest corner of Section four (4) township three (3) north, range one (1) west; thence south to the southeast corner of section thirty-two (32), township two (2) north, range one (1) west; thence, west to the northwest corner township one (1) north, range one (1) west; thence southerly to the southwest corner of township one (1) north, range one (1) west; thence east to the southwest corner of section thirty-three (33), township one (1) north, range four (4) east; thence in a northerly direction along the north and south centerline of township one (1), two (2) and three (3) north, range four (4) east, Boise Meridian, to a point in the center of the channel of the Boise River where the section line between section fifteen (15) and sixteen (16) township three (3) north, range four (4) east, Boise Meridian crosses said Boise River, the point of beginning.	12/27/02	Attainment.		
. . . . .				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 02–27237 Filed 10–25–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA—B –7431]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1-percent-annual-chance) Flood Elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified Base Flood Elevations for new buildings and their contents.

DATES: These modified Base Flood Elevations are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Director, Federal Insurance and Mitigation Administration, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified Base Flood Elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The modified Base Flood Elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified Base Flood Elevation determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified Base Flood Elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in Base Flood Elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified Base Flood Elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa	Town of Carefree (01–09–1157P), (02–09–1409X).	August 29, 2002; September 5, 2002; *Arizona Business Gazette.*	The Honorable Edward C. Morgan, Mayor, Town of Carefree P.O. Box 740, Carefree, Arizona 85377.	December 5, 2002	040126
Maricopa	Town of Cave Creek (01–09–1157P), (02–09–1409X).	August 29, 2002; September 5, 2002; *Arizona Business Gazette.*	The Honorable Vincent Francia, Mayor, Town of Cave Creek, 37622 North Cave Creek Road, Cave Creek, Arizona 85331.	December 5, 2002	040129
Maricopa	City of Chandler (02–09–248P).	July 24, 2002; July 31, 2002; *Arizona Republic.*	The Honorable Jay Tibshraeny, Mayor, City of Chandler, 55 North Arizona Place, Chandler, Arizona 85225.	October 30, 2002	040040
Maricopa	City of Scottsdale (01–09–1157P), (02–09–1409X).	August 29, 2002; September 5, 2002; *Arizona Business Gazette.*	The Honorable Mary Manross, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, Arizona 85251.	December 5, 2002	045012
Maricopa	Unincorporated Areas (02–09–068P).	September 5, 2002; September 12, 2002; *Arizona Business Gazette.*	The Honorable Don Stapley, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	August 21, 2002	040037

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Pima	City of Tucson (02–09–1050P).	September 18, 2002; September 25, 2002; *Daily Terntornal.*	The Honorable Robert Walkup, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona, 85726.	September 11, 2002 ..	040076
Pima	Unincorporated Areas (02–09–1007P).	September 19, 2002; September 26, 2002; *Anzona Daily Star.*	The Honorable Raul Grijalva, Chairman, Pima County , Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701.	September 9, 2002 ...	040073
California:					
Alameda	City of Dublin, (00–09–931P).	July 26, 2002; August 2, 2002; *Tn-Valley Herald.*	The Honorable Janet Lockhart, Mayor, City of Dublin, 100 Civic Plaza, Dublin, California 94568.	November 1, 2002	060705
San Diego	City of San Diego, (00–09–717P).	August 15, 2002; August 22, 2002; *San Diego Union-Tribune.*	The Honorable Richard M. Murphy, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	November 21, 2002 ..	060295
Yolo	City of Winters, (02–09–649P).	August 1, 2002; August 8, 2002; *Winters Express.*	The Honorable Harold Anderson, Mayor, City of Winters, 318 First Street, Winters, California 95694–1923.	July 11, 2002	060425
Colorado:					
El Paso	City of Colorado Springs, (02–08–141P).	August 14, 2002; August 21, 2002; *The Gazette.*	The Honorable Mary Lou Makepeace, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901–1575.	August 6, 2002	080060
El Paso	City of Colorado Springs, (02–08–325P).	September 5, 2002; September 12, 2002; *The Gazette.*	The Honorable Mary Lou Makepeace, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901–1575.	August 21, 2002	080060
Jefferson	City of Golden (02–08–185P).	August 8, 2002; August 15, 2002; *Denver Post.*	The Honorable Charles J. Baroch, Mayor, City of Golden, 911 10th Street, Golden, Colorado 80401.	November 14, 2002 ..	080090
Jefferson	City of Westminster (02–08–013P).	September 12, 2002; September 19, 2002; *Westminster Window.*	The Honorable Ed Moss, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80031.	December 19, 2002 ..	080008
Jefferson	Unincorporated Areas (02–08–185P).	August 8, 2002; August 15, 2002; *Denver Post.*	The Honorable Michelle Lawrence, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, Colorado 80419.	July 23, 2002	080087
Jefferson	Unincorporated Areas (02–08–368P).	September 18, 2002; September 25, 2002; *Canyon Courier.*	The Honorable Michelle Lawrence, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, Colorado 80419.	December 25, 2002 ..	080087
Weld	Town of Firestone (01–08–384P).	July 31, 2002; August 7, 2002; *Farmer and Miner.*	The Honorable Michael Simone, Mayor, Town of Firestone, P.O. Box 100, Firestone, Colorado 80520.	November 6, 2002	080241
Weld	Unincorporated Areas (01–08–384P).	July 31, 2002; August 7, 2002; *Greeley Tribune.*	The Honorable Glenn Vaad, Chairman, Weld County Board of Commissioners, P.O. Box 758, Greeley, Colorado 80632–0758.	July 11, 2002	080266
Texas:					
Collin	City of Frisco (00–06–1133P).	February 1, 2002; February 8, 2002; *Frisco Enterprise.*	The Honorable Kathy Seei, Mayor, City of Frisco, City Hall, P.O. Box 1100, Frisco, Texas 75034.	November 2, 2000	480134
Dallas	City of Dallas (99–06–1120P).	January 31, 2002; February 7, 2002; *Dallas Morning News.*	The Honorable Ron Kirk, Mayor, City of Dallas, 1500 Manilla Street, Dallas, Texas 75201.	November 13, 2000 ..	480171
Utah:					
Utah	City of Spanish Fork (01–08–306P).	August 28, 2002; September 4, 2002; *Daily Herald.*	The Honorable Dale Barney, Mayor, City of Spanish Fork, 40 South Main Street, Spanish Fork, Utah 84660.	February 16, 2003	490241

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Utah	Unincorporated Areas (01–08–306P).	August 28, 2002; September 4, 2002; *Daily Herald.*	The Honorable Jerry Grover, Chairman, Utah County Board of Commissioners, County Administration Building, 100 East Center Street, Suite 2300, Provo, Utah 84606.	December 4, 2002	495517

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: October 17, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–27320 Filed 10–25–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2514, MM Docket No. 01–11, RM–10027, and RM–10322]

Radio Broadcasting Services; Arcadia, Desert Hot Springs, Fallbrook, Murrieta, and Yucca Valley, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 281A to Murrieta, California, as a first local aural service in response to a rulemaking petition filed by Helen Jones. *See* 66 FR 8559, February 1, 2001. The coordinates for Channel 281A at Murrieta are 33–32–55 and 117–09–26. The document also denies a counterproposal filed by Big City Radio-LA, L.L.C., to upgrade Station KLYY(FM), Arcadia, California, from Channel 296A to Channel 296B1. To accommodate the upgrade, the counterproposal also proposed to substitute 281A for Channel 296A for Station KSYY(FM), Fallbrook California, and to downgrade, reallot, and change the community of license of Station KYOR(FM), Channel 295B, Yucca Valley, California, to Channel 295B1 at Desert Hot Springs, California. The staff reasoned that the counterproposal could not be granted because the Commission's policies and rules do not permit pre-1964 grandfathered, short-spaced stations such as KLYY(FM) to upgrade channel class with short-spacings to stations on second or third adjacent FM channels.

DATES: Effective November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 01–11, adopted September 25, 2002, and released October 9, 2002. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Murrieta, Channel 281A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–27326 Filed 10–25–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 208 and 216

Training Supporting Implementation of Section 803 of the National Defense Authorization Act for Fiscal Year 2002, Competition Requirements for Purchase of Services Under Multiple Award Contracts

AGENCY: Department of Defense (DoD).

ACTION: Notice of training opportunities.

SUMMARY: The Director, Defense Procurement, is sponsoring two training sessions to support implementation of the Defense Federal Acquisition Regulation Supplement final rule published in the **Federal Register** on October 25, 2002, under DFARS Case 2001-D017, Competition Requirements for Purchase of Services Under Multiple Award Contracts.

DATES: Training will be conducted on October 31, 2002, and on November 12, 2002, from 1–3 p.m.

ADDRESSES: Training will be conducted in the Crystal City area of Arlington, VA, in Room C–43, Crystal Mall 4, 1941 Jefferson Davis Highway, Arlington, VA 22202. The room is located on the Underground/Tunnel level and is accessible from the Metro.

FOR FURTHER INFORMATION CONTACT: For information regarding registration for the training sessions or other training issues, contact Ms. Melissa Rider, Procurement Analyst, at *melissa.rider@osd.mil* or (703) 614–3883. For information regarding final rule content, contact the case manager, Ms. Susan Schneider, at (703) 602–0326.

SUPPLEMENTARY INFORMATION: DoD contracting personnel and personnel who develop requirements for service task orders under multiple award vehicles (including Federal Supply Service multiple award schedules), civilian agency personnel who fulfill DoD requirements under the Economy Act, and representatives of companies that have been awarded a multiple award contract for services should attend the training. Civilian agencies must follow the new DoD procedures if they acquire services on behalf of DoD

under multiple award contracts or schedules. Attendance at the training sessions is limited to 60 per session. For those who are unable to attend the training sessions, briefings, including briefer notes, have been posted to the Defense Procurement Web site at *http://www.acq.osd.mil/dp* under the special interest drop down box/Section 803.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 02-27348 Filed 10-25-02; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 020819201-2201-01; I.D.'s 091401B and 092401E]

RIN 0648-AQ23

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule, technical amendment.

SUMMARY: NMFS is issuing a correction to the interim final rule and final rule implementing the ALWTRP's Seasonal Area Management (SAM) and Dynamic Area Management (DAM) programs, respectively, which were published in the **Federal Register** on January 9, 2002. The purpose of this action is to correct errors in and make minor clarifications to the SAM interim final rule and to the DAM final rule. Some aspects of the SAM and DAM program were inadvertently omitted from the associated regulatory text and this technical amendment makes the regulatory text reflect information provided in the rules' preambles.

DATES: Effective October 28, 2002.

ADDRESSES: Copies of the Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Final Regulatory Flexibility Analysis (FRFA), are available from the Protected Resources Division, NMFS, 1 Blackburn Drive, Gloucester, MA 01930-2298. Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may be obtained by writing Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or Katherine Wang, NMFS, Southeast Region, 9721 Executive Center Dr., St.Petersburg, FL 33702-2432.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS, Northeast Region, 978-281-9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301-713-2322. Individuals who use a telecommunications device for the deaf (TDD) may call theFederal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excludingFederal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.nmfs.gov/whaletrp/*. Copies of the most recent marine mammal stock assessment reports may be obtained by writing to Richard Merrick, NMFS, 166 Water St., Woods Hole, MA 02543 or can be downloaded from the Internet at *http://www.wh.whoi.edu/psb/sar2001.pdf*. In addition, copies of the document entitled "Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options" and "Identification of Seasonal Area Management Zones for North Atlantic Right Whale Conservation" are available by writing to Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or can be downloaded from the Internet at *http://www.nero.nmfs.gov/whaletrp/*.

Background

This final rule modifies the Atlantic Large Whale Take Reduction Plan as deemed necessary by NMFS to satisfy requirements of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). On January 9, 2002, NMFS published a SAM interim final rule (67 FR 1142) and DAM final rule (67 FR 1133) in the **Federal Register**. The purpose of this final rule is to correct errors in and make minor clarifications in the SAM interim final rule and DAM final rule regulatory text. NMFS had discussed the SAM and DAM programs in the preambles to the SAM and DAM rules, however, some aspects of each program were inadvertently omitted from the associated regulatory text.

Corrections

NMFS noted in the preamble to the DAM proposed (66 FR 50160) and final rules (67 FR 1133) that if NMFS decides not to implement restrictions within a DAM zone, it will issue an alert to fishermen requesting that they voluntarily remove lobster trap and anchored gillnet gear from a DAM zone and asking them not to set additional gear inside it. However, NMFS inadvertently omitted this language from the regulatory text section of the DAM rule.

The new and existing SAM gear requirements discussed in the preambles to the SAM proposed and interim final rules are intended to be required in addition to existing requirements for Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, Offshore Lobster Waters, and Other Northeast Gillnet Waters or in place of the existing requirements for those areas to the extent the SAM gear requirements conflict with them. But, text to that effect did not appear in the proposed rule's regulatory text. NMFS noted this discrepancy and intended to correct this oversight in the interim final rule. However, this clarification was also inadvertently omitted from the interim final rule's regulatory text section. Therefore, the regulations are corrected to note that the SAM gear modifications supercede requirements found at existing ALWTRP fishery specific area requirements when they are more restrictive.

The SAM interim final rule also incorrectly defined SAM East to include Point 9, 42&30′ N Lat., 66°50′ W Long., which is outside the Exclusive Economic Zone. This rule removes this point from the regulations and renumbers the remaining points. Also, NMFS clarifies that the gear restriction in § 229.32 (g)(4)(ii)(B) applies in SAM East. While the fact that the gear restrictions in § 229.32(g)(4)(ii)(B) apply in SAM East is clear from the structure of the regulations, NMFS is adding the words "in SAM East" for added clarity.

A number of clarifications are made to § 229.32 (g)(4)(i)(B). First, NMFS clarifies that the gear restriction in § 229.32 (g)(4)(i)(B) applies in SAM West. While the fact that the gear restrictions in § 229.32(g)(4)(i)(B) apply in SAM West is clear from the structure of the regulations, NMFS is adding the words "in SAM West" for added clarity. Second, NMFS mistakenly omitted from the regulatory text for the SAM interim final rule the following requirements: (1) buoy lines are to be composed entirely of sinking or neutrally buoyant line; and (2) floating ground lines and buoy lines are prohibited. However, the preambles to the proposed and interim final rules for SAM stated that the ground lines and buoy lines were to be composed entirely of sinking or neutrally buoyant line in SAM areas, and indicated that floating ground lines and buoy lines are prohibited. Thus, the wording at § 229.32 (g)(4)(i)(B)(1) and (g)(4)(i)(B)(*2*) has been changed accordingly to reflect the discussion in the preambles.

Third, NMFS wrote "sinking ground line" in the heading at the beginning of § 229.32 (g)(4)(i)(B)(*2*); however, this has been changed to "ground line" to clarify the requirement stated in the preambles and the regulatory text following the heading that ground lines be made entirely of sinking or neutrally buoyant line. Fourth, NMFS noted on the SAM Gillnet Gear graphics that five weak links with a breaking strength not to exceed 1,100 lb (498.9 kg) each are required on a net panel. However, the word "each" was not in the regulatory text to the SAM interim final rule. Through this rule, § 229.32 (g)(4)(i)(B)(1)(iii) is clarified to indicate that the breaking strength of each weak link on a net panel must not exceed 1,100 lb (498.9 kg).

The SAM interim final rule and associated gear modifications were effective March 1, 2002; however, NMFS mistakenly indicated on the SAM Northern Nearshore and Inshore Lobster Gear and SAM Offshore Lobster Gear graphics (Figures 2 and 3) that the single buoy line requirement was effective January 1, 2003. This correction removes the incorrect effective date from the graphics.

Figure 4 also incorrectly indicated on the SAM Gillnet Gear graphic that the single buoy line requirement was effective January 1, 2003, and described the SAM gillnet gear anchoring system as a 22 lb (9.9 kg) Danforth-style anchor. As noted above, the SAM interim final rule and associated gear modifications were effective March 1, 2002. Additionally, the regulations state that all anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (9.9 kg) Danforth-style anchor at each end of the net string. This language is consistent with the preamble of the proposed and interim final rule for SAM.

Classification

The Assistant Administrator (AA) finds that good cause exists to waive the requirement to provide prior notice and the opportunity for comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be unnecessary. Prior notice and opportunity for comment are unnecessary because the technical amendment to the regulations implementing the SAM and DAM programs merely clarifies NMFS' intent as explained in the preambles to the rules and will have a de minimus effect, if any, on the regulated community. The clarifications do not increase the scope of the regulated community nor add new requirements. Also, because this rule corrects and clarifies provisions and makes non-substantive or de minimus changes to the SAM and DAM regulations good cause exists, under 5 U.S.C. 553(d), not to delay the effective date for 30 days.

Because a general notice of proposed rulemaking is not required under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. While a Regulatory Flexibility Analysis is not required and none has been prepared for this technical amendment, the economic impacts on affected fisheries of the rules and alternatives to them were considered by NMFS. Copies of the analyses for the SAM interim final rule and the DAM final rule may be obtained from NMFS (see **ADDRESSES**) by requesting copies of the EA/RIRs for each program.

Dated: October 17, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

Corrections to the Preamble of the Interim Final Rule

In rule FR Doc. 02-274, published January 9, 2002 (67 FR 1142), make the following corrections:

1. On pages 1146 and 1147, Figures 2 and 3 are corrected to read as follows:

BILLING CODE 3510-22-S

Figure 2

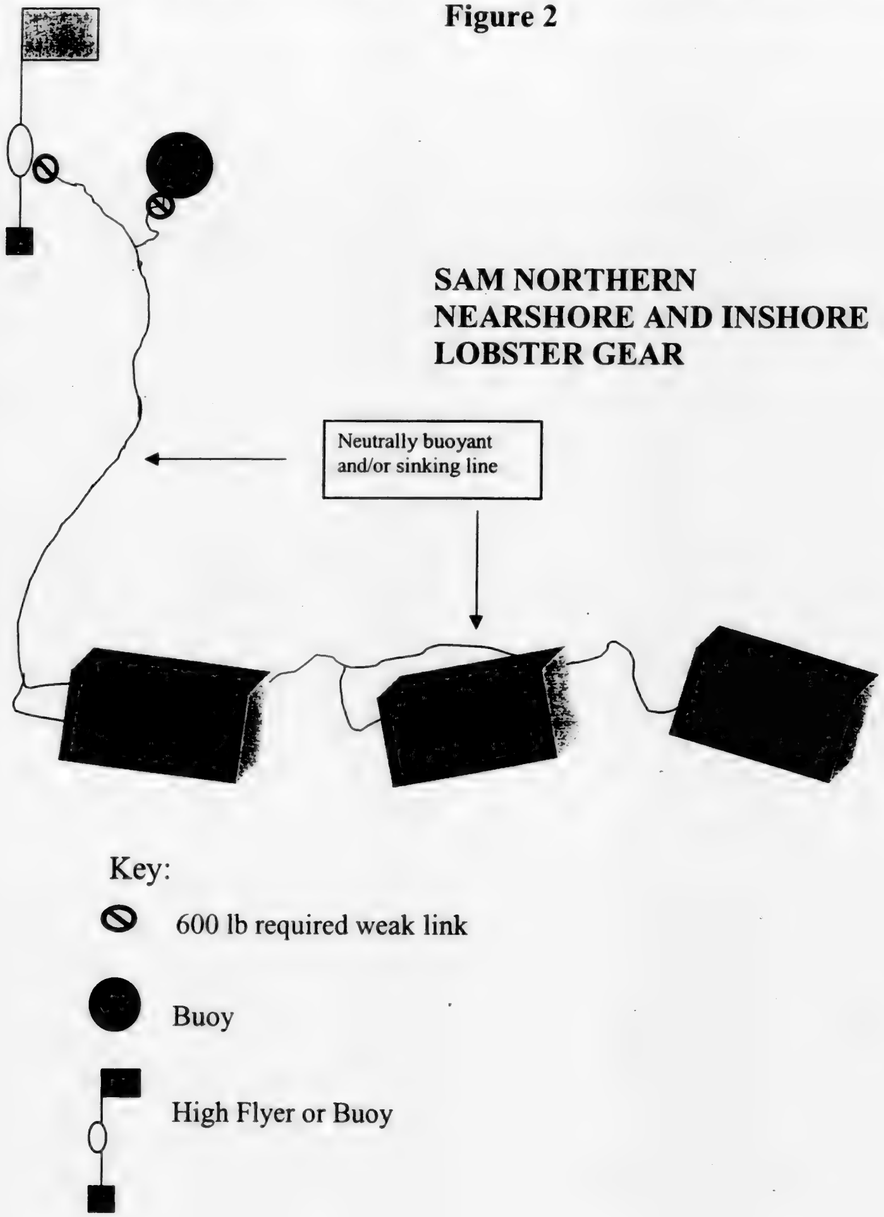

Figure 3

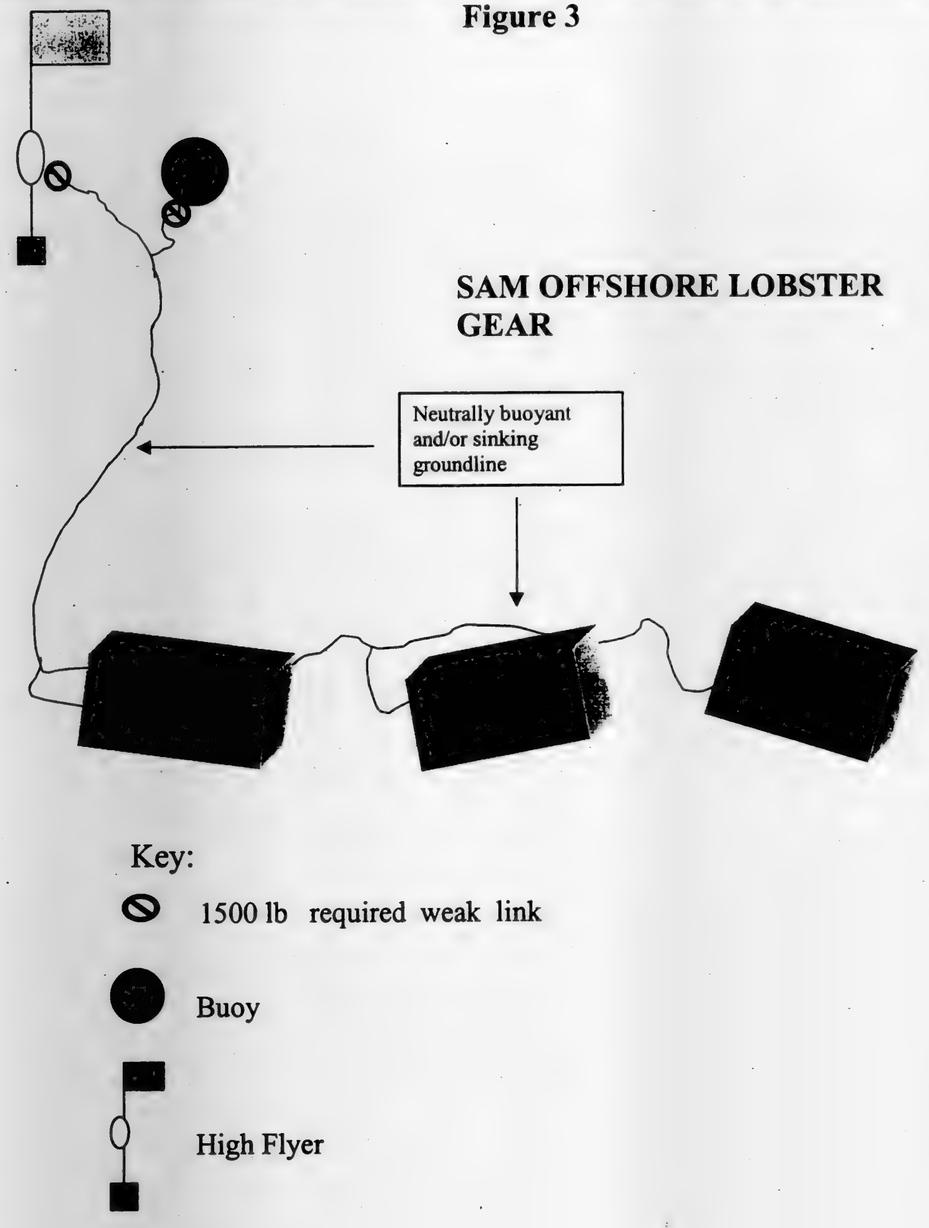

2. On page 1149, Figure 4 is corrected to read as follows:

Figure 4

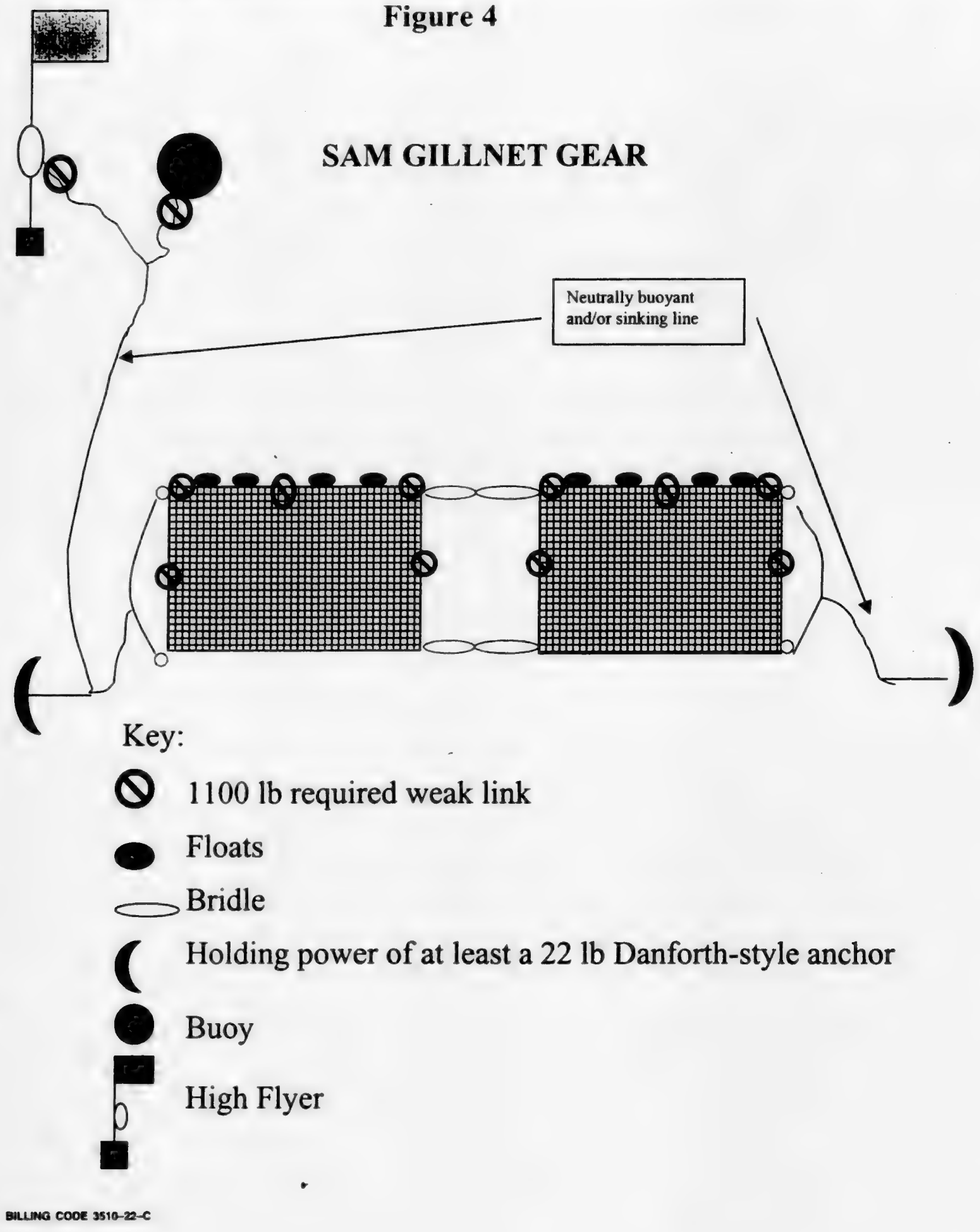

BILLING CODE 3510-22-C

List of Subjects in 50 CFR Part 229

Fisheries, Marine mammals.

For the reasons set out in the preamble, 50 CFR part 229 is corrected by making the following correcting amendments:

PART 229–AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

§ 229.32 [Corrected]

2. Corrected § 229.32 as follows:

a. Paragraph (g)(3)(iii) introductory text is corrected by removing the word "either" in the last sentence;

b. Paragraph (g)(3)(iii)(A) is corrected by removing the word "or" at the end of the text;

c. Paragraph (g)(3)(iii)(B) is corrected by adding "and/or" at the end of the text;

d. Paragraph (g)(3)(iii)(C) is correctly designated as (g)(3)(iii)(D); and

e. A new paragraph (g)(3)(iii)(C) is added and paragraphs (g)(4) introductory text, (g)(4)(i)(B) and (g)(4)(ii) are correctly revised to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(g)* * *

(3)* * *

(iii)* * *

(C) Issue an alert to fishermen using appropriate media to inform them of the fact that right whale density in a certain area has triggered a DAM zone. In the alert, NMFS will provide detailed information on the location of the DAM zone and the number of animals sighted within it. Furthermore, NMFS will request that fishermen voluntarily remove lobster trap and anchored gillnet gear from the DAM zone and ask that no additional gear be set inside it for 15 days or until NMFS rescinds the alert.

* * * * *

(4) *Seasonal Area Management (SAM) Program.* In addition to existing requirements for vessels deploying anchored gillnet or lobster trap gear in the Other Northeast Gillnet Waters, Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, and Offshore Lobster Waters found at § 229.32 (b) – (d), a vessel may fish in the SAM Areas as described in paragraphs (g)(4)(i)(A) and (g)(4)(ii)(A) of this section, which overlay the previously mentioned areas, provided the vessel complies with the gear requirements specified in paragraphs (g)(4)(i)(B) and (g)(4)(ii)(B) of this section during the times specified in those paragraphs. The gear requirements in (g)(4)(i)(B) and (g)(4)(ii)(B) supercede requirements found at § 229.32 (b) - (d) when the former are more restrictive than the latter. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(i)* * *

(B) *Gear requirements.* Unless otherwise authorized by the Assistant Administrator for Fisheries, NMFS, in accordance with paragraph (g)(2) of this section, from March 1 through April 30, no person may fish with anchored gillnet or lobster trap gear in SAM West unless that person's gear complies with the following gear characteristics:

(*1*)*Anchored gillnet gear.* (*i*) Ground lines and Buoy lines—All ground lines and buoy lines must be made entirely of sinking or neutrally buoyant line. Floating ground lines and buoy lines are prohibited.

(*ii*) Buoy weak links—All buoy lines are attached to the buoy with a weak link having a maximum breaking strength of up to 1,100 lb (498.9 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(*iii*) Net panel weak link—Each net panel must have a total of five weak links. The breaking strength of each of these weak links must not exceed 1,100 lb (498.9 kg). The weak link requirements apply to all variations in panel size. Three of the five weak links must be located on the floatline. One floatline weak link must be placed at the center of the net panel, and two weak links must be placed as close as possible to each of the bridle ends of the net panel. The remaining two of the five weak links must be placed in the center of each of the up and down lines at either end of each panel.

(*iv*) Buoy line—No more than one buoy line per net string may be used, and it must be deployed at the northern or western end of the gillnet string depending on the direction of the set.

(*v*) Gillnet anchor—All anchored gillnets, regardless of the number of net panels, must be securely anchored with a holding power of at least a 22 lb (9.9 kg) Danforth-style anchor at each end of the net string.

(*2*) *Lobster Trap gear.* (*i*) Ground lines and Buoy lines—All ground lines and buoy lines must be made entirely of sinking or neutrally buoyant line. Floating ground lines and buoy lines are prohibited.

(*ii*) [*Reserved*]

(*iii*) Offshore Lobster Waters Area buoy weak links—All buoy lines must be attached to the buoy with a weak link having a maximum breaking strength of up to 1,500 lb (680.4 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(*iv*) Buoy line—No more than one buoy line per trawl is allowed. The buoy line must be attached to the northern or western end of the trawl string depending on the direction of the set. These requirements supersede the requirements found at § 697.21, which require one radar reflector at each end of a trawl with more than three traps.

(ii) SAM East. (A) *Area.* SAM East consists of all waters bounded by straight lines connecting the following points in the order stated:

SAM EAST

Point	N. Lat.	W. Long.
SAM5	41°48.9′	69°24′
SAM4	42°30′	69°24′
SAM8	42°30′	67°26′
SAM9	41°45′	66°50′
SAM10	41°45′	68°17′
SAM11	42°10′	68°31′

(B) *Gear requirements.* Unless otherwise authorized by the Assistant Administrator for Fisheries, NMFS, in accordance with paragraph (g)(2) of this section, from May 1 through July 31, no person may fish with anchored gillnet or lobster trap gear in SAM East unless that person's gear complies with the gear characteristics found at paragraph (g)(4)(i)(B) of this section.

* * * * *

[FR Doc. 02–27363 Filed 10–25–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D. 101102G]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action 17—Adjustment of the Ceremonial and Subsistence Harvest Regulations for the Ocean Salmon Fisheries of the Quileute Tribe

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS announces that the ceremonial and subsistence (C&S) harvest regulations for the Quileute Tribe were modified to extend the C&S fishery through midnight on Tuesday, October 15, 2002, with a possession and landing limit of 20 salmon per day, and all size restrictions suspended for the duration of the fishery. On September 26, 2002 the Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that the tribal overall quota of 60,000 chinook and 60,000 coho salmon had not been reached, and it was found that there was enough salmon left in the quotas to allow additional days of fishing in the C&S fishery. These actions were necessary to conform to the 2002 management goals.

DATES: Closure of the C&S harvest for the Quileute Tribe effective 2359 hours local time, October 15, 2002, after which the fishery will remain closed until opened through an additional inseason action, which will be published in the **Federal Register** for the west coast salmon fisheries, or until the effective date of the year 2003 management measures. Comments will be accepted through November 15, 2002.

ADDRESSES: Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator modified the C&S harvest regulations for the Quileute Tribe to extend the C&S fishery through midnight on Tuesday, October 15, 2002, with a possession and landing limit of 20 salmon per day, and all size restrictions suspended for the duration of the fishery. On September 26, 2002, the Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that the tribal quota of 60,000 chinook and 60,000 coho salmon had not been reached, and it was found that there was enough salmon left in the quotas to allow additional days of fishing in the C&S fishery. Modification of Treaty Indian fishing is authorized by regulations at 50 CFR 660.408(k)(1). Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1), and modification of fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i).

In the 2002 annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002), NMFS announced that all treaty Indian fisheries would open May 1, 2002, through the earlier of June 30, 2002, or a 30,000–chinook quota, and July 1, 2002, through the earliest of September 15, 2002, or a 30,000–chinook or the overall 60,000 coho quota. The minimum size and retention limits for C&S harvest for the Quileute, Hoh, and Quinault tribes were: "Not more than 2 chinook longer than 24 inches (61.0 cm) in total length may be retained per day. Chinook less than 24 inches (61.0 cm) total length may be retained."

On September 26, 2002, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council, the Quileute Tribe, the Washington Department of Fish and Wildlife, the Makah Tribe, the Quinault Tribe, and other interested parties by conference call. Information related to catch to date, the chinook and coho catch rates, and effort data indicated that the chinook and coho quotas had not been reached. As a result, the Quileute Tribe recommended, and the Regional Administrator concurred, that the Quileute Tribe's C&S fishery be modified to extend the C&S fishery through midnight on Tuesday, October 15, 2002, with a possession and landing limit of 20 salmon per day, and all size restrictions suspended for the duration of the fishery. All other restrictions that apply to this fishery remained in effect as announced in the 2002 annual management measures.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the Quileute Tribe. The States and Tribes manage the fisheries in State waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411 (a)(2), actual notice to fishers of the above described actions were given prior to the effective dates by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

These actions do not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), or delaying the effectiveness of this rule for 30 days under 5 U.S.C. 553(d)(3), because such notification and delay is impracticable and contrary to the public interest. As previously noted, actual notice of these actions were provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002) and the West Coast Salmon Plan. Prior notice and opportunity for public comment is impracticable because NMFS, the Tribes, and the State agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the limits to which the fishery must be in place. Moreover, such prior notice and the opportunity for public comment is contrary to the public interest because it does not allow fishers appropriately controlled access to the available fish at the time they are available.

The AA finds good cause to waive the 30–day delay in effectiveness required under 5 U.S.C. 553(d)(3). A delay in effectiveness of this action would not allow fishers appropriately controlled access to the available fish at the time they are available.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 21, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–27361 Filed 10–25–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D.101102D]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action No. 15—Closure of the Commercial Fishery from Humbug Mountain, OR to the Oregon-California Border

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure; request for comments.

SUMMARY: NMFS announces that the commercial fishery for all salmon except coho in the area from Humbug Mountain, OR to the Oregon-California Border was closed at midnight on September 9, 2002. The Northwest Regional Administrator, NMFS (Regional Administrator), determined that the quota of 2,000 chinook salmon had been reached. This action was necessary to conform to the 2002 management goals.

DATES: Closure in the area from Humbug Mountain to the Oregon-California border, effective 2359 hours local time (l.t.), September 9, 2002, after which the fishery will remain closed until opened through an additional inseason action, which will be published in the **Federal Register** for the west coast salmon fisheries, or until the effective date of the year 2003 management measures. Comments will be accepted through November 15, 2002.

ADDRESSES: Comments on these actions must be mailed or faxed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070, facsimile 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132, facsimile 562–980–4018.

Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator closed the commercial salmon fishery in the area from Humbug Mountain, OR to the Oregon-California Border effective at midnight on Monday, September 9, 2002. Information provided on September 9, 2002, estimated that the quota of 2,000 chinook salmon had been reached. Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1).

In the 2002 annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002), NMFS announced that the commercial fishery for all salmon except coho in the area from Humbug Mountain, OR to the Oregon-California Border would open July 1, 2002, through the earlier of July 30, 2002, or a 1,500–chinook quota. The fishery would then reopen on August 1, 2002, through the earlier of August 29, 2002, or a 3,000–chinook quota; and September 1, 2002, through the earlier of September 30, 2002, or a 2,000–chinook quota. No transfer of remaining quota from earlier fisheries allowed.

Inseason Action #8 announced the commercial fishery for all salmon except coho in the area from Humbug Mountain to the Oregon-California Border was closed at midnight on July 26, 2002 (67 FR 57345, September 10, 2002). It was determined that the quota of 1,500 chinook salmon had been reached.

On September 9, 2002, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council and Oregon Department of Fish and Wildlife (ODFW) by conference call. Information related to catch to date, the chinook catch rate, and effort data indicated that it was likely that the quota had been reached. As a result, the State of Oregon recommended, and the Regional Administrator concurred, that the commercial salmon fishery in the area from Humbug Mountain, OR to the Oregon-California Border close effective at midnight on Monday, September 9, 2002. All other regulations that apply to this fishery remain in effect as announced in the 2002 annual management measures and subsequent inseason actions.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the ODFW. The States manage the fisheries in State waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411 (a)(2), actual notice to fishers of the above described action was given prior to the effective date by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), or delaying the effectiveness of this rule for 30 days under 5 U.S.C. 553(d)(3), because such notification and delay is impracticable and contrary to the public interest. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002) and the West Coast Salmon Plan. Prior notice and opportunity for public comment is impracticable because NMFS and the State agencies have insufficient time to allow for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the fishery closure must be implemented to avoid exceeding the quota. Moreover, such prior notice and the opportunity for public comment is contrary to the public interest because not closing the fishery upon attainment of the quota would allow the quota to be exceeded and thus compromise conservation and allocation objectives established preseason, and it does not allow fishers appropriately controlled access to the available fish at the time they are available.

The AA finds good cause to waive the 30–day delay in effectiveness required under 5 U.S.C. 553(d)(3). A delay in

effectiveness of this action would not allow fishers appropriately controlled access to the available fish at the time they are available.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 21, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–27359 Filed 10–25–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D. 101102C]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action 14--Adjustment of the Recreational Fishery from Leadbetter Point, WA to Cape Falcon, OR (Columbia River Area)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment; request for comments.

SUMMARY: NMFS announces that the recreational fishery in the area from Leadbetter Point, WA to Cape Falcon, OR (Columbia River Area), was modified to close at midnight on Monday, September 2, 2002, and then reopen Friday, September 6, 2002, through midnight on Sunday, September 15, 2002. On August 29, 2002, the Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that the quota of 55,700 coho salmon would be reached by September 2, 2002. However, after reevaluating the available catch and effort data on September 4, 2002, it was found that there was enough salmon left in the coho quota to allow an additional 10 days of fishing if coho were transferred from Westport sub-area quota. These actions were necessary to conform to the 2002 management goals.

DATES: Closure in the Columbia River Area effective 2359 hours local time (l.t.), September 2, 2002; Reopening in the Columbia River Area effective 0001 hours l.t., September 6, 2002 through 2359 hours l.t., September 15, 2002, after which the fishery will remain closed until opened through an additional inseason action, which will be published in the **Federal Register** for the west coast salmon fisheries, or until the effective date of the year 2003 management measures. Comments will be accepted through November 15, 2002.

ADDRESSES: Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator modified the season for the recreational fishery in the Columbia River sub-area to close at midnight on Monday, September 2, 2002, and then reopen Friday, September 6, 2002, through midnight on Sunday, September 15, 2002. On August 29, 2002 the Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that the quota of 55,700 coho salmon would be reached by September 2, 2002. However, after reevaluating the available catch and effort data on September 4, 2002, it was found that there was enough salmon left in the coho quota to allow an additional 10 days of fishing if the remaining coho were transferred from the Westport sub-area quota. Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1), and modification of fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i).

In the 2002 annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002), NMFS announced the recreational fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, would have an overall chinook quota of 67,500 fish, with each of its four sub-areas having a chinook guideline. The Columbia River sub-area was announced to open July 7, 2002, through the earlier of September 30 or a 55,700 coho subarea quota, with a guideline of 11,200 chinook. The Westport sub-area was announced to open June 30, 2002, through the earlier of September 8, 2002, or a 39,280 coho subarea quota, with a guideline of 32,000 chinook.

The Columbia River sub-area fishery was modified twice by inseason action. The fishery was first modified to establish chinook minimum size limits of 28 inches (71.1 cm) total length from the U.S.-Canada Border to Leadbetter Point, WA, and 26 inches (66.0 cm) total length from Leadbetter Point, WA to Cape Falcon, OR effective July 21, 2002 (67 FR 52891, August 14, 2002). Information provided on July 18, 2002, regarding the available catch and effort data indicated that modifying the minimum size limit of 24 inches (61.0 cm) total length for chinook to the adjusted size limits should be implemented to slow the catch of chinook and provide greater access to the coho quota. Second, the season for the recreational fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, was modified to prohibit chinook retention effective Saturday, August 10, 2002, in the Neah Bay, La Push, and Columbia River sub-areas (see 67 FR 61041, August 27, 2002). The three sub-areas would then remain open through the earlier of their established season end dates or the attainment of their respective marked coho subarea quotas.

The recreational fishery in the Westport, WA sub-area was modified three times by inseason action. The last action modified the Westport sub-area to reopen on Sunday, August 18, 2002, through midnight on Monday, August 19, 2002, to access the available chinook and marked coho left in the sub-area quotas (67 FR 63055, October 10, 2002). The sub-area closed for the 2002 season because there were no chinook remaining in the guideline. However, there were approximately 20,000 marked coho left in the Westport sub-area quota when the sub-area closed.

On August 29, 2002, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council (Council), Washington Department of Fish and Wildlife(WDFW), and Oregon Department of Fish and Wildlife (ODFW) by conference call. Information related to catch to date, the chinook and coho catch rates, and effort data indicated that it was likely that the coho quota would be reached by Monday, September 2, 2002. As a result, the States of Washington and Oregon recommended, and the Regional Administrator concurred, that the

Columbia River sub-area close effective at midnight on Monday, September 2, 2002. All other restrictions that apply to this fishery remained in effect as announced in the 2002 annual management measures. In addition, the parties agreed to reevaluate the fishery on September 4, 2002, to assess the possibility of further openers.

On September 4, 2002, the Regional Administrator again consulted with representatives of the Council, WDFW and ODFW by conference call. Information related to catch to date, the chinook and coho catch rates, and effort data indicated that there was enough coho left in the Columbia River sub-area quota, added with the available coho remaining from the Westport sub-area quota, to allow 10 more days of fishing. In addition, enough chinook remained in the quota to account for anticipated hooking mortality that would occur during the fishery. As a result, the States of Washington and Oregon recommended, and the Regional Administrator concurred, that the recreational fishery in the Columbia River sub-area should be modified to reopen on Friday, September 6, 2002, through midnight on Sunday, September 15, 2002, to access the available marked coho left in the modified sub-area quota. All other restrictions that applied to this fishery, including the chinook non-retention requirement, remained in effect as announced in the 2002 annual management measures and subsequent inseason actions.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the States. The States manage the fisheries in State waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411 (1)(2), actual notice to fishers of the above described actions were given prior to the effective dates by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

These actions do not apply to other fisheries that may be operating in other areas.Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), or delaying the effectiveness of this rule for 30 days under 5 U.S.C. 553(d)(3), because such notification and delay is impracticable and contrary to the public interest. As previously noted, actual notice of these actions were provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002) and the West Coast Salmon Plan. Prior notice and opportunity for public comment is impracticable because NMFS and the State agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the limits to which the fishery must be adjusted. Moreover, such prior notice and the opportunity for public comment is contrary to the public interest because it does not allow fishers appropriately controlled access to the available fish at the time they are available.

The AA finds good cause to waive the 30–day delay in effectiveness required under 5 U.S.C. 553(d)(3). A delay in effectiveness of this action would not allow fishers appropriately controlled access to the available fish at the time they are available.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 21, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–27362 Filed 10–25–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 208
Monday, October 28, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 400, 407 and 457

RIN 0563–AB85

General Administrative Regulations, Subpart T—Federal Crop Insurance Reform, Insurance Implementation, Regulations for the 1999 and Subsequent Reinsurance Years; Group Risk Plan of Insurance Regulations for the 2001 and Succeeding Crop Years; and the Common Crop Insurance Regulations, Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: The Federal Crop Insurance Corporation is reopening and extending the comment period for the proposed rule that was published in the **Federal Register** on Wednesday, September 18, 2002 (67 FR 58912–58933) that amended the General Administrative Regulations, Subpart T; Group Risk Plan of Insurance Regulations; and the Common Crop Insurance Regulations, Basic Provisions. The proposed rule implements certain provisions of the Agricultural Risk Protection Act of 2000 (ARPA) eliminating identified program vulnerabilities that have lead to potential fraud, waste, and abuse, and make such other changes to existing policy provisions to better meet the needs of producers. This action will allow interested persons additional time to prepare and submit comments.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business November 12, 2002, and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676. Comments titled "Basic Provisions" may also be sent via the Internet to *DirectorPDD@rm.fcic.usda.gov*. A copy of each comment will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CDT, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Janice Nuckolls, Insurance Management Specialist, Research and Development, Product Development Division, Risk Management Agency, at the Kansas City, MO address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

On Wednesday, September 18, 2002, FCIC published a proposed rule with request for comments in the **Federal Register** proposing changes to subpart T in the General Administrative Regulations, the Group Risk Plan of Insurance Regulations, and the Common Crop Insurance Regulations; Basic Provisions to implement program changes mandated by ARPA, and make other changes to existing policy provisions to better meet the needs of the insured.

Comments were required to be received on or before October 18, 2002. Based on requests received during the comment period, we are reopening and extending the comment period until November 12, 2002. This action will allow interested persons additional time to prepare and submit comments.

Signed in Washington, DC, on October 23, 2002.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 02–27367 Filed 10–25–02; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV02–993–3 PR]

Dried Prunes Produced in California; Revising the Regulations Pertaining to a Voluntary Prune Plum Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on revising the administrative rules and regulations pertaining to a voluntary prune plum diversion program under the California prune marketing order (order). The order regulates the handling of dried prunes produced in California and is administered by the Prune Marketing Committee (Committee). The proposed changes would revise the regulations to reflect changes in industry structure and current economic conditions, and would modify administrative procedures used in connection with implementing a diversion program. These changes would provide for more timely and efficient implementation of a diversion program if recommended in the future.

DATES: Comments must be received by December 27, 2002. Pursuant to the Paperwork Reduction Act, comments on information collection burden that would result from this proposal must be received by December 27, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on revising the administrative rules and regulations pertaining to a voluntary prune plum diversion program under the California prune marketing order (order). The order regulates the handling of dried prunes produced in California and is administered by the Prune Marketing Committee (Committee). The proposed changes would revise the regulations to reflect changes in industry structure and current economic conditions, and would modify administrative procedures used in connection with implementing a diversion program. These changes also would provide for more timely and efficient implementation if a diversion program is needed in the future. The proposed changes were unanimously recommended by the Committee at a meeting on November 29, 2001.

Volume Regulation Authority

Section 993.54 of the order provides authority for volume control in the form of reserve pooling. Volume control regulation is designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California prune crop may be sold by handlers to any market (salable or free tonnage) while the remaining percentage must be held by handlers in a reserve pool (or reserve) for the account of the Committee. Reserve prunes are disposed of through various programs authorized under the order. Net proceeds generated from sales of reserve prunes are distributed to the reserve pool's equity holders, primarily producers.

Diversion Program Authority

The order also provides authority under § 993.62 for prune producers to participate in a voluntary prune plum diversion program when a reserve pool is implemented. Under this program, prune producers can elect to divert part of their prune plum crop from normal prune or prune product markets in lieu of placing prunes in a reserve pool. Section 993.62 also authorizes establishment of rules and regulations to implement and administer a diversion program.

Section 993.162 contains the rules and regulations necessary for governing the implementation of a diversion program.

Prune Marketing Committee Recommendations

Because a diversion program has not been implemented since the 1970's, the administrative rules and regulations contain several outdated provisions. Section 993.162(a) of the regulations currently establishes specific dryaway ratios by producing regions within the production area. Dryaway ratios represent the ratio of the weight of fresh prune plums needed to produce dried prunes, and are the basis for computing the dried weight equivalent of diverted fresh prune plums. The ratios range from 2.6 to 3.25 pounds of fresh plums to make a pound of French prunes, depending on the producing region. For non-French prunes, the dryaway ratio is established at 3.5 pounds of plums for one pound of non-French prunes for the entire production area.

The dryaway ratios can change from year to year depending upon weather conditions, fruit maturity at time of harvest, fruit solids and other factors. The dryaway ratios used in the early 1970's are no longer valid. Expanding production together with limited dehydration capacity has forced some growers to begin harvesting earlier and continue later than in the past. This has resulted in dryaway ratios higher than those currently specified. Because of this, and to provide more flexibility, the Committee recommended removing the specific dryaway ratios for non-French prunes from § 993.162(a) of the regulations and proposed adding language that would allow the Committee to compute dryaway ratios for the applicable producing regions based on a survey of at least eight commercial prune dehydrators geographically dispersed within the production area.

When the Committee believes a diversion program is needed, the Committee would obtain annual average dryaway ratios from commercial dehydrators surveyed and compute a five-year average dryaway ratio for each dehydrator. The Committee would then add together the participating commercial dehydrators' five-year average dryaway ratios for each producing region within the production area, and divide the total dryaway ratio by the number of participating commercial dehydrators to obtain each year's average dryaway ratio by producing region. In the event any of the annual dryaway ratios for any of the crop years are abnormally high or low in any year, the Committee could replace the abnormal year's data with that of an earlier year. After the computations are made, the resulting ratios would be announced and commercial dehydrators would be notified by letter prior to the beginning of any crop year in which reserve pooling and a diversion program was being contemplated. This would result

in more accurate dryaway ratios in determining the dried weight equivalent of fresh prune plums being diverted.

No change to the dryaway ratio for non-French prunes was recommended. Production of these prunes is small (0.06 percent of total prune production), little data is available, and it is believed that the currently listed ratio of 3.5 to 1 is accurate.

As previously mentioned, dryaway ratios for French prunes are calculated and applied to various producing regions within the production area. Section 993.162(a) of the regulations currently contains reference to 13 counties that no longer produce prunes. Prune production has shifted within the production area over the years. Thus, the Committee recommended updating the prune producing regions and condensing them into fewer regions. It is proposed that the regions used in determining dried weight equivalents for a diversion program in § 993.162(a) be realigned as follows:

French Prunes

- North Sacramento Valley—The counties of Butte, Glenn, Shasta, and Tehama.
- South Sacramento, Napa, Sonoma, and Santa Clara Valleys and the counties of Amador, Colusa, Lake, Placer, Solano, Sutter, Yolo, Yuba, Napa, Sonoma, San Benito, and Santa Clara.
- San Joaquin Valley—The counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare.

This proposal also would allow the Committee to assign any new counties of production to one of these three regions or remove counties when production ceased. When prune acreage ceases to exist in a county, the Committee would remove that county from the existing production region, with the approval of the Secretary, and announce the removal to the industry. In like manner, if there were new producing counties within the State, the Committee would, with the approval of the Secretary, be allowed to assign them to one of the existing regions based on geographic proximity and/or production/dehydration characteristics, instead of listing the counties in the rules and regulations. These assignments also would be announced to the industry. This process would allow the Committee to make timely changes to the producing regions so they reflect the current industry situation. Section 993.162(a) is proposed to be modified to reflect these changes.

The region for non-French prunes would continue to include all counties within the production area because specific information on growing regions within the State is not maintained.

Section 993.162(b) of the regulations currently establishes the following eligible diversion methods: (1) Disposing of harvested prune plums under Committee supervision for nonhuman use at a location and in a manner satisfactory to the Committee; and (2) Leaving unharvested the entire production of prune plums from a solid block of bearing trees designated by the producer applying for the diversion. This proposal would specifically reference the removal of prune plum trees prior to harvest as an eligible diversion method. In the past, it has been determined that removing trees would qualify as unharvested production under the existing regulations. However, the Committee recommended adding clarifying language to the regulations to ensure that the removal of trees would qualify as an eligible diversion method.

A final change to § 993.162(b) would require the Committee to conduct a meeting prior to the beginning of any crop year in which a diversion program was being contemplated to determine which diversion method or methods may be used, and announce the eligible diversion method(s) to the industry. Section 993.162(b) is proposed to be modified to reflect these changes.

To participate in the diversion program, producers must file an application with the Committee. Section 993.162(c) of the regulations currently requires that when a producer applies for the diversion program, a deposit fee shall accompany the application. The deposit fees established in the current regulations are as follows: For each producer application, the fee shall be the greater of either $100 or the amount obtained by multiplying the quantity, in tons, of prune plums proposed to be diverted by $3.50. For commercial dehydrators acting as an agent for a group of four or more producers, the fee shall be the greater of either $200 or the amount obtained by multiplying the aggregate quantity in tons of prune plums proposed to be diverted by the group by $3.50. The deposit fees charged to diverting growers were intended to finance the Committee's administrative costs for the entire diversion program with any excess monies to be refunded on a prorate basis to participants. Because of changed economics since these fees were established in the 1970's, the deposit fees established in the regulations would not currently cover these costs. The Committee, therefore, recommended revising the regulations to provide that whenever a diversion program is implemented, the Committee shall, with the approval of the Secretary, compute and announce the deposit fees associated with filing applications for the diversion program. The deposit fees would be announced to the industry, instead of specifying the deposit fees in the rules and regulations. It is intended that the computed fees would reflect Committee administrative costs associated with administering a diversion program whenever such a program is recommended.

These changes would allow flexibility in the regulations by allowing the Committee to compute and announce the fees. Section 993.162(c) is proposed to be modified to reflect these changes.

The Committee also recommended changes to § 993.162(d) of the regulations. This section includes criteria for approving diversion applications and establishes fees in connection with modifying applications. The proposed changes would remove reference to specific fees and allow the Committee to apply fees consistent with the proposed process regarding deposit fees. The changes also would increase the service charge for modifying applications from $1 to $2 per ton to reflect current administrative costs. Section 993.162(d) is proposed to be modified accordingly. The rules and regulations pertaining to implementing a prune diversion program were developed in the 1970's, and several provisions are outdated. These proposed changes are designed to bring the rules and regulations in line with the present California prune industry practice. The changes also provide for flexibility in years when reserve pooling and a diversion program are implemented.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,205 producers of dried prunes in the production area and approximately 24 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated industry profile shows that 9 out of 24 handlers (37.5 percent) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Fifteen of the 24 handlers (62.5 percent) shipped under $5,000,000 worth of prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, would be considered large growers with annual receipts over $500,000. The majority of handlers and producers of California dried prunes may be classified as small entities. USDA does not have precise numbers on the total number of commercial dehydrators in the industry or their size. However, it may be assumed that many may be considered small under SBA criteria.

Under § 993.62 of the order, when volume control in the form of a reserve pool is implemented, prune producers can elect to divert part of their prune plum crop from normal markets in lieu of placing prunes in a reserve pool. Section 993.163 contains the administrative rules and regulations necessary to administer a diversion program. This proposed rule would revise those regulations.

One of the proposed changes would remove references in the regulations to establish dryaway ratios for prune plums of the French variety. Dryaway ratios are used to determine the dried weight equivalent of fresh prune plums diverted from normal markets. Because these dryaway ratios are outdated, the Committee recommended replacing them by a process that would allow the Committee to compute and announce current dryaway ratios based on a survey of commercial dehydrators. Surveying commercial prune dehydrators would impose a minor information collection burden on such entities. It is estimated that between 8 and 15 commercial dehydrators would be requested to furnish information on their annual average dryaway ratios to the Committee, and that it would take approximately 15 minutes to furnish the information. The total estimated annual burden of collecting this information is estimated to be 225 minutes (3 hours and 45 minutes) for the industry. The additional information collection burden is being submitted to the Office of Management and Budget (OMB) for approval, and is addressed in a later section of this proposed rule.

Another change would update the prune producing regions to which the dryaway ratios for French prunes are applied, and allow the Committee to update the areas based on current production information. Dryaway ratios vary from area to area, and prune production shifts over time. Another change would specify in the regulatory text that tree removal is an acceptable diversion method, and that the Committee may determine, with the approval of the Secretary, and announce which method(s) of diversion may be used whenever a program is implemented. Another change would remove from the regulations outdated deposit fees for diversion program participants and authorize the Committee to compute such fees based on current program administration costs.

The proposed changes to the prune producing regions, addition of acceptable diversion methods, and the Committee's authority to determine which methods of diversion are to be used are not expected to have a significant impact on growers or handlers, either small or large. These changes would update the regulations to reflect changes in the industry and to facilitate administration and implementation of a voluntary diversion program, if recommended in the future.

The proposed changes regarding deposit fees would allow the Committee to collect charges from diversion program participants that reflect actual administrative costs incurred by the Committee. The fees specified in the regulations are outdated and would not cover the Committee's actual costs if a diversion program was needed to be implemented in the future. These changes would help to ensure that the growers participating in a future diversion program would pay the administrative costs of the program, as specified in § 993.62(g) of the order. Because growers participating in a diversion program are the beneficiaries of the program, it is appropriate that they pay the administrative fees of the program. In addition, because the diversion program is voluntary, growers would determine individually whether the costs would outweigh the benefits prior to their participation. It is not known how many growers would participate in a diversion program, since there has not been one implemented under the marketing order since the 1970's.

This proposed rule would be applied to small and large entities equally, regardless of size. It is anticipated that the recommended actions would benefit the prune industry by updating the regulations to reflect changes in the industry, and by providing a process that would facilitate more timely implementation of a diversion program, if recommended.

The Committee discussed alternatives to this change on November 29, 2001, including taking no action. However, that would leave any future diversion program a less viable supply management tool due to outdated program elements. Another alternative was to update the data on dryaway ratios, prune producing regions, and diversion application charges through informal rulemaking the next time a diversion program was considered, rather than changing to a formula or survey procedure as proposed herein. This alternative was not recommended because the Committee believed that this proposal would provide for more flexibility in administering a future diversion program.

This action would allow the Committee to survey commercial prune dehydrators to estimate costs applicable to drying prune plums. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data to administer a future program. This rule would impose some additional reporting or recordkeeping requirements on both small and large California prune plum commercial dehydrators. The information collection requirements are discussed in the following section. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's Supply Management Subcommittee meeting on November 28, 2001, and the Committee meeting on November 29, 2001, where this action was deliberated, were both public meetings widely publicized throughout the prune industry. All interested persons, both large and small, were invited to attend the subcommittee and Committee meetings and participate in the industry's deliberations. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/*

fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces that AMS is seeking approval for a new information collection request for Dried Prunes Produced in California, Marketing Order No. 993 (order).

Title: Dried Prunes Produced in California, Marketing Order No. 993.

OMB Number: 0581–NEW.

Type of Request: New collection.

Abstract: The information collection requirements in this request are essential to carryout the intent of the Act, to provide the respondents the type of service they request, and to administer the dried prune marketing order program, which has been operating since 1949.

On November 29, 2001, the Prune Marketing Committee unanimously recommended revising the order's administrative rules and regulations pertaining to a voluntary prune plum diversion program. One of the proposed revisions would require the Committee to survey commercial prune dehydrators to determine dried weight equivalents for fresh prune plums to be diverted. The Committee would obtain commercial dehydrators' annual dryaway ratios for the preceding five years, and would compute a five-year average dryaway ratio for each dehydrator. The Committee would then average those ratios and compute a five-year average dryaway ratio for each producing region, and apply that ratio to diverted prune plums in those regions.

The survey is needed so the Committee can compute and announce dried weight equivalents for fresh prune plums for use by those choosing to participate in a voluntary diversion program.

The information collection would be used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters staff, and authorized Committee employees. Authorized Committee employees will be the primary users of the information and AMS is the secondary user.

The request for approval of the new information collection under the order is as follows:

Prune Dehydrator Survey

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Commercial prune dehydrators.

Estimated Number of Respondents: 15.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3.75 hours.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-NEW and the Dried Prune marketing order, and be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

As mentioned before, AMS is seeking approval from OMB for the additional burden imposed by the *Prune Dehydrator Survey*. Upon OMB approval, the additional burden will be merged into the information collection currently approved under OMB No. 0581–0178, Vegetable and Specialty Crop Marketing Orders.

In addition to the information collection burden, this rule also invites comments on revising the regulations concerning a voluntary prune plum diversion program under the order. A 60-day comment period is invited to allow interested persons to respond to this proposal. All written comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is proposed to be amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 993.162, paragraphs (a), (b), (c), and (d) are revised to read as follows:

§ 993.162 Voluntary prune plum diversion.

(a) *Quantity to be diverted.* The Committee shall indicate the quantity of prune plums that producers may divert pursuant to § 993.62 whenever it recommends to the Secretary that diversion operations for a crop year be permitted. Whenever diversion operation for a crop year have been authorized by the Secretary, the Committee shall notify producers, commercial dehydrators, and handlers, known to it of such authorization and diversion program procedures. The Committee shall compute the dried weight equivalent of prune plums so diverted on a dryaway basis as follows:

(1) For prune plums of the French variety, the Committee shall survey at least eight commercial prune dehydrators that are geographically dispersed within the production area to obtain their annual dryaway ratios for each of the preceding five crop years, and compute a five-year average dryaway ratio for each dehydrator. The Committee shall then add together the participating commercial dehydrators' five-year average dryaway ratios for each producing region within the production area, and divide the total by the number of participating commercial dehydrators in that region to compute the dryaway ratio by producing region. In the event any of the annual dryaway ratios for any of the crop years is abnormally high or low in any year, the Committee may replace the abnormal year's data with that of an earlier year. The prune producing regions for which dryaway ratios shall be computed for prune plums of the French variety are as follows:

(i) North Sacramento Valley, which includes the counties of Butte, Glenn, Shasta, and Tehama;

(ii) South Sacramento, Napa, Sonoma, and Santa Clara Valleys, which includes the counties of Amador, Colusa, Lake, Placer, Solano, Sutter, Yolo, Yuba, Napa, Sonoma, San Benito, and Santa Clara; and

(iii) San Joaquin Valley, which includes the counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare.

(A) *New producing counties within the area.* If there were new producing counties within the State of California, the Committee would, with the approval of the Secretary, assign the new prune producing county or counties, as the case may be, to one of the prune producing regions based on geographic proximity and/or production/dehydration characteristics. The addition of a county or counties, as the case may be, to one of the producing regions would be announced to the industry.

(B) *Removal of a county from a production area.* When prune acreage ceases to exist in a county, the Committee would, with the approval of the Secretary, remove that county from the existing region. Removal of a county from a production region also would be announced to the industry.

(2) For prune plums of the non-French variety, the dryaway ratio shall be 1 pound for each 3.50 pounds or prune plums diverted. The prune-producing region for prune plums of non-French varieties is the State of California.

(b) *Eligible diversions.* Eligible diversions shall preclude prune plums from becoming prunes and may include the following methods:

(1) Disposing of harvested prune plums under Committee supervision for nonhuman use at a location and in a manner satisfactory to the Committee;

(2) Leaving unharvested the entire production of prune plums from a solid block of bearing trees designated by the producer applying for the diversion or removing prune plum trees prior to harvest; and/or

(3) Such other diversions as may be authorized by the Committee and approved by the Secretary.

(4) In accordance with § 993.62(c), eligible diversion shall not apply to prune plums, which would not, under normal producer practices, be dried and delivered to a handler. On or before July 20 of each crop year when the Committee recommends a reserve pool and diversion program (except the Committee with the approval of the Secretary may extend this date by not more than 10 business days if warranted by a late crop), the Committee shall identify, with the approval of the Secretary, the acceptable method(s) of voluntary prune plum diversion through reasonable publicity to producers, commercial dehydrators, handlers, and the cooperative bargaining association(s). For the purposes of this section, cooperative bargaining association means a nonprofit cooperative association of dried prune producers engaged within the production area in bargaining with handlers as to price and otherwise arranging for the sale of natural condition dried prunes of its members.

(c) *Applications for diversion*—(1) *By producers.* Each producer desiring to divert prune plums of his own production shall, prior to diversion, file with the Committee a certified application on Form PMC 10.1 "Application for Prune Plum Diversion" containing at least the following information:

(i) The name and address of the producer; whether the producer is an owner-operator, share-landlord, share-tenant, or cash tenant; and the name and address of any other person or persons sharing a proprietary interest in such prune plums;

(ii) The proposed method of diversion and the location where the diversion is to take place;

(iii) The quantity and variety of prune plums proposed to be diverted; and

(iv) The approximate period of diversion.

(v) A deposit fee shall accompany each producer's application to cover costs associated with processing the application and administering the diversion program. The Committee shall compute, with the approval of the Secretary, and announce to the industry, the deposit fee. The deposit fee announced shall be a set dollar amount or a per ton cost based on the proposed tonnage to be diverted. The fee paid by the applicant shall be the greater of these amounts.

(2) *By dehydrator as agent.* Any producer, or group of producers, may authorize a dehydrator to act as an agent to divert harvested prune plums. Prior to diversion such dehydrator shall submit to the Committee an application on Form PMC 10.1 "Application for Prune Plum Diversion" for each producer or group of producers under contract with the dehydrator. A deposit fee shall accompany each such application to cover the costs associated with processing the application and administration of the program. With respect to any group of four or more producers under contract with a dehydrator, the deposit fee for the group shall be the greater of either double the single deposit fee, pursuant to paragraph (c)(1) of this section, or the amount obtained by multiplying the total tonnage of prune plumes to be diverted by the group of producers covered in the dehydrator's application times the per ton deposit rate announced by the Committee pursuant to (c)(1) of this section.

(3) *Receipt of applications.* The Committee shall establish, and give prompt notice to the industry, a final date for receipt of applications for diversion: *Provided*, That the Committee may extend such deadline if the total tonnage represented in all applications is substantially less than the total tonnage established by the Committee pursuant to paragraph (a) of this section.

(d) *Approval of applications.* No certificate of diversion shall be issued by the Committee unless it has approved the application covering such diversion.

(1) The Committee's approval of an application shall be in writing, and include at least the following:

(i) The details as to the method of diversion to be followed;

(ii) The method of appraisal to be used by the Committee to determine the quantity of prune plums diverted;

(iii) The lesser of either the quantity specified in the application to be diverted, or modification of that quantity as a result of any Committee action to prorate the total quantity to be diverted by all producers; and

(iv) Such other information as may be necessary to assist the applicant in meeting the requirements of this section, including the conditions for proof of diversion.

(2) If the Committee determines that it cannot approve an application it shall notify the applicant promptly. The Committee shall state the reason(s) for failing to approve the application, and request the applicant to submit, if practicable, an amended application correcting the deficiencies in the original application.

(3) The Committee shall establish, and give prompt notice to the industry of a final date by which a producer or dehydrator may modify an approved application, including changing the proposed method of diversion or the quantity of prune plums proposed to be diverted: *Provided*, That any such change shall include information on the location or quantity of such diversion and shall be accompanied by a payment of a second deposit fee, calculated pursuant to paragraph (c)(1) or (c)(2), as applicable, of this section, plus a $2 per ton service charge for any increase in tonnage to be diverted.

(4) If an applicant cancels an approved diversion application prior to diversion, no part of the deposit fee shall be refunded, except upon approval by the Committee following review of all circumstances in the matter.

* * * * *

Dated: October 22, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–27305 Filed 10–25–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1400

RIN 0560–AG86

Income Limits

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement provisions of the Farm Security and Rural Investment Act of 2002 regarding limits on the income of persons eligible for program participation. These regulations set forth the criteria to be applied in determining whether certain income limits have been exceeded by an individual or entity and thus making such individual or entity ineligible for certain Commodity Credit Corporation (CCC) commodity and conservation program benefits. The proposed rule, generally, provides that for individuals CCC will use the adjusted gross incomes reported by the individual in the prior three years to the Internal Revenue Service (IRS), United States Department of Treasury, and a comparable amount for all other entities such as corporations, limited partnerships, and charitable institutions.

DATES: To be assured of consideration comments must be received by November 27, 2002.

ADDRESSES: Comments and requests for further information should be directed to Dan McGlynn, Production, Emergencies and Compliance Division, United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Ave. SW., Washington, DC 20250–0517. Telephone: (202) 720–3463. Electronic mail: *Income_Limits@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) provides that the regulations needed to implement Title I of the 2002 Act, including those involved here, may be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Because the provisions of the rule are not effective until the 2003 crop, and due to the complexity of the issues presented in the rule, it has been determined that it is in the public's interest to solicit comments on this rule before it becomes effective.

Executive Order 12866

This proposed rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

This proposed rule has a potential impact on all programs listed in the Catalog of Federal Domestic Assistance in the Agency Program Index under the Department of Agriculture, Farm Service Agency and Natural Resources Conservation Service. Other assistance programs are also impacted.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. An Environmental Evaluation was completed and the proposed action has been determined not to have the potential to significantly impact the quality of the human environment and no environmental assessment or environmental impact statement is necessary. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

This rule has been reviewed under Executive Order 12778. This rule preempts State laws that are inconsistent with it, however, this rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule. Also, this rule contains no mandates as defined in sections 202 and 205 of UMRA.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be done without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The form that applicants will use to certify their income is being developed for on-line use. However, because of the nature of the other paperwork and documentation that may be needed to verify eligibility based on income, the use of electronic means of submission for those information collections is not feasible at this time.

Background and Discussion

The 2002 Act authorized new programs and benefits, including direct payments and counter-cyclical payments for producers of certain covered commodities and for payments and other benefits under a number of new and revised conservation programs. Section 1603 of that Act amended the Food Security Act of 1985 by adding a new section 1001D to provide that individuals or entities shall not be eligible to receive direct payments, counter-cyclical payments, marketing loan gains nor a payment under any of the conservation program authorized under title XII of the Food Security Act of 1985 Act, nor a payment under the conservation programs of title II of the 2002 Act, if the three year average of the adjusted gross income of the individual, or comparable measure for an entity, exceeds $2.5 million. An exemption, though, is provided where not less than 75 percent of the adjusted gross income is derived from farming, ranching, or forestry operations. In determining the scope of coverage to an individual or entity, section 1001D(a)(1) provides:

> In this section, the term "average adjusted gross income", with respect to an individual or entity (for purposes of this section as defined in section 1001(e)(2)(A)(ii)), means the 3-year average of the adjusted gross income or comparable measure of the individual or entity over the preceding tax years, as determined by the Secretary.

Section 1001 of the 1985 Act sets forth the statutory payment limitations applicable to certain commodity and conservation program benefits. Generally, these provisions have been the same since enactment in 1987, with amendments made since then to include new payments authorized by statutes enacted after 1987, and provide that the total amount of specified payments that a "person" may receive are limited to specified amounts per year. Section 1001(e)(2)(A) contains one of the fundamental components of the statutory payment limitation scheme in that it defines the term "person" as follows:

> * * * the term "person" means—
> (i) An individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or a participant in a similar entity (as determined by the Secretary);
> (ii) A corporation, joint stock company, association, limited partnership, charitable organization, or other similar entity (as determined by the Secretary, including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar entity (as determined by the Secretary); and
> (iii) A State, political subdivision, or agency thereof.

In determining who is a "person" for purposes of section 1001D, an "entity" is specifically defined to be the same as an "entity" as provided in section 1001(e)(2)(A)(ii) of the 1985 Act. Notably, section 1001D does not contain such a mandate to use the definitions in sections 1001(e)(2)(A)(i) and (iii). Accordingly, this proposed rule provides that the definition of an "entity" shall be the same for purposes of sections 1001 and 1001D of the 1985 Act. In order to provide consistency in the application of both sections 1001 and 1001D, the proposed rule also provides that the definition of an "individual" will be the same for both purposes.

This proposed rule does not propose to extend the adjusted gross income limits to States, counties, political subdivisions, agencies thereof, or recognized Indian tribes because Governmental organizations do not have "income" similar to the other listed individuals and entities.

The term "adjusted gross income," for IRS purposes, applies only to taxpayers who are "individuals." Thus, this proposed rule proposes, for individuals, that adjusted gross income be based on the IRS definition of that term and associated filings. Section 1001D(a)(1) takes into account the limited use of this term by providing that the Secretary is to fashion a "comparable measure" for other entities. In order to maintain a consistent application of this statutory provision as compared to its application to individuals, this proposed rule proposes that prior years' tax filings will be the starting point of reference. In addition, due to the severe penalties associated with the filing of a false tax return, CCC has determined that such information is likely to be the most credible evidence available to determine this "comparable measure" of adjusted gross income. While this proposed rule defines the adjusted gross income for the different program participants, the proposed rule does not specify the line item on tax returns for participants from which the critical information will be gathered since such references may likely change from year-to-year. CCC anticipates that the CCC forms that will be used to make these determinations will specify the specific lines from various IRS forms that will be used. To the extent information from the entity is needed that can not be ascertained solely from the IRS forms, CCC will specify in its forms what other information is needed. Because of the large number of business entities that may be affected by this rule and the desire to rely to the maximum extent possible only on the information already set forth on the IRS forms, CCC specifically requests comments on which IRS forms and lines on the forms that would be rational to use in the application of this rule.

For individuals, the adjusted gross income would be the amount so specified on the individual's final (including amendments) tax return for the applicable year. Where there is a joint return filed, the adjusted gross income specified on the joint return will be used unless a certified public accountant or attorney provides a certified statement delineating the distribution of income and expenses if the two taxpayers would have filed separate returns. Accordingly, it is possible that one tax return will be used by more than one individual for purpose of this rule.

For corporations including a "sub-chapter S corporation", the adjusted gross income will be the final taxable income plus charitable contributions. The proposed rule includes charitable contributions in order to provide equitable treatment vis-a-vis individuals. For an individual, charitable deductions are deducted from adjusted gross income, along with a variety of other items, to determine the individual's taxable income. Generally, the other items deducted from an individual's adjusted gross income, such as personal exemptions and child care credits, do not have a corresponding relevancy on a corporate return. Inclusion of charitable contributions by corporations would, in the view of CCC, be more comparable to the actions of an individual.

For charitable organizations with income that is not subject to Federal income taxation, the comparable measure of adjusted gross income is proposed to be "unrelated business taxable income" of the entity as reported to the Internal Revenue Service less any other income CCC determines to be from commercial activities. Currently, that amount is specified on line 34 of Internal Revenue Service Form 990–T. Generally, this would exclude from inclusion as adjusted gross income receipts that are gifts, grants and contributions that are tax deductible by the donor; and receipts from rent, royalties and asset sales. Effectively, the adjusted gross income for these entities would be the net income from only their commercial activities.

For a general partnership, foreign partnership, limited liability company, limited partnership, limited liability partnership or similar organization, the adjusted gross income will be the sum of the income from trade or business activities plus the guaranteed payments to the members as reported for the applicable tax year.

For an estate or trust, the adjusted gross income will be the sum of the adjusted total income plus the charitable deductions as reported for the applicable tax year.

Individuals and entities who have adjusted gross income in excess of $2.5 million and whose average adjusted gross income from farming, ranching, and forestry is less than 75 percent of

such income are ineligible for the specified CCC program benefits. The determination of this income from farming, ranching and forestry will be that which is included in the an individual's adjusted gross income. Generally, for farming and ranching incomes, this amount will be from the IRS forms used to determine farm income, currently IRS form 4865 and Schedule F, and would represent the net income from the farming operation after deductions for the cost of production. CCC specifically requests comments on what should be classified as income from farming, ranching and forestry activities. Income derived from forestry operations, to the extent it is not reported on these forms, would be the subject of a separate report by the individual or entity.

With respect to those persons who have exceeded the $2.5 million threshold, Congress intended that those persons who are dependent upon farming, ranching and forestry should be accorded deferential treatment; however, there is no legislative history with respect to the manner in which income derived from specific types of asset sales should be treated. Because of the inherent inability of CCC to try to distinguish the treatment of different types of sales of assets, CCC proposes that:

(1) Income from selling land used to produce forestry or agricultural commodities would not be considered to be derived from framing, ranching or forestry;

(2) Farm or forestry implement sales by a retail dealership would not be considered farm or forestry income but the sale of equipment otherwise subject to depreciation expense on the IRS Form 4865 or Schedule F would be considered to be included as such income;

(3) Investment income of an individual would not be considered income from farming, ranching or forestry even though the invested funds were derived from such sources;

(4) Income from sales at a market would only be considered to be income from farming, ranching and forestry if the commodity being sold was produced by the person;

(5) Income from sales as a commission broker, auctioneer or warehouse operator or similar enterprise would not be income from farming, ranching or forestry; and

(6) In integrated operations, undifferentiated income, for example, income that could not be differentiated between income for the production of the tree and for the sale of a finished product, would not be considered to be derived from farming, ranching and forestry.

Section 1603 also requires a commensurate reduction in the share of payments going to an entity which is proportional to the interest held in the entity by parties whose adjusted gross income is over $2.5 million. Information regarding ownership of interests in entities will be requested to a maximum of five levels of organization. Based upon past experience in administering the provisions of section 1001 relating to the maximum amount of specified payments a person may receive, CCC has determined that business enterprises comprised of such layered ownership generally are done so simply to maximize the receipt of government payments.

The proposed rule also provides that payments, incidental to the actual program payments, made to vendors that receive payment for services or technical assistance that otherwise would be provided to producers and program participants by the government will not be included as payments and benefits subject to this limitation.

Cost/Benefit Analysis

The adjusted gross income limitation not only applies payments under the commodity and price support programs, but to all payments and benefits under the conservation and related programs. Included, but not limited to, are direct and counter-cyclical payments, conservation reserve and environmental quality incentive program payments, loan deficiency payments and marketing loan gains.

For the 2003 through 2007 crop, program or fiscal years, an individual or entity is not eligible for payments or benefits from the above-mentioned programs if their average adjusted gross income exceeds $2.5 million for the 3 tax years immediately preceding the applicable crop, program or fiscal year. This requirement applies unless 75 percent or more of that average adjusted gross income amount was derived from farming, ranching or forestry operations.

The determinations necessary for compliance with the adjusted gross income requirement will be based on Internal Revenue Service concepts and information included on final tax filings. Comparable measures for adjusted gross income have been developed for entities, partnerships and for organizations that do not have such a line item on tax filings, and that are non-profit, or are not required to file tax information.

Under the adjusted gross income provisions, there is a required commensurate reduction of program payments in the situations where an individual or entity fails to comply. Any program payment or benefit issued to an entity, general partnership, or joint venture shall be reduced by an amount commensurate with the direct or indirect interest held by that individual or entity that is determined to have an average adjusted gross income that exceeds the limitation.

Note that those ineligible for marketing loan gains and loan deficiency payments because of the adjusted gross income restriction may still be eligible to participate in the marketing assistance loan programs. Further, when commodity prices decrease they will still be able to use commodity certificates to repay those loans at rate lower that the original loan rates. Benefits they realize from the reduced payment rate, essentially the same as marketing loan gains, are subject neither to payment limits nor the adjusted gross income restrictions.

The 2002 Act mandates that the adjusted gross income requirement apply to the 2003 through 2007 crop years. In May 2002, the Congressional Budget Office estimated that savings from the adjusted gross income requirement will total $22 million in fiscal years 2002 through 2006.

The Cost/Benefit Assessment of the adjusted gross income limitation is available from James Baxa, Production, Emergencies, and Compliance Division, United States Department of Agriculture (USDA), 1400 Independence Ave, SW, Washington, DC 20250. Phone: (202) 720–4189. E-mail: *James Baxa@wdc.usda.gov*.

List of Subjects in 7 CFR Part 1400

Agriculture, Price support programs, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, CCC proposes to amend 7 CFR part 1400 as follows:

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

1. The authority citation for part 1400 is continues to read as follows:

Authority: 7 U.S.C. 1308 *et seq.*

2. Section 1400.1 is amended by adding a new paragraph (h) to read as follows:

§ 1400.1 Applicability.

* * * * *

(h) As provided in subpart G of this part, additional requirements are applicable to certain of the payments specified in paragraph (g) of this section.

3. Subpart G is added to read as follows:

Subpart G—Average Adjusted Gross Income Limitation

Sec.

1400.600 Applicability.
1400.601 Determination of average adjusted gross income.
1400.602 Compliance.
1400.603 Commensurate reduction.

Subpart G—Average Adjusted Gross Income Limitation

§ 1400.600 Applicability.

(a) For the 2003 through 2007 crops, programs or fiscal years, an individual or entity is not eligible for any payment or benefit identified in § 1400.1 as being subject to this part if the individual's or entity's average adjusted gross income exceeds $2.5 million for the 3 tax years immediately preceding the applicable crop, program or fiscal year. Payments may also be reduced under the commensurate share rules set out in § 1400.603.

(b) Notwithstanding paragraph (a) of this section, the individual or entity may be considered to meet the requirements of this subpart if not less than 75 percent of the individual's or entity's average adjusted gross income for the 3 tax years immediately proceeding the applicable crop, program or fiscal year, is derived from farming, ranching, and forestry operations.

(c) In addition to payments or benefits identified under § 1400.1, this subpart applies to benefits provided to participants under contracts or agreements entered into during the 2003 through 2007 fiscal years for the following programs:

(1) The program authorized by part 1466 of this chapter or its successor regulations;

(2) The program authorized by part 1467 of this chapter or its successor regulations;

(3) The program authorized by part 636 of this chapter or its successor regulations;

(4) Any other program authorized by Title XII of the Food Security Act of 1985, as amended, or Title II of the Farm Security and Rural Investment Act of 2002.

(d) Determinations made under this subpart with regard to the programs described in paragraph (c) of this section will be based on the year the contract or agreement is approved and that determination will apply for the entire term of the subject agreement or contract.

(e) Vendors that receive payment for technical services or assistance provided in conjunction with programs under Title II of the 2002 Act and Title XII of the 1985 Act, but who are not in the class of persons who are beneficiaries of the program, are not subject to this subpart for services that are of the type that are also performed by the Federal Government.

(f) Payments to a person as an escrow agent or other similar capacity in which the recipient is maintaining temporary custody of the funds for eventual disbursement to eligible program participant are not subject to this part so long as the party ultimately receiving the payment is eligible under this part.

(g) Payments to States, counties, political subdivisions and agencies thereof, and Indian tribes are not subject to this subpart.

§ 1400.601 Determination of average adjusted gross income.

(a) For purposes of this subpart, *income from farming, ranching and forestry* means income derived from producing crops, livestock and unfinished raw forestry products.

(b) For purposes of this subpart, *adjusted gross income* means:

(1) For an individual filing a separate tax return, the amount reported as adjusted gross income on the final federal tax return for the individual for the applicable tax year;

(2) For an individual filing a joint tax return, the amount reported as "adjusted gross income" on the final filed federal tax return for the applicable tax year unless a certified statement is provided by a certified public accountant or attorney specifying the manner in which such income would have been determined if the individuals had filed two separate returns and that this calculation is consistent with the information actually supporting the filed joint return;

(3) For a corporation, including a subchapter S corporation, the total final reported "taxable income" as reported to the Internal Revenue Service plus the amount of the charitable contributions as reported on the final federal income tax return for the applicable tax year;

(4) For a tax exempt entity, the adjusted gross income is the "unrelated business taxable income" of the entity as reported to the Internal Revenue Service, less any other income CCC determines to be from non-commercial activities;

(5) For a limited liability company, limited partnership, limited liability partnership or similar type of organization, the income from trade or business activities plus the amount of guaranteed payments to the members as reported on the federal tax return for the applicable year; and

(6) For an estate or trust, the adjusted total income plus charitable deductions as reported on the federal tax return for the applicable tax year.

(c) For purposes of applying this subpart and calculating the three-year average referenced in § 1400.600, that average shall be for the adjusted gross income for the three tax years immediately preceding the applicable crop, program or fiscal year, as determined by CCC, excluding any year in which the individual or entity did not have income or had adjusted gross income considered to be zero.

§ 1400.602 Compliance.

(a) To comply with the adjusted gross income limitation, an individual or entity shall provide either as required by CCC:

(1) A certification in the manner prescribed by CCC from a certified public accountant or attorney that the individual's or entity's average adjusted gross income of the individual or entity does not exceed this limitation; or

(2) Submission to CCC of the relevant Internal Revenue Service documents and supporting financial data as requested by CCC. Such information may include State income tax returns, financial statements, balance sheets, reports prepared for or provided to another Government agency, information prepared for a private lender, and other credible source of information relating to the amount and source of the person's income.

(b) Audits of certifications of average adjusted gross income may be conducted as necessary to determine compliance with requirements of this part. As a part of this audit income tax forms may be requested and if requested must be supplied. If a person has submitted information to CCC, including a certification from a certified public accountant or attorney, that relied upon information from a form previously filed with the Internal Revenue Service, such person shall provide to CCC a copy of any amended form filed with the Internal Revenue Service within 30 days of the filing.

(c) The program participant shall provide all information and documentation the reviewing authority determines necessary to verify any information or certification provided under this part, including all documents referred to in paragraph (a)(2) of this section. Failure to provide necessary and accurate information to verify compliance, or failure to comply with the this subpart's requirements, will result in the determination of ineligibility for all program benefits for the year or years subject to the request.

§ 1400.603 Commensurate reduction.

(a) Any program payment or benefit subject to this part provided to an entity, general partnership or joint venture shall be reduced by an amount commensurate with the direct and indirect ownership interest in the entity, general partnership, or joint venture of each individual or entity determined to have an average adjusted gross income in excess of this limitation under the standards elsewhere provided in this subpart for the direct recipient of such payments.

(b) Ownership interest in an entity shall be reviewed to the fifth level of ownership to determine whether a commensurate reduction is applicable and the extent of such reduction. If an ownership interest is not held by an individual in any of the first five levels of ownership, no payment or benefit shall be made with respect to such interest.

Signed in Washington, DC, on October 21, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–27227 Filed 10–25–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Nos. EE–RM/TP–02–002; EE–RM/STD–02–330]

Energy Conservation Program for Consumer Products: Test Procedure for Residential Central Air Conditioners and Heat Pumps; Energy Conservation Standards for Small Duct High Velocity Air Conditioners and Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public workshop.

SUMMARY: The Department of Energy (DOE or Department) is convening a public workshop to discuss and receive comments on several issues related to test procedures for residential central air conditioners and heat pumps and energy conservation standards for small-duct high-velocity (SDHV) central air conditioners and heat pumps.

DATES: The public workshop will be held on Friday, December 13, 2002, from 9 a.m. to 4 p.m. Comments submitted by electronic mail will be considered timely if they are submitted by 11:59 p.m. (Eastern time) January 8, 2003. Written comments, data and information, and a signed original with an electronic copy on diskette, must be received at the Department of Energy by January 8, 2003.

ADDRESSES: The workshop will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue SW., Washington, DC 20585. (Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. If you are a foreign national and wish to participate in the workshop, please inform DOE of this fact as soon as possible by contacting Ms. Crystal Branson at (202) 586–6448 so that the necessary procedures can be completed.)

On or about November 15, 2002, DOE will place a set of presentations describing the Department's research on these issues and workshop agenda on the DOE Web site at: *http://www.eren.doe.gov/buildings/codes_standards/*. Please submit comments, data and information electronically. These should be sent to the following Internet address: *CAC@ee.doe.gov*. Electronic comments must be submitted as a WordPerfect 5.1/6.1/8 format file and avoid the use of special characters or any form of encryption. Comments in electronic format should also be identified by the docket number EE–RM/STD–02–330 (for SDHV comments), or EE–RM/TP–02–002 (for test procedure comments), and wherever possible carry the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. No telefacsimiles (telefaxes) will be accepted.

Written (paper) comments may be submitted to: Ms. Crystal Branson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Energy Conservation Standards and Test Procedures for Residential Central Air Conditioners and Heat Pumps, Docket Number: EE–RM/TP–02–002 (for test procedure comments); EE–RM/STD–02–330 (for SDHV comments), EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–6448. Please submit one signed copy and a computer diskette or CD (in WordPerfect™ 8 format)—no telefacsimiles.

Copies of the transcript of the public workshop, public comments received, and this notice may be read (or copied) at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9611, e-mail: *michael.raymond@ee.doe.gov*, or Mr. Michael W. Bowers, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8140, e-mail: *Mike.Bowers@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: Part B of Title III of the Energy Policy and Conservation Act of 1975 (EPCA or Act), Public Law 94–163, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619; the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12; the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357; and the Energy Policy Act of 1992 (EPACT), Public Law 102–486, created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program include residential central air conditioners and central air conditioning heat pumps. (42 U.S.C. 6295(d)).

The Department has been pursuing a rulemaking activity for the purpose of determining whether amended energy conservation standards for the niche central air conditioning products with small ducts and high velocities are justified. The Department also is developing additional revisions it intends to propose to the test procedures for residential central air conditioners and heat pumps. These revisions concern: (1) Establishing new default values for the cooling mode cyclic degradation coefficients; (2) increasing the minimum static pressure used in testing small duct high velocity systems; (3) testing of two-capacity heat pumps; and (4) acceptable verification units for the alternative rating method.

The workshop announced in today's notice is the next step in the rulemaking process for determining whether to amend the energy conservation standards for small-duct high-velocity air conditioners and heat pumps. In a notice of final rulemaking published on May 23, 2002 (67 FR 36368), DOE established amended energy conservation standards for all classes of residential central air conditioners and heat pumps except small-duct high-velocity systems. In that final rule, DOE created a separate product class for SDHV systems, but it deferred establishing amended standards pending completion of a new test procedure and the analysis needed to support new standards. The May 23, 2002, final rule defines "small duct high-velocity system" to mean a heating and cooling product that contains a blower and indoor coil combination that: (1) Is designed for, and produces, at least 1.2 inches of external static pressure when operated at the certified air volume rate of 220–350 CFM per rated ton of cooling; and (2) when applied in the field, uses high velocity room outlets generally greater than 1000 fpm which have less than 6.0 square inches of free area. (*See* revision to § 430.2 at 67 FR 36406). The workshop announced in today's notice is also being held to consider the additional revisions to DOE's test procedure for central air conditioners and heat pumps mentioned in the preceding paragraph of this notice.

A detailed agenda for this workshop is currently under development and as noted above, will be posted on the Department's Web site on or about November 15, 2002. The agenda items will include issues related to the engineering and life-cycle cost methodology used in the small-duct high-velocity standards rulemaking, and the methodology and data used to derive new default values for the cooling mode cyclic degradation coefficients. For each agenda item, the Department will make a presentation summarizing the current status and will initiate a discussion regarding the accuracy and completeness of data and analysis tools. During these discussions, the Department is particularly interested in receiving comments and views of interested parties and possible approaches to enhance the accuracy of the analysis tools and data. The Department encourages those who wish to participate in the workshop to make presentations that address these issues. If you would like to make a presentation during the workshop, please inform Ms. Branson at least two weeks before the date of the workshop and provide her with a copy of your written presentation material at least one week before the date of the workshop.

The meeting will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by antitrust law. After the meeting and a period for written statements, the Department will begin collecting data and conducting the analyses discussed at the workshop.

If you would like to participate in the workshop, to receive workshop materials, or to be added to the DOE mailing list to receive future notices and information regarding distribution transformers, please contact Ms. Crystal Branson at (202) 586–6448.

Issued in Washington, DC, on October 22, 2002.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 02–27332 Filed 10–25–02; 8:45 am]

BILLING CODE 6450–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AB34

Exclusion for Certain Otherwise Regulated Persons From the Definition of the Term "Commodity Pool Operator"

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing to amend Rule 4.5 by adding an alternative limitation on the non-hedge activities of eligible persons claiming relief under the rule (Proposal). The Commission also is taking a "no-action" position to permit the use of this alternative criterion pending final action on an amendment to the rule. The Proposal and the "no-action" position would not affect the ability of qualifying entities under Rule 4.5 to engage in unlimited trading for *bona fide* hedging purposes.

DATES: Comments on the proposed rule change must be received by December 12, 2002.

ADDRESSES: Comments on the proposed rule should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5528, or by e-mail to *secretary@cftc.gov*. Reference should be made to "Proposed Amendment to Rule 4.5 for Non-Hedge Activity."

FOR FURTHER INFORMATION CONTACT: Barbara S. Gold, Associate Director, Division of Clearing and Intermediary Oversight, or Ronald Hobson, Industry Economist, Office of the Chief Economist, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone number: (202) 418–5441 or (202) 418–5285, respectively; facsimile number: (202) 418–5536, or (202) 418–5660, respectively; and electronic mail: *bgold@cftc.gov* or *rhobson@cftc.gov*, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

The term "commodity pool operator" (CPO) is defined in section 1a(5) of the Commodity Exchange Act (Act),[1] to mean:

> [A]ny person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, *except that the term does not include such persons not within the intent of the definition of the term as the Commission may specify by rule, regulation, or order.* [Emphasis added.][2]

In connection with the adoption of the Futures Trading Act of 1982,[3] the Senate Committee on Agriculture, Nutrition, and Forestry (Committee) considered an amendment to the Act that would have exempted certain persons from the CPO definition. In lieu of adopting such an amendment to the CPO definition, the Committee directed the Commission to issue regulations that would have the effect of providing relief from regulation as a CPO for certain otherwise regulated persons with respect to their operation of certain collective investment vehicles that met certain criteria. These criteria specified, among other things, that "the entity uses commodity futures or options thereon

[1] 7 U.S.C. 1a(5) (2002).

[2] Both the Act and the Commission's rules issued thereunder can be accessed through the Commission's Web site: *www.cftc.gov/cftc/cftclawreg.htm#cea*. Commission rules cited to herein are found at 17 CFR chapter I (2002).

[3] Pub. L. No. 97–444, 96 Stat. 2294 *et seq.* (1983).

solely for hedging purposes" and that "initial margin requirements or premiums for * * * futures or options contracts will never be in excess of 5 percent of the entity's assets. * * *"[4] Pursuant to this directive, in 1985 the Commission adopted Rule 4.5.[5]

The purpose of Rule 4.5 is to make available to certain persons (eligible persons) an exclusion from the definition of CPO with respect to their operation of certain entities (qualifying entities) that would otherwise be treated as commodity pools under the Act, but that are already subject to extensive operating requirements of another federal or state regulator. These eligible persons and their qualifying entities include: (1) Investment companies registered as such under the Investment Company Act of 1940; (2) state-regulated insurance companies with respect to their operation of insurance company separate accounts; (3) state- or federally-regulated financial depository institutions with respect to their operation of separate units of investment; and (4) trustees, named fiduciaries, certain designated fiduciaries, and employers of pension plans subject to Title I of the Employee Retirement Income Security Act of 1974 with respect to the operation of such plans.[6] In order to claim exclusion from the CPO definition under Rule 4.5, an eligible person must file a Notice of Eligibility with the National Futures Association (NFA) and the Commission.[7] The Notice must contain specified representations on how the person will operate the qualifying entity. These operating criteria include requirements to: restrict the amount of the entity's commodity interest trading with respect to its non-hedging activity; not market the entity as a pool or otherwise as a vehicle to trade commodity interests; disclose the purpose of and restrictions on the entity's commodity interest trading; and submit to special calls to demonstrate compliance with the foregoing provisions. A supplemental Notice must be filed, as necessary, to render the original Notice "accurate and complete."[8]

Based upon its staff's experience in administering Rule 4.5, the Commission has made various revisions to the rule subsequent to its initial adoption. These revisions have expanded the range of persons eligible to claim relief under the rule[9] and the trading strategies that may be engaged in under the rule—*i.e.*, that unlimited hedging but limited non-hedging activities may be engaged in under the rule.[10] Based upon staff's most recent experience with Rule 4.5, the Commission again is proposing revisions to the rule and, in particular, to the operating criteria concerning the amount of a qualifying entity's non-hedging commodity interest trading.

II. The Proposal

A. The Text of the Proposal

Currently, Rule 4.5(c)(2)(i) provides that the Notice of Eligibility must contain a representation that the eligible person must operate the qualifying entity such that the entity:

> Will use commodity futures or commodity option contracts solely for bona fide hedging purposes within the meaning and intent of [Rule] 1.3(z)(1); *Provided, however,* That in addition, with respect to positions in commodity futures or commodity option contracts which do not come within the meaning and intent of [Rule] 1.3(z)(1), a qualifying entity may represent that the aggregate initial margin and premiums required to establish such positions will not exceed five percent of the liquidation value of the qualifying entity's portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; And, *Provided further,* That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in [Rule] 190.01(x) may be excluded in computing such 5 percent.

This limitation on non-hedge activity contained in Rule 4.5 has come to be known as "the 5 percent test."

Because futures margins have generally been set at levels near or below 5 percent of contract value, the 5 percent test has permitted the notional value of non-hedging commodity futures and option positions to approximate the liquidation value of an entity's portfolio. Recently, however, eligible persons and qualifying entities have expressed concern to Commission staff over the 5 percent test, because margin levels for certain stock index futures have come to significantly exceed 5 percent of contract value, thereby limiting the use of such contracts in non-hedging strategies to a much greater extent than other types of contracts with lower margins.[11] They also have expressed concern that a similar constraint could arise with respect to security futures products (SFPs), because the required margin for SFPs will be 20 percent of contract value.[12]

In response to these concerns, the Commission is proposing to amend Rule 4.5 by adding as an alternative to the 5 percent test a limitation based on the notional value of non-hedge positions. This amendment would reorganize paragraph (c)(2)(i) of the rule, to: (1) Redesignate the 5 percent test as new paragraph (c)(2)(i)(A); and (2) provide an alternative non-hedge operating criterion in new paragraph (c)(2)(i)(B).

As proposed, this alternative would provide that, with respect to non-hedge commodity interest positions, a qualifying entity may represent that the aggregate notional value of such positions does not exceed the liquidation value of the qualifying entity's portfolio (notional test). This alternative is based upon a proposal recently made to the Commission's Division of Clearing and Intermediary Oversight in connection with a request for "no-action" relief from the 5 percent test of Rule 4.5(c)(2).[13] For the purpose of the notional test, "notional value" would be calculated for futures by multiplying for each such position the size of the contract, in contract units, by the current market price per unit and for options by multiplying for each such position the size of the contract, in contract units, by the strike price per unit.

The following two examples show the different effects of the existing and proposed non-hedging tests using futures contracts based on equity, in one instance, and on debt, in the other instance. In each example, the eligible person desires to establish the maximum number of contracts permissible for the qualifying entity. In both examples, it is assumed that the entity's liquidation value is $10 million, the settlement level of the contract is as of September 25, 2002, and the margin requirement is as of September 26, 2002.

With respect to the S&P 500 Stock Price Index futures contract traded on the Chicago Mercantile Exchange, the number of contracts the person could establish would be:

5% of liquidation value = $500,000 (.05 × $10,000,000)
Initial non-hedge margin for a single S&P contract = $17,813, or almost 9% of contract value
S&P settlement level = 819.29 points
S&P contract value = $204,822.50 (819.29 × $250 per point)
5% Test = 28 contracts ($500,000/$17,813=28.07)
Notional Test = 48 contracts ($10,000,000/$204,822.50=48.8)

Thus, for establishing positions in the S&P 500 Stock Price Index future contract, the notional test would be less restrictive.

With respect to the 10-Year Treasury Note contract traded on the Chicago Board of Trade, the number of contracts that the eligible person could establish would be:

5% of liquidation value = $500,000 (.05 × $10,000,000)
Initial non-hedge margin for a single T-Note contract = $1,755, or less than 2% of contract value
T-Note settlement level = 114,160 points
T-Note contract value = $114,160 (114,160 × 100%)
5% Test = 284 contracts ($500,000/$1,755=284.9)
Notional Test = 87 contracts ($10,000,000/$114,160=87.6)

Thus, for establishing positions in the 10-Year Treasury Note contract, the 5 percent test would be less restrictive.

The following table summarizes this information:

Contract	Liquidation value	5%	Initial margin (as of 9/26/02)	Settlement level (as of 9/25/02)	Multiplier	Contract value	No. Contracts 5% test	Contracts notional test
S&P	$10m	$500,000	$17,813	819.29	$250	$204,822.50	28	48
T-Note	10m	500,000	1,755	114,160.00	100%	114,160.00	284	87

The Proposal (and the "no-action" position taken below) would not affect the ability of eligible persons claiming relief under Rule 4.5 to use commodity interests for *bona fide* hedging purposes on an unlimited basis. Rather, it would establish a second, alternative test under which they could use commodity interests for other than *bona fide* hedging purposes. Also, the Proposal (and the "no-action" position) would not affect any other provision of Rule 4.5, including the proviso following paragraph (c)(2) of the rule that:

> the making of such representations [as are required in the Notice of Eligibility] shall not be deemed a substitute for compliance with any criteria applicable to commodity futures or commodity options trading established by any regulator to which [an eligible] person or qualifying entity is subject.

B. Request for Comment

The Commission requests comment on the Proposal and on the following issues:

(1) Do the proposed changes adequately address perceived problems with the existing requirements under Rule 4.5?

(2) Is there some other limitation for non-hedge positions that the Commission should adopt in lieu of, or in addition to, the existing and proposed limitations?

(3) Should the Commission impose *any* limitation for non-hedge activity by persons claiming relief under Rule 4.5?

C. "No-Action" Position

The Proposal would facilitate the use of the commodity interest markets by persons and entities who, in accordance with Rule 4.5, are "otherwise regulated" and it would potentially benefit other market participants through increased liquidity. Accordingly, the Commission has determined that, pending action on the Proposal, it will not commence any enforcement action against an eligible person for failing to register as a CPO in accordance with section 4m(1) of the Act,[14] where the eligible person operates a qualifying entity in accordance with the proposed revisions to Rule 4.5(c)(2).

Neither eligible persons who have claimed relief under Rule 4.5 nor eligible persons who claim such relief in the future need to take any additional action to operate their qualifying entities in accordance with the notional test. Rather, making the representations currently required by the rule in a Notice filed with the NFA and the Commission—including the representation concerning the 5 percent test—is all that is required.

This position will remain in effect until such time as the Commission takes final action on the Proposal. It is, however, subject to the condition that upon adoption of any amendment to Rule 4.5, the eligible person must comply in full with the terms of any amendment as the Commission may adopt or with the existing 5 percent test of Rule 4.5. In the event the Commission adopts an alternative non-hedge operating criterion that varies from the criterion proposed herein, it will provide affected eligible persons and qualifying entities with sufficient time within which to comply with the criterion as adopted.

III. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA),[15] which imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to the Proposal. The Commission believes the proposed amendment of Rule 4.5 does not contain information requirements which necessitate the approval of the Office of Management and Budget, because the purpose of the amendment is to provide an alternative representation that may be made to claim the relief available under the rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[16] requires that agencies, in promulgating rules, consider the impact

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[4] S. Rep. No. 384, 97th Cong., 2d Sess. 79–80 (1982).

[5] 50 FR 15868 (Apr. 23, 1985), which contains a full discussion of the history of the directive and the subsequent adoption of Rule 4.5.

[6] Rules 4.5(a) and (b).

[7] Rule 4.5(c).

[8] Rule 4.5(d).

Over the past ten years, eligible persons have filed approximately 15,500 initial and supplemental Notices with the NFA and the Commission, as follows: registered investment companies (filing on a series-by-series basis)—12,000; state-regulated insurance companies—600; state- or federally-regulated financial depository institutions—2,700; and pension plan trustees, fiduciaries and employers—200. However, not all of the qualifying entities named in these Notices may still be in operation as of this date.

Additionally, Rule 4.5 provides that certain pension plans are not commodity pools. Because this exclusion is self-executing, no notice must be filed to claim it. Accordingly, the amendment to Rule 4.5(c) that the Commission is today proposing does not apply to these plans or their operation. *See* Rule 4.5(a)(4)(i)–(iv).

[9] See 58 FR 43791 (Aug. 18, 1993). The Commission also has expanded the class of persons who are "non-pools" under Rule 4.5. *See* 65 FR 24127 (Apr. 25, 2000).

[10] *See* 58 FR 6371 (Jan. 28, 1993).

[11] *See, e.g.*, comments received in connection with the Commission's Roundtable on CPO and CTA Issues, held on September 19, 2002. These comments may be accessed at *http://www.cftc.gov/opa/press02/opa4700–02.htm.*

The Commission held the Roundtable as a result of its "Report on the Study of the Commodity Exchange Act and the Commission's Rules and Orders Governing the Conduct of Registrants Under the Act." The Report was mandated by section 125 of the Commodity Futures Modernization Act of 2000 (CFMA), which directed the Commission to conduct a study of those sections of the Act and the Commission's rules applicable to intermediaries. The Report can be accessed through: *www.cftc.gov/files/opa/opaintermediarystudy.pdf*, and section 125 of the CFMA can be accessed through: *www.cftc.gov/files/ogc/ogchr5660.pdf.*

[12] *See* CFTC Rule 41.45(b)(1) and Securities and Exchange Commission Rule 403(b)(1), 67 FR 53146, 53174 and 53179, respectively (Aug. 14, 2002).

[13] *See* Letter of Barclays Global Investors, N.A. dated July 18, 2002, to Jane K. Thorpe, Director of the Division.

[14] 7 U.S.C. 6m(1).

[15] 44 U.S.C. 3501 *et seq.*

[16] 5 U.S.C. 601 *et seq.*

of these rules on small entities. The definitions of small entities that the Commission has established for this purpose do not address the eligible persons and qualifying entities set forth in Rule 4.5 because, by the very nature of the rule, the operations and activities of such persons and entities generally are regulated by federal and state authorities other than the Commission. Assuming, arguendo, that such persons and entities would be small entities for purposes of the RFA, the Commission believes that the Proposal would not have a significant economic impact on them because it would relieve a greater number of those persons (and entities) from the requirement to register as a CPO and from the disclosure, reporting and recordkeeping requirements applicable to registered CPOs.

Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to section 3(a) of the RFA,[17] that the Proposal will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission invites comment from any person who believes that these rules, as proposed, would have a significant economic impact on its operation.

List of Subjects in 17 CFR Part 4

Commodity pool operators, Commodity trading advisors, Commodity futures, Commodity options.

Accordingly, 17 CFR chapter I is proposed to be amended as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6b, 6c, 6(c), 6*l*, 6m, 6n, 6o, 12a, and 23.

Subpart A—General Provisions, Definitions and Exemptions

2. Section 4.5 is proposed to be amended by revising paragraph (c)(2)(i) to read as follows:

§ 4.5 Exclusion for certain otherwise regulated persons from the definition of the term "commodity pool operator."

* * * * *

(c) * * *

(2) * * *

(i) Will use commodity futures or commodity options contracts solely for bona fide hedging purposes within the meaning and intent of § 1.3(z)(1) of this chapter; *Provided, however,* That in addition, with respect to positions in commodity futures or commodity option contracts which do not come within the meaning and intent of § 1.3(z)(1), a qualifying entity may represent that:

(A) The aggregate initial margin and premiums required to establish such positions will not exceed five percent of the liquidation value of the qualifying entity's portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; *Provided further,* That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in § 190.01(x) of this chapter may be excluded in computing such five percent; or

(B) The aggregate notional value of such positions does not exceed the liquidation value of the qualifying entity's portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into. For the purpose of this paragraph (c)(2)(i)(B), the term "notional value" shall be calculated for each such futures position by multiplying the size of the contract, in contract units, by the current market price per unit and for each such option position by multiplying the size of the contract, in contract units, by the strike price per unit;

* * * * *

Issued in Washington, DC, on October 22, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–27309 Filed 10–25–02; 8:45 am]

BILLING CODE 6351–01–P

[17] 5 U.S.C. 605(b).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles–Long Beach 02–004]

RIN 2115–AA97

Security Zones; San Pedro Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish moving and fixed security zones around and under all cruise ships located on San Pedro Bay, California, in and near the ports of Los Angeles and Long Beach. These proposed security zones are needed for national security reasons to protect the public and ports from potential terrorist acts. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port Los Angeles-Long Beach.

DATES: Comments and related material must reach the Coast Guard on or before November 22, 2002.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, Waterways Management Division, 1001 S. Seaside Avenue, Building 20, San Pedro, California 90731. The Waterways Management Division maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Waterways Management Division between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Rob Griffiths, Assistant Chief, Waterways Management Division, (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP Los Angeles-Long Beach 02–004), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

In our final rule, we will include a concise general statement of the comments received and identify any changes from the proposed rule based on the comments. If as we anticipate, we make the final rule effective less than 30 days after publication in the **Federal Register**, we will explain our good cause for doing so, as required by 5 U.S.C. 553(d)(3).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Division at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions in Iraq have made it prudent for U.S. ports to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Magnuson Act (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in Subparts 6.01 and 6.04 of part 6 of Title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against a cruise ship would have on the public interest, the Coast Guard proposes to establish security zones around and under cruise ships entering, departing, or moored within the ports of Los Angeles and Long Beach. These security zones will help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against cruise ships. The Coast Guard believes the establishment of security zones is prudent for cruise ships because they carry multiple passengers.

On November 1, 2001, we issued a similar rule under docket COTP Los Angeles-Long Beach 01–011, and published that rule in the **Federal Register** (67 FR 2571, Jan. 18, 2002) under temporary section 165.T11–058 of Title 33 of the Code of Federal Regulations (CFR). Under temporary section 165.T11–058, which expired at 11:59 PDT on May 1, 2002, the Coast Guard established a 100-yard security zone around all cruise ships that entered, were moored in, or departed from the Port of Los Angeles and that were anchored at Catalina Island.

On May 1, 2002, another temporary rule was issued, under docket COTP Los Angeles-Long Beach 02–009, and was published in the **Federal Register** (67 FR 31955, May 13, 2002) under temporary section 165.T11–065 of Title 33 of the CFR. Under temporary section 165.T11–065, which expires at 11:59 p.m. PST on December 1, 2002, the Coast Guard established moving and fixed security zones around cruise ships located on San Pedro Bay, California, near and in the ports of Los Angeles and Long Beach. The Captain of the Port has determined the need for continued security regulations exists.

Accordingly, this rulemaking proposes to make permanent the temporary security zones established on May 1, 2002, in the rule published in the **Federal Register** at 67 FR 31955 on May 13, 2002.

Discussion of Proposed Rule

The Coast Guard proposes to establish moving and fixed security zones around all cruise ships that are anchored, moored, or underway within the Los Angeles and Long Beach, port areas. These proposed security zones will take effect upon the entry of any cruise ship into the waters within three nautical miles outside of the Federal breakwaters encompassing San Pedro Bay and will remain in effect until the cruise ship departs the three nautical mile limit. This proposed rule, for security concerns, prohibits entry of any vessels inside the security zone surrounding a cruise ship. These security zones are within a 100 yard radius around any cruise ship that is anchored at a designated anchorage; within a 100 yard radius around any cruise ship that is moored, or in the process of mooring at any berth within the Los Angeles or Long Beach port areas; and within 200 yards ahead, and 100 yards on each side and astern of a cruise ship that is underway.

These security zones are needed for national security reasons to protect cruise ships, the public, transiting vessels, adjacent waterfront facilities, and the ports from potential subversive acts, accidents, or other events of a similar nature. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port or his designated representative. Vessels already moored or anchored when these security zones take effect are not required to get underway to avoid either the moving or fixed zones unless specifically ordered to do so by the Captain of the Port or his designated representative.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Pursuant to 33 U.S.C. 1232 and 33 CFR part 27, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States; a maximum criminal fine of $10,000; and imprisonment up to 10 years.

The Captain of the Port will enforce these zones and may request the use of resources and personnel of other government agencies to assist in the patrol and enforcement of the regulation. The Captain of the Port retains discretion to initiate Coast Guard civil penalty action against non-complaint parties pursuant to the PWSA, or, refer appropriate cases to the cognizant U.S. Attorney Office for disposition. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 33 U.S.C. 1231.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The effect of this regulation will not be significant because the zones will encompass only a small portion of the waterway. Furthermore, vessels will be able to pass safely around the zones, and may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The sizes of the zones are the minimum necessary to provide adequate protection for the cruise ships, their crews and passengers, other vessels operating in the vicinity of the cruise ships and their crews, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route to the Ports of Los Angeles and Long Beach and pleasure craft engaged in recreational activities and sightseeing. The security zones will prohibit any commercial vessels from meeting or overtaking a cruise ship in the main ship channels, effectively prohibiting use of the channels. However, the moving security zones will only be effective during cruise ship transits, which will last for approximately 30 minutes. In addition, vessels are able to safely transit around the zones while a vessel is moored or at anchor in the Ports of Los Angeles and Long Beach.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. We expect this proposed rule may affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in these small portions of the ports of Los Angeles or Long Beach near a cruise ship covered by these security zones. The impact to these entities would not be significant since these zones are proposed to encompass only small portions of the waterway for limited periods of time while the cruise ships are transiting, moored, or in anchorage. Delays, if any, are expected to be less than thirty minutes in duration.

Small vessel traffic can pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. When a cruise ship is at anchor, vessel traffic will have ample room to maneuver around the security zone. The outbound or inbound transit of a cruise ship will last about 30 minutes. Although this regulation prohibits simultaneous use of portions of the channel, this prohibition is of short duration. While a cruise ship is moored, commercial traffic and small recreational traffic will have an opportunity to coordinate movement through the security zone with the COTP or his or her designated representative.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Rob Griffiths, Assistant Chief, Waterways Management Division, (310) 732–2020.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are proposing to establish security zones. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.1154 to read as follows:

§ 165.1154 Security Zones; Cruise Ships, San Pedro Bay, California.

(a) *Definition.* "Cruise ship" as used in this section means a passenger vessel, except for a ferry, over 100 feet in length, authorized to carry more than 12 passengers for hire; making voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked or disembarked in the Port of Los Angeles or Port of Long Beach.

(b) *Location.* The following areas are security zones:

(1) All waters, extending from the surface to the sea floor, within a 100-yard radius around any cruise ship that is anchored at a designated anchorage either inside the Federal breakwaters bounding San Pedro Bay or outside at designated anchorages within three nautical miles of the Federal breakwaters;

(2) The shore area and all waters, extending from the surface to the sea floor, within a 100-yard radius around any cruise ship that is moored, or is in the process of mooring, at any berth within the Los Angeles or Long Beach port areas inside the Federal breakwaters bounding San Pedro Bay; and

(3) All waters, extending from the surface to the sea floor, within 200 yards ahead, and 100 yards on each side and astern of a cruise ship that is underway either on the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within three nautical miles seaward of the Federal breakwaters.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or remaining in these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Los Angeles-Long Beach, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 1–800–221–USCG (8724) or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(3) When a cruise ship approaches within 100 yards of a vessel that is moored, or anchored, the stationary vessel must stay moored or anchored while it remains within the cruise ship's security zone unless it is either ordered by, or given permission from, the COTP Los Angeles-Long Beach to do otherwise.

(d) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by the Los Angeles Port Police and the Long Beach Police Department.

Dated: October 4, 2002.

J.M. Holmes,

Captain, Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 02–27375 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–01–48–7174b; A–1–FRL–7376–4]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Prevention of Significant Deterioration (PSD) of Air Quality Permit Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. The revision consists of a new rule, PART Env-A 623, "Prevention of Significant Deterioration of Air Quality Permitting," that adopts into New Hampshire's SIP the federal PSD program provisions. The SIP revision also amends New Hampshire's permit procedural rule, PART Env-A 205, "Permit Notice and Hearing Procedures: Temporary Permits and Permits to Operate," that make the rule consistent with the new state PSD rule. In another document published elsewhere in this issue of the **Federal Register**, EPA is approving the State's SIP submittal as a direct final rulemaking. The action will ensure that New Hampshire and EPA will interpret and enforce the same PSD rules providing regulatory certainty to the state's regulated community. The approval of this revision will make New Hampshire's PSD program consistent with the federal plan requirements for a SIP-approved PSD program.

DATES: Written comments must be received on or before November 27, 2002.

ADDRESSES: Comments may be mailed to Steven A. Rapp, Air Permits, Toxics, and Indoor Programs, Office of Ecosystem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosytem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Brendan McCahill, (617) 918–1652. E-mail at *McCahill.Brendan@epa.gov*.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be

addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 3, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 02–25858 Filed 10–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket # ID–02–001; FRL–7397–9]

Approval and Promulgation of Air Quality Implementation Plans; State of Idaho; Northern Ada County Carbon Monoxide Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On January 17, 2002, the State of Idaho submitted a request to redesignate the Northern Ada County "not classified" carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS). The State also submitted a CO maintenance plan for Northern Ada County. In this action, EPA is proposing to approve the Northern Ada County CO redesignation request and the maintenance plan. In the Final Rules Section of this **Federal Register**, EPA is approving the State's redesignation request and State Implementation Plan (SIP) revision, involving the maintenance plan, as a direct final rule without prior proposal because the Agency views the redesignation and SIP revision as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by November 27, 2002.

ADDRESSES: Written comments may be mailed to: Steven K. Body, Office of Air Quality, EPA Region 10, 1200 Sixth Ave., Seattle WA 98101.

Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region 10, Office of Air Quality, 1200 Sixth Ave., Seattle WA 98101.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, Office of Air Quality, EPA Region 10, 1200 Sixth Ave., Seattle WA 98101. Telephone at (206) 553–0782.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule, of the same title, published in the rules section of this **Federal Register**.

Dated: October 10, 2002.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 02–27238 Filed 10–25–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2390, Docket No. 02–179, RM–10199]

Radio Broadcasting Services; Port St. Joe, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses a pending petition for rulemaking to add an FM allotment in Port St. Joe, Florida. The Commission had requested comment on a petition filed by Cecil P. Staton, proposing the allotment of Channel 242A at Port St. Joe, Florida. *Port St. Joe, Florida*, 66 FR 44586, August 24, 2001. The petitioner filed comments in support of the proposal. No other comments were received. On June 16, 2002, petitioner requested that the Commission dismiss the pending petition. This document grants that request, dismissing the petition and terminating the proceeding.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. The address of counsel for the petitioner is as follows: Timothy K. Brady, P.O. Box 71309, Newnan, GA 30271–1309.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–179, adopted September 18, 2002, and released September 27, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *See* 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26224 Filed 10–25–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2308, Docket No. 01–191, RM–10211]

Radio Broadcasting Services; Clayton, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses a pending petition for rulemaking to add an FM allotment in Clayton, Oklahoma. The Commission had requested comment on a petition filed by Maurice Salsa, proposing the allotment of Channel 232C3 at Clayton, Oklahoma. *Clayton, Oklahoma*, 66 FR 44588, August 24, 2001. The petitioner filed comments in support of the proposal. No other comments were received. On October 17, 2001, petitioner submitted a motion requesting that the Commission dismiss the pending petition. This document grants that motion, dismissing the petition and terminating the proceeding.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. The address of the petitioner is as follows: Maurice Salsa, 5616 Evergreen Valley Drive, Kingwood, TX 77345.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–191, adopted September 11, 2002, and released September 27, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26223 Filed 10–25–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 02–277; FCC 02–249]

RIN 4207

2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission initiates its third biennial review of its broadcast ownership rules pursuant to section 202 of the Telecommunications Act of 1996. The Commission invites comment on the national television multiple ownership rule, the local television multiple ownership rule, the radio-television cross-ownership rule, and the dual network rule. The first two rules have been reviewed and remanded to the Commission by the U.S. Court of Appeals for the District of Columbia Circuit, and the issues on remand are incorporated into the proceeding. In addition, comments filed in previously opened proceedings on the local radio ownership rule and the newspaper/broadcast cross-ownership rule are incorporated into this proceeding. The Commission's Media Ownership Working Group also separately released a series of studies on the media marketplace, and evidence in those studies, as well as the comments, will be used to support decisions in this proceeding.

DATES: Comments are due on or before December 2, 2002; reply comments are due on or before January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, (202) 418–2380, and Debra Sabourin, (202) 418–2330. Press inquiries should be directed to Michelle Russo at (202) 418–2358 (voice), (202) 418–7365 (TTY) or (888) 835–5322 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's *Notice of Proposed Rulemaking* ("NPRM") MB 02–277; FCC 02–249, adopted September 12, 2002 and released September 23, 2002. The complete texts of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via email *qualexint@aol.com*. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419 comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings* (63 FR 24121, May 1, 1998). This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact Brian Millin at (202) 418–7426 (voice), (202) 418–7365 (TTY), or via email at *bmillin@fcc.gov*. Parties may submit their comments using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies. Comments may be filed as an electronic file via the Internet at *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply. Additional information on ECFS is available at *http://www.fcc.gov/e-file/ecfs.html*.

Filings may also be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered

paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Synopsis of the Notice of Proposed Rulemaking

I. Introduction

1. This *NPRM* initiates a comprehensive review of the Commission's media ownership rules. The law governing our media ownership policies and the media market has undergone substantial changes since our ownership rules were adopted. As a result, this proceeding will include a careful analysis of our policy goals and the development and implementation of a regulatory framework that best serves to achieve those goals.

2. The Commission has long regulated media ownership as a means of promoting diversity, competition, and localism in the media without regulating the content of broadcast speech. The Commission has adopted these regulations pursuant to sections 307, 308, 309(a), and 310(d) of the Communications Act, which authorize the Commission to grant and renew broadcast station licenses in the public interest. The existing rules were adopted largely on a rule-by-rule basis and evolved incrementally over the years. During these evolutions, courts generally approved our rules as long as they were rationally related to achieving their stated purpose and our decisions complied with administrative procedure requirements.

3. The Telecommunications Act of 1996 ("the Act"), Public Law No. 104–104, fundamentally changed broadcast ownership law. Section 202(h) of the 1996 Act directs the Commission to re-examine its broadcast ownership rules every two years and repeal or modify any regulation it determines to be no longer in the public interest. Recent court decisions have held that section 202(h) changes the way the Commission must evaluate its broadcast ownership rules. The courts have stated that section 202(h) carries with it a presumption in favor of repealing or modifying the ownership rules. The court decisions interpreting section 202(h) require a Commission decision to retain or modify its media ownership regulations, in its biennial review, to be based on a solid factual record and a consistent analytical framework.

4. The regulatory structure best suited to promote the public interest is not static. Thus, the Commission's media ownership rules must be reassessed on an ongoing basis to ensure that they are grounded in the current realities of the media marketplace. It is only through this reevaluation that the Commission can be assured that its media ownership rules actually advance, rather than undermine, our policy goals. In this regard, we recognize that the marketplace has changed dramatically over the last few decades, with both greater competition and diversity, and increasing consolidation.

5. In conducting this reassessment of our broadcast ownership regulatory framework, we must clearly define our objectives as we strive to promote the public interest. The Commission's ownership policies traditionally have focused on advancing three broadly defined goals: (1) Diversity, (2) competition, and (3) localism. This proceeding will review these policy objectives in light of the current media marketplace and determine whether Commission intervention is necessary to achieve these objectives. In addition, we will consider whether there are additional objectives that the Commission should strive to achieve through our media ownership rules. One such goal may be increased innovation of media platforms and services. In defining these objectives, this proceeding will consider whether the Commission should prioritize these policy objectives and, if so, how. By determining the relative weight of each objective, the Commission will be well positioned to address those instances in which there is tension between our policy goals.

6. This *NPRM* initiates review of four ownership rules: the national television multiple ownership rule, § 73.3555(e); the local television multiple ownership rule, § 73.3555(b); the radio-television cross-ownership rule, § 73.3555(c); and the dual network rule, § 73.658(g). The first two rules have been reviewed and remanded to the Commission by the U.S. Court of Appeals for the District of Columbia Circuit. We address the issues on remand in this proceeding. *Fox Television Stations, Inc.* v. *FCC* ("*Fox Television*"); *Sinclair Broadcast Group, Inc.* v. *FCC* ("*Sinclair*").

7. The Commission previously has initiated proceedings on the local radio ownership rule, MM Docket No. 01–317, Definition of Radio Markets, NPRM/FNPRM (66 FR 63986, December 11, 2001), and the newspaper/broadcast cross-ownership rule, Cross-Ownership of Broadcast Stations and Newspapers, MM Docket No. 01–235, Newspaper/Radio Cross-Ownership Waiver Policy, MM Docket No. 96–197, Order and *NPRM* (66 FR 50991, October 5, 2001). The local radio ownership rule sets forth the number of radio stations that an entity may own in a single radio market, § 73.3555(a). The local radio ownership proceeding examines the effects of market consolidation, the proper definition of a radio market, and possible changes to our local radio ownership rules and policies to reflect the current radio marketplace. The newspaper/broadcast cross-ownership rule, which prohibits the common ownership of a daily newspaper and a broadcast station in the same market, § 73.3555(d), is currently under review in the newspaper/broadcast cross-ownership proceeding. Comments filed in those proceedings will be incorporated in this proceeding. We seek additional comment on those rules to the extent necessary to address issues raised for the first time in this *NPRM*. We do not contemplate a change in the broadcast attribution rules, except to the extent that the single majority shareholder exemption is under consideration in the cable proceeding. *Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992; Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, CS Docket No. 98–82, *FNPRM* (66 FR 51905, October 11, 2001). We note in this regard that the attribution rules do not themselves prohibit or restrict ownership of interests in any entity, but rather determine what interests are cognizable under those ownership rules. Furthermore, the focus of the biennial review process is whether the ownership rules "are necessary in the public interest as the result of competition." The media attribution limits are set at the level the Commission believes conveys influence over the affairs of the company in which the interest is held. This level is not related to any changes in competitive forces, and hence the limits are not reviewed on a biennial basis.

8. Our local ownership rules, which include the newspaper/broadcast cross-ownership rule, the local TV ownership rule, the radio/TV cross-ownership rule, and local radio ownership rule, are interrelated. Each is intended to foster competition and diversity in the local media marketplace. As a result, it is appropriate for the Commission to consider these rules collectively, as any change to one rule may affect the need for other rules to be retained, modified, or eliminated. In addition, by evaluating our local ownership rules collectively, we facilitate consistent analysis of policy questions that are common to multiple rules. We are better able to analyze and apply our findings in areas such as these by considering the rules collectively rather than separately. Assessing these rules collectively also avoids the problem in sequential decision making whereby early decisions can inadvertently predetermine—or preclude certain approaches in—later decisions.

II. Legal Framework for Biennial Ownership Review

9. Section 202(h) of the 1996 Act provides: The Commission shall review its rules adopted pursuant to this section and all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest. Section 11 further requires that the Commission "shall repeal or modify any regulation it determines to be no longer necessary in the public interest." 47 U.S.C. 161.

10. The 1996 Act repealed the prohibition on common ownership of cable and telephone systems, overrode the few remaining regulatory limits upon cable/network cross-ownership, eliminated the national and relaxed the local restrictions upon radio ownership, eased the "dual network" rule for television, and directed the Commission to eliminate the cap upon the number of television stations any one entity may own and to increase to 35 from 25 the maximum percentage of American households a single TV broadcaster may reach. According to the court in Fox Television, these enactments, together with section 202(h), "set in motion a process to deregulate the structure of the broadcast and cable television industries" as both competition and diversity among media voices increase.

11. This is our third biennial review. As a result of the 1998 biennial review proceeding, the first review, the Commission relaxed the dual network rule, eliminated the experimental broadcast station multiple ownership rule, and initiated a proceeding with respect to the newspaper/broadcast cross-ownership rule. The Commission decided to retain the local radio ownership rule, the national TV ownership rule (including the UHF discount), and the cable/broadcast cross-ownership rule. Prior to completing the 1998 biennial review, the Commission had substantially relaxed the local TV ownership and radio/TV cross-ownership rules in the separate local television ownership proceeding, (MM 91–221, Report and Order ("*R&O*"), 64 FR 50651, September 17, 1999). In the 2000 biennial review proceeding, a Commission-wide comprehensive proceeding, the Commission endorsed the results of the 1998 biennial review of its broadcast ownership rules. 1998 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to section 202 of the Telecommunications Act of 1996 (65 FR 43333, July 13, 2000); 2000 Biennial Regulatory Review, CC Docket No. 00–175, Report, 16 FCC Record 1207 (2001).

12. *Court Decisions Reviewing 1998 Biennial Review.* The Commission's decisions in the 1998 Biennial Report relating to the cable/broadcast cross-ownership rule and the national TV ownership rule were challenged in the United States Court of Appeals for the District of Columbia Circuit. In Fox Television, the court vacated the cable/broadcast cross-ownership rule, and remanded the decision to retain the national TV ownership rule, holding that the Commission's decision to retain these rules was arbitrary and capricious and contrary to section 202(h) of the 1996 Act. The court stated that the Commission had "no valid reason to think the [national TV ownership rule] is necessary to safeguard competition" or "to advance diversity" and had given no reason to depart from the conclusion the Commission had reached in 1984 that the rule was no longer necessary. The court observed that the Commission had provided no analysis of the state of competition in the television industry to justify its decision to retain the national TV ownership rule. In addition, the court faulted the Commission's decision to retain the national TV ownership rule while it observed the effects of changes in the local TV ownership rule. The court concluded that this "wait-and-see" approach could not be squared with section 202(h), which "carries with it a presumption in favor of repeal or modification of ownership rules."

13. In retaining the national TV ownership rule, the Commission, in part, reasoned that the rule was necessary to strengthen the bargaining power of the network affiliates, thereby promoting localism and diversity. Although the court in Fox Television rejected the networks' argument that this justification was inconsistent with the requirements of section 202(h), the court determined that the Commission's reliance on this justification was invalid because it did not have sufficient record support. In particular, the court held that the Commission had failed to justify its departure from the 1984 Multiple Ownership Order, where the Commission said it "had no evidence indicating that stations which are not group-owned better respond to community needs, or expend proportionately more of their revenues on local programming." Nonetheless, the court held that the Commission could conceivably distinguish—as incorrect or inapplicable because of changed circumstances—its views in the 1984 Multiple Ownership Order. The court also noted that the Commission did advert to possible competitive problems in the national markets for advertising and program production, and that the intervenors, including the National Association of Broadcasters and National Affiliated Stations Alliance, made a plausible argument that the national television ownership rule furthers competition in the national television advertising market.

14. Based on these findings, the court remanded for further consideration the issue of whether to repeal or modify the national TV ownership rule, holding that "the probability that the Commission will be able to justify retaining the Rule is sufficiently high that vacatur of the Rule is not appropriate." The court also held that the Commission's decision to retain the national TV ownership rule did not violate the First Amendment, reaffirming that the review of broadcast regulations under First Amendment jurisprudence is more deferential than review of cable or print media regulations. The court also rejected the networks' claim that section 202(h) does not allow the Commission to regulate broadcast ownership in the interest of diversity alone. The court held that in the context of broadcast regulation, the public interest has historically embraced both diversity and localism, that protecting diversity is a permissible policy for the agency to seek to advance, and that nothing in section 202(h) indicated that Congress had departed from that approach. The court then held that whatever the virtues may be of a free market in television stations, "Congress may, in the regulation of

broadcasting, constitutionally pursue values other than efficiency—including in particular diversity in programming, for which diversity of ownership is perhaps an aspirational but surely not an irrational proxy."

15. The court also, in Fox Television, vacated the cable/broadcast cross-ownership rule, finding that the Commission had failed to justify its retention of the rule as necessary to safeguard competition. In the 1998 Biennial Report, the Commission attempted to justify the retention of the rule by arguing that a cable operator that also owns a broadcast station has the incentive to discriminate against other broadcasters by: (1) Offering joint advertising sales and promotions, and (2) not carrying, or carrying on undesirable channels, broadcast signals of competing stations. The court found that the Commission had not shown a substantial enough probability of discrimination to deem reasonable a broad cross-ownership rule, especially in light of: (1) Existing conduct rules, such as must-carry, ensuring access to cable systems, and (2) competition from DBS providers, which would make discrimination against competing broadcasters unprofitable. Further, the court found that the Commission had failed to justify its departure from a 1992 Report and Order in which it had concluded that the rule was not necessary to prevent carriage discrimination. The court also found that the Commission had failed to justify the rule based on its diversity concerns. Based on its assessment that there was little chance that the Commission would be able to justify retaining the cable/broadcast-cross-ownership rule, and that the disruption caused by vacatur would be insubstantial, the court vacated the rule.

16. With respect to the standard of review generally under section 202(h), the court noted, in the context of discussing the cable/broadcast cross-ownership rule, that the Commission had applied too lax a standard and that "[t]he statute is clear that a regulation should be retained only insofar as it is necessary in, not merely consonant with, the public interest." The Commission petitioned for rehearing as to this issue, arguing that the court's interpretation of the statutory language would impose a higher standard in deciding whether to retain a rule than that which applied to the adoption of the rule in the first place. On rehearing, the court deleted the paragraph in its earlier opinion holding the Commission to a higher "necessary" standard in biennial review proceedings, finding that the cable/broadcast cross-ownership rule could not pass muster even under the more relaxed "consonance" standard and that determining the applicability of a stricter standard of review therefore was not necessary. The court decided to leave "unresolved precisely what section 202(h) means when it instructs the Commission first to determine whether a rule is 'necessary in the public interest' but then to 'repeal or modify' the rule if it is simply 'no longer in the public interest.'"

17. In Sinclair Broadcast Group, Inc. v. FCC, the court reviewed the Commission's decision relaxing the local TV ownership rule. That rule allows the combination of two television stations in the same market if: (1) The Grade B contours of the stations do not overlap, or (2) (a) one of the stations is not among the four highest-ranked stations in the market, and (b) at least eight independently owned and operating full power commercial and non-commercial television stations, or "voices," would remain in that market after the combination. Under the rule, voices are defined to include only broadcast television stations in the market. In Sinclair, the court held that the Commission "adequately explained how the [local TV ownership rule] furthers diversity at the local level and is necessary in the 'public interest' under section 202(h) of the 1996 Act." The court also upheld the local TV ownership rule against a First Amendment challenge, applying the "rational-basis" standard of review. The court held that there was a rational relationship between the Local TV Ownership Report and Order and our diversity and competition goals. The court noted that choosing the number eight and defining voices "are quintessentially matters of line drawing invoking the Commission's expertise in projecting market results," and did not decide the issue of whether eight is the appropriate numerical limit. The court invalidated, however, the Commission's definition of voices under the rule because it did not adequately explain its decision to include only broadcast television stations as voices. The court pointed out that the definition was inconsistent with the definition of voices for the radio/TV cross-ownership rule, which also considers major newspapers and cable television to be voices. The court observed that "[o]n remand, the Commission conceivably may determine to adjust not only the definition of 'voices' but also the numerical limit."

18. We seek comment on the statutory language of section 202(h) of the 1996 Act and the court's interpretations of that language in Fox Television and Sinclair. We specifically invite comment on the standard we should apply in determining whether to modify, repeal, or retain our rules under section 202(h) of the 1996 Act. For example, does the phrase, "necessary in the public interest," mean we must repeal a rule unless we find it to be indispensable? Or does the phrase mean that we can retain a rule if we would be justified under the current circumstances in adopting it in the first instance because the record shows that it serves the public interest? Or is the standard somewhere in between? The Commission argued in its rehearing petition in Fox Television that "necessary in the public interest," when viewed in the context of the rest of the 1934 and 1996 Acts, means "in the public interest," or useful or appropriate. The very next sentence of the statute uses the term "no longer in the public interest," thus appearing to equate a rule's being "necessary in the public interest" with its being "in the public interest." The Commission argued that other provisions of the Communications Act contain similar language using the terms, "necessary," "required," and "necessity," but those provisions have been construed to require the Commission to demonstrate that the rules we adopt advance legitimate regulatory objectives, not that they are necessary in the sense of being indispensable. Others might argue, however, that "necessary in the public interest" connotes that a rule must be essential or indispensable in order for us to retain it. What light do the statutory context and other case law cast on the meaning of the term? We invite comment on any other factors we should consider with respect to the meaning of the statutory term "necessary in the public interest" as it bears on our review of the ownership rules at issue in this proceeding.

19. In both Fox Television and Sinclair, the court, noting that "section 202(h) carries with it a presumption in favor of repealing or modifying the ownership rules," faulted the Commission's justification of its rules as lacking supporting factual evidence. Accordingly, with respect to the rules under consideration, we strongly encourage commenters to provide empirical evidence to buttress their assertions. Our Media Ownership Working Group is engaged in a number of studies that are intended to inform the 2002 biennial review. These studies, which will be released separately for comment, concern the following subjects: (1) Inter-media substitutability among local media outlets from the perspective of local advertisers; (2) the effect of broadcast media concentration on the level of non-advertising content produced and consumed; (3) the status of broadcast television in the multichannel marketplace; (4) a comparison of local news quantity and quality on network-owned stations and network affiliates; (5) past consumer substitution patterns across various media; (6) the effect of common ownership of same-market newspapers and television stations on news coverage; (7) a survey of American consumers regarding outlets used for news and current affairs; (8) an examination of program diversity on prime time network television between 1966 and 2002; (9) a survey of changes in the availability of media outlets over time in ten select cities; and (10) the effect of local radio market concentration on program diversity and advertising prices. Given the importance of this data to the proceeding, and in order to streamline the review process, comments will be due 60 days after Commission release of the studies; reply comments will be due 90 days after release of the studies. We intend to use the evidence collected in the studies, as well as the comments, to guide and support our decisions in this proceeding.

20. *The First Amendment.* Any media ownership rules we ultimately adopt in this proceeding must be consistent not only with the legal standard of section 202(h), but also with the First Amendment rights of the affected media companies and of consumers. The Fox Television and Sinclair cases recently applied the rational-basis standard to broadcast ownership rules. The court held in Fox Television that the Commission's decision to retain the national TV ownership rule did not violate the First Amendment, and it held in Sinclair that the local TV ownership rule complies with the First Amendment. The court reaffirmed in both cases that the rational-basis standard of First Amendment scrutiny is applicable to broadcast television rather than the higher intermediate scrutiny applicable to cable operators or the strict scrutiny applicable to print media. As the court noted in Sinclair, there is no unabridgeable First Amendment right to hold a broadcast license when a would-be broadcaster does not satisfy the public interest by meeting the Commission criteria for licensing, including ownership limitations.

21. In general, ownership limits on cable operators have been subject to the O'Brien, or intermediate scrutiny, test. Under this standard, government regulation of speech will be upheld only if: (1) It furthers an important or substantial governmental interest; (2) the government interest is unrelated to the suppression of free expression; and (3) the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest. The Supreme Court has determined that "promoting the widespread dissemination of information from a multiplicity of sources" is a government interest that is not only important, but is of the "highest order" and is unrelated to the suppression of free speech.

22. Courts have consistently applied the rational-basis test when faced with First Amendment challenges to Commission ownership restrictions on broadcast media. This is true even when the ownership regulation effectively limits what a non-broadcast media firm, such as a newspaper or a cable company, can own. In other words, when the rule prevents a newspaper from owning an in-market radio station, the courts do not apply the strict scrutiny test applicable to newspapers as newspapers, but rather the rational-basis test used for evaluating broadcast regulations. We will explore a variety of options for a new media ownership framework. We seek comment on the standard of review that would apply to these options.

III. The Modern Media Marketplace

23. Section 202(h) requires the Commission to consider whether any of its ownership rules are "necessary in the public interest as a result of competition." As noted, the Fox Television court faulted the Commission for failing to provide any analysis of the state of competition in the television industry to justify its retention of the national TV ownership rule. Therefore, our evaluation of the broadcast ownership rules must take into account the current status of competition in the media marketplace. Throughout this proceeding, we seek comment on how changes and developments in the media marketplace affect our analysis and decision making. For example, in section IV we explore the definition of the product market and seek comment on whether the proliferation of programming outlets and services requires the Commission to redefine the product market to include media other than broadcasting. The data provides a brief overview of the number of outlets and potential competitors in the video, audio, and newspaper industries. We seek comment on the significance of this data to our biennial review of the ownership rules as well as any other competitive data that would be useful to our analysis.

24. *Video.* There are currently over 106 million TV households in the U.S. served by a variety of video outlets. Over-the-air outlets include: 1,331 commercial TV stations (752 UHF, 579 VHF); 381 non-commercial, educational TV stations (254 UHF, 127 VHF); 554 Class A TV stations (451 UHF, 103 VHF); and, over 2,100 other low-power TV stations. Over sixty percent of commercial TV stations are affiliated with one of the top four networks (ABC, CBS, Fox and NBC). Another 19 percent are affiliated with the smaller national networks: United Paramount (UPN), Warner Brothers (WB), and Paxson Network. The remaining commercial stations are affiliated with other smaller networks or are independents.

25. Cable TV is available to the vast majority of TV households in the U.S. There are 69 million households that subscribe to cable. There are over 230 national cable programming networks and more than 50 regional networks. Many cable systems offer access channels for public affairs, educational and governmental ("PEG") programming and a few offer local cable news, educational and public affairs programming. Direct broadcast satellite ("DBS") is available nationwide and has over 18 million subscribers. In addition to the national cable programming networks, DBS offers regional sports networks. DBS may also retransmit the signals of local and network affiliate television stations to subscribers in their local markets. DBS is also required to reserve not less than 4 percent of its channel capacity exclusively for noncommercial programming of an educational or informational nature. Other Multi-channel Video Program Distributors ("MVPDs") include: satellite master antenna systems (SMATV), with 1.5 million subscribers; home satellite dishes, which serve about 1 million homes; and multipoint distribution service (MDS), with about 700,000 subscribers.

26. *Audio.* Over 13,260 radio stations are currently on the air (4,811 AM, 6,147 commercial FM and 2,303 educational FM). The average radio market has 23 commercial stations. Of the 285 Arbitron radio markets, almost one-half of the markets are served by more than 20 stations and 90% of the markets are served by more than 10 stations. In addition to broadcast radio, audio music, talk, and news channels are provided by many cable and DBS operators. Two Digital Audio Radio Service ("DARS") systems with over 140,000 subscribers offer almost 100 audio channels nationwide using

satellite transmission. Even more audio channels are available through Internet streaming.

27. *Newspapers.* In 2001, there were 1,468 daily newspapers in the U.S. The total circulation for those newspapers was about 56 million. There were also about 7,700 weekly newspapers with a combined circulation of about 71 million. Sunday newspaper circulation collectively reaches over 59 million per week. Many of these newspapers are available over the Internet.

28. *Internet and other media.* Almost 60% of the U.S. population has Internet access at home. Over 40 million residential Web users have accessed streaming video. Also, about 90% of households have at least one VCR and more than one-half of those own at least two VCRs. Over 14 million homes have DVD players. Personal Video Recorders ("PVR") sales have reached 500,000 since they were introduced two years ago.

IV. Policy Goals

29. Each of the rules under review in this proceeding seeks to further one or more of three important public interest goals—diversity, competition and localism. The Commission long has embraced these values as the foundation of its ownership rules and policies. In this proceeding the Commission seeks to: (1) Define more precisely the Commission's policy goals; (2) determine how to best promote these goals in today's media market consistent with our statutory mandate; (3) establish the best measure for diversity, competition, and localism; and (4) establish a balancing test to prioritize the goals if tension exists between them.

30. The courts have recognized the Commission's legitimate interest in promoting these policy goals through ownership limits. Media ownership may be limited in order to promote the First Amendment interests of consumers of the electronic media and to promote diversity and competition. The Court has upheld the Commission's predominant reliance on the diversity rationale to support its newspaper/broadcast cross-ownership policies. In Sinclair, the Court of Appeals noted that ownership limits encourage diversity in the ownership of broadcast stations, which can in turn encourage a diversity of viewpoints in the material presented over the airwaves. The court added that diversity of ownership as a means to achieving viewpoint diversity has been found to serve a legitimate government interest, and has, in the past, been upheld under rational basis review. The interests that government may promote through content neutral rules also include competition—both the promotion of competition and the prevention of anti-competitive practices and results.

31. Section 202(h) requires the Commission to determine whether its ownership rules remain necessary in the public interest as a result of competition. Therefore, we must first determine whether the marketplace provides a sufficient level of competition to protect and advance our policy goals. If not, we must determine whether the existing rules or revisions to those rules are required to protect and advance diversity, competition, and localism in the media marketplace.

32. The following paragraphs briefly discuss the Commission's policy goals and invite comment on each. We welcome the submission of any relevant empirical studies for quantifying benefits and harms, as well as comments based on well-established economic theory and empirical evidence. In that regard, we are especially interested in receiving comments that provide not only the theoretical justifications for adopting a particular regulatory framework, but also empirical data on the effect that competition and consolidation in the media industry have on our policy goals.

A. Diversity

33. Diversity is one of the guiding principles of the Commission's multiple ownership rules. It advances the values of the First Amendment, which, as the Supreme Court stated, "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." The Commission has elaborated on the Supreme Court's view, positing that "the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level."

34. The Commission has considered four aspects of diversity: viewpoint diversity, outlet diversity, source diversity, and program diversity. Viewpoint diversity ensures that the public has access to "a wide range of diverse and antagonistic opinions and interpretations." It attempts to increase the diversity of viewpoints ultimately received by the public by providing opportunities for varied groups, entities and individuals to participate in the different phases of the broadcast industry. Outlet diversity is the control of media outlets by a variety of independent owners. Source diversity ensures that the public has access to information and programming from multiple content providers, while program diversity refers to a variety of programming formats and content. Each of these components of diversity is described.

35. *Viewpoint Diversity.* Viewpoint diversity has been the touchstone of the Commission's ownership rules and policies. We remain fully committed to preserving citizens' access to a diversity of viewpoints through the media. The Supreme Court has stated that "it has long been a basic tenet of national communications policy that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." The diversity of viewpoints, by promoting an informed citizenry, is essential to a well-functioning democracy. The principal means by which the Commission has fostered diversity of viewpoints is through the imposition of ownership restrictions. In Sinclair, the Court of Appeals noted that ownership limits encourage diversity in the ownership of broadcast stations, which can in turn encourage a diversity of viewpoints in the material presented over the airwaves. The court added that diversity of ownership as a means to achieving viewpoint diversity has been found to serve a legitimate government interest, and has, in the past, been upheld under rational-basis review.

36. *Outlet Diversity.* The control of media outlets by a variety of independent owners is referred to as "outlet diversity." Outlet diversity ensures that the public has access to multiple, independently-owned distribution channels (*e.g.*, radio, broadcast television, and newspapers) from which it can access information and programming. We have long assumed that diffusing ownership of outlets promotes a wide array of viewpoints. Thus outlet diversity was a key mechanism for promoting viewpoint diversity. In attempting to foster viewpoint diversity through structural regulation, our content-neutral method does not seek to evaluate the substance of any station's editorial decisions. Indeed, a major benefit of content-neutral structural regulation is that we avoid making inescapably subjective judgments about editorial decisions, viewpoints and content. Rather, we attempt only to preserve a sufficient number of independently owned outlets to increase the likelihood that independent viewpoints will be available in local markets. The Supreme Court has upheld the Commission's judgment that diversification of ownership enhances the possibility of achieving greater diversity of viewpoints.

37. *Source Diversity.* A related concept is "source diversity," which refers to the availability of content to consumers from a variety of content producers. Source diversity ensures that the public has access to information and programming from multiple content providers and producers. A wide array of content producers can contribute both to viewpoint diversity (particularly where the content is news and public affairs programming) and program diversity. A number of government efforts, both past and present, have been aimed at promoting source diversity on mass media distribution platforms. Our efforts centered initially on broadcast television, but have broadened in scope more recently to focus on MVPDs such as cable operators and DBS service.

38. *Program Diversity.* Program diversity refers to a variety of programming formats and content. Examples of program categories include formats such as dramas, situation comedies, reality television shows, and newsmagazines, as well as content, such as health, nature, foreign language/ethnic, and cooking. In 1960, when broadcast television was a more dominant mass communications medium in this country, we sought to promote program diversity through direct means. *See, e.g.*, Report and Statement of Policy Re: Commission en banc Programming Inquiry ("1960 Programming Policy Statement"), 44 F.C.C. 2303 (1960).

39. More than twenty years later, the Commission has indicated that markets may serve Americans' demand for diverse programming more effectively than government regulation. In the Dual Network Order (66 FR 32242, June 14, 2001), the Commission allowed common ownership of a major broadcast network and an emerging broadcast network in part because "if two networks are owned by a single entity, the entity has an incentive to attract an array of viewers with differing interests to produce the largest combined audience for the overall enterprise. This allows for the major network to pursue programming suitable to mass tastes, with the smaller network programming to minority and niche tastes."

40. *Diversity Issues for Comment.* We seek comment on several aspects of diversity, including how the specific terms should be defined. The airing of news and public affairs programming has traditionally been the focus of viewpoint diversity. We seek comment on whether we should consider non-traditional news programming as contributing to viewpoint diversity. For example, do "magazine shows" such as Sixty Minutes and "talk shows" such as Hardball contribute to viewpoint diversity as much as (or less or more than) straightforward news broadcasts?

41. Viewpoint diversity has been a central policy objective of the Commission's ownership rules. We seek comment on whether viewpoint diversity should continue to be a primary goal of the Commission's decision-making. The Commission has not viewed source and outlet diversity as policy goals in and of themselves, but as proxies for viewpoint diversity. Should the Commission continue to use source and outlet diversity as proxies to protect and advance viewpoint diversity? Or should each type of diversity be an explicit goal of the Commission's policymaking? Parties advocating that source and/or outlet diversity should be a goal of Commission ownership policies should address how priorities would be set among these types of diversity.

42. Once we define our diversity goal, we must then ask whether the marketplace will protect and advance diversity without regulatory requirements. As set forth in section III, the current media marketplace appears robust in terms of the aggregate number of media outlets. Consumers generally have access to news, public affairs, and entertainment programming from a variety of media outlets—broadcast, cable, satellite, newspapers and the Internet. What has been the effect of this proliferation of new media outlets on the Commission's diversity goals? What effects, if any, do these outlets have on our objective of promoting diversity and the means by which we can best achieve those goals? How should these or other outlets be considered for the purposes of analyzing viewpoint diversity? Are there unique attributes of broadcasting that should lead us to define and measure diversity without reference to other media? Commenters should provide empirical data on consumer substitutability among the various media outlets or programs.

43. In considering these questions, we are particularly interested in the actual experience of the media industry. Has consolidation in local markets led to less or greater diversity? Commenters are encouraged to submit empirical data and analysis demonstrating both the change (either decrease or increase) in diversity levels and the causal link, as opposed to mere correlation, between those changes and greater consolidation in local markets. Evidence comparing the levels of diversity in local communities with different levels of media concentration would be especially useful.

44. If the market alone does not satisfy the Commission's goal of protecting and advancing viewpoint diversity, we must then consider the appropriate regulatory framework for achieving that goal. Traditionally, the Commission has focused on the number of independent owners on the theory that a larger number of owners would help provide greater viewpoint diversity. Commission policy presumes that multiple owners are more likely to provide "divergent viewpoints on controversial issues," which the Commission has stated is "essential to democracy." Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, MM 01–317, *NPRM*, (66 FR 63986, December 11, 2001)." We invite comment as to this policy. Although courts have affirmed the Commission's ability to limit ownership in pursuit of a diversity of viewpoints, they recently have required that we demonstrate a close connection between the ownership rules and diversity. Therefore, we must examine whether ownership limits are in fact necessary to promote diversity in the media. If we are to maintain ownership limits predicated on preserving diversity, we must inquire into whether our traditional theory of diffused ownership policy is in fact more likely to preserve diversity than a policy that relies on market forces or other measures to foster diversity.

45. If the Commission continues to rely on an independent voice test as a measure for ensuring the appropriate level of diversity, what media outlets or programming services should be included in the independent voice test? For example, should we include cable or DBS? Should commonly-owned media outlets be considered a single media "voice" in evaluating diversity? Should cable television count as one voice because the cable operator exercises editorial control over the content that is distributed over that platform? Or should the Commission look to the number of independent programming entities as separate and distinct voices?

46. What other measures of diversity, quantitative or qualitative, should we consider, and what tools do we have to measure diversity with a reasonable degree of accuracy? Are audience demographics an appropriate measure of diversity? Is competition an appropriate proxy for diversity, such that the presence of a competitive local market will assuage our concerns about diversity? Should we take ratings figures or other measures of consumer usage

into account in measuring diversity, and if so, how? In considering the various potential ways to measure diversity, we seek comment on how their use comports with the values and principles embodied in the First Amendment.

47. We also must consider the appropriate geographic area over which to measure diversity. Although radio ownership restrictions are limited to the local market, television ownership is restricted both on the local level and nationally. Does the appropriate geographic area for measuring diversity differ based on whether the programming is local or national in nature? Should the appropriate geographic area for measuring diversity be the same as the relevant geographic market for competition purposes?

48. We also seek comment on whether the level of diversity that the public enjoys varies among different demographic or income groups. Although access to broadcasting services is available to all individuals in a community with the appropriate receiving equipment, access to other forms of media typically requires the user to incur a recurring charge, generally in the form of a subscription fee. Does this or any other differences between broadcasting and other media reduce the level of diversity that certain demographic or income groups enjoy? Does the fact that 86% of American households pay for television impact this analysis? What is the extent of any disparity in access to diversity, and how should we factor in that disparity in our diversity analysis?

49. Would one or more kinds of diversity be better promoted by alternatives to structural regulation, such as behavioral requirements? We invite comment on whether we should promulgate behavioral regulations. What, if any, behavioral requirements should be imposed and how should they be administered? How is diversity served, if at all, by existing behavioral rules such as those that require broadcasters to provide political candidates access to their facilities under certain conditions, or those that require cable systems to set aside channel capacity for certain uses (*e.g.*, PEG, leased access)? What kind of programs and content contribute to viewpoint diversity?

50. In addition to seeking to foster the policy goals discussed, the Commission has historically used the ownership rules to foster ownership by diverse groups, such as minorities, women and small businesses. In the context of this comprehensive review of our ownership rules, we invite comment on whether we should consider such diverse ownership as a goal in this proceeding. If so, how should we accommodate or seek to foster that goal? In addition, we invite comment as to our legal authority to adopt measures to foster that goal.

B. Competition

51. Competition is the second principle underlying the Commission's local ownership rules and policies. In this proceeding, we seek to: (1) Define the Commission's competition policy goal; (2) determine whether the market alone can achieve that goal; and if not, (3) establish the appropriate regulatory framework to protect and advance a competitive media market.

52. We must first consider the Commission's underlying policy objectives in examining competition. The Commission has relied on the principle that competitive markets best serve the public because such markets generally result in lower prices, higher output, more choices for buyers, and more technological progress than markets that are less competitive. In general, the intensity of competition in a given market is directly related to the number of independent firms that compete for the patronage of consumers. We seek comment on how the Commission should define our competition policy goal. In addition to the diversity component of our public interest analysis, should the Commission specifically analyze the competitive nature of the market? Or should we rely on the diversity component of our analysis such that a certain level of diversity would alleviate our competition concerns? Additionally, as discussed, we seek comment on the various types of competition (*i.e.*, competition for viewers/listeners or advertisers) and the appropriate standards and measures to be used.

53. Once we define our competition policy goal, we must then determine whether the market will protect and advance competition without regulatory requirements. As set forth in section III, the current media market appears robust in terms of the aggregate number of outlets. Today, broadcasters operate in an increasingly crowded and dynamic media market. During the past twenty years, the broadcast television industry has faced increasing competition both from additional television stations and from other video delivery systems. The number of full-power television stations has increased 68% since 1980, from 1,000 to almost 1,700, and the number of broadcast networks has grown from three to seven. During that same period, there has been an enormous increase in the supply of non-broadcast video programming available to Americans. Cable television and DBS carry dozens, and often hundreds, of channels and have taken significant market share from broadcast TV stations. Furthermore, Americans have demonstrated an increased willingness to pay for information and programming. Cable television and other MVPDs, including DBS, have reached an 86.4% penetration rate in American homes.

54. What has been the effect of this proliferation of new media outlets on the Commission's competition goals? What effects, if any, do these outlets have on our objective to promote competition and the means by which we can best achieve this goal? How should these and other outlets be considered for the purposes of analyzing competition? Are there unique attributes of broadcasting that should lead us to define and measure competition without reference to other media?

55. If the market alone does not satisfy the Commission's goal of protecting and advancing competition, we must then consider the appropriate regulatory framework for achieving that goal. The Commission has traditionally relied on structural ownership rules, which focus on the number of independent owners, on the theory that a larger number of owners would enhance competition. While our local ownership rules were based largely on preserving viewpoint diversity, the Commission also found that these rules would serve the public interest by preventing broadcasters from "dominat[ing] television and radio markets and wielding power to the detriment of small owners, advertisers, and the public interest." Are structural ownership limits the best means to promote competition in the media? If we are to maintain ownership limits predicated on preserving competition, is our traditional theory of diffused ownership policy more likely to preserve competition than a policy that relies on market forces or other measures to foster competition?

56. If we determine that a competition analysis is necessary, we must define the relevant product and geographic markets in which broadcast TV and radio stations compete, as well as the market share of the participants within the relevant market, and then weigh the benefits of consolidation against the harms to consumers. For example, although ownership consolidation can produce efficiencies that result in stronger stations and improved services to the public, excessive concentration may reduce competition for viewers/listeners and lessen incentives to innovate and improve services to the public.

57. We must first determine the relevant product markets. Generally, broadcast stations compete to attract viewers/listeners and advertising dollars, and they compete as buyers of programming. In past examinations of our ownership rules, we have focused on the program delivery market, the advertising market, and the program production market. These individual product markets vary in significance depending upon the particular rule under examination. In addition, these product markets are interrelated, since advertising revenue is often used to finance program acquisition, which in turn helps to attract viewers/listeners, which then enables media owners to charge advertisers. We have not, however, resolved the issue of the relative weights we should accord each of these product markets for purposes of our competition analysis. We seek comment on whether our competition analysis should focus on competition for advertising revenue, competition for viewers/listeners, a combination of the two, competition for programming, or some other factor.

58. We first address the delivered programming market. Viewers/listeners seeking delivered programming may choose among various providers, including broadcasters, cable systems, DBS, and DARS. Viewers/listeners, however, may also obtain programming from videos, DVDs, CDs, and the Internet. Viewers/listeners may also attend movie theaters, stage theaters, and music concerts. While the Commission previously concluded that delivered video programming could be a relevant market, we seek comment on whether the relevant market should be broader. The answer depends on the degree of substitutability between delivered programming and these other options. Do viewers/listeners consider these other options to be good substitutes for delivered programming? Commenters are encouraged to produce studies and empirical data to support their views regarding the relevant product market. If delivered programming is the relevant product market, should we measure market concentration by using the number of separately owned outlets, or some other metric? If the relevant product market is broader than delivered programming, how should we measure market concentration?

59. Next, we address the advertising market. As the steward of the Communications Act, the Commission is charged with evaluating the potential benefits and harms to the viewing and listening public, not to advertisers. We first seek comment on whether our authority under the Communications Act justifies our basing broadcast ownership regulation on the level of competition in the advertising market. We also seek comment on whether, as a policy matter, the Commission should be concerned with advertising rates, or whether competition concerns in advertising markets are more appropriately governed by the antitrust agencies. What precisely are the harms viewers and listeners would suffer if advertising prices were to rise as a result of more concentrated media markets, and what empirical evidence of these harms is available?

60. The vast majority of American households now pay for information and programming by subscribing to cable television or satellite services. Does this change in consumer viewing habits suggest that the advertising market may not be the best product market to analyze because we do not capture this factor as part of the competitive analysis? For instance, people who subscribe to DBS often watch non-broadcast channels. By reducing viewership of local broadcast channels, non-broadcast channels may reduce advertising revenues flowing to local television stations. How can we capture the impact of a rule change on viewers if we are using a product definition (*e.g.* advertising) that does not account for these viewers/listeners. A recent study indicated that Internet users spend approximately 25% less time watching television stations than non-Internet users. This phenomenon suggests that the Internet may compete with television for viewers, which could reduce advertising revenues for both broadcast and non-broadcast channels. Competitive developments such as these are not reflected in past Commission evaluations of the advertising market, yet they may have a meaningful effect on broadcasters' ability to compete in today's media market. We seek comment on how trends such as these should impact our analysis. In light of market developments, would a direct analysis of competition for viewers/listeners be a more appropriate means for advancing our competition goal? If so, how should we measure entities' market power? Commenters are encouraged to produce studies and empirical data to support or refute claims.

61. If the Commission determines that competition in advertising markets is an important component of our competitive analysis, we must then determine the relevant advertising product market. Historically, the Commission has focused only on broadcast advertising. We seek comment on whether, in today's marketplace, we should broaden the relevant advertising product market to include other media advertising.

62. To what extent do non-broadcast media compete with broadcasters for advertising dollars? For example, the cable television industry has undergone consolidation at both the national and local level. In addition to competing for audience share, cable television now appears to be a more formidable competitor to broadcasters for national and local advertising. In 1980, broadcast TV captured virtually all of the national and local TV ad market (over 99%), whereas cable had less than one percent. In 2000, broadcast TV share declined to 70% of national TV ad revenue and about 80% of local TV ad revenue, and cable increased to 30% and 20%, respectively. How do these and other developments in the media advertising market affect our decision-making? Parties are asked to provide empirical data on the substitutability for advertisers among all media outlets and to comment on how this data should impact how we would define the relevant advertising product markets. How should the differences between local, regional, and national advertising markets factor into our analysis?

63. We also seek comment on the extent, if any, to which our competition analysis should consider the programming purchasing market. Broadcasters, broadcast networks, cable networks, cable operators, DBS networks, and DBS operators create, purchase, or barter for programming. Would relaxation or elimination of the broadcast ownership rules enable broadcasters to exercise monopsony power in the purchase of programming, or is there sufficient competition from other program buyers (*e.g.*, cable and DBS) or from other distribution streams (*e.g.*, Internet or international) to prevent the exercise of such power?

64. Our competition analysis must also define the geographic market for delivered programming and advertising. The geographic extent of the market, the area where buyers can purchase a particular product or service from sellers, is sometimes difficult to determine, since different media outlets serve different geographic areas. What are the implications of these different geographic market definitions for our competition analysis? Would the appropriate geographic market be different if we focused on viewership/listenership rather than advertising?

65. *Innovation.* Change permeates virtually every aspect of the organization of media markets and the operation of media companies. In both

broadcast and cable industries, analog transmission technologies are giving way to digital transmission technologies that will greatly increase operators' ability to offer new, more and better services. In addition to broadcast and cable, consumers also have access to multi-channel video and audio programming from DBS and the Internet and multi-channel audio programming from DARS. Each of these distribution technologies are expanding the number of program choices and developing program content for increasingly specialized audiences. All of these changes reflect innovation, *i.e.*, the development of new products or services or new, less costly ways of producing or delivering existing services.

66. Innovation reflects developments in technology that affect the modern media marketplace. Innovation brings significant benefits to consumers through the creation of new media products and services, but it can destabilize established business practices and customer relationships. Markets in which innovation is a prominent attribute differ from traditional markets, largely because the focal point of competitive rivalry is shifted more toward innovation, which may fundamentally alter the behavior of firms competing in the market. In traditional markets (where product differentiation is not extensive), firms compete for customers primarily based on price and terms of sale of an existing (substitutable) product or service. By contrast, competitors in markets where innovation is an important force face a more dynamic and uncertain market. Innovation competition involves intense "competition for the market" such that a successful innovation may result in the sudden economic obsolescence of an existing product or technology (and sometimes the demise of the firms that produce it). Innovation competition tends to produce market leaders that dominate a market for a period of time until supplanted by another innovation introduced by the market leader or a competitor.

67. We seek comment on this analysis. To what extent does innovation competition characterize rivalry in contemporary delivered programming, broadcast advertising, and program production markets? In which media markets does price competition seem to predominate over innovation competition? If innovation competition is pervasive in media markets today, how should our ownership rules be modified to encourage rivalry focused on innovation?

68. Congress has directed the Commission to make the introduction of new technologies and services a priority. We seek comment on whether innovation is a valid policy goal in the consideration of the competitive effects of our ownership rules. In this regard, we invite comment on how our media ownership policies and rules affect the incentives to innovate among broadcasters and other media market competitors. For example, how do our broadcast ownership rules affect innovation in the form of digital television, digital cable, Internet access, and other new technologies? Do our ownership rules hinder continued innovation? Should the Commission actively seek to promote innovation through its ownership rules, or merely avoid interfering with firms' ability to innovate? If the former, what changes to the ownership rules, if any, would promote innovation?

C. Localism

69. The Commission has historically pursued policies aimed at encouraging localism. One statutory basis of the Commission's promotion of localism in broadcasting is section 307 of the 1934 Act, which dates from the Radio Act of 1927 and, in its present form, states: "In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." Another is the Congressional Findings and Policy in connection with the Cable Television Consumer Protection and Competition Act of 1992, which include the finding that "[a] primary objective and benefit of our nation's system of regulation of broadcast television is the local origination of programming." We invite comment on the goal of localism as we have defined it and whether we should define it more narrowly or more broadly.

70. From the earliest days of broadcasting, federal regulation has sought to foster the provision of programming that meets local communities' needs and interests. Thus, the Commission has licensed stations to serve local communities, pursuant to section 307(b) of the 1934 Act, and it has obligated them to serve the needs and interests of their communities. Stations may fulfill this obligation by presenting local news and public affairs programming and by selecting programming based on the particular needs and interests of the station's community. As the Fox Television court recognized, one of the Commission's purposes in retaining the national TV ownership rule was "to preserve the power of affiliates in bargaining with their networks and thereby allow the affiliates to serve their local communities better."

71. Localism remains an important attribute of the broadcast media industry. We request comment whether, and to what extent, it is related to ownership limits. For example, do ownership limits tend to ensure an adequate supply of local information intended to meet local needs and interests? Is such news, public affairs, and other programming likely to be available in the current marketplace without ownership limits? To what extent do consumers' access to local news and information on non-broadcast media (*e.g.*, newspapers, cable television, DBS, and the Internet) impact this analysis? How much local news and information is available on a typical cable system and on the Internet, other than news that originates on broadcast stations? Would some combination of market mechanisms and ownership limits, rather than one or the other, best promote localism? Are consolidation and efficiency innovations likely to reduce the level of local programming or reduce the amount of programming that is locally produced?

V. Local Ownership Rules

72. In this section, we discuss and invite comment on possible changes to our multiple ownership rules concerning local broadcasting (the local TV multiple ownership rule and the radio/TV cross-ownership rule). We also invite suggestions of how we could achieve our goals of diversity, competition, and localism by means other than broadcast ownership rules. The options include case-by-case determinations of multiple ownership and a single ownership rule that would apply to all media outlets. We invite comment on how best to define a "voice" or other measurement of viewpoint diversity in our local rules. In this latter regard we focus especially on relatively new media such as DBS and the Internet, which have become powerful forces in recent years but are not reflected in our current rules.

A. Local TV Multiple Ownership Rule

73. The local TV ownership rule allows an entity to own two television stations in the same DMA, provided: (1) the Grade B contours of the stations do not overlap; or (2) (a) at least one of the stations is not ranked among the four highest-ranked stations in the DMA, and (b) at least eight independently owned and operating commercial or non-commercial full-power broadcast television stations would remain in the DMA after the proposed combination ("top four ranked/eight voices test"). In counting the number of independently owned and operating full-power stations that count as voices under the rule, only those stations whose Grade B signal contours overlap with the Grade B contour of at least one of the stations in the proposed combination are counted.

74. The Commission adopted a rule prohibiting common ownership of two TV stations with intersecting Grade B contours in 1964. The rule was based in part on the Commission's earlier "diversification of service" rationale, which suggests that the Commission believed its diversity concerns were better promoted by a greater number rather than a lesser number of separately owned outlets. In 1996, Congress directed the Commission to "conduct a rulemaking proceeding to determine whether to retain, modify, or eliminate its limitations on the number of television stations that a person or entity may own, operate, or control, or have a cognizable interest in, within the same television market." The Commission revised the rule to its current form in 1999, citing as reasons growth in the number and variety of local media outlets and the efficiencies and public service benefits that can be obtained from joint ownership. Additionally, the Commission sought to "facilitate further development of competition in the video marketplace and to strengthen the potential of broadcasters to serve the public interest." The Commission made relatively minor changes to the rule on reconsideration. In its remand of the Commission's 1999 Order, the court found the Commission's explanation of its decision to include only broadcast television stations as voices insufficient, although it concluded that the Commission had adequately explained how the local TV ownership rule "furthers diversity at the local level and is necessary in the 'public interest' under section 202(h) of the 1996 Act."

75. We ask for comment whether the local TV ownership rule is necessary in the public interest as the result of competition. Does it continue to serve its original purposes of furthering diversity and facilitating competition in the marketplace? Does the rule promote the other goals we set forth, including all the various forms of diversity, competition, and localism? If the rule serves some of our purposes and disserves others, does the balance of its effects argue for keeping, revising, or abolishing the rule? In the following paragraphs, we explore these questions in more detail.

1. The Sinclair Decision

76. The voice test that applies to the current local TV ownership rule includes only TV stations. As discussed in Sinclair, the court invalidated the definition of voices because the Commission had not adequately explained its decision to exclude other media. The court noted that the Commission's decision was inconsistent with the definition of voices for the radio/TV cross-ownership rule, which also considers daily newspapers, radio stations, and incumbent cable operators to be voices. The court noted that, having found for purposes of TV/radio cross-ownership that counting other media voices more accurately reflects the actual level of diversity and competition in the market, the Commission had not explained why such diversity and competition should not also be reflected in its definition of voices for the local TV ownership rule. The court noted that on remand, the Commission may adjust not only the definition of voices, but also the numerical limit, given that there is a relationship between the definition of voices and the choice of a numerical limit.

77. We invite comment on how to apply a voice test for a local TV ownership rule, if we decide to apply one. Should we continue to count only independently owned and operating full power commercial and non-commercial television stations, or should we expand the media included in the definition of a voice? For example, should we include radio stations, daily newspapers, cable systems, DBS and DARS, the Internet, and perhaps other media? To what extent do consumers view these other media as sources of local news and information? In addition, we invite comment as to what numerical or other limit we should set for the number of voices. In current marketplace conditions, what number of voices would preserve our competition and diversity goals? Finally, we invite comment as to whether any definition of "voices" we adopt for the local TV ownership rule should be used in other rules, or whether there is adequate justification for distinguishing between voices relevant to one rule and those relevant to another.

2. Diversity

78. The rule barring ownership of two TV stations in the same market was intended to preserve viewpoint diversity and promote competition in local markets. With respect to viewpoint diversity, the prohibition against common ownership of two top-four-ranked stations in the same market was intended to avoid combinations of two stations offering separate local newscasts. The Commission's analysis indicated that the top-four-ranked stations in each market generally had a local newscast, while lower-ranked stations frequently did not. The Commission reasoned that permitting combinations between these two categories of stations, but not among the top four-ranked stations, would better preserve the possibility for different viewpoints in local news presentation, "which is at the heart of our diversity goal."

a. Nature of Viewpoints on Local Television

79. We seek evidence on the extent to which local television stations express viewpoints in local newscasts and, if so, whether, and to what extent, those newscasts provide diverse points of view. What are a station's incentives regarding the expression of a viewpoint, both explicitly through editorializing and implicitly through decisions on whether and how to cover particular events? It is our understanding that TV stations have largely abandoned editorials because they fear that viewers who disagree with the viewpoint expressed will temporarily or permanently elect to watch another channel. Is this accurate? If so, what is the effect of this change? News organizations argue that they have a strong economic incentive to keep their news coverage and reporting as balanced and unbiased as possible. On the other hand, it appears that news periodicals and other print media may have defined and distinct viewpoints. If so, are different viewpoints explained or represented in their news reporting? What effects have national, regional, and local cable news had on the expression of viewpoints in local markets? We seek comment on these issues, including whether local TV ownership regulations are necessary to foster viewpoint diversity.

80. We have already suggested that market incentives may preserve program diversity as effectively as more diffused ownership structures. We seek comment on whether owners of broadcast stations have similar incentives with respect to diverse viewpoints. Our understanding is that, when both television stations in a duopoly carry local news, the newscast typically is produced by a single set of personnel using one set of

facilities. Are there different economic incentives among stand-alone stations, duopolies, or "triopolies" to produce, in a single newscast, a diversity of viewpoints? What other evidence or economic theories would shed light on the "viewpoint" incentives of commonly-owned local broadcast outlets? Are different viewpoints produced by one editor the equivalent for diversity purposes of different viewpoints produced by multiple editors?

b. Connection Between Ownership and Viewpoint

81. In the *1984 Multiple Ownership Order*, the Commission cited evidence that at least some TV station owners allowed local management to make news reporting decisions. In addition, according to testimony before Congress by the President and Chief Operating Officer of Viacom, Inc., CBS' TV stations determine locally how much news to air, what stories are run, and when they are aired. To what extent are station owners or the local news departments responsible for those viewpoints expressed through local newscasts? What evidence is available on this point? Do station owners have formal or informal policies that determine the involvement of station owners in news coverage and reporting decisions? Commenters are requested to provide information bearing on the connection between editorial judgment or news selection and station ownership. If the record indicates a lack of connection between ownership and viewpoint expressed via local news programming, we seek comment on the weight that finding should be accorded in our determination of whether the local TV ownership rule continues to be supportable in its present form.

c. Program Diversity

82. The Commission previously has noted that a single owner of multiple outlets may have stronger incentives to provide diverse entertainment formats, programs, and content on its multiple outlets than would separate station owners. An entity that owns multiple stations in a market may have the incentive to target its programming to appeal to a variety of interests in an effort to maximize audiences, rather than program its multiple outlets with the same format or programming, thereby competing with itself. While acknowledging this viewpoint in the TV Ownership *FNPRM* (60 FR 06490, February 2, 1995), the Commission questioned whether this model would promote a variety of viewpoints with regard to news and public affairs programming, but sought comment on whether it may indeed promote diversity of entertainment formats and programs. We invite comment on whether, and if so how, common ownership leads to provision of more diverse programming with respect to both entertainment and news and public affairs programming in order to maximize audience share. If common ownership of multiple stations promotes program diversity, how does this affect the need for the current local TV ownership rule? Absent a rule, would market forces alone lead to increased program diversity on commonly-owned stations?

83. A second, more fundamental, issue regarding program diversity is raised by the dramatic advances in video delivery technology in the past quarter century. Cable television systems and DBS providers offer dozens, and often hundreds, of channels to subscribers. Entire channels are devoted to particular formats or specialized subjects. The increase in the variety of programming available to many American consumers today suggests that limits on TV station ownership may no longer be needed to promote program diversity in the video market. We seek comment on this analysis in connection with the local TV multiple ownership rule.

3. Competition

84. In the TV Ownership *FNPRM*, the Commission identified three product markets in which television broadcasters operate: the market for delivered programming; the advertising market; and the program production market. Further, the Commission segmented the advertising market into national, national spot, and local markets, based on the nature of the geographic area advertisers wish to reach. The Commission tentatively concluded that cable television directly competes with broadcast television stations in each of these markets, and that broadcast radio and newspapers compete with television in the local advertising market. The Commission sought comment on whether other suppliers of video programming (*e.g.*, multichannel multipoint distribution service and DBS compete with broadcast television stations. The Commission stated that it may not be appropriate to include them because their market penetration was so low that they were not relevant substitutes to a majority of Americans. The record compiled in the 1998 Biennial Report suggested that this situation may have changed. We encourage comment on which types of firms compete in these markets today. Are there media outlets other than those discussed here, *e.g.*, the Internet, that should be considered to be competitors in these product markets? We seek information on the local market share of DBS and multichannel multipoint distribution service, as we generally only have aggregate national subscription data for these services. If broadcast TV competes with cable and other media, do our local broadcast ownership rules affect broadcasters' ability to effectively compete?

85. The Commission tentatively concluded in the TV Ownership *FNPRM* that the geographic market for delivered programming was local; the geographic markets for advertising were both national and local; and the geographic market for program production was national/international in scope. Local geographic markets are particularly difficult to define because the local footprint of a broadcast outlet is likely to be different than the geographic area covered by other media outlets, such as cable systems. We seek comment on how we should define the local geographic media market. Commenters are encouraged to submit data that we could use to identify relevant competitors within geographic markets.

a. Advertising Market

86. For our competitive analysis of the local TV ownership rule, we seek comment on advertising markets. Advertising markets are both national and local in scope because of the differing geographic areas advertisers wish to reach. Certain advertisers wish to reach the entire nation at once with their advertisements and therefore seek out media outlets with a national footprint. The sources of media with a national footprint include broadcast television networks, program syndicators, cable television networks, DBS and possibly cable multiple system operators ("MSOs"). Other advertisers are only interested in paying for advertisements that reach viewers in a specific, local area. These advertisers seek out media with a local footprint. These local media include individual broadcast television stations, individual cable system operators, individual broadcast radio stations, and local newspapers. The "national spot market" is a subset of the local advertising market. In this market, national advertisers buy advertising time on certain specific local media outlets in order to bring a specialized advertising message to only some regions of the country. Generally, the national advertisers work with national advertising representative firms to place these advertisements. With newer technology, however, the television networks are able to place national spot advertisements into their own feeds. We ask for comment on this analysis of advertising markets, and on the policy implications of this or other analyses for our ownership rules. Our goal is to ascertain whether the local TV ownership rule, as currently formulated, continues to be needed to promote competition in these advertising markets.

87. Broadcast television stations compete most directly in the local advertising market. We seek to identify the relevant competitors in this market. Has the consolidation of cable systems into local and regional clusters improved the ability of cable operators to compete with television broadcasters in the local advertising market? At a minimum, we expect that local cable operators that can offer an advertising product comparable to that of local television stations should be included in our analysis. If we conclude that cable operators do compete in the local television advertising market, that would suggest that the rule as currently structured may not be necessary to promote competition in local television advertising markets and that a more relaxed ownership limit may be appropriate. If we conclude that cable operators and television stations constitute the relevant market participants, we propose counting each outlet equally for purposes of assessing local advertising competition. We seek comment on this analysis, including whether a metric other than outlet counting is more appropriate in this area, and on the maximum level of concentration among these outlets that would ensure competition in local television advertising markets. We encourage commenters to submit empirical analyses of whether advertisers view different advertising media as substitutes for local television. Such data might include advertiser spending patterns or information from firms that purchase advertising for clients.

88. It is also possible that radio stations, daily newspapers, and/or direct mail may, for some advertisers, exert competitive pressure on local television advertising rates. If one or more of such media are substitutes for some advertisers but not for others, we seek comment on whether to include such other competing outlets in our advertising competition analysis. Conversely, the exclusion of daily local newspapers from our analysis could result in a local television ownership rule that is unduly restrictive from a competitive perspective. We strongly encourage commenters to address this issue of how our local media ownership rules should account for this issue of partial substitutability.

b. Delivered Video Market

89. For our competitive analysis of the local TV ownership rule, we also seek comment on the market for delivered video programming. In the TV Ownership *FNPRM*, the Commission observed that the time Americans spent viewing television remained steady between 1970 and 1988. The Commission concluded from this stability of television viewing over time that "delivered video programming" could be a relevant market. If such data shows comparable levels of television viewing from 1988 to the present, should we continue to define delivered video market programming as a relevant market? If delivered video programming is a relevant market, we must determine how to measure market concentration. The Commission has traditionally used the number of separately owned stations or outlets serving a market. We seek comment, however, on other potential measures of concentration, such as audience share.

90. Consumers have entertainment alternatives to watching television (*i.e.*, delivered video programming from broadcast TV, cable TV, and DBS). These options include video programming from VCRs/DVDs, movie theaters and the Internet, as well as non-video entertainment such as listening to audio programming, reading, and virtually any other activity that a large number of people find entertaining. To what extent do consumers find these entertainment alternatives to be good substitutes for television viewing? If there is substantial substitution between these alternatives and television viewing, this may suggest that the relevant market is broader than delivered video programming. How should this affect our analysis of the need for a local TV ownership rule or how such a rule should be drawn?

91. Assuming that the delivered video market is a relevant product market for our competition analysis, the Commission has tentatively included commercial broadcast television operators, public broadcast television station operators, and cable system operators to be economically relevant alternative suppliers of delivered video programming. The rapid growth of DBS since 1995 requires us to include DBS as a strong participant in the delivered video market. We seek comment on other media that should be included in the delivered video market. For example, in our Eighth Annual MVPD Competition Report, we detailed the status of additional potential competitors, including: wireless cable systems, SMATV systems, local exchange carriers, open video systems, Internet video, home video sales and rentals, electric utilities, and broadband service providers. Some of these media are not available in many markets and, thus, may not be relevant substitutes to a majority of Americans. Should a level of market penetration be deemed at which a non-broadcast video delivery media directly competes with broadcast television stations? How does the fact that there are no consumer fees for broadcast TV affect our analysis?

92. While some video delivery media may be considered good substitutes for entertainment programming, are the same media good substitutes for local news and public affairs programming? What measures should we use to determine whether consumers view different media as substitutes for entertainment programming or news programming? Although cable systems carry local broadcast stations and therefore may be considered good substitutes for both entertainment programming and local news and public affairs programming, DBS systems and other media may carry less local news and public affairs programming. To what extent, if any, should our analysis of competition in the market for delivered programming differ from our analysis of viewpoint and program diversity?

c. Video Program Production Market

93. Television stations, along with TV networks, cable networks, cable operators, DBS networks and DBS operators purchase or barter for video programming. The program production market could be affected if relaxation of the local TV ownership rule permits a broadcaster to exercise significant market power in the purchase of video programming. The result might be that suppliers of video programming would be forced to sell their product at below competitive market prices in order to gain access to the local market controlled by one or a few local group owners. The potential for the exercise of such market power, however, depends critically on the absence of a sufficient number of competitors. The ever-increasing number of alternative providers of delivered video programming in virtually every major market may mitigate the potential for distorting the prices of video programming by providing program producers with additional outlets for their product. We solicit comment on this point and evidence on the potential

market power in the purchase of video programming if we were to relax the local ownership rule.

d. Innovation

94. We seek comment on the impact that the local TV ownership limits may have on innovation in the media marketplace. Does our current rule promote innovation? Would relaxation of the local TV ownership rule increase incentives or resources to provide innovative broadcast programming or new broadcast-based technologies or services? What effect, if any, would a relaxed local ownership rule have on the transition to digital television, or the provision of other services by a local TV station?

4. Localism

95. We seek comment on whether and if so, how the local TV ownership rule affects localism. Does the local TV ownership rule affect either the quantity or quality of local news and other programming of local interest produced and aired by local stations? Does it affect the local selection of news content that is aired? We request that commenters provide data on the impact that TV duopolies and Local Marketing Agreements ("LMAs") have had on the production of local programming by stations involved in such combinations or arrangements. According to testimony before Congress by the President and Chief Operating Officer of Viacom, Inc., after CBS' combination with Viacom, which resulted in six duopoly markets, CBS had, or planned to have, half-hour news spots or hourly updates on stations, in five different markets, that had not run such programming before. We invite comment on whether these assertions reflect industry-wide trends. We ask commenters to provide empirical data that demonstrates increased or decreased levels of local programming as a result of consolidation.

96. In the 1984 Multiple Ownership *Order*, the Commission cited awards received by TV stations "from leading professional organizations and community organizations" as one relevant indicator of local news quality. If such awards are a reasonable barometer of news "quality," we request empirical analyses of whether these awards tend to be earned systematically more or less often by TV duopolies and/or LMAs.

97. Local TV newscasts and local public affairs shows are an important service provided by local television stations. The cost of producing those programs may represent a significant portion of a station's budget, particularly in small markets where the fixed costs of production are spread over a relatively small customer base. We seek comment on whether the current local TV ownership rule affects the viability of existing local newscasts and/or potential newscasts, particularly for small stations. Commenters asserting that a relaxation of the local TV ownership rule will result in more local news are requested to specifically address whether such greater output outweighs the potential loss of diverse voices among stations that previously had separate newscasts. Are there other factors or policy goals we should consider in determining whether to retain, modify or eliminate the local TV ownership rule?

B. Radio/TV Cross-Ownership Rule

98. The radio/TV cross-ownership rule limits the number of commercial radio and television stations one entity may own in a market. The rule allows common ownership of at least one television station and one radio station in a market. In larger markets, a single entity may own additional radio stations depending on the number of other voices in the market. In larger markets, a single entity may own additional radio stations depending on the number of other voices in the market. 47 CFR 73.3555(c). The radio/TV cross-ownership rule generally allows common ownership of one or two TV stations and up to six radio stations in any market where at least twenty independent "voices" would remain post-combination; two TV stations and up to four radio stations in a market where at least ten independent "voices" would remain post-combination; and one TV and one radio station notwithstanding the number of independent "voices" in the market. If permitted under the local radio ownership rules, where an entity may own two commercial TV stations and six commercial radio stations, it may own one commercial TV station and seven commercial radio stations. For this rule, a "voice" includes independently owned and operating same-market, commercial and noncommercial broadcast TV, radio stations, independently owned daily newspapers of a certain circulation, and cable systems providing generally available service to television households in a DMA, provided that all cable systems within the DMA are counted as a single voice (Local TV Ownership *R&O*).

99. The original rule, which prohibited radio/TV cross-ownership, was adopted in 1970. In adopting the rule, the Commission stated explicitly that "the principal purpose of the proposed rules is to promote diversity of viewpoints in the same area * * * [W]e think it clear that promoting diversity of ownership also promotes competition." The Commission adopted a presumptive waiver policy to permit certain radio/TV combinations in 1989, and relaxed the rule to its current form in 1999. The Commission relaxed the radio/TV cross-ownership rule to balance its traditional diversity and competition concerns with its desire to permit broadcasters and the public to realize the benefits of radio-television common ownership. The modifications were intended to ease administrative burdens and provide predictability to broadcasters in structuring their business transactions. In the 1998 Biennial Report, the Commission concluded that no further changes were warranted because the radio/TV cross-ownership rule had been so recently relaxed, but it committed to monitor the market effects of our deregulatory actions to determine whether further changes are warranted.

100. We ask parties to comment on whether the radio/TV cross-ownership rule is necessary in the public interest as the result of competition. Does it continue to serve its original purposes of promoting economic competition and diversity, particularly viewpoint diversity? Does the rule promote the other goals we set forth, including the various forms of diversity and localism? If the rule serves some of our purposes and disserves others, does the balance of its effects argue for keeping, revising, or abolishing the rule?

101. Some of the issues and requests for data contained in the preceding section on the local TV ownership rule overlap with our analysis of the radio/TV cross-ownership rule. For example, our request for comment on consumers' sources for news and information is directly relevant to both the local TV ownership rule and radio/TV cross-ownership rule. Issues of viewpoint diversity and localism, and issues of competition in the advertising market and innovation, are also relevant to both the local TV ownership rule and the radio/TV cross-ownership rule. Where appropriate, we will apply data and analysis from that section to our analysis of the radio/TV cross-ownership rule.

1. Viewpoint Diversity

102. The current radio/TV cross-ownership rule counts as a media voice each independently owned and operating same-market full-power commercial and noncommercial broadcast television and radio station. It also counts certain types of daily newspapers and cable systems because "such media are an important source of news and information on issues of local concern and compete with radio and television, at least to some extent, as advertising outlets." Thus, the current rule implies that only these particular types of media contribute to viewpoint diversity. The rule does not account for news available on Internet Web sites, DBS, cable overbuilds, magazines or weekly newspapers. In our 1984 review of the national TV ownership rule, however, we concluded that, with respect to viewpoint diversity, the market includes a wide variety of media types engaged in the dissemination of ideas, including not only television and radio outlets, but also "cable, other video media, and numerous print media as well." Should those media be counted in a new voice test for radio/TV cross-ownership, and if so, to what extent? Should we count each independently owned cable network carried by a cable system in a market as one voice? Does competition among these media render the current restriction unnecessary? Finally, we seek comment on any alternatives to a voice test.

2. Localism

103. In 1989, the Commission concluded that the cost savings and aggregated resources of combined radio-television operations appeared to contribute to more news, public affairs and other non-entertainment programming. Based in part on that finding, the Commission adopted a new presumptive waiver policy allowing increased radio-television ownership in the top-25 television markets and in certain situations involving the acquisition of "failed" stations. It anticipated that this policy would lead to a limited number of additional radio-television combinations that would enable the Commission to obtain additional evidence regarding the advantages and disadvantages of maintaining the cross-ownership rule. We seek comment on the quantities of local news and public affairs programming provided by TV-radio combinations and stand-alone TV and radio stations in those same markets. Are combinations and stand-alone stations providing comparable quantities of such programming? If TV-radio combinations produce a greater quantity of news programming than non-combined stations, does that suggest that greater cross-ownership among TV and radio stations would produce more news and/or public affairs programming? If the quantity of news and public affairs is the same or less on cross-owned stations, does it suggest the opposite?

3. Competition

104. In analyzing the relationship of the radio/TV cross-ownership rule and our goal of competition, the key issue under our traditional competition framework is the extent to which radio and television stations compete with each other to attract advertising revenue. The stronger the competition between these two outlets, the more relevant a cross-ownership limit may be. Relaxation or elimination of the rule may not harm competition if the record shows that there is weak substitution between radio and television advertising. We welcome comment, as well as any empirical studies, on the substitution between radio and television advertising. We also wish to consider what bearing advertising substitution between radio, television, and other outlets, such as newspapers, magazines, and Internet Web sites, may have on this rule. Any empirical work demonstrating such advertising substitution is strongly encouraged.

105. We are also concerned with the impact that radio/TV cross-ownership limits may have on innovation in the media marketplace. Does our current rule promote innovation? Would relaxation of the radio/TV cross-ownership rule increase incentives to provide innovative broadcast programming or new broadcast-based technologies or services? Are there other factors or policy goals we should consider in determining whether to retain, modify, or eliminate the radio/TV cross-ownership rule?

C. Alternative Means To Achieve Goals

106. If the record demonstrates that the current ownership rules are no longer necessary to actually serve the stated goals and the public interest, we seek comment on the most appropriate means to achieve the stated goals. We see, at a minimum, three alternatives: (1) A case-by-case approach; (2) outlet specific rules; and (3) a single local media ownership rule covering all outlets. Often, bright line structural regulations have the effect of being both over-inclusive and under-inclusive. That is, a prophylactic structural rule may prohibit a combination that poses little competitive or consumer harm, or entails substantial consumer benefits. Or, such a limit may allow anti-competitive combinations that nevertheless satisfy the rule. We ask whether our structural regulations should be replaced with a case-by-case review of transactions so that a fact-specific analysis of the impact on our policy goals can be conducted. In the alternative, or in conjunction with a case-by-case review, should the Commission rely solely on the unfettered marketplace to achieve its stated policy goals? If we decide to retain structural rules, should the Commission retain a set of outlet specific rules similar in form to our current rules?

107. We recognize that a pure case-by-case approach could create an unnecessary level of uncertainty among media firms. Such uncertainty could be mitigated by one or more "soft" ownership caps. A soft cap would identify a certain level of ownership concentration below which a transaction would be presumed lawful, and above which the transaction would be unlikely to be permitted, but would be reviewed by the Commission on a case-by-case basis. If we adopted one or more soft caps, we anticipate identifying the factors we would consider in evaluating proposed transactions. We seek comment on these matters.

108. If we decide to retain structural rules, should the Commission retain a set of outlet specific rules similar in form to our current rules? This type of ownership rule structure may permit the Commission to limit specific harms and promote specific benefits in a more targeted fashion than would case-by-case review. For example, if we found that two outlet types were both the undisputed leaders in contributing to viewpoint diversity and were the only two competitors in a particular advertising market, we would explore whether a cross-ownership limitation was necessary to preserve viewpoint diversity and economic competition.

109. As suggested by this hypothetical such an outlet specific method could require persuasive evidence that particular outlets are sufficiently unique that they merit treatment separate from other outlets. The Sinclair court held that we failed to justify applying disparate voice tests to broadcast television stations in the local TV multiple ownership and the radio/TV cross-ownership rules. For this reason, should the Commission adopt a local single media ownership rule that is applicable to all or some media outlets and dependent on the number of independent "voices" in any particular market? This single rule option is intended to address only those instances in which the ownership of multiple media outlets included a broadcast station. A single rule applicable to all media might help avoid the type of inconsistency criticized by the Sinclair court. The goal of a single rule would be to replace outlet specific rules that no

longer may be justified by themselves but which, viewed collectively, may continue to be necessary in some form to promote competition, diversity and localism. We seek comment on these proposals.

110. A key factor in whether we pursue a single framework or more outlet specific policies, or other options, is the feasibility of synthesizing the results of our various inquiries. We have identified the promotion of diversity, competition, and localism as potential guiding principles in setting ownership policies. It is conceivable that certain media outlets are substitutes for diversity purposes, but are not substitutes from the perspective of advertisers or program producers. In that situation, one option might be to: (1) maintain same-outlet restrictions (*e.g.*, a limit on the number of commonly-owned radio stations per market), perhaps based on market size, in order to preserve economic competition among those outlets that directly compete with each other; and (2) eliminate the cross-ownership rules based on clear evidence that Americans today rely on a far wider array of media outlets than they did decades ago, when the cross-ownership rules were first adopted. Or, if the evidence supported a finding that certain different types of outlets were particularly important news sources, we might replace the cross-ownership limits with an overall per-market cap on media outlets. We seek comment on whether this type of ownership framework would be an appropriate response to a record that showed that the markets for advertising and viewpoint diversity are not coterminous. If we adopt such a framework, should we adopt grandfathering provisions, and if so, what limits should we set?

111. Another approach to setting a single ownership rule would be to focus on promoting viewpoint diversity. Such a rule might be appropriate if evidence in the record were to show that certain media constitute an "essential class" of news outlets for Americans today. If the evidence before us were to show, for example, that local television stations, local cable operators, and daily newspapers were a distinct group of influential news outlets, we might consider a local media ownership rule that permitted one entity to own up to a certain percentage of such outlets in a local market. Such a rule could limit the common ownership of cable systems and broadcast stations in a market. We seek comment on the implications of such a result. In setting the appropriate percentage cap, we would rely partly on the extent to which the evidence indicated that all other media—such as radio, the Internet, weekly newspapers, magazines, cable and DBS—were significant (though not "essential") outlets for Americans to obtain news and information. We seek comment on this option and, in particular, on whether such a rule aimed at promoting viewpoint diversity would effectively promote competition in local media markets as well. By limiting application of this rule to only those instances in which the ownership of multiple media outlets includes a broadcast station, would we impair broadcasters' ability to compete in today's media marketplace?

D. "Voice" or Other Test

112. We next address three subjects related to a so-called "voice test" to assure competition and diversity in a given market: (1) how to reformulate our mechanism for measuring diversity and competition in a market; (2) how to accord different weights to different media types to the extent that they are relied on by consumers differently; and (3) how to account for diversity and competition via MVPDs and the Internet in a revised voice test.

1. Creating a New Metric

113. In this section, we explore how to reformulate our mechanism for measuring diversity and competition in a given market. All four of our existing local broadcast ownership rules are aimed at preserving diversity and competition. The radio/TV cross-ownership rule employs a voice test that allows varying levels of broadcast ownership based on the number of broadcast stations, major newspapers and cable systems in the market. Such market-specific mechanisms, properly implemented, represent an effective mechanism for addressing media ownership limits in widely divergent market conditions.

114. Thus, we initially explore whether to continue to use a voice test to guarantee a minimum level of diversity and competition in a given market. The two current voice tests collectively include television stations, cable systems, radio stations, and daily newspapers as "voices." Other media that we could consider include Internet web sites (including video services and online radio stations), DARS, magazines, DBS operators, weekly newspapers, and national newspapers. We request comment, including empirical evidence, on whether each of these additional outlets should be counted in a revised voice test.

2. Weighting the Voices

115. If data show that consumers rely to varying degrees on different types of outlets for news and public affairs, we seek comment on how we might design a test that accords different weights to different outlet types. For example, it may be appropriate to consider using weights based on such factors as audience reach, ownership structure, the percent of programming or print content devoted to local news, and/or consumer use patterns. Such an approach could be a more accurate measure of diversity and competition than the binary "voice" model (*i.e.*, an outlet either is or is not a voice), but may be difficult to design and administer over time as industry conditions change. This raises the question of how to account for such changes in a manner that does not undermine certainty and predictability.

116. If we pursue a weighted approach to measuring diversity and competition in a given market, we would need a way to quantify the relative contributions of each type of outlet. We are uncertain whether traditional all-news programming should continue to be the only measure of an outlet's role in the market, or whether other types of information that people obtain from the media should count as well. Such quasi-news sources might include cable and DBS channels covering business or sports, and websites devoted to those subjects. In addition, some non-news programming on broadcast television, such as "60 Minutes," may be similar to news programming in certain respects. We seek comment on the relevance of these sources of news and information to a weighting system for various media outlets.

117. We also seek comment on the relevance of current MVPD and Internet penetration levels in considering the contributions of MVPDs and the Internet to diversity and competition. Broadcast television and radio are available to virtually all Americans who purchase a television or radio, but the Internet, DBS, and cable require monthly subscriptions. Does this fact support a difference in the treatment of these media, such as a rule that counts only broadcast television and radio? Or is the fact that some media are "free" and others require subscriptions immaterial to their impact on the American people? In the past decade, non-broadcast media have become widely available and have been subscribed to by the majority of American homes. Are they now ubiquitous? Do the Americans who still consume only broadcast television and radio have any distinguishing features, such as location or level of income or education?

118. Traditional voice tests do not consider the entire range of news sources available to the public. A vast majority of people may choose to receive news and information from a single source (*e.g.*, a local television broadcast). This fact does not necessarily imply that the public has limited access to many other sources of news and information (including the Internet, for example). In other words, a lack of diversity in the outlets that consumers typically view or listen to does not necessarily imply that consumers have limited access to diverse viewpoints or to multiple sources of news and information. We seek recommendations on how to accurately capture the vibrancy and variety of today's media market in a framework that is predictable, adaptable to future marketplace changes, and judicially sustainable.

3. Accounting for Diversity and Competition Via MVPDs and the Internet

119. MVPDs and the Internet have posed unique challenges under past formulations of the voice test. Unlike TV and radio stations, MVPDs and the Internet are single outlets furnishing access to multiple news sources. In analyzing whether and how MVPDs, such as cable systems, should be counted as voices, we must examine not only how much content is available, but also who controls viewers' access to it. We decided in 1999, in the context of the radio/TV cross-ownership rule, to count a cable system as one voice because "most programming is either originated or selected by the cable system operator, who thereby ultimately controls the content of such programming." However, cable systems also give viewers access to much information on matters of public concern. For example, it appears that a typical household that subscribed to cable (or DBS) service could find—on CNN, CNBC, MSNBC, Fox News, and C–SPAN—at least as many sources of information about national issues as it would find on multiple broadcast TV and radio stations. It also appears, however, that most MVPDs carry largely the same all-news channels and other channels with specialized news and information such as business, sports, and weather. Under one possible approach, we could choose to count CNN as one voice even if it were carried in a community by the largest cable operator, an overbuilder, and two or more DBS providers.

120. Another approach would be to count each independent owner as a voice, so that if one entity owned a broadcast station, a cable system and several channels on it, an Internet access service, and a web page in the same area, it would count as one voice instead of many. Although we have listed many sources of media programming and distribution, industry consolidation and the reduction in the number of owners could diminish diversity and competition across these outlets.

121. We invite comment on DBS's contribution to diversity and competition, and whether DBS should be considered a voice in any rule we adopt. At a minimum, DBS contributes to viewpoint diversity through its editorial control over channel selection. In addition, DBS systems are, like cable systems, platforms and outlets for far more channels and programs than can be presented by broadcasters. In the past we have not counted DBS as a voice because it did not then provide local programming. We invite comment as to whether that rationale is still valid today. Should we consider DBS a voice because of the range of programs and channels it provides? Do these systems contribute to diversity and competition regardless of the extent to which DBS provides local programming?

122. In addition, DBS operators' transmission of local broadcast channels has greatly increased since the enactment of the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"), which permitted DBS operators to retransmit local broadcast signals into local markets. We ask whether, in light of SHVIA, DBS can fairly be classified as an outlet for the purpose of any new voice test. Does the local programming available on DBS merely reproduce the information obtainable via over-the-air television and cable? Does DBS provide a source of diversity and competition to consumers in rural areas that are not served by local TV stations or cable?

123. We request comment on whether the foregoing analysis of cable and DBS is correct. Based on that analysis, should we count these media as voices, and if so, how? For example, where there are two cable systems serving the same area, should we count each as a voice? Or, should we count, as independent voices, each independently owned source of news and public affairs programming that is made available to cable and DBS subscribers? When the same programming is made available in a community by more than one MVPD, *e.g.*, if each one provides CNN, should that count as one voice or more? How, if at all, should the same question be answered for broadcast stations in the same area that carry programs from the same source, such as a single news broadcast? On an AOL Time Warner cable system, for example, should CNN count as a voice independent of AOL Time Warner? Should we count each independently owned network carried by a cable system or DBS provider in a market as one voice? On cable television, do PEG channels carry enough information and viewpoints to count as one or more voices? How common are locally or regionally oriented cable offerings such as New England Cable News, the borough-specific cable channels in New York City, and NorthWest Cable News that serves Seattle and the Pacific Northwest? Finally, we seek comment on the ability of cable operators and DBS providers to act as content gatekeepers by choosing which programming is selected to fill the available channel capacity. Should their status as gatekeepers affect whether or how we count them as voices?

124. Like cable and DBS, the Internet also presents unique challenges in the context of diversity and competition. In 1999, we decided not to count the Internet as a voice, in part because "many still do not have access to this new medium." Is the Internet now so widely accessible that it should count as a voice? Are there characteristics of the acquisition of information on the Internet, such as the need to click a hyperlink or key in a website's Internet address, that make it different from broadcasting such that we should not count it? Or, should these characteristics of the Internet affect the significance we give the Internet? If so, should it count as one voice or many? On the Internet, how much news and how many viewpoints are original; that is, not merely re-purposed content that also is available from local and national media outlets, such as TV stations, networks, and newspapers? We assume that the Internet permits the user to access any news source having a presence on the World Wide Web. Is there any instance of an Internet service provider ("ISP") or other entity acting as an "Internet gatekeeper" by denying a subscriber access to a news source on the World Wide Web? Is the role of a gatekeeper different between the Internet and cable or DBS? We also assume that, unlike cable or DBS, the Internet has unlimited capacity such that there is no limit on the number of news sources that a user can reach. We seek comment on these assumptions and their relevance to our analysis of diversity and competition.

VI. National Ownership Rules

125. In this section we consider whether the national TV ownership rule and the dual network rule continue to meet the statutory standard. Unlike the local TV ownership rule and the radio/TV cross-ownership rule, these two rules do not directly limit local media ownership, although they may indirectly affect viewpoint diversity in a given local market by limiting network ownership across markets. As such, they appear to play a less direct role in our core policy concern of viewpoint diversity, although we invite comment on this issue.

A. National TV Ownership Rule

126. The national TV ownership rule prohibits an entity from owning television stations that collectively would reach more than 35% of U.S. television households. Reach is defined as the number of television households in the TV DMA to which each owned station is assigned. 47 CFR 73.3555(e)(1). In the 1999 National Television Ownership *R&O* (64 FR 50647, September 17, 1999) the Commission clarified that no market will be counted more than once when calculating the 35% cap. DMAs, rather than Arbitron's Areas of Dominant Influence, are used to define a station's market for the purpose of calculating national audience reach. Broadcast Television National Ownership Rules, Review of the Commission's Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules. VHF stations are attributed with all TV households in the DMA; UHF stations are attributable with 50% of the DMA households (the "UHF discount"). VHF stations are attributed with all TV households in the DMA; UHF stations are attributable with 50% of the DMA households (the "UHF discount").

127. The Commission first adopted national ownership restrictions for television broadcast stations in 1941 by imposing numerical caps on the number of stations that could be commonly-owned. The rule was amended a number of times thereafter to increase the cap on the number of television stations. In 1985, the station cap was raised from 7 to 12 and an audience reach limit of 25% was added. The stated purposes of these early national TV ownership limits were, in general, to balance several goals. On the one hand, the Commission wanted to promote competition and "diversification of program and service viewpoints." On the other hand, common ownership of stations in different areas allows efficiencies to be realized, and the Commission raised numerical limits as the number of television stations increased.

128. In the 1996 Act, Congress directed the Commission to eliminate the station cap and raise the national reach limit from 25% to 35%. In the 1998 Biennial Report, the Commission addressed the issue of whether or not to modify or eliminate the 35% national audience reach limit. The Commission determined that the changes made in 1999 to the local television ownership rule should be observed and assessed before making any further changes to the national limit. It also found that many group owners had acquired large numbers of stations nationwide, and that this trend needed further observation. The Commission stated that consolidation of ownership of television stations in the hands of a few national networks would not serve the public interest. The Commission reasoned that national networks have a strong economic interest in having their affiliates clear (that is, decide to broadcast) all network programming, and independently owned affiliates play a valuable counterbalancing role because they have the right to decide whether to clear network programming or to air instead programming from other sources that they believe better serves the needs and interests of the local communities to which they are licensed. It also said that independent ownership of stations increases the diversity of programming by providing an outlet for non-network programming. The Commission referred to possible competitive problems in the national markets for advertising and program production. The court in Fox Television has remanded the Commission's decision in the 1998 Biennial Review not to consider further changes in the national TV ownership rule. In this section, we invite comment on whether to retain, eliminate, or modify the national TV ownership rule.

129. We ask for comment about whether the current national TV ownership rule is necessary in the public interest as the result of competition. Does it continue to serve its original purposes of promoting competition and viewpoint and programming diversity? Does the rule promote the other goals in described section IV, including localism and the various other forms of diversity and competition? If the rule serves some of our purposes and disserves others, does the balance of its effects argue for keeping, revising, or abolishing the rule?

130. We invite comment on the relevance and continued efficacy of the UHF discount. The UHF discount is intended to recognize the deficiencies in over-the-air UHF reception in comparison to VHF reception. The Commission retained the 50% UHF discount in the 1998 Biennial Report, concluding that the signal disparity between UHF and VHF had not yet been eliminated. Noting that the signal disparity should be rectified to some extent by digital television, however, the Commission stated in the 1998 Biennial Report that when the transition to digital television is near completion, we would issue a *NPRM* proposing a phased-in elimination of the discount.

131. We ask the parties to comment on the extent of the UHF "handicap" in today's marketplace. In particular, over 86% of consumers receive video programming from MVPDs where UHF signal quality is largely equalized with that of VHF channels. In addition, cable has must carry obligations with respect to UHF stations and DBS operators carry UHF stations in any local market where they elect to carry at least one local broadcast signal. We seek comment on whether the UHF discount continues to be necessary in light of the effect of MVPDs on UHF signal issues.

1. Diversity

132. In 1984, the Commission concluded that the relevant geographic market for considering viewpoint diversity is local, not national. Thus, in the 1984 Multiple Ownership *Order*, the Commission relaxed the national ownership restrictions. It raised the station cap from seven stations to twelve stations and said that the entire rule would be eliminated (or sunset) in six years. The Commission reasoned that the area from which consumers can select the relevant mass media alternatives is generally the local community in which they work and live, where radio and TV signals are available in discrete local markets, and other local media outlets are abundantly available. It determined that the lack of relevance of the rule to local viewpoint diversity "persuades us that elimination of the national ownership rule is unlikely to have an adverse impact on the number of independent viewpoints available to consumers." It also determined that elimination of the national TV ownership rule posed no threat to the diversity of independent viewpoints in the information and entertainment markets, because a wide range of media outlets existed and because the rule did not affect the number of viewpoints in the relevant local markets.

133. On reconsideration, the Commission added a 25% audience reach limit to the 12 station cap and eliminated the sunset provision adopted in the 1984 Multiple Ownership Order, concluding that "the complete and abrupt elimination of our national multiple ownership rules might engender a precipitous and potentially disruptive restructuring of the broadcast industry." The Commission reiterated that diversity of viewpoint was determined at the local level. The Commission also affirmed that the 1984 decision: balanced the need for a presumptive rule equating ownership diversity at the national level with viewpoint diversity against the demonstrable benefits of group ownership. In the context of this balancing process, we found that national ownership diversity is not of primary relevance in promoting viewpoint diversity. In this regard we noted that the most important idea markets are local . . . [N]ational broadcast ownership limits, as opposed to local ownership limits, ordinarily are not pertinent to assuring a diversity of views to the constituent elements of the American public.

134. In the 1998 Biennial Report, the Commission reconsidered its views regarding the relationship between the national TV ownership rule and viewpoint diversity. It asserted that independently-owned affiliates play a valuable role by "counterbalancing" the networks' strong economic incentive in clearing all network programming "because they have the right . . . to air instead" programming more responsive to local concerns. In determining not to modify or eliminate the rule, it noted that the "competitive concerns" of opponents of relaxing or eliminating the [national TV ownership rule], including the concern that the number of viewpoints expressed nationally would be reduced, were more convincing than the comments in support of relaxation or elimination.

135. In Fox Television, the DC Circuit remanded the decision in the 1998 Biennial Report to retain the national TV ownership rule, holding that the decision to retain it was arbitrary and capricious. The court took note of the Commission's 1984 Multiple Ownership Order, which concluded that the rule should be repealed because it focuses on national, rather than local, markets and thus has an insignificant effect on viewpoint diversity. It also took note of the Commission's 1984 assertion that it had no evidence suggesting that stations which are not group-owned better respond to community needs, or spend more of their revenues on local programming. When the Commission changed course by retaining the limit in the 1998 Biennial Report, it failed to explain why it no longer considered the reasoning in its 1984 Multiple Ownership Order to be persuasive. According to the court, the Commission's failure to explain this significant deviation from its earlier conclusions rendered its 1998 decision arbitrary and capricious.

136. It appears that the national TV ownership rule is not directly relevant, and perhaps not relevant at all, to the goal of promoting viewpoint diversity. Consumers generally do not travel to other cities to obtain viewpoints. Instead, they rely on outlets for news sources, such as TV, radio, newspapers, Internet, cable, DBS, and magazines that are available in their own cities. As a result, the expression of viewpoints by television stations in one city does not appear to affect in any meaningful way the viewpoints available to people located in other cities. We seek comment on this analysis as well as on the general question whether our national TV ownership rule is relevant to our goal of promoting viewpoint diversity on a local level. Is there a relationship between the national ownership rule and the dual network rule with regard to viewpoint diversity? For example, could we safely repeal the national ownership rule as long as we maintain the dual network rule because the latter renders more likely the preservation of at least four different newscasts in each market? Does, as the Commission concluded in the 1998 Biennial Report, independent ownership of stations increase diversity of programming by providing outlets for non-network programming? Do commenters believe that the broadcast of non-network programming promotes our goal of source diversity?

137. We seek comment on the role of independently owned and operated stations. In deciding not to relax the national ownership rule in the 1998 Biennial Report, the Commission said: We do not believe that consolidation of ownership of all or most of the television stations in the country in the hands of a few national networks would serve the public interest. The national networks have a strong economic interest in clearing all network programs, and we believe that independently owned affiliates play a valuable counterbalancing role because they have the right to decide whether to clear network programming or to air instead programming from other sources that they believe better serves the needs and interest of the local communities to which they are licensed. Independent ownership of stations also increases the diversity of programming by providing an outlet for non-network programming. In Fox Television, the court found our explanation to be a plausible justification for the national ownership rule and consistent with the requirements in section 202(h). The court stated, however, that the Commission's conclusion was not adequately supported by the record: Although we do not agree with the networks that this reason is unresponsive to section 202(h) * * * we must agree that the Commission's failure to address itself to the contrary views it expressed in the 1984 Report effectively undermines its rationale. * * * The [1998 Biennial Report] does not indicate the Commission has since received such evidence or otherwise found reason to repudiate its prior decision. We seek comment on whether independently owned, network-affiliated stations offer more diverse programming and/or programming from more diverse sources than affiliated stations that are owned and operated by their network. We ask parties to provide evidence supporting their comments on this issue. Are there other factors or policy goals we should consider in determining whether to retain, modify, or eliminate the national TV ownership rule?

2. Competition

138. We seek comment on how the national TV ownership rule affects the ability of TV station group owners to compete against other video providers. We are interested in the impact this rule may have on the program production market and the advertising market. We also ask whether examination of advertising competition is, or should be, relevant to this analysis. Commenters are asked to analyze the impact of the transaction costs and uncertainties associated with network-affiliate relationships as well as any pro-competitive benefits of the current national television ownership rule. We also seek comment on whether the national television ownership rule artificially constrains the largest group owners from employing their skills in additional markets, and whether and how this operates to the detriment of consumers in those markets.

a. Program Production Market

139. Broadcast television stations organize a schedule of video programming which they either produce themselves or purchase from others in a national market. The TV Ownership *FNPRM* expressed a competitive concern about the ability of large purchasers of video programming to exercise monopsony power and

artificially restrict the price paid for programming. The market for program production appears to consist of firms that produce niche and general entertainment programming for sale to program packagers. Program packagers include cable networks, broadcast television networks, program syndicators, and individual owners of television stations (regardless of whether the station also carries network programming).

140. We seek comment on whether the national TV ownership rule promotes or hinders competition in the program production market. We ask commenters to address whether raising the national ownership cap would facilitate monopsony power. Our answer to this question depends significantly on the identification of market participants.

141. Regulatory changes have occurred in the past six years that may have affected the program production market. Prior to the 1996 increase in the national TV ownership cap, the Commission eliminated the financial interest and syndication rules ("fin-syn") and the prime time access rule ("PTAR"). Can the effects of the 1996 change in the national ownership cap be separated from the effects of the repeal of the fin-syn and PTAR rules? If so, we ask commenters to identify those effects and to address whether the 35% cap continues to be necessary to promote a robust and diverse program production market.

b. Advertising Markets

142. We have considered national television advertising as a relevant market based on the different nature of advertisers seeking a national audience rather than ones purchasing time for local markets. More recently, we identified a strategic group among the programming networks that consisted of ABC, NBC, CBS, and Fox. This assessment was based on findings that: (1) the relatively few local stations available with which to affiliate constituted a meaningful entry barrier into the strategic group; and (2) prime time viewership ratings were significantly higher for the strategic group networks than for other broadcast television networks. If our prior identification of this strategic group continues to be accurate today, the existence of this group likely restrains competition for national advertising among the broadcasters.

143. We seek comment on whether this analysis continues to be an accurate characterization of the national advertising market and the participants in the market. First, we request comment on whether the key participants in the national television advertising market should be defined more broadly to include broadcast TV networks outside the strategic group. If so, what are the factors that should be considered in identifying the members of the strategic group? Should the participants in the national television advertising market also include other outlets such as non-broadcast television networks (ESPN, CNN, etc.)? Cable networks and the other broadcast networks such as The WB and UPN have national coverage and carry national advertising, which may suggest they serve as substitutes from the perspective of at least some advertisers.

144. Second, regardless of whether we also include non-broadcast networks in the national television advertising market, we seek information on the extent to which national spot advertisements and/or syndicated programming are fungible with network television advertising from the perspective of advertisers. If group owners compete in the national advertising market, it would appear that increasing the 35% ownership cap could diminish competition by allowing broadcast networks to acquire additional stations, thereby reducing the effectiveness of non-network group owners in the national advertising market. We request market share data and analysis on this important point. Technology changes in advertising delivery may also allow the broadcast television networks to effectively provide national spot advertising. That is, a national network may deliver different advertisements targeted to different regions of the country simultaneously. We seek comment on this development and its relevance, if any, to competition in the national advertising market. Third, a recent study suggests that the national advertisers do not readily substitute between alternative media. We seek comment on this analysis.

145. The national TV ownership rule does not appear to have a direct effect on the number of competitors in the local advertising market. The rule affects primarily the total number of national households one group owner can reach, not the number within a single market. Of course, we recognize that the 35% limit could inhibit the participation of a group owner in a particular local TV market and thereby affect competition in that market. In particular, we seek comment on whether additional scale economies could be realized by group owners and whether the current rule prevents especially skilled management from entering additional local markets. We seek comment on this general issue, and whether limiting the size of group owners nationally can have an impact on competition in the local advertising market.

c. Innovation

146. We are also concerned with the impact that the national TV ownership rule may have on innovation in the media marketplace. Does our current rule promote or hinder innovation? Does a traditional competition analysis adequately capture the beneficial effects of innovation? What effect, if any, would a relaxed national TV ownership rule have on the ability of a broadcast network to develop innovative programming or services, or to effectuate the transition to digital television? Does the answer depend on whether the group owner plans to provide purely high definition television or standard definition television plus ancillary services? Would relaxation of the national TV ownership rule increase the ability and incentives of market participants (the large group owners in particular) to develop innovative technologies and/or new types of video programming?

3. Localism

147. The Commission has said in the past that a national TV ownership rule strengthens localism by creating a class of non-network station owners that can decide whether to preempt network programming in favor of programming that would better serve the needs and interests of that station's community. In Fox Television, the court affirmed that localism is a potentially relevant consideration in deciding whether to retain, modify, or eliminate the national TV ownership rule. Given this statement by the court and fact that the national ownership rule may have the most direct impact of our rules on the attainment of localism, our evaluation of the continued need for this rule will rely heavily on our findings regarding its effectiveness in promoting localism.

148. The production of local news and public affairs programming may represent one form of localism. We seek to understand whether the national TV ownership rule, by preserving a class of affiliates, may have the effect of increasing or decreasing the quantity and/or quality of local news and public affairs programming. We would be particularly interested in any clear correlation between the status of stations as affiliates or network-owned and the quantity of local news and public affairs produced by those stations. We request that commenters submit evidence addressing the relative output of affiliates and networks in this regard and address the appropriate weight of such data in our evaluation of localism and the national ownership rule.

149. The national TV ownership rule may also promote localism by creating economic incentives for non-network station owners regarding the preemption of network-delivered programs with station-selected programming. Networks incur costs in producing or purchasing programming for distribution on their networks. Since the networks initially bear these costs, network-owned and operated stations may have a stronger economic incentive than affiliates, all else being equal, to distribute network programming rather than replacing it on a station-by-station basis in response to community interests. It is also possible that the local programming preference in a particular instance may be sufficiently strong that even a network-owned station would find it profitable to replace its own programming with alternative programming. Parties commenting on this issue are asked to address specifically the allocation of advertising revenues between networks and affiliates on preempted programming. We seek comment on these observations and on any other economic incentives affecting the preemption of network programming by local stations.

150. In addition, television stations are obligated to serve the needs and interests of their local communities. We ask commenters to address the extent to which affiliates and/or network-owned stations could be expected to preempt network programming when it is not in their economic interest to do so. According to testimony before Congress by the President and Chief Operating Officer of Viacom, Inc., CBS' owned-and-operated stations "have complete freedom locally," even preempting primetime network programming to air, for example, an emergency weather newscast, a local telethon, and other events of local interest. If the principal category of such "unprofitable" preemption is breaking news or other emergency information, should we expect networks and affiliates to respond similarly with respect to such situations?

151. A key aspect of the argument that the national TV ownership rule promotes localism is that affiliates serve local needs more effectively than network station owners because affiliates are more likely to replace network programming with programming more suited to local needs. There are significant portions of the American public that already receive broadcast programming through stations owned and operated by broadcast networks. Is there evidence that consumers served by network-owned stations have either benefited or been harmed by the lack of a non-network owner as a check on network-provided programming?

152. It is also possible that localism may be furthered by the national TV ownership rule by preserving a sufficiently large class of network affiliates that collectively can influence network programming decisions. This may be the case where networks plan to air a particular program that a large percentage of its affiliates disfavor. Negotiations between a sufficiently large group of affiliates may cause the network to revise its programming decision. By contrast, if the national television ownership cap were raised or eliminated, a smaller group of affiliates raising the same concern might be less able to persuade the network to alter is programming plans. We ask commenters to address the frequency and efficacy of such discussions, to the extent they occur in practice, and the value of this form of localism compared with station-by-station preemption issues discussed.

153. We also seek comment on whether the national TV ownership rule continues to be necessary to preserve affiliate bargaining power regarding preemption. Would increasing the cap shift bargaining power to the networks such that "local" rights would be lost as a practical matter?

154. Separate from the selection of programming, our goal of promoting localism may be addressed through rules that promote the production of local news and public affairs programming. The 1984 Multiple Ownership Order relied on news ratings as an indicator of the quality of local news produced by group-owned stations versus that produced by stand-alone stations. The Commission reasoned that higher ratings indicated a greater responsiveness to local needs. Should we compare the quality of local news produced by network owned and operated stations and that of affiliates using ratings as a measure of quality? Are there alternative measures for this comparison?

4. Audience Measurement

155. The national TV ownership rule is calculated based on the number of television households a station can reach. The number of households reached nationwide is the sum of the number of households in each DMA in which a group owner owns a television station. The number of households in a DMA is halved for UHF stations. The national TV ownership rule is thus based on homes "passed," not homes actually viewing the stations of a group owner. This "potential audience" measure is at odds with the way we calculate a national ownership audience reach limit for cable television. A home is attributed to a multi-system cable operator only if that MSO actually serves the home, not simply because it is available to that home. We seek comment on which measurement method is appropriate given the policy objectives of the national TV ownership rule, and the differences between cable and broadcast television in the ease with which the potential service can be accessed (switching off and on channels versus subscription and installation). Is the current method of measuring the broadcast audience appropriate because broadcast is a non-subscription service? Is there an alternative measurement method that would be preferable to either of these existing approaches?

B. Dual Network Rule

156. The dual network rule currently provides: "A television broadcast station may affiliate with a person or entity that maintains two or more networks of television broadcast stations unless such dual or multiple networks are composed of two or more persons or entities that, on February 8, 1996, were 'networks' as defined in § 73.3613(a)(1) of the Commission's regulations (that is, ABC, CBS, Fox, and NBC)." The rule in its current form permits broadcast networks to provide multiple program streams (program networks) simultaneously within local markets, and prohibits only a merger between or among these four networks.

157. The dual network rule was originally adopted over sixty years ago and flatly prohibited any entity from maintaining more than a single radio network. A few years later, the rule was extended to television networks. The Commission believed that an entity that operated more than one network might preclude new networks from developing and affiliating with desirable stations because those stations might already be tied up by the more powerful network entity. The Commission expressed concern that dual networking could give a network too much market power. The rule was also intended to remove barriers that would inhibit the development of new networks, as well to serve the Commission's more general diversity and competition goals.

158. After Congress, in the 1996 Act, directed the Commission to amend the rule, the Commission amended the rule for the first time since it was adopted to

permit a broadcast station to affiliate with a network organization that maintains more than one broadcast network unless the multiple network combination was created by a combination among ABC, CBS, Fox, or NBC, or a combination between one of these four networks and UPN or WB. In the Dual Network Order last year, the Commission further relaxed the rule to permit a "top four" network to merge with or acquire UPN or WB. The Commission found that: (1) competition in the national advertising market would not be harmed by this rule change; (2) greater vertical integration of the sort contemplated by this rule change was potentially an efficient, pro-competitive response to increasing competition in the video market; and (3) program diversity would not be harmed because the two combined networks would have strong economic incentives to diversify their program offerings. We ask for comment whether the relaxation of the dual network rule has had the effects that we foresaw in the Dual Network Order.

159. We ask for comment about whether the present dual network rule is necessary in the public interest as the result of competition. Does it promote the goals we set forth—diversity, competition, and localism? If the rule serves some of our purposes and disserves others, does the balance of its effects argue for keeping, revising, or abolishing the rule?

1. Diversity

a. Program Diversity

160. In the Dual Network Order, the Commission found that program diversity at the national level would not likely be harmed by the combination of an emerging network (*i.e.*, UPN or WB) with one of the four major networks. The Commission found it likely that their common owner would have strong incentives to produce a diverse schedule of programming for each set of local TV outlets in the same market. Has the Commission's expectation proved correct? We also seek comment on the effect that consolidation between and among top four networks likely would have on program diversity. We seek comment on whether, and if so how, the increased competition that television stations face from cable networks and other media affects the diversity of programming on all national program networks.

b. Viewpoint Diversity

161. With respect to the combination of two or more top four networks, we see several potential viewpoint diversity issues. The first is the loss of an independently owned and produced local newscast in cities where the two networks each own local television stations. We seek comment on the impact of such a development on viewpoint diversity. The local TV ownership rule could limit the degree to which one entity, including a network, could own multiple TV stations in one market, assuming we retain that rule. We seek comment on whether we should address the loss of an independent local newscast as a result of a combination of two or more of the four major networks in the dual network rule, in the local TV ownership rule, or in some alternative new rule.

162. The second possible viewpoint diversity concern relating to the elimination of the dual network rule is the potential loss of one or more independent national television news operations. The primary focus of networks' national news operations appears to be on the nightly newscasts by ABC, CBS, and NBC. We ask for comment, in light of other sources of news and current public affairs, whether the loss of one or more of those nightly newscasts as an independent source of news would significantly reduce sources of news and current affairs and thus injure the public interest. Should the fact that the national broadcast networks alone reach virtually all households in the country affect our analysis? Would a reduction in the number of independently-owned national television networks give the remaining networks undue power and influence, such as during national elections?

163. Third, in the Dual Network Order, we noted evidence in the record from Network Affiliated Stations Alliance ("NASA") that eliminating the dual network prohibition against combinations of two of the top four major networks would increase the networks' economic leverage over their affiliates. We seek comment on how the combination of two top four networks would affect the balance of negotiating power between networks and affected affiliates. Commenters should identify with precision how any such leverage affects viewpoint diversity in terms of program selection. We also seek comment on whether combinations of major networks would affect the quantity or quality of diverse viewpoints on the merged company's owned and operated stations. Are there other factors or policy goals we should consider in determining whether to retain, modify or eliminate the dual network rule?

2. Competition

164. The Dual Network Order did not resolve whether the dual network rule should be eliminated. Some commenters pointed to new broadcast and non-broadcast competitors and argued that a merger of two major networks would not unduly affect the level of diversity and competition. Other commenters argued that major networks continue to have market power and relaxation of the rule would have an adverse impact on competition. We invite updates of these arguments. We also seek comment on whether the dual network rule promotes or retards innovation.

165. In the Dual Network Order, we found that the merger of an emerging network and a major network may benefit viewers and advertisers by lowering the risk associated with the creation of new network programming by giving one company a larger potential audience for the programming produced by the network. This spreads the fixed costs of program creation over a larger number of viewers, thereby lowering the per-viewer cost of producing the programming. If there are potential efficiencies of eliminating the rule for emerging networks, as we concluded last year, will comparable efficiencies accrue if two or more top four networks were permitted to merge?

166. In the Dual Network Order, we found that the combination of an emerging network and one of the four major networks would not harm the national television advertising market because the two networks would compete in different strategic groups. We seek comment on the effect of mergers among the four major networks on the program production market. If the four major networks constitute a strategic group within the national advertising market, do they also operate as a strategic group within the program production market? We seek comment on how competition in the program production market and program diversity would be affected, if at all, by a merger among two or more of the four major networks.

167. We are also concerned with the impact that the dual network rule may have on innovation in the media marketplace. Does our current rule promote innovation? Would relaxation of the dual network rule increase incentives to provide innovative broadcast programming or new broadcast-based technologies or services?

3. Localism

168. The Dual Network Order did not address localism as a policy goal *per se*. It did address localism in the context of a discussion of diversity. We seek to expand our understanding of the relationship between localism and the dual network rule. We invite comment as to whether the current rule promotes localism and, if so, whether, modification or elimination of the rule would have any effect. We also seek comment on whether combinations among major networks would affect the quantity or quality of local news provided by the merged company's owned and operated stations. Are there any other factors we should consider in determining whether to retain, modify, or eliminate the dual network rule?

VII. Administrative Matters

A. Procedural Provisions

1. Ex Parte Provisions

169. Because this proceeding involves broad public policy issues, the proceeding will be treated as "permit but disclose" for purposes of the Commission's *ex parte* rules. *See* generally 47 CFR 1.1200–1.1216. *Ex parte* presentations will be governed by the procedures set forth in section 1.1206 of the Commission's rules applicable to non-restricted proceedings. Should circumstances warrant, this proceeding or any related proceeding may be designated as restricted.

170. Parties making oral *ex parte* presentations are directed to the Commission's statement re-emphasizing the public's responsibility in permit-but-disclose proceedings and are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in § 1.1206(b) as well.

171. We urge persons submitting written *ex parte* presentations or summaries of oral *ex parte* presentations in this proceeding to use ECFS in accordance with the Commission rules. Parties using paper *ex parte* submissions must file an original and one copy with the Commission's Secretary, Marlene H. Dortch. As applicable, please follow the procedures set forth for sending your submission by mail, or for hand delivery of your submission to the Commission's filing location in downtown Washington, DC.

172. In addition, we request that parties provide two paper copies of each *ex parte* submission to Qualex International. We ask parties to serve one electronic copy via email, plus one paper copy of each *ex parte* submission, to (1) Linda Senecal, Industry Analysis Division, Media Bureau, Federal Communications Commission, 445 12th Street, SW., Room 2-C438, Washington, DC 20554, email *lsenecal@fcc.gov*; and (2) Mania Baghdadi, Industry Analysis Division, Media Bureau, Federal Communications Commission, 445 12th Street, SW., Room 2–C267, Washington, DC 20554, email *mbaghdad@fcc.gov*.

B. Initial Regulatory Flexibility Analysis

173. As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis ("*IRFA*") of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *NPRM*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on this *NPRM*, and they should have a separate and distinct heading designating them as responses to the IRFA.

VIII. Initial Regulatory Flexibility Act

174. As required by the Regulatory Flexibility Act ("RFA"), *see* 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM*, provided in sections IV, V and VI of the item. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA").

A. Need for, and Objectives of, the Proposed Rules

175. Section 202(h) of the Telecommunications Act of 1996 ("1996 Act") requires the Commission to review all of its broadcast ownership rules every two years commencing in 1998, and to determine whether any of these rules are necessary in the public interest as the result of competition. The 1996 Act also requires the Commission to repeal or modify any regulation it determines to be no longer in the public interest. At the time these ownership rules were adopted, there were fewer local media outlets and fewer types of media than there are today. The ownership rules in their current form therefore may need revision to ensure that they accurately reflect current media marketplace conditions. The goal of this proceeding is to solicit comment on the modification of the subject policies and rules.

176. In this *NPRM*, we seek comment on both "local" and "national" ownership rules. The local rules are the local TV multiple ownership rule and the radio/TV cross-ownership rule. The national ownership rules are the national TV multiple ownership rule and the dual network rule. These four rules are described in sections V and VI of this *NPRM*. Additionally, open proceedings concerning the newspaper/broadcast cross-ownership rule and the local radio ownership rule are incorporated into this proceeding.

177. Section 202(h) of the 1996 Telecommunications act directs the Commission to re-examine its broadcast ownership rules every two years and either repeal, retain or modify them. Additionally, two recent court decisions by the U.S. Court of Appeals for the District of Columbia Circuit state that section 202(h) carries with it a presumption in favor of repealing or modifying the ownership rules. In the Fox Television case, discussed in section II of the item, the court vacated the cable/broadcast cross-ownership rule and remanded for further consideration the Commission's decision in its 1998 biennial review to retain then national TV multiple ownership rule. In the Sinclair case, discussed in section II of the item, the same court invalidated the Commission's definition of "voices" under the local TV ownership rule, stating the Commission had failed to justify its decision to include only TV broadcast stations as voices.

178. In light of the mandate in section 202(h) and these recent court decisions, the Commission seeks comment from parties concerning ownership rules discussed in the *NPRM*. The Commission believes that a broad range of comments must be received to ensure we fulfill our mandate to further the public interest, convenience and necessity.

179. We are required under the Regulatory Flexibility Act to demonstrate a flexible and responsive awareness of the interests of small business entities that are subject to the rules under review in this *NPRM*. Accordingly, we solicit comment from all small business entities, including minority-owned and women-owned small businesses. We especially solicit

comment on whether, and if so, how, the particular interests of these small businesses may be affected by the rules.

B. Legal Basis

180. This *NPRM* is adopted pursuant to sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310, and section 202(h) of the Telecommunications Act of 1996.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

181. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by any proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental entity" under section 3 of the Small Business Act. In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

182. In this context, the application of the statutory definition to television stations is of concern. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over inclusive to this extent.

183. *Television Broadcasting.* The Small Business Administration defines a television broadcasting station that has no more than $12 million in annual receipts as a small business. Television broadcasting consists of establishments primarily engaged in broadcasting images together with sound, including the production or transmission of visual programming which is broadcast to the public on a predetermined schedule. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce programming in their own studios. Separate establishments primarily engaged in producing programming are classified under other NAICS numbers.

184. According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database on August 22, 2002, about 870 (70%) of 1,250 commercial television broadcast stations have revenues of $12 million or less. We note, however, that under SBA's definition, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figure on which it is based does not include or aggregate revenues from non-television affiliated companies.

185. *Radio Broadcasting.* The SBA defines a radio station that has $6 million or less in annual receipts as a small business. According to Commission staff review of BIA Publications Inc. Master Access Radio Analyzer Database on August 22, 2002, about 10,800 (96%) of 11,320 commercial radio stations have revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules.

186. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $12.5 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite ("DBS") services, home satellite dish ("HSD") services, multipoint distribution services ("MDS"), multichannel multipoint distribution service ("MMDS"), Instructional Television Fixed Service ("ITFS"), local multipoint distribution service ("LMDS"), satellite master antenna television ("SMATV") systems, and open video systems ("OVS"). According to the Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue. We address each service individually to provide a more precise estimate of small entities.

187. *Cable Operators.* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions adopted in this *NPRM.*

188. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

189. *DBS Service.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated $12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

190. *Home Satellite Dish ("HSD") Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

191. *Multipoint Distribution Service ("MDS"), Multichannel Multipoint Distribution Service ("MMDS"), Instructional Television Fixed Service ("ITFS") and Local Multipoint Distribution Service ("LMDS").* MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS. LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

192. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had an annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $12.5 million annually. Therefore, for purposes of the IRFA, we find that there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

193. The SBA definition of small entities for cable and other program distribution services, which includes such companies generating $12.5 million in annual receipts, seems reasonably applicable to ITFS. There are presently 2,032 ITFS licenses. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

194. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding calendar years. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS provides as defined by the SBA and the Commission's auction rules.

195. In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

196. *Satellite Master Antenna Television ("SMATV") Systems.* The SBA definition of small entities for cable and other program distribution services includes SMATV services and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December, 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July, 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

197. *Open Video Systems ("OVS").* Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

198. *Daily newspapers.* The SBA defines a newspaper publisher with less than 500 employees as a small business. According to the 1997 Economic Census, 8,620 of 8758 newspaper publishers had less than 500 employees. The data does not distinguish between newspaper publishers that publish daily and those that publish less frequently, and the latter are more likely to be small businesses than the former because of the greater expense to publish daily. The newspaper/broadcast cross-ownership rule applies only to daily newspapers. It is likely that not all of the 8,620 small newspaper publishers are affected by the current rule.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

199. We anticipate that none of the proposals presented in the *NPRM* will result in an increase to the reporting and recordkeeping requirements of broadcast stations, newspapers, or cable television stations. However, one alternative available to the Commission in this *NPRM* is retention of the current rules.

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

200. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

201. We are directed under law to consider alternatives, including alternatives not explicitly listed. This *NPRM* invites comment on a number of alternatives to retain, modify, or eliminate the individual ownership rules. The Commission will also consider additional significant alternatives developed in the record.

202. In this context, we highlight certain aspects of this *NPRM* in which we have asked commenters to discuss alternative means of achieving our goals. Parties' discussions of alternatives that are in their submitted comments will be fully considered in our evaluation of whether to retain, modify or eliminate our media ownership rules.

203. Our local ownership rules include the newspaper/broadcast cross-ownership rule, the radio/TV cross-ownership rule, the local radio ownership rule, and the local TV multiple ownership rule. These rules are interrelated. Each is intended to foster competition and diversity in the local media marketplace. One approach under consideration is to consider these rules collectively and thus adopt a single rule that would foster diversity, competition, and localism. An alternative option is to retain the current regulatory scheme, in which we apply individual, media-specific local ownership rules. We ask for comment on how best to choose among these or other alternatives.

204. We also ask about alternative approaches to identifying and weighting "voices" if the Commission adopts a new "voice" test. Should the Commission develop a new "voice" test, according weights to different outlet types, or considering factors such as audience reach, ownership structure, percentage of programming or print content devoted to local news, and/or consumer use patterns? Should the Commission consider an alternative that would count, or not count, certain types of media outlets as a "voice"?

205. In this *NPRM*, the Commission explores the underpinnings of three principles underlying the regulation of the broadcast industry, namely diversity, competition and localism. These principles are of particular import to small entities. Thus, we seek comment to promote on the general advantages and disadvantages of relying on our current ownership rules to promote the public interest versus developing a single local ownership rule or conducting a case-by-case analysis.

206. In addition to seeking to foster the policy goals discussed, the Commission has historically used the ownership rules to foster ownership by diverse groups, such as minorities, women and small businesses. In the context of this comprehensive review of our ownership rules, we invite comment on whether we should consider such diverse ownership as a goal in this proceeding. If so, how should we accommodate or seek to foster that goal? In addition, we invite comment as to our legal authority to adopt measures to foster that goal.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

IX. Ordering Clauses

207. Pursuant to sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310, and section 202(h) of the Telecommunications Act of 1996, this *NPRM*.

208. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Radio, Television broadcasting.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02-27311 Filed 10-25-02; 8:45 am]

BILLING CODE 6712-01-P

Notices

Federal Register
Vol. 67, No. 208
Monday, October 28, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Renewal of Advisory Committee on Actuarial Examinations

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Renewal of Advisory Committee.

SUMMARY: The Joint Board for the Enrollment of Actuaries announces the renewal of the Advisory Committee on Actuarial Examinations.

FOR FURTHER INFORMATION CONTACT: Gloria Walker, Management/Program Analyst, 202-694-1854.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to advise the Joint Board on examinations in actuarial mathematics and methodology. The Joint Board administers such examinations in discharging its statutory mandate to enroll individuals who wish to perform actuarial services with respect to pension plans subject to the Employee Retirement Income Security Act of 1974. The Committee's advisory functions will include, but will not necessarily be limited to: (1) Considering areas of actuarial knowledge that should be treated on the examinations; (2) developing examination questions; (3) recommending proposed examinations and pass marks; and (4), as requested by the Joint Board, making recommendations relative to the examination program.

Dated: October 11, 2002.

Paulette Tino,

Chairman, Joint Board for the Enrollment of Actuaries.

[FR Doc. 02-27044 Filed 10-25-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. ST-02-05]

Microbiological Data Program; Public Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The purpose of this notice is to notify all interested persons that the USDA Agricultural Marketing Service (AMS) will hold a public meeting to discuss the Microbiological Data Program (MDP). Specifically, AMS will discuss the current status of the program and invite comment and input regarding the MDP activities to date. This notice also sets forth the schedule and proposed agenda for the meeting.

DATES: The public meeting will be held on Wednesday, November 20, 2002, from 1 to 4 p.m.

ADDRESSES: The public meeting will be held at the Hilton Garden Inn, Georgetown meeting room, 815-14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Martha Lamont, Monitoring Programs Office, Science and Technology Programs, Agricultural Marketing Service, United States Department of Agriculture, 8609 Sudley Road, Manassas, Virginia, 20110-8411. Telephone number (703) 330-2300, Ext 17 or fax (703) 369-0678.

SUPPLEMENTARY INFORMATION: In the past several years the number of foodborne illness associated with domestic and imported fresh fruits and vegetables has increased. Some microorganisms once thought under control may be adapting to their environments, may be developing resistance to conventional food processing operations, and may be re-emerging with increased pathogenicity. To respond to these concerns, Congress authorized an appropriation of $6.234 million for FY 2002 to fund a microbiological monitoring program for foodborne pathogens and indicator organisms on domestic and imported fruits and vegetables. The program is designed to collect reliable data and develop national estimates of bacterial contamination with regard to selected produce. The MDP is a voluntary data gathering program and not a regulatory or enforcement program. The Federal agencies; Food and Drug Administration, Centers of Disease Control and Prevention, USDA's National Agricultural Statistical Service, as well as 10 State Departments of Agriculture, industry and academia have provided assistance and information in formulating program policy and operating procedures. The program is being conducted under the authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*).

AMS is hereby giving notice of a public meeting, scheduled for Wednesday, November 20, 2002, in order to keep all interested persons advised of the current status of the program and invite comment and input regarding the MDP activities to date. The public meeting will begin at 1 p.m. and is scheduled to end at 4 p.m. It will be held at the Hilton Garden Inn, Georgetown meeting room, 815-14th Street, NW., Washington, DC 20005.

Those parties who wish to speak at the meeting should register on or before November 13, 2002 to speak, please e-mail *Martha.Lamont@USDA.gov*, or send a fax to Martha Lamont at (703) 330-2300, Ext 17. Registrants should include their name, address, and daytime telephone number. Depending on the number of registered speakers, time limits may be imposed on speakers, and speakers who have registered in advance will be given priority if time is limited.

The proposed agenda for the meeting will include discussions of: (1) MDP overview and current status, (2) MDP sampling and testing methodology, (3) MDP Annual Summary Calendar Year 2002, and (4) recommendations and concerns.

Registration upon arrival is necessary for all participants, including those who have registered to speak in advance. Speakers should provide one original and two copies of their presentation at registration. A registration desk will be located outside the meeting room. If you require special accommodations, such as a sign language interpreter, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.** The meeting will be recorded, and information about obtaining a transcript will be provided at the meeting.

Dated: October 22, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–27306 Filed 10–25–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Mineral County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Lolo National Forest's Mineral County Resource Advisory Committee will meet on November 12 at 6 p.m. until 8 p.m. in Superior, Montana for a business meeting. The meeting is open to the public.

DATES: November 12, 2002.

ADDRESSES: The meeting will be held at the Mineral County Courthouse, 300 River Street, Superior, MT 59872.

FOR FURTHER INFORMATION CONTACT: Robert Harper, Designated Forest Official (DFO), District Ranger, Superior District, Lolo National Forest at (406) 822–4233.

SUPPLEMENTARY INFORMATION: Agenda topics for this meeting include establishing operating guidelines, and discussion about funding projects. If the meeting location is changed, notice will be posted in local newspapers, including the Mineral Independent and the Missoulian.

Dated: October 17, 2002.

Robert Harper,

Designated Federal Official, District Ranger, Superior Ranger District.

[FR Doc. 02–27313 Filed 10–25–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Service Strategic Plan (2003 Update)

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Government Performance and Results Act of 1993, the Forest Service will be updating its strategic plan over the next twelve months. The purpose of this plan is to outline long-term goals and objectives that will help guide the agency's current actions and future plans. In the past, the Forest Service has found that public comment has been helpful in developing the strategic plan and its subsequent updates. This notice, therefore, announces the opportunity for the public to review the agency's current strategic plan and to recommend changes that should be included in the draft 2003 update.

DATES: Comments must be received, in writing, on or before December 30, 2002.

ADDRESSES: Send written comments for the draft 2003 update of the strategic plan to the Director, Strategic Planning and Resource Assessment Staff, via U.S. Postal Service to Forest Service, USDA, Mail Stop 1129, 1400 Independence Ave., SW, Washington, DC 20250–1129; via email to *spra@fs.fed.us;* or via facsimile to (703) 605–4199. The public may inspect comments received on this notice in the office of the Director of Strategic Planning and Resource Assessment, Sixth Floor, Rosslyn Plaza, Building E, 1621 North Kent Street, Arlington, VA 22209. Persons wishing to inspect the comments are encouraged to call ahead at (703) 605–4488 to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Nancy Osborne, Strategic Planning and Resource Assessment Staff, (703) 605–4488; or via email at *spra@fs.fed.us.* Additional information concerning the strategic plan, including the current plan, may be obtained on the Internet at *http://www.fs.fed.us/plan.*

SUPPLEMENTARY INFORMATION: The intent of the strategic plan is to outline long-term goals and objectives that will help guide the agency's current actions and future plans. Management strategies are identified under each objective that provide key approaches to be used to achieve the stated goals and objectives. The draft 2003 update of the strategic plan will be developed using the Montreal Process Criteria and Indicators for forest conservation and sustainable management as a framework for identifying goals, objectives, and trend indicators focused on the agency mission of sustainable resource management. Three goals are envisioned for the draft 2003 update of the strategic plan: (1) Sustaining ecosystem health, diversity, and productivity of national forests and grasslands, (2) providing the American people with a sustainable flow of goods and services, and (3) maintaining organizational capacity to deliver effective public service.

More information on the Montreal Process Criteria and Indicators and on current trends in the indicators for the United States is available at *http://www2.srs.fs.fed.us/2003/2003.htm,* the Web site for the draft National Report on Sustainable Forests. In addition, it is anticipated that the 2003 update of the Forest Service Strategic Plan will be available for public comment in spring 2003.

Dated: October 18, 2002.

Sally D. Collins,

Associate Chief.

[FR Doc. 02–27333 Filed 10–25–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Natural Resources Conservation Service (NRCS) will hold a Farm Bill 2002 National Technical Service Provider Summit entitled "Expanding the Capabilities of Conservation Service on Private Lands." The purpose of this event is to initiate a Departmental dialogue with potential technical service providers. The Summit is open to the public.

DATES: The Summit will convene Thursday, November 7, 2002. Registration will start at 8 a.m., followed by a panel session. The afternoon listening session will continue until 4 p.m., with opportunities for statements on ways to successfully implement a Technical Service Provider Process.

ADDRESSES: The Summit will be held at the Jefferson Auditorium of the Department of Agriculture's (USDA) South Building, 1400 Independence Ave., SW., Washington, DC. Participants should enter the building through the 5th wing entrance of the South Building, located on the corner of Independence Avenue and 14th Street. Participants should note that in order to access the building, they must bring valid photo identification and allow for time to be checked in at the security station. Weapons of any type, including protective sprays, are prohibited in the building. Requests to make statements should be sent to Marilou Flores, USDA/NRCS Technical Service Provider Group. Speakers will be limited to three minutes. Written statements will also be accepted, and should be addressed to Melissa M. Hammond, Group Leader, Technical Service Provider Group, USDA/Natural Resources Conservation Service, Washington, DC. Elements for which potential private and public technical service providers may provide statements include:

- Technical Service Provider Process.
- Payment Process.
- Payment Rates.
- Certification.
- Decertification.
- Quality Assurance Process.
- Training.
- Liability.
- Competition.

FOR FURTHER INFORMATION CONTACT: Marilou Flores, Management Analyst, USDA/NRCS Technical Service Provider Group; telephone: (202) 720–0427; fax: (202) 720–3052; e-mail: *marilou.flores@usda.gov.*

SUPPLEMENTARY INFORMATION: This summit will also be broadcast nationally as a live satellite telecast available through satellite downlink and web streaming. Additional information about this summit that occurs after this **Federal Register** notice is published, may be found on the World Wide Web at *http://www.nrcs.usda.gov/.*

Information on Services for Individuals With Disabilities: For information on facilities, or services for individuals with disabilities, or to request special assistance at the Summit, contact Marilou Flores.

USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Statutes enforced by USDA also prohibit discrimination on the basis of political beliefs and marital or family status (not all prohibited bases apply to all programs). Persons with disabilities who require alternate means for communication or program information (Braille, large print, audio tape, etc.) should contact USDA's Target Center at (202) 720–2000 (voice and TDD).

To file a complaint of discrimination to USDA, write to the Director, Office of Civil Rights, Room 326–W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410; or call (202) 720–5964 (voice and TDD). The USDA is an equal opportunity provider and employer.

Signed in Washington, DC on October 21, 2002.

Thomas A. Weber,

Associate Chief, Natural Resources Conservation Service.

[FR Doc. 02–27298 Filed 10–25–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results and partial rescission of fourth antidumping duty administrative review.

SUMMARY: On January 4, 2002, the Department of Commerce published the preliminary results, partial rescission and postponement of the fourth antidumping duty administrative review of the antidumping duty order on brake rotors from the People's Republic of China. *See Brake Rotors from the People's Republic of China: Preliminary Results, Preliminary Partial Rescission, and Postponement of Final Results of the Fourth Antidumping Duty Administrative Review,* 67 FR 557 (January 4, 2002) (*Preliminary Results*). This administrative review examines six PRC companies (i.e., one exporter whose entries are all subject to the antidumping duty order and five exporters included in three exporter/producer combinations for which only certain entries are subject to the antidumping duty order) (*see* "Background" section below for further discussion). The period of review is April 1, 2000, through March 31, 2001. We gave interested parties an opportunity to comment on our preliminary results.

Based on the use of additional publicly available information and the comments received from the interested parties, we have made two changes to the margin calculation for the sole respondent in the administrative review for which we calculated an antidumping duty margin. The final weighted-average dumping margin for the reviewed firm in the administrative review is listed below in the section entitled "Final Results of Administrative Review."

EFFECTIVE DATE: October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Terre Keaton, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to 19 CFR Part 351 (2001).

Background

On January 4, 2002, the Department published in the **Federal Register** the preliminary results, preliminary partial rescission, and postponement of final results of the fourth antidumping duty administrative review of the antidumping duty order on brake rotors from the People's Republic of China ("PRC") (67 FR 557).

On January 14, 2002, the petitioner[1] requested the Department to reconsider its decision not to conduct verification of Qingdao Gren (Group) Co. ("Gren") based on the argument that it submitted a timely request for that company to be verified and that there was good cause to verify Gren's data based on the concerns raised in its letter. On January 24, 2002, we informed the petitioner's counsel that it would not be possible to conduction verification of Gren's submitted data in this review because (1) a verification of Gren's data was not statutorily required; (2) the petitioner did not sufficiently demonstrate that good cause existed for verifying Gren's data; and (3) in the absence of good cause, the Department's team assigned to this case did not have the resources to verify any additional companies other than those companies it had already selected for verification (*see* Memorandum dated January 24, 2002, from Irene Darzenta Tzafolias, Program Manager, to the File).

On March 2, 2002, the Department provided a verification outline to certain respondents[2] selected for verification

[1] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

[2] The respondents in this review are Gren and the following three exporters/producer combinations (which are excluded from the order on brake rotors only with respect to brake rotors sold through those combinations): (1) China National Automobile Industry Import & Export Corporation ("CAIEC") or Laizhou CAPCO Machinery Co., Ltd. ("Laizhou CAPCO")/Laizhou CAPCO; (2) Shenyang Honbase Machinery Co., Ltd. ("Shenyang Honbase") or Laizhou Luyuan Automobile Fittings Co., Ltd. ("Laizhou Luyuan")/Shenyang Honbase or Laizhou Luyuan; and (3) China National Machinery and Equipment Import & Export (Xinjiang) Co., Ltd. ("Xinjiang")/Zibo Botai Manufacturing Co., Ltd. ("Zibo").

Continued

(*i.e.*, four of the five exporters included in the three exporter/producer combinations and as discussed in the *Preliminary Results* at 67 FR 558). On March 7, 2002, the petitioner provided verification comments. From March 14 through April 2, 2002, the Department conducted its verification of data obtained for certain U.S. entries of brake rotors from four of the five exporters included in the three exporter/producer combinations, in accordance with 19 CFR 351.307.

On April 16, 2002, the Department placed on the record certain publicly available information for consideration in the final results (*see* April 16, 2002, letter with attachment from Katherine Johnson, Acting Program Manager, to each interested party).

On April 26, and May 2, 2002, the Department issued its verification reports. The petitioner submitted its case brief on June 14, 2002. The respondents collectively submitted their rebuttal brief on June 21, 2002.

The Department has conducted these reviews in accordance with section 751 of the Act.

Scope of the Order

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under "one ton and a half," and light trucks designated as "one ton and a half."

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer ("OEM") which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are classifiable under subheading 8708.39.5010 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), we have determined that, during the period of review ("POR"), the exporters which are part of the three exporter/producer combinations which received zero rates in the less-than-fair-value ("LTFV") investigation did not make shipments of subject merchandise to the United States during the POR. Specifically, we have determined that during the POR, (1) neither CAIEC nor Laizhou CAPCO exported brake rotors to the United States that were manufactured by producers other than Laizhou CAPCO; (2) neither Shenyang Honbase nor Laizhou Luyuan exported brake rotors to the United States that were manufactured by producers other than Shenyang Honbase or Laizhou Luyuan; and (3) Xinjiang did not export brake rotors to the United States that were manufactured by producers other than Zibo.

In order to make this determination, we first examined POR-subject merchandise shipment data furnished by the Customs Service by performing a data query. Because the data from our initial query was voluminous, we randomly selected 25 entries (*i.e.*, five entries per company) from the data query results for further examination by the Customs Service (*see* Memorandum dated October 2, 2001, from Brian C. Smith, Team Leader, to the File, titled, "Request for Assistance: Shipments of Brake Rotors from the People's Republic of China Manufactured and/or Exported By Five PRC Companies During the Period April 1, 2000, Through March 31, 2001").

Specifically, we requested the Customs Service to examine further the documentation filed at the U.S. port for each of those selected entries made by the exporters at issue to determine the manufacturer of the merchandise. To check further the accuracy of the data for those entries, we conducted verification of the entry data selected for four of the five exporters included in the three exporter/producer combinations. At verification, we examined all documentation (*i.e.*, bills of lading, invoices, payment documentation, production orders, etc.) pertaining to the entry data for those companies. *See* verification reports for CAIEC and Laizhou CAPCO dated April 26, 2002, and verification reports for Laizhou Luyuan and Shenyang Honbase dated May 2, 2002, for additional discussion.

Therefore, based on the data contained on the record for all 25 entries from our data query results and our findings with respect to these and other entries selected at verification, we found no evidence that any of the exporter/producer combinations which are the subject of this administrative review made shipments of subject merchandise during the POR. (*See* "Issues and Decision Memorandum" from Richard W. Moreland, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated October 21, 2002 (Comments 1 through 4 and 6).) Therefore, we are rescinding this review with respect to CAIEC, Laizhou CAPCO, Shenyang Honbase, Laizhou Luyuan, and Xinjiang.

Since the preliminary results, we have also examined whether any exporter/producer combinations in this review underwent changes in ownership and, if so, whether there are changed circumstances which would affect their order exclusion status. As a result of verification findings, although we did find that there had been changes in ownership since the LTFV investigation with respect to Laizhou Luyuan, Laizhou CAPCO, and CAIEC, we found no evidence that the change in ownership in each of these companies affects their exclusion status.

With respect to Laizhou Luyuan, another company purchased a significant portion of it after the LTFV investigation. At verification, we thoroughly examined the facts behind that other company's investment in Laizhou Luyuan, and whether it was exporting through Laizhou Luyuan brake rotors to the U.S. market.

In addition, in order to determine whether these two companies should be treated as one entity, we examined the extent to which the export operations of Laizhou Luyuan and this other company were intertwined and whether this relationship has significant potential for the manipulation of pricing, export, and production decisions pertaining to the subject merchandise. Based on our verification findings, we find that the export activities of Laizhou Luyuan and the company that purchased a significant portion of Laizhou Luyuan are sufficiently separate even though common ownership does exist. Specifically, based on our verification findings, we determine that Laizhou Luyuan has not significantly changed its (1) management, (2) production facilities, (3) supplier relationships, or (4) customer base as a result of its purchase by the other company (*see* Laizhou Luyuan's April 26, 2002, verification report). Thus, we find that the export operations of Laizhou Luyuan and the other company are sufficiently separate from one another such that there is no significant potential for manipulation of pricing, export, or production decisions.

Finally, after examining both companies' records at verification we found no instance that the other company is exporting Laizhou Luyuan-made brake rotors to the U.S. market or that Laizhou Luyuan is exporting brake rotors sourced through the other company.

Analysis of Comments Received

All issues raised in the case briefs are addressed in the Decision Memo, which is hereby adopted by this notice. A list of the issues raised, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

After the use of additional publicly available information and the comments received from the interested parties, we made two changes to Gren's margin calculation.

1. To value selling, general, and administrative expenses, factory overhead and profit, we used the 1998 financial data of Jayaswals Neco Limited, the 1998–1999 financial data of Rico Auto Industries Limited, and the 2000–2001 financial data of Kalyani Brakes Limited.
2. We used the updated value from the International Trade Administration website to value skilled, unskilled and packing labor.

Final Results of Review

We determine that the following weighted-average margin percentage exists for the period April 1, 2000, through March 31, 2001:

Exporter	Margin (percent)
Qingdao Gren (Group) Co.	0.02 (de minimis)

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific *ad valorem* duty assessment rates for merchandise subject to this review. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the POR from Gren for which the importer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's entries during the review period. For entries made by PRC companies for which the Department has rescinded the administrative review (*i.e.*, the exporter/producer combinations listed in the "Background" section of this notice), the Customs Service shall continue not to assess *ad valorem* duties on those entries made by those exporter/producer combinations.

Cash Deposit Requirements

The following deposit rates shall be required for merchandise subject to the order entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Gren will be the rate indicated above; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding, but for whom the Department has rescinded the review or of whom the review was not requested for this POR will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for all other PRC exporters will continue to be 43.32 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: October 21, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix--Issues in Decision Memo

Comments

1. Whether the Sampling Technique and Method Used for Collecting Data in this Review Violated the Petitioners' Rights of Due Process
2. Whether to Reverse the Preliminary Results With Respect to the Exporter/Producer Combinations
3. Whether the Exporter/Producer Combinations Excluded from the Order Violated the Exclusion Conditions Based on Examination of Selected U.S. Brake Rotor Entries during the Period of Review
4. Whether Two Companies Failed the Verification Process Based on the Verification Findings and Documents Obtained From Verification
5. Whether Certain Data Obtained from Verification Were Illegible
6. Whether the Change in Ownership Warrants Assigning Laizhou Luyuan the PRC-Wide Rate

As stated in the *Preliminary Results*, we selected CAIEC, Laizhou CAPCO, Shenyang Honbase, Laizhou Luyuan, and a company related to Laizhou Luyuan for verification. We did not select Gren for verification because we did not find good cause had been demonstrated with respect to this company and verification of this company was not statutorily required (*see* 67 FR at 558).

7. Whether We Should Have Conducted Verification of Gren's Data

[FR Doc. 02–27393 Filed 10–25–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Partial Rescisson of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of partial rescission of the antidumping duty new shipper review of fresh garlic from the People's Republic of China.

SUMMARY: On July 31, 2002, the Department of Commerce published the preliminary results of the new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China. The review covers Jinan Yipin Corporation, Ltd., and Shandong Heze International Trade and Developing Company. The period of review is November 1, 2000, through October 31, 2001. For the reasons discussed below, we are rescinding the review of Shandong Heze International Trade and Developing Company.[1]

EFFECTIVE DATE: October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Ellman or Mark Ross, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4852 and (202) 482–4794, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 2001).

[1] We are also conducting a new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China for Jinan Yipin Corporation, Ltd. On October 22, 2002, we issued a notice extending the final results of that new shipper review.

Scope of the Order

The products covered by this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheading 0703.20.0010, 0703.20.0020 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

Background

On July 31, 2002, we published in the **Federal Register** the notice of preliminary results of the new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC), in which we indicated our intent to rescind the review of Shandong Heze International Trade and Developing Company (Shandong Heze) based on lack of evidence supporting Shandong Heze's entitlement to a separate rate from the PRC-wide entity. *See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review and Intent to Rescind in Part*, 67 FR 49669 (July 31, 2002); see also *Shandong Heze International Trade and Developing Company—Separate Rates Analysis and Deficient Submissions Memorandum*, dated July 24, 2002, available in the Central Records Units (CRU), Room B–099 of the main Department of Commerce Building. In the notice we invited interested parties to comment on our preliminary results.

On August 15, 2002, Shandong Heze filed a case brief addressing issues raised in the Department's preliminary results of review, and the petitioner filed rebuttal comments on August 21, 2002. Subsequent to our receipt of the case brief, we identified an additional deficiency in Shandong Heze's reporting and, on September 19, 2002, we released for comment the draft decision memorandum in which we identified the deficiency. See *Shandong Heze International Trade and Developing Company—Recission of New Shipper Review Due to Lack of Required Certification*, dated September 19, 2002, available in CRU. We did not receive any comments from either party by the due date we established. Therefore, the analysis we proposed in that memorandum remains unchanged.

Rescission of Review

The Department's regulations at 19 CFR 351.214(b)(2)(ii) state that, if the company requesting the review is the exporter but not the producer of the subject merchandise, then the request from this company must contain: (1) A certification that the company did not export subject merchandise to the United States during the period of investigation (POI), and (2) a certification from the person or company that produced or supplied the subject merchandise to the company requesting the review that the producer or supplier did not export the subject merchandise to the United States during the POI. Shandong Heze did not supply the Department with the certifications required in a new shipper review under 351.214(b)(2)(ii)(B) of the Department's regulations. As discussed above, the Department released to the parties for comment a draft decision memorandum in which it identified the deficiency and, in the memorandum, a prompt rescission of the review of Shandong Heze was recommended. As indicated above, we did not receive any comments on this issue. Therefore, we find it appropriate to rescind the new shipper review of Shandong Heze based on its failure, despite multiple opportunities, to provide the proper certifications pursuant to 19 CFR 351.214(b)(2)(ii).

Analysis of Comments Received

Because the Department is rescinding this review based on Shandong Heze's failure to provide the proper certifications, we have not addressed the other, unrelated arguments offered by the parties after issuance of the preliminary results of the new shipper review.

Notification

Bonding is no longer permitted to fulfill security requirements for shipments from Shandong Heze of fresh garlic from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the **Federal Register**.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement, pursuant to 19 CFR 351.402(f)(3), could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Tariff Act of 1930, as amended.

Dated: October 22, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–27395 Filed 10–25–02; 8:45 am]
BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Notice of Extension of Time Limit for the Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the final results of antidumping duty new shipper review.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China until no later than November 26, 2002. The new shipper review covers one exporter, Jinan Yipin Corporation Ltd.[1] The period of review is November 1, 2000, through October 31, 2001. This extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5047.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act and all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2002).

Background

On July 24, 2002, the Department issued the preliminary results of the new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China. See *Fresh Garlic from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty New Shipper Review and Intent to Rescind in Part*, 67 FR 49669 (July 31, 2002). We invited parties to comment on our preliminary results. We received comments from the petitioners and the new shipper, Jinan Yipin Corporation, Ltd. The final results for this review are currently due October 22, 2002.

Extension of Time Limit for Final Results of New Shipper Review

Section 751(a)(1)(B)(iv) of the Act provides that the Department will issue the final results of a new shipper review within 90 days after the date on which the preliminary results were issued. If the Department determines that a new shipper review is extraordinarily complicated, however, section 751(a)(1)(B)(iv) of the Act allows the Department to extend the deadline for the final results to up to 150 days after the date on which the preliminary results of the new shipper review were issued. The Department has determined that this case is extraordinarily complicated, and the final results of this new shipper review cannot be completed within 90 days from the date on which the preliminary results were issued. The Department finds that this new shipper review is extraordinarily complicated because the comments we received present a number of complex factual and legal questions about the assignment of antidumping duty margins.

Therefore, in accordance with section 751(a)(1)(B)(iv) of the Act and 19 CFR 351.214(i)(3), the Department is extending the time limit for the completion of the final results by thirty-five days. The final results will be due no later than November 26, 2002.

Dated: October 22, 2002.

Richard W. Moreland,

Deputy Assistant Secretary for AD/CVD Enforcement I.

[FR Doc. 02–27396 Filed 10–25–02; 8:45 am]
BILLING CODE 3510–DS–P

[1] We were also conducting a new shipper review of the antidumping order on fresh garlic from the People's Republic of China for Shandong Heze International Trade and Developing Company (Shandong Heze). On October 22, 2002, we issued a notice rescinding that new shipper review.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–854]

Certain Tin Mill Products From Japan: Notice of Initiation of Changed Circumstances Review of the Antidumping Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances antidumping duty review.

SUMMARY: In accordance with 19 CFR 351.216(b), Nippon Steel Corporation ("Nippon"), an exporter and manufacturer of the subject merchandise, filed a request for a changed circumstances review of the antidumping order on certain tin mill products from Japan with respect to certain laminated tin-free steel, as described below. At Nippon's request, Weirton Steel Corporation, United States Steel Corporation, Bethlehem Steel Corporation, USS–Posco Industries, and National Steel Corporation stated that they do not object to the exclusion of this product

from the order. In response to the apparent lack of interest in this product from the domestic industry, the Department of Commerce ("the Department") is initiating a changed circumstances review with respect to this request for all future entries for consumption of tin-free laminated steel, as described below.

EFFECTIVE DATE: October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1394.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended ("the Act"), by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 351 (2002).

SUPPLEMENTARY INFORMATION:

Background

On August 28, 2000, the Department published in the **Federal Register** the antidumping duty order on certain tin mill products from Japan. *See Notice of Antidumping Duty Order: Certain Tin Mill Products from Japan* 65 FR 52067 (August 28, 2000). On September 6, 2002, Nippon, an exporter and manufacturer of the subject merchandise requested that the Department revoke in part the antidumping duty order on certain tin mill products from Japan. Specifically, Nippon requested that the Department revoke the order with respect to imports meeting the following specifications: Tin-free steel laminated on one or both sides of the surface with a polyester film, consisting of two layers (an amorphous layer and an outer crystal layer), that contains no more than the indicated amounts of the following environmental hormones: 1 mg/kg BADGE (BisPhenol—A Di-glycidyl Ether), 1 mg/kg BFDGE (BisPhenol—F Di-glycidyl Ether), and 3 mg/kg BPA (BisPhenol—A).

Nippon included letters from Weirton Steel Corporation, United States Steel Corporation, Bethlehem Steel Corporation, USS-Posco Industries, and National Steel Corporation, in its request for the changed circumstances review stating their support for the exclusion of the tin-free laminated steel, as described above. However, the Department does not have information on the record of this changed circumstances review that the aforementioned domestic tin mill producers account for substantially all, or at least 85 percent, of the production of the domestic like product. *See Oil Country Tubular Goods From Mexico: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 14213 (March 24, 1999). Additionally, the Department has no information on the record that the other known domestic producers of tin mill products, Wheeling-Pittsburgh Steel Corporation, and Ohio Coatings Corporation, have no interest in maintaining the antidumping duty order with respect to certain laminated tin-free steel described in Nippon's request. Therefore, we are not combining this initiation with a preliminary determination, which is our normal practice under section 351.221(c)(3)(ii). This notice of initiation will accord all interested parties an opportunity to address this proposed exclusion.

Scope of Review

The products covered by this antidumping order are tin mill flat-rolled products that are coated or plated with tin, chromium or chromium oxides. Flat-rolled steel products coated with tin are known as tin plate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such and scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single- or double-reduced), and whether or not coated with a plastic material. All products that meet the written physical description are within the scope of this order unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

—Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (#10%) or 0.251 mm (90 pound base box) (#10%) or 0.255 mm (#10%) with 770 mm (minimum width) (#1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (# 1/16 inch) and 35.4 inches (maximum length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2 1/2 anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/m^2; with a chrome oxide coating restricted to 6 to 25 mg/m^2 with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers, measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cut-off of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/m^2 as type DOS, or 3.5 to 6.5 mg/m^2 as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).

—Single reduced electrolytically chromium- or tin-coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.

—Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.

—Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur, 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70–130 mg/m^2, with a chromium oxide layer of 5–30 mg/m^2, with a tensile strength of 260–440 N/mm^2, with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (KG)10.0 minimum, Br (KG) 8.0 minimum, Hc (Oe) 2.5–3.8, and MU 1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.

—Bright finish tin-coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of 3/4 pound (0.000045 inch) and 1 pound (0.00006 inch).

—Electrolytically chromium coated steel having ultra flat shape defined as oil can maximum depth of 5/64 inch (2.0 mm) and edge wave maximum of 5/64 inch (2.0 mm) and no wave to penetrate more than 2.0 inches (51.0 mm) from the strip edge and coilset or curling requirements of average maximum of 5/64 inch (2.0 mm) (based on six readings, three across each cut edge of a 24 inches (61 cm) long sample with no single reading exceeding 4/32 inch (3.2 mm) and no more than two readings at 4/32 inch (3.2 mm)) and (for 85 pound base box item only: crossbuckle maximums of 0.001 inch (0.0025 mm) average having no reading above 0.005 inch (0.127 mm)), with a camber maximum of 1/4 inch (6.3 mm) per 20 feet (6.1 meters), capable of being bent 120 degrees on a 0.002 inch radius without cracking, with a chromium coating weight of metallic chromium at 100 mg/m^2 and chromium oxide of 10 mg/m^2, with a chemistry of 0.13% maximum carbon, 0.60% maximum manganese, 0.15% maximum silicon, 0.20% maximum copper, 0.04% maximum phosphorous, 0.05% maximum sulfur, and 0.20% maximum aluminum, with a surface finish of Stone Finish 7C, with a DOS–A oil at an aim level of 2 mg/square meter, with not more than 15 inclusions/foreign matter in 15 feet (4.6 meters) (with inclusions not to exceed 1/32 inch (0.8 mm) in width and 3/64 inch (1.2 mm) in length), with thickness/temper combinations of either 60 pound base box (0.0066 inch) double reduced CADR8 temper in widths of 25.00 inches, 27.00 inches, 27.50 inches, 28.00 inches, 28.25 inches, 28.50 inches, 29.50 inches, 29.75 inches, 30.25 inches, 31.00 inches, 32.75 inches, 33.75 inches, 35.75 inches, 36.25 inches, 39.00 inches, or 43.00 inches, or 85 pound base box (0.0094 inch) single reduced CAT4 temper in widths of 25.00 inches, 27.00 inches, 28.00 inches, 30.00 inches, 33.00 inches, 33.75 inches, 35.75 inches, 36.25 inches, or 43.00 inches, with width tolerance of # 1/8 inch, with a thickness tolerance of #0.0005 inch, with a maximum coil weight of 20,000 pounds (9071.0 kg), with a minimum coil weight of 18,000 pounds (8164.8 kg) with a coil inside diameter of 16 inches (40.64 cm) with a steel core, with a coil maximum outside diameter of 59.5 inches (151.13 cm), with a maximum of one weld (identified with a paper flag) per coil, with a surface free of scratches, holes, and rust.

—Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents in the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.7 mg/square foot of chromium applied as a cathodic dichromate treatment, with coil form having restricted oil film weights of 0.3–0.4 grams/base box of type DOS–A oil, coil inside diameter ranging from 15.5 to 17 inches, coil outside diameter of a maximum 64 inches, with a maximum coil weight of 25,000 pounds, and with temper/coating/dimension combinations of : (1) CAT 4 temper, 1.00/.050 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 33.1875 inch ordered width; or (2) CAT5 temper, 1.00/0.50 pound/base box coating, 75 pound/base box (0.0082 inch) thickness, and 34.9375 inch or 34.1875 inch ordered width; or (3) CAT5 temper, 1.00/0.50 pound/base box coating, 107 pound/base box (0.0118 inch) thickness, and 30.5625 inch or 35.5625 inch ordered width; or (4) CADR8 temper, 1.00/0.50 pound/base box coating, 85 pound/base box (0.0093 inch) thickness, and 35.5625 inch ordered width; or (5) CADR8 temper, 1.00/0.25 pound/base box coating, 60 pound/base box (0.0066 inch) thickness, and 35.9375 inch ordered width; or (6) CADR8 temper, 1.00/0.25 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 32.9375 inch, 33.125 inch, or 35.1875 inch ordered width.

—Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT 5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15–20 mg/216 sq. in., with ordered dimension combinations of (1) 75 pound/base box (0.0082 inch) thickness and 34.9375 inch x 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 inch x 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch x 34.125 inch scroll cut dimension.

—Tin-free steel coated with a metallic chromium layer between 100–200 mg/m^2 and a chromium oxide layer between 5–30 mg/m^2; chemical composition of 0.05% maximum carbon, 0.03% maximum silicon, 0.60% maximum manganese, 0.02% maximum phosphorous, and 0.02% maximum sulfur; magnetic flux density ("Br") of 10 kg minimum and a coercive force ("Hc") of 3.8 Oe minimum.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States ("HTSUS"), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0000, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0000 if of alloy steel. Although the subheadings are provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Initiation of Changed Circumstances Antidumping Duty Administrative Review

Pursuant to section 751(d)(1) of the Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) if other changed circumstances sufficient to warrant revocation exist. To the Department's knowledge the following are U.S. producers of tin mill products: Bethlehem Steel Corporation, National Steel Corporation, Midwest Division, Ohio Coatings Corporation, U.S. Steel Group, a Unit of USX Corp , Wheeling-Pittsburgh Steel Corporation, and USS-Posco Industries, Inc. Based upon the statements of no interest by Weirton

Steel Corporation, United States Steel Corporation, Bethlehem Steel Corporation, USS-Posco Industries, and National Steel Corporation, we believe there is information sufficient to warrant initiation of this changed circumstances review.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results. Interested parties may submit comments for consideration in the Department's preliminary results not later than 14 days after publication of this notice. Responses to those comments may be submitted not later than 7 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. The Department will also issue its final results of review within 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e), and will publish these results in the **Federal Register**. While the changed circumstances review is underway, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise, including the merchandise that is the subject of this changed circumstances review, will continue unless and until it is modified pursuant to the final results of this changed circumstances review or other administrative review.

This notice is in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: October 21, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–27394 Filed 10–25–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Geographic and Atmospheric Administration

Availability of Seats for the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOD).

ACTION: Notice and request for applications.

SUMMARY: The Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS or Sanctuary) is seeking applicants for the following two vacant seats on its Sanctuary Advisory Council (Council): Fishing and Native Hawaiian. The Sanctuary will choose two applicants as members and two as alternates to those members.Members are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the conservation and management of marine resources; and the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve two-year terms, pursuant to the Council's Charter.

DATES: Applications are due by November 20, 2002.

ADDRESSES: Application kits may be obtained on our website *www.hihwnms.nos.noaa.gov* or from Amy Glester at the Hawaiian Islands Humpback Whale National Marine Sanctuary, 6700 Kalanianaole Hwy, Suite 104, Honolulu, Hawaii 96825. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Amy Glester at (808) 397–2655, or *amy.glester@noaa.gov*.

SUPPLEMENTARY INFORMATION: The HIHWNMS Advisory Council was established in March 1996 (the current Council has served since July 1998) to assure continued public participation in the management of the Sanctuary. Since its establishment, the Council has played a vital role in the decisions affecting the Sanctuary surrounding the main Hawaiian Islands.

The Council's twenty-four voting members represent a variety of local user groups, as well as the general public, plus ten local, state and Federal governmental jurisdictions.

The Council is supported by three subcommittees: a Research Committee chaired by the Research Representative, an Education Committee chaired by the Education Representative, and a Conservation Committee chaired by the Conservation Representative, each respectively dealing with matters concerning research, education and resource protection.

The Council represents the coordination link between the Sanctuary and the state and federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the humpback whale and its habitat around the main Hawaiian Islands.

The council functions in an advisory capacity to the Sanctuary Manager and is instrumental in helping to develop policies and program goals, and to identify education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The Council works in concert with the Sanctuary Manager by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program within the context of Hawaii's marine programs and policies.

Authority: 16 U.S.C. Section 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program).

Dated: October 15, 2002

Jamison S. Hawkins,

Acting Assistant Administrator for Oceans and Coastal Zone Management.

[FR Doc. 02–27368 Filed 10–25–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. 2003–C–002]

Request for comments and notice of round table meetings regarding Small Business Views on Additional Harmonization of Patent Laws

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for input and notice of round table meetings.

SUMMARY: The United States Patent and Trademark Office (USPTO) seeks comments from small businesses, experts in global patent issues and other interested parties on achieving additional harmonization of patent laws. As a part of this effort, USPTO announces the scheduling of three round table meetings to receive views on patent law harmonization issues.

DATES: Comments must be received by December 19, 2002, to ensure consideration. Requests to participate in round table meetings must be received by November 22, 2002. If it becomes necessary to limit the number of participants, preference will be given to first-in-time requests. The round table meetings are tentatively scheduled for December 2, 2002, in the greater Los Angeles, California area; December 4, 2002, in the greater Chicago, Illinois area; and December 19, 2002, in the greater Washington, DC area.

ADDRESSES: Written comments and requests to participate in the round table meetings should be addressed to the United States Patent and Trademark Office, Office of International Relations, Room 902, 2121 Crystal Drive, Arlington, VA 22202, *Attn:* Jon Santamauro, Small Business/ Harmonization; faxed to Jon Santamauro's attention at (703) 305–8885; or sent via electronic mail to *sbpatentharmonization@uspto.gov*. Specific times and locations for the round table meetings will be determined based on responses received from persons who express an interest in participation. Details as to those times and locations will be communicated to participants and posted on USPTO's Web site at *www.uspto.gov*.

FOR FURTHER INFORMATION CONTACT: Jon Santamauro by telephone at (703) 305–9300 or by electronic mail at *sbpatentharmonization@uspto.gov*.

SUPPLEMENTARY INFORMATION:

Background

In response to a request by the Ranking Republican Member of the Senate Committee on Small Business and Entrepreneurship and the Chairman of the House Committee on Small Business, the General Accounting Office (GAO) analyzed and prepared a report on (1) whether small businesses face impediments in obtaining foreign patent protection; (2) what impact any impediments have on their foreign patent decisions; and (3) whether any Federal actions could help small businesses overcome the impediments they may face in obtaining foreign patents. The Congressional requesters expressed concern that some small businesses, particularly high-technology firms, were not obtaining patent protection overseas and thus were losing potential sales in foreign markets.

The GAO completed its report, captioned Federal Action Needed to Help Small Businesses Address Foreign Patent Challenges (GAO–02–789), in July 2002 and made it available to the public in August 2002. The report is available on-line at *www.gao.gov*.

According to the report, foreign patent costs are the most significant impediment that small businesses face in trying to protect their inventions abroad. The conclusion is based on information received from small businesses and patent attorneys consulted by GAO in preparation of the report. The report also identifies impediments including companies' limited foreign patent knowledge; differences among foreign patent systems; and the existence of challenging business climates and weak patent enforcement in certain countries.

To help address these impediments, GAO recommends that USPTO obtain input from small businesses, experts in global patent issues, and other interested parties in order to assess the advantages and disadvantages of various options for achieving additional patent law harmonization. In addition, GAO recommends that the Administrator of the Small Business Administration, with assistance of USPTO, collect and make available information about key aspects of foreign patent laws, requirements, procedures, and costs that would be useful to small businesses that are considering whether to obtain foreign patent protection.

Consistent with the GAO recommendation, the Congressional requesters of the GAO report have requested that the USPTO convene a series of round table meetings with small business owners and policy experts by December 31, 2002, to hear views on the harmonization of global patent laws. They further request a synopsis of the proceedings and findings by March 31, 2003.

Round Table Meetings and Request for Comments

The USPTO requests that interested parties submit comments and/or recommendations on achieving additional harmonization of patent laws. It is suggested that this input be categorized as follows:

(1) Cost and fee related issues.

(2) Procedural and administrative issues.

(3) Substantive patent law issues.

(4) Enforcement issues.

(5) Miscellaneous issues.

Comments must be received by December 19, 2002, to ensure consideration, and should be addressed to the United States Patent and Trademark Office, Office of International Relations, Room 902, 2121 Crystal Drive, Arlington, VA 22202, Attn: Jon Santamauro, Small Business/ Harmonization; faxed to Jon Santamauro's attention at (703) 305–8885; or sent via electronic mail to *sbpatentharmonization@uspto.gov*.

In addition, the USPTO will conduct round table meetings to hear views on the harmonization of international patent laws. The round table meetings are tentatively scheduled for December 2, 2002, in the greater Los Angeles, California area; December 4, 2002, in the greater Chicago, Illinois area; and December 19, 2002, in the greater Washington, DC area.

Requests to participate in round table meetings must be received by November 22, 2002, and should be addressed as indicated above. If it becomes necessary to limit the number of participants, preference will be given to first-in-time requests. Specific times and locations for the round table meetings will be determined based on responses received from persons who express an interest in participation. Details as to those times and locations will be communicated to participants and posted on USPTO's Web site at *www.uspto.gov*.

Dated: October 22, 2002.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 02–27323 Filed 10–25–02; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF ENERGY

American Statistical Association Committee on Energy Statistics; Notice of Renewal

AGENCY: Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), I hereby certify that the renewal of the charter of the American Statistical Association Committee on Energy Statistics is in the public interest in connection with the performance of duties imposed on the Department of Energy by law. This determination follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to section 102–3.60, title 41, Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel M. Samuel at (202) 586–3279.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to provide advice on a continuing basis to the Administrator of the Energy Information Administration (EIA), including:

1. Periodic review of and advice on Energy Information Administration data collections and analysis programs;

2. Advice on technical and methodological issues in planning, operation, and the review of Energy Information Administration statistical programs and their relative priorities; and

3. Advice on matters concerning improved energy modeling and forecasting tools, particularly regarding their functioning, relevancy, and results.

Issued in Washington, DC, on October 18, 2002.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 02–27329 Filed 10–25–02; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Advisory Board. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, November 20th and Thursday, November 21, 2002.

ADDRESSES: U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW, (Room 1E–245), Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Director of the Environmental Management Advisory Board, (EM–10), 1000 Independence Avenue SW, (Room 5B–171), Washington, DC 20585. The telephone number is 202–586–4400. The Internet address is *james.melillo@em.doe.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on corporate issues confronting the Environmental Management Program. The Board will contribute to the effective operation of the Environmental Management Program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing the Office of Environmental Management.

Preliminary Agenda

Wednesday, November 20, 2002

1 p.m. Public Meeting Open
—Welcome
—Opening Remarks
—Orientation
—Environmental Management Overview
—Organizational Discussions
5 p.m. Public Comment Period and Adjournment

Thursday, November 21, 2002

9 a.m. Opening Remarks
—Roundtable Discussion
—Board Work Session
2 p.m. Public Comment Period and Adjournment

Public Participation: This meeting is open to the public. If you would like to file a written statement with the Board, you may do so either before or after the meeting. If you would like to make an oral statement regarding any of the items on the agenda, please contact Mr. Melillo at the address or telephone number listed above, or call the Environmental Management Advisory Board office at 202–586–4400, and we will reserve time for you on the agenda. Those who call in and or register in advance will be given the opportunity to speak first. Others will be accommodated as time permits. The Board Chair will conduct the meeting in an orderly manner.

Minutes: We will make the minutes of the meeting available for public review and copying by December 20, 2002. The minutes and transcript of the meeting will be available for viewing at the Freedom of Information Public Reading Room (1E–190) in the Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. The Room is open Monday through Friday from 9 a.m.–4 p.m. except on Federal holidays.

Issued in Washington, DC on October 21, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–27328 Filed 10–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, November 16, 2002 8:30 a.m.—Noon.

ADDRESSES: Crosby Senior Center, 8910 Willey Road, Harrison, OH.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, The Perspectives Group, Inc., 1055 North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail; *djsarno@theperspectivesgroup.com*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

8:30 a.m. Call to Order

8:30—8:45 a.m. Chair's Remarks and Ex Officio Announcements

8:45—9 a.m. Feedback from Chairs Meeting

9—10 a.m. Silos Update and Planning for Workshop

10—10:15 a.m. Break

10:15—11:45 a.m. Stewardship Management Plan Discussion

11:45—12 p.m. Public Comment

Noon Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday—Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, c/o Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on October 22, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–27330 Filed 10–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board (STEAB). Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice be announced in the **Federal Register**.

DATES: November 21, 2002 from 8:00 AM to 5:00 PM, and November 22, 2002 from 8:00 AM to 1:00 PM.

ADDRESSES: The Madison Hotel, Fifteenth and M Streets, NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Planning, Budget, and Outreach, Energy Efficiency and Renewable Energy (EERE), U.S. Department of Energy (DOE), Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda:

- STEAB Committee updates
- STEAB Annual Report Kickoff
- EERE State Success Stories
- Discussion Sessions with the Office of Energy Efficiency and Renewable Energy, USDOE Staff
- Update on Current Energy Legislation
- Public Comment Period

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 21, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–27331 Filed 10–25–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7400–6]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for the Borden Chemical, Inc. Formaldehyde Plant Geismar, Ascension Parish, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to state operating permit.

SUMMARY: This notice announces that the EPA Administrator has denied the petition to object to a state operating permit issued by the Louisiana Department of Environmental Quality (LDEQ) for Borden Chemical, Inc.'s formaldehyde plant in Geismar, Louisiana. Pursuant to section 505(b)(2) of the Clean Air Act (Act), the petitioner may seek judicial review of this petition response in the United States Court of Appeals for the Fifth Circuit. Any petition must be filed within 60 days of the date this notice appears in the **Federal Register**, pursuant to section 307(d) of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at the Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2001.htm*

FOR FURTHER INFORMATION CONTACT: Bonnie Braganza, Air Permitting Section, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7340 or e-mail at *braganza.bonnie@epa.gov*.

SUPPLEMENTARY INFORMATION: The Clean Air Act (Act) affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

The Louisiana Environmental Action Network submitted a petition to the Administrator on January 2, 2001, requesting that EPA object to the modified title V operating permit issued for Borden Chemical, Inc.'s formaldehyde plant in Geismar, Louisiana. The petition objects to issuance of the proposed permit on the following grounds: (1) The emission reductions relied upon to avoid designation as a major modification are not real, actual, or allowable under Federal law and regulations; (2) nonattainment new source review applies because the emission reductions were not surplus under Louisiana regulations; (3) Borden should not be rewarded for violating the Clean Air Act, and the modified permit is contrary to EPA policy and the intent of the Act; and (4) a new facility in the Baton Rouge nonattainment area will not provide sufficient reductions to achieve the ozone standard.

On September 30, 2002, the Administrator issued an order denying the petition. The order explains the reasons for the Administrator's decision.

Dated: October 19, 2002.

Gregg A. Cooke,

Regional Administrator.

[FR Doc. 02–27339 Filed 10–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CO–001–0071; FRL–7400–8]

Adequacy Status of the Lamar and Steamboat Springs, CO PM_{10} Maintenance Plans for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this document, EPA is notifying the public that we have found that the motor vehicle emissions budgets in the Lamar and Steamboat Springs, Colorado particulate matter of 10 micrograms in size or smaller (PM_{10}) maintenance plans submitted on July 31, 2002, are adequate for conformity purposes. On March 2, 1999, the DC Circuit Court ruled that budgets in submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the City of Lamar, the City of Steamboat Springs, the Colorado Department of Transportation and the U.S. Department of Transportation are required to use the motor vehicle emissions budgets from these submitted maintenance plans for future conformity determinations.

DATES: This finding is effective November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Kerri Fiedler, Air & Radiation Program (8P–AR), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6493. The letter documenting our finding is available at EPA's conformity Web site: *http://www.epa.gov/oms/transp/conform/adequacy.htm.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used we mean EPA.

This action is simply an announcement of a finding that we have already made. We sent a letter to the Colorado Air Pollution Control Division on September 25, 2002 stating that the motor vehicle emissions budgets in the submitted Lamar and Steamboat Springs PM_{10} maintenance plans are adequate. This finding has also been announced on our conformity Web site at *http://www.epa.gov/oms/transp/conform/adequacy.htm.*

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from our completeness review, and it also should not be used to prejudge our ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved, and vice versa.

We've described our process for determining the adequacy of submitted SIP budgets in a memo entitled, "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision," dated May 14, 1999. We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 21, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 02–27345 Filed 10–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7400–9]

Request for Nominations to the Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations of qualified candidates to be considered for appointments to fill vacancies on the Good Neighbor Environmental Board. Suggested deadline for receiving nominations is Friday, November 22, 2002. Selection of candidates for appointments will be made by EPA Administrator Christine Todd Whitman. Appointments are scheduled to be announced during January 2003.

ADDRESSES: Submit nomination materials to: Elaine Koerner, Designated Federal Officer, Good Neighbor Environmental Board, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency (1601E), 655 15th. St., NW., Washington, DC. 20460.

FOR FURTHER INFORMATION CONTACT: Elaine Koerner, Designated Federal Officer, Good Neighbor Environmental Board, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency (1601E), 655 15th. St NW., Washington, DC 20460; telephone 202–233–0069; fax 202–233–0070; email *koerner.elaine@epa.gov.*

SUPPLEMENTARY INFORMATION: The Good Neighbor Environmental Board meets three times each calendar year at different locations along the U.S.-Mexico border. It was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the U.S. President and Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the U.S. side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. Board members typically contribute 10–15 hours per month to the Board's work. The Board membership position is voluntary; travel expenses are covered.

The following criteria will be used to evaluate nominees:

- Residence in one of the four U.S. border states.
- Professional knowledge of, and experience with, environmental infrastructure activities and policy along the U.S.-Mexico border.
- Senior level-experience that fills a gap in Board representation, or brings a new and relevant dimension to its deliberations.
- Representation of a sector or group that is involved in border region environmental infrastructure.
- Demonstrated ability to work in a consensus-building process with a wide range of representatives from diverse constituencies.
- Willingness to serve a two-year term as an actively-contributing member, with possible re-appointment to a second term.

Nominees' qualifications will be assessed under the mandates of the Federal Advisory Committee Act, which requires Committees to maintain diversity across a broad range of constituencies, sectors, and groups.

Nominations for membership must include a resume describing the professional and educational qualifications of the nominee as well as community-based experience. Contact details should include full name and title, business mailing address, telephone, fax, and e-mail address. A supporting letter of endorsement is encouraged but not required.

Dated: October 16, 2002.

Elaine M. Koerner,

Designated Federal Officer.

[FR Doc. 02–27347 Filed 10–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7401–7]

Air Quality Criteria for Particulate Matter

AGENCY: Environmental Protection Agency.

ACTION: Notice of workshop.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) National Center for Environmental Assessment, within the Agency's Office of Research and Development, is announcing a Workshop on GAM-Related Statistical Issues in Particulate Matter (PM) Epidemiology. The workshop is open to the public.

DATES: The workshop will begin on November 4, 2002, at 8:45 a.m. and will conclude on November 6, at 4 p.m.

ADDRESSES: The workshop will be held at the Sheraton Imperial Hotel, 4700 Emperor Boulevard, Durham, North Carolina 27703. Logistics for the workshop are being arranged by Science Applications International Corporation (SAIC), an EPA contractor. The public is invited to attend the workshop. Persons wanting to register for the GAM workshop may do so at the following Web site *http://www.cvent.com.* The event code is EPHVP19M8U.

FOR FURTHER INFORMATION CONTACT: For workshop information, registration, and logistics, contact Alina Martin, Science Applications International Corporation, 11251 Roger Bacon Drive, Reston, VA 20190; telephone: 703–318–4678; facsimile:703–736–0826; or e-mail at *martinali@saic.com.*

For technical information, contact Dr. Robert Elias, U.S. EPA, NCEA–RTP, B243–01, Research Triangle Park, NC 27711; telephone: 919–541–4167; facsimile: 919–541–1818; or e-mail: *elias.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: The workshop, which is being organized in coordination with the Health Effects Institute (HEI), is being held to provide a forum (open to the public) for discussion of: (a) Newly identified issues related to the conduct of General Additive Model (GAM) analyses, using commercially available software packages (*e.g.*, S-plus or SAS), in time-series studies of relationships between ambient air particulate matter (PM) and mortality/morbidity endpoints (*e.g.*, daily deaths, hospital admissions); (b) progress made to date in the conduct of reanalyses of a group of GAM-related studies identified by EPA as being of high priority for policy considerations (*see www.epa.gov/ncea/partmatt.htm* for more information); and (c) additional considerations for future directions for new PM epidemiologic analyses. After the workshop, participating investigators will have the opportunity to modify preliminary reanalyses presented at the workshop to take into account the workshop discussions and to submit to EPA written "short communications" conveying key information on the reanalyses and their outcomes. Those short communications are to be peer-reviewed by an HEI-assembled panel of experts and then included in an HEI Report, to be made available in early 2003. The peer-reviewed reanalyses in the HEI Report will be considered by NCEA–RTP staff in preparing revised draft chapters bearing on PM epidemiology studies for inclusion in a Fourth External Review Draft of EPA's Air Quality Criteria Document for PM to be released next spring for public comment (60 days) and Clean Air Scientific Advisory Committee (CASAC) review at a public meeting in mid-summer 2003. The final version of the PM Criteria Document will ultimately provide key scientific bases for the now ongoing Congressionally mandated periodic review of the PM National Ambient Air Quality Standards (PM NAAQS).

A detailed agenda for the meeting will be made available via the above-listed Web site or contact person.

Dated: October 22, 2002.

Art Payne,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–27491 Filed 10–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7400–7]

Draft Chesapeake Bay Comprehensive Oyster Management Plan; Availability

The U.S. Environmental Protection Agency's Chesapeake Bay Program Office, on behalf of the partners of the Chesapeake Bay Program, announces the availability of the Draft Chesapeake Bay Comprehensive Oyster Management Plan for a 30-day period of public review and comment. The Draft Plan addresses both habitat restoration and oyster fishery management. It emphasizes biologically based, strategic decision making, enables an adaptive management approach, and provides for better coordination among key agencies, organizations, and institutions involved in oyster restoration in Maryland and Virginia waters of Chesapeake Bay and its tidal tributaries. The Chesapeake Bay oyster partners include the U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, National Oceanic and Atmospheric Administration, Maryland Department of Natural Resources, Virginia Marine Resources Commission, Maryland Oyster Recovery Partnership, Virginia Oyster Heritage Program, and Chesapeake Bay Foundation. Following receipt of comments, a final Draft Plan will be circulated to Chesapeake Bay Program signatory partners for approval. It is expected that the final Plan will be adopted by the Chesapeake Executive Council in 2003. On November 4, 2002, the Draft Plan will be available on-line at the EPA Region III Web site *www.epa.gov/r3chespk/,* or by regular mail from the EPA Chesapeake Bay Program Office (*Phone:* (410) 267–5700).

Comments should be postmarked no later than December 4, 2002. Comments can be sent either by email to *fritz.mike@epa.gov* or by regular mail to Michael Fritz, U.S. EPA, 410 Severn Avenue, Suite 109, Annapolis, MD 21403. Further information about the Chesapeake Bay Program and oysters in the bay is available at *www.chesapeakebay.net.*

Diana Esher,

Deputy Director, Chesapeake Bay Program Office.

[FR Doc. 02–27346 Filed 10–25–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following

collections of information titled: (1) Interagency Notice of Change in Director or Executive Officer, and (2) Customer Assistance.

DATES: Comments must be submitted on or before December 27, 2002.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Consumer and Compliance Unit), (202) 898–7453, Legal Division, Room MB–3109, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (FAX number (202) 898–3838; Internet address: *comments@fdic.gov*).

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collections of Information

1. *Title:* Interagency Notice of Change in Director or Executive Officer.
OMB Number: 3064–0097.
Frequency of Response: On occasion.
Affected Public: All financial institutions.
Estimated Number of Respondents: 200.
Estimated Time per Response: 2 hours.
Total Annual Burden: 400 hours.
General Description of Collection: The Interagency Notice of Change in Director or Executive Officer is submitted regarding the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer. The information is used by the FDIC to make an evaluation of the general character of individuals who will be involved in the management of depository institutions, as required by statute.

2. *Title:* Customer Assistance.
OMB Number: 3064–0134.
Frequency of Response: On occasion.
Affected Public: All financial institutions.
Estimated Number of Respondents: 5,000.
Estimated Time per Response: 30 minutes.
Total Annual Burden: 2,500 hours.
General Description of Collection: This collection permits the FDIC to collect information from customers of financial institutions who have inquiries or complaints about service. Customers may document their complaints or inquiries to the FDIC using a letter or on an optional form.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC this 21st day of October, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–27269 Filed 10–25–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Banking Policy; Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of the first meeting of the FDIC Advisory Committee on Banking Policy ("Advisory Committee"), which will be held in Washington, DC. The Advisory Committee will provide advice and recommendations on a broad range of issues relating to the FDIC's mission and activities.

TIME AND PLACE: Wednesday, November 13, 2002, from 9 a.m. to 12:30 p.m., and 1:30 to 3:30 p.m. The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

AGENDA: The agenda items include discussion of the FDIC organizational structure, corporate priorities and challenges for the future. Agenda items are subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

TYPE OF MEETING: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public must present a photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting.

FOR FURTHER INFORMATION: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the Corporation, at (202) 898–3742.

Dated: October 23, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Committee Management Officer.

[FR Doc. 02–27324 Filed 10–25–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1433–DR]

Indiana; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana, (FEMA–1433–DR), dated September 25, 2002, and related determinations.

EFFECTIVE DATE: October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 25, 2002:

Madison County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–27319 Filed 10–25–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1437–DR]

Louisiana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–1437–DR), dated October 3, 2002, and related determinations.

EFFECTIVE DATE: October 16, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 16, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–27316 Filed 10–25–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1435–DR]

Louisiana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–1435–DR), dated September 27, 2002, and related determinations.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 1, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–27317 Filed 10–25–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1434–DR]

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1434–DR), dated September 26, 2002, and related determinations.

EFFECTIVE DATE: October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 26, 2002: Webb County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–27318 Filed 10–25–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 12, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Charles F. Sposato, Elkton, Maryland; to acquire additional voting shares of Cecil Bancorp, Inc., Elkton, Maryland, and thereby indirectly acquire additional voting shares of Cecil Federal Bank, Elkton, Maryland.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Harrell Investment Partners Limited Partnership, Camden, Arkansas, and Searcy W. Harrell, Jr., and Peggy Harrell, Camden, Arkansas, as general partners, to gain control of Harrell Bancshares, Inc., Camden, Arkansas, and thereby indirectly acquire voting shares of Calhoun County Bank, Hampton, Arkansas, and First Bank of South Arkansas, Camden, Arkansas.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Nagy Family Limited Partnership I, a Washington limited partnership, Ferenc Nagy and Susanna Nagy, general partners, and Ferenc Nagy and Eva Brevick, as individuals, all of Seattle, Washington; to acquire voting shares of Viking Financial Services Corp., Seattle, Washington, and thereby indirectly acquire voting shares of Viking Community Bank, Seattle, Washington.

Board of Governors of the Federal Reserve System, October 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02-27307 Filed 10-25-02; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 21, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 3030-B4470:

1. Southwest Florida Community Bancorp, Inc., Fort Myers, Florida; to acquire at least 50 percent of the voting shares of Sanibel Captiva Community Bank, Sanibel, Florida (in organization).

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Platte Valley Financial Service Companies, Inc., Scottsbluff, Nebraska; to retain 100 percent of the voting shares of Tri-County Bank National Association, Cheyenne, Wyoming.

Board of Governors of the Federal Reserve System, October 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02-27308 Filed 10-25-02; 8:45 am]

BILLING CODE 6210-01-S

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Thursday, October 31, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets, NW., Washington, DC 20551.

STATUS: Open.

We ask that you notify us in advance if you plan to attend the open meeting and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling (202) 452-2474 or you may register on-line. You may pre-register until close of business October 30, 2002. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call (202) 452-2955 for further information.

Privacy Act Notice: Providing the information requested is voluntary; however, failure to provide your name, date of birth, and social security number or passport number may result in denial of entry to the Federal Reserve Board. This information is solicited pursuant to Sections 10 and 11 of the Federal Reserve Act and will be used to facilitate a search of law enforcement databases to confirm that no threat is posed to Board employees or property. It may be disclosed to other persons to evaluate a potential threat. The information also may be provided to law enforcement agencies, courts and others, but only to the extent necessary to investigate or prosecute a violation of law.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of the routine nature, no discussion of the following item is anticipated. The matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed 2003 Private Sector Adjustment Factor.

Discussion Agenda

2. Final amendments to Regulation B (Equal Credit Opportunity) that would conclude the Board's review of the regulation. (Proposed earlier for public comment; Docket No. 1008)

3. Final amendments to Regulation A (Extensions of Credit by Federal Reserve Banks) and Regulation D (Reserve Requirements for Depository Institutions) that would implement revisions to discount-window programs. (Proposed earlier for public comment; Docket No. 1123)

4. Proposals regarding sections 23A and 23B of the Federal Reserve Act:

a. Final rules that would comprehensively implement sections 23A and 23B through new Regulation W (Transactions Between Member Banks and Their Affiliates). (Proposed earlier for public comment; Docket No. 1103); and rescind the Board's existing formal interpretations of sections 23A and 23B in light of Regulation W; and

b. Publish for comment a proposed rule that would limit the availability of an exemption from section 23A provided in section 250.250 of the Board's formal interpretations for loans purchased by a bank from an affiliate.

5. Proposed 2003 fees for priced services and electronic connections.

6. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office and copies may be ordered for $6 per cassette by calling 202-452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202-452-2955.

SUPPLEMENTARY INFORMATION: You may call 202-452-3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: October 24, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02-27524 Filed 10-24-02; 3:07 pm]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration), Department of Health and Human Services (HHS).

ACTION: Notice of modified or altered system of records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter a SOR, "CMS Utilization Review Investigatory Files, System No. 09-70-0527." We propose to change the name of this system to "CMS Fraud Investigation Database (FID)," to more accurately reflect the increase in scope proposed by this modification. We propose to broaden the scope of responsibility and activities covered by this system to include activities related to fraud and abuse in all health care programs administered by CMS. We are deleting routine uses number 1 pertaining to Department of Justice (DOJ) for consideration of criminal prosecution or civil action, number 2 pertaining to state or local licensing authorities (including state medical review boards), professional review organizations, peer review groups, medical consultants, or other professional associations for possible administrative action, number 3 pertaining to * * * officers and employees of state governments * * * Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) * * * as well as states attorneys * * *, number 4 pertaining to * * * third parties for the purpose of establishing or negating a violation, number 5 pertaining to * * * cases involving fraudulent tax returns or forger of Medicare checks to the Treasury Department, postal authorities, or to appropriate law enforcement authorities, and an unnumbered routine use authorizing disclosure to the Social Security Administration (SSA).

Disclosures of the data allowed in routine uses number 1, 2, 3, 4, 5, and to the SSA will be accomplished by a new routine use "to combat fraud and abuse in certain health benefits programs" and will be numbered as routine use number 5. We propose a new routine use number 1 specifically for the release of information in the system to a contractor or consultant who need to have access to the records in order to assist CMS. We propose a new routine use number 4 specifically for the release of information in the system to a contractor that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program to combat fraud and abuse. We propose to modify the language of routine uses number 6 and number 7 to clarify the circumstances for disclosure under these routine uses and change the numbers of these routine uses to number 2 and number 3.

The security classification previously reported as "None" will be modified to reflect that the data in this system is considered to be "Level Three Privacy Act Sensitive." The routine uses will then be prioritized and reordered according to their proposed usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization and to update language in the administrative sections to correspond with language used in other CMS SOR.

The primary purpose of this SOR is to identify if a violation(s) of a provision of the Social Security Act (the Act) or a related penal or civil provision of the United States Code (U.S.C.) related to Medicare (Title XVIII), Medicaid (Title XIX), HMO/Managed Care (Title XX), and Children's Health Insurance Program (Title XXI) have been committed, determine if HHS has made a proper payment as prescribed under applicable sections of the Act and whether these programs have been abused, coordinate investigations related to Medicare, Medicaid, HMO/Managed Care, and Children's Health Insurance Program, and prevent duplications, and provide case file material to the HHS Office of Inspector General when a case is referred for fraud investigation. Information retrieved from this SOR will also be disclosed to: (1) Support regulatory and policy functions performed within the Agency or by a contractor or consultant; (2) support constituent requests made to congressional representatives; (3) support litigation involving the Agency related to this system; and (4) combat fraud and abuse in certain health care programs. We have provided background information about the modified system in the "Supplementary Information" section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See "Effective Dates" section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on September 9, 2002. To ensure that all parties have adequate time in which to comment, the modified or altered SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, Office of Information Services, CMS, Room N2-04-27, 7500 Security Boulevard, Baltimore, Maryland 21244-1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.-3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Mark Koepke, Division of Program Integrity Operations, Program Integrity Group, Office of Financial Management, CMS, Mail-stop C3-02-16, 7500 Security Boulevard, Baltimore,

Maryland 21244–1850. The telephone number is 410–786–0524.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System

A. Statutory and Regulatory Basis for SOR

In 1988, CMS established a SOR the authority of sections 205, 1106, 1107, 1815, 1816, 1833, 1842, 1872, 1874, 1876, 1877, and 1902 of the Act, United States Code (U.S.C.) sections 405, 1306, 1307, 1395g, 1395h, 1395l, 1395u, 1395ii, 1395kk, 1395mm, 1395nn, and 1396a). Notice of this system, "CMS Utilization Review Investigatory Files, System No. 09–70–0527," was published in the **Federal Register** at 53 FR 52792, (Dec. 29, 1988), an unnumbered routine use was added for SSA at 61 FR 6645 (Feb. 21, 1996), three new fraud and abuse routine uses were added at 63 FR 38414 (July 16, 1998), and then at 65 FR 50552 (Aug. 18, 2000), two of the fraud and abuse routine uses were revised and a third deleted.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system contains the name, work address, work phone number, social security number, Unique Provider Identification Number (UPIN), and other identifying demographics of individuals alleged to have violated provision of the Act related to Medicare, Medicaid, HMO/Managed Care, and Children's Health Insurance Program or other criminal/civil statutes as they pertain to The Act programs where substantial basis for criminal/civil prosecution exist, defendants in criminal prosecution cases, or persons alleged to have abused the programs. The last category of individuals would, for example, include persons alleged to have rendered unnecessary services to Medicare beneficiaries or Medicaid recipients, over utilized services, or engaged in improper billing.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose, which is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release FID information that can be associated with an individual as provided for under "Section III. Entities Who May Receive Disclosures Under Routine Use." Both identifiable and non-identifiable data may be disclosed under a routine use. Identifiable data includes individual records with FID information and identifiers. Non-identifiable data includes individual records with FID information and masked identifiers or FID information with identifiers stripped out of the file.

We will only collect the minimum personal data necessary to achieve the purpose of FID. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the system of records will be approved only for the minimum information necessary to accomplish the purpose of the disclosure only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.*, disclosure of individual-specific information for the purposes of combating fraud and abuse in a health benefits program funded in whole or in part by Federal funds.

2. Determines:

a. That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. That the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. That there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the FID without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this system of records.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries and other individuals often request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government,

is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

4. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

5. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require FID information for the purpose of combating fraud and abuse in such Federally funded programs.

A. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

A. Administrative Safeguards

The FID system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act (PRA) of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, appendix III, "Security of Federal Automated Information Resources." CMS has prepared a comprehensive system security plan as required by the Office and Management and Budget (OMB) Circular A–130, appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, "Guide for Developing Security Plans for Information Technology Systems." Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- *Database Administrator* class owns the database objects, *e.g.*, tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- *Quality Control Administrator* class has read and write access to key fields in the database;
- *Quality Indicator Report Generator* class has read-only access to all fields and tables;
- *Policy Research* class has query access to tables, but are not allowed to access confidential personal identification information; and
- *Submitter* class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the FID system: Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card key and/or combination that grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System resources caused by fire, electricity, water, and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are

determined and implemented at the Agency level.

• Inactivity Log-out—Access to the NT workstation is automatically logged-out after a specified period of inactivity.

• Warnings—Legal notices and security warnings display on all servers and workstations.

• Remote Access Security (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security. These include, but are not limited to: the Privacy Act of 1974, the Computer Security Act of 1987, OMB Circular A–130, revised, Information Resource Management Circular #10, HHS Automated Information Systems Security Program, the CMS Information Systems Security Policy and Program Handbook, and other CMS systems security policies. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of FID data. FID information on individuals is completed by contractor personnel and submitted to CMS through standard systems located at different locations. CMS will utilize a variety of onsite and offsite edits and audits to increase the accuracy of FID data.

CMS will take precautionary measures (*see* item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure of identifiable data from the modified system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: September 9, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

System No. 09–70–0527

SYSTEM NAME:

Centers for Medicare & Medicaid Services (CMS) Fraud Investigation Database (FID), HHS/CMS/OFM.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitivity.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850. Information in this system is also maintained at various remote locations listed in appendix "A."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals alleged to have violated provision of the Act related to Medicare (Title XVIII), Medicaid (Title XIV), HMO/Managed Care (Title XX), and Children's Health Insurance Program (Title XXI) or other criminal/civil statutes as they pertain to the Act programs where substantial basis for criminal/civil prosecution exist, defendants in criminal prosecution cases, or persons alleged to have abused the programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the name, work address, work phone number, social security number, Unique Provider Identification Number (UPIN), and other identifying demographics of individuals alleged to have violated provision of the Act or persons alleged to have abused Medicare and/or Medicaid programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system was established under the authority of sections 205, 1106, 1107, 1815, 1816, 1833, 1842, 1872, 1874, 1876, 1877, and 1902 of the Act (Title 42 United States Code (U.S.C.) sections 405, 1306, 1307, 1395g, 1395h, 1395l, 1395u, 1395ii, 1395kk, 1395mm, 1395nn, and 1396a).

PURPOSE(S):

The primary purpose of the system of records is to identify if a violation(s) of a provision of the Act or a related penal or civil provision of the United States Code (U.S.C.) related to Medicare (Title XVIII), Medicaid (Title XIV), HMO/Managed Care (Title XX), and Children's Health Insurance Program (Title XXI) have been committed, determine if HHS has made a proper payment as prescribed under applicable sections of the Act and whether these programs have been abused, coordinate investigations related to Medicare, Medicaid, HMO/Managed Care, and Children's Health Insurance Program, and prevent duplications, and provide case file material to the HHS Office of the Inspector General when a case is referred for fraud investigation. Information retrieved from this system of records will also be disclosed to: support regulatory and policy functions performed within the Agency or by a contractor or consultant, support constituent requests made to a congressional representative, support litigation involving the Agency related to this system of records, and to combat fraud and abuse in certain health care programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the FID without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 82462, December 28, 2000, as amended by 66 FR 12434, February 26, 2001). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information." We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

2. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

4. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

5. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by the name of the subject of the investigation and assigned UPIN number.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the FID system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, *e.g.*, security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised) appendix III.

RETENTION AND DISPOSAL:

Records are maintained 15 years in a secure storage area with identifiers.

SYSTEM MANAGER(S) AND ADDRESSES:

Director, Program Integrity Group, Office of Financial Management, CMS, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, social security number (SSN) or UPIN, address, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system include data collected from FID computer files as transmitted by the contractor sites.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

HHS claims exemption of certain records (case files on active fraud investigations) in the system from notification and access procedures under 5 U.S.C. 522a (k)(2) inasmuch as these records are investigatory materials compiled for program (law) enforcement in anticipation of a criminal or administrative proceedings. (*See* Department Regulation (45 CFR 5b.11))

Appendix A. Health Insurance Claims

Medicare records are maintained at the CMS Central Office (see section 1 below for the address). Health Insurance Records of the Medicare program can also be accessed through a representative of the CMS Regional Office (see section 2 below for addresses). Medicare claims records are also maintained by private insurance organizations that share in administering provisions of the health insurance programs. These private insurance organizations, referred to as carriers and intermediaries, are under contract to the Health Care Financing Administration and the Social Security Administration to perform specific task in the Medicare program (see section three below for addresses for intermediaries, section four addresses the carriers, and section five addresses the Payment Safeguard Contractors.

I. Central Office Address

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

II. CMS Regional Offices

Boston Region—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. John F. Kennedy Federal Building, Room 1211, Boston, Massachusetts 02203. Office Hours: 8:30 a.m.–5 p.m.

New York Region—New Jersey, New York, Puerto Rico, Virgin Islands. 26 Federal Plaza, Room 715, New York, New York 10007. Office Hours: 8:30 a.m.–5 p.m.

Philadelphia Region—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia. Post Office Box 8460, Philadelphia, Pennsylvania 19101. Office Hours: 8:30 a.m.–5 p.m.

Atlanta Region—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee. 101 Marietta Street, Suite 702, Atlanta, Georgia 30223. Office Hours: 8:30 a.m.–4:30 p.m.

Chicago Region—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin. Suite A—824, Chicago, Illinois 60604. Office Hours: 8 a.m.–4:45 p.m.

Dallas Region—Arkansas, Louisiana, New Mexico, Oklahoma, Texas, 1200 Main Tower Building, Dallas, Texas. Office Hours: 8 a.m.–4:30 p.m.

Kansas City Region—Iowa, Kansas, Missouri, Nebraska. New Federal Office Building, 601 East 12th Street Room 436, Kansas City, Missouri 64106. Office Hours: 8 a.m.–4:45 p.m.

Denver Region—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. Federal Office Building, 1961 Stout St Room 1185, Denver, Colorado 80294. Office Hours: 8 a.m.–4:30 p.m.

San Francisco Region—American Samoa, Arizona, California, Guam, Hawaii, Nevada. Federal Office Building, 10 Van Ness Avenue, 20th Floor, San Francisco, California 94102. Office Hours: 8 a.m.–4:30 p.m.

Seattle Region—Alaska, Idaho, Oregon, Washington. 1321 Second Avenue, Room 615, Mail Stop 211, Seattle, Washington 98101. Office Hours 8 a.m.–4:30 p.m.

III. Intermediary Addresses (Hospital Insurance)

Medicare Coordinator, Assoc. Hospital Serv. Maine (ME BC), 2 Gannett Drive South, Portland, ME 04106–6911.

Medicare Coordinator, Anthem New Hampshire, 300 Goffs Falls Road, Manchester, NH 03111–0001.

Medicare Coordinator, BC/BS Rhode Island (RI BC), 444 Westminster Street, Providence, RI 02903–3279.

Medicare Coordinator, Empire Medicare Services, 400 S. Salina Street, Syracuse, NY 13202.

Medicare Coordinator, Cooperativa, PO Box 363428, San Juan, PR 00936–3428.

Medicare Coordinator, Maryland B/C, PO Box 4368, 1946 Greenspring Ave., Timonium, MD 21093.

Medicare Coordinator, Highmark, P5103, 120 Fifth Avenue Place, Pittsburgh, PA 15222–3099.

Medicare Coordinator, United Government Services, 1515 N. Rivercenter Dr., Milwaukee, WI 53212.

Medicare Coordinator, Alabama B/C, 450 Riverchase Parkway East, Birmingham, AL 35298.

Medicare Coordinator, Florida B/C, 532 Riverside Ave., Jacksonville, FL 32202–4918.

Medicare Coordinator, Georgia B/C, PO Box 9048, 2357 Warm Springs Road, Columbus, GA 31908.

Medicare Coordinator, Mississippi B/C B MS, PO Box 23035, 3545 Lakeland Drive, Jackson, MI 39225–3035.

Medicare Coordinator, North Carolina B/C, PO Box 2291, Durham, NC 27702–2291.

Medicare Coordinator, Palmetto GBA A/RHHI, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, Tennessee B/C, 801 Pine Street, Chattanooga, TN 37402–2555.

Medicare Coordinator, Anthem Insurance Co. (Anthm IN), PO Box 50451, 8115 Knue Road, Indianapolis, IN 46250–1936.

Medicare Coordinator, Arkansas B/C, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Group Health of Oklahoma, 1215 South Boulder, Tulsa, OK 74119–2827.

Medicare Coordinator, Trailblazer, PO Box 660156, Dallas, TX 75266–0156.

Medicare Coordinator, Cahaba GBA, Station 7, 636 Grand Avenue, Des Moines, IA 50309–2551.

Medicare Coordinator, Kansas B/C, PO Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.

Medicare Coordinator, Nebraska B/C, PO Box 3248, Main PO Station, Omaha, NE 68180–0001.

Medicare Coordinator, Mutual of Omaha, PO Box 1602, Omaha, NE 68101.

Medicare Coordinator, Montana B/C, PO Box 5017, Great Falls Div., Great Falls, MT 59403–5017.

Medicare Coordinator, Noridian, 4510 13th Avenue SW., Fargo, ND 58121–0001.

Medicare Coordinator, Utah B/C, PO Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.

Medicare Coordinator, Wyoming B/C, 4000 House Avenue, Cheyenne, WY 82003.

Medicare Coordinator, Arizona B/C, PO Box 37700, Phoenix, AZ 85069.

Medicare Coordinator, UGS, PO Box 70000, Van Nuys, CA 91470–0000.

Medicare Coordinator, Regents BC, PO Box 8110 M/S D–4A, Portland, OR 97207–8110.

Medicare Coordinator, Premera BC, PO Box 2847, Seattle, WA 98111–2847.

IV. Medicare Carriers

Medicare Coordinator, NHIC, 75 Sargent William Terry Drive, Hingham, MA 02044.

Medicare Coordinator, B/S Rhode Island (RI BS), 444 Westminster Street, Providence, RI 02903–2790.

Medicare Coordinator, Trailblazer Health Enterprises, Meriden Park, 538 Preston Ave., Meriden, CT 06450.

Medicare Coordinator, Upstate Medicare Division, 11 Lewis Road, Binghamton, NY 13902.

Medicare Coordinator, Empire Medicare Services, 2651 Strang Blvd., Yorktown Heights, NY, 10598.

Medicare Coordinator, Empire Medicare Services, NJ, 300 East Park Drive, Harrisburg, PA 17106.

Medicare Coordinator, Triple S, #1441 F.D., Roosvelt Ave., Guaynabo, PR 00968.

Medicare Coordinator, Group Health Inc., 4th Floor, 88 West End Avenue, New York, NY 10023.

Medicare Coordinator, Highmark, PO Box 89065, 1800 Center Street, Camp Hill, PA 17089–9065.

Medicare Coordinator, Trailblazers Part B, 11150 McCormick Drive, Executive Plaza 3 Suite 200, Hunt Valley, MD 21031.

Medicare Coordinator, Trailblazer Health Enterprises, Virginia, PO Box 26463, Richmond, VA 23261–6463. United Medicare Coordinator, Tricenturion, 1 Tower Square, Hartford, CT 06183.

Medicare Coordinator, Alabama B/S, 450 Riverchase Parkway East, Birmingham, AL 35298.

Medicare Coordinator, Cahaba GBA, 12052 Middleground Road, Suite A, Savannah, GA 31419.

Medicare Coordinator, Florida B/S, 532 Riverside Ave, Jacksonville, FL 32202–4918.

Medicare Coordinator, Administar Federal, 9901 Linnstation Road, Louisville, KY 40223.

Medicare Coordinator, Palmetto GBA, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, CIGNA, 2 Vantage Way, Nashville, TN 37228.

Medicare Coordinator, Railroad Retirement Board, 2743 Perimeter Parkway, Building 250, Augusta, GA 30999.

Medicare Coordinator, Cahaba GBA, Jackson Miss, PO Box 22545, Jackson, MI 39225–2545.

Medicare Coordinator, Adminastar Federal (IN), 8115 Knue Road, Indianapolis, IN 46250–1936.

Medicare Coordinator, Wisconsin Physicians Service, PO Box 8190, Madison, WI 53708–8190.

Medicare Coordinator, Nationwide Mutual Insurance Co., PO Box 16788, 1 Nationwide Plaza, Columbus, OH 43216–6788.

Medicare Coordinator, Arkansas B/S, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Arkansas-New Mexico, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Palmetto GBA–DMERC, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, Trailblazer Health Enterprises, 901 South Central Expressway, Richardson, TX 75080.

Medicare Coordinator, Nordian, 636 Grand Avenue, Des Moines, IA 50309–2551.

Medicare Coordinator, Kansas B/S, PO Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.

Medicare Coordinator, Kansas B/S–NE, PO Box 239, 1133 Topeka Ave., Topeka, KS 66629–0239.

Medicare Coordinator, Montana B/S, PO Box 4309, Helena, MT 59601.

Medicare Coordinator, Nordian, 4305 13th Avenue South, Fargo, ND 58103–3373.

Medicare Coordinator, Noridian BCBSND (CO), 730 N. Simms #100, Golden, CO 80401–4730.

Medicare Coordinator, Noridian BCBSND (WY), 4305 13th Avenue South, Fargo, ND 58103–3373.

Medicare Coordinator, Utah B/S, PO Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.

Medicare Coordinator, Transamerica Occidental, PO Box 54905, Los Angeles, CA 90054–4905.

Medicare Coordinator, NHIC—California, 450 W. East Avenue, Chico, CA 95926.

Medicare Coordinator, Cigna, Suite 254, 3150 Lakeharbor, Boise, ID 83703.

Medicare Coordinator, Cigna, Suite 506, 2 Vantage Way, Nashville, TN 37228.

V. Payment Safeguard Contractors

Medicare Coordinator, Aspen Systems Corporation, 2277 Research Blvd., Rockville, MD 20850.

Medicare Coordinator, DynCorp Electronic Data Systems (EDS, 11710 Plaza America Drive 5400 Legacy Drive, Reston, VA 20190–6017.

Medicare Coordinator, Lifecare Management Partners Mutual of Omaha Insurance Co. 6601 Little River Turnpike, Suite 300 Mutual of Omaha Plaza, Omaha, NE 68175.

Medicare Coordinator, Reliance Safeguard Solutions, Inc., PO Box 30207 400 South Salina Street, 2890 East Cottonwood Pkwy. Syracuse, NY 13202.

Medicare Coordinator, Science Applications International, Inc., 6565 Arlington Blvd., PO Box 100282, Falls Church, VA.

Medicare Coordinator, California Medical Review, Inc., Integriguard Division Federal Sector Civil Group, One Sansome Street, San Francisco, CA 94104–4448.

Medicare Coordinator, Computer Sciences Corporation, Suite 600 3120 Timanus Lane, Baltimore, MD 21244.

Medicare Coordinator, Electronic Data Systems (EDS), 11710 Plaza America Drive 5400 Legacy Drive, Plano, TX 75204.

Medicare Coordinator, TriCenturion, L.L.C., PO Box 100282, Columbia, SC 29202.

[FR Doc. 02–27337 Filed 10–25–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0445]

FDA Regulation of Combination Products; Public Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing to discuss the assignment, premarket review, and postmarket regulation of combination products. Combination products (defined in more detail later in this document) are products containing a combination of drugs, devices, or biological products. These products often are novel and have significant potential to enhance the public health. The purpose of the hearing is to solicit information and views from interested persons on the issues and concerns relating to the assignment, premarket review, and postmarket regulation of combination products. FDA is proposing specific questions, and the agency is interested in responses to these questions and any other pertinent information stakeholders would like to share.

DATES: The public hearing will be held on November 25, 2002, from 9 a.m. to 5 p.m. Submit written or electronic notices of participation by close of business on November 8, 2002. Written and electronic comments will be accepted until January 24, 2003.

ADDRESSES: The public hearing will be held at the DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD. Directions to the hotel can be found at *http://www.doubletreerockville.com*.

Submit written or electronic notices of participation and comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852; or e-mail FDADockets@oc.fda.gov; or on the Internet at *http://www.accessdata.fda.gov/scripts/oc/dockets/commentdocket.cfm*. Transcripts of the hearing will be available for review at the Dockets Management Branch (see address in previous sentence) and on the Internet at *http://www.fda.gov/ohrms/dockets*.

FOR FURTHER INFORMATION CONTACT: Mark D. Kramer, Combination Products Program (HF–7), Food and Drug Administration, 5600 Fishers Lane, rm. 14B–03, Rockville, MD 20857, 301–827–3390, FAX 301–480–8039, e-mail: *mkramer@oc.fda.gov*.

Registration Information and Requests for Oral Presentation

Preregistration by written notice is necessary to ensure participation. The procedures governing the hearing are found in part 15 (21 CFR part 15). To register to attend the hearing, submit your name, title, business affiliation, address, telephone, fax number, and e-mail address. If you wish to make an oral presentation during the open public comment period of the hearing, you must state your intention on your registration form or with the registration contact person listed (*see* **FOR FURTHER INFORMATION CONTACT**). You must submit a written statement at the time of registration for each discussion question you wish to address, the names and addresses of all individuals that plan to participate, and the approximate time requested to make your presentation. Electronic registration for this hearing is available at *http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm*. Registrations will be accepted on a first-come, first-served basis. Individuals who register to make an oral presentation will be notified of the scheduled time for their presentation prior to the hearing. Depending on the number of presentations, FDA may need to limit the time allotted for each presentation. All participants are encouraged to attend the entire day. Presenters must submit two copies of each presentation given. If you need special accommodations due to a disability, please inform the registration contact person when you register. Presentations will be limited to the questions and subject matter identified in section III of this document.

SUPPLEMENTARY INFORMATION:

I. Background

The Safe Medical Devices Act (SMDA) of 1990 explicitly recognized the existence of products that "constitute a combination of a drug, device, or biological product" and provided a mechanism for determining which agency component would be assigned the administrative responsibility of regulating a particular combination product (21 U.S.C. 353(g)). The Food and Drug Administration Modernization Act of 1997 (FDAMA) further refined the assignment process by providing a mechanism to request that FDA classify a product as a drug, biological product, device, or a combination product, in addition to determining which agency component will be assigned to regulate the product (21 U.S.C. 360bbb–2).

As defined in § 3.2(e) (21 CFR 3.2(e)), the term combination product means a product comprised of two or more different regulated components, e.g., drug, device, or biologic (for example, a syringe prefilled with a drug); or two or more separate products packaged together as one unit (for example, a kit containing drapes, needles, a syringe, a local anesthetic and a topical antiseptic). A combination product is also defined to include a product that is intended for use only with an approved product where both are required to achieve the intended use, indication, or effect, and the labeling of the approved product needs to be changed to reflect this use. For example, if a device to aerosolize medication works only with a specific aerosolized drug, the device would be labeled for use with this drug and the two products would be a combination product. Finally, the combination product definition

includes any investigational product that is intended to be used only with another investigational product where both are required to achieve the intended use, indication, or effect.

In accordance with section 503(g)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 353(g)(l)), the agency is required to assign premarket review responsibility for combination products based on the product's "primary mode of action." The designation of an agency component does not preclude consultations with other agency components, and when such consultation is used, the involvement of more than one center in the premarket review process presents unique challenges in review management. In addition, where the agency finds it is appropriate, the agency reserves the option to require separate applications to be approved (by either the lead center or separate agency components) for the individual components of a combination product. FDA recognizes that requiring the approval of a second agency component may present additional issues for the applicant and in those instances strives to coordinate the reviews to the greatest extent possible.

A number of issues have been raised regarding FDA's regulation of combination products. These include concerns about the consistency, predictability, and transparency of the assignment (jurisdiction) process; issues related to the management and timeliness of the review process when two (or more) FDA centers have review responsibilities for a combination product; lack of clarity about the postmarket regulatory controls applicable to combination products; and the lack of clarity regarding certain agency policies, such as when applications to more than one agency component are needed.

FDA recognizes the need to have policies and procedures that will ensure the efficient and effective review and regulation of combination products, and has established a Combination Products Program within the Office of the Ombudsman to provide support to the Centers for these activities. In addition to serving as a point of contact for industry and the FDA centers on combination products issues, the Combination Products Program is working with the centers to develop a variety of initiatives to improve the review and regulation of combination products. These initiatives include the development of standard operating procedures to improve the management of the intercenter review process, centralized monitoring of the progress of premarket reviews of combination products, and the development of guidance on policy issues that relate to combination products.

II. Purpose and Scope of the Hearing

The agency recognizes the importance of protecting the public health by facilitating the introduction of safe and effective new products. New technologies and products that result from the combination of components that would otherwise be regulated under different regulatory authorities raise not only unique scientific questions, but also regulatory challenges related to where and how such products should be regulated in order to ensure adequate and consistent regulatory oversight.

FDA is calling this meeting to discuss the agency's processes for the assignment, premarket review, and postmarket regulation of combination products in general. The meeting is another step in the agency's continuing effort to elicit information helpful to the refinement of the agency's policies on combination products, and will build upon the June 24, 2002, part 15 hearing held to discuss the assignment and premarket review of wound healing products comprised of living human cells in combination with a device matrix. The hearing is limited to discussion of combination products as defined in § 3.2(e). Combinations of two devices, two drugs, or two biologics are not considered combination products under § 3.2(e) and are beyond the scope of this meeting. Discussion of the assignment of specific types of combination products, or of premarket review or testing requirements for specific products, is also beyond the scope of the meeting. Examples of issues raised for particular products may, however, be appropriate for illustration purposes.

III. Issues for Discussion

Combination products often involve cutting edge, novel technologies that raise unique scientific, technical, policy and regulatory issues. Multi-center responsibility for the premarket review and regulation of combination products creates special challenges with respect to both the scientific and administrative aspects of review management. In addition, the combination of components that would normally be regulated under different regulatory authorities introduces additional factors to consider in the formulation of appropriate regulatory requirements. FDA recognizes the need to have policies and procedures that will ensure the efficient and effective review and regulation of combination products, and is holding this meeting to obtain stakeholders' views on the issues raised by, and suggestions for, the review and regulation of combination products.

To assist in the development of consistent policies on assignment of these products and appropriate premarket and postmarket regulatory policies, the agency invites information and comments on the issues and questions listed in the next section of this document.

A. Assignment and Intercenter Agreements

Issue:

One goal of FDA's regulatory process has been the establishment of a credible, consistent and predictable ("transparent") framework for the assignment and review of human drugs, biologics, and devices to the appropriate centers. Prior to 1991, confusion over product jurisdiction was a frequently cited complaint by regulated industry.

As described in section I of this document, SMDA required that FDA assign combination products to the FDA components based on the product's primary mode of action. Furthermore, in 1991, the Center for Biologics Evaluation and Research (CBER), the Center for Devices and Radiological Health (CDRH), and the Center for Drug Evaluation and Research (CDER) developed working agreements ("Intercenter Agreements") addressing the assignment and regulatory pathways for specified products or classes of products, including some types of combination products. The Agreements identify the lead center that will be responsible for regulating particular types of products, and in some instances, the applicable regulatory authority. While the Intercenter Agreements continue to provide useful guidance, the evolution in technology and scientific knowledge about the mode of action of medical products has in some cases pushed the usefulness of the current Intercenter Agreements past their limits. FDA recognizes the need to revise and update the Intercenter Agreements to reflect decisions made since 1991 and an appropriate division of labor among the centers.

Stakeholders have voiced concern about a perceived lack of consistency in the assignment of combination products. This perception is sometimes attributed to potential differences in the interpretation of a combination product's "primary mode of action," a term that is not defined in the statute. The assignment process may also appear to be inconsistent if two products that appear to be similar in nature are assigned to different centers based on differences in their primary mode of action. When review responsibility for particular products of a given type is split between two centers, it may lead to inconsistencies in the type of premarket regulatory authorities applied, review policies, postmarket regulatory controls, and other factors relevant to product regulation.

Another complaint frequently cited about the assignment of combination products is the lack of transparency. In an effort to keep stakeholders apprised of significant jurisdictional decisions, FDA has begun to post a series of "jurisdictional updates" on its Combination Products Web site *http://www.fda.gov/oc/ombudsman/combination.html*. These jurisdictional updates report prior agency decisions only and are not policy statements. In determining whether Web publication of a jurisdictional update is appropriate for a product, FDA will take into account the current level of interest in the jurisdictional issue, the extent to which the class of products can be clearly described, the extent to which the existence and description of the class of products has been made public, and related factors. In cases where it is not possible to adequately describe the subject of a jurisdictional decision and still protect confidential and trade secret information, jurisdictional updates will not be available.

Questions:

1. What types of guiding scientific and policy principles should FDA use in its revisions to the existing Intercenter Agreements that allocate review responsibility for human medical products?
2. What factors should FDA consider in determining the primary mode of action of a combination product? In instances where the primary mode of action of the combination product cannot be determined with certainty, what other factors should the agency consider in assigning primary jurisdiction? Is there a hierarchy among these additional factors that should be considered in order to ensure adequate review and regulation (e.g., which component presents greater safety questions)?

B. Marketing Applications

The SMDA required that the primary mode of action of a combination product must determine which FDA center would be responsible for premarket review, but did not address which authorities, including which type of marketing application, should be used to review the combination product, beyond authorizing FDA to use any resources necessary to ensure an adequate premarket review. The selection of regulatory authorities to be applied to a combination product is intended to ensure appropriate review and regulation, but may also affect the potential for generic competition and the availability of certain regulatory mechanisms or processes (e.g., a device component of a combination product regulated solely under the new drug application (NDA) or biological license application (BLA) authorities would not be eligible for reclassification or review under section 510(k) of the act premarket notification).

As stated in 21 CFR 3.4(b), FDA may require separate applications for the different components of a combination product ("The designation of one agency component as having primary jurisdiction for the premarket review and regulation of a combination product does not preclude consultations by that component with other agency components or, in appropriate cases, the requirement by FDA of separate applications."). This flexibility is important because the most appropriate regulatory approach for a given combination product may need to be tailored to the associated scientific and policy issues. Some applicants have questioned the need for separate marketing applications for the components of a combination product, perhaps based on the perception that the regulatory burden would be less with a single application. On the other hand, some applicants have objected to FDA's decision to require only a single application because separate applications were considered to be advantageous for future development and/or marketing opportunities. While no single approach is universally preferred or most appropriate from a regulatory perspective, the agency recognizes that it is important to have established criteria for determining whether one application or two would be more appropriate.

Questions:

3. What are the general scientific and policy principles that should be followed in selecting the premarket regulatory authorities to be applied to combination products? Is one premarket review mechanism (e.g., premarket approval (PMA), premarket notification (510(k)), new drug application (NDA), or biologic licensing application (BLA)) more suitable than another for regulating combination products?
4. Recognizing the need to ensure product safety and effectiveness, what criteria should FDA use to determine whether a single application or separate applications for the individual components would be most appropriate for regulation of a combination product? For example, FDA may determine that it is necessary to apply elements of different regulatory authorities to a combination product to ensure safety and efficacy (e.g., device postmarketing reporting for the combination product, with drug current good manufacturing practices (CGMPs) applicable to the drug component only). Should the need to apply a mixed regulatory approach influence whether one application or two are more appropriate?

C. Other Issues

Issues:

Combination products sometime raise concerns about safety and effectiveness, or risks to the public health, arising specifically from the combination nature of the product. The agency may draw from the statutory and regulatory authorities applicable to all components of the combination product in order to ensure adequate review of the safety and effectiveness of a product. For example, a drug-coated device may be subject to the device Quality Systems Regulation for the device component, to drug good manufacturing practices (GMPs) for the drug coating, and to a mix of requirements, as appropriate, for the combined product.

While this flexibility is appropriate to enable FDA to best promote and protect public health and address unique issues arising from the combination of two products that would otherwise be separately regulated, stakeholders have complained that there is a lack of consistency, predictability, and transparency in the application of postmarket requirements for such products. Since manufacturers must design their manufacturing and quality systems for the types of products they produce, an applicant that primarily manufacturers devices, for example, may not have the systems in place to manufacture a drug-coated device that will be subject to drug GMPs. Similarly, applicants report confusion in deciding which adverse event monitoring regulations to follow for a combination product. Applicants report that reporting to multiple centers has been required in some cases, and is duplicative and unnecessary.

Questions:

5. What scientific and policy principles should be followed in determining the appropriate manufacturing and quality system regulatory authorities (e.g., Current

Good Manufacturing Practices versus Quality System Regulation) applicable to combination products?

6. What scientific and policy principles should be followed in determining the appropriate adverse event reporting requirements (e.g., the drugs and biologics adverse event reporting system, Medical Device Reporting) to be applied to a combination product?

7. What other comments do you have concerning other issues related to FDA regulation of combination products? (Examples may include cross labeling of products intended to be used together, though manufactured by different companies; and application of promotion and advertising policies to combination products.)

IV. Notice of Hearing Under Part 15

The Commissioner of Food and Drugs (the Commissioner) is announcing that the public hearing will be held in accordance with part 15. The hearing will have a presiding officer, who will be accompanied by senior management from CBER, CDER, CDRH, and the agency's Combination Products Program.

Persons who wish to participate in the part 15 hearing must file a written or electronic notice of participation with the Dockets Management Branch (see **ADDRESSES**). To ensure timely handling, any outer envelope should be clearly marked with the docket number listed at the head of this notice along with the statement "Combination Products Hearing." Groups should submit two written copies. The notice of participation should contain the person's name; address; telephone number; affiliation, if any; the sponsor of the presentation (e.g., the organization paying travel expenses or fees), if any; a brief summary of the presentation (including the specific discussion questions that will be addressed); and approximate amount of time requested for the presentation. The agency requests that interested persons and groups having similar interests consolidate their comments and present them through a single representative. After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by telephone of the time allotted to the person and the approximate time the person's oral presentation is scheduled to begin. If time permits, FDA may allow interested persons attending the hearing who did not submit a written or electronic notice of participation in advance to make an oral presentation at the conclusion of the hearing. The hearing schedule will be available at the hearing. After the hearing, the hearing schedule will be placed on file in the Dockets Management Branch under the docket number listed at the head of this notice.

Under § 15.30(f), the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation.

Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (part 10, subpart C (21 CFR part 10, subpart C)). Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b). The transcript of the hearing will be available on the Internet at *http://www.fda.gov/ohrms/dockets*, and orders for copies of the transcript can be placed at the meeting or through the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Any handicapped persons requiring special accommodations to attend the hearing should direct those needs to the contact person (see **FOR FURTHER INFORMATION CONTACT**).

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

V. Request for Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic notices of participation and comments for consideration at the hearing. To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open following the hearing. Persons who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (see **ADDRESSES**). You should annotate and organize your comments to identify the specific questions to which they refer (see section III of this document). Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number at the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Transcipts of the hearing also will be available for review at the Dockets Management Branch.

VI. Electronic Access

Persons with access to the Internet may obtain more information about this hearing or combination products in general at *http://www.fda.gov/oc/ombudsman/combination.html*.

Dated: October 18, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–27267 Filed 10–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: November 19, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To discuss the next steps for the DCLG with Dr. von Eschenbach and to get an update on the CARRA program.

Place: 6166 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Elaine Lee, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 300 C, Bethesda, MD 20892, 301/594–3194.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the

record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27404 Filed 10–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee H—Clinical Groups.

Date: December 5–6, 2002.

Time: 1 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Philadelphia Airport, One Arrivals Road, Philadelphia, PA 19153.

Contact Person: Deborah R. Jaffee, PhD., Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8038, MSC 8328, Bethesda, MD 20892, (301) 496–7721, *dj86k@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27405 Filed 10–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Obesity and Nutrition Research Centers.

Date: December 3–4, 2002.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 758, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27399 Filed 10–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Research Career Award for Transition to Independence.

Date: November 15, 2002.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6143, MSC 9608, Bethesda, MD 20892–9608, 301–443–1178, *benxu1@mail.nih.gov*.

Name of Committee: National Institutes of Mental Health Special Emphasis Panel, T32 Services and Interventions Applications.

Date: November 25, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard E. Weise, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6140, MSC 9606, Bethesda, MD 20892–9606, 301–443–1225, *rweise@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development

Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27400 Filed 10–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Refugee Mental Health.

Date: November 14, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27401 Filed 10–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel NSAL.

Date: December 2, 2002.

Time: 11 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216, *hhaigler@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of health, HHS)

Dated: October 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27402 Filed 10–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Biochemical and Genetic Factors in Birth Defects and Other Adverse Pregnancy Outcomes.

Date: November 5, 2002.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6100 Executive Blvd., DSR Conf. Rm., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of health, HHS)

Dated: October 17, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27403 Filed 10–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Letter of Invitation.

Date: November 20, 2002.

Time: 9 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Boulevard, 5th Floor Conference Room, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892, 301–435–6908.

(Catalog of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27406 Filed 10–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Transcription Factors in Myelodysplastic Syndromes.

Date: October 30, 2002.

Time: 3 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverse@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Endocrinology, Metabolism, Nutrition, & Reproductive Sciences.

Date: November 7, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–1041.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS Opportunistic Infections SEP.

Date: November 8, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701.

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, 301–435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group, Clinical Oncology Study Section.

Date: November 10–12, 2002.

Time: 2 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Wyndham San Diego at Emerald Plaza, 400 West Broadway, San Diego, CA 92101.

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, Oral Biology and Medicine Subcommittee 2.

Date: November 11–12, 2002.

Time: 7:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center, 1143 New Hampshire Ave, North West, Washington, DC 20037.

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Psycholinguistics.

Date: November 11, 2002.

Time: 11 AM to 12 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Women's Mental Health.

Date: November 11, 2002.

Time: 1 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeffrey W. Elias, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913, *eliasj@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 3.

Date: November 12–13, 2002.

Time: 8 AM to 11 AM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, Chesapeake Suites, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 02—HIV Vaccine R21 applications.

Date: November 12, 2002.

Time: 8:30 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1BM1(01): Small Grant (R03, R15 & R21) Microbiology Applications.

Date: November 12, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Timothy J. Henry, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Radiation Biology and Medical Physics.

Date: November 12, 2002.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Shen K. Yang., PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892, (301) 435–1213, *yangsh@sr.nih.gov*.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Hematology Subcommittee 2.

Date: November 12–13, 2002.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jerrold Fried, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892–7802, 301–435–1777, *friedj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict Reviews in Psychopathology and Adult Disorders.

Date: November 12, 2002.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, Washington, DC 20037.

Contact Person: Luci Roberts, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, *roberlu@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 03—Innovation Grants: HIV Vaccines.

Date: November 12, 2002.

Time: 9:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Psychopathology and Adult Disorders.

Date: November 12, 2002.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, Washington, DC 20037.

Contact Person: Luci Roberts, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, *roberlu@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BDCN 2 04: Spinal Cord injury.

Date: November 12, 2002.

Time: 10 a.m. to 10:45 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sherry L. Stuesses, PhD., Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1785, *stuesses@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cognition and Neuroimaging.

Date: November 12, 2002.

Time: 1:10 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Bishop PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–T 01: Quorum: Endorcine and Reproductive Science.

Date: November 12, 2002.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Krish Krishnan, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1401.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 UROL 01: Urology.

Date: November 12–13, 2002.

Time: 2 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG SSS X 11B: Small Business: Electromagnetics.

Date: November 12, 2002.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 F03A (20) MDCN Fellowship Review Group A.

Date: November 13–14, 2002.

Time: 8:00 AM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Michael Nunn, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1257.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to review SBIR applications.

Date: November 13, 2002.

Time: 8:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 11–Small Business: Viral Vaccines.

Date: November 13, 2002.

Time: 8:30 AM to 10:00 AM.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Occupational Safety and Health.

Date: November 13, 2002.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Charles N. Rafferty, PhD, NIOSH Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–3562, *raffertc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Demographic Small Business.

Date: November 13, 2002.

Time: 9:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 01—Vaccines of Infectious Diseases.

Date: November 13–14, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications, The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel, DNA Repair.

Date: November 13, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7804, Bethesda, MD 20814–9692, 301–435–3504, fungv@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Therapy.

Date: November 13, 2002.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718, *perkins@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27397 Filed 10–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BDCN–4 (01).

Date: October 24–25, 2002.[1]

Time: 8:30 a.m. to 5 p.m.

[1] Editorial Note: This document was received at the Office of the Federal Register on October 23, 2002.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW, Washington, DC 20037.

Contact Person: Jay Joshi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 22, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27398 Filed 10–25–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–00–1020–24]

Sierra Front-Northwestern Great Basin Resource Advisory Council; Notice of 2003 Meetings Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of 2003 Meetings Locations and Times for the Sierra Front-Northwestern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), meetings of the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for discussion at each meeting will include, but are not limited to: January 28–29, 2003 (Carson City, Nevada)—RAC review and recommendations on the Walker River Basin EIS, report on national wild horse & burro program status, field trip to the proposed National Wild Horse & Burro Adoption/Visitor Center site off U.S. Highway 50 in Moundhouse, Nevada; April 24–25, 2003 (Reno, Nevada)—official action on Black Rock NCA including subcommittee review and a possible ½-day session with NE California RAC, status of Nevada counties wilderness package development, and status of prescribed fire & wildland fire planning projects in

the Carson City and Winnemucca Field Offices; and July 24–25, 2003 (Winnemucca, Nevada)—RAC review of Pine Nut Mountain Plan Amendment EIS, Sage Grouse program review and inspection of fire rehabilitation sites including an overnight camping trip in the Winnemucca Field Office area. Manager's reports of field office activities will be given at each meeting. The council may raise other topics at any of the three planned meetings.

DATES AND TIMES: The RAC will meet three times in 2003 on January 28–29 (Tuesday & Wednesday), at the BLM–Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada; on April 24–25 (Thursday & Friday), at the BLM–Nevada State Office, Great Basin A&B Conference Room, 1340 Financial Blvd., Reno, Nevada; and on July 24–25 (Thursday & Friday), at the BLM–Winnemucca Field Office, 5100 E. Winnemucca, Blvd., Winnemucca, Nevada. All meetings and field trips are open to the public. Each meeting will last from 8 a.m. to 4 p.m., plus, a general public comment period, where the public may submit oral or written comments to the RAC, will be at 11 a.m. on the first day of each meeting, unless otherwise listed in each specific, final meeting agenda.

Final detailed agendas, with any additions/corrections to agenda topics, locations, field trips and meeting times, will be available on the Internet at least 14 days before each meeting, at *www.nv.blm.gov/rac*; hard copies can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of each agenda, should contact Mark Struble, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885–6107 no later than 10 days prior to each meeting.

FOR FURTHER INFORMATION CONTACT: Mark Struble, Public Affairs Officer, BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone: (775) 885–6107. E-mail: *mstruble@nv.blm.gov*

Dated: October 23, 2002.

John O. Singlaub,

Field Manager, Carson City Field Office.

[FR Doc. 02–27314 Filed 10–25–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Death Valley National Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: This notice sets forth the date of the November 13, 2002 meeting of the Death Valley National Park Advisory Commission.

DATES: The public meeting will be held on November 13, 2002 from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Death Valley National Park Visitor Center Auditorium, Highway 190, Death Valley, California.

FOR FURTHER INFORMATION CONTACT: James T. Reynolds, Death Valley National Park, P.O. Box 579, Death Valley, California 92328.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Death Valley National Park Advisory Commission, PO Box 579, Death Valley, California 92328.

Agenda: The November 13, 2002 meeting will consist of Operational Updates on Park Activities which include Fee Demo Program Outsourcing; Barrick Administrative Site Donation; California Desert Parks Foundation update; Comprehensive Interpretive Plan update; a review of Fee Demo Projects; Environmental Audit briefing; Yucca Mountain Project update; Exotic Plant Removal project update; Wilderness Boundary update; Grazing issues update; Timbisha Shoshone Tribe update; an update on the Furnace Creek Environmental Impact Statement and related water issues; and a Citizens Open Forum where the public can make comments and ask questions on any park activity.

Dated: September 30, 2002.

James T. Reynolds,

Superintendent.

[FR Doc. 02–27247 Filed 10–25–02; 8:45 am]

BILLING CODE 4310–70–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that four meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506 as follows:

Local Arts Agencies: November 13–14, 2002, Room 716 (Access and Heritage & Preservation categories). A portion of this meeting, from 10:45 a.m. to 12 p.m. on November 14th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5 p.m. on November 13th and from 9 a.m. to 10:45 a.m. and 12 p.m. to 1:15 p.m. on November 14th, will be closed.

Dance: November 13–15, 2002, Room 730 (Access and Heritage & Preservation categories). A portion of this meeting, from 9:30 a.m. to 10:30 a.m. on November 15th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on November 13th and 14th and from 10:30 a.m. to 2 p.m. November 15th, will be closed.

Theater/Musical Theater: November 18–21, 2002, Room 730 (Access and Heritage & Preservation categories). A portion of this meeting, from 3:15 p.m. to 4:45 p.m. on November 20th, will be open to the public for policy discussion. The remaining portions of this meeting, from 10 a.m. to 6 p.m. on November 18th and 19th, from 10 a.m. to 3:15 p.m. and 4:45 p.m. to 6 p.m. on November 20th, and from 10 a.m. to 2:30 p.m. on November 21st, will be closed.

Visual Arts: November 19–20, 2002, Room 716 (Access and Heritage & Preservation categories). A portion of this meeting, from 2 p.m. to 2:45 p.m., will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on November 19th and from 9 a.m. to 2 p.m. and 2:45 p.m. to 4:30 p.m. on November 20th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Accessability, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: October 22, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–27321 Filed 10–25–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel; Notice of Change

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the time of the open session of the Combined Arts Advisory Panel, Music Section (Access and Heritage & Preservation categories) has been changed. This session will be held from 11 a.m. to 12:30 p.m., rather than 2 p.m. to 3:30 p.m., on November 22, 2002, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

Dated: October 22, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–27322 Filed 10–25–02; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on November 7–9, 2002, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 26, 2001 (66 FR 59034).

Thursday, November 7, 2002

8:30 a.m.–8:35 a.m.: Opening Statement by the ACRS *Chairman*— The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Proposed Resolution of Generic Safety Issue (GSI)–189, "Susceptibility of Ice Condenser and Mark III Containments to Early Failure From Hydrogen Combustion During a Severe Accident" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff on the results of their additional analyses and proposed recommendations for resolving GSI–189.

10:15 a.m.–11:45 a.m.: Early Site Permit Process (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Early Site Permit Process.

11:45 a.m.–12:15 p.m.: Peach Bottom License Renewal Application (Open)—Report by the Subcommittee Chairman regarding the October 30, 2002 Plant License Renewal Subcommittee meeting on the license renewal application for the Peach Bottom Nuclear Plant Units 2 and 3.

1:15 p.m.–3:15 p.m.: Westinghouse AP1000 Design (Open)—The Committee will hear presentations by and hold discussions with representatives of Westinghouse regarding the design features of, and test information on, the AP1000 design. The NRC staff will provide a status report regarding its review schedule.

3:30 p.m.–5 p.m.: Risk-Informed Improvements to Standard Technical Specifications (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding staff's progress on risk-informed improvements to Standard Technical Specifications and related matters.

5:15 p.m.–6 p.m.: Report Regarding Recent Operating Events (Open)—The Committee will hear a report by the Cognizant ACRS member regarding recent operating events of interest.

6 p.m.–7 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, November 8, 2002

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–12 Noon: Organizational and Personnel Matters (Closed)—The Committee will discuss organizational and personnel matters as well as the potential improvements to internal ACRS policies and procedures.

Note: This session will be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.)

1 p.m.–4 p.m.: Safeguards and Security Activities (Closed)—(This session will be held in room T–8E8.) The Committee will hear a report by the cognizant Subcommittee Chairman regarding matters discussed at the October 31, 2002 meeting of the ACRS Subcommittee on Safeguards and Security. In addition, the Committee will discuss the content of a proposed report to the Commission on Safeguards and Security matters.

Note: This session will be closed pursuant to 5 U.S.C. 552b(c)(1) to protect national security information.)

4:15 p.m.–5 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

5 p.m.–5:15 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

5:30 p.m.–7 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, November 9, 2002

8:30 a.m.–10 a.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

10:15 a.m.–12:15 p.m.: Annual ACRS Report on the NRC Safety Research Program (Open)—The cognizant Subcommittee Chairman will report on matters discussed at the November 6, 2002 Safety Research Program

Subcommittee meeting, and the Committee will discuss a draft ACRS report to the Commission on the NRC Safety Research Program.

12:30 p.m.–1 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63460). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Associate Director for Technical Support named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Associate Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Associate Director if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy, *per* 5 U.S.C. 552b(c)(2) and (6), and to protect national security information *per* 5 U.S.C. 552b(c)(1).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur, Associate Director for Technical Support (301–415–0138), between 7:30 a.m. and 4:15 p.m., ET.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: October 22, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–27335 Filed 10–25–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena (GSI–189); Revised

The starting time for the ACRS Subcommittee meeting on Thermal-Hydraulic Phenomena (GSI–189) scheduled for November 5, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland has been changed from 8:30 a.m. *to 1:30 p.m.*

For further information contact: Ms. Maggalean W. Weston (telephone 301–415–3151) between 7:30 a.m. and 5:00 p.m. (EDT).

Dated: October 18, 2002.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–27336 Filed 10–25–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [67 FR 64940, October 22, 2002]

STATUS: Open meeting

PLACE: 450 Fifth Street, NW., Washington, DC

ANNOUNCEMENT OF OPEN MEETING: Open meeting.

The Commission will hold an Open Meeting on Friday, October 25, 2002 at 2:30 p.m., in Room 1C30, the William O. Douglas Room, to consider appointments to the Public Company Accounting Oversight Board.

The Commission (Chairman Pitt, Commissioners Glassman, Goldschmid, Atkins and Campos) determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 24, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–27483 Filed 10–24–02; 12:30 pm]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46702; File No. SR–Amex–2002–47]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 by the American Stock Exchange LLC Relating to Non-Member Fees for Transactions in Nasdaq Securities Traded on an Unlisted Basis

October 22, 2002.

On June 3, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder.[2] Amex filed Amendment No. 1 on June 11, 2002,[3] and Amendment No. 2 on August 27, 2002.[4] The proposed rule change, as amended, was noticed in the **Federal Register** on September 17, 2002.[5] On October 3, 2002, Amex filed Amendment No. 3 to the proposed rule change.[6] The Commission is publishing this notice to approve the proposed rule change, as amended, and solicit comments on Amendment No. 3 from interested persons.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from William Floyd-Jones, Assistant General Counsel, Amex, to Katherine England, Esq., Assistant Director, Office of Market Supervision ("Market Supervision"), Commission (June 10, 2002).

[4] *See* letter from William Floyd-Jones, Assistant General Counsel, Amex, to Katherine England, Esq., Assistant Director, Market Supervision, Commission (Aug. 26, 2002).

[5] *See* Securities and Exchange Act Release No. 46483 (Sept. 10, 2002), 67 FR 58658 (Sept. 17, 2002).

[6] Amex filed Amendment No. 3 to provide that the Amex will begin to assess the proposed non-member transaction fees as of the trade date October 1, 2002. *See* letter from William Floyd-Jones, Assistant General Counsel, Amex, to Katherine England, Esq., Assistant Director, Market Supervision, Commission (October 1, 2002) ("Amendment No. 3").

[7] SR–Amex–2002–59 implements these same fees for members. *See* Securities Exchange Act Release No. 46484 (Sept. 10, 2002), 67 FR 58659 (Sept. 17, 2002).

I. Description

The Amex proposes to adopt transaction fees for non-member trades in The Nasdaq Stock Market, Inc. ("Nasdaq") securities admitted to dealings on an unlisted basis. Accordingly, the Exchange is implementing a separate fee schedule for transactions in Nasdaq securities admitted to dealings so that the Amex can be competitive with other market centers that trade Nasdaq securities. According to the Exchange, the proposed fees are in line with similar fees charged by other market centers for transactions in Nasdaq securities.

II. Commission Findings

The Commission finds that the proposed rule change, as amended, is consistent with section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)[9] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities. The Amex will assess the same fees to both members and non-members equally. The Commission also finds good cause for approving proposed Amendment No. 3 prior to the thirtieth day after the date for publication of notice of filing thereof in the **Federal Register**. Amendment No. 3 will permit the Amex to begin to assess the proposed non-member transaction fees as of the trade date October 1, 2002, so that these fees will begin to be assessed at the same time as the Exchange begins to assess its member transaction fees.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 of the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–47 and should be submitted by November 18, 2002.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–2002–47), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27350 Filed 10–25–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46697; File No. SR–CHX–2002–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Automatic and Manual Execution Procedures

October 21, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on September 13, 2002, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. The proposed rule change has been filed by the CHX as a "non-controversial" rule change under Rule 19b–4(f)(6)[3] under the Act. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XX, Rule 37 of the CHX Rules to clarify the provisions that govern the approval necessary to switch from manual to automatic execution of orders.

Below is the text of the proposed rule change. Proposed new language is *italicized*. Proposed deletions are in [brackets].

Chicago Stock Exchange Rules

* * * * *

Article XX

* * * * *

Guaranteed Execution System and Midwest Automated Execution System

Rule 37

(a) No change to text.
(b) No change to text.
(1)–(7) No change in text.
[(8) In unusual trading situations, specialists may switch from automatic execution to a manual execution mode at their respective posts. With respect to specialists trading Nasdaq issues, "manual execution mode" shall include any instance in which a specialist

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

reduces the auto-execution threshold below the minimum set forth in Rule 37(b)(1) of this Article. For purposes of this subsection (8), "unusual trading situations" for NASDAQ/NM issues include the existence of large order imbalances and/or significant price volatility. If a specialist elects to switch to a manual execution mode based on the existence of unusual trading situations, such specialist (A) must document the basis for election of a manual execution mode; (B) must disclose to its customers the differences in procedures from normal market conditions and the circumstances under which the specialist generally may activate these procedures; and (C) must seek relief from the requirements of MAX from two (2) floor officials or a designated member of the Exchange staff who would have authority to set execution prices.]

[(9)]*(8)* No change to text.

[(10)]*(9)* No change to text.

[(11)]*(10)* No change to text.

[(12)]*(11)* No change to text.

* * * * *

* * * Interpretations and Policies:

.01–.03 No change to text.

.04 Ability to Switch MAX to Manual Execution.

Effective April 4, 1994. Specialists have the ability to switch their MAX terminals off automatic execution at their respective posts. [This new functionality is being implemented to allow specialists to timely switch to a manual execution mode when a certain analyst/reporter's report is broadcast on cable T.V., if market conditions in a particular stock warrant it. Specialists should switch to manual mode only when absolutely necessary and are required to return to the automatic execution functionality immediately when the primary market quotes accurately reflect market conditions. A specialist cannot remain in manual mode, under this paragraph, for more than five minutes without securing the permission of two (2) floor officials.]

Reasons for moving to manual execution mode. Specialists trading listed securities may use the procedures described below to switch to manual execution mode when the primary market quotes are inaccurate due to market conditions. For example, this functionality might be used if it became apparent that the NYSE invoked its unusual market conditions rule (pursuant to SEC Rule 11Ac1–1). This functionality cannot be used merely because of a volatile market.

Specialists trading Nasdaq/NM securities may use the procedures described below to switch to manual execution mode in unusual trading situations. With respect to specialists trading Nasdaq/NM securities, "manual execution mode" shall include any instance in which a specialist reduces the auto-execution threshold below the minimum set forth in Rule 37(b)(1) of this Article. For purposes of this paragraph, "unusual trading situations" include the existence of large order imbalances and/or significant price volatility.

Procedures for switching to manual execution mode. [In all other instances, w] *When* a specialist believes it is necessary to be in a manual execution mode, he or she must secure the permission of his/her firm's floor supervisor (who, under normal circumstances should be located on the trading floor) before switching to manual, and the firm supervisor must immediately (but in no event more than three minutes after switching to manual mode) notify and secure the permission of a floor official to remain in manual mode. [This new functionality cannot be used merely because of a volatile market, but shall only be permitted when the primary market quotes are inaccurate due to market conditions. For example, this new functionality might be used if it became apparent that the NYSE invoked its unusual market conditions rule (pursuant to SEC Rule 11Ac1–1).] The floor official must be satisfied that the conditions which permit putting an issue on manual mode are present before granting a specialist's request to switch to the manual mode and such permission shall only be in effect for five minutes. A firm's floor supervisor shall monitor the conditions which formed the basis for the decision to ensure that specialists return to the auto-execution feature when such conditions are no longer present. Both the firm's floor supervisor and the specialist have the responsibility, and are required, to immediately reinstate MAX's automatic execution functionality when [the primary market quotes accurately reflect market conditions] *market conditions no longer support the decision to move to manual execution mode.* If the specialist and the firm's floor supervisor believe it is necessary to continue in manual mode for longer than five minutes, then the firm supervisor must again secure the permission of the floor official who granted the initial permission, and if such floor official is not available, then from another floor official. Reasons for going to manual mode, the time spent in manual mode, the name of the firm supervisor who permitted the specialist to switch to manual mode and the name of the floor official who granted permission to go to manual mode must be documented and filed with the market regulation department before the next business day's opening.

When operating in the manual mode. Specialists still have the responsibility to fill customer orders according to CHX Rules—including the BEST Rule. All pricing executions will be reviewed for accuracy. This capability should only be utilized on an infrequent basis and only in unusual circumstances.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In October, 2001, the Exchange's Board of Governors approved changes to the procedures that a specialist must follow when switching from automatic to manual execution mode, intending that the changes would apply to specialists trading both listed and OTC securities. Among other things, these changes required the floor supervisor of a specialist firm to approve any switch to manual execution mode before it occurred and to promptly seek floor official approval of that change. Additionally, the amended language made it clear that the firm's floor supervisor was responsible for filing documentation with the Market Regulation Department about each change. Finally, the modified text confirmed that floor official permission to operate in manual execution mode expired after a limited time period; after five minutes, the specialist firm and its floor supervisor were again required to seek permission to remain in manual execution mode. The CHX filed this proposed rule change with the Commission on November 14, 2001; the Commission approved the proposed rule change on April 17, 2002.[4]

Because of a staff oversight, however, the changes made by the Exchange's earlier proposal only impacted listed specialists. This submission would extend the same requirements to specialists trading over-the-counter ("OTC") securities and consolidate the rule provisions relating to this issue for easier reference.[5]

As with the Exchange's earlier filing, the Exchange anticipates that these rule changes will promote greater accountability and preclude reliance on manual execution mode in a manner that is potentially violative of CHX rules. They also will assist the Market Regulation Department in determining more easily whether violations of the Exchange's rules regarding manual execution mode have occurred.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[6] In particular, the Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act[7] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

[4] *See* Securities Exchange Act Release No. 45770 (April 17, 2002), 67 FR 19784 (April 23, 2002) (SR–CHX–2001–26).

[5] The proposal deletes language from the rule that allows a listed specialist to switch to manual execution mode when a "certain analyst/reporter's report is broadcast on cable TV." That rule provision has become obsolete and no longer provides a reason for which a specialist can switch to manual execution mode.

Additionally, the Exchange has not included, in its proposal, a requirement that a specialist firm that changes its auto-execution status must notify order-sending firms of that change. The Exchange reports that in recent months, order-sending firms appear, more and more, to base their order-routing decisions on the execution quality statistics of various market centers. The Exchange believes that, if orders are given quick executions at appropriate prices, order-sending firms may not be interested in whether the execution was automatically or manually given. Nevertheless, the Exchange plans to continue the practice of providing automated notices to order-sending firms that request them with respect to trading in OTC issues and will consider whether a similar practice is appropriate for firms that send orders in listed securities.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change[8] has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The CHX seeks to have the proposed rule change become operative upon filing in order to more quickly implement these procedures and thus require all of its specialists—those trading both OTC and listed securities—to use identical procedures when changing from automatic execution mode to manual execution mode.

The Commission, consistent with the protection of investors and the public interest, designates the proposal to be operative as of September 13, 2002.[11] Acceleration of the operative date of the proposed rule change will allow the CHX to quickly harmonize the procedures the specialist follows when switching from automatic execution mode to manual execution mode for listed and Nasdaq securities.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2002–15 and should be submitted by November 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27299 Filed 10–25–02; 8:45 am]

BILLING CODE 8010–01–P

[8] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission. *See* Prefiling Notice of Proposed Rule Change (SR–CHX–2002–15), dated May 22, 2002.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46688; File No. SR–CSE–2002–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to Changes in Transaction and Related Fees

October 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4[2] thereunder, notice is hereby given that on September 30, 2002, the Cincinnati Stock Exchange, Inc. ("Exchange" or "CSE") submitted to the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CSE. The proposed rule change has been filed by the CSE under Rule 19b-4(f)(2)[3] of the Act because it changes a due, fee, or other charge. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend the Exchange's schedule of transaction fees and related fees.

The text of the proposed rule change is below. Proposed additions are in italics and proposed deletions are in [brackets].

* * * * *

Proposed Rule Change

The Cincinnati Stock Exchange, Incorporated

Trading Rules

Rule 11.10 National Securities Trading System Fees

A. Trading Fees

(a)–(d) (No Change to Text)

(e) [(1) Crosses and Meets. Each member will be charged $0.0005 per share ($0.50/1000 shares), with a maximum charge of $37.50 per firm per side of the transaction. No agency, professional agency or proprietary charges are applied.

(2) Tape "C" Transactions. Tape "C" Transactions are defined as transactions conducted in Nasdaq securities pursuant to unlisted trading privileges ("UTP"). Members will be charged a per share fee for Nasdaq securities based upon the following schedule:

Number of shares traded (in a single day)	Fee per share
0–5 million	$0.001
5 million one +	0.000025]

(1) Users executing crosses and meets in Tape A securities shall be charged $0.0005 per share per side for average daily volume up to 5 million shares per day and $0.000025 per share per side for average daily volume above 5 million shares, with a maximum charge of $37.50 per firm per side of transaction.

(2) Users, who are not registered as Qualified or Designated Dealers in the securities in which they are executing crosses and meets in Tape C securities (Nasdaq NMM and SmallCap securities), shall pay no transaction fees.

(3) Dealers executing crosses in Tape C securities (Tape "C" Transactions are defined as transactions conducted in Nasdaq securities pursuant to unlisted trading privileges) in which they are registered shall be charged a per share fee as noted below:

Average daily number of shares	*Fee per share*
Up to 5 million shares	*$0.001*
5 million shares and above	*0.000025*

[(f) ITS Transactions. These transactions are charged according to the capacity in which they are executed.]

(f) ITS Transactions. All ITS transactions, whether inbound or outbound, will be charged $0.001 per share.

(g) (No change to text)

[(h) Preferenced Transactions. Designated dealers that are preferencing transactions are charged for one side of their preferenced transactions and are subject to the incremental rates as noted below:

Avg. daily principal share* volume	Charge per share
1 to 250,000	$0.0015
250,001 to 500,000	0.0013
500,001 to 750,000	0.0009
750,001 to 1,250,000	0.0007
1,250,000 and higher	0.0005

*Odd-Lot Shares Excluded]

(h)(1) Preferenced Transactions. Designated Dealers that are preferencing transactions in Tape A securities are charged for one side of their preferenced transactions and are subject to the incremental rates as noted below:

Average daily share volume*	*Charge per share*
1 to 250,000	*$0.0015*
250,001 to 500,000	*0.0013*
500,001 to 750,000	*0.0009*
750,001 to 1,250,000	*0.0007*
1,250,000 and higher	*0.0005*

**Odd-Lot shares excluded*

(2) Dealers executing preferencing transactions in Tape C securities are charged for one side of their preferenced transactions and are subject to the following incremental rates:

*Average daily share** volume*	*Charge per share*
Up to 5 million shares	*$0.001*
5 million shares and above	*0.000025*

***Odd-Lot shares excluded*

[(i) Member Gross Fee Discount. Members will receive an incremental discount to their total gross fee** charged in any given month as follows:

Gross fees	Percentage
$0.00 to $5,000	0
$5,000.01 to $20,000	0
$20,000.01 to $50,000	15
$50,000.01 to $90,000	20
$90,000.01 to $125,000	25
$125,000.01 and higher	30

*Excludes: Agency Transactions (a), Crosses & Meets (e), Dealer of the Day (g)(2) and Preferenced Transaction (h) Fees.]

(i) Reserved.

(j) Revenue Sharing Program. After the Exchange earns total operating revenue sufficient to offset actual expenses and working capital needs, a percentage of all specialist Operating Revenue ("SOR") shall be eligible for sharing with Designated Dealers. SOR is defined as operating revenue, which is generated by specialist firms. SOR consists of transactions fees, book fees, technology fees, and market data revenue, which is attributable to specialist firm activity. SOR shall not include any investment income or regulatory monies. The sharing of SOR shall be based on each Designated Dealer's pro rata contribution to SOR. In no event shall the amount or revenue shared with Designated Dealers exceed SOR. *To the extent market data revenue is subject to year-end adjustment, SOR revenue may be adjusted accordingly.*

(k) Tape "B" Transactions. The CSE will not impose a transaction fee on Consolidated Tape "B" securities. In addition, Members will receive a 50 percent pro rata transaction credit of net Tape "B" revenue. *To the extent market data revenue from Tape "B" transactions is subject to year-end adjustment, credits provided under this program may be adjusted accordingly.*

[(l) Tape "C" Transaction Credit. Members will receive a 75 percent pro rata transaction credit of Tape "C" revenue.]

(l) Reserved.

(m) (No change to text)

(n) (No change to text)

(o) Technology Fee. Every member of the Exchange shall be assessed a fee of [$500.00] *$750.00* per month to help offset technology expenses incurred by the Exchange.

(p) (No change to text)

(a) (No change to text)

(r) Workstation Fee. Every member using the Exchange Workstation shall be charged $500.00 per device per month.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing amendments to the Exchange Rules governing transaction and related fees. The first proposed rule change amends subsection (1) to Rule 11.10(A)(e), ("Crosses and Meets"). Subsection (1) currently provides that members will be charged $0.0005 per share per side, with a cap of $37.50 per firm per side of any transaction. The amended rule will provide that Users executing agency crosses or meets in Tape A securities (securities listed on the New York Stock Exchange) shall be charged $0.0005 per share per side for average daily volume up to 5 million shares and $0.000025 per share per side for average daily volume above 5 million shares. The cap of $75.00 per transaction remains.

Subsection (2) of Rule 11.10(A)(e) is amended to change the current fee structure for crosses and meets in Tape C (Nasdaq securities) transactions. Currently, subsection (2) provides a fee structure of $0.001 for average daily volume up to 5 million shares traded and $0.000025 for average daily volume above 5 million shares. Subsection (2) is amended eliminate the current fee schedule and to charge Users who are not Dealers no transaction fees for crosses and meets in Tape C securities. The Exchange states that since it is unable to share the market data revenue generated through its volume, the Exchange believes it is equitable and reasonable to reduce other transaction fees such as the fee for non-Dealers to execute crosses and meets in Tape C securities.[4]

Subsection (3) of Rule 11.10(A)(e) is added to provide that Dealers executing crosses in Tape C securities are charged $0.001 for average daily volume up to 5 million shares traded and $0.000025 for average daily volume above 5 million shares. The Exchange believes that it is fair to continue to charge Dealers in Tape C securities transaction fees because they are eligible to share in the market data revenue generated by their trading activity.[5] This is because, under Rule 11.10A(j), Dealers share in Specialist Operating Revenue, which includes market data revenue, after the CSE retains sufficient income to offset actual expenses and working capital needs.[6]

Rule 11.10(A)(f) is being amended to reflect changes in the billing of ITS transactions. Currently, ITS transactions are charged according to the capacity in which they are executed. The Exchange is amending Subsection (f) to provide that all ITS transactions will be billed $0.001 per share.

The Exchange is also amending Rule 11.10(A)(h), "Preferenced Transactions," by adding subsections to the rule. Subsection (1) specifies that the current fee schedule for preferenced transactions set forth in rule 11.10(A)(h) applies to Tape A securities only. Subsection (2) is added to provide that preferenced transactions in Tape C securities will be charged $.001 for average daily volume up to 5 million shares and $0.000025 for average daily volume above 5 million shares.

Rule 11.10(A)(i), "Member Gross Fee Discounts," is deleted in light of the other fee reductions implemented in this filing.

In addition, the Exchange is amending Rules 11.10(A)(j) and (k) by adding a provision to each clarifying that to the extent CSE market data revenue is subject to a year-end adjustment, revenues distributed to members is subject to adjustment accordingly. This Exchange believes that this provision will ensure that member receipts of market data revenue are consistent with the year-end true-up procedures applied by the Consolidated Tape Association and the Nasdaq-UTP Plan.

The Exchange is eliminating Rule 11.10(A)(l) because of the Commission's abrogation of the Exchange's pilot Nasdaq securities market data revenue sharing program.[7] However, the Exchange is reserving Rule 11.10(A)(l) should the Exchange refile its Nasdaq revenue sharing program. Finally, the Exchange is amending Rule 11.10(A)(o) to increase the Exchange's technology fee from $500 per month to $750 per month and is adding Rule 11.10(A)(r) to establish a fee of $500 per month for access to the Exchange's workstation, which was recently introduced to members.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act[8] in general, and with section 6(b)(5) of the Act[9] specifically, in that it is designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest and promote just and equitable principles of trade. The Exchange also believes that the proposal is consistent with section 6(b)(4) of the Act[10] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by charging on a pro rata basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 17 CFR 240.19b-4(f)(2).

[4] Telephone conference call among Jeffery T. Brown, Senior Vice President and General Counsel, CSE, Florence Harmon, Senior Special Counsel, Division, Commission, and Timothy Fox, Law Clerk, Division, Commission, October 16, 2002.

[5] *Id.*

[6] *Id.*

[7] *See* Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (Order of Summary Abrogation). The Commission notes that the proposed rule change will effectively remove transaction fees for non-Dealer members of CSE, including ECNs, who execute crosses or meets in Tape C securities.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change changes a member due, fee or other charge, it has become effective pursuant to section 19(b)(3)(A) of the Act [11] and subparagraph (f)(2) of Rule 19b-4 [12] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–2002–14 and should be submitted by November 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27300 Filed 10–25–02; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(3)(C).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46698; File No. SR–ISE–2002–22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the International Securities Exchange, Inc. Relating to Pilot Fee Waivers

October 21, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2002, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The ISE filed an amendment to the proposed rule change on October 9, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to waive the following fees through May 31, 2003: firm proprietary execution fees for trading in the ISE Block Mechanism; firm proprietary execution fees for all trades on options on the iShares S&P 100 Index Fund; and the $.10 licensing surcharge fee for all firm proprietary trades in options on the iShares S&P 100 Index Fund.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to waive two firm proprietary fees for a pilot period expiring on May 31, 2003. Customer fees for these types of trades already are waived through June 30, 2003. *The fees the ISE proposes to waive under this pilot program are:*

- Firm proprietary fees for all transactions executed in the ISE's Block Order Mechanism. This is functionality that the ISE has introduced into the market place to effect large trades of 50 or more contracts. The ISE's goal is to attract firm proprietary traders to use this new type of functionality.

- Firm proprietary fees and licensing surcharges for all transactions in options on the iShares S&P 100 Index Fund, an exchange-traded fund based on the S&P 100 Index. The ISE's intent is to make trading in this product more attractive, and more competitive with options on the S&P 100 Index.

The ISE will continue to charge these fees to its members for trades by both ISE market makers and market makers on other exchanges. However, the ISE does not permit non-members to enter orders on the ISE, and thus does not impose these fees directly on non-members.

2. Statutory Basis

The ISE believes that the basis for the proposed rule change is the requirement under section 6(b)(4) of the Act [4] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated October 8, 2002, and attachment ("Amendment No. 1"). In Amendment No. 1, the ISE proposes to correct the rule text of the proposed rule change to clarify that the pilot period for the fee waivers would end on May 31, 2003.

[4] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to file number SR–ISE–2002–22 and should be submitted by November 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27301 Filed 10–25–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46695; File No. SR–NASD–2002–120]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify Application of Additional Circuit/SDP Charge Under Rule 7010(f) to NASD Members

October 21, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 12, 2002 the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Nasdaq has prepared. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the rule immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the conditions under which members pay the Additional Circuit/SDP Charge under NASD Rule 7010(f).[5] As described in more detail in section II.A.1 below, for members that require circuit consolidation, Nasdaq proposes to implement the Additional Circuit/SDP Charge on a rolling basis as the circuit consolidation work is performed.

The text of the proposed rule change is below. Proposed new text is *italicized* and proposed deleted text is [bracketed].

* * * * *

Rule 7010. System Services

(a) " (e) No change

(f) Nasdaq Workstation™ Service

(1) No change.

(2) The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via equipment and communications linkages prescribed for the Nasdaq *Workstation II Service*:

Service Charge $1,875/month per service delivery platform ("SDP") from December 1, 2000 through February 28, 2001. $2,035/month per SDP beginning March 1, 2001.

Display Charge $525/month per presentation device ("PD").

Additional Circuit/SDP Charge $3,075 per month from December 1, 2000 through February 28, 2001, and $3,235/month beginning March 1, 2001*.

A subscriber that accesses Nasdaq Workstation II Service via an application programming interface ("API") shall be assessed the Service Charge for each of the subscriber's SDPs and shall be assessed the Display Charge for each of the subscriber's API linkages, including an NWII substitute or quote-update facility. API subscribers also shall be subject to the Additional Circuit/SDP Charge.

(3) No change.

*A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDPs by placing eight PDs and/or API servers on an SDP and obtains an additional SDP(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP(s) (*i.e.*, the difference between the number of SDPs a subscriber has and the number of SDPs the subscriber would need to support its PDs and/or API servers, assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its T1 circuits by placing [six] *eighteen* SDPs on a T1 circuit; in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP slot on the existing T1 circuit(s). Regardless of the SDP allocation across T1 circuits, a subscriber will not be subject to the Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDP, assuming [a six to one] *an eighteen-to-one* ratio.

(g)–(r) No change.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Nasdaq also submitted a proposed rule change to modify the conditions under which non-members of the NASD pay the Additional Circuit/SDP Charge. *See* SR–NASD–2002–121.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Nasdaq Workstation II ("NWII") service allows market participants to access Nasdaq and Nasdaq facilities through Nasdaq's Enterprise Wide Network II ("EWN II"). To use the NWII service, each subscriber location has at least one service delivery platform ("SDP") that connects to Nasdaq by a dedicated T1 circuit pair. The SDP functions as the gateway from the subscriber's NWII "presentation device" ("PD")[6] or application programming interface ("API") server [7] to the EWN II. Each SDP is permitted to support up to eight PDs or API servers. In the past, each T1 circuit pair had been capable of supporting six SDPs. As the result of recent improvements in circuit efficiency, however, it is now possible to support eighteen SDPs on one T1 circuit pair. This marked increase in circuit capacity provides Nasdaq and its market participants with an opportunity to enhance the efficiency of the NWII service by reducing the number of circuits required to provide a given level of service.

Under Nasdaq's current pricing structure for NWII, a subscriber generally pays $2,035 per SDP month, but is assessed an "Additional Circuit/SDP Charge" of $3,235 per month for unutilized SDP slots if it uses T1 circuits inefficiently.[8] A subscriber does not pay the Additional Circuit/SDP Charge, however, if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDPs, assuming a six-to-one ratio. This pricing structure encourages subscribers to maximize circuit capacity and is aimed at preventing the premature exhaustion of EWN II's capacity to support additional circuits. This in turn helps to ensure that the capacity of the EWN II can keep pace with the growth of trading volumes. In order to reflect the realities of technological change and to encourage firms to take full advantage of the resulting efficiencies, Nasdaq is modifying the requirement for full utilization of circuits from six SDPs per T1 circuit to eighteen. As is currently the case, subscribers would not pay an Additional Circuit/SDP Charge for unused slots as long as the subscriber does not exceed the minimum number of T1 circuits needed to support its SDPs (based on an eighteen-to-one ratio).

Nasdaq believes that the increased efficiency of T1 circuits will allow Nasdaq and subscribers to discontinue the use of many T1 circuit pairs, and that this will, in turn, expand the available capacity of EWN II, thereby enhancing its ability to keep pace with future growth in trading volumes. In anticipation of this capacity expansion, during the past three months Nasdaq has tripled the EWN II bandwidth, from 256kb to 768kb, without increasing costs to subscribers. Moreover, since subscribers will be able to use a T1 circuit pair to support more SDPs than has previously been the case, a subscriber can now expand its own capability as its needs grow without incurring the costs and delays associated with installation of an additional circuit pair.

In order to allow subscribers with redundant circuits to take advantage of these added efficiencies, it will be necessary for Nasdaq to perform upgrades on subscribers' existing circuits, a process that can only be completed on a circuit-by-circuit basis. Accordingly, Nasdaq would implement the proposed Additional Circuit/SDP Charge on a rolling basis, as subscribers with redundant circuits are provided with the opportunity to have the circuit consolidation work performed. Subscribers would receive notice of the opportunity to eliminate unneeded circuits through direct personal contact from Nasdaq technical personnel. Until a subscriber's circuits have been upgraded, the subscriber would be charged the Additional Circuit/SDP Charge on the basis of a six-to-one ratio. Following the completion of the upgrade of a given subscriber, the eighteen-to-one ratio would apply. Similarly, if a subscriber chooses not to complete the upgrade, the subscriber would be charged according to the eighteen-to-one ratio, starting with the calendar month following its decision not to upgrade. Finally, for subscribers that do not require circuit consolidation, the eighteen-to-one ratio would apply immediately. Thus, if a subscriber that is utilizing circuits efficiently adds a new circuit before fully utilizing the capacity of existing circuit(s), it would be assessed the Additional Circuit/SDP Charge.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[9] including Section 15A(b)(5) of the Act,[10] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. As is currently the case, the Additional Circuit/SDP Charge would be imposed upon subscribers that make inefficient use of T1 circuits and SDPs. The proposed rule change would not result in any change in the fees paid by subscribers that take advantage of the opportunity to eliminate underutilized T1 circuits. Moreover, Nasdaq believes that, by encouraging subscribers to maximize circuit capacity, the proposed rule change will help to ensure that the EWN II can keep pace with future growth of trading volumes.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [11] and Rule 19b–4(f)(2) thereunder [12] because it establishes or changes a due, fee, or other charge. At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–120 and should be submitted by November 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27351 Filed 10–25–02; 8:45 am]

BILLING CODE 8010–01–P

[6] A PD is an NWII workstation provided by Nasdaq that resides on the desktop of the end user.

[7] An API allows a firm to obtain NWII service using the firm's own workstation (e.g., a personal computer), server, and software systems to access, display, interface with, and operate the NWII service.

[8] The Additional Circuit/SDP Charge is also assessed, in lieu of the $2,035 per SDP per month Service Charge, if a subscriber exceeds the minimum number of SDPs needed to support its PDs and/or API servers (assuming an eight-to-one ratio). This aspect of the fee is not being changed.

[9] 15 U.S.C. 78o-3.

[10] 15 U.S.C. 78o-3(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46696; File No. SR–NASD–2002–121]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify Application of Additional Circuit/SDP Charge Under Rule 7010(f) to Non-NASD Members

October 21, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 12, 2002 the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Nasdaq has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the conditions under which subscribers who are not members of the NASD pay the Additional Circuit/SDP Charge under NASD Rule 7010(f).[3] For non-member subscribers that require circuit consolidation, Nasdaq proposes to implement the Additional Circuit/SDP Charge on a rolling basis as the circuit consolidation work is performed.

The text of the proposed rule change is below. Proposed new text is italicized and proposed deleted text is [bracketed].

* * * * *

Rule 7010. System Services

(a)—(e) No change.

(f) Nasdaq Workstation™ Service

(1) No change.

(2) The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via equipment and communications linkages prescribed for the Nasdaq Workstation II Service:

Service Charge: $1,875/month per service delivery platform ("SDP") from December 1, 2000 through February 28, 2001 $2,035/month per SDP beginning March 1, 2001.

Display Charge: $525/month per presentation device ("PD").

Additional Circuit/SDP Charge: $3,075 per month from December 1, 2000 through February 28, 2001, and $3,235/month beginning March 1, 2001*.

A subscriber that accesses Nasdaq Workstation II Service via an application programming interface ("API") shall be assessed the Service Charge for each of the subscriber's SDPs and shall be assessed the Display Charge for each of the subscriber's API linkages, including an NWII substitute or quote-update facility. API subscribers also shall be subject to the Additional Circuit /SDP Charge.

(3) No change.

*A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDPs by placing eight PDs and/or API servers on an SDP and obtains an additional SDP(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP(s) (*i.e.*, the difference between the number of SDPs a subscriber has and the number of SDPs the subscriber would need to support its PDs and/or API servers, assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its T1 circuits by placing [six] *eighteen* SDPs on a T1 circuit; in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP slot on the existing T1 circuit(s). Regardless of the SDP allocation across T1 circuits, a subscriber will not be subject to the Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDP, assuming [a six to one] *an eighteen-to-one ratio.*

(g)–(r) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Nasdaq Workstation II ("NWII") service allows market participants to access Nasdaq and Nasdaq facilities through Nasdaq's Enterprise Wide Network II ("EWN II"). To use the NWII service, each subscriber location has at least one service delivery platform

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq also submitted a proposed rule change to modify the conditions under which members pay the Additional Circuit/SDP Charge. *See* SR–NASD–2002–120.

("SDP") that connects to Nasdaq by a dedicated T1 circuit pair. The SDP functions as the gateway from the subscriber's NWII "presentation device" ("PD")[4] or application programming interface ("API") server[5] to the EWN II. Each SDP is permitted to support up to eight PDs or API servers. In the past, each T1 circuit pair had been capable of supporting six SDPs. As the result of recent improvements in circuit efficiency, however, it is now possible to support eighteen SDPs on one T1 circuit pair. This marked increase in circuit capacity provides Nasdaq and its market participants with an opportunity to enhance the efficiency of the NWII service by reducing the number of circuits required to provide a given level of service.

Under Nasdaq's current pricing structure for NWII, a subscriber generally pays $2,035 per SDP month, but is assessed an "Additional Circuit/SDP Charge" of $3,235 per month for unutilized SDP slots if it uses T1 circuits inefficiently.[6] A subscriber does not pay the Additional Circuit/SDP Charge, however, if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDPs, assuming a six-to-one ratio. This pricing structure encourages subscribers to maximize circuit capacity and is aimed at preventing the premature exhaustion of EWN II's capacity to support additional circuits. This in turn helps to ensure that the capacity of the EWN II can keep pace with the growth of trading volumes. In order to reflect the realities of technological change and to encourage firms to take full advantage of the resulting efficiencies, Nasdaq is modifying the requirement for full utilization of T1 circuits from six SDPs per T1 circuit to eighteen. As is currently the case, subscribers would not pay an Additional Circuit/SDP Charge for unused slots as long as the subscriber does not exceed the minimum number of T1 circuits needed to support its SDPs (based on an eighteen-to-one ratio).

Nasdaq believes that the increased efficiency of T1 circuits will allow Nasdaq and subscribers to discontinue the use of many T1 circuit pairs and that this will, in turn, expand the available capacity of EWN II, thereby enhancing its ability to keep pace with future growth in trading volumes. In anticipation of this capacity expansion, during the past three months Nasdaq has tripled the EWN II bandwidth, from 256kb to 768kb, without increasing costs to subscribers. Moreover, since subscribers will be able to use a T1 circuit pair to support more SDPs than has previously been the case, a subscriber can now expand its own capability as its needs grow without incurring the costs and delays associated with installation of an additional circuit pair.

In order to allow subscribers with redundant circuits to take advantage of these added efficiencies, it will be necessary for Nasdaq to perform upgrades on subscribers' existing circuits, a process that can only be completed on a circuit-by-circuit basis. Accordingly, Nasdaq would implement the proposed Additional Circuit/SDP Change on a rolling basis, as it provides subscribers with redundant circuits the opportunity to have the circuit consolidation work performed. Subscribers would receive notice of the opportunity to eliminate unneeded circuits through direct personal contact from Nasdaq technical personnel. Until a subscriber's circuits have been upgraded, the subscriber would be charged the Additional Circuit/SDP Charge on the basis of a six-to-one ratio. Following the completion of the upgrade of a given subscriber, the eighteen-to-one ratio would apply. Similarly, if a subscriber chooses not to complete the upgrade, the subscriber would be charged according to the eighteen-to-one ratio, starting with the calendar month following its decision not to upgrade. Finally, for subscribers that do not require circuit consolidation, the eighteen-to-one ratio would apply once the proposed rule change becomes effective. Thus, if a subscriber that is utilizing circuits efficiently adds a new circuit before fully utilizing the capacity of existing circuit(s), it would be assessed the Additional Circuit/SDP Charge.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[7] including section 15A(b)(5) of the Act,[8] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. As is currently the case, the Additional Circuit/SDP Charge would be imposed upon subscribers that make inefficient use of T1 circuits and SDPs. The proposed rule change would not result in any change in the fees paid by subscribers that take advantage of the opportunity to eliminate underutilized T1 circuits. Moreover, Nasdaq believes that, by encouraging subscribers to maximize circuit capacity, the proposed rule change will help to ensure that the EWN II can keep pace with future growth of trading volumes.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–121 and should be submitted by November 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27352 Filed 10–25–02; 8:45 am]

BILLING CODE 8010–01–P

[4] A PD is an NWII workstation provided by Nasdaq that resides on the desktop of the end user.

[5] An API allows a firm to obtain NWII service using the firm's own workstation (e.g., a personal computer), server, and software systems to access, display, interface with, and operate the NWII service.

[6] The Additional Circuit/SDP Charge is also assessed, in lieu of the $2,035 per SDP per month Service Charge, if a subscriber exceeds the minimum number of SDPs needed to support its PDs and/or API servers (assuming an eight-to-one ratio). This aspect of the fee is not being changed.

[7] 15 U.S.C. 78o–3.

[8] 15 U.S.C. 78o–3(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3455]

State of California

Los Angeles County and the contiguous counties of Kern, Orange, San Bernardino and Ventura in the State of California constitute a disaster area as a result of a wildfire that began on September 1, 2002 in a portion of the San Gabriel Canyon in the Angeles National Forest. The wildfire, known as the "Curve Fire", consumed 20,857 acres and destroyed homes and personal property. The wildfire was fully contained on September 12, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 23, 2002, and for economic injury until the close of business on July 22, 2003, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.625
Homeowners Without Credit Available Elsewhere	3.312
Businesses With Credit Available Elsewhere	7.000
Businesses and Non-Profit Organizations Without Credit Available elsewhere:	3.500
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.375
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.500

The number assigned to this disaster for physical damage is 345505 and for economic damage is 9R9900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 22, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–27355 Filed 10–25–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3456]

State of California

Los Angeles County and the contiguous counties of Kern, Orange, San Bernardino and Ventura in the State of California constitute a disaster area as a result of a wildfire that began on September 22, 2002 in a portion of the San Dimas Canyon in the Angeles National Forest. The wildfire, known as the "Williams Fire", consumed 38,094 acres and destroyed homes and personal property. The wildfire was fully contained on October 1, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 23, 2002, and for economic injury until the close of business on July 22, 2003, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.625
Homeowners Without Credit Available Elsewhere	3.312
Businesses With Credit Available Elsewhere	7.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	3.500
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.375
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.500

The number assigned to this disaster for physical damage is 345605 and for economic damage is 9S0100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 22, 2002

Hector V. Barreto,

Administrator.

[FR Doc. 02–27356 Filed 10–25–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3452, Amdt. #2]

State of Louisiana

In accordance with a notice received from the Federal Emergency Management Agency, dated October 17, 2002, the above numbered declaration is hereby amended to include Allen, East Baton Rouge, East Feliciana, Pointe Coupee, Rapides, St. Helena, Washington and West Baton Rouge Parishes in the State of Louisiana as disaster areas due to damages caused by Hurricane Lili beginning on October 1, 2002, and continuing through October 16, 2002.

In addition, applications for economic injury loans from small businesses located in Grant and Natchitoches Parishes in Louisiana; and Marion, Walthall and Wilkinson Counties in Mississippi may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary county have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is December 2, 2002, and for economic injury the deadline is July 3, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 21, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–27358 Filed 10–25–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3454]

State of South Carolina

Clarendon and Georgetown Counties and the contiguous counties of Berkeley, Calhoun, Charleston, Florence, Horry, Marion, Orangeburg, Sumter and Williamsburg in the State of South Carolina constitute a disaster area due to damages caused by flooding and tornadoes from Tropical Storm Kyle on

October 11, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 20, 2002, and for economic injury until the close of business on July 21, 2003, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.625
Homeowners without credit available elsewhere	3.312
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 345406 and for economic damage is 9R9800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 21, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–27357 Filed 10–25–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4168]

Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to the Tunisian Combat Group (JCT)

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, and in consultation with the Secretary of the Treasury and the Attorney General, I hereby determine that the Tunisian Combat Group (JCT) has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: October 7, 2002.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 02–27354 Filed 10–25–02; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During October 7, Through October 18, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Applications filed during week ending: October 11, 2002.

Docket Number: OST–2002–13557.
Date Filed: October 9, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 0971 dated 11 October 2002. Mail Vote 243—Resolution 004a. Restriction of Applicability (Amending) r1. Intended effective date: 21 October 2002.

Docket Number: OST–2002–13560.
Date Filed: October 9, 2002.
Parties: Members of the International Air Transport Association.
Subject: CTC COMP 0425 dated 11 October 2002. Mail Vote 244—Resolution 004a. Restriction of Applicability of Resolutions (Amending) r1. Intended effective date: 21 October 2002.

Docket Number: OST–2002–13563.
Date Filed: October 9, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC23 ME–TC3 0154 dated 8 October 2002. TC23/TC123 Middle East–TC3 (except South East Asia). Expedited Resolution 002p. Intended effective date: 15 November 2002.

Docket Number: OST–2002–13565.
Date Filed: October 9, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC23 EUR–JK 0086 dated 8 October 2002. TC23/TC123 Europe-Japan/Korea Expedited Resolution 002an. PTC23 EUR–JK 0087 dated 8 October 2002. TC23/TC123 Europe-Japan/Korea Expedited Resolution 002ao. Intended effective date: 15 November 2002/1 January 2003.

Docket Number: OST–2002–13579.
Date Filed: October 9, 2002.
Parties: Members of the International Air Transport Association.
Subject: PAC/Reso/417 dated August 5, 2002. Finally Adopted Resolutions R–1 to R–12. Minutes—PAC/Meet/175 dated August 5, 2002. Intended effective date: January 1, 2003.

Applications filed during week ending: October 18, 2002.

Docket Number: OST–2002–13606.
Date Filed: October 16, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC2 AFR–TC3 0178 dated 11 October 2002. TC23 Africa-South Asian Subcontinent. Expedited Resolutions 002e, 15v r1—r2. PTC2 AFR–TC3 0179 dated 11 October 2002. TC23 Africa-South West Pacific. Expedited Resolutions 002n, 15v–r3—r4. Intended effective date: 15 November 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–27386 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly subpart Q) During the Week Ending October 18, 2002

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1999–6319.
Date Filed: October 16, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 6, 2002.

Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, requesting to amend its experimental certificate of public convenience and necessity for Route 564 (U.S.-Mexico) to incorporate authority for service between Memphis and Mexico City, Memphis and Puerto Vallarta, and Detroit and Cozumel. Northwest also requests that the Department integrate this authority with all of Northwest's existing certificate and exemption authority to the extent consistent with U.S. bilateral agreements and DOT policy.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–27385 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–12690]

Information Collection Under Review by the Office of Management and Budget: (OMB): 2115–0139, 2115–0035, 2115–0598, 2115–0556, and 2115–0111

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the five Information Collection Reports (ICRs) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before November 27, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2002–12690] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Docket Management Facility at (202) 493–2251 and (b) OIRA at 202–395–5806, or e-mail to OIRA at *oira_docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*. (b) OIRA does not have a website on which you can post your comments.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 (Plaza level), 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICRs are available for inspection and copying in public dockets. They are available in docket USCG 2002–12690 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov*; and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, (202) 267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, (202) 366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published [67 FR 49734 (July 31, 2002)] the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the collection; (2) the accuracy of the Department's estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collection; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2002–12690. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

1. *Title:* Ships' Stores Certification for Hazardous Materials Aboard Ships.
OMB Control Number: 2115–0139.
Type of Request: Extension of a currently approved collection.
Affected Public: Suppliers and manufacturers of hazardous products used on ships.
Form: This collection of information does not require the public to fill out forms, but does require the information to be in written format to the Coast Guard.
Abstract: The information is needed to ensure that personnel aboard ships become aware of the proper usage and stowage for certain hazardous materials.
Annual Estimated Burden Hours: The estimated burden is 6 hours a year.

2. *Title:* Report of Defect or Noncompliance and Report of Campaign Update.
OMB Control Number: 2115–0035.
Type of Request: Extension of a currently approved collection.
Affected Public: Manufacturers of recreational boats, inboard engines, outboard motors, and sterndrive units.
Forms: CG–4917 and CG–4918.
Abstract: The information in this report is needed to ensure manufacturers' compliance with requirements for notifying consumers of defects in recreational boats, inboard engines, outboard motors, and sterndrive units.
Annual Estimated Burden Hours: The estimated burden is 328 hours a year.

3. *Title:* Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters.

OMB Control Number: 2115–0598.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of certain vessels.

Forms: CG–5662.

Abstract: The information is needed to carry out the reporting requirements of 16 U.S.C. 4711 regarding the management of ballast water, to prevent the introduction and spread of aquatic-nuisance species into U.S. waters.

Annual Estimated Burden Hours: The estimated burden is 33,500 hours a year.

4. *Title:* (a) Reports of MARPOL 73/78 Oil, Noxious Liquid Substances (NLS) and Garbage Discharge; (b) Application for Equivalents, Exemptions, and Alternatives; and (c) Voluntary Reports of Pollution Sightings.

OMB Control Number: 2115–0556.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of vessels for (a) and (b), and the public for (c).

Forms: This collection of information does not require the public to fill out forms, but does require the information to be in written or electronic format.

Abstract: The information is needed by the Coast Guard to ensure compliance with pollution-prevention standards and to respond to and investigate pollution incidents.

Annual Estimated Burden Hours: The estimated burden is 10 hours a year.

5. *Title:* Course Approval for Merchant Marine Training Schools.

OMB Control Number: 2115–0111.

Type of Request: Extension of a currently approved collection.

Affected Public: Merchant marine training schools.

Forms: This collection of information does not require the public to fill out forms, but does require the information submitted to be in written or electronic format.

Abstract: The information is needed to ensure that merchant marine training schools meet minimal statutory requirements. The information is used to approve the curricula, facilities, and faculties for these schools.

Annual Estimated Burden Hours: The estimated burden is 16,988 hours a year.

Dated: October 23, 2002.

C. I. Pearson,

Director of Information and Technology.

[FR Doc. 02–27371 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2001–9852]

High Density Airports; Notice of Adopted Lottery Allocation Procedures for Slot Exemptions at LaGuardia Airport

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of adopted lottery allocation procedures at LaGuardia Airport.

SUMMARY: This notice announces the adoption of proposed modifications to the lottery procedures for reallocation of available exemption slots at LaGuardia Airport.

DATES: Effective upon publication.

FOR FURTHER INFORMATION CONTACT: Lorelei D. Peter, Traffic and Operations Law Branch, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number 202–267–3073.

SUPPLEMENTARY INFORMATION:

Background

The FAA has broad authority under Title 49 of the United States Code (U.S.C.), Subtitle VII, to regulate and control the use of the navigable airspace of the United States. Under 49 U.S.C. 40103, the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as many be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of the navigable airspace. Also, under section 40103, the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace. The High Density Traffic Airports Rule, or "High Density Rule," 14 CFR part 93, subpart K, was promulgated in 1968 to reduce delays at five congested airports: John F. Kennedy International Airport (JFK), LaGuardia, O'Hare International Airport (O'Hare), Ronald Reagan Washington National Airport (Reagan National) and Newark International Airport (Newark) (33 FR 17896; December 3, 1968). The regulation limits the number of instrument flight rule (IFR) operations at each airport, during certain hours of the day. It provides for the allocation to carriers of operational authority, in the form of a "slot" for each IFR takeoff or landing during a specific 30- or 60-minute period. The restrictions at Newark were lifted in the early 1970s.

"AIR–21"

On April 5, 2000, the "Wendell H. Ford Aviation Investment and Reform Act for the 21st Century" ("AIR–21") was enacted. Section 231 of AIR–21 significantly amended 49 U.S.C. 41714 to phase out slots at LaGuardia, JFK, and O'Hare. Section 41715 terminates slots at O'Hare as of July 1, 2002, and at LaGuardia and JFK on January 1, 2007. Section 231 also included new provisions codified at 40 U.S.C. 41716, 41717, and 41718 that enable air carriers meeting specified criteria to obtain exemptions (referred to as "exemption slots") from the requirements of subparts K and S of part 93 of Title 14 of the Code of Federal Regulations at LaGuardia, JFK, O'Hare, and Reagan National. As a result of this legislation, the Department of Transportation (Department) issued eight orders establishing procedures for the processing of various applications for exemption slots authorized by the statute. Specifically, Order 2000–4–11 implements 49 U.S.C. 41716(a), which provides that an exemption slot must be granted to any airline using Stage 3 aircraft with fewer than 71 seats that proposes to provide nonstop service between LaGuardia and an airport that was designated as a small hub or nonhub airport in 1997, under certain conditions. The exemption must be granted if: (1) The airline was not providing such nonstop service between the small hub or nonhub airport and LaGuardia during the week of November 1, 1999; (2) the proposed service between the small hub or nonhub airports and LaGuardia exceeds the number of flights provided between such airports during the week of November 1, 1999; or (3) if the air transportation pursuant to the exemption would be provided with a regional jet as replacement of turboprop service that was being provided during the week of November 1, 1999.

Under AIR–21 and the Department's Orders, air carriers meeting the statutory tests delineated above automatically receive blanket approval for exemption slots, provided that they certify in accordance with 14 CFR 302.4(b) that they meet each of the statutory criteria. The certification must state the communities and airport to be served, that the airport was designated a small hub and nonhub airport as of 1997, that the aircraft used to provide the service have fewer than 71 seats, that the aircraft are Stage 3 compliant, and the planned effective dates. Carriers must also certify that the proposed service represents new service, additional frequencies, or regional jet service that has been upgraded from turboprop service when compared to service for the week of November 1, 1999. In addition, carriers must state the number of exemption slots and the times needed to provide the service. Order 2000–4–10 implements the provisions of 49 U.S.C. 41716(b), which states that exemption slots must be granted to any new entrant or limited incumbent airline using Stage 3 aircraft that proposes "to provide air transportation to or from LaGuardia or John F. Kennedy International Airport if the number of exemption slots granted under this subsection to such air carrier with respect to such airport does not exceed 20." Applications submitted under this provision must identify the airports to be served and the time requested.

Section 231 of AIR–21, 49 U.S.C. 41715(b)(1), expressly provides that the provisions for exemption slots are not to affect the FAA's authority over safety and the movement of air traffic. The reallocation of exemption slot times by the lottery procedures described in this Notice is based on the FAA's statutory authority and does not rescind the exemptions issued by the Department under Orders 2000–4–10 and 2000–4–11. As provided in those orders, carriers that have filed the exemption certifications also need to obtain an allocation of exemption slot times from the FAA. The limiting and reallocation of these exemption slots is in recognition that it is not possible to add an unlimited number of new operations at LaGuardia, especially during peak hours, even if those operations would otherwise qualify for exemptions under AIR–21.

Lastly, § 93.225 of Title 14 of the Code of Federal Regulations sets forth the process for slot lotteries under the High Density Rule. The process described in the regulations is similar to the process described here and allows for special conditions to be included when circumstances warrant special consideration.

Extension of the Exemption Slot Allocation and Proposed Modifications to the Lottery Procedures

By notice published in the **Federal Register**, the FAA extended the allocation of the exemption slots for an additional two years. This extension, which will expire on October 31, 2004, allows for additional time to address a longer-term solution for LaGuardia Airport. Additionally, modifications to the allocation procedures were proposed for comment. One comment was received from America West Airlines. Several commenters filed comments discussing the long-term demand-management proposals in this docket as well as Docket FAA–2001–9854. Due to the nature of these comments, they will not be addressed in this Notice.

America West reiterates its argument in its comments to Phase II (policy alternatives for demand management) to abolish or modify the perimeter rule for LaGuardia Airport to enable it to operate non-stop service between LaGuardia and its principal hubs of Phoenix and Las Vegas. America West contends that the perimeter rule is anti-competitive and contributes to congestion. America West further argues that eliminating or modifying the perimeter rule can be made without determining the broader issues associated with demand management at LaGuardia and that there is no reason to delay action on this issue. America West also argues that since the incumbent carriers hold such a large percentage of the slots allocated under the High Density Rule (HDR), new entrants carriers should receive all requested exemption slots up to the statutory limit of 20, before any additional exemption slots are allocated to small hub, non-hub service by the large incumbent carriers.

In this notice, only comments concerning the proposed allocation procedures will be addressed. AIR–21 sought to provide additional access to LaGuardia for two distinct categories of operations as part of a phase-out of the HDR. AIR–21 did not seek to rectify any imbalance among competing slot holders of HDR slots. Instead, AIR–21 treats the categories equitably. As the FAA has stated in previous notices, for the interim period, the agency's stated policy of maintaining the goals and purposes of AIR–21 requires that allocation procedures are consistent with the policies of AIR–21. Therefore, the FAA adopts the lottery procedures as proposed and set forth below.

Adopted Lottery Procedures

1. The cap on AIR–21 exemption slots (7 a.m. through 9:59 a.m.) will remain in effect through October 30, 2004.

2. The FAA may approve the transfer of exemption slot times between carriers only on a temporary one-for-one basis for the purpose of conducting the operation in a different time period. Carriers must certify to the FAA that no other consideration is involved in the transfer.

3. Phase I: If any exemption slots are returned to the FAA or are withdrawn for non-use, the FAA would make the first four exemption slots available on a first-come, first-serve basis to a carrier that was not operating at LaGuardia as of August 15, 2001, that has certified to the Department in accordance with the procedures articulated in OST Order 200–4–10, and has a written request on file with the Slot Administration Office. Any of the first four returned or withdrawn exemption slots that are not selected by such a carrier would be available to the carriers that have less than 20 slots and exemptions slots at LaGuardia for selection in accordance with the August 15 established rank order, with each carrier able to select two exemption slots. Any exemption slots not selected during this process then would be made available to the carriers providing small hub/non-hub service using the December 4 rank order. This concludes Phase I.

4. Phase II: If any subsequent exemption slots become available for reallocation and there is an eligible carrier not conducting service at the airport seeking exemption slots, then the available exemption slots would be offered to that carrier first, provided that the total number of exemption slots allocated to carriers providing small hub/non-hub service is not below 76. If a new, eligible carrier does not select the exemption slots, then they would be offered to the category of carriers that is below parity, up to the level of re-establishing parity (using respective rank order). If the exemption slots are not selected or there are available exemption slots remaining, then they would be offered to carriers in the same category from which the exemption slots came. Any remaining exemptions not selected would be offered to the other category of carriers, using its respective rank order.

5. A carrier would have three business days after an offer from the Slot Administration Office to accept the offered exemption slot time. Acceptance must be in writing to the Slot Administration Office. If the Slot Administration Office does not receive an acceptance to an office within three business days, the carrier would be recorded as rejecting the offer and the next carrier on the list would be offered the available exemption slot times.

6. Carriers that are offered exemption slot times by the Slot Administration Office must re-certify to the Department of Transportation in accordance with the procedures articulated in OST Orders 200–4–10 and 2000–4–11 prior to operation and provide the Department and the FAA with the markets to be served, the number of exemption slots, the frequency, and the time of operations, before the exemption

slots times will be allocated by the FAA to the carrier.

7. All operations allocated under these procedures must commence within 120 days of a carrier's acceptance of an available exemption slot.

8. The Chief Counsel will be the final decision maker concerning eligibility of carriers to participate in the allocation process.

Issued on October 22, 2002, in Washington, DC.

James W. Whitlow,

Deputy Chief Counsel.

[FR Doc. 02–27381 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–60]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 18, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–200X–XXXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Sandy Buchanan-Sumter, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–7271.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 23, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–11131.

Petitioner: Gary K. Gates.

Section of 14 CFR Affected: 14 CFR 61.113(d) and (e)

Description of Relief Sought: To permit an individual holding a private pilot certificate with at least 1,000 hours of pilot-in-command time and an instrument rating to conduct point-to-point airlifts of medical. The individual conducting the airlifts would provide transport to checkups and followup hospital visits and receive compensation for concurrent operating expenses.

[FR Doc. 02–27380 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting is scheduled for November 7, 2002, at 10 a.m.

ADDRESSES: The meeting will be held at Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 10591, 10th floor, McCracken Room.

FOR FURTHER INFORMATION CONTACT: Gerri Robinson, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9678; fax (202) 267–5075; e-mail *Gerri.Robinson@faa.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Executive Committee to be held on November 7, 2002, at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591. The agenda will include:

- Status of Fuel Tank Recommendation.
- AVR Priority Process.
- Department Internet RulemakingTracking System.
- Green Book Changes.
- Issue Area Status Reports from Assistant Chairs.
- Remarks from other EXCOM members.
- Committee Schedule for 2003.

The FAA will brief ARAC on the status of the recommendation forwarded to the FAA from the Fuel Tank Inerting Harmonization Working Group on March 29, 2002, and pending changes to the ARAC Operations Manual.

Attendance is open to the interested public but will be limited to the space available. The FAA will arrange teleconference capability for individuals wishing to join in by teleconference if we receive that notification by October 31, 2002. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area will be responsible for paying long-distance charges.

The public must arrange by October 31 to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on October 22, 2002.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 02–27428 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Free Flight Steering Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Government/Industry Free Flight Steering Committee Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Government/Industry Free Flight Steering Committee.

DATES: The meeting will be held November 15, 2002, from 10:30–12 pm.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Bessie Coleman Conference Center (Rm. 2AB), Washington, DC, 20591.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Free Flight Steering Committee meeting. ***Note:*** *Non-Government attendees to the meeting must go through security and be escorted to and from the conference room.* The agenda will include:

- November 15:
  - Opening Session (Welcome and Introductory Remarks, Review/Approve Summary of Previous Meeting)
- Free Flight Select Committee Report
  - National Airspace System Concept of Operations, Revision 1
  - Work Program Update
- Federal Aviation Administration Presentation
- Suggested Free Flight Steering Committee Meeting Dates for 2003
  - Wednesday, April 23, 2003
  - Wednesday, August 20, 2003
  - Wednesday, December 3, 2003
- Closing Session (Other Business, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 21, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–27383 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–05–C–00–PSC To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Tri-Cities Airport, Submitted by the Port of Pasco, Tri-Cities Airport, Pasco, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Tri-Cities Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 27, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr, J. Wade Bryant, Manager, Seattle Airports District Office, SEA–ADO; Federal Aviation Administration, 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James Morasch, A.A.E, Director of Airports, at the following address: 3601 North 20th Avenue, Pasco, Washington 99301.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Bellingham International Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–ADO, Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 02–05–C–00–PSC to impose and use PFC revenue at Tri-Cities Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 21, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Port of Pasco, Tri-Cities Airport, and Pasco, Washington was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 25, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: April 1, 2002.

Proposed charge expiration date: February 1, 2006.

Total requested for use approval: $1,409,000.

Brief description of proposed project: Security Enhancements, Terminal Building Passenger Boarding Area Upgrades, and Interactive Training Systems.

Class or classes of air carriers, which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Tri-Cities Airport.

Issued in Renton, Washington on October 21, 2002.

David A. Field,

Manager, Planning, Programming, and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02–27382 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2002–13634]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces the Information Collection Request (ICR) abstracted below has been

forwarded to the Office of Management and Budget (OMB) for extension of the currently approved information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on July 30, 2002.

DATES: Comments must be submitted before November 27, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: Rail Fixed Guideway Systems, State Safety Oversight (*OMB Number: 2132–0558*)

Abstract: 49 U.S.C. section 5330 requires each State to designate a State Safety Oversight agency to oversee the safety and security operations of "a rail fixed guideway system" within the State's jurisdiction. To comply with Section 5330, State oversight agencies must require System Safety Program Plans (SSPPs) from rail fixed guideway systems; review and approve these SSPPs; require notification of unacceptable hazardous conditions according to the American Public Transportation Association (APTA) Hazard Classification Matrix; require and review corrective action plans from rail fixed guideway systems to eliminate such conditions; require an ongoing safety audit process at the rail fixed guideway systems; and submit both an annual certification to FTA that the State is in compliance with the requirements of Section 5330 and an annual report documenting safety activities. Collection of this information will enable the State oversight agency to monitor effectively the safety of the rail fixed guideway system. Without certification from the State oversight agency, FTA would be unable to determine each State's compliance with Section 5330.

If a State fails to comply with the requirements of Section 5330, FTA may withhold up to five percent of funds apportioned under section 5307 to a State, or urbanized area within a State, beginning in Fiscal Year 1997.

Estimated Annual Burden: 37,158 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: October 22, 2002.

Dorrie Y. Aldrich,

Associate Administrator for Administration.

[FR Doc. 02–27384 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Over-the-Road Bus Accessibility Program Announcement of Project Selection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation (DOT) Federal Transit Administration (FTA) announces the selection of projects to be funded under Fiscal Year 2002 appropriations for the Over-the-road Bus (OTRB) Accessibility Program, authorized by section 3038 of the Transportation Equity Act for the 21st Century (TEA–21). The OTRB Accessibility Program makes funds available to private operators of over-the-road buses to help finance the incremental capital and training costs of complying with DOT's over-the-road bus accessibility rule, published in a **Federal Register** notice on September 24, 1998.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator for grant-specific issues; or Sue Masselink, Office of Program Management, 202–366–2053, for general information about the OTRB Program.

SUPPLEMENTARY INFORMATION: A total of $6.9 million was appropriated for the program in FY 2002 which together with $204,100 in prior year unobligated funds made a total of $7.1 million available for allocation: $5.3 million for intercity fixed-route providers and $1.8 million for all other providers, such as commuter, charter, and tour operators. A total of 91 applicants requested $18.4 million: $11.5 million was requested by intercity fixed-route providers, and $6.9 million was requested by all other providers. Project selections were made on a discretionary basis, based on each applicant's responsiveness to statutory project selection criteria, fleet size, and level of funding received in previous years. Because of the high demand for the funds available, most applicants received less funding than they requested, but all qualified applicants received some funding. The selected projects will provide funding for the incremental cost of adding lifts to 149 new vehicles, retrofitting 68 vehicles, and $476,279 for training. Each of the following 73 awardees, as well as the 18 applicants who were not selected for funding, will receive a letter that explains how funding decisions were made.

Operator	Award Amounts		
	Intercity fixed-route	Other	Total
Region I:			
Arrow Line, Inc., East Hartford, CT		$50,000	50,000
Bonanza Bus Lines, Providence, RI	$68,080		68,080
Brunswick Transportation Company, South Portland, ME		42,700	42,700
Brush Hill Transportation Company, Randolph, MA	28,915		28,915
Gulbankian Bus Lines, Southborough, MA		11,709	11,709
McGinn Bus Company, Plymouth, MA	28,915		28,915
Mini Coach of Boston, Inc., Chelsea, MA		38,000	38,000
Morgan Coach Lines, Inc., South Deerfield, MA		39,895	39,895
Pawtuxet Valley Bus Lines, West Warwick, RI		7,200	7,200
Peter Pan Bus Lines, Springfield, MA	113,600		113,600

Operator	Award Amounts		
	Intercity fixed-route	Other	Total
Vermont Transit Company, Inc., Burlington, VT	99,454		99,454
Region II:			
Academy Express, LLC, Hoboken, NJ	18,000	26,936	44,936
Adirondack Trailways, Hurley, NY	130,000		130,000
Blue Bird Coach Lines, Inc., N. Tonawanda, NY	40,770	42,120	82,890
DeCamp Bus Lines, Montclair, NJ		90,000	90,000
Hampton Jitney, Inc., Southampton, NY		25,575	25,575
Hudson Transit Lines, Inc., Mahwah, NJ	108,000		108,000
Suburban Transit Corp., New Brunswick, NJ		18,000	18,000
Sunrise Coach Lines, Inc., Greenport, NY		32,010	32,010
Syracuse and Oswego Motor Lines, East Syracuse, NY		39,600	39,600
Utica Rome Bus Company, Clinton, NY		39,150	39,150
Region III:			
Butler Motor Transit, Butler, PA		44,100	44,100
Capitol Bus Company, Harrisburg, PA	5,000		5,000
Central Cab Company, Waynesburg, PA		43,200	43,200
Elite Coach, Ephrata, PA		40,950	40,950
Eyre Bus Service, Inc., Glenelg, MD		102,857	102,857
First Priority Tours, Inc., District Heights, MD		34,306	34,306
James River Bus Lines, Richmond, VA		38,520	38,520
Lenzer Tour and Travel, Sewickley, PA		42,750	42,750
Martz Trailways, Wilkes-Barre, PA	199,579		199,579
Mountaineer Coach, Beaver, WV		19,000	19,000
Thomas Tours, Beltsville, MD		20,646	20,646
Trans-Bridge Lines, Bethlehem, PA	51,053		51,053
Region IV:			
Southern Coach, Durham, North Carolina		84,090	84,090
Carolina Trailways, Raleigh, North Carolina	99,454		99,454
First Class Coach Co., St. Petersburg, Florida	107,200		107,200
Good Time Tours, Pensacola, Florida		26,902	26,902
Capital Trailways, Montgomery, Alabama	69,300		69,300
Colonial Trailways, Mobile, Alabama		60,750	60,750
Americoach Tours, Memphis, Tennessee		46,250	46,250
Region V:			
Jefferson Lines, Minneapolis, Minnesota	143,188		143,188
Rockford Coach Lines, LLC, Rockford, Illinois	66,303		66,303
Gad-About Tours, Columbiana, Ohio		36,800	36,800
Ready Bus Lines, La Crescent, Minnesota		29,700	29,700
VanGalder Bus, Janesville, Wisconsin	9,700		9,700
Seniors Unlimited, Pontiac, Michigan		22,190	22,190
Wisconsin Coach, Waukesha, Wisconsin	81,400		81,400
Croswell Bus Lines, Inc., Williamsburg, Ohio		27,692	27,692
Peoria Charter Coach Co., Peoria, Illinois		19,950	19,950
Robinson Coach, Evanston, Illinois		56,500	56,500
Region VI:			
Valley Transit, Harlington, Texas	66,000		66,000
Kerrville Bus Co., San Antonio, Texas	94,140	36,000	130,140
TNM&O, Lubbock, Texas	66,303		66,303
All Aboard America, Carlsbad, New Mexico		41,741	41,741
Franklin Charter, Inc., Tulsa, Oklahoma		29,000	29,000
Gulf Coast Transit, Houston, Texas		112,000	112,000
El Expresso, Houston, Texas	85,500	38,250	123,750
Fun Time Tours, Corpus Christi, Texas		38,934	38,934
Greyhound, Dallas, Texas	3,025,082		3,025,082
Region VII:			
St. Louis Executive Coach, Inc., St. Louis, Missouri		32,800	32,800
Burlington Trailways, West Burlington, Iowa	57,025		57,025
Region VIII: No Applications			
Region IX:			
Royal Safari, Orange, California	28,885		28,885
Santa Barbara Air Bus, Goleta, California	51,868		51,868
Roberts Hawaii, Honolulu, Hawaii		126,000	126,000
Marin Airporter, San Rafael, California	80,600		80,600
KT Contract Services, Inc., North Las Vegas, Nevada	76,950	6,000	82,950
Quest, San Luis Obispo, California	32,612		32,612
Grosvenor Bus Lines, San Francisco, California		36,000	36,000
Storer Coach, Modesto, California		62,500	62,500
Orange Belt Stages, Visalia, California	51,520		51,520
Region X:			
Wikkiser International Co., Inc., Ferndale, Washington	40,000		40,000
Wheatland Express, Pullman, WA	28,800	27,000	55,800

Operator	Award Amounts		
	Intercity fixed-route	Other	Total
Total	5,313,946	1,825,523	7,139,469

Eligible project costs may be incurred by awardees prior to final grant approval. The incremental capital cost for adding wheelchair lift equipment to any new vehicles delivered on or after June 9, 1998, the effective date of TEA–21, is eligible for funding under the OTRB Accessibility Program.

Applicants selected for funding may be contacted by FTA regional offices if additional information is needed before grants are made. The grant applications will be sent to the U.S. Department of Labor (DOL) for certification under labor protection requirements pursuant to 49 U.S.C. 5333(b). After referring applications to affected employees represented by a labor organization, DOL will issue a certification to FTA. Terms and conditions of the certification will be incorporated in the FTA grant agreement under the new guidelines replacing those in 29 CFR Part 215. Please see *Amendment to Section 5333(b), Guidelines to Carry Out New Programs Authorized by the Transportation Equity Act for the 21st Century (TEA–21)*; Final Rule (64 FR 40990, July 28, 1999).

Issued on October 22, 2002.

Jennifer L. Dorn,

Administrator.

[FR Doc. 02–27374 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2002–13632]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before December 27, 2002.

ADDRESSES: Comments may be submitted in writing to the U.S. Department of Transportation's Docket Management Section, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. Alternatively, comments may be submitted electronically by logging onto the docket management website at http://dms.dot.gov. Click on "Help" or "Electronic Submission" to obtain instructions for filing the document electronically. In the submittal, the commenter should refer to the docket number.

FOR FURTHER INFORMATION CONTACT: For further information, contact Mr. Joseph Scott, Office of Crash Avoidance Standards, 400 Seventh Street, SW., DC 20590. Mr. Scott's telephone number is (202) 366–8525. His FAX number is (202) 493–2739. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) How to enhance the quality, utility, and clarity of the information to be collected;

(4) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic,, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Tire Identification and Record Keeping.

OMB Control Number: 2127–0050.

Affected Public: Tire Manufacturers, Dealers, and Distributors.

Form Number: The forms on which the information is to be recorded are provided by the tire manufacturers to both independent and non-independent dealers. In the case of independent dealers, the law specifies that they must record the tire identification number(s) of the tire(s) sold on a registration form, and hand that form to the tire purchaser. The purchaser is then free to complete the remaining information, place a stamp on the registration form, and return it to the tire manufacturer.

Abstract: Each tire manufacturer must collect and maintain records of the names and addresses of the first purchasers of new tires. All tire dealers and distributors must record the names and addresses of retail purchasers of new tires and the identification number(s) of the tires sold. A specific form is provided to tire dealers and distributors by tire manufacturers for recording this information. The completed forms are returned to the tire manufacturers where they are to remain for three years after the date received by the manufacturer. Additionally, motor vehicle manufacturers are required to record the names and addresses of the first purchasers of new motor vehicles, together with the identification numbers of the tires on the new vehicles.

Estimated Annual Burden: 747,500.

Estimated Number of Respondents: 37,400,000.

Issued on: October 23, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–27369 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket NHTSA–99–5087]

Rulemaking Program Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of NHTSA Rulemaking Status Meeting.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's vehicle regulatory program.

DATES: The Agency's regular public meeting relating to its vehicle regulatory program will be held on Thursday, November 21, 2002, beginning at 9:45 a.m. and ending at approximately 12 p.m. at the Best Western Gateway International Hotel 9191 Wickham, Romulus, Michigan. Questions relating to the vehicle regulatory program must be submitted in writing with a diskette (Microsoft Word) by Wednesday, November 6, 2002, to the address shown below or by e-mail. If sufficient time is available, questions received after November 6, may be answered at the meeting. The individual, group or company submitting a questions(s) does not have to be present for the questions(s) to be answered. A consolidated list of the questions submitted by November 6, 2002, and the issues to be discussed will be posted on NHTSA's Web site *(www.nhtsa.dot.gov)* by Wednesday, November 20, 2002, and also will be available at the meeting. The agency will hold a second public meeting on November 21, devoted exclusively to a presentation of research and development programs. This meeting will begin at 1:30 p.m. and end at approximately 5 p.m. This meeting is described more fully in a separate announcement. The next NHTSA Public Meeting will take place on Thursday, April 3, 2003, at the Best Western Gateway International Hotel, Romulus, Michigan.

ADDRESSES: Questions for the November 21, NHTSA Rulemaking Status Meeting, relating to the agency's vehicle regulatory program, should be submitted to Delia Lopez, NVS–100, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW., Washington, DC 20590, Fax Number (202) 366–4329, e-mail *dlopez@nhtsa.dot.gov*. The meeting will be held at the Best Western Gateway International Hotel, Romulus, Michigan 48174, the telephone number is 734–728–2800.

FOR FURTHER INFORMATION CONTACT: Delia Lopez, (202) 366–1810.

SUPPLEMENTARY INFORMATION: NHTSA holds regular public meetings to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory program. Questions on aspects of the agency's research and development activities that relate directly to ongoing regulatory actions should be submitted, as in the past, to the agency's Rulemaking Office. Transcripts of these meetings will be available for public inspection in the DOT Docket in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page, (length has varied from 80 to 150 pages) upon request to DOT Docket, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The DOT Docket is open to the public from 10 a.m. to 5 p.m. The transcript may also be accessed electronically at *http://dms.dot.gov*, at docket NHTSA–99–5087. Questions to be answered at the public meeting should be organized by categories to help us process the questions into an agenda form more efficiently.

Sample format:

I. Rulemaking

A. Crash avoidance

B. Crashworthiness

C. Other Rulemakings

II. Consumer Information

III. Miscellaneous

We plan to conduct this meeting differently than past meetings in an effort to have a greater dialogue with the public on rulemaking issues. Instead of responding individually to questions asking when we plan to publish a particular rulemaking action, we will respond to all of those questions on a single piece of paper. That piece of paper will be posted on our Web site by Wednesday, November 20 and distributed at the public meeting on November 21. Our intention is to move these meetings away from focusing on NHTSA's schedule for its rulemaking actions to discussions about the substantive progress on rulemaking actions and the agency's substantive plans, to the extent those have been determined.

For the November 21 meeting, NHTSA will begin by addressing any substantive issues raised in the questions submitted in response to this notice. We will then offer a presentation by Roger Kurrus on the research behind and reasons supporting the star ratings used in our New Car Assessment Program. NHTSA will then give a brief review of our plans for improving occupant protection in rear-end crashes. We expect this will form the basis for better dialogue with the attendees at these public meetings on rulemaking.

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of "auxiliary aids" (*e.g.*, sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Delia Lopez on (202) 366–1810, by COB Wednesday, November 20, 2002.

Issued: October 23, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–27370 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13533]

Notice of Receipt of Petition for Decision That Nonconforming 1995–2002 Harley Davidson Buell Motorcycles (All Models) Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995–2002 Harley Davidson Buell motorcycles (all models) are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995–2002 Harley Davidson Buell motorcycles (all models) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 27, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket

Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.)

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Northern California Diagnostic Laboratories, Inc. of Napa, California ("NCDL")(Registered Importer 92–011) has petitioned NHTSA to decide whether non-U.S. certified 1995–2002 Harley Davidson Buell motorcycles (all models) are eligible for importation into the United States. NCDL contends that these vehicles are eligible for importation under 49 U.S.C. 30141(a)(1)(A). The vehicles which NCDL believes are substantially similar are 1995–2002 Harley Davidson Buell motorcycles (all models) that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1995–2002 Harley Davidson Buell motorcycles (all models) to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Specifically, the petitioner claims that non-U.S. certified 1995–2002 Harley Davidson Buell motorcycles (all models) are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, and 205 *Glazing Materials*.

The petitioner also states that vehicle identification number (VIN) plates that meet the requirements of 49 CFR Part 565 have been affixed to non-U.S. certified 1995–2002 Harley Davidson Buell motorcycles.

Petitioner additionally contends that the vehicles are capable of being altered to meet the following standards, in the manner indicated below:

Standard No. 108 Lamps, *Reflective Devices and Associated Equipment:* installation of headlamp bulbs, amber front side reflectors, and red rear side reflectors that conform to the requirements of the standard. The petitioner states that the vehicles are already equipped with a tail lamp system, a stop lamp system, a white license plate lamp, and turn signals that conform to the standard.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a label showing that the tires and rims are in conformity with the requirements of the standard.

Standard No. 123 *Motorcycle Controls and Displays:* modification of the speedometer to read in miles per hour. The petitioner states that the vehicles are already equipped with a supplemental engine stop control on the right handlebar and other controls and displays that are in conformity with the requirements of the standard.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 23, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–27389 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13538]

Notice of Receipt of Petition for Decision That Nonconforming 2002 Yamaha FJR 1300 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2002 Yamaha FJR 1300 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002 Yamaha FJR 1300 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on the petition is November 27, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.)

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Northern California Diagnostic Laboratories, Inc. of Napa, California ("NCDL") (Registered Importer 92–011) has petitioned NHTSA to decide whether non-U.S. certified 2002 Yamaha FJR 1300 motorcycles are eligible for importation into the United States. NCDL contends that these vehicles are eligible for importation under 49 U.S.C. 30141(a)(1)(B) because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that non-U.S. certified 2002 Yamaha FJR 1300 motorcycles have safety features that comply with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, and 205 *Glazing Materials*.

The petitioner also states that vehicle identification number (VIN) plates that meet the requirements of 49 CFR Part 565 have been affixed to non-U.S. certified 2002 Yamaha FJR 1300 motorcycles.

Petitioner additionally contends that the vehicles are capable of being altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of headlamp bulbs, amber front side reflectors, and red rear side reflectors that conform to the requirements of the standard. The petitioner states that the vehicles are already equipped with a tail lamp system, a stop lamp system, a white license plate lamp, and turn signals that conform to the standard.

Standard No. 120, *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a label showing that the tires and rims are in conformity with the requirements of the standard.

Standard No. 123 *Motorcycle Controls and Displays:* modification of the speedometer to read in miles per hour. The petitioner states that the vehicles are already equipped with a supplemental engine stop control on the right handlebar and other controls and displays that are in conformity with the requirements of the standard.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 23, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–27387 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13534]

Notice of Receipt of Petition for Decision That Nonconforming 1989–1993 Honda VFR 400 and RVF 400 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1989–1993 Honda VFR 400 and RVF 400 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1989–1993 Honda VFR 400 and RVF 400 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on the petition is November 27, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.)

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Northern California Diagnostic Laboratories, Inc. of Napa, California ("NCDL") (Registered Importer 92–011) has petitioned NHTSA to decide whether non-U.S. certified 1989–1993 Honda VFR 400 and RVF 400 motorcycles are eligible for importation into the United States. NCDL contends that these vehicles are eligible for importation under 49 U.S.C. 30141(a)(1)(B) because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that non-U.S. certified 1989–1993 Honda VFR 400 and RVF 400 motorcycles have safety features that comply with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, and 205 *Glazing Materials*.

The petitioner also states that vehicle identification number (VIN) plates that meet the requirements of 49 CFR part 565 have been affixed to non-U.S. certified 1989–1993 Honda VFR 400 and RVF 400 motorcycles.

Petitioner additionally contends that the vehicles are capable of being altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of headlamp bulbs, amber front side reflectors, and red rear side reflectors that conform to the requirements of the standard. The petitioner states that the vehicles are already equipped with a tail lamp system, a stop lamp system, a white license plate lamp, and turn signals that conform to the standard.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a label showing that the tires and rims are in conformity with the requirements of the standard.

Standard No. 123 *Motorcycle Controls and Displays:* modification of the speedometer to read in miles per hour. The petitioner states that the vehicles are already equipped with a supplemental engine stop control on the right handlebar and other controls and displays that are in conformity with the requirements of the standard.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 23, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–27388 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13539]

Notice of Receipt of Petition for Decision That Nonconforming 1989–1994 Honda CBR 250 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1989–1994 Honda CBR 250 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1989–1994 Honda CBR 250 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on the petition is November 27, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL 401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Northern California Diagnostic Laboratories, Inc. of Napa, California ("NCDL")(Registered Importer 92–011) has petitioned NHTSA to decide whether non-U.S. certified 1989–1994 Honda CBR 250 motorcycles are eligible for importation into the United States. NCDL contends that these vehicles are eligible for importation under 49 U.S.C. 30141(a)(1)(B) because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that non-U.S. certified 1989–1994 Honda CBR 250 motorcycles have safety features that comply with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, and 205 *Glazing Materials*.

The petitioner also states that vehicle identification number (VIN) plates that meet the requirements of 49 CFR Part 565 have been affixed to non-U.S. certified 1989–1994 Honda CBR 250 motorcycles.

Petitioner additionally contends that the vehicles are capable of being altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of headlamp bulbs, amber front side reflectors, and red rear side reflectors that conform to the requirements of the standard. The petitioner states that the vehicles are already equipped with a tail lamp system, a stop lamp system, a white license plate lamp, and turn signals that conform to the standard.

Standard No. 120 Tire Selection and Rims for Vehicles other than Passenger Cars: Installation of a label showing that the tires and rims are in conformity with the requirements of the standard.

Standard No. 123 *Motorcycle Controls and Displays:* modification of the speedometer to read in miles per hour. The petitioner states that the vehicles are already equipped with a supplemental engine stop control on the right handlebar and other controls and displays that are in conformity with the requirements of the standard.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on October 23, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–27390 Filed 10–25–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration, Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before November 27, 2002.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications (*See* Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at *http://dms.dot.gov*.

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 22, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemption and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13129–N	.....	Great Lakes Chemical Corp., El Dorado, AR.	49 CFR 173.227	To authorize the one-time, one-way transportation in commerce of DOT-Specification UN1A1 drums for disposal containing a poison by inhalation material. (mode 1)
13135–N	RSPA–02–13521.	Space Systems/ Loral, Palo Alto, CA.	49 CFR 173.302	To authorize the transportation in commerce of a non-DOT specification pressure vessel as part of a satellite assembly containing Division 2.2. hazardous materials (modes 1, 4)
13137–N	RSPA–02–13520.	Atlas Air, Inc., Purchase, NY.	49 CFR 175.320	To authorize the transportation in commerce of Division 1.1., 1.2, 1.3 and 1.4 explosives, which are forbidden or exceed quantities presently authorized by cargo-only aircraft. (mode 4).

[FR Doc. 02–27391 Filed 10–25–02; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before November 12, 2002.

ADDRESS COMMENTS TO: Records Cancer, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Records Center. Nassif Building, 400 7th Street SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 22, 2002.

R. Ryan Posten,

Exemptions Program Oficer, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
8760–M		Barton Solvents, Inc., Des Moines, IA [1]	8760
8944–M		AMKO A Service Company, Gnadenhutten, OH [2]	8944
11993–M	RSPA–97–3100	BREED Technologies, Inc., Lakeland, FL [3]	11993
12277–M	RSPA–95–5797	The Indian Sugar & General Engineering Corporation, Haryana, IN [4]	12277
12886–M	RSPA–02–11449	The Society of the Plastics Industry, Inc., Washington, DC [5]	12886
12953–M	RSPA–02–11835	Westinghouse Electric Company, Pittsburgh, PA [6]	12953
13036–M	RSPA–02–12789	Datum, Beverly, MA [7]	13036
13113–M	RSPA–02–13308	Dow AgroSciences L.L.C., Indianapolis, IN [8]	13113
13133–M		U.S. Department of Energy, Albuquerque, NM [9]	13133

[1] To modify the exemption to authorize the transportation of additional Class 3 materials in compartmented cargo tank motor vehicles.
[2] To modify the exemption to authorize the use of an additional cylinder with changes to the requalification/retest procedures and rail freight and cargo aircraft only as additional modes of transportation.
[3] To modify the exemption to authorize the transportation of Division 1.4G and Class 9 materials in non-DOT specification cylinders for use as components of automobile safety restraint systems.
[4] To modify the exemption to authorize an updated design of the non-DOT specification pressure vessel for the transportation of Division 2.1, 2.2 and additional 2.3 materials.
[5] To reissue the exemption originally issued on an emergency basis for the transportation of a Division 5.2 material without subsidiary hazard labels.
[6] To modify the exemption to authorize an updated description of the Class 7 material to be transported via rail freight and motor vehicle.
[7] To reissue the exemption originally issued on an emergency basis for the transportation of DOT Specification 3E cylinders containing hydrogen in metal hydride as an integral part of the hydrogen maser.
[8] To reissue the exemption originally issued on an emergency basis for the transportation of Division 6.1 materials in DOT Specification cargo tank motor vehicles and portable tanks.
[9] To reissue the exemption originally issued on an emergency basis for the transportation of up to 25 grams of unapproved explosives, classed as Division 1.4E, when shipped in a special shipping container.

[FR Doc. 02–27392 Filed 10–25–02; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 18, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 27, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0071.
Form Number: IRS Form 2120.
Type of Review: Extension.
Title: Multiple Support Declaration.
Description: A taxpayer who pays more than 10%, but less than 50%, of the support for an individual may claim that individual as a dependent provided the taxpayer attaches declarations from anyone else providing at least 10% support stating that they will not claim the dependent. This form is used to show that the other contributors have agreed not to claim the individual as a dependent.
Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 11,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Minutes
Recordkeeping	6
Learning about the law or the form	4
Preparing the form	7
Copying, assembling, and sending the form to the IRS	13

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 112,500 hours.
OMB Number: 1545–0108.
Form Number: IRS Form 1096.
Type of Review: Extension.
Title: Annual Summary and Transmittal of U.S. Information Returns.
Description: Form 1096 is sued to transmit information returns (Forms 1099, 1098, 5498, a W–2G) to the IRS Service Centers. Under Internal Revenue Code (IRC) section 6041 and related sections, a separate Form 1096 is used for each type of return to the service center by the payer. It is used by IRS to summarize and categorize the transmitted forms.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 4,023,036.
Estimated Burden Hours Per Respondent: 13 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1,016,812 hours.
OMB Number: 1545–0257.
Form Number: IRS Forms 8109, 8109–B, and 8109–C.
Type of Review: Extension.
Title: Federal Tax Deposit Coupon (8109 and 8109–B); and Form FTD Address Change (Form 8109–C).
Description: Federal Tax Deposit Coupons are used to deposit certain types of taxes at authorized depositaries. Coupons are sent to the IRS Centers for crediting to taxpayers' accounts. Data is used by the IRS to make the credit and to verify tax deposits claimed on the returns. The FTD Address Change is used to change the address on the FTD coupons. All taxpayers required to make deposits are affected.
Respondents: Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 9,300,700.
Estimated Burden Hours Per Respondent:

	Minutes
Form 8109	2
Form 8109–B	3
Form 8109–C	1

Frequency of Response: On occasion, Weekly, Monthly, Other (semiweekly).
Estimated Total Reporting Burden: 1,841,607 hours.
OMB Number: 1545–0718.
Form Number: IRS Form 941–M.
Type of Review: Extension.
Title: Employer's Monthly Federal Tax Return.
Description: Form 941–M is used by certain employers to report payroll taxes on a monthly rather than quarterly basis. Employers who have failed to file Form 941 or who have failed to deposit as required are notified by the District Director that they must file Form 941–M monthly.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/Recordkeepers: 1,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	12 hr., 26 min.
Learning about the law or the form.	35 min.
Preparing, copying, assembling, and sending the form to the IRS.	49 min.

Frequency of Response: Monthly.
Estimated Total Reporting/Recordkeeping Burden: 166,320 hours.
OMB Number: 1545–1029.
Regulation Project Number: IA–83–90 Final.
Type of Review: Extension.
Title: Disclosure of Tax Return Information or Purposes of Quality or Peer Review; Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer.
Description: These regulations govern the circumstances under which tax return information may be disclosed for purposes of conducting quality or peer reviews, and disclosures that are necessary because of the tax return preparer's death or incapacity.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 250,000.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Estimated Total Reporting/Recordkeeping Burden: 250,000 hours.
Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental PRA Clearance Officer.

[FR Doc. 02–27303 Filed 10–25–02; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 18, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 27, 2002 to be assured of consideration.

Departmental Offices/Office of the Assistant Secretary (Financial Institutions)/First Accounts Program

OMB Number: 1505–0188.
Form Number: None.
Type of Review: Extension.
Title: First Accounts Program Agreement for Grants.
Description: The Department of the Treasury (Treasury) seeks to continue to collect financial and project performance information from First Accounts grantees. Respondents are Non-Profit Organizations, For-Profit Organizations and a Local Government. The information collected will be used to verify grantee compliance with the terms of the Grant Agreement entered into between Treasury and each grantee.
Respondents: Not-for-profit institutions, Business or other for-profit, State, Local or Tribal Government.
Estimated Number of Respondents/Recordkeepers: 15.
Estimated Burden Hours Per Respondent/Recordkeeper: 25 hours.
Frequency of Response: On Occasion, Quarterly, Annually.
Estimated Total Reporting/Recordkeeping Burden: 555 hours.
Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices,

Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental PRA Clearance Officer.

[FR Doc. 02–27304 Filed 10–25–02; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–165–84]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, FI–165–84, Below-Market Loans (1.7872–11(g)(l) and 1.7872–11(g)(3)).

DATES: Written comments should be received on or before December 27, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or through the internet (*Larnice.Mack@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Below-Market Loans.

OMB Number: 1545–0913.

Regulation Project Number: FI–165–84 (Notice of Proposed Rulemaking).

Abstract: Internal Revenue Code section 7872 recharacterizes a below-market loan as a market rate loan and an additional transfer by the lender to the borrower equal to the amount of imputed interest. The regulation requires both the lender and the borrower to attach a statement to their respective income tax returns for years in which they have imputed income or claim imputed deductions under Code section 7872.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 1,631,202.

Estimated Time Per Respondent: 18 min.

Estimated Total Annual Burden Hours: 481,722.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 21, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–27296 Filed 10–25–02; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
October 28, 2002

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Electing Mark to Market for Marketable Stock; Hearing Cancellation; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–112306–00]

RIN 1545–AY17

Electing Mark to Market for Marketable Stock; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels the public hearing on proposed regulations containing procedures for certain United States persons holding marketable stock in a passive foreign investment company (PFIC) to elect mark to market treatment for that stock under section 1296 and related provisions of sections 1291 and 1295.

DATES: The public hearing originally scheduled for Wednesday, November 6, 2002, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: LaNita Van Dyke of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Wednesday, July 31, 2002 (67 FR 49634), announced that a public hearing was scheduled for Wednesday, November 6, 2002, at 10 a.m., in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 1291 of the Internal Revenue Code. The outlines of topics to be addressed at the hearing were due on Wednesday, October 16, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, October 22, 2002, no one has requested to speak. Therefore, the public hearing scheduled for Wednesday, November 6, 2002, is cancelled.

LaNita Van Dyke,

Acting Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–27295 Filed 10–25–02; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
October 28, 2002

Part III

Department of the Treasury

31 CFR Part 5
Treasury Debt Collection; Final and Proposed Rules

DEPARTMENT OF THE TREASURY

31 CFR Part 5

RIN: 1505–AA90

Treasury Debt Collection

AGENCY: Department of the Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: This rule revises the Department of the Treasury's debt collection regulations to conform to the Debt Collection Improvement Act of 1996, the revised Federal Claims Collection Standards, and other laws applicable to the collection of nontax debts owed to Treasury. This rule also revises Treasury's regulations governing the offset of Treasury-issued payments to collect debts owed to other Federal agencies.

DATES: This rule is effective November 27, 2002; comments must be received on or before November 27, 2002.

ADDRESSES: Send comments to Cathy Thomas, Office of the Deputy Chief Financial Officer, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Attention: Metropolitan Square, Room 6228, Washington, DC 20220. Comments also may be submitted by electronic mail to *cathy.thomas@do.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Cathy Thomas, Office of the Deputy Chief Financial Officer, at (202) 622–0817, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. This document is available for downloading from the Department of the Treasury's Financial Management Service web site at the following address: *http://www.fms.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background

This rule revises the Department of the Treasury's (Treasury Department's) debt collection regulations found at 31 CFR part 5 to conform to the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321, 1358 (Apr. 26, 1996), the revised Federal Claims Collection Standards, 31 CFR Chapter IX (parts 900 through 904), and other laws applicable to the collection of nontax debt owed to the Government.

This regulation provides procedures for the collection of nontax debts owed to Treasury entities. Treasury adopts the Government-wide debt collection standards promulgated by the Departments of the Treasury and Justice, known as the Federal Claims Collection Standards (FCCS), as revised on November 22, 2000 (65 FR 70390), and supplements the FCCS by prescribing procedures consistent with the FCCS, as necessary and appropriate for Treasury Department operations. Treasury entities may, but are not required to, promulgate additional policies and procedures consistent with this regulation, the FCCS, and other applicable Federal laws, policies, and procedures. *See, for example,* the debt collection regulations governing the collection of overpayments under certain District of Columbia retirement plans (66 FR 36703, July 13, 2001). This regulation also provides the procedures for the collection of debts owed to other Federal agencies when a request for offset is received by the Treasury Department.

This regulation does not apply to the collection of tax debts, which is governed by the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*) and regulations, policies and procedures issued by the Internal Revenue Service. This regulation does not apply to the Treasury Department's Financial Management Service when acting on behalf of other Federal agencies and states to collect delinquent debt referred to the Financial Management Service as required or authorized by Federal law for collection action. *See* 31 U.S.C. 3711(g), 3716, and 3720A. Regulations governing this centralized collection of debts by the Financial Management Service are found at 31 CFR part 285.

Unlike the Treasury Department's current regulation (*see, for example,* 31 CFR 5.3), this regulation does not contain a section regarding the delegation of debt collection authority within the Treasury Department. The delegation is now contained in Treasury Directive 34–02, Credit Management and Debt Collection (*see http://www.treas.gov/regs),* and does not need to be included in the revised regulation.

Nothing in this regulation precludes the use of collection remedies not contained in this regulation. For example, Treasury entities may collect unused travel advances through setoff of an employee's pay under 5 U.S.C. 5705. Treasury entities and other Federal agencies may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law.

Section Analysis

Subpart A—Sections 5.1 through 5.3

Subpart A of this regulation addresses the general provisions applicable to the collection of nontax debts owed to the bureaus of the Department of the Treasury, the Office of Inspector General, and the Office of Inspector General for Tax Administration (collectively referred to as "Treasury entities"). The Departmental Offices, one of Treasury's bureaus, includes the Office of D.C. Pensions, the Community Development Financial Institution Fund, the Executive Office of Asset Forfeiture, and the Office of Foreign Assets Control. The other bureaus are the Bureau of Public Debt; Bureau of Engraving and Printing; U.S. Mint; Secret Service; Customs Service; Financial Management Service; Internal Revenue Service; Bureau of Alcohol, Tobacco, and Firearms; Office of Comptroller of the Currency; the Office of Thrift Supervision; the Federal Law Enforcement Training Center; and the Financial Crimes Enforcement Network.

As stated in section 5.2 of this interim rule, nothing in this regulation requires a Treasury entity to duplicate notices or administrative proceedings required by contract, this regulation or other laws or regulations. Thus, for example, a Treasury entity is not required to provide a debtor with two hearings on the same issue merely because the entity uses two different collection tools, each of which requires that the debtor be provided with a hearing.

Subpart B—Sections 5.4 through 5.19

Subpart B of this regulation describes the procedures to be followed by Treasury entities when collecting debts owed to the Treasury Department. Among other things, subpart B outlines the due process procedures Treasury entities are required to follow when using offset (administrative, tax refund and salary) to collect a debt, when garnishing a debtor's wages, or before reporting a debt to a credit bureau. Specifically, Treasury entities are required to provide debtors with notice of the amount and type of debt, the intended collection action to be taken, how a debtor may pay the debt or make alternate repayment arrangements, how a debtor may review documents related to the debt, how a debtor may dispute the debt, and the consequences to the debtor if the debt is not paid. Unlike the Treasury Department's current regulation (*see, for example,* 31 CFR 5.11), this regulation does not require Treasury entities to send notices by certified mail. The Treasury Department has determined that the certified mail requirement imposes an unnecessary administrative burden and expense. Notices may be sent by first-class mail, and if not returned by the United States Postal Service, Treasury entities may presume that the notice was received. *See Rosenthal* v. *Walker,* 111 U.S. 185 (1884); *Mahon* v. *Credit Bureau of Placer County Incorporated,* 171 F.3d 1197 (9th Cir. 1999). Nothing in this regulation precludes a Treasury entity from sending a notice by certified mail if appropriate or required by statute.

Subpart B also explains the circumstances under which Treasury entities may waive interest, penalties and administrative costs.

This regulation updates Treasury Department procedures to reflect changes required by the DCIA. For example, the DCIA centralized the use of offset by requiring agencies to refer debts delinquent more than 180 days to the Financial Management Service for offset. *See* 31 U.S.C. 3716(c)(6). The Financial Management Service disburses nearly 950 million Federal payments annually and is required to offset payments to persons who owe delinquent debts to the Government. Prior to the DCIA, agencies were required to contact the particular agency issuing a payment in order to initiate the offset of a Federal payment. This regulation also incorporates procedures for several new collection remedies authorized by the DCIA, such as administrative wage garnishment and barring delinquent debtors from obtaining additional Federal loan assistance.

Unlike the Treasury Department's current regulation (*see, for example,* 31 CFR 5.3), this regulation no longer specifies the dollar threshold for which legal approval of compromises or suspension or termination of debt collection activity is required. This information is contained in Treasury Directive 34–02, Credit Management and Debt Collection, which may be found at *http://www.treas.gov/regs.*

Subpart C—Sections 5.20 and 5.21

Subpart C of this regulation describes the procedures to be followed when a Federal agency, other than a Treasury entity, would like to use the offset process to collect a debt from a nontax payment issued by the Treasury Department as a payment agency. This is distinguished from the offset of payments *disbursed* by the Treasury Department's Financial Management Service in its capacity as disbursing agency for the Federal Government. The offset of payments disbursed by the Financial Management Service, including tax refund payments issued by the Internal Revenue Service and social security benefit payments issued by the Social Security Administration, is conducted through the Treasury Offset Program and is governed by regulations found at 31 CFR part 285, as well as agency-specific regulations. Subpart C of this regulation governs the process for offsets that occur on an ad hoc, case-by-case basis to collect debts from payments made by the Treasury Department to its employees, its vendors, and others to whom the Treasury Department is required or authorized to pay. While centralized offset through the Treasury Offset Program is the Government's primary offset collection tool, this regulation provides the procedures to be used when centralized offset is otherwise not available or appropriate. An agency's use of the non-centralized administrative offset process shall not provide grounds to invalidate any offset on the basis that centralized offset was not used.

Regulatory Analysis

E.O. 12866, Regulatory Review

This rule is not a significant regulatory action as defined in Executive Order 12866. Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act do not apply.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Moreover, the rule will only affect persons who owe delinquent nontax debts to the Treasury Department and other Federal agencies. Accordingly, a regulatory flexibility analysis is not required.

Special Analyses

The Treasury Department is promulgating this interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553 (the "APA"). The Treasury Department has determined that a comment period is unnecessary because the procedures contained in this interim rule are mandated by law and by regulations promulgated by the Departments of Treasury and Justice. The public is invited to submit comments on the interim rule, which will be taken into account before a final rule is issued.

List of Subjects in 31 CFR Part 5

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Government employee, Hearing and appeal procedures, Pay administration, Salaries, Wages.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 5 is revised to read as follows:

PART 5—TREASURY DEBT COLLECTION

Subpart A—General Provisions

Sec.
5.1 What definitions apply to the regulations in this part?
5.2 Why is the Treasury Department issuing these regulations and what do they cover?
5.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?

Subpart B—Procedures To Collect Treasury Debts

5.4 What notice will Treasury entities send to a debtor when collecting a Treasury debt?
5.5 How will Treasury entities add interest, penalty charges, and administrative costs to a Treasury debt?
5.6 When will Treasury entities allow a debtor to pay a Treasury debt in installments instead of one lump sum?
5.7 When will Treasury entities compromise a Treasury debt?
5.8 When will Treasury entities suspend or terminate debt collection on a Treasury debt?
5.9 When will Treasury entities transfer a Treasury debt to the Treasury Department's Financial Management Service for collection?
5.10 How will Treasury entities use administrative offset (offset of non-tax Federal payments) to collect a Treasury debt?
5.11 How will Treasury entities use tax refund offset to collect a Treasury debt?
5.12 How will Treasury entities offset a Federal employee's salary to collect a Treasury debt?
5.13 How will Treasury entities use administrative wage garnishment to collect a Treasury debt from a debtor's wages?
5.14 How will Treasury entities report Treasury debts to credit bureaus?
5.15 How will Treasury entities refer Treasury debts to private collection agencies?
5.16 When will Treasury entities refer Treasury debts to the Department of Justice?
5.17 Will a debtor who owes a Treasury debt be ineligible for Federal loan assistance or Federal licenses, permits or privileges?
5.18 How does a debtor request a special review based on a change in circumstances such as catastrophic illness, divorce, death, or disability?
5.19 Will Treasury entities issue a refund if money is erroneously collected on a debt?

Subpart C—Procedures for Offset of Treasury Department Payments To Collect Debts Owed to Other Federal Agencies

5.20 How do other Federal agencies use the offset process to collect debts from payments issued by a Treasury entity?
5.21 What does a Treasury entity do upon receipt of a request to offset the salary of a Treasury entity employee to collect a

debt owed by the employee to another Federal agency?
Appendix A to Part 5—Treasury Directive 34–01—Waiving Claims Against Treasury Employees for Erroneous Payments

Authority: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3717, 3718, 3720A, 3720B, 3720D.

Subpart A—General Provisions

§ 5.1 What definitions apply to the regulations in this part?

As used in this part:

Administrative offset or *offset* means withholding funds payable by the United States (including funds payable by the United States on behalf of a State Government) to, or held by the United States for, a person to satisfy a debt owed by the person. The term "administrative offset" includes, but is not limited to, the offset of Federal salary, vendor, retirement, and Social Security benefit payments. The terms "centralized administrative offset" and "centralized offset" refer to the process by which the Treasury Department's Financial Management Service offsets Federal payments through the Treasury Offset Program.

Administrative wage garnishment means the process by which a Federal agency orders a non-Federal employer to withhold amounts from a debtor's wages to satisfy a debt, as authorized by 31 U.S.C. 3720D, 31 CFR 285.11, and this part.

Agency or *Federal agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

Creditor agency means any Federal agency that is owed a debt.

Debt means any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person. As used in this part, the term "debt" does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

Debtor means a person who owes a debt to the United States.

Delinquent debt means a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made.

Delinquent Treasury debt means a delinquent debt owed to a Treasury entity.

Disposable pay has the same meaning as that term is defined in 5 CFR 550.1103.

Employee or *Federal employee* means a current employee of the Treasury Department or other Federal agency, including a current member of the Armed Forces, Reserve of the Armed Forces of the United States, or the National Guard.

FCCS means the Federal Claims Collection Standards, which were jointly published by the Departments of the Treasury and Justice and codified at 31 CFR parts 900—904.

Financial Management Service means the Financial Management Service, a bureau of the Treasury Department, which is responsible for the centralized collection of delinquent debts through the offset of Federal payments and other means.

Payment agency or *Federal payment agency* means any Federal agency that transmits payment requests in the form of certified payment vouchers, or other similar forms, to a disbursing official for disbursement. The "payment agency" may be the agency that employs the debtor. In some cases, the Treasury Department may be both the creditor agency and payment agency.

Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of entity other than a Federal agency.

Salary offset means a type of administrative offset to collect a debt owed by a Federal employee from the current pay account of the employee.

Secretary means the Secretary of the Treasury.

Tax refund offset is defined in 31 CFR 285.2(a).

Treasury debt means a debt owed to a Treasury entity by a person.

Treasury Department means the United States Department of the Treasury.

Treasury entity means the Office of Inspector General, the Office of Inspector General for Tax Administration, or a bureau of the Treasury Department, including the Departmental Offices, responsible for the collection of the applicable Treasury debt. Departmental Offices include, but are not limited to, the Office of D.C. Pensions, the Community Development Financial Institution Fund, the Executive Office of Asset Forfeiture, and the Office of Foreign Assets Control. Other bureaus include, but are not limited to, the Bureau of Public Debt; Bureau of Engraving and Printing; U.S. Mint; U.S. Secret Service; Customs Service; Financial Management Service; Internal Revenue Service; Bureau of Alcohol, Tobacco, and Firearms; Office of Comptroller of the Currency; the Office of Thrift Supervision; Federal Law Enforcement Training Center; and the Financial Crimes Enforcement Network.

§ 5.2 Why is the Treasury Department issuing these regulations and what do they cover?

(a) *Scope.* This part provides procedures for the collection of Treasury debts. This part also provides procedures for collection of other debts owed to the United States when a request for offset of a Treasury payment is received by the Treasury Department from another agency (for example, when a Treasury Department employee owes a debt to the United States Department of Education).

(b) *Applicability.* (1) This part applies to the Treasury Department when collecting a Treasury debt, to persons who owe Treasury debts, and to Federal agencies requesting offset of a payment issued by the Treasury Department as a payment agency (including salary payments to Treasury Department employees).

(2) This part does not apply to tax debts nor to any debt for which there is an indication of fraud or misrepresentation, as described in § 900.3 of the FCCS, unless the debt is returned by the Department of Justice to the Treasury Department for handling.

(3) This part does not apply to the Financial Management Service when acting on behalf of other Federal agencies and states to collect delinquent debt referred to the Financial Management Service for collection action as required or authorized by Federal law. *See* 31 CFR part 285.

(4) Nothing in this part precludes collection or disposition of any debt under statutes and regulations other than those described in this part. *See, for example,* 5 U.S.C. 5705, Advancements and Deductions, which authorizes Treasury entities to recover travel advances by offset of up to 100% of a Federal employee's accrued pay. *See, also,* 5 U.S.C. 4108, governing the collection of training expenses. To the extent that the provisions of laws, other regulations, and Treasury Department enforcement policies differ from the provisions of this part, those provisions of law, other regulations, and Treasury Department enforcement policies apply to the remission or mitigation of fines, penalties, and forfeitures, and debts arising under the tariff laws of the United States, rather than the provisions of this part.

(c) *Additional policies and procedures.* Treasury entities may, but are not required to, promulgate additional policies and procedures consistent with this part, the FCCS, and other applicable Federal law, policies, and procedures.

(d) *Duplication not required.* Nothing in this part requires a Treasury entity to duplicate notices or administrative proceedings required by contract, this part, or other laws or regulations.

(e) *Use of multiple collection remedies allowed.* Treasury entities and other Federal agencies may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law. This part is intended to promote aggressive debt collection, using for each debt all available collection remedies. These remedies are not listed in any prescribed order to provide Treasury entities with flexibility in determining which remedies will be most efficient in collecting the particular debt.

§ 5.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?

This part adopts and incorporates all provisions of the FCCS. This part also supplements the FCCS by prescribing procedures consistent with the FCCS, as necessary and appropriate for Treasury Department operations.

Subpart B—Procedures To Collect Treasury Debts

§ 5.4 What notice will Treasury entities send to a debtor when collecting a Treasury debt?

(a) *Notice requirements.* Treasury entities shall aggressively collect Treasury debts. Treasury entities shall promptly send at least one written notice to a debtor informing the debtor of the consequences of failing to pay or otherwise resolve a Treasury debt. The notice(s) shall be sent to the debtor at the most current address of the debtor in the records of the Treasury entity collecting the debt. Generally, before starting the collection actions described in §§ 5.5 and 5.9 through 5.17 of this part, Treasury entities will send no more than two written notices to the debtor. The purpose of the notice(s) is to explain why the debt is owed, the amount of the debt, how a debtor may pay the debt or make alternate repayment arrangements, how a debtor may review documents related to the debt, how a debtor may dispute the debt, the collection remedies available to Treasury entities if the debtor refuses to pay the debt, and other consequences to the debtor if the debt is not paid. Except as otherwise provided in paragraph (b) of this section, the written notice(s) shall explain to the debtor:

(1) The nature and amount of the debt, and the facts giving rise to the debt;

(2) How interest, penalties, and administrative costs are added to the debt, the date by which payment should be made to avoid such charges, and that such assessments must be made unless excused in accordance with 31 CFR 901.9 (*see* § 5.5 of this part);

(3) The date by which payment should be made to avoid the enforced collection actions described in paragraph (a)(6) of this section;

(4) The Treasury entity's willingness to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the debt under terms acceptable to the Treasury entity (*see* § 5.6 of this part);

(5) The name, address, and telephone number of a contact person or office within the Treasury entity;

(6) The Treasury entity's intention to enforce collection if the debtor fails to pay or otherwise resolve the debt, by taking one or more of the following actions:

(i) *Offset.* Offset the debtor's Federal payments, including income tax refunds, salary, certain benefit payments (such as Social Security), retirement, vendor, travel reimbursements and advances, and other Federal payments (*see* §§ 5.10 through 5.12 of this part);

(ii) *Private collection agency.* Refer the debt to a private collection agency (*see* § 5.15 of this part);

(iii) *Credit bureau reporting.* Report the debt to a credit bureau (*see* § 5.14 of this part);

(iv) *Administrative wage garnishment.* Garnish the debtor's wages through administrative wage garnishment (*see* § 5.13 of this part);

(v) *Litigation.* Refer the debt to the Department of Justice to initiate litigation to collect the debt (*see* § 5.16 of this part);

(vi) *Treasury Department's Financial Management Service.* Refer the debt to the Financial Management Service for collection (*see* § 5.9 of this part);

(7) That Treasury debts over 180 days delinquent must be referred to the Financial Management Service for the collection actions described in paragraph (a)(6) of this section (*see* § 5.9 of this part);

(8) How the debtor may inspect and copy records related to the debt;

(9) How the debtor may request a review of the Treasury entity's determination that the debtor owes a debt and present evidence that the debt is not delinquent or legally enforceable (*see* §§ 5.10(c) and 5.11(c) of this part);

(10) How a debtor may request a hearing if the Treasury entity intends to garnish the debtor's private sector (*i.e.*, non-Federal) wages (*see* § 5.13(a) of this part), including:

(i) The method and time period for requesting a hearing;

(ii) That the timely filing of a request for a hearing on or before the 15th business day following the date of the notice will stay the commencement of administrative wage garnishment, but not necessarily other collection procedures; and

(iii) The name and address of the office to which the request for a hearing should be sent.

(11) How a debtor who is a Federal employee subject to Federal salary offset may request a hearing (*see* § 5.12(e) of this part), including:

(i) The method and time period for requesting a hearing;

(ii) That the timely filing of a request for a hearing on or before the 15th calendar day following receipt of the notice will stay the commencement of salary offset, but not necessarily other collection procedures;

(iii) The name and address of the office to which the request for a hearing should be sent;

(iv) That the Treasury entity will refer the debt to the debtor's employing agency or to the Financial Management Service to implement salary offset, unless the employee files a timely request for a hearing;

(v) That a final decision on the hearing, if requested, will be issued at the earliest practical date, but not later than 60 days after the filing of the request for a hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(vi) That any knowingly false or frivolous statements, representations, or evidence may subject the Federal employee to penalties under the False Claims Act (31 U.S.C. 3729–3731) or other applicable statutory authority, and criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or other applicable statutory authority;

(vii) That unless prohibited by contract or statute, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and (viii) That proceedings with respect to such debt are governed by 5 U.S.C. 5514 and 31 U.S.C. 3716;

(12) How the debtor may request a waiver of the debt, if applicable (*see, for example,* Treasury Directive 34–01 (Waiving Claims Against Treasury Employees for Erroneous Payments), set forth at Appendix A of this part and at *http://www.treas.gov/regs*);

(13) How the debtor's spouse may claim his or her share of a joint income tax refund by filing Form 8379 with the Internal Revenue Service (*see http://www.irs.gov*)

(14) How the debtor may exercise other statutory or regulatory rights and remedies available to the debtor;

(15) That certain debtors may be ineligible for Federal Government loans, guaranties and insurance (*see* 31 U.S.C. 3720B, 31 CFR 285.13, and § 5.17(a) of this part);

(16) If applicable, the Treasury entity's intention to suspend or revoke licenses, permits or privileges (*see* § 5.17(b) of this part); and

(17) That the debtor should advise the Treasury entity of a bankruptcy proceeding of the debtor or another person liable for the debt being collected.

(b) *Exceptions to notice requirements.* A Treasury entity may omit from a notice to a debtor one or more of the provisions contained in paragraphs (a)(6) through (a)(17) of this section if the Treasury entity, in consultation with its legal counsel, determines that any provision is not legally required given the collection remedies to be applied to a particular debt.

(c) *Respond to debtors; comply with FCCS.* Treasury entities should respond promptly to communications from debtors and comply with other FCCS provisions applicable to the administrative collection of debts. *See* 31 CFR part 901.

§ 5.5 How will Treasury entities add interest, penalty charges, and administrative costs to a Treasury debt?

(a) *Assessment and notice.* Treasury entities shall assess interest, penalties and administrative costs on Treasury debts in accordance with the provisions of 31 U.S.C. 3717 and 31 CFR 901.9, on Treasury debts. Interest shall be charged in accordance with the requirements of 31 U.S.C. 3717(a). Penalties shall accrue at the rate of 6% per year, or such other higher rate as authorized by law. Administrative costs, that is the costs of processing and handling a delinquent debt, shall be determined by the Treasury entity collecting the Treasury debt. Treasury entities may have additional policies regarding how interest, penalties, and administrative costs are assessed on particular types of debts. Treasury entities are required to explain in the notice to the debtor described in § 5.4 of this part how interest, penalties, costs, and other charges are assessed, unless the requirements are included in a contract or repayment agreement.

(b) *Waiver of interest, penalties, and administrative costs.* Unless otherwise required by law, Treasury entities may not charge interest if the amount due on the debt is paid within 30 days after the date from which the interest accrues. *See* 31 U.S.C. 3717(d). Treasury entities may waive interest, penalties, and administrative costs, or any portion thereof, when it would be against equity and good conscience or not in the Treasury entity's best interest to collect such charges, in accordance with Treasury guidelines for waiving claims against Treasury employees for erroneous overpayments. *See* Treasury Directive 34–01 (Waiving Claims Against Treasury Employees for Erroneous Payments) set forth at Appendix A of this part and at *http://www.treas.gov/regs.* Legal counsel approval is not required to waive such charges. Cf., §§ 5.7 and 5.8 of this part, which require legal counsel approval when compromising a debt or terminating debt collection activity on a debt.

(c) *Accrual during suspension of debt collection.* In most cases, interest, penalties and administrative costs will continue to accrue during any period when collection has been suspended for any reason (for example, when the debtor has requested a hearing). Treasury entities may suspend accrual of any or all of these charges when accrual would be against equity and good conscience or not in the Treasury entity's best interest, in accordance with Treasury guidelines for waiving claims against Treasury employees for erroneous overpayments. *See* Treasury Directive 34–01 (Waiving Claims Against Treasury Employees for Erroneous Payments), set forth at Appendix A of this part and at *http://www.treas.gov/regs.*

§ 5.6 When will Treasury entities allow a debtor to pay a Treasury debt in installments instead of one lump sum?

If a debtor is financially unable to pay the debt in one lump sum, a Treasury entity may accept payment of a Treasury debt in regular installments, in accordance with the provisions of 31 CFR 901.8 and the Treasury entity's policies and procedures.

§ 5.7 When will Treasury entities compromise a Treasury debt?

If a Treasury entity cannot collect the full amount of a Treasury debt, the Treasury entity may compromise the debt in accordance with the provisions of 31 CFR part 902 and the Treasury entity's policies and procedures. Legal counsel approval to compromise a Treasury debt is required as described in Treasury Directive 34–02 (Credit Management and Debt Collection), which may be found at *http://www.treas.gov/regs.*

§ 5.8 When will Treasury entities suspend or terminate debt collection on a Treasury debt?

If, after pursuing all appropriate means of collection, a Treasury entity determines that a Treasury debt is uncollectible, the Treasury entity may suspend or terminate debt collection activity in accordance with the provisions of 31 CFR part 903 and the Treasury entity's policies and procedures. Legal counsel approval to terminate debt collection activity is required as described in Treasury Directive 34–02 (Credit Management and Debt Collection), which may be found at *http://www.treas.gov/regs.*

§ 5.9 When will Treasury entities transfer a Treasury debt to the Treasury Department's Financial Management Service for collection?

(a) Treasury entities will transfer any eligible debt that is more than 180 days delinquent to the Financial Management Service for debt collection services, a process known as "cross-servicing." *See* 31 U.S.C. 3711(g) and 31 CFR 285.12. Treasury entities may transfer debts delinquent 180 days or less to the Financial Management Service in accordance with the procedures described in 31 CFR 285.12. The Financial Management Service takes appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt and the collection action to be taken. *See* 31 CFR 285.12(b)(2). Appropriate action includes, but is not limited to, contact with the debtor, referral of the debt to the Treasury Offset Program, private collection agencies or the Department of Justice, reporting of the debt to credit bureaus, and administrative wage garnishment.

(b) At least sixty (60) days prior to transferring a Treasury debt to the Financial Management Service, Treasury entities will send notice to the debtor as required by § 5.4 of this part. Treasury entities will certify to the Financial Management Service, in writing, that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection. In addition, Treasury entities will certify their compliance with all applicable due process and other requirements as described in this part and other Federal laws. *See* 31 CFR 285.12(i) regarding the certification requirement.

(c) As part of its debt collection process, the Financial Management Service uses the Treasury Offset Program to collect Treasury debts by administrative and tax refund offset. *See* 31 CFR 285.12(g). The Treasury Offset Program is a centralized offset program administered by the Financial Management Service to collect delinquent debts owed to Federal agencies and states (including past-due child support). Under the Treasury Offset Program, before a Federal payment is disbursed, the Financial Management Service compares the name and taxpayer identification number (TIN) of the payee with the names and TINs of debtors that have been submitted by Federal agencies and states to the Treasury Offset Program database. If there is a match, the Financial Management Service (or, in some cases, another Federal disbursing agency) offsets all or a portion of the Federal payment, disburses any remaining payment to the payee, and pays the offset amount to the creditor agency. Federal payments eligible for offset include, but are not limited to, income tax refunds, salary, travel advances and reimbursements, retirement and vendor payments, and Social Security and other benefit payments.

§ 5.10 How will Treasury entities use administrative offset (offset of non-tax Federal payments) to collect a Treasury debt?

(a) *Centralized administrative offset through the Treasury Offset Program.* (1) In most cases, the Financial Management Service uses the Treasury Offset Program to collect Treasury debts by the offset of Federal payments. *See* § 5.9(c) of this part. If not already transferred to the Financial Management Service under § 5.9 of this part, Treasury entities will refer any eligible debt over 180 days delinquent to the Treasury Offset Program for collection by centralized administrative offset. *See* 31 U.S.C. 3716(c)(6); 31 CFR part 285, subpart A; and 31 CFR 901.3(b). Treasury entities may refer any eligible debt less than 180 days delinquent to the Treasury Offset Program for offset.

(2) At least sixty (60) days prior to referring a debt to the Treasury Offset Program, in accordance with paragraph (a)(1) of this section, Treasury entities will send notice to the debtor in accordance with the requirements of § 5.4 of this part. Treasury entities will certify to the Financial Management Service, in writing, that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection by offset. In addition, Treasury entities will certify their compliance with the requirements described in this part.

(b) *Non-centralized administrative offset for Treasury debts.* (1) When centralized administrative offset through the Treasury Offset Program is not available or appropriate, Treasury entities may collect past-due, legally enforceable Treasury debts through non-centralized administrative offset. *See* 31 CFR 901.3(c). In these cases, Treasury entities may offset a payment internally or make an offset request directly to a Federal payment agency. If the Federal payment agency is another Treasury entity, the Treasury entity making the request shall do so through the Deputy Chief Financial Officer as described in § 5.20(c) of this part.

(2) At least thirty (30) days prior to offsetting a payment internally or requesting a Federal payment agency to offset a payment, Treasury entities will send notice to the debtor in accordance with the requirements of § 5.4 of this part. When referring a debt for offset under this paragraph (b), Treasury entities making the request will certify, in writing, that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection by offset. In addition, Treasury entities will certify their compliance with these regulations concerning administrative offset. *See* 31 CFR 901.3(c)(2)(ii).

(c) *Administrative review.* The notice described in § 5.4 of this part shall explain to the debtor how to request an administrative review of a Treasury entity's determination that the debtor owes a Treasury debt and how to present evidence that the debt is not delinquent or legally enforceable. In addition to challenging the existence and amount of the debt, the debtor may seek a review of the terms of repayment. In most cases, Treasury entities will provide the debtor with a "paper hearing" based upon a review of the written record, including documentation provided by the debtor. Treasury entities shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the Treasury entity determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although Treasury entities should carefully document all significant matters discussed at the hearing. Treasury entities may suspend collection through administrative offset and/or other collection actions pending the resolution of a debtor's dispute. Each Treasury entity will have its own policies and procedures concerning the administrative review process consistent with the FCCS and the regulations in this section.

(d) *Procedures for expedited offset.* Under the circumstances described in 31 CFR 901.3(b)(4)(iii), Treasury entities may effect an offset against a payment to be made to the debtor prior to sending a notice to the debtor, as described in § 5.4 of this part, or completing the procedures described in paragraph (b)(2) and (c) of this section. Treasury entities shall give the debtor notice and an opportunity for review as soon as practicable and promptly refund any money ultimately found not to have been owed to the Government.

§ 5.11 How will Treasury entities use tax refund offset to collect a Treasury debt?

(a) *Tax refund offset.* In most cases, the Financial Management Service uses the Treasury Offset Program to collect Treasury debts by the offset of tax refunds and other Federal payments. *See* § 5.9(c) of this part. If not already transferred to the Financial Management Service under § 5.9 of this part, Treasury entities will refer to the Treasury Offset Program any past-due, legally enforceable debt for collection by tax refund offset. *See* 26 U.S.C. 6402(d), 31 U.S.C. 3720A and 31 CFR 285.2.

(b) *Notice.* At least sixty (60) days prior to referring a debt to the Treasury Offset Program, Treasury entities will send notice to the debtor in accordance with the requirements of § 5.4 of this part. Treasury entities will certify to the Financial Management Service's Treasury Offset Program, in writing, that the debt is past-due and legally enforceable in the amount submitted and that the Treasury entities have made reasonable efforts to obtain payment of the debt as described in 31 CFR 285.2(d). In addition, Treasury entities will certify their compliance with all applicable due process and other requirements described in this part and other Federal laws. *See* 31 U.S.C. 3720A(b) and 31 CFR 285.2.

(c) *Administrative review.* The notice described in § 5.4 of this part shall provide the debtor with at least 60 days prior to the initiation of tax refund offset to request an administrative review as described in § 5.10(c) of this part. Treasury entities may suspend collection through tax refund offset and/or other collection actions pending the resolution of the debtor's dispute.

§ 5.12 How will Treasury entities offset a Federal employee's salary to collect a Treasury debt?

(a) *Federal salary offset.* (1) Salary offset is used to collect debts owed to the United States by Treasury Department and other Federal employees. If a Federal employee owes a Treasury debt, Treasury entities may offset the employee's Federal salary to collect the debt in the manner described in this section. For information on how a Federal agency other than a Treasury entity may collect debt from the salary of a Treasury Department employee, see §§ 5.20 and 5.21, subpart C, of this part.

(2) Nothing in this part requires a Treasury entity to collect a Treasury debt in accordance with the provisions of this section if Federal law allows otherwise. *See, for example,* 5 U.S.C. 5705 (travel advances not used for allowable travel expenses are recoverable from the employee or his estate by setoff against accrued pay and other means) and 5 U.S.C. 4108 (recovery of training expenses).

(3) Treasury entities may use the administrative wage garnishment procedure described in § 5.13 of this part to collect a debt from an individual's non-Federal wages.

(b) *Centralized salary offset through the Treasury Offset Program.* As described in § 5.9(a) of this part, Treasury entities will refer Treasury debts to the Financial Management Service for collection by administrative offset, including salary offset, through the Treasury Offset Program. When possible, Treasury entities should attempt salary offset through the Treasury Offset Program before applying the procedures in paragraph (c) of this section. See 5 CFR 550.1109.

(c) *Non-centralized salary offset for Treasury debts.* When centralized salary offset through the Treasury Offset Program is not available or appropriate, Treasury entities may collect delinquent Treasury debts through non-centralized salary offset. *See* 5 CFR 550.1109. In these cases, Treasury entities may offset a payment internally or make a request directly to a Federal payment agency to offset a salary payment to collect a delinquent debt owed by a Federal employee. If the Federal payment agency is another Treasury entity, the Treasury entity making the request shall do so through the Deputy Chief Financial Officer as described in § 5.20(c) of this part. At least thirty (30) days prior to offsetting internally or requesting a Federal agency to offset a salary payment, Treasury entities will send notice to the debtor in accordance with the requirements of § 5.4 of this part. When referring a debt for offset, Treasury entities will certify to the payment agency, in writing, that the debt is valid, delinquent and legally enforceable in the amount stated, and there are no legal bars to collection by salary offset. In addition, Treasury entities will certify that all due process and other prerequisites to salary offset have been met. *See* 5 U.S.C. 5514, 31 U.S.C. 3716(a), and this section for a description of the due process and other prerequisites for salary offset.

(d) *When prior notice not required.* Treasury entities are not required to provide prior notice to an employee when the following adjustments are made by a Treasury entity to a Treasury employee's pay:

(1) Any adjustment to pay arising out of any employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment, and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(e) *Hearing procedures.* (1) *Request for a hearing.* A Federal employee who has received a notice that his or her Treasury debt will be collected by means of salary offset may request a hearing concerning the existence or amount of the debt. The Federal employee also may request a hearing concerning the amount proposed to be deducted from the employee's pay each pay period. The employee must send any request for hearing, in writing, to the office designated in the notice described in § 5.4. *See* § 5.4(a)(11). The request must be received by the designated office on or before the 15th calendar day following the employee's receipt of the notice. The employee must sign the request and specify whether an oral or paper hearing is requested. If an oral hearing is requested, the employee must explain why the matter cannot be resolved by review of the documentary evidence alone. All travel expenses incurred by the Federal employee in connection with an in-person hearing will be borne by the employee.

(2) *Failure to submit timely request for hearing.* If the employee fails to submit a request for hearing within the time period described in paragraph (e)(1) of this section, the employee will have waived the right to a hearing, and salary offset may be initiated. However, Treasury entities should accept a late request for hearing if the employee can show that the late request was the result of circumstances beyond the employee's control or because of a failure to receive actual notice of the filing deadline.

(3) *Hearing official.* Treasury entities must obtain the services of a hearing official who is not under the supervision or control of the Secretary. Treasury entities may contact the Deputy Chief Financial Officer as described in § 5.20(c) of this part or an agent of any agency designated in Appendix A to 5 CFR part 581 (List of Agents Designated to Accept Legal Process) to request a hearing official.

(4) *Notice of hearing.* After the employee requests a hearing, the designated hearing official shall inform the employee of the form of the hearing to be provided. For oral hearings, the notice shall set forth the date, time and location of the hearing. For paper hearings, the notice shall notify the employee of the date by which he or she should submit written arguments to the designated hearing official. The hearing official shall give the employee reasonable time to submit documentation in support of the employee's position. The hearing official shall schedule a new hearing date if requested by both parties. The hearing official shall give both parties reasonable notice of the time and place of a rescheduled hearing.

(5) *Oral hearing.* The hearing official will conduct an oral hearing if he or she determines that the matter cannot be resolved by review of documentary evidence alone (for example, when an issue of credibility or veracity is involved). The hearing need not take the form of an evidentiary hearing, but may be conducted in a manner determined by the hearing official, including but not limited to:

(i) Informal conferences with the hearing official, in which the employee and agency representative will be given full opportunity to present evidence, witnesses and argument;

(ii) Informal meetings with an interview of the employee by the hearing official; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(6) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the available written record, including any documentation submitted by the employee in support of his or her position.

(7) *Failure to appear or submit documentary evidence.* In the absence of good cause shown (for example, excused illness), if the employee fails to appear at an oral hearing or fails to submit documentary evidence as required for a paper hearing, the employee will have waived the right to a hearing, and salary offset may be initiated. Further, the employee will have been deemed to admit the existence and amount of the debt as described in the notice of intent to offset. If the Treasury entity representative fails to appear at an oral hearing, the hearing official shall proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented and the documentary evidence submitted by both parties.

(8) *Burden of proof.* Treasury entities will have the initial burden to prove the existence and amount of the debt. Thereafter, if the employee disputes the existence or amount of the debt, the employee must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the employee may present evidence that the proposed terms of the repayment schedule are unlawful, would cause a financial hardship to the employee, or that collection of the debt may not be pursued due to operation of law.

(9) *Record.* The hearing official shall maintain a summary record of any hearing provided by this part. Witnesses will testify under oath or affirmation in oral hearings.

(10) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 days after the date on which the request for hearing was received by the Treasury entity. If the employee requests a delay in the proceedings, the deadline for the decision may be postponed by the number of days by which the hearing was postponed. When a decision is not timely rendered, the Treasury entity shall waive penalties applied to the debt for the period beginning with the date the decision is due and ending on the date the decision is issued.

(11) *Content of decision.* The written decision shall include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(12) *Final agency action.* The hearing official's decision shall be final.

(f) Waiver not precluded. Nothing in this part precludes an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or other statutory authority.

(g) *Salary offset process.* (1) *Determination of disposable pay.* The office of the Deputy Chief Financial Officer will consult with the appropriate Treasury entity payroll office to determine the amount of a Treasury Department employee's disposable pay (as defined in § 5.1 of this part) and will implement salary offset when requested to do so by a Treasury entity, as described in paragraph (c) of this section, or another agency, as described in § 5.20 of this part. If the debtor is not employed by the Treasury Department, the agency employing the debtor will determine the amount of the employee's disposable pay and will implement salary offset upon request.

(2) *When salary offset begins.* Deductions shall begin within three official pay periods following receipt of the creditor agency's request for offset.

(3) *Amount of salary offset.* The amount to be offset from each salary payment will be up to 15 percent of a debtor's disposable pay, as follows:

(i) If the amount of the debt is equal to or less than 15 percent of the disposable pay, such debt generally will be collected in one lump sum payment;

(ii) Installment deductions will be made over a period of no greater than the anticipated period of employment. An installment deduction will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount or the creditor agency has determined that smaller deductions are appropriate based on the employee's ability to pay.

(4) *Final salary payment.* After the employee has separated either voluntarily or involuntarily from the payment agency, the payment agency may make a lump sum deduction exceeding 15 percent of disposable pay from any final salary or other payments pursuant to 31 U.S.C. 3716 in order to satisfy a debt.

(h) *Payment agency's responsibilities.* (1) As required by 5 CFR 550.1109, if the employee separates from the payment agency from which a Treasury entity has requested salary offset, the payment agency must certify the total amount of its collection and notify the Treasury entity and the employee of the amounts collected. If the payment agency is aware that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar payments, it must provide written notification to the payment agency responsible for making such payments that the debtor owes a debt, the amount of the debt, and that the Treasury entity has complied with the provisions of this section. Treasury entities must submit a properly certified claim to the new payment agency before the collection can be made.

(2) If the employee is already separated from employment and all payments due from his or her former payment agency have been made, Treasury entities may request that money due and payable to the employee from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar funds, be administratively offset to collect the debt. Generally, Treasury entities will collect such monies through the Treasury Offset Program as described in § 5.9(c) of this part.

(3) When an employee transfers to another agency, Treasury entities should resume collection with the employee's new payment agency in order to continue salary offset.

§ 5.13 How will Treasury entities use administrative wage garnishment to collect a Treasury debt from a debtor's wages?

(a) Treasury entities are authorized to collect debts from a debtor's wages by means of administrative wage garnishment in accordance with the requirements of 31 U.S.C. 3720D and 31 CFR 285.11. This part adopts and incorporates all of the provisions of 31 CFR 285.11 concerning administrative wage garnishment, including the hearing procedures described in 31 CFR 285.11(f). Treasury entities may use administrative wage garnishment to collect a delinquent Treasury debt unless the debtor is making timely payments under an agreement to pay the debt in installments (see § 5.6 of this part). At least thirty (30) days prior to initiating an administrative wage garnishment, Treasury entities will send notice to the debtor in accordance with the requirements of § 5.4 of this part,

including the requirements of § 5.4(a)(10) of this part. For Treasury debts referred to the Financial Management Service under § 5.9 of this part, Treasury entities may authorize the Financial Management Service to send a notice informing the debtor that administrative wage garnishment will be initiated and how the debtor may request a hearing as described in § 5.4(a)(10) of this part. If a debtor makes a timely request for a hearing, administrative wage garnishment will not begin until a hearing is held and a decision is sent to the debtor. See 31 CFR 285.11(f)(4). If a debtor's hearing request is not timely, Treasury entities may suspend collection by administrative wage garnishment in accordance with the provisions of 31 CFR 285.11(f)(5). All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor.

(b) This section does not apply to Federal salary offset, the process by which Treasury entities collect debts from the salaries of Federal employees (see § 5.12 of this part).

§ 5.14 How will Treasury entities report Treasury debts to credit bureaus?

Treasury entities shall report delinquent Treasury debts to credit bureaus in accordance with the provisions of 31 U.S.C. 3711(e), 31 CFR 901.4, and the Office of Management and Budget Circular A–129, "Policies for Federal Credit Programs and Nontax Receivables." For additional information, see Financial Management Service's "Guide to the Federal Credit Bureau Program," which may be found at http://www.fms.treas.gov/debt. At least sixty (60) days prior to reporting a delinquent debt to a consumer reporting agency, Treasury entities will send notice to the debtor in accordance with the requirements of § 5.4 of this part. Treasury entities may authorize the Financial Management Service to report to credit bureaus those delinquent Treasury debts that have been transferred to the Financial Management Service under § 5.9 of this part.

§ 5.15 How will Treasury entities refer Treasury debts to private collection agencies?

Treasury entities will transfer delinquent Treasury debts to the Financial Management Service to obtain debt collection services provided by private collection agencies. See § 5.9 of this part.

§ 5.16 When will Treasury entities refer Treasury debts to the Department of Justice?

(a) *Compromise or suspension or termination of collection activity.* Treasury entities shall refer Treasury debts having a principal balance over $100,000, or such higher amount as authorized by the Attorney General, to the Department of Justice for approval of any compromise of a debt or suspension or termination of collection activity. *See* §§ 5.7 and 5.8 of this part; 31 CFR 902.1; 31 CFR 903.1.

(b) *Litigation.* Treasury entities shall promptly refer to the Department of Justice for litigation delinquent Treasury debts on which aggressive collection activity has been taken in accordance with this part and that should not be compromised, and on which collection activity should not be suspended or terminated. See 31 CFR part 904. Treasury entities may authorize the Financial Management Service to refer to the Department of Justice for litigation those delinquent Treasury debts that have been transferred to the Financial Management Service under § 5.9 of this part.

§ 5.17 Will a debtor who owes a Treasury debt be ineligible for Federal loan assistance or Federal licenses, permits or privileges?

(a) *Delinquent debtors barred from obtaining Federal loans or loan insurance or guaranties.* As required by 31 U.S.C. 3720B and 31 CFR 901.6, Treasury entities will not extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a debt owed to a Federal agency. This prohibition does not apply to disaster loans. Treasury entities may extend credit after the delinquency has been resolved. See 31 CFR 285.13 for standards defining when a "delinquency" is "resolved" for purposes of this prohibition.

(b) *Suspension or revocation of eligibility for licenses, permits, or privileges.* Unless prohibited by law, Treasury entities should suspend or revoke licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay a debt. The Treasury entity responsible for distributing the licenses, permits, or other privileges will establish policies and procedures governing suspension and revocation for delinquent debtors. If applicable, Treasury entities will advise the debtor in the notice required by § 5.4 of this part of the Treasury entities' ability to suspend or revoke licenses, permits or privileges. *See* § 5.4(a)(16) of this part.

§ 5.18 How does a debtor request a special review based on a change in circumstances such as catastrophic illness, divorce, death, or disability?

(a) *Material change in circumstances.* A debtor who owes a Treasury debt may, at any time, request a special review by the applicable Treasury entity of the amount of any offset, administrative wage garnishment, or voluntary payment, based on materially changed circumstances beyond the control of the debtor such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) *Inability to pay.* For purposes of this section, in determining whether an involuntary or voluntary payment would prevent the debtor from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation, and medical care), the debtor shall submit a detailed statement and supporting documents for the debtor, his or her spouse, and dependents, indicating:

(1) Income from all sources;
(2) Assets;
(3) Liabilities;
(4) Number of dependents;
(5) Expenses for food, housing, clothing, and transportation;
(6) Medical expenses; and
(7) Exceptional expenses, if any.

(c) *Alternative payment arrangement.* If the debtor requests a special review under this section, the debtor shall submit an alternative proposed payment schedule and a statement to the Treasury entity collecting the debt, with supporting documents, showing why the current offset, garnishment or repayment schedule imposes an extreme financial hardship on the debtor. The Treasury entity will evaluate the statement and documentation and determine whether the current offset, garnishment, or repayment schedule imposes extreme financial hardship on the debtor. The Treasury entity shall notify the debtor in writing of such determination, including, if appropriate, a revised offset, garnishment, or payment schedule. If the special review results in a revised offset, garnishment, or repayment schedule, the Treasury entity will notify the appropriate agency or other persons about the new terms.

§ 5.19 Will Treasury entities issue a refund if money is erroneously collected on a debt?

Treasury entities shall promptly refund to a debtor any amount collected on a Treasury debt when the debt is waived or otherwise found not to be owed to the United States, or as otherwise required by law. Refunds under this part shall not bear interest unless required by law.

Subpart C—Procedures for Offset of Treasury Department Payments To Collect Debts Owed to Other Federal Agencies

§ 5.20 How do other Federal agencies use the offset process to collect debts from payments issued by a Treasury entity?

(a) *Offset of Treasury entity payments to collect debts owed to other Federal agencies.* (1) In most cases, Federal agencies submit eligible debts to the Treasury Offset Program to collect delinquent debts from payments issued by Treasury entities and other Federal agencies, a process known as "centralized offset." When centralized offset is not available or appropriate, any Federal agency may ask a Treasury entity (when acting as a "payment agency") to collect a debt owed to such agency by offsetting funds payable to a debtor by the Treasury entity, including salary payments issued to Treasury entity employees. This section and § 5.21 of this subpart C apply when a Federal agency asks a Treasury entity to offset a payment issued by the Treasury entity to a person who owes a debt to the United States.

(2) This subpart C does not apply to Treasury debts. *See* §§ 5.10 through 5.12 of this part for offset procedures applicable to Treasury debts.

(3) This subpart C does not apply to the collection of non-Treasury debts through tax refund offset. *See* 31 CFR 285.2 for tax refund offset procedures.

(b) *Administrative offset (including salary offset); certification.* A Treasury entity will initiate a requested offset only upon receipt of written certification from the creditor agency that the debtor owes the past-due, legally enforceable debt in the amount stated, and that the creditor agency has fully complied with all applicable due process and other requirements contained in 31 U.S.C. 3716, 5 U.S.C. 5514, and the creditor agency's regulations, as applicable. Offsets will continue until the debt is paid in full or otherwise resolved to the satisfaction of the creditor agency.

(c) *Where a creditor agency makes requests for offset.* Requests for offset under this section shall be sent to the U.S. Department of the Treasury, ATTN: Deputy Chief Financial Officer, 1500 Pennsylvania Avenue, NW., Attention: Metropolitan Square, Room 6228, Washington, DC 20220. The Deputy Chief Financial Officer will forward the request to the appropriate Treasury entity for processing in accordance with this subpart C.

(d) *Incomplete certification.* A Treasury entity will return an incomplete debt certification to the creditor agency with notice that the creditor agency must comply with paragraph (b) of this section before action will be taken to collect a debt from a payment issued by a Treasury entity.

(e) *Review.* A Treasury entity is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(f) *When Treasury entities will not comply with offset request.* A Treasury entity will comply with the offset request of another agency unless the Treasury entity determines that the offset would not be in the best interests of the United States, or would otherwise be contrary to law.

(g) *Multiple debts.* When two or more creditor agencies are seeking offsets from payments made to the same person, or when two or more debts are owed to a single creditor agency, the Treasury entity that has been asked to offset the payments may determine the order in which the debts will be collected or whether one or more debts should be collected by offset simultaneously.

(h) *Priority of debts owed to Treasury entity.* For purposes of this section, debts owed to a Treasury entity generally take precedence over debts owed to other agencies. The Treasury entity that has been asked to offset the payments may determine whether to pay debts owed to other agencies before paying a debt owed to a Treasury entity. The Treasury entity that has been asked to offset the payments will determine the order in which the debts will be collected based on the best interests of the United States.

§ 5.21 What does a Treasury entity do upon receipt of a request to offset the salary of a Treasury entity employee to collect a debt owed by the employee to another Federal agency?

(a) *Notice to the Treasury employee.* When a Treasury entity receives proper certification of a debt owed by one of its employees, the Treasury entity will begin deductions from the employee's pay at the next officially established pay interval. The Treasury entity will send a written notice to the employee, indicating that a certified debt claim has been received from the creditor agency, the amount of the debt claimed to be owed by the creditor agency, the date deductions from salary will begin, and the amount of such deductions.

(b) *Amount of deductions from Treasury employee's salary.* The amount deducted under § 5.20(b) of this part will be the lesser of the amount of the debt certified by the creditor agency or an amount up to 15% of the debtor's disposable pay. Deductions shall continue until the Treasury entity knows that the debt is paid in full or until otherwise instructed by the creditor agency. Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the creditor agency. *See* § 5.12(g) (salary offset process).

(c) *When the debtor is no longer employed by the Treasury entity.* (1) *Offset of final and subsequent payments.* If a Treasury entity employee retires or resigns or if his or her employment ends before collection of the debt is complete, the Treasury entity will continue to offset, under 31 U.S.C. 3716, up to 100% of an employee's subsequent payments until the debt is paid or otherwise resolved. Such payments include a debtor's final salary payment, lump-sum leave payment, and other payments payable to the debtor by the Treasury entity. *See* 31 U.S.C. 3716 and 5 CFR 550.1104(l) and 550.1104(m).

(2) *Notice to the creditor agency.* If the employee is separated from the Treasury entity before the debt is paid in full, the Treasury entity will certify to the creditor agency the total amount of its collection. If the Treasury entity is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, Federal Employee Retirement System, or other similar payments, the Treasury entity will provide written notice to the agency making such payments that the debtor owes a debt (including the amount) and that the provisions of 5 CFR 550.1109 have been fully complied with. The creditor agency is responsible for submitting a certified claim to the agency responsible for making such payments before collection may begin. Generally, creditor agencies will collect such monies through the Treasury Offset Program as described in § 5.9(c) of this part.

(3) *Notice to the debtor.* The Treasury entity will provide to the debtor a copy of any notices sent to the creditor agency under paragraph (c)(2) of this section.

(d) *When the debtor transfers to another Federal agency.* (1) *Notice to the creditor agency.* If the debtor transfers to another Federal agency before the debt is paid in full, the Treasury entity will notify the creditor agency and will certify the total amount of its collection on the debt. The Treasury entity will provide a copy of the certification to the creditor agency. The creditor agency is responsible for submitting a certified claim to the debtor's new employing agency before collection may begin.

(2) *Notice to the debtor.* The Treasury entity will provide to the debtor a copy of any notices and certifications sent to the creditor agency under paragraph (d)(1) of this section.

(e) *Request for hearing official.* A Treasury entity will provide a hearing official upon the creditor agency's request with respect to a Treasury entity employee. *See* 5 CFR 550.1107(a).

Appendix A to Part 5—Treasury Directive 34–01—Waiving Claims Against Treasury Employees for Erroneous Payments

Treasury Directive 34–01

Date: July 12, 2000.
Sunset Review: July 12, 2004.
Subject: Waiving Claims Against Treasury Employees for Erroneous Payments.

1. Purpose

This Directive establishes the Department of the Treasury's policies and procedures for waiving claims by the Government against an employee for erroneous payments of: (1) Pay and allowances (*e.g.*, health and life insurance) and (2) travel, transportation, and relocation expenses and allowances.

2. Background

a. 5 U.S.C. § 5584 authorizes the waiver of claims by the United States in whole or in part against an employee arising out of erroneous payments of pay and allowances, travel, transportation, and relocation expenses and allowances. A waiver may be considered when collection of the claim would be against equity and good conscience and not in the best interest of the United States provided that there does not exist, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim.

b. The General Accounting Office Act of 1996 (Pub. L. 104–316), Title I, § 103(d), enacted October 19, 1996, amended 5 U.S.C. § 5584 by transferring the authority to waive claims for erroneous payments exceeding $1,500 from the Comptroller General of the United States to the Office of Management and Budget (OMB). OMB subsequently redelegated this waiver authority to the executive agency that made the erroneous payment. The authority to waive claims not exceeding $1,500, which was vested in the head of each agency prior to the enactment of Pub. L. 104–316, was unaffected by the Act.

c. 5 U.S.C. § 5514 authorizes the head of each agency, upon a determination that an employee is indebted to the United States for debts to which the United States is entitled to be repaid at the time of the determination, to deduct up to 15%, or a greater amount if agreed to by the employee, from the employee's pay at officially established pay intervals in order to repay the debt.

3. Delegation

a. The Deputy Assistant Secretary (Administration), the heads of bureaus, the Inspector General, and the Inspector General for Tax Administration are delegated the authority to waive, in whole or in part, a claim of the United States against an employee for an erroneous payment of pay and allowances, travel, transportation, and relocation expenses and allowances, aggregating less than $5,000 per claim, in accordance with the limitations and standards in 5 U.S.C. § 5584.

b. Treasury's Deputy Chief Financial Officer is delegated the authority to waive, in whole or in part, a claim of the United States against an employee for an erroneous payment of pay and allowances, travel, transportation, and relocation expenses and allowances, aggregating $5,000 or more per claim, in accordance with the limitations and standards in 5 U.S.C. § 5584.

4. Appeals

a. Requests for waiver of claims aggregating less than $5,000 per claim which are denied in whole or in part may be appealed to the Deputy Chief Financial Officer for the Department of the Treasury.

b. Requests for waiver of claims aggregating $5,000 or more per claim which are denied in whole or in part may be appealed to the Assistant Secretary (Management)/Chief Financial Officer.

5. Redelegation

The Deputy Assistant Secretary (Administration), the heads of bureaus, the Inspector General, and the Inspector General for Tax Administration may redelegate their respective authority and responsibility in writing no lower than the bureau deputy chief financial officer unless authorized by Treasury's Deputy Chief Financial Officer. Copies of each redelegation shall be submitted to the Department's Deputy Chief Financial Officer.

6. Responsibilities

a. The Deputy Assistant Secretary (Administration), the heads of bureaus, the Inspector General, and the Inspector General for Tax Administration shall:

(1) Promptly notify an employee upon discovery of an erroneous payment to that employee;

(2) Promptly act to collect the erroneous overpayment, following established debt collection policies and procedures;

(3) Establish time frames for employees to request a waiver in writing and for the bureau to review the waiver request. These time frames must take into consideration the responsibilities of the United States to take prompt action to pursue enforced collection on overdue debts, which may arise from erroneous payments.

(4) Notify employees whose requests for waiver of claims aggregating less than $5,000 per claim are denied in whole or in part of the basis for the denial and the right to appeal the denial to the Deputy Chief Financial Officer of the Department of the Treasury. All such appeals shall:

(a) Be made in writing;

(b) Specify the basis for the appeal;

(c) Include a chronology of the events surrounding the erroneous payments;

(d) Include a statement regarding any mitigating factors; and

(e) Be submitted to the official who denied the waiver request no later than 60 days from receipt by the employee of written notice of the denial of the waiver; and

(f) Attach at least the following documents: the employee's original request for a waiver; the bureau's denial of the request; any personnel actions, *e.g.*, promotions, demotions, step increases, etc. that relate to the overpayment.

(5) Forward to Treasury's Deputy Chief Financial Officer the appeal and supporting documentation, the bureau's recommendation as to why the appeal should be approved or denied; and a statement as to the action taken by the bureau to avoid a recurrence of the error.

(6) Pay a refund when appropriate if a waiver is granted;

(7) Fulfill all labor relations responsibilities when implementing this directive; and

(8) Fulfill any other responsibility of the agency imposed by 5 U.S.C. § 5584, or other applicable laws and regulations.

b. Treasury's Deputy Chief Financial Officer shall advise employees whose requests for waiver of claims aggregating $5,000 or more per claim are denied in whole or in part of the basis for the denial and the right to appeal the denial to the Assistant Secretary (Management)/Chief Financial Officer. All such appeals shall be in the format and contain the information and documentation described in subsection 6.a.(4), above. The Deputy Chief Financial Officer shall forward to Assistant Secretary (Management)/Chief Financial Officer the appeal and supporting documentation, his/her recommendation as to why the appeal should be approved or denied, and a statement obtained from the bureau from which the claim arose as to the action taken by the bureau to avoid a recurrence of the error.

7. Reporting Requirements

a. Each bureau, the Deputy Assistant Secretary (Administration) for Departmental Offices, the Inspector General, and the Inspector General for Tax Administration shall maintain a register of waiver actions subject to Departmental review. The register shall cover each fiscal year and be prepared by December 31 of each year for the preceding fiscal year. The register shall contain the following information:

(1) The total amount waived by the bureau;

(2) The number and dollar amount of waiver applications granted in full;

(3) The number and dollar amount of waiver applications granted in part and denied in part, and the dollar amount of each;

(4) The number and dollar amount of waiver applications denied in their entirety;

(5) The number of waiver applications referred to the Deputy Chief Financial Officer for initial action or for appeal;

(6) The dollar amount refunded as a result of waiver action by the bureau; and

(7) The dollar amount refunded as a result of waiver action by the Deputy Chief Financial Officer or the Assistant Secretary (Management)/Chief Financial Officer.

b. Each bureau, the Deputy Assistant Secretary (Administration) for Departmental Offices, the Inspector General, and the Inspector General for Tax Administration shall retain a written record of each waiver action for 6 years and 3 months. At a minimum, the written record shall contain:

(1) The bureau's summary of the events surrounding the erroneous payment;

(2) Any written comments submitted by the employee from whom collection is sought;

(3) An account of the waiver action taken and the reasons for such action; and

(4) Other pertinent information such as any action taken to refund amounts repaid.

8. Effect of Request for Waiver

A request for a waiver of a claim shall not affect an employee's opportunity under 5 U.S.C. § 5514(a)(2)(D) for a hearing on the determination of the agency concerning the existence or the amount of the debt, or the terms of the repayment schedule. A request by an employee for a hearing under 5 U.S.C. § 5514(a)(2)(D) shall not affect an employee's right to request a waiver of the claim. The determination whether to waive a claim may be made at the discretion of the deciding official either before or after a final decision is rendered pursuant to 5 U.S.C. § 5514(a)(2)(D) concerning the existence or the amount of the debt, or the terms of the repayment schedule.

9. Guidelines for Determining Requests

a. A request for a waiver shall *not* be granted if the deciding official determines there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim. There are no exceptions to this rule for financial hardship or otherwise.

(1) "Fault" exists if, in light of all the circumstances, it is determined that the employee knew or should have known that an error existed, but failed to take action to have it corrected. Fault can derive from an act or a failure to act. Unlike fraud, fault does not require a deliberate intent to deceive. Whether an employee should have known about an error in pay is determined from the perspective of a reasonable person. Pertinent considerations in finding fault include whether:

(a) The payment resulted from the employee's incorrect, but not fraudulent, statement that the employee should have known was incorrect;

(b) The payment resulted from the employee's failure to disclose material facts in the employee's possession which the employee should have known to be material; or

(c) The employee accepted a payment, which the employee knew or should have known to be erroneous.

(2) Every case must be examined in light of its particular facts. For example, where an employee is promoted to a higher grade but the step level for the employee's new grade is miscalculated, it may be appropriate to conclude that there is no fault on the employee's part because employees are not typically expected to be aware of and understand the rules regarding determination of step level upon promotion. On the other hand, a different conclusion as to fault potentially may be reached if the employee in question is a personnel specialist or an attorney who concentrates on personnel law.

b. If the deciding official finds an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim, then the request for a waiver must be denied.

c. If the deciding official finds no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim, the employee is *not* automatically entitled to a waiver. Before a waiver can be granted, the deciding official must also determine that collection of the claim against an employee would be against equity and good conscience and not in the best interests of the United States. Factors to consider when determining if collection of a claim against an employee would be against equity and good conscience and not in the best interests of the United States include, but are not limited to:

(1) Whether collection of the claim would cause serious financial hardship to the employee from whom collection is sought.

(2) Whether, because of the erroneous payment, the employee either has relinquished a valuable right or changed positions for the worse, regardless of the employee's financial circumstances.

(a) To establish that a valuable right has been relinquished, it must be shown that the right was, in fact, valuable; that it cannot be regained; and that the action was based chiefly or solely on reliance on the overpayment.

(b) To establish that the employee's position has changed for the worse, it must be shown that the decision would not have been made but for the overpayment, and that the decision resulted in a loss.

(c) An example of a "detrimental reliance" would be a decision to sign a lease for a more expensive apartment based chiefly or solely upon reliance on an erroneous calculation of salary, and the funds spent for rent cannot be recovered.

(3) The cost of collecting the claim equals or exceeds the amount of the claim;

(4) The time elapsed between the erroneous payment and discovery of the error and notification of the employee;

(5) Whether failure to make restitution would result in unfair gain to the employee;

(6) Whether recovery of the claim would be unconscionable under the circumstances.

d. The burden is on the employee to demonstrate that collection of the claim would be against equity and good conscience and not in the best interest of the United States.

10. Authorities

a. 5 U.S.C. § 5584, "Claims for Overpayment of Pay and Allowances, and of Travel, Transportation and Relocation Expenses and Allowances."

b. 31 U.S.C. § 3711, "Collection and Compromise."

c. 31 U.S.C. § 3716, "Administrative Offset."

d. 31 U.S.C. § 3717, "Interest and Penalty on Claims."

e. 5 CFR Part 550, subpart K, "Collection by Offset from Indebted Government Employees."

f. 31 CFR Part 5, subpart B, "Salary Offset."

g. Determination with Respect to Transfer of Functions Pursuant to Public Law 104–316, OMB, December 17, 1996.

11. Cancellation

TD 34–01, "Waiver of Claims for Erroneous Payments," dated October 25, 1995, is superseded.

12. Office of Primary Interest

Office of Accounting and Internal Control.

Dated: September 26, 2002.

Lisa Ross,

Acting Assistant Secretary for Management and Chief Financial Officer.

Edward R. Kingman, Jr.,

Assistant Secretary for Management and Chief Financial Officer, Department of the Treasury.

[FR Doc. 02–27006 Filed 10–25–02; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

31 CFR Part 5

RIN 1505–AA90

Treasury Debt Collection

AGENCY: Department of the Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to interim regulations.

SUMMARY: This proposed rule proposes to revise Treasury's debt collection regulations. Elsewhere in this issue of the **Federal Register**, the Department of the Treasury is issuing an interim rule revising the Department of the Treasury's debt collection regulations to conform with the Debt Collection Improvement Act of 1996, the revised Federal Claims Collection Standards, and other laws applicable to the collection of nontax debts owed to Treasury. The interim rule revises Treasury's regulations governing the offset of Treasury-issued payments to collect debts owed to other Federal agencies. The interim rule also serves as the text of this notice of proposed rulemaking.

DATES: Comments must be received on or before November 27, 2002.

ADDRESSES: Send comments to Cathy Thomas, Office of the Deputy Chief Financial Officer, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Attention: Metropolitan Square, Room 6228, Washington, DC 20220. Comments also may be submitted by electronic mail to*cathy.thomas@do.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Cathy Thomas, Office of the Deputy Chief Financial Officer, at (202) 622–0817, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. This document is available for downloading from the Department of the Treasury's Financial Management Service web site at the following address:*http://www.fms.treas.gov*.

SUPPLEMENTARY INFORMATION: The interim rule in this issue of the **Federal Register** revises 31 CFR part 5. For the text of the interim rule, see Treasury Debt Collection, published elsewhere in this issue of the **Federal Register**.

Regulatory Analyses

This proposed rule is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rule will only affect persons who owe delinquent nontax debts to the Treasury Department and other Federal agencies. Accordingly, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 31 CFR Part 5

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Government employee, Hearing and appeal procedures, Pay administration, Salaries, Wages.

Dated: September 26, 2002.

Edward R. Kingman, Jr.,

Assistant Secretary for Management and Chief Financial Officer, Department of the Treasury.

[FR Doc. 02–27007 Filed 10–25–02; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Monday,
October 28, 2002

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 61
Picture Identification Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. FAA–2002–11666; Amendment No. 61–107]

RIN 2120–AH76

Picture Identification Requirements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This rule revises the pilot certificate requirements to require a person to carry a photo identification acceptable to the Administrator when exercising the privileges of a pilot certificate. Additionally, this final rule requires a pilot certificate holder to present a photo identification when requested by the Administrator, an authorized representative of the National Transportation Safety Board (NTSB) or Transportation Security Administration (TSA), or a law enforcement officer. These measures address security concerns regarding the identification of pilots.

DATES: This final rule is effective October 28, 2002. You may send your comments to reach us on or before November 27, 2002.

ADDRESSES: Mail or hand deliver your comments to Docket Management System, Attention: Docket No. FAA–2002–11666, U.S. Department of Transportation, 400 Seventh Street, SW (Nassif Building), Room 401, Plaza Level, Washington, DC 20590–0001. Send electronic comments to: *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: John D. Lynch, Certification Branch, AFS–840, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone No. (202) 267–3844.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, federalism, or security impacts that might result from this rule. The most helpful comments reference a specific portion of the rule, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

All comments received will be filed in the docket. The FAA will develop a report that summarizes each substantive public contact with the FAA personnel concerning this rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

We will consider all comments we receive on or before the closing date for comments. We may change this rule based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments, include with your comments a pre-addressed, stamped postcard that identifies the docket number. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last five digits of the Docket number of this notice (10910). Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register**'s Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If your organization is a small entity and you have a question, contact your local FAA official. If you don't know how to contact your local FAA official, you may contact the Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (888) 551–1594. Internet users can find additional information on SBREFA on the FAA's web page at www.faa.gov and may send electronic inquiries to the following internet address: 9-AWA-SBREFA@faa.gov.

Background

The Aviation and Transportation Security Act (ATSA), Public Law 107–71, enacted on November 19, 2001, requires the Under Secretary of Transportation for Security ("Under Secretary") to consider a requirement for a photo identification pilot certificate. In relevant part, § 109(a) of ASTA provides that the Under Secretary in consultation with the Administrator of the Federal Aviation Administration, may "consider whether to require all pilot licenses to incorporate a photograph of the license holder and appropriate bio-metric imprints." The Under Secretary is required to report annually to Congress on the progress in evaluating and taking such actions.

In addition, § 129 of ATSA amends 49 U.S.C. 44703(g), by adding the phrase "combating acts of terrorism" as an additional purpose for revising the FAA airman certification system. The FAA now must consider terrorism as a factor in addition to the needs of pilots and officials responsible for enforcing drug-related laws when making modifications to the airman certification system.

Congress first mandated modification of the airman certification system in the Federal Aviation Administration Drug Enforcement Assistance Act of 1988 (DEA Act) (Subtitle E of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690)) with the objective of assuring positive and verifiable identification of each person applying for or holding a pilot certificate. The DEA Act was intended to assist Federal, State, and local agencies involved in the enforcement of the nation's drug laws. In response to the DEA Act, the FAA issued a Notice of Proposed Rulemaking on March 12, 1990 (55 FR 9270). The proposed rule would have required a two part pilot certificate; part A was an Airman Identity Card and part B would include all ratings and limitations. This new certificate would be issued to private, commercial, and airline transport pilots. As proposed, the Airman Identity Card portion of the pilot certificate would be non-forgeable and contain a photograph of the pilot, his or her signature, address, and identification number. In addition, the certificates would be machine-readable by equipment in use by the United States Customs Service, and have a variety of other security features. The FAA's proposed rule to modify the airman certification system has not been issued as a final rule by the FAA.

Petition From the Aircraft Owners and Pilots Association

By letter, dated February 21, 2002, Mr. Philip Boyer, President, Aircraft Owners and Pilots Association (AOPA), 421 Aviation Way, Frederick, MD 21701, petitioned the FAA to revise 14 CFR 61.3(a) and (l) to require a pilot to carry, and present for appropriate inspection, a form of photo identification acceptable to the Administrator of the Federal Aviation Administration. Specifically, the AOPA requested that 14 CFR 61.3(a) be amended to provide that a person may not act as a pilot of a civil aircraft of U.S. registry unless that person has a form of photo identification acceptable to the Administrator in that person's physical possession or readily accessible in the aircraft while exercising the privileges of a pilot certificate or special purpose pilot authorization. The AOPA also suggested 14 CFR 61.3(l) be amended to provide that each person required to have a form of photo identification by 14 CFR 61.3(a) be required to present it for inspection upon request from the Administrator or any Federal, State, or local law enforcement officer.

In its petition, the AOPA expressed the view that the intent of the DEA Act and ATSA provisions on pilot identification would be met by its recommended rule changes, and that its approach would be far less costly and quicker to implement than would any significant modification to the airman certification system. The AOPA notes that all fifty States and the District of Columbia issue a photo identification driver's license, and that currently candidates for a pilot certificate examination are required to present photo identification. Thus, the requirement to present a photo identification acceptable to the Administrator could be met with a driver's license, at no cost to pilots or the government. Precisely because of the very minimal burden of the recommended changes, the AOPA believes that its recommendation should be implemented through a direct final rule, and suggests that the FAA find notice and comment to be impractical, unnecessary, or contrary to the public interest.

The FAA's Acceptance of the Petition

By letter dated March 27, 2002, the FAA responded to the AOPA petition by stating that the proposal "provides a positive short-term measure to enhance security throughout the general aviation community." While the AOPA's recommendations are a good interim measure, neither the FAA nor the Transportation Security Administration has concluded that these measures address fully the concerns reflected in the DEA Act or ATSA. Although requiring a pilot to carry an acceptable photo identification will provide more security than not requiring an identification, the overlap of key information between the pilot certificate and the required photo identification will be limited and potentially inconsistent. For example, it is quite likely the addresses on the two documents will not match, because the address on a pilot certificate is not updated when a pilot moves. Moreover, an improved pilot certificate could include a variety of security enhancements in addition to simply having a photograph of the holder on the certificate.

This rule adopts the core of the AOPA's recommendations for pilot identification requirements. The FAA will continue to work in conjunction with the TSA to determine what further actions need to be taken to improve airman certification process. The FAA considers the AOPA's recommendations to be an expeditious and cost effective measure that will provide additional security through enhanced identification of pilots exercising the privileges of their certificate. Requiring pilots to carry photographic identification with a pilot certificate will be cost effective because most pilots already carry an identification acceptable to the Administrator, such as a driver's license, and the cost of obtaining a government issued photo identification is minimal. The TSA recognizes the ongoing security concerns regarding the use of an aircraft to conduct terrorist acts within the United States. Therefore, TSA has requested that the FAA issue a final rule, without prior notice and public comment, effective upon publication, adopting the AOPA petition to require that pilots properly identify themselves. The TSA believes this action is necessary to prevent further terrorist acts which may result in grave hazards to aircraft, persons, and property within the United States.

The Rule Change

The chart below is a brief summary of the regulatory changes contained in this final rule. The list is followed by a more detailed discussion of the rule.

Final rule No.	Part 61 Sec. No./Para. No.	Summary of the rule
1	§ 61.3(a)	Each person must carry a photo identification acceptable to the Administrator when exercising the privileges of a pilot certificate.
2	§ 61.3(l)	Each person must present such photo identification when requested to do so by the Administrator, an authorized representative of the NTSB or the TSA, or a law enforcement officer.

(1) 14 CFR 61.3(a) is amended to require each person to carry a photo identification when exercising the privileges of a pilot certificate.

The FAA revises 14 CFR 61.3(a) to require each person to carry a photo identification when exercising the privileges of a pilot certificate. The photo identification in most instances likely will be a driver's license issued by a State, the District of Columbia, or a territory or possession of the United States. It may also be a government identification card issued by the Federal government or a State, the District of Columbia, or a territory or possession of the United States, a military identification card, or a passport. Under this rule, a credential with a photo issued by an air carrier or airport operator that provides unescorted access to a security identification display area at an airport regulated under 49 CFR part 1542 is acceptable. The rule also permits other forms of photo identification that the Administrator finds acceptable.

(2) 14 CFR 61.3(l) is revised to require a person to present a photo identification when requested to do so

by the Administrator, an authorized representative from the NTSB or the TSA, or a law enforcement officer.

The FAA revises 14 CFR 61.3(l) so as to require a person to present a photo identification when requested to do so by the Administrator, an authorized representative of the NTSB or the TSA, or a law enforcement officer. A request from the Administrator for a person to present a photo identification includes a request from any FAA Aviation Safety Inspector or designated examiner. A request from an authorized representative of the NTSB for a person to present a photo identification includes a request from an Accident Investigator of the NTSB. A request from a law enforcement officer for a person to present a photo identification includes a request from any city, municipality, county, parish, borough, State, or Federal law enforcement officer.

Justification for Immediate Adoption

This action is being taken without providing the opportunity for prior notice and public comment. The TSA requests immediate adoption of this rule to require pilots to carry and present identification and the FAA finds this action is necessary to assist in preventing hazards to aircraft, persons, and property within the United States. The TSA, in consultation with the security agencies of the Executive Branch, monitors threats to aviation security on a constant basis. The TSA has issued other regulatory documents that became effective immediately in order to minimize security threats and potential security vulnerabilities to the fullest extent possible, and the FAA issues this rule without prior notice and public comment for the same reason. The FAA, TSA, and other federal security agencies have been concerned about the potential misuse of an aircraft to carry out terrorist acts in the United States since September 11, and the TSA and FAA now believe it is necessary to require pilots to carry and present picture identification to help minimize the threat of such acts.

The FAA finds that prior notice and public comment are impracticable and contrary to the public interest, pursuant to section 553 of the Administrative Procedure Act (APA). Section 553(b)(B) of the APA permits an agency to forego notice and comment rulemaking when "the agency for good cause finds * * * that notice and public procedures thereon are impracticable, unnecessary or contrary to the public interest." The use of notice and comment prior to issuance of this rule would delay the potential security benefit of this rulemaking and increase the public's exposure to the risk of another terrorist act unnecessarily. FAA asks for comment with publication of this rule, and will consider all comments received during the comment period. If changes to the rule are necessary to address aviation security more effectively, or in a less burdensome but equally effective manner, FAA will make such changes. The FAA finds that that the circumstances described herein warrant immediate action, and finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

Economic Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review, directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more, in any one year (adjusted for inflation).

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. This rule is considered significant under that Order. If we determine that the expected impact is so minimal that the regulation does not warrant a full evaluation, we include a statement to that effect and the basis for it in the preamble. The FAA has determined that the expected economic impact of this rule is so minimal that it does not warrant a full regulatory evaluation. This action imposes no costs on pilots subject to this rule because most persons already have some form of photo identification. It does, however, provide unquantifiable security benefits by helping establish the identity of pilots. The FAA also has determined that this rule is consistent with the objectives of Executive Order 12866.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final action imposes no costs on any small entities subject to this rule. Consequently, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities. The FAA solicits comments on this certification.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, aren't considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA accordingly has assessed the potential effect of this rule to be minimal and therefore has determined that this rule will not result in an impact on international trade.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act) requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The Act requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed "significant intergovernmental mandate." Under the Act, a "significant intergovernmental mandate" is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this rule would not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. We determined that this rule, therefore, would not have federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no requirements for information collection associated with this rule.

Environmental Analysis

FAA Order No. 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order No. 1050.1D, Appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those that may cause a significant impact on the human environment if implemented) qualify for a categorical exclusion. The FAA has determined that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its implementation.

Energy Impact

We assessed the energy impact of this rule in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 61

Aircraft, Airmen, Aviation safety, and Reporting and recordkeeping requirements.

The Amendment

For the reasons stated in the preamble, the Federal Aviation Administration amends part 61 of Title 14 of the Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

2. Amend § 61.3 by revising paragraph (a) and the introductory text of paragraph (l) and by adding paragraph (l)(4) to read as follows:

§ 61.3 Requirement for certificates, ratings, and authorizations.

(a) *Pilot certificate.* A person may not act as pilot in command or in any other capacity as a required pilot flight crewmember of a civil aircraft of U.S. registry, unless that person—

(1) Has a valid pilot certificate or special purpose pilot authorization issued under this part in that person's physical possession or readily accessible in the aircraft when exercising the privileges of that pilot certificate or authorization. However, when the aircraft is operated within a foreign country, a current pilot license issued by the country in which the aircraft is operated may be used; and

(2) Has a photo identification that is in that person's physical possession or readily accessible in the aircraft when exercising the privileges of that pilot certificate or authorization. The photo identification must be a:

(i) Valid driver's license issued by a State, the District of Columbia, or territory or possession of the United States;

(ii) Government identification card issued by the Federal government, a State, the District of Columbia, or a territory or possession of the United States;

(iii) U.S. Armed Forces' identification card;

(iv) Official passport;

(v) Credential that authorizes unescorted access to a security identification display area at an airport regulated under 49 CFR part 1542; or

(vi) Other form of identification that the Administrator finds acceptable.

* * * * *

(l) Inspection of certificate. Each person who holds an airman certificate, medical certificate, authorization, or license required by this part must present it and their photo identification as described in paragraph (a)(2) of this section for inspection upon a request from:

* * * * *

(4) An authorized representative of the Transportation Security Administration.

Issued in Washington, DC, on October 23, 2002.

Marion C. Blakey,

Administrator.

[FR Doc. 02–27411 Filed 10–23–02; 4:10 pm]

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Federal Register

Monday,
October 28, 2002

Part V

Department of Housing and Urban Development

24 CFR Part 982
Housing Choice Voucher Program Homeownership Option: Eligibility of Units Owned or Controlled by a Public Housing Agency; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–4759–I–01]

RIN 2577–AC39

Housing Choice Voucher Program Homeownership Option: Eligibility of Units Owned or Controlled by a Public Housing Agency

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule provides that units owned or substantially controlled by a public housing agency (PHA) are eligible for purchase under the Housing Choice Voucher Program homeownership option. The inclusion of PHA-owned or controlled properties among properties eligible for purchase under the homeownership option will expand the availability of housing and affordable homeownership opportunities for voucher families participating in the homeownership option. The interim rule also establishes procedures to remove potential conflicts of interest where the PHA is the seller. Specifically, the interim rule provides that an independent entity must perform certain administrative duties for which the PHA would normally be responsible. These provisions are modeled on the requirements for PHA-owned units in the voucher rental program.

DATES: *Effective Date:* November 27, 2002.

Comments Due Date: December 27, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for inspection and copying between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–0477. (This is not a toll-free number.) Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Under the "homeownership option" of the Housing Choice Voucher Program, a public housing agency (PHA) may choose to provide monthly tenant-based assistance to an eligible family that purchases a dwelling unit that will be occupied by the family. The regulatory requirements governing the homeownership option are located in subpart M of HUD's regulations for the Housing Choice Voucher Program at 24 CFR part 982. Subpart M describes program requirements for special housing types, where assistance is provided with voucher program funds under the consolidated annual contributions contract.

This interim rule provides that properties owned or substantially controlled by a PHA are eligible for purchase under the homeownership option. The current homeownership option regulations are unclear regarding the eligibility of PHA-owned units. This interim rule amends § 982.628 of the homeownership option regulations, which concerns the eligibility of units, to specify that a PHA may provide homeownership assistance for the purchase of a PHA-owned unit. The inclusion of PHA-owned units in the universe of eligible units will expand the availability of housing and affordable homeownership opportunities for voucher families participating in the homeownership option.

New § 982.628(c) provides that PHA-owned units are eligible for purchase through the homeownership option, but provides that an independent entity must perform certain administrative duties for which the PHA would normally be responsible. The independent entity must review the contract of sale, conduct the initial housing quality standards (HQS) inspection, and review the independent inspection report. In addition, the independent entity must determine the reasonableness of the sales price and any PHA provided financing.

The reviews performed by the independent entity shall be conducted in accordance with the homeownership option regulations. The independent entity must be selected by the PHA and approved by HUD in accordance with existing procedures under the tenant-based assistance program at § 982.352(b)(iv)(B) and (C). The PHA may not steer, direct, or require families to purchase PHA-owned properties.

Except for the purchase of PHA-owned units, the homeownership option regulations do not require the PHA to consider the reasonability of the sales price. In addition, although a PHA may establish requirements governing terms and types of financing, it is not required to do so (see § 982.632). Therefore, the requirement that the independent entity review the reasonableness of the sales price and any PHA provided financing for PHA-owned units goes beyond what is otherwise required, but HUD believes a third party review of these two areas is helpful to protect the purchasing family where the seller is also the administering PHA.

II. Justification for Interim Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is "impractical, unnecessary, or contrary to the public interest" (*see* 24 CFR 10.1). For the following reasons, HUD has determined that it would be contrary to the public interest to delay the effectiveness of this rule in order to solicit prior public comments.

The interim rule eliminates ambiguity in HUD's homeownership option regulations by clarifying that PHA-owned units are eligible for purchase with voucher homeownership assistance. Clarifying that PHA-owned units are eligible for purchase under the homeownership option will expand the availability of housing and affordable homeownership opportunities for voucher families participating in the program. Delaying the effectiveness of this rule to solicit prior public comment would perpetuate the current ambiguity of the regulations, and might prevent families from purchasing PHA-owned units.

Although the interim rule also establishes new requirements for such sales, these procedures are necessary to eliminate potential program abuses where the PHA is also the seller. Further, these procedures are closely modeled on the existing requirements for PHA-owned units under the rental voucher program. Accordingly, these requirements are familiar to PHAs and voucher families, and should not raise any novel issues or impose undue administrative burdens on PHAs.

Although HUD believes that good cause exists to publish this rule for effect without prior public comment, HUD recognizes the value of public comment in the development of its regulations. HUD has, therefore, issued these regulations on an interim basis and has provided the public with a 60-day comment period. HUD welcomes comments on the regulatory amendments made by this interim rule. The public comments will be addressed in the final rule.

III. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That Finding remains applicable to this interim rule and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule is exclusively concerned with homeownership voucher assistance. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (RFA), has reviewed and approved this interim rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows:

(1) *A Substantial Number of Small Entities Will Not be Affected.* The interim rule is exclusively concerned with public housing agencies that administer tenant-based housing assistance under section 8 of the United States Housing Act of 1937. Under the definition of "small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

(2) *No Significant Economic Impact.* The interim rule does not change the amount of funding available under the Housing Choice Voucher Program. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Catalog of Domestic Assistance Number

The Catalog of Domestic Assistance Number for the Housing Choice Voucher Program is 14.871.

List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 982 as follows:

PART 982—SECTION 8 TENANT BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

1. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

2. Add § 982.628(c) to read as follows:

§ 982.628 Homeownership option: Eligible units.

* * * * * *

(c) *PHA-owned units.* Homeownership assistance may be provided for the purchase of a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA), only if all of the following conditions are satisfied:

(1) The PHA must inform the family, both orally and in writing, that the family has the right to purchase any eligible unit and a PHA-owned unit is freely selected by the family without PHA pressure or steering;

(2) The unit is not ineligible housing;

(3) The PHA must obtain the services of an independent agency, in accordance with § 982.352(b)(1)(iv)(B) and (C), to perform the following PHA functions:

(i) Inspection of the unit for compliance with the HQS, in accordance with § 982.631(a);

(ii) Review of the independent inspection report, in accordance with § 982.631(b)(4);

(iii) Review of the contract of sale, in accordance with § 982.631(c); and

(iv) Determination of the reasonableness of the sales price and any PHA provided financing, in accordance with § 982.632 and other supplementary guidance established by HUD.

* * * * * *

Dated: September 3, 2002.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 02–27310 Filed 10–25–02; 8:45 am]

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Part VI

The President

Proclamation 7614—United Nations Day, 2002

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Presidential Documents

Title 3—

The President

Proclamation 7614 of October 23, 2002

United Nations Day, 2002

By the President of the United States of America

A Proclamation

The United Nations was founded 57 years ago to improve our global community by strengthening the ties among member nations through improved communication, expanded understanding, and enhanced security. On United Nations Day, America joins the world in commemorating the founding of this important international organization and recognizing the profound impact it has had on our world and the role that it continues to play.

Since October 24, 1945, the United Nations Organization has grown to include 191 member states. Through its relief agencies, the U.N. aids and protects millions of refugees and displaced persons worldwide. For example, in 2001, the United Nations World Food Program provided aid to 77 million people in 82 countries and helped to avert a severe famine that threatened Afghanistan. The U.N. also seeks to improve living conditions around the globe by immunizing children, providing safe drinking water, and fighting disease.

The United States remains committed to helping the U.N. to advance human rights, healthcare, security, and education throughout the world; and we will continue to meet these and other commitments as we rejoin the United Nations Educational, Scientific, and Cultural Organization. Our country continues to work with the U.N. in supplying aid for nations and peoples in need or distress, and in providing medical care and other essentials through U.N. agencies such as UNICEF.

As our world faces new challenges and opportunities, the efforts of the United Nations take on a renewed significance. The United States recognizes the U.N. for its efforts to support and strengthen the international coalition against global terror. And we hope the United Nations will fulfill its role in addressing the threats posed to the civilized world, particularly the threat now posed by Iraq. As a founding member of the U.N., the United States reaffirms our dedication to this vital organization and our hope that it will continue to fulfill the vision of its founders.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 24, 2002, as United Nations Day. I call upon the people of the United States to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

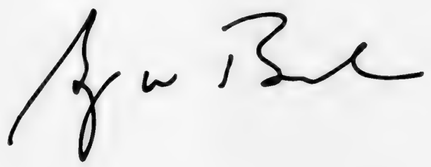

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[1]Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4]No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 29

[Docket No. SW011; Special Conditions No. 29–011–SC]

Special Conditions: Sikorsky Aircraft Corporation Model S–92A Helicopter; Use of a Dual-Engine 30-Minute Power Rating

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters. The S–92A helicopters will have an unusual feature associated with the use of a dual-engine 30-minute power rating. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for use of this power rating. These special conditions contain the additional safety standards that the Administrator considers necessary to ensure that critical functions of systems will be maintained during use of this rating.

DATES: The effective date of these special conditions is October 16, 2002. Comments must be received on or before December 30, 2002.

ADDRESSES: Comments on these special conditions should be mailed in duplicate to: Federal Aviation Administration (FAA), Office of the Regional Counsel, Attention: Rules Docket No. SW011, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked Docket No. SW011. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 4:00 p.m. The Rules Docket for special conditions is maintained at the Federal Aviation Administration, Rotorcraft Directorate, 2601 Meacham Blvd., Room 448, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, FAA, Rotorcraft Directorate, Rotorcraft Standards, Fort Worth, Texas 76193–0110, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected helicopter. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, views, or data. Communications should identify the regulatory docket and be submitted in duplicate to the address specified above. We will consider all comments we receive on or before the closing date for comments. We may change these special conditions in light of the comments we receive. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. If you want the FAA to acknowledge receipt of your comments on this proposal, include a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

For the Model S–92A helicopter, Sikorsky Aircraft Corporation has applied for use of a dual-engine 30-minute power rating in addition to a maximum continuous power rating. The Sikorsky Model S–92A is a transport category A and B rotorcraft, powered by two General Electric CT7–8 engines certificated with a dual-engine 30-minute power rating greater than the maximum continuous power rating. The S–92A with the CT7–8 engine installation will have 30-Second One-Engine-Inoperative (OEI), 2-Minute OEI, Continuous OEI, 30-Minute, Takeoff, and Maximum Continuous power ratings.

This unusual dual-engine power capability must be limited to use for hovering operations only for periods not to exceed 30 minutes at any time after takeoff, to allow the rotorcraft to fly extended hover maneuvers while performing search and rescue missions. However, this rating is also suitable for other missions that require increased rotorcraft hovering capability and duration, beyond those that the maximum continuous engine rating allows.

The S–92A has the same engine torque and rotor speed limits for use of aircraft 30-minute power or maximum continuous power ratings. As a result, the FAA has determined that compliance with the structural and drive system requirements of 14 CFR part 29 (part 29) has not been affected by the 30-minute rating application.

The applicable airworthiness requirements do not contain a 30-minute power rating definition and do not contain adequate or appropriate safety standards for the type certification of this unusual engine rating. Due to increased engine N_1 (gas turbine speed) and $T_{4.5}$ (power turbine inlet temperature) limits for this new rating, as compared to the existing continuous rating, airworthiness requirements must be specified for powerplant cooling and operational limitations for this novel or unusual design feature.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Sikorsky Aircraft Corporation must show that the Model S–92A helicopter meets the applicable provisions of the regulations as follows:

- 14 CFR Part 29, Amendment 29–1 through Amendment 29–45, inclusive;
- 14 CFR Part 29, Appendix H, Amendments 36–1 through the amendment effective at the time of certification; and
- Any special conditions, exemptions, and equivalent safety findings deemed necessary.

If the Administrator finds that the applicable airworthiness regulations for part 29 do not contain adequate or appropriate safety standards for the Sikorsky Model S–92A because of a novel or unusual design feature, special

conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Sikorsky Model S–92A must comply with the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as appropriate, are defined in § 11.19, and issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the TC for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same TC be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Sikorsky Model S–92A will incorporate the following novel or unusual design features: A dual-engine 30-minute power rating which will require a special condition for hovering cooling test procedures and powerplant limitations.

Applicability

As discussed above, these special conditions are applicable to the Sikorsky Model S–92A. Should Sikorsky Aircraft Corporation apply at a later date for a change to the TC to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of helicopter. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the helicopter.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Sikorsky Model S–92A is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Parts 21 and 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for these special conditions is as follows: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44709, 44711, 44713, 44715, 45303.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Sikorsky Model S–92A helicopters.

1. Hovering Cooling Test Procedures

Acceptable hovering cooling provisions must be shown for the following conditions, which replace the requirements of § 29.1049:

(a) At the maximum weight, or at the greatest weight at which the rotorcraft can hover (if less), at sea level, with the power required to hover but not more than 30-minute power, in-ground effect with the maximum tailwind velocity and azimuths requested for approval, until at least 5 minutes after the occurrence of the highest temperature recorded or until the expiration of the 30-minute power application period, whichever occurs first; and,

(b) With 30-minute power, maximum weight, and at the altitude resulting in zero rate of climb for this configuration, until at least 5 minutes after the occurrence of the highest temperature recorded or until the expiration of the 30-minute power application period, whichever occurs first.

2. Powerplant Limitations

In addition to the requirements of § 29.1521 the limitations for rated 30-minute power usage must be established as follows:

Rated 30-Minute Power Operations

The powerplant rated 30-minute power operation must be limited to use for periods not to exceed 30 minutes for hovering operations only and limited by:

(a) The maximum rotational speed which may not be greater than

(i) The maximum value determined by the rotor design; or

(ii) The maximum value shown during the type tests;

(b) The maximum allowable power turbine inlet gas temperature;

(c) The maximum allowable engine and transmission oil temperatures.

(d) The maximum allowable power or torque for each engine, considering the power input limitations of the transmission with all engines operating; and

(e) The maximum allowable power or torque for each engine considering the power input limitations of the transmission with one-engine-inoperative.

Issued in Fort Worth, Texas, on October 16, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service, ASW–100.

[FR Doc. 02–27378 Filed 10–28–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–4]

Establishment of Class D Airspace; Greenville Donaldson Center, SC, Amendment of Class E2 Airspace; Greer, Greenville-Spartanburg Airport SC, and Amendment of Class E5 Airspace; Greenville, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action delays indefinitely the establishment of Class D airspace at Greenville Donaldson Center, SC, the amendment of Class E2 airspace at Greer, Greenville-Spartanburg Airport, SC, and the amendment of Class E5 airspace at Greenville, SC. The construction of a new federal contract tower with a weather reporting system has been delayed, with an uncertain completion date; therefore, the effective date of the establishment of Class D airspace and amendment of Class E airspace must also be delayed indefinitely.

EFFECTIVE DATE: The effective date of the final rule published May 1, 2002, at 67 FR 21575 (0901 UTC, November 28, 2002) is delayed indefinitely.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

Airspace Docket No. 02–ASO–04, published in the **Federal Register** on May 1, 2002, (67 FR 21575), established Class D airspace at Greenville Donaldson Center, SC, amended Class E2 airspace at Greer, Greenville-Spartanburg Airport, SC, and amended Class E5 airspace at Greenville, SC. The construction of a federal contract tower with a weather reporting system at Donaldson Center Airport made this action necessary. This action was originally scheduled to become effective on November 28, 2002; however, an unforeseen delay in beginning construction on the tower has required the effective date of this action to be delayed. Construction is now scheduled to begin in January 2003, with an anticipated date of September 2003. A notice announcing a new effective date will be published in the **Federal Register** at least 90 days prior to the new effective date.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Delay of Effective Date

The effective date on Airspace Docket No. 02–ASO–04 is hereby delayed indefinitely.

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

* * * * *

Issued in College Park, Georgia, on October 17, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–27174 Filed 10–28–02; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 242–0367; FRL–7396–3]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District, Ventura County Air Pollution Control District, and Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the Imperial County Air Pollution Control District (ICAPCD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on April 25, 2002 and concerns volatile organic compound (VOC) emissions from gasoline dispensing facilities. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves local rules that regulate this emission source and directs California to correct rule deficiencies.

EPA is also finalizing the full approval of a revision to the Santa Barbara County Air Pollution Control District portion of the California SIP regarding organic liquid cargo vessels.

EFFECTIVE DATE: This rule is effective on November 29, 2002.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted rule revisions at the following locations:

Air and Radiation Docket and Information Center (6102T), U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rules that were submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On April 25, 2002 (67 FR 20478), we proposed a limited approval and limited disapproval of the following rules that were submitted for incorporation into the California SIP by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local Agency	Rule #	Rule title	Revised	Submitted
ICAPCD	415	Transfer and Storage of Gasoline	09/14/99	05/26/00
VCAPCD	70	Storage and Transfer of Gasoline	11/14/00	05/08/01

We proposed a limited approval because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the CAA. Our proposed action contains more information on the rules and our evaluation.

On April 25, 2002 (67 FR 20478), we also proposed a full approval of the following rule that was submitted for incorporation into the California SIP.

TABLE 2.—SUBMITTED RULE

Local Agency	Rule #	Rule Title	Revised	Submitted
SBCAPCD	346	Loading of Organic Liquid Cargo Vessels	01/18/01	05/08/01

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following party.

1. Richard H. Baldwin, Ventura County Air Pollution Control District, letter dated May 28, 2002 and received May 28, 2002. The comments and our responses are summarized below.

Comment 1: EPA's proposed rulemaking states that Rule 70 is deficient because, "Reverification of the performance tests of the vapor recovery system * * * should be performed more frequently * * * in order to fulfill RACT." For a variety of reasons, the commenter believes that this deficiency is more stringent than that required by RACT.

Response 1: RACT generally refers largely to direct emission control requirements such as emission limits. Monitoring, reporting, recordkeeping, and similar requirements designed to ensure compliance with control requirements are sometimes also referred to as components of RACT, but often considered simply enforceability elements necessary to fulfill the general CAA 110(a)(2) enforceability requirement. We agree with the commenter that the control requirements in Rule 70 meet or exceed RACT. However, we should have identified the rule deficiency more clearly as an enforceability issue because, as described in our proposal action and associated TSD, we believe the existing performance test requirements do not adequately ensure continued compliance with the control requirements.

Comment 2: South Coast AQMD is the only California District that currently contains reverification of performance test requirements sufficient to address EPA's proposed limited disapproval. EPA should not define RACT based on the single most stringent adopted rule.

Response 2: EPA is not using the more stringent South Coast requirements as the primary basis for disapproving Rule 70. Rather, as discussed in our proposed action, we are relying on the research, performed by the California Air Pollution Control Officer's Association (CAPCOA), CARB, and others, which shows that existing Rule 70 reverification of performance test requirements do not adequately ensure compliance with the rule's control requirements. *See also* Response 1.

Comment 3: EPA should approve the submitted version of Rule 70 as meeting RACT requirements.

Response 3: We concur that Rule 70 meets or exceeds the RACT control requirements. We do not believe, however, that the reverification of performance test requirements adequately fulfill section 110(a)(2) enforceability requirements. *See also* Response 1.

Comment 4: EPA Region IX's guidelines for evaluating vapor recovery rules are inappropriately more stringent in California than in other states.

Response 4: The guidelines distinguish requirements in California from requirements in other states because of the unique role that CARB plays in regulating vapor recovery. We believe, however, that the substance of our guidelines is the same for California and other states.

Comment 5: The rule improvement identified by EPA is not relied upon in Ventura's approved attainment demonstration.

Response 5: Improved reverification of performance test requirements are not intended to directly yield emission reductions that would be incorporated in an attainment demonstration. They are intended to assure that control requirements contained in Rule 70, which are relied on in Ventura's attainment demonstration, are in fact achieved.

Comment 6: RACT should be determined on a national, not a regional basis.

Response 6: Reasonably available controls can vary somewhat based on local economic and other factors. See also Response 1.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is finalizing a limited approval of VCAPCD Rule 70. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of VCAPCD Rule 70. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act as described in 59 FR 39832 (August 4, 1994). In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months.

As authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is finalizing a limited approval of ICAPCD Rule 415. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of ICAPCD Rule 415. No sanctions are associated with this action because this is not a required submittal.

Note that the submitted rules have been adopted by the VCAPCD and ICAPCD, and EPA's final limited disapproval does not prevent the local agencies from enforcing them.

As authorized in sections 110(k)(3) of the CAA, EPA is finalizing a full approval of SBCAPCD Rule 346. This action incorporates the submitted rule into the California SIP.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it

does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 30, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 1, 2002.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(279)(i)(A)(*9*), (284)(i)(C)(*2*), and (284)(i)(D)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(279) * * *

(i) * * *

(A) * * *

(*9*) Rule 415, adopted on September 14, 1999.

* * * * *

(284) * * *

(i) * * *

(C) * * *

(*2*) Rule 346, adopted on January 18, 2001.

(D) Ventura County Air Pollution Control District.

(*2*) Rule 70, adopted on November 14, 2000.

* * * * *

[FR Doc. 02–27343 Filed 10–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–7390–6]

RIN 2040–AD72

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Measurement of Mercury in Water; Revisions to EPA Method 1631

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves EPA Method 1631, Revision E: Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry (Method 1631E) for determination of mercury in aqueous samples. Today's rule replaces the currently approved version of Method 1631 and includes revisions that address stakeholder concerns. EPA Method 1631E clarifies quality control and sample handling requirements and allows flexibility to incorporate additional available technologies. This rule also amends the requirements regarding preservation, storage, and holding time for low level mercury samples.

DATES: This final rule is effective on November 23, 2002. For judicial review purposes, this final rule is promulgated as of 1 p.m. Eastern Standard Time on November 12, 2002 in accordance with 40 CFR 23.7. The incorporation by reference of EPA Method 1631, Revision E, is approved by the Director of the Federal Register as of November 23, 2002.

FOR FURTHER INFORMATION CONTACT: William Telliard; Engineering and Analysis Division (4303T); Office of Science and Technology; Office of Water; U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or call (202) 566–1061 or e-mail at *telliard.william@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Potentially Regulated Entities

EPA Regions, as well as States, Territories and Tribes authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits that comply with the technology-based and water quality-based requirements of the Clean Water Act. In doing so, NPDES permitting authorities, including authorized States, Territories, and Tribes, make a number of discretionary choices associated with permit writing, including the selection of pollutants to be measured and, in many cases, limited in permits. If EPA has "approved" (*i.e.*, promulgated through rulemaking) standardized testing procedures for a given pollutant, the NPDES permitting authority must specify one of the approved testing procedures or an approved alternate test procedure for the measurements required under the permit. In addition, when an authorized State, Territory, or Tribe provides certification of Federal licenses under Clean Water Act section 401, States, Territories and Tribes are directed to use the approved testing procedures. Categories and entities that may be regulated include:

Category	Examples of potentially regulated entities
State, Territorial, and Indian Tribal Governments.	States, Territories, and Tribes authorized to administer the NPDES permitting program; States, Territories, and Tribes providing certification under Clean Water Act section 401.
Industry	Private facilities required to monitor.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be

regulated. To determine whether your facility or organization is regulated by this action, you should carefully examine the applicability language at 40 CFR 136.1 (NPDES permits and CWA). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT SECTON.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. W–01–05. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket located at EPA West Building, Room B135, 1301 Constitution Avenue, Washington, DC. This Docket Facility is open from 8:30 a.m. and 4:30 p.m. Eastern Time, Monday through Friday, excluding Federal holidays. The Docket telephone number is 202–566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at *http://www.epa.gov/fedrgstr/.*}

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. Once in the system, select "search," then key in the appropriate docket identification number.

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I. Statutory Authority

Today's rule is promulgated pursuant to the authority of sections 301, 304(h), 307, and 501(a) of the Clean Water Act (CWA), 33 U.S.C. 1311, 1314(h), 1317, 1361(a) (the "Act" or "CWA"). Section 301 of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit, issued under section 402 of the Act. Section 304(h) of the Act requires the Administrator of the EPA to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit applications pursuant to section 402 of this Act." Section 501(a) of the Act authorizes the Administrator to "prescribe such regulations as are necessary to carry out his function under this Act." EPA publishes CWA analytical method regulations at 40 CFR part 136. The Administrator also has made these test procedures applicable to monitoring and reporting of NPDES permits (40 CFR parts 122, §§ 122.21, 122.41, 122.44, and 123.25), and implementation of the pretreatment standards issued under section 307 of the Act (40 CFR part 403, §§ 403.10 and 402.12).

II. Background

A. Regulatory History

On May 26, 1998, EPA proposed EPA Method 1631 at 40 CFR part 136 for use in determining mercury at ambient water quality criteria levels in EPA's Clean Water Act programs (63 FR 28867). On March 5, 1999, EPA published a Notice of Data Availability that included additional data supporting the application of EPA Method 1631 to effluent matrices (64 FR 10596), and on June 8, 1999, published a final rule promulgating EPA Method 1631, Revision B: Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry (64 FR 30416) at 40 CFR part 136. Following method promulgation, EPA published a technical correction replacing Revision B (Method 1631B) with EPA Method 1631, Revision C (66 FR 32774; June 18, 2001). Revision C clarified the method text regarding the reporting and use of field blanks.

B. Settlement Agreement

Following promulgation of EPA Method 1631B on June 8, 1999, several industry groups filed a petition for judicial review of the method. On October 19, 2000, EPA entered into a Settlement Agreement (*Alliance of Automobile Manufacturers, et al.* v. *EPA*, No. 99–1420, D.C. Dir.) with the Petitioners. The Settlement Agreement includes three clauses that address revisions to EPA Method 1631 (Clauses 2, 3, and 4). Clauses 2 and 3 committed EPA to sign a notice of final rulemaking by June 15, 2001, revising sections 12.4.2 and 9.4.3.3 of EPA Method 1631B to clarify the use of field blanks. EPA complied with that commitment. On June 18, 2001, EPA published a notice of final rulemaking announcing a revised version of EPA Method 1631 (Revision C; Method 1631C).

Clause 4 of the Settlement Agreement required that EPA sign a notice for publication in the **Federal Register** to propose additional requirements for certain clean techniques and quality control (QC) provisions on or before September 30, 2001, and to sign a notice

for final action on the proposal on or before September 30, 2002. On October 9, 2001, EPA published a notice proposing such revisions (66 FR 51518). At that time, EPA also made a draft of the method available to present the proposed revisions in context of EPA Method 1631 procedures (draft Method 1631, Revision D). Today's action satisfies EPA's obligation to take final action on the proposed rulemaking.

C. Proposed Rule

On October 9, 2001, EPA proposed revisions to Method 1631 under the Settlement Agreement (66 FR 51518). The proposed revisions were listed in Appendix A of the Settlement Agreement and were presented in Section IV of the proposed rule (66 FR 51520). The proposed revisions would have converted certain of the recommendations and guidance in the method (specifically, certain clean techniques and quality control provisions) into requirements. The proposal would have allowed an NPDES permittee to forgo such requirements at their own discretion, but at their own risk. The proposal would not have allowed other method users (*e.g.*, State agencies) to forgo the proposed requirements.

EPA proposed several additional revisions that were not contested in the litigation. These latter proposals would clarify method procedures, increase method flexibility, and provide additional guidance for method implementation. To ensure consistency with analytical method requirements, EPA also proposed an amendment to Table II at 40 CFR 136.3(e) to address collection and handling of samples for analysis using EPA Method 1631. The additional proposed revisions and the proposed amendment to Table II at 40 CFR 136.3(e) were based on comments and recommendations submitted to EPA by various stakeholders since promulgation of EPA Method 1631B in June of 1999. EPA received 26 comment packages on the October 2001 proposed rule. Section V of this document summarizes the major comments. The administrative record supporting today's action responds to the public comments received on all the proposed changes.

III. Summary of Final Rule

A. EPA Method 1631, Revision E

Today's action replaces all previously approved versions of EPA Method 1631 with EPA Method 1631, Revision E (Method 1631E) for measurement of mercury in aqueous samples. Today's action does not repeal any other currently approved methods that measure mercury. EPA Method 1631E (the "Method") incorporates several revisions to increase method flexibility and improve data quality. These revisions:

- Allow the use of automated flow-injection systems (Sections 10.3 and 11.2.2);
- Incorporate system blanks for use with automated flow-injection systems (Sections 9.4.2 and 10.3.2);
- Incorporate definitions for blank samples (Sections 9.4 and 17);
- Incorporate a requirement for analysis of method blanks (Section 9.4);
- Include a requirement to analyze bottle blanks at a recommended minimum frequency of 5 percent (Sections 6.1.2.4 and 9.4.7);
- Allow extension of the calibration range (Sections 1.3 and 10.4);
- Remove requirements for immediate sample preservation, refrigeration of unpreserved samples, and collection of samples with zero headspace, provided sample bottles are tightly capped and samples are either preserved or analyzed within 48 hours of collection (Section 8.5).
- Allow extension of the time until preservation to 28 days if a sample is oxidized in its sample container (Section 8.5);
- Extend the maximum sample holding time (time from sample collection until sample analysis) from 28 days to 90 days (Section 8.5);
- Incorporate a carryover test for determining the amount of mercury that would be carried into a subsequent sample when a sample containing a high level of mercury is analyzed (Sections 4.2.8.1 and 11.2);
- Further clarify that samples must be completely oxidized prior to analysis (Section 8.1);
- Allow shipment of empty bottles for sample collection (Section 6.1.2.1);
- Incorporate a requirement for analysis of a minimum of two matrix spike/matrix spike duplicate (MS/MSD) sample pairs per analytical batch of twenty samples (Section 11.1.2);
- Reinforce the requirement that only glass or fluoropolymer bottles may be used for sample collection (Section 4.3.7.1 and 8.2);
- Allow both field and laboratory sample filtration (Sections 2.2 and 8.4);
- Correct part numbers (Sections 6.1.3.2 and 6.1.3.3); and
- Clarify that method users are permitted to omit steps or modify procedures provided that all performance requirements in the Method are met, but must not omit or modify any procedure defined by the term "shall" or "must," and must perform all quality control tests (Method introductory note).

B. Amendment to 40 CFR 136.3(e), Table II

Today's rule also amends 40 CFR 136.3(e) by adding a footnote (17) to Table II to include requirements for collection, filtration, preservation, and maximum holding times that are specific to samples collected for determination of mercury using EPA Method 1631. This footnote includes the following requirements for mercury samples: samples must be collected in either fluoropolymer or glass containers; samples must be preserved with either HCl or BrCl within 48 hours of collection; time until preservation may be extended to 28 days if samples are oxidized in the sample bottles; samples have a maximum holding time of 90 days from the date of sample collection; and samples must be filtered in a clean area in the laboratory or in the field prior to sample preservation. This amendment provides consistency with requirements approved in previous versions of EPA Method 1631 and with the revisions promulgated today.

IV. Changes from the October 9, 2001 Proposed Rule

A. Additional Requirements for Clean Techniques and Quality Control Provisions

Under the Settlement Agreement, EPA proposed certain clean techniques and quality control (QC) provisions as requirements. Under the then existing versions of Method 1631, these provisions were only recommendations. These provisions were presented in Section IV.A of the proposed rule and were indicated throughout draft Method 1631D by the word "must" in bracketed and italicized text. A summary of the comments received and EPA's response to the comments is presented in Section V.B of this document.

Commenters generally opposed the changes from "should" to "must," maintaining that Method 1631 and other EPA methods should be "performance based"; *i.e.*, that the method user should be accorded flexibility to improve method performance and lower the costs of measurements, provided all performance criteria are met. However, commenters supported specific requirements for analysis of bottle blanks (Sections 6.1.2.3 and 9.4.7), analysis of blanks to test for carryover (Sections 4.3.8.1 and 11.2), analysis of two MS/MSD pairs per each analytical batch of 20 samples (Section 11.1.2), and use of either fluoropolymer or glass containers for sample collection (Section 4.3.7.1). In response to comments, EPA is incorporating these changes into EPA Method 1631E in today's rule.

Following review of comments, EPA believes that requiring the additional proposed requirements for clean techniques or quality control provisions would result in unnecessary economic burden and would limit future use of the Method. With the exceptions outlined above, EPA is not promulgating the clean techniques and quality control requirements proposed earlier. Instead, EPA has retained in the Method as recommendations that samples should be collected using clean hands/dirty hands collection procedures (Section 9.4.4.2); samples should be processed in a clean room or clean bench (Sections 4.3.3 and 8.5.3); exposure to sources of contamination should be minimized (Section 4.3); work surfaces should be cleaned prior to processing sample batches (Section 4.3.5); traps that tend to absorb large quantities of water vapor should be pre-dried or discarded (Section 4.3.3); outside air, if clean, should be brought into the clean bench air intake (Section 7.2); samples should be stored in clean, new polyethylene bags prior to use (Section 8.6); and samples collected for measurement of methylmercury should be collected and preserved according to procedures required in the analytical method that will be used (Sections 2.3 and 8.5).

B. Election by a Permittee or Industrial User

Under the Settlement Agreement, EPA also proposed that an NPDES permittee or an industrial user of a POTW be able to elect not to implement the clean techniques and QC provisions "in its discretion and at its peril, unless specifically provided otherwise by the relevant permitting agency or pretreatment control authority, as the case may be." The election, if promulgated, would apply only to those clean techniques and QC provisions designated in the Settlement Agreement and designated by bracketed and italicized text throughout draft Method 1631D. Because EPA is not imposing such requirements, EPA has not included the proposed election revision in today's final rule. A summary of the comments regarding the proposed option and EPA's response to the comments is presented in Section V.C of this document.

C. Additional Revisions to EPA Method 1631

Since promulgation of EPA Method 1631B in June 1999, EPA received many suggestions from Method users for improving method flexibility and clarifying certain method procedures. EPA proposed and discussed these improvements and clarifications in the October 9, 2001 proposal. In today's final rule, EPA is withdrawing or revising certain proposed Method revisions based on adverse comments. Specifically, EPA is (1) revising the term "calibration blank" to "system blank" for those blank samples required during calibration and batch analyses when using a flow-injection system, (2) revising the proposed QC acceptance criteria associated with system blanks and the use of these blanks, (3) withdrawing the frequency requirement associated with analysis of bottle blanks, and (4) withdrawing the requirement to commensurately raise the lowest calibration point when the upper end of the calibration range is raised. These four revisions and the corresponding comments on the proposed rule are described in more detail in Sections V.E through V.F of this document.

D. Extension of Holding Times for Unpreserved Samples

In the October 9, 2001 proposal, EPA stated that it was reviewing data that indicate samples collected for measurement of low level mercury may be stable for as long as 35 days prior to preservation, and included the data in the Record supporting the proposed rule. At that time, EPA also solicited additional data or comments regarding the stability of unpreserved samples.

EPA received comments on the proposed rule that support extension of the time prior to preservation and has completed review of the data discussed in the proposed rule. In response to these data and to submitted comments, EPA is requiring in Method 1631E that samples must be preserved within 48 hours of sample collection. However, EPA is allowing extension of the time until preservation to 28 days if samples are oxidized in the sample bottles. EPA has included this change in Section 8.5 of EPA Method 1631E and in Footnote 17 to Table II at 40 CFR 136.3(e).

E. Clarifications and Corrections

Minor clarifications and technical corrections are included in EPA Method 1631E to address errors and inconsistencies noted by commenters. These changes and corrections:

- Revise Section 9.4.2 to clarify that system blanks are specific to flow-injection systems;
- Revise Section 9.4.3.1 to clarify that in order to assess possible contamination from reagents, reagent blanks include hydroxylamine hydrochloride solution in addition to BrCl solution;
- Revise Section 11.2.2.1 to clarify that the amount of NH_2OH required will be approximately 30 percent of the BrCl volume;
- Revise the QC acceptance criteria for reagent blanks in Section 9.4.3 from 0.25 ng/L to 0.2 ng/L for consistency with reporting requirements;
- Revise Section 12.2.1 to clarify that the mean peak response for bubbler blanks measured during calibration or with each analytical batch is used for calculating sample results;
- Correct the concentration units in the equations in Sections 12.2.2 and 12.3.2;
- Revise Section 9.3.2.2 to clarify that identical volumes of spiking solution must be used for MS/MSD samples;
- Revise Section 4.4.1 to clarify that, for those samples requiring pre-reduction with $SnCl_2$ (*i.e.*, samples containing iodide concentrations greater than 3 mg/L), the $SnCl_2$ should be added in a closed vessel or analysis should proceed immediately;
- Revise Section 11.1.1.2 to clarify that samples containing high organic content may also be diluted to reduce the amount of BrCl that may be required, provided that the resulting level of mercury is sufficient for reliable determination within the range of method calibration;
- Revise Section 7 to include a note clarifying that the quantities of reagents and the preparation procedures are for illustrative purposes. A laboratory may use quantities of reagents and procedures that differ, provided it is able to demonstrate equivalent performance;
- Revise Sections 7.9 and 7.10 to clarify that standard solutions should be replaced monthly, or longer if extended stability is demonstrated;
- Correct Section 2.7 to include the analytical trap in the description;
- Revise Section 9.1.7 and Section 10.1 to clarify that analysis of samples may proceed without recalibration, provided system performance is verified at the end of the analytical sequence;
- Revise Section 9.4 to address the performance criteria associated with blank samples in those circumstances when a method detection limit greater than 0.2 ng/L is sufficient to address compliance monitoring;
- Include a note in Section 9.1.2.1 to clarify that acceptance criteria associated with blank samples may be adjusted to support measurements at the compliance level; and
- Revise Section 12.5.1 to include specifications for reporting results of Method blanks.

V. Response to Major Comments

EPA requested comments on the various EPA Method 1631 revisions detailed in the October 9, 2001 proposal, and requested data supporting comments, if available. Twenty five stakeholders provided comments on the proposal addressing over 50 separate issues. Stakeholders included 10 laboratories, 6 POTWs, 3 regulatory authorities, 3 industries/industry groups, one instrument manufacturer, a group of several POTWs, and the Petitioners (see Settlement Agreement discussion, Section II.B).

The following section summarizes major comments received on the proposed rule and EPA's response. The complete Response to Comments document can be found in the public record for this final rule (Record Section VI, DCN B.1).

A. Performance-Based Measurement System

Several commenters on the October 9, 2001 proposed rule noted that Section 1.8 of EPA Method 1631 describes the method as performance-based, and that if certain recommendations for clean techniques included in the method were to become requirements as proposed, the method would no longer be performance-based. Commenters stated that requiring laboratories and sample collectors to adopt clean procedures that are unnecessary is contrary to a performance-based measurement system, and added that additional requirements would impose cost burdens that could result in reduced method implementation. Commenters stated further that performance-based measurements must not prescribe particular actions unless they are essential to the successful implementation of the method. Commenters added that many of the proposed requirements would lock users into current technology despite the many advances and improvements in techniques and equipment that are likely to occur in the coming decades. Commenters believe that if the performance-based nature of the method is not retained, further improvement of method performance would be hindered.

EPA developed performance-based measurement systems as part of EPA's commitment to reducing unnecessary regulatory burden and encouraging the use of emerging and innovative technologies. Throughout development of these analytical methods, EPA recognized that allowance for this flexibility must be matched with controls to ensure that data quality is maintained. For this reason, many approved methods include standardized QC tests and specific QC acceptance criteria that must be met when a method is modified to overcome interferences or lower the cost of measurement.

The QC acceptance criteria included in EPA Method 1631 were developed using method validation data from 12 laboratories. These criteria include precision and recovery performance requirements for the matrix spike and matrix spike duplicate (MS/MSD), initial and ongoing precision and recovery (IPR and OPR), calibration linearity, method detection limit (MDL), and quality control samples (QCS). EPA Method 1631 criteria also include requirements for several blanks (*i.e.*, equipment, bottle, field, method, reagent, system, and bubbler blanks) to monitor potential contamination during sample collection and analysis.

EPA acknowledges the concerns submitted by commenters and agrees that the QC requirements and acceptance criteria in EPA Method 1631 are sufficient to ensure data quality and preclude inadequate method implementation. For these and other reasons given in the Response to Comments document, EPA has decided not to require most of the clean techniques and quality control provisions proposed.

B. Proposed Requirements for Clean Techniques

Only comments submitted on behalf of the Petitioners supported promulgation of all the proposed requirements for the additional clean techniques specified in the Settlement Agreement. This commenter stated that clean sampling and analytical techniques are critical to obtaining reliable results for use in the regulatory process. The commenter stated further that, although clean techniques result in additional expense, the consequences could be more serious if data users act upon test results that may be affected by contamination.

Nineteen commenters submitted comments opposing these additional requirements. These commenters believe that EPA Method 1631 contains sufficient QC to determine the source of any contamination and that if a laboratory can demonstrate it is capable of meeting the Method QC criteria without the additional proposed clean techniques, it should be allowed to do so. Several commenters stated that the reasoning behind the proposed requirements appears to be arbitrary and that it is unclear what scientific basis was used to determine which techniques should be requirements. Commenters noted that the requirements would place a burden, operational and economic, on facilities with little or no gain in analytical performance, and could severely limit the ability of regulators to determine whether mercury discharges are being controlled effectively. At least one POTW commenter stated that, if these requirements were promulgated as proposed, it most likely would no longer use EPA Method 1631. Additionally, a regulatory authority noted that if costs escalate because of additional requirements, such costs would limit the ability of regulators to determine whether mercury discharges are being controlled effectively.

EPA agrees with the majority of commenters and believes that the additional requirements proposed to be included in EPA Method 1631 would be burdensome, and that the QC acceptance criteria included in the Method are sufficient to ensure data quality. EPA has not received data to support a decision that the proposed additional clean techniques and quality control provisions are necessary to ensure validity of data obtained through implementation of EPA Method 1631. The requirements and criteria associated with quality control and blank samples throughout the Method are the most appropriate and valuable means for identifying and controlling contamination.

Additionally, EPA believes that if all of the recommendations for clean techniques were required, compliance with the requirements would be extremely difficult to monitor. For example, EPA proposed to revise Method 1631 Section 4.3.8.4 as follows: "* * * Whenever possible, sample processing and analysis [must] occur as far as possible from sources of airborne contamination." Following review of comments, EPA believes that it does not have sufficient information to provide specific tests to determine compliance with such a requirement. EPA believes the most appropriate means for demonstrating that samples are processed and analyzed using procedures to minimize contamination are already included in the requirements and criteria for analysis of blanks, and that analysts are appropriately advised regarding how to avoid contamination by the recommendations for clean techniques in the Method.

EPA also recognizes that sample locations and laboratory environments can differ significantly and that the site-specific clean techniques necessary to meet the performance criteria included in EPA Method 1631 will be best determined and improved upon by individual Method users. For these reasons, and to respond to the concerns of commenters, EPA is retaining the clean techniques provisions as recommendations but not requirements in EPA Method 1631E. EPA Method 1631E continues to require that all QC tests be performed and that all QC acceptance criteria are met, and continues to include the following as recommendations:

- Use a clean room or clean bench for sample preparation and analysis (Sections 4.3.3 and 8.5.3);
- Minimize exposure of the apparatus to contamination (Section 4.3.3);
- Clean work surfaces prior to processing sample batches (Section 4.3.5);
- Process samples as far as possible from sources of airborne contamination (Section 4.3.8.4);
- Ensure that laboratory air is low in mercury (Section 7.2);
- Store sample bottles in clean (new) polyethylene bags until sample analysis (Section 8.6); and
- Use "Clean Hands/Dirty Hands" techniques described in EPA's Method 1669: Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels for collection of equipment blanks (Section 9.4.4.2).

In addition to recommending these protocols for clean techniques throughout EPA Method 1631E, EPA published several guidance documents supporting the collection and analysis of samples for measurement of low-level mercury. These guidance documents include Guidance for Implementation and Use of Method 1631 for Determination of Low-Level Mercury (40 CFR Part 136) EPA 821–R–01–023, March 2001; Method 1669: Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels, EPA–821–R–96–001, July 1996; Guidance on Establishing Trace Metals Clean Rooms in Existing Facilities, EPA–821–B–96–001, January 1996; and Guidance on Documentation and Evaluation of Trace Metals Data Collected for Clean Water Act Compliance Monitoring, EPA–821–B–96–004, July 1996.

C. Election by a Permittee or Industrial User

Under the Settlement Agreement, EPA proposed to require specific clean techniques and QC provisions in draft Method 1631D and to provide only NPDES permittees and industrial users with the option not to implement those techniques and provisions.

Comments submitted on behalf of the Petitioners regarding this proposed option state that this approach would be appropriate because (1) the liability associated with sampling lies with the permittee and, therefore, the permittee should have the discretion to determine what is or is not an acceptable contamination risk, (2) permittees are familiar with the characteristics of their effluent and the level to which clean techniques must be followed, and (3) EPA and State agencies lack this level of facility-specific understanding and therefore, should be required to follow clean procedures. The commenter added that, under the current system, permittees may be precluded from raising the contamination issue as a defense in an enforcement action or, at a minimum, would bear the very heavy burden of proving contamination for data generated by EPA or State agencies.

Eleven commenters stated that giving certain groups the option to eliminate certain requirements for clean techniques and QC provisions would result in a plethora of methods and would make it very difficult for contract testing laboratories who would bear the burden of the resulting confusion. Some permittees may elect to forgo required clean techniques while others would not; all laboratory customers, however, would benefit and bear costs of clean techniques, regardless of their election. These commenters believe that such an option would set a dangerous and undesirable precedent regarding what any particular person believes is "necessary" to achieve a scientifically valid result. These commenters stated further that implementation of this option would limit the quality and value of collective databases for environmental decision making.

In today's final rule, EPA is not requiring most of the proposed clean techniques and QC provisions for any users of the Method. EPA agrees with the majority of commenters that applying such requirements to only some users would create unwanted inconsistency, would severely impair laboratories serving multiple clients, and would ultimately cause misinterpretation of data and confusion among regulators and laboratories. Most importantly, EPA disagrees with the comment that all of the proposed clean techniques are necessary to obtain reliable results. EPA also disagrees with the comment that Federal and State laboratories lack the necessary information (or even need facility-specific information) to minimize contamination. In today's final rule, EPA has not included this option in EPA Method 1631E.

Rather than requiring the clean techniques and QC provisions for some users but not for others, EPA instead is providing equal flexibility for all users of the Method. Most of the clean techniques and QC provisions are included only as recommendations in the final rule. Because EPA is not requiring most of the proposed clean techniques and QC provisions for any users of the Method, there is no reason to include the option for permittees and industrial users to elect not to use them, and in today's final rule, EPA has not included this option.

D. Bottle Blanks

EPA proposed to revise EPA Method 1631 to include requirements to assess cleanliness of bottle blanks and to require analysis of bottle blanks at a minimum frequency of 20 percent from a given lot. Most commenters agreed that requiring analysis of bottle blanks is appropriate and good practice. However, only one comment submitted regarding these blank samples supported a requirement that bottle blanks be analyzed at a frequency of 20 percent. EPA received comments from 7 laboratories, 1 instrument manufacturer, and 1 regulatory authority that this frequency requirement is excessive, and would result in unnecessary additional equipment costs. Commenters also provided cost information suggesting that, if one assumes a low cost of between $40 and $50 per Method 1631 analysis performed, this requirement would add a cost of $800 to $1000 per lot of clean bottles, or approximately $8 to the cost of each bottle purchased. Commenters also recommended alternate frequency requirements for bottle blank testing ranging from a minimum of 1 percent to 10 percent.

EPA's proposal to include a requirement that a minimum of 20 percent of the bottles from a given lot be tested for cleanliness was based on current practices implemented in a single laboratory. Because method and field blanks also are used to monitor contamination and are required in EPA Method 1631E, EPA agrees that requiring testing of 20 percent of the bottles from each lot is unnecessary and probably excessive. Although laboratories and cleaning facilities may choose to test at this frequency as a means of ensuring contamination control, EPA is not requiring that frequency in today's rule. EPA believes that testing a lot of bottles at a minimum frequency of 5% is sufficient and has included this frequency as a recommendation in EPA Method 1631E. While EPA is recommending that bottle blanks be analyzed at a frequency of 5%, laboratories have demonstrated the ability to meet EPA Method 1631 performance criteria and data quality

objectives analyzing bottle blanks at a minimum frequency of 1%. Therefore, if a laboratory is able to meet performance criteria using a minimum frequency of 1%, it should be allowed.

E. Range of Method Calibration

In response to several requests from stakeholders to apply EPA Method 1631 across a broader range, EPA proposed to allow calibration to a lower point (below the ML) to more accurately measure mercury in blank samples, and to a higher point (above 100 ng/L) to measure concentrations presently measured with other approved mercury methods. EPA also proposed certain criteria to ensure that this allowance would not compromise data quality. These criteria included: (1) A minimum of five, non-zero calibration points; (2) the difference between successive calibration points must be no greater than a factor of 10 and no less than a factor of 2 and should be approximately evenly spaced on a logarithmic scale over the calibration range; (3) the relative standard deviation (RSD) of the calibration factors for all calibration points must be less than 15%; (4) the calibration factor for any calibration point at a concentration greater than 100 ng/L must be within plus or minus 15% of the average calibration factor for the points at or below 100 ng/L; (5) the calibration factor for any point less than 5 ng/L must be within plus or minus 25% of the average calibration factor for all points; (6) if the highest calibration point is increased above 100 ng/L, the lowest calibration point (ML) must be increased commensurately above 0.5 ng/L; and, (7) if the calibration is to a higher range and this Method is used for regulatory compliance, the ML must be less than one-third the regulatory compliance limit.

Several commenters expressed concern regarding the proposed option to extend the lower end of calibration in EPA Method 1631. Commenters noted that in the proposed rule preceding the June 8, 1999, promulgation of EPA Method 1631B, EPA proposed to allow users to calculate lower MDLs and MLs. Based on comments, however, EPA "removed the option for laboratories to calculate their own lower MDLs and MLs. * * *" 64 FR 30420 (June 8, 1999). In support, EPA stated its belief that "this will avoid confusion and preclude lower MDLs and MLs from being used for NPDES permitting or regulatory compliance determinations." Commenters stated that authorization for Method users to calibrate instruments to below the Method ML would result in regulatory uncertainty. For these reasons and in response to comments, EPA has clarified this provision in EPA Method 1631E by stating that, for the purpose of measuring the level of mercury in blank samples only, calibration may be extended to a lower level.

One commenter on the proposed rule expressed concern that allowing extension of the high end of the calibration range could jeopardize low-level compliance determinations by increasing the potential for bias resulting from cross contamination or carryover. The commenter pointed out that EPA acknowledged this increased risk by proposing a new method section that specified a carryover test (see Proposed Rule, Section IV.A.7). This commenter believes that bubbler blank and method blank analyses are insufficient to identify and control contamination if calibration is extended to levels greater than 100 ng/L. EPA proposed to add a carryover test to Method 1631 in response to comments from stakeholders who requested an allowance for extension of the method calibration range, but were concerned about potential contamination that could result from extension of the upper end of calibration. EPA believes that the carryover test, the requirements associated with blank analyses, and the calibration criteria included in Method 1631, Revision E are sufficient to prevent effects that could result from cross contamination or carryover. For this reason, and in response to additional comments, EPA has included an allowance for extension of the upper end of the calibration range in EPA Method 1631, Revision E.

Three additional commenters supported extension of the upper end of the calibration range. These commenters believe the carryover test and ongoing blank determinations will ensure the analytical system remains sufficiently clean or that carryover will be detected should it occur. The commenters stated, however, that the corresponding criterion that the lowest calibration point must be raised commensurately when the upper end of calibration is raised is inappropriate. Commenters stated further that this criterion is unnecessary, particularly if an analytical system is demonstrated to be sufficiently linear and clean as specified by QC requirements included in the Method. Commenters added that commensurate raising of the lower end of calibration is unnecessary, particularly if two of the additional proposed corresponding criteria for extended calibration are met (*i.e.*, the calibration factor (CF) for any calibration point at a concentration greater than 100 ng/L must be within plus or minus 15 percent of the average CF for the points at or below 100 ng/L and the CF for any point less than 5 ng/L must be within plus or minus 25 percent of the average CF for all points). EPA agrees that commensurate raising of the lower end of calibration is unnecessary, provided the remaining calibration criteria are met. EPA also points out that (1) there is no similar restriction in other methods; (2) the carryover test included in Section 4.3.8.1 of Method 1631, Revision E will allow a laboratory to determine the level at which Hg will be carried into a succeeding sample or blank; (3) the extensive requirements for blanks will detect contamination; and (4) a laboratory can run a blank before each sample, if desired, to demonstrate that a preceding sample did not carry Hg into the next sample. For these reasons, EPA is not including the proposed requirement for increasing the low end of the calibration range when the upper end is increased in today's rule.

Following review of these comments, EPA has determined that allowing Method users to raise the Method calibration range, provided the performance criteria specified in Section 10.4 of the Method are met, will increase method flexibility without compromising data quality. Such an allowance is consistent with EPA protocol for approval of new methods and with the International Union of Pure and Applied Chemists (IUPAC) guidelines for calibration. EPA agrees with most commenters and believes that Method 1631 contains QC requirements that are sufficient to detect and preclude carryover from samples or standards containing high levels of mercury (*i.e.*, greater than 100 ng/L). Additionally, EPA agrees that the criteria included in Section 10.4 of the Method is sufficient to ensure data quality without the requirement to raise the lower end of calibration if an extended upper end of calibration is used. For these reasons, EPA has removed the requirement to commensurately raise the low end of the calibration range when the upper end is raised from Section 10.4 of Method 1631E and is approving the provision to allow extension of the upper end of the calibration range. EPA also agrees with most commenters that the proposed procedure for identifying and controlling carryover will assist Method users, and is promulgating the procedures in Section 4.3.8.1 (see Section V.I. below).

F. Acceptance Criteria Associated With Blank Samples

EPA received several comments regarding Method 1631 QC acceptance criteria associated with the analysis of blank samples. Numerous commenters stated that an acceptance criterion stipulated as less than the Method MDL (<0.2 ng/L) is inappropriate. Commenters note that measurements below the minimum level of quantitation (*i.e.*, the lowest calibration point) of an analytical method are inherently problematic and will result in failures attributable to random variation alone. Commenters also state that such a criterion is inappropriate because an MDL of 0.2 ng/L is not required to meet performance specifications in the Method. These commenters point out that Section 9.2.1 of EPA Method 1631 states that an MDL less than or equal to 0.2 ng/L or one-third the regulatory compliance limit, whichever is greater, is acceptable. Commenters note further that if a compliance level were 4 ng/L, an MDL determination of 1.3 ng/L would be sufficient. In such a case, monitoring levels of mercury in blanks against a criterion of 0.2 ng/L would be inconsistent.

Except for those criteria associated with calibration and method blank analyses, the QC acceptance criteria for blank samples included in EPA Method 1631 are identical to those originally proposed in May 1998. EPA received, reviewed, and responded to numerous comments prior to promulgation of EPA Method 1631B in June of 1998. Since promulgation, use of EPA Method 1631 has increased significantly, as has the ability to meet Method QC acceptance criteria. For this reason, EPA did not include revisions to these acceptance criteria in the October 2001 proposed rule, and is not promulgating such revisions in today's final rule. In response to comments on the October 2001 proposed rule, however, EPA is clarifying that the QC acceptance criteria for blank samples may be adjusted (*i.e.*, raised) to support measurements at the compliance level (see EPA Method 1631E, Note to Section 9.1.2.1). For example, if the compliance level is 4 ng/L, an appropriate MDL would be 1.3 ng/L, the corresponding lowest calibration standard would be at the ML of 4 ng/L, and appropriate QC acceptance criteria for blank samples would be 1.3 ng/L (bubbler and reagent blanks) or 4 ng/L (method, field, and bottle blanks).

G. Flow-Injection Systems

Commenters were supportive of EPA's proposed revision to incorporate automated flow-injection systems into EPA Method 1631. Commenters stated that, without EPA's acknowledgment that these systems are in use, implementation of such systems could be curtailed.

1. Calibration or System Blanks

EPA Method 1631, Revision C included bubbler blanks to establish a background for the bubbler system (*i.e.*, bubbler, traps, and cold-vapor atomic fluorescence detector). Bubbler blanks, however, are not appropriate for flow-injection systems. Hence, EPA proposed a requirement for analysis of calibration blanks when using flow-injection systems. The proposed QC acceptance criteria and application requirements for the calibration blanks were identical to the existing QC acceptance criteria and application requirements for the bubbler blanks (*i.e.*, the mean result of bubbler or calibration blanks is subtracted from results of calibration standards and samples and must be < 0.25 ng/L).

Since proposal, EPA has determined that the term "system" blank is more appropriate for the blank samples associated with flow-injection systems because these blank samples are used to assess contamination during calibration and during analysis of analytical batches. Therefore, EPA has replaced the proposed term "calibration blank" with "system blank" throughout Method 1631E.

Numerous commenters strongly objected to the requirements associated with the system blanks that EPA proposed to accompany flow-injection systems. Commenters stated that bubbler blanks and calibration (*i.e.*, system) blanks are not identical in either composition or purpose, and emphasized that it would be inappropriate and impractical to treat these samples as identical. Commenters noted that, unlike bubbler blanks which analyze previously-purged water to measure the level of mercury remaining in the bubbler system, system blanks measure residual mercury in reagent water as well as mercury in the reagents used in the calibration standards and samples. Commenters added that for this reason, the proposed system blank criteria for flow-injection systems are at least twice as restrictive as those placed on the use of bubbler systems.

In response to comments and upon further review of automated flow-injection systems, EPA has revised the proposed requirements associated with system blanks. EPA recognizes that flow injection systems require that reagents are added to all samples including the calibration standards, and has included a criterion in Section 9.4.2 of EPA Method 1631E that system blanks containing levels of mercury equal to or greater than 0.5 ng/L demonstrate that the system is out of control.

2. Terminology

Two commenters on the proposed rule stated that EPA should revise the term used for these systems from "Automated Flow-Injection" to "Continuous Flow" throughout EPA Method 1631. Although EPA agrees with these commenters that "Continuous Flow" is descriptive of the flow-injection systems used for determination of mercury in EPA Method 1631, it is a generic term that includes other systems such as sequential injection, sequential flow, and bead injection systems. EPA believes that the system described in EPA Method 1631 is consistent with the definition of a flow injection system, and has retained the proposed "flow-injection" terminology throughout EPA Method 1631E.

H. Sample Containers

Twelve commenters submitted comments regarding the proposed requirement to use either glass or fluoropolymer containers for collection of samples for measurement of mercury using EPA Method 1631. Commenters generally emphasized support for the performance-based nature of sample container selection to preclude unnecessary expense and allow for development of future materials. However, most commenters also expressed preference for fluoropolymer, glass, or fluoropolymer-lined glass containers for sample collection and preparation, particularly because of the possibility for some forms of mercury to move in or out of containers composed of other materials.

Four commenters on the proposed rule requested that EPA Method 1631 be revised to allow collection of samples in high density polyethylene (HDPE) containers if the samples are shipped to the laboratory for preservation and transferred to fluoropolymer containers within 48 hours. These commenters submitted identical data comparing summary results of samples collected using fluoropolymer sample bottles to samples collected using HDPE sample bottles to support this request. These data are included in Section V.E.1.10 of the Rulemaking Record. EPA has reviewed these data, and notes that although the results of the composite samples collected using either container type do not demonstrate a significant trend in mercury increase or loss, the results of the grab samples indicate a consistent increase in mercury concentration, ranging from 15 to 240 percent, in samples collected using HDPE containers.

EPA recognizes the concern that some forms of mercury can move in or out of containers composed of materials other than fluoropolymer or glass, and believes this concern is emphasized by commenters requesting that samples collected using HDPE containers be allowed only if the samples are transferred to fluoropolymer containers within 48 hours. In response to comments, and in recognition of current Method implementation practices, EPA is including a requirement in EPA Method 1631E that only fluoropolymer or glass containers be used for collection of samples to avoid artificial increases in mercury levels prior to measurement.

I. Carryover

EPA proposed to include a carryover test in Method 1631 to determine the concentration at which greater than 0.2 ng/L mercury would be carried into the subsequent sample (see draft EPA Method 1631D, Section 4.3.8.1). EPA also proposed to require that each time a laboratory analyzes a sample containing the concentration of mercury determined to result in 0.2 ng/L carryover, the laboratory must run a bubbler or calibration blank to ensure carryover does not affect the results of the analysis of the subsequent samples.

Commenters generally supported incorporation of a carryover test to identify and control contamination from carryover that can result from analysis of samples containing high levels of mercury. Commenters also supported the proposed requirement for analysis of a blank sample following a sample containing a high level of mercury to demonstrate that the analytical system is clean. Several commenters, however, noted that the proposed standard for determining carryover (*i.e.*, the level at which the analytical system will carry greater than 0.2 ng/L of Hg into a succeeding bubbler or calibration blank) is inappropriate because measurements below the ML of 0.5 ng/L are unreliable.

EPA has reviewed these comments and agrees with commenters' concerns regarding this performance standard. EPA recognizes that the carryover test is designed to target samples containing levels of mercury that could cause carryover, and believes that a performance standard of 0.5 ng/L is appropriate for the purposes of this test. EPA also believes, however, that in order to ensure data quality at the low levels of detection achievable by EPA Method 1631, levels of mercury no greater than 0.2 ng/L should be permitted to be carried over into succeeding samples. For this reason, EPA is requiring that a bubbler blank or system blank be analyzed following a sample containing a level of mercury that is one-half or greater than the level identified in the carryover test. Specifically, EPA is requiring that when a sample is analyzed that contains one-half or greater of the level of mercury that has been determined to result in 0.5 ng/L carryover, a blank must be analyzed to demonstrate no carryover at the 0.2 ng/L level (see Section 4.3.8.1 of EPA Method 1631E). For example, if the carryover test determines that samples containing 150 ng/L result in carryover greater than 0.5 ng/L, then the laboratory must analyze a blank sample following analysis of any sample containing more than 75 ng/L mercury.

EPA received additional comments presenting other concerns related to the carryover test. Commenters noted that it is unnecessary to require analysts to order samples from the lowest to the highest concentration. Commenters stated that analysts will define the order of samples according to information made available to them, and that there are other factors besides mercury concentration that are important in determining the order of samples. Commenters also noted that EPA should clarify that blanks should be run on the same bubbler used to run the high-concentration sample and that the requirements for the carryover test were not included in procedures for implementation of flow injection systems. EPA acknowledges that analysts often are not aware of the concentration levels of mercury contained in samples and that analysts may wish to order samples from least complex matrix to most complex matrix (*e.g.*, ambient water to influent). For this reason, EPA has removed the requirement, and is instead recommending that samples known or suspected to contain the lowest concentration of mercury should be analyzed first followed by samples containing higher levels. EPA also has clarified that a bubbler blank should be analyzed using the same bubbler as that used to analyze the high-concentration sample and has added Section 11.2.2.3 to EPA Method 1631E to clarify that the carryover test and associated blank analysis are required.

J. Other Technical Details

Several commenters requested revisions and clarifications to the Method that were already addressed in the Guidance or were beyond the scope of the proposed rule. Specifically, EPA received comments requesting the inclusion of all QC acceptance criteria into a single table in Method 1631; clarification of site-specific frequency requirements associated with MS/MSD samples; additional recommendations for sample filtration, clean techniques, and sample handling procedures; and approval of EPA Method 245.7: Mercury in Water by Cold Vapor Atomic Fluorescence Spectrometry.

Following promulgation of today's rule, the Agency plans to revise the Guidance to reflect today's final rule and to incorporate further clarification of Method procedures. EPA also has completed a study to validate Method 245.7 in multiple laboratories and is planning to continue efforts towards approval of this additional test procedure.

EPA reviewed all the additional recommendations and comments and has provided responses to each in the Comment Response Document.

VI. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the U.S. Small Business Administration definitions at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Today's rule promulgates a revised version of an already approved EPA Method to improve and clarify method procedures. Today's rule also promulgates an amendment to Table II at 40 CFR 136.3(e) to provide consistency with previously approved requirements in EPA Method 1631 and with method revisions promulgated today for collection, preservation, and storage of samples for determination of mercury using Method 1631.

Overall, the costs of these revisions are minimal. While some of the revisions may increase cost (*e.g.*, quality control requirements), other revisions will offset any increases and provide flexibility to lower the overall analytical costs (*e.g.*, use of new, less expensive equipment). Many of the laboratories that analyze for mercury are already implementing the additional requirements, further minimizing any potential cost increases. EPA estimates that any costs associated with the additional requirements will be alleviated or eliminated by the additional flexibility. Therefore, EPA believes that this rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, Tribal, and local governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for the notification of potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandate (under the regulatory provisions of Title II of the UMRA) for State, Tribal, and local governments or the private sector in any one year. This rule imposes no enforceable duty on any State, local or Tribal governments or the private sector. This rule promulgates revisions to a previously approved method for measuring mercury in wastewater. This rule also revises Table II at 40 CFR 136.3(e) to clarify requirements for sample collection, preservation, and storage, and to make these requirements consistent with previously approved requirements in EPA Method 1631 and with today's promulgated method revisions. Thus, today's rule is not subject to sections 202 and 205 of the UMRA. For the same reasons, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule also is not subject to the requirements of section 203 of the UMRA.

D. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It does not impose any information collection, reporting or record keeping requirements. This action revises a currently approved test method for use in water monitoring programs but does not add additional burden nor specifically require the use of the test method. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previoulsy applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

E. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standard bodies (VCSBs). The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. However, EPA

identified no such standards for the measurement of mercury at water quality criteria levels, and none were brought to our attention in comments. Therefore, EPA has decided to promulgate EPA Method 1631, Revision E: Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is neither "economically significant" as defined in Executive Order 12866, nor does it concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule promulgates EPA Method 1631, Revision E to replace an already approved version of the method for measuring mercury at low levels for compliance monitoring under the Clean Water Act and provide additional flexibility for use of currently available technologies. The costs of this rule for State and local governments are minimal. Thus, Executive Order 13132 does not apply to this rule.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, titled "Consultation and Coordination With Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications. "Policies that have Tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes or on the distribution of power and responsibilities between the Federal government and Indian Tribes."

This final rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. Today's rule promulgates EPA Method 1631, Revision E to replace an already approved version of the method for measuring mercury at low levels for compliance monitoring under the Clean Water Act, and provide additional flexibility for use of currently available technologies. The costs of this rule for Tribal governments are minimal. Thus, Executive Order 13175 does not apply to this rule.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on November 29, 2002.

J. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

K. Plain Language Directive

Executive Order 12866 directs each agency to write its rules in plain language. Readable regulations help the public find requirements quickly and understand them easily. Plain language increases compliance, strengthens enforcement, and decreases mistakes, frustration, phone calls, appeals, and distrust of government. EPA made every effort to write this preamble to the final rule in as clear, concise, and unambiguous manner as possible. Specifically, EPA used active voice and avoided the use of technical terms except when necessary. EPA solicited but received no comments on the Plain Language aspects of this rule.

List of Subjects in 40 CFR Part 136

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

Dated: September 30, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations, is amended as follows:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

1. The authority citation for Part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a), Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is amended:

a. By revising Item 35 in Table IB of paragraph (a).

b. By revising Footnote 43 to Table IB of paragraph (a).

c. By revising paragraph (b)(41).

d. By revising entries 18 and 35 under the heading "Metals" in Table II of paragraph (e).

§ 136.3 Identification of test procedures.

* * * * *

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and method	Reference (method number or page)				
	EPA [1, 35]	Standard methods [edition(s)]	ASTM	USGS [2]	Other
* * * * * * *					
35. Mercury—Total,[4] mg/L:					
Cold vapor, manual or	245.1	3112 B [18th, 19th]	D3223–91	I–3462–85	977.22 [3]
Automated	245.2.				
Oxidation, purge and trap, and cold vapor atomic fluorescence spectrometry (ng/L).	1631E [43].				
* * * * * * *					

Table 1B Notes:

[1] "Methods for Chemical Analysis of Water and Wastes," Environmental Protection Agency, Environmental Monitoring Systems Laboratory-Cincinnati (EMSL-CI), EPA–600/4–79–020, Revised March 1983 and 1979 where applicable.

[2] Fishman, M.J., *et al.* "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments," U.S. Department of the Interior, Techniques of Water—Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

[3] "Official Methods of Analysis of the Association of Official Analytical Chemists," methods manual, 15th ed. (1990).

[4] For the determination of total metals the sample is not filtered before processing. A digestion procedure is required to solubilize suspended material and to destroy possible organic-metal complexes. Two digestion procedures are given in "Methods for Chemical Analysis of Water and Wastes, 1979 and 1983". One (Section 4.1.3), is a vigorous digestion using nitric acid. A less vigorous digestion using nitric and hydrochloric acids (Section 4.1.4) is preferred; however, the analyst should be cautioned that this mild digestion may not suffice for all samples types. Particularly, if a colorimetric procedure is to be employed, it is necessary to ensure that all organo-metallic bonds be broken so that the metal is in a reactive state. In those situations, the vigorous digestion is to be preferred-making certain that at no time does the sample go to dryness. Samples containing large amounts of organic materials may also benefit by this vigorous digestion, however, vigorous digestion with concentrated nitric acid will convert antimony and tin to insoluble oxides and render them unavailable for analysis. Use of ICP/AES as well as determinations for certain elements such as antimony, arsenic, the noble metals, mercury, selenium, silver, tin, and titanium require a modified sample digestion procedure and in all cases the method write-up should be consulted for specific instructions and/or cautions.

NOTE TO TABLE 1B NOTE 4: If the digestion procedure for direct aspiration AA included in one of the other approved references is different than the above, the EPA procedure must be used.

Dissolved metals are defined as those constituents which will pass through a 0.45 micron membrane filter. Following filtration of the sample, the referenced procedure for total metals must be followed. Sample digestion of the filtrate for dissolved metals (or digestion of the original sample solution for total metals) may be omitted for AA (direct aspiration or graphite furnace) and ICP analyses, provided the sample solution to be analyzed meets the following criteria:

a. has a low COD (<20)
b. is visibly transparent with a turbidity measurement of 1 NTU or less
c. is colorless with no perceptible odor, and
d. is of one liquid phase and free of particulate or suspended matter following acidification.

* * * * *

[35] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic are provided in Appendix D of this part titled, "Precision and Recovery Statements for Methods for Measuring Metals".

* * * * *

[43] USEPA. 2002. Method 1631, Revision E, "Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry." September 2002. Office of Water, U.S. Environmental Protection Agency (EPA–821–R–02–019). The application of clean techniques described in EPA's draft Method 1669: Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels (EPA–821–R–96–011) are recommended to preclude contamination at low-level, trace metal determinations.

* * * * *

(b) * * *

(41) USEPA. 2002. Method 1631, Revision E, "Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry." September 2002. Office of Water, U.S. Environmental Protection Agency (EPA–821–R–02–019). Available from: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Publication No. PB2002–108220. Cost: $25.50 (subject to change).

* * * * *

(e) * * *

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES

Parameter No./name	Container [1]	Preservation [2,3]	Maximum holding time [4]
* * * * * * *			
Metals			
18. Chromium VI [7]	P, G	Cool, 4°C	24 hours.
35. Mercury [17]	P, G	HNO_3 to pH<2	28 days.
3, 5–8, 12,13, 19, 20, 22, 26, 29, 30, 32–34, 36, 37, 45, 47, 51, 52, 58–60, 62, 63, 70–72, 74, 75. Metals except boron, chromium VI and mercury [7].	P, G	do	6 months.

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES—Continued

Parameter No./name	Container[1]	Preservation[2,3]	Maximum holding time[4]
.	.	.	.

[1] Polyethylene (P) or glass (G). For microbiology, plastic sample containers must be made of sterilizable materials (polypropylene or other autoclavable plastic), except for samples collected for trace-level mercury (see footnote 17).

[2] Sample preservation should be performed immediately upon sample collection. For composite chemical samples each aliquot should be preserved at the time of collection. When use of an automated sampler makes it impossible to preserve each aliquot, then chemical samples may be preserved by maintaining at 4°C until compositing and sample splitting is completed, except for samples collected for trace-level mercury (see footnote 17).

[3] When any sample is to be shipped by common carrier or sent through the United States Mails, it must comply with the Department of Transportation Hazardous Materials Regulations (49 CFR part 172). The person offering such material for transportation is responsible for ensuring such compliance. For the preservation requirements of Table II, the Office of Hazardous Materials, Materials Transportation Bureau, Department of Transportation has determined that the Hazardous Materials Regulations do not apply to the following materials: Hydrochloric acid (HCl) in water solutions at concentrations of 0.04% by weight or less (pH about 1.96 or greater); Nitric acid (HNO_3) in water solutions at concentrations of 0.15% by weight or less (pH about 1.62 or greater); Sulfuric acid (H_2SO_4) in water solutions at concentrations of 0.35% by weight or less (pH about 1.15 or greater); and Sodium hydroxide (NaOH) in water solutions at concentrations of 0.080% by weight or less (pH about 12.30 or less).

[4] Samples should be analyzed as soon as possible after collection. The times listed are the maximum times that samples may be held before analysis and still be considered valid. (See footnote 17 for samples collected for trace level mercury). Samples may be held for longer periods only if the permittee, or monitoring laboratory, has data on file to show that for the specific types of samples under study, the analytes are stable for the longer time, and has received a variance from the Regional Administrator under § 136.3(e). Some samples may not be stable for the maximum time period given in the table. A permittee, or monitoring laboratory, is obligated to hold the sample for a shorter time if knowledge exists to show that this is necessary to maintain sample stability. See § 136.3(e) for details. The term "analyze immediately" usually means within 15 minutes or less of sample collection.

. . . . .

[7] Samples should be filtered immediately on site before adding preservative for dissolved metals, except for samples collected for trace-level mercury (see footnote 17).

. . . . .

[17] Samples collected for the determination of trace level mercury (100 ng/L) using EPA Method 1631 must be collected in tightly-capped fluoropolymer or glass bottles and preserved with BrCl or HCl solution within 48 hours of sample collection. The time to preservation may be extended to 28 days if a sample is oxidized in the sample bottle. Samples collected for dissolved trace level mercury should be filtered in the laboratory. However, if circumstances prevent overnight shipment, samples should be filtered in a designated clean area in the field in accordance with procedures given in Method 1669. Samples that have been collected for determination of total or dissolved trace level mercury must be analyzed within 90 days of sample collection.

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BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–7398–4]

RIN 2040–AD81

Unregulated Contaminant Monitoring Regulation: Approval of Analytical Method for *Aeromonas*; National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical and Microbiological Contaminants

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's rule approves the analytical method and an associated Minimum Reporting Level (MRL) to support the Unregulated Contaminant Monitoring Regulation's (UCMR) List 2 *Aeromonas* monitoring. This List 2 monitoring will be conducted at 120 large and 180 small Public Water Systems (PWS) from January 1, 2003 through December 31, 2003.

Today's rule also approves EPA Method 515.4 to support previously required National Primary Drinking Water Regulation (NPDWR) compliance monitoring for 2,4-D (as acid, salts and esters), 2,4,5-TP (Silvex), dinoseb, pentachlorophenol, picloram and dalapon. In addition, EPA Method 531.2 is approved to support previously required NPDWR monitoring for carbofuran and oxamyl.

Minor changes have been made in the format of the table of methods required to be used for organic chemical NPDWR compliance monitoring to improve clarity and to conform to the format of other methods tables. In addition, the Presence-Absence (P–A) Coliform Test listed in the total coliform methods table was inadvertently identified as Method 9221. This has been corrected to 9221 D. Also, detection limits for "Cyanide" were added in the "Detection Limits for Inorganic Contaminants" table for the two cyanide methods, and minor editorial corrections were made.

EPA is approving seven of the eight additional industry-developed analytical methods that were proposed to support previously required NPDWR compliance monitoring. These seven methods include: A method for the determination of atrazine, two methods for the determination of cyanide, two methods for the determination of total coliforms and *E. coli*, a method for the determination of heterotrophic bacteria, and a method for the determination of turbidity. With respect to the eighth industry-developed method proposed on March 7, 2002, EPA is deferring a decision on its approval until additional clarifying information from the vendor is evaluated.

Finally, EPA is updating the information concerning the inspection of materials in the Water Docket to reflect its new address.

DATES: This regulation is effective November 29, 2002. The incorporation by reference of the methods listed in the rule is approved by the Director of the Federal Register as of November 29, 2002. For purposes of judicial review, this final rule is promulgated as of 1 p.m. Eastern Time on November 12, 2002, as provided in 40 CFR 23.7.

ADDRESSES: The official public docket for this rule is located at EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: For information regarding the actions included in this final rule contact David J. Munch, EPA, 26 West Martin Luther King Dr. (MLK 140), Cincinnati, Ohio 45268, (513) 569–7843 or e-mail at *munch.dave@EPA.gov*. General information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

A. Potentially Regulated Entities

The only regulated entities affected by today's rule are the 300 public water systems selected for *Aeromonas* monitoring. Use of the remaining methods approved in this action is voluntary. If, however, one of these methods is selected to support compliance monitoring, then compliance with the procedures specified in the method is required. A nationally representative sample of 120 large community and non-transient non-community water systems serving more than 10,000 persons is required to monitor for *Aeromonas* under the current UCMR. In addition, a nationally representative sample of 180 small community and non-transient non-community systems serving 10,000 or fewer persons is also required to monitor for *Aeromonas*. States, Territories, and Tribes with primacy to administer the regulatory program for public water systems under the Safe Drinking Water Act, sometimes conduct analyses to measure for contaminants in water samples and are thus affected by this action. Categories and entities potentially regulated by this action include the following:

Category	Examples of potentially regulated entities	NAICS[a]
State, Local, & Tribal Governments	States, local and tribal governments that analyze water samples on behalf of public water systems required to conduct such analysis; States, local and tribal governments that themselves operate community and non-transient non-community water systems required to monitor.	924110
Industry	Private operators of community and non-transient non-community water systems required to monitor.	221310
Municipalities	Municipal operators of community and non-transient non-community water systems required to monitor.	924110

[a] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware of that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is potentially regulated by this action concerning the monitoring for *Aeromonas*, you should carefully examine the applicability criteria in §§ 141.35 and 141.40 of the Code of Federal Regulations (CFR). A listing of both the large and small systems selected to perform *Aeromonas* monitoring is available at *http://www.epa.gov/safewater/standard/ucmr/systems.html*. To determine whether your facility is potentially regulated by this action concerning the use of EPA Methods 515.4 or 531.2 or the additional industry-developed methods being approved, you should carefully examine the applicability criteria in §§ 141.21, 141.23, 141.24 and 141.74 of the CFR. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Availability of Related Information

1. EPA has established an official public docket for this action under Docket ID No. W–01–13. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket, EPA, 1301 Constitution Avenue, NW., EPA West, Room B–102, Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–2426.

2. You may access this Federal Register document electronically through the EPA Internet under the "Federal Register" listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, or access those documents in the public docket that are available electronically. Once in the system, select "Quick Search," then key in the appropriate docket identification number. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section B.1.

C. Abbreviations and Acronyms Used in the Preamble and Final Rule

2,4-D—2,4-dichlorophenoxyacetic acid
2,4,5-TP—2,4,5 trichlorophenoxyacetic acid
ADA—ampicilin-dextrin
APHA—American Public Health Association
ASTM—American Society for Testing and Materials
CAS—Chemical Abstract Service
CFR—Code of Federal Regulations
CFU/mL—colony forming units per milliliter
EPA—United States Environmental Protection Agency
et. al.—and others
et. seq.—and the following
GLI method—Great Lakes Instruments method
HCL—hydrochloric acid
HRGC—high resolution gas chromatography
HRMS—high resolution mass spectrometer
ICR—information collection request
LD—point of lowest disinfectant residual
MCL—maximum contaminant level
MD—midpoint in the distribution system
MDL—method detection limit
MI—4-methylumbelliferyl-beta-D-galactopyranoside-indoxyl-beta-D-glucuronide
mg/L—milligram per liter
MR—point of maximum retention
MRL—minimum reporting level
NAICS—North American Industry Classification System
NERL—National Environmental Research Laboratory
NPDWR—National Primary Drinking Water Regulation
NTIS—National Technical Information Service
NTTAA—National Technology Transfer and Advancement Act
OMB—Office of Management and Budget
P–A—Presence-Absence
PCBs—polychlorinated biphenyls
pH—negative logarithm of the effective hydrogen-ion concentration
pKa—negative logarithm of the acidity constant

PT—proficiency testing
PWS—public water system
RFA—Regulatory Flexibility Act
SBA—Small Business Administration
SBREFA—Small Business Regulatory Enforcement Fairness Act
SDWA—Safe Drinking Water Act
UCMR—Unregulated Contaminant Monitoring Regulation
UMRA—Unfunded Mandates Reform Act of 1995
UV—ultraviolet

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I. Statutory Authority and Background

The Safe Drinking Water Act (SDWA) section 1445(a)(2), as amended in 1996, requires EPA to establish criteria for a program to monitor unregulated contaminants and to publish a list of contaminants to be monitored. To meet these requirements, EPA published the Revisions to the Unregulated Contaminant Monitoring Regulation (UCMR) for Public Water Systems (in 64 FR 50555, September 17, 1999) which substantially revised the previous Unregulated Contaminant Monitoring Program, codified at 40 CFR 141.40. The September 1999 UCMR requires monitoring for three lists of contaminants. EPA subsequently published supplements to the September 1999 rule which included approved analytical methods for conducting analyses of List 1 and selected List 2 contaminants (65 FR 11372, March 2, 2000 and 66 FR 2273, January 11, 2001) and technical corrections and other supplemental information (66 FR 27215, May 16, 2001 and 66 FR 46221, September 4, 2001). The January 11, 2001 rule specified the requirements for *Aeromonas* monitoring in the UCMR; however, an analytical method for the analysis of *Aeromonas* was not approved as part of that final rule. Today's rule amends the UCMR to specify a method and an associated Minimum Reporting Level (MRL) for monitoring *Aeromonas* on List 2.

The SDWA, as amended in 1996, requires EPA to promulgate national primary drinking water regulations (NPDWRs) which specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants (SDWA section 1412 (42 U.S.C. 300g–1)). NPDWRs apply to public water systems pursuant to SDWA section 1401 (42 U.S.C. 300f). According to SDWA section 1401(1)(D), NPDWRs include "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels, including acceptable methods for quality control and testing procedures." In addition, SDWA section 1445(a) authorizes the Administrator to establish regulations for monitoring to assist in determining whether persons are acting in compliance with the requirements of the SDWA. EPA's promulgation of analytical methods is authorized under these sections of the SDWA, as well as the general rulemaking authority in SDWA section 1450(a), (42 U.S.C. 300j–9(a)).

II. Explanation of Today's Action

Prior actions (66 FR 2273, January 11, 2001; and 66 FR 46221, September 4, 2001), specify the methods to be used for analysis of List 2 chemicals. In today's action, EPA is approving the use of EPA Method 1605 for the analysis of *Aeromonas* as specified in List 2 of Table 1 with an MRL of 0.2 Colony Forming Units (CFU)/100 mL.

Today's action also approves EPA Method 515.4 for the determination of 2,4-D (as acid, salts and esters), 2,4,5-TP (Silvex), dinoseb, pentachlorophenol, picloram and dalapon; EPA Method 531.2 for the determination of carbofuran and oxamyl; and an additional industry-developed method for the determination of atrazine in drinking water using an immunoassay-based technology and colorimetric determination, in accordance with § 141.24(e), to support monitoring required under § 141.24(h). Today's rule also approves six additional industry-developed methods: a method using a micro-scale hard distillation apparatus followed by colorimetric determination of total cyanide and a method using an ultra-violet digester system for the determination of total and available cyanide, to support monitoring required under § 141.23 (k)(1); a method for the determination of the presence or absence of total coliforms and *E. coli* in drinking waters using a liquid culture, and a membrane filter method for the determination of total coliforms and *E. coli* using a membrane filter enzyme-substrate procedure, for monitoring required under § 141.21; and a method for the determination of heterotrophic bacteria, and a laser based nephelometric method for the determination of turbidity, for monitoring required under § 141.74. With respect to the eighth industry-developed method proposed on March 7, 2002, EPA is deferring a decision on its approval until additional clarifying information from the vendor is evaluated.

In addition, the Presence-Absence (P–A) Coliform Test listed in the total coliform methods table was inadvertently identified as Method 9221. As proposed on March 7, 2002, this has been corrected to 9221 D. Also, detection limits for "Cyanide" were added in the "Detection Limits for Inorganic Contaminants" table for the two cyanide methods, and minor editorial corrections were made.

The actions taken in this final rule were proposed in the **Federal Register** published on March 7, 2002 (67 FR 10532, March 7, 2002). Twenty-six sets of comments were received concerning this proposal. Those comments which have resulted in EPA modifying what was proposed on March 7, 2002 are discussed in summary form below. More detailed responses to these comments, and to all other comments, are contained in "Public Comment and Responses for the Unregulated Contaminant Monitoring Regulation: Approval of Analytical Method for *Aeromonas*. National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical and Microbiological Contaminants' which is available in Docket ID No. W–01–13. See Section B. Availability of Related Information for information on contacting the official public docket.

In this final version of the rule, EPA has decided to provide the full titles of the methods approved in this action in footnotes 17 and 18 to the table at § 141.21(k)(1), the footnote in § 141.24(e)(1), and footnotes 11 and 12 to the table at § 141.74(a)(1). Each of these titles were included in the discussions of each method detailed in the proposal to this regulation, published in the **Federal Register** on March 7, 2002 (67 FR 10532, March 7, 2002). These titles were also on the cover of each method, all of which were available in the Water Docket for this regulation.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing prior notice and an opportunity for public comment. EPA is publishing several rule changes related to today's final determination. First, the address for the Water Docket has been updated in § 141.24(e)(1) and in the text accompanying the tables at §§ 141.21(f)(3), 141.23(k)(1), 141.40(a)(3) and 141.74(a)(1) to conform to the Water Docket's new address. Second, the address for the Water Resource Center has been corrected in footnote 6 to the table in § 141.21(f)(3). Finally, the address for the National Technical Information Service was added in footnote 6 to the table at § 141.23(k)(1). EPA has determined that there is "good cause" for making these rule changes final without prior proposal and opportunity for comment because these rule changes have no substantive impact and merely correct or replace outdated CFR text. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes "good cause" under 5 U.S.C. 553(b)(B). For the same reasons, EPA is making these rule changes effective upon publication. 5 U.S.C. 553(d)(3).

III. Summary of Comments Resulting in Changes in the Proposed Action

EPA has received and is reviewing clarifying information concerning the evaluation of the Colitag® Test. Thus, EPA is not taking final action on this method at this time. EPA will respond to all comments regarding this method in a future action.

No comments were received that would warrant delaying final action concerning: EPA Method 515.4 for the determination of 2,4-D (as acid, salts and esters), 2,4,5-TP (Silvex), dinoseb, pentachlorophenol, picloram and dalapon; EPA Method 531.2 for the determination of carbofuran and oxamyl; Syngenta AG–625 for the determination of atrazine; QuikChem 10–204–00–1–X or Kelada 01 for the determination of cyanide; Readycult" Coliforms 100 Presence/Absence Test and Membrane Filter Technique using Chromocult" Coliform Agar for the determination of total coliforms and *E. coli*; SimPlate for the determination of heterotrophic bacteria; or Hach FilterTrak 10133 for the determination of turbidity. Therefore, these methods are approved for drinking water compliance monitoring as proposed.

One commenter suggested that the entries for cyanide in both of the tables located in § 141.23 were confusing. This commenter suggested that the tables be reordered, so that the analytical methods would be listed in the same order in both tables. This commenter also noted that the footnotes listing whether the method was for the determination of free or total cyanide were in error. In addition, this commenter noted that the detection limit listed for the Kelada 01 method was in error.

EPA agrees with the commenter. The tables in § 141.23 have been reordered, putting the analytical methods listed in the same order. The Agency intends to propose changes to the footnotes listing whether the method was for the determination of free or total cyanide in a future action. The detection limit for the Kelada 01 method has been corrected.

IV. Laboratory Approval and Certification for Aeromonas Monitoring

As a result of today's action, laboratories wishing to analyze samples for *Aeromonas* under the UCMR must use EPA Method 1605. EPA has previously specified, in § 141.40 (a)(5)(ii)(G)(*3*) (66 FR 2273, January 11, 2001), that *Aeromonas* analyses must be performed by laboratories certified under § 141.28 for compliance analyses of coliform indicator bacteria using an EPA approved membrane filtration procedure. Because of differences between EPA Method 1605 and existing membrane filtration methods for coliform indicator bacteria, laboratories performing EPA Method 1605 must also participate in proficiency testing (PT) studies to be conducted by EPA. Laboratories wishing to be approved to use Method 1605 for this monitoring should submit a "request to participate" letter to EPA and will be asked to analyze 10 samples for *Aeromonas* using Method 1605. Within 10 days of this rule being signed by the EPA Administrator, EPA will notify each large public water system selected to perform *Aeromonas* monitoring of the need for their laboratory to submit this "request to participate" letter. EPA has established 30 days following the publication of the final rule as the latest date by which it will be able to accept the "request to participate" letter due to the very short time left before the beginning of the monitoring program (January 2003). The "request to participate" letter should be mailed to: Technical Support Center *Aeromonas* PT Coordinator, EPA, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268. Upon completion of the *Aeromonas* PT Program, EPA will provide each successful laboratory with an approval letter identifying the laboratory by name and the approval date. This letter, and a copy of the laboratory's certification under § 141.28 for compliance analysis of coliform indicator bacteria using an EPA approved membrane filtration procedure, may then be presented to any Public Water System (PWS) as evidence of laboratory approval for *Aeromonas* analysis supporting the UCMR. Laboratory approval is contingent upon the laboratory having and maintaining certification to perform drinking water compliance monitoring using an approved coliform membrane filtration method. EPA will post a list of the laboratories that have successfully completed each PT study at *http//www.epa.gov/safewater/standard/ucmr/aprvlabs.html*.

All large and small systems selected for the Screening Survey will be notified by their State Drinking Water Authority or EPA at least 90 days before the dates established for collecting and submitting UCMR field samples to determine the presence of *Aeromonas*. The PWSs selected to conduct *Aeromonas* monitoring are listed at *http//www.epa.gov/safewater/standard/ucmr/systems.html*. Large systems must send samples to approved laboratories and then report the results to EPA as specified in § 141.35. All shipping and analytical costs incurred by monitoring requirements for small systems will be paid by EPA; however, small systems will be responsible for collecting these samples.

V. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0204. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1896.03) and a copy may be obtained from Susan Auby by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Avenue, NW, Washington, DC 20460; by e-mail at: *auby.susan@epa.gov*; or by calling (202) 566–1672. The information requirements are not effective until OMB approves them.

The information to be collected pursuant to today's final rule fulfills the statutory requirements of section 1445(a)(2) of the SDWA, as amended in 1996. The data to be collected will describe the source water, location, and test results for samples taken from PWSs. Reporting is mandatory. § 141.35. The data are not subject to confidentiality protection. The cost estimates described below for *Aeromonas* monitoring are attributed to laboratory fees, shipping costs, and some minimal labor burden for reading of requirements and for collecting samples. For large systems, labor burden estimates also consider activities related to reporting of results to EPA's UCMR database.

Average annual non-labor costs for each large system during the three-year ICR period of 2002–2004 are estimated to be $197. Each large and small system is required to collect *Aeromonas* samples an average of 2 times per year for the 2002–2004 period. EPA will incur no additional labor costs for implementation of today's final rule. The Agency's annual non-labor costs for the ICR period are estimated to be $50,310. These non-labor costs are solely attributed to the cost of sample testing and sample kit shipping for the 180 small systems. Annual costs and burdens are detailed in the following tables. A detailed discussion of these costs was presented in the **Federal Register** published on March 7, 2002 (67 FR 10532, March 7, 2002).

AVERAGE ANNUAL PWS BURDEN AND COST SUMMARY

[2002–2004]

Activity	Annual burden hours	Cost				Annual responses
		Annual labor cost	Annual O&M cost	Annual capital cost	Total annual cost	
180 Small PWSs (serving 10,000 or fewer)	253	$6,086	$0	$0	$6,086	360
120 Large PWSs (greater than 10,000)	100	2,403	23,640	0	26,043	240
Total	353	8,489	23,640	0	32,129	600

BOTTOM LINE ANNUAL BURDEN AND COST

[2002–2004]

Annual number of respondents	300 = 180	Small PWSs (serving 10,000 or fewer).
	+ 120	Large PWSs (serving greater than 10,000).
Total annual responses	600 = 360	Small PWS responses.
	+ 240	Large PWS responses.
Annual number of responses per respondent	2 = 600	Total annual responses from above.
	/300	Total annual respondents from above.
Total annual respondent hours	353 = 253	Small PWS.
	+ 100	Large PWS.
Hours per response	0.59 = 353	Total annual respondent hours from above.
	/600	Total annual responses from above.
Total annual O&M and capital cost	$23,640 = $0	180 small PWSs.
	+ $23,640	120 large PWSs.
Total annual respondent cost	$32,129 = $6,086	180 small PWSs.
	+ $26,043	120 large PWSs.
Total annual hours (resp. plus Agency)	353 = 353	Total annual respondent hours for PWSs.
	+ 0	Total annual EPA hours.
Total annual cost (resp. plus Agency)	$82,440 =	Total annual costs nationally.
	$32,130 +	Total annual respondent costs for PWSs.
	$50,310	Total annual EPA costs.

Note that there is no capital cost associated with this Rule. Primacy agencies do not incur any costs associated with this Rule.

Today's rule also approves EPA Methods 515.4 and 531.2 to support monitoring already required under Phase II/V monitoring (§ 141.24), and approves seven additional industry-developed analytical methods. This part of today's final rule merely allows for the use of additional standardized methods, offering systems and their laboratories further operational flexibility. Thus, EPA believes that there is no cost or burden to public water systems associated with the addition of these additional methods. In addition, because State adoption of analytical methods is voluntary, no costs are estimated for States related to the additional analytical methods that are included in today's final rule.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and use technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with the Small Business Administration's (SBA) Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be public water systems serving 10,000 persons or fewer. This is the cut-off level specified by Congress in the 1996 Amendments to the SDWA for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register**, (63 FR 7620, February 13, 1998) requested comment, consulted with SBA, and expressed its intention to use the alternative definition for all future drinking water regulations in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that final rule, the alternative definition would be applied to this regulation as well.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

As for the UCMR, published on September 17, 1999 (64 FR 50555), EPA analyzed separately the impact on small privately and publicly owned water systems because of the different economic characteristics of these ownership types. For publicly owned systems, EPA used the "revenue test," which compares a system's annual costs attributed to the rule with the system's annual revenues. EPA used a "sales test" for privately owned systems, which involves the analogous comparison of UCMR-related costs to a privately owned system's sales. Because EPA does not know the ownership types of the systems selected for *Aeromonas* monitoring, the Agency assumes that the distribution of the national representative sample of small systems will reflect the proportions of publicly and privately owned systems in the national inventory (as estimated by EPA's 1995 Community Water System Survey, *http://www.epa.gov/safewater/cwssvr.html*). The estimated distribution of the sample for today's final rule, categorized by ownership type, source water, and system size, is presented in the following table.

NUMBER OF PUBLICLY AND PRIVATELY OWNED SMALL SYSTEMS TO PARTICIPATE IN SCREENING SURVEY 2 FOR AEROMONAS

Size category	Publicly owned systems	Privately owned systems	Total—All Systems
Ground Water Systems			
500 and under	8	29	37
501 to 3,300	35	16	51
3,301 to 10,000	27	7	34
Subtotal Ground	70	52	122
Surface Water Systems			
500 and under	5	13	18
501 to 3,300	10	4	14
3,301 to 10,000	20	6	26
Subtotal Surface	35	23	58
Total	105	75	180

The basis for the UCMR RFA certification for today's final rule, which approves Method 1605 for the analysis of *Aeromonas*, was determined by evaluating the total cost as a percentage of system revenues/sales. In the worst-case-scenario, the smallest system size category (*i.e.*, 500 and under) is estimated to have revenues/sales of approximately $80,000. The total cost attributable to *Aeromonas* monitoring for these 55 systems represents less than 0.2 percent of their annual revenue/sales. The impact for larger systems will be even less significant. EPA specifically structured the rule to avoid significantly affecting small entities by assuming all costs for laboratory

analyses, shipping, and quality control for small entities. EPA incurs the entirety of the non-labor costs associated with *Aeromonas* monitoring, or 89 percent of all costs. Small systems only incur labor costs associated with the collection of *Aeromonas* samples and for reading about their sampling requirements, with an total labor cost per system of UCMR implementation of $101.50.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, UMRA section 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative, if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under UMRA section 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or for the private sector in any one year. The only costs resulting from today's rule are those associated with the *Aeromonas* screening survey. EPA estimates that the total cost for State, local, and Tribal governments, and the private sector for one year of List 2 Screening Survey monitoring for *Aeromonas* (in 2003) is approximately $247,320, of which EPA will pay $150,930 or approximately 61 percent. The total costs not payed by EPA are $96,390 for the one year of *Aeromonas* monitoring (2003). State drinking water programs are assumed to incur no additional costs associated with the *Aeromonas* Screening Survey component of the UCMR. No costs are estimated/incurred for the other methods included in this final rule since they represent additional methods that public water systems may elect to use but that are not required. This rule does not withdraw earlier versions of methods, and there is no corresponding increase in expenditure or burden. Thus, today's final rule is not subject to the requirements of UMRA sections 202 and 205.

EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments because EPA will pay for the reasonable costs of testing for the small PWSs required to sample and test for *Aeromonas* under this final rule, including those owned and operated by small governments. The only costs that small systems will incur are those attributed to collecting the *Aeromonas* samples and packing them for shipping to the laboratory (EPA will also pay for shipping). These costs are minimal, and are neither significant nor unique. For the reasons stated above, no costs are estimated/incurred for the other methods. Thus, today's rule is not subject to the requirements of UMRA section 203.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The objective of this final rule is to specify approved analytical methods, thereby allowing *Aeromonas* to be included in the UCMR Screening Survey program and approving EPA Methods 515.4 and 531.2 and seven additional industry-developed methods that public water systems may use to conduct analyses previously required. The cost to State and local governments is minimal, and the rule does not preempt State law. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials. No comments were received that concerned issues covered by Executive Order 13132.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, titled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsiblitities between the Federal government and Indian tribes."

This final rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The objective of this final rule is to specify approved analytical methods, thereby allowing *Aeromonas* to be included in the UCMR Screening Survey program and approving EPA Methods 515.4, 531.2 and seven additional industry-developed methods that public water systems may use to conduct analyses previously required. Only one small Indian Tribal system was selected for *Aeromonas* monitoring. Since this utility will be receiving sampling assistance from the State of Montana and EPA will pay for all shipping and analysis costs, the cost to the Tribal government will be minimal. The rule does not preempt Tribal law. Thus, Executive Order 13175 does not apply to this rule. Moreover, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically solicited comment on the proposed rule from tribal officials. No comments concerning Tribal issues were received.

G. Executive Order 13045—Protection of Children From Environmental Health Risks & Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not "economically significant" as defined under Executive Order 12866. Further, this final rule does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Effect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. EPA identified no voluntary consensus standards for *Aeromonas*. Therefore, EPA has approved only EPA Method 1605 for *Aeromonas* monitoring.

Concerning the approval of EPA Method 515.4, while the Agency identified two new voluntary consensus methods (American Society for Testing and Materials (ASTM) D5317–98, and SM 6640 B) for the chlorinated acids as being potentially applicable, they are not included in this rule. EPA has decided not to approve SM 6640 B because the use of this voluntary consensus standard would have been impractical due to significant shortcomings in the sample preparation and quality control sections of the method instructions. Section 1b of Method SM 6640 B states that the alkaline wash detailed in section 4b2 is optional. The hydrolysis that occurs during this step is essential to the analysis of the esters of many of the analytes. Therefore, this step is necessary and cannot be optional. In addition, the method specifies that the quality control limits for laboratory fortified blanks are to be based upon plus or minus three times the standard deviation of the mean recovery of the analytes, as determined in each laboratory. Therefore, this method permits unacceptably large control limits which may include 0 percent recovery. ASTM D5317–98 specifies acceptance windows for the initial demonstration of proficiency for laboratory fortified blank samples that are as small as 0 percent to as large as 223 percent recovery for picloram, with tighter criteria for other regulated contaminants. Therefore, this method permits unacceptably large control limits which include 0 percent recovery. Since SM 6640 B has significant shortcomings in the sample preparation and quality control sections and D5317–98 has unacceptably large quality control limits use of these methods for drinking water analysis is impractical. Therefore, EPA is approving only EPA Method 515.4 for the chlorinated acids at this time.

Concerning the approval of EPA Method 531.2, while the Agency identified two new voluntary consensus methods (Standard Method 6610, 20th Edition, and Standard Method 6610, 20th Supplemental Edition) as being potentially applicable for the analysis of carbamates, the Agency is not approving them in this rulemaking. Standard Method 6610, 20th Edition has recently been approved for compliance monitoring. Standard Method 6610, 20th Supplemental Edition permits the use of a strong acid, hydrochloric acid (HCL), as a preservative. The preservatives in all of the other approved EPA and Standard Methods procedures for these analytes are weak acids that adjust the pH to a specific value based upon the pKa of the preservative. The use of HCL would require accurate determinations of the pH of the sample in the field and could be subject to considerable error and possible changes in pH upon storage. Although not specifically observed for oxamyl or carbofuran during the development of similar methods, structurally similar pesticides have been shown to degrade over time when kept at pH 3. Therefore, approval of this method is impractical because it specifies the use of a strong acid (HCL) when positive control of the pH is critical. Therefore, EPA is approving only EPA Method 531.2 for determining oxamyl and carbofuran.

The seven other analytical methods being approved in this regulation are additional analytical methods for use in drinking water compliance monitoring, submitted to EPA by industry. These industry-developed methods will supplement existing approved methods, some of which are voluntary consensus standards.

J. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (February 11, 1994), focuses Federal attention on the environmental and human health conditions of minority and low-income populations with the goal of achieving environmental protection for all communities. This regulation adds new analytic methods to part 141. It does not withdraw any currently approved methods nor does it add or alter any current monitoring requirement. The purpose of this regulation is to provide additional analytical methods for

drinking water utilities to use to meet the currently existing monitoring requirements. EPA has determined that there are no environmental justice issues in this rulemaking.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on November 29, 2002.

L. Administrative Procedures Act

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing prior notice and an opportunity for public comment. EPA is publishing several rule changes related to today's action that were not included in the proposal. First, the address for the Water Docket has been corrected in § 141.24(e)(1) and in the text accompanying the tables at §§ 141.21(f)(3), 141.23(k)(1), 141.40(a)(3) and 141.74(a)(1). Second, the address for the Water Resource Center has been corrected in footnote 6 to the table in § 141.21(f)(3). Finally, the address for the National Technical Information Service was added in footnote 6 to the table at § 141.23(k)(1). EPA has determined that there is "good cause" for making these rule changes final without prior proposal and opportunity for comment because these rule changes have no substantive impact and merely correct or replace outdated CFR text. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes "good cause" under 5 U.S.C. 553(b)(B). For the same reasons, EPA is making these rule changes effective upon publication. 5 U.S.C. 553(d)(3).

M. Plain Language Directive

Executive Order 12866 calls for each agency to write its rules in plain language. Readable regulations help the public find requirements quickly and understand them easily. They increase compliance, strengthen enforcement, and decrease mistakes, frustration, phone calls, appeals, and distrust of government. EPA made every effort to write this preamble to the final rule in as clear, concise, and unambiguous manner as possible. Today's final rule language is largely in a table format consistent with the format of the CFR sections being amended.

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Incorporation by reference, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: October 18, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 141.21 is amended:

a. By revising the Table in paragraph (f)(3);

b. By adding paragraphs (f)(6) (viii) and (ix).

The revision and additions read as follows:

§ 141.21 Coliform sampling.

* * * * *

(f) * * *

(3) * * *

Organism	Methodology [12]	Citation [1]
Total Coliforms [2]	Total Coliform Fermentation Technique [3,4,5]	9221A, B
	Total Coliform Membrane Filter Technique [6]	9222 A, B, C
	Presence-Absence (P–A) Coliform Test [5,7]	9221 D
	ONPG–MUG Test [8]	9223
	Colisure Test [9]	
	E*Colite® Test [10]	
	m-ColiBlue24® Test [11]	
	Readycult® Coliforms 100 Presence/Absence Test [13]	
	Membrane Filter Technique using Chromocult® Coliform Agar [14]	

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents listed in footnotes 1, 6, 8, 9, 10, 11, 13 and 14 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, EPA West, 1301 Constitution Avenue, NW, EPA West, Room B102, Washington DC 20460 (Telephone: 202–566–2426); or at the Office of Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C. 20408.

[1] *Standard Methods for the Examination of Water and Wastewater*, 18th edition (1992), 19th edition (1995), or 20th edition (1998). American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005. The cited methods published in any of these three editions may be used.

[2] The time from sample collection to initiation of analysis may not exceed 30 hours. Systems are encouraged but not required to hold samples below 10 deg. C during transit.

[3] Lactose broth, as commercially available, may be used in lieu of lauryl tryptose broth, if the system conducts at least 25 parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliform, using lactose broth, is less than 10 percent.

[4] If inverted tubes are used to detect gas production, the media should cover these tubes at least one-half to two-thirds after the sample is added.

[5] No requirement exists to run the completed phase on 10 percent of all total coliform-positive confirmed tubes.

[6] MI agar also may be used. Preparation and use of MI agar is set forth in the article, "New medium for the simultaneous detection of total coliform and *Escherichia coli* in water" by Brenner, K.P., et. al., 1993, Appl. Environ. Microbiol. 59:3534–3544. Also available from the Office of Water Resource Center (RC–4100T), 1200 Pennsylvania Avenue, NW, Washington DC, 20460, EPA/600/J–99/225. Verification of colonies is not required.

[7] Six-times formulation strength may be used if the medium is filter-sterilized rather than autoclaved.

[8] The ONPG–MUG Test is also known as the Autoanalysis Colilert System.

[9] A description of the Colisure Test, Feb 28, 1994, may be obtained from IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, Maine 04092. The Colisure Test may be read after an incubation time of 24 hours.

[10] A description of the E*Colite® Test, "Presence/Absence for Coliforms and *E. Coli* in Water," Dec 21, 1997, is available from Charm Sciences, Inc., 36 Franklin Street, Malden, MA 02148–4120.

[11] A description of the m-ColiBlue24® Test, Aug 17, 1999, is available from the Hach Company, 100 Dayton Avenue, Ames, IA 50010.

[12] EPA strongly recommends that laboratories evaluate the false-positive and negative rates for the method(s) they use for monitoring total coliforms. EPA also encourages laboratories to establish false-positive and false-negative rates within their own laboratory and sample matrix (drinking water or source water) with the intent that if the method they choose has an unacceptable false-positive or negative rate, another method can be used. The Agency suggests that laboratories perform these studies on a minimum of 5% of all total coliform-positive samples, except for those methods where verification/confirmation is already required, *e.g.*, the M-Endo and LES Endo Membrane Filter Tests, Standard Total Coliform Fermentation Technique, and Presence-Absence Coliform Test. Methods for establishing false-positive and negative-rates may be based on lactose fermentation, the rapid test for β–galactosidase and cytochrome oxidase, multi-test identification systems, or equivalent confirmation tests. False-positive and false-negative information is often available in published studies and/or from the manufacturer(s).

[13] The Readycult® Coliforms 100 Presence/Absence Test is described in the document, "Readycult® Coliforms 100 Presence/Absence Test for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Finished Waters", November 2000, Version 1.0, available from EM Science (an affiliate of Merck KGgA, Darmstadt Germany), 480 S. Democrat Road, Gibbstown, NJ 08027–1297. Telephone number is (800) 222–0342, e-mail address is: adellenbusch@emscience.com.

[14] Membrane Filter Technique using Chromocult® Coliform Agar is described in the document, "Chromocult® Coliform Agar Presence/Absence Membrane Filter Test Method for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Finished Waters", November 2000, Version 1.0, available from EM Science (an affiliate of Merck KGgA, Darmstadt Germany), 480 S. Democrat Road, Gibbstown, NJ 08027–1297. Telephone number is (800) 222–0342, e-mail address is: *adellenbusch@emscience.com.*

* * * * *

(6) * * *

(viii) Readycult® Coliforms 100 Presence/Absence Test, a description of which is cited in footnote 13 to the table at paragraph (f)(3) of this section.

(ix) Membrane Filter Technique using Chromocult® Coliform Agar, a description of which is cited in footnote 14 to the table at paragraph (f)(3) of this section.

* * * * *

3. Section 141.23 is amended by revising the entry for "Cyanide" in the table in paragraph (a)(4)(i) and in the table in paragraph (k)(1) to read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

* * * * *

(a) * * *

(4) * * *

(i) * * *

DETECTION LIMITS FOR INORGANIC CONTAMINANTS

Contaminant	MCL (mg/L)	Methodology	Detection limit (mg/L)
Cyanide	0.2	Distillation, Spectrophotometric [3]	0.02
		Distillation, Automated, Spectrophotometric [3]	0.005
		Distillation, Amenable, Spectrophotometric [4]	0.02
		Distillation, Selective Electrode [3]	0.05
		UV, Distillation, Spectrophotometric	0.0005
		istillation, Spectrophotometric	0.0006

[3] Screening method for total cyanides.

[4] Measures "free" cyanides.

* * * * *

(k) * * *

(1) * * *

Contaminant and methodology [13]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	Other
12. Cyanide:					
Manual Distillation followed by.		D2036–98A	4500–CN⁻ C	4500–CN⁻ C.	
Spectrophotometric Manual.		D2036–98A	4500–CN⁻ E	4500–CN⁻ E	I–3300–85 [5]
Spectrophotometric Semi-automated.	335.4 [6]	D2036–98B	4500–CN⁻ G	4500–CN⁻ G.	
Spectrophotometric, Amenable.			4500–CN⁻ F	4500–CN⁻ F.	
Selective Electrode					Kelada 01 [17]
UV/Distillation/ Spectrophotometric.					QuikChem 10–204–00–1–X [18]
Distillation/ Spectrophotometric.					

Contaminant and methodology [13]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	Other
.	.	.	.	.	.

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents listed in footnotes 1–11,16 and 17–18 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, 1301 Constitution Avenue, NW., EPA West, Room B102, Washington, DC 20460 (Telephone: 202–566–2426); or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[1] *Annual Book of ASTM Standards*, 1994, 1996, or 1999, Vols. 11.01 and 11.02, ASTM International; any year containing the cited version of the method may be used. The previous versions of D1688–95A, D1688–95C (copper), D3559–95D (lead), D1293–95 (pH), D1125–91A (conductivity) and D859–94 (silica) are also approved. These previous versions D1688–90A, C; D3559–90D, D1293–84, D1125–91A and D859–88, respectively are located in the Annual Book of ASTM Standards, 1994, Vol. 11.01. Copies may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[4] *Standard Methods for the Examination of Water and Wastewater*, 18th edition (1992), 19th edition (1995), or 20th edition (1998). American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005. The cited methods published in any of these three editions may be used, except that the versions of 3111B, 3111D, 3113B and 3114B in the 20th edition may not be used.

[5] Method I–2601–90, Methods for Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments, Open File Report 93–125, 1993; For Methods I–1030–85; I–1601–85; I–1700–85; I–2598–85; I–2700–85; and I–3300–85 See Techniques of Water Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A–1, 3rd ed.,1989; Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225–0425.

[6] "Methods for the Determination of Inorganic Substances in Environmental Samples", EPA/600/R–93/100, August 1993. Available at NTIS, PB94–120821. Available at NTIS, PB94–120821, 5285 Port Royal Road, Springfield, VA 22161. The toll free telephone number is 800–553–6847.

* * * * *

[13] Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2X preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis (*i.e.*, no sample digestion) will be higher. For direct analysis of cadmium and arsenic by Method 200.7, and arsenic by Method 3120 B sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Preconcentration may also be required for direct analysis of antimony, lead, and thallium by Method 200.9; antimony and lead by Method 3113 B; and lead by Method D3559–90D unless multiple in-furnace depositions are made.

* * * * *

[17] The description for the Kelada 01 Method, "Kelada Automated Test Methods for Total Cyanide, Acid Dissociable Cyanide, And Thiocyanate", Revision 1.2, August 2001, EPA # 821–B–01–009 for cyanide is available from the National Technical Information Service (NTIS), PB 2001–108275, 5285 Port Royal Road, Springfield, VA 22161. The toll free telephone number is 800–553–6847.

[18] The description for the QuikChem Method 10–204–00–1–X, "Digestion and distillation of total cyanide in drinking and wastewaters using MICRO DIST and determination of cyanide by flow injection analysis", Revision 2.1, November 30, 2000 for cyanide is available from Lachat Instruments, 6645 W. Mill Rd., Milwaukee, WI 53218, USA. Phone: 414–358–4200.

* * * * *

4. Section 141.24 is amended by revising paragraph (e)(1), introductory text and the table in paragraph (e)(1) to read as follows:

§ 141.24 Organic chemical, sampling and analytical requirements.

* * * * *

(e) * * *

(1) The following documents are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at EPA's Drinking Water Docket, 1301 Constitution Avenue, NW., EPA West, Room B102, Washington DC 20460 (Telephone: 202–566–2426); or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Method 508A and 515.1 are in *Methods for the Determination of Organic Compounds in Drinking Water*, EPA/600/4–88–039, December 1988, Revised, July 1991. Methods 547, 550 and 550.1 are in *Methods for the Determination of Organic Compounds in Drinking Water—Supplement I*, EPA/600–4–90–020, July 1990. Methods 548.1, 549.1, 552.1 and 555 are in *Methods for the Determination of Organic Compounds in Drinking Water—Supplement II*, EPA/600/R–92–129, August 1992. Methods 502.2, 504.1, 505, 506, 507, 508, 508.1, 515.2, 524.2, 525.2, 531.1, 551.1 and 552.2 are in *Methods for the Determination of Organic Compounds in Drinking Water—Supplement III*, EPA/600/R–95–131, August 1995. Method 1613 is titled "Tetra-through Octa-Chlorinated Dioxins and Furans by Isotope-Dilution HRGC/HRMS", EPA/821–B–94–005, October 1994. These documents are available from the National Technical Information Service, NTIS PB91–231480, PB91–146027, PB92–207703, PB95–261616 and PB95–104774, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800–553–6847. Method 6651 shall be followed in accordance with *Standard Methods for the Examination of Water and Wastewater*, 18th edition (1992), 19th edition (1995), or 20th edition (1998), American Public Health Association (APHA); any of these three editions may be used. Method 6610 shall be followed in accordance with *Standard Methods for the Examination of Water and Wastewater, (18th Edition Supplement)* (1994), or with the 19th edition (1995) or 20th edition (1998) of *Standard Methods for the Examination of Water and Wastewater*, any of these three editions may be used. The APHA documents are available from APHA, 1015 Fifteenth Street NW., Washington, D.C. 20005. Other required analytical test procedures germane to the conduct of these analyses are contained in *Technical Notes on Drinking Water Methods*, EPA/600/R–94–173, October 1994, NTIS PB95–104766. EPA Methods 515.3 and 549.2 are available from U.S. Environmental Protection Agency, National Exposure Research Laboratory (NERL)-Cincinnati, 26 West Martin Luther King Drive, Cincinnati, OH 45268. ASTM Method D 5317–93 is available in the *Annual Book of ASTM Standards*, (1999), Vol. 11.02, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or in any edition published after 1993. EPA Method 515.4, "Determination of Chlorinated Acids in Drinking Water by Liquid-Liquid Microextraction, Derivatization and Fast Gas Chromatography with Electron Capture Detection," Revision 1.0, April 2000, EPA /815/B–00/001 can be accessed and downloaded directly on-line at *www.epa.gov/safewater/methods/sourcalt.html*. The Syngenta AG–625, "Atrazine in Drinking Water by Immunoassay", February 2001 is available from Syngenta Crop Protection, Inc., 410 Swing Road, Post Office Box 18300, Greensboro, NC 27419, Phone number (336) 632–6000. Method 531.2 "Measurement of N-methylcarbamoyloximes and N-methylcarbamates in Water by Direct Aqueous Injection HPLC with Postcolumn Derivatization," Revision 1.0, September 2001, EPA 815/B/01/002 can be accessed and downloaded directly on-line at *www.epa.gov/safewater/methods/sourcalt.html*.

Contaminant	EPA method [1]	Standard methods	ASTM	Other
1. Benzene	502.2, 524.2.			
2. Carbon tetrachloride	502.2, 524.2, 551.1.			
3. Chlorobenzene	502.2, 524.2.			
4. 1,2-Dichlorobenzene	502.2, 524.2.			
5. 1,4-Dichlorobenzene	502.2, 524.2.			
6. 1,2-Dichloroethane	502.2, 524.2.			
7. cis-Dichloroethylene	502.2, 524.2.			
8. trans-Dichloroethylene	502.2, 524.2.			
9. Dichloromethane	502.2, 524.2.			
10. 1,2-Dichloropropane	502.2, 524.2.			
11. Ethylbenzene	502.2, 524.2.			
12. Styrene	502.2, 524.2.			
13. Tetrachloroethylene	502.2, 524.2, 551.1.			
14. 1,1,1-Trichloroethane	502.2, 524.2, 551.1.			
15. Trichloroethylene	502.2, 524.2, 551.1.			
16. Toluene	502.2, 524.2.			
17. 1,2,4-Trichlorobenzene	502.2, 524.2.			
18. 1,1-Dichloroethylene	502.2, 524.2.			
19. 1,1,2-Trichloroethane	502.2, 524.2, 551.1.			
20. Vinyl chloride	502.2, 524.2.			
21. Xylenes (total)	502.2, 524.2.			
22. 2,3,7,8-TCDD (dioxin)	1613.			
23. 2,4-D [4] (as acid, salts and esters)	515.2, 555, 515.1, 515.3, 515.4.		D5317–93.	
24. 2,4,5-TP [4] (Silvex)	515.2, 555, 515.1, 515.3, 515.4.		D5317–93.	
25. Alachlor [2]	507, 525.2, 508.1, 505, 551.1.			
26. Atrazine [2]	507, 525.2, 508.1, 505, 551.1.			Syngenta AG–625.
27. Benzo(a)pyrene	525.2, 550, 550.1.			
28. Carbofuran	531.1, 531.2	6610.		
29. Chlordane	508, 525.2, 508.1, 505.			
30. Dalapon	552.1, 515.1, 552.2, 515.3, 515.4.			
31. Di(2-ethylhexyl)adipate	506, 525.2.			
32. Di(2-ethylhexyl)phthalate	506, 525.2.			
33. Dibromochloropropane (DBCP)	504.1, 551.1.			
34. Dinoseb [4]	515.2, 555, 515.1, 515.3, 515.4.			
35. Diquat	549.2.			
36. Endothall	548.1.			
37. Endrin	508, 525.2, 508.1, 505, 551.1.			
38. Ethylene dibromide (EDB)	504.1, 551.1.			
39. Glyphosate	547	6651.		
40. Heptachlor	508, 525.2, 508.1, 505, 551.1.			
41. Heptachlor Epoxide	508, 525.2, 508.1, 505, 551.1.			

Contaminant	EPA method [1]	Standard methods	ASTM	Other
42. Hexachlorobenzene	508, 525.2, 508.1, 505, 551.1.			
43. Hexachlorocyclopentadiene	508, 525.2, 508.1, 505, 551.1.			
44. Lindane	508, 525.2, 508.1, 505, 551.1.			
45. Methoxychlor	508, 525.2, 508.1, 505, 551.1.			
46. Oxamyl	531.1, 531.2	6610.		
47. PCBs [3] (as decachlorobiphenyl)	508A.			
48. PCBs [3] (as Aroclors)	508.1, 508, 525.2, 505.			
49. Pentachlorophenol	515.2, 525.2, 555, 515.1, 515.3, 515.4.		D5317–93.	
50. Picloram [4]	515.2, 555, 515.1, 515.3, 515.4.		D5317–93.	
51. Simazine [2]	507, 525.2, 508.1, 505, 551.1.			
52. Toxaphene	508, 508.1, 525.2, 505.			
53. Total Trihalomethanes	502.2, 524.2, 551.1.			

[1] For previously approved EPA methods which remain available for compliance monitoring until June 1, 2001, see paragraph (e)(2) of this section.

[2] Substitution of the detector specified in Method 505, 507, 508 or 508.1 for the purpose of achieving lower detection limits is allowed as follows. Either an electron capture or nitrogen phosphorous detector may be used provided all regulatory requirements and quality control criteria are met.

[3] PCBs are qualitatively identified as Aroclors and measured for compliance purposes as decachlorobiphenyl. Users of Method 505 may have more difficulty in achieving the required detection limits than users of Methods 508.1, 525.2 or 508.

[4] Accurate determination of the chlorinated esters requires hydrolysis of the sample as described in EPA Methods 515.1, 515.2, 515.3, 515.4 and 555 and ASTM Method D5317–93.

* * * * *

5. Section 141.40 is amended by revising in Table 1, the second "List 2—Screening Survey Microbiological Contaminants to be sampled after notice of analytical methods availability" under paragraph (a)(3), and revising footnote h, to read as follows:

§ 141.40 Monitoring requirements for unregulated contaminants.

(a) * * *

(3) * * *

TABLE 1. UNREGULATED CONTAMINANT MONITORING REGULATION (1999) LIST

. . . . . .

LIST 2—SCREENING SURVEY MICROBIOLOGICAL CONTAMINANTS TO BE SAMPLED

1—contaminant	2—identification number	3—analytical methods	4—minimum reporting level	5—sampling location	6—period during which monitoring to be completed
Aeromonas	NA	EPA Method 1605 [h]	0.2—CFU/100mL [f]	Distribution System [g]	2003

Column headings are:

1—Chemical or microbiological contaminant: the name of the contaminants to be analyzed.

2—CAS (Chemical Abstract Service Number) Registry No. or Identification Number: a unique number identifying the chemical contaminants.

3—Analytical Methods: method numbers identifying the methods that must be used to test the contaminants.

4—Minimum Reporting Level: the value and unit of measure at or above which the concentration or density of the contaminant must be measured using the Approved Analytical Methods.

5—Sampling Location: the locations within a PWS at which samples must be collected.

6—Years During Which Monitoring to be Completed: the years during which the sampling and testing are to occur for the indicated contaminant.

The procedures shall be done in accordance with the documents listed next in these footnotes. The incorporation by reference of the following documents listed in footnotes a-c and h was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the following sources. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Copies of the documents may be obtained from the sources listed in these footnotes. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–476–4791. Documents may be inspected at EPA's Drinking Water Docket, 1301 Constitution Avenue, NW., EPA West, Room B102, Washington DC 20460 (Telephone: 202–566–2426); or at the Office of FEDERAL REGISTER, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[f] Minimum Reporting Level represents the value of the lowest concentration precision and accuracy determination made during methods development and documented in the method. If method options are permitted, the concentration used was for the least sensitive option.

[g] Three samples must be taken from the distribution system, which is owned or controlled by the selected PWS. The sample locations must include one sample from a point (MD from § 141.35(d)(3), Table 1) where the disinfectant residual is representative of the distribution system. This sample location may be selected from sample locations which have been previously identified for samples to be analyzed for coliform indicator bacteria. Coliform sample locations encompass a variety of sites including midpoint samples which may contain a disinfectant residual that is typical of the system. Coliform sample locations are described in 40 CFR 141.21. This same approach must be used for the *Aeromonas* midpoint sample where the disinfectant residual would not have declined and would be typical for the distribution system.e Additionally, two samples must be taken from two different locations: The distal or dead-end location in the distribution system (MR from § 141.35(d)(3), Table 1), avoiding disinfectant booster stations, and from a location where previous determinations have indicated the lowest disinfectant residual in the distribution system (LD from § 141.35(d)(3), Table 1). If these two locations of distal and low disinfectant residual sites coincide, then the second sample must be taken at a location between the MD and MR sites. Locations in the distribution system where the disinfectant residual is expected to be low are similar to TTHM sampling points. Sampling locations for TTHMs are described in 63 FR 69468.

[h] EPA Method 1605 "*Aeromonas* in Finished Water by Membrane Filtration using Ampicillin-Dextrin Agar with Vancomycin (ADA–V)", October 2001, EPA # 821–R–01–034. The method can be accessed and downloaded directly on-line at *www.epa.gov/microbes*.

* * * * *

6. Section 141.74 is amended by revising the table in paragraph (a)(1) to read as follows:

§ 141.74 Analytical and monitoring requirements.

(a) * * *

(1) * * *

Organism	Methodology	Citation [1]
Total Coliform [2]	Total Coliform Fermentation Technique [3,4,5]	9221 A, B, C
	Total Coliform Membrane Filter Technique [6]	9222 A, B, C
	ONPG-MUG Test [7]	9223
Fecal Coliforms [2]	Fecal Coliform Procedure [8]	9221 E
	Fecal Coliform Filter Procedure	9222 D
Heterotrophic bacteria [2]	Pour Plate Method	9215 B
	SimPlate [11].	
Turbidity	Nephelometric Method	2130 B
	Nephelometric Method	180.1 [9]
	Great Lakes Instruments	Method 2 [10]
	Hach FilterTrak	10133 [12]

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents listed in footnotes 1, 6, 7 and 9–12 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, 1301 Constitution Avenue, NW., EPA West, Room B102, Washington DC 20460 (Telephone: 202–566–2426); or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20408.

[1] Except where noted, all methods refer to *Standard Methods for the Examination of Water and Wastewater*, 18th edition (1992), 19th edition (1995), or 20th edition (1998), American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005. The cited methods published in any of these three editions may be used.

[2] The time from sample collection to initiation of analysis may not exceed 8 hours. Systems must hold samples below 10 deg. C during transit.

[3] Lactose broth, as commercially available, may be used in lieu of lauryl tryptose broth, if the system conducts at least 25 parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliform, using lactose broth, is less than 10 percent.

[4] Media should cover inverted tubes at least one-half to two-thirds after the sample is added.

[5] No requirement exists to run the completed phase on 10 percent of all total coliform-positive confirmed tubes.

[6] MI agar also may be used. Preparation and use of MI agar is set forth in the article, "New medium for the simultaneous detection of total coliform and *Escherichia coli* in water" by Brenner, K.P., et. al., 1993, Appl. Environ. Microbiol. 59:3534–3544. Also available from the Office of Water Resource Center (RC–4100T), 1200 Pennsylvania Avenue, NW., Washington DC 20460, EPA/600/J–99/225. Verification of colonies is not required.

[7] The ONPG–MUG Test is also known as the Autoanalysis Colilert System.

[8] A–1 Broth may be held up to three months in a tightly closed screw cap tube at 4 deg. C.

[9] "Methods for the Determination of Inorganic Substances in Environmental Samples", EPA/600/R–93/100, August 1993. Available at NTIS, PB94–121811.

[10] GLI Method 2, "Turbidity", November 2, 1992, Great Lakes Instruments, Inc., 8855 North 55th Street, Milwaukee, Wisconsin 53223.

[11] A description of the SimPlate method, "IDEXX SimPlate TM HPC Test Method for Heterotrophs in Water", November 2000, can be obtained from IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, Maine 04092, telephone (800) 321–0207.

[12] A description of the Hach FilterTrak Method 10133, "Determination of Turbidity by Laser Nephelometry", January 2000, Revision 2.0, can be obtained from; Hach Co., P.O. Box 389, Loveland, Colorado 80539–0389. Phone: 800–227–4224.

* * * * *

[FR Doc. 02–27133 Filed 10–28–02; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 102302A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for king mackerel in the exclusive economic zone (EEZ) in the western zone of the Gulf of Mexico. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 12 noon, local time, October 25, 2002, through June 30, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 727–570–5305, fax 727–570–5583, e-mail Mark.Godcharles@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf of Mexico migratory group of king mackerel in the western zone of 1.01 million lb (0.46 million kg) (66 FR 17368, March 30, 2001).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined that the commercial quota of 1.01 million lb (0.46 million kg) for Gulf group king mackerel in the western zone will be reached on October 24, 2002. Accordingly, the commercial fishery for Gulf group king mackerel in the western zone is closed effective 12 noon, local time, October 25, 2002, through June 30, 2003, the end of the fishing year. The boundary between the eastern and western zones is 87°31'06"W. long., which is a line directly south from the Alabama/Florida boundary.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones or subzones taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones or subzones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B), as such procedures would be unnecessary and contrary to the public interest. Similarly, there is a need to implement these measures in a timely fashion (manner) to prevent an overrun of the commercial quota of Gulf group king mackerel, given the capacity of the fishing fleet to harvest the quota quickly. Any delay in implementing this action would be impractical and contrary to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 23, 2002.

Dean Swanson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–27504 Filed 10–24–02; 3:51 pm]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020606142–2234–02; I.D. 041802F]

RIN 0648–AP39

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Experimental Setnet Sablefish Landings To Qualify Limited Entry Sablefish-Endorsed Permits for Tier Assignment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical correction.

SUMMARY: NMFS announces approval of a regulatory amendment to revise sablefish tier qualifications for the limited entry, fixed gear, primary sablefish fishery. NMFS issues this final rule to amend tier qualifications to include sablefish landings taken under the provisions of an exempted fishing permit (EFP) from 1984–1985 with setnet gear north of 38° N. latitude (lat.). Setnet EFP landings will be added to the current pot (trap) and longline landings to qualify a sablefish-endorsed permit for its tier assignment. This rule is intended to recognize historical sablefish landings made by current primary season participants.

DATES: Effective October 24, 2002.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) for this action are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220. Copies of the final regulatory flexibility analysis (FRFA) are available form D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Jamie Goen (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736; and email: yvonne.dereynier@noaa.gov, jamie.goen@noaa.gov; or Svein Fougner (Southwest Region, NMFS), phone: 562–980–4040; fax: 562–980–4047; and email: svein.fougner@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is available on the Government Printing Office's website at http://www.access.gpo.gov/su_docs/aces/aces140.html.

Background

On June 24, 2002, NMFS published a proposed rule (67 FR 42525) based on a recommendation of the Pacific Fishery Management Council (Council), under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS requested public comments on the proposed rule through July 24, 2002. No comments were received. NMFS issues this final rule to amend tier qualifications for the limited entry, fixed gear, primary sablefish fishery to include sablefish landings taken under the provisions of an exempted fishing permit (EFP) from 1984–1985 with setnet gear north of 38° N. lat. The background and rationale for this rule are discussed in the preamble to the proposed rule published on June 24, 2002 (67 FR 42525). Additional information is available in the EA/RIR/IRFA prepared by the Council for this action (see **ADDRESSES**). Detailed information regarding the management history of the limited entry, fixed gear, sablefish-endorsed fishery, including the 3–tier program is available in the preamble to the proposed rule for that program at 63 FR 19878, April 22, 1998.

During 1984–1985, some vessels that had historically participated in the pot or longline sablefish fishery chose instead to participate in an EFP to test sablefish catchability with setnet gear north of 38° N. lat. If those vessels had not participated in the setnet EFP and had fished for sablefish with pot or longline gear during 1984–1985 as usual, the EFP vessels may have qualified for a higher tier assignment.

So as not to discourage future participation in EFPs, the Council recommended that NMFS include EFP setnet landings from 1984–1987 in the qualifying requirements for tier assignment for those fixed gear vessels that had already qualified for a sablefish endorsement. However, NMFS did not issue any setnet EFPs after 1985. Therefore, NMFS will amend the regulations at 50 CFR part 660 to include landings of sablefish taken with setnet gear north of 38° N. lat. under the provisions of an EFP issued by NMFS in 1984–1985 when determining tier qualifications for permits that already have a sablefish endorsement.

Corrections to 50 CFR Part 660

NMFS will make technical corrections to 50 CFR part 660 Subpart A, Subpart B, Subpart C, Subpart D, Subpart E, Subpart F, Subpart G, and Subpart H to correct an outdated title of an agency official.

NMFS will also make technical corrections to the groundfish regulations at 50 CFR part 660. The first correction will add clarifying language to § 660.323(a)(4)(vi) to connect activities authorized under other paragraphs, such that if a whiting reapportionment authorized under § 660.323(a)(4)(iv) were to occur, the re-opening of primary whiting season described at § 660.323(a)(3)(i) is included in the list of Federal actions to be announced at § 660.323(a)(4)(vi). The second correction will update the title of an agency official referenced in § 660.324(d) and § 660.350(b)(3). The third correction will amend a cross reference in § 660.324(f), and § 660.325(d)(2) and (e)(1). These corrections are technical amendments to the groundfish regulations and will not change the effect of the regulations on fisheries entities or resources.

Comments and Responses

No comments were received during the comment period for the proposed rule (67 FR 42525, June 24, 2002), which ended July 24, 2002.

Changes from the Proposed Rule

This final rule includes two minor changes to the regulatory text from the proposed rule. In § 660.334, paragraph (d)(3)(ii), the last sentence was replaced with a sentence specifying what is meant by "application." The replacement sentence reads, "The application shall consist of a written letter stating the applicant's circumstances, requesting action, be signed by the applicant, and submitted along with the relevant documentation (fish tickets) in support of the application for a change in tier status." In § 660.334, paragraph (d)(3)(iii), the word "certificate" was replaced with the word "permit".

Classification

Under 5 U.S.C. 553 (d)(1), the Assistant Administrator for Fisheries, NOAA waives the 30–day delay in effectiveness for this rule as it relieves a restriction. This rule is intended to recognize historical sablefish landings made by current primary season participants. This rule relieves a restriction by removing an inequity that has been in place since 1998 due to the tier qualification requirements established for the original tier assignments. This restriction is preventing those sablefish-endorsed permit owners who participated in the setnet EFP from 1984–1985 from using their setnet EFP sablefish landings during this period to qualify for tier assignments. This restriction has kept some vessels from possibly qualifying for a higher tier assignment and has thus restricted their ability to land more sablefish each year since 1998. This rule relieves the restriction by allowing sablefish-endorsed permit owners who participated in setnet EFPs during 1984–1985 to submit those setnet EFP sablefish landings to qualify for a higher tier designation. Delaying effectiveness of this rule would unnecessarily perpetuate the inequity by not allowing fishermen who qualify for a higher tier assignment access to increased sablefish landings associated with the higher tier during the 2002 primary season. The primary sablefish season for 2002 is from April 1 - October 31. The 30–day delay in effectiveness would not allow fishermen adequate time to apply for a tier upgrade based on setnet EFP sablefish landings and would not allow NMFS time to process that application before the end of the 2002 primary season.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS prepared a FRFA describing the impact of this action on small entities. The IRFA was summarized in the proposed rule on June 24, 2002 (67 FR 42525). The following is the summary of the FRFA.

Because the Council omitted setnet landings made under EFPs from the qualifying requirements for the 3–tier limited entry fixed gear sablefish fishery, this regulatory amendment is intended to recognize those historical sablefish landings made by current primary season participants. Qualifying

requirements under subsequent amendments to the limited entry fixed gear sablefish fishery were low enough that the issue of whether to include setnet EFP landings did not come up. After implementation of the 3–tier program, the issue of whether to include setnet landings to qualify for tier assignment was brought to the Council's attention through an appeal process provided for in the 3–tier program's regulations.

In the case of the setnet fishery north of 38° N. lat., some vessels that had historically participated in the sablefish fishery chose instead to participate in an EFP to test sablefish catchability with setnet gear north of 38° N. lat. If those vessels had not participated in the setnet EFP and had fished for sablefish with pot or longline gear during 1984–1985 as usual, the vessels may have qualified for higher tier assignments. It is inequitable to exclude setnet EFP landings in the tier qualifications for a vessel that historically participated in the fixed gear sablefish fishery and could have qualified for a higher tier had it not participated in the EFP.

In addition, those who participated in the EFPs with setnet gear believed they were investing in the future of the fixed gear fishery and took part in the fishery with Council consent. If, in determining the level of a permit's qualification for harvest privileges the Council and NMFS had decided to disallow landings taken under the setnet EFPs, they could have discouraged fishers from taking part in experimental fisheries in the future. A public policy that discourages participation in EFPs would inhibit useful innovation in the fishery.

The comment period on the proposed rule (67 FR 42525, June 24, 2002) for this action ended on July 24, 2002. The agency did not receive any public comments on the proposed rule or the IRFA during the comment period.

This rule will apply to owners of limited entry fixed gear sablefish permits that have a catch history that includes sablefish fishing with setnet gear under an experimental fishing permit. While two owners qualify for the provisions under this rule, only one is expected to have sufficient setnet landings to move his permit to a higher sablefish tier. The other owner already has the highest sablefish tier, Tier 1, and could not increase his tier assignment by including setnet EFP landings in his qualifications. All other limited entry fixed gear sablefish permit owners will be modestly affected by a shift of sablefish allocation toward the one owner with setnet EFP landings history.

The only reporting or recordkeeping requirement associated with this rule is a one-time application process requesting that setnet EFP landings be included in sablefish tier qualifications. The application consists of a letter requesting action together with any relevant evidence, in this case fish tickets, to be submitted to NMFS Sustainable Fisheries Division by the party wishing to qualify for a higher tier based on setnet EFP landings. The application process for a tier upgrade will be open for a window period starting when the final rule is published until December 31, 2002.

Compliance requirements do not go beyond general compliance requirements for operating in the Pacific coast primary sablefish fishery. The primary sablefish fishery has been managed under the 3–tier system since 1998, so the concept and the compliance requirements associated with the concept are well understood. No specialized skills are needed for meeting these compliance requirements.

The range of alternatives considered to count setnet EFP sablefish landings toward tier qualifications were from giving vessels no credit for setnet landings (no action); partial credit for the landings, or 100 percent credit for the landings (adopted action). There is no apparent rationale to guide the selection of the partial credit approach. Therefore, the partial credit approach risked being arbitrary and capricious and intermediate options were not analyzed. The intermediate alternatives considered but not analyzed included allowing vessels with setnet landings to qualify for a higher tier for a temporary period of time or creating an intermediate tier level for which vessels with setnet landings might qualify. The provision of higher levels of access for a temporary period has been used in the past as a way of reducing the negative effects of disruption in the fishery while small businesses make a transition to new restrictions (e.g., the "B" permits that were provided in Amendment 6 and grandfather provisions in Amendment 14). However, in this case, vessels have been operating under the three-tier system since 1998, and have likely already made transitions. Additionally, creating a temporary higher tier doesn't address, over the long-term, the issue of unfairness to historical fixed gear sablefish fishermen who chose to participate in the setnet EFP instead and were penalized when the tier system was created. Thus, a temporary higher tier might still discourage future participation in EFPs. Therefore, the intermediate alternative of a temporary higher tier does not address the purpose and need of the proposed action. Similarly, creation of an intermediate tier level to provide some accommodation for vessels with setnet landings would present a problem similar to that of giving partial credit for setnet landings, (i.e., identification of a rational basis for setting the level of harvest for the intermediate tier). Creation of a new intermediate tier would also make the management system more complex.

The expected net effects between no action and the adopted action are primarily reallocational in nature. Under the adopted action, the amount of reallocation is less than three quarters of one percent of the allocation to the primary fixed gear sablefish fishery, with less than one quarter of one percent moving between gear types (from pot to longline). The permits for some vessels may be reassigned to higher tiers, resulting in a reduction in the cumulative limits for all permits in all tiers. None of the alternatives considered would change the amount of fixed gear sablefish harvested or change managers' ability to control harvest. The adopted alternative will not adversely impact the sablefish stock, other species, or the ocean environment. This action is being proposed to address fairness and equity considerations and to avoid discouraging future innovation through EFPs (innovation may directly contribute to meeting the objectives of the FMP and Magnuson-Stevens Act national standard guidelines). It was for these reasons that NMFS and the Council adopted the action to include setnet EFP sablefish landings in tier qualifications, which will be implemented through this final rule. A copy of the FRFA is available from NMFS (see **ADDRESSES**).

This rule contains a collection-of-information requirement that can only apply to two individuals according to the requirements of the rule that applicants are sablefish-endorsed permit owners who participated in setnet EFPs between 1984–1985. Therefore, because this rule applies to less than 10 people, it is not subject to the requirements of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: October 22, 2002.

Rebecca Lent,

Deputy Assistant Administrator, for Regulatory Programs National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660— FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 660.324 [Amended]

2. In § 660.324, paragraph (d) remove the words "Regional Director" and add in their place, "Regional Administrator", and in Paragraph (f) remove the words "subpart C" and add in their place, "§ 660.331 through § 660.341".

3. In § 660.334, paragraphs (d)(2) and (3) are redesignated as paragraphs (d)(3) and (4), respectively, a new paragraph (d)(2) is added; the newly redesignated paragraphs (d)(3) and (d)(4) are revised to read as follows:

§ 660.334 Limited entry permits endorsements.

* * * * *

(d)* * *

(2) Endorsement and tier assignment qualifying criteria.

(i) Permit catch history. Permit catch history will be used to determine whether a permit meets the qualifying criteria for a fixed gear sablefish endorsement and to determine the appropriate tier assignment for endorsed permits. Permit catch history includes the catch history of the vessel(s) that initially qualified for the permit, and subsequent catch histories accrued when the limited entry permit or permit rights were associated with other vessels. The catch history of a permit also includes the catch of any interim permit held by the current owner of the permit during the appeal of an initial NMFS decision to deny the initial issuance of a limited entry permit, but only if the appeal for which an interim permit was issued was lost by the appellant, and the owner's current permit was used by the owner in the 1995 limited entry sablefish fishery. The catch history of an interim permit where the full "A" permit was ultimately granted will also be considered part of the catch history of the "A" permit. If the current permit is the result of the combination of multiple permits, then for the combined permit to qualify for an endorsement, at least one of the permits that were combined must have had sufficient sablefish history to qualify for an endorsement; or the permit must qualify based on catch occurring after it was combined, but taken within the qualifying period. If the current permit is the result of the combination of multiple permits, the combined catch histories of all of the permits that were combined to create a new permit before March 12, 1998, will be used in calculating the tier assignment for the resultant permit, together with any catch history (during the qualifying period) of the resultant permit. Only sablefish catch regulated by this part that was taken with longline or trap (pot) gear will be considered for the sablefish endorsement, except that vessels qualifying for the sablefish endorsement based on longline or trap (pot) landings may include setnet sablefish landings defined at (d)(2)(ii)(B) of this section in meeting tier assignment qualifications. Sablefish harvested illegally or landed illegally will not be considered for this endorsement.

(ii) Sablefish endorsement tier assignments. Only limited entry, fixed gear permits with sablefish endorsements will receive cumulative trip limit tier assignments.

(A) The qualifying weight criteria for Tier 1 are at least 898,000 lb (407,326 kg) cumulative round weight of sablefish caught over the years 1984–1994. The qualifying weight criteria for Tier 2 are at least 380,000 lb (172,365 kg), but no more than 897,999 lb (407,326 kg) cumulative round weight of sablefish caught over the years 1984–1994. Fixed gear permits with less than 380,000 lb (172,365 kg) cumulative round weight of sablefish caught over the years 1984–1994 qualify for Tier 3. All qualifyihg sablefish landings must be caught with longline or trap (pot), although setnet landings defined at subparagraph (B) of this section may also be included in tier assignment qualifying landings. Sablefish taken in tribal set aside fisheries does not qualify.

(B) Setnet sablefish landings are included in sablefish endorsement tier assignment qualifying criteria if those landings were made north of 38° N. lat. under the authority of an EFP issued by NMFS in any of the years 1984–1985, by a vessel that landed at least 16,000 lb (7,257 kg) of sablefish with longline or trap (pot) gear in any one year between 1984–1994.

(iii) Evidence and burden of proof. A vessel owner (or person holding limited entry rights under the express terms of a written contract) applying for issuance, renewal, replacement, transfer, or registration of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. The owner of a permit endorsed for longline or trap (pot) gear applying for a sablefish endorsement or a tier assignment under this section has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(A) A certified copy of the current vessel document (USCG or State) is the best evidence of vessel ownership and LOA.

(B) A certified copy of a State fish receiving ticket is the best evidence of a landing, and of the type of gear used.

(C) A copy of a written contract reserving or conveying limited entry rights is the best evidence of reserved or acquired rights.

(D) Such other relevant, credible evidence as the applicant may submit, or the SFD or the Regional Administrator request or acquire, may also be considered.

(3) Issuance process for sablefish endorsements and tier assignments. (i) No new applications for sablefish endorsements will be accepted after November 30, 1998.

(ii) All tier assignments and subsequent appeals processes were completed by September 1998. If, however, a permit owner with a sablefish endorsement believes that his permit may qualify for a change in tier status based on qualifications in paragraph (d)(2)(ii)(B) of this section, the SFD will accept applications for a tier change through December 31, 2002. The application shall consist of a written letter stating the applicant's circumstances, requesting action, be signed by the applicant, and submitted along with the relevant documentation (fish tickets) in support of the application for a change in tier status.

(iii) After review of the evidence submitted under paragraph (ii), and any additional information the SFD finds to be relevant, the Regional Administrator will issue a letter of determination notifying a permit owner of whether the evidence submitted is sufficient to alter the initial tier assignment. If the Regional Administrator determines the permit qualifies for a different tier, the permit owner will be issued a permit with the revised tier assignment once the initial permit is returned to the SFD for processing.

(iv) If a permit owner chooses to file an appeal of the determination under paragraph (iii) of this section, the appeal must be filed with the Regional Administrator within 30 days of the issuance of the letter of determination. The appeal must be in writing and must

allege facts or circumstances, and include credible evidence demonstrating why the permit qualifies for a different tier assignment. The appeal of a denial of an application for a different tier assignment will not be referred to the Council for a recommendation under § 660.340 (e).

(v) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 30 days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

(4) Ownership requirements and limitations. (i) No partnership or corporation may own a limited entry permit with a sablefish endorsement unless that partnership or corporation owned a limited entry permit with a sablefish endorsement on November 1, 2000. Otherwise, only individual human persons may own limited entry permits with sablefish endorsements.

(ii) No person, partnership, or corporation may have ownership interest in or hold more than three permits with sablefish endorsements, except for persons, partnerships, or corporations that had ownership interest in more than 3 permits with sablefish endorsements as of November 1, 2000. The exemption from the maximum ownership level of 3 permits only applies to ownership of the particular permits that were owned on November 1, 2000. Persons, partnerships or corporations that had ownership interest 3 or more permits with sablefish endorsements as of November 1, 2000, may not acquire additional permits beyond those particular permits owned on November 1, 2000. If, at some future time, a person, partnership, or corporation that owned more than 3 permits as of November 1, 2000, sells or otherwise permanently transfers (not leases) some of its originally owned permits, such that they then own fewer than 3 permits, they may then acquire additional permits, but may not have ownership interest in or hold more than 3 permits.

(iii) A partnership or corporation will lose the exemptions provided in paragraphs (d)(4)(i) and (ii) of this section on the effective date of any change in the corporation or partnership from that which existed on November 1, 2000. A "change" in the partnership or corporation means a change in the corporate or partnership membership, except a change caused by the death of a member providing the death did not result in any new members. A change in membership is not considered to have occurred if a member becomes legally incapacitated and a trustee is appointed to act on his behalf, nor if the ownership of shares among existing members changes, nor if a member leaves the corporation or partnership and is not replaced. Changes in the ownership of publicly held stock will not be deemed changes in ownership of the corporation.

* * * * *

5. In § 660.335, paragraphs (d)(1), (d)(2), and (e)(1) are revised to read as follows:

§ 660.335 Limited entry permits renewal, combination, stacking, change of permit ownership or permit holdership, and transfer.

* * * * *

(d) * * *

(1) General. The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit ownership has been registered with and approved by the SFD. The SFD will not approve a change in permit ownership for limited entry permits with sablefish endorsements that does not meet the ownership requirements for those permits described at § 660.334 (d)(4).

(2) Effective date. The change in ownership of the permit or change in the permit holder will be effective on the day the change is approved by SFD, unless there is a concurrent change in the vessel registered to the permit. Requirements for changing the vessel registered to the permit are described at paragraph (e) of this section.

* * * * *

(e) * * *

(1) General. A permit may not be used with any vessel other than the vessel registered to that permit. For purposes of this section, a permit transfer occurs when, through SFD, a permit owner registers a limited entry permit for use with a new vessel. Permit transfer applications must be submitted to SFD with the appropriate documentation described at paragraph (g) of this section. Upon receipt of a complete application, and following review and approval of the application, the SFD will reissue the permit registered to the new vessel.

* * * * *

6. In § 660.350, paragraph (b)(3) remove the term "RA" and add, in its place, the words "Regional Administrator".

7. In addition to the amendments set forth above, in 50 CFR part 660 remove the words "Regional Director" and add, in their place, the words "Regional Administrator" in the following places:

a. Section 660.12,;
b. Section 660.14 (b), (c), (e), and (f)(2);
c. Section 660.15, (e) and (j);
d. Section 660.17 (a), (c), (d), (e)(1), (e)(2), (e)(4) and (k);
e. Section 600.21 (l)introductory text, (l)(1), (l)(2), and (l)(3) and (l)(4);
f. Section 660.23 (a) and (b);
g. Section 660.27 (e), (f)(1), (f)(2) intoductory text, and (f)(2)(i);
h. Section 660.28 (b), (e), (g), (h), (i)(1), and (i)(2)(ii);
i. Section 660.31 (c)(2), (d)(2), and (g)(2);
j. Section 660.43 (b);
k. Section 660.50 (c);
l. Section 660.51 (a), (b), (c)(1),(c)(2), (d), (e), (f), (g)(1), (g)(2), and (j)(2);
m. Section 660.52 (a), (b)(1) and (b)(3);
n. Section 660.53 (c)(2) and (d)(2);
o. Section 660.65 (a) and (d);
p. Section 660.66 introductory text and (a);
q. Section 660.67 (c)(1), (c)(2), (c)(4), (d)(2)(iii), and (d)(2)(iv);
r. Section 660.81 (e);
s. Section 660.84 (c)(2) and (c)(4);
t. Section 660.85 (a);
u. Section 660.302;
v. Section 660.321 (a);
w. Section 660.324 (d);
x. Section 660.339;
y. Section 660.402;
z. Section 660.409 (a)(1) and (b)(1);
aa. Section 660.411 (c).

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Proposed Rules

Federal Register
Vol. 67, No. 209
Tuesday, October 29, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1491

RIN 0578–AA37

Farm and Ranch Lands Protection Program

AGENCY: Commodity Credit Corporation, Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth the policies implementing the farmland protection program. The Farm Security and Rural Investment Act of 2002 repealed the Farmland Protection Program (FPP), established by the Federal Agriculture Improvement and Reform Act of 1996, and authorized a new farmland protection program. The new program will be called the Farm and Ranch Lands Protection Program (FRPP) to both distinguish it from the repealed program and to better describe the types of land the program seeks to protect. Under the FRPP, the Secretary of Agriculture, acting through the Natural Resources Conservation Service (NRCS), is authorized, on behalf of the Commodity Credit Corporation (CCC) and under its authorities, to purchase conservation easements for the purpose of protecting topsoil by limiting nonagricultural uses of the land. As set forth in this proposed rulemaking, NRCS proposes to continue to administer FRPP using the same request for application (RFA) process to announce funding availability that it has used since authorization of the Farmland Protection Program in 1996. NRCS seeks comments from the public on this proposed rule.

DATES: Written comments must be received on or before December 30, 2002.

ADDRESSES: All comments concerning this proposed rule should be submitted to Denise Coleman, Farmland Protection and Community Planning Staff, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890. Attention: FRPP Comments. FAX: (202) 720–0745. The Proposed Rule can also be accessed and comments submitted via Internet to *denise.coleman@usda.gov* Attention: FRPP Comments. Users can access the Natural Resources Conservation Service (NRCS) homepage at: *http://www.nrcs.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Denise Coleman, Farmland Protection Program Manager, Natural Resources Conservation Service; phone: (202) 720–9476; fax: (202) 720–0745; e-mail: *denise.coleman@usda.gov*.

SUPPLEMENTARY INFORMATION:

Background Related to the Farm and Ranch Lands Protection Program

Urban sprawl continues to threaten the Nation's farm and ranch land. Social and economic changes over the past three decades have influenced the rate at which land is converted to nonagricultural uses. Population growth, demographic changes, large lot development, expansion of transportation systems, and economic prosperity have contributed to increased agricultural land conversion rates. Increased population, growing affluence, expanded transportation, and cultural factors of "bigger means better," has accelerated the depopulation of the urban centers and has resulted in the conversion of farmland. Between 1960 and 1990, metropolitan-area population grew by 50 percent while the acreage of developed land increased 100 percent. About 45 percent of new construction between the years of 1994 and 1997 occurred in rural areas, with nearly 80 percent being land bordering urban areas. Overall, this translates to over 2.8 million acres being converted per year, with 2 million devoted to housing (USDA, 2000).

According to the USDA National Resources Inventory (NRI), urban and built-up areas increased from 65.3 million acres in 1992 to 79 million acres in 1997, equaling an area approximately the size of Ohio. Perhaps more important than the overall rate of land conversion is the location and type of land subject to this change in land use. On average, prime and important farmlands are being converted at a rate two to four times that of other lands. Based on NRI urban and built-up data for the 1980s, 46 percent of the land converted to urban and built-up uses comes from cropland and pasture, while 38 and 14 percent comes from forest land and range land, respectively. Much of the land being lost is prime, unique, or important farmland located near cities. Moreover, an end to farm and forest land conversion is not in sight. The National Home Builders Association forecasts an expansion of 1.3 to 1.5 million new homes per year through 2010 (USDA, 2000).

As a result of these land use changes, there is growing national interest in the protection of farm and ranch land. Once developed, productive farmland's rich topsoil is effectively lost forever, placing future food security for the Nation at risk. Furthermore, land use devoted to agriculture provides an important contribution to environmental quality, history, and scenic beauty.

Overview of the Farm and Ranch Lands Protection Program

The FRPP is a voluntary program that helps farmers and ranchers keep their land in agriculture. The program provides matching funds to State, Tribal, local governments, and non-governmental organizations with existing farmland protection programs to purchase conservation easements. Funds from FRPP cannot be used to restore historical or archaeological resources nor can funds be used to share in the cost of conservation practices.

Under the FRPP, NRCS proposes to continue to administer the program using the public notice process, as it has since the Farmland Protection Program was authorized in 1996. Through the public notice process, NRCS will solicit applications from federally recognized Indian Tribes, States, units of local government, and non-governmental organizations to cooperate in the acquisition of conservation easements on farms and ranches for the purpose of protecting topsoil from conversion to nonagricultural use. Although NRCS has authority to acquire other interests in land, the RFA will seek to fund the acquisition of conservation easements.

To participate, entities with existing agricultural land protection programs submit to the local NRCS State Office applications requesting FRPP funds to purchase conservation easements that restrict the conversion of farm and ranch land to nonagricultural uses. Entities eligible to participate in the FRPP include:

- Any agency of any State or local government or federally recognized Indian Tribe (including a farmland protection board or land resource council established under State law); or
- Any organization that:
- Is organized principally for one or more of the following conservation purposes: the preservation of land for recreation, open space, historically important land areas and structures, and natural wildlife habitat;
- Is operated exclusively for charitable, religious, or educational purpose, with no part of its net earnings paid to any private shareholder or individual and no substantial part of its activities influencing legislation or intervening in any political campaign for or against a public office candidate; or
- Normally receives more than one-third of its support in each taxable year from any combination of gifts, grants, contributions, or membership fees, and normally receives not more than one-third of its support in each tax year from the sum of gross investment income.

To be eligible for FRPP, the land proposed for a conservation easement must:

- Contain prime, unique, or other productive soil as defined by the Farmland Protection Policy Act of 1981, as amended (7 U.S.C. 4201 *et seq.*); or
- Contain historical or archaeological resources; and
- Be subject to a pending offer from an eligible entity; and
- Be privately owned.

Aside from demonstrating land and entity eligibility, entities wishing to receive FRPP funds must also demonstrate:

- A commitment to long-term conservation of agricultural lands;
- A capability to acquire, manage, and enforce easements;
- Staff capacity that will be dedicated to monitoring and easement stewardship; and
- The availability of funds to acquire and manage conservation easements.

Selection will be based on national criteria as determined by the NRCS Chief, set forth in the RFA, and additional State criteria as determined by the appropriate State Conservationist. Examples of national criteria may include:

- Acreage of prime, unique, and important farm and ranch land to be protected;
- Total acres of land to be protected with the requested award;
- Acreage of prime, unique, and important farm and ranch land identified in the National Resources Inventory as converted to nonagricultural uses;
- Total acres needing protection;
- Number or acreage of historic and archaeological resources to be protected on farm or ranch lands;
- Anticipated average FRPP cost per acre;
- Rate of land conversion (e.g., local land-use conversion rates);
- Degree of leveraging guaranteed by eligible entities;
- History of eligible entity's commitment to conservation planning and conservation practice implementation;
- Eligible entity's history of acquiring, managing, holding, and enforcing conservation easements. This could include annual farmland protection expenditures, monetary donations received, accomplishments, and staffing levels;
- A description of the eligible entity's farmland protection strategy and how the FRPP application submitted by the entity corresponds to the entity's strategic plan; and
- Eligible entity's total estimated acres of unfunded conservation easements on prime, unique, and important farm and ranch land.

Examples of State criteria developed by the State Conservationist may include:

- Proximity of the parcel to other protected clusters;
- Proximity of the parcel to other agricultural operations and infrastructure;
- Parcel size;
- Type of land use;
- Maximum FRPP cost expended per acre;
- Environmental, cultural, and social benefits;
- Degree of leveraging by the entity; and
- Other criteria as determined by the State Conservationist.

Criteria used to evaluate applications will be available to the public through the NRCS State Conservationist. Pending offers must be for acquiring an easement in perpetuity except where State law prohibits a permanent easement. Once an entity is selected for funding, NRCS, on the behalf of CCC, enters into a cooperative agreement with the entity, thereby obligating money for the easement acquisition. The selected entity works with the landowner; processes the easement acquisition; holds, manages, and enforces the easement. Landowners retain all rights to use the property for agriculture. A Federal contingent right interest in the property must be included in each easement deed for the protection of the Federal investment. In addition, all lands enrolled in FRPP must have a conservation plan developed based on the NRCS Field Office Technical Guide (FOTG) specifications and highly erodible and wetland conservation provisions, in accordance with 7 CFR part 12.

The Federal share for any easement acquisition is limited to a maximum of 50 percent of the appraised fair market value of the conservation easement. As part of its share of the cost of purchasing a conservation easement an eligible entity may include a charitable donation by the landowner of not more than 25 percent of the appraised fair market value of the conservation easement. Where the easement purchase price is less than the appraised fair market value, an entity may choose to provide 50 percent of the purchase price of the conservation easement. If the 50 percent of the purchase price option is chosen, the NRCS share will not exceed the entity's contribution.

Regulatory Certifications

Executive Order 12866

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has been determined that this proposed rule is not a significant rule making action. Therefore, no benefit cost assessment of potential impacts is necessary.

Regulatory Flexibility Act

Pursuant to 5 U.S.C 605(c) of the Regulatory Flexibility Act, it has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined by that Act. Therefore, a regulatory flexibility analysis is not required for this proposed rule. This proposed rule implements the Farm and Ranch Lands Protection Program, which involves the voluntary acquisition of interests in property by NRCS in partnership with State, local, and Tribal governments and nonprofit entities.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in annual effect on the economy of $100,000,000 or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete in domestic and export markets.

Environmental Analysis

A draft Environmental Assessment (EA) has been prepared to assist NRCS in determining whether this proposed rule would have a significant impact on the quality of the human environment such that an Environmental Impact Statement (EIS) should be prepared. Based on the results of the draft EA, NRCS proposes issuing a finding of no significant impact (FONSI) before a final rule is published. Copies of the draft EA and FONSI may be obtained from Denise Coleman, Farmland Protection and Community Planning Staff, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890. The FRPP draft EA and FONSI will also be available at the following Internet address: *http://www.nrcs.usda.gov/programs/Env_Assess/FPP/FPP.html.*

Written comments on the draft EA and FONSI should be sent to Denise Coleman, Farmland Protection and Community Planning Staff, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890.

Paperwork Reduction Act

Section 2702 of the Farm Security and Rural Investment Act of 2002 provides that the promulgation of this proposed rule is carried out without regard to Chapter 35 of Title 44, United States Code (commonly known as the Paperwork Reduction Act).

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed in accordance with Executive Order 12988. NRCS has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this rule. Nevertheless, in the event that such a conflict were to be identified, the proposed rule would preempt the State or local laws or regulations found to be in conflict. The provisions of this proposed rule are not retroactive. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR part 614 must be exhausted.

Executive Order 13132, Federalism

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. NRCS has determined that the rule conforms to the federalism principles set forth in the Executive Order; would not impose any compliance cost on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, NRCS has assessed the effects of this rulemaking action of State, local, and Tribal governments, and the public. This action does not compel the expenditure of $100,000,000 or more by any State, local, or Tribal government, or anyone in the private sector; therefore, a statement under section 202 of the Act is not required.

List of Subjects in 7 CFR Part 1491

Administrative practice and procedure, Agriculture, Soil conservation.

For the reasons stated in the preamble, the Commodity Credit Corporation proposes to amend Chapter XIV by adding a new part 1491 as set forth below:

PART 1491—FARM AND RANCH LANDS PROTECTION PROGRAM

Subpart A—General Provisions

Sec.

1491.1 Applicability.
1491.2 Administration.
1491.3 Definitions.
1491.4 Program requirements.
1491.5 Application procedures.
1491.6 Ranking considerations and proposal selection.
1491.7 Funding priorities.

Subpart B—Cooperative Agreements and Conservation Easement Deeds

1491.20 Cooperative agreements.
1491.21 Funding.
1491.22 Conservation easement deeds.
1491.23 Easement modifications.

Subpart C—General Administration

1491.30 Violations and remedies.
1491.31 Appeals.
1491.32 Scheme or device.

Authority: 16 U.S.C. 3831h, 3831i.

Subpart A—General Provisions

§ 1491.1 Applicability.

(a) The regulations in this part set forth policies, procedures, and requirements for program implementation of the Farm and Ranch Lands Protection Program as administered by the Natural Resources Conservation Service (NRCS). FRPP cooperative agreements and easements signed on or after the effective date of the final regulation will be administered according to 7 CFR part 1491.

(b) The NRCS Chief may implement FRPP in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1491.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the NRCS Chief.

(b) NRCS shall:

(1) Provide overall program management and implementation leadership for FRPP;

(2) Develop, maintain, and ensure that policies, guidelines, and procedures are carried out to meet program goals and objectives;

(3) Ensure that the FRPP share of the cost of an easement or other deed restrictions in eligible land shall not exceed 50 percent of the appraised fair market value of the conservation easement;

(4) Determine land and entity eligibility;

(5) Make funding decisions and determine allocations of program funds;

(6) Coordinate with the Office of the General Counsel (OGC) to ensure the legal sufficiency of the cooperative agreement and the easement deed or other legal instrument;

(7) Sign and monitor cooperative agreements for the CCC with the selected entity;

(8) Monitor and ensure conservation plan compliance with highly erodible land and wetland provisions in accordance with 7 CFR part 12; and

(9) Provide leadership for establishing, implementing, and overseeing administrative processes for easements, easement payments, and administrative and financial performance reporting.

(c) NRCS may enter into cooperative agreements with eligible entities to assist NRCS with implementation of this Part.

§ 1491.3 Definitions.

The following definitions may be applicable to this part:

Agricultural uses are defined by State law. (If the agency finds that a State definition of agriculture is so broad that an included use could lead to the degradation of soils, NRCS reserves the right to impose greater deed restrictions on property than allowable under a State definition of agriculture in order to protect topsoil.)

Chief means the Chief of NRCS, USDA.

Commodity Credit Corporation (CCC) is a Government-owned and operated entity that was created to stabilize, support, and protect farm income and

prices. CCC is managed by a Board of Directors, subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio director and chairperson of the Board. CCC provides the funding for FRPP, and NRCS administers the FRPP on its behalf.

Conservation Easement means a voluntary, legally recorded restriction, in the form of a deed, on the use of property, in order to protect resources such as agricultural lands, historic structures, open space, and wildlife habitat.

Conservation Plan means the document that—

- Applies to highly erodible cropland;
- Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules;
- Is approved by the local soil conservation district in consultation with the local committees established under Section 8 (b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 5909h(b)(5)) and the Secretary, or by the Secretary.

Contingent right is an interest in land held by the United States, which the United States may exercise under specific circumstances in order to enforce the terms of the conservation easement or hold title to the easement.

Eligible entities means federally recognized Indian Tribes, States, units of local government, and certain non-governmental organizations (see definition below), which have a farmland protection program that purchases agricultural conservation easements for the purpose of protecting topsoil by limiting conversion to non-agricultural uses of the land. Additionally, to be eligible for FRPP, the entity must have pending offers (see definition below), for the acquiring conservation easements for the purpose of protecting agricultural land from conversion to nonagricultural uses.

Eligible land is privately owned land on a farm or ranch that has prime, unique, statewide, or locally important soil, or contains historical or archaeological resources, and is subject to a pending offer by an eligible entity. Eligible land includes cropland, rangeland, grassland, and pasture land, as well as forest land that is an incidental part of an agricultural operation. Other incidental land that would not otherwise be eligible, but when considered as part of a pending offer, may be considered eligible, if inclusion of such land would significantly augment protection of the associated farm or ranch land.

Fair market value of the conservation easement is ascertained through standard real property appraisal methods. Fair market value is the amount in cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure of time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer. Neither the seller nor the buyer act under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal.

Field Office Technical Guide (FOTG) is the official document for NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. The FOTG contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Historical and archaeological resources must be:

- Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 16 U.S.C. 470, *et seq.*), or
- Formally determined eligible for listing in the National Register of Historic Places (by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and the Keeper of the National Register in accordance with Section 106 of the NHPA), or
- Formally listed in the State or Tribal Register of Historic Places of the SHPO (designated under section 101 (b)(1)(B) of the NHPA) or the THPO (designated under section 101(d)(1)(C) of the NHPA).

Land Evaluation and Site Assessment System (LESA) is the Federal land evaluation system used to rank land, based on soil potential for agriculture, as well as social and economic factors, such as location, access to market, and adjacent land use. (For additional information see the Farmland Protection Policy Act Rule (7 CFR part 658).

Landowner means a person, persons, estate, corporation, or other business or nonprofit entity having fee title ownership of farm or ranch land.

Natural Resources Conservation Service is an agency of the U.S. Department of Agriculture.

Non-governmental organization, is defined as any organization that:

- Is organized for, and at all times since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue code of 1986;
- Is an organization described in section 501(c)(3) of that code that is exempt from taxation under 501(a) of that code;
- Is described in section 509(a)(2) of that code; or
- Is described in section 509(a)(3) of that code and is controlled by an organization described in section 509(a)(2) of that code.

Other interests in land include any right in real property recognized by State law, including fee title. FRPP funds will only be used to purchase other interests in land with prior approval from the Chief.

Other productive soils are soils that are contained on farm or ranch land that is identified as farmland of statewide or local importance and is used for the production of food, feed, fiber, forage, or oilseed crops. The appropriate State or local government agency determines statewide or locally important farmland with concurrence from the State Conservationist. Generally, these farmlands produce high yields of crops when treated and managed according to acceptable farming methods. In some states and localities, farmlands of statewide and local importance may include tracts of land that have been designated for agriculture by State law or local ordinance. 7 CFR part 657, sets forth the process for designating soils as statewide or locally important.

Pending offer is a written bid, contract, or option extended to a landowner by an eligible entity to acquire a conservation easement before the legal title to these rights has been conveyed for the purpose of limiting non-agricultural uses of the land.

Prime and unique farmland are defined separately, as follows:

- Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, without intolerable soil erosion, as determined by the Secretary.
- Unique farmland is land other than prime farmland that is used for the production of specific high-value food and fiber crops, as determined by the Secretary. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR part 657 and 7 CFR part 658.

Secretary is the Secretary of the U. S. Department of Agriculture.

State Technical Committee means a committee established by the Secretary of the U.S. Department of Agriculture in a State pursuant to 16 U.S.C. 3861 and 7 CFR part 610, subpart C.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area (Puerto Rico and the Virgin Islands), or the Pacific Basin Area (Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

§ 1491.4 Program requirements.

(a) Under the FRPP, the Secretary, on behalf of CCC, shall purchase conservation easements, in partnership with eligible entities, from landowners who voluntarily wish to protect their farm and ranch lands from conversion to nonagricultural uses. Eligible entities submit applications to NRCS State Offices to partner with NRCS to acquire conservation easements on farm and ranch land. NRCS enters into cooperative agreements with selected entities and provides funds for up to 50 percent of the appraised market value for the easement purchase. In return, the entity agrees to acquire, hold, manage, and enforce the easement. A Federal contingent right interest in the property must be included in each easement deed for the protection of the Federal investment.

(b) The term of all easements will be in perpetuity unless prohibited by State law.

(c) To be eligible to receive FRPP funding, an entity must meet the definition of "eligible entity" as listed in the "Definitions" section of this proposed rule. In addition, eligible entities wishing to receive FRPP funds must also demonstrate:

(1) A commitment to long-term conservation of agricultural lands;

(2) A capability to acquire, manage, and enforce easements;

(3) Sufficient number of staff that will be dedicated to monitoring and easement stewardship; and

(4) The availability of funds.

(d) Eligible land must meet the definition of "eligible land" as provided herein. In addition:

(1) Entire farms or ranches may be enrolled in FRPP.

(2) Farms must contain at least 50 percent of prime, unique, statewide, or locally important soil, unless otherwise determined by the State Conservationist, or contain historical or archaeological resources.

(3) Eligible lands are farm and ranch lands that must be subject to a pending offer, as defined in the "Definitions" section of this proposed rule, for purchase of a conservation easement.

(4) Eligible land must be privately owned. NRCS will not enroll land in FRPP that is owned in fee title by an agency of the United States or State or local government, or land that is already subject to an easement or deed restriction that limits the conversion of the land to nonagricultural use, unless otherwise determined by the Secretary.

(5) Eligible land must be owned by landowners who certify that they do not exceed the adjusted gross income limitation eligibility requirements set forth in Section 1604 of the Farm Security and Rural Investment Act of 2002.

(e) Prior to FRPP fund disbursement, all parcels must have an appraisal. Appraisals shall be completed and signed by a State-certified or licensed appraiser and shall contain a disclosure statement by the appraiser. The appraisal shall conform to either the Uniform Standards of Professional Appraisal Practices or the Uniform Appraisal Standards for Federal Land Acquisitions; or, with NRCS National Office approval, be valued using an alternative real estate evaluation system used by the State government in expending State funds. Where an alternative real estate evaluation system is used, parcels will be given equal priority as those having current appraisals.

(f) At the discretion of the Chief, a standard easement will be required as a condition for program participation.

(g) The landowner shall be responsible for complying with the Highly Erodible Land and Wetland Conservation provisions of the Food Security Act of 1985, as amended, and 7 CFR part 12.

§ 1491.5 Application procedures.

(a) When funds are available, NRCS publishes a Request for Applications in the **Federal Register** or, at the discretion of the Chief, uses another process to solicit applications from eligible entities to cooperate in the acquisition of conservation easements on farms and ranches. Information required in the application will be set forth in the Request for Applications.

(b) To participate, an eligible entity submits an application to NRCS for the acquisition of conservation easements on eligible farm or ranch land, on which the entity already has pending offers. An entity's application contains a request to fund one or more parcels. All applications must be submitted to the appropriate NRCS State Conservationist by the specified date, as indicated in the Request for Applications.

§ 1491.6 Ranking considerations and proposal selection.

(a) Once the NRCS State Conservationist has assessed entity eligibility and land eligibility, the State Conservationist shall use National and State criteria to evaluate the land and rank parcels, contained within the entity's application. Entities and parcels will be selected for participation based on the entities' responses to the Request for Applications. Selection will be based on national ranking criteria set forth by the Chief in the Request for Applications and state criteria as determined by the State Conservationist, with advice from the State Technical Committee.

(1) Examples of national criteria may include:

(i) Acreage of prime, unique, and important farm and ranch land to be protected;

(ii) Total acres of land to be protected with the requested award;

(iii) Acreage of prime, unique, and important farm and ranch land identified in the National Resources Inventory as converted to nonagricultural uses;

(iv) Total acres needing protection;

(v) Number or acreage of historic and archaeological resources to be protected on farm or ranch lands;

(vi) Anticipated average FRPP cost per acre;

(vii) Rate of land conversion (*e.g.*, local land use conversion rates);

(viii) Degree of leveraging guaranteed by eligible entities;

(ix) History of eligible entity's commitment to conservation planning and conservation practice implementation;

(x) Eligible entity's history of acquiring, managing, holding, and enforcing conservation easements. This could include annual farmland protection expenditures, monetary donations received, accomplishments, and staffing levels;

(xi) A description of the eligible entity's farmland protection strategy and how the FRPP application submitted by the entity corresponds to the entity's strategic plan; and

(xii) Eligible entity's estimated acres of unfunded conservation easements on prime, unique, and important farm and ranch land.

(2) Examples of State or local criteria determined by the State Conservationist include:

(i) Proximity of parcel to other protected clusters;

(ii) Proximity of parcel to other agricultural operations and infrastructure;

(iii) Parcel size;

(iv) Type of land use;

(v) Maximum FRPP cost expended per acre;

(vi) Degree of leveraging by the entity;

(b) State ranking criteria will be developed on a State-by-State basis. Prior to proposal submission, interested entities should contact the State Conservationist located in their State for a full listing of applicable National and State ranking criteria.

(c) The NRCS State Conservationist may seek advice from the State Technical Committee (established pursuant to 16 U.S.C. 3861) in evaluating the merits of the applications.

§ 1491.7 Funding priorities.

(a) NRCS will only consider funding the acquisition of eligible land in the Program if the agricultural viability of the land can be demonstrated. For example, the land must be of sufficient size and have boundaries that allow for efficient management of the area. The land must also have access to markets for its products and a support infrastructure appropriate for agricultural production.

(b) NRCS may not fund the acquisition of eligible lands if NRCS determines that the protection provided by the FRPP would not be effective because of on-site or off-site conditions.

(c) NRCS will place a higher priority on easements acquired by entities that have extensive experience in managing and enforcing easements.

(d) During the application period, pending offers having appraisals completed and signed by State-certified appraisers within the preceding one year shall receive higher funding priority by the NRCS State Conservationist. Before funding is released for easement acquisition, the cooperating entity must provide NRCS with a copy of the certified appraisal.

(e) NRCS may place a higher priority on lands and locations that help create a large tract of protected area for viable agricultural production and that are under increasing urban development pressure(s).

(f) NRCS may place a higher priority on lands and locations that link to other Federal, Tribal, or State governments or non-governmental organization efforts with complementary farmland protection objectives (*e.g.*, open space, watershed and wildlife habitat protection).

(g) NRCS may place a higher priority on lands that provide multifunctional benefits including social, economic, and environmental benefits.

(h) A higher priority may be given to certain geographic regions where the enrollment of particular lands may help achieve National, State, and regional goals and objectives, or enhance existing government or private conservation projects.

(i) NRCS may place a higher priority on the national ranking criteria listed herein than State criteria, if the NRCS Chief deems appropriate.

Subpart B—Cooperative Agreements and Conservation Easement Deeds

§ 1491.20 Cooperative agreements.

(a) NRCS, on behalf of CCC, enters into a cooperative agreement with those entities selected for funding awards. Once a proposal is selected by the State Conservationist, the entity must work with the appropriate State Conservationist to finalize and sign the cooperative agreement incorporating all necessary FRPP requirements. The cooperative agreement addresses:

(1) The interests in land to be acquired, including the form of the easements to be used and terms and conditions;

(2) The management and enforcement of the rights acquired;

(3) The role of NRCS;

(4) The responsibilities of the easement manager on lands acquired with the assistance of FRPP; and

(5) Other requirements deemed necessary by NRCS to protect the interests of the United States.

(b) The cooperative agreement will also include an attachment listing the parcels accepted by the State Conservationist, landowners' names, addresses, location map(s), and other relevant information. An example of a cooperative agreement may be obtained from the State Conservationist.

§ 1491.21 Funding.

(a) The State Conservationist, in coordination with the cooperating entity, shall determine the NRCS share of the cost of purchasing a conservation easement.

(b) Under the FRPP, NRCS may provide up to 50 percent of the appraised fair market value of the conservation easement. Entities are required to supplement the NRCS share of the cost of the conservation easement.

(c) Landowner donations up to 25 percent of the appraised fair market value of the conservation easement may be considered part of the entity's matching offer.

(d) The entity must provide, in cash, at least 25 percent of the appraised fair market value of the conservation easement. When providing its share of the cost of the conservation easement, an entity may:

(1) Provide in cash, at least 25 percent of the appraised fair market value of the conservation easement, when accompanied by a landowner donation; or

(2) Provide at least 50 percent of the purchase price, in cash, of the conservation easement. In this situation, the NRCS share cannot exceed the entity's contribution.

(e) FRPP funds may not be used for expenditures such as appraisals, surveys, title insurance, legal fees, costs of easement monitoring, and other related administrative costs incurred by the entity.

(f) If the State Conservationist determines that the purchase of two or more conservation easements are comparable in achieving FRPP goals, the State Conservationist shall not assign a higher priority to any one of these conservation easements based on lesser cost to FRPP.

§ 1491.22 Conservation easement deeds.

(a) Under FRPP, a landowner grants an easement to an eligible entity with which NRCS has entered into an FRPP cooperative agreement. The easement shall require that the easement area be maintained in accordance with FRPP goals and objectives for the term of the easement.

(b) Pending offers by an eligible entity must be for acquiring an easement in perpetuity, except where State law prohibits a permanent easement.

(c) The conveyance document or conservation easement deed used by the eligible entity may be reviewed and approved by the NRCS National Office and Office of the General Counsel (OGC) before being recorded.

(d) Since title to the easement is held by an entity other than the United States, the conveyance document must contain a "contingent right" clause that provides that all rights conveyed by the landowner under the document will become vested in the United States should the eligible entity (*i.e.*, the grantee[s]) abandon or attempt to terminate the conservation easement. In addition, the contingent right also provides, in part, that the Secretary takes title to the easement, if the eligible entity fails to uphold the easement or attempts to transfer the easement without first securing the consent of the Secretary.

(e) As a condition for participation, a conservation plan will be developed by NRCS in consultation with the landowner and implemented according to the NRCS Field Office Technical Guide and approved by the local conservation district. The conservation plan will be developed and managed in accordance with the Food Security Act of 1985, as amended, 7 CFR part 12 or subsequent regulations, and other requirements as determined by the State Conservationist. To ensure compliance with this conservation plan, the easement will grant to the United States, through NRCS, its successors or assigns, a right of access to the easement area.

(f) The cooperating entity shall acquire, hold, manage and enforce the easement. The cooperating entity may have the option to enter into an agreement with governmental or private organizations to carry out easement stewardship responsibilities if approved by NRCS.

§ 1491.23 Easement modifications.

(a) After an easement has been recorded, no amendments to the easement will be made without prior approval by NRCS.

(b) Easement modifications will be approved only when easement is duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation, and when the amendment is consistent with the purposes of the conservation easement.

Subpart C—General Administration

§ 1491.30 Violations and remedies.

(a) In the event of a violation of the terms of the easement, the entity shall notify the landowner. The landowner may be given reasonable notice and, where appropriate, an opportunity to voluntarily correct the violation in accordance with the terms of the conservation easement.

(b) In the event that the cooperating entity fails to enforce any of the terms of the easement as determined in the sole discretion of the Secretary, the Secretary and his or her successors and assigns shall have the right to enforce the terms of the easement through any and all authorities available under Federal or State law. In the event that the cooperating entity attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests of the easement or extinguish the easement or without the prior consent of the Secretary and payment of consideration to the United States, then, at the option of the Secretary, all right, title, and interest in the conservation easement shall become vested in the United States of America.

(c) Notwithstanding paragraph (a) of this section, NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations, as it relates to the conservation plan. The entry may be made at the discretion of NRCS when the actions are deemed necessary to protect highly erodible soils and wetland resources. The landowner shall be liable for any costs incurred by the United States as a result of the landowner's negligence or failure to comply with the easement requirements.

(d) The United States shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

(e) The conservation easement shall include an indemnification clause requiring landowners to indemnify, defend, and hold harmless the United States from any liability resulting from the negligent acts of the landowner.

(f) In instances where an easement is terminated or extinguished, NRCS will collect CCC's share of the conservation easement based on the appraised fair market value at the time the easement is violated or terminated. CCC's share shall be in proportion to its percentage of original investment.

§ 1491.31 Appeals.

(a) A person or cooperating entity participating in FRPP may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR part 614.

(b) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for the purposes of judicial review, no decision shall be a final agency action except a decision of the U. S. Department of Agriculture under these provisions.

(c) Any appraisals, market analyses, or supporting documentation that may be used by the NRCS to determine property value are considered confidential information, and shall be disclosed only as determined by the cooperating entity and NRCS in accordance with applicable law.

§ 1491.32 Scheme or device.

(a) If it is determined by the Secretary that a landowner or cooperating entity have employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such landowner or cooperating entity during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person or entity of payments for easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

Signed in Washington, DC, on October 16, 2002.

Bruce I. Knight,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

[FR Doc. 02–26888 Filed 10–28–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM01–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design

October 22, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of technical conferences.

SUMMARY: On July 31, 2002, the Commission issued a Notice of Proposed Rulemaking (NOPR) in the above-captioned docket, proposing to amend its regulations to remedy undue discrimination through open access transmission service and standard electricity market design. The Commission has scheduled a series of public conferences, to be held in the Commission Meeting Room, to address specific areas of concern about the proposed rule. Persons interested in speaking at the conferences should file requests to speak on or before October 25, 2002.

DATES: Requests to speak are due: October 25, 2002. Conferences will be held on: November 6, 2002, November 19, 2002, and December 3, 2002.

ADDRESSES: Send requests to speak to: Office of the Secretary, Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8004.

SUPPLEMENTARY INFORMATION:

1. Take notice that technical conferences led by Commissioners and members of Commission staff will be held on November 6, 2002, November 19, 2002, and December 3, 2002. Each conference will take place from approximately 9:30 a.m. until 5 p.m. in the Commission Meeting Room on the second floor of the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. All interested persons may attend, and registration is not required; however, in-person attendees are asked to notify the Commission of their intent to attend by sending an e-mail message to *customer@ferc.gov*.

2. These technical conferences are intended to be working sessions that focus on clarifying areas of concern with the proposed rule, resolving differences, and devising solutions to the difficult issues that have been identified during the Commission's outreach efforts following issuance of the Notice of Proposed Rulemaking (NOPR) in this docket. To make the conferences successful, we encourage participants to come prepared to support alternative proposals and offer concrete solutions to the issues that have been raised.

3. As specified in the Notice issued in this docket on October 2, 2002, the November 6, 2002, conference will focus on pricing proposals for network upgrades and expansions. The Commission wants to ensure that infrastructure will be built in a timely manner and that costs will be recovered in a fair and efficient manner. In particular, the discussions will attempt to clarify and seek consensus on:

a. Definitions of pricing policies including types of participant funding.

(1) "Beneficiaries pay"—the beneficiary, whether a single customer, a rate zone, the entire RTO, or a neighboring region as determined by the Independent Transmission Provider, pays for the upgrades.

(2) "Market-based participant funding"—projects voluntarily proposed by individual market participants are voluntarily paid for by those participants, in order to use the expanded capacity and receive the Congestion Revenue Rights created.

(3) "Rolled in pricing"—projects are paid by all users of the regional grid.

(4) "Local License plate pricing"—Projects in a given service territory are paid for by those who pay the access charge in that territory.

b. Definitions of categories of investments that must be addressed:

(1) Region-wide reliability;

(2) Local reliability;

(3) Congestion relief.

c. Which of the types of investments in (b) should be treated under each of the pricing policies in (a)?

d. What barriers might remain under the proposed planning process to getting needed transmission built, and how can they be addressed better?

e. How much regional variation should be allowed in determining the appropriate pricing treatment for each category of investment?

f. Under market-based participant funding, should a market participant who funds an upgrade and receives the associated congestion revenue rights also pay an access charge to receive transmission service?

g. In a region that moves to rely substantially on market-based participant funding, how should customers transition from transmission credits for network upgrades associated with generator interconnections to congestion revenue rights?

h. In regions that propose to rely substantially on market-based participant funding, how can current wholesale network customers ensure that their load growth continues to be planned-for on a non-discriminatory basis?

i. What accommodations should be made, if any, to account for the recovery of the costs of transmission expansion with state retail rate freezes.

4. The November 19, 2002 conference will focus on aspects of the resource adequacy requirement proposed in the NOPR, specifically:

a. How to accommodate differences in state requirements for reserve margins, resource adequacy, and retail access to achieve a standard or seamless resource adequacy within each region;

b. Appropriate elements of design for resource adequacy requirements in areas that have retail access;

c. Methods of ensuring adequate resource deliverability;

d. Potential roles for central procurement;

e. Appropriate penalties for LSEs that do not meet the requirements;

f. Balance of energy and capacity prices to provide appropriate long run investment incentives;

g. Potential roles of forward capacity markets;

h. How to assign the appropriate value (both price and quantity) to demand-side resources' participation in satisfying resource adequacy requirements;

i. How to ensure resource adequacy in energy-limited systems; and

j. Possible seams issues.

5. The December 3, 2002, conference will discuss specific issues related to the transition to congestion revenue rights (CRRs), such as:

a. Whether the Commission's proposal to have a mandatory auction for CRRs should be replaced by a policy allowing regions to choose an allocation procedure.

b. Determining how to allocate CRRs such that all customers receive CRRs commensurate with their existing rights to the transmission system, including load diversity and to what extent planned and documented future load growth is accounted for;

c. Determining how to make sure that competing load-serving entities can acquire CRRs associated with new load or load formerly served by another load-serving entity;

d. Developing long-term CRRs to match the term of power purchase contracts;

e. Where CRRs are auctioned, how to ensure that any auction revenues are properly returned to load;

f. Guarding against the use of CRRs to exercise market power; and

g. Allowing regional variation on how rights are allocated to load.

6. Persons interested in speaking at these conferences should file a request to speak on or before October 25, 2002, in Docket No. RM01-12–000. If possible, interested speakers should also send a copy of their request to speak to *customer@ferc.gov*. The request should clearly specify the topic and date of the conference to which the request pertains; the name of the speaker; his or her title; the person or entity the speaker represents; the speaker's mailing address, telephone number, facsimile number and e-mail address; and a brief description of the issues the speaker wishes to address. As the number of potential speakers may exceed the time allotted for the conference, interested speakers are encouraged to coordinate their efforts with others who may have similar interests. Based on the requests to participate, panels of speakers will be specified in a subsequent notice.

7. Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646), for a fee. They will be available for the public on the Commission's FERRIS system two weeks after the conference. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection website at *http://www.capitolconnection.gmu.edu* and click on "FERC."

8. For more information about the conferences, please contact Sarah McKinley at (202) 502–8004 or *sarah.mckinley@ferc.gov*.

By direction of the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27439 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AL32

Schedule for Rating Disabilities; Evaluation of Multiple Scars

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend that portion of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities that addresses the Skin in order to clarify how to evaluate multiple superficial or deep scars in a uniform and consistent manner.

DATES: Comments must be received by VA on or before December 30, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AL32." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (38 CFR part 4) by revising § 4.118, that portion of the Schedule that addresses scars. It would clarify the method of evaluating multiple superficial and deep scars and provide directions that promote consistent evaluations.

A current note under diagnostic codes 7801 (scars, other than head, face, or neck, that are deep or that cause limited motion) and 7802 (scars, other than head, face, or neck, that are superficial and that do not cause limited motion) in § 4.118 of VA's Schedule for Rating Disabilities (38 CFR part 4) directs that scars in widely separated areas, as on two or more extremities or on anterior and posterior surfaces of extremities or trunk, be separately rated and combined in accordance with 38 CFR 4.25 (Combined ratings table).

The current rating schedule provides an evaluation level of 10 percent under diagnostic code 7803 for superficial unstable scars and under diagnostic code 7804 for superficial painful scars. However, it provides no guidance on whether or not each painful or unstable scar, no matter how small or close together, should be separately evaluated. Examples where this might be an issue are multiple scars stemming from a grenade explosion or from certain surgical procedures, such as numerous ligations of varicose veins on a single leg. This lack of guidance has led to inconsistent evaluations because raters are unsure whether each unstable or painful scar calls for a separate evaluation. Therefore, we propose to revise the rating schedule to clarify how multiple superficial unstable or painful scars are to be evaluated.

The provision concerning the evaluation of multiple scars under diagnostic codes 7801 and 7802 has been in effect for many years. Diagnostic codes 7803 and 7804 both address superficial scars, which are, by virtue of the lesser extent of tissue damage, inherently less seriously disabling than deep scars, which are evaluated under diagnostic code 7801. It would, therefore, be neither appropriate nor internally consistent to assign a separate evaluation for each painful or unstable superficial scar, while assigning only a single evaluation for multiple deep scars, unless they are in widely separated areas. Disproportionately high evaluations for superficial scars would result if that were done. Therefore, we propose to evaluate multiple superficial scars under diagnostic codes 7803 and 7804 in the same manner that multiple deep and superficial scars are evaluated under diagnostic codes 7801 and 7802. The issues related to evaluation are similar, and evaluating multiple scars of all four types in the same manner would promote fair and consistent handling of multiple scars, result in equitable evaluations, and remove any ambiguity about their evaluation. We propose to provide three notes at the beginning of § 4.118 providing directions for evaluating multiple scars evaluated under diagnostic codes 7801, 7802, 7803, and 7804.

The first note would explain that scars located in two or more of the following locations are considered to be in widely separated areas of the body: the anterior surface of the left upper extremity, the anterior surface of the right upper extremity, the posterior surface of the left upper extremity, the posterior surface of the right upper extremity, the anterior surface of the left lower extremity, the anterior surface of the right lower extremity, the posterior surface of the left lower extremity, the posterior surface of the right lower extremity, the anterior surface of the trunk, the posterior surface of the trunk, and the head, face, and neck. This represents a rewording of part of the current note under diagnostic codes 7801 and 7802.

The second note would direct raters to assign a single evaluation for all superficial scars in each widely separated area of the body. This is also a rewording of part of the current note under diagnostic codes 7801 and 7802, and would apply to diagnostic codes 7802, 7803, and 7804, the three codes under which superficial scars are evaluated. Since there is the possibility that one or more multiple superficial scars might have characteristics that would allow evaluation under more than one of the diagnostic codes from 7802 to 7804, the note also directs raters to increase the evaluation for scar(s) in each widely separated area of the body by 10 percent if any of the scars in a given area meet the criteria for evaluation under at least two diagnostic codes (among 7802, 7803, or 7804).

The third note would apply to deep scars and directs raters to assign a single evaluation for all deep scars in each widely separated area of the body. This is not a substantive change from the current direction.

We propose an additional change under diagnostic code 7801 in order to eliminate possible confusion about scars that fall between the sizes indicated at various percentage levels. Ten percent would be assigned for area or areas of at least 6 square inches (39 sq. cm.) but less than 12 square inches (77 sq. cm.). 20 percent for area or areas of at least 12 square inches (77 sq. cm.) but less than 72 square inches (465 sq. cm.). 30 percent for area or areas of at least 72 square inches (465 sq. cm.) but less than

144 square inches (929 sq. cm.), and 40 percent for area or areas of 144 square inches (929 sq. cm.) or greater.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

(The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.)

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: October 3, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

2. Section 4.118 is amended by:

A. Adding three Notes immediately before diagnostic code 7800.

B. Revising diagnostic codes 7801 and 7802.

The addition and revision read as follows:

§ 4.118 Schedule of ratings—skin.

Notes to the Schedule of Ratings for Skin:

(1) For purposes of evaluating scars, scars located in two or more of the following locations are considered to be in widely separated areas of the body:

(a) The anterior surface of the left upper extremity.

(b) The anterior surface of the right upper extremity.

(c) The posterior surface of the left upper extremity.

(d) The posterior surface of the right upper extremity.

(e) The anterior surface of the left lower extremity.

(f) The anterior surface of the right lower extremity.

(g) The posterior surface of the left lower extremity.

(h) The posterior surface of the right lower extremity.

(i) The anterior surface of the trunk.

(j) The posterior surface of the trunk.

(k) The head, face, and neck.

(2) Assign a single evaluation for all superficial scars in each widely separated area of the body. Increase the evaluation for scar(s) in each widely separated area of the body by 10 percent if any of the scars in a given area meet the criteria for evaluation under at least two diagnostic codes (among 7802, 7803, or 7804).

(3) Assign a single evaluation for all deep scars in each widely separated area of the body.

* * * * *

7801 Scars, other than head, face, or neck, that are deep or that cause limited motion:

Area or areas of 144 square inches (929 sq. cm.) or greater—40

Area or areas of at least 72 square inches (465 sq. cm.) but less than 144 square inches (929 sq. cm.)—30

Area or areas of at least 12 square inches (77 sq. cm.) but less than 72 square inches (465 sq. cm.)—20

Area or areas of at least 6 square inches (39 sq. cm.) but less than 12 square inches (77 sq. cm.)—10

Note: A deep scar is one associated with underlying soft tissue damage.

7802 Scars, other than head, face, or neck, that are superficial and that do not cause limited motion:

Area or areas of 144 square inches (929 sq. cm.) or greater—10

Note: A superficial scar is one not associated with underlying soft tissue damage.

* * * * *

[FR Doc. 02–27408 Filed 10–28–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7400–3]

RIN 2060–AJ27

Protection of Stratospheric Ozone: Phaseout of Chlorobromomethane Production and Consumption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: With this action, EPA is proposing to add chlorobromomethane (CBM) to the list of controlled substances subject to production and consumption controls in accordance with both the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) and EPA's regulations under the Clean Air Act Amendments of 1990 (CAAA). Today's action proposes to create a new Group (Group VIII) of class I substances for CBM, and to designate the value of CBM's "ozone - depleting potential" (ODP) as 0.12. In accordance with the Protocol, today's action proposes phasing out CBM production and consumption upon publication of the final rule with permitted exemptions. Today's action also proposes to restrict trade in CBM with countries who are not Parties to the Beijing Amendments to the Protocol.

DATES: Comments must be received in writing by November 29, 2002, unless a public hearing is requested. If a public hearing takes place, it will be scheduled for November 13, 2002, after which comments must be received on or before December 13, 2002. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on November 5, 2002. After that time, interested parties may call EPA's Stratospheric Ozone Protection Information Hotline at 1–800–296–1996 to inquire with regard to whether a hearing will be held, as well as the time and place of such a hearing.

ADDRESSES: Public comments and data specific to this action should be submitted in duplicate (two copies) to: Air and Radiation Docket (6102), Air Docket No. A–92–13, Section XII, U.S. Environmental Protection Agency, 401 M Street, SW., Room M–1500, Washington, DC 20460. If you plan to submit comments, please also notify Jabeen Akhtar, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–3514.

Materials relevant to this proposed rulemaking are contained in Public Docket No. A–92–13, Section XII. The docket is located in room M–1500, Waterside Mall (Ground Floor), at the above address. The materials may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. The telephone number is (202) 260–7548. The docket may charge a reasonable fee for copying docket materials.

Information designated as Confidential Business Information (CBI) under 40 CFR, Part 2, Subpart 2, must be sent directly to the contact person for this notice. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Ozone Information Hotline at 1–800–296–1996, or Jabeen Akhtar, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, (202) 564–3514; *akhtar.jabeen@epa.gov*. Overnight or courier deliveries should be sent to the office location at 4th floor, 501 3rd Street, NW., Washington, DC, 20001. You may also visit the Ozone Depletion web site of EPA's Global Programs Division at *http://www.epa.gov/ozone/index.html* for further information about EPA's Ozone Protection regulations, the science of ozone depletion, and other topics.

SUPPLEMENTARY INFORMATION: This document concerns proposed amendments to the production and import controls for ozone-depleting substances (ODS). The proposed amendment concerns the addition of a new controlled substance, chlorobromomethane (CBM), to the list of substances already subject to controls related to production, import, export, destruction, transhipment, essential uses, and feedstock uses.

The regulated categories that may be affected by this proposed action include:

Category	SIC	NAICS	Examples of potentially regulated entities
1. Industrial organic chemicals, NEC	2869	325199	Producers, importers, or exporters of CBM.
2. Pharmaceutical preparations	2834	325412	Transformers of CBM.
3. Pesticides and agricultural chemicals, NEC	2879	32532	Transformers of CBM.
4. Chemicals and allied products, NEC	5169	42269	Lab suppliers of CBM.
5. Testing laboratories, except veterinary testing labs	8734	54138	Lab users of CBM.
6. Medical and diagnostic laboratories	8071	6215	Lab users of CBM.
7. Research and development in the physical, engineering and life sciences	8731, 8733	54171	Lab users of CBM.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed action. This table lists the types of entities that EPA is now aware could potentially be regulated by this proposed action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, etc., could be regulated by this proposed action, you should carefully examine the applicability criteria in § 82.1(b) of Title 40 of the Code of Federal Regulations (CFR). If you have any questions regarding the applicability of this proposed action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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I. What Is the Scientific and Legal Background for Regulations To Phase Out Ozone-Depleting Substances?

International and national regulatory activities to phase out ozone-depleting substances (ODSs) arose from scientific findings linking ODSs with stratospheric ozone depletion. The stratospheric ozone layer protects the Earth from penetration of harmful ultraviolet (UV–B) radiation. Scientific evidence links the release of certain man-made halocarbons, including chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform, and methyl bromide, to the depletion of the stratospheric ozone layer. Ozone depletion harms human health and the environment through increased incidence of cataracts, certain skin cancers, suppression of the immune system, damage to plants including crops and aquatic organisms, increased formation of ground-level ozone and increased weathering of outdoor plastics.

In response to the body of evidence linking chlorofluorocarbons and other chlorinated and brominated compounds to ozone depletion, the international community reached agreement in 1987 on a landmark treaty. This treaty, the Montreal Protocol on Substances that Deplete the Ozone Layer ("Montreal Protocol" or "Protocol") was originally signed by 46 nations, including the United States. The Protocol establishes

controls on the production and consumption of ozone depleting chemicals. The Protocol has been amended and adjusted numerous times in the 15 years since its original signing, and 183 nations have now ratified the original Protocol (as of 1/24/02).

The Clean Air Act Amendments of 1990 direct the Environmental Protection Agency (EPA) to issue regulations to implement the provisions of the Protocol within the United States. Accordingly, EPA developed a scheme of production and consumption controls relative to substances addressed by the Protocol. The current regulatory requirements of the Stratospheric Ozone Protection Program implement the provisions of the Protocol and the Clean Air Act (CAA) by limiting the production and consumption of ozone-depleting substances. These regulatory requirements are codified at Subpart A to Part 82 of Volume 40 of the Code of Federal Regulations (40 CFR Part 82, Subpart A). As the control measures of the Protocol have been amended or adjusted, and in consideration of other factors, Subpart A has also been amended. For example, following the amendments to the Protocol made at the Fourth Meeting of the Parties in Copenhagen in 1992, a number of changes to the control provisions of the Protocol were made, including an accelerated phaseout of ODS production and consumption. EPA published a final regulation in December of 1993, implementing the United States' obligation under the Copenhagen amendments (58 FR 65018). Other regulations amending Subpart A include those published on December 20, 1994 (59 FR 65478), May 10, 1995 (60 FR 24970), August 4, 1998 (63 FR 41625), and October 5, 1998 (64 FR 53290).

In the context of the regulatory program, the use of the term consumption may be misleading. Consumption does not mean the "use" of a controlled substance, but rather is defined as the formula: consumption = production + imports—exports, of controlled substances (Article 1 of the Protocol and Section 601 of the CAA). Furthermore, the objective that consumption shall not exceed zero, except for exempted uses (as is the ultimate objective under the Montreal Protocol and CAA for all ozone-depleting substances) is achieved through a ban on production and on import. Quantities of exports are not controlled as such (although trade in controlled substances with non-Parties to the Protocol is controlled for reasons explained in section IV.C.3. of this Preamble). Yet by setting production and import in the above equation equal to zero, any positive quantity of export in the above equation will result in a value for consumption which is less than zero. Under the regulatory program established by EPA to implement the Montreal Protocol, limited exceptions to the ban on the import of phased-out class I controlled substances exist if the substances are: (1) Previously used, (2) imported for essential uses as authorized by the Protocol and 40 CFR Part 82, Subpart A, (3) imported for destruction or transformation only, or (4) a transhipment (*i.e.*, from one foreign country through the U.S., to another foreign country) or a heel (a small amount of controlled substance remaining in a container after discharge) (40 CFR 82.4(d), 82.13(g)(2)).

II. What Chemicals Are Addressed by Today's Proposed Action and How Are They Used?

Today's proposed action will affect only one chemical, chlorobromomethane (CBM).[1] CBM is a chemical compound found in trace quantities in the atmosphere with both natural and man-made sources. Research indicates that CBM has an atmospheric lifetime of ~0.21–0.25 yr^{-1}. The Parties to the Montreal Protocol designated the ODP of CBM as 0.12. This value is consistent with an examination of scientific investigations on this topic, which concluded that an appropriate range for the ODP of CBM is 0.07–0.15 (See 64 FR 22985, 4/18/99).

Preliminary research indicates that the past and current major industrial applications of CBM have been in 4 main areas: in the fire protection sector, as an explosion suppression agent, as a solvent, and as a feedstock in the manufacture of other chemicals. Informal discussions with CBM producers indicate that the majority of CBM is produced for feedstock use. EPA seeks comment as to whether any other uses of CBM exist that have not been captured in the following subsections.

A. CBM as a Fire Extinguishing Agent

Halogenated agent fire extinguishers were initially developed in the early 1900s and filled an important fire protection niche. Halogenated agent extinguishers were efficient on fires in materials where water or largely water solutions were ineffective, such as on fires involving electrical arcs and on fires involving volatile liquids.

Increasing concerns about short and long-term adverse health effects of CBM on the lungs, kidneys, skin, and liver led to the end of this agent's acceptability as a fire extinguishing agent for use in areas occupied by humans. In the 1960s, Underwriters' Laboratories, Inc. withdrew recognition of fire extinguishing agents with a toxicity classification exceeding a certain threshold. This action affected CBM, carbon tetrachloride and methyl bromide as fire extinguishing agents. In the early 1980s, the Occupational Safety and Health Administration (OSHA) banned the use of both carbon tetrachloride and CBM as fire extinguishing agents in areas where employees can be exposed to the agent or its side effects. OSHA does, however, permit the use of CBM as an explosion suppression agent in unoccupied spaces (29 CFR Part 1910, Subpart L, Appendix A (Section 160)).

Preliminary research by EPA also indicates that CBM was used in some military applications (*e.g.*, in aircraft fire protection). However, Department of Defense (DoD) officials indicate that no current requirements exist or are expected to exist for CBM, and that today's proposed action will not adversely affect DoD.

B. CBM as an Explosion Protection Agent

CBM is an effective explosion protection agent. Explosions affect many industries such as plastics, forest products, powdered foods, waste disposal, grain, coal, chemical, petrochemical, food processing, brewing, and pharmaceutical. Explosions are broadly classified as deflagrations or detonations, depending upon the speed at which the combustion zone propagates. Five primary methods exist for controlling deflagrations: prevention, containment, venting, suppression, and isolation. CBM and other halon agents were used in explosion suppression systems. Such systems operate by detecting an explosion in its early stages and introducing a suppressant (*e.g.*, CBM) that prevents the combustion reaction from continuing.

EPA research indicates that one U.S. company historically manufactured explosion protection systems containing CBM. Manufacture and sale of such systems ended in the early 1990s. No significant imports of such systems into this country are known. It is estimated that several hundred such explosion protection systems are currently deployed among various facilities throughout the United States. An EPA regulation, published on April 28, 1999 (64 FR 22982), found CBM to be unacceptable as a substitute for Halon 1301 in total flooding applications in the fire suppression and explosion protection sector. EPA published this rule under Section 612 of the CAAA, which authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. The program generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. In the April 1999 action, the SNAP program found that other alternative Halon 1301 replacement agents existed with zero or lower ozone-depleting potential than CBM.

[1] The terms chlorobromomethane and bromochloromethane are synonymous. They both refer to the chemical, CH_2BrCl. Both terms can be found in industry, scientific, and regulatory documents.

C. CBM as a Solvent

CBM has been considered as a potentially promising cleaning agent, either alone or as a solvent blend. Under EPA's SNAP program, the Agency received an application requesting consideration of CBM as a substitute for CFC–113 and methyl chloroform in solvents cleaning of metals, electronics, and in precision cleaning.

In a regulation published on April 28, 1999 (noted above), EPA determined that CBM was unacceptable as a substitute for CFC–113, methyl chloroform (MCF), and HCFC–141b in metals cleaning, electronics cleaning and precision cleaning because numerous other alternative substances exist with lower environmental risks (64 FR 22982). That regulation also established that CBM is unacceptable in aerosols (as a solvent) as a substitute for CFC–113, methyl chloroform, and HCFC 141b, and in adhesives, coatings, and inks (as a carrier solvent) as a substitute for CFC–113, methyl chloroform, and HCFC 141b.

D. CBM as a Feedstock

According to preliminary research by EPA, approximately 80% of CBM produced in the past has been used as a feedstock in the manufacture of pharmaceutical products, water treatment chemicals, and a biocide. Today's proposed action would not affect production or import (except for import from non-Party countries; see section IV.C.1.) of CBM when that CBM is subsequently transformed, as it is when it is used as a feedstock. "Transform" means to use and entirely consume (except for trace quantities) a controlled substance in the manufacture of other chemicals for commercial purposes (See 40 CFR 82.3). The definition of "production" of controlled substances in § 82.3 explicitly excludes "the manufacture of a controlled substance that is subsequently transformed" and therefore production controls will not apply to such manufacture. Also, § 82.4 (c) and (d) exclude controlled substances "that are transformed or destroyed" from the Class I import prohibition.

E. Process Agents

The Parties to the Protocol recognize that certain controlled ozone-depleting substances, because of their unique chemical and/or physical properties, can facilitate an intended chemical reaction and/or inhibit an unintended chemical reaction. The term "process agent" is used to refer to controlled substances in such applications. Controlled substances are typically used in chemical processes as process agents for at least two of the following unique chemical and/or physical properties: (1) Chemically inert during a chemical reaction; (2) physical properties (*e.g.*, boiling point, vapor pressure, specific solvency); (3) to act as a chain transfer agent; (4) to control the desired physical properties of a process (*e.g.*, molecular weight, viscosity); (5) to increase plant yield; (6) non-flammable/non-explosive; and (7) to minimize undesirable by-product formation. Source: Process Agents Task Force (PATF), 2001 (available at *http://www.teap.org/html/process_agents_reports.html*).

Formally, the term "process agents" under the Montreal Protocol means "the use of controlled substances for the applications listed in table A" of Decision X/14 of the Meetings of the Parties to the Montreal Protocol (Handbook for the International Treaties for the Protection of the Ozone Layer. Ozone Secretariat, UNEP, Nairobi, Kenya, p. 85. Available at *http://www.unep.org/ozone/Handbook2000.shtml)*. Presently, four controlled substances are listed as process agents: carbon tetrachloride (CTC), CFC–11, CFC–12, and CFC–113. These are used in the manufacture of chlorine, polymers, chlorinated (intermediate) products, pharmaceuticals, and pesticides and other agricultural chemicals.

Controlled substances produced or imported as process agents (as listed in table A of Decision X/14) for use in plants and installations that were in operation before January 1, 1999, are not counted in the calculation of production and consumption of controlled substances from January 1, 2002, and thereafter. That is, production and import of controlled substances as process agents listed in table A of Decision X/14 are not subject to production and import restrictions under the Montreal Protocol. In the case of non-Article 5 Parties such as the U.S., the emissions of controlled substances in these processes must be reduced to insignificant levels as defined in table B of Decision X/14.

Parties may propose additions to the list of controlled substances designated as process agents by sending a detailed proposal to the Ozone Secretariat, which will forward them to the Technology and Economic Assessment Panel (TEAP). The Panel will then investigate the proposed change and make a recommendation to the Parties whether or not the proposed use should be added to the list by decision of the Parties.

EPA received a letter from one stakeholder requesting that their use of CBM as a solvent in the process of producing a polymer additive be considered a process agent use. EPA has approved this company's use of CBM as a process agent use and has submitted a request to the TEAP to add this use of CBM to the list of process agents in Table A of Decision X/14 and to change the emissions limit for the United States in Table B to reflect this addition. EPA seeks comment as to whether any other applications of CBM exist that should be submitted for consideration as a process agent. Commenters should provide detailed information on the quantities of chemicals involved, the chemical process, and the products. EPA also seeks comment as to the anticipated impacts, if any, of this proposed rule on such potential process agent uses.

III. What Are the Elements of the International Agreement To Regulate CBM?

A. Preliminary Discussions on Controlling CBM

Interest in banning production of CBM was first raised in the Montreal Protocol forum in 1998. At the Tenth Meeting of the Parties to the Protocol in November, 1998, the suggestion was made that the Parties immediately ban CBM. CBM was recognized as a "new" and unregulated substance with a high ODP. In response to concern that CBM was being aggressively marketed to developing countries as an "ozone-safe" alternative solvent, and that unhindered global production of CBM could significantly harm or threaten the ozone layer, the Parties to the Montreal Protocol agreed at the Tenth Meeting to take measures to discourage its production and marketing. The 1999 Report of the Technology and Economic Assessment Panel included a recommendation for regulatory controls of CBM from the Solvents Technical Options Committee (STOC):

In view of the predicted quantities of CBM, if the market for this substance is developed

unhindered and the ODP, which is within the same range as HCFCs regulated under the Montreal Protocol, the STOC recommends that the Parties consider appropriate action to prevent or limit further depletion of the ozone layer due to this substance."[2]

It should be noted that there was reason to believe that a significant future market for CBM might exist in the absence of regulation. For example, industry had identified CBM as a potentially promising cleaning agent in the 1990s; and as mentioned above, EPA's SNAP program had received an application requesting consideration of CBM as a substitute for CFC–113 and methyl chloroform in solvents cleaning of metals, electronics, and in precision cleaning. Although EPA's 1999 regulation noted above (64 FR 22982) determined that CBM was unacceptable as a substitute for CFC–113, methyl chloroform (MCF), and HCFC–141b in metals cleaning, electronics cleaning and precision cleaning, as well as unacceptable as a substitute for Halon 1301 in total flooding applications in the fire suppression and explosion protection sector, these restrictions do not control CBM use outside of the United States.

B. The "Beijing Amendments" and Their Provisions Regarding CBM

The Parties to the Protocol at the Eleventh Meeting ("Beijing Amendments") agreed to list CBM as a controlled substance and establish its phaseout schedule. The specific terms of the Beijing Amendments can be found at *http://www.unep.org/ozone/Beijing-Amendment.shtml* and also in the Docket to this proposed rulemaking. The Parties agreed to add a new group of controlled substances to Annex C. This new group, Group III, consists of a single entry, chlorobromomethane, which was assigned an ODP of 0.12. Furthermore, the Parties agreed to add a new Article ("Article 2I: Bromochloromethane") to the Protocol which specifies that as of January 1, 2002, the consumption and production of the controlled substance in Group III of Annex C shall not exceed zero, except for production or consumption necessary to satisfy uses that may be agreed by the Parties in the future to be essential.

The Protocol contains no exemptions from production controls for CBM to meet the "basic domestic needs" of "Article 5" parties as it does for many other groups of ODSs. For other ODSs, the Montreal Protocol allows Parties to exceed their level of baseline production to accommodate the "basic domestic needs" of Article 5 countries. Article 5 countries are defined by the Parties as developing countries whose annual calculated level of consumption of controlled substances falls below certain thresholds. The basis for allowances for Article 5 Parties has been described previously (52 FR 47496, 12/14/87). For certain ODSs, the Protocol allows excess production for Article 5 countries and EPA has accordingly provided for such excess production in its regulations (see 40 CFR Part 82, Subpart A, 82.9(a)). In contrast, when the control measures set forth in the Protocol do not provide for such excess production, no "Article 5" provision has been granted in EPA regulations. Because Article 2I of the Protocol, which specifies controls on CBM, does not include the provision for granting Article 5 allowances for CBM, such a provision will not be made with today's proposed action (see discussion in Section IV.C.5.a).

In addition to the control measures described above, the Beijing Amendments add to the Protocol a ban on import of CBM from, and export of CBM to, non-Parties to the Beijing Amendments. Under the terms of the Beijing Amendments, each Party is required to implement this trade ban on CBM within 1 year of the date of entry into force of the Amendments. In general, under the Montreal Protocol and its amendments, bans on imports from and exports to non-Parties reflect an agreed strategy by the Parties to the Montreal Protocol to encourage ratification of each successive amendment package to the Protocol and to ensure that controlled ozone-depleting substances are not provided to countries that have not agreed to control measures.

Finally, as with most other groups of ODSs regulated under the Montreal Protocol, the phaseout of CBM production and consumption accommodates the future possibility of "essential use" allowances. At the Fourth Meeting of the Parties to the Protocol in Copenhagen (November 23–25, 1992), the Parties established criteria for determining "essential uses" that could be exempted from the phaseout of production and importation. These criteria and the nomination process are described in more detail in earlier **Federal Register** notices (64 FR 50084, 9/15/99).

[2] April 1999 Report of the Technology and Economic Assessment Panel, Part V, 2.7.1.

IV. What Are the New U.S. Requirements Proposed by Today's Action?

A. Legal Authority

Several provisions of the CAA provide the legal authority for today's proposed action. Section 602(a) provides EPA with the general authority to list Class I substances. Section 602(a) requires EPA to add to the list of Class I substances those substances that it finds cause or contribute significantly to harmful effects on the stratospheric ozone layer. Section 602(c) requires that the Administrator place newly added Class I substances, to the extent consistent with the Montreal Protocol, either into an existing Group or a new Group. As explained in Section III A of today's proposed action, EPA believes that CBM may cause or contribute significantly to the harmful effects on the stratospheric ozone layer. Whenever EPA adds a substance to the Class I list, EPA is also required by Section 602(e) to assign a numerical value representing the substance's ozone-depleting potential (ODP). Section 602(e) requires this ODP numerical value to be consistent with the Montreal Protocol if such ODP is specified by the Montreal Protocol.

Those substances listed as a Class I (or Class II) substance are then subject to the monitoring and reporting requirements as set forth and implemented under Section 603. Section 603(b) requires that on a quarterly basis, or other such basis as EPA may prescribe, a report be filed with EPA regarding the amount of substance(s) produced, imported, and exported during the preceding reporting period.

Section 604 sets forth the general phase-out schedule of Class I substances and exceptions to the phase-out. Section 604(a) requires EPA to promulgate regulations implementing the phase-out schedule for Class I substances set forth in the CAA. The Section 604 phaseout date for most Class I substances is January 1, 2000; however, under Section 602(d), EPA may establish a later phaseout date for a newly listed substance if the Section 604 phaseout date is unattainable, considering when the substance is listed.

Section 614(b) requires that Title VI of the CAAA be "construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, * * *, and shall not be construed, interpreted, or applied to abrogate the responsibilities of the United States to implement fully the provisions of the Montreal Protocol." Section 614(b) requires that in the case of any conflict "between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern." Thus, today's proposed actions list CBM and put in place the phaseout controls consistent with the Montreal Protocol.

B. Specific Elements of Today's Proposed Action

1. Listing CBM and Controls

Today's proposed action would create a new Group (Group VIII) of class I substances, place CBM in this new Group, and assign CBM an ODP of 0.12. Today's proposed action would establish a full ban on CBM production and import. This ban would not apply to the production or import of CBM that is subsequently transformed or destroyed, or to imports of transhipments or heels (see Section I). No interim phasedown levels are proposed; that is, production and import are unrestricted until the effective date of the ban. It should be noted that EPA is not proposing baseline allowances for CBM and therefore will not at this time collect information on baseline production and consumption of CBM.

Today's action does not propose production for the "basic domestic needs" of Article 5 countries for reasons described in Section III B of this Preamble. After the total phaseout of CBM production and import, EPA anticipates that the Parties to the Protocol may authorize inclusion of CBM in the exemption for laboratory and analytical uses, described in greater detail in Section IV.B.2 of this Preamble. EPA is proposing reporting and recordkeeping requirements for persons who produce, import, destroy, transform, tranship, or export CBM, as well as for CBM authorized for essential uses. In addition, EPA is proposing that persons wishing to import used, recycled or reclaimed CBM must comply with the petition process described in 40 CFR 82.4(j) and 82.13(g)(2), (3) and (4).

EPA is proposing that the effective date for all of today's proposed actions would be 30 days from the date of publication of the final rule in the **Federal Register**. Under Section 604(b) of the CAA, unless otherwise stated, the phaseout date for Class I substances is January 1, 2000. However, pursuant to Section 602(d), EPA may establish a later phaseout date for a newly listed substance if the Section 604(b) date is unattainable. Because the January 1, 2000 phaseout date is in the past, it is obviously unattainable. Therefore, EPA is proposing to establish a later phaseout date linked to the publication date of the final rule.

Today's proposed effective date takes into consideration that the Beijing Amendments entered-into-force under the Protocol on February 25, 2002, for Parties that have ratified the amendment package. The U.S. Senate gave their advice and consent to the ratification of the Beijing Amendment package on October 9, 2002, but the U.S. must still officially deposit its instrument of ratification with the United Nations. Ninety days following the date the U.S. officially deposits the instrument of ratification for the Beijing Amendment package, the U.S. assumes obligations to comply with the provisions of the Beijing Amendment. Thus, EPA needs to have put in place (prior to the deposit of the instrument of ratification) final regulatory programs that will implement and ensure U.S. compliance with the provisions of the Beijing Amendment package.

2. Ban on Trade With Non-Parties

Today's action also proposes to prohibit CBM import from and export to a foreign state that is not a Party to the 1999 Beijing Amendments to the Protocol. In accordance with previously established provisions under the Protocol, current EPA regulations (60 FR 24970; 40 CFR 82.4(l)) prohibit certain class I controlled substances from export to or import from foreign states not Parties to the Montreal Protocol or specific amendment packages to the Protocol (*e.g.*, the London Amendments).

With today's action, EPA is proposing adding a new subparagraph, § 82.4(l)(5) regarding a CBM trade ban that would become effective 30 days after the date of publication of the final rule in the **Federal Register**. However, in going forward with today's proposal, EPA wishes to note that it is also considering alternative dates for making the trade ban effective. EPA is also considering an effective date immediately upon publication of the final rule. This other approach is being considered because under the Protocol, the CBM trade ban will go into effect one year from entry-into-force of the Beijing Amendments. Since the Beijing Amendments entered-into-force on February 25, 2002, the effective date of the trade ban for those countries that have ratified the Amendments would be February 25, 2003. An effective date for the trade ban for the U.S. could therefore be on or after this 2003 date.

The U.S. Senate gave their advice and consent to the ratification of the Beijing Amendment package on October 9, 2002, but the U.S. must still officially deposit its instrument of ratification with the United Nations. Ninety days following the date the U.S. officially deposits the instrument of ratification for the Beijing Amendment package, the U.S. assumes obligations to comply with the provisions of the Beijing Amendment. Thus, EPA needs to have put in place (prior to the deposit of the instrument of ratification) final regulatory programs that will implement and ensure U.S. compliance with the provisions of the Beijing Amendment (including the trade ban on CBM).

A revised list of Parties that have ratified the Montreal Protocol and successive amendments to the Protocol is published as Annex 1 in Appendix C to Subpart A with today's proposed action. For the purposes of the trade ban proposed in today's action, companies should refer to Appendix C to Subpart A of Part 82 to identify nations that have not yet ratified the Beijing Amendments, although this list will likely change by the time a final rule is published. CBM imports from or exports to these nations that have not ratified the Beijing Amendments would be prohibited. EPA will publish notices on a periodic basis to update this list (Appendix C) to reflect when Parties ratify the Montreal Protocol and its amendments. For additional information on countries that have ratified the Protocol and its amendments, visit the website of the United Nations Environment Program (UNEP) Ozone Secretariat at www.unep.org/ozone/ and look for the "Status of Ratification."

3. Essential Use Exemptions

Article 2I of the Montreal Protocol allows for the possibility of "essential use" exemptions from the phaseout established for CBM. The Parties to the Protocol established a process in Decision IV/25 by which they can determine what uses of a controlled substance are considered "essential uses." In contrast, the CAA delineates several specific exemptions under which uses of ODS may be considered to be exempt from the phaseout of ODSs. Thus, a use that is considered an "essential use" under the Protocol, taking into account more recent decisions under the Protocol, may or may not be specifically exempt from the phaseout under the CAA. Section 614 of the CAA dictates that the more stringent provision should prevail when there is a conflict with the Protocol. In some instances the CAA may contain the more stringent provision.

In 2001, EPA provided a *de minimis* exemption for essential laboratory uses of class I ODSs based on the criteria

listed in Appendix G of subpart A of 40 CFR part 82. Production and import of class I controlled substances for certain narrowly defined laboratory and analytical applications are exempt from the production and import phaseout (*See* 66 FR 14760 (3/13/01)). The criteria identifying exempt applications are specified in Appendix G to 40 CFR Part 82, Subpart A. Furthermore, the production and import of class I controlled substances for laboratory and analytical applications must be conducted in accordance with the recordkeeping and reporting requirements specified in 40 CFR 82.13(v) to (z) of Subpart A, which are summarized later in this Preamble.

On February 11, 2002, EPA extended this exemption through the year 2005, while eliminating the following uses, consistent with Decision XI/15: (1) Testing of oil, grease and total petroleum hydrocarbons in water; (b) Testing of tar in road-paving materials; and (c) Forensic finger-printing (67 FR 6352). However, it should be noted that the Parties to the Montreal Protocol have not extended the global laboratory and analytical essential-use exemption indefinitely. This issue is further discussed at 66 FR 14767 (3/13/01).

4. Recordkeeping and Reporting Requirements

If EPA designates CBM as a class I ODS, existing recordkeeping and reporting requirements in 40 CFR 82.13 will apply to production, importation, destruction, transformation, transhipments, export, or essential uses of CBM. Potentially affected parties are urged to consult the relevant regulatory paragraphs in 40 CFR Part 82.13, Subpart A. In addition, guidance and reporting forms for these requirements are available from EPA's Stratospheric Ozone Hotline ((800) 296–1996). Today's proposal to extend the existing recordkeeping and reporting requirements to CBM will not take effect until EPA's information collection request (ICR) has been finalized. This process is described in Section VII.E.

(a) Producers

EPA is proposing that entities that produce CBM, as for other class I controlled substances, would submit a report to the EPA Administrator within 120 days of publication of the final rule, describing in detail how daily production quantities are measured and recorded, including how fugitive losses are accounted for and the estimated percent efficiency of production process. These entities would also maintain detailed records pertaining to (i) The quantity of controlled substances produced at each facility and the purposes for which they are produced, used, and sold, with certain written verifications; (ii) quantities of other chemicals produced within each facility and quantities of inputs used in the production of controlled substances; and (iii) shipments of controlled substances produced at each facility. These entities would, in addition, submit a quarterly report identifying quarterly production amounts and amounts sold, transferred, or exported (and specifying amounts transformed or destroyed by the producer or recipient), with appropriate verifications; and a list of the essential-use (including laboratory essential use) allowance holders from whom orders were placed and the quantity of essential-use controlled substances requested and produced, with appropriate verifications. See 40 CFR Part 82, Subpart A (§ 82.13) for the complete reporting and recordkeeping requirements.

(b) Importers

According to EPA's existing requirements for ODSs, a person may import a used class I controlled substance if they comply with the petition process described in 40 CFR 82.4(j) and 82.13(g)(2),(3) and (4). Under the Protocol and the CAA, the import of "used controlled substances" does not count against a country's obligation to completely phase out import. Therefore, EPA is proposing that with the listing of CBM as a class I controlled substance, an importer of used, recycled, or reclaimed CBM would become subject to the requirements specified in these sections. Specifically, importers of used, recycled, or reclaimed controlled substances and transshipments would need to fulfill the import petition process.

This process requires that for each individual shipment of greater than 150 lbs, at least 15 working days before the shipment leaves the foreign port of export, the importer must submit to EPA a petition including the identity and quantity of the controlled substance; information pertaining to the source, foreign owner, and exporter of the controlled substance, and information regarding the previous use and identity of foreign reclaimer; information on import port of entry, vessel, and dates of shipment; and the intended use of the controlled substance (40 CFR 82.13(g)(2) and (g)(3)).

EPA is also proposing that entities that import CBM, would also be subject to the standard recordkeeping and reporting requirements for importers of class I substances. These include the requirement to maintain detailed records of the quantity of each controlled substance, including information and documentation pertaining to the amounts that may be in mixtures, that are used, recycled or reclaimed, that are for use or sold for use in processing resulting in their transformation or destruction, and that are imported for essential uses; and including documentation and/or certification relating to port of entry, country from which the substance was imported, bill of lading, the U.S. customs entry form, and intended use of the imported substance. Such entities must also submit to EPA a quarterly report summarizing the records described above and including certifications regarding the intended use of controlled substances (*e.g.*, transformation, destruction, essential uses). In the case of imports of used (including recycled or reclaimed) controlled substances, or heels of controlled substances, bills of lading or invoices must be labeled, indicating that the controlled substance is used, recycled, reclaimed, or a heel, as appropriate. See 40 CFR Part 82, Subpart A (§ 82.13) for complete reporting and recordkeeping requirements.

(c) Exporters

EPA is proposing that exporters of CBM, as for other class I controlled substances, would submit information within 45 days after the end of the control period, including the names and addresses of the exporter and the recipient of the exports, the type and quantity of the controlled substances exported, percentage which is used, recycled, or reclaimed, date/port of export, amount exported to Article 5 countries, and documentation or certification relating to purchaser's or importer's intent to transform or destroy the controlled substance. Exporters of class I controlled substances must also label, in the case of exports of used (including recycled or reclaimed) controlled substance, bills of lading or invoices, indicating that the controlled substance is used, recycled, or reclaimed. See 40 CFR Part 82, Subpart A (§ 82.13) for the complete reporting and recordkeeping requirements.

(d) Destroyers

EPA is proposing that entities that destroy CBM, as with other class I controlled substances, would submit a one-time report stating the destruction unit's efficiency and the methods used to determine destruction efficiency and to record the volume destroyed. Changes to these methods must be reported within 60 days of the change. The report must also include names of other regulations applicable to the destruction process. Such entities must also provide the producer or importer from whom they purchased or received the controlled substances with a verification that controlled substances will be used in processes that result in their destruction. Destroyers of class I controlled substances must also report the names and quantities of class I controlled substances destroyed for each control period within 45 days of the end of the control period. See 40 CFR Part 82, Subpart A (§ 82.13) for the complete reporting and recordkeeping requirements.

(e) Transformers

EPA is proposing that entities that transform CBM, as for other class I controlled substances, would provide the producer or importer of the controlled substances the IRS certification that the controlled substances are to be used in processes resulting in their transformation, and report the names and quantities of class I controlled substances transformed for each control period within 45 days of the end of the control period. *See* 40 CFR Part 82, Subpart A (§ 82.13) for the complete reporting and recordkeeping requirements.

(f) Transhipments, Heels, and Essential Uses

EPA is proposing that entities that bring back a container with a heel of CBM to the United States would report quarterly the amount brought into the United States, certifying that the residual amount in each shipment is less than 10% of the volume of the container and will remain in the container and be included in a future shipment, be recovered and transformed or destroyed, or be recovered for a non-emissive use. They would also have to report on the final disposition of each shipment within 45 days of the end of the control period. Entities that transship a controlled substance must maintain records that indicate that the controlled substance shipment originated in a foreign country destined for another foreign country, and does not enter interstate commerce with the United States. Entities that were allocated essential-use allowances and submitted an order to a producer or importer for a controlled substance must report the quarterly quantity received from each producer or importer. See 40 CFR Part 82, Subpart A (§ 82.13) for the complete reporting and recordkeeping requirements.

(g) Laboratory Essential Uses

EPA is proposing that CBM to be used in laboratory applications be exempted from the ban in the same manner that all other Class I ODSs are exempted for laboratory uses. In addition, laboratory distributors who sell CBM under this exemption would be subject to the reporting requirements outlined in 40 CFR Part 82, Subpart A (§ 82.13). These reporting requirements are as follows: Laboratory distributors/suppliers must report quarterly the quantity received of each class I controlled substance from each producer or importer. Distributors must also keep on record certifications from customers who purchase CBM (or any Class I ODS) stating that the CBM will only be used in laboratory applications defined in 40 CFR Part 82, Subpart A (§ 82.13), Appendix G. (Laboratory customers purchasing a controlled substance under the global laboratory essential-use exemption must provide the producer, importer or distributor with a one-time-per-year certification for each controlled substance that the substance will only be used for laboratory applications and not be resold or used in manufacturing). Distributors must report quarterly the quantity of the controlled substance purchased by each laboratory customer. If the controlled substances are only sold as reference standards for calibrating laboratory analytical equipment, the distributor may write a letter to the EPA Administrator requesting permission to submit these reports annually rather than quarterly. See 40 CFR Part 82, Subpart A (§ 82.13) for complete reporting and recordkeeping requirements.

V. What Other Stratospheric Protection Regulations Will Relate to CBM Following Today's Proposed Action?

A regulation originally published on February 11, 1993 (58 FR 8136) and amended at 60 FR 4020 (January 19, 1995) establishes requirements pertaining to labeling of products containing or made with ozone-depleting substances. The text of that regulation (as well as Fact Sheets about it) can be found at the following Web site: *http://www.epa.gov/ozone/title6/labeling/labeling.html*. The labeling requirements apply to products manufactured with, containers of, and products containing specific ozone-depleting substances pursuant to section 611of the CAAA. Specifically, the regulations require products that are manufactured with a process using a class I substance; products containing a class I substance; and containers of a class I or class II (hydrochlorofluorocarbons (HCFCs)) substance or mixture to bear a "clearly legible and conspicuous" warning statement. Manufacturers, distributors, wholesalers, and retailers of products manufactured with, containers of, and products containing CBM would therefore be required to comply with the labeling requirements which would become applicable to CBM one year after its final listing as a class I ODS; See 40 CFR Part 82, Subpart E.

VI. What Are the Supporting Analyses?

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Section 204 of the UMRA requires the Agency to develop a process to allow elected State, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising

small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's proposed ban on production and import is expected to have minimal economic impact because production and import for feedstock uses (which represent the majority of current production and import uses) are exempt from the ban. Furthermore, CBM use has been largely curtailed by prior environmental and safety regulations in the fire protection, explosion suppression, and solvent sectors. Therefore the proposed ban of CBM is not expected to significantly affect the regulated community.

Based upon research and information available to EPA at this time, EPA understands that the regulated community directly impacted by today's proposed action is restricted in size. Potentially regulated entities include entities that produce, export, or import CBM; entities that use CBM in a process that results in its transformation or destruction; entities that are laboratory suppliers of CBM; and entities with laboratory uses of CBM. For all of these entities, there would be new recordkeeping and reporting requirements imposed by today's proposed action, but these are estimated to be minimal (approximately a total for the industry of $200,000 per year; see VII.B. for explanation of this estimate).

Thus, today's proposed rule is not subject to the requirements of sections 202 or 205 of the UMRA. EPA has also determined that this proposed rule contains no regulatory requirements that are expected to significantly or uniquely affect small governments; therefore, we are not required to develop a plan with regard to small governments under section 203. Finally, because this proposed rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected State, local, and tribal officials under section 204.

B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that is identified by the Standard Industrial Classification (SIC) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The size standards described in this section apply to all Small Business Administration (SBA) programs unless otherwise specified. The size standards themselves are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small.

Category	SIC Code	NAICS Code	SIC small business size standard (in number of employees or millions of dollars)
1. Industrial organic chemicals, NEC	2869	325199	1,000
2. Pharmaceutical preparations	2834	325412	750
3. Pesticides and agricultural chemicals, NEC	2879	32532	500
4. Chemicals and allied products, NEC	5169	42269	100
5. Testing laboratories, except veterinary testing labs	8734	54138	$5.0
6. Medical and diagnostic laboratories	8071	6215	$5.0
7. Research and development in the physical, engineering and life sciences	8731, 8733	54171	$5.0

After considering the economic impacts of today's proposed rule on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities.

Briefly, the following entities may potentially be affected by this regulation: entities that produce, export, or import CBM; entities that use CBM in a process that results in its transformation or destruction; entities that are laboratory suppliers of CBM; and entities with laboratory uses of CBM. For all these entities, there are new recordkeeping and reporting requirements imposed by today's proposed action. See the section entitled "Paperwork Reduction Act." It is estimated that total recordkeeping and reporting requirements will cost approximately an industry-wide total of $200,000 for the universe of potentially regulated entities, consisting of approximately 130 companies.

In addition to recordkeeping and reporting requirements, today's proposed action bans the production and import of CBM. There are only 2 known producers of CBM in the United States. These are large, multinational corporations and not small entities. In addition, informal discussions with these producers indicate that virtually all of their CBM production is for customers who transform CBM; this production is not subject to the CBM phaseout implemented by today's proposed action. Regarding import, EPA records indicate that during the years 1995–1999 (the years for which data were available), 22 companies had imported CBM during one or more years. Of these, 16 had imported CBM in only one of the 5 years of record. Informal discussions with the primary importer (responsible for 77% of the imported CBM) indicate that 80-85% of their imports are for transformation. Thus, the impacts of today's proposed action on CBM importers will also be limited (providing that import is from countries that are Parties to or in compliance with the Beijing Amendments). EPA sent letters on February 28, 2001, and again on April 25, 2001, to all importers for which addresses could be found, as well as others, notifying them of EPA's anticipated implementation of the 1999 Beijing Amendments to the Montreal Protocol, including the ban on production and import, and new recordkeeping and reporting requirements. To date, no adverse concern has been expressed by any small business recipient of the letter.

Today's proposed action also bans trade in CBM with countries which are not Parties to or in compliance with the Beijing Amendments to the Montreal Protocol. EPA believes that this provision of today's proposed rule will not significantly impact the regulated community because extremely limited demand is believed to exist for non-feedstock purposes, as explained in earlier sections of this Preamble, and because it is expected that demand for CBM for feedstock purposes could potentially be met by domestic production.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA notes that it has conducted outreach to consult with and notify the potentially affected community of today's proposed action.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this proposed regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant" regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this proposed rule is not a "significant regulatory action" and is therefore not subject to OMB review.

D. Applicability of Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it implements an obligation of the United States to implement fully the provisions of the Montreal Protocol and is not directly based on health or safety risks.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1432.22) and a copy may be obtained from Susan Auby by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at *auby.susan @epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. The information requirements are not enforceable until OMB has approved them.

As explained in EPA's ICR document, EPA's Office of Air and Radiation is revising the previously approved information collection by the same title.[3] Today's proposed action will impose new recordkeeping and reporting requirements associated with the production, import, export, recycling, destruction, transhipment, and feedstock use of CBM. Specifically, producers, importers, and exporters will be required to submit to EPA quarterly reports of the quantity of CBM in each of their transactions; they will also be required to report the quantity of CBM transformed or destroyed. Producers, importers, and exporters of CBM must also maintain records such as Customs entry forms, bills of lading, sales records, and canceled checks to support their quarterly reports. The quarterly reports may be faxed or mailed to EPA, where they will be handled as confidential business information. EPA will store the submitted information in a computerized database designed to track production, import, and export balances and transfer activities. EPA is currently exploring the possibility of having reports filled and submitted to the Agency over a secure Web site. If and when electronic reporting would occur, EPA would change its guidance document and its ICR to indicate a change in burden hours. EPA will use the information to ensure that the U.S. maintains compliance with the Protocol requirements and to report annually to United Nations Environment Programme the U.S. activity in CBM. EPA will store the submitted information in a computer system designed to track production, import, and export balances and transfer activities. EPA estimates that the information collection will involve approximately 133 respondents: 2 producers, 2 exporters, 8 importers, 100 laboratory certifiers, 8 transformers and destroyers, 6 essential use allowance holders, 2 laboratory suppliers, and 5 laboratory suppliers (reference standards). The total annual industry burden and cost are estimated at 2,580 hours and $201,350, of which $3,000 are annual operating and maintenance (O&M) costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and

[3] On March 5, 2001, the Office of Management and Budget (OMB) approved EPA's request for the extension of approval of this ICR. The request for extension was submitted by EPA on November 29, 2000. With that approval, OMB stated that it "understands that EPA is in the process of developing several rules that would result in revisions to this collection * * * EPA will need to revise this collection as part of those rulemaking processes." This ICR revision is one such revision.

requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 29, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by November 29, 2002.

F. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule will not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

Today's proposed rule is expected to primarily affect private sector entities that either produce, import, export, transform, or use or supply CBM for laboratory purposes. EPA is not aware of any current uses of CBM by public sector entities. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

G. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

Today's proposed rule is expected to primarily affect private sector entities that either produce, import, export, transform, or use or supply CBM for laboratory purposes. EPA is not aware of any current uses of CBM by tribal governments or their communities. Thus, Executive Order 13175 does not apply to this proposed rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

H. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today's proposed action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Executive Order 13211 (Energy Effects)

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355 (5/22/01)) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorobromomethane, Exports, Imports, Reporting and recordkeeping requirements, Halon, Ozone layer.

Dated: October 18, 2002.

Christine Todd Whitman,

Administrator.

For reasons set out in the preamble, 40 CFR Part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.3 is amended by:

a. Adding in alphabetical order the definition of Beijing Amendments.

b. Revising the last sentence in the definition of Controlled substance.

The revision and addition read as follows:

§ 82.3 Definitions.

* * * * *

Beijing Amendments means the Montreal Protocol, as amended at the Eleventh Meeting of the Parties to the Montreal Protocol in Beijing in 1999.

* * * * *

Controlled substance * * * Class I substances are further divided into eight groups, Group I, Group II, Group III, Group IV, Group V, Group VI, Group VII, and Group VIII, as set forth in appendix A to this subpart.

* * * * *

3. Section 82.4 is amended by:

a. Revising the first sentence of paragraph (b),

b. Revising the first sentence of paragraph (d),

c. Adding paragraph (l)(5).

The revisions and addition read as follows:

§ 82.4 Prohibitions.

* * * * *

(b) Effective January 1, 1996, for any class I, Group I, Group II, Group III, Group IV, Group V, or Group VII controlled substances, and effective January 1, 2005, for any class I, Group VI controlled substance, and effective [date 30 DAYS FROM PUBLICATION OF FINAL RULE IN **Federal Register**], for any class I, Group VIII controlled substance, no person may produce, at any time in any control period, (except that are transformed or destroyed domestically or by a person of another Party) in excess of the amount of conferred unexpended essential-use allowances or exemptions under this section, or the amount of unexpended Article 5 allowances as allocated under § 82.9 for that substance held by that person under the authority of this subpart at that time for that control period. * * *

* * * * *

(d) Effective January 1, 1996, for any class I, Group I, Group II, Group III, Group IV, Group V, or Group VII controlled substances, and effective January 1, 2005, for any class I, Group VI controlled substance, and effective [date 30 DAYS FROM PUBLICATION OF FINAL RULE IN **Federal Register**] for any class I, Group VIII controlled substance, no person may import (except for transhipments or heels), at any time in any control period, (except for controlled substances that are transformed or destroyed) in excess of the amount of unexpended essential-use allowances or exemptions as allocated under this section for that substance held by that person under the authority of this subpart at that time for that control period. * * *

* * * * *

(l) * * *

(5) Import or export any quantity of a controlled substance listed in Class I, Group VIII, in Appendix A to this subpart, from or to any foreign state not Party to the Beijing Amendments (as noted in Appendix C, Annex 1, to this subpart), unless that foreign state is complying with the Beijing Amendments (as noted in Appendix C, Annex 2, to this subpart).

* * * * *

4. Section 82.13 is amended by:

a. Revising paragraph (a).

b. Revising paragraph (f)(1) introductory text.

The revisions read as follows:

§ 82.13 Recordkeeping and reporting requirements.

(a) Unless otherwise specified, the recordkeeping and reporting requirements set forth in this section take effect on January 1, 1995. For class I, Group VIII controlled substances, the recordkeeping and reporting requirements set forth in this section take effect on [date 30 DAYS FROM PUBLICATION OF FINAL RULE IN THE **Federal Register**].

* * * * *

(f) * * *

(1) Within 120 days of May 10, 1995, or within 120 days of the date that a producer first produces a class I controlled substance, whichever is later, and within 120 days of [PUBLICATION OF FINAL RULE] for class I, Group VIII controlled substances, every producer who has not already done so must submit to the Administrator a report describing:

* * * * *

5. Appendix A to Subpart A is amended by adding paragraph H. to read as follows:

Appendix A to Subpart A of Part 82—Class 1 Controlled Substances

Class 1 controlled substances	ODP
. . . . .	
H. Group VIII:	
CH_2BrCl (Chlorobromomethane)	0.12

6. Appendix C to Subpart A is revised to read as follows:

Appendix C to Subpart A of Part 82—Parties to the Montreal Protocol, and Nations Complying With, But Not Parties To, The Protocol

Annex 1 to Appendix C of Subpart A—Parties to the Montreal Protocol (as of January 24, 2002)

The check mark [√] means the particular country ratified the Protocol or the specific Amendment package. Amendment packages are identified by the name of the city where the amendment package was negotiated and agreed. Updated lists of Parties to the Protocol and the Amendments can be located at: *www.unep.org/ozone/ratif.shtml*.

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Albania	✔				
Algeria	✔	✔	✔		
Angola	✔				
Antigua and Barbuda	✔	✔	✔	✔	
Argentina	✔	✔	✔	✔	
Armenia	✔				
Australia	✔	✔	✔	✔	
Austria	✔	✔	✔	✔	
Azerbaijan	✔	✔	✔	✔	
Bahamas	✔	✔	✔		
Bahrain	✔	✔	✔	✔	
Bangladesh	✔	✔	✔	✔	
Barbados	✔	✔	✔		
Belarus	✔	✔			
Belgium	✔	✔	✔		
Belize	✔	✔	✔		
Benin	✔	✔	✔		
Bolivia	✔	✔	✔	✔	
Bosnia and Herzegovina	✔				
Botswana	✔	✔	✔		
Brazil	✔	✔	✔		
Brunei Darussalam	✔				
Bulgaria	✔	✔	✔	✔	
Burkina Faso	✔	✔	✔		

Foreign state	Montreal protocol	London amend-ments	Copen-hagen amend-ments	Montreal amend-ments	Beijing amend-ments
Burundi	✔	✔	✔	✔	✔
Cambodia	✔				
Cameroon	✔	✔	✔		
Canada	✔	✔	✔	✔	✔
Cape Verde	✔	✔	✔	✔	
Central African Republic	✔				
Chad	✔	✔	✔	✔	
Chile	✔	✔	✔	✔	✔
China	✔	✔			
Colombia	✔	✔	✔		
Comoros	✔	✔			
Congo	✔	✔	✔	✔	✔
Congo, Democratic Republic of	✔	✔	✔		
Costa Rica	✔	✔	✔		
Cote d'Ivoire	✔	✔			
Croatia	✔	✔	✔	✔	
Cuba	✔	✔	✔		
Cyprus	✔	✔			
Czech Republic	✔	✔	✔	✔	✔
Denmark	✔	✔	✔		
Djibouti	✔	✔	✔	✔	
Dominica	✔	✔			
Dominican Republic	✔	✔	✔		
Ecuador	✔	✔	✔		
Egypt	✔	✔	✔	✔	
El Salvador	✔	✔	✔	✔	
Estonia	✔				
Ethiopia	✔				
European Community	✔	✔	✔	✔	
Federated States of Micronesia	✔	✔	✔		✔
Fiji	✔	✔	✔		
Finland	✔	✔	✔	✔	✔
France	✔	✔	✔		
Gabon	✔	✔	✔	✔	✔
Gambia	✔	✔			
Georgia	✔	✔	✔	✔	
Germany	✔	✔	✔	✔	✔
Ghana	✔	✔	✔		
Greece	✔	✔	✔		
Grenada	✔	✔	✔	✔	
Guatemala	✔	✔	✔	✔	✔
Guinea	✔	✔			
Guyana	✔	✔	✔	✔	
Haiti	✔	✔	✔	✔	
Honduras	✔	✔	✔		
Hungary	✔	✔	✔	✔	
Iceland	✔	✔	✔		
India	✔	✔			
Indonesia	✔	✔	✔		
Iran, Islamic	✔	✔	✔	✔	
Ireland	✔	✔	✔		
Israel	✔	✔	✔		
Italy	✔	✔	✔	✔	
Jamaica	✔	✔	✔		
Japan	✔	✔	✔		
Jordan	✔	✔	✔	✔	✔
Kazakhstan	✔	✔			
Kenya	✔	✔	✔	✔	
Kiribati	✔				
Korea, Democratic People's Republic of	✔	✔	✔	✔	✔
Korea, Republic of	✔	✔	✔	✔	
Kuwait	✔				
Kyrgyzstan	✔				
Lao, People's Democratic Republic	✔				
Latvia	✔	✔	✔		
Lebanon	✔	✔	✔	✔	
Lesotho	✔				
Liberia	✔	✔	✔		
Libyan Arab Jamahiriya	✔	✔			
Liechtenstein	✔	✔	✔		
Lithuania	✔	✔	✔		

Foreign state	Montreal protocol	London amend-ments	Copen-hagen amend-ments	Montreal amend-ments	Beijing amend-ments
Luxembourg	✔	✔	✔	✔	✔
Madagascar	✔	✔	✔	✔	✔
Malawi	✔	✔	✔		
Malaysia	✔	✔	✔	✔	✔
Maldives	✔	✔	✔	✔	
Mali	✔	✔			
Malta	✔	✔			
Marshall Islands	✔	✔	✔		
Mauritania	✔				
Mauritius	✔	✔	✔		
Mexico	✔	✔	✔		
Moldova	✔	✔	✔		
Monaco	✔	✔	✔	✔	
Mongolia	✔	✔	✔		
Morocco	✔	✔	✔		
Mozambique	✔	✔	✔		
Myanmar	✔	✔			
Namibia	✔	✔			
Nauru	✔				
Nepal	✔	✔			
Netherlands	✔	✔	✔	✔	✔
New Zealand	✔	✔	✔	✔	✔
Nicaragua	✔	✔	✔		
Niger	✔	✔	✔	✔	
Nigeria	✔	✔	✔	✔	
Norway	✔	✔	✔	✔	✔
Oman	✔	✔	✔		
Pakistan	✔	✔	✔		
Palau	✔	✔	✔	✔	✔
Panama	✔	✔	✔	✔	
Papua New Guinea	✔	✔			
Paraguay	✔	✔	✔	✔	
Peru	✔	✔	✔		
Philippines	✔	✔	✔		
Poland	✔	✔	✔	✔	
Portugal	✔	✔	✔		
Qatar	✔	✔	✔		
Romania	✔	✔	✔	✔	
Russian Federation	✔	✔			
Rwanda	✔				
Saint Kitts & Nevis	✔	✔	✔	✔	
Saint Lucia	✔	✔	✔	✔	✔
Saint Vincent and the Grenadines	✔	✔	✔		
Samoa	✔	✔	✔	✔	✔
Sao Tome and Principe	✔	✔	✔	✔	✔
Saudi Arabia	✔	✔	✔		
Senegal	✔	✔	✔	✔	
Seychelles	✔	✔	✔		
Sierra Leone	✔	✔	✔	✔	✔
Singapore	✔	✔	✔	✔	
Slovakia	✔	✔	✔	✔	
Slovenia	✔	✔	✔	✔	
Solomon Island	✔	✔	✔	✔	
Somalia	✔	✔	✔	✔	✔
South Africa	✔	✔	✔		
Spain	✔	✔	✔	✔	
Sri Lanka	✔	✔	✔	✔	
Sudan	✔	✔	✔		
Suriname	✔				
Swaziland	✔				
Sweden	✔	✔	✔	✔	
Switzerland	✔	✔	✔		
Syrian Arab Republic	✔	✔	✔	✔	
Tajikistan	✔	✔			
Tanzania, United Republic of	✔	✔			
Thailand	✔	✔	✔		
The Former Yugoslav Republic of Macedonia	✔	✔	✔	✔	
Togo	✔	✔	✔	✔	✔
Tonga	✔				
Trinidad and Tobago	✔	✔	✔	✔	
Tunisia	✔	✔	✔	✔	

Foreign state	Montreal protocol	London amend-ments	Copen-hagen amend-ments	Montreal amend-ments	Beijing amend-ments
Turkey	✔	✔	✔		
Turkmenistan	✔	✔			
Tuvalu	✔	✔	✔	✔	
Uganda	✔	✔	✔	✔	
Ukraine	✔	✔			
United Arab Emirates	✔				
United Kingdom	✔	✔	✔	✔	✔
United States of America	✔	✔	✔		
Uruguay	✔	✔	✔	✔	
Uzbekistan	✔	✔	✔		
Vanuatu	✔	✔	✔		
Venezuela	✔	✔	✔		
Viet Nam	✔	✔	✔		
Yemen	✔	✔	✔	✔	
Yugoslavia	✔				
Zambia	✔	✔			
Zimbabwe	✔	✔	✔		

Annex 2 to Appendix C of Subpart A—Nations Complying With, But Not Parties To, the Protocol [Reserved]

7. Appendix F. to Subpart A. is amended by:

a. Removing entries F. and G.

b. Under A. Class I: by adding entries 6, 7, and 8.

The additions read as follows:

Appendix F to Subpart A—Listing of Ozone Depleting Chemicals

Controlled Substance	ODP	AT L	CLP	BLP
A. Class I				
. . . . .				
6. Group VI:				
CH_3Br-Bromomethane (Methyl Bromide)	0.7		[reserved].	
7. Group VII:				
$CHFBr_2$-	1.00		[reserved].	
CHF_2Br-(HBFC-22B1)	0.74		[reserved].	
CH_2FBr	0.73		[reserved].	
C_2HFBr_4	0.3–0.8		[reserved].	
$C_2HF_2Br_3$	0.5–1.8		[reserved].	
$C_2HF_3Br_2$	0.4–16		[reserved].	
C_2HF_4Br	0.7–1.2		[reserved].	
$C_2H_2FBr_3$	0.1–1.1		[reserved].	
$C_2H_2F_2Br_2$	0.2–1.5		[reserved].	
$C_2H_2F_3Br$	0.7–1.6		[reserved].	
$C_2H_3FBr_2$	0.1–1.7		[reserved].	
$C_2H_3F_2Br$	0.2–1.1		[reserved].	
C_2H_4FBr	0.07–0.1		[reserved].	
C_3HFBr_6	0.3–1.5		[reserved].	
$C_3HF_2Br_5$	0.2–1.9		[reserved].	
$C_3HF_3Br_4$	0.3–1.8		[reserved].	
$C_3HF_4Br_3$	0.5–2.2		[reserved].	
$C_3HF_5Br_2$	0.9–2.0		[reserved].	
C_3HF_6Br	0.7–3.3		[reserved].	
$C_3H_2FBr_5$	0.1–1.9		[reserved].	
$C_3H_2F_2Br_4$	0.2–2.1		[reserved].	
$C_3H_2F_3Br_3$	0.2–5.6		[reserved].	
$C_3H_2F_4Br_2$	0.3–7.5		[reserved].	
$C_3H_2F_5Br$	0.9–1.4		[reserved].	
$C_3H_3FBR_3$	0.08–1.9		[reserved].	
$C_3H_3F_2Br_3$	0.1–3.1		[reserved].	
$C_3H_3F_3Br_2$	0.1–2.5		[reserved].	
$C_3H_3F_4Br$	0.3–4.4		[reserved].	
$C_3H_4FBr_3$	0.03–0.3		[reserved].	
$C_3H_4F_2Br_2$	0.1–1.0		[reserved].	
$C_3H_4F_3Br$	0.07–0.8		[reserved].	
$C_3H_5FBr_2$	0.04–0.4		[reserved].	
$C_3H_5F_2Br$	0.07–0.8		[reserved].	
C_3H_6FB	0.02–0.7		[reserved].	
8. Group VIII:				
CH_2BrCl (Chlorobromomethane)	0.12		[reserved].	

[FR Doc. 02–27340 Filed 10–28–02; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding for a Petition To List the Washington Population of the Western Gray Squirrel as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to list the western gray squirrel (*Sciurus griseus griseus*) in Washington under the Endangered Species Act of 1973, as amended. After reviewing the petition and all available scientific and commercial information, we find that the petition presents substantial information indicating that there may be one or more distinct population segments (DPS) of western gray squirrels in Washington for which listing may be warranted. With the publication of this notice, we are initiating a status review of the western gray squirrel subspecies *Sciurus griseus griseus* in Washington. In addition to requesting information on the status of the western gray squirrel in Washington, we are requesting information on the subspecies rangewide for the purpose of determining if one or more of the Washington populations of this subspecies constitutes a DPS, or constitutes a significant portion of the range of the subspecies. We will prepare a 12-month finding on our determination.

DATES: The finding announced in this document was made on October 17, 2002. To be considered in the 12-month finding for this petition, comments and information should be submitted to us by December 30, 2002.

ADDRESSES: Submit information, comments, or questions concerning this petition finding to the Manager, U.S. Fish and Wildlife Service, Western Washington Fish and Wildlife Office, 510 Desmond Drive SE, Suite 102, Lacey, WA 98503. The petition, supporting information, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ken Berg, Manager (see **ADDRESSES** section) (telephone 360/753–9440; facsimile 360/753–9518).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1533(b)(3)(A)), requires us to make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and a notice of the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, we are required to promptly commence a review of the status of the involved species, if one has not already been initiated under our internal candidate process. After completing the status review, we will issue an additional finding (the 12-month finding) determining whether listing is, in fact, warranted.

On January 4, 2001, we received a petition dated December 29, 2000, from the Northwest Ecosystem Alliance, Bellingham, Washington, and the Tahoma Audubon Society, University Place, Washington. The petition and cover letter clearly identified itself as such and contained the names, addresses, and signatures of the petitioning organizations' representatives. Information relating to the taxonomy, the historic and present population status and trends, threats, and a discussion of the qualifications of the western gray squirrel (*Sciurus griseus griseus*) in Washington as a distinct vertebrate population segment (DPS) were included in the petition. The petition requested an emergency rule to list the Washington population(s) of the western gray squirrel as threatened or endangered under the Act or, as an alternative, the immediate emergency listing of just the southern Puget Sound population of western gray squirrels followed by a later consideration of the "full Washington State distinct population segment under the standard processing requirements." The petition also requested the designation of critical habitat for the western gray squirrel in Washington, coincident with the listing.

In a letter dated March 9, 2001, we acknowledged receipt of the petition (Service, *in litt.*, 2001). We stated that we were unable to address the petition at that time because we were required to spend nearly all of our listing and critical habitat funding for fiscal year 2001 to comply with court orders and judicially approved settlement agreements. We also indicated in our letter that, from our initial review of the petition, there was no emergency situation for Washington population(s) of the western gray squirrel. The proposed construction of the Cross-Base Highway, identified by the petitioners as an imminent threat to the Puget Sound population, was not scheduled to be constructed for at least 5 years.

On May 6, 2002, we received a 60-day Notice of Intent to sue from the Northwest Ecosystem Alliance and Tahoma Audubon Society (plaintiffs) alleging we had violated the Act by failing to make a finding on whether the petition to list the Washington population(s) of the western gray squirrel presented substantial information indicating that listing may be warranted. On July 17, 2002, the plaintiffs filed a lawsuit in United States District Court for the District of Oregon to compel us to comply with the listing requirements of the Act. We are making this 90-day petition finding in accordance with the court's order in this case, *Northwest Ecosystem Alliance and Tahoma Audubon Society* v. *U.S. Fish and Wildlife Service, Badgely, Williams, and Norton*, No. CV 02–945 (D. OR.).

The western gray squirrel belongs to the mammalian order Rodentia, the suborder Sciurognathi, and the family Sciuridae. There are three subspecies of western gray squirrel: *Sciurus griseus griseus*, which ranges from central Washington to the western Sierra Nevada Range in central California; *Sciurus griseus anthonyi*, which ranges from the southern tip of the California Coast Range into south-central California; and *Sciurus griseus nigripes*, which ranges from south of San Francisco Bay in the central California Coast Range to San Luis Obispo County (Hall 1981). *Sciurus griseus griseus* was described from a squirrel seen by Lewis and Clark at the Dalles in Wasco County, Oregon (Rodrick 1987).

The western gray squirrel is the largest native tree squirrel in the Pacific Northwest and is the only member of the genus *Sciurus* native to Washington. Two other members of the genus found in Washington are introduced species: the eastern gray squirrel (*Sciurus carolinensis*) and the fox squirrel (*Sciurus niger*) (Washington Department of Wildlife (WDW) 1993). Other common names applied to the western gray squirrel include the silver gray squirrel, California gray squirrel, Oregon gray squirrel, Columbian gray squirrel,

and gray squirrel (Northwest Ecosystem Alliance and Tahoma Audubon Society 2000).

The historic distribution of the western gray squirrel was once widespread throughout Washington, Oregon, California, and in western Nevada along the base of the Carson Range and in Washoe County (Linders 2000). Currently, the species is rare in Nevada. Western gray squirrels in California still occur in the interior valley margin of the Cascades, Sierra Nevada, Tehachapi, Little San Bernardino, Santa Rosa, and Laguna Mountains, and west through the Coast Range to the Pacific Coast (Carraway and Verts 1994). In Oregon, the western gray squirrel distribution extends along the southwestern foothills of the Coast Range northward to Coos Bay, north along the eastern side of the Coast Range and along both sides of the Cascades into Washington (Verts and Carraway 1998).

Washington Western Gray Squirrel Populations

Historically, western gray squirrels probably ranged throughout western Washington and the Cascades in association with oak communities. One hypothesis suggests that the western gray squirrel migrated northward into Washington with the spread of Oregon white (Garry) oak (*Quercus garryana*) from the Willamette Valley in Oregon. Consequently, the species was more widely distributed in prehistoric times and has diminished in recent times along with the decrease in distribution of oak woodlands (WDW 1993). Western gray squirrels in Washington once ranged from southern Puget Sound south to the Columbia River, east along the Columbia River Gorge in the southern Cascades, and north along the eastern slopes of the Cascades to Lake Chelan. Documentation for western gray squirrels includes records for Whatcom, Pierce, Thurston, Grays Harbor, Lewis, Clark, Skamania, Klickitat, Yakima, Kittitas, Chelan, and Okanogan counties in Washington (WDW 1993; Washington Department of Fish and Wildlife 1998). The subspecies' range extensions into Chelan and Okanogan counties, beyond the range of Oregon white oak, may have resulted from plantings of walnut trees by early settlers. The range extension north into Okanogan County occurred since 1965 (WDW 1993). Currently, in Washington, only three geographically isolated western gray squirrels remain: one in Thurston and Pierce counties, one in Klickitat and Yakima counties, and one in Chelan and Okanogan counties (Bayrakci 1999; Linders 2000; WDW 1993).

Distinct Vertebrate Population Segment

We must consider any species for listing under the Act if there is sufficient information to indicate such action may be warranted. "Species" is defined by the Act as including any subspecies of fish and wildlife or plants, and any distinct population segment of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532 (16)). We, along with the National Marine Fisheries Service (National Oceanic and Atmospheric Administration-Fisheries), developed the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS Policy) (61 FR 4722) to help us in determining what constitutes a distinct population segment (DPS). Under this policy, we use three elements to assess whether a population under consideration for listing may be recognized as a DPS: (1) Discreteness of the population in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing.

The DPS analysis is a stepwise analysis; significance is considered only when discreteness of the population has been determined, and the conservation status is considered only when both discreteness and significance of the population have been established. Discreteness refers to the isolation of a population from other members of the species and is based on two criteria: (1) Marked separation from other populations of the same taxon resulting from physical, physiological, ecological, or behavioral factors, including genetic discontinuity; or (2) populations delimited by international boundaries. If the population is determined to be discrete, we determine significance by assessing the distinct population segment's importance and/or contribution to the species throughout its range. Measures of significance may include, but are not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence the discrete population segment differs markedly from other populations of the taxon in its genetic characteristics.

If we determine that a population meets the discreteness and significance criteria for a distinct population segment, we evaluate the threats to determine if endangered or threatened status based on the Act's standards is warranted. Endangered means the species is in danger of extinction throughout all or a significant portion of its range. Threatened means the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

In requesting to list the "Washington population(s)" of the western gray squirrel as threatened or endangered, the petition describes three small disjunct populations in Washington that "are separated by a distance of more than 300 km, and western gray squirrels are not likely to disperse more than 20 km." The degree of isolation of the three populations described in the petition suggest that individuals from the three populations would not naturally interbreed. The petition, however, provides sufficient information on each of the three Washington populations to indicate that we should consider whether one or more of these populations may meet the criteria for listing as a DPS. Threats to some populations of the subspecies include habitat modification and destruction due to fire suppression, logging, overgrazing, highway construction, and residential development. Other threats include fluctuating food supplies, disease, competition, road kills, and illegal shooting. The subspecies is listed as threatened by the State of Washington.

Emergency Listing and Critical Habitat Designation

Petitions for emergency listing and concurrent designation of critical habitat with the listing action, as requested in the petition to list the Washington population(s) of the western gray squirrel, are not expressly provided for by the Act. However, we may address the need for an emergency rule pursuant to section 4(b)(7) of the Act (16 U.S.C. 1533(b)(7). In addition, the Act requests us to designate critical habitat concurrently with listing a species to the maximum extent prudent and determinable (16 U.S.C. 1533(a)(3)(A).

We may issue an emergency rule to list a species if threats to the species constitute an emergency posing significant risk to its continued survival. We consider a species for emergency listing when the immediacy of the threat is so great to a significant portion of the total population that the routine listing process is not sufficient to prevent large losses that may result in extinction.

Upon receipt of the petition, we reviewed the available information to determine if the existing and foreseeable threats represented an emergency to the western gray squirrel. The petition identified the proposed construction of the Cross-Base Highway in Pierce County as presenting an imminent and significant threat to the well-being of western gray squirrels in south Puget Sound. Consequently, the petitioners requested an emergency listing of the Washington population(s) of the western gray squirrel or, as an alternative, emergency listing the Puget Sound population "followed by consideration of the full Washington State distinct population segment."

The currently anticipated schedule for the proposed Cross-Base Highway indicates the Record of Decision will not be completed until August 2003. There is limited funding available for project development beyond the completion of the environmental documentation phase. Before construction can begin, the project will require 2 years for engineering design and 2 years for right-of-way acquisition. Although there will be some overlap in timing, Pierce County anticipates the necessary time for completion of the three phases will not be less than about 5 years (T.G. Ballard, County Engineer, Pierce County Public Works and Utilities, *in litt.*, 2002). Consequently, we have determined that the Cross-Base Highway does not present an imminent threat to the southern Puget Sound population of western gray squirrels, and an emergency listing is not warranted at this time. However, we would initiate an emergency listing if, at any time, we determine that an emergency listing of a species, including a DPS, is warranted.

Petition Finding

We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. On the basis of the best scientific and commercial information, we find the petition presents substantial information that there may be one or more distinct population segments of western gray squirrels in Washington for which listing may be warranted.

With the publication of this notice, we are initiating a status review of *Sciurus griseus griseus* to determine whether one or more of this subspecies' populations in Washington constitute a DPS, and if so, whether listing of such DPS(s) is warranted, not warranted, or warranted but precluded by other pending proposals.

Public Information Solicited

When we make a finding that sufficient information exists to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the western gray squirrel throughout the subspecies' (*Sciurus griseus griseus*) range in Washington, Oregon, California, and Nevada. Information on the status of the subspecies rangewide will assist us in determining if one or more of the Washington populations of western gray squirrels meet the distinct vertebrate population segment criteria, particularly the significance test, or constitute a significant portion of the range.

We request any additional information, comments, and suggestions from the public, governmental agencies, the scientific community, industry, and any other interested parties concerning the status of this subspecies of western gray squirrel throughout its range in Washington, Oregon, California, and Nevada. We are seeking information regarding historic and current distribution, habitat use and habitat conditions, biology and ecology, ongoing conservation measures for the subspecies and its habitat, and threats to the subspecies and its habitat. More specifically, for the three Washington populations of the western gray squirrel, we request any available information on: (1) The genetics of these populations, as they relate to each other and to the closest populations in Oregon; (2) the extent to which the two populations east of the Cascade Range are discrete from each other; (3) current status and trends of each of these populations; (4) the presence and status of the subspecies on additional public or private lands; (5) identification of current specific threats to each of the populations; and (6) any additional information that will support the DPS analysis of the significance, as defined in our DPS policy (see Distinct Vertebrate Population Segment section above), of each of these populations to the subspecies as a whole.

If you wish to comment, you may submit your comments and materials concerning this finding to the Manager, Western Washington Fish and Wildlife Office (see **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular office hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

References Cited

A complete list of all references cited herein is available upon request from the Western Washington Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this document is Dr. Karolee Owens, of the Western Washington Fish and Wildlife Office (see **ADDRESSES** above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 17, 2002.

Marshall P. Jones Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–27297 Filed 10–28–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 100102D]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS).

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a

preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The experiment proposes to conduct a study of an experimental bycatch reduction device in order to develop otter trawl gear for the NE Multispecies fishery that would result in reduced catch of Atlantic cod. The EFP would allow these exemptions for one commercial vessel for not more than 5 days of sea trials. All experimental work would be monitored by Manomet Center for Conservation Sciences personnel. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before November 13, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Manomet EFP Proposal for Inclined Mesh Bycatch Reduction Device." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Tom Warren, Fishery Policy Analyst, 978–281–9347.

SUPPLEMENTARY INFORMATION: An application for an EFP was submitted by Manomet Center for Conservation Sciences on August 19, 2002.

The EFP would allow for exemptions from the Gulf of Maine (GOM) Regulated Mesh Area gear requirements at 50 CFR 648.80(a)(3)(i) and the days-at-sea (DAS) requirements at 648.82(a). The EFP would exempt one federally permitted commercial fishing vessel from the following two requirements of the NE Multispecies FMP: The requirement to use a minimum mesh size of 6.0 inch (15.2 cm) diamond mesh or 6.5 inch (16.5 cm) square mesh in the body and extension of a trawl net while fishing in the GOM Regulated Mesh Area; and the requirement to use a day-at-sea (DAS) while targeting groundfish.

The goal of this study is to assess the utility of a bycatch reduction device in the GOM groundfish fishery. The specific trawl design to be tested is referred to as an inclined separation panel. The separation panel consists of 4 inch (10.2 cm) diamond mesh sewn in the extension and codend of a trawl (with 6.5–inch (16.5–cm) diamond mesh codend). The vessel will target mixed groundfish (yellowtail flounder, winter flounder, American plaice, Atlantic cod, and summer flounder). All undersized fish would be returned to the sea as quickly as possible after measurement. The incidental catch is expected to be comprised of skates, dogfish, sculpin and sea robin. The incidental catch of these species is expected to be minimal and efforts will be made to return incidentally caught species to the sea as quickly as possible. According to the applicant, a trawl net of similar design has been used in Irish Sea fisheries to separate cod from other roundfish and flatfish, with a success rate of approximately 80 percent.

The applicant requested that the research be conducted in the GOM in the area north of 42° 30' N. lat. and west of 69° 00' W. long. However, due to the severely overfished condition of the Cape Cod stock of yellowtail flounder, NMFS will confine the research to the area north of the stock boundary 42° 50' N. lat. The vessel would conduct a total of approximately 25 tows of 20 to 30 minutes duration over a period of 5 sea days. The tows would be recorded using a video camera in order to verify proper net functioning and to record fish behavioral reactions. Fish retained by the upper and lower codends would be counted, weighed and measured, and all legal catch sold. The vessel would be exempted from 5 DAS in order to provide compensation for a portion of the cost of the research.

If the research results prove similar to the 80–percent success rate reported by the Irish industry, the applicant intends to conduct future research to fine-tune the use of the net and conduct fleetwide trials with the hope of integrating a bycatch reduction device requirement into the FMP.

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 23, 2002.

Dean Swanson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–27511 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[Docket No. 021017239–2239–01; I.D. 091902F]

RIN 0648–AQ15

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Foreign Fishing and Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 2003 Specifications and Foreign Fishing Restrictions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, 2003 initial specifications; request for comments.

SUMMARY: NMFS proposes initial specifications for the 2003 fishing year for Atlantic mackerel, squid, and butterfish (MSB). Regulations governing these fisheries require NMFS to publish proposed specifications for the upcoming fishing year and to provide an opportunity for public comment. This action also proposes an inseason adjustment procedure for the 2003 mackerel joint venture processing (JVP) annual specifications. Finally, NMFS proposes a revision to the method for carrying over *Loligo* squid Quarter I underages into Quarter III. The intent of this action is to promote the development and conservation of the MSB resources.

DATES: Public comments must be received no later than 5 p.m., Eastern Standard Time, on November 27, 2002.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at *http:/www.nero.gov/ro/doc/nr.htm*.

Comments on the proposed specifications should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Please mark the envelope, "Comments-2003 MSB Specifications." Comments also may be sent via facsimile (fax) to 978–281–9135. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail *paul.h.jones@noaa.gov*.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP), prepared by the Mid-Atlantic Fishery Management Council (Council), appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. These regulations, at §§ 600.516(c) and 648.21, require that NMFS, based on the maximum optimum yield (Max OY) of each fishery as established by the regulations, annually publish a proposed rule specifying the initial amounts of the initial optimum yield (IOY), as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), total allowable level of foreign fishing (TALFF), and JVP for the affected species managed under the FMP. Because the regulations found in § 648.20 also specify that IOY for squid is equal to the combination of RQ and DAH, there will be no TALFF specified for squid. For butterfish, the regulations specify that a butterfish bycatch TALFF will be specified if TALFF is specified for Atlantic mackerel. Procedures for determining the initial annual amounts are found in § 648.21.

In addition, the regulations at § 648.21(g) allow the specification of quota set-asides to be used for research purposes. For 2003, the Council recommended quota set-asides of up to 2 percent of IOY for Atlantic mackerel and butterfish; and of up to 3 percent of IOY for squids. The set-asides would fund research and data collection for those species. A Request for Research Proposals was published to solicit proposals for 2003 based on research priorities previously identified by the Council (67 FR 13602, March 25, 2002). The deadline for submission was May 13, 2002. On July 10, 2002, NMFS convened a Review Panel to review the comments submitted by technical reviewers. Based on discussions between NMFS staff, technical review comments, and Review Panelist comments, two *Loligo* squid project proposals were recommended for approval and forwarded to the NOAA Grants Office for award. Consistent with the recommendations, the quotas in this proposed rule have been adjusted to reflect the projects recommended for approval. If the awards are not made by the NOAA Grants Office for any reason, NMFS will publish an action in the **Federal Register** restoring the unused set-aside amount to the annual quota.

Table 1 contains the proposed initial specifications for the 2003 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries.

TABLE 1.—PROPOSED INITIAL ANNUAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2003

Specifications	Squid		Atlantic mackerel	Butterfish
	Loligo	*Illex*		
Max OY	26,000	24,000	[1] N\A	16,000
ABC	17,000	24,000	347,000	7,200
IOY	[5] 16,872.5	24,000	[2] 175,000	5,900
DAH	16,872.5	24,000	[3] 175,000	5,900
DAP	16,872.5	24,000	150,000	5,900
JVP	0	0	[4] 10,000	0
TALFF	0	0	0	0

[1] Not applicable.
[2] IOY may be increased during the year, but the total ABC will not exceed 347,000 mt.
[3] Includes 15,000 mt of Atlantic mackerel recreational allocation.
[4] JVP may be increased up to 20,000 mt at discretion of Regional Administrator.
[5] Excludes 127.5 mt for Research Set-Aside (RSA).

2003 Proposed Specifications

Atlantic Mackerel

Overfishing for Atlantic mackerel is defined by the FMP to occur when the catch associated with a threshold fishing mortality rate (F) of F_{MSY} (the F that produces MSY (maximum sustainable yield)) is exceeded. When spawning stock biomass (SSB) is greater than 890,000 mt, the maximum F threshold is F_{MSY} (0.45), and the target F is 0.25. To avoid low levels of recruitment, the FMP contains a control rule whereby the threshold F decreases linearly from 0.45 at 890,000 mt SSB to zero at 225,000 mt SSB (¼ of the biomass level that would produce MSY on a continuing basis (B_{MSY})), and the target F decreases linearly from 0.25 at 890,000 mt SSB to zero at 450,000 mt SSB (½ B_{MSY}). Annual quotas are specified that correspond to the target F resulting from this control rule.

Since SSB is currently above 890,000 mt, the target F for 2003 is 0.25. The yield associated with that target F at the estimated stock size is 369,000 mt. The ABC recommendation of 347,000 mt represents an adjustment to the yield estimate of 369,000 mt, minus the estimated Canadian catch of 22,000 mt. The proposed IOY for the 2003 Atlantic mackerel fishery is 175,000 mt, which is equal to the proposed DAH. The specification for DAH is computed by totaling the estimated recreational catch, the proposed DAP, and the proposed JVP. The 175,000 mt proposed DAH is comprised of 15,000 mt recreational; 150,000 mt DAP; and 10,000 JVP.

The Council recommends, and NMFS proposes, to reduce JVP by 10,000 mt and increase DAP for the Atlantic mackerel fishery by 100,000 mt. The DAP and JVP components of DAH have historically been estimated using the Council's annual processor survey, which is intended to obtain estimates of processing capacity in the domestic and joint venture (JV) fisheries. However, from 1994 through 2002, response to this voluntary survey was incomplete and did not contain projections from some large processors. This year, in place of the survey, the Council relied on testimony presented by domestic processors during its May 2, 2002, meeting concerning their current and projected shoreside processing capacity for Atlantic mackerel in 2003. While domestic processing capacity is increasing, the Council believes, based on the best data available, that the capacity of the domestic fleet to harvest mackerel still exceeds the domestic

processors' capacity to process mackerel. Therefore, the Council has recommended, and NMFS proposes, a specification of 10,000 mt of JVP for the 2003 fishery, with a possible increase to 20,000 mt later in 2003. If additional applications for JVP are received, the Council could authorize NMFS to increase this allocation to 20,000 mt by publishing a notice in the **Federal Register** and providing a 30-day comment period.

The Council also recommended, and NMFS proposes, a TALFF of zero. The Council chose to specify an IOY that results in a TALFF of zero despite the minimal loss to the Nation that may result from the loss of poundage fees collected from foreign vessels. The Council believes that the development of the domestic mackerel fishery results in the greatest resource benefits to the nation. With the 100,000 mt increase in DAP, the Council was concerned that the perceived competition TALFF represents to U.S. processors could impede the future expansion of domestic mackerel processing facilities.

As authorized by §§ 600.501 and 600.520(b)(2)(ii), the Council recommended, and NMFS proposes, that several special conditions be imposed on the 2003 Atlantic mackerel fishery, as follows: (1) JVs would be allowed south of 37°30′ N. lat., but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Administrator, Northeast Region, NMFS (Regional Administrator) should ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel optimum yield (OY) may be increased during the year, but the total should not exceed 347,000 mt; and (4) applications from a particular nation for an Atlantic mackerel JV allocation for 2003 may be based on an evaluation by the Regional Administrator of that nation's performances relative to purchase obligations for previous years.

Atlantic Squids

Loligo

The FMP defines overfishing for *Loligo* squid as occurring when the catch associated with a threshold of the fishing mortality that produces the maximum sustainable level of yield per recruit (F_{MAX}) is exceeded (F_{MAX} is a proxy for F_{MSY}). When an estimate of F_{MSY} becomes available, it will replace the current overfishing proxy, F_{MAX}. Max OY is specified as the catch associated with F_{MAX}. The biomass target is specified as B_{MSY}.

NMFS' Northeast Fisheries Science Center (NEFSC) fall 2000 and spring 2001 survey data, length based virtual population analyses results, scale survey biomass estimates, and production modeling estimates all indicate that *Loligo* squid biomass was high in 2002 and 2001. The most recent stock assessment for *Loligo* squid (the 34th Northeast Regional Stock Assessment Workshop, 2002 (SAW–34)) concluded overfishing is not occurring and recommended that the Council maintain the catch of 20,000 mt (to include both landings and discards).

Based on the assumption that the stock will be at or near B_{msy} in 2003, the Council recommended no changes from the 2002 quota level. The 2003 quota is specified as the yield associated with 75 percent of F_{msy} at B_{msy}, or 17,000 mt, based on projections from SAW–34. The regulations continue to specify Max OY as the yield associated with F_{max}, or 26,000 mt. Thus, the 2003 proposed Max OY for *Loligo* squid is 26,000 mt and the recommended ABC for the 2003 fishery is 17,000 mt.

In Amendment 5 to the FMP, the Council concluded that U.S. vessels have the capacity to, and will harvest the OY on an annual basis, so that DAH equals OY. The Council also concluded that U.S. fish processors, on an annual basis, can process that portion of the OY that will be harvested by U.S. commercial fishing vessels, so that DAP equals DAH. The regulations found in § 648.20 do not authorize the specification of JVP and TALFF for the *Loligo* squid fishery, therefore, JVP and TALFF are zero.

Distribution of the Annual *Loligo* Squid Quota

Since 2001, the annual DAH for *Loligo* squid has been allocated into quarterly periods. The Council and NMFS recommended no change from the 2002 quarterly distribution system. Due to the recommendation of two research projects that would utilize *Loligo* squid RSA, this proposed rule adjusts the quarterly allocations from those that were proposed, based on formulas specified in the FMP. The 2003 quarterly allocations would be as follows:

TABLE 2.—*Loligo* SQUID QUARTERLY ALLOCATIONS

Quarter	Percent	Metric tons[1]	Research set-aside
I (Jan–Mar)	33.23	5,606.7	N/A
II (Apr–Jun)	17.61	2,971.3	N/A
III (Jul–Sep)	17.3	2,918.9	N/A
IV (Oct–Dec)	31.86	5,375.6	N/A
Total	100	16,872.5	127.5

[1] Quarterly allocations after 127.5 mt RSA deduction

Also unchanged from 2002, the Council recommended that the 2002 directed fishery be closed in Quarters I–III when 80 percent of the period allocation is harvested, with vessels restricted to a 2,500-lb (1,134-kg) *Loligo* squid trip limit per single calender day until the end of the respective quarter. The directed fishery would close when 95 percent of the total annual DAH has been harvested, with vessels restricted to a 2,500-lb (1,134-kg) *Loligo* squid trip limit per single calender day for the remainder of the year. Quota overages from Quarter I would be deducted from the allocation in Quarter III, and any overages from Quarter II would be deducted from Quarter IV.

Carry-Over of Quarterly Quota Underages

The Council has also recommended, and NMFS proposes, to modify the method for carrying over *Loligo* squid Quarterly underages for 2003 and subsequent fishing years. Currently, by default, Quarterly underages from Quarters II and III carry over into Quarter IV because Quarter IV does not close until 95 percent of the total annual quota has been harvested. Additionally, if the Quarter I landings for *Loligo* squid are less than 80 percent of the Quarter I allocation, the underage below 80 percent would be applied to the Quarter III allocation. NMFS is publishing the measure in this proposed rule as presented in the Council's submission, but notes that the Council minutes for the May 2, 2002, meeting lists the Council's motion for this proposed change, however, it was not consistent with the intent of the action. This proposed rule publishes the measure as Council staff believes the Council intended. NMFS requests Council confirmation of its intent during the public comment period.

Illex

The overfishing definition for *Illex* squid states that overfishing for *Illex* squid occurs when the catch associated with a threshold fishing mortality rate of F_{MSY} is exceeded. Maximum OY is specified as the catch associated with a fishing mortality rate of F_{MSY}. The biomass target is specified as B_{MSY}. The minimum biomass threshold is specified as ½ B_{MSY}.

The most recent assessment of the *Illex* squid stock (SAW–29) concluded that the stock is not overfished and that overfishing is not occurring. The previous assessment, the 21st Northeast Regional Stock Assessment (1996), had concluded that the U.S. *Illex* squid stock is fully exploited. Due to a lack of adequate data, the estimate of yield at F_{MSY} was not updated in SAW–29. However, an upper bound on annual F was computed for the U.S. Exclusive Economic Zone portion of the stock, based on a model that incorporated weekly landings and relative fishing effort and mean squid weights during 1994–1998. These estimates of F were well below the biological reference points. Current absolute stock size is unknown and no stock projections were done in SAW–29.

Since data limitations did not allow an update of yield estimates at the threshold and target F values, the Council recommended, and NMFS proposes, that the specification of Max OY and ABC remain unchanged from 2002 at 24,000 mt (the yield associated with F_{MSY}). The directed fishery for *Illex* squid would remain open until 95 percent of the DAH is taken (22,800 mt). Once 95 percent of the DAH is estimated to have been taken, the directed fishery would be closed and a 5,000-lb (2,268-kg) trip limit would take effect for the remainder of the fishing year. Similar to *Loligo* squid, when a trip limit is in effect, vessels are prohibited from possessing or landing more than 5,000 lb (2,268 kg) in a single calendar day. The FMP does not authorize the specification of JVP and TALFF for the *Illex* squid fishery because of the domestic fishing industry's ability to harvest and to process the OY from this fishery.

Butterfish

The FMP set OY for butterfish at 16,000 mt. Based on the most current stock assessment, the Council recommends, and NMFS proposes, an ABC of 7,200 mt for the 2003 fishery. This represents no change in the specifications since 1996. Commercial landings of butterfish have been low, at 2,797 mt, 1,964 mt, 2,116 mt and 1,432 mt for the 1997 through 2000 fisheries, respectively. Lack of market demand and the difficulty in locating schools of market-sized fish have constrained this fishery.

For the 2003 fishing year, the Council recommended, and NMFS proposes, an IOY for butterfish of 5,900 mt. The IOY is composed of a DAH of 5,900 mt and a bycatch TALFF that is equal to zero. The regulations found in § 648.20 authorizes the specification of JVP or TALFF specifications for butterfish only for a bycatch TALFF specification if TALFF is specified for Atlantic mackerel. Because the Council did not recommend TALFF for Atlantic mackerel, TALFF for butterfish is set at zero.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an IRFA in section 3.0 of the RIR that describes the economic impacts this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the **SUPPLEMENTARY INFORMATION** section of this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. There are no new reporting or recordkeeping requirements contained in the Preferred Alternatives or any of the alternatives considered for this action. A copy of the IRFA can be obtained from the Northeast Regional Office of NMFS (see **ADDRESSES**), from the Council (see **ADDRESSES**) or via the Internet at *http://www.nero.NMFS.gov*. A summary of the analysis follows:

The numbers of potential fishing vessels in the 2002 fisheries are 384 for *Loligo* squid/butterfish, 73 for *Illex* squid, 2,242 for Atlantic mackerel, and 1,828 vessels with incidental catch permits for squid/butterfish. All of the vessels are considered small entities. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive. The proposed DAH specifications of 175,000 mt for Atlantic mackerel, 24,000 mt for *Illex* squid, and 5,900 mt for butterfish represent no constraint on vessels in these fisheries. The level of landings in the proposed specifications for 2003 have not been achieved by vessels in these fisheries in recent years. Absent such a constraint, no impacts on revenues are expected as a result of the proposed action.

From 1997–2001, *Loligo* squid landings averaged 16,771 mt. If the 2002 proposed DAH specification of 17,000 mt for *Loligo* squid is achieved, there would be an increase in catch and revenue in the *Loligo* squid fishery relative to the average landings from 1997–2001. NMFS also proposes to modify the provision for carrying over Quarter I *Loligo* squid underages. Under the new measure, *Loligo* squid Quarter I underages less than 80 percent of the Quarter I allocation would be applied to Quarter III. Currently, all underages from Quarter I less than 70 percent are applied to the Quarter III allocation. By making the increased underage available during Quarter III, *Loligo* squid permit holders could continue to fish during a time when that quarter may have otherwise been closed. This could provide an added economic benefit to fishers during Quarter III. However, because this provision would only shift a limited amount of quota from one period to another, and does not modify the *Loligo* squid annual quota, no overall change in revenue is expected.

One alternative considered for the Atlantic mackerel fishery was to set the 2003 specifications at the same level as 2002. The Council rejected this option because of concerns associated with the potential for rapid expansion of the shore-side processing sector of this industry in 2003. If rapid expansion of the processing sector did occur early in 2003, and landings exceeded 85,000 mt, an inseason adjustment to IOY would be necessary. However, the majority of mackerel landings occur from January through March, and it is unlikely that an inseason adjustment could be made in time for quota to be available to industry for that period. The result would be the unnecessary closure of the fishery that could result in negative economic and/or social impacts to the U.S. mackerel industry. Some or all of the vessel owners, crews, dealers, processors or fishing communities associated with the Atlantic mackerel fishery could be adversely affected by maintaining the 2002 annual specifications for Atlantic mackerel in 2003. A second alternative considered for Atlantic mackerel was to

set ABC at the long-term potential catch (LTPC), or 134,000 mt. This alternative was found inconsistent with the status of the stock. The current adult stock was recently estimated to exceed 2.1 million mt. The specification of ABC at LTPC would effectively result in an exploitation rate of only about 6 percent, well below the optimal level of exploitation. The Council considered the level of foregone yield under this alternative unacceptable.

For *Loligo* squid, one alternative that was considered was to set the ABC, DAH, DAP, and IOY at 13,000 mt, or a 23.3-percent reduction from the 2001 level. This was the same level as the initial quota allocated for the 2000 fishing year (an inseason adjustment increased the ABC, DAH, DAP, and IOY to 15,000 mt; 65 FR 60118, October 10, 2000). If the 13,000-mt alternative was adopted for the 2002 fishing year, 15 of the 447 impacted vessels would experience a total gross revenue reduction (all species combined) of greater than 5 percent. The remaining 365 vessels would experience a less than 5-percent reduction in revenue or an increase in revenue. A second alternative would have set ABC, DAH, DAP, and IOY at 18,300 mt. Under this alternative, the quota would be specified at a level that is 1,300 mt higher than is specified by the overfishing definition control rule in the FMP. Since the stock is technically not protected from overfishing, some negative economic and social impacts could be expected from this alternative in the long term if the stock did become overfished. The vessel owners, crews, dealers, processors and fishing communities associated with these ports would be expected to be affected the most by this alternative when compared to the proposed 2003 annual specifications for *Loligo*.

For *Illex* squid, one alternative considered would have set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt and a second alternative would have set Max OY at 24,000 mt and ABC, IOY, DAH, and DAP at 19,000 mt. These specifications would be far in excess of recent landings in this fishery. Therefore, there would be no constraints and, thus, no revenue reductions, associated with these specifications. However, the Council considered the first alternative unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of *Illex* squid. Conversely, under the second alternative an ABC of 19,000 mt would not allow the fishery to perform at its optimal exploitation level during a year of relatively high abundance, and was therefore rejected.

For butterfish, the Council considered two alternatives; the first set a Max OY of 16,000 mt and an ABC, IOY, DAH, and DAP of 7,200 mt, and the second set a Max OY of 16,000 mt and a ABC, IOY, DAH, and DAP at 10,000 mt. These specifications far exceed recent harvests in the butterfish fishery and would not constrain or impact the industry; however, they could lead to overfishing of the stock and, thus, were rejected by the Council.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 24, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.21, paragraph (f)(3) is revised to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(f) * * *

(3) Beginning January 1, 2003, if commercial landings in Quarter I are determined to be less than 80 percent of the Quarter I quota allocation, any remaining Quarter I quota that is less than 80 percent will be reallocated to Quarter III (*e.g.*, if the Quarter I quota was 100,000 lb (220,462 kg) and 50,000 lb (110,231 kg) was landed, then the remaining Quarter I quota, up to 80 percent, or 30,000 lb (66,139 kg), would be reallocated to Quarter III. A balance of 20 percent, or 20,000 lb (44,092 kg), would remain in Quarter I).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021017238–2238–01; I.D. 092602I]

RIN 0648–AQ31

Fisheries of the Northeastern United States; Proposed 2003 Fishing Quotas for Atlantic Surfclams, Ocean Quahogs, and Maine Mahogany Ocean Quahogs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 2003 fishing quotas for Atlantic surfclams, ocean quahogs, and Maine mahogany ocean quahogs; request for comments.

SUMMARY: NMFS proposes quotas for the Atlantic surfclam, ocean quahog, and Maine mahogany ocean quahog fisheries for 2003. Regulations implementing the Fishery Management Plan for Surf Clams and Ocean Quahog Fisheries require NMFS to propose for public comment specifications for the 2003 fishing year. The intent of this action is to propose allowable harvest levels of Atlantic surfclams and ocean quahogs from the exclusive economic zone and an allowable harvest level of Maine mahogany ocean quahogs from Atlantic waters north of 43°50' N. lat. in 2003.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on November 27, 2002.

ADDRESSES: Written comments on the proposed specifications should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, "Comments—2002 Clam and Quahog Specifications." Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and the Essential Fish Habitat Assessment, are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. A copy of the EA/RIR/IRFA is accessible via the Internet at *http://www.nero.gov/ro/doc/nr.htm*.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 978–281–9252.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surfclam and Ocean Quahog Fisheries (FMP) requires NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surfclams and ocean quahogs on an annual basis from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected must allow sustainable fishing to continue at that level for at least 10 years for surfclams and 30 years for ocean quahogs. In addition to this constraint, the Council policy also considers the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP published on May 19, 1998 (63 FR 27481), added Maine mahogany ocean quahogs to the management unit and provided that a small artisanal fishery for ocean quahogs in the waters north of 43°50' N. lat. has an annual quota with an initial amount of 100,000 Maine bu (35,240 hectoliters (hL)) within a range of 17,000 to 100,000 Maine bu (5,991 hL to 35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is in addition to the quota specified for the ocean quahog fishery. The fishing quotas must be in compliance with overfishing definitions for each species. In proposing these quotas, the Council considered the available stock assessments, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas closed to fishing. This information was presented in a written report prepared by the Council staff. The proposed quotas for the 2003 Atlantic surfclam, ocean quahog, and Maine mahogany ocean quahog fisheries are shown here. The status quo levels of 2002 for both the regular ocean quahog and the Maine mahogany ocean quahog are proposed to be maintained for 2003, but the surfclam quota would be increased by 4 percent from 3.135 million bu to 3.250 million bu (1.669 million hL to 1.730 million hL).

PROPOSED 2003 SURFCLAM/OCEAN QUAHOG QUOTAS

Fishery	2003 final quotas (bu)	2003 final quotas (hL)
Surfclam [1]	3,250,000	1,730,000
Ocean quahog [1]	4,500,000	2,396,000
Maine mahogany quahog [2]	100,000	35,240

[1] 1 bushel = 1.88 cubic ft. = 53.24 liters.
[2] 1 bushel = 1.2445 cubic ft. = 35.24 liters.

Surfclams

The Council's recommended 2003 quota of 3.25 million bu (1.730 million hL) for surfclams is the third change in the quota since 1995. In 1999, the Council expressed its intention to increase the surfclam quota to OY over a period of 5 years, (OY = 3.4 million bushels (1.810 million hL)). The most recent assessment for surfclams (SAW 30) indicated that the resource is at a high level of biomass, is under-exploited, and can safely sustain increased harvests, but cautioned that it may be advantageous to avoid localized depletion. Industry reports that the current demand for clam products is very strong. In fact, all of the 2.850 million bu (1.517 million hL) quota was harvested from Federal waters in 2001, with landings of surfclams from both state and Federal waters increasing by 1 percent in 2001 to a total of 4.05 million bu (2.156 million hL). However, recent information reported by industry participants in their vessel trip reports has shown a reduction in the landings per unit of effort, an important indicator that the annual quota is approaching the OY for the resource. The majority of the surfclam catch continues to be derived from one area (northern New Jersey). Based on the information and advice from the most recent assessment for surfclams, the Council recommends an increase of 4 percent from the 2002 level of 3.135 million bu (1.669 million hL), rather than taking the entire allowable maximum increase in a single year. This would result in a 2003 quota of 3.25 million bu (1.720 million hL).

Ocean Quahogs

The Council has recommended a 2003 quota of 4.5 million bu (2.396 million hL) for ocean quahogs. This quota would be identical to that adopted for the past 4 years, but represents an increase of 13 percent from the 1998 quota level. Although ocean quahog landings have been on a declining trend since the 4.9-million bu (2.609-million hL) peak in 1992, quahog landings in fishing year 2001 increased by approximately 0.5 million bu (0.266 million hL) from 2000 levels, to a total of 3.69 million bu (1.965 million hL), or 82 percent of the annual quota. Explanations as to why the annual quota has not been fully harvested include the observation that productivity of existing ocean quahog beds has been steadily declining as the formerly dense beds of quahogs are fished down, and the fact that fuel prices have increased substantially in the past 3 years, creating heightened costs of traveling long distances to fish offshore beds. Due to these higher costs, industry has been increasingly substituting surfclams for ocean quahog sales. These combined factors have led to the underharvest of the ocean quahog quota. Based on advice from SAW 31, the Council recommends maintaining the ocean quahog quota for 2003 at the 2002 level of 4.50 million bu (2.396 million hL).

The Atlantic surfclam and ocean quahog quotas are specified in standard bushels of 53.24 L. per bushel, while the Maine mahogany ocean quahog quota is specified in "Maine" bu of 35.24 L per bu. (see section 648.2 for definitions of "bushel" and "Maine bushel"). Because Maine mahogany ocean quahogs are the same species as ocean quahogs, both fisheries are combined and share the same ocean quahog overfishing definition. When the two quota amounts (ocean quahog and Maine mahogany quahog) are added, the total allowable harvest is still lower than the level that would result in overfishing for the entire stock.

The Council has recommended that the Maine mahogany ocean quahog quota remain unchanged from the 2002 quota level at 100,000 Maine bu (35,240 hL) for 2003. No additional information on the impacts of the mahogany quahog quota that would allow a more in-depth analysis of the stock and, therefore, allow the quota to be increased beyond the current maximum level of 100,000 Maine bu (35,240 hL) is available at this time. An effort within the State of Maine is currently underway to initiate a scientific survey and assessment of the

mahogany ocean quahog resource. From the information currently available, maintaining the quota at its current level for another year will not seriously constrain the fishery or endanger the resource.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be exempt from review under Executive Order 12866.

The Council prepared an IRFA in section 8.0 of the RIR that describes the economic impacts this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, the objectives and the legal basis for this action are contained in the **SUPPLEMENTARY INFORMATION** section. This action does not duplicate, overlap, or conflict with any other Federal rules. A summary of the IRFA follows:

Vessels

In 2001, a total of 51 vessels reported harvesting surfclams or ocean quahogs from Federal waters under an Individual Transferable Quota (ITQ) system. Average 2001 gross income for surfclam harvests was $753,682 per vessel, and $678,885 per vessel for ocean quahog harvests. In the small artisanal fishery for ocean quahogs in Maine, 31 vessels reported harvests in the clam logbooks, with an average value of $113,181 per vessel. All of these vessels fall within the definition of a small entity. The Council recommends no change in the 2003 quotas for ocean quahogs or Maine mahogany ocean quahogs from their 2002 quotas, and a 4-percent increase in the surfclam quota. Since 2001 harvest levels of 2.855 and 3.691 million bu (1.520 and 1.965 million hL) for surfclams and ocean quahogs, respectively, were below the 2003 proposed quotas, the Council believes that the proposed 2003 quotas may yield a surplus quota available to vessels participating in all these fisheries. This is especially likely to occur in the ocean quahog fishery. In the case of a surplus quota, vessels would not be constrained from harvesting additional product, thus, allowing them to increase their revenues.

The Council analyzed four ocean quahog quota alternatives in addition to the preferred 4.500-million bu (2.396 million hL) option, including 4.000, 4.250, 4.750, and 6.000 million bu (2.129, 2.263, 2.529, and 3.195 million hL). The minimum allowable quota specified in the current OY range is 4.000 million bu (2.129 million hL) of ocean quahogs. Adoption of a 4.000 million bu (2.129 million hL) quota would represent a 12-percent decrease from the current 4.500 million bu (2.396 million hL) quota and, assuming the entire quota is harvested, an 8-percent increase in harvest from the 2001 harvest level of 3.691 million bu (1.965 million hL). This alternative would take the most conservative approach to managing the fishery that is currently available to the Council. Adopting the maximum allowable quota of 6.000 million bu (3.195 million hL) for ocean quahogs would represent a 33-percent increase in allowable harvest and a 63-percent increase in landings from 2001, assuming all the quota were harvested. However, the industry does not have a market available to absorb such a large increase in landings and may not have the vessel capacity necessary to harvest a quota this large. Since all alternatives, including the preferred, would yield increases relative to the actual 2001 landings, increased revenues would be likely to occur.

The Council identified four surfclam quota alternatives in addition to the preferred alternative of 3.250 million bu (1.730 million hL), including 1.850, 2.850, 3.135, and 3.400 million bu (0.985,1.517, 1.669, and 1.810 million hL). The minimum allowable quota specified in the current OY range is 1.850 million bu (0.985 million hL) of surfclams. Adoption of a 1.850 million bu (0.985 million hL) quota would represent a 41-percent decrease from the current 3.135 million bu (1.517 million hL) quota, and a 35-percent decrease from the 2001 harvest level of 2.855 million bu (1.520 million hL). A reduction in quota of this magnitude would have a substantially negative impact on overall exvessel revenues. Adoption of the 2.850 million bu (1.517 million hL) quota would be equivalent to the 2001 surfclam landings and would represent a 9-percent decrease from the 2002 quota level of 3.135 million bu (1.517 million hL). Given the current biological status of the surfclam resource, the Council does not believe that a quota reduction is warranted at this time. Adoption of the 3.135 million bu (1.669 million hL) quota would most likely have a limited impact on small entities, since it results in no change from status quo. Adopting the maximum allowable quota of 3.400 million bu (1.810 million hL) for surfclams would allow for an 8-percent increase in the surfclam quota. The Council is not recommending a quota increase of this magnitude at this time, due to uncertainties in the stock assessment. The preferred alternative allows for a 4-percent increase from 3.135 million bu (1.669 million hL) to 3.25 million bu (1.730 million hL). In summation, the Council determined that the only alternative that would significantly negatively impact revenues to vessels is the 1.850 million bu (0.985 million hL) alternative for surfclams. The 2.850 million bu (1.517 million hL) and status quo alternative would be restrictive and have a slight to moderate impact on revenues. The resource can support the 4-percent increase in landings and the industry believes it can utilize this additional product and thus have a beneficial impact for the Nation.

The quota for Maine mahogany ocean quahogs is specified at a maximum 100,000 bu (35,240 hL). The FMP specifies that upward adjustments to the quota would require a scientific survey and stock assessment of the Maine mahogany ocean quahog resource. However, no survey or assessment has been conducted. The Council considered two alternative quotas for the Maine mahogany fishery, in addition to the preferred alternative of 100,000 bu (35,240 hL), including 50,000 bu and 72,466 bu (17,620 and 25,537 hL). Any quota the Council would have recommended below the 1999 landing level of 93,938 Maine bu (33,104 hL) would most likely have resulted in a decrease in revenues to individual vessels.

Processors

In 2001, there were 13 processors that participated in the surfclam and ocean quahog fisheries, plus 10 companies that bought ocean quahogs directly from vessels from within the State of Maine. Of the 13 processors, approximately 5 are responsible for the vast majority of purchases in the exvessel market and sale of processed clam products in appropriate wholesale markets. Impacts to surfclams and ocean quahog processors would most likely mirror the impacts of the various quotas to vessels as discussed above. Revenues earned by processors would be derived from the wholesale market for clam products, and since a large number of substitute products (i.e., other food products) are available, the demand for processed clam products is likely to be price-dependant.

Allocation Holders

In 2002, surfclam allocation holders totaled 99, while 63 firms or individuals held ocean quahog allocation. If the recommended quotas are accepted, i.e., no change from 2002 quotas on ocean quahogs, Maine mahogany ocean quahogs, and a slight increase of 4 percent for surfclams, it is likely that impacts to allocation holders or buyers will be minimal. Theoretically, increases in quota would most likely benefit those who purchase quota (through lower prices (values)) and negatively impact sellers of quota because of reduction in value. Decreases in quota would most likely have an opposite effect.

Reporting and Recordkeeping Requirements

This proposed rule would not impose any new reporting, recordkeeping, or other compliance requirements. Therefore, the costs of compliance would remain unchanged.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: October 24, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–27505 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 101702B]

RIN:0648–AP92

Fisheries of the Exclusive Economic Zone off Alaska; Recordkeeping and Reporting Changes to the Individual Fishing Quota Program (IFQ) for Pacific Halibut and Sablefish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability (NOA) of Amendments 72/64 to fishery management plans; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 72 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands and Amendment 64 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. Amendments 72/64 would implement revisions to the recordkeeping and reporting (R and R) regulations established to monitor and enforce the IFQ Program for fixed gear Pacific halibut and sablefish fisheries in and off Alaska. The purpose of this action is to reduce reporting burden for processors and registered buyers, while maintaining existing data collection, monitoring, and enforcement capabilities.

DATES: Comments on Amendments 72 and 64 must be received at the following address by December 27, 2002.

ADDRESSES: Comments on Amendments 72/64 may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel-Durall. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th St., Room 453, Juneau, AK 99801. Copies of Amendments 72/64 and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228, patsy.bearden@noaa.gov

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP, immediately publish a notice in the **Federal Register** that the FMP or amendment is available for public review and a 60–day comment period (see section 304(a)(1)(B).

Amendments 72/64 were adopted by the Council in April 2002. If approved by NMFS, these amendments would be combined with regulatory amendments that would relieve some RR requirements for the IFQ fisheries. The amendments are necessary to comply with National Standard 7 (16 U.S.C. 1851(a)(7)), which states, "Conservation and Management measures shall, where practicable, minimize costs and avoid unnecessary duplication." The proposed action that would require FMP amendment is as follows: Eliminate the vessel clearance requirement and replace it with a verbal "departure report" prior to leaving the jurisdiction of the Council. This action would modify the requirement in the BSAI and GOA FMPs for vessels with IFQ sablefish catch leaving the jurisdiction of the Council to check in with NMFS at a certified port and have the vessel's hold sealed prior to departure. This action makes no change in current management practices in the IFQ fisheries. This action would relieve some reporting burden and operational restrictions on vessels by allowing vessels leaving the jurisdiction of the Council to provide a verbal "departure report" rather than going to a specific port for a vessel clearance. Enforcement personnel are not currently able to effectively determine catch quantity at the vessel clearance port and are unable to seal a vessel's hold without compromising vessel safety. Thus, from a monitoring and enforcement perspective, no effective difference exists between a verbal "departure report" and the verbal vessel clearance report. This action could reduce the time vessels are required to stay in port and could reduce operating costs for vessels that are landing catch in locations outside of Alaska. This action would also amend the FMPs to ensure that the scope of the FMPs is within the practical limitations of enforcement to meet the requirements of the FMPs. This action, if adopted, modifies existing recordkeeping and reporting requirements.

Public comments are being solicited on the amendments through the end of the comment period stated in this NOA. A proposed rule that would implement the amendments as well as regulatory amendments proposing other changes to recordkeeping and reporting requirements for the IFQ fisheries will be published in the **Federal Register** for public comment following NMFS' evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on Amendments 72/64 to be considered in the approval/disapproval decision on the amendments, whether specifically directed to the amendments or the proposed rule. Comments received after that date will not be considered in the approval/disapproval decision on the amendments. To be considered in the approval/disapproval decision, comments must be received by the close of business on the last day of the comment period specified in this NOA; that does not mean postmarked or otherwise transmitted by that date.

Dated: October 23, 2002.

Bruce C. Moorehead

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–27512 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 209
Tuesday, October 29, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Winema and Fremont Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Winema and Fremont Resource Advisory Committee will meet in Bly, Oregon, for the purpose of developing recommendations for the Winter Fire Rehabilitation Project on the Fremont National Forest.

DATES: The meeting will be held on November 14, 2002.

ADDRESSES: The meeting will be held in the conference room of the Bly Ranger District, Highway 31, in Bly. Send written comments to Winema and Fremont Resource Advisory Committee, c/o USDA Forest Service, P.O. Box 67, Paisley OR 97636, or electronically to *waney@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: W.C. (Bill) Aney, Designated Federal Official, Paisley Ranger District, Fremont and Winema National Forests, P.O. Box 67, Paisley OR 97636, telephone (541) 943–4401.

SUPPLEMENTARY INFORMATION: The meeting will begin at 12:30 p.m. on Thursday, November 14 and end at approximately 4:30 p.m. The agenda will include a review of Forest Plan standards and guidelines related to fire salvage and rehabilitation, supplemental information used to help develop projects, and development of a proposed action by the project interdisciplinary planning team.

All Winema and Fremont Resource Advisory Committee Meetings are open to the public. There will be a time for public input and comment. Interested citizens are encouraged to attend.

Dated: October 15, 2002.

Steven A. Ellis,

Acting Forest Supervisor.

[FR Doc. 02–27327 Filed 10–28–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Status of Project Proposals, (5) Update on Approved Projects, (6) Draft Addition to Standard Long Form/Possible Action, (7) General Discussion, (8) House Committee Report, (9) Chairman Report.

DATES: The meeting will be held on November 14, 2002, from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; EMAIL *ggaddini@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by November 12, 2002 will have the opportunity to address the committee at those sessions.

Dated: October 23, 2002.

James F. Giachino,

Designated Federal Official.

[FR Doc. 02–27430 Filed 10–28–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Meeting

AGENCY: Economic Development Administration, Commerce.

ACTION: Notice.

SUMMARY: Announcement of New Members and the Re-Appointment of one member to the Economic Development Administration's (EDA) Performance Review Board.

FOR FURTHER INFORMATION CONTACT: LaVerne H. Hawkins, Department of Commerce, Office of Human Resources, at (202)–482–2537, Room 7412, Washington, DC 20230. The Economic Development Administration's Performance Review Board members are:

Mary Pleffner, Chair, Chief Financial Officer.
Gerald R. Lucas, Director, Office of Strategic Resources, Office of the Secretary.
James L. Taylor, Deputy Chief Financial Officer, Office of the Secretary.
Suzette Kern, Associate Director for Management, and Chief Financial Officer.
Bill Day, EDA Regional Director.
LaVerne H. Hawkins, Executive Secretary, ITA, Office of Human Resources Management. (202) 482–2537.

Dated: October 17, 2002.

Darlene F. Haywood,

Acting Director, Office of Human Resources Management.

[FR Doc. 02–27426 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–24–U

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Pars Company, Inc.; Order Denying Export Privileges

On September 4, 2001, a U.S. District Court in the Eastern District of North Carolina convicted Pars Company, Inc. of violating the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1994 & Supp. V 1999)) ("IEEPA"). Specifically, the Court found that Pars Company, Inc. exported and attempted to export goods and technology to a person in a third country with knowledge that the goods and technology were intended to be supplied to Iran.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app 2401–2420 (1994 & Supp. V 1999)) ("Act")[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating any of a number of federal criminal statutes including the IEEPA shall be eligible to apply for or use any export license issued pursuant to, or provided, by the Act or the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2002)) ("Regulations"), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the IEEPA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person's export privileges for a period of up to 10 years from the date of conviction and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Par Company, Inc.'s conviction for violating the IEEPA, and after providing notice and an opportunity for Pars Company, Inc. to make a written submission to the Bureau of Industry and Security before issuing an Order denying his export privileges, as provided in Section 766.25 of the Regulations, I, following consultations with the Director, Office of Export Enforcement, have decided to deny Pars Company, Inc.'s export privileges for a period of nine years from the date of its conviction. The nine-year period ends on September 4, 2010. I have also decided to revoke all licenses issued pursuant to the Act in which Pars Company, Inc. had an interest at the time of its conviction.

Accordingly, it is hereby *ordered:*

I. Until September 4, 2010, Pars Company, Inc., 200 Mainstail Drive, Cary, North Carolina 27511, ("the denied person") and, when acting in behalf of it, all of its successors or assigns, officers, representatives, agent and employees, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Pars Company, Inc. by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until September 4, 2010.

VI. In accordance with Part 765 of the Regulations, Pars Company, Inc. may file an appeal from this Order with the Under Secretary for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Pars Company, Inc. This Order shall be published in the **Federal Register**.

Dated: October 21, 2002.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 02–27427 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–DT–M

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 CFR, 2000 comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1994 & Supp. V 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 201 (3 CFR, 2001 comp. 783 (2002)), as extended by the Notice of August 14, 2002 (67 FR 53721, August 16, 2002), has continued the Regulations in effect under IEEPA.

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of the Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–840]

Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbon and Certain Alloy Steel Wire Rod from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty orders.

EFFECTIVE DATE: October 29, 2002.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Amber Musser, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0631 or (202) 482–1777, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2002).

Background

On August 30, 2002, the Department published its final determination in the antidumping duty investigation of carbon and certain alloy steel wire rod from Canada. *See Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Canada*; 67 FR 55782 (August 30, 2002) (Final Determination).

On October 15, 2002 the International Trade Commission (the ITC) notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from Canada.

Scope of the Orders

The merchandise covered by this investigation is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as "tire cord quality" or "tire bead quality" indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products subject to this order are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Amended Final Determination

On August 23, 2002, in accordance with section 735(a) of the Act, the Department made a final determination that carbon and certain alloy steel wire rod from Canada is being, or is likely to be, sold in the United States at less than fair value. *See Final Determination*. One of the three respondents[1] and the petitioners[2] filed timely allegations that the Department had made ministerial errors in its final determination. We have determined, in accordance with 19 CFR 351.224, that certain ministerial errors were made in the final determination.

For Ispat Sidbec Inc. (Ispat), we corrected errors pertaining to the calculation of credit expense, and revised further-manufacturing costs in the calculation of net U.S. prices.

For Ivaco Inc. (Ivaco), we made a number of corrections, including

- revising freight to warehouse expense, freight revenue, warehousing expense, credit expense and U.S. inventory carrying costs for certain sales.
- revising the margin program to correctly distinguish between Ivaco's export price (EP) and constructed export price (CEP) sales,
- revising the below-cost test to exclude imputed inventory carrying costs,
- subtracting early payment discounts from the gross unit price in the calculation of indirect selling expenses,
- modifying the packing expenses for Ivaco's sales which were further processed by Sivaco Ontario,
- and correcting the figure used for foreign exchange gains and losses, which changed the financial expense ratio.

Finally, for all three respondents we excluded the sales of non-prime material from the arm's-length test. For a detailed discussion of the Department's analysis of the parties' allegations of ministerial errors, see Memorandum to Faryar Shirzad, Assistant Secretary, Import Administration, from Daniel O'Brien, AD/CVD Office 5, Ministerial Error Allegations, dated September 27, 2002. Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of carbon and certain alloy steel wire rod from Canada to correct these ministerial errors.

The revised final weighted-average dumping margins are as follows:

Manufacturer/exporter	Original Weighted-Average Margin (Percent)	Amended Weighted- Average Margin (Percent)
ISI	2.54	3.86
Ivaco	13.35	9.90
Stelco	1.18*	1.18*
All Others	9.91	8.11

* *De minimis* - excluded from the calculation of the "All Others" rate.

Antidumping Duty Order

On October 15, 2002, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination that the industry in the United States producing carbon and certain alloy steel wire rod is materially injured within the meaning of section 735(b)(1)(A)(ii) of the Act by reason of imports of the subject merchandise from Canada.

In accordance with section 736(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the EP or CEP of the merchandise for all relevant entries of carbon and certain alloy steel wire rod from Canada. These antidumping duties will be assessed on (1) all unliquidated entries of carbon and certain alloy steel wire rod from Canada entered, or withdrawn from warehouse, for consumption on or after April 10, 2002, the date on which the Department published its notice of preliminary determination in the **Federal Register**, and before October 7, 2002, the date on which the Department was required, pursuant to section 733(d)(3) of the Act, to terminate the suspension of liquidation; and (2) on all merchandise, with the exception of the merchandise produced by Stelco, entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this antidumping duty order in the **Federal Register**. Entries of carbon and certain alloy steel wire rod made between October 7, 2002, and the day preceding the date of publication of this notice in the **Federal Register**, are not liable for the assessment of antidumping duties due to the Department's termination, effective October 7, 2002, of the suspension of liquidation. On or after the date of publication of this notice in the **Federal Register**, the Customs service must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted above.

This notice constitutes the antidumping duty order with respect to carbon and certain alloy steel wire rod from Canada, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of Act and 19 CFR 351.211.

Dated: October 18, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–27258 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–DS–S

[1] The three respondents are Ivaco, Inc., Ispat Sidbec Inc., and Stelco Inc. Of these companies, only Ivaco alleged that the Department had made ministerial errors.

[2] The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Inc., Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–832, A–560–815, A–201–830, A–841–805, A–274–804, A823–812]

Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: October 29, 2002.

FOR FURTHER INFORMATION CONTACT: Victoria Schepker (Brazil) at (202) 482–1756, Michael Ferrier (Indonesia) at (202) 482–1394, Marin Weaver (Mexico) at (202) 482–2336, Thomas Gilgunn (Moldova) at (202) 482–4236, Tisha Loeper-Viti (Trinidad and Tobago) at (202) 482–7425, James Doyle (Ukraine) at (202) 482–0159; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations are to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2001).

Background

On August 26, 2002, the Department issued its final determinations in the antidumping duty investigations of carbon and certain alloy steel wire rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine. *See Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Brazil*, 67 FR 55792 (August 30, 2002); *Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Indonesia*, 67 FR 55798 (August 30, 2002); *Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Mexico*, 67 FR 55800 (August 30, 2002); *Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Moldova*, 67 FR 55790 (August 30, 2002); *Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago*, 67 FR 55788 (August 30, 2002); and *Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Ukraine*, 67 FR 55785 (August 30, 2002).

On October 15, 2002, the International Trade Commission (the ITC) notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine. The antidumping duty order and amended final determination for carbon and certain alloy steel wire rod from Canada is published in a separate **Federal Register** notice. In addition, the ITC notified the Department of its final determination that critical circumstances do not exist with respect to imports of subject merchandise from Moldova and Ukraine.

Scope of the Orders

The merchandise subject to these orders is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as "tire cord quality" or "tire bead quality" indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Antidumping Duty Orders

In accordance with section 736(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of carbon and certain alloy steel wire rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine. These antidumping duties will

be assessed on all (1) unliquidated entries of carbon and certain alloy steel wire rod from Mexico, Moldova, Trinidad and Tobago, and Ukraine entered, or withdrawn from warehouse, for consumption on or after April 10, 2002, and before October 7, 2002, and from Brazil on or after April 15, 2002, and before October 12, 2002; and (2) merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these antidumping duty orders in the **Federal Register**. The Department terminated the suspension of liquidation, pursuant to section 733(d)(3) of the Act on October 7, 2002, for Mexico, Moldova, Trinidad & Tobago, and Ukraine, and on October 12, 2002, for Brazil. Entries of carbon and certain alloy steel wire rod made between October 12, 2002, for Brazil and between October 7, 2002, for Mexico, Moldova, Trinidad and Tobago, and Ukraine and the day preceding the date of publication of this notice in the **Federal Register**, are not liable for the assessment of antidumping duties. Regarding the negative critical circumstances determination, we will instruct the Customs service to lift suspension and to release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after January 10, 2002, but before April 10, 2002. January 10, 2002, is 90 days prior to April 10, 2002, the date of publication of the preliminary determinations in the **Federal Register**. The Department suspended liquidation of entries of carbon and certain alloy steel wire rod from Indonesia on August 30, 2002, the **Federal Register** publication date of the final affirmative antidumping duty determination.

On or after the date of publication of this notice in the **Federal Register**, Customs must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. In the case of Brazil, we will adjust the deposit requirements to account for any export subsidies found in the amended final determination in the companion countervailing duty investigation. The "all others," "Moldova-wide," and "Ukraine-wide" rates apply to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-Average Margin
Brazil.	
Companhia Siderúrgica Belgo Mineira and Belgo-Mineira Participão Indústria e Comércio S.A. (BMP)	94.73%
All Others	74.35%
Indonesia.	
P.T. Ispat Indo	4.06%
All Others	4.06%
Mexico.	
Siderurgica Lazaro Cardenas Las Truchas, S.A. de C.V. (SICARTSA)	20.11%
All Others	20.11%
Moldova.	
Moldova-wide rate	369.10%
Trinidad and Tobago.	
Caribbean Ispat Ltd	11.40%
All Others	11.40%
Ukraine.	
Krivorozhstal State Mine-Metallurgical Works	116.37%
Ukraine-wide rate	116.37%

This notice constitutes the antidumping duty orders with respect to carbon and certain alloy steel wire rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

These orders are issued and published in accordance with section 736(a) of Act and 19 CFR 351.211.

Dated: October 21, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–27513 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–845, A–122–847]

Notice of Initiation of Antidumping Duty Investigations: Certain Durum Wheat and Hard Red Spring Wheat From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of antidumping duty investigations.

EFFECTIVE DATE: October 29, 2002.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder at (202) 482–0189 or Judith Wey Rudman at (202) 482–0192, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are references to the provisions codified at 19 CFR part 351 (2002).

The Petitions

On September 13, 2002, the Department received petitions filed in proper form by the North Dakota Wheat Commission (hard red spring wheat), the Durum Growers Trade Action Committee (durum wheat), and the U.S. Durum Growers Association (durum wheat) (collectively, "the petitioners").[1] The Department received petition supplements from September 24 through October 21, 2002.

In accordance with section 732(b)(1) of the Act, the petitioners allege that imports of durum wheat and hard red spring wheat from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the respective domestic industries because they are interested parties as defined in section 771(9)(E) and (F) of the Act, and they have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate. *See infra*, "Determination of Industry Support for the Petitions."

[1] In the September 13, 2002 petitions, the petitioners identified the North Dakota Wheat Commission as a petitioner for both the durum wheat and hard red spring wheat petitions. However, in a petition supplement dated September 24, 2002, the petitioners informed the Department that, with respect to the petition on durum wheat, the petitioners were replacing the North Dakota Wheat Commission with the Durum Growers Trade Action Committee.

Scope of Investigations

For purposes of these investigations, the products covered are (1) durum wheat and (2) hard red spring wheat.

1. Durum Wheat

Imports covered by this investigation are all varieties of durum wheat from Canada. This includes, but is not limited to, a variety commonly referred to as Canada Western Amber Durum. The merchandise subject to this investigation is currently classifiable under the following Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 1001.10.00.10, 1001.10.00.91, 1001.10.00.92, 1001.10.00.95, 1001.10.00.96, and 1001.10.00.99. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

2. Hard Red Spring Wheat

Imports covered by this investigation are all varieties of hard red spring wheat from Canada. This includes, but is not limited to, varieties commonly referred to as Canada Western Red Spring, Canada Western Extra Strong, and Canada Prairie Spring Red. The merchandise subject to this investigation is currently classifiable under the following HTSUS subheadings: 1001.90.10.00, 1001.90.20.05, 1001.90.20.11, 1001.90.20.12, 1001.90.20.13, 1001.90.20.14, 1001.90.20.16, 1001.90.20.19, 1001.90.20.21, 1001.90.20.22, 1001.90.20.23, 1001.90.20.24, 1001.90.20.26, 1001.90.20.29, 1001.90.20.35, and 1001.90.20.96. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

As discussed in the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Parties should submit any comments on the file of each (durum wheat and hard red spring wheat) investigation. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of an investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like products referred to in these petitions are the domestic like products defined in the *Scope of Investigations* section, above. Based upon our review of the petitioners' claims, we have accepted the petitioners' definitions of the domestic like products. For further discussion, *see* the October 23, 2002, Memorandum from the Team to Richard W. Moreland, "Domestic Like Product and Industry Support" ("*Like Product/Industry Support Memo*"), which is on file in the Central Records Unit ("*CRU*"), Room B–099 of the main Department of Commerce building.

On October 3, 2002, the Department extended the deadline for the initiation determinations to no later than October 23, 2002, in order to establish whether the petitions are supported by the respective domestic industries, pursuant to section 732(c)(1)(B) of the Act. *See* October 3, 2002, Memorandum to Faryar Shirzad from Richard W. Moreland, "Extension of Deadline for Determining Industry Support." The Department has determined that, pursuant to section 732(c)(4)(A) of the Act, the petitions contain adequate evidence of industry support. *See* the October 23, 2002, Import Administration AD/CVD Enforcement Initiation Checklist ("*Initiation Checklist*") and the *Like Product/Industry Support Memo*, both of which are on file in the CRU.

We determine that the petitioners have demonstrated industry support representing over 50 percent of total production of the domestic like products. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like products, and the requirements of section 732(c)(4)(A)(i) of the Act are met. The Department received no opposition to the petitions.

Accordingly, we determine that these petitions are filed on behalf of the respective domestic industries within the meaning of section 732(b)(1) of the Act.

[2] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380–81 (July 16, 1991).

Export Price ("EP") and Normal Value ("NV")

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. A more detailed description of these allegations is provided in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, as appropriate.

Export Price

For export price ("EP") comparisons to home market prices and third country prices, the petitioners based EP on monthly average unit values ("AUVs") of durum wheat and hard red spring wheat derived from official U.S. import data for the period July 1, 2001 through June 30, 2002. We adjusted the petitioners' calculations of EP for comparisons to CV to include the entire period July 2001 through June 2002. We further adjusted the calculation of EP for hard red spring wheat to correct for certain errors in the petitioners' calculations.

For EP comparisons to home market prices, the petitioners based EP on AUVs for Canadian western amber durum wheat with vitreous kernel content greater than 84 percent (HTSUS 1001.10.00.91) for durum wheat, and AUVs for #1 red spring wheat with a protein content of greater than 13.9 percent but less than or equal to 14.2 percent (HTSUS 1001.90.2016) for hard red spring wheat. For EP comparisons to third country prices, the petitioners based EP on AUVs for Canadian western amber durum wheat with vitreous kernel content greater than 84 percent (HTSUS 1001.10.00.91) for durum wheat, and AUVs for Canadian western red spring wheat with a protein level greater than 14.2 percent (HTSUS 1001.90.20.10) for hard red spring wheat. For EP comparisons to CV, the petitioners included in their calculation of EP AUVs for all of the HTSUS categories included in the scope listed above.[3] The petitioners made no adjustments to EP. For further discussion, *see Initiation Checklist*.

Normal Value

Section 773(a)(1)(C)(iii) of the Act provides that the Department will use third-country prices for purposes of calculating NV if "the particular market situation in the exporting country does not permit a proper comparison with the export price or constructed export price." The petitioners assert that the markets for durum wheat and hard red spring wheat in Canada constitute a "particular market situation" within the meaning of section 773(a)(1)(C)(iii) and, therefore, prices in the home market are inappropriate for purposes of calculating NV. The petitioners cite to the Statement of Administrative Action which states that, while "particular market situation" is not defined, the Department may be satisfied that one exists "where * * * there is government control over pricing to such an extent that home market prices cannot be considered to be competitively set." SAA at 822.

The petitioners contend that, as a monopoly seller, the CWB conducts a nonmarket operation. In support of its argument, the petitioners cite to the ITC's Section 332 Investigation report which stated that "all wheat destined for either domestic human consumption or for export must be marketed by or through the CWB." (*See Wheat Trading Practices: Competitive Conditions Between U.S. and Canadian Wheat*, Investigation No. 332–429, USITC Publication No. 3465 at 3–1 (Dec. 2001) ("*ITC Report*")). The petitioners further cite to the statement by the ITC that "although the CWB states that it is a 'commercial entity,' it is immune from the usual commercial threats to a corporation's survival." (*See ITC Report* at Chapter 3, pp. 13–16). According to the ITC's findings, "the Board is in all significant respects an arm of the Government of Canada, with government approval and backing of its borrowing and other financing, which reduces its costs and insulates it from the commercial risks faced by large and small U.S. grain traders." (*See ITC Report* at Chapter 3, pp. 13–16) The petitioners assert that the ITC has found that the CWB is a government-backed entity with powers conferred upon it by the Canadian Government under the Canadian Wheat Board Act.

In further support of its claim that the CWB operates as a monopoly, the petitioners cite to the findings of the U.S. Trade Representative ("USTR") in its 301 investigation. In that investigation, USTR stated that "the Government of Canada grants the Canadian Wheat Board (CWB) special monopoly rights and privileges which disadvantage U.S. wheat farmers and undermine the integrity of the trading system." *See USTR Affirmative Finding in Response to North Dakota Wheat Commission Petition ("USTR Report")*, (February 15, 2002) at 2. Like the ITC, USTR also found that the CWB is "insulated from commercial risks because the Canadian government guarantees its financial operations, including its borrowing, credit sales to foreign buyers and initial payments to farmers." *See USTR Report* at 2.

According to the petitioners, because the CWB operates as a monopoly in the Canadian market without effective competition from imports, the CWB administratively sets prices for durum wheat and hard red spring wheat in Canada, rendering the home market inappropriate for purposes of determining an actual market price. In short, as the only seller in Canada, the CWB operates in Canada free from any competition from domestic sellers. The Canadian Government restricts imports of durum wheat and red spring wheat into Canada, thereby exercising complete control over the Canadian market and insulating the CWB from foreign competition as well.

Finally, the petitioners cite to prior cases in which the Department has used third-country sales as the basis for normal value due to a particular market situation. (*See Initiation of Antidumping Duty Investigations: Spring Table Grapes from Chile and Mexico*, 66 FR 26831, 26834 (May 15, 2001) and *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile* 63 FR 31411 (June 9, 1988)). The petitioners assert that, in making its particular market situation determination in those cases, the Department relied on factors, some of which are also present in this case, such as: the home market industry is export oriented, the home market is incidental to the Canadian wheat industry, and domestically-sold wheat has perfunctory marketing and distribution.

Based on the above, we have determined information reasonably available to the petitioners indicates the existence of a particular market situation which renders price comparisons between home market and U.S. prices inappropriate for purposes of determining whether to initiate the antidumping investigations on durum wheat and hard red spring wheat. In the course of these investigations, the Department will examine further the issue of particular market situation and, if necessary, the proper comparison market to be examined in each investigation.

While asserting the existence of a particular market situation which renders price comparisons between home market and U.S. prices

[3] The petitioners excluded seed wheats from the U.S. price calculation. These wheats are classified by the HTSUS subheadings: 1001.90.10.00 and 1001.10.00.10. In addition they excluded a broader HTSUS category which includes other non-hard red spring wheats (*i.e.*, 1001.90.20.96).

inappropriate, the petitioners have, as a possible alternative, provided EP to home market price comparisons.

Price-to-Price Comparisons Based on Home Market Prices

For durum wheat, the petitioners based NV on average monthly domestic prices of the CWB's sales of #1 milling grade Canadian western amber durum. For hard red spring wheat, the petitioners based NV on average monthly domestic prices of the CWB's sales of milling grade #1 Canadian western red spring, 14 percent protein. These prices were derived from a publicly available source on the internet. The home market prices were then converted from Canadian dollars to U.S. dollars and compared to U.S. AUVs.

Based on EP to home market price comparisons, the petitioners calculated dumping margins for durum wheat ranging from 3.2 to 23.2 percent, with a weighted-average margin of 13.3 percent. The petitioners calculated dumping margins for hard red spring wheat ranging from 0 to 25.6 percent, with a weighted-average margin of 7.6 percent.

Price-to-Price Comparisons Based on Third Country Prices

The petitioners calculated NV based on AUVs of Japanese imports of the subject merchandise from Canada. The AUVs were obtained from the Japanese Customs Agency's Web site, *http://www.customs.go.jp*. Since the AUVs reported by the Japanese Customs Agency were reported in yen per metric ton, the petitioners converted the prices from yen to U.S. dollars by applying the average POI exchange rate found at *http://ia.ita.doc.gov/exchange/Japan.txt*. After converting the Japanese prices to U.S. dollars per metric ton, the petitioners subtracted amounts for insurance and freight. Freight rates were obtained from the USDA's *Grain Transportation Prospects* and from discussions with an official at the USDA. A quote for insurance rates was obtained from an insurance company, Marsh, Inc. The net Japanese AUVs were then compared to U.S. AUVs.

Based on EP to third country price comparisons, the petitioners calculated dumping margins for durum wheat ranging from 26.5 to 48.2 percent, with a weighted-average margin of 40.2 percent. The petitioners calculated dumping margins for hard red spring wheat ranging from 18.2 to 86.6 percent, with a weighted-average margin of 44.8 percent.

Price-to-CV Comparisons

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV on CV. In accordance with section 773(e) of the Act, the petitioners calculated CV as the cost of manufacture ("COM"), selling, general and administrative ("SG&A") expenses and profit. To calculate COM, the petitioners based direct expenses and depreciation expenses on publicly available data.

1. Durum Wheat

We revised the petitioners' calculation of COM for Alberta by applying yields that were from the same public source as the production expenses for that province. For Saskatchewan, we revised the COM by applying calculated, weighted-average yields by soil type based on additional, publicly available information. To calculate SG&A, the petitioners relied upon amounts reported in the CWB's 2001 annual report. Consistent with 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon publicly available data.

Comparing EP to the adjusted CV, we found no additional evidence to support the petitioners' claim that durum wheat from Canada is being dumped in the United States.

2. Hard Red Spring Wheat

To calculate COM, the petitioners based direct expenses and depreciation expenses on publicly available data. We revised the petitioners' calculation of COM for Alberta by applying yields that were from the same public source as the production expenses for that province. For Saskatchewan, we revised COM by applying calculated, weighted-average yields by soil type based on additional, publicly available information. To calculate SG&A, the petitioners relied upon amounts reported in the CWB's 2001 annual report. Consistent with 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon publicly available data.

Based on a comparison of EP to the adjusted CV, we calculated a margin of 13.26 percent for hard red spring wheat.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of durum wheat and hard red spring wheat from Canada are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industries producing the domestic like products are being materially injured, or are threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The petitioners contend that each industry's injured condition is evident in the declining trends in domestic prices, production volume and value, market share, income and wages, net sales volume and value, and, for durum wheat, the increasing U.S. inventory levels. The petitioners further allege threat of injury due to increased import volumes and import penetration, because of excess production capacity in Canada, and because inventory levels in Canada exceed its demand for wheat. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, reports from the ITC and United States Department of Agriculture, statistics compiled by the Canadian Wheat Board and *Statistics Canada*, as well as independent academic and economic studies.

We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see Initiation Checklist*).

Initiation of Antidumping Investigations

Based upon our examination of the petitions on durum wheat and hard red spring wheat from Canada, we have found that they meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of durum wheat and hard red spring wheat from Canada are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(c)(1) of the Act, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the Government of Canada. We will attempt to provide a copy of the public version of each petition to each exporter named in the petitions, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine no later than November 18, 2002, whether there is a reasonable indication that imports of durum and hard red spring wheat from Canada are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigations being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–27514 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–846 and C–122–848]

Notice of Initiation of Countervailing Duty Investigations: Durum Wheat and Hard Red Spring Wheat From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of countervailing duty investigations.

SUMMARY: The Department of Commerce is initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of durum wheat and hard red spring wheat from Canada receive countervailable subsidies.

EFFECTIVE DATE: October 29, 2002.

FOR FURTHER INFORMATION CONTACT: Craig W. Matney, AD/CVD Enforcement, Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1778.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department") regulations are references to the provisions codified at 19 CFR part 351 (April 2002).

The Petitions

On September 13, 2002, the Department received petitions filed in proper form by the North Dakota Wheat Commission (hard red spring wheat), Durum Growers Trade Action Committee (durum wheat), and the U.S. Durum Growers Association (durum wheat) (collectively, "the petitioners").[1] The Department received petition supplements from September 24 through October 21, 2002.

In accordance with section 702(b)(1) of the Act, the petitioners allege that manufacturers, producers, or exporters of durum wheat and hard red spring wheat, the subject merchandise, from Canada receive countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the respective domestic industries because they are interested parties as defined in sections 771(9)(E) and (F) of the Act and they have demonstrated sufficient industry support with respect to each of the countervailing duty investigations that they are requesting the Department to initiate. *See infra*, "Determination of Industry Support for the Petitions."

Scope of Investigations

For purposes of these investigations, the products covered are (1) durum wheat and (2) hard red spring wheat.

1. Durum Wheat

Imports covered by this investigation are all varieties of durum wheat from Canada. This includes, but is not limited to, a variety commonly referred to as Canada Western Amber Durum. The merchandise subject to this investigation is typically classified in the following Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 1001.10.00.10, 1001.10.00.91, 1001.10.00.92, 1001.10.00.95, 1001.10.00.96, and 1001.10.00.99.

2. Hard Red Spring Wheat

Imports covered by this investigation are all varieties of hard red spring wheat from Canada: This includes, but is not limited to, varieties commonly referred to as Canada Western Red Spring, Canada Western Extra Strong, and Canada Prairie Spring Red. The merchandise subject to this investigation is typically classified in the following HTSUS subheadings: 1001.90.10.00, 1001.90.20.05, 1001.90.20.11, 1001.90.20.12, 1001.90.20.13, 1001.90.20.14, 1001.90.20.16, 1001.90.20.19, 1001.90.20.21, 1001.90.20.22, 1001.90.20.23, 1001.90.20.24, 1001.90.20.26, 1001.90.20.29, 1001.90.20.35, and 1001.90.20.96.

Although the HTSUS subheadings provided for durum wheat and hard red spring wheat are for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

As discussed in the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Parties should submit any comments on the file of each (durum wheat and hard red spring wheat) case. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determinations.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of Canada ("GOC") for consultations with respect to the petitions filed in these proceedings. The Department held consultations with the GOC on October 1, 2002. The points raised in the consultations are cited in the Memorandum to the File, "CVD Consultations with Officials from the Government of Canada," dated October 2, 2001, which is on file in the Department's Central Records Unit,

[1] In the September 13, 2002 petitions, the petitioners identified the North Dakota Wheat Commission as a petitioner for both the durum wheat and hard red spring wheat petitions. However, in a petition supplement dated September 24, 2002, the petitioners informed the Department that, with respect to the petition on durum wheat, the petitioners were replacing the North Dakota Wheat Commission with the Durum Growers Trade Action Committee.

Room B–099 of the main Department of Commerce building ("CRU").

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of an investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[2]

[2] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

Section 771(10) of the Act defines the domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like products referred to in these petitions are the domestic like products defined in the *Scope of Investigations* section, above. Based upon our review of the petitioners' claims, we have accepted the petitioners' definitions of the domestic like products. For further discussion, *see* October 23, 2002 Memorandum from Team to Richard W. Moreland, "Domestic Like Product and Industry Support" ("*Like Product/Industry Support Memo*"), which is on file in the CRU.

On October 3, 2002, the Department extended the deadline for the initiation determinations to no later than October 23, 2002 in order to establish whether the petitions are supported by the respective domestic industries, pursuant to section 702(c)(1)(B) of the Act. *See* October 3, 2002 Memorandum to Faryar Shirzad from Richard W. Moreland, "Extension of Deadline for Determining Industry Support." The Department has determined that, pursuant to section 702(c)(4)(A) of the Act, the petitions contain adequate evidence of industry support. *See* October 23, 2002 Import Administration AD/CVD Enforcement Initiation Checklist ("*Initiation Checklist*") and *Like Product/Industry Support Memo*, both of which are on file in the CRU.

We determined that the petitioners have demonstrated industry support representing over 50 percent of total production of the domestic like products. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like products, and the requirements of section 702(c)(4)(A)(i) of the Act are met. The Department received no opposition to the petitions. Accordingly, we determine that these petitions are filed on behalf of the respective domestic industries within the meaning of section 702(b)(1) of the Act.

Injury Test

Because Canada is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industries producing the domestic like products are being materially injured, or are threatened with material injury, by reason of the imports of subject merchandise. The petitioners contend that each industry's injured condition is evident in the declining trends in domestic prices, production volume and value, market share, income and wages, net sales volume and value, and, for durum wheat, increasing U.S. inventory levels. The petitioners further allege threat of injury due to increased import volumes and import penetration, excess production capacity in Canada, and because inventory levels in Canada exceed its demand for wheat. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, reports from the ITC and United States Department of Agriculture, statistics compiled by the Canadian Wheat Board ("CWB") and Statistics Canada, as well as independent academic and economic studies.

We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by accurate and adequate evidence, and meet the statutory requirements for initiation (*see Initiation Checklist*).

Initiation of Countervailing Duty Investigations

The Department has examined the countervailing duty petitions on durum wheat and hard red spring wheat from Canada and found that they comply with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of certain durum wheat and hard red spring wheat from Canada receive countervailable subsidies.

We are including in our investigations the following programs alleged in the petitions to have provided a countervailable subsidy to the CWB:

1. Railcar Lease Subsidy
2. Provision of Government-owned Railcars
3. Rail Freight Revenue Cap Subsidy
4. Maintenance of Uneconomic Branch Lines and Short Line Subsidies
5. Government Guarantee of Borrowing and Lending

A discussion of evidence supporting our initiation determination on these programs is contained in the *Initiation Checklist*.

At this time, we are not including in our investigations of certain durum wheat and hard red spring wheat the following programs alleged to benefit producers and exporters of the subject merchandise in Canada:

1. Railcar Allocation Subsidy

The petitioners allege that the GOC has given the CWB the power to allocate railcars for the transportation of its grain, thereby eliminating the risk premium that grain companies would otherwise charge to cover the impact of competing with non-Board users for railcars. The petitioners assert that this railcar allocation subsidy is a financial contribution because the railroads are providing their transportation services at less than adequate remuneration.

However, the petitioners have not identified the financial contribution being made (directly or indirectly) by the government. In the petitions, the petitioners state that the allocation authority granted to the CWB "is a financial contribution in the form of the provision of a service at less than adequate remuneration." However, the GOC is not providing rail service. Instead, this service is provided by the private railway companies.

Instead, it appears that the GOC has bestowed on the CWB certain authority with respect to the transportation of CWB grains. This authority originates in the CWB Act, which states that "no person other than the Corporation [Board] shall transport or cause to be transported from one province wheat or products owned by a person other than the Board," and is further addressed in a June 2000 memorandum of understanding ("MOU") between the GOC and the CWB.

The MOU, refers to the CWB's railcar allocation power and states, inter alia, that the authority will be used only with respect to the grain that the CWB markets. Also, in describing this provision in the MOU, the petitioners have characterized this provision as permitting the CWB to negotiate car supply requirements with the railways.

Although we do not have a clear understanding of what the CWB's authority is with respect to the allocation of railcars, the information provided by the petitioners appears to indicate that CWB negotiates the number of cars it will receive with the railways and that its allocation authority pertains only to cars for the grains it markets, so that it is not allocating cars away from non-Board users.

Therefore, because the petitioners have not identified a financial contribution or a benefit, we recommend not including this alleged subsidy in our investigation.

2. Shipper of Record

The petitioners allege that in November 2000 the CWB declared itself the "shipper of record," enabling the CWB to receive multi-car discounts on freight movement, instead of the grain companies. The petitioners allege that the GOC accorded the right to the CWB to act as the "shipper of record" and, therefore, transferred the right to claim such discounts from the grain companies to the CWB.

The petitioners have not identified the financial contribution being made (directly or indirectly) by the government. As with the allegation regarding railcar allocation, the petitioners point to authority granted to the CWB, which allows it to declare itself shipper of record. According to the petitioners, this results in the CWB being able to negotiate multi-car discounts with the railways, discounts that would otherwise be paid to the grain companies. If these discounts are the financial contribution, then they appear to be bestowed by the railways.

Therefore, because the petitioners have not identified a financial contribution, we recommend not including this alleged subsidy in our investigation.

3. Noncommercial Provision of Forward Contracts

The petitioners allege that, by establishing the CWB as the only legal purchaser of western Canadian wheat and by guaranteeing CWB's initial payments to producers, the GOC has removed all acquisition risks from the CWB. Accordingly, in the absence of such risk, the CWB is able to provide forward contracts to U.S. buyers at a lower price. The petitioners allege that the financial contribution "is in the form of a government guarantee (which is equivalent to the cost of insurance that a private firm would have to pay to replicate the CWB's risk position) and the value of the CWB's monopsony status."

The petitioners have not provided sufficient evidence to support its contention that the GOC provided a financial contribution in the form of a guarantee that benefits the CWB. Additionally, the petitioners have not explained how the GOC grant of monoposony status to the CWB falls within the definitions of a "financial contribution" enumerated in section 771(5)(D) of the Act. Therefore, we recommend not investigating this alleged subsidy.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public versions of the petitions have been provided to the GOC. We will attempt to provide a copy of the public versions of the petitions to each exporter named in the petition, as provided for under section 351.203(c)(2) of the Department's regulations.

ITC Notification

We have notified the ITC of our initiations, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine no later than November 18, 2002, whether there is a reasonable indication that imports of durum and/or hard red spring wheat are causing material injury, or threatening to cause material injury to, a U.S. industry. A negative ITC determination will result in the investigation(s) being terminated; otherwise, the investigation(s) will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–27515 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Inventions, Government-Owned; Availability for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government-owned inventions available for licensing.

SUMMARY: The inventions listed below are owned in whole by the U.S. Government, as represented by the Department of Commerce. The inventions are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of

Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, e-mail: *mclague@nist.gov*, or fax: 301–869–2751. Any request for information should include the NIST Docket number and title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

[Docket No.: 96–012US]

Title: A Device for Spatially-Resolved, High-Sensitivity Measurement of Optical Absorption Based on Intra-Cavity Total Reflection.

Abstract: An optical cavity resonator device is provided for conducting sensitive measurement of optical absorption by matter in any state with diffraction-limited spatial resolution through utilization of total internal reflection within a high-Q (high quality, low loss) optical cavity. Intracavity total reflection generates an evanescent wave that decays exponentially in space at a point external to the cavity, thereby providing a localized region where absorbing materials can be sensitively probed through alteration of the Q-factor of the otherwise isolated cavity. When a laser pulse is injected into the cavity and passes through the evanescent state, an amplitude loss resulting from absorption is incurred that reduces the lifetime of the pulse in the cavity. By monitoring the decay of the injected pulse, the absorption coefficient of manner within the evanescent wave region is accurately obtained from the decay time measurement.

[Docket No.: 96–025CIP]

Title: Intra-Cavity Total Reflection For High Sensitivity Measurement Of Optical Properties.

Abstract: An optical cavity resonator device is provided for conducting sensitive measurement of optical absorption by matter in any state with diffraction-limited spatial resolution through utilization of total internal reflection within a high-Q (high quality, low loss) optical cavity. Intracavity total reflection generates an evanescent wave that decays exponentially in space at a point external to the cavity, thereby providing a localized region where absorbing materials can be sensitively probed through alteration of the Q-factor of the otherwise isolated cavity. When a laser pulse is injected into the cavity and passes through the evanescent state, an amplitude loss resulting from absorption is incurred that reduces the lifetime of the pulse in the cavity. By monitoring the decay of the injected pulse, the absorption coefficient of manner within the evanescent wave region is accurately obtained from the decay time measurement.

[Docket No.: 96–025US]

Title: Broadband, Ultrahigh-Sensitivity Chemical Sensor Based on Intra-Cavity Total Reflection.

Abstract: A broadband, ultrahigh-sensitivity chemical sensor is provided that allows detection through utilization of a small, extremely low-loss, monolithic optical cavity. The cavity is fabricated from highly transparent optical material in the shape of a regular polygon with one or more convex facets to form a stable resonator for ray trajectories sustained by total internal reflection. Optical radiation enters and exits the monolithic cavity by photon tunneling in which two totally reflecting surfaces are brought into close proximity. In the presence of absorbing material, the loss per pass in increased since the evanescent waves that exist exterior to the cavity at points where the circulating pulse is totally reflected, are absorbed. The decay rate of an injected pulse is determined by coupling out an infinitesimal fraction of the pulse to produce an intensity-versus-time decay curve. Since the change in the decay rate resulting from absorption is inversely proportional to the magnitude of absorption, a quantitative sensor of concentration or absorption cross-section with 1 part-per-million/pass or better sensitivity is obtained. The broadband nature of total internal reflection permits a single device to be used over a broad wavelength range. The absorption spectrum of the surrounding medium can thereby be obtained as a measurement of inverse decay time as a function of wavelength.

Dated: October 21, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–27421 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102402B]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings.

DATES: The meetings will be held on November 12–15, 2002.

ADDRESSES: These meetings will be held at the Westin Beach Resort, 97000 South Overseas Highway, Key Largo, FL 33037; telephone: 305–852–5553.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

November 14

8:30 a.m.—Convene.

8:45 a.m.zn–9 a.m.—Appointment of Committee Members

9 a.m.–9:15 a.m.—Election of Vice Chairman

9:15 a.m.–;11:30 a.m.—Receive public testimony on the Secretarial Reef Fish Amendment 2.

1 p.m.–4 p.m.—Receive the report of the Habitat Protection Committee.

4 p.m.–5 p.m.—Receive the report of the Shrimp Management Committee.

November 15

8:30 a.m.–11 a.m.—Receive the report of the Reef Fish Management Committee.

11 a.m.–11:30 a.m.—Receive the report of the Joint Reef Fish and Artificial Reef Committees.

11:30 a.m. - 11:40 a.m. -Receive the International Commission for the Conservation of Atlantic Tunas Meeting report.

11:40 a.m.–11:50 a.m.–Receive Enforcement Reports.

11:50 a.m.–12 noon—Receive the NMFS Regional Administrator's Report.

12 noon–12:15 p.m.—Receive Director's Reports.

12:15 p.m.–12:30 p.m.—Other Business.

Committees

November 12, 2002

8:30 a.m.–12:30 p.m.—Convene the Habitat Protection Committee to review and comment on the Draft Environmental Impact Statement (DEIS) for the Essential Fish Habitat (EFH) Generic Amendment. The committee will also consider the recommendations of Technical and User Review Panels, Habitat Protection Advisory Panels (APs) and the Scientific and Statistical Committee (SSC). The Council will take final action on the DEIS in January 2003 and file the DEIS with the Environmental Protection Agency (EPA).

2 p.m.–5:30 p.m.—Convene the Reef Fish Management Committee to make its final recommendations to the Council on Secretarial Reef Fish Amendment 2 for amberjack. The amendment contains a rebuilding program for greater amberjack, which is largely based on actions previously taken by the Council in 2000 and 2001 for reducing the recreational bag limits to 1 fish and implementing a 3–month commercial closure. The committee will review new stock assessments on red and yellowedge grouper, but will defer taking action on this information to the January 2003 meeting. The committee will review comments from scoping meetings on Reef Fish Amendment 21 related to extending the duration of rules establishing the Madison/Swanson and Steamboat Lumps marine reserves. The Council will take final action on this amendment in May 2003. The committee will also review a draft red snapper individual fishing quota profile and recommend changes to the Council. The profile when completed will be submitted by NMFS to fishermen for comments in a referendum conducted by NMFS. The committee will discuss with enforcement officials possible causes of violations of the reef fish bottom longline prohibited area in the western Gulf and potential remedies.

November 13, 2002

8:30 a.m.–9:30 a.m—Convene a joint meeting of the Reef Fish Management and Artificial Reef Committees to consider whether the Council should consider holding workshops to discuss establishing special management zones (SMZs) off Alabama where the number of hooks fished per line may be limited. If approved, these workshops will be scheduled in 2003.

9:30 a.m.–11:30 a.m.—Convene the Shrimp Management Committee to review scoping comments on an options paper that eventually will become Shrimp Amendment 13. The draft amendment will address adding rock shrimp to the fishery management plan, alternatives to improve bycatch estimates, alternatives for reducing bycatch, the need for Vessel Monitoring Systems, and alternatives that could reduce effort.

11:45 a.m.–6 p.m.—Council members will visit the U.S. Coast Guard air station and bases in the Miami area for an orientation and training session.

Although non-emergency issues not contained in the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act), those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson Act, provided the public has been notified of the Council's intent to take final action to address the emergency. A copy of the Committee schedule and agenda can be obtained by calling (813) 228–2815.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by November 4, 2002.

Dated: October , 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–27510 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 093002C]

Endangered Species; File No. 1245

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that J. David Whitaker has been issued a modification to scientific research Permit No. 1245.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Lillian Becker or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On September 27, 2001, notice was published in the **Federal Register** (66 FR 49353) that a modification of Permit No. 1245, issued May 19, 2000 (65 FR 36666), had been requested by the above-named individual. A second modification request was published in the **Federal Register** on August 6, 2002 (67 FR 50874). The requested modifications were granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The modifications extend the permit for an additional two years and increases non-lethal take of loggerhead sea turtles from 250 to 300 and leatherbacks from 1 to 3.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: October 23, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–27509 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030602C]

Marine Mammals; File No. 1009–1640

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Jerome Siegel, Neurobiology Research 151A3, 16111 Plummer St., VA GLAHS-Sepulveda, North Hills, CA 91343, has applied in due form for a permit to import tissue samples from bottlenose dolphins (*Tursiops truncatus*), harbor porpoise (*Phocoena phocoena*), common dolphins (*Delphinus delphis*), beluga whales (*Delphinapterus leucas*), and Northern fur seals (*Callorhinus ursinus*) from Russia, and to analyze tissue samples from captive killer whales (*Orcinus orca*) and bottlenose dolphins in the U.S. for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before November 29, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant proposes three projects. The first is to investigate the anatomy and immunohistology of several structures of cetacean brains. Three bottlenose dolphin, three harbor porpoise, two common dolphin, and two beluga whale brains will be imported from Russia. Brains will be collected from animals killed during subsistence harvest or that died in fishing nets, and from dead animals stranded on shore. No animals will be deliberately killed to fulfill samples for this project. The second project involves the study of sleep in fur seals. Six seals will be caught on the Bering Island in Russia, temporarily held in captivity, implanted for polygraphic sleep studies, and euthanized. Microdialysis samples and brains of the six fur seals will be imported for anatomical studies. The third study involves the determination of hormonal and peptidergic properties of the extended waking behavior in mothers and calves of killer whales and bottlenose dolphins. Blood and urine samples from six U.S. captive killer whale mother/calf pairs and three bottlenose dolphin mother/calf pairs will be analyzed for hormone concentrations. Four bottlenose dolphins will be collected from the Black Sea in Russia, held in temporary captivity, administered hormones, and blood samples from these animals will be imported for this study. The requested duration of the permit is five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 23, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–27507 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

October 23, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 29, 2002

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 67 FR 65178, published on December 18, 2001). Also see 66 FR 63029, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 23, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002.

Effective on October 29, 2002, you are directed to adjust the current limits for the following categories, as provided for in the Memorandum of Understanding between the Governments of the United States and the Former Yugoslav Republic of Macedonia dated November 7, 1997:

Category	Adjusted twelve-month limit [1]
433	26,423 dozen.
448	63,539 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,
James C. Leonard III,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[Doc. 02–27447 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the United Arab Emirates

October 23, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 29, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for swing and carryforward. The limit for Category 317 is being reduced for swing being subtracted.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63038, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 23, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textiles and textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on October 29, 2002, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
317	51,134,770 square meters.
334/634	437,793 dozen.
335/635	255,507 dozen.
336/636	343,747 dozen.
338/339	1,047,479 dozen of which not more than 657,999 dozen shall be in Categories 338–S/339–S [2].
341/641	532,548 dozen.
342/642	423,079 dozen.
351/651	288,731 dozen.
647/648	568,509 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–27446 Filed 10–28–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, November 1, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 02–27600 Filed 10–25–02; 2:43 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, November 29, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 02–27601 Filed 10–25–02; 2:43 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, November 22, 2002.

PLACE: 1155 21st St., NW., Washington, DC., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission
[FR Doc. 02–27602 Filed 10–25–02; 2:44 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

SUNSHINE ACT MEETING

TIME AND DATE: 11 a.m., Friday, November 15, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 02–27603 Filed 10–25–02; 2:44 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, November 8, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance mattters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 02–27604 Filed 10–25–02; 2:45 pm]
BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Collection of Information for Children's Sleepwear

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Consumer Product Safety Commission (CPSC) requests comments on a proposed extension of approval, for a period of three years from the date of approval by the Office of Management and Budget (OMB), of a collection of information from manufacturers and importers of children's sleepwear. This collection of information is in the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X and the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 and regulations implementing those standards. *See* 16 CFR parts 1615 and 1616. The children's sleepwear standards and implementing regulations establish requirements for testing and recordkeeping by manufacturers and importers of children's sleepwear.

The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from OMB.

DATES: The Office of the Secretary must receive written comments not later than December 30, 2002.

ADDRESSES: Written comments should be captioned "Children's Sleepwear, Collection of Information" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR parts 1615 and 1616, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0416, extension 2226.

SUPPLEMENTARY INFORMATION:

A. The Standards

Children's sleepwear in sizes 0 through 6X manufactured for sale in or imported into the United States is subject to the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (16 CFR part 1615). Children's sleepwear in sizes 7 through 14 is subject to the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (16 CFR part 1616). The children's sleepwear flammability standards require that fabrics, seams, and trim used in children's sleepwear in sizes 0 through 14 must self-extinguish when exposed to a small open-flame ignition source. The children's sleepwear standards and implementing regulations also require manufacturers and importers of children's sleepwear in sizes 0 through 14 to perform testing of products and to maintain records of the results of that testing. 16 CFR part 1615, subpart B; 16 CFR part 1616; subpart B. The Commission uses the information compiled and maintained by manufacturers and importers of children's sleepwear to help protect the public from risks of death or burn injuries associated with children's sleepwear. More specifically, the Commission reviews this information to determine whether the products produced and imported by the firms comply with the applicable standard. Additionally, the Commission uses this information to arrange corrective actions if items of children's sleepwear fail to comply with the applicable standard in a manner that creates a substantial risk of injury to the public.

OMB approved the collection of information in the children's sleepwear standards and implementing regulations under control number 3041–0027. OMB's most recent extension of approval will expire on January 31, 2003. The Commission proposes to request an extension of approval without change for the collection of information in the children's sleepwear standards and implementing regulations.

B. Estimated Burden

The Commission staff estimates that about 53 firms manufacture or import products subject to the two children's sleepwear flammability standards. The Commission staff estimates that these standards and implementing regulations will impose an average annual burden of about 6,000 hours on each of those firms. That burden will result from conducting the testing required by the standards and maintaining records of the results of that testing required by the implementing regulations. The total annual burden imposed by the standards and regulations on all manufacturers and importers of children's sleepwear will be about 318,000 hours. The hourly wage for the testing and recordkeeping required by the standards and regulations is about $30.03, for an annual cost to the industry of about $9,550,000.

The Commission will expend approximately three months of professional staff time annually for examination of information in the records maintained by manufacturers and importers of children's sleepwear subject to the standards. The annual cost to the Federal government of the collection of information in the sleepwear standards and implementing regulations is estimated to be $22,500.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
—Whether the estimated burden of the proposed collection of information is accurate;
—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: October 22, 2002.

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.
[FR Doc. 02–27414 Filed 10–28–02; 8:45 am]
BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 21, 2002, 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Informal Discussion
6:00 p.m.—Call to Order; Introductions; Approve October Minutes; Review Agenda
6:10 p.m.—DDFO's Comments
- Budget Update
- ES & H Issues
- EM Project Updates
- CAB Recommendation Status
- Other

6:30 p.m.—Ex-officio Comments
6:40 p.m.—Public Comments and Questions
6:50 p.m.—Review of Action Items
7:05 p.m.—Break
7:15 p.m.—Presentation
- Conflict of Interest
- Water Policy Box
- SSAB Chairs' Meeting in Oak Ridge, TN (Oct 17–19)

8:30 p.m.—Public Comments and Questions
8:40 p.m.—Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership

9:10 p.m.—Administrative Issues
- October Chairs' Meeting
- Review of Workplan
- Review of Next Agenda
- Federal Coordinator Comments
- Final Comments

9:00 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed above or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC, on October 23, 2002.

Rachel M. Samuel,
Deputy Advisory Committee Management Officer.
[FR Doc. 02–27441 Filed 10–28–02; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Coal Council Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Coal Council Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463,86 Stat. 770) requires notice of these meetings be announced in the **Federal Register**.

DATES: November 21, 2002, 8:30 AM to 12:30 PM.

ADDRESSES: Hamilton Crowne Plaza Hotel, 14th & K Streets, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585. Phone: 202/586-3867.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* The purpose of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda

- Call to order by Mr. Wes Taylor, Chairman.
- Other Council business.
- Panel on Energy and Economy of the Future:

Mr. Des C. Reloj, Jr., Executive Director Energy Security Initiatives, Inc., will discuss coal's value in a methane-based economy.

Dr. Edward D. Rubin, Carnegie-Mellon University, will discuss coal's role in a hydrogen-based economy and associate carbon management opportunities.

- Remarks by Secretary of Energy, Spencer Abraham.
- Presentation by Mr. Terry Ackman, National Energy Technology Laboratory on mine safety and mine mapping.
- Panel on Mercury Emissions Control:

Mr. Tom Feeley, National Energy Technology Center

Dr. W. Randall Seeker, GE International

Mr. Frank Alix, CEO, Powerspan Corporation

Mr. Michael Horvath, FirstEnergy Corporation

Mr. James Butz, Vice President Operations, ADA Technologies

- Discussion of other business properly brought before the Committee.
- Public comment—10 minute rule.
- Adjournment.

Public Participation: The meeting is open to the public. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Margie D. Biggerstaff at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Transcripts: The transcript will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on October 23, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee . Management Officer.

[FR Doc. 02–27440 Filed 10–28–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM96–1–020]

Standards For Business Practices of Interstate Natural Gas Pipelines

October 23, 2002.

In the matter of: RP02–492–001, RP02–414–001, RP02–454–001, RP02–474–001, RP02–475–001, RP02–461–001, RP02–423–002, RP02–456–002, RP02–493–001, RP02–449–001, RP02–491–001, RP02–464–001, RP02–431–001, RP02–490–001, RP02–476–001, RP02–478–002, RP02–467–001, P02–473–001, RP02–457–001, RP02–484–001, RP02–451–001, RP02–435–001, PG&E Gas Transmission, RP02–455–001, RP02–462–001, RP02–432–001, RP02–494–001, RP02–471–001, RP02–443–001 and RP02–479–002, (Not Consolidated): Algonquin Gas Transmission Company, Alliance Pipeline L.P., Black Marlin Pipeline Company, Columbia Gas Transmission Company, Columbia Gulf Transmission Company, Crossroads Pipeline Company, Dauphin Island Gathering Company, Discovery Gas Transmission LLC, East Tennessee Natural Gas Company, Eastern Shore Natural Gas Company, Egan Hub Partners, L.P., Granite State Gas Transmission, Inc., Gulf States Transmission Corporation, Gulfstream Natural Gas System, Iroquois Gas Transmission System LP, Midwestern Gas Transmission Company, Mississippi Canyon Gas Pipeline, LLC, Nautilus Pipeline Company, North Baja Pipeline, LLC, Northern Border Pipeline Company, Northern Natural Gas Company, Petal Gas Storage, L.L.C., PG&E Gas Transmission, Northwest Corporation, Southern Natural Gas Company, Southern LNG Inc., Texas Eastern Transmission, LP, Tuscarora Gas Transmission Company, USG Pipeline Company, and Vector Pipeline L.P., Notice of Compliance Filing.

Take notice that the above-referenced pipelines made filings to comply with the Commission's orders in the above-captioned docket nos. These revised tariff sheets are to be effective October 1, 2002. These filings address compliance with Order 587-O.[1]

In Order No. 587-O, the Commission required pipelines to file revised tariff sheets to comply with Version 1.5 of the consensus industry standards, promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB), formerly the Gas Industry Standards Board. The Commission directed that pipelines implement these standards by filing revised tariff sheets no later than August 1, 2002, to become effective October 1, 2002 implementation date required by Order No. 587-O.

The Commission issued orders in each of the captioned dockets on the pipelines initial filings to comply with Order No. 587-O. Each of the pipelines has filed to comply with the applicable Commission's order.

Any person desiring to protest in a proceeding must file a separate protest in each docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 30, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27459 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

[1] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587–O, 67 FR 30788 (May 8, 2002); III FERC Stats. & Regs. Regulations Preambles, 31,129 (May 1, 2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–30–000]

Algonquin LNG, Inc. and Algonquin ALNG, LP; Notice of Proposed Changes in FERC Gas Tariff

October 22, 2002.

Take notice that on October 17, 2002, Algonquin LNG, Inc. (ALNG) and Algonquin LNG, LP (ALNG LP) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to reflect a corporate name change to become effective October 17, 2002.

ALNG and ALNG LP state that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27468 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–31–000]

Alliance Pipeline L.P.; Notice of Proposed Change in FERC Gas Tariff

October 22, 2002.

Take notice that on October 17, 2002, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 247, with an effective date of November 1, 2002.

Alliance states that the filing is being made to reinstate the rate ceiling for short-term capacity release transactions following the conclusion of the two-year waiver period established in Order No. 637.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27469 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–196–003]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

October 23, 2002.

Take notice that on October 18, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets included in this filing as Appendix A to the filing, to be effective on December 1, 2002.

CEGT states that the purpose of this filing is to comply with the Commission's order issued September 23, 2002 in Docket No. RP02-196–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27461 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–29–000]

CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 22, 2002.

Take notice that on October 17, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, First Revised Sheet No. 461, to be effective November 17, 2002.

CEGT states that the purpose of this filing is to submit a non-conforming service agreement along with revised tariff sheet to reference such agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link.

Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502-8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27467 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–088]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

October 23, 2002.

Take notice that on October 18, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective November 1, 2002:

Original Sheet No. 656
Original Sheet No. 657
Original Sheet No. 658
Sheet Nos. 659–699 [reserved]

CEGT states that the purpose of this filing is to reflect the implementation of two new negotiated rate transactions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document.

For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27475 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–475–002, RP96–129–017 and RP00–609–003]

CMS Trunkline Gas Company, LLC; Notice of Compliance Filing

October 23, 2002.

Take notice that on October 18, 2002, CMS Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed on Appendix A attached to the filing proposed to be effective November 1, 2002.

Trunkline asserts that the purpose of this filing is to implement the terms of the February 21, 2002 Stipulation and Agreement in Docket Nos. RP00–475–000, RP96–129–000, RP00–609–000 and RP00–609–001 (Settlement). The Settlement was approved, as modified, by the Commission's July 5, 2002 Order on Trunkline's Order No. 637 Settlement, 100 FERC ¶ 61,048 (2002), in the above referenced proceedings.

Trunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27460 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–23–000]

Columbia Gas Transmission Corporation; Notice of Tariff Filing

October 21, 2002.

Take notice that on October 15, 2002, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Seventh Revised Sheet No. 280; Ninth Revised Sheet No. 281; Seventh Revised Sheet No. 351; Sixth Revised Sheet No. 355; Second Revised Sheet No. 357; Seventh Revised Sheet No. 575; and Fifth Revised Sheet No. 581, effective November 15, 2002.

Columbia states that the filing is being made to incorporate into its tariff the Commission's recent pronouncements in Tenaska Marketing Ventures v. Northern Border Pipeline Company, 99 FERC ¶ 61,182 (2002), and provide for limited situations in which a replacement shipper's service agreement may be terminated where the associated primary contract (*i.e.*, the releasing shipper's contract) has been terminated.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27465 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP99–541–003, RP03–28–000]

Cotton Valley Compression, L.L.C.; Notice of Compressor Change Tariff, Rate, and Environmental Filing

October 22, 2002.

Take notice that on October 16, 2002, Cotton Valley Compression, L.L.C. (Cotton Valley), filed in Docket Nos. CP99–541–003 and RP03-28–000 a report (1) describing the first change of leased compressor units, (2) recomputing the stated rates to reflect the cost and capacity impacts of that compressor change, (3) replacing specific tariff sheets to reflect those revised rates, and (4) satisfying environmental conditions attached to its original certificate of public convenience and necessity issued in 2000. 90 FERC ¶ 61,206.

In that certificate besides authorizing Cotton Valley's 1,200 horsepower of installed leased compression with a capacity of 13,100 Dth/d, the Commission authorized it to operate leased compressors up to 3,000 horsepower with a capacity of up to 31,000 Dth/d, without further certification or abandonment for changes up or down within this upper level, subject to certain conditions.

In pertinent part Cotton Valley reports that: (1) it replaced the 600 horsepower Waukesha Dresser unit with a single 1,350 horsepower CAT 3516, with 1,950 horsepower of combined compression and a maximum firm capacity of 17,800 Dth/day; (2) it certifies that, with the new leased compressor configuration described above, the previously determined acceptable air emission level of less than 100 TPY combined has not been exceeded; (3) it shows that the 1999 compressor noise reading of Ldn of 46 dBA at the nearby noise sensitive areas (NSA) for the original 1,200 hp three-unit configuration has been reduced to an Ldn of 40.5 dBA at the NSA; (4) it both computes new rates and revises tariff sheets to reflect revised FT base reservation rate which drops from $0.86 to $0.6406 per Dth per month, and the revised FT deferred compressor surcharge which increases from $0.9258 to $1.354 per Dth per month, with comparable IT rate revisions.

The following revised tariff sheets are being filed:

First Revised Sheet No. 2 superceding Original Sheet No. 2
First Revised Sheet No. 4 superceding Original Sheet No. 2

Cotton Valley requests that these sheets be made effective on November 15, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27451 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–000]

Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff

October 23, 2002.

Take notice that on October 18, 2002, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eleventh Revised Sheet

No. 9, and Eighth Revised Sheet No. 10, to become effective October 1, 2002.

Dauphin Island states that these tariff sheets reflect changes to Maximum Daily Quantities (MDQ's) and the termination of two contracts.

Dauphin Island states that copies of the filing are being served contemporaneously on all participants listed on the service list in this proceeding and on all persons who are required by the Commission's regulations to be served with the application initiating these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27474 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–554–001]

Eastern Shore Natural Gas Company; Notice of Tariff Filing

October 22, 2002.

Take notice that on October 15, 2002, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing, with a proposed effective date of October 1, 2002.

ESNG received an order in RP02–535–000 on October 1, 2002 that rejected the tariff sheets filed in its September 6, 2002 storage tracker filing. The tariff sheets were filed to revise ESNG's rates under Rate Schedule CFSS in order to track rate changes submitted by Columbia Gas Transmission Corporation (Columbia) on August 30, 2002, in Docket No. RP02–526–000. Columbia's tariff sheets were rejected by a Commission Letter Order issued September 26, 2002. Subsequently, ESNG's tariff sheets were rejected as moot. In this filing ESNG is requesting that tariff sheets originally filed on September 24, 2002 in Docket No. RP02–554–000 be withdrawn and substitute tariff sheets are being filed (in the same docket) which track the original changes in Transcontinental Gas Pipe Line Corporation (Transco) storage rates but also include corrected rates proposed to be changed under Rate Schedule CFSS from the filing made on September 6, 2002.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27463 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–1–000]

El Paso Pipeline Company; Notice of Site Visit

October 23, 2002.

Beginning on Tuesday, November 5, 2002, and ending on Thursday, November 8, 2002, the Federal Energy Regulatory Commission staff will conduct a limited site visit of the existing and proposed compressor station locations where El Paso Natural Gas Company (El Paso) proposes to construct and operate facilities for the Power Up Project.

On November 5, we will visit the proposed Wink and Black River Compressor Station sites and the existing Cornudas Compressor Station, in that order. We will meet at 8 AM at the following location near the proposed Wink Compressor Station: ALCO Discount Store 308 E. U.S. Highway 302 Kermit, Texas 79475. *El Paso contact for directions*: Jeff Blake, (713) 594–9122.

On November 6, we will meet at 8 AM at the existing El Paso Compressor Station. We will visit the existing El Paso, Florida, and Lordsburg Compressor Stations, in that order. The address for this location is: El Paso Compressor Station, 12600 McCombs St. El Paso, Texas 79934. *El Paso contact for directions*: Keith Udhe, (915) 821–8081.

On November 7, we will visit the proposed Cimarron and Tom Mix Compressor Station sites and the existing Casa Grande Compressor Station, in that order. We will meet at 8 AM at the following location near the proposed Cimarron Compressor Station: Best Western Plaza Inn (I–10 Exit 340), 1100 W. Rex Allen Dr., Willcox, Arizona. *El Paso contact for directions*: Sheila Castellano, (719) 510–3516.

Please contact El Paso for directions to the identified compressor stations. For further information, call the Office of External Affairs, at 1–866–208–FERC.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27449 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–26–000]

Gulfstream Natural Gas System, L.L.C.; Notice of Tariff Filing

October 21, 2002.

Take notice that on October 16, 2002, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 2; First Revised Sheet No. 190; Original Sheet No. 190A; and First Revised Sheet No. 191, to become effective November 16, 2002.

Gulfstream states that the purpose of this filing is to revise the capacity release provisions in Section 26 of the General Terms and Conditions with the addition of a new Section 26.6, which sets forth its right to terminate temporary capacity releases by shippers who are not creditworthy or who have become non-creditworthy and also clarifies that it may notify releasing shippers and suspend or terminate the capacity release if the replacement shippers are not creditworthy or have become non-creditworthy, thus reverting the capacity back to the releasing shippers.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27466 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–422–003]

Kern River Gas Transmission Company; Notice of Application To Amend Certificate of Public Convenience and Necessity

Issued: October 23, 2002.

On October 15, 2002, Kern River Gas Transmission Company (Kern River), 295 Chipeta Way, Salt Lake City, Utah, 84108, filed an application in Docket No. CP01–422–003 pursuant to Section 7c of the Natural Gas Act (NGA) and Subpart A of Part 157 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), for an amended certificate of public convenience and necessity authorizing Kern River to install and operate modified compressor facilities for its 2003 Expansion Project, for which an Order Denying Rehearing and Issuing Certificate (Order) was issued on July 17, 2002 in Docket No. CP01–422–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link.

Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502-8222 or for TTY, (202) 502–8659.

Kern River states that the Order authorized Kern River to construct and operate additional facilities needed to expand its transportation capacity from Opal, Wyoming to delivery points primarily in California. At its existing Muddy Creek Compressor Station, located in Lincoln County, Wyoming, Kern River states that it was authorized to install two additional Solar Mars 100 SoLoNox turbine-driven centrifugal compressor units (15,000 ISO horsepower each) and to upgrade an existing Solar Mars 100 compressor unit that is currently derated to a Mars 90 equivalent with 13,000 ISO horsepower. According to Kern River, upgrading the existing unit to the full 15,000 ISO horsepower rating of a Mars 100 compressor unit was to have been accomplished through control software changes.

Instead of upgrading the existing derated unit, Kern River states that it is now proposing to replace it with a different Mars 100 compressor unit equipped with an Augmented Backside Cooled (ABC) combustor liner that is expected by its manufacturer, Solar Turbine

Inc. (Solar), to significantly reduce pollutant emissions. The replacement compressor unit would be installed as part of a Solar research and development project and would be provided at no additional cost to Kern River. The replacement unit would have exactly the same horsepower as the derated unit would have had after being upgraded as part of the Kern River 2003 expansion project.

Kern River states that it is requesting authorization by no later than January 1, 2003, so that the proposed modification may be incorporated into Kern River's 2003 Expansion Project, which is scheduled to be completed and in-service by May 1, 2003.

Any questions regarding this application may be directed to Billie L. Tolman, Manager, Tariffs & Certificates, Kern River Gas Transmission Company, P. O. Box 582000, Salt Lake City, Utah 84158-2000, at (801) 584–6976.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November 13, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the

Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and instructions on Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27409 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–34–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 23, 2002.

Take notice that on October 18, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective October 1, 2002.

First Revised Ninth Revised Sheet No. 5
Fourth Revised Sheet No. 5-A
Third Revised Sheet No. 140
Fourth Revised Sheet No. 144
Third Revised Sheet No. 145
Third Revised Sheet No. 161
Third Revised Sheet No. 822
Third Revised Sheet No. 823
Third Revised Sheet No. 839

Kern River states that the purpose of this filing is to revise Kern River's tariff to reflect the expiration of the temporary waiver of the rate ceiling on short-term capacity release transactions.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27472 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–362–002]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

October 22, 2002.

Take notice that on October 15, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing tariff sheets to modify the Tariff mechanism that allows the pipeline to enter into pre-arranged capacity sales with its shippers. GTN requests that these tariff sheets become effective on November 14, 2002.

GTN states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27462 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–031]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 22, 2002.

Take notice that on October 16, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1-A, Third Revised Sheet No. 128, to be effective November 16, 2002.

GTN states that the filing is being file to incorporate language articulating post-open season procedures as they relate to the awarding of capacity.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27476 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–32–000]

Stingray Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

October 22, 2002.

Take notice that on October 18, 2002, Stingray Pipeline Company, L.L.C. (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 186, to become effective on December 1, 2002.

Stingray states that this filing is being made to comply with Section 2.5 of a Stipulation and Agreement (S&A) filed in Docket No. RP99–166–000 on September 19, 2002. The filing institutes a new provision in section 22.5 of the General Terms and Conditions of Stingray's FERC Gas Tariff that will provide Stingray the right to process delivered natural gas for removal of liquid and liquefiable hydrocarbons so long as Stingray redelivers thermally equivalent quantities of natural gas to its shippers.

Stingray states that a copy of this filing has been served upon its customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27470 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–32–002]

Texas Eastern Transmission, LP; Notice of Compliance Filing

October 22, 2002.

Take notice that on October 1, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 ("Tariff"), the tariff sheets listed in Appendix A of the filing proposed to be effective on November 1, 2002.

Texas Eastern states that the purpose of this filing is to comply with Ordering Paragraph (B) of the Commission's Order Issuing Certificate issued June 28, 2002, in Docket No. CP02–32–000 ("June 28 Order"). Texas Eastern states that the tariff sheets listed in Appendix A establish the maximum recourse rate and the related negotiated rate for service on Texas Eastern's TIME Project facilities, as required by the June 28 Order, and incorporate references to the new incremental TIME service into Rate Schedule FT–1 and the General Terms and Conditions of the Tariff, including the reference in Section 3 of Rate Schedule FT–1 specifically required by the Commission in Ordering Paragraph (B)(4) of the June 28 Order.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27448 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–33–000]

Texas Eastern Transmission, LP; Notice of Tariff Filing

October 23, 2002.

Take notice that on October 17, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, to become effective on November 1, 2002:

Original Sheet No. 51C
Original Sheet No. 105
Sheet Nos. 106—125
First Revised Sheet No. 297A
First Revised Sheet No. 297B 4th Rev First Revised Sheet No. 529
Fourth Revised Sheet No. 624

Texas Eastern states that these tariff sheets are being filed to implement an initial incremental maximum recourse rate for service under Rate Schedule MLS–1 on the Fayette Lateral, a new lateral constructed under Texas Eastern's blanket certificate authority. In addition, Texas Eastern and Duke Energy Fayette, LLC have agreed to a negotiated rate for up to 125,000 dekatherms per day of firm transportation service on the Fayette Lateral pursuant to Rate Schedule MLS–1 to a new 620 megawatt electric generating plant being constructed by Duke Energy Fayette, LLC in Fayette County, Pennsylvania, with service commencing November 1, 2002. The tariff sheets filed herewith also establish the negotiated rate with Duke Energy Fayette, LLC and, in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, reflect the essential elements of the negotiated rate contract.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27471 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP88–391–027 and RP93–162–012, CP88–391–028 and RP93–162–013]

Transcontinental Gas Pipe Line Corporation; Notice of Annual Cash-Out Filing

October 23, 2002.

Take notice that on September 30, 2002, Transcontinental Gas Pipe Line Corporation (Transco) filed in Docket Nos. CP88–391–027 and RP93–162–012 its annual report of cash-out purchases for the period August 1, 2001 through July 31, 2002. The report was filed to comply with the cash-out provisions in Section 15 of the General Terms and Conditions of Transco's FERC Gas Tariff. Transco filed various Appendices with the annual cash-out report at A–1, A–2, B–1, B–2, and C–3.

Take notice that on October 11, 2002, Transco filed in Docket Nos. CP88–391–028 and RP93–162–013 to correct certain clerical errors in Appendixes A–1, A–2, and B–1 to its September 30 annual cash-out filing. Transco explains that Appendix A–1 sets forth the quantities purchased and sold for each shipper for cash-out purchases and sales during the Annual Cash-Out Period. Appendix A–2 sets forth the amounts paid to or by each shipper for cash-out purchases and sales during the Annual Cash-Out Period. Appendix B–1 sets forth the quantities purchased and sold for each shipper for cash-out purchases and sales under each Pipeline Interconnect Balance Agreement (PIBA) on Transco's system during the Annual Cash-out Period. In order to correct the clerical errors, Transco submitted revised Appendices A-1, A–2, and B–1 to its Annual Cash-Out Report filed on September 30. Transco asserts that for the convenience of the Commission and interested Parties, it also included the appendices of the September 30 filing which are not being revised: Appendix B–2 which sets forth the amount purchased and sold for each shipper for cash-out purchases and sales under each PIBA and Appendix C–1 which compares Transco's cash-out and PIBA revenues received with costs incurred on a monthly basis for the current annual billing period.

Transco states that the report shows that for the annual cash-out period ending July 31, 2002, Transco has a net underrecovery of $22,908,461. Transco alleges that in accordance with Section 15 of its tariff it will carry forward such net underrecovery to offset any net overrecovery that may occur in future cash-out periods.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed by November 4, 2002, in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27450 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–22–000]

Transcontinental Gas Pipe Line Corporation Notice of Tariff Filing

October 18, 2002.

Take notice that on October 15, 2002, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing, and their proposed effective dates are detailed in the Appendix.

Transco states that the purpose of the instant filing is to update certain Delivery Point Entitlement (DPE) tariff sheets in accordance with the provisions of Section 19 of the General Terms and Conditions of Transco's Third Revised Volume No. 1 Tariff. Specifically, such tariff sheets have been revised to include changes associated with (1) completed incremental capacity expansions and (2) miscellaneous adjustments.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27464 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–35–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

October 23, 2002.

Take notice that on October 18, 2002, Wyoming Interstate Company, Ltd. (WIC) tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 2, Twelfth Revised Sheet No. 36, with an effective date of July 1, 2002.

WIC states that it is submitting this tariff sheet to add a provision approved in the Docket No. RP02–286–000 proceeding to the tariff sheet recently approved in the Docket No. RP00–484–003 proceeding. No new changes are proposed to the sheet.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document.

For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27473 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

October 23, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: Major Unconstructed Project.

b. *Project No.*: 12379–000.

c. *Date filed*: September 27, 2002.

d. *Applicant*: Lake Dorothy Hydro, Inc.

e. *Name of Project*: Lake Dorothy Hydroelectric Project.

f. *Location*: On 1,804 acres administered by the Tongass National Forest, at Lake Dorothy on Dorothy Creek, near Juneau, Alaska. Township 42S, Range 69E and 70E, Copper River Meridian.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)–825 (r).

h. *Applicant Contact*: Mr. Corry V. Hildenbrand, President, Lake Dorothy Hydro, Inc., 5601 Tonsgard Court, Juneau, AK 99801–7201, (907) 463–6315; and Ms. Susan Tinney, Licensing Coordinator, S. Tinney Associates, Inc., P.O. Box 985, Lake City, CO 81235, (970) 944–1020.

i. *FERC Contact*: Michael H. Henry, E-mail—*mike.henry@ferc.gov* or telephone (503) 944–6762.

j. *Cooperating agencies*: We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. *Deadline for filing requests for cooperating agency status*: December 7, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link.

l. The application is not ready for environmental analysis at this time.

m. *The Lake Dorothy Project would consist of*: (1) a proposed lake tap of Lake Dorothy and 680-foot-long water transmission tunnel that would discharge water into Dorothy Creek between Lake Dorothy and Lieuy Lake. Water then flows out of Lieuy Lake into Bart Lake via the natural streambed between Lieuy and Bart Lakes, keeping Bart Lake at optimum levels for power generation; (2) a proposed lake tap of Bart Lake, 935-foot-long power tunnel, and 6,900-foot-long penstock from Bart Lake to a 14.3 megawatt surface powerhouse near tidewater; (3) 3.5 half miles of proposed overhead transmission line that would intertie with an existing overhead transmission line from the Snettisham Hydroelectric Project, which conveys power through a submarine cable across the Taku Inlet to Juneau, Alaska. The average annual generation is expected to be 74,500 megawatt hours. The proposed project facilities would be owned by the applicant.

n. A copy of the application is available for review at the Commission

in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h above.

o. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter December 2002
Notice soliciting final terms and conditions December 2002
Notice of the availability of the draft EA April 2003
Notice of the availability of the final EA June 2003
Ready for Commission's decision on the application September 2003

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27454 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2552–058]

Notice of Scoping Meetings and Site Visit and Solicitation of Scoping Comments

October 23, 2002.

Take notice that the following hydroelectric application has been filed with Commission and are available for public inspection:

a. *Type of Application:* License Surrender for the Fort Halifax Project.

b. *Project No.:* 2552–058.

c. *Date filed:* June 20, 2002.

d. *Applicant:* FPL Energy Maine Hydro LLC (FPL).

e. *Name of Project:* Fort Halifax Project.

f. *Location:* The project is located on the Sebasticook River, in Kennebec County, Maine.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a) 825(r) 799 and 801.

h. *Applicant Contact:* F. Allen Wiley, FPL Energy Maine Hydro LLC, 160 Capitol Street, Augusta, ME 04330, (207) 623–8413.

i. *FERC Contact:* Any questions on this notice should be addressed to either Mrs. Jean Potvin at (202) 502–8928, or e-mail address: *jean.potvin@ferc.gov* or Mr. Robert Fletcher at (202) 502–8901, or e-mail address: *robert.fletcher@ferc.gov.*

j. *Deadline for filing scoping comments:* November 15, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2552–058) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. *Description of the Project:* FPL proposes to surrender the license for the Fort Halifax Project. As part of its request, FPL proposes to remove a 72-foot section of the spillway to provide permanent fish passage. The remainder of the dam will remain intact. The partial removal of the dam will result in a lowering of the Fort Halifax impoundment directly upstream of the dam by as much as 25 feet. The partial dam removal will make an additional 5.2 miles of riverine habitat available to anadromous fish using the Kennebec River drainage system.

l. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–502–8222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

m. *Scoping Process:* The Commission intends to prepare an Environmental assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action. As a result of the Commissions July 7, 2002 public notice requesting comments on the application, numerous filings were made raising a variety of issues related to the project. Commission staff will conduct a scoping meeting to receive additional information on the issues raised these filings.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA.

The times and locations of these meetings are as follows:

Agency Scoping Meeting

Date: Thursday, November 7, 2002.
Time: 10 am to 12 noon.
Place: Elks 905 Banquet & Conference Center.
Address: 76 Industrial Park Road, Waterville, ME.

Public Scoping Meeting

Date: Thursday, November 7, 2002.
Time: 7 pm to 9 pm.
Place: Same location as for the Agency Meeting.
Address: Same address as for the Agency Meeting.

Site Visit

The Applicant and FERC staff will conduct a site visit of the project on November 6, 2002, between 1:30 pm and 3:30 pm. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at the project for a short overview of the hydro operations. Participants in the site visit will need to provide their own transportation. All participants are responsible for their own transportation to the site.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA based on comments received to date; (2) solicit from the meeting participants additional information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27457 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2146–090,82–019, and 618–104—Alabama Coosa River Project, Mitchell Project, and Jordan Project]

Alabama Power Company; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

October 22, 2002.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Alabama and Georgia State Historic Preservation Officer (hereinafter, SHPOs) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing Section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. Section 470 f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project Nos. 2146, 82, and 618.

The programmatic agreement, when executed by the Commission, the SHPOs, and the Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the licenses until the licenses expire or are terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to Section 106 for the above projects would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Orders issuing licenses.

Alabama Power Company, as licensee for Project Nos. 2146, 82, and 618, and the Mississippi Band of Choctaw Indians, Jena Band of Choctaw Indians, Chickasaw Nation, Poarch Band of Creek Indians, and the U.S. Bureau of Indian Affairs have expressed an interest in this preceding and are invited to participate in consultations to develop the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned projects as follows:

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.
Amanda McBride or Representative, Alabama Historical Commission, 468 South Perry Street, Montgomery, Alabama 36130–0900.
David Crass or Representative, Georgia Historic Preservation Division, 156 Trinity Avenue S.W., Suite 101, Atlanta, GA 30303–1040.
Christine Norris, Tribal Historic Preservation Officer, Jena Band of Choctaw Indians, P.O. Box 14, Jena, LA 71342.
William Day, Tribal Historic Preservation Officer, Poarch Band of Creek Indians, 128 Olive St., Pineville, LA 71360.
Rena Duncan, Tribal Historic Preservation Officer, Chickasaw Nation, P.O. Box 1548, Ada, OK 74820.
Ken Carleton, Tribal Historic Preservation Officer, Mississippi Band of Choctaw Indians, P.O. Box 6257, Choctaw, MS 39350.
Dr. James Kardatzke, Bureau of Indian Affairs, Eastern Region Office, 711 Stewarts Ferry Pike, Nashville, TN 37214.
Kelly Schaeffer, 6225 Brandon Avenue, Suite 110, Springfield, VA 22150.
Barry Lovett or Representative, Alabama Power Company, P.O. Box 2641, Birmingham, AL 35291.
John Harrington, Esq., Office of Solicitor, Southeast Regional Office, 75 Spring St., S.W., Suite 304, Atlanta, GA 30303.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about Historic Properties, including Traditional Cultural Properties. If Historic Properties are to be identified within the motion, please use a separate page, and label it NON-PUBLIC Information.

An original and 8 copies of any such motion must be filed with Magalie R. Salas, the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15 day period.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27455 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR Section 385.2010.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2165–015—Alabama Black Warrior River Project]

Alabama Power Company; Notice of Proposed Revised Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

October 22, 2002.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or

[1] 18 CFR Section 385.2010.

issue in the proceeding for which the list is established.

The Commission staff is consulting with the Alabama State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing Section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. Section 470 f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project No. 2165–015.

The programmatic agreement, when executed by the Commission, the SHPO, and the Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to Section 106 for the Black Warrior River Project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a license.

Alabama Power Company, as licensee for Project No. 2165, and the Mississippi Band of Choctaw Indians, Jena Band of Choctaw Indians, Chickasaw Nation, Poarch Band of Creek Indians, U. S. Forest Service, U.S. Army Corp of Engineers, and the U.S. Bureau of Indian Affairs have expressed an interest in this preceding and are invited to participate in consultations to develop the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned project as follows:

Dr. Laura Henley Dean, Advisory Council on Historic Preservation The Old Post Office, Building, Suite 803, 1100 Pennsylvania Avenue, NW, Washington, DC 20004.

Amanda McBride or Representative, Alabama Historical Commission, 468 South Perry Street, Montgomery, Alabama 36130–0900.

Christine Norris, Tribal Historic Preservation Officer, Jena Band of Choctaw Indians, P.O. Box 14, Jena, LA 71342.

William Day, Tribal Historic Preservation Officer, Poarch Band of Creek Indians, 128 Olive St., Pineville, LA 71360.

Rena Duncan, Tribal Historic Preservation Officer, Chickasaw Nation, P.O. Box 1548, Ada, OK 74820.

Ken Carleton, Tribal Historic Preservation Officer, Mississippi Band of Choctaw Indians, P.O. Box 6257, Choctaw, MS 39350.

Dr. James Kardatzke, Bureau of Indian Affairs, Eastern Region Office, 711 Stewarts Ferry Pike, Nashville, TN 37214.

Elrand Denson or Representative, United States Forest Service, 2946 Chestnut St., Montgomery, AL 36107–3010.

Michael Eubanks, United States Army Corp of Engineers, 109 Saint Joseph St., Mobile, AL 36628.

Charles Gault, Esq., Office of Solicitor, 530 Gay St., Room 308, Knoxville, TN 37918.

Kelly Schaeffer, 6225 Brandon Avenue, Suite 110, Springfield, VA 22150.

Barry Lovett or Representative, Alabama Power Company, P.O. Box 2641, Birmingham, AL 35291.

We propose to remove the following person from the restricted service list for the aforementioned project because his interests will be taken into account through the Forest Service: Robert Pasquill, United States Forest Service, 2946 Chestnut St., Montgomery, AL 36107–3010.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about Historic Properties, including Traditional Cultural Properties. If Historic Properties are to be identified within the motion, please use a separate page, and label it NON–PUBLIC Information.

An original and 8 copies of any such motion must be filed with Magalie Salas, the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15 day period.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27456 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12125–001]

Quantum Energy Solutions; Notice of Surrender of Preliminary Permit

October 22, 2002.

Take notice that Quantum Energy Solutions, permittee for the proposed Grays Harbor Project, has requested that its preliminary permit be terminated. The permit was issued on March 13, 2002, and would have expired on February 28, 2005. The project would have been located on the Pacific Ocean and Grays Harbor in Grays County, Washington.

The permittee filed the request on August 28, 2002, and the preliminary permit for Project No. 12125 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27452 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12126–001]

Quantum Energy Solutions; Notice of Surrender of Preliminary Permit

October 22, 2002.

Take notice that Quantum Energy Solutions, permittee for the proposed Newport, Oregon Jetty Project, has requested that its preliminary permit be terminated. The permit was issued on March 13, 2002, and would have expired on February 28, 2005. The project would have been located on the Pacific Ocean and Yaquina River in Lincoln County, Washington.

The permittee filed the request on August 28, 2002, and the preliminary permit for Project No. 12126 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27453 Filed 10–28–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–8–000]

Revised Public Utility Filing Requirements; Notice

October 21, 2002.

1. In Order Issuing Instruction Manual for Public Utilities to Use to File Their Electric Quarterly Reports, issued on May 29, 2002, the Commission defined the specific filing instructions for complying with Order 2001, Revised Public Utility Filing Requirements, (67 FR 31043, FERC Stats. & Regs. ¶ 31,127, April 25, 2002). This notice is to provide guidance to aid public utilities preparing their Electric Quarterly Report filings and to clarify previous instructions.

2. This guidance is divided into four parts: general information, filer information, contract information, and transaction information. In this document, "Filer, Contract, and Transaction Templates" refer to the three sheets of the Excel format (or the three sections of the CSV format) detailing the proper file structure of the Electric Quarterly Report. These are posted on FERC's web site at *http://www.ferc.gov/electric/electric.htm*. Filers are encouraged to read this guidance to ensure that they fill out their Electric Quarterly Reports correctly.

General Information

3. Every utility with a tariff on file with the Commission pursuant to Part 35 of the Commission's regulations must file the Electric Quarterly Report, even if there are no contracts under any of a utility's tariffs or rate schedules, or no sales were made during the quarter. Respondents without sales should leave the transaction template blank.

4. Utilities must inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. A newly authorized power marketer may elect to report such changes in conjunction with its updated market analysis or in a separate report filed under the docket number in which it received market-based rate authority. Such designations were previously filed with the first Power Marketer Quarterly Report.

For the October 31, 2002 Filing:

5. When filling out the description information in the E-filing web page, list every regulated utility by name that is included in the filing as a seller. (In other words, if a parent company is filing for several subsidiaries, each of which has tariffs on file, each subsidiary should be listed separately in the description.) This will aid searches in FERRIS for the desired filing.

6. If the EQR filing is over 10 Mb, break it up as described in the Commission's July 1, 2002 order.[1] If multiple files are necessary, in addition to using the file naming convention described in the July order, please identify which file is being attached (i.e., Volume 1, Volume 2, etc.) in the description field on the e-filing page. There is no need to repeat the Filer or Contract Template data on each file.

7. If the filing is 10 Mb. or less, please submit all of the data in one file rather than making multiple smaller filings.

Filer Information

8. In most cases, the agent, respondent, and seller will be the same. Each should be identified. Contact information is required for at least the respondent.

a. The agent is the party that physically makes the filing.

b. The respondent is the company taking responsibility for making the filing. In many cases, the filing is on behalf of a single seller, and the respondent and seller are the same. Other possibilities include a parent company making the filing for subsidiary companies listed as sellers, a service company making a filing on behalf of affiliated sellers, or an RTO/ISO making a filing on behalf of its member utilities.

c. Sellers are public utilities that have tariffs and/or rate schedules on file at FERC.

Contract Information

9. Seller company name must be spelled exactly as listed on the Filer Template.

10. Customer DUNS number is a required field, as stated in the final rule. Filings that are missing DUNS numbers are incomplete.

11. FERC tariff reference should list the tariff and/or rate schedule approved by the Commission. For independent power marketers, this is likely "Rate Schedule No. 1," the rate schedule authorizing sales at market based rates. Examples of other appropriate entries are listed on the example templates on the FERC's web site at *http://www.ferc.gov/electric/EQR-Excel-Example.xls*.

12. Contract Service Agreement ID is a unique (company) name given to each service agreement. It may be the number assigned by FERC for those service agreements that have been filed and approved by the Commission, or it can be an internal numbering system. The filer must be able to readily identify and produce a contract based on the Contract Service Agreement ID.

13. The first twelve fields on the Contract Template apply to the entire contract/service agreement. The last twenty fields in the template apply to each contract product. If a contract includes multiple products, each has to be listed separately.

14. Dates: There are six date fields in the contract template. The first four are related to the contract itself, and the last two address the contract products. These are:

a. Contract Execution Date is the date the contract was signed. If the parties signed on different dates, or there are different contract amendments, use the latest date signed as the contract execution date.

b. Contract Commencement Date is the first date the contract was effective—frequently the first date of service under a contract.

c. Contract Termination Date is the date specified (if any) in the contract that the contract will expire of its own terms.

d. Actual Termination Date is the date the contract actually terminates. This could be the contract termination date, or any other date the parties agree to. This field will only be filled out after the contract has been terminated.

e. Begin and End Dates apply to contract products, rather than the whole contract, and are to be used when there are multiple time frames addressed in the contract. If all products listed in the contract begin and end on the same dates as the contract does, there is no need to list dates in these Begin and End Date fields. Therefore, in most cases, these fields will be left blank. An example of when and how these fields should be used is this: in a five-year power sales contract with a different quantity and price specified for each

[1] Order Denying Requests for Rehearing, Requests for Stay and Request for Extension, and Providing Clarification, 100 FERC ¶ 61, 074 (2002).

year, the product (power) would be listed on five lines. Each listing would have a unique begin and end date and the price assigned for each year would be listed on the appropriate line. Another example is a transmission contract with several ancillary services. The transmission service and each of the ancillary services could have different begin and end dates.

15. At least one of the four rate fields (rate, rate minimum, rate maximum, rate description) must be filled out. For example, most market-based rates should state "Market-Based Rate" in the Rate Description Field. If the service does not have a rate, NA should be entered in the rate description field.

16. Other mandatory fields include: Customer name, Contract Affiliate, FERC Tariff Reference, Contract Service Agreement ID, Contract Execution Date and/or Contract Commencement Date.

Transaction Information

17. Transaction data should be filed for all power sales pursuant to Part 35 tariffs on file with the Commission. This includes cost-based and market-based rate sales.

18. Seller company name must be exactly as listed on the Filer and Contract templates.

19. Customer information must be exactly as listed on the Contract template.

20. FERC Tariff Reference and Contract Service Agreement ID must be exactly as listed in the Contract Template.

21. The system will allow negative numbers in the price and charge fields.

22. Whether and how certain types of transactions should be reported are set forth below:

23. "Tolling" and barter transactions: Tolling transactions are energy conversion services (i.e., converting gas/oil/coal into MW). Some contracts provide for barter payments (a portion of the fuel or output). These are reportable as a sale of electricity under a utility's MBR tariff. Barter transactions should be converted to a monetary basis in the same manner used by the utility in its SEC and IRS filings, and reported on the Electric Quarterly Report.

24. Bundled service:

a. If power is sold at a "delivered price" at a specified point (and transmission and ancillary services are not separately delineated), only the delivered price should be reported on the Electric Quarterly Report as the price of power.

b. If the power is purchased at one location and, as part of the sale, it is transmitted to another location, the transmission and any other related charges should be reported separately for market-based prices. For grandfathered cost-based rates bundled with transmission, a product name will be added ("grandfathered bundled") that identifies the transaction as a grandfathered rate. Grandfathered services are those that provided for bundled transmission, ancillary and energy prior to the effectiveness of Order No. 888's OATTs. For Grandfathered transactions, report the Commission-approved bundled rate without separating the rate into transmission and energy components.

c. The Electric Quarterly Report has a column for the transmission component of energy sales. However, many different services in addition to transmission are associated with energy sales (ancillary services most common). The Commission needs to understand the derivation of the total commodity price. To the extent that there are services delineated in the contract that are part of the total sale, they should be listed on separate lines and priced separately (other than the exception detailed above for Grandfathered rates).

25. Rate design: Many services do not have one-part commodity rates/prices for energy sales. Utilities should use different lines for listing the different components of the rate/price (such as reservation fee, commodity price, etc.) in the Contract and Transaction Templates.

26. Capacity, RMR, and stand-by service should be reported with the commodity sales if they are in the market-based rate contract. The transactions, including these charges, should be sufficiently detailed to explain the derivation of the price.

27. "Border Agreement" energy sales, exchanges as part of a Rate Schedule, emergency sales or other sales/exchanges under an Interconnection Agreement, line loss adjustments, and ISO day-ahead trades are reportable, just as any other trade or sale is.

28. In general, QF energy transactions are not reportable, as they have "exempt" status. However, some utilities with a QF exemption have a Part 35 tariff on file with the Commission, in which case transactions under that tariff are reportable.

29. Marketing fees (the fee a marketer charges the utility with a tariff for marketing the energy) should not be included in the Electric Quarterly Report if they are included in the price of the energy. However, if the marketing fee is assessed separately to the buyer in addition to the price of the energy, the fee should be broken out and shown on a separate line.

30. Options that go to delivery should be reported at the strike price. Revenue from the sale of the option should not be reported.

Revisions to Electric Quarterly Reports

31. A utility must file a revised Electric Quarterly Report if more complete information is obtained or errors are found in a utility's Electric Quarterly Report. Some structured markets do not give prices/revenues to sellers until after 30 or more days, so the pricing data will not be available by the report date. Utilities should enter the transaction quantities and nothing for the unknown prices, and file revised reports when the information becomes available.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02-27458 Filed 10-28-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Western Area Power Administration

Collections From Central Valley Project Power Contractors To Carry Out the Restoration, Improvement, and Acquisition of Environmental Habitat Provisions of the Central Valley Project Improvement Act of 1992

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed procedures.

SUMMARY: The Western Area Power Administration (Western) is proposing revised procedures for the assessment and collection of restoration fund payments from the Central Valley Project (CVP) Power Contractors as required by the Central Valley Project Improvement Act of 1992 (CVPIA). These proposed procedures take a different approach toward assessing Power Contractors' collections that more closely reflects Western's 2004 Power Marketing Plan. Existing procedures are linked to an older and soon to be obsolete Power Marketing Plan. The existing procedures became effective on September 3, 1998, and will remain in effect until superseded by this process.

DATES: The consultation and comment period will begin on the date of publication of this **Federal Register** notice and will end December 30, 2002. Western will present a detailed explanation of the proposed procedures at a public information forum on November 20, 2002, at 10 a.m., PST. It will receive oral and written comments at a public comment forum beginning at 1 p.m., PST, on this same date. Western must receive all comments by the end of the comment period to ensure they are considered.

ADDRESSES: Western will hold the public information and comment forums at the Sierra Nevada Region Office, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630-4710. Send comments to: Mr. Thomas R. Boyko, Power Marketing Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630-4710, e-mail *boyko@wapa.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Melinda C. Grow, Public Utilities Specialist, Rates Division, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630-4710, telephone (916) 353-4443, e-mail *grow@wapa.gov*.

SUPPLEMENTARY INFORMATION: Section 3407 of the CVPIA (Pub. L. 102-575, Stat. 4706, 4726) establishes in the Treasury of the United States the CVP Restoration Fund (Restoration Fund) to carry out the habitat restoration, improvement, and acquisition provisions of the CVPIA. The CVPIA further requires the Secretary of the Interior to assess and collect annual mitigation and restoration payments from CVP Water and Power Contractors (Restoration Payments). The Secretary of the Interior, through the Bureau of Reclamation (Reclamation), is responsible for determining and collecting the CVP Water and Power Contractors' share of the annual Total Power Restoration Fund Payment Obligation.

Because Western markets and transmits CVP power and maintains all CVP power contracts, Western agreed to administer the assessment and collection of the Restoration Payments from CVP Power Contractors. Western executed a letter of agreement with Reclamation to establish procedures for depositing collections from CVP Power Contractors into the Restoration Fund.

Through an open and public process, the existing procedures became effective on September 3, 1998, and remain in effect until superseded (63 FR 41561, August 4, 1998). Western indicated that it would review the procedures associated with the assessment and collection of the Restoration Payments from CVP Power Contractors every 5 years or if one of the following occurs: (1) If there is a significant change to or suspension of the legislation; (2) if a material issue arises; (3) if an apparent inequity in the procedures is discovered; or (4) if any significant change occurs that affects the procedures.

Western published a new Marketing Plan (2004 Power Marketing Plan) in the **Federal Register** on June 25, 1999, that specifies the terms and conditions under which Western will market power from CVP and the Washoe Project beginning January 1, 2005 (64 FR 34417). Since the current methodology for the assessment and collection of Restoration Fund payments from the CVP Power Contractors is tied to the 1994 Marketing Plan (57 FR 45782, October 5, 1992) and long-term firm CVP power contracts will expire on December 31, 2004, it is necessary to change the assessment and collection of Restoration Payments from CVP Power Contractors.

Western will prorate and assess to CVP Power Contractors the annual Power Restoration Payment Obligation (PRPO), as determined by Reclamation. Western will issue each CVP Power Contractor a monthly Restoration Fund Bill reflecting its share of the PRPO. The CVP Power Contractors will pay that amount to Western. Western will transfer all amounts collected from CVP Power Contractors to Reclamation for deposit into the Restoration Fund.

The following table provides a summary comparison of the existing procedures and proposed procedures.

TABLE 1.—HIGHLIGHTS OF CHANGES FOR ASSESSING THE ANNUAL PRPO TO CVP POWER CONTRACTORS

Methodology element	Existing procedures	Proposed procedures
Effective Date	September 3, 1998	January 1, 2005.
Assessment of Prorated Charges	Based on actual capacity and energy amounts delivered by or scheduled by Western.	Based on assigned Base Resource Percentage as articulated in the 2004 Power Marketing Plan.
Method of Calculation	Capacity and energy multipliers multiplied by actual capacity and energy amounts. The multipliers are calculated using prior year power sales to recover the PRPO.	Each Power Contractor's Base Resource Percentage is multiplied by the PRPO to determine their annual PRPO obligation.
Assessment Year	June 1 through May 31	None.
Billing Year	September through August	No change.
Exclusion of First Preference Customers	Three First Preference Customers	All First Preference Customers.
Annual Reconciliation	None required	Required due to Exchange Program and posted on Power Contractor's August bill.

Acronyms and Definitions

As used throughout the remainder of this notice, the following acronyms and definitions when used with initial capitalization, whether singular or plural, will have the following meanings:

2004 Power Marketing Plan: The final marketing program for the Sierra Nevada Region power after 2004 established through a public process and published in the June 25, 1999, **Federal Register** (64 FR 34417).

Administrator: The Administrator of the Western Area Power Administration.

Assessment Month: The service month, which is 3 months prior to the Billing Month. This term is used in the August 4, 1998, **Federal Register** (63 FR 41561) procedures and will become obsolete assuming this proposed procedure is finalized and approved.

Assessment Year: The period that uses the service months from June 1 through May 31 for billing CVP Power Contractors for Restoration Payments.

Base Resource: CVP and Washoe Project power output and existing power purchase contracts extending beyond 2004, determined by Western to be available for marketing, after meeting the requirements of Project Use and First Preference Customers, and any adjustments for maintenance, reserves,

transformation losses, and certain ancillary services.

Billing Month: The month CVP Power Contractors will be billed for the Restoration Payments.

Billing Year: The period, September through August, that represents the annual Restoration Fund billing cycle.

Central Valley Project (CVP): The multipurpose Federal water and power project extending from the Cascade Range in northern California to the plains along the Kern River south of the city of Bakersfield.

CVP Improvement Act of 1992 (CVPIA): Title 34 of Public Law 102–575, 106 Stat. 4706, *et seq.* A legislative act, enacted on October 30, 1992, that defines provisions for habitat restoration, improvement and acquisition, and other fish and wildlife restoration activities in the CVP area of California.

DOE: United States Department of Energy.

Exchange Program: Established in the **Federal Register** for the 2004 Power Marketing Plan and intended to allow customers to fully and efficiently use their power allocations.

First Preference Customer: A customer wholly located in Trinity, Calaveras, or Tuolumne counties, California, as specified under the Trinity River Division Act (69 Stat. 719) and the New Melones provisions of the Flood Control Act of 1962 (76 Stat. 1173, 1191–1192).

Fiscal Year (FY): The year which begins October 1 and ends September 30.

Interior: United States Department of the Interior.

kW: Kilowatt, the electrical unit of capacity that equals 1,000 watts.

kWh: Kilowatthour, the electrical unit of energy that equals the generation of 1,000 watts over 1 hour.

Letter of Agreement: Letter of Agreement No. 93-SAO–10156, a written agreement between Reclamation and Western that establishes procedures to deposit the Restoration Payments collected from CVP Power Contractors into the Restoration Fund.

Midyear Adjustment: The adjustment to the annual PRPO as determined by Reclamation on or about April 1 of each year.

Power: Capacity and energy.

Power Contractor: An entity purchasing power from Western for a period in excess of 1 year.

Power Restoration Payment Obligation (PRPO): The portion of the Total Restoration Payment Obligation calculated and assigned annually to CVP Power Contractors by Reclamation.

Project Use: The power used to operate CVP or Washoe Project facilities in accordance with authorized purposes and pursuant to Reclamation law.

Reclamation: United States Department of Interior, Bureau of Reclamation.

Restoration Fund: The CVP Restoration Fund, established by Section 3407 of the CVPIA, into which revenues provided by the CVPIA are deposited, and from which funds are appropriated by the Secretary to carry out the habitat restoration, improvement, and acquisition provisions of the CVPIA.

Restoration Fund Bill(s): The instrument prepared and issued monthly as a mechanism for collecting the Restoration Payments from CVP Power Contractors.

Restoration Payment(s): The amount(s) recorded as payable on CVP Power Contractors' Restoration Fund Bills.

Secretary: Secretary of DOE.

Total Power Restoration Fund Payment Obligation: The total amount of payments collected from the CVP Water and Power Contractors calculated annually by Reclamation.

Washoe Project: The Federal water project located in the Lahontan Basin in west-central Nevada and east-central California, as described in Western's final 2004 Power Marketing Plan for the Sierra Nevada Region.

Western: United States Department of Energy, Western Area Power Administration.

Proposed Procedures

Determination of the Total Power Restoration Fund Payment Obligation

Reclamation is responsible for assigning the PRPO for the CVP Power Contractors. On or about July 1 of each year, Reclamation will provide a letter to Western's Regional Manager of the Sierra Nevada Region with the determined PRPO amount and a detailed explanation of the computation for the upcoming FY. Upon receiving the letter from Reclamation, Western will notify each CVP Power Contractor of the Total Power Restoration Fund Payment Obligation and the monthly amounts to be collected from CVP Power Contractors.

Allocating the Power Restoration Payment Obligation (PRPO)

Western will allocate the PRPO among CVP Power Contractors each FY. After notification by Reclamation, Western will calculate the annual obligation for each CVP Power Contractor. Western will base its calculation on the assigned Base Resource percentage for each CVP Power Contractor as detailed in the 2004 Power Marketing Plan. This annual obligation will be divided by the number of months in the FY; *i.e.*, twelve, or in the case of FY 2005, the number of months remaining in the FY; *i.e.*, nine, to determine the monthly obligation.

Since the 2004 Power Marketing Plan does not begin until January 1, 2005, and Restoration Fund collections for FY 2005 (October 1, 2004, through September 30, 2005) begin prior to this, FY 2005 will be a transition year for Restoration Fund collections from Power Contractors.

Western will base Restoration Fund collections from Power Contractors for October through December 2004 upon the existing collection methodology articulated in the August 4, 1998, **Federal Register**. Western intends to begin collection under these new proposed procedures beginning with January 2005 collections. As a point of clarification, Western will bill the Power Contractors for the October 2004 collection in their September 2004 bills based upon energy and capacity amounts for their June 2004 service month. A similar process will continue through the December 2004 collection.

In December 2004, Western will total the Restoration Fund collections made by the Power Contractors from October and November 2004, and the amounts payable for December 2004, and subtract this amount from the annual PRPO to calculate the balance to collect for the remaining 9 months (January through September) of the FY. Western will multiply this total by each Power Contractor's Base Resource percentage. This amount will then be divided by nine to determine each Power Contractor's monthly obligation.

Year-End Reconciliation Process

Implementation of the Exchange Program may result in some Power Contractors receiving small amounts of energy in excess of their Base Resource in some months. Although recipients of this exchange energy will pay for this power, Restoration Fund obligations are based on the Power Contractors' percentage of the Base Resource excluding exchange energy. Alternatively, some Power Contractors that are not able to use all of their Base Resource and return it as exchange energy could be overpaying their Restoration Fund obligations since their actual power usage might be less than their Base Resource percentage.

In an effort to rectify underpayment made by recipients of exchange energy and overpayments by other Power Contractors, Western will conduct a reconciliation process, otherwise known as an annual true up, before preparing August Restoration Fund Bills. This reconciliation will require Western to identify energy amounts exchanged among individual Power Contractors on a monthly basis through July. This information will provide the basis for determining the amount of energy exchanged during the billing year.

Western will add an additional charge or a balloon payment to the August Restoration Fund Bills for each Power Contractor who received exchange energy during the past year. Conversely, Western will also post an offsetting credit for those Power Contractors that provided exchange energy on their August bill.

Exclusion of First Preference Customers From the Power Restoration Payment Obligation

Western has discretion how the PRPO is assessed to CVP Power Contractors. As a consequence, Western previously reviewed the CVPIA regarding the assessment of the Restoration Fund's costs, and similar costs under other related legislation affecting CVP Power Contractors. Western also reviewed Trinity County's contribution toward the restoration programs compared to contributions made by other CVP Power Contractors. Western concluded from this review that Trinity County may, at times, pay a greater share of the costs toward the restoration programs. As a means of mitigating the effects of these restoration programs on Trinity County, coupled with the socioeconomic effects the construction of the Trinity Dam has had on the community, Western intends to exclude Trinity County indefinitely from the PRPO.

Similar consideration was given to the remaining three First Preference Customers: Tuolumne Public Power Agency (TPPA), Calaveras Public Power Agency (CPPA), and Sierra Conservation Center (SCC). Construction of the New Melones Dam on the Stanislaus River has contributed to improved fishery habitat and water quality in the Stanislaus and San Joaquin rivers, as well as the South Delta. Given these circumstances, Western intends to exclude TPPA, CPPA, and SCC indefinitely from the PRPO.

Collection of CVP Power Contractors Restoration Fund Payment

Each CVP Power Contractor will receive a Restoration Fund Bill each month on or about the twenty-fifth (25th), but no later than the last day of the month. The Restoration Fund billing cycle for each FY will begin within 30 days following August 1 or the date

written notification of the annual PRPO is received from Reclamation, whichever occurs later.

Payment Due Date

All CVP Power Contractors' Restoration Payments are due and payable before the close of business on the twentieth (20th) calendar day each Restoration Fund Bill is issued or the next business day thereafter if said day is a Saturday, Sunday, or Federal holiday.

Late Payment Charges Assessed to Delinquent Restoration Payments

Western will add a late payment charge of five hundredths percent (0.05%) of the principal amount unpaid for each day the Restoration Fund Bill payment is delinquent. Western will apply any payments received to the charges for the late payment assessed on the principal first and then to the payment of the principal.

Deposit of CVP Power Contractors' Restoration Payments Into the Restoration Fund

On or about the twenty-seventh (27th) calendar day of the month following each Billing Month, Western will transfer all of the Restoration Payments received, including late payment charges, to Reclamation for deposit into the Restoration Fund. The thirtieth (30th) of September of each FY is the last day Western will transfer Restoration Payments, including late payment charges, to Reclamation for that FY.

Adjustment to the PRPO

Each FY's annual PRPO is subject to a Midyear Adjustment determined by Reclamation. The Midyear Adjustment occurs on or about April 1 of each FY, following Reclamation's annual determination of available CVP water supply for the year. Reclamation notifies Western, in writing, of the Midyear Adjustment. Upon receiving Reclamation's notification, Western will factor the Midyear Adjustment amount into the calculation for the remaining PRPO for the year. Western will then notify each CVP Power Contractor of the Midyear Adjustment to the annual PRPO.

Instruction for Mailing Public Comments

The comment period will begin with the publication of this notice in the **Federal Register** and will end 60 days after publication. Western must receive all comments by the end of the comment period to assure consideration. Written comments can be mailed, faxed, or e-mailed to Mr. Thomas R. Boyko, Power Marketing Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, fax (916) 985–1931, e-mail *boyko@wapa.gov*.

Availability of Information

All studies, comments, letters, memorandums, or other documents made or kept by Western for developing the final procedures, will be made available for inspection and copying at Western's Sierra Nevada Regional Office, located at 114 Parkshore Drive, Folsom, CA 95630–4710.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities. Western has determined that this action relates to rates or services offered by Western and, therefore, is not a rule within the purview of the Act.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500 through 1508); and the Integrated DOE NEPA Implementing Procedures (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866. This notice is not required to be cleared by the Office of Management and Budget.

Dated: October 9, 2002.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 02–27442 Filed 10–28–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7401–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Estuary Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): National Estuary Program, EPA ICR Number 1500.05, OMB Control Number 2040–0138, expiring April 30, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 30, 2002.

ADDRESSES: Comments should be sent to the Coastal Management Branch; Oceans and Coastal Protection Division (4504T); U.S. Environmental Protection Agency; 1200 Pennsylvania Ave., NW., Washington, DC 20460. Interested persons may obtain a copy of the ICR without charge by contacting the person identified below.

FOR FURTHER INFORMATION CONTACT: Darrell Brown at 202/566–1256 (phone); 202/566–1336 (facsimile); *brown.darrell@epa.gov* (e-mail) or Greg Colianni at 202/566–1249 (phone); 202/566–1336 (facsimile); *colianni.gregory@epa.gov* (e-mail).

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities affected by this action are those State or local agencies or nongovernmental organizations that receive grants under section 320 of the Clean Water Act, the National Estuary Program (NEP). EPA provides grants to these entities to support 28 National Estuary Programs around the country and in Puerto Rico. Each entity receiving such a grant must submit an annual workplan that describes the projects and activities to be carried out using the section 320 funds and that documents the source of the 50% non-federal matching funds required by section 320. Every three years each NEP must also submit information about progress being made in implementing its comprehensive conservation and management plan (CCMP). Each entity must also submit annual Government Performance Results Act (GPRA) information.

Title: National Estuary Program (OMB control #2040–0138; ICR #1500.05) expiring April 30, 2003.

Abstract

Annual Workplans

The NEP involves collecting information from the State or local agency or nongovernmental organizations that receive funds under section 320 of the Clean Water Act. The regulation requiring this information is found at 40 CFR part 35. Prospective grant recipients seek funding to develop or oversee and coordinate implementation of CCMPs for estuaries of national significance. In order to receive funds, grantees must submit an annual workplan to EPA. The workplan consists of two parts: (a) Progress on projects funded previously; and (b) new projects proposed with dollar amounts and completion dates. The workplan is reviewed by EPA and also serves as the scope of work for the grant agreement. EPA also uses these workplans to track performance of each of the 28 estuary programs currently in the NEP.

Implementation Reviews

EPA provides funding to NEPs to support long-term implementation of CCMPs if such programs pass an implementation review process. Implementation reviews are used to determine progress each NEP is making in implementing its CCMP and achieving environmental results. In addition to evaluating progress, the results are used to identify areas of weakness each NEP should address for long-term success in protecting and restoring their estuaries. EPA will also compile successful tools and approaches as well as lessons learned from all implementation reviews to transfer to the NEPs and other watershed programs. For this ICR cycle, implementation reviews will be required for 9 programs in FY2004 and 19 programs in FY2005. No implementation reviews will be required in FY2003.

Government Performance Results Act

EPA requests that each of the 28 NEP receiving section 320 funds reports information that can be used in the GPRA reporting process. This reporting is done on an annual basis and is used to show environmental results that are being achieved within the overall NEP Program. This information is ultimately submitted to Congress along with GPRA information from other EPA programs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Request for Comments

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The estimated burden for the 28 NEPs totals about 18,340 hours for the cycle 4/30/2003 to 4/30/2006 or about 6,113 hours/year on average. Total hours are based on the following estimates:

100 hours/annual workplan 28 NEPs = 2,800 hours/year; 3 years = 8,400 hours

250 hours/implementation review 9 NEPs = 2,250 hours/FY2004

250 hours/implementation review 19 NEPs = 4,750 hours/FY2005

35 hours/annual GPRA reporting 28 NEPs= 980 hours/year; 3 years = 2,940 hours

There is no anticipated cost burden for the NEPs to report the requested information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. These burden estimates are for preparation of the annual workplans, implementation review reports, and GPRA reports.

Please send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: October 21, 2002.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. 02–27494 Filed 10–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7401–1]

Agency Information Collection Activities: Continuing Collection; Comment Request; Information Collection Activities Associated With EPA's Energy Star Buildings Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: Information Collection Activities Associated with EPA's ENERGY STAR Buildings Program, EPA ICR Number 1772, OMB Number 2060–0347. OMB approval expires on April 30, 2003. Before submitting the ICR to OMB, EPA is soliciting comments on specific aspects of the information collection activities as described below.

DATES: Comments must be submitted on or before December 30, 2002.

ADDRESSES: Climate Protection Partnerships Division, U.S. EPA (MC–6202J), 1200 Pennsylvania Ave., NW, Washington, DC 20460. ICR may be obtained electronically by contacting Mary Susan Bailey via e-mail at *bailey.marysusan@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Mary Susan Bailey, phone: 202–564–0189, fax: 202–565–2083, *bailey.marysusan@epa.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Information Collection Activities Associated with EPA's ENERGY STAR Buildings Program (OMB Number 2060–0347, EPA ICR Number 1772), expiring on April 30, 2003.

Abstract: ENERGY STAR is a voluntary program aimed at preventing pollution rather than controlling it after its creation. The program focuses on reducing utility-generated emissions by reducing the demand for energy. EPA introduced ENERGY STAR in 1991 by launching the Green Lights program to encourage corporations, state and local governments, colleges and universities, and other organizations to adopt energy efficient lighting as a profitable means of preventing pollution and improving lighting quality. Since then, EPA has expanded ENERGY STAR to encompass organization-wide energy efficiency, such as building technology upgrades (*e.g.*, HVAC systems), product purchasing initiatives, and employee training. At the same time, EPA has streamlined the reporting requirements of ENERGY STAR and focused on providing incentives for improvements (*e.g.*, ENERGY STAR Awards Program). EPA also makes tools and other resources available over the web to help the public overcome the barriers to evaluating their energy efficiency and investing in improvements.

To join ENERGY STAR, organizations are asked to complete a Partnership Letter or Agreement that establishes their commitment to energy efficiency. Partners agree to undertake efforts such as measuring, tracking, and benchmarking their organization's energy performance by using tools such as those offered by ENERGY STAR; developing and implementing a plan to improve energy performance in their facilities and operations by adopting a strategy provided by ENERGY STAR; and educating staff and the public about their partnership with ENERGY STAR, and highlighting achievements with the ENERGY STAR Label, where available.

Partners also may be asked to periodically submit information to EPA as needed to assist in program implementation. For example, EPA compiles the Energy Service and Product Provider Directory to provide the public with easy access to energy efficiency products and services. Businesses wishing to appear in this directory are asked to submit a completed form that details their products and services.

Partnership in ENERGY STAR is voluntary and can be terminated by partners or EPA at any time. EPA does not expect organizations to join the program unless they expect participation to be cost-effective and otherwise beneficial for them.

In addition, partners and any other interested party can help EPA promote energy-efficient technologies by evaluating the efficiency of their buildings by benchmarking individual buildings by using EPA's on-line benchmarking tool, Portfolio Manager, and apply for ENERGY STAR Labels if their performance ranks in top 25 percent. If they can demonstrate that an individual building meets the ENERGY STAR criteria, they will receive an ENERGY STAR plaque that they can display on the building. EPA does not expect that organizations will deem any information collected under ENERGY STAR to be confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public burden for this collection of information will vary depending on the type of participant, the specific collection activity, and other factors. The annual burden for joining ENERGY STAR and conducting related activities is estimated to range from about 2 to 8 hours per respondent. This includes time for preparing and submitting the Partnership Letter or Agreement and other information as requested. The burden for applying for an ENERGY STAR Label is estimated to range from about 5.5 to 10.5 hours per respondent. This includes time for reading the instructions of the benchmarking tool if needed, gathering and entering information on building characteristics and energy use into the tool, printing a score report, and preparing/submitting the ENERGY STAR Label application materials to EPA. The burden for applying for an ENERGY STAR Award is estimated to range from 4 to 26.5 hours per respondent. This includes time for

preparing and submitting the awards application materials to EPA.

The total annual operation and maintenance costs to respondents collectively is estimated to be $1.54 million. This includes the cost to organizations applying for an ENERGY STAR Label to contract a Professional Engineer to conduct a facility inspection and notarize the score report. It also includes postage costs for various submittals from the public to EPA. There is no capital cost to respondents.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Participants in ENERGY STAR.

Estimated Annual Number of Respondents: 5,000.

Frequency of Response: One-time, annually, and/or periodically, depending on type of respondent and collection.

Estimated Total Annual Hour Burden: 83,343 hours.

Estimated Total Annualized Capital, Operation/Maintenance Cost Burden: $1,540,483.

Dated: October 21, 2002.

Kathleen Hogan,

Director, Climate Protection Partnerships Division.

[FR Doc. 02–27497 Filed 10–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7400–2]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement in *Weyerhaeuser Company* v. *Whitman, et al.*, No. 01–1122 (DC Circuit). This case concerns the final rule entitled "National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills," published at 66 FR 3179 on January, 12, 2001.

DATES: Written comments on the proposed settlement agreement must be received by November 29, 2002.

ADDRESSES: Written comments should be sent to Steven Silverman, Air and Radiation Law Office (2366A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A copy of the proposed settlement agreement is available from Phyllis J. Cochran, (202) 564–7606.

SUPPLEMENTARY INFORMATION: EPA has promulgated a number of National Emission Standards for Hazardous Air Pollutants (NESHAP) for the pulp and paper source category. This notice concerns the NESHAP for the chemical recovery combustion processes, whereby spent pulping liquors (so-called black liquor) are thermally regenerated for reuse in the pulping process. *See* 66 FR 3179 (January 12, 2001) (promulgating a new subpart MM to Part 63). The Weyerhaeuser Company filed a timely petition for review of portions of the rule dealing with emission standards for the sulfite process subcategory. *Weyerhaeuser Company* v. *Whitman, et al.*, No. 01–1122 (DC Circuit).

Weyerhaeuser and EPA have now reached initial agreement on a settlement of the case which could lead to the voluntary dismissal of the petition for review. The settlement requires EPA to sign a proposed rule and/or a notice of direct final rulemaking no later than December 1, 2002, incorporating certain amendments, and to take final action concerning these amendments no later than June 1, 2003.

Under the settlement, EPA would propose (or issue a direct final rule subject to withdrawal in the event of significant adverse comment) revised standards applicable to a single sulfite process pulping mill located in Cosmopolis, Washington. This mill contains an apparently unique source involved in black liquor recovery (a so-called hog fuel dryer) which is not regulated under any of the Pulp and Paper NESHAPs, nor under any other NESHAP. The initial settlement would amend the rule to allow this mill to demonstrate compliance by controlling this emission source rather than controlling sources otherwise regulated under the rule. The company has submitted information to EPA (available in the docket to the rule) demonstrating persuasively that the projected level of control would remove more hazardous air pollutants of the same type (*i.e.* metal hazardous air pollutants, for which particulate matter is a surrogate) than would be controlled under the existing rule. The company also believes that it is more economical to control the hog fuel dryer than other emission points regulated under the existing rule. The initial settlement would not otherwise affect any of the standards in the promulgated rule, and would not alter that rule's compliance date (which would remain January 12, 2004).

EPA believes that the compliance alternative contemplated in the initial settlement offers additional compliance flexibility and should result in greater emission control of hazardous air pollutants than the existing rule. The Agency thus believes that this is a reasonable settlement.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement agreement. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

Dated: October 22, 2002.

Richard B. Ossias,

Acting Associate General Counsel, Air and Radiation Law Office.

[FR Doc. 02–27344 Filed 10–28–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7401–2]

Meeting of the National Drinking Water Advisory Council Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Under Section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given of a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. 3300f *et seq.*). The Council will hear presentations and have discussions on topics important to the Environmental Protection Agency's national drinking water program, including, but not limited to: updates on the Ground Water and Radon rules; status reports from the NDWAC's working groups on Affordability and the Contaminant Candidate List; source water protection initiatives; and progress in implementing the Public Health Security and Bioterrorism Preparedness Response Act of 2002.

DATES: The Council meeting will be held on November 20, 2002, from 8:30 a.m. until 5:30 p.m. and November 21, 2002, from 8:30 a.m. until 1:00 p.m., Eastern Standard Time.

ADDRESSES: The meeting will be held at The Westin Philadelphia Hotel located at 99 South 17th Street, Philadelphia, Pennsylvania 19103 and are open to the public.

FOR FURTHER INFORMATION CONTACT: Members of the public that would like to attend the meeting, present an oral statement, or submit a written statement, should contact Brenda Johnson, Designated Federal Officer, National Drinking Water Advisory Council, by phone at 202–564–3791, by e-mail to *johnson.brendap@epa.gov*, or by regular mail to the U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 1200 Pennsylvania Avenue NW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: The Council encourages the public's input and will allocate one hour for this purpose. Oral statements will be limited to five minutes, and it is preferred that only one person present the statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals or organizations interested in presenting an oral statement should notify the Council's Designated Federal Officer by telephone at (202) 564–3791 no later than November 13, 2002. Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Dated: October 23, 2002.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 02–27498 Filed 10–28–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Advisory Committee on HIV and STD Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: CDC Advisory Committee on HIV and STD Prevention.

Times and Dates: 8:30 a.m.–5 p.m., November 14, 2002.

8:30 a.m.–12 p.m., November 15, 2002.

Place: Corporate Square Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

Purpose: This Committee is charged with advising the Secretary and the Director, CDC, regarding objectives, strategies, and priorities for HIV and STD prevention efforts including maintaining surveillance of HIV infection, AIDS, and STDs, the epidemiologic and laboratory study of HIV/AIDS and STDs, information/education and risk reduction activities designed to prevent the spread of HIV and STDs, and other preventive measures that become available.

Matters To Be Discussed: Agenda items include issues pertaining to (1) STD/HIV program integration (2) Global AIDS Activities and (3) syphilis elimination efforts. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Paulette Ford-Knights, Public Health Analyst, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, Mailstop E–07, Atlanta, Georgia 30333. Telephone 404/639–8008, fax 404/639–3125, e-mail *pbf7@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 23, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–27431 Filed 10–28–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interagency Committee on Smoking and Health Meeting: Correction

ACTION: Notice; correction.

Name: Interagency Committee on Smoking and Health.

Date and Time: November 6, 2002, 9 a.m. to 4 p.m.

Correction

In the **Federal Register** of September 5, 2002, Volume 67, Number 172, Notices, Pages 56844–56845, under "PLACE" Should read: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD, 20814, telephone 301/657–1234 or fax 301/657–6453.

Correction

In the **Federal Register** of September 5, 2002, Volume 67, Number 172, Notices, Pages 56844–56845, under "DATE and TIME" Should read: November 6, 2002, 9 a.m. to 4 p.m.

Contact Person for More Information: Ms. Monica L. Swann, Committee Management Specialist, Interagency Committee on Smoking and Health, Office on Smoking and Health, NCCDPHP, CDC, 200 Independence Avenue, SW., Room 317B, Washington, DC, 20201, telephone (202) 205–8500.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 23, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–27432 Filed 10–28–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration).

ACTION: Notice of modified or altered system of records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter an SOR, "Intermediary Medicare Claims Record (IMCR) System," System No. 09–70–0503. We propose to delete published routine uses numbered 1, 3, 4, 5, 6, 7, 9, 12, 14, 16, 17, 18, 21, 23, 24, and an unnumbered routine use authorizing disclosure to the Social Security Administration (SSA). We propose to delete published routine uses number 1 authorizing disclosure to claimants and their authorized representatives, number 3 authorizing disclosure to third party contacts to establish or verify information, number 4 authorizing disclosure to the Treasury Department for investigating alleged theft, number 5 authorizing disclosure to the United States Postal Service (USPS), number 6 authorizing disclosure to the Department of Justice (DOJ) to combat fraud and abuse, number 7 authorizing disclosure to the Railroad Retirement Board (RRB), number 9 authorizing disclosure to State Licensing Boards for review of unethical practices, number 12 authorizing disclosure to state welfare departments, number 14 authorizing disclosure to state audit agencies, number 16 authorizing disclosure to senior citizen volunteers to assist beneficiaries, number 17 authorizing disclosure to a contractor to recover erroneous Medicare payments, number 18 authorizing disclosure to state and other governmental Workers' Compensation Agencies, number 19 authorizing disclosure to insurance companies providing protection to enrollees, number 21 authorizing disclosure to an agency of a state government or established by law, number 22 authorizing disclosure to insurers who are primary payers to Medicare, number 23 authorizing disclosure to the Internal Revenue Service (IRS), number 24 authorizing disclosure to servicing fiscal intermediaries/carriers banks to transfer remittance advice to Medicare, and an unnumbered routine use authorizing disclosure to the SSA.

Disclosures permitted under routine uses number 4, 5, 7, 9, 12, 14, 18, 21, 23, and to the SSA will be made a part of proposed routine use number 2. Proposed routine use number 2 will allow for release of information to "another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent." Disclosures permitted under published routine uses number 1, 3, 16, and 24 will be combined with published routine use number 2, which permits release to "third party contacts," and covered by proposed routine use number 3. Disclosure authorized to "insurance companies providing protection to enrollees" under routine use 19 and to "insurers who are primary payers to Medicare" under routine use number 22 will be combined and listed as proposed routine use number 6. Disclosures permitted under published routine use number 17 will be covered by proposed routine use number 10, which will permit the release of data to contractors and grantees for the purposes of combating fraud and abuse. Disclosures permitted under published routine use number 6 will be covered by proposed routine use number 11, which will permit the release of data to other Federal agencies for the purposes of combating fraud and abuse. We propose to renumber published routine use number 20 as proposed routine use number 1 and modify the language to clarify the circumstances for disclosure to contractors and consultants.

The security classification previously reported as "None" will be modified to reflect that the data in this system is considered to be "Level Three Privacy Act Sensitive." We are modifying the language in the remaining routine uses to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the SOR is to properly pay Medicare insurance benefits to or on behalf of entitled beneficiaries. Information in this system will also be released to: support regulatory and policy functions performed within the Agency or by a contractor or consultant, another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent, third party contacts, providers and suppliers of services dealing through fiscal intermediaries or carriers, Quality Improvement Organizations (QIO), insurance companies and other groups providing protection for their enrollees, insurers and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. § 1395y (b), an individual or organization for research, evaluation, or epidemiological projects, support constituent requests made to a congressional representative, support litigation involving the agency related to this SOR, and combat fraud and abuse in certain Federally-funded health care programs. We have provided background information about the modified system in the "Supplementary Information" section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See "Effective Dates" section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on September 19, 2002. To ensure that all parties have adequate time in which to comment, the modified or altered SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Marianne Faulstich, Director, Division of Intermediary and Fiscal Systems, Business Systems Operating Group, Office of Information Services, CMS, Room N2–09–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–7401.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified SOR

A. Statutory and Regulatory Basis for SOR

In 1988, CMS modified a SOR under the authority of sections 1816, 1862 (b) and 1874 of Title XVIII of the Social Security Act (the Act) (42 United States Code (USC) sections 1395 (h), 1395y (b), and 1395kk). Notice of the modification to this system, "Intermediary Medicare Claims Records, System No. 09–70–0503" was published in the **Federal Register** (FR) 53 FR 52806 (Dec, 29, 1988), an unnumbered routine use was added for the SSA at 61 FR 6645 (Feb. 21, 1996), three new fraud and abuse routine uses were added at 63 FR 38414 (July 16, 1998), and then at 65 FR 50552 (Aug. 18, 2000), two of the fraud and abuse routine uses that were revised and a third deleted.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system contains information on Medicare beneficiaries, on whose behalf providers have submitted claims for reimbursement on a reasonable cost basis under Medicare Part A and B, or are eligible, and/or individuals whose enrollment in an employer group health benefits plan covers the beneficiary. Information contained in this system consist of billing for medical and other health care services, uniform bill for provider services or equivalent data in electronic format, and Medicare secondary payer records containing other third party liability insurance information necessary for appropriate Medicare claims payment and other documents used to support payments to beneficiaries and providers of services. These forms contain the beneficiary's name, sex, health insurance claim number (HIC), address, date of birth, medical record number, prior stay information, provider name and address, physician's name, and/or identification number, warranty information when pacemakers are implanted or explanted, date of admission or discharge, other health insurance, diagnosis, surgical procedures, and a statement of services rendered for related charges and other data needed to substantiate claims.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release IMCR information that can be associated with an individual as provided for under "Section III. Proposed Routine Use Disclosures of Data in the System." Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of IMCR. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.*, to properly pay medical insurance benefits to or on behalf of entitled beneficiaries.

2. Determines:

a. That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. That the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. That there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the IMCR without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this SOR.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

Carriers and intermediaries occasionally work with contractors to identify and recover erroneous Medicare payments for which workers' compensation programs are liable.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require IMCR information for the purposes of determining, evaluating, and/or assessing cost, effectiveness, and/or the quality of health care services provided in the state, to support evaluations and monitoring of Medicare claims information of beneficiaries, including

proper reimbursement for services provided.

Treasury Department may require IMCR data for investigating alleged theft, forgery, or unlawful negotiation of Medicare reimbursement checks.

USPS may require IMCR data for investigating alleged forgery or theft of reimbursement checks.

RRB requires IMCR information to enable them to assist in the implementation and maintenance of the Medicare program.

SSA requires IMCR data to enable them to assist in the implementation and maintenance of the Medicare program.

IRS may require IMCR data for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plan or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y(b).

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with the HHS for administration of state supplementation payments for determinations of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under section 1843 of the Social Security Act (the Act), for quality control studies, for determining eligibility of recipients of assistance under Titles IV and XIX of the Act, and for the complete administration of the Medicaid program. IMCR data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the state or who are residents of that state.

Occasionally state licensing boards require access to the IMCR data for review of unethical practices or non-professional conduct.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require IMCR information for auditing of Medicare eligibility considerations. Disclosure of physicians' customary charge data are made to state audit agencies in order to ascertain the corrections of Title XIX charges and payments. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this SOR.

State and other governmental worker's compensation agencies working with CMS to assure that workers' compensation payments are made where Medicare has erroneously paid and workers' compensation programs are liable.

3. To third party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program; and the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of program activities.

Third parties contacts require IMCR information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual or the representative of the applicant, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

Senior citizen volunteers working in the carriers and intermediaries' offices to assist Medicare beneficiaries' request for assistance may require access to IMCR information.

Occasionally fiscal intermediary/carrier banks, automated clearing houses, value added networks, and provider banks, to the extent necessary transfer to providers electronic remittance advice of Medicare payments, and with respect to provider banks, to the extent necessary to provide account management services to providers using this information.

4. To providers and suppliers of services dealing through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

Providers and suppliers of services require IMCR information in order to establish the validity of evidence, or to verify the accuracy of information presented by the individual as it concerns the individual's entitlement to benefits under the Medicare program, including proper reimbursement for services provided.

Providers and suppliers of services who are attempting to validate items on which the amounts included in the annual Physician/Supplier Payment List, or other similar publications are based.

5. To Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

QIOs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. QIOs will assist the state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for release to CMS.

6. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.*, health maintenance organizations (HMOs) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers, TPAs, HMOs, and HCPPs may require IMCR information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

7. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

IMCR data will provide for research, evaluation, and epidemiological projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

8. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

9. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court, or adjudicatory body involved.

10. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

11. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require IMCR information for the purpose of combating fraud and abuse in such Federally funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information".

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

A. Administrative Safeguards

The IMCR system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act (PRA) of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, "Security of Federal Automated Information Resources." CMS has prepared a comprehensive system security plan as required by the Office of Management and Budget (OMB) Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, "Guide for Developing Security Plans for Information Technology Systems." Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or work station and the system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects; *e.g.*, tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- Quality Control Administrator class has read and write access to key fields in the database;

• Quality Indicator (QI) Report Generator class has read-only access to all fields and tables;

• Policy Research class has query access to tables, but are not allowed to access confidential individual identification information; and

• Submitter class has read and write access to database objects, but no database administration privileges.

B. *Physical Safeguards:* All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the IMCR system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

• User Log-ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.

• Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.

• Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the Agency level.

• Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.

• Warnings—Legal notices and security warnings display on all servers and workstations.

• Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified SOR on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. We will only disclose the minimum personal data necessary to achieve the purpose of IMCR. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a higher level of security clearance for the information maintained in this system in an effort to provide added security and protection of data in this system.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: September 19, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

09–70–0503

SYSTEM NAME:

Intermediary Medicare Claims Records (IMCR) System, HHS/CMS/OIS.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at CMS Regional Offices, CMS Intermediaries, Social Security Field Offices, and at locations listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information on Medicare beneficiaries, on whose behalf providers have submitted claims for reimbursement on a reasonable cost basis under Medicare Part A and B, or are eligible, and/or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in this system consist of billing for medical and other health care services, uniform bill for provider services or equivalent data in an electronic format, and Medicare secondary payer records containing other third party liability insurance information necessary for appropriate Medicare claims payment and other documents used to support payments to beneficiaries and providers of services. These forms contain the beneficiary's name, sex, health insurance claim number (HIC), address, date of birth, medical record number, prior stay information, provider name and address, physician's name, and/or identification number, warranty information when pacemakers are implanted or explanted, date of admission or discharge, other health insurance, diagnosis, surgical procedures, and a statement of services rendered for related charges and other data needed to substantiate claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the maintenance of this SOR is given under the authority of sections 1816, 1862 (b) and 1874 of Title XVIII of the Social Security Act (42 United States Code (USC) sections 1395(h), 1395y (b), and 1395kk).

PURPOSE(S):

The primary purpose of the SOR is to properly pay Medicare insurance benefits to or on behalf of entitled beneficiaries. Information in this system will also be released to: support regulatory and policy functions performed within the Agency or by a contractor or consultant, another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent, third party contacts, providers and suppliers of services dealing through fiscal intermediaries or carriers, Quality Improvement Organizations (QIO), insurance companies and other groups providing protection for their enrollees, insurers and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. 1395y (b), an individual or organization for research, evaluation, or epidemiological projects, support constituent requests made to a congressional representative, support litigation involving the Agency related to this SOR, and combat fraud and abuse in certain Federally-funded health care programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the IMCR without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected.

This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). We propose to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3.To third party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program; and the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of program activities.

4. To providers and suppliers of services dealing through fiscal intermediaries or carriers for the administration of Title XVIII of the Social Security Act.

5. To Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

6. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.*, health maintenance organizations (HMOs) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

7. To an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

8. To a Member of Congress or congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

9. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

10. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee

of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

11. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by the beneficiary's name, HICN, and assigned unique physician identification number.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the IMCR system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, *e.g.*, security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Records are closed at the end of the calendar year in which paid, held 2 additional years, transferred to Federal Records Center and destroyed after another 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Intermediary and Fiscal Systems, Business Systems Operations Group, Office of Information Services, CMS, 7500 Security Boulevard, Room N2–09–27, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, inquiries should be addressed to the social security office nearest the requester's residence, the appropriate intermediary, the CMS regional office, or write to the system manager listed above. The entity contacted will require the system name, HIC, address, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 Code of Federal Regulations (CFR) 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system is obtained by the provider from the individual or, in the case of some Medicare secondary payer situations, through third party contacts. The medical information is provided by the providers of medical services.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A. Health Insurance Claims

Medicare records are maintained at the CMS Central Office (see section 1 below for the address). Health Insurance Records of the Medicare program can also be accessed through a representative of the CMS Regional Office (see section 2 below for addresses). Medicare claims records are also maintained by private insurance organizations who share in administering provisions of the health insurance programs. These private insurance organizations, referred to as carriers and intermediaries, are under contract to the Health Care Financing Administration and the Social Security Administration to perform specific tasks in the Medicare program (see section three below for addresses for intermediaries, section four addresses the carriers, and section five addresses the Payment Safeguard Contractors.

I. Central Office Address

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

II. CMS Regional Offices

Boston Region—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. John F. Kennedy Federal Building, Room 1211, Boston, Massachusetts 02203. Office Hours: 8:30 a.m.–5 p.m.

New York Region—New Jersey, New York, Puerto Rico, Virgin Islands. 26 Federal Plaza, Room 715, New York, New York 10007. Office Hours: 8:30 a.m.–5 p.m.

Philadelphia Region—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia. Post Office Box 8460, Philadelphia, Pennsylvania 19101. Office Hours: 8:30 a.m.–5 p.m.

Atlanta Region—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee. 101 Marietta Street, Suite 702, Atlanta, Georgia 30223. Office Hours: 8:30 a.m.–4:30 p.m.

Chicago Region—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin. Suite A–824, Chicago, Illinois 60604. Office Hours: 8 a.m.–4:45 p.m.

Dallas Region—Arkansas, Louisiana, New Mexico, Oklahoma, Texas, 1200 Main Tower Building, Dallas, Texas. Office Hours: 8 a.m.–4:30 p.m.

Kansas City Region—Iowa, Kansas, Missouri, Nebraska. New Federal Office Building, 601 East 12th Street—Room 436, Kansas City, Missouri 64106. Office Hours: 8 a.m.–4:45 p.m.

Denver Region—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. Federal Office Building, 1961 Stout St—Room 1185, Denver, Colorado 80294. Office Hours: 8 a.m.–4:30 p.m.

San Francisco Region—American Samoa, Arizona, California, Guam, Hawaii, Nevada. Federal Office Building, 10 Van Ness Avenue, 20th Floor, San Francisco, California 94102. Office Hours: 8 a.m.–4:30 p.m.

Seattle Region—Alaska, Idaho, Oregon, Washington. 1321 Second Avenue, Room 615, Mail Stop 211, Seattle, Washington 98101. Office Hours 8 a.m.–4:30 p.m.

III. Intermediary Addresses (Hospital Insurance)

Medicare Coordinator, Assoc. Hospital Serv. Maine (ME BC), 2 Gannett Drive South Portland, ME 04106–6911.

Medicare Coordinator, Anthem New Hampshire, 300 Goffs Falls Road, Manchester, NH 03111–0001.

Medicare Coordinator, BC/BS Rhode Island (RI BC), 444 Westminster Street, Providence, RI 02903–3279.

Medicare Coordinator, Empire Medicare Services, 400 S. Salina Street, Syracuse, NY 13202.

Medicare Coordinator, Cooperativa, PO Box 363428, San Juan, PR 00936–3428.

Medicare Coordinator, Maryland B/C, PO Box 4368, 1946 Greenspring Ave., Timonium, MD 21093.

Medicare Coordinator, Highmark, P5103, 120 Fifth Avenue Place, Pittsburgh, PA 15222–3099.

Medicare Coordinator, United Government Services, 1515 N. Rivercenter Dr., Milwaukee, WI 53212.

Medicare Coordinator, Alabama B/C, 450 Riverchase Parkway East, Birmingham, AL 35298.

Medicare Coordinator, Florida B/C, 532 Riverside Ave., Jacksonville, FL 32202–4918.

Medicare Coordinator, Georgia B/C, PO Box 9048, 2357 Warm Springs Road, Columbus, GA 31908.

Medicare Coordinator, Mississippi B/C B MS, PO Box 23035, 3545 Lakeland Drive, Jackson, MI 39225–3035.

Medicare Coordinator, North Carolina B/C, PO Box 2291, Durham, NC 27702–2291.

Medicare Coordinator, Palmetto GBA A/RHHI, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, Tennessee B/C, 801 Pine Street, Chattanooga, TN 37402–2555.

Medicare Coordinator, Anthem Insurance Co. (Anthm In), PO Box 50451, 8115 Knue Road, Indianapolis, IN 46250–1936.

Medicare Coordinator, Arkansas B/C, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Group Health of Oklahoma, 1215 South Boulder, Tulsa, OK 74119–2827.

Medicare Coordinator, TrailBlazer, PO Box 660156, Dallas, TX 75266–0156.

Medicare Coordinator, Cahaba GBA, Station 7, 636 Grand Avenue, Des Moines, IA 50309–2551.

Medicare Coordinator, Kansas B/C, PO Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.

Medicare Coordinator, Nebraska B/C, PO Box 3248, Main PO Station, Omaha, NE 68180–0001.

Medicare Coordinator, Mutual of Omaha, PO Box 1602, Omaha, NE 68101.

Medicare Coordinator, Montana B/C, PO Box 5017, Great Falls DIV., Great Falls, MT 59403–5017.

Medicare Coordinator, Noridian, 4510 13th Avenue SW., Fargo, ND 58121–0001.

Medicare Coordinator, Utah B/C, PO Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.

Medicare Coordinator, Wyoming B/C, 4000 House Avenue, Cheyenne, WY 82003.

Medicare Coordinator, Arizona B/C, PO Box 37700, Phoenix, AZ 85069.

Medicare Coordinator, UGS, PO Box 70000, Van Nuys, CA 91470–0000.

Medicare Coordinator, Regents BC, PO Box 8110 M/S D–4A, Portland, OR 97207–8110.

Medicare Coordinator, Premera BC, PO Box 2847, Seattle, WA 98111–2847.

IV. Medicare Carriers

Medicare Coordinator, NHIC, 75 Sargent William Terry Drive, Hingham, MA 02044.

Medicare Coordinator, B/S Rhode Island (RI BS), 444 Westminster Street, Providence, RI 02903–2790.

Medicare Coordinator, Trailblazer Health Enterprises, Meriden Park, 538 Preston Ave., Meriden, CT 06450.

Medicare Coordinator, Upstate Medicare Division, 11 Lewis Road, Binghamton, NY 13902.

Medicare Coordinator, Empire Medicare Services, 2651 Strang Blvd., Yorktown Heights, NY, 10598.

Medicare Coordinator, Empire Medicare Services, NJ, 300 East Park Drive, Harrisburg, PA 17106.

Medicare Coordinator, Triple S, #1441 F.D., Roosvelt Ave., Guaynabo, PR 00968.

Medicare Coordinator, Group Health Inc., 4th Floor, 88 West End Avenue, New York, NY 10023.

Medicare Coordinator, Highmark, PO Box 89065, 1800 Center Street, Camp Hill, PA 17089–9065.

Medicare Coordinator, Trailblazers Part B, 11150 McCormick Drive, Executive Plaza 3 Suite 200, Hunt Valley, MD 21031.

Medicare Coordinator, Trailblazer Health Enterprises, Virginia, PO Box 26463, Richmond, VA 23261–6463. United Medicare Coordinator, Tricenturion, 1 Tower Square, Hartford, CT 06183.

Medicare Coordinator, Alabama B/S, 450 Riverchase Parkway East, Birmingham, AL 35298.

Medicare Coordinator, Cahaba GBA, 12052 Middleground Road, Suite A, Savannah, GA 31419.

Medicare Coordinator, Florida B/S, 532 Riverside Ave, Jacksonville, FL 32202–4918.

Medicare Coordinator, Administar Federal, 9901 Linnstation Road, Louisville, KY 40223.

Medicare Coordinator, Palmetto GBA, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, CIGNA, 2 Vantage Way, Nashville, TN 37228.

Medicare Coordinator, Railraod Retirement Board, 2743 Perimeter Parkway, Building 250, Augusta, GA 30999.

Medicare Coordinator, Cahaba GBA, Jackson Miss, PO Box 22545, Jackson, MI 39225–2545.

Medicare Coordinator, Adminastar Federal (IN), 8115 Knue Road, Indianapolis, IN 46250–1936.

Medicare Coordinator, Wisconsin Physicians Service, PO Box 8190, Madison, WI 53708–8190.

Medicare Coordinator, Nationwide Mutual Insurance Co., PO Box 16788, 1 Nationwide Plaza, Columbus, OH 43216–6788.

Medicare Coordinator, Arkansas B/S, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Arkansas-New Mexico, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Palmetto GBA—DMERC, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, Trailblazer Health Enterprises, 901 South Central Expressway, Richardson, TX 75080.

Medicare Coordinator, Nordian, 636 Grand Avenue, Des Moines, IA 50309–2551.

Medicare Coordinator, Kansas B/S, PO Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.

Medicare Coordinator, Kansas B/S—NE, PO Box 239, 1133 Topeka Ave., Topeka, KS 66629–0239.

Medicare Coordinator, Montana B/S, PO Box 4309, Helena, MT 59601.

Medicare Coordinator, Nordian, 4305 13th Avenue South, Fargo, ND 58103–3373.

Medicare Coordinator, Noridian Bcbsnd (CO), 730 N. Simms #100, Golden, CO 80401–4730.

Medicare Coordinator, Noridian Bcbsnd (WY), 4305 13th Avenue South, Fargo, ND 58103–3373.

Medicare Coordinator, Utah B/S, PO Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.

Medicare Coordinator, Transamerica Occidental, PO Box 54905, Los Angeles, CA 90054–4905.

Medicare Coordinator, NHIC—California, 450 W. East Avenue, Chico, CA 95926.

Medicare Coordinator, Cigna, Suite 254, 3150 Lakeharbor, Boise, ID 83703.

Medicare Coordinator, Cigna, Suite 506, 2 Vantage Way, Nashville, TN 37228.

V. Payment Safeguard Contractors

Medicare Coordinator, Aspen Systems Corporation, 2277 Research Blvd., Rockville, MD 20850.

Medicare Coordinator, DynCorp Electronic Data Systems (EDS, 11710 Plaza America Drive 5400 Legacy Drive, Reston, VA 20190–6017.

Medicare Coordinator, Lifecare Management Partners Mutual of Omaha Insurance Co. 6601 Little River Turnpike, Suite 300 Mutual of Omaha Plaza, Omaha, NE 68175.

Medicare Coordinator, Reliance Safeguard Solutions, Inc., P.O. Box 30207 400 South Salina Street, 2890 East Cottonwood Pkwy. Syracuse, NY 13202.

Medicare Coordinator, Science Applications International, Inc., 6565 Arlington Blvd. PO Box 100282, Falls Church, VA.

Medicare Coordinator, California Medical Review, Inc. Integriguard Division Federal Sector Civil Group One Sansome Street, San Francisco, CA 94104–4448.

Medicare Coordinator, Computer Sciences Corporation Suite 600 3120 Timanus Lane, Baltimore, MD 21244.

Medicare Coordinator, Electronic Data Systems (EDS), 11710 Plaza America Drive 5400 Legacy Drive, Plano, TX 75204.

Medicare Coordinator, TriCenturion, L.L.C., PO Box 100282, Columbia, SC 29202.

[FR Doc. 02–27338 Filed 10–28–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0456]

Determining Hospital Procedures for Opened-But-Unused, Single-Use Medical Devices; Request for Comments and Information; Correction

AGENCY: Food and Drug Administration, HHS

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of August 28, 2002 (67 FR 55269). The document announced a request for comments about current practices with respect to opened-but-unused, single-use medical devices. The document was inadvertently published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Planning, and Legislation (HF–27), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–27, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–21891, appearing on page 55269 in the **Federal Register** of Wednesday, August 28, 2002, the following correction is made:

1. On page 55269, in the third column, "[Docket No. 00D–0053]" is corrected to read "[Docket No. 02N–0456]".

Dated: October 21, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–27413 Filed 10–28–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0461]

Antimicrobial Drug Development; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop, cosponsored with the Infectious Diseases Society of America (IDSA) and the Pharmaceutical Research and Manufacturers of America (PhRMA), regarding antimicrobial drug development. The public workshop is intended to provide information for and gain perspective from advocacy groups, interested health care providers, academia, and industry organizations on various aspects of antimicrobial drug development, including the selection of delta in noninferiority (equivalence) clinical trials, the need for newer antimicrobial agents for the treatment of resistant pathogens, and clinical trial design. The input from this public workshop will help in developing topics for further exploration.

Date and Time: The public workshop will be held on November 19 and 20, 2002, from 9 a.m. to 5 p.m.

Location: The public workshop will be held in the Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD. Seating is limited and available only on a first-come, first-served basis. Please note there is very limited parking in the vicinity of 5630 Fishers Lane, but it is near the Twinbrook Metro station. Please bring picture identification in order to clear building security.

Contact Person: John H. Powers, Center for Drug Evaluation and Research (HFD–104), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20850, 301–827–2350, e-mail: powersjoh@cder.fda.gov, or Leo Chan, Center for Drug Evaluation and Research (HFD–104), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20850, 301–827–2350, e-mail: chanl@cder.fda.gov.

Registration: Preregistration is required. Send registration information (including name, title, firm name, address, telephone, and fax number) to Leo Chan (see the *Contact Person* section of this document) by November 12, 2002. There is no registration fee for the public workshop. Space is limited; therefore, interested parties are encouraged to register early.

Persons needing a sign language interpreter or other special accommodations should notify the contact person at least 7 days in advance.

SUPPLEMENTARY INFORMATION: FDA is announcing a public workshop, cosponsored with IDSA and PhRMA, regarding antimicrobial drug development. On February 19 and 20, 2002, a public meeting of FDA's Anti-Infective Drugs Advisory Committee was held to discuss issues related to the selection of delta in noninferiority (equivalence) clinical trials and the development of antimicrobial agents for the treatment of resistant pathogens (67 FR 3726, January 25, 2002). This public workshop will further expand the discussion of both issues as well as focus on general considerations in designing clinical trials for antimicrobial products. Additional discussion topics include drug development for acute bacterial meningitis, acute exacerbation of chronic bronchitis, and hospital-acquired pneumonia. The input from this public workshop will help in developing topics for further exploration.

The agency encourages individuals, patient advocates, industry, consumer groups, health care professionals, researchers, and other interested persons to attend this public workshop.

Transcripts: Transcripts of the public workshop will be available for review at the Dockets Management Branch Public Reading Room, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 and on the Internet at http://www.fda.gov/ohrms/dockets/dockets/dockets.htm or you may request a transcript of the public workshop from the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 20 working days after the public workshop, at a cost of 10 cents per page.

Dated: October 23, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–27438 Filed 10–28–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HRSA AIDS Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following advisory committee meeting. The meeting is open to the public.

Name: HRSA AIDS Advisory Committee (HAAC).

Date and Time: November 21, 2002; 1:30 p.m.–5 p.m., November 22, 2002; 8:30 a.m.–3:30 p.m.

Place: Radisson Barcelo, 2121 P Street, NW., Washington, DC 20037, Telephone: (202) 293–3100.

Agenda: Agenda items for the meeting include a discussion of the involvement of Community and Migrant Health Centers in HIV care, HIV medical certification, HRSA restructuring, AIDS Drug Assistance Program issues, Native American issues, and HAAC planning for reauthorization of the CARE Act.

For Further Information Contact: Anyone requiring further information should contact Shelley Gordon, HIV/AIDS Bureau, Parklawn Building, Room 16C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–9684.

Dated: October 17, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–27520 Filed 10–28–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: "Nucleic acid encoding mesothelin, a differentiation antigen present on mesothelium, mesotheliomas and ovarian cancers" U.S. Patent 6,152,430, Issued November 28, 2000, and "Mesothelium antigen and methods and kits for targeting it" U.S. Patent 6,083,502, Issued July 4, 2000

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1) (i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent 6,153,430: "Nucleic acid encoding Mesothelin, a differentiation antigen present on mesothelium, mesotheliomas and ovarian cancers" issued November 28th, 2000, and U.S. Patent 6,083,502: "Mesothelium antigen and methods and kits for targeting it" issued July 4th, 2000, to Cell Genesys, Inc., which is located in Foster City, California. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to human gene therapy using peptides or antibody fragments for the treatment of cancer.

DATES: Only written comments and/or license applications that are received by the National Institutes of Health on or before December 30, 2002 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Brenda J. Hefti, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804. Telephone: (301) 496–7056, x206; Facsimile: (301) 402–0220; and e-mail: *heftib@od.nih.gov*.

SUPPLEMENTARY INFORMATION: The prospective exclusive license: will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

The technology claimed in the issued patent relates to mesothelin, which is associated with mesotheliomas and ovarian cancers. The invention includes uses for the amino acid and nucleic acid sequences for mesothelin, recombinant cells expressing it, methods for targeting and/or inhibiting the growth of cells bearing mesothelin, methods for detecting the antigen and its expression level as an indication of the presence of tumor cells, and kits for such detection.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 15, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–27517 Filed 10–28–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: "Modulating IL–13 Activity Using Mutated IL–13 Molecules that are Antagonists or Agonists of IL–13", PCT Application PCT/US00/31044

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1) (i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in PCT application PCT/US00/31044 , entitled "Modulating IL–13 Activity Using Mutated IL–13 Molecules that are Antagonists or Agonists of IL–13", which was filed on November 10, 2000 to NeoPharm, Incorporated which is located in Lake Forest, Illinois. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to therapy for asthma and other immunological disorders.

DATES: Only written comments and/or license applications that are received by the National Institutes of Health on or before December 30, 2002 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Brenda J. Hefti, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804. Telephone: (301) 496–7056, x206; Facsimile: (301) 402–0220; and e-mail: heftib@od.nih.gov.

SUPPLEMENTARY INFORMATION: The prospective exclusive license: will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

The technology claimed in the issued patent relates to mutated forms of IL–13, either agonists or antagonists, which have higher binding affinity for the IL–13 receptor than does wild-type IL–13. The application also claims therapeutic uses of these mutated forms of IL–13, and their use as targeting moieties.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 15, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–27518 Filed 10–28–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Co-Exclusive License: "Endotracheal Tube Using Leak Hole To Lower Resistance and Dead Space"

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a co-exclusive license worldwide to practice the inventions embodied in: U.S. Application No. 09/967,903, filed September 28, 2001, entitled "Endotracheal Tube Using Leak Hole to Lower Resistance and Dead Space" to Vital Signs, Inc. of Totowa, New Jersey.

The United States of America is the assignee to the patent rights of these inventions. The field of use of the contemplated co-exclusive license may include all medical applications, and the other co-exclusive licensee has not yet been identified.

DATES: Only written comments and/or applications for a license that are received by the NIH Office of Technology Transfer on or before December 30, 2002 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Dale D. Berkley, Ph.D., J.D. Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 223; Facsimile: (301) 402–0220; e-mail: *berkleyd@od.nih.gov*. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION: The invention is a tracheal tube ventilation apparatus which, through the use of one or more tube leak holes or connecting tubes positioned in the wall of the endotracheal tube above the larynx, is able to efficiently rid the patient of expired gases and promote healthier breathing. A first stage of the apparatus has a smaller diameter such that it fits within the confined area of the lower trachea and the second stage has a larger diameter, which fits properly within the larger diameter of the patent's pharynx. The endotracheal tube is preferably wire reinforced and ultra-thin walled so as to reduce airway resistance. The invention substantially reduces endotracheal dead space and is expected to benefit those patients with early stage acute respiratory failure, and reduce or obviate the need for mechanical pulmonary ventilation in many patients.

The prospective co-exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice may be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 9, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–27519 Filed 10–28–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–44]

Notice of Proposed Information Collection: Comment Request; Computation of Surplus Cash Distributions and Residual Receipts and Funds Authorizations

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: December 30, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410

FOR FURTHER INFORMATION CONTACT: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–3730 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Computation of Surplus Cash Distributions and Residual Receipts and Funds Authorizations.

OMB Control Number, if applicable: HUD–52537 & HUD–92466.

Description of the need for the information and proposed use: Pursuant to the Regulatory Agreement for Multifamily Housing insured mortgages, under Sections 207, 220, 221(d)(4), 231, 232, and 236, owners are required to adhere to certain guidelines regarding Surplus Cash and to establish a Residual Receipt Account. These receipts are completed and submitted to HUD by owners of insured multifamily projects. The information collected is used by HUD personnel, owners, and non-profit entities for the disbursement of funds.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents is 20,000 generating 20,000 annual responses; the frequency of response is annually; the estimated time to prepare the information collection is approximately 2 hours; and the estimated total number of annual burden hours is 40,000.

Status of the proposed information collection: New Collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: October 21, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–27417 Filed 10–28–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of public meetings of the Invasive Species Advisory Committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meetings of the Invasive Species Advisory Committee. The purpose of the Advisory Committee is to provide advice to the National Invasive Species Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is Co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues. The purpose of a meeting on November 18–19, 2002 is to convene the full Advisory Committee (appointed by Secretary Norton on April 1, 2002); and to discuss implementation of action items outlined in the National Invasive Species Management Plan, which was finalized on January 18, 2001.

DATES: Meeting of Invasive Species Advisory Committee: 9 a.m., Monday, November 18, 2002 and 8:30 a.m., Tuesday, November 19, 2002.

ADDRESSES: Hamilton Crowne Plaza Hotel; The Sphinx Club at Almas Temple, 1315 K Street, NW., Washington, DC 20005. Meetings on both days will be held in the Oasis Room.

FOR FURTHER INFORMATION CONTACT: Kelsey Passe, National Invasive Species Council Program Analyst; Phone: (202) 513–7243; Fax: (202) 371–1751.

Dated: October 23, 2002.

Lori Williams,

Executive Director, National Invasive Species Council.

[FR Doc. 02–27437 Filed 10–28–02; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Federal Regional Council Application, Nomination, and Interview Forms

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: We accept comments until December 30, 2002.

ADDRESSES: Send your comments on the requirement to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Anissa Craghead at (703) 358–2445, or electronically to *anissa_craghead@fws.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) plan to submit a request to OMB for approval of the collection of information related to the recruitment of Federal Subsistence Advisory Council members. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Title VIII of the Alaska National Interest Lands Conservation Act (16 USC 3101) designates the Departments of the Interior and Agriculture as the key agencies responsible for implementing the subsistence priority on Federal public lands for rural Alaska residents. These responsibilities include the establishment of Regional Advisory Councils with members from each region who are knowledgeable about the region and subsistence uses of the public lands. In order for the Federal Board to make recommendations to the Secretaries for membership on these Regional Councils, it is necessary to recruit and screen applicants. These three associated forms allow the Federal Subsistence Board to recruit applicants and to review their credentials in order to make recommendations to the Secretaries for appointment of members to the Regional Councils. One-third of the seats on the Regional Councils become vacant each year. Additional vacancies may occur due to resignations or deaths of sitting members.

Title: Federal Subsistence Regional Advisory Council Membership Application Form.

Approval Number: 1018–XXXX.

Frequency of Collection: Annually.

Description of Respondents: Alaska residents.

Total Annual Burden Hours: The reporting burden is estimated to average 0.5 hours per respondent. With an estimated 120 applicants annually, the estimated Total Annual Burden hours is 60 hours.

Total Annual Responses: About 120 applications are expected to be submitted annually.

Federal Subsistence Regional Advisory Council Membership Application Form (use this form if you are applying for a seat on the council)

The Federal Subsistence Board is accepting applications through Month/Day/Year for membership on ten Federal Subsistence Regional Advisory Councils. The Regional Advisory Councils provide advice and

recommendations to the Board, concerning subsistence hunting, trapping and fishing issues on Federal public lands. XXXX appointments will be made in Year to fill expiring terms and seats vacated by resignation on the Regional Advisory Councils.

"The Regional Advisory Councils are the crucial link between subsistence users and the Federal Subsistence Board as their recommendations carry a great deal of weight in decisions regarding subsistence," says Mitch Demientieff, Chair of the Board.

Criteria for Membership

- Resident of the region he/she wishes to represent
- Knowledge of fish and wildlife resources in the region
- Knowledge of subsistence uses, customs, and traditions in the region
- Knowledge of recreational, commercial, and other uses in the region
- Leadership and experience with local regional organizations
- Ability to communicate effectively
- Willing to travel to and attend Regional Advisory Council meetings at least two times each year (usually in October and February)
- Willing to occasionally attend Federal Subsistence Board meetings

Federal Subsistence Regions

Regional Advisory Councils represent the following geographic regions in Alaska:

Region 1	Southeast Alaska
Region 2	Southcentral Alaska
Region 3	Kodiak/Aleutians
Region 4	Bristol Bay
Region 5	Yukon-Kuskokwim Delta
Region 6	Western Interior
Region 7	Seward Peninsula
Region 8	Northwest Arctic
Region 9	Eastern Interior
Region 10	North Slope

Regional Advisory Council Membership

Regional Advisory Council members are appointed to 3-year terms. The Regional Advisory Councils meet at least twice a year. While no compensation is provided for this volunteer service, Regional Advisory Council members are reimbursed for travel-related expenses. Responsibilities of the Regional Councils include:

- Review and make recommendations to the Federal Subsistence Board on proposals for regulations, policies, management plans, and other subsistence related issues on Federal public lands within the region;
- Develop proposals pertaining to the subsistence harvest of fish and wildlife, and review proposals submitted by others;
- Encourage and promote local participation in the decision making process affecting subsistence harvests on Federal public lands;
- Make recommendations on customary and traditional use determinations of subsistence resources;
- Appoint members to national park subsistence resource commissions.

Schedule

February [day/year]

Deadline for submitting applications and nominations.

March–May

Applications will be reviewed by regional panels.

June

Federal Subsistence Board will review panel recommendations.

July–November

Secretaries of Interior and Agriculture will review recommendations and appoint members to the Regional Councils.

For More Information Please Call

Southeast Alaska Region: Bob Schroeder, Juneau, (800) 586–7895 or (907) 586–7895.

Southcentral Alaska Region: Ann Wilkinson, Anchorage, (800) 478–1456 or (907) 786–3888.

Kodiak/Aleutians Region: Michelle Chivers, Anchorage, (800) 478–1456 or (907) 786–3888.

Bristol Bay Region: Cliff Edenshaw, Anchorage, (800) 478–1456 or (907) 786–3888.

Yukon-Kuskokwim Delta Region: Alex Nick, Bethel, (800) 621–5804 or (907) 543–3151.

Western Interior Alaska Region: Vince Mathews, Fairbanks, (800) 267–3997 or (907) 456–0277.

Northwest Arctic Region: Helen Armstrong, Anchorage, (800) 478–1456 or (907) 786–3888.

North Slope & Seward Peninsula Regions: Barb Armstrong, Anchorage, (800) 478–1456 or (907) 786–3888.

Eastern Interior Alaska Region: Donald Mike, Anchorage, (800) 478–1456 or (907) 786–3888.

In accordance with the Privacy Act (5 U.S.C. 552a) and the Paperwork Reduction Act (44 U.S.C. 3501), please note the following information. This information collection is authorized by the Alaska National Interest Lands Conservation Act and regulations promulgated thereunder. It is our policy not to use your name for any other purpose. The information that you provide will be used by the Federal Subsistence Board to make recommendations to the Secretary of the Interior for appointment of members of the Federal Subsistence Regional Advisory Councils. This information will be maintained in accordance with the Privacy Act, but may be released under a Freedom of Information Act request (5 U.S.C. 552). Your response is voluntary. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. This information collection has been approved by OMB and assigned clearance number 1018–xxxx. We estimate that it will take you about 20 minutes to respond to these questions. Comments on this form should be mailed to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Mail Stop Room 222, Arlington Square, Washington, DC 20240, (1018–xxxx). Thank you.

OMB Clearance Number 1018–xxxx.
Expires: xx–xx–xxxx.

Federal Subsistence Regional Advisory Council Membership

Application Form (use this form if you are applying for a seat on the council)

Your name:
First Name

Middle Initial

Last Name

Your Mailing address:

Your Telephone numbers:
home:

work:

fax:

Email:

Where is your *primary* place of residence?

Please answer the following questions (use another page if necessary):

(1) Please describe your knowledge of fish and wildlife resources in the region.

(2) Please describe your knowledge of subsistence and customary and traditional uses of resources in the region.

(3) Please describe your knowledge of recreational, guiding, commercial and other uses of fish and wildlife resources in the region.

(4) Do you participate in meetings on fish and wildlife issues (*i.e.* Fish and Game Advisory Committees, Regional Advisory Councils, Marine Mammal Commissions, Caribou Working Groups, Subsistence Resource Commissions, Coastal Resource Service areas, Waterfowl Conservation Committees)? If so, please describe your involvement.

(5) Have you served in an official capacity on councils, boards, committees, or associations in the past few years? Please mention the role you served while working with these groups (*i.e.* Chair, Vice Chair, member).

(6) The seat you are applying for represents users throughout the region. How would you find out about fish and wildlife concerns people have and get information back to those people?

(7) Please describe your ability to communicate effectively with others.

(8) Do you use Federal lands for hunting, trapping, fishing, guiding, transporting, commercial fishing, gathering, or sharing of traditional knowledge or other use of fish and wildlife resources?

(9) Are you willing to travel to and attend Regional Advisory Council meetings at least two times each year? (Regional Advisory Council meetings are usually held in October and February and travel expenses are reimbursable) Yes___No___

(10) Are you willing to attend Federal Subsistence Board meetings occasionally? (Board meetings are usually held in May and December. Travel expenses are reimbursable) Yes___ No___

Which user group will you represent as a member of the Regional Advisory Council? (Check ONE only!)

a. subsistence user

b. recreational/sport user

c. commercial fisherman

d. guide (hunting or fishing)

e. transporter/outfitter

f. other

Please describe your affiliation with this user group. You may include letters of endorsement from interest groups or local or statewide organizations, if you so desire.

Any additional comments you want to offer (attach additional sheets if needed).

Reference Contacts: Please include three references who can be contacted. You may also submit a letter of recommendation if you wish. Please provide the most current phone numbers available.

Name:

Organization:

Address:

Telephone Numbers:
Home:

Work:

Name:

Organization:

Address:

Telephone Numbers:
Home:

Work:

Name:

Organization:

Address:

Telephone Numbers:
Home:

Work:

I certify that, to the best of my knowledge, all statements are correct and complete.

Applicant Signature

Date

Please submit completed applications to: U.S. Fish and Wildlife Service, Federal Subsistence Board, 3601 C Street, Suite 1030, Anchorage, Alaska 99503.

Applications must be received by Month/Date/Year.

Federal Subsistence Regional Advisory Council Membership

Applications Will Be Accepted Through Month/Date/Year

Application Materials Are Enclosed!

Title: Federal Subsistence Regional Advisory Council Membership Nomination Form.

Approval Number: 1018–XXXX.

Frequency of Collection: Annually.

Description of Respondents: Local governments, Tribal organizations, and special interest groups.

Total Annual Burden Hours: The reporting burden is estimated to average 0.5 hours per respondent. With an estimated 50 nominations annually, the estimated Total Annual Burden Hours is 25 hours.

Total Annual Responses: About 50 nominations are expected to be submitted annually.

Federal Subsistence Regional Advisory Council Membership Nomination Form (for use when you are nominating someone else for a seat on the council)

The Federal Subsistence Board is accepting nominations and applications through Month/Day/Year for membership on ten Federal Subsistence Regional Advisory Councils. The Regional Councils provide advice and recommendations to the Board, concerning subsistence hunting, trapping and fishing issues on Federal public lands. XXXX appointments will be made in Year to fill expiring terms and seats vacated by resignation on the Regional Advisory Councils.

"The Regional Advisory Councils are the crucial link between subsistence users and the Federal Subsistence Board as their recommendations carry a great deal of weight in decisions regarding subsistence," says Mitch Demientieff, Chair of the Board.

Criteria for Membership

- Resident of the region he/she wishes to represent
- Knowledge of fish and wildlife resources in the region
- Knowledge of subsistence uses, customs, and traditions in the region
- Knowledge of recreational, commercial, and other uses in the region
- Leadership and experience with local regional organizations
- Ability to communicate effectively
- Willing to travel to and attend Regional Advisory Council meetings at least two times each year (usually in October and February)
- Willing to occasionally attend Federal Subsistence Board meetings

Federal Subsistence Regions

Regional Advisory Councils represent the following geographic regions in Alaska:

Region 1	Southeast Alaska
Region 2	Southcentral Alaska
Region 3	Kodiak/Aleutians
Region 4	Bristol Bay
Region 5	Yukon-Kuskokwim Delta
Region 6	Western Interior
Region 7	Seward Peninsula
Region 8	Northwest Arctic
Region 9	Eastern Interior
Region 10	North Slope

Regional Advisory Council Membership

Regional Advisory Council members are appointed to 3-year terms. The Regional Councils meet at least twice a year. While no compensation is provided for this volunteer service, Regional Council Members are reimbursed for travel-related expenses. Responsibilities of the Regional Councils include:

- Review and make recommendations to the Federal Subsistence Board on proposals for regulations, policies, management plans and other subsistence related issues on Federal public lands within the region;
- Develop proposals pertaining to the subsistence harvest of fish and wildlife, and review proposals submitted by others;
- Encourage and promote local participation in the decision making process affecting subsistence harvests on Federal public lands;
- Make recommendations on customary and traditional use determinations of subsistence resources;
- Appoint members to national park subsistence resource commissions.

Schedule

February [day/year]

Deadline for submitting applications and nominations.

March–May

Applications will be reviewed by regional panels.

June

Federal Subsistence Board will review panel recommendations.

July–November

Secretaries of Interior and Agriculture will review recommendations and appoint members to the Regional Councils.

For More Information Please Call

Southeast Alaska Region: Bob Schroeder, Juneau, (800) 586–7895, or (907) 586–7895.

Southcentral Alaska Region: Ann Wilkinson, Anchorage, (800) 478–1456 or (907) 786–3888.

Kodiak/Aleutians Region: Michelle Chivers, Anchorage, (800) 478–1456 or (907) 786–3888.

Bristol Bay Region: Cliff Edenshaw, Anchorage, (800) 478–1456 or (907) 786–3888.

Yukon-Kuskokwim Delta Region: Alex Nick, Bethel, (800) 621–5804 or (907) 543–3151.

Western Interior Alaska Region: Vince Mathews, Fairbanks, (800) 267–3997 or (907) 456–0277.

Northwest Arctic Region: Helen Armstrong, Anchorage, (800) 478–1456 or (907) 786–3888.

North Slope & Seward Peninsula Regions: Barb Armstrong, Anchorage, (800) 478–1456 or (907) 786–3888.

Eastern Interior Alaska Region: Donald Mike, Anchorage, (800) 478–1456 or (907) 786–3888.

In accordance with the Privacy Act (5 U.S.C. 552a) and the Paperwork Reduction Act (44 U.S.C. 3501), please note the following information. This information collection is authorized by the Alaska National Interest Lands Conservation Act and regulations promulgated thereunder. It is our policy not to use your name for any other purpose. The information that you provide will be used by the Federal Subsistence Board to make recommendations to the Secretary of the Interior for appointment of members of the Federal Subsistence Regional Advisory Councils. This information will be maintained in accordance with the Privacy Act, but may be released under a Freedom of Information Act request (5 U.S.C. 552). Your response is voluntary. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. This information collection has been approved by OMB and assigned clearance number 1018–xxxx. We estimate that it will take you about 20 minutes to respond to these questions. Comments on this form should be mailed to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Mail Stop Room 222, Arlington Square, Washington, DC 20240, (1018–xxxx). Thank you.

OMB Clearance Number 1018–xxxx.

Expires: xx–xx–xxxx.

Federal Subsistence Regional Advisory Council Membership

Nomination Form (for use when you are nominating someone else for a seat on the Council)

Name of the person you are nominating:

First Name

Middle Initial

Last Name

Nominee's Mailing address:

Nominee's Telephone numbers:

home:

work:

fax:

Email:

Where is the nominee's *primary* place of residence?

Please answer the following questions (use another page if necessary):

(1) Please describe the nominee's knowledge of fish and wildlife resources in the region.

(2) Please describe the nominee's knowledge of subsistence and customary and traditional uses of resources in the region.

(3) Please describe the nominee's knowledge of recreational, guiding, commercial and other uses of fish and wildlife resources in the region.

(4) Does the nominee participate in meetings on fish and wildlife issues (*i.e.* Fish and Game Advisory Committees, Regional Advisory Councils, Marine Mammal Commissions, Caribou Working Groups, Subsistence Resource Commissions, Coastal Resource Service areas, Waterfowl Conservation Committees)? If so, please describe the nominee's involvement.

(5) Has the nominee served in an official capacity on councils, boards, committees, or associations in the past few years? Please mention the role you served while working with these groups (*i.e.* Chair, Vice Chair, member).

(6) The seat you are nominating someone for represents users throughout the region. How would the nominee find out about fish and wildlife concerns people have and get information back to those people?

(7) Please describe the nominee's ability to communicate effectively with others.

(8) Does the nominee use Federal lands for hunting, trapping, fishing, guiding, transporting, commercial fishing, gathering, or sharing of traditional knowledge or other use of fish and wildlife resources?

(9) Is the nominee willing to travel to and attend Regional Advisory Council meetings at least two times each year? (Regional Advisory Council meetings are usually held in October and February and travel expenses are reimbursable) Yes___ No___

(10) Is the nominee willing to attend Federal Subsistence Board meetings occasionally? (Board meetings are usually held in May and December. Travel expenses are reimbursable) Yes___ No___

Which user group will the nominee represent as a member of the Regional Advisory Council? (Check ONE only!)

a. subsistence user _____

b. recreational/sport user _____

g. commercial fisherman _____

h. guide (hunting or fishing) _____

i. transporter/outfitter _____

j. other _____

Any additional comments you want to offer (attach additional sheets if needed).

Reference Contacts: Please include two references who can be contacted. You may also submit a letter of recommendation if you wish. Please provide the most current phone numbers available.

Your name: _____

Organization: _____

Address: _____

Telephone Numbers:

Home: _____

Work: _____

Name: _____

Organization: _____

Address: _____

Telephone Numbers:

Home: _____

Work: _____

Name: _____

Organization: _____

Address: _____

Telephone Numbers:

Home: _____

Work: _____

I certify that, to the best of my knowledge, all statements are correct and complete.

Signature _____

Date _____

Your Title: _____

Organization: _____

Please submit completed applications to: U.S. Fish and Wildlife Service, Federal Subsistence Board, 3601 C Street, Suite 1030, Anchorage, Alaska 99503.

Applications must be received by Month/Date/Year

Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, 3601 C Street, Suite 1030, Anchorage, AK 99503.

Federal Subsistence Regional Advisory Council Membership

Nominations will Be Accepted Through Month/Date/Year.

Nomination Materials are Enclosed!

Title: Regional Advisory Council Member Evaluation—Candidate Interview Form.

Approval Number: 1018–XXXX.

Frequency of Collection: Annually.

Description of Respondents: Alaska residents.

Total Annual Burden Hours: The reporting burden is estimated to average 0.5 hours per interview. With an estimated 120 applicants and 5 interviews conducted per applicant, the estimated Total Annual Burden hours is 300 hours.

Total Annual Responses: About 600 interviews are expected to be conducted annually.

Regional Advisory Council Member Evaluation Candidate Interview Form

Panelist:

Applicant:

Date:

Information from the questions that follow will help the Federal Subsistence Board develop a list of recommended appointments to the Federal Subsistence Regional Advisory Council in your region. All candidates must be a resident of the region he or she is representing. Resource management challenges and allocation controversies are particularly intense in many parts of Alaska, so wider representation is needed to ensure that the Councils serve as forums for constructive dialogue and problem solving. As a result, Councils have designated seats: 70 percent for representatives of subsistence interests and 30 percent for representatives of recreational/sport, and commercial interests. Careful attention needs to be paid to the affiliation of the candidate.

Several factors that will be used to evaluate individual qualifications, include:

- Knowledge of fish and wildlife resources in the region
- Knowledge of subsistence uses, customs, and traditions in the region
- Knowledge of recreational, commercial and other uses in the region
- Leadership and experience with local regional organizations
- Ability to communicate effectively
- Willing to travel to and attend Regional Council meetings at least two times each year (usually in September/October and February/March)
- Willing to occasionally attend Federal Subsistence Board meetings

In accordance with the Privacy Act (5 U.S.C. 552a) and the Paperwork Reduction Act (44 U.S.C. 3501), please note the following information. This information collection is authorized by the Alaska National Interest Lands Conservation Act and regulations promulgated thereunder. It is our policy not to use your name for any other purpose. The information that you provide will be used by the Federal Subsistence Board to make recommendations to the Secretary of the Interior for appointment of members of the Federal Subsistence Regional Advisory Councils. This information will be maintained in accordance with the Privacy Act, but may be released under a Freedom of Information Act request (5 U.S.C. 552). Your response is voluntary. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. This information collection has been approved by OMB and assigned clearance number 1018-xxxx. We estimate that it will take you about 20 minutes to respond to these questions. Comments on this form should be mailed to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Mail Stop Room 222, Arlington Square, Washington, DC 20240, (1018-xxxx). Thank you.

OMB Clearance Number 1018-xxxx.

Expires: xx-xx-xxxx.

Key Contacts.

Panels are required to consult with key regional contacts such as regional and local governments; tribes and corporations; fish and game advisory committees; commercial fisheries organizations; recreational, hunting, and fishing organizations; ADF&G; and all pertinent Federal field offices.

Panelists need to document contacts with key contacts in the region on the table below.

Organization, Government, or Agency	Person Contacted	Date

Questions to be directed to both the Applicant/Nominee and the key contacts/references:

1. Please describe your (the applicant's/nominee's) knowledge of fish and wildlife resources in the region.

2. Please describe your (the applicant's/nominee's) knowledge of subsistence and customary and

traditional uses of resources in your region.

3. Please describe your (the applicant's/nominee's) knowledge of recreational, guiding, commercial, and other uses of fish and wildlife resources in the region.

4. Do you (Does the applicant/nominee) participate in meetings on fish and wildlife resource issues (*i.e.* Fish and Game Advisory Committees, Regional Advisory Councils, Marine Mammal Commissions, Caribou Working Groups, Subsistence Resource Commissions, Coastal Resource Service Areas, Waterfowl Conservation Committees)? If so, please describe the involvement.

5. Have you (Has the applicant/nominee) served in an official capacity on councils, boards, committees, or associations in the past few years? Please mention the role you (he/she) served while working with these groups (*i.e.* Chair, Vice Chair, member).

6. The Regional Council member represents users throughout the region. How would you (the applicant/nominee) find out about fish and wildlife concerns people have and get information back to those people?

7. Please describe your (the applicant's/nominee's) ability to communicate effectively with others.

8. Do you (Does the applicant/nominee) use Federal public lands for hunting, trapping, fishing, guiding, transporting, commercial fishing, gathering, or sharing of traditional knowledge or other use of fish or wildlife resources?

9. Describe your (the applicant's/nominee's) affiliation with the user group that you (he/she) will represent. Are there formal endorsements from this group? If so, please describe them.

Questions for the Applicant/Nominee only:

What are some fish and wildlife issues you would like to see addressed through the Regional Advisory Council over the next three years?

Why do you want to serve on the Regional Advisory Council?

Regional Council members serve as volunteers but are reimbursed for travel costs such as lodging, food, transportation, and other related expenses. There is no compensation for lost wages or job activities missed as a result of doing Regional Advisory Council business.

Are you willing to serve as a volunteer in this way? Yes_____ No_____

Can you be available to travel to meetings lasting 2–4 days within the region at least twice a year? Yes_____ No_____

We invite comments concerning this proposed information collection on:

(1) Whether the collection of information is necessary for the proper selection of Regional Council members, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: October 23, 2002.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 02–27429 Filed 10–28–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Habitat Conservation Plan for the Northern Spotted Owl, Napa County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service (Service) has received an application for an incidental take permit from Terra Springs, LLC (the "applicant") for the northern spotted owl (*Strix occidentalis caurina*) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The applicant addresses the potential for "take" of the threatened northern spotted owl associated with timber harvest and conversion of timberlands to vineyards within a 76 acre area in Napa County (the "covered lands"). These activities (the "covered activities") are those associated with conversion of 22 acres of forest lands to vineyard and with any subsequent removal of commercial conifer trees from the remainder of the covered lands. A conservation program to minimize and mitigate for the covered activities would be implemented as described in the Terra Springs Low Effect Habitat Conservation Plan (Plan), which would be implemented by the applicant, and which includes management in perpetuity of 41 acres of the parcel as nesting/roosting quality habitat for the northern spotted owl.

We request comments on the permit application, the Plan, and on the preliminary determination that the Plan qualifies as a "Low-effect" Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in the Environmental Action Statement (EAS), which is also available for public review.

DATES: Written comments should be received on or before November 29, 2002.

ADDRESSES: Comments should be addressed to the Project Leader, Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, California 95521. Written comments may be sent by facsimile to (707) 822–8411.

FOR FURTHER INFORMATION CONTACT: Ms. Amedee Brickey, Team Leader, Habitat Conservation Planning Team, at the Arcata Fish and Wildlife Office; telephone: (707) 822–7201.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the application, Plan, and EAS should contact the Service by telephone at (707) 822–7201 or by letter to the Arcata Fish and Wildlife Office. Copies of these documents also are available for public inspection during regular business hours at the Arcata Fish and Wildlife Office.

Background Information

Section 9 of the Act and Federal regulation prohibit the "take" of animal species listed as endangered or threatened. Take is defined under the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under limited circumstances, the Service may issue permits to authorize "incidental take" of listed animal species. "Incidental take" is defined by the Act as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

The applicant is seeking a permit for take of the threatened northern spotted owl (*Strix occidentalis caurina*) during the life of the permit. The duration of the permit is 30 years.

The Terra Springs LLC site, the covered lands, comprises two adjacent parcels, totaling 76 acres, and is located about 4 miles west of the city of Saint Helena, on the western edge of the Napa Valley between 1,800 and 2,000 feet above sea level. The site is located within a fragmented landscape of conifer, hardwood, and mixed conifer-hardwood forests; agricultural lands including vineyards, orchards, and grazing lands; and scattered wineries, residences, and bed and breakfast facilities. The Terra Springs LLC property currently includes an existing vineyard, orchard, and winery, in addition to approximately 65 acres of forest lands dominated by Douglas-fir trees.

The proposed Terra Springs LLC project includes a Timberland Conversion and Timber Harvest Plan prepared under California Forest Practices Rules. The project would convert 22 acres of forest to vineyard and would also include removal of commercial conifer trees from the remaining acres of forest, consistent with providing 41 acres of nesting/roosting-quality habitat for northern spotted owls.

Northern spotted owls have large home ranges and inhabit lands containing older forest types, or the ecological equivalent, to meet their biological needs. The minimum size of the home range for northern spotted owls that meets their biological needs varies from province to province. Within the Klamath and Coast Provinces of California (which include the proposed Plan area), a 1.3 mile radius area around a nest site or activity center is considered representative of the home range for the species for management purposes. The Terra Springs LLC site is within the home range of one northern spotted owl activity center, site number NSO NP033. This activity center is located approximately 1.1 miles from the Terra Springs site. Thus, forest within the Plan area is considered habitat for the owls associated with the activity center.

The applicant proposes to avoid, minimize, and mitigate the effects of the project on the northern spotted owl by implementing the Plan. Under the Plan the applicant proposes to manage 41 acres of the 76 acres property as forested, nesting/roosting habitat for the northern spotted owl. The applicant will also place a deed restriction on the parcel requiring management of these 41 acres as northern spotted owl habitat, in perpetuity. Currently 30 acres of the 41 acres are nesting/roosting habitat quality. The remaining 11 acres, currently of foraging habitat quality, will be managed to develop into the higher quality nesting/roosting habitat. In addition to mitigation, the Plan also includes measures to minimize take of the northern spotted owl.

No critical habitat for any listed species occurs on the project site.

The Proposed Action consists of the issuance of an incidental take permit and implementation of the Plan, which includes measures to avoid, minimize and mitigate impacts of the project on the northern spotted owl. Three other alternatives are considered in the Plan. Under the No Action Alternative, no permit would be issued. Under the Off-site Mitigation Alternative, roosting and foraging habitat would be purchased and used to replace habitat affected by the proposed activities. Under the Higher Intensive Use Alternative, more intensive land uses than are currently in place or proposed in the Plan would be sought.

The Service has made a preliminary determination that the Plan qualifies as a "low-effect" plan as defined by its Habitat Conservation Planning Handbook (November 1996). Determination of low-effect Habitat Conservation Plans is based on the following three criteria: (1) Implementation of the Plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the Plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the Plan, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant.

Therefore, the Service has preliminarily determined that approval of the Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, appendix 1 and 516 DM 6, appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. We will consider public comments in making our final determination on whether to prepare such additional documentation.

The Service provides this notice pursuant to section 10(c) of the Act. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public. We will evaluate the permit application, the Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to Terra Springs, LLC for the incidental take of the northern spotted owl from conversion of 22 acres of forest lands to vineyard and any subsequent removal of commercial conifer trees from the remainder of the covered lands. We will make the final permit decision no sooner than 30 days from the date of this notice.

Dated: October 22, 2002.

Miel R. Corbett,

Acting Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–27424 Filed 10–28–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–023–02–1410–HY–011L–241A; F–14836–EE]

Public Easement Closure; Prohibition of All Activities

AGENCY: Northern Field Office, Bureau of Land Management, Fairbanks, Alaska.

ACTION: Notice to the public of a temporary closure of a public easement [17(b) of the Alaska Native Claims Settlement Act, 43 U.S.C. Sec. 1616(b)] administered by the Northern Field Office, Bureau of Land Management, Alaska.

SUMMARY: This notice closes a 17(b) easement identified as Easement Identification Number 1 C5, E. The easement is located east of Barrow, Alaska, from Niksiirak to Plover Point. This closure notice is necessary to protect humans from an unprecedented number of polar bears in the area. The welfare of the polar bear population around Barrow, Alaska also necessitates this closure action.

Discussion of this closure has taken place between BLM, the North Slope Borough, Ukpeagvik Inupiat Corporation, and the Native Village of Barrow Inupiat Traditional Government.

DATES: This closure is effective September 23, 2002, and will be in effect until May 1, 2003, unless revoked earlier by the Authorized Officer.

FOR FURTHER INFORMATION: Additional information concerning the closure may be obtained from Craig McCaa, Public Affairs, BLM Northern Field Office, 1150 University Avenue, Fairbanks, Alaska 99709–3844. Mr. McCaa may be reached at (907) 474–2231 or at 1–800–437–7021, x2231, or at *Craig_McCaa@ak.blm.gov.*

SUPPLEMENTARY INFORMATION:

Closure Order

1. *Authority:* 43 Code of Federal Regulations (CFR) 8364.1.

2. *Closure:* The following described lands are closed to all activity.

Lands Affected

Sec. 12 & 13, T. 23 N., R. 18 W., and Sec. 3, 4, 5, 7, 8, 10, 18, 32 and 33, T. 23 N., R. 17 W., of the Umiat Meridian, approximately 1 acre.

Dated: September 24, 2002.

Susan M. Will,

Associate Field Manager, Northern Field Office, Bureau of Land Management.

[FR Doc. 02–27479 Filed 10–28–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–02–2640–HO–UTZA]

Notice of Temporary Closure of the Manning Canyon Area

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of temporary closure of the Manning Canyon Area.

SUMMARY: Notice is hereby given that all access by the public to the roads and surrounding public lands in Manning Canyon, Utah County, will be temporarily closed to the general public beginning October 1, 2002 and continuing through October 1, 2006. The public lands, which total approximately 4,110 total acres, that are affected by this closure are as follows:

Manning Canyon Hazardous Material Cleanup Site

T. 6 S., R. 3 W., SLM,
Section 13, W½,
Section 14, all,
Section 15, all,
Section 22, E½, all public lands east of and including the north-south road,
Section 23, all,
Section 24, S½NE¼, W½,
Section 25, W½, SE¼, those lands which BLM holds interest in pursuant to Manning Canyon remediation contract,
Section 26, all public lands east of the West Manning Canyon Road,
Section 27, NE¼NE¼NE¼, north of the West Manning Canyon Road,
Section 36, N½NW¼ north and east of the West Manning Canyon Road and north of the old railroad grade.

FOR FURTHER INFORMATION CONTACT: Tim Ingwell, BLM Hazardous Material Specialist, Salt Lake Field Office, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah, 84119; (801)–977–4300, or email at *Tim_Ingwell@blm.gov*.

SUPPLEMENTARY INFORMATION: This closure to public access and use will serve to protect the safety and health of individuals and groups visiting and utilizing the network of Off-Highway Vehicle (OHV) trails, visiting, hiking, hunting, and camping within the Fivemile Pass OHV area during the cleanup of the hazardous material in Manning Canyon. The hazardous materials consist of numerous mine tailings piles that contain large concentrations of heavy metals, such as lead and arsenic, and exceed the recommended parts per million concentrations. These tailings are also a potential threat to ground water contamination to water sources used by local residents. A map depicting the closure area is available for public inspection at the Bureau of Land Management, Salt Lake Field Office.

The authority for establishing this restriction is found at 43 CFR 8364.1(a). This restriction does not apply to:

(1) Any federal, state or local government officer or member of an organized rescue or fire fighting force while in the performance of an official duty.

(2) Any Bureau of Land Management employee, agent, contractor, or cooperator while in the performance of an official duty.

(3) Any federal, state, local, or contract law enforcement officer, while in the performance of their official duties, or while enforcing this closure notice.

Violation of this closure is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360–0.7 as further defined in 18 U.S.C. 3571.

Dated: September 25, 2002.

Glenn A. Carpenter,

Field Office Manager.

[FR Doc. 02–27477 Filed 10–28–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–03–1430–BJ]

Notice of Filing of Plats of Survey; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

Indian Meridian, Oklahoma:

T. 7 N., R 21 W., approved September 27, 2002, for Group 65 OK;
T. 10 N., R 10 E., approved September 30, 2002, for Group 88 OK;
T. 25 N., R 24 E., approved September 04, 2002, for Group 72 OK;

New Mexico Principal Meridian, New Mexico:

T. 9 S., R 14 E., approved September 26, 2002, for Group 928 NM;
Tierra Amarilla Grant, approved September 10, 2002, for Group 904 NM;
Felipe Gutierres or Town of Bernalillo Grant, approved September 23, 2002, for Group 994 NM;

6th Principal Meridian, Kansas

T. 33 S., R 40 W., approved September 30, 2002, for Group 25 KS;

Protraction Diagrams for:

T. 19 N., R 11 E., approved September 30, 2002, NM;

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: October 7, 2002.

Steve Beyerlein,

Acting Chief Cadastral Surveyor for New Mexico.

[FR Doc. 02–27490 Filed 10–28–02; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN–75209]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada; Correction

AGENCY: Bureau of Land Management.

ACTION: Correction.

SUMMARY: This action corrects errors in the acreage and land descriptions in the notice published as FR Doc. 02–11433, 67 FR 30960, May 8, 2002.

On page 30960, second column, line 6 from the bottom of the column, which reads "2,303.61 acres of public lands from" is hereby corrected to read "2,313.92 acres of public lands from".

On page 30960, third column, line 29 from the top of the column, which reads "Sec. 4, lots 9 to 14, inclusive, lots 16 to 20," is hereby corrected to read "Sec. 4, lots 9 to 14, inclusive, lots 16 and 17,".

On page 30960, third column, line 35 from the top of the column, which reads "Sec. 9, lots 1 to 4 inclusive," is hereby corrected to read "Sec. 9, lots 1 to 3 inclusive,".

On page 30960, third column, line 37 from the top of the column, which reads "S½NE¼SW¼NE¼, S½SE¼SW¼NE¼," hereby corrected to read "S½NE¼SW¼NE¼, N½SE¼SW¼NE¼,".

On page 30960, third column, line 17 from the bottom of the column, which reads "Sec. 16, N½NW¼SW¼, SE¼NE¼NE¼," is hereby corrected to read "Sec. 16, SE¼NE¼NE¼,".

On page 30960, third column, line 15 from the bottom of the column, which reads "SE¼NE¼NE¼, and E½SE¼NE¼." is hereby corrected to read "SW¼NE¼NE¼, and E½SE¼NE¼.".

On page 30960, third column, line 13 from the bottom of the column, which reads "2,303.61 acres in Nye and Mineral" is hereby corrected to read "2,313.92 acres in Nye and Mineral".

Dated: September 24, 2002.

Jim Stobaugh,

Lands Team Lead.

[FR Doc. 02–27478 Filed 10–28–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Northeast Region; Notice of Termination of an Environmental Impact Statement, Intent To Prepare an Environmental Assessment, and To Hold Public Meetings

In accordance with the National Environmental Policy Act of 1969 (Pub. L.91–109 section 102(c)) supportive Council on Environmental Quality regulations, Department of the Interior and National Park Service (NPS) guidance documents, the NPS is terminating an Environmental Impact Statement (EIS) as noticed in the **Federal Register**, March 13, 2002 (11363) for a special resource study of an Upper Housatonic Valley National Heritage Area, authorized by Public Law 106–470. It was apparent that an EIS was not necessary as there was little or no potential for significant impact to the human environment of the study area. Coincident with this termination notice, and pursuant to the same authorization and guidance, the NPS is hereby noticing its intent to prepare an Environmental Assessment (EA) for the Upper Housatonic Valley study area which encompasses a watershed containing eight municipalities in Litchfield County, Connecticut and eighteen municipalities in Berkshire County, Massachusetts. The purpose of the study and EA is to determine if this area can become a National Heritage Area. If the National Park Service determines that the Upper Housatonic Valley has an assemblage of natural, historic, and cultural resources that together represent distinctive aspects of American heritage worthy of recognition, conservation, interpretation, and continuing use, Congress could designate it as a National Heritage Area. The study will identify alternative interpretive theme options and partnership arrangements to manage the heritage area. NPS would not administer or manage such an area. The alternatives will describe: Proposed heritage area boundaries; evaluations of significance, suitability, and feasibility; characteristics of the proposed management entity; participation of State and local governments and private and public organizations; anticipated levels of public use; as well as consider economic and social benefits of public use as the principal aspect of potential impact to the human environment within and about the study area.

The National Park Service will hold public meetings in December, 2002 (Date, Time, and Place to be announced coincident with noticing the availability of the study and EA in draft) which will provide opportunity for public comment on the study and EA. The purpose of these meetings is to obtain both written and verbal comments concerning the future use, stewardship and protective management of an Upper Housatonic Valley National Heritage Area.

Additional information about the study and EA is available from James O'Connell, Study Project Manager, National Park Service Boston Support Office, 15 State Street, Boston, Massachusetts 02109–3572, (617) 223–5222. Those persons who wish to comment verbally or in writing, or who require further information, should contact Mr. O'Connell.

After public and interagency review of the document in draft, comments will be considered, the EA portion of the study will be accordingly finalized and a NEPA closure document in the form of a Finding of No Significant Impact will be prepared, so that the study can be finalized in a report to Congress. Should any unresolvable controversy arise or significant environmental impacts unknown at this time be realized, the steps of closure and study report completion could be forestalled by necessity to process a full environmental impact statement.

Sandra Corbett,

Superintendent, Boston Support Office.

[FR Doc. 02–27245 Filed 10–28–02; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–749 (Review)]

Persulfates From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on persulfates from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

On September 6, 2002, the Commission determined that the domestic interested party group

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

response to its notice of institution (67 FR 38333, June 3, 2002) was adequate and the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[2] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act. The Commission transmitted its determination in this review to the Secretary of Commerce on October 31, 2002. The views of the Commission are contained in USITC Publication 3555 (October 2002), entitled Persulfates From China: Investigation No. 731–TA–749 (Review).

Issued: October 23, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–27436 Filed 10–28–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–473]

Certain Video Game Games Systems and Components Thereof; Notice of Commission Decision Not to Review an Initial Determination Finding the Sole Respondent in Default, and Request for Submissions on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission ("the Commission") has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") finding respondent Ultimate Game Club ("UGC") in default. In connection with final disposition of the investigation, the Commission is requesting briefing on remedy, the public interest, and the appropriate bond during the period of Presidential review.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON–LINE) at *http://dockets.usitc.gov/eol/public.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission voted to institute this investigation on July 19, 2002, based on a complaint against UGC filed by Microsoft Corporation of Redmond, Washington. 67 FR 48949 (July 26, 2002). The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain video game systems, accessories, or components by reason of infringement of the claims of U.S. Design Patent No. D452,282 and U.S. Design Patent No. D452,534.

UGC did not file responses to the complaint, the notice of investigation, or Microsoft's discovery requests. On August 24, 2002, Microsoft moved pursuant to section 337(g) and Commission rule 210.16(b) for issuance of an order directing UGC to show cause why it should not be found in default. Microsoft's motion also requested that, upon UGC's failure to show cause, an ID be issued finding UGC in default, and that a limited exclusion order and cease and desist order be issued immediately against UGC. On August 23, 2002, the Commission investigative attorney (IA) filed a response supporting the request for a show cause order. On September 5, 2002, the presiding ALJ issued Order No. 4, which ordered UGC to show cause by September 18, 2002, why it should not be found in default. UGC did not respond to the order to show cause.

On September 27, 2002, the IA filed a letter supporting a finding of default against UGC. On October 9, 2002, the ALJ issued an ID (Order No. 5) finding UGC in default. No petitions for review of the ID were filed. Under Commission rule 210.16(b)(3), 19 CFR 210.16(b)(3), UGC is deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in this investigation. Section 337(g)(1), 19 USC 1337(g)(1) and Commission rule 210.16 (c), 19 CFR 210.16(c), authorize the Commission to order limited relief against a respondent found in default unless, after consideration of public interest factors, it finds that such relief should not issue. In this investigation, UGC has been found in default and Microsoft has requested issuance of a limited exclusion order that would deny entry to certain video game systems, accessories, or components imported by UGC. Microsoft also requests issuance of a cease and desist order. If the Commission decides to issue remedial orders against UGC, it must consider what the amount of the bond should be during the Presidential review period. In connection with the final disposition of this investigation, the potential remedies are a cease and desist order and a limited exclusion order that could result in the exclusion from entry into the United States of certain video game systems, accessories, or components imported by UGC. Accordingly, the Commission is interested in receiving written submissions that address whether either or both such orders should be issued. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, it should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion). If the Commission contemplates a remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider in this investigation include the effect that remedial orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation. If the Commission issues a limited exclusion order, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed limited exclusion orders must be filed no later than close of business on [the date that is two weeks after issuance of this notice]. Reply submissions, if any, must be filed no later than the close of business on [the date that is three weeks after issuance of this notice]. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary. This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.16 and 210.42 of the Commission's rules of practice and procedure, 19 CFR 210.16 and 210.42.

By order of the Commission.

Issued: October 23, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–27435 Filed 10–28–02; 8:45 am]

BILLING CODE 7020–02–P

[2] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements is available from the Office of the Secretary and at the Commission's Web site.

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: New Collection, Financial Status Report (SF 269A).

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 163, page 54479 on August 22, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 29, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of information collection:* New collection.

2. *The title of the form/collection:* Financial Status Report (SF 269A).

3. *The agency number, if any, and the applicable component of the department sponsoring the collection:* Non-applicable. The Department of Justice, Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The form is completed by grant recipients who were awarded grants by the Department of Justice, Office of Justice Programs. It is used as an aid for grant recipients to report the status of their expenditures.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The estimated total number of respondents are 11,292, and the estimated time to complete the form is one and a half hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 67,752 hours annual burden associated with this information collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: October 23, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–27416 Filed 10–28–02; 8:45 am]

BILLING CODE 4410–18–M

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, November 7, 2002, and Friday, November 8, 2002, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW.,

Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on November 7, and at 9: a.m. on November 8.

Topics for discussion include: Medicare in the context of the federal budget; emergency department use and beneficiary access to care; beneficiary access to post-hospital care—results of a focus group with hospital discharge planners; how Medicare makes coverage decisions; payment for ambulatory surgery and other services provided in multiple settings; examining growth in the volume of physician services; M+C payment areas—exploring alternatives; choice of SNF services in Medicare+Choice; PPS for inpatient psychiatric facilities; expanded transfer policy for hospital inpatient services; and workplans for assessing the adequacy of payments for outpatient dialysis, skilled nursing facilities, and home health services.

Agenda will be mailed on November 30, 2002. The full agenda will be available on the Commission's website (*www.MedPAC.gov.*)

ADDRESSES: MedPAC's address is: 601 New Jersey Avenue, NW.,; Suite 9000, Washington, DC 20001. The telephone number is (202) 220–3700.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 220–3700.

Mark E. Miller,

Executive Director.

[FR Doc. 02–27445 Filed 10–28–02; 8:45 am]

BILLING CODE 6820–BW–M

OFFICE OF NATIONAL DRUG CONTROL POLICY

Meeting of the Advisory Commission on Drug Free Communities

AGENCY: Office of National Drug Control Policy.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Drug-Free Communities Act, a meeting of the Advisory Commission on Drug Free Communities will be held on November 13, 2002, at the Office of National Drug Control Policy in the 5th Floor Conference Room, 750 17th Street NW., 7th Floor, Washington, DC. The meeting will commence at 9 a.m. on Wednesday, November 13, 2002, and adjourn at 5 p.m. The agenda will include: the solicitation for Mentoring Grants; the National Antidrug Coalition Institute; the Marijuana and Community Drug Prevention Initiatives of the National Youth Anti-Drug Media Campaign Coalition Building Initiative; and remarks by ONDCP Director, John P. Walters. There will be an opportunity for public comment from 4 p.m. until 4:30 p.m. on Wednesday, November 13, 2002. Members of the public who wish to attend the meeting and/or make public comment should contact Sigrid Melus at (202) 395–6700 to arrange building access.

FOR FURTHER INFORMATION CONTACT: Linda V. Priebe, (202) 395–6622.

Dated: October 23, 2002.

Linda V. Priebe,

Assistant General Counsel.

[FR Doc. 02–27415 Filed 10–28–02; 8:45 am]

BILLING CODE 3180–02–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 7, Application for License to Export Nuclear Equipment and Material.

2. *Current OMB approval number:* 3150–0027.

3. *How often the collection is required:* On occasion; for each separate request for a specific export license and for exports of incidental radioactive material using existing general licenses.

4. *Who is required or asked to report:* Any person in the U.S. who wishes to export: (a) Nuclear equipment and material subject to the requirements of a specific license, (b) radioactive waste subject to the requirements of a specific license, and (c) incidental radioactive material that is a contaminant of shipments of more than 100 kilograms of non-waste material using existing NRC general licenses.

5. *The number of annual respondents:* 70.

6. *The number of hours needed annually to complete the requirement or request:* 191 hours (190.8).

7. *Abstract:* Any person in the U.S. wishing to export nuclear material and equipment requiring a specific authorization or radioactive waste requiring a specific authorization ordinarily should file an application for a license on NRC Form 7, except that certain submittals should be filed by letter. The application will be reviewed by the NRC and by the Executive Branch, and if applicable statutory, regulatory, and policy considerations are satisfied, the NRC will issue a license authorizing the export.

A completed NRC Form 7 must also be filed by any person in the U.S. wishing to use existing NRC general licenses for the export of incidental radioactive material before the export takes place (if the total amount of the shipment containing the incidental radioactive material exceeds 100 kilograms). The form is reviewed by the NRC to ensure that the Agency is informed before the fact of these kinds of shipments and to allow NRC to inform other interested parties, as appropriate, including import control authorities in interested foreign countries.

Submit, by December 30, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 22nd day of October, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–27480 Filed 10–28–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice; Meeting

DATE: Weeks of October 28, November 4, 11, 18, 25, December 2, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 28, 2002

Wednesday, October 30, 2002

2 p.m. Discussion of security issues (Closed—Ex. 1 & 9)

Thursday, October 31, 2002

9:25 a.m. Affirmation session (Public meeting), (If needed)

9:30 a.m. Briefing on EEO program (Public meeting) (Contact: Irene Little, 301–415–7380)

2:30 p.m. Briefing on proposed rulemaking to add new section 10 CFR 50.69, "Risk-Informed Categorization and Treatment of Structures, Systems, and Components for Nuclear Power Reactors" (Public meeting) (Contact: Eileen McKenna, 301–415–2189, or Timothy Reed, 301–415–1462)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Friday November 1, 2002

9 a.m. Discussion of security issues (Closed—Ex. 1)

Week of November 4, 2002—Tentative

There are no meetings scheduled for the week of November 4, 2002.

Week of November 11, 2002—Tentative

Thursday, November 14, 2002

2 p.m. Discussion of management issues (Closed—Ex. 2)

Week of November 18, 2002—Tentative

Thursday, November 21, 2002

2 p.m. Discussion of security issues (Closed—Ex. 1)

Week of November 25, 2002—Tentative

There are no meetings scheduled for the week of November 25, 2002.

Week of December 2, 2002—Tentative

Wednesday December 4, 2002

10 a.m. Briefing on decommissioning bankruptcy issues (Closed—Ex. 4 & 9)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: R. Michelle Schroll (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: October 24, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 02–27591 Filed 10–25–02; 12:31 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, October 4, 2002, through October 17, 2002. The last biweekly notice was published on October 15, 2002 (67 FR 63687).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Rgister a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville

Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By November 29, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov*.

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief."

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: September 6, 2002.

Description of amendments request: The amendments would replace the peak linear heat safety limit, in Technical Specification (TS) 2.1.1.2, "Reactor Core SLs [Safety Limits]," by a peak fuel centerline temperature safety limit to have a safety limit in the TSs that would not be exceeded during normal operation or anticipated operational occurrences (AOOs), in accordance with Section 50.36(c)(1)(ii)(A) of Title 10 of the Code of Federal Regulations (10 CFR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not require any physical change to plant systems, structures, or components nor does it require any change in systems or plant operations. The proposed change does not result in any change to safety analysis methods or results. The change to establish peak fuel centerline temperature as the Safety Limit is consistent with the PVNGS Units 1, 2 and 3 licensing bases for ensuring that the fuel design limits are met. Operations and analysis will continue to be in accordance with the PVNGS Units 1, 2 and 3 licensing bases. The peak fuel centerline temperature is the basis for protecting the fuel and is consistent with the safety analysis. [The peak linear heat rate and peak fuel centerline temperature safety limits are not initiators of accidents.]

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The PVNGS Units 1, 2 and 3 Updated Final Safety Analysis Report (UFSAR) Chapter 15 accident analyses for AOOs where the peak linear heat rate may exceed the existing Safety Limit of 21 kW/ft are the control element assembly (CEA) Withdrawal events at Subcritical and Low Power conditions. The analyses for these AOOs indicate that the peak fuel centerline temperature is not exceeded. The existing safety analyses, which remain unchanged, do not affect any accident initiators that would create a new accident. [The peak linear heat rate and peak fuel centerline temperature safety limits are not initiators of accidents.]

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not result in any change to safety analysis methods or results. Therefore, by changing the Safety Limit from peak linear heat rate to peak fuel centerline temperature the margins as established in the PVNGS Units 1, 2 and 3 Technical Specifications and UFSAR are unchanged.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, APS [Arizona Public Service Company] concludes that the activities associated with the proposed amendment[s] presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c) and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: September 20, 2002.

Description of amendment request: The proposed amendment revises Technical Specification (TS) 3.9.5, Shutdown Cooling (SDC) and Coolant Circulation—Low Water Level, for Unit Nos. 1 and 2 to add two notes to allow operational changes in the Shutdown Cooling System to support operations and testing. The changes would allow the SDC pumps to be deenergized for less than or equal to 15 minutes when switching from one train to another. The second change would allow one SDC loop to be inoperable for up to 2 hours for surveillance testing, provided that the other loop was operable and in operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The system affected by this proposed amendment is the Shutdown Cooling (SDC) System. This system mitigates the consequences of a boron dilution event and removes decay heat from the Reactor Coolant System when the unit is in Mode 6. This proposed amendment revises the Technical Specification to allow the SDC pumps to be deenergized for less than or equal to 15 minutes to allow swapping from one operating train to another, and would allow one SDC loop to be inoperable for up to two hours for surveillance testing. Because this system is used for the mitigation of an accident, it is not an accident initiator. Therefore, the probability of an accident previously evaluated is not increased.

The only design basis accident considered in this Mode is a boron dilution event. Consideration is also given to a loss of decay heat removal in this Mode as well. Both of these conditions are evaluated in the Updated Final Safety Analysis Report (UFSAR). The evaluations consider operation of the SDC system to mitigate these conditions. Removing this system from service for a limited amount of time, with other operational restrictions, limits the consequences to those already assumed in the UFSAR. Thus, no increase in offsite dose occurs under this conditions. Therefore, the consequences of an accident previously evaluated have not increased.

Therefore, the probability or consequences of an accident previously evaluated have not significantly increased.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The proposed changes do not involve a significant change in the operation of the plant and no new accident initiation mechanism is created by the proposed changes. The SDC System is not being altered by this amendment request. No substantial changes are made in the way in which the SDC System is operated. The only change made would allow both SDC pumps to be

deenergized to swap operating trains, and one SDC inoperable for less than two hours to allow for surveillance testing. Since the SDC System is an accident mitigating system only, changes in when this system is needed to operate cannot create a new [kind] of accident.

Therefore, the possibility of a new or different [kind] of accident from any previously evaluated is not created.

3. Would not involve a significant reduction in a margin of safety.

The margin of safety provided by the SDC System is to provide boration control and to remove decay and sensible heat from the Reactor Coolant System as described in the UFSAR. Removal of system components from service as described above, and with limitations in place to prevent boron dilution and loss of decay and sensible heat removal, does not significantly impact the margin of safety. The SDC System will continue to be able to provide its safety function under this conditions. Operators will continue to have adequate time to respond to any off-normal events. Removing the system from service, for a limited period of time, with other operational restrictions limits the consequences to those already assumed in the UFSAR. Therefore, no reduction in [a] margin of safety has occurred because the event results in the UFSAR are not changed by operation in the proposed conditions.

Therefore, the proposed changes do not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard J. Laufer.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, and Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina and York County, South Carolina

Date of amendment request: August 26, 2002.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) for diesel fuel oil for the plant's onsite diesel-generator power sources. The proposed changes would allow the use of an optional water and sediment content test, would relocate the specific version of certain American Society for Testing and Materials (ASTM) references to licensee controlled documents, would add several new ASTM references, and would relocate the requirement for a 10-year diesel fuel oil tank inspection and cleaning to licensee controlled documents. The licensee stated that the changes are consistent with the Standard Technical Specification Travelers (TSTF) 374, Revision 0 and TSTF 2, Revision 1. Associated changes are also proposed for the TS Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following discussion is a summary of the evaluation of the change contained in this proposed amendment against the 10 CFR 50.92 (c) requirements to demonstrate that all three standards are satisfied. A no significant hazards consideration is indicated if operation of the facility in accordance with the proposed amendments would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

First Standard

The proposed changes relocate the specific American Society for Testing and Materials (ASTM) Standard references from the Administrative Controls Section of Technical Specifications (TS) to a licensee-controlled document. Since any changes of the licensee-controlled document will be evaluated to the requirements of 10 CFR 50.59, "Changes, tests, and experiments," no increase in the probability or consequences of an accident previously evaluated is involved. In addition, the "clear and bright" test used to establish the acceptability of new fuel oil for use prior to addition to the storage tanks has expanded to allow a water and sediment content test to be performed to establish the acceptability of new fuel oil. The Bases for SR 3.8.3.3 (CNS) and 3.8.3.2 (MNS) are revised to indicate that the API gravity is tested in accordance with ASTM D1298 or D287.

Relocating the specific ASTM Standard references from the TS to a licensee-controlled document, allowing a water and sediment test to be performed to establish the acceptability of new fuel oil, and revising the TS Bases will not affect or degrade the ability of the emergency diesel generators (DGs) to perform their specified safety function. Fuel oil quality will continue to meet ASTM requirements.

In addition Surveillance Requirements (SR) 3.8.3.5 for McGuire and 3.8.3.6 for Catawba are revised to remove the requirement for a 10-year tank inspection and cleaning. This requirement will be moved to a licensee-controlled document. Any changes of the licensee-controlled document will be evaluated to the requirements of 10CFR 50.59 "Changes, tests, and experiments,".

This change will not affect or degrade the ability of the emergency diesel generators (DGs) to perform their specified safety function. Fuel oil quality will continue to meet ASTM requirements.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained.

The proposed changes do not alter or prevent the ability of structures, systems, or components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated.

Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Second Standard

The proposed changes relocate the specific ASTM Standard references from the Administrative Controls Section of TS to a licensee-controlled document. In addition, the "clear and bright" test used to establish the acceptability of new fuel oil for use prior to addition to storage tanks has been expanded to allow a water and sediment content test to be performed to establish the acceptability of new fuel oil. The proposed changes revise Bases B 3.8.3 to reference the current specific ASTM standards. The Bases for SRs 3.8.3.3 (CNS) and 3.8.3.2 (MNS) are revised to indicate that the API gravity is tested in accordance with ASTM D1298 or D287.

In addition Surveillance Requirements (SR) 3.8.3.5 for McGuire and 3.8.3.6 for Catawba are revised to remove the requirement for a 10-year tank inspection and cleaning. This requirement will be moved to a licensee-controlled document. Any changes of the licensee-controlled document will be evaluated to the requirements of 10CFR50.59 "Changes, tests, and experiments,".

The changes do not involve a physical alteration to the plant (*i.e.*, no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis or licensing basis. Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Third Standard

The proposed changes relocate the specific ASTM Standard references from the Administrative Control Section of TS to a licensee-controlled document. Instituting the proposed changes will continue to ensure the use of the current applicable ASTM Standards to evaluate the quality of both new and stored fuel oil designated for use in the emergency diesels. The detail associated with the specific ASTM Standard references is not required to be in the TS to provide adequate protection of the public health and safety, since the TS still retains the requirement for compliance with the applicable ASTM standard. Changes to the licensee-controlled document are performed in accordance with the provisions of 10 CFR 50.59. Should it be determined that future changes involve a potential reduction in a margin of safety, NRC review and approval would be necessary prior to the implementation of the changes. This approach provides an effective level of regulatory control and provides for a more appropriate change control process.

The "clear and bright" test used to establish the acceptability of new fuel oil for use prior to the addition to storage tanks has been expanded to allow a water and sediment content test to be performed to establish the acceptability of new fuel oil. The proposed changes revise Bases B 3.8.3 to allow reference to the current ASTM standard. The Bases for SR 3.8.3.3 is revised to indicate that the API gravity is tested in accordance with ASTM D1298 or D287. The level of safety of facility operation is unaffected by the proposed changes since there is no change in the intent of the TS requirements of assuring fuel oil is of the appropriate quality for emergency DG use.

In addition Surveillance Requirements (SR) 3.8.3.5 for McGuire and 3.8.3.6 for Catawba are revised to remove the requirement for a 10-year tank inspection and cleaning. This requirement will be moved to a licensee-controlled document. Any changes of the licensee-controlled document will be evaluated to the requirements of 10CFR50.59 "Changes, tests, and experiments". The level of safety of the facility operation is unaffected by the proposed changes since there is no change in the intent of the SR to clean and inspect the fuel tanks.

Therefore, the proposed changes listed above do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 15, 2001, as supplemented by letter dated August 27, 2002.

Description of amendment request: The proposed amendment request provides additional information to support a modification to Technical Specification 3.4.7 and limits Reactor Coolant System activity permitted by the ACTION statement to 60 microcuries per gram (μCi/gm) at all power levels. The letdown line break accident analysis in the Final Safety Analysis Report is also changed to reflect revised dose consequences. This notice supercedes the biweekly **Federal Register** notice dated November 28, 2001 (66 FR 59504), based on the original application dated October 15, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed change to the Technical Specifications (TS) conservatively limits Reactor Coolant System (RCS) activity permitted by Action Statement 3.4.7.a to 60 μCi/gm at all reactor power levels. The proposed change to the Final Safety Analysis Report (FSAR) Section 15.6.3.1 revises the letdown line break accident analyses.

The probability of a previously evaluated accident is not affected by this change because the pre-existing iodine spike is not an accident initiator and the new letdown line break accident analysis does not affect any plant Structure, Systems, or Component (SSC) but merely determines the consequences of the previously evaluated accident.

This TS change is conservative in that it will reduce the accident consequences for events occurring at lower power levels. The new letdown line break accident analysis meets the original Safety Evaluation Report (SER) and the current Standard Review Plan (SRP) acceptance criteria of a small fraction of the 10 CFR [Part] 100 limits.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will the operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The probability of a new or different accident is not affected by this change because the new letdown line break analysis does not affect any plant Structure, Systems, or Component but merely determines the consequences of the previously evaluated accident.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will the operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: The TS change is more limiting in that it will reduce the accident consequences for events occurring at lower power levels.

The new letdown line break accident analysis, assuming one operating charging pump, meets the original SER and current SRP acceptance criteria of a small fraction of the 10 CFR [Part] 100 limits. This single pump analysis provides a suitable licensing basis analysis and has sufficient conservatism to accommodate two and three pump operating scenarios that may exist during the operating cycle.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois; Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment request: September 27, 2002.

Description of amendment request: The proposed amendment changes Appendix B, "Environmental Protection Plan (Non-Radiological)," of the license by removing a parenthetical reference to a superseded section of 10 CFR 51.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change deletes a reference to a superseded section of 10 CFR 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," found in the non-radiological Environmental Protection Plans (EPPs) for Byron Station, LaSalle County Station and Quad Cities Nuclear Power Station, Units 1 and 2. The EPP (Non-Radiological) is Appendix B to the Facility Operating License. The change is administrative in nature. No physical changes to the facilities will result from the proposed change. The initial conditions and methodologies used in accident analyses remain unchanged. The

proposed change does not revise or alter the design assumptions for systems or components used to mitigate the consequences of accidents. Thus, accident analyses results are not impacted by this proposed change.

Therefore, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change deletes a reference to a superseded section of 10 CFR 51.5. The change is administrative in nature. No physical or operational changes to the facilities will result from the proposed change.

The proposed change does not affect the design or operation of any system, structure, or component (SSC) in the plant. The safety functions of the related SSCs are not changed in any manner, nor is the reliability of any SSC reduced. The change does not affect the manner by which the facility is operated and does not change any facility, structure, system, or component. No new or different type of equipment will be installed by this proposed change.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change is administrative in nature and has no impact on the margin of safety of any Technical Specification. There is no impact on safety limits or limiting safety system settings. The change does not affect any plant safety parameters or setpoints. The proposed change deletes an inaccurate reference to a section of 10 CFR 51 that has been superseded. No physical or operational changes to the facility will result from the proposed changes.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania

Date of amendment request: January 16, 2002.

Description of amendment request: The amendment would make administrative, editorial, and format (including repagination) changes to the technical specification (TS) Bases index and the Administrative Control section of TSs. Specifically, the amendments would relocate the TS Bases page listings from the TS index to a TS Bases index, and remove certain duplicative administrative requirements from Section 6, "Administrative Controls," of the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed administrative changes to the TS index and to Section 6 of the TSs do not result in changes being made to structures, systems, or components (SSCs), or to event initiators or precursors. Also, the proposed changes do not impact the design of plant systems such that previously analyzed SSCs would now be more likely to fail. The initiating conditions and assumptions for accidents described in the Updated Final Safety Analysis Report (UFSAR) remain as previously analyzed. Thus, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

The previously analyzed SSCs are unaffected by the proposed changes and continue to provide assurance that they are capable of performing their intended design function in mitigating the effects of design basis accidents (DBAs). As such, the consequences of accidents previously evaluated in the UFSAR will not be increased and no additional radiological source terms are generated. Therefore, there will be no reduction in the capability of those SSCs in limiting the radiological consequences of previously evaluated accidents and reasonable assurance that there is no undue risk to the health and safety of the public will continue to be provided. Thus, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed administrative changes do not significantly increase the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed administrative changes do not involve physical changes to analyzed SSCs or changes to the modes of plant operation defined in the technical specification. The proposed changes do not involve the addition or modification of plant equipment (no new or different type of equipment will be installed) nor do they alter the design or adversely affect operation of any plant systems. No new accident scenarios, accident or transient initiators or precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes.

The proposed administrative changes do not cause the malfunction of safety-related equipment assumed to be operable in accident analyses. No new or different mode of failure has been created and no new or different equipment performance requirements are imposed for accident mitigation. As such, the proposed changes have no effect on previously evaluated accidents.

Therefore, the proposed administrative changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

No. The proposed administrative changes do not affect any previously evaluated accident. The proposed changes do not adversely affect the TS requirements and will continue to ensure that the necessary plant equipment is operable in the plant conditions where these systems are required to operate to mitigate a DBA as described in the analyses presented in the UFSAR. Thus, the proposed administrative, editorial, and format changes do not affect plant safety.

Therefore, the proposed administrative changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Richard J. Laufer.

Indiana Michigan Power Company, Docket No. 50–316, Donald C. Cook Nuclear Plant, Unit 2, Berrien County, Michigan

Date of amendment request: July 23, 2002.

Description of amendment request: The proposed amendment would revise the Unit 2 reactor coolant system (RCS) pressure-temperature curves in Technical Specification (TS) Figures 3.4–2 and 3.4–3 and associated TS Bases. The revised curves will bound operation of the unit for the remainder of its current license duration and bound operation with planned license amendments to increase the power level at which the unit is allowed to operate.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

Probability of Occurrence of an Accident Previously Evaluated

The proposed change will revise the RCS pressure-temperature curves to bound operation of the reactor for up to 32 EFPY at a power level of up to 3800 MW for the current fuel cycle and beyond, to reflect new fluence analysis methodology, to reflect the use of ASME [American Society of Mechanical Engineers] Code Case N–641, to include boltup limits, and to no longer include instrument uncertainty margins.

The proposed change will not result in physical changes to structures, systems, or components (SSCs), or to event initiators or precursors. The proposed change will not affect the ability of personnel to control RCS [Reactor Coolant System] pressure at low temperatures and, thereby, ensure the integrity of the RCPB [Reactor Coolant Pressure Boundary]. Use of ASME Code Case N–641 will be approved by the NRC through approval of a Donald C. Cook Nuclear Plant-specific exemption to requirements in 10 CFR 50.60(a) and 10 CFR 50, Appendix G. Therefore, the proposed revision to the RCS pressure-temperature curve changes will have been determined in accordance with NRC accepted methodologies. These methodologies provide adequate assurance that the reactor vessel will withstand the effects of normal cyclic loads due to temperature and pressure changes, and provide an acceptable level of protection against brittle failure. Additionally, the proposed changes will not impact the design or operation of plant systems such that previously analyzed SSCs will be more likely to fail. The initiating conditions and assumptions for accidents described in the UFSAR will remain as previously analyzed. Therefore, the proposed changes will not involve a significant increase in the probability of an accident previously evaluated.

Consequences of an Accident Previously Evaluated

The proposed change does not reduce the ability of any SSC to limit the radiological consequences of accidents described in the UFSAR. The proposed change will not alter any assumptions made in the analysis of radiological consequences of previously evaluated accidents, nor does it affect the ability to mitigate these consequences. No new or different radiological source terms will be generated as a result of the proposed change. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

The format changes will improve the appearance of the affected pages but will not affect any requirements. In summary, the probability of occurrence and the consequences of an accident previously evaluated will not be significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will not result in physical changes to SSCs. The proposed change will not involve the addition or modification of plant equipment (no new or different type of equipment will be installed) nor will it alter the design of any plant systems. The proposed change solely involves RCS pressure-temperature limits. The types of potential accidents associated with these limits have been previously identified and evaluated. No new accident scenarios, accident or transient initiators or precursors, failure mechanisms, or single failures will be introduced as a result of the proposed changes. No new or different modes of failure will be created. The format changes will improve the appearance of the affected pages but will not affect any requirements. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed RCS pressure-temperature curves will continue to provide adequate margins of protection for the RCPB. The proposed changes have been determined, through supporting analyses, to be in accordance with the methodologies and criteria set forth in the applicable regulations, or in accordance with technically adequate alternatives. Compliance with these methodologies provides adequate margins of safety and ensures that the RCPB will withstand the effects of normal cyclic loads due to temperature and pressure changes as well as the loads associated with postulated faulted events as described in the UFSAR. The format changes will improve the appearance of the affected pages but will not affect any requirements. Therefore, the proposed change will not significantly reduce the margin of safety.

In summary, based upon the above evaluation, [Indiana Michigan Power Company] I&M has concluded that the proposed changes involve no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: September 30, 2002.

Description of amendment request: The proposed amendment requests permission to change Kewaunee Nuclear Power Plant (KNPP) Facility Operating License DRP–43 to use an upgraded computer code for design basis accident containment integrity analyses. KNPP is currently licensed to use code for Generation of Thermal-Hydraulic Information for Containment (GOTHIC) version 6.0a. The proposed amendment requests to use GOTHIC 7.0p2 (GOTHIC 7).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Accident analyses affected by GOTHIC have each been evaluated and found to show good agreement between the GOTHIC 7 analysis and the current analysis of record (AOR). Safety analysis results using GOTHIC 7 are shown to satisfy all applicable design and safety analysis acceptance criteria. Since GOTHIC 7 conforms to design bases and its results are bounded by the existing safety analyses, its use within limits of the bounding accident analyses will not cause an increase in the probability or consequences of an accident previously evaluated. Adherence to safety analysis acceptance criteria prevents use of GOTHIC 7 from creating new challenges to components and systems that could adversely affect their ability to mitigate accident consequence or diminish integrity of any fission product barrier.

Thus, the requested upgrade to GOTHIC 7 with [mist diffusion layer] MDL modeling option will not increase probability or the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Upgrade to GOTHIC 7 is a change in analysis methods applied to Kewaunee [design basis accident] DBA. Analysis methods are not accident initiators. GOTHIC 7 will be applied in the same manner currently licensed and it is consistent with current plant design bases and licensed accident analysis methodologies. It does not adversely affect any fission product barrier, nor does it alter the safety function of safety related systems, structures, and components depended upon for accident prevention or mitigation. Equipment important to safety will continue to function within design. As demonstrated by the [Numerical

Applications Inc.] NAI report, GOTHIC 7 yields a representation of expected plant response for affected design basis accidents that is more accurate but remains conservative. GOTHIC 7 predicted results for affected DBA remain bounded by the limiting analyses of record.

Thus, the requested upgrade to GOTHIC 7 does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety.

Upgrade to GOTHIC 7 affects Kewaunee design basis [loss of coolant accident] LOCA and [main steamline break] MSLB DBA containment analyses. The results predicted by GOTHIC 7 for these DBA analyses remain within limiting design basis accidents of record. GOTHIC 7 accuracy and conservatism in this application has been verified through benchmark analyses against the current analyses of record, validated against recognized standard data, and found to be appropriate for application to Kewaunee DBA. Safety analysis acceptance criteria are satisfied and adherence to safety analysis acceptance criteria using GOTHIC 7 assures that Technical Specification limits will not be exceeded during normal operation.

Thus, upgrade to GOTHIC 7 does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: September 19, 2002.

Description of amendment request: The proposed amendment would delete Surveillance Requirement (SR) 4.6.B.2, "Primary System Boundary—Reactor Vessel Temperature and Pressure," from the Monticello Technical Specifications (TSs) on the basis of the licensee's commitment to (1) relocate the current requirements to the Updated Safety Analysis Report (USAR) and (2) implement the Boiling Water Reactor Vessel and Internals Program Integrated Surveillance Program as approved by the Nuclear Regulatory Commission (NRC) in a letter dated February 1, 2002. SR 4.6.B.2 currently states: "Test specimens representing the reactor vessel, base weld, and weld heat affected zone metal shall be installed in the reactor vessel adjacent to the vessel wall at the core midplane level. The material sample program shall conform to ASTM [American Society for Testing and Materials] E 185–66." The licensee would also make related changes to the TS Bases 3.6/4.6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change relocates the requirement of the TS Surveillance Requirement to a Licensee controlled document and implements an integrated surveillance program that has been evaluated by the NRC staff as meeting the requirements of paragraph III.C of Appendix H to 10 CFR [Part] 50. The proposed change of relocating a TS Surveillance Requirement to the Monticello USAR and implementing an integrated surveillance program is not considered a precursor or initiator of an accident previously evaluated. The proposed change does not impact current plant operations or the design function of any structure, system or component. Consequently, the proposed change does not significantly increase the probability of any accident previously evaluated.

The proposed change provides the same assurance of Reactor Pressure Vessel integrity as has always been assured. The relocation of the TS Surveillance Requirement provides an acceptable method for implementing the integrated surveillance program which was evaluated by the NRC staff as meeting the requirements of 10 CFR [Part] 50, Appendix H, paragraph III.C. The relocation of the TS Surveillance or the implementation of an integrated surveillance program is not an input or consideration in any accident previously evaluated, thus the proposed change will not increase the probability of any such accident occurring. The proposed amendment does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident, nor does it affect any assumptions or conditions in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, operation of the facility in accordance with the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. No equipment interfaces are modified and no changes to any equipment function or the method of operating the equipment are being made. The proposed change, to relocate the TS Surveillance and implement an integrated surveillance program, maintains an equivalent level of RPV [reactor pressure vessel] material surveillance and does not introduce any new accident initiators. The proposed change will not change the design, configuration or operation of the plant.

Therefore, operation of the facility in accordance with the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change will not involve a significant reduction in a margin of safety.

The proposed amendment has been evaluated as providing an acceptable alternative to the plant-specific RPV material surveillance program that meets the requirements of the regulations for RPV material surveillance. The proposed change does not exceed or alter a design basis or safety limit. The change relocates a TS Surveillance Requirement and implements an integrated surveillance program and as such does not significantly reduce the margin of safety.

Therefore, operation of the facility in accordance with the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: L. Raghavan.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania

Date of amendment request: September 23, 2002.

Description of amendment request: **The proposed amendments would change the SSES 1 and 2 Technical Specifications (TSs) by revising limiting condition for operation (LCO) 3.6.2.3 to add a new Condition B, which permits both residual heat removal (RHR) suppression pool cooling subsystems to be inoperable for 8 hours, rather than immediately initiating a unit shutdown. By making this change, the licensee is incorporating Technical Specifications Task Force change traveler number 230 into its TSs.**

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed change relaxes the Required Actions of [LCO 3.6.2.3] by allowing 8 hours to restore one RHR suppression pool cooling subsystem to OPERABLE status when both subsystems have been determined to be inoperable. Required Actions and their associated Completion Times are not initiating conditions for any accident previously evaluated. The proposed 8 hour Completion Time provides some time to restore required subsystem(s) to OPERABLE status, yet is short enough that operating an additional 8 hours is not a significant risk. Consequently, this change in Required Actions does not significantly increase the probability of occurrence of any accident previously evaluated. The Required Actions in the proposed change have been developed to provide assurance that appropriate remedial actions are taken in response to the degraded condition, considering the operability status of the RHR Suppression Pool Cooling System and the capability of minimizing the risk associated with continued operation. As a result, the consequences of any accident previously evaluated are not significantly increased. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical modification or alteration of plant equipment (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The Required Actions and associated Completion Times in the proposed change have been evaluated to ensure that no new accident initiators are introduced. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The relaxed Required Actions do not involve a significant reduction in a margin of safety. The proposed change has been evaluated to minimize the risk of continued operation with both RHR suppression pool cooling subsystems inoperable. The operability status of the RHR Suppression Pool Cooling System, a reasonable time for repair or replacement of required features, and the low probability of a design basis accident occurring during the repair period have been considered in the evaluation. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Richard J. Laufer.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: April 16, 2002.

Description of amendment request: **The proposed change would revise the Technical Specifications to delete the primary containment isolation valves and instrumentation associated with the permanent removal of the reactor vessel head spray piping.**

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: No.

The proposed changes to Technical Specification Tables 3.3.2–1, 3.3.7.4–2, 3.4.3.2–1, and 3.6.3–1 do not involve a change in structures, systems, or components that would affect the probability or consequences of any accident previously evaluated in the Hope Creek Updated Final Safety Analysis Report.

The proposed changes involve eliminating piping and valves associated with the reactor head spray. The reactor head spray system was initially provided to cool down the steam dryer and separator during shutdown. The head spray system is not credited for the prevention or mitigation of any accident. Therefore, neither the offsite or control room radiological consequences are affected. The head spray piping removal and addition of a bolted flange on the reactor coolant pressure boundary enhances plant safety by eliminating a source of pipe whip and potential leakage. In addition, the drywell penetration will be capped and welded closed. This will maintain primary containment integrity and will be periodically tested in conjunction with the containment integrated leak rate test.

Therefore, as discussed above, this modification does not involve a significant increase in the probability or consequences from any accident previously analyzed.

2. Does not create the possibility of a new or different kind of accident from any accident previously analyzed?

Response: No.

The proposed changes to Technical Specification Tables 3.3.2–1, 3.3.7.4–2, 3.4.3.2–1, and 3.6.3–1 do not involve a change in structures, systems, or components that would create a new or different kind of accident from any accident previously evaluated in the Hope Creek Updated Final Safety Analysis Report.

The proposed change to eliminate the head spray piping and the addition of a bolted flange on the reactor coolant pressure boundary enhances plant safety by eliminating a source of pipe whip and potential leakage. In addition, the drywell penetration will be capped and welded closed. This will maintain primary containment integrity and will be tested in conjunction with the containment integrated leak rate test.

Therefore, as discussed above, this modification does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does not involve a significant reduction in [a] margin of safety?

Response: No.

The proposed change to delete the head spray valves from Tables 3.3.2-1, 3.3.7.4–2, 3.4.3.2–1, and 3.6.3–1 does not reduce any margin of safety as defined in the Technical Specifications or Bases. The bolted flange that will be installed on the head spray penetration will maintain the integrity of the reactor coolant pressure boundary. This flange would then be tested as part of the reactor pressure vessel hydrostatic test. In addition, the drywell penetration will be capped and welded closed. This will maintain primary containment integrity and will be tested as part of the containment integrated leak rate test.

Accordingly, based on the above, the proposed change does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Andersen, Acting.

Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: November 7, 2001.

Description of amendment request: **The proposed amendments would remove license condition 2.C.3.f from the Unit 1 operating license and license condition 2.C.4 from the Unit 2 operating license, and replace them with a commitment in Section 9.1.4.2.2.5 of the Updated Final Safety Analysis Report (UFSAR). Specifically, license conditions 2.C.3.f and 2.C.4 to FOLs NPF–2 and NPF–8, respectively, require NRC approval of the lifting devices which attach the spent fuel cask to the crane prior to use of the spent fuel cask crane for the purpose of moving**

spent fuel casks. Subsequent to issuance of FOLs NPF–2 and NPF–8, the NRC issued NUREG–0612, "Control of Heavy Loads at Nuclear Power Plants," which endorsed the use of ANSI N14.6 for the design and inspection of special lift devises thereby eliminating the need for license conditions 2.C.3.f and 2.C.4. Accordingly, SNC proposes that license conditions 2.C.3.f and 2.C.4 be removed from FOLs NPF–2 and NPF–8, respectively, and replaced with a commitment in the FNP UFSAR to ANSI N14.6 for the design, fabrication, testing, and quality assurance requirements associated with the spent fuel cask lift device.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change replaces license conditions 2.C.3.f and2.C.4 to FOLs NPF–2 and NPF–8, respectively, with a commitment in the FNP Updated Final Safety Analysis Report (UFSAR) to the requirements of ANSI N14.6, as clarified by NUREG–0612, for the design, fabrication, testing, maintenance, and quality assurance requirements applicable to the spent fuel cask special lift device. The proposed change does not involve a physical change to or require new or different operability requirements for plant systems, structures, or components. NUREG–0612, Control of Heavy Loads at Nuclear Power Plants, provides methods acceptable to the NRC for assuring the safe handling of heavy loads. NUREG–0612 endorses the use of ANSI N14.6 for the design, fabrication, testing, maintenance, and quality assurance requirements applicable to special lifting devices used to handle heavy loads in the proximity of safe shutdown equipment and irradiated spent fuel, thereby eliminating the need for license conditions 2.C.3.f and 2.C.4 to FOLs NPF–2 and NPF–8, respectively. Accordingly, removal of license conditions 2.C.3.f and 2.C.4 to FOLs NPF–2 and NFP–8, respectively, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change replaces license conditions 2.C.3.f and 2.C.4 from FOLs NPF–2 and NPF–8, respectively, with a commitment in the FNP UFSAR to the requirements of ANSI N14.6, as clarified by NUREG–0612, for the design, fabrication, testing, maintenance, and quality assurance requirements applicable to the spent fuel cask special lift device. The proposed change does not involve: (1) A physical change to plant systems, structures or components; or (2) require new or different operability requirements for plant systems, structures, or components. SNC's commitment to the guidance provided in ANSI N14.6, as clarified by NUREG–0612, provides assurance that the spent fuel cask special lift device, in conjunction with the use of the single-failure proof spent fuel cask crane, will preclude the possibility of a cask drop accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety?

The proposed change does not involve a physical change to the plant or impact the operability requirements of systems, structures, or components considered important to safety. As stated above, the use of ANSI N14.6, as clarified by NUREG–0612, has been endorsed by the NRC in NUREG–0612. The proposed change replaces license conditions 2.C.3.f and 2.C.4 to FOLs NPF–2 and NPF–8, respectively, with a commitment in the FNP UFSAR to the requirements of ANSI N14.6, as clarified by NUREG–0612, for the design, fabrication, testing, maintenance, and quality assurance requirements for the spent fuel cask crane special lift device. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Section Chief: John A. Nakoski.

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear (SQN) Plant, Unit 1, Hamilton County, Tennessee

Date of amendment request: March 29, 2002 (TSC 02–02) as supplemented by a letter dated October 10, 2002.

Description of amendment request: The proposed amendment deletes several of the Unit 1 Technical Specification (TS) surveillance requirements (SR) contained in TS 3/4.4.5, "Steam Generators" (SGs), associated with the voltage-based SG alternative repair criteria (ARC). In addition the proposed changes would delete License Condition 2.C.9.d which references commitment letters associated with SG inspection activities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Tennessee Valley Authority's [TVA's] proposed TS amendment does not compromise limits associated with SG tube integrity. TVA's proposed change removes existing SG tube plugging criteria (*i.e.*, ARC) from the TS and reestablishes the standard TS criteria (40 percent through-wall criteria). This change is inherently more conservative.

The proposed revision does not alter plant equipment, test methods or operating practices. The proposed change continues to provide controls for safe operation of SQN SGs within the required limits. The proposed change does not contribute to events or assumptions associated with postulated design basis accidents (*i.e.*, SG tube rupture). The proposed change does not affect operator indicators or actions required to diagnose or mitigate a SG tube rupture accident. The proposed revisions continue to maintain the required safety functions. Accordingly, the probability of an accident or the consequences of an accident previously evaluated is not increased.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

TVA's proposed amendment removes existing repair criteria and incorporates the more conservative TS limit for SG tube plugging (*i.e.*, plug tubes with degradation depths equal to or greater than 40 percent through-wall). This change will not give rise to new failure modes. The failure of a SG tube to maintain leakage integrity during operation is an analyzed event in the SQN Updated Final Safety Analysis Report. Accordingly, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

TVA's proposed TS amendment is conservative with respect to the margin of safety. The margin of safety is preserved through ensuring structural integrity and leakage integrity of the SG tubes.

TVA's proposed change to remove ARC from the TS does not compromise structural integrity or leakage integrity of SG tubes. The proposed change invokes the standard TS tube plugging criteria limit (40 percent through-wall criteria) which is inherently more conservative.

The proposed change does not affect the plant conditions, setpoints, or safety limits that could result in precursors to accidents or degrade accident mitigation systems. Plant system safety functions are not altered by the proposed change. Consequently, the proposed TS revisions does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 6, 2002 (TS 00–14).

Brief description of amendments: The proposed amendments would change the Sequoyah (SQN) Units 1 and 2 Technical Specification (TS) 3/4.4.9.1, "Pressure/Temperature [P–T] Limits, Reactor Coolant System" and TS 3/4.4.12, "Low Temperature Overpressure Protection [LTOP] Systems." The proposed amendment provides two changes to the these specifications as described below:

1. The proposed change relocates the information provided in these TSs into a pressure temperature limit report (PTLR) format in accordance with U.S. Nuclear Regulatory Commission (NRC) Generic Letter (GL) 96–03, "Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure Protection System Limits."

2. The proposed change also upgrades these TSs to the standard TS requirements for Westinghouse plants (NUREG–1431, Revision 2). In addition, the Tennessee Valley Authority (TVA) proposed a change to SQN TS 3/4.4.9.2, "Pressurizer," to relocate the requirements of this TS into the SQN Technical Requirements Manual (TRM).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision does not affect plant equipment, test methods or operating practices. The modification to SQN TSs is consistent with the Standard Technical Specifications for Westinghouse Plants and continues to provide controls for safe operation within the required limits. The revised specifications provide appropriate administrative controls for the RCS [reactor coolant system] P–T limits and LTOP setpoints within the PTLR for future revisions as needed. The proposed changes do not contribute to events or assumptions associated with postulated design basis accidents (DBA). The proposed revisions continue to maintain the required safety functions. Accordingly, the probability of an accident or the consequences of an accident previously evaluated is not increased.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revisions are not the result of changes to plant equipment, test methods, or operating practices. The proposed revision to the SQN RCS P–T limits, and LTOP setpoints continues to ensure that conservative fracture toughness margins are maintained to protect against reactor pressure vessel failure and overpressure conditions. The modified P–T limits and LTOP setpoints are based on NRC approved methodology in conjunction with alternative methods provided in ASME Code Case N–640, "Alternative Requirement Fracture Toughness for Development of P–T Limit Curves for ASME [American Society of Mechanical Engineers] Section XI, Division 1" and WCAP–15315, "Reactor Vessel Closure Head/Vessel Flange Requirements Evaluation for Operating PWR [pressurized water reactor] and BWR [boiling water reactor] Plants."

The proposed changes to incorporate the PTLR format is administrative in nature and provide controls for maintaining RCS P–T limits and LTOP setpoints for future revisions as needed.

The reactor vessel P–T limits and LTOP setpoints are operational limits and are not considered to be contributors to the generation of postulated accidents. The safety functions of the associated systems remain unchanged and do not affect the assumptions of DBAs. The operational limits and setpoints continue to be governed within the TSs/PTLR. Accordingly, the proposed changes do not create the possibility of a new or different kind of accident.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

TVA's proposed TS amendment provides revised reactor pressure vessel P–T limits and LTOP setpoints that are within the design capabilities of the RCS Safety Structures, Systems and Components (SSC) and pressure control systems. The limits are based on conservative design margins that ensure that plant operation is within the design capacity of the reactor vessel materials. Accordingly, the function of the RCS to provide a fission product barrier is not compromised.

TVA's proposed change to include revised P–T and LTOP limits does not result in a change to system design features. The proposed change does not affect plant conditions that result in precursors to accidents or cause degradation of accident mitigation systems. The plant system safety functions are not altered by the proposed change.

The proposed changes to the P–T limits and LTOP setpoints change the calculations and method from that described in the current TS Bases to one based on ASME Code Case N–640 and WCAP–15315. The effect of this change is to allow plant operation with different limits while continuing to retain conservative margins for assuring integrity of the reactor vessel and the RCS. Consequently, the proposed TS revisions do not significantly reduce the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: July 9, 2002.

Brief description of amendment: The proposed amendment would revise the Technical Specifications to remove the cycle-specific allowances on (1) Rod insertion limits during individual rod position indicator channel calibrations and (2) rod position indicator channel accuracy for operation at or below 50 percent power. The proposed amendment also would revise the control rod indicated misalignment limits.

Date of publication of individual notice in **Federal Register:** October 7, 2002 (67 FR 62500).

Expiration date of individual notice: November 6, 2002.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: October 1, 2002.

Brief description of amendments: The amendments revise the licensing basis as described in the Updated Final Safety Analysis Report (UFSAR) to allow lifting heavier loads with the reactor building crane during the Unit 1 refueling outage beginning in November 2002.

Date of publication of individual notice in **Federal Register:** October 4, 2002 (67 FR 62270).

Expiration date of individual notice: November 4, 2002.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: September 11, 2001, as supplemented on June 27 and September 19, 2002.

Brief description of amendment: The amendment revised the Technical Specifications, Section 3.9, "Refueling," and its corresponding bases to permit the continuation of core alterations during refueling operations with the refueling interlocks inoperable by providing alternate actions which will preserve the intended design function of the inoperable interlocks.

Date of Issuance: October 10, 2002.

Effective date: October 10, 2002, and shall be implemented within 30 days of issuance.

Amendment No.: 234.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 5, 2002 (67 FR 10008). The June 27 and September 19, 2002, letters provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 10, 2002.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2 (HBRSEP2), Darlington County, South Carolina

Date of application for amendment: March 13, 2002, as supplemented May 10, August 14, September 5, September 23, and October 4, 2002.

Brief description of amendment: The amendment revises the Technical Specifications (TS) for HBRSEP2 to permit selective implementation of alternative radiological source term and modify the TS requirement for movement of irradiated fuel and performing core alterations.

Date of issuance: October 4, 2002.

Effective date: October 4, 2002.

Amendment No.: 195.

Facility Operating License No. DPR–23: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 30, 2002 (67 FR 21285). The May 10, August 14, September 5, September 23, and October 4, 2002, supplements contained clarifying information only and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: January 31, 2002, as supplemented by letters dated June 12, June 25, July 22, September 16, and October 2, 2002.

Brief description of amendment: This amendment increases the licensed power level by approximately 1.7%, from 3,833 megawatts thermal (MWt) to 3,898 MWt. These changes result from increased feedwater flow measurement accuracy to be achieved by utilizing high accuracy ultrasonic flow measurement instrumentation.

Date of issuance: October 10, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 156.

Facility Operating License No. NPF–29: The amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 2, 2002 (67 FR 15622).

The June 12, June 25, July 22, September 16, and October 2, 2002, supplemental letters provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 10, 2002.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 30, 2001.

Description of amendment request: The amendment revises the Cooper Nuclear Station's Technical Specifications (TS) 5.5.7, "Ventilation Filter Testing Program (VFTP)," reflecting a correction of an erroneous reference to American Society of Mechanical Engineers N510–1980.

Date of issuance: September 30, 2002.

Effective date: The amendment is effective on the date of issuance, to be implemented within 30 days from the date of issuance.

Amendment No.: 195.

Facility Operating License No. DPR–46: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 5, 2001 (66 FR 46480). The Commission related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: June 28, 2002, as supplemented on August 15, August 16, and October 2, 2002.

Brief description of amendments: The amendments change the Salem Technical Specifications (TS) requirements for Fuel Decay Time prior to commencing movement of irradiated fuel. TS Limiting Condition for Operation 3/4.9.3, "Decay Time," is revised to allow fuel movement in the containment to commence 100 hours after the reactor has become subcritical between October 15th through May 15th. Should refueling occur between May 16th and October 14th, the current 168 hours decay time limit will remain in place. These requirements are valid through the year 2010.

Date of issuance: October 10, 2002.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment Nos.: 251 and 232.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 30, 2002 (67 FR 55887). The August 15, August 16, and October 2, 2002, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 10, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: July 18, 2002.

Brief description of amendments: These amendments change the Salem Technical Specifications (TSs) requirements associated with its containment spray nozzles. The frequency of TS Surveillance Requirement (SR) 4.6.2.1.d for verifying that the containment spray nozzles are unobstructed is changed from a fixed 10-year frequency to after activities that could result in nozzle blockage. In this case, PSEG will be required to evaluate the work performed to determine the impact to the containment spray system, or perform an air or smoke flow test. The applicable Bases pages are also revised to reflect this change.

Date of issuance: October 10, 2002.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment Nos.: 252 & 233.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 20, 2002 (67 FR 53989). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 10, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: November 1, 2001, as supplemented on October 1, 2002.

Brief description of amendments: The changes modify the provisions under which equipment may be considered operable when either its normal or emergency power source is inoperable. Technical Specifications (TS) Section 3.0.5 was deleted and additional limiting conditions for operation were incorporated into electrical power systems TS 3.8.1.1, "A.C. Sources—Operating." The corresponding TS Bases were modified accordingly. The proposed changes are consistent with the recommendations contained in NUREG–1431, Rev. 2, "Standard Technical Specifications for Westinghouse Plants."

Date of issuance: October 11, 2002.

Effective date: October 11, 2002.

Amendment Nos.: 253 and 234.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 5, 2002 (67 FR 5331). The October 1, 2002 supplement was within the scope of the original application and did not change the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 11, 2002.

No significant hazards consideration comments received: No.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: February 20, 2001.

Brief description of amendment: The amendment eliminates the security plan requirements from the 10 CFR Part 50 licensed site after the spent nuclear fuel has been transferred to the 10 CFR Part 72 licensed Independent Spent Fuel Storage Installation and is based in part on exemptions from specific requirements set forth in 10 CFR Part 73 and 10 CFR 50.54(p).

Date of issuance: October 10, 2002.

Effective date: October 10, 2002, to be implemented within 30 days.

Amendment No.: 131.

Facility Operating License No. DPR–54: The amendment revised the Operating License and the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 21, 2001 (66 FR 15930). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 10, 2002.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 25, 2002.

Brief description of amendment: The amendment revises Surveillance Requirements (SRs) 3.3.1.2 and 3.3.1.3 of the technical specifications on the reactor trip system (RTS) instrumentation. The change to SR 3.3.1.2 replaces the reference to the nuclear instrumentation system channel output by a reference to the power range channel output and deletes Note 1 to the SR. The change to SR 3.3.1.3 is editorial.

Date of issuance: October 2, 2002.

Effective date: October 2, 2002, and shall be implemented within 6 months of the date of issuance, including the incorporation of changes to the Technical Specification Bases as described in the licensee's application dated July 25, 2002.

Amendment No.: 148.

Facility Operating License No. NPF–42: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 20, 2002 (67 FR 53992). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2002.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 304–415–4737 or by email to *pdr@nrc.gov*.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By November 29, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[2] which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: September 26, 2002.

Description of amendment request: The amendments consist of a one-time change to the Dresden Updated Final Safety Analysis Report (UFSAR) to state that lifting heavy loads up to and including 116 tons is allowed prior to and during the upcoming Dresden Unit 3 refueling outage number 17.

Date of issuance: October 4, 2002.

Effective date: Immediately, to be implemented within 30 days.

Amendment No.: 196 and 189.

Facility Operating License Nos. DPR–19 and DPR–25: Amendment revises the UFSAR.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. Joliet Herald News, dated October 1, 2002. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a Safety Evaluation dated October 4, 2002.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Dated at Rockville, Maryland, this 18th day of October 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–27243 Filed 10–28–02; 8:45 am]

BILLING CODE 7590–01–P

[2] "The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitoner's interest.

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief."

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 1 p.m., Monday, November 4, 2002; 8:30 a.m., Tuesday, November 5, 2002.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: November 4—1 p.m. (Closed); November 5—8:30 a.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, November 4–1 p.m. (Closed)

1. Financial Performance.
2. Strategic Planning.
3. Personnel Matters and Compensation Issues.

Tuesday, November 5–8:30 a.m. (Open)

1. Minutes of the Previous Meeting, October 7–8, 2002.
2. Remarks of the Postmaster General and CEO.
3. Quarterly Report on Service Performance.
4. Capital Investments.
   a. Flats Sequencing System and Delivery Point Packager.
   b. Surface-Air Support System Modification Request and Enterprise Data Warehouse—Network Operations Management.
   c. Point of Service (POS) One—Stage 3.
5. Tentative Agenda for the December 9–10, 2002, meeting in Washington, DC.

CONTACT PERSON FOR MORE INFORMATION: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 02–27619 Filed 10–25–02; 2:45 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27583]

Filings Under the Public Utility Holding Company Act of 1935, As Amended ("Act")

October 23, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 18, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 18, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

PG&E Corporation, et al. (70–10047)

PG&E Corporation ("PG&E Corp."), a holding company claiming exemption from registration under section 3(a)(1) of the Act by rule 2, One Market, Spear Tower, Suite 400, San Francisco, California 94105, Pacific Gas and Electric Company ("PG&E"), a direct public-utility company subsidiary of PG&E Corp., Newco Energy Corporation ("Newco"), a direct nonutility subsidiary of PG&E, Electric Generation LLC ("Gen"), a direct nonutility subsidiary of Newco, all at 77 Beale Street, San Francisco, California 94177, have filed an application with the Commission under sections 9(a)(2) and 10 of the Act. On October 16, 2002, the Commission issued a notice of the application (HCAR No. 27578). This supplemental notice replaces the prior notice to correct certain inaccuracies.

On April 6, 2001, PG&E filed a petition under chapter 11 of the U.S. Bankruptcy Code. On September 20, 2001, PG&E Corp. and PG&E (collectively, "Proponents") jointly submitted to the United States Bankruptcy Court for the Northern District of California ("Bankruptcy Court") a plan of reorganization for PG&E. The Proponents subsequently amended that plan (as amended, "Plan"). PG&E is a debtor-in-possession, and continues to provide all of the electric generation, electric transmission, gas transmission, and gas and electric local distribution services that it did before, except that it is not able to purchase power to supply its net open position and is only able to make infrastructure investments. PG&E Corp., PG&E, Newco, and Gen (collectively, "Applicants") request authority to effect certain transactions, described below, as set forth in the Plan.[1]

I. Description of the Applicants

PG&E Corp., a California corporation, became the holding company of PG&E on January 1, 1997. Through other subsidiaries, PG&E Corp. is engaged in a number of nonutility businesses.[2] PG&E Corp.'s common stock and related preferred stock purchase rights are publicly traded on the New York Stock Exchange.

Newco was incorporated under the laws of the State of California on October 19, 2001. It is a wholly owned, direct subsidiary of PG&E. Newco is the sole member of three limited liability companies: ETrans LLC ("ETrans"); Gen; and GTrans LLC ("GTrans"). Currently, Gen is an inactive nonutility subsidiary that owns all of the outstanding ownership interests of twenty-seven limited liability companies (collectively, "GenSub LLCs").[3] The GenSub LLCs are California limited liability companies formed on October 30, 2001.

PG&E, a California corporation, is a public-utility company engaged principally in the business of providing regulated electricity and natural gas distribution and transmission services throughout most of northern and central California. Currently, all of the outstanding shares of common stock of PG&E are held directly or indirectly by PG&E Corp.[4] In addition, PG&E has a number of series of publicly held preferred stock outstanding. The company's service territory covers approximately 70,000 square miles, and includes all or a portion of forty-eight of California's fifty-eight counties. As of December 31, 2001, PG&E employed approximately 19,000 people. PG&E's generation facilities consist primarily of hydroelectric and nuclear generating plants, and have an aggregate net operating capacity of approximately 6,649 megawatts ("MW"). As of December 31, 2001, PG&E owned approximately 18,648 miles of interconnected transmission lines of 60 kilovolts ("kV") to 500 kV and transmission substations having a capacity of approximately 7,091 megavolt-amperes ("MVa"). PG&E distributes electricity to its customers through approximately 116,460 circuit miles of distribution system and distribution substations having a capacity of approximately 24,894 MVa. PG&E relinquished operational control, but not ownership, of its electric transmission facilities to the California Independent System Operator ("Cal-ISO").[5] PG&E also owns and operates a gas transmission, storage and distribution system in California. As of December 31, 2001, PG&E's gas system consisted of approximately 6,254 miles of transmission pipelines, three gas storage facilities, and 38,410 miles of gas distribution lines. PG&E's peak send-out of gas on its integrated system in California during the year ended December 31, 2001, was 3,793 million cubic feet ("MMcf"). The total volume of gas throughput during 2001 was approximately 916,635 MMcf of which 270,556 MMcf was sold to direct end-use or resale customers and 646,079 MMcf was transported as customer-owned gas. As of December 31, 2001, PG&E served approximately 3.9 million gas customers.

Currently, the Federal Energy Regulatory Commission ("FERC") regulates PG&E's electric transmission rates and access, interconnections, operation of the Cal-ISO, and terms and rates of wholesale electric power sales. In addition, most of PG&E's hydroelectric facilities operate in accordance with licenses issued by FERC. The Nuclear Regulatory Commission ("NRC") oversees the licensing, construction, operation and decommissioning of nuclear facilities, including PG&E's Diablo Canyon Power Plant ("DCPP") and the retired Humboldt Bay Power Plant Unit 3. The CPUC has jurisdiction to set retail rates and conditions of service for PG&E's electric distribution, gas distribution and gas transmission services in California. The CPUC also has jurisdiction over PG&E's sales of securities, dispositions of utility property, energy procurement on behalf of its electric and gas retail customers, and certain aspects of PG&E's siting and operation of its electric and gas transmission and distribution systems. In addition, the California Energy Commission has jurisdiction over the siting and construction of new thermal electric generating facilities fifty MW and greater in size.

II. The Plan

As of November 30, 2001, the total estimated allowed claims against PG&E was $13.135 billion. The Plan provides that PG&E pay its creditors $3.92 billion in cash that it currently has on hand and, as discussed below, finance the remaining $9.215 billion through asset sales, issuances of new securities and replacement mortgage bonds, and continuations of existing debt.

A. Asset Sales

Under the Plan, PG&E's four distinct lines of business—electric transmission; electric generation; gas transmission; and gas and electric distribution—would be structurally separated by dividing PG&E's assets and liabilities. PG&E would transfer, among other things, its electric transmission assets to ETrans in exchange for approximately $400 million in cash[6] and approximately $650 million in long-term notes issued to PG&E for transfer to its creditors.[7]

In exchange for approximately $850 million in cash[8] and approximately $1,550 million in long-term notes issued to PG&E for transfer to its creditors,[9] PG&E would transfer, among other things, most of its electric generation assets to the GenSub LLCs.

PG&E would transfer, among other things, certain gas transmission assets, to GTrans in exchange for $400 million in cash[10] and $500 million in long-term notes issued to PG&E for transfer to its creditors.[11]

B. Other Financi

1. Under the Plan, PG&E would issue approximately $3,706 million in new long-term notes to the public or to third parties in private offerings. PG&E would also issue new mortgage bonds to replace existing mortgage bonds. In addition, certain existing debts of PG&E would remain in place, for which PG&E would be responsible.

C. Asset and Debt Allocation

The Plan provides that: ETrans acquire 8.9% of PG&E's assets and assume 11.4% of its debt; Gen acquire 29.7% of PG&E's assets and assume twenty-six percent of its debt; and GTrans acquire 7.8% of PG&E's assets and assume 9.8% of its debt. Correspondingly, PG&E would retain 53.5% of its assets and be responsible for 52.8% of its debt.

III. The Reorganization

After its electric generation, electric transmission, and gas transmission assets are transferred, PG&E would dividend to PG&E Corp. all of its stock in Newco, and PG&E Corp. would dividend to its shareholders all of the common stock of PG&E (collectively, "Reorganization").[12] After the Reorganization, PG&E ("Reorganized PG&E") would no longer be an associate company with respect to ETrans, Gen, or GTrans. Applicants project, on a *pro forma* basis, that the common equity of PG&E Corp., as a percentage of its total capitalization, would be 21.1% as of December 31, 2002.

In accordance with lease agreements between the GenSub LLCs and their parent company, Gen would operate its subsidiaries' facilities.[13] Consequently, upon receipt by the GenSub LLCs of PG&E's utility assets, Gen would be a public-utility company within the meaning of the Act by virtue of its operation of those assets. Under the Plan, Gen and PG&E would enter into a Master Power Purchase and Sales Agreement ("PSA"). The PSA provides that, for twelve years, Gen sell and Reorganized PG&E purchase the capacity, energy and other electrical

[1] To date, the Bankruptcy Court has not approved the Plan or any other proposed plan to reorganize PG&E, including the plan submitted by the California Public Utilities Commission ("CPUC").

[2] These nonutility subsidiaries are organized under its wholly owned direct subsidiary, PG&E National Energy Group LLC ("PG&E NEG").

[3] The GenSub LLCs are: Diablo Canyon LLC; Mokelumne River Project LLC; Rock Creek-Cresta Project LLC; Haas-Kings River Project LLC; Crane Valley Project LLC; Pit 1 Project LLC; Hat Creek 1 and 2 Project LLC; Poe Project LLC; Pit 3, 4 and 5 Project LLC; Upper NF Feather River Project LLC; Spring Gap-Stanislaus Project LLC; Kern Canyon Project LLC; Kilarc-Cow Creek Project LLC; Chili Bar Project LLC; Desabla-Centerville Project LLC; McCloud-Pit Project LLC; Drum-Spaulding Project LLC; Merced Falls Project LLC; Bucks Creek Project LLC; Potter Valley Project LLC; Phoenix Project LLC; Kerckhoff 1 and 2 Project LLC; Narrows Project LLC; Balch 1 and 2 Project LLC; Helms Project LLC; Battle Creek Project LLC; and Tule River Project LLC.

[4] PG&E Corp. holds approximately ninety-four percent of PG&E's common stock directly and approximately six percent indirectly through PG&E Holdings LLC ("PG&E Holdings"), a wholly-owned subsidiary of PG&E.

[5] The Cal-ISO controls the operation of the California transmission system, is responsible for assuring the reliability of the electric system, provides open access transmission service on a nondiscriminatory basis, has responsibility for meeting applicable reliability criteria, planning transmission additions and assuring the maintenance of adequate reserves, and is subject to tariffs filed with the FERC.

[6] Applicants state that ETrans would raise this cash by selling long-term notes to the public or to third parties in private offerings.

[7] Applicants state that the allocation between cash and notes may change based on market conditions and other factors.

[8] Applicants state that Gen, the parent of the GenSub LLCs, would raise this cash by selling long-term notes to the public or to third parties in private offerings.

[9] *See* above, at n. 7.

[10] Applicants state that GTrans would raise this cash by selling long-term notes to the public or to third parties in private offerings.

[11] *See* above, at n.7.

[12] PG&E Holdings LLC would retain its ownership of approximately six percent of PG&E's outstanding common shares.

[13] The term of each lease is for as long as each GenSub LLC holds a license issued by the FERC to operate (or by the NRC to possess, use or operate) its facility.

products from Gen's facilities and procured by Gen under its certain contracts. Applicants state that they are seeking approval from the FERC for the proposed market-based rates provided for by the PSA. Under the PSA, Reorganized PG&E would have the right to dispatch (*i.e.*, direct the timing and level of operation) the facilities within legal and contractual constraints so that the output is delivered primarily when Reorganized PG&E needs it to serve its customers. The GenSub LLCs may also be public-utility companies by virtue of their direct ownership of generating facilities,[14] in which case Gen would also be a "holding company" as a result of its ownership of all the outstanding ownership interests in the GenSub LLCs.[15] Applicants also state that Gen would claim exemption by rule 2 from registration under section 3(a)(1) of the Act. Applicants state that, after the Reorganization, the FERC would have license and operating jurisdiction over most of the hydroelectric facilities and rate jurisdiction over the sale of the output of Gen and its subsidiaries, and the NRC would continue its jurisdiction over the operations of the Diablo Canyon Power Plant. Applicants project, on a *pro forma* basis, that the common equity of Gen, as a percentage of its total capitalization, would be −97.2% as of December 31, 2002.

ETrans would be a public-utility company as a result of its ownership and operation of transmission assets. Applicants state that the FERC would continue to have jurisdiction over the rates, terms and conditions for all transmission and transmission-related services provided by ETrans. They also state that the FERC would have jurisdiction over ETrans' participation in the Cal-ISO or any future FERC-approved Western regional transmission organizations that would have operating control over ETrans' transmission assets under FERC tariffs. Applicants project, on a *pro forma* basis, that the common equity of ETrans, as a percentage of its total capitalization, would be 33.8% as of December 31, 2002.

PG&E Corp. and Newco would also be "holding companies," within the meaning of the Act, as a result of holding ownership interests in ETrans, Gen, the GenSub LLCs and, in the case of PG&E Corp., Newco. Applicants state that PG&E Corp. would continue to claim exemption,[16] and Newco would claim exemption, from registration by rule 2 under section 3(a)(1) of the Act. Applicants state that, with the exception of GTrans,[17] PG&E Corp. would continue to own its existing nonutility businesses through PG&E NEG.

Reorganized PG&E would continue to provide gas and electric distribution services using assets that it currently owns. PG&E's preferred stock would remain in place as the preferred stock of Reorganized PG&E. Applicants state that the CPUC would continue to have jurisdiction over Reorganized PG&E's retail electric and gas distribution assets, rates, and services. Applicants project, on a *pro forma* basis, that the common equity of Reorganized PG&E, as a percentage of its total capitalization, would be 44.4% as of December 31, 2002.

IV. Summary of Proposed Transactions

Applicants request authority for: (1) Gen to acquire directly the GenSub LLCs; (2) Newco to acquire directly Gen and ETrans, and to acquire indirectly the GenSub LLCs; and (3) PG&E Corp. to acquire directly Newco, and acquire indirectly ETrans, Gen, and the GenSub LLCs.[18] If necessary, Applicants also request authority for PG&E to acquire Newco, ETrans and Gen on an interim basis, between the time that utility assets are transferred to ETrans and Gen and the Reorganization is completed.[19]

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-27516 Filed 10-28-02; 8:45 am]

BILLING CODE 8010-01-P

[14] Applicants argue that the GenSub LLCs would not be "public-utility companies" within the meaning of the Act but, alternatively, request authority for Gen to acquire them directly and Newco and PG&E Corp. to acquire them indirectly.

[15] *See supra*, at n.8.

[16] On July 5, 2001, the California Attorney General filed a petition requesting that the Commission terminate PG&E Corp.'s claimed exemption and require that PG&E Corp. register under section 5 of the Act or modify the company's exemption to ensure compliance with California law.

[17] GTrans would not be a public-utility company within the meaning of the Act because, according to Applicants, it would provide only gas transmission services.

[18] *See supra*, at n.8.

[19] Applicants also state that, if necessary, PG&E will claim exemption from registration by rule 2 under the Act for the interim period during which it will hold all of the ownership interests in Newco.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25784; File No. 812-12847]

The Equitable Life Assurance Society of the United States, *et al.*; Notice of Application

October 23, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order of approval pursuant to section 26(c) of the Investment Company Act of 1940 (the "1940 Act") and an order of exemption pursuant to section 17(b) of the 1940 Act from section 17(a) of the 1940 Act.

APPLICANTS: For purposes of the order requested pursuant to section 26(c), The Equitable Life Assurance Society of the United States ("Equitable"), Separate Account A of Equitable ("Separate Account A"), Separate Account FP of Equitable ("Separate Account FP"), Separate Account No. 45 of Equitable ("Separate Account 45"), Separate Account No. 301 of Equitable ("Separate Account 301"), The American Franklin Life Insurance Company ("American Franklin"), Separate Account VUL of American Franklin, Integrity Life Insurance Company ("Integrity"), Separate Account VUL of Integrity, National Integrity Life Insurance Company ("National Integrity") and Separate Account VUL of National Integrity (collectively, the "section 26 Applicants").[1] For purposes of the order pursuant to section 17(b), Equitable, Separate Account A, Separate Account FP, Separate Account 45, Separate Account 66 and Separate Account 301 and EQ Advisors Trust (the "Trust") (collectively with Equitable and its Separate Accounts, the "section 17 Applicants").

SUMMARY OF APPLICATION: Applicants request an order (a) approving the proposed substitution by certain insurance company separate accounts of Class 1A shares of the EQ/Alliance International Portfolio for Class 1A shares of the EQ/Alliance Global Portfolio and Class 1B shares of the EQ/Alliance International Portfolio for Class 1B shares of the EQ/Alliance Global Portfolio (the "Substitution") and (b) to permit certain in-kind transactions in connection with the proposed Substitution. Each of these portfolios serves as an underlying investment option for certain variable annuity contracts and/or variable life insurance policies ("Contracts") issued by Equitable, American Franklin, Integrity and National Integrity (collectively, the "Insurance Companies" and individually, an "Insurance Company"). (The EQ/Alliance International Portfolio is referred to herein as the "Replacement Portfolio." The EQ/Alliance Global Portfolio is referred to herein as the "Removed Portfolio.").

FILING DATE: The application was filed on July 3, 2002 and amended and restated on October 23, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 13, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants: c/o Peter D. Noris, Executive Vice President and Chief Investment Officer, The Equitable Life Assurance Society of the United States, 1290 Avenue of the Americas, New York, New York 10104; G. Stephen Wastek, Esq., Integrity Life Insurance Company, National Integrity Life Insurance Company, 515 West Market Street, Louisville, Kentucky 40202; Lauren W. Jones, Esq., The American Franklin Life Insurance Company, 2929 Allen Parkway, Houston, Texas 77019; and Arthur J. Brown, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942-8090).

[1] Separate Account A, Separate Account FP, Separate Account 45, Separate Account No. 66 of Equitable ("Separate Account 66"), Separate Account 301, Separate Account VUL of American Franklin, Separate Account VUL of Integrity and Separate Account VUL of National Integrity are referred to herein collectively as the "Separate Accounts" and individually as a "Separate Account." Separate Account A, Separate Account FP, Separate Account 45, Separate Account 66 and Separate Account 301 are referred to herein collectively as the "EQ Separate Accounts" and individually as an "EQ Separate Account."

Applicants' Representations

1. Equitable is a New York stock life insurance company that has been in business since 1859. Equitable is a wholly owned subsidiary of AXA Financial, Inc., which is a wholly owned subsidiary of the AXA Group, the holding company for an international group of insurance and related financial services companies. Equitable serves as depositor for each of the EQ Separate Accounts. Separate Account A, Separate Account 45 and Separate Account 301 fund certain variable annuity contracts. Separate Account FP funds certain variable life insurance policies. Separate Account 66 funds group pension and profit-sharing plans under group annuity contracts issued by Equitable. Each EQ Separate Account is a segregated asset account of Equitable and, with the exception of Separate Account 66, is registered with the Commission as a unit investment trust under the 1940 Act. Separate Account 66 is excluded from registration under the 1940 Act pursuant to section 3(c)(11) of the 1940 Act. Separate Account 66 is not a section 26 Applicant. Units of interest in the EQ Separate Accounts under the Contracts issued by Equitable are registered under the Securities Act of 1933, as amended ("1933 Act").

2. American Franklin is a legal reserve stock life insurance company organized under the laws of the State of Illinois in 1981. American Franklin is an indirect, wholly owned subsidiary of American International Group, Inc. ("AIG"). AIG, a Delaware corporation, is a holding company which through its subsidiaries is primarily engaged in a broad range of insurance and insurance-related activities and financial services in the United States and abroad. American Franklin serves as depositor for Separate Account VUL of American Franklin, which funds certain variable life insurance policies. Separate Account VUL of American Franklin is a segregated asset account of American Franklin and is registered with the Commission as a unit investment trust under the 1940 Act. Units of interest in this Separate Account under the Contracts issued by American Franklin are registered under the 1933 Act.

3. Integrity is an Ohio stock life insurance company that has been in business since 1966. Integrity is a wholly owned subsidiary of The Western and Southern Life Insurance Company ("W&S"), a mutual life insurance company originally organized under the laws of the state of Ohio in 1888. Integrity serves as depositor for Separate Account VUL of Integrity, which funds certain variable life insurance policies. Separate Account VUL of Integrity is a segregated asset account of Integrity and is registered with the Commission as a unit investment trust under the 1940 Act. Units of interest in this Separate Account under the Contracts issued by Integrity are registered under the 1933 Act.

4. National Integrity is a New York stock life insurance company that has been in business since 1968. National Integrity is a wholly owned subsidiary of Integrity, which in turn is a wholly-owned subsidiary of W&S. National Integrity serves as depositor for Separate Account VUL of National Integrity, which funds certain variable life insurance policies. Separate Account VUL of National Integrity is a segregated asset account of National Integrity and is registered with the Commission as a unit investment trust under the 1940 Act. Units of interest in this Separate Account under the Contracts issued by National Integrity are registered under the 1933 Act.

5. The Trust is organized as a Delaware business trust and registered as an open-end management investment company under the 1940 Act. Its shares are registered under the 1933 Act. The Trust is a series investment company and currently has 39 separate series (each a "Portfolio" and collectively, the "Portfolios"). Equitable currently serves as investment manager ("Manager") of each of the Portfolios. Both the Removed and Replacement Portfolios are series of the Trust. The Trust does not impose sales charges for buying and selling its shares. All dividends and other distributions with respect to a Portfolio's shares are reinvested in full and fractional shares of the Portfolio to which they relate. The Trust currently offers two classes of shares, Class IA and Class IB shares, which differ only in that Class IB shares are subject to a distribution plan adopted and administered pursuant to Rule 12b-1 under the 1940 Act. Under that distribution plan, up to 0.50% of the average daily net assets attributable to the Class IB shares of each Portfolio may be used to pay for distribution and shareholder services. The distributors for the Class IA and Class IB shares of each Portfolio are AXA Advisors, LLC ("AXA Advisors") and AXA Distributors, LLC ("AXA Distributors"). Under the Distribution Agreements with respect to the promotion, sale and servicing of shares of each Portfolio,

payments to AXA Advisors and AXA Distributors, with respect to activities under the distribution plan, are currently limited to payments at an annual rate equal to 0.25% of the average daily net assets of each Portfolio (including the Removed and Replacement Portfolios) attributable to its Class IB shares.

6. The Manager has retained investment sub-advisers ("Advisers") to provide day-to-day investment advisory services for each of the 39 current Portfolios. The Trust has received an exemptive order from the Commission ("Multi-Manager Order") that permits the Manager, or any entity controlling, controlled by, or under common control (within the meaning of Section 2(a)(9) of the 1940 Act) with the Manager, subject to certain conditions, including approval of the Board of Trustees of the Trust, and without the approval of shareholders to: (a) select new or additional Advisers for each Portfolio; (b) enter into new Investment Advisory Agreements with Advisers ("Advisory Agreements") and/or materially modify the terms of any existing Advisory Agreement; (c) terminate any existing Adviser and replace the Adviser; and (d) continue the employment of an existing Adviser on the same contract terms where the Advisory Agreement has been assigned because of a change of control of the Adviser.

7. Each Insurance Company, on its own behalf and on behalf of its Separate Accounts, proposes to exercise its contractual right to substitute a different eligible investment fund for one of the current investment funds offered as a funding option under the Contracts. In particular, the Section 26 Applicants propose to substitute Class IA and Class IB shares of the Replacement Portfolio for Class IA and Class IB shares of the Removed Portfolio, respectively.

8. The Section 26 Applicants propose the Substitution as part of a continued and overall business plan by each of the Insurance Companies to make its Contracts more attractive to existing Contract owners or to prospective purchasers, as the case may be. Each of the Insurance Companies has carefully reviewed its Contracts and each investment option offered under its Contracts with the goal of providing a superior choice of investment alternatives. In certain cases, the Substitution is intended to simplify the prospectuses and related materials with respect to the Contracts and the investment options available through certain Separate Accounts. Additionally, in each case, the Substitution will substitute shares of the Replacement Portfolio for shares of the Removed Portfolio, which has an identical investment objective and similar investment policies and risks as the Replacement Portfolio. The Substitution also would replace a portfolio that has been experiencing a significant decline in Contract owner interest, evidenced by recent net cash outflows, with a portfolio that has generated more interest among Contract owners, evidenced by its modest net cash inflows in that same time period. Furthermore, the Substitution ultimately may enable an Insurance Company to reduce certain of the costs that it incurs in administering the Contracts by consolidating overlapping and duplicative Portfolios. Finally, the Substitution is designed to provide Contract owners with an opportunity to continue their investment in a similar Portfolio without interruption and without any cost to them. In this regard, the Insurance Companies have agreed to bear all expenses incurred in connection with the Substitution and related filings and notices, including legal, accounting, brokerage and other fees and expenses. On the effective date of the Substitution ("Substitution Date"), the amount of any Contract owner's or participant's Contract value or the dollar value of a Contract owner's or participant's investment in the relevant Contract will not change as a result of the Substitution.

9. The Replacement Portfolio has an identical investment objective and similar investment policies and risks as the Removed Portfolio. In addition, Alliance Capital Management, L.P. ("Alliance") serves as the Adviser to both Portfolios. The investment objective of the Replacement and Removed Portfolios is to seek to achieve long-term growth of capital. To achieve this objective, Alliance invests the assets of the Replacement Portfolio primarily in both growth-oriented and value-oriented stocks of established non-U.S. companies. These non-U.S. companies may have operations in the U.S., in their country of incorporation and/or in other countries. The Replacement Portfolio also may invest in any type of investment grade fixed income security, including preferred stocks, convertible securities, bonds, notes and other evidences of indebtedness, including obligations of foreign governments. Although no particular proportion of stocks, bonds or other securities is required to be maintained, the Portfolio intends under normal market conditions to invest primarily in equity securities. The Portfolio is diversified for purposes of the 1940 Act.

10. The Removed Portfolio invests primarily in a diversified mix of equity securities of U.S. and established foreign companies that Alliance believes have prospects for growth. The Portfolio is diversified for purposes of the 1940 Act. Like the Replacement Portfolio, the Removed Portfolio may invest in any type of security, including common and preferred stocks, bonds and other evidences of indebtedness, and other securities of issuers wherever organized and governments and their political subdivisions. No particular proportion of stocks, bonds or other securities is required to be maintained, although the Removed Portfolio, like the Replacement Portfolio, intends under normal conditions to invest substantially all of its assets in equity securities. Although the Replacement Portfolio generally does not invest to a significant extent in the securities of U.S. issuers, the primary risks associated with an investment in the Replacement and Removed Portfolios are similar. In particular, the primary risks associated with an investment in the Replacement Portfolio include derivatives risk, equity risk, foreign securities risk, growth investing risk, leveraging risk, liquidity risk and value investing risk. The list of primary risks associated with an investment in the Removed Portfolio is the same.

11. Applicants believe that the Replacement Portfolio's investment policies are sufficiently similar to those of the Removed Portfolio that the essential objective and risk expectations of Contract owners can continue to be met. In particular, Applicants believe that the Removed Portfolio's ability to invest in foreign companies is the primary reason that Contract owners allocate value to that Portfolio. Thus, substituting the Replacement Portfolio, which invests primarily in foreign companies, for the Removed Portfolio is consistent with this investment approach. Contract owners that seek to pursue an asset allocation strategy that blends U.S. and foreign investments will continue to have access through their Contracts to a wide variety of Portfolios that invest primarily in U.S. companies, as well as in the Replacement Portfolio and other Portfolios that invest primarily in foreign companies. Applicants also note that there is no other Portfolio in the Trust that pursues a global investment strategy and invests primarily in equity securities that would be a more appropriate replacement portfolio. Applicants note, however, that the foreign companies in which the Removed and Replacement Portfolios invest are very similar in that they are primarily large, established companies. In addition, most of the companies in which the Replacement Portfolio invests have significant operations in the U.S. Thus, Applicants believe that, after the proposed Substitution, a Contract owner would continue to have value allocated to a Replacement Portfolio with an identical investment objective and similar investment policies, and would have assumed similar risks.

12. The charts below compare the advisory fees, total expenses and asset sizes of the Class IA and Class IB shares of the Replacement Portfolio and the Removed Portfolio for the one year periods ended December 31, 2000, December 31, 2001, and September 30, 2002. The charts also show the *pro forma* expenses of the Replacement Portfolio assuming that the Substitution had been in effect for the year ended December 31, 2001. Although the management fee for the Replacement Portfolio is higher than that of the Removed Portfolio, as a condition of any order approving the proposed Substitution, Equitable will contractually reduce its management fee for the Replacement Portfolio by adopting the management fee schedule of the Removed Portfolio, which at all asset levels is lower than the management fee of the Replacement Portfolio. This proposed reduction is reflected in the *pro forma* information presented in the charts below. In addition, although the total expense ratio for each class of shares of the Replacement Portfolio was higher than the corresponding class of shares of the Removed Portfolio for each period, Equitable, as a condition to any order approving the proposed Substitution, will waive its management fee and reimburse expenses incurred by the Replacement Portfolio for a period of two years after the date of the Substitution to the extent necessary to ensure that the total expense ratio of each class of shares of the Replacement Portfolio after the Substitution is no higher than that of the corresponding class of shares of the Removed Portfolio for the one year period ended September 30, 2002. However, as shown below, it is expected that the total expense ratio of each class of shares of the Replacement Portfolio will be no higher than that of the corresponding class of shares of the Removed Portfolio as a result of the Substitution, absent any waivers or reimbursements.

	Replacement portfolio (class IA)			Removed portfolio (class IA)			Combined portfolio (class IA)
	One year period ended 12/31/2000	One year period ended 12/31/2001	One year period ended 09/30/2002	One year period ended 12/31/2000	One year period ended 12/31/2001	One year period ended 09/30/2002	One year period ended 12/31/2001
Net Assets	$228 million	$168 million	$164 million	$1.5 billion	$1.1 billion	$961 million	$1.268 billion
Management Fee [1]	0.87 percent	0.85 percent	0.85 percent	0.69 percent	0.73 percent	0.74 percent	0.73 percent
Rule 12b–1 Fee	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Other Expenses	0.29 percent	0.25 percent	0.36 percent	0.09 percent	0.12 percent	0.17 percent	0.12 percent
Total Expenses	1.16 percent	1.10 percent	1.21 percent	0.78 percent	0.85 percent	0.91 percent	0.85 percent

[1] The management fee for the Replacement Portfolio on an annual basis is equal to 0.850% of the first $1 billion; 0.800% of the next $1 billion; 0.775% of the next $3 billion; 0.750% of the next $5 billion; and 0.725% thereafter. The management fee for the Removed Portfolio on an annual basis is equal to 0.750% of the first $1 billion; 0.700% of the next $1 billion; 0.675% of the next $3 billion; 0.650% of the next $5 billion; and 0.625% thereafter.

	Replacement portfolio (class IB)			Removed portfolio (class IB)			Combined portfolio (class IB)
	One year period ended 12/31/2000	One year period ended 12/31/2001	One year period ended 09/30/2002	One year period ended 12/31/2000	One year period ended 12/31/2001	One year period ended 09/30/2002	One year period ended 12/31/2001
Net Assets $37 million	$36 million	$40 million	$198 million	$196 million	$179 million	$232 million.	
Management Fee	0.87 percent	0.85 percent	0.85 percent	0.69 percent	0.73 percent	0.74 percent	0.73 percent
Rule 12b–1 Fee	0.25 percent	0.25 percent	0.25 percent	0.25 percent	0.25 percent	0.25 percent	0.25 percent
Other Expenses	0.29 percent	0.25 percent	0.36 percent	0.09 percent	0.12 percent	0.17 percent	0.12percent
Total Expenses	1.41 percent	1.35 percent	1.46 percent	1.03 percent	1.10 percent	1.16 percent	1.10 percent

13. Applicants represent that the Trust's independent accountants will perform procedures, as agreed upon between the Trust and the independent accountants, relating to the total expense ratio for each class of shares of the Removed Portfolio for the one year period ended September 30, 2002. Within 90 days after the issuance of any order pursuant to this Application, the independent accountants will issue an agreed upon procedures report to management of the Trust (which consists entirely of persons who are officers or employees of Equitable) and the Board of Trustees of the Trust detailing the results of the procedures performed relating to the calculation of the total expense ratios based solely on the unaudited information provided by Equitable, the Trust's administrator, and JP Morgan Investors Services Co. ("JPMIS"), the Trust's sub-administrator. In conjunction with the procedures, Equitable and JPMIS will provide a certification that the unaudited information was prepared on a basis consistent with the audited financial statements of the Trust. Further, the certification will state that the information was produced under the same internal control environment that supports the Trust's audited financial statements and that to their knowledge there were no material deficiencies in such internal controls from October 1, 2001, through the date the procedures are performed. The procedures performed by the independent accountants will include reading the testing results of the control objectives applicable to expenses and net asset value calculations contained in the September 30, 2002, JPMIS Fund Accounting SAS 70 Report on Controls Placed in Operation and Test of Operating Effectiveness covering the period from October 1, 2001, through

September 30, 2002, and reporting on any exceptions that pertain to the expense accounting process and net asset value calculations. The independent accountants' procedures will also include testing, on a selection basis, of expenses and net asset value calculations during the period October 1, 2001, to September 30, 2002, and testing of all audit adjustments pertaining to the relevant portfolios recorded or proposed by the independent accountants and not recorded, if any, associated with each of the audits of the financial statements of the Trust for the years ended December 31, 2001 and 2002 to identify any which pertain to expense adjustments and net asset value calculations. Finally, based upon the December 31, 2002, audit of the Trust by the independent accountants, the independent accountants' report will indicate whether there were any matters noted involving internal control and its operation that would be considered material weaknesses as of December 31, 2002. This internal control consideration will be based upon the planning and performing of the December 31, 2002, audit of the financial statements of the Trust, which is for the purpose of determining the auditing procedures for expressing an opinion on the Trust's financial statements and not to provide assurance on internal control. If the Trust's independent accountants determine, based on the procedures performed, that the total expense ratios for the Removed Portfolio for the period October 31, 2001, to September 30, 2002, were lower than those shown above, Applicants will modify the Trust's fee waiver and reimbursement arrangement as of the date of the Substitution to conform to the calculation of the total expense ratio for each class of shares of the Removed Portfolio by the independent accountants. In addition, Equitable will reimburse the Replacement Portfolio for any amounts not previously reimbursed to that Portfolio to the extent necessary to ensure that the total expense ratios of the Class IA and Class IB shares of the Replacement Portfolio for the period from the date of the Substitution to the date of the modification of the Trust's fee waiver and reimbursement arrangement (on an annualized basis) do not exceed the independent accountants' calculation of the expense ratios for the Class IA and Class IB shares of the Removed Portfolio for the one year period ended September 30, 2002. Furthermore, the revised fee waiver and expense reimbursement arrangement will be in effect for the twenty-four month period beginning as of the date of the Substitution. The report will be treated by the Trust as part of its books and records available for inspection by the staff of the Commission. The report will be retained by the Trust for a period of not less than six years.

14. The chart below compares the average annual total returns of the Class IA shares of the Replacement Portfolio and the Removed Portfolio, as well as returns for their respective benchmarks, for the one year, three year, five year, ten year and since inception periods ended December 31, 2001. Although the Removed Portfolio's historical performance for the one, three and five year periods was more favorable than that of the Replacement Portfolio, the Removed Portfolio has not generated significant Contract owner interest recently, evidenced by its recent net cash outflows. The Replacement Portfolio, in contrast, has generated modest net cash inflows, indicating greater Contract owner interest. The Replacement Portfolio's recent performance also has been more favorable than that of the Removed Portfolio, although there is no guarantee that this will continue to be the case in the future.

[Amounts in percent]

Portfolio class IA, periods ended 12/31/2001	1 Year	3 Years	5 Years	10 Years	Since inception
EQ/Alliance International Portfolio	(22.88)	(6.48)	(2.60)	NA	1.03 (04/03/95)
MSCI EAFE	(21.44)	(5.05)	0.89	NA	2.87
EQ/Alliance Global Portfolio	(20.08)	(3.43)	4.12	8.71	9.01 (08/27/87)
MSCI World	(16.82)	(3.37)	5.37	8.06	6.72

15. In connection with the Substitution, Equitable, American Franklin and their respective Separate Accounts will file with the Commission prospectuses and/or prospectus supplements that notify Contract owners and participants of their respective Insurance Company's intention to substitute the Replacement Portfolio for the Removed Portfolio.[2] The prospectuses and prospectus supplements, as appropriate, also will describe the Substitution, the Replacement and Removed Portfolios and the impact of the Substitution on fees and expenses at the underlying fund level. The section 26 Applicants will send the appropriate prospectus or prospectus supplement (or other notice), as appropriate, containing this disclosure to all existing and new Contract owners and participants. Together with this disclosure, the section 26 Applicants will send to any of those existing Contract owners and participants who have not previously received a prospectus for the Replacement Portfolio a prospectus and/or prospectus supplement for the Replacement Portfolio. New purchasers of Contracts will be provided with a Contract prospectus and/or supplement containing disclosure regarding the Substitution, as well as a prospectus for the Replacement Portfolio. The Contract prospectus and/or supplement and the prospectus and/or prospectus supplement for the Trust, including the Replacement Portfolio, will be delivered to purchasers of new Contracts in accordance with all applicable legal requirements.

16. Contract owners and participants will be sent a notice of the Substitution before the Substitution Date (which notice may be in the form of a prospectus supplement as described above). The notice will inform Contract owners and participants that the Substitution will be effected on the Substitution Date and that they may transfer assets from the Removed Portfolio (or from the Replacement Portfolio following the Substitution Date) to another investment option available under their Contract without the imposition of any applicable transfer charges, limitations, fees, or other penalties that might otherwise be imposed for a period beginning 30 days before the Substitution Date and ending no earlier than 30 days following the Substitution Date and such transfers will not count against the limit, if any, on the number of free transfers permitted under the Contracts. Within five days after the Substitution Date, the section 26 Applicants will mail: (a) a written notice to all Contract owners and participants affected by the Substitution informing them that the Substitution was completed and restating that they may transfer assets from the Replacement Portfolio to another investment option available under their Contract free of any applicable transfer charges, limitations, fees, or other penalties that might otherwise be imposed through a date at least 30 days following the Substitution Date and such transfers will not count against the limit, if any, on the number of free transfers permitted under the Contracts; and (b) a confirmation of the transactions.

17. The Substitution will be effected by redeeming shares of the Removed Portfolio partly in-kind and partly in cash on the Substitution Date at their net asset value and using the proceeds of those in-kind redemptions to purchase shares of the Replacement Portfolio at their net asset value on the same date ("In-Kind Transactions"). The in-kind redemptions and contributions will be done in a manner consistent with the investment objectives, policies and diversification requirements of the Replacement Portfolio and the Removed Portfolio. The Manager, in consultation with the Replacement Portfolio's Adviser, will review the In-Kind Transactions to ensure that the assets are suitable for the Replacement Portfolio. All assets and liabilities will be valued based on the normal valuation procedures of the Removed Portfolio and the Replacement Portfolio, as set forth in the Trust's registration statement

18. No transfer or similar charges will be imposed by the section 26 Applicants and, on the Substitution Date, all Contract values will remain unchanged and fully invested. Contract owners and participants will not incur any fees or charges as a result of the proposed Substitution, nor will their rights or the Insurance Companies' obligations under the Contracts be altered in any way. All expenses in connection with the proposed Substitution, including any brokerage, legal, accounting, and other fees and expenses will be paid by the Insurance Companies. The proposed Substitution will not impose any tax liability on Contract owners or participants or cause the Contract charges currently being paid by Contract owners and participants to be greater after the proposed Substitution than before the proposed Substitution. All Contract-level fees will remain the same after the proposed Substitution. The proposed Substitution will not alter in any way the benefits, including tax benefits to Contract owners and participants, or the Insurance Companies' obligations under the Contracts.

In addition, the proposed Substitution will not be treated as a transfer for purposes of assessing transfer charges or computing the number of permissible transfers under the Contracts.

19. The section 26 Applicants request that the Commission issue an order pursuant to section 26(c) of the 1940 Act approving the substitution of: (i) Class IA shares of the Replacement Portfolio for Class IA shares of the Removed Portfolio; and (ii) Class IB shares of the Replacement Portfolio for Class IB shares of the Removed Portfolio. The section 17 Applicants request that the Commission issue an order pursuant to section 17(b) of the 1940 Act granting an exemption from section 17(b) to the extent necessary to permit the In-Kind Transactions.

Applicable Law

Section 26(c) of the 1940 Act

1. Section 26(c) of the 1940 Act prohibits the depositor of a registered unit investment trust that invests in the securities of a single issuer from substituting the securities of another issuer without Commission approval. Section 26(c) provides that "[t]he Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title."

2. Applicants represent that the proposed Substitution involves a substitution of securities within the meaning of section 26(c) of the 1940 Act. The Applicants, therefore, request an order from the Commission pursuant to section 26(c) approving the proposed Substitution.

3. Applicants state that the section 26 Applicants have reserved the right under the Contracts to substitute shares of another eligible investment fund for one of the current investment funds offered as a funding option under the Contracts. Applicants represent that the prospectuses for the Contracts and the Separate Accounts contain appropriate disclosure of this right. The section 26 Applicants have reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed or disadvantaged by events affecting the issuer of the securities held by a Separate Account and to preserve the opportunity to replace such shares in situations where a substitution could benefit the Insurance Companies and their respective Contract owners.

4. Applicants state that the Replacement Portfolio and the Removed Portfolio have identical investment objectives and similar investment policies and risks. In addition, the proposed Substitution retains for Contract owners the investment flexibility that is a central feature of the Contracts, and any impact on the investment programs of affected Contract owners, including the appropriateness of the available investment options, should therefore be negligible.

5. Applicants also maintain that the ultimate effect of the Substitution would be to consolidate overlapping and duplicative investment options in a single Portfolio. This consolidation will permit each Insurance Company to present information to its Contract owners and participants in a simpler and more concise manner. The anticipated streamlining of the disclosure documents should provide Contract owners and participants with a simpler presentation of the available investment options under their Contracts and related financial information.

6. Thus, Applicants state that the Substitution protects the Contract owners and participants who have allocated Contract value to the Removed Portfolio by: (a) Providing an underlying investment option for sub-accounts invested in the Removed Portfolio that is similar to the Removed Portfolio; (b) providing such Contract owners and participants with simpler and more focused disclosure documents; and (c) providing such Contract owners and participants with an investment option that would have an identical management fee schedule and a total expense ratio that is no higher than the current investment option.

7. Applicants assert that the proposed Substitution is not of the type that section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute investment securities in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner and participant with the right to exercise his or her own judgment, and transfer Contract values and cash values into and among other investment options available to Contract owners and

[2] Integrity, National Integrity and their respective Separate Accounts will prepare and distribute a notice of the Substitution, which will contain substantially the same information that would be contained in any prospectus supplement as described herein.

participants under their Contracts. Additionally, the Substitution will not, in any manner, reduce the nature or quality of the available investment options. Moreover, the section 26 Applicants will offer Contract owners and participants the opportunity to transfer amounts out of the affected sub-accounts without any cost or other penalty that may otherwise have been imposed for a period beginning 30 days before the Substitution Date and ending no earlier than 30 days after the Substitution Date. Applicants conclude that the Substitution will not result in the type of costly forced redemption that section 26(c) was designed to prevent.

8. Applicants assert that the proposed Substitution is also unlike the type of substitution that section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners and participants select much more than a particular underlying fund in which to invest their Contract values. They also select the specific type of insurance coverage offered by the section 26 Applicants under the applicable Contract, as well as numerous other rights and privileges set forth in the Contract. Contract owners also may have considered the Insurance Company's size, financial condition, and its reputation for service in selecting their Contract. These factors will not change as a result of the proposed Substitution.

9. Applicants state that the significant terms and conditions of the Substitution are as follows:

a. The Replacement Portfolio has an identical investment objective and similar investment policies and risks as the Removed Portfolio, providing Contract owners and participants with a means to continue their investment goals and risk expectations;

b. To ensure that the management fee of the Replacement Portfolio is no higher after the Substitution than that of the Removed Portfolio before the Substitution, Equitable will contractually reduce its management fee for the Replacement Portfolio by adopting the management fee schedule of the Removed Portfolio, which at all asset levels is lower than the management fee of the Replacement Portfolio;

c. Equitable will waive its management fee with respect to the Replacement Portfolio and/or reimburse expenses incurred by the Replacement Portfolio during the twenty-four months following the Substitution to the extent necessary to ensure that the total expense ratios for any period (not to exceed a fiscal quarter) of the Class IA and Class IB shares of the Replacement Portfolio do not exceed 0.91% and 1.16%, respectively, of the Replacement Portfolio's average daily net assets (on an annualized basis) (or the expense ratios determined after the procedures are performed by the Trust's independent accountants);

d. Investments in the Replacement Portfolio may be temporary investments for Contract owners and participants as each Contract owner and participant may exercise his or her own judgment as to the most appropriate investment alternative available. In this regard, the proposed Substitution retains for Contract owners and participants the investment flexibility which is a central feature of the Contracts. Additionally, for a period beginning at least 30 days before the Substitution Date, and ending no earlier than 30 days after the Substitution, Contract owners and participants directly affected by the Substitution will be permitted to transfer value from the Replacement Portfolio or the Removed Portfolio to another investment option available under their Contract free of any otherwise applicable transfer charges, limitations, fees, or other penalties that might otherwise be imposed and such transfers will not count against the limit, if any, on the number of free transfers permitted under the Contracts;

e. The Substitution will be effected at the relative net asset values of the shares of the Removed Portfolio and the Replacement Portfolio, without the imposition of any transfer or similar charge by the section 26 Applicants, and with no change in the amount of any Contract owner's or participant's Contract value or in the dollar value of his or her investment in such Contract;

f. Contract owners and participants will not incur directly or indirectly related fees or charges as a result of the Substitution. The Insurance Companies have agreed to bear all expenses incurred in connection with the Substitution and related filings and notices, including legal, accounting, brokerage and other fees and expenses. The Substitution will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the Substitution than before the Substitution;

g. The Substitution will not be counted as a new investment selection in determining the limit, if any, on the total number of Portfolios that Contract owners and participants can select during the life of a Contract;

h. The Substitution will not alter or affect the insurance benefits or rights of Contract owners or participants or the terms and obligations of the Contracts;

i. Contract owners and participants would not incur any adverse tax consequences as a result of the Substitution;

j. Contract owners and participants affected by the Substitution will be sent written confirmation of the Substitution that identifies the Substitution made on behalf of the Contract owner or participant within five days following the Substitution;

k. Contract owners and participants may withdraw amounts under the Contract or terminate their interest in a Contract, under the conditions that currently exist, including payment of any applicable withdrawal or surrender charge; and

l. For those Contract owners or participants who were Contract owners or participants on the date of the Substitution, each Insurance Company will not increase sub-account or Contract expenses for a period of 24 months following the Substitution Date.

Section 17(a) of the 1940 Act

1. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the same persons, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

2. Section 17(b) of the 1940 Act provides that the Commission may, upon application, issue an order exempting any proposed transaction from section 17(a) if: (a) The terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transactions are consistent with the policy of each registered investment company concerned; and (c) the proposed transactions are consistent with the general purposes of the 1940 Act.

3. The Section 17 Applicants request an order pursuant to section 17(b) of the 1940 Act exempting them from the provisions of section 17(a) to the extent necessary to permit them to carry out the In-Kind Transactions.

4. The section 17 Applicants submit that the terms of the proposed In-Kind Transactions, including the consideration to be paid and received are reasonable and fair and do not involve overreaching on the part of any person concerned. The In-Kind Transactions will be effected at the respective net asset values of the Removed Portfolio and the Replacement Portfolio, as determined in accordance with the procedures disclosed in the registration statement for the Trust and as required by Rule 22c-1 under the 1940 Act. The In-Kind Transactions will not change the dollar value of any Contract owner's or participant's investment in any of the Separate Accounts, the value of any Contract, the accumulation value or other value credited to any Contract, or the death benefit payable under any Contract. After the proposed In-Kind Transactions, the value of a Separate Account's investment in the Replacement Portfolio will equal the value of its investments in the Removed Portfolio (together with the value of any pre-existing investments in the Replacement Portfolio) before the In-Kind Transactions.

5. Applicants state that the section 17 Applicants will assure themselves that the In-Kind Transactions will be in substantial compliance with the conditions of Rule 17a–7 under the 1940 Act. To the extent that the In-Kind Transactions do not comply fully with the provisions of paragraphs (a) and (b) of Rule 17a–7, the section 17 Applicants assert that the terms of the In-Kind Transactions provide the same degree of protection to the participating companies and their shareholders as if the In-Kind Transactions satisfied all of the conditions enumerated in Rule 17a–7. The section 17 Applicants also assert that the proposed In-Kind Transactions by the section 17 Applicants do not involve overreaching on the part of any person concerned. Furthermore, the section 17 Applicants represent that the proposed Substitution will be consistent with the policies of the Removed Portfolio and the Replacement Portfolio, as recited in the Trust's current registration statement.

6. Applicants also assert that the proposed In-Kind Transactions are consistent with the general purposes of the 1940 Act and that the proposed In-Kind Transactions do not present any conditions or abuses that the 1940 Act was designed to prevent.

Conclusion

For the reasons set forth in the Application, the section 26 Applicants and the section 17 Applicants respectively state that the proposed Substitution and the related In-Kind Transactions meet the standards of section 26(c) of the 1940 Act and section 17(b) of the 1940 Act and respectfully request that the Commission issue an order of approval pursuant to section 26(c) of the 1940 Act and section 17(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27484 Filed 10–28–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46705; File No. SR–BSE–2002–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the Boston Stock Exchange, Inc. to Amend its Minor Rule Violation Plan

October 22, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2002, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 23, 2002, the BSE amended the proposed rule change.[3] The BSE again amended the proposal on October 9, 2002.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Minor Rule Violation Plan ("Plan"). The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Chapter XXXIV

Minor Rule Violations

Rule Violations

Sec. 1 No change.

Sec. 2(a) No change.

(b) [Failure to Confirm Open Orders (Ch. II, Sec. 15). Initial Offense—Written Warning; Second Offense—$100; Subsequent Offenses—$250.]

Failure to Maintain Proper Records (Ch. II, Sec. 15; Ch. XV, Sec. 8; Ch. XXII, Sec. 1):

Failure to maintain required records for annual examinations, surveillance, and other purposes. Initial offense—$500; Subsequent Offenses—$1,000

(c)—(e) No change

(f) Floor Order Facilitation (*Ch. II, Sec. 3; Ch. XV, Sec. 2; Ch. XV, Sec. 3;* Ch. XVIII, Sec. 1):

Conduct which may cause delays or interruptions in the orderly facilitation and/or confirmation of orders received on the Floor such as failure to record proper post locations or dilatory practices in handling orders received on the Floor[.], *as measured by the Exchange and in excess of three (3) instances over the preceding rolling thirty-day period.*

Initial Offense—Written Warning; Second Offense—$100; Subsequent Offenses—$250.

(g)—(j) No change.

(k) Trading in an Inactive Alternate and/or Trading Account (Ch. XXII, Sec. 2(m)):

Patterns of trading indicating abuse of inactive accounts, as measured by the Exchange, and in excess of three (3) instances over the preceding thirty-day period.

Initial Offense—$500; Subsequent Offenses—$2,500

(l)—(n) No change.

(o) Dealings Outside of Exchange Operating Hours (Ch. I–B, Sec. 2):

First offense—Written Warning; Second Offense—$50; Subsequent Offenses—$100

Policy Violations

Sec. 3 (a)—(g) No change.

(h) Floor Conduct:

Unprofessional or Disruptive Behavior.

Initial Offense—$100; Subsequent Offenses—$500

Extremely unprofessional or disruptive behavior, as determined by two floor officials.

All offenses—$1,000

(i)—(o) No change.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* August 21, 2002 letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), SEC, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaces and supersedes the original filing.

[4] *See* October 8, 2002 letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Nancy Sanow, Assistant Director, Division, SEC ("Amendment No. 2"). In Amendment No. 2, the BSE added language to set a standard by which violations of certain provisions of the Minor Rule Violation Plan will be determined.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Plan, which is located in Chapter XXXIV, "Minor Rule Violations" of the Rules of the Board of Governors of the Exchange.

The first proposed change is to delete Section 2, Rule Violations, Paragraph (b), Failure to Confirm Open Orders. This Rule was originally intended to address the manual obligations of specialists to confirm their open orders at the end of the day. This has become an automated process, and the Rule is therefore unnecessary.

The second proposed change is to replace Section 2, Rule Violations, Paragraph (b), Failure to Confirm Open Orders, with a new Paragraph (b) entitled "Failure to Maintain Proper Records (Chapter II, Dealings on the Exchange, Section 15, Records of Orders from Offices to Floor; Chapter XV, Dealer Specialists, Section 8, Records; Chapter XXII, Financial Reports and Requirements, Section 1, Member and Member-Organization's Statement of Financial Condition)". The explanatory sentence for this rule violation will read: "Failure to maintain required records for annual examinations, surveillance, and other purposes." Due to the potentially serious nature of record keeping violations, the Exchange seeks to prescribe a $500 fine for initial offenses, and a $1,000 fine for subsequent violations of this paragraph. Furthermore, as to form, inserting this rule into this paragraph will obviate the need to renumber subsequent paragraphs.

The third proposed change is to alter Section 2, Rule Violations, Paragraph (f), Floor Order Facilitation (Ch. XVIII, Sec. 1), so that it more fully addresses practices of specialists that may have a dilatory effect on the handling of orders submitted to the floor for execution. The wording of the Section will not be changed, but several rule references will be added to the title of the section, to enable the BSE to more accurately identify which section(s) of its rules are the focus of the violation. The following rule references will be added into the title of the paragraph: Chapter II, Dealings on the Exchange, Sec. 3, Execution Guarantee; Chapter XV, Dealer Specialists, Sec. 2, Responsibilities, and Sec. 3, Code of Acceptable Business Practices for Specialists.

The fourth proposed change is to add an explanatory sentence to Section 2, Rule Violations, Paragraph (k) Trading in an Inactive Alternate and/or Trading Account, to address a change in focus to identify patterns in trading in these accounts, as opposed to individual trades. Due to volume increases in the marketplace, the BSE feels that trading patterns are a more efficient way to identify abuses of inactive accounts. Accordingly, an explanatory sentence will read: "Patterns of trading indicating abuse of inactive accounts." The fine structure will remain the same.

The fifth proposed change is to add a new paragraph to Section 2, Rule Violations. New paragraph (o) will be entitled "Dealings Outside of Exchange Operating Hours (Chapter I–B, Business Hours, Section 2, Dealings on the Floor, Hours)". No explanatory sentence is needed. A written warning will be given for first offenses. Second offenses will result in a $50 fine, and subsequent offenses will result in $100 fines.

The final proposed change is to Section 3, Policy Violations, Paragraph (h), Floor Conduct, and is designed to address egregious behavior. A third fine category will be added, with a brief explanation, which will read: "Extremely unprofessional or disruptive behavior, as determined by two floor officials." The fine will be $1,000 per offense.

2. Statutory Basis

The BSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the BSE consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to file number SR–BSE–2002–04 and should be submitted by November 19, 2002.

[5] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27485 Filed 10–28–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46714; File No. SR–EMCC–2002–01]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Granting Approval of a Proposed Rule Change Expanding the Types of Instruments Eligible for Processing

October 23, 2002.

I. Introduction

On January 10, 2002, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-EMCC–2001–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposed rule change was published in the **Federal Register** on August 9, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The purpose of the proposed rule change is to expand the types of instruments eligible for processing by EMCC to include emerging market corporate debt that meets certain criteria. EMCC will accomplish this by adding a new definition, "eligible corporate debt," to Rule 1. "Eligible corporate debt" will be defined as those instruments which:

1. Are issued by or on behalf of an issuer domiciled in an emerging markets jurisdiction;

2. The minimum amount of the debt issue outstanding or to be issued at the time of determination is $200,000,000, and the issuer has cumulatively issued at least $750,000,000 (or equivalent currency) of debt securities; and

3. EMCC does or would include the sovereign debt of the jurisdiction where the issuer is domiciled in the list of EMCC eligible instruments.

As with all instruments that are EMCC eligible, such instruments will also have to meet the existing criteria set forth in Rule 3 in that they will have to be eligible for settlement at a "qualified securities depository"[3] and must be U.S. dollar denominated. Accordingly, Section 1 of Rule 3 will be amended to include a reference to "eligible corporate debt."

EMCC believes that the inclusion of dollar denominated emerging market corporate debt meeting the foregoing criteria will be beneficial to its members because it will help eliminate counterparty risk in these instruments when EMCC becomes the central counterparty. EMCC also believes that its current clearing fund formula will allow it to collect appropriate amounts of collateral to cover the risks posed by this class of securities.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[4] By expanding the types of instruments available for processing by EMCC, the proposed rule change will allow more of EMCC's members' trades to be processed through the facilities of EMCC which should promote the prompt and accurate clearance and settlement of such securities transactions. Furthermore, the Commission finds that EMCC's current risk management procedures, including its clearing fund formula, have been designed and are operated in such a manner that EMCC will be able to provide clearance and settlement services for eligible corporate debt in a manner that will provide for the safeguarding of securities and funds in its possession or control or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-EMCC–2002–01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27488 Filed 10–28–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46712; File No. SR–NASD–2002–149]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Nasdaq's Transaction Credit Program for Exchange-Listed Securities

October 23, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 18, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010 to codify on a permanent basis Nasdaq's InterMarket[3] Transaction Credit Pilot Program ("Program"), and to raise the percentage of revenue available for distribution under the Program from 40% to 50%. The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.[4]

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 46311 (August 5, 2002), 67 FR 51906.

[3] A qualified securities depository is defined by EMCC Rules to be a securities depository which has entered into an agreement with EMCC pursuant to which it will effect book-entry transfers of EMCC Eligible Instruments to and by EMCC.

[4] 15 U.S.C. 78q-1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. *See* Securities Exchange Act Release No. 42907 (June 7, 2000); 65 FR 37445 (June 14, 2000)[SR–NASD–00–32).

[4] The text is marked to show changes from the language of the rule as proposed to be amended by SR–NASD–2002–115, and assumes that the Commission will approve SR–NASD–2002–115 before approving this proposal. If the Commission determines that SR–NASD–2002–115 should not be approved, Nasdaq will submit an amendment to this filing to reflect the disposition of SR–NASD–2002–115.

7010. System Services

(a)—(b) No change.

(c)(1) No change.

(2) Exchange-Listed Securities Transaction Credit.

[For a pilot period,] NASD members that trade securities listed on the NYSE ("Tape A") and Amex ("Tape B") in over-the-counter transactions may receive from the NASD transaction credits based on the number of transactions attributed to them. A transaction is attributed to a member if (i) the transaction is executed through CAES or ITS and the member acts as liquidity provider (*i.e.*, the member sells in response to a buy order or buys in response to a sell order) or (ii) the transaction is not executed through CAES or ITS and the member is identified as the executing party in a trade report submitted to the NASD that the NASD submits to the Consolidated Tape Association. An NASD member may earn credits from one or both pools maintained by the NASD, each pool representing [4]50% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions. An NASD member may earn credits from the pools according to the member's pro rata share of all over-the-counter transactions attributed to NASD members in each of Tape A and Tape B for each calendar quarter[, ending with the calendar quarter starting on October 1, 2002].

(d)—(r) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's InterMarket is a quotation, communication, and execution venue that allows NASD members to quote and trade stocks listed on the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex"). The InterMarket competes with regional exchanges like the Chicago Stock Exchange ("CHX"), the Boston Stock Exchange ("BSE"), and the Cincinnati Stock Exchange ("CSE"), for retail order flow in stocks listed on the NYSE and the Amex. Through the InterMarket, Nasdaq operates the Computer Assisted Execution System ("CAES"), a system that facilitates the execution of trades in listed securities between NASD members that participate in the InterMarket, and the Intermarket Trading System ("ITS"), a national market plan system that permits trades between NASD members and specialists on the floors of national securities exchanges that trade listed securities.[5]

Nasdaq proposes to modify the Program. Under the Program, Nasdaq shares a portion of the tape revenues that it receives (through the NASD), from the Consolidated Tape Association ("CTA"), by providing a transaction credit to members who engage in over-the-counter trading activity in CTA-eligible securities. The Program helps InterMarket market makers and investors lower costs associated with trading listed securities. The Program also enables Nasdaq to compete against other exchanges that offer similar programs, including CHX, CSE, and BSE.[6]

Under the current Program, Nasdaq calculates two separate pools of revenue from which credits can be earned: one representing 40% of the gross revenues received from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by the CTA (Tape A), the other representing 40% of the gross revenue received from the CTA for reporting Amex trades (Tape B). Eligibility for transaction credits is based on concurrent quarterly trading activity.[7] Under the current Program, trade reports of ITS and CAES transactions, which are reported to Nasdaq automatically, have been attributed to the sell side of the trade,[8] although Nasdaq has filed a proposed rule change to allocate trades to the party that provides liquidity in a given transaction.[9]

Nasdaq believes that it is important to establish the transaction credit program as a permanent part of the InterMarket. The Program has been in place for three years, and has proved to be successful. The InterMarket has emerged as a viable competitive option to trading on the primary market and, along with other exchanges that trade CTA-eligible securities, has helped to reduce the cost of trading those issues. The Program has been a critical aspect of the InterMarket's ability to compete effectively with other exchanges.

To maintain that competitiveness, Nasdaq believes it is necessary to raise the percentage of revenue available for distribution under the Program from 40% to 50%. Currently, the CSE and CHX both distribute 50% of revenue under the formulae contained in their programs, and the BSE has filed a proposal with the Commission to distribute 50% of revenue as well.[10]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,[11] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq believes the proposed rule change will lower the cost of conducting business through the InterMarket for members that provide liquidity through ITS or CAES. Nasdaq also believes that encouraging members to provide liquidity will enhance the efficiency of the InterMarket, and will benefit investors whose trades are routed to the InterMarket by increasing

[5] *See* CAES/ITS User Guide, p.5, at www.intermarket.nasdaqtrader.com.

[6] *See* Securities Exchange Act Release Nos. 38237 (February 4, 1997), 62 FR 6592 (February 12, 1997)(SR–CHX–97–01); 39395 (December 3, 1997), 62 FR 65113 (December 10, 1997)(SR–CSE–97–12); 49469 (September 13, 2002), 67 FR 59084 (September 19, 2002)(SR–BSE–2002–10).

[7] The Commission recently approved an amendment to the Program that made all members eligible to receive the transaction credit. *See* Securities Exchange Act Release No. 46549 (September 25, 2002), 67 FR 61705 (October 1, 2002)(SR–NASD–2002–111). Prior to that, a member had to print an average of 500 daily trades of Tape A securities during a quarter to qualify for Tape A sharing, and an average of 500 daily trades of Tape B securities during a quarter to qualify for Tape B sharing.

[8] Non-ITS/CAES trades that are reported to Nasdaq are attributed to the member identified in the trade report as the executing party, which is either the reporting party or a "give up" on whose behalf the trade is reported. The crediting of non-ITS/CAES trades remains unchanged.

[9] On August 16, 2002, Nasdaq filed SR–NASD–2002–115 to modify the current Program to attribute ITS and CAES trades to a member that provides liquidity (*i.e.*, that sells in response to an order to buy, or that buys in response to an order to sell). Nasdaq has incorporated that proposal in the permanent Program because it believes that encouraging InterMarket participants to provide liquidity will increase the efficiency of InterMarket transactions and enhance the competitiveness of InterMarket vis-à-vis the exchanges with which it competes.

[10] *See* Securities Exchange Act Release No. 49469 (September 13, 2002), 67 FR 59084 (September 19, 2002)(SR–BSE–2002–10).

[11] 15 U.S.C. 78o–3(b)(5).

the likelihood that they will be promptly executed.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

On July 2, 2002, the Commission issued an Order abrogating certain proposed rule changes relating to market data revenue sharing programs.[12] In that Order, the Commission expressed concern that the subject proposed rule changes raised "serious questions as to whether they are consistent with the Act and with the protection of investors." Specifically, the Commission questioned the effect of market data rebates on the accuracy of market data, and on the regulatory functions of self-regulatory organizations.

The Commission now solicits comment on this proposed rule change, and in general, on (1) market data fees; (2) the collection of market data fees; (3) the distribution of market data rebates; (4) the effect of market data revenue sharing programs on the accuracy of market data; and (5) the impact of market data revenue sharing programs on the regulatory functions of self-regulatory organizations.

[12] Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002)(File Nos. SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37) (Order of Summary Abrogation).

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–149 and should be submitted by November 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27487 Filed 10–28–02; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46713; File No. SR–NYSE–2002–48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Extension of the Pilot With Respect to Exceptions to NYSE Rule 123(e) for Orders in Exchange-Traded Funds

October 23, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 8, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This proposal is to extend until January 5, 2004 the effectiveness of the amendment to NYSE Rule 123(e) which provides that orders in Exchange-Traded Funds ("ETFs") may be entered into an electronic system on the Floor (Front-End Systemic Capture or "FESC") within 90 seconds of execution. This amendment was approved by the Commission on a pilot basis for one year (the "Pilot") on January 7, 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 21, 2001, the Exchange filed a proposed rule change to amend NYSE Rule 123(e) to provide that orders in ETFs may be entered within 90 seconds of execution.[6] NYSE Rule 123(e) ordinarily requires that all orders in any security traded on the Exchange be entered into an electronic data base before they can be represented in the Exchange's auction market. This exception to NYSE Rule 123(e) for ETFs was filed as a one-year pilot, and

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The NYSE asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* SR–NYSE–2001–52 (December 21, 2001).

approved by the Commission on January 7, 2002.[7]

The Exchange proposes to extend this pilot for an additional year (from January 6, 2003 until January 5, 2004). The Exchange continues to believe that this proposal will facilitate trading in ETFs on the Exchange, while still ensuring that the Exchange maintains its electronic order data base with orders being entered in reasonable proximity to order executions. The Exchange notes that requirements that members record the time of receipt of an order on the Floor remain in full effect and are not affected by this proposal.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act[8] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change is designed to accomplish these needs by strengthening the Exchange's ability to surveil the Floor activities of members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive both the pre-filing notice requirement of at least five business days (or such shorter time as designated by the Commission) and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii).[11] The Commission notes, however, that waiver of these periods is not necessary to continue the Pilot uninterrupted without inconvenience and delay to the public.[12] The Commission, consistent with the protection of investors and the public interest, has determined to waive the five-day pre-filing notice requirement (given that the Exchange filed the proposed rule on October 8, 2002), but the Commission is not waiving the 30-day operative period because it is not necessary. The proposed rule change will enable members to execute orders in ETFs quickly without having to enter the order into an electronic system (FESC). However, the proposal will still require that these orders be entered into an electronic system (FESC) within a very short time frame (90 seconds after the execution of the respective order).

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2002–48 and should be submitted by November 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27486 Filed 10–28–02; 8:45 am]

BILLING CODE 8010–01–P

[7] *See* Securities Exchange Act Release No. 45246 (January 7, 2002), 67 FR 1527 (January 11, 2002).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] Telephone conference between Jeffrey Rosenstrock, Senior Special Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on October 21, 2002.

[13] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C). The Commission notes, however, this proposed rule change has been filed as a one-year extension of a one-year pilot. During the pilot, the NYSE will surveil the application of the exception to NYSE Rule 123(e) and submit data to the Commission for the purpose of evaluating the Rule's efficacy.

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4180]

Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to Jemaah Islamiya (JI)

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, and in consultation with the Secretary of the Treasury and the Attorney General, I hereby determine that Jemaah Islamiya has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: October 17, 2002.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 02–27502 Filed 10–28–02; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 4153]

Advisory Committee on International Law; Notice of Committee Meeting

A meeting of the Advisory Committee on International Law will take place on Friday, November 8, 2002, from 10 a.m. to approximately 4 p.m., as necessary, in Room 1207 of the United States Department of State, 2201 C Street, NW., Washington, DC. The meeting will be chaired by the Legal Adviser of the Department of State, William H. Taft, IV, and will be open to the public up to the capacity of the meeting room. The meeting will discuss various issues related to Extraterritorial Civil and Criminal Jurisdiction, the 54th Session of the International Law Commission, the Current Status of Negotiations on the Proposed Hague Judgments Convention, Current Issues Concerning Treaties, and other current legal topics.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring access to the session should, by Wednesday, November 6, 2002, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647–2767) of their name, Social Security number, date of birth, professional affiliation, address and telephone number in order to arrange admittance. This includes admittance for government employees as well as others. All attendees must use the "C" Street entrance. One of the following valid IDs will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Because an escort is required at all times, attendees should expect to remain in the meeting for the entire morning or afternoon session.

Dated; October 17, 2002.

Judith L. Osborn,

Attorney-Adviser, Office of United Nations Affairs, Office of the Legal Adviser, Executive Secretary, Advisory Committee on International Law, Department of State.

[FR Doc. 02–27501 Filed 10–28–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–13659]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Rita C. Jackson, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–5755; Fax 202–493–2288, or E-mail: *rita.jackson@marad.dot.gov*. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Maritime Administration Service Obligation Compliance Report and Merchant Marine Reserve, U.S. Naval Reserve Annual Report.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0509.

Form Numbers: MA–930.

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: The Maritime Education and Training Act of 1980, imposes a service obligation on every graduate of the U.S. Merchant Marine Academy and every subsidized State maritime academy graduate who received a Student Incentive Payment. This mandatory service obligation is for the Federal financial assistance the graduate received as a student and requires the graduate to maintain a license as an officer in the merchant marine and to report on reserve status, training, and employment for applicable periods.

Need and Use of the Information: This information collection is necessary to determine if a graduate of the U.S. Merchant Marine Academy or subsidized State maritime academy graduate is complying with the terms of the service obligation for that year.

Description of Respondents: Graduates of the U.S. Merchant Marine Academy and every subsidized State Maritime academy graduate who received a Student Incentive Payment.

Annual Responses: 2300.

Annual Burden: 1150 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

By Order of the Maritime Administrator.
Dated: October 23, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–27425 Filed 10–28–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 18, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 29, 2002 to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: 1515–0175.

Form Number: None.

Type of Review: Extension.

Title: Documents Required Aboard Private Aircraft.

Description: The documents required by Customs regulations for private

aircraft arriving from foreign countries pertain only to baggage declarations. Customs requires that the pilot present documents required by FAA to be presented upon arrival.

Respondents: Individuals or households, business or other for-profit.

Estimated Number of Respondents: 150,000.

Estimated Burden Hours Per Respondent: 1 minute.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,490 hours.

Clearance Officer: Tracey Denning (202) 927–1429, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–27422 Filed 10–28–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 18, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 29, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1275.

Regulation Project Number: CO–45–91 Final.

Type of Review: Extension.

Title: Limitations on Corporate Net Operating Loss Carryforwards.

Description: Section 1.382–9(d)(2)(iii) and (d)(4)(iv) allow a loss corporation to rely on a statement by beneficial owners of indebtedness in determining whether the loss corporation qualifies under section 382(1)(5). Section 1.382–9(d)(6)(ii) requires a loss corporation to file an election if it wants to apply the regulations retroactively, or revoke a prior section 382(1)(6) election.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 650.

Estimated Burden Hours Per Respondent: 1 hour, 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 200 hours.

OMB Number: 1545–1421.

Regulation Project Number: IA–62–93 Final.

Type of Review: Extension.

Title: Certain Elections Under the Omnibus Budget Reconciliation Act of 1993.

Description: These regulations establish various elections enacted by the Omnibus Budget Reconciliation Act of 1993 (Act). The regulations provide guidance that enable taxpayers to take advantage of various benefits provided by the Act and the Internal Revenue Code.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents: 410,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 202,500 hours.

OMB Number: 1545–1487.

Regulation Project Number: REG–209827 and REG–111672–99 Final.

Type of Review: Extension.

Title: Treatment of Distributions to Foreign Persons Under Sections 367(e)(1) and 367(e)(2).

Description: Sections 367(e)(1) and 367(e)(2) provide for gain recognition on certain transfers to foreign persons under sections 355 and 332. Section 6038B(a) requires U.S. persons transferring property to foreign persons in exchanges described in sections 332 and 355 to furnish information regarding such transfers.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 217.

Estimated Burden Hours Per Respondent: 11 hours, 23 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,471 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–27423 Filed 10–28–02; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
October 29, 2002

Part II

Department of Housing and Urban Development

Notice of FHA Accelerated Claim Disposition Demonstration; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4691–N–02]

Notice of FHA Accelerated Claim Disposition Demonstration

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces HUD's establishment of the Accelerated Claim Disposition (ACD) Demonstration. Under the ACD Demonstration, HUD will pay accelerated claims on certain defaulted FHA-insured mortgages. HUD intends to select up to nine mortgagees to participate in the ACD Demonstration. The demonstration will have a limited initial duration and will include mortgage loans secured by properties located within the jurisdiction of HUD's Philadelphia, Pennsylvania and Atlanta, Georgia Homeownership Centers (HOCs). At the conclusion of the demonstration, HUD will assess its success and determine whether to implement the ACD process, on a permanent basis, throughout the country. This notice follows publication of a February 5, 2002 **Federal Register** notice proposing the establishment of the ACD Demonstration, and takes into consideration the public comments received on the earlier notice.

FOR FURTHER INFORMATION CONTACT: Kathleen S. Malone, Director, Office of Asset Sales, Room 6266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone: (202) 708–2625 (this is not a toll-free telephone number). Hearing- and speech-impaired persons may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—HUD's February 5, 2002 Federal Register Notice

On February 5, 2002 (67 FR 5418), HUD published a notice in the **Federal Register** announcing its intent to establish the Accelerated Claim Disposition (ACD) Demonstration, and soliciting public comments on the proposal. The ACD Demonstration is authorized under section 204 of the National Housing Act (12 U.S.C. 1710), as amended by section 601 of the Fiscal Year 1999 Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub. L. 105–276, approved October 21, 1998) (the FY 1999 HUD Appropriations Act). Section 601 of the FY 1999 HUD Appropriations Act amended section 204 to make more effective the methods for paying insurance claims and disposing of HUD-acquired single family mortgages and properties.

Under amended section 204(a)(1)(A) of the National Housing Act, the Secretary of HUD is authorized to pay accelerated claims upon assignment of certain defaulted FHA-insured mortgage loans. Before implementing the new accelerated claim payment process authorized by amended section 204 on a nationwide basis, HUD has decided to conduct a demonstration involving a group of defaulted mortgages. The ACD Demonstration will allow HUD to assess the success of the new accelerated claim payment process and to address any programmatic concerns before authorizing its use throughout the country. Publication of the February 5, 2002 notice allowed HUD to solicit input on how the ACD Demonstration should be structured and its success evaluated.

II. Significant Changes to Proposed ACD Demonstration

This notice announces HUD's establishment of the ACD Demonstration. The notice follows publication of the February 5, 2002 notice, and takes into consideration the public comments received on the earlier notice. The most significant changes that have been made to the ACD Demonstration since publication of the February 5, 2002 notice are as follows:

A. Changes Regarding FHA Insurance Requirements

1. *Eligibility of FHA-insured mortgages on two to four-unit homes.* HUD has expanded eligibility for the ACD Demonstration to include FHA single family mortgages on one to four-unit homes. The February 5, 2002 notice limited eligibility to FHA mortgages on one-unit homes. Mortgages on two to four-unit homes have a higher risk of foreclosure, all other factors being equal. Inclusion of these mortgages in the ACD Demonstration will therefore increase the number of defaulted loans available for submission of an accelerated claim and enhance the usefulness of the ACD process for participating mortgagees. Accordingly, HUD has determined that inclusion of these mortgages in the ACD Demonstration is appropriate.

2. *FHA endorsement date.* The notice specifies that the FHA endorsement date of the mortgage loan must be prior to February 5, 2002.

3. *No pending or paid partial FHA insurance claim.* The notice provides that there must be no pending or paid partial FHA mortgage insurance claim in connection with the defaulted mortgage.

B. Changes Regarding Loan Status

1. *Minimum unpaid principal balance.* The notice provides that the mortgage must have an unpaid principal balance of no less than $20,000.

2. *Minimum length of default prior to payment of accelerated claim.* This notice clarifies that to be eligible for an accelerated claim, a mortgage must be in default for at least four full monthly installments (*i.e.*, four full mortgage payments are due and unpaid).

3. *Maximum length of default prior to payment of accelerated claim.* Related to the preceding clarification, HUD will also establish a maximum number of missed payments beyond which it will not pay an accelerated claim on a defaulted mortgage. This maximum number of missed payments will vary depending on the location of the underlying property, and will be based on the foreclosure timelines for the various jurisdictions in the Atlanta and Philadelphia Homeownership Centers (HOCs). The schedule of maximum missed mortgage payments will be provided to mortgagees prior to their agreement to participate in the ACD Demonstration.

4. *Revised loan to value requirements.* This notice provides that, to be eligible under the ACD Demonstration, a mortgage must have a loan to value ratio of 85 percent or greater, rather than the 90 percent specified in the February 5, 2002 notice. HUD has determined that a high percentage of claims meeting the lower loan to value ratio satisfy the other eligibility criteria for an accelerated claim. Revising the loan to value ratio will make more loans eligible for the ACD process, thereby increasing its usefulness for participating mortgagees and better enabling HUD to evaluate the success of the ACD Demonstration. Accordingly, HUD believes that inclusion of these mortgages in the ACD Demonstration is appropriate.

5. *Need for Broker's Price Opinion (BPO).* This notice clarifies that BPOs are not used to calculate loan eligibility for the ACD Demonstration. However, BPOs will be required for all loans for which a claim is submitted. The BPO will be made available to private sector firms who qualify to participate in a competitive bidding process to select a participant in the joint venture formed for disposition of the mortgage loans. Participating mortgagees will be reimbursed for BPOs on all loans for which a claim is submitted and paid.

6. *FICO score no longer an eligibility criterion.* This notice provides that a mortgagor's FICO score will no longer be used as an eligibility criterion under the ACD Demonstration. (FICO stands for Fair, Issac and Company—the company that has developed the mathematical formulas used to derive FICO scores.)

7. *Indemnification Agreement.* The notice provides that the mortgage loan must not be, to the knowledge of the participating mortgagee, subject to an Indemnification Agreement as of the provisional claim approval date.

C. Changes Regarding Loss Mitigation

1. *Loss mitigation evaluation.* The notice provides that, for each defaulted mortgage, the participating mortgagee (or the prior servicer of the defaulted mortgage) has evaluated all of the loss mitigation actions provided in 24 CFR 203.605 and determined that no such action is appropriate or, if appropriate, that such action has been tried and has failed.

2. *Special forbearance relief.* To be eligible under the ACD Demonstration, the mortgage loan must not be subject to special forbearance relief under 24 CFR 203.614.

D. Changes Regarding Property Securing Mortgage

1. *Exclusion of properties located in asset control areas.* This notice provides that the ACD Demonstration will exclude loans secured by properties located in asset control areas designated under section 204(h) of the National Housing Act, as added by section 602 of the FY 1999 HUD Appropriations Act.

2. *Properties seized by the United States.* The mortgage must not be secured by a property that has been seized by the U.S. Department of Justice or subject to a seizure order in connection with a drug-related case.

3. *Limit on cost of repairs.* As of the provisional claim approval date, the cost of any required repairs to the property must be less than 10% of the property's value.

E. Changes Regarding Foreclosure

1. *Foreclosure sales and deeds-in-lieu of foreclosure.* For a mortgage to be eligible for an accelerated claim, there must not have been a foreclosure sale or pre-foreclosure sale of the property, no deed-in-lieu of foreclosure has been accepted, and no foreclosure sale has been scheduled within sixty days following the claim date.

2. *Commencement of foreclosure proceedings.* If foreclosure of the property has been initiated, the foreclosure action may not have been contested in order for the defaulted mortgage to be eligible under the ACD Demonstration.

III. Discussion of the Public Comments Received on the February 5, 2002 Notice

The public comment period on the February 5, 2002 notice closed on April 8, 2002. HUD received 21 comments on the notice. Mortgage companies, legal aid providers, nonprofit housing and community development organizations, and national organizations representing mortgage bankers and realtors submitted comments. This section of the preamble presents a discussion of the most significant issues raised by the public commenters on the February 5, 2002 notice, and HUD's responses to these comments.

Comment: Participation in the ACD Process should be voluntary. Several of the commenters made this suggestion.

HUD Response: Participation in the ACD Demonstration is voluntary.

Comment: Participating mortgagees should be required to fully comply with loss mitigation processes. Some commenters expressed concern that the ACD Demonstration could result in families losing their homes if participating mortgagees do not fully utilize the existing HUD loss mitigation process.

HUD Response: The ACD Demonstration will not compromise existing loss mitigation standards and requirements. Only those mortgagees qualified in the top tier of the FHA Tiering System (which ranks mortgagees in loss mitigation use) are eligible to participate in the ACD Demonstration. Participating mortgagees must exhaust all loss mitigation options prior to submitting a claim under the ACD Demonstration. Further, HUD expects that the joint venture Manager will be motivated to avoid foreclosure and seek to restructure loans in accordance with market value and owner income.

Comment: HUD should permit use of additional risk scoring models. Several commenters suggested that participating mortgagees be allowed to use risk scoring models, other than the Freddie Mac Early Indicator Risk Scoring System, to determine the eligibility of a mortgage for an accelerated claim.

HUD Response: HUD has not adopted the change suggested by the commenters. Mortgagees participating in the ACD Demonstration are required to use the Freddie Mac Early Indicator Risk Scoring System. However, HUD will explore the use of other risk scoring models for use in the permanent ACD program.

Comment: HUD should conduct an audit before terminating FHA mortgage insurance. One commenter suggested that HUD conduct pre-claim audits to ensure the eligibility of a loan for an accelerated claim prior to termination of FHA insurance. Alternatively, the commenter suggested that HUD conduct a post-claim audit but not terminate FHA insurance until the audit is complete.

HUD Response. HUD has not adopted the change requested by the commenter. The ACD Demonstration will contain several safeguards to ensure that a defaulted loan qualifies for payment of an accelerated claim. Participating mortgagees are required to assure that loans meet the eligibility criteria for an accelerated claim. HUD will also review the eligibility of defaulted loans during the pre-claim process and notify the participating mortgagees of provisional approval or disapproval of the submitted loans. FHA mortgage insurance will be terminated upon payment of the claim.

Comment: Will FHA insurance be restored for a mortgage loan reassigned to the participating mortgagee? One commenter asked this question.

HUD Response. If the FHA insurance was valid prior to submittal of the accelerated claim, HUD will reinstate the mortgage insurance after reassignment of the loan to the participating mortgagee.

Comment: ACD Demonstration should take into consideration other community revitalization and affordable housing programs and initiatives. One commenter made this suggestion. The commenter was particularly concerned about the potential impacts of the ACD Demonstration on the program for the disposition of HUD-owned single family assets in asset control areas authorized by section 602 of the FY 1999 HUD Appropriations Act.

HUD Response. HUD agrees and has revised the ACD Demonstration in response to the concerns expressed by the commenter. Specifically, the ACD Demonstration will not include any mortgages secured by a property located within an asset control area.

Comment: Objection to use of BPO in calculating loan to value ratio. Several commenters objected to the use of a BPO in calculating the loan to value ratio of the defaulted mortgage. The commenters suggested that HUD reimburse mortgagees for the cost of the BPO, or permit the use of an Automated Valuation Model (AVM) analysis to determine the value of the property.

HUD Response. BPOs are not used to calculate the loan to value ratios to determine eligibility for the ACD

Demonstration. Loan to value ratios will be determined using the original appraisal or, if none is available, the original principal balance of the mortgage. However, BPOs will be required for all loans for which a claim is submitted, and made available to bidders qualifying for participation in the joint venture. Participating mortgagees will be reimbursed for BPOs on all loans for which a claim is submitted and paid.

Comment: FICO score should not be used in determining loan eligibility. One commenter suggested that HUD eliminate some of the specific loan eligibility criteria during the demonstration period, and specifically suggested the removal of the FICO score requirement.

HUD Response. HUD will not use the FICO score eligibility criterion during this demonstration period. The FICO score requirement is being removed both in response to the public comments and because the requirement overlapped with other eligibility criteria.

Comment: Loans should be in default for longer than three months to qualify for the ACD process. Several commenters suggested that HUD extend the three-month period that a loan must be default to qualify for payment of an accelerated claim.

HUD Response. In response to these comments, this notice clarifies that HUD will not pay an accelerated claim until an eligible mortgage is in default for at least four full monthly installments (*i.e.*, four full mortgage payments are due and unpaid). Further, HUD will also establish a maximum number of missed payments beyond which it will not pay an accelerated claim on a defaulted mortgage. This maximum number of missed payments will vary depending on the location of the underlying property, and will be based on the foreclosure timelines for the various states located within the jurisdictions of the Atlanta and Philadelphia HOCs. The schedule of maximum missed mortgage payments will be provided to mortgagees prior to their agreement to participate in the ACD Demonstration.

Comment: Accelerated claim amount should be based on the mortgage note interest rate. Several commenters wrote that HUD should base the amount of the accelerated claim on the mortgage note rate of interest (rather than on the debenture rate). The commenters also suggested that the amount of the claim be calculated from the date of the last paid installment rather than from the date of default.

HUD Response. HUD is statutorily required to pay insurance claims based on the debenture rate from the date of default.

Comment: Submission of a Mortgage Insurance Certificate (MIC) should not be required for payment of an accelerated claim. A few commenters opposed requiring the submission of a paper MIC as part of the claim submission process.

HUD Response. HUD has eliminated the submission of an MIC as a prerequisite for the payment of an accelerated claim. For claim payment under the ACD Demonstration, HUD will rely on representations and information provided by participating mortgagees (including a screen print-out from the FHA Connection portfolio screen verifying mortgagee identification number, property address and current holder) as well as internal information to determine insurance status. Participating mortgagees will, however, be required to submit the MIC with the collateral files (and obtain a duplicate original MIC if the original MIC is missing) following claim submission. Mortgagees will continue to be required to submit the original or a duplicate MIC as a prerequisite to submitting a conveyance or other disposition claim for FHA single family mortgage insurance benefits.

Comment: Factors for consideration in evaluating the success of the ACD Demonstration. Several commenters submitted helpful recommendations regarding the factors HUD should consider in evaluating the success of the ACD Demonstration.

HUD Response. HUD appreciates all of the suggestions made by these commenters. HUD will consider all of these comments in determining the criteria for evaluating the ACD Demonstration. A summary of the results of the evaluation will be published in the **Federal Register**.

IV. Overview of the ACD Demonstration

A. Duration

The ACD Demonstration will have a limited duration. HUD may extend the duration of the demonstration in order to accurately assess its effectiveness.

B. Geographic Scope

The demonstration will initially include mortgages secured by properties located within the jurisdiction of HUD's Philadelphia, Pennsylvania and Atlanta, Georgia HOCs. HUD may decide at a future date to expand the scope of the ACD Demonstration to include one or more additional HOCs.

The Philadelphia HOC serves Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

The Atlanta HOC serves Alabama, Florida, Georgia, Kentucky, Illinois, Indiana, Mississippi, North Carolina, South Carolina, and Tennessee, as well as the Caribbean.

C. Participating Mortgagees

Mortgagee participation in the ACD Demonstration is voluntary. HUD will select up to 9 eligible mortgagees to participate in the ACD Demonstration. In order to be selected for participation in the ACD Demonstration, a mortgagee must satisfy all of the following criteria:

1. *Number of serviced loans.* The mortgagee must currently service in excess of 20,000 mortgage loans secured by properties that are located within the jurisdiction of the Philadelphia or Atlanta HOCs.

2. *Loss mitigation performance.* The mortgagee must be qualified in the top tier of the FHA Tiering System, which ranks mortgagees in loss mitigation use. The FHA Tiering System was developed by HUD's National Servicing and Loss Mitigation Center and is subject to future refinement.

3. *Computer system capabilities.* The mortgagee must have the technical capability to interface with the FHA Single Family Claims system, through the internet (using the FHA Connection System) and using Electronic Data Interchange (EDI) technology. In addition, the mortgagee must have the technical capability to interface with any other computer systems utilized by FHA or its contractors pertaining to the ACD Demonstration.

4. *Use of the Freddie Mac Early Indicator Risk Scoring System.* The mortgagee must have the ability to run risk scoring models using the Freddie Mac Early Indicator Risk Scoring software program.

5. *Other criteria.* The mortgagee will be required to meet any additional criteria that HUD may establish regarding the eligibility of mortgagees for participation in the ACD Demonstration.

D. Eligible Loans

Only certain defaulted FHA-insured loans are eligible for the accelerated claim payment process. To be eligible for payment of an accelerated claim, the defaulted mortgage must meet the following criteria:

1. FHA Insurance

(a) The mortgage is an FHA-insured single family mortgage loan on a one-to four-unit home.

(b) The mortgage loan is an actively insured by FHA under either section 203(b) or 234 of the National Housing Act (12 U.S.C. 1709(b) and 1715y).

(c) The FHA endorsement date of the mortgage is prior to February 5, 2002.

(d) There is no pending or paid partial FHA mortgage insurance claim in connection with the mortgage.

2. Loan Status

(a) The mortgage loan has an unpaid principal balance of no less than $20,000.

(b) The mortgage must be in default for at least four full monthly installments (*i.e.*, four full mortgage payments are due and unpaid). However, the number of missed monthly installments on the mortgage as of the provisional approval date may not exceed the maximum number allowed by HUD for the jurisdiction in which the property securing the mortgage is located.

(c) The mortgage has a loan to value ratio of 85 percent or greater. The loan to value ratio represents the relationship between the amount of the mortgage loan and the value of the real estate. The loan to value ratio is to be determined using the original appraisal or, if none is available, the original principal balance of the mortgage loan.

(d) The mortgage must have received a score of D, E, or F on the Freddie Mac Early Indicator Risk Scoring software system.

(e) To the knowledge of the participating mortgagee, the mortgage loan is not subject to an Indemnification Agreement as of the provisional claim approval date.

4. Property Securing Mortgage

(a) The mortgage must be secured by a property located within the jurisdiction of HUD's Philadelphia, Pennsylvania or Atlanta, Georgia HOCs. However, the property must not be located in an asset control area designated under section 204(h) of the National Housing Act as added by section 602 of the FY 1999 HUD Appropriations Act.

(b) The mortgage must not be secured by a property that has been seized by the U.S. Department of Justice or otherwise subject to a seizure order in connection with a drug-related case.

(c) As of the provisional claim approval date, the cost of any required repairs to the property must be less than 10% of the property's value.

5. Foreclosure

(a) No foreclosure sale of the property has been scheduled within the sixty (60) day period after the claim date, there has been no foreclosure sale or pre-foreclosure sale, and no deed-in-lieu of foreclosure has been accepted.

(b) If the first step required under applicable law to initiate a foreclosure of the property has been taken, the foreclosure action has not been contested.

6. Other Eligibility Requirements

The mortgage must meet any additional criteria that HUD may establish regarding the eligibility of defaulted mortgage loans for an accelerated claim under the ACD Demonstration.

E. Risk Scoring

At the 90th day of delinquency, mortgagees participating in the ACD Demonstration will be required to begin running scoring models using the Freddie Mac Early Indicator Risk Scoring System to confirm the eligibility of the mortgage for payment of an accelerated claim. Provided that the mortgage meets the eligibility criteria described in paragraph. IV.D. of this notice, participating mortgagees will have the option to submit an accelerated claim.

F. Disposition Methods

HUD will use one or both of the following disposition methods under the ACD Demonstration. HUD, in its sole discretion, will determine which of the two disposition methods to use for particular mortgages under the demonstration.

1. *Joint Venture.* The joint venture method will be the primary disposition method used under the ACD Demonstration. Under this disposition method, HUD will sell a majority interest in a public/private joint venture formed to acquire, service and dispose of the mortgage loans submitted under the ACD Demonstration. The private sector entity will be selected through a competitive bid process and will serve as the Manager of the joint venture. The joint venture Manager will receive a percentage of the net cashflow from the joint venture derived from the eligible mortgages submitted by mortgagees participating in the ACD Demonstration. The private sector joint venture Manager will be responsible for maximizing the value of each mortgage loan asset through re-performance, refinancing, workout, foreclosure and/or disposition. HUD expects the joint venture Manager to conduct its operations in a manner consistent with applicable FHA and industry standards for integrity and avoidance of predatory lending practices.

Private sector firms that pre-qualify will be given the opportunity to bid at a competitive auction to be the joint venture Manager. To qualify, bidders must be adequately capitalized and must meet other FHA standards for loan servicing, experience and integrity. Before bidding, investors will be required to make a security deposit with HUD.

2. *Other disposition methods may be used.* HUD may also consider using the special servicing disposition method or other disposition methods under later subsequent demonstrations. The ACD Demonstration will not initially use this method, and HUD may decide not to use this disposition method at all during the course of the demonstration. Under this disposition method, servicing of the mortgage may be transferred to a special servicer. The special servicer may provide assistance to HUD in undertaking one or more of the following actions: (a) Foreclosing and selling the properties; (b) accumulating mortgages for a whole loan sale; and/or (c) accumulating mortgages for disposition in a securitization.

V. Evaluating the Success of the ACD Demonstration

At the conclusion of the ACD Demonstration, HUD will assess its success and determine whether to implement the ACD process on a permanent basis throughout the country. In conducting this evaluation, HUD will assess such factors as whether the use of the ACD process will: (1) reduce loss rates; (2) reduce the cost and time associated with claim dispositions; and (3) enhance the ability of HUD to assess risk and manage the FHA mortgage insurance fund.

VI. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment was prepared for the February 5, 2002 notice in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That Finding of No Significant Impact remains applicable to this notice and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating policies that have federalism implications and either impose substantial direct compliance costs on State and local governments and are not required by statute, or preempt State law, unless the relevant requirements of section 6 of the Executive Order are met. This notice does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Dated: October 23, 2002.

Sean Cassidy,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–27559 Filed 10–28–02; 8:45 am]

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